

GUWAHATI@ICAI



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COVER HEADLINES

| | |
|-------------------------------------|-----------|
| Chairman Speaks | 1 |
| Editor's Desk | 2 |
| Article | 3 |
| Guwahati Branch Activities | 7 |
| ICAI Important Announcements | 11 |
| Managing Committee | 12 |
| Keep in touch | 13 |

Chairman Speaks...



Dear Professional Colleagues and Friends,

Welcome to the season of newness and celebrations.

Most of us are in a 'relaxed mode' after successfully undergoing the pressures of earlier due dates, be it Income Tax or GST. While relaxation is necessary for rejuvenation, we must strive to upgrade and improve ourselves on various fronts. We need to plan for that and simultaneously enjoy our time upskilling ourselves, pursuing our hobbies, and honing our fitness.

Keeping my message brief, I would conclude by urging all members to actively participate in all the activities with full spirit and effervescence. I earnestly request everyone to cultivate the habit of reading along with attending the CPE seminars and group discussions.

And yes, do keep writing articles and send them to us. Your writing endeavours will adorn our newsletter with knowledge.

My best wishes to everyone.

Regards,

CA. Gaurab Garodia
Chairman

Editor's Desk...

Dear Esteemed Professional Colleagues,

It's the season of gaiety and gala. The New Year wave coupled with the festive vibes of Makar Sankranti and Bhogali Bihu nourishes the soul with energy and effervescence.



Magh Bihu or Bhogali Bihu, celebrated in January, celebrates the commencement of harvesting season and is also regarded as the first day of the Assamese New Year. The significance of this festival is purely agricultural in nature. It also signifies hope, positivity and anticipation. The festival is also all about sharing meals with the community, as the word 'Bhog' means eating. Magh Bihu is the festival, which is dedicated to Agnidev, the lord of fire and people offer prayers to Lord Agni Dev.

Likewise, in life, the start of the New Year gives us yet another opportunity to introspect on the bygone year, to make new resolutions, to take up new skills, and to begin afresh with newer perspectives.

Regards,

CA. Saurav Somani
Editor

Article



CA. Rahul Sharma
FCA, MBA (Fin.), LLb, CAIIB
Jaipur
rahulsharmafca@rediffmail.com

TDS on Rentals: Section 194 I, Section 194 IB and Section 194 IC

Section 194 I: Any person excluding Individual and HUF (however if Individual or HUF has Rs 1 Cr. Turnover in case of Business or Rs 50 Lacs in case of Profession, this provision also applies to them) on payment of Rent of more than Rs. 2,40,000 to resident is required to deduct Tax at Source.

Definition of Rent: "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,—

- (a) land; or
- (b) building (including factory building); or
- (c) land appurtenant to a building (including factory building); or
- (d) machinery; or
- (e) plant; or
- (f) equipment; or
- (g) furniture; or
- (h) fittings,

whether or not any or all of the above are owned by the payee;

Rate of Tax: (a) two per cent for the use of any machinery or plant or equipment; and

(b) ten per cent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings:

To widen the coverage and bring in those individual or HUF who pay big amount of rent but are still not liable to audit, Section 194 IB was introduced in Budget 2017.

Section 194 IB: Any Individual or HUF not liable for TDS under Section 194 I on payment of rental income to a resident more than Rs. 50,000 per month is required to deduct tax at source on that payment.

Rate of Tax: Tax to be deducted at the rate of 5%

Petroleum reserves, Gas reserves etc.

Difference between Section 194 I and Section 194 IB

| Particulars | Section 194I | Section 194 IB |
|--------------------------------------|--|---|
| Person responsible for TDS | Any person (Including Individual and HUF whose turnover exceeds Rs. 1 Cr. In business and 50 lacs in profession) | Individual and HUF except on whom Section 194 I applies |
| Monetary Limit | Rs. 2,40,000 per annum | Rs. 50,000 per month |
| Applicable on which assets | Land, Building, Plant and Machinery, Equipments, Furniture or Fitting etc. | Land and Building |
| Tax rate | 10% on Land, Building, Furniture and Fitting 2% on Plant and Machinery | 5% on Land and Building |
| Time Limit of TDS | At the time of credit or payment whichever is earlier | At the time of credit for the rent of last month / last month of tenancy or at the time of payment whichever is earlier |
| Time Limit for payment of TDS | Within 7 days from end of the month in which deducted | 30 days from end of the month in which tax deducted |
| TAN Required | Yes | No |
| Form to be filled | 26Q | 26QC |

Section 194 IC : Notwithstanding anything contained in section 194-IA, any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under the specific agreement, shall at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax thereon.

"**specified agreement**" means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash;

Some Issues:

1. Section 194I provides that a person who is responsible for paying to any person any income by way of rent shall deduct income tax thereon at the rate prescribed therein.

Explanation (i) to section 194 I defines rent to mean any payment by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building together with furniture or fixtures.

In case assessee has acquired a right to display advertisement on hording than that is different from rent for Land Building etc. There has to be a link between rent income and use of any Land, Building etc. It was pleaded in the case that circulars are not in any way

binding on the appellate authorities and assessee, circulars are binding on Income tax Authorities. [ITO Vs Roshan Publicity Pvt. Ltd. (2005) 4 SOT 105 (Mum)]

The contract for putting up a hoarding is in the nature of advertising contract and provisions of section 194C would be applicable. It may, however, be clarified that if a person has taken a particular space on rent and thereafter sublets the same fully or in part for putting up a hoarding, he would be liable to TDS under section 194-I and not under section 194C of the Act. [Circular No. 715, dated 08.08.1995]

2. Payments made by persons, other individuals and HUFs for hotel accommodation taken on regular basis will be in the nature of rent subject to TDS under section 194-I. [Circular 715 dated 08.08.1995]. However a difference has been established between rate agreement and accommodation on regular basis. To constitute accommodation on regular basis there has to be an obligation on the part of hotel provided a room from specified set of during the period of agreement [Circular 5/2002 dated 30.07.2002]
3. The tax is to be deducted from actual payment and there is no need of computing notional income in respect of a deposit given to the landlord. If the deposit is adjustable against future rent, the deposit is in the nature of advance rent subject to TDS.[Circular 715 dated 08.08.1995].
4. The tax is to be deducted from rent paid, by whatever name called, for hire of a property. The incidence of deduction of tax at source does not depend upon the nomenclature, but on the content of the agreement as mentioned in clause (i) of *Explanation* to section 194-I.[Circular 715 dated 08.08.1995]
5. Clarification regarding deduction of tax at source from payment of rent (Circular 718 dated 22.08.1995)

Query No. 2: Whether tax is required to be deducted at source where a non-refundable deposit has been made by the tenant?

Answer: In cases where the tenant makes a non-refundable deposit tax would have to be deducted at source as such deposit represents the consideration for the use of the land or the building, etc., and, therefore, partakes of the nature of rent as defined in section 194-I. If, however, the deposit is refundable, no tax would be deductible at source. It is further clarified that if the deposit carries interest, the tax to be deducted on the amount of interest will be governed by section 194A of the Income-tax Act.

Query No. 3: Whether the tax is to be deducted at source from warehousing charges?

Answer: The term 'rent' as defined in *Explanation (i)* below section 194-I means any payment by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any building or land. Therefore, the warehousing charges will be subject to deduction of tax under section 194-I.

Query No. 4: On what amount the tax is to be deducted at source if the rentals include municipal tax, ground rent, etc. ?

Answer The basis of tax deduction at source under section 194-I is "income by way of rent". Rent has been defined, in the *Explanation (i)* of section 194-I, to mean any payment under any lease, tenancy, agreement, etc., for the use of any land or building. Thus, if the municipal taxes, ground rent, etc., are borne by the tenant, no tax will be deducted on such sum.

Query No. 5: Whether section 194-I is applicable to rent paid for the use of only a part or a portion of any land or building?

Answer Yes, the definition of the term "any land" or "any building" would include a part or a portion of such land or building.

6. If the composite arrangement is in essence the agreement for taking premises on rent, the tax will be deducted under section 194-I from payments thereof. [Circular 715 dated 08.08.1995]
7. Representations have been received from the various quarters regarding applicability of the provisions of section 194-I of the Income-tax Act to the sharing of the proceedings of film between film distributor and a film exhibitor owning a cinema theatre. The matter has been examined by the Board and the Board are of the view that the *provisions of section 194-I are not attracted to such payment because :*
 - (i) *The exhibitor does not let out the cinema hall to the distributor;*
 - (ii) *Generally, the share of the exhibitor is on account of composite services; and*
 - (iii) *The distributor does not take cinema building on lease or sub-lease or tenancy or under any agreement of similar nature.*[Circular 736 dated 13.02.1996]
8. Assessee was paying rent to the holding company as reimbursement for last many years. This position had been accepted by the department all through and it has been never disputed even after insertion of section 194-I and amendment in section 40(a)(ia). There was no material change in the facts and law during the year under consideration. The holding company had also not debited the whole of rent to its books of account. It had only debited the rent which pertained to the part of the premises occupied by it. Therefore, there was no lessor and lessee relationship between the holding company and assessee where the provisions of section 194-I were attracted. Therefore, the addition made under section 40(a)(ia) was to be deleted. [ACIT Vs Result Services (P) Ltd.]
9. Landing and Parking Charges paid by the assessee to airlines Airport Authority of India were rent within the meaning of Section 194 I Singapore Airlines Ltd Vs ITO (2006) 7SOT 84 (Chennai)
10. Storage tanks in question did not qualify either as land or as building within the meaning of Section 194I, what is attached to the land belongs to the land is a principle not applicable to India. Therefore, structure though erected on land, could not be regarded as part of the land. [Gulf Oil India Ltd Vs ITO (2000) 75 ITD 172 (mum)]
11. Rent paid to Co-owners separately will not partake the character of rent paid to AOP [CIT Vs Lally Motors (2009) 311 ITR 29 (P&H)]
12. A perusal of the above terms of the agreement clearly reveals that the agent not only stores the goods but also renders certain other professional services like inventory management on behalf of the appellant, packing the goods in required quantity according to the requirement of the stockist/dealers, follow up collection, maintain bank accounts of the sale proceeds. It cannot be said that the dominant purpose of the agreement is only warehousing. The agreement, terms of which we have set out above, cannot be said to be a composite arrangement which is in essence an agreement for taking premises on rent. The appellant does not have any interest whatsoever over the various places where his goods are stored. The agreement between the appellant and the agents cannot also be said to be a warehousing agreement. Hence, section 194 I does not apply.

[Eli Lilly & Co. (India) Ltd. Vs. DCIT (2006) TTJ 461 (Del.)]

Guwahati Branch Activities

Branch Activity Report for the month of November 2022

- a) On 16th November 2022, Guwahati Branch of ICAI organized 6 Hour-CPE on Hands-on Practical Workshop on Appeal Before CIT (Appeals) on the following topic:

1. Overview of the Process of Appeal before CIT, Speaker: CA. Sunil Sharma.
2. Legal aspects in the appeal filing, Speaker:CA. Sanjay Mody,
3. Process of filing online Appeal, Speaker: CA. Anil Kumar Agarwala.

& case study discussion on the appeal remedy available in the following aspects:144: Best Judgement Assessment, 147/148 Assessment, Assessment under section 143(3)/147 r.w.s 263, 143(3) Regular scrutiny assessment, Penalty Appeal under Section 270A, 272A(1)(d) etc.



- b) ICAI in its endeavor to spread Financial Literacy under the "Vittyta Gyan ICAI ka Abhiyan" organized an Investor Awareness Program for the Officers of BSF Tura, Tura on 08.11.2022. CA. Deepjyoti Singha Roy was the resource person for the event.
- c) Three Career counselling programs in school and colleges in different parts of Assam by different faculties were held at Shrimanta Shankar Academy Junior College on 09.11.2022, Hindustani Kendriya Vidyalaya on 11.11.2022 & Happy Child High School on 11.11.2022.



- d) On November 26th, 2022, the Guwahati Branch of EIRC of ICAI has organized two-day Annual Sports Meet i.e., 26th & 27th of November for both students and members at Royal Global University.

The Annual Sports Meet 2022 involved both indoor and outdoor events ranging from Cricket, Sprint, Relay Race, Lemon Spoon Race to Chess, Table Tennis, Badminton, Carrom etc. With the intention to increase the engagement of students & members with the branch and spread awareness on mental & physical fitness the branch had successfully hosted the event with a footfall of more than 250-300 participants.



- e) Capacity Building Programme on GST for Commissionerate of Taxes, Government of Assam for 3 Days was organized by The Institute of Chartered Accountants of India- GST & Indirect Taxes Committee on 28th, 29th and 30th November 2022 at Assam Administrative Staff College, Guwahati.

The 3-Day capacity building programme was graced and inaugurated by Shri Jayant Narlikar, IAS-Commissioner & Secretary to the Government of Assam, Finance Department, Shri Rakesh Agarwala- IAS- Principal Commissioner of State Tax, Assam, Shri Siddharth Jain, IRS- Additional Commissioner Excise and Taxation, Haryana, CA. Rajendra Kumar P- GST & Indirect Taxes Committee Chairman, ICAI and by CA. Gaurab Garodia, Chairman Guwahati Branch of ICAI and the inaugural session was initiated and ended with a formal vote of thanks by CA. Saurabh



Choudhary, Secretary Guwahati Branch of ICAI.

In three Days ten technical sessions will be carried out by expert speakers of National Level on different subjects on GST like Overview of GST - 5 years in India and the way forward , System Overview of Scrutiny and Audit, Analysis of Financial Statements with GST Perspective , Return and E-invoicing under GST, GST in Banking Industry and Analysis of Financial Statements of banking companies with GST perspective, GST in Insurance Industry & Analysis of Financial Statements of Insurance companies with GST perspective, GST in Real Estate & Works Contract, GST in Hospitality and Tourism Sector etc. The technical sessions were attended by more than 75 officers of the state GST Department.

f) Nine Career Counselling programs in school and colleges in different parts of Assam by different faculties were held at School and Colleges as follows: -

- . Golaghat Commerce College
- . Jagiroad College
- . Kendria Vidhayalaya, Narengi.
- . Maharishi Vidyamandir, Silphukri
- . Nagaon College
- . National Public School
- . Southpoint School
- . Vinayak Institute, Jagiroad

Branch Activity Report for the month of December 2022

a) The two day National Conference of Chartered Accountants “Pratibaddhata - Committed to Excellence” was organized on 16th and 17th December at Pragjyoti ITA Centre for Performing Arts, Guwahati. Sri Ashok Singhal, Hon’ble Minister, Housing and Urban Affairs, Irrigation (Assam) inaugurated the Conference on 16th December 2022 along with President ICAI CA(Dr.) Debashis Mitra, CCM CA. Ranjeet Kumar Agarwal, EIRC Chairman CA. Ravi Kumar Patwa, Chairman Guwahati Branch of EIRC of ICAI CA. Gaurab Garodia and other eminent dignitaries.

At the inaugural ceremony, Ashok Singhal, Hon’ble Minister Housing and Urban Affairs, Irrigation (Assam), inter alia, announced that the Assam Government shall provide adequate land to ICAI for setting up a Centre of Excellence in Assam. The Centre of Excellence shall be a state of the art infrastructure which shall contribute immensely to the growth of students of this region.

The conference witnessed brainstorming sessions on current and sensitive issues. The first session was a panel discussion on changing landscape of investigations in economic offences by eminent panellists Adv. Karnal Singh, Adv Biswajit Das and Justice Manmohan Singh, all from Delhi. This was followed by a Technical Session on Direct Taxes which witnessed deliberations by eminent speakers CA. Kapil Goel from Delhi and Adv. Inder Paul Bansal from Delhi.

The second day witnessed sessions on Goods and Service Tax by CA Gaurav Gupta from Delhi and CA. Dr. Arpit Haldia from Jodhpur, which dealt with burning issues and remarkable amendments in GST. A special motivational session was also held

which was graced by the Hon'ble DC, Barpeta District, CA Aayush Garg wherein he motivated CAs to also enter public services. In the last technical session, topics of Corporate Law were discussed at length by experts like CA. Archana Bhutani from Delhi and CA Manoj Banthia from Kolkata.

A colourful and musically enriched cultural evening themed "Sama" was held at Pragjyoti ITA Centre on Friday evening where CA Members as well as students showcased their talents for entertainment of the delegates and their family members. CA. Swati Tejawat, Chairperson of Media and Publicity Committee for the conference informed that the conference was successfully concluded on Saturday evening in the presence of Chairman of the Guwahati Branch CA. Gaurab Garodia and other Managing Committee Members, galaxy of Past Chairmen of the Branch.



- b) A 4-Hour CPE Seminar on Code of Ethics- Recent Changes and SA 230 Audit Documentation was held on 29-12-2022, Thursday from 3 PM to 7 PM. The topics were deliberated by CA. Kamal Mour and CA. Swati Tejawat.



- c) On 26th December 2022, Managing Committee of Guwahati Branch had a meeting with Honourable Deputy Commissioner of Kamrup Rural for allotment of land for Centre of Excellence at Guwahati.
- d) On 5th of December 2022, Special Interaction program with The President, The Institute of Chartered Accountants of India, CA. (Dr.) Debashish Mitra along with Chairman EIRC CA. Ravi Kumar Patwa was organised with the past chairpersons of the Guwahati Branch of ICAI.

ICAI's Important Announcements

| Points | Link |
|--|---|
| <ul style="list-style-type: none">• Exposure Draft of Guidance Note on Audit of Banks, 2023: | https://resource.cdn.icai.org/72655aasb58571.pdf |
| <ul style="list-style-type: none">• Exposure Draft on International Tax Reform - Pillar Two Model Rules (proposed amendments to IAS 12): | https://www.icai.org/post/ed-on-international-tax-reform-pillar-two-model-rules |
| <ul style="list-style-type: none">• Social Audit Standards (SAS) 100 to 1600: | https://resource.cdn.icai.org/72658srsb58573.pdf |
| <ul style="list-style-type: none">• Technical Guide on Digital Assurance: | https://resource.cdn.icai.org/72659aasb58574.pdf |

Managing Committee

Guwahati Branch of EIRC of ICAI

2022-23



 **CA. Gaurab Garodia** 
Chairman
9435040955
gaurabgarodia@gmail.com



 **CA. (Dr.) Ayush Saraf** 
Vice-Chairman
9864822043
caayushsaraf@gmail.com



 **CA. Saurabh Choudhary** 
Secretary
9864054044
casaurabhchoudhary@gmail.com



 **CA. Raginee Goyal** 
Treasurer
9706027627
raginee@gmail.com



 **CA. J P Gupta** 
CPE Committee Chairman
9435559687
cajayprakash@gmail.com



 **CA. Anjani Kumar Mundhra** 
EICASA Guwahati Chairman
9864058996
anjanimundhra@gmail.com



 **CA. Sushil Kumar Kalani** 
Nominate Member EICASA
9435050917
kalanisushil@hotmail.com

Keep in touch!

- ✚ Write to us on icai.guwahati@gmail.com
- ✚ Email for submitting articles:
newsguwahati.icai@gmail.com. Send us your articles along with short-biodata and a picture
- ✚ Visit us on www.guwahati-icai.org for regular updates.



Editorial Team:

CA. Saurav Somani – Editor

CA. Gaurab Garodia – Chairman

CA. Ankit Agarwal – Advisor

CA. Ravi Kumar Patwa – Ex-Officio

Mr. Sagar Nath – Designer

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