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BHUTA SHAH & CO LLP

CHARTERED ACCOUNTANTS

Monthly E-Newsletter

BSC BEACON

TAX & REGULATORY INSIGHTS

WHAT'S INSIDE

I. DIRECT TAXATION:
A. CORPORATE TAX

1. *Share premium received by the Assessee held as capital receipt, as the same does not give rise to any income and not taxable under Section 68 of the Act.*

Shendra Advisory Services Pvt. Ltd. ('the Assessee') issued shares at a premium to its promoters, one being an Indian entity and the other a foreign promoter during the AY 2011-12. The AO considered that the entire share premium received as unexplained cash credit under Section 68 of the Act, on account of a violation of Section 78(2) of the Companies Act, 1956, giving prescribed mode of utilisation of share premium. The AO stated that there was no justification for charging such premium. Aggrieved, the Assessee filed an appeal before the CIT(A) who allowed the appeal of the Assessee.

On further appeal, the Hon'ble Mumbai ITAT noted that there was no evidence in the Assessee's balance sheet of misuse of share premium and that mere breach of the Companies Act could not recharacterize a capital receipt as revenue receipt. The Hon'ble ITAT also emphasized that share premium is a capital account transaction and cannot be brought to tax as income under Section 68 or Section 56 unless specifically covered by law. Aggrieved, the tax authorities filed an appeal before Hon'ble Bombay HC.

The Hon'ble HC upheld the Hon'ble ITAT's decision, ruling that non-compliance of another Act ('Companies Act') cannot transform a capital receipt into revenue receipt. The Hon'ble HC held that share premium is capital in nature and not taxable as income. When the tax authorities challenged the judgement of Hon'ble HC before the Hon'ble SC, the SLP was dismissed, both on the grounds of a 271-day delay in filing the SLP and on merits.

Shendra Advisory Service Pvt Ltd [TS-5149-SC-2025-O]

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2. *Criminal Proceedings quashed under Section 276C(1)(i), 276D, and 277 of the Act*

Anurag Dalmia ('the Assessee') had filed returns for AYs 2006-07 and 2007-08 which were duly processed and refunds issued. In the year 2011, the Indian tax authorities received information from French government under the DTAA alleging that the Assessee and others were linked to four entities maintaining accounts with HSBC Private Bank (Suisse), Switzerland. Based on this, a search was carried out at Assessee's premises in 2012, but no incriminating material was found. Despite the Assessee's categorical denial of holding any Swiss account, assessments were reopened, and additions were made towards alleged undisclosed accounts and notional interest, which were later upheld by Hon'ble CIT(A). Aggrieved, the Assessee filed an appeal before the Hon'ble Delhi ITAT.

However, in February 2018, the Hon'ble ITAT set aside the additions, holding that no incriminating evidence was discovered in the search and reliance only on unauthenticated documents was not sustainable. Penalties imposed under Section 271(1)(c) of the Act were also deleted. Notwithstanding this, the tax authorities filed criminal complaints in January 2016 for willful tax evasion, making false statements, and refusal to sign a consent waiver form authorizing access to Swiss bank information.

The Hon'ble High Court considered three key issues. First, it held that the information from France lacked authenticity, as it was neither certified by Swiss authorities nor supported by independent evidence. Reports also suggested that the HSBC data was stolen and modified, further weakening its credibility. The Court relied on ***CIT v. Odeon Builders Pvt. Ltd***[1] where it was held that additions cannot be made solely based on third-party information without further enquiry or evidence. It also referred to ***PCIT v. Meeta Gutgutia***[2], affirming that assessments cannot be sustained on general information in the absence of incriminating material found during search. Secondly, regarding the petitioner's refusal to sign the consent waiver, the Court noted that a penalty had already been levied under

[1] *[TS-5239-SC-2019-O]*
[2] *[TS-199-HC-2017(DEL)]*

Section 271(1)(b) and upheld in appeals. While non-signing could attract penalty, it could not by itself give rise to criminal prosecution. In support, reliance was placed on ***K.C. Builders v. ACIT***[3]**,** wherein an identical question came up for consideration and it was held that, *the finding of the Appellate Tribunal is conclusive of there being no false statement of Income, then it has to be concluded that the prosecution cannot be sustained.* Lastly, the Court emphasized that prosecutions under Section 276C, 276D, and 277 require credible evidence of concealment or false statements, or wilful evasion. The principle laid down in ***P. Jayappan v. S.K. Perumal***[4] was upheld which stated that proceedings under the Act would not exonerate the Appellant or cause any existing criminal proceeding initiated under the Act to an end. The result of any proceeding would not be binding on the criminal court

The Hon'ble Court concluded that the entire prosecution was based on unauthenticated documents with no corroboration from the source country, and that the Hon'ble ITAT had already ruled on merits in favour of the assessee. Since no incriminating material was found in the search and no evidence showed that the petitioner had concealed income or held undisclosed Swiss accounts, continuation of prosecution would amount to abuse of process. Accordingly, the criminal complaints were quashed.

This ruling reinforces that unauthenticated foreign information, without corroboration and without independent incriminating material, cannot be the basis for either additions in assessment or criminal prosecution under the Act.

Anurag Dalmia [TS-1010-HC-2025(DEL)]

3. *Loss from Derivative Trading is Business Loss under Section 43(5) of the Act and thus can be set off against Business Income*

Madanlal Ltd. ('the Assessee') was engaged in trading of derivatives (i.e. futures and options) as well as goods and merchandise. For the AY 2008–09, it incurred significant losses from derivative transactions and claimed it as set-off against profits of business. However, the AO, treated such losses as speculative loss by invoking Section 73 of the Act. The AO opined that since derivatives are linked to shares, the losses partook the character of speculation loss and hence, could not be adjusted against business profits. Aggrieved, the Assessee filed an appeal before CIT(A).

The CIT(A) held that losses incurred from trading in derivatives were business losses under the proviso to Section 43(5) of the Act and not speculation losses. Thus, the CIT(A) allowed the appeal of the Assessee. On further appeal, the Hon'ble ITAT upheld the view taken by CIT(A) and held that the future and option transactions were not covered by Explanation to Section 73 of the Act. Accordingly, the loss on trading of futures and options could be set off against business income. The Tax Authorities filed an appeal before the Hon'ble Calcutta HC contending that derivative transactions (being share-based) should be treated as speculative under Section 73 of the Act.

The Hon'ble HC, relying on its earlier ruling in *Asian Financial Services Ltd.*[5] and held that eligible derivative transactions on recognized stock exchanges are specifically excluded from being treated as speculative under Section 43(5) of the Act. It also clarified that while Explanation to Section 73 of the Act deems share trading losses as speculative, this does not apply to derivatives, as the law distinguishes between the two. Accordingly, the Hon'ble HC dismissed the appeal of the Tax Authorities and confirmed that derivative losses are business losses, and allowable to be set off against business income.

Madanlal Ltd [TS-5466-HC-2025(Calcutta)-O]

4. *ITAT clarifies application of tax provisions to Real Income and not Notional Income*

Deepak Kothari ('the Assessee') sold number of immovable properties being plot of land and had earned LTCG during the AY 2017-18. During the assessment proceedings, the AO observed that the land was transferred under an Agreement to Sell executed on 28.12.2007 (i.e., AY 2008-09) wherein the sales consideration was determined at INR 7.20 Crores. Further, the AO opined that Assessee offered the capital gains to tax in AY 2017-18 claiming the cost of indexation for the said plot of lands upto AY 2017-18 even though capital asset stood transferred during the AY 2008-09. The AO also noted that the Assessee had utilised the sales consideration for further investments and had enjoyed the funds for 10 years. Accordingly, the AO, applying the cost of interest, determined an interest of INR 8.36 Crores on the sales consideration of INR 7.20 Crores and determined the total consideration of INR 15.56 Crores. Consequently, the AO determined that LTCG of the Assessee after giving cost of indexation relief at INR 11.84 Crores.

Aggrieved, the Assessee filed an appeal before the CIT(A) who deleted the addition and allowed the appeal. The Hon'ble CIT(A) held that there is no such procedure in computation of capital gain as followed by the AO. The AO had attempted to tax the notional

[3] *[TS-1-SC-2004]*
[4] *[TS-5007-SC-1984-O]*
[5] *Asian Financial Services Ltd. v. CIT [TS-5147-HC-2016(Calcutta)-O]*

income which is incorrect since the Act has specifically provided mode of computation of sale consideration under Section 48 of the Act.

Aggrieved, the tax authorities filed an appeal before the Hon'ble ITAT, the ITAT observed that while the Assessee has benefited from early receipt of sale consideration and there is no mechanism to address such computation of income based on notional interest to go back to the AY in which Assessee has received the benefit. The Hon'ble ITAT emphasized that a sale transaction can be treated as complete only when the relevant sale deed is executed and no such evidence was produced by the tax authorities to show Assessee has already handed over the land to the purchaser. The Hon'ble ITAT reiterated that there is no mechanism to determine the notional income or deemed income earned by the Assessee which can be taxed. Accordingly, the Hon'ble ITAT upheld the order of the CIT(A) and deleted the addition made by the AO.

Deepak Kothari [TS-1038-ITAT-2025 (DEL)]

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5. ***Reopening of case based on audit objection is a change of opinion and therefore not valid as per law.***

India Exposition Mart Limited ('the Assessee') is a company promoted by Export Promotion Council for handicrafts and exporters of Handicrafts. During the AY 2009-10, the Assessee received grant from Uttar Pradesh Government for construction of Mart. Accordingly, the Assessee initiated the construction process in a phased manner. However, due to the international economic scenario, the Assessee decided not to go with the 3rd phase of expansion & capital WIP of INR 1.70 Crores was written off. Further, the Assessee claimed expense of INR 6.26 Lakhs in its ROI for the AY 2009-10. During the assessment proceedings, a disallowance of INR 1.06 Lakhs was made to the returned loss. Subsequently, an audit objection was raised that expenses of INR 1.81 Crores on account of Capital WIP write-off is not allowable as it is neither a revenue expenditure nor does it pertain to AY in question. Based on audit objection, the AO initiated reassessment proceedings. The Assessee challenged the reassessment proceedings on the ground that reassessment proceeding is initiated merely on basis of audit objection and is clearly a change of opinion making it as invalid as per the law. However, the AO made an addition of INR 1.81 Crores to the returned loss of the Assessee.

Aggrieved, the Assessee filed an appeal for before the CIT(A). The CIT(A) dismissed the Assessee's appeal stating that the reassessment proceeding under Section 147 r.w.s 148 of the Act cannot be held to be invalid merely because these proceedings were initiated subsequent to an audit objection. Aggrieved, the Assessee filed an appeal before Hon'ble Delhi ITAT.

The Hon'ble ITAT after hearing the facts and contentions of the Assessee and tax authorities came to a divergent view. The Hon'ble Accountant Member held that the reopening basis the audit objection is valid as per law and directed the CIT(A) to identify whether AO has made his own belief for reopening or merely acted upon third party information (i.e. audit objection by audit committee). However, the Hon'ble Judicial Member held that the reopening on basis of audit objection, without any new information coming to notice of AO, and all data available during the assessment proceeding, is invalid and bad in law. Further the Hon'ble JM also held that since ITAT is a fact finding authority, the delegation of finding factual accuracy to CIT(A) is not tenable.

As there were divergent views, the Hon'ble President of ITAT nominated Vice President (VP) of the ITAT as the Third Member. The VP aligned with the view of Hon'ble JM and held that reopening on mere audit objection without any new material on record is invalid and bad in law. Further, VP allowed the write off of Capital WIP as a revenue expenditure relying on various case laws.

India Exposition Mart Ltd [TS-1057-ITAT-2025(DEL)]

6. ***Rebate under Section 87A of the Act is available against income taxable at special rates, such as under Section 111A, since there is no express restriction or denial of such rebate under the provisions of the Act***

Jayshreeben Jayantibhai Palsana ('the Assessee') filed her ROI for AY 2024-25 declaring total income of INR 4,27,635/-. The Assessee subsequently revised the

return to rectify omissions in the capital gains schedule, opting for the default new tax regime under Section 115BAC(1A) of the Act and computing tax of INR 13,320 on STCG taxable under Section 111A at 15%. As the total income was below INR 7,00,000/-. The Assessee claimed rebate of INR 13,320 under Section 87A (as amended by Finance Act, 2023). However, CPC Bengaluru, while processing the return under Section 143(1) of the Act, disallowed the rebate without assigning any reason or making adjustment under Section 143(1)(a) of the Act.

Aggrieved by this adjustment, the Assessee filed an appeal before the Hon'ble CIT(A). The Hon'ble CIT(A) dismissed the appeal, observing that computation under Section 115BAC(1A) of the Act is subject to Chapter XII, which covers income taxed at special rates such as STCG under Section 111A and LTCG under Section 112/112A, and therefore rebate under Section 87A cannot be applied against such income. Relying further on the Memorandum to the Finance Bill, 2025, which restricts rebate on special rate income from AY 2026–27, the CIT(A) held that the same principle applied to AY 2024–25 and accordingly rejected the Assessee's claim on rebate under Section 87A of the Act.

On further appeal, the Hon'ble Ahmedabad ITAT noted that the law for AY 2024–25 did not provide any restriction on claiming rebate against STCG under Section 111A, unlike in the case of LTCG under Section 112A where an explicit exclusion exists. It held that the provisions of Section 87A are clear and independent and cannot be curtailed by Section 115BAC(1A) or by the Finance Bill memorandum, which only applies prospectively from AY 2026–27. Accordingly, the Hon'ble Ahmedabad ITAT ruled in favour of the Assessee, allowing the rebate under Section 87A on STCG, deleting the demand raised by CPC, and directing the tax authorities to recompute the tax liability. This decision provides relief to small taxpayers for AY 2024–25 but clarifies that from AY 2026–27 onwards, such rebate will not be available on STCG due to legislative amendment.

Jayshreeben Jayantibhai Palsana [TS-1054-ITAT-2025(Ahd)]

7. *Mere dealing in manipulated scrip does not justify adverse inference, deletes penny stock transaction addition under Section 68 of the Act*

Urveen Shivprasad Vyas ('the Assessee') filed her ROI for AY 2018–19 declaring total income of INR 2.61 Lakhs. Based on information received from the Investigation Wing, the AO noted that the Assessee had traded in shares of Kushal Tradelink Ltd., a script allegedly used for price rigging and creating artificial capital losses. The Assessee had purchased and sold the said shares, incurring a STCL of INR 14.31 Lakhs. Accordingly, the AO reopened the assessment under Section 147 of the Act and concluded that the loss was fictitious accommodation entry, relying on SEBI's findings and investigation reports relating to Kushal group's activities. The AO disallowed the STCL of said shares and reassessed the income of INR 16.75 Lakhs. Aggrieved, the Assessee filed an appeal before the CIT(A).

The CIT(A) affirmed the AO's order and held that the Assessee failed to substantiate her claim with convincing submissions or sufficient supporting documents. The CIT(A) further noted that although both the reopening and the disallowance were contested, no persuasive evidence was filed in the appellate proceedings and thus sustained the disallowance.

On further appeal, the Assessee argued before the Hon'ble Ahmedabad ITAT that the CIT(A) erred in holding that no evidence was furnished during appeal. The Assessee had duly submitted demat statements, contract notes, and bank statements. It was contended that the order of the CIT(A) was non-speaking and mechanical in nature. The Hon'ble ITAT observed that the AO neither conducted an independent inquiry nor produced evidence linking the Assessee to price manipulation. The disallowance made by AO was based only on SEBI's general findings on the Kushal Group without specific evidence against the Assessee. Relying on the coordinate bench decision in *Bao Value Fund*[6]. The Hon'ble ITAT held that mere dealings in a manipulated scrip cannot warrant adverse inference

[6] *[TS-6243-ITAT-2025(Mumbai)-O]*

unless the Assessee's direct involvement in rigging or accommodation entries is established. As the Assessee's trades were genuine and executed through recognized channels, the ITAT deleted the disallowance under Section 68 of the Act and decided the matter in favour of the Assessee.

Urveen Shivprasad Vyas [TS-1060-ITAT-2025 (Ahd)]

8. *Compensation paid on cancellation of earlier 'agreement to sell' entitled for deduction as 'cost of improvement' in subsequent sale*

Shankare Gowda ('the Assessee'), entered into an agreement to sell his land to Mr. H D Ramesh (first purchaser) on 18.12.2012 for a consideration of INR 11 Crore (of which INR 3 Crores was received by the Assessee as an advance). The land was intended to be used for SEZ purpose. However, as the agreement was not viable and feasible for SEZ unit, it was cancelled. As per the agreement, the seller (Assessee) was liable to pay compensation of INR 6 Crores. However, both the parties agreed to cancel the agreement to sell vide a separate cancellation agreement dated 21.06.2017. As per the cancellation agreement, the Assessee paid INR 3.70 Crores to the first purchaser as compensation. During the AY 2018-19, the Assessee sold his land to another party and earned capital gains. For the AY 2018-19, the Assessee filed his ROI declaring total income of INR 17.58 Crore. Thereafter, the Assessee revised his ROI declaring a total income of INR 13.88 Crore. During the assessment proceedings, the AO observed that the Assessee had claimed the compensation paid to the first purchaser as cost of improvement in his revised ROI. The AO did not allow the deduction for compensation and added it back to the returned income of the Assessee.

Aggrieved, the Assessee filed an appeal before the CIT(A). The CIT(A) held that the compensation paid on cancellation of first transaction cannot be said to be expenditure incurred wholly and exclusively for in connection with the subsequent transfer of immovable property as per Section 48 of the Act. The CIT(A) also alleged that no documentary evidence for payment to the first purchaser was placed on records. The CIT(A) opined that the said compensation is in the nature of penalty. Accordingly, the CIT(A) held the said expense is not an allowable deduction on subsequent sale of the immovable property and upheld the assessment order.

Upon further appeal, the Hon'ble Bangalore ITAT noted that as per the clause 7(c) of agreement to sell, in the event the Assessee defaults to perform his obligations then the Assessee shall be liable to pay back the

advance amount along with the liquidated damages to the tune of **double the advance amount received** by him. Further, the Hon'ble ITAT noted the copy of bank account statement filed before the ITAT where it was found that amount was actually paid. Accordingly, the Hon'ble ITAT stated that by paying the compensation to the first purchaser the Assessee obtained a clear title to the property as the same was already agreed to be sold. Also, the Hon'ble ITAT held that the compensation was paid in respect of the property which was ultimately transferred to the subsequent buyer with clear title.

The Hon'ble ITAT relied on the decision of the Delhi HC in the case of *Kaushalya Devi*[7], and held that that the compensation paid by the Assessee in respect of first agreement to sale can be said to be wholly and exclusively incurred in connection with the present transfer of the immovable property in which capital gain arises and thus, deleted the additions made by the AO. Accordingly, the appeal of the Assessee is allowed.

Shankare Gowda [TS-1009-ITAT-2025(Bang)]

9. *Addition under Section 68 of the Act for unexplained income on account of sale of shares was deleted, as the amount was received as corpus donation from trustee.*

K. R. Shroff Foundation (the Assessee) is a charitable trust registered under Section 12AA of the Act. During the AY 2018-19, the Assessee received 80 Lakhs equity shares of e-Infochips Ltd from its trustee Pratul K Shroff (Director of e-Infochips Ltd) as corpus donation. Subsequently, the shares of e-Infochips Ltd were acquired by Arrow Electronics India Pvt. Ltd., (subsidiary of Arrow Electronics Inc), as part of its long-term strategy to move up the value chain. Due to the said acquisition, the Assessee received sale

[7] *Kaushalya Devi v. Commissioner of Income-tax [TS-198-HC-2018(DEL)]*

consideration of INR 538.40 Crores (@ INR 673 per share) and dividend of INR 68.65 Crores. The Assessee offered the LTCG on sale of shares of e-Infochips Ltd for tax but claimed exemption under Section 11(1) of the Act in view of the investments made in prescribed mode of FDs. During the scrutiny proceedings, the AO noted the per share cost and FMV of shares of e-Infochips Ltd at INR 7.18 and INR 96.46 respectively. The AO did not find any justification for sale consideration of INR 673 per share. Accordingly, he made an addition of entire sale consideration under Section 68 of the Act.

Also, the AO noted that main object of the Assessee was to provide better quality education to the teachers and students in the Government Schools. The AO observed that the Assessee was training and providing assistance to certain teachers and students who were already taking education from Government schools. Accordingly, since the Assessee was not imparting any education / running any educational institutions / providing degree or diploma to the students, its activities cannot be covered by definition of 'charitable activities' as per Section 2(15) of the Act. Accordingly, the exemption claimed under Section 11 & 12 of the Act was denied. Aggrieved, the Assessee filed an appeal before the CIT(A). The CIT(A) allowed the ground regarding the disallowance under Section 68 of the Act. However, the CIT(A) affirmed the denial of exemption under Section 11 & 12 of the Act on the basis that donation of shares was made with an objective of avoiding payment of tax by trustee on capital gains on transfer of shares. The CIT(A) held the donation by trustee to be covered under Section 13(1)(c) read with Section 13(3) of the Act. Aggrieved by the order of the CIT(A), the Assessee and tax authorities filed cross-appeals before the Hon'ble Ahmedabad ITAT.

The Hon'ble ITAT noted that the sale of shares was a genuine transaction as Arrow's acquisition of e-Infochip was a publicly reported event involving over 500 shareholders (including one entity of Government of Gujarat), who received the same price. The genuineness of the donation of shares was never disputed, and the fund flow from Mauritius through banking channels was fully explained. Referring to the **Vodafone International Holding BV** ruling, the Hon'ble ITAT clarified that funding from a Mauritius entity does not make a transaction non-genuine. Since even the trustee's identical personal share sale was accepted by the department, there was no justification for a different stand against the Assessee. The addition under Section 68 of the Act was therefore deleted.

On the issue of exemption, the Hon'ble ITAT disagreed with the view that the donation was a tax-avoidance device. It observed that the trustee had in fact given his property to the trust, and there was no application of trust's income / property for his benefit. None of the conditions of Section 13(2) were attracted, and the Assessee had merely converted corpus shares into cash as permitted under law by relying on the judgments of **Hon'ble Delhi ITAT in Sera Foundation & Hon'ble Gujarat HC in Shree Kamdar Education Trust.** The Hon'ble ITAT also noted that the work of the Assessee in supporting government schools and remedial education, even if not formal schooling, clearly falls within “charitable purpose” as per Section 2(15) of the Act. Exemption under Section 11 & 12 was restored by relying on judgment of **Gujarat HC in Insaniyat Trust.** In conclusion, Revenue's appeal was dismissed, and the Assessee's appeal was partly allowed.

Dr. K.R. Shroff Foundation [TS-1062-ITAT-2025 (Ahd)]

B. INTERNATIONAL TAXATION

1. ***Substantive control in Indian operations constitutes fixed place PE, validating the doctrine of 'economic substance over legal form'.***

Hyatt International (the Assessee) is a company incorporated in and resident of UAE. In September 2008, the Assessee entered into Strategic Oversight Services Agreements with 2 companies – Asian Hotels Limited, Delhi and AHL Mumbai to provide strategic planning and know-how services. The Assessee did not have any fixed place of business, office or branch in India and presence of its employees in India did not exceed nine-month period as per Article 5(2) of the DTAA. The Assessee received Strategic Fees for providing services as per SOSA. The Assessee did not offer the same for tax in India for the AY 2009-10 in absence of specific Article in India-UAE DTAA for

taxing FTS. During the assessment proceedings, the AO opined that there existed a business connection as per Section 9(1)(i) of the Act and a PE under Article 5 of DTAA. Further, the Strategic Fees constituted royalties and FTS under Section 9(1)(vi)/(vii) of the Act as well as royalties under Article 12 of the DTAA. The Assessee filed its objections before the Hon'ble DRP which rejected the objections and confirmed the findings of AO. In the meantime, the assessment orders for subsequent years ranging from AY 2010-11 to AY 2012-13. The Assessee challenged the final assessment orders at Hon'ble Delhi ITAT but could not succeed. Meanwhile, similar assessment orders for AY 2013-14, 2014-15, 2016-17 and 2017-18 were passed considering the Strategic Fees as taxable in India.

The Hon'ble ITAT dismissed the appeals and confirmed the assessment order by relying on the decision of Hon'ble SC in case of ***Formula One World Championship Limited[8].*** The Hon'ble ITAT held that Assessee had a fixed place of business in India, constituting a PE under Article 5(1) of the DTAA. Aggrieved, the Assessee filed appeals against the decision of Hon'ble ITAT before the Hon'ble Delhi HC for all the 8 AYs. The Delhi HC held that Strategic Fees could not be subject to tax as royalty. However, it concurred with the view of Hon'ble ITAT that Assessee had a PE in India in form of fixed place of business. Aggrieved, the Assessee preferred the appeal before the Hon'ble SC.

The Hon'ble SC analysed various clauses of SOSA in detail. In this context, the Hon'ble SC noted that:

- SOSA is to remain in force for a period of 20 years with possibility of extension by 10 years
- Assessee is responsible for providing plans, policies, procedures and guidelines to ensure adherence to 'Hyatt Operating Standards'.
- Assessee is vested with the complete control and discretion in formulating the plan for hotel operations like branding, marketing, product development and daily operations (e.g. HR, guest admittance, pricing, use of premises, operating bank accounts, appointment of non-local hotel employees including General Manager).
- Assessee is empowered to assign its employees to India without prior approval of hotel owner in India.
- Strategic Fees is consideration as a percentage of room revenue and other revenue (whether derived from hotel's operations – directly or indirectly) and not as a fixed fee.

The above-mentioned clause in SOSA confers consistent and enforceable right to implement its policies and ensure compliance in all operational aspects of the hotel. The control and supervision exercised by the Assessee were held to be more than just advisory services and aligns with the criteria for a Fixed Place PE under Article 5 of the DTAA. It also relied on decision of Formula One (supra) for ascertaining the factors to determine the fixed place PE – (a) Fixed place of business at the disposal and (b) Carrying on of the business must be wholly or partly through that place. The broad features of a PE can be classified as (i) stability, (ii) productivity and (iii) dependence. Applying the principles to the instant case, the Hon'ble SC noted that SOSA reflects all the characteristics of PE, viz.,

i) Stability: Long-term agreement of 20 years

ii) Productivity: Profit-linked Strategic fees

iii) Dependence: Reliance on hotel infrastructure and staff to carry out its business.

Accordingly, the Hon'ble SC concluded that Assessee's role was not confined to high-level decision making but extended to substantive operating control and implementation. It is well settled that legal form does not override economic substance in determining PE status. Therefore, AHL constituted a fixed place of business – PE of the Assessee in India. Consequently, the profits attributable to such PE is liable to tax as Business Profits under Article 7 of the DTAA. Accordingly, the appeals of the Assessee are dismissed.

Hyatt International Southwest Asia Ltd [TS-954-SC-2025]

2. *Matter to be placed before Hon'ble CJI to ascertain whether the limitation period for completion of assessment includes the period of DRP proceedings.*

Shelf Drilling Ron Tappmeyer Ltd (the Assessee) is engaged in the business of providing services relating to prospecting / extraction of mineral oils. The Assessee did not opt for presumptive tax regime under Section 44BB of the Act and declared loss of INR 120.18 Crore in its ROI for AY 2014-15 filed on 29.11.2014. The case of Assessee was picked for scrutiny proceedings and a draft assessment order was passed computing the total income at INR 4.34 Crore. The Assessee filed its objections before the Hon'ble DRP which rejected the objections vide its directions dated 28.09.2017. The AO passed a final assessment order on 30.10.2017. Aggrieved, the Assessee filed an appeal before the Hon'ble Mumbai ITAT.

The Hon'ble ITAT allowed the appeal, vide its order

[8] *Formula One World Championship Limited vs. CIT [TS-5102-SC-2017-O]*

dated 04.10.2019 and remanded the matter to the AO for fresh adjudication. However, the AO issued the show cause notice on 24.09.2021 against which the Assessee filed its response. The AO passed the draft assessment order on 29.09.2021. In compliance with Section 144C(2) of the Act, the Assessee filed its objections against the draft assessment order on 27.10.2021. Simultaneously, the Assessee filed writ petition before the Hon'ble Bombay HC contending that no final assessment order could be passed since the period of limitation as prescribed under Section 153(3) of the Act, read with TOLA expired on 30.09.2021. The Hon'ble HC allowed the writ petition of the Assessee following the decision of Hon'ble Madras HC in case of Roca Bathroom Products. Aggrieved the Tax Authorities filed a SLP before Hon'ble SC.

Before the Hon'ble SC, the tax authorities contended that assessment procedure for eligible Assessees as defined under Section 144C (15) of the Act is distinct from the normal category of Assessees. The provisions of Section 144C is a separate code by itself. Section 144C of the Act has non-obstante clause and so the provisions of Section 144C (DRP Proceedings) would have to be interpreted in juxtaposition with Section 153(3) (period of limitation of assessment proceedings) of the Act. Per contra, the Assessee contended that the limitation period for completion of assessment, reassessment or re-computation as per Section 153(1) of the Act is twenty-one months (subject to the provisos therein). However, in a case where Section 92C applies, Section 153 have expressly extended the limitation period by twelve months. This extended timeline is not applicable to the Assessee's case. Also, while calculating the period of limitation, the Explanation to Section 153 expressly lists the specific periods to be excluded which does not include period of proceedings before the Hon'ble DRP. Further, there is no additional limitation period contemplated over and above prescribed under Section 153(3) of the Act.

The issue before Hon'ble SC was whether time limit for completion of DRP proceeding should be subsumed within limitation period.

Justice B.V. Nagarathna concurred with the HC, holding that the procedure under Section 144C of the Act must conclude within the limitation set out in Section 153(1) or Section 153(3) of the Act. However, Justice Satish Chandra Sharma held that timelines under Section 144C of the Act operate in addition to the timelines under Section 153 of the Act, providing extended timeframes for the tax authorities. In view of divergent opinions, the matter was directed to be placed before the Hon'ble CJI for constitution of a larger bench to resolve the issue.

Shelf Drilling Ron Tappmeyer Ltd. etc. [TS-5150-SC-2025-O]

3. *No PE triggered as control over seconded employee's does not rests with the Assessee*

Mitsui Mining and Smelting Company Limited ('the Assessee'), a non-resident company incorporated in Japan, seconded certain employees to its Indian subsidiary, Mitsui Kinzoku Components India Pvt. Ltd. ('MKCI'). The seconded employees were getting salary from the Indian company, and they offered the salary income for tax in India. During the assessment proceedings for the AY 2022-23, the AO concluded that the seconded employees of the Assessee were exercising complete control over the physical premises of MKCI and carrying out sale operations in India. Hence, the Assessee is said to be having PE in India. Aggrieved by the draft assessment order, the Assessee filed its objections before the Hon'ble DRP. However, the Hon'ble DRP confirmed the draft assessment order. Aggrieved, the Assessee filed an appeal before the Hon'ble Delhi ITAT.

The Hon'ble ITAT perused certain clauses of the secondment agreement between the Assessee and MKCI and made following observations:

1. The seconded employees were to be integrated into the business of MKCI as its own employees to facilitate its business operations in India.
2. The seconded employees were to work as full-time employees of MKCI and work solely under the control, directions, responsibility and supervision of MKCI
3. They shall work in their personal capacity and not for and on behalf of the Assessee,
4. The Assessee is not at all responsible for the losses,

if any, occurred to the MKCI due to the action of seconded employees

5. The Assessee will not have any right to use, maintenance of disposal of any structure or asset of MKCI or any right over any employee of MKCI.

On perusal of the above clauses, the Hon'ble ITAT concluded that there was no employer employee relationship between the Assessee and the seconded employees. Therefore, the Hon'ble ITAT held that the Assessee was neither having any control over the employees seconded by it to MKCI nor it was having any control over the asset/structures of MKCI. Accordingly, there cannot be any fixed place PE of the Assessee in India due to seconded employees as per Article 5 of India-Japan DTAA. Hence, the Hon'ble ITAT allowed the appeal of the Assessee.

Mitsui Mining and Smelting Company Limited [TS-6241-ITAT-2025(Delhi)-O]

4. *Mumbai Tribunal Rejects Revenue's Treaty Abuse Claim Against Irish Aircraft Lessors*

The Assessee is part of a batch of Irish lessors (lead case: TFDAC Ireland II Ltd.) engaged in leasing aircraft on a dry operating basis to IndiGo for AY 2022–23. During assessment, the Tax Authorities (a) re-characterised the leases as finance leases and treated the receipts as "royalty" under Section 9(1)(vi) or, alternatively, "interest" under Article 11 of the India–Ireland DTAA; (b) invoked Articles 6 and 7 of the MLI (PPT) to deny treaty benefits; and (c) alleged a fixed-place PE in India on the footing that the aircraft were at the Assessee's disposal. The DRP substantially endorsed these positions and framed the additions on that basis.

In appeal, the Hon'ble ITAT held that the MLI could not be applied to the India–Ireland DTAA absent a specific Section 90(1) notification incorporating the relevant provisions, following the SC ruling in Nestlé SA; hence, the PPT could not be used to deny treaty relief. The Hon'ble ITAT further found, on the contract terms and industry/regulatory material (including RBI guidance), that the arrangements were dry operating leases; therefore, the receipts were not "interest."

The Hon'ble ITAT dismissed the claim of existence of a PE in India as envisaged by tax authorities, emphasising that operational control and commercial possession of the aircraft were entirely with IndiGo. Drawing on the "disposal" test articulated in Formula One, E-Funds and Hyatt, the Hon'ble ITAT observed that a fixed place PE arises only where the foreign enterprise has the place at its disposal to carry on its own business. In the present case, the aircraft were leased to IndiGo for its exclusive use; the lessors' limited rights of inspection or repossession were protective in nature and did not amount to having the aircraft at their disposal. Accordingly, the presence of the aircraft in India could not, by itself, establish a PE of the Irish lessors.

Finally, construing the treaty text, the Hon'ble ITAT held that Article 8(1) expressly covers the "operation or rental of aircraft in international traffic," which allocates taxing rights to Ireland; this specific rule prevails even if Article 7 were otherwise engaged. The additions were therefore unsustainable, and the remaining grounds (e.g., interest/penalty) were rendered academic. Appeals allowed.

5. *Salary received in India for services rendered in Malaysia is exempt in India as per India-Malaysia DTAA*

Arumugam Rajasekar ('the Assessee') is a non-resident individual based in Malaysia and employed with TCS Malaysia Sdn Bhd (TCS Malaysia). During the AY 2018-19, the Assessee received a part of his salary in India through TCS India owing to administrative convenience. Although he rendered services in Malaysia, TCS India deducted tax on the salary paid to him in India out of abundant caution. The Assessee claimed the salary income received in India as exempt from tax in his ROI under Article 16(1) of the India-Malaysia DTAA, since the services were rendered outside India and his entire salary has been subject to tax in Malaysia.

During the assessment proceedings, the AO relied on the decision of the Hon'ble Chennai ITAT in the case of *Dennis Victor Rozario*[9] and rejected the Assessee 's claim of exemption under the DTAA. The AO made an addition in respect of salary income received from TCS India. Aggrieved, the Assessee filed an Appeal before the CIT(A) who upheld the assessment order. The CIT(A) held that since the Assessee has received the salary in India, the same is taxable under Section 5(2) of the Act.

Upon further appeal, the Hon'ble Chennai ITAT noted the following facts:

- The Assessee was a non-resident of India and tax resident of Malaysia.
- He was an employee of TCS Malaysia.
- The Assessee received partial salary in India and balance in Malaysia. However, his entire salary income was subject to tax in Malaysia as per its domestic tax laws.

[9] *Dennis Victor Rozario ITA No. 298/CHNY/2016*

Further, the Hon'ble ITAT relied on the decision of the Hon'ble SC in the case of *LW Russel*[10] wherein it was held that location of receipt of salary is not important for determine the taxability of salary income. Further, the Hon'ble ITAT relied on *Utanka Roy*[11] wherein it was held that to determine the point of taxability, it is necessary to find the place where income has accrued (i.e. the place where services were rendered).

The Hon'ble ITAT noted the provisions of Section 5(2) along with Section 9(1)(ii) of the Act and concluded that salary cannot be taxed in India only for the reason that it was received in India. The salary income would be subject to tax in India only if it accrues in India (i.e. services are rendered in India).

The Hon'ble ITAT relied on the Karnataka HC decision in the case of *Prahlad Vijendra Rao*[12] wherein it was held that criteria for determining that salary income earned in India, is that services are rendered in India. Therefore, the salary received for working abroad was held as not accrued nor deemed to have been accrued in India.

The Hon'ble ITAT also referred to the decision of the Hon'ble SC in the case of *P.V.A.L Kulandagan Chettiar*[13] wherein it was held that in the case of any conflict between the provisions of the DTAA and the Act, the provisions of the DTAA would prevail.

Based on the above judicial precedents and after perusing Article 16(1) of the DTAA, the Hon'ble ITAT concluded that the Assessee being a Tax Resident of Malaysia, salary income earned in Malaysia would be taxable only in Malaysia and not in India. Accordingly, the appeal of the Assessee is allowed.

Arumugam Rajasekar [TS-1041-ITAT-2025(CHNY)]

[10] *CIT v. LW Russel [TS-6-SC-1964]*
[11] *Utanka Roy v. DIT [TS-6251-HC-2016(Calcutta)-O]*
[12] *Prahlad Vijendra Rao [TS-5806-HC-2010(Karnataka)-O]*
[13] *CIT v. P.V.A.L Kulandagan Chettiar [TS-5041-SC-2007-O]*
[14] *[TS-707-ITAT-2022(Mum)-TP]*

II. TRANSFER PRICING

1. AO cannot extend the limitation period under Section 144C(13) of the Act in the garb of rectification made by DRP

Fresenius Kabi Oncology Ltd ('the Assessee') filed its ROI for AY 2015-16. The AO passed the draft assessment order dated 24.12.2018. The Assessee filed its objections on 22.01.2019 before the Hon'ble DRP. The Hon'ble DRP issued its directions as per Section 144C(5) of the Act vide order dated 26.09.2019. The TPO passed the order giving effect to the said directions on 26.11.2019 and the final Assessment order was passed by the AO on 20.12.2019.Aggreived, the Assessee filed an appeal before the Hon'ble Delhi ITAT.

The Assessee contested that the final order is void as the last date for passing the final Assessment order was 31.10.2019 as per Section 144C(13) of the Act.

The tax authorities contended that as the order giving effect was passed by the TPO on 26.11.2019 after the DRP's directions and draft assessment order of FAO, the final order passed by JAO on 20.12.2019 is within the limitation period of Section 144C(13) of the Act. It was also contended that the DRP rectified its directions vide the rectification order dated 07.09.2019 which was forwarded to TPO for giving effect. Accordingly, the final assessment order after considering the rectified TP adjustments was made on 28.12.2019.

The Hon'ble Delhi ITAT decided the Appeal in Assessee's favour and held that the final Assessment order is barred by limitation as the last date for passing the final Assessment order as per Section 144C(13) of the Act expired on 31.10.2019. It further held that even if the assessment is completed by JAO or by FAO, the order should be passed within the time prescribed under Section 144C(13) of the Act after receipt of DRP's directions. Further, when the DRP issues directions, TPO has no power to resume jurisdiction and the TPO could only pass the effect order in a way which should not extend the time limit available with the AO for passing the Final Assessment Order.

The Hon'ble ITAT further held that the AO should pass the final order within a period of one month from the end of the month in which the DRP's directions (on Assessee's objections) is received by the AO. The Hon'ble ITAT relying on the decision of the co-ordinate bench in the case of *Michael Page International Recruitment (Pvt.) Ltd*[14] held that Section 144C(13) enjoins the AO to complete the assessment in conformity with the directions issued by the DRP. The AO shall not hold to give effect to this direction even the

same looks prima facie incorrect. The AO shall pass the order as directed by DRP within the permitted time limit. In case of any mistakes in the directions, rectification can be done by the DRP itself and the order shall be rectified by the AO as per the rectification provisions of the Act. However, the final Assessment order should be passed by AO within time limit prescribed under Section 144C(13) of the Act. Accordingly, the Hon'ble ITAT held that Final Assessment order passed by JAO is invalid and hence, quashed. Therefore, the appeal of the Assessee is allowed.

Fresenius Kabi Oncology Ltd [TS-442-ITAT-2025(DEL)-TP]

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2. *Payments in the nature of pass-through costs to third parties with no value addition should be excluded from the cost base for calculation of Assessee's margin.*

Pfizer Ltd ('the Assessee') is providing Clinical Study Management and Monitoring (CSMM) support services to its AE. The Assessee benchmarked the transaction using TNMM as the MAM and calculated an OP/OC at 10.34% for computation of margin in respect of CSMM services. The Assessee made payments to clinical laboratories (third parties) for performing clinical trials. At the time of margin calculation, the Assessee removed the payments made to clinical laboratories from the cost base as the same represents third party costs incurred by the Assessee while acting as an intermediary. Therefore, the payment made by Assessee are in the nature of pass-through cost and there cannot be any mark-up on such payments. The TPO rejected the comparables selected by the Assessee for benchmarking the provision of CSMM support services and selected comparables operating in Contract Research and Developments and computed the arm's length margin of 23.76%. Further, the TPO recalculated the Assessee's operating margin earned from the provision of CSMM support services at 10.08% by including the payment made to Laboratories in the cost base.

The Assessee filed an appeal before the CIT(A) who granted partial relief in respect of exclusion of PTC and arrived at arm's length margin of 13.71%. Aggrieved, the tax authorities filed an appeal before the Hon'ble Mumbai ITAT.

The Hon'ble Mumbai ITAT relying on the decision of the Hon'ble Bombay HC for the AY 2004-05 in its own case held that pass through costs needs to be removed from the cost base for computing the operating margin.

Further on the ground of selection of comparables operating in Contract Research & Development, the Hon'ble ITAT relying on the decision of co-ordinate bench in the Assessee's own case for earlier years held that as the Assessee was mere facilitator did not perform the clinical trial by itself but rather outsourced the same to the third party. Hence the comparison of Assessee's margin with the comparables operating in contract R&D services is not tenable. Accordingly, the Hon'ble Mumbai ITAT dismissed the appeal of the tax authorities.

Pfizer Ltd [TS-6242-ITAT-2025(Mumbai)-O]

III. IMPORTANT CIRCULARS AND NOTIFICATIONS

1. *CBDT[15] circular regarding PAN Inoperative & TDS/TCS Consequences*

- The CBDT has modified earlier Circulars (No. 3/2023 and 6/2024) regarding consequences of PAN becoming inoperative due to non-linkage with Aadhaar.
- Taxpayers had faced grievances where deductors/collectors received notices for "short deduction/collection" of TDS/TCS because PANs were inoperative.
- Relief Provided: No liability will arise on deductors/collectors for short deduction/collection if:
  a. Payment/credit made between 01.04.2024 – 31.07.2025, and PAN is made operative by 30.09.2025.
  b. Payment/credit made on or after 01.08.2025, and PAN is made operative within 2 months from the end of the month of payment/credit.

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2. *CBDT[16] notifies relaxation of time limit for processing of returns of income filed electronically which were incorrectly invalidated by CPC*

- CBDT has allowed relaxation for electronically filed returns (up to 31.03.2024) that were erroneously invalidated by CPC due to technical reasons. Such returns will now be processed, and intimations under Section 143(1) of the Act will be issued by 31.03.2026.

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3. *CBDT[17] amends FORM No. 10CCF in IT Rules*

CBDT notifies the amendments in Form No. 10CCF - Annexure A of the Income Tax Rules, 1962. The

[15] *Circular no. 09/2025 dated 21.07.2025*
[16] *Circular no. 10/2025 dated 28.07.2025*
[17] *Notification No. 135/2025/F. No. 370142/33/2025-TPL dated 20.08.2025*

amendment clarifies that in Serial No. 6, for IFSC Insurance Offices carrying on insurance business, the term "gross income" will mean profits and gains computed as per Section 44 and the First Schedule of the Act. Further, in Serial No. 9, it is specified that for such IFSC Insurance Offices, where profits and gains are calculated as per Section 44 and the First Schedule, the field for "gross eligible income" may be reported as Nil.

4. *CBDT[18] introduces amendment in Rule 21AIA*

CBDT has notified the **Income-tax (Twenty-Fourth Amendment) Rules, 2025.** It removes **sub-rule (4) of Rule 21AIA** and redefines the term **"specified fund"** to align with the meaning provided in Section 10(4D) of the Act.

5. *CBDT[19] introduces Rule 3C and 3D, specifying salary income and gross total income, determining perquisites under Section 17(2) of the Act*

In the Rules, after Rule 3B, the following rules shall be inserted:

Rule 3C –Salary income for the purposes of Section 17(2)(iii)(c) of the Act: For the purposes of item (c) of sub-clause (iii) of clause (2) of Section 17 of the Act, the prescribed limit of income under the head "Salaries" shall be increased to Rs. 4,00,000 from earlier limit of Rs. 50,000.

Rule 3D – Gross total income for the purposes of Section 17(2) Proviso (vi) of the Act: For the purposes of clause (vi) of the Proviso to clause (2) of Section 17 of the Act, the prescribed limit of gross total income shall be Rs. 8,00,000.

[18] Notification No. 136/2025/F. No. 370142/29/2025-TPL dated 21.08.2025
[19] Notification No. 133/2025/F. No. 370142/27/2025-TPL dated 18.08.2025

IV. REGULATORY UPDATES

1. *Introduction of "Single Window Automatic & Generalised Access for Trusted Foreign Investors framework for FPIs and FVCIs*

The objective of introducing SWAGAT-FI is to improve ease of investments by simplifying onboarding and ongoing compliances for a specific set of Foreign Portfolio Investors (FPIs). SEBI wants to simplify the process ensuring the regulatory safeguards. Investors face multiple routes with varying compliances depending on the type of investment but the new framework would now provide easier investment access, unified registration process, reduced repeated compliance and documentation to low-risk foreign investors. There are number of proposed relaxations under SWAGAT-FI framework which includes registration and review of KYC, increased participation of NRIs, OCIs, RI individuals, using single demat account for investment under FPI and FVCI route.

2. *Consultation paper on providing flexibilities to Large Value Funds for Accredited Investors.*

SEBI has set up Ease of Doing Business Group ("EoDB WG") to review compliance requirements and with the objective to simplify AIF regulations. The EoDB WG has highlighted few of the issues with regards to accredited investors in Large Value Funds.

The Consultation paper has discussed few changes alongwith the rationale for proposing these amendments. We have lifted below the points raised for comments from stakeholders.

1) Minimum investment amount to be lowered from 70 crores to 25 crores.
2) Relaxation of NISM certification criteria to LVF schemes.
3) LVFs to be exempted from adopting the standard PPM template and have PPM audit requirements.
4) Members of Investment Committee exempted from regulation 20(8) of AIF Regulation.
5) No cap on maximum numbers of investors.
6) Existing schemes to be given an option to convert.

3. *FMEs allowed to launch third party schemes under the new IFSCA regulations.*

Earlier, IFSCA had allowed AIF managers to launch multiple schemes under one platform but only internally, not for third parties. Now this platform enables it. Registered FMEs can now manage schemes

on behalf of third-party fund managers in India or abroad, subject to authorization by the IFSCA. Only restricted schemes can be launched under third-party fund management arrangements. Retail schemes cannot be launched under this arrangement. The appointment of one dedicated Principal Officer is mandatory for each Platform Scheme, additionally for Registered FME a separate Compliance Officer is to be appointed. The FME seeking authorization for third-party fund management needs to maintain an additional net-worth of $500,000 at all times. Third party will be deemed to be an "associate" of the FME for the purpose of compliance with the IFSCA Fund Management Regulations. IFSCA has mandated FMEs to provide disclosures to the investors about the activities of the FME, the relevant third party and disclose any potential conflict of interests and ensure clear segregation of fund as well as functions.

4. IFSC – Global Access Framework

One of the key objectives of IFSCA is to develop the IFSC in India as a gateway for cross border capital flows, effectively connecting India with global financial markets. To serve this purpose, the IFSCA has introduced a new Global Access framework. As per this, Broker dealers and recognized stock exchanges must obtain IFSCA authorization to act as Global Access Providers (GAPs) by paying Authorization Fee of USD 10,000 and quarterly recurring fees based on activity level. GAPs must maintain a net worth of USD 500,000 and the access is allowed only for IFSC – recognized financial products. GAPs need to disclose to their client that investor protection, dispute resolution mechanism and investor grievance redressal mechanism which are generally available to clients of Recognized Stock Exchanges in IFSC, are not available to the clients for global access.

IFSCA has also mandated GAPs to maintain separate bank accounts for activities in Global Access and the activities in IFSC. Additional disclosures related to risk factors of Global Markets, Fee and Tax structure, regulatory requirements of foreign jurisdictions are to be made by the provider to the clients. The responsibility for compliance with the KYC, AML and CFT norms rests with the GAPs.

V. GOODS AND SERVICE TAX

1. On 29 July 2025, the finance minister Nirmala Sitharaman clarified that apartment associations are required to register under GST if the aggregate turnover exceeds INR 20 lakh or INR 10 lakh (in special category states) in a financial year. It was also explicated that the associations are required to pay GST only where the maintenance charged is more than INR 7,500 per month per member. It was further stated that apartment associations having maintenance charges up to INR 7,500 per month per member or having aggregate turnover of goods and services below the threshold, that is INR 20 lakh, need not be registered under GST.

2. The United States has raised tariffs on imports from India to 50%, effective 27 August 2025, under Executive Order 14329. This measure, announced in the Presidential Executive Order of 6 August 2025, with a 21-day implementation period, doubles the earlier 25% duty and represents the sharpest trade action against India in recent years. Although framed within the broader U.S. geopolitical strategy concerning Russia and Ukraine, the decision has a direct bearing on India's export competitiveness, supply chains, and bilateral trade balance.

Case Laws

1. Department can issue separate notices under Sections 73 and 74 of the CGST Act on distinct and independent grounds.

The Assessee was a dealer of ferrous waste and scrap, remelting scrap ingots. The Assessee received a SCN dated 29 April 2024 for the period 2019-20, under

acknowledgement and show cause notice beyond the mandatory time limits renders the rejection order as invalid. Further, the word "shall" reflect legislative intent for strict compliance, and any delay vitiates the refund process. It was observed that insofar as the reason for rejecting the refund are concerned, placing reliance on extraneous grounds and documents is beyond the SCN and the same were made on assumptions. The bench also observed that the Single Judge had applied a double standard by holding the timelines as mandatory for the Assessee but not for the tax authorities. Because of this evident legal error, the Court felt it had no choice but to intervene and set aside the decision of the Single Judge.

Suraj Mangar vs Assistant Commissioner of West Bengal State Tax dated 30 July 2025, [2025] 176 taxmann.com 951 (Calcutta) [30-07-2025]

3. *Tax Implications of Employee Secondment: Not Treated as Manpower Supply Where Indian Entity Retains Effective Control*

The Assessee is engaged in manufacturing and engineering services for metro and railway projects, received expatriate employees from overseas group companies under secondment arrangements. Fresh employment agreements were executed with these secondees, who were placed on Assesses payroll in India. The salaries were directly paid by the company after deduction of tax at source and extended statutory employment benefits under Indian labour laws. However, social security and other overseas benefits continued to be administered by the foreign parent entities, which raised debit notes on the Assessee for reimbursement. The Assessee paid GST under reverse charge on such reimbursements. The department alleged that the Assessee had received manpower supply services from its foreign group entities and sought to levy GST on the total value of salaries and reimbursements.

The question before the Court was whether the deputation of employees by foreign group entities to the Assessee constituted a taxable supply of manpower services under the CGST Act, or whether the arrangement represented an employer–employee relationship falling outside the scope of GST as per Schedule III.

The Karnataka High Court emphasized the principle of "substance over form" in evaluating secondment arrangements. It noted that the secondees worked exclusively under the Assesses supervision in India, followed its internal rules and code of conduct, and were remunerated directly by the Assessee. It was also

observed that the social security contributions made abroad were statutory obligations of the home country and mere reimbursements by the Assessee did not alter the employer–employee character. In summary, the Assessee had the operational and functional control, as well as the economic burden of employment.

The Court distinguished the Supreme Court's ruling in Northern Operating Systems Pvt. Ltd. by stressing that it cannot serve as a sweeping precedent; each secondment arrangement must be tested on its own facts. The key considerations include who bears long-term employment responsibility, whether assignments are task-specific or open-ended, how salary is disbursed, and whether secondees are absorbed into the Indian entity.

The Court also relied on Paragraph 3.7 of the CBIC Circular 210/4/2024-GST dated 26 June 2024, clarifying valuation of related-party transactions, supported by the Delhi High Court in Metal One Corporation. The Court held that the secondees were employees of the Assessee during their tenure in India, and that the arrangement constituted an employer–employee relationship and not manpower supply. Accordingly, GST was not payable on remuneration of seconded employees.

Alstom Transport India Limited vs. Commissioner of Commercial Taxes and Ors. W.P. No. 1779/2025

Section 74 of CGST Act. The Adjudicating Authority vide order dated 20 October 2022 concluded the proceedings. The Assessee then filed an appeal against the order which was dismissed by the Appellate Authority vide order dated 27 December 2023.

The Assessee received another SCN dated 13 May 2024 issued under Section 73 of the CGST Act for the same period but different issues. The demand raised was confirmed vide order dated 19 July 2024.

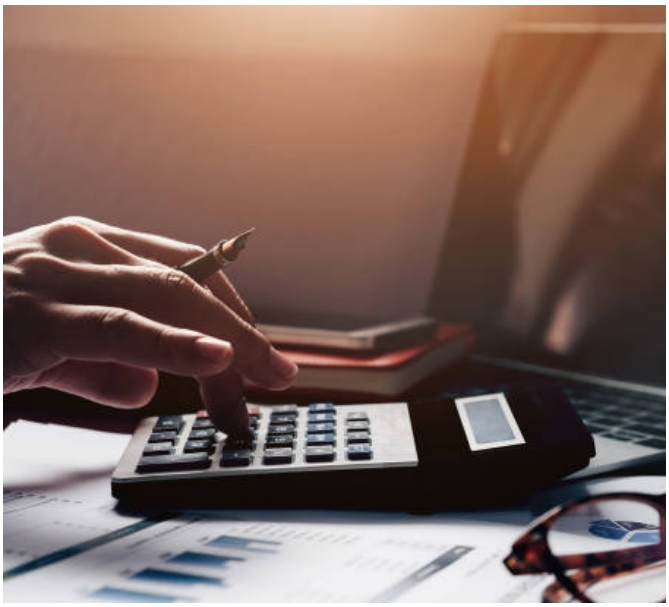
The Assessee filed a writ petition challenging the SCN dated 13 May 2024, and the order dated 19 July 2024. The writ petition was filed on the ground that multiple proceedings cannot be initiated for the same period and vagueness of the RCM-related demand.

The question raised before the Calcutta High Court was whether SCN under Section 73 can be issued for the same period when proceedings under Section 74 of the CGST Act, have been concluded?

The Calcutta High Court, on the ground of vagueness in the RCM-related demand, held that it suffered from no procedural infirmity and accordingly rejected it. The Court clarified that Sections 73 and 74 of the CGST Act operate on distinct grounds and are mutually exclusive. Therefore, once proceedings under Section 74 are concluded, the same issue cannot be reopened under Section 73. Since ITC claims for 2019–20 had already been adjudicated under Section 74, issuing a fresh notice under Section 73 for the same period was impermissible. However, the Court sustained demands relating to RCM and output tax, as they arose on separate grounds.

Consequently, the overlapping ITC demand was quashed, DRC-07 order was set aside, and the Department was directed to issue a revised demand after excluding the quashed portion. The writ petition was thus allowed, and the demand under DRC-07 dated 19 July 2024, stood set aside.

Sayan Biswas vs Deputy Commissioner of Revenue & Ors. [2025-TIOL-1311-HC-KOL-GST]



2. *Refund Rejection on Grounds of Small Office Space Beyond Jurisdiction; Reiterates Mandatory 60-Day GST Refund Timeline*

The Assessee filed an application dated 24 December 2021, for refund of unutilized ITC for the period of February 2021 to August 2021 on account of zero-rated supplies as per Section 54 of the WBGST Act read with rule 89 of the WBGST Rules. The refund application was acknowledged after a delay of two days from the expiry of the statutory period of 15 days on 10 January 2022. The Assessee received a SCN dated 8 February 2022. The rejection order was passed on 24 February 2022, which was beyond the 60-day mandatory limit stipulated in Section 54(7) of the CGST Act. The claim of the Assessee was thus found to be inadmissible. Aggrieved by the order, the Assessee filed an appeal before the Appellate Authority which was rejected on ground of delay. The Assessee filed a writ petition challenging the order of the Appellate Authority which was remanded with the direction to dispose on merits. It was also held that the 60-day timeline for processing GST refunds under Section 54(7) of CGST Act, is mandatory and not directory.

However, the Appellate Authority once again rejected the appeal of the Assessee on the ground that upon physical verification of the business premises and was found to be unfit to conduct such business, and that e-way bills for inward supplies had not been generated. The order of the Appellate Authority resulted in the appeal before the Calcutta High Court where the question before the Court were as follows:

i. Whether the period of 60 days under Section 54(7) of the CGST Act is mandatory?

ii. Whether the orders of rejection of the Assesses' claim of refund by the Adjudicating Authority and Appellate Authority are bad in law?

The division bench of the Calcutta High court while reversing the order of the single judge bench, held that Section 54(7) of the CGST Act mandates the Proper Officer to issue an order within 60 days from the date of receipt of the refund application. This time limit provided is mandatory and any delays in issuing the

VI. COMPLIANCE CALENDAR FOR SEPTEMBER 2025

A. Income tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	7th Sept	August 2025	TDS / TCS Payment	Non-Government Deductors
02	15th Sept	Qtr. 2 (F.Y 2025-26)	Advance tax payment	All Assessee
03	16th Sept	FY 2024-25	Return of income for the assessment year 2025-26 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.	For all Taxpayers
04	30th Sept	FY 2024-25	Filing the Income Tax Audit Report (other than Transfer pricing audit)	For All taxpayers to whom tax audit is applicable

B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	10th Sept	August 25	GSTR – 7 (TDS)	Person required to deduct TDS under GST
02	10th Sept	August 25	GSTR – 8 (TCS)	Person required to collect TCS under GST
03	11th Sept	August 25	GSTR 1	a) Taxable persons having annual turnover > Rs. 5 crores in FY 2024-25 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2024-25 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
04	13th Sept	August 25	GSTR – 1 (IFF)- QRMP	Aggregate Turnover is up to Rs. 5 crores
05	13th Sept	August 2	GSTR – 6 (ISD)	Person registered as ISD
06	20th Sept	August 25	GSTR – 3B	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2024-25 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2024-25 and not opted for QRMP scheme
07	13th Sept	August 25	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
08	20th Sept	August 25	GSTR - 5A (OIDAR)	OIDAR services provider
09	25th Sept	August 25	GSTR – 3B - QRMP scheme- Monthly payment *	Aggregate Turnover is up to Rs. 5 crores

** 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*

C. FEMA Compliance

Sr. No.	Due Dates	Particulars	Applicable to
01	7th Sept.	ECB 2 Return (External Commercial Borrowing)	All Indian Borrowers who have non-resident lenders
02	30th Sept.	Form FLAIR return based audited financials (Annual Return)	Indian Companies and LLP regarding to Foreign asset and liabilities

D. Ministry of Corporate Affairs (MCA) Compliance

Sr. No.	Due Dates	Particulars	Applicable to
01	30th Sept.	Annual General Meeting	For all Companies
02	30th Sept.	Form DIR-3 KYC to be completed for Directors	All the directors

GLOSSARY

ABBREVIATION	FULL FORM
Act	Income-tax Act, 1961
AE	Associated Enterprise
ALP	Arm's Length Price
AO	Assessing Officer
AY	Assessment Year
CBDT	Central Board of Direct Taxes
CIRP	Corporate Insolvency Resolution Process
CIT	Commissioner of Income-tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CIT(E)	Commissioner of Income-tax (Exemption)
CPC	Centralized Processing Centre
CRS	Computer Reservation System
CSR	Corporate Social Responsibility
CII	Cost Inflation Index
CUP	Comparable Uncontrolled Price
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement
ECB	External Commercial Borrowings
EVs	Electric Vehicles
FAR	Functions performed, Assets employed, and Risks assumed
FMV	Fair Market Value

GLOSSARY

ABBREVIATION	FULL FORM
FTS	Fess for Technical Services
FY	Financial Year
GST	Goods & Service Tax
HC	High Court
Hon'ble	Honorable
ITAT	Income Tax Appellate Tribunal
IBC	Insolvency and Bankruptcy Code
LTCG	Long Term Capital Gains
MAM	Most Appropriate Method
MOU	Memorandum of Understanding
NCLT	National Company Law Tribunal
NBFC	Non-Banking Financial Institution
OECD	Organization for Economic Co-operation and Development
PCIT	Principal Commissioner of Income Tax
PE	Permanent Establishment
Rules	Income-tax Rules, 1962
RBI	Reserve Bank of India
ROI	Return of Income
SC	Supreme Court
SDV	Stamp Duty Value
SRA	Slum Rehabilitation Authority
TDS	Tax Deducted at Source
TP	Transfer Pricing
TNMM	Transactional Net Margin Method
TPO	Transfer Pricing Officer

BHUTA SHAH & CO LLP
CHARTERED ACCOUNTANTS

About us

Bhuta Shah & Co LLP (BSC) is a dynamic professional Chartered Accountants firm with a distinctive blend of skill sets, experience and expertise. Established in the year 1986, we operate from our Head Office in Nariman Point, Mumbai while having 6 offices across India in Mumbai, Pune, Ahmedabad and New Delhi.

We offer our clients a wide range of services including Audit & Assurance, Direct Taxation, Indirect Taxation, Transaction Advisory, Corporate Finance, Corporate Advisory, Risk Advisory, Cyber Security and Resolution & Insolvency Advisory.

We provide services to a diverse set of leading Indian and Multinational Clients, including FPIs, Mutual Funds, Large Banks, Broking Institutions, Listed Companies including Pharmaceutical Companies, Manufacturing Companies, Insurance Companies, Realty Companies, Jewellery Companies, Hospitals and several other Large and Medium Businesses.

Our forte is high quality services to our clients based on the core principles of Quality, Focus, Timeliness and Commitment.

The Leadership Team comes with rich experience and is supported by a competent and efficient team of Professionals including Chartered Accountants, Professionals with Big-4 Consulting and Industry experience, Advocates, Company Secretaries, MBAs, Former IRS Officers, who are committed to providing timely, professional and quality services to our clients.

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