THE

BHUBANESWAR BRANCH OF EASTERN INDIA REGIONAL COUNCIL OF

# Institute of Chartered Accountants of India



# Newsletter March 2013



BHUBANESWAR BRANCH OF EIRC OF ICAI ICAI BHAWAN, PLOT NO: A/122/A

NAYAPALLI

BHUBANESWAR-751012 Ph No: 0674-2392391/2390773 E-Mail: <u>bhubaneswar@icai.org</u> Website: <u>http://www.bbsricai.org</u> CA. Ramesh Chandra Pradhan, Chairman

CA. Partha Sarathi Mishra, Vice Chairman

CA. Sanjay Kumar Agrawalla, Secretary

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CA. Vijaya Batth, Chairperson, EICASA

CA. Jyotirmay Pradhan, MC Member

CA. Raja Narayan Tripathy, MC Member

CA. Siddharth Ranjan, MC Member

#### Editorial



Dear Members.

This is my first communication to you as the chairman; so, first I express my heartfelt gratitude to the elected members of the Management Committee 2013-2016 for electing me as chairman for the year 2013-14 and my sincere gratitude to members at large for electing me in the Management Committee. I begin with a quote:

"No bird soars too high if he soars with his own wings."
- William Blake

It is with the support and wishes from all the members and my colleague in the Management Committee I would like to carry the tradition that has been laid down by our predecessor to greater height. I personally believe in Teamwork, Transparency, Co-ordination and would like to imitate the same in my functioning as the Chairman of the Branch. As a Chairman I have visualized a few areas where the focus would be emphasized which includes taking forward the initiative of the Branch in setting up of a Centre of Excellence, Improving the infrastructural facilities for Students, organizing seminars on topics/issues of Auditing/Taxation/IT for members and lastly to project the Branch as the mouthpiece of the members, both in practice and service by representing the grievances at/before various forums/Authorities.

The new Management committee took office at a time when Finance Bill 2013 had already been presented by Hon'ble Finance Minister and we had to organize a "Budget seminar 2013" which was already overdue and within a short span we did organize the seminars and it was overwhelmingly attended by the members. Similarly the Branch organized Bank Audit seminar 2013 during the last week of March 2013 in spite of the fact that there were confusion as to Bank audit allotment procedure and eligibility of the firm ,but as it is well known that the "show must go on" the branch did organize the seminar and it was well responded by members.

Further, I would like to mention here that the Branch made a representation to HU & D Departments for relaxing certain terms & condition for the engagement of Chartered Accountants firms to participate in the double entry based accounting system in 109 No's of ULB's in Odisha to enable small and medium CA firms to participate and the Authority favourably accepted the same by amending turnover and No's of Partners requirement and also by extending the last date for submission. This effort resulted in many Small & medium firm participating in the process and I further reiterate that many such initiative would be taken by the Branch in coming days for the betterment of the profession at large.

With this I would like to sum up the message and look forward to the continuous support and good wishes from each and every member in practice/service to take forward the initiative which would benefit the members.

CA. Ramesh Chandra Pradhan Chairman

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CA. Ramesh Chandra Pradhan

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Published by

Ramesh Chandra Pradhan Chairman

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#### BHUBANESWAR BRANCH OF FIRC

#### An analysis of controversy regarding "paid" or "payable" u/s Section 40(a)(ia)

Sub-clause (ia) was inserted in clause (a) of section 40 of Income-tax Act'1961 vide Finance Act, 2004 w.e.f. 01.04.2005. As per this sub-clause if any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction has not been paid then disallowance u/s 40(a)(ia) is made. The rigours of this sub-clause have been lessened to a great extent by amendments made through subsequent Finance Acts.

It is apparent that the sub-clause has used the word "payable". Hence, in this article an endeavour has been made to analyse whether disallowance can be made under this sub-clause only in respect of amount "payable" as at the end of the year on which TDS has not been deducted or the disallowance has to be made both in respect of amount "paid" and/or "payable".

Till the judgment in the case of Merilyn Shipping & Transports v. Additional Commissioner of Income-tax, Range-1, Visakhapatnam [2012] 20 taxmann.com 244 (Visakhapatnam), different benches of ITAT gave differing views as to whether the disallowance u/s 40(a)(ia) can only be made in respect of expenses remaining payable as on the close of the year or it can be made in respect of "paid" during the year as well as expenses remaining "payable" as on the close of the year.

In the following cases it was held that disallowance u/s 40(a)(ia) can only be made in respect of expenses remaining "payable" as on the close of the year and it cannot be made in respect of expenses "paid" during the year.

- Jaipur Vidyut Vitaran Nigam Limited v. ACIT (Jaipur Bench);
- Teja Construction v. ACIT [2010] 39 SOT 13 ii. (HYD.)(URO);
- K. Srinivasa Naidu v. ACIT (Hyderabad Bench); 111.
- Sanap Agroanimals Pvt. Ltd. v. ACIT (Nasik iv. Pune Bench);
- SRS Real Estate Limited v. Addl. CIT v. (Faridabad);

- Shah Charulatha Milind v. ITO (Pune Bench); vi.
- Alishan Realcon Pvt. Ltd. v. ITO (Khurda -V11. Cuttack Bench);
- Sri Narayanbhai Dahyabhi Prajapati v. ITO V111. (Ahmedabad);
- ix. G.F. Securities v. **DCIT** (ITA No. 1215/Mad./2009) (Chennai Bench)

On the contrary, in the following cases it has been held that disallowance u/s 40(a)(ia) can be made in respect of expenses remaining "payable" as on the close of the year as well as in respect of expenses "paid" during the year.

- Jahangir Biri Factory (P.) Ltd. v. Dy. CIT [IT Appeal No. 1173 (Kol.) of 2008, dated 27-3-2009];
- Shree Choudhary Transport v. ITO [2009] 27 ii. SOT 76 (Jodh.)(URO);
- ITO v. Dhirubhai Dajibhai Patel [IT Appeal 111. No. 2820 (Ahd.) of 2008, Dated 30-6-2010;
- Gaonkar Mines v. Addl. CIT [2011] 45 SOT iv. 437/9 taxmann.com 33 (Bang.);
- Dy. CIT v. Ashika Stock Broking Ltd. [2011] 44 SOT 556 (Kol.);
- Rajendra Kumar v. Dy. CIT [2010] 39 SOT vi. 373 (Bang.);
- Parinika Construction V11. (P.) Ltd. 1081/Hyd./2009 dated 16-7-2010.
- Viii. ITO v. M. Shankar [2010] 127 ITD 316
- Savala Associates v. ITO [2010] 35 SOT 148 ix.
- Dy. CIT v. Umang Dairies Ltd. [2010] 36 SOT х. 383 (Delhi).

In order to settle the matter once for all, the Hon'ble President of ITAT constituted a special bench in the case of Merilyn Shipping & **Transports** to decide the following question:

> "Whether section 40(a)(ia) of the Incometax Act can be invoked only to disallow expenditure of the nature referred to therein which is shown as "payable" as on the date of the balance sheet or it can be invoked also to disallow such expenditure which become payable at any time during the



relevant previous year and was actually "paid" within the previous year?"

The special bench has held that section 40(a)(ia) is applicable only to expenditure which remains "payable" as on the date of Balance Sheet and cannot be invoked to disallow the amounts which have already been "paid" during the year without deducting tax at source. [Merilyn Shipping & Transports v. Additional Commissioner of Income-tax, Range-1, Visakhapatnam [2012] 20 taxmann.com 244 (Visakhapatnam)].

The aforesaid decision of Special Bench of ITAT has subsequently been followed in the case of Rajamahendri Shipping & Oil Field Services Ltd. v. Additional Commissioner of Income-tax [2012] 20 taxmann.com 474 (Visakhapatnam). The Revenue went to High Court against the judgment of Merilyn Shipping case and Hon'ble Andhra Pradesh High Court has granted interim suspension of the judgment of Merilyn Shipping case vide its order dated 08.10.2012.

So, now the question arises as to whether the interim suspension granted by Hon'ble High Court undermines the binding effect of the decision as laid down by the Hon'ble Special Bench of ITAT? In other words, whether the authority of that decision as a precedent is undermined?

It is heartening to note that in the case of Incometax Officer v. MGB Transport in I.T.A No.

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2280/Kol/2010, it has been held by Hon'ble Kolkata Bench of ITAT on 15.03.2013 as under:

"we are of the view that the decision of the special bench of this tribunal in the case of Merilyn Shipping & Transports (supra) still holds ground and accordingly, TDS provisions will apply, for the purpose of invocation of the provisions of section 40(a)(ia) of the Act, only on the amounts remained "payable" at the end of financial year and not on the "paid" amounts."

It is pertinent to mention here that Hon'ble Kolkata Bench of ITAT relied heavily on the judgment of Hon'ble Supreme Court in the case Shree Chamund Mopeds Ltd. vs. Church of South India Trust Association, Madras, AIR 1992 SC 1439, 1444 wherein the Apex Court has analysed the difference between "stay of operation" of an order and "quashing of an order" and held that 'stay of order' of an appellate authority / court by a higher court means that the order passed by the appellate authority / lower court still continues to exist in law in spite of the 'stay' and its existence is not destroyed.

It is therefore felt that the order of special bench of ITAT in Merilyn Shipping case still holds the field and can very well be relied by 1st and 2<sup>nd</sup> appellate authorities in deciding cases u/s 40(a)(ia).

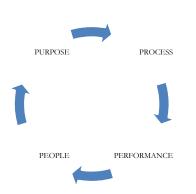
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#### BHUBANESWAR BRANCH OF EIRC

Whistle Blowing: A Frabjous Opportunity for Enhancing Corporate Governance "Our lives begins to end the day we become silent about things that matter"



Corporate Governance is about commitment to values and ethical business conduct. Good governance starts with setting a "tone at the top" and honouring the responsibilities that arise from the trust placed in them by investors.

The 4Ps of Corporate Governance, **People, Purpose, Process and Performance** has rightly identified that business cannot run only with profits, but there must be recognition for human aspects as well.

Among the various persons involved in strengthening corporate governance, the following are key persons whose role plays an important bearing on the system (though not necessarily in that order)

- 1. Board of Directors
- 2. Independent Directors
- 3. Auditors
- 4. Promoters
- 5. Employees

A notable feature of the aforesaid key persons is that the **first four** occupy the position on one side of the river while the **employee** stands alone on the other bank.

Despite this disparity in role playing, the write up seeks to examine the power and the opportunity available to the employee(s) in enhancing corporate governance through whistle blowing, because a culture of silence is the foundation

When to blow the whistle?

Knowledge of inappropriateness

Bad Claims

Knowledge of impending doom

When you know something is going on that should not happen

When you know that incorrect details have been given

When you know the project is doomed for failure and can prove yet no one else realises

for corruption and whistle blowing is all about breaking the silence.

# What is whistle blowing and who is a whistle blower?

Whistle blowing is like letting out the cat or bring out the truth to the whole world which was till now not known and access to such information was till such time very limited and restricted. When whistle blowing occurs, it generally indicates an ethical failure at the organisational level.

A whistle blower is an employee of an organisation or company who speaks out about the organisation in an effort to correct perceived wrongdoing.

#### How is it a frabjous opportunity?

The word *frabjous* means informal, splendid or magnificent. *It is a blend of fair, fabulous and joyous*, a word coined by *Lewis Carroll*, author of "Alice in Wonderland". Invariably, it is the employee, who is the first to realise or suspect that a malpractice is going on. It gives the employee a fair chance to expose, a fabulous opportunity to bring out the truth and a joyous feeling of accomplishing an indomitable activity of the organisation.

#### When is the right time to blow the whistle?

The answer is depicted in the following chart.



Malcolm Salter, Professor with Harvard Business School, has noted that some disasters help trigger deep learning and change. He says, "Political Scientists have the Bay of Pigs; Engineers have the Corporations Challenger disaster and Enron." Adding to this, whistle blowers have the Satyender Dubey case in India

#### What does the success of whistle blowing lie on?

The lack of identity protection serves as a disincentive to employees and other individual stake holders to come forward and report malpractice,

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which is why the whistle blower is in a very vulnerable position

Employees can be the first to realise that something is wrong in the workplace

Life can only be understood backwards, but it has to be lived forwards.

Whistle blowing is part of the check and balance of an organization to ensure that "they are doing right by their actions."

Sector wise examples of whistle blowing in organisations across the globes

	Area/Sector	Whistle Blower	Organisation	What was blown?
A	Accounting	Cynthia Cooper Sharon Watkins	WorldCom, US Enron	Exposed corporate financial scam, largest accounting fraud ever.
G	Gasoline	Myron Mehlman	Mobil	The toxicologist warned that the company's gasoline contained benzene in excess of 5%
Н	Hacking	Shawn Carpenter	Sandia National Laboratories	Group of hackers penetrating hundreds of computer networks at US defence contractors, military installation and govt agencies to access sensitive information
Ι	Insurance	Wendell Potter	CIGNA	He was the head of corporate communications, one of the largest health insurance companies in US and testified against the HMO industry in the US Senate as a Whistleblower.
N	Nuclear Power	Karen Silkwood	Kerr-Mcgee	Labour Union Activist and chemical technician testified to Atomic Energy Commission alleging that safety standards have slipped. She however died under mysterious circumstances. This act of whistle blowing was dramatized in film, "Silkwood"
О	Oil	S Manjunath	Indian Oil Corporation	Spoke against adulteration of petrol,
Т	Tobacco	Jeffrey Wigand	Brown & Williamson	Exposed the Company's practice of manipulating the effect of nicotine in cigarettes. This act of whistle blowing was dramatized in film, "The Insider"
V	Vietnam War	Daniel Ellsberg	US, State Department	Leaked the Pentagon papers containing a secret account of Vietnam War revealing practices of deception by administrators
W	Weapon Exports	Ingvar Bratt	Bofors	He revealed himself as the anonymous source in the Bofors scandal about illegal weapon exports. This act led to a new Swedish law concerning company secrets which is commonly referred to as Lex Bratt.



#### How is whistle blowing connected to corporate governance?

A globally coordinated system of governance, regulation, and oversight is needed to prevent future crises, but with care not to deter innovation.But good governance goes beyond economic progress (or rather, as in this case, the economic progress of the big corporates).

The global "financial tsunami" has far exceeded anybody's imagination.

To implement best practices for corporate governance that promotes integrity, transparency **Bibliography** 

and accountability, the board of directors need to exercise its fiduciary responsibilities in the widest sense of the term.

Whistle blowing is relevant and plays a crucial role in corporate governance. Ethics is not simply a check-the box or create-a-document activity. Good governance balances growth with justice. And that's why accountability, transparency and whistle blowing are critical to ensure a level playing field for all stakeholders in the policy process.

A Corporate's growth, progress, its sustainability and consistency largely depends upon the approach, the value system and practice of governance

The author of this paper is extremely thankful to the following Authors/webpages, whose write ups were useful in creation of the paper:

- 1. Corporate Governance Principles, Mechanisms & Practice by Swami (Dr.) Parthsarathy).( Publisher Biztantra ) Date of Publication 2007
- 2. Excerpts from speech delivered by N.R Narayana Murthy at George Washington University DC, 6 Feb, 2006
- 3. Confessions of an Enron Executive : A Whistleblower's story by Lynn Brewer .
- 4. Wikipedia

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#### ON THE LIGHTER SIDE OF LIFE

#### Now have a laugh at our expense...

A young accountant spends a week at his new office with the retiring accountant he is replacing. Each and every morning as the more experienced accountant begins the day, he opens his desk drawer, takes out a worn envelope, removes a yellowing sheet of paper, reads it, nods his head, looks around the room with renewed vigor, returns the envelope to the drawer, and then begins his day's work.

After he retires, the new accountant can hardly wait to read for himself the message contained in the envelope in the drawer, particularly since he feels so inadequate in replacing the far wiser and more highly esteemed accountant. Surely, he thinks to himself, it must contain the great secret to his success, a wondrous treasure of inspiration and motivation. His fingers tremble anxiously as he removes the mysterious envelope from the drawer and reads the following message:

"Debits in the column toward the file cabinet. Credits in the column toward the window."



#### The Institute of Chartered Accountants of India **Board of Studies**

Launch e-Learning Course for Intermediate (IPC) Course on Students Learning Management System (<a href="http://StudentsLMS.icai.org">http://StudentsLMS.icai.org</a>)

The Board of Studies is pleased to announce the availability of e-Learning facility **Intermediate (IPC)** Course on the Students Learning Management System (LMS) (http://StudentsLMS.icai.org), with an objective to provide quality self-learning facility. This initiative aims to provide quality education for learning, re-learning and revising anytime and anywhere in an affordable manner. The salient features of this initiative are as follows:

- Anytime/ Anywhere Online Learning
- Foundation for understanding concepts and self study of study Materials
- **Examination Oriented Training**
- Online Self-Assessment Quiz
- Quality Lectures contributed by leading Faculty Members
- Uniform training across the country
- Monitoring/ Tracking of Learning

The Intermediate (IPC) Course e-Learning is expected to be enhanced from current 120+ hours to 200+ hours shortly.

Students of the PCC/ IPCC/ Intermediate (IPC) Course of the Institute interested in pursuing the e-Learning course can register themselves on the Students LMS at the following URL and they would be sent an e-Mail providing them the Redeem Code to start accessing this facility.

#### http://StudentsLMS.icai.org

This e-Learning facility would allow students to get the full advantage of the experience of articleship which adds to their worth.

Students are encouraged to make good use of this online resource to have a better understanding of the subjects and enhance preparation for their forthcoming Examinations. We welcome views and suggestions for improvements through feedback form available on the said LMS.

#### Common Proficiency Course (CPC) e-Learning on

Students Learning Management System (http://StudentsLMS.icai.org)

The Board of Studies is pleased to announce the availability of e-Learning facility for Common Proficiency Course (CPC) on the Students Learning Management System (LMS) (http://StudentsLMS.icai.org), with an objective to provide quality self learning facility. This initiative aims to provide quality education for learning, re-learning and revising anytime and anywhere in an affordable manner.

The e-Learning facility for Common Proficiency Course is available in bilingual mode – Hindi and English. Students of the Common Proficiency Course of the Institute interested in pursuing the e-Learning course can register themselves on the Students LMS at the following URL and start using this facility:

#### http://StudentsLMS.icai.org

Students are encouraged to make good use of this online resource to have a better understanding of the subjects and enhance preparation for their forthcoming Examination. We welcome views and suggestions for improvements through feedback form available on the said LMS.

> Director **Board of Studies**

#### BHUBANESWAR BRANCH OF EIRC

Notification for Eligibility Test (ET) for Post Qualification Course on Information Systems Audit (ISA) on Saturday the 11th May, 2013 Last Date for Online Form Submission 30th April, 2013 till 5:30 PM

- 1. The next Eligibility Test for ISA PQC is scheduled to be held on Saturday the 11<sup>th</sup> May, 2013 from 08.00 a.m. to 12.00 p.m. A detailed notification giving list of centers would be hosted on Committee Portal at http://cit.icai.org by 16th April, 2013.
- 2. A list of candidates, who have completed ISA Professional Training from 1st October 2012 to 31st March 2013, would also be hosted by 15th April 2012. In case you do not find your name in the list, kindly forward your request giving requisite details (ISA

No, Membership No., Name, ISA PT Date and City) to isa@icai.org, by 25th April 2013.

- 3. Candidates desirous of taking this ISA ET have to submit the Online ISA ET Form (by giving their ISA No. and password) that would be available on the Committee Portal at http://cit.icai.org from 15th to 30th April, 2013.
- 4. Candidates filling form B or C (2nd or subsequent attempt) have to ensure that their ISA ET Fee of Rs. 500/-(Rupees five hundred only) reaches the following address by the aforementioned last date through Demand Draft/ Pay Order in favour of

"The

Secretary, ICAI", payable at Delhi.

The Secretary

Committee on Information Technology

The Institute of Chartered Accountants of India 5th Floor, Hostel Block, ICAI Bhawan, A-29,

Sector-62, Noida - 201309, India

Phone: 0120 3045 961 Fax: 0120 3045 989 E-mail ID: isa@icai.in

- 5. Applications received after the aforementioned last date would not be entertained under any circumstances and candidates would have to take the ISA ET in Nov, 2013 attempt.
- 6. Result of ISA Eligibility Test on 11th May, 2013 would be announced by 5.00 P.M. on Tuesday the 21st May, 2013.

EVENTS FOR THE MONTH OF APRIL 2013										
Day & Date	Programme	Speaker/ Resource Person	Venue	Duration	CPE Hours	Fees Rs.				
15.04.2013	Seminar on Service Tax & Vat		ICAI Bhawan, Plot No-A/122/1, Nayapalli, Bhubaneswar- 751012	4 Hrs						
27.04.2013	Work shop on IT	An eminent IT Expert	ICAI Bhawan, Plot No-A/122/1, Nayapalli, Bhubaneswar- 751012	10 AM to 6 PM	6	600/-				



#### **Glimpses of Events**

#### Seminar on Union Budget- 2013



CA. Partha Sarathi Mishra, Vice Chairman, Bhubaneswar Branch introducing the guest (L to R): CA. Sanjay Kumar Agrawalla, Secretary, CA. Debendranath Panda, CESAT Member, New Delhi, Sri Jugal Kishore Mohapatra, Additional Chief Secretary, Govt of Odisha, CA. Ramesh Chandra Pradhan, Chairman, Bhubaneswar Branch, CA. Arun Kumar Sabat, Past Chairman, Bhubaneswar Branch and Dr. Rakesh Gupta, ITAT Member, New Delhi



(L to R): CA. Sanjay Kumar Agrawalla, Secretary, CA. Debendranath Panda, CESAT Member, New Delhi, Sri Jugal Kishore Mohapatra, Additional Chief Secretary, Govt of Odisha, CA. Ramesh Chandra Pradhan, Chairman, Bhubaneswar Branch, CA. Arun Kumar Sabat, Past Chairman, Bhubaneswar Branch and Dr. Rakesh Gupta, ITAT Member, New Delhi



Participants of the seminar



CA. S.C. Dhadra, Past Council Member, ICAP fellitating CA. Sunil Kumar Sahoo, Regional Council Member, EIRC in presence of CA. Ramesh Chandra Pradhan, Chairman, Bhubaneswar Branch



CA. Ramesh Chandra Pradhan, Chairman addressing the media during the Budget 2013 Seminar in Presence of CA. Partha Sarathi Mishra, Vice Chairman and CA. Pradeep Kumar Sahoo, Member, Bhubaneswar.



#### Seminar on Bank Audit-2013



CA. Partha Sarathi Mishra, Vice Chairman, Bhubaneswar Branch introducing the guest (L to R) CA. Sanjay Kumar Agrawalla, Secretary, Bhubaneswar Branch CA. Ramesh Chandra Pradhan, Chairman Bhubaneswar Branch, Shri Praveen Gupta, Chief General Manager, State Bank of India, Local Head Office, Bhubaneswar and CA. Rajib Sekhar Saboo, Independent Director. Rank of Barada



(L to R): CA. P. Venugopala Rao, Chairman, Technical Session, CA. Niranjan Joshi, Speaker, Mumbai, CA. Prashant Kumar Bal, Past Chairman & Speaker, Bhubaneswar



CA. Amit Kumar Agarwalla, Treasurer, presenting a bouquet to CA. Rajib Sekhar Sahoo, Speaker



Shri Praveen Gupta, Chief General Manger, State Bank of India, Local Head Office, Bhubaneswar lightening the Inaugural Lamp (L to R) CA. Arun Verma, CA. P.K.Daspattnaik, Past Chairmen, Bhubaneswar Branch, CA. Rajib Sekhar Sahoo, Independent Director, Bank of Baroda, CA. Ramesh Chandra Pradhan, Chairman, Bhubaneswar Branch, CA. Niranjan Joshi, Speaker, Mumbai, CA. Sanjay Kumar Agrawalla, Secretary, Bhubaneswar Branch, CA. B.Manoj Kumar Patro, Past Chairman, CA. Siddharth Ranjan, MC Member, Bhubaneswar Brnach, CA. Prashant Kumar Bal, Past Chairman and Speaker, Bhubaneswar CA. Rajendra Kumar Das, Past Chairman and CA. Raja Narayan Tripathy, MC Members Bhubaneswar Branch



(CA. Vijaya Batth, Chairperson, EICASA presenting a bouquet to Shri Praveen Gupta, CGM, SBI, Local HO



CA. Arun Kumar Verma presenting a memento to Shri Praveen Gupta, CGM, SBI, Local Ho



#### Holi Celebration at Branch







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