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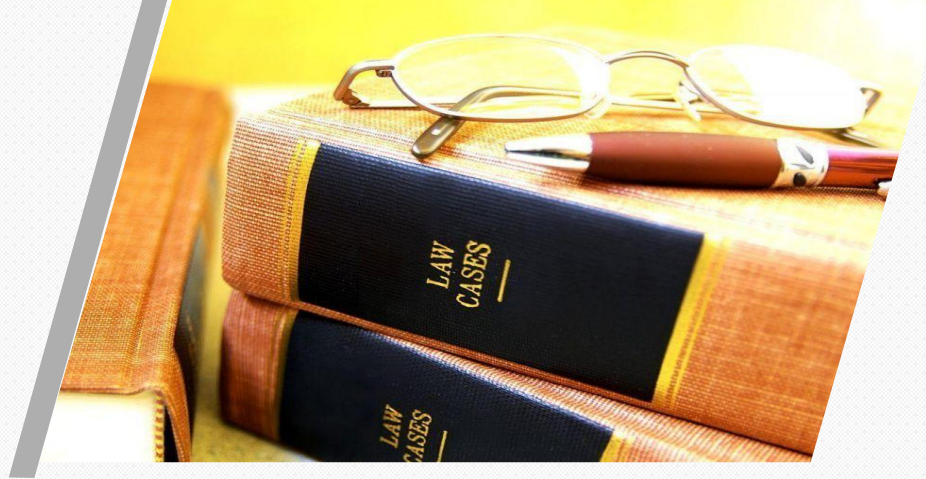
**December 2022**

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# Direct Tax Case Laws



## Case Law 1:

### **CA not expected to check genuineness of documents submitted by client while issuing Form 15CB.**

Petitioner, a Chartered Accountant, was approached by his client for the issuance of Form 15CB. The client was required to make payments for imports. The petitioner issued Form 15CB on his client's request after going through all the required information. Subsequently, an investigation was carried out on the client and found that it was involved in money laundering. The allegations indicated opening fictitious bank accounts, forged bills of entry, parking huge funds in the bank account and transferring funds to various overseas parties. During the investigation, the Enforcement Directorate (ED) discovered the petitioner's involvement as Form 15CB was filed in his name and overseas payments were made through bank accounts using such forms. After the investigation, the Enforcement Directorate filed a supplementary complaint on the petitioner, contending his involvement in the generation of proceeds of crime. Aggrieved by the order of the Enforcement Directorate, a petition was filed before the trial court but with no success. Thereafter, a petition was filed before the Madras High Court. The Court held that all the nationalised banks transferred the money without Form 15CB except a particular Bank. If the petitioner had been part of the conspiracy, the certificates would not have been uploaded in his name. The petitioner has only received

the remuneration for issuance of such Form 15CB and nothing more. Further, it was held that Chartered Accountant is only required to examine the nature of remittance and nothing beyond that. There is no requirement to dig deep into the genuineness of the documents submitted by his clients. Since the petitioner issued Form 15CB after scrutinising the documents furnished to him by the client, there was no reason for the petitioner to suspect the genuineness of such import transactions. He discharged his duties following the professional behaviour expected from him. Therefore, the Court discharged the petitioner from the prosecution and enlisted him as a witness.

### **Murali Krishna Chakrala Vs. The Deputy Director, Directorate of Enforcement - [Madras HC, 2022]**

## Case Law 2:

### **Director who holds no share in the company can't treated as AE u/s 92A(j) merely because he is described as KMP in its audited accounts**

The assessing officer reopened the assessment, forming the view that the assessee and Biomatrix Marketing Pvt Ltd are associated enterprises and proposed that some income on account of ALP adjustment has escaped the assessment. The reason recorded for re-opening the case was that since Sandeep tandon was the

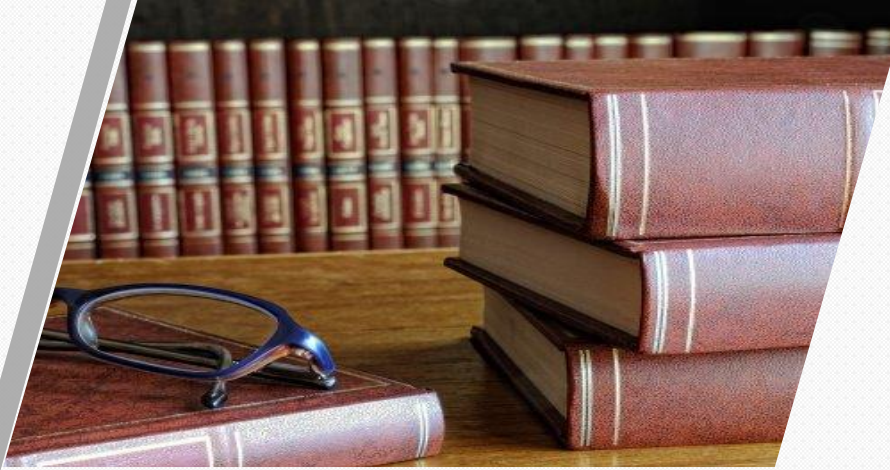
# Direct Tax : Case Laws

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Director of Reliance holding and at the same time holding 91% in Biomatrix hence Reliance i.e., assessee and Biomatrix are associate enterprise. Now, the question arises whether just because someone is described as a key managerial person in the annual accounts and is a director of the company, can it be said that that said, enterprise is controlled by an individual' as is the necessary precondition for invoking Section 92A(2)(j). Further, it is important to bear in mind the fact that in order to be said to be in control of another company, as stated in section 92A(2)(b) and (f), either such person should hold more than 26% of the voting power of the company or such person appoints more than half of the directors or members of the governing board or one or more of the executive directors or members of the governing board. ITAT observed that there is no material or substantive indication to the effect that the assessee company 'is controlled by an individual', i.e. Sandeep Tandon, as is the necessary precondition for invoking Section 92A(2)(j). Hence, ITAT held that mere directorship of the assessee company or that person being described as 'key managerial person' in the annual accounts of the company, cannot, by itself, be reason enough to come to conclusion that assessee and Biomatrix are associated enterprise.

**Reliance Industrial Holdings (P.) Ltd. v Deputy Commissioner of Income-tax (ITAT, IT APPEAL NOS. 125 AND 126 (MUM.) OF 2021)**

# Indirect Tax : Case Laws



## Case Law 1:

### **AAR: GST on transfer of leasehold land including other services**

#### **FACTS OF THE CASE :**

Ranchi Smart City Cooperation limited is a registered assessee under GST. The applicant is engaged in allotment of land on Leasehold/Freehold basis to eligible bidders through e-auction process for institutional, Residential. The applicant submitted that it was established in the Year 2016 under Smart City Mission, a scheme Sponsored by the Government of India for promoting substantial urban development, utilizing information services and technology to achieve its objective. The RSCCL is 100% owned by the government as per para 2(zfa) of Notification No. 12/2017-CT dated 28.06.2017 and its main objective Area Based Development of land by way of plots, roads, parks, playground, amenities and other utilities as per Jharkhand Smart Cities Land and Other Fixed Assets Rules, 2019 apart from basic amenities.

The applicant has further submitted the sanction order of project and cleared that the basic price of land is based on the factors duly approved by the cabinet of Ministers of Jharkhand and duly vetted by the legal department. The buyer shall be responsible for construction and Maintenance of any road or damage or any electric installation within the allotted plot at his own cost and expenses. The Government of India also released fund to State Government for Administrative &

Office expenses separately for Smart City Proposal.

#### **FINDINGS OF THE CASE :**

As per the above observations, the following findings were issued against the rulings:

- Applicability of GST on transfer of leasehold land which includes services such as electricity line, water line etc. is included in Notification No. 12/2017-central tax dated 28.06.2017 and hence, it is exempted from the tax.
- Applicability of GST on transfer of ownership of freehold land- It appears as absolute sale of land and hence sale of land is not taxable.
- Applicability of GST on Annual Lease Rent - Leasing of land for commercial purpose is a taxable supply @18% as per SI No. 2(a) of schedule II of CGST Act,2017.
- Applicability of GST Rate on the above cases - The amount received by the applicant against transfer of ownership of sale of land is not taxable under GST Act. The amount received by the applicant against transfer of leasehold land is taxable under leasing services and attracts GST @18% if the activity is not covered under Notification No.12-2017-Central tax.
- Whether they as a service provider can claim ITC on their inward goods and services - The applicant as a service provider cannot claim ITC on their inward goods and services.

# Indirect Tax

## Circulars & Notifications



### S. No Notifications

#### 1. Seeks to make amendments (Third Amendment, 2022) to the CGST Rules, 2017.

As per Notification No. 22/2022 dated 21st October'22, in exercise of the powers conferred by section-164 of the CGST Act,2017-Central tax made the following amendment in the table, in second column against serial numbers 10,11,12 and 13:

- For the figures, letters and words “ between April'22 to September'22 “ shall be substituted with the words “ April'22 to October'22, filed up to 30th November'22 “.

<https://taxinformation.cbic.gov.in/view-pdf/1009548/ENG/Notifications>

#### 2. Seeks to empower the Competition Commission of India to handle anti-profiteering cases under CGST Act, 2017 with effect from 01.12.2022.

As per Notification No. 23/2022 dated 23rd November'22, in exercise of the powers conferred by subsection (2) of section 171 of the CGST Act,2017-Central tax notifies that the competition commission of India to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate resulted in the price of the goods or services or both supplied by him and came into force from 1st December'22.

<https://taxinformation.cbic.gov.in/view-pdf/1009556/ENG/Notifications>

#### 3. Seeks to make fourth amendment (2022) to CGST Rules with effect from 01.12.2022.

As per Notification No. 24/2022 dated 23rd November'22, in exercise of the powers conferred by section-164 of the CGST Act,2017-Central tax made the following amendment which shall came into force from 1st December'22:

- Rule 122, 124,125, 134, 137 shall be omitted.
- In Rule 127 in the marginal heading the word `duties' shall be substituted with `Functions' and for the words ` It shall be the duty of the Authority' substituted with the words `The Authority shall discharge the following functions'.

<https://taxinformation.cbic.gov.in/view-pdf/1009557/ENG/Notifications>

# Indirect Tax Notifications & Circulars

## S. No    Circulars

### 1. Clarification on refund related issues

As per Circular No. 181/13/2022 dated 10th November'22, in exercise of the powers conferred by section-168 of the CGST Act,2017 hereby clarify issues that the amended formula under sub-rule (5) of rule 89 of the CGST Rules,2017 for calculation of refund of ITC on inverted duty structure would be applicable on applications filed on or after 05-07-2022. It also clarifies that the restriction imposed in case of certain goods falling under chapter 15 and 27 vide notification no. 09/2022 would be applicable only for all applications filed on or after 18-07-2022.

<https://taxinformation.cbic.gov.in/view-pdf/1003131/ENG/Circulars>

### 2. Guidelines for verifying the Transitional Credit in light of the order of the Hon'ble Supreme Court in the Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, order dated 22.07.2022 & 02.09.2022.

As per Circular No. 182/14/2022 dated 10th November'22, clarifies the guidelines for verifying the transitional credit and reopens the portal for filing transitional credit from 1st October'22 to 31st November'22 with some changes in the process of filing. It also clarifies that the registered person can revise its filed TRAN forms only once.

<https://taxinformation.cbic.gov.in/view-pdf/1003132/ENG/Circulars>

# Legal & Regulatory Notifications



## S. No Notifications

### 1. The Companies (Registered Valuers and Valuation) Amendment Rules, 2022

(Notification dated 21st November, 2022)

Ministry of Corporate Affairs (MCA), vide its notification dated 21st November, 2022, has amended the Companies (Registered Valuers and Valuation) Rules, 2017 through the Companies (Registered Valuers and Valuation) Amendment Rules, 2022

#### Key Highlights

#### 1. New provision and “Annexure V” have been inserted which requires :

- Intimation by the registered valuers on the below changes affecting the registration of registered valuer to the authority on payment of the requisite fee:

Sl. No.	Particulars of Change
1.	Communication details like Name, Address, e-mail etc
2.	Transfer of membership of Registered Valuers Organisation.
3.	Change in composition of Board of Directors, or partners, in the company or partnership entity, as the case may be.
4.	Change in Memorandum of Association of company or partnership agreement of the partnership entity, as the case may be
5.	Any other details

- Intimation by the Registered Valuers Organizations on below changes to the authority on payment of the requisite fee:

Sl. No.	Particulars of Change
1.	Composition of Governing Board of an RVO
2.	Chief Executive Officer/ Managing Director of an RVO
3.	Name of an RVO
4.	Registered Office address of an RVO



# Legal & Regulatory

## **2. Annexure III, Part II lists the conditions that requires application by the member for surrender of membership and expulsion from membership.**

One such condition listed is with respect to taking up of employment by member. Now, an explanation has been added for the removal of doubts which clarifies that a member who functions as a whole-time director in the company registered as valuer shall not be treated as taking up employment under this provision.

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=4AT36Gfmz6B67TutrQwENQ%253D%253D&type=open>



## Understanding The Concept of GAAR

By – Tarun Chauhan

IBA

The General Anti-Avoidance Rule (GAAR) is an anti-tax avoidance law in India to curb tax evasion and avoid tax leaks. It came into effect on 1st April 2017. The GAAR provisions come under the Income Tax Act, 1961. GAAR is a tool for checking aggressive tax planning especially that transaction or business arrangement which is/are entered into with the objective of avoiding tax. It is specifically aimed at cutting revenue losses that happen to the government due to aggressive tax avoidance measures practiced by companies. The Vodafone case, the biggest sensation of Indian Taxation history is one of the main reasons for the framework of GAAR.

GAAR is effective from assessment year 2008-19. It is meant to be applied to transactions which are prima facie legal but result in tax reduction. Broadly tax reduction can be of following three categories:

- ❖ Tax Mitigation
- ❖ Tax Evasion
- ❖ Tax Avoidance

We have explained these further to understand which type of tax reduction invoke GAAR.

### Concept of Tax Evasion, Tax Avoidance and Tax mitigation :

Tax mitigation is a 'positive' term in the context of a situation where taxpayers take advantage of a fiscal incentive provided to them by a tax legislation by complying with its conditions and taking cognisance of the economic consequences of their actions. Tax mitigation is permitted under the Act. **This tax reduction is acceptable even after GAAR has come into force.**

Tax evasion is when a person or entity does not pay the taxes that is due to the government. This is illegal and liable to prosecution. Illegality, willful suppression of facts, misrepresentation and fraud—all constitute tax evasion, which is prohibited under law. **This is also not covered by GAAR as the existing jurisprudence is sufficient to cover tax evasion/Sham transactions.**

Tax avoidance includes actions taken by a taxpayer, none of which are illegal or forbidden by the law. However, although these are not prohibited by the law, they are considered undesirable and inequitable, since they undermine the objective of effective collection of revenue. GAAR is

specifically, against transactions where the sole intention is to avoid tax. In this the taxpayers used legal steps which results in tax reduction, which steps would not have been undertaken if there was no tax reduction. **This kind of tax avoidance planning is sought to be covered by GAAR.**

With GAAR there is no difference between tax avoidance and tax evasion. All transactions which have the implication of avoiding tax can come under the scanner of GAAR.

Now let's see when can GAAR apply and in which cases GAAR is exempt in the forgoing paragraphs.

### **When can GAAR Apply?**

As per the provision of the Income Tax Act, GAAR would apply to an arrangement entered into by the tax payer which may be declared to be an impermissible avoidance agreement (IAA).

This provision starts with a non-obstante clause. Thus, it has an overriding applicability.

Now we will understand what does Impermissible Avoidance Agreement mean.

### **What is Impermissible Avoidance arrangement (IAA) :**

The provision of GAAR is to codify the doctrine of 'substance over form' where the real intention of the parties and purpose of an arrangement is taken into account for determining the tax consequences, irrespective of the legal structure of the concerned transaction or arrangement.

Therefore, GAAR provisions are applicable to "Impermissible avoidance arrangement" (IAA) for which following two conditions have to be satisfied :

#### **1. The main purpose of entering into such arrangement is to obtain tax benefit, and**

#### **2. If the arrangement:**

- Creates rights or obligations, which are not ordinarily created between persons dealing at Arm's Length Price (or)
- Results, directly or indirectly, in the misuse or abuse of the provisions of The Income Tax Act (or)
- Lacks or deemed to lack commercial substance in the whole or in part (or)
- Is entered or carried out by means or in a manner which is not ordinarily employed for bona fide purpose.

### **Onus on whom?**

Under GAAR the onus is on the revenue to declare an arrangement as IAA. If the revenue considers that the arrangement is an IAA, the assessee will be given an opportunity to be heard. Based on the response of the assessee further action will be taken.

Thus there is no suo-moto application of GAAR. It has to be specifically applied by the revenue by declaring the arrangement as IAA. Having declared an arrangement as IAA, the onus shifts to

the assessee to rebut the declaration or agree with the revenue's view.

The declaration of an arrangement as IAA has to be under specified process u/s 144BA.

Now we have discussed few cases where GAAR we will see whether GAAR would apply or not.

**Case A :** A business sets up an undertaking in an underdeveloped area by putting in substantial investment of capital, carries out manufacturing activities therein and claims a tax deduction on sale of such production/manufacturing. Is GAAR applicable in this case?

There is an arrangement and one of the main purposes is a tax benefit. However, this is a case of tax mitigation where the taxpayer is taking advantage of a fiscal incentive offered to him by submitting to the conditions and economic consequences of the provisions in the legislation e.g., setting up the business only in the underdeveloped area.

Therefore, Revenue should not invoke GAAR as regards to this arrangement.

**Case B :** A business sets up a factory for manufacturing in an underdeveloped tax-exempt area. It then diverts its production from other connected manufacturing units and shows the same as manufactured in the tax-exempt unit (while doing only process of packaging there). Is GAAR applicable in this case?

There is an arrangement and there is a tax benefit, the main purpose of this arrangement is to obtain a tax benefit. The transaction fails to have a commercial nature and there is misuse of the tax provisions.

Therefore, revenue should invoke GAAR as regards to this arrangement.

**Case C :** An Indian Company buys goods from Singapore and sells in Dubai. So being an Indian Company, its world income will be made taxable in India. In order to avoid the levy of tax in India, the Indian company incorporates another company in Cyprus which is a Zero Tax Jurisdiction.

This is basically done in order to show that such sale is undertaken through the company in Cyprus and the Place of effective management of business is Cyprus. Since there is no commercial reason of undertaking the sale through the company in Cyprus, the status of the company incorporated in Cyprus will be dissolved and the provisions of GAAR will be invoked. Thus, GAAR overrules Place of effective management.

**Case D :** X Ltd an Indian Company is intending to provide a loan to Y Ltd also an Indian Company. But in order to avoid the taxability of interest income on such loan in the hands of X Ltd, it incorporates a subsidiary A Ltd in Cayman Islands (Zero Tax Jurisdiction) and such company provides a loan to Y Ltd.

Since there is no bona fide purpose of creating a subsidiary and the sole purpose was to avoid tax resulting into misuse of provisions of Income Tax Act and hence the provisions of GAAR will be made applicable.

## **Conclusion :**

The conditions and tests are very elaborate. Almost any situation which will have the effect of tax reduction, can be covered within GAAR. Therefore, one must analyse the tax implication of any transaction very carefully before undertaking the same.

Also, there is many criticism regarding GAAR since anti-tax avoidance regulations are difficult to implement as it is hard to differentiate between different types of avoidance practices. Many provisions of GAAR have been criticised by various thinkers. However, the basic criticism of GAAR provisions is that it is considered to be too harsh in nature and there was a fear that tax authorities will apply these provisions regularly and torture the general honest taxpayer too

## Training Session II PLI Scheme



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Thank you Amit for briefing us on Production-Linked Incentive (PLI) Scheme and its implications.

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## Training Session II Audit Sampling



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Thank you Atul Kumar Varun for making us understand the audit planning process and the subsequent execution of Audit Sampling in order to meet the determined audit objectives.

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# Upcoming Compliances

Date	Compliance
December 11, 2022	Due Date for filing of Form GSTR-1 for the period November 2022 for the registered taxpayers who have opted for monthly filing of GST Returns
December 13, 2022	Due Date for submission of invoices through IFF under QRMP scheme for the period November 2022 for the registered taxpayers who have opted for quarterly filing of GST Returns
	Due Date for filing of Form GSTR-6 for the period November 2022 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration
December 15, 2022	Third instalment of advance tax for the assessment year 2023-24
December 20, 2022	Due Date for filing of Form GSTR-3B for the period November 2022 for the registered taxpayers who have opted for monthly filing of GST Returns
December 24, 2022	Due Date for Challan Payment along with filing for the period November 2022 for the registered taxpayers who have opted for QRMP scheme
December 30, 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of November 2022
December 30, 2022	Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is January 1, 2021 to December 31, 2021) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.
December 31, 2022	Filing of belated/revised return of income for the assessment year 2022-23 for all assessee (provided assessment has not been completed before December 31, 2022)

# Upcoming Compliances

Date	Compliance
December 31, 2022	Due Date for Annual GST Compliance and Reconciliation statement for the registered taxpayers having turnover over exceeding 2 crores and 5 crores for FY 2021-22.



# Editorial Team



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