BHUTA SHAH & CO LLP

CHARTERED ACCOUNTANTS

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BSC BEACON

TAX & REGULATORY INSIGHTS

WHAT'S INSIDE

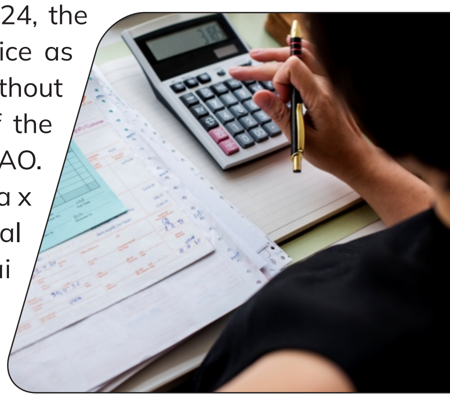
I. DIRECT TAXATION:
A. CORPORATE TAX

1. ***Reassessment beyond Six years invalid; Third-party search does not extend limitation to Ten years***

Ekansh Concepts Limited (formerly Choice Infra Ventures Ltd) had filed its ROI for AY 2016-17 on 29.09.2016, declaring total income of INR 56.16 lakhs. Several years later, the AO received information from DDIT(Investigation)-1, Ranchi, based on a search and seizure action conducted under Section 132 on 26.04.2023 at the premises of Manikaran Power Ltd. and its associate concerns. This information suggested that the Assessee had received INR 42.84 crore from Manikaran Power Ltd. and had subsequently written off this advance by routing payments through alleged sub-contractors, who in turn were said to have transferred funds to sister concerns of Manikaran Power Ltd. On this basis, the AO issued a reassessment notice under Section 148 on 31.03.2024, seeking to reopen the AY 2016-17 assessment.

The Assessee challenged the notice on jurisdictional grounds, arguing it was time-barred under the erstwhile Section 149(1)(b) (pre-Finance Act 2021), reassessment notices could only be issued within six years from the end of the relevant assessment year, which for AY 2016-17 expired on 31.03.2023. The Assessee relied on the first proviso to Section 149(1) of the Act, which protects assessment years up to AY 2021-22 from the new ten-year extended limitation period where a notice could not have been issued under the old six-year regime, and cited several precedents including the Supreme Court's ruling in Union of India vs. Rajeev Bansal[1] and the Bombay High Court's ruling in Bhoomi Viral Shah vs. ITO[2], among others. However, AO rejected the arguments of the Assessee. Being aggrieved, the Assessee filed an appeal before the CIT(A).

The CIT(A), after examining a long line of judicial precedents (most from the jurisdictional Bombay High Court), held that under the first proviso to Section 149(1)(b) of the Act, a reassessment notice under the new regime cannot be issued for AY 2021-22 or earlier years if the six-year period from the end of the relevant assessment year had already expired at the time the notice was actually issued. The CIT(A) reasoned that the phrase "at that time" in the proviso refers to the date on which the notice under Section 148 is issued, meaning that if a notice could not have been validly issued under the old six-year regime on that date, it likewise cannot be issued under the new ten-year regime. Applying this test, since the six-year period for AY 2016-17 expired on 31.03.2023 and the notice was issued only on 31.03.2024, the CIT(A) quashed the notice as barred by limitation, without going into the merits of the additions made by the AO. Aggrieved, the tax authorities filed an appeal before Hon'ble Mumbai ITAT.



Before the Hon'ble ITAT, the tax authorities contended that the case fell within the first proviso to Section 149 as a "search assessment" under Section 153C, which permits reopening up to ten years, since the reassessment stemmed from information unearthed during a search conducted on a third party (Manikaran Power Ltd.) rather than on the Assessee itself. The Hon'ble ITAT rejected this contention, relying on the Delhi High Court's decision in E-Homes Infrastructure Pvt. Ltd. vs. DCIT[3], which, on similar facts, held that a reassessment notice issued beyond six years cannot be saved merely because the underlying information originated from a third-party search. Agreeing with the CIT(A)'s reasoning as well-founded, the ITAT held that since the six-year window for AY 2016-17 expired on 31.03.2023 and the notice was issued only on 31.03.2024, it was clearly barred by limitation under Section 149 read with its first proviso. Accordingly, the ITAT dismissed the tax athorities appeal and upheld the quashing of the notice issued under Section 148 of the Act.

Ekansh Concepts Limited [TS-1085-ITAT-2026(Mum)]

2. ***Joint property purchased with spouse doesn't restrict exemption under Section 54 of the Act. The same needs to be examined based on actual investment made by the Assessee.***

Himanshu Bhatt ("the Assessee") sold a residential flat on 21.03.2011 and claimed exemption under Section 54 of the Act on purchase of a new residential flat. The new flat was purchased jointly in the names of the Assessee and his wife. In the first round of proceedings, the Hon'ble ITAT restored the issue of computation of capital gains to the AO for fresh adjudication. It also

[1] [TS-725-SC-2024]
[2] [TS-6511-HC-2024(Bombay)-O]
[3] [TS-7060-HC-2025(Delhi)-O]

directed the AO to verify the Assessee's claim under Section 54 of the Act. In the consequential proceedings, the AO accepted the purchase of the new flat but restricted the exemption to 50% of the investment on the ground that the property was jointly owned with the wife. The CIT(A) upheld the restriction. The CIT(A) also observed that the Assessee had not established that his wife was only a nominal holder and that the claim was not made in the original return. Aggrieved, the Assessee preferred an appeal before the Hon'ble ITAT.

The Hon'ble Mumbai ITAT held that Section 54 does not require the new residential property to be purchased exclusively in the name of the Assessee. It also does not require proportionate restriction of the exemption merely because the spouse is a joint owner. Relying on the decision of the Hon'ble Delhi High Court in CIT v. Ravinder Kumar Arora[4] and the coordinate bench decision in Smt. Tejal Kaushal Shah[5], the Hon'ble ITAT held that the exemption should be examined with reference to the investment actually made by the Assessee. The ownership ratio mentioned in the purchase document cannot, by itself, determine the amount of exemption. In the present case, the Assessee established that the entire purchase consideration was funded by him. The Tax Authorities did not bring any material on record to establish any independent financial contribution by the wife. The Hon'ble ITAT further held that the claim could not be rejected merely because it was not made in the original return, since the earlier order had specifically restored the matter for verification of the claim. Accordingly, the Hon'ble ITAT held that the exemption under Section 54 of the Act could not be restricted to 50%. Since the investment made by the Assessee exceeded the long-term capital gain, the entire gain was eligible for exemption. The addition was deleted and the appeal was allowed.

Himanshu Manoranjan Bhatt vs. ITO [TS-1171-ITAT-2026(Mum)]

3. ***Valid allotment letter is sufficient for claiming Section 54F of the Act exemption despite delay in construction or registration of the new residential property.***

Ashwin Chhotalal Paurana ("the Assessee") transferred his rights in an immovable property and earned long-term capital gains. The Assessee had acquired the original rights in AY 2013–14. During the relevant AY 2018-19, the Assessee surrendered such rights and received consideration. He invested the entire consideration received towards purchase of a residential property under an allotment letter issued by the developer dated 10.06.2017. The allotment letter recorded the appropriation of the consideration towards the new residential property. However, the construction and registration of the property were subsequently delayed due to regulatory approvals, amendments to the sanctioned plans and RERA-related requirements. The registered sale agreement was eventually executed on 31.03.2021. The Assessee claimed exemption under Section 54F of the Act on the basis of the investment made in the new residential property. The AO denied the exemption on the ground that the Assessee had not established ownership and timely purchase or completion of the new residential property. The CIT(A) upheld the AO's action. Aggrieved, the Assessee preferred an appeal before the Hon'ble Mumbai ITAT.

The Hon'ble Mumbai ITAT observed that the Tax Authorities had not disputed the genuineness or continued validity of the allotment letter. The allotment letter clearly recorded that the consideration received by the Assessee had been appropriated towards the purchase of the new residential property. The Hon'ble ITAT relied upon CBDT Circular No. 471 dated 15.10.1986, which recognises the date of allotment as the relevant date for determining acquisition of a residential property under a construction scheme. The Hon'ble ITAT held that the subsequent delay in construction or execution and registration of the sale agreement could not negate the acquisition already made through the valid allotment. Since the investment remained appropriated towards the residential flat and the allotment was never cancelled, the Assessee could not be denied exemption under Section 54F of the Act merely because the registration was completed subsequently. Accordingly, the Hon'ble ITAT directed the AO to compute the deduction under Section 54F of the Act and partly allowed the appeal.

Ashwin Chhotalal Paurana [TS-1149-ITAT-2026(Mum)]

4. ***Receipts from amenities and furniture & fixtures forming part of composite letting taxable as Income from House Property.***

Redwood IT Services Private Limited ("the Assessee"), engaged in owning and commercially exploiting

[4] *[TS-675-HC-2011(DEL)]*
[5] *[TS-6360-ITAT-2025(Mumbai)-O]*

Information Technology Park premises, licensed office units to various occupants. In respect of the occupation of the premises, the parties executed a Leave and Licence Agreement along with separate agreements for amenities and furniture & fixtures. The Assessee offered the entire receipts arising under all the agreements under the head "Income from House Property" and claimed deduction under section 24 of the Act. During appellate proceedings, the CIT(A) exercised enhancement powers and held that the receipts attributable to the Amenities Agreement and the Furniture & Fixtures Agreement were independent of the rental receipts arising from the Leave and Licence Agreement. Accordingly, the CIT(A) directed that such receipts be assessed under the head "Income from Other Sources" and denied deduction under Section 24(a) of the Act. The CIT(A) also upheld the disallowance of deduction claimed under Section 24(b) of the Act in respect of borrowed capital. Aggrieved, the Assessee preferred an appeal before the Hon'ble Mumbai ITAT.

The Hon'ble ITAT observed that the Amenities Agreement and the Furniture & Fixtures Agreement were supplemental to the Leave and Licence Agreement and were co-terminus with the principal licence. The Hon'ble ITAT further observed that the amenities comprised central air-conditioning system, AHU rooms, BTU metering arrangement, diesel generator, electrical infrastructure, lift lobbies, washrooms, parking facilities and allied infrastructure attached to the commercial building. The furniture & fixtures comprised fixed partitions, cabins, conference rooms, server rooms, workstations, pantry structures, electrical fittings and similar fit-outs embedded in the premises. The Hon'ble ITAT noted that these facilities merely rendered the office premises functional and commercially usable and were incapable of independent commercial exploitation. Accordingly, the building, amenities and fixtures together constituted one integrated commercial unit.

The Hon'ble ITAT observed that before invoking Section 56 of the Act, the Revenue must first demonstrate that the receipt is incapable of falling within Section 22 of the Act. The Hon'ble ITAT further observed that separate agreements executed for accounting convenience, commercial negotiation or stamp duty considerations do not by themselves create separate taxable sources. Relying upon Sultan Brothers (P.) Ltd. v. CIT[6], Shambhu Investment (P.) Ltd. v. CIT[7], CIT v. Bhaktawar Construction (P.) Ltd[8] and CIT v. J.K. Investors (Bombay) Ltd[9], the Hon'ble ITAT held that the receipts arising under the Amenities Agreement and the Furniture & Fixtures Agreement constituted an integral and inseparable component of the composite letting of the commercial premises and could not be artificially segregated and assessed under the head "Income from Other Sources". Accordingly, the enhancement made by the CIT(A) was set aside and the Assessee was held entitled to deduction under Section 24(a) of the Act.

On the issue of deduction under Section 24(b) of the Act, the Hon'ble ITAT observed that the Assessee had furnished fund-flow statements, bank records and utilisation charts demonstrating that the subsequent borrowing had been utilised to discharge earlier borrowings which were used for acquisition of the property. The Hon'ble ITAT held that Section 24(b) of the Act does not prohibit refinancing of an earlier eligible borrowing and that the character of the borrowing does not change merely because one lender is substituted by another. Since no diversion of borrowed funds for a non-qualifying purpose had been established, the Hon'ble ITAT directed the AO to allow deduction under Section 24(b) of the Act. The Hon'ble ITAT further held that, in view of its finding that the receipts were assessable under the head "Income from House Property", the Assessee's alternative claim under Section 57 of the Act had become academic and did not survive for adjudication. Accordingly, the appeal filed by the Assessee was allowed.

Redwood IT Services Private Limited [TS-1218-ITAT-2026(Mum)]

5. ***ITAT quashes denial of exemption under Section 11 of the Act, holding that rental income earned by the trust cannot be treated as a commercial activity warranting invocation of Proviso to Section 2(15) of the Act***

Kandivli Halai Lohana Mitra Mandal Trust ("the Assessee") is a charitable trust registered under Section 12A since AY 1974-75 and also registered under Section 80G and with the Charity Commissioner, Mumbai. The trust was established to undertake charitable activities such as education, medical relief, relief to the poor, maintenance of a temple and sanatorium, operation of a marriage hall (Wadi), and

[6] *[TS-2-SC-1963]*
[7] *[TS-5004-SC-2003-O]*
[8] *[TS-5619-HC-1985(Bombay)-O]*
[9] *[TS-5502-HC-2012(Bombay)-O]*

assistance during natural calamities. For AY 2015-16, the trust reported gross receipts of about INR 1.89 crore, comprising mainly rental and licence fee income from its Wadi, residential properties, medical centre, mobile tower, advertisement hoardings, and interest income. Out of these receipts, approximately INR 1.58 crore was applied towards charitable purposes, including educational assistance, medical aid, food distribution, and maintenance of charitable facilities. The remaining surplus was accumulated within the limits prescribed under Section 11 of the Act. Accordingly, the trust claimed exemption under Section 11 and filed its return declaring nil taxable income.

The AO observed that the trust was earning substantial rental and licence fee income from exploitation of its properties and treated such activities as commercial in nature. Since its receipts exceeded the threshold of INR 25 lakh, the AO invoked the proviso to Section 2(15) of the Act and denied exemption under Section 11 of the Act for AYs 2015-16 and 2016-17.

The CIT(A) upheld the AO's action, holding that the trust's principal source of income was rental receipts and that letting out properties for consideration was not a charitable activity by itself. Relying on CBDT Circular No. 11/2008, the CIT(A) concluded that the trust's activities had commercial characteristics and confirmed the denial of exemption.

On further appeal, the Hon'ble Mumbai ITAT reversed the findings of the lower authorities. The Hon'ble ITAT noted that the trust's registration under Section 12A of the Act remained valid and had never been cancelled. In the absence of any finding that the trust's activities were non-genuine or contrary to its charitable objects, its charitable status could not be denied.The Hon'ble ITAT further clarified that the proviso to Section 2(15) of the Act applies only to entities falling under the residual category of "general public utility" and not to trusts genuinely engaged in charitable purposes such as education, medical relief, or relief of the poor. The tax authorities had not shown that the trust had abandoned these charitable objectives.The Hon'ble ITAT emphasized that the source or volume of income is not determinative of charitable status. What matters is the dominant object of the trust and the application of income towards charitable purposes. Since the trust applied its funds for charitable activities and there was no allegation of diversion of income, change in objects, or non-genuine conduct, the denial of exemption was unjustified. Accordingly, the ITAT allowed the trust's claim for exemption under Section 11 of the Act for AYs 2015-16 and 2016-17.

Kandivli Halai Lohana Mitra Mandal Trust [TS-1220-ITAT-2026 (Mum)]

6. *Exemption under Section 54F of the Act allowable for cost of land purchased prior to transfer and construction completed within prescribed period.*

Damodar Bhimjibhai Patel ('the Assessee'), an individual, held a share in a parcel of land which was converted into stock-in-trade. Long-term capital gains arose on such conversion under Section 45(2) of the Act. The Assessee subsequently constructed a residential house and claimed exemption under Section 54F of the Act. The Assessing Officer denied the exemption on the ground that the land on which the residential house was constructed had been purchased before the transfer of the original asset. The exemption was also denied in respect of amounts utilised towards construction after the due date for filing the return, as the Assessee had not deposited the unutilised amount in the Capital Gain Account Scheme (CGAS). On appeal, the CIT(A) allowed the Assessee's claim. Aggrieved, the Tax Authorities filed an appeal before the Hon'ble Surat ITAT .

The Hon'ble ITAT observed that Section 54F of the Act requires the Assessee to construct a residential house within three years from the date of transfer. It does not prescribe that the land on which the house is constructed must also be purchased after the date of transfer. The Hon'ble ITAT held that the cost of land forms an integral part of the cost of the residential house. It further observed that the construction had been completed within the prescribed period. The Hon'ble ITAT also considered the requirement of depositing unutilised consideration in the CGAS before the due date of filing the return. It relied on the decision of the Hon'ble Karnataka HC in CIT v. K. Ramachandra Rao[10] and held that where the Assessee actually utilised the amount for construction of the residential house within the prescribed three-year period, exemption cannot be denied merely due to non-deposit in the CGAS before the due date. Accordingly, the Hon'ble ITAT upheld the order of the CIT(A) and dismissed the appeal filed by the Tax Authorities.

DCIT v. Damodar Bhimjibhai Patel [TS-1102-ITAT-2026(SUR)]

[10] [TS-5578-HC-2014(Karnataka)-O]

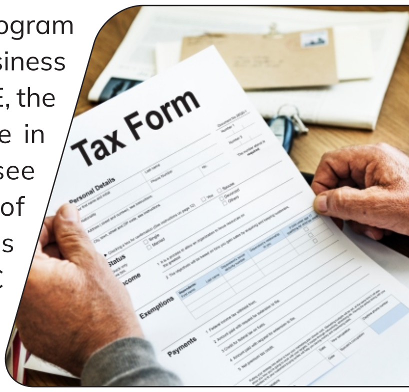
B. INTERNATIONAL TAXATION

1. ***Matter remanded to JAO for examining the requirement of specific human element to qualify services as FTS.***

SFDC Ireland Ltd (the Assessee) is a successor in the interests of an erstwhile entity Tableau International, Unlimited Co., Ireland (TI). The merger of TI with the Assessee was with effect from 01.04.2024. The Assessee is engaged in the business of sale of shrink-wrapped / off-the-shelf/electronically downloadable Tableau software, provision of Software as a Service (SAAS) to customers in India. During the AY 2020-21, the Assessee received an income of INR 73.41 crore on account of sale of software, SAAS, and other incidental and training services to resellers / customers. The Assessee claimed the said income as exempt from tax on the basis that the income was on account of sale of a copyrighted article and it did not allow the use or right to use the copyright in the software to Indian customers.

During the scrutiny proceedings, the AO examined the contractual agreements and other submissions. The AO referred to the decision of Hon'ble Agra ITAT in case of Metro & Metro vs. Addl CIT (IT)[11] wherein the Hon'ble ITAT did not find any difference whether the services are rendered through human involvement or through automated means and held that automated services would be taxable as FTS under Section 9(1)(vii) of the Act. The AO opined that even if the services are rendered in automation mode but if the nature of services falls within the letter and intent of FTS, the same would be liable for tax in India. The AO noted that employees of Indian customers / users are imparted training to enable them to act independently and that the customers / users are held responsible for the damages to the software. The AO also relied on decision of Hon'ble SC in case of Kotak Securities Ltd[12] to support the finding that human element was not required if the result of providing technical services with the human intervention is satisfied with the automated process also. Therefore, the AO concluded that receipts are FTS in nature and passed draft assessment order taxing it at 10% on gross receipts under Section 115A of the Act read with Article 12 of India-Ireland DTAA. Aggrieved, the Assessee filed its objections before the Hon'ble DRP which confirmed the findings of the AO.

Aggrieved, the Assessee filed an appeal before the Hon'ble Delhi ITAT. Before the Hon'ble ITAT, the Assessee relied on Hon'ble Delhi HC decision in case of Infrasoft Ltd wherein it was held that the transactions of granting limited licence to users to enable the effective operation of the program would be considered as business income and in absence of PE, the same would not be taxable in India. Further, the Assessee contended that findings of above decision was confirmed by the Hon'ble SC in case of Engineering Analysis. Per contra, the tax authorities supported the final assessment order.



The Hon'ble ITAT noted that in case of Infrasoft Ltd (supra), the Hon'ble Delhi HC was considering as to whether the ITAT was right in holding that receipts were not royalty under Article 12 of India-US DTAA. Accordingly, the Hon'ble ITAT distinguished the facts of Infrasoft Ltd from the present case insofar as Article 12 dealing with Royalty under India-US DTAA and India-Ireland DTAA were different. The Hon'ble ITAT also noted the judgment of Kotak Securities (supra), that the issue as to whether the technical services provided by the Assessee in automation mode has blurred the requirement of specific human element to qualify as technical services under Article 12(3)(b) of the India-Ireland DTAA remains to be examined by the AO / DRP. Accordingly, the Hon'ble ITAT set aside the final order and remanded the matter back to the AO for fresh adjudication.

SFDC Ireland Ltd [TS-1079-ITAT-2026(DEL)]

2. ***Disallowance on payments to foreign entities under Section 40(a)(i) of the Act restricted to 30% on account of non-discrimination clause in DTAA.***

GE India Industrial Private Limited (the Assessee) has made certain payments to US and Chinese entities amounting to INR 1.61 crore and INR 6.10 crore respectively without deducting tax during the AY 2017-18. In the TAR, the said omission was reported. Thereafter, the Assessee made the disallowance in its ROI to the extent of 30% of such payments (i.e., INR 48.30 lakhs and INR 1.83 crore respectively) in accordance with non-discrimination clause in the respective DTAA. In the intimation, the disallowance under Section 40(a)(i) of the Act was increased to 100% resulting in additional disallowance of INR 5.40 crore.

Aggrieved, the Assessee filed an appeal before the CIT(A) – NFAC who upheld the view adopted in the intimation and dismissed the appeal of the Assessee.

[11] [TS-7024-ITAT-2013(Agra)-O]
[12] [TS-166-SC-2016]

Thereafter, the Assessee filed an appeal before the Hon'ble Delhi ITAT.

Before the Hon'ble ITAT, the Assessee relied on the ruling of the co-ordinate bench in case of LinkedIn Technology Information[13] and of Hon'ble Delhi HC in case of Herbalife India Private Ltd wherein it was held that Section 40(a)(i) of the Act is discriminatory in nature. Even though Section 40(a)(i) of the Act contains a non-obstante, Section 90(2) of the Act clearly states that DTAA provisions would prevail over the Act unless Act is more beneficial. The Hon'ble Delhi HC in case of Herbalife (supra) also held that the application of disallowance @ 100% under Section 40(a)(i) of the Act is discriminatory in nature insofar as the quantum of disallowance is concerned. The quantum of disallowance for resident is restricted to 30% under Section 40(a)(ia) of the Act. Therefore, to meet the requirement of non-discriminatory clause of Article 26(3) of the DTAA, the disallowance for payment to a non-resident (without deducting tax) should be restricted to 30%. Per contra, the tax authorities supported the intimation.

The Hon'ble ITAT examined the submission made by the Assessee and the above-mentioned judicial precedents. The Hon'ble ITAT followed both the decisions (as mentioned above) and allowed the appeal of the Assessee.

GE India Industrial Private Limited [TS-1174-ITAT-2026(DEL)]

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3. ***Profits from offshore supply of equipment and designs cannot be attributed to a Supervisory PE in the absence of a Fixed Place PE in India.***

Paul Wurth Italia SPA ("the Assessee"), a tax resident of Italy, was engaged in the supply of blast furnace equipment, designs and drawings, and supervisory services relating to erection and commissioning of projects in India. During the relevant assessment years, the Assessee supplied equipment and designs to Indian customers such as Tata Steel, SAIL, RINL, etc. on a Free on Board (FOB) basis and separately rendered onshore supervisory services. The Assessee admitted the existence of a Supervisory PE under Article 5(2)(j) of the India-Italy DTAA in respect of its supervisory activities and offered the related income to tax as business profits under Article 7.

During the assessment proceedings, the AO alleged that Paul Wurth India ("PWI"), an Indian group entity of the Assessee, and the use of customer project sites constituted a Fixed Place PE in India. The AO further contended that the contracts formed a composite arrangement and sought to invoke the force of attraction rule under Article 7 of the DTAA. Consequently, the AO attributed 50% of the profits from offshore supplies of equipment, drawings and designs to the alleged PE and subjected the same to tax in India.

The CIT(A) held that no Fixed Place PE existed and accordingly deleted the profit attribution relating to offshore supplies. However, the CIT(A) recharacterized the supervisory receipts as Fees for Technical Services ("FTS") and further treated certain receipts from designs and drawings supplied for indigenous equipment and civil works as Royalty / FTS.

Aggrieved, both the Tax Authorities and the Assessee preferred appeal before the Hon'ble Delhi ITAT.

The Hon'ble ITAT held that PWI did not constitute a Fixed Place PE of the Assessee. The Tribunal observed that PWI was merely an associate/group entity within the Paul Wurth group and not a subsidiary of the Assessee. Further, there was no evidence to establish that PWI secured contracts, concluded contracts, or carried out core business functions on behalf of the Assessee. The mere fact that an employee of PWI signed as a witness to a contract could not lead to the inference that PWI constituted a PE of the Assessee. The Tribunal also held that the customer's project site could not be regarded as a Fixed Place PE as there was no evidence to demonstrate that the Assessee exercised control over, or had the premises at its disposal.

Relying, inter alia, on the decision of the Supreme Court in Ishikawajima-Harima Heavy Industries Ltd., the Hon'ble ITAT noted that (i) all manufacturing, design, fabrication and supply activities were carried out outside India, (ii) ownership, title and risk in the equipment passed outside India upon shipment on an FOB basis, and (iii) payments were received outside India in foreign currency. Accordingly, the Tribunal held that profits arising from offshore supplies of equipment, drawings and designs were not taxable in India.

The Hon'ble ITAT further observed that although the Assessee had a Supervisory PE in India, the said PE had no role to play in the offshore supply activities. Consequently, profits from offshore supplies could not be attributed either to the alleged Fixed Place PE or to the admitted Supervisory PE. The Tribunal also rejected the Revenue's reliance on the force of attraction rule

[13] LinkedIn Technology Information vs. PCIT [TS-28-ITAT-2026(DEL)]

and held that the mere existence of a Supervisory PE does not justify attribution of profits from offshore supplies where such supplies were completed outside India and were not carried on through the PE.

As regards the supervisory receipts, the ITAT held that such receipts were effectively connected with the Supervisory PE and were therefore taxable as business profits under Article 7 of the DTAA and not as FTS. The Tribunal also rejected the CIT(A)'s characterization of receipts from offshore supply of designs and drawings as Royalty / FTS and held that such receipts constituted business income.

Accordingly, the Tax Authorities appeal was dismissed and the Assessee's appeals was allowed.

Paul Wurth Italia SPA [TS-1219-ITAT-2026(DEL)]

4. *Outright purchase of software from Malaysian AE is not royalty; TDS under Section 195 of the Act not applicable.*

Value Labs LLP ("the Assessee"), a software development LLP, purchased software from its Associated Enterprise ("AE"), Value Labs SDN BHD, Malaysia. The transaction was examined in transfer pricing proceedings. The Hon'ble ITAT had earlier deleted the transfer pricing adjustment relating to the purchase of software and IP rights. Subsequently, the AO initiated proceedings under Sections 201(1) and 201(1A) of the Act, alleging that the Assessee had failed to deduct TDS on the payment made to the Malaysian AE.

The Assessee submitted that the software was purchased outright from the Malaysian AE. It contended that the payment represented business receipts in the hands of the AE. Since the AE did not have a PE in India, the receipts were not taxable in India under Article 7 of the India-Malaysia DTAA. The Assessee further submitted that the software and IP rights were acquired under separate arrangements. TDS had already been deducted on the payment relating to the IP rights. The CIT(A) accepted the Assessee's position. The Tax Authorities challenged the order before the Hon'ble Hyderabad ITAT.

The Hon'ble Hyderabad ITAT observed that the software transaction was an outright sale. It was not a payment for the use or right to use the copyright in the software. Accordingly, the payment for the software did not constitute royalty. The Tribunal further held that the payment represented business receipts of the Malaysian AE. As the AE did not have a PE in India, such receipts were not taxable in India under Article 7 of the India-Malaysia DTAA.

The Hon'ble ITAT also noted that the Assessee had separately acquired the IP rights and had deducted TDS on the payment relating to such rights. The Hon'ble ITAT upheld the order of the CIT(A) and dismissed the appeal filed by the Tax Authorities. The Assessee's cross-objection was dismissed as infructuous.

Value Labs LLP v. DCIT [TS-1118-ITAT-2026(HYD)]

5. *Repurchase of vested stock options taxable as Long-Term Capital Gains and not as perquisite.*

Pramod Kumar Jain ('the Assessee') was an employee of Flipkart Internet Private Ltd. ("FIPL"), an Indian group entity of Flipkart. During the course of employment, the Assessee was granted stock options by Flipkart Private Limited, Singapore ("FKS") under the Flipkart Stock Option Scheme, 2012 ("FSOP 2012"). During the relevant year, FKS repurchased 2,653 vested stock options held by Assessee against payment of consideration. The Assessee offered the consideration received on such repurchase under the head "Capital Gains". The AO initiated reassessment proceedings and held that the receipt was taxable as a perquisite under Section 17(2) of the Act under the head "Salaries", inter alia, relying upon Form 16, TDS deducted by the employer and the Letters of Offer for Repurchase of Vested Options. The CIT(A) upheld the AO's findings. Aggrieved, the Assessee preferred an appeal before the Hon'ble Bangalore ITAT.

The Hon'ble ITAT noted that pursuant to vesting of stock options, the option holder had a right, but not an obligation, to purchase or subscribe at a future date to the shares underlying the options at a predetermined price. The Hon'ble ITAT further noted that the shares of FKS were not listed on any recognised stock exchange and therefore the Assessee could never exercise the stock options vested in him. Accordingly, only the first two stages, namely issuance and vesting of stock options, could be completed and no shares were ever allotted to the Assessee.

The Hon'ble ITAT observed that only after the option granted to an employee under an employees' stock option plan is exercised does the incidence of taxability under Section 17(2)(vi) of the Act arise. Until then, it is merely an employee's stock option and cannot be considered to be a "specified security" under Section 17(2)(vi) of the Act. Since the stock options granted to the Assessee were never exercised and no shares were ever allotted, a "specified security" did not come into existence. Accordingly, the consideration received upon repurchase of vested stock options by FKS could not be taxed as a perquisite under the head "Salaries".

The Hon'ble ITAT further held that the stock option vested in the Assessee under FSOP 2012 was a capital asset, being the right to subscribe to the shares underlying the options at a future date. Relying upon the decisions of the Hon'ble Supreme Court in Miss Dhun Dadabhoy Kapadia v. CIT[14] and the Hon'ble Karnataka High Court in Chittharanjan A. Dasannacharya v. CIT[15], the Hon'ble ITAT held that repurchase of vested stock options by FKS amounted to a transfer under section 2(47) and the consideration received thereon was taxable under Section 45 of the Act under the head "Capital Gains".

The Hon'ble ITAT also held that the arrangement between the parties did not determine the tax liability of an assessee and such liability had to be ascertained on the basis of law. Further, deduction of TDS by the payer was not the ultimate determinative factor on the taxability of income in the hands of the payee. The Hon'ble ITAT also distinguished the decision of the Hon'ble Madras High Court in Nishithkumar Mukeshkumar Mehta v. DCIT, TDS[16]. Accordingly, the Hon'ble ITAT held that the Assessee had rightly offered the consideration received on repurchase of vested stock options as Long-Term Capital Gains and allowed the appeal.

Pramod Kumar Jain [TS-1163-ITAT-2026(Bang)]

II. TRANSFER PRICING

1. ***Berry ratio can be selected for benchmarking based on the facts pertaining to limited functions and risks undertaken. Segregation approach is more reliable when transactions are independent and not linked with each other. Recovery of expense cannot be presumed to be an international transaction using Bright Line/ intensity approach. For applicability of CUP method similarities in products is an important criteria.***

Samsung India Electronics Pvt. Ltd.[17] ("SIEL") ('the Assessee') is a wholly owned subsidiary of Samsung Electronics Co. Ltd., Korea. The assessee is engaged in manufacturing and trading of consumer electronics, home appliances, mobile phones and IT products, besides providing contract software development services and trading telecommunication equipment. It entered into various international transactions with its AE. The case of the Assessee was selected for scrutiny and the matter was referred to the TPO for determination of the ALP.

The Assessee has incurred AMP expenditure relating to manufacturing, trading and networking segments on behalf of its AE. The expense was reimbursed on cost-to-cost basis and hence no benchmarking was done by the Assessee. However, the TPO proposed that the expenditure was done by the Assessee for promotion of the 'Samsung' brand and made adjustments on substantive basis and protective basis by applying Intensity Approach and Bright line approach for different segments.

The Assessee has paid royalty to its AE pursuant to license agreements for providing technical know-how and assistance for manufacturing of colour televisions, washing machines, refrigerators, air conditioners, and mobile phones. The Assessee combined this transaction with other manufacturing segment transaction and benchmarked on an aggregated basis under TNMM. The TPO rejected the benchmarking methodology and applied CUP method by relying on 3 third-party royalty agreements to make differential adjustment.

In networking segment, the Assessee following a different benchmarking approach in current year separately benchmarked the transaction of import of telecommunication equipment from AE and availing network support services of network design, installation, commissioning and network maintenance activities from AE's project office in India. For import transaction, the Assessee selected itself to be the tested party by adopting Berry ratio (GP/VAE) as PLI under TNMM and selected distributor companies to calculate arm's length margin range. For network support services, it selected AE's project office as tested party by adopting TNMM as MAM and OP/OC as PLI. The TPO rejected the segregated approach, benchmarked both the transaction on aggregate basis by selecting TNMM as MAM and OP/OR as PLI and

[14] [TS-2-SC-1966-O]
[15] [TS-5542-HC-2020(Karnataka)-O]
[16] [TS-582-HC-2024(MAD)]
[17] [TS-620-ITAT-2026(DEL)-TP]

made differential adjustments using service sector comparables. The Assessee, however, contended that both the transactions are different and cannot be interlinked with each other.

Aggrieved, the Assessee filed its objections before the DRP. The DRP rejected the objections filed by the Assessee and upheld the order of the TPO. It rejected the selection of berry ratio on the ground of the finding that the Assessee was carrying out warehousing activities.

Aggrieved, the Assessee filed an appeal before the Hon'ble Delhi ITAT, the Hon'ble ITAT observed that in respect to AMP expenditure, the TPO/DRP treated expenditure beyond the reimbursement received from the AE as an international transaction and applied the Bright Line/intensity approach. The Hon'ble ITAT observed that the transaction is a covered ground in Assessee's own case and that there was no difference in facts of current year. Accordingly relying on its decision in Samsung India Electronics Pvt Ltd[18] for AY 2014-15, held that without evidence of an arrangement with the AE for incurring additional AMP expenditure such expenditure cannot be presumed to be an international transaction.

On the payment of royalty, the Hon'ble ITAT observed that the royalty agreements introduced by TPO belong to complete different agricultural industry while the products manufactured by the Assessee belongs to consumer electronics & home appliances. The Hon'ble ITAT observed that factors such as geographical market where the transaction takes strong similarity of product is required for application of CUP method and these factors are clearly not satisfied here. The Hon'ble ITAT further observed that the above 3 agreements were rejected as relevant CUP in earlier years by coordinate bench and relying on its decision of earlier years decided the matter in favour of the Assessee.

For the networking segment, the Hon'ble ITAT observed that the Assessee merely operated as a merchant trader by facilitating trade between AE and end customer. It observed that the equipment is purchased on CIF basis, sold on bill-to-ship to model on high sea sales basis, custom clearance being done by end customer with shipment directly made to customer warehouse. The Assessee does not undertake any procurement, warehousing, distribution or logistics functions nor does it have any intangibles/substantial assets for this particular segment and is only a limited risk distributor and not full-fledged distributor as asserted by DRP. In the given situation, since no real risk is borne by the Assessee, the Cost of Goods is just a mere pass-through cost which is correctly excluded from the denominator. All operating expense relating to depreciation, rent and insurance, after sales service expenses and other miscellaneous operating expenses have been included in the cost base while computing GP/VAE which captures the functions performed and risks undertaken by both the entities.

The Hon'ble ITAT relying on the decision of CIT v. M.R. P. Firm, Muar[19] and CIT v. Bharat General Reinsurance Co. Ltd[20] held that the assessee was justified in adopting a more refined and scientifically accurate transfer pricing methodology by separately benchmarking distribution and service transactions. The Hon'ble ITAT accepted Berry Ratio as the most appropriate PLI for distribution activities under the Other Method, while holding that service transactions were rightly benchmarked under TNMM using OP/OC as the PLI using SEC PO as the tested party and service companies as comparables. It observed that the assessee cannot be compelled to follow the methodology adopted in earlier years solely for the sake of consistency when the revised approach is more appropriate and no defect has been identified therein. Accordingly, the grounds challenging the rejection of Berry Ratio were allowed and directed the AO to recompute the ALP.

Samsung India Electronics Limited [TS-620-ITAT-2026(DEL)-TP]

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2. *Directs AO/TPO to grant working capital adjustment in accordance with Rule 10B(3), if claim found to be factually correct.*

Nynas Naphthenics Pvt. Ltd.[21] ('the Assessee') has entered into international transaction with its AE 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 at the time of passing the order, denied working capital adjustment for trading segment which captures the differences in inventory, trade

[18] [TS-7471-ITAT-2020(Delhi)-O],

[19] [TS-1-SC-1964-O]

[20] [TS-5365-HC-1970(Delhi)-O]

[21] TS-629-ITAT-2026(Mum)-TP

receivables and trade payables between itself and comparable companies for determining the arm's length price of the international transaction.

The Assessee contended that these differences materially affected the operating margins and therefore appropriate adjustment was required under Rule 10B(3) of the Income-tax Rules, 1962 ('the Rules'). To support its contention, the Assessee relied on the decision of BP India (P.) Ltd[22] and Packt Publishing Private Limited[23]. The Assessee had furnished the detailed working-capital adjustment working and furnished the relevant supporting documents before the TPO.

Aggrieved, the Assessee raised its objections before the Hon'ble DRP. The DRP rejected the objections on the ground that the Assessee has not provided sufficient documentation to justify the material impact of the working-capital differences on the margins of the comparables and that accurate adjustment cannot be determined.

On further appeal before Hon'ble Mumbai ITAT, the Hon'ble ITAT held that working capital adjustment is intended to neutralise the effect of difference in inventory, trade receivables and trade payables of the tested party vis-a-vis the comparable companies. Such adjustment is permissible under Rule 10B(3) as it may affect the operating margins because the period for which funds remain blocked in inventory or receivables, or are available through trade credit, carries a time value. The Hon'ble ITAT observed that the correctness and sufficiency of the working capital adjustment furnished by the Assessee was not examined by the TPO and DRP. Accordingly, since the matter pertains to verification of factual details, the Hon'ble ITAT restored the matter back to the TPO for examination of the working capital adjustment and directed that the adjustment be granted if found factually correct.

Nynas Naphthenics Pvt Ltd [TS-629-ITAT-2026(Mum)-TP]

3. ***MAP rate not applicable where DAPE undertakes activities beyond those disclosed in TPSR; restricts profit attribution to 12%***

BBC Global News Limited ("the Assessee"), a UK tax resident engaged in operating BBC World News Channel and BBC website, had BBC Global News India P. Ltd. ("BGNIPL") as its Dependent Agency Permanent Establishment ("DAPE") in India. Under a MAP resolution for AYs 2004-05 to 2014-15, profit attributable to the Indian PE was agreed at 8.75% of advertisement revenue, which was also adopted for AYs 2015-16 and 2016-17.

For AYs 2017-18 to 2022-23, pursuant to a survey conducted in February 2023, the AO observed that the Indian DAPE was undertaking activities beyond those disclosed in the Transfer Pricing Study Report ("TPSR"), including promotion and procurement of advertising business, obtaining customer orders, collection follow-ups, business development, marketing and research activities. Accordingly, the AO enhanced the profit attribution from 8.75% to 15%.

The Hon'ble Delhi ITAT observed that a MAP resolution is not binding for assessment years not specifically covered by the MAP. However, the MAP rate may be extended to subsequent years where there is no change in facts or the scope of activities undertaken by the PE. Since the DAPE was found to be performing activities substantially wider than those disclosed in the TPSR, the ITAT held that the MAP rate of 8.75% could not be adopted.

At the same time, the Hon'ble Delhi ITAT held that the AO's enhancement to 15% was based on estimation and was on the higher side. Accordingly, the ITAT restricted the profit attributable to the Indian DAPE to 12% of advertisement revenue.

The Hon'ble Delhi ITAT also rejected the Assessee's contention that no further attribution was warranted since BGNIPL had been remunerated at arm's length. Relying on the Supreme Court's decision in DIT v. Morgan Stanley & Co.[24], the ITAT noted that no further attribution is generally required where the PE is remunerated at arm's length after considering all risk-taking functions. However, an exception applies where the transfer pricing analysis does not adequately reflect the functions performed and risks assumed by the PE, which was found applicable in the present case.

BBC Global News Limited [TS-8628-ITAT-2026(Delhi)-O]

[22] *[TS-7879-ITAT-2025(Mumbai)-O]*
[23] *[TS-8627-ITAT-2026(Mumbai)-O]*
[24] *DIT v. Morgan Stanley & Co. [TS-5020-SC-2007-O]*

4. Deletes royalty TP adjustment where adjusted GP falls within ±3% of comparable margins

ELCA Cosmetics Pvt. Ltd. ("the Assessee") is engaged in wholesale purchase and resale of products of its group entities. For AY 2016-17, the Assessee benchmarked its international transactions under the Resale Price Method ("RPM"), aggregating royalty payments made under its Trade License Agreement and Marketing Knowhow License Agreement with the purchase transactions, on the basis that the transactions were closely linked.

The TPO rejected the aggregation and benchmarked the royalty payments separately using the Comparable Uncontrolled Price ("CUP") Method. The TPO relied upon certain franchise agreements and determined an average royalty rate of 2.65%, resulting in a transfer pricing adjustment. The DRP upheld the adjustment.

The Hon'ble Delhi ITAT rejected the CUP adopted by the TPO, observing that the franchise agreements relied upon were unsigned, non-executed documents/ templates and therefore could not constitute reliable comparables for benchmarking the royalty transaction. At the same time, the ITAT held that the royalty payment could not simply be aggregated with the purchase transaction under RPM, since royalty constituted an operating expense and was not factored into the gross profit margin under RPM.

However, instead of remanding the matter for fresh benchmarking, the Hon'ble Delhi ITAT considered the actual gross profit earned by the Assessee. The Assessee had reported a gross profit margin of 37.97%, as against 32.28% earned by the comparables selected in its TP study. After adjusting the gross profit for royalty and other operating expenses, the adjusted GP margin was 31.97%, which was within the ±3% range of the comparable margin.

Accordingly, the Hon'ble Delhi ITAT held that the Assessee was entitled to the benefit of the ±3% variation and deleted the transfer pricing adjustment. The ITAT clarified that this approach was adopted specifically to resolve the dispute based on the material available on record and should not be treated as a method applicable to other years or other assessees.

ELCA Cosmetics Pvt. Ltd. v. DCIT [TS-8630-ITAT-2026(Delhi)-O]

III. GOODS AND SERVICES TAX – UPDATES

I. GST – Case Laws

a. An officer who approved the investigation report recommending prosecution cannot subsequently adjudicate the same matter as the quasi-judicial authority; reasonable apprehension of bias vitiates the order even without proof of actual bias

The Assessee is a proprietorship firm dealing in bullion, gems and jewellery, registered under the CGST Act, 2017 and the Rajasthan GST Act, 2017. An investigation report prepared for the purpose of launching prosecution was signed and included an endorsement that the report had been carefully examined and approved. A SCN dated 21 May 2024 followed, proposing penalties under Section 122(1). The same Additional Commissioner then acted as the quasi-judicial authority and passed the Order-in-Original dated 16 January 2025 imposing penalties under Section 122(1)(ii), (vii), (xii), (xvi) and (xvii). The Assessee's objection on this score was dealt with at paragraph 25 of that order, which reasoned that the competent authority to sanction prosecution was the Commissioner and not the Additional Commissioner, and went on to record that the taxpayer was attempting to hinder the proceedings. The Order-in-Appeal affirmed the order, holding that an officer acting as investigator and adjudicator cast no stigma on the proceedings. The Department urged that no objection had been taken at the initial stage, that the two capacities were distinct, and that no actual prejudice had been shown.

The issue before the Hon'ble Court was whether the adjudication stood vitiated where the officer who had approved the investigation report proposing prosecution subsequently adjudicated the same matter as the quasi-judicial authority.

The Hon'ble Court found on the record that the investigation report had been countersigned and approved by the Additional Commissioner, who also passed the impugned order. Such an arrangement undermines the very foundation upon which a quasi-judicial authority is expected to function. The precedents cited by the Department were held to have only limited application and not to accord with the settled principles governing the exercise of quasi-judicial powers, particularly where a person directly associated with the initiation of proceedings goes on to adjudicate the same matter. Further, para 25.3 of the impugned order itself showed that the objection had

not been adequately addressed. The Hon'ble Court did not consider it necessary to decide whether the several roles assumed by the same officer had actually resulted in bias, since the reasonable apprehension of bias in the mind of the Assessee could not be ignored where quasi-judicial powers were being exercised. In this regard, reliance was placed on Ashok Kumar v. State of Haryana[25], wherein it was held that no man can be a judge in his own cause, and that the governing test is a real likelihood of bias rather than proof of actual bias. Justice must be seen to be done as well as done, and the rule extends to every case in which an independent mind has to be applied. The Order-in-Original and the Order-in-Appeal were quashed, and the matter was remanded to the competent authority, with the direction that the roles of investigator, approving authority and quasi-judicial officer should not be discharged by the same individual. No finding was recorded on actual bias or on the merits, and all other issues were left open.

Gajmukhi Bullion v. Additional Commissioner, CGST, Rajasthan High Court, Writ Petition No. 14693 of 2026, decided on 17 July 2026

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b. *Proceedings under Section 73 initiated and concluded in the name of a deceased proprietor, where the Department knew of the death, are without jurisdiction and non est, and participation by the legal heir does not cure the defect*

The Assessee, Mr. Manoranjan Mohapatra, carried out business under GSTIN 21AGEPM8738K1Z5 as M/s. J.S. Enterprisers, and had discharged tax liability during FY 2021-22, for which the annual return in Form GSTR-9 was filed on 31 December 2022. The Assessee died on 24 November 2022, and his legal heirs continued the business in the same name until 31 March 2023 and then constituted a partnership firm, for which a fresh registration bearing GSTIN 21ABWFM0651L1Z0 was issued on 3 February 2023. They also decided that the proprietorship would continue through one of the heirs, and an application for non-core amendment of the registration particulars was approved on 20 June 2023 and the GSTR 3B for June 20233 was duly filed. Despite this, the Superintendent issued a notice in Form GST ASMT-10 in the name of the deceased, followed by a SCN. The Assistant Commissioner then issued a further notice in Form GST DRC-01, again in the name of the deceased and the legal heir filed a reply and opted for a hearing. While the Superintendent dropped the allegations, the Assistant Commissioner concluded the proceeding and passed an order of the same date in the name of the deceased.

The issue before the Hon'ble Court was whether the Assistant Commissioner was competent to initiate proceedings under Section 73 and pass an order raising a demand against a person who had already died.

The Hon'ble Court on scrutiny of the record observed that the death was within the knowledge of the authority, the fact having been intimated well before the notices issued. It was held that issuing notice to the correct person and not to a dead person is not a mere procedural requirement but a condition precedent to validity, and that an alternative remedy is no bar where the proceeding is without jurisdiction. The Department's contention that the legal heir had participated and could not now resile was rejected, since the death and the subsequent registration changes had been intimated before the notice issued, and the Assistant Commissioner could not have proceeded against a dead person while conscious of the fact. Following Devendra Kumar Singh v. State of U.P.[26], the Hon'ble Court held that Section 93 deals only with the liability of a legal representative and it does not authorize a determination to be made against a dead person, so a notice to the legal representative is a sine qua non. Accordingly, the notices and the order were quashed, with liberty to the Proper Officer to proceed by issuing notice to the Assessee representing the other legal representatives.

J.S. Enterprisers v. Superintendent, Central GST and CX, Orissa High Court, [TS(DB)-GST-HC(OR)-2026-983]

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c. *Uploading a SCN or order under the "View Additional Notices and Orders" tab is not by itself valid service under Section 169 unless receipt is acknowledged or a reply is filed*

The Assessee is a proprietorship firm carrying out business in Chandigarh. Scrutiny proceedings were initiated under Section 61 of the CGST Act, 2017, and an intimation in Form ASMT-10 asked for reasons on discrepancies between Forms GSTR-1, GSTR-3B and GSTR-2A for FY 2017-18, together with supporting documents relating to credit notes of Rs. 20,99,199. A notice in Form DRC-01 followed under Section 73,

[25] *(1985) 4 SCC 417*

[26] *[TS(DB)-GST-HC(ALL)-2025-3505]*

which was confirmed. The Assessee's case was that no date, time or venue of personal hearing was ever communicated, and that apart from uploading the order under the "View Additional Notices and Orders" tab on the Common Portal, no other mode of service was adopted. Since the Department treated the upload as service, the period of limitation under Section 107 had run out, and the appeal could not be filed. In a batch of over 40 writ petitions, the SCN's and orders routinely served on registered persons solely by uploading them under the tab 'View Additional Notices and Orders' on the GST common portal (www.gst.gov.in), without any other mode of service being attempted, and without any acknowledgment of receipt, were challenged.

The issue before the Hon'ble Court was whether uploading a notice or an Order-in-Original under the "View Additional Notices and Orders" tab on the Common Portal amounts to proper service under Section 169 read with Section 146, so as to trigger the period of limitation for an appeal under Section 107.

The Court examined Section 146, which empowers the Government to notify the Common Portal only for specified purposes, alongside the three notifications issued thereunder for registration/ returns/ payment of tax, for e-way bills, and for e-invoicing. It was noted that none of these notifications authorize use of the Common Portal for service of notices or orders. Further, the e-mail sent to the registered address, moreover, merely intimates that something has been uploaded; it does not attach the notice or order itself, and therefore cannot independently satisfy the e-mail mode of service under Section 169(1)©. The Hon'ble Court also held that Section 169(1) prescribes six modes of service, and that while the deeming fictions in sub-sections (2) and (3) attach to service by tender, post, publication and affixation, no such fiction attaches to service by e-mail or by making the document available on the Common Portal. Thus, Section 146 requires the Common Portal to be notified for the relevant purpose of service. The Court took judicial notice of the cumbersome, multi-click navigation required to even locate the relevant tab on the portal, describing it as akin to "playing a game of treasure hunt."

The Court accordingly held that service by mere portal upload cannot be deemed sufficient unless its receipt is acknowledged or a reply is filed, in which case Section 160(2) protects the proceeding, since a defect in service cannot be raised once the notice has already been acted upon. On this basis, the Court laid down the following framework:

(i) Service of an SCN cannot be deemed sufficient merely because it was uploaded on the portal, unless its receipt is acknowledged or a reply is filed.

(ii) Where an SCN served only by portal upload results in an ex parte order for want of reply, the proceedings stand restored to the SCN stage, with four weeks granted to file a reply.

(iii) Where a contested order-in-original is served only by portal upload, the limitation period for filing an appeal is not triggered, and the assessee has a fresh four weeks to appeal.

(iv) Appeals already dismissed as time-barred, where the order-in-original was served only by portal upload, stand restored to their original numbers for hearing on merits.

(v) Where both the SCN and the resulting ex parte order were served only by portal upload and the subsequent appeal was dismissed for delay, both orders are set aside, and the matter is restored to the SCN stage.

The Court further applied the ratio established in the case of Taylor v. Taylor[27] and Khereshwar Mahadev Va Dauji Maharaj Samiti v. State of Uttar Pradesh[28], where it was observed that what a statute requires to be done in a particular manner must be done in that manner alone, the upload was held not to be an authorized mode of service. The Court further directed the Department to overhaul the portal's user interface by introducing prominent dashboard alerts, mandatory pop-up notifications, OTP-based acknowledgment of statutory communications, automated SMS alerts, and a dedicated section for statutory notices, so that the Common Portal genuinely functions as an instrument of communication rather than a procedural trap.

Luxmi Traders v. Union Territory of Chandigarh, Punjab & Haryana High Court, [TS-526-HC(P&H)-2026-GST]

d. ***Pre-deposit mis-recorded as "tax" in DRC-07 defeats the object of the appellate remedy; matter remitted to Appellate Authority instead of relegating Assessee to GSTAT***

The Orissa High Court considered a challenge to an Order-in-Appeal that had affirmed an adjudication order passed under Section 73 of the CGST/OGST Act

[27] *[(1875) 1 Ch.D 426]*
[28] *[2025 INSC 362]*

for FY 2017-18. On audit, the Assessee had reversed ITC availed on exempt supplies, and the adjudicating authority raised a demand confined to interest for delayed reversal, together with penalty and there was no disputed tax component. However, in Form GST DRC-07, the interest amount of Rs.1,87,093 was erroneously recorded under the head “Tax” instead of “Interest”. The Appellate Authority affirmed the adjudication order without correcting this error.

The Assessee argued that this misclassification prejudiced its statutory remedy of a further appeal to the GST Appellate Tribunal, since Section 112(8) mandates pre-deposit of a percentage of the “remaining amount of tax in dispute” and not interest or penalty. Since the DRC-07 showed the interest as “tax”, and rectification of the appellate order under Section 161 was by then time-barred, the online GSTAT filing system would have insisted on pre-deposit treating the interest component as tax, which the Revenue itself conceded.

It was observed that a pre-deposit under Section 112(8) is required only in respect of the remaining amount of tax in dispute and does not extend to interest or penalty. Since the Order-in-Appeal continued to reflect interest as tax, and the Appellate Authority was unable to rectify it, an appeal to the Tribunal would oblige the Assessee to deposit ten per cent of an interest component wrongly carried into the appellate order, which the Department conceded. Relegating the Assessee to that remedy would therefore not subserve justice. The Order-in-Appeal was set aside and the matter remitted to the Appellate Authority to decide the appeal afresh on merits, uninfluenced by the earlier order, after hearing the Assessee.

Magnum Estates (P.) Ltd. v. Additional Commissioner, GST (Appeals), Orissa High Court, [TS-537-HC(ORI)-2026-GST]

e. ***Where a works contract awarded under the VAT regime ran into the GST regime, the tax attributable to the change of regime is reimbursable with interest under Clause 43.2 of the General Conditions of Contract***

The Assessees, Sakthi Constructions, P & C Projects Private Limited and RPP Infra Projects Limited, responded to tenders floated in 2015 by the first respondent for the Integrated Storm Water Drainage work in Chennai. Their bids were accepted in October 2015, the contracts were awarded in September and December 2015, and the packages were completed between March 2018 and March 2019. Having opted to pay tax under Section 6(1)(I) of the Tamil Nadu Value Added Tax Act, 2006 read with Rule 8(5)(d) of the Rules of 2007, they discharged tax at two per cent of the contract value on the compounded basis until the GST enactments took effect. The Assessees sought reimbursement of the higher tax borne under the new regime, price adjustment under Clause 45 of the General Conditions of Contract and release of the retention amounts. The first respondent rejected those claims by orders dated 26 January 2024, 09 January 2024 and 25 January 2024, treating the price adjustment claims as an afterthought raised after completion and final billing, and withholding the retention amounts pending audit objections.

The issue before the Hon'ble Court was whether the Assessees were entitled to reimbursement of the tax attributable to the change from the VAT regime to the GST enactments, and whether their claims to price escalation and to the retention amounts could be granted in writ.

The Hon'ble Court began by setting out the two contractual provisions at the heart of the dispute — Clause 43 (Tax) and Clause 45 (Price Adjustment) of the GCC — along with the arbitration machinery in Clauses 23 and 24, which routes disputes first to an Adjudicator/Dispute Review Expert and then, if either side is dissatisfied, to arbitration. It then turned to G.O.Ms.No.296, Finance (Salaries) Department dated 09 October 2017, which the State Government had issued to deal precisely with this kind of situation: the shift from VAT to GST. That Government Order borrowed a principle from Section 64-A of the Sale of Goods Act, 1930, which allows a seller to pass on to the buyer any tax that is imposed or increased after a contract has already been signed. Clause 6 of the Government Order made this even clearer, stating that once GST is collected by a supplier, it is ultimately the purchaser who must bear that cost. Reading this Government Order alongside Clauses 43.1 and 43.2 of the GCC, the Hon'ble Court concluded that the Assessees were indeed entitled to be reimbursed for the extra tax burden that followed the rollout of the GST enactments from 1 July 2017 onward.

The Hon'ble Court reasoned that because the tenders were floated and bids accepted in 2015, the Assessees remained under the old VAT regime until 30 June 2017, after which the GST regime took over. This, the Court said, was exactly the situation Clause 43.2 was designed for: it required the Project Manager to adjust the Contract Price whenever taxes, duties or levies changed between the period when the bids were submitted and the date of the last Completion Certificate; the only condition being that such changes hadn't already been factored into the contract price. Since Clause 6 of the Government Order pointed the same way, the Court held that the tax differential had to be reimbursed to the Assessees along with interest.

The Court then took up a separate issue specific to RPP Infra Projects Limited, the retention amount that had been withheld under the impugned order dated 25 January 2024. The Department had justified this on two grounds: pending audit objections from the Accountant General, and the fact that RPP had raised its price-adjustment claims only from 27 July 2019 onwards, well after the work was already completed. The Hon'ble Court was not persuaded. It held that retention money should ordinarily be released back to a contractor unless the Department can point to a specific, concrete reason to withhold it against work actually executed and merely citing pending audit objections, without anything more, wasn't good enough.

Finally, on the question of Price Escalation and Price Adjustment under Clause 45, the Hon'ble Court declined to give any opinion at all, holding that this involved genuinely disputed questions of fact that a writ court wasn't the right forum to resolve. Instead, it left the Assessees free to pursue this claim through the dispute resolution route already built into the GCC.

The writ petitions were accordingly disposed of with three directions: the Department was to refund the tax component under Clause 43.2 along with interest at commercial rates; it was to refund the retention amounts, again with interest at commercial rates; and the Assessees were given liberty to separately pursue their Price Escalation/Price Adjustment claims under Clause 45 through the contractually prescribed remedy.

Sakthi Constructions v. Additional Chief Secretary/Commissioner, Chennai, Madras High Court, [TS(DB)-GST-HC(MAD)-2026-984]

f. Omission of Rule 96(10) Applies to Pending Proceedings; GST Council's Recommendation for Prospective Operation Is Advisory

The Assessee, Goodluck India Ltd., was one of many exporters claiming refund of IGST paid on goods and services exported out of India, which were pending consideration under Rule 96 of the CGST Rules, 2017. Sub-rule (10) of Rule 96 restricted such refunds where the exporter had received supplies after availing certain notified benefits. By Notification No. 20/2024-Central Tax, dated 8 October 2024, Rule 96(10) was omitted with effect from that date, following a recommendation of the 54th GST Council meeting held on 9 September 2024, which had suggested the omission take prospective effect since the rule was "leading to unnecessary complications without any intended benefit being served." No saving clause was inserted alongside the omission. Disputes arose over whether this omission would apply to refund proceedings already pending as on the date of omission, or only to fresh claims arising thereafter. The High Court held that the omission applied to all pending proceedings as of that date, meaning the restriction under Rule 96(10) would no longer bar refunds in cases still pending. Aggrieved by this, the Department approached the Hon'ble Supreme Court by way of appeal, while the Assessee had separately filed two Special Leave Petitions challenging the vires of Rule 96(10) itself — a challenge the High Court had declined to examine once it decided the omission covered all pending matters.

The issue before the Hon'ble Court was whether omission of Rule 96(10) of the CGST Rules, effected by Notification No. 20/2024-Central Tax, would benefit Assessees with pending IGST refund claims by freeing those claims from the restriction that sub-rule had earlier imposed.

The Hon'ble Court noted the Additional Solicitor General's fair submission that the GST Council's recommendation was only advisory and not binding, and examined the actual text of that recommendation, which described Rule 96(10) as causing needless complications without serving any real purpose, and had proposed omitting it along with Rules 89(4A) and 89(4B), prospectively. The Counsel for the respondents relied on the Constitution Bench decision in Kolhapur Canesugar Works Ltd. v. Union of India[29], where the Hon'ble Supreme Court had held that when a rule is simply omitted, as distinct from a statute being repealed, Section 6 of the General Clauses Act does not automatically preserve pending proceedings.

[29] (2000) 2 SCC 536 = 2000 (119) E.L.T. 257 (S.C.)

Continuation of such proceedings is possible only if the rule-making authority has expressly inserted a saving clause or created some other legal device (such as a deeming fiction) to keep the earlier rule alive for pending matters. Applying this principle, the Hon'ble Court observed that Rule 96(10) had been omitted precisely because it was causing unnecessary complications, and that no saving or sunset clause accompanied its omission. It reasoned that the GST Council's recommendation for prospective operation, being merely advisory, could not bind the rule-making authority, and that the deliberate choice to omit the rule without any saving provision reflected an intention to end the complications once and for all, not to let them persist for cases still pending. On this basis, the Hon'ble Court found no good reason to interfere with the High Court's well-reasoned judgment. Noting that similar disputes were pending before various High Courts with conflicting outcomes, the Hon'ble Court directed that copies of its order be sent to all High Courts so that pending matters on this issue could be brought to a close. The appeals were accordingly dismissed, and all pending applications stood disposed of.

Goodluck India Ltd. v. Union of India, Supreme Court, [TS-575-SC-2026-GST]

g. *Services rendered by an Advocate acting as an Insolvency Professional fall under the forward charge*

The Assessee, Kanwal Chaudhary, an Advocate enrolled with the Bar Council of Delhi, qualified for the Limited Insolvency Examination and was registered as an Insolvency Professional. By order dated 13 December 2018, the NCLT appointed him Interim Resolution Professional for the corporate debtor, and he raised invoices in August and October 2019 for his professional fee. When the successor called for GST compliant invoices, the Assessee replied that he was neither registered nor required to be registered, relying on Section 9(3) and (4) of the CGST Act, 2017 read with Notification No. 12/2017-Central Tax (Rate) and Notification No. 13/2017-Central Tax (Rate), both dated 28 June 2017. While directing payment of the balance fee of Rs. 49,04,988, the NCLT referred the GST question to the Insolvency and Bankruptcy Board of India. By order dated 9 March 2021, the IBBI held that insolvency and receivership services are not covered under RCM and directed the Assessee to furnish GST compliant invoices, which order was challenged.

The issue before the Hon'ble Court was whether GST on services rendered by an Advocate acting as an Insolvency Professional is payable under the forward charge mechanism or the reverse charge mechanism.

The Hon'ble Court held that Section 9(1) of the CGST Act, 2017 fastens the levy on the supplier as the taxable person, so the forward charge is the default rule and that the reverse charge under Section 9(3) operated only for notified categories. Notification No. 13/2017-Central Tax (Rate), as amended by the corrigendum dated 25 September 2017, applies the reverse charge to services provided by an individual advocate or a firm of advocates by way of legal services. Insolvency and receivership services are not notified, so the default rule governs them. Under the Scheme of Classification of Services, legal services fall under 99821 and are enumerated up to the residuary code 998219, whereas insolvency and receivership services are separately classified under code 998241, coordinate with legal services and not subordinate to them. The preface to the Scheme requires the most specific description to be preferred over the general, a principle affirmed in Moorco (India) Ltd. v. Collector of Customs[30] and CCT v. A.R. Thermosets (P.) Ltd.[31]. Insolvency Professionals form a distinct statutory class registered under Section 207 of the Insolvency and Bankruptcy Code, 2016 and discharging functions under Sections 17, 18 and 25, duties which was described in the matter of Swiss Ribbons (P.) Ltd. v. Union of India[32], as managerial, administrative and quasi-judicial. Further, Regulation 5(c) of the IBBI (Insolvency Professionals) Regulations, 2016 admits several qualifying routes, and of 4,558 registered professionals only 283 are advocates. The role in which a person acts, and not the underlying enrolment, determines the nature of the supply. The Advocates Act, 1961 and the IBC Code operate harmoniously, the latter opening a further stream of specialized service without subjecting it to the regime governing legal practice, a position the Bar Council of India affirmed by affidavit dated 6 September 2025. Thus, it was held that advocates acting as Insolvency Professionals must therefore register and issue GST compliant invoices under the forward charge, while legal services rendered in their capacity as Advocates continue under the reverse charge.

Kanwal Chaudhary v. Insolvency and Bankruptcy Board of India, Delhi High Court, [LSI-1241-HC-2026-(DEL)]

[30] [1994 (74) E.L.T. 5 (S.C.)]
[31] [TS-360-SC-2016-VAT]
[32] [LSI-18-SC-2019(NDEL)]

*h. **A grievance that the adjudicating authority ought to have called for further documents or considered the reply more fully goes to the correctness of the adjudication and not to natural justice, and does not justify bypassing the appeal under Section 107***

The Assessee, Sodexo India Services (P.) Ltd., challenged an Order-in-Original dated 24 March 2026 passed under Section 74 of the CGST Act, 2017, by which a demand of about Rs. 8.75 crores was confirmed with interest and penalty on 11 issues arising out of audit proceedings. The predominant component of the demand rested on the allegation that the supply of catering services and the sale of pre-packaged food products constitute a composite supply liable to GST at 18%. The Assessee participated in the audit, filed replies to the Audit Memo and the Additional Audit Memo with documentary evidence, agreements, invoices and reconciliations, responded to the SCN, and attended the personal hearings before the order came to be passed. The case in the writ petition was confined to the decision-making process. It was contended that if the adjudicating authority considered the material insufficient, it ought to have called upon the Assessee to furnish further documents or clarifications before determining the liability, and that its reply had not been adequately considered, the order having been passed mechanically.

The issue before the Hon'ble Court was whether the case fell within any of the recognised exceptions to the rule of alternative remedy, so as to justify invoking Article 226 of the Constitution despite the efficacious statutory appeal under Section 107.

The Hon'ble Court observed that the appellate remedy is a complete and comprehensive statutory mechanism, the Appellate Authority being vested with wide powers to examine questions of fact and law, reappreciate the material and determine the correctness of the order. Restraint in such matters rests not on any want of jurisdiction but on sound principles governing judicial discretion. Following the decision of the Court in the matter of Asstt. Commissioner of State Tax v. Commercial Steel Ltd.[33], it was observed that writ jurisdiction may be exercised where there is a breach of fundamental rights, a violation of natural justice, an excess of jurisdiction or a challenge to vires. The mere assertion of such a ground does not by itself justify bypassing the statutory remedy. On the record the Assessee had participated throughout and had placed its material before the authority, so this was not a case of denied opportunity. The proposition that an adjudicating authority must seek further documents before concluding could not be accepted as an inflexible requirement of natural justice; once adequate opportunity has been given, the authority adjudicates on the record before it. Whether the material was sufficient and whether the conclusions drawn are sustainable are matters touching the merits and lie within the province of the Appellate Authority. The impugned order had in fact noticed the reply, and any complaint about the adequacy of its consideration concerns the correctness of the adjudication rather than a jurisdictional infirmity. The petition was dismissed with liberty to appeal; the period of its pendency being excluded from limitation.

Sodexo India Services (P.) Ltd. v. Union of India, Delhi High Court, [TS-514-HC(DEL)-2026-GST]

II. Circulars & Notifications

a. Circular No. 256/02/2026-GST dated 25 July 2026

The CBIC has clarified the procedure for review and filing of departmental appeals before the Goods and Services Tax Appellate Tribunal (GSTAT) where the original adjudication order was passed by a Common Adjudicating Authority (CAA) in cases investigated by the Directorate General of GST Intelligence (DGGI). The clarification addresses the identity of the reviewing authority, the Commissionerate responsible for filing the appeal, and the GSTAT Bench before which the appeal is to be filed. The Circular lays down the following procedure - once the appellate authority passes an order-in-appeal in a CAA-originated case, it must upload the order on the common portal and send a copy, both by email and physically, to the Principal Commissioner/Commissioner of the CGST Commissionerate having jurisdiction over the CAA. That Commissioner must examine the order at the earliest, obtaining comments from the DGGI wherever necessary, and forward comments, inputs and recommendations to the jurisdictional Principal Commissioner/Commissioner of each taxable person or noticee covered by the underlying order-in-original.

The jurisdictional Commissioner of each such taxable person or noticee is clarified to be the "reviewing authority" under Section 112(3) of the CGST Act, 2017, and must examine the legality and propriety of the

[33] *[TS-482-SC-2021-GST]*

Order-in-Appeal in light of the comments received before deciding whether to direct an appeal. Where an appeal is warranted, a separate appeal must be filed for each taxable person or noticee, by the CGST Commissionerate having jurisdiction over that person, and the appeal must be filed before the GSTAT Bench having territorial jurisdiction over that person or noticee's location, not necessarily the Bench where the CAA's Commissionerate sits. After filing (or after deciding not to file), the jurisdictional Commissioner must intimate the Commissioner having jurisdiction over the CAA, enclosing a copy of the appeal where one has been filed. The stated objective is to create a uniform, coordinated appellate process among the appellate authority, the CAA's supervising Commissionerate, the DGGI, and the jurisdictional Commissionerates of the taxable persons concerned, and to ensure departmental appeals reach the legally competent territorial GSTAT Bench.

Notifications, Circulars & Instructions – Custom

III. Circulars

a. Circular No. 34/2026-Customs dated 30 July 2026

The CBIC has introduced an ECCS Refund Module to automate the filing and processing of refund applications relating to courier imports. The reform seeks to replace the existing manual process under section 27 of the Customs Act, 1962 with an electronic workflow through the Express Cargo Clearance System (ECCS).

The authorised couriers may file refund applications electronically along with supporting documents such as the Bill of Entry, Air Waybill, proof of duty payment, invoice, unjust enrichment certificate and NOC from the importer. A unique Refund Request Number (RRN) will be generated immediately and will serve as the reference for subsequent processing and tracking.

The Proper Officer is required to scrutinize the claim and communicate deficiencies within 10 days of generation of the RRN. Queries should, as far as possible, be consolidated rather than raised piecemeal. Once deficiencies are resolved, an acknowledgement number will be generated. Orders sanctioning or rejecting refunds, including examination of unjust enrichment, will be communicated electronically through ECCS.

b. Circular No. 35/2026-Customs dated 6 August 2026

CBIC has prescribed a uniform, technology-driven and risk-based Standard Operating Procedure for clearance of personal postal imports through Foreign Post Offices (FPOs) under the Postal Import Regulations, 2025. The FPO Import Application is operational at Bengaluru, Kochi, Mumbai FPO, APSO Mumbai, Kolkata, Ahmedabad, Chennai and Delhi and is integrated with the Risk Management System (RMS).

The Postal Authority is required to electronically present the list of postal articles arriving to the Proper Officer. Where Electronic Advance Data (EAD) is available, assessment may be undertaken before arrival on the basis of RMS instructions; otherwise, assessment follows presentation of the articles.

Physical examination is generally restricted to consignments selected by RMS or otherwise identified based on intelligence, regulatory requirements or discrepancies. Where additional information is required, a D-Call Letter is to be issued electronically, and queries should be specific, relevant and consolidated. If no response is received within 30 days, or the information is inadequate, the Proper Officer may proceed on the basis of the available declaration and information.

IV. Case Laws — Custom

a. Laser imager usable with diagnostic machines under two different tariff headings falls under the residual accessory heading, not under either machine's heading

The Assessee, Carestream Health India had imported 'Dryview 6850' laser imagers, dry-laser printers that interface with diagnostic machines such as MRI, CT and mammography equipment to print diagnostic images on film and classified them under CTH 9018 9019 as "other diagnostic instruments and apparatus". The Assistant Commissioner re-classified them under residual CTH 9033 0000 as accessories, a view affirmed by the Commissioner (Appeals) and CESTAT, resulting in a differential duty demand of Rs. 5,21,616.

The issue before the court was on the classification of the imported "Dryview 6850 Laser Imagers W/3D"-

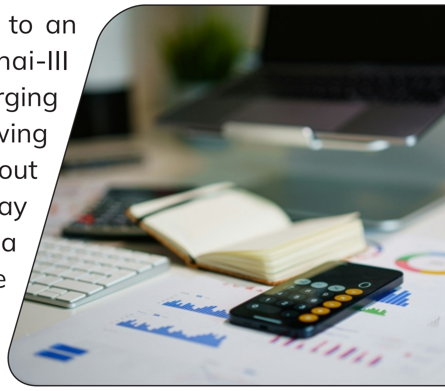
whether they fall under CTH 9018 90 19 (other diagnostic instruments and apparatus) as claimed by the importer, or the residuary CTH 9033 00 00 (parts and accessories of Chapter 90 machines not specified elsewhere) as classified by the Department.

The Hon'ble Supreme Court declined to treat the laser imager as a diagnostic apparatus in its own right. It has no diagnostic skill or capability and must receive inputs from diagnostic equipment before it can print, whereas CTH 9018 9019 applies only to diagnostic instruments or diagnostic apparatus. The Assessee had placed reference on the decision of the Hon'ble SC in the matter of Commissioner of Customs, New Delhi v. C-Net Communication (India) (Pvt.) Ltd.[34], wherein it was decided whether a signal decoder was a "reception apparatus for television" or "electrical machines/apparatus having individual functions." In that case, the Court applied a "function performed" test, since a television works even without a decoder, the decoder's function in relation to the TV had to be independently assessed. The Hon'ble Court distinguished this case on the ground that the laser imager neither aids nor augments the performance of the medical equipment feeding it, that equipment being complete in itself. It serves only the ancillary function of transferring diagnostic data onto film. On Note 2(b) to Chapter 90, an accessory is classified with a machine only where it is suitable solely or principally for a particular kind of machine or for machines of the same tariff heading. The imagers were compatible with equipment under CTH 9018 as well as under CTH 9022, headings then carrying different rates of duty, so clubbing them with either single heading defied logic. Note 2(c) therefore applied and the goods fell under the residuary CTH 9033 0000. Thus, the appeal was dismissed.

M/s. Carestream Health India Pvt. Ltd. v. Commissioner of Customs, Supreme Court of India, [TS-259-SC-2026-CUST]

b. Currency seized as evidence in economic offences is a "thing" under Section 110(3), not confiscable goods under Section 110(1) and the six-month limit under Section 110(2)'s does not apply

The Special Intelligence and Investigation Branch, Chennai received a report in April 2024 concerning misuse of the DGFT Amnesty Scheme for one-time settlement of default in export obligation. Investigation revealed that entries in the EODC section register had been forged to show that the Department had reconciled documents and closed cases. A representative of one importer disclosed payment of Rs. 50 lakhs as a bribe to an Appraiser of the Chennai-III Commissionerate for forging letters to the DGFT showing challan payments of about Rs. 1.66 crores. On 8 May 2024, the premises of a shop owned by the Assessee, Vikram Jain, were searched, his father and another person being found to control it and to act as hawala conduits for the Appraiser. Cash of Rs. 21,55,000 was seized on a reasonable belief that it represented unaccounted money earned through illegal gratification. The Assessee challenged the seizure by writ petition, contending that no show cause notice had been issued within six months. The learned Single Judge, applying Section 110(1) read with Section 110(2) of the Customs Act, 1962, directed refund of the cash, and the Department preferred an intra-court appeal.



The issue before the Hon'ble Court was whether currency seized during an investigation into fraudulent claims under the Amnesty Scheme was goods under Section 110(1), requiring release for want of notice under Section 110(2), and whether release could be directed in writ while the investigation continued.

The Hon'ble Court held that Section 110 distinguishes between two situations. Sub-section (1) permits seizure of goods liable to confiscation and is subject to sub-section (2), which requires release where no notice under Section 124(a) issues within six months, extendable by a further six months. Sub-section (3) permits seizure of documents or things useful or relevant to any proceeding under the Act and prescribes no time limit, such material being retainable for the duration of the proceedings. Currency answers the description of goods only where it is itself the subject matter of the customs violation. Where a proper officer, while exercising powers under Section 110, comes upon incriminating material connected with other violations, that material is a "thing" under sub-section (3). Here the currency was seized while investigating a bribe taken by a departmental Appraiser, on a reasonable belief that it formed part of hawala transactions. The investigation disclosed possible offences under the Income Tax Act, the Prevention of Corruption Act and the Prevention of Money Laundering Act. Ordering release before the investigation concluded would pre-conclude and foreclose the investigation of a grave economic offence. The order of the learned Single Judge was set aside,

[34] *(2007) 12 SCC 72*

and the Department was directed to deposit the seized currency in an interest-earning scheme with a nationalized bank until the investigation is complete.

Principal Commissioner of Customs, Chennai v. Shri Vikram Jain,0020Madras High Court, [TS-262-HC-2026(MAD)-CUST]

c. ***Period during which the Interim Board for Settlement lacks quorum must be excluded while computing the statutory time limit for disposal of settlement applications under Section 127C***

The Assessee was engaged in the import of components used in the manufacture of cellular mobile phones. Following an investigation by the DRI, two SCNs were issued. The first alleged wrongful availment of Notification No. 57/2017-Customs with incorrect classification for May 2019 to September 2021. The second alleged non-payment of differential duty on unutilized or rejected goods under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. The Assessee filed settlement applications under Section 127B of the Customs Act, 1962. On the amendment of Chapter XIVA by the Finance Act, 2025 they stood transferred to the Interim Board for Settlement-I, Delhi. The Board heard the parties and reserved the matters for orders. Before orders were pronounced, a Member retired, and from 1 October 2025, the Board lacked the requisite quorum. No steps were taken to reconstitute it, and by communications dated 17 April 2026 the settlement proceedings were treated as having abated under Section 127C(12).

The issue before the Hon'ble Court was whether the period during which the Interim Board lacked quorum and was incapable of exercising jurisdiction must be excluded in computing the time limit for disposal of settlement applications under Section 127C(8A) as extended by Section 127C(12).

The Hon'ble Court held that the settlement framework and its timelines must be read as a whole and consistently with the object of expeditious and effective settlement. The prescribed period necessarily assumes the continued existence of a duly constituted Interim Board capable of performing its adjudicatory function. A case in which applicant delays are not comparable to one in which the forum itself cannot decide for want of the legally required quorum, and treating both alike would make a statutory remedy depend on administrative contingencies wholly beyond the applicant's control, producing an arbitrary and unworkable result. In the present case, the Assessee had completed every step required of it and the proceedings had been heard and reserved before the Board became non-functional. The Hon'ble Court accordingly set aside the communications dated 17 April 2026 and declared that the entire period from 1 October 2025, when the Board became incapable of functioning, until the date of judgment stands excluded in computing the period under Section 127C(8A) as extended by Section 127C(12). The proceedings were held not to have abated. The Interim Board, now duly constituted, was directed to take up the applications from the stage at which they stood immediately before the impugned communications and decide them expeditiously, the Hon'ble Court expressing no opinion on the merits and leaving all questions open.

Holitech India Private Limited v. Union of India, Delhi High Court, [TS-256-HC-2026(DEL)-CUST]

d. ***Fire-damaged cars that have lost their commercial identity as vehicles are scrap, not restricted motor vehicles, and a vessel merely berthing at a notified ship-breaking yard does not amount to "unloading" under the Customs Act***

The Assessee, ITC Global Holdings Pvt. Ltd., was concerned with a consignment of automobiles that had been extensively damaged by fire on board a vessel. The cars had lost their commercial identity and utility as vehicles and could not be removed without breaking up the vessel, and the salvage and sale arrangements restricted the cargo to scrap, or demolition use while prohibiting its use as spare parts. The vessel was brought to the Alang ship-breaking area, the cargo remaining on board and being physically removed only after seizure during ship-breaking. The Commissioner of Customs treated the goods as commercial and passenger automobile vehicles falling within the Negative List of Imports under paragraph 156 of the Import and Export Policy, 1992-97. He ordered confiscation of the cargo under Sections 111(d) and 111(h) of the Customs Act, 1962 and of the vessel under Section 115(2), and imposed penalties. The CESTAT set aside those orders on findings of fact, aggrieved the Revenue appealed before the Hon'ble

Court.

The issue before the Hon'ble Court was whether the fire-damaged automobiles required an import licence, and were liable to confiscation as prohibited goods, and whether bringing the vessel to Alang, amounted to unloading in contravention of the Customs Act.

The Hon'ble Court proceeded on the unchallenged findings of fact recorded by CESTAT and on the salvage agreement, under which the burnt cars were to be treated as scrap alone. On that footing the cars could not by any stretch be regarded as commercial and passenger automobile vehicles so as to fall within Serial No. 3 of Part J of the Negative List. Nor could they be treated as second-hand goods capable of use as cars under Chapter V of the Import Policy. Goods that have lost their commercial identity through complete damage are to be assessed according to their resultant character, so the licensing restriction did not apply, and Section 111(d) was not attracted. On the second question, unloading under Sections 33 and 34 requires physical removal of cargo from the vessel, and berthing or bringing a vessel into port is a distinct act. In the present case, the cargo remained on board when the vessel entered and was brought alongside, and Talaja had been notified as a customs port under Section 7 by Notification No. 3 of 1993, with the Alang foreshore notified for ship-breaking, so no permission was required merely for the vessel to enter. Further, confiscation under Section 111(h) and of the vessel under Section 115(2), and the consequential penalties, could not be sustained. The questions were answered in favour of the Assessee, the question on a reference under Section 130(1) being academic and left unanswered.

Commissioner Of Customs (Preventive) v. ITC Global Holdings Pvt. Ltd., High Court of Gujarat, decided on 5 August 2026

IV. REGULATORY UPDATES

1. *Income Recognition in case of acquisition of Specified Non-Financial Assets (SNFA)*

Circular / Notification	RBI/2026-27/197; DOR.STR.REC.162/21-04-048/2026-27
Issue Date	16 July, 2026
Last Update on	16 July 2026

RBI has amended the Income Recognition, Asset Classification and Provisioning Directions for NBFCs in relation to acquisition of Specified Non-Financial Assets (SNFA). Any accrued but unrealised interest and/or charges relating to the extinguished exposure for periods prior to acquisition of an SNFA shall not be recognised as income upon acquisition. Where such income has already been recognised in respect of an SNFA outstanding as on September 30, 2026, the unrealised portion is required to be reversed through the Profit and Loss account by September 30, 2027. Further, income received from an SNFA is to be recognised as 'non-interest / other income' in the year in which it is realised, while expenses towards upkeep of an SNFA are to be recognised in the year in which they are incurred. The amendment comes into force from October 1, 2026.

2. *Supervisory Returns Directions, 2026*

Circular / Notification	RBI/DoS/2026-27/466; DoS.CO.DSG.60/33.01.001/2026-27
Issue Date	31 July, 2026
Last Update on	31 July, 2026
Effective date	31 July, 2026

RBI has issued comprehensive directions governing supervisory returns applicable to NBFCs across all layers, unless otherwise specified. NBFCs are required to submit applicable returns with accurate, complete and reconciled information within prescribed timelines and maintain records of the data sources and aggregation rules used for preparing such returns. The framework covers returns including DNBS01, DNBS02, DNBS03 and other specialised returns, with additional reporting requirements depending on the category and layer of the NBFC. The directions also strengthen Board and Senior Management oversight over data quality, data aggregation, IT infrastructure and reporting controls. DNBS10 – Statutory Auditor's Certificate is required to be filed annually through CIMS, with the NBFC enabling the auditor to file it within five working days of signing the audit report and in any event by December 31 of the relevant year.

3. *Cybersecurity, Technology: Risk, Resilience and Assurance Framework*

Circular / Notification	RBI/DoS/2026-27/461; DoS.CO.CSITEG.55/31.01.015/ 2026-27
Issue Date	31 July, 2026
Last Update on	31 July, 2026
Effective date	31 July, 2026

RBI has introduced a comprehensive cybersecurity and technology framework for NBFCs, with requirements differentiated by layer and asset size. The framework requires appropriate Board-approved information security policies, identification and classification of information assets, segregation of duties, role-based access controls, maker-checker controls and incident management processes. NBFCs are required to maintain effective Business Continuity Planning and Disaster Recovery capabilities, periodically test such arrangements and preserve the integrity and security of backups. Cyber incidents are required to be reported to RBI within six hours of detection through the DAKSH platform, along with proactive notification to CERT-In. The framework therefore has significant implications for IT governance, cybersecurity controls, vendor resilience, incident response and Board-level oversight.

4. *Compliance Function Directions, 2026*

Circular / Notification	RBI/DoS/2026-27/460; DoS.CO.PPG.54/11.01.005/ 2026-27
Issue Date	31 July, 2026
Last Update on	31 July, 2026
Effective date	31 July, 2026

RBI has prescribed a strengthened Compliance Function framework for NBFCs in the Middle and Upper Layers. The Board / Audit Committee is required to ensure that an appropriate Compliance Policy is established and implemented, while Senior Management must undertake an annual compliance risk assessment and prepare a plan for managing identified risks. The Compliance Function is required to remain independent, adequately staffed and responsible for overall compliance oversight, including compliance testing, monitoring of regulatory changes and time-bound implementation of RBI inspection and supervisory observations. The Chief Compliance Officer (CCO) is required to head the Compliance Department, have appropriate reporting lines to the MD & CEO and/or Board / ACB, and be appointed for a fixed minimum tenure of three years in accordance with the prescribed framework.

5. *Miscellaneous Supervisory Directions, 2026*

Circular / Notification	RBI/DoS/2026-27/467; DoS.CO.PPG.61/11.01.005/ 2026-27
Issue Date	31 July, 2026
Last Update on	31 July, 2026
Effective date	31 July, 2026

RBI has issued miscellaneous supervisory directions applicable to NBFCs across layers, covering Core Financial Services Solution (CFSS), fair practices in charging of interest, nomination facilities and the Prompt Corrective Action framework. NBFCs in the Upper and Middle Layers having 10 or more fixed point service delivery units are required to implement CFSS and submit quarterly progress reports to RBI. NBFCs must review loan disbursal, interest and EMI charging practices and correct unfair practices, including through system-level changes. Deposit-taking NBFCs are required to obtain nomination for eligible deposit accounts and report nomination coverage quarterly. The Directions also provide a framework for timely supervisory intervention and remedial measures under the PCA framework.

6. *Auditor's Report Directions, 2026*

Circular / Notification	RBI/DoS/2026-27/468; DoS.CO.ARG.62/08.91.001/ 2026-27
Issue Date	31 July, 2026
Last Update on	31 July, 2026
Effective date	31 July, 2026

RBI has issued revised Auditor's Report Directions applicable to auditors of NBFCs, requiring a separate report to the Board of Directors in addition to the report under Section 143 of the Companies Act, 2013. The report covers, among other matters, the validity of the Certificate of Registration, Principal Business Criteria, Net Owned Fund, capital adequacy, income recognition, asset classification, provisioning, liquid assets and applicable RBI returns. The auditor is also required to report unfavourable or qualified findings with reasons. Where the auditor identifies specified non-compliance with the RBI Act or applicable RBI Directions, an Exception Report is required to be submitted to the concerned Senior Supervisory Manager / Regional Office of RBI. This increases the importance of maintaining robust evidence of compliance across prudential, reporting and governance requirements.

7. Statutory Audit Directions, 2026

Circular / Notification	RBI Notification dated 31 July 2026 – Statutory Audit Directions, 2026 (Notification ID 13588)
Issue Date	31 July, 2026
Last Update on	31 July, 2026
Effective date	31 July, 2026

RBI has introduced revised requirements relating to appointment and reappointment of Statutory Central Auditors / Statutory Auditors of NBFCs, subject to the prescribed applicability provisions. The Board is required to determine the number of auditors based on a Board-approved policy, while the Audit Committee is required to oversee auditor independence, conflict-of-interest matters and annual performance review. NBFCs with an asset size of ₹15,000 crore and above at the end of the previous year are required to have a joint statutory audit by at least two audit firms. Auditors are generally appointed for a continuous period of three years, with a six-year cooling-off period for reappointment in the same NBFC after completion of tenure. The NBFC is also required to shortlist at least two audit firms for each vacancy and submit the prescribed intimation / certificate to RBI within one month of appointment.

8. Responsible Business Conduct – Recovery Agents and Recovery Agencies

Circular / Notification	: RBI/2026-27/230; DOR.MCS.REC.No.199/ 01-01-039/2026-27
Issue Date	06 August, 2026
Last Update on	06 August, 2026
Effective date	01 January, 2027

RBI has comprehensively revised the framework governing recovery of loan dues and engagement of recovery agencies by specified NBFCs having customer interface. The amended framework will come into effect from January 1, 2027 and requires an NBFC to maintain a Board-approved collection / recovery policy covering recovery triggers, escalation mechanisms, code of conduct, financial-distress cases, due diligence and monitoring of recovery agencies. Antecedent verification of recovery agents is required before engagement and periodically thereafter, and recovery agents must obtain the prescribed IIBF certification / training. Recovery practices must comply with prescribed conduct standards; abusive or threatening communication, excessive calls, public humiliation, privacy intrusion and misleading representations are prohibited. Recovery calls / visits are generally restricted to 8:00 a.m. to 7:00 p.m., subject to specified exceptions. Additional safeguards apply where technology-based mobile-device restrictions are used for recovery, including restrictions on accessing personal data such as contacts, SMS, call logs, photos and location history.

V. COMPLIANCE CALENDAR FOR SEPTEMBER 2026

A. Income tax

Sr No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	7th Sept	August 2026	TDS / TCS Payment	Non-Government Deductors
02	15th Sept	Qtr. 2 (Tax Year 2026-27)	Advance tax payment	All deductors
03	30th Sept	FY 2025-26	Filing the Income Tax Audit Report (other than Transfer pricing audit)	For All taxpayers to whom tax audit is applicable

B. Goods and Service Tax

Sr. No.	Due Dates	Concerned (reporting) Period	Compliance Detail	Applicable to
01	10th Sept	August 2026	GSTR – 7 (TDS)	Person required to deduct TDS under GST
02	10th Sept	August 2026	GSTR – 8 (TCS)	Person required to collect TCS under GST
03	11th Sept	June 2026	GSTR 1	a) Taxable persons having annual turnover > INR 5 crores in FY 2024-25 b) Taxable persons having annual turnover ≤ INR 5 crores in FY 2024-25 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
04	13th Oct	July- September 2026	GSTR 1 IFF	Persons with turnover less than INR 5 Crores during the preceding year and who have opted for QRMP scheme.
05	13th Sept	August 2026	GSTR - 5 (NRTP)	Non-resident taxable person (NRTP)
06	13th Sept	August-2026	GSTR – 6 (ISD)	Person registered as ISD
07	20th Sept	August-2026	GSTR – 3B	a) Taxable persons having annual turnover > INR 5 crores in FY 2024-25 b) Taxable persons having annual turnover ≤ INR 5 crores in FY 2024-25 and not opted for QRMP scheme
08	20th Sept	August-2026	GSTR - 5A (OIDAR)	OIDAR services provider
09	22nd/ 24th Oct	July- September 2026	GSTR – 3B	Quarterly return for persons who have opted for QRMP scheme

GLOSSARY

ABBREVIATION	FULL FORM
Act	Income-Tax Act, 1961
AE	Associated Enterprise
ALP	Arm's Length Price
AMP	Advertising, Marketing and Promotion
AO	Assessing Officer
AY	Assessment Year
CAA	Common Adjudicating Authority
CBDT	Central Board Of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CCO	Chief Compliance Officer
CERT-In	Indian Computer Emergency Response Team
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CFSS	Core Financial Services Solution
CGAS	Capital Gain Account Scheme
CGST	Central Goods And Service Tax
CIF	Cost, Insurance, and Freight
CIT	Commissioner Of Income-Tax
CIT(Appeals) / CIT(A)	Commissioner Of Income-Tax (Appeals)
CIMS	Centralised Information Management System.
CUP	Comparable Uncontrolled Price
CTH	Customs Tariff Heading
DDIT	Deputy Director of Income Tax
DGGI	Directorate General of GST Intelligence
DGFT	Directorate General of Foreign Trade
DRI	Directorate of Revenue Intelligence
DRP	Dispute Resolution Panel
DNBS	Department of Non-Banking Supervision
DTAA	Double Taxation Avoidance Agreement
EAD	Electronic Advance Data
ECCS	Express Cargo Clearance System
EODC	Export Obligation Discharge Certificate
FTS	Fees for Technical Services.
FOB	Free on Board
FPO	Foreign Post Offices
FY	Financial Year
GCC	Global Capability Centre
GST	Goods & Services Tax

GLOSSARY

ABBREVIATION	FULL FORM
GSTAT	Goods and Services Tax Appellate Tribunal
GSTIN	Goods and Services Tax Identification Number
GP	Gross Profit
GSTR	Goods and Services Tax Return
HC	High Court
Hon'ble	Honourable
IIBF	Indian Institute of Banking & Finance
IBBI	Insolvency and Bankruptcy Board of India
ITC	Input Tax Credit
IBC	Insolvency and Bankruptcy Code
IGST	Integrated Goods and Services Tax
INR	Indian Rupee
ISD	Input Service Distributor
ITAT	Income Tax Appellate Tribunal
ITO	Income Tax Official
JAO	Jurisdictional Assessing Officer
LLP	Limited Liability Partnership
MAM	Most Appropriate Method
MAP	Mutual Agreement Procedure
NBFC	Non-Banking Financial Company
NCLT	National Company Law Tribunal
NFAC	National Faceless Assessment Centre
NOC	No Objection Certificate
NRTP	Non-resident taxable person
OC	Operating Cost
OGST	Odisha Goods and Services Tax.
OIDAR	Online Information and Database Access or Retrieval
OP	Operating Profit
PCA	Prompt Corrective Action
PE	Permanent Establishment
PLI	Profit Level Indicator
QRMP	Quarterly Return Monthly Payment
RBI	Reserve Bank of India
RPM	Resale Price Method
ROI	Return Of Income
RERA	Real Estate (Regulation and Development) Act, 2016
RMS	Risk Management System

GLOSSARY

ABBREVIATION	FULL FORM
RRN	Refund Request Number
SAAS	Software as a Service
SC	Supreme Court
SCN	Show Cause Notice
SNFA	Specified Non-Financial Assets
TAR	Tax Audit Report
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
TPSR	Transfer Pricing Study Report
TNMM	Transactional Net Margin Method
TP	Transfer Pricing
TPO	Transfer Pricing Officer
VAT	Value Added Tax

BHUTA SHAH & CO LLP
CHARTERED ACCOUNTANTS

About us

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

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

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

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