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BUSINESS ADVISORS

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**April - 2022**

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# Direct Tax Case Laws



## Case Law 1:

**Issue: Whether Subscription received from Indian subscribers by Singapore based co. for its CRM Portal services is 'Royalty' u/s 9(1)(vi) or Article 12 of DTAA**

Assessee is a company incorporated in Singapore and a tax resident of Singapore. It is a leading provider of Comprehensive Customer relationship management services to its customers through its website salesforce.com. Services rendered by the assessee help the client in generating customised reports based on data fed by the client. The access to the assessee's database is for limited duration and the period for which subscription fee is paid by client.

AO was of opinion that above mentioned services are covered under section 9(1)(vi) and Article 12 of DTAA i.e., consideration is paid for Royalty hence TDS @ 10% should have been deducted by Indian Subscriber.

However, assessee contended that above service is not of Royalty nature taking into account definition of Royalty as per DTAA i.e. royalties means payments of any kind received as a consideration for the use of, or the right to use any copyright of a literary, artistic or scientific work, including cinematograph film or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or

scientific experience, including gains derived from the alienation of any such right, property or information or any industrial, commercial or scientific equipment; hence assessee contended no requirement to deduct TDS arises.

ITAT held that assessee does not provide any information concerning industrial, commercial, scientific experience. The assessee only processes the proprietary data of the customers and provides the result in desired forms. Hence, it cannot be said that consideration for CRM services is in the nature of Royalty.

**Deputy Director of Income tax v/s Salesforce.com Singapore Pte.**

# Direct Tax

## CIRCULARS



### S. No    Circulars

#### **1. CIRCULAR NO. 7 OF 2022 - CLARIFICATION WITH RESPECT TO RELAXATION OF PROVISIONS OF RULE 114AAA PRESCRIBING THE MANNER OF MAKING PERMANENT ACCOUNT NUMBER (PAN) INOPERATIVE**

Section 234H read with rule 114AAA provides that where PAN is not linked with Aadhaar by the last notified date i.e. 31st March 2022 then the allotted PAN shall be made inoperative. In case any PAN become Inoperative then it will have following implications:

- The person shall not be able to file return using the inoperative PAN
- Pending returns will not be processed
- Pending refunds cannot be issued to inoperative PANs
- Pending proceedings as in the case of defective returns cannot be completed
- Tax will be required to be deducted at a higher rate as PAN becomes inoperative
- The taxpayer might face difficulty at various other fora like banks and other financial portals, as PAN is one of the important KYC criteria for all kinds of financial transactions.

To ensure smooth application of above-mentioned provisions, CBDT clarified that impact of sub-rule (2) of rule 114AAA i.e., PAN shall become inoperative in case of non-linking with Aadhaar shall come into effect from 1st April 2023 and the period beginning from 1st April 2022 and ending with 31st March 2023 shall be the period during which the said sub-rule shall not have above negative consequence. However, taxpayer shall be liable to pay fee as per rule 114(5A).

# Notifications

## S. No Notifications

### 1. Notification No 23/2022

CBDT has notified Form ITR-7 for those who are required to furnish return under section 139(4A) or 139(4B) or 139(4C) or 139(4D)

### 2. Notification No 21/2022

CBDT has notified various forms for filing of Income tax return for Previous Year 2021-2022 and AY 2022-2023 such as Sahaj ITR-1, ITR-2, ITR-3, SUGAM ITR-4, ITR-5, ITR-6, ITR-V and ITR Ack.

### 3. Notification No 19/2022

The Central Board of Direct Taxes (CBDT) has notified the Faceless Inquiry or Valuation Scheme, 2022 to introduce the Artificial Intelligence for Assessment Proceedings under section 142 of the Income Tax Act, 1961. It will be effective from 30th March 2022.

#### **The Faceless Inquiry or Valuation Scheme, 2022, covers the following:**

- Issuance of notice under section 142(1) of the Income Tax Act
- Making inquiry before assessment under section 142(2) of the Income Tax Act
- Direct the assessee to have his accounts audited under section 142(2) of the Act.
- Valuation officer estimating the value of any asset, property, or investment under section 142A of the Income Tax Act.

Above mentioned points shall be done in a faceless manner via automated allocation in accordance with and to the extent provided in section 144B of the Income Tax Act with the objective to make assessment of assessee's total income or loss "Faceless".

"Automated allocation" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimize the use of resources.

### 4. Notification No 18/2022

The Central Board of Direct Taxes (CBDT) has notified the e-Assessment of Income Escaping Assessment Scheme, 2022 to impart greater efficiency, transparency, and accountability. The Scheme is applicable with effect from 29-03-2022.

The Scheme provides that assessment, reassessment or recomputation under Section 147 and issuance of notice under Section 148 shall be done:

- a) Through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 for issuance of notice, and

# Notifications

## S. No Notifications

- b) In a faceless manner, to the extent provided in Section 144B with reference to making assessment or reassessment of total income or loss of assessee.

### **5. Notification No 17/2022**

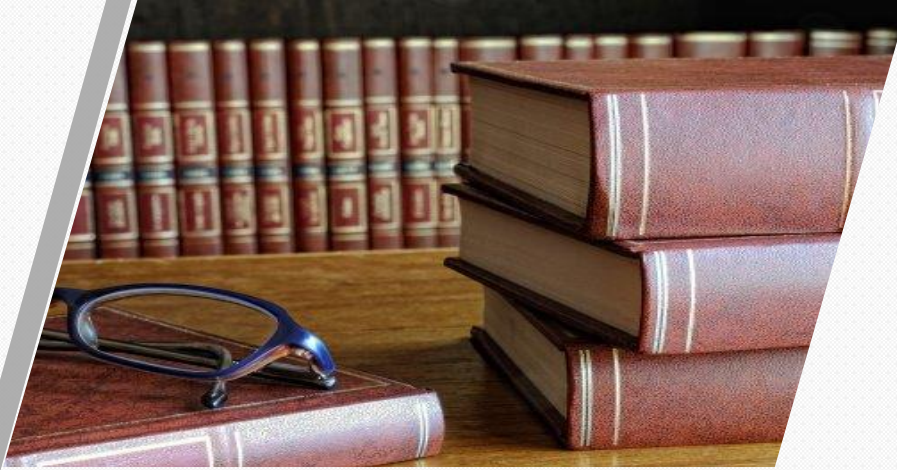
CBDT has notified that those who fails to intimate his Aadhaar number by 31st March 2022, shall be liable to pay fee of Rs 500 in case where such intimation is made within 3 months from 31st March 2022 otherwise Rs 1,000.

### **6. Notification No 15/2022**

The Central Board of Direct Taxes (CBDT) has notified the Faceless Jurisdiction of Income-tax Authorities Scheme, 2022. The Scheme is applicable with effect from 28-03-2022.

The jurisdiction of the Assessing Officer shall be vested in a faceless manner through automated allocation.

# Indirect Tax : Case Laws



## Case Law 1:

### **GST liability under reverse charge mechanism on supply of E-goods by foreign suppliers**

The Appellant is a proprietor supplying digital goods i.e., “Online gaming” and is a recipient of OIDAR services from foreign suppliers like Newgameway from China, Global and MmoBay LLC from the USA. Digital goods/E-goods are sent to the appellant by e-mail or instant message service and payout is issued. These received digital goods are accessed and stored on cloud servers. Customers of the appellant visit the appellant’s website and make payments to appellant, after which Digital Goods are delivered from cloud server to the customers by e-mail.

Appellant hold that e-goods are stored on cloud servers located outside India and are purchased from vendors outside India such that it cannot be said to be imports in India, hence out of the purview of reverse charge under GST. Further, such e-goods are sold by the appellant to foreign customers who pay in foreign currency treating it as supply outside India i.e., it is out and out supply not liable to GST. AAR holds that as per CGST Act supply of e-goods by OIDAR Service providers being covered under supply of services are taxable under GST. Accordingly, procurement of e-goods by appellant from foreign suppliers (OIDAR Service suppliers) will attract levy of IGST under RCM in terms of Section 5(3) and 5(4) of IGST Act as place

of supply in respect of OIDAR Services is the location of the recipient of such services in terms of section 13(2) of IGST Act 2017.

Considering above, the transaction of procuring goods from outside India qualifies for import of services even though e-goods after being purchased by appellant are stored on Cloud Servers located outside India and same are not downloaded by appellant in India. The decision of ruling authority was challenged before appellate authority and the appellate authority affirms the decision.

**In the matter of Amogh R. Bhatwadekar (GST AAAR Maharashtra), order no. MAH/AAAR/RS-SK/34/2020-21, dated 16th March 2021**

# Indirect Tax

## Notifications



### S. No Notifications

#### 1. Seeks to amend Notification no. 14/2019-Central Tax to implement special composition scheme for Brick Kilns, as recommended by 45 GSTC

CBIC vide Notification No. 04/2022 – Central Tax Dated 31st March 2022 has notified addition of some entries, as reproduced in the table below, to the list of entries of goods making its manufacturer ineligible to opt for composition levy under sub-section (1) of section 10 of the CGST Act, 2017.

1.	6815	Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks
2.	6901 00 10	Bricks of fossil meals or similar siliceous earths
3.	6904 10 00	Building bricks
4.	6905 10 00	Earthen or roofing tiles

#### 2. Seeks to amend notification no. 10/2019-Central Tax

CBIC vide Notification No. 03/2022 – Central Tax Dated 31st March 2022 has notified addition to the list of entries of goods, as reproduced in the table below, making its supplier unexempted from obtaining registration even when he is engaged exclusively in supply of goods and aggregate turnover in the financial year does not exceed forty lakh rupees.

1.	6815	Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks
2.	6901 00 10	Bricks of fossil meals or similar siliceous earths
3.	6904 10 00	Building bricks
4.	6905 10 00	Earthen or roofing tiles

#### 3. Appointment of Common Adjudicating authority for adjudicating the show cause notices issued by DGGI under GST

CBIC vide Notification No. 02/2022 – Central Tax Dated 11th March 2022 has notified that the Additional Commissioners or Joint Commissioners of Central Tax, subordinate to the Principal Commissioners of Central Tax or the Commissioners of Central Tax, as specified in column (2) of the table below, are vested with the powers for passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence as specified in column (3) of the table.



# Indirect Tax Notifications



## S. No Notifications

Sl. No.	Principal Commissioner or Commissioner of Central Tax	Powers (Exercisable throughout the territory of India)
(1)	(2)	(3)
1.	Principal Commissioner Ahmedabad South	Passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence under sections 67, 73, 74, 76, 122, 125, 127, 129 and 130 of Central Goods and Services Tax Act 2017.
2.	Principal Commissioner Bhopal	
3.	Principal Commissioner Chandigarh	
4.	Commissioner Chennai South	
5.	Principal Commissioner Delhi North	
6.	Principal Commissioner Guwahati	
7.	Commissioner Rangareddy	
8.	Principal Commissioner Kolkata North	
9.	Principal Commissioner Lucknow	
10.	Commissioner Thane	

# Legal & Regulatory Notifications



## S. No Notifications

### 1. COMPANIES (ACCOUNTS) SECOND AMENDMENT RULES, 2022

(MCA notification dated March 31, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification number G.S.R. (E) dated March 31, 2022 has amended the Companies (Accounts) Rules, 2014..

#### The key highlights of the notification are:

- a) These rules now will be called as the Companies (Accounts) Second Amendment Rules, 2022.
- b) As per the notification, MCA has provided extension to the Companies whose financial year commences from April 2023, and which uses accounting software for maintaining its books of account.
- c) As per the rule, every Company who uses accounting software for maintaining its books of account, shall use only that accounting software which has a feature of recording audit trail of each and every transaction. Earlier, the date for updating such software was April 2022, now it has been extended up to April 2023.
- d) MCA has extended the last date for filing Form CSR-2 for the Companies on which the provisions of Corporate Social Responsibility (CSR) apply.
- e) The Companies can now file form up to May 31, 2022 for the Financial Year 2020-21. Earlier, the last date for filing the same was March 31, 2022.

#### Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=lzW7fqstVJYuFz6gHMSkKw%253D%253D&type=open>



## Rise of Freelancers

By – Nirav Maniar

IBA

In past couple of years, the corporate world has seen jobs getting cut amid hiring boom- the great resignation and rise of a Gig economy. Covid 19 showed some contradicting pictures in the job market. On one hand where one set was losing jobs, the other was negotiating a 100-300% jump in salaries.

Some outcomes create anxiety whereas others created euphoria. No two persons share the same view about how this has changed lives, theirs as well as others. Workspaces will keep evolving and discovering new trends to fit in the requirements.

The biggest trend to emerge from Pandemic is the Gig economy - Rise of Freelancers- those 'employees' who are yours, but not yours technically. They would cost you a bit more but free you of the burden to manage retirals and benefits. You don't essentially need offsites or team parties to retain them.

Most of these Gigworkers are generally sensitised about their role and expectations and they work on it with same if not less grit as full time employees. India itself has seen rise of tech enabled match making portals specifically catering to freelancer job market. This definitely indicates that there is a strong demand for Gigworkers. A study by SAAS Company Oorwin conducted a world survey and found that there is a difference in how remote work affected small and medium enterprises (SMEs) and large enterprises. While a majority of SMEs said they saw a dip in productivity after shifting to remote work, most big enterprises and large companies reported an increase in productivity in the remote setting. The survey also shows that employees have strong, and at times opposing, opinions about remote work. While some employees love saving time they'd spend commuting to work, others miss the social interactions and the synergy of working together. Given that there is no Hallmark available for People business, it is always going to be subjective and it will take some time before the industry view is firmed up.

**The following will be the primary determining factors towards the full acceptance of a gig economy:**

1. Trust and Integrity. Will employers be able to trust the freelancers and whether they will deliver what is expected of them. Will there be mass available delivery and tracking platforms that SMEs can use to control deliverables and make full use of Gig model.
2. How comfortable the employers can be, with the use of technology in remote onboarding. Given the rising cases of fake candidates, dual employment, Corporates still are unsure. The verifications standards will need to be adhered reliable assessments will need to be in place.
3. Candidate availability for planned recruitments. With growth in business and demand, there will always be shortage of candidates who can meet the cut off. Whether Corporates are able to hire requisite qualifications in requisite timeframe. Assessed freelancers become valuable to bridge the notice period gap and also to provide short term support.
4. Perception management around freelancer profiles will need a serious relook. Candidates who are new to freelancing are sceptical about step treatment. Given the air of uncertainty around the continuance of job, the way freelance is viewed in society also needs to undergo a shift.
5. Commercial alignment is important. Given that there is no social security benefits associated with freelance assignments, if employers can take into account the total cost instead of comparing freelancer's CTC with that of the permanent employee. There needs to be shift for the model to be lucrative for both employer and employee. Freelancers will always demand higher compensation unless pressed and employers should
6. The more famous dichotomy of whether to work from home or from office remains and will take its own course based on the job requirements

Such arrangements require a mental shift at all levels and that can only happen when the infrastructure around Gigworking is strengthened. Just like world has understood the need and quickly taken to EVs, Gig too shall find its weave.

From employer expectations, delivery control to remuneration, a separate Gig economy with its own loom, texture and design need to be developed conscientiously.

## Partners Directors Managers Get Together



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Get together of senior management organised to celebrate the success and togetherness. The spouses of the senior management were also invited to express gratitude for their support during the tough times of Covid.

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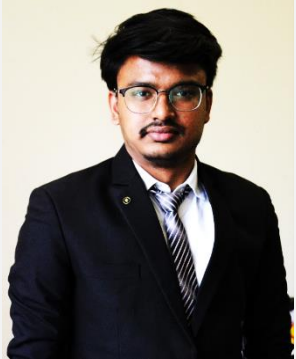
# Upcoming Compliances

Date	Compliance
April 11, 2022	Due Date for filing of Form GSTR-1 for the period March 2022 for the registered taxpayers who have opted for monthly filing of GST Returns
April 13, 2022	Due Date for filing of Form GSTR-1 for the period January to March 2022 for the registered taxpayers who have opted for quarterly filing of GST Returns
April 14, 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB & 194M in the month of February, 2022
April 15, 2022	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending March 2022
April 20, 2022	Due Date for filing of Form GSTR-3B for the period March 2022 for the registered taxpayers who have opted for monthly filing of GST Returns
April 22, 2022	Due Date for filing of Form GSTR-3B for the period January to March 2022 for the registered taxpayers who have opted for quarterly filing of GST Returns and having principal place of business in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar islands and Lakshadweep
April 24, 2022	Due Date for filing of Form GSTR-3B for the period January to March 2022 for the registered taxpayers who have opted for quarterly filing of GST Returns and having principal place of business in the state of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi
April 30, 2022	Due date for deposit of TDS for the period January 2022 to March 2022 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H

# Upcoming Compliances

Date	Compliance
April 30, 2022	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of March 2022 has been paid without the production of a challan
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB & 194M in the month of March 2022
	Due date for e-filing of a declaration in Form No. 61 containing particulars of Form No. 60 received during the period October 1, 2021, to March 31, 2022
	Due date for uploading declarations received from recipients in Form. 15G/15H during the quarter ending March 2022

# Editorial Team



## About us:

IBA is a leading financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax (GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bengaluru and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

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