2025-26-51-06 CTCJ

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The Chamber's Journal

YOUR MONTHLY COMPANION ON TAX & ALLIED SUBJECTS

September 2025

Total Page: 148
Price
₹ 300/- per copy

Tax Audit and ITR – Key Updates for FY 2024-25 Tax Filings



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Glimpses of the new Chamber's Conference Room was inaugurated on 21st August, 2025 at office No. 3, Reva Chambers, New Marine Lines, Mumbai 400020



Mr. S.E. Dastur (Sr. Adv. & Past President) inaugurating the new conference room.



CA Vijay Bhatt (Imm. Past President) alongwith CA Jayant Gokhale (President) and CA Neha Gada (Vice President) performing the puja.



CA Jayant Gokhale welcoming Sr, Adv, S.E. Dastur



Sr. Adv. S.E. Dastur addressing the members



Group Photo



View of the Conference Room

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2025-26:51-06 CTCJ

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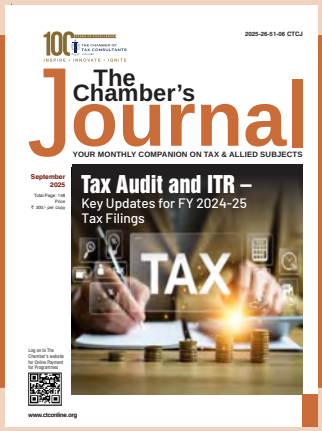
Design & Printed by : Finesse Graphics & Prints Pvt. Ltd.; Tel. : +91 22 4036 4600

Contents



From the President
— Jayant Gokhale.....6

From the Editor's Desk
— Anish Thacker.....8

Special Feature on Tax Audit and ITR - Key Updates for FY 2024-25 Tax Filings

Reporting in a Tax Audit Report - Analysis of Reporting Clauses
— Anita Basrur & Jenish Mapara 10

Changes in reporting in Tax Audit Report – Income & Expense Clauses
— Jay Shah 17

Impact of ICAI's Guidance Note on Financial Statement of Non-Corporate Assessee; Impact on Tax Audits of Non-Corporates
— Abhishek Mahawar.....26

Tax Audit considerations of Unique Income Streams
— Manisha Futermal & Snehal Mayacharya 34

Income Recognition, Deferral and Exemption is a Choice or Compulsion?
— Ankit Marlecha.....42

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Usage of AI and Automation Tools in Tax Audit
— Saili Kulkarni 56

Reporting, Disclosures, Representations and Documentation – Caution for Tax Auditors
— Parveen Kumar 67

Hot Spot
New Investment Products - SIFs and QIFs - Taxation Impact
— Nehal Sampat.....77

Direct Taxes - Important Judgements
Supreme Court
— Keshav Bhujle 82

High Court
— Jitendra Singh, Radha Halbe & Harsh Shah.....88

Tribunal
— Nikhil Mutha, Viraj Mehta & Kinjal Bhuta.....92

International Taxation - Important Judgements Case Law Update
— Dr. Sunil Moti Lala 99

Indirect Taxes - Important Judgements GST
— Naresh Sheth & Jinesh Shah 114

Service Tax
— Rajiv Luthia & Keval Shah.....119

Corporate Laws - Important Judgements Case Law Update
— Makarand Joshi.....125

Other Laws
FEMA Updates & Analysis
— Hardik Mehta & Tanvi Vora.....132

Best of The Rest
— Rahul Hakani & Niyati Mankad.....135

The Chamber News
— Mehul Sheth & Ankit Sanghavi 144



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From the President

CA Jayant Gokhale

Dear Members,

While many professionals are immersed in meeting income tax filing deadlines, the CTC team has been energetically pursuing its ambitious Centenary Year goals. A major milestone was the inauguration of the CTC Learning Centre on August 21st by Past President (PP) and mentor, Senior Advocate Sohrab E Dastur. With a seating capacity of over 40 and equipped with cutting-edge acoustics and audiovisual technology, this Centre is now fully operational and poised to become a hub for web-based and hybrid learing initiatives. The inauguration was graced by several past presidents, including the ever-energetic PP, P.C. Joshi, and senior members.

The very next day, on August 22nd, PP, Senior Advocate Y.P. Trivedi delivered the first webcast from the Learning Centre, sharing his inspiring journey through the legal, corporate, social and political spheres. He emphasized that a professional needs to focus on succeeding in an ethical manner and for which hard work and commitment to do your best is the prime ingredient of success. The Leaning Centre, painstakingly created by the entire team (and particularly through the dedicated efforts of CA Mehul Seth (Secretary) and CA Vitang Shah (Treasurer), shall be a cornerstone for future learning initiatives of the CTC.

To ensure that this infrastructure translates into meaningful outcomes, the Managing Council has formulated strategies to maximize its utility. In today's digital age, physical location has become largely irrelevant. Members across India can now access CTC's educational offerings—study circles, lectures, seminars—remotely. To further extend this outreach, the Council has introduced a special one-time Centenary Year Digital Membership for professionals outside Mumbai. This Centenary Year initiative offers **online** an **instant digital membership** with a suite of member privileges. Members are encouraged to spread the word among non-members outside MMR, helping extend CTC's reach and impact. In alignment with this vision, the newly formed Committee for Outreach to Branches is formulating revised guidelines for branches/chapters nationwide. The synergy between the Learning Centre, digital membership, and branch outreach is expected to significantly enhance CTC's national presence and standing.

While carrying out all these activities, we remain sensitive to the needs of the professionals and taxpayers at the ground level. Our Law & Representation committee was amongst the first to write to the Authorities a well reasoned application for extension of date for Filing of Tax Audit Reports and another seeking time for Filing of GSTR 3B.

CTC's academic activities too remain vibrant. The Students Committee has continued conducting the "Practical Income Tax & Litigation Masterclass" and recently hosted a timely webinar on Tax Audit training for students. And to crown this the **Udaan** series opener for the Centenary Year will be an inspiring interview with Dr. Narendra Jadhav—economist, former Planning Commission member and Parliamentarian. Though designed for students, this session promises to provide inspirational insights and guidance to all members.

Other committees have also been dynamic: the International Tax Committee held five Study Circle Meetings last month; the Direct Tax Committee hosted two; and the Indirect Tax, Accounting & Auditing, and Digital Connect Committees each conducted at least one Study meeting/webinar. These efforts reflect CTC's commitment to continuous learning and professional development.

This emphasis on academic engagement is especially critical given the rapidly evolving global landscape. (In the context of Mr. Trump, it is perhaps more apt to say that the world is changing every-day)! Recent developments include shifts in U.S. tariffs, volatility in global trade, major changes in India's GST rates, and the introduction of the new Income Tax Act of 2025. Technological advancements in AI and semiconductor initiatives in India further underscore the pace of change. Even long-standing fundamental economic assumptions—like the USD's role as the global reserve currency—are being re-evaluated by various central banks.

In such turbulent times, professionals must stay informed not only about tax and economic laws but also about broader macroeconomic trends. As **Peter Drucker** wisely noted, *"The greatest danger in times of turbulence is not the turbulence – it is to act with yesterday's logic."* CTC, with its legacy and goodwill, is uniquely positioned to be a guiding force for its members since we can call upon some of the most eminent and experienced experts and visionaries to guide us. By leveraging its network of experts and thought leaders, CTC aims to equip professionals with the knowledge needed to navigate these challenges.

To supplement these efforts, CTC has also launched the Centenary Special "Gyan Shorts"—bite-sized, five-minute knowledge capsules delivered via Social Media and YouTube Channel of CTC on a weekly basis. These are designed to keep members updated and engaged in a fast-paced world. Announcements of some of our popular RRCs will also be issued shortly so remain alert!

In closing, I invite every member to immerse themselves in this "Gyan Ganga" that CTC offers. As Rupert Murdoch aptly said, *"The world is changing very fast. Big will not beat small anymore. It will be the fast beating the slow."* Let us embrace this journey of knowledge together, and may it bring success and fulfilment to each of us.

CA Jayant Gokhale
President



From The Editor's Desk

CA Anish M. Thacker

My Brothers and Sisters,

"There can be no life without change and to be afraid of what is different or unfamiliar is to be afraid of life"

– Theodore Roosevelt

I came across this quote on my friend, CA Ameet Patel's LinkedIn page today (thank you Ameet for sharing this) and as I sit down to pen this communication just after the recent happening of some major events which could potentially change our lives significantly, I think this quote is apt for what I want to share with you.

The first event is the Tariffs put in place by the United Staes of America (USA). Though many of us felt that we may be able to work out a diplomatic solution with the USA to somehow avoid these tariffs being levied, the fact of the matter is that these are now a reality. The levy of these tariffs can cause significant disruption in our trade volumes with the USA particularly our exports. This may also impact tax collections as whatever we export would ideally be sourced or manufactured locally, the volume of which will also get impacted. The exact impact remains to be evaluated but all that we can see from a tax perspective is that tax collections will reduce. To what extent, remains to be seen.

The second very significant event is the reforms in the Goods and Services Tax (GST) to be implemented from 22nd September 2025. Many experts and industry veterans are hailing the same and are confident that the reduction in GST rates and the match of rates applicable to input and output would make life easier for the business as well as for the consumer, particularly the middle class. Hopefully the increase in tax collection on account of this will offset the strenuous situation caused by the imposition of the tariffs. Again, to what extent, remains to be seen.

For us professionals, the third significant event is the notification of the format of the financial statements of non-corporate entities. The step is salutary in as much as it will result in uniformity, transparency and ease of comprehension of the non-corporate accounts. Of course, the uncertainty around extension of due dates for tax audit completion and the filing of the 'audit' returns continues till date and though several institutions including the Chamber have filed representations to the Ministry of Finance requesting for extension, one is yet to hear from the Ministry. Through this medium, and on behalf of all of us, this is one more request to the Hon. Finance Minister to consider our request.

A century old institution stands tall and proud and also takes fresh guard for the next century. I am happy to see several initiatives being implemented in this centenary year, by President Jayant Gokhale and the conscientious and hardworking team of office bearers, core group members and staff to improve members' experience. I am sure that you, my brothers and sisters, will welcome these with great enthusiasm. You have been the cornerstone of the Chamber's glory over the past 100 years and I am confident that

with your enthusiastic backing, the Chamber will go from strength to strength and will emerge, better stronger and more dynamic in provision of education to professionals and public, in the times to come.

You would have received our first special edition of the centenary year on the evolution of Direct Tax Laws in India. A lot of hard work and effort has gone into curating the same. We are also working on five other similar editions, namely on Constitution and Tax Law, Indirect Taxes, Accounting & Auditing, Professional Ethics and Information Technology & Artificial Intelligence. Your feedback on the first issue will be of tremendous help in bringing the best of what we can do, to you in the next five editions. The request to all of you therefore is to please do give us constructive feedback. Communication always works best if it is two-way.

This month's issue of the Journal is a 'regular' issue on "Tax Audit and ITR – Key updates for FY 2024-25 filings". The issue is timely and also covers the updates exhaustively yet succinctly. I would like to express deep gratitude to the learned authors for their contribution and to the Journal Committee, Chairman Ameya Kunte, and P Shivanand Nayak and Jiger Saiya who have worked hard on this issue, for their dedication and commitment to bring this issue to you all.

We are in the middle of the festive season with Krishna Janmashtami and Ganesh Chaturthi having recently passed by the time this Journal reaches you. We also would have had celebrations of the Parsi New Year, Id e Milad and Onam having just gone by. There is Navratri, Dussehra and Diwali to look forward to. My best wishes to you all for the festival just gone by and festivals to come. My best wishes also for the successful completion of all personal tax return filings by the 15th September deadline.

I end this communication with another quote from Swami Vivekannanda:

> *"Be fearless in the pursuit of what sets your soul on fire!"*

Jai Hind!

CA Anish M. Thacker
Editor



REPORTING IN A TAX AUDIT REPORT - ANALYSIS OF REPORTING CLAUSES





CA Anita Basrur *CA Jenish Mapara*

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Overview

This article provides an overview of key clauses under the TAR, with particular focus on reporting requirements, audit methodologies, and clause-wise disclosures in Form 3CD. It also reviews recent amendments made to Form 3CD by the CBDT through N. No. 23/2025 dated 28 March 2025. These amendments, covering clauses such as 12, 19, 21(a), 22, 26, 28, 29, 31(a), 31(b), 31(c), and 36B, aim to enhance transparency, standardize reporting practices, and align audit disclosures with evolving legislative and regulatory frameworks. In addition, the article examines recent judicial precedents relevant to the mandatory use of UDIN in TAR, interpretation of the MFN clause. Staying abreast of these legal developments, maintaining proper documentation, and ensuring accurate disclosures remain critical responsibilities for tax auditors.

Tax Audit is a statutory examination of taxpayer's financial records to ensure compliance with the provisions of the Income-tax Act, 1961 ("the Act"). Under Section 44AB, specified categories of taxpayers are required to have their accounts audited by a Chartered Accountant (Tax Auditor or TA). The Tax Audit Report (TAR) must be furnished in Form 3CA or 3CB, along with the statement of particulars in Form 3CD. The Tax Auditor is responsible for expressing an opinion on whether the information provided in Form 3CD is "true and correct", subject to any observations or qualifications noted in Form 3CA/3CB. As the tax audit season for Assessment Year (A.Y.) 2025–26 begins, businesses and tax professionals should prepare for significant updates to the tax audit reporting framework, particularly relating to Form 3CB and Form 3CD. This article provides a brief overview of the key reporting clauses, recent amendments, and judicial developments impacting tax audits.

The Tax Auditor is responsible for expressing an opinion on whether the information provided in Form 3CD is "true and correct", subject to any observations or qualifications noted in Form 3CA/3CB

A) Reporting in a Tax audit report - Analysis of major reporting clauses

Clause number	*Analysis*
1	The name of the assessee whose accounts are being audited should be mentioned. The name should match with that appearing in the PAN records. If assessee uses any different trade name, the same should also be mentioned herein. In case of a branch audit, the branch name should also be included along with the name of the assessee. Irrespective of whether there is a change in the assessee's name during the financial year or after the year-end but before signing the audit report, the name as on the year-end should be mentioned. In both cases, the TA should disclose the name change as an observation in the TAR.
2	The address reported should be the registered office address in case of a company and in other cases, the address communicated by the assessee to the Income-tax Department as on the date of signing the TAR. The TA should verify the address from income tax records or the assessee's profile on the Income-tax portal, and any discrepancies should be reported as an observation in the TAR.
3	The PAN of the assessee must be mentioned, as it is a mandatory field in the e-filing format. For individuals, the Aadhaar number can also be provided, but it is optional.
4	The TA should verify the various registrations allotted to the assessee and mention these numbers in this clause. If assessee has multiple registrations all the numbers must be mentioned. Further, the TA should satisfy itself that all the necessary registrations have been obtained and in case a particular registration is not obtained, the same should be reported in this clause.
5	The Act defines different classes of assessees in the definition of "person" in section 2(31) of the Act, namely, individual, HUF, company, firm, AOP or BOI whether incorporated or not, a local authority or AJP. The TA needs to mention the relevant status of the assessee under this clause.
6	This is the financial year pertaining to the audit. This period is typically from the 1st April to 31st March of the next year but care has to be taken in case of closure of businesses, new businesses, amalgamations, demergers as here the start or end date will be different.
7	The assessment year relevant to the previous year to which the audit pertains needs to be mentioned.

Clause number	*Analysis*
8 & 8A	Clause (a) to (e) of Section 44AB of the Act specify the circumstances under which tax audit is to be conducted. The relevant clause needs to be mentioned. E.g. if sales turnover or gross receipts exceed Rs. 1 crore, audit is conducted as per clause (a) etc. In case an assessee has opted for certain special tax regime, the same needs to be reported in Clase 8A. The TA needs to verify whether the specified forms for availing these tax regimes have been filed. In case the forms are not filed, representation/confirmation to the effect that the same will be filed within specified timelines should be obtained. It is pertinent to note that, while generating UDIN, the same clause as chosen in clause 8 of Form 3CD needs to be selected.
9	The names of all partners or members of a firm, LLP, BOI, or AOP along with their profit-sharing ratios (including loss-sharing) needs to be reported under this clause. All changes in partners or their ratios during the year, regardless of frequency, must be disclosed. The TA needs to satisfy itself of the correctness of the disclosure after verifying the necessary documents.
10	The principal line of each business of the assessee needs to be reported in this clause. The business code applicable to the business from the list provided needs to be selected. If there are any changes in the nature of business or profession to be carried out, the same needs to be mentioned. In case of new line of business or discontinuation of a business, the same will need to be reported.
11	Every person, upon crossing a specified limit of turnover, needs to compulsorily maintain certain books of accounts as prescribed like cash book, journal, ledger, etc. Further, certain specified professionals have additional records prescribed that they must maintain. The TA should obtain the list of books maintained by the asseseee and mention the same under this clause. In case the assessee maintains books in electronic form, details of the place where the serve is located needs to be obtained and disclosed herein.

Clause number	*Analysis*
13	The method of accounting adopted—whether cash basis or mercantile basis—must be clearly specified. Companies are mandatorily required to maintain their books of accounts on the mercantile (accrual) basis in compliance with the Companies Act. Under the Income Tax Act, taxpayers are required to follow the Income Computation and Disclosure Standards (ICDS) and compute taxable income accordingly. The impact of ICDS on profit or loss, including – The increase in profit, decrease in profit and net effect is mentioned as per each ICDS needs to be reported under this clause.
14	The method of valuation of inventory should be consistently followed by the assessee. The same should also include certain prescribed adjustments. These adjustments relate to taxes, duties, cesses (such as excise duty, VAT) that are incurred while acquiring the inventory.
31(a) (b) (c) (d) (e)	This clause requires TA to report particulars of loan or deposit exceeding the specified amount taken or accepted during the year. It also requires TA to report particulars of loan or deposit exceeding the specified amount repaid during the year. Previously, the mode of acceptance or repayment of loans and deposits—whether by cash, account payee cheque, or draft—had to be disclosed manually across multiple sub-clauses. The language used in these sub-clauses was often unclear, making it difficult to understand exactly what needed to be reported under each category. Additionally, there was no specific option to classify transactions recorded through journal entries in loan accounts (such as adjustments or book entries). These transactions were frequently reported as being made "otherwise than by account payee cheque/draft," which could lead to automatic additions to the assessee's income under relevant tax provisions. The revised format addresses these issues by introducing a drop-down selection system with predefined codes. This coding system is designed to: • Clearly differentiate transactions made in cash from those made through account payee cheque or draft, • Standardize reporting across all audits through the use of dropdown menus, and • Enhance data structuring to facilitate better analysis and compliance monitoring.

Clause number	*Analysis*
32 (a)	This clause requires TA to report brought forward losses or unabsorbed depreciation and verify whether any pending assessments, appellate proceedings, or delays in return filing have an impact on the carry forward situation. A new reporting is required in case of section 115BAD and 115BAC of the Act, in respect of losses and allowances not allowed, as well as any adjustments to depreciation arising from the exercise of such option. If the assessee has opted for a concessional tax regime, the TA should obtain and verify the relevant forms filed for such option and also ensure that the reporting in clause 18(ca) is consistent with the disclosure in column (6) of the table under clause 32.
32 (b)	The TA needs to report change in shareholding taken place during the year under audit. Further, in case the change in shareholding exceeds 51%, the losses incurred in the previous years is not allowed to be carried forward. This clause applies to private limited companies but includes certain exceptions. It does not apply if less than 51% of the voting power has changed hands, or if the change in shareholding is due to the death of a shareholder. It is also not applicable when shares are gifted by a shareholder to a relative. Additionally, in cases where the holding company is a foreign entity, the provision is not triggered if the change in shareholding results from an amalgamation or demerger, provided that less than 51% of the shareholding has changed.
32(c), (e)	The TA is required to report speculation loss incurred during the year and provide the details thereof. A speculation loss cannot be set off against any income other than a speculation gain. Further, a loss in speculation business will be allowed to be carried forward for only 4 years. This clause keeps the above provisions in check.
34	This clause broadly relates to reporting of compliances (deduction/collection/ furnishing returns) in respect of taxes deducted/collected during the year under audit together with applicable interest thereon, if any. The TA should verify the TDS/TCS returns filed and also the demand status on TRACES portal for reporting under this clause. While reporting the details of tax deduction on payments outside India in clause 34, the TA will need to ensure that the DTAA benefits have been correctly considered especially when benefit of 'Most Favoured Nation' clause is being considered. This is on account of the decision of the Hon'ble **Supreme Court in the case of** ***Societe de***

Clause number	*Analysis*
	Participations Financiers vs. Assistant Commissioner of Income-tax (171 taxmann.com 393) wherein it was held a notification under section 90(1) is mandatory condition to give the effect of DTAA, any protocol changing its terms or conditions, which has effect of altering existing provisions of law, for a party to claim benefit of a 'same treatment (MFN)' clause based on the entry of the DTAA between India and another state which is member of OECD. Further, the relevant date would be entering into treaty with India and not a later date, when, after entering into DTAA with India, such country becomes an OECD member and the said issue is fully covered in the case of ***Nestle SA vs. Assessing Officer (International Taxation) (SC) (165 taxmann.com 334).***
35	This clause requires the TA to verify and provide quantitative details of the stock of raw materials and finished products of the assessee.
36B	A new Clause 36B has been introduced in Form 3CD, following Clause 36A. This clause requires the TA to specifically report receipts arising from the buyback of shares, as defined under Section 2(22)(f) of the Act. This provision was introduced through the Finance Act No. 15 of 2024, effective from October 1, 2024. Thus, only amounts received on or after October 1, 2024 should be reported. Buyback of shares up to September 30, 2024 does not have to be reported. In view of this reporting, there will be transparency and the tax authorities will have information about the said income directly from the TAR. Accordingly, the assessee will need to ensure that the amount is offered to tax in the computation of income as dividend.
37	This clause requires TA to report whether cost audit was required to be carried out or not and provide the details of the same. In case the said audit was required but not carried out, the same needs to be reported.
38	This clause requires TA to report whether an audit was required to be conducted under the Central Excise Act and whether the same has been carried out or not.
39	With GST in place, reporting under this clause by and large becomes redundant.
40	This clause requires the TA to report various ratios of previous year and preceding previous year. Further, such ratios would not be applicable for persons engaged in profession/ service industry. The TA needs to ensure that there is consistency between the numerator and denominator while calculating the said ratios.



Clause number	*Analysis*
41	This clause requires the details of demand raised or refund issued during the previous year under any tax laws other than the Income-tax Act, 1961 and Wealth-tax Act, 1957 along with details of relevant proceedings.
42	This clause requires the TA to state whether the reporting of Specified Financial Transactions is required to be done in the case of the assessee and whether the necessary forms have been filed within the specified due dates. The clause further requires the TA to comment whether all the requisite details have been furnished or not.
43	This clause requires the TA to report whether the assessee is required to furnish Country by Country reporting. If the same is applicable, then the TA is required to provide the requisite details.

■

CHANGES IN REPORTING IN TAX AUDIT REPORT – INCOME & EXPENSE CLAUSES



CA Jay Sharad Shah

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Overview

This article examines the significant changes in reporting under the Tax Audit Report – Form 3CD, with a specific focus on clauses impacting income and expenditure disclosures for Assessment Year 2025-26. Drawing on CBDT Notification No. 23/2025 dated 28 March 2025, the ICAI's Exposure Draft of the Guidance Note on Tax Audit, and relevant judicial pronouncements and circulars, the analysis provides a clause-by-clause update with practical implications for computation of income.

Key developments covered include:

- *Expanded concessional regimes (Clause 8A – inclusion of section 115BAE) and presumptive taxation for professionals (Clause 12 – section 44ADA).*
- *Adjustments to Written Down Value on regime switch (Clause 18(ca)) and corresponding loss disclosures (Clause 32).*
- *Enhanced reporting of disallowable expenditure under Explanation 3 to section 37 (Clause 21(a)), now segregating offences, fines, compounding/settlement payments, and perquisites given in violation of law.*
- *Updated partner remuneration reporting (Clause 21(b)(ii)(B)(IV)) with a recollection of an old CBDT Circular No. 739 being referred to in the ICAI's Exposure Draft of the Guidance Note.*
- *Introduction of Clause 36B to capture shareholder income on buyback of shares, following the shift of tax incidence from company (section 115QA) to shareholder (section 2(22)(f)).*
- *Omission of redundant Clauses 28 and 29 relating to section 56(2)(viia)/(viib).*

The article links these changes to statutory provisions, compliance challenges, and interpretative issues, offering auditors a comprehensive guide to practical reporting under the revised Form 3CD.

Abstract

Few clauses under the Tax Audit Report – Form 3CD have been revised for the Assessment Year 2025-26. This article focuses on the clauses which have an effect on the Income or Expense i.e., the Computation of Income Statement. The following material has been referred to for this article:

1. **CBDT Notification No. 23/2025 dated 28 March 2025** – new disclosures, typographical corrections, and few clause deletions.

2. **ICAI's Exposure Draft of Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961**– detailed instructions, operational checklists, and interpretative clarifications.

3. **Key judicial pronouncements and circulars** – influencing reporting of disallowable expenditure **(CBDT Circular 5/2012 dated 1-8-2012), partner remuneration (CBDT Circular No. 739 (25-3-1996)),** etc.

This article presents a clause-by-clause update, linking each to the corresponding section of the Income-tax Act, explaining the rationale for reporting, detailing its impact on computation, and analysing judicial precedents or circulars that have shaped these changes.

Clause-by-Clause Analysis

Clause 8A – Concessional Tax Regimes (inclusion of section 115BAE)

Earlier Position

Clause 8A of Form 3CD earlier required reporting where the assessee had opted for concessional tax regimes under:

- **section 115BAA** – Domestic companies (22% rate),
- **section 115BAB** – New manufacturing companies (15% rate),
- **section 115BAC** – Individuals/HUFs opting for simplified rate,
- **section 115BAD** – Co-operative societies

Change Made

- Clause 8A has been amended to **include section 115BAE**, introduced by the Finance Act 2023, effective AY 2024-25.
- section brief: New manufacturing co-operative societies incorporated after 01-04-2023, commencing production by 31-03-2024 (extended by notification), taxed at 15% on profits and gains derived from manufacturing. Exclusions: Certain activities (like software development, mining, power generation, bottling gas) are not considered "manufacturing" for this purpose.
- Accordingly, the tax auditor must now **report where the assessee has exercised an option under section 115BAE** in addition to the other concessional regimes

Linkage to other Clauses

Restrictions on set-off/carry-forward of losses attributable to such deductions (linked with Clause 32 reporting)

Clause 12 – Presumptive Tax Regimes (incl. section 44ADA)

Earlier Position

Clause 12 covered presumptive regimes for businesses (section 44AD, section 44AE) and certain sectors (section 44BB, section 44BBB). It did not specifically include presumptive

taxation for professionals under section 44ADA.

Change Made

- section 44ADA has been explicitly added. The clause now mandates disclosure when the assessee is declaring professional income on a presumptive basis (50% of gross receipts) under this section.

- Note: The tax auditor will have to ascertain if the assessee is covered by the provisions of any of the sections specified in clause 12.

- 3 situations have been envisaged by ICAI's Exposure Draft of the Guidance Note 2025:

  a) **Common books with presumptive business included**

  Issue: Apportionment of common expenses between regular and presumptive businesses.

  Auditor's approach: Arrive at a fair and reasonable estimate, document the basis, and if unsatisfied, record observations in Para 3 of Form 3CA/Para 5 of Form 3CB.

  b) **Separate books for each business (including presumptive)**

  Issue: No apportionment needed, as accounts are distinct.

  Auditor's approach: Verify profit disclosure directly from the separate books maintained.

  c) **No books for presumptive business, only net income credited to P&L**

  Issue: Inability to verify the correctness of presumptive income.

  Auditor's approach: State the figure as per P&L with a note of limitation. Appropriate Qualification in Form 3CB, as the absence of books prevents assurance of a true and fair view.

Clause 18(ca) – WDV Adjustment on Regime Switch

Earlier Position

- Clause 18(ca) was introduced when concessional regimes under section **115BAA, 115BAB, 115BAD**, and **115BAC(1)** came in.

- It required disclosure of the **one-time adjustment to Written Down Value (WDV)** where unabsorbed depreciation attributable to **additional depreciation [section 32(1)(iia)]** became ineligible under these concessional regimes.

- The intent was to ensure that while "additional depreciation" is barred, the underlying cost of the asset is not permanently lost — instead, it is restored into the WDV of the relevant block.

Change Made

- **Clause 18(ca) has been expanded** to cover cases where an assessee switches to the **new regime under section 115BAC(1A)** (introduced by Finance

Act, 2023 for individuals/HUFs from AY 2024–25).

- Thus, from AY 2025–26 onwards, the auditor must now also report WDV **adjustments, if any** in cases where individuals/HUFs exercise the section 115BAC(1A) option. Though this section is primarily aimed at personal income, in cases where individuals/HUFs are carrying on **business and have a manufacturing unit, additional depreciation could have created unabsorbed depreciation.**

- **Example (simplified):**

  – Unabsorbed depreciation as on 1-Apr-2024 = ₹ 25 lakh, of which ₹ 10 lakh relates to additional depreciation.

  – On opting for section 115BAA or section 115BAC(1A):

    - ₹ 10 lakh is **barred** from carry forward (Clause 32).
    - ₹ 10 lakh is **added to WDV of block** (Clause 18(ca)).
    - Net effect: Immediate set-off disallowed, but depreciation benefit flows in later years.

Linkage to other Clauses

Cross-verification between Clause 18(ca) and Clause 32 is critical. If loss due to additional depreciation is reported as disallowed in Clause 32, then a corresponding WDV adjustment should be seen in Clause 18(ca).

Clause 21(a) – Disallowable Expenditure (Explanation 3 to section 37)

Earlier Position

Clause 21(a) required auditors to report expenditure that was incurred for an offence or prohibited by law, or by way of penalty or fine for violation of law. There was no segregation of disallowable items such as compounding fees, settlements, and perquisites given in violation of codes of conduct, etc.

Change Made

Clause 21(a) now requires the auditor to report separately:

1. Expenditure for offences or prohibited activities **(under law in India or abroad)**

   - Scope of coverage: Covers expenditure incurred for any purpose which constitutes an offence or is otherwise prohibited by law, whether in India or outside India. This includes payments connected with activities expressly prohibited under statute (e.g., bribes, kickbacks, unlawful gratification), Expenditure linked with transactions violative of foreign law (e.g., anti-bribery, anti-corruption laws abroad). Expenditure incurred for acts which, though not resulting in conviction, are prohibited by regulatory or statutory provisions.

   - In the pre-amended clause, as there was no specific reporting requirement for penalties and fines paid for violations of the law in

force in a country outside India, the same had to be reported under item (via), which required reporting of expenditure by way of any other penalty or fine not covered in (vi). Now, post amendment, the same has to be reported in item (vi) since there is a specific requirement to report penalties and fines paid for violation of law in force in India as well as in a country outside India.

2. Other fines or penalties (not covered above)

- This category is intended to capture fines and penalties that are not directly linked to prohibited activities but nevertheless arise under statute or regulation i.e., the underlying activity is **not unlawful or prohibited**, but a **monetary penalty** is imposed for a lapse, delay, or non-compliance

- Clause 21 (a), item vi (i.e., Head 1 mentioned above) seems to be now reserved for substantive unlawful/ prohibited activity, whereas, Clause 21 (a), item via (Head 2) seems to deals with procedural/compliance penalties.

- Examples are Late filing fee for annual return under Companies Act, Penalty for delayed filing of TDS/GST returns, Municipal fine for parking or traffic violation, etc
- This clause covers only penalty or fine for violation of law and not the payment for contractual breach or liquidator damages.

- Even if the assessee is contesting such an order before higher authorities, the same will not be relevant and the mere point for ascertaining is whether such a sum is debited to the profit and loss account and if yes, the same has to be disclosed.

3. Expenditure incurred to compound an offence under Indian or foreign laws.

- This head requires reporting of amounts paid towards compounding or settlement of offences under statutory frameworks, both domestic and foreign.

- In certain offences, the parties involved can effect a compromise before the launching of prosecution or while the case is under trial in the court or under litigation. This may be at various levels and it is legally valid under various laws. When an assessee opts for compounding, further action under trial is discontinued. Cases in which this is permissible are called compoundable offences.

- Examples are Compounding fees under the Companies Act, 2013, Compounding charges under FEMA, Compounding charges paid to SEBI or RBI for regulatory violations.

- This clause, which now requires reporting the said expenses of compounding, is not restricted to expenses incurred under any

law for the time being in force in India **but also outside India (Refer enhanced Explanation 3 vide Finance Act 2024).**

4. Benefits/perquisites given (in any form) to any person if granted in violation of law or regulations or rule or guideline governing the conduct of such person.

    - Covers any benefit or perquisite (whether in cash or kind) granted in violation of applicable law or regulatory framework (rule/regulation/guideline) **binding on the recipient.**

    - **This reflects CBDT Circular 5/2012 dated 1-8-2012 issued by CBDT in respect of inadmissibility of expenses particularly incurred in providing freebies to Medical Practitioners by the pharmaceutical and allied health sector industry and the Supreme Court ruling in *Apex Laboratories Pvt. Ltd. vs. DCIT (2022)*, which held that such expenses are inadmissible even if not directly prohibited for the giver.**

    - The tax auditor should obtain the list of beneficiaries from the management. Further, one may also cross-verify with the list of beneficiaries in respect of whom tax has been deducted at source under section 194R.

5. Settlement expenses incurred to "settle proceedings for contravention" under laws notified by the Central Government.

    - Encompasses amounts paid to settle regulatory or judicial proceedings for contravention of laws, pursuant to schemes or regulations notified by the Central Government.

    - CBDT has notified, effective FY 2024–25, that settlement payments under the following Acts must be disclosed (i.e., are disallowed under (iv)): SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956, Depositories Act, 1996, Competition Act, 2002.

- Following amendments to section 37 have been considered for the changes in reporting under this clause:

    – Finance Act 2022: Inserted Explanation 3, **clarifying** no deduction shall be allowed for any expenditure incurred (i) for any purpose which is an offence or prohibited by law, (ii) for providing any benefit or perquisite to a person in violation of any law, rule, regulation, or guideline governing the conduct of such person, (iii) for compounding of an offence, or (iv) for settlement of any proceedings under any law.

    – Finance Act 2024: Enhanced Explanation 3 to include compounding of offences **under foreign law too**.

Clause 21(b)(ii)(B)(IV) – Partner Remuneration

Earlier Position

Reported remuneration but with an incorrect label ("payer" instead of "payee").

Change Made

- Typo corrected; slab limits updated per section 40(b)(v) amendment- **Maximum deductible remuneration** to working partners (whether fixed salary, bonus, commission or otherwise) is amended as follows:
  - **On the first ₹ 3,00,000 of book profit or in case of loss:** ₹ 1,50,000 or 90% of book profit, whichever is higher.
  - **On the balance of book profit:** 60% of book profit.
- Renewed attention is bought to **CBDT Circular No. 739 (25-3-1996) in the ICAI's Exposure Draft of the Guidance Note 2025, which is summarized as follows:**
  - For A.Ys. 1993-94 to 1996-97, liberal deduction was allowed where the deed merely stated, "remuneration as allowable under section 40(b)(v)."
  - **From A.Y. 1997-98 onwards**, no deduction is admissible unless the deed **specifies the amount of remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration.**
  - **Clauses that merely restrict remuneration according to provisions of section 40(b)(v) and defer remuneration to mutual agreement at year end may invalidate the deduction.**

Clause 32 – Loss/Depreciation in Concessional Regimes (sections 115BAA, 115BAC, 115BAD, 115BAE)

Earlier Position

Clause 32 required reporting where the assessee had opted for taxation under special provisions such as section 115BAA (domestic companies) or section 115BAC (individuals/ HUFs). Specifically:

- **Column 5:** Disclosure of losses/ allowances not allowable under the opted section (e.g., set-off of carried forward loss relating to additional depreciation under section 32(1)(iia), certain deductions under Chapter VI-A, etc.).
- **Column 6:** Disclosure of the amount corresponding to additional depreciation, adjusted in **Clause 18(ca) which allows one-time adjustment to Written Down Value (WDV)** where unabsorbed depreciation attributable to **additional depreciation [section 32(1)(iia)]** became ineligible under these concessional regimes.

Change Made

- **Column 5:** The scope has been expanded to cover all losses/allowances not allowed not only under sections 115BAA and 115BAC but also under section 115BAD (co-operative societies) and

section 115BAE (new manufacturing co-operatives).

- **Column 6:** Now requires reporting of adjustments corresponding to additional depreciation not just for section 115BAC but also for sections 115BAD and 115BAE. One must note that this particular amendment for sections 115BAD and 115BAE is relevant only for AY 2021-22 and AY 2024-25, as applicable.

Linkage to other Clauses

Cross-verification between Clause 18(ca) and Clause 32 is critical. If loss due to additional depreciation is reported as disallowed in Clause 32, then a corresponding WDV adjustment should be seen in Clause 18(ca).

Clause 36B – Buyback of Shares

Earlier Position

- Till 30-10-2024, buyback of shares was governed by section 115QA, which levied a distribution tax on the company undertaking buyback (20% plus surcharge & cess) on the distributed income.

- There was no reporting requirement in Form 3CD with respect to amounts received by a shareholder on buyback of shares.

Change Made

- By insertion of **section 2(22)(f)**, w.e.f. 1-10-2024, consideration received by the shareholder on buyback of shares (in accordance with the provisions of section 68 of the Companies Act, 2013) is now deemed to be **dividend** in the hands of the shareholder. (Simultaneously, **section 115QA** has been made redundant, as the tax liability has shifted from the company to the shareholder)

- To give effect to this change, **Notification No. 23/2025** has inserted a new **Clause 36B in Form 3CD,** requiring reporting by the tax auditor on buyback receipts. This clause requires both – Amount received and the Cost of acquisition of shares bought back.

- The tax auditor should take into consideration whether the amount that has been received as a buyback is forming part of the accounts that is subject to Tax Audit or not. In case of any individual/HUF, there could be a case where there are two separate sets of financials maintained i.e. one set of financials containing the business accounts and the other one which only has personal accounts. Hence, if the share and securities forms part of the personal accounts, then, ideally no reporting is required to be made in this clause as it is not subjected to tax audit. However, if the business accounts have the shares and securities reported under it, then, a reporting shall be required to be made, even if the assessee claims that the amount has been earned out of tradable stock i.e. the assessee is in the business of trading into shares and securities and the buyback amount is just a by-product of such inventory.

- Any reporting made in item (i) and/or (ii) of sub-clause (b) of Clause 36B shall

have a direct nexus to the computation of total income. The reporting made in item (i) of sub-clause (b) to Clause 36B shall have a direct effect on the computation of "Dividend Income" of the assessee. Further, the reporting made under item (ii) of sub-clause (b) to Clause 36B shall have a direct effect in computing the "Capital Losses" which shall either be carried forward (on account of the full value of consideration being NIL) and/or shall be set-off against the Capital Gains earned by the assessee.

Clauses 28 & 29 - Omitted by Notification No. 23/2025 (w.e.f. AY 2025-26)

Earlier Position

- **Clause 28:** Required reporting under section 56(2)(viib) (issue of shares by a closely held company at premium in excess of fair market value (FMV)) – to identify possible taxability in hands of issuing company (so-called Angel Tax provision).

- **Clause 29:** Required reporting under section 56(2)(viia) (buying unlisted shares for less than FMV – taxable in hands of buyer, being a firm or closely held company).

Change Made

- Subsequent Changes in Law

  – **section 56(2)(viia):** Omitted from **AY 2018–19**, effectively merged into **section 56(2)(x)**, which applies to all assessees and covers receipt of property (including unlisted shares) for inadequate consideration.



  – **section 56(2)(viib):** Still exists, but its applicability has narrowed due to:

    - Exemptions for eligible start-ups (DPIIT recognition, angel funding relaxation).

    - DVO/merchant banker-based valuation mechanisms; assessment is more a matter of AO scrutiny at assessment stage rather than auditor reporting.

- Given that Clause 29 had already become redundant after section 56(2)(viia) sunset & Clause 28 duplicated examination that is now part of AO's assessment of section 56(2)(viib) compliance (and subject to valuation disputes), these clauses have been omitted.

■

IMPACT OF ICAI'S GUIDANCE NOTE ON FINANCIAL STATEMENT OF NON-CORPORATE ASSESSEE; IMPACT ON TAX AUDITS OF NON-CORPORATES



CA Abhishek Mahawar

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Overview

The Institute of Chartered Accountants of India (ICAI) has introduced a Guidance Note on Financial Statements of Non-Corporate Entities (NCE), effective April 1, 2024. This development marks a significant step in strengthening financial reporting for entities such as proprietorships, partnerships, HUFs, trusts, societies, and other non-corporate forms. The Guidance Note upgrades the earlier technical guide and prescribes uniform formats for the Balance Sheet, Statement of Profit and Loss, and Notes to Accounts.

The initiative aims to bring standardisation, comparability, and greater transparency in reporting, ensuring financial statements are more useful to stakeholders including lenders, regulators, and investors. Key features include structured presentation, detailed reconciliations, mandatory comparative figures, ageing analysis of receivables, and comprehensive disclosure requirements for borrowings, payables, assets, and investments. These reforms also align financial reporting more closely with tax audit requirements, facilitating smoother extraction of data for compliance.

However, the transition poses practical challenges, particularly for smaller firms and traditional entities that lack systems or records to readily adopt the new framework. Auditors will need to exercise professional judgement in ensuring compliance, while entities may require capacity building and support to implement the formats effectively.

Overall, the Guidance Note is a much-needed reform and aims for a higher benchmark for the quality and consistency of non-corporate financial reporting in India.

Overview

Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI) act as a pillar for sound financial reporting system of an entity. Accounting Standards prescribed recognition and measurement principles as well as presentation and disclosure requirements for the events, transactions and various elements of the financial statements, general purpose financial statements prepared in accordance with the accounting standards, provide relevant and reliable information about the entity to its stakeholders.

Accounting Standards Board of the ICAI (ASB) had issued a technical guide on financial statements of non-corporate entities in June 2022 recommending the formats of financial statements to strengthen and standardise the financial reporting formats to be followed by non-corporate entities.

To further enhance the quality and comprehension of financial statements of non-corporate entities and to prescribe authoritative guidance for the members of ICAI, for the effective implementation of accounting standards for preparation of financial statements of such entities, the ASB has upgraded this technical guide into guidance note on Financial Statements of Non-Corporate Entities (NCE) in August 2023 and has made it effective from accounting period beginning on or after April 1, 2024.

The ASB has upgraded this technical guide into guidance note on Financial Statements of Non-Corporate Entities (NCE) in August 2023 and has made it effective from accounting period beginning on or after April 1, 2024.

The Guidance Note applies to all business or professional entities which are sole proprietorships, HUFs, partnership firms, trusts, societies, AOPs, BOIs. However, it is not applicable where specific formats are prescribed by relevant laws, regulators, or ICAI guidance specific to certain types of entities (for example NPOs, educational institutions).

While the Guidance Note is recommendatory in nature, Clause 12.15.2.1 of Part II of Second Schedule of the Code of Ethics (2020) issued by ICAI requires members to adhere to all ICAI-issued guidance. Furthermore, SA 700 on Forming an Opinion and Reporting on Financial Statements mandates compliance with the applicable financial reporting framework issued by the ICAI.

Background and Rationale

Financial reporting by non-corporate entities has long suffered from ambiguity and a lack of uniformity, resulting in financial statements that are difficult to compare across industries and offer limited utility to the key stakeholders such as current and prospective investors, employees, lenders, suppliers, trade creditors and customers, who depend heavily on reliable financial information to make informed economic decisions.

Intended Outcomes and Benefits

The Guidance Note on Financial Statements of Non-Corporate Entities, issued by the ICAI, seeks to:

- Standardise presentation by prescribing uniform line-items and formats for the Balance Sheet, Statement of Profit and Loss and accompanying notes.
- Improve reliability and comparability by aligning reporting with Accounting Standards (the "AS") and mandating cross-referenced notes.
- Ensure consistency and comprehensiveness by covering all material components of a "complete set" of financial statements and providing illustrative templates for seamless adoption.
- Provide authoritative guidance to ICAI members for the effective examination of ASs applied in the financial statements of non-corporate entities.

In essence, the Guidance Note serves as both a compliance tool for preparers and a quality



benchmark for auditors, thereby addressing gaps in both preparation and verification of financial statements.

Coverage, Applicability, and Exceptions

The Guidance Note defines a complete set of financial statements for non-corporate entities to include the Balance Sheet, Statement of Profit and Loss, and the Notes to the Financial Statements. However, Illustrative formats have been provided only for the Balance Sheet, Statement of Profit and Loss and accompanying notes, therefore the large entities may have to use the corporate entity format for the Cash Flow Statement.

Regarding the applicability of the Guidance Note, all Business or Professional Entities, other than Companies incorporated under Companies Act and Limited Liability Partnerships incorporated under Limited Liability Partnership Act are considered to be Non-Corporate entities. The most common structures of Non-Corporate entities are as follows:

1. Sole proprietorship firms
2. Hindu Undivided Family
3. Partnership Firms
4. Association of Persons
5. Body of Individuals
6. Resident Welfare Associations
7. Societies registered under any law for the time being in force
8. Trusts (private or public) registered under any law for the time being in force or unregistered
9. Statutory Corporations, Autonomous bodies and Authorities

10. Any form of organisation that is engaged fully or partially in any Business or Professional activity.

It may be pertinent to note here that the Guidance Note is applicable for the purpose of preparation of the financial statements of all Non-Corporate Entities except where:

1. Formats/principles are specifically prescribed by the relevant Statute or Regulator or any Authority;

2. Autonomous Bodies under Government of India which are required to compile their accounts in a uniform format of accounts as prescribed by Government of India, Ministry of Finance; or

3. Guidance has been specifically given by ICAI (e.g., Educational Institutions, Political Parties, Not-for Profit Entities, etc.).

These exceptions recognise that certain entities operate under distinct statutory or regulatory frameworks, and applying the Guidance Note in such cases could lead to conflicts or redundancies.

Impact of the Guidance Note on Financial Statements of Non-Corporate Entities

Accounting Standards issued by the ICAI act as the foundation of a sound financial reporting system. Through its ASB, the ICAI formulates and recommends Accounting Standards (Ind AS and AS) for companies to the Government of India for notification under Section 133 of the Companies Act, 2013, and separately issues Accounting Standards for non-corporate entities.

In August 2024, during its 433rd meeting, the ICAI Council approved a revised classification framework for non-corporate entities, effective for accounting periods beginning on or after April 1, 2024. This framework determines the applicability of ASs and classifies non-company entities into two broad categories:

In August 2024, during its 433rd meeting, the ICAI Council approved a revised classification framework for non-corporate entities, effective for accounting periods beginning on or after April 1, 2024.

- Micro, Small, and Medium-Sized Entities (the "MSMEs")

- Large Entities (the "Large Entities").

To qualify as an MSME, an entity must meet all the following criteria:

1. It must not have equity or debt securities listed or in the process of listing in India or abroad.

2. It should not be a bank, financial institution, or insurance company.

3. Its turnover (excluding other income) must not exceed ₹ 250 crore in the immediately preceding accounting year.

4. Its borrowings must not exceed ₹ 50 crore at any point during that year.

5. It must not be a holding or subsidiary of a non-MSME.

Entities that fail to meet these criteria are classified as Large Entities, subject to a more extensive set of standards and disclosures. This ensures proportionality, lighter compliance for smaller entities, while larger ones maintain higher transparency.

General Instructions laid in respect of the Financial Statements of Non-Corporate Entities

The prescribed formats are with minimum disclosure requirements, entities may add headings, classifications, or line items as needed for clarity or statutory compliance. All disclosures required by ASs or other laws still apply in addition to these formats.

Key general instructions include:

- Figures may be rounded off based on total income (hundreds, thousands, lakhs, or crores) and applied uniformly (Discretion is left to the entity)
- Comparative figures for the previous year are mandatory for every line item and corresponding note.
- Headings, classifications, or terminology may be adapted if required by statute or ASs.

This approach promotes trend analysis and consistent presentation across reporting periods.

Structure of the Mandated Formats

At the onset, the face of the Balance Sheet has been structured into two broad heads—"Owners' Funds and Liabilities" and "Assets"—with clear sub-classifications. Capital and current accounts of proprietors or partners must be disclosed separately with detailed reconciliation. Liabilities are categorized into current and non-current, with detailed reporting for borrowings, trade payables, and provisions. On the asset side, entities must provide line-item details for Property, Plant and Equipment (PPE), intangible assets, investments and categorised into current and non-current, inventories and Cash and Bank balances. The classification ensures that the nature and liquidity of assets are clearly conveyed to users of the financial statements.

The Statement of Profit and Loss is equally comprehensive. It mandates a standardised reporting of income and expenses, including cost of materials consumed, changes in inventory, employee benefits, depreciation, and other operational expenses. Partner remuneration is shown as a separate line item before the computation of taxable profit. Tax expenses, provisions for exceptional and extraordinary items, as well as discontinued operations, have also been incorporated.

Requirement of expanded disclosures in the accompanying Notes to Accounts

Perhaps the most impactful change brought by the Guidance Note is the detailed and mandatory disclosure framework in the Notes to Accounts. Each line item in the financial statements must be cross-referenced to relevant notes, providing numerical breakdowns and narrative context.

Capital account disclosures are required to present a reconciliation of the opening and closing balances for each owner or partner, including contributions, drawings, interest, remuneration, and share of profits or losses. This promotes accountability and transparency, especially in closely held businesses.

Borrowings, Short-Term and Long-term must be disclosed with complete detail—whether secured or unsecured, the nature of security, any guarantees provided by the owners/

Perhaps the most impactful change brought by the Guidance Note is the detailed and mandatory disclosure framework in the Notes to Accounts.

partners/proprietors, related party loans, the amounts and terms of repayment of such loans under each head shall be disclosed.

Similarly, trade payables must include disclosures in compliance with the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, including unpaid dues and interest obligations.

A full reconciliation of fixed assets and intangible assets is now mandatory, showing gross and net carrying amounts, detailing additions, disposals, revaluations, impairments, and accumulated depreciation. This ensures a more accurate representation of the asset base and its valuation.

For trade receivables, aged analysis is required, particularly highlighting debts outstanding for more than six months.

The prescribed formats and disclosures under the Guidance Note often align with the information sought in Form 3CD.

Classification of receivables into good, unsecured, or doubtful is expected, with any provisions for bad debts disclosed separately.

Non-current and Current investments must be classified as trade investments or other investments, and further grouped into categories such as investment property, equity instruments, preference shares, government or trust securities, debentures or bonds, mutual funds, partnership firm interests, and other specified investments. Detailed disclosures are required for each investee entity, for partnership firms, the names of partners, total capital, and individual profit-sharing ratios. Investments valued other than at cost must disclose the valuation basis, along with the aggregate value of quoted investments and their market value, the aggregate value of unquoted investments, and provisions for diminution.

Long-term and Short-term loans and advances are to be classified into capital advances, related-party loans and advances (with details), and other loans and advances, with further sub-classification as secured considered good, unsecured considered good, or doubtful. Any allowance for bad or doubtful loans and advances must be disclosed separately.

Further, entities must disclose all contingent liabilities, segregated into claims not acknowledged as debt, guarantees issued, and other financial exposures. These notes give stakeholders a more complete picture of financial risk.

Collectively, these comprehensive formats promote greater financial discipline and provides stakeholders with a more accurate, transparent, and decision-useful representation of an entity's financial position.

Interplay Between the Guidance Note and Tax Audit Reporting

While the Guidance Note issued by ICAI does not directly alter the statutory requirements of a tax audit u/s 44AB of the Income-tax Act, 1961, its implementation indirectly strengthens the quality, depth, and reliability of financial reporting. This, in turn, benefits tax audit procedures by making information more structured, reconcilable, and transparent.

The prescribed formats and disclosures under the Guidance Note often align with the information sought in Form 3CD. This alignment reduces the risk of inconsistencies and improves the ease of extracting data for tax audit reporting. For example, several

disclosure items under the Guidance Note directly map to clauses in Form 3CD, thereby facilitating better cross-referencing.

One such area of alignment between the reporting requirements prescribed in Form 3CD for tax audits and the formats recommended under the Guidance Note pertains to disclosures mandated by the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act"). Both frameworks require the reporting of the amount of interest disallowable u/s 23 of the MSMED Act. This alignment ensures that disclosures in the financial statements support accurate and consistent reporting in the tax audit report.

It is pertinent to note that the exposure draft on Guidance Note issued by ICAI on Tax Audits u/s 44AB (2025) has also in its Para 10 on "Form of Financial Statements" categorically specified the effective date of Guidance Note on Non-Corporate Entities to cover period beginning from 01-04-2024.

Practical Challenges

While the Guidance Note marks a significant step forward in standardising financial reporting for non-corporate entities, certain grey areas and practical challenges remain. Key practical concerns include:

1. The Guidance Note mandates the applicability of AS 3 (Cash Flow Statements) for **large entities (Non MSME)**, recognising the Cash Flow Statement as an integral part of a complete set of financial statements. The guidelines neither clarifies how this requirement should be fulfilled by large entities preparing accounts on a cash basis of accounting nor does it provide any specific framework for the same. This ambiguity is particularly relevant for certain large trusts, societies, and sole proprietorships, where the underlying accounting framework does not align with the fundamental assumption of accrual basis of accounting.

2. In the area of disclosures, w.r.t. AS 22 (Accounting for Taxes on Income) which applies to all non-corporate entities, with a welcome relaxation allowing MSMEs to forgo creation of deferred tax asset/liability, however the standard still requires to recognise and report current tax and provision for income tax even by small proprietorships who have often not done so in practice. The common practice of keeping personal incomes/ losses outside the books of account being audited will result in inaccurate current tax provisions in the Financial Statements and may lead to misleading results and confuse other stakeholders like Lenders, Regulatory Authorities etc.

   Notably, the Guidance Note on Tax Audit also recognises this challenge — particularly in the context of Clause 40 of Form 3CD — by recommending the use of pre-tax profits in profit ratio comparisons to avoid distortions caused by tax provisions.

3. Similarly, the framework has rightly been aligned with requirements of AS 10 (Property, Plant and Equipment) which mandates disclosure of gross carrying values, accumulated depreciation, and other relevant details. In the past it has been seen that many smaller entities, PPE has traditionally been presented only on a net basis, stemming from oversight and an unstructured reporting environment.

4. AS 10 (Property, Plant and Equipment) requires depreciation to be calculated based on the useful lives of assets,

rather than by applying the block-wise Written Down Value (WDV) rates prescribed under the Income-tax Act. While this has always been the fundamental requirement of the standard, the introduction of the new financial reporting framework brings sharper attention to any non-compliance. For many such entities that have historically followed tax-based WDV rates, transition to AS 10 presents significant practical challenges. Full compliance would require recalculating depreciation retrospectively—from the original acquisition date of each asset, to determine the correct carrying amounts as per useful life–based depreciation. This exercise may be resource-intensive and complex, particularly for entities with older assets, or inadequate historical records.

Thus, although conceptually this requirement is not new, its enforceability under the current framework exposes gaps between tax-driven practices and accounting standard–driven financial reporting.

The above concerns underscore that, while the Guidance Note brings much-needed uniformity and professionalism to non-corporate entity reporting, its implementation will not be without hurdles. Certain requirements, such as, ensuring accurate current tax provisioning in proprietorships under AS 22, and retrospective adjustments for depreciation under AS 10 for entities following WDV methods may require practical accommodations. Until additional guidance or relaxations are given, auditors will need to apply professional judgement and opine appropriately by documenting the basis for departures or estimates if any.

It must be noted that the issues discussed above are not exhaustive but merely illustrative of the broader challenges that may arise in practice.

Conclusion

The ICAI Guidance Note on Financial Statements of Non-Corporate Entities is a much-needed reform in Indian accounting. By introducing standard formats and stronger disclosure requirements, it brings more discipline, uniformity, and reliability to a large part of the Indian economy that had lacked strict presentation rules before.

However, the path to compliance will not be without hurdles. Since the preparation of financial statements under this framework rests primarily with the entities and the Guidance Note is not legally mandatory for them, thus auditors may find it challenging to enforce compliance, especially in small and medium-sized firms lacking the systems, resources, or technical knowledge to follow the new formats unaided.

For auditors, the responsibility has expanded. Firstly they must now verify not only compliance with Accounting Standards but also adherence to the prescribed formats, with any departures to be clearly reported. This heightens the need for thorough documentation, careful review, and sound professional judgement.

Overall, the Guidance Note is a positive milestone towards raising the standard of non-corporate financial reporting. But to be truly effective, it should be updated from time to time to address practical difficulties and ensure smooth adoption across all categories of non-corporate entities.

■

TAX AUDIT CONSIDERATIONS OF UNIQUE INCOME STREAMS





CA Manisha Futermal *CA Snehal Mayacharya*

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Overview

This article delves into taxation of unique investment instruments like digital assets (such as cryptocurrencies), units of Alternate Investment Fund, futures and options, and unit linked insurance product. The emergence of these products introduces additional challenges in how income is categorized and taxed under the Income Tax Act, 1961. Tax auditors must navigate these complexities by accurately distinguishing between business income and capital gains, a classification that inherently affects tax rates, computation methods, and reporting obligations. The Article provides overview of tax implications arising in hands of investors along with caution points which the tax auditor should consider in course of reporting.

In today's dynamic landscape, the financial ecosystem has witnessed a surge in unconventional income sources, driven by the growing popularity of digital assets, alternative investments, and hybrid financial products. The proliferation of innovative investment instruments has introduced a new layer of complexities in income classification and tax compliance under the Income Tax Act, 1961 (ITA). For tax auditors, this changing landscape demands a nuanced understanding of both traditional and emerging streams of income and ensures accurate reporting and adherence to the provisions of the ITA. This article deals with tax implications and audit considerations, if any, applicable to such income sources, highlighting the statutory framework, judicial precedents, regulatory guidance and practical factors that may be considered.

1. Classification of income as Business income vs. capital gains

1.1. First and foremost, one will need to determine if the income under consideration is in the nature of business income or capital gains[1] as it directly impacts the applicable tax rates, computation methods, and regulatory

1. *Capital gains v business income has been evaluated as nature of investment options discussed in this article are more or less in the nature of capital asset, if not classified as stock in trade.*

The classification of income remains fact-driven, with no standard formula. In context of investment in shares, judicial precedents, based on the facts of individual cases, have laid down certain guiding parameters to differentiate between shares held as investments and those held as stock-in-trade.

requirements for both taxpayers and auditors. The classification of income remains fact-driven, with no standard formula. In context of investment in shares, judicial precedents, based on the facts of individual cases, have laid down certain guiding parameters to differentiate between shares held as investments and those held as stock-in-trade. Also, Central Board of Direct Taxes (CBDT) has, over time, issued various Instructions and Circulars[2] to assist in distinguishing between shares held as investments and shares held as stock-in-trade.

1.2. Based on the aforesaid CBDT Circulars and certain judicial precedents in the context of shares, the following illustrative factors can be considered by tax auditor for classification of income, while every case is fact specific and will require individual assessment:

(a) ***Motive/intention of investment:*** If investment is made with a motive of earning a profit from churning of investments, it may indicate a trading activity. Conversely, if the investment is aimed at deriving income through dividends, interest, etc. it may yield capital gains. (***H. Mohammad & Co. vs. CIT [1977] 107 ITR 637 (Gujarat HC), Fidelity Advisor Series VIII, in re. 271 ITR 1 (2005) - AAR)*** and Authority for Advance Rulings (AAR) (288 ITR 641).

(b) ***Recurrence of transaction and period for which it is held***: If the volume of shares purchased and resold is very high, and the frequency of transaction is also high, it is likely to qualify as a stock in trade. The ratio between 'purchase and sales' and the 'holding' would also be a relevant guiding factor. (***G. Venkata Swami Naidu & Co. vs. CIT [1959] 35 ITR 594 (SC), Fidelity Advisor Series VIII, in re. 271 ITR 1 (2005) - AAR)*** and Authority for Advance Rulings (AAR) (288 ITR 641). If the investment is held for a long period of time to earn capital appreciation, it suggests that the investment is in the nature of a capital asset. ***Deepaben Amitbhai Shah vs. DCIT (2017) 397 ITR 687 (Guj.), PCIT vs. Ramniwas Ramjivan Kasat (2017) (410 ITR 540) (Guj.)***

(c) ***Accounting treatment:*** The recognition in books of accounts, i.e., as investment or stock in trade, is a relevant factor, but not a conclusive one. (***Karam Chand***

2. *CBDT Instruction No. 1827, dated 31 August 1989; CBDT Office Memorandum, dated 13 December 2005; CBDT Circular No. 4/2007, dated 15 June 2007; Circular No. 06/2016, dated 29 February 2016 supplement by Circular F No. 225/12/2016/ ITA-II dated 02 May 2016.*



Thapar & Brothers (P.) Ltd. vs. CIT [1971] 83 ITR 899 – SC).

(d) ***Nexus with business carried on:*** A strong nexus/connection with the taxpayer's business could be an indicative factor that the surplus/ gains arising from such transactions are business income or otherwise. ***(Sardar Indra Singh & Sons Ltd. vs. CIT [1953] 24 ITR 415 (SC) & SBH v. CIT [1988] 151 ITR 703 (Andhra Pradesh HC).***

(e) ***Two Portfolios:*** Taxpayers may have both an investment portfolio (capital assets) and a trading portfolio (stock-in-trade). Income can arise under both capital gains and business income. (Circular No. 4 of 2007).

In a move to reduce litigation and provide certainty, CBDT has issued Circular No. 06/2016, dated 29 February 2016 supplemented by Circular dated 02 May 2016 in the context of listed shares and securities and unlisted shares. The Circular requires Assessing Officers to accept the classification as adopted by the assessees either as inventory or capital asset (where period of holding is more than 12 months) provided consistency is maintained and transaction is not sham. With reference to other securities, other than listed shares and securities and unlisted shares, classification based on above guiding principles are applicable.

2. Taxation of crypto-currency/virtual digital asset

2.1. Indian government and Reserve Bank of India have adopted a stringent perspective and regulated crypto currency to discourage people from investing in crypto, while the West has been aggressive in investing in crypto assets. With innovative ideas around, crypto currencies have also taken different forms. Illustratively, **Bitcoin** is the original and most widely used digital currency, primarily for peer-to-peer transactions, Ethereum introduced smart contracts and powers decentralized applications, Stablecoins like USDT and USDC are pegged to fiat currencies to maintain price stability etc.

2.2. Under the ITA virtual digital asset (VDA) has been defined in an exhaustive

The Circular requires Assessing Officers to accept the classification as adopted by the assessees either as inventory or capital asset (where period of holding is more than 12 months) provided consistency is maintained and transaction is not sham.

manner u/s 2(47A) and it includes Non-Fungible Tokens as well within its ambit. The definition of VDAs is quite broad, potentially encompassing not just cryptocurrencies but also digital gift cards, vouchers, loyalty points, miles etc. However, to bring greater clarity and avoid unnecessary complications, the Central Board of Direct Taxes (CBDT), through Notification No. 74/2022, has specifically excluded gift cards, vouchers, loyalty points, etc., from the scope of VDAs, and the reader may refer to the aforesaid Notification for more details.

The definition of VDAs is quite broad, potentially encompassing not just cryptocurrencies but also digital gift cards, vouchers, loyalty points, miles etc.

2.3. The taxation of crypto currency in India is regulated by Section 115BBH of the ITA. This provision imposes a flat 30% rate on gains arising from the transfer of a VDA. Any income from the transfer of any VDA is governed by Section 115BBH and can cover events like the sale of VDAs for Fiat currency, Exchange of VDA for another VDA (like exchange of Bitcoin for Ethereum), exchange of VDA for goods/services etc. The provisions of Sec. 115BBH are applicable to all transfers of VDAs, whether held as a capital asset or not.

2.4. Further, the provision specifically restricts the set off and/or carry forward of losses arising from the transfer of VDAs.

2.5. On computation of income, Section 115BBH only allows deduction of the cost of acquisition of VDA from the consideration received on transfer and no other expenses are eligible for deduction. Accordingly, it becomes vital to determine the cost and one may usefully refer to the principles enunciated by the Supreme Court in the case of ***Challapalli Sugar Ltd. vs. CIT (1975) (98 ITR 167) (SC)***, wherein the SC ruled that the cost of acquisition should be determined on commercial and accounting principles. Further, for identification of VDA, the tax auditor may apply the First in, First Out (FIFO) method, which is applicable in case of sale of shares or securities, unless one is able to identify each asset individually.

2.6. A stringent measure u/s. 115BBH is that it restricts the set off and/or carry forward of losses arising from the transfer of VDAs. Specifically, a loss from one VDA cannot be used to offset profits from another VDA. So, in case of a person having say 3 Bitcoins, one will need to determine the gain/loss for each of the 3 Bitcoins separately, and gains from one Bitcoin cannot be used to offset the losses incurred on another Bitcoin. The provisions as it stand today can raise practical challenges while mapping each VDA, and it is likely to get further complicated considering that one can buy fractions of VDA as well.

One may usefully refer to the principles enunciated by the Supreme Court in the case of *Challapalli Sugar Ltd. vs. CIT (1975) (98 ITR 167) (SC)*, wherein the SC ruled that the cost of acquisition should be determined on commercial and accounting principles.

2.7. On TDS compliance, Section 194S requires the buyer of VDA to undertake withholding on any consideration on transfer of VDA to a resident, @ 1% on gross basis at the time of payment or credit, whichever is earlier, subject to the threshold. Taxes are required to be withheld even where consideration is in kind. However, if the transaction is undertaken on a crypto exchange, the CBDT Guidelines[3] provide mechanism for TDS compliance. For transactions undertaken on peer to peer platform like blockchain, the CBDT Circular clarifies the primary withholding obligation on the buyer[4]. Since the tax auditor is required to report compliance with TDS provisions in Clause 34 of Form 3CD, he may check for compliance of relevant provisions read with CBDT Circulars. Particularly, in the case of default in withholding of tax in case of consideration paid in kind, there is a prosecution risk on the assessee per section 276B.

2.8. Pertinent to note that the IT department has been very proactive and aggressive in checking for tax evasion arising due to crypto currency transactions. One of the instances has been of a wedding planner at Jaipur, wherein cryptos were used in order to conduct an Indian wedding[5]. Tax auditors may be vigilant as well in their audits to make sure that no transaction goes unaccounted for.

3. Alternative Investment Fund - Taxation in the hands of unitholders

3.1. With the advent of start-up economy and shortcomings of the Venture Capital Fund structure, the Securities Exchange Board of India introduced the concept of an Alternate Investment Fund (AIF) in 2012, wherein investors can pool funds and invest in target entities through AIFs, being a pooling vehicle. AIFs are generally set up either as a company, a trust or an LLP. All AIFs are required to mandatorily seek registration from SEBI either as Category I/II/III AIF, and based on category, the tax implications under the ITA also vary.

3.2. ***Category I and II AIF***

(a) ***Pass-through:*** Except for business income earned by AIF, all other income is exempt in the hands of AIF and taxable in the hands of the unit holders. The income earned by AIF retains its character as such, ie if AIF were to receive interest income, the same will also be regarded as interest income in the hands of unit holders, dividend will retain dividend character, so on and so forth. The income will be taxable in the hands of unit holders at the tax rates applicable to them. The reader may refer sections 115UB, 10(23FBA), 10(23FBB) of the ITA in this regard.

3. *CBDT Circular No. 13/ 2022.*
4. *CBDT Circular No. 14/2022.*
5. *Tax raids on Jaipur wedding planners reveal Crypto use, Rs. 20 cr in cash & jewels seized - The Economic Times.*

(b) ***Business income:*** If the AIF's income is characterised as business profits, tax is paid at the AIF level; the corresponding share is exempt for unit-holders.

(c) ***Timing/deemed credit:*** If income is distributed by AIF, it shall be deemed to be of the same nature and in the same proportion in the hands of the investors/unit holders as if it had been received by, or had accrued or arisen to the AIF. Even if not distributed, a unitholder is deemed to have been credited with their share on the last day of the financial year; once taxed on accrual, later cash distributions are not taxed again.

(d) ***Losses***: Non-business losses can flow through for set-off/carry-forward at unit holder level (subject to conditions including 12-month holding of units). Business losses remain at the fund level to be set off against future business profits.

(e) TDS at 10% is applicable on income of investor other than the portion taxed at fund level u/s 194LBB.

3.3. ***Category III AIF:*** Tax is typically assessed at the fund level under normal provisions of ITA (like sections 161–164 in case AIF is set up as trust). Investors usually are not directly assessed on the Cat III fund's annual income, though actual distributions can have consequences depending on AIF status.

3.4. The person responsible for crediting or making payment of income on behalf of the Fund would furnish a statement in Form 64C to the investors and a statement in Form 64D to the prescribed income-tax authority within the time limit as prescribed under the ITA, giving details of the nature of the income paid or credited during the relevant year and such other relevant details. These forms may be useful in determining the nature of income and applicable tax rates and can be relied upon by the tax auditor as well.

4. Taxation of futures and options (F&O)

4.1. Investment in highly volatile market by way of futures and options has been a popular choice of avenue for various assessees. A futures contract is an agreement to buy or sell an asset at a predetermined price on a specific future date. An options contract gives the buyer the right, but not the obligation, to buy or sell an asset at a set price before a certain date. These instruments are commonly used for hedging risk or speculating on price movements in the market. F&O trading is popular in equity, commodity, and currency markets. Generally, the settlement of position in F&O transaction is made otherwise than by way of delivery. Further, if stock derivative contracts are not squared off on or before expiry, such contracts shall be settled by way of physical settlement.

A futures contract is an agreement to buy or sell an asset at a predetermined price on a specific future date. An options contract gives the buyer the right, but not the obligation, to buy or sell an asset at a set price before a certain date.

4.2. Trading in F&O transactions, which are generally in the nature of business income, carried out on a recognised stock exchange and recognised commodity exchange where STT or CTT is paid, are not covered by the scope of speculative transactions u/s. 43(5) of ITA. In rare cases, where F&O transaction is settled off-market without delivery, the tax auditor will need to determine whether it will be part of speculative business, more so considering that there are restrictions on the set off of losses from speculative business.

4.3. A common issue that arises in case of F&O transactions is the manner of quantification of total turnover/sale/gross receipt from business in order to determine the threshold for 44AB. Useful reference can be found in Para 5.11 of ICAI Guidance Note on Tax Audit u/s. 44AB (Revised Edition 2025). It explains that in case of speculative transactions, the aggregate and absolute value of the difference arising on net settlement shall form part of turnover. Further, one can also refer illustratively to the Mumbai ITAT decision in the case of ***Growmore Exports Ltd vs. ACIT [2001] 78 ITD 95 (Mum.), Om Stock & Commodities (P.) Ltd. vs. DCIT [2014] 48 taxmann.com 186 (Mumbai - Trib.), CIT vs. Harsh Estate (P.) Ltd dated 19 December 2007 (Bom.)***

4.4. Additionally, ICAI also guides to include the following income within scope of turnover:

(a) Premium received on sale of options except to the extent premium is included in determining net profit.

(b) Differences in case of any reverse trades

(c) For outstanding transactions, turnover should be considered only in the year in which it is squared off.

5. Taxation of income from Unit-linked insurance policy (ULIP)

5.1. ULIPs offer a unique combination of life insurance coverage and market-linked returns. By integrating the protective features of insurance with the potential for growth based on market performance, ULIPs have gained significant popularity among investors seeking both financial security and investment flexibility.

5.2. Generally, amount of premium of a ULIP scheme is partly towards the policyholder's insurance and partly towards the investment component. The investable portion of the premium is invested in equity, debt, money market or a mix of all based on the goals and risk appetite of the investor.

5.3. Historically, income earned on maturity of ULIP has been exempt from tax u/s 10(10D) of the ITA. However, with reference to ULIPs issued on or after February 1, 2021 the exemption is not applicable if the premium payable for any year during the term of the policy exceed INR 2.5 lakhs and will be taxed as capital gains. In case of multiple ULIPs held by a taxpayer, the aggregate premium for all the policies are considered for the limit of ₹ 2.5 lakhs, while death benefits remain exempt.

The applicable tax rate will depend upon whether the capital gains are in the nature of long term or short term and also based on the nature of underlying asset, ie equity oriented fund or debt oriented fund.

5.4. Computation of income: Section 45(1B) read with Rule 8AD provides special charging and computation provision taxing income from non-exempt ULIPs as capital gains[6], wherein the premiums paid till the date of receipt is allocated as cost thereof and allowed as deduction. The premiums paid thereafter till the date of next receipt are allocated to the next receipt and so on. Such treatment can have effect of creating capital loss in case of partial withdrawals where aggregate premiums paid till such date are more than partial withdrawal amount and consequently giving rise to high capital gains on subsequent receipts.

5.5. TDS @5% is deducted on the income component of non exempt life policy payouts under Sec. 194DA of the ITA.

6. Concluding thoughts

In an era where investment products continually evolve and the regulatory framework governing them grows ever more complex, tax compliance demands both precision and discernment. Instruments such as VDAs, AIFs, F&O trades, ULIPs each present their own nuances, requiring professionals to stay abreast of legislative changes and emerging interpretations. The interplay between financial innovation and tax law underscores the necessity for auditors and investors alike to embrace a holistic, fact-based approach.

For tax auditors, the responsibility extends towards ensuring that every transaction is accurately classified, appropriately disclosed, and compliant with the latest statutory requirements, including those set forth in Form 3CD.

For tax auditors, the responsibility extends towards ensuring that every transaction is accurately classified, appropriately disclosed, and compliant with the latest statutory requirements, including those set forth in Form 3CD. Through continuous learning, careful evaluation, and adherence to best practices, professionals can guide stakeholders confidently through the shifting landscape.

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6. *Prior to amendment to S. 10(10D) w.e.f 1.4.2021, recently, Mumbai Tribunal in case of Selina Shah vs. ITO (ITA No. 2352/MUM/2025) has ruled that maturity proceeds on redemption of ULIP is taxable as capital gains as units of ULIP represent capital asset u/s. 2(14).*

INCOME RECOGNITION, DEFERRAL AND EXEMPTION IS A CHOICE OR COMPULSION?



CA Ankit Marlecha

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Overview

This article examines the legal and accounting framework that governs the concept of "income" under the Income-tax Act, 1961. It traces the development of the law from the traditional periodicity-based approach to its current scope, which extends to capital and non-recurring receipts. It covers the statutory charging provisions contained in sections 4, 5, and 9, focusing on the determination of accrual, receipt, and taxable nexus.

Further, the article evaluates the timing and method of income recognition under sections 145, 145A, and 145B, addressing situations where statutory rules override accounting practices. Particular emphasis is placed on the role of the Income Computation and Disclosure Standards (ICDS), their interaction with Ind-AS, and the challenges arising from judicial interpretation and constitutional safeguards.

The discussion also considers areas where accounting and tax treatments diverge, including partner's income on reconstitution of a firm, conversion of stock-in-trade into capital asset, and recognition of notional or perquisite-based income under section 28(iv). The interplay between ICDS and Ind-AS is assessed in the context of practical compliance issues, supported by a comparative analysis of unbilled and unearned revenue.

A. Introduction

1. The word 'income' is a term of wide import. Income in common parlance means a monetary return. According to the dictionary it means "a thing that comes in". (See Oxford Dictionary, Vol. V, page 162; Stroud, Vol. II, pages 14-16). It is something that goes into one's pocket. The Hon'ble Calcutta High Court in Shaw Wallace's (6 ITC 178) case defined income to *"connote a periodical monetary return, coming in with regularity or expected regularity, from definite sources"*. It emphasized the periodical and source-based nature of income.

2. Under the Income-tax Act, 1961 ('the Act'), income is defined in an inclusive manner under section 2(24) of the Act. The definition does not focus on the traditional attributes or characteristics of income, such as periodicity or source. Instead, it specifies an inclusive list of

Under the Income-tax Act, 1961 ('the Act'), income is defined in an inclusive manner under section 2(24) of the Act. The definition does not focus on the traditional attributes or characteristics of income, such as periodicity or source. Instead, it specifies an inclusive list of transactions and receipts that are to be treated as income for tax purposes.

transactions and receipts that are to be treated as income for tax purposes. It adds several artificial categories to the concept of income[1]. This legislative approach reflects a deliberate dilution of the classical attributes of income, particularly periodicity and a continuous definite source. One-time receipts are increasingly treated as income. Capital receipts are also now treated as income and are taxable. While such an approach makes it easier to include different types of receipts as income, but it also creates difficulties in recognition, measurement and auditing such income. In this article, we attempt to highlight the challenges in income audit.

Statutory framework for income recognition under tax laws

3. It is a settled principle that income tax law cannot assess all receipts[2]. Only those receipts that amount to income can be assessed. The recognition of income is the bedrock of taxation. Income tax, as a fiscal levy, rests not only on the existence of income but also on the question of when such income is said to have arisen, accrued, or been received. This temporal dimension - the incidence and timing of taxation - has been one of the most litigative issues in Indian tax jurisprudence.

4. At a conceptual level, the recognition of income through drive by business realities and accounting compulsions, is not always straightforward. In certain cases, income is earned but not received (e.g., interest accrued but not collected, unbilled revenues etc). In others, income is received but not fully earned (e.g., unearned incomes, advance payments). Further complexities arise when income is subject to deferral due to contractual stipulations (e.g., retention money in construction contracts) or exemption due to statutory carve-outs (e.g., agricultural income). Therefore, the moot question is whether the recognition of incomes is a choice based on accounting discretion, or compulsion derived from statutory prescription? The answer rests at the intersection of statutory provisions, accounting standards, jurisprudence, and administrative practice.

5. To address 'choice or compulsion', one must understand the framework set out by the Act. Under the Act, Income-tax is payable on the 'total income' of a person. 'Total income' is defined in section 2(45) of the Act to mean the total amount

1. *Dooars Tea Co. Ltd. vs. Commissioner of Agricultural Income-tax (1962) 44 ITR 6 (SC)*
2. *Mehboob Productions P Ltd vs. CIT (1977) 106 ITR 758 (Bombay HC)*

of income referred to in section 5 and computed in the manner laid down in the Act. Section 4 is the basic charging section. Section 5 of the Act outlines the scope of the charge viz. the total income of a person. It provides that all income from whatever source derived is to be included in the total income of the resident assessee[3]. The emphasis in all these sections is on the **income** of a person. The charge under section 4 of the Act is thus attracted with respect to the 'income' of a person.

6. It is pertinent to note that section 5 does not define income. It also does not deem a non income as income. The role of section 5 is to provide for the contours within which all incomes must fall for consideration of levy of tax. In order that a certain income is charged to tax in India, it is necessary for that income to fall within the scope of total income. This rule is universally applicable to all persons, whether resident or non-resident. In other words, even a resident may not be liable to tax unless his income falls within the scope of total income. On the corollary, incomes which are outside the scope of section 5 escape taxation.

7. Section 9 sets out transactions/situations in which income is deemed to accrue or arise in India. The function of section 9 is to shift the locale of income. A shifting presupposes that the income had accrued elsewhere.

8. The judicial view on the aspect of income recognition has laid emphasis on test of 'control' or 'right to receive' the income for chargeability under the Act. Accrual in the legal sense occurs only when a right to receive the amount had arisen during the accounting year. When such a right is not present, the amount has not accrued. The Supreme Court in ***Kanchanganga Sea Foods Ltd. vs. CIT (2010) 325 ITR 540 (SC)*** observed - *"It is trite to say that to constitute income the recipient must have control over it."*. The Punjab and Haryana High Court in ***CIT vs. Punjab Tractors Co-op. Multipurpose Society Ltd. (1998) 234 ITR 105 (Punjab & Haryana)*** held - *"Generally, income must accrue first, receipt normally follows the accrual. In other words, the right to receive must come into existence before the actual receipt takes place. Receipt, by itself, is not sufficient to attract tax. It is only receipt as 'income' which would attract tax. Every receipt by the assessee is, therefore, not necessarily income in his hands. It bears the character of income at the time when it accrues in the hands of the assessee and then it becomes exigible to tax."*

9. From the above, it is evident that the Act imposes compulsory obligations on recognition, measurement, and reporting of income. Section 4, 5 and 9 encompasses within itself the place, time and person to be taxed. The judiciary has laid emphasis on the recipient having 'control' or 'right to receive' such income. While accounting standards and business

3. *Performing Rights Society Ltd vs. CIT (1977) 106 ITR 11 (SC)*

realities may offer flexibility in form or timing, once these choices are made, reporting for tax purposes is dictated by the provisions of the Act.

Evolution of Income Recognition principles in Indian Tax Law

10. Historically, income recognition principles were guided by generally followed accounting principles in conjunction with the accounting standards issued by the Institute of Chartered Accountants of India (ICAI). This legislative mandate prescribing the above was enshrined under section 145(1) of the Act. Vide the Finance Act, 1995 w.e.f. 1st April 1997, the Central Government notified distinct accounting standards for the computation of business income and income from other sources. The justification for the said amendment germinated from a view that a single of set of standards for determination of accounting profit and taxable income were not ideal. This was due to the varied objectives pursued to be achieved by financial reporting vis-à-vis that of tax legislation.

11. These amendments were also fuelled by judicial principles that clearly delineated that the income recognition principles as per accounting standards and the Income tax law stands on a separate footing. Put differently, the treatment of an item of income as per an accounting standard should be independently evaluated on the touchstone of the provisions under the Act[4].

Consequences of the amendment to section 145 of the Act

12. For the purposes of the Act, the introduction of accounting standards under sub-section 145(2) of the Act effectuated the maintenance of separate books of accounts for an assessee. This approach was however dissuaded by the committee of experts[5] who suggested that income computation standards should restrict itself to the domain of computation of income and not permeate into maintenance of books of accounts. In line with the said suggestions, vide S.O 892(E) dated 31.03.2025, 10 Accounting standards were introduced for the computation of income under the head business or profession and income from other sources. It was clarified in the preamble that ICDS is applicable for computation of income and not for the purposes of maintenance of books of account. The scope of these standards were restricted to alter the accounting profit as per the books of account to arrive at the taxable income under the Act.

13. The Legislature restricted the applicability of ICDS only to assessee who maintain their books of accounts on the mercantile (accrual) system of accounting. Therefore, assessee maintaining accounts on a cash basis are

4. *Kedarnath Jute Mfg. Co Ltd vs. CIT [1971] 82 ITR 363; Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT [1997] 227 ITR 172 / 93 Taxman 502*
5. *Constitution of the Committee on system of accounting - method of accounting standards, Dated 14-08-2012*

generally not subject to adjustments or implications under ICDS. Further, it was also clarified that ICDS was sub-servient to provisions of the Act and would not run contrary to the provisions of the Act. However, following the introduction of certain sections into the Act to give recognition to ICDS, it is important to consider whether an assessee can still adopt this position. This issue is explored further later in the article.

Interplay of section 145, 145A and 145B of the Act

14. Section 145A and 145B are accessories to section 145 of the Act. They supplement the applicability and reach of section 145(1) and 145(2) of the Act. Section 145A is applicable for the purposes of determination of income under the head business or profession. Section 145A has been amended to give effect to ICDS. Section 145A covers not only goods but services & securities also. It outlines the valuation of purchases and sale of goods, services or inventories (including securities) shall be made in accordance with the provisions of section 145(2) of the Act i.e., ICDS. It also mandates an inclusive method of accounting to be employed for tax purposes, contrary the prescription under the accounting standards (AS/Ind AS). This would require the tax auditor to recast the profit & loss under inclusive method of accounting. The details of deviation, if any, from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss have to be stated under clause 14(b) of the Form 3CD. The Guidance Note on Tax Audit issued by ICAI however treats the said adjustment to be revenue neutral[6]. It has been held in the under mentioned decisions that the exclusive method of accounting is revenue neutral –

(a) ***Berger Paints India Ltd. vs. CIT 187 CTR 193 (SC)***

(b) ***Lakhanpal National Ltd. vs. CIT 162 ITR 240 (Guj)***

(c) ***CIT vs. Indo Nippon Chemicals Ltd. 261 ITR 275 (SC)***

(d) ***CIT vs. Diamond Dye Chem Ltd (2017) 396 ITR 536 (Bom).***

15. Section 145B begins with a non-obstante clause and assumes precedence in application over the provisions of section 145 of the Act. It provides for recognition of income on receipt basis under certain circumstances. Hence, this section would operate with an overriding effect over the provisions of 145, generally accepted accounting principles and the ICDS.

16. It is also important to note that when no books of account are maintained, section 145 of the Act does not apply. In such cases, income cannot be deemed received before it actually accrues, and therefore, it is taxable only upon its accrual.

6. *Para 26.16 of the Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961 (Revised 2025)*

Is ICDS still relevant in income recognition?

17. With the introduction of the Income Computation and Disclosure Standards (ICDS) under section 145(2) of Act, the legislature sought to standardize recognition principles and eliminate subjectivity. However, this move raised questions about whether ICDS reduced the element of choice in income recognition and converted it into a matter of compulsion, especially where ICDS provisions overrode well-settled judicial doctrines.

The First Blow

18. The first blow to the implementation of ICDS was dealt by the Delhi High Court in Chamber of Tax Consultants[7] wherein it was held that ***'Income computation and Disclosure Standards' (ICDS) notified by Central Government in exercise of power under section 145(2) cannot override binding judicial precedents or provisions of Act or Rules framed thereunder.*** In an earlier decision, the Apex court in Sedco Forex International Inc[8] held that that the computation provisions cannot travel beyond the scope of charge under Sections 4 and 5 of the Act.

19. The introduction of ICDS attempted a transgression that was contrary to the fundamental framework of the statute. The power to enact law is an essential legislative function, vested solely in Parliament, and cannot be exercised by the executive. If section 145(2), as amended, had not been read down, it would have directly violated the provisions of the Income-tax Act, Article 141, and Article 265 of the Constitution of India. Consequently, the attempt to override the Act through excessive delegation of power was struck down.

The Second Innings

20. In an attempt to grant legal sanction to the ICDS and to counter the decision of the Delhi High Court in ***Chamber of Tax Consultants (supra)***, the Legislature introduced shadow provisions in the Act through Finance Act, 2018. This Act amended and recast various provisions of the Income-tax Act, including sections 36(1)(xviii), 40A(13), 43AA, and 43CB, with retrospective effect.

21. On a close reading on these sections, one may deduce that the substantive law regarding recognition (or otherwise) of income and expenditure is laid down within the main body of the respective sections. Reference to ICDS is permitted only for the limited purpose of adopting the computation mechanism prescribed therein and for ensuring the necessary disclosures. This effectively reduces ICDS to rules of computation and disclosure rather than principles of recognition. With the introduction of these specific sections in the Act, the applicability of ICDS has, in effect, been extended to all assessees — including those following the cash system of accounting.

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7. *Chamber of Tax Consultants vs. Union of India [2018] 400 ITR 178 (Delhi)*
8. *(2017) 399 ITR 1 (SC)*

22. The learned authors in the treatise of Sampath Iyengar, Law of Income Tax, 13th Edition have interestingly opined that "*considering the inherent limitation, a basic question arises why at all the ICDS are needed. Income Tax Act read with the Rule itself is a standard. Charge of tax and computation are integral part of levy as held in* ***CIT vs. B.C. Srinivasa Setty***[9]*. The It is evident from the fact that there are specific charging sections and computation provisions for each head of income in the Act supplemented by the Rules, wherever considered necessary. As the efforts by revenue to somehow overreach law by tweaking the ICDS are always expected, the tax litigation is bound to increase when such ICDS is challenged.*"

23. On reading the above, one may reasonably infer that the provisions of section 145 and 145(2) are a compulsion and no longer provide a choice to the assessee. Further, the introduction of the related sections in the Act with reference to section 145(2) have made the application of ICDS even more inevitable and far-reaching. Therefore, even though the provisions of the section 145(2) and ICDS stand on a sliding slope, its descent has been halted for the time being by the legislation through introduction of specific provisions in the Act.

Is accounting entry in the books decisive for income recognition?

24. Section 44AA of the Act compels businessmen to maintain books of account. The books of account are to be maintained in accordance with the ordinary commercial principles of accounting. Thus, tax accounting" is not essentially different from commercial accounting. Tax accounting generally recognizes and accepts accounting which is consistent and statute compliant. Profit as per such commercial accounting is the base from which the taxable income is determined.

25. Tax laws may include specific deviations from commercial accounting principles when determining taxable income. However, in the absence of such specific deviations, the principles of commercial accounting are generally followed for tax computations as well. [***CIT vs. Ahmedabad New Cotton Mills Co. Ltd (1930) 4 ITC 245 (PC)***].

26. There can be situations where commercial accounting differs from tax accounting principles. Recognizing this dichotomy, courts have established the settled principle that the tax consequences under tax laws are not dependent on the accounting entries recorded in the books. The Apex Court in the case of ***CIT vs. Shoorji Vallabhdas & Co. [1962] 46 ITR 144 [SC]*** wherein it was held by their Lordships that if income does not result at all, there cannot be a tax even though in book keeping an entry is made about a hypothetical income which does not materialise.

27. As pointed by Lord Russell in the case of ***B.S. Footwear Ltd. [1970] 77 ITR***

9. *128 ITR 294 (SC)*

860 [CA], the Income-tax law does not march step by step in the footprints of the accountancy profession. A receipt has to be treated under the head on which it becomes taxable and it cannot be treated otherwise even if it is transferred to the profit and loss account as was held in the decisions in ***CIT vs. India Discount Co. Ltd. [1970] 75 ITR 191 [SC]*** at page 195; ***Sutlej Cotton Mills Ltd. vs. CIT [1979] 116 ITR 1 [SC]*** and ***CIT vs. Sahara Investment India Ltd. [2004] 266 ITR 641 [Allahabad HC].***

28. Applying the above principles, one could deduce that mere incorporation of profits in the financial statements in India cannot be an event of taxation. Even otherwise, the method of accounting cannot alter the basis of taxation or the range and ambit of income chargeable to tax. It can only determine the timing of taxation. It was observed in ***Rungta Sons Limited vs. CIT [1964] 54 ITR 447 [Calcutta HC]***, that mercantile system of accounting makes unrealised income taxable, but it cannot make unrealised income realised.

Recognition of loss would also be driven by the income recognition principles?

29. Loss, in a common parlance, is excess of outflow over inflow. It is a settled principle that the term 'income' includes its negative variant, that is, loss. Income & loss are thus two sides of the same coin – one depicting a positive outcome while the other depicting a negative outcome[10]. The question to deliberate is whether the determination and recognition of loss would also be driven by the income recognition principles?

30. Income, as a concept, indicates a positive figure. The definition under section 2(24) uses the words 'received', 'winnings' or 'granted' which carry a positive connotation. Loss on the other hand is 'ab-extra'. The use of these terms in section 2(24) appears to indicate that the law does not visualize any losses to be listed therein. One could therefore argue that loss recognition principles do not necessary follow income recognition principles. Under the act, there have been certain specific instances where the Legislature has held that income includes loss. For example, explanation 2 to section 64 reads - 'For the purposes of this section," income" includes loss'. The explicit mention of such an aspect goes on to substantiate that under general principles income does not include losses. Similarly, section 10 contains provisions for exemption of certain incomes. It does not exempt 'loss'.

31. This proposition is reinforced by legislative emphasis on loss or deduction recognition primarily on a payment basis (e.g., Section 43B). Therefore, it is reasonable to conclude that income recognition principles may not automatically extend to recognizing losses.

10. CIT vs. Harprasad & Co. (P.) Ltd [1975] 99 ITR 11 [Allahabad HC]; CIT vs. J.H. Gotla (1985) 156 ITR 323 (SC).

Interplay of accounting standards and Income tax Act, 1961

32. Income recognition is a fundamental aspect of both financial accounting and taxation, but the principles and rules often differ between accounting standards (such as AS, Ind-AS) and the Act. This divergence can lead to timing differences, disputes in tax assessment, and challenges in compliance, audit, and reporting. Few such examples of divergent treatments arising from the interplay between accounting choices and tax compulsions are outlined below:

    (a) ***Partners Income charged to tax in the hands of firm:*** The Finance Act, 2021 introduced Section 9B into Chapter II ("Basis of charge") of the Income tax Act. This section provides that when, during the reconstitution of a firm/LLP/AOP/BOI ("specified entity"), a partner/member ("specified person") receives capital assets or stock in trade, such receipt is deemed a taxable transfer. Importantly, the liability falls on the entity, not the recipient. Correspondingly, section 45(4) was substituted to tax situations where, at the time of reconstitution, a specified person receives money or other assets in excess of his capital account balance. Again, though the benefit accrues to the individual partner, the taxable consequence is fastened on the entity. From a tax audit perspective, this complexity poses significant challenges - particularly in validating attribution workings,



capital account balances, and ensuring correct head of income classification.

(b) ***Conversion of stock-in-trade to capital asset:*** From an accounting viewpoint, the conversion of stock-in-trade into a capital asset is treated as an internal reclassification. The asset is transferred from inventory to fixed or investment assets at book value or cost. No immediate income recognition occurs because this process does not involve any sale or realization of value. The converted asset is reflected on the balance sheet under the appropriate category and is subsequently depreciated or held as an investment, depending on its nature. However, under the Act, the Fair Market Value (FMV) of the stock-in-trade as on the date of conversion is treated as business income and taxed accordingly in that year [section 28(via) read with clause (xiia) to section 2(24)]. This ensures that taxpayers cannot postpone tax liability by merely reclassifying inventory as a capital asset. Therefore, there is a timing difference between accounting profit, which defers income recognition and taxable income, which recognizes income immediately at conversion.

(c) ***Conversion of capital asset to stock-in-trade:*** From an accounting viewpoint, the investment or fixed asset is transferred to inventory at its book value, with no immediate profit or income recognized in the accounts, since there is no sale or realization of cash at this stage. However, under the Act, such conversion is deemed a "transfer" as per section 2(47)(iv). The special provision under section 45(2) clarifies that the capital gains arising from this deemed transfer are not taxed at the moment of conversion, but are instead chargeable to tax in the year when the converted stock-in-trade is actually sold or otherwise transferred. For the purpose of capital gains computation, the fair market value (FMV) on the date of conversion is treated as the full value of consideration, and indexed cost benefits are allowed until that date. There is a distinct timing mismatch between accounting and taxation. While accounting does not recognize income on conversion, tax law treats the conversion as a taxable transfer, but defers taxation of gains until the subsequent sale. On actual sale of the stock-in-trade, two forms of income are recognized - the capital gain (between original cost and FMV at conversion) and business income (between FMV at conversion and sale price). This split calculation can complicate compliance/reporting.

(d) ***Deemed incomes under the Act:*** Deemed incomes are amounts alien to the accounting world. These are not normally considered as income but are treated as such under the tax law to prevent tax avoidance through technical arrangements. For example,

(i) Section 2(22)(e) covers "deemed dividend". It deems any loan or advance by a private company to a substantial shareholder or to a concern in which the shareholder is substantially interested, out of accumulated profits, as dividend income. These transactions are taxed as dividend income in the hands of the recipient, even though no formal dividend is declared. While accounting treatment in the books treats these as loans, tax law requires them to be taxed as income in the recipient's hands in the year received.

(ii) Section 56(2)(x) taxes money, movable property, or immovable property received for free or for less than fair value (over a certain threshold) as "income from other sources" for the recipient in the year of receipt. Under accounting frameworks (including IND-AS), gifts and gratuitous property transfers are generally credited directly to capital or reserves and are not recognized as revenue or profit in the profit & loss statement. Provisions of the Act, however, overrides this treatment, requiring these items to be taken as taxable income in the year of receipt.

Thus, the Act taxes certain receipts as income even if they are not recognized as such under accounting norms, requiring careful reconciliation between accounting and tax treatment

(e) ***Benefits or perquisites under the Act:*** From an accounting perspective, recognition of perquisites or benefits depends on their nature, recognition criteria under applicable accounting standards (such as Ind AS), and whether they can be reliably measured. Perquisites may not be recorded as income if considered personal or non-business-related benefits. Under the Act, section 28(iv) casts a wider net on taxing benefits or perquisites, including those not recognized as income in books. Tax authorities often treat these benefits as taxable even if ignored in accounts.

(f) Potential incomes taxed irrespective of actual profits: Chapter XII-G of the Act, contains special provisions relating to the taxation of income of shipping companies based on their potential income rather than actual profits. This regime introduces a notional or deemed income concept, whereby certain incomes are deemed to have been earned by shipping companies, even if such income has not actually been realized. The approach of taxing potential income under Chapter XII-G can be seen as taxing "unrealized" or "hypothetical" income because the liable tax is based on a pre-determined formula rather than actual earnings. This is an exception to the general

In contrast, Section 43CB read with ICDS prescribes a bright-line rule. Once 25% of the stage of completion is crossed, POCM must be applied, irrespective of whether the outcome can be measured reliably.

principle that income is taxed on actual accrual or receipt.

Mis-matches between ICDS and Ind AS – Few practical challenges

33. For companies that prepare financial statements based on Ind-AS, the computation of income under the normal provisions of the Income-tax Act shall still be made in accordance with Act read with ICDS, unless specifically otherwise provided. The CBDT[11] has clarified that ICDS shall apply irrespective of the accounting standards adopted by them for their books of account (i.e., whether they follow Ind-AS, AS or any other system). The following examples highlight the divergence in accounting treatment under Ind AS viz-a-viz tax treatment under the Act:

A. Revenue from services

34. Both Ind-AS and ICDS require revenue from rendering of services to be recognised under the percentage of completion method (POCM). Under Ind-AS, however, this method can be applied only once the outcome of the contract can be measured reliably - meaning revenues, costs, and stage of completion must all be capable of reliable measurement. There is no prescribed stage from which POCM becomes mandatory; its application depends purely on whether reliable measurement is possible.

35. In contrast, Section 43CB read with ICDS prescribes a bright-line rule. Once 25% of the stage of completion is crossed, POCM must be applied, irrespective of whether the outcome can be measured reliably. This creates a key divergence. Further, under Ind-AS, if the outcome cannot be estimated reliably and recovery of costs is not probable, revenue is not recognised at all, and all costs are expensed, resulting in a loss. ICDS, however, mandates that once the 25% threshold is reached, only a proportionate loss corresponding to the percentage of completion may be recognised — it is silent on treatment in the initial stages if costs are irrecoverable.

36. Additionally, ICDS allows an assessee the option to defer recognition for short-term service contracts (duration less than 90 days) until the contract is completed or substantially completed. No such relaxation exists under Ind-AS.

B. Interest free loan given to employees/ subsidiaries

37. The accounting of interest-free loans highlights a core divergence between Ind-AS 109 and ICDS. Ind-AS 109 mandates recognition at fair value on initial recognition, with subsequent measurement using the Effective Interest Rate (EIR) method. Thus, where a company advances a long-term, interest-

11. FAQ No. 5 in Circular no. 10/2017, dated 23rd March, 2017

free loan (e.g., a parent to its subsidiary or an employer to an employee), the loan is recorded at its discounted present value. The difference between the nominal value disbursed and the fair value is recognised as equity contribution or employee benefit expense. Over the tenure of the loan, imputed interest income is credited annually to the profit and loss account until the carrying value equals the repayment amount.

ICDS, however, does not recognise the concept of fair value or notional interest. For income tax purposes, the loan is recorded at the transaction value, and since it is contractually interest-free, no accrual of interest arises.

38. ICDS, however, does not recognise the concept of fair value or notional interest. For income tax purposes, the loan is recorded at the transaction value, and since it is contractually interest-free, no accrual of interest arises. Such notional interest which has been credited to the statement of profit and loss of the parent company/employer would not be "income" as per the Act. This distinction gives rise to a reconciliation item for tax audit purposes. Under Clause 13(e) of Form 3CD, the auditor must report such divergence between Ind-AS and ICDS in income recognition. The difference further impacts MAT, since book profits (with imputed interest) are higher than normal taxable income. The mismatch underscores the need for careful reporting and reconciliation in tax audits.

C. Retention Money

39. Section 43CB(2)(i) provides that contract revenue shall include retention money. If the assessee has no right to receive the same, it cannot be said that the same has accrued to the assessee in terms of section 5 on the basis of principles of accrual adumbrated in ***E D Sassoon & Co Ltd vs. CIT (1954) 26 ITR 27 (SC)***. Section 43CB being a computation section cannot override section 5[12]. A reference can be made to the clarification issued by CBDT in response to in Q&A 11 of Circular No. 10/2017 dated 23-3-2017 where it has been stated that retention money shall be recognised as revenue subject to the condition of reasonable certainty of ultimate collection contained in Paragraph 9 of ICDS III. This highlights a clear divergence between tax and accounting treatments, leading to potential issues when retention money is taxed as contract revenue despite uncertainty over its receipt, risking taxation of unrealized or contingent income.

Unbilled Revenue vs. Unearned Revenue

40. The dichotomy between "unbilled revenue" and "unearned revenue" often results in timing differences between financial statements prepared under accounting standards (AS/Ind AS) and income recognition under the Act read with the ICDS. The key differences in accounting viz-a-viz tax treatment are tabulated below:

12. *Sedco Forex International Inc. vs. Commissioner of Income Tax and another [2017] 399 ITR 1 [SC]*

Aspect	*Unbilled Revenue*	*Unearned Revenue*
Meaning	Income already earned for goods delivered or services rendered but not yet invoiced as at reporting date.	Income received in advance before goods/services are delivered or performance obligations completed.
Nature in Books of Account	Treated as an asset (receivable/ accrued income)since economic benefits are due.	Treated as a liability (deferred income/contract liability)until obligations are met.
Relevant Accounting Standards	AS 9/Ind AS 115 requires recognition when performance obligation is satisfied, even if billing is pending.	AS 9/Ind AS 115 prohibits premature recognition; advances shown as deferred income until earned.
Income-tax Act Treatment	Taxable in the year the income accrues, even if invoice not raised or payment not received. Section 43CB read with ICDS-IV supports accrual/ POCM for service contracts.	As per Section 43CB read with ICDS-IV, recognition may be accelerated compared to accounting standards. Advances may be taxed if they relate to accrued obligations.
Practical Examples	Year-end accruals, project milestones achieved but invoice pending, completed work not yet billed.	Advance subscription fees, upfront software or service payments, rent/ licensing paid before service tenure.

Concluding remarks

41. Income recognition, deferral, and exemption often represent a choice for taxpayers, who may seek to time income recognition to minimize tax liability. However, the Legislature has consistently intervened to curb aggressive or innovative interpretations that could undermine the integrity of the tax base. The determination of income recognition has thus evolved well beyond the realm of mere accounting entries in the books of account. Although the income recognition provisions under the Act does not, in substance, impose additional taxes, it undeniably accelerates the recognition of income and defers the recognition of expenditure, thereby altering the timing of tax incidence to the detriment of taxpayers. The courts have repeatedly emphasised held that the Revenue should not fritter away its energies in fighting matters of this kind [***CIT vs. Nagri Mills Co Limited (1958) 33 ITR 681 (Bom HC); CIT vs. Excel Industries Ltd (2013) 358 ITR 295 (SC)***]. The larger impact, is that ICDS and income recognition provisions are likely to give rise to significantly more litigation than it resolves—an outcome contrary to its stated objective of ensuring tax certainty and reducing disputes. Despite which, the Legislature continues to evolve and refine the scope of income and income recognition principles, reigniting the tussle between tax policy and practical application.

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USAGE OF AI AND AUTOMATION TOOLS IN TAX AUDIT



CA Saili Kulkarni

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Overview

Tax audits, once reliant on manual verification of permanent files and client files, are now being transformed by Artificial Intelligence (AI) and automation. Traditional processes - such as reconciling ledgers, verifying vouchers, and compiling working papers - were time-intensive, error-prone, and reactive in nature. The modern tax landscape, however, demands agility, accuracy, and continuous compliance as businesses manage vast volumes of structured and unstructured financial data.

AI and automation tools address these challenges by digitizing records, reconciling data in real-time, and detecting anomalies with greater precision. Agentic AI functions like a digital auditor, autonomously performing reconciliations, monitoring compliance, and flagging risks. Generative AI (GenAI) accelerates reporting, simplifies complex tax laws, and enhances communication with clients through scenario analysis and clear summaries. Meanwhile, automation technologies like Robotic Process Automation (RPA) streamline repetitive tasks – data extraction, validation checks, and workflow management - ensuring audit trails are complete and standardized.

The benefits are twofold: for businesses, audits become faster, transparent, and strategically valuable; for auditors, operational workload reduces, allowing focus on risk assessment and advisory roles. While challenges such as data privacy, oversight, and implementation costs remain, the future points toward continuous, intelligent, and value-driven audits that go beyond compliance to strengthen governance and decision-making.

Introduction

Tax audits have always been a cornerstone of financial governance. They ensure that businesses comply with statutory obligations and maintain transparency in their tax filings. In essence, a tax audit provides both regulators and stakeholders with confidence that an organization is operating within the framework of law while upholding fiscal discipline.

Traditionally, tax audits were conducted through painstaking manual review of financial documents, with auditors relying heavily on permanent files—which contained enduring records such as company detailed details and past audit observations—and client files, which held current year working papers, vouchers, and supporting schedules. Using these two reference sets, auditors would cross-check ledger entries, verify invoices, reconcile bank statements, and ensure compliance with tax laws.

The modern tax environment demands speed, accuracy, and agility. Organizations handle vast amounts of structured and unstructured financial data, from digital invoices and bank feeds to international transfer pricing documents. Tax authorities, too, are moving towards e-audits, data-driven compliance enforcement, and advanced analytics. Against this backdrop, Artificial Intelligence (AI), automation, and digital audit platforms are no longer optional—they are essential tools transforming the audit landscape.

Today, tax audits have evolved far beyond compliance. They are about generating real-time insights, enabling predictive risk assessment, and empowering businesses to make strategic decisions. The rise of Agentic AI, Generative AI (GenAI), and automation platforms has ushered in a new era where audits are continuous, intelligent, and value-driven.

Pain Points of Manual Tax Audits



Market Survey Snapshot[1]

Market surveys show strong demand for AI in tax & audits processes, but adoption remains uneven. Tax leaders widely believe in the effectiveness of AI/GenAI, yet most departments have automated only a fraction of their processes.

1 *References:*
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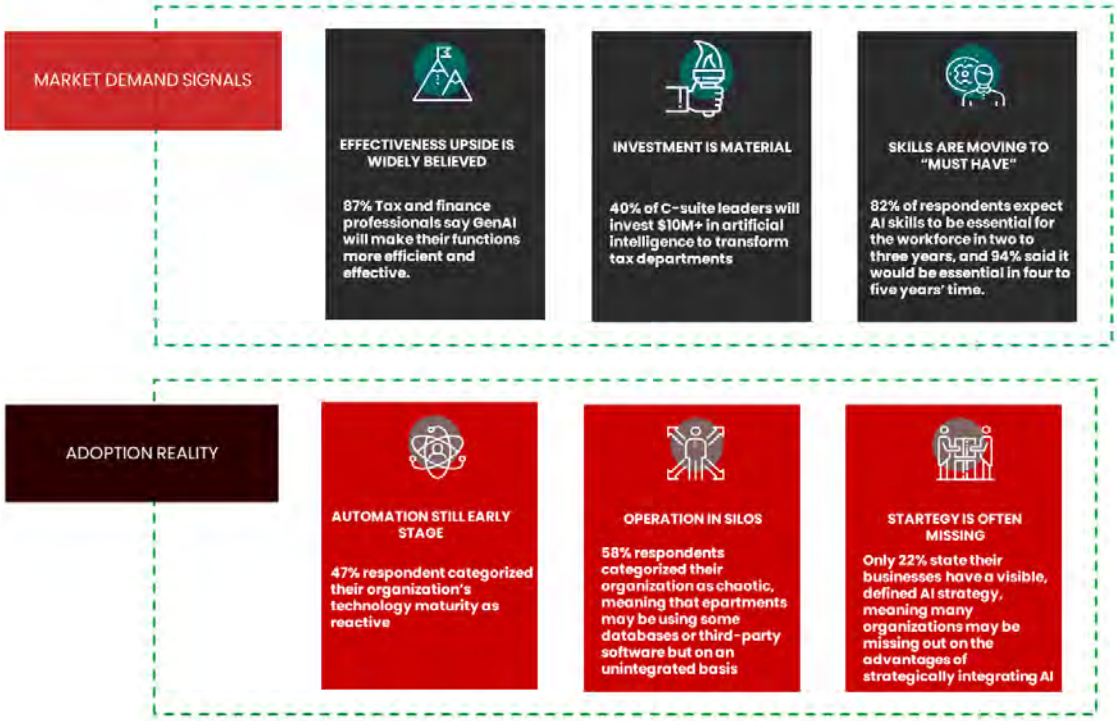


Beyond Manual Checks

The Rise of Agentic AI, Generative AI, and Automation in Tax Audits

Agentic AI in Tax Audits : Autonomous Compliance Intelligence

Agentic AI is designed to act autonomously, reason through complex problems, and orchestrate multi-step workflows. In a tax audit context, Agentic AI can operate as a "digital tax auditor" that can independently execute audit checks, reconcile records, and continuously monitor compliance requirements.

Key capabilities of Agentic AI

- ***Continuous Reconciliation:*** Continuously reconcile data between general ledgers and filing data.
- ***Anomaly Detection:*** Detect anomalies such as mismatched entries, suspicious expense patterns, or missing data points.
- ***Dynamic Compliance Tracking:*** Track regulatory updates and automatically

In a tax audit context, Agentic AI can operate as a "digital tax auditor" that can independently execute audit checks, reconcile records, and continuously monitor compliance requirements.

apply relevant compliance checks without manual intervention.

- ***Workflow Automation:*** Trigger workflows such as requesting supporting documents from clients, generating exception reports, and escalating critical issues to auditors.

This autonomy helps auditors reduce time spent on routine reconciliations and validations, shifting their focus toward high-value activities like analysing risks, planning strategies, and advising clients. For businesses, it ensures audits are proactive rather than reactive, with compliance being monitored continuously throughout the year.

Generative AI for Insights, Reporting, and Client Communication

GenAI, known for creating content and synthesizing complex data, has significant applications in tax audits. Its role extends beyond just number crunching to simplifying communication, drafting reports, and providing scenario simulations.

Some key applications include:

- ***Drafting audit reports:*** GenAI can prepare structured first drafts of audit findings by analysing transaction data, highlighting irregularities, and summarizing compliance risks in clear, professional language.

- ***Explaining complex tax laws:*** Instead of auditors spending hours interpreting new tax provisions for clients, GenAI can generate simplified summaries tailored to client-specific scenarios.

GenAI not only accelerates reporting but also enhances transparency for clients, as findings are explained in simple, easy-to-understand formats.

- ***Predictive simulations:*** By running different financial models, GenAI can estimate the tax exposure under multiple assumptions, helping clients prepare for regulatory queries or optimize tax planning.

- ***Client Communication:*** Creates simplified executive summaries, FAQs, and visual dashboards for stakeholders, making audits more transparent.

GenAI not only accelerates reporting but also enhances transparency for clients, as findings are explained in simple, easy-to-understand formats.

Automation Tools in Tax Audit Processes

While AI brings intelligence, automation delivers efficiency. Automation tools like Robotic Process Automation (RPA) and AI-driven data extraction systems play a crucial role in executing repetitive, high-volume tasks that traditionally relied on carefully maintained permanent files and client files.

- ***Data extraction and digitization:*** Using Optical Character Recognition (OCR), invoices, receipts, contracts, and bank statements can be digitized and automatically categorized. What once required manually compiling evidence into client files can now be streamlined into structured, searchable digital records.

- ***Transaction matching:*** RPA bots can reconcile thousands of entries across bank statements, purchase ledgers, and tax returns in minutes—something that would take days if done manually by referring back and forth between client files and working papers.

- ***Validation rules and checks:*** Automated scripts can instantly flag mismatches in credits, underreported liabilities, or deviations from standard accounting treatments. These flagged exceptions can then be systematically documented and updated in permanent or client files, ensuring continuity and traceability.

- ***Workflow automation:*** Tools can automatically generate and assign tasks (e.g., sending requests for supporting documents), reducing back-and-forth communication. Instead of auditors manually updating client files for every query, automation ensures that documentation flows directly into the audit trail.

Such automation eliminates human error in repetitive processes while significantly reducing audit timelines. Moreover, by integrating with digitized structure of permanent files and client files, automation ensures that the audit trail remains both comprehensive and standardized, thereby enhancing reliability and audit readiness.

Benefits for Clients

The adoption of AI and automation in tax audits has a direct, positive impact on clients:

- ***Faster Turnaround***: AI-enabled audits can process data at a fraction of the time required by manual audits, ensuring quicker completion and earlier visibility of results.

- ***Higher Accuracy:*** Automated validation reduces the likelihood of human error, ensuring greater reliability in reported figures.

- ***Transparency:*** Clients benefit from real-time dashboards and reports, giving them clarity on audit progress and identified issues.

- ***Cost Efficiency:*** Reduced manual effort translates into lower audit costs, especially for businesses with large transaction volumes.

- ***Predictive Insights:*** AI tools provide foresight into potential risks and exposures, helping businesses proactively address compliance gaps.

- ***Minimal Disruption:*** Since much of the process is automated, client teams spend less time gathering, reconciling, and clarifying data, allowing them to focus on core operations.

Clients, therefore, will experience not just compliance assurance but also strategic value creation through tax audits.

Benefits for Tax Auditors

For tax auditors, AI and automation tools shift the focus from manual validation to strategic advisory roles:

- ***Reduced Manual Workload:*** Repetitive tasks like matching entries, extracting data, or drafting reports are largely automated.

- ***Improved Audit Quality:*** AI-powered anomaly detection goes deeper into datasets than traditional sampling methods, uncovering irregularities that might otherwise be overlooked.

- ***Scalability:*** With AI, auditors can handle larger client portfolios without compromising quality, as the technology absorbs much of the operational burden.

- ***Enhanced Risk Management:*** Predictive models allow auditors to identify areas of potential tax exposure earlier, improving compliance assurance.

- ***Value-Added Advisory:*** With operational work minimized, auditors can focus on advisory roles such as tax planning, risk mitigation, and strategic business insights—elevating their position from compliance checkers to trusted advisors.

AI-Driven Tax Audit Lifecycle

Traditionally, tax audits have been episodic conducted once a year, often under tight deadlines. This "snapshot" approach often left little room for proactive compliance, strategic planning, or predictive risk management. With the advent of AI, GenAI, Robotic Process Automation (RPA), tax audits are now evolving into a continuous lifecycle rather than a one-off compliance exercise. This lifecycle integrates technology at every stage, from data ingestion to client advisory, ensuring audits are proactive, accurate, and value-driven:

- ***Data Collection & Digitization:*** The first step in any audit is gathering financial data—ledgers, invoices, contracts, payroll records, and tax returns. Historically, this process was manual, requiring client teams to compile thousands of documents. Today, Optical Character Recognition (OCR) and RPA bots automate this step by digitizing unstructured records into standardized, machine-readable formats.

- ***Automated Reconciliation:*** Once data is digitized, the next step is reconciliation. This involves matching entries across ledgers, bank statements, and tax filings. Traditionally, auditors sampled transactions manually, leaving room for errors or overlooked mismatches. With Agentic AI and RPA, reconciliation becomes continuous and exhaustive, covering 100% of transactions.

- ***Anomaly Detection:*** Beyond reconciliation, AI applies advanced analytics and machine learning algorithms to detect irregularities or risks. These anomalies may include duplicate invoices, missing TDS entries, unusual expense patterns, or deviations from statutory rules. Unlike humans, AI can analyse large volumes of data in seconds, identifying subtle patterns that may indicate fraud or compliance gaps.

- ***Generative AI Reporting:*** Once anomalies are flagged, GenAI comes into play. It creates draft reports, summarizing findings, highlighting risks, and even suggesting corrective actions in clear, professional language. This not only speeds up report creation but also improves communication with stakeholders. Instead of auditors manually drafting a report, GenAI can produce the first draft, complete with executive summaries, charts, and explanations tailored to both CFOs and non-financial board members.

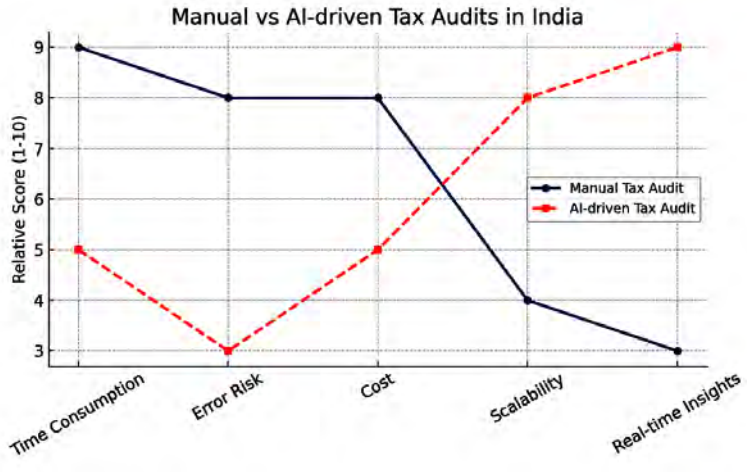
- ***Auditor Review & Insights:*** AI is not a replacement for human expertise—it is a partner. Auditors review the AI-generated reports, validate the findings, and add qualitative insights. This step ensures professional judgment, ethical considerations, and contextual understanding remain central to the audit process.

- ***Client Communication & Planning:*** The next stage involves discussing findings with clients. AI-generated dashboards and visual summaries allow auditors to present risks and recommendations in a transparent, easy-to-understand manner. This shifts the conversation from retrospective compliance to forward-looking strategy.

- ***Continuous Monitoring:*** Perhaps the most transformative aspect of AI-driven audits is that they are ongoing, not episodic. Agentic AI agents can continuously monitor compliance by analysing new transactions in real time, tracking regulatory updates, and automatically applying relevant checks.

The AI-driven tax audit lifecycle ensures that audits evolve from one-time, retrospective activities into continuous compliance journeys. Businesses benefit from real-time insights, auditors focus on advisory rather than manual checks, and regulators gain greater assurance of accuracy. With AI, tax audits are no longer simply about compliance—they are about building trust, reducing risks, and unlocking strategic value.

Comparison of Manual vs AI-driven Tax Audits



Challenges and Considerations in AI-driven Audits

While the adoption of Artificial Intelligence (AI) and automation tools in tax audits brings undeniable efficiency and strategic advantages, the transformation journey is not without hurdles. Businesses and auditors must address critical challenges to ensure that AI adoption is both effective and sustainable.

These challenges fall into three broad categories: data privacy, human oversight, and cost of implementation:

- ***Data Privacy:*** Tax audits deal with sensitive financial and personal information—ranging from corporate ledgers and payroll details to client bank records. With AI systems processing vast volumes of such data, the risk of data breaches, cyberattacks, or unauthorized access increases significantly. Organizations need to invest in robust encryption, access controls, anonymization techniques, and regular cybersecurity audits. Additionally, clear contractual terms with technology providers are essential to ensure accountability for data handling.

- ***Human Oversight:*** One of the biggest misconceptions about AI in auditing is that it can completely replace human auditors. While AI excels at analysing large datasets, detecting anomalies, and drafting reports, it lacks the contextual understanding, ethical reasoning, and professional scepticism that auditors bring to the table. AI outputs are only as reliable as the data and algorithms behind them. Biased or incomplete data may lead to false positives or overlooked risks. Without human validation, such outputs could undermine the integrity of the audit. This highlights the need for a human-in-the-loop approach. Auditors must review AI-generated insights, exercise judgment, and ensure that conclusions are grounded in both legal frameworks and business realities. In fact, the most effective audit models are those where AI handles operational tasks while human auditors focus on risk assessment, advisory, and ethical considerations.

- ***Cost of Implementation:*** Adopting advanced AI and automation tools often requires significant upfront investment. The costs include purchasing software licenses, upgrading IT infrastructure, integrating AI tools with existing ERPs, and training staff to use the new systems effectively. For small and mid-sized firms, these costs can seem prohibitive. Even for large organizations, change management—convincing employees to embrace modern technology and adapt workflows—can be a major barrier. It is also important to consider the hidden costs of poor implementation. If AI systems are deployed without proper integration or staff training, organizations risk inefficiency, errors, and even regulatory non-compliance.

While AI offers tremendous potential to revolutionize tax audits, businesses and auditors must approach adoption thoughtfully. Data privacy safeguards must be prioritized to protect sensitive information; human oversight remains indispensable to ensure accuracy and ethical compliance; and cost considerations must be managed through strategic investments and phased implementation.

By acknowledging and addressing these challenges early on, organizations can unlock the true value of AI in tax audits – transforming audits from a compliance necessity into a strategic enabler of governance, risk management, and business growth.

Future Outlook: The Next Decade of AI-Driven Tax Audits

The tax audit of tomorrow will look dramatically different from today's predominantly manual, compliance-focused processes. As digital technologies mature, tax audits are expected to evolve into holistic ecosystems where AI, blockchain, regulatory technology (RegTech), and advanced analytics converge. Instead of being seen as periodic compliance burdens, audits will increasingly become strategic enablers of governance, transparency, and financial optimization:

- ***Blockchain-Integrated Audits:*** One of the most transformative trends will be the integration of blockchain into tax audits. Since blockchain creates an immutable, time-stamped ledger of financial transactions, it can serve as a single source of truth for auditors and regulators. This eliminates the need for exhaustive document tracing and manual reconciliations.

- ***RegTech Integration***: Tax laws are dynamic, with frequent updates at both national and international levels. Keeping pace with these changes is one of the biggest challenges for auditors and CFOs. Future tax audit platforms will integrate RegTech modules that automatically update compliance frameworks as laws evolve. If the Indian government introduces a new TDS rule, AI-enabled audit tools will automatically recalibrate workflows, flag impacted transactions, and update reporting templates. This reduces reliance on manual monitoring of regulatory bulletins and ensures organizations remain perpetually compliant.

- ***Voice & Conversational AI:*** As AI becomes more sophisticated, voice-driven, and conversational AI tools will become a standard part of tax audits. CFOs and auditors will interact with AI chatbots capable of answering tax queries, generating scenario analyses, or even drafting compliance reports in real time. An auditor could simply ask an AI system, "Show me all payments where TDS under section 194C was not deducted or deducted at a lower rate during FY 2024–25, along with vendor details." Within seconds, the system would generate a structured report, mapping the transactions directly to Clause 34 of Form 3CD (relating to TDS compliance). This enables auditors to instantly identify lapses, prepare disclosures, and ensure accurate reporting—transforming what is traditionally a painstaking reconciliation exercise into a seamless, real-time compliance check.

- ***Self-Healing Systems:*** The future will also see the emergence of self-healing audit ecosystems. Instead of merely flagging mismatches or anomalies, AI systems will automatically correct errors, reconcile mismatched entries, and generate audit trails for human review. E.g., If an invoice does not match with TDS returns, the system could autonomously trace supporting documents, suggest adjustments, or even draft a rectification entry—dramatically reducing client and auditor intervention in routine tasks.

The role of tax audits will expand beyond statutory compliance. They will evolve into continuous assurance systems that provide companies with real-time financial visibility,

For clients, this convergence of technologies translates into measurable advantages: faster turnaround times, greater transparency, cost-effective engagements, and real-time compliance assurance.

risk forecasting, and decision-making support. Audits will no longer be backward-looking exercises conducted once a year; instead, they will be integrated, ongoing processes that support corporate governance and enhance financial resilience.

In this future landscape, AI-powered tax audits will empower organizations to reduce risks, improve efficiency, and unlock strategic value. Compliance will become a byproduct of well-governed systems, while the audit function itself becomes a driver of financial optimization and competitive advantage.

Conclusion

The evolution of tax audits is entering a decisive phase where artificial intelligence (AI) and automation are no longer optional add-ons but integral enablers of efficiency, accuracy, and strategic value. Traditionally viewed as compliance-heavy exercises, tax audits are being redefined into streamlined, technology-driven processes that go beyond meeting statutory requirements to unlocking insights that shape financial and business strategy.

At the heart of this transformation lies the synergy of Agentic AI, GenAI, and automation tools. Agentic AI, functioning as a "digital auditor," automates routine yet critical tasks such as reconciliation, anomaly detection, and compliance validation. It tirelessly processes high volumes of data, eliminating human errors and providing auditors with a ready-to-use foundation for deeper analysis. GenAI, on the other hand, enhances the narrative dimension of audits—drafting detailed audit reports, preparing executive summaries, and even personalizing client communications in a clear and structured manner. When combined with automation technologies such as robotic process automation (RPA), these solutions ensure that operational workflows—whether it is collecting client data, mapping tax rules, or generating compliance certificates—are executed with consistency and speed.

For clients, this convergence of technologies translates into measurable advantages: faster turnaround times, greater transparency, cost-effective engagements, and real-time compliance assurance. Instead of waiting months for a finalized audit report, businesses can access ongoing insights throughout the year. This continuous monitoring not only ensures adherence to dynamic tax regulations but also allows CFOs and business leaders to proactively adjust financial strategies.

For auditors and tax professionals, the value proposition is equally compelling. With repetitive tasks automated, professionals gain the bandwidth to focus on higher-value advisory work—whether it is providing strategic guidance on tax structuring, identifying risks in cross-border transactions, or helping organizations plan for regulatory changes. This transition repositions auditors from compliance enforcers to trusted

This transition repositions auditors from compliance enforcers to trusted advisors, strengthening their role in corporate governance and long-term financial planning.



advisors, strengthening their role in corporate governance and long-term financial planning.

Of course, this technological transformation is not without its challenges and considerations. Data privacy and cybersecurity are paramount when dealing with sensitive financial and tax information. Human oversight remains essential to validate AI-generated insights and ensure that judgment, context, and ethical considerations are applied before conclusions are drawn. Moreover, the cost of implementation and the learning curve for adopting new systems may initially deter some organizations. However, the long-term gains in accuracy, efficiency, and strategic value far outweigh these temporary obstacles.

The future of tax audits, therefore, is not just about automation—it is about integration, foresight, and strategic enablement. As businesses operate in increasingly complex regulatory environments, AI-driven audit frameworks will provide the tools to stay compliant while offering a competitive edge through smarter financial decision-making.

In the near future, organizations and auditors who embrace this digital-first approach will not only safeguard themselves against compliance risks but also position themselves as leaders in innovation and governance. Those who adopt AI-driven audits will not just stay compliant—they will stay ahead. ■

REPORTING, DISCLOSURES, REPRESENTATIONS AND DOCUMENTATION – CAUTION FOR TAX AUDITORS



CA Parveen Kumar

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Overview

While preparing a report on Tax Audit under section 44AB of the Income Tax Act 1961, a tax auditor needs to be aware of the responsibilities and be cautious in light of close scrutiny by the regulators. This article touches upon key aspects to be kept in mind while carrying tax audit by the Chartered Accountants. Selecting correct reporting format, accuracy of the basic information besides diving deep into "true and correct" framework of information provided in form 3CD are paramount requirements.

The article touches disclosures such as TDS, GST, MSME, and GAAR etc and discuss the importance of professional judgment, documenting qualifications, and revising reports where required. It stresses that management is responsible for preparing information, auditors should verify information, obtain representations, and disclose inconsistencies.

Responsibility of tax auditor includes collecting evidence and keeping audit work papers to demonstrate that the audit was planned and the procedures were performed to meet audit objectives. Further, the article outlines essential documentation standards under SA 230, recommending systematic style of keeping audit work paper file covering appointment, planning, execution, completion, and retention. The objective of this write up is to empower the tax auditor and bring home seriousness of reporting requirements.

Section 44AB of the Income-tax Act, 1961 requires Tax Audit to be carried out in case of businesses and professionals whose turnover, sales, or gross receipts exceed the prescribed thresholds during a financial year. The audit should be conducted by a practising Chartered Accountant, who will furnish a report in specified format (Form 3CA or 3CB) along with the certain information and details (Form 3CD). This audit report has to be submitted on Income Tax Department's e-filing portal. The reporting is primarily factual and information to be furnished in Form 3CD is based on 'true and correct' framework, instead of 'True and Fair' framework. This create an enhanced obligation for tax auditor to carry out in depth and sometime hundred per cent examination of transactions, check adherence to documentation requirements, and also

The reporting is primarily factual and information to be furnished in Form 3CD is based on 'true and correct' framework, instead of 'True and Fair' framework.

leaves lesser scope for materiality, while at a few places judgement or interpretation will be required.

For professional carrying out this audit, Institute of Chartered Accountants of India (ICAI) has published a Guidance note on tax audit (Revised 2025)[1] (hereinafter referred as GN) to advice and provide direction to tax auditors helping navigate the process.

In this article, we will analyse cautions for the tax auditor while reporting, planning audit procedures besides taking representations from the management, specifically in key areas and how to collate audit work papers.

Reporting

While reporting, the tax auditor must exercise due care, a high degree of caution, and attention to detail. Any misreporting or failure to disclose relevant information may result in penalties for the taxpayer and may constitute professional misconduct for the auditor. Tax Audit Quality Review Board (TAQRB) has also highlighted these observations as key deficiency in its quality reviews.

Any misreporting or failure to disclose relevant information may result in penalties for the taxpayer and may constitute professional misconduct for the auditor.

Selection of Reporting Form

Tax auditor need to provide report in Form 3CA for assessee whose accounts are already audited under another law, like the Companies Act, and in Form 3CB for assessee who are not required to get their accounts audited under any other law. Information and details required in Form 3CD to be annexed with the report.

Accuracy of Basic Information

(a) Name, address, and Permanent Account Number (PAN) of the assessee should be reported correctly and spelling errors to be avoided.

(b) The name, address, membership number, and firm registration number (FRN) of the tax auditor must be correct. The tax audit report should also bear the auditor's signature with a stamp and date besides UDIN.



1. *https://resource.cdn.icai.org/87317dtc-aps1808gn-tax-audit2025.pdf*

Para 17.10 of GN states that where the tax auditor is unable to obtain the required information in respect of branches situated in India or outside India, then the fact should be suitably disclosed along with its impact on the Auditor's opinion on the particulars furnished Tax Audit report.

(c) The dates of the balance sheet and the period covered by the Profit & Loss Account/Income & Expenditure Account must be accurate.

Responsibility

Standard on Auditing (SA) 700 (Revised) provide guidance on the contents of report of an auditor and specific format has been provided in the utility for the tax auditor. Assesse's Responsibility paragraph and the Tax Auditor's Responsibility paragraph to be given in Clause (3) of Form No.3CA or Clause (5) of Form No.3CB rather than in attached notes.

Materiality

As per para 15.6 of GN, requirement in paragraph 3 of Form No. 3CA and paragraph 5 of Form No. 3CB relating to particulars in Form No. 3CD is that the auditor should report that these particulars in Form No. 3CD are "true and correct". …. the words "true and correct" lay emphasis on factual accuracy of the information.

While verifying data in Form 3CD, aspect of materiality should be considered as per nature of information. In other words, particulars should be given in respect of material items, and the auditors should assess factual correctness relating to these particulars. Following is an example of comment, which can be included in the report.

> *"An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in Form No. 3CD. The procedures selected depend on the auditor's judgment, and we have reported on these particulars in Form No. 3CD by applying test checks as considered appropriate, based on the concept of materiality and the representations made by the assessee, wherever considered necessary."*

Using the work of another auditors

Para 17.6 of GN visualise the situation when accounts of the business or profession have been audited under any other law, which has branches at various places, the branch accounts might have been audited by other auditors under the relevant Statute. If the audit under section 44AB is also carried out by the same branch auditors or other chartered accountants, they should submit the report in Form No. 3CA to the management or the principal tax auditor appointed for the head office under Section 44AB.

SA 600, 'Using the Work of Another Auditor' discusses the procedures as well as the principal auditor's responsibility in relation to his use of the work of the branch auditor. The principal tax auditor should submit his consolidated report on the registered or head office and branch accounts and report in his tax audit report as his observation in paragraph 3 of Form No. 3CA, conveying that the branches not audited by them.

Para 17.10 of GN states that where the tax auditor is unable to obtain the required information in respect of branches situated in India or outside India, then the fact should be suitably disclosed along with its impact on the Auditor's opinion on the particulars furnished Tax Audit report.

Qualification for Negative disclosures

Tax auditor should ensure that clauses against which negative reporting is made under form 3CD such as Clause 34 (TDS), Clause 44 (GST), etc are addressed and reported correctly. Same is in line with the guidance under para 17.5 of GN, which requires the auditors to state the reasons in case the response to requirement is negative. When tax auditor provides comment in audit report it becomes comprehensive and the user of audited statement of particulars can understand the impact.

Generally, qualifications are provided with respect to reporting under Section 21(d) for Payment mode other than account payee cheque/bank draft and online mode, section 34(a) for TDS reconciliation, Clause 30 for impermissible avoidance agreement, clause 27, Clause 44 for GST reconciliation, etc. In the cases where qualification is not provided in the form 3CA/3CB, the tax auditor should have detailed and appropriate documentation for verification of correctness and completeness of reporting under such clause.

The auditor must mention in the revised report that the said report has been revised, and a reference should be made to the earlier report as well. In the revised report, reasons for revising the report must be mentioned. (Para 15.13 of GN).

Businesses where books not produced

In case tax auditor is required to carry out audit in respect of one or more businesses, where books have not been produced, then in accordance with Para 18.10 of GN, the tax auditor should mention the fact that audit has not been conducted of those businesses whose books of account had not been produced. However, if the financial statements include, inter alia, the results of such business for which books of account have not been produced, the auditor should qualify his report in Form No. 3CB.

Revision in Tax Audit report

Tax auditor may need to revise the tax audit report due to reasons such as the revision of accounts by a company after their adoption at the annual general meeting, changes in law (e.g., retrospective amendments), or changes in interpretation (e.g., CBDT circulars, judgments of the High Courts or the Supreme Court) etc. In such cases, the auditor must mention in the revised report that the said report has been revised, and a reference should be made to the earlier report as well. In the revised report, reasons for revising the report must be mentioned. (Para 15.13 of GN).

Such revised report should be signed in the **current date**. It is recommended that all the revisions required should be done at a time. However, there may reasons, like, a court ruling subsequent to the signing and uploading of the revised tax audit report which may necessitate further revision of tax audit report. In such cases, the auditor may, if he deems fit, amend or again revise the tax audit report (Para 15.16 of GN)

A fresh UDIN should be generated and guidance of SA- 560 should be followed besides rules specified for revision for tax audit report by the CBDT.

Under Sub-rule (3) in Rule 6G of Income Tax rules, "The report of audit furnished under this rule **may be revised** by the person by getting revised report of audit from an accountant, duly signed and verified by such accountant, and furnish it before the end of the relevant assessment year for which the report pertains, **if there is payment by such person after furnishing of report** under

sub-rules (1) and (2) which necessitates recalculation of disallowance under **section 40 or section 43B**". Interesting to note that revision has to be done by the Tax auditor who has originally filed the report.

Disclosures in form 3CD

Assessee has responsibility for preparation of Form 3CD, Tax auditor needs to ensure that details filled in required clauses are complete and accurate and need to give an opinion whether the information in statement of particulars in Form 3CD are true and correct.

Various places, there might be a requirement of a comment by the auditor. Since utility might have limitation, the auditor needs to carefully draft appropriate comments. A few people prepare one annexure along with 3CD form, and upload that annexure, which contains comments related to various clauses. This must be properly referred to in the main report, in case used.

Recent Amendments

The Central Board of Direct Taxes (CBDT), vide Notification No. 23/2025 dated 28th March 2025, has amended Form 3CD under the Income-tax Rules, 1962, thereby introducing revisions to the particulars required to be furnished in the Form 3CD.

Key revisions to the particulars required to be furnished in the tax audit form such as Clause 22 (MSME reporting), Clause 26 (43B reporting including MSME), Clause 31 (Mode of payment), etc. Auditors and taxpayers must stay updated with the latest amendments and circulars, as changes can affect disclosure and reporting requirements.

These amendments are significant from perspective of tax auditor as detailing as well as professional judgement will be required while reporting in some of these clauses, especially where allowability under tax regulations needs to be verified. Please remember, the tax auditor is not the assessing authority and the judgement of auditor and tax officer might be varied.

Other considerations

Tax auditor should verify that exact mode of payment as applicable from the given drop down is provided in case where reporting is applicable.

While reporting under clause 8, In case of Company/LLP assessee, third proviso to section 44AB as the applicable section for tax audit should be selected instead of section 44AB(a) while filling up clause 8 of Form 3CD since accounts are audited under any other law. Similar precautions need to be exercised in case of co-operative societies/trusts etc. where audit is applicable under respective laws.

Further, in accordance with para 28.5 of GN, considering the explanation 3 under section 28 of Income tax act, no reporting shall be required in respect of any rental income from residential house property under clause 16(a).

For verifying reporting in sub-clause 16(b), the auditor should review all relevant records, correspondence, and particulars on department portal to confirm if any refund or

Key revisions to the particulars required to be furnished in the tax audit form such as Clause 22 (MSME reporting), Clause 26 (43B reporting including MSME), Clause 31 (Mode of payment), etc. Auditors and taxpayers must stay updated with the latest amendments and circulars, as changes can affect disclosure and reporting requirements.

claim was admitted and accepted during the financial year.

Escalation claims arise from contracts if permitted, and only those unconditionally accepted by the other party qualify as accepted claims. Claims merely made, under negotiation, or sub-judice do not qualify considering [***CIT vs. Hindustan Housing & Land Development Trust Ltd. [1986] 161 ITR 524 (SC)***]. The auditor must use professional judgment based on the facts.

For verifying reporting on clause 18, disputes with the Income-tax Department on classification or depreciation from prior years should be disclosed based on facts. If the auditor disagrees with the assessee' s classification or depreciation rate which is under dispute, this must be noted with details and a comment should be included in report.

Considering the amendment in clause 22 from FY 24-25 and extended disclosure requirements, Complete reconciliation of classification of Trade payables under MSME and NON MSME, amount due to micro or small enterprise (not Medium), amount paid to micro or small enterprise, due date of payment, date of payment, outstanding balances, amount inadmissible u/s 43B(h) of income tax act etc as per the requirement of the clause in compliance with relevant provisions of MSME Act should be obtained.

Reconciliation should be available with the assessee and verified by the auditor for the unpaid balances reported in this clause 22 during previous year and payments made during the current year besides what was due during the year but unpaid & outstanding on closing date. The same should be in agreement with books of accounts and details of any subsequent payment upto the due date of return.

Section 43B is applicable in respect of expenditure for which a deduction is otherwise allowable under the Act. Therefore, where any expenditure is reported under any other clause indicating that deduction is otherwise not allowable, there is no need of reporting such expenditure under this clause as per para 46.3 of the GN.

GAAR Provision reporting

For disclosure under clause 30C, Careful assessment should be made for whether the provisions of GAAR are triggered and arrangement is declared by the Principal Commissioner or the Commissioner or by an Approving Panel as an Impermissible Avoidance Arrangement ("IAA") in pursuance of provisions of section 144BA, whether any tax benefit is obtained & tests under section 96 of Income Tax Act are met, further the tax benefit arising in aggregate to all the parties should be Rs 3 crore or more and access to books of others parties to the arrangement should be available.

In absence of possibility of elaborate investigation process or lack of access to the books of account and other records of other parties to the arrangement, if the tax auditor is unable to come to a conclusion on 'true and correct' assertion, an appropriate disclaimer should be made in respect of reporting under this clause including comment in Form 3CA/3CB.

Non-corporate Assessee and tax exemptions

For sole proprietors or HUFs, if tax audit applies only to the business/profession, Chapter VIA deductions should be reported based on audited books. The total claim in the return may differ due to additional deductions not reflected in those books.

For sections like 80-IA, 80-IB, 80-IC, 80JJAA, separate audit reports or certificates are required. While reporting such deductions, the tax auditor should refer to these reports—

whether issued by them or another auditor—and ensure compliance with SA-600 if relying on another auditor's work.

While reporting under Clause 34(a), the tax auditor must verify all payments made by the assessee, not just those in the statement of Profit and Loss or TDS/TCS returns. For example, even advance payments to contractors may require TDS.

For Clause 34(a) & Clause 21(b), in case assessee is not responsible for deduction of Tax/or at certain rate, then Form 26A certificates/Lower deduction certificates/legal opinions/chartered accountant certificates based upon which foreign remittances made, DTAA rates etc. should be referred and documented.

The assessee is primarily responsible for preparing complete and accurate information. The tax auditor must verify its correctness through reasonable test checks and document the extent of checks in working papers and audit notes. There may be difference of opinion between the auditor and the assessee regarding the applicability of TDS/TCS provisions, the auditor should clearly disclose this as an observation in Clause 3 of Form 3CA or Clause 5 of Form 3CB, as applicable.

As per GN, for calculating stock in trade or turnover ratio, average stock should not be considered and same would include only finished goods and would not include the stock of raw material and work-in-progress.

In case, the previous year is not subject to audit, the same should be disclosed in the observation para of Form No.3CA/Form No.3CB.

The auditor should obtain copies of all demand or refund orders in respect of all the indirect tax laws received up to the audit date and exercise professional judgment to determine which laws (e.g., GST, Excise, VAT, etc.) are relevant for reporting under this clause. In large business, this might be a challenge and technology should be used to get access to the data and the auditor may use control approach to reach to conclusion. Still remember, responsibility of verifying that the reporting is true and correct is with the auditors.

For reporting in clause 40, demand or refund orders issued during the previous year may relate to periods other than that year and must still be reported. The auditor should verify books, orders, and cross-check demands via department portals. Any refund adjustments against demands should be reported. Details should align with contingent liabilities and statutory auditor disclosures. Management representation will play an important role in this regard.

The table heading "Breakup of total expenditure" indicates that only the total expenditure, including purchases, needs to be reported. Detailed head-wise or nature-wise expenditure is not required under this clause. Workpaper should be maintained for amount of expenditure reported in said clause vs expenditure in financial statements.

It is crucial to distinguish the supplier's registration status at the time of supply from their current status, as cancellations may be backdated. Post-balance sheet events

For sections like 80-IA, 80-IB, 80-IC, 80JJAA, separate audit reports or certificates are required. While reporting such deductions, the tax auditor should refer to these reports—whether issued by them or another auditor—and ensure compliance with SA-600 if relying on another auditor's work.

affecting this do not change the nature of the expenditure. Tax auditor may choose whether to extend the review procedures beyond the audit period.

Proper reconciliation of expenditure in books against the amount reported in clause 44 along with details of category of supplier, nature of service or goods. Further reconciliation of expenditure in respect of entities registered under GST, GST rate, exempted goods & services, etc. should be maintained and verified and in case not possible then consider a comment in the report.

Further while giving disclosures in form 3CD, in accordance with para 19.3 of guidance note, following are key considerations

(a) If reporting is required under multiple clauses for the same aspect, the tax auditor may report it in one clause and cross-reference it in the others

(b) If the tax auditor and assessee differ in opinion on Form 3CD disclosures, the auditor may present both views with relevant details to matter in his report in order to enable the tax authority to take a decision in the matter.

(c) While computing allowances or disallowances, the auditor should apply the law relevant to the year, even if the audit report format hasn't been updated accordingly.

(d) If the assessee provides incomplete or partial information, the auditor should still issue the report but qualify it in Para 3 of Form 3CA or Para 5 of Form 3CB, as applicable.

(e) If the auditor relies on a judicial ruling, it should be noted in Para 3 of Form 3CA or Para 5 of Form 3CB, as applicable.

Representation

SA 580 'Written Representations' deals with the auditor's responsibility to obtain written representations from management and, where appropriate, those charged with governance. While representations from Management are important, these will not be substitute of audit procedures and tax auditor must verify the information and representation provided. These representations will form part of audit file as additional audit evidence besides other work papers to help auditor reach to conclusion.

Para 2 of SA 580 states that audit evidence is all the information used by the auditor in arriving at the conclusions on which the audit opinion is based. Written representations are necessary information that the auditor requires in connection with the audit of the entity's financial statements. Accordingly, similar to responses to inquiries, written representations are audit evidence.

As per para 13.5 of GN, Form 3CD requires reporting on certain items like payments to persons covered under section 40A(2)(b), ICDS etc. for which full information may not be available in books of account. In respect of percentage of work in progress, good, doubtful or bad debts, MSME enterprises appearing as creditors etc. will require inputs from the management.

Tax auditor may raise certain issues for soliciting views of those charged with governance. Therefore, the tax auditor should consider SA 580 and obtain representation from management in appropriate circumstances and at appropriate time i.e. before commencement of audit or after conclusion of audit process.

Matters reported in Form 3CA/3CB and other relevant disclosures in Form 3CD, such as representations regarding the opted tax

regime, deductions and exemptions, payments under Section 43B, TDS or TCS compliance, contingent liabilities, ongoing litigations, unverifiable items, etc. should be supported by written representations obtained from the assesse.

The auditor shall ensure that all the **relevant and complete data** has been provided which can be referred in the para 10 of the SA 580, which requires that the auditor shall request management to provide a written representation that:

(a) It has provided the auditor with all relevant information and access as agreed in the terms of the audit engagement, and

(b) All transactions have been recorded and are reflected in the financial statements.

There can be cases where the details reported in the form 3CD are not in line with the written representation provided by the Management. As per Implementation Guide to SA 580, in case written representations are inconsistent with other audit evidence, the auditor shall perform audit procedures to attempt to resolve the matter and reconsider the reliability of other representations made by management.

If the matter remains unresolved, the auditor shall reconsider the assessment of the competence, integrity, ethical values or diligence of management, or of its commitment to or enforcement of these, and shall determine the effect that this may have on the reliability of representations (oral or written) and audit evidence in general.

In the case of identified inconsistencies between one or more written representations and audit evidence obtained from another source, the auditor may consider whether the risk assessment remains appropriate and, if not, revise the risk assessment and determine the nature, timing and extent of further audit procedures to respond to the assessed risks. Based on the circumstances, the tax auditor should consider whether his reliance on management's representations relating to other aspects of the financial statements is appropriate and justified.

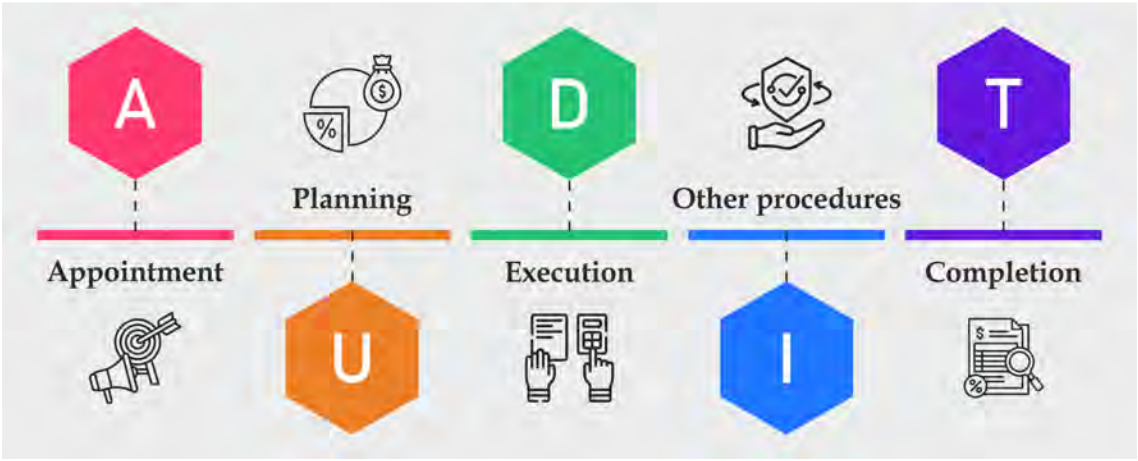
Implementation Guide to SA 580 provides guidance on up dation in Management representation, where it states that updated representation letter should state whether any information has come to management's attention that would cause them to believe that any of the previous representations should be modified, and whether subsequently any events have occurred that would require adjustment to or disclosure in those financial statements. Considering the same in case any revision is made in the Tax auditor report, the updated written representations should be obtained along with amendments.

Documentation

SA 230 'Audit Documentation' is an important guide for tax auditors. This standard clearly put responsibility on auditor to prepare and keep audit documentation for an audit. Laws or regulations may establish additional documentation requirements, especially in case of tax auditors.

Based on the circumstances, the tax auditor should consider whether his reliance on management's representations relating to other aspects of the financial statements is appropriate and justified.

Para 2 of SA 230 specifies the nature and purpose that audit documentation which includes keeping evidence of the **auditor's**



basis for a conclusion about the **achievement of the overall objectives** of the auditor; besides evidence that the audit was **planned and performed in accordance with SAs** and applicable legal and regulatory requirements. Para 13.4 of GN invites attention to this standard for documentation.

As example, audit file can be compartmentalised in six sections as given below

- **Appointment** (Engagement letter, Appointment letter, Independence and conflict of interest declaration by auditor, Communication with previous auditor (as applicable) etc.

- **Planning** (Audit planning memorandum including scope, client business and industry understanding, performance, audit team composition besides minutes of Team planning meeting and client kick-off meeting along with analytics between current and previous year etc.)

- **Execution** (Audit program, lead sheets, memos work done on data provided by client, analytical procedures, basis of sampling, control and substantive testing, alternate procedures and conclusions etc)

- **Other procedures** (section wise data collected, reconciliations with regulatory returns, GST and TDS returns and procedures performed or working notes)

- **Completion** (Original reports, representations, final set of statements, transfer pricing reports and other conclusions)

As per SQC 1, auditing firms to establish policies and procedures for the retention of engagement documentation. The retention period for audit engagements ordinarily is no **shorter than seven years** from the date of the auditor's report, or, if later, the date of the group auditor's report. Hence Tax auditor should ensure to keep the documentation appropriately for aforesaid mentioned period.

Conclusion

Tax auditor's responsibility is to verify information provided in tax audit report and uploaded on the utility and to establish that appropriate planning was done and procedures were carried out to meet the audit objectives, a detailed documentation must be prepared and kept in file.

■

NEW INVESTMENT PRODUCTS - SIFS AND QIFS - TAXATION IMPACT



CA Nehal Sampat

Backdrop

There is one common feature between investment products and tax & regulatory frameworks – evolution! Yes, just as tax and regulatory frameworks keep constantly evolving, so do investment products. In today's "new age" world, regulators such as the Securities and Exchange Board of India (SEBI) and the International Financial Services Centres Authority (IFSCA) proactively respond to the evolving needs of investors by providing a regulatory environment that fosters innovation, and Asset Managers follow-up by introducing new investment products.

This article seeks to discuss taxation treatment of two newly introduced investment products ie Specialised Investment Funds (SIFs), which are regulated by SEBI and Outbound Investment Funds (OIFs), which are regulated by IFSCA.

I. SIFs

To bridge the gap between investment products like mutual funds (which are relatively simple products with very low minimum investment size) and Portfolio Management Services (PMS)/Category III Alternative Investment Funds or AIFs (which can be more complex products with large minimum investment size), SEBI has introduced SIFs, as a new asset class.

What are SIFs?

Before we delve into taxation aspects of SIFs, it may be useful to have a quick overview of SIFs and their regulatory framework.

SEBI recently amended the SEBI Mutual Fund Regulations, 1996 to allow Mutual Funds (MFs) to launch SIFs. These can be launched under the same MF Trust, albeit under a different brand and logo to preserve the integrity of the existing MF business. The regulatory framework for SIFs permits products which can be designed to offer more sophisticated investment strategies as compared to MFs. Illustratively, there are certain restrictions on MFs to trade in derivatives or to take short positions. SIFs enjoy more flexibility to deal in derivatives or to take short positions. Like categories of MF schemes, SEBI has permitted launch of Equity Oriented, Debt Oriented and Hybrid SIFs. The minimum investment size for SIFs has been set as INR 10 lakhs (except for accredited investors).

Key taxation aspects

As mentioned above, the regulatory framework for SIFs contemplates SIFs being

launched by MFs under the same MF Trust as separate schemes.

The taxation regime as applicable to SEBI registered MFs should apply to SIFs. Accordingly, the entire income of SIFs (including gains from derivatives) ought to be exempt from income tax in the hands of SIFs under section 10(23D) of the Income-tax Act, 1961 (ITA). Distribution of income by SIFs to unitholders and gains on redemption/transfer of units of SIFs should be aligned to taxation of, and taxable in the hands of unitholders, in the same manner as traditional MFs.

For example, investments in SIFs which meet the threshold of "equity oriented fund" (EOFs) as referred to in section 112A of the ITA ought to be taxed in the same manner as EOFs, and investments in SIFs which qualify as "specified mutual funds" as referred to in section 50AA should be taxed accordingly.

Having said so, it may be useful to compare the key differences in the tax treatment of MFs with PMS and Category III AIFs, which has been tabulated below:

Parameter	*MFs & SIFs*	*PMS*	*Category III AIFs*
Point of tax incidence of gains on churn of portfolio/dividend or interest income	- Gains/income exempt in the hands of MFs/ SIFs - Taxation deferred till distribution by MF/SIFs or redemption or transfer of units	Upfront taxation of gains/income in the hands of investors	Upfront taxation of gains/income in the hands of AIF
Characterisation of gains	Capital gains taxation in the hands of investors possible if so supported by relevant facts	- Gains from derivatives usually taxable at the rates applicable to ordinary income - Capital gains taxation of shares possible if so supported by relevant facts	- Gains from derivatives usually taxable at the rates applicable to ordinary income - Capital gains taxation of shares possible if so supported by relevant facts

As evident from the above, from a taxation perspective, MFs and SIFs have advantages in terms of tax rates, point of incidence of taxation and certainty in taxation as compared with PMS or Category III AIFs.

II. OIFs in GIFT IFSC

GIFT IFSC is rapidly transitioning from an ambitious vision to a fast emerging, vibrant financial hub. Backed by a progressive regulatory environment and attractive tax incentives, the Asset Management sector in GIFT IFSC has witnessed remarkable growth, drawing both domestic and international Fund Management Entities (FMEs). In addition to traditional "inbound" Funds, several OIFs are being set-up in IFSC which offer interesting portfolio diversification avenues to resident Indian investors.

What are OIFs?

The Fund regime in GIFT IFSC is largely agnostic from investor (whether Indian or overseas) or investment (in India or outside India) perspective. OIFs essentially are Funds domiciled in GIFT IFSC, which are investing outside India. They could raise monies from either resident Indians or non-resident investors. They could be set-up as AIFs or Retail Funds.

Key regulatory aspects

Resident individuals are permitted to invest up to USD 250,000 outside India per financial year under the Liberalised Remittance Scheme (LRS). These remittances can flow into a Fund in GIFT IFSC, which is investing outside India. Similarly, listed Indian entities can undertake portfolio investment outside India up to 50% of their last audited net worth via the Overseas Portfolio Investment (OPI) route, which funds can also flow into GIFT IFSC Funds.

Interestingly, while unlisted Indian entities are generally restricted from undertaking portfolio investments abroad, the Overseas Investment Rules seem to permit them to allow 50% of their last audited net worth in global markets through GIFT IFSC Funds. This exception increases the attractiveness of GIFT IFSC as compared to other overseas jurisdictions to garner domestic funds for global investments.

There are more than a couple of dozen AIFs in GIFT IFSC that are raising monies from resident Indian individuals and entities for overseas portfolio investments, and the first outbound Retail Scheme has been recently launched followed by a whole set of Retail Schemes in the process of being launched making it an opportune time to review the taxation consequences from Fund and investors perspectives.

Key taxation aspects

The taxation of OIFs in GIFT IFSC depends on the Fund's classification for the purposes of the ITA. Investment Funds in GIFT IFSC can be set-up as Category I, Category II, or Category III AIFs, or as Retail Schemes in GIFT IFSC. The tax treatment varies based on this classification and the nature of the investors, as explained below.

OIFs registered as Category I and Category II AIFs

These AIFs primarily invest in unlisted securities. There are specific provisions in the ITA which prescribe taxation of Category I/II AIFs. These provisions, which were introduced for taxation of SEBI Category I/II AIFs, have been extended to IFSC Category I/II AIFs as well. They provide for taxation on what is commonly referred to as taxation on "pass through" basis.

Broadly:

- As per section 10(23FBA) read with section 115UB of the ITA, any income (except income chargeable under the head "profits and gains of business or profession" ie business income) earned by such AIFs is exempt from tax in the hands of the AIFs. Such income is chargeable to tax in the hands of the investors or unitholders of the AIF in the same manner as if it were the income accruing or arising to, or received by the unitholders had the investments, made by the AIFs been made directly by the unitholders.

  The Finance Act, 2025 has clarified that securities held by Category I/ II AIFs shall be regarded as "capital assets", largely addressing the issue of characterisation of gains on sale of such securities. Should any income be regarded as "business income", then, such income is taxable in the hands of the AIF and exempt from tax in the hands of the investors under section 10(23FBB) of the ITA.

- Losses arising to the AIF, other than losses under the head "profits and gains from business or profession", can be carried forward and set off in the hands of investors provided the investor has held units in the AIF for at least 12 months. "Business losses" can be set off in the hands of the AIF.

To summarise, OIFs which are registered as Category I/II AIFs, are taxable on a "pass through" basis with the investors liable to tax on income as if they had directly made the underlying investments.

Non-resident investors in such Funds can rely on a Circular issued by the Central Board of Direct Taxes (CBDT) wherein the CBDT has clarified that income earned by non-resident investors from offshore investments made by Category I/II AIFs should be regarded as income direct overseas investment and should not be taxable in India under section 5(2) of the ITA.

OIFs registered as Category III AIFs and Retail Scheme in GIFT IFSC

Section 10(4D) of the ITA exempts from taxation, the following incomes earned by Category III AIFs and Retail Schemes (including ETFs) in GIFT IFSC to the extent such incomes are attributable to non-resident investors:

- Income from transfer of securities (other than shares in a company resident in India);

- Income from securities issued by a non-resident which otherwise does not accrue or arise in India.

The above regime, commonly referred to as the "Specified Fund" taxation regime, is available provided all units of the Fund — except those held by the Fund manager — are held by non-resident investors. Thus, OIFs raising monies from non-resident investors only for overseas investments should be eligible for the exemption and their incomes from overseas investments should be exempt from tax in India.

OIFs raising monies from resident Indian investors do not meet with the qualifying conditions and are, thus, not eligible for the "Specified Fund" taxation regime. In the absence of any other specific provisions

governing taxation of such Funds, the taxation treatment of such OIFs depends on, amongst others, the legal structure of the Fund.

Where the OIF is set-up as a Trust, Trust taxation principles apply. All the relevant aspects such as revocable v irrevocable, determinate v indeterminate, "business income" v "capital gains" rates where income is chargeable to tax at Maximum Marginal Rates come into the play. Understanding these principles and applying them can be the subject matter of another article itself! Akin to the practice followed by domestic Category III AIFs, OIF Trusts in GIFT IFSC may end up discharging the tax liability at the Fund level, and the investors, then contending that no further taxes can be recovered from them. Where the OIF is set-up as an LLP, the income of the OIF should be taxable in the hands of the OIF LLP with no further tax in the hands of investors at the time of distribution thereof.

The following points from taxation perspective merit attention:

- Resident investors investing in Funds setup in offshore jurisdictions are generally subject to tax only at the time of receipt of income in India or at the time of redemption of units/ shares in offshore Funds. In contrast, when resident investors invest through a GIFT IFSC Fund—which is treated as a tax resident of India—taxes are imposed at the Fund level on all income earned by the Fund. Thus, churn of portfolio by OIF can be potentially taxable upfront as compared with potentially deferred taxation for overseas Funds.

- IFSC units are eligible to claim 100% tax deduction under section 80LA on income from the 'business' for which they have been approved for a period of 10 consecutive years out of 15 years from the year in which they are registered with the IFSCA. There is no guidance or clarity on whether the tax deduction can be availed by OIFs. The challenge gets further compounded for OIFs set-up as Trusts given the inherent nature of Trust taxation.

- Assuming the gains from sale of securities are chargeable to tax as "capital gains", the variance in the ETR between long term capital gains (12.5% + surcharge and cess) and short term capital gains (30% + surcharge and cess) can result in several challenges for open-ended Funds and their investors which could face higher taxation on account of flux of investors. This may trigger evaluation of commercial aspects such as lock-in of contributions by investors for say, 2 years to mitigate the rigour of short term capital gains taxation.

Conclusion

While taxation of SIFs and its investors appears to be relatively straight forward, taxation of OIFs and its investors merits careful consideration and deeper conversations with tax advisors. Both these investment products could gain traction with investors and therefore, it is imperative to understand and address taxation aspects appropriately.

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SUPREME COURT



Keshav B. Bhujle
Advocate

1 CIT VS. LOK HOUSING & CONSTRUCTION LTD. (2025) 476 ITR 366 (SC), DATED 24/04/2025

Assessment — Assessee filed return declaring income from sale of land — Thereafter the assessee filed revised return declaring nil income as the sale transactions were cancelled — The Tribunal accepted the revised return and held that once the transactions are cancelled the properties reverted back to the assessee – that they were duly reflected in assessee's balance-sheet as assets – that revised accounts scrutinized and found to be in order – Bombay High Court held that the finding of the Tribunal are on facts and no question of law arose — Supreme Court held that there is no good reason to interfere and dismissed the special leave petition filed by the Revenue: A. Y. 2007-08

The assessee was in the real estate business. For the A. Y. 2007-08, the assessee filed the return of income declaring income on account of sale of land/floor space index to five parties which were its associates or sister concerns. Subsequently, the assessee filed revised return declaring nil income in view of cancellation of the five sale agreements. The Assessing Officer rejected the revised return and computed income as per the original return.

The Tribunal accepted the revised return and found that the income earlier disclosed had not materialised because the agreements were terminable or could have been cancelled, that once they were cancelled, the properties reverted back to the assessee, that they were duly reflected in the balance-sheet and as assets of the assessee, that revised accounts were also scrutinized and found to be in order and meeting the accounting practice adopted. The Tribunal reversed the order of the Assessing Officer.

The Bombay High Court dismissed the appeal filed by the Department and held that no substantial question of law arose, that the findings of the Tribunal were essentially on the facts and consistent with the material placed on record. [***CIT vs. Lok Housing and Constructions Ltd., (2015) 5 ITR-OL 235 (Bom); 2015 SCC OnLine Bom 5255***.]

The Supreme Court dismissed the special leave petition filed by the Revenue and held as under:

> "Having heard Mr. Arijit Prasad, the learned senior counsel appearing for

the appellant-Revenue and having gone through the materials on record, we find no good reason to interfere with the impugned order dated April 13, 2015 passed by the High Court of Judicature at Bombay."

2 DY. CIT VS. RAKESH RAMANLAL SHAH (2025) 477 ITR 296 (SC), DATED 28/04/2025

Reassessment — Long-term capital gains on sale of shares — Regular assessment after enquiry allowing exemption u/s. 10(38) — Notice u/s. 148 for reassessment based on information from Deputy Director, Investigation about manipulation in shares of penny stock entity for generating bogus long-term capital gains and assessee a beneficiary — Gujarat High Court quashing notice holding that the Assessing Officer has acted on borrowed satisfaction without live link between information and material on record — Supreme Court dismissed the special leave petition filed by the Revenue: Ss. 10(38), 143(3) and 148 of ITA, 1961: A. Y. 2014-15

For the A. Y. 2014-15, the assessee's case was selected for scrutiny assessment. Assessment order was passed u/s. 143(3) of the Income-tax Act, 1961. After enquiry, the Assessing Officer had allowed the assessee's claim for exemption of long-term capital gain on sale of shares u/s. 10(38). Subsequently, the Assessing Officer issued a notice u/s. 148 for reassessment based on information received from the Deputy Director, Investigation about manipulation in shares of an entity being used as penny stock for generating bogus long-term capital gains on the ground that the assessee was one of the beneficiaries involved in the sham transactions.

The assessee filed writ petition challenging the notice. The Gujarat High Court allowed the writ petition, quashed the notice and held as under:

> "The Assessing Officer had assumed jurisdiction on the basis of borrowed satisfaction without there being and live link between the information and the material on record and had issued notice for making a fishing inquiry which was not permissible."

[See Rakesh Ramanlal Shah vs. Dy. CIT; (2025) 477 ITR 289 (Guj)]

The Supreme Court dismissed the special leave petition filed by the Revenue and held as under:

"i) Heard the learned Additional Solicitor General appearing for the petitioners.

ii) Delay condoned.

iii) No case for interference is made out in exercise of our jurisdiction under article 136 of the Constitution of India. The special leave petition is accordingly dismissed."

3 DY. CIT VS. DEEPANJAN ROY (2025) 478 ITR 160 (SC): DATED 16/07/2025

Reassessment – International transactions – Validity of notice u/s. 148 – Faceless procedure mandatory - Notices not following faceless procedure – Telangana High Court quashing notice following its own decision in in the case of *Venkataramana Reddy Patloola vs. Dy. CIT; (2024) 468 ITR 181(Telangana)* – Supreme Court dismissed the special leave petition filed by the Revenue: Ss. 144B, 148, 148A and 151A of ITA, 1961

The Telangana High Court allowed the assessee's writ petition and quashed the notice u/s. 148 of the Income-tax Act, 1961 following its own decision in in the case of ***Venkataramana Reddy Patloola vs. Dy. CIT; (2024) 468 ITR 181(Telangana).***

[Deepanjan Roy vs. Addl. DIT (International Taxation), (2025) 478 ITR 158 (Telangana).]

The Supreme Court dismissed the special leave petition filed by the Revenue and held as under:

"i) Having heard the learned counsel appearing for the petitioners-Revenue and having gone through the materials on record, we find no good reason to interfere with the impugned order passed by the High Court.

ii) The special leave petition is, accordingly, dismissed."

[Appendix:- *Venkataramana Reddy Patloola vs. Dy. CIT: (2024) 468 ITR 181(Telangana): Dated 24/07/2024*:

Reassessment – International transactions – Validity of notice u/s. 148 – Faceless procedure mandatory – Interpretation of clause 3(b) of Gazette notification or scheme dated 29/03/2022 – Revenue bound to follow new procedure for issuance on notice – Telangana High Court quashing the notices issued by the jurisdictional Assessing Officers and consequent proceedings and orders – Revenue given liberty to proceed in accordance with new procedure: Ss. 144B, 147, 148, 148A and 151A of ITA, 1961

In a batch of writ petitions before the Telangana High Court the singular and pivotal question raised was:

> "Whether the show-cause notices issued u/s. 148 of the Income-tax Act, 1961, in matters relating to international tax charges are exempted to follow the statutory faceless procedure?"

According to the Department as per the amended section 148 by the Finance Act, 2021 the jurisdictional Assessing Officer of regular charges were not barred from conducting the proceedings u/s. 148A and issuance of notice u/s. 148, that assessment orders relating to international taxation were exempted from the purview of faceless assessment system, that one of the exceptions provided by the CBDT in its order [F. No. 187/3/2020-ITA-I], dated 06/09/2021 to section 144B, was regarding assessment orders in cases assigned to international tax charges were exempted from the purview of faceless assessment system.

The assessees contended that a conjoint reading of section 151A and the notification or scheme dated 29/03/2022 made it clear that for the purpose of issuance of notice u/s. 148 the authorities were bound to follow the prescribed faceless assessment procedure. The assesses contended that the notice u/s. 148 issued by the jurisdictional Assessing Officer were contrary to the mandatory procedure prescribed in the notification dated 29/03/2022.

The High Court allowed the writ petitions and held as under:

"i) Section 151A of the Income-tax Act, 1961 is an enabling provision which permits the Central Government to make a scheme for the purposes of (a) Assessment, reassessment or recomputation u/s. 147; (b) Issuance of notice u/s. 148; (c) Conducting enquiries or issuance of notice u/s. 148A; and (d) Sanction for issue of such notice u/s. 151.

ii) Sub-section (2) of section 144B of the Act is also an enabling provision to the extent it gives authority to the Board (CBDT) to "specify" about applicability of faceless assessment in respect of class, income, group, etc. Clause 3(b) of the notification/scheme dated March 29, 2022 ((2022) 442 ITR (Stat) 198) shows that issuance of notice u/s. 148 is squarely covered and mandated under clause 3 by making it clear that it shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 of the Act for issuance of notice, and the same has to be in a faceless manner. The parties are at loggerheads because of expression, i.e., "to the extent provided in section 144B of the Act" used in clause 3(b) of the notification dated March 29, 2022 ((2022) 442 ITR (Stat) 198).

iii) Clause 3(b) of the notification dated March 29, 2022 ((2022) 442 ITR (Stat) 198), in specific, deals with issuance of notice under section 148 of the Act. For that purpose, the notification seeks to apply e-Assessment of Income Escaping Assessment Scheme, 2022. A microscopic reading of clause 3(b) shows that its only literal interpretation could be that issuance of notice u/s. 148 of the Act is squarely covered under the scheme, and for the purpose of issuance of notice, the faceless procedure must be followed. The expression "to the extent provided in section 144B of the Act" in our judgment does not deal with "issuance of notice" u/s. 148. The said expression is applicable with reference to "assessment" and "reassessment". Sub-section (2) of section 144B relates to "assessment" and does not deal with issuance of notice u/s. 148 of the Act.

iv) A careful reading of the scheme points out that law makers consciously provided two different sub-clauses (a) and (b). Clause 3 "(a)" specifically deals with assessment, reassessment and recomputation whereas sub-clause "(b)" deals with notice u/s. 148 of the Act and gives reference of section 144B for providing "extent" for the purpose of "assessment" and "reassessment". Putting it differently, sub-clause (b) of clause 3 of the scheme, before use of word "and" is complete in itself and makes it obligatory to issue notice u/s. 148 as per automated allocation procedure envisaged in clause 2(b) of the scheme. The sentence after use of word "and" in sub-clause (b) of clause 3 talks about "extent" provided in section 144B with reference to assessment and

reassessment. The second portion of sub-clause (b) of clause 3 after "and" does not deal with issuance of notice u/s. 148 of the Act. Therefore, sub-clause (b) of clause 3 is in two parts. First part is confined to notice u/s. 148 of the Act, whereas, second part after the word "and" is confined to "assessment" and "reassessment".

v) It is noteworthy that the order of CBDT dated September 6, 2021 deals with "assessment orders". The said order is passed in exercise of power u/s. 144B of the Act. The order of CBDT is clear that direction was issued about passing of "assessment orders" by the National Faceless Assessment Centre u/s. 144B of the Act except in two situations, one of which is passing of assessment orders in cases assigned to International Tax Charges.

vi) Thus, there is no cavil of doubt that section 144B of the Act and order of CBDT dated September 6, 2021 give exemption from following the mandatory faceless procedure only in relation to passing of assessment orders in cases of central charges and international tax charges. Any other interpretation would amount to doing violence with the language employed in the scheme/ notification dated March 29, 2022 ((2022) 442 ITR (Stat) 198), section 144B(2) of the Act and order dated September 6, 2021. Since in our view, the plain and unambiguous language used in the scheme and order dated September 6, 2021 shows that the notice u/s. 148 does not fall within the "exception", the judgments cited by the learned senior standing counsel for Income-tax Department are of no assistance. The taxpayer is nowhere distinguished between non-resident Indians and Indian citizens. The notice issued u/s. 148 must comply with the requirement of the scheme whether or not the taxpayer is a non-resident Indian/Indian citizen. Thus, the second limb of argument of the learned senior standing counsel for Income-tax Department deserves to be rejected.

vii) We are in respectful agreement with the view taken by the Bombay High Court [***Hexaware Technologies Ltd. vs. ACIT; (2024) 464 ITR 430 (Bom)***] and are of the opinion that the aforesaid underlined expression used in clause 3(b) of the scheme dated March 29, 2022 ((2022) 442 ITR (Stat) 198) does not preclude the mandatory faceless procedure for issuance of notice u/s. 148 of the Act. Any other interpretation, in our humble view, will not only cause violence to the language used, but will also defeat the object for which a transparent "faceless procedure" was introduced. Hence, we are unable to persuade ourselves to accept a different meaning than the literal meaning flowing and conveyed from the provisions.

viii) In view of the foregoing analysis, it is clear that the respondents have erred in not following the mandatory faceless procedure as prescribed in the scheme dated March 29, 2022 ((2022) 442 ITR (Stat) 198). Since notices u/s. 148 of the Act were not issued in a faceless manner, the entire further proceeding founded upon it and assessment orders stand vitiated. Thus, the impugned notices u/s. 148 of the Act and all consequential assessment orders based thereupon are set aside. Liberty is reserved to the respondents to proceed against the petitioners in accordance with law."]

4 CENTRAL FOOD TECHNOLOGICAL RESEARCH INSTITUTE VS. CIT (2025) 476 ITR 689 (SC), DATED 04/11/2024

Salary – Perquisite – Valuation of perquisite – Special mode of valuation for residential accommodation to employees of Central Government or State Government – Not applicable to employees of undertakings owned or Controlled by Central Government – Supreme Court held that there is no good reason to interfere and dismissed the special leave petition filed by the assessee: Rule 3 of IT Rules, 1962: A. Ys. 2007-08 to 2011-12

In the instant case the question before the Supreme Court was:

> "Whether the special mode of valuation for residential accommodation to employees of Central Government or State Government is applicable to employees of undertakings owned or Controlled by Central Government also."

For the A. Ys. 2007-08 to 2011-12, the Assessing Officer passed orders u/s. 201(1) r.w.s. 192 of the Income-tax Act, 1961, treating the assessee as in default for non-deduction or short deduction of tax at source and holding the assessee liable to pay interest us. 201(1A). The order was upheld by the Commissioner (Appeals) and the Tribunal.

The Karnataka High Court dismissed the appeal filed by the assessee and held, inter alia, that merely because the assessee was a body or undertaking owned or controlled by the Central Government, it could not be elevated to the status of Central Government, and claim that valuation of perquisite in respect of residential accommodation should be computed as in the case of an accommodation provided by the Central Government, and that therefore entry 1 of Table of rule 3 of the Income-tax Rules, 962 would not apply to the assessee.

The Supreme Court dismissed the special leave petition filed by the assessee and held as under:

"i) Having heard learned senior counsel for the petitioner(s) and learned counsel for the respondent(s) at length, we do not find any reason to interfere in the impugned judgment and order(s) [***Central Food Technological Research Institute vs. ITO (TDS), (2021) 439 ITR 735 (Karn); 2021 SCC OnLine Kar 15960***].

ii) The special leave petitions are hence dismissed."

■

" You cannot believe in God until you believe in yourself. "

Swami Vivekananda

HIGH COURT





Jitendra Singh
Advocate

Radha Halbe
Advocate

Harsh Shah
Advocate

1 CIT (TDS)-2 VS. NISH DEVELOPERS PVT. LTD. [2025] 177 TAXMANN.COM 472 (BOMBAY)

Section 201 of the Income Tax Act 1961 – payment made under Joint Venture Agreement – does not fall under the category of 'commission or brokerage' defined under section 194H of the Act – Thus, no TDS is required to be deducted from such payment

Facts

The assessee before the Hon'ble Bombay High Court is a private limited company. The assessee entered into a joint venture agreement with Assay Developers Pvt. Ltd. (ADPL) to develop a plot of land owned by the assessee in Mumbai. An Association of Persons (AOP) was formed for this purpose. During FY 2009–10, the assessee made a payment of Rs.80 crore to ADPL. The AO treated the said payment as "commission or brokerage" under Section 194H liable for deduction of tax at source. The AO, therefore treated the assessee as deemed to be an assessee-in-default under Sections 201(1) and 201(1A) of the Act. On appeal, the Ld. CIT(A) allowed the claim of the assessee and quashed the demand raised by passing the order under sections 201(1) and 201(1A) of the Act. The department being aggrieved by the order of the first appellant authority, approached the Appellate Tribunal. The Tribunal upheld the order of the Ld. CIT(A) and held that the transaction was on a principal-to-principal basis and therefore, not covered under Section 194H of the Act.

The department being further aggrieved challenged the ITAT's decision, before the Hon'ble Bombay High Court under section 260A of the Act.

Ruling of the High Court

Hon'ble Bombay High Court was pleased to dismiss the appeal filed by the department by observing that the transaction between the assessee and ADPL was on a principal-to-principal basis. ADPL had acquired tenancy rights independently and contributed them to the AOP as capital. Thus, the payment lacked the agency relationship required to classify it as 'commission or brokerage' under Section 194H of the Act requiring the assessee to deduct TDS on the said payment.

Note: Hon'ble High Court relied on the decision of Hon'ble Supreme Court in the case of ***CIT vs. Ahmedabad Stamp Vendors Association [2012] 348 ITR 378 (SC)*** wherein it has been held that element of agency is a necessary condition for invoking Section 194H of the Act.

2 TIVOLI INVESTMENT & TRADING CO. (P.) LTD VS. ACIT [2025] 177 TAXMANN.COM 509 (BOMBAY)

Section 23(1)(a) of the Income Tax Act, 1961 – Income from House Property – letting of office premises on nominal license fee and substantial security deposits – no bar under the Act to independently determine the annual value - security deposit can be considered as real income as per the provisions of section 23(1)(a) of the Act

Facts

The assessee during the relevant year under consideration let out an office premises situated at Nariman Point, Mumbai to CITI Bank under a leave and license agreement for ₹ 9,825/- per month and interest-free security deposit of ₹ 1.54 crore. The assessee declared the license fee only as rental income and claimed it under the head "Income from Business." The AO rejected the rent offered by the assessee and determined the annual value at ₹ 22 lakh under Section 23(1)(a) of the Act after considering (i) Comparable rents in the same building, and (ii) Notional interest on the security deposit, considering the assessee had availed an overdraft facility of ₹ 51 lakh. The assessee being aggrieved carried the matter upto Appellate Tribunal. However, the Appellate Tribunal also upheld the action of the AO.

The assessee being aggrieved by the order of the Appellate Tribunal, preferred the present appeal before the Hon'ble Bombay High Court under section 260A of the Act.

Ruling of the High Court

Hon'ble High Court upheld the view of the lower authorities by observing that the AO is not bound to accept municipal rateable value if it lacks proximity to the relevant assessment year or does not reflect market reality. The security deposit constituted the real economic benefit to the assessee, especially given its financial need evidenced by the overdraft. The license fee merely covered municipal outgoings. The AO's valuation was based on a conservative and reasonable analysis of comparable rents and financial indicators. The concept of standard rent is inapplicable as the premises were not governed by rent control legislation. The Court clarified that standard rent is relevant only where statutory tenancy exists.

3 PR. CIT VS. NOCIL LTD. [2025] 176 TAXMANN.COM 252 (BOMBAY)

Section 72A – demerger - carry forward and set off of business losses - provisions of section 72A(4) is not applicable to scheme of restructuring approved by court involving transfer of only specified assets and liabilities and consideration paid in cash instead of issue of shares to shareholders of assessee

Facts

The assessee filed its return of income for assessment year 2004-05, declaring nil income. The return was selected for scrutiny and assessment was completed under Section 143(3) of the Act on 29th December 2006, determining total income at ₹ 7,47,48,963/- as long-term capital gains and business

income assessed as 'Nil'. The assessee was served with the notice under Section 148 was of the Act to verify the carry forward of losses of earlier years for set-off against the current year income of A.Y. 2004-05 in view of provisions of section 72A(4) of the Act. The AO finalised the reassessment order by disallowing the carry forward of losses by observing that the assessee was not entitled to carry forward losses under Section 72A(4) of the IT Act. The assessee being aggrieved by the reassessment order, the assessee filed an appeal before the first appellate authority. The Ld. CIT(A) allowed the claim of the assessee to carry forward the business loss and unabsorbed depreciation by observing that there was in fact no demerger as contemplated under the Act. As there was no demerger, the provisions of Section 72A(4) of the IT Act were not attracted. The department carried the matter before the Appellate Tribunal. The Tribunal upheld the order of the Ld. CIT(A).

The department being aggrieved by the above order, challenged the same before the Hon'ble Bombay High Court.

Ruling of the High Court

Hon'ble Bombay High Court was pleased to dismiss the departments appeal by observing that the scheme of restructuring approved by High Court involved transfer of only specified assets and liabilities of two divisions of assessee to two companies, and consideration paid by resulting companies was not by issuance of any shares but in cash. Therefore, conditions for a valid 'demerger' under section 2(19AA) were not fulfilled; hence, provisions of section 72A(4) were not attracted in relation to scheme of arrangement between assessee and two companies. Therefore, the assessee is entitled to carry forward business losses and unabsorbed depreciation from earlier years to be set off against income of the impugned assessment year.

4 TYGER CAPITAL PVT. LTD. VS. ASSESSMENT UNIT, INCOME TAX DEPARTMENT [GUJARAT HIGH COURT | SCA NO. 5879 OF 2025 | DECIDED ON: 29 JULY 2025]

Section 143 (3) – Assessment – order passed under faceless scheme without providing video conferencing is against the principles of natural justice – bad in law

Facts

The assessee company had filed its return declaring income of ₹ 47.64 crore. The return filed by the assessee was selected for scrutiny assessment. A show cause notice dated 22 February 2025 was issued proposing additions of ₹ 47.11 crore. However, the notice was served on an outdated email ID and was only discovered by the assessee on 28 February 2025 via the e-filing portal. Upon discovering the notice, the assessee promptly requested a personal hearing via video conferencing, which was scheduled for 3 March 2025. During the session, the assessee sought a one-week adjournment but was granted only three days to respond. A detailed reply was submitted on 6 March 2025, along with a renewed request for personal hearing. Despite this, the Assessment Unit proceeded to pass the final assessment order under Section 143(3) read with Section 144B, without providing any opportunity of hearing.

The assessee being aggrieved by the assessment order dated 19 March 2025 as well as notice of demand issued under section 156 challenged the same before the Hon'ble Gujarat High Court.

Ruling of the High Court

Hon'ble High Court was pleased to set aside the assessment order as well as notice of demand by observing that the denial of a personal hearing via video conferencing, despite a specific and timely request, constituted a breach of the principles of natural justice. The purpose of video conferencing under the faceless regime is to ensure meaningful opportunity to be heard. Further, Clause G.3 of the Standard Operating Procedure (SOP) dated 3 August 2022 issued by the Ministry of Finance, which mandates centralized communication and procedural safeguards under Section 144B. The SOP requires physical communication via speed post and SMS in cases of non-responsiveness, and mandates documentation of such efforts. As the assessee had responded to the notice and requested a hearing, yet the Assessment Unit failed to comply with the SOP and denied the hearing. This procedural lapse rendered the assessment order unsustainable. ■

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1 ACIT 2(2)(1) VS. NATIONAL PEROXIDE LIMITED [ITA NO.2816/MUM/2023 DATED 04/08/2025] [AY 2018-19]

Deduction on account of embezzlement of funds by the employees - Allowed as deduction in the year of discovery

Facts

The assessee is engaged in the business of manufacturing and selling Hydrogen Peroxide. During the year under consideration, the assessee claimed a deduction of INR 18.96 crore on account of embezzlement of funds by employees. The embezzlement was detected in FY 2017-18 when the newly appointed CFO noticed abnormal debit balances in Local Sales tax payable, Central Sales tax Payable, Deposit Sales tax, Advance Sales tax, VAT Clearing, Purchase tax Clearing Account. On further investigation, it was found that over several years, senior employees had drawn bearer cheques in favour of entities that had no business connection and/or association with the Appellant. A forensic audit by PwC confirmed a fraud of about INR 37.03 crores, out of which INR 18.96 crores was claimed in the relevant year. The Company reported the fraud to the Bombay Stock Exchange, filed a complaint with the Economic Offences Wing, terminated the services of involved employees, and pursued criminal proceedings. The assessee's case was selected for complete scrutiny, and an addition of INR 18.96 crores was made to the total income of the assessee on account of the disallowance of the deduction claimed for embezzlement of funds by employees. Aggrieved by the order of the Learned Assessing Officer (LD. AO), the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [Ld. CIT(A)]. The Ld. CIT(A) reversed the order passed by the Ld. AO. Aggrieved by the order passed by the Ld. CIT(A), the revenue filed an appeal before the Hon'ble ITAT.

Held

The Hon'ble ITAT held that with respect to the claim of deduction in the Profit & Loss Account on account of embezzlement of funds, the assessee has furnished sufficient evidence demonstrating that the said embezzlement occurred during the impugned assessment year and these were not disputed or rejected by the Ld. AO. The Hon'ble ITAT relied on the CBDT Circular No. 35D (XLVII-20) of 1965, F. No. 10/48/65-IT(AI) dated 24/11/1965, which clarifies that losses arising due to embezzlement or negligence of employees should be allowed if they occur in the normal course of business and the funds were necessarily kept for business purposes. Reliance was placed on the decision of

Hon'ble Supreme Court in ***Badridas Daga vs. CIT [1958] 34 ITR 10 (SC)***, wherein it was held that losses from embezzlement are deductible if incidental to the business. Accordingly, the grounds raised by the Revenue were dismissed.

2 CHITTU BHAWANJI NARSEY VS. ITO [ITA NO: 2775/MUM/2025 (MUMBAI TRIB.)] (AY 2011-12)

Section 50C(3) – Reference made to DVO – DVO valuation higher than Stamp Duty Value (SDV) – SDV to be adopted as full value of consideration as per sub-section (3)

Facts

The assessee sold a flat vide agreement dated 07/01/2011 for a consideration of ₹ 3.50 crore. On that date, the Stamp Duty Value (SDV) of the said flat was ₹ 4.17 crore. The AO proposed to add the difference between the sale consideration and SDV u/s. 50C of the Act. The assessee submitted that the sale proposal was made in November -December 2010 and the agreement to sale was executed on 30/12/2010. The agreement was ultimately registered on 07/01/2011. The contention of the assessee was rejected, and the difference was taxed u/s. 50C of the Act. Before CIT(A), the assessee requested to adopt the ready reckoner rate as on 31/12/2010, as the proposal of sale was made on 27/11/2010. The assessee requested to refer the matter to the Departmental Valuation Officer (DVO) as per Section 50C(2) of the Act. The submission of the assessee was not accepted, and the CIT(A) confirmed the addition. The assessee filed an appeal before the Hon'ble Tribunal, and the matter got set aside to the file of the AO with a direction for referring to DVO for ascertaining the fair market value as on 27/11/2010. The DVO valued the property at ₹ 4.13 crore as on 27/11/2010. The AO took the value adopted by DVO and made an addition. Before CIT(A), the assessee submitted that the flat, which was sold, was allotted to him under redevelopment. On the insistence of the buyer, the assessee registered the redevelopment agreement for the said flat on 29/11/2010 when the SDV was ₹ 3.21 crore. The CIT(A) appeal confirmed the findings of the AO in adopting the value of the property at Rs. 4.13 crore on the grounds that once the DVO has valued the property, the AO has no option but to adopt the same as per section 50C(2) of the Act.

Held

Before the Hon'ble Tribunal, the AR argued that the report of DVO is binding on the AO and not on the appellate authorities. The assessee challenged the valuation made by the DVO as the fair market value was not considered of the properties which were valued by the DVO.

The AR also argued on the ground that as per section 50C(3) of the Act, when a reference is made to DVO and the valuation of DVO exceeds the SDV, then the SDV should be considered as the full value of consideration.

The Hon'ble Tribunal noted that the AO has referred DVO to determine the fair market value as on 27/11/2010. The Hon'ble Tribunal held that once the AO accepted the contention of the assessee for seeking estimation of value from DVO as on 27/11/2010 and estimation of DVO – ₹ 4.13 crore is more than the SDV of ₹ 3.21 crore, then, as per section 50C(3), the AO was required to accept the full value of consideration as per SDV. The Hon'ble Tribunal allowed the appeal and directed the AO to adopt SDV as the full value of consideration.

3 KRUTIK ASHOKKUMAR PARIKH-HUF VS. ITO [ITA NO. 1239/AHD/2025 DATED 13/08/2025]

Section 68 – Penny Stock Gain Treated as Non-Genuine – Sale of Karma ISP Shares Considered Sham Transaction

Facts

The assessee, a Hindu Undivided Family (HUF), filed a return declaring income of INR 1,90,780 for AY 2012–13. Later, the Ld. AO reopened the case after receiving information that the assessee had dealt in a penny stock called Karma ISP. On verification, the Ld. AO found that the assessee had purchased 7,800 shares for INR 1,76,670 at INR 22.65 per share and sold them for INR 21,72,300 at INR 278.50 per share within about 15-16 months gaining a return of over 1100%. The assessee claimed the profit as exempt long-term capital gain under Section 10(38). The Ld. AO noted that Karma ISP was one of the scrips flagged in various departmental investigations as being used for accommodation entries to convert unaccounted cash into exempt gains. The assessment was completed u/s 144 and an addition of INR 21,72,300 was made under Section 68 of the Act.

Before the Ld. CIT(A), the assessee argued that the transaction was genuine since it was done through the stock exchange and STT was duly paid. The assessee also raised the grounds that no cross-examination was provided and there was no evidence of any cash trail. The Ld. CIT(A), however, upheld the Ld. AO's view and the assessee filed an appeal before the Hon'ble ITAT.

Held

The Hon'ble SMC Bench of Ahmedabad ITAT upheld the addition noting that the assessee's purchase of Karma ISP shares lacked credibility on various grounds. First, the shares were purchased from a broker in April 2010 but the payment for the same was made after nearly eleven months (in March 2011), without any credible explanation or agreement to defer such payment. Further, the company itself had no real business or financial fundamentals to justify such a steep price rise, and the scrip had already been identified in departmental investigations as a penny stock used for generating bogus capital gains.

It further observed that the assessee's one-time transaction, resulting in an extraordinary gain of over 1100% within just 15–16 months and without any other share trading activity, clearly pointed to a non-genuine arrangement.

The Hon'ble ITAT held that such facts do not match normal commercial behavior and fail the test of "human probabilities". Relying on the Hon'ble Supreme Court decisions in case of ***CIT vs. Durga Prasad More [(1971) 82 ITR 540 (SC)]*** and ***Sumati Dayal vs. CIT [(1995) 80 Taxman 89 (SC)]***, the Hon'ble ITAT observed that the tax authorities are entitled to look beyond documents and judge the reality based on surrounding circumstances. The principle of "preponderance of probabilities" also supported the Revenue's case.

The Hon'ble ITAT concluded that the transaction was only a colourable device to claim tax exemption and was a sham meant for tax avoidance. Therefore, the addition of INR 21,72,300 under Section 68 of the Act was confirmed, and the appeal was dismissed.

4 ACIT VS. DR. K.R. SHROFF FOUNDATION [ITA NO.1205/AHD/2025 AND 796/AHD/2025 DATED 05/08/2025] FOR AY 2018-19

Section 68 – Sale of Shares Received as Corpus Donation; Sections 11 & 12 – Charitable Exemption vis-à-vis Section 13(1)(c)

Facts

The assessee, a charitable trust registered under section 12AA of the Act, received 80,00,000 equity shares of e-Infochips Ltd. as corpus donation from its trustee, Shri Pratul K. Shroff, on 12/12/2017. Subsequently, all shares of e-Infochips Ltd. were acquired by Arrow Electronics India Pvt. Ltd. (Arrow India), a subsidiary of Arrow Electronics Inc., USA, at INR 673 per share. The assessee trust sold its 80,00,000 shares for a total consideration of INR 538.40 crores.

The Ld. AO treated the entire consideration as unexplained cash credit under section 68 of the Act, doubting the genuineness of the transaction and the creditworthiness of Arrow India, as the source of funds for purchase of shares was infused into Arrow India by a Mauritius based Company, Components Agent Asia Holdings Ltd., the parent company of Arrow Electronics Inc., USA. The Ld. AO also denied exemption under sections 11 and 12 of the Act, stating that the assessee was not engaged in any charitable activity. Further, the Ld. CIT(A) deleted the addition under section 68 of the Act but upheld denial of exemption under sections 11 and 12 of the Act by invoking section 13(1)(c) r.w.s. 13(3) of the Act, holding that the corpus donation and subsequent sale were structured to avoid capital gains tax in the hands of the trustee. Aggrieved, both Revenue and assessee preferred cross appeals before the Hon'ble ITAT.

Held

The Hon'ble Bench of Ahmedabad ITAT upheld the deletion of the addition under section 68 of the Act, observing that the acquisition of e-Infochips Ltd. shares by Arrow India was a widely reported public event involving over 500 shareholders, and the transaction was duly reflected in the demat account of the assessee.

The Hon'ble ITAT, however, held that the assessee trust was engaged in charitable activities in education and public utility, supported by UNICEF reports, and that none of the conditions of section 13(2) of the Act were applicable since the shares were received as corpus donation, sold to a third party at uniform price, and proceeds invested in specified modes u/s 11(1A) of the Act.

Thus, relying on Hon'ble Gujarat HC decision in case of ***Shree Kamdar Education Trust vs. ITO (74 taxmann.com 253) (Guj. HC)***, the Hon'ble ITAT held that conversion of donated shares into cash cannot be termed a colourable device and hence the exemption under section 11 and 12 of the Act was accordingly allowed and the denial based on section 13(1)(c) of the Act was quashed.

5 M/S. OM SHRINIWAS DEVELOPERS VS. ITO [ITA NO: 1345/PUN/2025 (PUNE TRIB.) (AY 2016-17)

Section 147 & 43CA – Reopening based on same facts already verified during original assessment – change of opinion – difference between sale consideration and SDV within

5% tolerance u/s. 43CA – reopening held invalid and addition deleted

Facts

The assessee's case was selected for scrutiny assessment u/s. 143(3) and the assessee submitted all the requisite documents. The assessment order was passed accepting the returned income. Thereafter, the AO issued a notice u/s. 148 of the Act dated 28/06/2021 and an order was passed u/s. 148A(d) of the Act. The AO alleged that the assessee had sold two flats below market rate, and the provision of section 43CA of the Act is attracted. During the proceedings u/s.148A of the Act, the assessee submitted that the difference is less than 5% and within the tolerance limit specified u/s. 43CA of the Act. However, AO rejected the contention and the notice u/s. 148 was issued. The AO made an addition u/s. 43CA of the Act and was confirmed by the CIT(A). Against the said addition, the assessee filed an appeal before the Hon'ble Tribunal.

Held

Before the Hon'ble Tribunal, the assessee argued that the reopening of the assessment was based on a change of opinion and as all the details and documents were submitted before the AO at the time of regular assessment proceedings. The Hon'ble Tribunal held that notice u/s. 148A of the Act was issued based on the documents submitted by the assessee during the original assessment proceedings. The AO had verified all these documents and passed the assessment order accepting the returned income. It was held that the reopening of assessment based on the same facts and documents is nothing but a change of opinion. The AO has not brought on record any new fact before issuing notice u/s. 148A of the Act. Reliance was placed on the decisions of the Hon'ble Bombay High Court in the case of ***First Source Solutions Ltd. vs. ACIT 438 ITR 139 (Bom)*** and ***Mira Bhavin Mehta vs. ITO [WP no.3246 of 2022, order dated 13/02/2024]***. On merits, the Hon'ble Tribunal held that the difference in agreement value and SDV was less than 5% and the tolerance limit is applicable to AY: 2016-17. The addition was deleted.

6 FALGUN MAHESH OZA VS. ITO [ITA NO. 2970/MUM/2025 (MUMBAI TRIB.)] (AY 2009-10)

Section 147 – Reopening beyond period of 4 years – reasons recorded do not disclose failure on part of assessee – documentary evidences filed to establish CCM was genuine.

Facts

The assessee's case was reopened and a notice u/s. 148 of the Act was issued on 30/03/2016. The reasons recorded specified that information was received from the Investigation Wing alleging that the assessee received fictitious loss through his broker, M/s. ARJ Securities Pvt. Ltd. on account of Client Code Modification (CCM). The AO, referring to the modus operandi of CCM, disallowed the loss incurred from the said broker.

Before CIT(A), the assessee challenged the validity of the reopening of assessment on the ground that there was no tangible material with the AO. The alleged information received from ADIT could not be treated as tangible information for reason to believe that income

chargeable to tax has escaped assessment. The AO nowhere recorded that there was any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. A regular assessment was completed u/s. 143(3) and the entire details of share transactions were submitted and considered while passing the assessment order. On merit, the assessee stated that he has entered into various F&O transactions through his registered broker. CCM was made only when there was a mistake committed by the dealer or broker. The CCM facility is permitted as per the rules and regulations of the stock exchange. CCM are natural and common feature in the trade of exchange, as genuine mistake arises while executing the transaction. The CIT(A) upheld the reopening of assessment on the ground that the AO need not establish escapement of income. The information received has found the modus operandi adopted by the assessee to create artificial losses through CCM. There was tangible and relevant material for reopening the assessment. On merit of the addition, the CIT(A) held that the assessee has misused the CCM facility to create artificial losses with no genuine commercial justification. The AO has pointed out that modifications were not minor corrections or typographical errors, but rather deliberate and structured changes. Against the said order, the assessee filed an appeal before the Hon'ble Tribunal.

Held

Before the Hon'ble Tribunal, the AR of the assessee raised an additional legal ground that the reopening of assessment was beyond the period of 4 years, and the reasons recorded did not mention failure on the part of the assessee to disclose fully and truly all the material facts. It was argued that during the original assessment, entire details and particulars of the share transaction were duly considered, and only after verification of the same, the assessment order was passed. It was argued that reasons recorded has no recording of finding of the failure on the part of the assessee. On merits, AR submitted broker's bill, ledger account, and statement of account. The assessee suffered huge losses. These losses were carried forward for 8 years and were never set against profit. All such documents were furnished in regular and reassessment and the same was not controverted by the AO. It was also argued that no enquiry was made either from the broker or from SEBI that the assessee is actually a beneficiary of any such CCM. On the contrary, DR argued that AO is not required to establish the escapement of income and a prima facie belief is sufficient. There was definite information about CCM from the Investigation Wing.

The Hon'ble Tribunal allowed the additional legal ground raised by the assessee. It was held that there is no reference in the reasons recorded about failure on the part of the assessee to disclose fully and truly all the material facts as per the requirement of the first proviso to section 147 of the Act. Reliance placed by AR on the decision of Hon'ble High Court in the case of ***Ipca Laboratories Ltd. vs. DCIT [(2002) 124 Taxman 556 (Bom HC)]*** was considered. On merits, the Hon'ble Tribunal held that the assessee has furnished complete details of the transaction and furnished necessary evidence in the form of broker's bill, ledger account and scrip-wise summary and no adverse comment was made against such evidences. No investigation of fact, either from the broker or from the stock exchange, was carried out to disregard the evidences furnished by assessee. The appeal of the assessee was allowed.

■

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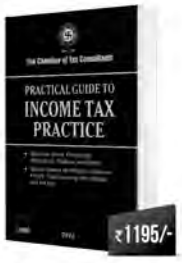

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CASE LAW UPDATE



Dr. CA Sunil Moti Lala
Advocate

I. PERMANENT ESTABLISHMENT

1 HYATT INTERNATIONAL SOUTHWEST ASIA LTD. VS. ADIT (2025) 176 TAXMANN.COM 783 (SC)

Indian Hotel which was provided strategic planning & know-how by a Dubai base company (assessee) was held to constitute "fixed place of business" or PE within meaning of article 5(1) (India-UAE DTAA)

Assessee, a company incorporated in Dubai, entered into two Strategic Oversight Services Agreements (SOSA) with AHL, an Indian hotel owner, to provide strategic planning and 'know-how' to ensure that the hotel was developed and operated efficiently. AO taxed hotel related services rendered by assessee, inter alia, on ground that assessee had a PE in India in form of place of business under article 5(1) of DTAA. AO's order was upheld both, by the Hon'ble Tribunal & High Court. The Hon'ble Supreme Court held that for a PE to exist two essential conditions must be satisfied i.e. (i) the place must be 'at the disposal' of the enterprise (ii) the business of the enterprise must be carried on through that place. It further held that PE must demonstrate the three core attributes of: stability, productivity and a degree of independence. It noted from the contractual provisions detailed in SOSA that the assessee exercised pervasive and enforceable control over the hotel's strategic, operational, and financial dimensions. It also noted that assessee's executives and employees made frequent and regular visits to India to oversee operations and implement SOSA. It concluded that the 20-year duration of SOSA, coupled with assessee's continuous and functional presence, satisfied tests of stability, productivity and dependence and thus, the hotel premises clearly satisfied the criteria required to be classified as a "fixed place of business" or PE. Furthermore, assessee's ability to enforce compliance, oversee operations, and derive profit-linked fees from hotel's earnings demonstrated a clear and continuous commercial nexus and control with hotel's core functions which satisfied conditions necessary for constitution of a Fixed Place Permanent Establishment under Article 5(1) of the DTAA. Thus, it concluded that assessee had a fixed place PE in India within meaning of article 5(1) and that consequently income received under SOSA was attributable to such PE and thus taxable in India. As regards the ***SC judgment in the case of E-Funds*** relied upon by the assessee, the Hon'ble Apex court held that

the said judgement was distinguishable on facts since in that case the Indian subsidiary merely provided back office support and was compensated on an arm's length basis, with no involvement in core business functions; whereas in contrast, in the present case, the hotel itself was the situs of the assesses primary business operations carried out under its direct supervision and aligned with its commercial interests. [***Hyatt International-Southwest Asia Ltd. vs. ADIT [2024] 158 taxmann.com 136 (Delhi)*** affirmed. ***Formula One World Championship Limited vs. CIT, IT [2017] 80 taxmann.com 347 (SC)*** followed. ***ADIT vs. E-Funds IT Solutions Inc. [2017] 86 taxmann.com 240 (SC)*** distinguished.]

2 MITSUI MINING AND SMETING COMPANY LTD VS. ACIT, IT (2025) 177 TAXMANN.COM 434 (DEL-TRIB)

Secondment of employees by Japanese company to its Indian subsidiary does not constitute a fixed place PE (India - Japan DTAA)

The AO held that the assessee, a Japanese company had seconded certain employees to its Indian subsidiary who were exercising complete control over the physical premises of the Indian subsidiary and also carrying out sales operations in India. Consequently, the AO held that the assessee had a PE in India. The Hon'ble Tribunal, after examining the secondment agreements, held that the assessee was neither having any control over employees seconded by it to the Indian entity nor the assessee was having any control over assets/structures of the Indian entity. It accordingly concluded that presence of a fixed place and carrying of business through that place was a condition precedent for holding a PE of a non-resident in India and that, these conditions were not fulfilled in the instant case.

3 SKY HIGH APPEAL XLIII LEASING COMPANY LTD VS. ACIT, IT (2025) 177 TAXMANN.COM 579 (MUM-TRIB)

Aircraft leased by Ireland based company to Indigo (ICO)-Not PE (India-Ireland DTAA)

Assessee, an Irish company was engaged in business of leasing aircraft to operators worldwide. It entered into lease agreements with an Indian airline operator, Indigo. AO and DRP held that the aircrafts being at the disposal of the assessee constituted its fixed place PE in India and, thus, the lease rental income would be taxable in India. The Hon'ble Tribunal noted the operational control of the aircrafts were vested exclusively with IndiGo and there were no personnel of assessee stationed in India. Further, rights retained by assessee such as periodic inspection, ensuring compliance with maintenance standards and repossession in default were standard lessor protections safeguarding value of asset, not indicia of asset (aircraft) being at lessor's disposal for carrying on business in the source State (India). The Hon'ble Tribunal, thus concluded that the assessee did not have a PE in India as per article 5. [***Sunflower Aircraft Leasing Ltd. vs. ACIT (IT Appeal No. 1107 (Mum) of 2025, dated 13-8-2025)*** followed]

II. BUSINESS PROFIT

1 CIT VS. FUJITSU LTD. (2025) 176 TAXMANN.COM 516 (DEL-HC)

Arbitral award amounts received from Indian AEs against Japanese Co's (assessee's) claims for non-payment of supplies- Business income-Not taxable in India as per Article 7 in the absence of PE (India-Japan DTAA)

The AO taxed the aforesaid amounts as 'Income from other sources' on the ground that arbitral award could not be considered as business income. The Hon'ble ITAT noted that the Arbitral Tribunal had rendered the arbitral award in favour of the assessee with regard to its claim in respect of non-payment of dues for offshore supplies to its AEs and that, consequently, the same was business income, which could not be taxed in India as per article 7 of the DTAA in the absence of a PE. The Hon'ble High Court held that undisputedly the receipts in the hands of the assessee was inextricably linked to its business and was on account of its business activity. Accordingly, it dismissed the revenue's appeal holding that no substantial question of law arose for consideration. [***Fujitsu Ltd. vs. ACIT (ITA No. 2607/Del/2022, dated 14-11-2024)*** affirmed]

III. SHIPPING & AIR TRANSPORT (ARTICLE 8) V. INTEREST (ARTICLE 11)

1 CELESTIAL AVIATION TRADING 15 LTD VS. ACIT, IT (2025) 176 TAXMANN.COM 902 (DEL-TRIB)

Rentals received by Ireland based company from leasing of aircrafts to ICO would not be taxable in India as per Article 8 and the said rentals could also not be taxed as Interest under article 11 since the lease agreements were in the nature of operating lease (India-Ireland DTAA)

The AO, after examining the Aircraft Specific Lease Agreement (ASLA) which the assessee had entered with Indigo (ICO), held that the same was not an operating lease but a finance lease and consequently, the income received by the assessee was liable to be taxed in India at the rate of 10% as interest under article 11. The Hon'ble Tribunal noted that the ASLA specifically stated that owner of aircraft would be the lessor i.e. the assessee. Further, there was no covenant in the ASLA which referred to the condition that after duration of the lease term, ownership in aircraft would be transferred to the lessee or that, lessee at any point of time could exercise option to purchase the aircraft. Further, Aircraft Lease Common Terms Agreement (CTA) also did not show that the ownership of aircraft would be transferred to lessee during the currency of the lease agreement. Since, at no point of time, common ownership in the aircraft was transferred to the lessee, which was the hallmark of a financial lease, the lease agreement could not be re-characterized as a

finance lease. Consequently, the provisions of article 11 would not be applicable and virtue of application of article 8, the lease rentals received by the assessee would not be exigible to tax in India. [***InterGlobe Aviation Ltd. (IndiGo) vs. Addl. CIT [2021] 131 taxmann.com 98 (Delhi-Trib.) (SB)*** followed].

2 SKY HIGH APPEAL XLIII LEASING COMPANY LTD VS. ACIT, IT (2025) 177 TAXMANN.COM 579 (MUM-TRIB)

Rentals received by Ireland based company from leasing of aircrafts to ICO would not be taxable in India as per Article 8 and the said rentals could also not be taxed as Interest under article 11 since the lease agreements were in the nature of operating lease (India-Ireland DTAA)

Assessee, an Irish company was engaged in business of leasing aircrafts to operators worldwide. It entered into lease agreements with an Indian airline operator, Indigo and claimed the lease rental income to be exempt from tax in India under article 8. AO held that article 8 did not apply as Indigo was a domestic airline and the leasing activity was not connected with international traffic. Further, the AO held that the leases in substance were finance leases and the income there from was assessable as interest income in India under article 11. The Hon'ble Tribunal held that Indigo's undisputed status as an international carrier and unchallenged deployment of leased aircraft on at least some international sectors would bring the income squarely within the scope of article 8(1) consequent to which the lease rentals would not be taxable in India. As regards the application of article 11 and taxing the lease rentals income as interest, the Hon'ble Tribunal noted that the lease contracts gave lessor the right to repossess the aircraft on default and further, required the aircraft to be returned by the lessee at the end of lease term. Furthermore, the lease contract required the lessee to display the owners name and not represent itself as the owner. It thus concluded that the leases were dry operating leases and not a finance lease. Consequently, it held that the lease rental income from aircraft could not be characterised as interest income taxable in India under article 11. [***Celestial Aviation Trading 15 Ltd. vs. ACIT, IT [2025] 176 taxmann.com 902 (Delhi-Trib.), Sunflower Aircraft Leasing Ltd. vs. ACIT (IT Appeal No. 1107 (Mum) of 2025, dated 13-8-2025)*** followed]

IV. DIVIDENDS

1 HDFC ERGO GENERAL INSURANCE COMPANY LTD. VS. DCIT (2025) 176 TAXMANN.COM 264 (MUM-TRIB)

Refund claim of DDT by a domestic company, in excess of 10% prescribed under article 10 - Rejected (India-Germany DTAA)

The assessee, a domestic company claimed refund of DDT paid on dividend paid to its German shareholder in excess of the rate of 10% as prescribed under the DTAA. The

Hon'ble Tribunal rejected the said claim by holding that since DTAA does not get triggered at all when a domestic company pays DDT u/s 115-O, assessee could not claim benefit of lower rate of DDT as per article 10 of the DTAA. ***[Genpact India (P.) Ltd. vs. DCIT [2019] 111 taxmann.com 402 (SC) (para 19) and Jt. CIT (LTU) vs. Texas Instruments (India) (P.) Ltd. [2022] 139 taxmann.com 153 (Bangalore-Trib.)*** followed].

2 SONY INDIA (P) LTD VS. ACIT (2025) 177 TAXMANN.COM 325 (DEL-TRIB)

Application of lower rate of DDT as prescribed under Article 10 of the DTAA w.r.t Dividends paid by a domestic company (assessee) to its Netherland based Shareholder - Rejected (India-Netherlands DTAA)

Assessee claimed that AO/DRP ought to have restricted levy of DDT on dividend distributed/paid to Sony Holding (Asia) B.V., Netherlands, being resident of Netherlands, in terms of Article 10 of India -Netherland DTAA r.w., Protocol to the India – Slovenia DTAA instead of section 115-O. The Hon'ble Tribunal held that the DTAA does not get triggered at all when a domestic company pays DDT under section 115-O but wherever contracting states to a tax treaty intend to extend treaty protection to a domestic company paying dividend distribution tax, only then, domestic company can claim benefit of DTAA. [***DCIT vs. Total Oil India (P.) Ltd. [2023] 149 taxmann.com 332 (Mumbai-Trib.) (SB)*** followed].

V. ROYALTY

1 CIT VS. SALESFORCE.COM SINGAPORE PTE LTD. (2025) 177 TAXMANN.COM 201 (SC)

SLP dismissed against HC order holding subscription fees received by Singapore company for providing CRM services to its Indian clients-Not Royalty u/s 9(1)(vi) & DTAA (India-Singapore DTAA)

Assessee, a Singapore based company provided cloud based Customer Relationship Management (CRM) Services to its customers in India. Customers in India paid subscription fee for availing CRM services. AO held that subscription fee was in the nature of royalty under section 9(1)(vi). The Hon'ble HC noted that assessee provided access to its CRM application software through remote Internet browser/server situated in Singapore and customers were provided access to application where they would input, store and retrieve proprietary data but there was no transfer of copyright in the CRM application software. The Hon'ble HC, in the impugned order, further held that since the subscribers did not have any physical access to equipment's providing system service and were only using services provided by the assessee, subscription fee received by assessee for providing CRM related services to its customers in India was not taxable in India as royalty or fees for

technical services. The Hon'ble Apex court dismissed the Revenue's SLP [SLP dismissed against ***CIT, IT vs. Salesforce.com Singapore Pte. Ltd. [2024] 165 taxmann.com 580 (Delhi)***].

2 DCIT, IT VS. MAXIS INTERNATIONAL SDN BHD (2025) 177 TAXMANN.COM 198 (SC)

SLP dismissed - Payments made to non-resident telecom operators for providing interconnect services-Not Royalty

SLP dismissed against HC order holding that payments made to non-resident telecom operators by assessee, for providing interconnect services would not constitute royalty and thus, tax was not deductible when payment was made to non-resident telecom operators [SLP dismissed against ***DCIT, IT vs. Maxis International SDN BHD [2025] 176 taxmann.com 999 (Karnataka); DDIT vs. Vodafone Idea Ltd [2024] 165 taxmann.com 392 (SC)*** followed].

3 DCIT VS. VODAFONE INDIA LTD. (2025) 176 TAXMANN.COM 626 (SC)

SLP dismissed - Payments made to non-resident telecom operators for providing interconnect services cannot be treated as Royalty- Income from business carried out by FCO outside India cannot be taxed in India

SLP dismissed against HC order holding that (a) payments made to non-resident telecom operators by assessee, a telecommunication service provider, for providing interconnect services and transfer of capacity in foreign countries was not chargeable to tax as royalty (b) Income tax authorities in India do not have jurisdiction to bring to tax income arising from extra- territorial source, that is outside India, in respect of business carried on by foreign companies outside India. (c) DTAA is a sovereign document between two countries and thus DTAA can be considered in proceedings u/s 201. [SLP dismissed against ***Vodafone Idea Ltd vs. DDIT,IT –[2023] 152 Taxmann.com 575 (Kar); DDIT vs. Vodafone Idea Ltd. [2024] 165 taxmann.com 392 (SC)*** followed.]

4 DDIT VS. VODAFONE IDEA LTD. (2025) 176 TAXMANN.COM 964 (SC)

Review Petition dismissed - Payments made to non-resident telecom operators for providing interconnect services-Not Royalty

Review petition dismissed against dismissal of SLP against HC order holding that payments made to non-resident telecom operators by assessee, a telecommunication service provider, for providing interconnect services and transfer of capacity in foreign countries was not chargeable to tax as royalty and that consequently the AO was not justified to hold

assessee as 'defaulter' for failure to deduct TDS in respect of the said payments. In the impugned SLP, it was held that in view of review petition ***CIT vs. GE India Technology Centre (P.) Ltd. [2024] 161 taxmann.com 707 (SC)*** having been dismissed both on ground of delay as well as on merits, SLP filed by revenue against impugned order of High Court was to be dismissed following aforesaid judgment. [***DDIT vs. Vodafone Idea Ltd. [2024] 165 taxmann.com 392 (SC)*** Affirmed.]

5 OVID TECHNOLOGIES INC VS. DCIT (2025) 176 TAXMANN.COM 557 (DEL-HC)

Subscription fees received by assessee, a US based company, from customers in India for accessing its database - Not taxable as Royalty or Fees for Technical Services under provisions of Act or DTAA (India-USA DTAA)

Assessee filed application u/s 197 seeking 'Nil' withholding tax certificate for Assessment Year 2026-2027 in respect of the abovementioned subscription fees. The same was rejected by the AO who directed that tax be deducted @ 15% on the above consideration paid to assessee, treating same as royalty. On a writ petition being filed by the assessee, the Hon'ble HC noted that the question whether such receipts were chargeable to tax was covered in favour of assessee by the decision of the Hon'ble Supreme Court in ***Engineering Analysis Centre of Excellence (P.) Ltd. vs. CIT [2021] 125 taxmann.com 42 (SC)***. Further, revenue's review petition against said decision was dismissed by the Hon, Ble Supreme Court. Therefore, the Hon'ble HC set aside the impugned order u/s. 197 and remanded the matter to the AO to consider assessee's application afresh and pass an order in accordance with law.

6 CIT-IT VS. XIOCOM (NZ) LTD. (2025) 177 TAXMANN.COM 508 (DEL-HC)

Consideration for sale of 'off the shelf' software-Not Royalty under Article 12 (India-New Zealand DTAA)

Consideration received by a New Zealand company for resale/use of computer software ('off the shelf' software) through EULAs/distribution agreements (granting non-exclusive licence rights to ICO) is not royalty for use of copyright of software under Article 12 of the DTAA and the same does not give rise to any taxable income in India. Consequently, the Indian payer was not obliged to deduct TDS u/s 195. [***Engineering Analysis Centre of Excellence (P.) Ltd. vs. CIT [2021] 125 taxmann.com 42/432 ITR 471/281 Taxman 19 (SC)*** – followed].

7 DCIT, IT VS. TRANS UNION LLC (2025) 176 TAXMANN.COM 626 (MUM-ITAT)

Supply of Software Licences by US Co - Not Taxable as Royalty under Article 12(3) (India -USA DTAA)

The assessee, a US-based company, received amounts from supply of software licences and related services to Indian customers which was taxed as royalty by the AO and the said addition was deleted by the CIT(A).

The Hon'ble Tribunal dismissed the Revenue's appeal since the revenue had failed to show that any copyright was transferred. It held that the CIT(A) had rightly held that such receipts were not taxable as royalty under Article 12(3) of the DTAA [***Engineering Analysis Centre of Excellence (P.) Ltd. vs. CIT [2021] 125 taxmann.com 42 (SC)*** – followed].

8 SRI LANKA CRICKET VS. ACIT, IT (2025) 177 TAXMANN.COM 156 (DEL-TRIB)

License fees received from ICO by Sri Lankan Cricket Association for granting broadcasting rights – Not Royalty under the Act/DTAA (India-Sri Lanka DTAA)

Assessee, National Association for sport of cricket in Sri Lanka, had granted broadcasting and certain ancillary rights to one Lex Sportel for live telecast of a particular cricket tournament held in Sri Lanka in March 2018. In turn, assessee had derived income, in form of license fees. The AO held that the said fees being in lieu of broadcasting rights, was taxable as royalty. The Hon'ble Tribunal deleted the addition by following the jurisdictional HC judgement in the case of ***CIT,IT vs. Fox Network Group Singapore Pte. Ltd. [2024] 158 taxmann.com 434 (Delhi)*** wherein it was held that fees received by assessee towards live transmission could not be classified as royalty income under section 9(1)(vi) of the Act. In the said HC judgement, it was held that Explanation 6 to section 9(i)(vi) hinged upon the activity of transmission by satellite whereas in the said case, the actual transmission of content was undertaken by SIPL (i.e. the by the payer of the licence fee) and not by the assessee there in i.e. Fox (who had granted the broadcasting lights). Further, in the said judgement, reliance was placed on the jurisdictional High Court judgement in the case of ***DIT vs. New Skies Satellite BV- 68 Taxmann.com 8 (Del)***.

VI. FEES FOR TECHNICAL SERVICES

1 PCIT VS. SONY INDIA SOFTWARE CENTRE (P) LTD. (2025) 177 TAXMANN.COM 206 (KAR-HC)

Payments to Singaporean company for general training programs & workshops- NOT FTS under article 12 (INDIA - SINGAPORE DTAA)

Assessee, an Indian company, engaged in providing software development services, made payment to one, JLSC, a tax resident of Singapore, for conducting workshops for its employees on performance management and career management without deduction of tax at source. AO held that payment made to JLSC was in the nature of fees for technical services which was covered under Article 12 of the DTAA and, thus, made disallowance under section 40(a)(i). The Hon'ble HC held that since training workshop for performance management and career management for employees were general training programs, there was no transfer of technical knowledge, technical know-how, experience, skill or process and, thus, payments made by assessee to JLSC for conducting workshops could not be considered as fees for technical services under Article 12 of the DTAA (***ACIT vs. Sony India Software Centre (P.) Ltd. [2025] 170 taxmann.com 309 (Bangalore-Trib.)*** affirmed).

2 CEVA FREIGHT LLC VS. DDIT (2025) 176 TAXMANN.COM 867 (DEL-TRIB)

Payments received by a U.S. company for providing day to day administrative support services to its Indian affiliate - Whether FTS- Matter remanded by Tribunal (India -USA DTAA)

The assessee, a US based company, had entered into an administrative support agreement with its Indian affiliate to provide day to day administrative support. AO opined that the said support services were clearly in nature of managerial and/or consulting services and, accordingly, categorically held that assessee's receipts constituted FTS under section 9(1)(vii). The Hon'ble Tribunal held since assessee did not furnish details of emails exchanged between parties on issue of services, exact and factual nature of services rendered could not be ascertained. Thus, it remanded the matter back to AO to ascertain whether the services were managerial or technical or consultancy or mixture of all and whether the 'make available' clause was satisfied or not. [***H. J. Heinz Company vs. ADIT [2019] 108 taxmann.com 473 (Delhi - Trib.)*** followed].

3 ERNST & YOUNG U.S. LLP VS. ACIT (IT) (2025) 177 TAXMANN.COM 170 (DEL-TRIB)

Reimbursement received by US co w.r.t cost of seconded employees - Not FTS under Article 12 (India-USA DTAA)

Cost to cost reimbursement on account of secondment of employees deployed in India, by the assessee, a U.S. LLP could not be treated/taxed as FTS under article 12 of the DTAA. (***Ernst & Young U.S. LLP vs. ACIT (IT) - [2023] 153 taxmann.com 95 (Delhi – Trib)*** **followed wherein inter alia it was held that where salary income had been taxed in the hands of the employees, the same amount could not, in law be subjected to tax twice).**

4 ERNST & YOUNG U.S. LLP VS. ACIT (IT) (2025) 177 TAXMANN.COM 170 (DEL-TRIB)

Professional services whereby 'make available' requirement is not met -Not FTS under Article 12(4) (India-USA DTAA)

The Hon'ble Tribunal held that amount received by a US LLP for rendering professional services to its clients in India could not be treated/taxed as FTS under article 12(4)(b) of the DTAA as the 'make available' requirement was not satisfied [***Ernst and Young U.S. LLP vs. ACIT [2025] 175 taxmann.com 150 (Delhi-Trib.)*** followed wherein it was inter alia held that the said service would fall within the meaning of article 12(5)(e) hence benefit of article 15 could not be denied to the assessee].

5 ACIT VS. SUBRAMANIAM HARIHARAN (2025) 177 TAXMANN.COM 640 (DEL-TRIB)

Professional fees paid to foreign law firms - Not FTS u/s 9(1)(vii)- Disallowance u/s 40(a)(i) deleted

The Hon'ble Tribunal held that 'professional services', which includes legal services, is a separate category of services, recognized as distinct from FTS, which is primarily 'managerial, technical or consultancy' services as referred to in section 9(1)(vii). 'Professional services', which includes legal services, is a separate category of services, recognized as distinct from FTS, which is primarily 'managerial, technical or consultancy' services as referred to in section 9(1)(vii). The controversy can be best resolved by reference to provision of law u/s 44AA of the Act, which mandates for maintenance of accounts by certain persons carrying on profession or business. The relevant sub-section (1) is reproduced below; "44AA. (1) Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable

the Assessing Officer to compute his total income in accordance with the provisions of this Act." Very apparently term 'technical consultancy' used in section 44AA of the Act has to be read ejusdem generis along with the words 'professional' activities' based on certain skills acquired by study of particular domain of studies and which have some regulatory bodies to oversee the conduct of practitioner of the those skills and the same, very much distinguishes it, with generic term 'technical services', falling in category of FTS. Thus these afore-reproduced provisions of the Act, make it crystal clear that "professional services", which includes legal services, is a separate category of services, recognized as distinct from FTS, which is primarily "managerial, technical or consultancy" services as referred to in section 9(1)(vii) of the Act, by the Legislature itself. If "FTS" as defined in Explanation 2 to section 9(1)(vii) were to include "professional services" as referred to in section 44AA, it would not have been necessary to refer to the latter specifically in Explanation (a) to section 194J of the Act, and Explanation (b) to that section would have been sufficient. Finance Act, 2020, w.e.f. 01.04.2020, has amended section 194J of the Act to provide that payment in the nature of 'fees for technical services (not being professional services)' shall be liable to tax deduction at source @ 2% whereas in respect of payment(s) being in the nature of 'fees for professional services', liability to deduct tax at source shall remain constant, i.e., 10%. Section 194M of the Act, inserted by Finance (No. 2) Act, 2019, w.e.f. 01.09.2019, mandates deduction of tax at source by individuals and HUFs on payments made in the nature of fees for professional services exceeding ₹ 50 lakhs in a financial year, without introducing any such obligation in respect of payments made towards 'fees for technical services'. Aforesaid, establish unequivocally that the Legislature has notably and deliberately created two separate classes of income, viz., fee for technical services and fee for professional services. "*Lex specialis derogat legi generali*", which means that special legislation overrides general legislation is a settled legal proposition. Since, section 40(a)(i) only provides for tax deduction in respect of payments made to non-resident of "fees for technical services or other sum chargeable under the Act" and Explanation to that section which provides the definition of "fees for technical services", does not mention "fees for professional services", the impugned disallowance u/s 40(a)(i) was held to be unjustified and consequently deleted.

6 VERITAS STORAGE [SINGAPORE] PTE LTD. [TS-1119-ITAT-2025 (DEL)

Maintenance support and other services' payments inextricably linked to software sale-NOT FTS (India -Singapore DTAA)

While holding the above, the Hon'ble Tribunal held that since revenue had accepted that sale of software was not taxable as royalty, then income from sale of related and inextricably linked services could not be held to be FTS. It further accepted assessee's plea that since the said transactions did not satisfy the 'make available' clause as per article 12(4)(b) of the DTAA, payments for the same could not be treated as FTS. It placed reliance on the coordinate bench decision in the case of ***TSYS Card Tech Limited – TS-36-ITAT-2023 (DEL)***.

7 KELLER ASIA PACIFIC LTD. [TS-1128-ITAT-2025(DEL)

Management and consultancy services provided by Singapore company to it's Indian AE-Not FTS sans satisfaction of the 'make available' clause (India-Singapore DTAA)

The assessee, a Singapore based company, provided strategic management consulting services etc to its Indian AE (and claimed the receipts in respect of the same as not taxable in India in the absence of a PE). AO taxed the same as FTS. The Hon'ble Tribunal, on perusing the Management Services Agreement and emails placed on record by the assessee, noted that the said services were provided on an ongoing basis and though such services provided could be classified as technical, managerial and consultancy advisory services, nowhere in the agreement there was any covenant for transferring or making available any technical know-how. No material was brought on record by the Revenue either to substantiate that there was transfer of know-how or technology and even the scope of work as detailed in the said Agreement did not refer to any transfer of know- how under any category of services. Further, the agreement did not specify any specific lifetime of the agreement from which it could be inferred that the term of the said agreement was perpetual, unless the same was terminated. Thus, it held that the fact -the said services were provided on a year to year basis, itself showed that there was no transfer of any technical know-how or skill or process or technology, for had it been such a case then the Indian AE would not have entered into such a perpetual agreement. Thus, since the 'make available' clause in article 12(4)(b) was not satisfied, the Hon'ble Tribunal deleted the said addition. [***Bio Rad Laboratories Inc vs. ACIT- (2023) 149 Taxmann.com (Del-Trib), Criteo Singapore Pte Ltd vs. ACIT- (2025) 170 Taxmann.com 162 (Del-Trib), Crocs Inc vs. ACIT- (202) 174 Taxmann.com 419 (Del-Trib)*** relied upon].

8 PHILIPS ELECTRONICS NEDERLAND VS. ACIT (IT) (2025) 177 TAXMANN.COM 187 (KOL-TRIB)

Payments received by Netherland based company from Indian AEs for rendition of support services - Held to be FTS under Article 12 (India-Netherlands DTAA)

Assessee, a Netherlands based company, received certain amount from its group entities in India towards rendition of support services. AO held that income received by the assessee was deemed to accrue or arise in India and was taxable as in India as FTS under Article 12 of the DTAA. Assessee contended that services rendered by it did not make available technical knowledge, experience, skill, etc. to group companies in India. The Hon'ble Tribunal confirmed the addition on the ground that the assessee had failed to dislodge the findings of AO that the services rendered by the assessee 'made available' technical knowledge, experience, skill etc to its AEs. However, it directed the AO to levy tax including surcharge @10% as per Article 12 of the DTAA.

VII. DEPENDANT PERSONAL SERVICES - INCOME FROM EMPLOYMENT

1 ARUMUGAM RAJASEKAR VS. ITO, IT (2025) 177 TAXMANN.COM 476 (CHENNAI-TRIB)

Salary of NRI employed in Malaysia -Taxable only in Malaysia as per Article 16 (India – Malaysia DTAA)

Assessee, a non-resident Indian, was an employee of TCS Malaysia. For administrative convenience, a part of his salary for his services in Malaysia was paid in India by TCS India and TDS was deducted. Assessee filed his return claiming exemption for salary earned in Malaysia under article 16 of the DTAA. The AO rejected assessee's claim of exemption on the ground that since assessee was a resident of Malaysia and a non-resident of India, he was not eligible to claim exemption under article 16. The Hon'ble Tribunal held that from the plain reading of section 5(2) and 9(1)(ii), it can be concluded that the salary income being received in India is subject to tax only in India. However, Explanation 2 to Section 5 clarifies that income will not be treated to be received in India so only on the basis that such income was received or deemed to be received in India. Thus, the conclusion follows to the effect that salary cannot be taxed in India only for the reason that it was received in India but it is said to be taxed at a place of its accrual which would be India, if and only if, the services are rendered in India, otherwise in the place where such services were rendered. Salary received in India by a non-resident employee in respect of services rendered outside India is said to be accrued outside India and cannot be taxable in India. Further, as the assessee qualified to be a tax resident of Malaysia and therefore, applying the provisions of article 16(1), the Hon'ble Tribunal concluded that the assessee's salary would be taxable only in Malaysia even though the same was received in India.

2 SIVAKARTHICK RAMAN VS. ACIT, IT (2025) 176 TAXMANN.COM 491 (CHENNAI-TRIB)

Salary of non-resident Indian seconded to China for services rendered in China -Taxable in China under Article 15 (India -China DTAA)

Assessee, an employee of BMW India was seconded on international assignment to BMW China. He was assessed as non-resident during the relevant year and salary received in India for services rendered in China was duly offered to tax in China. The assessee claimed exemption under article 15(1) of the DTAA. The AO disallowed the exemption since the salary was paid and credited in India. The Hon'ble Tribunal granted the exemption under the DTAA by following its order in ***Nanthakumar Murugesan vs. ITO (IT [2024] 165 taxmann.com 304 (Chennai -Trib.)*** (wherein on similar facts, the treaty exemption was granted since the impugned salary income was offered to tax in China and the assessee had not claimed any FTC in any of the jurisdictions).

VIII. FOREIGN TAX CREDIT (FTC)

1 PRATIM CHAKRABORTY VS. ITO (2025) 177 TAXMANN.COM 152 (KOL-TRIB)

Filing form 67 is merely directory in nature and even if it is filed belatedly, assessee would still be eligible to claim FTC [*Sonakshi Sinha vs. CIT (Appeals) [2022] 142 taxmann.com 414 (Mumbai-Trib.)* and *Satreena Consultants (P.) Ltd. vs. ITO (IT Appeal No. 543/KOL/2022, dated 22-2-2023)* – followed].

2 GRANDHI BUCHI SANYASI RAJU [TS-1023-ITAT-2025 (BANG)]

Filing form 67 is merely directory in nature and even if it is filed belatedly, assessee would still be eligible to claim FTC since CBDT Notification No. 9/2017 prescribing the procedure for filing Form 67 for claiming FTC, was not published at the time of filing of ITR for A.Y 2017-18.

IX. EXCHANGE OF INFORMATION

1 SANJAY JAIN VS. DCIT [2025] 176 TAXMANN.COM 956 (DEL-TRIB.)

In search and seizure cases, period of limitation for framing assessment could not be extended under Explanation (ix) to section 153B based on a reference made to Competent Authority of Hong Kong for periods prior to 30.11.2018, i.e. effective date of DTAA (India-Hong Kong DTAA)

A search and seizure under section 132 was conducted upon assessee. Consequent thereto, an assessment was completed under section 153A read with section 144 wherein reference was made to Competent Authority of Hong Kong on 04-12-2018 requesting for supply of information related to assessee and accordingly, limitation was extended for one year, i.e., up to 31-12-2019. Assessee contended that under Article 26 of DTAA between India and Hong Kong which came into force on 30-11-2018, request to disclose any information for periods prior to 30-11-2018 should be forcibly relevant to fiscal year or taxable event following that date. The Hon'ble Tribunal held that no request could be made under Article 26 of DTAA for period prior to 30-11-2018 and, thus, period of limitation for making an assessment under section 153B could not be extended under Explanation (ix) to section 153B on the basis of such reference made to the Competent Authority of Hong Kong. Thus, all assessments framed, which were

subject matter of instant appeal, being barred by limitation, were set aside [***PCIT vs. Smt. Sneh Lata Sawhney [2025] 174 taxmann.com 593*** (Delhi followed)].

X. OTHERS -MLI

1 SKY HIGH APPEAL XLIII LEASING COMPANY LTD VS. ACIT, IT (2025) 177 TAXMANN.COM 579 (MUM-TRIB)

Treaty benefits cannot be denied by invoking MLI in the absence of sec. 90(1) notification incorporating the MLI provisions into the DTAA (INDIA-IRELAND DTAA)

The assessee, an Ireland based company, leased aircraft to Indigo (ICO) and AO invoked Articles 6 and 7 of the Multilateral Instrument (MLI) to deny treaty benefits on ground that assessee's incorporation lacked commercial substance and failed the Principal Purpose Test. The Hon'ble Tribunal held that since there was no section 90(1) notification incorporating MLI provisions into India-Ireland DTAA and the assessee had demonstrated genuine commercial substance with valid TRC, denial of India-Ireland DTAA benefits was unsustainable. [***Assessing Officer (International Taxation) vs. Nestle SA [2023] 155 taxmann.com 384 (SC)*** followed].

" Do not believe in a thing because

you have read about it in a book.

Do not believe in a thing because another man has said it was true.

Do not believe in words because they are hallowed by tradition.

Find out the truth for yourself. Reason it out. That is realization. "

Swami Vivekananda

GST





CA Naresh Sheth *CA Jinesh Shah*

A. WRIT PETITIONS

1 NAVNIT MOTORS (P.) LTD. VS. COMMISSIONER OF CGST & CENTRAL EXCISE, (APPEALS-III), MUMBAI [2025] 176 TAXMANN.COM 601 BOMBAY HIGH COURT

Facts and issues involved

The dispute arose on the issue whether the mandatory 10% pre-deposit under Section 107(6) of the CGST Act, 2017 could be validly discharged by utilising Input Tax Credit (ITC) available in the electronic credit ledger. The Petitioner had deposited the pre-deposit amount by debiting ITC. However, the revenue rejected the same on the ground that in terms of Sections 107(6) of CGST Act r.w. Section 49(2) CGST Act, 2017, such payment could not be made through ITC. Consequently, the Petitioner's appeal was dismissed for alleged non-compliance, without issuance of notice or hearing, which according to the petitioner amounted to violation of the principles of natural justice.

Petitioner's Submissions

Dismissal of the appeal without affording any opportunity of hearing was in blatant violation of natural justice. Petitioner placed reliance on the judgment of the Bombay High Court in ***Oasis Realty vs. Union of India [[2022] 143 taxmann.com 5]***, wherein it was categorically held that the statutory pre-deposit under Section 107(6) can be made through ITC. Appellate Authority had wrongly relied on the judgment of the Patna High Court in ***Flipkart Internet Pvt. Ltd. vs. State of Bihar***, which was non-jurisdictional and whose relevant observations stood stayed by the Supreme Court. It was further submitted that objections based on Sections 49(2), 49(4) of the CGST Act and Rule 86(2) of the CGST Rules, 2017 had already been considered in Oasis Realty. Petitioner also relied on the CBIC Circular dated 6 July 2022, which clarified that ITC can be utilised for payment of pre-deposit. Accordingly, the impugned order was liable to be set aside, and the appeal should be restored.

Respondent's submissions

Revenue contended that pre-deposit under Section 107(6) could not be met through ITC since such deposit is not in the nature of "output tax liability." Referring to Sections 49(2), 49(4) of the CGST Act and Rule 86(2) of the CGST Rules, it was argued that the electronic credit ledger may only be utilised

for payment of output tax, and not for statutory deposits. The reliance placed on the Patna High Court's ruling in Flipkart Internet Pvt. Ltd. was justified, as the reasoning therein continued to hold the field notwithstanding the interim stay granted by the Supreme Court. It was also submitted that the ruling in Oasis Realty had not adequately considered Section 49(4) and Rule 86(2), and therefore the dismissal of the Petitioner's appeal for want of proper pre-deposit was correct in law.

Discussions by and Observations of High Court

High Court observed that the dismissal of the appeal without issuance of notice or granting hearing amounted to a violation of the principles of natural justice. It further held that the Appellate Authority had erred in disregarding the binding precedent of the Bombay High Court in ***Oasis Realty vs. Union of India***, which clearly permitted utilisation of ITC for discharging the statutory pre-deposit under Section 107(6). The reliance on the Patna High Court's ruling in Flipkart Internet Pvt. Ltd. was unjustified, as it was non-jurisdictional and stood stayed by the Supreme Court. The Court noted that the Revenue's interpretation based on Sections 49(2), 49(4) and Rule 86(2) had already been considered and rejected in Oasis Realty. Additionally, the CBIC Circular dated 6 July 2022 further supported the position that ITC can be utilised for making such deposits. Petitioner had validly complied with the requirement of Section 107(6) by debiting ITC from the electronic credit ledger

Decision of the High Court

Bombay High Court quashed and set aside the impugned order. Matter was remanded to the Appellate Authority with a direction to restore the appeal and decide the same on merits in accordance with law.

2 ALSTOM TRANSPORT INDIA LTD. VS. COMMISSIONER OF COMMERCIAL TAXES & ORS. 2025-TIOL-1159-HC-KAR-GST – KARNATAKA HIGH COURT

Facts and issues involved

Petitioner, engaged in railway and metro infrastructure projects, had seconded employees from its overseas group entities during the period July 2017 to March 2023. These expatriates were placed on the payroll of the Petitioner in India, and salaries were paid directly after deduction of TDS under the Income Tax Act, 1961. The Revenue issued a show cause notice alleging that the arrangement constituted "import of manpower supply service" and proposed to levy IGST of ₹ 59.57 crore along with interest and penalty. Despite the Petitioner's reliance on CBIC Circular No. 210/4/2024-GST dated 26.06.2024, which clarified that in related party cases with full ITC availability the value may be deemed as "Nil" where no invoice is raised, the Assistant Commissioner confirmed the demand. Aggrieved, the Petitioner filed the present writ petition.

Petitioner's Submissions

Petitioner argued that the seconded expatriates were its employees for all practical and legal purposes, as evidenced by employment contracts, salary payments through Indian payroll, deduction of TDS, and compliance with Indian labour laws. Hence, the relationship was squarely covered under Entry 1 of Schedule III of the CGST Act, 2017, which excludes services by an employee to employer from the scope of supply. It was contended that salaries cannot

be treated as "open market value" under Rule 28 of the CGST Rules, 2017. Reliance was placed on CBIC Circular No. 210/4/2024-GST, particularly Para 3.7, which deems the taxable value as "Nil" where no invoice is raised in related party transactions with full ITC. The Petitioner further relied on the decision of the Delhi High Court in ***Metal One Corporation India Pvt. Ltd. vs. Union of India [2024-TIOL-1858-HC-DEL-GST],*** which quashed similar demands. It was also highlighted that IGST had already been discharged on reimbursed amounts from November 2020 onwards under reverse charge, reinforcing revenue neutrality.

Respondent's Submissions

Revenue contended that the arrangement clearly fell within the ambit of "manpower supply services" as defined under GST. It was argued that the secondees continued to be employees of the foreign entity, which supplied manpower to the Petitioner in India. Placing reliance on Notification No. 10/2017-IGST (Rate) dated 28.06.2017 issued under Section 5(3) of the IGST Act, the Department argued that services supplied by a person in a non-taxable territory by way of manpower supply are taxable in the hands of the Indian recipient under reverse charge. Reference was made to the Supreme Court ruling in ***Northern Operating Systems Pvt. Ltd. vs. CC, CE & ST, Bangalore [2022-TIOL-48-SC-ST-LB],*** wherein secondment arrangements were held taxable as manpower supply.

Discussions by and Observations of High Court

High Court carefully considered the scope of Circular No. 210/4/2024-GST dated 26.06.2024. Referring specifically to Para 3.7, the Court noted that where full ITC is available and no invoice is raised, the taxable value of intra-group services may be deemed as "Nil," which shall be treated as the open market value under the second proviso to Rule 28(1). The Court held that this binding clarification leaves no scope for the Department to demand tax on alleged manpower services in such cases. Even if, arguendo, the secondment arrangement were to be treated as a taxable supply, the deeming fiction of "Nil" valuation under the Circular neutralised any tax liability. The Court also endorsed the reasoning of the Delhi High Court in ***Metal One Corporation (supra)***, which had adopted the same interpretation. It distinguished the Supreme Court's ruling in Northern Operating Systems Pvt. Ltd. on the ground that the said decision was fact-specific, whereas in the present case no invoices had been raised and salaries had been paid directly by the Indian entity, creating a genuine employer-employee relationship.

Decision of the High Court

The impugned orders dated 16.10.2024 confirming the IGST demand of ₹ 57.94 crore along with interest and penalty were quashed and set aside.

3 SAI STEEL VS. STATE OF BIHAR (177 TAXMANN.COM 62) – PATNA HIGH COURT

Facts and issues involved

It is the case of the petitioner that for the financial year 2017-18, the petitioner filed his GSTR-01, GSTR-3B & GSTR-09 and paid all due taxes according to the returns. Later on, the petitioner's Book of Account was selected for Audit under Section 65(1) of

the Bihar Goods and Services Tax/ Central Goods and Services Tax Act, 2017. The Audit Report prepared u/s 65(6) in GST ADT-02 Form observed that the petitioner short paid ₹ 5,08,195 identifying certain transactions to be Inter-State transactions which the petitioner had treated as Intra-State transactions under CGST/SGST Act, 2017 and had paid the taxes. In view of the aforesaid Audit observation, petitioner paid a sum of ₹ 5,08,195 vide DRC-03 and subsequently applied for refund of excess paid CGST and SGST of ₹ 2,54,098 each in RFD-01. Revenue rejected the refund application of the petitioner relying upon Section 54 of the BGST Act, 2017 on the grounds of limitation.

Petitioner's Submissions

Circular 162/18/2021-GST clarifies the position regarding the application of limitation in these matters refund can be claimed before the expiry of two years from the date of payment of tax under the correct head.

Hon'ble Jharkhand High Court in the case of G***ajraj Vahan (P.) Ltd SCC Online Jhar 3929*** had occasion to consider the Circular dated 25.09.2021 and allowed the writ application holding that the CBIC Circular had extended a benevolent provision for extension of limitation of refund in case of wrong deposit.

Respondent's Submissions

Revenue contended that u/s 54(1) r.w. Explanation 2(h) of the CGST/BGST Act, 2017, a refund application must be filed within two years from the date of payment of the tax sought to be refunded. Since the tax was paid in January 2018 and the refund application was filed only on 17.01.2024, it was delayed by nearly four years. He further submitted that although the respondents were otherwise willing to grant the refund, the statutory bar u/s 54 of CGST Act precluded any refund beyond the prescribed limitation period.

Discussion by and Observation of High Court

A reading of the impugned order reveals that the Revenue, at multiple places, acknowledged the petitioner's entitlement to refund of the amount paid. However, in the concluding part of the order, the refund application was rejected solely on the ground of limitation u/s 54 of the BGST Act, 2017.

It is observed that though the impugned order refers to Section 77(1) of the BGST/CGST Act, 2017, the provision has not been duly considered or appreciated by the Revenue. Further, the order overlooks Circular No. 162/18/2021-GST, which specifically clarifies the applicability of limitation in such cases, particularly in paragraphs 3 to 6 thereof.

On a bare reading of Section 77 of the CGST Act, 2017 read with Section 19 of the IGST Act and the clarificatory Circular, this Court has no iota of doubt that in the present case, the relevant date for counting the period of limitation would start from the date when the petitioner had deposited the tax under IGST Act, in the present case, the said date is 04.03.2023.

Revenue seems to have committed an error in taking a view that the period of two years would be counted from the month of January 2018 when the amount of SGST and CGST were deposited with the returns of the Financial Year 2017-18. If the order of the Respondent authority is allowed to remain in existence, it would amount to rendering Section 77 of the BGST/CGST Act, 2017 read with Section 19 of the IGST Act and clarificatory Circular No. 162/18/2021-GST redundant.

Decision of the High Court

The petitioner is entitled to get refund of the amount paid on account of SGST and CGST in January 2018, together with interest at the rate of 6% per annum from a date which would be beginning after three months from the date of filing of the application for refund, till the date of payment.

4 NIRMITE BUILDTECH VS. UNION OF INDIA 177 TAXMANN.COM 110 – BOMBAY HIGH COURT

Facts and issues involved

Petitioner approached Bombay High Court and filed writ petitions against the GST assessment orders that were passed on 27 January 2025 and 31 January 2025, saying that they did not have any other proper remedy available. As against the impugned assessment orders, the Petitioners have the remedy of an Appeal to the Appellate Authority under Section 107 of the Central Goods and Services Tax. Petitioners have made a bald statement that they have no efficacious or alternative remedy available to them save and except by way of filing the present Petitions.

Discussions by and Observations of High Court

Whilst there may be no serious dispute regarding the proposition that in Joint Development Agreements, there is no question of any supply that would be exigible to GST, the matter will have to be investigated in the context of the actual agreements between the parties. Such an examination would involve an investigation into factual aspects and the terms of the agreements between the developer and the owner. The mere nomenclature or title of the agreement is never conclusive. This exercise can be best undertaken by the Appellate Authorities under the Act.

In this case, no violation of natural justice is alleged. These Petitions do not contain any averments explaining why the Petitioners should be permitted to bypass the usual requirement of exhausting alternative remedies. Instead, the Petitioners have made a false statement claiming they have no effective or alternative remedy available to them. In all such matters, it is the duty of the Petitioners to state in clear terms that a statutory remedy is available and then proceed to explain why, in the peculiar facts and circumstances, the Petitioner must be excused from not exhausting such statutory remedies. In the case of ***State of Maharashtra vs. Greatship (India) Ltd [2022] 142 taxmann.com 417 (SC)/*** Civil Appeal No. 4956 of 2022, the Hon'ble Supreme Court has seriously faulted the High Court for entertaining Writ Petitions when the Petitioners have alternate and statutory remedies against assessment orders.

These petitions appear to have been instituted to take a chance or to avoid a pre-deposit. Neither of these motives is legitimate and can form the basis for bypassing the statutory remedies.

Decision of the High Court

Petition was dismissed by reserving the petitioners' liberty to institute appeals against the impugned assessment orders. ■

SERVICE TAX





CA Rajiv Luthia

Keval Shah
Advocate

1 M/S. BDS INFRASTECH PVT. LTD. VS. COMMISSIONER OF CENTRAL EXCISE AND CGST, JAIPUR, 2025 (8) TMI 8 - CESTAT NEW DELHI

Backgrounds and facts of the case

- The appellant is engaged in civil construction services and registered with the Service Tax Department for Works Contract services.

- During the period in dispute from 2013-14 to 2015-16, the appellant was awarded a work order dated 10.10.2013 by the "Developer" in respect of a new project launched by the name "Sunshine City Project" for two towers named "Opal and Pearl Tower" at Bhiwadi. The appellant was responsible for carrying out a comprehensive range of construction services for newly built structures. These services include earthwork (cutting, fixing floor, skirting and dado work) as well as specialized tasks like waterproofing, carpentry and glasswork (including doors, windows and reception counters), plumbing and sanitary installations, installation of passenger lifts, LPG line and telephone lines, internal and enamel painting.

- During the course of audit, it was observed that the appellant had short paid service tax of ₹ 12,05,704/- on "Works Contract Service", which was recoverable from them along with interest and penalty. It was further alleged that since as per the Annexures to the "Work Order" dated 10.10.2013, the scope of work to be carried out by the appellant was in the nature of finishing work and was not covered as per the definition of "Original Works" given in the Explanation-I to Rule 2A of the Service Tax (Determination of Value) Rules, 2006 [Valuation Rules, 2006]. Thus, the appellant was liable to pay service tax by taking the taxable value @ 70% of the gross amount charged for the said work. Since the appellant had paid service tax by taking the taxable value @40% of the gross amount charged, the appellant made short payment of service tax amounting to ₹ 74,02,691/- during the period 2014-15 to 2015-16. A total demand of ₹ 86,08,395/- along with Interest and Penalty was demanded.

Arguments by the Appellant

- The appellant while clarifying the nature of the "Works Order" dated 10.10.2013

had relied on the Certificate issued by the Developers stating that the work allotted to the appellant is a sub-contract.

The relevant para reads as under:-

"In this regard, it is informed to you that the work sub-contracted to you is a part of the main contract, which is an original works. The works contract services provided by you are all for new construction, hence, fall under the purview of original works as defined under Explanation-I to Rule 2A of the Service Tax (Determination of Value) Rules, 2006. Therefore, it would be liable to service tax on 40% of the value of the total amount charged for the works contract."

- In support of his submissions, the learned Counsel has referred to the decisions of the Tribunal as follows:-

  (1) ***M/s. Jangid Interior Décor Pvt.Ltd. vs. Principal Commissioner, CGST, New Delhi dated 02.07.2025-2025 (7) TMI-214 -CESTAT-New Delhi***

  (2) ***Kalpakaaru Projects Pvt. Ltd. vs. Principal Commissioner, CGST-Delhi South dated 26.05.2025-2025 (5) TMI 1832 -CESTAT-New Delhi***

Decision of the Hon'ble Tribunal

- Considering the observations with reference to the nature of work carried out by the assessee, while agreeing with the same, we find that the nature of work in the present case involves not merely cosmetic finishing work but also includes extensive work in terms of making the building habitable.

- In todays' modern concepts, construction cannot be restricted to merely the brick work or the basic structure of a building. Any building whether residential/non-residential is made useable only after the activities, like in the present case are carried out and which may be termed as miscellaneous civil construction. The project on which the appellant carried out those miscellaneous activities are the two towers raised by the Developer, which is a new construction and were completed by the appellant by carrying out the remaining activities.

- The term "construction" would involve multifarious activities. In other words, the concept of construction necessarily has an inbuilt part of finishing to make the building/tower/complex habitable and workable

- In the context from the "Work load" mentioned in the "Work Orders" read with the letter issued by the Developers, there is no iota of doubt that the work sub-contracted to the appellant was part of the main contract, which is an original work. The "Work Contract Services" provided by the appellant would fall under the purview of the definition of "Original Works" under Explanation-I to Rule 2A of the Valuation Rules.

- The Bench did not find any merits in the impugned order and hence, the same is set aside on the issue of granting abatement holding the work carried out by the appellant to be as "Original Works" and, therefore, the appellant are entitled to abatement of 60% and liable to pay service tax on 40% of the total amount charged for the work done.

- Since the main demand on this account is set aside, the interest and penalty is

consequently quashed, however, the interest amount levied on short payment of service tax amounting to ₹ 12,05,704/- is maintained as the said amount was deposited though prior to the issuance of the show cause notice yet after lapse of more than 2 years from the due date of payment of service tax.

- The appeal was, accordingly, allowed partly.

2 M/S IFB INDUSTRIES LIMITED VS. COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-PANCHKULA, 2025 (8) TMI 76 - CESTAT CHANDIGARH

Backgrounds and facts of the case

- The appellant is engaged in providing taxable services under Management, Maintenance & Repair Service.

- During the course of audit on 17.09.2010, it appeared to the Revenue that the appellants have been selling consumer goods and have engaged themselves in offering maintenance and repair during the warranty period; the appellants have availed CENVAT credit on various inputs.

- It appeared to the Revenue that as the appellants are providing taxable service of Management, maintenance & repair and are providing exempted services like trading etc., the appellants are required to follow the provisions of Rule 6(2) and Rule 6(3) of CENVAT Credit Rules, 2004.

- The revenue further, alleged that the appellants have neither maintained separate records for common inputs and input services on which credit is availed, two show cause notices dated 01.03.2012 and 11.10.2012 were issued to the appellants demanding service tax of ₹ 44,40,888/- and ₹ 64,82,994/- respectively.

- Subsequently. Commissioner of Central Excise & Service Tax, Panchkula *vide* impugned order dated 26.12.2013 confirmed the demand along with interest and equal penalty.

Arguments by Appellant Assessee

- The appellants, submits that the appellant has two branches viz. marketing division and service division; as per corporate policy, both the divisions maintained their accounts separately and therefore, there is no question of cross-utilization.

- Therefore, the only questions that remained to be decided would be in respect of the service division considering the following two questions:

  (i) Whether the sale of own manufactured goods by the marketing division of the appellant would be considered to be trading and thus, to be treated as exempted service.

  (ii) Whether "free after-sale service" in the nature of repair and maintenance during the warranty period are to be treated as exempted services.

- Also, Tribunal in appellant's own case vide Final Order No. 60021/2018 dated 04.01.2018 has allowed CENVAT credit to the appellants.

- Moreover, CESTAT, New Delhi in the appellant's own case vide Final Order No. 56363/2016 dated 23.12.2016 allowed the credit on the inputs used as spares for providing repair and maintenance service during the impugned period.

Decision of the Hon'ble Tribunal

- The issue emerges before us after the arguments advanced by both sides are:-

  (a) Whether the service of Repair and Maintenance provided by the appellant during the period of warranty free of cost, is an exempted service or not?

  (b) Whether the appellant is engaged in the activity of trading or not?

- As regards the issue (a), We find that Repairs and Maintenance service is taxable service with effect from 01.07.2003 in terms of provisions of Section 65(105)(zzg) of Finance Act, 1994 and the said activity thereafter has never been exempted by the Government by way of any notification thereof. Further, merely because the appellants are not charging any amount towards providing this service, does not mean that the service is an exempted service. Therefore, it cannot be said that the service provided by the appellant is exempted service. In fact, the said service is taxable service as per the provisions of Section 65(105)(zzg) of the Act. Therefore, we hold that appellant is providing taxable service of Repairs and Maintenance to the customers free of cost during the period of warranty.

- As regards issue (b) above, we find that the appellant is a branch office of their head office and they are getting the goods on stock transfer basis from head office for sale. Therefore, the appellant are selling their own goods, manufactured by them. If the person selling the goods manufactured them, in that circumstance, the appellant cannot be said that he is a trader. Therefore, we hold that the appellant is not engaged in the activity of trading.

- As in the appellant s own case, this Tribunal vide order dated 23.12.2016 (supra) allowed the Cenvat credit on the said service and for the subsequent period, the adjudicating authority himself has dropped the demand against the appellant. In those circumstances, we hold that appellant has correctly availed Cenvat credit on input services in question which are attributable to the branch office of the appellant in question.

3 M/S. CONDUENT BUSINESS SERVICES INDIA LLP (FORMERLY KNOWN AS AFFILIATED COMPUTERS SERVICES OF INDIA PVT. LTD.) VS. THE COMMISSIONER OF SERVICE TAX, BANGALORE, 2025 (8) TMI 1209 - CESTAT BANGALORE

Backgrounds and facts of the case

- The appellant was rendering services under the category of Business Auxiliary Services.
- During scrutiny, the Revenue observed that certain expenditures in foreign currency was received for leased circuit services/telecommunication services from abroad. These services were classified as Business Support Services and accordingly, the demand for the period May 2006 to March 2008 was confirmed invoking the proviso to Section 73 (1) of the Finance Act, 1994.
- Further, it was noticed that the appellant had availed and utilized Cenvat credit on insurance services which was not an eligible service as it did not have any nexus with the output service, hence Cenvat credit on the insurance services was also disallowed along with interest and various penalties were imposed.

Arguments by Appellant Assessee

- The appellant submitted that they were engaged in software development service and BPO service for which they utilize dedicated data links/leased circuits. From their business premises to gateway point/port i.e. from Chennai Port, the appellant had engaged Indian Telecommunications service providers and from such gateway point to foreign countries data links/leased circuits of M/s. Singtel Singapore was used to access servers of the group companies. For this data link leased circuit post to the gateway point/port, the parent company of the appellant had entered into an agreement with M/s. Singtel Singapore. Out of the cost paid to Singtel Singapore by the parent company, certain portion of the cost had been debited to the appellant which the appellant has paid. On this share of the cost paid by the appellant, there is a demand of service tax under reverse charge mechanism.
- The appellant does not receive any service from Singtel Singapore but is only sharing the cost incurred by the parent company of the appellant and since the cost sharing agreements do not involve any element of service, they are not liable to pay service tax.
- With respect to Cenvat credit claimed on insurance, the appellant stated that the insurance cover is provided to the employees during their employment with the appellant and since the insurance cover is an activity relating to business, Cenvat credit cannot be denied.
- With respect to limitation the appellant stated that earlier audit was conducted for the period July 2003 to March 2007 and the issue relating to service tax liability on data link leased circuit was raised but demand was proposed under 'Online Information and Database Access or Retrieval Service' vide audit report dated 18.09.2007 and the audit report also included the issue of ineligible Cenvat credit on insurance, however,

no action was taken to issue a notice on Cenvat credit, therefore, at a later stage, the same issues cannot be raised invoking suppression when the facts were already known to the Revenue in the year 2007 itself. It is also stated that no positive reasons have been brought on record to invoke suppression with mala fide intention.

Arguments by the Respondent

- They stated that the demand of service tax on the data link and leased circuit lines is valid and denial of Cenvat credit on insurance which has no nexus with the output service also to be sustained.

- Further, since the facts had come to the knowledge of the Revenue only after the visit of the audit party, extended period of limitation is rightly invoked.

Decision of the Hon'ble Tribunal

- It is submitted that the appellant does not receive any service from Singtel Singapore but is only sharing the cost incurred by the parent company of the appellant and since the cost sharing agreements do not involve any element of service, they are not liable to pay service tax as is decided in the case of Hindustan Construction ***Company Ltd. vs. CST, Navi Mumbai: (2025) 27 Centax 299 (Tri.-Bom.)*** and upheld by the Hon'ble Apex Court.

- It is also submitted that under the pre-Negative List era, the data link/leased circuit is covered by Telecommunications Service under section 65(109a) Clause (iv) and hence, it cannot be considered as Business Support Service. Reliance is placed on V***odafone Essar Mobile vs. CST, Delhi: 2017 (6) GSTL 67 (Tri.-Del.)*** The same is also endorsed by the Board vide various Circulars during the relevant period, hence, the question of demand of service tax on leased circuit services under the category of Business Support Services does not arise. Moreover, the appellant had established that this was on cost sharing basis where the expenses incurred by the appellant were reimbursed by their parent company as is held in the case of ***NCR Corporation India Pvt. Ltd. vs. Commissioner of C.T. Bangalore North: 2021 (55) GSTL 6 (Tri.-Bang.)*** and on this ground also, they are not liable to pay service tax.

- In view of the decision of the ***Reliance Industries Ltd. vs. Commissioner of Central Excise and ST (LTU), Mumbai: 2015 (38) STR 217 (Tri.-Bom.)*** and judgment of the Hon'ble Karnataka High Court in the case of C***ommissioner of Central Excise, Bangalore-II vs. Millipore India Pvt. Ltd.: 2012 (26) STR 514 (Kar.)*** dated 11.4.2011, appellant is eligible to avail Cenvat credit on insurance services and the demand on this ground is also unsustainable.

- Further, since the appeal succeeds on merits, the question of invocation of extended period does not arise.

■

CASE LAW UPDATE



CS Makarand Joshi

IBC

SHRI. DEV DEEPAK DOSHI - PETITIONER VS. M/S. DURA PUF (SILVASSA) PRIVATE LIMITED, RESPONDENT

In the matter of *Shri. Dev Deepak Doshi - Petitioner vs. M/s. Dura PUF (Silvassa) Private Limited, Respondent* in the order passed dated 2 June 2025 by the National Company Law Tribunal Mumbai

Facts of the Case

- This Company Petition is filed by Shri. Dev Deepak Doshi – Petitioner and Financial Creditor (FC) - an individual who was appointed as a Director of **M/s. Dura PUF (Silvassa) Private Limited** - Corporate Debtor (Respondent/CD) on 1 August 2006.
- The FC provided necessary Financial Assistance to the CD as and when needed.
- The FC advanced a Loan amount of Rupees Two Crores Twenty Lakhs only (approx.) (₹ 2,19,43,097/-) to the CD in various tranches which was repayable on demand.
- During February 2023, the FC had disagreements with the other Directors of the CD regarding certain key business decisions. Because of these differences, the FC was excluded from participating in the regular business affairs and decision-making processes of the CD. Faced with continued oppressive conduct by the other Directors, the FC contemplated resigning from the position of Director around October 2023.
- On 11 November 2023, the FC issued a Loan Recall Notice to the CD demanding repayment of the outstanding dues. The said notice was duly received by the CD. However, despite acknowledging the liability, the CD failed to make any payment towards the outstanding amount.
- As the oppressive acts continued and the loan amount remained unpaid, the FC resigned from directorship on 1 March 2024.

- The FC issued two further notices to the CD on 31 December 2023 and 5 March 2024 respectively, demanding repayment of the loan.

- Despite issuance of notices, the CD failed to make any payment to the FC, resulting in the filing of the Petition u/s 7 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code).

Arguments of the Petitioner/FC

- It was submitted that the Financial Statements of the CD reflect that an amount of Rupees Two Crores Sixteen Lakhs (approx.) (₹ 2,15,98,097/-) was due and payable to the FC as of 31 March 2023. The statements further confirm that the said loan is classified as "payable on demand".

- The FC asserted that the petition was maintainable and that the Corporate Insolvency Resolution Process (CIRP) should be initiated against the CD for the committed default.

- The FC's claim is substantiated by multiple pieces of documentary evidence, including bank statements demonstrating the transfer of funds, the ledger account maintained in the CD's books under the FC's name, and, most importantly, the CD's Balance Sheet as on 31 March 2023, which records the outstanding amount under "Long Term Borrowings" in the name of the FC.

Arguments of the Respondent/CD

- The CD submitted that the petition filed by the FC was non-maintainable. There was no written Agreement/Contract or document between the parties to demonstrate the nature of the transaction and the terms of the alleged financial debt. The FC failed to bring on record even a single document to demonstrate the alleged financial debt.

- The CD was a close-knit family business, and directors advanced funds from time to time as required for working capital.

- There was no specific date of repayment agreed between the parties.

- The FC unilaterally determined the date of default as 11 November 2023, by issuing a demand notice. The CD, however, contended that the said notice was motivated by the FC's dissatisfaction with the management and functioning of the CD. It was further argued that the notice was addressed to the Board of Directors and not specifically to the Respondent. The CD asserted that mere receipt of such a letter does not constitute an event of default.

- The claim made by the FC was without any interest component. Therefore, there is no "time value of money," and the amount cannot be termed as *Financial Debt* u/s Section 5(8) of IBC.

- Consequently, the alleged debt does not bear the commercial effect of a borrowing, as the funds were neither utilized by the CD for its working capital requirements nor were they obtained from the FC for the purpose of meeting such operational needs.

- The FC failed to demonstrate the actual date of default of the alleged financial

debt, which is a settled position of law that, without which, actual default cannot be ascertained.

- The contents of the reminder letters (31 December, 2023, and 5 March, 2024) demonstrate that the FC was aggrieved due to alleged oppressive acts of the other directors of the CD.

- The CD contended that the present proceeding is a fit case for adjudication through a Civil Trial, where the terms of the alleged transaction, if any, could be properly examined and determined. The CD further submitted that the FC has circumvented this appropriate legal recourse by directly invoking the remedy available under Section 7 of the IBC.

Held

- The NCLT held that the existence of financial debt can be proved through various documents, not just a written financial contract. Referring to ***Agarwal Polysacks Ltd. vs. K. K. Agro Foods & Storage***, it was noted that financial statements or records with an information utility are sufficient. In this case, the debt was established through the FC's bank statements, the CD's ledger, and notably, the CD's Balance Sheet as on 31 March 2023, which reflected the amount under "Long Term Borrowings" in the FC's name. The NCLT also relied on ***Vidyasagar Prasad vs. UCO Bank & Anr.***, where the Hon'ble *Supreme Court* held that balance sheet entries amount to an acknowledgement of debt.

- The NCLT rejected the CD's argument that the absence of interest disqualifies the loan as 'financial debt'. Citing ***Orator Marketing Pvt. Ltd. vs. Samtex Desinz Pvt. Ltd.,*** it clarified that under Section 5(8) of the IBC, interest is not mandatory and even an interest-free loan can have a "commercial effect of borrowing". The CD's own admission that the funds were for working capital, along with their classification as "Long Term Borrowings" in the balance sheet, confirmed the loan as financial debt.

- The NCLT defined 'default' as non-payment of debt when due. It was held that the FC's loan recall notice dated 11 November 2023 made the debt immediately payable. Concluding that all conditions u/s 7 of the IBC were met, the NCLT confirmed the Petitioner as a 'Financial Creditor' and that a 'Default' had occurred.

- The NCLT referred to the Hon'ble Supreme Court's ruling in ***M/s. Innoventive Industries Ltd. vs. ICICI Bank***, which mandates that once the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete.

SEBI

ADJUDICATION ORDER SECURITIES EXCHANGE BOARD OF INDIA IN THE MATTER OF LCC INFOTECH LIMITED (LCC)

Adjudication Order Securities Exchange Board of India in the matter of LCC Infotech Limited (LCC)

Facts of the case

- Securities and Exchange Board of India (hereinafter referred to as "SEBI") initiated the instant adjudication proceedings under section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") against LCC Infotech Limited (hereinafter referred to as "LCC"/"Noticee") for the alleged violation of regulation 31(1) read with regulation 4(1) (e) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "LODR Regulations")

- The Show Cause Notice (SCN) dated May 21, 2025, issued by SEBI to Noticee, alleged Undisclosed Share Sale by Mr. Siddhart Lakhotia. It was observed that, during the perusal of a Draft Letter of Offer ('DLOF') submitted to SEBI in the year 2024, Mr. Siddharth Lakhotia, one of the promoters of LCC, sold 10,000 equity shares on January 01, 2018. It was alleged that sale of equity shares on January 01, 2018, was not reflected in the shareholding patterns filed by LCC under Regulation 31(1) of the LODR Regulations. It was further alleged that this omission persisted for eight consecutive quarters, specifically from the quarter ended March 31, 2018, to the quarter ended December 31, 2019.

- SEBI further alleged that Noticee **filed an incorrect shareholding pattern** for the aforementioned eight quarters, **leading to a violation of Regulation 31(1)** of the LODR Regulations. Reg. 31(1)(b) of LODR Regulations obligates a listed entity to submit a statement showing holding of securities and shareholding pattern to the stock exchange(s) on a quarterly basis in the specified format **and Regulation 4(1)(e)** further requires that all disseminations made under the LODR Regulations must be adequate, accurate, explicit, timely, and presented in a simple language.

Contentions of The Noticee

- **Inadvertent and unintentional omission of the name of a promoter:** Noticee admitted that the disclosures made under the shareholding pattern for the quarter ended March 31, 2018, to December 31, 2019, did not account for Mr. Siddhart Lakhotia's share sale. The Noticee has attributed the said lapse to inadvertent and unintentional omission and contended that on July 4, 2018, BSE Ltd. issued a compulsory delisting order against the company, followed by a delisting order from NSE on August 8, 2018. They stated that during this period, shareholding details were blocked by NSDL and CDSL, which made the data unavailable to the company. Consequently, the sale of 10,000 shares by Mr. Siddhart Lakhotia was "inadvertently missed out" in the

shareholding patterns. Noticee appealed to these delisting orders before the Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble SAT, through its order, changed the company's status from "delisted" to "suspended". The Noticee argued that because data was not available during this period of delisting/suspension, the details of the share sale were missed.

- Noticee further stated that corrective actions have been taken wherein it had rectified the discrepancy in the shareholding statement which had occurred from the quarter ended March 31, 2018 to the quarter ended December 31, 2019.

Contentions of SEBI

- Inadvertent and unintentional omission of name of promoter: The Adjudicating Officer (AO), SEBI's stated that despite the delisting orders and their ramifications, LCC **remained listed** (as its status was changed to "suspended" by SAT, not fully delisted) and thus it was **incumbent on the Noticee to comply** with all LODR Regulations, including Regulation 31, "in letter and spirit". The AO emphasized the legal principle that "When a law prescribes a manner in which a thing is to be done, it must be done only in that manner". Furthermore, the AO pointed out that the **violations began on April 1, 2018**, whereas the first compulsory delisting order from BSE was passed only on **July 4, 2018**. This implied that LCC had **no justification for the wrongful statement** submitted for the period *prior* to the commencement of the stock exchange action, and therefore, LCC's submission could not be fully accepted.

AO also noted that LCC had **previously incurred monetary penalties for violations of LODR and Listing Agreement** via SEBI orders dated November 12, 2024, and November 29, 2004, indicating a repetitive nature of defaults

PENALTY: The Adjudicating Officer (AO) imposed a **penalty of ₹ 1,00,000/- (Rupees One Lakh only)** on the Noticee. This penalty was levied under **Section 15HB of the SEBI Act, 1992**, for the violation of Regulation 31(1) read with Regulation 4(1)(e) of the SEBI LODR Regulations after considering the absence of quantifiable gain and the repetitive nature of the default.

Companies Act, 2013

M/S RELISYS MEDICAL DEVICES LTD VS. D. RAJU REDDY, NCLAT DELHI

In the matter of *M/s Relisys Medical Devices Ltd vs. D. Raju Reddy, NCLAT* Delhi bench, order dated 23 May 2018.

Facts of the case

- Relisys Medical Devices Ltd, the appellant herein (hereinafter called as company/petitioner), is a company incorporated under the Companies Act 1956 and D. Raju Reddy (hereinafter called as respondent) is the non-resident shareholder of the company.

- On 1 December 2011, the company issued 1,92,441 Compulsory Convertible

Debentures (CCDs) of ₹ 10 each at a premium of ₹ 60 each to the respondent. At this time, the fair value of equity shares of the company was ₹ 64.22/-.

- On 6 August, 2013, the appellant company converted 1,92,441 CCDs into 4,29,419 equity shares of ₹ 10/- each at a premium of ₹ 21.37 each and allotted the shares to 1st respondent. This allotment was made at a valuation of ₹ 31.37/- each which was less than the fair value of shares at the time of issue of CCDs.

- As per the Foreign Exchange Management Act (FEMA) regulations, the conversion into shares of the company cannot be done at a price lower than the fair value of shares at the time of issue of the convertible securities. Therefore, this conversion was in violation of FEMA regulations.

- In order to rectify this non-compliance, the company filed a compounding application before the Reserve Bank of India (RBI). The RBI instructed the company either to unwind the excess shares allotted; or to bring in additional funds equivalent to the shares allotted and thereafter apply for compounding for the contraventions stated.

- Therefore, the company obtained a no-objection certificate from the respondent for rectification of the register in the form of cancellation of 219658 equity shares of ₹ 10 each excess allotted to him. Thereafter, the company filed a petition for the rectification of the register of members.

- However, the Hyderabad bench of NCLT rejected the petition because rectification of the register of members by cancelling the excess allotment of shares leads to a reduction of paid-up capital. and there is a prescribed procedure for reduction of share capital in the Memorandum of Association and Articles of Association of the company and the Companies Act, 2013 (the Act) which was not followed by the company.

- Therefore, the company is before the appellate Tribunal in an appeal against the NCLT order.

Petitioner's contentions

- The Tribunal is not justified in dismissing the application by contending that a Company cannot be the applicant seeking rectification of its register of members.

- The Tribunal has committed a serious error by assuming that the company has not followed the procedure prescribed under its Memorandum and Articles of Association, the Act and FEMA for increasing its authorized capital when there is no shred of any document to suggest the company has not followed the procedure so prescribed.

- The only violation committed by the appellant under FEMA was to allot shares at ₹ 31.37 instead of ₹ 64.22 and that there was no other violation under FEMA and it is as a result of such undervaluation of shares that excess shares of 219658 were allotted to the respondent.

- The rectification of the register of members by cancelling the excess shares allotted is merely an accounting entry whereby the amount paid up on the excess shares sought to be cancelled is credited to the securities premium account and there is no return of

capital and it does not tantamount to a reduction of capital as contemplated under Section 66 of the Act.

- The appellant submitted that if this Tribunal permits, the appellant will take the necessary steps legally required for cancelling the excess shares allotted and comply with other legal formalities as well as whatever directions this Tribunal gives.

Respondent's contentions

- Rectification of the register of members by cancelling the excess allotment of shares leads to a reduction of paid-up capital.

- There is a prescribed procedure for the reduction of share capital in the Memorandum and Articles of Association of the company and the Act, which the petitioner company has failed to follow.

- Also, the company has failed to make good, the non-compliance under applicable provisions of FEMA regulations 2000.

Held

- This case deals with where the CCDs have been converted into shares at the wrong share premium. The money has already been received by the company and the allocation of the same between paid-up share capital and securities premium must be done.

- It is noted that the security premium account for all practical purposes is to be treated as if the security premium account were the paid-up share capital of the company as per Section 52 of the Act.

- Securities premium amount has been determined to be wrongly short, and consequently, paid-up capital has been allocated of more amount than required. Therefore, the change in composition between the security premium account and paid-up share capital will not amount to a reduction in capital as both the components are treated as paid-up capital. Further reading of Section 100 of the Companies Act, 1956 (corresponding to section 66 of the Act), shows that this case is not covered under any of sub-clauses (a), (b) and (c) of Clause (1).

- As the appellant has opted to unwind the excess shares allotted, therefore, this will make a case of rectification of the wrongful calculation of share capital and securities premium and not a reduction of share capital because the security premium account is also to be treated as paid-up share capital. This is a case where security premium amounts will be increased and an equal amount of paid-up capital will be decreased and there will be no change in the overall amount allocated to paid-up share capital and security premium account.

- The petitioner was directed to cancel the excess allotment of 2,19,658 shares to the respondent. Instead, the total amount received through CCDs to be used to issue 2,09,761 equity shares of ₹ 10/- each at a premium of ₹ 54.22 as on 6 August, 2013. The premium amount shall be transferred to the Securities Premium Account. Further, revised balance sheets post 6 August, 2013 must be refiled and certified by a Chartered Accountant. The company must also comply with all applicable legal formalities under the Companies Act and other relevant laws.

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FEMA – UPDATES AND ANALYSIS





CA Hardik Mehta *CA Tanvi Vora*

In this article, we have discussed recent amendments made in FEMA through Notifications, Circulars, Master Directions, Press Notes & Press Releases.

A. Update through Notifications

1. RBI Measures to Strengthen International Trade Settlement and INR Utilisation through SRVAs

The Reserve Bank of India ("RBI") has issued two circulars in August 2025 pertaining to Special Rupee Vostro Accounts ("SRVAs").

Circular No. 8 dated 5th August 2025 allows Authorised Dealer ("AD") Category-I banks to open SRVAs of overseas correspondent banks without prior approval of the RBI. This measure simplifies and expedites the process for settling international trade in Indian Rupees. Previously, this required RBI approval. The FAQs on International Trade Settlement in Indian Rupees ("INR") have also been updated to this extent.

Circular No. 9 dated 12 August 2025 permits non-residents maintaining SRVAs to invest their surplus rupee balances in Central Government Securities including Treasury Bills.

While Circular No. 8 facilitates the operational opening of SRVAs, Circular No. 9 ensures productive utilisation of balances held therein. Together, these measures strengthen the internationalisation of the Indian Rupee, widen the scope of SRVA-based settlements and provide secure avenues for foreign participants to deploy their INR balances.

A.P. (DIR Series) Circular No. 8 dated 5 August 2025 and A.P. (DIR Series) Circular No. 9 dated 12 August 2025

(Comments: These circulars are key in the backdrop of India's ongoing efforts to promote the Indian Rupee as a settlement currency in global trade, reduce dependence on hard currencies like the US Dollar, and deepen financial integration with partner countries. With shifting geopolitical alignments, supply-chain realignments, and rising interest from countries seeking alternatives to dollar-based settlement

systems, the twin measures of easing SRVA operations and permitting rupee surplus investment in Government securities demonstrate RBI's strategic push towards internationalising the Rupee, strengthening India's economic resilience, and enhancing its role in the evolving global financial order.)

B. Update through Press Releases

1. Guarantee Regulations under Foreign Exchange Management Act (FEMA), 1999 – Draft for feedback

With a view to rationalize regulations pertaining to guarantees issued under FEMA, 1999, the RBI has proposed a draft for Guarantee Regulations ("2025 Draft Guarantee Regulations") for feedback from stakeholders. These Draft Regulations govern how Persons Resident in India ("PRII") may provide guarantee/surety on behalf a Person Resident Outside India ("PROI") in relation to cross-border transactions and are set to replace the earlier Foreign Exchange Management (Guarantees) Regulations, 2000 i.e. FEMA Notification No. 8/2000 dated May 3, 2000 ("FEMA 2000 Guarantee Regulations").

Comments/feedback on the 2025 Draft Guarantee Regulations may be submitted through the respective link under the 'Connect 2 Regulate' Section available on the RBI's website or may be forwarded via email by 4 September 2025, with the subject line "Feedback on draft guarantee regulations under FEMA, 1999".

Key features of the Regulation vis-à-vis FEMA 8/2000 Guarantee Regulations:

- FEMA 8/2000 Guarantee Regulations adopted a prescriptive approach, listing specific situations where guarantees could be given, such as for exports, imports, projects abroad, or joint ventures. However, under the 2025 Draft Guarantee Regulations, general permission is available under automatic route to give guarantee if the underlying transaction and the resultant transaction in case of invocation of the guarantee are FEMA compliant.

- The FEMA 8/2000 Guarantee Regulations were framed under clause (j) of Section 6(3) of FEMA, 1999, giving them a narrower scope, while the 2025 Draft Guarantee Regulations are issued under Section 6(2), expanding the legal basis and indicating broader coverage of cross-border guarantees.

- The FEMA 8/2000 Guarantee Regulations contained only basic definitions such as "Act" and "Authorised Dealer". The 2025 Draft Guarantee Regulations introduces detailed definitions for "Creditor", "Principal Debtor", "Surety", and "Guarantee", ensuring greater clarity and reducing interpretational issues.

- The applicability of FEMA 8/2000 Guarantee Regulations was limited to PRII giving guarantees/surety to PROI. The 2025 Draft Guarantee Regulations now extends the scope to PRII acting as debtor, or creditor in guarantees linked to current or capital account transactions unless specifically permitted.

- The 2025 Draft Guarantee Regulations explicitly bars ADs from issuing Letters of Comfort or Letter of Undertakings. PRIIs giving guarantees for PROIs must also comply with FEMA's Borrowing and Lending Regulations, 2018.

- The FEMA 8/2000 Guarantee Regulations provided exemptions for exporters, companies setting up joint ventures or subsidiaries abroad, and shipping or airline agents. The 2025 Draft Guarantee Regulations narrows exemptions, limiting them to overseas branches of ADs acting in the normal course of banking and custodian banks issuing irrevocable payment commitments for FPIs.

- FEMA 8/2000 Guarantee Regulations framework had no explicit reporting mechanism, relying mainly on AD oversight. The 2025 Draft Guarantee Regulations introduces mandatory reporting within 7 days of issuance, amendment, or invocation of guarantees (issuance, modifications, or invocation), with prescribed formats for sureties, principal debtors, and creditors.

- FEMA 8/2000 Guarantee Regulations were silent on delayed compliance. The 2025 Draft Guarantee Regulations has introduced a Late Submission Fee mechanism, allowing delayed reporting up to three years, thereby formalising accountability while providing a compliance window.

Press Release: 2025-2026/916 dated 14 August 2025

(Comments: The FEMA 8/2000 Guarantee Regulations were transaction-specific and provided prescriptive permission lists, reflecting early-stage liberalisation under FEMA. The 2025 Draft Guarantee Regulations modernises the framework into a principle-based, compliance-heavy structure aligned with other FEMA rules, international reporting standards, and risk management. It significantly enhances transparency (via reporting) and regulatory control, while reducing sector-specific carve-outs that were prevalent earlier.)

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" God is present in every Jiva;
there is no other God besides that.
Who serves Jiva serves God indeed. "

Swami Vivekananda

BEST OF THE REST





Rahul Hakani
Advocate

Niyati Mankad
Advocate

1 GLENCORE INTERNATIONAL AG VS. SHREE GANESH METALS & ANR., CIVIL APPEAL NO. 11067 OF 2025, DECIDED ON 25 AUGUST 2025) [SUPREME COURT]

Section 45 of the Arbitration and Conciliation Act, 1996 ("the Act") - an arbitration agreement need not be signed by both parties if their conduct demonstrates acceptance of the contract containing the arbitration clause - An arbitration agreement can be inferred from emails, invoices, and performance under the contract - Section 45 of the Act requires only prima facie proof of the existence of an arbitration agreement needs to be adduced before the referral court

Facts

The Appellant, Glencore International AG, a Swiss mining and trading company, entered into multiple contracts (2011–2012) with the Respondent, Shree Ganesh Metals, containing arbitration clauses under London Court of International Arbitration ("LCIA") Rules, seat London. In March 2016, parties negotiated a fresh contract (Contract No. 061-16-12115-S) for 6,000 MT of zinc. Although the Respondent never signed the contract, it lifted 2,000 MT, paid via Standby Letters of Credit referencing the contract, and acknowledged the contract in correspondence. Later disputes arose when the respondent defaulted on quotas, leading to a civil suit by it before the Delhi High Court challenging invocation of the Letters of Credit. Glencore sought reference to arbitration under Section 45 of the Act.

Issues Involved

1. Whether there existed a binding arbitration agreement between Glencore and Shree Ganesh Metals under Contract No. 061-16-12115-S, despite the latter not signing it?

2. Whether the Delhi High Court erred in refusing reference to arbitration under Section 45 of the Arbitration and Conciliation Act, 1996?

Held

The Supreme Court allowed the appeal, holding that Contract No. 061-16-12115-S was accepted and acted upon by the Respondent through supply, acceptance of goods, issuance of Letters of Credit, and correspondence. Thus, clause 32.2 (LCIA arbitration clause)

was binding. Section 44 and 45 of the Act applied since it was a foreign arbitration agreement. Relying on ***Shin-Etsu Chemical Co. Ltd. vs. Aksh Optifibre (2005) 7 SCC 234, Govind Rubber Ltd. vs. Louis Dreyfus (2015) 13 SCC 477, Caravel Shipping Services vs. Premier Sea Foods (2019) 11 SCC 461,*** among others, the Court reiterated that an arbitration agreement can be in writing without signatures if the parties are ad idem and have acted upon it. The Delhi High Court's contrary finding was set aside, and disputes were directed to arbitration under Section 45 of the Act.

2 M/S C.L. GUPTA EXPORT LTD. VS. ADIL ANSARI & ORS., CIVIL APPEAL NO. 2864 OF 2022, SC, DECIDED ON 22.08.2025 [SUPREME COURT]

Section 15 of the National Green Tribunal Act, 2010 ("NGT Act") - there must be a rational nexus between environmental damage and the compensation imposed, and that "rule of law does not permit State or its agencies to extract a 'pound of flesh', even in environmental matters." – held: NGT exceeded its jurisdiction in imposing an additional environmental compensation of ₹ 50 crores on the basis of the appellant's turnover – Further, NGT's power under Section 15 of the NGT Act cannot extend to prosecuting under PMLA - Continuous monitoring and restoration directions by NGT were upheld

Facts

Respondent No.1 filed an application before NGT alleging that the appellant industry was causing severe environmental degradation, discharging untreated effluents into a tributary of the Ganga, and extracting groundwater illegally. It was also alleged that authorities like the State Pollution Control Board and Central Ground Water Authority (CGWA) colluded by inaction. Multiple reports of a Joint Committee [Central Pollution Control Board (CPCB), Uttar Pradesh Pollution Control Board (UPPCB), and CGWA] between 2019–2021 highlighted initial non-compliance, imposition of Environmental Compensation (EC), and later full compliance by the appellant. Despite a 2021 report confirming compliance, the NGT imposed ₹ 50 crores compensation based on turnover and directed ED to act under PMLA, along with closure of defaulting units.

Issues Involved

1. Whether NGT was justified in imposing ₹ 50 crores as environmental compensation by linking penalty to the turnover of the appellant despite compliance being reported?

2. Whether NGT had jurisdiction to direct ED to proceed under the PMLA against the appellant?

3. Whether sweeping closure orders and turnover-based penalty were valid when statutory bodies already imposed EC following CPCB methodology?

4. To what extent NGT's powers under Section 15 of the NGT Act extend in environmental enforcement and penalty matters?

Held

The Supreme Court partly allowed the appeal:

- The Court set aside the ₹ 50 crores penalty imposed by NGT, holding that turnover has no nexus with environmental damage. Reliance was placed on ***Benzo Chem Industrial (P) Ltd. vs. Arvind Manohar Mahajan (2024 SCC OnLine SC 3543)***, where it was held that penalties based on revenue are alien to legal principles. Compensation must follow CPCB's prescribed methodology, not arbitrary turnover figures.

- The Court quashed NGT's direction to ED, citing ***Waris Chemicals (P) Ltd. vs. U.P. Pollution Control Board (2025 SCC OnLine SC 1261)*** and ***Vijay Madanlal Choudhary vs. Union of India ((2023) 12 SCC 1)***. It was clarified that Section 3 of PMLA applies only to proceeds of crime from a scheduled offence. In the absence of any FIR or complaint under environmental statutes, NGT had no jurisdiction to invoke PMLA.

- The Court struck down sweeping closure directions, noting that after the 2021 compliance report and subsequent inspections, continuous monitoring suffices. Statutory authorities (PCBs) retain powers to act against any future non-compliance.

- Further, The Court upheld NGT's structural directions for audits, water monitoring, aquifer recharge, and restoration, holding these to be within its jurisdiction under Section 15 of the NGT Act.

- The Court lamented that despite eventual compliance, the NGT judgment engaged in voluminous rhetoric without judicious application to facts, making the exercise largely futile.

The appeal was accordingly allowed, setting aside NGT's directions except those on continuous monitoring and restoration.

3 IQBAL AHMED (DEAD) BY LRS. & ANR. VS. ABDUL SHUKOOR, CIVIL APPEAL NO.10458 OF 2010, DECIDED ON AUGUST 22, 2025 [2025 INSC 1027]

Order XLI Rule 27(1) of the Code of Civil Procedure, 1908 - before permitting additional evidence under Order XLI Rule 27(1) of CPC the Appellate Court must first examine the pleadings of the party seeking to lead such evidence - In the absence of pleadings supporting the additional evidence, its admission would be of no consequence

Facts

The Appellants (plaintiffs) filed a suit for specific performance of an agreement to sell dated 20.02.1995, under which the respondent (defendant) agreed to sell his house property for ₹ 10,67,000, part payments having been made. Plaintiffs claimed readiness and willingness and alleged sale of their other properties to fund the transaction. The Trial Court decreed specific performance, disbelieving the defendant's case that the agreement was only a security for a loan of ₹ 1,00,000.

On appeal, the defendant sought to adduce additional evidence under Order XLI Rule 27(1) CPC, producing public documents such as tax extracts and encumbrance certificates to show plaintiffs had not sold

properties as claimed. The High Court admitted such evidence, disbelieved the plaintiffs' case, reversed the Trial Court's decree, and directed repayment of ₹1,00,000 loan. Aggrieved, the plaintiffs approached the Supreme Court.

Issues Involved

Whether it is necessary for the Appellate Court to consider the pleadings of the parties before adjudicating the prayer made for leading additional evidence under the provisions of Order XLI Rule 27(1) of the Code of Civil Procedure, 1908?

Held

The Supreme Court held that the High Court committed an error in permitting additional evidence without verifying whether the defendant's pleadings supported such a case. Since in the written statement the defendant merely denied knowledge of the plaintiffs selling their properties, there was no positive pleading to justify adducing additional evidence to prove otherwise. Admission of such evidence without foundational pleadings was impermissible. Referring to ***Bachhaj Nahar vs. Nilima Mandal*** and ***Union of India vs. Ibrahim Uddin***, the Court reiterated that Order XLI Rule 27(1) CPC must be read in light of the pleadings, failing which the additional evidence cannot be considered. Consequently, the impugned High Court judgment dated 30.12.2008 in RFA No.440 of 2000 was set aside, and the matter was remanded to the High Court for fresh consideration of the appeal and the Order XLI Rule 27(1) application in accordance with law. The Court requested expeditious disposal given that the suit dated back to 1997. The Civil Appeal was allowed, with parties left to bear their own costs.

4 PALM GROVES COOPERATIVE HOUSING SOCIETY LTD. VS. M/S MAGAR GIRME AND GAIKWAD ASSOCIATES ETC., CIVIL APPEAL NOS.5536-5538 OF 2025, DECIDED ON AUGUST 22, 2025 [2025 INSC 1023]

Section 25 of the Consumer Protection Act, 1986 ("the Act") – the Act is a self-contained code, and even after the 2002 Amendment, which substituted Section 25 and introduced ambiguity by restricting enforcement to "interim orders," the legislative intent was never to render final consumer orders unenforceable - Applying purposive interpretation, the Court held that every order of the District, State, or National Commission was and is enforceable - The nomenclature of proceedings before the State Commission (appeal or revision) is immaterial if the forum otherwise has jurisdiction under Section 27A - Consumer fora cannot be rendered toothless; thus, execution of final orders is maintainable

Facts

The respondent–builder *M/s Magar Girme & Gaikwad Associates* launched "Palm Groves" in 1995 and formed the appellant society in 2003. The society filed Complaint No. PDF/35/2005 before the Pune District Forum alleging construction defects, deficiency in service and non-execution of conveyance. By order dated 16.03.2007, the Forum directed execution of conveyance, recognised common amenity rights and awarded compensation. On appeals (FA Nos.421–423/2007), the State Commission on 02.04.2014 set aside only the builder's compensation. The appellant's RP No.3121/2014 before the National Commission led to a remand to the State

Commission, which in turn remanded to the District Forum (10.10.2017). Meanwhile, in Execution Petition No.22/2007, the District Forum approved a draft conveyance (20.11.2007), but the State Commission in RP Nos.156–158/2007 set aside that order (21.04.2014). The appellant's Execution RPs Nos.52, 53 and 56/2014 were dismissed by the National Commission (16.07.2019) as not maintainable, treating the State Commission's orders as appeals under Section 27A. These orders were challenged before the Supreme Court in Civil Appeals Nos.5536–5538/2025.

Issues involved

I. Whether there is any drafting error in Section 25 of the 1986 Act, as existed post 2002 Amendment, in so far it relates to enforcement of final orders, if yes, whether the tools available for interpretation of statutes can be used to clarify the position, to bring the same in line with the spirit of the 1986 Act?

II. Whether a revision petition filed against an order passed in execution proceeding can be construed as an appeal?

Held

The Court allowed the appeals in part, holding:

- Though Section 25 (post-2002 amendment) used the words "interim order," the scheme, object, and history of the Act show that every order was intended to be enforceable. The 1986 Act, being a beneficial and self-contained code, must be purposively construed to avoid rendering consumer fora ineffective. This position was later clarified in Section 71 of the Consumer Protection Act, 2019, restoring the earlier position.

- The proper remedy against enforcement orders is an appeal under Section 27A, not a revision under Section 17(1)(b), since "consumer dispute" in Section 17 relates to original complaints, not execution. However, wrong nomenclature of proceedings cannot defeat substantive rights; revision petitions filed before the State Commission could be treated as appeals under Section 27A.

- The Court discussed ***Karnataka Housing Board vs. K.A. Nagamani (2019)*** (holding revision not maintainable), ***Kamlesh Aggarwal vs. Narain Singh Dabbas (2015)*** (holding CPC principles apply to execution), and relied on purposive interpretation cases like ***Swiss Ribbons Pvt. Ltd. vs. Union of India (2019), MSR Leathers vs. S. Palaniappan (2013)***, and ***State of Karnataka vs. Vishwabharathi House Building Coop. Society (2003)*** to hold the Act is a complete code.

- The Supreme Court directed that execution of final consumer orders is legally maintainable and remitted matters to the National Commission with directions to entertain execution proceedings in line with this interpretation.

5 VIJAY KRISHNASWAMI VS. DDIT, CRIMINAL APPEAL NOS. OF 2025 (ARISING OUT OF SLP (CRL.) NOS. 3618-3620 OF 2024), DECIDED ON AUGUST 28, 2025 [2025 INSC 1048]

Section 276C(1) of the Income-tax Act, 1961 - continuation of prosecution under Section 276C(1) of the Act, despite the Settlement Commission's order granting immunity from penalty and absence of any finding of wilful evasion, amounts to abuse of process of law - The prosecution was lodged in blatant disregard of binding CBDT circulars (2008, Prosecution Manual 2009, and 2019 circular), which mandate that prosecution be initiated only after confirmation of penalty by ITAT and subject to monetary thresholds - Findings of the Settlement Commission under Section 245D(4), read with Section 245-I, are conclusive, and the authorities' persistence to prosecute was held unfair, unreasonable, and unlawful

Facts

A search under Section 132 of the IT Act was conducted at the appellant's residence on 24.04.2016, seizing unaccounted cash of approx. ₹ 4.93 crores. Prosecution was sanctioned by the Principal Director of Income Tax under Section 279(1), and a complaint under Section 276C(1) was filed on 11.08.2018 alleging wilful attempt to evade tax for AY 2017–18. Meanwhile, the appellant approached the Settlement Commission under Section 245C, disclosing additional income. By order dated 26.11.2019, the Commission granted immunity from penalty but not from prosecution (owing to pendency of quash petition before the High Court). The High Court dismissed the appellant's petition under Section 482 CrPC, leading to the present appeal.

Issues Involved

1. Whether continuation of prosecution under Section 276C(1) after the Settlement Commission's order granting immunity from penalty would amount to abuse of process of Court.

2. Whether the High Court was justified in dismissing the Appellant's quashing petition.

Held

The Court quashed the prosecution, holding that Section 276C(1) targets wilful attempts to evade tax, but mens rea must be proved. The Settlement Commission, having found full disclosure and no suppression, granted immunity from penalty, making further prosecution meaningless. Under Section 245-I, the Settlement Commission's findings are conclusive; continuation of prosecution in such circumstances was unwarranted. It was further held that CBDT circulars (2008, Prosecution Manual 2009, and 2019 circular) bound the Department, requiring prosecution only post-confirmation of penalty by ITAT and subject to monetary limits (₹ 25 lakhs). No such confirmation existed here. Reliance was placed on precedents such as ***K.C. Builders vs. CIT (2004) 2 SCC 731*** (penalty and prosecution are interlinked), ***Ranadey Micronutrients (1996) 10 SCC 387, Paper Products Ltd. (1999) 7 SCC 84, UCO Bank (1999) 4 SCC 599, CCE vs. Ratan Melting (2008) 13 SCC 1,*** among others, which established that circulars are binding on tax authorities. Court held that the authorities acted in "blatant disregard" of binding circulars, and continuation of prosecution amounted to abuse of process. Accordingly, the Supreme Court set aside the High Court's order, quashed the prosecution, and imposed costs of ₹ 2,00,000 on the Revenue payable to the Appellant.

6 SHREE GURUKRUPA SRA CO-OP HSG STY VS. MINISTER OF STATE, HOME (RURAL) HOUSING SCHOOL, WRIT PETITION (L) NO. 18500 OF 2025 AND WRIT PETITION (L) NO. 18923 OF 2025, DECIDED ON AUGUST 22, 2025 [BOMBAY HIGH COURT]

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("Slum Act") - once the Slum Rehabilitation Authority (SRA) approves a scheme and issues an LOI/IOA, the land-owning authority (MCGM) is bound under Regulation 2.8 of Development Control & Promotion Regulation 2034 ("DCPR 2034") to grant its NOC within 60 days, failing which it shall be deemed granted - political interference or extraneous pressure cannot derail a sanctioned slum rehabilitation scheme, especially where the scheme has attained finality up to the Supreme Court - The authorities are duty-bound to facilitate smooth implementation and eviction under the Slum Act in the larger public interest

Facts

Sateri Builders & Developers LLP was appointed in November 2020 as developer by Shree Gurukrupa SRA CHS for redevelopment of Final Plot No. 187 at Vile Parle under the SRA Scheme. The SRA directed inclusion of adjoining DP Road occupants as PAPs, leading to issuance of LOI (May 2022) and IOA (May 2022). These were quashed by AGRC but restored by the Bombay High Court (April 2024), which order was affirmed by the Supreme Court (May 2024). Despite compliance with rent deposits and other requirements, SRA issued stop work notices and withheld the Commencement Certificate, citing non-compliance and pending NOCs. Meanwhile, a local MLA (Respondent 9) lodged complaints with the Minister, who issued directions for reconsideration of the LOI. The petitioners approached the High Court seeking quashing of such interference and directions to issue CC and finalize Annexure II.

Issues Involved

Whether the Petitioner was entitled to a deemed NOC and Commencement Certificate under Regulation 2.8 of DCPR 2034 despite the authorities' inaction?

Held

The Court allowed the petitions. It held that the Minister had no authority to interfere in an SRA-sanctioned scheme and his notice dated 14.05.2025 was quashed. The Court held that the NOC stood deemed to have been granted under Reg. 2.8 of DCPR 2034, as MCGM failed to respond within 60 days. SRA was directed to finalize Annexure II (including PAPs as directed by the Supreme Court) and issue the Commencement Certificate within a time-bound period. The Court emphasized that the scheme was already tested before the High Court and Supreme Court; hence, re-agitating issues amounted to abuse. ***Relying on Yash Developers vs. Harihar Krupa CHS (2024) 9 SCC 606, K.K. Bhalla vs. State of M.P. (2006) 3 SCC 581 and State of Bihar vs. Project Uchcha Vidya (2006) 2 SCC 545***, the Court reiterated that extraneous political interference cannot obstruct statutory functions. Authorities were directed to implement eviction orders under Sections 33–39 of the Slum Act, 1971 and ensure smooth implementation of the scheme in public interest.

7 SACHIN MALPANI AND ORS... PETITIONERS VS. NILAM PATIL AND ORS., WRIT PETITION NO. 9179 OF 2022, DECIDED ON 4TH AUGUST, 2025 [BOMBAY HIGH COURT]

Section 10 of the Maharashtra Apartment Ownership Act, 1970 ("Apartment Act") - common expenses of a condominium must be charged to apartment owners in proportion to their percentage of undivided interest in the common areas and facilities, as declared in the registered Deed of Declaration - Resolutions of the general body prescribing equal maintenance charges cannot override statutory provisions

Facts

The dispute concerns "Treasure Park," a registered condominium of 11 buildings with 356 apartments. A Deed of Declaration (2011) and Supplementary Declaration (2017) subjected the property to the Apartment Act. By resolutions, the General Body levied equal maintenance charges for all apartments, with only sinking fund varying by flat size. The Respondent apartment owners complained to the Deputy Registrar that this violated Section 10 of the Apartment Act. On 08.07.2021, the Deputy Registrar directed the condominium to levy charges proportionately to undivided share. The Petitioners, owners of larger flats, challenged this before the Co-operative Court (Appeal No.01/2021), which rejected their appeal on 13.05.2022. Aggrieved, they approached the High Court.

Issues Involved

1. Whether the Deputy Registrar of Co-operative Societies had jurisdiction under Section 16A of the Apartment Act to pass the impugned order.

2. Whether maintenance charges in a condominium can be equally levied on all apartment owners regardless of flat size, or must necessarily be charged proportionately as per Section 10 of the Apartment Act and the Deed of Declaration.

3. Whether resolutions of the General Body levying equal charges could override the statutory mandate of proportionate levy.

Held

The Court dismissed the writ petition, upholding both impugned orders. It held that by State Notifications (2012, 2021) under Section 3 of the MCS Act, powers of Registrar were conferred on the District Deputy Registrar, hence the Deputy Registrar was competent. The argument of absence of express delegation and reliance on ***Marathwada University vs. Seshrao Balwant Rao Chavan and Sahni Silk Mills vs. ESIC*** was rejected. Moreover, Sections 6 and 10 of the Apartment Act, read with Clauses 7 and 9(xviii) of the Deed of Declaration, clearly mandate that common expenses must be borne proportionately according to the percentage of undivided interest, which is based on the apartment's value/area. Larger flat owners, enjoying higher voting rights, must bear higher proportionate contributions. Past resolutions for equal charges cannot override statutory provisions. Reliance on ***Venus Co-op Housing Society vs. Dr. JY Detwani*** was distinguished. The registered Deed of Declaration has statutory force, and unless amended, binds all members. The Petitioners had benefited from unequal levy earlier but cannot obstruct statutory compliance. Thus, both orders (08.07.2021 and 13.05.2022) were upheld, and the petition dismissed.

8 THE BOARD OF MUMBAI PORT AUTHORITY V. DSV GERIMAL (IMO NO.7932240) AND ANR., INTERIM APPLICATION NO. 954 OF 2025 IN COMMERCIAL ADMIRALTY SUIT NO. 19 OF 2022, DECIDED ON AUGUST 22, 2025 [BOMBAY HIGH COURT]

Order XI Rule 1 of the Code of Civil Procedure ("CPC") (as amended by the Commercial Courts Act, 2015) – It requires plaintiffs to disclose all documents in their power, possession, control or custody at the time of filing the plaint - an exception exists under Rule 1(c)(ii) permitting production of documents in answer to any case set up by the defendants subsequent to the filing of the plaint - In such cases, amendments under Order VI Rule 17 CPC may be allowed to determine the real controversy, provided no change in the nature or cause of action of the suit arises

Facts

The applicant, Board of Mumbai Port Authority, filed a suit for recovery of statutory port dues including port dues, pilotage dues and anchorage charges. An interim application was filed seeking amendment of the plaint to add Exhibits H-1 to H-14. The defendants consented to H-1 to H-10, being subsequent documents, but opposed H-11 to H-14 on the ground that they existed prior to filing of the suit, were in plaintiff's possession, and could not be introduced later due to Order XI Rule 1 CPC. The plaintiffs argued that the amendments were necessitated as defendants, in their written statement, wrongly annexed an outdated scale of rates (2006–2012), whereas the suit claims related to a later period (post-2012). Exhibits H-11 to H-14 contained applicable scales of rates (2017–2019) necessary to meet defendants' case.

Issues Involved

1. Whether documents (Exhibits H-11 to H-14), though in plaintiff's possession at the time of filing, could be introduced later by way of amendment under Order VI Rule 17 CPC despite the restrictions of Order XI Rule 1 CPC in commercial suits?

2. Whether the proposed amendments changed the nature of the suit or were necessary to determine the real controversy between the parties?

Held

The Court observed that Order XI Rule 1 CPC generally mandates disclosure of all documents at the time of filing the plaint, and prohibits reliance on undisclosed documents except with leave of the Court upon showing reasonable cause. However, Rule 1(c)(ii) carves out an exception for documents filed in answer to defendants' subsequent pleadings. Since the defendants annexed scales of rates (2006–2012) irrelevant to the period of claim, the plaintiffs were justified in seeking to introduce applicable scales of rates (2017–2019). The Court relied upon ***Valo Automotive Pvt. Ltd. vs. Hassad Food Co. Q.S.C., Bennett Coleman & Co. Ltd. vs. ARG Outlier Media Pvt. Ltd.,*** and distinguished ***Sony Music Entertainment India Pvt. Ltd. vs. Ilaiyaraaja Music N. Management Pvt. Ltd.,*** holding that the latter case was factually different. The principles from ***Khanna Rayon Industries Pvt. Ltd. vs. Swastik Associates*** were acknowledged but found consistent with allowing the amendment. As the issues were yet to be framed, the trial had not commenced, and the nature of the suit (recovery of port dues) remained unchanged, the Court allowed the interim application. Plaintiffs were granted liberty to amend the plaint and annex documents H-11 to H-14 within two weeks.

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THE CHAMBER NEWS



CA Mehul Sheth
Hon. Jt. Secretary



CA Ankit Sanghavi
Hon. Jt. Secretary

Important events and happenings that took place online/physical between **August 1, 2025 to August 31, 2025** are being reported as under:

PAST PROGRAMMES

INTERNATIONAL TAXATION

1.8.2025
Supreme Court Speaks: Substance, Control & PE – The Hyatt Ruling
Speaker: ***CA Jimit Devani***

Topic: Sessions on Reporting of Foreign Assets Schedule of ITR and Claiming of Foreign Tax Credit

11.8.2025
a Foreign Tax Credit - Intricacies and Practical aspects
Speaker: ***CA Monika Wadhani***

12.8.2025
b Foreign Assets Schedule of ITR - Reporting and Issues
Speaker: ***CA Vishal Shah***

21.8.2025
Topic: Study Circle Meeting on Global Moves, Local Impact: OBBBA for Indian NRIs and Businesses
Speaker: ***CA Hardik Mehta***

STUDENT

14.6.2025 & 8.6.2026
Topic: 2nd E-certificate Course on Practical Income Tax & Litigation Masterclass

2.8.2025
a Inauguration
Hon'ble Shri Justice Chandrakant Vasant Bhadang - President, ITAT

Basic Concepts
Mr. Devendra Jain, Advocate

4.8.2025
b Income from Capital Gains
Speaker: ***CA Sailee Gujarathi***

6.8.2025

c Income from Capital Gains (*continued*)
Speaker: ***CA Sailee Gujarathi***

8.8.2025

d Income from Capital Gains – Exemption provisions
Speaker: ***CA Prachi Parekh***

11.8.2025

e Income from House Property (including rules)
Speaker: ***Ms. Niyati Mankad, Advocate***

14.8.2025

f Profits and Gains from Business or Profession - Income
Speaker: ***CA Chirag Wadhwa***

18.8.2025

g Profits and Gains from Business or Profession – Deduction (*continued*)
Speaker: ***Mr. Ravi Sawana, Advocate***

19.8.2025

h Profits and Gains from Business or Profession - Books of Accounts, Tax Audit, Presumptive Tax provisions, ICDS, etc.
Speaker: ***CA Chirag Wadhwa***

22.8.2025

h Income from Salaries (including Rules)
Speaker: ***CA Aditya Pradhan***

25.8.2025

h Income from Salaries (including Rules) (*continued*)
Speaker: ***CA Aditya Pradhan***

26.8.2025

h Income from Other Sources (including rules 11UA & 11UB)
Speaker: ***Ritu Punjabi***

29.8.2025

h Residential Status and Scope of Total Income
Speaker: ***Jinal Jain***

Topic: **Webinar on Comprehensive Sessions on Tax Audit – Students' Perspective**

12.8.2025

a Key Note Address
Speaker: ***CA Ashok Mehta***

Detailed discussion on relevant provisions of Income-tax Act and Clause by Clause analysis of tax audit report
Speaker: ***CA Yogesh Amal***

13.8.2025

b Continuation of analysis of remaining clauses of tax audit report and detailed discussion on basics of form 3CD, documentation, uploading and filing of tax audit report
Speaker: ***CA Gautam Mota***

INDIRECT TAXES

6.8.2025

Topic: **Study Circle** - Practical Issues in Handling Search, Investigations, Seizure and Prosecution
Chairman: Abhay Desai, Advocate
Group Leader: CA Sumit Jhunjhunwala

DIRECT TAXES

7.8.2025
Topic: Webinar on Shares, Securities & Derivatives: A Taxation Masterclass
Speaker: ***CA P. V. Srinivasan***

19.8.2025
Topic: **Webinar on Practical Insights on Renewal and Re-registration of Charitable Institutions under Income Tax**
Speaker: ***CA Gautam Nayak***

26.8.2025
Topic: **ISG - Recent Important Decisions Under Direct Tax**
Speaker: ***CA Vijaykumar Puri***

DELHI CHAPTER

30.7.2025
Topic: **Recent important judgements of Supreme Court / High Courts**
Chairman : Mr. G S Pannu - Ex-Vice President, ITAT
Panel Members : Mr. Sunil Aggarwal (Standing counsel at DHC) & Mr. Ashish Garg

STUDY CIRCLE & STUDY GROUP

22.8.2025
Topic: **Learn with the Legends – An exclusive Fireside Chat with Dr. Y. P. Trivedi, Senior Advocate & Past President**
Moderator: ***Mr. K. Gopal, Advocate & Past President***

■

Glimpses of the event on Learn with the Legends - An exclusive Fireside Chat with Dr. Y. P. Trivedi, Senior Advocate & Past President held on 22nd August, 2025 at office No. 3, Reva Chambers, New Marine Lines, Mumbai 400020



(L-R) CA Neha Gada (Vice President), Adv. K Gopal (Moderator), Senior Adv. Y.P. Trivedi, CA Jayant Gokhale (President) & CA Dipesh Vora (Chairman – SC & SG Committee)



CA Dipesh Vora welcoming the guest



Adv. K. Gopal Moderating the session





Group Photo

THE CHAMBER'S JOURNAL
Posted at the Mumbai Patrika Channel
Sorting Office, Mumbai 400 001.
Date of Posting: 15th-16th of Every Month
R.N.I. No. MAHENG/2012/47041
Date of Publishing 12th of Every Month



Printed and Published by Shri Kishor D. Vanjara on behalf of The Chamber of Tax Consultants, 3 Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020 and Printed at Finesse Graphics & Prints Pvt. Ltd., 309 Parvati Industrial Premises, Sun Mill Compound, Lower Parel (W), Mumbai - 400 013. Tel.: 4036 4600 and published at The Chamber of Tax Consultants, 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020. Editor : Anish M. Thacker