



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(SET UP BY AN ACT OF PARLIAMENT)

— PUNE BRANCH OF WICASA OF ICAI —

NEWSLETTER

ISSUE NO. 12



"Your Gateway to the Inspired Minds of
Tomorrow's Chartered Accountants!!"

Where Creativity Meets Commerce

DECEMBER 2024

Table of CONTENTS

Chairperson's Communique

3

Editors Communique

4

Annual Compliance Obligations under GST

5

Steps for ensuring GST compliances : Time and Accuracy

10

Taxation of Gifts

15

Creative Commerce Corner

19

Past Events and photo gallery

22

**"Your Gateway to the Inspired Minds of
Tomorrow's Chartered Accountants!!"**

PUNE BRANCH OF WICASA OF ICAI

MANAGING COMMITTEE MEMBERS 2024-25



MR. ABHIRAJ SHINDE
Vice-Chairperson



MR. VAIBHAV AMBHORE
Secretary



MR. AMOL BHOSALE
Treasurer



MR. KRUSHNA GHOLAVE
Joint Secretary



MS. GEETA SHAH
Joint Treasurer



MR. OMKAR PHAPAL
Editor Head

CHAIPERSON'S COMMUNIQUE

Dear CA Students,

Greetings!!

I hope this message finds you in good health and high spirits. It gives me immense pleasure to address you through our esteemed CA Students Newsletter. You can achieve all your dreams through dedication, commitment, discipline and by believing yourself.

I take this opportunity to apprise you about a few seminars held during the last month.

We organised full day programme on GST audit wherein we will be discussing Recent Developments & Amendments in GST, how to draft Reply to the GST Return Scrutiny Notices and Show Cause Notices etc. We organised CA Students' National Talent Search 2024 wherein students participated in various competitions like Chess, Sketching, Best Presenter (PPT), Extempore etc.

The upcoming month will be full of seminars, workshops, industrial /educational visits etc. We are planning to organise Youth Festival 'जल्लोष 2024' wherein the students can participate in competitions like badminton, carrom etc. and showcase their talent of singing, dance, poetry etc. We will be organizing students interactive meet with Rank holders. We also have planned educational / industrial visit.

So, I encourage each one of you to actively and enthusiastically participate and contribute in the activities of Pune WICASA.

I wish all the students the success in upcoming exams and all their future endeavours.

Best Wishes,
Chairperson,
Pune Branch of WICASA

EDITOR'S COMMUNIQUE

Mr. OMKAR PHAPAL
Editor head,
Pune Branch of WICASA of ICAI



Dear Readers,

As the year comes to a close, December has been a month of immense learning, talent, and camaraderie for our CA student community. Here's a glimpse of the enriching events that made this month remarkable:

#One-Day Seminar on GST

The seminar on GST was a resounding success, bringing clarity to one of the most dynamic areas of taxation. With insightful sessions from industry experts, participants gained valuable knowledge on the latest updates and practical applications of GST, equipping them to excel in their professional journey.

#National Talent Search - Unveiling Creativity and Skill

Our National Talent Search proved to be a vibrant platform for showcasing diverse talents. The event featured:

- Chess Competition: Where strategic minds competed, demonstrating their analytical and problem-solving abilities.
- Presentation PPT Competition: A display of articulate ideas, professional communication, and creative presentations.
- Extempore Competition: Spontaneous and thought-provoking speeches that left the audience inspired.
- Sketching Competition: An artistic expression of creativity, capturing emotions and stories through art.

We are proud to witness such enthusiasm and participation, reflecting the holistic development of our student community.

As we look forward to the new year, let's carry forward the spirit of learning, collaboration, and excellence. Here's to achieving greater heights together!

Warm regards,
Omkar Phapal
Editor head
Pune Branch of WICASA



ANNUAL COMPLIANCE OBLIGATIONS UNDER GST

Today, we are going to have a wonderful insight and discussion on one of the needles of GST which stands out to be a transformative legislation in India's indirect tax landscape, which is definitely in a pipeline to entrench a unified tax system across the nation. Recently, GST has entered into its 8th year by providing us a return gift in form of 16 circulars and few notifications pursuant to 53rd Council Meeting. Post council meet on 23rd July 2024, our Hon'ble Finance Minister presented the Budget 2024-25 for 'Viksit Bharat 2047', and from Indirect tax perspective, the budget outlined several key amendments in GST law. Though, GST has completed its 7 years, but an understanding of its moot fundamentals is very crucial owing to the complexities and litigations revolving around.

GST is an outcome of subsummation process of various indirect taxes, carrying with it the fundamental essence of VAT principle to ensure seamless flow of ITC and elimination of cascading effect. However, reality portrays a seamless maze of ITC under GST and not a seamless flow, is it so? The question remains open for the crowd.



Jay Jain

WRO0753699

Now heading towards the needle of the session i.e., Annual compliance obligations under GST. Whenever we listen this term, firstly what comes in our mind – Annual Return & reconciliation Statement (GSTR-9 / 9C), isn't? But, is it only limited to GSTR-9 /9C, no not at all. Therefore, annual compliances can be broadly categorized in following buckets:

A. Procedural Compliance - Following are the major points that needs the locus for the session:

1. Key filings and Declaration:
 - Filing of letter of undertaking ('LUT') for zero-rated supplies by the 31st of March of the current financial year in accordance with Rule 96A of CGST Rules, 2017.
 - Opting for Quarterly Return Monthly Payment ('QRMP') scheme: We all know that as a trade facilitation measure, CBIC had issued circular 143/13/2022 dated 10th November 2020 and various notifications

pursuant to the recommendations in 42nd GST Council Meeting, to implement the scheme of quarterly return along with monthly payment of taxes. Wherein the aggregate turnover of the taxpayer in preceding financial year is up to INR 5 crores, he may opt for QMP scheme. The time limit to apply for QRMP scheme for any quarter is from 1st day of 2nd month of preceding quarter to the last day of the 1st month of the quarter.

- Enrolment for Composition Scheme: Where any registered person opts to pay tax under section 10 of CGST Act, 2017, shall be required to intimate in Form GST CMP-02 prior to the commencement of the financial year for which the option is sought. Additionally, shall furnish Form GST ITC-03 in accordance with Rule 44 of CGST Rules, 2017 within 60 days from the commencement of the relevant financial year for the purpose of disclosing ITC details.

- Declaration by Goods Transport Agency ('GTA'): In accordance with Notification no. 13/2017-Central Tax (Rate) dated 28th June, the supply of services by GTA in respect of transportation of goods is encompassed by reverse charge mechanism. In such case, GTA is available with following two options –

- i. Discharge of liability under Forward Charge Mechanism ('FCM');

- ii. Discharge of liability under Reverse Charge Mechanism ('RCM').

The existing GTA taxpayers, initially had to submit declaration in Annexure V or VI on or before 15th March of the current financial year to opt for FCM or RCM. However, vide notification 06/2023-Central Tax (Rate) dated 26th July 2023, the time limit to file the declaration has been revised to 1st January to 31st March of current financial year. In case of newly registered GTA taxpayer, who intends to discharge of tax liability under FCM shall submit the declaration in Annexure V before expiry of 45 days from the date of applying for GST registration or 1 month from the date of obtaining registration whichever is later.

2. Year-end Adjustments:

- Reversals of Input Tax Credit: The principle of VAT enunciates that credit is available only when tax is payable on output. However, there might be certain businesses having their output as taxable as well as exempt. For example, there might be certain businesses providing cleaning and housekeeping services. Now, if such services are being provided to Corporate entities it would be taxable and simultaneously, if provided to schools, they would be exempt pursuant to entry no. 66 of notification no. 12/2017. Hence, it becomes pretty much important that the business entities, precisely the small businesses must be aware of the nature of services that they are providing and what type of legal ramifications it would invite. From this point, we understand that supplies may be exempt by default in nature or when provided to specified persons.

For this entire discussion, Rules 42 and 43 read with section 17 of CGST Act, 2017 provides for reversal of ITC in the proportion of exempt and non-business supplies for inputs, input services and capital goods.

Hence, the crux of above rule is to segregate the input tax credit attributing to taxable and exempt / non-business supplies and making the required reversals in Form GSTR-3B or DRC-03. In accordance with the rules, such reversals are to be made in Form GSTR-3B and reconciliation shall be done considering the annual figures, and if it is observed that there is an excess / short reversal, the taxpayer shall either claim back the excess portion or discharge the short portion.

- Reconciliation of Various registers: From accounting perspective various registers are to be maintained by an entity, which creates a need for appropriate reconciliation of the amounts reported in GST Returns and those appearing in books of accounts. Following are the sine qua non reconciliations –

GST Returns	Books of Accounts	Remarks
Form GSTR-1 (base workings)	Outward / Sales register	<ul style="list-style-type: none"> Different treatment for asset disposals; Recoveries for insurance premium, canteen services, etc.
Form GSTR-3B / GSTR-2B	Inward / Purchase register	<ul style="list-style-type: none"> Treatment of ineligible ITC; Tracking of deferred ITC.
Reconciliation of E-way bill details / HSN & SAC summary and Form GSTR-1 / 3B.		<ul style="list-style-type: none"> Assists in replying to the ASMT-10, Scrutiny notices, Audit procedures, etc.

- Matching of ITC and necessary confirmations from Vendors: With the efflux of time, the ITC availment is becoming a maze, due to certain provisions under GST law. Post completion of particular financial year, the taxpayer should perform below important tasks –
 - Interval monitoring of deferred credit and credit appearing in Form GSTR-2B, which is not yet availed;
 - Obtaining necessary confirmations from the vendors with respect to payment of tax to the Government exchequer, in order to avoid unnecessary reversals owing to Section 41 read with Section 16(2)(c) and Rule 37A of CGST Act and Rules, 2017.

3. Key Filings:

- Filing of Form GST ITC-04: Where any registered person (hereinafter referred as 'Principal') sends any inputs, semi-finished goods, or capital goods to a Job worker under the cover of delivery challans, shall report the details of such challans in Form GST ITC-04. Following is the frequency and time limit for filing –

Aggregate Turnover (immediate preceding FY)	Frequency	Time limit
> INR 5 crores	Bi-Annually	1. Period – April to September On or before 25th of October 2. Period – October to March On or before 25th of April
Other cases	Annually	3. Period – April to March On or before 25th of April

The distinguishing point for Form GST ITC-04 is the filing frequency. Considering the aggregate turnover in preceding financial year, the form needs to be filed bi-annually or annually, as the case may be.

Basically, job work means any treatment or process carried out by a person on goods belonging to another taxable person. Therefore, it helps the exchequer to track the movement of goods.

For the concerned form, we may take an example of an entity engaged in manufacturing of medical devices or equipment's, wherein they require necessary moldings or treatments for entrenching the devices or equipment's for further sale. Hence, the registered taxpayers who are availing the job work services are required to file the said form.

- Machine registration and other compliances for specified manufacturers: Notification no. 04/2024 dated 5th January 2024, has prescribed a special procedure for manufacturers of specified goods such as tobacco, pan masala, etc. such as machine registrations, special monthly compliances. Further, any person registered on 1st April 2024 and is engaged in specified manufacturing is required to get his machines registered by 30th April 2024. Additionally, any person who has been granted registration post issuance of this notification, shall furnish the details of packing machines in Form GST SRM – I, within 15 days of grant of such registration.

However, vide notification no. 08/2024 dated 10th April 2024 has substituted the words 1st April 2024 to 15th May 2024, resulting into extension of time limit for implementation of the former notification.

4. Documentation:

- Invoice series: In accordance with Rule 46 of CGST Rules, 2017, the registered person shall have a unique invoice series for each financial year.
- E-invoicing: The registered taxpayer shall keep track of their aggregate turnover to evaluate the applicability of e-invoicing provisions. Vide notification no. 10/2023, the threshold limit of aggregate turnover has been reduced to INR 5 crore.

So, here we understood that how a registered taxpayer has to undertake various procedural compliances to safeguard himself from the legal ramifications.

B. Analytical Review Compliance

Now coming towards another portion of the composition i.e., Annual Return and Reconciliation Statement: Form GSTR-9 & 9C. Before delving and understanding the specifics of the second portion, it is pertinent to have a crystal clarity about the concerned forms. A question arises, whether any new transaction is reported in the said forms? If answer is 'Yes', then what type of transaction are those? And if answer is 'No', then what does GSTR-9 & 9C consists of?

The answer is pretty simple – Basically, the GSTR-9 & 9C is an auto-populated return and a statement, which consists of outward supplies and ITC details which have been reported on monthly or quarterly basis in Form GSTR-1 or Form GSTR-3B. The additional input that we have to put in, is in form of executing an analytical review process and fill the gaps or discrepancies, identified during reconciliations. In such process, the activity is not only restricted with the data reported in returns, but we also consider the entire business review. Now, from where do we get the entire business review? The document available with us is the 'Audited Financial Statements'.

Now, you all must be wondering that why such an important return has been secondary to our discussion. The reason is, almost 80% of the procedural compliances that we discussed above, forms a very significant base for preparation and finalization of GSTR-9 & 9C.

The primary intent of performing reconciliations between GST returns and Books of accounts is to identify any discrepancies or gaps for accurate furnishing of the concerned return. Examples are as follows:

- Assets written off in Books of Accounts, but not shown in GST returns;
- RCM liability on foreign currency expenditures, legal expenses;

ARTICLE

GSTR-9 & 9C consists of various tables, however all tables need not be reported, the reason being some of them may be optional or mandatory. Hence, the instructions issued by CBIC with respect to any change in reporting manner should be gone through for error-free furnishing of Annual Return and Reconciliation Statement.

Below are some the relevant tables of GSTR-9 (Annual Return):

Table 4 & 5 – Details of outward supplies (including zero-rated supplies) and transactions on which tax is paid in reverse charge basis.

Table 6 & 7 – Details of Input tax credit availed, and reversals made during the relevant financial year.

Table 8 – Reconciliation figures of ITC;

Table 9 – Tax payable through ITC and cash during the relevant financial year.

So, lastly let us understand the applicability of GSTR-9 & 9C in brief:

Annual Return / Reconciliation Statement	Type of Taxpayer	Threshold Limit	Due Date
GSTR-9	Normal Taxpayers <i>(Except CTP, ISD, NRTP, person paying TDS u/s 51, person collecting TCS u/s 52)</i>	Agg. T/O ≥ 2 Crores	31 st December of succeeding FY
GSTR-4	Composition Taxpayer	-	FY 2023-24 : 30 th April 2024 FY 2024-25 : 30 th June of succeeding FY
GSTR-9B	E-commerce Operator <i>(required to collect TCS)</i>	-	31 st December of succeeding FY
GSTR-9C	Normal Taxpayers <i>(Except CTP, ISD, NRTP, person paying TDS u/s 51, person collecting TCS u/s 52)</i>	Agg. T/O ≥ 2 Crores	31 st December of succeeding FY

Hence, from the entire composition we can infer that GST is not only about filing returns but encompasses a broad spectrum of analytical assessment through procedural compliances, bearing an effective impact on business health.



STEPS FOR ENSURING GST COMPLIANCES : TIME AND ACCURACY

A business with a turnover of more than 500 crore makes an outward supply of Rs. 75 lakhs with an IGST of Rs. 13,50,000. However, they failed to do e-invoicing for the same. What will the consequences be? Or when an electronic shop owner avails ITC of the snacks provided to its customers. But is it an eligible credit as per Section 17(5)?

Have you ever thought about the cost businesses pay for such ignorance and non-compliance with GST?

Let me tell you, when you fail to generate IRN, you become liable to pay a penalty. This penalty is equivalent to 100% of the amount of tax applicable on supply or Rs10,000, whichever is higher, as per Section 31 Rule 48(5). So immediately, you became liable to pay the penalty of Rs.13,50,000 for a single mistake. This is just one example of a penalty. There are other penalties, interest, late fees, or notices that may be served. When the department finds that there are discrepancies in filing the returns, availing the ITC, or any noncompliance of any of the provisions under the GST Acts, Also, the biggest nightmare for a taxpayer, which is a GST raid, can also take place as a consequence of non-compliance.



Janahavi S. Awasthi
WRO0701361

So today, to escape from such consequences and give you insight about the proactive measures that you can take to avoid such consequences, I, Janahavi Awasthi, share with you some basic steps that are majorly ignored or neglected in day-to-day practices while ensuring compliance under GST within the timeframe of provisions along with accuracy.

Time: Timeliness is a key factor in compliance. Developing time management strategies ensures that all deadlines are met consistently.

Accuracy: Accuracy in reporting is crucial for GST Compliance. Errors can lead to financial losses and regulatory scrutiny.

Before proceeding with steps, we need to understand at what stage these steps can be performed. The stages involved are: first, we need to ensure accurate recording of sales and purchases in the books on a monthly basis.

Once the monthly books are closed, the taxpayer, under Section 59, can exercise his liberty of assessing tax liability voluntarily in accordance with the provisions of the GST Acts and provide the basis of tax calculation to the tax administrations by filing the periodic returns. While doing so, if the taxpayer has committed any error or not complied with the GST Provisions, then two situations may arise: either the taxpayer himself recognises the mistake and rectifies the same in the subsequent months until the October return following the FY to which such error pertains or filing the annual return, whichever is earlier. In the second situation, the said time limit has expired, and the proper officer finds some discrepancies in the returns. Here, the situation becomes out of control for the taxpayer, and he is left with nothing but to welcome Form ASMT-10 under Section 61-Scrutiny Assessment or ADT-01 for Audit by Tax Authority or DRC-01 show cause notice for short payment or non-payment and be ready with his workings and explanation supporting the returns filed by him.

We can say that a taxpayer can perform compliance-ensuring steps while assessing the tax liability or before filing the returns, like basic data should be accurate, each transaction of sale and purchase should be recorded in a book on a proper date with the proper detail, description, HSN, quantity, quality, tax amount, vendor party GSTIN, and other relevant details as per Section 31.

Let's discuss these steps chronologically in brief:

Step 1: Registration and Returns

The first step to GST compliance is registration on the GST Portal. A taxable person can take registration under Section 22, which says that a taxpayer becomes liable for registration if the turnover in the financial year exceeds the threshold limit. Prescribed under section 22 or under section 24, which requires a taxpayer to get himself compulsorily registered under GST if he fulfils any of the 11 conditions, like being liable to deduct TDS, TCS, paying tax on an RCM basis, being an input services distributor, making inter-state supply, taxable supply, and such other conditions.

Time Limit for Registration: A taxpayer has to take registration within 30 days from the date when the taxpayer becomes liable for registration under Sections 22 and 24. However, there is no such time limit for voluntary registration under Section 25(3) of the CGST Act. Once the taxpayer is registered, he becomes liable to file the returns like GSTR-1, GSTR-3B, Input Service Distributor on a monthly basis, ITC-04 for job work, GST CMP-08 on a quarterly basis, GSTR-9, GSTR-9C, and GSTR-4 on an annual basis, whichever is applicable to the business.

Step 2: Data Accuracy in Tax Invoices and Books

1. GSTIN Check:

While collecting data from the debtor in the case of the forward charge mechanism, ensure that the GSTIN provided by him has an active status and not a cancelled one, that it actually belongs to the customer, and that it is in tune with its place of supply because ultimately it is going to be the basis for whether to charge CGST, SGST, or IGST.

Step 2: Data Accuracy in Tax Invoices and Books

Example: Let's say Mr. Bansilal is a supplier and Mr. Mansukh is a recipient who has registrations in different states. Mr. Mansukh entered into a contract with Mr. Bansilal for the supply of goods in their MH unit and MP unit. Mr. Bansilal issued two separate tax invoices on the MH GSTIN and MP GSTIN. Subsequently, Mr. Bansilal issued a credit note due to a shortage in the quantity supplied in the MH Unit. Mistakenly, Bansilal ji issued a credit note on MP GSTIN instead of MH GSTIN, and as a result, the ITC of the MP unit got reduced in GSTR-2B. Here, the credit note can be amended in subsequent returns by Mr. Bansilal. But by the time the supplier realises its mistake and makes the amendment, the time limit for the amendment may have expired, which is the October return following the end of the financial year to which such a credit note pertains or furnishing the relevant annual return, whichever is earlier.

2. Value of supply:

The taxpayer has to ensure that the taxable amount in the tax invoice is in compliance with the provisions of Section 15.

3. Time of Supply:

It gives us the point in time when liability to pay tax arises under Section 12 for goods and Section 13 for services. Events like the issuing of invoices, receipt of payment, receipt of service, and provision of service as recorded in the books of accounts Needs to be analysed to determine the time of supply. When the tax on supply is payable under the forward charge mechanism, while paying tax under the reverse charge mechanism, the date of receipt of goods or services, the date of making payment, and the and the date of issuing the invoice need to be analysed to determine the time of supply.

As a consequence of delayed GST payments, the standard interest rate for GST is 18% per annum. This rate applies when there is a delay in paying the tax that is due after filing the GST returns.

4. HSN/SAC:

A supplier has to be very precise in selecting the right HSN/SAC code for the goods it is supplying or services it is rendering.

Example: 482010-Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries, and similar articles

It is important because accurate HSN code reporting streamlines the tax processes by categorising the goods; applicable GST rates can be easily determined; simplifies the return filing; and reduces the error risk. The HSN code we report while filing the GSTR-1 is also used to determine the quantity of items traded or imported throughout a nation.

How do I read it?

48 - HSN Chapters

20 - Heading

10 - Sub-heading

5. RCM:

Under the reverse charge mechanism, it is the buyer who is liable to pay tax on his inward supply. It has been observed that since the tax is to be paid on expenses, many times the RCM transactions remain unscrutinized, the RCM liability gets delayed, and interest becomes payable on delayed payment. Hence, detailed scrutiny of the expenses is to be done to identify transactions liable to a reverse charge, like imports of goods, sponsorship services, GTA services, etc.

Example: A startup software company registers under GST Rent a Residential Dwelling and sets up office. In this case, it cannot be considered a normal rent agreement; rather, it is a rent agreement specified in Notification No. 05/2022-Integrated Tax (Rate) dated July 13, 2022, which says tax on service by way of renting a residential dwelling to a registered person is to be paid on an RCM basis. Hence, the software company is liable to pay tax on an RCM basis.

6. ITC:

Input tax credits play a vital role in our returns. It is important to ensure accurate compliance with the below sections.

1) Tax on inward supply can be availed of as ITC if eligibility and conditions as per Section 16 are fulfilled.

Example: As per Section 16(4), the input tax credit for the financial year becomes time-barred and cannot be availed of further after filing the annual return or the month of September following the end of FY, whichever is earlier.

2) GST does provide seamless flow of credit, but with some exceptions given under Section 17, due to which reversal in GSTR-3B is required.

For example,

a) a taxpayer has to consider Section 17(5) of Blocked Credit, which says that the credit is blocked in situations like ITC on goods sent as samples or gifts, tax paid on membership in a club or gym, tax paid on personal expenses, and expenses paid for outdoor catering or food or beverages.

b) business assets sold on which ITC was available at the time of purchase.

c) ITC proportionate to the exempt supply made during the month

d) If inward supply goods are used for personal consumption, then ITC is proportionate to that personal consumption.

3) A monthly reconciliation between books and GSTR-3B should be plotted by the taxpayer to identify which vendor has not reported the sales in his GSTR-1 and take a follow-up on the same.

When a taxpayer ensures data accuracy while filing the returns, he or she can fight any battle of notices and GST raids.

Step 3: Measures to be taken by Management

1.) Automation:

Technology plays a vital role in enhancing the data collection improves accuracy and ensure timely submission. Investing in the right software can also lead to a significant time reduction

2) Training and awareness:

Regular training and awareness program are essential in maintaining GST Compliance. Educating staff about the latest regulations and best practices fosters culture of Compliance and reduces human error.

3) Continuous Monitoring:

Periodic audit for ensuring ongoing compliance is necessary. It helps in identifying discrepancies and areas for improvement.

As rightly quoted by Darwin, "it is not the strongest of the species that survive, nor the most intelligent that survive, but the one who is responsive to change."

With this, I would like to end my session here by saying that theoretically, tax may be a difficult subject, but practically, it is an interesting area, especially when time and accuracy are the driving forces behind all the activities you carry out.

Thank you, everyone, for being such a wonderful audience. And I'm sure my words have reached too many consciousnesses from this stage.



TAXATION OF GIFTS

Gifts have always been subject to taxation in one form or another around the world, and India is not exempt from it. Legislators have long debated the taxation of gifts because, in situations where concealed assets were found, the Assessee would argue that the assets were gifts received and therefore free from taxation. In order to address this issue, legislation was put into place to ban specific behaviours, allowing for the taxation of such gift receipts while also exempting extremely small gift amounts, family gifts, and gifts given on specific dates.

II. The Brief history of taxation of gifts in India is as follows:

Tax on gifts was introduced in India in 1958 by the Gift Tax Act, which was subsequently amended and repealed in the year 1998. Till October 1, 1998, all gifts, barring a few exceptions, were chargeable to Gift Tax in the hands of the Donor under the Gift Tax Act. The period from October 1998 until March 2004 was without any tax on gifts. However, the gift tax was reintroduced in a new form to fill up the vacuum created by the abolition of the Gift tax Act, 1958 and the provisions were included in the Income-tax Act vide Finance (No. 2) Act, 2004, w.e.f. 1.4.2005.



Nivedi Jain
WRO0744031

The remarkable difference is that under the old law, gifts were taxed in the hands of the donor, while under the current law, the same is taxable in the hands of the donee or recipient of the gift as income from other sources u/s 56 of the Income Tax Act, 1961.

II. Applicability of the tax on the Gift:

Section 56(2)(x) of the Act stipulates that any person, which includes everyone, whether individual, HUF, firm, company, LLP, trust, etc., who receives any asset (money, immovable property or any property (other than immovable property)) without consideration or inadequate consideration is liable to pay tax on the value of such asset under the head of 'Income from Other Sources'.

The below table summarizes the taxability of gifts in various scenarios

Gift in Cash	Gift of immovable property*	Gift of movable property	Inadequate purchase of immovable property	Inadequate purchase of movable property
Gift in cash or Bank	Land/Building	Shares, securities, jewellery, bullion, paintings, drawings, work of art, sculptures, archaeological collections	Land/Building	Shares, securities, jewellery, bullion, paintings, drawings, work of art, sculptures, archaeological collections
Exemption limit of INR 50,000 for aggregate value of transactions in a year	Exemption limit of INR 50,000 for each transaction in a year	Exemption limit of INR 50,000 for aggregate value of transactions in a year	Exemption limit of INR 50,000 for each transaction in a year	Exemption limit of INR 50,000 for aggregate value of transactions in a year
Total cash/cheque received	Consider the stamp valuation	Consider the FMV	Consider the stamp valuation to calculate the benefit	Consider the FMV to find the benefit

* However, there is an ambiguity as to what does Immovable property exactly mean.

As per the meaning of the term "property" given in Clause (d) of Explanation to section 56(2)(vii), immovable property means any land, or building, or both. In the aforesaid Explanation while defining the term "property" the word 'capital asset' has also been used. On this basis, it is being argued that, if any property is not in the nature of capital asset as defined in section 2(14), the same is not covered under the definition of property and therefore, provisions of section 56(2)(x) are not applicable. Example of such cases are agriculture land, stock-in-trade, assets of personal effects etc. Hence, what agricultural land is becomes litigative.

In **Sh. Prem Chand Jain [TS-269-ITAT-2020(JPR)]**, Jaipur ITAT rules that the agricultural land, not being a capital asset u/s 2(14) cannot be subject to provisions of Sec.56(2)(vii)(b); AO had added the difference between the sale consideration and the stamp duty value of the two agricultural lands purchased by the Assessee; Observes that Sec.56(2)(vii)(b) refers to 'any immovable property', further notes that immovable property has not been defined, however the term "property" has been defined to mean capital asset of the Assessee namely, immovable property being land or building or both; Accepts Assessee's contention that the immovable property which is to be taxed under Section 56(2) needs to be a capital asset, in view of the fact that the phrase 'property' uses the phrase 'capital asset'; Holds that where the agricultural land doesn't qualify as a capital asset, provisions of section 56(2)(vii)(b) cannot be invoked.

In Shri Trilok Chand Sain [TS-8-ITAT-2019(JPR)], Jaipur ITAT rules in favour of Revenue, holds agricultural lands are covered under the ambit of Sec. 56(2)(vii)(b) taxability, rejects Assessee's stand that agricultural lands being excluded as capital assets u/s 2(14) cannot come under the purview of Sec. 56(2)(vii)(b).

Remarks,” On reading of provisions of 56(2)(vii)(b), we find that it refers to any immovable property and the same is not circumscribed or limited to any particular nature,”; Holds whether such lands fell into the definition of capital asset or stock-in-trade was irrelevant, and it could not be read into the definition of 'any immovable property' as per sec. 56(2)(vii)(b).

III. Exemption from tax on transaction with Nil or inadequate consideration (Gift):

i. Taxability of gifts received from a relative-

a. in the case of an individual

- spouse of the individual;
- brother or sister of the individual;
- brother or sister of the spouse of the individual;
- brother or sister of either of the parents of the individual;
- any lineal ascendant or descendant of the individual;
- any lineal ascendant or descendant of the spouse of the individual;
- spouse of the person referred to in items (B) to (F); and

This list is one-sided, in other words, a two-way relationship cannot be assumed.

In Shri Ghulam Farooq Ansari: TS-600-HC-2017(RAJ), Rajasthan HC reverses ITAT order of deleting disallowance made on account of gift received by Assessee individual (partner in Jewellery firm) from his brother (NRI, residing in Hong Kong) through nephew's bank account, holds that the amount transferred by nephew as a gift to the brother of father (Uncle) cannot be exempted.

b. in case of a Hindu undivided family, any member thereof;"

However, the following points are required to be considered while interpreting this aspect, i.e.,

i. A gift received by a member from HUF is not exempted.

ii. The Act does not clarify whether the transfer of any asset on the total partition or partial partition of HUF can be considered a gift or not. However, the partition of HUF, whether full or partial, is not an act of love or affection; hence, such a transfer should not be considered a gift by the HUF to its members

ii. Gift received on the occasion of marriage of the individual.

Some points to be noted here are:

a. Gifts received by any person other than the individual whose marriage has taken place are not exempted under this clause.

b. Gift received not on the date of the marriage.

In CIT v. Dr. (Mrs.) Neelambai Ramaswam (in the context of GTA), gift received 11 months after marriage was considered as gift received on the occasion of marriage as the gift was intended to be made at the time of marriage but could not be made.

iii. Gift received under a will, by way of inheritance, in contemplation of death of the payer

Two important requirements laid down in this sub-section are:

(i) the donor must be ill and expects to die shortly of the illness, and

(ii) possession of the property should be delivered to the donee, apparently during the lifetime of the donor.

iv. Gift received from received from local authority, charitable institute registered under section 12AA or 12AB, any Fund foundation, university, other educational institutions, hospitals, any trust, institution, referred to Section 10(23C).

v. Shares received by an individual or HUF because of amalgamation of de-merger.

vi. Any transfer between wholly owned subsidiary company and its holding company shall not be taxable u/s 56(2)(x), provided the subsidiary and holding company are Indian companies.

V. Specific cases related to gift transactions:

a. Gift by non-resident to resident and vice-versa

The provision of gifts applies to every person whether it is a resident or a non-resident.

- Any gift received by a received by a resident person consider to be taxable in India, whether it is received from a resident or a non-resident.

- Gifts received by a non-resident from a resident is also taxable in India.

In Gagan Infraenergy Ltd vs. DCIT (ITAT Delhi), it was held that the AO has correctly observed that gift by a corporation to another corporation is a strange transaction as there cannot be a gift between artificial entities/persons. There is no agreement/document that has been executed between group companies forming part of family realignment. To suggest that a company can give away its assets free to another even orally, can only be aiding dubious attempts at avoidance of tax payable under the Act unless it is supported by documentary evidence.

VI. Conclusion:

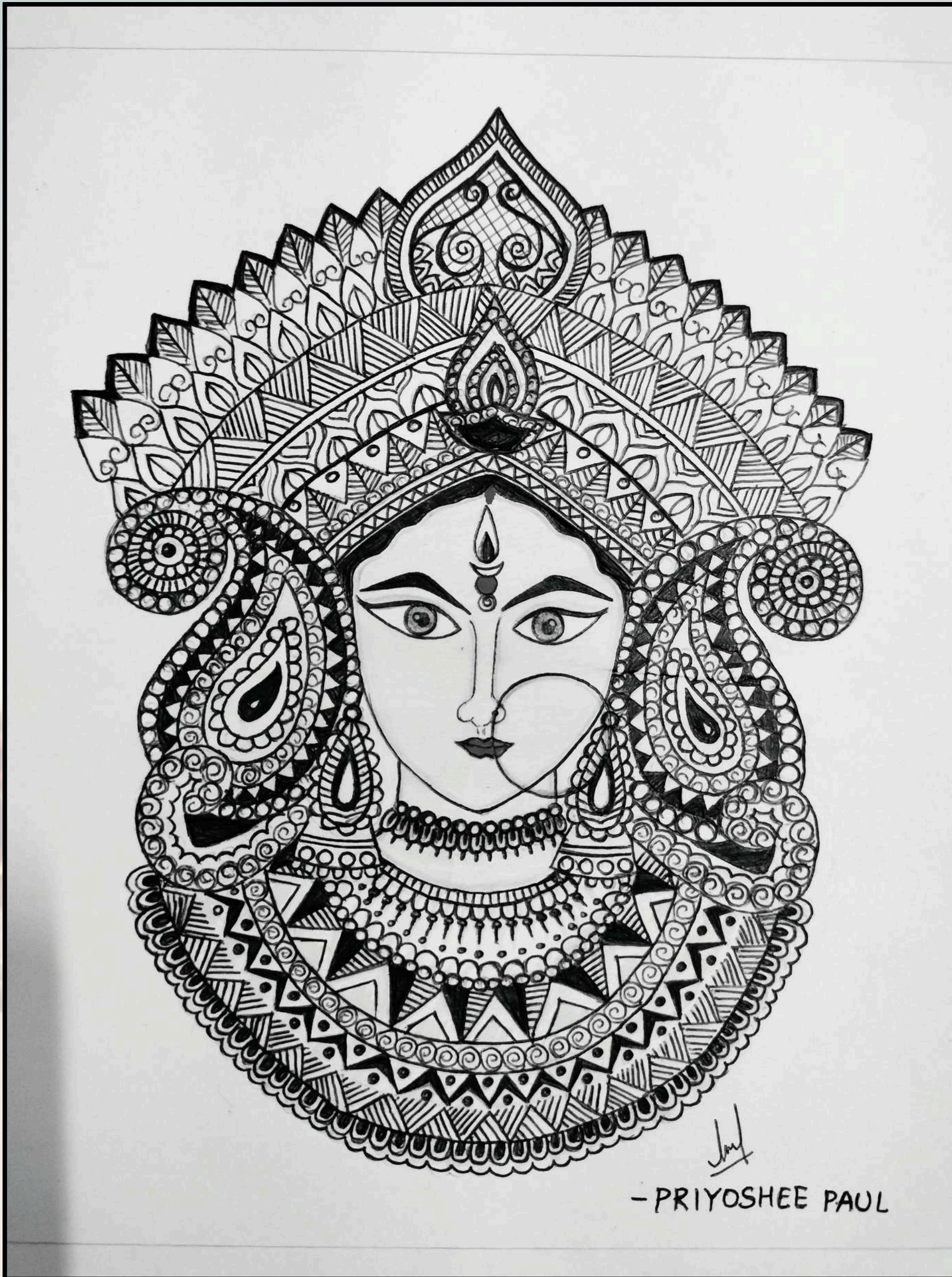
Tax planning by gift is a tool that has been given by the legislature to the taxpayers, and use of the same can't be avoided. Giving gifts to others is a very common way for taxpayers to manage their taxes within the boundaries of the law. The legislature has made every effort to close these loopholes by introducing a number of provisions, but there will always be situations where tax planning is feasible. Conflict between taxpayers and lawmakers will persist, and the taxability of gifts will continue to be a subject of litigation.

PLATFORM FOR CA STUDENTS TO SHOWCASE THEIR ARTWORK

CREATIVE COMMERCE
CORNER

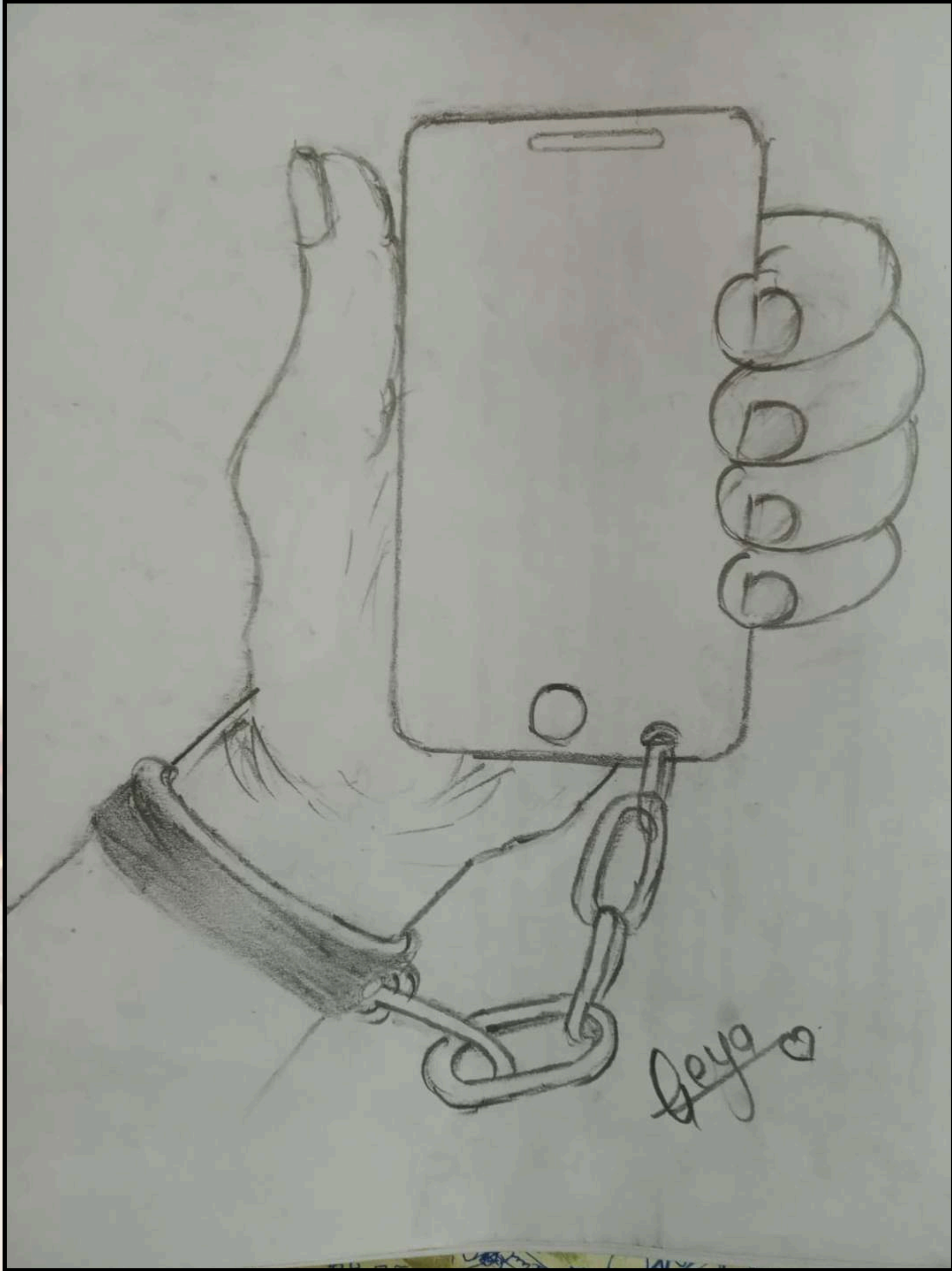
SKETCHES. POETRY. PAINTINGS.

DEC
2024



Priyoshee Paul
WRO0784269

CREATIVE COMMERCE CORNER



Geya Shah
WR00734583

GLIMPSE OF PAST EVENTS



**FULL DAY PROGRAMME ON GST AUDIT
MASTERCLASS ON 10TH NOVEMBER 2024**

GLIMPSE OF PAST EVENTS



NATIONAL TALENT SEARCH COMPETITION

GLIMPSE OF PAST EVENTS



NATIONAL TALENT SEARCH COMPETITION

GLIMPSE OF PAST EVENTS



NATIONAL TALENT SEARCH COMPETITION

EDUCATION IS THE MANIFESTATION OF PERFECTION ALREADY IN.

- SWAMI VIVEKANANDA

SHARE YOUR ARTICLES AND ARTWORKS ON
WICASA@PUNEICAI.ORG



PUNE_WICASA_ICAI



PUNE WICASA OF ICAI



PUNE WICASA

*Pune WICASA
Newsletter*

DISCLAIMER

The views and opinions expressed in this newsletter are solely those of the individual authors and contributors and do not necessarily reflect those of the Institute of Chartered Accountants of India (ICAI).