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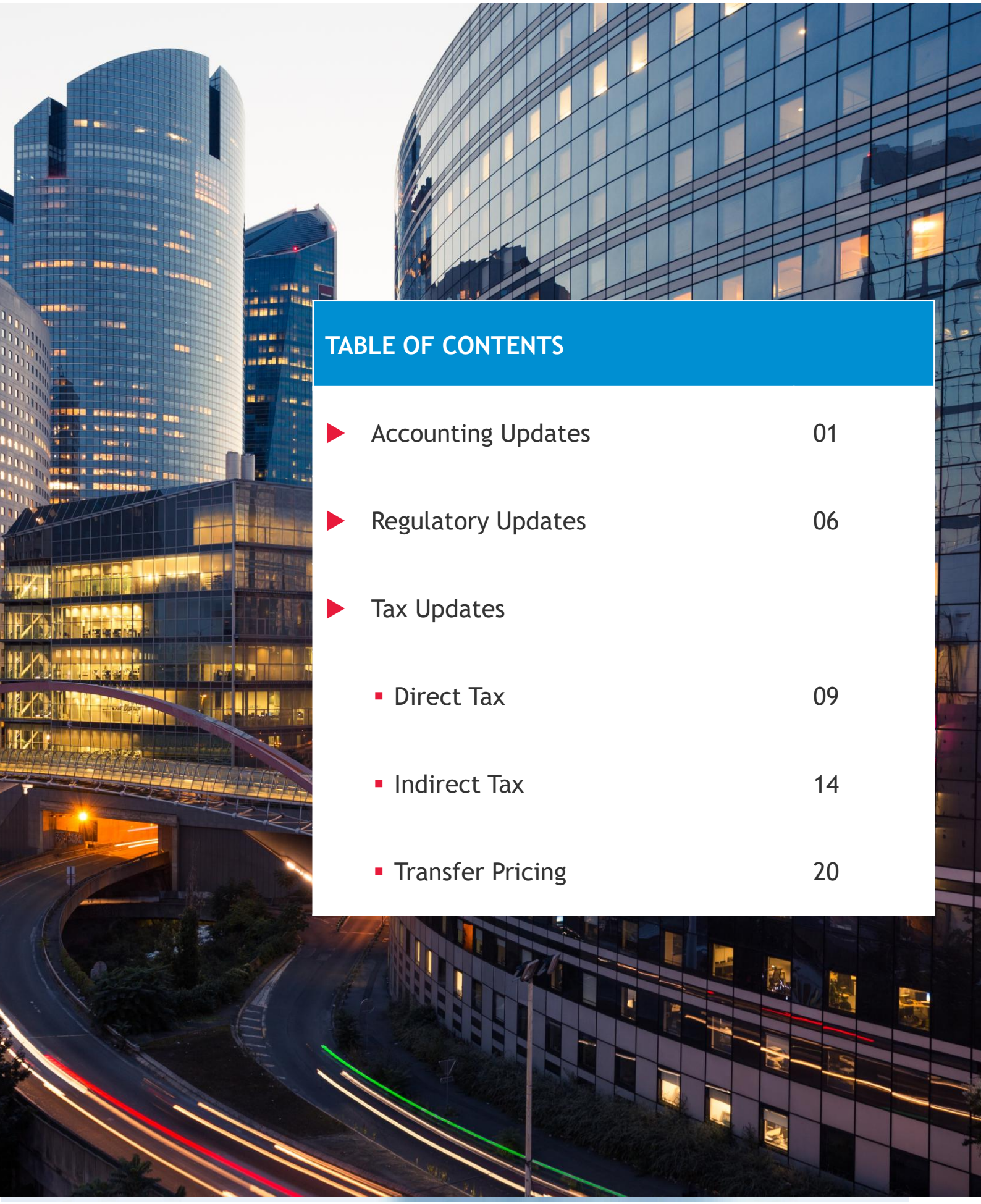

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ACCOUNTING UPDATES

The Institute of Chartered Accountants of India (ICAI):

Accounting Treatment under Ind AS 37 for Extended Producer Responsibility (EPR) for End of Life of Vehicles for Original Equipment Manufacturer (OEM) under Ind AS framework

ABC Limited is a listed company engaged in manufacturing and sale of automotive vehicles and prepares its financial statements in accordance with Ind AS. Pursuant to the notification of Environment Protection (End-of-Life Vehicles) Rules, 2025 effective April 1, 2025, the Company, being an Original Equipment Manufacturer (OEM), is required to fulfil Extended Producer Responsibility (EPR) obligations. These obligations require the Company to meet specified scrapping targets based on vehicles sold in past years (15 years for transport vehicles and 20 years for non-transport vehicles) by purchasing EPR certificates or through registered scrapping facilities.

The Company was of the view that since the obligation arises due to enactment of law and involves uncertainty in measurement and timing, the same should be recognised as a provision under Ind AS 37. Further, it was considered that this would result in recognition of cumulative liability for all past sales immediately on enactment of the law, leading to a significant one-time impact on profits. Accordingly, the matter was referred to the EAC to determine the obligating event, the appropriate accounting treatment for past vehicle sales, and whether such liability should be recognised through profit and loss or adjusted against retained earnings.

The Committee noted that although the obligation arises from legislation, the obligating event under Ind AS 37 is not the enactment of law itself but the past sale of vehicles, which triggers a legal obligation once the rules become effective. Further, since the Company has no realistic alternative but to settle the obligation and the requirement persists even if operations are discontinued, the obligation qualifies as a present liability. The Committee also observed that the outflow of resources is probable and a reliable estimate can be made, thereby meeting the criteria for recognition of a provision.

Accordingly, the EAC opined that the Company should recognise a provision for the EPR obligation in respect of all past vehicle sales at the time the ELV Rules come into effect. The entire amount of such provision should be charged to the Statement of Profit and Loss in the period of recognition and should not be adjusted against retained earnings.

Accounting for change in the measurement technique of Expected Credit Loss on financial assets under Ind AS framework

The Company is engaged in engineering consultancy and small construction projects and has been preparing its financial statements under Ind AS since FY 2017-18. For estimating Expected Credit Loss (ECL) on trade receivables, the Company was earlier using an internal grid matrix approach based on ageing buckets with predefined loss percentages. The Company now proposes to shift to a more scientific actuarial valuation approach, which incorporates probability-weighted outcomes, time value of money, forward-looking information, and statistical modelling techniques such as regression analysis.

The Company contended that this transition represents a change in measurement basis and therefore qualifies as a change in accounting policy under Ind AS 8, requiring retrospective application with adjustment to prior period comparatives and opening equity. Accordingly, the matter was referred to the EAC to determine whether such change should be treated as a change in accounting policy or otherwise.

The Committee noted that under Ind AS 8, ECL is an accounting estimate and measurement techniques (such as grid matrix or actuarial models) are methods used to arrive at that estimate. A change in such techniques or inputs used for estimation is treated as a change in accounting estimate rather than a change in accounting policy, unless the earlier method was non-compliant with Ind AS. Further, the Committee emphasised that a change in measurement technique does not constitute a change in measurement basis.

Accordingly, the EAC opined that the transition from the internal grid matrix approach to an actuarial valuation method represents a change in accounting estimate and not a change in accounting policy. Therefore, the impact of such change should be recognised prospectively in the Statement of Profit and Loss in the period of change and in future periods, and retrospective restatement is not required unless the earlier method is found to be erroneous or non-compliant with Ind AS.

Appropriateness of considering Employees' Family Benefit Scheme as Defined Benefit Scheme as per Ind AS 19

The Company, a listed Mini Ratna Category-I entity engaged primarily in e-commerce and trading activities, operates an Employees' Family Benefit Scheme (EFBS) under which, in case of death or permanent disability of an employee during service, the nominee or employee is entitled to receive monthly payments equivalent to the last drawn basic salary and dearness allowance up to the notional retirement date. This benefit is subject to the condition that the nominee or employee deposits the entire provident fund and gratuity amount with the Company, and the scheme remains optional in nature.The Company was of the view that the EFBS should not be classified as a defined benefit plan under Ind AS 19, primarily because the scheme is optional, the benefit is contingent upon specific events such as death or disability, and benefits are extended to nominees rather than directly to current or former employees. Accordingly, the matter was referred to the EAC to determine the appropriate classification of the scheme.

The Committee noted that under Ind AS 19, employee benefits include not only payments to employees but also to their dependents or beneficiaries. Further, the benefits under EFBS are not payable post-employment but arise during the course of employment upon the occurrence of specified events such as death or disability. Therefore, such benefits do not qualify as post-employment benefits. Instead, considering that Ind AS 19 specifically includes long-term disability benefits and, by analogy, death-in-service benefits under other long-term employee benefits, the Committee viewed EFBS as falling within this category.

The Committee also observed that since the benefit amount does not depend on length of service but is based on last drawn salary, the obligation arises only upon occurrence of the triggering event, i.e., death or disability. Accordingly, the expected cost of such benefits should be recognised when the event occurs, in line with paragraph 157 of Ind AS 19.

Based on the above, the EAC opined that EFBS should be classified as an 'other long-term employee benefit' and not as a defined benefit plan. Therefore, the classification as a defined benefit scheme is not relevant in this case.

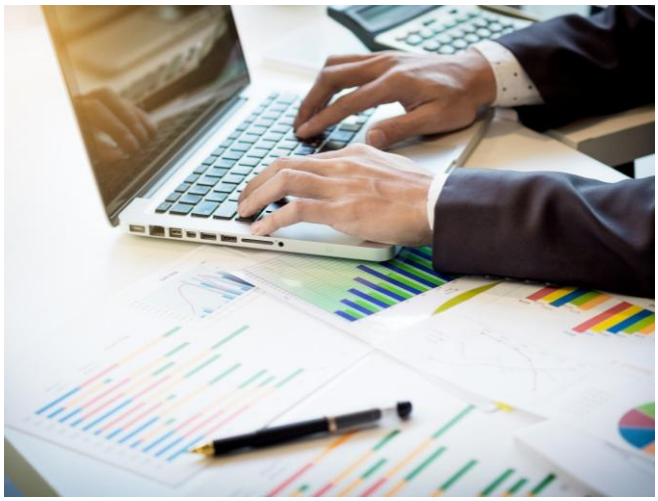
Accounting treatment of construction costs incurred on residential quarters built on land owned by MoR under Ind AS framework

The Company, a public sector undertaking established as a project implementation agency for Mumbai Urban Transport Projects, constructed residential quarters on land owned by the Ministry of Railways using its own funds. As per the arrangement, 50% of the constructed quarters were licensed to the Company for a period of 30 years at nominal rent, while the remaining 50% were retained by Railways. Although the Company capitalised the entire construction cost as Property, Plant and Equipment (PPE) and amortised it over the lease period, the Comptroller and Auditor General (CAG) raised objections stating that these assets legally belong to the Railways and therefore should not be recognised as PPE in the Company's books.

The Company justified its accounting treatment on the basis that it derived economic benefits from the leased portion of the quarters and had exclusive usage rights for a defined period. Accordingly, the matter was referred to the EAC to determine whether such capitalisation is appropriate under Ind AS. The Committee noted that the Company neither holds ownership nor control over the constructed quarters, as both land and structures legally belong to the Railways. Instead, the Company receives only the right to use a portion of the quarters for a specified period. Based on the terms of the arrangement, including exclusive use, identified assets, and absence of substantive substitution rights, the Committee concluded that the arrangement qualifies as a lease under Ind AS 116.

Further, the Committee analysed the nature of construction costs incurred and observed two scenarios: in some cases, the Company merely funded construction, while in others it provided construction services to the Railways in exchange for usage rights. Accordingly, such costs are either treated as lease prepayments or as consideration for services under Ind AS 115, depending on the nature of the transaction.

Based on the above, the EAC opined that capitalising the construction cost as PPE is not appropriate. Instead, the Company should recognise a right-of-use (ROU) asset and corresponding lease liability at the commencement of the lease under Ind AS 116. The ROU asset should then be amortised over the lease term or useful life, whichever is earlier, and presented appropriately in the financial statements.



REGULATORY UPDATES

The Institute of Chartered Accountants of India (ICAI):

Revised Code of Ethics (13th edition)

ICAI has issued an announcement regarding the applicability of the revised Code of Ethics (13th Edition). The revised Code of Ethics (13th edition)- Volume-I, II & III is applicable with effect from 01 April 2026, except for the s.no. (xxxi).

The s.no. (xxxi) "Assessment and evaluation of Social Impact, CSR Impact, Business Responsibility and Sustainability Reporting, and the like" of Management Consultancy and other services issued under Section 2(2)(iv) of the Chartered Accountants Act, 1949 in Code of Ethics, Volume-I is effective from 11 December 2025.

Ministry of Labour & Employment:

The Code on Wages (Central) Rules, 2026

The Occupational Safety Health and Working Conditions (Central) Rules 2026

The Industrial Relations (Central) Rules, 2026

The Social Security (Central) Rules, 2026

The Central Government has now notified the final Central Rules under all four Labour Codes on 8 May 2026, namely the Code on Wages (Central) Rules, 2026, Social Security (Central) Rules, 2026, Occupational Safety, Health and Working Conditions (Central) Rules, 2026 and Industrial Relations (Central) Rules, 2026, marking a critical shift from policy formulation to operational compliance. These Rules provide further clarity on key aspects, such as wages, social security, contract labour, working conditions, standing orders, and workforce reskilling obligations. The notifications shall come into force on the date of their publication in the Official Gazette. Key highlights include:

- Standard working hours have been defined as 8 hours per day and 48 hours per week, with employees entitled to one mandatory weekly rest day and double overtime wages for work on rest days.
- Minimum wages will be calculated on a daily basis and standardised into hourly and monthly rates.
- Variable Dearness Allowance (VDA) will be revised twice every year, before April and October, and will continue to remain linked to the Consumer Price Index (CPI).
- To receive social security benefits, a gig worker must work at least 90 days in a financial year with one aggregator/platform. If working with multiple platforms, the worker must complete 120 days combined.
- Wage deductions are capped at 50% of wages, with clear rules for fines, absenteeism, and loss recovery, while wage slips must be issued in digital or physical form before or at payment.
- Employers must maintain employee, wage, deduction, and attendance records for five years, with a strong push toward digital compliance through electronic registers, notices, claims, and appeals.
- The rules strengthen employee protection by making principal employers liable for unpaid wages and bonuses of contract/ gig workers, defining minimum (8.33%) and maximum (20%) bonus limits, and introducing a time-bound grievance and appeals mechanism.

Reserve Bank of India ('RBI'):

Reserve Bank of India (Commercial Banks - Prudential Norms on Capital Adequacy) Fifth Amendment Directions, 2026

Reserve Bank of India (Payments Banks - Prudential Norms on Capital Adequacy) Second Amendment Directions, 2026

Reserve Bank of India (Small Finance Banks - Prudential Norms on Capital Adequacy) Fourth Amendment Directions, 2026

RBI has issued Directions on Prudential Norms on Capital Adequacy amending the framework relating to the inclusion of quarterly profits in Common Equity Tier 1 (CET1) capital for CRAR calculation by Commercial Banks, Payments Banks and Small Finance Banks, respectively.

Operating framework for facilitating Outward Remittance services by non-bank entities through Authorised Dealer (Category I) banks in India

RBI has issued a circular dated 13 May 2026, updating Master Direction - Miscellaneous by omitting Paragraph 10. Paragraph 10 of the Master Direction provided a framework under which non-bank entities could obtain specific approval from the Reserve Bank for tie-up arrangements to facilitate outward remittance services through Authorised Dealer Category-I banks in India subject to certain conditions. On a review, it has been decided to dispense with the process of granting of the approvals by RBI for such tie-ups and instead Authorised Dealers are advised to comply with instructions furnished in Annex while facilitating cross-border outward remittance of funds for non-trade current account transactions using third party entity in online mode. Therefore, paragraph 10 of the Master Direction - Miscellaneous dated 1 January 2016 (as amended from time to time) stands deleted with immediate effect.

Securities and Exchange Board of India ("SEBI"):

Consultation Paper on Review and Rationalisation of (Buy-Back of Securities) Regulations, 2018

SEBI has issued a consultation to review and rationalise the SEBI (Buy-Back of Securities) Regulations, 2018 to improve efficiency and ease of doing business. Key proposals include:

- Re-introducing open market buy-backs via stock exchanges with completion within 66 working days.
- Removing separate trading windows and simplifying execution mechanisms.
- It suggests mandatory electronic intimation to shareholders, freezing promoter holdings during buy-back (except tender participation), and ensuring buy-backs do not breach Minimum Public Shareholding norms.
- The paper also proposes aligning buy-back intervals with the Companies Act, 2013, making Merchant Banker appointment optional, and reallocating their functions to companies, stock exchanges, and secretarial auditors.
- Comments or suggestions may be submitted on or before 29 May 2026.

Consultation Paper on Draft Circular for Enabling Third Party Payments in Mutual Funds in certain scenarios

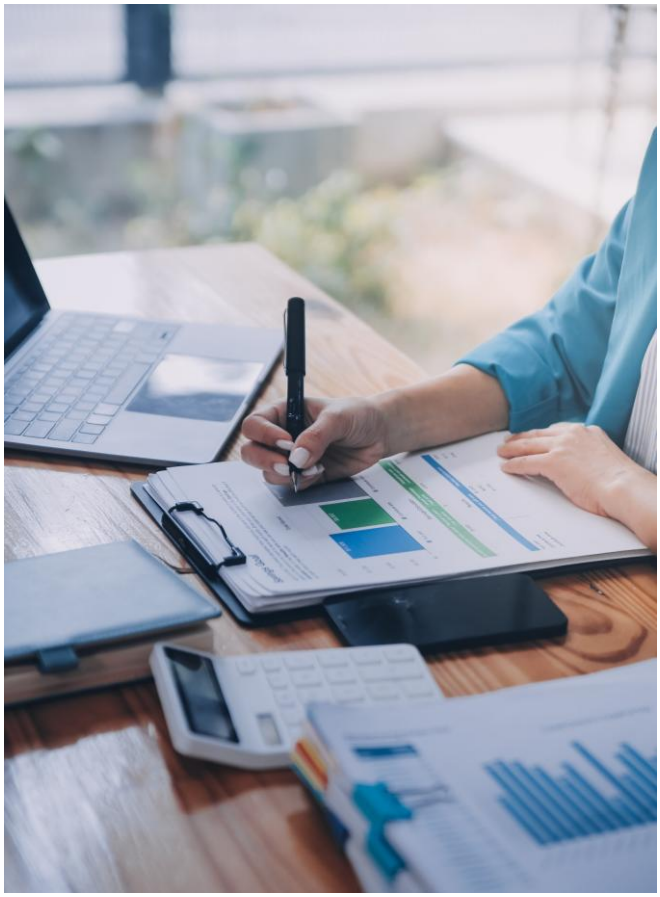
SEBI proposes allowing third-party payments in Mutual Funds in limited cases like employer salary deductions for employee MF investments and Asset Management Companies (AMCs) commission payments to distributors through MF units. The comments/suggestions should be submitted by 10 June 2026. Key proposals include:

- Only listed and EPFO-registered companies can offer payroll-based MF investments, and participation by employees will remain voluntary.
- AMCs may allow Mutual Fund Distributors (MFDs) to receive trail commissions in MF units instead of cash, subject to AMFI registration and safeguards against mis-selling.
- SEBI also proposes enabling investors to donate part of their MF investment, redemption, or returns towards social causes through NGOs or Social Stock Exchange (SSE) registered NPOs.
- Two donation models are proposed either through a dedicated MF scheme or through all existing MF schemes with an optional donation feature.
- AMCs must implement strict safeguards including KYC checks, validation of payer-beneficiary relationship, audit trails, PMLA compliance, and ensuring payouts go only to verified beneficiary accounts.

Status of SPVs post conclusion or termination of Concession Agreement

SEBI's circular, dated 15 May 2026, clarifies that even after the conclusion or termination of a concession agreement, an SPV will continue to be treated as an SPV provided certain conditions are met:

- The Investment Manager must, within one year, either exit the investment in the SPV (by selling, liquidating, winding it up, or merging it) or add a new infrastructure project to it. This one-year period will start from whichever happens last among: completion or termination of the concession (or similar) agreement, closure of all pending legal/tax matters and related appeals, or completion of the defect liability period.
- Further till the time investment in such SPV is held by the InvIT, adequate disclosures shall be made in the annual report of the InvIT which includes detailed breakup of value of investments at gross and net basis, brief details about project, Assets and Liabilities of the SPV (including specific reserves, if any), contingent liabilities, debt repayment, whether SPV has sufficient assets to meet its liabilities (including contingent liabilities), if not, how such liabilities are planned to be met, exit strategy and timeline, etc.
- This circular shall come into force with immediate effect.



Consultation on 'Green-Channel: AIF (Alternative Investment Fund) Rollout Upon Document Acknowledgement' (GARUDA) Mechanism for Processing of Placement Memorandum of AIFs filed with SEBI

SEBI has issued a consultation paper proposing the introduction of a "Green Channel" mechanism (GARUDA) to streamline and accelerate the launch of AIF schemes and improve ease of doing business. The comments/suggestions should be submitted by 1 June 2026. Key proposals include:

- For Regular schemes: To facilitate the launch of new schemes by AIFs after 10 working days of filing the application with SEBI through a Merchant Banker, unless otherwise advised and to facilitate the launch of first schemes from the date of grant of SEBI registration (or) after 10 working days of filing of application with SEBI, whichever is later.
- For accredited investor ("AI") only schemes and Angel Funds – To facilitate Manager of AIF to file PPM directly with SEBI in place of filing it through Merchant Banker and requirement of filing of Merchant Banker Due Diligence certificate may be replaced with the Undertaking by Chief Executive Officer of Manager (or person holding equivalent role or position depending on the legal structure of Manager) and Compliance Officer of Manager of AIF.
- For AI only schemes – To facilitate immediate launch of first scheme from the date of grant of SEBI registration and to facilitate immediate launch of new schemes upon filing of PPM with SEBI along with the aforementioned Undertaking by Chief Executive Officer of Manager (or person holding equivalent role or position depending on the legal structure of Manager) and Compliance Officer of Manager of AIF.
- For Angel Funds – To facilitate immediate circulation of PPM to their investors for soliciting funds from the date of grant of SEBI registration.

Insurance Regulatory Development Authority of India ('IRDAI'):

Remuneration to Key Management Persons (KMPs)

IRDAI has amended the Master Circular on Corporate Governance for Insurers, 2024 with immediate effect. Key highlights include:

- Insurers must now disclose the basis of remuneration for MD/ CEO, directors & KMPs and payments to related parties/ group entities.
- Insurers must publish performance metrics linked to KMP remuneration on their website (with last 3 years' data), including quarterly financial soundness and monthly product, claims, and grievance performance.
- Remuneration policy must ensure alignment with risk outcomes, policyholder interests, and long-term performance, with coordination between Nomination and Remuneration Committee and Risk Management Committee.
- For payment of variable pay to KMPs, at least 50% weightage tied to key metrics like financial soundness, product performance, claims, grievance redressal, Ind AS implementation, and removal of dark patterns.

REGULATORY UPDATES

Securities and Exchange Board of India ("SEBI"):

Circular dated 05 May 2026: Advisory on Emerging Advanced Artificial Intelligence (AI) Tools for Vulnerability Detection[1]

SEBI has issued a cybersecurity advisory highlighting the risks posed by emerging AI-driven vulnerability detection tools such as Claude Mythos. The regulator has cautioned that these tools can rapidly identify and potentially facilitate the exploitation of existing vulnerabilities, creating risks relating to data confidentiality, operational resilience, and reliability of outputs across regulated entities.

To address these concerns, SEBI has constituted a task force named cyber-suraksha.ai, comprising representatives from MIIs, QRTAs, all QREs, and other stakeholders. The task force will assess AI-related cyber risks, develop mitigation strategies, facilitate threat-intelligence sharing, report significant cyber incidents, and review the cybersecurity posture of third-party service providers.

SEBI has advised regulated entities to immediately deploy security patches, conduct regular vulnerability assessments and security audits, strengthen change-management and API security controls, and enhance SOC monitoring, including onboarding to the Market SOC (M-SOC) platform where applicable. Exchanges, depositories, and their empanelled vendors have also been advised to assess risks arising from AI-led vulnerability detection models and implement appropriate safeguards such as patch management, vulnerability assessment and penetration testing (VAPT), continuous monitoring, and system-hardening measures.

The advisory further emphasises periodic risk assessments, adoption of least-privilege and Zero Trust principles, maintenance of updated asset inventories and software bills of materials, and development of long-term AI-enabled cybersecurity strategies, including AI-assisted threat detection, autonomous mitigation, and continuous vulnerability management, with the objective of strengthening cyber resilience across the securities market ecosystem.

Consultation paper dated 05 May 2026 on Modification in the regulatory framework for Online Bond Platform Providers (OBPPs)

SEBI has issued a consultation paper proposing modifications to the regulatory framework governing OBPPs, aimed at facilitating ease of doing business and enhancing regulatory clarity. The key proposals are set out below:

1. Permitting OBPPs to Offer IFSCA-Regulated Products and Services

- SEBI has proposed to permit OBPPs to offer products, securities and services regulated by the International Financial Services Centres Authority ("IFSCA").
- The proposal has been introduced following a request from IFSCA, which highlighted that while SEBI-registered stock brokers are permitted to undertake securities market-related activities in the Gujarat International Finance Tec-City International Financial Services Centre ("GIFT-IFSC") upon registration with IFSCA, OBPPs are presently not permitted to offer IFSCA-regulated products.
- Accordingly, SEBI has proposed to allow OBPPs to offer such products in compliance with applicable requirements under the Foreign Exchange Management Act, 1999, including the Overseas Investment Rules and Liberalised Remittance Scheme limits.

[1] HO/13/19/12(1)2026-ITD-1_CIMGI/10873/2026

- Further, OBPPs would be required to operate in the manner prescribed for SEBI-registered stock brokers in GIFT-IFSC and disclose investor grievance redressal mechanisms for products regulated by financial sector regulators other than SEBI.

2. Permitting Distribution of 54EC Tax-Saving Bonds through OBPPs

- SEBI has also proposed to permit OBPPs to offer bonds issued under Section 54EC of the Income-tax Act, 1961 or Section 85 of the Income-tax Act, 2025 through their online bond platforms. The proposal seeks to address regulatory ambiguity arising from the exemption granted to such bonds from mandatory listing requirements. In order to enhance investor awareness, OBPPs would be required to disclose key features of these instruments, including eligibility conditions, lock-in period, investment limits, tax benefits and transfer restrictions.
- Additionally, OBPPs would be required to provide a disclaimer clarifying that investor grievances relating to such bonds fall within the jurisdiction of the issuer and not SEBI.

3. Review of Compliance Officer Requirements for OBPPs

- SEBI has further proposed to review the eligibility criteria for appointment of Compliance Officers by OBPPs.
- Presently, OBPPs are required to appoint a qualified Company Secretary as Compliance Officer. The proposal follows representations made by the Institute of Chartered Accountants of India ("ICAI"), which sought alignment of the OBPP framework with the regulatory requirements applicable to other SEBI-regulated intermediaries.
- Accordingly, SEBI has proposed replacing the existing requirement with a provision mandating the appointment of a Compliance Officer in accordance with the SEBI (Stock Brokers) Regulations, 2026.
- The proposed amendment is intended to harmonise regulatory requirements and promote ease of doing business.

The consultation paper invited public comments on the proposed changes until 26 May 2026.

Circular dated 15 May 2026: Permitted use of fresh borrowings for InvITs where Net Borrowings exceeds forty-nine percent of the value of InvIT assets[2]

The Circular is addressed to all Infrastructure Investment Trusts ("InvITs"), parties to InvITs, depositories and recognised stock exchanges. The provisions of this Circular have come into force with immediate effect.

The Circular specifies the permissible end-use of borrowings by InvITs where the net borrowings of the InvIT, Holdco and/or Special Purpose Vehicles ("SPVs") exceed forty-nine percent of the value of InvIT assets, pursuant to the amendment made to Regulation 20(3)(b)(ii) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations") dated 17 April 2026.

The Circular specifies that borrowings exceeding the aforesaid threshold may be utilised for the following purposes:

- Capital expenditure undertaken for enhancing asset performance or capacity augmentation;
- Major maintenance expenses relating to Road Projects, wherein such expenditure is not routine maintenance and is incurred in accordance with the obligations and requirements specified under the relevant concession agreement; and
- Refinancing of debt undertaken by the InvIT, Holdco or SPV, subject to the condition that the original debt being refinanced was utilised for purposes permitted under Regulation 20(3)(b)(ii) of the InvIT Regulations. Further, only the principal portion of such debt shall be eligible for refinancing and any accumulated interest, charges or fees shall not be refinanced.

The Circular further clarifies that Road Projects shall have the meaning as provided under the infrastructure sub-sector classification notified by the Ministry of Finance dated 19 September 2025, including any subsequent amendments or additions thereto.

The Circular does not alter the existing leverage threshold of forty-nine percent of the value of InvIT assets. Instead, it operationalises the amendment to Regulation 20(3)(b)(ii) of the InvIT Regulations by specifying the permissible utilisation of borrowings undertaken beyond such threshold.

[2] SEBI/HO/DDHS/DDHS-PoD-2/ I/11700/2026

Circular dated 29 May 2026: Ease of doing investments - Modified Norms for Nomination in Demat Accounts and Mutual Fund Folios[3]

The Circular is addressed to Asset Management Companies ("AMCs") of Mutual Funds ("MFs") and their Registrars to an issue, share Transfer Agents (RTAs), Recognised Depositories and Registered Depository Participant.

The Circular has revised SEBI's nomination framework for demat accounts and mutual fund folios, simplifying the process in response to stakeholder feedback received on the earlier nomination framework.

The key changes laid out in the Circular are as follows:

- Nomination is now mandatory for all new single-holder accounts/folios opened after the effective date of the Circular, unless the investor explicitly opts out via a declaration form;
- Nomination remains optional for Joint accounts. Further, consent of all the joint-holders shall be required for providing or changing nominee regardless of mode of operations;
- Up to three nominees can be designated, with the flexibility to split holdings by percentage. If no split is specified, assets are divided equally;
- Witness signatures are no longer required for offline nomination forms (except when a thumb impression is used instead of a signature)
- Online submission is accepted via Digital Signature certificate, Aadhaar e-sign, or OTP-based two-factor authentication.
- Depository Participants and Mutual Fund RTAs are required to send bi-annual SMS/email reminders and display pop-up messages to investors without nomination, encouraging them to provide nomination details.
- Investors may opt out of nomination by submitting the prescribed declaration form or exercising the opt-out option online.

The circular includes two ready-to-use formats:

- **Annexure A** — a nomination form capturing nominee details (name, relationship, date of birth for minors, and optional fields like contact details and percentage share) — and
- **Annexure B** — Declaration for opting out of nomination

This circular supersedes all prior SEBI circulars on nomination going back to 2002. The Circular is effective from 01 September 2026.

Reserve Bank Of India ("RBI")

Notification dated 29 May 2026: Foreign Exchange Management (Cross Border Merger) (Amendment) Regulations, 2026[4]

The Reserve Bank of India ("RBI") has issued the Foreign Exchange Management (Cross Border Merger) (Amendment) Regulations, 2026 under Section 47 of the Foreign Exchange Management Act, 1999 ("FEMA"), amending the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 ("Principal Regulations").

The Amendment Regulations replace references to the National Company Law Tribunal ("NCLT") with the broader term "Competent Authority" under the Principal Regulations. Accordingly, the Amendment Regulations introduce the definition of "Competent Authority", which means any authority empowered under the Companies Act, 2013 or any subordinate legislation made thereunder to approve a scheme of merger or amalgamation.

Further, the Amendment Regulations omit the existing definition of NCLT and replace references to "NCLT" appearing under Regulations 4, 5, 7 and 9 of the Principal Regulations with "Competent Authority".

The amendment expands the scope of approving authorities for cross-border merger transactions, aligning the FEMA framework with the provisions of the Companies Act, 2013 and applicable merger regulations.

The Amendment Regulations shall come into force from the date of their publication in the Official Gazette.

[3] SEBI/HO/OIAE/OIAE_IAD-3/P/CIR/2026/1267
[4] FEMA 389(1)/2026-RB

DIRECT TAX

Circulars / Notifications / Press Release

JUDICIAL UPDATES

Supreme Court overturns Karnataka High Court's decision and holds that interest on borrowed capital deployed for subsidiary's benefit is allowable under Section 36(1)(iii) of the Act

The taxpayer is a trust engaged in a composite business comprising film distribution, money lending, speculation, and investment in shares. The taxpayer borrowed INR 38mn from Corporation Bank to purchase shares of Shaw Wallace and Company Limited. During the course of assessment proceedings, the tax officer observed that the borrowed funds were routed through a group company, M/s Gayatri Holdings Private Limited, which in turn transferred the amount to purchase shares on behalf of the Trust and its related entities. Therefore, the tax officer opined that the taxpayer is not eligible to claim the deduction of interest of INR 2.1mn under Section 36(1)(iii)[1] of the Income-tax Act, 1961 ('the Act'). Accordingly, the assessment order was passed after disallowing the said interest.

Aggrieved, the taxpayer filed an appeal before the First Appellate Authority. The First Appellate Authority also disallowed the claim. Further, the taxpayer preferred an appeal before Karnataka Income Tax Appellate Tribunal ('ITAT') wherein the taxpayer's claim was allowed.

Aggrieved by Karnataka ITAT's order, the revenue preferred an appeal before Karnataka High Court ('HC'). However, the Karnataka HC reversed the ITAT's order, holding that the business of the subsidiary could not be treated as the business of the taxpayer and that the borrowed amount was utilised for the subsidiary's benefit and not for the taxpayer. Aggrieved by this, the taxpayer appealed before the Hon'ble Supreme Court ('SC').

The SC overturned the decision rendered by Karnataka HC and ruled that interest paid on borrowed capital deployed for subsidiary's business is an allowable business deduction and while coming to this conclusion, the following observations were laid out:

- Section 36(1)(iii) of the Act provides deduction of interest on capital borrowed for the purpose of business. Unlike the general definition of "interest" under Section 2(28A) of the Act which covers both borrowed money and debt incurred, Section 36(1)(iii) of the Act is confined to money borrowed.
- Reliance is placed on the SC's decision in the case of Bombay Steam Navigation Co. Pr. Ltd[2] wherein it was held that the legislature under Section 36(1)(iii) of the Act has permitted an allowance of interest paid on capital borrowed for the purposes of the business; and the capital, in this context, means money and not any other asset purchased on credit.
- Placed reliance in Madhav Prasad Jatia's[3] ruling wherein SC held that the expression "for the purpose of business" in Section 36(1)(iii) of the Act is wider in scope than the expression "for the purpose of making or earning income" appearing in Section 57(iii)[4] of the Act.
- Further, reference is made to the recent decision in Sharp Business System[5], wherein SC reiterated that the transfer of borrowed funds must be examined from the standpoint of commercial expediency and not from the point of view of whether the amount was advanced for earning direct profits. In the said decision, interest on funds invested in a sister concern for acquiring controlling interest was held to be an allowable deduction.

Accordingly, the High Court's judgment was set aside, and it was held that the Trust was entitled to deduction of the full interest amount under Section 36(1)(iii) of the Act.

[L.K. Trust v. Commissioner of Income Tax, Civil Appeal No. 527/2012 (SC)]

[1] Section 36(1)(iii) of the Act provides deduction of interest on capital borrowed for business/profession.
[2] Bombay Steam Navigation Co. Pr. Ltd v. CIT 56 ITR 52 (SC)].
[3] Madhav Prasad Jatia v. CIT [118 ITR 200 (SC)]
[4] Section 57(1)(iii) of the Act allows taxpayers to claim deductions for any expenditure laid out or expended wholly and exclusively for the purpose of making or earning income that is classified under "Income from Other Sources".
[5] Sharp Business System v. CIT [2025 SCC Online SC 2892]

Supreme Court dismisses Revenue's review petition and upholds that payments to non-residents for resale/use of computer software through distribution agreement do not constitute royalty

In a landmark ruling[6], a three-judge bench of the Supreme Court had held that payments made by Indian end-users or distributors to non-resident software companies whether under End-User Licence Agreements (EULAs) or distribution agreements do not constitute royalty for use of copyright in computer software. As a result, no tax was required to be deducted under Section 195 of the Act.

The Revenue filed fresh review petitions[7] seeking reconsideration of the judgement delivered by the SC in 2021. It was observed that an identical review petition[8] had already been dismissed on 23 April 2024 on merits. The bench held that it would be improper to reopen the same issue again and accordingly, dismissed the present petitions by following the earlier order.

[Engineering Analysis Centre of Excellence (P.) Ltd. V. CIT, review petition (C) nos. 1422-1497 OF 2021]

Bangalore Tax Tribunal holds that TDS is required on year-end provisions, however, grants relief on salary provisions where payment was not made during the year

The taxpayer is a company engaged in the business of real estate and construction. During the Fiscal year ('FY') 2017-18, the tax officer, upon verification of the tax audit report (Form 3CD), observed that the taxpayer had failed to deduct tax at source (TDS) on certain expenses. Further, the tax officer also noted short deduction of TDS on managerial remuneration paid to two senior personnel. Accordingly, the tax officer passed an order under section 201 of the Act holding the taxpayer to be assessee-in-default.

The taxpayer preferred an appeal before the First Appellate Authority. However, in the absence of any response from the taxpayer, the appeal was dismissed for non-prosecution without deciding the matter on merits. Aggrieved, the taxpayer filed an appeal before the Bangalore ITAT.

The Bangalore ITAT, while partly allowing the appeal, made the following key observations:

- With regard to year-end provisions, it is noted that the payee, PAN, nature of expenses and amounts were fully ascertainable as on the balance sheet date. The taxpayer's books of account were maintained on the accrual system under the Companies Act, 2013, and accordingly, it could not be argued that no expenditure had been incurred or the payee and amount are unascertainable.
- Under section 194C of the Act, tax is required to be deducted at the time of credit to the account of the contractor or at the time of payment, whichever is earlier. According to section 194C(2) of the Act, if the same is credited to any other account other than the account of the recipient, then also the taxpayer is required to deduct tax at source. Similar provisions are incorporated in the Explanation (c) of section 194J of the Act. Therefore, even if these amounts are credited to the expenses payable account, the taxpayer cannot escape the liability of tax deduction of tax at source.
- Taxpayer's contention that it is the Auditor who mentions the details in Form 3CD is absolutely incorrect, not supported by any provision of law and is not in accordance with guidelines issued by ICAI for tax audit under section 44AB of the Act. It is clarified that Form 3CD is prepared by the taxpayer and merely certified by the auditor.
- Accordingly, the taxpayer is in default for non-deduction of tax at source on the provision made at the end of the year which was reversed in subsequent period.
- However, the taxpayer is entitled to seek relief under the first proviso to section 201(1) of the Act to the extent the recipient vendors have already offered the corresponding income to tax and furnished the requisite certificate.
- With regard to the managerial remuneration, it is observed that the same was not actually paid during the relevant FY and was paid on a performance basis in the next year after deducting tax and issuing Form 16 for that year. Therefore, relief is provided to the taxpayer.

[M/s. Artha Real Estate Corporation Ltd. v. DCIT, TDS Circle - 1(1), ITA No. 2624/Bang/2025, (Bangalore ITAT)]

Mumbai Tax Tribunal upholds taxpayer's right to cherry-pick between DTAA and domestic law on a transaction-by-transaction basis

The taxpayer is a company incorporated in Singapore and a tax resident of Singapore within the meaning of Article 4 of the India-Singapore Double Taxation Avoidance Agreement ('DTAA'). Further, the taxpayer is engaged in providing B2B online marketplace services and acts as an investment holding company. For FY 2021-22, the taxpayer filed a return of income declaring total income of INR 343.65mn on account of capital gains. During the year, the taxpayer held investments in four Indian companies, viz., PayTM, Snapdeal, Xpressbees, and Bigbasket. Shares of PayTM and Snapdeal were acquired prior to 1 April 2017, while shares of Xpressbees and Bigbasket were acquired after 1 April 2017.

The taxpayer claimed exemption from tax in India on long-term capital gains ('LTCG') of INR 638.29mn arising from transfer of PayTM shares under Article 13(4A) of the India-Singapore DTAA. Simultaneously, it chose to be governed by the provisions of the Act in respect of the long-term capital loss ('LTCL') of INR 14,021.87mn arising from transfer of Snapdeal shares, seeking to carry forward and set off the same in subsequent years. The tax officer rejected the taxpayer's approach and passed the draft order after setting off the LTCL on shares acquired before 1 April 2017 against LTCG on shares acquired before 1 April 2017.

Aggrieved by this, the taxpayer filed objections before the Dispute Resolution Panel ('DRP'). The DRP directed that all transactions be compulsorily aggregated and subjected uniformly to either the Act or the DTAA. Following this, the tax officer added back INR 638.29mn on account of alleged non-disclosure of capital gains. Aggrieved, the taxpayer preferred an appeal before the Mumbai ITAT.

[6] Engineering Analysis Centre of Excellence (P.) Ltd . v. CIT [2021] 432 ITR 471 (SC)
[7] Review Petition (C) Diary No. 35475/2023
[8] CIT v. GE India Technology Centre (P.) Ltd. [2024] 161 taxmann.com 707/469 ITR 389 (SC)/Review Petition (C) Diary No. 35475/2023

The Mumbai ITAT, while ruling in favour of the taxpayer, made the following observations:

- Relying on coordinate bench decisions in Matrix Partners India Investment Holdings LLC[9] and Prashant Kothari[10], it is held that each investment or transaction giving rise to capital gains or losses constitutes an independent source of income.
- Reliance is placed on the decision of Mumbai Special Bench in Montgomery Emerging Markets Fund[11] wherein clear distinction between 'source of income' and 'head of income' is explained. Merely because multiple transactions fall under the common head "Capital Gains" does not obliterate their independent character as separate sources of income.
- In accordance with the provisions of section 90(2) of the Act, a taxpayer is entitled to avail the benefit of the Act or the applicable DTAA, whichever is more beneficial, in respect of each source of income independently. Such a course of action is permissible in law and cannot be faulted merely because the taxpayer opted for treaty benefit in respect of one source of income and provisions of the Act in respect of the other source of income.
- Capital gains from transfer of shares acquired prior to 1 April 2017 are governed by Article 13(4A) of the India-Singapore DTAA and do not form part of taxable income in India. Such exempt gains cannot be forced into the computation mechanism under the Act for the purpose of setting off losses from other transactions. The Revenue's approach of doing so effectively results in indirect taxation of treaty-exempt gains, which is contrary to the scheme of section 90(2) of the Act.
- Accordingly, the taxpayer has rightly claimed the exemption of LTCG on shares acquired before 1 April 2017 under Article 13(4A) of India-Singapore DTAA and appropriately carried forward the LTCL as per the provisions of the Act.

[Alibaba.com Singapore E Commerce Pvt. Ltd. v. DCIT, ITA No. 2070/Mum/2025 (Mumbai ITAT)]

Delhi Tax Tribunal rules IMAX Theatre Services has no Fixed Place PE or Service PE in India and rejects virtual PE concept under India-Canada DTAA

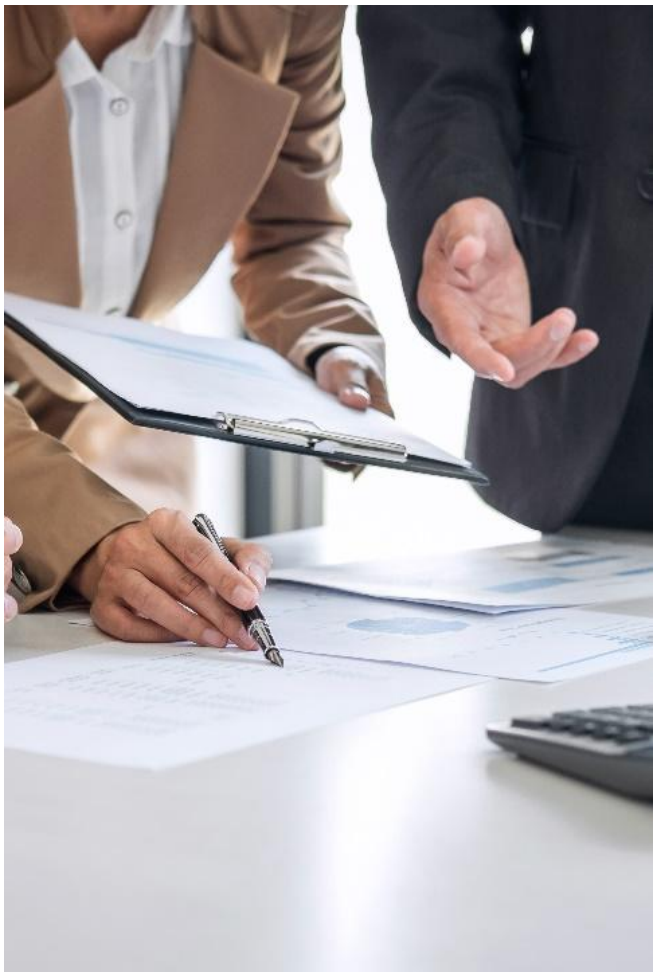
The taxpayer is a Canada-based company holding valid Tax Residency Certificate ('TRC') issued by Canadian Government and is engaged in providing maintenance services of Theatre Systems (IMAX Theatre Systems) globally, including India. Further, the maintenance services were provided partly through remote access and partly through physical visits by an employee of its Australian vendor (M/s ESPM). For FY 2021-22, the tax officer alleged that the taxpayer had both a Fixed Place PE and a Service/Supervisory PE in India and accordingly attributed profits and made an addition of INR 15.25mn.

Aggrieved by the additions proposed by tax officer, the taxpayer filed objections before the DRP. The DRP upheld existence of a fixed place PE and also of a supervisory PE in India. However, the DRP reduced the profit rate from 25%, as proposed in the draft order, to 12.5%, resulting in the addition of INR 7.6mn. Aggrieved by this, the taxpayer preferred an appeal before the Delhi ITAT.

The Delhi ITAT while ruling in favour of taxpayer made the following key observations:

- None of the tests provided for indicating the existence of a fixed place PE, i.e., place of business test, disposal test, permanence test and business activity test are found to be fulfilled in this case. Thus, it deserves to be held that there is no fixed place PE under Article 5(1) of the India-Canada DTAA.
- The total period of visit by employee on the specific sites of the theatre systems is exactly 67 days, which is less that threshold limit of 90-days under Article 5(2)(l) of the India-Canada DTAA.
- In relation to the remote access services, reliance is placed on Co-ordinate bench's ruling in the case of Ernst & Young (EMEIA) Services Ltd[12]. wherein it has relied on decision of Delhi High Court in Clifford Chance Pte. Ltd[13]. and has held that the concept of virtual PE on the basis of services provided remotely cannot be a valid construct for the purposes of determining a service PE.
- Further, the tax officer's reliance on the vendor employee's LinkedIn profile to establish his employment with IMAX is rejected, as affidavit was filed by M/s ESPM explicitly confirming his employment status.

[IMAX Theatre Services Ltd. v. ACIT, ITA No. 1890/Del/2025 (Delhi ITAT)]



[9] Matrix Partners India Investment Holdings, LLC v. DCIT (ITA No. 3097/Mum/2023) (Mumbai - Tribunal)
[10] Prashant Kothari vs. Int. Tax Ward 3(1)(1) reported in [2025] 174 taxmann.com 1244 (Mumbai - Trib.)
[11] Joint CIT v. Montgomery Emerging Markets Fund [2006] 100 ITD 217 (Mumbai) (SB)
[12] Ernst & Young (EMEIA) Services Limited vs. ACIT 184 taxmann.com 671 (Delhi - Trib.)
[13] Clifford Chance Pte Limited v CIT reported in 181 taxmann.com 254 (Del.) (HC)

Mumbai Tax Tribunal holds that lease rentals received by Irish aircraft leasing company from Indian airline are taxable only in Ireland under Article 8 of India-Ireland DTAA

The taxpayer company, an Irish resident, is engaged in the business of purchasing and leasing aircraft to third-party airlines and holds a valid Tax Residency Certificate of Ireland. During FY 2021-22, the taxpayer leased an aircraft to M/s InterGlobe Aviation Ltd (Indigo) under an operating lease agreement and received lease rentals aggregating to INR 275.1mn. As per Article 8 of the India-Ireland DTAA, income earned from shipping and air transport is taxable in the country of residence of the taxpayer. Considering the same, the taxpayer filed an NIL return of income in India.

During the course of assessment proceedings, the tax officer treated the India-Ireland DTAA as a Covered Tax Agreement under the Multilateral Instrument (MLI) and applied the Principal Purpose Test under Article 6 and 7 of the MLI to deny treaty benefits. The tax officer re-characterised the lease rentals as royalty under Section 9(1)(vi) of the Act read with Article 12(3) of India-Ireland DTAA and alternatively as interest under Article 11 of India-Ireland DTAA. Against the draft assessment order so passed, the taxpayer raised objections before the DRP. The DRP upheld the tax officer's findings and additionally held that the leased aircraft constituted a fixed place PE of the taxpayer in India and hence lease rentals can be taxable as business profits.

Aggrieved by the same, the taxpayer preferred an appeal before the Mumbai ITAT. The Mumbai ITAT while ruling in favour of the taxpayer, made the following key observations:

Applicability of MLI provisions under DTAA

- Reliance is placed on the Supreme Court's ruling in Nestle SA[14], wherein it is held that a notification under Section 90(1) of the Act is an indispensable and mandatory condition for any court, authority or tribunal to give effect to a DTAA, or to any protocol or instrument that purports to alter the terms or conditions of such agreement.
- Unless the changes contemplated in the MLI are expressly incorporated into Indian law through the statutory mechanism, namely, a specific notification under Section 90(1) of the Act, those changes cannot operate to alter the manner in which the domestic authorities apply the DTAA.
- Accordingly, Articles 6 and 7 of the MLI cannot be invoked against the taxpayer, as there is no notification under Section 90(1) of the Act incorporating those provisions into the India-Ireland DTAA.

Taxability of lease rentals from Aircraft

- Article 12(3)(a) of the India-Ireland DTAA expressly excludes aircraft from the definition of royalties. Accordingly, as per Article 12 and 8 of India-Ireland DTAA, profits derived by an enterprise of a contracting State from rental of aircraft are taxable "only" in Ireland.
- Further, as ownership of the aircraft remained with the lessor throughout and the lessee had no option to purchase the aircraft at expiry, therefore the lease is operating lease and not financial lease. Consequently, the lease rentals could not be re-characterised as interest under Article 11 of the India-Ireland DTAA.

Leased aircraft - Evaluation of Fixed Placed PE

- The Supreme Court in Formula One[15], has laid down two crucial tests to determine whether a foreign enterprise has a fixed place PE under Article 5(1) of the DTAA or not. Firstly, there should be a fixed place of business and secondly, that the place of business must be at the disposal of the foreign enterprise.
- Applying the above principle, the aircraft leased by the taxpayer to IndiGo were indeed present in India for extended periods. However, the aircraft here could not be accessed or used by the assessee at will for its business, every entry to airside/hangar areas required IndiGo's operational consent and regulatory clearances, and inspections were episodic, noticed, and ancillary to ownership protection. Hence, disposal test is not satisfied.

[Sky high Xxxiv Leasing Company Ltd. V. ACIT International Taxation (IT APPEAL NOS. 1308, 1327, 1328, 1348, 1349, 1350, 1351, 1805, 1859 (MUM.) OF 2025)]

Delhi Tax Tribunal holds that section 40(a)(ia) of the Act applies to short deduction of tax as well, however, restricts disallowance to proportionate amount

During FY 2016-17, the taxpayer company deducted tax on professional fees at a rate lower than the prescribed rate. During the course of assessment proceedings, the tax officer treated the same as a case of short deduction and disallowed 30% of the gross payment under section 40(a)(ia) of the Act. Aggrieved by this, the taxpayer filed an appeal before the First Appellate Authority. The taxpayer contended that section 40(a)(ia) of the Act applies only to cases of non-deduction of tax and not to short deduction. However, the First Appellate Authority upheld the tax officer's order. Aggrieved by this, the taxpayer filed an appeal before the Delhi ITAT.

The Delhi ITAT while upholding the tax officer's order, made the following observations:

- The Delhi High Court's ruling in Future First Info Services Pvt. Ltd[16], relied by the taxpayer did not deal with the issue of validity of disallowance u/s 40(a)(ia) on short deduction of tax.
- Reliance in this regard is placed on the Supreme Court's ruling in Dilip Kumar and Company[17], which held that exemptions and deductions are to be construed strictly and if there is any ambiguity in the notification, the benefit of such ambiguity cannot be claimed by the taxpayer and must be interpreted in favour of revenue.
- Accordingly, section 40(a)(ia) of the Act is applicable to cases of short deduction of tax. However, the tax officer was directed to restrict the disallowance only to the proportionate amount corresponding to the shortfall in tax deducted, rather than applying it to the entire payment.

[Pawan Hans Limited v. ACIT, Circle-19(1), ITA Nos. 5572 & 5964/Del/2025 (Delhi ITAT)

[14] TS-616-SC-2023
[15] (2017) 394 ITR 80 (SC)
[16] PCIT Vs. Future First Info Services Pvt in ITA No. 195/2022
[17] Commissioner Of Customs (Import), Mumbai vs M/S. Dilip Kumar and Company, AIR 2018 Supreme Court 3606

Delhi Tax Tribunal holds that the deciding factor for determining taxability under section 9(1) of the Act is situs of income and not source of receipts

The taxpayer, a Singapore-based company and part of Amphenol Corporation USA, earned royalty income and management fee from its Indian associated enterprises (AEs) across FYs 2017-18 to 2021-22. Royalty on sales made in India was offered to tax in India, however, the royalty on export sales was claimed as exempt under section 9(1)(vi)(b) of the Act on the ground that the source of such receipts was situated outside India. Management fee was claimed as exempt under Article 12 of the India-Singapore DTAA. The taxpayer's case was selected for scrutiny and aggrieved by the order passed by tax officer, the taxpayer filed an appeal before Delhi ITAT. The Delhi ITAT made the following key observations:

Re. Royalty from export sales

- The taxpayer's reliance on the Madras High Court ruling in Aktiengesellschaft Kuhnle Kopp & Kausch W. Germany v. BHEL[18] is rejected as the said judgement was rendered prior to amendment to section 9(1) of the Act and the amounts were received under 'pre-1976 agreement' in that case.
- Reliance is placed on the Delhi High Court's ruling in Havells India Ltd.[19], which laid down a clear directive that the importer of the taxpayer's product is no doubt situated outside India, but he cannot be regarded as a source of income. The importer of the taxpayer's product is merely the source of the receipts. The income component of the export receipts is located or situated in India. The situs of income as against the situs of receipts could therefore be considered as the decisive factor for determining taxability under section 9(1) of the Act.
- The place of conclusion of contracts would be one of the deciding factors though not the sole or essential factor, while dealing with situs of income vis-à-vis the situs of receipts. In the absence of adequate fact-finding regarding where the export contracts were concluded, issue is accordingly remanded to the tax officer with a direction to examine the place of contract conclusion and ascertain in which jurisdiction the exempt export royalty receipts were being offered to tax.

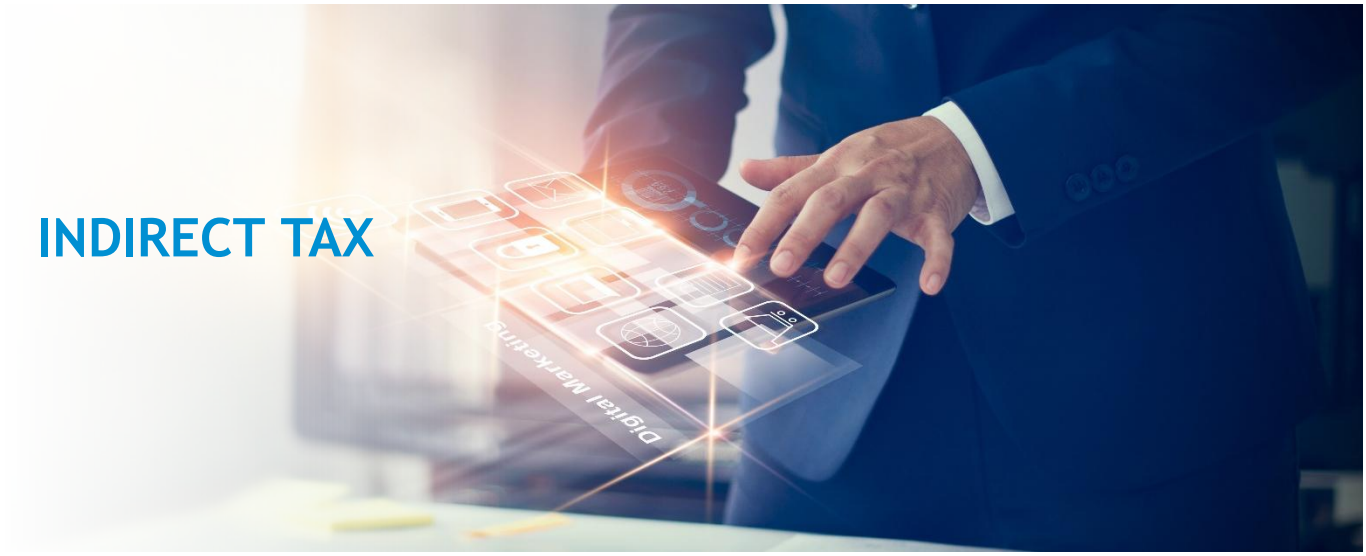
Management fee

- Reliance is placed on the taxpayer's own case[20] for FY 2014-15, wherein it was held that management support services do not qualify as Fees for Technical Services under Article 12(4)(a) of the India-Singapore DTAA, as such services are governed under a separate agreement and cannot be equated with technical assistance rendered in connection with licensing of patents, trademarks, and know-how. Based on this, relief is granted to the taxpayer on this issue for all five FYs under consideration.

On the additional issue of expense reimbursement for FY 2021-22, it is held that the DRP does not have power under section 144C(8)[21] of the Act to direct the tax officer to conduct fresh verification and enquiry into the nature of expenses. Such directions are held to be beyond the DRP's jurisdiction and are accordingly set aside.

[Amphenol FCI Asia Pte. Ltd. v. ACIT, ITA Nos. 1851, 1852, 814, 3002 & 2056/Del/2022 (Delhi ITAT)

[18] CIT v Aktiengesellschaft Kuhnle Kopp & Kausch W. Germany By BHEL, [2003] 262 ITR 513
[19] Havells India Ltd. (352 ITR 376) (Del) (HC)
[20] Amphenol FCI Asia Pte. Ltd (ITA 9659/Del/2019)
[21] Section 144C(8) of the Act empowers the DRP to confirm, reduce, or enhance variations proposed in a draft order.



LEGISLATIVE UPDATES

Goods and Services Tax

Principal Bench of GSTAT empowered to act as the National Appellate Authority

Effective 1 April 2026, the Principal Bench of the Goods and Services Tax Appellate Tribunal ('GSTAT'), New Delhi, is empowered to act as the National Appellate Authority under Section 101B of the Central Goods and Services Tax Act, 2017 ('CGST Act').

[Source: Notification No. 02/2026-Central Tax dated 7 May 2026]

Constitution of Benches and Allocation of Cases in GSTAT

The following directions have been issued regarding bench formation, case allocation and listing of matters before the GSTAT:

- Notwithstanding the provisions enabling Single Member Benches for disputes below INR 50 lakhs (not involving questions of law), all pending and future cases shall initially be listed before a Division Bench, which shall examine whether the matter involves any question of law and, where appropriate, recommend its placement before the President/Vice-President for hearing by a Single Member Bench.
- Appeals have been classified into three broad categories:
  - **Category I:** Core tax issues such as classification, valuation, time of supply, ITC eligibility, and determination of tax under Sections 73/74 of the CGST Act.
  - **Category II:** Registration, refund, assessment, recovery and procedural matters.
  - **Category III:** Ancillary matters such as seizure, confiscation, penalties, provisional attachment and residual issues.

[Source: Office Order No. 3/GSTAT/PB/2026 dated 14 May 2026]

GSTAT continues relaxed procedures for appeal filing till 31 December 2026

GSTAT has extended the procedural relaxations for appeal filing provided vide Office Order No. 16/2026[1] till 31 December 2026. Further, Scrutiny officers have been directed not to raise defects where required documents, such as a show cause notice, Order-in-Original, Order-in-Appeal, statement of facts, grounds of appeal and proof of pre-deposit/court fees, are uploaded in soft copy or where exemptions are granted by higher courts. Further, scanned certified copies of orders are also to be accepted if properly endorsed. Taxpayers must also upload Authorisation or Vakalatnama, whereas departmental appeals must include specified documents, with no requirement for court fee or pre-deposit.

[Source: F. No. GSTAT/Pr.Bench/Portal/125/25-26 dated 14 May 2026]

[1]Dated 20 January 2026

Functional enhancements proposed in the E-Way Bill Portal

The following functional enhancements will be introduced in the E-Way Bill ('EWB') Portal with effect from 15 June 2026 (further extended to 1 August 2026) with a view to strengthening tracking mechanisms and improving accuracy of transaction-level reporting:

- **Mandatory capture of 'Ship-To GSTIN':** In Bill-To-Ship-To transactions, the system will require mandatory reporting of 'Ship-To GSTIN'. Further, where the consignee is an unregistered person, the value 'URP' shall be entered in the Ship-To-GSTIN field.
- **Voluntary EWB closure facility**
  - EWB closure facility has been introduced in the system on a voluntary basis to enable closure of the EWB once delivery of goods is completed.
  - The EWB may be closed by the Supplier, Recipient, Transporter, Driver or authorised person whose mobile number has been provided for closure.
  - EWB can be closed EWB-wise or date-wise on the same or succeeding day of delivery.
  - Though it is voluntary to enter a Mobile Number at the time of EWB generation for EWB closure, the same can be updated subsequently during vehicle updation, consolidated EWB operations or extension of validity.

[Source: GSTN Advisories dated 21 May 2026 and 9 June 2026]

Customs

Origin rules and the first tranche of tariff concessions under India-Oman CEPA notified

The Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and Oman) Rules, 2026, are notified to come into effect from 1 June 2026. Further, the first tranche of tariff concessions under the India-Oman Comprehensive Economic Partnership Agreement, signed on 18 December 2025, has also been notified.

[Source: Notification No. 48/2026-Customs (N.T.) dated 29 May 2026, and Notification No. 20/2026-Customs dated 31 May 2026]

Directions issued for the identification and import clearance of hazardous cargo

A system-based intervention is being introduced whereby importers will be required to mandatorily declare hazardous cargo at the item level in the Bill of Entry for a list of specified goods. Such consignments will be flagged electronically to enable Customs officers to identify and process them expeditiously at the stages of assessment, examination and out-of-charge.

The facility is proposed to be implemented across all Customs formations by 1 July 2026. Further, suitable enhancements are also made in the Risk Management System to facilitate smoother clearance of such goods.

[Source: Circular No. 24/2026-Customs dated 14 May 2026]

Foreign Trade Policy

Prohibition on the export of Sugar

Export of Sugar (Raw Sugar, White Sugar and Refined Sugar) classified under HSN 1701 1490 and 1701 9990 has been prohibited till 30 September 2026. However, such a prohibition is not applicable to:

- Sugar exported to the European Union and the United States of America under the Concession List (Schedule) and Tariff Rate Quota;
- Export of Sugar under the Advance Authorisation Scheme;
- Exports to other countries to meet their food security needs as approved by the Government of India based on the request of such countries' governments; and
- Consignments already in the physical export pipeline.

[Source: Notification No. 16/2026-27 dated 13 May 2026]

JUDICIAL PRECEDENTS

Additional Session Judge cannot order the release of goods and vehicles seized by DRI under the Customs Act

Union of India Vs. Sayad Ali Laskar [TS-130-HC-2026(GAUH)-CUST]

A truck owned by Mr Sayad Ali Laskar ('Taxpayer') was intercepted and seized by the Directorate of Revenue Intelligence ('DRI') on the grounds that it was carrying concealed cartons of foreign-origin cigarettes (approximately 1.99 million sticks) on which applicable customs duty had not been discharged. Later, the DRI seized a white Tata Safari vehicle, mobile phones of the intercepted individuals and other relevant documents forming part of the investigation.

Aggrieved by the seizure, the Taxpayer approached the Court of the Additional Sessions Judge (FTC), No. 3, Kamrup (Metro), Guwahati ('ASJ'), seeking release of the vehicle. The DRI submitted before the ASJ that, under the provisions of the Customs Act, 1962 ('Customs Act'), the ASJ lacked jurisdiction to adjudicate upon the release of a vehicle seized under the Customs Act. It was contended that the powers relating to custody and disposal of articles, including vehicles, seized under the Customs Act, are exclusively vested with the 'Adjudicating Authority' or the 'Proper Officer' under Section 110A of the Customs Act.

The ASJ, vide order dated 24 June 2025 ('Impugned Order'), granted custody of the seized truck in favour of the Taxpayer. Aggrieved by the above, the DRI preferred an appeal before the Gauhati High Court, which set aside the Impugned Order on the ground of lack of jurisdiction and held as under:

- When Section 110A of the Customs Act specifically empowers the 'Proper Officer' to decide on the release of seized goods, recourse to a criminal court under Section 497 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') is not warranted because the Customs Act is a special legislation, but the BNSS deals with general law.
- The Taxpayer had not alleged any violation of the provisions of the Customs Act before the ASJ while seeking release of the vehicle. Further, reliance on ***Sundarbhai Ambalal Desai***[2] is misplaced as the said judgment dealt with the procedure for custody and disposal of valuable articles under the Code of Criminal Procedure, 1973 ('CrPC') and did not hold that CrPC would prevail over the Customs Act as regards the power to adjudicate on custody and release of vehicles seized under the Customs Act.
- Reliance was placed on ***Chungnunga***[3] wherein it was held that matters relating to smuggled goods fall within the jurisdiction of the customs authorities under the Customs Act, which is a special act. Further, Section 5 of the CrPC provides that the provisions of the CrPC will not clash with any special or local law for the time being in force.
- Accordingly, the Impugned Order was set aside, with a liberty to the Taxpayer to approach the competent authority under the Customs Act for release of the vehicle, and such authority shall decide the prayer on its merits, without being influenced by this order in any manner.

Last Mile delivery by ECO under a consignment note not classifiable as GTA services

In Re: M/s. Flipkart India Pvt. Ltd. [TS-339-AAAR(WB)-2026-GST]

M/s. Flipkart India Pvt. Ltd. ('Taxpayer') is inter alia engaged in B2B trading of goods and proposed to introduce a new business model to provide transportation services for goods sold through various Electronic Commerce Operator ('ECO') portals exclusively by road.

Under the proposed model, the following key features were proposed:

- The seller's responsibility ceases upon delivery of goods to the designated 'Source Mother Hub' ('hub'), after which, the Taxpayer undertakes the collection and transportation of such goods to the delivery address specified by the buyer.
- The consideration for such transportation is payable by the buyer, either at the time of purchase through the ECO platform or in cash to the Taxpayer at the time of delivery.
- The transportation charges are proposed to be separately disclosed in the invoice or bill of supply.
- A single consignment note is proposed to be issued for the movement of goods from the hub to the final destination, notwithstanding the multiple stages of transit or use of multiple vehicles.
- Upon issuance of the consignment note, the Taxpayer assumes responsibility for the goods, including the liability for any loss or damage during transit, which is also supported by transit insurance, and the Taxpayer also claims a lien over the goods.
- The Taxpayer may undertake transportation directly or through third-party transporters. In cases of rejection or return, any refund of freight shall be borne by the Taxpayer.

The Taxpayer approached the West Bengal Authority for Advance Ruling ('WBAAR'), proposing to treat the new model as a supply of Goods Transport Agency ('GTA') services and not courier services. Accordingly, it was contended that:

- For B2B supplies, GST would be applicable at 12% under forward charge, in terms of Sl. No. 9(iii)(b) of Notification No. 11/2017-Central Tax (Rate)[4]; and
- For B2C supplies, the services would be exempt from GST in terms of Sl. No. 21A of Notification No. 12/2017-Central Tax (Rate)[5].

The WBAAR upheld the classification as contended by the Taxpayer and held that the proposed activity of transportation of goods by road is not comparable to courier services, as courier operations typically involve multimodal or person-to-person delivery, whereas the Taxpayer's model involves transportation of goods exclusively by road and is supported by the issuance of a consignment note.

Aggrieved by the above, the tax authorities preferred an appeal before the West Bengal Appellate Authority for Advance Ruling ('WBAAAR'), which set aside the WBAAR ruling and held as under:

[2] Sundarbhai Ambalal Desai Vs. State of Gujarat [2002 (10) SCC 283]
[3] Union of India Vs. Chungnunga and Ors. [2003 (2) TMI 563 - Gauhati High Court]
[4] Dated 28 June 2017
[5] Dated 28 June 2017

- **Contractual arrangement and customer interface**
  - At the time of placing an order on the ECO platform, the customer is presented with a consolidated amount payable in respect of the transaction, *inter alia* comprising of the value of goods, platform charges and delivery/logistics charges. Separate invoices are issued for goods, platform services and transportation services.
  - The Buyer's Terms of Use merely state that transportation is facilitated through a generic 'transporter' without enabling the customer to identify, select or negotiate with the service provider.
  - The customer does not exercise any control over the mode, route or manner of transportation.
- **Absence of privity and a valid contract of carriage**
  - It is a settled principle of contract law that a binding agreement arises only when there is *consensus ad idem* between clearly identifiable parties on essential terms.
  - In the present case, there is no identifiable transporter with whom the customer contracts, resulting in the absence of privity of contract and lack of consensus ad idem.
  - The identity of the service provider being an essential element, its absence strikes at the root of contractual formation. Consequently, no legally enforceable contract of carriage can be said to exist between the customer and the transporter.
  - Hence, the assertion of lien based on such arrangement lacks legal foundation.
- **Substance over form**
  - Mere description of the service as 'GTA' or charges as 'transportation charges' is not determinative of the nature of the transaction, and the substance of such transaction must be examined.
  - Separate recovery of transportation charges does not, by itself, establish an independent GTA service without further substantive evidence establishing certainty of parties, real consent and actual commercial arrangement.
  - The arrangement appears to be embedded within standard-form contracts, lacking real commercial negotiation and does not reflect the intent of the parties.

- **Deficiencies in the consignment note and statutory requirements**
  - Issuance of a document styled as a consignment note is not conclusive for classification as a GTA service.
  - Further, the Taxpayer has only clarified that bicycles are not used in the proposed model but has not ruled out the use of two/three-wheelers in last-mile delivery, which do not qualify as 'goods carriage' under the Motor Vehicles Act, 1988.
  - Further, the requirement of vehicle details is relevant for e-way bill compliance. Absence or improper updating of such details in the consignment note or related documents may constitute a material defect, impacting satisfaction of the conditions for GTA classification.
  - Accordingly, the claim of classification as GTA services and consequent exemption under Sl. No. 21A of Notification No. 12/2017-Central Tax (Rate) is not sustainable.
- **Nature of operations is akin to an integrated e-commerce delivery/logistics arrangement**
  - The Taxpayer undertakes an integrated supply chain, involving collection, hub operations, sorting, transhipment, tracking and doorstep delivery.
  - In the e-commerce ecosystem, the end customer does not merely seek movement of goods by road but rather expects delivery of goods purchased online at their doorstep. The operational arrangement is therefore directed towards the fulfilment of an e-commerce order and not merely towards the transportation of goods as understood in the context of GTA service.
  - The assumption of responsibility till final delivery indicates an integrated e-commerce delivery/logistics arrangement, the substance of which aligns more with organised courier/logistics services rather than conventional GTA transportation.
  - The transportation element is embedded within standard-form platform terms, without any independent or informed contractual engagement by the customer. Accordingly, attributes such as privity, volition and control, typically associated with GTA services, are absent.
  - From the customer's perspective, the transaction constitutes a composite supply of goods with assured doorstep delivery, where delivery is inseparable from the purchase and not an independently contracted service.
  - The arrangement is therefore an artificial structuring lacking commercial substance, with the attribution of GTA service to the customer being illusory and inconsistent with the GST classification framework.
- In view of the above, the proposed model is classifiable as courier/logistics services, liable to GST at 18%.

Corporate Guarantees issued for a subsidiary without consideration are not liable to GST; Challenge to Rule 28(2) rejected

M/s. D P Jain & Co. Infrastructure Pvt. Ltd. Vs. Union of India and Ors. [TS-333-HC(BOM)-2026-GST]

Legislative Background

The taxability and valuation of corporate guarantees ('CG') between related parties have been specifically addressed through amendments to Rule 28 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules'). A summary of the key amendments is set out below:

- **Notification No. 52/2023-Central Tax dated 26 October 2023:** Inserted Rule 28(2) of CGST Rules with effect from 26 October 2023 to prescribe a deemed valuation mechanism, i.e., 1% of the guaranteed amount per annum or actual consideration, whichever is higher, for CG provided to related persons.
- **Notification No. 12/2024-Central Tax dated 10 July 2024:** Amended Rule 28(2) of CGST Rules with retrospective effect from 26 October 2023 to provide that where the recipient is eligible for full input tax credit ('ITC'), the value declared in the invoice shall be deemed to be the open market value, thereby mitigating the mandatory 1% valuation requirement in full ITC scenarios.
- **Circular No. 204/16/2023-GST dated 27 October 2023:** Clarified that issuance of CG by related parties, even without consideration, constitutes a supply of service under GST.
- **Circular No. 225/19/2024-GST dated 11 July 2024:** Further clarified on the valuation and the GST levy, including treatment of ongoing guarantees, renewals and confirmation of prospective application of Rule 28(2) of CGST Rules with effect from 26 October 2023.

Facts

M/s D.P. Jain & Co. Infrastructure Pvt. Ltd. ('Taxpayer') is engaged in the construction of National and State Highways pursuant to contracts awarded by the National Highways Authority and various State Corporations.

In connection with financing arrangements for its subsidiaries, the Taxpayer executed three CG deeds in favour of lending banks to cover cost overruns or funding shortfalls during the loan tenure. The agreements specifically provided that the Taxpayer has not and shall not receive any security, fee, commission, or other consideration for issuance of such guarantees. The details of such guarantees are tabulated below:

Subsidiary	Amount of loan	Date of the Guarantee deed	Bank
DPJ Pollachi HAM Project Pvt. Ltd.	INR 3.11 bn	3 November 2020	State Bank of India
D P Jain TOT Toll Roads Pvt. Ltd.	INR 11.96 bn	28 December 2021	Bank of Maharash tra
D P Jain Bangalore Chennai Expressways Pvt. Ltd.	INR 5.07 bn	8 August 2022	Bank of Maharash tra

An investigation was initially conducted by the Assistant Commissioner of State Tax for the period FY 2017-18 to FY 2022-23, wherein the expenses related to the three CGs were recorded in the books of account. However, no further action was initiated pursuant to such investigation.

Subsequently, the Directorate General of GST Intelligence ('DGGI') initiated separate proceedings against the Taxpayer by issuing a summons dated 20 July 2023, alleging non-payment of GST on CG. The DGGI also issued a letter stating that the subject matter of its investigation was not covered under the earlier State Tax proceedings. Consequently, a show cause notice dated 28 January 2025 ('Impugned SCN') was issued by DGGI.

The validity of the e Impugned SCN and Circular Nos. 204/16/2023[6] and 225/19/2024-GST[7] were challenged by the Taxpayer before the Bombay High Court. The Bombay High Court held that CGs provided to subsidiaries without consideration do not constitute a supply. The key findings of the Bombay High Court are as follows:

- **Nature of CG**
  - On a joint reading of Section 126 of the Indian Contract Act, 1872 and Section 2(11) of the Companies Act, 2013, a CG can be inferred as an affirmation usually made by a larger company on behalf of another business entity, which usually would be a smaller company.

[6] Dated 27 October 2023
[7] Dated 11 July 2024

- CG is an arrangement involving a borrower, lender and guarantor, whereby the guarantor undertakes to discharge the borrower's obligations in the event of default. Such guarantees are typically issued by holding or group entities without consideration to support subsidiaries or group companies and facilitate access to finance.
- In the present case, the CGs were provided by the Taxpayer to secure loans for its subsidiaries and cannot be regarded as guarantees issued to cover its own exposure or for unrelated third parties. CG is actually an in-house guarantee and is not issued to customers generally.
- Reliance was placed on ***Edelweiss Financial Services***[8] where, in the context of the Service Tax law, it was held that a CG issued for a subsidiary without consideration does not constitute a taxable service. It was further observed that for an activity to be taxable under Service Tax, it must not only involve a provider but also a flow of consideration for the rendering of the service. In the absence of either of these elements, taxability does not arise.

- **Issuance of CG is not a supply**
  - In the present case, the issuance of CGs by the Taxpayer to its subsidiaries was not supported by any consideration, and in Edelweiss Financial Services (supra), it was held that the issuance of CG to a group company without consideration would not fall within banking and other financial services and is a non-taxable service.
  - There is substance in the contention that execution of CG is in the nature of a contingent contract which becomes enforceable only at the instance of the bank/financial institution in the event of a default. There is no flow of consideration for the rendering of services, and hence, taxability does not arise.
  - CGs are issued without any security, whereas bank guarantees mostly require security against the offer of such a guarantee. Further, CGs are primarily based on the financial strength and creditworthiness of the guarantor.
  - The judgment in Edelweiss Financial Services (supra) is applicable to the present case, and accordingly, execution of the three CGs without consideration does not qualify as a taxable supply under Section 9 of the CGST Act, and the Impugned SCN and proceedings initiated by DGGI are quashed and set aside.

- **Challenge to the constitutional validity of the amendment to Rule 28(2) of CGST Rules cannot be entertained**
  - Every legislation, particularly in economic matters, is essentially empiric, and it is based on experimentation. There may be crudities, inequities and even possibilities of abuse, but on that account alone, it cannot be struck down as invalid. These can always be rectified by the Legislature by passing amendments. The Court must therefore decide the constitutionality of such legislation by the generality of its provisions[9].
  - Laws relating to economic activities should be viewed with greater latitude than laws touching civil rights. There exists a presumption in favour of constitutionality, and the burden lies on the challenger to establish a clear violation of constitutional principles.
  - Tax statutes are generally not considered violative of Article 19(1)(g) of the Constitution of India merely on the ground of burden or differential impact, and the Legislature enjoys wide discretion in matters of classification and fiscal policy.
  - Courts do not undertake a merit-based review of policy decisions involving public revenue, which are inherently based on economic considerations.
  - In view of the above, the challenge to the validity of Rule 28(2) of the CGST Rules is not sustainable.

[8] Commissioner of CGST & Central Excise Vs. Edelweiss Financial Services Ltd. [MANU/SC/0648/2023]
[9] R.K. Garg Vs. Union of India [MANU/SC/0074/1981]

TRANSFER PRICING

Circulars / Notifications / Press Release

Mumbai Tax Tribunal directs 50:50 split of interest saving for determining ALP of corporate guarantee commission

The taxpayer had provided corporate guarantees to its Associated Enterprises (AEs). During the first round of proceedings, the Transfer Pricing Officer (TPO) had computed the Arm's Length Price (ALP) of the guaranteed commission at 4.03%, which was reduced to 0.70% by the first appellate authority. The Mumbai Income Tax Appellate Tribunal (ITAT), in its earlier order, had remanded the matter back to the TPO, directing the TPO to apply the interest-saving approach for determining the arm's length price for guarantee commission.

In the set-aside proceedings for FY 2009-10, the TPO applied the interest-saving approach and arrived at an interest saving of 1.10% and allocated the entire saving to the corporate guarantee. The TPO passed the draft assessment order proposing transfer pricing (TP) adjustments of INR 29.48 lakhs (FY 2009-10), INR 25.58 lakhs (FY 2011-12) and INR 41.10 lakhs (FY 2012-13). Aggrieved by this, the taxpayer filed objections before Dispute Resolution Panel (DRP). However, DRP upheld the findings of the TPO and the final order was passed considering the proposed TP adjustments. Aggrieved, the taxpayer preferred an appeal before Mumbai ITAT.

The taxpayer contended that interest savings arising from a guarantee transaction are attributable to both the guarantor and the borrower, and accordingly, the benefit should be split equally between the parties in the ratio of 50:50. However, the Revenue opined that a 50:50 split could not be adopted as a standard basis and that the allocation must be based on a comparative FAR (Functions, Assets, Risks) analysis and other relevant factors.

The Mumbai Tax Tribunal, while ruling in favour of the taxpayer, held as under:

- Reliance is placed on the coordinate bench decisions in cases of Dabur India Ltd.[1] and Reliance Industries Ltd[2], and accordingly, the TPO is directed to adopt a 50:50 split for determining the ALP of guarantee commission using the interest saving method.
- Reference is made to the observations laid down in Rangachary Committee Report, which acknowledged the practical difficulties of splitting guaranteed benefits based on relative bargaining power and cautioned against treating the 50:50 ratio as an absolute norm
- Accordingly, it is clarified that the 50:50 split should not be treated as a standard benchmark by either the taxpayer or the TPO. The appropriate split must be determined based on the facts and circumstances of each case.

[ACG Associated Capsules (P.) Ltd. v. DCIT, ITA Nos. 9105, 5846 (MUM) of 2025 and 1827 (MUM) of 2026 (Mumbai Tax Tribunal)]

[1] Dabur India Ltd. v. Addl. CIT [2021] ITA Nos. 3114, 3241, 6256 & 6525/Del/2014 (Delhi - Trib.)
[2] Reliance Industries Ltd. v. Asstt. CIT [2022] [2023] 198 ITD 158 (Mumbai - Trib.)

Delhi Tax Tribunal deletes TP adjustment on sale of goods to wholly owned US LLC treated as pass-through entity; also deletes interest adjustment on receivables and SDT adjustment reducing section 80-IC deduction

The taxpayer is engaged in the manufacturing of automotive filters (oil, fuel, air, hydraulic) with approximately 98% of its revenue derived from filter manufacturing. The taxpayer entered into transactions of sale of goods to its AE, Elofic USA Limited Liability Corporation (LLC), which is wholly owned by the taxpayer. The taxpayer also had an eligible unit at Nalagarh, Himachal Pradesh, claiming deduction under section 80-IC of the Act and the specified domestic transactions (SDTs) between eligible and non-eligible units were benchmarked as per the Other Method based on comparable uncontrolled transactions.

During the course of assessment proceedings, the TPO made the following adjustments: (i) an ALP adjustment of INR 2,84,55,867 on sale of goods to the AE; (ii) imputed interest of INR 23,33,892 on overdue trade receivables from the AE (restricting credit period to 30 days); and (iii) a reworking of the eligible unit's profits under the Transactional Net Margin Method (TNMM) with altered filters and comparables, thereby reducing the section 80-IC deduction from INR 1,43,21,253 to INR 76,15,521. The DRP upheld most adjustments except to the extent that some relief was allowed on account of interest receivables from the AE on account of amounts recoverable towards the sales made to such AE. Aggrieved, the taxpayer appealed to the Delhi ITAT.

The Delhi ITAT made the following key observations:

- It is observed that the taxpayer is the sole proprietor/shareholder of Elofic USA LLC and under US law, the LLC is a pass-through entity. Therefore, all the income earned by the LLC is offered to tax in India and duly reported in the tax returns filed in India by the taxpayer.
- Reference is made to the Supreme Court's decision in the case of Hind Construction Ltd[3] and the coordinate bench ruling in Aithent Technologies (P.) Ltd.[4] wherein it was held that 'no one can trade with self and no one can earn from oneself'.
- The fact that the transactions were reported as AE transactions out of abundant caution did not prevent examining them from a true legal perspective. The taxpayer had given appropriate disclosures at each stage, i.e., at the time of filing the return, wherein the profits of foreign entity included in the taxable income and at the time of filing the TP study report. Accordingly, the TP adjustment related to the sale of goods is directed to be deleted.
- It is to be noted that the transaction of 'imputed interest adjustment on receivables from Elofic USA LLC' was intrinsically linked to the underlying sale transaction. Since the ALP adjustment on sales was already deleted, there was no independent basis to sustain the interest adjustment. Therefore, addition is accordingly directed to be deleted.
- The TPO, out of 11 comparables as identified by the Company, had picked only 3 of those comparables and while doing so, he has changed the filter of manufacturing income to total income from 50% to 95% for AE and SDT transactions respectively. Similarly, a filter of 2% advertisement expenditure was also applied without any reasonable basis. Since the taxpayer's eligible unit margin of 10.88% fell within the range of 10.80% to 21.60% (as determined by TPO itself), no TP adjustment on SDTs is warranted. The addition and the consequential reduction in the section 80-IC deduction is directed to be deleted.

[Elofic Industries Ltd. v. ACIT, IT Appeal No. 489 (Delhi) of 2022, (Delhi Tax Tribunal)]

Delhi Tax Tribunal holds that a limited-risk characterisation and TNMM benchmarking of Boeing India must be accepted

The taxpayer is a step-down subsidiary of The Boeing Company (TBC), USA. Following TBC's sale of Boeing aircraft and Boeing Business Jets (BBJ) to the Indian Air Force (IAF), entered into service contracts with the IAF for aircrew training and aircraft support services. Since the IAF preferred a local contracting entity and the taxpayer possessed neither the technical know-how nor the assets (such as training simulators) needed to fulfil these obligations, the taxpayer sub-contracted the substantial portion of the services to its AE, Boeing Aerospace Operations Inc. (BAO), while retaining only coordination and liaison functions. The taxpayer was remunerated on a cost-plus basis, retaining a mark-up of 20% on its value-added expenses (after excluding the cost of services outsourced to AE). Further, BAO bears all risks relating to liquidated damages, performance guarantees, and customer claims.

The taxpayer benchmarked the technical fees paid to BAO under the TNMM using Operating Profit (OP)/Operating Cost (OC) as the profit level indicator and characterised itself as a limited-risk service provider. This characterisation and benchmarking had been accepted by the TPO in the immediately preceding FY 2019-20. However, during assessment proceedings, the TPO recharacterised the taxpayer as a full-risk service provider, treated BAO as the tested party and made TP adjustment on account of technical fees paid to BAO.

Aggrieved by this, the taxpayer filed objections before the DRP and the DRP directed the TPO to reconsider the characterisation in light of additional evidence and not to penalise taxpayer for its inability to produce confidential defense contracts (which were subject to non-disclosure obligations with the Ministry of Defense). The TPO, however, maintained the adjustment with regard to technical fees paid to BAO. Aggrieved, the taxpayer preferred an appeal before the Delhi ITAT which ruled in favour of the taxpayer and made the following observations:

[3] CIT v. Hind Construction Ltd [1972] 83 ITR 211 (SC))
[4] Aithent Technologies (P.) Ltd. v. Dy. CIT [2016] 74 taxmann.com 214 (Delhi - Trib.)

- On a careful analysis of the taxpayer's financial statements, it is observed that the taxpayer neither owned any assets relevant to rendering training services to IAF nor had it invested in any related technical know-how. The assets held by the taxpayer are regular assets for running the liaison office, coordination and assistance. It clearly establishes that the taxpayer is only providing assistance to provide services through TBC or BAO to the IAF. This conclusively concluded that taxpayer was only a limited-risk service provider and not the main provider of training and technical services as characterised by the TPO.
- The inter-company agreements expressly allocated all significant risks, including liquidated damage, performance guarantees and customer claims to BAO/AE. The TPO had not brought any material on record to demonstrate that the taxpayer retained any business risk. It clearly discloses the fact that the whole risk vests with the AE. Based on the above aspect and total risk factor held by the AE, the taxpayer had chosen the TNMM as the MAM and determined the ALP.
- Since there is no change in the factual matrix for the FY 2019-20, as the facts are exactly the same in the present year and following the principles of consistency, the TPO is directed to accept the benchmarking conducted by the taxpayer.
- The non-disclosure clause in the agreement should not be a hindrance to accepting the detailed benchmarking conducted by the taxpayer.
- Further, since the DRP had directed the TPO to independently benchmark the transaction and the TPO failed to comply with this direction, the taxpayer's benchmarking is to be accepted.

[Boeing India Defense (P.) Ltd. v. DCIT, ITA No. 6042 (Del) of 2024, (Delhi Tax Tribunal)]

Chennai Tax Tribunal deletes double disallowance u/s 40A(2)(b) r.w.s 37 of the Act and restricts TP adjustment on corporate guarantee commission to 0.5%

The taxpayer is one of India's largest tyre manufacturers, producing tyres, treads, tubes, conveyor belts, and other related rubber products. Taxpayer was subject to reassessment proceedings for FY 2014-15 and 2015-16. The TPO made upward adjustments in relation to (i) raw material purchases from its Singapore-based wholly owned subsidiary, MRF SG Pte Ltd ("MRF SG"); and (ii) corporate guarantee extended to MRF SG. Additionally, the tax officer made a separate disallowance of expenses paid to MRF SG under section 40A(2)(b) of the Act read with Section 37 of the Act, over and above the TP adjustment already made by the TPO on the same transactions. On objections filed by the taxpayer before the DRP, the DRP upheld all adjustments, following which MRF Limited preferred an appeal before the Chennai ITAT.

The Chennai ITAT made the following key observations:

Re. No double disallowance under TP and corporate tax provisions

- It is observed that the TPO had already benchmarked the MRF SG transactions during TP proceedings and made an upward adjustment of 2.5% on cost. Therefore, the tax officer cannot again question the reasonableness of the same expenditure. The allegation that MRF SG was a sham entity was found to be unsupported by cogent evidence. Accordingly, a double disallowance once under TP provisions and again under corporate tax provisions is impermissible.

Re. Corporate guarantee commission restricted to 0.5%, no separate adjustment for letter of comfort

- Following coordinate bench precedents (including Bharti Airtel Ltd.[5] and TVS Logistics Services Ltd.[6]), corporate guarantee extended without cost to the guarantor may not warrant a TP adjustment.
- However, noting that the Bilateral Advance Pricing Agreement (BAPA) for subsequent years recognises 0.5% as the only appropriate compensation for such AE transactions, and does not require any separate consideration for the letter of comfort, the adjustment is restricted to 0.5%.

[MRF Limited v. DCIT, IT (TP)A 5 & 6/Chny/2024, (Chennai Tax Tribunal)]

Hyderabad Tax Tribunal holds that TPO cannot reject certified segmental financials on an ad hoc basis without independent analysis and upholds LIBOR + 3% as Arm's Length rate for ECB interest where rate is below RBI ceiling

The taxpayer is a wholly owned subsidiary of the Curia Group set up to provide research and development (R&D) services in the field of medicinal chemistry to its AEs. For FY 2017-18, the taxpayer's case was selected for scrutiny and during the course of proceedings, the TPO proposed a TP adjustment of INR 8.105 crore. The taxpayer contended that it had prepared detailed segmental results distinguishing its AE and non-AE transactions by adopting a direct cost allocation method allocating costs using activity-based keys. This segmental report was duly certified by a Cost and Management Accountant. The TPO, however, rejected these results solely on the ground that the segment results did not reconcile with the audited financials, and thereafter reallocated costs on a revenue proportion basis — an approach that resulted in identical profitability across all segments, effectively equating the AE and non-AE segments.

[5] Bharti Airtel Ltd. v. ACIT (161 TTJ 428)(Delhi ITAT)
[6] TVS Logistics Services Ltd. v. DCIT (ITA No. 458/Mds/2016)(Chennai ITAT)

Further, the taxpayer had borrowed funds from its AE across multiple financial years commencing FY 2013-14, all at a rate of GBP LIBOR plus 300 basis points (3%), which was below the applicable ceiling rate prescribed by the Reserve Bank of India (RBI) for ECBs at the time of each borrowing. The taxpayer had also obtained prior RBI approval for each such borrowing and had undertaken a detailed benchmarking analysis in its TPSR supporting LIBOR + 3% as the Arm's Length Price (ALP). The TPO summarily rejected this benchmarking without following any comparability analysis as prescribed under Chapter X of the Act and substituted the ALP at LIBOR + 2% on an ad hoc basis.

Aggrieved by this, the taxpayer filed objections before DRP wherein all adjustments proposed by TPO were accepted except for markup on reimbursement cost. Aggrieved, the taxpayer preferred an appeal before the Hyderabad ITAT.

The Hyderabad Tax Tribunal, ruling in favour of the taxpayer, made the following key observations:

Re. Rejection of Certified Segmental Financial Information

- The taxpayer had adopted a refined approach for the preparation of segment results giving true and fair view of its international transactions.
- The taxpayer had provided a detailed and cogent explanation for the difference between the TPSR segmental results and the audited financials namely, that the audited financials followed the mandate of AS-17, which reports only related party vs. non-related party information and does not provide business-segment-wise bifurcation between AE and non-AE transactions.
- The TPO/DRP's approach of reallocating costs proportionately to revenue would mechanically produce the same profitability for all segments and leads to the incorrect conclusion of equating AE and non-AE segments.
- Reliance was placed on the Delhi High Court ruling in NALWA Steel & Power Limited[7] and the Hyderabad Tribunal's coordinate bench decision in TPSC (India) (P.) Ltd[8] and the Mumbai Tribunal's ruling in Mylan Pharmaceuticals Private Limited[9], all of which support the proposition that where a taxpayer allocates costs based on identified cost drivers and accepted accountancy principles, the tax authorities are not justified in substituting an alternate allocation on turnover/revenue basis without investigation or justification.
- The TPO's rejection of the certified segmental results done on an ad hoc and mechanical basis, without independent analysis and without pointing out any specific defect or discrepancy in the taxpayer's methodology, is unjustified.
- Accordingly, the matter is restored to the TPO to independently consider the certified segmental financial results provided in the taxpayer's TP documentation.

Re. Interest on External Commercial Borrowings (ECBs)

- Since the taxpayer had obtained prior RBI approval for each of the ECB borrowings from its AE and the interest rate of LIBOR + 3% was lower than the ceiling rate prescribed by the RBI, the transaction of payment of interest on ECB can be held to be at ALP.
- The TPO rejected the taxpayer's benchmarking without conducting any comparability benchmarking analysis as statutorily required under Chapter X of the Act.
- Reliance is placed on the Karnataka High Court's decision in GE India Technology Center Pvt. Ltd[10]., wherein it was held that RBI's approval of the rate of interest is a relevant factor in determining the ALP and that the rate should be determined based on the prevailing rate at the time of availing the loan.
- Reference is made to the several coordinate bench decisions, such as Firemenich Aromatics (India) Pvt. Ltd[11], Goodyear South Asia Tyres Private Limited[12], Firestone International Pvt. Ltd[13]., and Devgen Seeds & Crop Technology Private Limited[14] all of which consistently held that an interest rate on ECBs equal to or below the RBI-notified ceiling rate qualifies as Arm's Length.
- Accordingly, the taxpayer's benchmarking of interest on ECBs at LIBOR + 3% is upheld.

[Curia India Private Limited v. DCIT, ITA No.389/HYd/2022 (Hyderabad Tax Tribunal)]

[7] Principal Commissioner of Income Tax v. NALWA Steel & Power Limited (ITA 725/2019)
[8] TPSC (India) (P.) Ltd v. DCIT (ITA (TP) No.225/Hyd/2022
[9] Mylan Pharmaceuticals Private Limited v. ACIT (ITA No.2209/Mum/2017)
[10] CIT v. GE India Technology Center Pvt. Ltd. (ITA No.282 of 2013)
[11] Firemenich Aromatics (India) Pvt Ltd vs. ACIT (ITA No.7844/Mum/2019)(Mumbai ITAT)
[12] Goodyear South Asia Tyres Private Limited v. ACIT (ITA No.7715/Mum/2012) (Mumbai ITAT)
[13] Firestone International Pvt. Ltd. v. ACIT (ITA No.5471/Mum/2014) (Mumbai ITAT)
[14] Devgen Seeds & Crop Technology Private Limited (ITA No.399/Hyd/2016)

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