



# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

— Pune Branch of WIRC of ICAI —

## NEWSLETTER - JULY 2023



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## CHAIRMAN'S MESSAGE

Dear Members & Students,

Wishing you all a very Happy 75th CA Day!

It is a proud moment for all of us that, our alma mater has completed its 74 years.

My heartiest congratulations to all of you on this momentous occasion of the 75th foundation day of our beloved institute.

The ICAI is constantly innovating, upgrading and make it enriching for the members and students.

Friends, this is our institute, let us stand by it very loyally, let the altar of worship be our own institute, our own country

As you are aware council of the institute including its branches are selflessly working for the benefit of members and students at large not only within India but also Globally. Recently Startup Sphere 2023 completed successfully in Mumbai which was attended by more than 7000 members.

At Pune Branch we celebrate Foundation Day with lots of activities for members and students i.e Walkathon, Different Competition, Flag Hoisting, Organ Donation Awareness & Camp, Health Check-Up Camp including checkup of Height, Weight, BP, BMI, Random Blood Sugar, Dr. Consultation etc., other CSR Activities includes Tree Plantation and some other sports activities. We have also decorated our office Building with Lighting, Balloons, Rangoli etc. On this auspicious occasion we have also arranged Felicitation Programme of Senior Members, Past CCM's, RCM's & MCM's of Pune Branch.

As like every year, we at Pune branch are very proud to state that around 826 bottles of blood on different locations was donated by our CA fraternity. During this month considering the due dates of income tax, we have organized many other professional programs for the benefit of members and students.

Do not forget to share your ideas, views and thoughts on any and every matter related to the branch. Assuring you that we shall definitely take cognizance of each and every email, message and verbal communication.

*"Learn everything that is good from others, but bring it in, and in your own way adsorb it; do not become others."* - Swami Vivekananda



CA Rajesh Agrawal

Chairman  
Pune Branch of WIRC of ICAI





WALKATHON - 01 July 2023







CA DAY 2023 CELEBRATION - 01 July 2023







## TREE PLANTATION - 02 July 2023







PUNE - FELICITATION OF SENIOR MEMBERS, PAST CCM, RCM & MCM





## TAXATHON



CA Bhuvanesh Kankani

'Ignorantia Juris Non Excusat', just by reading this maxim we immediately understand that one cannot defend himself by pleading his ignorance of the law. But the question, which we intend to discuss here is, is this a valid understanding? If Yes, then in what Context, & If No, then again in what context?

Origin: It's a Latin phrase wherein 'Ignorantia' refers to Ignorance, 'Juris' to Law and 'Non Excusat' to No Excuse. Which means that ignorance of any law cannot be used as defense for any breach of law. That is, one cannot say that he was unaware of the law to avoid the liability after breach of that law. The basic intention behind this legal maxim is to put a check on a person at fault getting freed merely by claiming that he was not aware of given law.

However, does it mean one should be aware of each and every law? and Is it possible?

Interestingly, in a case of P.V. Devassy vs Commissioner Of Income-Tax on 20 August, 1971 AIR 1974 Ker 95 Hon'ble Kerala High Court referred the observation of Lord Mansfield, (reproduced as under)

'it would be very hard upon the profession, if the law was so certain, that everybody knew it' (here by profession they mean to refer legal profession)'

That is Lord Mansfield mean to say, the profession of law would have been in trouble if the Law was certain.

In current scenario where there are numerous laws with huge magnitude of amendments can a person knowing each and every law be imagined?

## Preconditions

With an intention to draw some conclusion, lets first discuss what should be the preconditions to make this maxim valid. The preconditions would be same as they would be in a case where one writes a letter to another with an intention that the letter be read and the intended message is understood. Thus, what is required is the message be first delivered to addressee second the addressee be capable of understanding (i.e. he should know reading and understands what is written along with legislative intention). Thus, the preconditions should be 'Promulgation' and 'Knowability'.

'Knowability' refers to ability to Know. In given context, one can only decide whether any law is knowable or not, if that law

1. Is 'available' with him to read and
2. that person is capable to understand that law

This aspect of 'Availability' of the law tenders the requirement of 'Logistics' (from legislator to the subject audience). That is, each and every law must be very well publicized (Promulgated) to be available with intended audience.

Thereafter, comes the question of understanding the law. Acts, Rules, Circulars, Notifications etc. passed by State Governments are written in regional languages and sometimes in English also. Whereas, central Laws are written in English and Hindi (being official language). Chances that people not even understanding Hindi cannot be ruled out. Further, even if one is able to read but then what about "Vagueness in the law!", which is another aspect that needs to be considered while discussing the capability of understanding a law. A person committing an offence should be aware of the law, for which the law must be clear and not vague. Further, even a lawyer before arguing or a judge before writing a judgement refers the Bare Acts, commentaries to cross check themselves. Meaning, even the capable persons are required to have a second look at the laws so as to get an assurance. Thus, the question, can one update himself even of one particular law COMPLETELY?





'Knowability' of the law is must to ascertain whether one was negligent on knowing the law or whether he could not get a chance to know that law at all. This further leads to generate a requirement to differentiate between Mistake of Law and Ignorance of Law are one and same. Mistake of law implies that the doer has knowledge of law but that knowledge leads to wrong conclusion. Whereas, Ignorance of law implies total lack of knowledge. However, the conclusion in each case is same, i.e. committing an act which unlawful. Different commentators have different view on considering whether Ignorance and mistake of law be considered one and same or not.

Further to this, will Ignorance of law tantamount to mens rea? Mens rea means having culpable (guilty) state of mind wherein the doer of the act is having knowledge of unlawfulness and is prohibited by law. Whereas, in the scenario where doer is ignorant of law, he lacks the knowledge of the law as well as absence of mental state. Thus, ignorance of law cannot lead to mens rea.

### Ignorance of Law in context of Natural Laws

Even the question of Knowability may not arise in certain situations when the act is generally or commonly considered as offence/crime. Actions like theft, murder, rape, money laundering, tax evasion etc. are commonly considered as against public policy and are naturally punishable in one or the other law. Now, given the common understanding if someone commits such kind of act and claims that he was unaware of such laws prohibiting such act should be of no use as the action of committing such act was against public policy the consequence of which is known by everyone.

Thus, such acts which naturally by general sense are not accepted by society or such acts which are commonly known to be restricted or prohibited, the laws related to them though not available with the person committing crime cannot claim that he was unaware of those particular laws.

However, there are many other laws which are not so naturally known by society. Also, there are rules/regulations which are published after the enactment of an Act (Law) but those rules/ regulations are not promulgated in same way the given Acts are done. There are circulars, clarifications, instructions, notifications etc. which cannot be promulgated till each and every person. So, the question, should judiciary practically expect one to know each and every rules and regulations which are not forming part of public policy or are not much promulgated?

### Courts on this Maxim

Further, there are different level of courts in the Judiciary, like District Courts, High Courts, Supreme Courts. The Judgement given by District Court can be reversed by High Court and same also can be again reversed by Supreme Court which can be further reviewed by the larger bench of Supreme Court Itself. Why it does happen in such way, is it that the lower courts are not aware of the Law?

Even courts in India have even accepted this contention that its cannot be presumed that everyone is aware of each and every law, below are certain citations

1. The Supreme Court in the case of: Motilal Padampat Sugar Mills V. State of U.P., AIR1979 SC 621 - wherein, it accepted the dicta of Maule, J. and Lord Atkin, that while ignorance of law is no excuse, (a maxim of different scope and application), there is not and never has been a presumption that everyone knows the law. Relevant part of the judgement is as under,

'...6. The claim of the appellant to exemption could be sustained only on the doctrine of promissory estoppel and this doctrine could not be said to be so well defined in its scope and ambit and so free from uncertainty in its application that we should be compelled to hold that the appellant must have had knowledge of its right to exemption on the basis of promissory estoppel at the time when it addressed the letter dated 25th June, 1970. In fact, in the petition as originally filed, the right to claim total exemption from sales tax was not based on the plea of promissory estoppel which was introduced only by way of amendment. Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law. Over a hundred and thirty years ago, Maule, J., pointed out in *Martindale v. Faulkner*, (1846) 2 CB 706 "There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so". Scrutton, also once said: "It is impossible to know all the statutory law, and not very possible to know all the common law." But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in *Evans v. Bartlem*, 1937 AC 473 "the fact is that there is not and never has been a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application." It is, therefore, not possible to presume, in the absence of any material placed before the Court, that the appellant had full knowledge of its right to exemption so as to warrant an inference that the appellant waived such right by addressing the letter dated 25th June, 1970. We accordingly reject the plea of waiver raised on behalf of the State Government.....'





2. Hon'ble Madras High Court in the case of M/s. Hosanna Ministries in T.C. Appeal No.3 of 2017 adjudicated a matter in favour of appellant, wherein respondent revenue authorities had contended that 'Ignorance to Law' cannot be an excuse. Appellant had preferred an appeal before Hon'ble High Court against the order of Hon'ble Income-tax Appellate Tribunal ('ITAT'), Chennai wherein Hon'ble ITAT had rejected the request of the appellant to condone the delay of 1902 days till the date of filing appeal in the year of 2015. The reason given by the appellant was that of being unaware of newly inserted provision of in section 253(1) of the Income-tax Act, 1961 vide Finance Act 1999. Hon'ble HC while setting aside the order of Hon'ble Chennai ITAT had referred its own judgement in T.C.A.No.886/2016 wherein Hon'ble Supreme Court judgement in case of Motilal Padampat Sugar Mills V. State of U.P., AIR 1979 SC 621 was referred (same is quoted above also in this article)

The above judgement of Hon'ble Supreme Court dealt with the commercial laws and is very clear that such presumption if held would be contrary to common sense and reason.

#### General Discussion

Further, the maxim may hold its ground more in a criminal law than in a taxing law. Basically, in case if we imagine a scenario, in criminal laws, where the actor is pleading 'Ignorance of law', how tough it would be, rather impossible, for the prosecution to prove the crime. The proposition that this maxim will hold water in criminal laws is because the actions concerned in criminal laws are generally against public policy which are normally known to everyone in society, so there wont arise any situation where Actor is not aware of the consequence, in nature of some punishment, of the action done. Same analogy can also be drawn in case of prosecutions in case of tax evasions since 'Tax Evasion' is also considered as against public policy.

Further, when we talk of Commercial, Tax or Regulatory laws there are many instances where the subject audience is not aware of the law for substantial time. I would like to draw attention to few recent amendments in the Income-tax Act, 1961 which many tax payers were not aware till the time Chartered Accountants conducted audit,

- 1) Change in limit of Cash Transaction from Rs.20,000 to Rs.10,000 (Sub-section (3) of section 40A as amended by Finance Act 2017)
- 2) Seeking a declaration from Goods Carriage owners for non-deduction of tax as per section 194C (Sub-section (6) to section 194C as Amended by finance Act 2015)
- 3) Furnishing of Form 10 by the charitable trusts in case of accumulation of Income as amended by Finance Act 2016. (sub-section (2) to section 11)

Further, I would also like to ask everyone who reads this write-up, can you point out a section similar to sub-section (1) to section 41 of Income-tax Act, 1961 in Income-tax Act, 1961 itself? How many of us know that provision?

Accordingly, the inference drawn, from above writeup, can be applied in tax matters related to condonation of delay, regulatory matters, also in penalty matters to substantiate the reasonable cause.

In a penalty matter of Sneh Builder Vs. Dy.CIT I.T.A. No. 456/PN/2008 (AY 2004-05), Hon'ble Pune ITAT adjudicated in favour of assessee wherein 'Ignorance of law' was the defence of assessee, the relevant part of judgement is as under,

'14. In view of above legal and factual discussions penalty in question is deleted because, the assessee was under bonafide impression that transaction by way of bearer cheque is not violation of provisions of section 269SS of the Act. Moreover, this genuine transaction recorded in the books of account of the assessee. This point has not been raised even by the auditors as the same was done in the normal course of assessee's business since long. Before parting this decision, it is pertinent to mention that we are aware of the fact that in general, ignorance of law is no excuse but under certain circumstances it may be so. In the present case, ignorance of law may be defence, but one should be cautious while applying this proposition. It should be rarely used as specific circumstance. It is settled law that each case is decided in the facts and circumstances. It is also made clear that case laws relied on by both the parties have been taken into account, though same have not been specifically mentioned.'

Further in case of P.V. Devassy vs Commissioner of Income-Tax (supra) Hon'ble Kerala High Court adjudicated the penalty matter u/s 271(1) of the Income-tax Act, 1961 in the favour of assessee by stating that assessee had reasonable cause. The relevant part of the judgement, which drives the conclusion that the reason supplied by the assessee falls within the requirement of 'Reasonable Cause', is as under,

'8. .... Counsel for the revenue referred to Salmond on Jurisprudence, page 395, paragraph 102, and contended that every person is presumed to know the law, and, therefore, the assessee had no reasonable cause for not filing the return in time. Public policy requires that ignorance of law should be no excuse. But there is no presumption that every-body knows the law, though it is often so stated.



" Sometimes it is said that every man is presumed to know the law, but this is only a slovenly Way of stating the truth that ignorance of the law is not in general an excuse." (See A First Book of Jurisprudence by Pollock, at page 163.)

9. In *Marlindale v. Falkner*, [1846] 135 E.R. 1124, Maule J. said:

" There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so."

10. In *Criminal Law* by Glanville Williams, at page 385, it is stated :"

The view that everyone is presumed to know the law is now generally rejected; it is not a true proposition of law, and even if it were, it would only be a legal fiction, not a moral justification. Lord Mansfield drily observed that ' it would be very hard upon the profession, if the law was so certain, that everybody knew it'; and Maule J. is credited with the observation that everybody is presumed to know the law except His Majesty's judges, who have a Court of Appeal set over them to put them right'. The idea that the law can be known by everyone is to-day, in the 'planned' and 'welfare' State, more ludicrous than ever." '

The last sentence of this curated part of judgement, "The idea that the law can be known by everyone is to-day, in the 'planned' and 'welfare' State, more ludicrous than ever." Says it all.

#### Conclusion

The essential public character of a law requires that the law, once properly promulgated, must apply to anyone in the jurisdiction where the law applies. Public policy requires that ignorance of law should be no excuse. But there is no presumption that everybody knows the law, though it is often so stated.

Accordingly, for this Maxim to become valid, promulgation of law is of utmost importance. But the requirement doesn't end here, further, the intended audience must be enough capable even to understand the legislated law. Further to this, even in case where the intended audience is capable of understanding, the law must be clear and no ambiguities should exist (knowability). Thus, these preconditions appear to be quite idealistic but not practical and so is the Maxim.





**RULE 37A**



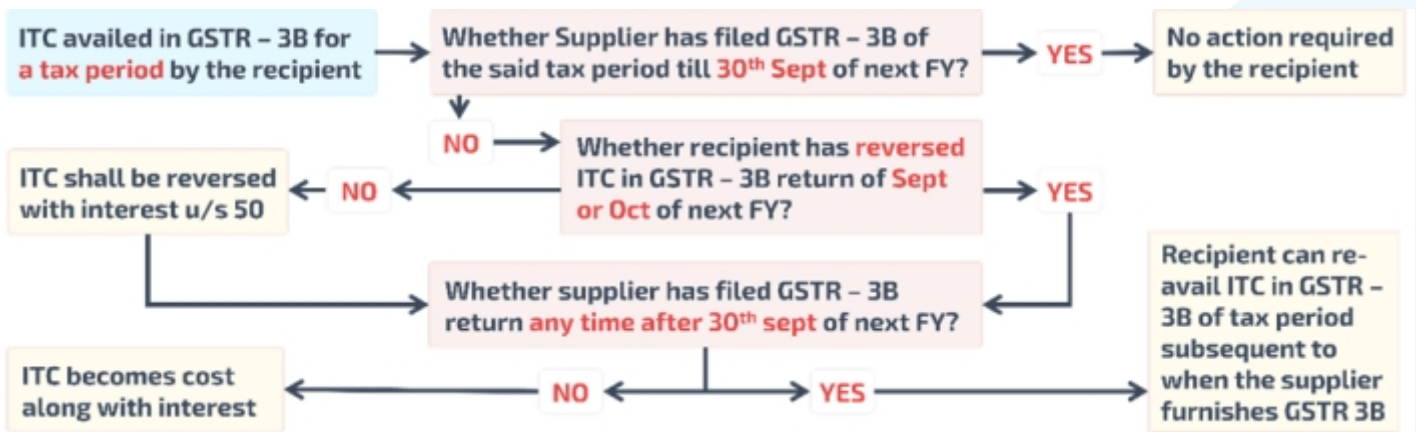
**CA Nilesh Mahajan**

**RULE 37A: ENSURE GSTR-3B COMPLIANCE OF SUPPLIERS TO PROTECT YOUR ITC**

In terms of Section 16(2)(c), one of the conditions for Input Tax Credit ('ITC') to become eligible is that the tax charged on the inward supply should be paid to the Government. However, it is difficult to confirm the payment status of the tax at the time of availing ITC, as the due date for filing the GSTR-3B return for both the supplier and recipient is the same i.e., 20th of subsequent month.

To address this issue, Section 41 of the GST law provides an exception to the aforesaid condition. Sub-section (1) of Section 41 allows the recipient to avail eligible ITC in their GST returns on self-assessment basis. However, Sub-section (2) of Section 41 states that the recipient must reverse the ITC on inward supplies if the supplier has not paid the tax due on those supplies. The recipient can re-avail the ITC once the payment is made by the supplier.

To provide a method for reversing and re-availing such ITC, the CBIC has issued Notification No. 26/2022 - CT, which inserts Rule 37A in the CGST Rules, 2017. In this regard, we have tried to explain the Rule 37A in SHORT, SIMPLE & EASY TO UNDERSTAND MANNER.





For ease of understanding the provisions & highlighting the issues that require clarification, the following table is provided:

Invoice Date	ITC availed 3B month	Supplier 3B filing date	Comments
25 July 2022	July 2022	01 Oct 2023	<p>ITC to be reversed in GSTR – 3B of Sept – 23 or Oct – 2023 [Table 4B(2)]</p> <p>Non reversal will attract interest, if the said credit is utilised U/s 50(3)*</p> <p>Re-claim ITC in GSTR – 3B of Nov or thereafter [Table 4A(5) &amp; 4D(1)]</p>
27 Aug 2022	Sept 2023	20 Oct 2023	<p>Rule 37A mandates the reversal of ITC if the supplier has not filed GSTR 3B until 30<sup>th</sup> September following the end of the FY in which the ITC was availed. In the given example, considering the ITC availed in FY 23-24, this implies that the supplier must fulfill their tax obligation by 30<sup>th</sup> September 2024 to avoid ITC reversal.</p>
08 Nov 2022	Oct – Dec 2022 [Q3]	10 Oct 2023	<p>ITC to be reversed in GSTR – 3B of Q2 July to Sept – 23 [Table 4B(2)]</p> <p>Non reversal will attract interest, if the said credit is utilised U/s 50(3)*</p> <p>Re-claim ITC in GSTR – 3B of Jan - Mar 2023 (Q4) &amp; thereafter [Table 4A(5) &amp; 4D(1)]</p>

\* Interest will be charged from the date of utilisation till the date of actual reversal in terms of Section 50(3) read with Rule 88B  
 Note: Rule 37A expects the recipient to reverse ITC through GSTR 3B, however, what if the reversal is done through DRC 03  
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