



**THE INSTITUTE OF  
CHARTERED ACCOUNTANTS OF INDIA**  
(Set up by an Act of Parliament)

**PUNE BRANCH OF WIRC OF ICAI**  
PUNE BRANCH OF WIRC OF ICAI

**NEWSLETTER**

**Issue NO. 04 - April 2020**

(Subscribers copy not for sale)



*Bridge and wall are made with the same material. But the bridge joins the people and the wall divides the people. Choose the right one.*

## Chairman's Communique



CA. Abhishek Dhamne  
Chairman  
Pune Branch of WIRC of ICAI

Dear Members,

As I write this Sanvad, we are under unprecedented lockdown due to global pandemic COVID 19 - Corona Disease. I hope all of you are staying at home and taking due care for safety of your good self and loved ones.

Let me share with you that, Pune ICAI has proactively taken initiatives to curb the

spread of corona disease. Under the guidelines of Head Office activities in relation Students and Members were suspended forthwith from March 13, 2020.

Due to Corona outbreak, National Conference on Bank Audit Organised by Auditing and Assurance Standards Board and hosted by Pune ICAI scheduled on 14<sup>th</sup> and 15<sup>th</sup> March was held for the first time in the history of Pune ICAI by way of electronic means and the response received for the same was fabulous. On the eve of the said conference, Pune ICAI received Goodwill Message from Smt. Pratibhatai Patil, Hon. Former President of India dedicating to members. We are thankful to Madam for her kind gesture.

Pune ICAI has been a pioneer branch to undertake survey to evaluate impact of Corona on CA's office. As you are aware government has taken measures by relaxing the compliance due dates it would be great relief for all CA offices. Majority of suggestions and representations from ICAI were accepted by the government. We had also organised e-meeting of various firms across Pune to understand problems that have occurred due lockdown in CA offices.

Making best of this lockdown we are arranging series of e-seminars for our members keeping them abreast with professional updates. We had the fortune of having CA Atul Kumar Gupta, Hon. President of ICAI and CA Nihar Jambusaria, Hon. Vice President of ICAI enlightening members with latest developments in the profession.

As there was 31<sup>st</sup> March year end and branch office was closed, we at Pune ICAI have launched Virtual Help Desk for Members as well as students to help them solve their queries. I am happy to share that we could serve quite a few members and students through that.

As I write to you this Sanvad, we at Pune ICAI have undertaken a task to prepare a concept paper on 'Work from Home - The Way Forward'. I am sure aforesaid

concept paper will be useful for all members across India.

You would be glad to know that your branch is not only active for organising e-meetings but also carrying of CSR activities by helping its students and members by providing food and shelter. I congratulate and appreciate efforts of our members CA Mithun Kotecha, CA Sachin Miniyar, CA Manikchand Baheti, CA Onkar Gadgil, CA Pooja Maheshwari, CA Abhay Bagmar, CA Rajesh Mehta, CA Sudeep Challani and most importantly CA Sarvesh Joshi who have come forward for humanity in these difficult times. Once situation is under control Pune ICAI will be more active in terms of organising Blood Donation Camps and arranging medicines for needy persons.

CA Atul kumar Gupta Hon. President of ICAI has appealed to members to contribute COVID 19 – ICAI Relief fund. As you are aware said donation received will be contributed to PM Cares Fund eligible for 100% as deduction under Section 80G of Income Tax Act, 1961. I request all of you to please donate generously for the same. Please visit [www.puneicai.org](http://www.puneicai.org) for more details.

As new financial year has started I would humbly like to remind you for payment of your Membership Fees for the year 2020-21. Please log on to SSP portal of ICAI and pay the same. Should you require any help please let us know. I would also like to take this opportunity to appeal you to contribute to CA Benevolent Fund (CABF).

The kind of mental stress we all are be going through and worrying about our office calendar due to this lock down. I would say *सरसलामत तो पगड़ीपचास*, please bear with the situation *ये वक़्त गुजरजायेगा* and we would come out victorious against the pandemic war.

Stay Home, Stay Healthy and Stay Safe.

Happy to Serve,

Abhishek Dhamne,

Chairman, Pune ICAI

April 1, 2020

चैत्र ८, १९४२ (Saka)





*Life is like piano. White keys are happy moments & Black keys are sad moments. But remember that sweet music is only possible when both the keys are played together.*



## PUNE BRANCH OF WIRC OF ICAI

List of recorded webinars available on Pune ICAI You Tube Channel

SR. NO.	DATE	TOPIC	SPEAKER	LINK
1	24.02.2020	Analysis of Union Budget 2020	CA Dr. Girish Ahuja	<a href="https://youtu.be/tw3HjVr40Y4">https://youtu.be/tw3HjVr40Y4</a>
2	26.03.2020	Analysis on Regulatory measures by Central Government recently announced	CA C.V. Chitale	<a href="https://youtu.be/ete3aonkFq8">https://youtu.be/ete3aonkFq8</a>
3	30.03.2020	Companies Amendment Bill	CA C.V. Chitale	<a href="https://youtu.be/ahx55m38DMg">https://youtu.be/ahx55m38DMg</a>
4	31.03.2020	Finance Act 2020	CA Nihar Jambusaria	<a href="https://youtu.be/6GZuxQlwwTQ">https://youtu.be/6GZuxQlwwTQ</a>

**Yours Proactively,  
Team Pune ICAI**

### Live Webinars

Professional Knowledge Series 2020  
9 videos · Pune ICAI

Opening Remarks by CA Atul Kumar Gupta, Hon. President of ICAI | Webinar on ...  
1.8K views · 1 month ago

36 1 Live chat Share Download

Pune ICAI **SUBSCRIBE**

Finance Act 2020 by CA Nihar Jambusaria  
880 views

13 1 Share Download Save

Pune ICAI **SUBSCRIBE**



*Sometimes it's very hard to move on, but once you move on, you will realize it was the best decision you have ever made.*

## What are some mistakes Indians make, that are destroying their financial lives?



Contributed by :- CA Govind M Chandak

Email :- [cagmchandak@gmail.com](mailto:cagmchandak@gmail.com)



### ► **Buying insurance policies for investment purpose**

Have you **invested your money in insurance plan to get a return in future?** Big mistake!

Out of 100 people, 95 have made this mistake.

**Very few** people understand the **difference between term plan, endowment plan, etc.**

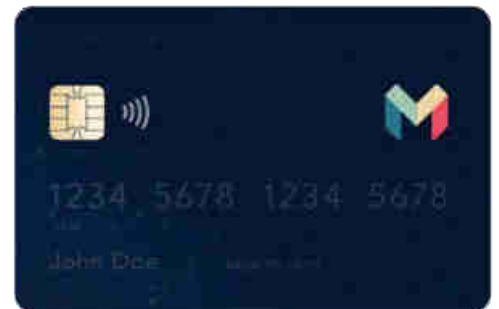


### ► **Not able to crack the credit card mystery**

Are you paying the minimum amount due on your credit card payment?

If yes, you are **trapped in credit card mystery.**

On the other side, **very few people really enjoy the benefits** like free lounge access, buy one get one movie ticket, etc.



### ► **No idea about the power of compounding**

Everyone has come across the formula of compounding but **very few people really understand** its power.

This is the reason **people do not start saving early and hence lose out on the power of compounding.**

Albert Einstein said that power of compounding is the eighth wonder of the world.







► **Buying stocks based on tips without any knowledge**

You will find every Tom, Dick and Harry giving **stock tips over Face book, Whatsapp and TV.**

Unfortunately, a lot of people **fall in a trap** of these people and **invest money without any knowledge.**

What is the end result? They lose everything!



► **Becoming a victim of lifestyle inflation**

Moving from 2BHK to 3bhk just because you have got a good hike, upgrading your car because you have got some bonus are some of the examples of **lifestyle inflation destroying financial lives.**



► **Buying things just because they are on discount**

From Amazon's "Great Indian Sale" to Flipkart's "The Big Billion Days", **everyone is encashing on the weakness of Indians buying things just because it is on discount.**

Funny thing is now you will find such sales every other month.



► **Getting tempted to go for an exotic vacation just because someone put a post on Face book and Instagram**

Instagram and Face book are introduced as **Social Media Platform** but they are actually **destroying the entire social fabric.**

Face book and Instagram are **more of a marketing platform** where people post stuff just to get some likes and companies **promote their product and services.**





*Good relations never ask for explanations because there is a silent understanding and a deep faith of unconditional love and trust exist in each other's life.*

▶ **Spending a bomb on weekend parties**  
**5 days work and 2 days party: This is the new culture in India.**

Pubs are jam-packed on weekends where people would spend a bomb on drinks.

By the end of the month, they are left with no money.



▶ **No track of cash flow**  
**Very few people keep a track of their expenses.**

Most of them just **don't know where the money is gone.**



▶ **No emergency budget**  
**Not having any extra money in the case of an emergency, results in embarrassing situations of borrowing money from friends and relatives.**

Some people even **break their investments** and make a big mistake.



▶ **No medical insurance**  
**People are losing out the lifetime savings just because they did not take medical insurance.**

One accident can shatter all financial dreams. Better be insured.

**Healthcare cost is rising** and it is **impossible** to manage it **without insurance.**





▶ **No financial plan**

People do not know why they need to save money because they **don't know their financial goals.**



▶ **No diversification**

Some people would invest all their money in real estate, some would invest all the money in gold, some would just keep it in the locker and some would invest all the money in the stock market.

**Very few people understand the right way of diversifying the investments.**



▶ **Spending all the hard earned money on children marriage**

Thanks to our hippocratic society!

**People save their entire life just to spend all the money on random relatives** who only bother about the food and arrangements.



▶ **Buying excessive gold only to keep it in the locker**

Gold worth lakhs is **kept in lockers only to be used once or twice a year.**

This is resulting in the **money getting blocked and hence not getting any returns on it.**





*Do You Know Why God Created Gaps between Fingers? So That Someone , Who is Special To You , Comes And Fills Those Gaps , By Holding Your Hand Forever.*

▶ **An extremely conservative approach with investment**

Traditionally, people have been risk-averse.

They would just have an **FD and live on 6–7% annual interest.**

Some would just keep the **cash at home.**



▶ **Lack of clarity between asset and liability**

Having a **car is not an asset** because it consumes fuel and requires maintenance cost to be spent.

Its price will only depreciate in the future.

**Car is a necessity but people spend a lot of money** and even take the loan to buy a luxury car over and above their budget.



▶ **Considering frugal as cheap**

A lot of people confuse economic spending with being cheap.

An economic spender does not compromise with quality but does his research well enough to buy the product or service at the lowest rate.



▶ **Procrastinating investment decisions**

“I will invest from tomorrow”.

But the problem is that **tomorrow never comes.**



▶ **Spending a lot of money on fancy stuff**

A fancy car, a fancy house, a fancy watch, a fancy vacation.

People want **fancy stuff** and **willing to pay a premium** irrespective of the value it generates.







*Never Think Hard About The PAST, It Brings Tears. Don't Think More About The FUTURE, It Brings Fear. Live This Moment with A Smile, It Brings Cheer.*

### ► **Lack of patience**

“I can’t wait for my wealth to grow. I want to double my investments in 6 months. I need to invest in the stock market.”

A lot of people **lose their lifetime of savings because they don’t have the patience to understand the investment option and would blindly trust anyone with their investment.**



### ► **Depending upon others for investment decisions**

“I don’t know anything about investment. Please manage my money.”

Unfortunately, a **lot of people are dependent upon others with their hard earned money.**

This is the reason we have a lot of self-proclaimed experts giving stock market tips.



### ► **Not discussing the money matters with the family**

Discussions related to money are considered as a **taboo in Indian families.**

Nobody really discusses money matters.

### ► **Getting too greedy with investment**

People **blindly invest** their money in penny stocks, day trading, futures and options.

They eventually lose all their hard earned money.

**What is the root cause? GREED**





*Every Test in Our Life Makes Us Bitter or Better Every Problem Comes To Make Us Or Break Us, The Choice is Ours Whether We Become Victims or Victorious.*

## Wasting time on unproductive things

▶ **Rather than learning** new stuff and growing their skill set, **people end up wasting time** on social media and YouTube



▶ **Lack of disciplined investment**

Instead of spending what is left after investing, people **invest what is left after spending.**

This results in undisciplined investment.



▶ **Root Cause**

**Lack of knowledge** about personal financial management!!



## Cricket, Baddminton & Table Tennis Matches with Income Tax Department





## Reverse Mortgage Loan



Contributed by :- CA. Kishor K Bhagwat

Email :- [kkbhagwat@yahoo.co.in](mailto:kkbhagwat@yahoo.co.in)



Friends, today I am going to introduce a relatively unpopular loan product available from the banks due to lack of proper propaganda of this type of loan available. So, let me introduce you to this loan facility namely REVERSE MORTGAGE LOAN. (RML).

The concept of RML is not new as it has been introduced in India in the Finance Act, 2007.

Basic idea of this loan is that you can keep your house as mortgage with your bank. The bank will give you a loan either in lump sum or by way of monthly annuity. So long as the applicant is alive, he need not repay the loan and interest. After his / her death, bank will sell the property, will recover its accumulated principal amount plus interest due there on till date of settlement and will hand over the balance, if left, to the legal heirs / nominees of the applicant.

This will facilitate senior citizens to maintain their lifestyle in their advanced age when the source of income is reduced due to retirement etc. This definitely is a good option for senior citizens to live independently in advanced age.

**Basic conditions of eligibility for RML are as under:-**

1. The applicant should be of the age 60 and above.
2. Joint loan facility with spouse is allowed but age of the spouse should be 55 years or above.
3. The loan will be given on any flat / bungalow / house purchased by the applicant.
4. Loan will not be given on ancestral property but the property should be self acquired.

**Once the above conditions are met, the bank will evaluate the proposal. They will evaluate on the following broad logical points –**

1. They will expect future life of the building for at least 20 years or more.

2. A proposer will buy insurance policy for the property.
3. The applicant has funds enough to pay municipal taxes and property maintenance charges. Bank will also evaluate the proposal on the current market value of the property.

Once satisfied on the above mentioned broad guidelines, bank will sanction the loan amount which at the most will be 50 percent of the current market price of the property.

The applicant can opt for 2 options

- a) He may take lump sum amount
- b) He can choose to receive monthly annuity type of payment. Generally, monthly annuity will not be more than Rs.50000/-. However, depending on case, the same can be increased or decreased.

Interest rate on the said loan will be dependent on the current market conditions. In addition to interest, bank will generally charge 0.5 percent processing fees.

If in future one has to sell the property after acquiring a loan, the bank will recover its loan amount plus interest due and then only will remove its charge. The applicant can always foreclose the loan if he can arrange funds from other sources.

So, once the loan is taken, then the applicant need not pay the instalment in his life time. After his death the bank will sell the property, will recover its due amount of loan plus interest and if any surplus is left, then the said amount will be handed over to the legal heirs / nominees of the applicant. Here, it is also important to note that, bank will give priority option to legal heirs / nominees to buy the said property.

In a nutshell, we can conclude that this is a good option for senior citizens to have a better lifestyle. At present, State Bank of India gives this loan, but other banks can also be tapped.





Live life like a pair of walking feet, the foot that is forward has no pride & the foot behind has no shame because they both know their situation will change.

## Live Telecast of 2 Days National Conference on Bank Audit



CA. Abhay Kamat



CA. Abhijit Sanzgiri



CA. Suhas Deshpande



CA. Sanat Chitale



CA. V. Somasekar



CA. Uday Sathaye



CA. Uday Kulkarni

## Live Webinars



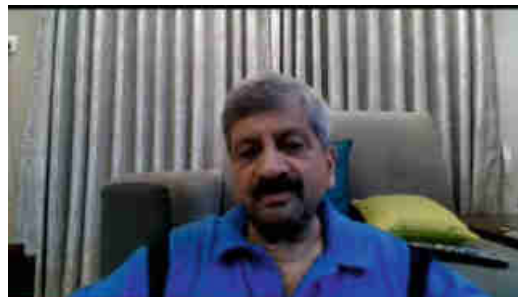
Motilal Oswal Financial Services Ltd  
1,906 videos

Companies Amendment Bill by CA C.V. Chitale  
1.4K views

Like Dislike Live chat Share Download

Pure ICAI **SUBSCRIBE**

CA C. V. Chitale, Speaker



Analysis on Regulatory Measures by Central Govt. recently announced by CA C.V. Chitale  
1.1K views

66 0 Live chat Share Download

Pure ICAI **SUBSCRIBE**

CA. Nihar Jambusaria, Speaker

CA. C. V. Chitale, Speaker





## TRANSFER PRICING PENALTIES AND THE INTERPLAY

Contributed by :- CA Amit Dhadphale and CA Swapnil Bafna  
Email :- [amit.dhadphale@in.ey.com](mailto:amit.dhadphale@in.ey.com) & [swapnil.bafna@in.ey.com](mailto:swapnil.bafna@in.ey.com)

### Executive summary:

Chapter X of the Income-tax Act, 1961 ('the Act') covers special provisions relating to avoidance of tax, which covered detailed Indian Transfer Pricing ('TP') Regulations ('ITPR'). ITPR prescribe onerous compliance requirements, whereas, the Act also prescribes stringent penalties for non-compliance. TP has been an area of focus by the Indian Revenue Authorities ('IRA'), which is evidenced by detailed TP Audits, significant TP adjustments and long drawn litigations. Moreover, TP arena has been ever widening and happenings are to cover introduction of clarifications, dispute resolution mechanisms, additional compliance requirements, such as Specified Domestic Transactions ('SDT'), Safe Harbour Rules, Advance Pricing Agreement, Country-by-Country-Reporting ('CbCR'), Master File, etc.

This article aims to discuss the TP related penal provisions from the Act in a detailed manner and the issues surrounding the same.

### A. Introduction:

- Finance Act ('FA') 2001 introduced TP provisions in the Income Tax Act, 1961 (the Act). With the amendments and widening of the scope, following compliance requirements are now applicable under the ITPR (summary provided for reference and understanding):
- **Maintenance of TP documentation:** Section 92D read with Rule 10D of the Income-tax Rules, 1962 ('the Rules') mandate the taxpayers entering into international transactions/ SDT to maintain the prescribed documentation in respect of the international transaction(s) with Associated Enterprise(s) ('AE') and SDTs by the due date for filing return of income ('ROI'). While the threshold for such detailed documentation is where the aggregate value of international

transactions exceeds INR 1 Crore and exceeding INR 20 Crores for SDTs, the ITPR also prescribe that the taxpayers with lower quantum of international transactions / SDTs should maintain such documentation, which would assist to substantiate the arm's length nature of its international transactions / SDTs. It may be noted that such documentation is not required to be submitted with any IRA while filing the ROI; but needs to be submitted as and when asked for under various provisions of the Act.

- **Furnishing of Accountant's Report in Form 3CEB:** Section 92E requires taxpayer to obtain and furnish by the due date for ROI, a report from a Chartered Accountant in Form 3CEB (to be filed electronically) by the specified due date, which covers the details such as names and addresses of AEs, the transactions, the value at which the transactions have been entered into by the taxpayer, the method adopted to compute Arm's Length Price ('ALP') and the ALP as computed by the taxpayer. There is no threshold that has been prescribed for this compliance.
- **Maintenance of Master File:** Post guidance by the Organization for Economic Cooperation and Development in Action Plan 13 of Base Erosion and Profit Shifting, ITPR have been amended to require every taxpayer, being the constituent of an international Group to keep and maintain (and electronically file in the prescribed Form 3CEAA by the due date for ROI) the prescribed information and documentation in respect of the international Group, provided the prescribed thresholds are met (consolidated Group turnover exceeding INR 500 Crores and aggregate value of international transactions exceeding INR 50 Crores or aggregate value of



Intellectual Property related transactions exceeding INR 10 Crores for the year under consideration). ITPR mandate furnishing of Part A of prescribed Form 3CEAA irrespective of compliance with these thresholds.

- **CbCR:** Every Indian resident parent entity or Indian resident entity nominated by the parent is required to furnish the report in respect of the international Group, which is to be electronically filed in the prescribed Form 3CEAD within one year from the end of the fiscal year of the parent. The Indian subsidiaries of overseas parent need to furnish an electronic CbCR notification in

the prescribed Form 3CEAC before two months of the due date for CbCR by its Parent.

- To ensure timely and appropriate compliance of TP regulations, FA 2001 introduced penal provisions viz. Section 271BA, Section 271AA and Section 271G for non-compliance. FA 2012, FA 2016 and FY 2020 have further widened the scope of penal provisions. Having broadly understood the compliances under the ITPR, let's now discuss the penal provisions in a detailed manner.

## **B. Analysis of penal provisions:**

### **➤ Penalties for failure to meet the prescribed compliances:**

#### **(I) Section 271BA: Penalty for failure to furnish report under Section 92E**

FA 2001 inserted Section 271BA imposing penalty of INR 1 Lakh for non-furnishing of report from a Chartered Accountant in Form 3CEB within the due date stipulated under the Act.

#### **(II) Section 271AA: Penalty for failure to keep and maintain information and document, etc., in respect of certain transactions.**

- FA 2001 inserted Section 271AA (1) imposing penalty for non-maintenance of TP documentation required to be maintained under Section 92D read with Rule 10D of the Rules by the prescribed due date, whereas, FA 2012 further widened the scope of Section 271AA (1) to non-reporting of international transactions/ SDTs and for furnishing of incorrect information or documents during the course of assessment proceedings. Quantum of penalty under section 271AA (1) is kept at 2% of value of international transactions/ SDT for each of default specified under the Section.

Each limb of section 271AA is analyzed below:

#### **(a) 271AA (1) (i): Failure to keep and maintain information and document as required by**

#### **sub-section (1) or sub-section (2) of section 92D.**

- Section 271AA (1) (i) imposes penalty for failure to keep and maintain information and documents as required under section 92D(1) and (2) read with Rule 10D by the prescribed due date.
- (b) Section 271AA (1) (ii): Failure to report transaction(s)**
  - Prior to FA 2012, there was no penalty under the Act for non-reporting of an international transaction. While inserting Section 271AA (1)(ii), Memorandum to FA 2012 clearly mentioned that the said penal provision has been inserted to act as deterrent against the taxpayers who, in order to suppress information about international transactions, may not furnish the report (or any specific transaction) in Form 3CEB or may not get the TP audit done.
  - Further, it is interesting to note that amended Section 271AA (1) reads as 'without prejudice to section 271BA'. As discussed above, Section 271BA imposes penalty for failure to furnish Form 3CEB on or before the specified date. Accordingly, in case where taxpayer has failed to furnish/ e-file Form 3CEB within the specified date, the AO may levy penalty under section 271AA (1) (ii) for failure to report the international transaction(s)/ SDTs in addition to penalty under section 271BA for failure to furnish Form 3CEB.



**(c) Section 271AA (1) (iii) : Maintains or furnishes any incorrect information or documents**

- Section 271AA (1)(iii) imposes penalty on taxpayers who maintain incorrect information/ documents as required under Rule 10D or where taxpayer furnishes incorrect information/ documents during the course of assessment proceedings. As mentioned in memorandum to FA 2001, this penal provision has been introduced to curb the action of taxpayers who suppress information/ falsify or tamper the documents to demonstrate arm's length nature of the international transactions/ SDTs, which are otherwise not at arm's length.

**(d) Section 271AA (2) : Failure to furnish Master File**

- Section 271AA (2) imposes penalty of INR 5 Lakhs for failure to furnish the Master File by the prescribed due date. It is interesting to note that this penal provision doesn't make any distinction where the Master File information is only to be furnished for statistical purposes (i.e. in Part A of Form 3CEAA), where the prescribed thresholds are not met or where a full-fledged Master File needs to be furnished.

**(III) Section 271GB : Penalty for failure to furnish CbCR**

- This Section prescribes graded penalty structure from INR 5,000 to INR 50,000 per day for: (a) Non-furnishing of CbCR or (b) non-submission of required information. It may be noted that there is no specific penalty for non-furnishing of the CbCR notification under Form 3CEAC.

➤ **Penalties for failure to furnish details when requisitioned:**

**(IV) Section 271G : Penalty for failure to furnish information/ documentation under section 92D**

- Section 92D (3) requires the taxpayers to furnish the TP documentation to the Assessing Officer ('AO') within 30 days (extendable upon request to sixty days),

when specifically requisitioned, failing which, the taxpayer may face a penalty of 2% of value of international transaction/ SDTs.

- Pertinent to note here that in case of furnishing of incorrect information, an additional penalty of 2% of value of international transaction/ SDTs is prescribed under Section 271AA(1)(iii).

➤ **Penalties for concealment / under-reporting / misreporting of income:**

**(V) Explanation 7 to Section 271(1)(c): Penalty for concealment of income or furnishing inaccurate particulars of income (upto AY 2016-17)**

- FA 2001 also inserted Explanation 7 to section 271(1) (c) w.e.f. AY 2002-03. As per Explanation 7, in case of any addition or disallowance by AO, while computing income under section 92C (4), such addition/ disallowance would be deemed to be concealment of income/ furnishing of inaccurate particulars of income, unless taxpayer proves to the satisfaction of the AO that price charged or paid to AEs is in good faith and with due diligence.

- In case, the AO is satisfied that taxpayer has concealed its income/ furnished inaccurate particulars of income, penalty under Section 271(1) (c) may range from 100% to 300% of tax sought to be evaded.

**(VI) Section 270A : Penalty for under-reporting and misreporting of income (w.e.f. AY 2017-18)**

- FA 2016 replaced the erstwhile penalty under Section 271(1) w.e.f. AY 2017-18. As per this newly inserted section, the taxpayer is liable to following two penalties:

(a) Under reporting of income: 50% of tax on under reported income ( i . e. TP adjustment) in case of failure to maintain TP documentation.

(b) Misreporting of income: 200% of tax on the under-reported income (i.e. TP adjustment), where the international transaction/ SDT was not reported by the taxpayer.



- No penalty under this Section can be levied if taxpayer has maintained TP documentation as prescribed under Section 92D, declared the international transactions/ SDT and disclosed all material facts relating to the transaction. Interestingly, this exception [as covered by Section 270A (6)(d)], may be

inadvertently, doesn't provide an exception for SDTs, possibly leading to a situation where the penalty of 50% of the tax on the under reported income may continue for SDTs, irrespective of the disclosures /declarations.

### ➤ Penalty for false entry:

#### (I) Section 271AAD : Penalty for false entry, etc. in books of account (w.e.f. 1 April 2020):

- Finance Act 2020 has inserted a new penalty under section 271AAD of the Act (w.e.f. 1 April 2020) for taxpayers whose books of accounts include (i) any false entry; or (ii) any entry relevant for computation of total income of such taxpayer has been omitted to evade tax liability.
- Penalty prescribed under this Section is equal to the amount of false entry. AO is empowered to levy this penalty on the taxpayer who passes the false entry and also on the person who causes taxpayer to make such entry.
- Term 'false entry' is defined to include any *'invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both'*.
- This is further significant in the context of TP wherein the TPO treat the ALP of any transaction (say, intra-group management charges) as Nil, alleging that Indian taxpayers have not received any goods or service from its associated enterprise and hence, should not have made any payment for the same. TP being a subjective exercise, this view could be taken by TPOs even after the taxpayer has furnished some documentation to justify receipt of the service. Even though it would be AO's discretion to levy penalty under this section, only time can tell whether the newly inserted penal provision would add to the already existing TP litigation in India thereby causing

further hardship to the taxpayers merely on account of two different viewpoints on what constitutes actual receipt of service.

- Further, it is to be noted that this section starts with 'without prejudice to any other provisions of the Act'. **Hence, penalty to be levied under this section would be in addition to the penalty prescribed under section 270A or 271AA of the Act.**

#### (II) Section 273B : Penalty not to be imposed in certain cases

- As per Section 273B, no penalty under Section 271AA, 271BA, 271G or 271GB could be levied in case the taxpayer/ Assessee proves that there was reasonable cause for failure to comply with the requirements of the Act.
- In view of the above, it is pertinent to note that penalties under Section 271AA, 271BA, 271G or 271GB are at the discretion of the AO. In case, taxpayer proves its bonafides and the fact that there was a reasonable cause for failure on its part and the AO is satisfied with the explanation given by the taxpayer, the AO may not levy penalties under the above sections.
- Interestingly, penalties under Section 270A and Section 271AAD do not seem to be covered in the above discretionary powers to the AO.





**C. Summary of penalty provisions:**

Sr. No.	Nature of violation (i.e. non-compliance / failure to furnish details during TP assessment)	Section(s) under which there is a potential TP penalty exposure
1	Failure to file Form 3CEB and consequently, no TP documentation is maintained by the taxpayer	<ul style="list-style-type: none"> <li>Section 271BA [i.e. INR 1 Lakh]</li> <li>Section 271AA(1)(i) and (ii) [i.e. 4% of aggregate value of international transaction(s) / SDT]</li> </ul> <p>[Refer Sr. No. 8 below for additional penalties in case TPO makes any TP adjustment]</p>
2	Form 3CEB is filed by the taxpayer but no TP documentation is maintained by the taxpayer	<ul style="list-style-type: none"> <li>Section 271AA(1)(i) [i.e. 2% of aggregate value of international transaction(s) / SDT]</li> </ul> <p>[Refer Sr. No. 9 below for additional penalties in case TPO makes any TP adjustment]</p>
3	Non-furnishing of TP documentation when requested by the TPO under Section 92D(3) of the Act (presuming that other TP compliances are undertaken)	<ul style="list-style-type: none"> <li>Section 271G [i.e. 2% of aggregate value of international transaction(s) / SDT in case taxpayer fails to furnish TP documentation even after request by TPO]</li> </ul>
4	Failure to furnish Master File (i.e. Part A and Part B of Form 3CEAA)	<ul style="list-style-type: none"> <li>Section 271AA(2) [i.e. INR 5 Lakhs]</li> </ul>
5	Failure to furnish Part A of Master File in Form 3CEAA	<ul style="list-style-type: none"> <li>Section 271AA(2) [i.e. INR 5 Lakhs]</li> </ul>
6	Failure to furnish CbCR under Section 286(2)	<ul style="list-style-type: none"> <li>Section 271GB [i.e. Graded penalty structure from Rs.5,000 to Rs. 50,000 per day]</li> </ul>
7	Failure to file CbCR notification under Section 286(1)	<ul style="list-style-type: none"> <li>No penalty prescribed</li> </ul>
8	TP adjustment made by TPO where the taxpayer has failed to file Form 3CEB and no TP documentation maintained	<p>Over and above penalties as mentioned in Sr. No. 1 hereinabove:</p> <ul style="list-style-type: none"> <li>Section 270A (misreporting of income) [i.e. 200% of tax on TP adjustment as a result of failure to report international transaction / SDT]</li> <li>Section 271G [i.e. 2% of aggregate value of international transaction(s) / SDT in case taxpayer fails to furnish TP documentation even after request by TPO]</li> </ul>
9	TP adjustment made by TPO where the taxpayer has filed Form 3CEB but no TP documentation is maintained	<p>Over and above penalty as mentioned in Sr. No. 2 hereinabove:</p> <ul style="list-style-type: none"> <li>Section 270A (under-reporting of income) [i.e. 50% of tax on TP adjustment]</li> <li>Section 271G [i.e. 2% of aggregate value of international transaction(s) / SDT in case taxpayer fails to furnish TP documentation even after request by TPO]</li> </ul>
10	TP adjustment made by TPO to a transaction which is not reported in form 3CEB  (presuming that filing of Form 3CEB	<ul style="list-style-type: none"> <li>Section 271AA(1) (ii) [i.e. 2% of value of such international / SDT transaction not reported]</li> <li>Section 271G [i.e. 2% of value of international transaction / SDT in case taxpayer fails to furnish TP</li> </ul>



*A bird sitting on a tree is never afraid of the branch breaking, because her trust is not on the branch but on its wings. Always believe in yourself.*

Sr. No.	Nature of violation (i.e. non-compliance / failure to furnish details during TP assessment)	Section(s) under which there is a potential TP penalty exposure
	and maintenance of TP documentation is undertaken for all other transaction)	documentation even after request by TPO] <ul style="list-style-type: none"> <li>Section 270A (misreporting of income) [i.e. 200% of tax on TP adjustment as a result of failure to report international transaction / SDT]</li> </ul>
11	In respect of all international transactions/ SDT, Form 3CEB is filed by taxpayer and TP documentation is maintained but TPO makes TP adjustment	<ul style="list-style-type: none"> <li>Till AY 2016-17: Penalty under section 271(1)(c) in the range of 100% to 300% of tax on the amount of TP adjustment</li> <li>From AY 2017-18 and onwards: No penalty</li> </ul>

#### D. Deep dive into key issues on levy of above penalties in certain cases:

With the above background, let's deep dive into certain key issues relating to levy of penalty:

##### ■ Case 1 : Can Penalties under section 271AA (1)(i) and Section 271G be levied cumulatively?

**Facts** :Taxpayer has not maintained prescribed documentation as required under Section 92D(1). During the course of Assessment proceedings, the AO asks to submit TP documentation, however, taxpayer failed to furnish the same.

**Issue** : Can the AO levy penalty under section 271AA (1)(i) i.e. failure to maintain documentation and also under Section 271G i.e. failure to furnish documentation?

**Analysis:**

- A person who has failed to maintain prescribed documentation can never be in position to furnish the same during the course of Assessment proceedings.
- As per Article 20(2) of the Constitution of India, a person cannot be penalized twice for same offence (though it could be argued that Article 20(2) is applicable in case of criminal proceedings only).

• Other sections having similar overlap :

- ✓ Hon'ble Gujrat High Court in case of Surajmal Parsuram Todi v CIT [222 ITR 641]: Where taxpayer has failed to maintain books of accounts under Section 44AA, the offence is complete. Hence, there can be no possibility of any offence as contemplated by section 44AB (i.e. to get books of accounts audited).Therefore, a separate penalty under section 271B cannot be levied.

- ✓ A plain reading of Sections 271C and 221 suggest that if a person has failed to deduct tax at source (whole or part of tax deductible) and consequently defaulted in depositing the same, such a person would be liable to penalties under both the Sections. Hon'ble Calcutta ITAT in case of ITO (TDS) v/s Titagarh Steels Ltd [79 ITD 532] has ruled that both the penalties cannot be imposed as a consequence of the same lapse of short deduction of tax at source.

- **In view of the above, it could be argued that penalty under Section 271AA (1) (i) and 271G cannot be levied simultaneously.**

- However, it is to be noted that a provision for imposition of penalty has to be construed strictly as a penal provision and the same cannot be given a liberal interpretation. Further, Memorandum to FA 2012 has clearly stated its intentions by a specific mention that penalty under amended Section 271AA is in addition to Section 271BA and 271G. **Hence, one can take an argument that penalties under section 271AA and 271G are independent of each other and could be levied cumulatively.**

- **Detailed guidance or judicial precedents are not available on this issue. Whilst it could be argued that penalty cannot be levied under both the Sections simultaneously, it is advisable that taxpayers should maintain a robust TP documentation to substantiate arm's length nature of its international transactions/ SDTs and furnish the same during Assessment proceedings to avoid penalty exposure.**

Case 2 : Can Penalties under section 271AA (1)



Decide to be **HAPPY** when you start your day. React with **JOY** whatever comes your way. You may be hurt by what people say, but don't let anyone spoil your day...!!!

(ii) and Section 271BA be levied cumulatively?

**Facts** : Taxpayer has not filed Form 3CEB in respect of its international transactions/ SDTs with its AEs.

**Issue** : Can the AO levy penalty under section 271AA (1)(ii) i.e. failure to report a transaction and also under Section 271BA i.e. failure to file Form 3CEB?

Analysis :

- Post amendment by FA 2012, Section 271AA of the reads as without prejudice to Section 271BA.
- Further, Memorandum to FA 2012 has clearly stated its intentions by a specific mention that the penalty under amended Section 271AA is in addition to Section 271BA and 271G. Hence, it can be said that penalties under section 271AA (1)(ii) and 271BA are independent of each other and could be levied cumulatively. In view of this, penalties under Section 271AA(1)(ii) and

Section 271BA are two independent penalties.

- Hence, it is more likely that in cases where taxpayer fails to furnish Form 3CEB and consequently, fails to report transactions, penalties could be levied under Section 271 BA and Section 271 AA(1)(ii) simultaneously.
- However, relying upon ruling of Courts in case of Surajmal Parsuram Todi v CIT (Supra) and ITO (TDS) v/s Titagarh Steels Ltd (Supra), it could be argued that a taxpayer should not be punished twice for the same offence i.e. for non-filing of Form 3CEB and non-reporting of transactions.
- **Detailed guidelines are not available on the said issue. Whilst it could be argued that penalty cannot be levied under both the Sections simultaneously, it is advisable that taxpayers should maintain a robust TP documentation and report all its international transactions.**

**E. Conclusion :**

Considering the above-mentioned stringent penalty provisions for non-compliance of TP regulations, it is clear that the intent of tax authorities is to ensure that the taxpayers judiciously undertake compliances. This is further evidenced by introduction of new and stringent penal provisions to curb malpractices.

In view of the fact that the quantum of penalty in majority of Sections (except non-furnishing of Form 3CEB) is linked to the value of international

transactions/ SDTs and the issues surrounding the levy of penalty, it is imperative that appropriate TP compliances should be undertaken by all taxpayers within the specified due date. It is also the duty of practicing Chartered Accountants to analyze and conclude regarding applicability of TP provisions to their clients and inform them in advance regarding the compliance requirements and consequences of non-compliance.

*Disclaimer : The views and opinions expressed in this article are those of the authors.*



**Seminar on Faceless e Assessment Scheme (Issues & Challenges)**



CA. Rahul Charkha, Speaker



CA. Arpita Choudhary, Speaker



Participants



Be true to yourself and be less concerned with what others think of you. Don't accept their definition of you, but grow into a self definition of your own.

## “Income Tax on Cooperative Housing Society (C. H. S.)”



Contributed by :- CA Sameer Ladda  
Email :- [samparth@gmail.com](mailto:samparth@gmail.com)



The C.H.S. is not apparently engaged in any business or income earning activities; there is a perception that they are not required to comply with any income tax provisions. The most of the C.H.S. are managed by the honorary office bearers who are generally not well versed with the laws.

The C.H.S. is a separate legal entity and therefore it is treated as separate from its members and it requires complying with various legal laws including the Income tax laws. In this article we will discuss about the Income tax only.

As per Income tax act it has the status of cooperative societies or the association persons. It requires obtaining the Pan. Without Pan it can't open bank account also.

It also requires obtaining the Tan as it requires to deduct T.D.S. and also required to file T D S returns. It should file the income tax return after the end of every financial year on or before 30<sup>th</sup> September in the form no ITR 5. If it made the delay up to December then it will have to bear the fine of Rs 5000/- and Rs 10000/- beyond December, subject to the restriction of Rs 1000/- maximum if the taxable income is below Rs 500000/-.

It has also the advance tax applicability if the tax liability is beyond Rs 10000/-. It has to pay 15 % of the total expected tax on or before June 15, on or before September 15 -30%, on or before December 15 -30%, and the balance 15 % on or before March 15.

Tax liability is calculated @ 10% up to Rs 10000, @20% from 10001 to 20000 and @30% from Rs. 20001 and above. If the income of the CHS exceeds Rs 100 lakhs then the surcharge at 12 % and education cess at 3% applicable. It has to get its books audited under the provisions of states of their respective cooperative society law. For example in the Maharashtra, the Maharashtra cooperative society's act 1960 is applicable. As the CHS generally does not carry business or profession, it is not required a separate tax audit u/s 44AB under income tax act to be conducted. In such case it is sufficient to get books of audited under any other respective applicable law. But if it is engaged in any business or professional activity then in my opinion tax audit is required.

**Principle of Mutuality and taxation applies in case of the C.H.S.** The honourable S.C observed that the doctrine of mutuality is based on the theory that a person can't make profit from himself. The essence of the principle of mutuality lies in the identification of the contributors and the participants who are also the beneficiaries. The surplus which is generated due to transactions between members is not taxable due to this concept of this principal of Mutuality.

**Now let's discuss some unique sources of the Income:-**

- a) **Non occupancy Charges and the transfer charges and contributions to the common funds:** - Since these charges are again utilised only for the common facilities and amenities for the members of the society .Hence the concept of the mutuality is applicable.
- b) **Parking charges:** - So far as parking charges are collected from members and tenants, they are not chargeable to tax as per concept of the mutuality .But if there is some commercial activity in the society like shops or gym. etc. and parking charges are collected from the outside visitors then they are chargeable to tax to that extent.
- c) **Advertisement Hoardings:** - Fully chargeable to tax. The expenses which are directly attributable to the same can be claimed as expenses.
- d) **Rental for towers etc.:** - The same is chargeable under the income tax under the income head 'Income from House property'. Standard deduction 30 % is applicable .If the society has taken loan for the construction of the same towers then interest is also deductible as per the normal rules of the income from house property.
- e) **Income from Interest:** - Generally the CHS are having major income from this source, the interest on investments (mainly fix deposits in the banks). This is chargeable under the head income from other sources, subject to section 80P mentioned below.

**In short, the income which is generated from**





*The purpose of life is not to be happy. It is to be useful, to be honorable, to be compassionate, to have it make some difference that you have lived and lived well.*

**the members, the concept of the mutuality is applicable and the income which is generated from other than members is taxable.**

**Benefit of the Deduction under section 80 P available to the C.H.S. which is as follows.**

- a) Section 80 P (2) (C):- up to Rs 50000/-.
- b) Section 80 P (2) (D):- An income generated by way of interest or dividend

from any other cooperative society is deducted irrespective of the amount. Here the term “ **Co- operative**” is very **important**.

- c) It clearly implies that if the C.H.S. invests its funds in any other banks other than cooperative sector, then it is taxable in the hands of the C.H.S.



## Hands on Workshop on GST New Returns (Applicable From 1042020) Jointly with CGST Department



*Smt. Krishna Mishra, Hon. Chief Commissioner, CGST*



*Participants*



*Practical Training*



*Practical Training*



*Inauguration*

## Lecture Meet on Vivaad Se Vishwas



*CA. Pramod Shingte, Speaker*



*Participants*



Be such a person to always spread your aura of smile and happiness, So that people enjoy the happiness in your presence and smile with your memories in your absence.

**TAXMANN**  
The Tax and Commerce Lives of India

## TAXMANN INTRODUCES – BUY E-BOOK & GET **FREE** IN-PRINT-BOOK\*\*

For Continued Professional Education (“CPE”), we have launched **e-Book with in-Print Book Offer**. Purchase Taxmann’s Kindle Book on Amazon & get in-Print book delivered at your doorstep



**GET STARTED**

**Step 1:** Visit Taxmann's Kindle Store on Amazon

**Step 2:** Review & Select the Book/s you want to Purchase\*

**Step 3:** Once your Purchase is done, you can start reading the e-Book on your Device

**Step 4:** e-Mail us the invoice copy of your Purchase, along with your complete postal address, at **sales@taxmann.com** on the 15th Day of the purchase

**Step 5:** You will receive a notification from us regarding dispatch of the in-Print copy of the book that you have purchased

\*Certain Publications which are not available in e-Book format, do not fall under this offer

\*\* Terms & Condition Apply

1. Offer is only valid on Books whose MRP is above INR 750
2. Offer is not valid on IIBF/NISM Books
3. Offer starting from 25th March 2020

### Ahmedabad

7, Abhinav Arcade, Ground Floor, Nr. Bank of Baroda,  
Pritam Nagar Paldi, Ahmedabad - 380007  
Tel. : +91-079-26589600/02/03  
Mobile : +91-9909984900, 9714105770  
Email : sales.ahmedabad@taxmann.com

### Pune

Mobile : 9822411811, 9834774266, 9322293945  
Email : sales.pune@taxmann.com

### Udaipur

Mobile : +91-9714178614, 9714105770n2, 9909984900  
Email : sales.udaipur@taxmann.com

### Nagpur

Mobile : +91-9372452573  
Email : sales.nagpur@taxmann.com

### Hyderabad

Mobile : +91-9391041461 / 09322293945  
Email : sales.hyderabad@taxmann.com



*Feelings are important in our life as they come from the heart. If you respond back they grow, if you ignore, they die and if you respect, they stay forever.*

## Pune Branch of WIRC of ICAI

Plot No.8, Parshwanath Nagar, CST No. 333,  
Sr.No.573, Munjeri, Opp. Kale hospital,  
Near Mahavir Electronics, Bibwewadi, Pune 411037  
Tel: (020) 24212251 / 52  
Web: [www.puneicai.org](http://www.puneicai.org)  
Email: [admin@puneicai.org](mailto:admin@puneicai.org)

### ADVERTISEMENT TARIFF

#### FOR PUNE BRANCH NEWSLETTER WEF NOVEMBER 2015

1) Back Page (19x15) Color	: ₹ 16,500/-
2) Inner Page of Front/Back Page (A4) Color	: ₹ 16,000/-
3) Full Page (A4) Color	: ₹ 15,000/-
4) Half Page	: ₹ 8,000/-
5) Quarter Page	: ₹ 4,500/-

**Discount:** \*3 to 6 Insertions - 10%  
\*7 to 12 Insertions - 15%  
\*Additional GST - 18%

**Disclaimer:** The ICAI and the Pune Branch of WIRC of ICAI is not in any way responsible for the result of any action taken on the basis of advertisement published in the newsletter. The members, however, may bear in mind the provision of the Code of Ethics while responding to the advertisements. The views and opinion expressed or implied in the Newsletter are those of the authors / contributors and do not necessarily reflect of Pune branch. Unsolicited matters are sent at the owners risk and the publisher accepts no liability for loss or damage. Material in this publication may not be reproduced, Whether in part or in whole without the consent of Pune branch. Members are requested to kindly send material of professional interest to [editor@puneicai.org](mailto:editor@puneicai.org) the same may be published in the newsletter subject availability of space and editorial editing.