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ACCOUNTING UPDATES

ACCOUNTING UPDATES

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

EAC OPINION

Classification of 'Provision for doubtful debts no longer required written back' as 'Other Income' or 'Other Operating Revenue'

Facts of the Case

A company (hereinafter referred to as 'the Company') is a Miniratna Category-I Company incorporated under the erstwhile Companies Act, 1956 (now Companies Act, 2013). Pursuant to the Initial Public Offer, equity shares of the Company are listed and traded on both Bombay Stock Exchange (BSE) Limited and National Stock Exchange (NSE) of India Limited. The core activity of the Company has been divided into two operational divisions, i.e., e-commerce and trading. The Company undertakes trading activities, disposal of ferrous and non-ferrous scrap, surplus stores, minerals, agri and forest products, etc., mostly from public sector undertakings, government departments, and leading private sector entities and other e-commerce services. The mode of disposal includes e-auction, e-tender, and e-reverse auction. Besides, the Company also e-auctions coal from coal mining entities. Apart from these, the Company also provides e-procurement and other platform development and maintenance solutions. The trading division handles domestic trade of mainly bulk industrial raw materials. It looks after sourcing, purchasing, and sales of industrial raw materials like heavy melting scrap, low ash metallurgical coke, HR coil, crude oil, naphtha, coking coal, and steam coal for supply to Indian industries in steel, infrastructure, and power sectors.

The source of revenue is currently the service charges income from its customers. Although operating in the trading and e-commerce segment, currently, the Company is predominantly an e-commerce service provider.

The financial performance of last three years and nine months ending on 31 December 2023 is given below:

Particulars	2020-21	2021-22	2022-23	2023-24 (Nine months)
Revenue from operations	427.75	470.64	324.72	234.32
Profit before tax	114.68	220.04	313.48	216.63
Profit after tax	101.07	200.05	239.23	152.41

Comptroller and Auditor General of India (CAG) query:

Statement of Profit and Loss: Revenue from Operations (Note 23): INR 324.72 Crore: Other Operating Revenues: INR 33.69 Crore; Other Income (Note 24): INR 173.29 Crore

The Company had made a provision of doubtful debts amounting to INR 94.89 crore in earlier year(s), against which it realised a sum of INR 18.23 crore from the customers during the financial year 2022-23. The balance amount of INR 76.66 crore was considered as 'Bad Debt' and charged to Profit and Loss (P & L) Account and entire provision for doubtful debts amounting to INR 94.89 crore was credited to P & L Account under the head 'Other Income'. Since trade receivable is the amount to be realised from customer in the normal course of operation, the writing back of provision against trade receivable should also be shown under 'Other Operating Revenues' instead of 'Other Income'. Hence, this resulted in overstatement of 'Other Income' and understatement of 'Other Operating Revenues' by INR 94.89 crore each.

Management's Reply:

The term 'Other Operating Revenue' is not defined. This would include revenue arising from the Company's operating activities, i.e., either its principal or ancillary revenue-generating activities, other than revenue arising from the sale of products or rendering of services. In the instant case, although "the trade receivable is the amount to be realised from customer in the normal course of operation", the provisions made against the bad and doubtful trade receivables and subsequent realisation thereof, if any, cannot be termed as a part of normal course of operation. Realisation of trade receivable and writing back of provision cannot be termed as similar activity.

It was also mentioned by the Company that the format of Statement of Profit and Loss as prescribed by Schedule III of the Companies Act, 2013 (as amended on date) prescribes for revenue from operations but has not differentiated among the operating and non-operating expenses. It would further be appreciated that the operating income comprises of amount related to operations in a particular operating cycle, which in the instant case is limited to financial year 2022-23. Operating income including other operating income arises due to the operational activities during the operating cycle embraced within the financial year which is F.Y. 2022-23 in the given case. The amount as cited in the audit query pertains to the reversal of provisions created in the earlier financial year/ operating cycle upon actual realisation of money in part (INR 18.23 crore) and balance written off as bad debt (INR 76.66 crore). No fresh provision has been made in F.Y 2022-23. Furthermore, the figure of INR 76.66 crore is appearing on both sides of the Statement of Profit and Loss, i.e., income and expenditure having no effect on the profitability, thereby having a neutral effect. For this, inclusion of the cited amount in the current year's operating cycle as 'Other Operating Income' will not reflect the true picture in the financial statements.

It is also submitted that the Company will review the matter in the financial year 2023-24, including obtaining an opinion from the ICAI and if required, will do the needful.

Query

In view of the above, the opinion is sought from the Expert Advisory Committee of the ICAI on whether 'Provision no longer required written back' can be classified as 'Other Income' or 'Other Operating Revenue'.

Points Considered by the Committee

The Committee notes that the basic issue raised in the query relates to presentation and classification of 'Provision for doubtful debts no longer required written back' in the Statement of Profit and Loss. Therefore, the Committee has examined this issue only and has not examined any other issue that may arise from the Facts of the Case. Further, the Committee has examined the query only from an accounting perspective and not from any other perspective. The Committee wishes to point out that the opinion expressed hereinafter is in the context of Indian Accounting Standards, notified under the Companies (Indian Accounting Standards) Rules, 2015, as amended from time to time.

At the outset, the Committee notes that the Company has used the nomenclature 'Provision for doubtful debts', which is not relevant under Ind AS scenario, as provision for doubtful debts is now termed as impairment loss on receivables or trade receivables (e.g., refer Ind AS 1 and Ind AS 109). Similarly, a provision written back is termed as reversal of impairment loss. In this regard, the Committee also notes paragraph 7 of Ind AS 37, 'Provisions, Contingent Liabilities and Contingent Assets', which states that while the "Standard defines provisions as liabilities…The term 'provision' is also used in the context of items such as… doubtful debts: these are adjustments to the carrying amounts of assets and are not addressed in this Standard". In other words, the term 'provisions' is used for liabilities and not for assets under Ind AS. Therefore, the Committee hereinafter uses the terms 'impairment' and 'reversal of impairment'. With regard to impairment of receivables, the Committee notes the following requirements of Ind AS 115, 'Revenue from Contracts with Customers':

"108 A receivable is an entity's right to consideration that is unconditional. A right to consideration is unconditional if only the passage of time is required before payment of that consideration is due. For example, an entity would recognise a receivable if it has a present right to payment even though that amount may be subject to refund in the future. An entity shall account for a receivable in accordance with Ind AS 109. Upon initial recognition of a receivable from a contract with a customer, any difference between the measurement of the receivable in accordance with Ind AS 109 and the corresponding amount of revenue recognised shall be presented as an expense (for example, as an impairment loss)."

From the above, the Committee notes that as per the requirements of Ind AS 115, receivable including impairment thereof is to be accounted for in accordance with Ind AS 109. Further, as per Ind AS 109, an entity is required to recognise a loss allowance (i.e. impairment) based on a forward-looking expected credit loss (ECL) model as per Section 5.5 thereof.

With regard to presentation of 'impairment loss' and any reversal thereof, as well as the derecognition of financial assets measured at amortised cost, the Committee further notes the following paragraphs of Indian Accounting Standard (Ind AS) 1, 'Presentation of Financial Statements' and Ind AS 115:

Ind AS 1

"82 In addition to items required by other Ind ASs, the profit or loss section of the sSatement of Profit and Loss shall include line items that present the following amounts for the period:

…

(aa) gains and losses arising from the derecognition of financial assets measured at amortised cost;

(ba) impairment losses (including reversals of impairment losses or gains) determined in accordance with Section 5.5 of Ind AS 109;

…"

Ind AS 115

"113 An entity shall disclose all of the following amounts for the reporting period unless those amounts are presented separately in the statement of profit and loss in accordance with other Standards:

(a) ...

(b) any impairment losses recognised (in accordance with Ind AS 109) on any receivables or contract assets arising from an entity's contracts with customers, which the entity shall disclose separately from impairment losses from other contracts."

From the above, the Committee notes that the impairment loss including reversals of impairment losses or gains, determined in accordance with Section 5.5 of Ind AS 109, should be presented separately on the face of the Statement of Profit or Loss. The Committee also notes that Part II of Division II of Schedule III to the Companies Act, 2013, prescribes the format of Statement of Profit and Loss applicable for companies adopting Ind ASs, which requires presentation of 'Impairment Losses' as a separate line item on the face of the Statement of Profit and Loss. Further, the Guidance Note on Division II - Ind AS Schedule III to the Companies Act, 2013 (revised January 2022 rdition), issued by the ICAI, also provides that a separate line item should be included in the profit or loss section of the Statement of Profit and Loss to present the impairment losses (including impairment gains or reversals of impairment losses) determined as per Ind AS 109, Section 5.5, in line with paragraph 82 of Ind AS 1.

10. Considering the requirements reproduced/ mentioned above, the Committee is of the view that reversal of impairment loss should be presented in the Statement of Profit and Loss under the line item 'Impairment Losses' under a separate head for impairment losses recognised on receivables recognised as per Ind AS 115. Therefore, in the extant case, the recovery of receivables (INR 18.23 crores), in respect of which an impairment loss was recognised in the financial statements earlier as per the requirements of the Standards and was adjusted in arriving at the carrying amount of receivables measured at amortised cost, would represent a reversal of impairment loss. Accordingly, the said reversal of impairment loss should be presented in the Statement of Profit and Loss under the line item 'Impairment Losses'. Thus, the question of presenting the same as 'Other Income' or 'Other Operating Revenue' does not arise.

Opinion

11. On the basis of above, the Committee is of the opinion that reversal of impairment loss (viz., INR 18.23 crore) should be presented in the Statement of Profit and Loss under the line item 'Impairment Losses', as discussed in above. Therefore, the question of presenting the aforesaid amount as 'Other Oncome' or 'other Operating Revenue' does not arise, as discussed above.

REGULATORY UPDATES

Institute of Chartered Accountants of India (ICAI)

ICAI (Aggregation of LLPs) Guidelines, 2024

The ICAI issued ICAI (Aggregation of LLPs) Guidelines, 2024 effective from 4 February 2025, for providing a structured framework for Indian CA Firms operating as Limited Liability Partnerships (LLPs) to partner with other LLPs in the same domain. This framework is designed to leverage the synergies of combining resources and strengths, enabling firms to provide superior and consistent services across the country. The aggregation of LLPs is envisioned to facilitate better coordination among partner firms, ensuring a seamless and high-quality audit process across all locations on a PAN India basis. The introduction of these guidelines aims to restructure CA firms, enable collaboration, and foster enhanced standards of service delivery across the Country.

ICAI (Merger and Demerger of CA firms) Guidelines, 2024

The ICAI has issued the ICAI (Merger and Demerger of CA firms) Guidelines, 2024, on 11 February 2025, which will be effective from said date. In 2024-25, the Committee for Aggregation of CA Firms (CACAF) of ICAI reviewed and updated the Merger and Demerger Rules that were initially issued in 2005. The revised guidelines, approved by the ICAI Council in July 2024, aim to streamline policies and procedures to ease the process of mergers for CA firms. The changes encourage strategic mergers to enhance firms' market presence and operational efficiency. The new ICAI (Merger and Demerger of CA Firms) Guidelines, 2024 repeal the previous rules of Merger and Demerger issued by the Council, but actions taken under the old rules shall be deemed to be valid under the new guidelines. Firms that merged before the new guidelines' implementation but have not completed five years post-merger can also benefit from the updated provisions.

Technical Guide on Accounting for Expenditure on Corporate Social Responsibility Activities (Revised January 2025 Edition)

ICAI has released the revised edition of the Technical Guide on Accounting for Expenditure on Corporate Social Responsibility (CSR) Activities (January 2025 Edition) in February 2025, incorporating the changes involved in CSR accounting with the enforcement of various provisions of the Companies (Amendment) Act, 2019, the Companies (Amendment) Act, 2020 w.e.f 2021 read with the Companies(Corporate Social Responsibility Policy)Amendment Rules, 2021 and the Amendments to Schedule III on 24 March 2021

The updated technical guide clarifies the treatment of unspent CSR funds, specifying whether they should be carried forward, transferred to a designated fund, or separately disclosed in the financial statements. It also provides guidance on accounting for various types of CSR activities, including contributions to government funds, in-house CSR initiatives and collaborations with non-profits. The document outlines principles for recognising expenses, assessing their impact, and maintaining proper documentation to comply with audit and regulatory requirements. Transparency and accuracy in CSR reporting are also emphasised, with encouragement for businesses to include detailed disclosures in their annual reports.

Frequently Asked Questions (FAQs) on Limited Liability Partnership Act, 2008 (Revised January 2025 Edition)

The ICAI released the Frequently Asked Questions (FAQs) on the Limited Liability Partnership Act, 2008 (Revised edition January 2025) on 17 February 2025. The Revised edition of FAQs addresses a wide range of common queries and concerns regarding the LLP formation, compliance obligations, filing requirements, governance structure, and amendments, along with practical examples. This revised edition will aid all stakeholders, including chartered accountants, legal professionals, and businesses using LLPs Regulations.

Frequently Asked Questions (FAQs) on Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Revised January 2025 Edition)

The ICAI released the Frequently Asked Questions (FAQs) on the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Revised January 2025 Edition) (LODR) on 17 February 2025. The revised edition is structured into two main parts: Part A, which provides a detailed explanation of the regulations and schedules, covering key aspects such as corporate governance, disclosures, and related party transactions; and Part B, which includes a newly added chapter "Compliance Calendar", which will assist professionals in tracking key deadlines and ensuring timely compliance with the regulations.

Study on Compliance of Financial Reporting Requirements (Ind AS Framework) Volume III

The Financial Reporting Review Board (FRRB) of the ICAI has published 'Study on Compliance of Financial Reporting Requirements (Ind AS Framework) – Volume III' in February 2025, which aims at identifying and addressing non-compliances observed in financial statements prepared under Indian Accounting Standards (Ind AS). The publication covers non-compliances in areas of Ind AS, Schedule III of the Companies Act, 2013, Standards on Auditing (SA), and Companies Auditor's Report Order (CARO), along with the detailed explanations for each observation for best understanding of the financial reporting practices. The observations are categorised based on elements of financial statements, such as Assets, Liabilities, Profit & Loss, Cash Flows, Auditor's Report, and CARO, among others. This publication serves as a crucial guide for improving compliance, accuracy, and transparency in financial statements prepared under Ind AS.

Guidance Note on Audit of Banks (2025 Edition)

The Auditing and Assurance Standards Board ('AASB') of the ICAI has released the 2025 Edition of the Guidance Note on Audit of Banks, dated 18 February 2025. Published annually under the authority of the ICAI Council, this revised edition provides comprehensive guidance to auditors on the statutory audits of banks and their branches.

The Guidance Note is structured into two sections:

- Section A: Statutory Central Audit
- Section B: Bank Branch Audit

Additionally, the Guidance Note includes practical resources such as illustrative formats for engagement letters, auditor's reports (for both nationalised banks and banking companies), management representation letters, the text of relevant RBI Master Directions, Master Circulars, and other circulars, giving auditors a thorough understanding of the regulatory framework that governs banking operations.

As the banking industry evolves, this Guidance Note serves as an essential tool for auditors, ensuring they conduct high-quality, compliant, and effective audits in the dynamic banking sector.

Ministry of Corporate Affairs (MCA)

Companies (Prospectus and Allotment of Securities) Amendment Rules, 2025

MCA *vide* notification dated 12 February 12, 2025, has issued an amendment to the Companies (Prospectus and Allotment of Securities) Rules, 2014. These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2025. Through these Amended Rules, the MCA has extended the deadline to comply with dematerialisation requirements by 30 June 2025 for private limited companies (excluding a Producer company) that is not considered a small company as of 31 March 2023. Earlier, the deadline for dematerialisation requirement was 30 September 2024.

They shall come into force on the date of publication in the Official Gazette.

Securities and Exchange Board of India (SEBI)

Industry Standards on "Minimum Information to be Provided for Review of the Audit Committee and Shareholders for Approval of a Related Party Transaction"

SEBI has issued a circular dated 14 February 2025 on Industry Standards on "minimum information to be provided for review of the audit committee and shareholders for approval of a related party transaction". This circular outlines updated requirements for related party transactions (RPTs) under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations). Key points include:

1. Regulation 23(2), (3), and (4) of the LODR Regulations mandates that RPTs must be approved by the audit committee and, if material, by shareholders.
2. To ensure uniformity in compliance, the Industry Standards Forum (ISF), consisting of the Associated Chambers of Commerce and Industry of India (ASSOCHAM), Confederation of Indian Industry (CII), and Federation of Indian Chambers of Commerce and Industry (FICCI), has developed standards for the minimum information to be provided for audit committee and shareholder approval of RPTs. These standards will be published by the industry associations and stock exchanges on their websites.
3. Listed entities shall follow these industry standards to ensure compliance with the SEBI Master Circular and LODR Regulations.
4. The Master Circular Part A of Section III-B is modified, listed entities to provide the audit committee with the information specified in the Industry Standards on Minimum Disclosures when presenting any proposal for the review and approval of a related party transaction (RPT).
5. The Master Circular Part B of Section III-B is modified, and notice is sent to shareholders seeking approval for any RPT, in addition to the requirement of the Companies Act, 2013 shall include the information specified in the Industry Standards on Minimum Disclosures as part of the explanatory statement.

This Circular shall come into effect from 1 April 2025.

This Circular impact all listed entities, all the recognised Stock Exchanges, ASSOCHAM, FICCI, and CII.

Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2025

SEBI *vide* circular dated 14 February 2025, has amended The Securities and Exchange Board of India (Mutual Funds) Regulations, 1996. These regulations may be called the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2025. Key amendments are as follows:

1. Regulation 25 (Chapter IV):
   - a new sub-regulation (16B) requires asset management companies (AMCs) to invest a specified percentage of employee remuneration of such employees, based on their roles or designations in mutual fund scheme units.
   - Additionally, sub-regulation (30) mandates that AMCs conduct stress testing for certain schemes and disclose the results in a specified manner.
2. In Regulation 35 (Chapter V), sub-regulation (5) stipulates that AMCs must deploy funds raised through new fund offers within a time period as may be determined by the Board.
3. In Regulation 52 (Chapter VII), a new sub-regulation (4A) requires AMCs to pay charges, commissions, or fees related to mutual fund distribution in the manner specified by the Board.

These amended provisions shall come into force with effect from 1 April 2025.

This circular impacts all asset management companies.

Clarification Regarding Investor Education and Awareness Initiatives

SEBI has issued a circular dated 20 February 2025, on clarification regarding investor education and awareness initiatives. The key changes are as follows:

Asset management companies (AMCs) are to annually set apart at least two basis points on daily net assets, within the maximum limit of total expense ratio limit, as per the SEBI Mutual Fund Regulations for investor education and awareness initiatives. This includes financial inclusion initiatives. Also, this clarification aligns with Chapter 10 of the SEBI Master Circular on Mutual Funds.

This circular impacts all Mutual Funds, all AMCs, all Trustee Companies/ Boards of Trustees of Mutual Funds, and the Association of Mutual Funds in India (AMFI).

Industry Standards Recognition Manual

For effective implementation of regulatory directions, applicable to various regulated entities like Market Infrastructure Institutions (MIIs), listed companies, Mutual Funds, stockbrokers, investment advisors, and other industry players, and to facilitate ease of compliance, the Board felt the need to facilitate Industry Standards Forms (ISFs) for setting standards for implementation of the regulatory directions. The implementation standards are meant to facilitate uniformity, ease of compliance and shall not necessarily precondition for regulator directions to become effective. Hence the ISF would not be empowered to take any regulatory action against any industry participant for failure to adopt or comply with the standards published by the ISF.

ISF shall not be a Self-Regulatory Organisation (SRO) and should be considered as a Committee. The scope of ISF would be to formulate standards for the implementation of various regulatory directions in consultation with SEBI and would not extend to draft Regulations or Circulars, or to suggest changes to existing Regulations or Circular. In case there are significant challenges to the implementation of a regulatory direction, the ISF may bring the same to the knowledge of SEBI, suggesting changes, if any, to the regulatory directions as required.

Other highlights include recognition process for Industry Standards, composition of ISFs, role of Anchor MII, publishing and compliance with standards, and pilot ISFs transition.

The provisions outlined in this manual shall be effective from 12 February 2025.

This framework applies to all regulated entities under SEBI's jurisdiction, including MIIs, listed companies, mutual funds, brokers, investment advisors, and any other entities involved in the securities market, to ensure effective and consistent compliance with SEBI's regulatory directions.

Industry Standards on Key Performance Indicators (KPIs) Disclosures in the Draft Offer Document and Offer Document

In order to facilitate a uniform approach in identification and disclosure practices of Key Performance Indicators (KPIs), the Industry Standards Forum (ISF) comprising of representatives from three industry associations, viz., ASSOCHAM, CII, and FICCI, under the aegis of the Stock Exchanges, has formulated industry standards, in consultation with SEBI, for effective implementation of the requirement to disclose KPIs in the draft offer document and offer document as per the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations). The industry associations which are part of ISF (ASSOCHAM, FICCI, and CII) and the stock exchanges shall publish the industry standards on their websites.

The Issuer Companies and Merchant Bankers shall follow the aforesaid industry standards to ensure compliance with the requirement to disclose KPIs in the draft offer document and offer document as per the provisions of ICDR Regulations.

This circular shall be applicable for all draft offer documents/ offer documents filed with SEBI/ Stock Exchanges on or after 1 April 2025

This standard applies to all listed entities/ proposed to be listed entities, all the recognised stock exchanges, all the registered merchant bankers, the Associated Chambers of Commerce and Industry of India (ASSOCHAM), the Federation of Indian Chambers of Commerce and Industry (FICCI), and the Confederation of Indian Industry (CII). ,

Industry Standards on Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

In order to facilitate ease of doing business, the Industry Standards Forum (ISF) comprising of representatives from three industry associations, viz., ASSOCHAM, CII, and FICCI, under the aegis of the Stock Exchanges, has formulated industry standards, in consultation with SEBI, for effective implementation of the requirement to disclose material events or information under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations). The industry associations which are part of ISF (ASSOCHAM, FICCI, and CII) and the stock exchanges shall publish the industry standards note on their websites. The listed entities shall follow the aforesaid industry standards to ensure compliance with Regulation 30 of LODR Regulations.

This standard applies to all listed entities, all the recognised stock exchanges, the Associated Chambers of Commerce and Industry of India (ASSOCHAM), the Federation of Indian Chambers of Commerce and Industry (FICCI), and the Confederation of Indian Industry (CII).

Timelines for Deployment of Funds Collected by Asset Management Companies (AMCs) in New Fund Offer (NFO) as per Asset Allocation of the Scheme

SEBI, through a notification dated 27 February 2025, has introduced certain amendments to the SEBI (Mutual Funds) Regulations, 1996. The objective is to improve the deployment of funds raised through New Fund Offers (NFOs) of Mutual fund schemes within the reasonable time period to discourage mis-selling of NFOs. The amendments are discussed as follows:

Deployment of Funds in NFO:

a) AMC shall specify achievable timeliness in Scheme Information Document of a Scheme regarding the deployment of funds as specified in asset allocation of the Scheme and garner funds accordingly during NFO.

b) AMC shall deploy funds in an NFO within 30 days from the date of allotment of units and in case unable to deploy within 30 days, reason in writing, including details of efforts taken to deploy funds, shall be placed before the Investment Committee of the AMC. A further 30-day extension may be granted under certain conditions by the Investment Committee, provided the root cause for delay is examined before granting part/ full approval extension.

c) Trustee should monitor deployment of funds collected in NFO and steps taken to ensure deployment within reasonable time frame.

d) If funds are not deployed as per the asset allocation within the prescribed timeline or extension then Investors will have the option to exit the scheme without paying any exit load, and the AMC will not be allowed to accept fresh flows into the scheme until funds are deployed according to the stated allocation.

Communication to Investors

Investors will be informed via email, SMS, or similar communication channels about their option to exit the scheme without an exit load if funds are not deployed as per the allocation.

This circular shall come into effect from 1 April 2025.

This circular applies to Mutual funds, Asset Management Companies, Trustee Companies/ Board of Trustees of Mutual funds, the Association of Mutual Funds in India, Registrars to an issue and share transfer agents.

Reserve Bank of India (RBI)

Standing Liquidity Facility for Primary Dealers

RBI *vide* notification dated 7 February 2025, has issued a Standing Liquidity Facility for Primary Dealers. As part of the bi-monthly Monetary Policy Statement for 2024-25, the Monetary Policy Committee (MPC) has decided to reduce the policy repo rate under the Liquidity Adjustment Facility (LAF) by 25 basis points, from 6.50% to 6.25%, with immediate effect. Consequently, the Standing Liquidity Facility provided to Primary Dealers (PDs) from the RBI will be available at the revised repo rate of 6.25%, effective immediately.

This notification impacts all Primary Dealers.

Change in Bank Rate:

RBI *vide* notification dated 7 February 2025 has issued Changes in Bank Rate. As announced in the Monetary Policy Statement 2024-25 dated 7 February 2025. The Bank Rate has been reduced by 25 basis points, from 6.75% to 6.50%, effective immediately. As a result, all penal interest rates related to shortfalls in reserve requirements, which are linked to the Bank Rate, have also been revised accordingly, as outlined in the annex.

This notification impacts all Banks.

Reserve Bank of India (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023 - Amendment

RBI *vide* notification dated 17 February 2025 has amended Reserve Bank of India (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023. As per the amendment, Investments made by All India Financial Institutions (AIFIs), as per their statutory mandates, in long-term bonds and debentures (with a minimum residual maturity of three years) issued by non-financial entities will not be considered in the 25% ceiling for investments under the Held to Maturity (HTM) category.

These instructions shall come into force with effect from 1 April 2025.

This notification impacts AIFIs regulated by the Reserve Bank, viz., the Export-Import Bank of India (EXIM Bank), the National Bank for Agriculture and Rural Development (NABARD), the National Bank for Financing Infrastructure and Development (NaBFID), the National Housing Bank (NHB) and the Small Industries, Development Bank of India (SIDBI).

Liquidity Adjustment Facility - Change in Rates

RBI *vide* notification dated 7 February 2025 has issued Liquidity Adjustment Facility - Change in Rates. The notification states that the Monetary Policy Committee (MPC) has decided to reduce the policy repo rate under the Liquidity Adjustment Facility (LAF) by 25 basis points, from 6.50% to 6.25%, with immediate effect. Further, it mentions that all other terms and conditions of the existing LAF Scheme remains unchanged. The move by the MPC is aimed at ensuring the stability of the economy while providing enhanced liquidity support in the market.

This notification impacts all Liquidity Adjustment Facility (LAF) participants.

Review and Rationalisation of Prudential Norms – UCBs

RBI has issued the review and rationalisation of prudential norms for Urban Co-operative Banks (UCBs) notification dated 24 February 2025. Periodically, the prescribed prudential norms for UCBs are updated by the RBI to strengthen the financial soundness and resilience. Accordingly, with a view to rationalise the existing norms and allow greater operational flexibility to UCBs without diluting the regulatory objectives, the prudential norms have been reviewed. In the revised norms, small value loans definition has been decided as 'loans of value not more than INR 25 lakh or 0.4%of their Tier I capital, whichever is higher, subject to a ceiling of INR 3 crore per borrower. In Real Estate Exposure Norms, subject to aggregate gaps for a UCB to housing, real estate and commercial real estate loans ceilings for individual housing loans prescribed per individual borrower for Tier-1 and other UCBs have been revised. Going forward, aggregate exposure of a UCB to housing loans to individuals, other than those eligible to be classified as priority sector, shall not exceed 25% of its total loans and advances. UCB to real estate sector, excluding housing loans to individuals, shall not exceed five per cent of its total loans and advances. Individual housing loan limits shall be subject to tier-wise ceilings mentioned in the circular, the loan amount per dwelling unit from INR 60 lakh for Tier-1 UCB to INR 3 crores for Tier-4 UCB.

UCBs are required to provide valuation differential provision on the Security Receipts (SRs) held against assets transferred by them to ARCs. A five-year glide path (till FY 2025-26) was provided *vide* Master Circular, provisioning requirement for investment in SRs which have been extended for an additional two years till FY 2027-28. Any provisions already made for the specified SRs shall continue to be maintained. Further, all other provisions of the MD-TLE shall continue to be applicable, as hitherto.

These changes are applicable with immediate effect from 24 February 2025 and impacts all Primary (Urban) Co-operative Banks.

Exposures of Scheduled Commercial Banks (SCBs) to Non-Banking Financial Companies (NBFCs) – Review of Risk Weights

RBI, *vide* notification dated 25 February 2025, has announced a revision in the risk weights on exposures of Scheduled Commercial Banks (SCB) to Non-Banking Financial Companies (NBFCs). Previously, as per the circular dated 16 November 2023, the risk weight of SCB exposures to NBFC was increased by 25 percentage points in all cases where the extant risk weight based on the external rating was below 100%. Post review, RBI has decided to slash the risk weights applicable of exposure of SCBs to NBFC, and the same shall be as per external ratings of the NBFCs, as specified in the **Master Circular – Basel III Capital Regulations** dated 1 April 2024.

These changes shall come into effect from 1 **April 2025** and would be impacting all Scheduled Commercial Banks (including Small Finance Banks but excluding Regional Rural Banks and Payments Banks).

Review of Risk Weights on Microfinance Loans:

RBI *vide* notification dated 25 February 2025 has revised the risk weights for microfinance loans for various categories of banks.

For Commercial Banks (including Small Finance Banks):

Microfinance loans in the nature of consumer credit, including personal loans, will be subject to a risk weight of 100%, instead of the previous risk weight of 125%. Further, RBI has clarified that microfinance loans which are not in the nature of consumer credit and fulfil all the four criteria as specified in Basel III Capital Regulations may be classified under regulatory retail portfolio, provided that the banks put in place appropriate policies and standard operating procedures to ensure fulfilment of the qualifying criteria specified in Basel III Capital Regulations.

For Regional Rural Banks (RRBs) and Local Area Banks (LABs):

All microfinance loans extended by RRBs and LABs will attract a risk weight of 100%.

The instructions of the Circular shall be applicable from the date of issue of this circular impacting outstanding as well as new micro finance loans. All other instructions of the Circular remain unchanged.

REGULATORY UPDATES

REGULATORY UPDATES:

RESERVE BANK OF INDIA (RBI)

Notification dated 7 February 2025: Access of SEBI-registered non-bank brokers to NDS-OM

The Reserve Bank of India (RBI) issued a notification on 7 February 2025, granting SEBI-registered non-bank brokers access to the Negotiated Dealing System – Order Matching (NDS-OM) platform. This move aims to enhance retail investor participation in the government securities market. The revised access criteria have been consolidated under the "Master Direction - RBI (Access Criteria for NDS-OM) Directions, 2025," superseding the previous directions from October 18, 2024.

The notification, issued under Section 45W of the RBI Act, 1934, enables SEBI-registered non-bank brokers to facilitate transactions for retail investors. The directions allow eligible entities to access NDS-OM through direct, indirect, or Stock Broker Connect mechanisms. Direct access is granted to banks, primary dealers, financial institutions, NBFCs, mutual funds, pension funds, insurance companies, and other entities permitted by the RBI. Indirect access is available to investors through entities that have direct access. The Stock Broker Connect mechanism allows retail investors with demat accounts to access NDS-OM via SEBI-registered brokers.

These directions take immediate effect and impact all participants in the government securities market by expanding market accessibility and improving retail participation.

Circular dated 10 February 2025: Amendments to Streamline Cross-Border Transactions Among ACU Member Countries

The RBI has issued the **FEMA 14(R)(1)/2025-RB** notification, amending the Foreign Exchange Management Regulations to streamline cross-border transactions. The amendment focuses on simplifying payments among Asian Clearing Union (ACU) member countries to enhance trade efficiency within the region.

- Payments between ACU member countries (excluding Nepal and Bhutan) must now be made through the ACU mechanism or as directed by the RBI, simplifying cross-border transactions and offering an alternative to traditional currency exchange methods.
- For transactions outside the ACU framework, payments and receipts must follow the existing Regulation 3 of FEMA, ensuring consistency while maintaining flexibility in global transactions.
- The amendments took effect immediately upon publication in the Official Gazette, implementing the new payment processes for ACU member nations.

Circular dated 13 February 2025: EXIM Bank's GoI-supported credit line to Vietnam government for high-speed guard boats

- The agreement, dated 31 July 2024, provides a LoC of USD 120mn for the procurement of high-speed guard boats in Vietnam.

- The agreement became effective from 20 January 2025, and the disbursement period for the LoC extends up to 60 months after the scheduled project completion date. Shipments under this LoC must be declared in the Export Declaration Form/ Shipping Bill as per instructions issued by the Reserve Bank of India from time to time.
- No agency commission is payable for exports under this LoC. However, if required, exporters may use their own resources or utilise balances in their Exchange Earners' Foreign Currency Account to pay commissions in free foreign exchange. Authorised Dealer (AD) Category-I banks may allow such remittances after realising the full eligible value of the export, subject to compliance with extant instructions for payment of agency commissions.

Circular dated 13 February 2025: Export-Import Bank of India's GOI-supported Line of Credit of USD 180mn to the Government of the Socialist Republic of Vietnam for procurement of four Offshore Patrol Vessels (OPV) in the Borrower's Country

RBI has *vide* circular dated 13 February 2025 highlighted the key points of the agreement dated 31 July 2024 entered into between the Export-Import Bank of India (Exim Bank) and Vietnam Government to provide a Government of India-supported Line of Credit (LoC) of USD 180mn for procurement of four Offshore Patrol Vessels (OPV) in Vietnam. The key points of the agreement are:

- The agreement became effective from 20 January 2025.
- The disbursement period for the LoC will be 60 months after the scheduled project completion date.
- Shipments under the LoC shall be declared in Export Declaration Form/ Shipping Bill as per instructions issued by the Reserve Bank from time to time.
- No agency commission is payable for export under said LoC. However, if required, the exporter may use his own resources or utilise balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer (AD) Category-I banks may allow such remittance after realisation of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.

Circular dated 17 February 2025: Government securities transactions between a Primary Member (PM) of NDS-OM and its own Gilt Account Holder (GAH) or between two GAHs of the same PM

The RBI issued a circular to all participants in the Government Securities market regarding changes in transactions involving Government securities between Primary Members (PMs) of the Negotiated Dealing System-Order Matching (NDS-OM) platform and their own Gilt Account Holders (GAHs).

Currently, transactions between a PM and its own GAH or between two GAHs of the same PM are not permitted to be matched on the NDS-OM platform, nor are they cleared and settled through the Clearing Corporation of India Limited (CCIL). However, based on feedback and a review, the RBI has decided to:

- Permit matching of transactions between a PM and its own GAH or between two GAHs of the same PM on both the anonymous Order Matching segment and the Request for Quote (RFQ) segment of NDS-OM. Transactions matched on NDSOM shall be cleared and settled through CC.
- Extend the facility of clearing and settlement through CCIL to transactions between a PM and its own GAH or between two GAHs of the same PM, which are bilaterally negotiated and reported to NDS-OM, on an optional basis.
- Any settlement failure will be treated as 'SGL bouncing' under the RBI's penalty framework, with operational guidelines issued by CCIL. These directions contained in this circular are issued under Section 45W of the RBI Act, 1934 and are subject to other legal approvals.

Notification dated 21 February 2025: Reserve Bank of India (Forward Contracts in Government Securities) Directions, 2025

With a view to regulate forward contracts in government securities in the Over-the-Counter (OTC) market, RBI notified the Reserve Bank of India (Forward Contracts in Government Securities) Directions, 2025, on 21 February 2025. The directions include key provisions to ensure market stability and transparency. The key measures are:

- Both resident and non-resident entities who are eligible to invest in Government Securities can undertake bond forward transactions.
- Scheduled commercial banks (excluding certain banks) and standalone primary dealers (SPDs) can act as market-makers, allowing them to take unlimited long positions and covered short positions.
- Non-retail entities can engage in bond forward transactions only for hedging purposes, with covered short positions allowed.
- Bond forwards can be settled either physically or cash-settled, with settlements being handled by the Clearing Corporation of India Ltd. (CCIL) or other approved agencies.
- Market-makers are required to report all bond forward transactions to the Trade Repository (TR) of CCIL, including details such as counterparties, underlying securities, and settlement types.

- For trades settled through CCIL, users must report their transactions via the clearing member.
- Market participants must comply with various RBI regulations, such as the Market-makers in OTC Derivatives Directions, 2021, and Prevention of Market Abuse Directions, 2019.
- Non-centrally cleared transactions must comply with margining requirements as per the Margining for Non-Centrally Cleared OTC Derivatives Directions, 2024.
- Violation of these directions may result in penalties, including temporary disallowance from dealing in bond forwards, after providing a reasonable opportunity for a hearing.

These directions are designed to bring greater transparency, improve risk management, and regulate bond forward transactions, ensuring market integrity and stability.

Circular dated 27 February 2025: Implementation of Section 51A of UAPA, 1967: Updates to UNSC's 1267/1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Amendments in one entry

RBI's Master Direction on Know Your Customer (KYC) states that REs must ensure they do not maintain accounts for individuals or entities listed by the UNSC for suspected terrorist links, in line with Section 51A of the Unlawful Activities (Prevention) Act (UAPA) 1967.

In connection with this, the Ministry of External Affairs (MEA) informed REs about a recent update in the UNSC's press release SC/16003 dated 21 February 2025, in which the UNSC removed Lionel Dumont (alias Abu Hamza) from the ISIL (Da'esh) and Al-Qaida Sanctions List.

As a result of this de-listing, the asset freeze, travel ban, and arms embargo no longer apply to him.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Circular dated 4 February 2025: Safer participation of retail investors in algorithmic trading

The Securities and Exchange Board of India (SEBI) issued a circular on 4 February 2025 introducing a framework for safer retail investor participation in algorithmic trading, effective 1 August 2025. The framework mandates brokers to oversee algo trading via APIs, ensuring unique identifiers, authentication, and due diligence on algo providers.

Stock exchanges must regulate the empanelment, testing, and monitoring of algos, while also defining broker responsibilities. The framework categorises algorithms into Execution (White Box) and Non-Replicable (Black Box), with stricter oversight for Black Box algos. Brokers must obtain exchange approval for each algo and be responsible for monitoring and addressing investor grievances. Exchanges will supervise algorithmic trading, set empanelment criteria for algo providers, and enforce compliance measures such as audit trails, kill switches, and confidentiality safeguards.

Stockbrokers and exchanges must align with these new operational and risk management standards by 1 April 2025. This circular impacts all recognised stock exchanges and stockbrokers, ensuring greater transparency, accountability, and risk control in retail algo trading.

Notification dated 6 February 2025: Measures to regulate AI usage, ensuring data security, compliance and accountability.

The Securities and Exchange Board of India (SEBI) issued a notification on 6 February 2025 to ensure the orderly development and strengthening of the equity derivatives market and has introduced regulations governing the use of Artificial Intelligence (AI) and Machine Learning (ML) tools by intermediaries.

- A new Chapter IIIB is introduced, titled "Usage of Artificial Intelligence".
- It mandates that any SEBI-regulated entity using AI and ML tools (either developed internally or sourced externally) must be responsible for:
  a) Privacy, security, and integrity of investor/ stakeholder data including data maintained by it in a fiduciary capacity.
  b) Outputs generated by AI/ ML tools.
  c) Compliance with applicable laws.
- SEBI retains the authority to take necessary actions against any violations.

The amendments will take effect upon publication in the Official Gazette.

Notification dated 6 February 2025: Amendment in Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018

The Securities and Exchange Board of India (SEBI) has recently amended the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018, through the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2025. Notified on 6 February 2025 and effective from 10 February 2025, these changes introduce significant responsibilities for recognised stock exchanges and clearing corporations regarding the use of Artificial Intelligence (AI) and Machine Learning (ML) tools.

The amendment inserts a new regulation, 39B, which stipulates that stock exchanges and clearing corporations using AI and ML tools are solely responsible for the privacy, security, and integrity of investors' and stakeholders' data. This responsibility extends to managing the outputs of these tools and ensuring compliance with applicable laws, whether the tools are developed internally or procured from third-party providers.

By explicitly addressing AI and ML, SEBI aims to ensure that these technologies are used responsibly and in compliance with existing legal standards. This move aligns with global trends in leveraging AI and ML for operational efficiency and risk management, enhancing transparency and accountability in the financial sector.

Notification dated 6 February 2025: Measures to enhance compliance and governance within the depository system

With a view to fostering a robust governance framework for depositories and participants, SEBI has introduced the following key changes:

- Interest on late payments (Regulation 9-A):
  If a depository fails to pay the required fees to the Board on time or fails to pay the entire amount, it must pay interest at a rate of 15% per annum on the outstanding amount for each month or part thereof until the payment is made.
- Timelines for annual fee payment:
  Annual fees by the depository must be paid within 15 days of the start of the financial year. A Chartered Accountant-certified statement is required for verification.
- Compliance with investor charter:
  To strengthen investor protection and enhance transparency, the depository participant shall ensure compliance with the Investor Charter.
- Use of AI & ML (Regulation 82-AA):
  Depositories using AI/ ML must ensure investor data privacy and security, accountability for AI-generated decisions, and compliance with laws.

The amendments will take effect from 1 April 2025.

Notification dated 10 February 2025: Measures to ensure investor protection, market transparency, and strengthening the compliance framework for various market participants

SEBI has framed the Investor Charter for various intermediaries primarily to enhance transparency, awareness, trust, and confidence among investors in the securities market. SEBI issued a notification on 10 February 2025 for various intermediaries and directed them to comply with the Investor Charter. This ensures that financial service providers adhere to uniform standards in their dealings with investors. The details are tabulated below-

Regulation	Person responsible for compliance with Investor Charter
SEBI (Stock Brokers) Regulations, 1992	Stock Broker
SEBI (Merchant Bankers) Regulations, 1992	Merchant Banker
SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993	Registrar to an Issue and Share Transfer Agents
SEBI (Debenture Trustees) Regulations, 1993	Debenture Trustee
SEBI (Bankers to an Issue) Regulations, 1994	Banker to an issue
SEBI (Mutual Funds) Regulations, 1996	Asset Management Company
SEBI (Custodian) Regulations, 1996	Custodian
SEBI (Know Your Client) Regulations, 2011	KYC Registration Agency
SEBI (Alternative Investment Funds) Regulations, 2012	Alternative Investment Fund
SEBI (Investment Advisers) Regulations, 2013	Investment Adviser
SEBI (Research Analysts) Regulations, 2014	Research Analyst
SEBI (Real Estate Investment Trusts), Regulations, 2014	Manager
SEBI (Infrastructure Investment Trusts) Regulations, 2014	Investment Manager
SEBI (Depositories and Participants) Regulations, 2018	Depositary Participant
SEBI (Foreign Portfolio Investors) Regulations, 2019	Designated Depositary Participant
SEBI (Portfolio Managers) Regulations, 2020	Portfolio Manager
SEBI (Vault Managers) Regulations, 2021	Vault Manager

The amendments will take effect upon publication in the Official Gazette.

Circular dated 12 February 2025: Service platform for investors to trace inactive and unclaimed Mutual Fund (MF) Folios – MITRA (Mutual Fund Investment Tracing and Retrieval Assistant)

SEBI, through this circular, has introduced the MITRA platform (Mutual Fund Investment Tracing and Retrieval Assistant) to help investors trace inactive and unclaimed mutual fund folios. This platform allows investors to identify forgotten investments, encourage KYC updates, and reduce unclaimed folios, which may be at risk of fraudulent redemptions.

The key points of this circular are:

- Inactive folios are those with no transactions in the last 10 years but still holding units.
- MITRA will be hosted by CAMS and KFIN Technologies and is expected to be operational within 15 working days.
- The platform will ensure cyber security and business continuity as per SEBI regulations.
- AMCs and other entities must raise awareness and support the platform's use.
- The Unit Holder Protection Committee (UHPC) will now review inactive folios and unclaimed amounts as part of its duties.

The goal is to enhance investor transparency and security while encouraging proper KYC compliance.

Notification dated 13 February 2025: Securities and Exchange Board of India (Procedure for making, amending and reviewing of Regulations) Regulations, 2025

The SEBI Regulations, 2025, published on 13 February 13 establish a structured process for making, amending, and reviewing regulations to ensure transparency and stakeholder engagement. These regulations mandate public consultation, requiring SEBI to publish draft regulations on its website for at least 21 days to gather feedback. SEBI must also disclose reasons for rejecting any public suggestions.

For amendments, the same process applies, ensuring consistency. However, in urgent cases, the Chairperson can bypass public consultation or shorten the feedback period if necessary. Internal SEBI matters and procedural updates are exempt from these rules.

SEBI will periodically review existing regulations based on enforcement experience, legal rulings, global best practices, and market needs. These regulations aim to make SEBI's rule-making process more transparent, structured, and market-responsive for better governance of India's securities market.

Circular dated 14 February 2025: Revised timelines for issuance of Consolidated Account Statement (CAS) by Depositories

Pursuant to representation from Depositories and Mutual Fund – Registrar and Transfer Agents (MF-RTA), SEBI has revised the timelines for issuing CAS to enhance compliance ease through this circular. The key points of this circular are:

- Asset Management Companies (AMC) or MF-RTAs shall now send the monthly common PAN data to Depositories on or before the 5th day from the month end. The Depositories, in turn, shall consolidate and dispatch the monthly CAS to investors that have opted for delivery via electronic mode (e-CAS) by 12th day from the month end and for delivery via physical mode by 15th day from the month end. Further, in respect of half-yearly CAS (applicable to investors without transactions), AMCs/ MF-RTAs shall provide the data with respect to the common PANs to the depositories on or before 8th day of April and October every year. The depositories shall then consolidate and dispatch the CAS to investors that have opted for e-CAS on or before the 18th day of April and October and opted for delivery via physical mode by 21st day of April and October.
- Depositories must amend their by-laws, implement system changes, disseminate the revised guidelines on their websites, and report implementation status to SEBI.
- This circular shall be effective from 14 May 2025

Circular dated 14 February 2025: Relaxed Timelines for AIF Investments in Dematerialised Form

The Securities and Exchange Board of India (SEBI) has revised timelines offering significant relief to Alternative Investment Funds (AIFs) regarding the mandatory dematerialisation of their investments. The changes aim to enhance operational flexibility while maintaining regulatory compliance and ensuring greater transparency in the market. This circular, effective immediately, sets forth new guidelines and timelines for AIFs to follow when it comes to holding their investments in dematerialised (demat) form.

- From 1 July 2025, AIFs must hold all new investments in dematerialised form, whether made directly in the investee company or through other entities, ensuring consistency and efficiency in investment management.
- The investments made by an AIF prior to 1 July 2025 are exempted from the requirement of being held in dematerialised form except:
    - Investee company of the AIF has been mandated under applicable law to facilitate dematerialisation of its securities.
    - The AIF, on its own, or along with other SEBI registered intermediaries/ entities which are mandated to hold their investments in dematerialised form, exercises control over the investee company.

  Such dematerialisation shall be done by the AIF on or before 31 October 2025.
- AIF schemes ending by 31 October 2025 (excluding extensions), or those already in extended tenure as of 14 February 2025, are exempted from the dematerialisation requirement.
- Trustees or sponsors of AIFs must ensure that "Compliance Test Report" prepared by the fund manager, includes compliance with the provisions of this Circular.

Circular dated 17 February 2025: Most Important Terms and Conditions (MITC) for Investment Advisors

This circular mandates the inclusion of standardised **Most Important Terms and Conditions (MITC)** in investment advisory agreements for Investment Advisers (IAs). This move is aimed at enhancing transparency and investor protection by ensuring clients understand the limitations and risks associated with investment services. The MITC, developed in collaboration with industry standards forums, outlines key provisions such as restrictions on fund acceptance, disclaimers on investment risks, prohibitions on guaranteed returns, fee structures, conflict of interest management, and grievance redressal mechanisms.

IAs are required to inform existing clients about the MITC by 30 June 2025 through verifiable communication methods like email. For new agreements, the MITC must be incorporated into the contract, and explicit client consent must be obtained. The circular also emphasises that IAs cannot execute trades on behalf of clients without explicit consent and must assess the client's financial profile and risk suitability. Additionally, IAs are prohibited from soliciting login credentials and must adhere to ethical standards, offering transparent advisory services.

Circular dated 17 February 2025: Most Important Terms and Conditions (MITC) for Research Analysts

This circular mandates the inclusion of standardised **Most Important Terms and Conditions (MITC)** for Research Analysts (RAs). This move aims to enhance transparency and accountability in the field of investment research by ensuring that clients are fully informed about the services they receive. The MITC, developed in collaboration with the Industry Standards Forum (ISF) and the Research Analyst Administration and Supervisory Body (RAASB), outlines key provisions such as fee structures, exclusions of statutory charges, conditions for premature termination, prohibitions on assured returns and client risk profiling.

Research Analysts are required to disclose these terms to existing clients by 30 June 2025 using verifiable communication methods like email. For new agreements, the MITC must be incorporated into the terms and conditions, and explicit client consent must be obtained. Additionally, RAs are prohibited from soliciting clients' login credentials or OTPs for trading, demat, or bank accounts, emphasising the importance of client data security. The circular is effective immediately.

Circular dated 21 Februars 2025: Investor Charter for Stock Broker

SEBI issued a circular updating the Investor Charter for Stock Brokers. This move is part of SEBI's broader strategy to enhance financial consumer protection, inclusion and literacy. The updated charter outlines the vision, mission, services provided by stock brokers, do's and don'ts for investors, grievance redressal mechanisms, and procedures for handling investor claims in case of a trading member's default. Stock brokers are required to disclose this charter to both existing and new clients through various channels, including their websites, office displays, and account opening kits. Additionally, brokers must publish data on investor complaints and their redressal status on their websites by the 7th of each month, following a specified format.

The charter emphasises the importance of ethical standards and compliance, aiming to facilitate fair and transparent trading practices that contribute to wealth creation for investors. It also highlights key investor rights, such as receiving information about account handlers, understanding investment risks, accessing account forms and filing grievances. Investors are advised to read all documents carefully, register contact details, and approach relevant authorities for grievances. The circular introduces specific timelines for key activities, including KYC entry, client onboarding, order execution, and grievance resolution. Furthermore, it promotes the use of the SCORES 2.0 system and the SMARTODR platform for efficient grievance redressal, enhancing transparency and investor protection in the securities market.

Circular dated 25 February 2025: Opening of Demat Account in the Name of Association of Persons (AoP)

After considering representations and discussions with stakeholders, SEBI has now permitted the opening of demat accounts in the name of an Association of Persons (AoP) for holding specific securities viz., mutual fund units, corporate bonds, and government securities. The circular amends the Master Circular for Depositories, allowing AoPs to open demat accounts under certain conditions *inter alia*:

- The AoP must ensure that it only subscribes to financial instruments or securities allowed by its governing statutes. This does not include equity shares.
- The PAN details of both the AoP and the Principal Officer (such as the secretary, treasurer, or manager) must be provided.

The provisions of the circular will be effective from 2 June 2025, and depositories are required to implement necessary systems, amend relevant rules, and inform market participants.

Circular dated 27 February 2025: Regulatory framework for Specialised Investment Funds

SEBI, *vide* Circular dated 27 February 2025, introduced a new regulatory framework for Specialised Investment Funds (SIFs) to bridge the gap between Mutual Funds (MFs) and Portfolio Management Services (PMS). The framework allows for more flexible portfolio management, targeting sophisticated investors like high-net-worth individuals and institutions.

The key points of the circular are:

- Minimum Investment Threshold;
- Investment Restrictions;
- Derivatives Investment;
- Subscription & Redemption;
- Listing of Units;
- Benchmarking;
- Risk Disclosure;
- Distribution and Compliance;
- Offer Document Requirements.

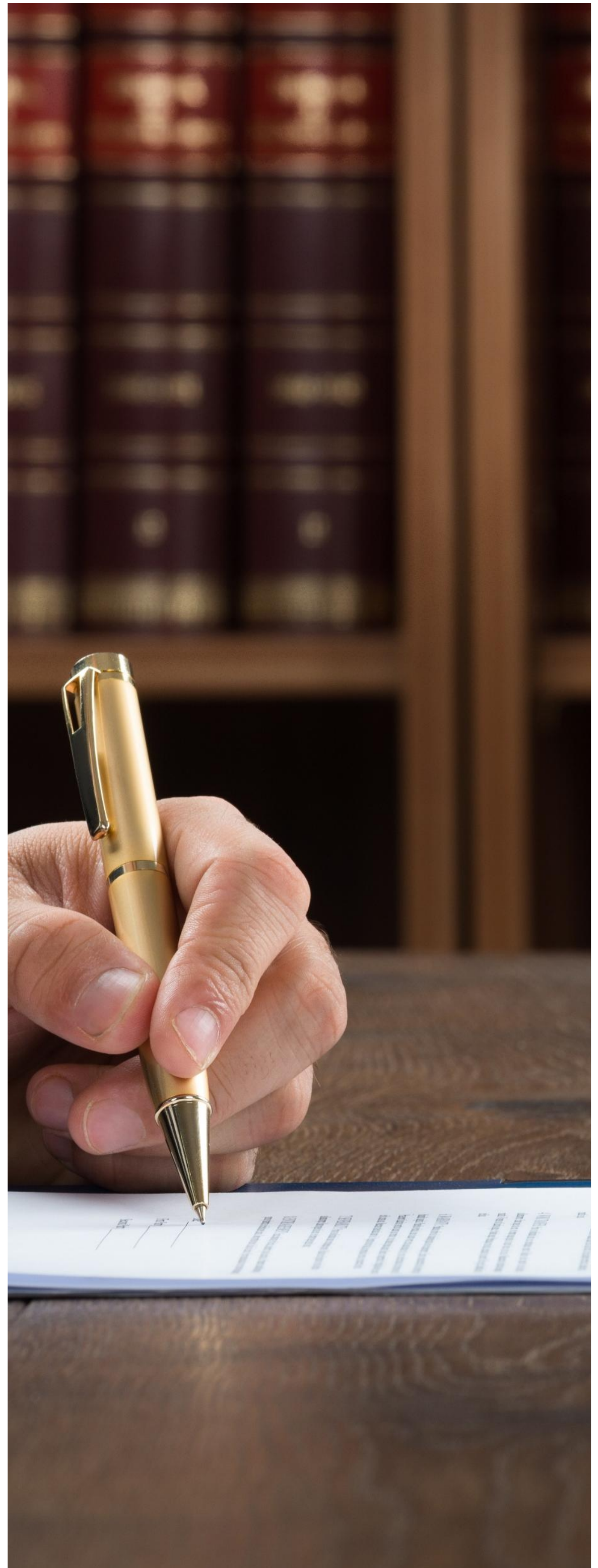
Circular dated 28 February 2025: Amendments and clarifications to Circular dated 10 January 2025 on Revise and Revamp nomination facilities in the Indian securities market

SEBI, *vide* Circular dated 28 February 2025, laid down the amendments and clarifications to the norms for nominations in demat accounts and mutual fund folios, aimed at enhancing investor protection and simplifying processes related to asset transmission in the event of an investor's demise. The amendments to the circular will come into effect on 1 March 2025, though some provisions will be implemented in phases, starting 1 June 2025.

The key points of the circular are:

- Assets are transmitted to surviving joint holders. They can transfer assets to a new or existing account.
- Single-holding investors can opt-out of nominations online or offline.
- Single-holding investors can designate a nominee to operate their account in case of incapacitation, with no restrictions on changes.
- KYC is not required for surviving holders unless previously requested but not submitted.
- Corporate actions and credit transactions are allowed in transmitted accounts.
- Odd lots are transferred to the first nominee. NRI/ OCI/ PIO can use passport numbers for identity. Minor nominees need guardian details.
- Key provisions are deferred to June 2025 and September 2025.
- AMCs and Depositories must submit progress reports to SEBI by specified deadlines.

This circular streamlines nomination and asset transmission procedures, ensuring transparency and ease of compliance for investors and institutions.



DIRECT TAX

CIRCULARS/ NOTIFICATIONS/ PRESS RELEASE

CBDT amends Rule 114DA requiring non-residents having Indian LO to furnish annual statements within 8 months

Rule 114DA of the Income Tax Rules, 1962 (IT Rules) requires a non-resident having a Liaison Office in India to furnish an annual statement every year in Form 49C. The Central Board of Direct Taxes (CBDT) has amended the said rule to provide that Form 49C shall now be required to be submitted within 8 months from the end of every fiscal year.

[Circular No 14/2025, dated 7 February 2025]

Finance Minister introduces simplified Income-tax Bill, 2025

In order to make the Income Tax Act, 1961 (IT Act) concise, lucid, and easy to read and understand, the Hon'ble Finance Minister Smt. Nirmala Sitharaman (Hon'ble FM) had announced a comprehensive review of the IT Act. Suggestions were also invited from the stakeholders for their input.

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 (Lower House) on 13 February 2025. The IT Bill is proposed to be effective from 1 April 2026.

Apart from the quantitative impact, like a reduction in the number of chapters, sections, and words, other qualitative improvements include:

- Simplified language
- Consolidation of amendments, reducing fragmentation
- Removal of obsolete and redundant provisions
- Structural rationalisation through tables and formulae for improved readability
- Preservation of existing taxation principles, ensuring continuity while enhancing usability.

The IT Bill reflects the Government's commitment to enhance ease of doing business by providing a tax framework that is simple and clear.
Please go to https://www.bdo.in/en-gb/insights/alerts-updates/fm-introduces-simplified-income-tax-bill-2025 to read our detailed alert.

[Press Release dated 13 February 2025]

CBDT issues circular on tax withholding from salaries for FY 2024-25

The CBDT *vide* circular no 24/2022 dated 7 December 2022 had intimated the rates for withholding tax from payment under the head "Salaries" under section 192 of the IT Act. Recently, the CBDT has issued a circular containing the amendments made *vide* the Finance (No.2) Act 2024, Finance Act 2024 and Finance Act of 2023 in respect of withholding tax from the payment of income under the head 'Salaries' during Fiscal Year (FY) 2024-25. This Circular also mentions that where no amendments have been made by these 3 Finance Acts, Circular No. 24/2022 shall continue to be applicable.

[Circular No. 3/2025 dated 20 February 2025]

JUDICIAL UPDATES

SC holds that voluntary disclosure of an offence will be covered under "first offence" and compounding of offences to be allowed in deserving cases

The taxpayer, a salaried individual and a recipient of profit from a partnership firm, filed belated returns for FY 2010-11 and 2012-13. The Tax Officer issued a show cause notice (SCN) as to why proceedings under section 276CC of the IT Act should not be initiated against him. The below table depicts the sequence of events:

FY	Due date for filing tax return	Date of filing tax return	Date of issue of show cause notice
2010-11	30 September 2011	4 March 2013	27 October 2014
2012-13	31 October 2013	29 November 2014	12 March 2015

The taxpayer replied to the SCN along with application for compounding. However, the compounding application for FY 2012-13 was not accepted by the tax authorities on the ground that the taxpayer had filed his tax return for FY 2012-13 after the show cause notice for the offence under Section 276CC of the IT Act had been issued for FY 2010-11. Therefore, the offence committed by the taxpayer under Section 276CC of the IT Act for the FY 2012-13 would not be covered by the expression “first offence” as defined in the Guidelines for Compounding of Offence, 2014 (2014 guidelines).

The taxpayer challenged the order passed by the tax authorities before the Hon’ble Gujarat High Court. The Hon’ble Gujarat High Court rejected the writ petition.

Aggrieved, the taxpayer filed a special leave petition before the Hon’ble Supreme Court. The Supreme Court, while ruling in favour of the taxpayer, made the following observations:

- Section 276CC of the IT Act punishes the wilful failure by the taxpayer in furnishing tax return which he is required to furnish under section 139(1)[1] or by notice given section 142(1)(i) or section 148 or section 153A of the IT Act.
- Principles can be drawn from the Hon’ble Supreme Court’s ruling in Prakash Nath Khanna[2] that an offence under Section 276CC of the IT Act could be said to have been committed as soon as there is a failure on the part of the taxpayer in furnishing the tax return of income within the due time as prescribed under Section 139(1) of the IT Act. Subsequent furnishing of the tax return by the taxpayer within the time limit prescribed under Section 139(4)[3] or before prosecution is initiated does not have any bearing upon the fact that an offence under Section 276CC has been committed on the day immediately following the due date for furnishing tax return.
- Section 139(8) of the IT Act provides that irrespective of whether the tax return is filed by the taxpayer after the specified date or is not furnished at all, the taxpayer shall be liable to pay simple interest at the rate of 15% reckoned from the day immediately following the specified date.
- Accepting the contention of the tax authorities that an offence happens only when a return is belatedly filed would mean that the commission of an offence under Section 276CC of the IT Act is made contingent upon the filing of the actual belated return by the taxpayer. This could never have been the intention of the legislature in enacting the provision as such a reading would mean that no taxpayer would file a tax return after the due date has expired and despite such failure would be able to escape any liability under Section 276CC of the IT Act.
- The 2014 guidelines superseded the 2008 guidelines and came into effect from 1 January 2015. Clause 2 of the 2014 guidelines provided that all compounding applications received on or after 1 January 2015 shall be decided in accordance with the 2014 guidelines.
- The compounding application for FY 2010-11 was made on 11 November 2014 and thus would be governed by the 2008 guidelines. The compounding application for the FY 2012-13 was preferred by the taxpayer on 19 March 2015, hence it would be governed by the 2014 guidelines.
- Paragraph 4 of the 2014 guidelines provides that compounding of offences is not a matter of right of the taxpayer. However, the offences may be compounded by the competent authority upon satisfaction that the eligibility conditions prescribed in the 2014 guidelines are being met. The ultimate discretion to compound the offence(s) or not has to be guided by factors which include the conduct of the taxpayer, the nature and magnitude of the offence and the unique facts of each case.
- As per the 2014 guidelines, Section 276CC offence would be a Category B offence. Category B offences will not be generally compounded other than the “first offence” as defined in the guidelines.
- “First offence” has been defined under the compounding guidelines as any offence committed:
  - Prior to the date of issuance of any show cause notice for prosecution in relation to the said offence; or
  - Prior to any intimation relating to prosecution by the department to the person concerned or prior to the launching of any prosecution, whichever is earlier.
- “First offence” is also defined to include any offence which has not been detected by the Tax Authorities, but has been voluntarily disclosed by a taxpayer prior to the filing of an application for compounding of offence.
- As per the guidelines, the compounding fee to be levied in the case of an offence under Section 276CC of the IT Act is to be reckoned from the date immediately following the date on which the tax return was due. This is in consonance with Section 139(8) of the IT Act and further fortifies the argument of the taxpayer that it is not the date of actual filing of the belated return, but the date immediately following the due date for filing of tax return which is to be considered as the date of commission of the offence.
- The show cause notice for the initiation of prosecution for the FY 2010-11 was the earliest in time.
- The offence for FY 2010-11 could be said to have been committed on 1 October 2011 and the offence for FY 2012-13 could be said to have been committed on 1 November 2013. Therefore, both the offences under Section 276CC of the IT Act were committed prior to the date of issue of any show cause notice for prosecution.
- 2014 guidelines allow only those offences to be treated as the “first offence” which are committed by the taxpayer either prior to a notice that he is liable to prosecution under the IT Act for the commission of such offences or those offences which are voluntarily disclosed by the taxpayer to the Department before they come to be detected. The latter part of the definition of the expression “first offence” is not to curtail the scope of the first half but to expand its ambit by including those cases where the taxpayer comes forward on his own initiative and discloses the commission of the offence.

[1] Section 139(1) of the IT Act provides that every person shall, on or before the due date, furnish a tax return, in the prescribed form and manner.

[2] Prakash Nath Khanna v. CIT (2004) 9 SCC 686

[3] Section 139(4) provides that if a person has failed to furnish the tax return within due date prescribed under section 139(1), then he may furnish the tax return for any FY at any time before the end of the succeeding FY or before the completion of the assessment, whichever is earlier

- Therefore, the offence as alleged to have been committed by the taxpayer under Section 276CC of the Act for the FY 2012-13 is, without a doubt, covered by the expression "first offence" as defined under the 2014 guidelines.

[Vinubhai Mohanlal Dobaria (Civil Appeal No. 1977 OF 2025)]

Special Bench of Mumbai Tax Tribunal holds that section 44C of the IT Act shall not be applicable for years prior to amendment in India-UAE Tax Treaty.

The taxpayer, a non-resident banking company incorporated in the United Arab Emirates (UAE), operates in India through its branches in Mumbai and New Delhi. For FY 2001-02, the taxpayer filed a revised tax return and claimed a deduction of INR 17.80mn for head office expenses allocated to the Indian branches as per Article 7(3) of the India-UAE Double Taxation Avoidance Agreement (DTAA or Tax Treaty or Treaty). The tax officer applied section 44C of the IT Act and thereby disallowed a certain portion of the Head Office expense.

The First Appellate Authority and the Mumbai Tax Tribunal ruled in favour of the tax authorities. As this decision conflicted with its earlier decision in the taxpayer's own case, a Special Bench of the Mumbai Tax Tribunal (Special Bench) was constituted. The Special Bench while ruling in favour of the taxpayer made the following observations:

- The first part of Article 25(1) of the DTAA provides that taxation of income and capital gains arising in a Contracting State shall be governed by the domestic laws of the respective Contracting States. The second part of Article 25(1) carves out an exception by providing that where express provisions to the contrary are made in the Treaty, taxation of income and capital in the respective Contracting States would be governed by such express provisions and not by the provisions of domestic laws in force in the respective Contracting States.
- Article 7 of the Treaty provides the mode and manner of taxability of business profit. Article 7(3) of the Treaty (prior to amendment) provided that while determining the profit of a Permanent Establishment (PE) all expenses incurred for the purpose of business of the PE, including executive and general administrative expenses, whether incurred in the State in which the PE is situated or elsewhere, has to be allowed as deduction.
- There was no restriction imposed regarding the limit of expenditure to be allowed with reference to the PE, nor there was any reference to the applicability of domestic law, including section 44C[4] of the IT Act. In the absence of any restriction imposed regarding the limit of expenditure to be allowed, the restriction imposed under the domestic law cannot be read into Article 7(3) of the Treaty.
- Article 25(1) cannot be interpreted in a manner to say that it will influence the computation of business profits under Article 7(3) or thrust the restriction imposed under the domestic law for computing the business profits.
- Article 25(1) and Article 7(3) operate in different situations. While Article 25(1) deals with the elimination of double taxation, Article 7 deals with the taxability of business profits and Article 7(3) lays down the mechanism of computation of business profit of PE.
- Effective from 1 April 2008, Article 7(3) was amende[5] to provide that while determining the profit of a PE, deduction of expenses shall be allowed in accordance with the provisions of and subject to the limitations of the tax laws of that State. There were no restrictions imposed with respect to the limit of deduction of expenses earlier to the Protocol.
- The amendment of Article 7(3) clearly establishes that the countries to the agreement, prior to the date of the Protocol, had intended to allow the deduction of all expenses relating to the PE without applying any restrictions/conditions imposed in the domestic laws of the respective Contracting States.
- The contention of the tax authorities that restriction for deduction of expenses under Article 7(3) was always there in view of Article 25(1) and the Protocol amending Article 7(3) is only for clarifying the position existing earlier cannot be accepted. Reliance is placed on the Hon'ble Supreme Court's ruling in the case of Azadi Bachao Andolan[6] wherein it was held that interpretation of the Treaty cannot be made in the same way as interpretation of statute.
- The protocol amending Article 7(3) was specifically made effective from 1 April 2008. Therefore, it is very much clear, that treaty partners intended to apply the amendment prospectively.
- In treaties entered by India with UAE, France, Mauritius and Japan, Article 7(3) in its original form provided for the deduction of expenses attributable to the PE without imposing restrictions of domestic laws. In contrast, in treaties entered with the UK and Germany, the treaty partners intended to apply the restrictions of domestic laws of the State wherein the PE is situated, in so far as it relates to the deduction of expenses on computing the profits of the PE. The Treaty with France was amended subsequently to apply the limitations of domestic laws.
- Wherever the countries intended to apply the restrictions imposed in the domestic laws, it was specifically provided in the Treaty. Further, wherever the treaty partners intended to amend the provisions of the treaty retrospectively, they specifically provided for it.
- When the treaty partners wanted to change the provisions of the Treaty, again, it was based on negotiations and amendment was made with reference to a particular date. Therefore, the amendment would also apply from the effective date and not any other date.
- In the case of ABN Amro Bank, a Special Bench of the Tribunal, while interpreting the provisions contained under Article 7(3) of the India - Japan Tax Treaty in contrast to a similar provision in the India - Netherland Treaty, observed that India - Japan Treaty does not provide for restriction in limit of expenditure as per domestic law provision. Therefore, Article 7(3) of the Treaty, being an express provision contrary to the domestic law will override the domestic law.

[4] Section 44C of the IT Act which is applicable to non-residents, provides that allowance in respect of expenditure in the nature of head office expenditure shall be limited to the lower of: 5% of the adjusted total income or the amount of so much of the head office expenditure incurred by the taxpayer as is attributable to the business or profession of the taxpayer in India.

[5] Notification no. SO 2001(E) (NO) 282/2007, dated 28 November 2007

[6] Union of India Vs. Azadi Bachao Andolan (2003) 132 Taxman 373 (SC)

- As far as expenses incurred outside India are concerned, SWIFT expenses are charged to Indian operations on an actual usage basis and Globus Accounting Software Maintenance expenses are charged to Indian operations on number of users' basis. Looking at the nature of expenditures incurred, it can be concluded that they are exclusively related to the operations of Indian branches.
- Relying on various judicial precedents and CBDT Circular No. 649[7] dated 31 March 1993, it can be deduced that the expenditure specifically incurred for the branches must be allowed without the restrictions of section 44C of the IT Act.

[Mashreq Bank Psc v. DCIT (ITA No. 1342/Mum/2006) (SB Mumbai Tax Tribunal)]

Kolkata Tax Tribunal holds that loan transactions undertaken 'regularly' and 'consistently', for commercial expediency will not be treated as deemed dividends.

The taxpayer, a private limited company, was engaged in the business of manufacturing laminates, panel products, furniture, potato flakes and agro products. During FY 2013-14, the taxpayer received a loan from its subsidiary, in which it held 74.65% shares. The tax officer treated the said loan as deemed a dividend under section 2(22)(e)[8] of the IT Act and thereby brought it to tax. The First Appellate Authority restricted the addition to the extent of the highest peak balance of the loan amount outstanding during the year.

The Kolkata Tax Tribunal, while holding that the loan transaction is not deemed dividend, made the following observations:

- The taxpayer and its subsidiaries had given and taken loans from each other from time to time, as per the business needs and the loans were squared up at the end of the year.
- The transactions between the taxpayer and its subsidiary company were like that of a current account.
- The transactions were continuous and running as per business needs and expediency.
- Reliance is placed on the Coordinate Bench of the Kolkata Tax Tribunal in the case of Shree Krishna Gyanodya Flour Mills Pvt. Ltd[9]. wherein it was held that where the loan transactions are in the normal course of business and out-of-business expediency and are representing current account transaction, in such type of transactions, the provisions of section 2(22)(e) of the IT Act would not be attracted.
- Further, the tax officer, for the preceding FY, *vide* remand report, has observed that such types of transactions were carried out between the taxpayer and its subsidiary continuously/consistently in the earlier FYs and the nature of the transactions was like of the current account, therefore, the provisions of section 2(22)(e) of the IT Act are not applicable.

[Merino Industries Ltd v. DCIT (I.T.A No.174/Kol/2019) (Kolkata tax Tribunal)]

[8] Section 2(22)(e) of the IT Act provides that dividend includes any payment by a private company of any sum, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

[9] Shree Krishna Gyanodya Flour Mills Pvt. Ltd. vs. PCIT (ITA No.1008/Kol/2016)

INDIRECT TAX

ITC is not available on goods/services procured for increasing the height of Tailing-dam

In Re: M/s. Hindustan Zinc Ltd. [TS-74-AAR(RAJ)-2025-GST]

Facts of the Case

- Hindustan Zinc Ltd. (Taxpayer) is *inter alia* engaged in the business of extracting and processing minerals and manufacturing metals such as Zinc, Lead, Silver, etc. and holds captive Zinc mines. The Taxpayer undertakes the following three-phased process to convert mineral ore into metal:
  - **Phase I**: Extracting ore from mines;
  - **Phase II**: Converting ore into concentrates at milling plants; and
  - **Phase III**: Processing concentrates on smelting plants for manufacturing metal.
- In Phase II, hazardous waste, i.e., tailings, consisting of crushed rock, water and chemicals, is generated. The tailings are toxic materials posing significant environmental risks. Hence, under the Environmental laws[1], these tailings are either used to backfill the extracted portion of underground mines or the remaining quantity is dumped into the 'Tailing dam', which contains these waste materials and prevents them from contaminating the surrounding environment.
- 'Tailing dam' are large storage sites resting on the foundation of natural soil or rock and made using materials like earth fill or rock fill to ensure structural strength. They are equipped with protective barriers such as geomembranes or clay liners to prevent leakage.
- The sole function of the tailing dam is to process the tailings generated during Phase II to prevent contamination of the surrounding environment. Tailings are continuously generated and transported to the tailing dam. As the volume of tailings in the dam grows, its height needs to be incrementally increased with the use of materials such as rocks, mud, sand, HDPE sheets, etc., the majority of which is waste material from the mining process itself.
- The Taxpayer employs a contractor to raise the height of the tailing dam who charges consideration along with applicable GST. The Taxpayer also procures goods such as HDPE sheets, etc. The expenses incurred by Taxpayers towards such goods /services are capitalised in its books.
- The Taxpayer filed an Advance Ruling Application on the tailing dam, which is nothing but an integral part of the milling plant and is thus covered under the term 'plant and machinery' as defined in Explanation to Section 17(5) of the CGST Act. More specifically, a tailing dam is, in the nature of 'apparatus' fixed to the earth, used for making an outward supply of services and, hence, covered under the purview of the phrase 'plant and machinery'.
  - Since the term 'apparatus' is not defined under the GST Law, reference was made to its dictionary meanings which clarifies that an 'apparatus' is a combination of equipment, tools or machines having a particular function or intended for a specific use. In the present case, the tailing dam, being squarely covered by the above definition, qualifies as an 'apparatus' as it - (a) Is a combination of equipment, tools or machines and (b) Has a particular function or intended for a specific use.

[1] Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act); Mineral Conservation and Development Rules, 2017 (MCD Rules) and Technical Bulleting no:30 issued by Ministry of Mines

- Considering the above, the tailing dam should be recognised as a composite assembly of various functional components, each of which plays a vital role in its overall operation. Reliance was placed on ***Victory Aqua Farm Ltd***[2]. to contend that the term 'apparatus' must be read in its functional sense rather than its strict mechanical sense.
- Without prejudice to the above, as per the settled law, a building or a structure which constitutes an apparatus by means of which business activities are carried out is covered within the purview of the term 'plant' (See ***S.K. Tulsi & Sons***[3]).
- In view of the above, ITC on goods/ services procured for raising the height of the tailing dam is available and should not be ineligible ITC in terms of sections 17(5)(c) and 17(5)(d) of CGST Act.

▪ **Tailing Dam is an integral part of mining facility**

- The provisions of the Environmental laws mandate the mining lease holder to take adequate steps, including the construction of a tailing pond/ dam for the disposal of tailings waste generated in the process of mining and milling. Proper disposal of tailings is also crucial for controlling environmental pollution.
- Tailings often contain hazardous chemicals used in the beneficiation process. Some of these hazardous chemicals, when exposed to air and water, can create acid mine drainage, which can lead to severe environmental damage if not properly contained. Hence, effective disposal methods are essential to prevent these contaminants from entering the surrounding environment, including soil and water sources.
- Hence, in view of its integral function for environmentally safe waste disposal, the tailing dam should be seen as an integral part of the overall manufacturing operations and, therefore, must be regarded as a part of 'plant and machinery'. Further, the meaning of 'apparatus' should not be restricted to such apparatus which is actually used in the manufacture of finished goods. Instead, the same should be extended to such apparatus that is used to deposit, manage or treat the waste products/ tailings generated during the manufacturing process.
- The tailing dam is an essential and integral part of the mining process, both operationally and legally, as mandated by law. Thus, ITC of GST paid on goods/ services procured for raising the height of tailing dam is not restricted *vide* Sections 17(5)(c) and 17(5)(d) of CGST Act.

▪ **Tailing dam is not a civil structure as it is not made of materials like cement**

- The tailing dam is made of materials like earth fill, rock fill, sand, geomembranes, clay liners, etc. No cement/steel/bricks are used for the construction of the tailing dam. Even if it is assumed that the use of cement is a relevant factor, it is an established principle of law[4] that merely because cement/steel/bricks are used for the construction of a structure, it does not cease to be a plant or machinery.
- On perusal of the break-up of the contract value towards earthwork (excavation, loading, unloading, transportation, levelling, piling of tailings) and purely construction work, the activity of increasing the height of tailing dam is majorly earthworks and not construction *per se*.
- Considering that the major activity is earthworks along with the functional role played by the tailing dam, it is evident that the activity of increasing the height of the tailing dam does not lead to any construction, and it falls within the scope of 'plant and machinery'.

▪ **Credit was available in respect of such services in the Pre-GST regime**

- In the Appellant's own case, in the pre-GST regime, CENVAT credit in respect of services availed for raising the height of tailing dam was allowed (See ***Hindustan Zinc Ltd***.[5]). It was also held that such services are for compliance with Environmental laws and, hence, qualify as an input service used by the manufacturer.
- Accordingly, it is undisputed that tailing dam has been considered as an integral part of Taxpayer's operations and hence, ITC on such goods/services is not restricted as per Sections 17(5)(c) and 17(5)(d) of the CGST Act. If ITC is denied, it would lead to a cascading effect of taxes, which increases the cost to the ultimate consumer. To avoid this, the restriction on ITC under Sections 17(5)(c) and 17(5)(d) of the CGST Act needs to be liberally interpreted.

▪ **Supreme Court ruling in Safari Retreats Ltd.**[6]:

- It is a settled law[7] that the functionality test can be used to determine whether the subject asset constitutes 'plant and machinery' or not. The functionality test is applicable to the tailing dam as follows:
  - It is an integral part of the mining process, without which the tailings generated during the beneficiation process would lead to blockages, equipment failure and inefficiencies within the milling plant, ultimately leading to a halt of the mining operations.
  - It consists of a complex system of different components and technologies, including automated pipelines, drainage systems, geomembranes and clay liners to process the wet tailings generated during the milling process.
  - It critically contributes towards environmental protection as it is specifically designed for the safe disposal, treatment and management of hazardous waste generated during mining operations.
  - It ensures mandatory compliance with the Environmental laws.
- Thus, it is evident that the tailing dam serves multiple equally important purposes within the Taxpayer's manufacturing process. Absent the tailing dam, the taxpayer cannot carry on its mining and manufacturing business. Accordingly, applying the functionality test, the tailing dam is covered under the purview of 'plant', and hence, ITC ought to be available on the inputs and input services used for setting up and developing the tailing dam.

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[2] Assistant Commissioner of Income Tax Vs. Victory Aqua Farm Ltd. [2015 (9) TMI 758]
[3] S.K. Tulsi & Sons Vs. Commissioner of Income Tax [1991 (187) ITR 685 (All.)]
[4] In J.K. Cement Works Vs. State of Karnataka [2017 (7) G.S.T.L. 408 (Kar.)] and State of Kerala Vs. Ambuja Cements Ltd. [2020 (1) KHC 884]
[5] Hindustan Zinc Ltd. Vs. Commissioner of Central Excise, Jaipur-II [2017 (7) TMI 387- CESTAT New Delhi] and Commissioner of Central Excise, Udaipur Vs. Hindustan Zinc Ltd. [2018 (7) TMI 682 – CESTAT New Delhi]
[6] Chief Commissioner of CGST Vs. Safari Retreats Pvt. Ltd. [2024 (131) GSTR 184] (our alert on the same can be accessed by clicking here)
[7] Safari Retreats Pvt. Ltd. (supra), Bharti Airtel Ltd. Vs. Commissioner of Central Excise [2024 SCC OnLine SC 3374], Commissioner of Income Tax Vs. B. Venkata Rao [2000 (243) ITR 81], Victory Aqua Farm (supra), Commissioner of Inland Revenue Vs. Barclay Curle & Co. Ltd. [1969 (1) WLR 675], Cooke Vs. Beach Station Caravans [1974 (1) WLR 1398] and Anchor International Ltd. Vs. Commissioner of Inland Revenue [2004 Scot CS 281].

Contentions of the Tax Authorities

- The transportation of tailings in the slurry form from the plant to the tailing dam is conducted through pipelines. These pipelines are not part of the main plant and hence do not fall under the definition of 'plant and machinery'. Moreover, the drainage system used for the construction and maintenance of the tailing dam cannot be classified as 'plant and machinery'. Further, to build a concrete structure, it is essential to use cement, a fact which has not been disclosed by the Taxpayer in the Advance Ruling application. After mixing cement, the dam is constructed, which is clearly an 'immovable property'.
- The activity carried out for construction / increasing the height of the tailing dam by procuring goods/services does not fall within the scope of the definition of 'plant and machinery' as it is an immovable property. Further, as per Explanation to Section 17 of the CGST Act, the tailing dam does not meet the definition of 'apparatus'; instead, it is covered under the scope of immovable property since it is a civil structure.
- The contention that a tailing dam consists of automated pipelines, drainage systems and geomembranes or clay liners and hence qualifies as a tailing dam as 'plant and machinery' is unacceptable as these three elements are utilised in almost all civil structures. Further, the mere availability of these elements does not make the tailing dam qualify the definition of 'plant and machinery'.
- In the present case, the tailing dam is a structure that plays no part in carrying out the furtherance of business; instead, it is used for complying with Environmental laws. Reliance can also be placed on Section 17(5)(fa) of the CGST Act, wherein ITC has been blocked on procurements used to comply with the Corporate Social Responsibility (CSR) obligations. Similar view was also upheld by ***In Re: Adama India Pvt. Ltd.***[8]
- The construction of a tailing dam only complies with environmental laws in order to protect the environment and is not an essential part of the entire mining process.
- Considering the above, the construction of a tailing dam is not a 'manufacturing operation' or 'apparatus' but is an immovable property.
- It is also pertinent to note that no dam can be constructed without the use of cement, as dust (dry tailings) cannot be solidified without the use of cement. The Taxpayer has failed to submit any evidence, such as technical literature, to support its contention that cement and building materials are not utilised in the construction of the tailing dam.
- The break-up of the elements of the tailing dam, as provided by the Taxpayer, should be thoroughly assessed by an expert with substantial expertise in structural engineering, such as a Chartered Engineer. Further, it is imperative that the Taxpayer provides a corresponding certificate to support this assessment.
- Considering the fact that there is major earthwork in construction/ increasing the height of the tailing dam, the Taxpayer's contention that the same does not fall under the purview of construction of immovable property is not acceptable in terms of the Explanation to Section 17(5)(d) of CGST Act wherein it is clearly explained that any 'addition' in the form of Earth, etc. would fall under the purview of immovable property. If the activity of increasing the height of the tailing dam involves earthwork, then it also comes under the definition of immovable property.
- The judgements relied upon by the Taxpayer under the Pre-GST regime are not *mutatis mutandis* applicable to the present case.
- Considering the above, the tailing dam is neither an integral part of manufacturing operations nor is it a plant and machinery.
- When there is a clear-cut and express provision under the GST law, there is no scope for liberal interpretation.

Observations and Ruling of the Rajasthan Authority for Advance Ruling

- Section 17(5)(d) of CGST Act provides that GST paid on goods and services (including works contract service) received by a taxpayer for construction of immovable property is not eligible for ITC, except in the following circumstances:
  - Where goods or services or both are received by a taxable person to construct an immovable property consisting of a 'plant or machinery';
  - Where goods and services or both are received by a taxable person for construction of immovable property made not on his own account.
    - Construction is said to be on a person's own account when - (i) it is made for his personal use and not for service, or (ii) it is to be used by the person constructing it as a setting in which business is carried out.
    - Construction cannot be said to be on a taxable person's own account if it is intended to be sold or given on lease or license.
- Since a tailing dam rests on the foundation of natural rock or soil with the help of cement and stretches over several kilometres, it is covered under the definition of 'immovable property'.
- A civil structure is any man-made structure that is built by applying the science of civil engineering. A civil structure can be built with cement and steel or by using other materials, depending on the purpose of the structure and its feasibility. The materials used for construction of a structure do not play a determinative role in defining it as a 'civil structure' or otherwise.
- In view of the above, the tailing dam is a civil structure and qualifies under the definition of 'immovable property'. Hence, the Taxpayer's submission that it is 'plant and machinery' is not tenable.

[8] In Re: Adama India Pvt. Ltd. [2021 (9) TMI 1061 - Authority For Advance Ruling, Gujarat]

- In both Sections 17(5)(c) and 17(5)(d) of the CGST Act, the intent is the same, i.e., the denial of ITC when goods or services or both are used for construction of the immovable property. However, an exception is provided in respect of the construction of immovable property, which is in nature of plant and/or machinery. However, there is a minor difference in the wordings in clause (c) and clause (d) of Section 17(5) of the CGST Act due to the different words used, i.e., 'plant and machinery' in clause (c) and 'plant or machinery' in clause (d).
- In order to clarify ambiguity regarding interpretation of the above phrases, Explanation to Section 17(5) defines the phrase 'plant and machinery'. However, the phrase 'plant or machinery' is not separately defined under the GST law. The intention of the GST law was to deny ITC in respect of construction of immovable property, other than immovable property which is in the nature of plant and/or machinery.
- While defining 'plant and machinery' and not separately defining 'plant or machinery', it is obvious that the legislature intended both 'plant and machinery' and 'plant or machinery' must be read from the definition given in Explanation to Section 17(5) of CGST Act as it would never have intended to define one word (viz., 'plant or machinery') open to varied interpretations, which may cause confusion and legal disputes. This is obviously due to the fact that the legislature never wants to treat 'plant or machinery' differently from 'plant and machinery'. There is no distinction between the words 'and'/'or' in the expression used in clauses (c) and (d) of Section 17(5) of the CGST Act.
- *Vide* press release of the Ministry of Finance, the GST Council in their 55th meeting had recommended aligning the provisions of section 17(5)(d) of the CGST Act with the intent of the said provision by amending section 17(5)(d) of CGST Act to replace the phrase 'plant or machinery' with 'plant and machinery', retrospectively with effect from 1 July 2017 so that the said phrase may be interpreted as per Explanation to Section 17 of CGST Act.
- The tailing dam can be simply termed as a structure providing a storage facility for waste products of mining operations. This storage facility does not play any role in the quantity or quality of the minerals extracted and processed and metals manufactured by the taxpayer. Thus, the tailing dams cannot be qualified to be used for carrying on the core business activities
- Considering the above, ITC is not available with respect to the goods and services used for increasing the height of the tailing dam.

Supply of Holographic Labels by the Excise Department for affixation to liquor bottles is a supply of goods

United Breweries Ltd. Vs. Joint Commissioner of GST & Central Excise [TS-82-HC(MAD)-2025-GST]

Facts of the Case

- United Breweries Ltd. (Taxpayer) is engaged in the manufacture, bottling and distribution of alcoholic beverages (Beer) under a license procured from the Prohibition Commissioner on payment of a license fee, subject to conditions stipulated by the Government of Tamil Nadu (TN Government).
- To prevent the transportation and sale of spurious liquor, the Excise Policy of the TN Government mandates the affixing of 'holographic stickers' on every bottle of Beer which is sold in the retail market. Such sticker indicates payment of State Excise on every bottle of Beer, and the same is required to be purchased from the Prohibition and Excise Department (PE Department).
- The Taxpayer was under a *bona fide* belief that it was liable to pay tax on the 'holographic stickers' procured from the PE Department under the Reverse Charge Mechanism (RCM) as per sl. no:5 of notification no:13/2017 - Central Tax (Rate) dated 28 June 2017 (NN 13/2017). Accordingly, the Taxpayer discharged GST @18% under RCM for the period April 2018 to February 2020.
- Subsequently the Taxpayer filed an application under Section 54 of CGST Act seeking a refund of GST paid under RCM under mistake of law since supply of holographic stickers amounts to supply of goods and not supply of services, and consequently, the same would not be leviable to GST under RCM as per sl. no:5 of NN 13/2017.
- The refund sanctioning authority rejected the said application by *inter alia* holding that:
  - Supply of holographic labels by the PE Department is naturally bundled and supplied in conjunction with the service provided by the said department to comply with the requirement to indicate the duty-paid nature of the ultimate goods supplied by the Taxpayer.
  - PE Department classifies supply of holographic labels under HSN Code 99919 – '*Administrative Services of the Government nowhere else classified*' attracting GST @18% under RCM. Consequently, the Taxpayer is liable to pay GST under RCM.
- Against this, the Taxpayer filed an appeal before the First Appellate Authority (FAA). However, the appeal was rejected by the FAA and the Order-in-Original was upheld *inter alia,* holding that:
  - It is not the case of the Taxpayer that the change in perception has its root in any new provision in law or change in provisions of the relevant statute/ notification/ clarification/ order.
  - It cannot be considered that the payments made for procuring the holograms are neither a supply of goods nor a supply of services in terms of notification no:25/2019 – Central Tax (Rate) dated 30 September 2019 (NN 25/2019).
  - In a sale transaction, the seller has no say on the goods after completion of the sale, and certainly, the seller cannot dictate any term regarding the manner of utilisation of the goods sold. Thus, the activity of provisioning of holographic labels eliminates the existence of 'sale'. As a result, there is no merit in the contention that the procurement of holographic labels is a consequence of 'sale' by the PE Department.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Madras High Court.

Contentions of the Taxpayer

- The Petitioner procures a license from the PE Department for manufacturing Beer upon payment of license fees. The GST Council, in its 37th meeting, had issued a clarification (as notified vide NN 25/2019) wherein the Government had notified certain activities/transactions undertaken by the Central Government, State Government, Union Territory Government and Local Authority as public authorities to be treated neither as the supply of goods nor as the supply of services.
- Since 'holographic stickers' purchased from the PE Department are to be considered as a supply of goods and not a service, it would not attract GST under RCM as per NN 13/2017. Accordingly, the Taxpayer was entitled to claim a refund of tax paid under RCM. Further, there is no notification under the GST law, which mandates payment of tax under RCM for the sale of 'holographic stickers'.
- As a result, the payment of GST under RCM as per NN 13/2017 was a mistake, and hence, the Taxpayer is entitled to claim a refund under section 54 of the CGST Act.
- Without prejudice to the above submissions, even if the supply of holographic labels is considered as a part of the composite supply of alcoholic liquor license, then in terms of NN 25/2019, the supply of holographic labels would be exempt.

Contentions of the Tax Authority

- The Impugned Order is well reasoned and does not warrant any interference by the Hon'ble High Court.
- The holographic labels supplied by the PE Department to manufacturers of distillery and brewery items indicate that it is a part of the service provided and is an independent service. Thus, there was no mistake on the part of the Taxpayer in paying GST under RCM.

Observations and Ruling of the Madras High Court

- The following two distinct activities are carried out by the Tamil Nadu State Government:
  - Activity of granting liquor licenses to the manufacturers for manufacturing alcoholic liquor. This is an activity carried out by the State of Tamil Nadu as a sovereign authority. NN 25/2019 provides that service by way of a grant of an alcoholic liquor license is neither a supply of goods nor services. Thus, the same would neither be considered a taxable supply under Section 2(108) of the CGST Act nor be leviable to GST under RCM under Section 9(3) of the CGST Act.
  - As per Section 7(2) of the CGST Act, certain activities/transactions carried out by the Central/ State/Local Authority as public authorities shall neither be treated as a supply of goods nor as the supply of service.
- As far as the sale and purchase of 'holographic stickers' are concerned, they are supplied by the PE Department to be affixed on the manufactured and bottled alcoholic liquor. If the sale is to be treated as a supply of service, the Taxpayer would be liable to pay tax under RCM as per sl. no:5 of NN 13/2017. On the other hand, if the supply of 'holographic stickers' is treated as a supply of 'goods', it would be outside the purview of tax payable under RCM.
- A holographic sticker is a label. It is undisputed that 'label' is a 'thing' viz., noun. Holographic sticker is therefore goods within the meaning of Section 2(52) of the CGST Act as 'goods' means every kind of movable property. Further, the expression 'service' *inter alia* means anything other than goods, money and securities. Thus, the supply of 'labels' is only the supply of 'goods' and not the supply of 'services' by the PE Department.
- The question of treating the activity of the PE Department in granting liquor licenses to manufacturers for manufacturing alcoholic products and supply of 'holographic stickers' is not a composite supply within the meaning of Section 2(30) of the CGST Act because of the following:
  - Under Section 2(30) of the CGST Act, supply should consist of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.
  - Supply of 'holographic sticker' is not a taxable supply within the meaning of Section 2(108) of the CGST Act as a grant of liquor license is exempted under NN 25/2019.
  - The illustration under Section 2(30) of the CGST Act also makes it clear that there was no composite supply within the meaning of the definition of 'composite supply'.
  - Therefore, the supply of 'holographic stickers', viz., excise labels, is not naturally bundled in conjunction with the grant of a liquor license by the PE Department in the ordinary course of business where one of which is a principal supply.
  - Apart from the above, the supply of 'holographic stickers' is an independent activity and is not a composite supply.
  - Even if the grant of license by the PE Department was liable to GST under Section 9 of the CGST Act, the tax authorities would not have been justified in treating the activity of supply of 'holographic stickers' as a composite supply.
- Moreover, the supply of 'holographic stickers' cannot be construed as the supply of services under Section 2(102) of the CGST Act. As a result, procurement of 'holographic stickers' would not attract GST under the RCM in terms of NN 13/2017.
- The principles of estoppel equity are alien to tax jurisprudence. Merely because the Taxpayer has unwittingly paid GST under RCM in the past *ipso facto* would not mean that the Taxpayer was bound by its past practices. There is no contract with the tax authorities for invoking the promissory estoppel against the Taxpayer. If the Taxpayer has paid GST under RCM by mistake, it is entitled to claim a refund under Section 54 of the CGST Act.
- In view of the above, the Impugned Order issued by the FAA is liable to be quashed and is accordingly quashed with consequential reliefs with a direction to the tax authorities to process the refund claims and refund the amounts paid by the Taxpayer within a period of three months.

TRANSFER PRICING

Jurisdiction of TP Adjustments made based on MAP under DTAA with any country do not bind tax authorities of any other countries

The taxpayer is a wholly owned subsidiary of AON PLC, the ultimate parent company, incorporated in Ireland. During the Assessment Year (AY) 2008-09, the taxpayer was engaged in providing services such as human resources consulting services, payroll processing, business process outsourcing, and software development services. It had, during the AY, rendered such services to its Associated Enterprises (AEs) as well as unrelated parties.

Facts of the case are presented below:

- The taxpayer's case was selected for scrutiny, and for related party transactions, reference was made to the Transfer Pricing Officer (TPO). The TPO has made an upward TP adjustment of INR 44,06,38,092 to the transactions entered by the taxpayer with its AEs. The said adjustment comprised two parts as under:

1	TP Adjustment – US Transactions	INR 41,79,89,294
2	TP Adjustment – Non-US Transactions	INR 2,26,48,798
		INR 44,06,38,092

- The Assessing Officer (AO) passed the draft assessment order based on the TP Order. The taxpayer filed its objection before the Dispute Resolution Panel (DRP) against the draft assessment order. However, the contentions and submissions of the taxpayer did not find any favor with the DRP as well. The DRP passed an order, and based on the said directions, the AO passed the final assessment order.
- The Assessing Officer (AO) passed the draft assessment order based on the TP Order. The taxpayer filed its objection before the Dispute Resolution Panel (DRP) against the draft assessment order. However, the contentions and submissions of the taxpayer did not find any favor with the DRP as well. The DRP passed an order, and based on the said directions, the AO passed the final assessment order.
- Aggrieved by the same, the taxpayer has filed an appeal before the Hon'ble Income Tax Appellate Tribunal (Tax Tribunal). During the proceedings, the taxpayer used Rule 44G of the Income Tax Rules, 1963 (the Rules) and Article 27 of the Indo-US Double Taxation Avoidance Agreement (DTAA) to invoke the Mutual Agreement Procedure (MAP) in order to settle the transfer pricing despite pertaining to the US transactions.
- A framework to settle this dispute was agreed upon by the USA and India's competent authorities for the AYs 2006-07 to 2010-11 and the communication for the settlement of the dispute as worked out by the competent authorities was received by the taxpayer.
- The AO reduced the TP adjustment for US Transactions based on the MAP resolution. The remaining dispute before ITAT was the TP adjustment for Non-US Transactions. The ITAT passed an order remanding back the matter to the TPO to determine TP adjustment for non-US transactions using the framework agreed upon for US transactions under the MAP.

The taxpayer has filed an appeal before the Hon'ble High Court (HC), impugning the order passed by the ITAT.

Questions of law in the case:

"Whether it is apposite to use the framework agreed by competent authorities of the US and India under the MAP in terms of Article 27 of the Indo-US DTAA, for deciding transfer pricing issues that are not covered under the said framework?"

The HC stated that the concept of MAP evolved for resolving double taxation disputes through a consensual procedure within the framework of DTAAs. However, in this case, the MAP procedure was based on an agreement between the competent authorities of India and the US, which was accepted by the taxpayer. The HC emphasised that there was no agreement between the tax authorities of other non-US countries regarding the determination of the arm's length price (ALP) of non-US transactions.

Therefore, the HC held that TP adjustments made based on the MAP under the Indo-US DTAA do not bind the tax authorities of non-US countries. The HC also stated that the agreement under MAP cannot be extrapolated as a determination of ALP of international transactions that are not subject to MAP.

AON Consulting Pvt. Ltd [TS-40-HC-2025(DEL)-TP]

Importance of consistency and the persuasive value of MAP (Mutual Agreement Procedure) and APA (Advance Pricing Agreement) in tax matters, particularly when it comes to the same taxpayer or assessee.

While MAP and APA procedures are not legally binding on other taxpayers, they hold persuasive value for the same taxpayer in subsequent assessments. The principle of consistency in tax matters ensures that the tax authorities should follow the same reasoning and approach in future cases with the same taxpayer, provided the facts and circumstances remain unchanged. If the authorities depart from the previous position without adequate justification, the taxpayer can argue for the benefit of consistency, which aligns with the ends of justice in tax adjudication.

The present case revolves around ensuring that the technology transfer agreements between JCB India and JCB UK are priced in line with the arm's length principle and that any transfer pricing adjustments are fair and consistent with previous years. If JCB India has already followed an acceptable methodology in prior years (with or without an APA), the authorities would be expected to uphold that methodology unless there is a valid reason to change it.

Facts of the case are presented below:

- JCB India Limited (Appellant) is a subsidiary of J.C. Bamford Excavators Ltd. (JCB UK) and manufactures and trades excavators, loaders, construction equipment, spares, and components.
- Technology Transfer Agreements (TTA) were entered into between JCB India and its AEs, where JCB India receives technology and know-how from JCB UK.
- The purpose of these agreements was to enable JCB India to manufacture technologically advanced products for earthmoving and construction equipment.
- Appellant entered into various international transactions with its AEs during the Assessment year (AY) 2013-14. Transfer Pricing Officer (TPO) has accepted all the international transactions of JCB India (the Appellant) except for the transaction related to the payment of royalty concerning the licensed manufacturing segment of the company, which involves the payment for the technology and know-how used for manufacturing various models of earthmoving and construction equipment.
- The Appellant applied the Comparable Uncontrolled Price (CUP) method to benchmark its royalty transaction with JCB UK and demonstrate that the payment of royalty complies with the arm's length principle as prescribed under Indian transfer pricing (TP) regulations.
- Since the average royalty rate from the comparables is 6.37%, and the 5% royalty paid by JCB India is lower than this average, the Appellant argued that the royalty payment is within the acceptable arm's length range.
- The Appellant essentially claimed that, as long as the royalty rate is equal to or lower than the average of the comparables (6.37%), it satisfies the arm's length standard.
- JCB India (the Appellant) has conducted a corroborative analysis using the Transactional Net Margin Method (TNMM) to further support the arm's length nature of its royalty payment to JCB UK for the licensed manufacturing segment.

Chronology of Events:

1. **TPO's TP Adjustment (2016):**
   - **JCB India** had paid a **5% royalty** to its **Associated Enterprise (AE)** in the **UK**. However, the **Transfer Pricing Officer (TPO)**, in his order dated **October 20, 2016**, decided that the **arm's length price** of the royalty should be only **2%**.
   - As a result, the TPO made a **transfer pricing adjustment** of INR **1,21,40,52,000** (adjusting the royalty paid from 5% to 2%).
2. **Draft Assessment Order (2016):**
   - Following the TPO's order, the **Assessing Officer (AO)** passed a **draft assessment order** on **December 29, 2016**, confirming the TP adjustment of INR **1,21,40,52,000**.
3. **Dispute Resolution Panel (DRP) Directions (2017):**
   - The **Dispute Resolution Panel (DRP)**, on **September 5, 2017**, upheld the TPO's adjustment, confirming the reduction of the royalty rate to **2%** for the **UK AE**.
4. **Final Order by AO (2017):**
   - The **AO** passed the **final assessment order** on **October 30, 2017**, confirming the TP adjustment based on the DRP's directions.
5. **Appeal Before ITAT (2019):**
   - **JCB India** filed an **appeal** before the **Income Tax Appellate Tribunal (ITAT)**, challenging the TP adjustment made by the Indian tax authorities.

- The **ITAT**, in its **order dated May 29, 2019**, ruled as follows:
    - The **issue of royalty payments to the AE in the UK** had already been **settled under the Mutual Agreement Procedure (MAP)** between the **UK and Indian tax authorities**.
    - As the matter had been resolved under **MAP**, the appeal concerning **royalty payments to the AE in the UK** was allowed to be **withdrawn**.
    - However, the case concerning the **royalty payments to the AE in Germany** was **remanded** back to the **TPO** for further examination.

ITAT's Order and Its Implications:

The ITAT, in its decision, made the following important observations:

1. **MAP Settlement for UK AE:**
    - The **Mutual Agreement Procedure (MAP)** was invoked to resolve the dispute over the **royalty payments** between **JCB India** and its **AE in the UK**.
    - The **ITAT** recognised that the **royalty issue** concerning **JCB UK** had already been settled by the **competent tax authorities** of **India and the UK** under the **MAP**, and therefore, no further action was needed in the domestic proceedings regarding the **UK AE**.
    - This settlement under MAP effectively nullified the **transfer pricing adjustment** made by the **TPO** for the **UK AE**, and the **ITAT** allowed the **appeal concerning the UK AE** to be **withdrawn**.
2. **Remand of Germany AE Issue:**
    - The issue concerning the **royalty payments to the AE in Germany** was not covered by the **MAP** settlement.
    - As a result, the **ITAT remanded** the matter back to the **TPO** for fresh examination. The **TPO** was directed to determine the **arm's length price** of the **royalty payments** made to the **AE in Germany** for the **Assessment Year (A.Y.) 2013-14** and to do so in accordance with the law.
    - The **TPO** was also required to grant a **proper opportunity** to **JCB India** to present its case, ensuring fairness in the process.

Key Takeaways:

1. **MAP Resolutions Are Binding: The ITAT's ruling** emphasises the **binding nature of MAP settlements**. In this case, the matter between **India and the UK** had already been resolved under **MAP**, and as such, the **ITAT** rightly allowed the **appeal regarding the UK AE** to be **withdrawn**.
2. **Separate Review for Germany AE:** The issue concerning the **Germany AE** remains unresolved and is now subject to a **fresh examination by the TPO**. The TPO is instructed to determine whether the **royalty payments** made to the **German AE** comply with the **arm's length principle**.
3. **Opportunities for the Assessee**: The **ITAT** ensured that **JCB India** would be granted **an opportunity to represent its case** during the re-assessment process, underlining the importance of procedural fairness.
4. **Future Implications:** This case sets a precedent for how **MAP resolutions** can resolve **transfer pricing disputes** between two countries and also underscores the need for tax authorities to follow proper procedures when re-assessing international transactions that fall outside such agreements.

Conclusion:

The ITAT's decision effectively resolves the issue of royalty payments to the AE in the UK by acknowledging the MAP settlement between India and the UK while remanding the issue concerning the German AE back to the TPO for further examination. This ensures that the dispute is resolved fairly and in accordance with the arm's length principle, with JCB India being given a chance to present its case.

JCB India Limited [TS-62-ITAT-2025(DEL)-TP]

HC Dismisses Unilever Industries' writ states petitioner is at liberty to file an appeal under section 246A(bb) but directs refund as per order u/s.154 r.w.s.92CD

The case involves Unilever Industries Pvt. Ltd. (the Petitioner) and their Transfer Pricing (TP) dispute related to Assessment Year 2017-18.

Key Facts:

1. **Return of Income Filing (Assessment Year 2017-18):**
    - *The Petitioner filed their Return of Income (RoI) for Assessment Year 2017-18 on 30th November 2017.*
    - *The declared total income was INR 181,90,84,190.*
2. **Selection for Scrutiny:**
    - *The Return of Income was selected for scrutiny assessment, and a notice under Section 143(2) of the Income Tax Act, 1961 was issued on 26th September 2018. This means that the Revenue sought to conduct a more detailed examination of the assessee's tax filings.*
3. **Proposed Adjustments:**
    - *A draft assessment order was passed proposing a Transfer Pricing (TP) adjustment along with other disallowances. The adjustment was related to the royalty payments made by the assessee to its associated enterprises (AEs).*
4. **Objections to Dispute Resolution Panel (DRP):**
    - *The Petitioner filed objections to the draft assessment order before the Dispute Resolution Panel (DRP).*
    - *During the pendency of the objections, the Petitioner entered into an Advance Pricing Agreement (APA) with the Central Board of Direct Taxes (CBDT) on March 28, 2022.*
5. **DRP Directions:**
    - *The DRP directed the Assessing Officer (AO)/Transfer Pricing Officer (TPO) to give effect to the APA as per Section 92CD of the Income Tax Act, subject to the Petitioner filing a modified return of income within the prescribed timeline under Section 92CD(1).*
6. **Modified Return of Income (RoI) Filing:**
    - *The Petitioner filed a modified return of income on June 24, 2022, in line with the directions issued by the DRP.*

- *The assessee also filed an Annual Compliance Report as per Rule 10A.*

7. **Letter from Revenue (March 31, 2024):**
   - *On March 31, 2024, the Revenue issued a letter which purportedly gave effect to the APA and the DRP's directions but also enhanced the assessee's income by certain disallowances.*
   - *The Petitioner contested that this letter, enhancing the declared income, was barred by limitation as per the law.*
8. **Legal Dispute:**
   - *The Petitioner argued that the letter issued by the Revenue, purportedly giving effect to the APA, was issued after the prescribed limitation period and, therefore, could not alter the declared income.*

Bombay High Court's Ruling:

1. ***Dismissal of the Writ Petition:***
   - *The Bombay High Court (HC) observed that the letter issued on March 31, 2024, was not a mere letter but an order under Section 92CD(3) of the Income Tax Act. Section 92CD deals with giving effect to the APA.*
   - *The HC pointed out that an appeal against this order could be filed under Section 246A(bb) of the Act.*
   - *Since the Petitioner had an alternate remedy in the form of an appeal, the HC dismissed the writ petition filed by the assessee.*
2. ***Refund of Admitted Amount:***
   - *Despite dismissing the writ petition, the HC noted that an order had been passed under Section 154 read with Section 92CD, which showed that an amount of INR 23,77,74,400 was refundable to the assessee.*
   - *The HC directed the Revenue to refund the admitted amount of INR 23,77,74,400 along with applicable interest until the date of payment.*

Legal Provisions Cited:

- ***Section 92CD: This section provides the framework for giving effect to an Advance Pricing Agreement (APA). It allows the taxpayer to file a modified return and requires the Assessing Officer (AO) to comply with the terms of the APA.***
- ***Section 246A(bb): This section allows an appeal against orders passed under Section 92CD(3), providing the taxpayer with an alternate remedy if they are aggrieved by the order.***
- ***Section 154: This section deals with the rectification of mistakes by the tax authorities. In this case, an order under Section 154 read with Section 92CD was issued, acknowledging the refund of the amount.***

Key Takeaways:

- ***Efficacious Alternate Remedy: The HC dismissed the writ petition because the Petitioner had an alternate remedy of filing an appeal under Section 246A(bb) against the order issued under Section 92CD(3).***
- ***Refund of Admitted Amount: Despite dismissing the petition, the HC ensured that the admitted refund of INR 23,77,74,400 was processed and directed its payment with interest.***
- ***Transfer Pricing and APA: The case highlights the importance of Advance Pricing Agreements (APAs) and the procedural requirements under Section 92CD for their implementation.***
- ***Limitation Period: The HC acknowledged the limitation issue raised by the assessee but emphasised that the correct legal process was to file an appeal under Section 246A(bb) rather than relying on a writ petition.***

Conclusion:

In this case, while the Bombay High Court upheld the Revenue's decision to enhance the declared income in line with the APA, it ensured the refund of the amount acknowledged as due to the assessee. The case also reinforced the importance of following the statutory appeal process when an effective remedy is available under the law.

Unilever Industries Pvt Ltd [TS-56-HC-2025(BOM)-TP]

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