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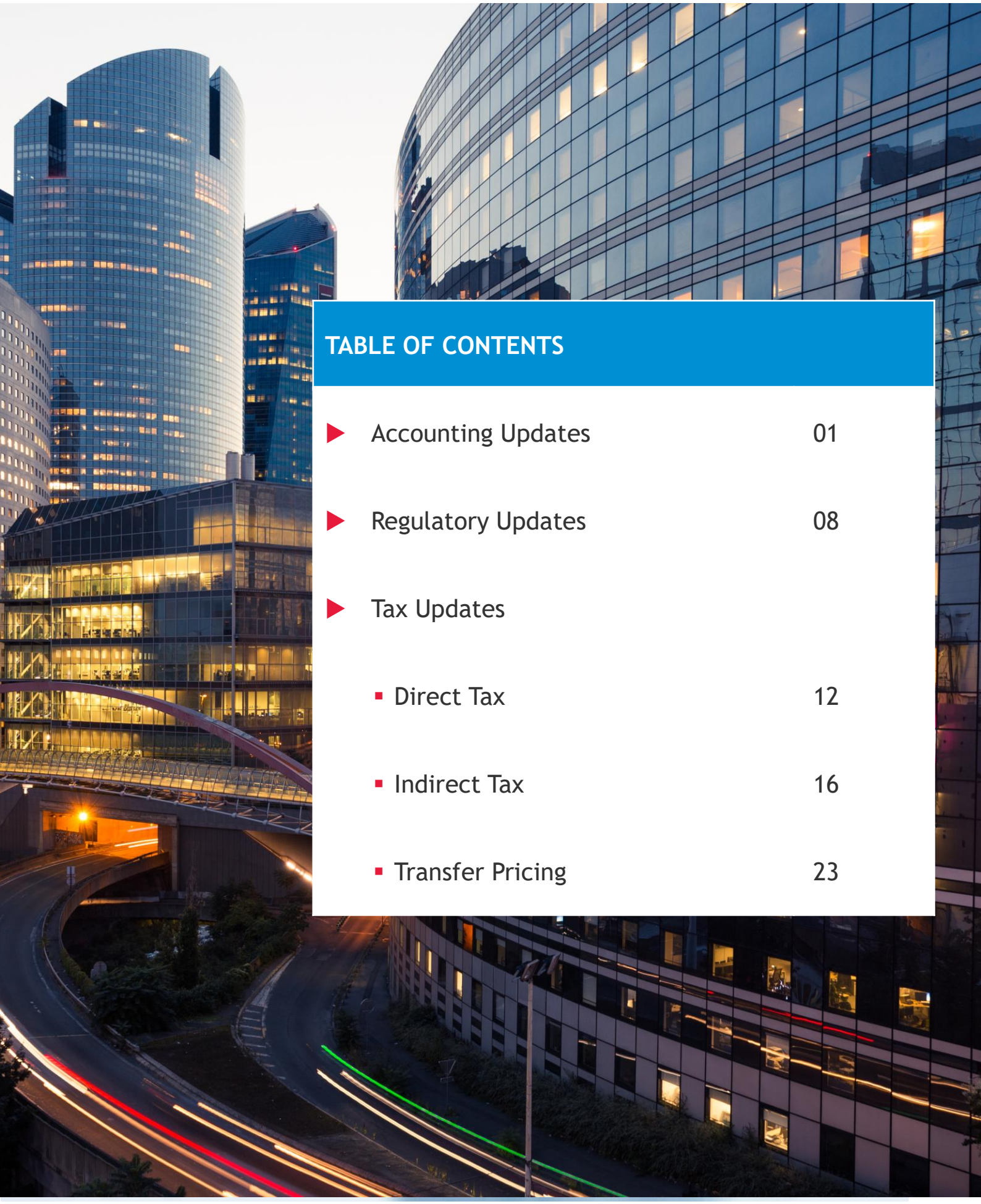

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Expert Advisory Committee (EAC) Opinion: Accounting for GST component paid on lease payment under Ind AS 116, 'Leases'.

A power generation company, recognised as a deemed public sector undertaking, entered into a lease agreement for corporate office premises in Delhi for the period from 1 November 2023 to 31 October 2026. The monthly lease rent was INR 17.80 lakh, subject to 18% GST. As the company is engaged in the generation and sale of electricity, which is exempt from GST, it does not claim input tax credit on GST payments. In accordance with paragraph 22 of Ind AS 116, the company classified the arrangement as a lease and recognised the right-of-use (RoU) asset and corresponding lease liability by discounting the gross lease payments, inclusive of the GST component. The company considered GST to be a non-recoverable expense and therefore included it in the lease payment amount for the purpose of measurement.

During the supplementary audit for the financial year 2023-24, the Comptroller and Auditor General (CAG) raised an observation on this accounting treatment. Referring to the ICAI's Educational Material on Ind AS 116 issued in January 2020, the CAG highlighted that GST should not be considered part of lease payments, even when input tax credit is not available. Paragraph 26 of Ind AS 116 requires lease liability to be measured at the present value of lease payments that are unpaid at the commencement date, discounted using the interest rate implicit in the lease or the lessee's incremental borrowing rate. As per the standard, "lease payments" refer to payments made by a lessee to a lessor for the right to use an underlying asset during the lease term. Since GST is a statutory levy payable to the government and collected by the lessor on behalf of the tax authorities, it does not meet the definition of lease payments under Ind AS 116.

The Expert Advisory Committee (EAC) concurred with the audit observation and clarified that GST, irrespective of its recoverability, cannot be included in the measurement of lease liability or RoU asset. GST is not a payment to the lessor for the right to use the asset but a government-imposed levy, and thus does not form part of the lease payments defined under the standard. The Committee also referred to paragraph 4 of Appendix C of Ind AS 37, which defines a levy as an outflow of resources imposed by governments in accordance with legislation. Accordingly, such GST amounts are not to be capitalised but should be recognised as expenses in the profit and loss statement when incurred. The company's accounting treatment, although based on practical cash flow considerations, was found inconsistent with the principles of Ind AS 116.

REGULATORY UPDATES

Institute of Chartered Accountants of India (ICAI)

Exposure Draft - Preface to the Standards on Internal Audit

The Committee of Internal Audit of ICAI has released the exposure draft on preface to the Standards on Internal Audit, facilitating understanding of the scope and authority of the pronouncements of the Internal Audit Standards Board. This Preface also lays down the underlying principles and boundaries for the internal audit function and activity. It provides clarity on key components governing Internal Audit to ensure standardisation and quality in discharge of internal auditor's responsibilities. The Council has decided that these Standards will be made mandatory in a phased manner. Comments may be submitted by 23 October 2025.

Announcement providing relaxation in compliance with the 'Guidance Note on Financial Statements of Non-Corporate entities' and 'Guidance Note on Financial Statements of Limited Liability Partnerships' for annual reporting period 2024-25.

ICAI had earlier issued the 'Guidance Note on Financial Statements of Non-Corporate Entities' and the 'Guidance Note on Financial Statements of Limited Liability Partnerships' in August 2023, effective for financial periods beginning on or after 1 April 2024.

In view of various representations and in the larger interest of the members, the Council of ICAI has decided to provide relaxation in mandatory compliance with the above-mentioned Guidance Notes for the annual reporting period 2024-25.

- Entities may voluntarily apply these Guidance Notes for the financial year 2024-25.
- This relaxation is aimed at providing members with adequate time for smoother implementation.

However, the announcement does not affect the applicability of the Accounting Standards or the Framework for the Preparation and Presentation of Financial Statements, which will continue to apply as per relevant ICAI pronouncements.

National Financial Reporting Authority (NFRA)

NFRA's Auditor-Audit Committee Interaction Series 4

NFRA's *Auditor-Audit Committee Interaction Series 4* emphasises the importance of effective communication between statutory auditors and audit committees on the subject of impairment of non-financial assets. Drawing references from the Companies Act, SEBI (LODR) provisions, SA 260, SA 265, SA 540, and SQC 1, this publication aims to strengthen auditor-governance dialogue surrounding complex accounting estimates and judgments. It reiterates that impairment assessment requires auditors to evaluate management's identification of impairment indicators, reasonableness of assumptions, valuation models, and sufficiency of audit evidence, particularly in respect of goodwill and intangible assets.

The series provides an extensive set of illustrative questions that audit committees may use to discuss with auditors matters such as identification of cash-generating units, estimation of recoverable amounts, use of experts, reasonableness of cash flow assumptions and discount rates, and adequacy of related disclosures. It also connects these to auditor responsibilities under relevant SAs concerning assessment of risks of material misstatement, evaluation of management bias, and reporting of key audit matters. Overall, NFRA's initiative underscores its objective of strengthening audit quality and accountability by encouraging informed, structured, and transparent engagement between auditors and audit committees on areas involving significant estimation and judgment.

Reserve Bank of India (RBI)

Draft Directions/ Regulations

RBI has issued the draft regulatory framework for public comments, on lending to related parties by various regulated entities, such as:

- RBI (Commercial Banks – Lending to Related Parties) Directions, 2025
- RBI (Small Finance Banks – Lending to Related Parties) Directions, 2025
- RBI (Regional Rural Banks – Lending to Related Parties) Directions, 2025
- RBI (Local Area Banks – Lending to Related Parties) Directions, 2025
- RBI (Urban Co-operative Banks – Lending to Related Parties) Directions, 2025
- RBI (Rural Co-operative Banks – Lending to Related Parties) Directions, 2025
- RBI (Non-Banking Financial Companies – Lending to Related Parties) Directions, 2025
- RBI (All India Financial Institutions – Lending to Related Parties) Directions, 2025
- FEMA (Borrowing and Lending) (Fourth Amendment) Regulations, 2025
- FEMA (Establishment in India of a branch or office) Regulations, 2025

The draft Directions propose a harmonised, principle-based framework for regulated entities (REs) to follow when lending to related parties, aiming to rationalise and streamline existing provisions. Key elements of the framework include the introduction of scale-based materiality thresholds, beyond which lending to related parties would require approval from the Board or its Committee; the exclusion of Independent Directors of other banks from the definition of 'related persons' for the purposes of these Directions; a principle-based exemption from Section 20(1)(b) of the Banking Regulation Act, 1949 for specific loan types; and the establishment of appropriate supervisory reporting and disclosure requirements for related party transactions.

Further, the Draft regulation proposes to rationalise ECB rules by linking limits to financial strength, easing maturity and end-use norms, expanding participants, and simplifying reporting. RBI also proposes to relax eligibility criteria for foreign branch/office setup in India, shift to a principle-based framework, and simplify the closure process for non-compliant or inactive offices.

Comments on draft directions on lending to related parties and comments on draft regulations may be submitted by 31 October 2025, and 24 October 2025, respectively.

Master Direction - Import of Goods and Services

RBI has updated the Master Direction on Import of Goods and Services on 1 October 2025. The amendment extends the time period for foreign exchange outlay in Merchanting Trade Transactions from four to six months, while keeping the overall completion period at nine months. Further, AD banks are now permitted to reconcile and close import entries up to INR 10 lakh per bill based on the importer's self-declaration of payment. This includes accepting reduced invoice values and allows for quarterly consolidated declarations. Additionally, banks are mandated to review their fee structures for handling these small-value import transactions and are prohibited from levying any penalties for delays in adhering to regulatory guidelines.

Master Direction – Export of Goods and Services

RBI has updated the Master Direction on Export of Goods and Services on 1 October 2025, stating that the AD banks are now permitted to reconcile and close export entries up to INR 10 lakh per bill based on the exporter's self-declaration of payment realisation. This includes accepting reduced invoice values and allows for quarterly consolidated declarations. Additionally, banks are mandated to review their fee structures for handling these small-value export transactions and are prohibited from levying any penalties for delays in adhering to regulatory guidelines.

Master Direction - RBI (Interest Rate on Advances) Directions, 2016

RBI has stated that banks may reduce spread components under External Benchmark, for a loan category earlier than three years for customer retention, on justifiable grounds, in a non-discriminatory manner, and in terms of the bank's policy.

OTHER REGULATORY MATTERS:

National Stock Exchange of India (NSE)

FAQs on Applicability of the Industry Standards on "Minimum information to be provided for Review of the Audit Committee and Shareholders for Approval of Related Party Transaction (RPT)"

NSE issued Frequently Asked Questions ('FAQs') regarding the applicability of the Industry Standards ('Standards') on the Minimum Information required for the Audit Committee ('AC') and Shareholder approval of Related Party Transactions ('RPTs').

Applicability and Scope of the RPT Industry Standards

The RPT Industry Standards, effective 1 September 2025, replace previous RPT disclosure formats under the Master Circular.

- **Scope:** These Standards prescribe the minimum information required. Management can provide additional information, and the Audit Committee can seek any further data necessary to evaluate the RPT.
- **Applicability to Subsidiaries:** The Standards are applicable to RPTs undertaken by foreign or domestic subsidiaries if those transactions require AC or shareholder approval of the listed holding company under the LODR Regulations.
- **Threshold:** The Standards apply to RPTs where the aggregate value of all transactions with a related party during a financial year exceeds INR 1 Crore (including previous transactions and those approved by ratification).
- **Exception:** If a transaction is below the INR 1 Crore threshold but is deemed a 'material RPT' under Regulation 23(1) of LODR (i.e., exceeding 10% of the annual consolidated turnover), the RPT Industry Standards do not apply. However, the Board/AC may require minimum disclosures per their internal policy for approval of RPT .

Guidelines for placing information to the Audit Committee

The Standards mandate specific information to be placed before the Audit Committee:

- External Reports: Besides the valuation report, other reports like benchmarking reports, arm's length pricing reports, transfer pricing agreements, and fairness opinions must be provided if taken or relied upon for the proposed RPT.
- Joint Certification: A certificate covering the proposed RPTs must be jointly signed by two different individuals from the leadership team (CEO/MD/WTD/Manager and CFO), even if one individual holds both a WTD and CFO role.
- AC Minutes: If the Audit Committee does not approve an RPT, the comments and rationale for rejection must be recorded in the minutes. The AC's comments on approved RPTs should also be captured.

Minimum Information to be provided to the shareholders for approval of Material RPTs

For material RPTs requiring shareholder approval:

- Redaction: Information provided to shareholders may be redacted, provided such redaction is approved by both the Audit Committee and the Board of Directors.
- Access to Reports: Both a weblink and a QR Code must be disclosed in the Explanatory Statement for accessing the valuation or other reports considered by the AC.

Minimum information of the proposed

- Financial Basis: If the preceding financial year's audited financials for the listed entity or its subsidiary are unavailable at the time of seeking approval, the last audited financial statements should be used.
- Disclosure on Borrowings by entity or its subsidiary: If a listed entity has no comparable maturity profile for a proposed borrowing, the management must inform the AC and provide the minimum, maximum, and average interest rate of all ongoing borrowings by the listed entity/ subsidiary.
- Royalty Payments: If the peer companies do not disclose royalty payments in their financials, the Audit Committee must be informed of the non-disclosure.

CBDT extends specified date for filing of various reports of audit for the AY 2025-26

The due date for furnishing tax audit reports and various other reports for Companies and Persons (other than companies) whose accounts are required to be audited under Income Tax or under any other law has been extended from 30 September 2025 to 31 October 2025.

Income Tax Act 2025, including Tabular Mapping of Sections vis-à-vis Income-tax Act, 1961

The Direct Tax Committee of ICAI has released first edition of the Bare Law of the Income-tax Act, 2025 including tabular mapping of corresponding sections of erstwhile Income Tax Act, 1961.

Suggestions on Practical Issues in GST

The GST and Indirect tax committee of ICAI has presented a comprehensive set of suggestions addressing practical issues faced by taxpayers under GST. This document aims to provide constructive feedback and recommendations to the Government of India, particularly the Goods and Services Tax Council and the Central Board of Indirect Taxes and Customs (CBIC), for streamlining the implementation and compliance of the Goods and Services Tax (GST) law in India.

The suggestions broadly cover areas such as (a) Adjudication & Enforcement, Input tax credit ('ITC'), Registration, Refunds, Returns, and E-way bill.

In adjudication and enforcement, the recommendations are to provide sufficient time for replies to notices, enforce virtual hearings unless physical hearings are chosen, and ensure dual service of communications both electronically and physically. The Committee urges reliance on digital records during personal hearings and stresses the need for a unified case management module that tracks all proceedings under a single case ID. It also recommends the creation of a login mechanism for unregistered persons penalised under GST, and reiteration of prescribed procedures for inspection, detention, and release of goods.

In ITC, the document calls for operational enhancements to allow credit distribution based on the current month's turnover in cases where historical data is lacking, reinstatement of rate columns and quarterly views in Form GSTR-2B, and automated re-credit of ITC after withdrawal of GST cancellation applications. Regarding registration, the ICAI suggests improvements for jurisdiction selection, simultaneous amendment application submission, pre-submission previews, temporary rectification windows, and transparent, reasoned orders for registration cancellations. They highlight the need to address system issues in cases of mergers or demergers and integration challenges in registrations via the MCA portal, along with enabling online TDS registration cancellation.

Refund processing reforms include implementation of a faceless, system-driven, and time-bound framework supported by automation, clear refund mechanisms for rejected casual and non-resident taxable person registrations, and specific clarifications to support SEZ units in claiming ITC refunds.

The Committee calls for realignment of default return dashboard periods to user filing habits, advance EVC generation for smoother filings, and modification of remit forms to distinguish between taxable and exempt supplies for specific composition taxpayers.

Lastly, it is proposed that the e-way bill system be updated to capture details of the ultimate recipient in complex supply chain scenarios, thus bringing practice in line with operational realities and minimising compliance uncertainties.

Ministry of Corporate Affairs (MCA)

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025

MCA has amended the Fast Track Merger rules under Section 233 of the Companies Act, 2013, via the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025 which will be effective from 4 September 2025. These changes significantly expand the categories of companies eligible for the streamlined process. Now, the fast-track route is available for mergers between unlisted companies (with aggregate outstanding loans not exceeding INR 200 crore and no default, requiring an auditor's certificate); a holding company and its subsidiary; or fellow subsidiaries of the same holding company, provided the transferor company(ies) is not listed. The rules also now cover the merger of a foreign holding company with its wholly owned Indian subsidiary.

The new rules also introduce key procedural modifications for companies utilising the Fast Track Merger. For entities regulated by sectoral regulators like SEBI, RBI, or IRDAI, the scheme notice must now also be issued to the concerned regulator and stock exchanges for objections. When filing the scheme with the Central Government, the company must include a statement explaining how any objections or suggestions from these regulators were addressed. Finally, the amendments clarify that the Fast Track Merger procedure and its provisions mutatis mutandis (with necessary changes) apply to a scheme involving the division or transfer of a company's undertaking under Section 232.

The forms CAA-9, CAA-10, CAA-11 and CAA-12 shall be substituted with the revised forms as mentioned in the notification.

Clarification on holding of AGM and EGM through Video Conference (VC) or Other Audio Visual Means (OAVM) and passing of Ordinary and Special resolutions by the companies.

MCA Vide its general circular dated 22 September 2025, clarified that Companies are permitted to continue holding AGMs and EGMs through VC or OAVM until further orders, following the frameworks laid down in earlier circulars issued since 2020. However, the circular specifically states that this continuation does not grant any extension for the statutory timelines for holding AGMs under the Companies Act, 2013, and companies failing to adhere to those timelines will be liable to legal action. All previous requirements for conducting AGMs and EGMs through VC/OAVM, as set out in earlier circulars, remain unchanged.

Securities and Exchange Board of India (SEBI)

SEBI Board Meeting

SEBI has approved several amendments to its regulations with the primary objective of enhancing ease of doing business and fostering financial inclusion across the Indian capital markets. These decisions, announced following the 211th SEBI Board meeting, addressing a wide range of areas including IPOs, foreign investment, and mutual funds. The new measures aim to strike a balance between investor protection and providing a more conducive regulatory environment for market participants.

Key Highlights:

(a) Easing Listing and Investment Rules

SEBI has recommended changes to the Minimum Public Shareholding (MPS) rules, allowing very large companies to take up to 10 years to achieve the 25% MPS requirement. In the primary market, the anchor investor portion for IPOs has been increased to 40% and expanded to include Life Insurance Companies and Pension Funds, alongside Mutual Funds, strengthening the involvement of long-term institutional investors.

(b) Compliance and Access

As part of simplifying compliance for listed entities, SEBI introduced scale-based thresholds for determining "material" Related Party Transactions (RPTs) and eased disclosure requirements for smaller transactions. Access to foreign capital has been simplified through the new 'SWAGAT-FI' framework, which grants trusted, low-risk foreign investors, such as Sovereign Wealth Funds, expedites access and registration validity to 10 years. Additionally, the minimum investment for Large Value Funds (LVFs) for accredited investors has been reduced to INR 25 crores.

(c) Protecting and Including Investors

To increase financial inclusion, SEBI reduced the maximum permissible Mutual Fund exit load from 5% to 3% and introduced new incentives for distributors focusing on bringing new investors from Beyond-30 cities. Furthermore, REITs have been re-classified as "equity" for Mutual Fund investment to boost capital flows. Finally, a new website, 'India Market Access,' has been launched as a centralised digital gateway to help Foreign Portfolio Investors (FPIs) navigate India's regulatory landscape.

Format of 'Disclosure Document' for Portfolio Managers

SEBI, through a circular dated 9 September 2025, has introduced a simplified format for the 'Disclosure Document' required from Portfolio Managers by deleting Schedule V from the SEBI (Portfolio Managers) Regulations, 2020. The new format divides the document into static section; which contain information that does not change frequently, and dynamic section; which are updated as needed. When any section is updated, only the modified pages must be certified by an independent Chartered Accountant and the Principal Officer. Portfolio managers are required to notify clients of any updates, post the revised pages on their website, and file them with SEBI within 7 working days of the change. The circular is effective immediately.

Framework for AIFs to make co-investment within the AIF structure under SEBI (Alternative Investment Funds) Regulations, 2012

SEBI, through its circular dated 9 September 2025, now allows Category I and II Alternative Investment Funds (AIFs) to provide accredited investors with the ability to co-invest in portfolio companies by launching distinct Co-Investment Schemes (CIV schemes) within the AIF structure, apart from the previously available Portfolio Manager route. The important conditions *inter-alia* include:

- Each CIV scheme must maintain separate bank and demat accounts, with its assets strictly safeguarded from other CIVs and the main AIF scheme to ensure proper segregation and transparency.
- The amount any investor can co-invest via all CIV schemes in a Company is capped at three times their corresponding investment in the associated AIF's scheme, except for institutional or government-linked investors who are exempt from this restriction.
- Investors who have defaulted or been excluded from the main AIF's investment in a Company are not permitted to co-invest in that company through a CIV.
- CIV schemes are subject to governance, reporting, and implementation standards formulated by the AIF industry in consultation with SEBI to prevent misuse of the framework.

Revised regulatory framework for Angel Funds under AIF Regulations

SEBI vide circular dated 10 September 2025, issued a revised regulatory framework for Angel Funds under the Alternative Investment Funds Regulations. This framework aims to ease business, reduce risks, and provide clearer operational guidelines. Further, it mandates Angel Funds registered after the aforesaid circular's date must raise funds exclusively from Accredited Investors by issuing units in ways specified by SEBI. For Angel Funds registered on or before the circular date, there is a transition period until 8 September 2026, during which they may offer investment opportunities to up to 200 non-Accredited Investors. However, after this date, no new investments from non-Accredited Investors will be allowed.

Existing non-Accredited Investors can continue to hold their current investments in accordance with the terms specified in the Private Placement Memorandum or fund documents. These changes are designed to ensure that only financially knowledgeable and capable investors participate in Angel Funds going forward, enhancing investor protection and bringing disciplined fundraising practices to the sector.

The circular is effective immediately.

SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021

SEBI has notified the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, introducing a new Regulation 9A into the existing framework. Under this provision, employees identified as promoters or belonging to the promoter group in a draft IPO document are permitted to continue holding or exercising stock options, Stock Appreciation Rights (SARs), or other benefits, provided those were granted at least one year before the IPO draft was filed. This entitlement remains subject to the terms of the specific scheme, compliance with the amended SEBI regulations, and all other relevant laws.

SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2025

SEBI has notified the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2025, introducing several key changes.

- Definition of "specified securities holders" is expanded to include accredited investors under SEBI's AIF Regulations, specifically for investing in Angel Funds registered under the AIF framework.
- Prior to filing a draft offer document, all specified securities held not only by promoters but also promoter groups, selling shareholders, directors, key managerial personnel, senior management, qualified institutional buyers, and other specified persons must be in dematerialised form.
- The one-year holding period requirement for equity shares exemption has now been expanded to shares arising from conversion of fully paid-up compulsorily convertible securities offered for sale, provided they were acquired pursuant to a scheme approved by a High Court, Tribunal, or Central Government-approved scheme under Sections 230 to 234 of the Companies Act, that the scheme had existed for more than one year before approval.
- Amends to Disclosure Requirements in Schedule VII (Placement / Offer Documents) related to risk factors, financial details, and legal proceedings in placement or offer documents.
- Minimum Promoter Contribution shortfalls could be covered by qualified investors such as AIFs, foreign VC investors, scheduled banks, PFIs, insurance companies, non-individual public shareholders with at least 5% post-issue capital, or related promoter group entities (other than the promoter).
- Clarifies the definition and requirements for Social Impact Assessment Organizations and sets compliance timelines for Non-Profit Organizations registered under the Social Stock Exchange to comply within two years.

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2025

SEBI notified the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2025, effective from the date of publication. The key amendment mandates that

- Securities issued under any Scheme of Arrangement or through subdivision, split, or consolidation must be issued exclusively in dematerialised form. For investors who do not have demat accounts, listed entities are required to open separate demat accounts to facilitate these holdings. This change will promote dematerialisation and reduce risks related to physical securities such as fraud and loss.
- Not-for-profit organizations (NPOs) registered or listed on Social Stock Exchanges must disclose their financial aspects annually by 31 October or by the due date for filing their income tax returns, whichever is later, or within any other timeframe prescribed by SEBI. Additionally, these organisations must report specified non-financial information within 60 days after the financial year-end or as directed by SEBI.
- Annual impact report submitted by NPOs shall cover at least 67% of their program expenditure during the previous financial year. Further, for social enterprises registered on the Social Stock Exchange but not raising funds, submission of a self-certified annual impact report is mandatory.

Framework on Social Stock Exchange

SEBI vide circular dated 19 September 2025, amended the framework for the Social Stock Exchange (SSE), to align with changes made in ICDR and LODR Regulations. These changes are based on recommendations from the Social Stock Exchange Advisory Committee (SSEAC).

The updated framework clarifies the minimum requirements for an NPO seeking registration with the SSE:

- Types of legal entities eligible for registration as an NPO have been consolidated and clarified. Entities eligible to be registered in India shall be in any one of the forms — charitable trust or charitable society, or a Section 8 company (including a Section 25 company).
- Annual Disclosure (covering general, governance, and financial aspects) timing for NPOs to file has been revised to 31 October of each year or the income tax return filing due date, whichever is later.

- The circular modifies the requirements related to the Annual Impact Report (AIR) for Social Enterprises (SEs) that have raised funds via the SSE, or NPOs registered without listing any security:
- AIR submission deadline for Social Enterprises using the SSE shall be 31 October of each year or before the income tax return filing due date, whichever is later. Further, for registered NPOs with the SSE (without listing), the AIR will be self-reported and must cover activities amounting to at least 67% of the program expenditure in the previous financial year.
- All AIR for Social Enterprises that have raised funds must be assessed by Social Impact Assessors (SIAs), and their report must be disclosed along with the AIR.

Securities and Exchange Board of India (Investor Protection and Education Fund) (Amendment) Regulations, 2025

SEBI has notified the Securities and Exchange Board of India (Investor Protection and Education Fund) (Amendment) Regulations, 2025, effective from 1 September 2025 to enhance investor protection during PSU delisting. Under the updated framework, any money owed to shareholders who didn't take part in a PSU delisting must be deposited into a designated account held by the relevant stock exchange. This account will safeguard the funds for up to seven years, giving investors ample time to claim what they're owed. If the money remains unclaimed after seven years, it must be transferred to the Investor Education and Protection Fund (IEPF), which was set up under the Companies Act, 2013, and in case, legal or procedural barriers exist that prevent transfer to the aforesaid IEPF, then the funds shall be credited directly to SEBI's IPEF account.

Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2025

SEBI has notified the Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2025, introducing specific provisions for the delisting of Public Sector Undertakings (PSUs) equity shares (excluding Banks, NBFCs, and Insurance Companies).

Key Highlights:

- Delisting is permitted if the acquirer and other PSUs hold at least 90% of shares, subject to shareholder approval via special resolution.
- The delisting must follow a fixed price process, with the floor price set based on recent acquisition prices or a joint valuation report, and the final price being at least 15% higher.
- Funds payable to shareholders who do not tender their shares must be held by the stock exchange for seven years, after which unclaimed amounts will be transferred to the Investor Education and Protection Fund or SEBI's Investor Protection Fund if transfer isn't feasible. Investors can claim unclaimed amounts through the stock exchange.

These regulations are effective from 1 September 2025.

Securities and Exchange Board of India (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2025

SEBI has notified the SEBI (Infrastructure Investment Trusts) (Third Amendment) Regulations, 2025, introducing key reforms to improve transparency, governance, and accountability of InvITs. These regulations are effective from 1 September 2025.

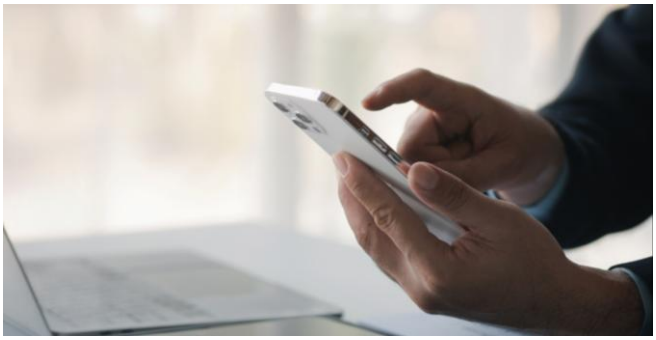
- The minimum investment for all privately placed InvITs would be INR 25 lakhs. The definition of "public" has been clarified — a related party who is also a Qualified Institutional Buyer (QIB) would be considered "public", but the InvIT's main management entities (sponsor, investment manager, etc.) shall never be considered "public".
- The reporting and valuation deadlines have been aligned with the submission of quarterly financial results.
- InvITs whose borrowings exceed 49% are required to conduct and submit quarterly asset valuations and a new quarterly report.
- Holding Company within the InvIT structure shall offset its own negative cash flow against cash flows from its subsidiaries.

Securities and Exchange Board of India (Real Estate Investment Trusts) (Second Amendment) Regulations, 2025

SEBI has notified the (Real Estate Investment Trusts) (Second Amendment) Regulations, 2025, introducing key reforms to improve transparency, governance, and accountability of Real Estate Investment Trusts ('REITs').

Key Highlights Include:

- Related parties of the REIT, its sponsor, or manager are excluded from being 'public.' However, if these parties qualify as QIBs, they will be treated as 'public.' Sponsors and managers are never considered 'public.'
- Reporting on under-construction property status is now aligned with SEBI's quarterly financial results timeline, replacing the earlier fixed 30-day deadline.
- Valuation reports (annual and half-yearly) must be submitted simultaneously to trustees and stock exchanges.
- Holding Company with negative net distributable cash flow may adjust against cash flows from underlying SPVs, subject to required disclosures.
- Annual valuation as of 31 March and half-yearly valuation as of 30 September must be submitted with the respective financial results.



REGULATORY UPDATES

REGULATORY UPDATES:

Notification of Securities and Exchange Board of India (Portfolio Managers) (Amendment) Regulations, 2025 by Securities and Exchange Board of India ("SEBI")

With an objective to enhance transparency and accountability in the portfolio management industry, SEBI has amended the existing SEBI (Portfolio Managers) Regulations, 2020 (**"PMS Regulations"**) vide notification dated 1 September 2025[1]. Such amendments are effective from 3 September 2025.

Key Highlights

1. ***Contract with clients and disclosures [Regulation 22(3) of PMS Regulations]:***
   - Portfolio manager shall provide the document to the client in the format (as against the existing format specified in Schedule V) as may be specified by SEBI, along with the certificate in Form C as specified in Schedule I, prior to entering into an agreement.
2. ***Deletion of Schedule V of PMS Regulations:***
   - Schedule V, which provides the format of the Disclosure Document, was deleted.

Format of 'Disclosure Document' for Portfolio Managers

In line with the above amendments to PMS Regulations and as a part of an initiative for ease of doing business, SEBI has issued the format of Disclosure Document in a simplified manner in Annexure-I through circular dated 9 September 2025[2]. The provisions of aforesaid circular shall be applicable with immediate effect.

Key Highlights

- The Disclosure Document has been divided into the following two sections:
  - Static section - comprising of parameters such as definitions, services offered, risk factors, nature of expenses, taxation, accounting policies, investor services, etc.
  - Dynamic section – comprising parameters such as client representation, financial performance, performance of portfolio manager, audit observations (of preceding 3 years), and details of investment insecurities of related parties of portfolio manager
- Page/s containing change/s in any parameter would need to be certified by an independent chartered accountant and the Principal Officer of PMS. The same shall also be highlighted in the communication to clients
- Updated Disclosure Document Page(s) in which changes are carried out shall be simultaneously communicated to the clients, updated on the website of the portfolio manager and filed with the SEBI within seven working days from the date of change

Notification of Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2025 by SEBI

With an objective to enhance ease of doing business for Alternative Investment Funds (**"AIFs"**), SEBI has amended the existing SEBI (Alternative Investment Funds) Regulations, 2012 (**"AIF Regulations"**) vide notification dated 8 September 2025[3]. Such amendments primarily include conditions for co-investment by Category I and Category II AIFs and a revised regulatory framework for Angel Funds.

Key Highlights

1. ***Substitution and insertion of definitions related to co-investments [Regulation 2 of AIF Regulations]:***
   - Existing definition of co-investment modified to restrict co-investment in "*unlisted securities*" of investee companies.
   - Insertion of definition of co-investment scheme (*i.e., scheme facilitating co-investment to investors of a particular scheme of an AIF*) and shelf placement memorandum (*i.e., memorandum filed by an AIF for launching co-investment schemes*).

[1] SEBI Notification No. SEBI/LAD-NRO/GN/2025/260 dated 1 September 2025
[2] SEBI Circular No. SEBI/HO/IMD/IMD-RAC-3/P/CIR/2025/125 dated 9 September 2025
[3] SEBI Notification No. SEBI/LAD-NRO/GN/2025/265 dated 8 September 2025

2. ***Key conditions for co-investment by Category I and Category II AIFs [New Regulation 17A of AIF Regulations]:***
   - Co-investment by investors shall be through (a) a co-investment scheme launched under AIF Regulations; or (b) a co-investment Portfolio Manager as specified under the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020.
   - Filing of shelf placement memorandum with SEBI, in the manner as may be specified by SEBI through a merchant banker, along with applicable fee, prior to the co-investment opportunity being offered to the investors.
   - Separate co-investment scheme shall be launched for each co-investment. Restriction on Angel Fund to launch a co-investment scheme.
   - Only accredited investors of Category I or Category II AIF shall be eligible to invest in a co-investment scheme.
   - Each co-investment scheme shall invest in only 1 investee company.
   - Co-investment scheme shall not invest in units of AIFs.
   - Co-investment through a co-investment scheme shall be carried out in the manner and subject to the conditions as may be specified by SEBI from time to time.

   SEBI vide circular dated 9 September 2025[4] has issued a detailed framework for AIFs to make co-investment with the AIF structure under the AIF Regulations, which inter alia prescribes operational modalities, a template for the shelf placement memorandum, etc.

3. ***Amendment to definitions relevant to Angel Funds [Regulation 19A of AIF Regulations]:***
   - Angel Fund shall now mean a sub-category of Category I AIF that raises funds from "*accredited investors*" as against "*angel investors*".
   - Angel investor shall now mean an accredited investor, or key management personnel of an angel fund or its manager, who invests in an Angel Fund.
   - Substitution of the term "*company with family connection*" with the term "*related party*" as defined under Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

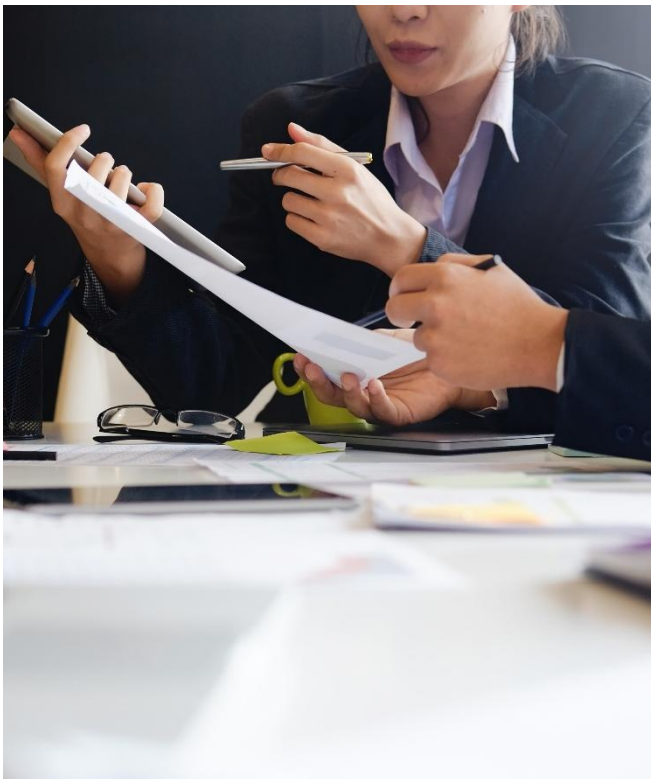
4. ***Investment in Angel Funds [Regulation 19D of AIF Regulations]:***
   - Angel Funds shall now raise funds only from "*accredited investors*" by way of issue of units, in the manner as may be specified by SEBI from time to time. However, key management personnel of an Angel Fund or its manager may also make investments in Angel Funds.
   - Angel Funds to file a placement memorandum with SEBI in the specified format through a merchant banker while filing an application for registration.
   - Angel Fund shall on-board at least five accredited investors before declaring its first close in the manner specified.
   - Failure to declare the first close shall require refilling of the placement memorandum with SEBI, along with the requisite fees.

5. ***Investment by Angel Funds [Regulations 19F of AIF Regulations]:***
   - Angel Funds shall invest only in start-ups, which are not promoted or sponsored by or related to a corporate group whose group turnover exceeds INR 300 cr.
   - Additional investments in existing investee companies which are no longer start-ups are permissible, subject to conditions as may be specified by SEBI.
   - Revised limit of investment in any investee company (min. INR 10 lakh and max. INR 25 cr.).
   - Each investment in an investee company shall have a contribution from at least two accredited investors.

6. ***Obligations of Sponsors and Managers of Angel Funds [Regulation 19G of AIF Regulations]:***
   - Continuing interest of manager or sponsor in each investment of Angel Fund of not less than 0.5% of the amount invested or INR 50,000, whichever is higher.
   - Manager shall disclose and offer each investment opportunity to all investors of the Angel Fund.
   - Investors shall have rights in an investment of the Angel Fund and in the distribution of proceeds of the investment, pro rata to their contribution to the investment, except for cases specified by SEBI.

   SEBI vide circular dated 10 September 2025[5] has issued a detailed framework in relation to fundraising, investments, offering and allocation of investment opportunities, and other obligations as applicable for Angel Funds.

7. ***Effective date of the above notification:***
   - The above notification shall come into force on the date of its publication in the Official Gazette.



[4] SEBI Circular No. SEBI/HO/AFD/AFD-POD-1/P/CIR/2025/126 dated 9 September 2025
[5] SEBI Circular No. SEBI/HO/AFD/AFD-POD-1/P/CIR/2025/128 dated 10 September 2025

Ease of regulatory compliance for Foreign Portfolio Investors ("FPIs") investing only in Government Securities ("GS-FPIs") by SEBI

SEBI Master Circular for FPI[6] dated 30 May 2024 ("**FPI Master Circular**") inter alia specifies the guidelines for FPIs registration, Know Your Customer ("**KYC**") requirements and investment conditions/restrictions under Parts A, B and C of FPI Master Circular, respectively.

In order to facilitate ease of regulatory compliance for GS-FPIs, SEBI (Foreign Portfolio Investors) Regulations, 2019, were amended vide notification dated 11 August 2025[7].

Accordingly, SEBI vide its recent circular dated 10 September 2025[8] ("**Circular**") has summarised changes to such FPI Master Circular.

Key Highlights

1. ***Guidance for processing of FPI application by Designated Depository Participants ("DDPs") [Para 1 of Part A of FPI Master Circular]:***
   - FPIs that invest exclusively under Fully Accessible Route shall not be required to furnish investor group details.
2. ***Continuance of Registration [Para 4 of Part A of FPI Master Circular]:***
   - GS-FPIs who wish to continue with their registration for the subsequent block of 3 years should only pay the fees to their DDPs. The requirement of informing of any change in information (*as applicable to FPIs*) shall not be applicable to GS-FPIs.
   - In case of no change in information, as previously furnished, requirement of giving declaration (*as applicable to FPIs*) shall not be applicable to GS-FPIs.
3. ***Change in Material Information [Para 14 of Part A of FPI Master Circular]:***
   - GS-FPIs shall report all material changes (both Type I and Type II) along with supporting documents (if any) as soon as possible and within 30 days of such change.
4. ***Mechanism for transition between regular FPIs and GS-FPIs [New Para 19 of Part A of FPI Master Circular]:***
   - New FPI applicants willing to invest only in government securities may identify themselves as GS-FPIs by making an appropriate declaration to their DDPs at the time of onboarding.
   - Regular FPIs (existing as well as prospective) may also transition to GS-FPIs by making an appropriate declaration to their DDPs.
   - DPPs to ensure that FPIs have divested all its holdings except for Government Securities.
   - DPPs, along with Depositories, shall also ensure that FPI has either closed its demat accounts or there are fail-safe mechanisms in place preventing the holding of any assets other than Government Securities.
   - Similarly, GS-FPIs may also transition to regular FPIs by making an appropriate declaration to their DPPs and submitting incremental information and documents as are applicable to regular FPIs. From transition becoming effective, FPI shall be required to comply with regulatory requirements as applicable to a regular FPI.
5. ***Periodic KYC Review [Para 5 of Part B of FPI Master Circular]:***
   - For GS-FPIs, periodicity of KYC review by custodians shall be harmonised with the applicable periodicity of KYC review of their respective bank accounts, as prescribed by RBI.
6. ***Implementation guidelines and effective date of Circular:***
   - Custodians and Designated Depository Participants Standards Setting Forum (CDDPSF), in consultation with SEBI, shall formulate a standard operating procedure for implementing the provisions of this Circular.
   - The provisions of this Circular shall come into force with effect from 8 February 2026.

SEBI facilitates ease of doing investment through smooth transmission of securities from Nominee to Legal Heir

In order to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets, SEBI vide circular dated 19 September 2025[9] ("**Circular**") has streamlined the process of appointing a nominee who acts as a trustee of the securities of the original security holder and transfers such securities to the legal heir as per the succession plan.

Key Highlights

1. ***Existing procedure for effecting transfers by nominee:***
   - While transferring the securities to legal heir, nominee may get assessed for capital gains tax.
   - Payment of tax by the nominee in such a situation may not be appropriate considering such transmission is exempted and not considered as "transfer" as per the provisions of section 47(iii) of the Income-tax Act, 1961 ("**IT Act**").
   - While the nominee may claim a refund of such tax, this process causes inconvenience to the nominee.
2. ***Revised guidelines in relation to transfers by nominee:***
   - Standard reason code, viz. Transmission to Legal Heirs ("**TLH**") as recommended by Working Group based on engagement with Central Board of Direct Taxes ("**CBDT**"), shall be used by the reporting entities while reporting the transmission of securities from nominee to legal heir, to the CBDT so as to enable proper application of the provisions of the IT Act.
3. ***Implementation guidelines and effective date of Circular:***
   - Procedural requirements for transmission of securities continue to be as provided under the provisions of SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015 and Master Circular for Registrars to an Issue and Share Transfer Agents dated 23 June 2025.
   - RTAs, Listed Issuers, Depositories and Depository Participants are directed to make necessary system changes and implement above proposal with effect from 1 January 2026.

[6] Master Circular for 'Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors' No. SEBI/HO/AFD/AFD-PoD-2/P/CIR/P/2024/70 dated May 30, 2024
[7] SEBI Notification No. SEBI/LAD-NRO/GN/2025/254 dated 11 August 2025
[8] SEBI Circular No. SEBI/HO/AFD/AFD-PoD-3/P/CIR/2025/127 dated 10 September 2025
[9] SEBI Circular No. SEBI/HO/MIRSD/MIRSD-PoD/P/CIR/2025/130 dated 19 September 2025

Investment in Corporate Debt Securities by Persons Resident Outside India ("PROI") through Special Rupee Vostro account ("SRVA")

PROI that maintains an SRVA for international trade settlement in Indian Rupees in terms of circular dated 11 July 2022[10], were permitted to invest their rupee surplus balance in SRVA in Central Government Securities (including Treasury Bills), vide circular dated 12 August 2025[11].

RBI vide circular dated 3 October 2025, has also decided to permit investment of these balances in non-convertible debentures/bonds and commercial papers issued by an Indian company.

Master Direction - Reserve Bank of India (Non-resident Investment in Debt Instruments) Directions, 2025 ("**Master Direction**") has been updated to reflect the above amendments. The updated instructions shall be applicable with immediate effect.

Key Highlights

1. ***Definitions [Para 3(i)(e) of Part-1 of Master Direction]:***
   - Substitution of term "Government Securities" with "eligible instruments" for investment by PROI from rupee surplus balance maintained in SRVA.
2. ***General Route [Para 4.2 of Part-2 of Master Direction]:***
   - Investments of rupee surplus balances in SRVA in non-convertible debentures/bonds and commercial papers issued by an Indian company shall be reckoned under the investment limit for corporate debt securities under the General Route.
3. ***Investment conditions [New Para 7A.4.1 of Part-5A of Master Direction]:***
   - Above investments shall be subject to the investment limit and stipulations specified for FPI investments under the General Route.
   - Minimum residual maturity requirement and issue-wise limit shall not apply to investments made under SRVA route.
   - Primary responsibility of complying with all applicable limits for such investments shall lie with the SRVA holders and the AD Category – I bank where these accounts are maintained.
4. ***Obligations of AD Category-I banks [Para 7A.6 of Part-5A of Master Direction]:***
   - Facilitate opening of separate demat accounts for SRVA holders for holding all such investments.
   - Report the transactions by SRVA holders in above instruments to depository(ies) registered with SEBI, for reckoning them under the investment limits for corporate debt securities under the General Route.

Updated FAQs on International Trade Settlement in Indian Rupees (INR)

RBI has updated its FAQs (FAQ No. 15) on international trade settlement in INR to reflect investment of surplus balances in SRVA in non-convertible debentures/bonds and commercial papers issued by an Indian company in terms of guidelines and limits prescribed vide RBI circular dated 3 October 2025.

[10] RBI A.P. (DIR Series) Circular No. 10 dated 11 July 2022
[11] RBI A.P. (DIR Series) Circular no. 9 dated 12 August 2025

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.

[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

- 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.
- 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.

[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)

- 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.

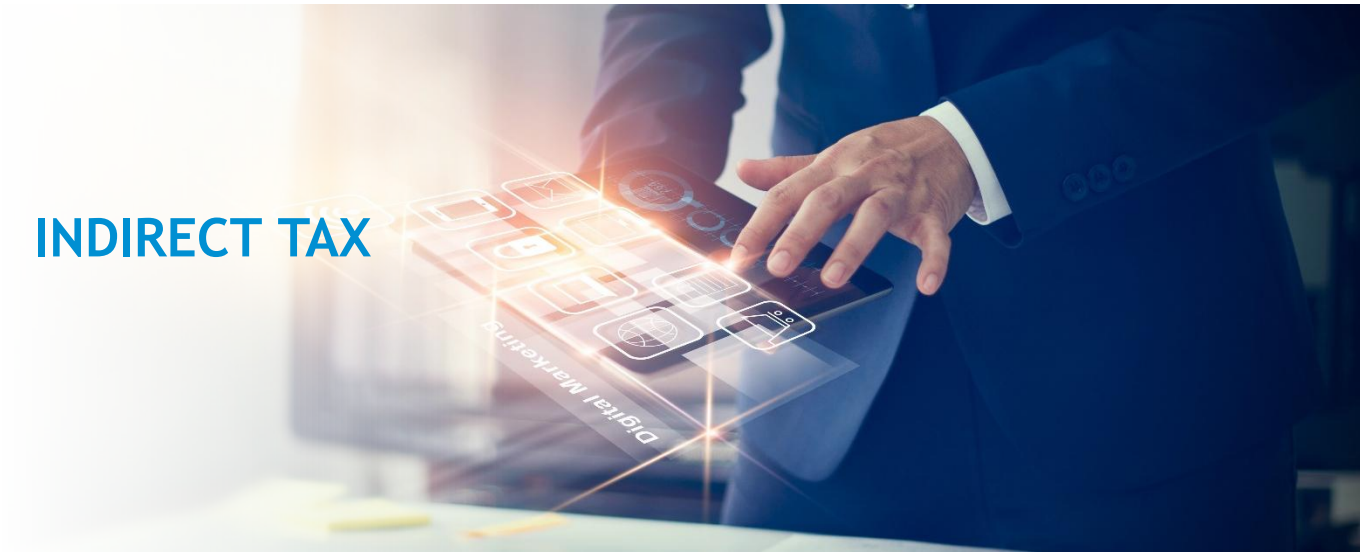
The first appellate authority also rejected the claim of the taxpayer on the ground that such change of claim could have been possible only by filing the revised tax return and such effect cannot be granted to the taxpayer in absence of CBDT instruction. The Tribunal, however, relying on Circular No. 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)]

[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



Delhi High Court rules on the legality and privacy-related aspects arising from search and seizure proceedings

Genesis Enterprises & Ors. Vs. Principal Commissioner, CGST Delhi East and Ors. [TS-807-HC(DEL)-2025-GST]

Facts of the Case

- The Gumber family, inter alia, comprises Mr. Vikas Gumber, his wife, Mrs. Bharati, his sons, Abhishek, Anurag, and Ankit, and their families. Search and seizure was conducted by the officials of the CGST Department against the Gumber family in its residential premises, their firms and various other entities (including M/s. Genesis Enterprises ('Taxpayer'), being one of the Petitioners in the present matter) at different premises on 22 July 2025.
- During the search, a large number of electronic gadgets, documents and devices were seized. Thereafter, on 24 July 2025, the tax authorities went to Marengo Asia Hospital in Faridabad and served a summons upon Mr. Vikas Gumber and the partners of various firms.
- The Taxpayers filed a Writ Petition challenging the validity of the search and seizure before the Delhi High Court on the following:
  - **Search and seizure were carried out in a manner contrary to the provisions of the GST laws**:
    - The *Panchnama* about the search at the residential premises of the Gumber family was not properly recorded. Further, the seizure of CCTV footage from the residential premises has not been properly mentioned in the *Panchnama*.
    - The tax authority entered the business premises of the Taxpayer in an unauthorised manner and proceeded to seal the said premises. Although the tax authorities contended that the tenant residing on the first floor had provided the keys, the said tenant did not have any keys and the locks were broken open in an unlawful manner.
  - **Payment of taxes and withdrawal of refund applications were under coercion and duress**:
    - Applying coercion and duress, the tax authorities compelled the Taxpayer to withdraw refund applications. Further, the tax authorities also pressurised the Gumber family, pursuant to which, Mr. Abhishek made payment of requisite taxes. This was also evidenced by various WhatsApp messages.
    - The coercion on the part of the tax authorities is evident from the fact that the aforesaid actions, viz., withdrawal of refund applications and payment of taxes, were made at a time when there was a family function in the Gumber Family.

Contentions of the Taxpayer

- **Payment of taxes and withdrawal of refund were under coercion and duress**:
  - The chronology of events which led to payments being made and withdrawal of refund applications shows that enormous pressure was put on the Taxpayers, especially when there was a family function in the Gumber family on 2 August 2025.
  - The email received from the tax authorities on 18 August 2025 indicates that various amounts were being demanded post-search, which was conducted in an unlawful manner and without following the due process of law.
  - A sequence of certain WhatsApp chats was also relied upon to contend that Mr. Abhishek Gumber was being forced to reverse the full refund amount.
- **Panchnama about the search at residential premises is not properly recorded**:
  - The tax authority entered the business premises of the Taxpayer in an unauthorised manner, stating that the tenant residing at the first floor had

provided the keys, whereas the said tenant actually did not have any keys and the locks were broken open in an unlawful manner. Further, the seizure of CCTV footage from the residential premises has not been properly mentioned.

- The tax authorities have transgressed the authority conferred under section 67 of Central Goods and Services Tax Act, 2017 ('CGST Act') and section 103 of Bhartiya Nagarik Suraksha Sanhita, 2023 ('BNSS').
- Seizure of CCTV footage from the residential premises constitutes a severe violation of the right to privacy because various family members of Gumber family were residing therein.

- Reliance in this regard was also placed on CBIC Instruction No. 01/2022-23 dated 25 May 2022, ***Bhumi Associates Vs. Union of India [2021 (124) taxmann.com 429]*** and ***Vallabh Textiles Vs. Senior Intelligent Officer [2022 (1) Centax 241 (Del.)]***.
- Considering the above, the following reliefs were sought by the Taxpayers:
  - To not use the CCTV footage from the residence, which was seized by way of hard disk of the cameras and the memory cards seized by the tax authorities.
  - For de-sealing of business premises of the Taxpayer so that the normal business operations can be resumed.
  - To reinstate the refund applications which were purportedly withdrawn under coercion and duress and consequently, the amount of input tax credit ('ITC') that was re-availed by Applicants in their respective Electronic Credit Ledgers at the time of withdrawal of refund applications must be reversed.
  - To refund the amounts which were paid by Mr. Vikas Gumber under coercion and duress.

Contentions of the tax authorities

- **Reasons to believe**:
  - The intelligence received *vide* email dated 21 July 2025 revealed that 5 firms controlled by the Gumber family had filed refund claims which appeared *prima facie* improper, consisting of a chain of suppliers appearing to have been created to pass on fake ITC. Subsequently, upon discreet verification, it was observed that there was no business activity and these firms were merely created to avail fraudulent ITC. Moreover, preliminary data analysis also revealed that suppliers to these firms were not genuine and had transactions only with entities linked to the Gumber family.
  - Thus, the tax authorities had '***reasons to believe***' that the Gumber family was indulging in large-scale wrongdoing with other entities related to the Gumber family, which were fictitious firms incorporated for passing on ITC.
  - As per section 67(2) of CGST Act, proper '***reasons to believe***' should have been recorded at the level of Joint Commissioner to conduct the investigation. During investigation and on the basis of data, which was retrieved, various firms have been found which are fictitious and are run by persons connected with Gumber family. A chart of such firms and the allegations against them is also provided in response to the Writ Petition, and hence, the investigation ought to be permitted to be continued without any hindrance.

- **Seized devices have not been accessed**:
  - As regards the taxpayer's contention regarding violation of privacy, there is no apprehension of the same since the hard drive of CCTV and the memory cards, which are set out in the panchnama, have not been opened, and the same would not be opened without following the proper Standard Operating Procedures.
- **Sealing of business premises of the Taxpayer:**
  - The tenant in the business premises of the Taxpayer had a bunch of keys as recorded in the panchnama, and the said tenant had provided access to the Taxpayer's premises, and the search was carried out in the presence of two independent witnesses and the tenant.
  - Upon receipt of the Taxpayer's request for de-sealing, the same was duly acknowledged, and the Taxpayer was given the opportunity to join the de-sealing process. The Taxpayer was also provided with an option of provisional release of the seized goods.
- **Coercion for making payment of GST (through Form GST DRC-03) and withdrawal of refund application:**
  - The Taxpayer and the related firms have obtained more than INR 40 Mn. In ITC and have also filed refund applications to the tune of INR 50 Mn., all of which are fake ITC without any actual supply of goods.
  - Further, no communication was made with the tax authorities when the refund application was withdrawn. The withdrawal of refund applications post inspection shows that the parties were aware of the penalty and other actions for fraudulent refunds and hence, they chose to withdraw the refund applications immediately. The payment of GST was voluntary in nature.
- Thus, it was submitted that the entire investigation is underway and there is no violation of privacy as alleged by the Taxpayer and hence, the Writ Petition must be dismissed.

Observations and ruling of the Delhi High Court

- **Scheme of section 67 of the CGST Act:**
  - The officers of the GST department are permitted to inspect, search and also undertake seizure if they suspect wrong-doing such as suppression of transactions, wrongful claim of ITC in excess of entitlement or in contravention of the provisions of GST law to evade tax or has failed to declare either the premises where goods are kept or illegally transported, likely to cause evasion of tax. However, this is subject to a precondition that a senior officer not below the rank of Joint Commissioner ought to have '***reasons to believe***' the existence of circumstances necessitating either inspection, search or seizure.
  - Further, the '***reasons to believe***' also need to exist before any confiscation of goods, documents or books of things is made. In the '***reasons to believe***', the tax authorities have to disclose that such seized items are useful or are relevant to the proceeding. Even *superdari*[1] seizure is also permitted under the GST law.
  - As per section 67(2) of the CGST Act, documents or things which are not relied upon must be returned to the person from whom the seizure is made. The tax authority is also empowered to seize or break or open the locks or any storage receptacles for accessing the accounts, registers or documents if there is a suspicion of concealment and if the access is denied.
  - The scheme of section 67 of the CGST Act entitles the person searched or from whose custody the documents are seized to make copies of all the documents which are seized, and under section 67(6) of the CGST Act, provisional release of the seized goods, subject to certain terms and conditions, is also permitted.
  - As per section 67(7) of the CGST Act, if a seizure is effected under section 67(2) and no show cause notice is issued within a period of 6 months of the seizure of goods (extendable by a further period of 6 months on sufficient cause), the seized goods are liable to be returned. Further, a proper inventory has to be made for the seized goods.
  - The safeguards and conditions under BNSS, which apply to search and seizure, would also apply. If the proper officer has '***reasons to believe***' that there is evasion or an attempt to evade tax, reasons shall be recorded for retaining the seized goods or other things, including documents, and a receipt of the same shall also be executed. As per section 67(12) of the CGST Act, a trap purchase can also be made by the Commissioner or any officer authorised by him.
- The aforesaid scheme of section 67 of the CGST Act has been interpreted by various courts as under:
  - **RJ Trading Co.**[2]: It was observed that the jurisdictional facts ought to exist before the power under section 67 is exercised.
  - **Santosh Kumar Gupta**[3]: The Division Bench of the Delhi High Court observed that, as per the information of the GST department, the entity from whom the goods were purchased was non-existent and held that there is no ground to declare the search as illegal.
  - Similar view was upheld by the Delhi High Court in ***Deepak Khandelwal***[4].
- In view of the above, it was held as under:
  - **Manner in which CCTV footage is to be copied**: The hard disk or any memory card which contains CCTV footage of the residential premises would not be accessed by the tax authorities except in the presence of at least one member of the Gumber family and one authorised representative. After viewing the footage in their presence, if there is any relevant data that is required by the GST department, only to that extent, the same would be copied. All the remaining footage would be returned to the Taxpayers.
  - **Cases where the lock of the Taxpayer's business premises can be broken**: The tax authorities must ensure that the person who is being investigated gives access to the premises that are required to be searched. Taking access through a tenant who may have keys to the premises may not be permissible, unless it is with the knowledge of the person/entity being searched. However, if the tax authorities are of the opinion that the person being investigated is not providing access to the premises, then, after following the due process and after recording the requisite '***reasons to believe***', the locks can be broken.
  - **Communications with the persons under investigation**:
    - All communications by the tax authorities with the person(s) or entities being investigated ought to be in the official prescribed mode. Whenever emails are sent, the name and designation of the official ought to be mentioned, so that it can be properly traced back to the person who has sent the email.
    - As regards WhatsApp communication, the same would not be usually permissible unless there is an exceptional circumstance or an emergency. Engaging in such WhatsApp communication may, in fact, make the tax authorities subject to various allegations, which ought to be avoided.
  - **Allegations relating to payments under coercion and duress**:
    - The allegation of coercion or duress would need deeper examination in appropriate proceedings, as there are different versions claimed by Taxpayers and tax authorities.
    - Mr. Abhishek Gumber, who is stated to have made the deposit, is fully aware of the consequences of his actions. He was also engaged in continuous communication on WhatsApp with the tax authorities, which ought to have been avoided.
    - As regards the payments made and refund applications which were withdrawn, the same would be subject to the outcome of the show cause notice. If in the show cause notice proceedings, the Taxpayers succeed, the refund applications would be permitted to be revived by the Taxpayers.
- The other remedies which the Taxpayer wishes to avail are left open, and the present Writ Petition is set aside.

[1] **Editor's Note:** '*Superdari*' refers to the temporary custody of property or goods by law enforcement agencies that have been seized by them.
[2] ***M/s. R.J. Trading Co. Vs. Commissioner of CGST, Delhi North and Ors. [2021 (7) TMI 924 - Delhi High Court]***
[3] ***Santosh Kumar Gupta Vs. Union of India and Ors. [2023 (12) TMI 292 - Delhi High Court]***
[4] ***Deepak Khandelwal Vs. Commissioner of CGST & Anr. [2023 SCC OnLine Del 4985]*** **(affirmed by Supreme Court in SLP No. 31886/2024). Reliance was also placed on Supreme Court ruling in *ITC Ltd. Vs. State of Karnataka & Anr. [Civil Appeal No. 11798/2025]* which was issued in the context of Legal Metrology Act, 2009.**

Cross-empowerment is inherent and automatic under section 6(1) of the CGST Act; a Notification only required to impose conditions

R.K. Ispat Ltd. & Ors. Vs. Union of India & Ors. [TS-831-HC(J&K)-2025-GST]

Facts of the Case

- The Central tax authorities had received intelligence stipulating that 12 entities were engaged in fraudulent availment and utilisation of bogus ITC basis mere paper transactions without actual supply or receipt of goods. Basis the said intelligence, the tax authorities conducted search operations under section 67(2) of CGST Act at the business premises of all 12 entities.
- All 12 entities have their registered address falling within Jammu and Kashmir Integrated Textile Park. Further, during search, Mr. Kush Aggarwal, Director of M/s. Chinab Industries Pvt. Ltd. was present and claimed himself to be authorised signatory of the other 11 entities as well.
- The tax authorities observed that out of 12 entities, only 2 entities viz., M/s. Chenab Machinery and Engineering Pvt. Ltd. and M/s. Natural Industries were functional. M/s. R.K. Ispat Ltd. ('Taxpayer'), one of the petitioners in the present writ petition was not found to have any permission from the District Industries Centre to undertake fabrication activities. The tax authorities had also observed other discrepancies/irregularities in respect of other entities.
- Thus, the intelligence inputs and materials collected during search indicated that all the 12 entities were involved in fraudulent availment and utilisation of bogus ITC through paper transactions without actual receipt/supply of goods. Hence, all these 12 entities were issued show cause notices and summary thereof ('Impugned SCN') for five assessment years by Joint Commissioner, CGST *inter alia* alleging imposition of penalty on these entities.
- Against this, the Taxpayer and other entities filed a writ petition before the Jammu and Kashmir High Court challenging the Impugned SCN on the following grounds:
  - Whether issuance of a specific notification for cross-empowerment under section 6 of CGST Act and Jammu and Kashmir Goods and Services Tax Act, 2017 ('SGST Act') is mandatory and in the absence thereof, whether an officer under CGST Act can exercise jurisdiction in respect of an assessee assigned to the officer under SGST Act?
  - Whether bunching of show cause notices under section 74 of CGST Act is permissible?
  - Whether the Joint Commissioner is the competent officer to issue a show cause notice to an assessee where the amount involved is less than INR 10 Mn.?

Contentions of the Taxpayer

- The Impugned SCN is issued without the authority of law, in as much as the Central tax officers have no jurisdiction to initiate any proceedings under the CGST Act since the Taxpayer is assigned to the State Tax Authority of Jammu and Kashmir.
- The Joint Commissioner, CGST, lacks jurisdiction to issue the Impugned SCN in terms of Circular dated 9 February 2018, as the amount involved in the present case is less than INR 10 Mn.
- The bunching of show cause notices for five assessment years, from FY 2017-18 to FY 2021-22, is not permissible in terms of section 74 of the CGST Act.

Observations and ruling of the Jammu and Kashmir High Court

- Sections 3 to 5 of the CGST Act deal with what is called 'linear jurisdiction'. The jurisdiction of the officers under the CGST Act is in respect of the taxpayers assigned to the 'Central Jurisdiction'. Similar provisions are also contained in State enactments in respect of officers assigned to 'State jurisdiction'. Section 6 of the CGST Act, pari materia to section 6 of the SGST Act, deals with the provisions pertaining to cross-empowerment, i.e., jurisdiction of the officers appointed under the SGST Act to act as proper officers for the purpose of the CGST Act.
- **Requirement to issue specific notification for cross-empowerment under section 6 of the CGST Act:**
  - From a plain reading of section 6 of the CGST Act, it clearly transpires that the underlying objective of enacting section 6 is to streamline tax administration, promote judicial accountability, eliminate duplicity in proceedings and create a conducive environment for business operations.
  - To ensure convenience and provide a single interface for the purpose of tax administration, every taxpayer has been assigned to the jurisdiction of either the Centre or the State tax authorities. However, the GST law also contemplates cross-empowerment of the Centre and the States over the taxpayers assigned to each other.
  - Relevant judicial precedents:
    - The Madras High Court[5] has held that for effecting cross-empowerment, the issuance of a notification by the Government on recommendations of the GST Council is *sine qua non*.
    - However, the Kerala High Court[6] and Karnataka High Court[7] have taken a contrary view, holding that cross-empowerment under section 6(1) of the CGST Act is inbuilt and does not require issuance of a separate notification. It was also held that a notification is required only for imposing riders and conditions on cross-empowerment.

[5] Tvl. Vardhan Infraastructure Vs. DGGSTI [2024 (3) TMI 1216 (Mad.)]
[6] Pinnacle Vehicles & Services Pvt. Ltd. Vs. Joint Commissioner [2025 (1) TMI 838 (Ker.)]
[7] SLM Stationery Vs. Union of India [2025 (4) TMI 232 (Kar.)]

- Section 6(1) of the CGST Act speaks of cross-empowerment and unequivocally prescribes that the officers appointed under the SGST Act are authorised to act as proper officers for the purpose of the CGST Act, and this cross-empowerment is '***without prejudice to other provisions of the Act***'. Hence, the aforesaid provision does not interfere with the powers conferred on the officers under the provisions of CGST Act.
- The phrase '***without prejudice to the provisions of the Act***' would mean that the provision being enacted will not override, limit or affect any other provisions of CGST Act. It is a sort of savings clause that ensures that the operation of the rest of CGST Act remains intact.
- Section 6(1) of CGST Act also employs the phrase '***subject to such conditions as the Government may, on the recommendations of Council, by notification, specify***' which implies that if the Government intends to impose conditions on cross-empowerment, it can do so only by issuing a notification specifying such conditions. Reading this phrase to mean that cross-empowerment can only be effectuated through the issuance of a notification would amount to doing violence to the plain language.
- The cross-empowerment is, therefore, inherent and automatic under section 6(1) of CGST Act. The Government is only empowered to subject cross-empowerment of officers to such conditions as it shall, on the recommendations of the GST Council, specify by notification. Unless such a notification specifying the conditions subject to which the cross-empowerment envisaged under section 6(1) shall be effectuated is issued, the officers appointed under the SGST Act shall be deemed to be proper officers for the purpose of CGST Act.
- On conjoint reading of section 6(2) with 6(1) of CGST Act, it appears that where any proper officer issues an order under the CGST Act, he shall also issue an order under the SGST Act under intimation to the jurisdictional officer under the SGST Act. This can only be helmed or curtailed by the conditions to be specified by Central Government by issuing a notification.
- On a careful reading of various circulars/clarifications[8] issued by CBIC, it is evident that while section 6 of CGST Act ensures a single interface and avoids dual control by allocating taxpayers between the Central and State tax administrations, the power to take intelligence-based enforcement action is conferred upon both the Central and State tax authorities.
- A notification would be required only when conditions are to be imposed and in the absence of such conditions specified by a notification, the cross-empowerment envisaged under section 6(1) of CGST Act would be absolute and complete. Accordingly, if no notification is issued to impose any conditions, the officers of both the Central and State tax administrations shall be proper officers for all purposes of CGST Act and SGST Act.
- Without entering into a detailed analysis of the different opinions rendered by certain High Courts, it was held that the cross-empowerment envisaged under section 6(1) of the CGST Act is automatic and a result of legislative mandate. No separate notification by the Government is required to effectuate cross-empowerment. The power to issue a notification shall be exercised only if the Government seeks to impose conditions on such empowerment. Absent such notification, the officers appointed under the SGST Act automatically act as proper officers for the purpose of the CGST Act.

- **Bunching of show cause notices for multiple financial years**:
  - On perusal of section 74 of the CGST Act, it does not *prima facie* come out that there is any prohibition against issuance of a show cause notice for evasions that have taken place in more than one financial year. Although there were rival contentions from both sides on this issue, the question is left open to be determined in appropriate proceedings.
- **Powers of the Joint Commissioner to issue a show cause notice where the amount involved is less than INR 10 million.**
  - As per section 5(2) of the CGST Act, the Central Tax officer is empowered to exercise the powers of a subordinate officer. Hence, the Joint Commissioner is empowered to issue the notice, being the authority higher than the one empowered to initiate action.
  - Moreover, the Circular dated 9 February 2018 authorises the Joint Commissioner to issue a show cause notice where the amount involved exceeds INR 10 million. However, this does not mean that the Joint Commissioner is not competent to issue a show cause notice where the monetary limit or the amount involved is less than INR 10 million. The aforesaid circular clarifies that all officers up to the rank of Commissioner and Joint Commissioner are assigned as proper officers for the issuance of show cause notices and orders under sections 73/74 of the CGST Act.
  - Accordingly, in light of section 5(2) of the CGST Act, a Central Tax Officer is empowered to exercise the powers and discharge the duties conferred or imposed under the CGST Act on any officer of Central Tax who is subordinate to him.
  - The fixation of monetary limits is only an administrative measure for optimal distribution of work relating to show cause notices and orders under sections 73 and 74 of the CGST Act.
- In view of the above, there is no merit in the Writ Petition filed by the Taxpayer and hence, the same is dismissed. Except for the conclusion relating to the interpretation of section 6 of the CGST Act, the other views are only a reflection of a *prima facie* opinion. Hence, the Taxpayers shall not be prejudiced from raising these issues before the adjudicating authority.

[8] Circular No. 01/2017 dated 20 September 2017, D.O. F. No. CBEC/20/43/01/2017-GST (Pt.) dated 5 October 2018 and CBEC-20/10/07/2019-GST dated 22 June 2020

Subscription and redemption of mutual funds is includible in value of exempt supply and ITC must also be reversed on common inputs and input services

In Re: M/s. Zydus Lifesciences Ltd. [2025-VIL-42-AAAR]

Facts of the Case

- M/s. Zydus Lifesciences Ltd. ('Taxpayer') is engaged in the manufacture, supply and distribution of pharmaceutical products. It utilises excess funds / idle cash by subscribing to various mutual fund schemes. Subsequently, they redeem it when there is a requirement of liquidity.
- The Taxpayer avails ITC on various inputs/input services used for making taxable supplies as well as towards the investment and redemption of mutual fund units. Currently, the Taxpayer reverses proportionate ITC as per section 17(2) of the CGST Act, read with rule 42(2) of the CGST Rules, by treating the activity of investment and redemption of mutual fund units as an exempt supply.
- The Taxpayer, however, felt that they were not required to reverse the proportionate ITC and approached the Gujarat Authority for Advance Ruling ('GAAR') for obtaining a ruling on its eligibility to avail ITC on common inputs and input services used in relation to the subscription and redemption of mutual funds.
- The GAAR[9] held that the Taxpayer can claim ITC on common inputs and input services used in relation to the subscription and redemption of mutual fund units, subject to the condition mentioned in section 17(2) of the CGST Act, and the value of exempt supply shall include the value of transactions in securities. GAAR made the following observations:
  - Securities include units under a mutual fund scheme in terms of section 2(h)(id) of the Securities Contracts (Regulation) Act, 1956 ('SCRA') and the terms 'goods' and 'services' specifically exclude 'securities' by virtue of their definitions. Hence, securities would not fall under the ambit of exempt supply.
  - The term 'redemption' must be understood by applying the common parlance test , which is nothing but the sale of a mutual fund by a unit holder back to the Asset Management Company ('AMC').
  - Redemption is nothing but the sale of mutual fund units to AMC. It does not matter by which nomenclature a transaction is known, if broadly it is a sale. Cessation of ownership of units by unit fund holder, in this case the Taxpayer, amounts to sale of mutual fund units.
- Aggrieved by the above, the Taxpayer filed an appeal before the Gujarat Appellate Authority for Advance Ruling ('GAAAR').

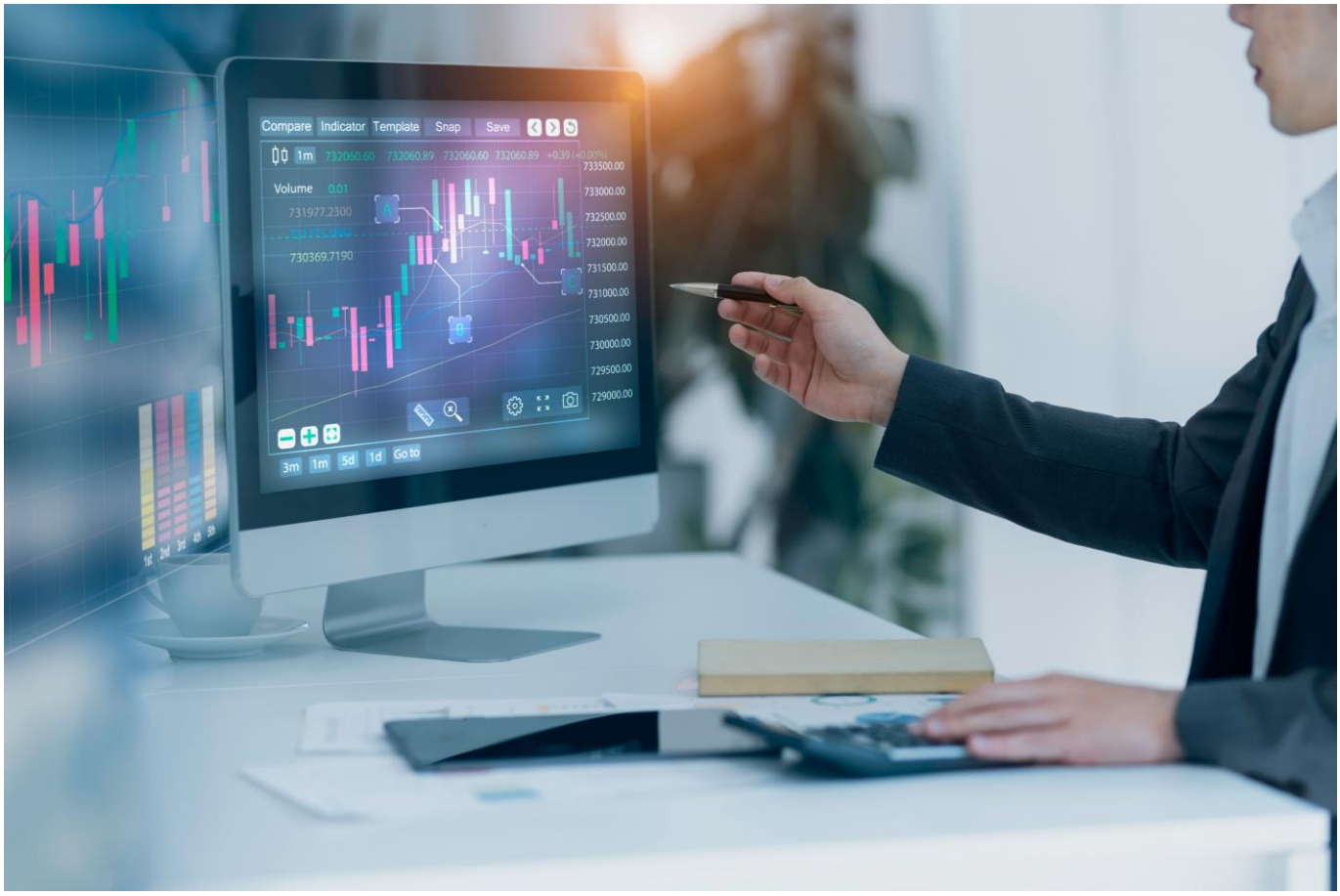
Contentions of the Taxpayer

- The activity of investment in a mutual fund, i.e., subscription and redemption thereof, is in the course or furtherance of business, and there is no purchase or sale transaction involved in the same. The requirement of ITC reversal arises only when any inputs and input services are used for effecting exempt supplies.
- Since 'securities' are excluded from the definition of 'goods' (section 2(52)) and 'services' (section 2(102)), they stand excluded even from the ambit of 'exempt supply' (section 2(47)) and 'non-taxable supply' (section 2(78)).
- There is no requirement to reverse ITC of tax paid on common inputs and input services under section 17(2) of the CGST Act because the activity of investment and redemption of mutual funds is not an 'exempt supply'. Further, redemption of mutual funds is distinct from sale of securities.
- The Central Goods and Services Tax Rules, 2017 ('CGST Rules') do not outline a specific mechanism for determining the value of 'redemption of mutual funds' and subsequently incorporating the same in the value of exempt supply. Hence, the mechanism for reversal of ITC, as prescribed, would be inapplicable in the absence of 'sale value' in respect of redemption of mutual funds. It is a settled law that where the provision for computation of value of 'exempt supply' is unavailable, the provisions pertaining to reversal of ITC will become ineffective, as in the case of redemption of mutual funds.
- The GAAR, in the Impugned Order, has not made any observation regarding the activity of subscription and redemption of mutual funds not being in the course or furtherance of business. The interpretation adopted by GAAR that redemption is equivalent to sale is legally untenable.

[9] In Re: M/s Zydus Lifesciences Ltd. [2025-VIL-38-AAR]

Observations and ruling of the GAAAR

- Mutual funds are securities in terms of section 2(h)(id) of SCRA. Being securities, mutual funds are neither goods (under section 2(52)) nor services (under section 2(102)).
- The contention that there is no requirement to reverse ITC on common inputs and input services in relation to transactions of subscription and redemption of mutual funds is not legally tenable owing to the deeming fiction in section 17(3) of the CGST Act *via* an inclusion clause.
- The legislature's intent is clearly manifested in section 17(3) of the CGST Act, which proposes to include the value of transactions in securities in computing the value of exempt supply under section 17(2) of the CGST Act.
- Accepting the argument that as 'redemption' of mutual fund is not *akin* to 'sale', there is no mechanism for reversal of ITC on common inputs and input services would lead to a situation wherein the delegated legislation, i.e., CGST Rules, render the intent of the statute, i.e., section 17 of CGST Act, otiose, which is legally not permissible.
- The phraseology used in section 17(3) of the CGST Act, 2017 is 'transactions in securities' and hence, the term 'sale' used in the CGST Rules must be interpreted accordingly, to ensure that the provisions of Section 17(3) of the CGST Act are not rendered otiose.
- The Taxpayer has not produced anything which would otherwise lead to interfering with the GAAR ruling, as far as the above contention is concerned. Further, the Taxpayer has not substantiated as to how the activity of subscription and redemption of mutual funds is in the course or furtherance of his business. Hence, their contention is not tenable.
- Although section 16(1) of the CGST Act allows ITC in respect of all inward supplies of goods or services or both used or intended to be used in the course or furtherance of business, the same is subject to certain conditions and restrictions, including those prescribed in section 17 of the CGST Act.
- Section 17(3) of the CGST Act proposes to include the value of transactions in securities for computing the value of exempt supply under section 17(2) of the CGST Act. Thus, even if the subscription and redemption of mutual funds is in the course or furtherance of business, ITC on common inputs and input services used in relation to these activities is subject to the condition mentioned in section 17(2) read with section 17(3) of the CGST Act.
- Considering the above, the appeal filed by the Taxpayer against the GAAR Ruling was rejected.



TRANSFER PRICING

ITAT Delhi Ruling: Avaada Group Wins Relief on TP Adjustments and Section 115BAB

In a landmark decision dated September 3, 2025, the Delhi Bench of the Income Tax Appellate Tribunal (Tax Tribunal) ruled in favour of the taxpayer and its group entities, quashing transfer pricing (TP) adjustments and rejecting the application of Section 115BAB. The Tax Tribunal held that since the taxpayer had not commenced business and had no taxable income, the provisions relating to Specified Domestic Transactions (SDT) and concessional tax rates under Section 115BAB were inapplicable.

Case Background: Scrutiny Triggered by Domestic Transactions

The case was selected for scrutiny under the Computer-Assisted Scrutiny Selection (CASS) system for Assessment Year (AY) 2021-22, citing "Large specified domestic transactions." The taxpayer had received loans from its Associate Enterprises (AEs)—Avaada Energy Pvt. Ltd. (AEPL) and Viraj Solar Maharashtra Pvt. Ltd. (VSMPL). The Transfer Pricing Officer (TPO) noted that no interest was charged on the loan from AEPL and that the interest paid to VSMPL was below the arm's length rate.

The TPO alleged that the holding company was shifting profits to its subsidiary, which was subject to a lower tax regime, and proposed an ALP adjustment of INR 9.88 lakh. This included INR 8.75 lakh for interest shortfall on the VSMPL loan and INR 1.13 lakh for the AEPL loan.

Revenue's Argument: Section 115BAB and Safe Harbour Rules

The Revenue contended that the taxpayer's AEs extended capital without charging interest, thereby earning less than ordinary profits. Invoking Section 115BAB, the TPO argued that the concessional tax regime incentivised profit shifting. The interest rate was benchmarked using the marginal cost of lending plus a 425 basis point margin, arriving at 11.311%.

The Dispute Resolution Panel (DRP) upheld the TPO's findings, stating that even if the taxpayer did not claim the benefit of Section 115BAB due to losses, the provision still applied within the broader framework of the Income Tax Act. The DRP maintained that adjustments were valid to reduce the excess loss claimed.

Taxpayer's Defense: No Income, No Business, No Applicability

The taxpayer argued that:

- The Company had not commenced operations during AY 2021-22.
- All expenses were capitalised as work-in-progress; no revenue was earned.
- Section 115BAB applies only when income is earned and the concessional rate is opted for.
- TP adjustments based on hypothetical profit shifting were unjustified in a pre-operational phase.

The taxpayer emphasised that the loans were short-term and partially repaid, and interest was paid to VSMPL for only 32 days. No interest was paid to AEPL, and the Company had not benefited from any tax arbitrage.

Tax Tribunal's Findings: No Business, No Taxable Income, No TP Adjustments

The Tax ITAT Bench ruled that the taxpayer had not commenced business and had no taxable income, rendering the provisions of Section 115BAB and SDT inapplicable. The Tax Tribunal held that the concept of profit shifting does not arise when no profits exist and that TP adjustments based on such assumptions were invalid. It also rejected the TP adjustment on EPC contract transactions with Avaada Ventures Pvt. Ltd., noting that the facts and reasoning were identical to the interest-related adjustments.

Key Takeaways

- *Section 115BAB cannot be invoked in the absence of taxable income.*
- *TP adjustments based on hypothetical profit shifting are invalid for pre-operational entities.*
- *The ruling provides clarity for companies in the infrastructure and renewable energy sectors during their construction phase.*

This decision sets a precedent for similar disputes, reinforcing that tax provisions must be applied in context and not in abstraction.

Avaada Mhkhamgaon Private Ltd [TS-519-ITAT-2025(DEL)-TP]

ITAT: Holds no TP adjustment to be added to book profits u/s 115JB

Innovative Textiles Limited filed its return of income for the Assessment Year 2017-18, declaring a business loss of INR 8,54,00,730 and book profits under section 115JB of INR 93,55,782. The case was referred to the Transfer Pricing Officer (TPO) for examining the international transactions entered into with associated enterprises.

The principal transaction under review was the purchase of cotton amounting to INR 27,14,55,905 from its associated enterprise. The TPO, after carrying out a benchmarking analysis, proposed a transfer pricing adjustment of INR 84,95,443. The Assessing Officer, while completing the final assessment pursuant to the directions of the Dispute Resolution Panel (DRP), incorporated this adjustment in the regular computation of income, thereby reducing the returned business loss to INR 7,69,05,287.

In addition, the AO also added the transfer pricing adjustment to the book profits while determining liability under section 115JB. Aggrieved by these adjustments, the assessee preferred an appeal before the Income Tax Appellate Tribunal (ITAT).

Issue 1: Whether Transfer Pricing Adjustment could validly be added to book profit while computing income under section 115JB of the Income Tax Act, 1961 – Dispute over INR 84.95 lakhs Adjustment

TPO's Objection:

The TPO rejected the Comparable Uncontrolled Price (CUP) method adopted by the assessee for benchmarking the international transaction and applied the Transactional Net Margin Method (TNMM). On this basis, he determined an adjustment of INR 84,95,443 to align the purchase price of cotton with the arm's length principle.

The Assessing Officer, while giving effect to the TPO's determination, reduced the Appellant's returned business loss and, in addition, proceeded to include the said adjustment while computing book profits under section 115JB. The AO did not restrict himself to the specific adjustments enumerated in the Explanation to section 115JB and instead treated the transfer pricing adjustment as an item to be added back for MAT purposes.

Appellant Contention:

The appellant, through its authorised representative, argued that the addition of a transfer pricing adjustment to book profits was beyond the scope of section 115JB. It was submitted that the law, as settled by the Supreme Court in the case of ***Apollo Tyres Ltd. v. CIT (255 ITR 273)***, clearly restricts the Assessing Officer from altering the net profit prepared under the Companies Act except to the extent of adjustments specifically provided in the Explanation to section 115J/115JB.

It was further pointed out that the ITAT, Delhi Bench, in the case of ***Cash Edge India Pvt. Ltd.*** **(ITA No. 64/Del/2015)** had already adjudicated on an identical issue and held that transfer pricing adjustments cannot be added back while computing book profits. Reliance was also placed on judicial precedents, including ***Malayalam Manorama Co. Ltd. (300 ITR 251)*** **and** ***DCIT v. Bisleri Sales Ltd. (151 TTJ 285).*** The appellant stressed that there was no allegation by the AO of any irregularity in the preparation of accounts under the Companies Act and, therefore, no justification existed for any such adjustment. Based on these submissions, the appellant urged the Tribunal to direct the deletion of the transfer pricing addition from the MAT computation.

Tax Tribunal's Analysis and Conclusion

The Tribunal, after considering the rival submissions and examining the record, held that the controversy is squarely covered by binding judicial precedents. It observed that the Hon'ble Supreme Court in *Apollo Tyres Ltd. v. CIT* (255 ITR 273) has categorically held that the Assessing Officer, while computing book profits under section 115J/115JB, cannot go beyond the net profit shown in the profit and loss account prepared in accordance with the Companies Act, save for the adjustments expressly provided in the Explanation to the section. The Tribunal further noted that in *Cash Edge India Pvt. Ltd.* (ITA No. 64/Del/2015), the Delhi Bench had applied this principle and specifically held that transfer pricing adjustments do not fall within the ambit of Explanation 1 to section 115JB(2).

In the present case, there being no allegation of any defect in the preparation of accounts, the action of the Assessing Officer in adding the transfer pricing adjustment of INR 84,95,443 to the book profits was held to be without authority of law. Accordingly, Ground No. 3 was allowed, and the said adjustment was directed to be excluded from book profit computation under section 115JB. The other grounds were left open as not pressed. The appeal was thus partly allowed.

Innovative Textiles Limited [TS-560-ITAT-2025(DEL)-TP]

ITAT: Remits TP-adjustment w.r.t trading segment, TPO to examine if foreign AE can be considered the tested party

Andante Foods LLP (the appellant) is engaged in the business of processing and selling fruits and vegetables, food processing, and nutraceuticals. It has a subsidiary in Belgium, which acts as a sales/commission agent for the appellant's exports to Europe, North America, Canada, and South Africa. The Belgium entity enters contracts on behalf of the appellant but cannot do so independently without authorisation. The assessee filed its return of income for AY 2020-21, declaring nil income on 13.01.2021.

The appellant had entered into international transactions with the Belgian AE, including:

(vi) Sale of processed foods (INR 11,78,14,292),

(vi) Purchase of packing materials (INR 9,07,688),

(vi) Payment of sales commission (INR 4,88,00,421),

(vi) Compensation for damaged goods (INR 9,72,293),

(vi) Rent for machinery (INR 1,30,924),

(vi) and other minor transactions.

The Transfer Pricing Officer (TPO) questioned the selection of the Belgian AE as the tested party and rejected the appellant's Transfer Pricing Study Report (TPSR), carrying out an independent benchmarking exercise based on seven comparables (Prowess database). The TPO determined an arm's length price (ALP) of INR 16,67,32,942 against the cost incurred of Rs. 33,91,14,105, resulting in an upward adjustment of INR 17,23,81,163. Additionally, interest on overdue receivables was computed at INR 4,53,367, treating it as a separate international transaction.

Issue 1: whether the appellant could select the Belgian AE as the tested party under TNMM and whether overdue trade receivable from AE be treated as a separate international transaction requiring notional interest.

TPO/AO's Objection:

The TPO treated the appellant(Indian manufacturer) as the tested party because the appellant had greater entrepreneurial risk, and the Belgian AE's selection as the tested party was not sufficiently supported. The TPO found that the appellant's claim that the AE was "least complex" was not substantiated by documentary proof.

The TPO carried out an independent comparable search (Prowess) using food-processing/trading filters and finalised **seven** comparables (3-year 35th percentile → margins 3.39% to 45.3%; median/PLI ~6.04%). Based on these comparables, the TPO computed the appellant's PLI (OP/OR) and found the appellant's operating performance extremely adverse (91.103%), arriving at an ALP of INR 16,67,32,942 (costs INR 33,91,14,105), giving rise to an adjustment of INR 17,23,81,163.

The TPO regarded receivables outstanding beyond the agreed 120 days as a separate international transaction (i.e., a financing component) and computed notional interest using LIBOR (6.818%), arriving at an interest adjustment of INR 4.53 lakh. The TPO rejected the appellant's claim that it was debt-free or that interest was not chargeable.

AO/DRP upheld the TPO's approach: DRP emphasised that a foreign AE can be a tested party only if the taxpayer furnishes sufficient relevant information about AE and comparables; in the absence of such demonstrable data, the TPO's rejection of the TPSR was correct. DRP also agreed that interest on overdue receivables is a separate international transaction requiring benchmarking.

Appellant Contention:

On tested-party selection: the appellant maintained that the Belgian AE is a limited-risk commission agent (enters contracts on behalf of the Indian principal, cannot bind customers independently, is remunerated by a fixed commission), therefore, it is the least complex party and an appropriate tested party for TNMM. The appellant relied on its TPSR (13 comparables; median OP margin 2.27%) and argued AE's margin (-7.41%) fell below independent benchmarks and therefore the commission arrangement was at arm's length. The appellant asserted there is no bar to selecting a foreign AE as the tested party and that sufficient comparables/data were provided in the TPSR (search matrix showed a large initial universe, reduced to 13 final comparables).

On combining transactions: the appellant questioned the TPO's combination of sales of goods and commission/other items for benchmarking, contending that sales and commission income arise under different terms and should be analysed separately (i.e., commission transactions should be benchmarked against commission/agency comparables).

On working-capital and interest: the appellant argued that when TNMM is applied for the tested party chosen, the impact of delayed receipts is or should be captured via a *working capital adjustment* (WCA). The assessee pointed out that the TPO did not provide a WCA in his comparables set (and therefore could not validly claim that interest on overdue receivables was a standalone adjustment). In short, interest should not have been treated as a separate international transaction if TNMM with WCA was the correct method and if the tested party/benchmarks captured the working-capital difference.

On facts/documentation: the appellant contended it had placed AE financial information and comparability analysis in the TPSR and that the TPO/AO/DRP rejected the TPSR on a theoretical threshold without examining the TPSR's contents — i.e., the rejection was premature.

Tax Tribunal's Analysis and Conclusion:

The Tribunal observed that the appellant had failed to produce audited financial statements of the Belgian AE during the hearing, making it impossible to independently verify the claim that the AE was the least complex party. The AE's available financials indicated it was undertaking purchase and sale activities and was not merely a limited-risk commission agent, highlighting an incomplete factual foundation for the appellant's claim.

At the same time, the Tribunal noted that the TPO/AO/DRP had rejected the TPSR at the threshold without properly evaluating its comparability analysis, including the search matrix and selection of 13 comparables, resulting in a procedural error. Balancing these defects, the Tribunal remanded the matter to the AO/TPO, directing the appellant to furnish audited financial statements of Adante Belgium along with a detailed FAR analysis for both the AE and the Indian entity to establish which party is the least complex and the true nature of the transactions. The AO/TPO was tasked with examining this information and determining, after proper evaluation, whether the foreign AE could be accepted as the tested party, and thereafter to determine the ALP, including revisiting interest on delayed receivables. Both grounds of appeal were allowed for statistical purposes, with the adjustment and interest not being finally sustained but requiring fresh consideration based on evidence and proper benchmarking.

Andante Foods LLP [TS-549-ITAT-2025(Bang)-TP]

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