



Monthly E-Newsletter

# **BSC BEACON**

**TAX & REGULATORY INSIGHTS**

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## I. DIRECT TAX:

### A. CORPORATE TAX

#### 1. Upholds that reassessment proceeding initiated based on independent scrutiny of ROI cannot be considered as "Borrowed Satisfaction"

The Assessee filed its ROI for the AY 2010-11 declaring income from brokerage and commission, interest on loan and profit on sale of investment. Subsequently, a search was conducted on the premises of Mr. Himanshu Verma ('Mr. Verma') wherein various incriminating materials were seized. Pursuant to the search proceeding, the tax authorities found that the Mr. Verma was engaged in the business of providing accommodation entries through share capital.

Consequently, based on the report received from the Investigation Wing, the AO has issued reassessment notice alleging that Assessee has received INR 2.45 Crores being accommodation entry in form of share capital from 6 entities controlled by Mr. Verma. However, the AO had made addition of INR 11.05 Crores being share application money received from impugned parties. Against the assessment order, the Assessee filed an appeal before the CIT(A) who affirmed the assessment order on legal grounds as well as on merits. Aggrieved by the order of the CIT(A), the Assessee filed an appeal before the Hon'ble Delhi ITAT. The Hon'ble ITAT noted that AO recorded incorrect facts in the reason for reopening of assessment. Further, the Hon'ble ITAT observed that the AO reproduced the information received from Investigation Wing in the reasons recorded under Section 148 of the Act. Accordingly, the Hon'ble ITAT held that the reassessment was initiated on incorrect facts and the approval granted by the Pr. CIT was invalid as well as without application of mind. Accordingly, the Hon'ble ITAT quashed the reopening of the assessment by holding that reasons to believe are, in fact, conclusion of the AO.

Aggrieved by the ITAT order, the tax authorities filed an appeal before the Hon'ble Delhi HC. The Hon'ble Delhi HC observed that the report of the Investigation Wing only prompted the AO to scrutinise the ROI. Further, the AO considered the statement of Mr. Verma and the fact that some of the accommodation entry providers, as disclosed in the statement were also found to be investors in the Assessee. Accordingly, the formation of opinion by the AO was demonstrative of due application of mind and cannot be characterized as based on 'borrowed satisfaction'. Further, the approval accorded by Pr. CIT was also complied with Section 151 of the Act. Accordingly, the Hon'ble HC allowed the

appeal of the tax authorities, has set aside the ITAT order and restored the original assessment.

*Ganesh Ganga Investments Pvt Ltd [TS-292-HC-2025(DEL)]*

#### 2. Collection of 20% of disputed tax is not a mandatory obligation as per CBDT Office Memorandum No. 1914 dated 31.07.2016

Haji I. Asarab Ali ("the Assessee") filed an appeal against the assessment order dated 08.03.2024 before the JCIT (Appeals) – NFAC, which was pending for disposal. However, the AO, without considering the pendency of appeal, passed an order for the payment of 20% of the disputed demand as a precondition for considering the stay petition. Therefore, the Assessee filed a writ petition before the Hon'ble Madras HC against the impugned order for payment of 20% of the disputed demand.

The Hon'ble Madras HC observed that Office Memorandum No. 1914 dated 31.07.2016 stipulates a condition for considering stay petitions by payment of 20% of the disputed demand. This is only a condition and not a mandatory requirement.

Further, the Hon'ble HC directed the CIT(A) to dispose of the pending appeal within three months from the date of receipt of the Court's order.

*Haji I. Asarab Ali [TS-314-HC-2025(MAD)]*

#### 3. AO required to provide all the information and material at the time of issue of notice under Section 148A(b) of the Act and cannot introduce fresh grounds in order under Section 148A(d) of the Act.

A survey under Section 133A of the Act was carried at the business premises of the Assessee wherein certain records, including Cost to Completion ('CTC') reports, were found. Pursuant to the survey, the AO alleged that the expenses recorded under the head "Contingency & Design Risk" in the CTC report are bogus expenses and are generated through taking entries from various vendors. Accordingly, the AO passed an order disallowing the contingency expenses and made additions to the income of the Assessee for the AY 2017-18.

Aggrieved by the said order, the Assessee filed an appeal before the CIT(A) who had granted substantial relief to the Assessee by deleting 95% of the addition in

respect of contingency expenses. Against the order of the CIT(A), the Assessee and tax authorities filed cross appeals before the Hon'ble Mumbai ITAT.

Before the Hon'ble ITAT, the Assessee pointed out that in the SCN issued under Section 148A(b) of the Act, the AO has mentioned a sum of INR 97.11 Lakhs towards contingency expenses, however, no material was provided to the Assessee. In this regard, the Hon'ble Mumbai ITAT relying on the judgement of the Hon'ble SC in the case of **Rajeev Bansal**<sup>1</sup> and the decision of the Hon'ble Bombay HC in the case of **Anurag Gupta**<sup>2</sup>, has ruled that where the AO does not provide the information and material along with his notice under Section 148A(b) of the Act, then entire proceedings get vitiated.

Further, the Assessee had filed a detailed submission in response to the said SCN, wherein it was stated that the Assessee did not have a detailed breakup of the amount under consideration and had asked the AO to provide the details of the breakup. The Assessee also submitted before the Hon'ble ITAT that the AO has passed the order under Section 148A(d) of the Act based on new issues and material for which the Assessee was not provided any opportunity to file its rebuttal. In view of the above, the Hon'ble ITAT has stated that the AO has relied on fresh issues in the order passed under Section 148A(d) of the Act which is contrary to the judgement of Delhi HC in the case of **Tosca Master**<sup>3</sup>. Accordingly, the Hon'ble ITAT following the principles laid down by the Hon'ble Delhi HC in case of **Banyan Real Estate Fund Mauritius**<sup>4</sup>, has held that the notice issued under Section 148 of the Act is invalid and has quashed the said notice.

*CEC-ITD CEM TPL Joint Venture [TS-240-ITAT-2025(Mum)]*



<sup>1</sup> *UOI & Ors. v. Rajeev Bansal [TS-725-SC-2024]*

<sup>2</sup> *Anurag Gupta v. ITO and Ors [TS-219-HC-2023(BOM)]*

<sup>3</sup> *Tosca Master v. DCIT [TS-583-HC-2024(DEL)]*

<sup>4</sup> *Banyan Real Estate Fund Mauritius Vs. ACIT [TS-566-HC-2024(DEL)]*

<sup>5</sup> *ACIT vs. Ahmedabad Urban Development Authority [TS-814-SC-2022]*

#### **4. Claim of exemption under Section 11 of the Act can be sustained only in the absence of an intent to earn profits.**

The Assessee is a public trust registered with the office of Charity Commissioner under the Bombay Public Trust Act, 1950 from 11.05.1973. It is also registered under Section 12A of the Act from 16.03.1974. It carries out the activity of maintaining swimming pool, related club house facilities and other sports activities such as squash, billiards, bridge, etc. for members as well as public. During the AY 2014-15, the Assessee filed ROI and claimed carry-forward of deficit of INR 5.43 Crores after claiming exemption under Section 11 of the Act. However, the AO denied the benefit of exemption under Section 11 of the Act based on following factors:

- a. Assessee is a mutual organization with commercial objectives and so, no charitable benefits can be granted; and
- b. Activities undertaken by the Assessee were in the nature of trade, commerce or business and hence, the proviso to Section 2(15) of the Act will come into effect.

Accordingly, the AO made additions and determined total assessed income at INR 19.14 Crores. Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A) who followed the judgment of the Hon'ble Bombay HC in Assessee's own case for AY 2004-05, AY 2006-07 as well as AY 2007-08 and allowed the appeal of the Assessee. The tax authorities filed an appeal before the Hon'ble Mumbai ITAT. Before the Hon'ble ITAT, the tax authorities contended that Assessee is a mutual organisation with commercial objectives and hence, cannot claim exemption under Section 11 of the Act. The tax authorities relied on the judgment of the Hon'ble SC in case of **Ahmedabad Urban Development Authority**<sup>5</sup> to state that income becomes taxable if proviso to Section 2(15) of the Act is satisfied.

Per contra, the Assessee argued that the facilities provided by it were available not only to members but also to general public. It also hosts competitions including inter-club swim meet and schools in the locality use its swimming pool to provide training to their students. It submitted details of various achievements of the participants. The Assessee also argued that it has been suffering deficit over the years and is only charging nominal fees / charges from members and other people using the facilities to recoup some of the recurring maintenance costs and submitted the comparison of receipts and amount spent for various activities, which clearly showed that the Assessee had incurred losses even without

allocation of common administration cost. The activities of the Assessee cannot be treated in the nature of trade, commerce or business as defined in proviso to Section 2(15) of the Act merely for the reason that it charges fees from members and others. The Assessee relied on decision of Co-ordinate Bench of the Hon'ble Mumbai ITAT in case of **Media Research Users Council**<sup>6</sup> wherein judgment of Ahmedabad Urban Development Authority (*supra*) was analysed.

The Hon'ble ITAT noted that promotion of sports falls within charitable cause of advancement of any other object of General Public Utility. The Hon'ble ITAT held that in absence of intention to generate profit from the activities of the Assessee (as seen from continuous deficit), the activities cannot be considered as commercial in nature. Also, once the activities are held to be mutual, the same cannot be regarded as held in the nature of trade, commerce or business since a person cannot trade with oneself. Based on the findings and observations, the Hon'ble ITAT held that Assessee is not hit by the proviso to Section 2(15) of the Act and hence, claim of exemption under Section 11 of the Act is allowed. Accordingly, the Hon'ble ITAT dismissed the appeal of the tax authorities.

*Otters Club [TS-259-ITAT-2025 (Mum)]*

##### **5. Affirms Stepsibling as relatives under the Act and therefore Section 56 not to be attracted for gift received from stepsibling**

Rabin Arup Mukerjea ("the Assessee") is a non-resident Indian. He received a flat in Mumbai as a gift from Ms. Vidhie Mukerjea ("Vidhie") in January 2016. The Assessee is the son of Peter Mukerjea from his first marriage, while Vidhie is the daughter of Indrani Mukerjea from her earlier marriage. After Peter and Indrani got married, Rabin and Vidhie became stepsibling, though they do not share a biological parent.

In 2021, Rabin applied for a certificate under Section 197 of the Act for lower deduction of tax on account of sale of property. The tax authorities reviewed the gift deed and reopened Assessee's case, claiming that the gift was taxable, since Vidhie was not a "relative" as per the Act. The AO passed the reassessment order stating that stepsiblings are not relative as per the Act and therefore the stamp duty value of the property received by Assessee is taxable under Section 56 of the Act.

Assessee filed an appeal before the CIT(A), which was dismissed on the basis that relative definition under Section 56(2) of the Act is to be interpreted to the extent

<sup>6</sup> *Media Research Users Council vs. ADIT [TS-763-ITAT-2023(Mum)]*

of blood relationships, lineal ascendant and lineal descendant. Aggrieved by the order of CIT(A), the Assessee filed an appeal before the Hon'ble Mumbai ITAT.

The Hon'ble ITAT ruled in Assessee's favour, recognizing that stepsiblings fall within the broader interpretation of "relatives" under the Act. The ITAT cited legal dictionaries and other Indian statutes like the Companies Act and RBI Act, which acknowledge stepsiblings as relatives. The Hon'ble ITAT ruled that stepbrother and stepsister are part of family by affinity and in common sense they are related to each other as brother and sister. Accordingly, gift received from stepsister is not taxable in hands of stepbrother under Section 56 of the Act.

*Rabin Arup Mukerjea [TS-298-ITAT-2025(Mum)]*



##### **6. Allotment date is determinant factor for computing holding period of the property**

Anil Murarilal Agarwal ("the Assessee"), engaged in the business of eco-friendly food packaging, filed his ROI for AY 2016–17. During the assessment proceedings, the AO noted that the Assessee had registered purchase and sale of two flats during the year under consideration but had not disclosed any STCG in the ROI. Based on the registration dates, the AO treated the transactions as STCG and added INR 1.42 crore to the Assessee's income. Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A) who dismissed the appeal on three basis - (i) alleged violation of the Slum Rehabilitation Scheme (SRA scheme) in the purchase of flats, (ii) failure to submit the original sale agreement for AY 2010–11, and (iii) lack of proof of possession.

On further appeal, the Assessee submitted that he and



his wife had jointly booked the flats in FY 2004–05 for which they received the letter of allotment. These flats were later transferred to their sons in FY 2009–10. The resulting LTCG had already been disclosed in the ROI for the AY 2010–11 along with exemption claims under Sections 54/54F of the Act. The Assessee clarified that the registration of the documents occurred only in AY 2016–17 due to conditions imposed by the builder, but ownership and possession was transferred much earlier. The Assessee also produced allotment letters and a memorandum of sale agreement showing transfer to his sons in FY 2009–10. Further, the Assessee relied on Delhi HC's ruling in case of **K. Ramakrishnan**<sup>7</sup>, wherein the date of allotment has been held to be date of purchase of property and not the date of registration of the conveyance deed. The Assessee also referred to the decision of the Co-ordinate Bench of the Hon'ble Mumbai ITAT in case of **Anita D. Kanjani**<sup>8</sup> which held that the holding period of the property should be computed from the date of issue of allotment letter.

The Hon'ble Mumbai ITAT noted the submissions made by Assessee and tax authorities. The Hon'ble ITAT held that the LTCG had been correctly assessed in AY 2010–11 and accepted by the tax authorities. It also rejected the allegation on SRA scheme violations as the Assessee has purchased the flats under sale component of SRA scheme and not under slum occupation category. Accordingly, the Hon'ble ITAT allowed the Assessee's appeal.

Anil Murarilal Agarwal [TS-347-ITAT-2025(Mum)]

<sup>7</sup> K. Ramakrishnan [TS-5293-HC-2014(Delhi)-O]

<sup>8</sup> Anita D. Kanjani [TS-5208-ITAT-2017(Mumbai)-O]

<sup>9</sup> CIT v. K. Srinivasan [TS-5150-SC-1971-O]

### 7. Maximum marginal rate refers to tax rate on highest slab of income and not highest rate of surcharge.

The Assessee is a private discretionary trust who filed its ROI for AY 2023-24 declaring income of INR 4.85 Lakhs paying tax at 'MMR' of 30% without any surcharge. The CPC levied the highest rate of surcharge on the MMR while processing the ROI. The Assessee filed an appeal against the levy of surcharge before the CIT(A). The CIT(A) upheld the levy of surcharge at the MMR based on the factor that use of word "if any" under Section 2(29C) of the Act would mean "if levy of surcharge is at all available under the Finance Act or not". Aggrieved, the Assessee filed an appeal before the Hon'ble Mumbai ITAT. The Assessee filed an application before the Hon'ble President to constitute a SB for deciding the issue under reference in view of the decisions of the ITAT holding contrary view on this issue.

Before the Hon'ble ITAT (SB), the tax authorities contended that to find out the maximum marginal rate, the Finance Act of every year is relevant for knowing the highest slab rate of tax and surcharge. It also submitted that to curb the avoidance of tax, it was decided to levy maximum marginal rate for Private Discretionary Trusts which included surcharge for highest slab as well. It was also submitted that the words "if any" in the definition of maximum marginal rate implies that surcharge applicable to the highest income slab shall be applicable if at all charge of surcharge is provided in the Finance Act.

Per Contra, the Assessee contended that MMR as defined in Section 2(29C) of the Act means the rate of income tax applicable in relation to highest slab of income as specified in the Finance Act of the relevant year with reference to an individual, association or body of individual and such tax is to be increased by applicable surcharge, if any. The rates of tax are prescribed by Section 2(1) of Finance Act 2023 which is subject to Section 2(3) of Finance Act 2023 as per which the tax in case of a Private Discretionary Trust, is charged as per the provision of Section 164/167B of the Act, i.e., at the maximum marginal rate with no mention of any surcharge. The rate of tax and surcharge are two different connotations under the Act and Article 271 of the Constitution. As per Article 271, surcharge is recognised as a separate category and its collection is treated differently than income-tax. Reliance was placed on the ruling of the Hon'ble SC in the case of **K. Srinivasan**<sup>9</sup>. The Assessee submitted that the charging Section for surcharge is Section 2(1) of the Finance Act 2023 which provides for rate of surcharge depending on total income and accordingly no surcharge can be

levied when the income does not exceed INR 50 lakhs relying on various judgements. It was also submitted that the introduction of surcharge was intended to collect higher tax from assesses having higher quantum of income and therefore the levy of surcharge have a direct nexus to the quantum of income earned by the Assessee. Therefore, levy of surcharge at the rate of 37% on the income not exceeding INR 50 lakhs is incorrect.

The SB noted the Article 265 of the Constitution of India mandates that no tax can be collected without authority of law. Hence, levy of surcharge must be preceded by a law enacted by the Parliament authorising such levy. In absence of any such law, surcharge cannot be collected. The words "if any" used in definition of MMR must be read in conjunction with computation mechanism provided under "Surcharge on Income-tax" as per Section 2 of the Finance Act. It was held that though income of private discretionary trust is taxable at the MMR under Sections 164 and 167B of the Act, surcharge must be computed based on slab rates as prescribed in the relevant Finance Act, and not at the highest surcharge rate.

*Araadhya Jain Trust [TS-366-ITAT-2025 (Mum SB)]*

#### **8. Payment of 20% demand by the Assessee is unjust when refund for earlier-AY is not paid by tax authorities**

The Assessee was entitled to an income-tax refund of INR 19.75 Crores for the AY 2012-13 as per the order passed under Section 143(3) r.w.s. 254 of the Act dated 22.01.2025. However, the said refund was not yet paid to the Assessee. Also, there were outstanding demands payable by the Assessee for the AY 2020-21 and AY 2021-22 amounting to INR 13.78 Crores and INR 17.09 Crores respectively, totalling to INR 30.87 Crores (said outstanding demand). In response to the said outstanding demand, the Assessee has filed an application for stay of demand before the AO and CIT. However, the Assessee received a letter dated 21.02.2025 for payment of said outstanding demand failing which the demand recovery measures including bank attachments would be undertaken.

In response to said letter for payment of outstanding demand, the Assessee has filed petitions before the Hon'ble Bangalore ITAT for both the AYs seeking a stay on the recovery of the said outstanding tax demand.

Before the Hon'ble Bangalore ITAT, the Assessee pointed out that the AO had already granted a refund for AY 2012-13 which is yet to be released. Considering the pendency of the quantum appeals and stay

petitions before the Hon'ble ITAT, the Assessee prayed that 20% of the disputed tax demand be adjusted against the refund due for AY 2012-13 and the balance demand be stayed for a period of 180 days or until disposal of the appeal, whichever is earlier.

The Hon'ble ITAT noted the details of outstanding demand and the refund for AY 2012-13. Accordingly, the Hon'ble ITAT held that it would be unjust for the Assessee to pay 20% of the disputed tax demands when a refund for a prior AY remains unpaid. Therefore, the Hon'ble ITAT directed the AO to adjust 20% of the said outstanding demands against the refund granted for AY 2012-13. Also, the Hon'ble ITAT directed the AO that the balance outstanding demand for these years shall be stayed for a period of 180 days from the date of the said order or until disposal of the quantum appeals, whichever is earlier.

*Altisource Business Solutions Private Ltd [TS-157-ITAT-2025(Bang)-TP]*



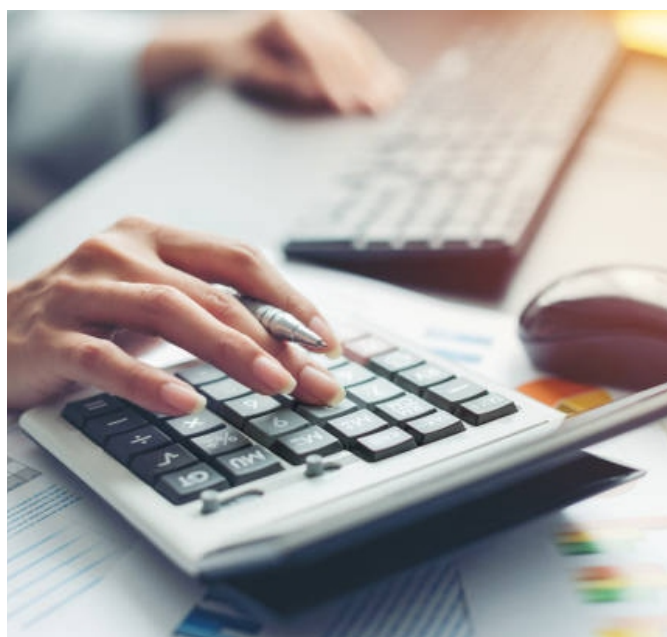
#### **9. Deduction under Section 54 of the Act allowed on 'pari materia' principle following judgment of Ravinder Kumar Arora.**

Assessee is a retired school teacher and sold his residential house for INR 43.50 Lakhs during the AY 2012-13. He purchased a new house for INR 18 Lakhs in the name of his spouse and paid stamp duty of INR 0.72 Lakhs. Also, he deposited an amount of INR 20.33 Lakhs in his bank account. He filed his ROI for AY 2012-13 disclosing income of INR 4.15 Lakhs after claiming deduction under Section 54 of the Act amounting to INR 37.74 Lakhs on the basis that certain amount from his bank account was incurred for renovation / repairs of the house. During the assessment proceedings, the AO allowed the claim of INR 18.72 Lakhs under Section

54 of the Act. However, he rejected the claim of INR 19.02 Lakhs on the basis that Assessee failed to furnish the documentary evidence for utilisation of this capital gain amount. Aggrieved by the Assessment order, the Assessee filed an appeal before CIT(A) who rejected the entire claim of INR 37.74 lakhs since new house property was purchased by the Assessee in name of his spouse. Therefore, the Assessee filed an appeal before the Hon'ble Delhi ITAT.

The Hon'ble ITAT noted that utilization of part of Long Term Capital Gains for purchase of new asset (house) is not disputed. Further, the Hon'ble ITAT relied on the judgment of the Hon'ble Delhi HC in the case of **Ravinder Kumar Arora<sup>10</sup>** wherein it was held that when an Assessee has purchased a new house in the name of his spouse, the Assessee is eligible for deduction under Section 54F of the Act. The Hon'ble ITAT noted that provisions of Section 54F of the Act are pari materia with the provisions of Section 54 of the Act. It is a well settled legal proposition that purposive construction is to be preferred against literal construction, more so when literal construction does not restrict that the house be purchased in name of Assessee only. The Hon'ble ITAT also noted that provisions of Section 54 of the Act are beneficial provisions which should be interpreted liberally in the favour of the Assessee, once the basic conditions for claiming the deduction are satisfied. Accordingly, the Hon'ble ITAT allowed the deduction under Section 54 of the Act amounting to INR 26.17 Lakhs [18.72 Lakhs being the cost of new house (including stamp duty) and INR 8 lakhs being the estimated cost of renovation and repairs].

*Dharam Veer Singh [TS-385-ITAT-2025(DEL)]*



<sup>10</sup> CIT vs. Ravinder Kumar Arora TS-675-HC-2011(DEL)

#### **10. Addition in respect of write-off of Security Receipts and upside income on account of realization of NPAs deleted based on incorrect appreciation of facts by AO and adherence to RBI Guidelines by the Assessee.**

The Assessee is an 'Securitisation and Reconstruction Company (ARC)', registered with RBI under Section 3 of the SARFAESI Act. The Assessee acquires NPAs from various banks through Securitization Trusts – STs (in which the Assessee holds minimum investment of 15% and balance investment is made by other investors known as Qualified Buyers - QBs). STs issues Securities Receipts (SRs) to the Assessee and QBs (collectively called as SR Holders - SRH). The Assessee records the SRs as investments in its books and writes off as per RBI Guidelines. The Assessee is the sole trustee, manager and recovery agent of STs and works towards recovery of NPAs. For the services relating to recovery of NPAs, the Assessee charges Management Fees and Portfolio Recovery Fees to STs. When the NPAs are recovered by the STs, it first reduces the running cost expenditure (including Management Fees and Portfolio Recovery Fees charged by the Assessee) and then the balance funds out of realisation are distributed to all the SRHs – including the Assessee. During the assessment proceedings for the AY 2016-17, the AO made the following disallowances:

Sr. No.	Nature of Disallowance	Amount (INR Crores)
1	Write-off of Security Receipts	82.87
2	Upside Income – Realization made by STs	153.77
3	Protective addition of upside income relating to other SRHs	245.51
<b>Total</b>		<b>482.15</b>

The AO observed that RBI Guidelines for the purpose of write-off of SRs are for the purpose of NPA resolution and not for determining income and tax liability under the Act. Therefore, the write-off of SRs is disallowed. Also, the AO made disallowance in respect of upside income (in case of multiple assignment agreements by STs) by considering that realization made from NPAs were not properly accounted as income by the Assessee in case of realization made by STs and that relating to other SRHs.

Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A) who deleted the disallowance in respect of write-off of SRs and protective addition of upside income relating to other SRHs. However, the CIT(A) restricted the disallowance in respect of upside income where realization made by

STs from INR 153.77 Crores to INR 68.92 Crores based on the observation that only 41 STs were having multiple assignment agreements out of total 319 STs. Aggrieved by the order of the CIT(A), the tax authorities filed an appeal, and the Assessee filed cross-objections before the Hon'ble Mumbai ITAT.

The Hon'ble ITAT noted the provisions of SARFAESI Act and the RBI Guidelines in respect of write-off of SRs. It observed that Assessee has written off those SRs which were held for maximum of 8 years as an investment considering it as 'Loss Assets'. Further, it was observed that the Assessee has offered for tax any realization arising from SRs which was written off in the past. Accordingly, the Hon'ble ITAT confirmed the order of the CIT(A) on the issue of write-off of SRs.

Further, the Hon'ble ITAT noticed that STs are notionally treated as separate entities for the purpose of accounting treatment. The tax authorities have misdirected themselves in their understanding of manner and functioning of the Assessee and STs. Realization made from NPAs by STs cannot be considered as the income of the Assessee as the Assessee holds only 15% in STs. The Assessee was right in comparing the investments made by it in SRs with the investments made by general public in Mutual Fund investments. Therefore, the Hon'ble ITAT held that AO was not right in assessing any realisation made by the concerned STs as income of the Assessee and CIT(A) was not justified in partially confirming a part of the said addition. Accordingly, the order passed by CIT(A) was set aside on this issue and the Hon'ble ITAT directed AO to delete the addition.

On the issue of upside income relating to other SRHs, the Hon'ble ITAT noted that any income pertaining to other investors cannot be considered as income of the Assessee unless they are distributed between the SRHs. Therefore, the Hon'ble ITAT affirmed the order of CIT(A) on this issue. Resultantly, the appeal filed by the tax authorities was dismissed and cross-objections filed by Assessee was allowed.

*Asset Reconstruction Company [TS-350-ITAT-2025 (Mum)]*



## B. INTERNATIONAL TAX

### 1. *Provision of Passenger Solution System not Fees for Technical Service under India-USA treaty as the services are not made available to recipient.*

Sita Information Networking Computing USA Inc. ("the Assessee"), a US-based company, provided airline passenger services like reservations, ticketing, and flight tracking to Indian airlines. These services were operated remotely from Assessee's data center in Atlanta, Georgia, USA, using their own software systems. The Assessee had no office or business presence in India. However, the AO claimed that the payments received for these services were taxable in India as FTS under Section 9(1)(vii) of the Act and Article 12 of the India-USA DTAA. Aggrieved by the assessment order, the Assessee filed appeals before the CIT(A) for the period from AY 2014-15 to AY 2021-22 (relevant AYs).

The CIT(A) after perusing the arguments and relying on various judgements<sup>11</sup> held that the Passenger Services cannot be taxed under Section 9(1)(vii) due to lack of human element. The CIT(A) also held the Passenger Services are not taxable under Article 12 of India-USA DTAA stating that neither any technology is made available to recipient of the services nor there is transfer of any technical knowledge, experience, skill, know-how or processes. It also does not consist of the development and transfer of a technical plan or technical design. Aggrieved by the order of the CIT(A) for the relevant AYs, the tax authorities filed an appeal before the Hon'ble Mumbai ITAT.

The Hon'ble ITAT dismissed the appeal of tax authorities stating that the services were standard software-based and did not involve the transfer or sharing of any technical knowledge or skills with Indian airlines. Since no technology or know-how was "made available" to the Indian recipient, the services did not qualify as FTS under Article 12 of the DTAA. The Hon'ble ITAT relied on several past judgments, including those from the SC, to support its decision. Accordingly, the Hon'ble ITAT held that the income earned by the Assessee for these services is not taxable in India.

*Sita Information Networking Computing USA Inc. [TS-389-ITAT-2025(Mum)]*

## 2. Benefit under DTAA can be claimed in respect of capital gains arising on sale of units of equity / debt mutual fund

The Assessee was a non-resident of India and tax resident of Singapore. She filed her ROI for the AY 2022-23 disclosing total income of INR 4.53 Lakhs after claiming DTAA benefit in respect of STCG arising on sale of debt mutual fund and equity mutual fund amounting to INR 88.75 Lakhs and INR 46.91 Lakhs respectively (totaling to INR 135.66 Lakhs). During the assessment proceedings, the Assessee contended that capital gains arising on sale of debt and equity mutual funds is not taxable in India under Article 13(5) of India-Singapore DTAA. However, the AO made an addition in respect of total STCG in the draft assessment order. The Assessee filed objections before the Hon'ble DRP which were rejected on the basis that the capital gains arising from units of mutual funds that derived substantial value from assets located in India are taxable in India. Accordingly, the AO passed final assessment order by sustaining the addition in the draft assessment order. Aggrieved, the Assessee filed an appeal before the Hon'ble Mumbai ITAT.

Before the Hon'ble Mumbai ITAT, the Assessee contended that investment was made directly by her and not by portfolio manager. The Assessee also submitted copies of bank statements where the investment made to mutual funds and receipt of sale consideration by mutual funds were reflected. Further, the Assessee relied on the various judicial precedents<sup>12</sup> wherein it was held that capital gains on sale of mutual funds cannot be considered as capital gains on sale of shares. Hence, in the instant case, the STCG on sale of mutual fund units were not covered under clause 4A to 4C of Article 13 of India-Singapore DTAA. Accordingly, the capital gains on sale of mutual fund units would be covered under the Article 13(5) of the India-Singapore DTAA and will be taxable in State of Residence (Singapore). The Assessee also contended that Section 90(2) of the Act provides an option to select the provisions of DTAA or the Act, whichever is more beneficial. Per contra, the tax authorities relied on assessment order.

The Hon'ble ITAT held that STCG is not taxable in India due to the beneficial provisions under the India-Singapore DTAA after considering the factual matrix and the decisions relied upon by the Assessee.

*Anushka Sanjay Shah vs. ITO(IT) [(2025) 173 taxmann.com 570 (Mum – Trib)]*

<sup>11</sup> *Bharti Cellular Limited [TS-5028-SC-2010-O]*

<sup>12</sup> *Kotak Securities Limited [TS-166-SC-2016]*

<sup>13</sup> *Vodafone India Services (P) Ltd vs UOI [TS-5904-HC-2014(Bombay)-O]*

## II. TRANSFER PRICING

### 1. TPO cannot make any TP adjustment by recharacterizing the capital transaction as loan

Assessee is engaged in the business of trading of textile products. During the AY 2012-13, the Assessee filed its ROI for the AY 2012-13 declaring a total income of INR 12.75 Crores. Pursuant to scheme of amalgamation sanctioned by the Hon'ble Bombay HC, the Assessee filed revised ROI. The Assessee converted the loans from its AE into equity by issuing 9,000 equity shares of GBP 1 each at premium of GBP 999 per share. During the assessment proceedings, the Assessee submitted the valuation report in support of the share premium. However, the TPO considered the said transaction in the nature of loan and reworked the share premium at GBP 339.50 and treated the difference of GBP 660.50 as loan in the hands of the Assessee. The TPO made TP adjustment amounting to INR 2.42 Crores towards interest on the amount of excess premium treated as loan. Aggrieved by the assessment order, the Assessee filed an appeal before the CIT(A) who allowed the appeal by relying on the decision of the Hon'ble Bombay HC in the case of Vodafone India Services (P) Ltd.<sup>13</sup> Aggrieved by the CIT(A) order, the tax authorities filed an appeal before the Hon'ble Mumbai ITAT.

Before the Hon'ble ITAT, the tax authorities contended that reliance on Vodafone Services (*supra*) by the CIT(A) was misplaced as in that case, the shares of Indian company was brought by the AE. However, it is reverse in the case of the Assessee.

Per contra, the Assessee relied on the Vodafone Services judgment and contended that recharacterization of share transaction as loan by TPO



is incorrect. The Assessee also relied on the decision of co-ordinate bench of the Hon'ble Mumbai ITAT in case of *Aegis Limited*<sup>14</sup> and *Topsgroup Electronic Systems Ltd*<sup>15</sup> wherein it was held that ratio laid down by *Vodafone Services (supra)* is applicable to both inbound and outbound transactions.

The Hon'ble Mumbai ITAT referred to judicial precedents relied upon by the Assessee and held that the TPO cannot make TP adjustment by recharacterizing the capital transaction as loan and accordingly deleted the TP adjustment.

*Welspun Global Brands Ltd [TS-125-ITAT-2025(Mum)-TP]*



## **2. TPO cannot determine NIL ALP when the Assessee fails to provide corroborative evidence in relation to receipt of services**

The Assessee, a non-resident company incorporated in the USA, is engaged in the business of banking. The Indian branch of the Assessee carries out the functions of Credit Card Business, Service in relation to sale of TCs and Acceptance of institutional deposits as defined by RBI. The Assessee benchmarked the international transactions of availing Intra-Group Services (IGS) from its AE using TNMM as the MAM. However, during the assessment proceedings for the AY 2011-12, the TPO rejected the same and applied CUP Method to benchmark the IGS transaction. Further, the TPO rejected the selection of foreign AE as the tested party as per Rule 10B(2)(d) of the Rules and considered the data of foreign comparables in public domain as insufficient and inaccurate for benchmarking purpose. Accordingly, the TPO considered the Indian

comparables (*Kotak*) for calculating ALP of the IGS and reduced the ALP of IGS to be NIL on the basis that the Assessee failed to establish the direct nexus between the payments made by the Assessee and actual services received from AE along with its costing.

However, on appeal before the CIT(A), the CIT(A) provided relief by considering 50% of the ALP of the IGS as against NIL determined by TPO. Aggrieved by the order of the CIT(A), the tax authorities and the Assessee filed cross-appeals.

The Hon'ble ITAT observed that the TPO has questioned the selection of foreign AE as the tested party based on functionality and geographical area along with various market factors affecting the overall pricing, margin and cost of the services. The TPO has also questioned the availability of the data of foreign comparables leading to inaccuracy and insufficiency of data. Since the Assessee has not brought on record any material to contradict the observation of the TPO, the Hon'ble ITAT upheld the decision of the lower authorities and rejected the TP Study of the Assessee.

Further, for the rejection of TNMM as MAM, the Hon'ble ITAT observed that the TPO has compared the ratio of IGS payment to sales of the Assessee with the ratio of similar expenses to sales of the comparables. Further, the Assessee has not furnished any alternative benchmarking approach on the records. Accordingly, the Hon'ble ITAT upheld the CUP method for benchmarking.

Also, the Hon'ble ITAT held *Kotak* as an appropriate Indian comparable provided their similar services are compared amongst themselves along with specific data only for arriving at the correct benchmarking.

The Hon'ble ITAT held that TPO is not justified in determining NIL value as the ALP of the transaction on the reasoning that the Assessee failed to submit any corroboratory evidence for receipt/rendering of services by its AE. However, the TPO ought to have looked into all the evidence submitted by the Assessee and then give his findings. It may be advantageous to the Assessee to engage its AE for IGS as a business model. Therefore, the costing of such services requires proper analysis and examination to determine ALP. Accordingly, the Hon'ble ITAT remanded the matter back to the TPO to verify and determine the ALP of the transaction after applying applicable transfer pricing mechanism as per the Rules.

*American Express Banking Corp [TS-139-ITAT-2025(DEL)-TP]*

<sup>14</sup> *Aegis Limited vs ACIT [TS-5563-ITAT-2015(Mumbai)-O]*

<sup>15</sup> *Topsgroup Electronic Systems Ltd vs. ITO [TS-5319-ITAT-2016(Mumbai)-O]*

### III. IMPORTANT CIRCULARS AND NOTIFICATIONS

#### 1. **CBDT<sup>16</sup> amends Form No. 26Q & 27Q for submitting details u/s 194T of the Act**

The CBDT has amended the Rules to include the disclosure of Section 194T in Form 26Q and Form 27Q. In Form 26Q, Section 194T is added after disclosure of Section 194S in the heading and in the table under Note 16 of the Annexure, covering payments like salary, remuneration, commission, bonus, or interest to a partner of a firm. Similarly, in Form 27Q, Section 194T is inserted after disclosure of Section 194N in the heading and added in the table under Note 13 of the Annexure for similar types of payments made to a partner of a firm.

#### 2. **CBDT<sup>17</sup> amends Form 3CD reporting to include share buy-back receipts & MSME payments reporting**

The CBDT has implemented notable amendments to Form No. 3CD via the Income-tax (Eighth Amendment) Rules, 2025, effective from 01.04.2025. These revisions are in line with the Finance (No. 2) Act, 2024 and bring several key changes to tax audit reporting requirements.

##### A. **Revised Clause 22 – MSME Payment Disclosures**

Clause 22 has been updated to enhance transparency regarding disallowances under Section 43B(h) of the Act. The following must now be separately disclosed:

- Total dues payable to micro and small enterprises
- Payments made within the stipulated time frame
- Outstanding amounts deemed inadmissible for the previous year

##### B. **Removal of Clauses 28 & 29**

Clauses related to the reporting of unlisted share receipts under Section 56(2)(viia) and Section 56(2)(viib) of the Act have been omitted, eliminating the need to report transactions involving shares received at undervalued or overvalued prices.

##### C. **New Code System under Clause 31**

A classification code system has been introduced for transactions involving loans, deposits, and repayments. Each transaction must be reported with an appropriate code, such as:

- Code A & B: Cash payment / receipt
- Code C & D: Payment / Receipt through Non-

account payee cheque

- Code E: Transfer of assets
- Code F: Transfer of liability
- Code G & H: Conversion of Assets / liabilities
- Code I & J: Journal entry (Debit/Credit)
- Code K & L: Any other mode (Debit/Credit)

##### D. **Introduction of Clause 36B – Reporting of Buyback Proceeds**

*Tax auditors are now required to report transactions related to buyback of shares under Section 2(22)(f). The disclosure must include:*

- The amount received from the buyback
- The cost of acquisition of the shares bought back



##### 3. **CBDT<sup>18</sup> allows waiver on levy of interest under Section 201(IA)(ii)/206C(7) in specific cases**

The CBDT through Circular has directed that the CCIT, DGIT, or PrCCIT may consider granting a waiver or reduction of interest levied under Sections 201(1A)(ii) and 206C(7) of the Act. This relief is applicable in cases where taxpayers, deductors, or collectors experience technical glitches during the remittance of TDS or TCS, resulting in delayed credit of tax to the Central Government.

Where the payment was initiated on time but delayed due to circumstances beyond the control of the deductor or collector, an application for waiver of interest may be submitted. The competent authority may, upon verification of the technical issue and after affording the applicant an opportunity of being heard, pass an order for reduction or waiver of such interest.

<sup>16</sup> No. 22/2025/F. No. 370142/08/2025-TPL dated 27.03.2025

<sup>17</sup> Notification No. 23/2025/F. No. 370142/10/2025-TPL dated 28.03.2025

<sup>18</sup> Circular No. 5/2025 dated 28.03.2025

Applications must be filed within one year from the end of the relevant financial year, and the concerned authority is required to dispose of the application within six months of its receipt.

The CBDT has clarified that once an order is passed by the CCIT, DGIT, or PrCCIT, no further petitions will be entertained by the Board in this regard.

#### 4. ***CBDT<sup>19</sup> introduces Rule 12AE, notifies new Form ITR-B for income disclosure post search***

The CBDT has amended the Rules by introducing Rule 12AE. This new rule mandates that the return of income required to be furnished under Section 158BC(1)(a) of the Act - pertaining to searches conducted under Section 132 of the Act or requisitions under Section 132A of the Act on or after 01.09.2024 - must be filed using Form ITR-B and verified as specified therein. Rule 12AE also introduces the format of Form ITR-B. The provisions of this notification shall be deemed effective from 01.09.2024.

## IV. GOODS AND SERVICE TAX AND CUSTOMS UPDATE

### Goods and Services Tax

#### 1. ***Advisory on reporting values in Table 3.2 of GSTR-3B:***

From the April 2025 tax period onwards, Table 3.2 of Form GSTR-3B - which captures inter-state supplies to unregistered persons, composition taxpayers, and UIN holders - will be auto-populated and **non-editable**. These values will be drawn from the inter-state supplies declared in GSTR-1, GSTR-1A, and IFF in requisite tables.

To ensure accuracy, any corrections must be made by amending the values in GSTR-1A or filing revised details in GSTR-1/IFF for a subsequent tax period. It is advised to report correct values in the original returns to avoid discrepancies in GSTR-3B.

#### 2. ***HC of Kerala: Amendment leading to Retrospective GST chargeability with respect to services provided by clubs and associations to their members, in which the petitioner believed it was not liable to GST and relied on the principle of mutuality.***

##### Background:

The petitioner, Kerala State Branch of the Indian Medical Association, operates various mutual benefit schemes aimed at supporting its member-doctors and their immediate families in cases of death, disability, or specified illnesses. Under these schemes, member-doctors contribute an admission or annual fee, and in some cases, a fraternity contribution upon the death or disability of a fellow member. Each scheme is managed independently by an elected committee, maintains separate bank accounts, and is subject to individual audits. The petitioner had a bona fide belief that it was not liable to pay GST on these services provided to its members, relying on the principle of mutuality.

However, this position was altered by the Finance Act, 2021, which amended Section 2(17)(e) and Section 7(1)(aa) of the CGST Act and the Kerala GST Act,

deeming services provided by clubs and associations to their members as taxable supplies. Notably, the amendment was made retrospective from 01.07.2017. As a result, the petitioner faced the risk of tax demands and coercive recovery actions by the Directorate General of GST Intelligence, including summons for submission of GST registration details and financial records for the years 2017-18 to 2021-22.

##### HC's observations and rulings:

In response, the petitioner filed a writ petition before the HC, seeking relief from potential enforcement actions and a declaration that the amendment was arbitrary and unconstitutional. The HC, while refusing to declare the amended provisions unconstitutional, held that the retrospective application of the amendment from 01.07.2017, was unjust and unsustainable in law. Consequently, the Court struck down the retrospective effect of the amendment but upheld the prospective applicability of the GST provisions.

### Customs

#### 1. ***Expansion of customs airport operations in Gujarat by adding Dholera as an authorised location***

The CBIC has issued Notification No. 25/2025-Customs (N.T.), amending Notification No. 61/94-Customs (N.T.), to expand customs airport operations within the state of Gujarat. Through this amendment, Dholera has been officially designated as a location authorized for the unloading of imported goods and loading of export goods or any class of such goods.

##### References:

- Notification No. 25/2025-Customs (N.T.) dated 15.04.2025
- HC Of Kerala, Indian Medical Association v. Union of India [2025] 173 taxmann.com 474 (Kerala)[11.04.2025].

<sup>19</sup> F. No. 370142/29/2024-TPL dated 07.04.2025

## V. COMPLIANCE CALENDAR FOR MAY 2025

### A. Income tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	7th May	April 2025	TDS / TCS Payment	Non-Government Deductors
02	15th May	January 2025 to March 2025	TCS Return	All Assessee to whom TCS provisions are applicable
03	30th May	January 2025 to March 2025	TCS Certificate	All Assessee to whom TCS provisions are applicable
04	31st May	January 2025 to March 2025	TDS Return	All Assessee to whom TDS provisions are applicable
05	31st May	FY 2024-25	SFT Return	<ol style="list-style-type: none"> <li>1. Any person covered under audit under Section 44AB of the Act</li> <li>2. A Banking company, Cooperative bank</li> <li>3. Any institution issuing credit card</li> <li>4. A company issuing shares or bonds or debentures</li> <li>5. Listed companies purchasing its own shares under Section 68 of Companies Act 2013</li> <li>6. Trustee of Mutual Fund</li> <li>7. Any other authorized person.</li> </ol>

### B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	10th May	May 2025	GSTR – GSTR – 7 (TDS)	Person required to deduct TDS under GST
02	10th May	May 2025	GSTR – 8 (TCS)	Person required to collect TCS under GST
03	11th May	May 2025	GSTR – 1	<ol style="list-style-type: none"> <li>a) Taxable persons having annual turnover &gt; Rs. 5 crores in FY 2023-24.</li> <li>b) Taxable persons having annual turnover ≤ Rs. 5 crores in FY 2023-24 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme.</li> </ol>
04	13th May	April 2025	GSTR – 1 (IFF)- QRMP	Aggregate Turnover is up to Rs. 5 crores.
05	13th May	May 2025	GSTR – 6 (ISD)	Person registered as ISD.
06	13th May	May 2025	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP).
07	20th May	May 2025	GSTR – 3B	<ol style="list-style-type: none"> <li>a) Taxable persons having annual turnover &gt; Rs. 5 crores in FY 2023-24.</li> <li>b) Taxable persons having annual turnover ≤ Rs. 5 crores in FY 2023-24 and not opted for QRMP scheme.</li> </ol>
08	20th May	May 2025	GSTR - 5A (OIDAR)	OIDAR services provider.

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
09	25th May	April 2025	GSTR – 3B - QRMP scheme - Monthly payment*	Aggregate Turnover is up to Rs. 5 crores.
10	25th may	April 2025	PMT-06	For those who have availed the Quarterly Return Monthly Payment (QRMP) option

\* Taxpayers who have availed the Quarterly Return Monthly Payment (QRMP), option having aggregate TO up to INR 50 Mn in PFY whose principal place of business is in Category -1 states

\*\* Taxpayers who have availed the Quarterly Return Monthly Payment (QRMP), having aggregate TO up to INR 50 Mn in PFY whose principal place of business is in Category -2 states

### C. Provident Fund (PF) / Employee State Insurance Corporation (ESIC)

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	15th May	April 2025	PF/ESIC Payment	All Assessee to whom respective laws of PF / ESIC are applicable
02	25th May	April 2025	PF Monthly Return	
03	30th May	October 2025 to March 2025	ESIC half-yearly Return	

### D. FEMA Compliance

Sr. No.	Due Dates	Particulars	Concerned (reporting) Period	Applicable to
01	7th May	ECB 2 Return (External Commercial Borrowing)	April 2025	All Indian Borrowers who have non-resident lenders



## GLOSSARY

ABBREVIATION	FULL FORM
Act	Income-tax Act, 1961
AE	Associate Enterprise
ALP	Arm's Length Price
AO	Assessing Officer
AY	Assessment Year
CBDT	Central Board of Direct Taxes
CIT	Commissioner of Income-tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CCIT	Chief Commissioner of Income-tax
CGST	Central Goods & Service Tax
CUP	Comparable Uncontrolled Price
CPC	Centralised Processing Centre
DGIT	Director General of Income-tax
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement
ECB	External Commercial Borrowings
FTS	Fees for Technical Services
FY	Financial Year
GST	Goods & Service Tax
HC	High Court
Hon'ble	Honorable
IGS	Intra-Group Services
ITAT	Income Tax Appellate Tribunal
ITR	Income Tax Return
LTCG	Long Term Capital Gains
MAM	Most Appropriate Method
MMR	Maximum Marginal Rate
NPA	Non Performing Asset
Pr CCIT	Principal Chief Commissioner of Income-tax
QB	Qualified Buyers
QRMP	Quarterly Return Monthly Payment
ROI	Return of Income
RBI	Reserve Bank of India
Rules	Income-tax Rules,1962
SARFAESI	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

## GLOSSARY

ABBREVIATION	FULL FORM
SB	Special Bench
SC	Supreme Court
SCN	Show Cause Notice
SR	Securities Receipts
SRH	Securities Receipts Holders
ST	Securitization Trusts
SEBI	Securities Exchange Board of India
STCG	Short Term Capital Gains
TDS	Tax Deducted at Source
TNMM	Transactional Net Margin Method
TP	Transfer Pricing
TPO	Transfer Pricing Officer

## About us

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