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**April 2023**

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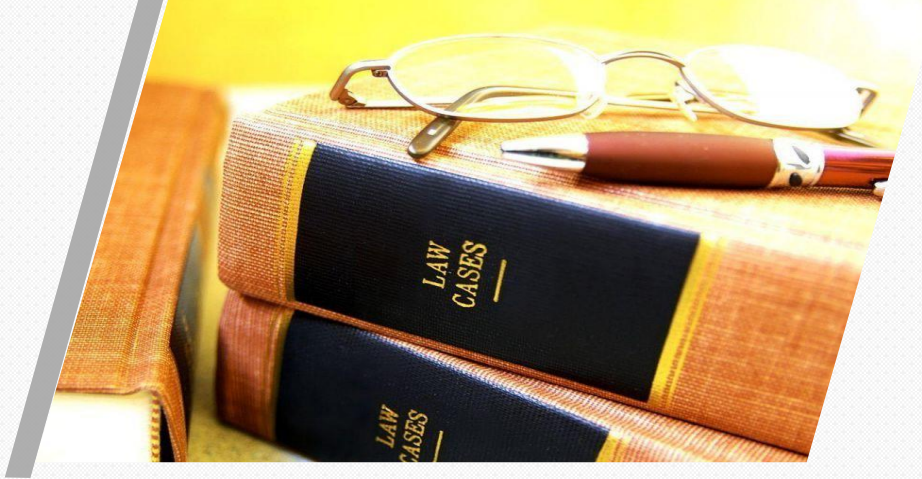
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# Direct Tax Case Laws



## Case Law 1:

**Whether if search is qua place and not qua assessee and if there are two entities in one premises, there can be a common search operation on them - Held, yes - Assesseees were two group companies engaged in different businesses but operating from same premises?**

A common search warrant was issued qua premises of both assesseees and search was conducted upon them and a common panchnama was issued for seizures made during search - Thereafter, notices under section 153A were issued upon assesseees and further a block assessment was made wherein Assessing Officer determined undisclosed income of certain amount of assesseees and levied tax –

Assesseees contended that since they were two separate entities engaged in different businesses and filing separate tax returns, issuance of common search warrant and common panchnama on them was impermissible in law, thus, said common search warrant and further proceedings under section 153A initiated against them were unjustified –

Since warrant of authorization was qua 'premises' and not qua 'assessee', a common warrant of authorisation for search and common panchnama issued on assesseees-group companies who were separate entities engaged in different businesses but were operating from one premises was justified

## Case Law 2:

**Where Assessing Officer rejected assessee's claim for deduction under section 54F on ground that at time of sale of capital asset, assessee was owner of more than one residential house properties, in view of fact that one residential property was co-jointly owned in name of assessee and his wife and he could not be treated as 'absolute owner' of said property, deduction under section 54F could not be denied to him.**

Deduction under section 54F is allowed if the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house and also assessee should not own more than one house in his name at the time of transfer of the asset besides the house which is being purchased or constructed for availing exemption.

Assessee filed his return claiming deduction under section 54F in respect of capital gain arising from transfer of capital assets. Assessing Officer thus rejected assessee's claim for deduction on ground that he was owner of two flats on date of transfer of capital assets and therefore does not satisfy the condition under section 54F. It was submitted that the residential flat situated at Goa was actually purchased jointly in the name of assessee as well as his wife. Assessee also relied upon the case ITO v. Rasiklal N. Satra wherein it was held that

# Direct Tax : Case Laws

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word 'own' appearing in section 54F includes only such residential house which is fully and wholly owned by one person and not a residential house owned by more than one person. Since, the legislature has not amended the provisions of section 54F, it has to be held that the word "own" in Section 54F would include only the case where a residential house is fully and wholly owned by the assessee and consequently would not include a residential house owned by more than one person.

Also, the share of the assessee was transferred /gifted to his daughter Ms Alisha Ashok Chauhan by way of gift deed. Therefore, the assessee cannot be said to be the full owner of the property. Thus even if, as per the provision of section 27(1)(Deemed Ownership) of the Act, the assessee is considered to be a deemed owner of the Goa flat, but even then, assessee would still being a co-owner cannot be termed that Goa flat is fully and wholly owned by him, thus cannot be denied exemption u/s 54F.

Therefore, assessee could not be treated as 'absolute owner' of the residential flat situated at Goa and the exemption under section 54F has been allowed to the assessee.

**Ashok G. Chauhan v Assistant Commissioner of Income-tax**

# Direct Tax Circulars & Notifications



## S. No Notification & Circulars

### 1. Notification No: F. No. DGIT(S)-ADG(S)-3/e-Filing Notification/Forms/2023/13420

CBDT vide above mentioned notification has provided further partial relaxation till 30th September 2023 from mandatory filing of Form 10F electronically.

### CIRCULARS :

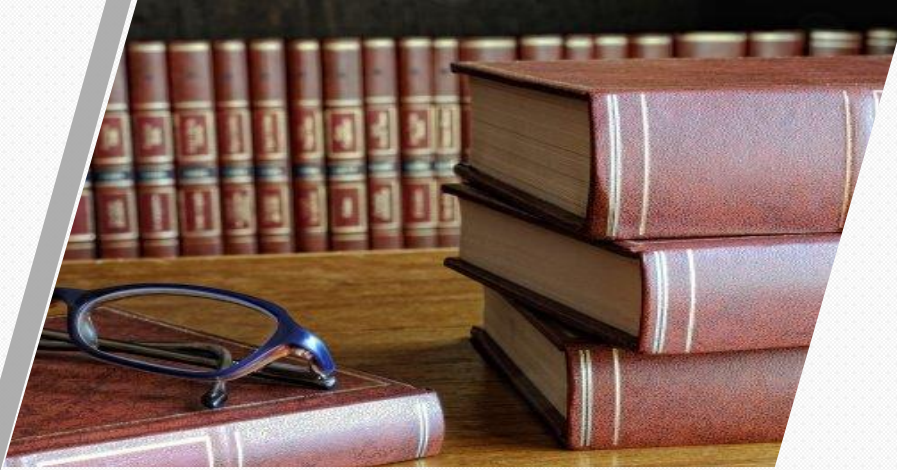
#### Circular No 03/2023 :

The CBDT clarified that a person who has failed to link the Aadhar number with PAN card shall face the following consequences :

- PAN becomes inoperative.
- Refund of any amount of tax or a part, shall not be made to him
- Interest shall not be payable to him on that return.
- Tax shall be deducted at high rate.
- TCS shall be collected at higher rate.

This takes effect from 1st July 2023.

# Indirect Tax : Case Laws



## **Case Law 1:**

### **Brief Facts of the Case :**

M/S ARPK Health care Pvt Ltd and M/s Asian Institute of Medical Science is providing health care services as defined under clause (zg) of the notification no. 12/2017 dated 28-06-2017. Both M/s Asian Hospital and M/S ARPK health care will share the charges paid by the patients. From the clarification provided in circular no. 32/06/2018-GST and rulings pronounced by Karnataka state in the case of Matrix Imaging solutions Pvt Ltd, it is clear that the entire amount charged by M/s Asian from the patients including the fee charges made to the doctors employed by M/s ARPK is towards the healthcare services provided by M/s Asian and M/s ARPK to the patients are exempt.

From the documents submitted by the applicant, it is observed that the applicant is registered under the Companies Act, 2013 but not in a clinical establishment Act, 2010. The applicant is providing services of human resources. The applicant will be overall in charge of the gastroenterology department of the recipient of services, i.e., M/s Asian Hospital.

The applicant has also raised the query that whether the services provided through an agreement to M/s Asian Hospital falls under the category of SAC 9993 or not? And whether the consideration to be received by the applicant from the Asian Hospital as to be agreed upon by both parties is eligible for exempt under S. No. 74 of Notification No.

12/2017. So, it is observed that the main recipient of the services are the patients and services to the patients are covered under S. No. 74 of Notification 12/2017. and the charges paid to M/s Asian Hospital for the said outsourcings of infrastructure are not exempted.

### **Findings of the case :**

In view of the written submissions filed by the applicant, the submissions made at the time of personal hearing, the following findings were issued against the rulings:

- Fee/charges received by M/s ARPK from M/s Asian are not exempt under GST.
- Fee/charges for health care services received by M/s Asian is exempt under GST except the services mentioned under the heading 9993 clause no. 03/2022-Central tax dated 13-07-2022.

**[In the matter of M/s M/s ARPK Healthcare Pvt Ltd, Advance Ruling No. HR/HAAR/07/2022-23, Dated 06/09/2022]**

# Indirect Tax

## Notifications & Circulars



### S. No Notifications

#### 1. Amnesty to GSTR-4 non-filers

As per Notification No. 02/2023-central tax dated 31st March'23, in exercise of the powers conferred by section - 128 of the CGST Act,2017- Central govt made certain amendments in Notification No. 73/2017.

Registered persons who fail to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March 2019 or for the Financial years from 2019-20 to 2021-22 by the due date but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023". The amount of late fee payable shall waived off in excess of five hundred rupees (Rs.250- CGST/SGST) and shall stand fully waived for nil return.

**Link :** <https://taxinformation.cbic.gov.in/view-pdf/1009685/ENG/Notifications>

#### 2. Extension of time limit for application for revocation of cancellation of registration

As per Notification No. 03/2023-central tax dated 31st March'23, in exercise of the powers conferred by section - 148 of the CGST Act,2017- Central govt hereby notifies that registered person whose registration have been cancelled on or before 31st December'22 under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act, and who has failed to apply for revocation of cancellation of such registration within the time period specified in section 30, may apply for revocation of cancellation after filing all returns along with the payment of tax up to the effective date of cancellation of registration up to 30th June'23. No further extension of time period for filing applications in such cases.

**Link :** <https://taxinformation.cbic.gov.in/view-pdf/1009684/ENG/Notifications>

#### 3. Amendment in CGST Rules

As per Notification No. 04/2023-central tax dated 31st March'23, in exercise of the powers conferred by section - 164 of the CGST Act,2017- Central govt hereby made certain amendment in CGST Rules:

- For sub-rule (4A) , Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.
- Certain amendment made in sub-rule (4B) to give effect under sub-rule(4A).

**Link :** <https://taxinformation.cbic.gov.in/view-pdf/1009686/ENG/Notifications>

# Indirect Tax Notifications & Circulars

## S. No Notifications

### 4. Seeks to amend Notification No. 27/2022 dated 26.12.2022.

As per Notification No. 05/2023-central tax dated 31st March'23, in exercise of the powers conferred by sub-rule(4B) of rule 8 of the CGST Act,2017- Central tax made certain amendments in Notification No. 27/2022, for the words, "provisions of", the words "proviso to" shall be substituted which came into force w.e.f. 26th Dec'22.

**Link :** <https://taxinformation.cbic.gov.in/view-pdf/1009687/ENG/Notifications>

### 5. Amnesty scheme for deemed withdrawal of assessment orders issued under Section 62.

As per Notification No. 06/2023-central tax dated 31st March'23, in exercise of the powers conferred by section - 148 of the CGST Act,2017- Central govt hereby notifies that registered person who fail to furnish return u/s 62(1) within 30 days from the assessment order on or before 28th Feb'23. Registered person shall withdraw order after filing returns along with interest and late fee on or before 30th June'23.

**Link :** <https://taxinformation.cbic.gov.in/view-pdf/1009688/ENG/Notifications>

### 6. Rationalisation of late fee for GSTR-9 and Amnesty to GSTR-9 non-filers.

As per Notification No. 07/2023-central tax dated 31st March'23, in exercise of the powers conferred by section - 128 of the CGST Act,2017- Central govt reduces the amount of late fee for GSTR-9.

Registered Persons having an Aggregate Turnover	Amount of Late Fees
Upto Rs. 5 crores	Rs. 50/day
More than Rs.5 crores and upto Rs. 20 crores	Rs. 100/day

Maximum late fee is calculated at 0.04% (0.02% CGST+0.02% SGST) of Turnover

### Amnesty to GSTR-9 non-filers

The maximum Late Fees is restricted to Rs. 20,000 (Rs. 10,000 for CGST/SGST each) if Annual Return for the Financial Years 2017-18 to 2021-22 are filed between 01-04-23 to 30-06-23.

**Link :** <https://taxinformation.cbic.gov.in/view-pdf/1009689/ENG/Notifications>

### 7. Amnesty to GSTR-10 non-filers.

As per Notification No. 08/2023-central tax dated 31st March'23, in exercise of the powers conferred by section - 128 of the CGST Act,2017- Central govt reduces the amount of late fee for GSTR-10. The maximum Late Fees is restricted to Rs. 1,000 if Return are filed between 01-04-23 to 30-06-23.



# Indirect Tax Notifications & Circulars

## S. No Notifications

**Link:** <https://taxinformation.cbic.gov.in/view-pdf/1009690/ENG/Notifications>

### 8. Extension of limitation under Section 168A of CGST Act.

As per Notification No. 09/2023-central tax dated 31st March'23, In exercise of the powers conferred by section 168A of the CGST Act, section 21 of UTGST Act and extends the time limit specified under sub-section(10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, as per the following period:

Financial Year	Last Date of issuance of Order
2017-18	31-12-2023
2018-19	31-03-2024
2019-20	30-06-2024

**Link:** <https://taxinformation.cbic.gov.in/view-pdf/1009691/ENG/Notifications>

### 9. Seeks to provide commencement date for Section 163 of the Finance act, 2023.

As per Notification No. 01/2023-compensation cess dated 31st March'23, In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2023, central govt appoints the day 1st Apr'23 as the date on which the provisions of section 163 of the said Act shall come into force.

**Link :** <https://taxinformation.cbic.gov.in/view-pdf/1009681/ENG/Notifications>

## CIRCULARS:

### 1. Clarification regarding GST rate and classification of 'Rab' based on the recommendation of the GST Council in its 49th meeting held on 18th February 2023-reg.

As per Circular No. 191/03/2023 dated 27th March,2023, in exercise of the issues examined by GST Council in the 49th meeting held on 18th February,2023 hereby clarifies that Rab when sold in pre-packaged and labelled would be taxable @5% and Nil GST when sold in other than pre-packaged and labelled.

**Link :** <https://taxinformation.cbic.gov.in/view-pdf/1003155/ENG/Circulars>

# Column

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## Digital Assurance....High Time We Talk About It!

By Puneet Sharma

IBA

### **Background**

Standard on Auditing- SA 500 (as well as ISA 500)- “Audit Evidence” requires the auditor to obtain sufficient appropriate audit evidence to enable himself to draw reasonable conclusions before issuing an audit opinion.

It has been a while that auditors have been making use of technology in carrying out their audit procedures. Whilst the traditional audit procedures such as vouching continue to be in vogue, the advent of tech tools definitely give the auditors a good reason to use technology extensively, wherever feasible.

Audit evidence refers to both information obtained by the auditor from the books of account as well as that obtained from external sources. Audit evidence obtained using automated audit procedures provide enhanced assurance to audit committees and other stakeholders as it is believed that the possibility of an error is almost negated.

The Institute of Chartered Accountants of India (ICAI) has released a Technical Guide (“Guide”) in January 2023 on digital assurance which provides examples of various external data sources and how they can be used in audits of financial statements to obtain relevant audit evidence.

The Guide, while stating that an auditor may use digital information from external sources across various phases of the audit, also gives certain examples of how digital information from external sources can be used while conducting audits.

### **Digital Auditing**

Of late, there is an increased focus on data management, which is facilitated by extensive usage of Computer Assisted Auditing Techniques (CAATs) and other data management softwares, making it possible to process the entire data population, as against a sample.

In addition to the above digital tools, which are already being used in audits, more advanced technologies such as AI and drones could also have a role to play in the near future, which will

necessitate change in the way audits are conducted

In the above context, certain specific issues vis a vis auditor's consideration of audit evidence, may be categorised as under:

- Changes in the sources of information and how the information is processed, communicated, and used,
- Continual development in technology; and
- Professional skepticism.

**Illustrative cases of digital data used in performing audit procedures :**

<b>A. Statement of Profit and Loss</b>	
<b>Areas</b>	<b>Procedures</b>
<b>Sales process - Cut off testing</b>	Auditor can take the e-way bill register and sales register with delivery terms and the date of delivery. This can be used to map the delivery terms and date in sales register with the dates in the e-way bill register to ensure that the revenue is recognised in the correct period.
<b>GSTN Portal: Electronic Ledgers</b>	Auditor can verify the completeness of revenue and purchases to a great extent on the basis of these ledgers. Following are the major line items over which comfort could be obtained on balance with government authorities, refund claimed and outstanding, ITC claimed and so on.
<b>Payroll process – employee master data validation through provident fund portal using UAN number</b>	Auditor can compare the details available on the Employees' Provident Fund Organisation portal with the employee master and identify discrepancies in PAN details, Aadhar details, Bank account numbers, previous employment details, educational qualifications etc.
<b>Benchmarking</b>	Auditor can analyse and benchmark the revenue growth, EBITDA percentage, net profit percentage, margin, contribution of the company with all the peer companies in that particular sector. This can help to analyse whether the figures of the financial statements are in line with the industry standards
<b>B. Balance Sheet</b>	
<b>Areas</b>	<b>Procedures</b>
<b>Debtors / Receivable process</b>	Auditor can leverage the credit rating and map them with the customers with whom the entity is transacting. On performing this analysis, if auditor notices that significant amount is receivable from companies who are rated as likely to default on their financial obligation, then the audit team can perform specific and detailed audit procedures to assess recoverability of such dues.
<b>Bank reconciliation process</b>	Auditor can take the bank ledger from the entity's ERP and bank statement from the banks' website and can re-perform the bank reconciliation for a given period. Further, the auditor can obtain the rights to login and view the bank accounts. If this is available, the auditor can verify the account balances using this external source and agree the bank statements provided by the management.
<b>Procure to pay – GST Input tax credit</b>	Auditor can identify fictitious GSTINs in the vendor master wherein no details of such GSTINs are available on the GST portal. Similarly, Auditor can also Identify cancelled and suspended GSTINs from the portal.
<b>Conversion of foreign exchange into INR</b>	Indian Accounting Standards requires company to translate foreign figures into INR at each reporting date. To gain greater comfort over the translation of foreign exchanges into INR, an auditor can automate the working to check the accuracy of conversion.

## **Conclusion**

The advancements in data and technology across the world have put the power of data and computing in the hands of the end-users. These users are assisted by various online tools as well as open-source software which enable them to access the data from external sources and analyse it to obtain meaningful analysis and insights.

As far as the auditors are concerned, they will be able to deliver high quality audits only by making use of technology, especially in case of large companies. It will therefore be in the auditors best interest to invest in technology as well as train its resources to ensure they are able to use technology to their best advantage.

## Training Sessions



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Thanks Neha & Kunal for delivering session on basic understanding of M&A tax and keeping participants engaged through discussion, interaction and fun.

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Thank you Dhurba for making us understand Order To Cash Process Audit in order to meet the determined audit objectives.

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# Upcoming Compliances

Date	Compliance
April 11, 2023	Due Date for filing of Form GSTR-1 for the period March'23 for the registered taxpayers who have opted for monthly filing of GST Returns
April 13, 2023	Due Date for submission of invoices through IFF under QRMP scheme for the period March'23 for the registered taxpayers who have opted for quarterly filing of GST Returns
	Due Date for filing of Form GSTR-6 for the period March'23 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration
April 14, 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB and 194M, 194S in the month of February 2023
April 15, 2023	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending March 2023
April 20, 2023	Due Date for filing of Form GSTR-3B for the period March'23 for the registered taxpayers who have opted for monthly filing of GST Returns
April 30, 2023	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of March 2023 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, 194S in the month of March 2023

# Editorial Team



Sakshi Sachdeva



Manisha Martolia



Kunal Aggarwal



Alok Gupta



Sakshi Gogia

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## Contact Us



S-217, Panchsheel Park,  
New Delhi -110017



**Mail Us**  
info@ibadvisors.co



**Call Us**  
+91-11-40946000



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www.ibadvisors.co

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