



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
(A STATUTORY BODY ESTABLISHED UNDER AN ACT OF PARLIAMENT)



Volume I, Issue 5, July 11

# VAPI BRANCH OF WIRC OF ICAI

*Indian Accounting Profession*

62 Glorious Years in the Service to the Nation

## FROM THE DESK OF SECRETARY

Respected & Dear Members,

At the out set, I would like to wish you Happy C.A Day, on 1<sup>st</sup> July'2011,It gives me pleasure to inform you that the Branch premises work is on the verge of completion & positively it would be inaugurated in the month of August'2011.

### PAST EVENTS :-

1. On 1<sup>st</sup> July,on the eve of C.A day, We conducted Career counseling in KBS Commerce College & Vallabh Ashram School, Pardi.
2. Work-shop on E-TDS was conducted jointly with Daman Industries Association on 29<sup>th</sup> July in Daman Industries Association Hall.
3. Quiz Competetion for C.A Students was held on 30<sup>th</sup> July at Hotel Galaxy, wherein Total 11 teams participated.
4. RCM Neil Majithia from Mumbai was invited for the function & he motivated the students present in the event.
5. AGM of the branch was conducted at 2.00 p.m on 30<sup>th</sup> July.

### FORTHCOMING EVENTS :-

1. Flag Hosting on 15<sup>th</sup> August in New Branch Premises.
2. R.R.C with WIRC on 19<sup>th</sup> -21<sup>st</sup> August in Ras resorts,Silvassa
3. Inauguration of Branch by the President & Vice President of ICAI.

Last but not the least, I would like to thank all the members of Vapi Branch for their continued Support & guidance.

I also request all the members to contribute generously to CABF as it is need of the hour & the same has been a keen agenda for our Hon. President CA. G. Ramaswamy.

Yours Truly

C.A HITESH A. PATEL

Secretary, Vapi Branch

### MANAGING COMMITTEE OF THE YEAR

CA. Jignesh Vasani  
CA. Giriraj Laddha  
CA. Prakash Chordia  
CA. Hitesh Patel  
CA. Jaiprakash Shethiya  
CA. Deepak Desai

### **Editorial Board Member:**

CA. Giriraj B. Laddha  
CA. Prakash Chordia  
CA. Chhaya M Kothari





## DIRECT TAX LAW UPDATES

### AMENDMENT IN RULE 114B OF THE INCOME TAX RULES, 1962 – INCOME-TAX (FIFTH AMENDMENT) RULES, 2011 {199 TAXMANN 81 (ST.)}

#### NOTIFICATION NO. 27/2011 [F. NO. 149/122/2010-SO(TPL)]/S.O. 1214(E), DATED 26-5-2011

The Central Board of Direct Taxes has amended the Rule 114B w.e.f. 1st day of July, 2011 for quoting the PAN in documents pertaining to specified transaction as follows:—

1. In the Explanation (a), in clause (k), for the words “tour operator” the words “tour operator, or to an authorized person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)” shall be substituted.

2. In clause (l) for the words “for issue of a credit card” the words “for issue of a credit or debit card” shall be substituted.

3. After clause (p) and before the first proviso, the following clauses shall be inserted, namely :—

“(q) payment of an amount aggregating fifty thousand rupees or more in a year as life insurance premium to an insurer as defined in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938);

(r) payment to a dealer,— (I) of an amount of five lakh rupees or more at any one time; or

(ii) against a bill for an amount of five lakh rupees or more, for purchase of bullion or jewellery;”.

### SECTION 139 OF THE INCOME-TAX ACT – RETURN OF INCOME - EXEMPTION TO SPECIFIED PERSONS FROM

### REQUIREMENT OF FURNISHING A RETURN OF INCOME UNDER SECTION 139 (1) FOR ASSESSMENT YEAR 2011-12

#### NOTIFICATION NO. 36/2011 [F. NO. 142/09/2011(TPL)] / SO 1439(E), DATED 23-6-2011

The Central Government has exempted the following class of persons, subject to the conditions specified hereinafter, from the requirement of furnishing a return of income u/s 139(1) for the assessment year 2011-12, namely :—

#### Class of Persons

1. An Individual whose total income for the relevant assessment year does not exceed five lakh rupees and consists of only income chargeable to income-tax under the following head,—

(A) “Salaries”;

(B) “Income from other sources”, by way of interest from a savings account in a bank, not exceeding ten thousand rupees.

#### Conditions

2. The individual referred to in para 1,—

(i) has reported to his employer his Permanent Account Number (PAN);

(ii) has reported to his employer, the incomes mentioned in sub-para (B) of para 1 and the employer has deducted the tax thereon;

(iii) has received a certificate of tax deduction in Form 16 from his employer which mentions the PAN, details of income and the tax deducted at source and deposited to the credit of the Central

Government;

(iv) has discharged his total tax liability for the assessment year through tax deduction at source and its deposit by the employer to the Central Government;

(v) has no claim of refund of taxes due to him for the income of the assessment year; and

(vi) has received salary from only one employer for the assessment year.

3. The exemption from the requirement of furnishing a return of income-tax shall not be available where a notice under section 142(1) or section 148 or section 153A or section 153C of the Income-tax Act has been issued for filing a return of income for the relevant assessment year.

4. This notification shall come into force from the date of its publication in the Official Gazette

### SECTION 48 EXPLANATION (v) OF THE INCOME-TAX ACT – COMPUTATION OF CAPITAL GAINS – NOTIFIED COST INFLATION INDEX FOR FINANCIAL YEAR 2011-12

#### NOTIFICATION NO. 35/2011 [F. NO. 142/5/2011-TPL]/SO 1438(E), DT 23-6-2011

The cost inflation index notified for the financial year 2011-12 for computation of capital gains is 785





## CENTRAL EXCISE LAW UPDATES

### Circulars

#### Writing off of arrears of Central Excise duty and Customs duty

The powers to write – off the arrears have been delegated to the competent authorities in the following manner:-

#### Competent Authority

Chief Commissioner of Customs & Central Excise / Central Excise / Customs

Commissioner of Customs & Central Excise / Commissioner of Customs / Commissioner of Central Excise Act,

#### Powers Delegated

(a) Full powers for abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, and Central Excise Act, 1944.

(b) To write off irrecoverable amounts of Customs/Central Excise duties upto ` 15 lakh subject to a report to the Board.

(a) Full powers for abandonment of irrecoverable amounts of fines and penalties imposed under Customs 1962, and Central Excise Act, 1944.

(b) To write off irrecoverable amounts of Customs/Central Excise duties up to Rs 10 lakh subject to a report to the Chief Commissioner.

In respect of the interest amount, it is clarified that once duty involved is written off, the interest due thereon would get automatically written off.

(Circular No. 946/07/2011 dated June 1st, 2011)

#### Issues regarding levy of excise duty on branded readymade garments and made-up articles of textiles

Clarification on the following issues is provided:

a) Applicability of mandatory levy of excise duty on school uniforms, uniforms for private security guards, companies, hotels, airlines, etc, and made-ups such as linens, towels bearing the name or logo of a hotel, restaurant or airlines etc. – It is clarified that such products would not merit treatment as “branded” products merely because the name of the school, institution or company or their logo is either printed, embroidered or etched on them. There is no nexus between such a name or logo and the product at the time of its sale which is essential ingredient in the definition of the term “brand name”. Unless such garments/made- ups also bear a brand name in addition to the name or logo such goods would not attract the excise duty.

b) Applicability of mandatory levy of excise duty on made-ups such as blankets bearing the name of the manufacturer and supplied to the Ministry of Defence or its organisations – Mere affixing of name of the tailor or manufacturer would not constitute a brand name. Blankets supplied to the Defence establishment with affixing the name of the manufacturer on such goods would not, by itself, bring them within the ambit of branded goods.

c) Determination of eligibility of the manufacturer or factory to the benefit of small scale exemption – A manufacturer or factory whose aggregate value of clearances for home consumption does not exceed ` 4 crore in the preceding financial year is eligible for full exemption on similar clearances for an amount





## CENTRAL EXCISE LAW UPDATES

not exceeding ` 1.5 crore in the current financial year. It has been clarified that certification by a Chartered Accountant or self certification by a manufacturer may be accepted for ascertaining the aggregate value of clearances.

(Circular No. 947/8/2011 - CX dated June 21st, 2011)

### **Exemption available to manufacturer of recorded smart cards**

Exemption is available to manufacturer of recorded smart cards to register only one premise from where centralized billing or accounting system is undertaken in respect of such goods manufactured by different manufacturing units under the Central Excise Act.

(Notification No. 14/ 2011 - Central Excise (N.T.) dated June 3rd, 2011)

### **Exemption from levy of Central Excise**

Notification No. 4/2006 –CE dated March 1st, 2011 exempts certain goods from levy of excise duty. The scope of the said notification has been widened to also include,

- Colour positive unexposed cinematographic film in rolls of any size and length; and
- Colour negative unexposed cinematographic film in rolls of 400 feet and 1000 feet

(Notification No. 33/2011 – CE dated June 25th, 2011)

## SERVICE TAX LAW UPDATES

**Central Government vide Notification No.38/2011-ST, Notification No.39/2011-ST & Notification No.40/2011-ST all dated 14th June, 2011** has deferred the levy of service tax on taxable services provided by Government Railways to any person in relation to transport of goods by rail (Section 65(105)(zzzp)) to 1st January,2012.

**Central Government vide Notification No. 41/2011-ST dated 27th June, 2011** has amended Rule 7(c) of the Point of Taxation Rules, 2011 whereby Point of Taxation in respect of individual, proprietorship or partnership firms providing taxable services of “Consulting Engineer (Section 65(105)(g))” shall be the date on which payment is received.

## GUJARAT VAT LAW UPDATES

### **Opportunity for Obtaining Statutory Forms**

Vide Public Circular No. GUJKA/VAT-6/11-12/OTW.119/101 dt. 15th June, 2011, new opportunity is afforded to the dealers, who have not obtained statutory forms from the Department, for any reason, they have to apply, by using Add On Utility, to the Deputy Commissioner, with reasons for omission to demand forms earlier and have to substantiate their claim of forms with accounts records, audited annual report etc.

### **Lump Sum New Return Form**

Vide Notification No. {GHN-18}VAR-2011 (31) I Th. Dt. 16th June, 2011, the Return Forms No. 202 & 202-A, for dealers having opted for Lump Sum Scheme, have been substituted by new forms mentioned therein.

### **Assessment Order Form substituted**

Vide Notification No. {GHN-18}VAR-2011 (31) I Th. Dt. 16th June, 2011, the Assessment Order Form No. 304 has been substituted by new form mentioned therein.

(SOURCE : WIRC-ICAI.ORG LAW UPDATES)





## CRITICAL ANALYSIS OF SECTION 44AD

**\* What are the benefits of getting the assessment u/s. 44AD?**

One may note the benefits of being covered by section 44AD: -

1. Assessee will be exempted from the requirement of maintaining any books of account as prescribed u/s. 44AA.
2. Assessee will not be required to get the accounts audited u/s. 44AB. Further, the turnover of such business will not be considered for calculating the turnover u/s. 44AB.
3. In the new provisions, the assessee is made further exempt from the requirement of payment of advance-tax. Thus, assessee will not be liable for interest u/s. 234B and 234C.
4. No separate deduction will be allowable u/s. 30 to 38 and no disallowance will be made u/s. 40 to 43D. This means that even if assessee does not deduct TDS, or makes cash payment exceeding prescribed limit u/s. 40A(3), or does not discharge statutory dues u/s. 43B, or makes illegal expenses under Explan. to section 37; no disallowance will be made for same.
5. One may further note, although assessee will not be getting any deduction/ no separate disallowance will be made; yet, in case of firm, a separate deduction u/s. 40(b) for payment to partners will be allowed.
6. Another benefit of offering income u/s. 44AD is that generally scrutiny norms do not cover section 44AD cases. In case assessee offers income lower than section 44AD, scrutiny assessment is mandatorily done.
7. It may also be noted that the deprecia-

tion will be deemed to have been allowed. Therefore, the Written Down Value of the assets will be deemed to have been recomputed and reduced.

**\* Whether the Assessee can carried forward unabsorbed depreciation?**

As per the subsection (3) of section 44AD, the Act clearly states that the Depreciation is deemed to have been allowed u/s. 32 and the same has been deemed to have been set off against the profit. Hence the same cannot be allowed to be allowed to be carried forwarded. Deduction under chapter VI (Set off and carry forward of losses)

As per Universal cargo Carriers Inc Vs. CIT (1987) 165 ITR 209(Cal.), current and brought forward losses can be set off. This decision has been rendered in context of section 44B and should equally apply to 44AD

**\* I am (My firm is) a Professional. Am I eligible under section 44AD.**

Section 44AD uses the words "Business". The word "business" is different from "profession". Section 2(13) defines "business" to include any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture. Whereas, section 2(36) defines "profession" to include vocation.

One may note that business does not include profession as held in **G.K. Choksi 295 ITR 376 (SC)**. Therefore section 44AD does not apply to any profession.

**\* What is the meaning of Claimed to have been earned?**

By the introduction of these words in section 44AD(1), the legislature shows his intention to accept specified income as returned income even if higher sum is earned by eligible assessee unless it is claimed by assessee in his Income Tax Return.





- \* ***1 am engaged in hiring leasing plying of goods carriages and own 7 trucks. Can I be covered by section 44AD?***

Section 44AD specifically excludes the business of plying, hiring or leasing of goods carriages "referred to in section 44AE". Therefore such assessee shall not be covered by section 44AD.

- \* ***1 am engaged in the business of plying, hiring or leasing of goods carriages and own 12 trucks. Can I be covered by section 44AD?***

Section 44AD uses the words "referred to in". Since section 44AE makes a reference to section 44AE, therefore, in my view, in case an assessee owns more than 10 goods carriages, assessee is not be business of plying, hiring or leasing goods carriages "referred to in section 44AE". Assessee can opt for presumptive taxation u/s. 44AD in such cases. In such cases, assessee shall verify the turnover of such business, as the turnover of such business may be more than Rs. 60 lakhs in most cases.

- \* ***1 am engaged in two "eligible business" u/s. 44AD. Turnover of one business is Rs. 35 lacs and turnover of other business is Rs. 45 lacs. Will I still be covered by section 44AD?***

If assessee is running multiple eligible businesses, having different methods of Accounting, turnover of all those businesses shall be determined as per method of accounting regularly employed for respective businesses. Further the turnover so determined shall be clubbed to determine whether limit of 60 lakhs gets exceeded.

- \* ***1 am engaged in two businesses. Turnover of one business is Rs. 35 lakhs and turnover of another business is Rs. 65 lakhs. Will I be covered by section 44AD?***

Assessee will be eligible for presumptive taxation in respect of business with turnover of Rs. 35 lakhs. For business with turnover of Rs. 65 lakhs, assessee will have to prepare the books of account and get the accounts audited.

Clause 10 of the Tax Audit Report Form No. 3CD may be noted, which states that the profits and gains assessable on presumptive basis, shall be indicated and the amounts and the relevant sections shall be disclosed. This shall be reported in the audited accounts. Further, while audit, the auditor shall be careful, that any expenditure relating to presumptive business is not debited to the P L Account. The Guidance Note on Tax Audit gives a detailed procedure as to how the tax auditor shall approach in such case. The problem will arise, when separate books for both business are not maintained .

- \* ***Assessee, a C.A. has a professional turnover of Rs. 10 lakhs. Turnover from real estate trading is Rs. 55 lakhs. Whether assessee is covered by presumptive taxation.***

The guidance note on tax audit states that the turnover from business and profession has to be taken separately. Therefore, for the real estate trading, assessee will be covered by section 44AD as the turnover is less than 60 lakhs. However, **for** professional income, the assessee will have to maintain books u/s. 44AA. Since the gross receipts are not more than Rs. 15 lakhs, assessee will not be required to get the accounts audited.

- \* ***Assessee is a trading company, with turnover of Rs. 40 lakhs. Whether assessee is covered by section 44AD.***

The new section 44AD applies only in case of individual, HUF and Firm (excluding LLP). Therefore, a company will not be covered by section 44AD.

- \* ***Assessee firm is developing housing projects and is covered by section 80IB(10). Can assessee go for section 44AD?***

Section 44AD restricts an assessee who is covered by income based deductions and exemptions (section 10A/10B/ 10AA/ 10BA/ Chapter VIA Part C) from the application of section 44AD. Therefore, such assessee cannot opt for presumptive taxation u/s. 44AD.





\* ***Does Sec 44AD apply to assessee who does business of sale and purchase of shares and securities?***

As per Section 44AD, Eligible Business covers any business except Transport Business and includes all the business whether it is:

- Manufacturing
- Trading
- Wholesale
- Retail
  
- Job Work
- Service business
- Speculative/ Non speculative., e.g.
  - (i) Advertising agent
  - (ii) Clearing, forwarding and shipping agents - CIT v. Jeevanlal Lallubhai & Co. [1994] 206 ITR 548 (Bom).
  - (iii) Couriers
  - (iv) Insurance agent
  - (v) Nursing home
  - (vi) Stock and share broking and dealing in shares and securities - CIT v. Lallubhai Nagardas & Sons [1993] 204 ITR 93 (Bom).
  - (vii) Travel agent.

The only criteria is that, the turnover of eligible Business should not exceed Rs. Sixty lacs in the previous Year.

\* ***I am covered by section 44AD and my turnover is Rs. 50 lakhs. However, I have a profit of 2%. I have no other source of income. Shall I maintain books and get them audited.***

New section 44AD is the true wisdom of the legislature. As per new section 44AD, you are required to maintain books and get them audited only if the total income exceeds the basic exemption limit. Since your profit is only Rs. 1 lakhs and you have no other source, your total income is Rs. 1 lakhs (i.e. below basic exemption limit. You are not required to maintain books and get it audited.

\* ***What will be your answer, if the assessee has capital gains of Rs. 3 lakhs also apart from profit of Rs. 1 lakhs (2% of Rs. 50 lakhs)***

In such case, since the total income is Rs. 4 Lakhs, assessee shall maintain books and get the same audited.

\* ***My turnover is Rs. 50 lakhs. My profit rate is 4%. I have no other source of income. Shall I maintain books and get them audited.***

Since your total income is Rs. 2 lakhs, you are required to maintain books and get the accounts audited.

\* ***What will be your answer, if assessee claims Rs. 70,000 as deduction u/s. 80C.***

In case assessee claims deduction u/s. 80C, the total income will be Rs. 1,30,000. Therefore, assessee is not required to maintain books and get them audited.

\* ***I am an individual with turnover of Rs. 30 lakhs in immediately preceding P.Y.. I offer lower profits u/s. 44AD and therefore I am liable to get the accounts audited u/s. 44AB. Shall I deduct TDS in current year.***

TDS shall not be deducted. TDS provisions do not state that TDS shall be deducted if audit is done u/s. 44AB; it is only stated that the turnover exceeds the maximum amount u/s. 44AB. Therefore, even if the audit is done, since the turnover is less than Rs. 60 lakhs, .

\* ***I have a turnover of Rs. 5 crores. AO rejected the books. AO wants to apply profit rate of 8% relying on section 44AD, even-though the turnover exceeds Rs. 60 lakhs.***

As held by **Allied Engineers 180 Taxman 70 (Del.)**, 8% profit rate cannot be applied when the turnover was more than Rs. 60 lakhs.

(COMPILED BY: CA. CHHAYA M KOTHARI)





WRITE-UP

## KYC and Anti- Money Laundering Guidelines

In our professional work we have to deal with Banks and financial institutions on routine basis. We have to conduct different bank Audits like statutory audits, revenue audits, concurrent audits etc. and other certification work under banking environment. In such environment we have to be aware of banking terms and banking norms. KYC and AML is one of the important terms which are frequently used in banking environment.



### ⇔ Importance of KYC and Anti- Money Laundering Guidelines:-

The KYC guidelines are introduced to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities. It enables banks to know their customer and their financial dealing which helps them to manage their risk prudently.

### ⇔ When KYC applies.

KYC guidelines applies at following stages

1. Opening a new account.
2. Opening a subsequent account where documents as per current KYC standards not been submitted while opening the initial account.
3. Opening a locker facility where these documents are not available with the banks for all the locker facility holders.

KYC also applies to non account holders who approaches bank for high value transactions

### ⇔ Money Laundering:-

Money laundering refers to the processing of criminal proceeds to hide its illegal origin.

Under money laundering three stages viz- placement, layering and integration are adopted so as to disguise the actual origin of funds generated through illegal means lay committing financial crimes, smuggling etc .

It creates adverse impact on social as well as economic life and further accelerates the growth of illegitimate criminal activities.

With a view to prevent the money laundering activities in India. the prevention of Money Laundering Act, 2002 was passed. Section 3 of which states that whoever acquires, owns possesses, or transfers any proceeds of crime or knowingly enters into any transaction which is





related to proceeds of crime directly or indirectly or conceals or aids in the concealment of the proceeds of crime, shall be guilty of money laundering.

⇔ **Impact of money laundering on development:-**

With a view to prevent the money laundering activities in India, the prevention of Money Laundering Act, 2002 was passed. section 3 of which states that whoever acquires, owns possesses, or transfers any proceeds of crime or knowingly enters into any transaction which is related to proceeds of crime directly or indirectly or conceals or aids concealment of the proceeds of crime. shall be guilty of money laundering.]

⇔ **Harmful effects on the society :**

- Widespread use of bribery in government offices leading to corruption.
- Control over vast sector of economy by handful persons through investment by unfair means.
- Infiltration of banking and financial institutions through organized crimes.
- Dampen social fabric and ethical standards prevalent in the society.
- Weakness the democratic institutions from grassroot level itself enactments,

⇔ **Indian initiatives in preventing money laundering:-**

To counteract the harms caused by money laundering and with a new t prevent the same was introduced on August 4<sup>th</sup>, 1998 a bill known as Prevention of Money Laundering Bill 1998.

- Prevention of Money laundering Bill 1999 was introduced on the basis of recommendation make by standing committee.
- The bill finally became Prevention of Money laundering Act 2002 after receiving Presidents assent on January 17th, 2003.
- This Act provides for offences, punishments in lieu of money laundering, confiscation attachment and other adjudication provisions so as to ensure effective prevention of money laundering.

(COMPILED BY: CA. DHAVAL GHADIYALI)





WRITE-UP

## Corporate Governance & India's Enron



When terrorists attacked Mumbai last November, the media called it "India's 9/11." That tragedy has been succeeded by another that has been dubbed "India's Enron." In one of the biggest frauds in India's corporate history, B. Ramalinga Raju, founder and CEO of Satyam Computers, India's fourth-largest IT services firm, announced on January 7 that his company had been falsifying its accounts for years, overstating revenues and inflating profits by \$1 billion.

Shocking fraud revelations now coming to light would certainly have been unknown some months back. But a closer look at some of the "material facts"—which Golden Peacock judges should have known about at the time of the award—reveals a company whose governance standards were far from those of a global leader. In fact, in public filings made several weeks prior to the award show, Satyam demonstrated woeful boardroom inadequacies and significant departures from commonly accepted "best practices" in governance. But Satyam won and painted itself in a self-congratulatory light by using Golden Peacock logos and references.

*Golden Peacock Global Award for excellence in Corporate Governance. This company was named the winner by the World Council for Corporate Governance as recently as in September 2008! This is after approving the false balance sheet presented in the Board of Directors.*

According to experts from Wharton and elsewhere, the Satyam debacle will have an enormous impact on India's business scene over the coming months. The possible disappearance of a top IT services and outsourcing giant will reshape India's IT landscape. Satyam could possibly be sold -- in fact, it had engaged Merrill Lynch to explore "strategic options," but the investment bank has withdrawn following the disclosure about the fraud. It is widely believed that rivals such as HCL, Wipro and TCS could cherry pick the best clients and employees, effectively hollowing out Satyam. Another possible impact could be on the trend of outsourcing to India, since India's IT firms handle sensitive financial information for some of the world's largest enterprises. The most significant questions, however, will be asked about corporate governance in India, and whether other companies could follow Satyam's Raju in revealing skeletons in their own closets.

The outrage over Raju's admission of systematic accounting fraud has broadened to wider concern about the potential damage to India's appeal for foreign investors and the IT services industry in particular. Immediately following Raju's confession, Satyam's shareholders took a direct hit as the company's share price crashed 77% to Rs. 30 (approximately 60 cents), a far cry from its 52-week high of Rs. 544 (\$11.35) last May.

"If there were one or two more such accounting scandals in the next six months, it would make international investors more wary," says Wharton management professor [Michael Useem](#). "One example would put people on guard; several examples would be enough to tell big investment money managers that they have to be especially careful working in that environment."





## ***“Riding a tiger, not knowing how to get off without being eaten”***

Raju was compelled to admit to the fraud following an aborted attempt to have Satyam invest \$1.6 billion in Maytas Properties and Maytas Infrastructure ("Maytas" is Satyam spelled backwards) -- two firms promoted and controlled by his family members. On December 16, Satyam's board cleared the investment, sparking a negative reaction by investors, who pummeled its stock on the New York Stock Exchange and Nasdaq. The board hurriedly reconvened the same day and called off the proposed investment.

The matter didn't die there, as Raju may have hoped. In the next 48 hours, resignations streamed in from Satyam's non-executive director and Harvard professor of business administration Krishna Palepu and three independent directors -- Mangalam Srinivasan, a management consultant and advisor to Harvard's Kennedy School of Government; Vinod Dham, called the "father of the Pentium chip" and now executive managing director of NEA Indo-US Ventures in Santa Clara, Calif.; and M. Rammohan Rao, the dean of the Indian School of Business in Hyderabad (ISB). Rao had chaired both December 16 board meetings. On January 8, he resigned his position as the ISB dean. In a letter to the ISB community, he explained: "Unfortunately, yesterday's shocking revelations, of which I had absolutely no prior knowledge, mean that we are far from seeing the end of the controversy surrounding Satyam Computers. My continued concern and preoccupation with the evolving situation are impacting my role as dean of ISB at a critical time for the school. Given that my term with ISB anyway ends in a few months, I think that this is an appropriate time for me to step down."

Resigning as Satyam's chairman and CEO, Raju said in a letter addressed to his board, the stock exchanges and the market regulator Securities & Exchange Board of India (SEBI) that Satyam's profits were inflated over several years to "unmanageable proportions" and that it was forced to carry more assets and resources than its real operations justified. He took sole responsibility for those acts. "It was like riding a tiger, not knowing how to get off without being eaten," he said. "The aborted Maytas acquisition was the last attempt to fill the fictitious assets with real ones."

Specifically, Raju acknowledged that Satyam's balance sheet included Rs. 7,136 crore (nearly \$1.5 billion) in non-existent cash and bank balances, accrued interest and misstatements. It had also inflated its 2008 second quarter revenues by Rs. 588 crore (\$122 million) to Rs. 2,700 crore (\$563 million), and actual operating margins were less than a tenth of the stated Rs. 649 crore (\$135 million).

Satyam's auditor PricewaterhouseCoopers issued a terse statement: "Over the last two days, there have been media reports with regard to alleged irregularities in the accounts of Satyam.... Price Waterhouse are the statutory auditors of Satyam. The audits were conducted by Price Waterhouse in accordance with applicable auditing standards and were supported by appropriate audit evidence. Given our obligations for client confidentiality, it is not possible for us to comment upon the alleged irregularities. Price Waterhouse will fully meet its obligations to cooperate with the regulators and others."

What follows is a breakdown of some of the ways in which Satyam's practices were inadequate:

### **Board Composition**

The lack of financial acumen on the Satyam board is glaring. The company admits in its August 2008 Form 20-F filing with the Securities & Exchange Commission: "We do not have an individual serving on our Audit Committee as an 'Audit Committee Financial Expert' as defined in applicable rules of the Securities & Exchange Commission. This is because our board of directors has determined that no individual audit committee member possesses all the attributes required by the definition 'Audit Committee Financial Expert.'"

Of the six nonmanagement directors serving on the Satyam board, four were academics, one was a former Cabinet Secretary of the Indian government and only one (Vinod K. Dham) was a former





Chairman/CEO of a tech company (he had previously served as vice-president of Intel's Microprocessing Products Group). Two of the independent directors—Vinod K. Dham and T. R. Prasad—are each noted in the 2008 SEC filing as serving on eight boards in addition to Satyam's.

### Board Independence

Satyam had a majority of independent directors—barely. Five of the nine directors are listed as "independent of management." Notably, Harvard Business School Professor Krishna Palepu is not among them, likely due to payments of \$200,000 a year noted in the filing that he received in professional service fees from the company. Satyam may have divided the roles of chairman and CEO, but the two individuals who served in these roles were brothers and both were members of management. The company had no independent board leadership; the U.K. Combined Code—which the several Britain-based members of the Council should have been patently familiar with—specifies that boards should "appoint one of the independent non-executive directors to be a senior independent director."

Moreover, Satyam's Form 20-F states: "Our non-management directors do not meet periodically without management directors"—contravening a governance best practice mandatory for companies listed on both U.S. exchanges and widely adopted throughout the world. A recent Korn/Ferry board study notes that over 60% of boards in Australasia have adopted the practice of having the board meet regularly without management.

### Board Committees

Satyam's Form 20-F filed in August 2008 also states "We do not have a Nominating/Corporate Governance Committee." This, too, is a glaring departure from "best practices" in global governance. Satyam's board structure instead included one committee you don't see every day—the unfortunately named "Investors' Grievance Committee." (A possible foreshadowing of recent events, this committee will no doubt see plenty of activity in the months ahead.)

When unethical executives become intent on defrauding a company, it can be tough for even the most seasoned directors to see through the scam. But what's shocking in the Satyam case is the recognition this company received for its governance even though its board failed to adopt some basic and widespread boardroom best practices, some of which might well have triggered board awareness that something was amiss. Now that the Indian government has dissolved the Satyam board, we can only hope that from the ashes of Satyam's Golden Peacock rises a phoenix of far superior governance that can not only salvage the company but set a truly worthwhile example of how a world class company should be governed.

*A spokesperson for the World Council of Corporate Governance indicated that in the future, their awards process would require "deeper scrutiny." Their experience serves as an important lesson to all third parties who grant governance prizes.*

***The lessons learnt from Satyam saga will help improve the level of corporate governance in India in the years to come, the apex body of chartered accountants, ICAI, said.***

***"Satyam is a study in itself and a matter of research also. I think in periods to come you will find that it will help to improve the levels of corporate governance in the country," Institute of Chartered Accountants of India (ICAI) Former President Amarjit Chopra said here.***

***"Probably, Satyam is the best things that could happen because it shall now prevent frauds in future."***

(COMPILED BY: CA. YOGESH KOTHARI)





# ICAI UPDATES

## Multipurpose Empanelment Form 2011-12

This is to inform that Multipurpose Empanelment form for the year 2011-12 (including form for empanelment of Bank Branch Auditors □ for the year 2011-12) has been hosted on the website [www.meficai.org](http://www.meficai.org) today. Last date for submission of online applications on

## CCBCAF & SMP Initiative

### \* Creation of Exclusive Website by CA Firms & Practitioners

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners exclusive Website [www.icai.org.in](http://www.icai.org.in) was launched by Hon'ble Shri R. P. N. Singh, Minister of State, Ministry of Corporate Affairs on the occasion of CA Day celebration on 1st July, 2011. The Website will enable the Practitioners and firms to create their websites and upload the details of their firms as per the norms laid down by the Council of the Institute of Chartered Accountants of India. The website provides a platform for the CA Firms to upload their firms' details and gives them an opportunity to reach out to the members and CA firms practicing worldwide.

The website has various downloadable software like ICAI-Tax Suite, ICAI- ROC etc. useful for office management and efficient documentation for the members and firms. The website also acts as a forum for consolidation of the members and CA Firms by providing for consolidation measures like Networking, Merger and Corporate Form of Practice. The website also contains Minimum Recommended Scale of Fees for the Professional Assignments done by the Chartered Accountants, which is about the fee as per the work performed for various professional assignments and the amount quoted under respective heads of professional work.

The website also contains a Discussion Forum wherein the members may share their knowledge and experience gained through their practice

### \* ICAI launches ICAI- Tax Suite: Tax Compliance Software

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners, has launched The ICAI- Tax Suite on 1st July, 2011 by Hon'ble CA. K. Rahman Khan, Deputy Chairman of Rajya Sabha, Parliament of India.

ICAI- Tax Suite contains the Income Tax, TDS, Audit Reports, Project Report/ CMA, Form Manager, AIR (Annual Information Return), Service Tax and Document Management and will help the Practitioners & CA Firms. 'ICAI-Tax Suite' software has been uploaded in the Committee website [www.icai.org.in](http://www.icai.org.in), so that members can easily download, free of cost. The CD containing ICAI- Tax Suite software shall be sent in a Brochure free of cost to all the members in practice and CA Firms.





# ICAI UPDATES

The details of use and benefits are given on committee's website on [www.icaai.org.in](http://www.icaai.org.in). Members may avail the benefits of this arrangement.

Note: Members may also contact the Committee for details of ICAI-Tax Suite by email on [soft-wares.taxsuite@icaai.org](mailto:soft-wares.taxsuite@icaai.org)

## \* **ICAI- ROC : MCA-21 Compliance Software**

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners, has launched the ICAI-ROC software on 1st July, 2011 by Hon'ble CA. K. Rahman Khan, Deputy Chairman of Rajya Sabha, Parliament of India. The software has been uploaded in the Committee website [www.icaai.org.in](http://www.icaai.org.in). 'ICAI-ROC' Software on MCA21 Compliance provides the facility to prepare Auto filing of e-Forms, Shares Records/Certificates, Meetings & Minutes, Resolutions/Drafting, Annual Return forms and maintenance of Registers and Reports etc. The members who are desirous of this software may send their special request on committee's website [www.icaai.org.in](http://www.icaai.org.in). The details of use and benefits are given on committee's website on [www.icaai.org.in](http://www.icaai.org.in). Members may avail the benefits of this arrangement.

Note: Members may also contact the Committee for details of ICAI-ROC by email on [soft-wares.roc@icaai.org](mailto:soft-wares.roc@icaai.org).

## **ANNOUNCEMENT FOR FINANCIAL ASSISTANCE FROM CHARTERED ACCOUNTANTS STUDENTS BENEVOLENT FUND**

The Board of Trustees of The Chartered Accountants Students Benevolent Fund have decided to grant financial assistance to 200 students who are currently undergoing articled training in accordance with The Chartered Accountants Regulation, 1988 and are poor, needy but meritorious requiring financial assistance to pursue the Chartered Accountancy course @ Rs. 1500/- p.m. for one year with effect from October, 2010 to September, 2011 to be paid in lump sum.

The eligibility criteria for obtaining financial assistance from CASBF are be as under;

- i) Passed 10 + 2 examination with a minimum of 70 percent marks and Passed Common Proficiency Test of ICAI in the first attempt **or** Passed B.Com Examination of a recognized University with a minimum of 60% marks.
- ii) Currently undergoing articled training as per CA Regulations.
- iii) Annual income of both parents from all sources be not more than Rs. 1.50 lakh.

Students who are needy, poor but meritorious and are fulfilling the above criteria may apply for financial assistance from the Chartered Accountants Students Benevolent Fund. Students may send their request in the prescribed form. The form can be downloaded from website of the Institute [www.icaai.org](http://www.icaai.org).

The Board of Trustees will consider each such cases on merit basis and decide at their discretion the amount of financial assistance to be granted. website - [www.icaai.org](http://www.icaai.org) email : [cbf@icaai.in](mailto:cbf@icaai.in)





## CARRIER COUNCELING PROGRAM, on 1st July CA DAY



CA. Vimal Desai in Carrier Counseling Program at VALSAD



CA. Jaiprakash Shethiya in Carrier Counseling Program at KBS, VAPI



Students at KBS, VAPI for Carrier Counseling





**WICASA QUIZ COMPETITION, on Saturday 30th July 2011**



*The Winner of Quiz Competition Aasif Isani & Pritesh Parekh*



**1st Runner-up of Quiz Competition  
Pankaj Dama & Ankit Nahar**



**2nd Runner-up of Quiz Competition  
Mohan Sharma & Neelam Rojani**





Members & ITO's at Workshop on E-TDS held on 29th of July 2011 at Daman



CA. Neel Majithia, Chairman of WICASA, welcome by CA. Giriraj B Laddha for addressing student general meet organized at Galaxy, Vapi

To,

**If Undelivered Return to:**

**VAPI BRANCH OF WIRC OF The Institute of Chartered Accountants of India.**

3rd Floor, Yamuna Complex, N.H.No 8, Near Gokul Vihar First Gate, Vapi- 396195.

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