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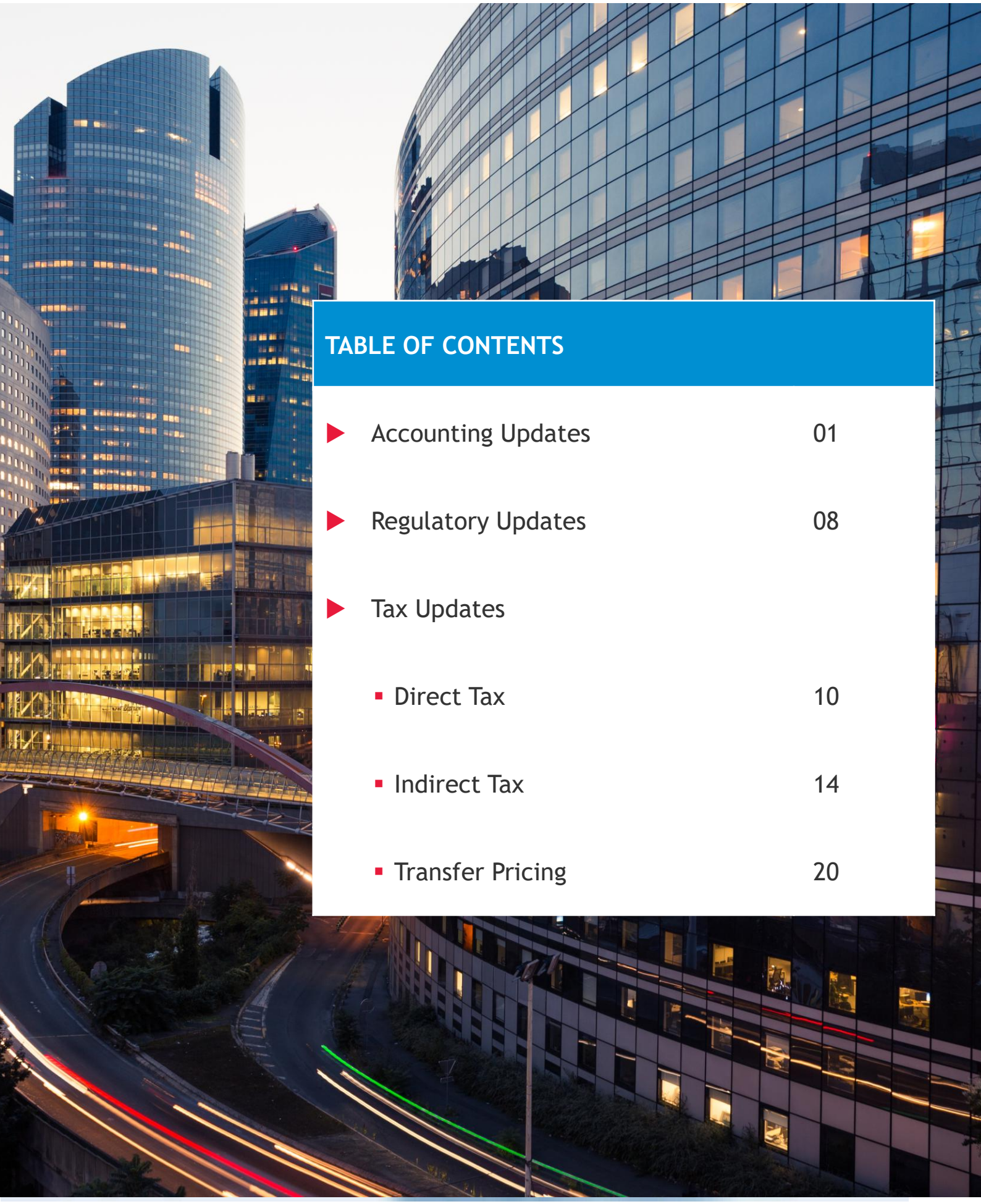

TABLE OF CONTENTS

ACCOUNTING UPDATES

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Institute Of Chartered Accountants Of India (ICAI)

Expert Advisory Committee (EAC) Opinion: Recognition of liability towards planned expenditure committed for Stage II Forest Clerance and Environmental Management Plan under Environmental Clearance of Bauxite Mine received from MoEF&CC under Ind AS framework.

A public sector enterprise under the administrative control of the Ministry of Mines, Government of India, is engaged in mining of bauxite, manufacturing of alumina and aluminium, and generation of captive power. Further, the Company has been allotted a new bauxite mine and for which it has obtained statutory clearances including Stage-I and Stage-II forest clearances and Environmental Clearance (EC). These clearances, granted by the Ministry of Environment, Forest and Climate Change (MoEF&CC), were subject to specific conditions such as compensatory afforestation, desilting of village tanks, planting of drought-hardy species, green belt development, and topsoil management. While INR 262.12 crores deposited under Stage-I clearance was recognised as 'Intangible Assets under Development', the Company did not recognise INR 9.89 crores of additional committed revenue expenditure and INR 120 crores planned under the Environmental Management Plan (EMP) in its financials as on 31 March 2024.

The Company argued that the obligating event for these expenditures arises only upon execution of the mining lease and commencement of mine operations, respectively. It believed that since the mine had not become operational and the lease was not executed by the reporting date, the liability did not qualify for recognition under Ind AS 37. The supplementary audit conducted by the Comptroller and Auditor General of India (CAG) disagreed, stating that the undertakings provided by the Company to MoEF&CC constitute a present obligation resulting from past events, i.e., obtaining of statutory clearances. The audit noted that non-provision of these amounts led to understatement of current liabilities and Capital Work-in-Progress (CWIP) by INR 129.89 crores (INR 9.89 crores for forest clearance-related commitments and INR 120 crores for EMP implementation).

The Expert Advisory Committee (EAC) of ICAI reviewed the issue and opined that a provision should not be recognised merely when the Company makes a commitment or undertaking to regulatory authorities. Referring to Ind AS 37, the EAC emphasised that for a provision to be recognised, a present obligation must exist as a result of a past event, and such an obligation should exist independently of the Company's future actions. The Committee concluded that only upon entering forest land or commencing mining operations—events that could lead to environmental impact—the Company may have a present obligation to incur the related expenditure. The timing of recognising such provisions is a matter of professional judgement based on specific facts and circumstances, and the Company should assess its obligations accordingly.

REGULATORY UPDATES

Institute of Chartered Accountants of India (ICAI)

FAQs on Management Representation Letter

The Auditing and Assurance Standards Board of ICAI has released the FAQs on the MRL to provide practical guidance on the implementation of the principles laid down in SA 580, which inter alia includes responses to common queries on the MRL. The FAQs provide detailed guidance on written representations (WRs) in audits, outlining the key subjects they should cover, such as compliance with laws, fraud, internal controls, and related party transactions. The document also includes procedural guidance on the timing, format, and updates of WRs, along with handling additional or qualified representations. Additionally, it addresses special scenarios, including requirements related to consolidated financial statements (CFS), regulatory disclosures, and Indian-specific considerations such as CARO, SEBI, and the Companies Act.

The publication contains four Appendices which include illustrative templates on Representation Letter, Format for Updating Management Representation Letter, Format for Additional Considerations, and SA 580 Compliance Checklist. "Appendix I: Illustrative Representation Letter" includes a comprehensive format of management representation letter.

Widening the scope of mandatory applicability of Audit Quality Maturity Model (AQMM) and disclosure of AQMM Levels on ICAI Website and Peer Review Certificates

The Institute of Chartered Accountants of India (ICAI), through its Centre for Audit Quality, has announced the widened mandatory applicability of the Audit Quality Maturity Model (AQMM) Version 2.0. Previously applicable only to firms auditing listed entities, Banks other than Co-Operative banks (Except multi- state Co-operative banks), and insurance companies (excluding branch auditors), the revised mandate will now extend in a phased manner to additional categories of firms. From 1 April 2026, AQMM will be mandatory for firms auditing holding, subsidiary, associate, or joint venture entities of listed companies, banks other than co-operative banks (except multi-state co-operative banks), and insurance companies. It will also apply to firms proposing to undertake Statutory Audit of unlisted public companies having paid-up capital of not less than INR 500 crore or having annual turnover of not less than INR 1000 crore or having, in aggregate, outstanding loans, debentures and deposits of not less than INR 500 crore as on the 31 March of immediately preceding financial year.

Further, from 1 April 2027, AQMM will be mandatory to firms that propose to undertake the Statutory Audit of entities that have raised funds from the public or banks or financial institutions of over INR 50 crore during the period under review or of any body corporate, including trusts which are covered under public interest entities.

Additionally, AQMM levels of firms will now be disclosed on the ICAI website and included in Peer Review Certificates, enhancing transparency and promoting audit quality across the profession.

Other Regulatory Matters

The Income Tax Act, 2025

The Government of India has enacted a new law titled the Income-tax Act, 2025, which replaces the erstwhile Income-tax Act, 1961. The new Act was passed by Parliament as the Income-tax (No. 2) Bill, 2025, and was officially notified in the Gazette of India on 22 August 2025. The provisions of this Act shall come into effect from 1 April 2026, and will apply for the financial year commencing on that date, i.e., FY 2026-27 onwards.

Key Highlights of the Income-tax Act, 2025:

1. Introduction of a Unified "Tax Year": The concepts of "Assessment Year" and "Previous Year" used under the 1961 Act have been replaced with a single unified term - "Tax Year". This change is intended to simplify reference and interpretation.
2. Faceless and Digital-First Compliance Mechanism: The new Act formalises a digital-first approach to compliance, introducing provisions for faceless assessments, electronic notices, and digital interaction between taxpayers and tax authorities, thereby reducing physical interface.
3. No Change in Tax Rates: The existing income-tax slabs and rates remain unchanged under the new legislation.
4. Recognition and Taxation of Virtual Digital Assets (VDAs): For the first time, Virtual Digital Assets, including cryptocurrencies and similar digital instruments, have been formally defined and recognised as 'Capital Assets'. Consequently, income from their transfer will now be taxable under the Act.

The Taxation Laws (Amendment) Bill, 2025.

The Lok Sabha passed two important laws related to taxation—the **Income Tax (No. 2) Bill 2025**, and the **Taxation Laws (Amendment) Bill, 2025**. The Income Tax (No. 2) Bill 2025 aims to consolidate and amend the **Income Tax Act, 1961**, while the Taxation Laws (Amendment) Bill, 2025 proposes amendments to both the Income Tax Act, 1961 and the **Finance Act, 2025**.

Key Changes Proposed in the Taxation Laws (Amendment) Bill, 2025

The amendments will take effect from **1 April 2025**, and focus on three major areas:

1. **Unified Pension Scheme (UPS):** The Bill introduces new tax exemptions under **Section 10** for lump-sum payouts from the UPS. Up to 60% of the pension corpus withdrawn on retirement or superannuation will be exempt from tax. Additionally, Section 80CCD is amended to clarify that amounts withdrawn from the UPS will be taxable unless transferred to a pool corpus, in which case it remains tax-neutral.
2. **Foreign Sovereign Investment:** To strengthen India-Saudi tax cooperation, **Section 10(23FE)** has been amended to include Saudi Arabia's Public Investment Fund and its wholly owned subsidiary as eligible for tax exemptions on income from Indian infrastructure investments.

3. **Search & Seizure Block Assessments:** Amendments to **Section 49 of the Finance Act, 2025** address assessment proceedings initiated or ongoing during search operations under **Section 132/132A**. Such proceedings will now automatically abate at the time of the search, simplifying compliance and avoiding overlapping assessments.

The Insolvency and Bankruptcy Code (Amendment) Bill, 2025

The finance minister has introduced the Insolvency and Bankruptcy Code Amendment Bill, 2025, in the Lok Sabha. The bill introduces significant changes to overhaul India's insolvency regime with the aim of reducing delays, maximising value for stakeholders, and aligning with global best practices.
The key amendment includes an amendment to Section 7 of the Insolvency and Bankruptcy Code (IBC), which clarifies that the Adjudicating Authority has a strict 14-day timeline to decide whether to admit or reject a corporate insolvency application. The decision must be based only on three conditions: whether a default has occurred, if the application is complete, and whether there is no disciplinary action against the proposed resolution professional. If these conditions are met, the authority cannot reject the application on any other grounds. Additionally, if a financial institution files a record of default from an information utility, it is considered sufficient proof of default to initiate the insolvency process. Further, the bill introduced creditor-initiated insolvency resolution process which is an out-of-court initiation mechanism for genuine business failures to facilitate faster, cost-effective resolution with minimal business disruption, and the Introduction of a cross-border insolvency mechanism and group insolvency.

Draft Delhi Code on Social Security Rules, 2025

The Government of National Capital Region of Delhi has released the Draft Rules under the Code on Social Security, 2020, aiming to establish a comprehensive social security framework for workers across both the formal and informal sectors, with a strong focus on the unorganised workforce. The draft rules propose the establishment of Career Centres to assist with employment opportunities, the creation of a Social Security Fund for worker welfare, and the formation of a representative Governance Board to oversee implementation. The Government has invited public feedback on the draft, reinforcing its commitment to transparency and stakeholder participation. Once finalised, the rules will be applicable to all workplaces across Delhi.

The Promotion and Regulation of Online Gaming Act 2025

The Promotion and Regulation of Online Gaming Bill, 2025 has been passed and notified in e-gazette to establish a uniform legal framework for online gaming in India. The enactment aims to regulate and promote e-sports, educational, and social games while imposing a complete ban on real-money online games, both domestic and foreign, regardless of skill or chance. A national authority will be established to oversee compliance, user protection, and platform categorisation. penalty.

Key Highlights:

- The enactment notified in the gazette on 22 August 2025, applies across India and to services operating from outside India.
- E-sports officially recognised as a competitive sport with upcoming support infrastructure and incentives.
- Social games to be registered, age-appropriate, and promoted through dedicated platforms.
- Central government empowered to recognise, categorise and register online social games.
- Empowerment to block access to unlawful gaming platforms under the Information Technology Act, 2000
- Complete ban on online money games (games of skill/chance or both) and stricter penalties for promotion, facilitation, or financial transactions
- Stringent punishments for violations by service providers, advertisers and fund transfer platforms. Liabilities can extend to Companies and responsible individuals involved in the offence, however, independent directors may be exempt if they demonstrate due diligence
- Persons contravening the provision of the Act shall be punished with imprisonment extended up to 3 years or with fines extended up to INR 1 crore, with harsher penalties for repeat offenders
- Empowerment to block access to unlawful gaming platforms under the Information Technology Act, 2000

Checklist for Preparation of ITR Forms (ITR 1 & ITR 4)

The Direct Tax Committee of ICAI has released a publication, first in series containing checklists for the preparation of different ITR forms, such as ITR 1 and ITR 4. The publication provides guidance on the applicability of the form, Modes for filing, Pre-requisites for filing electronically, steps for filing, and a detailed checklist for each part of the returns.

Handbook on Invoicing under GST

The GST and Indirect tax committee of ICAI has released third revised edition of 'Handbook on Invoicing under GST', incorporating all the latest amendments related to it until 31 May 2025. The first edition was a compilation of GST invoicing provision. Later, second edition was updated with norms, FAQs, MCQs, diagrams, e-invoicing overview. The publication will aid as an informative guide on GST invoicing, helping businesses and professionals ensure compliance while optimising their financial processes.

Handbook on Exempted Supplies under GST

The GST and Indirect Tax Committee of ICAI has come out with fourth edition of its publication 'Handbook on Exempted Supplies under GST', incorporating legal provisions updated up to 15 April 2025. This publication provides an analysis of all the exemptions provided under the GST law for goods as well as services, making them easily understandable. The content is structured to offer clarity on eligibility criteria and also analyses each entry of the exemption notification, making it a valuable resource for all stakeholders.

Jan Vishwas (Amendment of Provisions) Bill, 2025

The Union Commerce and Industry Minister introduced the Jan Vishwas (Amendment of Provisions) Bill, 2025, in the Lok Sabha, which has been sent to the Select Committee of the Lok Sabha for review. The Act aims to decriminalise 355 provisions across 16 central acts as part of creating a more business-friendly environment and promoting ease of living by eliminating unnecessary legal hurdles and simplifying the regulatory landscape. The initiative underscores India's commitment to creating a predictable, transparent, and fair regulatory environment.

Key measures include first-time contraventions under 76 offences in 10 Acts would attract only a warning or advisory; penalties are recalibrated to provide for proportional fines with higher charges for repeat defaults; monetary penalties are subject to an automatic increase of 10% every three years; designated officers rather than courts are empowered to impose and adjudicate penalties; four existing Acts introduced in the 2023 law are proposed for further decriminalisation.

The bill inter alia proposes amendments to Micro Small Medium Enterprises (MSME) Act, 2006 and Reserve Bank of India Act,1934 such as:

- Amendment to section 27 of MSMED Act 2006 by replacing court adjudicated penalty to administrative penalty. The amendment proposes warning at first instance and penalty at second instance. The penalty shall be adjudicated by Development Commissioner (on behalf of the Government of India), with right to appeal allowed to the Secretary of the concerned Ministry/Department.
- Amendment to section 58B of the Reserve Bank of India Act, 1934 by replacing the term 'penalties' with 'offences', omits Sections 58B(2) and 58B(4AA), which prescribe penalties for failure to submit books, documents, or respond to queries.
- Amendment to section 58G of the Reserve Bank of India Act, 1934 by replacing the term 'fine' with 'penalties', and insertion of new provision, Section 58G(1A) - imposing INR 1 lakh penalty for failure to submit books, documents, or respond to queries, while ensuring the issuance of a show-cause notice and reasonable opportunity of being heard before imposing penalty.

Reserve Bank of India (RBI)

Master Direction – Export of Goods and Services

RBI issued an updated Master Direction on the export of goods and services on 5 August 2025 in order to promote greater use of Indian Rupee (INR) in international trade and enhancing India's position in global commerce. Updates — allowing invoice, payment, and settlement of exports and imports in INR, subject to compliance with Circular No. 08 dated 5 August 2025, on International Trade Settlement in INR.

Key features in the amended circular are as follows:

- Exports and imports can now be denominated and invoiced in INR.
- Exchange rates for such transactions will be market-determined.
- Indian Authorized Dealer (AD) banks can open Special Rupee Vostro Accounts for correspondent banks of partner countries to facilitate INR settlements.
- Indian exporters are permitted to receive advance payments in INR.
- Set-off facility allowed between export receivables and import payables with the same overseas counterparty, as per FEMA guidelines.
- Surplus INR balances in Vostro Accounts can be utilised for investments, projects, and managing trade advances.
- AD Category-I banks shall have the autonomy to open/close Special Rupee Vostro Accounts without prior RBI approval.

Introduction of Continuous Clearing and Settlement on Realisation in Cheque Truncation System("CTS")

In continuation to the press release on 8 August 2024 which announced the transition of Cheque Truncation System (CTS) from the current approach of batch processing to continuous clearing with settlement on realisation, RBI now has decided to transition CTS to continuous clearing and settlement on realisation in two phases.

The cheque clearing process has been streamlined into a single presentation session from 10:00 AM to 4:00 PM, during which banks continuously scan and send cheque images to the clearing house. These images are delivered in real-time to the respective drawee banks, which are required to process and confirm each cheque—either honouring or dishonouring it—on a continuous basis until 7:00 PM. A key feature introduced in this system is the "Item Expiry Time," which sets a deadline for the drawee bank to confirm each cheque. In Phase 1, currently in effect, the expiry time is fixed at 7:00 PM, and if the drawee bank does not respond by then, the cheque is deemed approved. In Phase 2, the expiry time will shift to a dynamic model, where each cheque must be confirmed within 3 hours of its receipt by the drawee bank. This phased implementation aims to enhance the efficiency, speed, and reliability of the cheque clearing system.

Reserve Bank of India (Counterparty Credit Risk: Add-on factors for computation of Potential Future Exposure) (Amendment) Directions, 2025.

The RBI issued a draft circular on 20 August 2025, seeking public comments on subject "Counterparty Credit Risk: Add-on factors for computation of Potential Future Exposure – Revised Instructions", for computing Potential Future Exposure (PFE) under the Current Exposure Method (CEM) for Counterparty Credit Risk (CCR).

The key changes include, mandatory CCR capital charge for banks acting as clearing members in equity and commodity derivatives on SEBI-recognised exchanges, Revised add-on factors for Interest Rate Contracts and Exchange Rate Contracts (including Gold). the changes aim to align with Basel Committee (BCBS) guidelines.

Comments on the draft circular are invited from banks, market participants and other stakeholders.

International Trade Settlement in Indian Rupees

The Reserve Bank of India (RBI) has further eased norms for international trade settlement in Indian Rupees (INR) through its latest A.P. (DIR Series) Circular No. 08, dated 5 August 2025. The revised guidelines shall take effect immediately. As per revised guidelines, Authorized Dealer Category-I (AD Cat-I) banks can now open Special Rupee Vostro Accounts (SRVAs) for overseas correspondent banks without prior approval from RBI, subject to compliance with other applicable laws and regulations. This marks a significant relaxation from the earlier framework laid out in Para 10 of Circular No. 10 dated 11 July 2022. This circular impact All Category-I Authorised Dealer Banks.

Securities and Exchange Board of India (SEBI)

Consultation Paper on review of requirements of Minimum Public Offer and timelines to comply with Minimum Public Shareholding for issuers in terms of Securities Contracts (Regulation) Rules, 1957

With a goal to ease mega listings while protecting market stability and investor interest, SEBI has released a consultation paper proposing changes to Minimum Public Offer ('MPO') and Minimum Public Shareholding ('MPS') requirements for large companies at the time of listing on Indian stock exchanges.

Under the existing rules of Securities Contracts (Regulation) Rules, 1957, Companies with a post issue market cap (refer table) shall meet the current requirements of MPO

POST ISSUE MARKET CAPITAL	EXISTING - MINIMUM PUBLIC OFFER	EXISTING - TIMELINES TO ACHIEVE MPS
INR 50,000 Cr < MCap ≤ INR 1,00,000 Cr	At least **10%**	MPS of 25% to be achieved in 3 years from date of listing
MCap > INR 1,00,000 Cr	INR 5000 Cr and at least 5% of the post issue share capital	MPS of 10% to be achieved in 2 years and 25% within 5 years from the date of listing

SEBI noted that these norms can be restrictive, especially for large, profitable firms and PSUs. Accordingly, SEBI has suggested a more flexible, three-tier system (refer table):

POST ISSUE MARKET CAPITAL	PROPOSAL - MINIMUM PUBLIC OFFER	PROPOSAL - TIMELINES TO ACHIEVE MPS
INR 50,000 Cr < MCap ≤ 1,00,000 Cr	INR 1,000 Cr and at least 8% of post issue capital	MPS of 25% to be achieved within 5 years from date of listing
MCap > INR 1,00,000 Cr	INR 6,250 Cr and 2.75% of post issue capital	Public holding < 15% on the date of listing — MPS to be achieved within 5 years from date of listing and 25% within 10 years from date of listing Public holding > 15% on the date of listing — MPS to be achieved within 5 years from date of listing.
MCap > INR 5 Lakh Cr+	INR 15,000 Cr and MPO, 1% public holding (min. 2.5% dilution)	[— " —]

Public comments have been sought by SEBI.

Consultation Paper on Amendments to Provisions Relating to Related Party Transactions Under SEBI (LODR) Regulations, 2015 And Circulars Thereunder

SEBI vide Consultation Paper dated 4 August 2025, has proposed amendments to the Related Party Transactions (RPT) framework. Key proposals include:

- Materiality threshold for RPTs by listed entities - Scale based threshold up to INR 5,000 crores by linking the annual consolidated turnover buckets to different % threshold for consideration of material RPTs.
- Material RPT thresholds for unlisted subsidiaries of listed entity-% limits as per latest audited financials or listed entity's scale-based materiality threshold.
- Relaxation in disclosure / minimum information requirements to be placed before audit committee and shareholders for RPT - exceeds INR 10 crore and above full RPT Industry Standards shall be followed, else simplified disclosure format provided it is between INR 1 crore and INR 10 crore.
- Validity of shareholder "omnibus approvals" granted for RPT by shareholders - to be incorporated in master circular.

Public comments have been sought by SEBI.

Review of Framework for conversion of Private Listed InvIT into Public InvIT

SEBI has revised the regulatory framework governing the conversion of private listed Infrastructure Investment Trusts (InvITs) into public InvITs. These changes are part of amendments made to Chapter 14 of the InvIT Master Circular and are effective immediately.

Under the revised framework; sponsors and sponsor groups are now required to maintain a minimum unitholding as per Regulations 12(3) and 12(3A) of the InvIT Regulations. Moreover, the units held by sponsors will be subject to a lock-in period in line with Regulation 12(5) of the InvIT Regulations.

In a key procedural change, SEBI has now aligned the issuance and disclosure requirements for public issuance of units during the conversion process with those applicable to follow-on public offers (FPOs), rather than treating them as initial public offers (IPOs). This alignment aims to streamline the conversion process and reduce regulatory friction.

Consultation paper on providing flexibilities to Large Value Funds for Accredited Investors ("LVFs") under SEBI (AIF) Regulations

SEBI, through a consultation paper dated 7 August 2025, has proposed a series of relaxations under the Alternative Investment Funds (AIF) Regulations to enhance the accessibility and flexibility of Large Value Funds (LVFs). One of the key proposals is to reduce the minimum investment requirement for LVFs from INR 70 crore to INR 25 crore, thereby lowering the entry barrier for sophisticated domestic investors. Additionally, SEBI has suggested exempting LVFs from several regulatory obligations, including the mandatory use of a standard Private Placement Memorandum (PPM) template, annual audits of PPM terms, specific responsibilities of investment committee members, and the NISM certification requirement for key investment personnel. The proposals also includes removing the cap on the maximum number of investors in LVFs and allowing existing AIF schemes to convert into LVF schemes, subject to meeting prescribed conditions. These changes are intended to streamline the regulatory framework and encourage greater participation in LVFs. Public comments have been sought by SEBI on these proposed amendments.

Master Circular for Debenture Trustees (DTs)

SEBI has issued this Master Circular, including all relevant circulars that were issued till 13 August 2025, with consequent changes. This master circular supersedes the Master circular for DTs and format of Due Diligence Certificate to be given by the DTs. This Master Circular will ensure effective regulation of the corporate bond and enable DTs and other stakeholders to get access to all the applicable circulars at one place.

Consultation paper on Review of SEBI (Stock Brokers) Regulations, 1992

SEBI has released a consultation paper on Review of SEBI (Stock Brokers) Regulations, 1992, proposing a comprehensive review of the Stock Brokers (SB) Regulations. The objective of the regulations was to establish a regulatory framework for stock brokers, including provisions on eligibility, registration, obligations, responsibilities, and continued participation in the securities market. To realign the regulations with evolving market practices and the current regulatory environment, SEBI constituted a Working Group (WG) to undertake a detailed review. The WG focused on simplifying the language for better clarity, removing inconsistencies within the regulations, eliminating redundant provisions, and incorporating new requirements arising from market and regulatory developments. Public comments have been sought by SEBI.

Relaxation in timeline to submit net worth certificate by Stockbrokers to offer margin trading facility to their clients

SEBI has revised the compliance timelines for stock brokers submitting the half-yearly net worth certificates required to offer margin trading facilities, now mandating submission within sixty days from the half-year ending in March and within forty-five days from the half-year ending in September. This adjustment is intended to align them with the financial reporting timelines prescribed under the SEBI (LODR) Regulations, 2015, and ensure brokers have adequate time to complete their financial disclosures. Stock exchanges have been directed to modify their rules accordingly and communicate these changes to their members.

Technical Clarifications to Cybersecurity and Cyber Resilience Framework (CSCRF) for SEBI Regulated Entities (REs)

SEBI vide circular dated 28 August 2025, has issued technical clarifications with respect to CSCRF for SEBI Regulated Entities in following parts.

The circular entails principles for entities regulated by multiple authorities, defining the scope of CSCRF as only systems used exclusively for SEBI-regulated activities, while shared infrastructure will be audited if not already covered by another regulator. It also addresses technical details on system classification, security models, audit reporting, crisis management, and recommended certifications. Additionally, it revises categorisation criteria for portfolio managers and merchant bankers in line with regulatory thresholds, mandates adherence to CERT-In Cyber Security Audit Policy Guidelines and directs exchanges and depositories to update their rules and inform stakeholders.

Stock Exchanges and Depositories are instructed to amend their relevant byelaws, rules, and regulations to implement the above directions, inform their members/participants accordingly, and publish the contents of this circular on their websites.

Securities and Exchange Board of India (Investment Advisers) (Amendment) Regulations, 2025

SEBI has notified the Investment Advisers (Amendment) Regulations, 2025, introducing key changes to how Research Analysts (RAs) must maintain their security deposits with SEBI. The move aims to enhance investor protection and support the effectiveness of SEBI's Online Dispute Resolution (ODR) mechanism.

Under the amended Regulation 8(2), SEBI is now empowered to specify the form and manner in which the deposit must be held such as fixed deposits, escrow accounts, or any structure it deems appropriate. This replaces the earlier provision that lacked clarity on how the deposit should be maintained.

Additionally, a new Regulation 8(3) has been inserted, mandating that the deposit be marked under lien in favour of a SEBI-recognised body or entity responsible for overseeing Research Analysts. This ensures that, in cases where an RA fails to comply with an arbitration award, conciliation outcome, or ODR ruling, the dues can be recovered directly from this deposit. This measure is to safeguard the investor interest and enforce recovery from deposit.

Ministry of Corporate Affairs (MCA)

Companies (Incorporation) Second Amendment Rules, 2025

MCA vide notification dated 26 August 2025 has amended the Companies (Incorporation) Rules, 2014, by substituting the existing Form No. RD-1 with a revised version, which will come into effect from September 15, 2025. The new form incorporates several key updates, including a provision for the selection of the purpose relating to the notice of approval of a scheme filed in Form CAA-11, the requirement to provide details of the transferor company in relevant cases, an option to attach the approved scheme as filed in Form CAA-11, and a provision for submitting an authorisation letter.

Amendments to Companies (Indian Accounting Standards) Rules, 2015

MCA vide Companies (Indian Accounting Standards) Second Amendment Rules, 2025 dated 13 August 2025 amended the Indian Accounting Standards (Ind AS) to align with recent updates in the International Financial Reporting Standards (IFRS). The key focus areas have been classification of liabilities, disclosure requirements for supplier finance arrangements, and recognition and disclosure related to the OECD's Pillar Two global tax reforms. Some of the amendments have specific effective dates, reporting periods beginning on or after 1 April 2025 or 1 April 2026.

Classification of Liabilities (Ind AS 1): Earlier, the classification of liabilities as current or non-current often depended on management's intent/ expectations or if a lender waived a loan covenant breach after the reporting date but before approval of financial statements. The revised standard now requires that the entity must have the legal right to defer repayment as at reporting date to defer settlement greater than 12 months. This means that even if a waiver is granted after reporting date, the liability may still be classified as current. The change will be implemented in two phases: Until 31 March 2026 (FY 2025-26) - waiver before approval of financial statements is sufficient. Stricter classification aligned with IFRS will apply mandatorily from FY 2026-27 onwards- liability current unless lender gave a grace period >12 months before reporting date. The change reduces subjectivity and aligns India with global financial reporting practices.

Disclosure of Supplier Finance Arrangements (Ind AS 7 & 107): Supplier finance arrangements, such as reverse factoring, involve a third party paying suppliers while the company repays the financier later. Until now, there were no specific disclosure requirements for these arrangements. From FY 2025-26, companies will be required to disclose the terms of such arrangements, amounts involved, and timing of payments compared to normal trade payables. These disclosures will provide greater transparency around hidden financing that can affect working capital and liquidity assessments.

Recognition and Disclosure for OECD's Pillar Two Taxes (Ind AS 12): The amendments apply to income taxes arising from tax law enacted or substantively enacted to implement the Pillar Two model rules of OECD, including tax law that implements qualified domestic minimum top-up taxes. Income taxes arising from Pillar Two legislation / income taxes, the requirement to recognise / disclose information about deferred tax asset and liabilities are exempt. However, entity that has applied the exception shall disclose the current tax impact related to Pillar Two income taxes and if enacted but not yet effective — entity must provide reasonable estimable information to help users under the potential exposure. Applicable from annual reporting periods beginning on or after 1 April 2025 and for interim periods ending 31 March 2026 entities need not provide these disclosure requirements.

Lessor Transitional Relief (Ind AS 116): For lease arrangements which include both land and buildings, use the transition date facts and circumstances to assess the classification of each element as finance or an operating lease. With this amendment, lessor does not need to go back to the original lease inception to make judgement of the lease element.

Other Editorial Changes: Along with these major amendments, there are also minor editorial updates to ensure consistency with IFRS. These include corrections to references, transition paragraphs, and standard numbering in several Ind AS such as Ind AS 101, 108, 109, 115, 28, and 32.

REGULATORY UPDATES

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Reserve Bank of India (RBI)

Reserve Bank of India (Co-Lending Arrangements) Directions, 2025

The Reserve Bank of India has issued Reserve Bank of India (Co-Lending Arrangements) Directions, 2025 dated 06 August 2025.

These directions are applicable to co-lending arrangements entered into by commercial banks, all-India financial institutions, and NBFCs (including HFCs).

Co-lending arrangement refers to an arrangement, formalised through an *ex-ante* agreement, between a regulated entity which is originating the loans ('originating RE') and another regulated entity which is co-lending ('partner RE'), to jointly fund a portfolio of loans, comprising of either secured or unsecured loans, in a pre-agreed proportion, involving revenue and risk sharing.

These directions contain provisions for retention of minimum 10% share of the individual loan in its books, interest rate, operational arrangements such as routing transactions through escrow, default loss guarantees, asset classification norms, disclosures, etc. in relation to co-lending arrangements.

These directions shall come into force from 01 January, 2026, or from any earlier date as decided by a regulated entity as per its internal policy ('effective date'). Any new co-lending arrangement entered into after the effective date shall be in compliance with these directions.

Draft Foreign Exchange Management (Guarantees) Regulations, 2025

The Reserve Bank of India has issued Draft Foreign Exchange Management (Guarantees) Regulations, 2025.

The draft regulations inter alia provide that a person resident in India may act as a surety or a principal debtor or a creditor for a guarantee, subject to the following conditions:

(a) The underlying transaction and the resultant transaction in case of invocation of the guarantee are not in contravention, directly or indirectly, of the Act or rules or regulations or directions issued under the Act.

(b) Where the surety is a person resident in India and the principal debtor is a person resident outside India, the resultant transaction upon invocation of guarantee, that is, the lending by a person resident in India to a person resident outside India, shall be in compliance with Foreign Exchange Management (Borrowing and Lending) Regulations, 2018.

Further, the draft regulations also introduce reporting requirements.

The final regulations in this regard are awaited.

Investment in Government Securities by Persons Resident Outside India through Special Rupee Vostro account

The Reserve Bank of India vide its circular dated 12 August 2025 has introduced an amendment to the Foreign Exchange Management (Debt Instruments) Regulations, 2019.

Pursuant to the said amendment, the persons resident outside India that maintain a Special Rupee Vostro Account ('SRVA') for international trade settlement in Indian Rupees may now invest their rupee surplus balance in the aforesaid account in Central Government Securities (including Treasury Bills).

Necessary operational instructions have also been incorporated in the Master Direction - Reserve Bank of India (Non-resident Investment in Debt Instruments) Directions, 2025 dated January 07, 2025

Securities and Exchange Board of India (SEBI)

Consultation Paper on Amendment to the definition of Strategic Investor for REITs and InvITs

SEBI has released a consultation paper dated 01 August 2025 which proposes to broaden the scope of 'Strategic Investor' to include Qualified Institutional Buyers as defined under SEBI ICDR Regulations. Further, SEBI has clarified that FPIs who are individuals, companies, or family offices are not QIBs. So, such persons will also not be allowed to apply as Strategic Investors to ensure consistency.

This proposed amendment intends to widen the investor base for applying under the Strategic Investor category in a public issue of units of the REIT/InvIT and to promote ease of doing business by enabling REITs and InvITs to attract capital from more investors under the Strategic Investor category.

The actual amendment is awaited.

Proposals for Ease of Doing Business for Investment Advisers and Research Analysts

SEBI, vide Consultation Paper dated 07 August 2025, has proposed amendments to the regulatory framework for Investment Advisers ('IAs') and Research Analysts ('RAs') aimed at facilitating ease of doing business. Key proposals include:

- Permitting IAs and RAs to share past performance data with clients
- Allowing IAs to provide second opinions on pre-distributed assets.
- Relaxing corporatisation, education criteria, proof of address, and documentation requirements.

The actual amendment is awaited.

Consultation Paper on introduction of separate type of AIF scheme for only Accredited Investors

SEBI, through a consultation paper, dated 07 August 2025, has proposed introducing a new category of Alternative Investment Fund ('AIF') schemes exclusively for Accredited Investors. This aims to provide a relatively lighter regulatory framework compared to regular AIFs.

The proposal builds on the existing Accredited Investor framework, focusing inter alia on easing accreditation processes, no requirement for all investors' rights to be pari-passu if they waive it, longer scheme tenure, waiving NISM certification for key investment team members in such schemes, removal of the cap on number of investors per scheme, and allowing the fund manager to assume trustee-like responsibilities in trust-structured funds under certain terms.

The actual amendment is awaited.

Consultation Paper on proposals to facilitate participation by resident Indians in Foreign Portfolio Investors (FPIs)

SEBI has released a consultation paper dated 07 August, 2025, proposing measures to enhance participation of resident Indians in Foreign Portfolio Investors ('FPIs'). Key proposals include:

- Allowing retail schemes based in International Financial Services Centres (IFSCs) with resident Indian non-individual sponsors/managers to register as FPIs
- Aligning contribution limits under SEBI FPI Regulations with IFSCA Fund Management Regulations for resident Indian non-individuals
- Permitting Indian Mutual Funds to be constituents of FPIs

These steps aim to improve the regulatory framework and promote greater involvement of resident Indian entities in FPIs.

The actual amendment is awaited.

Consultation Paper on introduction of "Single Window Automatic & Generalised Access for Trusted Foreign Investors (SWAGAT-FI)" framework for FPIs and FVCIs

SEBI has issued a consultation paper dated 07 August 2025, proposing the introduction of the "Single Window Automatic & Generalised Access for Trusted Foreign Investors (SWAGAT-FI)" framework.

This aims to inter alia simplify onboarding and ongoing compliance for low-risk Foreign Portfolio Investors (FPIs) and Foreign Venture Capital Investors (FVCIs), especially government-owned funds and regulated public retail funds.

The framework intends to provide a single access point for these investors to multiple investment routes under SEBI regulations, making foreign investments easier while maintaining necessary regulatory oversight.

The actual amendment is awaited.

Use of liquid mutual funds and overnight mutual funds for compliance with deposit requirement by Investment Advisers and Research Analysts

SEBI vide its circular dated 12 August 2025 has permitted IAs and RAs to use units of liquid mutual funds or overnight mutual funds—in addition to the previously mandated bank deposits—as a way to satisfy their required "deposit" under their respective regulations.

The deposit must still be lien-marked in favour of the relevant supervisory body (IAASB or RAASB) and compliance with this new option is required by 30th September 2025

The provisions of this circular shall come into effect from the date of issuance of this circular.

Consultation Paper on Draft circular on Ease of doing investment - Smooth transmission of securities from Nominee to Legal Heir

SEBI has released a consultation paper dated 12 August 2025, in relation to easing the process of transferring securities from nominees to legal heirs after the death of the original holder.

Currently, such transfers are sometimes misreported as sales, leading to incorrect taxation of nominees, even though they act only as trustees for legal heirs. To resolve this, SEBI proposes a standard reporting code "TLH" (Transmission to Legal Heirs) for accurate reporting to the Income Tax Department.

The actual amendment is awaited.

Consultation Paper on Review of Block Deal Framework

SEBI has released a draft circular dated 22 August 2025 proposing modifications to the existing Block Deal Framework based on stakeholder feedback and recommendations from a Working Group and SMAC.

Key proposals include defined morning (8:45-9:00 AM) and afternoon (2:05-2:20 PM) block deal windows with specific reference prices, minimum order size of INR 25 crore, and mandatory delivery for trades executed in these windows. Details of block deals will be disclosed publicly after market hours

The actual amendment is awaited.

DIRECT TAX

Circulars/ Notifications/ Press Release

Income Tax Bill, 2025 and The Taxation Laws (Amendment) Bill, 2025 receive President's assent

On 7 February 2025, the Cabinet approved the Income-tax Bill, 2025 (IT Bill) and it was tabled by Hon'ble FM in the Lok Sabha on 13 February 2025. A Parliamentary Select Committee was formed to review the IT Bill 2025 and provide its recommendations. To avoid confusion arising from multiple versions of the ITB 2025, the Government withdrew the IT Bill from the Lok Sabha with an intent to replace it with a Revised ITB 2025. Consequently, the Government tabled the Revised IT Bill before the Lok Sabha on 11 August 2025, which was approved by Lok Sabha on the same day. The Rajya Sabha also approved it on 12 August 2025.

Additionally, the Government introduced The Taxation Laws (Amendment) Bill 2025 (Amendment Bill) to implement specific changes to the Income-tax Act, 1961 (IT Act), which received approval from both the Lok Sabha and Rajya Sabha. Both the Bills received the Presidential Assent on 21 August 2025. The Income-tax Act 2025 will be applicable from 1 April 2026.

CBDT introduces new rule specifying salary income and gross total income for determining perquisites

Section 17(2)(iii) of the IT Act provides that perquisite includes the value of any benefit or amenity granted or provided free of cost or at concessional rate by any employer (including a company) to an employee whose income under the head "Salaries", exclusive of the value of all non-monetary benefits or amenities, exceeds fifty thousand rupees. The Central Board of Taxes (CBDT) has inserted Rule 3C in the Income-tax Rules, 1962 (IT Rules) to provide that the prescribed income under the head "Salaries" shall be INR 0.4mn.

Proviso to Section 17(2) of the IT Act provides that perquisite shall not include any expenditure incurred by the employer on medical treatment of the employee, or their family member, outside India; travel and stay abroad of the employee or attendant, for medical treatment subject to the condition that the expenditure on travel shall be excluded from perquisite only in the case of an employee whose gross total income, as computed before the said expenditure, does not exceed the prescribed limit. The CBDT has inserted Rule 3D in the IT Rules to provide that the prescribed gross total income shall be INR 0.8mn.

[Notification G.S.R. 555(E) (NO. 133/2025/F. NO. 370142/27/2025-TPL), dated 18 August 2025]

CBDT amends Form No 10CCF in IT Rules

Section 80LA of the IT Act provides deductions in respect of certain incomes of Offshore Banking Units and International Financial Services Centre. Form No. 10CCF requires the taxpayer to provide the gross income of the units referred to in section 80LA(2) of the IT Act. In this regard, CBDT has amended FORM No. 10CCF to provide that in case of the Unit being an IFSC Insurance Office undertaking insurance business, the "gross income" will mean to be the profit and gains calculated as per the provisions of section 44 and the First Schedule of the IT Act the field "gross eligible income", may be submitted as "Nil".

[Notification G.S.R. 564(E) (NO. 135/2025/F. NO. 370142/33/2025-TPL), dated 20-8-2025]

Judicial Updates

Mumbai Tax Tribunal holds that MLI provisions not enforceable without separate notification

In order to eliminate double taxation and facilitate efficient exchange of information, India has entered into Double Tax Avoidance Agreements ('DTAA' or 'Treaty') with several countries. Multilateral Instrument (MLI) was introduced as a swift and efficient mechanism for implementing Organisation for Economic Co-operation and Development (OECD) and the G20's Base Erosion and Profit Shifting (BEPS) treaty-related measures across jurisdictions without the need to renegotiate Tax Treaties. India signed MLI to implement Treaty-related measures on 7 June 2017 and ratified the MLI in 2019.

Recently, the Supreme Court in Nestle's decision had held that for any amendment in the DTAA, a separate notification needs to be issued. (please click on https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-sc-holds-that-applicability-of-%E2%80%98most-favoured-nation%E2%80%99-(mfn)-clause-is-not-automat to read our detailed alert on this decision). This raises a question regarding the automatic assimilation of such international instruments into the Indian legal framework. Recently, the Mumbai Tax Tribunal had an occasion to analyse whether the MLI provisions can be enforced into the treaty without a separate notification under section 90(1) of the IT Act. Wherein the Tribunal has held that in the absence of a specific notification under Section 90(1) of the IT Act, provisions of the MLI cannot be invoked to deny the treaty benefits. To read our detailed analysis, please click on https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-mumbai-tax-tribunal-holds-that-mli-provisions-not-enforceable

[Sky High Appeal XLIII Leasing Company Limited v ACIT (International Tax), ITA No. 1198/Mum/2025)]

Supreme Court renders split verdict on whether the time taken for the Dispute Resolution Panel process is over and above the statutory limitation period prescribed under Section 153 for completing an assessment

Section 144C of the IT Act was introduced by the Finance Act, 2009, to streamline dispute resolution for certain non-resident taxpayers and transfer pricing cases. It introduced a two-stage mechanism:

- The tax officer issues a draft assessment order,
- The taxpayer may accept the draft order or file objections before the Dispute Resolution Panel (DRP), which can issue binding directions to the tax officer. The tax officer then passes the final assessment order in conformity with the DRP's directions.

While this mechanism sought to provide speedy resolution and reduce litigation, a question may arise as to whether the time taken for the DRP process under Section 144C of the IT Act shall override the limitation period prescribed under Section 153[1] of the IT Act. In this regard, recently, the Hon'ble Supreme Court (SC) had an occasion to analyse the said issue. The two-judge bench rendered a split verdict wherein one of the members has held that the DRP process operates independently of the timelines prescribed in Section 153 of the IT Act and the dissenting member held that without explicit statutory exclusion in Section 153 of the IT Act, DRP timelines must fit within the prescribed limits, stressing strict interpretation of fiscal statutes. To read our detailed analysis, please click on https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-supreme-court-renders-split-verdict-on-whether-the-time-taken-for-the-drp-process

[ACIT v Shelf Drilling Ron Tappmeyer Ltd. Etc. SLP (Civil) Nos.20569-20572 of 2023]

Ahmedabad Tax Tribunal holds that section 87A rebate shall be allowed against short-term capital gains

The taxpayer, a resident individual, filed her original tax return for FY 2023-24 under section 139(1) of the IT Act declaring total income of INR 0.4mn which consisted of short-term capital gains under section 111A of the IT Act, Long-term capital gains under section 112A of the IT Act and Income from other sources. The return was subsequently revised within the time allowed under section 139(5) of the IT Act, to correct certain omissions in the capital gain schedule and exercised the option to be governed by the default new tax regime under section 115BAC(1A) of the IT Act. The total tax liability computed under the revised return amounted to INR 0.013mn arising solely on account of STCG under section 111A of the IT Act, chargeable at 15%. Since the total income was below INR 0.7mn, the taxpayer claimed rebate of INR 0.013mn under section 87A of the IT Act.

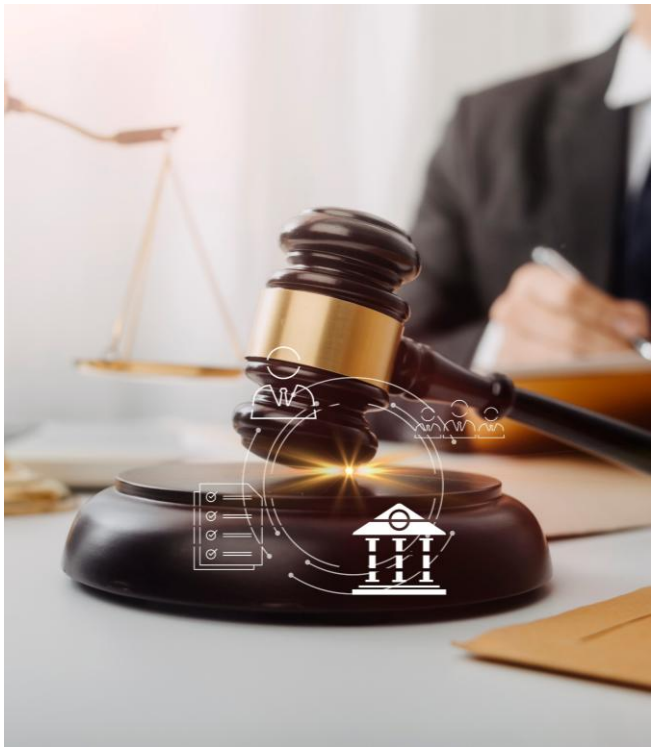
The Centralised Processing Centre (CPC) processed the tax return under section 143(1) of the IT Act and denied rebate under section 87A and raised a demand of INR 0.015mn. The first appellate authority upheld the denial. Aggrieved, the taxpayer preferred an appeal before the Ahmedabad Tax Tribunal. The Tax Tribunal while ruling in favour of the taxpayer made the following observations:

- The amended first proviso[2] to section 87A of the IT Act provides that where the total income of the taxpayer is chargeable to tax under section 115BAC(1A) of the IT Act and the total income does not exceed INR 0.7mn, the taxpayer shall be entitled to a deduction..."
- The statute does not draw any distinction between normal income and income chargeable at special rates, nor does it contain any express exclusion for tax arising under section 111A of the IT Act.
- By contrast, the legislature has inserted an express bar on availability of rebate in section 112A(6) of the IT Act, which states that where the total income of a taxpayer includes any long-term capital gains referred to in section 112A(1) of the IT Act, the rebate under section 87A of the IT Act shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains.
- The absence of a corresponding clause in section 111A of the IT Act is legally significant and supports the principle that when the legislature intended to deny rebate in respect of special income (as in section 112A), it has done so expressly.
- On a plain reading of the statutory provisions, there exists no express bar either in section 87A of the IT Act or section 111A of the IT Act for denial of rebate.

[1] Section 90(1) of the IT Act provides that the Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India, for grating relief, avoidance of double taxation, exchange of information, recovery of tax and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.
[2] inserted by the Finance Act, 2023 w.e.f. FY 2023-24

- Section 115BAC(1A) of the IT Act opens with a non obstante clause. The purpose of this clause is to enable the computation of income tax under the concessional rate regime, subject to existing special rate provisions under Chapter XII, such as sections 111A, 112, 112A, etc. This clause governs the computation of tax and does not affect eligibility to rebates or deductions unless specifically restricted.
- Section 87A of the IT Act is not part of Chapter XII; it is an independent rebate provision under Chapter VIII of the IT Act. Therefore, the overriding clause in section 115BAC(1A) of the IT Act does not derogate or modify section 87A, unless section 87A itself provides for exclusion, which, in the present case, it does not.
- The Finance Bill 2025 itself proposes to insert new restrictions on rebate under section 87A of the IT Act with effect from FY 2025-26, which implies that the existing law (i.e., as applicable to FY 2023-24) does not contain such a restriction. Secondly, the Explanatory Memorandum cannot override the plain language of the statute. It is a tool of interpretation, not a source of substantive law.
- The legislative intent is further clarified by the subsequent amendment proposed in the Finance Bill, 2025, which is prospective in nature and thereby reinforces that no such restriction was in force during the FY.
- Therefore, the prospective amendment in the Finance Act 2025 supports the view that under the unamended provision applicable for FY 2023-24, rebate under section 87A cannot be denied merely because tax arises under section 111A of the IT Act.

[Jayshreeben Jayantibhai Palsana v ITO, Ahmedabad (ITA No.1014/Ahd/2025)]



Bombay High Court holds that security deposit is the real return for the taxpayer and not the low rental receipt

The taxpayer purchased office premises in Mumbai for consideration of INR 2.18mn. On 29 November 1988, the taxpayer entered into Leave and License Agreement and other connected agreements with Citi Bank for letting out the office premises for a period of 10 years. The agreed license fees were Rs.0.009825mn. Citi Bank paid interest free security deposit of INR 15.4mn to the taxpayer.

For FY 1989-1990, the taxpayer offered rental income of INR 0.11mn calculated on the basis of license fees of INR 0.009825mn per month to be taxed under the head 'Income from Business'. The tax officer determined the gross annual rateable value of the property under Section 23(1)(b) of the IT Act at INR 2.2mn, treating the same as the amount for which the property might have reasonably been let out from year to year.

Aggrieved, the taxpayer preferred an appeal and the first and second appellate authority ruled in favour of the tax authorities. Aggrieved, the taxpayer preferred an appeal before the Bombay High Court. The Bombay High Court while ruling in favour of the tax authorities made the following observations:

- On perusal of Leave & License Agreement, it appears that the municipal taxes, ground rent, cesses, duties and other outgoings in respect of the licensed premises were INR 0.009825mn per month at the relevant time and the Licensor had agreed to bear the same only to the extent of INR 0.009825mn per month.
- The arrangement creates an impression that the amount of INR 0.009825mn agreed to be paid as license fees by Citi Bank to the taxpayer was actually the amount of taxes and municipal outgoings.
- As per Section 22 of the IT Act, the annual value of the property consisting of building or lands appurtenant thereto becomes chargeable to income tax under the head 'Income from house property'. Therefore, whether the property is actually let out or not, the annual value of the property still becomes chargeable to income tax under Section 22 of the IT Act.
- Section 23(1)(a) of the IT Act provides that the annual value of a property is deemed to be the sum for which the property might reasonably be expected to let from year to year.
- Therefore, under Section 23(1)(a) of the IT Act, the tax officer needs to conduct an enquiry and determine the annual value for which the property might reasonably be expected to let, whether or not the same is actually let.
- However, in a case where the property is actually let and the annual rent received or receivable by the owner is in excess of the sum determinable under Section 23(1)(a) of the IT Act, the actual sum so received/receivable becomes the annual value of the property for the purposes of Section 22 of the IT Act.
- Reliance is placed on various judicial precedents which have held that it is impermissible to take into consideration the notional interest on security deposit received while letting out the property for the purpose of determination of annual value either under Section 23(1)(a) or under Section 23(1)(b) of the IT Act.

- However, in the present case, the tax officer has determined the gross annual rateable value based on the comparable instance of letting out property in the same building to the same licensee (Citi Bank).
- The municipal rateable value may not always represent the true and fair market rent which the property actually fetches.
- The moment the tax officer notices that the gap between the two amounts is wide, he cannot be compelled to accept the municipal rateable value for the purpose of Section 23 of the IT Act.
- Reliance is placed on Delhi HC's decision in Moni Kumar Subba[3] and Bombay HC's judgment in Tip Top Typography[4], wherein it was held that rateable value fixed by municipal authorities can be a rational yardstick only when such value has close proximity with the assessment year in question.
- Taxpayer's contention to invoke 'standard rent' for determination of annual rental value is rejected as the same is to be referred to only in cases of rent control legislations like the Bombay Rent Act/Maharashtra Rent Control Act, etc.
- Therefore, the security deposit in the present case is the real return for the taxpayer and not the amount indicated as license fees.

[Tivoli Investment & Trading Co. Pvt. Ltd. v The ACIT and another, ITA No. 5 OF 2004]

Gujarat High Court allows lower rate on LTCG due to retrospective amendment even in the absence of revised tax return

The taxpayer is a foreign company incorporated in Japan and engaged in the business of manufacturing of tyres. In the tax return for FY 2013-14, the taxpayer offered LTCG of INR 6782.33mn on sale of shares of its associated company Bridgestone Limited at the rate of 20%. A note was submitted in the tax return that capital gains on sale of shares of its Indian subsidiary are taxable in India in view of paragraph 3 of Article 13 of the India-Japan Tax Treaty read with section 45 of the IT Act. The taxpayer later claimed that in view of the retrospective amendment to section 112(1)(c)(iii)[5] of the IT Act, LTCG claimed should be taxed at the rate of 10% instead of 20% as offered in the tax return.

At the relevant point of time, when the amendment as per the Finance Act, 2017 was made applicable retrospectively, assessment proceedings were in progress before the tax officer and accordingly, the taxpayer brought to the notice of the tax officer about the amendment made by the Finance Act, 2017 requesting him to tax long-term capital gain at the rate of 10%. The tax officer rejected the contention of the taxpayer on the ground that there was uncertainty as to whether the unlisted securities as mentioned in section 112(1)(c)(iii) of the IT Act would include shares of a private limited company.

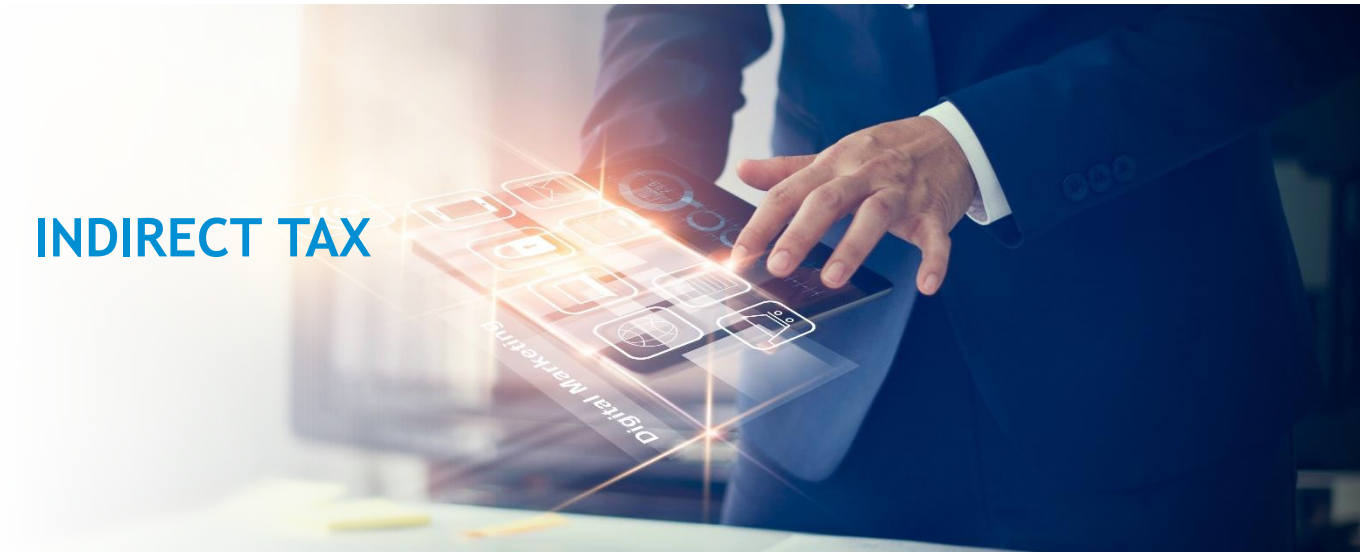
The first appellate authority also rejected the claim of the taxpayer on the ground that such change of claim could have been possible only by filing the revised tax return and such effect cannot be granted to the taxpayer in absence of CBDT instruction. The Tribunal, however, relying on Circular No. 14(XL-35) of 1955 dated 11 April 1955, held that the taxpayer was eligible of being taxed at a lower rate of 10% even in absence of the taxpayer filing the claim by way of revised tax return and in absence of any specific instruction by CBDT to that effect.

Aggrieved, the tax authorities preferred an appeal before the Hon'ble Gujarat High Court. The Gujarat High Court, while ruling in favour of the taxpayer made the following observations:

- Reliance is placed on Gujarat High Court's ruling in case of **Mitesh Implex**[6] which relied upon various decisions of Hon'ble Apex Court and more particularly, in case of **National Thermal Power Co. Ltd**[7]., wherein the Hon'ble Apex Court held that when the question of law was raised for the first time before the Tribunal though the facts were already on record, it was observed that there is no reason why the taxpayer should be prevented from raising such a question before the Tribunal.
- Even in case of **Goetze (India) Ltd**[8]**.** the Hon'ble Apex Court after distinguishing the judgment in case of **National Thermal Power Co. Ltd.**, while deciding the powers of the tax officer has made it clear that the issue in the case was limited to the power of the assessing authority and does not impinge on the power of the Tribunal under section 254 of the IT Act, 1961.
- Therefore, no substantial question of law arises for consideration and the appeal is dismissed.

[Bridgestone Corporation v CIT (Intl Tax and TP) (R/TAX APPEAL NO. 219 of 2024)]

[3] Commissioner of Income-Tax vs Moni Kumar Subba [2011] 333 ITR 38
[4] Commissioner of Income-tax-12 vs. Tip Top Typography [2014] 368 ITR 330 (Bombay)
[5] Section 112(1)(c)(iii) of the IT Act was amended by Finance Act 2016 to provide that long term capital gains arising from the transfer of a capital asset being shares of the company not being company in which the public are substantially interested, shall be chargeable to tax at the rate of 10%. However, the said amendment was made applicable from FY 2016-2017. Thereafter, Finance Act, 2017 clarified that such amendment will be applicable retrospectively from FY 2012- 13 and subsequent years.
[6] Commissioner of Income-tax v. Mitesh Implex (2014) 367 ITR 85 (Guj)
[7] National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC)
[8] Goetze India Ltd Vs CIT (2006) 204 CTR (SC) 182



Supreme Court strikes down renewal of provisional attachment

Kesari Nandan Mobile Vs. The Assistant Commissioner of State Tax (2), Enforcement Division - 5, Vadodara [2025-VIL-65-SC]

Legislative Background

- Section 83 of the Central Goods and Services Tax Act, 2017 ('CGST Act') empowers the Commissioner to provisionally attach any property, including bank accounts of specified persons, including a taxable person, during the pendency of any proceeding under Chapters XII, XIV or XV of CGST Act. This provision is intended to be used as a **protective measure** to safeguard the interest of revenue, i.e., in cases where there is an apprehension that a taxpayer may dispose of his assets or otherwise frustrate recovery of tax dues.
- Section 83(2) imposes a restriction on the validity of such attachment by providing that such attachment shall cease to have effect after **one year from the date of the order**.

Facts of the case

- M/s. Kesari Nandan Mobile ('Taxpayer') is a sole proprietorship firm dealing in telephone sets, smartphones and other apparatus classifiable under HSN codes 8517 and 8542.
- Upon receipt of information that the Taxpayer is involved in circular trading / bogus billing of goods, the tax authority carried out search and seizure at Taxpayer's premises under section 67 of CGST Act on 17 October 2023. Summons were also issued under section 70 of CGST Act.
- *Vide* Orders dated 17 and 26 October 2023 ('Initial Attachment Orders'), the tax authority provisionally attached four bank accounts and a residential property belonging to the Taxpayer under section 83 of CGST Act. The Taxpayer filed a reply on 2 November 2023, seeking the release of the above bank accounts.
- The grounds recorded by the tax authority for non-consideration of the above reply are as under:
  - 115 taxpayers from Gujarat were engaged in organised flow of ineligible Input Tax Credit ('ITC'), thereby defrauding the Government Exchequer from its revenue.
  - As per the alleged scheme of bogus supplies, the dealers buy lower-end mobile products from registered authorised dealers and then sell such phones to customers without reporting them in their GST returns. These dealers claim ITC on such inward supplies and then pass it to the middle-chain dealers by issuing fake invoices of high-end mobile products. While HSN code is the same, there is a mismatch between their inward and outward supplies.
  - Such credit is further passed on through bogus bills until the high-end mobile products are exported and refund of accumulated ITC is claimed in contravention of the provisions of section 16 of Integrated Goods and Services Tax Act, 2017.
  - The quantum of bogus GST refund in the state of Gujarat itself is approximately INR 3.6bn. The Taxpayer may end up jeopardising the entire tax amount and may end up absconding and hence, there is no option but to turn towards the Taxpayer's bank account balances.
- On 1 May 2024, the Taxpayer filed an Objection under Rule 159 of CGST Rules against the Initial Attachment Orders. However, such objection was not adjudicated/disposed of.
- Upon completion of one year, the Taxpayer filed an application dated 28 October 2024 to pass an order intimating that the Initial Attachment Orders have ceased to operate as per section 83(2).

- Pending the above application, the tax authority once again attached Taxpayer's bank account *vide* Order dated 13 November 2024. Thereafter, the Taxpayer filed a Writ Petition before Gujarat High Court. On 18 December 2024, the remaining three bank accounts of Taxpayer were also attached and a satisfaction note was issued for attachment of all four bank accounts. The renewed attachment orders are collectively referred to as the 'Impugned Attachment Orders'.
- *Vide* the Impugned Order, the Gujarat High Court dismissed the Writ Petition challenging the Impugned Attachment Orders on the following grounds:
  - The Impugned Attachment Orders need not be interfered with as the Taxpayer appears to have indulged in fraudulent transactions by utilising the ITC in excess of INR 189.7mn.
  - Tax authority has applied its mind by issuing the Impugned Attachment Orders after recording the satisfaction and after issuance of the intimation in Form GST DRC-01A.
  - The law does not place any embargo for a second provisional attachment order to be issued after lapse of the earlier order and that the tax authority, intending to safeguard the interest of the revenue, did not commit any breach of section 83.
- Aggrieved by the above, the Taxpayer preferred an appeal before the Supreme Court.

Contentions of the Taxpayer

- The reason assigned by the Gujarat High Court is fundamentally flawed inasmuch as it travelled beyond the legislative intent and purpose of securing the interest of revenue, overlooking that the life of a provisional attachment order is only for a year from the date of its issuance.
- Section 28BA of Customs Act, 1962 ('Customs Act') and section 11DDA of Central Excise Act, 1944 ('CE Act') provides for provisional attachment and embodies the provisions for enabling extension of the period of provisional attachment such that cumulative period would not exceed two years. On the contrary, Section 83 of CGST Act does not embody a provision for extending the validity of provisional attachment order after its expiry/lapse. Absent such provision, the attachment must necessarily lapse after one year and consequently, the tax authorities cannot renew attachment of Taxpayer's bank accounts again. Reliance was placed on ***RHC Global Exports***[1].
- Reliance was also placed on an order dated 17 December 2018 which delegates powers to be exercised under section 83. Although the Taxpayer is covered under the jurisdiction of Range-I, Ghatak-3, Ahmedabad but the tax authority who has issued the Impugned Attachment Orders has jurisdiction at Vadodara. Hence, the tax authority has exercised jurisdiction beyond its authority and hence, the same is null and void.
- The satisfaction notes issued with the Initial and Impugned Attachment Orders show no significant differences. The Taxpayer objected to initial satisfaction note, *vide* representation dated 1 May 2024. It is obligatory for the tax authority to consider such representation under Rule 159(5) of the Central Goods and Services Tax Rules ('CGST Rules'). Failure or omission to dispose of such representation, followed by issuance of the Impugned Attachment Orders, based on the same satisfaction note, amounts to gross misuse of powers.

- The satisfaction notes issued with the Initial and Impugned Attachment Orders show no significant differences. The Taxpayer objected to initial satisfaction note, *vide* representation dated 1 May 2024. It is obligatory for the tax authority to consider such representation under Rule 159(5) of the Central Goods and Services Tax Rules ('CGST Rules'). Failure or omission to dispose of such representation, followed by issuance of the Impugned Attachment Orders, based on the same satisfaction note, amounts to gross misuse of powers.
- The Kerala High Court in ***Ali K.***[2] did not concur with the Gujarat High Court decision in ***Shrimati Priti***[3]. However, the Kerala High Court observed that there is clear absence of any enabling provision in section 83 to permit the tax authorities to re-issue the attachment order which ceases to have life beyond one year by operation of law.
- Considering the above, the Impugned Attachment Orders must be set aside and the Taxpayer must be permitted to operate their bank accounts.

Contentions of the tax authorities

- The Taxpayer is involved in a large-scale financial fraud, causing loss of revenue to the Government. Further, there exists an apprehension that the dues assessed by tax authority may not be realised and the Taxpayer may dispose of its assets causing difficulty in recovery of dues.
- Having regard to the fraud committed by Taxpayer and the minimal chance of recovery, coupled with absence of any prohibition imposed by the CGST Act, the Initial Attachment Order was renewed and such renewal does not suffer from any infirmity, far less any illegality.
- The Impugned Attachment Order cannot be challenged on the ground that the law does not permit a renewal of the earlier order. Hence, the appeal is liable to be dismissed.

Observations and ruling of the Supreme Court

- The ratio laid down by Supreme Court in ***Radha Krishan Industries***[4] was relied upon by holding that any further discussion would be a mere repetition of what has been firmly established. However, what remains for consideration is the interpretation of section 83(2) of CGST Act.
- A plain reading of section 83(2) would imply that an order of provisional attachment would cease to have any effect after a period of a year. This provision does not require employment of other interpretation rules beyond a literal interpretation to understand it.
- A statutory authority, without statutorily conferred power, has no power to act in a particular manner[5]. It is well settled that legislature having exercised its essential function, a certain margin of latitude is always allowed to the executive in working out the details of exemption[6].
- For an authority to exercise power, it must either be empowered by the statute or authorised by executive instructions. If the power is not conferred by statute, executive instructions or any other instrument which is law as per Article 13 of Constitution of India, cannot be justified by contending that exercised power is neither prohibited by statute nor by executive instructions.

[1] RHC Global Exports Pvt. Ltd. and Ors. Vs. Union of India and Ors. [2024-VIL-44-SC]
[2] Additional Director General and Anr. Vs. Ali K. and Ors. [2025-VIL-121-KER]
[3] Shrimati Priti Vs. The State of Gujarat [2011-VIL-436-GUJ]
[4] Radha Krishan Industries Vs. The State of Himachal Pradesh [2021-VIL-50-SC]
[5] State of Odisha Vs. Satish Kumar Ishwardas Gajbhiye [2021 17 SCC 90]
[6] Lohia Machines Ltd. Vs. Union of India [1985 2 SCC 197]

- There is a complete absence of an executive instruction consistent with the legislative policy and intendment of the CGST Act authorising renewal of a lapsed provisional attachment order. Viewed from either angle, issuance of Impugned Attachment Orders appears to be indefensible.
- Having regard to the draconian nature of power conferred on the revenue by section 83(1) to levy a provisional attachment, the terms of the entire section have to be construed in a manner so that section 83(2) is not effectively reduced to a dead letter. Reliance was also placed on the Latin maxim '***ut res magis valeat quam pereat***' which means that a legal text, especially a statute, should be interpreted in a way that gives the document force rather than makes it fail.
- Conceding power to tax authority to issue fresh provisional attachment order after initial order is lapsed by operation of law or to renew the same would render section 83(2) *otiose* and accepting the reason assigned by the High Court would permit tax authority to exercise a power which is not the statutory intendment. There is no reason to read section 83 in a manner to confer any additional power over and above the draconian power conferred by section 83(1).
- Thus, fresh issuance of provisional attachment order premised on substantially the same grounds as the earlier one would be in disregard to the safeguard provided in section 83(2). The age-old principle, that an act which cannot be done directly cannot be done indirectly, would apply in its entirety. To permit any other interpretation would result in an abuse of law and due process.
- Repeated or continuous issuance of provisional attachment order under the garb of 'renewal' could lead to a serious anomaly. With no change in circumstances, such repeated orders would be contrary to the plain reading of section 83(2) and *akin* to filling old wine in a new bottle.
- Provisional Attachment is a pre-emptive measure to protect the interest of revenue. It cannot function as a recovery measure. A period of one year, as ordained by the legislature, is enough for tax authorities to conclude its investigation. If not, the legislature could have provided for a renewal or extension provisions as in CE Act and Customs Act and section 83(2) of CGST Act does not provide for any exception to the rule.
- Once the inquiry culminates into a final demand, recourse must be had to the provisions which provide for recovery of the assessed tax, penalty, interest, etc. Short-circuiting the procedure by pursuing provisional attachment as a means to recover tax dues, as a natural consequence, would frustrate the intent and purpose of the statute. The view taken in ***Ali. K. (supra)*** appears to be acceptable and is approved.
- The Taxpayer's argument that Parliament, being cognizant of other taxing statutes, deliberately chose not to incorporate an extension provision, carries considerable merit. The procedure of provisional attachment is not alien to tax jurisprudence and can be found in several statutes including the Customs Act, CE Act and Income Tax Act, 1961. When the statute provides for an extension, the authority thereunder is free to do so, subject to such restrictions as may be imposed. Conversely, when a statute does not provide for an extension, renewal, re-issuance, revival — whatever be the nomenclature — the executive cannot overreach the statute to do so.
- Despite the statute having provided for a lapse after one year, it is observed that debit-freeze continues for long after that, compelling the taxpayers to approach the High Courts for an order seeking lifting of attachment which by the statutory provision stands lifted.
- It is rather incongruous and redundant that parties must approach the High Courts to seek enforcement of a law already in force. The deliberate non-compliance by tax authorities to implement statutory protection would undermine the rule of law and render the action not only susceptible to vulnerability but also being set at naught.
- This issue was addressed by 53rd GST Council Meeting wherein an amendment was proposed in rule 159(2) of CGST Rules and Form GST DRC-22 to the effect that the provisional attachment would lapse at completion of one year from the date of attachment order.
- The issue of delegation and assumption of jurisdiction is not considered since the Impugned Attachment Orders are set aside.
- In view of the above, the tax authorities could not have issued the Impugned Attachment Orders upon the previous ones having ceased to have any effect by operation of law after a year of its issuance. Consequently, the appeal is allowed with the following directions:
  - Bank accounts attached by tax authority should be de-freezed and made operable forthwith.
  - Since the investigation is still underway, the tax authorities shall not be precluded from conducting or taking further steps in accordance with law.

Form GST DRC-07 only a summary of the Order, can be uploaded subsequently if Order is communicated within limitation period

Rishi Enterprises. Vs. Additional Commissioner Central Tax Delhi North and Anr. [TS-744-HC(DEL)-2025-GST]

Facts of the case

- An investigation was initiated against Padmavat Industries ('PI') situated in Anand Parbat Industrial Area based on the information received from Directorate General of Analytics and Risk Management ('DGARM') alleging that PI is non-existing at its principal place of business.
- DS Enterprises ('DSE'), identified as one of the recipients of goods supplied by PI, the investigation revealed that DSE was also non-existent at its declared place of business. The enquiries made during physical inspection did not yield any satisfactory answers and hence, summons were issued to obtain various documents.
- However, neither did anyone appear before the tax authorities nor was any response received. Thus, it was concluded that DSE was a bogus and non-existing firm that had obtained GST registration merely to avail illegal ITC and utilise the same without any receipt of goods and also pass on the inadmissible ITC to various taxpayers without supply of goods.
- Thus, the GST registration of DSE was cancelled retrospectively with effect from 15 September 2017. Thereafter, all 89 taxpayers, including the M/s. Rishi Enterprises ('Taxpayer') out of 229 taxpayers falling within Delhi jurisdiction to whom DSE had issued invoices were issued show cause notices ('Impugned SCN').

- The Taxpayer furnished a reply to Impugned SCN *inter alia* contending that all E-way bills, E-invoices and payments are duly supported by documents. As per Invoices, the value of goods procured by Taxpayer from DSE is INR 14.41mn and the ITC claimed thereon is INR 2.59mn
- Considering the above, the Impugned Order was passed by the Adjudicating Authority on 11 February 2025 *inter alia* demanding tax and penalty of INR 5.19mn.
- Aggrieved by the above, the Taxpayer filed a writ petition before the Delhi High Court.

Contentions of the Taxpayer

- **Invocation of extended period of limitation**
  - The limitation period of five years under section 74(10) of CGST Act could not have been invoked by the tax authorities as there is no wilful suppression or fraud in the instant case[7].
  - The period prescribed for issuance of a show cause notice under Section 73(10) of CGST Act has already lapsed. Consequently, the Impugned SCN is itself time-barred.
- **Impugned Order is barred by limitation**
  - The Impugned Order was not issued within five years from the due date for filing of annual return which ended on 5 February 2025. Instead, the Impugned Order was signed on 31 January 2025 and was uploaded on GST Portal along with Form GST DRC-07 on 11 February 2025. Hence, the same is barred by limitation. Reliance was placed on ***Suman Jeet Agarwal[8]***.
  - Though the Impugned Order is an appealable order, the question of limitation being one that is jurisdictional in nature, the writ petition would be maintainable.
- **Issuance of consolidated SCN for multiple financial years**
  - A consolidated show cause notice for the period 2017 to 2023 cannot be issued and a consolidated order cannot be passed as each financial year would have to be dealt with separately and separate orders would have to be passed[9].
- **Service of Impugned Order**
  - The Impugned order relates to 89 parties and the email dated 4 February 2025 does not show that the Impugned Order was communicated to all the parties. Further, the attachment (i.e., Impugned Order) is 17 MB in size, which is beyond the normal storage compatible with an email on established platforms such as Google, Hotmail, Yahoo.
  - Under section 169(2) of CGST Act, 'deemed service' would only be applicable in case of service under sections 169(1)(a), 169(1)(e) or 169(1)(f) of CGST Act in view of the terms 'tendered' or 'published' or 'affixed' being used in said subsection. No 'deemed service' can be attributed where service is affected through the modes prescribed under the remaining sub-clauses of section 169(1) of CGST Act.
- Based on the above, the SCN and the Impugned Order are liable to be quashed.

Contentions of the tax authorities

- The Delhi High Court, in ***Ambika Traders[10]***, held that if the allegations of fraudulent availment of ITC are raised in a show cause notice, then the same can deal with multiple financial years.
- The Delhi High Court, in ***Suresh Kumar[11]***, held that the belated uploading of Form GST DRC-07 would not in itself make an order barred by limitation.
- Though the Impugned Order was uploaded on 11 February 2025, an email was sent on 4 February 2025 to Taxpayer's registered email address.

Observations and ruling of the Delhi High Court

- As regards the Taxpayer's contention that the reply was not considered, it is pertinent to note that Para 14 of the Impugned Order indicates that three personal hearings were fixed.
- Whether the notice for hearing was received by the Taxpayer or not is a factual issue and when such detailed investigation takes place whereby the Taxpayer has filed a reply and hearing notices were issued, there is no reason to disbelieve the tax authorities. Once the reply was filed by Taxpayer, a duty is cast upon it to be diligent and attend any hearings that may be fixed.
- **Invocation of extended period of limitation**
  - Section 74 of CGST Act is invoked in circumstances where there is an allegation of fraud, wilful misstatement or suppression. In the present case, the SCN and the Impugned Order reveals that the investigation commenced in October 2023 when information was received from Investigation Wing. Immediately thereafter, PI and DSE were investigated and it was found that there was fraudulent availment and passing on of ITC.
  - Though the total number of recipients of invoices issued by DSE were 229, only 89 firms falling in tax authorities' jurisdiction were served SCNs. If, *prima facie*, in the process of investigating 89 entities and their documents, instances of fraudulent availment were revealed, the extended period of limitation would obviously apply.
  - The decision in ***L&T Hydrocarbon Engineering[12]*** is not applicable as the Court was considering a case where there was only an issue of law to be decided and no factual averment was required to be examined. In the present case, there are various factual issues that are required to be considered and analysed, which in a Writ Jurisdiction cannot be gone into.
  - Hence, the provisions of section 74 of CGST Act are applicable to the present case.
- **Impugned Order is barred by limitation**
  - Section 74(10) of CGST Act only requires the order to be issued within a period of five years and that the summary Order in Form GST DRC-07 is required to be uploaded electronically.
  - The issue in the present case pertains to the date of issuance of the Impugned Order as to – whether the same would be the date of signing of the order (31 January 2025) or date of communication of order (email dated 4 February 2025) or the date of uploading the Impugned Order along with Form GST DRC-07 on GST Portal (11 February 2025).

[7] HCL Infotech Ltd. Vs. Commissioner, Commercial Tax and Anr. [2024 (9) TMI 1644 - Allahabad High Court]
[8] Suman Jeet Agarwal and Other Vs. Income Tax Officer, Ward 61(1) and Ors. [2022 (9) TMI 1384 - Delhi High Court]
[9] Joint Commissioner (Intelligence and Enforcement) Thiruvananthapuram and Anr. Vs. M/s. Lakshmi Mobile Accessories [2025 (2) TMI 666 - Kerala High Court] and M/s. Sree Ananta Exim Vs. Union of India and Ors. [2024 (10) TMI 1704 - Delhi High Court]
[10] Ambika Traders Vs. Additional Commissioner, Adjudication, DGGSTI, CGST Delhi North [2025 (8) TMI 315 - Delhi High Court]
[11] Suresh Kumar Vs. Commissioner, CGST, Delhi North [2025 (8) TMI 1057 - Delhi High Court]
[12] L&T Hydrocarbon Engineering Vs. Union of India [2022 (4) TMI 70 - Gujarat High Court]

- Section 74(10) of CGST Act merely requires the Impugned Order and not Form GST DRC-07 to be mandatorily issued within the limitation period. After the issuance of order, a summary of such order must be uploaded electronically. The amount that is liable to be paid/demanded as per the order is already contained in the order itself.
- Para 2 of Impugned Order provides the amount liable to be paid by Taxpayer. Upon the issuance of Impugned Order *via* email, the amount demanded is clearly decipherable from the order itself.
- In ***Suresh Kumar (supra)*** it was held that in case of hundreds of noticees, a reasonable period may be taken by the tax authorities to actually generate Form GST DRC-07 in order to clearly specify the demand against each of the noticees, so that there is no ambiguity whatsoever.
- However, there is no doubt that Form GST DRC-07 ought to ideally accompany the order or should be uploaded within a reasonable time, as without Form GST DRC-07, no appeal can be filed and no demand can be enforced. Reliance is also placed on ***Sahithi Marketers***[13].

- **Issuance of consolidated SCN for multiple financial years**
  - The aspect of multiple financial years being covered in a single show cause notice is squarely covered by the decision in ***Ambika Traders (supra)*** wherein it was held that:
    - The Legislature is conscious of the fact that wrongfully availed ITC can relate to a period that need not be a specific financial year.
    - Fraudulent utilisation and availment of ITC cannot be established on most occasions without connecting transactions over different financial years.
    - Solitary availment or utilisation of ITC in one financial year may not be capable of establishing a pattern of fraudulent availment or utilisation of ITC. It is only when a series of transactions is analysed, investigated and enquired into and a consistent pattern is established that the fraudulent availment and utilisation of ITC may be revealed. The language used in sections 74(3), 74(4), 73(3) and 73(4) of CGST Act, i.e., the words 'period' or 'periods' as against 'financial year' or 'assessment year' is therefore, significant.
  - In the instant case, there is a maze of transactions which may spread over various financial years. Owing to statutory language and the view already taken in the above decision, it cannot be held that a show cause notice or an order passed under section 74 of CGST Act relating to fraudulent availment of ITC, cannot relate to multiple financial years.
- **Service of Impugned Order**
  - It is undisputed that service can be made by any one of the modes mentioned under section 169 of CGST Act. 'Limitation' and 'service' are interlinked with each other. Thus, the term issuance of order must be interpreted as per section 169 of CGST Act and rule 142 of CGST Rules.
  - In the case of some modes of service prescribed under section 169, service is deemed to have been completed. However, it cannot be held that only when service is done by any of the deemed service modes, the order would stand issued. The issuance of order by any of the stipulated modes of service would constitute service of order.
  - There is difference between the issuance of order and deemed service under section 169(2). Issuance of order is required under Section 74(10) of CGST Act and service through a mode which would constitute deemed service of the order is not mandated.
  - Therefore, communicating an order *via* email would be sufficient service as per section 169. Rule 142 is also clear which uses the expression 'summary of the order issued'.
- Accordingly, the present writ petition is dismissed. The Taxpayer is permitted to file an appeal under section 107 of CGST Act by 30 September 2025 along with the requisite pre-deposit. If the same is filed within the stipulated period, the Appellate Authority shall not dismiss the appeal on grounds of limitation and adjudicate the same on its own merits.

Refund of pre-deposits paid under erstwhile indirect tax regime through Electronic Credit Ledger must be paid in cash

M/s. Flipkart India Pvt. Ltd. Company Vs. Assistant Commissioner of Commercial Taxes and Ors. [TS-785-HC(KAR)-2025-GST]

Facts of the case

- M/s. Flipkart India Pvt. Ltd. ('Taxpayer') is a registered dealer *inter alia* engaged in B2B trading across a wide gamut of products, including Mobiles, Electronic items, Apparels, Footwear, etc.
- For FY 2011-12 to FY 2014-15, re-assessment orders were passed against the Taxpayer under the Karnataka Value Added Tax Act, 2003 ('KVAT Act') by treating mobile phone charger as an unscheduled commodity and taxing it separately at a higher rate.
- Against these orders, the Taxpayer preferred appeals before the First Appellate Authority ('FAA') by making pre-deposit of 30% of the total demands through cash under section 62 of KVAT Act.
- The above appeals were dismissed by FAA *vide* order dated 25 March 2019. Against this, the Taxpayer filed appeals before the Karnataka Appellate Tribunal ('KAT') by making pre-deposit payment of the balance 70% pre-deposit of the demand. However, the said pre-deposit was paid by utilising ITC balance available in Taxpayer's Electronic Credit Ledger ('ECrL') under GST law. This pre-deposit payment was duly accepted by tax authority.
- *Vide* orders dated 31 March 2022, KAT allowed the appeals filed by the Taxpayer. Against this, the tax authorities filed Sales Tax Revision Petitions before the Karnataka High Court which were dismissed. Thus, the decision of KAT had attained finality and the Taxpayer was entitled to claim refund of the entire 100% pre-deposit amount paid while filing appeals before FAA and KAT.

[13] Sahithi Marketers Vs. Superintendent of Central Tax [2025 (29) Centax 129 (Telangana)]

- However, the tax authority only sanctioned refund of 30% pre-deposit amount which was paid through cash while continued to withhold the remaining 70% pre-deposit, paid through ECrL.
- Consequently, the Taxpayer filed various representations seeking refund / release / sanction the balance 70% pre-deposit along with applicable interest in cash. However, the same was not complied with by the tax authorities.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Karnataka High Court.

Contentions of the Taxpayer

- The Taxpayer is entitled to refund of the entire amount deposited by it by way of pre-deposit in cash under sections 142(7)(b) and 142(8)(b) of the Karnataka Goods and Services Tax Act, 2017 ('KGST')[14] and non-refunding of the said amount in cash as well as withholding / retention of the same is illegal.

Contentions of the tax authorities

- As per Circular No. GST-03/2018-19 dated 16 April 2018 ('Circular'), arrears of interest and penalty only can be discharged through Electronic Cash Ledger ('ECL'). Accordingly, the 70% of VAT arrears which included arrears of interest and penalty, which were discharged through Taxpayer's ECrL would be recoverable through ECrL alone and not by way of cash refund.
- The Taxpayer had voluntarily discharged the balance 70% of VAT liability through ECrL and refund in cash was not permissible as only arrears are recoverable by reversing ITC and the same does not apply to voluntary payments by the Taxpayer.
- Since neither the Taxpayer submitted any details of ITC being reversed nor the Taxpayer filed an application for re-credit of the ITC utilised for making pre-deposit payments, it is not entitled to seek refund in cash as claimed in the present writ petition.
- Hence, the present writ petition is liable to be dismissed.

Observations and ruling of the Karnataka High Court

- A harmonious and purposive construction/interpretation of the statutory scheme provided in section 142 of KGST Act is sufficient to come to the sole / unmistakable conclusion that if a claim for refund is made in relation to any amounts payable for any proceedings under KVAT Act (including appeal/review/reference/adjudication/assessment) and such claim for refund is found to be admissible, the same shall be refunded back in cash. Section 142 of KGST Act does not make any distinction between payment made/recovered from the Taxpayer either in the form of cash or by utilisation of ITC balance lying in the Taxpayer's ECrL.
- It follows from Para 4.1(b) of Circular GST-03 that it is permissible for recovery / payment of any amounts either by way of cash or by way of utilisation of ITC from ECrL. In either case, if a claim is made for refund of any amount either pursuant to the result of appeal, review or reference (as contemplated in section 142(7)(b)) or as a result of assessment or adjudication proceedings (as contemplated in section 142(8)(b)), irrespective of whether the amount was paid in cash or by utilising ITC from ECrL, all refundable amounts shall be refunded only by way of cash.
- Consequently, the Taxpayer is fully justified in seeking refund of 70% pre-deposit amount paid through ECrL to be refunded back together with interest on the entire deposit and hence, the present Writ Petition deserves to be allowed.
- The contention of the tax authority cannot be accepted as:
  - The 70% pre-deposit made by the Taxpayer was not voluntary and the same was made for the purpose of filing an appeal.
  - The statutory scheme underly section 142 clearly indicates that all types/kinds of refund found to be payable/admissible under any of the various situations/circumstances enumerated in sections 142(3) to 142(9) would entail provision of refund in cash only.
  - Having accepted payment of 70% pre-deposit through ECrL, the tax authorities are estopped and are not entitled to place reliance upon the Circular to contend that the same cannot be refunded in Cash.
- Although both sides did not advert to rule 92(1A) of the Karnataka Goods and Services Tax Rules, 2017 ('KGST Rules'), reference was made by the High Court on the said rule which was inserted with effect from 23 March 2020. The said rule stipulates that refund of the amounts debited from ECrL and subsequently found to be admissible/refundable would have to be re-credited back as ITC in ECrL. However, the aforesaid provision is not applicable to the present case because:
  - Rule 92(1A) only came into effect prospectively with effect from 23 March 2020 whereas the Taxpayer had undisputedly made 70% pre-deposit payment through ECrL on 20 July 2019.
  - Sections 142(7)(b) and 142(8)(b) of KGST Act clearly contemplates that all types/kinds of amounts refundable/admissible are to be refunded back in cash without there being any distinction drawn/made between deposits made in cash or those made through ECrL.
- Relying on the principle laid in ***K. Paripoornan***[15], it was held that the transitional provisions can modify the existing provisions to provide for matters which are felt important to the Legislature. Consequently, the express provision in section 142 providing for refund in cash must be given effect to and as such, the Taxpayer would be entitled to claim the refund of the remaining 70% pre-deposit in Cash. Reliance was also placed on ***Rane Brake Lining Ltd.***[16], ***Larsen and Tourbo***[17], ***Thermax Ltd.***[18], ***Eicher Motors Ltd.***[19].
- Considering the above, the refund of the balance amount of pre-deposit paid through ECrL should be done in cash as per the clear mandate of sections 142(7)(b) and 142(8)(b) of KGST Act.
- As far as the matter of interest on delayed payment of refund is concerned, reliance was placed on the following judicial precedents issued by Supreme Court:
  - In ***Sandvik Asia***[20], it was held that an assessee is entitled to compensation by way of interest for the delay in payment of amounts lawfully due to him.
  - In ***Tata Chemicals Ltd.***[21], it was held that the obligation to refund money received and retained without right implies and carries with it the right to interest and whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows as a matter of course.
- Considering the above, the Writ Petition is allowed with a direction to the tax authorities to refund of the balance amount of pre-deposit paid through ECrL along with applicable interest in cash within a period of six weeks from the date of receipt of copy of the High Court order.

[14] Pari materia provisions of CGST Act
[15] K. Paripoornan vs. State of Kerala [1994 (5) SCC 593]
[16] Rane Brake Lining Ltd. Vs. Commercial Tax Officer [2024 (8) TMI 1394 – Madras High Court]
[17] Larsen and Tourbo Vs. Deputy Commissioner [2024 (10) TMI 1604 – Madras High Court]
[18] Thermax Ltd. Vs. Union of India [2019 (31) GSTL 60 (Guj)]
[19] Eicher Motors Ltd. Vs. Union of India [1999 (106) ELT 3 (SC)]
[20] Sandvik Asia Vs. Commissioner of Income Tax [2006 (280) ITR 643]
[21] Union of India Vs. Tata Chemicals Ltd. [2014 (363) ITR 658]

TRANSFER PRICING

ITAT Rules Income from Scrap Sales as Operating, Benchmarks FCCD Interest with Domestic PLR for ZF Wind Power

The Chennai Income Tax Appellate Tribunal ('Tax Tribunal') has ruled on two key issues in favour of ZF Wind Power Coimbatore Pvt. Ltd. for the Assessment Years ('AY') 2012-13 and 2013-14. The decision, which upholds the findings of the Commissioner of Income Tax (Appeals) ('CIT(A)'), addresses the classification of income from scrap sales and the appropriate arm's length price ('ALP') for interest payments on Fully Compulsory Convertible Debentures ('FCCD').

Scrap Sales as Operating Income:

The Tax Tribunal ruled that income from the sale of scrap is considered **operating income**. The taxpayer had classified scrap from manufacturing under "other operating revenue" and scrap from unpacking imported raw materials under "other income". The Transfer Pricing Officer ('TPO') had treated the latter as a non-operating income based on its classification in the financial statements.

The tribunal, however, stated that the TPO should not have treated the income as non-operating without first appreciating its nature and its link to the taxpayer's primary manufacturing activity. The Tax Tribunal observed that the sale of leftover packing materials relates to the taxpayer's core business operations. The decision aligns with previous rulings by the Pune Bench of the Tribunal in cases such as *Cummins India Limited* and *Behr India Ltd.*, which also held that scrap sales should be part of operating income for computing a company's margin.

Interest on FCCDs:

Nature and Benchmarking of FCCDs

The Tax Tribunal determined that the FCCDs are "akin to a domestic term-loan" because they are denominated in Indian Rupees and are treated as a loan/debt instrument until they are mandatorily converted into equity at a defined term. The interest on these FCCDs is not subject to foreign currency fluctuation and is paid on their Indian Rupee face value. The conversion is considered similar to repayment in the case of a traditional loan.

Arm's Length Price ('ALP')

The tribunal concluded that since the FCCDs are similar to domestic term loans, their interest rates must be benchmarked against a **domestic interest rate**. The Tax Tribunal directed the TPO to adopt the **average SBI Prime Lending Rate ('PLR')** as the ALP for the interest payments. This directive follows the Hyderabad ITAT's Special Bench ruling in Hyderabad Infratech Pvt. Ltd., which also upheld the use of SBI PLR for benchmarking similar transactions.

ZF Wind Power Coimbatore Pvt Ltd [TS-447-ITAT-2025(CHNY)-TP]

ITAT: Working capital adjustment cannot be denied despite complex, material differences in comparables

The appellant, TE Connectivity Services India Pvt. Ltd., a wholly owned subsidiary of TE Singapore, is engaged in rendering shared services in the domains of IT, finance back-office, HR, and customer support to group entities. The remuneration model is on a cost-plus mark-up basis.

The appellant filed its return of income for AY 2020-21 at Nil income. However, the AO completed assessment at INR 29.19 lakh by making adjustments on account of arm's length price [ALP] of international transaction at INR 10.63 lakh & variation in respect of disallowance of INR 9.56 lakh.

The appellant is aggrieved and has preferred the appeal on the following three adjustments:

Issue 1: Working Capital Adjustment and Interest on Overdue Receivables – Dispute over INR 10.62 lakh Adjustment

TPO's Objection:

The TPO denied the working capital adjustment since the appellant failed to demonstrate its impact on profitability. It was further held that there was no evidence to show whether the comparables financed their working capital through own funds or borrowings, nor was it established that such financing had a bearing on their profitability. The TPO also noted that segmental working capital data was not available in the annual reports of comparables and that differences in cost of capital across companies made such adjustments unreliable.

Appellant Contention:

The **appellant contended** that detailed workings for working capital adjustment had been provided in its TP Study Report demonstrating that the median margin post-adjustment stood at 11.35%. It was argued that if such adjustment were allowed, the TP adjustment of INR 10.62 lakh towards interest on overdue receivables would automatically get subsumed. The appellant emphasised that working capital materially impacts profits under TNMM and relied upon the decision of the Hon'ble Delhi High Court in ***Kusum Health Care Pvt. Ltd. (398 ITR 66) in support***.

Tax Tribunal's Analysis and Conclusion

The Tribunal concluded that working capital adjustment is a valid and necessary comparability adjustment under TNMM, particularly when material differences exist. It held that mere complexity cannot be a ground for rejection and observed that the lower authorities had erred by dismissing the claim without analysing the detailed workings submitted. The matter was therefore restored to the TPO for fresh examination, with a direction that if the adjustment is granted, the addition on account of interest on overdue receivables be deleted. Accordingly, this ground was allowed for statistical purposes.

Issue 2: Disallowance of Interest on Compulsorily Convertible Debentures ("CCD") – INR 6.11 Cr. Adjustment

During the FY 2015-16, appellant has issued 6,50,00,000 CCDs of INR 10 each to its AEs by way of a right issue carrying simple interest of 3 months of MIBOR + 150 basis points capped to 9.75% p.a. The total amount of interest expenses payable to AE for this year is INR 6,11,15,550 towards the aforementioned CCDs. Admittedly, the appellant did not claim the above sum as deductible expenses in the return of income.

TPO's / AO's Objection

The TPO/ AO declined the appellant claim for interest deduction on CCDs on the ground that it was a **fresh claim** made during assessment without a revised return. ***Relying on hon'ble Supreme Court judgement Goetze (India) Ltd. (204 CTR 182),*** the authorities held that any new deduction must be routed through a revised return within the prescribed time. They also noted that, although the appellant had recognised total CCD interest of INR 6,11,15,550 in Form 3CD (clause 30B) and computed section 94B eligibility, the return itself added back the entire interest and claimed only INR 5,22,24,373 under section 94B—effectively allowing merely INR 88,91,176—so any further enhancement amounted to a fresh, impermissible claim.

Appellant Contention

The appellant argued that it was not a fresh claim but a correction of the originally under-claimed interest expense, attributable to management change and COVID-related constraints that prevented filing a revised return. Substantively, the total finance cost on CCDs for FY 2015-16 was INR 6,11,15,550; only INR 65,83,293 was charged to the P&L due to IND-AS, and the balance INR 5,45,30,728 was inadvertently not claimed in the return.

During assessment, a revised computation and a condonation application to CBDT (for late revised return) were furnished. The appellant emphasised there is no legal bar on reducing assessed income below returned income at appellate stages, citing Wipro Finance Ltd. (443 ITR 250, SC), Karnataka State Co-op. Federation Ltd. (128 taxmann.com 1, Kar HC), and Perlo Telecommunications & Electronic Components India Pvt. Ltd. (Madras HC), and urged that section 94B permits the deduction subject to its cap.

Tax Tribunal's Analysis and Conclusion

The Tribunal noted that Form 3CD clearly disclosed the full CCD interest of INR 6,11,15,550 and a section 94B computation; in the filed return, the appellant added back the full interest and claimed only INR 5,22,24,373 under section 94B, effectively allowing INR 88,91,176.

In view of the Karnataka High Court's dictum that an appellant may make a fresh claim before appellate authorities even without a revised return and considering the appellant consistency plea for AYs 2017-18 and 2018-19, the Tribunal remanded the issue to the AO. The AO is directed to examine the workings, quantify the allowable interest under section 94B, and grant deduction in accordance with law. Accordingly, the ground is allowed for statistical purposes with a remand.

Issue 3: Disallowance of reimbursement of ESOP cost to AE u/s 40 (a)(i) – INR 9.56 Lakh Adjustment

AO's Objection

The Ld. AO observed that payments aggregating **INR 9,56,232** made to the associated enterprise were not shown to be mere reimbursements of employee-related ESOP costs and, therefore, might contain an element of income subject to tax and withholding.

In the absence of contemporaneous documentary evidence demonstrating that the payments were made strictly on a **cost-to-cost** basis, the AO made an addition in the draft assessment treating the amounts as not allowable and susceptible to disallowance under section **40(a)(i)**. The Dispute Resolution Panel subsequently confirmed the AO's conclusion on the same footing.

Appellant Contention

The appellant contended that the payments represented **actual ESOP-related expenditure** incurred upon vesting in accordance with IND-AS (recognised in equity compensation reserve) and were reimbursed to the AE on a **cost-to-cost** basis. The payment was not consideration giving rise to taxable income under sections 9 or 45 of the Act and thus did not attract withholding obligations.

To substantiate the nature of the payment, the appellant produced **Form 16s** for two employees — Anuraj Joshi (ESOP INR 6,77,139) and Mudabbirnauman (ESOP INR 2,87,240) — showing that those amounts correspond to the ESOP expenditures reimbursed to the AE, thereby demonstrating the absence of any income element.

Tax Tribunal's Analysis and Conclusion

The Tribunal found that the sole issue was whether the payment was a genuine **cost-to-cost reimbursement**. Having regard to the Form 16s produced before it, the Tribunal concluded that the appellant had satisfactorily established the payments related exclusively to ESOP obligations of the two employees and that no element of income arose therefrom.

Relying on the principle in **GE India Technology Centre Pvt. Ltd. (327 ITR 456)** that withholding obligations do not arise where there is no chargeable income, the Tribunal held that the disallowance under section **40(a)(i)** was unsustainable. The matter was directed to be deleted by the learned AO and, accordingly, the Ground was allowed.

TE Connectivity Services India Pvt Ltd [TS-480-ITAT-2025(Bang)-TP]

ITAT: Upholds deletion of adjustments qua inter-unit transfer of goods, management support services

The appellant company "M/s.TVS Motor Company Limited" is engaged in the business of manufacturing of two-wheeler and other vehicles, transferred goods from its non-80IC unit to its 80IC unit. The international transactions were subjected to **transfer pricing verification**, wherein the TPO proposed an addition of **INR 14.78 crores**. The appellant contended that no TP adjustment was warranted since the **gross profit margin of the eligible 80IC unit was lower than that of the domestic segment** at the entity level (after excluding eligible unit profits).

Both the Revenue vide IT(TP)A No.67/Chny/2024 and the Appellant ITA No.2405/Chny/2019 filed appeals against the **CIT(A)'s order dated 19.06.2019** for **AY 2014-15**.

Revenue Appeal

Issue 1: Inter unit transfer from non-eligible unit to 80IC (eligible) unit- Dispute over INR 14. 78Cr.Adjustment

TPO/AO's Objection:

The TPO/AO concluded that a meaningful comparison required elimination of the excise duty element from the eligible unit because excise was shown in the books, but corresponding revenue was not recognised; after this adjustment the gross profit margins diverged materially, producing an alleged excess profit of approximately INR 23.78 crore (≈ 9.86%). On that basis, the TPO imposed a 10% markup and effected an upward TP adjustment of INR 14,78,78,398. The Revenue urged that CIT(A)'s allowance of only a limited reduction was excessive.

Appellant Contention:

The Appellant maintained that no TP adjustment was warranted because, at the entity level (after excluding the eligible undertaking), the gross level margin of the eligible 80IC undertaking was lower than that of the domestic vehicle segment. The appellant asserted it follows uniform transfer pricing across its plants (Hosur→80IC and Hosur→Mysore), and submitted an alternative computation (before CIT(A)) showing the post-adjustment gross profit differential to be only 0.54% (19.41% v. 18.87%) after excluding excise—well within tolerances. On that basis, CIT(A) quantified the excess at 2%, reducing the quantum to INR 2.25 crores, which the appellant defended before the Tribunal, also invoking the second proviso to section 92C(2).

Tax Tribunal's Analysis and Conclusion:

The Tribunal found that the appellant operates in a **captive customer scenario** engaged in customised manufacturing and that market value cannot meaningfully be ascribed to bespoke inter-unit transfers. It accepted that CIT(A) had thoroughly examined the factual matrix (paras 3–11 of the CIT(A) order) and that no case for interference was made out. Applying the legal tolerance under section 92C(2) and on the facts, the Tribunal **upheld CIT(A)'s reduction** of the TPO's addition (i.e., limited the adjustment to the 2% figure adopted by CIT(A)) and **dismissed the Revenue's grounds of appeal** on this issue.

Issue 2: Upward adjustment of INR 17.69 Cr. made by the AO/TPO on account of alleged non-receipt of management/administrative support services from AEs

AO's Objection:

The Ld. TPO held that the appellant failed to substantiate the actual receipt of services, terming the allocation of cost as ad hoc and without basis, thereby suggesting an attempt at shifting expenses. The TPO further observed that the appellant already possessed an adequate in-house team of professionals, thereby negating the need for availing such services from its AEs. Additionally, the clause in the agreement providing for an annual escalation of 15% was questioned, as it lacked any cogent justification. Accordingly, the TPO determined the arm's length price of the impugned services at NIL.

Appellant Contention:

The appellant contended that the payments were made pursuant to a long-standing management services agreement dated 29.03.1997, under which services such as internal audit, legal, consultancy, taxation, and trademark support were continuously rendered by its AEs. It was argued that apportionment of common group-level expenses is a well-recognised practice and not indicative of profit shifting. The appellant further emphasised that such payments were tax-neutral and highlighted that no disallowance had been made by the Revenue in earlier years, save for one year, i.e., AY 2017-18, after which the position reverted to acceptance in AY 2018-19.

Tax Tribunal's Analysis and Conclusion:

The Ld. CIT(A), after detailed consideration, accepted the appellant submissions and recorded a finding that the impugned services had indeed been rendered, and accordingly deleted the adjustment. On further appeal, the Hon'ble ITAT, concurring with the findings of the CIT(A), observed that the factum of services stood established, that the objections of the TPO were unsustainable, and that the principle of consistency mandates that Revenue should not deviate in the absence of any change in facts. Consequently, the Tribunal upheld the order of the CIT(A) and dismissed the Revenue's appeal on this issue.

Issue 3: Deletion of appellant's claim of additional depreciation by the Ld. CIT(A) – Dispute over INR 16.71 Cr. Adjustment

AO's Objection:

The Ld. AO held that additional depreciation is allowable only in the year in which the plant and machinery is purchased and put to use. He further rejected the appellant's reliance on earlier Tribunal rulings in its own favour, noting that the Department had filed an appeal before the Hon'ble High Court. The AO accordingly disallowed the entire claim and made an addition of INR 16.71 Crores.

Appellant Contention:

The appellants submitted that the actual claim of additional depreciation was only INR 1,64,60,585 and not INR 16.71 Crores as wrongly noted by the AO. It was further contended that the balance INR 15.07 Crores represented current year's normal depreciation. The appellants also argued that it had claimed only 50% of additional depreciation in the preceding year as the asset was put to use for less than 180 days, and the balance claim was correctly made in the current year.

Reliance was placed on decisions of the Hon'ble Tribunal in appellants' own case for AY 2012-13 and on the rulings of the Hon'ble Karnataka High Court in *Rittal (India) Ltd.* (388 ITR 423) and Hon'ble Madras High Court in appellant case for AY 2004-05 (TCA No.294 of 2016).

Tax Tribunal's Analysis and Conclusion:

The ITAT held that the issue is squarely covered by earlier judicial precedents in appellants' own case and other High Court rulings. However, noting that the AO had pointed out a calculation error of INR 74,50,227 in appellant claim, the Tribunal remitted the matter back to the AO for the limited purpose of recomputing the correct quantum of allowable additional depreciation. The Revenue's grounds of appeal were dismissed.

Appellant's Appeal

Issue 1: Addition made by the Ld. AO under Section 14A – Dispute over INR 3.99Cr. Adjustment

AO's Objection:

The Ld. AO disallowed expenditure under Section 14A read with Rule 8D on the ground that the appellant had earned dividend income and held substantial investments. He rejected the Tribunal's earlier favourable rulings in appellant's own case (AYs 2008–09 and 2009–10), holding that the matter was pending before the Hon'ble Madras High Court. Consequently, he made an addition of INR 3.99 Crores.

Appellant Contention:

The appellant contended that no disallowance under Section 14A was warranted. It submitted that in AY 2012–13, the Tribunal had already held in its favour that:

Where appellant's own funds exceeded its investments, no disallowance under Rule 8D(2)(ii) could be made, as per *HDFC Bank Ltd. v. DCIT* (366 ITR 505) and *CIT v. Reliance Utilities and Power Ltd.* (313 ITR 340).

For Rule 8D(2)(iii), only dividend-yielding investments should be considered, following *ACIT v. Vireet Investment (P.) Ltd.* [2017] 82 taxmann.com 415 (Special Bench).

The appellants also provided a revised working restricting the disallowance to dividend-yielding investments.

Tax Tribunal's Analysis and Conclusion:

The ITAT observed that facts of the present case were identical to those in AY 2012–13, where relief had been granted to the appellants. Applying judicial precedents, it directed the AO to verify the revised computation furnished by the appellants and recompute the disallowance under Section 14A read with Rule 8D(2)(iii) strictly with reference to dividend-yielding investments. Accordingly, the appellants ground was **partly allowed**.

Issue 2 Payments made for drawings/designs qualify as "plant" eligible for deduction under section 32AC, and if simultaneous claim of depreciation under section 32 bars such deduction

AO's Objection:

The AO disallowed the claim under section 32AC on the premise that the provision applies only where the appellant acquires and installs a *new plant or machinery* and that mere capitalisation of "intangible plant and machinery" (drawings/designs) could not be treated as the "actual cost of new asset" for section 32AC. The AO noted that the Appellant had not treated these items consistently in the schedule of fixed assets and that the Appellant had claimed special rate depreciation (25%) as intangible assets—thereby, in the AO's view, precluding simultaneous claim of the incentive under section 32AC. The CIT(A) upheld this view.

Appellant Contention:

The Appellant pleaded that:

(a) It satisfies the statutory pre-requisites of section 32AC (engaged in manufacture and aggregate investment threshold in new assets exceeded INR 100 crore during 1/4/2013–31/3/2015);

(b) The payments to BMW AG constituted acquisition of technical know-how/drawings/designs which qualify as **"plant"** or as intangible assets eligible for depreciation under section 32(1)(ii);

(c) The decision of the Hon'ble Apex Court in *Scientific Engineering House Pvt. Ltd.* (157 ITR 86) supports treatment of drawings/designs as plant; and

(d) There is **no express prohibition** in the statute preventing simultaneous claims under sections 32 and 32AC — section 32 being a general depreciation provision and section 32AC being a specific investment incentive introduced to promote industrial investment.

Tribunal's Analysis and Conclusion:

The Tribunal held that the Appellant met the threshold conditions of section 32AC (manufacturing status and investment quantum). Relying on statutory definitions (section 43(3), section 2(11)) and the Apex Court's ruling in *Scientific Engineering*, the Tribunal accepted that the drawings/designs fall within the ambit of *plant* and are depreciable. It further held that neither section 32 nor section 32AC contains any bar to simultaneous claims; section 32AC is a distinct, statutory incentive and not displaced by a depreciation claim. Consequently, the Tribunal set aside the orders of the AO and CIT(A), directed the AO to allow the deduction of **INR 2.75 Cr.** under section 32AC, and allowed the Appellant's grounds on this issue.

Issue 3: Claim additional depreciation under section 32(1)(iia), despite omission in the original return

AO's Objection:

The AO disallowed the claim, relying on the Supreme Court's ruling in **Goetze India** that an assessing officer cannot entertain a deduction claimed otherwise than by filing a revised return within the statutory time; the AO therefore held the claim inadmissible. The CIT(A) concurred with the AO.

Appellant Contention:

The appellant submitted that the omission was inadvertent and relied on **Explanation 5 to section 32**, which provides that depreciation is allowable whether claimed in the return. The appellant also pointed out that **Goetze India** itself recognises the Tribunal's power to admit such a claim (even if the AO cannot), and therefore the claim ought to be admitted and adjudicated on merits. The Appellant requested allowance of additional depreciation and urged reassessment in accordance with law.

Tax Tribunal's Analysis and Conclusion:

The Tribunal held that while the AO may be precluded from entertaining claims not made by way of revised return, the Tribunal (and by extension appellate fora) may admit such claims per **Goetze India**.

Further, **Explanation 5 to section 32** supports the proposition that depreciation is allowable even if not claimed in the return. The Tribunal therefore set aside the orders of the AO and CIT(A), admitted the appellant's claim for consideration, and **remitted the matter to the AO** to re-examine the claim afresh in accordance with law — after affording the appellant due opportunity and by passing a speaking order. The appellant grounds on this issue were allowed (for statistical purposes).

TVS Motor Company Ltd [TS-477-ITAT-2025(CHNY)-TP]

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