

# NOTICES FOR DONATION TO PENNY POLITICAL PARTIES



**CA. PANKAJ SHAH**

*LLB(Hons), BBA, CS, FCA, DISA,  
Insolvency Professional, Registered Valuer (SFA)*

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# Donation to political parties deductible

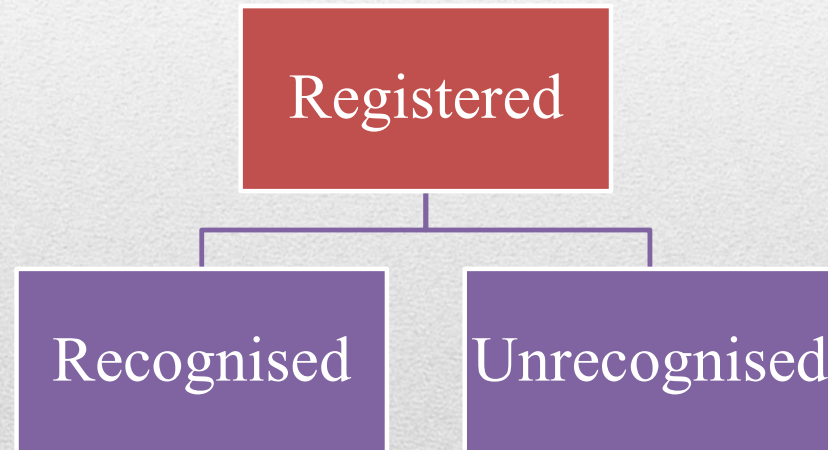
80GGB –  
Indian  
company

80GGC – any  
person except  
local authority

## **Deductions under Income tax**



- *Explanation.—For the purposes of sections 80GGB and 80GGC, "political party" means a political party **registered** under section 29A of the Representation of the People Act, 1951 (43 of 1951).*

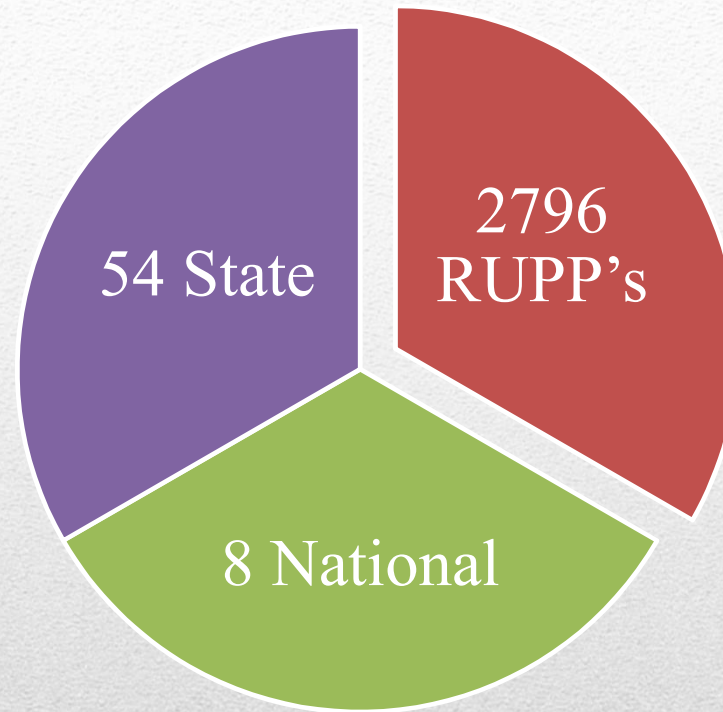


# Section 80GGB/80GGC

- Registered unrecognised parties are those parties which are
  - either newly registered or
  - which have not secured enough percentage of votes in the assembly or general elections to become a state party or
  - those which have never contested elections since being registered.

# Registered Unrecognised Political Parties (RUPP)?





# Registered Unrecognised Political Parties

**Schedule VIA****Deductions under Chapter VI-A (Section)**

<b>TOTAL DEDUCTIONS</b>	<b>a</b>	<b>80C</b>		<b>h</b>	<b>80G</b>		
	<b>b</b>	<b>80CCC</b>		<b>i</b>	<b>80GG</b>		
	<b>c</b>	<b>80CCD</b>		<b>j</b>	<b>80GGA</b>		
	<b>d</b>	<b>80D</b>		<b>k</b>	<b>80GGC</b>		
	<b>e</b>	<b>80DD</b>		<b>l</b>	<b>80RRB</b>		
	<b>f</b>	<b>80DDB</b>		<b>m</b>	<b>80U</b>		
	<b>g</b>	<b>80E</b>					
	<b>n</b>	<b>Total deductions (total of a to m)</b>					

# Disclosure in ITR





Search action in 2021-22

On 23 RUPP

Offices at Ahmedabad

# Income tax Search

### 07.09.2022 Search on 23 RUPP

- 35 bogus intermediaries
- 3 major exit providers

### Incriminating documents

- Bogus donation receipts
- Diaries containing details of commiussion
- Loose papers
- Whatsapp chats
- Statement of persons involved
- Commission 1.5% to 5 %

# Findings in search



- *Election Commission of India does not have power to de-register a political party for non-compliance with the conditions for the grant of such registration*

**INDIAN NATIONAL CONGRESS (I)  
vs. INSTITUTE OF SOCIAL WELFARE & ORS. (SC)  
[2002] 5 SCC 685**

Assessment  
Year 2019-20

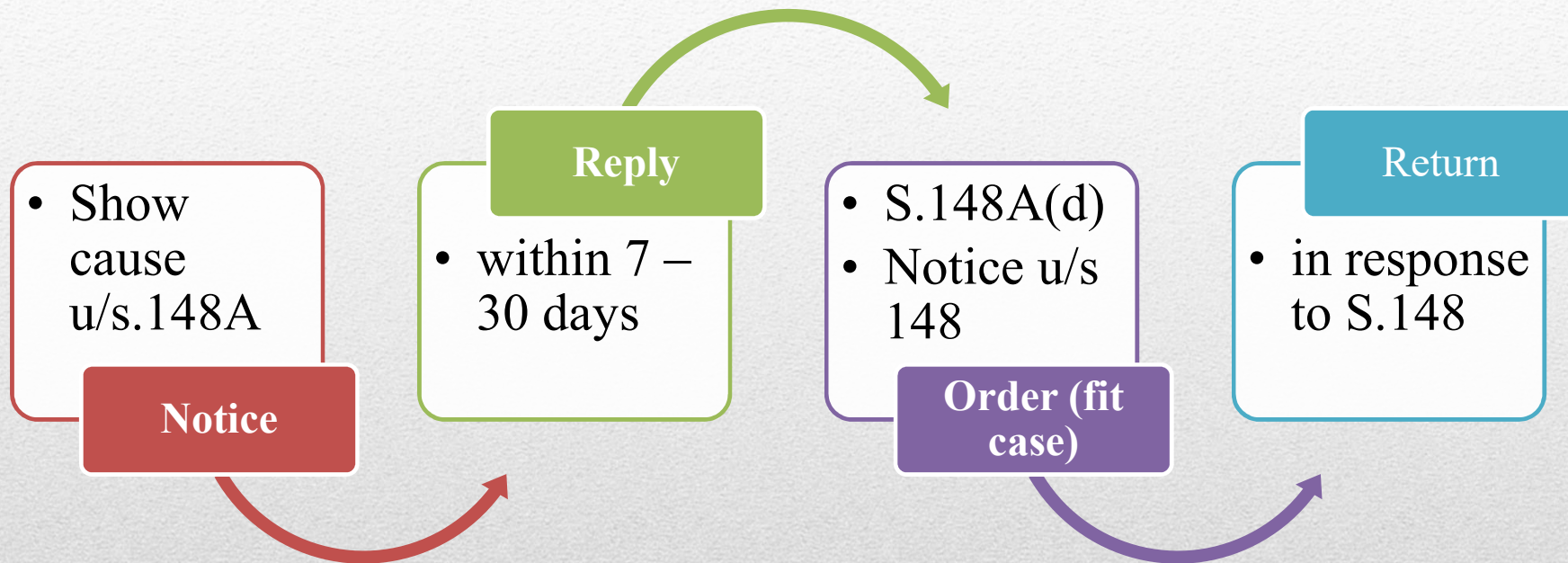
Donations  
ranging from  
Rs.25,000 to  
Rs.5,00,000

Assessee's

Salaried and  
small proprietors

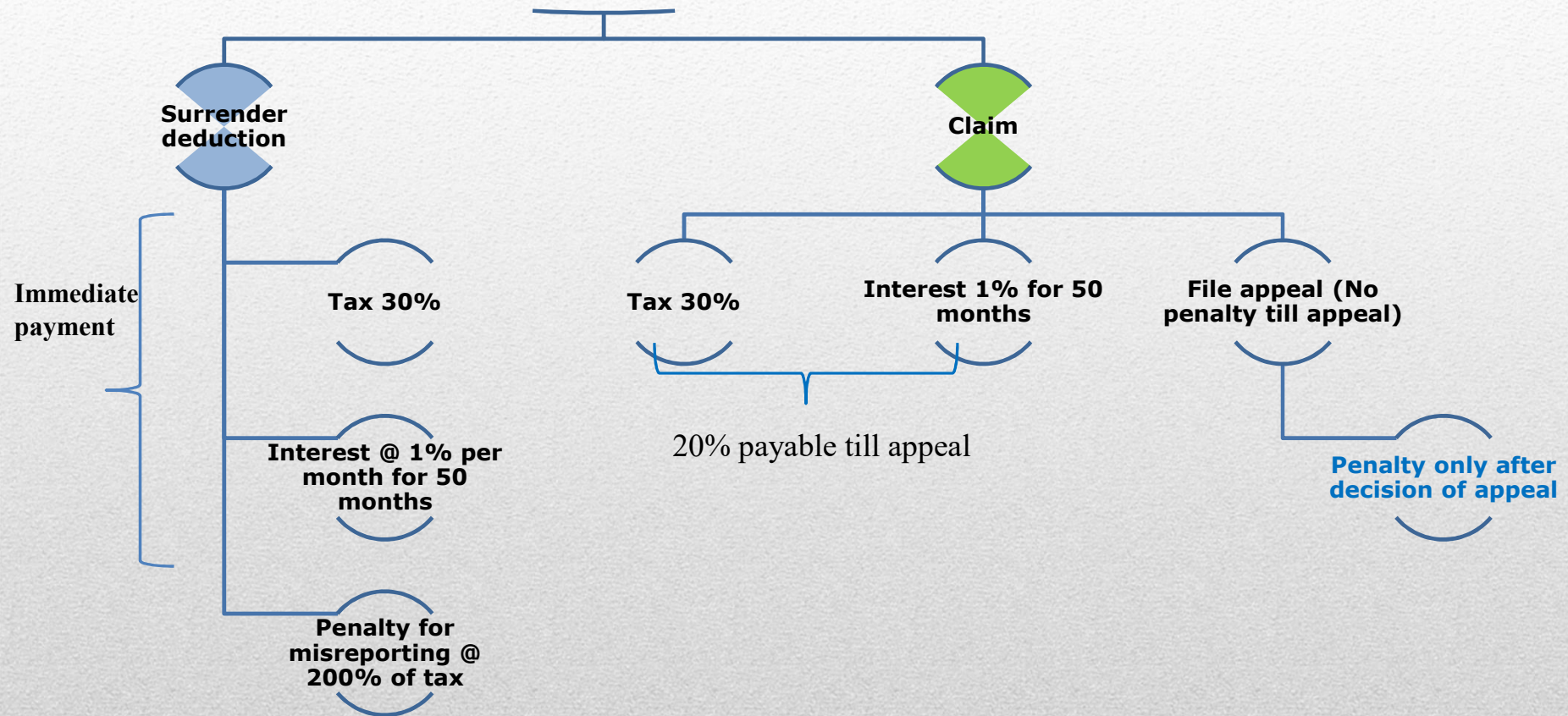
# Reassessment Notices





# Reassessment

## Return in response to Section 148 notice



# Options for AY 2019-20



Particulars	Amount
Donation	100000
Tax	30000
Interest till return u/s 148	15000
Penalty (misreporting)	60000
Total liability	105000
	105%*

*\*the above calculation is an approximate demonstration of impact*

## Impact of Surrender in return

## Certain intermediaries have sent receipts to clients

- Whatsapp
- Email

## Donors have filed complaints

- Ultimate beneficiaries
- Caution to be exercised

# Impact on Intermediaries



AO is  
free to  
ask  
about

- Cash deposit in bank account
- Credits in account
- Source of other investments
- Disallowance of other deductions claimed

## Scope of Reassessment

More than 8 Lakh appeals pending at CIT(A)

Government approach to reduce litigation

- Recent GST amnesty scheme

Common man and small salaried taxpayer involved

Possibility of VSVS-2 cannot be ruled out

# Amnesty Scheme



Litigate or  
surrender

- AY 2019-20
- AY 2020-21

Eligible for  
Updated  
return

- AY 2021-22
- AY 2022-23

# Remedy



# LITIGATION

Rebuttal, Jurisprudence and Representation

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| CA Pankaj Shah | 969 189 3040 | [pankajgshah@gmail.com](mailto:pankajgshah@gmail.com) | Indore |



## Notice u/s 148 of Act

- To be issued by FAO
- Notification No.18/2022 dated 29.03.22

## Incorrect information

- Reasons state X party actual Y party
- Sagar Enterprises vs. ACIT (2002) 257 ITR 335 (Guj) (HC)

## Approval u/s 151

- Specified authority
- Mechanical approval

# Technical flaws in notice

## Why?

- Agenda, Ideology and objectives

## Who?

- Influencer
- Leader

## Mode?

- Cash
- Cheque

# Rationale



Section 68-69D not applicable

Onus on the department to prove

- Accuser to prove
- No name in statement
- Not possible to prove cash return

**Onus to prove**

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Third party material

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Can be used only after confrontation

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Full statements to be demanded

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Name of Assessee in statement?

**C.Vasantlal** [1962] 45 ITR 206 (SC)

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| CA Pankaj Shah | 969 189 3040 | [pankajgshah@gmail.com](mailto:pankajgshah@gmail.com) | Indore |



## LIC of India's 219 ITR 410 (SC)

- *The law does not contemplate or require the performance of an impossible act.*
- *impotentia excusat legem*

No control over political parties

# Doctrine of Impossibility

- *When statements of witnesses are made basis of demand, not allowing Assessee to cross-examine witnesses is a serious flaw which makes order nullity, as it amounts to violation of principles of natural justice*

# **Andaman Timber Industries**

**[2015] 62 taxmann.com 3 (SC)**



- *Entries in loose papers/sheets are irrelevant and not admissible under section 34 of the Evidence Act.*
- *As to the value of entries in the books of account, such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. Even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability;*
- *The Court has to be on guard while ordering investigation against any important Constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence it is not admissible in evidence.*

# **Common Cause v. Union of India**

## **394 ITR 220 (SC)**



# **ACIT V. ARMEE INFOTECH**

[2022] 136 taxmann.com 128 (Ahmedabad - Trib.)



27. The grievance of the Revenue in its appeal for the Asst.Year 2012-13 is that the Id.CIT(A) has erred in deleting disallowance of Rs. 55 lakhs in respect of donation to political parties under section 80GGC of the Act. The grievance of the assessee in its appeal for the Asst.Year 2014-15 is that the Id.CIT(A) has erred in confirming the disallowance of Rs. 5,86,32,892/- which was claimed as deduction under Chapter VIA in respect of donation given to political party and charitable institutions.

28. Brief facts of the case are that in the Asst.Year 2012-13, the assessee has given donation of Rs. 55 lakhs to Rashtriya Komi Ekta Party ("RKE" party for short) which is duly registered with Election Commission of India. Similarly, for the Asst.Year 2014-15, the assessee has given donation to the following parties :

<i>Sl. No.</i>	<i>Name of the Donee</i>	<i>Amount in Rs.</i>
1	Rashtriya Komi Ekta Party	3,00,00,000
2	Akhil Bhartiya Hindu Mahasabha	1,00,00,000
3	Lok Janshakti Party	1,54,00,000
4	Shri Sadvichar Parivar Jankalyan Pashuraksha Charitable Trust	75,00,000
5	Mahavir Shubh Sandesh Jivdaya Panjrapole Charitable Trust	25,00,000
6	Shri Vardhaman Jivdaya Panjrapole Charitable Trust	25,00,000
	Total	6,79,00,000



29. In the Asst.Year 2012-13, the AO has disallowed this donation of Rs. 55 lakhs. However, in the Asstt.Year 2014-15, he disallowed a sum of Rs. 5,46,32,892/- out of total donation made by the assessee. The finding of the Id.CIT(A) while deleting disallowance of Rs. 55.00 lakhs in the Asst.Year 2012-13 reads as under :

"7.1 Decision: I have carefully gone through the appellant's contentions reoroduced herein above. I have also perused the relevant paragraph of the Assessment Order under appeal. Upon perusal of records of proceedings, I find it as a fact that the appellant has given contribution of Rs. 55,00,000/- to Rashtriya Komi Ekta Party, which is a political party duly registered with the Election Commission of India. The necessary documentary evidences in the form of copy of the receipt of the donation given and also evidence regarding registration of the said political party with the Election Commission of India had been furnished by the appellant before the AO in the course of Assessment proceedings and also before me in the Appellate proceedings./The AO's reference in the assessment order to the effect that the said political party has not filed Return of Income for A.Y. 2012-13 will not disentitle the appellant's claim for 'deduction on account of contribution to the political party, when all the conditions prescribed in section 80GGC are duly satisfied. The donation has been made through cheque to a political party approved by Election Commission of India, therefore, the conditions to claim deduction u/s.80GGC are fully complied. Having regard to the totality of the facts and circumstances of the case, I hold that the AO is in error in disallowing claim for deduction on account of contribution to political party which is as per the provisions of section 80GGC. Accordingly, the disallowance made by the AO is hereby deleted and the AO is directed to allow the same. This ground no. 5 is allowed."



30. With assistance of the Id.representatives, we have gone through the record. In the Asst.Year 2012-13, the assessee has given donation to only one party *i.e.* "RKE" whereas in the Asst.Year 2014-15, it has given donation to three political parties *viz.* "RKE", Akhil Bhartiya Hindu Mahasabha, Lok Janshakti Party. Apart from these three political parties, it has further given donation to three charitable institutions *vis.* Shri Sadvichar Parivar Jankalyan Pashuraksha Charitable Trust, Mahavir Shubha Sandesh Jivdaya Panjrapole Charitable Trust, Shri Vardhaman Jivdaya Panjrapole Charitable Trust. Let us take note of section 80GGC :

31. A perusal of the above section would reveal that it provides deduction of any amount of contribution made by an assessee in the previous year to a political party. Only exception provided in this section is that the assessee should not be by a local authority *i.e.* Municipal authority etc. or any artificial juridical person wholly or partly funded by the Government. In other words, donation should not be given by a local authority or by a corporation funded by the Government. Except these two categories of the assessee, if any other assessee made a contribution to a political party, then such contribution would be allowed as deduction. *Explanation* appended to this section further provides the meaning of a political party and it contemplates a "political party" means a political party registered under section 29A of the Representation of the People Act, 1951. The assessee has produced details of payment made through account payee cheques as well as registration certificate of these political parties before the AO. Only exclusion made with effect from 1-4-2014 is that donation should not be made in cash and this clause is not applicable on the facts of the assessee's case, because it has made through account payee cheques. Next category of donee is charitable institution. These institutions got registered under section 12A of the Income-tax Act. Their incomes are to be assessed under sections 11, 12 and 13 of the Act. Their characters/activities have been categorized as charitable by the department itself. They have been granted registration under section 80GGC of the Act for soliciting donation from the assessee, which will be allowed as deduction in the hands of donors. The Id. CIT(A) in the Asst.Year 2012-13 has accepted this fact, and deleted the disallowance.



**32.** The case of the Revenue in the Asst.Year 2014-15 is that the assessee failed to prove, whether ultimately, the donees have used these monies ? The AO has devoted a lot of energy in conducting such inquiry as to how these monies have been incurred by the recipients. To our mind, the authorities below have misdirected themselves. The donees are taxable entities in themselves. If they misused their position and failed to conduct themselves in regard with requirement of law, then this amount could be taxable in his hands. Act nowhere put obligation upon the donor to ensure how the funds are utilized by the donee towards their objects. Due to this reason, we are of the view that whole angle of inquiry at the end of the AO is misdirected. It is for the AO to verify whether these charitable institutions have utilized funds for charitable objects or not, in their own cases, and if they failed to utilize funds for their objects, then their charitable status could be cancelled. Registration under section 12AA could be cancelled as per the procedure contemplated in section 12AA(3) of the Act. The funds which were not used for objects of the Trust, that can be brought to tax under section 13(3) of the Act. A perusal of the scheme of Income-tax Act, it would reveal that once the donation has been made, the donee is not under obligation to keep a track of the donation, and nothing left in his hand which can ask for return of these amounts. There is no such provision provided in the Act. If a duly recognized institution, for the purpose of receiving donation, somebody makes donation and then how the donation would be bogus, if the donee failed to use it for the object which has been made eligible to receive the donation. How the donor could dictate terms after donations are made ? No donee will be under influence of the donor for arranging its affairs. Therefore, there is fallacy in the approach of the Id.AO as well as the Id.CIT(A) for disallowing the donations made by the assessee. We do not find merit in the grounds of Revenue raised in the Asst.Year 2012-13. The Id.CIT(A) has rightly deleted the disallowance of Rs. 55.00 lakhs. This ground of appeal is rejected. On the same analogy, the grounds appeal raised by the assessee in the Asst.Year 2014-15 for disallowance of Rs. 5,86,32,892/- is allowed.



# Thank you

**CA. Pankaj Shah**

[pankajgshah@gmail.com](mailto:pankajgshah@gmail.com)

+91 969 189 3040

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