

# E - NEWSLETTER

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EXCELLENCE...>>>



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President, ICAI



CA. Naveen N. D. Gupta  
Vice-President, ICAI

MARCH 2017



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(Setup by an Act of Parliament)



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**CA. R. JEGADEESH** | Chairman  
0/2 Near ICAI Bhavan, Old Natham Road,  
Opp. Bolamanthiram School, Madurai – 625 014.  
Office : 04546-254234  
Mobile : 94433 84627  
Email : ranajegadeesh@yahoo.co.in



**CA. T. MARIAPPAN** | Vice Chairman  
Yogananda & Ram – Chartered Accountants  
79 Bharathiar Road, Ground Floor,  
Jaihindpuram, Madurai – 625 011.  
Office : 0452-2624070  
Mobile : 99401 56514  
Email : tmariappan\_madurai@yahoo.co.in



**CA. S. PONSINGH JOHNSON MATHURAM**  
Secretary  
11A/2 Manjanakara Street, I Floor,  
Madurai – 625 001.  
Office : 0452-2337359  
Mobile : 99944 10111  
Email : spon Singh@yahoo.co.in



**CA. P. VENKATACHALAM**  
Treasurer  
12 Perumal Bavan, 7th Street,  
Subramanipuram, Kamikudi – 630 002.  
Office : 04565-226207  
Mobile : 98942 36207  
Email : venkatavm\_kkd@yahoo.com



**CA. T. BALASUBRAMANIAN**  
SICASA – Chairman  
No 61, Naicker New Street, II Floor,  
Madurai – 625 001.  
Office : 0452-2622319  
Mobile : 98655 85552  
Email : tbslsu79@gmail.com



**CA. A. K. ABINAYASRI** | Editor  
AG-01, Mithra Block, Agrini Apartment,  
78 TPK Road, Andalpuram,  
Madurai – 625 003.  
Office : 0452-4504490  
Mobile : 99440 56295  
Email : abinayasri2018@gmail.com



**CA. K. S. CHANDRASEKARAN**  
Member  
108, Kamarajar Salai,  
Madurai – 625 009.  
Office : 0452 4372044  
Mobile : 94422 77963  
Email : kscca01@yahoo.co.in



**CA. N. CHIDAMBARAM**  
Immediate Past Chairman  
2/231, Malligai Cross Street,  
Gomathipuram, Madurai – 625 020.  
Office : 0452-4396113  
Mobile : 94432 79133  
Email : nchidambaram.ca@gmail.com



**CA DUNGAR CHAND U JAIN**  
Ex-Officio  
70 Naicker New Street, II Floor  
Madurai – 625 001.  
Office : 0452-4372000  
Mobile : 98945 05007  
Email : dungarchand@hotmail.com

EDITOR : CA A. K. ABINAYASRI

## EDITORIAL BOARD :

CA JEGADEESH R  
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## Content

Managing Committee	01
Chairman's Message	02
Articles	
Interesting cases in Capital Gain	03
Analysis of Goods Definition in Model CGST/SGST Law	05

Excel Tips	08
Event Gallery	10
Monthly Events	11



Beloved Senior Members of the profession,  
Respected Past Chairmen of Madurai branch,  
Esteemed Colleagues and my Dear friends.....

It is indeed a great honor to become as the Chairman of this prestigious Madurai Branch of SIRC of ICAI. I would like to extend my hearty gratitude for reposing confidence in me by handing over the baton of Leadership of Madurai Branch, which I take with folded hands and address you for the first time as Chairman of this illustrious Branch of ICAI.

I understand and I am aware of the fact that many towering personalities have occupied the chair of leadership in this branch. That reminds me of the excellence, dedication and commitment of the pioneers, who set a wonderful record for me, to observe and follow their footsteps.

Madurai branch has seen more than 30 chairmen in its history. As far as this branch is concerned, I am just another chairman in the line. But for me, this is the most exciting, most rewarding, most meaningful, most challenging one time life opportunity. For me it is a dream come true situation and for this, I remain grateful all my lifetime.

What should I do for those who have reposed their faith in me and rewarded me with honour and dignity associated with this chairmanship?

I will be failing in my duty if my performance is below the benchmark. I will be failing in my duty if I do not come out with commendable & meaningful programs for this year.

Yes, I realize that my new responsibility brings both opportunity and challenges. But I hope that I will continue to enjoy your faith, affection, love & support... and I have no doubt that we can reach our collective goals together.

In the words of **Robert F. Kennedy**:

**"Few will have the greatness to bend history itself, but each of us can work to change a small portion of events. It is from numberless acts of courage & belief that human history is shaped."**

With great sense of responsibility, we have planned various innovative programs for members, students and stakeholders for this year and I will share with you such programs from time to time. I invite suggestions from all of you to make every program and event a grand success. As the saying goes, coming together is beginning, keeping together is progress and working together is success.

All our efforts are basically on an ongoing process. That means we have to try our level best to reach the ultimate. Until then we will not rest. That is why the theme for this year becomes a driving force. The theme is **"Striving for Excellence"**. Our slogan for attending meetings and events shall be **"On time Everytime"** and our slogan for all our proceedings shall be **"First Things First."** Therefore, I appeal all of you to be punctual and methodological in all our endeavor.

Dear colleagues, I am quite confident that your involvement in various initiatives of the branch will give me inspiration to put in more energy and to take the profession to new heights. This is a joint effort. I seek your support and enterprising ideas to translate the dream into reality.

Let me conclude with these words...

**"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."**

Come on friends, let us achieve further success and mark our significant.

With Regards,

**CAR JEGADEESH**  
**CHAIRMAN**



### Capital Gains on conversion of leasehold property rights to freehold property rights:

The Allahabad High Court in the case of **CIT V. Smt. Rama Rani Kalia (2013) 358 ITR 499** held that where the Leasehold Rights are converted into Freehold Right, this type of conversion would not result into any improvement of title and would have no effect on the taxability of profits. In this case the property owned by the assessee was held as lessee since 1984 and the property was transferred on March 31, 2004 after the Leasehold Rights in the property were converted into Freehold Rights. Still for the purpose of determining their Short or Long-term Capital Gains would depend upon the original purchase date and not the date on which the property was converted into Freehold. The hon'ble judges further held that the conversion of the rights of the lessee in the property from Leasehold to Freehold was only a matter of her rights in the property but this would not have any effect on the taxability of Capital Gains from such property which was related to the period over which the property is held. In this case it may be noted here that the original property which was leasehold was purchased on July 7, 1984. The Freehold was converted on 29.3.2004 and sold on March 31, 2004 and it was held that the gain for the above would be Long-term Capital Gain.

### No Capital Gains on adjustment of shares among family members:

The Karnataka High Court in the case of **CIT v. R. Nagaraja Rao (2013) 352 ITR 565** held that mere partition is not treated as a transfer and in a family settlement which is recorded one. It is nothing but a partition. After relying on a decision of the Karnataka High Court in the case of **K.N. Madhusudhan** the hon'ble judges were of the view that the word "transfer" does not include partition or family settlement as defined under the Act. It is well-settled that a partition is not a transfer. What is recorded in a family settlement is nothing but a partition.



**CA. P.V. RAJARAJESWARAN**

Every member has an anterior title to the property which is the subject-matter of a transaction, that is, partition of a family arrangement. So there is an adjustment of shares, crystallization of the respective rights in the family properties, and, therefore, it cannot be construed as a transfer in the eye of law. When there is no transfer, there is no capital gains and, consequently, no tax on capital gains is liable to be paid. The Tribunal on a proper consideration of the entire material on record has categorically held that the transaction in question is a family arrangement. There is no transfer, there is no capital & therefore, there is no liability to pay capital gains tax.

### Reference to departmental valuation officer for capital gains purpose:

The Bombay High Court in the case of **CIT v. Puja Prints (2014) 360 ITR 697** has held that reference to the Income-tax Departmental Valuation Officer can only be made in case where the value of the Capital Asset as shown by the assessee is lower than the fair market value as on 1.4.1981. It was further held that where the value of the Capital Asset shown by the assessee on the basis of approved Valuation Report was more than the fair market value and reference to the Valuation Officer was not valid.

**Compensation paid to tenants for delivering vacant possession:**

The Madras High Court in the case of CIT v. Spencers and Co. Ltd. (No. 3) (2013) 359 ITR 644 held that where the agreement did not provide for any obligation on the assessee to settle claim of the tenant for getting vacant possession and the compensation which was paid by the assessee to the tenant for delivering the vacant possession was not to be treated as compensation of development right but it would be treated as cost of improvement and would be entitled to indexation benefit.

**Whether land and building can be bifurcated:**

Shri Kikimal K Chhabria V Asst Commissioner of Income tax Mumbai 2015 ITAT Mumbai-When the second floor of the house is sold and building was treated as Depreciate asset, can land be bifurcated and whether this can be treated as long term capital asset. Held yes.

Commissioner of Income Tax Coimbatore - Vs - K.Jayakumar IN THE HIGH COURT OF JUDICATURE AT MADRAS Pronounced on 04.03.2015. **Whether State PWD rate can be adopted for valuation of residential house property. Held yes.**

Section 54, read with section 54D, of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residential house (**Deduction wrongly claimed**) - Assessment year 2009-10 - Whether where assessee fulfilled conditions prescribed in section 54 for claiming deduction, merely because assessee had inadvertently made claim under a wrong section i.e., section 54D, same could not be a ground to deny benefit of deduction which was otherwise allowable to him - Held, yes. **Circular No. 14 (XL-35), dated 11-4-1955.** [2015] 56 taxmann.com 221 (Pune - Trib.) IN THE ITAT PUNE BENCH 'A' Income-tax Officer, Ward- 1 (3), Nashik v. Anirudha Ashok Jajoo

**In whose name the property is to be purchased:**

For claiming deduction of capital gains under section 54F, new residential house need not be purchased by the assessee in his own name. CIT vs Kamal Wahal (2013) 30 taxman.com

**Wrong title:**

Section 2(14) read with sections 45 and 56, of the Income-tax Act, 1961 - Capital gains - Capital asset (Immovable property) - Assessment year 2008-09 - Assessee's books had shown long-term capital gains from unauthorizedly encroached school land for which he had no title/right - Whether 'property of any kind held' as per definition of 'capital asset' in section 2(14) means property legally held by assessee and not property illegally encroached by him - Held, yes - Whether capital gains under section 45 accrues only if there is a sale or any transfer of capital asset - Held, yes - Whether since assessee did not have legal right or title over property in question, there was no capital asset owned by assessee within meaning of section 2(14) and, therefore, there was no question of any sale or transfer of capital asset to claim capital gain - Held, yes - Whether such gain would be assessed as income from other sources - Held, yes. [2015] 58 taxmann.com 227 (Mumbai - Trib.) IN THE ITAT MUMBAI BENCH 'B' Income-tax Officer, 21(3)(1), Mumbai v. Bhagwan T. Fatnani.

**Holding period:**

When property is held as stock in trade is converted into investment, to ascertain whether the gain is long term or short term, the period of holding as investment alone is to be considered. C.S. Holdings Pvt Ltd. ACIT (2014) 63 SOT 98 (Chennai)



## ANALYSIS OF GOODS DEFINITION IN MODEL CGST / SGST LAW :

### GOODS SEC 2(48):

Goods means every kind of movable property other than

- > Money
- > Securities

but includes →

- > Actionable claim
- > Growing Crops
- > Grass and things

attached to or forming part of land and which are agreed to be severed before the supply or under the contract of supply

### Goods [Article 366 (12A) of the Constitution]

Goods includes

**All materials, commodities and articles.**

### Definition of Goods in earlier Laws :

#### Goods[Sec 2(d) of CST Act, 1956]

“Goods” includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities;

#### Goods [Sec 65B(25) of Finance Act, 1994]

Goods means every kind of movable property other than actionable claim and money and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

#### Goods[Explanation to Sec 2(D) of the Central Excise Act 1944]

Goods include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.



CA J. BALASUBRAMANIAN CA G. SARAVANA KUMAR



### Analysis:

Goods is the most noteworthy definition in Model GST Law as Supply of Goods is the taxable event on which GST is being levied.

### Comparison of definition of Goods in Model GST Law with that of earlier laws:

#### Central Sales Tax Law:

In CST Act, the definition of Goods unambiguously excludes newspapers, but the definition in the model GST law articulates all moveable property as goods and moreover the Article 366(12) of the Constitution also defines Goods includes all materials, commodities and articles. Thus, the taxability of Newspapers is not being excluded in Model GST Law from taxation purview.

#### Service Tax Law:

The same definition as in Service Tax law was replaced in the Model GST Law with one distinction that Actionable claim was in exclusive clause but here it is inclusive clause.

#### Central Excise Law:

In central excise the Goods are not defined directly, but in an Explanation to the definition of Excisable Goods the interpretation of the Goods being given. Moreover, the following 2 conditions have been mentioned in Central Excise Law for treating an article to be goods which is not being emphasized in Model GST Law.

- > Goods must be bought and sold for a consideration
- > Goods must be deemed to be marketable

The above 2 conditions are not specified in the Model GST Law the reason because the supply of Goods or Services for both consideration as well as non-consideration is also liable to GST as it is a deemed supply.

### Analysis of Goods in Model GST Law:

As per Model GST Law the definition of Goods includes all kinds of moveable property, actionable claim, growing crops and grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply. However the definition precisely excludes money and securities.

### GENERAL INCLUSION:

### MOVEABLE PROPERTY:

The word "moveable property" is not defined in the GST Law, but as per Black Law's dictionary the word movable is that which can be changed in place, as movable property; or in time, as movable feasts or terms of court. Similarly the word property means the ownership of a thing is the right of one or more persons to possess & use it to the exclusion of others.

As per **Section 2(36) of the General Clauses Act, 1897**, movable property is defined as property of every description **except immovable property**. Thus, conjointly reading the above meaning with reference to the definition available in the **Article 366(12) of the constitution** all articles, commodities & materials which is moveable is treated as Goods for the purpose of GST.

### SPECIFIC INCLUSION:

#### ACTIONABLE CLAIM:

Actionable Claim is precisely included in the definition and hence it is goods. The term Actionable Claim is not defined in CGST / SGST Act, but as per **Sec 3 of the Transfer of Property Act, 1882** –

Actionable Claim means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in possession either actual or constructive, of the claimant, which the civil courts recognize as affording grounds of relief whether such debt or beneficial interest be existent, accruing or conditional or contingent.

#### ILLUSTRATIONS FOR ACTIONABLE CLAIM:

- > An Unsecured Debt
- > A sale of a lottery ticket also amounts to transfer of an actionable claim as held in **Sunrise Associate Vs. Govt. of NCT of Delhi, 2006 (5) SCC 603**.
- > Right to recover insurance money or a partner's right to sue for an account of a dissolved partnership or the right to claim the benefit of a contract not coupled with any liability as decided in **Union of India Vs. Sarada Mills (1972) 2 SCC 877, 880**.
- > A claim for arrears of rent has also been held to be an actionable claim as decided in **State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh 1952 SCR 889, 910**.
- > A right to the credit in a provident fund account has also been held to an actionable claims as decided in **Official Trustee, Bengal Vs. L. Chippendale AIR 1944 (Cal.) 335**.



*Congratulations*

**To CA Dunga Chand Jain** from Madurai for being elected as Secretary of SIRC of ICAI. May this success leads to a greater achievement in the years to come. Congratulations for present and upcoming successes.



**GROWING CROPS, GRASS & THINGS...:**

All the growing crops, grass and things attached to or forming part of the land agreed to be severed before supply or under the contract of supply. On plain reading of this part of the definition it is understood that the scope of covering the Agricultural produce are also covered by this part of the definition. But, however, separate definition is available for Agriculture and Agriculturist under **Sec 2(7) & Sec 2(8) of CGST/SGST Act**. Moreover, the Agriculturist is not considered as a taxable person as per Schedule V to the model CGST / SGST Law. Though, it seems to be clear that the Agricultural produce will not be made liable to GST as per the above points, it is better to exclude from the definition of Goods through an explanation.

**SPECIFIC INCLUSION:****MONEY:**

The term Money is defined in Model GST Law, however we can import the definition of money as available in Service Tax Law as per which Money means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any similar instrument but shall not include any currency that is held for its numismatic value. Thus all transaction in money is neither goods nor services as in the definition of service also money is precisely excluded. Hence, supplying of the money is not liable to GST.

**SECURITIES:**

The word "Securities" is not defined in the GST Law, but as per **Sec 2(h) of the Securities Contracts Regulation Act, 1956**, Securities include –

- Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- Derivative;

- units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- Security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- Units or any other such instrument issued to the investors under any mutual fund scheme; Explanation. -For the removal of doubts, it is hereby declared that "securities" shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938.
- Any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;
- Government securities;
- Such other instruments as may be declared by the Central Government to be securities;
- Rights or interest in securities;

**Presently, Securities Transaction Tax is payable on the following securities as per Securities Contracts (Regulation) Act, 1956:**

- Shares, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate
- Derivatives
- Units or any other instrument issued by any collective investment scheme to the investors in such schemes
- Security receipt as defined in section 2(zg) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- Government securities of equity nature
- Rights or interest in securities
- Equity-oriented mutual funds



Since Securities Transaction Tax is being paid on the above securities which is not subsumed in GST, the Model GST Law specifically excludes Securities in the definition of Goods and thereby supply of the same shall not be liable to GST.

### AMBIGUITY OF GOODS Vs. SERVICES WHETHER SETTLED NOW:

Lot of legal wrangles were pending before the Judicial forum for some 2 to 3 decades whether certain transaction to be treated as goods or services, now the Model GST Law attempts to settle the same by mentioning the certain matters to be treated as Supply of Goods as well as Supply of Services in Schedule II to the CGST / SGST Act.

**The following are the matters which are treated as supply of Goods :**

- Any transfer of the title in goods

- Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed.
- Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.
- Transfer or disposal of Business Assets whether or not for a consideration.
- Sale of business assets of a taxable person by any other person to recover debt shall be deemed to be Supply of Goods.
- Goods forming part of the assets of any business carried on by a taxable person, who ceases to be so, shall be deemed to be supplied by him in course of furtherance of his business immediately before he ceases to be a taxable person, unless the business is transferred as a going concern to another person or the business is carried on by a personal representative who is deemed to be a taxable person.

## LEFT, RIGHT, MID FUNCTIONS

### LEFT Function :

This function displays a specified number of characters from the left hand side of a piece of text.

**Syntax = LEFT (OriginalText, NumberOfCharactersRequired)**

### RIGHT Function :

This function displays a specified number of characters from the right hand side of a piece of text.

**Syntax = RIGHT (OriginalText, NumberOfCharactersRequired)**

### MID Function :

This function picks out a piece of text from the middle of a text entry. The function needs to know at what point it should start, and how many characters to pick. If the number of characters to pick exceeds what is available, only the available characters will be picked.

**Syntax = MID (OriginalText, StartNumber, NumberOfCharactersToPick)**



**CA DUNGAR CHAND U JAIN**

Example :

Data	Result	Formula Used	What the formula does ?
Madurai Branch of SIRC of ICAI	Madurai	=LEFT(A2,7)	Results in 7 characters from beginning
Madurai Branch of SIRC of ICAI	ICAI	=RIGHT(A3,4)	Results in 4 characters from end
Madurai Branch of SIRC of ICAI	Branch	=MID(A4,9,6)	helps pick specific characters from the cell, say 6 characters from 9th Character

The Left function and Right function are simple functions which helps pick the characters from the beginning or ending of the characters in a cell as the case may be, whereas the Mid function helps pick characters in-between the cells.

**For instance, in a Permanent Account Number (PAN), the possible results of 4th character of PAN can only be any one of the following :**

C	Company
P	Person / Individual
H	HUF(Hindu Undivided Family)
F	Firm
A	Association of Persons (AOP)

T	AOP (Trust)
B	Body of Individuals (BOI)
L	Local Authority
J	Artificial Juridical Person
G	Govt

**To test the 4th character is valid or not, we can use the mid function as follows :**

S. No.	PAN	Result	Formula Used
1	ABCPD1234D	P	=MID(B2,4,1)
2	CEDCJ8568J	C	=MID(B3,4,1)
3	BBBDF4567A	D	=MID(B4,4,1)

Serial No. 3 gives the result as "D" which is not a valid 4th character. Thus it is evident that the PAN BBBDF4567A is invalid.

Note : All the PAN mentioned in the above example are dummy only and the algorithm to check if the PAN itself is valid is not made known to general public for security purposes. Hence we can use Excel to curb only apparent structural mismatch.

## 10.02.2017 - Analysis of Budget 2017



## 18.02.2017 - Overview Of TDS



## HONOURING PASS OUTS



### *Congratulations*



To **CA S. SRIDHARAN** - Ponniyin Selvan is a historical fiction based on the life of Raja Raja Cholan. Hearty congratulations to CA S Sridharan for translating a literary work -Ponniyin Selvan from the original language to English language . The people who cannot read tamil has been given an excellent oppurtunity to know about the classic work.

## 27.02.17 - INSTALLATION FUNCTION



## MARCH - 2017 EVENTS

Date	Topic	Speakers	Registration Fees	Time	CPE Hours
04-03-2017	<b>Union Budget - 2017</b>	1. CA M Subbiah, Madurai. 2. CA P. V.Raja Rajeswaran, Madurai. 3. CA M. Selvakumar, Madurai.	Rs. 200/-	05.00 PM - 08.00 PM	3 Hours
08-03-2017	<b>Unleashing the power within women CA's</b>	1. CA J Sumathy, Madurai. 2. CA T. Manimegalai, Madurai.	Nil	05.30 PM - 07.30 PM	2 Hours
11-03-2017	<b>Half day seminar on Assurance Standards a Key for Quality</b>	1. CA M P Vijay kumar, Chennai. 2. CA P. K.Ranganathan, Chennai	Rs. 300/-	10.00 AM - 02.00 PM	4 Hours
18-03-2017	<b>One day seminar on Bank Audit Seminar</b>	1. CA. Ananthan, Bangalore 2. CA G Parthiban, Madurai 3. CA. M. Lakshmanan, Madurai 4. CA Lalitha, Bangalore	Rs. 1400/- Members Rs. 1000/- ARS & New Members	10.00 AM - 05.00 PM	6 Hours
25-03-2017	<b>Study Circle Meeting on Planning of Bank Branch Audit and Documentation</b>	CA V.K. Viswanathan, Madurai.	Rs. 300/-	06.30 PM - 08.30 PM	2 Hours

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**Published by :** CA Ponsingh , Mobile- 99944 10111, Secretary on behalf of MBSIRC of SIRC of ICAI, ICAI Bhawan, Old Natham Road, Opp. Balamandiram School, Madurai -625014, Phone : 0452-2640968, Email : madurai@icai.org, www.madurai-icai.org ,  
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