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BHUTA SHAH & CO LLP

CHARTERED ACCOUNTANTS

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BSC BEACON

TAX & REGULATORY INSIGHTS

WHAT'S INSIDE

I. DIRECT TAXATION:
A. CORPORATE TAX

1. ***Deduction in respect of an incentive attached to the profits from provision of long-term finance distinguished from a general provision restricting to income arising out of long-term financing activity***

Jindal Equipment Leasing Consultancy Services Ltd. ('the Assessee'), an investment company of the Jindal Group, held shares in Jindal Ferro Alloys Ltd. ('JFAL') and Jindal Strips Ltd. ('JSL'), representing controlling interest and reflected as investments in its financial statements. During AY 1997-98, JFAL was amalgamated with JSL pursuant to a scheme approved by the Andhra Pradesh and Punjab & Haryana HCs. Under the scheme, shareholders of JFAL received 45 shares of JSL for every 100 shares of JFAL held. The Assessee claimed exemption under Section 47(vii) of the Act, treating the shares received on amalgamation as capital assets.

The AO denied the exemption, treating the shares as stock-in-trade and taxing the difference between market value and book value as business income. The CIT(A) upheld the assessment order. On further appeal, the Hon'ble Delhi ITAT allowed the Assessee's appeal, holding that it was unnecessary to determine whether the shares were capital assets or stock-in-trade, since no profit accrued until the shares were actually sold. Relying on the Hon'ble SC decision in Rasiklal Maneklal[1], the Hon'ble ITAT held that extinguishment of rights in old shares was merely incidental to amalgamation and did not constitute a transfer under the Act. The Hon'ble ITAT held that as there was no transfer, no taxable income accrued.

The tax authorities appealed to the Hon'ble Delhi HC, contending that the Hon'ble ITAT erred in relying on Rasiklal Maneklal (supra) without considering the later SC ruling in Grace Collis[2], which held that "transfer" under Section 2(47) of the Act includes extinguishment of rights in a capital asset, attracting capital gains tax under Section 45 of the Act, though exempt under Section 47(vii) of the Act. The Hon'ble HC observed that if the shares were held as capital assets, the exemption under Section 47(vii) of the Act would apply. However, if they were held as stock-in-trade, the receipt of JSL shares amounted to realisation of trading assets, and the difference in value could be taxed as business income under Section 28(iv) of the Act. Relying on Orient Trading Co. Ltd.[3], the Hon'ble HC reinstated the principle of valuation of stock at lower of cost or market price and reiterated that exchange of shares held as stock-in-trade amounts to realisation of stock, giving rise to taxable profits. The matter was remanded to the Hon'ble ITAT to determine the nature of the Assessee's shareholding in JFAL (as capital asset or Stock-in-trade). Aggrieved, the Assessee appealed to the Hon'ble SC.

Before the Hon'ble SC, the Assessee argued that allotment of shares in the amalgamated company in substitution of shares in the amalgamating company does not amount to realisation of stock-in-trade by sale or exchange so as to generate taxable business income. Reliance was placed on Rasiklal Maneklal (supra) to contend that such exchange does not constitute transfer, and therefore no capital gains arise. The Assessee further relied on E.D. Sassoon & Co. Ltd.[4] and Shoorji Vallabhdas & Co.[5] to argue that income is taxable only when a real, enforceable right to receive income arises, and that hypothetical or illusory benefits cannot be taxed. Accordingly, even if the shares were held as stock-in-trade, receipt of shares on amalgamation would not result in taxable business income.

The tax authorities supported the Hon'ble HC's view, arguing that transfer is not a prerequisite for taxation of business income under Section 28 of the Act, which covers profits, gains, or benefits arising from business, whether convertible into money or not. Reliance was again placed on Orient Trading Co. Ltd. (supra) to assert that exchange of shares by a share dealer constitutes realisation of stock-in-trade.

After hearing the arguments of both the parties, the Hon'ble SC held that once receipt of shares on amalgamation is regarded as a transfer for capital gains purposes, that character cannot be ignored while examining taxability under Section 28 of the Act. Where shares held as trading stock are exchanged for shares of the amalgamated company, there is a receipt of consideration in kind. However, such receipt becomes taxable as business income only if it results in realisation of profit in the commercial sense. This depends on whether: (i) the old shares cease to exist as trading stock, (ii) the new shares have a definite and

[1] *CIT v. Rasiklal Maneklal (HUF) [TS-9-SC-1989]*
[2] *CIT v. Grace Collis (2001) [TS-5-SC-2001]*
[3] *Orient Trading Co. Ltd v. CIT [TS-13-SC-1997]*
[4] *E.D. Sassoon & Co. Ltd v. CIT [TS-1-SC-1954]*
[5] *CIT v. Shoorji Vallabhdas & Co. [TS-1-SC-1962]*

ascertainable value, and (iii) the Assessee has the ability to immediately dispose of the new shares and realise money. If these conditions are not satisfied, taxation is deferred until actual sale.

The Hon'ble SC held that exchange of shares pursuant to amalgamation gives rise to taxable business income under Section 28 only where such shares are held as stock-in-trade in the books of account, such shares are realisable in money and such shares are capable of definite valuation.

The actual application of the above principles is subject of factual determination and hence, the Hon'ble SC remitted the matter to the Hon'ble ITAT for fresh adjudication. Accordingly, the Hon'ble SC affirmed the order of the Hon'ble HC and dismissed the appeal.

Jindal Equipment Leasing Consultancy Services Ltd [TS-13-SC-2026]

2. *Revision under Section 263 of the Act quashed for absence of identifiable error*

Eastman Exports Global Clothing Pvt. Ltd. ("the Assessee") filed its ROI for AY 2007-08, which was assessed under Section 143(3) of the Act. As per the scheme of demerger sanctioned by the Hon'ble Madras HC, the manufacturing divisions of Tangible Textiles Pvt. Ltd., Cotton Base Clothing India Pvt. Ltd., and Essorpe Mill Ltd. were transferred to the Assessee during the year under consideration. In accordance with Section 72A(4) of the Act, the Assessee carried forward and set off the accumulated losses and unabsorbed depreciation of the demerged undertakings.

Subsequently, the CIT issued a SCN under Section 263 of the Act, alleging that the carry forward of losses and depreciation was erroneous and prejudicial to the interests of the tax authorities. Further, treating the transaction as an amalgamation, the CIT held that the conditions prescribed under Section 72A(2) of the Act (that the amalgamating companies should have been engaged in business for at least three years), were not satisfied. Despite detailed submissions by the Assessee explaining that the transaction was a demerger governed by Section 72A(4) of the Act, the CIT set aside the assessment and remitted the matter to the AO for fresh examination.

Aggrieved, the Assessee filed an appeal before the Hon'ble Chennai ITAT, which quashed the revisionary order passed under Section 263 of the Act, holding that the CIT failed to demonstrate any specific error in the assessment order. Subsequently the tax authorities filed an appeal before the Hon'ble Madras HC.

The Hon'ble High Court reiterated that revision under Section 263 of the Act can be exercised only when the twin conditions are satisfied concurrently – the assessment order must be both erroneous and prejudicial to the interest of the tax authorities, as laid down in Malabar Industrial Co. Ltd.[6] The Hon'ble HC observed that the schemes clearly constituted a demerger under Section 2(19AA) of the Act and not an amalgamation under Section 2(1B) of the Act. It further noted that while Section 72A(2) of the Act prescribes conditions for amalgamation, Section 72A(4) of the Act, applicable to demergers, contains no such requirements. Since the Assessee's case was squarely covered under Section 72A(4), there was no error in the original assessment order.

Hon'ble HC held that despite being aware of the nature of the transaction and having examined the Assessee's reply, the CIT failed to identify any specific error in the assessment order and merely remitted the issue for verification. Such an approach amounted to a roving and fishing enquiry, which is impermissible under Section 263 of the Act. Accordingly, the Hon'ble HC held that the assumption of revisionary jurisdiction was invalid and affirmed the order of Hon'ble ITAT on deletion of the proceedings initiated under Section 263 of the Act. Accordingly, the Hon'ble HC dismissed the appeal.

Eastman Exports Global Clothing Pvt Ltd [TS-1687-HC-2025(MAD)]

3. *Entering into JDA is held not equal to transfer of the property*

C. Aryama Sundaram's ('the Assessee') parents and their HUFs, jointly owned a residential house property in Chennai. On 15.12.1994, the owners entered into a Joint Development Agreement (JDA) with builders for redevelopment of the property, under which the owners were entitled to 50% of the developed area and certain monetary consideration for surrender of development rights. Necessary tax clearances were obtained in 1994. The residential structure was demolished pursuant to the JDA.

The Assessee's father passed away on 03.11.1996, and the Assessee inherited his father's share in the property, which was still under development. After completion of development, the Assessee and his mother sold their respective shares in the newly

[6] *Malabar Industrial Co. Ltd [TS-6-SC-2000]*

developed property to third parties over several years beginning from FY 1998–99.

In his ROI, the Assessee claimed exemption under Section 54 of the Act by reinvesting the sale proceeds in another residential house on 30.01.2001 (FY 2000–01). The AO initially accepted the claim but later reopened the assessment on the ground that proof of reinvestment was not furnished. In contrast, the Assessee's mother's claim was accepted as she had deposited the proceeds in the CGAS Account. The Assessee's appeal before the CIT(A) was allowed after he produced proof of reinvestment in and exemption under Section 54 was granted.

The Tax Authorities appealed to the Hon'ble Chennai ITAT, which set aside the CIT(A)'s order and restored the assessment order. The ITAT held that (i) documentary evidence of reinvestment had not been produced before the AO, (ii) exemption under Section 54 of the Act was not available as the amount was not deposited under CGAS, (iii) the original residential house had been demolished in FY 1994–95 and therefore no residential house existed, and (iv) the date of transfer for capital gains purposes was the date of execution of the JDA and not the date of sale of the developed property.

Aggrieved, the Assessee appealed to the Hon'ble Madras HC. The Assessee also contended before the Hon'ble HC that the Hon'ble ITAT erred in rejecting his alternate plea for exemption under Section 54F. The Hon'ble HC observed that although proof of reinvestment was not furnished before the AO, the capital gains computation reflected reinvestment and the documentary evidence had subsequently been placed on record before the CIT(A). The Hon'ble HC further held that the transaction must be viewed holistically as a continuous series of events and that execution of a JDA, by itself, does not constitute a transfer.

The Hon'ble HC accepted the Assessee's contention that the JDA was only for development and that capital gains arose only upon sale of the developed property in 1999, not on execution of the JDA. It further held that for claiming exemption under Section 54 of the Act, the only requirement is that the property be assessable under the head 'income from house property', actual earning of such income is not mandatory. The Hon'ble HC clarified that an Assessee can either reinvest under Section 54(1) of the Act or deposit funds under Section 54(2) of the Act and the tax authorities cannot compel adoption of a particular mode.

However, the Hon'ble HC rejected the plea that exemption under Section 54F of the Act would automatically follow if Section 54 of the Act relief was denied, holding that the Hon'ble ITAT could consider an alternate claim only if properly raised with relevant facts. Accordingly, the appeal was partly allowed by granting relief under Section 54 of the Act and rejecting the claim under Section 54F of the Act.

C. Aryama Sundaram [TS-1718-HC-2025(MAD)]

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4. Non-compliance with CBDT Manual renders Digital Evidence legally unsustainable

Arti Garg ("the Assessee") purchased a residential property for a consideration of INR 3.50 crores and registered the sale deed on 30.12.2020. In her ROI for AY 2021-22, the Assessee declared total income of INR 9.30 lakhs. Subsequently, a search was conducted on a third-party property dealer, during which a digital image of handwritten slip allegedly claimed to be signed by the seller was recovered from his mobile phone, indicating a total consideration of INR 5.50 crores for the said property.

Based on the - digital image and a subsequently retracted statement recorded from the Assessee, the AO held that an additional sum of INR 2 Crores was paid in cash. Accordingly, the AO made an addition of INR 2 crores under Section 69 of the Act as unexplained investment in the hands of the Assessee which was further confirmed by the CIT(A).

Aggrieved, the Assessee filed an appeal before the Hon'ble Delhi ITAT, contending that the entire addition was based on inadmissible electronic evidence. It was argued that the digital image relied upon by the AO was retrieved from the mobile phone of a third party and was not supported by a valid chain of custody as mandated under Section 65B of the Indian Evidence Act, 1872 and that the CBDT Manual on Handling of Digital Evidence (prescribing detailed procedures for the collection, preservation, analysis, and presentation of electronic evidence), was not followed. It was also submitted that the retracted statement, in the absence of corroborative evidence, could not sustain the addition.

The Hon'ble ITAT noted that although a certificate under Section 65B of the Indian Evidence Act was placed on record, the same was deficient and did not demonstrate compliance with the requirements laid down under law. Further, there was no evidence to establish a proper chain of custody, no material to show

how the data was extracted, preserved, or transmitted from the seized device to the AO, and no signatures of the officers involved in the search proceedings to authenticate the process.

The Hon'ble ITAT placed significant reliance on the CBDT Manual governing digital evidence and held that the extensive safeguards prescribed therein were disregarded. The Hon'ble ITAT further observed that the alleged digital image was not corroborated by any independent evidence, that the statements relied upon stood retracted, and that the Assessee was not afforded effective opportunity to cross-examine the third party from whose device the image was recovered.

In view of the above, the Hon'ble ITAT held that the electronic evidence lacked legal sanctity and could not form the sole basis for making additions under Section 69 of the Act. Accordingly, the Hon'ble ITAT allowed the appeal of the Assessee and deleted the addition of INR 2 Crores made under Section 69 of the Act.

Arti Garg [TS-37-ITAT-2026(DEL)]

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5. *TDS credit allowed to the Assessee despite corresponding income being offered by the sister concern*

Haddock Propbuild Pvt. Ltd. (The 'Assessee'), is a domestic private limited company engaged in the real estate business. During the AY 2017-18, it entered into a collaboration agreement with its sister concern, Emaar MGF Land Limited ('Principal') to procure land for a development project on behalf of its Principal. However, the land was required to be registered in the Assessee's name. As per the agreement, the possession of the land was handed over to the principal and the land remained under the supervision and control of the principal. Further, the Assessee was legally bound to hand over any income generated from the sale of property in pursuance of the terms of the agreement to the Principal. The Assessee received an amount of INR 3.41 Crores on sale of property and TDS of INR 3.41 Lakhs was deducted therefrom. Further, the said amount and the corresponding TDS was reflected in the Form 26AS of the Assessee for the year under consideration.

The Assessee filed its ROI for A.Y. 2017-18 declaring a loss of INR 6,995 and claimed a refund of INR 3.41 Lakhs on account of the aforesaid TDS. The ROI was processed under Section 143(1) of the Act by the CPC, which denied the refund on the grounds that the corresponding income was not offered to tax by the Assessee.

Aggrieved, the Assessee filed an appeal before the CIT(A) who dismissed the appeal. On further appeal before the Hon'ble Delhi ITAT, the assessment was set aside to the AO to verify the status of the TDS reflecting in Form 26AS and the corresponding income. However, the claim of TDS was again denied by the AO, and confirmed by the CIT(A).

Aggrieved, the Assessee filed an appeal before the Hon'ble Delhi ITAT. The Assessee produced its Form 26AS showing TDS in its name. A confirmation from the Principal to the effect that the related income was declared in its financial statements and offered it to tax in its ROI. The Assessee relied on the decision of the Hon'ble Delhi HC in the case of Relcom, while the tax authorities contended that TDS credit could not be allowed since the Assessee had not offered the income in its own ROI.

The Hon'ble Delhi ITAT examined whether TDS credit under Section 199 of the Act can be granted if the TDS appears in the Assessee's Form 26AS but the corresponding income is offered by a sister concern. Relying on Relcom (supra), the Hon'ble Delhi ITAT held that TDS credit cannot be denied on the said ground alone. Further, the Hon'ble Delhi ITAT rejected the contention that instead of claiming the entire TDS amount, the Assessee ought to have sought a correction of the vendor's mistake as it would have unnecessarily prolonged the entire process of seeking refund based on TDS credit. The Hon'ble ITAT directed the AO to allow the TDS credit after verifying that the Principal had not claimed the same TDS in its own ROI.

Haddock Propbuild Pvt Ltd [TS-1679-ITAT-2025(DEL)]

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6. *Dividend income received in AY 2017-18 not taxable in hands of Trust under Section 10(34) r.w.s 115BBDA of the Act*

Jasmina Trust ("the Assessee") is a trust registered under Section 12A of the Act. For the AY 2017-18, the Assessee filed its ROI declaring total income as NIL. During the assessment proceedings, the AO made additions by treating dividend income amounting to INR 25.51 lakhs as unexplained income and disallowed

expenses of INR 30.05 lakhs claimed under Section 57(1) of the Act. Aggrieved, the Assessee filed an appeal before the CIT(A).

While the CIT(A) partly allowed the appeal by deleting the disallowance of expenditure of INR 30.05 lakhs, the addition of INR 25.51 lakhs of dividend income was confirmed, with a direction to allow the basic exemption of INR10 lakhs and to levy tax at 10% on the balance amount as per Section 115BBDA of the Act (Section 115BBDA provides for tax exemption to specified Assessees in respect of dividend income upto INR 10 Lakhs and a tax rate of 10% on dividend exceeding INR 10 Lakhs). Aggrieved, the Assessee filed an appeal before the Hon'ble Delhi ITAT.

Before the Hon'ble ITAT, the Assessee contended that the proviso to Section 10(34) of the Act (which removes the applicability of dividend income exemption covered under Section 115BBDA of the Act) was inserted by the Finance Act, 2016 w.e.f. 01.04.2017 and, therefore, is applicable only from AY 2018-19 onwards, and not to the year under consideration, i.e., AY 2017-18. On the other hand, the tax authorities argued that since the proviso to Section 10(34) was inserted with effect from 01.04.2017, it is applicable from AY 2017-18 onwards.

The Hon'ble Delhi ITAT, after examining the provisions of Section 10(34) of the Act, held that the amendment to Section 10(34) of the Act is applicable prospectively from AY 2017-18 onwards. However, a careful reading of the newly inserted Section 115BBDA of the Act reveals that the special rate of tax is applicable only to Individuals, HUFs as well as Firms, and does not extend to Trusts. Since Section 115BBDA of the Act specifically restricts its applicability to Individuals, HUFs, and Firms, the proviso to Section 10(34) of the Act cannot be invoked in the case of a Trust. Accordingly, the Hon'ble ITAT observed that the action of the CIT(A) in treating the dividend income as taxable in the hands of the Assessee and taxing the same under Section 115BBDA of the Act is contrary to the provisions of the Act. Consequently, the addition so made is deleted and the appeal of the Assessee is allowed.

Jasmina Trust [TS-1656-ITAT-2025(DEL)]

7. Grant of TDS credit not claimed in ITR but made during the OGE to the CIT(A) Order allowed even after expiry of 8 years.

Daiwa Capital Markets India Private Limited ("the Assessee") filed its original ROI claiming TDS credit of INR 1.78 crore and later filed a revised ROI. In the interim, one party deducted and deposited additional TDS of INR 73.24 lakh but failed to intimate the Assessee. Consequently, the Assessee could not claim this TDS in the revised ROI, although the corresponding income was duly offered to tax in both the original and revised ROIs.

During assessment proceedings under Section 143(3) of the Act, certain additions were made, which were subsequently deleted by the CIT(A). At the time of scrutiny, the Assessee was unaware of the additional TDS and therefore did not claim the credit. However, while seeking to give effect to the CIT(A)'s order, the Assessee requested the AO to grant credit for the unclaimed TDS of INR 73.24 lakh.

The AO rejected the request on the grounds that the TDS credit was not claimed in the ROI, Rule 37BA was not followed, and the claim was beyond the time limit prescribed under CBDT Circular No. 11/2024 dated 01.04.2024. The CIT(A) upheld the AO's view. Aggrieved, the Assessee appealed before the Hon'ble Mumbai ITAT.

Before the Hon'ble ITAT, the Assessee argued that the failure to claim TDS credit was an inadvertent error, and denial of credit would result in double taxation, violating principles of natural justice and Article 265 of the Constitution, which mandates that tax can be levied or collected only by authority of law. The tax authorities contended that the Assessee failed to follow the prescribed procedure and that the claim was made after eight years i.e. after the time prescribed under Income Tax rules.

The Hon'ble ITAT held that once the corresponding income has been taxed, denial of credit for TDS already received by the Government is wholly unjustified and amounts to violation of Article 265. It observed that tax authorities have a statutory and constitutional obligation to grant TDS credit reflected in Form 26AS. The claim cannot be rejected merely due to a procedural lapse when tax has been duly deducted and deposited.

Accordingly, the ITAT directed the AO to allow TDS credit of INR 73.24 lakh. If this results in a refund, it shall be treated as advance tax and interest under Section 244A shall be granted. The Assessee's appeal was allowed.

Daiwa Capital Markets India Private Limited [TS-1657-ITAT-2025(Mum)]

8. AO cannot use reassessment proceedings to bypass the expiry of time limit prescribed for search proceedings

During FY 2017-18, a search warrant was issued under Section 132 of the Act on Ms. Aakurti Ruia ("the Assessee") to search a locker situated in Delhi. The Assessee was present at the search premises and in her presence gold coins and jewelry worth INR 76.14 lakhs were recovered, out of which gold coins and jewelry worth INR 68.52 lakhs was seized.

After the search proceedings, the AO found that the Assessee had not filed ROI under Section 139 of the Act. Hence, a notice was issued under Section 148 of the Act to initiate income escaped assessment under Section 147 of the Act. In response, the Assessee filed her ROI on 15.12.2022 declaring a total income of INR 2.07 Lakhs only. The AO completed the assessment under Section 143(3) read with Section 147 of the Act on 25.03.2023 making addition of INR 76.14 lakhs on account of unexplained gold coins and jewelry.

Aggrieved, the Assessee filed an appeal before the CIT(A). The CIT(A) after considering the submissions of the Assessee limited the addition to the extent of INR 17.09 lakhs. Aggrieved, the Assessee filed an appeal before the Hon'ble Bangalore ITAT. The Assessee challenged the validity of assessment order contending the assessment was required to be framed under Section 153A/153C of the Act. The Assessee contended that the assessment was required to be concluded as per Section 153B of the Act i.e. within 21 months from the end of the FY in which last authorization was executed i.e. F.Y. 2017-18 – 31.12.2019.

On the contrary the tax authorities submitted that the search was conducted on a third party and hence, provisions of Section 153A/153C of the Act is not applicable and that the AO is not debarred from reopening assessment under Section 147 of the Act.

The Hon'ble ITAT held that the panchnama dated 05.01.2018 clearly records that the Assessee was present at the time of the search and the locker seized stands in her name. Thus, the Assessee is not third party to search but one of the persons searched.

The provisions of Section 153A to Section 153D will get triggered which will have over-riding effect over general provisions of the Act as supported by the decision of Hon'ble HC of Rajasthan in the case of Shyam Sunder Khandelwal v. Asstt. CIT[7] which was followed by the Hon'ble Jurisdictional HC in case of PCIT vs VSL Mining Co. (P) Ltd.[8] It was further held that the assessment was barred by limitation under Section 153B of the Act. The Hon'ble ITAT categorically held that the AO could not invoke Section 147 of the Act to circumvent the expiry of limitation prescribed under Section 153B of the Act. It observed that where a special code prescribes a specific time limit and procedure for search assessments, the general provisions cannot be used to bypass the statutory mandate.

The provisions of Sections 153B are meant to bring finality to search assessment within a fixed outer time limit. Any assessment made after the prescribed time limit under Section 153B of the Act becomes a nullity. Accordingly, the Hon'ble ITAT held that as the impugned order was beyond the statutory time limit under Section 153B of the Act, it is invalid and void – ab – initio. Resultantly, the Assessment Order is quashed, and the appeal of the Assessee is allowed on legal grounds. The issues raised by the Assessee on merits of the addition is dismissed as infructuous and the appeal is accordingly partly allowed.

Aakruti Ruia [TS-1666-ITAT-2025(Bang)]

B. INTERNATIONAL TAXATION

1. SC declares Tiger Global's Flipkart Share Sale a Sham Transaction and denies India-Mauritius DTAA Benefits

Tiger Global International II/III/IV Holdings ("the Assessees" or "TGI") are private companies incorporated in Mauritius to undertake investment activities. The Assessees held a Category 1 Global Business License and a valid Tax Residency Certificates issued by the Mauritius Revenue Authorities. They formed part of a multi-layered group structure comprising of a fund set up in Cayman Islands (pooling vehicle) and Mauritius intermediate holding companies. Tiger Global Management LLC (USA) (TGM LLC) acted as the investment manager for the Cayman Islands Fund.

During the period from October 2011 and April 2015, the Assesses acquired shares of Flipkart Singapore (FS) which derived its value substantially from assets located in India in terms of its shareholding in Flipkart India. In 2018, the Assesses proposed to transfer their shares to Fit Holdings S.A.R.L. (FH), Luxembourg. Prior to such transfer, the Assesses had requested for a NIL withholding tax certificate under Section 197 of the Act from the Indian Tax Authorities, claiming exemption on capital gains under Article 13 of the India–Mauritius DTAA.

The Tax Authorities denied granting a NIL withholding certificate and passed an order to deduct tax at the

[7] *Shyam Sunder Khandelwal v. Asstt. CIT [TS-6341-HC-2024(Rajasthan)-O]*
[8] *PCIT vs VSL Mining Co. (P) Ltd [TS-6757-HC-2024(Karnataka)-O]*

prescribed rates. Consequently, on 18th August 2018, TGI sold 1,62,43,010 shares at a transaction value of around INR 14440. 23 Crores (USD 2.08 Billion).

In February 2019, the Assesses moved to Authority for Advance Rulings (AAR) seeking its opinion on the taxability of the transaction. The AAR rejected the application by holding that prima facie the effective control and management of the Assesses is in USA. It further held that control resided with US-based personnel who exercised operational authority over bank accounts for transactions above USD 2,50,000 and for the investment decisions.

Aggrieved by the ruling, the Assesses filed a writ petition before the Hon'ble Delhi High Court challenging the findings of the AAR. The High Court reaffirmed the sanctity of the Tax Residency Certificate and ruled that tax authorities could not disregard treaty residency in the absence of clear evidence of fraud or sham arrangements. It further held that domestic tax provisions and GAAR could not be applied in a manner inconsistent with express treaty protections, particularly in view of the grandfathering clause under Article 13(3A). Consequently, the High Court set aside the AAR ruling and held that TGI possessed sufficient economic substance, independent commercial operations, and satisfied the limitation of benefits conditions prescribed under the India–Mauritius DTAA.

Aggrieved, the tax authorities filed a Special Leave Petition in the Supreme Court challenging the judgement of the Delhi High Court.

The Supreme Court examined the legislative framework governing treaty benefits and General Anti-Avoidance Rules (GAAR), noting that the introduction of Section 90(2A) curtailed the absolute supremacy of treaty provisions by subjecting them to GAAR. This change empowered tax authorities to deny DTAA benefits where transactions were structured primarily for tax avoidance. The Court further clarified that grandfathering under Rule 10U is not absolute. Even arrangements entered into prior to the cut-off date can be scrutinized under GAAR if tax benefits arise on or after 01 April 2017 and exceed the prescribed monetary threshold.

Addressing indirect transfers, the Court reaffirmed the applicability of Section 9(1)(i) read with Explanation 5, which deems income from foreign share transfers taxable in India where such shares derive substantial value from Indian assets. Once domestic taxability is established, treaty relief becomes conditional upon compliance with anti-abuse provisions.

The bench emphasized that amendments to the Income Tax Act, GAAR provisions, revised rules, and the 2016 Protocol to the India–Mauritius DTAA have fundamentally altered the legal landscape in the post Vodafone era. Earlier CBDT Circulars and pre-amendment jurisprudence, including reliance on Tax Residency Certificates (TRC), were held insufficient in the current statutory regime. The Court ruled that TRC alone does not guarantee treaty protection and that factual examination of substance, control, and commercial purpose is mandatory.

A significant aspect of the judgment was the shift in burden of proof under Section 96(2), which places the onus on taxpayers to disprove the presumption of tax avoidance. The Court found that the Tax Authorities had produced clear prima facie evidence demonstrating that the structure was designed solely to avoid Indian tax liability.

Applying the amended DTAA provisions, including Article 13 and the Limitation of Benefits clause under Article 27A, the Court concluded that the Assessees did not qualify for treaty benefit. The transaction lacked economic substance and failed the residence and management tests required for treaty eligibility.

The Supreme Court categorically held that while legitimate tax planning is permissible, arrangements that are sham, artificial, or designed primarily for evasion cannot be protected. Once a transaction is found to be impermissible under GAAR, treaty exemptions automatically cease to apply.

Consequently, the Court set aside the High Court's ruling and upheld the Revenue's position, confirming that capital gains arising from transfer as taxable in India.

Tiger Global International II Holdings [TS-38-SC-2026]

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2. *Payments for use of ICC Mark amounts to Royalty and subject to Withholding at 15%.*

Global Cricket Corporation (“GCC”), a company incorporated in Singapore, entered into an agreement with ICC Development (International) Ltd. to acquire commercial rights relating to ICC-owned cricket events. Under this arrangement, GCC was entitled to appoint global partners, including sponsors, broadcasters, suppliers, and other licensees.

LG Electronics India (P.) Ltd. (“the Assessee”), an Indian

company and part of the LG group, entered into a global partnership agreement with GCC to acquire advertising and promotional rights in relation to ICC cricket events. These rights included display of LG marks at specified venues and the right to use ICC and event marks in advertising material across the licensed territory. The total consideration payable by the LG group was USD 27.5 million, of which USD 11 million was borne by the Assessee and the remaining USD 16.5 million by other LG group entities.

The Assessee filed an application under Section 195 of the Act seeking a certificate for remittance of the amount without deduction of tax at source. The DDIT rejected the application, holding that the payment constituted "royalty" for acquisition of rights to commercially exploit ICC events and was taxable in India under Article 12 of the India– Singapore DTAA at 10%. Aggrieved, the Assessee filed an application for revision before the DIT under Section 264 of the Act.

The DIT held that the sponsorship payment was composite in nature. Based on the Assessee's submissions and a letter from GCC stating that incidental use of trademarks was valued at USD 1,000, the DIT bifurcated the consideration: two-thirds attributable to advertising and promotional services (non-royalty) and one-third attributable to the right to use ICC trademarks and event marks. The latter portion was held to be "royalty" taxable in India under the Act and Article 12 of the DTAA, with withholding tax applicable at 15%. Challenging this finding, the Assessee filed a writ petition before the Hon'ble Delhi HC.

Before the Hon'ble HC, the Assessee argued that the dominant purpose of the agreement was advertising and brand promotion, and that use of ICC marks was merely incidental and inseparable from the sponsorship arrangement. It contended that there was no independent licensing of trademarks or separate consideration for such use, and that the apportionment was artificial and unsupported by the contract. The Assessee sought issuance of a NIL withholding certificate.

The tax authorities argued that the agreement expressly granted enforceable rights to use, reproduce, and display ICC trademarks and event marks across media and territories. Such rights constituted valuable commercial rights qualifying as "royalty" under the Act and the DTAA. The apportionment adopted by the revisional authority was defended as reasonable.

The Hon'ble HC held that the agreement conferred substantive rights to use ICC trademarks for commercial exploitation, which could not be regarded as merely incidental to advertising. It ruled that the right to use trademarks squarely falls within the definition of "royalty". The HC further held that in composite contracts containing taxable and non-taxable elements, tax authorities are empowered to reasonably apportion consideration.

On examining the agreement and GCC's letter, the HC observed that GCC granted global partnership rights to use ICC marks, controlled advertising sites, and undertook responsibility for signage and display. The definitions of "licensed territory" and "advertising material" were broad and not limited to venues or geography. Finding no arbitrariness or perversity in the bifurcation, the Court upheld the revisional order under Section 264 of the Act and dismissed the writ petition.

LG Electronics India P.Ltd [TS-1715-HC-2025(DEL)]

3. *Concepts of Virtual Service PE not contemplated by DTAA or domestic tax law resulting in remand of the matter to AO for fresh consideration*

Ernst & Young LLP ("the Assessee") is an entity incorporated in India and engaged in providing wide range of professional services across industries. The Assessee had applied for issuance of NIL withholding certificate for the proposed payment of INR 17.50 Crores to be made to Ernst & Young (EMEIA) Services Limited ("EMEIA"), a UK based entity.

The Assessee contended that the payment made is neither FTS (in absence of service being make available) nor business income (due to absence of PE) and accordingly not taxable in India as per India-UK DTAA. However, the AO held that the payments constituted business income taxable in India on the premise that EMEIA had a "virtual service PE" in India under Article 5(2)(k) of the India-UK DTAA. Accordingly, the AO directed the Assessee to withhold taxes at the rate of 5.25% vide an order under Section 195 of the Act.

Aggrieved, the Assessee filed a writ before the Hon'ble Delhi HC. Before the Hon'ble HC the Assessee contended that the concept of "virtual service PE" is not recognized under DTAA or the Act and therefore, the payment made by the Assessee should not be taxable in India. The Assessee relied on decision of jurisdictional Hon'ble HC in the case of Clifford Chance Pte. Ltd.,[9] wherein similar provisions under the

[9] *Clifford Chance Pte. Ltd [TS-1603-HC-2025(DEL)]*

India–Singapore DTAA were interpreted and it was held by Hon'ble Delhi HC that service PE requires physical presence of employees in the source country. The Assessee prayed before the Hon'ble HC to set aside the impugned order under Article 226 of Constitution of India without remanding the matter to the AO.

Per Contra, the Tax Authorities argued that Article 5(2)(k) of India-UK DTAA does not mandate physical presence and that the service furnished "through employees or other personnel within the contracting state" could include virtual services. Further, the tax authorities contested the view of the Assessee and requested the Hon'ble HC to remand the matter to the AO.

The Hon'ble HC categorically rejected the theory of "virtual service PE", holding that courts cannot read concepts into treaty provisions which are not expressly contemplated in the DTAA or domestic tax laws. The Hon'ble HC further observed that the sole basis of rejecting the NIL withholding certificate was the alleged existence of a virtual PE, which is unmerited. Accordingly, the Hon'ble Delhi HC set aside the order and remanded the matter back to the AO with directions to pass fresh order within 2 weeks in response to a fresh application by the Assessee.

Ernst And Young LLP [TS-34-HC-2026(DEL)]

4. *DTAA benefit prevails over SEP as per the Act in case of income received from rendition of management consultancy services*

Vijay Mariappan Austin Prakash ('the Assessee'), a Singaporean citizen and tax resident of the UAE, earned about INR 8.28 crore from Zerodha Broking Ltd. ('ZBL') for providing management consultancy and business advisory services. He was a salaried employee of Zerodha till 30.09.2020 and thereafter rendered services as an independent consultant under a formal agreement. During the AY 2022-23, he stayed in India for less than 60 days and claimed exemption of the consultancy income under Article 14 of the India–UAE DTAA in his ROI. During the assessment proceedings, the Assessee produced TRC issued by the UAE Authorities to substantiate the claim of DTAA exemption.

The AO issued the draft order under Section 144C(1) of the Act treating the consultancy income as taxable in India, holding that the Assessee had merely changed his status from employee to consultant to avoid tax. The AO concluded that the services rendered did not qualify as "professional services" under Article 14 of the India–UAE DTAA, and that the Assessee had a business connection in India due to SEP under Section 9(1)(i) of the Act, since the prescribed monetary threshold of INR 2 Crores had been crossed. Aggrieved, the Assessee filed his objections before DRP which rejected the Assessee's objection on the ground of delayed filing of objection. The AO passed a final assessment order by assessing the income as business income of the Assessee.

Aggrieved, the Assessee filed an appeal with the Hon'ble Visakhapatnam ITAT which noted that, under domestic law, the Assessee crossed the SEP threshold, and therefore the income could be deemed to accrue in India under Section 9(1)(i) of the Act. Further, the Hon'ble ITAT held that Article 14 of the India–UAE DTAA contains an inclusive definition of "professional services" and that management consultancy clearly falls within its scope. As the Assessee had neither a fixed base nor a PE in India and he did not stay in India for 183 days or more, the income was taxable only in the UAE, as per Article 14. (country of his residence)

The Hon'ble ITAT further rejected the allegation of the consultancy arrangement being a colourable device by observing that the change from employment to consultancy was governed by a valid agreement. The Hon'ble ITAT concluded that the agreement could not be disregarded merely because the nature of functions was similar and held that the Assessee is entitled to avail the benefit under Section 90(2) of the Act. Accordingly, the income of the Assessee held not be taxable in India in the absence of PE in India. Resultantly, the Hon'ble ITAT allowed the appeal of the Assessee.

Vijay Mariappan Austin Prakash [TS-1744-ITAT-2025(VIZ)]

5. *Fees for Satellite Transmission Services falls outside the Scope of Royalty Under Article 12 of the India-Hongkong DTAA*

Asia Satellite Telecommunications Company Ltd ('the Assessee'), a tax resident of Hongkong is engaged in the business of providing satellite transponder capacity to its customers across the world including India. The Assessee does not own any satellite, orbital slots, equipment, or office in India. All other infrastructure/equipment used for the purpose of providing such services are located outside India.

Under the business model, customers send encrypted signals to the Assessee's satellites located outside India using their own uplink facilities. The satellite transponder receives this signal, and it amplifies them to a specific geographical area. The intended recipient then decrypts and uses the signals with their own equipment. All these steps together are called "Satellite Transmission Services".

The Assessee charged fees from Indian customers for providing this service. The AO contended that the fees charged by the Assessee fall within the definition of royalty under the Act as well as India- Hong Kong DTAA. Accordingly, the AO passed an order under Section 143(3) r.w.s. 144 (13) of the Act considering the fees received by the Assessee as royalty income.

Aggrieved, the Assessee filed an appeal before the Hon'ble Delhi ITAT and contended that the said receipts were in the nature of business income not royalty, relying on the decision of the Hon'ble Delhi High court in DIT vs. New Skies Satellite BV[10], where in it was held that fees received by the Assessee for providing transmission facility through satellite is not in the nature of royalty under India - Thailand DTAA. It was further held that the amendments brought in by Finance Act, 2012 which resulted in widening the scope of definition of royalty under the Act has no effect on the definition of 'royalty' as provided in DTAA.

On the other hand, the tax authority argued that the India – Hongkong DTAA was entered in the year 2018 i.e. much after the date of amendment brought in the definition of royalty under the Act and therefore the definition of royalty under the Act is presumed to be known by the contracting states at the time of entering into the DTAA.

After perusing the arguments of the Assessee and the tax authority, the Hon'ble ITAT held that fees received by the Assessee for providing satellite transmission services do not fall within the definition of royalty under Article 12 of India-Hong Kong DTAA, and therefore not taxable in India. The Hon'ble ITAT re-iterated that domestic law amendments cannot override treaty provisions. Accordingly, the Hon'ble ITAT allowed the appeal filed by the Assessee.

Asia Satellite Telecommunications Company Ltd (TS-1743-ITAT-2025(DEL)

[10] DIT vs. New Skies Satellite BV [TS-64-HC-2016(DEL)]
[11] Toshiba Corporation [TS-7471-ITAT-2025(Delhi)-O]

6. Reimbursement of salaries paid to employees on secondment on cost-to-cost basis is not taxable as FTS

Toshiba Energy System & Solutions Corporation ('the Assessee') a Japanese Company received reimbursements from its Indian group entities towards salaries paid to employees on secondment basis. The reimbursements were made strictly on a cost-to-cost basis without any markup. The AO/DRP alleged that such reimbursements falls under the definition of Fees for Technical Services (FTS) under section 9(1)(vii) of the Act and Article 12(4) of the India–Japan DTAA as the secondment arrangement led to the provision of technical services by the Assessee to its Indian affiliates. Aggrieved, the Assessee filed its objections before the Hon'ble DRP, which rejected the objections and confirmed the Assessment Order.

Aggrieved, the Assessee filed its appeal before the Hon'ble Delhi ITAT.

Before the Hon'ble ITAT, the Assessee contended that the issue is covered by the decision of the coordinate bench in case of Toshiba Corporation[11] wherein it was held that once the payments to employees are established as salaries, then such payments cannot be covered within the definition of FTS as per Article 12(4) of India Japan DTAA. Per contra, the Tax Authorities supported the assessment order.

The Hon'ble ITAT observed that salaries of seconded employees of Indian entities paid by the Assessee were reimbursed by the Indian companies without markup in Japan. It also noted that the Assessee was able to establish an employer–employee relationship between such employees and the Indian group entities. The Hon'ble ITAT observed that salary income is expressly excluded from FTS under Explanation 2 to section 9(1)(vii) of the Act and it will not fall under Article 12(4) of the India–Japan DTAA. Hence, the Hon'ble ITAT held that reimbursement of salaries paid to seconded employees on a cost-to-cost basis is not taxable as FTS.

Toshiba Energy System & Solutions Corporation [TS-1689-ITAT-2025(DEL)]

II. TRANSFER PRICING

1. *No TP adjustment on interest on delayed receivables when Assessee is a debt-free company and earns higher margins*

ERM India (P.) Ltd ('the Assessee') is engaged in the business of providing consultancy services. The Assessee entered into International transaction with its AE and hence the case was referred to the TPO for determination of the Arm's Length Price. Assessee benchmarked the international transactions at entity level under TNMM with margin of 18.03% vis-à-vis the mean of 7.06% of the comparable companies. The TPO accepted the arm's length nature of the principal international transactions but treated outstanding receivables from AEs as a separate international transaction and proposed interest adjustment on delayed receivables at the rate of 15.25% (SBI PLR + 300 bps) with credit period of 30 days. The Assessee contended that the adjustments are not tenable on the following grounds-

1. it was a debt-free company,
2. working capital adjusted margin of 18.03% significantly higher than the working capital adjusted margin of comparables at 7.60%, thereby subsuming the impact of delayed receivables,
3. no interest was charged from either AEs or non-AEs
4. the matter was covered in Assessee's own case of earlier years

The Assessee filed its objections before the Hon'ble DRP. The Hon'ble DRP rejected the objections filed by the Assessee and issued directions to compute interest by applying LIBOR plus 400 basis points after allowing a grace period of 60 days.

The Hon'ble ITAT held that no transfer pricing adjustment could be made on account of interest on delayed receivables. It observed that the Assessee's working capital adjusted margin was substantially higher than that of the comparable companies, indicating that the impact of receivables was already factored into profitability. It further noted that the Assessee was a debt-free entity, and therefore no question of charging interest on receivables arose. Relying on the decision of coordinate tribunal in the case of Kusum Health Care[12], Inductis India (P.) Ltd.[13], and TCI-GO Vacation India (P.) Ltd.[14], the Hon'ble ITAT held that where working capital adjustment has been granted and the Assessee's margin exceeds that of comparables, no separate adjustment for interest on receivables is warranted. Accordingly, the Hon'ble ITAT deleted the addition and decided the matter in the favour of the Assessee.

ERM India (P.) Ltd. [TS-07-ITAT-2026(DEL)-TP]

2. *Capital forex loss relating to ECB translation is non-operating in nature for TP margin calculations.*

Idemitsu Lube India Private Limited ('the Assessee') entered into international transactions with its AEs during the year. The case of the Assessee was selected for scrutiny and the matter was referred to the TPO for determination of the ALP. The TPO rejected Assessee's benchmarking of manufacturing segment by rejecting comparables selected by Assessee and incorporating new comparable companies for calculation of ALP margin range and reworked Assessee's margin of 5.67%. The TPO calculated the revised ALP range without providing any basis of calculation of margin range of comparable companies. Further, the TPO considered the foreign exchange capital loss arising on External Commercial Borrowings (ECBs) as operating in nature for calculating margin of manufacturing segment. The Assessee contended that the Tax Authorities has accepted the Assessee's contention of treating foreign exchange gain/loss as non-operating in nature in the earlier assessment years on the same loan which continued in the current year. The Assessee contented that the AO/TPO had committed computational errors in margins calculation of comparable companies.

The Assessee filed its objections against the proposed additions before the Hon'ble DRP, while the Hon'ble DRP rejected the objections filed by the Assessee, it issued directions to the TPO to remove 2 comparable companies considered by the TPO.

On further appeal before the Hon'ble Delhi ITAT, Hon'ble Delhi ITAT observed that the TPO in the earlier years treated ECB-related forex loss and gain as non-operating for calculation of margin purpose. The Hon'ble Delhi ITAT accordingly applying the principle of consistency held that loss on foreign exchange translation relating to ECBs should be treated as non-operating in nature for the purpose of margin calculation.

On the ground of margin computation of comparables,

[12] Kusum Health Care (P.) Ltd [TS-412-HC-2017(DEL)-TP]
[13] Inductis India (P.) Ltd. [TS-679-HC-2023(DEL)-TP]
[14] TCI-GO Vacation India (P) Ltd. [TS-57-ITAT-2024(DEL)-TP]

the Hon'ble Delhi ITAT observed that the AO/TPO had not provided any basis of his working of margin range of comparable companies. It further observed that the Assessee has submitted a detailed chart depicting the mismatch in the margin range of the comparable companies as calculated by the TPO and by Assessee. The Hon'ble ITAT accordingly directed the AO/TPO to consider the chart provided by the Assessee and to provide the detailed margin calculation/working after providing opportunity of being heard to the Assessee. Overall, the ruling was in favour of the Assessee, reinforcing consistent treatment of capital account forex items as non-operating for TP analysis and mandating transparent margin computations.

Idemitsu Lube India Private Limited [TS-11-ITAT-2026(DEL)-TP]

3. ***Segmental Analysis is mandatory in case of two separate transactions as depicted from FAR analysis. Non-Compete Fee is an allowable revenue expenditure.***

Spectris Technologies (P.) Ltd ('the Assessee') is engaged in the business of supplying equipment and products relating to material analysis. It also provides installation and commissioning services, annual maintenance (AMC), after-sales services, agency and marketing support services to its AEs. It maintained two distinct business segments - (i) AMC and (ii) agency and marketing support services - and benchmarked the international transactions segment-wise using appropriate transfer pricing methods. During the AY 2009-10, the Assessee paid non-compete fees, capitalized it in its books and claimed depreciation thereon.

During the assessment proceedings, the TPO rejected the segmental analysis benchmarking of the Assessee by alleging that FAR of AMC segment is linked to other functions performed in other segment of agency & market support service. The TPO accordingly aggregated the income and expenditure with respect to AE and non-AE segments alleging that the segmental accounts have been artificially created for transfer pricing purposes showing profitability in AE related services and losses in the AMC business. The TPO applied TNMM at the entity level resulting in a transfer pricing adjustment. Further, the AO disallowed the depreciation on non-compete fees by treating the expenditure as capital and personal in nature.

The CIT(A) upheld the action of the AO/TPO on both counts - aggregation of segments for TP purposes and disallowance of depreciation on non-compete fees.

Aggrieved by the above order, the Assessee filed its appeal before the Hon'ble Delhi ITAT. The Assessee contended that the two segments were functionally distinct, supported its contention by proper FAR analysis and factually presented that the issue of segmental accounts is a covered matter which is being accepted by Tax Authorities in earlier years. On the grounds of non-compete fees, it placed its reliance on the decision of Hon'ble Supreme Court judgment in the case of Sharp Business System which held non-compete fees to be revenue expenditure.

The Hon'ble ITAT held that the Assessee's business comprised two separate segments with distinct FAR profiles and, therefore, segment-wise benchmarking was mandatory. and unaudited segmental accounts cannot be rejected without pointing out defects. Accordingly, the Hon'ble ITAT remanded the matter to the TPO for fresh benchmarking and the TP adjustment was directed to be set aside.

On the grounds of non-Compete fee, the Hon'ble ITAT relying on the Apex Court ruling in Sharp Business System[15], held that non-compete fees is revenue in nature. Accordingly directed the AO to allow the expenditure and rework the treatment of depreciation already claimed in accordance with the Apex Court judgment.

Spectris Technologies (P.) Ltd. [TS-04-ITAT-2026(DEL)-TP]

III. GOODS & SERVICES TAX AND CUSTOMS

A. Case Laws- GST and Customs

1. ***Retrospective cancellation of GST registration unsustainable when SCN did not propose retrospective effect***

The Assessee's GST registration was cancelled retrospectively by an order dated 27 May 2023 on the ground of alleged fraud and willful misstatement. Prior to this, a show cause notice ('SCN') dated 5 April 2023 was issued proposing cancellation of registration. The Assessee filed a detailed reply to the show cause notice and also intimated an updated registered address. No physical verification was carried out at the new address, and the reply was not dealt with in the final order. Importantly, while the order cancelled the

[15] *Sharp Business System [TS-5323-SC-2025-O]*

registration with retrospective effect, neither the show cause notice nor the cancellation order recorded any specific reasons justifying such retrospective operation. The statutory appeal filed by the Assessee was dismissed by the appellate authority solely on the ground of limitation, without examining the merits of the retrospective cancellation.

The issue before the Hon'ble Court was whether the GST registration of the Assessee could be cancelled retrospectively when the SCN did not propose retrospective cancellation and when the order for cancellation itself did not disclose any reasons for giving such effect, particularly in view of the serious civil consequences flowing from such retrospective cancellation.

The Hon'ble Court noted that the show cause notice issued to the Assessee only proposed cancellation of registration and did not put the Assessee to notice that retrospective cancellation was contemplated. The Hon'ble Court further found that the cancellation order was completely silent on the reasons for giving retrospective effect and did not deal with the reply submitted by the Assessee. In absence of a specific proposal in the SCN and cogent reasons recorded in the final order, the Hon'ble Court held that retrospective cancellation of registration was unsustainable in law. Emphasizing principles of natural justice, the Hon'ble Court reiterated that such serious civil consequences must be preceded by clear notice and proper reasoning. Accordingly, the Hon'ble Court set aside the cancellation order, restored the GST registration of Assessee and directed that access to the GST portal be granted to enable filing of pending returns in accordance with law.

Modi Packers v. Superintendent, High Court of Delhi [TS(DB)-GST-HC(DEL)-2025-3339]

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2. *GST Council directed to urgently consider reduction of GST on air purifiers and HEPA filters recognized as medical devices*

The Petitioner filed a writ petition in public interest challenging the levy of 18% GST on air purifiers and HEPA filters, contending that such products qualify as “medical devices” as per Section 3(b)(iv) of the Drugs and Cosmetics Act, 1940, notified vide Notification S.O. 648(E) dated 11 February 2020, and accordingly, should attract 5% GST.

It was submitted that similar devices notified under the said notification were subjected to GST at 5%, and there was no rational basis for taxing air purifiers and HEPA filters at a higher rate, especially in view of deteriorating air quality conditions. Reliance was also placed on the report of the Parliamentary Standing Committee on Science &Technology, Environment, Forests and Climate Change dated 12 December 2025, which recommended abolition or reduction of GST on air purifiers and HEPA filters on public health considerations.

The Hon'ble Delhi High Court observed that the concerns raised by the Petitioner were substantial and supported by recommendations of the Parliamentary Standing Committee report. The Court observed that the devices listed in Notification dated 11 February 2020 attracted GST at 5% and made note of the functions performed by air purifiers and HEPA filters and concluded that there appears to be no reason why a similar rate could not be extended to products in question. Accordingly, the GST Council was directed to consider lowering or abolishing GST on air purifiers and HEPA filters at the earliest.

Kapil Madan v. Union of India, High Court of Delhi [TS(DB)-GST-HC(DEL)-2025-3340]

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3. *Bail granted in GST ITC fraud case where continued custody served no purpose*

In a case before the Hon'ble Punjab and Haryana High Court, the Assessee was arrested on allegations of fraudulent availment of Input Tax Credit (ITC) under Section 132 of the Central Goods and Services Tax Act, 2017 and had remained in judicial custody for over six months despite completion of the investigation and filing of the complaint before the competent court. The Assessee was accused of wrongfully availing and utilizing ITC through transactions that were allegedly unsupported by actual supply of goods and causing loss to the revenue. The offence was triable by a Magistrate and the maximum punishment prescribed did not exceed five years' imprisonment. The Assessee suffered from serious medical ailments during custody and statutory bail applications had been rejected by the trial courts. There was no material to show that the Assessee would tamper with evidence or evade trial if released on bail, and most of the evidence relied upon by the prosecution was documentary and electronic in nature.

Issue before the Hon'ble Court was whether the

Assessee, who had been in custody for an extended period after investigation was complete and where trial was likely to take considerable time, could be denied bail when continued detention did not serve any meaningful purpose and when there was no risk of tampering with evidence or absconding from the trial.

Hon'ble High Court reiterated the well-settled principle that bail is the rule and jail is the exception, even in economic offence cases, unless there are extraordinary circumstances warranting continued detention. It observed that prolonged incarceration after completion of investigation, when the complaint has already been filed and most evidence is documentary and already seized, serves little purpose and offends the fundamental tenet of the right to personal liberty. The Hon'ble High Court further noted the Assessee's serious medical condition, absence of any material suggesting risk of tampering with evidence or evading trial, and the fact that the trial was likely to extend over a long period, all of which weighed in favor of granting bail. Emphasizing that continued detention under such circumstances would defeat the rule of law and the object of speedy trial. Consequently, the Hon'ble High Court granted regular bail to the Assessee, subject to conditions such as surrender of passport and appearance before the trial court on each date, enabling the Assessee to defend the case during pendency of the trial.

Manmohan Singh v. State (DGGI), Punjab & Haryana High Court [TS(DB)-GST-HC(P&H)-2025-2946]

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4. Fresh recovery proceedings after appellate affirmation of GST refund held unsustainable

The Assessee, a GST-registered company, filed an application for refund of unutilized ITC on export of goods without payment of IGST for the relevant tax period. A pre-refund show cause notice was issued alleging short shipment of goods. In response, the Assessee accepted partial inadmissibility of the refund claim to a limited extent and requested sanction of the balance eligible amount. After considering the reply and material on record, the Assistant Commissioner passed a refund sanction-cum-speaking order allowing the admissible refund and issued corresponding refund payment order.

Aggrieved by the sanction of refund, Department invoked the review mechanism and filed an appeal before the Appellate Authority. The Appellate Authority, after examining the grounds raised by the Department and the factual and legal aspects of the refund claim, dismissed the appeal on merits and affirmed the refund sanction order. Consequently, the refund attained finality in terms of the statutory appellate framework.

Despite this appellate affirmation, the Joint Commissioner thereafter issued a demand-cum-show cause notice dated 25 September 2025 and a summary notice dated 28 October 2025, under Section 73 of the CGST Act, 2017, proposing recovery of the very same refund amount on identical grounds which had already been examined and rejected in appellate proceedings. This prompted the Assessee to approach the Hon'ble Court challenging the jurisdiction and legality of the fresh proceedings.

Issue before the Hon'ble Court was whether recovery proceedings under Section 73 could be initiated by a subordinate authority on the same grounds after the refund sanction order had been affirmed by the Appellate Authority and had attained finality.

The Hon'ble Court observed that once a refund sanction order is affirmed by the Appellate Authority, it becomes final and binding on the Department unless it is set aside or stayed by a higher forum. It was held that a review order passed by the Commissioner directing filing of an appeal is purely administrative and cannot override or nullify a quasi-judicial appellate order. The Hon'ble Court stressed that initiation of proceedings under Section 73 on identical grounds amounted to an impermissible review of a concluded issue, was arbitrary and without jurisdiction, and violated the principles of res judicata and issue estoppel. In support, reliance was placed on the decisions of the Hon'ble Supreme Court in Union of India v. Kamlakshi Finance Corporation Ltd.[16], Tirupati Balaji Developers (P.) Ltd. v. State of Bihar[17] and B.L. Sreedhar v. K.M. Munnireddy[18], which consistently emphasized that orders of higher appellate authorities are binding on subordinate authorities and cannot be circumvented by indirect or parallel proceedings. Holding that such action would lead to undue harassment of the Assessee and uncertainty in tax administration, the Hon'ble Court quashed the impugned demand-cum-show cause notice and the summary notice.

[16] Kamlakshi Finance Corporation Ltd. 1991 (55) E.L.T. 433 (S.C.)
[17] Tirupati Balaji Developers (P.) Ltd. (2004) 5 SCC 1
[18] B.L. Sreedhar (2002) Supp. 4 SCR 601

Auroglobal Comtrade (P.) Ltd. v. Joint Commissioner of GST & Central Excise, Orissa High Court [TS-1030-HC(ORI)-2025-GST]

5. *Procuring authority directed to reimburse differential GST due to incorrect tax rate applied*

The Assessee, a works contractor engaged in Government construction projects, was awarded contracts by the Tamil Nadu Housing Board (TNHB) for construction of a commercial complex and residential units. Under the GST regime effective from 1 July 2017, construction services were taxable at 18 percent. However, while issuing work orders and payment certifications, the Housing Board applied a reduced GST rate of 12 percent and released payments accordingly. The Assessee raised bills strictly in line with the certifications issued by the Housing Board and remitted GST to the authorities based on the amounts so certified. This resulted in an underpayment of GST to the extent of 6 percent, solely on account of the incorrect rate applied by the procuring authority. Subsequently, the GST authorities-initiated proceedings against the Assessee for short payment of tax, proposing levy of interest and penalty. Meanwhile, the TNHB passed a resolution acknowledging the applicability of 18 percent GST for the relevant period. The Assessee made multiple representations seeking reimbursement of the differential GST already demanded and partially paid, but the balance amount remained unpaid, leading to the writ petition.

The issue before the Hon'ble Court was whether the Assessee could be saddled with the financial burden arising from underpayment of GST caused by the procuring authority applying an incorrect tax rate, and whether the Housing Board could be directed to reimburse the differential GST along with consequential interest and penalties.

The Hon'ble Court observed that GST is an indirect tax and the ultimate incidence thereof lies on the service recipient. It was held that the Assessee was bound to follow the billing instructions and payment certifications issued by the Housing Board and could not be faulted for not charging GST at a higher rate. The underpayment of tax arose entirely due to the incorrect application of rate by the procuring authority and not due to any omission or default on the part of the Assessee. The Hon'ble Court reiterated that contractors cannot be penalised for tax shortfall resulting from directions of Government agencies. The Hon'ble Court relied upon decisions of the Hon'ble Madras High Court in the matter of Subaya Constructions Company Ltd. v. Commissioner of Municipal Administration and Chennai and Immanuel & Company v. Divisional Engineer (H), where it was held that in Government works contracts, the liability arising from change or incorrect application of tax law must be borne by the procuring entity. Applying these principles, the Hon'ble Court directed the TNHB to consider the Assessee's representations and pass appropriate orders for disbursement of the differential 6 percent GST along with applicable interest and penalties, if levied by the GST authorities.

Kanthan Associates v. State of Tamil Nadu [TS(DB)-GST-HC(MAD)-2025-3341]

6. *Assignment of leasehold rights of GIDC plot not exigible to GST*

The Assessee, a private limited company, was allotted a plot of land by the Gujarat Industrial Development Corporation on a long-term lease. Subsequently, the Assessee assigned its leasehold rights in the said plot to a third-party assignee for consideration by executing an assignment deed. State GST authorities issued summons to the Assessee seeking details of the assignment and thereafter demanded GST along with interest on the alleged supply involved in transfer of leasehold rights. While disputing the taxability of the transaction, the Assessee paid interest under protest through Form DRC-03 and thereafter filed a refund application seeking refund of the interest paid, contending that no GST was leviable on assignment of leasehold rights in land. The refund application was rejected at the threshold by issuance of a deficiency memo on the ground that there was no notification or circular of the GST Council permitting such refund.

Issue before the Hon'ble Court was whether assignment by sale or transfer of leasehold rights in respect of land allotted by GIDC constituted a "supply" exigible to GST under Section 7 of the Central Goods and Services Tax Act, 2017 and whether the refund application could be rejected through a deficiency memo merely for want of a specific notification or circular.

The Hon'ble Gujarat High Court observed that assignment by sale or transfer of leasehold rights in respect of land constitutes transfer of benefits arising from immovable property and does not fall within the scope of "supply" under Section 7 of the CGST Act.

[19] *Subaya Constructions Company Ltd. [TS(DB)-GST-HC(MAD)-2019-814]*
[20] *Immanuel & Company [TS(DB)-GST-HC(MAD)-2022-604]*

Relying on earlier judicial precedents, the Court held that such transactions are neither taxable under Schedule II nor are they excluded supplies under Schedule III so as to attract GST. The deficiency memo rejecting the refund application was held to be legally unsustainable and was quashed, with directions to revive the refund application and pass fresh orders in accordance with law.

Meghaaarika Enterprises (P.) Ltd. v. State of Gujarat [TS-1041-HC(GUJ)-2025-GST]

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7. Clinical data management services provided to overseas entities qualify as export of services

The Assessee was engaged in providing data management and backend support services relating to clinical trials to its foreign parent company located in the United States under a Master Service Agreement (MSA) dated 1 January 2018. The services were rendered during the period July 2017 to March 2018 and April 2019 to March 2020, and consideration was received in foreign currency. The Assessee treated the said supply as export of services and accordingly claimed zero-rated treatment under Section 16 of the IGST Act, 2017. The Department, however, issued demand orders seeking to levy GST by treating the services as intra-State taxable supplies on the premise that the activities were performed in India and the place of supply was within the taxable territory.

The principal issue before the Hon'ble Court was whether data management and allied services provided by the Assessee to its foreign parent entity qualified as export of services, and whether the place of supply of such services was required to be determined based on the location of the recipient under Section 13 of the IGST Act, read with the applicable circulars, thereby rendering the levy of GST unsustainable.

The Hon'ble Court examined the nature of services rendered under the MSA and placed significant reliance on Circular No. 209/1/2018-ST dated 4 May 2018, particularly paragraph 3.2 thereof, which clarified that in the case of services on software involving testing, debugging, modification, customization, adaptation, upgradation, enhancement or implementation of information technology software, the place of supply is the location of the recipient of services. The Hon'ble Court observed that data management services relating to clinical trials squarely fall within the scope of paragraph 3.2 of the said Circular and are intermediary-independent services, where the location of performance is not determinative. Since the recipient of services was located outside India and the consideration was received in convertible foreign exchange, essential conditions for export of services under Section 2(6) read with Section 16 of the Integrated Goods and Services Tax Act, 2017 stood satisfied.

Accordingly, the Hon'ble Court held that the levy of GST on such data management services was unsustainable in law and quashed the impugned demand orders to the extent they sought to tax such services. The Hon'ble Court also noted that Notification No. 56/2023–Central Tax, could not be invoked to sustain the impugned demands in the facts of the case.

Iqvia RDS (India) (P.) Ltd. v. Union of India [TS(DB)-GST-HC(KAR)-2025-3342]

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8. Rule 39(1)(a) mandating month-wise distribution of ISD credit held ultra vires section 20 of CGST Act

The Assessee, registered as an Input Service Distributor (ISD), accumulated ITC during the financial years 2017–18 and 2018–19 and distributed the accumulated credit in the last month of each financial year instead of distributing it on a month-wise basis. During audit proceedings, the Department alleged that such distribution was contrary to Rule 39(1)(a) of the CGST Rules, 2017, which mandates that the credit available for distribution in a month shall be distributed in the same month. On this basis, a final audit report and a show cause notice dated 30 January 2024 were issued proposing penalty and invoking the extended period of limitation, on the allegation of suppression. The Assessee contended that Section 20 of the CGST Act, 2017, which governs the manner and conditions of distribution of credit by an Input Service Distributor, does not prescribe any time limit for such distribution, and that all particulars of distribution were duly disclosed in Form GSTR-6 and were available to the Department on the common GST portal.

The principal issues before the Hon'ble Court were whether Rule 39(1)(a), to the extent it imposes a mandatory same-month distribution requirement, is ultra vires Section 20 of the CGST Act, 2017, and whether invocation of the extended period of limitation under Section 74 on the ground of suppression was legally sustainable.

The Hon'ble Court observed that Section 20 is conspicuously silent on any timeline for distribution of ITC and merely provides the manner of distribution. It held that delegated legislation cannot introduce substantive restrictions or inflexible time limits not contemplated by the parent statute, particularly where such restriction results in denial or forfeiture of

legitimately accrued credit and defeats the fundamental GST objective of seamless flow of credit. Relying on settled principles laid down by the Hon'ble Supreme Court in STO v. K.I. Abraham[21], Lakshmi Rattan Engineering Works Ltd.[22], and Global Energy Ltd v. Central Electricity Regulatory Commission[23], and following the reasoning adopted in Kirloskar Brothers Ltd v. State of Jharkhand[24], the Hon'ble Court held that a rule-making authority cannot prescribe a limitation period or substantive condition in the absence of express statutory sanction. Consequently, Rule 39(1)(a) was declared ultra vires Section 20 to the extent it mandates same-month distribution of credit.

On limitation, the Hon'ble Court noted that the show cause notice was issued beyond the normal period prescribed under Section 73 and that all material facts relating to distribution of credit were duly disclosed in statutory returns. Following the ratio of Pushpam Pharmaceuticals Company[25], it was held that where facts are within the knowledge of the tax authorities, the allegation of suppression cannot be sustained. Accordingly, the final audit report, the show cause notice, and all consequential proceedings were set aside, with the decision rendered in favour of the Assessee.

BirlaNu Ltd. v. Union of India [TS-1055-HC(TEL)-2025-GST]

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9. *Flavoured milk is classifiable under Heading 0402 and taxable at 5%; levy at 12% as 'beverage containing milk' unsustainable*

The Assessee, engaged in the manufacture and sale of milk and milk products, was subjected to assessment proceedings wherein the Department classified "flavoured milk" under HSN 2202 99 30 as a "beverage containing milk" and levied GST at the rate of 12% under Section 9 of the CGST Act. It was contended by the Assessee that flavoured milk is essentially milk, constituting more than 90% milk with added sugar and a minimal quantity of permitted flavouring, and therefore falls under HSN 0402, which covers "milk and cream, concentrated or containing added sugar or other sweetening matter", attracting GST at 5% in terms of Sl. No. 8 of Notification No. 1/2017–Central Tax (Rate) dated 28 June 2017. The assessment order and the appellate order rejected this contention, leading the Assessee to approach the Hon'ble Karnataka High Court.

The issue before the Hon'ble Court was whether flavoured milk is classifiable under HSN 0402 99 90 as milk containing added sugar or other sweetening matter, or under HSN 2202 99 30 as a beverage containing milk.

The Hon'ble Court examined the scope of HSN 0402 and observed that it is not confined to plain milk alone but expressly includes milk containing added sugar or other sweetening matter as well as other milk products. The Hon'ble Court held that flavoured milk does not cease to be milk merely because a small quantity of flavour is added, particularly when milk continues to be the predominant constituent. Applying the principle of noscitur a sociis, the Hon'ble Court interpreted the expression "beverages containing milk" under HSN 2202 to refer to beverages where milk is only one of the components, typically along with water, and not to products which are essentially milk-based. The Hon'ble Court further held that HSN 0402 is a specific entry for milk and milk products, whereas Heading 2202 is a general entry for beverages, and the specific entry must prevail over the general one, as per Rule 3(a) of General rules of Interpretation of Customs Tariff Act, 1975.

In arriving at this conclusion, the Hon'ble Court followed and relied upon the judgments of the Andhra Pradesh High Court in the Assessee's[26] own case, as well as in Vijaya Vishakha Milk Producers Company Ltd.[27], which had been affirmed by the Hon'ble Supreme Court, and also placed reliance on the judgment of the Madras High Court in Parle Agro (P.) Ltd.[28], wherein it was held that flavoured milk is classifiable under HSN 0402 and not under HSN 2202. The Hon'ble Court noted that the GST Council's recommendations cannot override the statutory tariff entries or settled principles of classification.

Accordingly, the Hon'ble Court held that flavoured milk is classifiable under Tariff Heading 0402 99 90 and taxable at 5% GST, quashed the impugned assessment and appellate orders, and directed the Department to refund the amounts collected along with applicable interest, in favour of the Assessee.

Dodla Dairy Ltd. v. Union of India [TS(DB)-GST-HC(KAR)-2025-3344]

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[21] STO v. K.I. Abraham [1967] [20 STC 367]
[22] Lakshmi Rattan Engineering Works Ltd [AIR 1968 SC 488]
[23] Global Energy Ltd [TS-5288-SC-2019-O]
[24] Kirloskar Brothers Ltd [TS-210-HC-2023(JHAR)-VAT]
[25] Pushpam Pharmaceuticals Company [1995 Supp (3) SCC 462]
[26] Dodla Dairy Ltd. [TS-175-HC(AP)-2025-GST]
[27] Vijaya Vishakha Milk Producers Company Ltd. [TS-349-SC-2025-GST]
[28] Parle Agro (P.) Ltd. [TS-577-HC(MAD)-2023-GST]

10. Place of supply is determined by destination of delivery and not by place of handing over goods to carrier; demand of CGST and SGST in addition to IGST already paid held invalid

The Assessee, engaged in inter-state supply of motor vehicles and parts, had paid IGST on supplies made to dealers located outside the State and discharged liabilities for the period April 2018 to March 2021. The Department issued a SCN mentioning that as per the terms of the dealership agreement and invoice conditions, title and risk in the goods passed to the dealers at the factory gate upon handing over the goods to the common carrier. It was alleged that the place of supply was within the State and that the Assessee had wrongly paid IGST instead of CGST and SGST. On this basis, the Department proposed to demand CGST and SGST in addition to the IGST already discharged by the Assessee.

Issue before the Hon'ble Court was whether, in a case involving movement of goods, the place of supply is to be determined based on the destination where the movement of goods terminates for delivery to the recipient under Section 10(1)(a) of the IGST Act, or based on the place where title in goods is alleged to pass upon handing over the goods to the transporter, thereby justifying levy of CGST and SGST.

The Hon'ble Karnataka High Court observed that Section 10(1)(a) of the IGST Act clearly provides-where supply involves movement of goods, the place of supply is the location where the movement of goods terminates for delivery to the recipient and not the place where the movement originates. The Hon'ble Court held that there is no nexus between passing of title under the Sale of Goods Act and determination of place of supply under the IGST Act. It was observed that handing over goods to a common carrier at the factory gate does not amount to termination of movement for delivery to the recipient, as the movement terminates only when the goods reach its destination outside the State. Since the movement of goods terminated outside the State, the supplies were inter-State in nature and IGST was rightly paid by the Assessee. The Court further observed that demanding CGST and SGST in addition to IGST would amount to double taxation and result in a revenue-neutral situation. Accordingly, the show cause notice to that extent was quashed.

Toyota Kirloskar Motor Pvt. Ltd. v. Union of India [TS(DB)-GST-HC(KAR)-2025-3343]

11. Customs duty not leviable on electricity cleared from SEZ to DTA in absence of 'import into India'

The Assessee, engaged in generation of electrical energy through a unit located in a Special Economic Zone (SEZ), supplied electricity from its SEZ unit to entities situated in the Domestic Tariff Area. The Department sought to levy customs duty on such supplies by invoking Section 30 of the SEZ Act, 2005, which provides that goods removed from an SEZ to the DTA shall be chargeable to duties of customs as leviable on imported goods. In this regard, reliance was placed on Notification No. 25/2010-Cus. dated 27 February 2010 and subsequent notifications prescribing rates of duty on electrical energy cleared from SEZ to DTA. The Assessee challenged the levy contending that electricity generated within India does not amount to "import into India" for the purposes of Section 12 of the Customs Act, 1962, which is the charging provision for customs duty, and that a notification issued in exercise of delegated powers cannot create a tax liability in the absence of authority under the parent statute.

Issue before the Hon'ble Court was whether customs duty under Section 12 of the Customs Act, 1962 could be levied on electrical energy generated within an SEZ and supplied to the DTA by applying the deeming fiction contained in Section 30 of the SEZ Act, read with Notification No. 25/2010-Cus., and whether such levy was constitutionally and statutorily valid.

The Hon'ble Court held that customs duty can be levied only when there is an actual import of goods into India as contemplated under Section 12 of the Customs Act. It was observed that electricity generated within India, even if generated in an SEZ, does not cross the customs frontiers of India and therefore cannot be regarded as an import in the real sense. The Hon'ble Court clarified that the deeming fiction under Section 30 of the SEZ Act is a limited fiction intended only for the purpose of determining the rate of duty, where a levy otherwise exists, and cannot be extended to create a charge of tax in the absence of a charging provision under the Customs Act. The Hon'ble Court stressed that legal fiction cannot be expanded beyond the purpose for which it is created.

The Hon'ble Court further held that Notification No. 25/2010-Cus., though styled as an exemption notification, was in substance a colourable exercise of

delegated legislation, as it sought to impose a levy of customs duty retrospectively without authority of law. Such an exercise was held to be impermissible and violative of Article 265 of the Constitution, which mandates that no tax shall be levied or collected except by authority of law. It was also observed that subsequent notifications prescribing different rates of duty could not cure the fundamental absence of legislative competence to levy customs duty on such supplies. Accordingly, the levy of customs duty on electrical energy supplied from the SEZ to the DTA was held to be ultra vires, and the Department was directed to refund the amounts collected from the Assessee.

Adani Power Ltd. v. Union of India [TS-1-SC-2026-CUST]

12. Aluminium Shelves Used for Mushroom Cultivation Classifiable as Aluminium Structures, Not as Parts of Agricultural Machinery

The Assessee imported aluminium shelving along with floor drains and an automatic watering system for use in mushroom cultivation and filed a Bill of Entry classifying all the items under CTH 84369900 as parts of agricultural machinery, attracting nil rate of duty. While the classification of floor drains and the automatic watering system was accepted, Department disputed the classification of aluminium shelving, alleging that the same were aluminium structures classifiable under CTH 76109010, attracting customs duty. A show cause notice was issued under Section 28(1) of the Customs Act, 1962 for recovery of differential duty along with interest under Section 28AA.

The adjudicating authority as well as the Commissioner (Appeals) held against the Assessee by applying General Rules of Interpretation and classified the goods as aluminum structures. However, the Tribunal allowed the Assessee's appeal holding that the shelves were specifically designed for mushroom cultivation, were known in trade parlance as mushroom growing racks, and were classified as parts of agricultural machinery under CTH 8436 by applying General Rule of Interpretation 3.

Before the Hon'ble Court, the core issue was whether aluminium shelves used in mushroom cultivation were classifiable as parts of agricultural machinery under CTH 84369900 or as aluminium structures under CTH 76109010 of the First Schedule to the Customs Tariff Act, 1975.

The Hon'ble Court examined the scheme of classification, the General Rules for Interpretation, Section Notes and Chapter Notes, as well as the Harmonised System Explanatory Notes to CTH 7610, which adopt the explanatory criteria of CTH 7308 mutatis mutandis. It was noted that CTH 7610 is an eo nominee entry covering aluminium structures without reference to use, whereas CTH 8436 relates to agricultural machinery and parts thereof, where the test of principal use becomes relevant.

The Hon'ble Court observed that end use is irrelevant unless the tariff entry itself refers to use or adaptation, reiterating the settled principle laid down in Dunlop India Ltd. v. Union of India[29] and Saraswati Sugar Mills v. Commissioner[30]. It was held that the aluminium shelves were not machines in themselves, had no moving parts, and merely served as supporting structures on which independent machines were installed. The Assessee failed to discharge the burden of proving any specialised trade meaning distinct from the common understanding. The Hon'ble Court observed that the subject goods also fail to qualify as parts of the machines with which they are integrated into post-importation. Thus, the Hon'ble Court held that when a heading is specific and eo nomine, use cannot override its plain scope. Consequently, the Tribunal's order was set aside, and the goods were held classifiable under CTH 76109010 as aluminium structures, with the appeal allowed in favour of the Department.

Commissioner of Customs (Import) v. Welkin Foods [TS-2-SC-2026-CUST]

IV. CIRCULARS AND NOTIFICATIONS

1. Notification No. 19/2025 – Central Tax and 20/205- Central Tax, both dated 31 December 2025

The Central Government has notified significant changes in the taxation and valuation mechanism applicable to specified tobacco, pan masala and nicotine products through Notification No. 19/2025 – Central Tax, 19/2025 – Central Tax (Rate) and Notification No. 20/2025 – Central Tax, both dated 31 December 2025, effective from 1 February 2026.

The Notifications amend the GST rate structure by

[29] *Dunlop India Ltd. 1983 (13) E.L.T. 1566 (S.C.)*
[30] *Saraswati Sugar Mills [TS-2-SC-2011-EXC]*

rationalizing the schedules applicable to tobacco and pan masala products as follows:

Tariff Heading	Description of goods	Existing	Revised
2106 90 20	Pan masala	28%	40%
2401	Unmanufactured tobacco; tobacco refuse [other than tobacco leaves]	28%	40%
2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes;	28%	40%
2403 19 21, 2403 19 29	Biris	28%	18%
2403	Other manufactured tobacco and manufactured tobacco substitutes; homogenized or reconstituted tobacco; tobacco extracts and essences [other than biris]	28%	40%
2404 11 00	Products containing tobacco or reconstituted tobacco and intended for inhalation without combustion	28%	40%
2404 19 00	Products containing tobacco or nicotine substitutes and intended for inhalation without combustion;	28%	40%

The notification also shifts the basis of taxation for these specified goods to the declared Retail Sale Price (RSP) printed on the package, inclusive of all taxes. Where more than one RSP is declared or where prices are altered, the maximum RSP is to be considered for valuation purposes.

Notification No. 20/2025 complements the above change by amending the CGST Rules, 2017, and introducing a special valuation mechanism through the insertion of a new rule. Under this mechanism, the value of supply of the notified tobacco, pan masala and nicotine products is deemed to be the declared RSP reduced by the applicable GST. Consequentially, to ease the operation, Rule 31D has been inserted and 86B has been amended for such supplies, particularly where tax has already been discharged on an RSP basis.

The combined effect of these notifications is the introduction of a uniform, RSP-based valuation system along with a restructured and higher GST rate regime for demerit goods such as tobacco and pan masala. This move is intended to curb undervaluation, improve tax compliance, simplify the levy by reducing reliance on multiple valuation methods, and ensure stable revenue while continuing to discourage consumption of such products.

2. *Notification No. 50/2025 – Customs dated 30 December 2025*

The Government has amended Notification No. 62/2022–Customs by updating the applicable rate and conditions that were provided under Table I of the 2022 Notification. The move aligns customs duty provisions with evolving trade and fiscal policy objectives, ensuring clarity and current applicability of duty rates on imported goods.

3. *Notification No. 51/2025 – Customs dated 30 December 2025*

CBIC has amended Notification No. 41/2025–Customs dated 30 September 2025, by substituting the existing TABLE I with a revised tariff schedule for Basic Customs Duty (BCD), Agriculture Infrastructure and Development Cess (AIDC) and Health Cess applicable to various imported goods. The amendments are made by the Central Government to implement the second tranche of tariff concessions under the India-EFTA (Switzerland) Trade Agreement, with effect from 1 January 2026.

4. *Notification No. 52/2025 – Customs dated 30 December 2025*

The Government has amended Notification No. 42/2025–Customs dated 30 September 2025, to revise tariff concessions applicable to imports from Norway under the India–EFTA framework. The notification

takes effect from 1 January 2026, signaling changes to the BCD, AIDC and, where applicable, Health Cess across specified tariff items.

5. *Notification No. 53/2025 – Customs dated 30 December 2025*

The Notification introduces further amendments to Notification No. 43/2025-Customs dated 30 September 2025 by substituting the existing tariff table with a revised schedule of duty rates, including BCD, AIDC and, where applicable, Health Cess, for specified imported goods. The Notification implements the second tranche of tariff concessions under the India–EFTA Trade and Economic Partnership Agreement (TEPA) specifically with Iceland, with effect from 1 January 2026.

6. *Notification No. 79/2025 – Customs (N.T.) dated 31 December 2025*

The Notification introduces the Sea Cargo Manifest and Transshipment (Fifth Amendment) Regulations, 2025 under the Customs Act, 1962 to amend the existing Sea Cargo Manifest and Transshipment Regulations, 2018. The key change substitutes the date specified against Serial No. 6 in the Table following Form-XII, extending the compliance timeline to 31 March 2026. This provides additional time for stakeholders to meet the sea cargo manifest and transshipment declaration requirements under the SCMTR framework.

7. *Circular No. 30/2025 – Customs dated 31 December 2025*

The CBIC has issued clarifications and implementation guidance regarding the SCMTR and provides updated guidance to Customs formations following the recent extension of SCMTR transitional provisions via Notification No. 79/2025-Customs (N.T.) dated 31 December 2025. The Circular notes that key electronic manifest messages, including import-export and stuffing messages, have been successfully rolled out pan-India and outlines steps to onboard Special Economic Zone units through API integration by 31 March 2026. For importers, carriers and Customs practitioners, this means that digital reporting under SCMTR remains mandatory and that systems enhancements and phased roll-outs should be factored into operational planning to avoid disruptions in cargo clearance.

V. REGULATORY UPDATES

1. *SEBI simplifies the requirements for grant of accreditation to investors*

SEBI had introduced the accredited investor framework by amending the AIF regulations vide its notification dated August 03,2021. Post the amendment, SEBI had issued various circulars in relation to the accreditation framework which had been incorporated in the master circular for AIFs.

SEBI vide circular dated 09 January 2026 stated that investment managers may finalize and execute the contribution agreement and initiate other operational procedures for investors who are awaiting their accreditation certificate from the accreditation agency subject to following conditions:

- investment manager's assessment of investor's eligibility criteria,
- any commitment made by such investor shall not be included in calculating the corpus of the scheme until that investor has obtained their accreditation certificate, and
- the schemes of AIFs shall only receive funds from that investor post obtaining the accreditation certificate.

Earlier, as per Annexure A of 'Annexure 8 of master circular: modalities of accreditation' SEBI had mandated that calculation of net-worth be given as an annexure to the net-worth certificate. Now, it has been specified that submitting detailed break up of the same is not required. Further, it is optional for a Chartered Accountant to specify the actual net-worth of the investor on the net-worth certificate.

2. *FPI's can now directly apply for DSC while submitting CAF*

SEBI has issued a press release dated January 8, 2026, allowing FPIs to procure a Digital Signature Certificate (DSC) at the time of FPI registration. Earlier, SEBI had permitted FPIs to use DSC for execution of Common Application Form (CAF) and other registration related documents vide its circular dated March 27,2023.

Now for digitizing the FPI onboarding process, a new DSC facility from Indian DSC issuers has been developed within the CAF portal itself. FPI registration application and DSC application have been integrated into a single unified process which will result in the ease of on boarding of FPI's.

Detailed process flow and FAQs have been made available by SEBI on the India Market Access Portal.

3. *Consultation Paper on norms for sharing and usage of price data for educational purposes*

SEBI has issued a consultation paper to simplify and standardize the norms for sharing and usage of price data for educational purposes. Earlier, SEBI issued a circular on May 24, 2024 to permit stock exchanges to share price data for educational and investor awareness activities with a one-day time lag, primarily to prevent misuse of real-time data. Subsequently, the circular issued on January 29, 2025 prescribed that entities engaged solely in educational activities may use price data only with a three month lag. Although both circulars address the educational use of price data but they serve distinct purposes: the May 2024 circular permits stock exchanges to share price data for educational purposes with a one-day time lag, while the January 2025 circular prescribes that entities engaged solely in education may use only price data only with a three month lag.

Further, SEBI, vide circular dated May 24, 2024, also prescribed norms for sharing real-time price data with third parties, under which sharing of live price data was prohibited except where such sharing is necessary for the orderly functioning of the securities market.

SEBI has proposed a uniform 30-day time lag for the sharing and usage of price data solely for educational and investor awareness purposes, while requiring persons engaged solely in education to continue complying with the prohibited activities under the January 2025 circular, all other provisions of the relevant circulars remain unchanged.

SEBI had invited public comments on the proposed framework and safeguards.

4. *Extension of timeline for implementation of additional incentives to distributors for onboarding new investors*

SEBI, vide Circular dated November 27, 2025, prescribed a framework for incentivizing mutual fund distributors for mobilizing investments/inflows from new investors.

This incentive framework was aimed to encourage distributors to onboard new individual investors from B-30 cities and new women investors from both T-30 and B-30 cities, based on new PAN registrations.

The framework was initially scheduled to come into effect from February 1, 2026. However, based on feedback from industry participants citing operational and system-related challenges, SEBI has deferred the implementation date to March 1, 2026.

All other provisions of SEBI Circular dated November 27, 2025, shall remain unchanged.

5. *SEBI introduces mandatory certification requirement for Compliance Officers*

With regards to the Regulation 20(17) of SEBI Regulations 2012, the Manager shall appoint a Compliance Officer who shall be responsible for monitoring compliance with the provisions of the SEBI Act 1992, rules and regulations, guidelines, circulars, and directives issued by SEBI. Regulation 20(18) provides that the Compliance Officer so appointed shall fulfil the eligibility criteria as specified by the Board from time to time.

SEBI, vide circular dated December 30, 2025, has prescribed the Compliance Officers appointed by the Managers of AIFs to mandatorily obtain NISM certification by passing the NISM Series-III-C: Securities Intermediaries Compliance (Fund) Certification Examination issued by NISM.

From 1 January 2027 onwards, only those individuals who have obtained the prescribed NISM certification shall be appointed as, or continue to function as, Compliance Officers of Managers of AIF.

6. *SEBI Circular on simplification and standardization of issuance of duplicate securities certificates*

SEBI, vide circular dated May 25, 2022, read with Para 22 of Master Circular for Registrars to an Issue and Share Transfer Agents (RTAs') dated June 23, 2025, prescribed the documentary, procedural requirements and threshold for the issuance of duplicate securities certificate.

Further, to simplify the procedures and make it more efficient, SEBI vide Circular dated December 24, 2025, has reviewed the threshold and simplified the documentation for issuance of such certificates. Listed Companies and RTA shall process all requests for issuance of duplicate securities in accordance with the said circular. To facilitate ease of doing investment for investors, the threshold for the simplified documentation has been increased from the current Rs Five Lakhs to Rs Ten Lakhs.

For the documentation, SEBI has also prescribed a standardized Affidavit-cum-Indemnity Bond, rationalized documentation for higher-value cases i.e. securities having value more than Rs Ten Lakhs, and removed the requirement of notarization for securities valuing up to Rs. 10,000. In addition to the above,

duplicate securities issued must be in dematerialized mode.

For securities valued up to ₹10,00,000, the investors need to submit a standardized Affidavit-cum-Indemnity bond as per the format specified in the said circular on non-judicial stamp paper of the appropriate value. For securities valued up to ₹10,000, security holder shall submit an undertaking as per format specified in the said circular on plain paper. For securities valued above ₹10,00,000, the claimant shall submit an FIR, clearly mentioning details of securities such as folio number, certificate number and distinctive number. In the case of securities valued above ₹10,00,000, the listed company shall issue an advertisement in newspaper regarding the loss of securities on a weekly basis. The listed company may recover a minimal cost for the advertisement from the investor.

The revised provisions shall also apply to ongoing requests for issuance of duplicate securities which are under process to give benefit of simplified procedure to investors.

7. *SEBI introduces circular for enhancement of 'Facility for Basic Services Demat Account'*

SEBI has issued a circular introducing further measures to enhance the facility of the Basic Services Demat Account (BSDA) with the objective of providing ease of investment for investors and ease of doing business for Depository Participants (DPs). Based on stakeholder feedback, SEBI has decided to exclude Zero Coupon Zero Principal (ZCZP) bonds, delisted securities and suspended securities from the calculation of value thresholds for determining BSDA eligibility. Further, for the purpose of valuation, illiquid securities shall be valued at their last closing price while assessing BSDA eligibility.

The circular also mandates that DPs should reassess the eligibility of demat accounts for BSDA on a quarterly basis which was earlier stated in the circular to be carried out at the end of each billing cycle. The DPs should open only BSDA for Beneficial Owners (BO) if such demat accounts are eligible for BSDA unless such BO specifically provides consent for regular account. DPs are required to obtain explicit consent from BO through an authenticated and verifiable channel, as prescribed by the Depositories, for availing or continuing with a regular demat account where the investor's account qualifies for BSDA.

The revised provisions shall come into effect from March 31, 2026.

8. *Amendments in IFSCA (CMI) Regulations for regulatory flexibility and ease of operations*

IFSCA notified the IFSCA (Capital Market Intermediaries) (Amendment) Regulations, 2026. The amendments introduce regulatory flexibility and operational ease for intermediaries operating in IFSCs.

A key change allows entities to obtain a unified registration to undertake multiple capital market activities, reducing procedural fragmentation. Eligibility norms for key managerial personnel are broadened by expanding acceptable educational disciplines to include fintech, science, technology, engineering and mathematic fields. Also, the requirement of obtaining professional qualification or post-graduate degree or post graduate diploma from a recognized foreign universities has been relaxed and the same can be obtained from any foreign university.

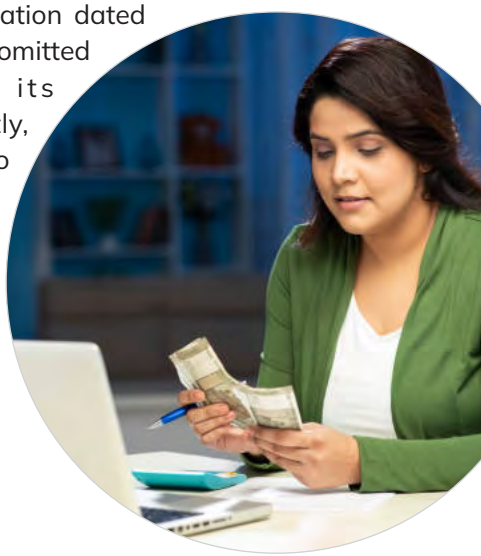
Requirements for the roles of principal officer and compliance officer are eased by reducing the minimum work experience requirement from ten years to five years. The amendments also permits a single principal officer across specified intermediary activities, while mandating a separate vertical head for distribution businesses where multiple activities are undertaken.

The minimum net worth requirements for custodians are fixed at USD 1 million and compliance to the said requirement shall be made by June 30, 2026 for all custodians including existing custodians.

9. *Ease in infrastructure compliance requirements for BATF Service Providers*

Under the IFSCA Book-keeping, Accounting, Taxation and Financial Crime Compliance Services Regulations ("BATF"), 2024, Regulation 12 prescribed a requirement for BATF Service Providers to maintain office space in the IFSC with a minimum carpet area of 60 square feet per employee.

IFSCA through notification dated 5th January 2026 has omitted Regulation 12 in its entirety. Consequently, all references to Regulation 12 have also been deleted from the Second Schedule.



10. *IFSCA facilitates bullion imports via IIBX for Qualified Jewellers and India-UAE CEPA TRQ Holders*

IFSCA had issued Circular dated October 10, 2025 in respect of import of gold or silver through IIBX by Qualified Jewellers and valid India–UAE CEPA Tariff Rate Quota (TRQ) holders.

Based on the representations received and consultations held with various stakeholders, IFSCA, vide its Circular dated January 2, 2026, has relaxed the eligibility criteria for the import of gold or silver through IIBX for SEZ units holding a valid Letter of Approval and having export of jewellery as one of their authorized operations, as well as for Advance Authorization holders.

It has also been clarified that for the import of silver bars under ITC (HS) Code 71069221 through IIBX, an entity is not required to be notified by IFSCA as a Qualified Jeweller.

The instructions contained in both above mentioned circulars have now been compiled and re-issued under this Consolidated Circular.

11. *IFSCA extents deadline for implementing revised norms to CMI Regulations*

IFSCA had issued a circular dated September 04, 2025 extending the deadline for implementation of sub-regulation (2), (3) and (8) of regulation 9 of the Capital Market Intermediaries (CMI) Regulations to December 31, 2025.

The Authority held a meeting on December 22, 2025 and have approved certain amendments to CMI Regulations relating to the appointment of Principal Officer and Compliance Officer of capital market intermediaries.

In view of the above, the deadline for implementing revised norms has been extended up to January 15, 2026 or till the date publication of the IFSCA (Capital Market Intermediaries) (Amendment) Regulations, 2026 in the Official Gazette, whichever is earlier.

12. *IFSCA issues clarifications regarding computation of liquid net worth*

IFSCA issues clarification for computation of liquid net worth under IFSCA (Capital Market Intermediaries) Regulations, 2025.

It has been clarified that the base minimum capital and interest free deposit maintained by registered broker dealers and the registered clearing members with Recognized Stock Exchange and clearing corporations respectively shall be considered while computing liquid net worth. Further margins maintained by registered broker dealers and clearing members in relation to trading activities in IFSC or Global Access shall also be a part of liquid net worth. The circular further clarifies that liability shall be excluded from the computation of liquid net worth.

VI. COMPLIANCE CALENDAR FOR FEBRUARY 2026

A. Income tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	7th Feb	January 2026	TDS / TCS Payment	Non-Government Deductors
02	15th Feb	January 2026	Depositing PF/ESI contribution	All deductors

B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	10th Feb	Jan 2026	GSTR – 7 (TDS)	Person required to deduct TDS under GST
02	10th Feb	Jan 2026	GSTR – 8 (TCS)	Person required to collect TCS under GST
03	11th Feb	Jan 2026	GSTR 1	a) Taxable persons having annual turnover > Rs. 5 crores in FY 2024-25 b) Taxable persons having annual turnover ≤ Rs. 5 crores in FY 2024-25 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
04	13th Feb	Jan 2026	GSTR – 1 (IFF)- QRMP	Aggregate Turnover is up to Rs. 5 crores
05	13th Feb	Jan 2026	GSTR – 6 (ISD)	Person registered as ISD
06	20th Feb	Jan 2026	GSTR – 3B	a) Taxable persons having annual turnover > Rs. 5 crores in FY 2024-25 b) Taxable persons having annual turnover ≤ Rs. 5 crores in FY 2024-25 and not opted for QRMP scheme
07	13th Feb	Jan 2026	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
08	20th Feb	Jan 2026	GSTR - 5A (OIDAR)	OIDAR services provider
09	25th Feb	Jan 2026	GSTR – 3B - QRMP scheme- Monthly payment	Aggregate Turnover is up to Rs. 5 crores

C. FEMA Compliance

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

GLOSSARY

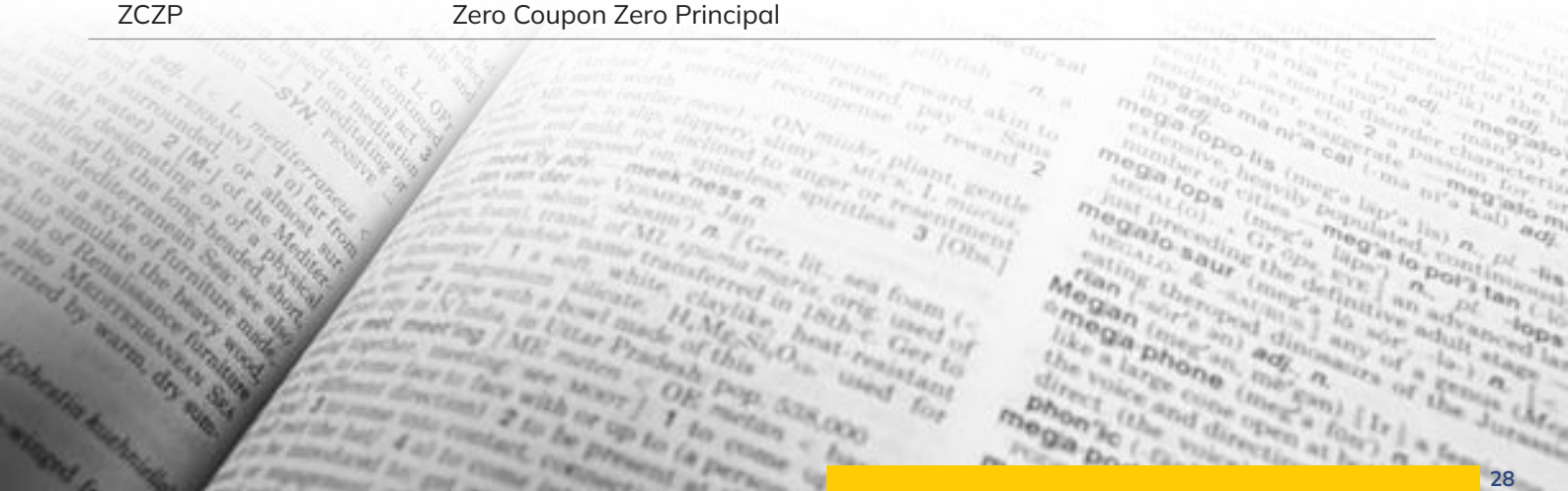
ABBREVIATION	FULL FORM
Act	Income-tax Act, 1961
AE	Associated Enterprise
AAR	Authority for Advance Rulings
AAAR	Appellate Authority for Advance Ruling
AI	Accredited Investors
AIF	Alternative Investment Fund
ALP	Arm's Length Rate
AMFI	Association of Mutual Funds in India
AML	Anti-Money Laundering
AGR	Adjusted Gross Revenue
AO	Assessing Officer
AY	Assessment Year
BER	Base Expense Ratio
BMA	Black Money Act
BFAR	Board for Advance Ruling
BSDA	Basic Services Demat Account
CBDT	Central Board of Direct Taxes
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CDSCO	Central Drugs Standard Control Organization
CBIC	Central Board of Indirect Tax and Customs
CMI	Capital Market Intermediaries
CASS	Computer-Assisted Scrutiny Selection
CFT	Combating of Financing Terrorism
CGAS	Capital Gains Account Scheme
CGST	Central Goods & Services Tax
CIT	Commissioner of Income-tax
CIT(Appeals) / CIT(A)	Commissioner of Income-tax (Appeals)
CPC	Centralized Processing Centre
DCIT	Deputy Commissioner of Income Tax
DDIT	Deputy Director of Income Tax
DGIT	Directorate General of Income Tax
DCIT	Deputy Commissioner of Income Tax
DDT	Dividend Distribution Tax
DIN	Document Indentification Number
DOT	Department of Telecommunications
DT	Debenture Trustees
DTAA	Double Taxation Avoidance Agreement

GLOSSARY

ABBREVIATION	FULL FORM
DRP	Dispute Resolution Panel
ECB	External Commercial Borrowings
ETF	Exchange-Traded Fund
FAR	Functions, Assets and Risk Analysis
FPI	Foreign Portfolio Investment
FTC	Foreign Tax Credit
FTS	Fees for Technical Services
FY	Financial Year
GAAR	General Anti-Avoidance Rules
GP	Gross Profit
GST	Goods & Service Tax
GAP	Global Access Providers
GSTAT	Goods and Services Tax Appellate Tribunal
HC	High Court
Hon'ble	Honourable
HUF	Hindu Undivided Family
IIBX	India International Bullion Exchange
IB	Introducing Brokers
ICC	International Cricket Council
IFSC	International Financial Service Centre
IFSCA	International Financial Services Centre's Authority
ITAT	Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITR	Income Tax Return
JDA	Joint Development Agreement
KYC	Know your customer
LODR	Listing Obligations and Disclosure Requirements
LIBOR	London Interbank Offered Rate
LF	License Fees
LVF	Large Value Fund
MII	Market Infrastructure Institution
MTC	Model Tax Convention
NBFC	Non-Banking Financial Company
NFAC	National Faceless Assessment Centre
NISM	National Institute of Securities Markets
NRI	Non- Resident Indians
OGE	Order Giving Effect

GLOSSARY

ABBREVIATION	FULL FORM
OECD	Organisation for Economic Co-operation and Development
PE	Permanent Establishment
PAN	Permanent Account Number
PCIT	Principal Commissioner of Income Tax
PLR	Prime Lending Rate
RBI	Reserve Bank of India
RE	Regulated Entities
ROI	Return of Income
RFRC	Risk-Focused Regulatory Compliance
RBOE	Risk-Based Operational Excellence
REIT	Real Estate Investment Trust
RAIN	Registrar Association of India
Rules	Income-tax Rules, 1962
SWAGAT-FI	Single Window Automatic and Generalised Access for Trusted Foreign Investor
SC	Supreme Court
SDF	Sugar Development Fund
SEP	Significant Economic Presence
SMP	Social Media Platform
SCN	Show Cause Notice
SUC	Spectrum Usage Charges
SEZ	Special Economic Zone
SEBI	Securities and Exchange Board of India
SGST	State Goods and Services Tax
SIF	Specialised Investment Fund
TDS	Tax Deducted at Source
TER	Total Expense Ratio
TNMM	Transactional Net Margin Method
TP	Transfer pricing
TPO	Transfer Pricing Officer
ZCZP	Zero Coupon Zero Principal



BHUTA SHAH & CO LLP
CHARTERED ACCOUNTANTS

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