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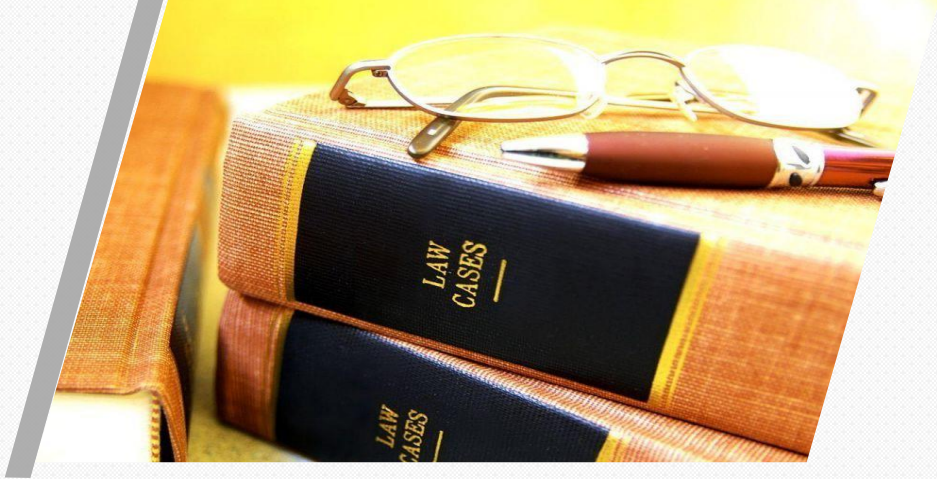
**July 2023**

# Content

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<b><u>Direct Tax – Case Laws</u></b>	<b>3</b>
<b><u>Direct Tax – Circulars &amp; Notifications</u></b>	<b>5</b>
<b><u>Indirect Tax – Case Laws</u></b>	<b>6</b>
<b><u>Indirect Tax Circulars &amp; Notifications</u></b>	<b>7</b>
<b><u>Legal &amp; Regulatory Notifications</u></b>	<b>8</b>
<b><u>Column</u></b>	<b>10</b>
<b><u>IBA News</u></b>	<b>12</b>
<b><u>Compliance Calendar</u></b>	<b>13</b>
<b><u>About us</u></b>	<b>15</b>

# Direct Tax Case Laws



## Case Law 1:

**Where assessee-trust had substantially satisfied all conditions for availing benefit of exemption it could not have been denied due to belated filing of audit report in Form No. 10B**

The assessee was a public charitable trust engaged in imparting education. Admittedly, the assessee was granted exemption certificate under section 12A as well as recognition under section 80G(5). The assessee filed its return of income claiming exemption was disallowed by the Assessing Officer. The only reason for disallowance of claim of exemption was non-furnishing the audit report in Form-10B alongwith return of income or before filing of return of income. CIT(A) confirmed the action of Assessing Officer and dismissed the appeal of the assessee by holding that the assessee had not furnished any application for seeking condonation of delay in filing Form 10B from Commissioner (Exemption) nor furnished the order condoning the delay if any. It is found that the Jurisdictional High Court in a recent decision in the case of Trust For Reaching The Unreached Through Trustee v. CIT held that when the assessee trust substantially satisfied the condition for availing benefit of exemption as trust, exemption cannot be denied merely on bar of limitation in furnishing audit report in Form-10B.

Considering the aforesaid factual and legal discussion, it is found that the assessee has substantially satisfied all the conditions for

availing the benefit of exemption except for filing audit report in Form 10B, which was filed belatedly, thus respectfully following the decision of the High Court, the grounds of appeal raised by assessee are restored back to the file of Assessing Officer to verify the contents of Form 10B for all the assessment years and grant necessary exemptions by passing the order in accordance with law.

**Navbharat Charitable Trust v. Income Tax Officer.**

## Case Law 2:

**Transaction of furnishing corporate guarantee to a step-down subsidiary i.e. an associated enterprise, would come under purview of international transaction**

The assessee furnished corporate guarantee to a bank on behalf of its step-down subsidiary in Cyprus. The value of the corporate guarantee given by the appellant is US\$ 13.5 million. The AO being of the view that since the assessee had not charged the corporate guarantee fee on the said international transaction, proposed an upward adjustment towards corporate guarantee fee at the rate of 2 per cent of outstanding loan The AO held that said transaction was in the nature of international transaction and, accordingly, upheld the adjustment proposed by the TPO.

# Direct Tax : Case Laws

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On examining the case under the definition of international transaction as per section 92B(1), it was observed that the assessee-company is located in India and its wholly-owned subsidiary is located at UK and its step-down subsidiaries are located in other parts of the world. Since the assessee-company has given a corporate guarantee for one of its step-down subsidiaries i.e. an associate enterprises there is prima facie an international transaction and now to complete the same has to be a bearing on the profits, income, losses or assets of such enterprise. In case of any default by K regarding repayment of loan to Bank the first/direct impact will be on the assessee and that can end up a cost on the assessee and Similarly if there is a gain arising out of the said corporate guarantee by way of deduction in interest rates, which will thus, increase the profits of the step-down subsidiaries, will have a positive impact on the profits of the assessee-company and therefore, there is a direct bearing on the profits/losses of the assessee-company for the said transaction entered on behalf of its associate enterprises. Therefore, the said transaction comes under the purview of international transaction and which thus calls for the calculation of upward adjustment towards corporate guarantee fee. Now, so far as the computation of corporate guarantee fee is concerned, TPO applied 2 per cent rate and on the other hand, the assessee has given an alternate submission applying 0.25 per cent rate. However, it is found that under similar set of facts and circumstances of the case, the addition for corporate guarantee fee applying 0.5 per cent rate had been sustained in the decision of Greenply Industries Ltd. v. Asstt. CIT wherein the issue has been examined at length and Arm's Length fee has been restricted at the rate of 0.5 per cent. Therefore, the Assessing Office

was to be directed to compute the corporate guaranteed fee at the rate of 0.5 per cent of the outstanding loan at the year-end as against 2 per cent charged in the assessment proceedings.

**Tata Global Beverages Ltd. v. Deputy Commissioner of Income-tax**

# Direct Tax Circulars & Notifications



## S. No Notification & Circulars

### 1. Notification No. 46 /2023/F.No.500/1/2014-APA

The Central Government hereby notifies that where the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one per cent. of the latter in respect of wholesale trading and three per cent. of the latter in all other cases.

For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely: -

- purchase cost of finished goods is eighty per cent. or more of the total cost pertaining to such trading activities; and
- average monthly closing inventory of such goods is ten per cent. or less of sales pertaining to such trading activities.

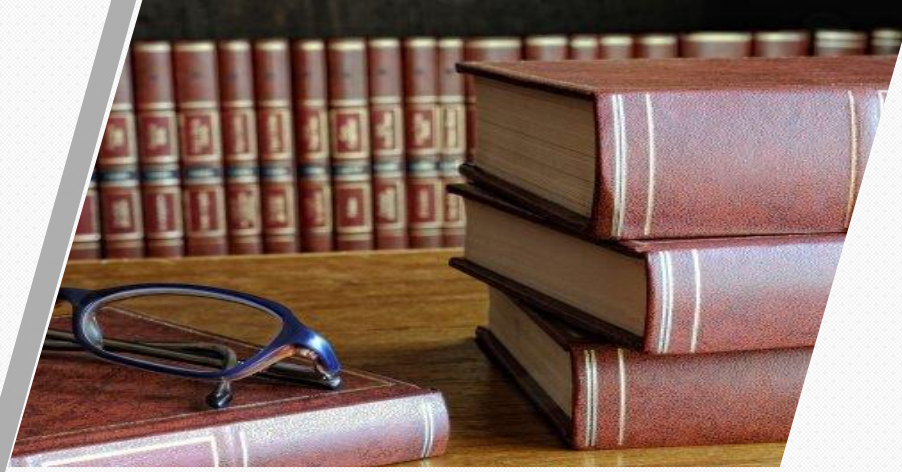
### Circulars :

#### 1. Circular No 09/2023

##### **CBDT extends the time limits for submission of certain TDS/TCS Statement.**

- The statement of deduction of tax for the first quarter of the financial year 2023-24, required to be furnished in Form No. 26Q or Form No. 27Q, on or before 31<sup>st</sup> July 2023 under Rule 31A of the Income-tax Rules, 1962 ("the Rules"), may be furnished on or before 30<sup>th</sup> September 2023.
- The statement of collection of tax for the first quarter of the financial year 2023-24, required to be furnished in Form No. 27EQ, on or before 15<sup>th</sup> July 2023 under Rule 31AA of the Rules, may be furnished on or before 30<sup>th</sup> September 2023.

# Indirect Tax : Case Laws



## **Case Law 1:**

### **Facts & Rulings of the case :**

M/S SBI Textiles Private Limited registered under GST for their two units in same state and wish to merge both units by way of transfer of all assets and liabilities. The applicant furnished an application form ARA-01 for seeking an advance ruling regarding the transfer of unutilized balance in the E-credit ledger on the merger of two distinct persons within the same state, having the same PAN, as specified in Section 25(4) of the Chhattisgarh Goods & Services Tax Act, 2017. They are also seeking clarification on whether the transfer of unutilized balance in the E-credit ledger between distinct persons in the same state, with the same PAN, can be done without following the process of merger.

The applicant contends that the transfer of unutilized balance in the E-credit ledger should be allowed based on Section 18(3) of the CGST Act, 2017. They argue that the registrations under different GSTINs within the same state and under the same PAN should be treated as separate registered persons for the purpose of GST, and therefore, the transfer of unutilized balance of Input Tax Credit (ITC) should be allowed.

During the personal hearing, the applicant reiterated their points and requested a ruling on the matter. The jurisdictional Deputy Commissioner opened that the transfer of unutilized balance in the E-credit ledger on merger of distinct units is clarified in CGST circular no. 133/2020, but there is

no procedure defined for the transfer of unutilized balance between distinct persons, making it ineligible for transfer.

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

The authority analysing the case states that the provisions for implementing the CGST Act and the Chhattisgarh CGST Act, 2017 are similar, and the issues raised by the applicant are not within the scope of the advance ruling mechanism. According to Section 97(2) of the CGST Act, the questions on which advance rulings can be sought are specified, and the issues raised by the applicant do not fall under those categories.

Accordingly, the application filed by the applicant for advance ruling is rejected.

# Indirect Tax

## Notifications & Circulars



### S. No Notifications

- 1. Seeks to extend the due date for furnishing FORM GSTR-1 for April and May 2023 for registered persons whose principal place of business is in the State of Manipur.**

CBIC vide Notification No.14/2023-Central tax dated 19th June 2023, has extended the due date till the 30th June 2023 for filing GSTR-1 for the registered person filing return under section 39(1) in the state of Manipur w.e.f. 31st May 2023

Link: <https://taxinformation.cbic.gov.in/view-pdf/1009753/ENG/Notifications>

- 2. Seeks to extend the due date for furnishing FORM GSTR-3B for April and May 2023 for registered persons whose principal place of business is in the State of Manipur.**

CBIC vide Notification No.15/2023-Central tax dated 19th June 2023, has extended the due date till the 30th June 2023 for filing GSTR-3B for the registered person filing return under section 39(1) in the state of Manipur w.e.f 31st May 2023.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009754/ENG/Notifications>

- 3. Seeks to extend the due date for furnishing FORM GSTR-7 for April and May 2023 for registered persons whose principal place of business is in the State of Manipur.**

CBIC vide Notification No.16/2023-Central tax dated 19th June 2023, has extended the due date till the 30th June 2023 for filing GSTR-7 for the registered person required to deduct tax at source under section 39(6) with rule 66 in the state of Manipur w.e.f 31st May 2023.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009755/ENG/Notifications>

### Instructions: -

- 1. Guidelines for processing of applications for registration :**

CBIC vide Notification No.3/2023-Central tax dated 14th June 2023, provides the guidelines for registration. And further states that, the officer shall initiate the process of scrutiny and verification of the details filled by the applicant in the application for registration in FORM GST REG-01 Immediately on receipt of the application for the registration in the Task List of the concerned officer on ACES-GST application.

<https://taxinformation.cbic.gov.in/view-pdf/1000479/ENG/Instructions>

# Legal & Regulatory Notifications



## S. No Notifications

### 1. Companies (Accounts) Second Amendment Rules, 2023

(Notification dated May 31, 2023)

Ministry of Corporate Affairs, vide its Notification dated May 31, 2023, has issued notification stated that after filing of the form AOC-4 or form AOC-4 NBFC (IND AS) and form AOC-4 XBRL for the Financial Year 2023-24, the company shall also separately file form CSR-2 on or before **March 31, 2024**.

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=hkjC9jSSH4nRkzYxvO2a5w%253D%253D&type=open>

### 2. Limited Liability Partnership (Amendment) Rules, 2023

(Notification dated June 02, 2023)

Ministry of Corporate Affairs, vide its Notification dated June 02, 2023, has issued notification about the substitution of the LLP Form 3 (Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein) with the new one.

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=iiQZzbSNrcRVS%252F9wRBqOew%253D%253D&type=open>

### 3. Insolvency and Bankruptcy Code, 2016

(Notification dated June 14, 2023)

Ministry of Corporate Affairs, vide its Notification dated June 14, 2023, has issued notification that where the corporate debtor has entered into any of the following transactions, arrangements or agreements, namely: -

- The Production Sharing Contracts, Revenue Sharing Contracts, Exploration Licenses and Mining Leases made under the Oilfields (Regulation and Development) Act, 1948 (53 of 1948) and rules made thereunder; and
- Any transactions, arrangements or agreements, including Joint Operating Agreement, connected or ancillary to the transactions, arrangements or agreements referred to in clause (i)



# Legal & Regulatory

provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), shall not apply.

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=igiGKv5zktdufUjKGZkigA%253D%253D&type=open>

#### **4. Relaxation in paying additional fees in case of delay in filing DPT-3 for Financial Year ended on March 31, 2023**

(Notification dated June 21, 2023)

Ministry of Corporate Affairs, vide its Notification dated June 21, 2023, has issued notification stated that the due date of filing the form DPT-3 (Return of Deposits) for the Financial Year March 31, 2023 has been extended up to July 31, 2023 without the payment of the additional fees due to the transition of the MCA-21 portal from V2 to V3.

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=GZbzY8G5s24kITjoGKWLQQ%253D%253D&type=open>

# Column

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## GST Implication on Renting of Residential Dwellings

By – Kishan Kashyap

IBA

### **Introduction and concept :**

In general, A dwelling is a physical space that provides shelter and serves as a personal living space for individuals or families. It can also encompass the surrounding land or property associated with the place of residence.

Under the Goods and Services Tax (GST) in India, the term "residential dwelling" refers to a property or building that is primarily used for residential purposes. It includes houses, apartments, flats, condominiums, and other similar units that are meant for residential occupancy.

The concept of residential dwellings is important under GST as it determines the applicable tax rates, input tax credit eligibility, and other provisions related to the sale or supply of such properties. The GST rates for residential dwellings may vary depending on factors such as the value of the property, the carpet area, and whether the property falls under the category of affordable housing or not.

### **GST Implementation :**

Personal consumption of Goods and services by an individual is an important part of survival or growth and thus, goods and services which are essential for the well-being of any individual have been exempt from GST by the Government. Therefore, service of renting of residential dwelling for use as residence have been exempted from GST As per Sl. No. 12 of Notification No. 12/2017-CT (Rate) dated 28.06.2017.

However, as per Notification No. 04/2022-CT (Rate) dated 13.07.2022 (w.e.f. 18.07.2022) the aforesaid exemption has been restricted. It means that if such service is provided to a registered person the RCM @18% will be applicable on the same and if the residential property is given to an unregistered person (i.e., not to a registered person) for use as residence only, then the exemption shall prevail.

The Government has also amended the original Notification No. 13/2017-CT (Rate) dated 28.06.2017 by way of issuing a Notification No. 05/2022-CT (Rate) dated 13.07.2022. Prior to

Notification 05/2022, if residential dwelling is given on rent for commercial purposes then it is not exempt supply and service is covered under forward charge basis i.e., supplier has to charge GST on forward charge basis.

But after the Notification No. 05/2022-CT (Rate), if any person (whether registered or not) gives service by way of renting of residential dwelling to a registered person for commercial use then the GST would be applicable on reverse charge basis.

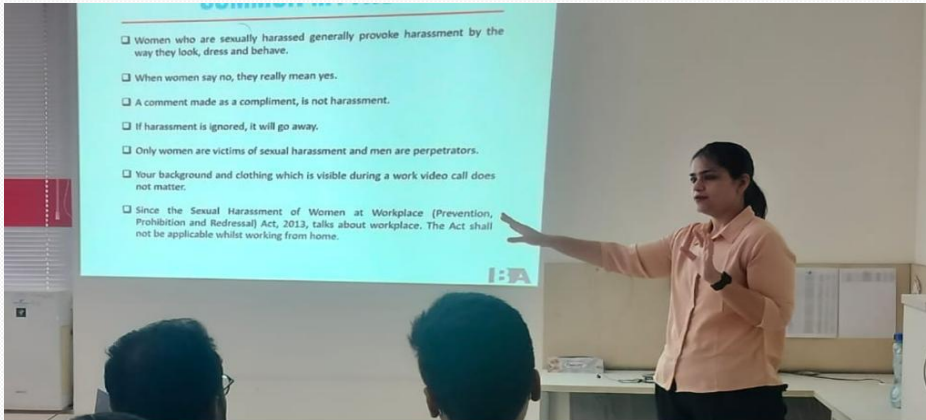
**Crux of renting of residential property :**

Applicability on renting of residential property is summarized in the following table:

Particulars	Landlord	Tenant	GST Applicability
Residential property used for residential purpose	Registered	Registered	GST is applicable @18% under RCM
Residential property used for residential purpose	Registered	Unregistered	Exempt under GST
Residential property used for residential purpose	Unregistered	Unregistered	Exempt under GST
Renting of residential property for any other purpose	Registered	Unregistered	GST is applicable @18% under FCM.
Renting of residential property for any other purpose	Registered	Registered	GST is applicable @18% under FCM.
Renting of residential property for any other purpose	Unregistered	Registered	GST is applicable @18% under FCM.
Renting of residential property for any other purpose	Unregistered	Unregistered	Exempt under GST

The tenant can claim the Input tax credit, if the property taken on rent is used for business purpose.

## Training Session: POSH



We appreciate Surbhi's presentation on POSH. We learned the skills and knowledge necessary for professional conduct and appropriate behavior at the workplace.

## Promotions - 2023

### PROMOTION ANNOUNCEMENT 2023

 <b>SWETA SINHA</b> SR. MANAGER	 <b>SAKSHI GOGIA</b> SR. MANAGER	 <b>RAVI KUMAR</b> MANAGER	 <b>PARIDHI AGARWAL</b> MANAGER	 <b>ANKIT RASTOGI</b> MANAGER	 <b>ASHISH GUPTA</b> DEPUTY MANAGER
 <b>SHRUTI JAIN</b> DEPUTY MANAGER	 <b>IMRAN KHAN</b> ASSISTANT MANAGER	 <b>SAKSHI SACHDEVA</b> SENIOR ANALYST	 <b>ASHWINDER SINGH SAINI</b> SENIOR ANALYST	 <b>ATUL KUMAR VARUN</b> SENIOR ANALYST	 <b>SHALU SHARMA</b> SENIOR ANALYST



It gives us an immense pleasure to announce promotions at IBA. We proudly applaud for each one of them, for their unwavering diligence and unwavering pursuit of greatness.

# Upcoming Compliances

Date	Compliance
July 10, 2023	Due Date for filing of Form GSTR-1 for the period June 2023 for the registered taxpayers who have opted for monthly filing of GST Returns
July 13, 2023	Due Date for submission of invoices through IFF under QRMP scheme for the period Apr-June 2023 for the registered taxpayers who have opted for quarterly filing of GST Returns
	Due Date for filing of Form GSTR-6 for the period June 2023 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration
June 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 April 2023
July 15, 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB,194M,194S in the month of May, 2023
	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending June, 2023
	Quarterly statement of TCS deposited for the quarter ending June 30, 2023
	Upload the declarations received from recipients in Form No. 15G/15H during the quarter ending June, 2023.
July 20, 2023	Due Date for filing of Form GSTR-3B for the period June 2023 for the registered taxpayers who have opted for monthly filing of GST Returns
July 24, 2023	Due Date for filing of GSTR-3B and Challan Payment for the period Apr-June 2023 for the registered taxpayers who have opted for QRMP scheme.
July 30, 2023	Quarterly TCS certificate in respect of tax collected by any person for the quarter ending June 30, 2023

# Upcoming Compliances

Date	Compliance
July 30, 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB,194M,194S for the month of June, 2023
July 31, 2023	Return of income for the assessment year 2023-24 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A applies or (d) an assessee who is required to furnish a report under section 92E.
	Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending June 30, 2023.
	Intimation in Form 10BBB by a pension fund in respect of each investment made in India for quarter ending June, 2023 Intimation in Form II by Sovereign Wealth Fund in respect of investment made in India for quarter ending June, 2023

# Editorial Team



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## 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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Queries/Feedback/Suggestions on this newsletter may be addressed to: [info@ibadvisors.co](mailto:info@ibadvisors.co)

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