

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)



Issue No. 12
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NEWSLETTER

PUNE BRANCH OF
WIRC OF ICAI

(Subscribers copy not for sale)

PUNE BRANCH OF WIRC OF ICAI

Forthcoming Programmes

SR. NO.	DATE	SEMINAR NAME	VENUE	TIME	FEES	CPE HRS.
1.	26th January, 2020	Flag Hoisting on the Occasion of "Republic Day"	ICAI Bhawan, Bibwewadi, Pune	9.00 am	N. A.	N. A.
2.	28th January, 2020	One Day Seminar on "ABCD of Technology"	MES Auditorium, Balshikshan, Kothrud, Pune	9.30 am To 5.00 pm	Rs. 900/- Plus GST	6 Hrs.
3.	8th February, 2020	Grow your Firm & Practice (The Future Ready CA Firm) for SMPs	ICAI Bhawan, Bibwewadi, Pune	10.00 am To 5.30 pm	Rs. 500/- Plus GST	6 Hrs.

Notes:-

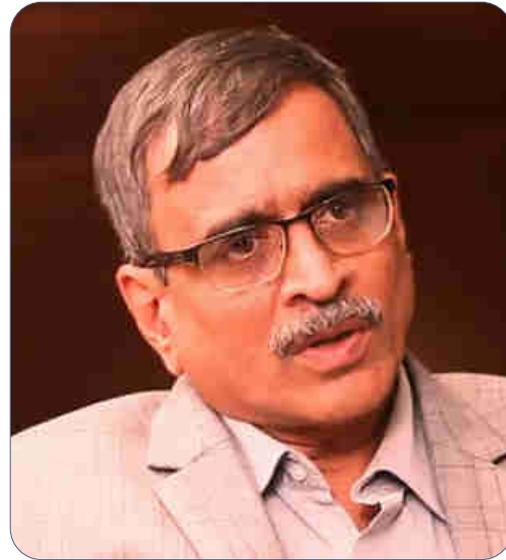
- 1) Registrations half an hour before program timings mentioned above.
- 2) For online registrations & detailed programme structure visit www.puneicai.org
- 3) Spot Registration Fees will be charge 25% extra

Congratulations

Getting elected as Directors of Cosmos Bank



CA. Yashwant Kasar



CA. Milind Kale

Getting elected as Vice chairman of Vidya Sahakari Bank



CA. Mahesh Gavaskar

Chairperson's Communique

Respected Members,

I'm feeling very proud to share that your branch was successful in coordinating a mega event for students. More than 2,500 students participated in the International Students Conference. The cultural event provided a showcase for students talent and the paper presentations from the students were a class in itself. We could feel the enthusiasm and the brilliance displayed by students. Really they are the future of our profession and it is definitely bright. The students also congregated to form a human chain in the shape of CA logo. This human chain was much appreciated and was useful to create awareness about CA as a profession in public at large.



CA. Ruta Chitale
Chairperson
Pune Branch of WIRC of ICAI

We also had a spate of seminars and sessions on various topics ranging from Internal Audit 2.0 to Excel. The focus of the profession, I feel, is increasingly undergoing a fast pace of change from the traditional to the digital. We all need to update and ready ourselves for this changing scene. Various programs are being conducted to help the members for such updates. We are also in the process of getting approvals for various post qualification courses to be held at Pune. Please await these announcements.

In addition to seminars, a need to create resource/ knowledge bank is felt especially by the new entrants to the profession or members seeking to find a cross-confirmation of their logic/ rationale while carrying out consultancy engagements. This need is usually felt by proprietorship or SMP's wherein the four-eye policy is difficult to implement. In such a case, it was thought that an informal helpdesk shall be useful. In the coming days, I shall endeavor to create such help giving platforms especially on social media with the help of experts; after taking the necessary and requisite permissions/approvals. I appeal to all the members to kindly let me know their core competence in order that experts can be identified in particular fields.

To initiate the (knowledge) resource creation, an idea of creating small videos is in its nascent stage. This shall be akin to TED Talks. A person can make a small 10 min video whereby he/she can endeavor to explain any particular topic/ issue/ concept. This, after review by editorial team, may be put up on Pune branch website (of course only after the permissions/ approvals in place)! This would be useful when any person searches for any particular topic/ concept and the key words can lead the searcher to Pune branch website. This would also make ICAI – Pune branch website a useful public utility tool for general people too. Will appreciate if we get a feedback on this and other ideas too.

Do not forget to share your ideas, views and thoughts on any and every matter related to the branch. Assuring you that we shall definitely take cognizance of each and every email, message and verbal communication.

Awaiting your email at chairman@puneicai.org and/or message at my personal mobile number (#8390610136).

Warm Regards,
CA Ruta Chitale

"Don't feel bad if people remember you only when they need you. Feel privileged that you are like a candle that comes to their minds when there is a darkness."

Consulting v Industry – Two sides of the same coin?

Contributed by :- CA. Payal Sabnis
Email :- payal.sabnis@nangia.com

One of the rudimentary questions to any freshly qualified Chartered Accountant (CA) is whether to join an Industry or a consulting firm. Gone are the days where a CA would largely choose to focus only on audit or tax matters. A fresher in the profession is spoilt for choice as newer avenues in the form of forensics, transaction advisory, technology solutions using artificial intelligence to even establishing their own start up with an innovative idea etc. are in vogue and offer an opportunity to travel an area relatively less explored with rapid growth.

Adopting their career in non-conventional areas or even in traditional audit and tax spheres generally leads a CA to approach a consulting firm or an Industry. Though both means generally lead to achieving the desired result, a lot depends upon the mental preparedness, adaptability and approach of an individual along with his soft skills to lay his footprint in his path of success. This article aims to succinctly lay certain pointers (in a non-partisan manner, other things being equal) on working on either side of the table i.e. in Industry or in consulting firms. Though grass always looks greener on the other side, understanding of demands of the role and the expectations of the employer can go a long way to settle down for an individual.

On a lighter note, according to the popular cartoon character 'Dilbert', merger of the words 'con' and 'insult' gives rise to 'consult'. On a serious note though, consulting is a far more serious and fast paced practice wherein an individual usually has multiple opportunities to explore his potential and develop a holistic horizon in whichever field he / she chooses. Some pointers to work in consulting arena are as under:

- **Growth:** Growth is more likely than not assured while you consult as one is constantly exposed to different clients, industries, business practices and experiences. This helps the individual to develop a holistic approach while also understand the manner businesses are conducted. Some workstreams (e.g. transfer pricing) offer more insights into business models, supply chain and pricing mechanisms and can be attractive to analytical brains in the profession.
- **Targets:** Most consulting firms expect individuals upon achieving a certain career progression to also be engaged into business development initiatives. Targets are often set depending upon the hierarchy and variable compensation as well as future growth trajectory often depends upon realisation of the said targets.
- **Knowledge Management:** Consulting firms often have a wealth of information as they share their lessons learnt, constant updates in say tax subjects, developing whitepapers, best practices, etc. across the organization. The broader the network and sharing across the firm more is the availability of information at your fingertips. It is a common expectation that the individual is well updated of the changes taking place and makes efforts in this regard. Being technically strong is one of the biggest assets for an individual which makes him valued across an organisation.
- **Work-Life balance:** "Time" for consultants is the scarcest of commodities. Deadlines and deliverables while maintaining the quality of work are extremely vital in consulting field and an individual often juggles between managing work, client and management expectations, deadlines etc. In the fast paced world of consulting the relevance of the term 'work life' balance sometimes ceases to exist and an individual may at a certain point of time in his career have to make a choice between growth and personal life. Having said so, there are multiple individuals though who have shown the way in achieving their goals without having to compromise heavily on their work life balance.
- **Working Women:** According to a recent survey conducted by AVTAR and Working Mother on Indias Top 10 Best Companies for Women, consultancy firms have outperformed. The factors taken into consideration were mainly women's recruitment, retention and advancement to their safety and security in the workplace, flexibility of work hours, parental leave, benefits and work-life programmes, as well as company culture and management accountability.

"Having a sharp memory is a good quality of brain, but, the ability to forget the unwanted is a far better quality of the heart. Develop the second one and feel the difference."

Having seen how consulting looks like and what an individual can expect to imbibe while working in an consulting firm, lets have a look on whether grass is greener on the other side. Working in Industry presents a different working environment with its own set of advantages and disadvantages. A brief look into what one can expect working in Industry can be summarised as under:

- **Growth:** Growth opportunities are to an extent limited while working in Industry unless for those willing to grab opportunities when it knocks the door.
- **Liaisoning:** One of the important starting points of working in Industry would be to make workplans / roadmap and to list down priorities in the assigned areas of work. As both the internal and statutory compliances are mandatory for the company, balancing everything simultaneously is a must. Day-wise and month-wise plan needs to be chalked down in advance and review of the same at the end of the day is important. Co-ordination between process owners is an important task and a daily tracker should be prepared and updated including escalation points to the department head.
- **Work Pattern:** Your industry colleagues are normally content to concentrate on their work. Your consulting colleagues spend most of their time trying to out-do each other and are more likely to go all out and get their hands into their areas of interest. In the industry, people do "their job" and are generally focused on their area of work and their scope or area of responsibility is very restricted. Anything outside of that is considered someone else's job and/or responsibility.
- **Creativity:** New ideas are not necessarily the norm in the industry as you run the risk of being someone who challenges "how things are done here" even if your ideas are great.
- **Training:** In the industry, employee training is mostly limited to the area of business or technology that the industry is in. Training in finance / tax or other upcoming laws etc. is thus left upon the individual to take initiative or depend upon updates or workshops of consultancy firms.
- **Work-Life Balance:** Work-life balance in industry is relatively better than in consulting as the nature of work demands are generally pre-set and managed. Except for critical internal or statutory deadlines, an individual could enjoy the luxury of precious family time etc. For a working woman too, generally industry offers many initiatives like day care facilities, concessions like work from home in case of urgency etc.

Career in Consulting :

Starting a career in consulting itself is probably a better choice rather than transitioning from Industry to consulting as the approach and focus of the individual is largely restricted to his designated area in Industry. Willingness to learn and re-learn, striving to achieve perfection, being innovative and ability to manage are some key skill sets for an individual to consider working in consultancy field.

Career in Industry :

Working in Industry could be a more favoured approach to an individual having fondness for being expert in his designated area and having willingness to lean the business nitty grit-ties. Relationship building with not only peers from your team but also with colleagues from business is helpful and your social and soft skills play a big role here. It may take time to understand the internal politics but once set, there can be no looking back. One of the main advantages to work in an industry for an inquisitive individual would be to have a deep understanding of how different facets of its business functions, whether in manufacturing or service sector. An individual open to challenges must also keep his eyes wide open for possible opportunities to work in different available departments to get better exposure and growth opportunities.

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Some Interesting Aspects of Penalty U/S 271D r.w.s 269SS of The Income-Tax Act, 1961 (PART -2)

Contributed by :- CA. Bhuvanesh Kankani

Email :- bhuvaneshkankani@gmail.com

In continuation to the article published in our last edition, Question No.5 Onwards are discussed as under

Q. WHETHER ADVANCES COVERED BY SECTION 269SS?

Provisions of section 269SS covers loans, deposits and specified sum whereby advances are not covered. However, advances against immovable properties are duly covered as 'specified sum'. Barring advances against immovable properties there is no restriction u/s 269SS upon acceptance of cash advance. However, provisions of section 269ST should be considered while transacting in cash advances.

Relevant case law:

'Provisions of section 269SS are applicable only in case of loans and deposits received by the assessee in contravention of the provision. Thus, when the assessee receives advance from his customers for supply of goods in cash exceeding the limits prescribed in section 269SS, penalty under section 271D was held to be not leviable. (A.Y. 1990-91) CIT & Anr. v. Kailash Chandra Deepak Kumar (2009) 32 DTR 336 / 317 ITR 351 (All.)(High Court)'

Q. WHETHER MONEY RECEIVED FROM MEMBERS OF CO-OPERATIVE SOCIETY OR PARTNERS OF FIRM PARTAKE THE NATURE OF LOAN?

As highlighted above, that the provisions of section 269SS gets triggered only when the loan, advances or specified sum is received from ANOTHER PERSON. Since one cannot transact with himself. Similarly merely owing to legal fiction cash received from the members of co-operative societies, partners of partnership firm wherein tax evasion is not the motive does not partake the nature of Loan or deposits as the payers and recipient represent each other.

Relevant case laws:

'Money received by assessee co-operative society from its member/director and their relatives by way of deposits and loans given to them as part of its banking activities cannot be considered as "loan" or "deposit" so as to attract section 269SS or 269T, as the assessee is working on the concept of mutuality and its directors or members are not covered by the expression "any other person" occurring in section 269SS, more so when the assessing officer has accepted the genuineness of such deposits and the assessee was under bonafide belief the provisions of section 269SS and 269T are not applicable. (A.Ys. 2006-07 and 2007-08) Citizen Co-operative Society Ltd. v. Addl. CIT (2010) 41 DTR 305 (Hyd.)(Trib.)'

'In case of CIT Vs M/s Muthoot Financiers (ITA 336/2002) Hon'ble Delhi High Court allowed the argument of assessee (respondent in the case) that cash payments received from partners do not partake the nature of loan and the transaction should not be taken as independent transaction as partner and partnership firm don not have separate identification then one another.'

Q. WHETHER, IN CASE OF PENALTIES ABOVE RS. 20,000/-, PENALTY BE REDUCED BY RS.20,000?

'If any loan is there exceeding Rs.20,000 and any penalty is to be imposed, permissible amount of Rs.20,000 has to be adjusted. CIT v. Ajanta Dyeing & Printing Mills (2003) 130 Taxman 442 / 164 ITR 505 (Raj.)(High Court)'

That is, in case penalty is for accepting cash loan of Rs.50,000/- then in such case penalty of Rs.30,000/- should only be levied, as Rs.20,000/- is allowed amount of accepting cash loan.

Q. WHETHER PENALTY CAN BE IMPOSED IN CASE OF AMOUNT TO BE TAXED AS UNDISCLOSED INCOME?

The moment department contends that given amount is income, that means that said amount is neither loan nor deposit nor specified sum thus not qualifying to fall under the ambit of section 269SS.

Relevant case law:

'Penalty is not leviable when in a case the Revenue takes the stand that the alleged deposit was undisclosed income of the assessee. CIT v. Standard Brands Ltd. (2006) 204 CTR 48 / 285 ITR 295 / 155 Taxman 383 (Delhi)(High Court).'

Q. WHETHER PENALTY CAN BE LEVIED ON MERE SURMISES OR INCOMPLETE EVIDENCES?

Penalties being strict in nature they cannot be automatic. Unless the fact of breach of provision is proved beyond doubt and the act or omission falls within four corners of the provision of law, penalty should not be levied.

Relevant Case laws:

In the absence of any definite material to establish that the assessee had received loan/deposit in contravention of the provisions of s. 269SS, except for the photocopies of statement of loan submitted by the alleged creditor which was contradicted by the assessee and which has been shown to be incomplete and had been rejected by the CIT(A). Penalty under section 271D could not be levied. (A.Ys. 1995-96, 1996-97) **Navin Kumar v. Jt. CIT (2006) 99 TTJ 267 / 98 ITD 242 (TM)(Amritsar)(Trib.)**

In an identical case of Dy. CIT Cent. Cir. 2(2) Pune Vs. M/s. Sneh Builders [I.T.A. No. 520/PN/2008 : A.Y. 2004-05] Hon'ble Pune ITAT upheld the decision of CIT(A) in deleting penalty u/s 271D. Hon'ble Pune tribunal held as under

"The action of the Assessing Officer in imposing the penalty u/s 271D on the presumption that against the security of these cheques of Rs. 95,50,000/- the assessee must have taken equivalent amount of cash is not borne from the records. There is no concrete evidence to fact that such amount was in fact received in cash by the assessee except the statement of Shri B.H. Shah. General statement of third person cannot be valid basis for taking action against the assessee. As the penalty has been imposed only on the basis that against the security of cheques equivalent amount of cash might have been taken cash loans is not justified. Under the facts and circumstances penalty of Rs. 95,50,000/- was rightly deleted by the CIT(A). We uphold the same.' (para no. 7 of the order)"

Q. WHETHER PROVISIONS OF SECTION 269SS r.w.s 271D AND 273B WILL APPLY IN CASE OF GENUINE TRANSACTION?

Upon perusal of the memorandum behind bringing the section 269SS it is clear that the legislative assembly intended to curb the practise of extending false explanation against the cash found during the search actions. Accordingly, the intention was bring down the non-genuine transactions. This being the background, the transactions contravening provisions of section 269SS if genuine and as per provisions of section 273B relief can be granted by not imposing penalty.

Relevant Case laws:

'Bona fide belief that share application money was neither loans or deposits, deletion of the penalty was held to be justified. [S. 271D] Dismissing the appeal of the revenue the Court held that; in the instant case also, the assessee was under the bona fide impression that the money received was only towards allotment of shares and it is not a loan or deposit. Hence, no question of law much less any substantial question of law arises for consideration in the instant appeal. (AY. 2002-03 to 2004-05) CIT v. Object Frontier Software (P.) Ltd. (2017) 244 Taxman 292 (Mad.) (HC)'

Dismissing the appeal of the revenue, the Court held that the transaction was found to be genuine. The Assessing Officer had not doubted the transaction. In that view of the matter, both the Commissioner (Appeals) and the Tribunal had rightly deleted the penalty. (AY. 1994-95) CIT v. Panchsheel Owners Associations (2017) 395 ITR 380 (Guj.) (HC)

Allowing the appeal the Court held that, penalty is not automatic under section 271D of the Income-tax Act, 1961 on mere violation of the provisions of section 269SS of the Act. The assessee explained that the amount received from his son was neither a loan nor a deposit within the meaning of section 269SS of the Act and it was received in cash in view of urgent necessity. A proper explanation had been rendered by the assessee for the transaction. Hence, the imposition of penalty under section 271D was not valid. Dr. Rajaram L. Akhani v. ITO (2017) 395 ITR 497 (Guj.) (HC)

Q. WHETHER MERE EXISTENCE OF GENUINE OR BONAFIDE TRANSACTION IS SUFFICIENT TO ATTRACT RELIEF U/S 273B OF THE ACT OR WHETHER IT HAS TO BE ESTABLISHED THAT ON ACCOUNT OF SOME BONAFIDE REASONS THE ASSESSEE COULD NOT GET LOAN/DEPOSIT BY ACCOUNT PAYEE CHEQUE OR ACCOUNT PAYEE BANK DRAFT ?

Many times the cash loan accepted by the persons would be genuine but contravening the provisions of section 269SS in such cases though the transaction is genuine courts have held that along with the genuineness the bonafide reason behind accepting loan or advance in cash needs to be established.

To adjudicate the validity of said requirement division bench of Mumbai Tribunal in the matter of Deepak Sales & Properties Pvt Ltd vs. ACIT (ITAT Mumbai) (Special Bench) I.T.A. No. 6304/Mum/2012 had referred the matter to Hon'ble President of ITAT to constitute a special bench. Relevant text of the order stating the reason behind referring the matter is reproduced as under,

The appeal initially came up before "Mumbai G Bench" of ITAT (referred to as "Division Bench") and the members constituting therein referred the issue to the Hon'ble President for constituting a Special Bench. The back ground of the same is discussed in brief. The Division Bench noticed that the assessee has contended before it that if a transaction of accepting deposits in violation of sec. 269SS is found to be bonafide one, then the penalty u/s 271D of the Act should not be levied. In this regard, the assessee had placed reliance on the decision rendered by Mumbai G bench of ITAT in the case of Zodiac Developers P Ltd (ITA No.31/Mum/2011 dated 10.10.2014), wherein

the Bench has, inter alia, observed that if the Assessing Officer has not doubted the genuineness of the transaction and if no addition is made u/s 68 of the Act, penalty cannot be imposed u/s 271D of the Act. The Division Bench was of the view that the decision so rendered by G bench in the case of Zodiac Developers P Ltd (supra) is directly contrary to the decision rendered by Hon'ble Apex Court in the case of Kum. A.B.Shanti (255 ITR 258), wherein it was observed that existence of genuine or bonafide transaction is not sufficient to attract relief u/s 273B of the Act and it has to be established that on account of some bonafide reasons the assessee could not get loan/deposit by account payee cheque or account payee bank draft. The Division Bench has expressed the view that the provisions of sec. 271D & 271E come into play only in respect of genuine transactions, with an exception provided u/s 273B whereby an assessee can establish bonafide reasons so as to bring the case out of a sweep of provisions of section 271D & section 271E of the Act.

Accordingly the Division Bench was of the opinion that the view taken by ITAT "G" Bench (supra) needs to be reconsidered. Accordingly, the Division Bench has requested that the Hon'ble President may constitute a Special Bench, in exercise of power vested in him u/s 255(3) of the Act.

The end result of this appeal was against the assessee as Hon'ble bench held that the bonafide reason for accepting cash could not be established. While adjudicating the matter the the case of Kum. A.B.Shanti (255 ITR 258) as adjudicated by Hon'ble Supreme court was duly considered.

Hon'ble Pune tribunal in the case of ITO v. Sunil M. Kasliwal (2005) 94 ITD 281 / 80 TTJ 01 / (2004) 2 SOT 596 (TM)(Pune)(Trib.) had adjudicated on identical footings,

It is not sufficient to say simply that transaction was genuine; circumstances under which cash was accepted are to be explained; where assessee took cash loan from two ladies for purchasing machinery, since urgent requirement of machine was not known and machine was not purchased soon after taking loan from 'ladies', it indicated that the assessee could have complied with requirement of section 269SS without much difficulty and, as such, penalty in respect of loan was justified. (A.Y. 1990-91)

To sum up, penalty under section 271D has to be initiated by JCIT for which there is no time limit however there is time limit to impose the penalty upon initiation (as per section 275 of the Act). Further, penalty should not be levied in case the transaction is genuine and bonafide reason for accepting the cash amount is established. Whereas, while determining the amount of penalty adjustment of Rs. 20,000 be made, i.e. allowed limit to transact in cash. There wont be any penalty in case loan amount reflecting due to Journal entries.

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Workshops on "GST"



CA. Shankar Rochlani
Speaker



Adv. Arpitpusp Chaturvedi
Speaker



CA. Dilip Phadke
Speaker



CA. Pritam Mahure
Speaker



CA. Vaishali Kharde
Speaker

"Wrong is wrong even if everyone is doing it. And Right is right even if no one else is doing it. So let's Stick to our core values, and always walk on the path of righteousness, even if alone."

International Conference for CA Students



Inauguration



Dignitaries on Dias



Participants



Cultural Evening

Interactive Meet with Hon. President of ICAI



CA. Prafulla Chhajed, Hon. President of ICAI



Interaction with Members

Lecture Meet on "Capital Market & Opportunities (Investor Awareness)"



**CA. Mandar Bagul
Speaker**



**CA. Bharat Phatak
Speaker**



Participants

Outreach Program on "Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 & New Returns of GST "



Inauguration



Participants



**Shri. Rajiv Kapoor,
Commissioner, CGST Pune-II**



**Smt. Himani Dhamija, Deputy
Commissioner, CGST Pune II**



**CA. Swapnil Munot
Speaker**

Seminar on "Future of Internal Audit (Fraud, Risk & Analytics)"



**CA. Murtuza Kachwala
Speaker**



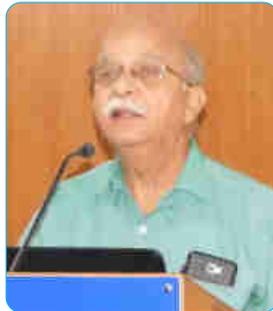
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Speaker**



**CA. Srinivas Swaminathan
Speaker**



**CA. Prashant Daftary
Speaker**



**CA. Arun Kelkar
Speaker**



Participants

Seminar on "Investments Opportunities in Economic Slowdown"



**CA. Nikhilesh Soman
Speaker**



Felicitation



Participants

"Don't be upset and get caught up with things or people that cannot change. Instead, move on, let go and focus on what you are able to change. The things that enhance your life. You deserve to be happy."

Seminar on "International Taxation - DTAA"



**CA. Sudin Sabnis
Speaker**



Participants

Seminar on "Assessments of Demonetisation era"



**CA. Pramod Shingte
Speaker**



Participants

Workshop on "Excel To Excel"



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Faculty**



**CA. Umakant Khadke
Faculty**



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