NEWSLETTER

MAY 2025

VASAI BRANCH OF WIRC

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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CA Daya Amit Bansal

Mobile No. : 89760 74320
E-mail : cadaya2011@gmail.com

Chairperson
Vasai Branch of WIRC of ICAI

Greetings to all!

I trust this message finds you well. On behalf of the Chairperson and the entire team of the Vasai Branch of WIRC of ICAI, I am delighted to share the highlights of our vibrant May 2025, a month filled with enriching experiences, dynamic learning, and joyful engagement.

With the aim of striking the right balance between professional growth and personal well-being, we successfully conducted a series of impactful events throughout the month.

We began with a practical and forward-looking webinar on “How to Automate Your Accounting using Zoho Books”, empowering participants to embrace technology in their practice. This was followed by a technical session on “CONCURRENT AUDIT”, offering valuable insights into audit procedures and compliance.

A special highlight was the seminar on “Professional Opportunities in RERA Registration, Compliance, Certification & Audit,” which opened new avenues for members exploring niche areas of practice.

To promote health and mindfulness, a Virtual Yoga Session was organized, receiving enthusiastic participation. Meanwhile, the “Champions Trophy” Cricket Tournament brought together members in a spirit of fun and sportsmanship.

For our CA Foundation students, the Mock Test Series II proved to be a helpful step in their exam preparation. And for our esteemed CA members, the International Study Tour to Bali offered an excellent blend of learning, networking, and cultural exploration — a truly memorable experience.

A heartfelt thank you to all speakers, participants, volunteers, and the organizing team. Your energy, dedication, and active involvement made each event a resounding success.

We look forward to your continued support and participation as we move ahead with the same enthusiasm and unity.

Warm regards,

CA Daya Amit Bansal

Chairperson

Vasai Branch of WIRC of ICAI

CA Lakshmikant Hebare

Mobile No. : 8329594778
E-mail : ca.lakshmikant@gmail.com

Taxpayers often face financial constraints around the due date for filing GSTR-3B, particularly after incurring fixed business expenditures such as salaries, rent, and creditor payments. Delays in receipt of payments from debtors — including government departments and large corporates — due to agreed turnaround times (TATs) or administrative bottlenecks further strain liquidity.

Consequently, taxpayers may be unable to discharge their GST liability by the due date, although they usually make the payment — along with applicable interest and late fee — before the end of the month and file the GSTR-3B thereafter.

During this interim period, tax authorities often begin pressuring taxpayers to file returns and clear liabilities. In doing so, various recovery mechanisms under the Central Goods and Services Tax Act, 2017 (CGST Act) are triggered. However, in many cases, the departmental actions are procedurally flawed or legally untenable.

This article critically examines the statutory mechanisms adopted by the department and evaluates their legality and procedural propriety, supported by relevant case law.

1. Notice under Section 46 – Valid Initiation

Section 46 of the CGST Act provides for issuance of a notice to a registered person who fails to furnish a return under Section 39 (GSTR-3B), requiring them to file the return within 15 days.

This notice is typically auto-generated by the GSTN system without manual intervention and serves as the legitimate starting point for initiating recovery proceedings for non-filers.

Legally Valid – This is the correct procedure for initiating compliance from a return defaulter.

2. Recovery under Section 75(12) read with Section 79 – Legally Flawed if Return is Not Filed

- In practice, many officers invoke Section 75(12) read with Section 79 to initiate recovery even when the GSTR-3B is not yet filed.
- Section 75(12) deals with recovery of self-assessed tax that remains unpaid as reflected in filed GSTR-3B and GSTR-1.
- Section 79 lays down various modes for recovery, such as attachment of bank accounts or deduction from receivables.

However, a plain reading of Section 75(12) makes it clear that it applies only to self-assessed tax in **"filed"** returns. The use of the term "filed" is crucial — if the return is not filed, the liability is not yet crystallized for the purposes of this provision.

Therefore, invoking Section 75(12) in such cases is bad in law.

Additionally, issuing notices under Section 75(12) either:

- before a notice under Section 46, or
- during the 15-day period granted under Section 46

...violates the procedural sequence laid down in the statute.

3. **Best Judgment Assessment under Section 62 – Valid Only After Lapse of Section 46 Timeline**

Section 62 allows the proper officer to pass a best judgment assessment order in case of non-filing of returns, based on available data (e.g., GSTR-1, GSTR-2B).

However, this can only be done after the expiry of the 15-day period from issuance of notice under Section 46. Premature action under Section 62 renders the order procedurally invalid.

This principle has been upheld in multiple judicial pronouncements:

Xestion Advisor Pvt. Ltd. v. Additional Commissioner Grade II

Writ Tax No. 1465 of 2024 (Allahabad High Court, decided on 09-04-2025)

"Where an order was passed under Section 62 creating demand against the assessee, but the notice under Section 46 was issued four days after the assessment order, such order suffered from serious infirmity due to non-compliance with principles of natural justice and statutory procedure. Accordingly, both the assessment and appellate orders were set aside."

Vinman Constructions Ltd. v. State of Jharkhand

W.P. (T) No. 786 of 2021 (Jharkhand High Court, decided on 22-02-2022)

"Where an assessment order under Section 62 was passed without issuance of notice under Section 46, such order was quashed due to procedural irregularity."

Conclusion

Taxpayers and tax professionals must exercise heightened vigilance while responding to recovery notices or assessment orders where statutory procedures are not followed. Recovery mechanisms must be invoked only after the due process — particularly notice under Section 46 — has been properly completed.

Any deviation from the statutory procedure violates natural justice and exposes the department's actions to judicial scrutiny. Knowing these procedural safeguards empowers taxpayers to challenge arbitrary recovery and uphold legal compliance.

CA Shailesh L. Prajapati

Mobile No. : 9372792283
E-mail : slprajapati2004@yahoo.com
slprajapati@parle-elizabeth.com

Corporate Restructuring and study of Section 79 and Section 72A of the Income Tax Act and corresponding Section in the Income Tax Bill 2025.

Preamble:

This study explores the implications and evolving interpretations of Section 72A and Section 79 of the Income Tax Act, 1961, with particular attention to the amendments proposed in the Income Tax Bill, 2025. Section 72A facilitates the carry-forward of losses and unabsorbed depreciation in cases of amalgamations, aiming to incentivise corporate restructuring and the revival of sick units. Conversely, Section 79 imposes restrictions on the carry-forward of losses in cases of substantial changes in shareholding in closely held companies, serving as an anti-abuse measure. The proposed amendments aim to bring clarity and tighten the conditions for availing tax benefits. Section 72A's amendment restricts the carry-forward period of business losses post-amalgamation to the remaining part of the original eight-year window, preventing the indefinite extension of tax benefits. Section 79's corresponding provision in the new Bill redefines beneficial ownership and confirms that once the 51% continuity condition is breached, the right to set off losses is permanently lost. Through the analysis of key case laws and judicial interpretations, this paper underscores the legislative intent to balance the facilitation of genuine corporate restructuring with the prevention of tax avoidance schemes, ensuring more robust and equitable tax compliance mechanisms.

It is a very important part of integrated reporting which combines both financial and non-financial parameters including companies' commercial, ecological and social impact which may be caused by routine business operations.

Section 79 of the **Income-tax Act, 1961** deals with the **set-off and carry forward of losses in case of a change in shareholding of a company.** It primarily applies to closely held companies, restricting them from carrying forward losses if there is a substantial change in ownership.

Section 79 – Restrictions on Carry Forward of Losses in Certain Companies

Section 79 imposes restrictions on the carry-forward and set-off of losses in cases where there is a change in shareholding of a closely held company (i.e., a company in which the public is not substantially interested).

Key Provisions:

1. **Shareholding Requirement:**

o If 51% or more of the voting power changes hands, the company cannot carry forward past losses.

o Exception: Eligible start-ups (under Section 80-IAC) can carry forward losses even if ownership changes, provided all original shareholders continue to hold shares.

2. Exemptions:

- Changes due to **death of a shareholder** or **gift to relatives** do not trigger restrictions.

- Amalgamations or demergers involving **foreign companies** are exempt if **51% of shareholders remain the same**.

- Companies undergoing restructuring under the **Insolvency and Bankruptcy Code, 2016** are also exempt.

On the other hand, **Section 119 of the proposed Income-tax Bill, 2025** introduces **new administrative powers for tax authorities**, allowing them to issue directions and relax provisions in certain cases to ensure smooth tax administration.

The Proposed Bill carries two major changes in the corresponding Section 119 from the existing Income Tax Act, 1961.

1. There is an amendment in the language from "person who beneficially held shares of the company' to ' beneficial owner shares of the company'. Many a time a question that has often come up before the Indian judiciary is whether beneficial ownership can be said to have remained unchanged if the registered owner of shares, holding more than 49% of the voting power, has changed. There are contrary view being taken in the different High courts for the beneficial ownership. One interpretation is taken in Mumbai High Tribunal in the case of Tainwala Trading and Investments C. Limited Vs ACIT [2012] 22 taxmann.com 68 (Mum)] in relation to Section 79 is that a person is said to be a beneficial owner of shares when they are held by someone else on his behalf, meaning thereby that the registered owner is different from the actual owner. This is aligned with the view of Delhi Bench of the Tribunal in case of ACIT vs WSP Consultants India Private Limited [[2022] 140 taxmann.com 65 (Delhi-Tribunal)].

2. Conditions under which losses can be carried forward and set off against future income. Under the existing framework, this benefit of carry forward and set off is available if at least 51% of the voting power is beneficially held by same share holders who held the shares on the last day of the year in which the loss was incurred. There was ambiguity regarding whether the right to carry forward and set off losses would be restored if the shareholding was subsequently restructured to meet 51% threshold in any future years of setting off such loss. The Mumbai bench of the Tribunal in Sodexo India Services Private Limited Vs. PCIT (TS-79-ITAT-2023 (Mum)], held that Section 79 of Income Tax Act, 1961 gets attracted in the year in which set off is claimed and not in the year when the shareholding of the company changes.

The Proposed Bill clarifies that once there is a change in shareholding beyond 49% compared to the year in which the loss was originally incurred, the right to carry forward and set off the loss is permanently lost. This means that even if the shareholding is later restored to meet the 51% requirement, the ability to utilize the carry-forward loss is not reinstated.

As per Section 119 3 (a), in case of change in shareholding of a company, not being a company in which public are substantially interested, during any tax year, loss brought forward from any preceding tax year shall not be allowed to be set off against the income of the said tax year and subsequent tax years unless the following conditions are satisfied:--

If the beneficial owners of shares of the company carrying at **least 51%** of voting power, as **on the last day of tax year in which loss was incurred**, shall continue to be the beneficial owner of shares carrying at least 51% of voting power, as on the last day of the **tax year in which such change in shareholding takes place**

Section 72A of the Income-tax Act, 1961 deals with the **carry-forward and set-off of accumulated losses and unabsorbed depreciation** in cases of **amalgamation or business reorganization.** It allows certain companies undergoing mergers to continue benefiting from tax losses, provided they meet specific conditions.

Section 116 of the proposed Income-tax Bill, 2025, introduces **new provisions related to corporate restructuring,** aiming to streamline tax benefits while preventing misuse. The amendments seek to **restrict the indefinite carry-forward of losses,** ensuring they are utilized within a defined period.

The proposed changes could impact **mergers and acquisitions,** particularly in cases involving distressed assets.

Section 72A – Carry Forward and Set-Off of Losses in Amalgamation

Section 72A provides tax benefits to companies undergoing **amalgamation, demerger, or business reorganization.** It allows the **carry-forward and set-off of accumulated losses and unabsorbed depreciation** of the amalgamating company by the amalgamated company, subject to certain conditions.

Key Provisions:

1. **Eligible Companies:** The section applies to companies engaged in **industrial activities, banking, shipping, or hotel businesses.**

2. **Conditions for Availing Benefits:**

- The amalgamating company must have been engaged in business for at least **three years** before amalgamation.
- The amalgamated company must continue the business of the amalgamating company for at least **five years.**
- The amalgamated company must fulfil prescribed conditions related to employment and asset retention.

3. **Restrictions:**

- Losses and depreciation can only be carried forward if the amalgamation is **genuine** and not for tax avoidance.
- Special provisions apply to **public sector companies undergoing strategic disinvestment.**

Section 72 A : Proposed amendment in Finance Bill 2025

At Present, before the proposed amendment, IT Act provides that the unabsorbed business losses can be carried forward for eight financial years succeeding the year in which the loss is incurred. In the case of amalgamation, IT Act provides that subject to the satisfaction of certain conditions, the unabsorbed business losses of the amalgamating company shall be regarded as the business loss of the amalgamated company for the year in which the amalgamation is effected while this helps in incentivizing the revival of loss making business, it could also potentially lead to unintended evergreening of losses from the income tax point of view.

Finance Bill 2025 has proposed to end the fresh life of eight years for carried forward of business losses by providing that in case of amalgamation, unabsorbed business losses will be allowed for only the remainder period, i.e the period remaining out of the eight years from the year in which the business loss is incurred. This is proposed to apply to any amalgamation which is effected on or after 1st April 2025.

Conclusion

The analysis of Sections 72A and 79 of the Income Tax Act, 1961, along with the proposed revisions in the Income Tax Bill, 2025, reveals a deliberate shift towards refining the tax benefits associated with corporate restructuring. Section 72A has traditionally enabled the revival of distressed businesses by allowing the carry-forward of business losses and unabsorbed depreciation in cases of genuine amalgamations. However, the current amendment introduces a critical limitation: such losses can now only be carried forward for the remaining portion of the original eight-year period, even post-amalgamation. This move prevents the indefinite postponement of tax liabilities and curbs the evergreening of losses.

Similarly, Section 79, which governs the carry-forward of losses amid shareholding changes, has been a source of judicial debate due to the ambiguity between registered and beneficial ownership. The updated provision in the 2025 Bill addresses this by emphasizing beneficial ownership and disallowing loss carry-forward if continuity in beneficial holding drops below 51%, even temporarily. This clarity strengthens anti-abuse provisions and aligns judicial interpretations under a unified statutory framework.

Collectively, these amendments represent the government's intention to support genuine business reorganizations while simultaneously preventing tax avoidance. The jurisprudence evolving around these sections demonstrates an increasing judicial focus on substance over form, particularly in the evaluation of beneficial ownership. As corporate India adapts to these reforms, careful planning will be essential to ensure compliance and the optimal use of available tax provisions. This balance between facilitation and regulation underscores a maturing and more nuanced Indian tax regime.

Disclaimer:

This document is intended solely for academic and informational purposes and does not constitute legal, financial, or professional tax advice. While every effort has been made to ensure the accuracy of the content based on the prevailing provisions of the Income Tax Act, 1961 and the proposed Income Tax Bill, 2025, the author does not assume any responsibility for errors, omissions, or any consequences arising from the use of this information. Readers are advised to consult qualified tax professionals or legal advisors before making any decisions based on the contents of this paper. Legislative changes or judicial rulings may alter the interpretations discussed herein.

CA Shilpa Goyal

Mobile No. : 8169480861
E-mail : cashilpaska@gmail.com

Understanding Rule 86B of CGST: What It Means for Businesses

Rule 86B under the **CGST Rules, 2017** has stirred discussion among taxpayers. It **limits** the use of **Input Tax Credit (ITC)** for paying GST liabilities, **mandating that at least 1% must be paid in cash**.

Who Does It Apply To?

This rule affects businesses with a **monthly taxable supply exceeding ₹50 lakh**. They **cannot use ITC to cover more than 99% of their tax liability**—even if they have sufficient credits.

Why Was It Introduced?

The government aims to **curb tax evasion and fraudulent ITC claims**, ensuring businesses contribute cash payments instead of relying solely on credit.

Exceptions to the Rule

Some businesses and individuals are exempt, including those who:

- Paid **over ₹1 lakh in income tax** in the last two years
- Received **₹1 lakh or more in refunds** due to exports or inverted tax structure
- Have already **paid 1% in cash this financial year**
- Are **government departments or PSUs**

Business Impact

1. **Increased Working Capital Requirements**

   Since businesses must pay **at least 1% of their GST liability in cash**, even if they have sufficient **Input Tax Credit (ITC)**, it **reduces liquidity**. Companies that rely heavily on ITC for tax payments now need to **maintain additional cash reserves**, affecting their financial planning.

2. **Impact on Small & Medium Enterprises (SMEs)**

   While the rule primarily targets **large taxpayers** (those with taxable supplies exceeding ₹50 lakh per month), SMEs that **fall just above this threshold** may struggle with compliance. Many businesses operate on **tight margins**, and this rule **adds financial strain**.

3. **Reduced ITC Utilization**

   Previously, businesses could **fully utilize ITC** to offset their tax liabilities. Now, with the **1% cash payment mandate**, companies must **rethink their tax strategies** and ensure they have enough liquidity to meet compliance requirements.

4. **Fraud Prevention & Tax Evasion Control**

   The rule was introduced to **curb fraudulent ITC claims** and prevent businesses from using fake invoices to evade taxes. While it has helped **reduce tax fraud**, genuine businesses may find it **burdensome**.

Failure to follow would lead to?

Failure to comply with **Rule 86B** under the **CGST Rules, 2017** can lead to serious consequences, including penalties and legal action. Here's what happens if a taxpayer does not make the required **1% cash payment**:

1. **Interest on Unpaid Tax**

   If the taxpayer **fails to pay GST as per Rule 86B**, they may be liable to pay **interest** on the unpaid amount. The standard interest rate is **18% per annum** on the outstanding tax liability.

2. **Penalty Under Section 122 of CGST Act**

   Non-compliance with GST payment rules can attract penalties under **Section 122** of the **CGST Act**. The penalty can be:

   - **10% of the tax due** or
   - **₹10,000**, whichever is higher.

3. **Suspension of GST Registration**

   If a taxpayer **repeatedly violates GST rules**, authorities may **suspend or cancel their GST registration**, preventing them from conducting business legally.

4. **Legal Action & Prosecution**

   In cases of **intentional tax evasion**, authorities may initiate **prosecution** under GST laws, leading to **fines or imprisonment** in extreme cases.

How to Automate Your Accounting using Zoho Books 1st to 3rd May 2025

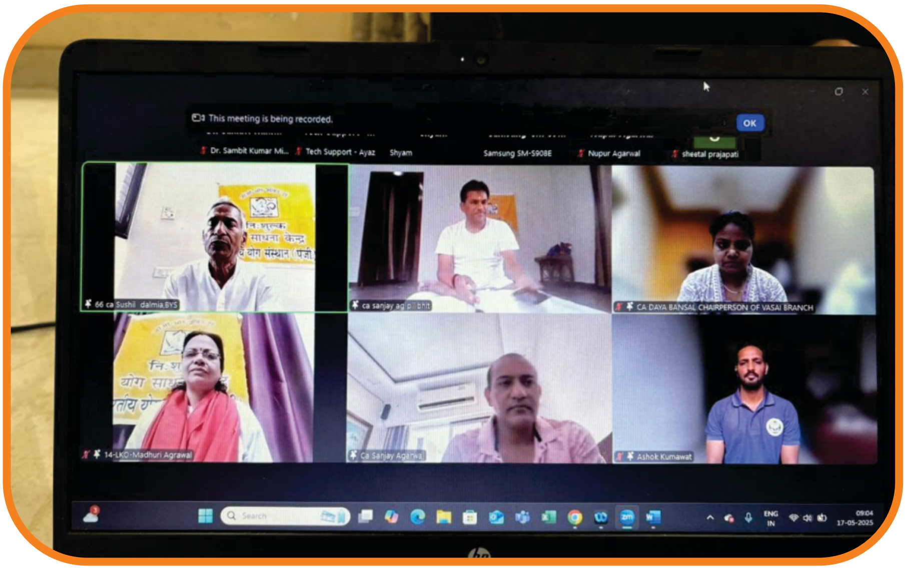
LOL@ICAI – Laugh Out Ledger
4th may 2025

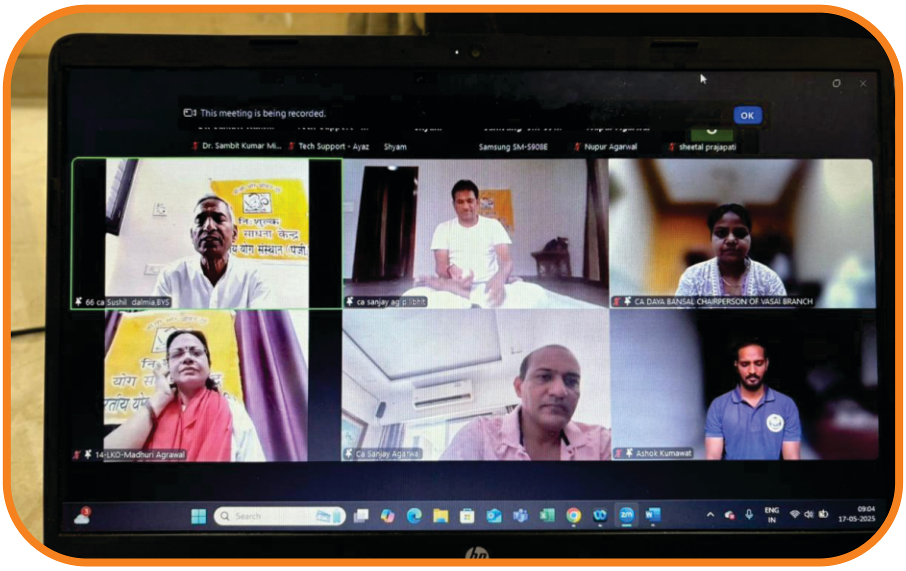
Concurrent Audit
3rd,4th 10th 11th 17th & 18th May 2025

Professional opportunities In Rera Registration Compliance Certification & Audit 11th May 2025

Champions Trophy
17th May 2025

Virtual Yoga Session
17th May 2025





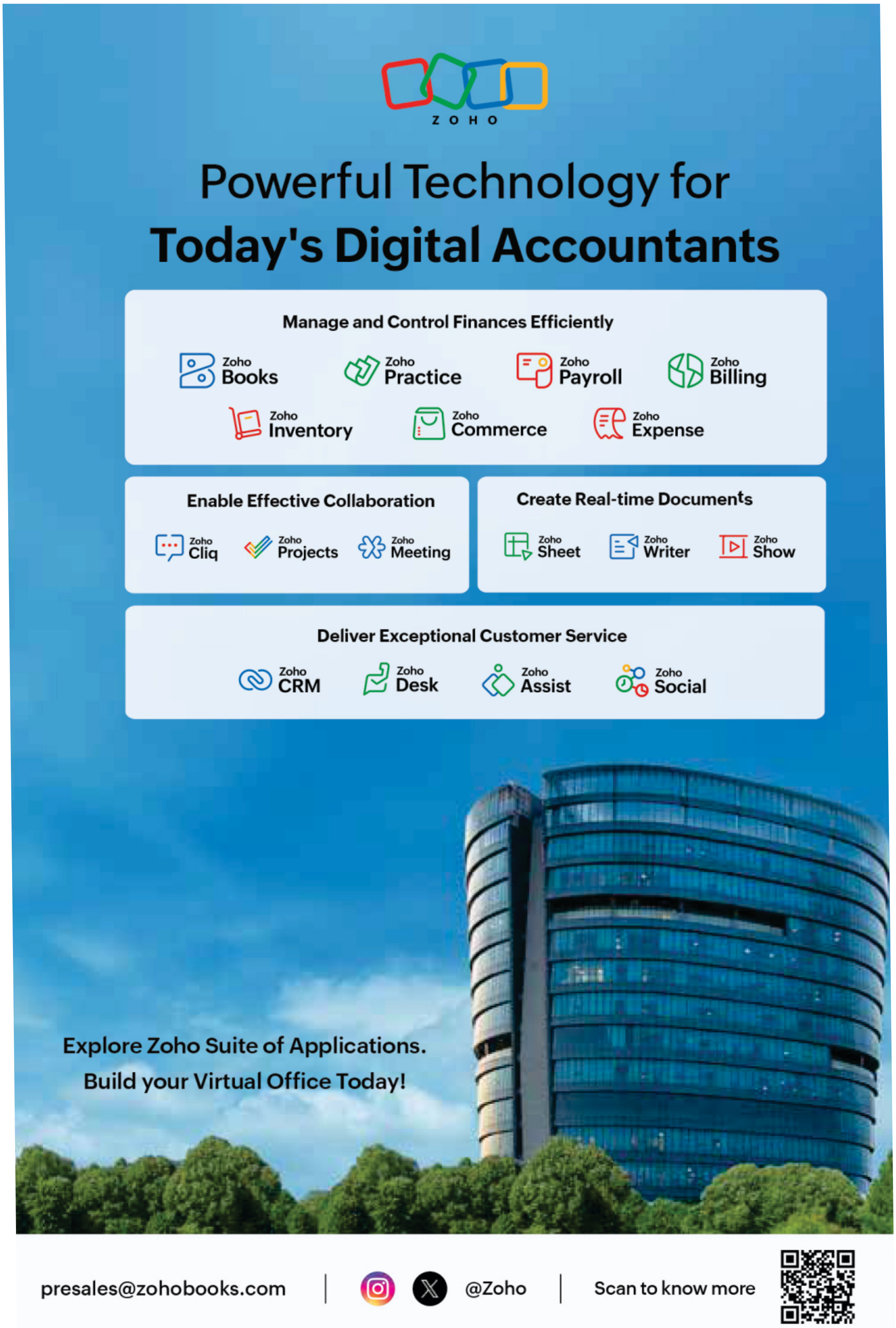
Learning Seminar
18th May 2025

"International Study Tour at BALI"
24th to 27th May 2025

PUBLIC OUTREACH PROGRAM
24th May 2025

Upcoming Events

Name of the Seminar, Lecture Meeting & Events etc.
Seminar on Scaling Up Audit Quality For Non-Corporate Entities
Seminar on Income Tax amendments for the AY 2025-26
Seminar on scaling up Audit Quality for non-Corporate Entities
Masterclass on GST Appellate Tribunal Advocacy
CA Day Celebration
Certification Course on AI
Yoga Week celebration



Editor: CA Daya Amit Bansal, Published by Vasai Branch of Western India Regional Council of The Institute of Chartered Accountants of India

The Institute of Chartered Accountants of India,
Vasai Branch of WIRC
Address: Maxus Mall, B Wing, 7th Floor, Above Maxus Banquet Hall, Temba Road, Bhayandar (West) Thane-401 101.
Contact: 9029858900/8655068901/8976068902 | Email: vasaibranch@gmail.com | Website: https://vasaibranchicai.com/