

CA. M. Devaraja Reddy
President



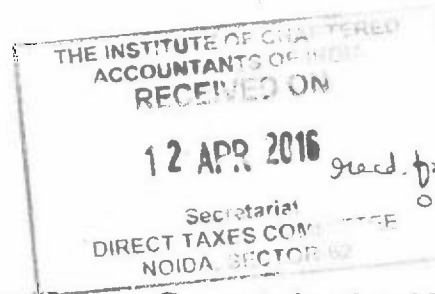
THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)
'ICAI Bhawan', Indraprastha Marg,
New Delhi - 110 002. INDIA

ICAI/DTC/2016-17/Rep - 3

7th April, 2016

Sh. Arun Jaitley,
Honb'le Finance Minister,
Ministry of Finance,
Government of India,
North Block,
New Delhi -110 001.

Respected Sir,



Re: Submissions on "Income Computational and Disclosure Standards (ICDS)"

As you are kindly aware that ICAI, being a partner in nation building, has always supported the efforts of the government to achieve its objective to optimize tax collection and prevent tax avoidance/evasion on one hand and to ensure timely compliance of statutory obligations by the tax payers on the other hand. It has also been ICAI's prerogative to strengthen the relationship between the taxpayers and the Department. Thus, time and again, we write to you, enlisting the difficulties being faced by the assesseees and/or chartered accountants.

Today, implementation of ICDS has been a matter of utmost concern not only for assesseees, chartered accountants but also the Department officials. Through this letter, we wish to bring to your kind attention certain areas of concern reported to ICAI:

- **Implementation of ICDS will increase complexity rather than promoting ease of doing business**

In line with ICAI's earlier submissions, it is respectfully submitted that a whole new set of standards would create confusion, increase complexity and drastically reduce the ease of doing business in India, which is not desirable. Taxpayers are already grappling with the regulatory changes of the Companies Act, 2013, IND AS and the proposed GST. Implementation of ICDS would further add to the agony hence time needs to provide to assessee to understand the new platform of standards and points of divergence with existing standards. Also, ICDSs introduces new concepts which have been left undefined, for instance, 'reasonable cause' for change in accounting policy or 'reasonable certainty' for recognition of provisions and contingent assets. These terms have not been defined and



would involve exercise of judgment by management & tax authorities. These are highly subjective and hence prone to different interpretations and litigation prone.

- **Maintenance of Separate Books of accounts –Unavoidable**

The notification introducing ICDS specifically clarifies that no separate books of accounts are required to be maintained for ICDS. However, practically this will pose a serious challenge to taxpayers given some significant differences between current accounting standards and ICDS.

Since there very few standards where a different treatment has been adopted by ICDS either due to provisions of the present law or any judicial pronouncement, only a reconciliation statement is required to be notified instead of notifying new set of standards. For ease of taxpayers, this reconciliation statement is otherwise also required for ensuring the implementation of ICDS

- **Would Increase Litigation- Observation of Justice R.V. Easwar Committee**

The transitional provisions in ICDS are also a bit vaguely worded and could create more disputes and surge in litigation. This would defeat the very objective of introducing ICDS to provide certainty in tax matters.

Even the Income tax Simplification Committee headed by Justice R.V.Easwar observed that many other provisions of the ICDS are capable of generating a legal debate about which at present there is no clarity.

- **Training required for both Department and assesseees**

Since ICDS are based on Accounting Standards and require use of fair valuation, not many tax officers and small assessee in mufasil areas would be able to appreciate its implementation without proper training and guidance and ICDS are applicable without any minimum income or turnover base. The tax officers and assessee would be required to be trained in these new areas. Implementation of ICDS at this stage, ie without imparting proper training would be a challenging task for the Department as well as taxpayers since both have to cope with accounting concepts and complex situations to achieve agreement on the



treatment during assessments. The determination of fair value as envisaged in notified ICDSs may be quite difficult and it be remembered that IND AS applying fair value is only applicable to larger companies as per road map of Ministry of Corporate Affairs, Government of India. For Ind AS, there is some guidance in Ind AS 113 Fair Value Measurement but for ICDSs, as of now, no such guidance is there and ultimately, it would lead to disputes and more litigation. Already there are a lot of disputes when capitals gains computation is made with regard to fair value. The ICDSs would add to the complexity. eg ICDS V on tangible fixed assets and ICDS VIII on securities provide for determination of fair value.

- **Significant difference between the provisions of ICDS and Judicial pronouncements**

The preamble states that if there is any conflict between the provisions of the Act and the ICDS, the Act will prevail. ICDSs, at many places, differ significantly from decisions pronounced by the Supreme Court and High Courts. A clarification would be required in respect of cases where there is difference in treatment owing to judicial pronouncements. In this regard, Annexure I contains an illustrative list of judicial decisions which appear to be in conflict with the principles notified in ICDSs.

- **Disclosures for “Income from other sources” not provided in the ITR forms**

As per the notification no.32/2015 dated 31.03.2015, ICDS are applicable for all assesseees following mercantile system of accounting, for the purposes of computation of income chargeable to tax under the head “Profit and gains of business or profession” or “Income from other sources”. While “Schedule ICDS” has been inserted in all relevant forms to report effect of ICDS on “*profit*”, there is no schedule to report the disclosures required in respect of income under the head “Income from other sources”.

- **Difference in notified ICDS and Accounting Standards will increase the timing difference between income and accounting income**

There are significant deviations between the notified ICDSs and Accounting Standards which are likely to have the effect of advancing the recognition of income or gains or postponing the recognition of expenditure or losses under tax laws and consequently, impacting the computation of tax liability under the Income-tax Act, 1961. These deviations would also increase the timing differences between taxable income and accounting income.

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Considering your valuable time, we are shared with you only the major concerns associated with the implementation of ICDS wef 1.4.2015. Apart from the above, there are various other issues in respect of each and every ICDS which we have reported separately to the Chairman, Central Board of Direct Taxes. Hopefully, the same is being considered.

In view of the issues raised by the taxpayers/ tax professionals in the recent past with regard to implementation of ICDSs as notified, it is requested that it may be deferred till a detailed study on ICDSs is done showing fully its impact on the taxpayers and the Department.

We hope that the suggestions of ICAI find favour with you. We would be grateful in case **we are given personal hearing to discuss and understand your concerns** as well as an opportunity to further elucidate our view point.

With warm regards,

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Devaraja Reddy', is written over a horizontal line.

CA. M. Devaraja Reddy

Annexure I

Rulings nullified by ICDS

ICDS	Case law	Remarks
I	BHARAT EARTH MOVERS LTD – 245 ITR 428 (SC)	Concept of prudence is not considered in ICDS. Hence mark to market losses cannot be allowed.
II	SAKTHI TRADING COMPANY – 250 ITR 871 (SC)	Inventory of the dissolved firm, where business continued or otherwise, need to be valued at NRV only. Hence, the ruling holding a view that in the case discussed above, the inventory could be valued at the lower of NRV/cost is overruled
III	East Coast Construction I Ltd – 283 ITR 297 (Mad) P & C constructions P Ltd – 218 ITR 113 (Mad)	Judgements held that Retention money needs to be taxed in the year of its receipt. These rulings are no longer valid.
		Foreseeable loss could be allowed considering prudence. Since ICDS does not recognise prudence, the foreseeable loss cannot be allowed
	Bokaro Steels Ltd – 236 ITR 315 (SC)	SC held that pre-construction income having close nexus with the construction can be reduced from the cost of project – ICDS seeks to nullify the ruling and provides for taxing the said revenue to tax.
IV	E D Sasson & Co – 26 ITR 27 (SC)	SC held that income shall be taxable only when there is established right to receive the income. Contrarily, ICDS seeks to tax interest income on time basis
	UCO Bank – 237 ITR 889 (SC)	SC held that interest on sticky loans are not required to be recognised on time basis where there is doubtful recovery. The ruling is no longer valid.
	Coral Electronics P Ltd – 274 ITR 336 (Mad)	ICDS seeks to introduce the POCM to service contracts also. The ruling is nullified.
VI	Woodward Governor India P Ltd – 312 ITR 254 (SC)	Loss on forex fluctuations is allowed as per AS 11. The said ruling is nullified as prudence is given go by in the ICDS
IX	Bokaro Steels Ltd	Ruling says that interest income earned during the pre-construction period having close nexus to the construction has to be reduced from interest expenses to arrive at the borrowing cost. This ruling is nullified.
X	Rotark Controls India P Ltd – 314 ITR 62 (SC)	Ruling says that provisions for warranty, etc, where basis are scientific, would be allowed as deduction. ICDS allows deduction only where the payment is “reasonably certain”. In the absence of definition of “reasonably certain”, there is good case to hold a view that ICDS does not permit the claim as allowed in the rulings.