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APRIL 2025

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EDITORIAL

Dear All,

As we welcome the new financial year 2025-26, April brings fresh opportunities, renewed focus, and strategic planning. This is the time for businesses to align their financial goals, streamline compliance, and prepare for the evolving regulatory landscape.

A significant development this month is the Finance Act, 2025, which has received Presidential assent and has been notified in the Official Gazette. The Act introduces key amendments aimed at strengthening tax administration, simplifying compliance, and fostering economic growth. It is crucial for businesses and professionals to stay updated and adapt accordingly.

Adding to this, the Income Tax Department has amended Tax Audit Form 3CD, effective April 1, 2025, bringing several key modifications:

- Insertion of Section 44BBC in Clause (12).
- Omission of deductions under Clause (19), removing references to Sections 32AC, 32AD, 35AC, and 35CCB.
- Modification of Clause (21) to include expenditures related to legal settlements for contraventions.
- Replacement of Clause (22) to include interest inadmissible under Section 23 of the MSMED Act, 2006, and outstanding dues to micro or small enterprises under Section 15.
- Changes in Clauses (26), (28), and (29), along with modifications in Clause (31), requiring transaction details with newly introduced codes.
- Insertion of Clause (36B), mandating disclosures regarding buyback of shares.

These updates emphasize the government’s focus on transparency and stronger compliance measures. It is imperative for businesses to review these changes and align their tax reporting accordingly.

Release of Our 6th E-Book: Journey to Die Empty

On the auspicious occasion of Gudi Padwa, symbolizing renewal and new beginnings, I am delighted to release our 6th e-book, Journey to Die Empty. This book is a heartfelt compilation of insights from 35+ contributors on living fully, giving unreservedly, and leaving a meaningful legacy.

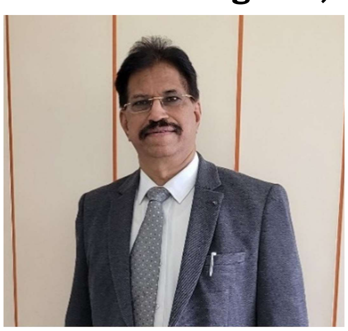
I extend my sincere gratitude to all contributors for their invaluable wisdom and to Mrs. Ruchi Bhansali - Bhandari for her dedicated efforts in making this book a creative and inspiring endeavour. Releasing it auspicious day of **Gudi Padwa** reinforces the idea of embracing life with purpose and passion.

At SPCM, we remain committed to guiding our clients through regulatory changes while fostering financial and personal growth. As we step into this new phase, let us move forward with clarity, resilience, and purpose.

As we step into the new financial year, let April be a reminder that progress is driven by adaptability, integrity, and informed decision-making. Let's embrace new opportunities with clarity and purpose

Wishing you all a successful and fulfilling year ahead!

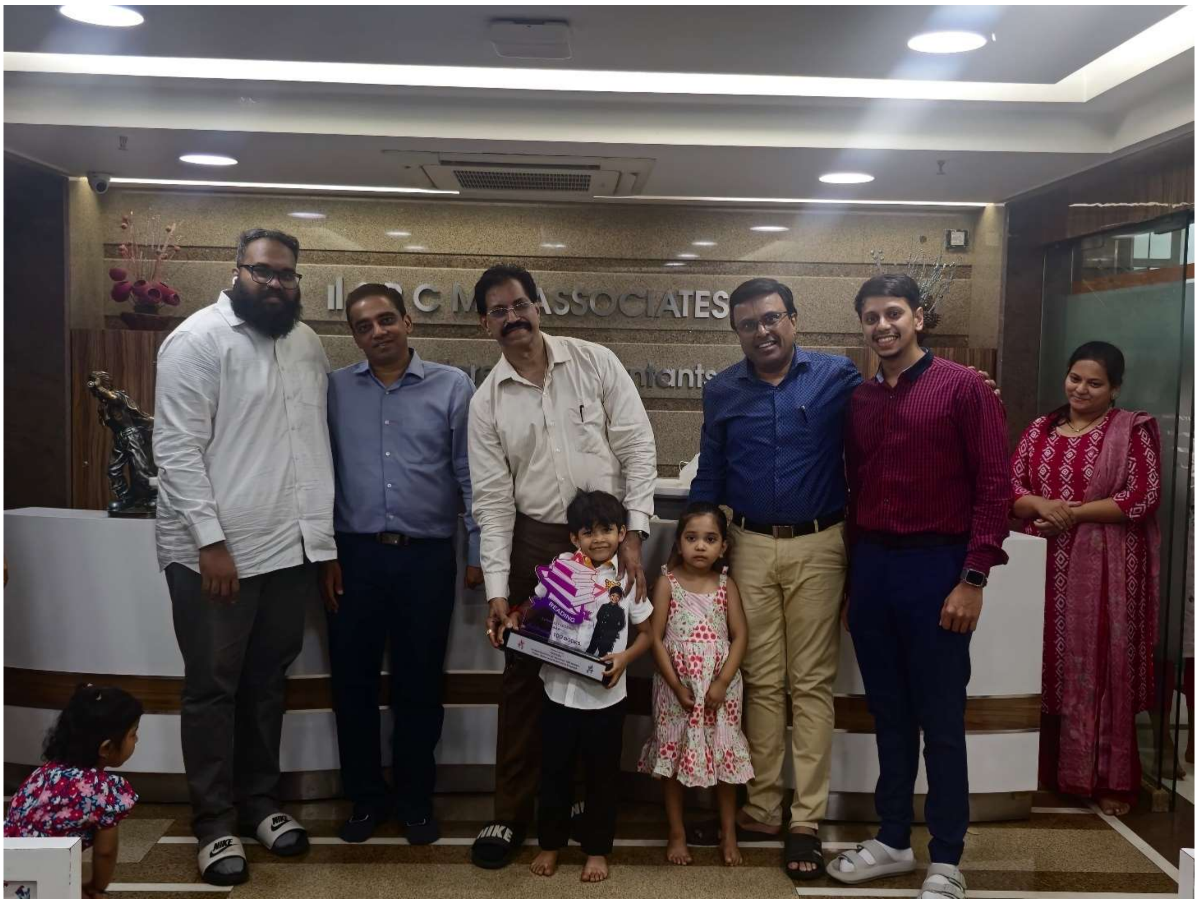
Thanking You,
With Warm Regards,



CA. Suhas P. Bora
Founder Partner,
SPCM and Associates,
Chartered Accountants

GLIMPSE OF EVENT

Master Adveek Bora — Felicitated as the Legend of Readers for completing 100 books in 90 days. A young torchbearer of the Bora legacy.



Adveek Bora — a shining star in the illustrious Bora legacy — has set an inspiring benchmark by reading 100 books in just 90 days. With curiosity in his eyes and discipline in his heart, young Adveek has proven that brilliance truly runs through generations.

A proud moment for the SPCM as well as Bora family, and a reminder to us all that the love for learning starts early — and lasts a lifetime!

DUE DATES

Income Tax, PF and ESIC due date calendar for the month of April 2025:

DATE	DUE DATE FOR
07-03-2025	• Due date for deposit of Tax deducted/collected by an office of the government for the month of March, 2025. However, all sum deducted by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income tax Challan
14-03-2025	• Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M and 194S in the month of February, 2025.
30-03-2025	• Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of March, 2025. • Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M and 194S in the month of March, 2025. • Due date for e-filing of a declaration in Form No. 61 containing particulars of Form No. 60 received during the period October 1, 2024 to March 31, 2025

DATE	DUE DATE FOR
	• Due date for uploading declarations received from recipients in Form. 15G/15H during the quarter ending March, 2025. • Due date for deposit of TDS for the period January 2025 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H

"When you want to succeed as bad as you want to breathe, then you'll be successful.
Pain is temporary. It may last for a minute, an hour, or a day, or even a year. But eventually, it will subside.
And something else will take its place. If I quit, however, it lasts forever."

— Eric Thomas

GST due dates for the month April 2025: -

DUE DATE	RETURN	PERIOD	DESCRIPTION
10th April	GSTR-7 (Monthly)	March '25	Summary of Tax Deducted at Source (TDS) and deposited under GST laws.
10th April	GSTR-8 (Monthly)	March '25	Summary of Tax Collected at Source (TCS) and deposited by E-commerce operators under GST laws.
11th April	GSTR-1 (Monthly)	March '25	Summary of outward supplies where turnover exceeds Rs.5 crore or have not chosen the QRMP scheme for the quarter of Jan-March 2025.
13th April	GSTR-6	March '25	Details of ITC received and distributed by ISD.
13th April	GSTR-5 (Monthly)	March '25	Summary of outward taxable supplies & tax payable by a non-resident taxable person.
13th April	GSTR-1 (Quarterly)	January 25 to March '25	Summary of outward supplies where turnover does not exceeds Rs.5 crore and have chosen the QRMP scheme for the quarter of Jan-March 2025.
18th April	CMP -08	Jan- March 2025	Form to declare the details or summary of self-assessed tax which is payable for a given quarter by taxpayers who are registered as composition taxable person or taxpayer who have opted for composition levy.

DUE DATE	RETURN	PERIOD	DESCRIPTION
20th April	GSTR-3B (Monthly)	March '25	Summary of outward supplies, ITC claimed, and net tax payable for taxpayers with turnover more than Rs.5 crore in the last FY or have not chosen the QRMP scheme for the quarter of Jan-March 2025.
20th April	GSTR-5A (Monthly)	March '25	Summary of outward taxable supplies and tax payable by OIDAR.

"Courage doesn't always roar. Sometimes courage is the quiet voice at the end of the day saying, 'I will try again tomorrow.'"

— Mary Anne Radmacher

INCOME TAX

TAX AUDIT: CHAPTER 8

TAX AUDIT - CLAUSE 18 to 20 OF FORM NO. 3 CD

We have started with a series on Tax Audit u/s 44AB of the Act considering practical aspects to be taken care of for issue of the Tax Audit reports as applicable for AY 2024-25.

In chapter - 1 we discussed about the applicability of Tax Audit u/s 44AB of the Income Tax Act.

In chapter - 2 we discussed about the meaning of the terms "Sales", "Turnover" and "Gross Receipts".

In chapter – 3 we discussed about " Clauses 1 to 8A of Form No. 3 CD."

In chapter – 4 we discussed about "Clauses 9 to 12 of Form No. 3 CD"

In chapter – 5 we discussed about "Clauses 13 of Form No. 3 CD"

In chapter – 6 we discussed about " Clause 14 and 15 of Form No. 3 CD"

In chapter – 7 we discussed about "Clause 16 and 17 of Form No. 3 CD"

In the series of Article on Tax Audit provisions, we will discuss about "Clause 18 and 20 of Form No. 3 CD"

Clause 18: Depreciation allowable:

This clause requires details of depreciation allowable under the Income Tax Act. Hence non- depreciable assets are not to be disclosed in this clause. The auditor should examine disclosure of the following:

(a) Description of asset/ block of assets.

- 'BLOCK OF ASSETS', means a group of assets falling within a class of assets comprising –Both Tangible and Intangible assets.
- It is very important to identify the block to which the asset of the assessee pertains and the tax auditor needs to review the nature and usage of the asset to ascertain the correct depreciation rate.
- Auditor should take care that land value of a flat/immovable property is not included in the value of building.
- Ensure opening value of block is matched with closing value of block in income tax return / Form CD Clause 18 of previous assessment year.
- In case the tax auditor doesn't agree with the classification of block or rate adopted by assessee, then he needs to disclose such fact in his report and draw the attention.

(b) Rate of depreciation.

- Once the classification has been ascertained and checked properly, check the rates of depreciation applicable to each block as per the Income-tax Rules, 1962.

(c) Actual cost or written down value, as the case may be.

- Actual cost of assets should be determined as per the provisions of section 43(1) of the Act and also ensure the compliance of AS – 10.

- For determining actual cost, any expenditure incurred for acquisition of any asset or part thereof in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account, exceeds Rs. 10000/- should be ignored / adjusted in terms of 2nd Proviso to section 43(1) inserted w.e.f. AY 2018-19.

- Obtain the copy of Income Tax Return for preceding previous year from the management to ensure the opening WDV of Block of Assets is same as closing WDV of previous year. The same should also be verified from previous year tax audit report, if audit was conducted in previous year.

(ca) This sub-clause has been substituted w.e.f. 5.3.2024.

- In this sub-clause adjustment of unabsorbed additional depreciation due to companies opting for section 115BAA was, which is for domestic companies which provides option to pay tax at concessional rate of 22% (plus surcharge and cess) was there for AY 2020-21 only.
- Then section 115BAC and 115BAD were substituted, giving similar option for Individuals/HUF and Co-operative Societies respectively for adjustment of unabsorbed additional depreciation due to opting for these sections. The same was also applicable for AY 2021-22 only
- From AY 2024-25 S. 115BAC has been made default regime for individuals, HUF, AOP & BOI. Hence, as the unabsorbed depreciation is not allowed to be set off, if assessee opts to be in new tax regime, the adjustment of the said unabsorbed additional depreciation is allowed by increase in the block). The said adjustment would be allowed for AY 2024-25 only.

(cb) This sub-clause has been inserted w.e.f. 1.4.2021.

- Adjustment made to WDV of Intangible asset due to excluding value of goodwill of a business or profession is to be disclosed.
- Goodwill not being a depreciable asset w.e.f. AY 2021-22, the

adjustment to opening WDV of goodwill was required to be made through this sub-clause to arrive at the adjusted opening WDV.

(cc) Adjusted WDV

- The adjusted value of WDV is disclosed here after adjustments in clause 18 (ca) & (cb)

(d) Additions/ deductions during the year with dates & adjustments

- Obtain list of fixed assets purchased during the previous year along with dates of addition as certified by the management and verify the same.

- Where any addition was made, the date on which the asset was put to use is to be reported. Please see that date of addition and date of asset put to use could be different dates and the same should be disclosed accordingly in this sub-clause.

- Actual cost of addition should be reduced by:

  a) Portion of cost met directly or indirectly by any other person

  b) Amount paid exceeding Rs. 10000/- per person per day by other than account payee cheque/draft or ECS or other electronic modes prescribed.

- Obtain list of deductions during the year to assets along with their dates of deduction.

- In respect of deductions, the sale value of the assets disposed of along with dates should be mentioned.

- Borrowing cost of specific borrowing for qualifying asset should also be adjusted to the cost in terms of ICDS IX (Borrowing Costs) read with section 36(1)(iii) and Explanation 8 to section 43(1).

- Check whether there is any adjustment on account of Foreign Exchange Fluctuation / Subsidy / Grant or Other Reimbursements by whatever name called.

(e) Depreciation allowable.

- It means depreciation allowable under the Income Tax Act, 1961 and the rules framed thereunder.
- Depreciation is allowed to the assessee u/s 32(1) whether or not he has claimed the deduction of the same. The Tax Auditor should verify the amount of depreciation claimed by the assessee.
- In order to be eligible for depreciation following conditions are necessary:
  - The Asset should be wholly or partly owned by the Assessee.
  - The Asset should be used for the purpose of business or profession.
- Ensure that additional depreciation (for assessee other than in new regimes) is charged as per conditions prescribed in section 32(1)(iia).
- Also ensure where asset is used for less than 180 days in previous year only 50% of the depreciation is charged.

(f) Written down value at the end of the year.

- Disclose the closing WDV after adjustments and depreciation during the year.

Clause 19 - Amounts admissible under sections:

32AC,	32AD	33AB	33ABA
35(1)(i)	35(1)(ii)	35(1)(iia)	35(1)(iii)
35(1)(iv)	35(2AA)	35(2AB)	35ABA
35ABB	35AC	35AD	35CCA
35CCB	35CCC	35CCD	35D
35DD	35DDA	35E	Any other relevant secti

- Please note that 'section 35ABA' and 'any other relevant section' is inserted by the IT (Fourth Amendment) Rules, w.e.f. 5-3-2024

- Clause 19 is applicable to the assessee who claims deduction under any of the above sections. This clause requires the tax auditor to report the amount of deduction admissible to the assessee under certain sections as mentioned therein. The details of amount debited to the P&L A/c and amount admissible as deduction under each section are required to be given.
- The amount covered by theses sections are generally debited to P&L A/c. However, deduction under certain sections is also based on the capital expenditure on assets/deposits maintained with designated accounts for specified purposes. These are treated as assets & not debited to P&L A/c. In such case, the ensure it is stated either NIL/NA under the second column of the table in which amount admissible is to be mentioned.
- Though section 35ABA is applicable from AY 2017-18, yet its reporting is made applicable from AY 2024-25.
- While reporting under Clause 19 and certifying various deductions, the Tax Auditor should verify the documentary records in support of the various deductions claimed and also conditions of allowability of various deductions.

Following is the requirement that respective Auditor need to go through:

- Verify the payments/contributions made under above sections with the supporting
- Verify the admissibility of deduction with reference to compliance of the conditions mentioned in the respective sections.
- Verify the amount claimed as deduction and amount debited/not debited to P&L A/c
- Check whether the necessary approval from the prescribed Authorities have been obtained, wherever required
- In case of expenditure on fixed Asset, whether the same has been claimed as deduction under any section. If

deduction is claimed on such assets, then depreciation on the same cannot be claimed.

- Check that in case the condition under relevant sections is not fulfilled, then they are treated as deemed profits & gains of business and are taxable in certain cases. In such case, report the same under Clause 24 of Form 3CD.

Clause 20:

Clause 20(a) - Any sum paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend. [Section 36(1)(ii)].

- Bonus and commission to employees as per their employment terms is deductible expenditure as these are contractual payments but indirect distribution of dividend/profits in the name of bonus/commission is not deductible expense as the assessee claims expenditure to reduce his income and income tax, hence its disallowed.
- Auditor should carefully examine the bonus and commission paid to employees with their terms of contract of those employees/ directors and need not to check of those who are independent directors.
- Normal bonus and commission to employees as per their employment terms is not to be reported in this clause.

Clause 20(b) - Details of contributions received from employees for various funds as referred to in section 36(1)(va):

- Section 36(i)(va) of the Act permits deduction of any sum received by the assessee from any of his employees (like contributions to any provident fund or superannuation fund or ESI Fund or any other Fund for employees' welfare), if it is credited by the assessee to the account of the employees in the relevant statutory fund on or before the due date.

- The ESIC for a month was to be deposited upto 21st of the next month. However, the same has changed to 15th of next month w.e.f. June 2017.
- The PF must be deposited upto 15th of the next month.
- It is pertinent to note that only employees' contribution is to be reported in this clause and not the employer's.
- The tax auditor should get a list from the assessee where all the contributions received from employees are deposited.
- He should take challans of deposition of contribution as the date and amount on challan is the actual date and actual amount for deposition of the contribution.
- Generally, contribution received from employees are treated as liability and credited to that liability account, so auditor should scrutinize these accounts and compare this with actual contribution deposited.
- Disclosure of the following is to be made:
    - Nature of Fund
    - Sum received from employees
    - Due date of payment
    - Actual amount paid
    - Actual date of payment to concerned authorities
- Due date of payment is the due date as per the relevant law under which sum is received from the employees

TAXABILITY OF TDR UNDER INCOME TAX ACT, 1961

I. Introduction:

The term Transferable Development Rights (TDRs) means making available certain amount of additional built-up area, in lieu of the area relinquished or surrendered by the owner of the land, so that he can use extra built-up area, either himself or transfer it to another, in need of the extra built-up area for an agreed sum of money.

As per Advanced Law Lexicon, 3rd Edition, 2005, by P.R. Aiyar, Transferable Development Rights (TDRs) means certificates issued in respect of category of land acquired for public purpose either by Central or State Government, in consideration of surrender of land by the owner with monetary compensation, which are transferable in part or whole. In regard to the purpose of TDR, it may be stated that the process of land acquisition in urban areas for public purpose specially for road widening, parks, playgrounds and schools, etc, is complicated, costly and time-consuming.

In order to minimize the time needed and to enable a process which could be advantageously put into practice to acquire land for reservation purposes, the concept of TDR comes in handy. In this context, another note-worthy aspect is whether Development Rights Certificate (DRC) is transferable / inheritable.

As already stated, if the owner of any land which is required for road widening or development of parks, playgrounds, civic amenities, etc, such land shall be eligible for the award of Transferable Development Rights (TDRs).

Such award will entitle the owner of the land, rights in the form of Development Rights Certificate (DRC), which he may use for himself for transfer to any other person.

II. Discussion about Development Control Regulations, 1991, Greater Bombay

In this context, it will be appropriate to refer to the Development Control Regulations, 1991, Greater Bombay. Rule 34 of the aforesaid regulations defines TDR, which stands for Transferable Development Rights. As per rule 34, in certain circumstances, the development potential of a plot of land may be separated from the land itself and may be made available to the owner of the land in the form of TDRs. These rights may be made available, and be subject to regulations in Appendix VII hereto.

Appendix VII lays down the rules for the grant of Transferable Development Rights to owners / developers and conditions for grant of such rights, which may be broadly listed as follows:

The owner (or lessee) of a plot of land which is reserved for public purpose under the development plan and for additional amenities deemed to be reservations provided in accordance with these regulations, excepting under certain conditions, shall be eligible for the award of TDR in the form of floor space index (FSI) to the extent and on the condition that such award will entitle the owner of the land to FSI in the form of Development Rights Certificate, which he may use himself or transfer to any other person. Subject to regulation 1, where a plot of land is reserved for any purpose specified in section 22 of Maharashtra Regional and Town Planning Act, 1966, the owner would be eligible for development rights to the extent stipulated in Rules 5 and 6 in the aforesaid Appendix, after the said land is surrendered free of cost or after completion of development. TDRs will be available only for prospective development of reservations. Development Rights Certificates will be issued by the Commissioner himself, giving details of FSI credit. The built-up area for the purpose of FSI shall be equal to the gross area of the reserved plot to be surrendered. When the owner or lessee also develops or constructs the amenity on the surrendered plot at his cost, he may be granted a further development right in the form of FSI equal to area of construction / development done by him. Similar rules have been framed in other big cities like Bangalore, where the concept of TDR is being made use of for the purpose of development of public amenities.

III. Whether the receipt on transfer / sale of TDRs is liable to capital gains tax.

In this Article, we are concerned with the issue, whether the receipts on sale of such TDRs could be brought to tax. At the outset, most of the Judicial Fora have held that surrender of land for the acquisition of TDR would be completely exempt, because in case of acquisition of TDR, the land which is transferred is different and TDR right received is different, for which there is no cost of acquisition and therefore, when the TDRs are sold, there is no capital gains liability.

In this context, it is relevant to state that Courts have consistently been taking a view that any amount received by an assessee from the transfer of an asset, for which no cost can be attributed, cannot be made exigible to tax. In this regard, a landmark judgement has been delivered by the Supreme Court in CIT Vs B. C. Srinivasa Setty [1981] 128 ITR 294 (SC). It was held in this case that all transactions encompassed by section 45 must fall under the governance of its computation provisions. A transaction to which those provisions cannot be applied must be regarded as never intended by section 45 to be the subject of the charge. What is contemplated by section 48(ii) is an asset in the acquisition of which it is possible to envisage a cost; it must be an asset which possesses the inherent quality of being available on the expenditure of money to a person seeking to acquire it. None of the provisions pertaining to the head "Capital gains" suggests that they include an asset in the acquisition of which no cost at all can be conceived. When goodwill generated in a new business is sold and the consideration brought to tax, what is charged is the capital value of the asset and not any profit or gain. Further, the date of acquisition of the asset is a material factor in applying the computation provisions pertaining to capital gain; but in the case of goodwill generated in a new business it is not possible to determine the date when it comes into existence. Another important judgement delivered by the **Supreme Court in this context is CIT Vs D. P. Sandhu Bros. Chembur P. Ltd or Union of India Vs Cadell Weaving Mills Co. P. Ltd [2005] 273 ITR 1 (SC). It was held in this case that –**

(i) The tenancy right was a capital asset. Surrender of tenancy right was a transfer and the consideration received therefor was a capital receipt, within the meaning of section 45, and

(ii) The amendment to section 55(2) took effect from 1.4.1995 and applied in relation to assessment year 1995-96 and subsequent years. Therefore, till that amendment in 1995, the law was that if the cost of acquisition could not, in fact be determined, the transfer of such capital asset would not attract capital gains tax. In this regard, it will also be relevant to refer to the provisions of section 55(2)(a), which are reproduced as follows : "55. Meaning of "adjusted", "cost of improvement" and "cost of acquisition".

(2) For the purposes of sections 48 and 49, "cost of acquisition",— (a) in relation to a capital asset, being

goodwill of a business or a trade mark or brand name associated with a business or a right to manufacture, produce or process any article or thing or right to carry on any business, tenancy rights, stage carriage permits or loom hours,—
(i) in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price ; and
(ii) in any other case not being a case falling under sub-clauses (i) to (iv) of sub-section (1) of section 49, shall be taken to be nil ;"

From the aforesaid provisions of section 55(2)(a), it may be seen that the same do not include Transferable Development Rights (TDRs). Therefore, the sale of TDR will not be liable to capital gains tax.

IV. Legal precedents in support of the view that there will be no capital gains tax on transfer / sale of TDR

There are a number of legal precedents which support the view that there will be no capital gains tax on the transfer / sale of Transferable Development Rights (TDRs). The same are discussed as follows:

1. CIT Vs Sambhaji Nagar CHS Ltd. [2015] 370 ITR 325 (Bom) : 113 DTR 89 (Bom)

In this case the assessee-society, with the promulgation of Development Control Rules (DCR) for Greater Mumbai, 1991, acquired the right of putting up additional construction through Transferable Development Rights (TDR). Instead of utilizing the right itself, the assessee decided to transfer the right to a developer for a consideration. The Assessing Officer (AO), for the assessment year 2007-08, held that the assessee transferred a valuable right, which was a capital asset under section 2(14) of the Income-Tax Act, 1961 (the Act). The right created by the

DCR, 1991, attached to the land owned by the assessee which was acquired for a value. Its title or ownership of the plot enabled the assessee to consume this floor space index (FSI) / transferable development right. Under these circumstances, the AO held that this was a transfer of capital asset held by the assessee, which was chargeable to tax. This was confirmed by the CIT(A). The Tribunal, however, held that the sale of transferable development rights did not give rise to any capital gains chargeable to tax. It was concluded by the Tribunal that the assessee had not incurred any cost of acquisition in respect of the right which emanated from the 1991 Rules, making the assessee eligible to additional FSI. The land and the building earlier in the possession of the assessee continued to remain with it. Even after the transfer of the right or the additional FSI, the position did not undergo any change. The Revenue could not point out any particular asset as specified in section 55(2) of the Act. On appeal by the Revenue to the High Court, dismissing the appeal, it was held that the Tribunal was justified in concluding that the additional FSI / TDR which was generated by the plot / property / land and came to be transferred under a document, in favour of the purchaser, would not result in the gains being assessed to capital gains. Accordingly, the conclusion of the Tribunal was imminently possible on the facts and in the light of the legal position as noted by the language of section 55(2) of the Act. In effect it was held by the High Court that an asset which is capable of an acquisition at a cost would be included in the provisions pertaining to the head “Capital gains”, as opposed to assets in the acquisition of which no cost at all can be conceived.

2. **CIT Vs Amrik Singh [2008] 299 ITR 14 (P&H) :**
   In this case, the assessee entered into an agreement with Shri Surjan Singh, vide agreement dated 14.2.1970, recognizing him

to be the occupancy tenant in respect of certain land. A declaratory decree was subsequently passed by the Court on 31.1.1972, whereby the agreement dated 14.2.1970 was given the Court's sanction in terms of section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952. Thus, the assessee became the owner of the land in respect of which he had earlier acquired only the tenancy rights. Thus, the assessee had acquired the ownership rights in the land by operation of law and not by purchase or inheritance. There is no record of any payment made for the acquisition of land in question either by the assessee or his predecessor-in-interest. The assessee, therefore, contended that he was not liable to pay any capital gains tax for the said land. The ITO did not agree with the assessee but the Tribunal held that no taxable capital gains arose. On a reference, it was held by the High Court that the assessee became the owner of the land in respect of which he had earlier acquired only tenancy rights. Thus, the assessee had acquired the ownership rights in the land by operation of law and not by purchase or inheritance. Therefore, the assessee was not liable to pay any capital gains tax.

3. **Land Breez Co-operative Housing Society Ltd. Vs ITO [2013] 21 ITR (Trib) 467 (Mum)**

In this case, a part of a land was transferred by its owner to the assessee, a housing co-operative society, for a consideration. Upon the demise of the original owner, her daughter entered into an agreement with another developer granting comprehensive development rights in respect of the balance portion of the land. Apprehending that the developer and the daughter would seek to develop the property by, inter-alia, utilizing the floor space index (FSI) pertaining to its part of the land, the assessee-society through its members instituted legal proceedings. An agreement was reached between the parties and the assessee-society and its members were paid certain amount for grant of permission and towards settlement of disputes between the builders, the assessee-society and its members. The Assessing Officer (AO) sought to tax the consideration so received in the hands of the assessee-society, inter-alia, on the ground that the land was acquired by the assessee-society after paying a consideration and ownership of the land carried with it a bundle of rights attached to it and of which the right of development was an important one. Therefore, the benefit in the form of transferable development rights (TDRs) arising out of the existing land was an immovable property, the transfer of which was liable to be taxed as income under the head "Capital gains". The Assessing Officer's stand was upheld by the CIT(A). On further appeal to the Tribunal, it was held that even though the Transferable Development Rights amounted to the transfer of a capital asset, it could not be subjected to tax under the head "Capital gains", for the reason that there was no cost of acquisition in acquiring the right which has been transferred. Therefore, taxing of the receipts on the transfer of Transferable Development Rights under the head "Capital gains" could not be sustained.

4. **ACIT Vs I G E India Ltd. [2013] 22 ITR (Trib) 365 (Mum)**

The assessee, in the year 1984, purchased a residential flat in a co-operative society. Under the Development Control Regulations (DCR) 1991, the assessee became entitled to the right to allow the usage of additional floor space index (FSI) of an area equivalent to the existing FSI, which worked out to 1608.67 sq. mtrs, and was available for development. Looking at the dilapidated state of the building, it was decided by the society to demolish the existing building and construct two new buildings on the property making use of the additional FSI granted under the DCR. Accordingly, the development of the building was undertaken under an agreement dated 18.11.2004 with M/s Gulmohar Developers and the transferable development rights were sold to the builder for a consideration of Rs.8.35 crores towards collective share of twenty four occupants of the flats of the society. The assessee's share, as a member of the society was allocated at Rs.33,23,522, out of which Rs.16,61,761, was receivable at the time of execution of the agreement. The Assessing Officer held that the net amount was chargeable to capital gains under section 50 of the Income-Tax Act, 1961. The CIT(A) held that the capital gains tax was not payable. On appeal before the Tribunal, it was held that even though the transfer of transferable development rights (TDRs) amounts to transfer of a capital asset, the gains could not be subjected to tax under the head "Capital gains" for the reason that there was no cost of acquisition in acquiring the flat which had been transferred and the computation mode given under section 48 was, thus, inapplicable in such cases.

5. **Maheshwar Prakash-2 Co-operative Housing Society Ltd. Vs ITO [2009] 313 ITR (AT) 103 (Mum)**:

   In this case, the assessee, a co-operative housing society, owned a building which had been constructed utilizing the floor space index (FSI) available to it. By virtue of the Development Control Regulations (DCR) 1991, additional right of availing of additional FSI through transferable development rights (TDRs) accrued to the assessee. The assessee entered into an agreement with M/s V S Magnet Pvt. Ltd. and M/s Spartek Properties and Securities Pvt. Ltd. on 25.11.2002 for construction of additional floors on the existing structure of the building and development of the property against a consideration of Rs.42 lakhs. According to the agreement, the TDRs had to be arranged by the developers at their own cost. The Assessing Officer (AO) assessed the amount received by the assessee under the agreement as long-term capital gains on the ground that the right to construct will be embedded in the land held by the assessee for more than three years. Accordingly, the AO made an addition of Rs.42 lakhs on account of long-term capital gains. The CIT(A) rejected the contention of the assessee that no capital gains arose to the assessee inasmuch as there was no cost of acquisition and upheld the order of the AO. The assessee preferred an appeal before the Tribunal contending that there could not be any transfer without having TDRs, that the right to construct additional floors was acquired by the assessee free of cost by virtue of the 1991 DCR and consequently, no capital gains arose. The Revenue contended that in view of the amended provisions of section 55 of the Act, the cost of acquisition had to be taken as Nil and the entire receipt was to be treated as capital gains. Held, allowing the appeal of the assessee, that the right to construct the additional storeys on account of increase in the FSI by virtue of 1991 DCR, was a capital asset held by the assessee. Therefore, assignment of the right to construct the additional storeys in favour of the developers amounted to transfer of a capital asset. The contention of the assessee that there could not be any transfer without having transferable development right was without force since the right to construct additional floors and the transferable rights were different and distinct rights which could be transferred for a consideration. The amended provisions of section 55(2) were not applicable as the assessee was not carrying on any business and the right to construct additional floors was not covered by any of the assets mentioned under section 55(2). The authorities were not justified in taking the cost of acquisition of the right to construct the additional floors as Nil. The right was not embedded in the land as the additional right which accrued to the assessee by virtue of 1991 DCR was distinct and separate from the original right. The right to construct additional floors exclusively belonged to the building owned by the assessee and it could not be transferred to any other society. Similarly the right belonging to other societies could not be purchased by the assessee for the purpose of constructing additional floors in its own building. Therefore, such right had no inherent quality of being available on expenditure of money and therefore, a cost for such an asset could not be envisaged. The right acquired by the assessee did not fall within the ambit of section 45. The consideration received in terms of the agreement was a capital receipt which was not chargeable to tax. In other words it was held that the right to make additional construction for acquiring of additional FSI by operation of DCRs 1991, having no cost of acquisition to the assessee, receipt on transfer thereof, was capital receipt which could not be charged to tax as capital gains.

6. **New Shailaja Co-operative Housing Society Ltd. Vs ITO [2009] 18 DTR (Trib) 385 (Bom)**

   In this case, the assessee, a co-operative housing society had acquired land in the year 1972 along with building thereon constructed by use of floor space index (FSI) of apprx. 11,000 sq. ft. By virtue of enactment of the Development Control Regulations (DCRs) 1991, the assessee became entitled to additional FSI of around 11,000 sq. ft. The assessee sold such entitlement right to M/s D.K. Builders for a consideration of Rs.48,96,225. The Assessing Officer (AO) called upon the assessee to show cause as to why the income on transferable development rights (TDRs) should not be treated as adventure in the nature of trade. The assessee claimed that the right to transfer by the assessee did not have any cost of acquisition and therefore, provisions of section 45 did not apply. The AO did not accept the aforesaid claim of the assessee and accordingly, he computed the capital gains at Rs.1.22 crores. The CIT(A) did not find any merit in the submission of the assessee on this issue and dismissed the assessee's appeal. On further appeal by the assessee before the Tribunal, it was held that the assessee having incurred no cost of acquisition for additional FSI to which it became entitled under the newly promulgated Development Control Regulations of Municipal Corporation, cannot be subjected to capital gains tax on transfer of such additional FSI. It was also held that the right to additional FSI was not included in any asset as specified in section 55(2) of the Act.

7. **ITO Vs Lotia Court Co-operative Housing Society Ltd. [2008] 12 DTR (Trib) 396 (Mum)**: In this case, the assessee, a registered society consisted of eleven members. The assessee society was entitled to receive certain TDRs from the Municipal Corporation of Mumbai, according to which additional floors could be constructed on the existing building. The said right to receive TDR was assigned to a builder by the members of the society for the purpose of repairing the said building. The assessee entered into an agreement with the developer, wherein the terms of settlement vis-a-vis the members of the society were agreed upon.

Separate agreement was entered into by the respective owners of the flats, i.e. the members of the society with the developer, for the assignment of TDR and construction of additional floors, in respect of each flat owner by the respective parties. The benefit of additional TDR was derived and enjoyed by the members of the assessee society and no consideration whatsoever was received by the assessee society for the assignment of TDRs and for carrying out the repairs of the building and construction of additional floors. The Assessing Officer (AO) treated the consideration received / receivable by the members of the society as income in the hands of the society. The CIT(A) noted that neither an income had been received by the society, nor any income had accrued to the society and following the ratio laid down by the Mumbai Bench of the Tribunal in the case of Jethalal D. Mehta Vs Dy.CIT (ITA No.672 / Mum / 2000, for the AY 1996-97 dt.27.1.2005), it was held that there was no merit in computing any capital gains on the sale of such TDRs in the hands of the assessee society. On appeal by the I.T. Department before the Tribunal, it was held that transfer of TDR rights by individual members of the assessee society, which was not owner of the land, to the developer, against repairs of the building and construction of additional floors without receipt of any consideration by individual flat owners of the society and without allocating any area in the constructed portion, did not give rise to any chargeable income or for that matter, capital gains. In other words, it was held that there was no question of taxable receipt on account of sale of additional floor space index (FSI) received by the assessee by virtue of transfer of TDRs under the Development Control Regulations, 1991, of Municipal Corporation, Mumbai.

V. Discussion about a novel judgement of Mumbai Bench of the Tribunal

Recently an interesting decision has been delivered by the Mumbai Bench of the Tribunal in the case of Kushal K.Bangia (a tax-payer) (ITA No.630 / Mum / 2006). In this case, it has been held that the cash compensation received by a member of the housing society under a development scheme from a developer is to be treated as "capital receipt" and hence not taxable as "revenue receipt" in the hands of the member. Consequently, the said compensation would reduce the cost of acquisition of the new flat at the time of computing the capital gains in respect of the said new flat. The brief facts of the case and ruling of the Tribunal are worth noting, which are listed as follows :

1. Facts of the case

(i) The tax-payer, an individual was a member of a housing society. The housing society, along with its members entered into an agreement with a developer for demolishing the residential building and construction of a new multi-storied building by using the FSI arising out of the property and by utilizing the TDR.

(ii) Under this agreement, the tax-payer received a slightly larger flat in the new building, a displacement compensation of Rs.6,12,000 (computed at the rate of Rs.34,000per month) for the period of construction of the new building and an additional compensation in cash of Rs.11,75,000.

(iii) The Assessing Officer (AO) brought to tax both the estimated value of the additional space in the new building and also the cash compensation received by the tax-payer.

(iv) Aggrieved by the order of the AO, the tax-payer preferred an appeal before the CIT(A). The CIT(A) deleted the addition of the estimated value of the additional space. However, the treatment of cash compensation as "casual income" chargeable to tax as "Income from other sources" was upheld by the CIT(A). 2. Tribunal's ruling

The ruling of the Tribunal may be summarized as follows:

(i) A capital receipt in principle is outside the scope of income chargeable to tax.

(ii) Hence, the connotation of income howsoever wide and exhaustive, can take into account only such capital receipts as taxable income as are provided as specifically taxable in the Income-Tax Act.

(iii) Unless it is in the nature of revenue or is brought within the ambit of income by way of specific provision under the Act, the receipt would not be taxable.

(iv) Further, one has to analyze the nature of payment in the hands of the receiver and not what is in the hands of the payer.

(v) The compensation received by the tax-payer is relating to the flat owned by the tax-payer and is clearly capital in nature (as the flat is a capital asset) even if it is revenue expenditure for the developer.

(vi) The impugned receipt though not taxable as revenue receipt would end up reducing the cost of acquisition of the flat and would be taken into account as and when the occasion arises for computing the capital gains in respect of the new residential flat

VI. Conclusion:

In the light of the discussion in the preceding paragraphs, it may be safely stated that there will be no capital gains tax on the receipts on transfer / sale of TDRs. The developer or the builder, as also the other connected parties may make use of the aforesaid provisions, in order to avoid payment of any capital gains tax in the scenario discussed in the aforesaid paragraphs.

"Success is no accident. It is hard work, perseverance, learning, studying, sacrifice and most of all, love of what you are doing or learning to do."

— Pelé

GST

GIST OF GST NOTIFICATION

NOTIFICATION NO	DATE	SUBJECT / HIGHLIGHTS
11/2025-Central Tax	27-03-2025	CBIC issued second amendment in Rule 164 These amendments primarily affect sub-rule (4) and sub-rule (7) of Rule 164 and have significant implications for taxpayers opting for the Amnesty Scheme under Section 128A of the CGST Act, 2017. This amendment primarily impacts refund eligibility and appeal withdrawal procedures under GST law.
10/2025-Central Tax	13-03-2025	This notification amends the earlier Notification No. 02/2017-Central Tax by redefining jurisdictional boundaries for certain tax administrative units. It revises the territorial jurisdictions of several locations, including Alwar, Chennai Outer, Jaipur, Jodhpur, Madurai, Tiruchirapalli, and Udaipur, covering various districts in Rajasthan and Tamil Nadu.

GIST OF GST CIRCULAR

CIRCULAR NO.	DATE	SUBJECT / HIGHLIGHTS
248/05/2025-GST	27-03-2025	Clarification on various issues related to availment of benefit of Section 128A of the CGST Act, 2017

GST UPDATES

1. GST Rate Adjustments for Hotels and Used Cars

- **Hotels:** The "Declared Tariff" concept will be abolished, with GST now applied to the actual amount charged to customers. Hotels charging over ₹7,500 per unit per day for accommodation will attract an 18% GST rate on restaurant services, along with ITC benefits.

- **Used Cars:** The GST rate on the sale of used cars will rise from 12% to 18%. This increase is expected to impact the pre-owned car market and may lead to higher tax liabilities for businesses involved in used vehicle sales.

2. Issue in filing applications (SPL 01/SPL 02) under waiver scheme

Grievances are raised by taxpayers regarding difficulties faced while filing the waiver applications. Taxpayers are advised to make the payment on or before 31.03.2025 and file the waiver application on or before 30.06.2025. For any other issues faced, the taxpayers are advised to raise grievance ticket immediately so that issue can be resolved.

3. Advisory on Case Insensitivity in IRN Generation

From 1st June 2025, the IRP (Invoice Reporting Portal) would treat invoice/document numbers as case-insensitive for the purpose of IRN generation.

To ensure consistency and avoid duplication, invoice numbers reported in any format (e.g., "abc", "ABC", or "Abc") would be automatically converted to uppercase before IRN generation. This change aligns with the treatment of invoice numbers in GSTR-1, which already treats them as case-insensitive.

4. Enhancements in Biometric Functionality - Allowing Directors to Opt for Biometric Authentication in Their Home State

GSTN has now introduced an additional facility allowing certain Promoters/Directors to complete their Biometric Authentication at any GSK in their Home State.

This facility applies to individuals listed in the Promoter/Partner tab for the following types of businesses:

- Public Limited Company
- Private Limited Company
- Unlimited Company
- Foreign Company

Under this enhancement, such Promoters/Directors can now choose any available GSK within their Home State in India (as per REG-01) for Biometric Authentication.

"I am not a product of my circumstances. I am a product of my decisions.
Every day you have a choice to move forward or stay where you are.
The power to change your life lies in the choices you make."

— Stephen R. Covey

FINANCE AND VALUATIONS

SOCIAL STOCK EXCHANGE (SSE): A NEW GATEWAY FOR SOCIAL IMPACT INVESTING IN INDIA

Introduction:

India has taken a significant step in blending finance with social development by launching the **Social Stock Exchange (SSE)**. Introduced by **Finance Minister Nirmala Sitharaman** in the **Union Budget 2019-20**, the SSE is designed to help **Non-Profit Organizations (NPOs) and For-Profit Social Enterprises (FPEs)** raise funds transparently.
SSE operates as a **separate segment under existing stock exchanges (BSE & NSE)** and is regulated by **SEBI (Securities and Exchange Board of India)**. It allows social enterprises to access capital markets while ensuring measurable social impact.

Legislative Backing:

- The **Social Stock Exchange (SSE) framework** was formally introduced through **Finance Bill 2021** and **Finance Act 2022**, which laid down the legal foundation for the platform.
- SEBI released SSE regulations in **July 2022**, providing a structured mechanism for social enterprises to register and raise funds.

What is the Social Stock Exchange (SSE)?

- The SSE is a financial platform designed to help organizations that work for **social, economic, and environmental development**.

- Unlike traditional stock exchanges, SSE enables social enterprises to raise capital from **impact investors, philanthropic funds, and CSR (Corporate Social Responsibility) contributions**.
- The initiative aims to **bridge the funding gap for social enterprises** while ensuring **financial accountability and transparency**.

What are Key Benefits of SSE?

- **Access to Capital** – Enables NPOs and social enterprises to **secure funding through donations, equity, or debt instruments**.
- **Increased Transparency** – Registered entities must **report their social impact**, ensuring accountability.
- **Encourages Impact Investing** – Attracts investors looking for **ethical and socially responsible opportunities**.
- **Credibility & Recognition** – SSE listing enhances the **trustworthiness of social enterprises**.
- **Government & SEBI Oversight** – Ensures **structured regulation and compliance**.
- **Tax Benefits** – Donations and investments in SSE-listed entities enjoy **special tax exemptions** under the **Income Tax Act, 1961**.

What is the eligibility for SSE Registration?

Eligibility Criteria for Non-Profit Organizations (NPOs)

- Must be registered as a **trust, society, or Section 8 company** under applicable laws.
- Must have been in existence for at least **three years**.

- Must have received **at least ₹50 lakh in donations** in the previous financial year.
- Must have spent **at least ₹10 lakh in the past year** on social programs.
- Must have a **valid 80G and 12A registration** under the Income Tax Act.
- Should not be engaged in activities related to **religious or political funding**.

Eligibility Criteria for For-Profit Social Enterprises (FPEs):

- Can be a **Private Limited Company, Limited Liability Partnership (LLP), or Sole Proprietorship**.
- At least **67% of revenue, expenditure, or beneficiaries** should be involved in social impact activities.
- Must operate in sectors such as:
  - Healthcare & sanitation
  - Education & skill development
  - Women empowerment & gender equality
  - Environmental sustainability & renewable energy
  - Livelihood generation & rural development

How to Register on SSE?

Step 1: Gather Required Documents

For Non-Profit Organizations (NPOs):

- Registration certificate (Trust Deed, Society Registration Certificate, or Section 8 Incorporation).
- Audited financial statements for the past three years.
- Details of social impact activities and their outcomes.
- 80G & 12A certificate (for tax benefits).
- Annual reports & CSR reports (if applicable).
- Board resolutions & governance documents.

For For-Profit Social Enterprises (FPEs):

- Certificate of Incorporation under the Companies Act.
- Memorandum of Association (MoA) & Articles of Association (AoA).
- Social Impact Assessment report proving eligibility.
- List of directors, shareholders, and funding sources.

Step 2: Apply for Registration on SSE

- Submit an **application to the SSE platform** under **BSE or NSE**.
- Attach all required documents and a **detailed impact assessment report**.
- Pay the **application processing fee** as per SSE norms.

Step 3: Review & Due Diligence by SSE

- The SSE Committee reviews the application for authenticity.
- SSE may ask for additional documents or conduct on-site verification.

Step 4: Approval & Listing on SSE

- If approved, the organization gets registered and listed on SSE.
- The entity can start raising funds through SSE-approved financial instruments.
- The SSE assigns a Unique Identification Number (UIN) to the entity

What are the tax Benefits for SSE-Listed Entities?

For Non-Profit Organizations (NPOs)

- **80G Tax Exemption** – Donors get **50% tax deduction** on donations.
- **12A Exemption** – NPOs don't pay **income tax on donations & grants**.
- **GST Exemptions** – Certain **charitable services are GST-free**.

For Social Enterprises & Investors

- **CSR Benefits** – Corporate donations qualify as **CSR spending with 100% tax deduction**.
- **Tax-Free Social Impact Bonds** – Investments in **Zero Coupon Zero Principal (ZCZP) bonds** enjoy tax exemptions.
- **Lower Corporate Tax Rates** – SSE-listed FPEs may qualify for **concessional tax rates**.

What is the Future of SSE in India?

With BSE and NSE launching their **Social Stock Exchanges**, India is set to become a **global leader in impact investing**. The SSE will:

- Strengthen the funding ecosystem for social enterprises.
- Encourage sustainable impact investing.
- Improve transparency in social funding.

The SSE presents a unique opportunity for **social enterprises, impact investors, and donors** to work together toward building a better future.

Conclusion:

The **Social Stock Exchange** is a game-changer in the field of impact investing, allowing organizations to raise capital while maintaining **transparency and accountability**. It provides a structured mechanism for social enterprises to scale their initiatives and attract investors who are looking for **measurable social returns** along with financial sustainability.

"Don't be pushed around by the fears in your mind. Be led by the dreams in your heart.
Live the life you were meant to live. Your potential is endless.
Keep going, keep growing, and never give up."

— Roy T. Bennett

S P C M & ASSOCIATES
Chartered Accountants

SPCM LEGAL

THANK YOU!

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