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ACCOUNTING UPDATES

Institute Of Chartered Accountants Of India (ICAI)

EAC Opinion

The EAC of ICAI examined whether a restaurant operator may capitalise salary costs of staff and the cost of food and beverage materials incurred during the pre-opening testing phase of a new outlet under Ind AS 16. The Company argued that these costs were directly attributable to bringing the restaurant to the condition necessary for its intended use, as testing activities ensured consistency in quality, ambience, and service standards across outlets. It is therefore proposed to capitalise these costs as part of the outlet's construction cost.

The Committee observed that, for the purpose of Ind AS 16, the relevant unit of account is the individual items of property, plant and equipment (PPE)—such as kitchen equipment, HVAC systems, lighting systems, and other machinery—not the restaurant outlet as a whole. Capitalisation is appropriate only for costs that are directly attributable to bringing a specific asset to the location and condition necessary for it to operate as intended. The EAC noted that the assets in question were already operational and that the testing activities primarily aimed at achieving brand consistency, training staff, and preparing the outlet for commercial launch—activities that fall under costs of opening a new facility or conducting business in a new location, which Ind AS 16 specifically prohibits from capitalisation.

Accordingly, the EAC concluded that pre-opening employee benefit costs and food and beverage material costs for trial runs cannot be capitalised and must be expensed as incurred. However, an exception exists for any clearly identifiable portion of employee costs relating to technical personnel who are engaged in resolving equipment-specific operational issues necessary to bring those assets to the condition required for their intended use. Only such directly attributable costs may be capitalised. The remainder of the testing and trial-related expenditure should be charged to the statement of profit and loss.

REGULATORY UPDATES

Ministry of Corporate Affairs (MCA)

Companies (Meetings of the Board and its Powers) Amendment Rules, 2025

The MCA, through its notification dated 3 November 2025, has provided further clarity on what constitutes the *"business of financing industrial enterprises"* for the purposes of Section 186(11)(a) of the Companies Act, 2013. The notification introduces Rule 11(2)(b) into the Companies (Meetings of Board and its Powers) Amendment Rules, 2025, thereby expanding the scope to include Finance Companies registered with the IFSCA that undertake activities specified under sub-clauses (a) or (e) of Regulation 5(1)(ii) of the IFSCA (Finance Company) Regulations, 2021, in the ordinary course of business. Rule 11(2)(a) continues to cover NBFCs registered with the RBI that provide loans or issue guarantees/security for loan repayment as part of their regular business activities.

Securities and Exchange Board of India (SEBI)

SEBI ICDR Third Amendment Regulations

SEBI, through its notification dated 31 October 2025, has issued the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2025, which amend the ICDR Regulations, 2018.

These amendments introduce key changes relating to anchor investor participation. The revised provisions modify the framework for the number of permitted investors and allocation thresholds, stipulating that for allocations up to INR 250 crore, a minimum of 2 and a maximum of 15 investors may participate, with a minimum allotment of INR 5 crore per investor. For allocations exceeding INR 250 crore, the regulations now require a minimum of 5 investors and allow an additional 15 investors for every further INR 250 crore or part thereof, again subject to the minimum allotment requirement.

Further, the amendment substitutes the anchor investor reservation structure 40% of the anchor portion must now be earmarked such that 33.33% is reserved for domestic mutual funds and 6.67% for life insurance companies and pension funds, with any under-subscription in the latter category reallocated to domestic mutual funds. The notification also clarifies definitions for "life insurance company" and "pension fund" with reference to their respective regulators. These amendments will come into effect from 30 November 2025.

Consultation Paper on amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, with the objective of enhancing ease of doing business and increasing the participation of retail investors in public issue

The first set of proposals relates to a review of the lock-in requirements applicable during IPOs. Currently, pre-issue capital held by non-promoters must be locked in for six months from the date of allotment; however, depositories are unable to create a lock-in on shares that are pledged prior to the IPO. This limitation creates significant practical challenges, particularly when such shareholders are untraceable or unable to release existing pledges. To address this, SEBI has proposed an enabling mechanism whereby companies would amend their Articles of Association to expressly treat pledged shares as locked-in for the applicable duration. The proposal further stipulates that, upon invocation or release of a pledge, the remaining lock-in would continue in the pledgee's or pledger's account, respectively. Additionally, SEBI has suggested inserting a proviso under Regulation 17 to permit depositories to mark such securities as "non-transferable" when a standard lock-in cannot be created. SEBI has sought public comments on whether this framework sufficiently resolves the challenges associated with lock-in of pledged shares.

The second part of the Consultation Paper reviews disclosure requirements relating to the Abridged Prospectus. SEBI notes that the full offer document (DRHP/RHP) is often lengthy and complex, posing difficulties for retail investors and limiting meaningful participation during the 21-day public comment period. Although regulations currently require an Abridged Prospectus to accompany each bid form, SEBI observes that this document does not significantly improve investor comprehension. To strengthen accessibility, SEBI proposes that the Offer Document Summary—which already forms part of the offer document—be made available separately on the websites of the issuer, SEBI, stock exchanges, and lead managers. SEBI also proposes rationalising the content and format of the Summary to more effectively highlight major risk factors, key financial information, and other material disclosures. In light of these enhancements, SEBI has recommended dispensing with the requirement to prepare and distribute a standalone Abridged Prospectus. Feedback has been invited on the proposals to separately host the Summary, refine its contents, and remove the Abridged Prospectus requirement.

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

SEBI has notified certain amendments in the SEBI Listing Regulations.

Key amendments include:

- Definition of Related Party Transactions (RPTs): Amended the definition of RPTs by expanding the existing exemption for retail purchases from the listed entity. The exemption, which earlier applied to "its directors or its employees," will now apply to "directors or key managerial personnel of the listed entity or its subsidiary, and the relatives of such directors or key managerial personnel."
- Materiality of Related Party Transactions (Regulation 23) - Introduced a scale-based threshold mechanism for determining material RPTs based on the annual consolidated turnover of the listed entity, as under:

Schedule XII of the regulations – Material RPT Thresholds:

Consolidated Turnover of Listed Entity	Threshold
I) Up to INR 20,000 cr.	10% of annual consolidated turnover of the listed entity
II) More than INR 20,000 Crore to up to INR 40,000 Crore	INR 2,000 cr. + 5% of annual consolidated turnover of the listed entity above INR 20,000 cr.
III) More than INR 40,000 Crore	INR 3,000 cr. + 2.5% of the annual consolidated turnover of the listed entity above INR 40,000 cr. or INR 5,000 cr. (whichever is lower)

- Omnibus shareholder approval for *material related party transactions* granted at an Annual General Meeting (AGM) will remain valid until the next AGM, provided it is held within the statutory timelines under Section 96 of the Companies Act, 2013. Such approvals are granted in general meetings other than the Annual General Meeting. Their validity cannot exceed one year from the date of approval.
- Regulation 53- Listed entities must submit and publish the annual report on or before the date of dispatch to shareholders or submission to the relevant government authority. If any changes are made to the annual report, a revised copy along with explanations must be published within 48 hours after the AGM on or before the date of dispatch of the same to its shareholders or the date of submission to the Central Government or the State Government, as the case may be.
- Regulation 58- Entities must send a web-link with the exact path to the full Annual Report. which may, at the option of the listed entity, also include a static QR code, may also be provided to security holders who have not registered their email addresses.

This notification shall come into force on the date of its publication in the official gazette, and those in relation to related parties as mentioned above shall come into force on the 30th day from the date of their publication.

Timeline for submission of information by the Issuer to the Debenture Trustee(s)

SEBI vide circular dated 25 November 2025, has mandated that, to enable Debenture Trustees to perform their function efficiently and in a timely manner, issuers shall submit the following reports/ certificate to the Debenture Trustees within the prescribed timelines:

Reports/ Certificate	Periodicity
Security cover Certificate, statement of value of pledged securities and statement of value of Debt Service Reserve Account or any other form of security offered.	Quarterly basis within 60 days from the end of each quarter, except for the last quarter, when submission is to be made within 75 days.
Net worth certificate of guarantor in case the debt securities are secured by way of a personal guarantee.	Half-yearly basis within 60 days from the end of each half-year.
Financials/value of guarantor prepared on the basis of audited financial statement, etc., of the guarantor (secured by way of corporate guarantee).	On an annual basis, within 60 days from the end of each financial year.
Valuation report and title search report for the immovable/ movable assets, as applicable.	Once in three years, within 60 days from the end of the financial year.

The provisions of this circular shall come into effect from quarter ended 31 December 2025.

Reserve Bank of India (RBI)

Foreign Exchange Management (Export of Goods and Services) (Second Amendment) Regulations, 2025

The Reserve Bank of India has issued a notification introducing following key amendments to the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015:

- **Regulation 9** - Realisation period for export: Exporters have 15 months (earlier 9 months) to realise and repatriate the full value of goods, software, or services exported from India.
- **Regulation 15** - Advance payment against exports: Exporters receiving advance payments can ship goods within 3 years (earlier 1 year), or as per contractual agreement, whichever is later.

Consequentially, RBI's prior approval is required in case exporter's inability to make the shipment 3 years (earlier 1 year).

The amendment shall come into force upon publication in the Official Gazette.

RBI issues Consolidated Master Directions

RBI has undertaken a significant organisational overhaul of the regulatory instructions issued by its Department of Regulation ('DoR'). As part of this major rationalisation initiative, over 9,000 circulars and guidelines issued over the years have been consolidated on an "as-is" basis. This exercise has resulted in the issuance of function-wise Master Directions ('MDs') tailored to each category of regulated entity, thereby enhancing clarity, accessibility, and regulatory coherence.

The restructured framework covers a wide spectrum of entities regulated by the RBI, including Commercial Banks, Small Finance Banks, Payments Banks, Local Area Banks, Regional Rural Banks, Urban and Rural Co-operative Banks, All India Financial Institutions, Non-Banking Financial Companies, Asset Reconstruction Companies, and Credit Information Companies. In addition, regulatory instructions previously issued by NABARD to Regional Rural Banks and State and Central Co-operative Banks have been consolidated in consultation with NABARD, ensuring uniformity and alignment across the cooperative banking ecosystem.

A total of 244 function-wise Master Directions has now been released under this initiative. An important outcome of the reorganisation is the streamlining of Know Your Customer (KYC) compliance: each regulated entity will now be governed by KYC directions specifically applicable to its category. For entities not directly regulated by the DoR, KYC compliance will be governed by the newly enacted RBI (Non-Banking Financial Companies – Know Your Customer) Directions, 2025.

Other Regulatory matters

NFRA publishes an 'Audit Practice Toolkit' to enhance audit quality in India

NFRA has published an 'Audit Practice Toolkit' on 3 November 2025. The publication prepared by NFRA Staff is part of NFRA's outreach initiatives for audit firms and audit practitioners which is in continuation of NFRA's recent initiatives. NFRA has issued this audit practice toolkit with regards to fundamental and critical aspect of the audit i.e., development and document of audit strategy commensurate with the risk profile of the auditee entity. This toolkit is intended to be a sample document which is scalable and adaptable to different sizes and industry category of the auditee companies. NFRA reiterates similar audit practice tool kits in other significant audit areas would be released during the financial year

Ministry of Labour and Employment

Government Announces implementation of Four Labour Codes to Simplify and Streamline Labour Laws

The Government of India has announced the implementation of the four Labour Codes – **the Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020** with effect from 21 November 2025, rationalising 29 existing labour laws.

Key highlights of the Code inter-alia are as follows:

- Fixed-Term Employees will be eligible for Gratuity after just one year, instead of five.
- 'Gig work', 'Platform work', and 'Aggregators' have been defined for the first time. Under Code on Social Security, 2020 all workers including gig & platform workers to get social security coverage. All workers will get PF, ESIC, insurance, and other social security benefits.
- All workers to receive a statutory right minimum wage payment.
- Uniform definition of 'wages' for calculating benefits related to Gratuity, Employees' State Insurance, Leave Encashment, Overtime, Statutory Bonus, etc.
- Mandatory appointment letters to all workers. Written proof will ensure transparency, job security, and fixed employment.
- ESIC coverage and benefits are extended Pan-India - voluntary for establishments with fewer than 10 employees, and mandatory for establishments with even one employee engaged in hazardous processes.
- Single registration, PAN-India single license and single return.
- Improved safety and health standards, including free annual health check-ups of the age above 40 years and night-work options for women with safeguards.
- Higher threshold for layoffs requiring government approval (from 100 to 300 workers).

During transition, the relevant provisions of the existing labour Acts and their respective rules, regulations, notifications, standards, schemes, etc. will continue to remain in force.

National Stock Exchange of India (NSE), BSE Ltd (BSE)

FAQs on submission of financial results under Regulation 33 of SEBI LODR & Master Circular for compliance with provisions of SEBI by listed entities.

NSE & BSE have issued an updated FAQs dated 17 November 2025, to guide listed entities, on the submission of financial results under Regulation 33 of the SEBI (LODR) Regulations, 2015 and others thereof. Key clarifications *inter alia* include

- After IPO, newly listed companies must submit financial results for the next quarter or financial year within timelines under Regulation 33 or within 21 days from the date of listing.
- SME companies that have voluntarily chosen to file quarterly results must still follow the mandatory requirement of submitting half-yearly results. Further, SMEs must ensure that the half-year financial data fields are fully completed as per Regulation 33.
- In case the SME company's post-issue paid-up capital crosses Rs. 25 crore, it must begin filing quarterly results like main-board companies. The requirement depends on when the allotment takes place
  - Wherein allotment happens after the end of a quarter but on or before the due date for submitting quarterly financial results, the SME must submit its quarterly results in that quarter, and
  - In case allotment happens both after the quarter and due date, the submission of financial results for the relevant period will be next quarter.
- SME filing obligation changes immediately as it migrates from the SME platform to the Main Board — If migration happens during the quarter or before the due date, the Company must submit financial results for that quarter. However, if the migration takes place post the due date of filing results, then that quarter's results are not required to be filed.
- Companies listed as a result of schemes of arrangement, such as mergers or demergers, must follow similar rules. Companies that list during the quarter or before the due date, financial results must be submitted and those listing after the due date, filings begin from the next reporting period. SME companies must also comply with the half-yearly submission requirement under Regulation 33(5).
- Companies that have subsidiaries, joint ventures or associate companies must submit both standalone and consolidated financial results. If any subsidiary or related entity is excluded from consolidation, the Company must clearly explain the reason for such exclusion in the notes to the results.
- Segment reporting is mandatory, even for companies operating in only one business segment. Company's must declare the fact of single reportable segment, as required by applicable accounting standards.
- Companies that do not have any subsidiaries, associates, or joint ventures must mention the fact in their notes section, and in case Company has subsidiaries, associates, or joint ventures and do not file consolidated financial results, it shall provide explanation in the notes.
- In cases where standalone and consolidated financial figures are the same, the Company should state the reason for the identical numbers.
- With respect to the last quarter of the financial year, companies shall include a note clarifying that the figures represent the balancing numbers between audited full-year results and the year-to-date results up to the third quarter. SEBI has made this disclosure mandatory to ensure consistency in reporting.
- Companies shall revise their XBRL filings in specific circumstances — A revised financial XBRL must be submitted if there is a discrepancy between the PDF and XBRL results, if the financial results are revised or restated, or if the company voluntarily chooses to update the filing. In all cases, an explanation for the revision must be provided in the "revision remarks" field.

REGULATORY UPDATES:

Securities and Exchange Board of India (SEBI)

Notification dated 1 November 2025: Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2025[1]

Part A: Simplification of REIT/InvIT Investment Rules

This notification targets simplification by omitting clause (b) of Regulation 52(6A) in Chapter VII, which previously imposed specific restrictions on certain investments. Schedule VII Clause 2 now explicitly inserts a 10% cap on mutual fund holdings in units of REITs issued by a single issuer after "paid up capital carrying voting rights," mirroring equity exposure limits to curb concentration. The term "company" is substituted with "entity" in Regulation 49AA sub-regulation (3) and Schedule VII Clause 10, expanding applicability beyond corporate structures to trusts and other issuers. Additionally, REIT references are systematically omitted from Regulation 49AA(4) (including clauses a, b i-ii, and proviso) and Schedule VII Clause 13 (sub-clauses a-e), streamlining language while retaining core InvIT investment permissions under the same conditions. These changes, effective from gazette publication on 31 October 2025, enhance clarity and operational ease for mutual funds investing in REITs and InvITs without altering fundamental risk frameworks.

Part B: Expanded Flexibility and Harmonised Limits

Mutual funds receive explicit permission to invest in REIT units alongside equity derivatives via insertion in Regulation 2(1)(ja) after "equity derivatives," classifying them as eligible instruments. Regulation 49(3) raises the minimum investment mandate in specified assets from 95% to 97% of net assets, tightening allocation discipline. Concentration risks are addressed through harmonised ownership caps in Regulation 49AA(2) and Schedule VII Clause 2: mutual funds under all schemes cannot exceed 10% of any entity's paid-up voting capital or 10% of REIT units from a single issuer; if reached, specialised investment funds (SIFs) across strategies are limited to 5% in the same, as clarified in the updated Explanation. Regulation 49AA(4) now focuses solely on InvITs post-REIT omissions. These provisions balance growth opportunities with investor protection, aligning with SEBI's 31 October 2025 notification

Consultation paper dated 6 November 2025 on Amendments to SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007

SEBI has issued a consultation paper proposing revisions to the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 (CAPSM) with the aim of widening regulatory coverage and modernising certification norms. Under the proposed amendments, the definition of "Associated Persons" would be expanded to include regulated entities, as well as individuals "intending to be engaged" or involved "directly or indirectly" in securities-market activities — a change intended to bring aspiring participants such as students and indirect participants under the regulatory ambit. To enhance professional standards, SEBI proposes recognising long-duration courses offered by the National Institute of Securities Markets (NISM) — delivered physically, online, or in hybrid mode — as a valid route for certification and Continuing Professional Education (CPE), alongside existing exam-based pathways. The regulator also seeks to permit CPE programs in electronic/hybrid mode to increase accessibility. In addition, SEBI plans to overhaul existing exemptions — currently available to "principals," persons above 50 years of age, or those with 10+ years' experience — replacing them with a stricter combined exemption for individuals aged at least 50 years and having at least 10 years of relevant securities-market experience, with age and experience to be reckoned as of the date of examination or CPE. The consultation remains open for public comments until 27 November 2025.

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

[1] F. No. SEBI/LAD-NRO/GN/2025/272.

Consultation on draft circular dated 7 November 2025: Clarifications and specific modalities with respect to maintaining pro-rata rights of investors of AIFs

SEBI has issued a draft circular to clarify and streamline the implementation of pro-rata rights for investors in Alternative Investment Funds (AIFs), following amendments to the AIF Regulations in November 2024 and feedback from the industry. The draft provides guidance on how investor commitment or undrawn commitment should be used for pro-rata drawdowns and distributions, and mandates upfront disclosure of the chosen methodology in the PPM. It also lays down rules to prevent disproportionate investor exposure and explains how existing schemes must align their drawdown practices going forward, without this being treated as a material change. For open-ended Category III AIFs, pro-rata drawdowns may not apply, but redemptions and distributions must follow a unit-based pro-rata approach. The circular clarifies that distributions from investments made before 13 December 2024 may follow existing waterfalls, and modifies earlier guidance to exempt carried interest and similar arrangements from pro-rata requirements. Investor commitments must be recorded in INR for consistency. SEBI may issue further implementation standards through the SFA, and managers and trustees must ensure proper documentation and compliance reporting. Public comments on the draft were invited until 28 November 2025

Circular dated 25 November 2025: SEBI (Debenture Trustees) Regulations, 1993[2]

The Circular dated 25 November 2025, specifies the terms and conditions for Debenture Trustees "DT" undertaking activities outside SEBI's regulatory purview, following the insertion of Regulation 9C in the SEBI (Debenture Trustees) Regulations, 1993 "DT Regulations". This Circular comes into immediate effect, issued under Section 11(1) of the SEBI Act, 1992 and Regulation 2A of the DT Regulations.

Regulation 9C of the DT Regulations permits a DT to undertake (a) activities regulated by other financial sector regulators, and (b) fee-based, non-fund based financial services activities not regulated by SEBI or any other regulator, through separate business units "SBU" and on an arm's-length basis, (collectively called as permitted activities).

These activities may be undertaken subject to the conditions specified in the Circular, one of which is that DTs regulated by the Reserve Bank of India must carry out DT activities through SBU, and must also comply with the other conditions specified in the Circular.

Circular dated 25 November 2025: Modifications to Chapter IV of the Master Circular for Debenture Trustees ("DTs") dated 13 August 2025, ("Circular")[3]

The Circular is addressed to all registered debenture trustees, issuers who have listed and/or propose to list debt securities, recognised stock exchange and depositories.

The Circular provides clarity on the manner of utilisation of the Recovery Expense Fund ("REF").

In case of default in listed debt securities, REF shall be used by DTs to take prompt action for enforcement/ legal proceedings. List of activities relating to same are mentioned in Para 2.1 of Circular, for which no prior approval of debenture holders ("DH") would be required. However, DTs must intimate DH through email and disclose the reimbursement on their website. For any usage beyond the specified list, prior consent of DH must be obtained and inform to the Designated Stock Exchange ("DSC").

The Circular further mentions the process for DTs to receive funds to DSC and DTs to maintain records and provide regular updates to DH. It also defines the concept of a Lead Debenture Trustee.

The Circular is effective with immediate effect.

Circular dated 25 November 2025: Timeline for submission of information by the Issuer to Debenture Trustee(s) ("DTs), ("Circular")[4]

The Circular is addressed to all Registered DTs, issuers of listed / proposed-to-be-listed debt securities and recognised stock exchanges.

To ensure that DTs can carry out their responsibilities efficiently and in timely manner, the Circular effective from quarter ending 31 December 2025, specifies following timelines for issuers to submit reports and certificates to DTs:

Reports/ Certificate	Periodicity
Security cover Certificate (as per Annex-VA to DT Master Circular)	Quarterly basis within 60 days from end of each quarter except last quarter when submission is to be made within 75 days.
Statement of value of pledged securities	
Statement of value for Debt Service Reserve Account or any other form of security offered	
Net worth certificate of guarantor (for personal guarantee-backed securities)	Half yearly basis, within 60 days from end of each half-year.
Financials/ value of guarantor prepared on basis of audited financial statement etc. of the guarantor (secured by way of corporate guarantee)	Annual basis within 60 days from end of each financial year.
Valuation report and title search report for the immovable/ movable assets, as applicable.	Once in three years, within 60 days from the end of the financial year

[1] HO/17/11/12(3)2025-DDHS-POD1/ I/146/2025
[2] HO/17/11/12(3)2025-DDHS-POD1/ I/145/2025
[3] HO/17/11/12(3)2025-DDHS-POD1/ I/144/2025

Notification dated 25 November 2025: SEBI (Investment Advisers) (Second Amendment) Regulations, 2025, (“Notification”)[5]

SEBI has amended the existing SEBI (Investment Advisers) Regulations, 2013 with immediate effect, introducing significant changes affecting registered Investment Advisers (“IA”), particularly regarding qualification requirements, individual IA thresholds, and compliance procedures.

Key amendments are as under:

1. **Stricter Thresholds for Individual IAs:**

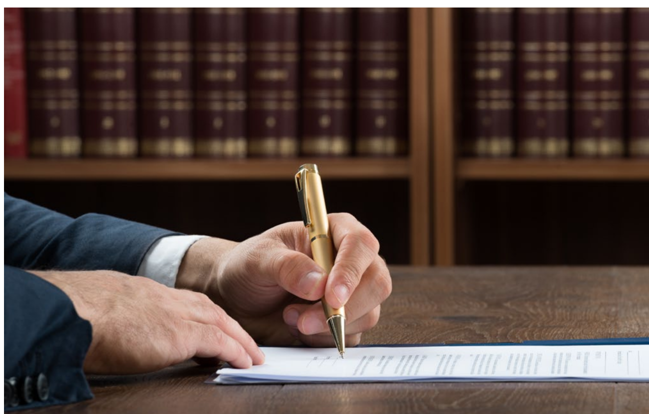
- Registered Individual IA are now subject to mandatory transition to Non-Individual IA if number of clients exceeds three hundred at any point in time or fee collected during the financial year exceeds three crore rupees (₹3,00,00,000), whichever is earlier.
- Transition process and timeline for above is also provide in this Notification.

2. **Enhanced Qualification and Certification Requirements:**

- SEBI has expanded the qualification requirements to include persons associated with Investment advice and simplified the educational eligibility to allow a graduate degree (or equivalent) from a recognised Indian or foreign university or CFA Charter along with National Institute of Securities Markets (“NISM”) accredited certification.
- Individual IAs, principal officers, associated persons, and partners (in case of partnership firms) must obtain fresh NISM certification prior to expiry of existing certificate, or within 3 years of registration.

3. **Compliance officer and amendments to Application Form (Form A):**

- Form A now requires the inclusion of the compliance officer in the details of contact persons, alongside the Principal Officer
- SEBI has updated Form A to align disclosures with the revised IA framework by inserting references to whom shall Form A be submitted, infrastructure declaration, simplifying the document by removing obsolete fields such as fax numbers, and replacing “address proof” with “details of address.”



Notification dated 25 November 2025: SEBI (Research Analysts) (“RA”) (Second Amendment) Regulations, 2025, (“Notification”)[6]

SEBI has amended existing SEBI (Research Analysts) Regulations, 2014, with immediate effect, to broaden the eligibility, streamline the eligibility criteria, and enhance the disclosure requirements.

Key amendments are as under:

1. **Amendments to eligibility and certification requirements:**

- SEBI has expanded the qualification requirements to include persons associated with research services and substituted the qualification criteria with graduate degree (or equivalent) from a recognised Indian or foreign university; or CFA Charter along with relevant National Institute of Securities Markets (“NISM”) accredited certification; OR Post Graduate Program in Securities Market (Investment Advisory), Financial Planning, or any other NISM program as may be specified.
- Individual RAs, principal officer of non-individual RAs, individuals employed as RAs, associated persons and partners of a RA partnership firm, shall obtain a fresh NISM certification before expiry of the existing certification or within three years of registration.

2. **Few amendments are made to Registration Application Form (Form A)** *such as contact information updates, details* of associated persons, infrastructure declaration, etc.

Circular dated 27 November 2025: SEBI (Mutual Funds) Regulations 1996[7]

This Circular is issued under the provisions of Regulation 52(4A) read with regulation 77 of SEBI (Mutual Funds) Regulations, 1996 (“the Regulation”), provides a revised mechanism for paying additional commission to mutual fund distributors. Earlier due to misuse of the incentive framework, Regulation 52(6A)(b) which governed such incentives was deleted vide gazette notification dated 31 October 2025.

However, to encourage mutual fund distributors, this Circular issued states that the distributors shall be eligible for an additional commission in the manner stated in this circular.

Effective from 1 February 2026, distributors will be eligible for an additional commission for onboarding new individual investors (new PAN) from B-30 cities and new women investors (new PAN) from both T-30 and B-30 cities.

The incentive will be 1% of the first lump-sum investment *(capped at ₹2,000, with a 1-year minimum holding)* or 1% of the first year’s SIP contributions *(capped at ₹2,000)*.

Additionally, the additional commission shall not be applicable to Exchange Traded Funds, Fund of Funds (domestic) with more than 80% of Assets Under Management invested in domestic funds and short-duration schemes such as Overnight Fund, Liquid Fund, Ultra Short Duration Fund and Low Duration Funds.

[5] F. No. SEBI/LAD-NRO/GN/2025/278.
[6] F. No. SEBI/LAD-NRO/GN/2025/277.
[7] HO/(83)-2025-IMD-POD-1/I/152/2025

Circular dated 28 November 2025: Reclassification of REITs as equity related instruments for facilitating enhanced participation by Mutual Funds and Specialised Investment Funds[8]

SEBI has issued a Circular (28 Nov 2025) for reclassification of Real Estate Investment Trusts (REITs)

Key Points of the circular are mentioned below:

- With effect from 1 January 2026, investments made by Mutual Funds ('MF') and Systematic Investment Funds ('SIF') in REITs will be treated as equity investments whereas Infrastructure Investment Trusts (InvITs) remain hybrid instruments.
- Existing REIT holdings in debt schemes as of 31 December 2025 will be grandfathered.
- Association of Mutual Funds in India (AMFI) must include REITs in market-cap-based scrip classification as per existing guidelines.
- Asset Management Companies (AMCs) to issue addendums to update scheme documents – the same will not be considered a fundamental attribute change to the scheme.
- REITs may be added to equity indices only after 1 July 2026.

The revised SEBI framework marks a significant shift in the regulatory treatment of REITs, aligning them with equity instruments and thereby broadening market access and investor participation.

Reserve Bank of India (RBI)

Notification dated 11 November 2025: Reserve Bank of India (Repurchase Transactions (Repo)) Directions, 2025 by the Reserve Bank of India ("RBI")[9]

The Reserve Bank of India has issued the Master Direction – Reserve Bank of India (Repurchase Transactions (Repo)) Directions, 2025, bringing the regulatory framework for repo and tri-party repo markets into a consolidated and updated regime. The Directions, which take immediate effect, rationalise eligibility, participation, collateral standards, market infrastructure, and reporting requirements across exchange-traded, electronic trading platform (ETP), and over-the-counter (OTC) repo transactions.

A key change under the revised framework is the inclusion of Municipal Debt Securities and other local-authority securities notified by the Central Government as eligible collateral for repo and reverse-repo transactions, following the Government notification dated 22 October 2025. Accordingly, the eligible collateral universe now comprises Government securities, listed corporate bonds and debentures, commercial papers (CPs), certificates of deposit (CDs), units of debt exchange-traded funds (ETFs), Municipal Debt Securities, and notified securities issued by local authorities.

The Directions update the rules relating to eligible participants, permitted trading venues, and allowable trading processes. The Master Direction consolidates and supersedes the Repurchase Transactions (Repo) Directions, 2018 and their subsequent amendments, along with a wide set of historical circulars listed in Annex III. This unified framework is intended to strengthen transparency, risk management, and operational consistency across India's repo markets while broadening collateral availability and aligning market infrastructure standards with global best practices. Please refer above circular for detailed directions.

Notification dated 14 November 2025: The Reserve Bank of India (Trade Relief Measures) Directions, 2025[10]

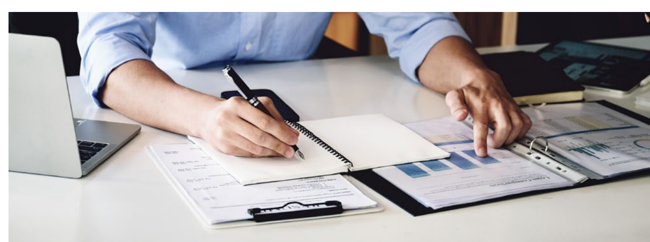
The Reserve bank of India has issued said direction, effective immediately, to support exporters affected by global trade disruptions. The framework applies to all major Regulated Lending Entities (REs) and prescribes uniform eligibility, relief options, prudential treatment, and reporting standards.

The Directions allow regulated entities (REs) to grant moratorium or deferment on term-loan instalments and CC/OD interest falling due between 1 September and 31 December 2025, with interest accruing only on a simple-interest basis and without any "interest-on-interest" component. Accrued interest may be converted into a funded interest term loan repayable after 31 March 2026 but no later than 30 September 2026. REs may also reassess drawing power or working-capital limits during the effective period based on revised margins or business conditions.

To ease liquidity pressures on exporters, REs engaged in export finance may extend enhanced export-credit tenors of up to 450 days for pre- and post-shipment credit disbursed up to 31 March 2026. Packing-credit facilities sanctioned on or before 31 August 2025 may be liquidated from legitimate alternate sources, including domestic sale proceeds or substitution with another export order.

Crucially, the grant of moratorium, deferment, or drawing-power recalculation will not be treated as restructuring under extant norms. The moratorium period is excluded from days-past-due computations, shielding eligible borrowers from any asset-classification downgrade solely due to these reliefs. Reporting to credit information companies must reflect this treatment, and CICs are required to ensure that such regulatory relief does not adversely impact borrower credit histories.

REs must also create a 5% general provision for eligible accounts and report relief measures regularly on RBI's DAKSH platform.



[8] HO/24/13/12(1)2025-IMD-POD-2/I/157/2025
[9] RBI/FMRD/2025-26/142 FMRD.DIRD.04/14.03.038/2025-26
[10] RBI/2025-26/96 DOR.STR.REC.60/21.04.048/2025-26

Insolvency and Bankruptcy Board of India (IBBI)

Discussion Paper dated 19 November 2025 on Proposed Guidelines for Conducting Valuation under the Insolvency and Bankruptcy Code, 2016.

The Insolvency and Bankruptcy Board of India (IBBI) has released draft guidelines (19 Nov 2025) for conducting valuation under the Insolvency and Bankruptcy Code, 2016. This initiative continues the Board's efforts to strengthen the valuation ecosystem by ensuring standardisation, transparency, and consistency in valuation practices.

The guidelines seek to prescribe uniform minimum content for valuation reports, documentation standards for Registered Valuers (RVs), and structured valuation formats for different asset classes.

The following are the key provisions of the draft guidelines:

1. Documentation Standards

Registered Valuers must maintain thorough written records covering:

- communications with the client,
- valuation methodologies considered,
- data sources and inputs evaluated,
- key risks and their treatment, and
- application of professional judgment.

This documentation must clearly explain the work performed and substantiate the valuation conclusion.

2. Minimum Content of Valuation Reports

The guideline emphasises on key content to be included in the report, few of which are:

- Purpose, scope, and intended use
- Details of the valuer & any third-party experts
- Nature of the assets/liabilities being valued
- Sources of information
- Basis and premise of value
- Valuation methodology adopted
- Key assumptions, risks, caveats
- Final fair value and liquidation value with rationale
- VRIN (Valuation Report Identification Number)

3. Key Parameters for Valuing Receivables:

When valuing receivables, the valuer must consider the following:

- nature of receivable (loan, trade debt, tax credit etc.),
- ageing profile,
- creditworthiness of debtor,
- legal enforceability, documentation quality,
- security status / related-party relationship, and
- economic and sectoral recovery trends.

The draft guideline further prescribes asset-specific reporting formats for-

- Land & Building
- Plant & Machinery
- Securities or Financial Assets

IBBI has asked the stakeholders to send their comments online on the portal by 10 December 2025, selecting stakeholder category (IP, creditor, registered valuer, etc.), and whether comments are general or specific with an aim to address any specific concern over the guideline

These guidelines aim to improve report quality, increase stakeholder confidence, create uniform valuation practices across cases, reduce ambiguity and disputes before tribunals, and align India's valuation regime with global standards.

DIRECT TAX

Circulars/ Notifications/ Press Release

Ministry of Finance notifies Protocol amending the India-Belgium DTAA

To grant relief from double taxation and efficient exchange of information, the Government of India has entered into Double Tax Avoidance Agreements (DTAA) with various countries. Any amendment in the DTAA is brought by way of a Protocol after discussion between both countries.

The DTAA and the Protocol between the Government of the Republic of India and the Government of the Kingdom of Belgium was signed at Brussels on 26 April 1993. The Protocol (Amending Protocol) amending the India-Belgium DTAA was signed at New Delhi on 9 March 2017 and came into force on 26 June 2025 following completion of legal procedures by both countries. Recently, in exercise of the powers conferred under section 90(1)[1] of the Income-tax Act,1961 (IT Act), the Ministry of Finance (MOF) has notified the Protocol to amend India-Belgium DTAA, directing that all the provisions of the Amending Protocol shall be given effect to in the Union of India.

You can read our detailed analysis here: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-mof-notifies-protocol-amending-the-india-belgium-dtaa

[Notification No. 160/2025/F. No. 505/2/1989-FTD-I dated 10 November 2025]

CBDT notifies amendment in Capital Gains Accounts Scheme, 2025

The Central Board of Direct Taxes (CBDT) has notified the Capital Gains Accounts Scheme (Second Amendment) Scheme, 2025 (Scheme). The Scheme further amends the Capital Gains Accounts Scheme, 1988. The amendment is effective from the date of its publication in the Official Gazette, i.e., 19 November 2025. The Scheme has been amended to include the following key changes:

i. **Meaning of 'Deposit Office' -** The meaning of "Deposit Office" is expanded to include any other banking company covered under the Banking Regulation Act, 1949, which is authorised by the Central Government, by notification in the Official Gazette to receive deposit and maintain the account of the depositor under this Scheme.

ii. **Scheme facilitates claiming exemption under section 54GA of the IT Act -** The CGAS benefit is now extended to taxpayers claiming exemption under section 54GA of the IT Act. Although section 54GA[2] of the IT Act already allows exemption when the capital gain is deposited in the Scheme, the Scheme did not expressly include section 54GA of the IT Act within its scope.

iii. **Deposit through 'Electronic Mode' -** The Scheme is amended to recognise payment through 'Electronic Mode'[3] as a valid mode for making deposits for the opening of a CGAS account. Earlier, deposits could be made only in cash, through a crossed cheque, or by draft.

iv. **Online account closure -** From 1 April 2027, the option to close the account shall be furnished electronically, either through a digital signature or an electronic verification code.

[Notification F. No.161/2025/F. No. 370142/23/2024-TPL, dated 19 November 2025]

[1] Section 90(1) of the IT Act empowers the Central Government to enter into agreements with foreign countries or specified territories for the avoidance of double taxation, the exchange of information, and the provision of assistance in tax recovery, and to notify such agreements in the Official Gazette.
[2] Section 54GA of the IT Act provides exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area to any Special Economic Zone.
[3] The 'electronic mode' means payment by use of an electronic clearing system through a bank account or by way of credit card, debit card, net banking, Immediate Payment Service (IMPS), Unified Payment Interface (UPI), Real Time Gross Settlement (RTGS), National Electronic Funds Transfer (NEFT) and Bharat Interface for Money (BHIM) Aadhaar Pay.

OECD updates Model Tax Convention to reflect rise of cross-border remote work and clarify taxation of natural resources

The Organisation for Economic Co-operation and Development (OECD) has issued the "2025 Update to the Model Tax Convention"[4] (2025 Update) that introduces significant new guidance on the circumstances under which cross-border remote working and home-office arrangements may create a "fixed place of business" permanent establishment (PE) under Article 5 of the OECD Convention which is an area of growing practical relevance following the acceleration of flexible work models post-COVID-19.

The 2025 update also emphasises the importance of multilateral co-operation to address emerging cross-border tax challenges and ensure that international tax systems keep pace with economic changes and modern business practices. Further, India has modified its positions on various other articles, including those relating to dividends, interest, capital gains, entertainers and sportspersons, etc. You can read our detailed analysis here: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-mof-notifies-protocol-amending-the-india-belgium-dtaa

[2025 Update to OECD Model Convention approved on 18 November 2025 and released on 19 November 2025]

CBDT launches second NUDGE Initiative to strengthen voluntary compliance in respect of foreign assets

In order to strengthen voluntary compliance in respect of foreign assets, the CBDT has launched "Non-intrusive Usage of Data to Guide and Enable (NUDGE)" initiative so as to promote accurate reporting and enhancement of revenue mobilisation.

- **The first NUDGE campaign -** The first NUDGE campaign, launched on 17 November 2024, targeted taxpayers who had been reported by foreign jurisdictions under Automatic Exchange of Information (AEOI) framework for not disclosing foreign assets in their tax returns for Fiscal Year (FY) 2023-24. The campaign delivered strong results wherein 24,678 taxpayers revised their returns and disclosed substantial amounts of foreign assets and foreign-source income.
- **Launch of the second NUDGE campaign -** Based on AEOI data for FY 2024-25, CBDT has identified high-risk cases where foreign assets appear to exist but have not been reported in the ITRs filed for AY 2025-26. Considering the success of the first campaign, the CBDT has launched the second NUDGE campaign under which messages and emails will be issued from 28 November 2025 to such taxpayers, advising them to review and revise their returns on or before 31 December 2025 to avoid penal consequences. The initiative aims to strengthen accurate disclosure in Schedule FA (Foreign Assets) and Schedule FSI (Foreign Source Income), as required under the IT Act and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.
- **Promoting transparency -** Through its prudent and analytics-driven approach, CBDT seeks to reduce information asymmetry, simplify compliance processes and reinforce a transparent, trust-oriented relationship with taxpayers. Taxpayers are encouraged to use this opportunity to ensure complete compliance with statutory reporting requirements.

[Press Release dated 27 November 2025]

Judicial Updates

Mumbai Tax Tribunal allows LTCG exemption to Singapore entity holding that it is not a conduit entity and satisfies PPT

The taxpayer, a private company incorporated in Singapore, is a wholly owned subsidiary company of Temasek Holdings (Private) Limited (Temasek), which is a Singapore-based investment company wholly owned by the Government of Singapore. The taxpayer functions as Temasek's dedicated investment and operating platform in the financial services sector across Asia. The taxpayer had invested in Fullerton India Credit Company Limited (FICCL) during the FY 2009-10 with the primary objective of holding the same as long-term strategic investment, which was consistent with its objective of functioning as an investment holding company. The taxpayer transferred its equity shares in FICCL to an unrelated company incorporated in Japan on 30 November 2021 and claimed the long-term capital gains arising from sale of shares as not taxable in India in view of Article 13(4A)[5] of the India-Singapore DTAA.

However, the tax authorities denied exemption of capital gain on the ground that the taxpayer had no employees and its directors were appointed by the group entities. The tax authorities further contended that the expenses of the directors cannot be attributed to the operational expenses of the taxpayer, and hence, the Principal Purpose Test (PPT) under the India-Singapore DTAA is not satisfied. Aggrieved, the taxpayer filed objections before the Dispute Resolution Panel (DRP); however, the DRP upheld the tax officer's observations. Further aggrieved, the taxpayer filed an appeal before the Mumbai Tax Tribunal, which made the following observations while ruling in favour of the taxpayer:

- Prior to the amendment introduced in 2016 by way of Protocol to the India-Singapore DTAA, capital gains arising to a resident of Singapore from the alienation of shares in an Indian company were taxable only in Singapore (resident country), subject to the Limitation of Benefits (LOB) conditions. Consequently, the gains arising to the taxpayer on sale of such pre-April 2017 investments would remain exempt from taxation in India in accordance with Article 13(4) of the DTAA read with paragraph 3 of the 2016 Protocol.
- Furthermore, the PPT was introduced under Article 24A of the India-Singapore DTAA with effect from 1 April 2017 in line with the OECD's Base Erosion and Profit Shifting Framework (BEPS) Action Plan 6 recommendations. As per the said recommendations, treaty benefits may be denied in cases where it is reasonable to conclude that one of the principal purposes of an arrangement/ transaction was to obtain benefit under the DTAA unless granting such benefit is in accordance with the object and purpose of the convention.
- The taxpayer has an independent management, economic substance, and operational control, and therefore, does not fit within the description of a "conduit company"[6]. Further, all administration and management activities of the taxpayer's affairs, including regular meetings of the Board of Directors and its sub-committees, were carried out in Singapore.

[4] The 2025 Update to the OECD Model Tax Convention | OECD
[5] Article 13(4) of India-Singapore DTAA exempts capital gains arising from sale of shares acquired prior to 1 April 2017 in Source country
[6] Conduit company refers to an entity interposed solely for treaty or tax benefits and lacking substantive functions or control over its income/ investments.

- The OECD Commentary and the Supreme Court in Azadi Bachao Andolan[7] recognise that the concept of 'conduit entities' must be distinguished from genuine resident entities having substantive commercial operations in the residence country.
- Moreover, the incorporation of the taxpayer was for sound commercial reasons, and the overall conduct of its affairs indicates that the same were not arranged with the primary purpose of taking advantage of Article 13(4A) of the DTAA. Additionally, under Article 24A(2) of the DTAA, treaty benefits may be denied to a "shell" or "conduit" company, defined as an entity having negligible business operations in Singapore or lacking business activities therein.
- The confirmation from the Inland Revenue Authority of Singapore (IRAS) affirms that the taxpayer satisfies the expenditure test under the DTAA. The Board of Directors and officers of the taxpayer provide leadership and strategic direction in the conduct of its affairs and formulate, implement and periodically review the overall investment strategy and operations.
- The directors' remuneration and management fees paid by the taxpayer represent consideration for the services rendered by the directors and employees of their holding company during the taxpayer's business operations. Additionally, the taxpayer has also paid insurance premium to safeguard their directors and officers against liabilities that may arise from decisions and actions undertaken in the discharge of their official duties.
- Further, the said expenses are reimbursed by the taxpayer to their holding company and are on an arm's length basis, in compliance with the Singapore transfer pricing regulations.
- The letter issued by the taxpayer's statutory auditor certifies that their annual operational expenditure in Singapore exceeded SGD 0.20mn for each of the two consecutive 12-month periods immediately preceding the date of disposal of shares in FICCL. Therefore, the taxpayer is not a shell or conduit company within the meaning of Article 24A(2) of the DTAA and qualifies for the treaty benefit under Article 13(4) of the India-Singapore DTAA.
- Without prejudice to the above, the ultimate beneficial owner of the taxpayer's investments is the Government of Singapore. Consequently, if any entity were to be regarded as earning the income, then it would be the Singapore sovereign itself and it is not subject to tax under the domestic law of India by virtue of the principle of sovereign immunity. Accordingly, the taxpayer satisfies the PPT under the India-Singapore DTAA and the claim of treaty benefit is allowed.

[Fullerton Financial Holdings Pte. Ltd. v. ACIT, I.T.A. No. 1137/MUM/2025 (Mumbai Tax Tribunal)]

Mumbai Tax Tribunal holds that LO does not constitute PE in India as its activities are preparatory and auxiliary in nature

The taxpayer, a foreign company, is engaged in international trade of petroleum coke, coal and metallurgical coke which is produced in refineries in India and is used by the cement industry. The taxpayer had a Liaison Office (LO) in India which was carrying out limited activities as permitted by the Reserve Bank of India (RBI) and its role was to liaise between the Indian parties and the group companies.

The taxpayer filed the return of income for FY 2020-21 by declaring a total income of NIL. The tax officer held that LO constitutes a fixed place PE of the taxpayer in India as it employed highly qualified people in India. Further, the tax officer contended that the operations of the LO, i.e., gathering of information and sending reports to parent company, although permitted by RBI, are integral to the trade carried out by the parent company and cannot be characterised as being merely 'preparatory or auxiliary' in nature. Aggrieved, the taxpayer filed objections before the DRP, which were dismissed.

Further aggrieved, the taxpayer preferred an appeal before the Mumbai Tax Tribunal. The Mumbai Tax Tribunal, while ruling in favour of the taxpayer, made the following observations:

- The LO interacted with Indian refineries and user industries on a regular basis to keep track of their production, consumption, requirements, pricing, etc. and communicates with the group companies.
- Further, the taxpayer acted as a channel of communication between entities in India and its group entities without undertaking any commercial/trading/industrial activity in India. The activity of the LO was to merely collect the statistical information for the purpose of competitive pricing assessment specific to petroleum coke to be shared with group companies.
- As per Article 5(1) of DTAA "PE" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.
- Further, Article 5(4) read with Article 13(2) of Multilateral Instrument (MLI) provides that the term "PE" shall be deemed not to include the maintenance of fixed place of business solely for the purpose of advertising, supply of information, scientific research, or other activities which had preparatory or auxiliary character for the enterprise.
- Additionally, the OECD BEPS project included Action Plan-7 which recommended the development of changes to the PE definition in Article 5 of the OECD Model Tax Convention (MTC) and these changes were applied under a new treaty or through the MLI, potentially under an existing treaty. The OECD specifically wanted to clarify that it is not possible to avoid PE status by fragmenting a cohesive operating business into several small operations in order to argue that each part merely is engaged in preparatory or auxiliary activities.

[7] UOI v. Azadi Bachao Andolan, C.A. No.s 8161 to 8164 of 2003 (Supreme Court)

- Considering the OECD's clarification, a new paragraph is introduced to Article 5 in order to prevent an enterprise or a group of closely related enterprises from artificial tax avoidance by virtue of fragmentation of activities.
- Although the taxpayer has a subsidiary in India, the company is dormant, and no activity is carried on. Therefore unless the tax authorities are able to establish that the information collected by the LO is used by the subsidiary which is a PE of taxpayer and that the LO's activity is a complimentary function that is part of a cohesive business operation in India, the activities of the LO would fall within the exception as provided in Article 5(4) read with the MLI.
- Further, since neither the LO nor the subsidiary is concluding any business activity in India using the information collected, the activities of the taxpayer can be said as preparatory or auxiliary in nature. Additionally, the employees of the LO are not authorised to conclude any business contracts, nor do they have any signing authority.
- Reliance can be placed on the decision of Hon'ble Supreme Court in the case of U.A.E. Exchange Center[8] wherein it is observed that the LO was permitted to undertake only those activities which were specified in the approval granted by the RBI. Further, the Court observed that the activities carried out by the LO in India were confined strictly to the scope of the RBI permission and were of a preparatory or auxiliary nature.
- Consequently, as the activities of LO are within the scope of what is permitted by RBI to a LO in India, the LO of the taxpayer cannot be treated as a PE within the meaning of Article 5 of India-Netherlands DTAA.

[Oxbow Energy Solutions B.V. v. DCIT, I.T.A. No. 4769/Mum/2023 (Mumbai Tax Tribunal)]

Delhi Tax Tribunal holds that Foreign Tax Credit of taxes withheld in Japan would be available irrespective of exemption under section 10A of the IT Act

The taxpayer is a company engaged in the business of trading and distribution of imaging and optical products, including cameras, printers, and other equipment. The taxpayer earned certain income from its operations in Japan, on which taxes were withheld in accordance with the domestic tax laws of Japan. In its return of income filed in India, the taxpayer claimed Foreign Tax Credit (FTC) under section 90 of the IT Act read with Article 23[9] of the India-Japan DTAA.

The taxpayer filed its return for FY 2002-03 declaring a certain loss and later revised the return by declaring excess loss wherein deduction under section 10A[10] of the IT Act was claimed against income earned by its Software Technology Park of India (STPI) unit. Subsequently, the tax officer framed the assessment at NIL income after setting off brought forward losses and after making an upward adjustment as proposed by the Transfer Pricing Officer. Also, while completing the assessment, denied the credit of FTC on the ground that in the same year the income corresponding to the Japanese receipts was either exempt under section 10A of the IT Act or neutralized by brought-forward business losses, resulting in no tax liability in India, hence, no credit could be granted when there was no Indian tax liability against which the foreign taxes paid could be adjusted.

Aggrieved, the taxpayer preferred an appeal before the Delhi Tax Tribunal which made the following observations while ruling in favour of the taxpayer:

- Reliance is to be placed on the decision of Hon'ble Delhi Tax Tribunal[11] in the case of the taxpayer itself wherein it was held that the taxpayer is entitled to claim FTC in India for taxes withheld in Japan, even though the income was exempt under section 10A of the IT Act or neutralised due to brought-forward losses, resulting in no Indian tax liability and thereby resulting into a refund.
- The Hon'ble Delhi Tax tribunal, while ruling in favour of the taxpayer, placed reliance on the decision of Karnataka High Court in the case of Wipro Ltd.[12] wherein the Court held that the taxpayer is eligible for entire credit of foreign taxes deducted in Japan, even if the taxability was NIL due to the deduction under section 10A of the IT Act and brought forward losses.
- The Hon'ble Tribunal negated tax authorities' reliance on the statutory provisions of the IT Act, the express language of Article 23 of the India-Japan DTAA and Mumbai Tax Tribunal's decision in the case of Bank of India[13] whereby the tax authorities tried to distinguish the Karnataka High Court in the case of Wipro Limited by stating that in the case before Karnataka High Court, the taxpayer had substantial Indian tax liability on non-exempt income and the FTC claimed was only a small part of the overall tax paid in India, hence, it was in accordance with the requirement of Article 23(2) of the DTAA and the credit was capped at the amount of Indian tax payable.
- The Tribunal further observed that in the case of Bank of India, the Mumbai Tax Tribunal after considering whether a non-jurisdictional High Court decision could serve as a binding precedent, arrived at a contrary conclusion. Placed reliance on the decision of the Hon'ble Delhi High Court in the case of M/s HCL Comnet Systems and Service Limited[14] which has agreed with the decision of Hon'ble Karnataka High Court in the case of Wipro Limited.

[Canon India Pvt. Ltd. v. DCIT, I.T.A. No. 585/DEL/2021 (Delhi Tax Tribunal)]

[8] UOI v. U.A.E. Exchange Center, [2020] 116 taxmann.com 379/273 Taxman 122/425 ITR 30 (Supreme Court)
[9] Article 23 of the India-Japan DTAA sets out the mechanism for eliminating double taxation.
[10] Section 10A of the IT Act provides tax exemptions for newly established undertakings in free trade zones or export-oriented units
[11] Canon India Pvt. Ltd. v. ACIT, I.T.A. No. 468/DEL/2021 (Delhi Tax Tribunal)]
[12] Wipro Ltd. v. DCIT, [2015] 62 taxmann.com 26 (Karnataka High Court)
[13] Bank of India vs. ACIT, [2021] 125 taxmann.com 155 (Mumbai Tax Tribunal)
[14] M/s HCL Comnet Systems and Service Limited v. DCIT, I.T.A. 546 of 2022 (Delhi High Court)

INDIRECT TAX

No cash refund for transitioned and reversed balance of Education Cess and Secondary and Higher Education Cess under section 142(3) of CGST Act

M/s. KEI Industries Ltd. Vs. Commissioner of Central Goods and Services Tax and Central Excise – Alwar [2025 (11) TMI 1641 - CESTAT New Delhi- (LB)]

Facts of the case

- During the erstwhile indirect tax regime, KEI Industries Ltd. ('Taxpayer'), engaged in manufacture of goods, had availed CENVAT credit of duty/tax paid on inputs and input services, including Education Cess ('EC'); Secondary and Higher Education Cess ('SHEC') and Krishi Kalyan Cess ('KKC') paid on such procurements. While EC and SHEC were abolished with effect from 1 March 2015 (*qua* goods) and 1 June 2015 (*qua* services), KKC was abolished on 30 June 2017 pursuant to the introduction of GST. However, as on 30 June 2017, the Taxpayer had carried forward balance of unutilised amount of these cesses.
- The Taxpayer had initially transitioned the closing balance of EC, SHEC and KKC as on 30 June 2017 under the GST Regime by filing Form GST TRAN-1. However, on being pointed out by the tax authorities that the same is not permissible under section 140 of the Central Goods and Services Tax Act, 2017 ('CGST Act'), the Taxpayer reversed the said claim of transition credit.
- Consequently, the Taxpayer had filed an application seeking a refund of the closing balance of EC and SHEC as on 30 June 2017 that could not be transitioned under the GST regime under section 142(3) of the CGST Act, read with section 11B of the Central Excise Act, 1944 ('CE Act'). The said application was filed on 11 October 2021 seeking a refund of INR 7,42,108 for FY 2015-16.
- The aforesaid application was rejected by the tax authorities. Against this, the Taxpayer filed an appeal against the same before CESTAT, New Delhi.
- J.K. Lakshmi Cement Ltd. and Bharat Heavy Electricals Ltd. (collectively referred to as the 'Intervenors') also became party to the matter, by intervening, and the contentions urged by the Taxpayer were supported by the Intervenors.

Contentions of the Taxpayer

- **Eligibility to claim a refund of EC and SHEC**
  - It is a settled law that repeal of a law cannot extinguish accrued credits and hence, the balance of cess cannot lapse.
  - The nature of CENVAT/MODVAT credit has been consistently recognised as a substantive and vested right as per the settled jurisprudence. Accordingly, once a credit is validly availed under the law, it crystallises into a property right which cannot be taken away by implication or by repeal of a rule, unless there exists an express statutory mandate for its lapse[1].
  - In the present case, the Taxpayer had validly availed the credit of EC, SHEC and KKC on its procurements. Merely because section 140 of CGST Act excluded transition of these balances, the vested rights already accrued cannot be deemed to have lapsed.
  - Reliance was placed on ***Eicher Motors Ltd. (supra)*** to contend that repeal of the earlier regime (pre-GST regime) and exclusion of cesses from transitional provisions does not, in the absence of an express lapse provision, extinguish the credits (i.e., closing balance of cess).
  - Section 142(3) of CGST Act reinforces this aforesaid position by expressly providing that all pending refund claims of CENVAT credit shall be disposed of under existing law (under pre-GST regime) and '***any amount eventually accruing shall be paid in cash***'.

[1] Eicher Motors Ltd. Vs. Union of India [1999 (2) SCC 361]

  - Hence, the accumulated balance of cess as on 30 June 2017, though could not be transitioned under the GST regime, remains the Taxpayer's vested right and must be refunded in cash[2].
  - In ***Slovak India Trading Co. Pvt. Ltd.***[3], it was held that unutilised credit of cess/duty cannot be allowed to lapse and must be refunded when no further utilisation is possible. Similar view was also upheld in various judicial precedents[4].
  - The CESTAT[5] had categorically held that sections 142(3) and 142(9)(b) of CGST Act specifically provide for cash refund of any amount of CENVAT credit as a transitional arrangement.

- **Limitation period**
  - The issue of the refund application being barred by limitation was never raised in ***Nu Vista Ltd. (supra)*** or ***M/s. NMDC Ltd***[6]. and refund claims post-GST were governed by section 142(3) of CGST Act, which does not impose the time bar of Section 11B of CE Act.
  - Sections 142(3) and 142(9)(b) of CGST Act is a transitional arrangement wherein it is specifically provided that the said provisions apply as a *non-obstante* clause i.e., they have an overriding effect if anything contrary is contained under the existing law i.e., CE Act, except section 11B(2) thereof. Thus, the said provision overrides the limitation period prescribed under Section 11B for refund of CENVAT credit.
- In view of the above, the Impugned Order be set aside and the appeal be allowed by upholding the Taxpayer's eligibility to claim refund.

Contentions of the Intervenors

- The CESTAT – Division Benches have rendered contradictory judgements in respect of the issue pertaining to refund of accumulated EC and SHEC in cash under section 142(3) of CGST Act. While the CESTAT, in ***Nu Vista (supra)*** had held allowed refund of accumulated cess balance in cash, in ***NMDC Ltd. (supra)***, the said refund was rejected under section 142(3) of CGST Act.
- The CESTAT ruling in ***NMDC Ltd. (supra)*** is based on an erroneous interpretation of transitional provisions under section 140 of CGST Act whereby it was held that since the expression '*eligible duties and taxes*' excludes all types of cesses, particularly EC and SHEC. Although the aforesaid definition of '*eligible duties and taxes*' was sought to apply to section 140(1) of CGST Act (*vide* the Central Goods and Services Tax (Amendment) Act, 2018), the said amendment was never notified, i.e., it never came into operation.
- Though the levy of EC and SHEC was discontinued in the 2015, no provision for lapse of its accumulated credit is present under rule 11(3)(ii) of the CENVAT Credit Rules, 2004 ('CCR'). Further, limited cross utilisation was allowed *vide* Notification No.12/2015-CE(NT)[7].
- Since all the excise duty balances including that of the cesses were duly reflected as closing balance in the Taxpayer's return, the same ought to be treated as eligible duties and the transition of such amounts should have been allowed under the GST regime[8].
- *Vide* Circular No. 267/8/2018-CX8[9], a check list was communicated to the tax authority as to what credit was allowed in Form GST TRAN-1 and what was not allowed to be carried forward.
- The credit of EC and SHEC, legally availed under the erstwhile Indirect tax regime, should have been allowed to be transitioned under the GST regime, failing which, cash refund should have been allowed without any bar on limitation under section 11B of CE Act or the restriction imposed under rule 5 of CCR.
- The decision of the Kerala High Court in ***Muthoot Finance Ltd.***[10] does not consider the provisions of section 140(1) read with section 142(3) of CGST Act. Accordingly, the decision rendered in the case of ***Nu Vista** (supra)* may be held as the correct decision for the issue in the present case.

Contentions of the tax authority

- ***NDMC Ltd.*** *(supra)* was rendered on merits while considering the legality and scope of section 142(3) of CGST Act whereas the decision in ***Nu Vista Ltd.*** *(supra)* was predominately based on the argument of credit being a vested right and by relying on various precedents including ***Slovak India (supra)***[11], but without any legal findings on the eligibility of refund of cess balance under section 142(3) of CGST Act.
- The provisions of section 140 and 142 of CGST Act are mutually exclusive and are not inter-related. Section 142(3) is an independent provision enabling claim of refund, *hitherto* eligible under erstwhile Indirect tax regime but could not be claimed due to the introduction of GST. However, the said refund under section 142(3) of CGST Act is not subject to the outcome of non-transition of credit under Section 140 of CGST Act. Accordingly, any examination of the provisions of the section 140 of CGST Act is non-contextual and irrelevant and hence, reliance cannot be placed on ***Godrej and Boyce Manufacturing Co. Ltd. (supra)***.
- The following are the pre-conditions to be eligible to claim refund of CENVAT credit in cash under section 142(3) of CGST Act:
  - Refund application should be for refund of any amount of CENVAT credit, duty, tax, interest or any amount paid under the existing law.
  - Such application is to be disposed of according to the provisions of the existing law.
  - If any amount eventually accrues, the same is to be refunded in cash, notwithstanding anything to the contrary contained under the provisions of the existing law other than the provisions of section 11B(2) of CE Act.

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[2] Reliance was placed on Combitic Global Caplet Pvt. Ltd. Vs. Union of India [2024 (200) Centax 144 (Bom.)] and Toyota Kirloskar Motor Pvt. Ltd. Vs. Pr. Commissioner of Central Tax, Pune GST-I [2025 (27) Centax 121 (Tri.-Mum.)]
[3] Union of India Vs. Slovak India Trading Co. Pvt. Ltd. [2006 (7) TMI 9 - Karnataka High Court], affirmed in [2007 (1) TMI 556 - SC Order]
[4] Nu Vista Ltd. Vs. Commissioner (Appeals), CGST, Central Excise, Raipur [2022 (3) TMI 1254 - CESTAT New Delhi] and M/s. Bharat Heavy Electricals Ltd. (Excise & Taxation Division) Vs. Commissioner Central Goods Service Tax, Central Excise & Customs, Bhopal (Madhya Pradesh) [2019 (4) TMI 1896 - CESTAT New Delhi]
[5] Tata Steel BSL Ltd. Vs. Commissioner of CGST and Central Excise, Raigad [2025 (11) TMI 192 (CESTAT-Mumbai)]
[6] M/s. NMDC Limited Vs. Commissioner of CGST, Raipur [2024 (5) TMI 192 - CESTAT New Delhi]
[7] Dated 30 April 2015
[8] Godrej and Boyce Manufacturing Co. Ltd. Vs. Union of India and Ors. [2021-TIOL-2112-HC-MUM-GST]
[9] Dated 14 March 2018
[10] Muthoot Finance Ltd. Vs. Union of India [2024 (10) TMI 1658 - Kerala High Court]
[11] And M/s. Bharat Heavy Electricals Ltd. (Excise & Taxation Division) (supra) and Toyota Kirloskar Motor Pvt. Ltd. (supra)

  - Section 142(3) of CGST Act also provides that where any claim for refund of CENVAT Credit is fully or even partially rejected, the amount so rejected shall lapse.
  - No refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under the GST law.
- The Bombay High Court[12] held that the transitional provision does not enable it to hold that the amount of unutilised CENVAT credit can be refunded in cash[13]. Thus, section 142(3) of CGST Act does not confer a new right which never existed under the erstwhile regime but only saves the existing right which existed on the date of transition i.e., on 1 July 2017.
- The CENVAT Credit of cesses was allowed to be utilised for payment of respective cesses on final products and no cross utilisation was allowed. Consequently, the closing balance of cess credit was lapsed as per rule 11 of CCR and a special window was provided for allowing cross utilisation only for such inputs or input services which were received on or after 1 March 2015. This further establishes the fact that such credits had lapsed. Hence, there remains no doubt that section 142(3) of CGST Act does not revive a lapsed and dead claim, specifically when such levy was extinguished in 2015 and also in the absence of any machinery provision for claim of refund[14].
- In light of the above, the decision of CESTAT in ***NMDC Ltd. (supra)*** may be followed by holding that no refund of EC and SHEC can be granted under section 142(3) of CGST Act.

Observations and judgement of Principal Bench, CESTAT New Delhi

- **Transitioning of EC and SHEC to the GST regime**
  - A harmonious reading of the provisions of CGST Act, Circular Nos. 267/8/2018-CX8[15] and 87/06/2019-GST[16] and the format of Form ER-1 return and Form GST TRAN-1 return would clarify that EC and SHEC, are clearly excluded from the ambit of '***eligible duties and taxes***'.
  - Since Explanation 1 and 2 to section 140 of CGST Act have clearly specified the '***inclusive list of duties and taxes***' that can be transitioned excluding EC and SHEC is sufficient to move them from the ambit of '***eligible duties and taxes***' without having to go into the issue of exclusion in terms of Explanation 3 of Section 140(5) was notified or not.
  - With the cesses getting subsumed within the levy of Excise Duty and Service Tax in 2015 and no similar Cess being imposed under the CGST Act, it leaves no scope to hold that such cesses would be treated as eligible input tax credit under the GST regime. Hence, such cesses could not have been transitioned to the GST Regime.
- **Refund of balance of transitioned EC and SHEC that was reversed**
  - When the goods and services are exempted from the levy of cess, the utilisation of its existing closing balance was fully blocked.
  - 'Vested Right', if any, was conferred on Taxpayer in 2015, but the Taxpayer did not apply for refund of such blocked credits and rather simply carried forward the balance till 30 June 2017 (i.e., for more than 2 years).
  - However, the aforesaid two options were negated by the High Courts in subsequent decisions[17] by holding that even prior to the introduction of GST regime on 1 July 2017, the balance of cess was lapsed and hence, the Taxpayer did not have a vested/indefeasible right.
  - The decision in ***Slovak India*** (***supra***) was distinguished by the Bombay High Court in ***Gauri Plasticulture*** (***supra***) and hence, cannot be applied to the present case. Further, the decisions in ***Combitic Global Caplet (supra)*** and ***Godrej and Boyce Manufacturing Co.*** (***supra***) were rendered in completely different set of facts and hence, the same would not be applicable. However, the decisions in ***Cellular Operators Association of India (supra)***, ***Banswara Syntex Ltd. (supra)***, ***Gauri Plasticulture*** (*supra*) and ***Sutherland Global Services (supra)*** are applicable to the present case with the judgement in ***Sutherland Global Services (supra)*** being most apposite and squarely applicable to the present case.
  - When the refund is not eligible *ab initio*, the question of granting such refund under the provisions of CGST Act cannot arise. Accordingly, no refund can be granted for the blocked balance of EC, SHEC and KKC under the provisions of Section 142(3) of CGST Act.
- ***Nu Vista Ltd.*** **(*supra*) and *NMDC Ltd.*** **(*supra*)**
  - In ***Nu Vista Ltd.*** (*supra*), overwhelming reliance was placed on ***Slovak India*** (*supra*). However, the fact that such ruling was disagreed by the Bombay High Court[18], the non-applicability of rule 5 of CCR to the facts in ***Nu Vista Ltd.*** (*supra*) and the decision in ***Sutherland Global Services*** (*supra*) were not brought to the notice of the Bench.
  - The taxpayer therein did not transition the closing cess balance but rather directly filed a refund application. Hence, the provisions of section 140 were not examined in detail.
  - In ***NMDC Ltd. (supra)***, the taxpayer therein had transitioned cess through Form GST TRAN-1 and a show cause notice was issued for its recovery. Sections 140 and 142 of CGST Act were examined in detail and consequently, it was held that such refund would not be eligible under section 142(3) of CGST Act.
  - Hence, the ruling in ***NMDC Ltd. (supra)*** was followed by CESTAT in the present case.
- **On Limitation**
  - The balance of Cess was blocked in 2015. If the Taxpayer had sought to obtain refund in cash, they should have filed an application within one year, as per the provisions of CE Act. However, the Taxpayer chose not to file refund application and quietly transitioned the cess balance through Form GST TRAN-1 on 1 July 2017.

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[12] M/s. Gauri Plasticulture Pvt. Ltd. Vs. The Commissioner of Central Excise, Indore and Ors. [2019 (6) TMI 820 - Bombay High Court]

[13] Banswara Syntex Ltd. Vs. Commissioner of CGST and Central Excise and Service Tax, Udaipur [2019 (365) E.L.T. 773 (Raj.)], Aragen Life Sciences Ltd. Vs. Commissioner of Central Tax, Secunderabad [2024-TIOL-1126-CESTAT-HYD], Tecumesh Products India Pvt. Ltd. Vs. Commissioner of Central Tax, Hyderabad [Final Order No. A/30018/2023 dated 17 March 2023], Lupin Ltd. Vs. Commissioner of Central Tax & Customs (Appeals), Guntur [Final Order No. A/30019/2023 dated 16 March 2023], Suvikram Plastex Pvt. Ltd. Vs. Commissioner of Central Tax, Bengaluru North West [2021 (54) G.S.T.L. 286 (Tri. - Bang.)], Commissioner, Tirupati Vs. Rani Plastic Pipe Industries [2020 (6) TMI 356], Mylan Laboratories Vs. Commissioner of Central Tax and Customs, Guntur [2020-TIOL-576-CESTAT-HYD], Bharat Heavy Electricals Ltd. Vs. Commissioner of Central Tax, Secunderabad-GST [2020 (41) G.S.T.L. 465 (Tri. - Hyd.)] and United Seamless Tubular Pvt. Ltd. Vs. CCT, Rangareddy GST [2019 (4) TMI 433]

[14] Muthoot Finance Ltd. Vs. Union of India [2024 (10) TMI 1658], Assistant Commissioner of CGST and Central Excise, Chennai Vs. Sutherland Global Services Pvt. Ltd. [2023 (6) Centax 99 (Mad.)], Cellular Operators Association of India Vs. Union of India [2018 (14) G.S.T.L. 522 (Del.)]

[15] Dated 14 March 2018

[16] Dated 2 January 2019

[17] Cellular Operators Association of India (supra) and Banswara Syntex Ltd. (supra)

[18] Gauri Plasticulture (supra)

  - The Taxpayer waited for the tax authority to point out the error in 2018/2019 and reversed the same and then filed the present refund claim by taking shelter of Section 142(3) of CGST Act that the time bar prescribed under Section 11B of CE Act would not apply.
  - Once the Taxpayer failed to utilise the normal avenue within the framework of CCR and CE Act, they cannot take recourse under the GST law to claim immunity from time-bar. Such refund claim is thoroughly misconceived and hopelessly time barred.
- In view of the above, the appeal filed by the Taxpayer was dismissed.

Despite periodic payments, Service Tax liability cannot be imposed on Intellectual Property Rights transferred prior to the introduction of Service Tax levy

M/s. UOP Inter Americana Vs. Commissioner of Central Excise and Service Tax, Delhi [TS-749-CESTAT-2025-ST]

Facts of the case

- M/s. UOP Inter Americana ('Taxpayer'), a Company is registered under the laws of State of Delaware, United States of America ('USA').
- The Taxpayer entered into a 'License Agreement' dated 18 March 2004 outside India, with M/s. Tamil Nadu Petrochemical Products Ltd., Indian Oil Corporation Ltd., Hindustan Petroleum Ltd. and Indian Petrochemical Corporation Ltd. ('Petroleum Companies'). The terms of the License Agreement are set out hereunder:
  - The Taxpayer granted a non-exclusive and non-transferable right to use the licensed technology (patented outside India) to the Petroleum Companies.
  - Petroleum Companies agreed to pay a fixed consideration to Taxpayer at pre-determined intervals in USD.
  - The Intellectual Property Rights ('IPR') owned by Taxpayer are registered outside India.
  - The Taxpayer is registered with Service Tax authorities for providing 'Consulting Engineering Services'.
  - The liaison office of UOP Asia Ltd. (a group entity of Taxpayer) was used for collection and remission of Service Tax and the same was done with the prior approval of the Reserve Bank of India ('RBI').
- For the period April 2004 to March 2007, the tax authorities alleged that the Taxpayer is liable to pay Service Tax on the services received by it from its overseas entity as per rule 2(1)(d)(iv) of Service Tax Rules, 1994 under the category IPR services as per the License Agreement.
- Consequently, a show cause notice dated 21 August 2008 was issued by the tax authorities, invoking the extended period of limitation, by alleging that the Taxpayer did not intimate the tax authority regarding receipt of payments against IPR services provided by them and misstated facts pertaining to rendition of taxable services with an intent to evade payment of Service Tax.
- Subsequently, the aforesaid notice was adjudicated culminating in the issuance of the Impugned Order confirming the Service Tax demand of INR 11.45 Mn. along with interest and penalty.
- Aggrieved by the above, the Taxpayer preferred an appeal before CESTAT Chandigarh.

Contentions of the Taxpayer

- The Taxpayer did not have any establishment, office, employee or any other assets in India from where the disputed services were provided. The registered premises (liaison office) in India was only for the purpose of collection of remittances from its customers in India and for remission of Service Tax to the tax authorities with prior permission of the RBI.
- As per the RBI Master Circular No. 03/2011-12 dated 1 July 2011, a liaison office can only undertake liaison activity and is not allowed to undertake any business activity. Accordingly, the Taxpayer's liaison office is used only for the activity approved by RBI.
- Service Tax on IPR was levied with effect from 10 September 2004. A perusal of the definition of IPR service provides that the taxable event is '***transfer of***' or '***grant of permission to use***' and not the actual use or enjoyment of the IPR.
- The transfer of '***patent rights***' by Taxpayer to the Petroleum Companies was a '***perpetual transfer***', being a one-time event and no further rights/processes/upgrades were provided to them. The taxable event occurred prior to date of enforcement of Service Tax on IPR services, notwithstanding that the consideration was to flow even beyond the said date.
- The position of law is no more *res integra* that the taxable event of '***transfer***' happens only once and cannot be treated as a continuous activity merely because the consideration for such transfer is paid at pre-determined intervals as per the terms agreed between parties[19].
- The levy of Service Tax on import of services was legally permissible only after the introduction of section 66A in FA 1994 with effect from 18 April 2006[20]. Reliance was also placed on CBEC Circular No. 36/4/2001 dated 8 October 2001 ('CBEC Circular') wherein it was clarified that services provided beyond the territorial waters of India is not leviable to Service Tax.
- The Taxpayer is a service provider and not the service recipient. Prior to insertion of Rule 2(1)(d)(iv), i.e., before 15 August 2002, the liability to pay Service Tax was only on the service provider and where the taxable service was provided by a non-resident, Service Tax could not be recovered under reverse charge mechanism.
- The condition that the service provider does not have any office in India, as per the Explanation to Rule 2 (1)(d)(iv) (introduced with effect from 16 June 2005) is not satisfied as the Taxpayer has a representative office in India[21].
- The show cause notice suffered from errors in computation of demand in as much as the cum-tax benefit was not provided, 'R&D Cess' abatement was not given and an erroneous rate of tax was applied. Penalties under sections 76 and 78 of FA 1994 cannot be imposed simultaneously.

[19] Modi-Mundipharma Pvt. Ltd. Vs. CCE, Meerut [2009 (4) TMI 113 - CESTAT, New Delhi]
[20] Union of India Vs. Indian National Shipowners Association [2009 (12) TMI 850 - SC Order], Foster Wheeler Energy Ltd. Vs. Commissioner of Central Excise & CGST, Vadodara-II [2007 (6) TMI 1 - CESTAT, Ahmedabad] and Mitsui & Co. Ltd. Vs. Commissioner of Central Excise and Service Tax, Jamshedpur [2013 (3) TMI 228 - CESTAT, Kolkata]
[21] ABB Ltd. Vs. Commissioner of Service Tax, Bangalore [2009 (8) TMI 173 - CESTAT, Bangalore]

- In view of the above, the Impugned Order should be set aside and quashed.

Observations and judgement of CESTAT Chandigarh

- On perusal of the agreements, it appears that M/s. UOP LLC (ultimate parent company) provides services related to the grant of patent, supply of engineering designs and provision of engineering services. It is undisputed that the said patents and IPR are registered in USA.
- The liaison office of UOP Asia Ltd. collects payments from the Petroleum Companies and remits the same to the parent company. Neither the show cause notice nor the Impugned Order establishes that the liaison office in India has provided services on their own account to the Petroleum Companies. In case the liaison office India had provided such services, the consideration for the same should have been in Indian Rupees which is neither established by the tax authorities nor is it the tax authorities' case that the payment was made in Indian Rupees.
- Hence, the only foregone conclusion is that the services were rendered by the Taxpayer from USA, i.e., from a place outside India. Thus, the taxability of service should be seen from that perspective alone.
- '***Intellectual property service***' was included in the list of taxable services *vide* an amendment in Section 65(55b) of Finance Act, 1994 ('FA 1994') with effect from 10 September 2004. The taxable event is '***transfer of***' or '***grant of permission to use***' by service provider and not the actual use or enjoyment of the IPR by service recipients.
- In the instant case, the transfer of patent or right to use has occurred much before 10 September 2004 and all the invoices were raised prior to 18 April 2006, i.e., before the date of insertion of Section 66A of FA 1994.
- Since the use of IPR is perpetual and its remuneration is dependent upon the production of goods by Petroleum Companies, the usage of IPR continued long after the transfer. However, it cannot be said that the taxable event is perpetual.
- The tax authority misconstrued the continuous usage and periodical payment of remuneration as the occurrence of the taxable event which is not only absurd but also seeks to make the statutory provision, meaningless and redundant.
- The taxable event of '***transfer***' happens only once and cannot be treated as a continuous activity merely because the consideration for such transfer is paid in pre-determined intervals as per the terms agreed between parties[22].
- When the services are provided by a service provider located outside India, there was no way to tax the same as the tax authority lacks jurisdiction[23]. The presence of a liaison office in India would not have made any such difference as the only way such services could have been taxed was after the insertion of Section 66A of FA 1994 i.e., with effect from 18 April 2006[24]. Further, merely because the Taxpayer had obtained registration under the Service Tax, it cannot be made the basis for fastening of tax liability[25].
- Hence, by no stretch of imagination can the Taxpayer be obligated to discharge Service Tax on such services provided by it from outside India.
- Further, no Service Tax liability can be fastened on out-of-pocket expenses under rule 5(1) of the Service Tax (Determination of Value) Rules, 2006[26] recovered prior to 18 April 2006 because if the underlying services were not taxable prior to such date, then the expenses recovered in relation thereto can also not be taxed.
- In view of the above, the appeals are allowed as the Impugned Order is not sustainable in law.

CESTAT upholds evidentiary value of emails obtained from proprietor's email account

Royal Blankets Vs. Principal Commissioner, Customs (Import) [Customs Appeal No. 51721 of 2021]

Facts of the case

- M/s. Royal Blankets ('Taxpayer') is a proprietorship form of Mr. Nitin Khandelwal. Mr. Nitin is also employed as a Manager in M/s. Wide Impex which is owned by his brother Mr. Mayank Khandelwal. Mr. Nitin also manages a partnership firm named M/s. KLM Overseas.
- An investigation was initiated by the Special Intelligence and Investigation Branch of Customs ('SIIB') against Wide Impex alleging under-valuation of imported goods and summons were issued to Mr. Mayank. Since Mr. Mayank was ill, he authorised Mr. Nitin to appear on his behalf and join the investigation.
- On 9 January 2018, Mr. Nitin gave a statement to SIIB *inter alia* stating that –
  - He used to visit China to place orders for goods on behalf of Wide Impex for its further sale to Mr. Prateek Jain, Mr. Rajnish Maurya and Mr. Piyush (collectively referred to as 'buyers').
  - He would undervalue the goods by submitting fake invoices for customs clearance and would remit the value shown in the invoice through banking channels.
  - The remaining value i.e., difference between the actual price and the under-invoiced valued would be paid by the buyers directly to the exporter.
  - Mr. Anuj Gupta co-ordinates export of goods from China and two invoices would be issued for each consignment viz., a genuine invoice showing the value of goods in Chinese Yuan Renminbi ('RMB') and a fake invoice showing value of goods in US Dollar ('USD'). The fake invoice would then be used for customs clearance.
  - Further, Mr. Nitin opened his email account using the computer installed in the room of SIIB and took a print-out of the original invoices in Excel form which was received from Mr. Anuj and put his signature certifying the document. It was also stated that the prices quoted in the Excel sheet were on CIF basis.

[22] Modi-Mundipharma (supra), Art Leasing Ltd. Vs. Commissioner of Central Excise, Cochin [2007 (6) TMI 217 - CESTAT, Bangalore], Reliance Industries Ltd. Vs. Commissioner of Central Excise, Rajkot [2008 (1) TMI 86 - CESTAT, Ahmedabad] and 20th Century Finance Corporation Ltd. and Anr. Vs. State of Maharashtra [2000 (5) TMI 980 - Supreme Court].
[23] CBEC Circular stated that the services provided beyond territorial waters of India are not liable to service tax as provisions of Service Tax have not been extended to such areas for a service recipient in India.
[24] Circular No. F. No. 276/8/2009 CX 8A dated 26 September 2011, in view of the decision of Bombay High Court as affirmed by Supreme Court in Indian National Shipowners Association (supra), clarified that Service tax liability on any taxable services provided by a non-resident or a person located outside India to a recipient in India would arise only with effect from 18 April 2006. Reliance is also placed on Commissioner of Service Tax, Ahmedabad Vs. M/s. Bosch Rexroth (India) Ltd. [2011 (4) TMI 222 - CESTAT, Ahmedabad]
[25] M/s. Jetlite (India) Ltd. Versus CCE, New Delhi [2010 (12) TMI 40 - CESTAT, New Delhi]
[26] Held ultra vires the provisions of FA 1994 in Intercontinental Consultants & Technorats Pvt. Ltd. Vs. Union of India [2012 (12) TMI 150 - Delhi High Court]

- During investigation, it was observed by SIIB that apart from Wide Impex, there were also consignments imported by the Taxpayer which led to investigation against the Taxpayer.
- Pursuant to the investigation, show cause notice ('SCN') was issued proposing to invoke extended period of limitation seeking to -
  - Reject transaction value in 23 Bills of Entry ('BoEs') filed by the Taxpayer under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('Valuation Rules') and re-determine the same as per section 14 of Customs Act, 1962 ('Customs Act') read with rule 10(2) of Valuation Rules; and
  - Impose interest and penalty under sections 112/114A and 114AA of Customs Act.
- Subsequently, replies were filed by Taxpayer and after affording personal hearings, the order was issued by the Principal Commissioner, Customs (Import)-ICD, Tughlakabad ('tax authority') confirming the demand alleged in SCN *inter alia* holding that
  - In respect of 6 BoEs, the values found in parallel invoices (as found in the Excel sheet) were used to determine the value of imported goods.
  - In respect of the remaining 17 BoEs, although no parallel invoices were found; on comparison of the goods imported in such BoEs and the value of goods found in the excel sheet (qua the aforesaid 6 BoEs), it is evident that the same *modus operandi* was adopted. Hence, demands in these BoEs were confirmed on the basis of values in contemporaneous imports for 6 BoEs.
  - The value determined as above were taken by the tax authorities as FOB prices and not CIF prices on which the notional components were added for freight (20%) and insurance (1.125%) as per rule 10(2)(b) of Valuation Rules.
  - Penalty equal to the differential duty was imposed under section 114A of Customs Act. Further, penalty of INR 5 Mn. Was imposed under section 114AA of Customs Act for knowingly or intentionally making false or incorrect declarations.
- Aggrieved by the above, the Taxpayer filed an appeal before CESTAT, New Delhi.

Contentions of the Taxpayer

- The SCN and the Impugned Order were issued without application of mind. The entire case is based on an unsigned, unstamped Excel sheets recovered from the email of Mr. Nitin.
- The transaction value in the invoices issued in USD was rejected without following the procedure laid down in rule 12 of Valuation Rules. Moreover, the sequence of following rules 4 to 9 sequentially was not carried out. As regards 17 BoEs, the differential liability was determined basis the values found in Excel sheet in respect of 6 BoEs although the description of the goods imported therein did not match with the description of the goods imported in 17 BoEs.
- The BoE No. 2521444 dated 19 July 2017 was not cleared by the customs authorities on the basis of self-assessment. Instead, the same was re-assessed by the tax authorities by enhancing the value from INR 7,91,689 to INR 8,89,221. The re-assessed BoE was assailed by the Taxpayer before the first appellate authority (Commissioner (Appeals)), who had upheld the re-assessment. Therefore, enhancing the value of assessment without challenging the first appellate order is not permissible.
- In respect of BoE No. 6985117 dated 5 October 2016, Anti-Dumping Duty ('ADD') was imposed. While the Taxpayer had given its reply challenging the imposition of ADD, no finding was given in the Impugned Order.
- The Excel sheet based on which the SCN and the Impugned Order was issued was not accompanied by a certificate as per section 138C of Customs Act. Hence, the same cannot be relied upon by the tax authorities.
- Penalty under section 114AA of Customs Act cannot be imposed as the said provision covers only mis-declaration in the case of exports. Reliance in this regard was placed on the 27th Report of the Standing Committee on Finance. The quantum of penalty imposed is also exorbitant.

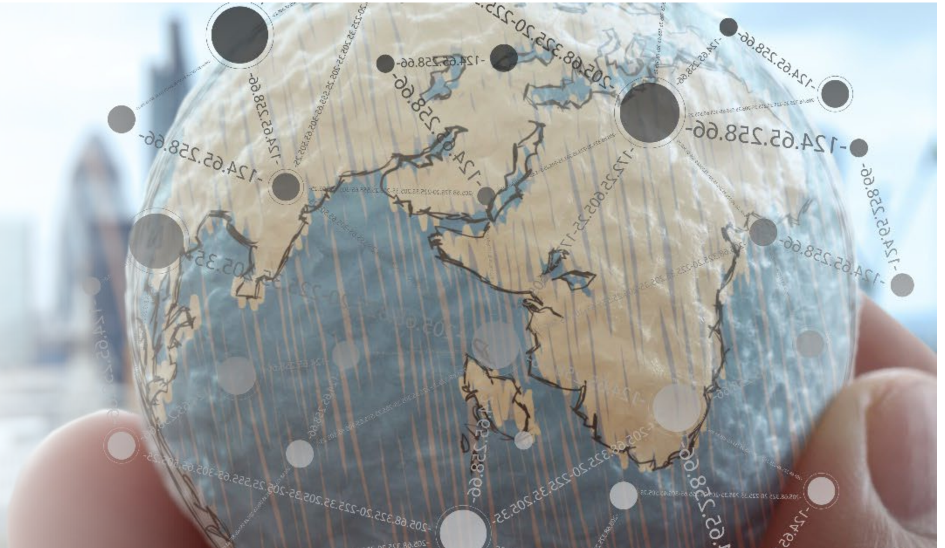
Contentions of the tax authority

- During investigation *qua* Wide Impex, it was observed that the Taxpayer had also undervalued the imported goods and Mr. Nitin was the person behind both these cases. The *modus operandi* explained by Mr. Nitin was that 2 invoices were issued for every consignment – one in RMB (declaring the correct price) and the other in USD (used for customs clearance).
- During investigation, Mr. Nitin also explained the manner of receipt of invoices on his email ID and the details of the sender of such email. Mr. Nitin also opened his email using his password in SIIB's office and from that, he had produced copies of the invoices and Excel sheets showing the correct values and under-valued prices. Thereafter, a print of the Excel sheet was taken which was duly signed by Mr. Nitin. The said Excel sheet formed the basis of further investigation.
- During investigation, it was also observed that Mr. Nitin was also involved in imports of other firms viz., the Taxpayer and KLM Overseas. Thereafter, SCN was issued to the Taxpayer to recover the differential duty and impose penalties, which was confirmed *vide* the Impugned Order.

Observations and ruling of CESTAT

- The Excel sheet produced by Mr. Nitin not only contained details of imports by Wide Impex but also some entries with respect to imports made by KLM Overseas and six entries with respect to imports by the Taxpayer. These six entries formed the basis of re-determination of value in respect of 6 BoEs.
- As regards remaining 17 BoEs, based on intelligence, the values declared in the BoEs was doubted, and when summoned, Mr. Nitin, in his statement had explained his *modus operandi*. He had also produced documents by printing from his email account which showed much higher values.
- It is pertinent to note that the email IDs of Mr. Nitin in which the invoices were received as well as the email IDs from which the invoices were sent were in exclusive knowledge of Mr. Nitin. There is nothing on record which shows that the tax authorities were aware about this. Further, the issue of parallel invoices was also in the exclusive knowledge of Mr. Nitin and he had exclusive access to his email accounts. Mr. Nitin had shown both sets of invoices and had printed and signed them. As a result, the tax authorities had reasonable doubt to reject the transaction value as per rule 12 of Valuation Rules.
- Once the transaction value is rejected, it should be re-determined sequentially as per rules 4 to 9 of Valuation Rules. The tax authorities were not only correct in adopting rule 9 of Valuation Rules after examining and excluding the applicability of rules 4 to 8 but had also accepted the declared value in majority of items and had enhanced value only in cases where it was warranted.
- However, the tax authorities could not have presumed that the values reflected in the Excel sheet were FOB values especially because Mr. Nitin’s statement clearly reflects that the value stated therein were CIF values. In the absence of evidence, the tax authorities could not conclude that the said value was FOB values and hence, the addition of 20% (towards freight) and 1.125% (towards insurance) is unsustainable in law and deserves to be set aside.
- The Taxpayer’s contention that the entire case is based on unsigned, unstamped Excel sheets recovered from Mr. Nitin’s email was not accepted by observing that in emails, one does not put one’s signature or stamp even otherwise.
- As regards BoE No. 2521444, it was held that once a BoE is re-assessed by the proper officer and such re-assessment is assailed before the first appellate authority, the re-assessment merges with the order passed by the appellate authority as per the doctrine of merger. The order passed by the appellate authority holds the field and unless the same is modified by a higher forum, the same cannot be modified through a SCN. Hence, the demand as regards this BoE cannot be sustained and must be set aside.
- As regards BoE No. 6985117, since the Impugned Order did not record any findings for imposition of ADD, the imposition of ADD must be set aside.
- As regards Taxpayer’s contention that the Excel sheet cannot be relied upon as evidence as it was not accompanied by a certificate under section 138C of Customs Act, it was observed that there is no force in this submission because:
  - Section 138C would apply if the information is printed from a computer and the certificate should certify that the computer was being used for the purpose of business during the relevant period.
  - In the present case, the Excel sheet was printed in SIIB’s office using its computer and printer, but the Excel sheet was not stored in that computer. It was also not any computer in the office or residence of Mr. Nitin. Instead, the same was in some server of Gmail cloud.
  - The tax authorities could not have issued a certificate regarding the servers of Gmail. In fact, the only person who would have known if that particular email ID was used during the relevant period to conduct business or not is the one who owns the Gmail ID i.e., Mr. Nitin.
  - Mr. Nitin had not explained in his statement but had also given his and the exporter’s email IDs and further opened his own Gmail account using his user ID and password.
- The penalty under section 114A of Customs Act is mandatory and is equal to the amount of duty evaded by suppression of facts. However, since the duty evaded is required to be recomputed as above, the penalty under section 114A needs to be re-determined accordingly.
- Section 114AA of Customs Act imposes penalty on a person who knowingly makes any false declaration statement or produces a document which is false or incorrect in any particular manner. There is nothing in the said provision to state that section 114AA applies only to exports and not to imports. Further, nothing in the said provision or the 27th Report of the Standing Committee of the Finance indicates that the said provision would apply only to exports. In the present case, the penalty imposed by the tax authorities was less than 10% of the value of goods and the same cannot be said to be excessive and hence, the same was upheld.
- In view of the above, the appeal was dismissed with the aforesaid reliefs and the matter was remanded for redetermination of demand and penalty under section 114A of Customs Act.

TRANSFER PRICING



ITAT: Offsetting outstanding payables with interest on overdue receivables incorrect, cites only income-impacting international transactions u/s.92

SAP India Private Limited ("SAP India") is a subsidiary of SAP AG, Germany, and SAP India Holdings PTE Ltd., Singapore. Incorporated on 14 March 1996, SAP India is primarily engaged in sublicensing, distribution, and after-sales support for SAP software products in India. Under a distribution agreement, SAP India markets SAP products and provides support services to independent customers in India.

The company undertakes multiple functions as part of its distribution and service model, including resale activities, marketing and advertising, replication and customisation of SAP software, quality control, sales and distribution, maintenance, consultancy, and training services.

Issue 1: Disallowance of ESOP Expenses

TPO's Objection:

- The Ld. AO/TPO, after examining the complete scheme, held that ESOP expenses are a capital expenditure and they are a notional loss and not an actual loss for which liability incurred.
- Dispute resolution panel ("DRP") also upheld the TPO/AO contention.

Appellant Contention:

- ESOP expenses cross-charged by parent company represent employee compensation and is revenue expenditure allowable u/s 37.
- Actual payment made to its parent company.
- It is a covered matter in Appellant's own case by Karnataka High court for AY 2017-18 and AY 2018-19.
- Further relying on the Karnataka High court ruling in case of Biocon Ltd. where it was held that it is an allowable expenditure.

Tax Tribunal's Analysis and Conclusion:

The Tribunal followed the Karnataka High Court decision in Biocon Ltd. and in Appellant's own earlier years, holding ESOP cost as allowable business expenditure under section 37 of the Act. The AO was directed to delete the disallowance.

Issue 2: Refund of Excess Dividend Distribution Tax (DDT) u/s 115-O

Appellant contention:

- Dividend paid to non-resident shareholders. Dividend distribution tax ("DDT") was calculated originally at the rate of 20.56% while according to the double taxation avoidance agreement, the tax rate should have been 10%.
- Appellant claiming that excess DDT paid should be refunded.

Tax Tribunal's Analysis and Conclusion:

- The Appellant raised the same arguments that were already considered and rejected by the Special Bench in DCIT vs. Total Oil India Pvt. Ltd.
- Since the issue is identical and already decided against the Appellant, the Tribunal follows that earlier ruling and dismisses the Ground of appeal.

Issue 3: Interest on delayed receivable

TPO's / AO's Objection:

- The TPO/AO treated the delay in receipt of receivables as a separate international transaction.
- Receivable cannot be netted off against payables since they arise from distinct transactions.
- Allowing a 30-day credit period and applying SBI short-term deposit rates, he calculated an interest adjustment and passed the order under section 92CA(3) on 28 January 2022.

Appellant Contention:

- The Appellant claimed that outstanding receivables should be netted off against payables to AEs before calculating interest.
- Argued that SBI short-term deposit rate used by TPO is inappropriate; EURIBOR should be applied because invoices are in Euro.

Tax Tribunal's Analysis and Conclusion:

- Upheld the TPO's view that delayed receivables form a separate international transaction.
- Stated that if transactions were intended to be netted off, the Appellant would have shown them net in its financial statements, which it did not.
- Held that netting off receivables with payables is incorrect and contrary to accounting principles.

Issue 4: Selection/ exclusion of Comparables in Distributions Segments

TPO's / AO's Objection:

- The TPO rejected the Appellant's transfer pricing study report, citing issues with certain filters and the use of data available only as of April 2019. And conducted an independent fresh search using his own set of filters.
- Out of the 11 comparables selected by the Appellant, the TPO accepted only five and rejected the remaining six.
- On his fresh search, the TPO identified a 13 comparable set computed their margin at 35th percentile at 6.25%, 65th percentile at 13.30% and median margin of 11.49%.
- TPO also denied working capital adjustment as requested by Appellant and determined the Appellant's Profit Level Indicator (PLI) at 4.14%, below the arm's-length range

Appellant Contention:

The Appellant contended that several comparables adopted by the TPO were functionally dissimilar, lacked segmental information, or failed the Related Party Transaction (RPT) filter.

Tax Tribunal's Analysis and Conclusion:

The Tribunal held that comparability must be examined on the basis of functional profile, availability of reliable segmental data, and strict adherence to the RPT filter.

Microsoft Corporation (India) Pvt. Ltd.:

- TPO had relied on appropriate segmental data, making it functionally comparable.
- However, the Tribunal clarified that the RPT filter must be independently applied to both sales and costs.
- If the company fails the RPT threshold on either parameter, it must be excluded.

Tally Solutions Pvt. Ltd.:

- Although the DRP treated it as a distributor, the Tribunal noted substantial R&D expenditure (approx. 7.17% of turnover) and involvement in software development activities.
- Since the company develops and sells its own software products, it is functionally dissimilar to a routine distributor and must be excluded.

Innovana Think labs Ltd.:

- Despite high revenue from software sales, the Tribunal accepted that it is primarily engaged in software development and not distribution.
- Accordingly, the company was directed to be excluded.

Quick Heal Technologies Ltd.:

- Found to be engaged in the development of proprietary software products rather than mere distribution.
- Functionally dissimilar and directed to be excluded.

CompuCom Software Ltd.:

- DRP had instructed the TPO to use only the "learning solutions" segment margin.
- Tribunal directed the TPO to strictly follow this direction.

Based on the above findings, the grounds relating to comparability selection and rejection were partly allowed.

SAP India Pvt Ltd [TS-665-ITAT-2025(Bang)-TP]

ITAT: Deletes TP-adjustment qua Management Fees, notes overall margin accepted under TNMM

Logwin Air & Ocean India Private Limited ("Appellant"), a company incorporated in India, is engaged in international freight forwarding and logistics services as part of the Logwin Group.

The Appellant entered into service agreements with its associated enterprise, Logwin Germany, for support and consulting services in Controlling, HR Management, Accounting/Financial Reporting, Marketing, Administration, and Miscellaneous Consulting on a cost-plus 5% basis.

During the assessment, the Transfer Pricing Officer (TPO) and Assessing Officer (AO) made adjustments on the basis that the Management Fees paid to the associated enterprise were not substantiated in terms of Need, Rendition, and Benefit.

Issue 1: Adjustment on Management fees

TPO's / AO's Objection:

- The TPO noted that the appellant failed to provide evidence of expenses incurred by the AE for rendering the services. Due to lack of evidence, the TPO doubted the validity and quantum of the expense allocation.
- The TPO disagreed with the benchmarking done by the Appellant for the international transaction of payment of Management Fees to the associated enterprise and treated the appellant as a tested party.
- The TPO held that the appellant failed the Need, Benefit and Rendition Test for the alleged services. The services were categorised as shareholder activities/duplicative services, for which no payment was considered necessary.
- TPO applied the "Other Method" as the most appropriate method, treating the arm's length price (ALP) of Management Fees **as Nil.**

DRP's Directions:

- Vide directions dated 20.09.2024 under section 144C (5), the DRP rejected the appellant's objections.
- The DRP rejected reliance on additional evidence, holding that the services were duplicative in nature and concluded that no real benefit accrued to the Appellant from the alleged services.

Appellant's Contention:

- The Appellant argued that all international transactions were benchmarked together using the Transactional Net Margin Method (TNMM), which resulted in a net operating margin of 7.52% versus 0.91% of comparable entities, demonstrating arm's length pricing.
- The Appellant contended that the TPO could not segregate the Management Fees from the aggregate benchmarking approach, as Rule 10A(d) recognises "closely linked transactions."
- The Appellant provided detailed documentary evidence of the services rendered (Controlling, HR, Marketing, Administration, etc.) and the benefits derived from these services.

Tax Tribunal's Analysis and Conclusion:

- The Tribunal relied on the Delhi High Court decisions in Magneti Marelli Powertrain India Pvt. Ltd. and Sony Ericsson Mobile Communication India Pvt. Ltd., which held that once a method like TNMM is accepted for all transactions, a separate adjustment for one element cannot be made.
- The Tribunal held that the TPO/AO was not justified in making a separate transfer pricing adjustment for Management Fees.
- The Tribunal deleted the transfer pricing adjustment.

Issue 2: Addition under Section 41 – Alleged Overstatement of Liability to Lufthansa Cargo AG

TPO's / AO's Objection:

- The AO noticed a difference of INR 16,57,766 between the appellant's ledger and Lufthansa Cargo AG's ledger.
- The AO proposed to treat the difference as a cessation of liability under Section 41(1), as the Appellant did not reconcile the discrepancy satisfactorily.
- DRP upheld this addition in its directions, stating that the adjustment arises from the intimation issued under section 143(1), and no detailed examination was done by the AO.

Appellant Contention:

- The Appellant submitted that the difference arose due to mismatched document numbers and incomplete ledgers from Lufthansa.
- The Appellant submitted that the difference arose due to mismatched document numbers and incomplete ledgers from Lufthansa.
- The Appellant offered to provide supporting invoices to reconcile the differences.

Tax Tribunal's Analysis and Conclusion:

- The Tribunal observed that the issue required factual verification of each invoice raised by Lufthansa and recorded in the appellant's ledger.
- Since the difference was due to mismatched invoice numbers and incomplete records, factual scrutiny was essential before confirming the addition.
- The Tribunal did not decide on the addition under Section 41 on merits and remanded the issue for factual verification.

Logwin Air & Ocean India Private Limited [TS-689-ITAT-2025(Mum)-TP]

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CONTACT US

For any content related queries, you may please write to the service line experts at accountingadvisory@bdo.in
For any other queries or feedback, kindly write to us at marketing@bdo.in

BDO INDIA OFFICES

Ahmedabad
Westgate Business Bay, Block - A,
Level-6, Opp. Nirvana Party Plot,
S. G. Highway, Ahmedabad – 380051, INDIA

Bengaluru - Office 1
Prestige Nebula, Floor 3
Infantry Road
Bengaluru 560001, INDIA

Bengaluru - Office 2
SV Tower, No. 27, Floor 3 & 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA

Bhopal
11th Floor, Bansal One Building
Office No. EL-012 & EL-021
Rani Kamlapati Railway Station
Bhopal 462016, INDIA

Chandigarh
Plot no. 55, Floor 5
Industrial & Business Park
Phase 1, Chandigarh 160002, INDIA

Chennai
Olympia Cyberspace, Floor 10, Module 4
No: 4/22 Arulayiammanpet, SIDCO Industrial
Estate Guindy, Chennai 600032, INDIA

Coimbatore
Pacom Square, Floor 3, 104/1, Sakthi
Main Road, Bharathi Nagar, Ganapathy
Coimbatore 641006, INDIA

Delhi NCR - Office 1
Magnum Global Park, Floor 21, Archview
Drive, Sector 58, Golf Course Extn Road
Gurugram 122011, INDIA

Delhi NCR - Office 2
Windsor IT Park, Plot No: A-1
Floor 2, Tower B, Sector 125
Noida 201301, INDIA

Goa
BIZ – Nest, Floor 7
A Wing, Sunteck Corporate Park
Opp. Shram Shakti Bhavan, Patto
Panaji, Goa 403001, INDIA

Hyderabad
1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA

Kochi
XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA

Kolkata
Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA

Mumbai - Office 1
The Ruby, Level 9, North West &
South East Wings, Senapati Bapat Marg
Dadar (W), Mumbai 400028, INDIA

Mumbai - Office 2
601, Floor 6, Raheja Titanium, Western
Express Highway, Geetanjali Railway
Colony, Ram Nagar Goregaon (E),
Mumbai 400063, INDIA

Mumbai - Office 3
Floor 20, 2001 & 2002 - A Wing, 2001-
F Wing Lotus Corporate Park, Western
Express Highway, Ram Mandir Fatak Road,
Goregaon (E) Mumbai 400063, INDIA

Mumbai - Office 4
2nd floor, Empire Complex
414 , Senapati Bapat Marg
Lower Parel West,
Mumbai 400013, INDIA

Pune - Office 1
Floor 6, Building No. 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

Pune - Office 2
Floor 2 & 4, Mantri Sterling, Deep Bunglow
Chowk, Model Colony, Shivaji Nagar
Pune 411016, INDIA

Vadodara
1008, Floor 10, "OCEAN", Sarabhai
Compound, Nr. Centre Square Mall,
Dr. Vikram Sarabhai Marg Vadodara
390023, INDIA

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