



TUTICORIN BRANCH OF SIRC

NEWS LETTER

The Institute of Chartered Accountants of India
(Set up by an Act of parliament)

Private Circulation only

OCTOBER 2010

Chairman Writes . . .

Dear Colleagues,

Dasara Greetings and Advance Diwali Greetings to All the Members and their Families,

By the time this News letter reaches the Members, most of the practicing Members would have completed their most of the Tax Audit assignments and been looking for celebrations. We hope that e-filing was a pleasant experience in the form accuracy and saving time. Anyhow the due date for Filing Income-Tax Returns due on 30th September has been extended by 15 days.

We are glad to inform you that the 25th Batch of Information Technology Training was commenced on 02.09.2010 and is in progress.

We are extremely delighted to inform you that "The Public Awareness Programme on T.D.S. & T.C.S." the mega seminar held at our Branch Premises on 03.09.2010 was a grand success. It was attended by more than 150 delegates and it was a yet another milestone in our Branch activities.

The Seminar was inaugurated by the Chief Commissioner of Income Tax Madurai Shri.A.Soorianarayanan I.R.S, illustrious son of our soil. In his address he stated that the Indian CA's are second to none in the world, and delivered a motivating address and appreciated the efforts of our Branch in conducting the programme. He highlighted the salient features and the pros and cons of the provisions of T.D.S. & T.C.S. under the Income Tax Act and cautioned the consequences if it is not duly complied by the deductors. Shri.S.Balasubramanian I.R.S Additional Commissioner of Income Tax Madurai made a well researched and insightful talk about the provisions of T.D.S. & T.C.S. and its due compliances. Our learned faculty CA.V.Thiagarajan Chennai elucidated the ramifications of the provision of T.D.S. & T.C.S. and Tax Audit Report u/s 44AB. The

facets and nuances of Tax Audit were brought out comprehensively by the expert speaker. It was a thought provoking and brain storming session. It was well received by all the delegates who had a feast of knowledge.



We are extremely thankful to all the Members from Profession and Industry, participants from various departments like Income Tax, Treasury, Postal, Electricity, Health, Education, Revenue, Horticulture, Agriculture, Educational Institutions (Schools, Colleges etc.,) Banks, Leading Business Houses, Students and Tax Practitioners for their whole hearted support in making the hi-profile seminar a grand success and we are sure they will cherish the memories of this seminar for a long time to come. We express our sincere thanks to M/s.VVD & Sons (P)ltd., for their hospitality by way of extending the sumptuous food.

We are pleased to inform you that the Chief Commissioner of Income Tax, Madurai on 03.09.2010, dedicated the Project Report on the Industrial Visit to an Export Oriented Dry Flower Company - M/s.Fauna International, Tuticorin done by CA Students of our Branch. The student's efforts and tireless work were very much commended and appreciated by all.

We are very much proud to say that the Chief Commissioner of Income tax was well received by most of our learned Members in practice in the morning at our Branch Premises and joined for a breakfast. It was a heart touching one.

At 9 A.M a Press Meet was organized and hand some number of Press and TV Reporters participated. In the meet, the Chief Commissioner gave an insightful talk about the "Refund Banker Scheme, the T.D.S. target set out for Madurai Region in 2010-11 and record break T.D.S. collection in the Madurai Region in 2009-10. The Chief Commissioner shared his happiness over the excellent T.D.S. collection in Tuticorin Range and added more such awareness programme would be conducted throughout the year with our assistance. We thank the Press and TV

Reporters for their extensive and exemplary coverage of news items and its publication/beamed in TV channel that reached nook and corner of North, East, West and South of the world.

On 4th September 2010 afternoon, the Branch organised Students Study Circle Meeting Led by Ms.J.Anne Jose, Final Student on "Plastics - A Potential Threat to our Eco System". It was so informative.

On 05.09.2010, our SIRC organized Regional Level Elocution Competition & Quiz Contest at Chennai. Our Students Mr.S.Somasundaram, Ms.A.Divya Ponnaras, Ms.M.Rajalakshmi, and Ms.S.Sundari participated in the competition. Myself and our CA.M.Arumugam attended the same. The ambience was wonderful and the hall was packed with our Students, Parents, Members, officials and Staff of SIRC. The atmosphere was very much conducive and the oratorical and the scintillating speech and the answer to the Quiz by the students in various topics shattered and bombard the audience in the hall. We were thrilled to hear the young students' speech with confidence and command over the subjects chosen. The knowledge and wisdom fervour seemed abundant in our Students and we sincerely wish and hope that this spirit pervades to all students.

The occasion was used to instill, encourage and bring out talents inbuilt in Students. We wish the students very good luck in their future endeavor.

On 11th September 2010 afternoon, the Branch organised Students Study Circle Meeting Led by Ms.S.Sundari, PCC Student on "Habits Lead to Health". It was so informative and educative.

We are very much delighted to inform you that, on 13.09.2010, a Souvenir Committee was formed under the dynamic and able leadership of our learned Member CA.R.Sriram of our Branch's 20th year of excellence. Also, a proposal to conduct a Residential Workshop on IFRS for two days in the month October at Poovar Island Resort was approved.

On 18th September 2010 afternoon, the Branch organised Students Study Circle Meeting Led by Mr.A.Antony Joshua, PCC Student, on "Minimum Alternative Tax (MAT)". It was so informative.

On 25th September 2010 afternoon, the Branch organised Students Study Circle Meeting on "AS-9 Revenue Recognition" Led by Mr.S.Somasundaram, Final Student. It was so informative.

We are pleased to inform you that the 2nd batch of IPCC classes was over on 25.09.2010. At this moment, we would express on sincere thanks to the affectionate,

appreciative, morale boosting, extraordinary and exemplary efforts taken by the faculty in the classes. We wish the same kind of patronage will continue for the forthcoming years. We hope the students will climb the next rung of the ladder towards their goal.

On 27th September 2010 evening, the Branch organized Study Circle Meeting Led by CA.A.C.G.Venantius on Exposure Draft on Standard on Assurance Engagements (SAE) 3402 (Assurance Reports on Controls at a Service Organisation). It was well attended by our Members and Students. Our suggestions and comments were forwarded to ICAI New Delhi and SIRC Chennai on 30.09.2010

On 29th September 2010, myself and our learned Members CA.R.Sriram, CA.B.Francis Amal George, CA.G.Xavier Fernando, CA.K.Ponpandi Inbarasu and CA.R.Ravi had an interactive Meeting with the Commissioner of Income Tax-II Madurai Range at Tuticorin on Practical Issues on Taxation and other related matters. It was quite interesting and more informative.

We are pleased to inform you that the 42nd Regional Conference of SIRC will be held on November 27 & 28, 2010 at Kochi. Our Tuticorin Members are requested to register with our Branch at the earliest so that train tickets can be booked well in advance, as the railway booking starts 90 days prior to the date of travel and in view of the Sabarimala Season commencing from November 17, 2010.

We are pleased to inform you that, the Central Indirect Taxes Committee intends to submit the Pre-Budget Memorandum on Indirect Taxes - 2011 to the Ministry of Finance preferably by December 1, 2010. Therefore, may we request you to give your valuable suggestions relating to Central Excise Law, Customs Law and Service Tax Law for the purpose of inclusion in the Pre-Budget Memorandum-2011. Kindly forward your valuable suggestions to our Branch preferably by 5th November, 2010 so as to proceed further.

We, through this column, solicit the valued views and suggestions of the Members for further accelerating the activities to provide the best of programmes to the Members.

We wish to put an optimistic note stating that our Branch continues to be one of the most active and vibrant Branches of our Region and each one of us should be proud and happy to be a part of our Branch.

Our Mantra which reads as under

"We Serve together with Fellowship."

Yours ever loving,

CA.H.Raman.



**Public Awareness Programme on TDS and TCS
(Under the Income Tax Act 1961) on 03.09.2010**

IMPORTANT ANNOUNCEMENT FOR STUDENTS

1. Students who have initially registered for Professional Education (Course - II) and passed one of the groups in Professional Education (Examination - II) Can commence their articled training on successful completion of Information Technology Training (ITT) - Having regard to the hardship faced by the students of Professional Education (Course-II), the Council of the Institute of Chartered Accountants of India has decided to allow Professional Education (Course-II) students who have passed one of the groups in Professional Education (Examination - II) to commence their articled training under a eligible member of the Institute in terms of Regulation 45 (1) (b) (i) of the Chartered Accountants Regulations, 1988. Please visit <http://220.227.161.86/20161announ10952.pdf> for complete details.

2. Exemption from undergoing Orientation Programme and payment of fees for Differently abled students - Differently abled Students, suffering from permanent disability of 50% or above are exempted from attending Orientation Programme. These students are also exempted from payment of fee related to Orientation Programme i.e. Orientation Programme registration fee of Rs. 1,000/- and course fee of Rs. 3,000/- for undergoing course. Please visit <http://220.227.161.86/20166announ10965.pdf> for the complete details and nature of disability which are regarded as disability for the above exemption. A disabled student has to submit a certificate of suffering from disability, certified by a physician / surgeon / oculist working in a Government hospital, as the case may be.

gnanamarga
New Challenges, New Frontiers

42nd REGIONAL CONFERENCE
of SIRC of ICAI at Kochi

CPE CREDIT
12 HRS

on ▼
November **27** and **28**, 2010
(SATURDAY and SUNDAY)

● ORGANISED BY SIRC OF ICAI ●
Hosted by ▶ Ernakulam Branch Venue ▶ Jawharlal Nehru International Stadium, Kaloor, Kochi

THE HINDU

INDIA'S NATIONAL NEWSPAPER

Printed at Chennai, Coimbatore, Bangalore, Hyderabad, Madurai, Delhi, Visakhapatnam, Thiruvananthapuram, Kochi, Vijayawada and Mangalore

Refund banker scheme is operational: Official

The Refund Banker Scheme has been made operational from Friday at national level. It would facilitate the income tax assesseees to view the status of refund online.

The assesseees could make use of this novel scheme, A. Soorianarayanan, Chief Commissioner of Income Tax, Madurai, said while addressing at a public awareness programme on tax deduction at source and tax collection at source, organised by the Institute of Chartered Accountants of India here.

Refund status can be tracked by entering the PAN and assessment year for which refund is to be tracked. The State Bank of India (SBI) is the refund banker to the Income Tax Department.

The Cash Management Product department of SBI (CMP SBI) processes the refunds under the scheme.

Details of refunds are forwarded to CMP SBI by the IT Department. CMP SBI processes the refunds and sends the refund intimation to the taxpayer.

S. Balasubramanian, Additional Commissioner of Income Tax (TDS), who elaborated on the provisions of tax deduction at source and tax collection at source, urged the business community to strictly adhere to tax norms.

Rs. 1,326- crore TDS target set Madurai region



Chief Commissioner of Income Tax, Madurai, A. Soorianarayanan releasing a project report in Tuticorin on Friday.

Earlier, Mr. Soorianarayanan said that a target of Rs.1,326 crore was set for TDS for Madurai region in 2010-11. During 2009-10, the TDS collection exceeded Rs. 1,186 crore in the region.

TDS collection in Tuticorin

During the last year, a sum of Rs.99 crore was collected as TDS in Tuticorin region. More awareness programmes would be conducted throughout the year, he added. H. Raman, Chairman, ICAI, Tuticorin Branch, welcomed the gathering. The programme was attended by businessmen and chartered accountants.

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தீன மலர்

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வருமான வரி செலுத்துவோர் வசதிக்காக ரீபன்ட் பேங்கர்ஸ் ஸ்கீம் புதிய திட்டம் துவக்கம்

- தூத்துக்குடியில் வருமானவரித்துறை ஆணையர் தகவல் -

வருமானவரி செலுத்துவோரின் வசதிக்காக கடந்த முதல் தேதி முதல் ரீபன்ட் பேங்கர்ஸ் ஸ்கீம் கொண்டு வரப்பட்டுள்ளதாகவும், வருமான வரி பிடித்தம் செய்யாதவர்களுக்கு அபாரதம் விதிக்கும் வகையில் அதிரடி நடவடிக்கை வர உள்ளதாக மதுரை வருமான வரித்துறை முதன்மை ஆணையர் சூரியநாராயணன் தெரிவித்தார்.

தூத்துக்குடியில் வருமானவரி செலுத்தும் நபர்களுக்கு அரசின் பல்வேறு சலுகைகளை விளக்கும் வகையில் விழிப்புணர்வு நிகழ்ச்சி நேற்று ஆதிபராசக்திநகர் சார்பட்ட அக்கவுண்ட் அசோசியேஷன் தூத்துக்குடி கிளையில் நடந்தது. விழிப்புணர்வு நிகழ்ச்சிக்கு வந்த மதுரை வருமான வரித்துறை முதன்மை ஆணையர் சூரியநாராயணன் நிரூபர்களிடம் கூறியதாவது:

கடந்த முதல் தேதி முதல் வருமான வரிச் செலுத்துவோரின் வசதிக்காக ரீபன்ட் பேங்கர்ஸ் என்னும் புதிய ஸ்கீம் கொண்டு வரப்பட்டுள்ளது. இது சம்பந்தமாக எல்லா மாவட்டத்திலும் விழிப்பிணர்வு ஏற்படுத்த நடவடிக்கை எடுக்கப்பட்டுள்ளது.

இதன் மூலம் வருமான வரி ரிட்டன் தாக்கல் செய்தவுடன் சம்பந்தப்பட்ட அசஸ்ஸர்களுக்கு பாங்க் அக்கவுண்டிற்கு அதன் விபரம் வந்துவிடும். இதனால் அசஸ்ஸர்கள் நாம் செலுத்திய ரிட்டன் தாக்கலாகி விட்டதா உள்ளிட்ட விபரங்களை உடனியாக தெரிந்து கொள்ளலாம். இதற்கான வருமான வரித்துறை அலுவலகத்திற்கு வந்து விபரம் கேட்க தேவையில்லை.

சம்பளம், காண்டிராக்ட் எடுத்து செய்தல் போன்ற பல பணிகளுக்கு டி.டி.எஸ் பிடித்தம் செய்யப்படுகிறது. டி.டி.எஸ் பிடிக்கப்பட்ட விபரத்தை இண்டர்நெட் மூலம் தெரிந்து கொள்ளலாம்.

எந்த பணம் செலவு செய்தாலும் அதற்கு வரி வருமா என்று முன் கூட்டியே பார்த்து சோதித்து கொள்ள வேண்டும். அப்படி செய்தால் தான் நல்லது. இதனை பணம் செலவு செய்பவர்கள் விழிப்புடன் இருக்க வேண்டும். தூத்துக்குடி நாகர்கோவில் மொத்தம் 99 கோடி ரூபாய் கடந்த ஆண்டு பிடித்தம் செய்யப்பட்டது. மொத்தம் வருமானவரியாக இந்த இரண்டு மாவட்டத்திலும் மொத்தம் 280 கோடி ரூபாய் வருமான வரிவசூல் செய்யப்பட்டுள்ளது. மதுரை மண்டலத்தில் மொத்தம் ஆயிரத்து 180 கோடி வருமான வரி

வசூல் ஆகியது. இதில் 280 கோடி அந்த இரண்டு மாவட்டங்களிலும் ஆகியுள்ளது. டி.டி.எஸ் பிடிக்காதவர்கள் மீது நடவடிக்கை வரும். முதலில் இது சம்பந்தமாக விழிப்புணர்வு ஏற்படுத்திய பிறகு அபாரதம் உள்ளிட்ட நடவடிக்கையை ஆரம்பிக்க உள்ளோம். மதுரை மண்டலத்தில் மொத்தம் வருமான வரி செலுத்தும் அசஸ்ஸர்கள் 4 லட்சம் பேர் உள்ளனர்.

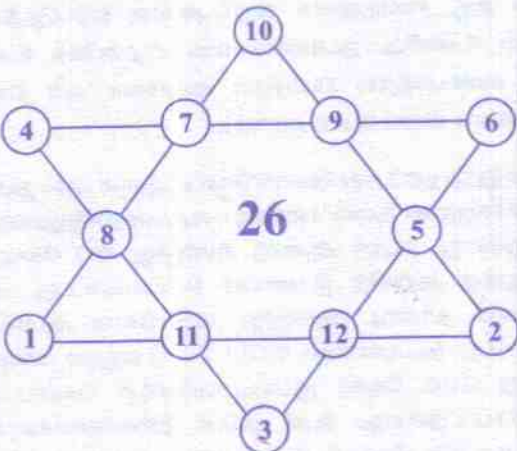
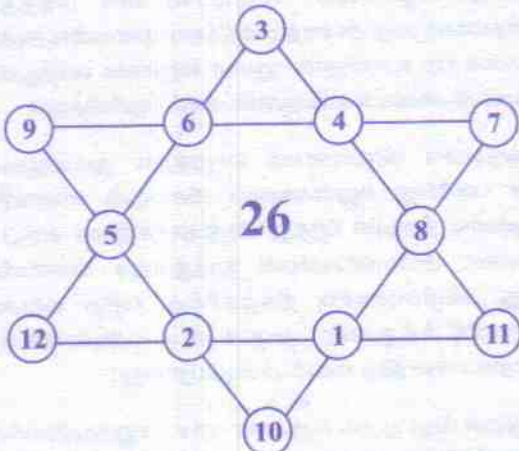
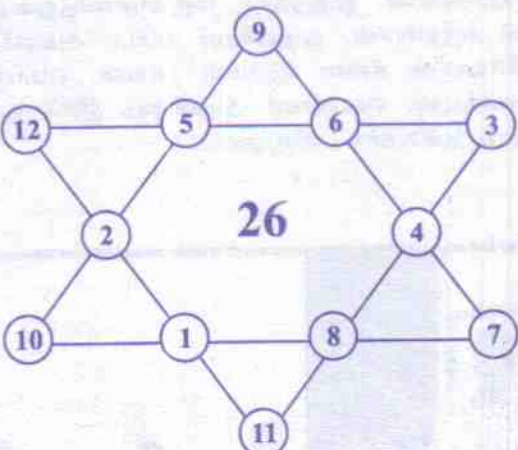
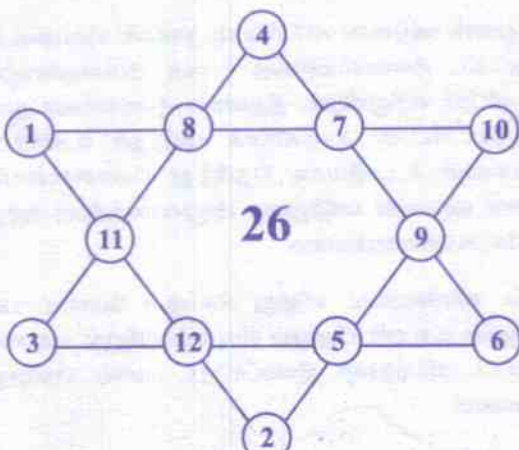
ரீபன்ட் செலுத்த தற்போது கொண்டு வரப்பட்டுள்ள புதிய நடவடிக்கை மூலம் மக்களுக்கு நல்ல வசதியை வருமானவரித்துறை செய்து கொடுத்துள்ளது. கடந்த ஆண்டு ஆயிரத்து 150 கோடி ரூபாய் வரிவசூலுக்கு குறியீடு நிர்ணயம் செய்யப்பட்டது. ஆனால் அதனையும் தாண்டி ஆயிரத்து 186 கோடி ரூபாய் வசூல் செய்யப்பட்டது. நடப்பாண்டில் (2010-2011) மதுரை மண்டலத்தில் ஆயிரத்து 326 கோடி ரூபாய் வரிவசூல் செய்ய இலக்கு நிர்ணயிக்கப்பட்டுள்ளது. பேன் நம்பர் இல்லாதவர்களுக்கு 20 சதவீதம் டி.டி.எஸ் பிடித்தம் செய்யப்படும். இதனால் எல்லோரும் பேன்கார்டு வைத்துக் கொள்ள வேண்டும். இவ்வாறு சூரியநாராயணன் தெரிவித்தார். கோவை கூடுதல் ஆணையர் பாலகப்பிரமணியன், தூத்துக்குடி வருமானவரித்துறை டெபுடி கமிஷனர் சுந்தரேசன், தூத்துக்குடி சார்பட்ட அக்கவுண்டன்ட் அசோசியேஷன் கிளை சேர்மன் ராமன், பொருளாளர் பொன்பாண்டியன், செயலாளர் அருள்ராய், துணைத்தலைவர் சேவியர்ராஜ் ஆகியோர் உடனிருந்தனர்.



தூத்துக்குடியில் வருமானவரி செலுத்தும் நபர்களுக்கு அரசின் பல்வேறு சலுகைகளை விளக்கும் வகையில் விழிப்புணர்வு நிகழ்ச்சி நடந்தது.

NUMBER SPECIAL

The figure given below is commonly known as King Solomon's Seal, Star of David or Sri Chakram. In geometry it is called Hexagram or Hexalpha. Two triangles are cutting each other making twelve intersecting points. The problem is to fill each intersecting point with one number from 1 to 12 in such a manner that the sum of four numbers in each straight line is 26.

 <p>26</p>	 <p>26</p>
Solution I	Solution II
 <p>26</p>	 <p>26</p>
Solution III	Solution IV

- 1) Four solutions are given above, Eighty are possible. Please try to find some more.
 - 2) Why the total is 26 ?
 - 3) The points can be filled up by any 12 consecutive numbers.
 - 4) Now try with first 12 odd numbers or even numbers and find out what is the total in each straight line?
- Mrs. Sornalatha Raman
- Answer next month.

“Freedom” - From What?

A friend of mine and myself were stuck in a traffic signal at Chennai in a Cab. A little slum girl thrust her hand into the stationary car, clutching a dozen or so plastic tri-colors; “buy one” she begged, “for Rs.5/- and if you pay Rs.10/-, I will give you three”.... “be patriotic”.

The irony and the tragedy of the situation could not be lost! This little girl, not more than ten years, should have been in school. And on the roads she was on a hot afternoon, desperate to earn some money and perhaps help supplement the meager earnings of her family. What does the Right to Education mean to her and to perhaps millions of other children all over the country who really have no access to any kind of education? Is she a beneficiary of the 'Save the Girl Child Campaign' or one of the 'Mid-day meals schemes on which the Government spends so much merely on publicity and fanfare? How about the laws for the Prevention of Child Labour - is there a political will to ensure its implementation? Such thoughts hit me simultaneously very hard.

The reality becomes even more frightening as one is caught in the whirlwind of what is happening all around: scams, scandals, insecurity, and violence. For the little girl out there, the corruption in the run-up to the Common Wealth Games and the mega telecom-scam and corporate frauds might mean nothing. She might not be aware that tonnes of food grains are rotting in several parts of the country and providing a feast for the rats. The rotting grains are rightfully hers.

I hesitate once again as she begs a final time. All she wants to do is to earn a few bucks as she tries to capitalize on my sense of 'patriotism'. At last I give her 10 bugs and she hands me three tri-colors and smiles. Her freedom has been bought over this time too, like it had been brought several times over, either out of pity or compulsion. The signal turns green...She quickly runs to the side of the road. My thoughts linger as to what I did was right or wrong.

Patriotism? For what? Does mere flag-waving ensure 'Freedom'?- Mull overs continue ...

-CA.G.Xavier Fernando



Regional Level Elocution & Quiz Contest at SIRC, Chennai on 05.09.2010



MORTGAGE AND CHARGES

RIGHTS OF MORTGAGOR:

By mortgaging the property the mortgagor does not cease to be its owner, he only transfers an interest in it. The law grants him the following rights:

(a) Right of Redemption : The first and foremost important right of the mortgagor is the right to redeem i.e; to take back the mortgaged property by paying the mortgage money at any time after the stipulated date for repayment. Section 60 of the Act provides that any time after the principal amount has become due, the mortgagor has a right to redeem the property. Although the Act has given him the right to redeem "any time" after their debts has become due, it rejoins upon the mortgagor the obligation to exercise this right (i) before the right is extinguished by the act of parties or by a decree of the court, or (ii) before its barred by the Limitations Act. The right to redeem the property even after the time of payment has elapsed is called Right or Equity of Redemption.

(b) Right against clog on equity of redemption : Right of redemption or equity of redemption is the essence of a mortgage and any provision inserted in the mortgage deed to prevent, evade or hamper redemption is void. Any condition which prevents the mortgagor from redeeming the property is called a "clog" on the equity or right of redemption and void. The rule of equity that once a mortgage always a mortgage prohibits a clog on the right of redemption. In other words, once a transaction is found to be a mortgage, the court would not permit any condition in a mortgage deed which would prevent or impede redemption or repayment of the loan for which the security was given.

(c) Right of partial redemption : A mortgage, as a rule, being one and indivisible for the debt and every part of it, the mortgagor cannot redeem piecemeal; he must redeem the whole property. But section 61 of the act gives a right of

partial redemption stating that " a mortgagor who has executed two or more mortgagee in favour of the same mortgagee shall, in absence of a contract in contrary, when the principal money of any two or more of the mortgage has become due, be entitled to redeem any one such mortgage separately or any two or more of such mortgages together .

An Eg : A mortgages property X to B and obtains loan of `10000. He then mortgages his property to Y and obtains the loan of `10000. He may redeem either property X or Y by paying the loan. The mortgagee cannot insist that A should redeem both mortgages together.

(d) Implied contract by mortgagor : The parties are free to enter into any terms they like. Where, however, the contract does not contain all the terms, section 65 provides for implied terms as follows. In absence of a contract to the contrary, the mortgagor shall be deemed to have contracted with the mortgagee that the:

(i) Mortgagor is entitled to transfer the interest (covenant for title)

(ii) Mortgagor will assist the mortgagee to enjoy quiet possession;

(iii) Mortgagor will pay public charges in respect of the mortgaged property;

(iv) Mortgagor covenants as to payment of the rent due on lease where the mortgaged property is leased;

(v) Mortgagor covenants as to payments to interest and principal on prior encumbrances, where the mortgage is a second or subsequent encumbrance on the property.

(e) Rights of Mortgagee and his remedies : If the mortgagor does not pay the mortgage money, the mortgagee may proceed to recover (i) from the mortgaged property or (ii) sue for recovery from the mortgagor personally. Thus the mortgagor has two remedies: one against the property and the other against the mortgagor personally.

(f) Liabilities of the mortgagee in possession : According to section 76, a mortgagee in possession is bound:

(1) To manage the property as a person of ordinary prudence would manage his own;

(2) To use his best endeavours to collect the rents and profits thereof;

(3) To pay out of the income all Government revenue or other charges of a public nature ;

(4) Not to commit any act which is destructive to the property ;

(5) To keep full and accurate accounts of all income and expenditure ; and

(6) When the mortgagor tenders or deposits the mortgage money , to account for his receipts from the property from the date of tender or deposited etc...

(g) Priority : The general rule of priority of different mortgages on the same property is that the successive mortgage is paid after the prior mortgage has been satisfied . Thus , if two successive mortgages are created by mortgagor on the same property , and both cannot be satisfied out of the mortgaged property , the prior mortgagee will have the first right to satisfy his whole debt and the balance , if any , will go to the subsequent mortgagee . But where the prior mortgages suffer from fraud , misrepresentation or gross neglect, the subsequent mortgage shall have priority over prior mortgage or of any other person who has for consideration acquired an interest in any of the properties

(h) **Marshalling** : If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person , the subsequent mortgagee is , in the absence of a contract to the contrary , entitled to have the prior mortgage debt satisfied out of the property or properties no mortgaged to him .

(i) **Subrogation** : Section 91 of the Transfer of Property Act enumerates the persons who may sue for

redemption . The primary right to redemption is given to the mortgagor under section 60 but in addition to the mortgagor certain other persons are also entitled to redeem or institute a suit for redemption of the mortgaged property namely ,

(1) Any person who has any interest in , or charge upon, the property mortgaged or in or upon the right to redeem the same ;

(2) Any surety for the payment of the mortgage debt ; or

(3) Any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property .

CHARGES

MEANING :

"Charge" has been defined under section 100 as "where immoveable property of one person is by the act of parties or operation of law made security for the payment of money to another , and the transaction does not amount to a mortgage , the latter person is said to have a charge on the property " . Thus a charge comes into existence either by operation of law or the act of parties .

Charge by act of parties :

When in a transaction for value, both the parties (debtor and creditor) intend that the property existing or future shall be made available as security for the payment of a debt and that the creditor shall have a present right to have it made available , there is a charge



Interactive Meeting with Commissioner of Income Tax-II, Madurai Range by our Members at Tuticorin

Charge by operation of law :

Charges created by law are those which arise on account of some statutory provisions . They are not created by voluntary action of the parties but arise as a result of some legal obligation .

FLOATING CHARGE :

A Charge may be (i) Fixed or (ii) Floating . A Fixed charge is a charge on specific property but a floating charge is an equitable charge on the assets for time being of a going concern . Its peculiar to companies which are able to borrow money without any interference with their assets so long as they are going concern . In other words , it's a charge on a class of the assets of the company , present as well as future . The assets of the company are constantly undergoing a change but the creditors will not normally interfere with the assets of the company unless there is some breach of some condition. A Floating charge has the following characteristics :

1. It is a charge on class of assets both present and future.
2. The class of assets charges is one which in the ordinary course of business would be changing from time to time .
3. It is contemplated by the charge that until some future step is taken by those who are interested in the charge the company may carry on its business in the ordinary way i.e; it may use its assets charged in the ordinary course of its business .

Crystallisation of Floating charge :

A Floating charge becomes fixed or crystallizes in the following cases :

1. When the money becomes payable under a condition in the debentures and the debenture holder takes some step to enforce the security ;
2. When the company ceases to carry on the business ; and
3. When the company is being wound up .



DISTINCTION BETWEEN MORTGAGE AND CHARGE :

S.No	MORTGAGE	CHARGE
1	Transfer of Interest in the property made by the mortgagor as a security for the loan	Not a transfer of any interest in the property though it is security for payment of the amount .
2	Created only by act of parties	Created by either act of parties or by operation of law
3	Mortgage deed must be registered and attested by two witnesses	Need not be made in writing , need not be attested or registered .
4	The mortgagor can foreclose the mortgaged property	Charge holder cannot foreclose though he can get property sold as in simple mortgage
5	The transferee of mortgaged property from the mortgagor can only acquire the remaining interest of the mortgagor and is only bound by the mortgage	Charge cannot be enforced against a transferee for consideration without notice
6	There can be security as well as personal liability . In fact the absence of personal liability is the principal test that distinguishes a charge from simple mortgage	In charge created by act of parties the specification of the particular fund or property negatives a personal liability and the remedy of the charge holder is against the property only .

(Concluded)

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