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CENTENARY SPECIAL ISSUE



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Glimpses of the 6-Hour Workshop

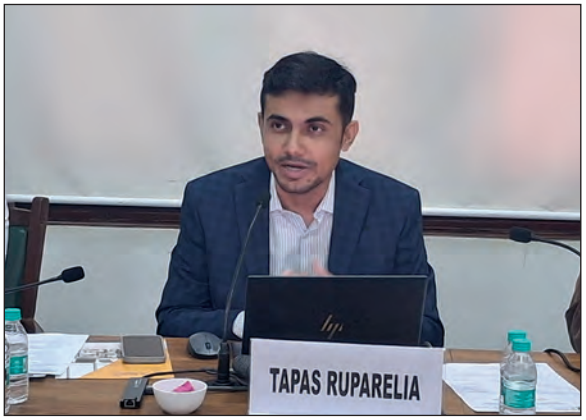
Practical Use of AI for CAs/ Advocates/ Practitioners in GST Practice held on 4th October, 2025 at IMC, Mumbai



CA Jayant Gokhale (President) giving his opening remark (L-R) CA Raj Khona (Convenor), Adv. Keval Shah (Chairman), CA Tejas Ruparelia (Speaker), CA Jayant Gokhale (President), CA Yash Parmar (Vice Chairman), CA umang Talati (Convenor)



Adv. Keval Shah (Chairman) welcoming the speakers and delegates



CA Tejas Ruparelia (Speaker) addressing the delegates



CA Rahul Bajaj (Speaker) addressing the delegates





Delegates

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From the President

Dear Members,

I am writing to you on the morning of Vijayadashmi, so at the outset, I extend my warm wishes to all on the occasion of Dussehra. As we step into the festive season, I hope you will be able to enjoy these festivities and celebrations with your family and loved ones.

The Chamber family is also bringing a bouquet of professional gifts for our members. Think of them as Deepavali gifts/offerings. Let me give you a glimpse of the goodies in store for you.

A unique program that will take place this year is the Shatabdi Summit - a special 2-day Centenary Conference that will take place at Hotel Sahara Star on 30th and 31st January 2026. You will recollect that we launched our Centenary celebrations in a grand manner at the same venue with a capacity crowd. The Shatabdi Summit is also planned in a similar fashion at a highly subsidised rate, since we wish to gift our members, who are like family to all of us. The special early bird offer for enrolling for this momentous event is from Dussehra to Diwali. So, hurry and enrol so that you do not miss out. But as with Diwali gifts, there are multiple gifts in store for our committed professionals. All of these events given below are also giving early bird enrolment offers.

The RRCs have been very carefully structured to blend learning and leisure in the manner that has been the hallmark of the Chamber. These will enable you to kickstart the new year with a bang and to invest in your knowledge capital to gain rich dividends in the coming year 2026. I mention these specially because, despite the enormous demand that these programs have generated in the past years, we have consciously decided not to increase the enrolment fees since we are celebrating the Centenary year and are keen to share the benefits and knowledge with our committed membership. I can only say in our customary language, “any delay in enrolment will be at your risk and cost”! Details are available on the website, and the enrolment counters are already ringing.

Having mentioned the gifts that are coming your way, I may also mention what we have been sharing with the authorities in the month gone by. On 16th Sept, Past President Anish Thacker, our Delhi Chapter Chairman Prakash Sinha, and I had the privilege of making a presentation to Shri Pitambar Das, Jt. Secretary (TPL), in the Finance Ministry, regarding Tax issues relating to Alternative Investment Funds and other such entities. I am happy to inform

Event	Venue	Dates
Shatabdi Summit	Sahara Star Hotel - Mumbai	30th & 31st Jan 26
FEMA RRC	Radisson Blu - Nashik	16th to 18th Jan 26
GST RRC	Jaypee Palace - Agra	8th to 11th Jan 26
Direct Tax RRC	Sheraton Grand - Bengaluru	5th to 8th Mar 26

that the deliberations were very constructive, and Mr Das also appreciated the Chamber's role in partnering with the government to bring in meaningful reforms.

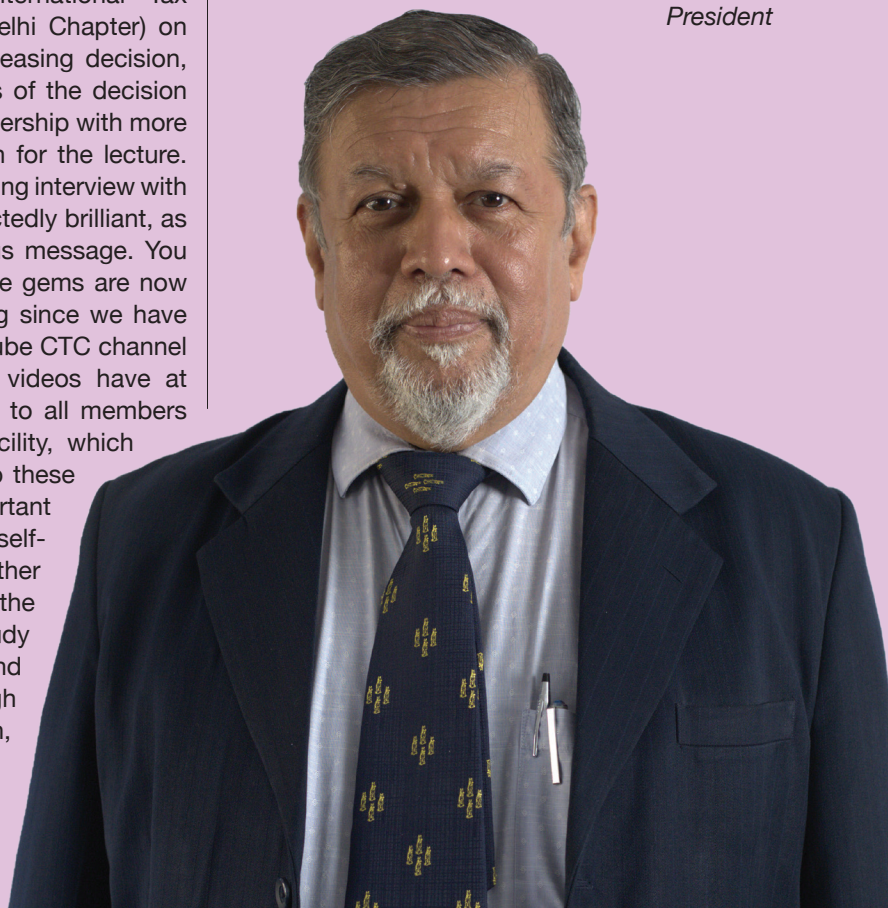
Similarly, the Chairman of the Indirect Tax Committee, Keval Shah, and I had the privilege of attending the launch of the GSTAT website at the hands of the FM, Ms. Nirmala Sitharaman, on 24th September. The President of GSTAT, Justice Sanjaya Kumar Mishra, and Shri Arvind Shrivastava, Revenue Secretary, spelt out the positive changes that the ministry is bringing to enable taxpayers and practitioners to file appeals online, track the progress of cases, and participate in hearings through digital mode. (Press Release: Press Information Bureau: https://www.pib.gov.in/PressReleseDetail.aspx?PRID=2170932) It was an occasion to hear the policy makers firsthand and to interact with senior GST professionals across the country.

The Study Circle and lecture meetings continue with the usual enthusiasm. Of particular note were 2 lectures (by the International Tax Committee and also by the Delhi Chapter) on the analysis of the Sky-High Leasing decision, which was held within 50 days of the decision being rendered. It got wide viewership with more than 100 participants logged in for the lecture. Similarly, the Udaan series opening interview with Dr. Narendra Jadhav was expectedly brilliant, as I had referred to in my previous message. You will be happy to note that these gems are now available for post-event viewing since we have consciously activated the YouTube CTC channel (ctcconnect). These uploaded videos have at least 10 hits per day. I appeal to all members to take benefit of this free facility, which will give you access not just to these lectures, but also other important sessions conducted in our self-awareness series (SAS) and other valuable content. Apart from the study circles in Mumbai, our study Groups in Delhi, Hyderabad, and Pune have demonstrated high activity levels and participation, which is very heartening, because it is a fundamental belief at CTC that the study of the intricacies of our professional subjects and the dissemination of related knowledge is CTC's mission and raison d'être. The enthusiastic and active participation by our members across the country is what enthuses our core group to keep performing with such zeal and commitment.

Before concluding, I must record my appreciation for another primary activity of the Chamber, viz., its Journal. This October issue deals with the Constitutional Aspects of Taxation. I believe that this issue will be truly a collector's item, not just because it is a Centenary Special Issue but also because it addresses the foundational concepts that concern us as practitioners, taxpayers, and citizens. The editorial of this issue speaks of this in greater detail, and therefore, I will not dwell upon this aspect further. However, I strongly suggest a detailed reading from cover to cover.

Happy festivities and Happy Reading!

CA Jayant Gokhale
President



From the Editor's Desk

My Brothers and Sisters,

The survival of our democracy and the unity and integrity of the nation depend upon the realisation that constitutional morality is no less essential than constitutional legality. Dharma lives in the hearts of public men; when it dies there, no Constitution, no law, no amendment, can save it" - Shri Nani A Palkhivala.

India's constitutional framework is the bedrock upon which the nation's vast and complex tax system is constructed. The relationship between the Indian Constitution and tax law is not merely academic; it is a dynamic, evolving interplay that shapes the country's fiscal landscape, determines the limits of governmental power, and ultimately affects the economic well-being of every citizen. At a time when fiscal policies are under intense scrutiny and debates on federalism and equity rage on, it is imperative to reflect on how constitutional principles have both enabled and restrained the exercise of taxation in India.

At the heart of the Indian tax system lies the Constitution of India, which meticulously delineates the powers to levy and collect taxes between the Union and the States. The Seventh Schedule, through its Union, State, and Concurrent Lists, is the primary mechanism for this allocation. Articles 245 to 265 provide the constitutional scaffolding for the imposition, collection, and appropriation of taxes, while Article 265 stands as a sentinel, declaring, "No tax shall be levied or collected except by authority of law."

This foundational principle ensures that the state's power to tax is not arbitrary but is subject to the rule of law — a fundamental feature of our democracy. The requirement that all taxation must have legislative sanction provides a crucial check on executive overreach, fostering transparency and accountability.

The division of taxing powers is a living testament to India's federal structure. Yet, it has also been a perennial source of friction. State governments frequently argue that the Union's control over the most lucrative sources of revenue — especially after the introduction of the Goods and Services Tax (GST) — has compromised their fiscal autonomy. The GST, while a remarkable exercise in cooperative federalism, has also exposed fissures in centre-state relations, particularly concerning compensation payments, revenue sharing, and the ability of states to raise resources independently.

Judicial pronouncements have often been called upon to clarify the boundaries of these powers, with the Supreme Court playing a pivotal role in interpreting the constitutional provisions to preserve the federal balance. The recent debates around GST compensation and the powers of the GST Council have once again thrown the spotlight on the need for a more robust and equitable fiscal federalism.

While the Constitution empowers the state to raise revenue, it also protects citizens against excessive or discriminatory taxation. The right to equality (Article 14), the prohibition against discrimination (Article 15), and the guarantee of freedom to practise any profession or trade (Article 19(1)(g)) all serve as bulwarks against arbitrary fiscal measures.

Courts have not shied away from striking down tax laws that infringe on these rights, insisting that taxation must pass the tests of reasonableness and non-arbitrariness. The doctrine of proportionality and the principle of non-retroactivity in tax legislation are constitutional shields that protect the taxpayer from the might of the state.

The Indian judiciary has often been pressed to serve as the final arbiter in disputes involving

tax laws and their constitutional validity. From landmark cases on the interpretation of taxing powers to recent verdicts on GST and on online transactions, the courts have ensured that legislative enthusiasm does not trample constitutional boundaries. Except for the case of Ashish Agarwal, where the recourse to Article 142 can be debated, the Courts, especially the Supreme Court, have stood steadfast in the upholding of constitutional principles while deciding tax cases.

However, the proliferation of tax litigation and the repetitive invocation of constitutional challenges also raise concerns about the complexity and uncertainty in the tax regime. There is an urgent need for clarity, consistency, and predictability, both in legislative drafting and judicial interpretation.

The interplay between the Indian Constitution and tax law is not static; it is an ongoing negotiation between the state's imperative to raise resources and the citizen's right to justice and fairness. As India aspires to be a $5 trillion economy, the pressures on the tax system and the constitutional framework that supports it will only intensify.

It is therefore incumbent upon lawmakers, administrators, and the judiciary to ensure that taxation remains a tool for nation-building, not a weapon of oppression. The constitutional principles of equity, federalism, and the rule of law must not merely inform tax policy; they must animate its every detail. The future of India's fiscal architecture depends on a delicate balance: one that respects the letter and spirit of the Constitution while meeting the evolving needs of a vibrant, diverse, and ambitious nation. The new Income-tax Act, 2025, hopefully with its change in language notwithstanding (used intentionally here), should, in my view, continue to uphold these constitutional principles too.

This issue on the 'Constitutional Aspects of Taxation' is the second of the six special issues of our Centenary Year. I would like to express deep gratitude to the Editorial Board for thinking of this topic for the special issue. I would like to thank CA Ameya Kunte, Chairman of the Journal Committee and Advocate Vinita Krishnan, and the Journal Committee team for their effort in putting this issue together. I would like to thank the authors for their articles, which contribute to the distinctiveness of this issue. In my recollection, this is the first such issue in the Chamber's Journal's history.

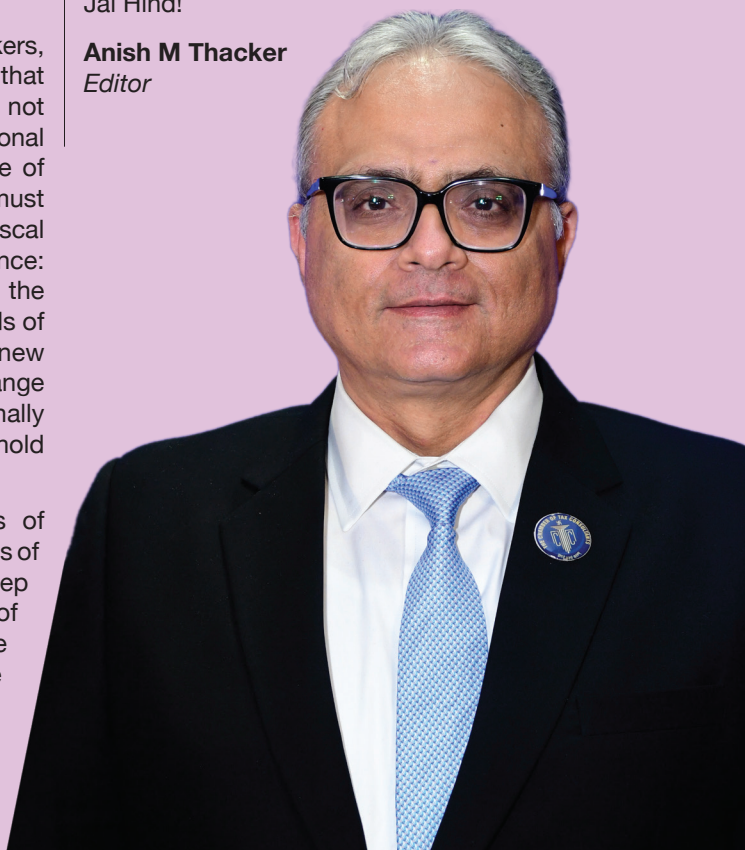
We now have a breather of a month's extension (received after considerable effort of our professional brethren) to complete our work and not be too stressed out in the festive season. I am writing this editorial on the auspicious day of Dussehra, where we all pledge to purge the evil from within, and which day signifies the triumph of values over baser human emotions like greed and lust. I wish all of you the very best for the festive season with Diwali and the new Samvat year around the corner. May the good in all of us always prevail and come to our rescue in times of need.

I end this communication with another quote from Swami Vivekananda:

"Do not lower your goals to the level of your abilities. Instead, raise your abilities to the height of your goals."

Jai Hind!

Anish M Thacker
Editor



The Father of Indian Tax Reforms
Dr Raja J Chelliah



Dr. Raja J. Chelliah (born 1922, passed away April 7, 2009) was a national icon, recognized as a teacher of economics, a fiscal policy maker, an institutional builder, and a mentor. The Government of India honoured him with the prestigious Padma Vibhushan in 2007. He is widely remembered as the Chief Architect of the Tax Reforms or the Father of Indian Tax Reforms initiated by the Government of India in 1991 when the country embarked on its liberalization journey.

Dr. Chelliah obtained his BA and MA degrees in Economics from the University of Madras. After teaching at Madras Christian College, he pursued his Ph.D. in Economics at the University of Pittsburgh, USA, on a Fullbright-SmithMundt scholarship. His early career included stints at the National Council of Applied Economics Research (NCAER), University of Rajasthan, and Osmania University. He then joined the International Monetary Fund (IMF), where he rose to become the Chief of the Fiscal Analysis Division in the Fiscal Affairs Department from 1970 to 1975.

Returning to India in 1975 at the behest of then Finance Minister C. Subramanian, Dr. Chelliah dedicated himself to rebuilding India's fiscal system. He served as an Honorary Consultant to the Ministry of Finance (1975-77), a member of the Planning Commission, and the 9th Finance Commission (1985-90). As Chairman of the Tax Reforms Committee in 1991, he prepared a blueprint for tax reforms, later serving as fiscal adviser to the Finance Minister for their implementation. His influence extended internationally, as he chaired the Tax Reforms Commission in Zimbabwe (1984-85) and advised South Africa's Financial and Fiscal Commission.

A formidable institutional builder, Dr. Chelliah founded both the National Institute of Public Finance and Policy (NIPFP) in New Delhi (starting in 1976) and the Madras School of Economics in Chennai. Remarkably, he started the Madras School of Economics after the age of 70, nurturing it into an institution of excellence. His work included invaluable contributions to fiscal federalism, development issues, and poverty eradication, leaving an indelible impression on India's rapidly globalizing economy, including the introduction of VAT in indirect taxes. His publications include: Towards Sustainable Growth: Essays in Fiscal and Financial Sector Reforms in India (1996), Ecotaxes on Polluting Inputs and Outputs (2007), Income–Poverty and Beyond (2002), Reports on India's Tax Reforms (with Vijay L. Kelkar, 2003).

His 1960 book, Fiscal Policy in Underdeveloped Countries, remains a classic and widely-used learning tool. Noted below is an excerpt therefrom:

"The fiscal policy appropriate for a country will depend, apart from many other factors, on the stage of its development and on the social goals currently accepted. Therefore, the policies outlined in this book are those that are called for in the light of the current situation in the countries that are now making desperate attempts at development. Conceivably, the presently underdeveloped countries will, sooner or later, reach a higher stage in their economic evolution. It may then be no longer considered vitally important to accelerate the rate of economic growth. In such an altered situation, all economic policies, including fiscal policy, will need to be re-oriented. The phase of development taken as background for policy, for purposes of this study, is the period of transition from the current state of under-development to the state of self-sustaining economic growth."

Doctrine of Ultra Vires and Interplay of Parent and Subordinate Legislation

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*See Disclaimer on page 5



N Venkataraman
Senior Advocate & Additional Solicitor General of India

Overview

In this article, the author examines the doctrine of ultra vires and its crucial role in the relationship between parent and subordinate legislation within the Indian legal framework. The doctrine, meaning "beyond one's legal power," ensures that entities exercising powers granted by legislation remain strictly within those bounds, rendering any action outside this scope null and void. The article highlights how parent legislation provides the source of authority, while subordinate legislation operates within the limits set by the parent Act. The author discusses landmark cases and constitutional principles, emphasizing that subordinate legislation cannot override the parent statute or the Constitution. Judicial review acts as a safeguard, striking down actions that are arbitrary, unreasonable, or contrary to statutory or constitutional limits. The article underscores the importance of understanding regulatory bodies and their delegated powers, and how they must adhere to the principles of natural justice, transparency, and certainty. The author explains how the doctrine of ultra vires serves as a constitutional checkpoint, ensuring that legislative intent and the rule of law prevail over administrative convenience or unchecked discretion.

Introduction

Legislation is a law or set of laws that is proposed by a Government and made official by the vote of Parliament.[1] An entity - be it Government, Corporate, or an Individual, which derives its power from legislation, must exercise such powers strictly within the prescribed sphere of that enabling legislation. The exercise of an action which is beyond the purview of the authorised power is governed by the *doctrine of ultra vires,* i.e., *"beyond the power" or "acting or done beyond one's legal power or authority*. The doctrine of ultra vires renders such an action null and void, ensuring that the executive bodies

1 *Ishita Chandra, Legislation as a source of law, MANUPATRA, (Aug. 3,2025 at 14:16 pm), cb76af91-b86c-47d7-b8f9-19bbe6543603.pdf.*



exercise their power within the scope of their limitation and not encroach upon anything which was beyond their Authority.[2]

One of the major aspects of this doctrine extends to its application in the interplay of parent and subordinate legislation. Salmond had divided legislation into two kinds: Supreme or Parent legislation, *one which is the supreme law of the land, which cannot be revoked, altered, or regulated by any other authority, and subordinate legislation, the one which derives its powers and functions in accordance with the supreme legislation*.[3] A parent legislation is one that provides for the source of power for the authority mentioned under it. Whereas, a subordinate legislation is where the primary legislation confers its powers and functions upon a subordinate body to make laws or regulations.

2 *Delhi Laws Act, 1912, In Re, 1951 SCC 568.*
3 *Ibid.*

The doctrine of ultra vires applies in this sphere to assess the extension of the delegated power within the explicit or implied bounds granted by the parent legislation to the subordinate one.

In the context of administrative law, this doctrine upholds the principle of separation of powers by fortifying that the institutional boundaries demarcating the organs of the democracy must not encroach upon each other's powers while performing their respective functions, and the power delegated by one to another within its authority must be executed within that sphere only[4] and not beyond it or encroached upon with the powers of the other body. The extension of the doctrine applies to the actions of the executive and delegated legislation, stating that while implementing laws, they cannot act beyond the delegated or conferred powers from the legislature.

> The exercise of an action which is beyond the purview of the authorised power is governed by the doctrine of ultra vires, i.e., "beyond the power" or "acting or done beyond one's legal power or authority.

4 *Mayank Thapa, Ultra Vires in Corporate Law: everything you need to know (2025), THE LEGAL VEDA, (Aug 6, 2025 at 15:45 pm), Ultra Vires in Corporate Law: Everything You Need to Know (2025).*

Historical Evolution of the Doctrine of Ultra Vires

The ultra vires doctrine first emerged in the common law via the corporate sector in the early 15th century, where the principle was instituted for all individuals to ascertain the legality of an action.[5] Gradually, the scope and application of this doctrine expanded to administrative law, playing a crucial role in maintaining control of overlap or overstep of the administrative authorities beyond their powers,[6] to ensure limits on the delegated legislation as well as its adherence to the intent of the parliament. In the 20th Century, in the *Anisminic Ltd case*,[7] Lord Reid, while applying the doctrine of "*collateral fact*," stated that - "*an error of law in the decision of a public body renders the decision void and ultra vires and hence subject to judicial review.*"

The ultra vires doctrine first emerged in the common law via the corporate sector in the early 15th century, where the principle was instituted for all individuals to ascertain the legality of an action.

In the Indian context, the principle started embedding its roots post-independence by sanctioning the supremacy of the Indian Constitution across the territory. From holding that- *a mere provision of a subordinate act being ultra vires to the Constitution's articles does not affect the validity of the rest of the Act*[8] to stating that - *If the act wholly in its operation is not sanctioned by the Constitutional provisions, then the act itself must be held to be completely ultra vires to the Constitution and void,*[9] the doctrine of ultra vires plays a pivotal role in upholding the supremacy of the Indian Constitution, by asserting that no entity - be it an individual, authority, or institution - is above the law, and the powers conferred by such an enabling law must be executed within the confined sphere of such conferred powers only and not beyond it.

The early jurisprudence in delegated legislation began with the *Delhi Law Act, 1912 Case*[10] recognizing that the legislative power to repeal or alter/ amend, or modify the essential particulars of laws already in force cannot be delegated. The decision of an administrative body must be in accordance with the purpose laid down in its enabling statute, and if such actions are manifestly unjust/outrageous, or unauthorised, they are ultra vires on the grounds of arbitrariness and unreasonableness.[11] Further, the *Express Newspapers'* case[12] explains the principle of ultra vires, as to require the statutory powers to be exercised on the grounds of reasonability, good faith, and correct measures. From providing a presumption in favour of the constitutionality of the act[13] to lay down standards for the test

The doctrine mandates that the powers conferred by law are neither absolute nor discretionary but are circumscribed by express and implied statutory limits and within the realms of the Constitution.

5 *Ishika Jaiswal, An analysis on the doctrine of ultra vires, Volume 6, Issue 1, INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH 2, (2025).*

6 *Sarah Lee, Understaning Ultra Vires in Administrative Law, NUMBERANALYTICS, (Aug 13, 2025 at 19:30 pm), Understanding Ultra Vires in Administrative Law.*

7 *Anisminic v. Foreign Compensation Commission [1968] 2 QB 862.*

8 *A.K. Gopalan v. State of Madras, 1950 SCC 228.*

9 *Romesh Thappar v. State of Madras, 1950 SCC 436.*

10 *Supra note 2 at Pg 1.*

11 *Vinod Kumar v. State of Haryana, (2013) 16 SCC 293.*

12 *Express Newspapers (P) Ltd. v. Union of India, (1986) 1 SCC 133.*

13 *Cellular Operators Assn. of India v. TRAI, (2016) 7 SCC 703.*

of ultra vires[14], the doctrine mandates that the powers conferred by law are neither absolute nor discretionary but are circumscribed by express and implied statutory limits and within the realms of the Constitution.

Constitutional Supremacy vis-à-vis the Interplay of Powers

The validity of a statute or enactment can be challenged on the grounds of being ultra vires to the Constitution.[15] Therefore, the primary or the parent legislation is always under the scrutiny of the constitutional provisions[16] and the secondary or subordinate must abide by both the provisions of the primary legislation as well as the Constitution for its operation.

The interrelationship between the parent and the subordinate legislations is the functional one between the law-making or law-providing authority and the law-applying or implementing authority.

The interrelationship between the parent and the subordinate legislations is the functional one between the law-making or law-providing authority and the law-applying or implementing authority. The subordinate legislation or the law implementing body must be in consonance with the powers conferred to it by the parent legislation. However, the parent legislation is not absolute and can be challenged on the grounds of constitutionality.[17]

Similarly, a subordinate legislation like its primary source may also be questioned on the grounds of - competence of the legislative body framing it[18], violation of the Constitutional provisions- *violation of even a single provision is sufficient to render it void*[19], a specific violation of any of the fundamental rights under the Constitution[20], non-conformity with the enabling legislation or the parent act[21], repugnant in nature to any other law[22], a manifest of arbitrariness or unreasonableness[23] in conferring such power by the parent act. The Apex Court[24] has laid down various principles to determine the ultra vires grounds of a subordinate legislation, such as - A rule-making body is to function within the powers authorised by the rule-making authority since the former merely derives such powers from the latter.[25] If the ground exceeds *the power*-then the source, meaning of such subordinate legislation and consistency of it with the conferred powers, must be determined to check an ultra vires nature.

An act is valid if it encroaches upon matters outside its scope; *incidentally*, a mere incidental trench upon the matters outside the authorized field of an enactment does not affect the validity of the act itself.[26] The Courts can rule an action as ultra vires of an executive authority where a statute is conferring discretionary powers upon the executive and such authority acts in any arbitrary manner, however, *the action* alone will not result in questioning the Constitutional

14 *Naresh Chandra Agrawal v. Institute of Chartered Accountants of India, 2024 SCC OnLine SC 114.*
15 *Janhit Abhiyan v. Union of India (EWS RESERVATION), (2023) 5 SCC 1.*
16 *Pratiksha Gautam, Sakshi, Judicial Control: Doctrine of Ultra Vires in Administrative Law, JOURNAL FOR LAW STUDENTS AND RESEARCHERS, (Aug 12 2025 at 14:04 pm), JUDICIAL CONTROL: DOCTRINE OF ULTRA VIRES IN ADMINISTRATIVE LAW by Pratiksha Gautam & Sakshi Nathani – JOURNAL FOR LAW STUDENTS AND RESEARCHERS.*
17 *Chintamanrao v. State of M.P., 1950 SCC 695.*
18 *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641.*
19 *Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1.*
20 *Dwarka Prasad Laxmi Narain v. State of U.P., (1954) 1 SCC 1,*
21 *Union of India v. S. Srinivasan, (2012) 7 SCC 683.*
22 *State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201.*
23 *J.K. Industries Ltd. v. Union of India, (2007) 13 SCC 673, see also Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223.*
24 *Naresh Chandra Agrawal v. Institute of Chartered Accountants of India, 2024 SCC OnLine SC 114.*
25 *Kerala SEB v. Thomas Joseph, (2023) 11 SCC 700.*
26 *State of Bombay v. F.N. Balsara, 1951 SCC 860.*

validity of the entire act conferring such powers,[27] to declare an act ultra vires, the Court must be satisfied with the '*substantive unreasonableness*' in the statute itself.[28] The doctrine, as regards the power of a statute, has to be understood reasonably, and the incidental or consequential actions upon the authorised acts are not to be held as ultra vires.[29]



Interface of Functions of Regulatory Bodies and Checks by the Ultra Vires Doctrine

A regulatory body is an outcome of a statutory commission or board that is constituted in accordance with the laws applicable to the regulation of the *public utility industry, licensees, or services*[30] - one which performs the functions delegated by the government through a specific piece of legislation, e.g., The Securities and Exchange Board of India (SEBI) - established under the SEBI Act of 1922[31], the Reserve Bank of India (RBI), established under the RBI Act, 1934[32]. The Insurance Regulatory and Development Authority of India (IRDAI)[33], established under the IRDAI Act, 1999, and similar statutory authorities are creations of specific enactments. The Regulations made by such regulatory body as per their enabling statutes may have the force of law; however, such powers are confined to certain limitations which are to be followed within that sphere alone. While discharging their functions as laid down in their enactments/statutes—*whether in issuing regulations, guidelines, or circulars*—they must act strictly within the limited sphere of their enabling legislation and that too in consonance with the Constitutional provisions.

For instance, a 2023 Recruitment Notification issued under Section 12 of the Army Act, 1950[34] allowing the induction of women in the JAG branch, reserving 6 vacancies for men while only 3 for women, is ultra vires to the Section 12 and the Articles 14, 15 and 16 of the Constitution, reason being that such a notification could not impose an additional restriction as regards to the "extent of induction" since the executive cannot exceed the statutory limits or undermine the Constitutional guarantees, as the parliament has not conferred this right upon the executive by way of Section 12 of the Act.[35] Similarly, the IBC, 2016, under section 240[36] provides for the *regulation-making powers of the board*

27 *State of T.N. v. Hind Stone, (1981) 2 SCC 205*
28 *State of T.N. v. K. Shyam Sunder, (2011) 8 SCC 737.*
29 *Khargram Panchayat Samiti v. State of W.B., (1987) 3 SCC 82.*
30 *Vidhika Sharma, Regulatory Authorities, CAG.GOV.IN, (Aug 13 at 21:52 pm), https://cag.gov.in/uploads/media/GroupIV-RegulatoryBodies-20200518224004.pdf.*
31 *The Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament,1992 (India).*
32 *The Reserve Bank of India Act, 1934, No.2, Acts of Parliament, 1934 (India).*
33 *The Insurance Regulatory and Development Authority Act, 1999, No. 41, Acts of Parliament, 1999 (India).*
34 *Army Act, 1950, No, 46, Acts of Parliament, 1950 (India).*
35 *Arshnoor Kaur v. Union of India, 2025 SCC OnLine SC 1668.*
36 *The Insolvency and Bankruptcy Code, 2016 sec. 240, No. 31, Acts of Parliament, 2016 (India).*

(Insolvency and Bankruptcy Board of India) and for discharging these functions, rules and regulations are to be made by the Central government, if a regulation is passed by the IBBI conferring powers beyond its competence of the power instilled in its authority by the Code will be held as ultra vires.[37]

Any action that deviates either the statutory limits or the constitutional safeguards, is liable to be struck down as *ultra vires* and hence void, since the executive is only a delegate and create substantive rights or restrictions, a subordinate legislation cannot override the parent statute nor the Constitution, hence the administration discretion of such regulatory authorities must remain non-arbitrary and reasonable to withstand judicial scrutiny.

A Regulation or Notification affecting a radical change in the policy of the enabling act is consequently ultra vires.[38] Even a constitutional body like UPSC is subject to judicial review if its decisions and actions are ultra vires to the Constitution or any legislation, or are arbitrary or discriminatory in nature.[39] Therefore, the powers conferred to the regulatory bodies by way of subordinate legislation enshrining necessary principles of natural justice, transparency, and certainty must be exercised within such a limited sphere by them.[40]

Conclusion

The doctrine of ultra vires is not only a procedural measure but is a constitutional safeguard ensuring that the conferred power remains accountable, proportionate, and law-bound. The doctrine of the inter-relationship of the parent and the subordinate legislation sheds light on the intricate balance between the intent of the legislature and the conferred power on the executive body. At the heart of this relationship, there lies a constitutional expectation *that all the delegated authorities must operate strictly within the confined powers explicitly or implicitly, which are conferred upon them by the primary or the parent legislation.*

The ultra vires doctrine is both a doctrinal as well as a judicial checkpoint, ensuring that the subordinate legislations - *like rules, regulations, circulars, or notifications*—are not wielded as instruments of unchecked discretion but are used only to implement and execute their functions, not to expand, contradict, or nullify the will of the parent legislature. The courts, with the help of judicial review, remain the ultimate watchdogs of this delicate boundary, preserving both the constitutional integrity and the legislative supremacy. Conclusively, the doctrine reaffirms the principle that in a constitutional democracy, the law is not just about what can be done, it is about what ought to be done - *within the conferred authority*. It serves as a reminder to both the lawmakers and the administrators that the legitimacy of their actions flows from the Constitution and the rule of law and not from expedience or convenience.

Self-contained sovereign legislations with virtually very little or no delegation now belong to the Pyramid Era. When actions, transactions, infractions, and global cross-border participation are involved, it is just impossible for plenary legislations to make an end-to-end coverage. Delegation is inevitable, but the avatars they take now are not confined just to rules or regulations. Notifications, clarifications, FAQs, policy issues, endorsement of stakeholder stand, and many more are getting added to this syllabus. The more the dilution, much more the obligation to make it legal and constitutional. Absence of a source of power, excessive delegation, abdication, emerge as front-line warriors, ably packed with a second line defence of them being arbitrary and unreasonable, and therefore violative of the equality clause, become the headers in court battles, and in the process, occasions do arise in court proceedings where we miss the woods for the trees.

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37 (2018) ibclaw.in 58 NCLT.

38 Rajnarain Singh v. Patna Administration Committee, (1954) 2 SCC 82.

39 UPSC v. Gyan Prakash Srivastava, (2012) 1 SCC 537.

40 Delhi Pollution Control Committee v. Lodhi Property Co. Ltd., 2025 SCC OnLine SC 1601.

Basic Concepts of Constitutional Law

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V Sudhish Pai
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Overview

In this article, the author examines the foundational principles of constitutional law. The author highlights the concept of a government with enumerated powers, where the judiciary acts as the guardian and arbiter of constitutional functions. Drawing on Dicey's classic enunciation, the article discusses the sovereignty of the parliament in England with the supremacy of a written constitution, distribution of powers, and judicial review in federal systems like India and the United States. The judiciary's independence and self-restraint are emphasized as essential to maintaining constitutional supremacy. The article further explores the distinction between legislative and constituent powers. It explains how constitutional amendments require a special process and authority. The basic structure doctrine is discussed as a safeguard against amendments that could undermine the constitution's core features and values, ensuring the preservation of democratic principles and human freedom. The author also addresses the principle of morality, explaining that constitutional law encompasses not only written rules but also conventions, customs, and judicial interpretations, which collectively shape the functioning of government institutions.

Introduction/Constitutional Law

Constitutional law is a part or branch of public law dealing with the state, its different organs, and their relations inter se as well as relations between the state and its citizens. It is a species of the generic term 'constitution' which is used to denote that part of the organic instrument which is directly enforceable in a court of law.

Constitution and Constitutionalism

The most basic or fundamental concepts of constitutional law are 'constitution' and 'constitutionalism'. Constitutionalism essentially is a limited government under a fundamental law, which is the constitution. This concept has its religious roots in the idea of divine law, its philosophical roots in the idea of natural law, its specifically Anglo-Saxon legal roots in the common law tradition, and its institutional roots

in the idea of the balanced state. It emphasizes the conception of a written constitution as 'higher law'.

The aspiration to make power impersonal and its exercise accountable has been the motivation for constitutions and constitutionalism. Constitutionalism is an attempt to establish the supremacy of law–its essence is the submission of politics to law. Men throughout history have longed for a higher standard by which their own man-made laws are tested. Constitutions are

Constitutionalism is an attempt to establish the supremacy of law– its essence is the submission of politics to law.

that higher standard. The belief that individuals have natural rights—inherent and inalienable—which are anterior to any written instrument like a constitution, that government acquires its authority from the people and that the purpose of government is to promote common good is what conceives and conceptualizes a constitution made in the name of the people, defining the powers of the main institutions and delineating the relationship between various organs of government and between the government and the citizens. It is framed for ages to come and designed to approach immortality as nearly as human institutions can.

Constitutionalism is a broad amorphous concept. More than a rule or principle of law, constitutionalism is a political theory. It signifies that the exercise of governmental power should be controlled to ensure that it does not destroy the very democratic values which it is intended to promote. It sets minimum standards of constitutional government. It emphasizes that institutional arrangements must provide for effective control of the abuse of power. Absolute power must be avoided by a diffusion of authority, which introduces checks and balances in a democratic system. A politically neutral civil service, an independent police force, an independent academic and practising legal profession, a free press reflecting diverse points of view, and, of course, an independent judiciary are essential concomitants of constitutionalism.

'Constitution' refers to the document – the Constitution of India or of the USA while 'constitutional law' refers to the justiciable parts of the document and those rules which have been evolved by courts in enforcing those justiciable provisions. This is so in countries like India, the USA, etc. Courts, in interpreting the constitution, try to discover the intention behind it and thus enlarge or transform the words of the written constitution. Thus, the mass of 'constitutional law' built up by the courts is wider than the text of the constitution. Conventions, customs, and usages are all part of constitutional law.

A constitution is the very life breath of a nation and the vehicle for its progress. It is the country's supreme law - *suprema lex*. The word 'constitution' is commonly used in at least two senses.

A constitution is the very life breath of a nation and the vehicle for its progress.

Firstly, to describe the whole system of government of a country, the collection of rules that establish and regulate or govern the government. These rules may be partly legal and partly non-legal or extra-legal. A typical example of this is Britain. The British Constitution is a collection of legal and non-legal rules which govern the government in Britain. The legal rules are embodied in statutes like the Act of Settlement, which regulates the succession to the throne, the various Representation of the

People Acts, the Judicature Acts, and the Parliament Acts of 1911 and 1949. They may also be there in orders/regulations issued under the prerogative or statutory authority, and also in decisions of courts. The non-legal rules are in customs and conventions, such as the Crown does not refuse assent to a Bill duly passed by Parliament; or that the Prime Minister holds office because and for so long as he has the confidence of the lower House.



Secondly, in almost every other country, the term 'constitution' is used in the narrower sense. It refers to and describes not the whole collection of rules, legal and non-legal, but rather a selection of them which has formally been embodied in one document or in a few closely related documents. In this sense, and this is what holds good for most countries, the constitution is a selection of the legal rules that govern the government of a country and which have been embodied in a document.

As Thomas Cooley says in his seminal work, Constitutional Limitations, a constitution is sometimes defined as the fundamental law of a state, containing the principles upon which the government is founded, regulating the division of sovereign powers, and directing to what persons each of these powers is confided and the manner in which it is to be exercised. Perhaps an equally complete definition would be that body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised.

A constitution is about the division, distribution, and management of state power so as to prevent arbitrariness and establish accountability to law. As Lord Bryce observes, it is a framework of political society organized through and by law, in which law has established permanent institutions with recognized functions and definite powers. It sets out the framework and functions of government of a state and declares the principles governing the operation of those organs and the relation between them and the citizens of the state. Prof. Anthony King defines a constitution as 'the set of the most important rules and common understandings in any given country that regulate[s] the relations among the country's governing institutions and also the relationship between those governing institutions and the people of that country.'

> Constitutions provide the means to guard against the states' capacity for invading the liberties available and guaranteed to all civilized people.

Objectives of a Written Constitution

The objectives of a written constitution in a democracy are broadly threefold: to establish the framework or structure of government; to delegate or assign powers to the various organs of the government; and to restrain the exercise of those powers in order to preserve individual rights. Constitutions provide the means to guard against the states' capacity for invading the liberties available and guaranteed to all civilized people. A modern constitution empowers citizens and also controls and disciplines power. By defining competences and entrenching rights the constitution limits powers and protects liberties. It unfolds a vision and a goal and charts a nuanced path for its realization.

'State' has been defined variously by different authorities from different points of view.



A constitution embodies and expresses the goals and aspirations of the people, depending upon the history of that society. It contains certain core political values and beliefs that cannot be tinkered with by transient public opinion. The limitations imposed by constitutional law on the actions of government are essential for the preservation of public and private rights, notwithstanding even the representative character of political institutions.

State Sovereignty

The term 'constitutional law' anticipates the term 'constitution' which in turn brings in the term 'state' to which the constitution relates. 'State' has been defined variously by different authorities from different points of view. A state is a body politic or society of men, united together for the purpose of promoting their mutual safety and advantage by the joint effort of their combined strength. 'Nation' and 'state', though generally used as importing the same idea or thing, do not really mean the same. 'Nation' is more strictly synonymous with 'people'. 'State' refers to a political or juristic entity.

The authority of the state, supreme within its territory and independent of any external control, is called 'sovereignty'. As applied to states, it imports the supreme, absolute, uncontrollable power by which any state is governed. A state is called sovereign when the supreme power resides within itself, whether resting in a single individual or in a number of individuals, or in the whole body of the people. The sovereignty generally extends to all the subjects of government within the territorial limits occupied by the associated society.

Government

The organization or agency through which the will of the people is formulated and expressed is called the 'government'. While the state is the

sovereign community by itself, the government is the organ through which the state acts. The state acts through different organs or branches or wings of the government, which are primarily classified under the heads - executive, legislative, and judicial. Any act of any of these organs constitutes state action. 'State' thus represents an impersonal concept indicating a political society in which sovereignty resides. The state can be a unitary state or a federal state. The sovereign authority resides in the entire nation state in the case of a unitary state, like, for e.g., the UK. In a federal state like the USA or India, this sovereign authority is divided between the federal/central authority and the units constituting the federation; the word 'state' is, in such cases, also used for the units of the federation.



The organization or agency through which the will of the people is formulated and expressed is called the 'government'.

Constitutional state

A 'constitutional state' is one in which the powers of the government, the rights of the governed, and the relations between the two are adjusted. It is significant that every state may possess some kind of a constitution. However, the term 'constitutional government' is applied only to those whose fundamental rules or maxims not only locate the sovereign power in individuals or bodies designated or chosen in some prescribed manner, but also define the limits of its exercise so as to protect individual rights and shield them against the exercise of arbitrary power.

All states with some constitution or another purport to govern for the welfare of the people. What distinguishes a democratic state from a totalitarian one is that a free democratic state respects certain basic human rights and endeavours to achieve its objectives through the discipline of fundamental freedoms. That is what constitutional government really signifies.

Limited government

The inarticulate major premise of constitutional law is that what obtains is limited government. Powers are distributed among the different wings. What is envisaged is not only a democracy of men but also of institutions. No institution is supreme or conferred with absolute power. All organs are creatures of the constitution and subject to constitutional limitations. The constitution operates as a limitation on all organs. Checks and balances of powers are perhaps the most

A 'constitutional state' is one in which the powers of the government, the rights of the governed, and the relations between the two are adjusted.



fundamental feature of democratic constitutions. Therefore, absolutism of any kind is an anathema.

Judicial review - disciplining exercise of power

The higher law concept of the constitution leads to the conclusion that if there is any conflict between the higher law and the ordinary law, the former shall prevail and the latter struck down as unconstitutional. The power and duty of invalidating unconstitutional laws belong to the judiciary. One of the fundamentals of constitutional law is that in a country with a written constitution and an entrenched Bill of Rights, and all the more in a federal polity, this judicial power is recognised as a necessary concomitant. What exists is a government of enumerated powers with the judiciary constituted as the guardian of the constitution and the arbiter of the functions of all organs of the state as grantees under the constitution.

The power and duty of invalidating unconstitutional laws belong to the judiciary.

The classic enunciation of the legal position by Dicey is that while parliamentary sovereignty and its adjunct the rule of law, which is the subordination of the executive to the legislative will, characterize the unwritten constitution of England, the essential threefold characteristics of a federal set up (like the U S Constitution or the Indian Constitution) are supremacy of the written constitution, distribution of powers among the different wings and also between the centre and the regional units and judicial review and enforcement of the constitution as the supreme law. What prevails here is the absolute reign of law under which the legislative power is also subject to constitutional limitations. This is constitutional supremacy, the judiciary being the monitor, defender and protector of the constitution. The sanction to keep the judiciary also within the bounds of its powers is, in a large measure, the judges' own sense of self-restraint.

The sanction to keep the judiciary also within the bounds of its powers is, in a large measure, the judges' own sense of self-restraint.

The exercise of every power must be disciplined and controlled: that is the purpose and function of judicial review. Thus, another constitutional fundamental is that public law has moved from a culture of authority to a culture of justification: no power is inherently unreviewable, and in a constitutional democracy wedded to the rule of law, unfettered and unreviewable discretion is a contradiction in terms. Independence of

the judiciary is therefore another basic concept and an independent judiciary is an inalienable imperative.

Fundamental rights – a limitation

Another basic concept is that fundamental rights act as a limitation on state power. A bill of rights seeks to place certain human rights and fundamental freedoms beyond the reach of ordinary laws. These rights are not the gift of any law or the Constitution. They inhere in every human person. Instruments like constitutions or bills of rights respond by recognising rather than creating or conferring them. When human rights are incorporated into the municipal law and guaranteed by a written constitution, they are justiciable and enforceable. The philosophy underlying this is that constitutional limitations are the only means of ensuring the survival of basic human freedoms.

The constituent power is independent of the doctrine of separation of powers. It is sovereign. It is the power that creates the organs and distributes the powers.

Constituent power

Constituent power means the power to make or change the constitution by which the different organs of the state are themselves created, and the exercise of the sovereign powers of the state by them is regulated. Ordinary legislation is law-making *under* the constitution, constitutional legislation is law *appertaining* to the constitution and above the mass of ordinary laws. Even where the legislative and constituent powers are vested in the same body, the distinction between the two is not obliterated.

The constitution, which is the fundamental law, cannot be altered by the legislature in the ordinary process of legislation, but only by that authority and according to the procedure prescribed in that behalf by the constitution. The power to amend becomes the constituent power in the hands of that body authorized to amend. The legislature is a constituted body while sitting as a legislature and making ordinary laws; it is a constituent body while exercising the power to amend the Constitution, as under Article 368 of our Constitution. The constituent power is independent of the doctrine of separation of powers. It is sovereign. It is the power that creates the organs and distributes the powers. The constituent power is sui generis. The power to change the constitution is a corollary of the power to make the constitution.

The importance of the amending power is brought out when Herman Finer in his *The Theory and Practice of Modern Government* defines constitution as its process of amendment, for, in his view, to amend is to *deconstitute* and *reconstitute*. The amending clause is so fundamental to a constitution that he is tempted to call it the constitution itself. Of course, the difficulty in amending makes almost impossible the surreptitious abrogation of rights guaranteed in the constitution.

Instruments like constitutions or bills of rights respond by recognising rather than creating or conferring them.

It has also been observed that the power to amend a constitution is a *derived constituent power*, derived because it originates in the constitution and that while no provision of a constitution (as originally framed) can be ultra vires because there is no touchstone outside

the constitution by which the validity of a constitutional provision can be adjudged, the power to amend cannot be equated with such power of framing: the amending power has to be within the constitution and not outside it.

Basic structure doctrine

This brings in the idea of the basic structure of the constitution. That, however, cannot dilute the quality of the constituent power whether exercised originally to make a constitution or later to amend. While the political sovereign is the people, the legal sovereign is the constituent power - the power to make or amend the constitution. And once the constitution is enacted, the legal sovereign is necessarily the amending power.

An amendment to the Constitution should not destroy the basic features, framework, or structure of the Constitution.



The basic structure doctrine is yet another basic concept: An amendment to the Constitution should not destroy the basic features, framework, or structure of the Constitution. This is to ensure that by the process of amendment, the constitution is not denuded of its core or made to suffer a loss of identity. It has been said that the theory and basis of the doctrine is that there are values which are so fundamental and intrinsic to the democratic way of life, the republican form of government, and the preservation of basic human freedoms that they must be outside the power of legislative majorities to override by the exercise of even constituent power. However, in applying the doctrine, the essential organic and evolutionary character of a constitution and its flexibility as a living entity to provide for the demands and compulsions of the changing times and needs cannot be ignored.

Constitutional law and taxation

The power of taxation, like police power and eminent domain, is an essential, inherent attribute of sovereignty. Certain fundamentals are well settled. The power to tax belongs as of right to every independent government. It rests upon necessity. It is a power so unlimited in force and so searching in extent that courts scarcely venture to declare that it is subject to any restrictions. Constitutional provisions relating to the power of taxation do not operate as grants of the power of taxation but instead merely constitute limitations upon a power which would otherwise be practically without limit. The power to impose tax is a legislative power and cannot be exercised by the executive. No tax can be imposed without the authority of law. The question pertaining to State necessities, the policy involved in imposing a tax, and in apportioning it is within the competence and discretion of the legislature. Courts cannot review the wisdom, advisability, or expediency of a tax. In a modern pluralistic welfare State, a taxing law



is not merely a measure for raising revenue to meet governmental expenditure; it has a fiscal mission, it is an instrument of social control and economic regulation, a tool to bring about socio-economic transformation. Tax laws are also subject to Article 14 and other constitutional limitations. But the legislature enjoys the widest latitude in relation to persons, areas, rates, and other incidents of a tax. The State is allowed to pick and choose areas, objects, persons, methods, and rates for taxation, provided it does so reasonably. The levy of a uniform rate is not per se bad. It is not essential to tax everything in order to tax something. The mere excessiveness of a tax or its imposition with retrospective effect or the hardship caused in individual cases is not per se violative of Art 19(1)(g). The court may intervene only when a tax is shown to be confiscatory and extortionate in character. The economic criteria that a taxing measure takes into consideration are not susceptible to adjudicative disposition.

It is interesting to note that the passing observation of Chief Justice Marshall that "the power to tax involves the power to destroy" was, with one pithy stroke, given its intellectual coup de grace by Justice Holmes saying: "The power to tax is not the power to destroy while this Court sits." He also famously said, "I like to pay taxes. With them, I buy civilization."

> The power to impose tax is a legislative power and cannot be exercised by the executive.

Constitutional morality

Constitutional law is wider than the constitution and includes conventions, customs, usages, and judge-made law. As Dicey observed in *The Law of the Constitution*, rules - written or unwritten, enacted by statute or derived from custom, tradition, or common law - constitute constitutional law in the proper sense and may be called collectively "the law of the constitution". The

other set of rules-conventions, understandings, habits, or practices - not enforced by the courts are also part of constitutional law and may be termed, as he says, the "conventions of the constitution" or "constitutional morality".

Dr. Ambedkar, speaking in the Constituent Assembly, referred to what Grote, the Greek historian, said: "The diffusion of constitutional morality, not merely among the majority of the community but throughout the whole, is the indispensable condition of a government at once free and peaceable." By constitutional morality, Grote meant a paramount reverence for the forms of the constitution, enforcing obedience to authority acting under and within these forms, yet combined with the habit of open speech, of action subject only to definite legal control.

> The mere excessiveness of a tax or its imposition with retrospective effect or the hardship caused in individual cases is not per se violative of Art 19(1)(g).

Constitutional morality, therefore, is not morality in any ethical perception. It is the custom and convention of the constitution; constitutional practice developed over a period of time, as contrasted with the written provisions of the constitution. It is not the judges' notion of morality in any sense. Constitutional morality is no less essential than constitutional legality for the survival and success of the democratic polity. But it is not something justiciable.

That we must cherish and foster constitutionalism is beyond debate and is non-negotiable. But not doing so is not open to judicial scrutiny and intervention. Constitutional morality is a sentiment to be cultivated among the people; it is more of a mandate to them and their representatives, rather than an additional source of power for the court. It cannot be a ground to examine and pronounce upon any legislation. It may be said that the remedy for preventing majoritarian excesses, perhaps, lies more in cultivating people's adherence to constitutional morality than in showing less deference to the legislature in the matter of constitutional values, as some think.

Epilogue

The constitution contains a mélange of powers. No single institution or branch of government is even remotely supreme. Any talk about the supremacy of any wing is totally puerile. Some tension and struggle occasionally arise. Reciprocal influence is a continuing process. Constitutions may be easily copied, but temperaments are not. Therefore, constitutional values and aspirations will have to be internalised in the psyche of the nation. We need to develop and always have a decorous regard for and play by the rules of the constitutional game. It is important that what is left unsaid in a constitution is sometimes as eloquent and significant as what is expressly stated. The constitutional equilibrium can be preserved only by *Obedience to the Unenforceable.* This is something that we both as a people and government, have to aim at and strive towards for the attainment of the larger common good. The survival and success of a constitutional democracy based on the constitutional fundamentals hinges not so much on the absence of conflict between the various organs but on the commitment of each to remain within its bounds.

> The constitutional equilibrium can be preserved only by Obedience to the Unenforceable.

Analysis of the Doctrine of Legitimate Expectation

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Overview

The article examines the historical evolution of the doctrine of legitimate expectation, from its inception in English law to its subsequent development in India, as a principle grounded in justice, predictability, and accountability. It describes how the doctrine has been accepted by Indian jurisprudence under Article 14, setting it apart from promissory estoppel by acknowledging it as a more comprehensive public law remedy. Its substantive and procedural aspects are examined, with a focus on how the doctrine serves as a check on arbitrary decisions while allowing for rational policy changes when the public interest so warrants.

The article's analysis of the doctrine's application to taxation is one of its unique contributions. It emphasizes how expectation have been shaped by taxpayers' reliance on government representations, circulars, and treaty assurances, especially in the context of the India–DTAA Mauritius Treaty, in the landmark judgment of the Supreme Court in Azadi Bachao. The article also analyses recent judicial trends that could jeopardise consistency and investor confidence, such as narrow interpretations of treaty benefits. The article recommends that transitional fairness be more firmly incorporated into India's tax system through the use of mechanisms like the APA and MAP regimes, which would establish legitimate expectation as both a judicial protection and a normative standard of governance in the changing international tax system.

Introduction

Legitimate Expectation as a concept stands undefined in the courts of law all over the world,

> Legitimate Expectation stands as a test against arbitrary and discretionary actions taken by a public authority under the powers accorded to them through the legislature.

**Mukesh Butani and Shankey Agrawal, Partners, BMR Legal with inputs from Siddharth Agrawal (Senior Associate) and Pratha Khanna (Associate), BMR Legal.*

wherein its depth ranges from an overarching creation of a certain expectation to the effect of this notion under the legal diaspora.[1] This concept was invoked under the arch of the Principles of Natural Justice, wherein the Right to be Heard was given primacy.[2] In the Indian Legal System, a ground for violating legitimate expectation is primarily raised when a statutory body, through representation or past practice, creates an expectation that it has the reasonable power to fulfil.[3] When the authority does not fulfil such an expectation, a direct violation of Legitimate Expectation exists as a ground to obtain statutory remedies. Over the years, the concept of Legitimate Expectation has gained significance, particularly in the field of Administrative Law, wherein its emergence is rooted in the interaction of principles of fairness and natural justice. Today, Legitimate Expectation stands as a test against arbitrary and discretionary actions taken by a public authority under the powers accorded to them through the legislature.[4] This doctrine deters public authorities from misusing their powers and acts as a safeguard for all rights granted to a citizen, specifically within the realm of the Constitution and subsidiary legislation. Through this paper, the authors aim to highlight the importance of the doctrine of legitimate expectation, its evolution over the years, and its impact on present-day policies, specifically outlined in the field of tax.

> Doctrine of Legitimate Expectation reflects Bentham's notion of predictability to establish that citizens organise affairs on official statements and representations made by statutory authorities.

Tracing the Constitutional Source for the Doctrine of Legitimate Expectation

Doctrine of Legitimate Expectation under English Law

The genesis of the doctrine of Legitimate Expectation lies in the intrinsic notion of fairness and equity, wherein any safeguard guaranteed to a citizen by practice cannot be taken away through an abuse of legislative power.[5] This doctrine aligns with the larger goal of public good with an emphasis on the underlying importance of judicial and legislative fairness.[6] Traces of this doctrine can be taken back to the case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp*,[7] wherein the plaintiff challenged the authority on the ground of

> The doctrine of legitimate expectation has evolved through various judicial precedents in India and has been shaped in a more concrete manner.

1 *Patel, Foram R. & Patel, Rishin, The Doctrine of Legitimate Expectation: From Development in England to Indian Scenario, ILI Law Review Winter Issue 2021, available at ili.ac.in (PDF).*
2 *A.K. Srivastava, Doctrine of Legitimate Expectation, Indian Journal of Training & Research, Vol. 25 (Mar. 2023), available at http://ijtr.nic.in/articles/art13.pdf*
3 *Ibid at 1.*
4 *Doctrine of Legitimate Expectation: Meaning, Concept & Its Application," Taxmann (last updated Dec. 20, 2022) https://www.taxmann.com/research/income-tax/top-story/10501000000022376/doctrine-of-legitimate-expectation-meaning-concept-its-application-experts-opinion.*
5 *"Doctrine of Legitimate Expectation: Meaning, Concept & its Application," Taxmann Blog (Dec. 20, 2022), https://www.taxmann.com/post/blog/opinion-doctrine-of-legitimate-expectation-meaning-concept-its-application/.*
6 *The Protection of Legitimate Expectation in Administrative Law: A Comparative Study Chapter: The Protection of Legitimate Expectation in UK Administrative Law Publisher: Hart Publishing Editors: A.K. Sperr and D. Zacharias https://www.researchgate.net/publication/277010634_The_Protection_of_Legitimate_Expectation_in_UK_Administrative_Law.*
7 *(1948) 1 KB 223.*



unreasonableness in a case revolving around the operation of cinemas. Later, Lord Denning officially coined the term 'Legitimate Expectation' in the case of *Schmidt v. Secretary of State for Home Affairs*,[8] wherein the term was used as an alternative for a 'substantial right' under public law. This case can be seen as the landmark judicial precedent under English Law, which hovered over the concept of 'creation of expectation'. In this case, Lord Denning categorically opined that a legitimate expectation would arise if, in a case, an applicant's permit is revoked before the time for such revocation has expired. After the pronouncement of this judgment, various judicial precedents emphasised the importance of this doctrine, such as in the case of *Hong Kong v. Ng. Yuen Shiu*[9], wherein Lord Fraser quashed a removal order which was then passed by the Hong Kong immigration authorities without any prior notice.

Rule of Law and Legitimate Governance Principle

To holistically comprehend the concept of legitimate expectation, it is imperative to establish a conjoined reading of the doctrine with the principle of legitimate governance established via the case of *Council of Civil Service Unions v. Minister for the Civil Service, also known as the GCHQ case*[10]. In this case, the House of Lords opined that a public body must operate straightforwardly and consistently with prior assurances to be able to operate reasonably and ensure fairness for all. The doctrine of Legitimate Expectation reflects Bentham's notion of predictability to establish that citizens organise affairs on official statements and representations made by statutory authorities.[11]

> The jurisprudence on the doctrine of Legitimate Expectation developed in parallel and closely interlinked with the doctrine of promissory estoppel, which the courts in India recognised earlier.

8 (1969) 1 ALL ER 904 (CA).
9 (1983) 2 AC 629.
10 [1984] UKHL 9.
11 Ferraro, F., Utility, Predictability, and Rights: Bentham's Utilitarianism and Constitutional Entitlements, (2022), available at https://onlinelibrary.wiley.com/doi/full/10.1111/raju.12335.

Article 141 of the Indian Constitution governs the binding nature of decisions opined by the Apex Court, and this article can be intrinsically linked to the principle of legitimate governance.[12] Through Article 141, an outline of consistency and predictability is instituted, preventing arbitrary or conflicting decisions by not just lower courts but also statutory bodies.

The jurisprudence on the doctrine of Legitimate Expectation developed in parallel and closely interlinked with the doctrine of promissory estoppel, which the courts in India recognised earlier.

Distinction between Promissory Estoppel and Legitimate Expectation

The principle of promissory estoppel can be traced back to the case of *Central London Property Trust Ltd. v. High Trees House Ltd.*[13] Lord Denning in the said judgment stated that once a promise is made with the intention of making it binding, and the promisee acts on it, the promisor is restricted from retracting the explicit promise made. Further, under English Law, the understanding of the concept evolved, wherein the presence of consideration was also made a necessary factor to establish a claim for promissory estoppel. The doctrine of legitimate expectation and promissory estoppel can be differentiated on the grounds of their scope and application in public law, wherein Legitimate Expectation exists as a larger remedy; however, promissory estoppel is restricted to dual-party transactions.[14] Promissory estoppel overarchingly governs private transactions with the involvement of consideration and is required to be proven on the basis of substantial loss. For a violation of legitimate expectation to be proven, significant proof has to be submitted, resulting in an improper action taken by statutory authorities, whereas a ground for promissory estoppel can be taken through a mere violation of a promise. The doctrine of legitimate expectation has evolved through various judicial precedents in India and has been shaped in a more concrete manner.

Recognition of the Doctrine of Legitimate Expectation under Indian Law

India, having its roots in the legal system of common law, derives significant reference from judicial decisions made in the United Kingdom. Manifestly, the doctrine of legitimate expectation found its anchor in the Indian Judicial System through precedential value, wherein the Supreme Court primarily used this doctrine as a tool to check arbitrariness exercised by administrative authorities.[15] This doctrine found its home under the rule of law, classified under Article 14, which is utilised as a right against the arbitrary action of the state.[16] The Apex Court, in its capacity, reinforces this doctrine to emphasise the value

The Doctrine of Legitimate Expectation is based on the notion of the rule of law, which demands consistency, predictability, and assurance from the government when interacting with the public.

12 *Basic Structure of the Indian Constitution: Doctrine of Constitutionally Controlled Governance; https://www.jstor.org/stable/43952120.*

13 *1947 KB 130.*

14 *Promisee' Right to Bound Public Authorities to Their Promise: The Debate between the Doctrine of Estoppel and Legitimate Expectation; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2640564.*

15 *Supra at 1.*

16 *P. Gokulapriya, Critical Analysis of the Doctrine of Legitimate Expectation, IJIRL, Vol. V Iss. III (June 2025), available at https://ijirl.com/wp-content/uploads/2025/06/CRITICAL-ANALYSIS-OF-THE-DOCTRINE-OF-LEGITIMATE-EXPECTATION.pdf.*



of procedural fairness, interpreting it in a manner that imposes a duty on public authorities to act reasonably. In India, the concept has developed in a somewhat conical manner wherein the three arches of the origin of a legitimate expectation are found in the express promise conveyed by a public authority, the existence of a past practice, and the reasonableness of such expectation.[17] When a claim for the doctrine of legitimate expectation is substantially proven, the claimant can question administrative authorities on various grounds such as illegality, irrationality, and procedural impropriety. In a broader sense, for a claim of a legitimate expectation to exist, there must be an unfulfilled promise by state authorities having a direct consequence to affect persons.[18] To rectify an error made by the public authorities, the statutory remedy of judicial review exists for the claimant to impose a remedial action safeguarded by the inherent powers of the courts of law.[19]

Evolution of the Doctrine of Legitimate Expectation in India and its linkage with Indian Tax Law

While the doctrine of legitimate expectation is not explicitly mentioned in the Constitution, it is often used as a right under Article 19 and Article 21 of the Constitution, which guarantee the freedom of speech and expression and the protection of life and personal liberty. This doctrine has a direct impact on these fundamental rights as it acts as

> The doctrine of legitimate expectation applies only to executive or administrative conduct, not to legislative acts.

17 Supra at 2.
18 Supra at 2.
19 Pinsent Masons, Legitimate Expectation as a Ground for Judicial Review, Out-Law Analysis, available at pinsentmasons.com/out-law/analysis/legitimate-expectation-as-a-ground-for-judicial-review-(last visited Sept. 4, 2025).

a check against restricted access to liberty and property interests.[20] Under Article 21, the doctrine of legitimate expectation plays a substantial role, especially in instances where policy upheavals, such as tariff changes or subsidy reductions, can shape the creation of a direct and affectable expectation.[21]



The Doctrine of Legitimate Expectation is a fairly recent development under the Indian Jurisprudence, with the first notable judgement pronounced in the late 1980s[22]. The jurisprudence on the doctrine of Legitimate Expectation developed in parallel and closely interlinked with the doctrine of promissory estoppel, which the courts in India recognised earlier[23]. Contrary to the position laid down by the English Court on the Doctrine of Promissory Estoppel, which laid special focus on the element of consideration for acting on the promise[24]. The Indian Supreme Court endorsed the element of equity while applying the doctrine of Promissory Estoppel and was not estopped by the strictures of consideration that fettered English Law. Bhagwati J, while speaking for the bench in *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*[25], underscored that promissory estoppel is a "*justice device for preventing injustice*" and should not be inhibited by technical doctrines. Building on this foundation, Indian courts gradually extended the principles of fairness and consistency underlying promissory estoppel into the doctrine of Legitimate Expectation. While Promissory Estoppel prevents a public authority from going back on clear promises that have induced reliance, legitimate expectation evolved to address situations where no formal promise was made but where consistent past practice, policy, or representation created a reasonable expectation in citizens that the status quo would continue unless altered on rational grounds.[26]

The Grund norm for the doctrine of Promissory Estoppel and the doctrine of Legitimate Expectation lies in the principle of equity, ensuring that every action of the executive must be fair, non-arbitrary, and consistent with assurances given. One of the earliest judgments on this approach was *Union of India v. Indo-Afghan Agencies Ltd*.[27], where the Supreme Court observed that though export incentives were not enforceable as contractual rights, the Government could not arbitrarily depart from its announced schemes when traders had acted in reliance on them. This served as a building block for the latter evolution of both the doctrine of promissory estoppel and the doctrine of legitimate expectation. The Doctrine of Legitimate Expectation is based on the notion of the rule of law, which demands consistency, predictability, and assurance from the government when interacting with the public. The doctrine contains both procedural and substantive characteristics. The procedural side of this doctrine pertains to the consistent procedures used by authorities, whereas "substantive legitimate expectation"

20 *Romit Srivastava, Test to Determine Reasonable Restrictions Under Article 19 of the Constitution of India, SSRN (Aug. 24, 2012), available at https://ssrn.com/abstract=2135681.*

21 *Mohd Aqib Aslam, Judicial Review of Administrative Actions: An Overview, Journal of Indian Scholar, Vol. 6, Iss. 4 (Dec. 2020), available at https://heinonline.org/HOL/LandingPage?handle=hein.journals/injlolw10&div=238&id=&page=.*

22 *State of Kerala v. K.G. Madhavan Pillai [1988] 4 SCC 669.*

23 *Collector of Bombay v. Municipal Corporation of the City of Bombay, 1951 AIR 46.*

24 *Combe v. Combe, (1951) 2 KB 215.*

25 *(1979) 2 SCC 409.*

26 *G. Sreenivasan v. Principal, Regional Engineering College, Rourkela, 1999 SCC OnLine Ori 58.*

27 *1967 SCC OnLine SC 12.*

refers to a claim of an individual for an opportunity based on a governmental action that creates an expectation.

The procedural aspect of the doctrine of legitimate expectation was developed before the substantive aspect. One of the earliest instances of adjudication of procedural legitimate expectation can be traced to the judgment of the Supreme Court in *Navjyoti Coop. Group Housing Society v. Union of India*[28], where the Court held that long-standing administrative practice in fixing seniority for allotment of land could not be altered without providing a justified reason and affording affected parties an opportunity of representation.

The Doctrine of legitimate expectation does not create a bar on the executive restraining them from any change in public policy. Any policy changing the already established procedure on justified reasoning cannot be invalidated by invoking the doctrine. In *Union of India v. Hindustan Development Corporation*[29], while hearing manufacturers' challenge to the dual-pricing policy introduced to curb cartelization, the Supreme Court upheld the measure, holding that legitimate expectation cannot override policies framed in the public interest. Similarly, in *P.T.R. Exports v. Union of India*[30], exporters' expectation under a quota regime were denied recognition, as no vested right could survive a rational change in international trade policy. These cases underscored that the doctrine is not absolute and must not be applied at the cost of overriding public interest wherever it is so demanded. The Courts have held that a public authority's act in furtherance of the public interest may override legitimate expectation[31]. However, the state and its instrumentalities must evaluate and give due weightage to the legitimate expectation of those who will be affected by the decision, and failing to do so may result in injustice, rendering the judgment arbitrary in nature.

Supreme Court in *Punjab Communications Ltd. v. Union of India*[32] while hearing a challenge to the Government's shift from a region-specific rural telephony project to a nationwide policy on the grounds of the legitimate expectation of bidders shortlisted under the original scheme relied upon comparative English jurisprudence to affirm that substantive legitimate expectation exists in Indian law but can be overridden by a rational change in policy made in the public interest. The decision stressed that courts are not empowered to question the policy wisdom, and judicial review is limited to checking whether the test of reasonableness, as held in the *Wednesbury* case, stands validated or not. The doctrine of legitimate expectation applies only to executive or administrative conduct, not to legislative acts. The doctrine cannot assail any action arising out of legislative change.[33]

The Apex Court in *State of Bihar v. Kalyanpur Cement Ltd.*,[34] recognised promissory estoppel and legitimate expectation simultaneously, while holding that the government is accountable for backtracking on exemption promises. In the given case, various companies invested in the Indian market by placing reliance on governmental assurances of sales tax exemption under the Industrial Policy. Later, the state denied this exemption, citing the expiry of the term of the policy. The Court estopped the Government from denying exemption as the investment was made on assurances of the State, which have

> The doctrine is aimed at ensuring that fairness and equity do not hinder well-reasoned actions of the executive for the public welfare.

28 (1992) 4 SCC 477.
29 (1993) 3 SCC 499.
30 (1996) 5 SCC 268.
31 Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries, AIR 1993 SC 1601.
32 (1999) 4 SCC 727.
33 J.P. Bansal v. State of Rajasthan (2003) 5 SCC 134.
34 (2010) 3 SCC 274.



crystallised into enforceable commitments. The creation of expectation based on the State's assurance is sufficient for the invocation of the doctrine; any action of the State in furtherance of such assurance is not necessary to provide legitimacy to such expectation. In *Manuelsons Hotels (P) Ltd. v. State of Kerala*,[35] the State had promised building tax exemptions to tourism projects. Still, it failed to issue the necessary notification before repealing the enabling provision. The Court located the appellants' claim within the framework of legitimate expectation, noting that governmental assurances and consistent policy statements had generated a reasonable expectation of exemption which could not be defeated without compelling public interest. The Supreme Court in another landmark judgment has, however, cautioned that though the Doctrine of legitimate expectation arose from Article 14, it is not an enforceable right, and unfairness, unreasonable and arbitrary nature of any State action needs to be depicted to invoke the doctrine.[36] The doctrine is aimed at ensuring that fairness and equity do not hinder well-reasoned actions of the executive for the public welfare. The Courts have been cautious in their application, balancing the rights of the individual and the power of the sovereign.

The Question of Legitimate Expectation in Indo-Mauritius Tax Treaty

Under the Indian Income Tax Law, countries may enter into Double Taxation Avoidance Agreements ('DTAA') with India to create a balance in terms of taxing rights, specifically where income is being generated in the two jurisdictions via the same entity. One such DTAA was signed between India and Mauritius in 1983, which established a preferential tax regime under which capital gains exemption was applied to "*any property other than*" mentioned under Article 13 of the DTAA.[37] This framework was significantly reinforced by *CBDT Circular 789 dated April 13, 2000*, which provides that Tax Residency Certificates (TRC) issued by Mauritian authorities would constitute "*sufficient evidence for accepting the status of residence as well as beneficial ownership*" for applying the India-Mauritius DTAA[38]. It is pertinent to note that CBDT circulars under the Income

> This judgment directly undermines the doctrine of legitimate expectation, which protects fairness and predictability.

35 (2016) 6 SCC 766.

36 Union of India v. P.K. Choudhary, (2016) 4 SCC 236.

37 India–Mauritius Double Taxation Avoidance Agreement, 1982, notified by GSR No. 920(E), dated Dec. 6, 1983.

38 Nishith Desai Associates. (2003, October 27). Supreme Court upholds the India–Mauritius tax treaty. Tax Hotline. Retrieved August 25, 2025, from https://www.nishithdesai.com/SectionCategory/33/Tax-Hotline/12/53/TaxHotline/5257/4.html

Tax Act derive their binding force from Section 119[39] of the Income Tax Act, which empowers it to issue orders and directions that are binding on all income tax authorities[40]. Hon'ble Supreme Court in *Union of India v. Azadi Bachao Andolan*[41], affirmed that in light of explicit provisions of India-Mauritius DTAA, the availing benefits of the Indo–Mauritius DTAA by structuring investments through Mauritius cannot be treated as illegal "tax evasion". Although the Supreme Court in Azadi Bachao (supra) did not expressly employ the terminology of "legitimate expectation," the structure of its reasoning reflects the doctrine's underlying logic. The Court upheld the binding force of *CBDT Circular 789*, which directed that a valid Tax Residency Certificate (TRC) issued by Mauritian authorities would be conclusive evidence of residence and beneficial ownership. By affirming the sufficiency of TRCs and rejecting the argument that treaty shopping was per se illegal, the Court effectively validated the reliance investors had placed on a long-standing administrative assurance. Investors' settled expectation were preserved so long as the policy framework remained unchanged. In this sense, Azadi indirectly operationalised the doctrine: it did not freeze policy, but it confirmed that existing commitments created by government circulars and treaty obligations could not be disregarded without undermining the fairness that legitimate expectation seeks to protect.

Impact of the Protocol Amendment and Inclusion of Grandfathering

In 2016, to prevent such misuse of the treaty, the Government of India and the Government of Mauritius renegotiated the Indo-Mauritius Treaty and amended the same via a protocol signed by the two countries.[42] After March 31, 2017, under the revised tax treaty between India and Mauritius, India attained the right to tax capital gains (or profit) in India on transactions in shares routed through the island nation. Certain convertibles still existed under the previous regime, such as Compulsory Convertible Debentures (CCDs) and Optionally Convertible Debentures (OCDs).[43] Any investments made before this date were exempted from such alteration in taxation rights between the countries.

The 2016 Protocol[44] fundamentally amended the India-Mauritius DTAA, granting India the right to tax capital gains on shares acquired on or from April 1, 2017[45]. However, recognising the legitimate expectation of existing investors, the Protocol included comprehensive grandfathering provisions. Article 13(3A) of the amended DTAA specifically protects investments made before April 1, 2017, ensuring that capital gains arising from the transfer of such shares remain exempt[46]

> The doctrine of Legitimate Expectation can also be included in international dispute resolution contexts, especially when directed towards global investment.

39 Income Tax Act, 1961, S. 119(1)

40 CCE v. Ratan Melting & Melting Wire Industries, (2008) 13 SCC 1 (SC); UCO Bank Calcutta v. CIT, (1999) 4 SCC 599 (SC).

41 (2004) 10 SCC 1.

42 Protocol Amending the Convention Between the Government Republic of India and the Government of Mauritius for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital Gains, and for the Encouragement of Mutual Trade and Investment. Signed at Port Louis on 24th August 1982, dated 10th May 2016.

43 Dhasmana, I. (2016, May 14). Mauritius treaty: No tax on derivatives, other non-share securities in India: FinMin. Business Standard. Retrieved August 25, 2025, from https://www.business-standard.com/article/economy-policy/mauritius-treaty-no-tax-on-derivatives-other-non-share-securities-in-india-finmin-116051301196_1.html.

44 Press Information Bureau, Government of India. (2016, August 29). Ministry of Finance, Department of Economic Affairs. Retrieved August 25, 2025, from https://dea.gov.in/sites/default/files/protocol_notification_IndoMauritius.pdf.

45 Ajinkya, B., Shaktawat, R., Jain, A., & Bukkapatnam, A. (2024, April 15). India amends its tax treaty with Mauritius, adds anti-abuse conditions. Khaitan & Co. Retrieved August 25, 2025, from https://www.khaitanco.com/thought-leadership/India-Amends-its-Tax-Treaty-with-Mauritius-Adds-Anti-Abuse-Conditions.

46 Emerging India Focus Funds, Apex Financial Services

from Indian taxation[47]. The 2016 Protocol and accompanying CBDT notifications[48] function as fresh representations that effectively embed the grandfathering promise within the treaty structure itself. This creates dual protection through treaty-level safeguards and administrative assurances, ensuring that legacy Mauritius investors' legitimate expectation are not merely preserved but reinforced through formal treaty amendments. Recent tribunal[49] and High Court[50] decisions have consistently upheld the sanctity of grandfathering provisions, emphasising that treaty benefits for pre-2017 investments cannot be denied without concrete evidence of treaty abuse.

Impact of Nestlé Judgment on Legitimate Expectation Doctrine

The Supreme Court's decision in *Assessing Officer v. Nestle SA*[51] represents a significant departure from established principles of automatic treaty benefit application. The Court held that Most Favoured Nation (MFN) clauses do not apply automatically but require separate notifications under Section 90 of the Income Tax Act. This decision raises concerning questions about the consistency and predictability of India's tax treaty policy and potentially disregards legitimate expectation of taxpayers. The Court's requirement for separate notifications effectively places an additional administrative hurdle that was not contemplated when investors made their decisions, potentially undermining the doctrine of legitimate expectation by suggesting that clear treaty language may not be sufficient to create enforceable expectation. This judgment directly undermines the doctrine of legitimate expectation, which protects fairness and predictability. The stability of India's tax system is undermined by sudden reversals without transitional fairness, even though legitimate expectation jurisprudence acknowledges that sovereigns may alter fiscal policy in the public interest. By essentially limiting the range of reasonable expectation, *Nestlé judgment (supra)* raises questions about the enforceability of even explicit treaty commitments unless they are domestically reaffirmed through notification.

Conclusion

Having analysed the impact of the doctrine of legitimate expectation in Indian Policies, it is undeniable that the doctrine of Legitimate Expectation and its correlation with the Principle of Promissory Estoppel stand as a ground for various taxpayers to receive remedies in instances of misuse of statutory power. This statutory power is then checked through judicial intervention; however, the larger impact of the same is not just on investors but on the overall economy of the country. An ideal approach to preventing such instances from recurring would be to implement formalised policy changes, such as incorporating the APA/MAP regimes, which are specifically designed for dispute resolution. Further, the doctrine of Legitimate Expectation can also be included in international dispute resolution contexts, especially when directed towards global investment. The doctrine of Legitimate Expectation serves as an equitable safeguard, enabling courts to impose a duty of fairness on statutory bodies. The Doctrine may play a crucial role in the ever-evolving BEPS-driven global tax order, moving from a judicially enforced constraint to a normative standard of governance that balances sovereign policy flexibility with investor confidence.

(Mauritius) Ltd, [1] ITA No.1963/Del/2025

47 *Supra at Note 8 ; India: Exemption from capital gains on transfer of shares available under India-Mauritius treaty (High Court decision).*

48 *Central Board of Direct Taxes. (2016, August 29). Notification of Protocol for amendment of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, and for the encouragement of mutual trade and investment between India and Mauritius. Ministry of Finance, Government of India. Retrieved from https://fintaxblog.com/wp-content/uploads/files/cbdt-press-release-dt-29-aug-2016-indo-mauritus-protocal.pdf.*

49 *Supra at Note 10.*

50 *Supra at Note 7.*

51 *TS-616-SC-2023.*

Tax Treaties and Extra-Territorial Taxation – A Constitutional Perspective

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Overview

India's approach to extraterritorial legislation is anchored in a constitutional architecture balancing sovereignty, legality, and international responsibility. Article 245 entered the Constitution without protracted debate; over decades, however, the Supreme Court has read into it a discipline restricting a statute's reach beyond India's borders to cases where a "real and not illusory" connection exists. The said insistence on nexus is more than a technical threshold; it reaffirms India's respect for other nations' sovereignty and the dignity of its legislative process. The dualist structure, rooted in Article 253 and articulated by the apex Court in cases including Nestle, ensures international treaties do not bypass Parliament's democratic mandate: a constitutional firewall protecting domestic rights while allowing India to engage with the world in line with principles of international comity. This ethos finds reflection in India's judiciary's approach to Tax Residency Certificates, where courts refuse to let mere suspicion erode the mutual trust underpinning treaty-based cooperation. As new tides such as the OECD's UTPR wash against India's shores, fresh constitutional challenges may arise, demanding a balance between protecting sovereignty and honoring international commitments. India's Constitution, the article argues, will find such a balance, for it "is not merely a document in black and white," but "a living document that evolves with the nation."

Introduction

"There are few kings in Europe," wrote the French Ambassador to London[1], "richer than the Directors of the English East India Company." Granted a royal charter by Queen Elizabeth I in 1600 to trade in India's commodities, the East India Company's power gradually deepened. One hundred and sixty-five years hence, seizing the waning authority of Emperor Shah Alam II, the Company coaxed the young Shah into issuing

1 *Comte De Chatelet, the French Ambassador to the Royal Court in London.*



a 'Diwani'[2]: a decree transferring the power to collect taxes from imperial officials to the Company. With such a stroke, an ordinary English enterprise, which did not even have a two-room office in London, donned the robes of an empire. And India, a giant that once commanded 27% of the world's economy in 1700, was reduced to its mere shadow by the time the sun finally set on the Raj.[3]

"At the stroke of the midnight hour," after nearly two centuries of struggle and sacrifice, India stepped out "from the old into the new."[4] On August 15, 1947, a free nation was born. Its Constitution, however, was still in the works. It was only two years, three months, and eleven days later, with the adoption of its Constitution — calligraphed by Prem Bihari Narain and illustrated by artist Nandalal Bose — on November 26, 1949, that "the soul of a nation, long suppressed," found its "utterance".[5] The Constitution of India came into effect on January 26, 1950, and stood as the longest written constitution in the world, encompassing 395 Articles, 22 Parts, and 8 Schedules, spanning nearly 145,000 words. One such Article is Article 245.

It is interesting to note that Article 245, which lays down the "Extent of laws made by Parliament and by the Legislatures of States," evoked no substantive debate in the Constituent Assembly.[6] Draft Article 216 (later enacted as Article 245 of the Constitution of India), was taken up on 13th June 1949 and adopted [7] on the same day.

Since then, the story has been somewhat different.

Extra-Territoriality

The issue of "extra-territorial operation" came before the Supreme Court as early as 1955, in the Bengal Immunity[8] case. The Apex Court, whilst tracing the pre-independence legislative history of the aforesaid Article, held that the words must be understood in their strict sense as having reference to the laws of a State for their nationals in respect of acts done outside the State. Stepping forward, the Supreme Court

2 *Emperor Shah Alam II granted the Diwani (the right to collect revenue) of Bengal, Bihar, and Orissa to the East India Company through the Treaty of Allahabad on August 12, 1765.*

3 *See, Economic Historian Angus Maddison's Contours of the world economy, 1–2030 AD.*

4 *"Tryst with Destiny" speech to the Indian Constituent Assembly in the Parliament House, on the eve of India's Independence.*

5 *Ibid.*

6 *The Constituent Assembly, after the partition of India, had 299 members. It held 11 sessions. The final session was on January 24, 1950.*

7 *245. Extent of laws made by Parliament and by the Legislatures of States. — (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.*

8 *The Bengal Immunity Company Ltd. v. The State of Bihar 1955 (2) SCR 603. The Court traced the history of Article 245(2) and observed that it is the successor to Section 65(1), sub-clauses (b), (c), (d), and (e) of the Government of India Act, 1915, and Section 99(2) of the Government of India Act, 1935.*

in Tata Iron & Steel Co.[9] observed, and reaffirmed in Shrikant Bhalchandra,[10] that the sufficiency of the territorial connection involves a consideration of two elements, namely, (a) the connection must be real and not illusory. and (b) the liability sought to be imposed must be pertinent to that connection. "It is inconceivable," the Apex Court in Electronics Corporation[11] observed that "a law should be made by Parliament in India which has no relationship with anything in India."

The Constitution of India came into effect on January 26, 1950, and stood as the longest written constitution in the world, encompassing 395 Articles, 22 Parts, and 8 Schedules, spanning nearly 145,000 words.

At this moment, it is important to recall that India's commitment to internationalism was not an afterthought, but an idea woven into the very fabric of its struggle for freedom. "In these days of rapid intercommunication and a growing consciousness of the oneness of all mankind," wrote Mahatma Gandhi in 1933[12], "we must recognize that our nationalism must not be inconsistent with progressive internationalism." Seventy-eight years later, a similar sentiment was echoed by the Supreme Court of India in GVK Industries[13], "India's emergence as a free nation, through a non-violent struggle," reminded the Supreme Court, "presaged the emergence of a moral voice… To make laws "for another territory" is to denigrate the principle of self-determination with respect to those people, and a denigration of the dignity of all human beings, including our own." Parliament, the highest court of the land, held, may legislate on extra-territorial aspects only if they have, or are expected to have, a real and not illusory connection with India. Parliament cannot legislate "for" territories outside India, but may enact laws with extra-territorial operation related to India or its inhabitants. Consistent with the said spirit, Courts have also frowned upon the Revenue's insistence on deducting tax at source ("TDS") bereft of a true territorial nexus with India. "The interpretation placed by the department," rebuked the Supreme Court in GE India Technology[14], while discouraging attempts to deduct tax at source for income not chargeable in India, "would result in a situation where, although the income has no territorial nexus with India or is not chargeable to tax in India, the Government would nonetheless collect tax." The principle so articulated found a clear echo in the pronouncement of the apex Court in the case of Engineering Analysis.[15]

Monism-Dualism

Broadly speaking, international law is concerned with the regulation of relationships between sovereign states, while municipal (or domestic) law governs the conduct of individuals among themselves and in relation to the state within a national legal system. According to the monist perspective, the said two spheres of law are not

It is important to recall that India's commitment to internationalism was not an afterthought, but an idea woven into the very fabric of its struggle for freedom.

9 *The Tata Iron & Steel Co. Ltd. v. The State of Bihar 1958 SCR 1355.*
10 *Shrikant Bhalchandra Karulkar v. State of Gujarat (1994) 5 SCC 459.*
11 *Electronics Corporation of India Ltd v. CIT 1989 SCR (2) 994.*
12 *'Parnakutt', Poona, September 14, 1933: The Collected Works of Mahatma Gandhi.*
13 *GVK Industries Ltd. v. ITO [2015] 371 ITR 453 (SC).*
14 *GE India Technology Cen. (P.) Ltd. v. Commissioner of Income-tax CA NOS. 7541-7778 OF 2010.*
15 *Engineering Analysis Centre of Excellence (P.) Ltd .v. CIT [2021] 432 ITR 471(SC).*



separate but form a unified legal framework. In a purely monist state, international law is automatically incorporated into the domestic legal order without the need for further legislative action. Legal philosopher Hans Kelsen, supporting the view, argued that all legal authority ultimately derives from a foundational norm of international law, which he termed the 'Grundnorm'. From such a standpoint, international law holds primacy over domestic law, rendering any conflicting national legislation invalid and affirming the direct applicability of international legal principles within a state's internal legal structure. Under a monist system, as seen in countries like the USA, France, and the Netherlands,[16] treaties become part of the domestic legal order and are enforceable without the need for additional legislative measures.

On the other hand, the theory of dualism, developed and supported by scholars such as German jurist Heinrich Triepel and Italian scholar Dionisio Anzilotti, asserts that international law and municipal law are fundamentally separate legal systems. Each operates independently, with distinct sources, purposes, and subjects. Dualist theorists argue that international law does not automatically apply within a state's domestic legal framework. A treaty has no effect on municipal law until an Act of Parliament is passed to give effect to it.[17]

The dichotomy between monist and dualist approaches in international law was aptly captured by the Supreme Court in Maganbhai Ishwarbhai Patel[18]. Considering the constitutional framework on treaties, "In some jurisdictions," observed the Supreme Court, "the treaty or the compromise read with the Award acquires full effect automatically in the Municipal Law, the other body of Municipal Law notwithstanding. Such treaties and awards are 'self-executing'. Legislation may nevertheless be passed in aid of implementation, but it is usually not necessary. The Constitution of India did not include any clear direction about treaties such as is to be found in the United States of America and the French Constitutions." In the dualist imagination, a treaty lives not one, but two lives, each unfolding in a world of its own. By day, it moves through the corridors of international law, shaped by the formalities and disciplines of global order. By night, it retreats into the domestic sphere, where it ought to submit to the will of national constitutions and local legal traditions. The said striking duality is beautifully captured by Duncan B. Hollis in his seminal paper[19] as under:

> "The treaty lives a double life. By day, it is a creature of international law, which sets forth extensive substantive and procedural rules by which the treaty must operate. By night,

16 *Victor Buckman, International Law.*

17 *Peter Malanczuk's, Akehurst's Modern Introduction to International Law, 1997 Edition.*

18 *Maganbhai Ishwarbhai Patel v. Union of India (1970) 3 SCC 400.*

19 *Duncan Hollis: Executive Federalism: Forging New Federalist Constraints on the Treaty Power" Legal Studies Research Paper Series.*

however, the treaty leads a more domestic life. In its domestic incarnation, the treaty is a creature of national law, deriving its force from the constitutional order of the nation state that concluded it."

In the Indian legal framework, the State is a creature of the Constitution[20]. Article 73 of the Constitution of India outlines the extent of executive power of the Union Government, while Article 253 empowers the Parliament to enact laws necessary for implementing international treaties, including tax treaties. Section 90 of the Income Tax Act, 1961 ('the Act'), provides the legislative sanction for the Central Government to enter into agreements with foreign countries for the avoidance of double taxation.

In India, unlike some other countries, the stipulations of a treaty are not, by virtue of its execution (i.e., signing the treaty alone), bestowed with the force of law. If a treaty either requires alteration of or addition to existing law, or affects the rights of the subjects, or are treaties on the basis of which obligations between the treaty-making state and its subjects have to be made enforceable in municipal courts, or which, involves raising or expending of money or conferring new powers on the government recognizable by the municipal courts, a legislation will be necessary.[21]

In *Nestle SA*[22], the Supreme Court undertook an analysis of constitutional principles, statutory provisions, and judicial interpretation to articulate the legal framework governing the enforceability of international treaties within the Indian legal system. Drawing upon the relevant Articles of the Constitution, key provisions of the Act, and established jurisprudence, the Apex Court outlined the legal position in the following terms:

(i) The terms of a treaty ratified by the Union do not ipso facto acquire enforceability;

(ii) The Union has exclusive executive power to enter into international treaties and conventions under Article 73 and Parliament, holds the exclusive power to legislate upon such conventions or treaties.

(iii) Parliament can refuse to perform or give effect to such treaties. In such event, though such treaties bind the Union, vis a vis the other contracting state(s), leaving the Union in default.

(iv) The application of such treaties is binding upon the Union. Yet, they "are not by their own force binding upon Indian nationals".

(v) Law making by Parliament in respect of such treaties is required if the treaty or agreement restricts or affects the rights of citizens or others or modifies the law of India.

Broadly speaking, international law is concerned with the regulation of relationships between sovereign states, while municipal (or domestic) law governs the conduct of individuals among themselves and in relation to the state within a national legal system.

(vi) If citizens' rights or others' rights are not unaffected, or the laws of India are not modified, no legislative measure is necessary to give effect to treaties.

(vii) In the event of any ambiguity in the provision or law, which brings into force the treaty or obligation, the court is entitled to look into the international instrument, to clear the ambiguity or seek clarity.

The Supreme Court firmly positioned India within the dualist tradition, holding that the mere act of

20 *S.R. Bommai v. Union of India (1994) 3 SCC 1.*
21 *State of Gujarat v. Vora Fiddali Badruddin Mithibarwala 1964 (6) SCR 461.*
22 *Assessing Officer (International Taxation) v. Nestle SA [2023] 458 ITR 756 (SC).*

entering into a treaty or protocol does not render it automatically enforceable in Indian courts or tribunals. The Court clarified that the provisions of such treaties do not, by themselves, confer enforceable rights upon individuals or entities until appropriate notifications are issued under Section 90(1) of the Act. The view elucidated by the Apex Court reflects the essence of dualist thought, wherein international law must be expressly incorporated into domestic legislation to have legal effect within the national legal system.

In India, unlike some other countries, the stipulations of a treaty are not, by virtue of its execution (i.e., signing the treaty alone), bestowed with the force of law.

Recently, the Mumbai Bench of the Income Tax Appellate Tribunal, in Sky High[23], following the principles laid down in Nestle, reaffirmed that the domestic enforceability of treaty-based instruments, including modifications brought about through the Multilateral Instrument ('MLI'), is subject to a strict statutory threshold under Indian law. The Tribunal underscored that even when a DTAA and the MLI are both duly signed, ratified, and individually notified, any modification to an existing tax treaty arising from such instruments cannot be enforced unless the specific impact of the modification has itself been separately notified under Section 90(1) of the Act. Echoing the Apex Court's reasoning in Nestle, the Tribunal held that treaty benefits and alterations do not flow automatically by virtue of external developments or multilateral arrangements, and absent a deliberate and express act of domestic incorporation through notification, such provisions cannot be treated as binding in municipal law.

23 Sky High Appeal XLIII Leasing Company Ltd v. ACIT [2025] 177 taxmann.com 579 (Mum. Trib.).

TRC

Another repeated controversy, which has received significant and repeated judicial intervention, is whether a Tax Residency Certificate ('TRC') alone is sufficient to claim benefits under a tax treaty. The issue has long been a subject of close scrutiny by Indian tax authorities, frequently leading to protracted litigation. The most authoritative judicial pronouncement on this issue came from the Supreme Court in the landmark case of Azadi Bachao Andolan[24]. The Court unequivocally held that tax authorities are bound to grant treaty relief so long as the taxpayer is a resident of the treaty partner country, as certified by the Revenue Authorities of that jurisdiction. According to the Court, this was the sole requirement for claiming treaty benefits: neither domestic law nor the treaty itself provided any scope for the Indian tax authorities to exercise discretion in denying such relief. In arriving at this conclusion, the Court affirmed the validity of CBDT Circular No. 789 dated 13.04.2000, which clarified that a person holding a valid TRC issued by the Mauritian Tax Authority would be entitled to avail the benefits under the India–Mauritius Double Taxation Treaty.

The aforesaid view was followed by the Punjab and Haryana High Court in Serco BPO[25], wherein the High Court unambiguously held that once a certificate of residence is duly issued by the authorities of the treaty partner, Indian tax officials are bound to accept it without casting doubt on its validity. Circular No. 789, issued under Section 119 of the Act, embodies not just administrative instruction but also the sovereign trust and mutual respect shared between the two contracting states. To disregard such a certificate, the High Court eloquently observed, would constitute an erosion of the faith and trust reposed by the Contracting States in each other.

24 Azadi Bachao Andolan v. Union of India [2003] 263 ITR 706 (SC).

25 Serco BPO (P.) Ltd. v. Authority for Advance Rulings [2015] 379 ITR 256 (P&H).

The Delhi High Court, in Blackstone[26], frowned upon the attempt of the tax authorities in seeking to question TRC, which, according to the Court, was wholly contrary to the Government of India's repeated assurances to foreign investors by way of CBDT Circulars as well as press releases and legislative amendments, and also the decision of the Supreme Court in Azadi Bachao Andolan. The said judgment has been stayed by the Supreme Court.

In a similar vein, in Tiger Global[27], the Delhi High Court held that the issuance of a TRC by the competent authority must be regarded as sacrosanct, and due weightage must be accorded to it, as it certifies that the TRC holder is a bona fide entity with beneficial ownership domiciled in a Contracting State and pursuing a legitimate business purpose in that State. The High Court observed that the Indian tax authorities are not justified in doubting the presumption of validity attached to the TRC, as doing so would inevitably erode the faith and trust reposed by Contracting States in each other. The Court further observed that treaties are entered into by Contracting States in the exercise of their sovereign powers. Having elucidated so, the High Court held that such reciprocal arrangements cannot be subjected to doubts regarding their validity. The Court also pointed out that Section 90 of the Act itself reflects the legislative intent to accord primacy to treaty enactments. The Supreme Court has heard the appeal filed at the instance of the Revenue against the Delhi High Court decision in Tiger Global; the judgment is awaited.

UTPR

The Undertaxed Profits Rule ('UTPR'), part of the OECD's[28] Pillar Two framework is designed to ensure that large multinational enterprises ('MNEs') with annual revenues over €750 million pay at least a 15% effective tax rate in every country they operate. Alongside the Income Inclusion Rule ('IIR'), the UTPR targets profit shifting to low-tax jurisdictions. Generally speaking, if a subsidiary of an MNE pays less than 15% tax in a country and that income isn't taxed under the parent company's IIR, other countries where the MNE operates can step in and collect extra tax to make up the difference.

However, the implementation of the UTPR raises significant legal concerns as to whether it constitutes an impermissible exercise of extraterritorial taxation, due to the absence of a proximate nexus between the foreign income subject to the UTPR and the sovereign taxing authority of the jurisdiction seeking to impose the tax. International law limits the scope of state jurisdiction to protect foundational principles of



26 *Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd. v. ACIT [2023] 452 ITR 111 (Del).*

27 *Tiger Global International III Holdings v. Authority for Advance Rulings (Income-tax) [2024] 468 ITR 405 (Del).*

28 *The Organisation for Economic Co-operation and Development, abbreviated as OECD, based in Paris (France), is an international organisation of 38 countries, established in 1961. Pillar Two advocates a global minimum corporate income tax rate of 15 percent for MNEs with a "significant economic footprint." The OECD aims to achieve the said aim through the Qualified Domestic Minimum Top-Up Tax ("QDMTT"), the Income Inclusion Rule ("IIR"), and the Undertaxed Profits Rule ("UTPR").*

sovereignty and territorial integrity, preventing unilateral extensions of taxing rights that could destabilize the international legal order. Judicial affirmation of this principle is evident in the Apex Court's ruling in the GVK case, which emphasized the necessity of a genuine connection between the taxpayer and the taxing state. Operationalizing the UTPR also exposes jurisdictions to significant international litigation risks, particularly under investment protection treaties. India's experience with retroactive tax legislation, most notably in the costly arbitral claims in Cairn and Vodafone[29], highlights the potential fallout from aggressive tax measures implemented without adequate adherence to treaty obligations. It is fitting to recall that the doctrine of economic allegiance, long revered as a pillar of international tax law, anchors a jurisdiction's taxing rights in the taxpayer's genuine economic ties to that territory.

It is fitting to recall that the doctrine of economic allegiance, long revered as a pillar of international tax law, anchors a jurisdiction's taxing rights in the taxpayer's genuine economic ties to that territory.

Conclusion

India's approach to extraterritorial legislation is anchored in a constitutional architecture that aligns sovereignty, legality, and international responsibility in measured balance. Article 245 entered the Constitution without protracted debate. The Supreme Court has, however, over decades, read into it a quiet discipline, one that restricts a statute's reach beyond India's borders to situations where a "real and not illusory" connection exists. The insistence on nexus is more than a technical threshold; it is a reaffirmation of India's respect for the sovereignty of other nations and for the dignity of its own legislative process. The dualist structure, rooted in Article 253 and explained and adopted by the Apex Court in Nestle, ensures that international treaties do not bypass the democratic mandate of Parliament: a constitutional firewall that protects domestic rights while allowing India to engage with the world, consistent with the principles of international comity. This spirit has found resonance in the Indian judiciary's approach to the TRC issue, where the courts have refused to let mere suspicion erode the mutual trust that underpins treaty-based cooperation. As new tides, such as the OECD's UTPR approach, awash against India's shores, fresh constitutional challenges may arise, demanding a careful balance between protecting sovereignty and honoring international commitments. And, so it will, for India's Constitution, "is not merely a document in black and white," as Justice P.N. Bhagwati observed, but "a living document that evolves with the nation."



29 Vodafone International Holdings BV v. Government of India [I], PCA Case No. 2016–35; Cairn Energy PLC and Cairn UK Holdings Limited (CUHL) v. Government of India, PCA Case No. 2016-7, Award, 21 December 2020.

Examining Tax Law from the Perspective of Articles 14 and 19

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Saurabh Soparkar
Senior Advocate

Overview

Personal liberty is a precious right. So, when the Founding Fathers sat together to draft the Constitution of India, while their first object was to give unto the people a constitution whereby government was established, their second object, equally important, was to protect the people against the very government!! That is why, while conferring extensive powers on the Government, they also assured to the people the Fundamental Rights in Part III of the Constitution, protecting the citizens against executive and legislative excesses. These rights are not "given to" us by the Constitution of India; they are ours, being basic rights as members of a civilised society. The Constitution recognises them and assures the people of protection against their violation. The article seeks to examine the tax laws, from their enactment to operation, from the perspective of two articles: Article 14, which guarantees equality, and Article 19, which protects the right to do business or trade. They are the most fundamental articles of our constitution.

Introduction

Articles 14 and 19 are mentioned in Part III of the Constitution of India, which contains all fundamental rights. Fundamental rights are those rights of citizens or those negative obligations of the state that do not permit encroachment on individual liberties. These fundamental rights have to be considered as the heart and soul of the Constitution. Such rights occupy a unique place in the lives of civilized societies and have been described in the judgments as "inalienable" or "primordial". An attempt is made in this article to discuss two of the most important fundamental rights from the perspective of tax laws.

Article 14

The Provision

Article 14 of the Constitution of India prescribes that "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*" A truly short



Article, but one of the most powerful Articles of the Constitution of India.

What is equality?

Everyone is entitled to be treated equally, but equality does not mean identical treatment to everyone irrespective of the fact as to whether or not they are similarly situated. One cannot have a legislation that would treat persons similarly situated, unequally, or people who are unequally situated, bunched together and treated equally. However, it is well settled that in the matter of taxation, picking and choosing within limits is inevitable and therefore permissible. True it is that taxation laws must also pass the test of Article 14. But in deciding whether a taxation law is discriminatory or not, it is necessary to bear in mind that the state has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. In this connection a reference be made to the judgment of the Supreme Court in the case of *Shashikant Lakshman Kale v. Union of India* 185 ITR 104 where the Supreme Court upheld the exemption from levy of tax on amount received on voluntary retirement to public sector employees which was not available to private sector employees after holding that there "exists an intelligible differentia between the two having rational nexus with the main object of promoting national economic policy or public policy."

Classification:

It is only when, within the range of its selection, the law operates unequally and that cannot be justified on the basis of any valid classification that it would be a violation of Article 14. The Supreme Court of India in the case of *East India Tobacco v. State of Andhra Pradesh* (AIR 1962 SC 1733) has approved the following dictum of Wills on "*Constitutional Law*".

> "A state does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods, and even the rates of taxation if it does so reasonably. ……..The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation."

And thus, it is well settled that a legislature, in order to tax some, need not tax all. It can adopt a reasonable classification of persons and things in

> These fundamental rights have to be considered as the heart and soul of the Constitution.

imposing tax liabilities. A law of taxation cannot be termed as being discriminatory because different rates of taxation are prescribed in respect of different items, provided it is possible to hold that the said items belong to distinct and separate groups and that there is a reasonable nexus between the classification and the object to be achieved by the imposition of different rates of taxation. The mere fact that a tax falls

more heavily on certain goods or persons may not result in its validity. In respect of taxation laws, the power of the legislature to classify goods, things, or persons is necessarily wide and flexible so as to enable it to adjust its system of taxation in all proper and reasonable ways. The courts lean more readily in favour of upholding the constitutionality of a taxing law in view of the complexities involved in the social and economic life of the community. Ordinarily, the court would trust the wisdom of the legislature in this regard, and unless the fiscal law in question is manifestly discriminatory, the court would refrain from striking it down on the ground of discrimination.

> Equality does not mean identical treatment to everyone irrespective of the fact as to whether or not they are similarly situated.

Discrimination as the ground of challenge:

A challenge to tax statutes made under Article 14 of the Constitution of India can be on grounds relatable to discrimination from either or both angles, procedural or substantive in nature. Thus, in *Suraj Mall Mohta and Co. v. A.V. Visvanatha Sastri (1955) 1 SCR 448*, the Supreme Court of India struck down Section 5(4) of the Taxation on Income (Investigation Commission) Act, 1947, on the ground of procedural arbitrariness. As against that an instance of taxation statute being struck down on substantive grounds which had alleged discrimination can be found in the 5-Judge decision of the Supreme Court in *Kunnathat Thatehunni Moopil Nair v. State of Kerala* (1961) 3 SCR 77, in which a uniform tax called "basic tax" levied under the provisions of the Travancore Cochin Land Tax Act, 1955 was held to be discriminatory as it required everyone to pay tax at the same flat rate, irrespective of the yield from the land, because it treated unequals, equally. Likewise, in *Union of India v. A. Sanyasi Rao* (1996) 3 SCC 465, the Supreme Court struck down Section 44-AC of the Income Tax Act as being discriminatory when only particular trades were singled out for discriminatory treatment, reliefs under Sections 28 to 43-C of the Income Tax Act being denied only to such trades. This was done as the denial of such relief had no nexus to the object sought to be achieved by the legislation and resulted in unfairness, arbitrariness, and denial of equality of treatment.

Manifest Arbitrariness:

There had been some debate on the issue as to whether a piece of legislation can be struck down on the ground of manifest arbitrariness; the contrary view being that one cannot attribute arbitrariness to the body of the legislators and so a legislation cannot be struck down on that ground; only delegated legislation can be. However, this issue has been put to rest by the Constitution Bench judgment in *Shayara Bano v. Union of India* (2017) 9 SCC 1 as follows:

> A challenge to tax statutes made under Article 14 of the Constitution of India can be on grounds relatable to discrimination from either or both angles, procedural or substantive in nature.

> "101. ..... The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments, would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally, and/or without an adequate determining principle. Also, when something is done that is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of

manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

Responsible Assesses benefit:

Following the judgement of Shayara Bano (supra), the Supreme Court in the case of *CIT v. Pepsi Foods Limited* 433 ITR 295 struck down the 3rd proviso to section 254(2A) off the Income Tax Act which did not permit stay order granted by the Tribunal to operate beyond 365 days being both arbitrary and discriminatory because no differentiation was made by the 3rd proviso between the assessees who are responsible for delaying the proceedings and the assessees who are not so responsible.

> No rule or law can be declared to be unreasonable merely because there is a reduction in the income of the citizen on account of regulation of the business.

But Challenges do fail!

But it is not that because of this extended scope of challenge on the ground of manifest arbitrariness, the legislative freedom gets curtailed. Attempts have been made by assessees to challenge the provisions of laws, including some of the provisions of the Income Tax Act, 1961 (hereinafter referred to as the Act), to get them struck down on the ground of manifest arbitrariness, but the same have not succeeded. For example, the Gujarat High Court, in the case of *Ashish Prafulbhai Patel v. ITSC* 403 ITR 318, did not accept the challenge by the assessee to the provision of the Act requiring an assessee to pay the full admitted amount of taxes in order to maintain a settlement petition on the ground of manifest arbitrariness. Similarly the Bombay High Court in the case of *Serum Institute of India Private Limited v. Union of India* 463 ITR 582 did not accept challenge to the amended definition of the term "income" so as to include the amount of cash assistance and subsidy within its fold on the ground of manifest arbitrariness by holding that whereas taxing laws are not outside Article 14, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy legislature enjoys a wide latitude in the matter of taxation and that Legislative assumption cannot be condemned as irrational and judicial veto is to be exercised only in cases that leave no room for reasonable doubt. It was also held that ordinarily constitutionality of a law is presumed, but in the case of fiscal laws, the presumption of constitutionality is particularly significant due to the complex nature of economic regulation. The court quoted the observation of the Supreme Court (*Bhavesh D. Parish v. Union of India* 2000 5 SCC 471) to the effect that while dealing with economic legislation, the court would interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all.

And at times they succeed!!

However, the Kerala High Court, in the case of *P. A Jose v. Union of India* (2024 SCC OnlineKer 2349), while dealing with the challenge to retrospective applicability of ICDS in relation to valuation of stock, came to the conclusion that such prescription of mandatory application of ICDS to apply FIFO method for valuing closing stock to those assessees who have been otherwise following LIFO method, would be manifestly arbitrary and therefore struck down the provision in relation to them. Similarly, when revisional proceedings were held to be time barred by the High Court in an earlier round of litigation law and thereupon the law was retrospectively amended to provide for extended time limit, the Gujarat High Court, in the case of *Reliance Industries limited v. State of Gujarat* 82 GSTR 32 declared the amended law to be manifestly arbitrary because it permitted the

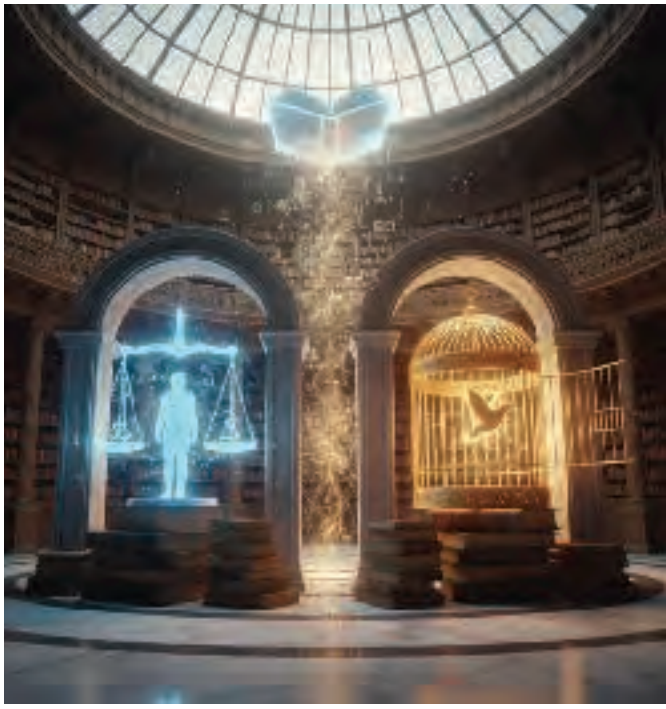
Revenue to reopen the case of an assessee at any point of time based on the decision of a completely unconnected assessee.

Retrospectivity and arbitrariness:

One more facet of the arbitrariness of laws is its retrospective application. It is well settled that the power to legislate also gives power to legislate retrospectively. However, the courts have recognised certain inherent limitations in framing retrospective tax legislation. In *Tata Motors Limited v. State of Maharashtra* 2004 5 SCC 783, it was observed that "it is undoubtedly true that the legislature has powers to make laws retrospectively, including the tax laws. Levies can be imposed or withdrawn, but if a particular levy is sought to be imposed only for a particular period and not before or subsequently, it is open to debate whether the statute passes the test of reasonableness or not." Over here, if the law is being enacted retrospectively to validate a levy which otherwise was in force but was invalidated by a Court order, usually a wider latitude is being given to uphold such a piece of Legislation. However, where the levy is effected retrospectively, not by way of validation but as a fresh levy, the Courts usually look at the matter more seriously to examine whether it is reasonable to have such a levy from a back date. In the case of *D. Cawasjee and Co. v. State of Mysore* 58 STC 1, the Supreme Court was concerned with the issue related to the constitutionality of the Mysore Sales Tax Amendment Act, 1969, which provided for levy of higher rate of tax with retrospective effect to nullify the judgement and order of the High Court for refund of excess amount of tax illegally collected. Accepting the challenge, on the basis of Articles 14 and 19, the said Act, the Amendment Act was held to be unconstitutional, being unreasonable and arbitrary after holding that the Act in question cannot be regarded as a Validating Act.

But the Court does not accept this argument!!

Discussion on the retrospective levy would not be complete without referring to a recent judgment of the Bombay High Court in the case of *All India Central Bank Officers Federation v. Union of India* 477 ITR 26. On 15th September 2006, in the case of Arun Kumar, the Supreme Court held that the legislature has the right to levy tax on a concession in the form of accommodation received from the employer at a concessional rate. However, whether or not there is an actual concession was required was to be decided by



the assessing officer under the law. The law was amended to measure such a deemed benefit. The said amendment was challenged inter alia on the ground that it retrospectively levies tax and therefore violates Article 14. The Bombay High Court repelled this contention by holding that there is no general rule against construing the machinery provisions retrospectively or holding that any retrospective construction of such provisions would render them ultra vires Article 14 of the Constitution of India. If the legislature gives limited retrospectivity to a machinery provision, the High Court held that the same is valid.

Article 19

Scope of Article 19:

Subject to limitations prescribed under sub-Article (6), Article 19(1)(g) of our Constitution recognises that every citizen of this country has the right to practise any profession, or to carry on any occupation, trade, or business. What would be the interplay between this Article and the tax laws?

When would this Article protect the Assessee:

The issue was first examined by the Constitution Bench of the Supreme Court in the case of *State of Madras v. Buckingham and Carnatic co Ltd (1969) 2 SCC 55* where, albeit in a slightly different context, the court held that the power of taxation is an essential and inherent attribute of sovereignty and general constitutional provisions relating to power of taxation are regarded not as a grant of power but as limitation upon the power which would otherwise be practically without limit. However, as a general rule, so long as tax retains its character as a tax and is not confiscatory or extortionate, the reasonableness of the tax cannot be questioned. So, a tax that is confiscatory or extortionate is invalid. Challenge to the levy of tax on bus operators as confiscatory or extortionate was rejected by the Supreme Court in the case of *Shaik Madar Saheb v. State of AP (1972) 4 SCC 635*, when the Supreme Court found that, as a result of the levy, the bus operators were not likely to end up having losses. Therefore, this argument, though available, might be difficult to prove in reality unless the levy is extremely disproportionate. This principle is succinctly explained by the Supreme Court in the case of *Deepak Theatre v. State of Punjab, 1992 Sup. (1) SCC 684* in the following words: "no rule or law can be declared to be unreasonable merely because there is a reduction in the income of the citizen on account of regulation of the business." Similar argument that the rate of rate of luxury tax is excessive and therefore violative of Article 19(1)(g) was raised before the Supreme Court in the case of *Express Hotels Private Limited v. State of Gujarat 1989 3 SCC 677* but the court rejected it by specifically holding that a mere excessive rates or that it affects earnings cannot, per se, be held to violet article 19(1)(g).



Reasonable Restrictions

Whereas under article 19(1)(g), an assessee has a right to do business or profession, it is obviously subject to reasonable restrictions. The power to search and seizure under the provisions of section 132 of the Act came up for challenge before the Supreme Court of India in the case of "*Pooranmal v. Director of Income Tax 93 ITR 505*" inter alia on the ground that these provisions are violative of Article 19(1)(g), which guarantees the right to do business. The Supreme Court negatived this argument by holding that the impugned provisions are evidently directed against persons who are believed, on good grounds, to have illegally evaded the payment of tax



on their income and property; therefore, drastic measures to get at such income and property with a view to recover the government dues would stand justified in themselves. It said that "when one has to consider the reasonableness of the restrictions or curbs placed on the freedoms mentioned under this Article, one cannot possibly ignore how such evasions eat into vitals of the economic life of the community……. Therefore, in the interest of the community, it is only right that the fiscal authorities should have sufficient powers to prevent tax evasion." So, stating, the Supreme Court upheld the validity of the law.

If no unfairness, the law not invalid:

Similarly, the provision of treating certain loans as "deemed dividend" came up for challenge before the Supreme Court of India in the case of *Navneet Lal C. Jhaveri v. AAC 56 ITR 198*. The Supreme Court, however, upheld the legislation, holding that the provision does not contravene any constitutional right; a shareholder has no such fundamental right to borrow money from the company, and that there is no element of unfairness in the fiction.

Curtailment of profit: no ground of challenge.

Recently Delhi High Court in the case of *Sanjeev Goyal v. Union of India 2024 163 taxman.com 122* was examining challenge to the amendment made in section 71 of the Act by insertion of subsection (3A) by Finance Act 2017 with effect from 1st April 2018 restricting set off of loss under head "income from house property" against any other head to an amount of ₹2,00,000 for a particular assessment year. The Court held that the right under Art. 19(1)

> Unless the provision creates an absolute restriction on the taxpayers' pre-existing right to claim the deduction or unless it does not meet the test of proportionality, the challenge would fail.

(g) can not be extended to protect one's right to profit, and that right to carry on any business is subject to regulatory parameters, and a challenge against such a regulatory parameter could not be premised on the sole basis that it curtails the profit. It further held that unless the provision creates an absolute restriction on the taxpayers' pre-existing right to claim the deduction or unless it does not meet the test of proportionality, the challenge would fail.

Conclusion

It is impossible to cover up the huge spectrum of issues thrown up by these two Articles, even in the field of tax laws. A small attempt is made over here to cover what I believe are important and interesting issues that would require some consideration and discussion in the times to come.

FIT ANNUAL TAXATION CONFERENCE 2025

5th and 6th December 2025, Four Seasons Hotel, Worli, Mumbai

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Article 21, Fairness and Principles of Natural Justice

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Sachit Jolly
Senior Advocate

Overview

In this article, the author examines the evolution of Article 21 of the Constitution of India, emphasizing its transformation from a provision limited to "procedure established by law" to a foundational guarantee of fairness, reasonableness, and natural justice in the protection of life and personal liberty. By tracing landmark Supreme Court judgments—including A.K. Gopalan, R.C. Cooper, Kesavananda Bharati, and Maneka Gandhi—the analysis illustrates how Article 21's interpretation has progressively incorporated procedural and substantive safeguards, aligning it closely with the rest of Part III of the Constitution of India, containing all fundamental rights, and particularly, Articles 14 and 19, and embedding within itself the principles of natural justice.

The article further explores the application of these principles in tax litigation, highlighting the active role of the writ jurisdiction of the Constitutional Courts in checking arbitrary state action and procedural violations, as seen in recent court interventions during the COVID-19 pandemic and in matters of retrospective taxation. It also addresses ongoing practical challenges—such as ineffective remand, procedural delays, and jurisdictional self-restraint—that affect the efficacy of writ remedies. The article underscores the importance of the modern-day interpretation of Article 21 of the Constitution of India and advocates for consistent adherence to fairness and natural justice by the tax administration, as well as the courts of law.

Introduction

The Constitution of India ("Constitution") is a living body that adapts to Indian society, while holding true to the ideals of independence our forefathers fought for and canonised in the Constitution. It may seem an oxymoron, but that is just how Indian constitutional law has developed, to ensure that the guarantee of freedom and dignity keeps up with our lives while ensuring that certain ideals remain forever unshaken.

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Article 21 of the Constitution, seemingly the provision that has had to adapt the most, has undergone a remarkable evolution, moving away from its originalist idea to becoming a cornerstone to guarantee every fundamental right enshrined in Part III of the Constitution.

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This article traces the development of Article 21, which, in its modern form, encompasses within its fold the requirements of fairness, reasonableness, and the principles of natural justice as part of 'procedure established by law' and how it has resulted in constitutional litigation forming an integral part of the tax disputes landscape in India.

Article 21: From Originalism to Living Constitutionalism

When talking about the origin and development of Article 21 of the Constitution across its 75-year history, comparisons with the Fifth Amendment of the United States ("U.S.") Constitution are inevitable. This is not just because the concept of fundamental rights was borrowed from the U.S. Constitution, but also because the originalist interpretation of Article 21 has evolved in tandem with the development of Indian constitutional law.

Article 21 reads as follows:

> *"No person shall be deprived of his life or personal liberty except according to procedure established by law."*

The relevant portion of the Fifth Amendment to the U.S. Constitution reads as follows:

> *"No person shall ... be deprived of life, liberty, or property, without due process of law."*

At first blush, both Constitutions appear to advocate for the same thing. However, the difference lies in how the right to life and personal liberty can be taken away. The Indian Constitution, according to its originalist interpretation, would allow the State to take away this right by any procedure validly established by law, even if such a procedure may suffer from manifest arbitrariness and possibly even perversity. The American Constitution, by using the words "due process of law", allows courts to strike down laws that suffer from arbitrariness or perversity, even if they were established through a valid constitutional process – known in the U.S. as 'substantive due process'. American courts can even strike at arbitrary or perverse executive action, such as violation of the right to be heard, or the rule against bias – known as 'procedural due process', which is essentially their term for 'principles of natural justice'.

Anyone reading this is likely to disagree that the Indian Constitution ever allowed the state to take away the right to life and liberty with such ease. Such disagreement is valid, given the development and current standing of Article 21 and Part III of the Constitution as a whole.

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The debate between 'due process of law' and 'procedure established by law' dates back to the Constituent Assembly Debates, with Dr. B.R. Ambedkar advocating for the former, while the majority supported the latter, which was finally adopted. The rationale for this was to limit the power of the Supreme Court, as using the phrase



'due process of law' would allow the Supreme Court to even question whether a law was "good law", possibly even allowing them to delve into the realm of policy. In this place, only the executive should belong. Our Supreme Court, however, had other ideas.

In 1950, the year the Constitution came into force, a 5 Judge bench of the Hon'ble Supreme Court considered the scope of Article 21 for the first time in *A.K. Gopalan v. State of Madras*[1], wherein the Petitioner challenged the legality of the Preventive Dentition Act, 1950, and the procedure prescribed therein. The Supreme Court subscribed to the originalist view of Article 21, stating that the Constituent Assembly had consciously omitted the phrase "due process of law" and instead adopted "procedure established by law". Further, the Court even held that the expression "law" did not include principles of natural justice, a position that received a strong dissent from Justice Fazal Ali. Lastly, the Court also emphasised that each fundamental right was to be treated as distinct and self-contained. Essentially, the right to life and personal liberty could be taken away as long as a law was validly enacted – even if such a procedure was in violation of the principles of natural justice.

> This basic structure included the judicial review, "essence of fundamental rights", "freedom and dignity of an individual", and Articles 14, 19, and 21 of the Constitution.

It took 20 years for this approach to be reconsidered, this time by an 11 Judge bench of the Supreme Court in *Rustom Cavasjee Cooper v. Union of India*,[2] (hereinafter, the

1 *AIR 1950 SC 27.*

2 *(1970) 1 SCC 248.*

Bank Nationalisation Case) wherein the Petitioner challenged the law that facilitated the nationalisation of a few banks. The Court, departing from the originalist view upheld in A.K. Gopalan, observed that Part III of the Constitution "weaves a pattern of guarantees on the texture of basic human rights and does not attempt to enunciate distinct rights". It further clarified that the term "law" refers to legislation within the competence of the legislature, provided it does not violate the fundamental rights guaranteed in Part III of the Constitution. This now meant that a law that took away the right to life and personal liberty must pass muster on all fundamental rights enshrined in Part III of the Constitution.

Any law taking away the right to life and personal liberty must pass the muster of Articles 14 and 19 of the Constitution.

Soon after, in 1973, 13 judges of the Supreme Court heard *Kesavananda Bharati v. State of Kerala*[3], holding by a narrow majority of 7-6 that there existed a "basic structure" of the Constitution, which could not be tampered with. This basic structure included the judicial review, "essence of fundamental rights", "freedom and dignity of an individual", and Articles 14, 19, and 21 of the Constitution. The law as it stood in 1973 was thus: (a) the right to life and personal liberty could be taken away by a law that passed muster on other articles of Part III of the Constitution, and (b) Articles 14, 19, and 21 of the Constitution, or at least their essence, could not be taken away at all.

However, the most significant turn came with the judgment of the Supreme Court in 1978 in *Maneka Gandhi v. Union of India*[4]. The case arose from an arbitrary confiscation of the petitioner's passport. The Court held that fundamental rights are not distinct and mutually exclusive, and that any "law" prescribing procedure under Article 21 of the Constitution must withstand scrutiny under all other guaranteed freedoms. Chief Justice M.H. Beg illustratively observed –

> *"Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at many point. They are all parts of an integrated scheme in the Constitution, their waters must mix to constitute that grand flow of unimpeded and impartial justice…".*

With a specific reference to Article 21 of the Constitution, the Court held that the "*procedure established by law*" must be right, fair, just, and reasonable, and could not be arbitrary, fanciful, or oppressive. In fact, in relation to Article 14 of the Constitution, the court even held that any arbitrary act is violative of the principle of equality and equal protection under the laws, thus paving the way for courts to strike down arbitrary and perverse executive action. This also legitimized the principles of natural justice as part of Article 14, which, according to the originalist ideal propounded in *A.K. Gopalan*, was never a consideration in Article 21.

The law now, and as it has been since, is that any law taking away the right to life and personal liberty must pass the muster of Articles 14 and 19 of the Constitution, and has shaped modern Constitutional law and litigation in India.

This expansive reading of Article 21 of the Constitution continued to guide the subsequent constitutional jurisprudence. In 2017, a 9 Judge Bench of the Hon'ble Supreme Court in *K.S. Puttaswamy v. Union of India*,[5] considered the question whether the right to privacy formed part of the fundamental rights under Part III of the Constitution. The Court reaffirmed that the phrase "*procedure established by law*" must necessarily embody the principles of fairness, justice, and reasonableness. Furthermore, the court had reaffirmed that the fundamental rights are not

3 *(1973) 4 SCC 225.*
4 *(1978) 1 SCC 248.*
5 *(2017) 10 SCC 1.*

"*isolated silos" or "watertight compartment*" but are completely intertwined.

An overview of the principles of natural justice

Principles of natural justice are based on 'fair-play in action' and are often seen as a procedural aspect of the doctrine of legitimate expectation, which is aimed at eliminating the possibility of arbitrariness in executive action.

Principles of natural justice embody two cardinal principles of fairness. The first is *audi alteram partem*, which translates into 'no one shall be condemned unheard', and the second is *nemo judex in causa sua*, which literally translates into 'no one should be made a judge in their cause' and is a rule against bias. *Audi alteram partem* is enshrined in procedure, which mandates issuance of notice to the respondent litigant, filing of pleadings, hearing both sides, and passing a well-reasoned order to decide a case.[6] The rule against bias, on the other hand, ensures that the judge has no personal or professional interest in the cause to be decided whatsoever, guaranteeing fair adjudication of disputes and furthering the requirements of equal protection under the laws as under Article 14 of the Constitution.[7]

The principles of natural justice guide procedure in all litigation, whether before the judiciary or any administrative authority in the country. As seen from the development of Article 21 outlined above, constitutional courts have the power to strike down arbitrary action wherever it may arise. Thus, a violation of principles of natural justice creates sufficient locus for a litigant to approach a constitutional court, which may exercise its writ jurisdiction to ensure that the fairness in litigation is not compromised. Not surprisingly, even the constitutional court itself will be bound by the principles of natural justice and fairness while deciding the case.

6 *Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise & Ors., (2015) 8 SCC 519.*

7 *Maneka Gandhi (supra).*

Invoking the writ jurisdiction of constitutional courts in tax cases

The writ jurisdiction of a constitutional court is invoked to present either (a) a constitutional challenge to administrative action on the grounds of arbitrariness or legal perversity, or (b) to challenge the validity of a tax statute itself.

Challenging the administrative action of tax authorities flows from reasons such as not providing an opportunity to be heard, the conduct of proceedings by tax officers who do not have jurisdiction to do so, and, in some cases, even departmental bias that a tax officer may have. It should be noted that the writ jurisdiction of a High Court under Article 226 of the Constitution of India is wider than Article 32 exercised by the Supreme Court, as a high court can exercise its writ jurisdiction when there is a violation of any "legal right", not just constitutional or fundamental rights.

The principles of natural justice guide procedure in all litigation, whether before the judiciary or any administrative authority in the country.

When a constitutional litigation is instituted in a tax case, it must pass the muster of maintainability, i.e., there must be the absence of an effective alternate remedy and a clear violation of legal rights. This is often the case in reassessments and back-assessments/audits in both direct and indirect tax cases, since these procedures don't allow for an appellant remedy during the initial stages to challenge their legal validity. Hence, taxpayers are constrained to approach the High Courts to avoid long-drawn-out assessment and appellate proceedings. The writ jurisdiction of High Courts in such cases was legitimised by the Supreme Court in its decision in *Calcutta*

Discount Co. (P) Ltd. v. CIT,[8] where it was held that the High Courts can issue writs preventing an executive authority from acting without jurisdiction. Later, in several cases, the Supreme Court expanded this view by stating that High Courts can exercise writ jurisdiction even in cases where an alternate remedy is available, if the challenge extends to a violation of principles of natural justice, assumption of jurisdiction, or a challenge to the legal vires of a statute.[9]

When a constitutional litigation is instituted in a tax case, it must pass the muster of maintainability, i.e., there must be the absence of an effective alternate remedy and a clear violation of legal rights.

For examining the invocation of Article 21 in tax cases, it is imperative to note that tax laws do not conform to the principles of equity, and challenges based on the same are generally not sustained. However, there have been instances when Courts have delved into the areas of equity to strike a balance between the tax, which is meant for the greater good of the public, and its impact on those who are burdened with the tax liability, to determine its tenability.

During the difficult times of COVID-19, the Delhi High Court[10] dealt with a challenge to Customs Notification No. 30/2021, issued by the Ministry of Finance Department, whereby oxygen concentrator from the customs barrier required payment of IGST at the rate of 12%, which was although reduced from the existing rate of 28% in view of the crisis due to COVID-19, however, the same stood in contrast to oxygen concentrators exempted from IGST, if the oxygen concentrators were imported for commercial use by the State Government or, any entity, relief agency or statutory body, authorised in this regard by any State Government.

The Petitioner, an 85-year-old individual, approached the High Court against the imposition of IGST on the import of the oxygen concentrator, which was gifted to him by his nephew, by invoking Article 21 of the Constitution. In the challenge before the Court, it was contended that the imposition of tax is discriminatory, unfair, and unreasonable, and that it impinges upon his right to life and health, which is violative of Article 21. In the given peculiar circumstances, the High Court observed that it was a rare case in which a writ was instituted invoking Article 21 of the Constitution to lay a challenge to a notification issued in the realm of tax statute, which, by virtue of its fundamental nature of being an exaction by the State, does not encompass equity. However, given the critical circumstances, it was contended before the Court and accepted that "threshold

Tax proceedings, in the nature of search proceedings or recovery proceedings, are challenged on grounds of being violative of Article 21 of the Constitution.

for assailing the impugned notification, [unlike in ordinary circumstances, involving a challenge to a taxing statute], is low". Therefore, applying the principle enunciated in *Indian Express Newspapers (Bombay) Private Limited*[11] in the context of Article 19(1)(a), it was held that the said same would equally apply to a challenge laid under Article 21 and therefore, the Petitioner was only required to demonstrate existence of

8 *(1961) 41 ITR 191.*

9 *Whirpool Corporation v. Registrar of Trademarks, Mumbai, (1998) 8 SCC 1; Harbanslal Sahni v. Indian Oil Corporation Ltd., (2003) 2 SCC 107; Radha Krishan Industries v. State of Himachal Pradesh & Ors., 2021 SCC OnLine SC 334.*

10 *Gurcharan Singh v. Ministry of Finance (Department of Revenue), Government of India - W.P.(C) 5149/2021.*

11 *Indian Express Newspapers (Bombay) Private Limited v. Union of India, (1985) 1 SCC 6415.*

"*distinct and noticeable burdensomeness that is clearly and directly attributable to the tax*". Accordingly, imposition of IGST on oxygen concentrators imported by individuals and received as gifts for personal use was held to be unconstitutional, and the notification was quashed.

Tax proceedings, in the nature of search proceedings or recovery proceedings, are challenged on grounds of being violative of Article 21 of the Constitution; however, the same are generally not interfered with, despite not being compliant with 'procedure established by law'. In recent times, a ruling from the Gujarat High Court[12] garnered a lot of attention when the search conducted upon a practicing advocate was challenged on various grounds, including violation of Article 21[13]. In search cases, the conduct, or misconduct, so to say, of the tax authorities are so brazen and blatant that the same should be immediately shunned and intervened by the Courts in view of being prima facie violative of fundamental rights, including various facets of Article 21 which do not conform to procedure established by law, however, generally, courts have been reluctant to interfere even in such cases. For instance, the said case before the Gujarat High Court also saw a number of glaring instances of misconduct by the tax authorities during the course of the search and even prior thereto. In the facts of the case, it was an admitted position that the notice server along with two police officers having rifles, without the presence of any female officer, went to the residence of a lady advocate who was working with the Petitioner as a freelancer, to serve the summons at 6:30 am and forcefully took her to office premises of the Petitioner, wherein CCTV cameras working in the office of the petitioner were turned-off. Even at the residential premises of the lady advocate, the officers switched off and took away the mobile phones of the lady advocate and all her family members. Therefore, prima facie, there was gross misconducts on the part of the officers, which not only resulted in harassment and trauma to the lady advocate and her family, who was not even covered under the search, but amounted to a violation of fundamental rights and were in clear violation of the search and seizure manual 2007 of the tax department. However, even after taking cognizance of the said facts, which were not even controverted by the department in the court, the court only made observations, deprecating the high-handed approach of the authorities, and noted that it expects the department to send an apology to the lady advocate for their inhumane approach.



While the levy of tax per se is generally outside the ambit of challenge in writ court on grounds of violation of Article 21, the procedure concerning the tax proceedings and tax collection is open to challenge. One such challenge was made to Section 139AA of the IT Act, which mandates

12 *Maulikkumar Satishbhai Sheth v. Income-tax Officer [2024] 161 taxmann.com 543 (Gujarat).*

13 *Kharak Singh v. State of UP, 1964(1) SCR 332; K.S. Puttaswamy & Anr. v. Union of India & Ors., (2017) 10 SCC 1.*

quoting the Aadhaar number in the PAN application/return of income, as being violative of Article 21 of the Constitution, as it offends the right to privacy, which is protected under Article 21. However, the Court held that right to privacy under Article 21 is also subject to limitations and the permissible invasion is to be tested on triple test of (a) the existence of a law; (b) a 'legitimate State interest'; and (c) 'test of proportionality',

> While the levy of tax per se is generally outside the ambit of challenge in writ court on grounds of violation of Article 21, the procedure concerning the tax proceedings and tax collection is open to challenge.

which was held to be satisfied with respect to Section 139AA of the IT Act and hence, it was held as constitutionally valid[14].

Examining jurisprudence regarding retrospective operation of tax laws, specifically from a constitutional perspective

One of the first cases dealing with retrospective taxation in India was that of *Asst. Commr. of Urban Land Tax v. Buckingham & Carnatic Co. Ltd.*[15], where the Supreme Court had adopted the 'doctrine of small repairs'. It was held that the legislature has the power to cure inadvertent defects in statute, such as those that may arise due to poor drafting or give rise to uncontemplated benefits, with retrospective effect, and any gain arising to a taxpayer because of such defects would be a windfall. It is well-settled law that no one can acquire a vested right from a defect in a statute, and therefore, imposition of tax with retrospective effect per se does not render the law unconstitutional. For examining the validity of retrospective operation of a tax law, various factors have to be considered, such as the context in which retroactivity is contemplated, the period of such retroactivity, and the degree and extent of the unforeseen financial burden imposed for the past period[16]. Generally, there is no quarrel regarding the position that an amendment can have a retrospective effect, and affect the vested rights of the parties if the provision is made retrospective either expressly or by necessary intendment[17]; however, even then, it is to be considered that retrospectivity must be reasonable, not excessive or harsh.[18] In recent times, a testament to retrospective amendments in tax law is the infamous amendment, also known as the Vodafone amendment, by which the legislature introduced a retrospective amendment in the IT Act, allowing the Indian tax authorities to bring to tax gains on account of indirect transfer of assets arising out of a transaction that took place wholly outside India. This retrospective amendment virtually overrode every legal argument accepted by the Supreme Court[19] while holding that the transaction between Vodafone and Hutchison was not liable to tax.

The law regarding retrospective application of a particular enactment, in the tax domain, is fairly settled by the Hon'ble Supreme Court in its five-judge Constitution Bench decision in the case of *CIT v. Vatika Township Pvt. Ltd*[20]. In that case, the Hon'ble Court held that while interpreting the applicability of a legislation, unless the intention appears contrary, the legal maxim '*lex prospicit non respicit*', i.e., law looks forward not backward, should ordinarily be applied. The said

14 *K.S. Puttaswamy (Supra)*
15 *Asst. Commr. of Urban Land Tax v. Buckingham & Carnatic Co. Ltd., (1969) 2 SCC 55.*
16 *Ujagar Prints (III) v. Union of India, (1989) 3 SCC 531.*
17 *Shyam Sunder v. Ram Kumar (2001) 8 SCC 24.*
18 *National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India, (2003) 5 SCC 23.*
19 *Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613.*
20 *CIT v. Vatika Township Pvt. Ltd 367 /TR 466.*

principle is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset.

Legal and practical issues associated with invoking the writ jurisdiction of courts in tax matters

Since principles of natural justice are integral to 'procedure established by law', the writ jurisdictions are invoked frequently in tax proceedings where the authorities fail to adhere to the said principles, seeking quashing of the action taken. Commonly, the courts in such cases tend to remand the matter for fresh adjudication, directing due compliance with the procedure; however, the remand in most cases fails to garner any effective results since the authorities continue to act with prejudice and pre-determined judgment.

In fact, the brazenness of the tax authorities was most evident in the "TOLA" controversy. The Taxation and Other Laws (Amendment) Act, 2020 ("TOLA") was enacted, extending the limitation for issuance of reassessment notices wherever the prescribed time limit was expiring during the COVID-affected period. Through TOLA and subsequent notifications thereunder, the time-limits to issue such notices were extended until June 30, 2021. However, w.e.f. April 01, 2021, a completely new reassessment regime, with newly prescribed time-limits, was put in place.[21] Tax officers, however, continued to issue notices under the old regime until June 30, 2021. Most High Courts quashed such notices issued under the old procedure in cases where the writ jurisdiction of the High Courts was invoked to adjudicate on the correct interpretation of the provisions of the TOLA.[22] The Revenue took the matter to the Supreme Court, where it ultimately accepted that the High Court's decisions were correct. However, the Revenue cited the fact that their officials were not aware of the new procedure, and given the volume of notices quashed, they practically requested the Supreme Court to issue directions under Article 142 of the Constitution, to have the notices reinstated. The Revenue eventually succeeded, at the cost of the rights of the citizens and in complete disregard for the principles of fairness enshrined in the Constitution of India.

Writ courts have devised a self-imposed bar on the invocation of writ jurisdiction where they decline to entertain a writ when there exists an alternate remedy or the Courts find that there is no infringement of fundamental rights and/or legal rights of the Petitioner. However, in such cases, the Courts tend not to appreciate the fact that by ousting a litigant for availing the alternate remedy, effective justice is denied since the alternate remedy at times amounts to a case of 'Caesar to Caesar', rendering it a futile/empty formality.

In many cases, although there exists no immediate alternate remedy for an action which is challenged by invoking the writ jurisdiction, yet the Courts decline to exercise their writ jurisdiction on the premise that the final order or final action would be amenable to the appellate jurisdiction. However, by not quashing the illegality at the inception itself, the process of justice is often delayed, which causes substantial loss of resources.

> While interpreting the applicability of a legislation, unless the intention appears contrary, the legal maxim 'lex prospicit non respicit ', i.e., law looks forward not backward, should ordinarily be applied.

It is also important to point out that although while exercising the writ jurisdiction, the courts only tend to examine the decision making

21 *See sections 40-45 of the Finance Act, 2021.*
22 *Union of India v. Ashish Agarwal, (2022) 444 ITR 1 (SC).*

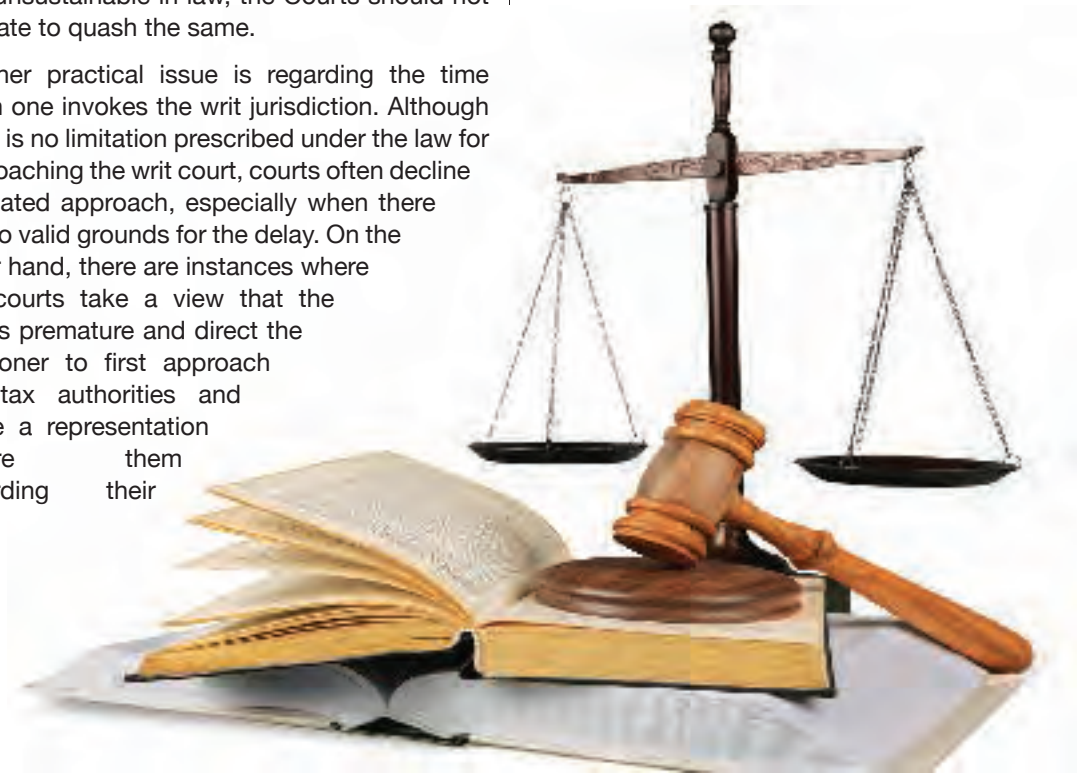
process, including adherence to principles of natural justice, as a part and parcel of which – it is also examined whether the decision arrived at is a reasoned order or not – however, a self-imposed bar has been in place to not test the validity of the reasoning given in the orders. This sometimes frustrates the whole objective of invoking the writ jurisdiction, as the perversity or absurdity of an action goes unchecked by a writ court due to such a bar. While it is understandable that a writ court cannot be expected to act like an appellate authority, yet, when there are glaring irregularities, making the action patently perverse and unsustainable in law, the Courts should not hesitate to quash the same.

Tax authorities should act in good faith and deal with the taxpayers without any bias or prejudice to avoid unnecessary harassment of them.

Another practical issue is regarding the time when one invokes the writ jurisdiction. Although there is no limitation prescribed under the law for approaching the writ court, courts often decline a belated approach, especially when there are no valid grounds for the delay. On the other hand, there are instances where the courts take a view that the writ is premature and direct the petitioner to first approach the tax authorities and make a representation before them regarding their grievance. However, usually, such an approach only results in delaying justice.

Conclusion

As we conclude, keeping in view the fundamentals of 'fair-play' and principles of justice enshrined in the Constitution, which are also imported to the statutes dealing with taxation, the aim of the authorities should be to ensure that compliance with the principles of natural justice in spirit and essence. If the principles of natural justice are followed and applied without any taint, the same would go a long way in reducing litigation, achieving effective resolution, and also restoring faith in the actions of the tax authorities. Therefore, tax authorities should act in good faith and deal with the taxpayers without any bias or prejudice to avoid unnecessary harassment of them. However, in cases of infringement of the same, the courts should not hesitate to intervene and strike down the action of the authorities.



Evaluating the Concept of Fiscal Federalism Through the Lens of GST

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K Vaitheeswaran
Advocate

Overview

The article examines the evolution of fiscal federalism in India through the implementation of the Goods and Services Tax (GST). It highlights that GST represents a unique simultaneous levy by both the Centre and the States, enabled by Article 246A of the Constitution, which grants equal legislative powers to both Central and State Governments. The GST Council, constituted under Article 279A, serves as a collaborative platform for dialogue between the Centre and the States, fostering cooperative federalism and ensuring that neither acts independently in tax matters. Judicial interpretations reaffirm that the Council's recommendations are persuasive rather than binding, preserving fiscal autonomy for both the Centre and States. The article contextualizes Indian federalism against global models, noting that while the US and Australian constitutions have evolved to strengthen central powers, India's GST framework is designed to balance power through negotiation and consensus. The GST regime has simplified indirect taxation, reduced rates, and promoted a harmonized national market. The author has expressed the requirement of further reforms for greater simplicity and efficiency. The article also explains how the decisions on GST rates and exemptions are made collectively, exemplifying fiscal federalism in practice and offering a model for other areas of Centre-State cooperation.

Evaluating the concept of fiscal federalism through the lens of GST

Federalism

The concept of fiscal federalism is derived from federalism, a political system in which several States form a unity but remain independent in internal affairs. Dicey calls it a political contrivance for a body of States which desire Union but not unity. Federalism is, therefore, a concept that unites separate States into a Union without sacrificing their own fundamental political integrity. Separate States, therefore, desire to unite so that all the member-States may share in



the formulation of the basic policies applicable to all and participate in the execution of decisions made in pursuance of such basic policies. Thus, the essence of a federation is the existence of the Union and the States and the distribution of powers between them. Federalism, therefore, essentially implies the demarcation of powers in a federal compact.[1]

> Federalism is, therefore, a concept that unites separate States into a Union without sacrificing their own fundamental political integrity.

Is the Indian Constitution federal in nature?

Before understanding whether our Constitution is truly federal or quasi-federal or a federal system with a tilt towards a unitary system, a look at the Constitutions of some of the other countries and their current status would be relevant.

US Constitution

The US Constitution is always considered an example of classic federalism. History would show that the US Constitution was born on account of a voluntary agreement between States that already existed, and they were not very keen to concede significant powers to the Centre. However, what is commonly referred to as the Supremacy Clause provides that the federal Constitution and the federal law generally would take precedence over State laws and even the State Constitution. Further, the powers granted to the Centre are structured in very general terms, and a liberal interpretation of these powers by the Court has made the Centre quite powerful.

President Trump, in his second term, is seen as putting to test the US Constitution. Birthright citizenship, which was given through the 14th Amendment, was taken away through an executive order. Many other executive orders are testing civil rights, gender equality, climate change, funding, international treaties, etc., while matters are before the Court, the infallibility of the US Constitution is clearly under debate, with executive orders operating as a counter Constitution.

> The US Constitution is always considered an example of classic federalism.

Australian Constitution

The Australian Constitution originally had

1 *S.R. Bommai v. Union of India, (1994) 3 SCC 1 (SC).*

limited powers for the Federal Government, but has slowly changed, and this has been through a combination of judicial interpretation, conditional grants in aid, etc. In practice, slowly, the Commonwealth Government has assumed a position of dominance with the transfer of power from the State Government to the Commonwealth Government. Originally, under the Constitution, both the Commonwealth and the States levied income tax. The war changed everything, and the federal laws imposed a higher rate of income tax, and federal income tax was given a priority over State taxes. Further, grants were given to States that did not levy income tax. Due to this and other related measures, the State vacated the field. The scheme was also upheld by the Courts.

Canadian Constitution

The Canadian Constitution, through Section 91 of the British North America Act, 1867, empowers the Centre to make laws for the peace, order, and good Government of Canada, with respect to subjects not exclusively assigned to the provinces, and through Section 92, empowers the provinces to legislate exclusively in respect of certain subjects.

The British North America Act was intended to establish a strong Centre, but the Constitutional developments in the Country belied the hopes of the makers of the BNA Act. The English-speaking people wanted a strong Centre, while the French-speaking minority in the Quebec Province wanted a weak Centre and a strong Province. In the course of time, the Privy Council, which acted as the highest and ultimate interpretative judicial organ of Canada, being influenced by the aspirations of the French minority, so interpreted the Scheme of distribution of powers as to shift the balance of powers in favour of the provinces at the cost of the Centre[2].

Recent trends indicate that there is no classic federalism or a straight-jacket formula for federalism, and countries adapt and change over time. Globalization, trade, wars, and the new trade wars, and the recent emphasis on country first, have slowly ensured a tectonic power shift from the States to the Federal government, even in countries where the position was different in the initial stages.

India

A Federal Constitution was established under the Government of India Act, 1935, based on the Report of the Joint Committee on Indian Constitutional Reform (Session 1933-34 – Vol. 1). The present Constitution has been built on the framework established under the Government of India Act, 1935. The founding fathers clearly intended to create a strong Centre against the State, which can be evidenced by the distribution of legislative subjects in the Seventh Schedule to the Constitution. Key subjects find a place in the Union List, and the Concurrent List provides for primacy to Parliament Legislation. Entry 97

Recent trends indicate that there is no classic federalism or a straight-jacket formula for federalism, and countries adapt and change over time.

of the Union List, which is a residuary power to make law, is with the Parliament, and Entry 97 did not exist in the Government of India Act, 1935.

The Supreme Court in the case of *State of West Bengal v. Union of India*[3] took note of the fact that our Constitution is not the result of any agreement, and it is not a federal form. It rejected the contention of the States that they shared sovereignty with the Centre. In that particular case, it was a suit by the State of West Bengal against the Union of India for a

2 *Chapter 10 – Legislative Relations – Indian Constitutional Law – M.P. Jain – 8th Edition.*

3 *AIR (1963) SC 1241 (SC).*

declaration that Parliament is not competent to make a law authorizing the Union Government to acquire land and rights in or over land, which are vested in a State, and that the Coal Bearing Areas (Acquisition and Development) Act, 1975 was ultra vires; the legislative competence of Parliament.

The Supreme Court in the case of *S.R. Bommai v. Union of India*[4] observed that federalism envisaged in the Constitution of India is a basic feature in which the Union of India is permanent within the territorial limits set in Article 1 of the Constitution and is indestructible. The State is the creature of the Constitution and the law made by Articles 2 to 4, with no territorial integrity, but a permanent entity with its boundaries alterable by a law made by Parliament. Neither the relative importance of the legislative entries in Schedule VII, Lists I and II of the Constitution, nor the fiscal control by the Union *per se,* are decisive to conclude that the Constitution is unitary. The respective legislative powers are traceable to Articles 245 to 254 of the Constitution. The State, qua the Constitution, is federal in structure and independent in its exercise of legislative and executive power. However, being a creature of the Constitution, the State has no right to secede or claim sovereignty. Qua the Union, the State is quasi-federal. Both are coordinating institutions and ought to exercise their respective powers with adjustment, understanding, and accommodation to render socio-economic and political justice to the people, to preserve and elongate the constitutional goals, including secularism.

The war changed everything, and the federal laws imposed a higher rate of income tax, and federal income tax was given a priority over State taxes.

4 *(1994) 3 SCC 1 (SC).*

Can it be said that the Constitution of India, even though identified as federal, has significant unitary features?

(i) History is important, and prior to 1935, British India was administered on a unitary basis. While the Government of India Act provided for a provincial legislature and the subjects for legislation were divided between the Dominion and the Provinces, Section 104 of the Government of India Act enabled the Governor General to empower either of these legislatures to enact a law in respect of a matter not enumerated in the List (residual powers).

(ii) Unlike the US, Indian federalism was not the result of an agreement between various sovereign units with the dominion. In fact, the Government of India Act converted a unitary system into a federal system.

(iii) In the Constitution of India, the tilt towards the Centre is manifest in the nature and type of subjects in the Union List; the conferment of residual power on the Parliament, and the primacy in the concurrent list.

(iv) Articles 249 to 252 provide liberty to the Parliament to encroach upon the fields meant exclusively for the State, even though it is subject to conditions. In terms of Article 249, Parliament can legislate in respect of a matter in the State List in the national interest. Interestingly, this power extends to GST through the 101st Constitutional Amendment.

The framework of taxation is one such financial obligation that strengthens the spirit of fiscal federalism.

Article 250 confers power on the Parliament to legislate with respect to any matter in the State List if a proclamation of emergency is in operation with respect to GST or any of the matters enumerated in the State List.



Fiscal Federalism

The principle of fiscal federalism lies at the very heart of India's position as a superpower today. The nation has cemented itself as a force to be reckoned with in all aspects of growth; national, international, and economic development. Fiscal federalism or decentralization of financial governance plays a key role in this regard, as India is committed to ensuring equitable financial resource-sharing between the Union and States. It strengthens governance, boosts cooperation, and facilitates inclusive decision-making for economic policies.

Articles 268-293 deal with financial matters and obligations. The framework of taxation is one such financial obligation that strengthens the spirit of fiscal federalism. However, prior to the introduction of the GST regime, the indirect taxation structure was heavily fragmented, which affected economic ease and integration. Plethora of taxes by the Centre, State, and the Municipality at different points of time on the same transaction on different aspects leads to cascading effect of taxes; inefficient structure; unviable business models; classification disputes; jurisdictional disputes; valuation disputes, and inflation.

With the rollout of GST, there was a shift towards a unified taxation framework, which aimed at strengthening collaboration and dialogue between the Centre and States. To achieve this objective, the GST Council was established in order to affirm the fiscal independence and autonomy of States. It is not merely a constitutional body restricted to the indirect tax system in India, but is also an important focal point to foster federalism, consensus-building building and democracy.

> The GST Council was established under Article 279A of the Constitution and makes recommendations on various matters to the Union and States.



GST Council - Pooled Sovereignty

The GST Council was established under Article 279A of the Constitution and makes recommendations on various matters to the Union and States. In Article 279A(4), the GST Council is empowered to make recommendations with reference to every aspect of GST, including the principles of levy, exemption, model GST laws, threshold limit for non-taxability, rates, special rates for a specified period, special provision for certain States, and any other matter relating to the goods and services tax. The recommendations also include the pre-GST taxes that may be subsumed in GST.

It is an institutional mechanism aimed at fostering collaborative and cooperative federalism to enable the Centre and States to constructively interact with each other on matters pertaining to GST. As such, the Parliament and State Legislatures essentially 'pooled' their sovereign authority to tax onto a single, common platform, i.e., the GST Council. It was envisaged that the simultaneous exercise of sovereign power would translate into collaborative decision-making and facilitate cooperative federalism.

The recommendations of the GST Council are not based on a unanimous decision but on a three-fourths majority of the members present and voting, where the Union's vote counts as one-third, while the States' votes have a weightage of two-thirds of the total votes cast. It is also interesting to note that parties with different political ideologies, which form the Centre and State Governments, sit together, debate, and unanimously agree on matters pertaining to GST. While the posturing for the public and the media may be different by some of the political parties after the GST Council meeting, the track records indicate that, except for one or two items, all decisions have been unanimous.

However, much more is at stake. States are fiercely competing with each other for investments, and fiscal concessions have always played a powerful role in attracting investments. While the pre-GST regime enabled the States and the Centre to provide many such tax-driven incentives, including deferral schemes and tax holidays, the GST has brought in discipline, and the competition is now based only on various other factors such as suitability, industrial climate, employability, resources, capital subsidies, and other incentives.

> GST is now 8 years old. The recommendations of the GST Council have not been violated by the Centre or the States.

GST is now 8 years old. The recommendations of the GST Council have not been violated by the Centre or the States. However, whether this honeymoon would continue or not is a debatable issue. The status quo has to continue to ensure

that the advantages of GST being a single tax on a single transaction across the country are not lost. However, the system is being tested from time to time.

The state of the economy, the need for resources to run the Government, revenue compulsions, and expenditure requirements could very well compel the parties to ignore the recommendations in the future. In the backdrop of these circumstances, Courts may have to decide on the scope and ambit of the term 'recommendations. *Union of India v. Mohit Minerals*[5] is one such instance of the same.

> The Gauhati High Court observed that the object behind inserting Article 246A and 279A is for the promotion of fiscal federalism and cooperative federalism.

Judiciary on fiscal federalism

The *Mohit Minerals* case made reference to cooperative, competitive, and fiscal federalism in light of GST, and it was observed that the power conferred upon the Union and States to make laws with respect to GST is simultaneous, and there is no exclusive or unilateral exercise of power. Further, the Supreme Court held that "recommendations" of the GST Council are only suggestive in nature and do not have binding value. This led to the view that States have unbridled fiscal autonomy to form their own taxation policies, which may go against the unitary structure of the GST system. A counter view was that there was nothing new in what the Supreme Court said since Article 246A confers powers both to the Parliament and the Legislature to make laws with reference to GST. A recommendation would remain as such unless it is acted upon in the form of an amendment to the Act or Rules or issue of a Notification.

The Court observed that *"as a matter of first principle, the provisions of the Constitution, which is the grundnorm of the nation, cannot be interpreted based on the provisions of a primary legislation. It is only the provisions of a primary legislation that can be interpreted with reference to the Constitution. The legislature amends the Constitution by exercising its constituent power and legislates by exercising its legislative power. The constituent power of the legislature is of a higher constitutional order as compared to its legislative power. Even if it is Parliament that has enacted laws making the recommendations of the GST Council binding on the Central Government for the purpose of notifying secondary legislations, it would not mean that all the recommendations of the Council made by virtue of its power under Article 279A have a binding force on the legislature."*



5 *Union of India v. Mohit Minerals 2022 (61) G.S.T.L. 257 (S.C.).*

In the case of *Mineral Area Development Authority v. SAIL*[6], the 9-member bench of the Supreme Court expanded on the concept of fiscal federalism. One of its basic tenets is that the power of the States to levy taxes within the legislative domain carved out to them and subject to the



limitations laid down by the Constitution must be secured from unconstitutional interference by the Parliament. Notably, it was observed that "by laying down a heterogeneous distribution of legislative powers, the Constitution underscores that the asymmetry of our federation is an integral aspect of our federal form of governance." The main reason guiding distribution is to ensure that the legislature is entrusted with adequate fiscal power to raise revenue to meet fiscal expenditure and manage fiscal deficit.

What happens if there is no recommendation, but there is exercise by way of legislation by the Centre or the State? The answer to this would depend upon the actual exercise of legislation; the source of power, and whether the provision which granted the power provided for recommendation of the GST Council as a *sine qua.* In the case of *Mahabir Tiwari v. Union of India [2025] 175 taxmann.com 176 (Gauhati),* it was observed that the object behind inserting Article 246A and 279A is for the promotion of fiscal federalism and cooperative federalism. As such, recommendations made by the Council are to be construed as sine qua non for the exercise of power by the Union and States. If the provisions of an Act explicitly stipulate that an act is to be done only on the recommendation of the GST Council, it can only be done when there is a recommendation.

In the case of *Brunda Infra Private. Limited. v. Additional Commissioner of Central Tax, Hyderabad*[7]*,* it was held that making the recommendations of the GST Council mandatory and binding *'will not be inconsonance with the principle of cooperative federalism'.*

Implications of the *Mohit Minerals* judgement

Mohit Minerals stands out as a significant ruling as it elucidates the concept of cooperative federalism through the lens of GST and discusses the role and nature of the GST Council in the process of fostering such federalism, and has far-reaching implications.

The case arose from an appeal preferred by the Union of India against the decision of the Gujarat High Court in the case of *Mohit Minerals Pvt. Ltd v. Union of India 2020 (33) G.S.T.L. 321* which held that the Notifications No.8/2017 and No.10/2017 issued by the Central Government by the power vested to it by sections 5(1), 6(1) and 20 (iii-iv) of the IGST Act, 2017 with the advice of the GST Council, subjecting the Indian importer to pay IGST for the services of transportation of goods in a CIF Contract with

> The Council is responsible for creating a collaborative dialogue between the Union and the States to ensure that the interests of both federal units are protected.

6 *Mineral Area Development Authority v. SAIL, (2024) 10 SCC 1.*

7 *Brunda Infra Private. Limited. v. Additional Commissioner of Central Tax, Hyderabad 2025 (95) G.S.T.L. 43 (Telangana).*

the foreign exporter on reverse charge basis are ultra vires to the IGST ACT, 2017 and the CGST ACT,2017.

The judgment in the present case upheld the ruling of the Gujarat High Court and held that the impugned levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGHST on the composite supply comprising of supply of goods and the supply of services on transportation, insurance, etc., in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by a shipping line would be in violation of Section 8 of the CGST Act.

One of the key arguments of the Union of India was that the notifications issued were based on the recommendations of the GST Council and that such recommendations were binding on the Union and the States. However, the Court held that the recommendations of the GST Council are not binding on the Union and the States and that the Council was only an advisory body formed to guide the legislatures in establishing harmony in the Goods and Services tax.

In many ways, the judgment did not say something new. The design of Article 246A itself is unique. It is not a tax on a subject in the concurrent list; it is not a tax by the Union with the State being excluded or vice versa. It is *a simultaneous levy by the Centre and the State on the same transaction.*

In the case of *Union of India v. VKC Footsteps India Pvt. Ltd. (2021) 52 GSTL 513,* the court held that the intention behind constituting a GST Council is towards the advancement and harmonized structure of the Goods and Services tax among the Union and its constituents. Following this decision, the Court in *Mohit Minerals* expanded upon the powers conferred upon the Union and the State under Article 246A and observed that it does not envisage a repugnancy clause. Rather, it provides simultaneous power to make laws with respect to GST to both the Parliament and the State.

On inserting Article 279A, the Constitution aims that neither the Centre nor the States acts independently of each other to foster the concept of 'Co-operative Federalism' where both the Centre and the States can exercise the power to tax without any prejudice to either of the Federal units. The Council is responsible for creating a collaborative dialogue between the Union and the States to ensure that the interests of both federal units are protected. In this regard, Article 279A(6) squarely conveys the motive and role of the GST Council as a guide to foster the development of a harmonized national market for goods and services. Accordingly, on a joint reading of Articles 246A and 279A, the Court reaffirmed the principles of cooperative federalism and fiscal federalism.



The Supreme Court concluded that recommendations of the GST Council are not binding on the Union and States for multiple reasons, namely:

The Constitutional Amendment indicates that the recommendations would have only a persuasive value.

Article 279A is not a non-obstante provision, and Article 246A is not subject to Article 279A.

The recommendations of the Council are the

product of a collaborative dialogue involving the Union and States. They are recommendatory in nature. To regard them as binding edicts would disrupt fiscal federalism, where both the Union and the States are conferred equal power to legislate on GST.

A clear understanding of the above-stated decisions explains that there is an intent behind the Constitutional makers in inserting each and every provision, which has to be understood in order to interpret them. Federalism, being the fundamental principle of India's democratic set up, is sought to be achieved by a collaborative negotiation between the federal units to balance the contestations and the consents between them. The introduction of the GST aimed at creating a harmonized and uniform tax structure for the advancement of cooperative federalism and fiscal federalism.

Conclusion

The understanding of GST law amongst various stakeholders is very different. Professionals understand simultaneous legislation; equal power between Centre and State in taxing supplies, including equal rates of tax; business and commerce understand from the prism of simplicity in having one law and one rate across the country. However, there are many, including from the media, politicians, and consumers, who still think that GST is a levy by the Centre and is not being properly shared with the States. Such a thought process has found its way into narratives being built and smear campaigns on GST being punitive. However, this is far from the truth. GST is the single most effective business and tax reform that this country has seen, and it has resulted in a reduction of the rate of indirect taxes when compared to the pre-GST era. However, reforms are still needed to make the law simpler, leaner, and effective, and to reduce the classification-related disputes. This is a journey that has to be undertaken through collaborative efforts by the Centre and the States.

GST is the single most effective business and tax reform that this country has seen, and it has resulted in a reduction of the rate of indirect taxes when compared to the pre-GST era.



Decisions involving taxation or exemption of goods and services are not unilateral decisions but agenda items that are discussed thoroughly by the Centre and the States represented by the Union Finance Minister/ Finance Minister of States and their team of officials. This is clearly fiscal federalism in action. This model, being such a success, can be tuned and applied to other subjects where the Centre and States have different viewpoints.

Constitutional Milestones in GST Jurisprudence

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Overview

GST replaced multiple taxes with a single, unified tax on goods and services across India to simplify the system and reduce tax-on-tax. However, GST was more than a tax reform. It reshaped our federal structure. The 101st Constitutional Amendment empowered both Parliament and States to levy GST under Article 246A, assigned interstate trade to Article 269A, and created the GST Council under Article 279A to guide this new system.

Yet, the real story has unfolded in courtrooms, and it has just begun. Judges have validated arrest and attachment powers under the GST law and intervened when provisional attachment is used like a blunt instrument, insisting that due process must be respected. In disputes over double taxation, input tax credit, refunds, intermediary services, anti-profiteering, mutuality, and e-way bill related violations, the judiciary has steadily carved boundaries around the officer's reach.

This article explores those landmark rulings, revealing how GST has evolved through judicial scrutiny. Beneath statutes and amendments, the courts have emerged as architects, safeguarding taxpayer rights under Articles 14, 19, 21, and 265. It is not a finished rule book. It is a living law, rewritten every day in courtrooms across the country.

Introduction

The introduction of GST was not a tax reform. It was a constitutional reset. With the 101st Constitutional Amendment, India introduced Article 246A, which permitted concurrent jurisdiction for the levy of tax on intrastate supply of goods & services. Article 269A provided for the power to tax interstate trade. Article 279A provided for the creation of the GST Council, sadly as a recommendatory body. Article 366(12)(a) defines "Goods & Services Tax" as any tax on the supply of goods or services or both except taxes on the supply of alcoholic liquor for human consumption. Article 366(26)(a) defines "Services" means anything other than goods. Similarly, certain consequential amendments were made in the Seventh Schedule, consisting of the Union List and the State List.



Thus, the statute (Central Goods & Services Tax Act, 2017, State Goods & Services Tax and Union Territory Goods & Services Tax Act, 2017, and rules framed thereunder) came to be enacted, deriving power from Article 246A. Hence, the same would always be subject to constitutional boundaries and must pass scrutiny of Article 14, Article 19(1)(g), Article 21, Article 265, read with Article 300A of the Constitution.

With this background, let us look at some important constitutional rulings under GST, not as dry theory, but as living law that directly impacts litigation, advisory, and enforcement strategy. Though an attempt has been made to cover all probable issues, any omission must be pardoned.

Powers of Arrest

The Constitutional Validity of Sections 69 and 70 (arrest and summons) of the CGST Act was under challenge. The Apex Court upheld the constitutionality of the said provisions, affirming that such powers flow from the authority of the Parliament under Article 246A.

However, the Court did not give a green flag for unchecked enforcement. It warned that arrests must be based on solid evidence, written reasons, and follow due process. Notably, it held that arrest can come before tax adjudication, marking a shift from earlier views like MakeMyTrip. While the ruling backs tax enforcement, it also raises red flags about the potential misuse, spotlighting the need for clear safeguards to protect taxpayer rights under Articles 21 and 19(1)(g) of the Constitution of India[1].

Attachment before decree

In 2021, the issue raised before the Apex Court was whether provisional attachment under Section 83 of the CGST Act can be used freely. The Court made it clear that provisional attachment is not a shortcut. It is the last resort. It cannot be used mechanically or arbitrarily. It can be invoked only when it is absolutely necessary to do so, to protect the interest of the Revenue. It must be backed by solid evidence, clear reasoning, and a

> Article 366(12)(a) defines "Goods & Services Tax" as any tax on the supply of goods or services or both except taxes on the supply of alcoholic liquor for human consumption.

1 *Radhika Agarwal v. Union of India 2025 SCC OnLine SC 449.*

fair hearing. Even in tax matters, due process is not optional[2]. The said ruling has been followed by various High Courts since.

Consequent to the above ruling, an amendment was made to section 83 with effect from January 1, 2022. It changed the language of the provision from "during the pendency of proceedings" to "after the initiation of any proceeding"; expanded the scope of attachment to include proceedings under the relevant chapters of the CGST Act, rather than limiting it to specific sections, and provided for the attachment of properties



belonging to persons other than the taxable person, such as beneficiaries of fraudulent transactions. Despite this, section 83 cannot be resorted to as a matter of routine. The Apex Court[3] reaffirmed these principles.

The Apex Court[4], recently, in the context of section 6(2)(b) of the Act, ruled that formal proceedings are only initiated after the tax authorities 'form their mind' regarding the exact allegations against the assessee and commence formal adjudication proceedings by way of the issuance of an SCN.

Double Taxation

An issue relating to the levy of IGST on ocean freight included in the CIF (Cost, Insurance and Freight) price was being examined by the Apex Court. The charge was sought to be levied on the importer on a reverse charge basis. Though the challenge to the validity of the notification was upheld, the Court held that charging IGST again would amount to double taxation. It emphasized that a foreign shipping service in a CIF contract, already part of the import value, lacks a territorial nexus to justify a second levy[5].

Intermediary

There was a challenge to the validity of section 13(8)(b) of the IGST Act, 2017 before the Bombay High Court. Section 13(8)(b) deemed the place of supply for intermediary services to be the location of the supplier. It was contended that there is an export of services to a recipient located outside India. There was a split verdict. One Hon'ble Judge struck it down as unconstitutional, calling it a violation of Articles 246A, 269A, 286, and 19(1)(g). The other Hon'ble Judge upheld it. The Third Hon'ble Judge, while upholding 13(8)(b), laid down that the scope was restricted to the IGST Act only, excluding CGST and SGST. Thus, holding that there cannot be a levy of CGST/ SGST (local taxes) on export of services. The matter is now pending before the Supreme Court (SLP No. 26011/2023) for the final word on its constitutionality[6].

Input Tax Credit

Input Tax credit is a "Hot Potato" for the taxpayers and tax administrators alike. Two sections deal with input tax credit (ITC), viz., section 16 and

2 *Radha Krishan Industries v. State of Himachal Pradesh 2021 (48) GSTL 113 (SC).*
3 *Kesari Nandan Mobile v. Office of Assistant Commissioner (2025) 8 TMI 992 (SC).*
4 *Armour Security (India) Limited v. Commissioner CGST (2025) 7 TMI 1181 (SC).*
5 *Mohit Minerals Private Limited v. Union of India 2022 (61) GSTL 257 (SC).*
6 *Dharmendra M. Jani v. Union of India 2023 (74) GSTL 401 (Bom).*



section 17. However, the contribution to litigation by these sections is about 80% of the disputes in the last 8 years. Kudos.

Supplier fails to pay tax; can the purchaser be penalized? The Calcutta High Court ruled that if the buyer has paid, holds a valid invoice, and reflected the transaction in returns, ITC should not be denied. The Revenue challenged the said ruling before the Apex Court. However, the Apex Court declined to interfere[7]. However, the validity of section 16(2)(c) is still pending adjudication before various High Courts.

Is input tax credit on goods and services used to construct immovable property that the taxpayer intends to lease, available or not? Section 17(5) bars ITC on certain immovable property. The Supreme Court upheld the validity of the said provision; however, it refused a blanket denial. It introduced a "functionality test". If the said property is the "commodity" in itself, credit has to be allowed. The credit chain must end only with the consumer. It is a destination-based consumption tax[8].

There are errors (some clerical, some unintentional, some reporting) in filing returns. Could the same lead to denial of ITC? The Court answered in the negative. It ruled that the bona fide mistakes, especially when tax is paid and no revenue loss occurs, should not lead to the blockage of ITC. Compliance cannot become punishment. The right to correct errors flows from the right to do business under Article 19(1)(g). Thus, the administration must be fair, facilitative, and human, especially in the face of software glitches and procedural rigidity[9]. A similar view was reiterated by the Delhi High Court[10].

The Bombay High Court upheld the validity of Sections 17(2) and 17(3) of the CGST/MGST Acts. It held that denying ITC to non-corporates under the reverse charge mechanism was not discriminatory. ITC is a conditional concession, not a right, and the classification between corporates and non-corporates has a rational basis. Thus, there is no violation of Articles 14 or 19(1)(g), and courts cannot strike down fiscal policy merely due to business hardship (non-availability of ITC)[11]. It followed the view taken by the Delhi High Court[12].

The Patna High Court upheld the constitutional validity of Section 16(4) of the CGST/BGST Act, 2017, which restricts Input Tax Credit (ITC) if invoices or debit notes are reported beyond the prescribed time limit. The Court ruled that ITC is a statutory concession and not a vested right, and therefore, denial of credit for missing timelines does not violate Articles 19(1)(g) or 300A. It emphasized that strict adherence to compliance deadlines is fundamental to the GST framework and legally sustainable[13].

The Gauhati High Court[14] struck down the validity

7 *Suncraft Energy Pvt. Ltd. v. Assistant Commissioner 2023 (77) GSTL 55 (Cal).*

8 *Safari Retreats Pvt. Ltd. v. Chief Commissioner 2024 (90) GSTL 3 (SC).*

9 *CBIC v. Aberdare Technologies Pvt. Ltd. & Ors., SLP (Civil) No. 7903 of 2025.*

10 *B. Braun Medical India Pvt. Ltd. v. Union of India & Ors. - W.P.(C) 114/2025.*

11 *Eagle Security & Personnel v. Union of India (Writ Petition No.1687 of 2024).*

12 *Pace Setters v. Union of India 2024 (85) GSTL 420 (Del).*

13 *Gobinda Construction v. Union of India [CWJC No. 9108 of 2021].*

14 *National Plasto Moulding v. Assistant Commissioner 2024 (8) TMI 836 (Gau HC).*

of section 16(2)(c) and section 16(2)(d) of the Act following the Delhi High Court judgment in Quest Merchandising. However, the Kerala High Court[15] has taken a contrary view and upheld the said provisions.

Refunds

The validity of Rule 89(5) of the CGST Rules excluding input services from refund under the inverted duty structure was a subject matter before the Supreme Court on the grounds that it is ultra vires Section 54(3)(ii) of the CGST Act. Divergent views of the Gujarat High Court[16] and Madras High Court[17] were before the Apex Court.

The Supreme Court upheld Rule 89(5), holding refund of unutilized ITC is allowed only on input goods and not input services. However, it acknowledged the flaws in the refund formula since ITC on both goods and services accumulates and urged the GST Council to review and fix the formula[18].

Basis the same, Rule 89(5) was amended vide Notification No. 14/2022-CT dated 05.07.2022, which explicitly excluded input services from the refund calculation. The Apex Court[19] considered the question whether the amendment to Rule 89(5) excluding input services from refunds under the inverted duty structure (IDS) could be applied retrospectively to deny refunds for the pre-amendment period. It affirmed the Gujarat High Court's ruling that the amendment cannot be applied retrospectively. It is prospective in nature. Thus, refund claims for input services filed prior to 05.07.2022 remain valid and must be processed accordingly.

Rule 96(10) denying refunds to exporters where the inputs/raw material have been imported without payment of IGST has had its fair share of litigation. The Kerala High Court held that the said rule is ultra vires section 54 of the CGST Act and Section 16 of the IGST Act, and struck it down[20]. However, the said rule was subsequently omitted. Based on the same, the Bombay High Court[21] resolved a long-pending dispute concerning the constitutional validity of CGST Rules 89(4B) and 96(10), holding that ongoing GST proceedings founded on these omitted rules cannot be sustained. Emphasizing that once a rule is omitted without a saving clause, it is deemed to have never existed. The Court clarified that pending actions under such rules automatically lapse unless they pertain to "transactions past and closed." This judgment effectively nullifies thousands of refund-related disputes and firmly establishes that omitted rules have no "legal afterlife". A similar view has been taken by the Uttarakhand High Court[22] and the Gujarat High Court[23].

Time-limit for adjudication

Notifications N0. 9/2023 and Notification N0. 56/2023, issued under Section 168A of the CGST Act, extending limitation periods for adjudication under Section 73 of the Act, was the subject matter of challenge before various courts. It was contended that the said notifications are ultra vires the parent Act; being delegated legislation must comply. The Gauhati High Court[24] held that the prior GST Council recommendation is a mandatory jurisdictional requirement. Hence, notifications issued merely on the inputs of the GST Implementation Committee were declared ultra vires. However, the Patna High Court[25] upheld the validity of the said notifications. The

15 *M. Trade Links v. Union of India 2024 (6) TMI 288 (Ker HC).*
16 *VKC Footsteps India Pvt. Ltd. v. Union of India TS-585-HC-2020(GUJ)-NT.*
17 *Transtonnelstroy Afcons Joint Venture v. Union of India TS-800-HC2020(MAD)-NT.*
18 *UOI & Ors. v. VKC Footsteps India Pvt. Ltd. 2021 (52) GSTL 513 (SC).*
19 *Union of India & Ors. v. Tirth Agro Technology Pvt. Ltd. & Ors. [SLP (Civil) Diary No. 31632/2025].*
20 *Sance Laboratories Pvt. Ltd. v. Union of India 2024 (11) TMI 188 (Ker).*
21 *Prashi Pharma Private Limited v. Union of India TS-788-HCBOM-2025-GST.*
22 *Sri Sai Vishwas Polymers v. Union of India 2025 (5) TMI 1811 (Uttarakhand HC).*
23 *Praspack Polymers v. Union of India 2025 (6) TMI 1156 (Guj HC).*
24 *Barkataki Print and Media Services v. Union of India and Ors. [2024] 166 taxmann.com 586 (Gauhati HC).*
25 *Barhonia Engicon Pvt. Limited & Others v. The State of Bihar & Ors, 2024 (12) TMI 440 (Patna HC).*

Telangana High Court[26], however, without going into the validity of the notification, held that the time limit had been extended by the Supreme Court in suo motu orders under Article 142, excluding the COVID-19 period from limitation computation. The Madras High Court[27] held that the impugned notifications are bad in law. However, the Supreme Court order would prevail

There have been several amendments to the statute (Act and Rules), but less spoken about the notifications and circulars over the past eight years, the better.

and cannot be overridden by flawed executive notifications. Now, all these matters are pending before the Apex Court, awaiting a final verdict from the Top Court[28].

Anti-profiteering provisions

Section 171 of the Act provides for anti-profiteering provisions. The Delhi High Court[29] examined the validity of anti-profiteering provisions and the legitimacy of the National Anti-Profiteering Authority (NAA), which ensures businesses pass tax benefits to consumers. The Court upheld the provisions and the NAA's role. It clarified that these measures promote consumer welfare by preventing unjust enrichment and ensuring tax savings reach buyers. Section 171 is not a price control but a regulatory tool aligned with the GST objective. The NAA was recognized as a fact-finding body with the necessary expertise, and judicial oversight over its decisions was deemed adequate. However, in appropriate cases, the decision-making process can be questioned. Now, the matter is awaiting its final nod at the doorstep of the Apex Court[30].

Mutuality principle - section 7(1)(aa)

Section 7(1)(aa) was an amendment to section 7. Section 7 provides for the scope of supply. Within a few years of the introduction of the law, the most important provision is being amended, that too retrospectively. The validity of retrospective amendment to Section 7(1)(aa) of the CGST Act, 2017 was called to question. The Kerala High Court[31] held that no GST is leviable on services provided by clubs and associations exclusively to their members because these transactions are based on the doctrine of mutuality. The Court found retrospective amendment to Section 7(1)(aa) of the CGST Act as unconstitutional. This ruling could also be a tower light for Resident Welfare Associations that charge GST on maintenance charges.

Assignment of long term lease hold rights

Recently, the Gujarat High Court[32] addressed the issue of levy of GST on assignment of leasehold rights pertaining to a Gujarat Industrial Development Corporation (GIDC) plot by a lessor (other than GIDC) to a lessee in consideration of lump sum charges. The ownership rights over the plot always remained with GIDC, and the original allotment of lease by GIDC to a lessee is treated as a service but is exempt from GST. The Court ruled that the assignment or transfer of leasehold rights in an immovable property cannot not considered a 'supply' under the CGST Act. It held that it was a right flowing from land and stands excluded in terms of Paragraph 5 of Schedule III

26 *Brunda Infra Pvt. Limited and Others. v. Additional Commissioner of Central Tax-2025 (1) TMI 299 (Telangana HC).*
27 *Tata Play Limited v. Union Of India (W.P.Nos.17184 of 2024).*
28 *HCC-SEW-MEIL-AAG JV v. Assistant Commissioner of State Tax Special Leave to Appeal (C) No.4240/2025.*
29 *Reckitt Benckiser India Pvt. Ltd. v. Union of India 2024 (82) GSTL 344 (Del).*
30 *Excel Rasayan Pvt. Ltd. v. Union of India & Ors. Special Leave to Appeal (c) No. 3112/2024.*
31 *Indian Medical Association v. UOI Kerala High Court W.A. No.1659 of 2024.*
32 *Gujarat Chamber of Commerce & Industry v. UOI 2025 SCC Online Guj 537.*

to section 7 of the Act. Referring to Article 265 of the Constitution, it held that taxes must have clear legal backing and cannot be imposed by stretched interpretation.

E-Way Bill Violations

The Apex Court addressed the issue of detention of goods during inter-State transportation due to an expired E-Way Bill, despite no tax evasion[33]. It held that ownership of the consignment and its use in executing



contractual obligations is not in dispute. While upholding tax liability, the Hon'ble Court halved the penalty under Article 142, citing no intent to evade and a bona fide transaction.

The Kerala High Court[34] held that a visible typographical error in the invoice value does not justify a penalty, treating it as a minor lapse. The Allahabad High Court[35] quashed seizure and penalty where a valid e-way bill was generated prior to interception. The Madras High Court[36] held that delivering goods to the wrong location by mistake does not warrant seizure when tax is paid and documents are proper. The Court urged officers to act reasonably. A similar view has been taken by the Calcutta High Court[37].

Conclusion

GST is a new law. It represents a complex marriage between the Centre and the States. There have been several amendments to the statute (Act and Rules), but less spoken about the notifications and circulars over the past eight years, the better. The GST Appellate Tribunal is nowhere in sight. A delay that appears to be a matter of conscious choice, intent, and design.

We must not forget the "children" born of this wedlock, "a maze of compliances and procedural complexities" marred by system-driven failures. Not a critique; as the law is here to stay. However, it requires major reforms, not just the rationalization of tax rates.

In this landscape, the Courts are expected to rescue taxpayers. We can only hope that pray that the judiciary, the strongest pillar that holds the Constitution together, comes to the aid of genuine taxpayers, exporters, and businesses, acting as a check on coercive actions carried out in the name of constitutional duties. The judiciary must ensure that the law remains fair, proportional, and that the rule of law prevails.

For legal and tax professionals, this evolving jurisprudence is not just academic; it is a living toolkit for defending taxpayer rights and promoting a more balanced taxation regime. In the end, a good tax policy must pass the constitutional test, and our courts are making sure it does.

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33 Vardan Associates Pvt. Ltd. v. Assistant Commissioner of State Tax 2024 (82) GSTL 226 (SC).

34 Rai Prexim India Pvt. Ltd. v. State of Kerala 2019 (23) GSTL 454(Ker).

35 Axpress Logistics India (P.) Ltd. v. Union of India 2018(18) GSTL 794 (All).

36 Tvl. R K Motors v. State Tax Officer WP (MD)No. 1287 of 2019.

37 Ashok Kumar Sureka Versus Assistant Commissioner, State Tax, Durgapur Range, Government Of West Bengal [2022 (3) Tmi 445 - Calcutta High Court].

Constituent Assembly Debates

An Excerpt

Thursday, August 4, 1949

Article 248[1]

Mr. President : Then we take up article 248.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

Taxes not to be imposed save by authority of Law.

"That for article 248, the following articles be substituted:—

248. No tax shall be levied or collected except by authority of law.

Consolidated Fund

'248A. (1) Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues or public moneys raised or received by the Government of India shall form one Consolidated Fund to be entitled "the Consolidated Fund of India", and all revenues or public moneys raised or received by the Government of a State shall form one Consolidated Fund to be entitled "the Consolidated Fund of the State".'"

(2) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with, law and for the purposes and in the manner provided in this Constitution."

These amendments are only consequential to what we have already accepted previously.

Mr. President : Amendment No. 196 ?

Shri T. T. Krishnamachari (Madras: General): Pandit Kunzru who gave notice of amendment No. 196 is not in the Chamber at present. There is another amendment, No. 198, which the Drafting Committee feel may be accepted and in order that it may be accepted, this amendment No. 196 has to be moved and accepted. If I am permitted to move it. I will do so.

Mr. President : Yes.

Shri T. T. Krishnamachari : Mr. President, Sir, I move amendment No. 196 in

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1 *Article 265 of the Constitution of India.*

the printed Supplementary List, standing in the name of Pandit Hirday Nath Kunzru :

[Shri T. T. Krishnamachari]

"That in amendment No. 195 above, in clause (1) of the proposed new article 248-A alter the words

'Subject to the provisions of' the words, figures and letter 'article 248-B of this Constitution and to the provisions of' be inserted."

I have already explained, Sir, that there is another amendment standing in the name of Pandit Kunzru which the Drafting Committee felt it would be wise to accept, and that is also a matter about which I will explain subsequently. And therefore in order to enable that amendment to be accepted, this amendment is necessary.

Mr. President : Amendment No. 197 standing in the name of Prof. Saksena.

Prof. Shibban Lal Saksena : Mr. President, Sir, I beg to move:

"That in amendment No. 195 above, in clause (1) of the proposed new article 248-A the words 'Subject to the provisions of this Chapter with respect to the assignment of whole or part of the net proceeds of certain taxes and duties to States.' be deleted."

Sir, at an early stage I gave my wholehearted approval to the new scheme of financial provisions, where Consolidated Funds and other such things have been introduced. But in this amendment of mine, I have only suggested that in the article 248-A as proposed by Dr. Ambedkar, the words, "subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States" may be removed. What will be the effect ? At present, what is contemplated is that several taxes should be allotted directly to the States, even though they may be collected under the laws framed by the Government of India. But what I want is that every tax or duty or whatever money is realised from the people of the country under laws framed by the Government of India they should first come to the treasury of the Government of India and thereafter any assignment should be made and money transferred. It should not be lawful for any State to appropriate to itself any revenue collected on the authority of the laws passed by the Government of India. Money should not go to the States treasury without first coming to the Central Government. I want that all the money should be pooled together and then from there it should be distributed. That gives the Centre some idea of the total collection, and also how it has been distributed. Otherwise they will probably not know how much money has come under a particular tax. My amendment is a simple one, though it involves a change in procedure. But I think all will agree that all finance should first come to the Central pool and then get distributed. I hope this simple amendment will be accepted by the House.

Mr. President : Does any one wish to say anything about the amendments or the original article moved by Dr. Ambedkar ?

(No Member rose.)

Then I will put the amendment first to vote. The first amendment is the one standing in the name of Pandit Kunzru.

The question is :

"That in amendment No. 195 above, in clause (1) of the proposed new article 248-A, alter the words

'Subject to the provisions of' the words figures and letter 'article 248-B of this Constitution and to the provisions of be inserted."

The amendment was adopted.

Mr. President : The question is :

"That in amendment No. 195 above, in clause (1) of the proposed new article 248-A, the words Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States,' be deleted."

The amendment was negatived.

Mr. President: Then I put the amendment moved by Dr. Ambedkar.

The question is :

Taxes not to be imposed save by authority of law.

"That for article 248, the following articles be substituted:—

"248. No tax shall be levied or collected except by authority of law. 248-A. (1) Subject to the provisions of article 248-B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues or public moneys raised or received by the Government of India shall form one consolidated Fund to be entitled "the Consolidated Fund of India," and all revenues or public moneys raised or received by the Government of a State shall form one Consolidated Fund to be entitled "the Consolidated Fund of the State."

(2) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

I put this article, as amended by amendment No. 196, to vote.

The motion was adopted.

Articles 248 and 248-A, as amended, were added to the Constitution.

Constitutional Challenges to Benami Transactions Act: The Ganpati Dealcom Case Study

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Overview

"This article examines the Prohibition of Benami Property Transactions Act, 1988, and its 2016 amendment through the lens of the Supreme Court's decisions in Union of India v. Ganpati Dealcom Pvt. Ltd. While the 1988 Act provided for criminal prosecution and benami property acquisition, these provisions were never operationalized due to a lack of enforcement mechanisms and procedural rules. The 2016 amendment sought to revive these dormant provisions. The critical question arose: would the 2016 amendments apply retrospectively to pre-2016 transactions?

In Ganpati I, the Supreme Court held that criminal prosecution and property confiscation under the amended Act could not apply retrospectively, as inter alia the relevant provisions under the unamended Act were unconstitutional. In Ganpati II, the Court recalled its earlier judgment as the constitutionality of the provisions had not been challenged by parties in Ganpati I. In this context, this article explores key constitutional principles — separation of powers, presumption of constitutionality, and retrospective application of laws.

While the 2016 amendments are more robust and likely to withstand constitutional scrutiny, their retrospective application remains contentious. The rehearing after Ganpati II presents an opportunity to clarify whether such amendments can apply to pre-2016 transactions."

Introduction

Benami transactions occur when a person buys or holds property in the name of another in order to hide true ownership. This undermines legal certainty as creditors cannot enforce claims, tax authorities cannot assess liability, and courts are misled about who bears responsibility.

The original Prohibition of Benami Property

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Transactions Act, 1988 ("the 1988 Act"), was intended to prevent benami transactions but remained largely ineffective due to lack of enforcement mechanisms and procedural guidelines. The 1988 Act was comprehensively amended by the Benami Transaction (Prohibition) Amendment Act, 2016 ("the 2016 Act"), which introduced a new definition, stringent penalties, detailed procedural frameworks, and specialized adjudicating authorities.

However, the 2016 Act raised a critical question: would the amendments apply to transactions completed before 2016. This question came before a three-judge bench of the Supreme Court in *Union of India and Another v. Ganpati Dealcom Private Limited*[1] ("Ganpati I"). It concluded that property forfeiture and criminal prosecution could not be applied retrospectively, and it held parts of the 1988 Act as unconstitutional. In 2024, the Supreme Court, acting in review, recalled Ganpati I and restored the appeal for a full rehearing (Ganpati II).[2]

> Benami transactions occur when a person buys or holds property in the name of another in order to hide true ownership.

We discuss these decisions in depth below.

Ganpati I: The Initial Challenge

Case Background

Briefly, Ganpati Dealcom Private Limited ("the Respondent") acquired some property in 2011 for approximately INR 9 crores.[3] Thereafter, in 2012, 99.9% shareholding of the Respondent was transferred to its sister concerns for INR 19 lakhs,[4] raising suspicion of a benami transaction. The challenge in Ganpati I arose from a show-cause notice and an order of provisional attachment[5] against the Respondent. The Respondent filed a writ petition before the Calcutta High Court, challenging the provisional attachment, which was dismissed by a single bench of the Calcutta High Court.[6]

The Respondent filed an appeal before the Calcutta High Court. A division bench of the Calcutta High Court quashed the show-cause notice and the provisional attachment order[7], holding that the 2016 Act does not have retrospective application.[8] The court premised its decision on several grounds, including that the 2016 Act did not expressly provide for retrospective application[9]; rules for the operationalisation of the 1988 Act were never notified;[10] and this delay meant that the government had waived its right to enforce the 1988 Act.[11] The division bench also cited earlier decisions of inter alia the Rajasthan High Court[12] and Bombay High Court[13] in support of its findings.

Aggrieved by this, the Union of India ("the Petitioner") filed an appeal before the Supreme Court. A three-judge bench of the Supreme Court framed the following issue for its consideration:

"… whether the Prohibition of the Benami Property Transactions Act, 1988, as amended by the Benami Transactions (Prohibition) Amendment Act, 2016 has a prospective effect."[14]

The main thrust of the Petitioner's argument

1 *(2023) 3 SCC 315.*
2 *Union of India v. Ganpati Dealcom (P) Ltd., (2025) 474 ITR 354*
5 *Ganpati I, paragraphs 5, 6.*
6 *Ganpati I, paragraph 7.*
7 *Ganpati Dealcom P. Ltd. v. Union of India, 2019 SCC OnLine Cal 8679, paragraphs 41, 42.*
8 *Ganpati I, paragraph 9.*
9 *Ganpati Dealcom P. Ltd. v. Union of India, 2019 SCC OnLine Cal 8679, paragraph 28.*
10 *Ganpati Dealcom P. Ltd. v. Union of India, 2019 SCC OnLine Cal 8679, paragraph 39.*
11 *Ganpati Dealcom P. Ltd. v. Union of India, 2019 SCC OnLine Cal 8679, paragraph 39.*
12 *Niharika Jain v. Union of India, 2019 SCC OnLine Raj 1640, paragraph 94.*
13 *Joseph Isharat v. Rozy Nishikant Gaikwad, 2017 SCC Online Bom 10099, quoted in Niharika Jain v. Union of India, 2019 SCC OnLine Raj 1640, paragraph 46.*
14 *Ganpati I, paragraph 3.*



was that the 2016 Act was only clarificatory and procedural, as benami transactions were already prohibited under the 1988 Act.[15] Accordingly, it was argued that the 2016 Act ought to have a retrospective effect. In this backdrop, the Supreme Court analysed the history of the subject Acts, and thereafter, answered the said issue.

Principles governing constitutional challenges

Before turning to the Court's reasoning, it is useful to outline the constitutional framework that guides such challenges.

India's constitutional framework operates on the fundamental principle of separation of powers, which distributes governmental authority among three distinct branches: the legislature, executive, and judiciary, ensuring a system of checks and balances.[16] The legislature, comprising Parliament and state assemblies, holds the primary responsibility for making laws. The judiciary serves as the guardian of the Constitution, ensuring that laws passed by the legislature comply with constitutional requirements.[17]

> Laws passed by the Parliament are presumed to be constitutional, unless proven otherwise.

Laws passed by the Parliament are presumed to be constitutional, unless proven otherwise.[18]

15 *Ganpati I, paragraph 38.*

16 *Kalpana Mehta v. Union of India, (2018) 7 SCC 1, paragraphs 31 to 39; See also Keshvananda Bharati v. State of Kerala, (1973) 4 SCC 225.*

17 *Kalpana Mehta v. Union of India, (2018) 7 SCC 1, paragraph 41.*

18 *Subramanian Swamy v. CBI, (2014) 8 SCC 682, paragraph 49: "There is always a presumption of constitutionality of an*



However, courts can strike down such laws on certain grounds, i.e., (i) lack of legislative competence or (ii) violation of fundamental rights or other constitutional provisions.[19] In Ganpati I, the challenge concerned the second ground.

Beyond the text of the Constitution, courts have developed tests to assess whether a law is constitutional. In particular, courts can examine whether a law is manifestly arbitrary, ie whether it is so unreasonable, irrational, or arbitrary that it violates the constitutional guarantee of equality.[20]

Further, courts can also test whether a law respects due process, ie whether a procedure which deprives a person of a fundamental right is fair, just and reasonable, based on a combined reading of Articles 14 and 21 of the Constitution.[21]

enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognised by the Court and due regard and deference must be accorded to the legislative process."

19 *Kalpana Mehta v. Union of India, (2018) 7 SCC 1, paragraph 41.*

20 *Shayara Bano v. Union of India, (2017) 9 SCC 1; See also Assn. for Democratic Reforms (Electoral Bond Scheme) v. Union of India, (2024) 5 SCC 1, paragraphs 193 to 200.*

21 *See Maneka Gandhi v. Union of India, (1978) 1 SCC 248; K. S. Puttaswamy (Privacy -9 J.) v. Union of India, (2017) 10 SCC 1.*

Other relevant legal principles

Alongside these broad constitutional principles, other relevant principles regarding retrospective amendments are set out below.

Curing of Void Statutes. Under Article 13(2) of the Constitution, any law made in contravention of fundamental rights stands "void".[22] A critical question that naturally arises is if a law is unconstitutional under Article 13(2), can it be revived by amending the Act to cure the defect, or will it have to be re-enacted. The answer turns on the meaning accorded to the word "void".

The leading judgement on this issue is by the Delhi High Court in P. L Mehra v. D. R Khanna[23] ("Mehra"), in a similar factual matrix concerning the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 ("1958 PP Act"). The petitioners in this case challenged the validity of certain provisions of the 1958 PP Act as being discriminatory, while the respondents argued that the discrimination was removed by way of

22 *Article 13(2), Constitution. "(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void".*

23 *1970 SCC OnLine Del 203.*

amendment in 1968.[24] The petitioners argued that the 1958 PP Act was void ab initio and could be 'cured' only by way of re-enactment.[25]

The majority view agreed with the petitioners and concluded that a law which is void under Article 13(2) is non-existent for all purposes, including repeal, amendment, or enforceability.[26] The majority further stated that a wholly void law can be operationalised only through measures such as reenactment, and mere amendment of certain portions of a void law would not suffice. [27] Ganpati I appears to echo this finding, in so farinsofar as it holds that amendments cannot retrospectively cure defects in the original statute.[28]

The dissenting view held that that a declaration of unconstitutionality by the judiciary cannot and does not repeal the law from the statute books,

> The 1988 Act was enacted with the intention of preventing benami transactions, but was skeletal in nature, containing only nine sections, with little procedural machinery.

and as such, the legislature can remove the vice of unconstitutionality through amendment, rather than re-enactment.[29]

In light of the majority view, the proceedings under the 1958 PP Act were quashed.[30] Notably, expressly on account of the majority view, the legislature passed a new statute, being the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.[31]



Retrospectivity of statutes. Indian courts are cautious about saying that a statute operates retrospectively where rights and liabilities are involved.[32] Procedural changes often apply to pending matters, but substantive liabilities usually do not travel backwards unless the text says so in plain terms. Where a statute creates heavier penalties, expands confiscation or converts a civil disability into a penal consequence, the presumption against retrospectivity is strong.[33] This is borne out by Article 20(1) of the Constitution which forbids ex post facto criminal punishment.[34]

Legislative History of the Act

These constitutional principles must be understood against the backdrop of how the benami law evolved over time.

24 Ibid, pp. 589, 590.
25 Ibid, pp. 589, 590.
26 Ibid, p. 609.
27 Ibid, p. 627.
28 Ganpati I, paragraph 92.
29 See Dissent by Justice Deshpande in Mehra.
30 1970 SCC OnLine Del 203, p. 628.
31 See, Statement of Objects and Reason, Public Premises (Eviction of Unauthorized Occupants) Act, 1971.
32 See CIT v. Vatika Township Private Limited, (2015) 1 SCC 1.
33 See Rao Shiv Bahadur Singh v. Vindhya Pradesh AIR 1953 SC 394.
34 "(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence"

The 1988 Act was enacted with the intention of preventing benami transactions, but was skeletal in nature, containing only nine sections, with little procedural machinery.

First, under the 1988 Act, "benami transaction" were was defined as any transaction in which property is transferred to one person for a consideration paid or provided by another person.[35] This definition covered only tripartite arrangements and not sham bipartite arrangements. Further, the definition did not include the ingredient of the transferee's lack of beneficial interest in the subject property.[36] The Supreme Court observed that the definition was impermissibly wide and could catch legitimate transactions such as gifts and trusts.[37]

Second, under Section 3 of the 1988 Act, benami transactions were prohibited, and the act of entering into such a transaction was criminalised. However, there were no designated authorities for adjudication, and no clear procedures for investigation and trial. Further, there was no express mens rea component,[38] basis which the Supreme Court concluded that the 1988 Act created a strict liability offence.[39] A strict liability offence is one which does not require intention, and the mere act itself is sufficient to attract punishment.

The 2016 Act effectively replaced the skeletal 1988 Act with a comprehensive code.

Third, under Section 5 of the 1988 Act, benami properties were liable to acquisition, in the manner "as may be prescribed". No relevant rules were notified for Section 5, and it was never utilised.[40] In effect, this confiscation power remained a dead letter.

Recognizing these serious deficiencies, the Parliament enacted the 2016 Act, which

1.1. Provided an expansive definition of "benami transaction" in section 2(9);

1.2. Created an Initiating Officer, an Approving Authority, an Adjudicating Authority, and an Appellate Tribunal for criminal prosecution;

1.3. Imposed increased penalties. Maximum imprisonment was raised to seven years and a fine of up to 25 percent of the property's fair market value, which increase was specifically stated to apply to offences committed after 25 October 2016, i.e., after the notification of the 2016 Act.

1.4. Introduced a mens rea element as an ingredient for criminal punishment.[41]

1.5. Provided a step-by-step procedure for provisional attachment, notice, hearing, confirmation, appeal, and confiscation.

In short, the 2016 Act effectively replaced the skeletal 1988 Act with a comprehensive code.

Findings of the Supreme Court

Relying on these constitutional and legal principles, Ganpati I laid down six key findings[42].

1.6. First, it declared that section 3(2) of the amended Act (i.e., the criminalisation provision under the 1988 Act) was unconstitutional from its inception for being manifestly arbitrary. This was on the grounds that (i) the 1988 Act omitted key ingredients such as mens rea[43] and beneficial ownership[44] arbitrarily and (ii) the lack of procedure was violative of

35 1988 Act, Section 2(a).
36 Ganpati I, paragraph 31.
37 Ganpati I, paragraph 31.
38 Ganpati I, paragraph 39.
39 Ganpati I, paragraph 44.
40 Ganpati I, paragraph 35.
41 Amended Act, Section 53.
42 Ganpati I, paragraph 127.
43 Ganpati I, paragraph 57.
44 Ganpati I, paragraph 59.



constitutional due process requirements.[45]

1.7. Second, and similarly, it held that acquisition under Section 5 of the 1988 Act was unconstitutional from its inception for being manifestly arbitrary, because it left essential procedures to be decided later by rules, amounting to excessive delegation.[46]

1.8. Third, and based on the aforesaid, it concluded that the 2016 Act was not merely procedural; it introduced substantive provisions. The Court held that the 2016 Act was in effect creating new provisions and new offences, and therefore, could not be applied retrospectively.[47]

1.9. Fourth, it characterised the confiscation under the amended section 5 as punitive in nature and therefore prospective. This finding was premised on the Court's conclusion that Section 5 provided for "in rem" forfeiture, i.e., it operated against the property itself, and not against any individual person, making it penal in nature.[48]

1.10. Fifth, it stated that authorities could not initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to 25 October 2016, and that such proceedings would stand quashed.

1.11. Sixth, it left open questions on the constitutionality of the confiscation mechanism under the 2016 Act for adjudication in appropriate proceedings.

These findings had significant implications on the prosecution of benami transactions in India. Following Ganpati I, several high courts, including the Delhi High Court,[49] Madras High

45 Ganpati I, paragraph 61.
46 Ganpati I, paragraphs 64, 65.
47 Ganpati I, paragraph 88.
48 Ganpati I, paragraph 118.
49 Rajesh Katyal v. Income-tax Department, (2023) SCC Online Del 4004.

Court[50], Telangana High Court[51] and the Punjab & Haryana High Court[52], quashed various show-cause notices and attachment orders. The Supreme Court also dismissed various special leave petitions and appeals on account of the findings in Ganpati I.[53]

Ganpati II: The Recall of Ganpati I

Meanwhile, the Union of India sought a review of Ganpati I before the Supreme Court, which culminated in the decision in Ganpati II. The Supreme Court allowed the Union's review and recalled the Ganpati I decision on the basis that "a challenge to the constitutional validity of a statutory provision cannot be adjudicated upon in the absence of a lis and contest between the parties."[54] It restored the appeal for a fresh hearing and gave liberty to parties in other proceedings that had relied on Ganpati I to seek review.[55]

The decision to recall Ganpati I appears to be grounded in basic principles of constitutional law, i.e., separation of powers, and presumption of constitutionality.

The power of courts to recall their own judgments is well-established in Indian jurisprudence and is permissible in limited circumstances, such as lack of jurisdiction, fraud against the Court, or violation of principles of natural justice.[56] Specifically, in the context of constitutional adjudication, it has been clarified[57] that courts cannot suo moto declare primary legislations as void, "firstly, in deference to legislative actions, which are presumed to be constitutional, secondly, because of the position it holds in the hierarchy of laws, and thirdly, because we know of no decision of this Court where a primary legislation was outlawed without a formal challenge being laid or a decision of a writ court striking down a primary legislation not under challenge being upheld."[58]

Hence, the decision to recall Ganpati I appears to be grounded in basic principles of constitutional law, i.e., separation of powers, and presumption of constitutionality.

The merits of Ganpati I remain to be tested afresh in the restored appeal. As a result, the aforesaid High Court rulings that had quashed proceedings on the strength of Ganpati I also became unsettled. Illustratively, the Karnataka High Court, on appeal, was constrained to remit a previous quashing order for fresh consideration.[59]

Potential Challenges: An Analysis

With Ganpati I recalled, the questions underlying the initial challenge remain open, and are likely to be adjudicated by the Supreme Court in due course. As such, it is important to assess the potential outcome of such a challenge.

When the 1988 Act is examined in isolation, it lacks the procedural safeguards and substantive clarity that would satisfy constitutional due process requirements. The 1988 Act prohibited benami transactions in broad terms but provided no clear mechanism for investigation, adjudication, protection of accused persons' rights, or appeal against adverse decisions. This

50 *CIT v. Advance Infra Developers (P) Ltd., (2023) SCC Online Mad 8408.*
51 *Goluguri Srirama Reddy v. Adjudicating Authority, (2022) SCC Online TS 3473*
52 *Jain Amar Clothing (P) Ltd. v. Central Board of Director Taxes, 2023 SCC OnLine P&H 3038*
53 *CIT v. Neopride Pharmaceuticals Ltd., (2023) SCC Online SC 816; CIT v. Goluguri Srirama Reddy, (2023) SCC Online SC 1064.*
54 *Ganpati II, paragraph 6.*
55 *Ganpati II, paragraphs 6, 7.*
56 *Budhia Swain v. Gopinath Deb, (1999) 4 SCC 396, paragraph 8.*
57 *Bihar Rajya Dafadar Chaukidar Panchayat v. State of Bihar and Ors. SLP (C) No. 18983/2023*
58 *Ibid, paragraph 34.*
59 *Initiating Officer under the PBPT Act v. Sri T R Chandraiah, Order dated 20 December 2024 in Writ Appeal No. 1060 of 2023.*

procedural vacuum made Sections 3 and 5 of the 1988 Act vulnerable to constitutional challenge on grounds of denial of due process and manifest arbitrariness.

The 2016 Act directly addresses these primary concerns. The amendments provide comprehensive procedural protections including: clear, precise definitions of prohibited conduct; designated adjudicating authorities with defined jurisdiction; proper notice and hearing procedures; rights of appeal and review; and time-bound adjudication processes. Given the comprehensive nature of the 2016 Act, constitutional challenges to the current legislative framework would face significant obstacles.

Regulation of benami transactions addresses a real social harm, yet it must operate within constitutional lines.

That said, certain avenues for challenge remain. One possible argument is that the 2016 Act could not retrospectively operationalise the 1988 Act, consistent with the Delhi High Court's reasoning in Mehra that void statutes cannot be retrospectively cured by amendment. The logical consequence of such a finding would be that the 1988 Act stood void ab initio, and the 2016 Act would require fresh legislative enactment. However, reliance on Mehra may be misplaced as the 1998 Act is not wholly void. Certain sections of the 1988 Act, such as Section 4, which deals with civil consequences, remain unchallenged.

A second line of challenge could emanate from the penal nature of confiscation and prosecution under the 2016 Act. If these measures are characterised as penalties, Article 20(1) would require that they operate only prospectively. This would limit the reach of the Act to post-2016 transactions, consistent with the Court's reasoning in Ganpati I.

On balance, while the 2016 Act is far more likely to withstand constitutional scrutiny than its 1988 predecessor, courts may insist that its procedures and punitive consequences apply only to conduct occurring after its commencement. The principal contest in future litigation may therefore turn not on the validity of the Act itself, but on the temporal reach of its provisions.

Conclusion

Regulation of benami transactions addresses a real social harm, yet it must operate within constitutional lines. The potential rehearing after Ganpati II offers a chance to settle two questions. First, can punitive confiscation and prosecution touch pre-2016 conduct. Second, are the amended procedures sufficiently fair and structured to satisfy Article 14 and Article 21.

Until then, litigants who obtained relief under Ganpati I now face the uncertainty of review proceedings, as the basis for their relief has been recalled. However, challenges to confiscation or prosecution of pre-2016 transactions remain open, and relief can still be pursued in ongoing or fresh proceedings.



Coach Style Leadership for Tax Professionals

Tax lawyers and tax law firms can adopt and adapt the principles of shifting from a "Boss" to a "Coach" leadership model to enhance their practice, improve team performance, and retain talent. This evolution involves a fundamental change from a traditional, hierarchical command-and-control style to a more collaborative and people-centric approach.

Here are several ways tax lawyers and firms can implement these learnings:

Shift from Task Delegation to Outcome-Based Empowerment

Instead of a senior lawyer or partner acting as a "boss" who simply issues instructions and measures success by task completion, they can adopt a "coach" approach.

- Traditional "Boss" Approach: A partner assigns a junior associate a research task with rigid instructions on how to perform it, focusing solely on the completion of the memo.
- Adapted "Coach" Approach: A partner defines the desired outcome (e.g., "We need to find the strongest arguments to support our client's tax position on this transaction") and empowers the associate to think critically and innovate in their research and analysis. This shift from dictating tasks to defining outcomes encourages junior lawyers to develop their own problem-solving skills and take ownership of their work.

Foster Psychological Safety and Innovation

The legal field, particularly tax law, can be high-pressure. A "boss" model that relies on authority can stifle creativity and make junior lawyers afraid to voice new ideas or admit mistakes.

- Creating Brave Spaces: Leaders in a tax law firm can cultivate an environment where team members feel safe to express ideas, challenge assumptions, and acknowledge errors without fear of reprisal. For example, during a strategy session for a complex tax case, a coaching-style leader would encourage all team members, regardless of seniority, to contribute ideas, ask questions, and even challenge the lead partner's initial assessment.
- Responding to Setbacks: If a project goes off-track, a "coach" leader would gather the team for open reflection, asking questions like, "What can we learn from this setback?" or "How could we approach this challenge differently?" rather than simply pointing out mistakes. This builds the team's resilience and confidence.

Professional Growth and Development

A key differentiator of the "coach" is the focus on the long-term development of team members, which directly benefits the firm.

- Beyond Billable Hours: While metrics are important, a coach-leader invests in developing the skills of their associates and paralegals. This could involve providing constructive, regular feedback, supporting further education

**This is a extract from the book titled "Boss vs Coach: Transforming Your Leadership Style" authored by Mohit Khullar & Olivia Gadd and published by Oakbridge Publishing, 2025.*

(like an LL.M. in Taxation), and aligning individual career goals with the firm's objectives. This approach contrasts with the "boss" model, which often sidelines personal growth in favor of immediate needs.

Enhance Employee Wellbeing to Combat Burnout

The demanding nature of tax law can lead to burnout. A "coach" leadership style addresses this by prioritizing employee wellbeing, recognizing that supported employees are more committed, engaged, and innovative.

- Implement Wellbeing Check-ins: Partners and managers can adopt practices like "wellbeing check-ins" to discuss not just caseloads, but also mental health and professional growth with their team members. This demonstrates that the firm values its lawyers as whole individuals, not just as "cogs in a machine".
- Invest in People: By putting people first, firms can unlock higher performance and build a resilient organization where lawyers bring their best selves to work. This people-first philosophy helps reduce high turnover rates, which are costly both financially and in the loss of institutional knowledge.

Adapt to Modern Workplace Expectations

The workforce is changing, with younger generations and the rise of hybrid work demanding new leadership styles.

- Attracting and Retaining Talent: Millennials and Gen Z lawyers are more likely to be drawn to and remain with firms where leaders act as mentors who inspire and guide, rather than bosses who command and control. Firms that stick to a rigid, top-down culture risk higher turnover as their talent seeks more empowering environments.
- Managing Hybrid Teams: The traditional "boss" approach of oversight and control is ineffective for hybrid or remote work arrangements. A "coach" leader excels in this environment by cultivating trust, empowering autonomy, and maintaining clear communication, enabling team members to take ownership of their work regardless of their physical location. This is crucial as employees now expect this level of trust and autonomy in all work environments.

By adopting these coaching principles, tax law firms can move beyond a transactional management style to one that builds trust, fosters growth, and drives performance through collaboration and empowerment. This evolution is presented not just as a trend, but as a necessary shift for future success and sustainability.



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Supreme Court



Keshav B Bhujle
Advocate

CIT (Exemption) v. United Way of Baroda: (2025) 478 ITR 535 (SC): 2025 SCC OnLine SC 1854 Dated 08/07/2025

Charitable purpose — Exemption u/s. 11 and 12 — Disqualification for exemption where activities in the nature of trade or business carried out — Income from ticket sales by organizing dance events and food stalls — Decision of court in favour of assessee in appeal for earlier assessment years on identical facts and circumstances — Gujarat High Court held that organizing cultural events did not constitute business activity to deny exemption and dismissed the appeal filed by the Department — Supreme Court dismissed the special leave petition filed by the Department: Ss. 2(15), 11, 12, and 13(8) of ITA, 1961: A.Y. 2015-16:

For the A.Y. 2015-16, the assessee, a trust, which organised dance events during festivals, earning income from ticket sales and food stalls, filed a nil return claiming exemption u/s. 11 and 12 of the Income-tax Act, 1961. The Assessing Officer denied exemption, treating these activities as business under the proviso to section 2(15) and accordingly made disallowances.

The CIT(Appeals) partly allowed the assessee's appeal. The Tribunal confirmed the order of the CIT(Appeals).

The Gujarat High Court dismissed the appeal filed by the Department and held as under:

> "The assessee's own case for the A.Y. 2014-15, on identical facts and circumstances concurrently found by the appellate authorities, had already been dismissed by the court in the appeal of the Department u/s. 260A holding, inter alia, that organising dance events could not be termed as a business, there were no distinguishing facts to take a different view for the subsequent A. Y. 2015-16."

CIT (Exemption) v. United Way of Baroda; (2025) 478 ITR 530 (Guj): 2024 SCC OnLine Guj 4431:

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

"i) Heard the learned counsel for the petitioners.

ii) We see absolutely no reason to interfere with the order of the High Court, in exercise of our jurisdiction under Article 136 of the Constitution of India.

iii) The present petition is, accordingly, dismissed"

Principal CIT v. Damodar Jajoo: (2025) 482 ITR 166 (SC): 2025 SCC OnLine SC 335 Dated 10/01/2025

Long-term capital gain — Exemption u/s. 10(38) — Purchase and sale of shares — Reopening of assessment on information from Investigation Directorate that assessee is beneficiary of accommodation entries provided by penny stock companies — Addition made on this basis — Tribunal on consideration of period of holding of shares recorded finding that long-term capital gains earned not significant amount and assessee had not taken accommodation entries — Gujarat High Court held that there is no error in finding of facts by Tribunal and accordingly, no question of law arose — Supreme Court dismissed the special leave petition filed by the Revenue: Ss. 10(38), 147 and 148 of ITA, 1961: A.Ys. 2011-12 and 2012-13:

For the A.Ys. 2011-12 and 2012-13, the assessee had claimed exemption u/s. 10(38) of the Income-tax Act, 1961. The assessment was reopened u/s. 147 on the information from the Investigation Directorate that the assessee is a beneficiary of accommodation entries provided by penny stock companies. In the reassessment proceedings, the assessee provided a detailed explanation with regard to the transactions in the penny stock company. The Assessing Officer, on the basis of the Information received from the Investigation Directorate, made an addition u/s. 68 on the ground that the assessee was one of the beneficiaries of accommodation entries provided by a penny stock company. The Assessing Officer found that the share price of the penny stock company had risen from Rs. 100 in December 2008, topped at Rs. 1000 in November 2010, and dipped to Rs. 50 in May 2012. The Assessing Officer observed that the financials of the company during the relevant period did not show any substantial change so as to support such a deviation of the price, that the company did not have any business activity which justifies the huge market price of the share, that purchase and sale transactions of the penny stock company were concentrated within a few persons and that the entry providers did not have creditworthiness. The assessee's submission that the transaction was done through a broker and banking channels was rejected by the Assessing Officer.

The CIT(Appeals) confirmed the order. The Tribunal reversed the order.

The Gujarat High Court dismissed the appeal filed by the Revenue and held as under:

"i) Considering the finding of fact, arrived at by the Tribunal that the assessee had sold shares after seven years and, therefore, the proximity of time between the purchase and sale could not be considered an accommodation entry in a penny stock company within a short period of about one year to claim bogus long-term capital gain or loss to defraud the Revenue.

ii) The Assessing Officer and the CIT(Appeals) had ignored the facts which were considered by the Tribunal to arrive at a finding of fact that the assessee had to be treated as an investor and could not be treated as having engaged in fraudulent activity or manipulation activity.

iii) The Tribunal, therefore, considering the period of holding of shares by the assessee, arrived at a finding that the long-term capital gains earned by the assessee were not a significant amount and, therefore, held that the assessee could not be said to have taken accommodation entries by entering into

transactions of shares in the penny stock company. Therefore, there was no error in the finding of facts and the conclusion arrived at by the Tribunal that the investment made by the assessee was long-standing and genuine and was not a penny stock company on the basis of which the claim of exemption of long-term capital gain u/s. 10(38) was wrongly denied.

iv) No question of law arose on the finding of fact arrived at by the Tribunal."

Principal CIT v. Damodar Jajoo: (2025) 482 ITR 154 (Guj): 2023 SCC OnLine Guj 5052:

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 petitioner and having gone through the materials on record, we see no reason to interfere with the impugned order passed by the High Court.

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

Principal CIT v. Dumka Catholoic Diocese: (2025) 478 ITR 215 (SC): 2025 SCC OnLine SC 1818 Dated 17/04/2025

Recovery of tax — Stay of recovery proceedings pending appeal before CIT(A) — Discretion of AO — Instruction issued by CBDT — Executive instructions cannot be contrary to statutory provisions — Exercise of discretion to be in accordance with rules of reasons and justice — Assessee asked to deposit 20 per cent of demand in terms of office memorandum of CBDT — High Court held, on facts, serious prejudice may be caused to assessee and exemption from pre-deposit should have been granted — High Court set aside the order refusing to stay and granted the stay of demand — Supreme Court dismissed the special leave petition filed by the Revenue: Ss. 119 and 226 of ITA 1961: A.Y. 2015-16:

For the A.Y. 2015-16, the assessee, a charitable society, received an assessment order making an addition. The assessee filed an appeal before the CIT(Appeals) and applied for a stay of recovery pending its appeal u/s. 226(6) of the Income-tax Act,1961. The application was rejected, and the assessee was required to pay 20 per cent of the disputed demand in terms of the CBDT office memorandum dated 31/07/2017.

The assessee filed a writ petition and challenged the order. The Jharkhand High Court allowed the writ petition, set aside the order rejecting to stay, and granted the stay of demand. The High Court held as under:

> "There was no statutory requirement of pre-deposit in the Income-tax Act, 1961, but such a requirement had been made mandatory by virtue of an office memorandum dated 29/02/2016, issued by CBDT. Executive instructions cannot be contrary to statutory provisions. Exercise of discretion to be in accordance with rules of reason and justice."

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

> "We are not inclined to interfere with the impugned judgment [*Dumka Catholoic Diocese v. Pr. CIT*, (2025) 478 ITR 209 (Jharkhand); 2024 SCC OnLine Jhar 1709.]. Hence, the present special leave petition is dismissed."

"Direct taxation is not merely a fiscal tool but an instrument for social justice and economic balance."

— Pt Jawaharlal Nehru

High Court



Jitendra Singh
Advocate



Radha Halbe
Advocate



Harsh Shah
Advocate

Pr. CIT v. Sanjaykumar Damjibhai Gangani [2025] 178 taxmann.com 276 (Gujarat)

Section 10(38) of the Income Tax Act 1961 – exemption of long-term capital gains from equities – assessee furnished relevant documentary evidence, including contract note of shares, demat details, details of bonus shares – AO had not brought any adverse evidence – exemption cannot be denied. [Section 68 of the Income Tax Act, 1961]

Facts:

The assessee in his return claimed exemption under Section 10(38) of the Act on long-term capital gains (LTCG) arising from the sale of shares of Sunrise Asian Ltd. The AO, relying on the information received from the Investigation Wing that certain companies, including Sunrise Asian Ltd., were allegedly used to provide accommodation entries for bogus LTCG, rejected the exemption claimed by the assessee and made an addition under Section 68, treating the LTCG as an unexplained cash credit. On appeal, the first appellate authority upheld the AO's view. The assessee, being aggrieved by the order passed by the Ld. CIT(A), challenged the same before the Income Tax Appellate Tribunal. The Tribunal allowed the claim of the assessee by observing that the assessee had furnished complete documentation, including:

- Contract notes,
- Demat account statements,
- Bonus share details, and
- Bank statements showing receipt of sale proceeds via RTGS/NEFT.

The Tribunal also noted that there was no evidence of manipulation by the broker or any link between the assessee and alleged entry operators.

The department being aggrieved by the order passed by the Tribunal, challenged the same before the Hon'ble Gujarat High Court under Section 260A of the Act.

Ruling of the High Court:

Hon'ble Gujarat High Court was pleased to dismiss the appeal filed by the department by

observing that the Tribunal's findings were based on evidence and aligned with the precedent set in *Pr. CIT v. Divyaben Prafulchandra Parmar [2024] 169 taxmann.com 473 (Gujarat)*. The AO's reliance on general patterns of price fluctuation and reports from the Investigation Wing, without direct evidence linking the assessee to any manipulation, was insufficient. The assessee held the shares for over two years, sold them through a SEBI-registered broker, and received proceeds through banking channels. SEBI had not flagged Sunrise Asian Ltd. as a manipulated scrip. The AO failed to establish any nexus between the assessee and the alleged entry operators. The denial of cross-examination and the absence of corroborative evidence rendered the addition unsustainable.

CIT (TDS) v. Dr. Balabhai Nanavati Hospital [2025] 178 taxmann.com 437 (Bombay)

Section 194J of the Income Tax Act, 1961 – Deduction at source - Fees for professional or technical services – payment made to honorary doctors on the panel of the hospital trust - cannot be treated as salary – TDS was rightly deducted under Section 194J of the Act. [Section 192 of the Income Tax Act, 1961]

Facts:

The assessee, a hospital trust, appointed consultant/honorary doctors on its panel. The assessee, while making the honorarium payment to the doctors, deducted TDS under Section 194J, treating the same as professional fees. The AO, however, on examination of the appointment letters and agreements with the doctors, came to the conclusion that the assessee had supervisory control over the doctors. Thus, the doctors were employees of the assessee; hence, the payments to these doctors were in the nature of 'salary', which attracts TDS under Section 192 of the Act. The AO, therefore, passed an order treating the assessee in default under Section 201(1) and Section 201(1A) of the Act and raised a demand of tax and interest for default in non-deducting TDS under Section 192 of the Act on the said payments. On appeal, the first appellate authority quashed the order passed under Section 201(1) and Section 201(1A) of the Act. The department being aggrieved carried the matter before the Appellate Tribunal. The Appellate Tribunal also upheld the view of the Ld. CIT(A).

The department, being further 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 was pleased to dismiss the appeal of the department by observing that the doctors were appointed based on specialization and were free to practice elsewhere. No fixed salary, PF, ESIC, or perquisites were provided. Further, the doctors had filed their returns under "Income from Business or Profession." The hospital retained part of the patient payments as administrative charges. Thus, the doctors were independent professionals. Accordingly, TDS provisions under Section 194J were rightly applied by the assessee.

Commissioner of Income Tax (International Taxation)-1 v. Bennett Coleman & Co. Ltd. [2025] 178 taxmann.com 255 (Bombay)

Section 268A of the Income Tax Act, 1961 – Monetary limits prescribed in CBDT circulars would apply to pending appeals - exceptions carved out by CBDT circulars would apply only prospectively.

Facts:

The Revenue filed an appeal in 2015 against Bennet Coleman & Co. Ltd. The tax effect in the appeal was below the monetary threshold prescribed in CBDT Circular No. 9 of 2024 (Rs. 2 crore). The Revenue sought to rely on an exception introduced in Circular No. 5 of 2024 dated 15 March 2024, which allowed appeals below the threshold limit in certain cases.

Ruling of the High Court:

Hon'ble Bombay High Court was pleased to dismiss the department's appeal by observing that the revised monetary limits under CBDT Circulars apply to all pending appeals. However, the exceptions carved out by the CBDT Circulars would apply only prospectively and would have no application if they were introduced after the filing of the appeal. As the present appeal was filed in 2015 and the exception was introduced in 2024, it could not justify the continuation of the appeal. The appeal was disposed of as the tax effect was below the prescribed limit.

Gateway Terminals India Pvt. Ltd. v. DCIT [2025] 177 taxmann.com 707 (Bombay)

Section 80IA of the Income Tax Act, 1961 – deduction – interest earned from fixed deposits to meet contractual obligations and also as per the directions of the High Court order – no interest from surplus funds that were lying idle - interest income is eligible for deduction under Section 80IA of the Act.

Facts:

The assessee, Gateway Terminals India Pvt. Ltd., operated a container terminal at JNPT under a Build-Operate-Transfer (BOT) license agreement. It claimed deduction under Section 80-IA of the Income Tax Act, 1961, on two types of interest income for AY 2012–13:

- Interest on Fixed Deposits: Funds were placed in FDs for two business reasons:
    1. To meet contractual obligations under the license agreement requiring crane replacement.
    2. To comply with a Bombay High Court order in a tariff dispute with TAMP, requiring segregation of differential tariff collections.
- Interest on TDS Refunds: Customers had wrongly deducted TDS on payments for port services. The refunded TDS, along with interest under Section 244A, was claimed as business income eligible for deduction.

The AO allowed the deduction on the above interest income under Section 80IA of the Act. However, the CIT(A) during the course of appellate proceedings enhanced the income by denying the deduction on the said interest income, treating the same as income from other sources. On further appeal, the Income Tax Appellate Tribunal also upheld the view of the Ld. CIT(A).

The assessee, being aggrieved by the order passed by the Appellate Tribunal, challenged the same before the Hon'ble Bombay High Court.

Ruling of the High Court:

Hon'ble High Court was pleased to allow the claim of the assessee and set aside the enhancement made by Ld. CIT(A) by observing that the FDs were not idle surplus but earmarked for crane replacement and tariff compliance - both integral to the eligible business. The license agreement required equipment replacement, and the funds were later used to purchase cranes worth Rs. 562 Crore. The interest was incidental to business compulsion, not a separate income stream. Further, with respect to the interest on TDS refunds, the Hon'ble Court held that the TDS

was wrongly deducted from port charges, which were part of the business income. The interest on refund was akin to delayed payment for services and thus part of business income. The assessee, therefore, is eligible to claim the deduction under Section 80IA on the said interest income.

Smt. Anvida Bandi v. Deputy Commissioner of Income Tax [2025] 177 taxmann.com 726 (Telangana)

Section 96 of the Income Tax Act, 1961 – General Anti-Avoidance Rule - Impermissible avoidance arrangement (Scope of) – set off of STCL and LTCG – shares transactions are genuine – Invocation of GAAR provisions on the basis of timing of sale and purchase of shares – Timing alone insufficient to establish impermissible avoidance arrangement.

Facts:

The assessee, a long-term investor in securities, sold unlisted shares during AY 2020–21, earning LTCG. In the same year, she purchased and sold listed shares of HCL Technologies, incurring STCL. The STCL was set off against the LTCG.

The AO invoked GAAR provisions under Chapter X-A, alleging that the transactions constituted an "impermissible avoidance arrangement" under Section 96. A reference was made to the Approving Panel, which upheld the AO's view under Section 144BA(6).

The assessee challenged the order before the Hon'ble Telangana High Court under Article 226 of the Constitution of India.

Ruling of the High Court:

Hon'ble Telangana High Court was pleased to allow the writ petition and held that Section 96(1) requires an "arrangement" between parties. The Revenue failed to show any collusion or related-party involvement. The four statutory ingredients of an impermissible avoidance arrangement - non-arm's length dealings, abuse of law, lack of commercial substance, and absence of bona fide purpose - were not satisfied. Further, all trades were routed through the stock exchange and DMAT account. The assessee had no knowledge of counterparties. The Revenue relied solely on the timing of transactions. The Court cited the Expert Committee's GAAR report, which clarified that timing alone cannot trigger GAAR. The assessee had a consistent history of trading and investing in shares. The HCL transaction was not isolated or tax-driven.

Accordingly, the order passed under Section 144BA(6) was quashed. Hon'ble Court reaffirmed that GAAR cannot be invoked without substantive evidence of tax avoidance arrangements.

> "A sound direct tax system is not one that extracts the maximum possible, but one that promotes honesty, growth, and compliance."
>
> ***— Nani A. Palkhivala***

TRIBUNAL



CA Nikhil Mutha



CA Viraj Mehta



CA Kinjal Bhuta
Advocate

Ideaforge Technology Ltd. v. ACIT [ITA No. 867/Mum/2025 dated 26/09/2025] [AY 2017-18]

Section 56(2)(viib) – Rule 11UA – Assessee has right to choose method – DCF vs NAV Method – Discretion of the assessee – AO cannot change the valuation method

FACTS OF THE CASE:

During the year under consideration, the assessee required capital for the expansion and diversification of its business and hence decided to issue equity shares. The assessee had an option under Rule 11UA to choose the method of valuation. Since it is a highly technical company, the Discounted Free Cash Flow Method (DCF) was considered more suitable. Ld. AO rejected the assessee's computation and applied the NAV method on the ground that the basis of valuation adopted by the assessee is not scientific and not based on past performance, and the data used in the computation of DCF is far from reality. The Ld. CIT (A) confirmed the additions made by AO. Hence appeal is filed before Hon. ITAT.

HELD:

Hon. ITAT held that it is clear that it is the option of the assessee to choose the method of valuation. Accordingly, the valuation of the shares by the assessee is found to be justified and as per the provisions of law. Relying on decisions of several High Courts and co-ordinate Benches of the Tribunal, it was held that the addition made by the ld. AO and confirmed by the Ld. CIT(A) is unjustified as the assessee had rightly exercised his option to choose the method of valuation under Rule 11UA(2) and ld. AO could not have altered the same. Accordingly, additions made were deleted.

Arham Star v. ITO [ITA No. 2427/Mum/2025 dated 26/09/2025] [AY 2010-11]

Section 68 – Bogus Purchase – All evidences submitted – Ratio of Mohammad Haji Adam and Company [2019] 103 taxmann.com 459 (Bom) to be followed - PCIT v. Kanak Impex India Ltd. [2025] 172 taxmann.com 283 (Bom) distinguishable on facts – Only Profit addition sustained

Facts of the Case:

Assessing Officer of the assessee received information from the Investigation Wing of the department, Mumbai, that the assessee had taken accommodation entries of purchases. Ld. AO made a 100% addition. Before the Ld. CIT(A), the assessee reiterated its submissions made in the course of assessment proceedings, along with corroborative documentary evidence. The assessee submitted that merely on the basis of the statement given at the time of search and survey, such a disallowance cannot be made without any corroborative documentary evidence and establishing a live nexus of the assessee. Assessee has correlated the alleged purchases, which have been held to be bogus, with the export sales made by it with all the documentary evidence. Sales are not doubted at all. The Ld. CIT(A) confirmed the additions made in the assessment. Being aggrieved by the same, an appeal was filed before Hon. ITAT.

Held:

Before Hon. ITAT, assessee submitted that placed reliance on Hon'ble Jurisdictional High Court of Bombay in the case of *PCIT v. Mohammad Haji Adam and Company* [2019] 103 taxmann.com 459 (Bom), whereby it was held that the disallowance ought to be restricted to the positive difference if any, between the gross profit element in the undisputed purchases and that on the disputed purchases. Assessee distinguished decision of Hon'ble Jurisdictional High Court of Bombay in the case of *PCIT v. Kanak Impex India Ltd.* [2025] 172 taxmann.com 283 (Bom). It was held that the details of documents furnished by the assessee to support the contentions made are:

i. Stock Register along with Sale & Purchase Register

ii. Purchase bill of Nice Diamonds along with its corresponding subsequent Export Sale invoice & Shipping Bill to SR Exports HK Ltd

iii. Purchase bill of Mohit Enterprises along with its corresponding subsequent Export Sale invoice & Shipping Bill to Lotus Gems BVBA

iv. Bank statements showing payments made towards the purchases from Mohit Enterprises and Nice Diamonds & Payments received for corresponding export sales made from SR Exports HK Ltd

v. Copy of Bank Realisation advice for export receipt from SR Exports HK Ltd

vi. Copy of Bank Realisation advice for export receipt from Lotus Gems BVBA, along with a Copy of the Bank Statement highlighting the said receipt

It was an admitted position that sales have not been doubted. Decision in the case of Kanak Impex India Ltd. (supra) also doesn't come to support the case of the Revenue, since it is squarely distinguishable on the facts. Considering the facts and working so furnished as well as following the said decision of Mohammad Haji Adam and Company, Hon. ITAT held to add the difference in profit on the undisputed purchases and the alleged bogus purchases.

Nashit Suhail Ansari v. NFAC [ITA No. 4416/Mum/2025 dated 26/09/2025] [AY 2018-19]

Section 151 – Reopening more than 3 years – Approval of PCCIT/CCIT mandatory – Approval taken of PCIT renders reassessment invalid

Facts of the Case:

Case is reopening u/s 148 for A.Y. 2018- 19 vide notice u/s 148 dated 19/04/2022. The case of the assessee was reopened beyond three years from the end of the relevant assessment year. Additions were made in the assessment and confirmed by the Ld. CIT(A). Before Hon. ITAT additional ground was raised challenging the

notice u/s 148 on the ground that approval u/s 151 was taken of the PCIT instead of the PCCIT or CCIT.

Held :

Hon. ITAT held that there is no dispute that the case of the assessee for A.Y. 2018-19 was reopened by issuing notice u/s 148 dated 19/04/2022. The Ld. AO in para 3 of the notice u/s 148 has clearly mentioned that the notice was issued after obtaining the prior approval of the Principal CIT, Mumbai-17, on 19/09/2022. Admittedly, the case of the assessee for A.Y. 2018-19 was reopened beyond three years from the end of the relevant assessment year and thus, as per the provisions of section 151 of the Act, the Ld. AO was required to obtain the prior approval of the Principal CCIT or CCIT and not from the Principal CIT, as has been held by the Hon'ble jurisdictional High Court in Vodafone Idea Ltd vs DCIT in Writ Petition No.2708 of 2022 dated 06/02/2022. Thus, considering the decision, the approval obtained by AO from the Principal CIT is not valid. Hence, notice u/s 148 was held to be invalid and consequently, the subsequent action thereon, including the assessment order, was held to be void ab initio.

MCM Developers v. DCIT [ITA No. 362/PUN/2025 dated 17/09/2025] [AY 2018-19]

Section 154 – Change of Penalty Section from 269ST/271DA to 269SS/271D not Permissible – Rectification Order Quashed

Facts of the Case:

The assessee, a partnership firm engaged in real estate development, was subjected to assessment under Section 153A r.w.s. 153C of the Act following a search action. In the assessment order dated 07/05/2021, the Ld AO reduced the returned loss of INR 2.86 crore to INR 55.13 lakh after, *interalia*, making an addition of INR 1.22 crore on account of profit determined from cash receipts of INR 2.50 crore.

The Ld. AO recorded that the assessee had accepted "on-money" cash of INR 2.50 crore from flat purchasers in violation of Section 269ST, and therefore made a reference to the Joint Commissioner of Income Tax ('JCIT') for initiation of penalty u/s 271DA of the Act. The JCIT also issued notice under Section 271DA of the Act.

Subsequently, the Ld. AO issued notice u/s 154 stating that Section 269ST of the Act had been "inadvertently" mentioned, and that the correct section was 269SS, which attracted penalty under Section 271D of the Act. The assessee did not respond, and the Ld. AO proceeded to pass a rectification order dated 11/09/2021, substituting 269SS/271D in place of 269ST/271DA.

The Ld. CIT(A) upheld the rectification, holding it to be a "glaring mistake" apparent from the record. The assessee preferred an appeal before the Hon. ITAT.

Held:

The Hon. ITAT made the following observations in its order:

- In the original assessment order, the Ld. AO had consciously applied Section 269ST of the Act and referred the matter for penalty under Section 271DA of the Act, and the JCIT had also issued notice under Section 271DA of the Act.
- If Section 269ST was written "inadvertently," then mentioning the penalty under Section 271DA could not also be a typographical error. The invocation of both provisions showed conscious application of the mind.
- Rectification under Section 154 of the Act is confined to mistakes "apparent from the record." Where two legal views are possible, and one has already been adopted by the AO, substitution of another view amounts to

a change of opinion, which is not permissible under Section 154.

- Reliance was placed on the Supreme Court ruling in *T.S. Balaram, ITO v. Volkart Brothers* (82 ITR 50), which held that debatable issues cannot be rectified under Section 154.
- Recent decisions of the Delhi High Court (*Birmala Projects Pvt. Ltd. v. Ashwani Ahluwalia [2025] 171 taxmann.com 755 (Delhi)*) and the Supreme Court (*RBANMS Educational Institution v. B. Gunashekar [2025] 173 taxmann.com 586 (SC)*) indicated that cash consideration in property transactions beyond INR 2 lakhs attracts Section 269ST/271DA of the Act.

Accordingly, Hon. ITAT allowed the Assessee's appeal and set aside the order of the CIT(A) quashing the rectification order passed under Section 154 of the Act.

Arihant Vastushilp Propcon Pvt. Ltd. v. ITO, Ward 1(1) [ITA Nos. 1241 to 1243/PUN/2025 dated 09/09/2025] [AY 2018-19]

Section 249(3) – Delay of 351 Days Condoned – Matter Remanded to CIT(A) for Decision on Merits

Facts of the case:

The assessee is a company engaged in the business of purchase, sale, and letting of leased residential and non-residential buildings. In the absence of details furnished by the assessee to substantiate the loan creditors amounting to INR 8,07,55,220, the Learned Assessing Officer ('Ld. AO') treated the same as unexplained cash credit within the meaning of section 68 of the Act. Further, since no valid explanation was offered by the assessee regarding the discrepancy in respect of the property sold, the Ld. AO applied a profit rate of 12% on the sale consideration of INR 6,45,19,025 and thereby made an addition of INR 77,42,284. The assessee filed an appeal before the Learned Commissioner of Income-tax ('Ld. CIT(A)') with a delay of 351 days. The Ld. CIT(A) dismissed the appeal on the ground that reasonable opportunities had already been provided by the Ld. AO, but the assessee failed to produce evidence or respond to the notices issued. Consequently, the assessment order was passed by the Ld. AO was upheld, and the appeal was dismissed. The Ld. CIT(A) also declined to admit the additional evidence produced by the assessee. Aggrieved by such an order of the Ld. CIT(A) / NFAC, the assessee filed an appeal before the Hon. ITAT.

Held:

Hon. ITAT observed that post exclusion of period covered by Covid-19 in light of the Hon'ble SC directions in Suo Motu Writ Petition (C) No. 3 of 2020 dated 10.01.2022, the effective delay worked out to only 102 days. Hon. ITAT condoned the delay, observing that the assessee was entirely dependent on the earlier Chartered Accountant, who failed to respond to statutory notices and also did not inform the assessee of the proceedings. Hon. ITAT relied on the decision of Hon'ble Bombay High Court in the case of *Vijay Vishin Meghani* (2017) (398 ITR 250), where a delay of 2984 days was condoned on the ground that the assessee was wrongly advised by his Chartered Accountant earlier not to file an appeal. Reliance was also placed on the decision of Mumbai ITAT in the case of *Nawany Corporation (I) Pvt. Ltd.* (ITA No.539/MUM/2022) wherein a delay of 944 was condoned on similar grounds. Hon. ITAT also relied on the decision of the Hon'ble Supreme Court in the case of Collector, *Land Acquisition v. Mst. Katiji & Ors.* (167 ITR 471) (SC) wherein it has been held that substantial justice should prevail over mere technicalities, and non-deliberate delay should not bar a party from obtaining justice. Accordingly, Hon. ITAT restored the matter back to the CIT(A) on merits.

Gupta Builders and Developers v. ACIT, CC-4(3) [ITA No. 4361/ Mum/2025 dated 03/09/2025] [AY 2015-16]

Section 148 – Notice signed on 31/03/2021 but issued on 01/04/2021 – Without following the procedure laid down in the case of Ashish Agarwal (SC) – Held, invalid

Facts of the case:

A survey was conducted under section 133A in the case of M/s Greenscape Developers Group and M/s Proviso Builders & Developers Group. From the survey operations, it was noticed that the assessee had taken loan to the tune of INR 98,00,000 from one M/s Granth Exim Pvt. Ltd., which, as per the survey report, was found to be a bogus party. Accordingly, the Learned Assessing Officer ('Ld. AO') reopened the assessment vide notice dated 31/03/2021 under section 148 of the Act. After perusal of the details furnished by the assessee, the Ld. AO treated the loan as unexplained under section 68 of the Act. The Ld. AO also disallowed the interest to the tune of INR 3,49,677 on said loan. Aggrieved by the Ld. AO's order, the assessee filed an appeal before the Ld CIT(A) raising a legal contention stating that the notice under section 148 itself is invalid since though the same is dated 31/03/2021, but was issued on 01/04/2021 (as evident from the email received by the assessee) and that the Ld. AO did not follow the procedure as per the directions of the Hon'ble Supreme Court in the case of *UOI v. Ashish Aggarwal* [2022] [138 taxmann.com 64]. The Ld CIT(A) dismissed the said contention of the assessee by holding that the notice was digitally signed on 31/03/2021, and since the notice was issued by an officer of the central charge, it is fair to assume that once the same has been digitally signed, the notice has actually been issued. Aggrieved by the said order, the assessee filed an appeal before the Hon. ITAT.

Held:

Hon. ITAT held that the notice issued to the assessee by ITBA vide mail dated 01/04/2021 cannot be held as issued on 31/03/2021. Hon. ITAT relied on the decision of Hon'ble Delhi High Court in the case of *Suman Jeet Agarwal v. ITO* [(2022) 449 ITR 517] and on the decision of the Hon'ble Madhya Pradesh High Court in the case of *Yuvraj S/O Late Sukhvir Singh Jain v. ITO* (Writ Petition No. 28293 of 2021 dated 03/03/2022) and accepted assessee's contention that mere digitally signing the notice is not issuance of the notice and since the e-mail was sent on 01/04/2021, the notice cannot be held as to have been issued on 31/03/2021. Thus, the procedure laid down by the Hon'ble SC decision in the case of UOI v. Ashish Aggarwal [2022] [138 taxmann.com 64] was required to be followed in the present case. In the absence of which, Hon. ITAT held the Notice under section 148 of the Act as invalid and allowed the appeal of the assessee.



Case Law Update



Dr. (CA) Sunil Moti Lala
Advocate

PERMANENT ESTABLISHMENT

Eleentec Co Ltd v. DDIT - (2025) 178 taxmann.com 20 (DEL-TRIB)

Duration of stay of employees of assesse's AE in India - Not relevant for computation of assessee's stay in India for constitution of PE under article 5(3)(b) (India – Korea DTAA)

The Assessee, a Korean company, was inter alia engaged in providing technical services. It had also entered into a 'Purchase and Sale Agreement' for the offshore supply of raw material outside the territory of India. It filed its return of income declaring income from technical services (FTS), royalty, and interest. However, the profits arising out of the offshore sale of raw material were not offered to tax in India as it did not have any PE in India. Though its employees had travelled to India, their duration in India was for only 137 days, i.e., below the threshold limit of 182 days under Article 5(3)(b) of the DTAA (which is a prerequisite to constitute a Supervisory/Installation PE). However, because the assessee had reimbursed the travel cost of 2 of the employees of its AE whose stay in India exceeded 183 days, the AO considered their stay into account and concluded that the assessee had a PE in India. Consequently, the AO attributed profits from the sale of the offshore supply of raw material to the said PE. The Hon'ble Tribunal noted that the assessee had substantiated with the help of the employment agreements and Form 16 of the aforesaid 2 employees, that they were not its employees but were the employees of its AE. It thus concluded that their presence in India had no relevance for the computation of the stay of assesse's employees in India under Article 5(3)(b) of the DTAA. Accordingly, in the absence of a PE in India, the addition/attribution made on account of the offshore supply of raw materials was deleted.

Sunflower Aircraft Leasing Ltd v. ACIT, IT-(2025) 177 taxmann.com 728 (MUM-TRIB)

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

Assessee, an Irish company, was engaged in the business of leasing aircraft to operators worldwide. It entered into dry operating lease agreements with an Indian airline operator, Indigo, for leasing two aircraft. The assessee claimed that the lease rentals earned by it were not taxable in India as it did not have a PE in India. The AO 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 as business income. Alternatively, he proposed to treat such lease rentals as royalty u/s 9(1)(vi). The DRP upheld the view of the AO that the aircraft constituted a PE of the assessee in India, but it did not accept royalty characterisation. It attributed profits to the alleged PE. The Hon'ble Tribunal noted that the operational control of the aircraft was vested exclusively with IndiGo and that there were no personnel of the assessee stationed in India. Further, rights retained by the assessee, such as periodic inspection, ensuring compliance with maintenance standards, and repossession in default, were standard lessor protections safeguarding the value of the asset, not indicia of the asset (aircraft) being at the 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. ***[Hyatt International Southwest Asia Ltd. v. ADIT (2025) 176 taxmann.com 783 (SC), Formula One World Championship Ltd. v. CIT (2017) 80 taxmann.com 347 (SC) and ADIT v. E-Funds IT Solution Inc. (2017) 86 taxmann.com 240 (SC) followed.]***

Note: Also see case no 1 under SHIPPING & AIR TRANSPORT

BUSINESS PROFIT

Roomag Motors & Controls (P) Ltd v. DCIT – (2025) 178 taxmann.com 347 (AHD-TRIB)

Commission paid to non-resident agent for introducing foreign buyers - Not Taxable-Disallowance u/s 40(a)(i) deleted.

The assessee-company made payment of commission to a non-resident agent for introducing foreign buyers without deduction of tax at source u/s 195. The AO disallowed the same u/s 40(a)(i). The Hon'ble Tribunal held that since the non-resident agent had no PE or business connection in India and services were rendered outside India, the impugned commission paid to the foreign agent was not chargeable to tax in India. Consequently, there was no obligation on the assessee to deduct tax under section 195 and the disallowance u/s 40(a)(i) was deleted.[*GE India Technology Centre Pvt. Ltd. v. CIT (2010) 7 taxmann.com 18 (SC),PCIT v. Nova Technocast (P.) Ltd. (2018) 94 taxmann.com 322 (Gujarat), DCIT v. Gujarat Microwax (P.) Ltd. (2018) 96 taxmann.com 644 (Ahd - Trib)and DCIT v. Mc Fills Enterprise (P.) Ltd. (2019) 101 taxmann.com 212 (Ahd - Trib) – followed]*

Bank of Tokyo Mitsubishi UFJ Ltd – (2025) 177 taxmann.com 732 (DEL-TRIB)

Consideration for guarantee given by assessee Bank on behalf of its customers accrues (and thus taxable) over the period of guarantee and Not Upfront (India-Japan DTAA)

Assessee, a Japanese bank, gave a guarantee on behalf of its customers and, in consideration thereof, it charged commission from such customers and treated the portion relating to the unexpired period of guarantees as an advance (unearned income) which was not offered for tax. The AO held that the commission received was like a fee for issuing a guarantee and was not a contingent receipt or advance, and it accrued at the time the bank issued guarantee and, thus, income got accrued to assessee, the moment right to receive had arisen. Accordingly, he added certain sum to the income of the assessee. CIT(A) deleted the addition following Hon'ble Calcutta High Court ruling in assessee's own case (A.Y. 1981-82) that such commission does not accrue upfront but should be spread over life of guarantee (*CIT v. Bank of Tokyo Ltd (1993) 71 Taxman 85* (Cal)).The Hon'ble Tribunal dismissed Revenue's appeal since assessee had followed consistent method of accounting of crediting income over period of life of the bank guarantee. [*DDIT v. Bank of Tokyo Mitsubishi UFJ Ltd. (IT Appeal No. 3754 (Delhi) of 2014) followed.]*

SHIPPING & AIR TRANSPORT (ARTICLE 8)

Jaldhi Overseas (P) Ltd v. ACIT, IT-(2025) 177 taxmann.com 753 (CHENNAI-TRIB)

Income derived by Singapore Entity from operation of ships - Taxable exclusively in Singapore under article 8 - Cannot be added by invoking limitation of relief under article 24 - (India-Singapore DTAA)

Assessee-company, a tax resident of Singapore, was engaged in the business of operating ships in international traffic. It filed its return claiming the benefit of Article 8 of the DTAA and offered Nil income in India. AO invoked Article 24 of the DTAA and held that only the actual amount received in Singapore was eligible for benefit under Article 8 and computed shipping income by treating it as taxable in India u/s 44B. The Hon'ble Tribunal followed a coordinate bench ruling in the case of *Mariana Express Lines Pte Ltd v. DCIT* – [2025] 177 Taxmann.com (Chennai-Trib) wherein it was inter alia held

i) Article 24 gets invoked in cases of exemption and in the given case the income from shipping business is not exempt but is taxed in the residence country.

ii) Article 8 is not an exemption provision but is an enabling provision granting exclusive taxing right to the resident country, i.e., Singapore and not source country i.e. India

iii) Under Article 8 India has given up the right to tax and therefore the income can be taxed ONLY in Singapore

iv) The test of whether the income is exempt or taxed at lower rate is of no relevance once the right to tax is given up.

v) In Singapore when the shipping income is taxed on accrual basis, Article 24 cannot be applied since the said Article can be invoked only when the income is taxed on receipt basis in the country of residence i.e. Singapore.

vi) Once the country of resident is having exclusive rights to tax a particular income by way of separate Article, then limiting or denying such benefit by interpreting the other Articles which are provided for limiting the benefit in case such income is exempt or taxed at reduced rate of tax in other Contracting State is contrary to the purpose and object of DTAA.

In the light of the above and after noting that the assessee had obtained certificate from IRAS

stating that income was taxable on accrual basis in Singapore, the Hon'ble Tribunal concluded that the AO was not correct in making addition towards income derived from operation of ships which was taxable exclusively in Singapore under article 8 by invoking limitation of relief under article 24.

Sunflower Aircraft Leasing Ltd v. ACIT, IT-(2025) 177 taxmann.com 728 (MUM-TRIB)

Rentals received by an Irish company from dry 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 since the lease agreements were in the nature of operating lease (India - Ireland DTAA)

Assessee, an Irish company, was engaged in the business of dry leasing aircrafts. It had leased two aircrafts to Indian airline, Indigo on dry operating lease basis 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 income therefrom was assessable as interest income in India. 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 taxing the lease rentals income as interest, the Hon'ble Tribunal noted that as the DRP had held that the lease in question was an operating lease, the income therefrom could not be treated as interest income.

INTEREST

Bank of Tokyo Mitsubishi UFJ Ltd – (2025) 177 taxmann.com 732 (DEL-TRIB)

Interest income derived by Indian branches of Foreign bank from its head office/ overseas branches - Not taxable in India under Article 11 (India - Japan DTAA)

The Hon'ble Tribunal held as above on the reasoning that a branch office would not partake of character or attribute of a separate legal personality. Thus, since payer & payee were both the same person, interest income being payment to self was not taxable [*Bank of Tokyo-Mitsubishi, UFJ Ltd. v. DDIT [IT Appeal Nos. 3707 & 3755 (Delhi) of 2014 dated 19.09.2017 followed.]*

DCIT v. Halliburton Off Shore Services Inc – (2025) 178 taxmann.com 348 (DEL-TRIB)

Interest income on income tax refund in India - Taxable @15% as per Article 11 (India - USA DTAA)

The AO taxed the aforesaid interest income at the maximum marginal rate by holding that the said interest income had been earned in respect of an income tax refund which was attributable to the income of the assessee by virtue of the existence of a PE in India and carrying out of business activity in India through that PE. The CIT(A) followed the order of the Co-ordinate Bench of the Hon'ble Tribunal in the case of *Expro Gulf Ltd. (ITA No 4198/Del/2017 & CO*

165/Del/2018), which in turn followed the Judgment of the Hon'ble Uttarakhand High Court in the case of *B. J. Services ME Limited* and held that the interest income on income tax refunds was liable to be taxed @15% as per Article 11 of the DTAA. In the absence of any contrary precedent brought on record and in view of the settled principles of law, the Hon'ble Tribunal upheld the order of the CIT(A) and dismissed Revenue's appeal.

ROYALTY

Viacom 18 Media (P) Ltd v. DCIT – (2025) 177 taxmann.com 810 (SC)

Notice issued in SLP filed against impugned order of High Court holding that - where payments were made by assessee to a USA-based company for satellite transponder services - matter was to be remanded to CIT(A) to examine nature of services rendered to ascertain whether the same constituted royalty under domestic law or DTAA - Impugned order stayed (India-USA DTAA)

Assessee had entered into an agreement with a USA-based company (Intelsat) for the provision of satellite signal reception and re-transmission services. AO treated said payments as royalty under explanation 6 to section 9(1)(vi) as inserted by Finance Act, 2012. CIT(A) and Hon'ble Tribunal upheld the AO's order. Assessee contended that the aforesaid payments did not constitute royalty under Article 12 of DTAA and that explanation 6 could not be retrospectively applied to payments made prior to the Finance Act, 2012. The Hon'ble High Court held that for payments made post Finance Act, 2012, matter was to be remanded to CIT(A) to examine the nature of services rendered to ascertain whether the same constituted royalty under the domestic law or DTAA.The Hon'ble SC issued notice in SLP filed by assessee against the impugned HC order and also stayed its operation ***[Notice issued in SLP against Viacom 18 Media (P.) Ltd. v. DCIT(IT) - (2025) 174 taxmann.com 389 (Bombay)]***

DCIT v. Orange 78 Rule Olivaier De Serrs Paris (France) - (2025) 178 taxmann.com 345 (SC)

Interconnect service charges - Not Royalty

Revenue's SLP dismissed against the order of the High Court holding that interconnect service charges paid by the assessee, a telecom company, to a non-resident telecom operator would not constitute royalty ***[SLP dismissed against DCIT (IT) v. Orange (2025)178 taxmann.com 134 (Kar)]***

CIT, IT v. Inmarsat Global Ltd - (2025) 177 taxmann.com 716 (BOM)

Payments received by a UK company (from VSNL, India) for allowing use or right to use of satellite transponders for rendering telecommunication services - Not royalty under article 13 (India-UK DTAA)

The Hon'ble HC found that the issue was squarely covered by the decisions of the Hon'ble Delhi High Court in the case of *Asia Satellite Telecommunications Co. Ltd. v. DIT [2011] 9 taxmann.com 168(Delhi) and DIT v. New Skies Satellite BV [2016] 68 taxmann.com 8(Delhi)* wherein reliance had been placed upon the judgement of the jurisdictional High Court in the case of *PCIT v. NEO Sports Broadcast (P.) Ltd. [2019] 107 taxmann.com 17 (Bombay)*.

Further, relying on the judgment of the Hon'ble Apex Court in *Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42 (SC),* it held that the definition of the word 'royalty' under the Income Tax Act as amended by the Finance Act, 2012, cannot expand the scope of the definition of the very same word in the DTAA entered into between India and the UK. Accordingly, it held that no substantial question of law arose for consideration and dismissed Revenue's appeal.

PCIT (IT) v. IBM Singapore PTE Ltd -(2025) 178 taxmann.com 201 (KAR)

Sale of copyrighted software - Not Royalty under Article 12 (India-Singapore DTAA)

The Hon'ble High Court held as above in view of the fact that the AO had specifically found that the assessee had not parted with its copyright. It could not be held that a mere sale of a copyrighted article renders income chargeable to tax in India as royalty. [***Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT (2021) 125 taxmann.com 42 (SC) – followed]***

Anuvu UK Operations Ltd v. ACIT (IT)-(2025) 178 taxmann.com 455 (DEL-TRIB)

Payments by Indian Airlines to UK Co for providing wireless in-flight entertainment (IFE) system and related services - Not Royalty/FTS under Article 13 (India-UK DTAA)

Assessee-company, based in the UK, was engaged in providing portable wireless in-flight entertainment (IFE) systems and related services to Indian Airlines. It also provided management, sales, and inventory management of advertising slots (static and video advertisements). The AO held that the fee for the provision of content received by the assessee from airlines for providing content for the in-flight entertainment system was in the nature of royalty as well as FTS. The Hon'ble Tribunal noted that the final product that emerged after compilation, encoding, and integration of audios/videos and advertisement as per the requirements of airlines was a copyrighted product of the assessee, which was exhibited on IFE systems of aircrafts operated by Indian Airlines. As per the agreement, assessee did not transfer any rights in the copyrighted product but only permitted the use of the copyrighted product. At no point of time, ownership in content was transferred to Indian Airlines nor was know-how to develop such a product transferred to Indian Airlines by the assessee. Therefore, payments received by the assessee for performing the task of procuring, processing content for screening same on the IFE system of airlines did not fall within the meaning of royalty or FTS as defined in Article 13 of the DTAA. Further, since Revenue had not been able to show transfer of any know-how or technical knowledge by the assessee to the Indian airline, receipts by the assessee for providing IFE content did not fall within the definition of FTS either.

Munich Re Automation Solutions Ltd [TS-1199-ITAT-2025(DEL-TRIB)]

Licence-fees for insurance sector software - Not Royalty under Article 12 (3) (India-Ireland DTAA)

The Hon'ble Tribunal held that the aforesaid payments received by the assessee, an Irish company from its Indian customer i.e. PNB Metlife, for licence of standardized software and connected services were not in the nature of royalty as per article 12(3) of the DTAA

since the assessee had not licensed any tailor-made software and had only licensed standard software which allowed its customer to use copyrighted article without transferring any copyright in the software. Further, it noted that Master Procurement Agreement (MPA) categorically mentioned that materials owned by the assessee prior to the date of this agreement including proprietary software updates and upgrades, user of documentation and manuals, functional, technical and parameters specifications, training materials, configuration and customization, specifications outside the scope of this agreement including assessee's IPRs etc were the property of the assessee unless made specifically for PNB MetLife. It concluded that since there were no deliverables and the entire payment was made for licensing of standard software and services, the same did not fall within the definition of royalty as per article 12 (3) of the DTAA. ***[Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT (2021) 125 taxmann.com 42 (SC) followed].***

Manisha Kiran Temkar v. ACIT (IT) – (2025) 177 taxmann.com 677 (MUM-TRIB)

Payments to non-residents a) in Bangladesh for commission for agency & allied services b)in Hong Kong for inspection & testing charges c) in Hong Kong for software use – Not taxable In India as Royalty /FTS - Disallowance u/s 40(a)(i) deleted

See case no 6 under FTS

FEES FOR TECHNICAL SERVICES

Goldman Sachs Services Pvt Ltd [TS-1286-HC-2025 (KAR)]

Salary of seconded employees reimbursed by Indian assessee to overseas entities - Not FTS u/s 9(1)(vii)

The Hon'ble High Court dismissed Revenue's appeal against the order of the Hon'ble Tribunal holding that the services provided fell within the employer and employee relationship and not FTS as per section 9(1)(vii) r.w. respective DTAA. The salary of seconded employees reimbursed to overseas entities could not be regarded as FTS under 9(1)(vii) and could not be subjected to tax in India as it did not involve any element of income embedded in it. ***[DIT(IT) v. Abbey Business Services India (P) Ltd (2020) 122 Taxmann.com 174(Kar) and CIT(IT) & others v. M/s Flipkart Internet Pvt Ltd (2025) SCC Online Kar 16629 followed]***

Keller Asia Pacific Ltd v. ACIT - (2025) 178 taxmann.com 141 (DEL-TRIB)

Payments to Singaporean company under Management Service Agreement for services such as strategic management consultancy services, legal services, engineering & technical advice, marketing & advertising services, human capital, procurement and IT services - Not FTS under article 12 (INDIA-SINGAPORE DTAA)

Assessee-company, a tax resident of Singapore, was providing ground engineering services used in the construction of buildings. It entered into a Management Services Agreement with its Indian subsidiary, Keller India, wherein it provided services such as

strategic management consultancy services, legal services, engineering & technical advice, marketing & advertising services, human capital, procurement, and IT services. It received a management fee from Keller India. The AO, however, held the management fee as FTS on the presumption that the assessee was making available Technical Knowledge, Skill, etc. to Keller India. The Hon'ble Tribunal noted that nowhere in the agreement was there any covenant for transferring/making available any technical know-how. Further, from the scope of work as detailed in the agreement and exchange of mails between the assessee and its Indian subsidiary, it was not emanating that there was a transfer of any know-how or technical knowledge or processes. Further, services were provided by the assessee to its Indian subsidiary on a year-on-year basis, which itself showed that there was no transfer of any technical know-how or skill or process, or technology. Since 'make available' clause in terms of article 12(4) was satisfied, payments received by assessee from its Indian subsidiary could not be treated as FTS **[*Crocs Inc. v. ACIT* (2025) 174 taxmann.com 419 (Delhi - Trib.), *Criteo Singapore Pte. Ltd. v. ACIT* (2025) 170 taxmann.com 162 (Delhi - Trib.), *Bio Rad Laboratories Inc. v. ACIT* (2023) 149 taxmann.com 342 (Delhi - Trib.) *followed. H.J. Heinz Company v. ADIT* (2019) 108 taxmann.com 473 (Delhi - Trib.) *distinguished.]***

Anuvu UK Operations Ltd v. ACIT (IT)-(2025) 178 taxmann.com 455 (DEL-TRIB)

Payments by Indian Airlines to UK co for providing wireless in-flight entertainment (IFE) system and related services - Not Royalty/FTS under Article 13 (India-UK DTAA)

See case no 5 under Royalty.

ADP (P) Ltd v. DDIT - (2025) 177 taxmann.com 708 (HYD-TRIB)

Payments made to an Australian company for providing business support services (wrt marketing & administration) to its Indian affiliate i.e. the assessee -Not FTS under section 9(1)(vii)/ Article 12 - Disallowance u/s 40(a)(i) deleted. (India - Australia DTAA)

Assessee-company was engaged in the business of providing computer software development and information technology-enabled support services to its group companies, including one ADP in Australia. Pursuant to the service agreement between the assessee and ADP, the assessee received certain services in the nature of marketing support, implementation, and administration support from ADP. Assessee made payment towards said support services to ADP without deducting tax at source on the ground that the income of ADP was not taxable in India either under domestic tax law or under DTAA. The AO observed that the payment made to ADP was in the nature of fees for technical services (FTS) as defined under section 9(1)(vii) and, thus, the assessee was required to deduct tax at source under section 195 on said payment. Consequently, the AO disallowed the aforesaid payment u/s 40(a)(i). The Hon'ble Tribunal noted that, as per Article 7 of DTAA, a non-resident enterprise can be taxed in India only if such an enterprise carries on business through permanent establishment (PE) in India. Since ADP was a tax resident of Australia and carried on its business operations outside India and did not have a PE in India, payments made to ADP could not be taxed in India. The same could also not be treated as FTS u/s 9(1)(vii). Further, assuming for a moment that the same constituted FTS u/s 9(1)(vii), from nature of service described in support services agreement, the Hon'ble Tribunal held that there was no technical knowledge, expertise, skill, know-how or processes made available to

assessee-company by ADP and, thus, support services fee paid by assessee-company to ADP was not taxable under provisions of article 12 of DTAA. Consequently, the disallowance u/s 40(a)(i) was deleted.

Metso OYJ v. ACIT (IT) – (2025) 177 taxmann.com 741 (KOL-TRIB)

Income earned by Finland company from providing centralised group services such as communication, marketing, strategy, HR, treasury, finance and tax to its Indian subsidiaries - Taxable as FTS under Article 12 (India - Finland DTAA)

Assessee-company, a resident of Finland, was engaged in the business of providing innovative and environmentally sound solutions for a wide range of customers in the metals processing industries. It had entered into an agreement with its subsidiaries in India for providing certain centralized services such as global communication and digital marketing, sales process and tool development, strategy and business intelligence, human resources, legal, treasury, finance, and tax, etc. AO made an addition on account of income earned by the assessee from the provision of such services as FTS in terms of Article 12 of DTAA. The Hon'ble Tribunal upheld the addition by followings its orders in the case of group concerns in earlier years. ***[Metso Outotec OYJ, (Earlier Known as "Outotec Oyj") v. Dy. CIT (International Taxation) (2023) 153 taxmann.com 723 (Kol - Trib.) followed.]***

> "Without global coordination, taxation loses its meaning in a borderless economy."
>
> ***— Thomas Piketty***

Manisha Kiran Temkar v. ACIT (IT) – (2025) 177 taxmann.com 677 (MUM-TRIB)

Payments to non-residents a) in Bangladesh for commission for agency & allied services b)in Hong Kong for inspection & testing charges c) in Hong Kong for software use – Not taxable In India as Royalty / FTS – Disallowance u/s 40(a)(i) deleted

The assessee was engaged in the business of international merchant trade of garments. She placed purchase orders in China, Hong Kong, Bangladesh, and Vietnam, and garments were directly exported to the USA. She made payment of a) commission to one IIBL, a non-resident, for agency services rendered by it for execution of sale and its allied activities of garments in Bangladesh b) to Bureau Verital Hong Kong Ltd as authorised by its sales party in certain cases for getting sample testing done for its garments and fabric c) EC Vision Ltd, HK for subscription of software used at Bangladesh & Vietnam for making various compliance, documentation like order details/packing list invoices, barcode stickers on cartons of the international trade executed from these countries. Utilization of the services of such parties was outside India. The AO was of the view that the assessee was liable to deduct TDS u/s 195 on the aforesaid remittances and consequently disallowed the same u/s 40(a)(i). The Hon'ble Tribunal noted that IIBL carried out its activities outside India and the income earned by it was not taxable in India. Certainly, payment made to a foreign agent was also not on account of royalty or fees for technical services. Further, checking and inspection charges carried out by using technology through software could not be considered as royalty. Therefore, no tax was to be deducted at source under section 195 on the aforesaid payments, and the disallowances u/s 40(a)(i) were deleted. ***[PCIT v. Vedanta Ltd. (2023) 146 taxmann.com 34 (SC) followed.]***

CAPITAL GAINS

Atyant Capital India Fund-I v. ADIT (IT) – (2025) 178 taxmann.com 19 (MUM-TRIB)

Simultaneous claims by Mauritian Entity of a) Exemption under DTAA w.r.t Long term capital gains from sale of shares acquired prior to 01.04.2017 and b) carry forward of long term capital loss under the Act from sale of shares acquired after 01.04.2017 – Allowable (India – Mauritius DTAA)

The CIT (A) had disallowed carry forward off the long term capital loss by holding that the choice of Act or the Treaty provisions was qua the stream of income and that since in the present case, both the capital gains and capital loss arose from the same stream of income being long term capital gains/losses and that since the assessee had opted for treaty benefits in respect of long term capital gains, it was not entitled to carry forward the long term capital loss under the Act. He relied on the judgment of *Indium IV (Mauritius) Holdings Ltd v. DCIT (2023) 155 Taxmann.com 336 (Mum - Trib)* wherein the assessee's simultaneous claims of treaty benefits in respect of short-term capital gains and carry forward of long-term capital losses under the Act were allowed since the short-term capital gains and long term capital losses were held to be two different streams of income. In the instant case, the Hon'ble Tribunal noted that in the aforesaid case of Indium, the co-ordinate bench had held that gains/loss arising from different transactions were different transactions and a separate source of income and that therefore short term capital gains and long term capital gains loss were distinct and separate streams of income arising to an assessee and section 90(2) would apply to each source of income. Further, the coordinate bench had also held that under the head capital gains, not only were the short-term and long-term capital assets different sources of income, but each transaction constituting the short-term and long-term capital assets was also a different source of income. In the instant case, the Hon'ble Tribunal held that both the transactions of long term capital gains & long term capital loss were distinct resulting in different sources of income and that consequently the assessee was entitled to claim treaty benefits in respect of long term capital gains from shares acquired before 01.04.2017 (grandfathered shares) and simultaneously carry forward the long term capital loss from shares acquired after 01.04.2017 (non-grandfathered shares) under the Act. ***[Jt. CIT v. Montgomery Emerging Markets Fund (2006) 100 ITD 217 (Mumbai) (SB) followed]***

OTHER INCOME

Metso OYJ v. ACIT (IT) – (2025) 177 taxmann.com 741 (KOL-TRIB)

Guarantee Fee received by Finland company - Taxable as Other Income under Article 21 (India -Finland DTAA)

Assessee, a company incorporated in Finland, received a guarantee fee from its Indian subsidiaries for providing corporate/performance guarantees. The AO treated such a fee as taxable in India under Article 21 as 'other income'. The Hon'ble Tribunal noted that an identical issue had been considered in the assessee's own case in earlier years, wherein it was held that providing guarantees was not a regular business activity but an obligation arising out of parent–subsidiary relationship. Thus, following the same, guarantee fee was held to be taxable in India as 'other income' under article 21 and not business income. ***[Metso Outotec OYJ, (Earlier Known as "Outotec Oyj") v. Dy. CIT (International Taxation) (2023) 153 taxmann.com 723 (Kol - Trib) followed.]***

FOREIGN TAX CREDIT (FTC)

Krishna Dalal – [TS-1204-ITAT-2025 (BANG)]

FTC Cannot Be Denied Merely on Technical Procedural Lapses Given That Requisite Documents Were Furnished by the Assessee

The assessee, having realised that he had inadvertently omitted to offer foreign income on account of bank interest and dividend in its original return of income for AY 2018-19, filed revised return and also claimed the FTC towards taxes paid on the said foreign income in the USA which was denied by the AO. Further , the rectification application filed by the assessee was also rejected and even the appeal was dismissed by the CIT(A) on the ground that necessary documentary evidence of foreign taxes paid was not furnished by the assessee. The Hon'ble Tribunal noted that the assessee had filled form 67 prior to filing of the revised return and had also subsequently furnished all the relevant details and evidences i.e. the copy of Federal Tax Payment Voucher and copy of the US tax return which substantiated that the assessee had indeed paid tax in the USA on the foreign income offered to tax in India. It concluded that the requirement of rule 128(8)(iii) stood duly complied with by the assessee and consequently, it directed the Revenue to allow assessee's claim of FTC after verification of the copies of the Federal Tax Payment voucher and the US tax return.

MFN – MOST FAVOURED NATION

Nestle SA [TS-1277-SC-2025]

Curative Petition against MFN judgement – Dismissed by the Supreme Court

The aforesaid curative petition was dismissed by the Hon'ble Supreme Court as no case was made out within the parameters indicated in the judgment of the apex court in ***Rupa Ashok Hurra v. Ashok Hurra & Anr –2002 (4) SCC 388.***

OTHERS

TE Connectivity Services India (P) Ltd v. DCIT - (2025) 177 taxmann.com 792 (BANG-TRIB)

Payments to AE of share based expenses on cost to cost basis without TDS – Disallowance u/s 40(a)(i) deleted

The Hon'ble Tribunal deleted the aforesaid disallowance u/s 40(a)(i) as there was no income element involved in the aforesaid payment. ***[GE India Technology Centre Pvt Ltd v. CIT – (2010) 7 Taxmann.com 18 (SC) followed]***

Steadview Capital Mauritius Ltd v. CIT (IT)-(2025) 178 taxmann.com 87 (MUM-TRIB)

Denial of Treaty benefits by invoking s.263 proceedings - Held Unjustified

Where the assessee, a Mauritius-based company, furnished sufficient evidence supporting carry forward of long-term capital losses and exemption of LTCG under India-Mauritius DTAA, and AO had accepted the return after necessary verification, invocation of revisionary proceedings u/s 263 to deny treaty benefits by setting of exempt long term capital long-term capital gains against long-term capital losses was held to be unjustified. ***[Malabar Industrial Co. Ltd. v. CIT (2000) 109 Taxman 66 (SC) and Jamnadas T. Mehta v. ITO (2002) 81 ITD 103 (Pune-Trib) (TM) followed].***

Jubin Jehnbux Gandevia v. ITO (IT) - (2025) 178 taxmann.com 208 (MUM-TRIB)

DRP has power to grant relief to a non-resident who has mistakenly offered non-taxable capital gains /excess tax on dividends in its return.

The assessee, a Singapore tax resident, mistakenly offered non-taxable capital gains and excess tax on dividends in its return, and subsequently, both the AO and DRP ignored the correction request, with DRP citing lack of jurisdiction. The Hon'ble Tribunal held that DRP can examine such issues u/s 144C(8) and restored the matter to AO to verify and allow relief, if admissible.

Lloyd's Register of Shipping v. DCIT -(2025) 177 taxmann.com 678 (MUM-TRIB)

Reassessment of non-resident to tax FTS – Held Unjustified

Where reassessment was initiated in case of assessee, a non-resident corporate entity, on the ground that management charges received by it from Indian branches of group companies were taxable as FTS under India-UK DTAA, but similar addition in preceding year had been deleted by the First Appellate Authority and attained finality, reassessment was held to be invalid as the very foundation of reopening did not exist. ***[CIT (Exemption) v. B. P. Poddar Foundation For Education [2023] 148 taxmann.com 125 (Calcutta) and Mahesh Kumar v. ITO [IT Appeal No. 2650 (Delhi) of 2024, dated 22-7-2025] - followed***

ACIT v. Nuwave e Solutions (P) Ltd - (2025) 178 taxmann.com 370 (DEL-TRIB)

Short deduction of TDS on buy-back payments made to non-resident – Disallowance u/s 40(a)(i) deleted

The assessee deducted TDS @ 10% on buy-back payments to NRI, while the AO held 20% to be the applicable rate and made a disallowance under section 40(a)(i). The Hon'ble Tribunal held that in case of lower deduction of TDS, provisions of section 40(a)(i) are not attracted. Accordingly, disallowance made was deleted. ***[CIT v. S. K. Tekriwal (2014) 46 taxmann.com 444 (Cal) followed]***

> "Taxation must catch up with globalization, not chase it from behind."
>
> ***— Pascal Saint-Amans (OECD BEPS Project)***

GST
Recent Judgments and Advance Rulings


CA Naresh K Sheth


CA Jinesh Shah

A. WRIT PETITIONS

IDP Education India (P.) Ltd. v. Union of India [2025] 178 taxmann.com 466 – Rajasthan High Court

Facts and issues involved:

The Petitioner is a subsidiary of IDP Education Ltd. (IDP Australia). IDP Australia has agreements with various foreign universities to assist students with admissions. Under these agreements, IDP Australia receives a portion of the student's fees as consideration for its services. To fulfil its obligations to these universities, IDP Australia has entered into a separate service agreement with the Petitioner. Under this agreement, the Petitioner provides services including student placement, course guidance, counselling, and enrolment assistance. IDP Australia retains ultimate authority over final admissions. In return, the Petitioner receives 77% of the application processing fees collected by IDP Australia as consideration for its services. The services rendered by the Petitioner to IDP Australia are on a principal-to-principal basis. The arrangement essentially constitutes sub-contracting of services by IDP Australia to the Petitioner, which IDP Australia is obligated to provide to foreign universities.

Petitioner classified its services to IDP Australia as export of services under Section 2(6) of the IGST Act, 2017, and claimed refund of IGST paid on such zero-rated supply under Section 16(3)(b) of the IGST Act. Both the Original and Appellate Authorities held that the Petitioner's services qualify as intermediary services, making the place of supply in India, thereby denying export status and the corresponding IGST refund. In view of judicial indiscipline and absence of a GST Tribunal, the Petitioner has approached this Hon'ble High Court under Article 226 of the Constitution of India.

Petitioner's submissions:

For the pre-GST period, i.e., the period April 2014-September 2015, Petitioner was confronted with a similar dispute with Respondent where the

Ld. CESTAT vide its Order dated 28.10.2021 categorically held that the services rendered by Petitioner did not qualify as intermediary and upheld the export status of the same. Further, the CBIC vide its Circular dated 20th September 2021 has observed (para 2.3) that there is broadly no change in the scope of intermediary services in the GST regime vis-a-vis Service Tax regime.

Under Section 2(13) of the IGST Act, an "intermediary" only includes a person who arranges or facilitates services between parties. The Petitioner provides services directly to IDP Australia and therefore does not qualify as an intermediary.

Honorable Bombay High Court in the case of *IDP Education India Pvt. Ltd. v. Union of India* [2025] 174 Taxmann.com 580 affirmed that the CESTAT rationale continues to apply under GST, as the legal and factual position of services with IDP Australia remains unchanged. Pursuant to this, the court sanctioned the refund to the petitioner.

Discussions by and Observations of the High Court:

Having considered the documents and also having considered the judgment of the Hon'ble Bombay High Court in the petitioner's own case in IDP Education India Pvt. Ltd. (supra), it is clear that the services provided by the petitioner are qua IDP Australia under a specific contract or arrangement with it. Not more than two parties are involved in this arrangement, namely, the petitioner and IDP Australia. For someone to be called an "Intermediary", there needs to be the existence of three parties in the contract, in the absence of which, the petitioner cannot be called an "Intermediary". In the present case, the services rendered by the petitioner are only to IDP Australia and, therefore, certainly qualify to be "Export" as held by CESTAT in the order referred above and the Hon'ble Bombay High Court.

The impugned order has incorrectly concluded that the petitioner has facilitated and arranged placement services between the Foreign Universities, IDP Australia, and the students. Petitioner has no say in the final admission process nor do they have any contractual arrangement with the Foreign Universities or the students, and hence, their services are only rendered to IDP Australia under a bi-partite arrangement. When the petitioner has been considered as an exporter in other State jurisdictions, there is no reason for respondents to take a different view in the matter.

Decision of the High Court:

Petition allowed. No order as to costs. Matter remanded to the Adjudicating Authority for processing the refund claim and paying the refund along with applicable interest.

Kay Pan Fragrance (P.) Ltd. v. State of UP [2025] 177 taxmann.com 816 – Allahabad High Court

Facts and issues involved:

Petitioner went into a Corporate Insolvency Resolution Process (CIRP) on 13th May 2022, and a Resolution Professional was appointed. Creditors were invited to submit their claims, and subsequently, on 31st October 2023, the Resolution Plan was approved by the NCLT. Despite this, the GST Department, through the Additional Commissioner, CGST, Meerut, passed an Assessment Order dated 29th April 2025 under Section 74(9) of the CGST/UPGST Act, 2017, raising tax, interest, and penalty dues for the period 2018–2021. Petitioner challenged this order before the Allahabad High Court, seeking its quashing and a direction restraining the recovery of the said dues. The central issue is whether the GST Department could create further dues after approval of the Resolution Plan by NCLT.

Petitioner's Submissions:

Petitioner argued that once the Resolution Plan has been approved by the NCLT, the GST Department is barred from creating further dues

by passing orders. Reliance was placed on judicial precedents, including *Ghanashyam Mishra & Sons (P.) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., N.S. Papers Ltd. v. Union of India, and Arena Superstructures (P.) Ltd. v. Union of India*. It was submitted that fastening new liabilities post-approval of the Resolution Plan would defeat the principle of a "clean slate" under IBC and was contrary to settled law.

Discussions by and Observations of the High Court:

The court referred to the judgment in *N.S. Papers Ltd.,* where it was held that the resolution applicant cannot be saddled with new claims once a Resolution Plan has been approved. It emphasized that allowing assessment to be kept pending and finalized after approval of the Resolution Plan would frustrate the objective of IBC, which is to give the resolution applicant a fresh start. The Court also relied upon the Supreme Court ruling in *Vaibhav Goyal v. Dy. CIT*, wherein it was categorically held that all dues, including statutory dues, if not part of the Resolution Plan, shall stand extinguished and no fresh proceedings could be continued for the pre-CIRP period. It was further observed that entertaining belated claims would create uncertainty and undermine the resolution process by burdening the resolution applicant with "undecided" liabilities.

Decision of the High Court:

The writ petition was accordingly allowed.

Khurja Scrap Trading Company v. Additional Commissioner Grade-2 (Appeal) [2025] 178 taxmann.com 48 – Allahabad High Court

Facts and issues involved:

The petitioner, engaged in the business of plastic roofing sheets, purchased roofing sheets from M/s Unique Trading Company, Ghaziabad, on 26.11.2021 and 30.11.2021. Based on valid tax invoices, the petitioner claimed Input Tax Credit (ITC). Subsequently, the department conducted a physical inspection of the supplier's premises, where the supplier was found to be non-existent. A show-cause notice was issued under Section 74 of the CGST/UPGST Act, resulting in an order dated 07.10.2022 imposing tax, interest, and penalty. The petitioner's appeal was dismissed by the Additional Commissioner (Appeals) on 16.12.2022.

The petitioner contended that at the time of the transactions, the supplier was duly registered, and its registration was cancelled only later, on 08.04.2022. The petitioner argued that both GSTR-1 and GSTR-3B had been filed by the supplier, reflecting the transaction and tax payment, but these facts were not considered by the authorities. The issue before the Court is whether ITC could be denied to the petitioner when the seller was duly registered at the time of supply but was subsequently deregistered.

Petitioner's Submissions:

The transactions are genuine and supported by tax invoices, payments through banking channels, and movement of goods, which were also verified through toll plaza records. Since the supplier was validly registered on the transaction dates, the subsequent cancellation of registration could not invalidate ITC.

Disclosure of the transaction in GSTR-2A, and corresponding filing of GSTR-1 and 3B by the supplier, further substantiated the genuineness of the ITC claim. Proceedings under Section 74 require specific findings of fraud, wilful misstatement, or suppression, none of which were present in the instant case.

Reliance in this regard was placed on decisions in case of *Suraj Impex (India) Pvt. Ltd. v. Union of India (SC), Commissioner of Sales Tax v. Agrawal Rolling Mills (Allahabad HC), R.T. Infotech v. Additional Commissioner (Allahabad HC), and Solvi Enterprises v. Additional Commissioner* (Allahabad HC).

Respondent's Submissions:

Petitioner failed to produce concrete proof of banking transactions, transportation, and unloading expenses. Since the supplier was not found at the business premises during inspection, the department rightly initiated proceedings under Section 74. Mere assertions of payments or filing of returns could not establish the genuineness of the transaction.

Discussions by and Observations of the High Court:

The court noted that the transactions were undertaken on 26.11.2021 and 30.11.2021, while the supplier's registration was cancelled only on 08.04.2022. Records showed that the supplier had duly filed GSTR-1/1FF and GSTR-3B for the relevant period. Once these facts were placed on record, the authorities were required to verify them through the GST portal data rather than drawing adverse inferences from subsequent inspection.

The court emphasized that Section 74 can only be invoked where there is fraud, wilful misstatement, or suppression of facts to evade tax. Referring to the CBIC circular dated 13.12.2023, the Court reiterated that mere non-existence of the supplier at a later date does not constitute grounds for denying ITC. Since no findings of fraud or suppression were recorded against the petitioner, the initiation of proceedings under Section 74 was unsustainable

Decision of the High Court:

The writ petition was allowed. Impugned orders passed by the authorities are hereby quashed.

B. RULINGS BY GST APPELLATE TRIBUNAL ('GSTAT')

DGAP v. Puma Realtors (P.) Ltd., Oreo City [2025] 178 taxmann.com 49 – Delhi GSTAT

Facts and issues involved:

Puma Realtors (P.) Ltd. was declared insolvent, and its ownership was taken over by M/s One Group Developers Pvt. Ltd. (Resolution Applicant) through an approved resolution plan under the Insolvency and Bankruptcy Code, 2016 w.e.f. 01.06.2021. The Directorate General of Anti-Profiteering (DGAP) alleged that the erstwhile company had failed to pass on the benefit of additional ITC accrued upon the introduction of GST to eligible recipients, thereby violating Section 171 of the CGST Act, 2017.

Direction issued by GSTAT:

Tribunal directed the DGAP to take an appropriate legal opinion in this connection. In response to such direction, legal opinion was sought by Pr. DG, DGAP from Shri Zoheb Hossain, Advocate-on-Record and Senior Standing Counsel for the Income Tax Department on the following issues:

a. Whether the due benefit of ITC that had accrued consequent to the introduction of the CGST Act, 2017, is to be passed on to the eligible recipients who are voiceless, unorganized, and scattered, will also come under the ambit of the IBC as amended from time to time, which could not be quantified due to non-submission of the requisite documents by the Noticee for completion of the investigation prior to passing on the NCLT final order dated 01.06.2021?

b. Whether the approved Resolution Applicant, i.e., consortium of M/s. APM Infrastructure Pvt. Ltd. & M/s Once City Infrastructure Pvt. Ltd. can be made accountable for passing on the benefit of ITC (profiteered amount) to the eligible recipient under Section 171 of the CGST Act, 2017?

The Learned Senior Standing Counsel opined as under:

a. Section 238 of IBC, 2016 contains a non-obstante clause that the provisions of IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus, even if it is argued that the provisions of Section 171 of the CGST Act, 2017 have been violated, the provisions of IBC, 2016 will nonetheless prevail.

b. Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* [2019] 111 taxmann.com 234 (SC)/(MANU/SC/1577/2019) observed that the Resolution Applicant should be aware of the claims and should not suddenly be burdened with undecided claims.

c. Hon'ble Supreme Court in *Ghanashyam Mishra & Sons (P.) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.* [2021] 126 taxmann.com 132 (SC)/(2021) SSC Online SC 313 has clearly held that no claims/dues may be entertained after the approval of the Resolution Plan.

d. Hon'ble NCLT, Delhi vide order dated 01.06.2021 approved the Resolution plan of the Resolution Applicant Consortium, whereby the moratorium ceased to have effect. Thus, the period to submit the claim lapsed without the Resolution Professional addressing the claims made herein.

e. NAA's claim would stand extinguished as it was not included in the Resolution plan approved by the Adjudicating Authority vide Order dated 01.06.2021.

Ruling by GSTAT:

In view of the clear legal position, as submitted through the written opinion quoted above, GSTAT was in agreement with the submissions made by the Sr. Standing Counsel and, therefore, did not find any reasonable cause to proceed further in the matter.

DGAP v. Mallikarjuna Cinema Hall, 70mm Hyderabad [2025] 178 taxmann.com 393 – Delhi GSTAT

Facts and issues involved:

GST rates on the tickets for admission to the theatres exhibiting cinematography films were 28% for the price range of Rs. 101/- or more. It was 18% for the tickets that were priced at Rs. 100 or less per person, per show. On the recommendation of the GST Council, the rates were reduced from 28% and 18 % to 18% and 12% respectively, w.e.f. 01.01.2019 vide notification no. 27/2018 - CT (Rate) dated 31.12.2018.

On 29.03.2019, an application was received by the Standing Committee of the Anti-Profiteering wing of the GST Regime from the Pr. Commissioner, Medchal Commissionerate, Hyderabad, inter alia, alleging profiteering by the Respondent. The Standing Committee, after examination, referred the matter to DGAP on 28.06.2019 for detailed investigation. DGAP's report was submitted to the NAA on 20.12.2019, pursuant to which the NAA issued notices to the Respondent on 18.12.2019 under Rule 129(3) of the CGST Rules, 2017. Respondent challenged NAA notices in *Mallikarjuna Traders v. Union of India* [W.P. No. 3087 of 2020], where interim relief was later vacated on 03.06.2021. Despite adequate opportunities, the Respondent failed to submit or inspect documents. DGAP thereafter reported profiteering of Rs. 16,50,166/- for 01.01.2019 to 30.06.2019.

Respondent's submissions:

The maximum cinema ticket prices in Telangana are fixed by the State Government under the Telangana Cinemas (Regulation) Act, 1955. As per Section 9-A, non-compliance thereof attracts prosecution and punishment. In exercise of these powers, the State Government issued G.O.M. No. 100 dated

26.04.2013, prescribing maximum ticket prices. Further, in the case of *Ramakrishna Glitterati v. State of Telangana* [W.P. No. 19046 of 2014, dated 31-10-2016], the Hon'ble Telangana High Court quashed the 2013 Government Order and directed the State Government to constitute a committee to determine fair ticket prices. Hon'ble Telangana High Court allowed cinema hall owners to fix ticket prices, subject to intimation to authorities.

Respondent, a single-screen cinema, was permitted to charge a maximum of Rs. 120/- for higher class and Rs. 40/- for lower class tickets. It is submitted that, during the profiteering period (01.01.2019 to 30.06.2019), ticket sales were strictly in line with State Government rates fixed with the High Court's approval. Respondent submits that profits earned while selling tickets at State Government-approved rates, with the High Court's permission, cannot be deemed unfair. Ticket pricing considers cinema expenses, inflation, movie popularity, OTT competition, and rising rent, factors which are all together ignored by DGAP in its analysis.

Secondly, DGAP erred by ignoring the tax-free maintenance charge exemption. The Government Order allows AC and Air-Cooled theatres to charge up to ₹7 per ticket as tax-free maintenance, but the Respondent continues to charge only ₹3 per ticket to remain competitive, an aspect overlooked by DGAP.

Thirdly, DGAP has misconstrued the scope of Section 171 of the CGST Act by assuming that any reduction in tax must be passed on in its entirety to the recipient. The provision uses the term "commensurate," indicating that the benefit of tax reduction should be passed on reasonably, considering other relevant factors such as inflation, rising operational costs, and other commercial considerations. Therefore, the Respondent submits that providers of goods and services have discretion to balance these factors while determining the benefit to be extended to recipients.

Discussions by and Observations of GSTAT:

The following issues of law and fact arise in the present case:

(i) Whether the Respondent profiteered Rs. 16,50,166/- by not reducing theatre ticket prices following the GST rate reduction from 01.01.2019 to 30.06.2019?

(ii) Whether the High Court of Hyderabad's orders and the subsequent Telangana Government Order fixing maximum ticket prices and allowing discretion to theatre owners absolve the Respondent from profiteering liability?

(iii) Whether market dynamics and factors beyond the Respondent's control led to non-passing of commensurate price reduction to consumers?

(iv) Whether the 18% interest on the profiteered amount under amended Rule 133(3)(c) of CGST Rules, 2017 is retrospective or prospective, and if prospective, whether it applies from 28.06.2019 to 01.04.2020?

(v) What should be the Tribunal's order under Section 171 of the CGST Act?

The following table has been relied upon by DGAP, demonstrating that the reduction in GST rates from 28% to 18%, and subsequently from 18% to 12% did not result in a commensurate reduction in ticket prices due to an increase in base price by the respondent:

The calculation method shown in Table A forms part of the DGAP report and has not been

> "If you want to know who really pays an indirect tax, look for who cannot pass it on."
>
> ***— Warren Buffett***

Table-A

s No	Admission ticket	01.12.2018 to 31.12.2018			01.01.2019 to 30.06.2019					
		Price of Ticket inclusive of tax (in Rs.)	GST Rate (%)	Amount Charged i.e Base Price (in Rs.)	Price of Ticket inclusive of tax (in Rs.)	GST Rate (%)	Amount Charged i.e Base Price (in Rs.)	Commensurate Base Price (in Rs.)	Amount which was to be Charged (in Rs.)	Increase in base price of the ticket
A	B	C	D	E=[C/ 128% or 118%]	F	G	H	I	J= (I*118% or 112%)	K="H-I
1	Maharaja Circle (Blockbuster movie)	118	28%	92.19	130	18%	110.17	92.19	108.78	17.98
					120		101.69	92.19	108.78	9.51
	Maharaja Circle (Other Movie)	100	18%	84.75	100	12%	89.29	84.75	94.92	4.54
2	Dress Circle	70	18%	59.32	80	12%	71.43	59.32	66.44	12.11
					70		62.50	59.32	66.44	3.18
3	First Class	30	18%	25.42	40	12%	35.71	25.42	28.47	10.29
					30		26.79	25.42	28.47	1.36

Table-B

S No	Admission ticket	01.01.2019 to 30.06.2019						
		Base Price charged (Rs.)	Commensurate Base Price (Rs.)	Excess amount charged per ticket (Rs.)	Excess tax charged per ticket @ 18% or 12%	Total Profiteering per ticket (Rs.)	Total tickets sold	Total Profiteering (including tax @18%) (in Rs.)
A	B	c	D	E=(C-D)	F=(E*18% or 12%)	G=(E+F)	H	I=(H*G)
1	Maharaja Circle (Blockbuster Movie)	110.17	92.19	17.98	3.24	21.22	18,849	3,99,952
		101.69	92.19	9.51	1.71	11.22	27,696	3,10,715
	Maharaja Circle (Other Movie)	89.29	84.75	4.54	0.54	5.08	78,774	4,00,546
2	Dress Circle	71.43	59.32	12.11	1.45	13.56	17,962	2,43,553
		62.50	59.32	3.18	0.38	3.56	31,351	1,11,588
3	First Class	35.71	25.42	10.29	1.23	11.53	11,954	1,37,775
		26.79	25.42	1.36	0.16	1.53	30,180	46,037
Grand Total								16,50,166

disputed by the Respondent. They have neither challenged the method nor the figures. Using the Respondent's outward supplies from 01.12.2018 to 30.06.2019, DGAP quantified profiteering of Rs. 11,11,212/- for Maharaja Circle, Rs. 3,55,141/- for Dress Circle, and Rs. 1,83,812/- for First Class, as reflected in Table B, in violation of Section 171 of the CGST Act.

For illustration, the Maharaja Circle Blockbuster Movie ticket was priced at Rs. 118/- before the GST rate reduction (28%), with a base price of Rs. 92.19. From 01.01.2019 to 30.06.2019, tickets were sold at Rs. 130/- or Rs. 120/-, with GST @18%, implying base prices of Rs. 110.17 and Rs. 101.69. A commensurate reduction should have kept base prices at Rs. 90.19–92.19, resulting in excess of Rs. 17.98 and Rs. 9.51, respectively. Similar variances occurred for Dress Circle (Rs. 4.54) and First Class (Rs. 12.11–3.18).

While Section 171 of the CGST Act mandates passing on the benefit of tax reduction to consumers via commensurate price reduction, suppliers may adjust base prices based on genuine commercial factors, market dynamics, or applicable laws. The Delhi High Court in Reckitt Benckiser India (P.) Ltd. clarified that any variance must be justified and not used to circumvent statutory obligations. The provision ensures the benefit of reduced tax or ITC reaches the ultimate consumer, preventing unjust retention by suppliers.

It is undisputed that GST on cinema tickets was reduced from 28% to 18% and 18% to 12%, yet the Respondent did not reduce ticket prices accordingly and, in fact, increased them. Paragraph 25 of the Respondent's submission admits an attempt to recover profit, constituting a clear admission—either judicial or evidentiary—under the Indian Evidence Act. Such admissions are strong proof of fact and, in the absence of any explanation or challenge by the Respondent, establish that profiteering occurred due to non-commensurate price reduction following GST rate cuts.

Further, the respondent's reliance on the Cinemas Act, Government orders, and the Rs. 3/- non-taxable maintenance charge does not exempt it from liability under Section 171 of the CGST Act. These provisions merely set maximum ticket prices and allow discretion for pricing, but do not permit withholding the benefit of the GST rate reduction from consumers. The additional Rs. 3/- charge is subject to GST, and therefore, the respondent's contentions lack merit.

The fourth issue relates to the imposition of 18% interest under amended clause (c) of Sub-Rule (3) of Rule 133 of CGST Rules, effective 28.06.2019. Legal principles of prospectivity ("*Nova constitutio futuris formam imponere debet non praeteritis*") establish that laws imposing new obligations or affecting vested rights operate prospectively unless expressly stated otherwise. Supreme Court judgments, including *Monnet Ispat & Energy Ltd. v. Union of India* (2012) and *CIT v. Vatika Township Pvt. Ltd.* (2014), confirm that such provisions do not apply retrospectively. On this issue, GSTAT has already decided in the case of *DGAP v. Procter & Gamble Group* [NAPA/13/PB/2025, dated 10-9-2025], that such a provision shall come into force only with the prospective effect from 28.06.2019. The respondent's contention that the 18% interest provision applies only prospectively is correct; however, its applicability from 01.04.2020 is not accepted. The provision came into effect on 28.06.2019. Evidence shows that from 01.01.2019 to 30.06.2019, the respondent collected GST at 18% and 12% without reducing ticket prices, confirming profiteering. Consequently, interest at 18% applies for the period 28th to 30th June 2019. The authority does not have the jurisdiction to impose interest on the profiteered amount for the period that falls prior to 18.06.2019.

Ruling by GSTAT:

GSTAT held that the respondent has profited a sum of Rs. 16,50,166 by not passing on the benefit of the reduction of GST rates to the customers.

Service Tax



CA Rajiv Luthia



Keval Shah
Advocate

M/s. Chettinad Logistics Pvt. Ltd. v. Commissioner of GST and Central Excise, Chennai 2025 (9) TMI 1273 - CESTAT CHENNAI

Background and facts of the case:

- The appellant is providing 'Port Service' to exporters/importers.
- During the audit of accounts of the appellant, it was noticed that the appellant has received Rs. 75,58,470/- for the FY 2008-09, Rs. 28,13,334/- for the 2009-10, and Rs. 10,20,029/- for the FY 2010-11(up to December 2010), from M/s. Chennai Container Terminal Limited (CCTL), for CFS Handling Charges, on which no Service Tax was paid by them. Consequently, the Show Cause Notice No: 627/2011dated 23/12/2011, came to be issued.
- M/s. CCTL receives the imported cargo at the terminal and moves the same to the container freight station at Royapuram Yard. The seal cutting, de-stuffing, etc. of the container is done as a job work by the Appellant. The said activity is falling under Port Services, which is not liable for ServiceTax. The appellant had not entered into any written agreement with CCTL and acted only on an oral agreement.
- The OIO, after allowing cum tax benefit, confirmed the demand under Cargo handling services and hence the present appeal.

Arguments by the Appellant:

- The appellant had been engaged by CCTL for the limited purpose of seal cutting of the containers and de-stuffing of the containers; and such activity cannot be covered by the definition of Cargo handling service; that more appropriate classification is "Port Service", and hence demand confirmed under Cargo handling service is not at all sustainable.
- The Appellant relied upon CBEC's clarification vide B11/1/2002 dt. 01.08.2002, in view of which the demand for Service Tax under cargo handling service is not at all sustainable, as entire activities are carried out within the port area, the service is more appropriately classifiable under port service only.
- Since CCTL is paying appropriate Service Tax for the overall activities undertaken by them and only a part of their activity has been Sub-contracted to the appellant, based on the above clarification, the appellant is of

the view that they are not liable to pay any Service Tax

- The appellant also pleaded that the demand up to September 2010 had been made by invoking the extended period. Considering the facts and circumstances of the case, there is no justification for such an invocation, and hence the demand up to September 2010 is hit by the time bar too.

Arguments by the Respondent:

- The authorized departmental representative prayed for dismissal of the appeal on merits as service activity has been undertaken in CCT, CFS at Royapuram, which does not come under the port area.

Decision of the Hon'ble Tribunal:

- The contents of the Master Circular No. 96/7/2007-S.T., dated 23-8-2007 supersedes the Circular B11/1/2002 Dt. 01.08.2002, relied upon by the Appellant and based on the same, we find that the impugned order has rightly upheld the demand of Tax under Cargo Handling services, and also as a sub-contractor to CCTL, and we are in perfect agreement with the same.
- The bench is in complete agreement with the Appellant's contentions that there has been neither any suppression of facts nor any wilful mis-statement warranting the invocation of such larger period, and that sufficient grounds do not exist in this case to sustain the allegation of wilful misstatement or the suppression of facts, and therefore, the extended period cannot be invoked. On the contrary, we observe that the appellants have been regularly filing their ST-3 returns and have not paid the service tax on the bona fide belief that the services rendered by them are port services and not liable to tax based on several decisions by Tribunals/Courts in their favour. Even otherwise, entertaining a belief in incorrect classification cannot be viewed as malafide action on the part of the appellant.
- The show cause notice in this case was issued on 23.12.2011, and the period of demand involved is 2008-09 to 2010-2011 (up to December 2010.), and therefore, the one-year period (normal period) expired by the end of November 2011. In such circumstances, the Department should not have invoked the extended period of limitation, and the Appellants' plea that the extended period of limitation ought not to have been invoked and an equivalent penalty ought not to have been imposed merits acceptance. Hence, we are of the view that there cannot be any ground for the Department to invoke a larger period under the proviso to Section 73(1) of the Finance Act, nor impose any penalty under Section 77/78 of the FA 1994. When the order itself fails on limitation, the demand of Tax and interest thereon and all the consequent penalties imposed stand vacated.
- In view of the foregoing discussions, the bench held that the demand sustains on merits but fails on the grounds of limitation, with the result that the impugned Order-in Appeal No. 463/2015/ (STA-II) dated 31.12.2015 passed by the Commissioner Service Tax (Appeal-II), Chennai is ordered to be set aside.

M/s Asianlak Health Food Ltd v. Commissioner of CE & ST, Ludhiana 2025 (9) TMI 752 - CESTAT CHANDIGARH

Background and facts of the case:

- The appellant is engaged in the provision of certain taxable services, including services liable to tax under the Reverse Charge Mechanism (RCM), such as Goods Transport Agency (GTA) Services, Legal Services, Security Services, and services provided by the Government to business entities.

- An audit of the appellant was conducted by the department on 15.11.2017 and 18.11.2017 for the financial years 2013-14 to 2016-17, wherein certain discrepancies were noticed with regard to the payment of service tax under RCM. The appellant, pursuant to the audit findings, deposited Rs. 8,55,338/- towards service tax under the Reverse Charge Mechanism.
- As per the appellant, they are entitled to avail credit of service tax paid under RCM pursuant to audit findings. The said credit, however, remained unavailed due to the transition to the goods and service tax (CGST regime); thereafter, the appellant filed a claim for refund of service tax paid under RCM.
- The adjudicating authority vide order dated 09.03.2020 rejected the refund claim on the ground that the erstwhile provision did not contain any provision permitting refund of service tax paid under RCM.
- Being aggrieved by the said order, the appellant had preferred an appeal before the Commissioner (Appeals), who dismissed the same vide the impugned order dated 22.03.2020. Hence, the present appeal.

Arguments by the Appellant:

- The Ld. Counsel of the appellant stated that the impugned order denying the refund of service tax under RCM is not sustainable in law as the same has been passed without properly appreciating the facts and the law.
- He further submits that at no stage during the proceedings did the department dispute the appellant's eligibility to avail credit of service tax paid under RCM.
- He further submitted that the appellant under the applicable credit provision of existing law is entitled to such credit and therefore, they are entitled to refund of the service tax paid under RCM under Section 142(3) of the CGST Act, 2017 which mandates that claim for refund filed after the appointed day for any amount paid under the existing law shall be disposed of in accordance with the provisions of the erstwhile law and any amount found admissible shall be refunded in cash.
- He further submitted that the Tribunal should invoke the Doctrine of Necessity in the present case to direct a grant of refund under Section 142(3) of the CGST Act 2017 and render complete justice to the appellant.

Arguments by the Respondent:

- The Ld. Authorized representative submitted that there was no provision under the existing law to grant refund of credit in respect of service tax paid under RCM and the provision under Section 142(3) is quite clear that unless the refund of any such input credit is otherwise eligible under the existing law, the same cannot be considered for refund in cash in terms of provision of Section 142(3).
- He also points out that there is a clear-cut provision under the Act for claiming such credit by way of revised return or by carrying forward the said amount of Cenvat credit relying on the balance relating to the period immediately preceding the appointing day. However, the same is subject to certain restrictions, including the specified eligible duties and taxes, etc., in respect of which the credit can be carried forward.
- He further submits that in the present case, it is an admitted fact that the appellant had not carried forward any credit for such tax using the provision under Section 140.

Decision of the Hon'ble Tribunal:

- The bench found that the issue involved in the present case is squarely covered in favour of the Revenue by the decision of this Tribunal in the case of M/s Max Specialty Films Ltd. and the decision of the Jharkhand High Court in the case of M/s Rungta Mines

Ltd. cited (Supra) and by following the said ratio, I hold that there is no infirmity in the order passed by the learned commissioner (Appeals) upholding the Order-in-Original and rejecting the refund claim in cash filed by the appellant.

Shri Momin Husain v. Commissioner of Central Excise & Service Tax, Lucknow 2025 (9) TMI 997 - CESTAT ALLAHABAD

Background and facts of the case:

- The appellant is engaged in 'Embroidery Work' of fabrics, which has been provided to the customers as per the demand made by the customers and also on a Job Work basis.
- The Revenue has demanded Service Tax on the basis of the income shown in the ITR for the year 2015-16. The demand was subsequently confirmed by the Adjudicating Authority, which also imposed penalties under Sections 77 and 78 of the Act. The Appellant challenged the said order of the Adjudicating Authority before the Commissioner (Appeals), who confirmed the demand but waived penalty under Section 77 of the Act.

Arguments by the Appellant:

- The Ld. Counsel for the Appellant has submitted that the impugned order and Order-in-Appeal have been passed without properly appreciating the facts and the relevant provisions of law, and their findings are based on assumption and conjecture.
- The Ld. Counsel also submitted that the activity of Embroidery Work is out of the ambit of Service Tax net as the embroidery work amounts to manufacture and is duly covered under Chapter Heading No. 5810 of the Central Excise Tariff Act [CETA] and manufacturing activity is covered under the Negative List i.e. Clause (f) of Section 66D of the Finance Act, 1994.
- He also submitted that the SSI exemption was available to a small unit under Notification No.08/2003 dated 01.03.2003, under which they were not required to pay excise duty up to the turnover of Rs. 1.5 Crores. The turnover of Appellant during the period 2014-15 to 2015-16 is only Rs. 43.20 lakhs, which is far below the exemption limit. Hence, there was no requirement for any excise compliance.
- That the Ld. Commissioner has entertained doubt without making any inquiry and without verifying the facts. He has simply observed that the Appellant, Momin Husain, and M/s Chand Art (name under which bills are issued) are not one and the same person, as the addresses of both indicate some difference in address. The consultant clarified that Momin Husain is the proprietor of M/s Chand Art, Lucknow, and that there is a minor difference in writing the address of the firm's name 'Chand Art', which has been followed from the days of his forefathers and has not been changed/amended.
- He also submitted that the Appellant was not registered with the service tax Department under the bona fide belief that he was not liable to pay service tax as his activities were manufacturing activities and covered under the Central Excise Tariff Act.

Arguments by the Respondent:

- The Ld. Departmental Authorized Representative justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

Decision of the Hon'ble Tribunal:

- The bench found that both Mr. Momin Husain and M/s Chand Art are one and the same person, and there is no scope to doubt that

the Appellant Momin Husain is different than that of Momin Husain of M/s Chand Art. Mr. Momin Husain is also the Proprietor of M/s Chand Art, hence the minor difference in the individual's address and the firm's address need not be confused with.

- They further stated that the activity of embroidery carried out by the Appellant has been held to be a manufacturing activity by CBIC vide letter dated 15.07.2011. The said letter clarifies that embroidery work done on a job work basis amounts to manufacture and does not fall within the purview of the then 'Business Auxiliary Service'.
- They also found that the process of carrying out embroidery on plain cloth/fabric amounts to manufacture, i.e., the distinctly new commercial product comes into existence, and this work is duly covered under Chapter Heading 1810 of CETA. Once the activity is clearly discernible as manufacturing activity of goods as specified under CETA, the said activity would go out of the purview of service tax. I also find that the Appellant has issued bills for his embroidery work to miscellaneous customers, mentioning the work of embroidery therein.
- He concluded that it is his considered view that the demand for Service Tax cannot be sustained and is set aside. The penalty imposed under Section 78 is also set aside. The appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

M/s. Tabassum Enterprises v. Commissioner of CGST & CX, Kolkata 2025 (9) TMI 1275 - CESTAT KOLKATA

Background and facts of the case:

- The appellant is engaged in providing the service of arranging goods transportation and has taken registration with the Department under the category of Goods Transport Agency Service. They didn't issue consignment notes and filed NIL service tax returns.
- On the basis of the data received from CBDT, an SCN was issued to the appellant demanding service tax of Rs. 25,10,850/- along with interest and an equal amount of penalty under Section 78 of the Finance Act, 1994.
- On appeal, the Ld. Commissioner (Appeals-I) did not agree with the calculation of demand on a pro-rata basis for the period April, 2017 to June, 2017 and dropped the service tax demand of Rs. 3,52,888/- from the aforesaid demand of Rs. 25,10,850/-. Hence, in the impugned order, the Ld. Commissioner (Appeals) has confirmed the service tax demand to the extent of Rs. 21,57,962/- along with interest and imposed an equal amount of tax as penalty.
- Aggrieved against the confirmation of the demands, the appellant has filed this appeal.

Arguments by the Appellant:

- The appellant submits that the demand has been raised and confirmed on the basis of CBDT data without adducing any corroborative evidence, which is impermissible. The appellant further stated that there is no evidence brought on record to substantiate the allegation that the appellant has actually rendered the GTA service to the customers. Accordingly, the appellant contends that the demand confirmed in the impugned order on the basis of assumptions and presumptions is not sustainable.
- The appellant further submits that they were rendering the service of arranging the transportation of goods. They did not issue any consignment note. The service of transportation of goods by road is liable to service tax under the category of GTA service, only when the service provider issues 'consignment notes'. As they have not

issued any 'consignment note', the services rendered by them were clearly excluded, as the said services were covered in the 'Negative List' Entry under Section 66D(P)(i)(A) of the Finance Act, 1994.

- With respect to the issue of limitation, the appellant submits that the entire demand was raised and confirmed in the impugned order on the basis of data received from CBDT, which were always available with the department. Therefore, there has been no suppression of the facts with the intention to evade the tax established in this case.

Arguments by the Respondent:

- The Ld. Authorised Representative of the department stated that the appellant has not raised the issue of not issuing 'Consignment Notes' earlier. Thus, raising this ground at this stage is only an afterthought. Further, the appellant could not submit any evidence to substantiate their claim.

Decision of the Hon'ble Tribunal:

- The bench held that the demand of service tax confirmed in the impugned order, solely relying on the data received from CBDT, without adducing corroborative evidence in support, cannot be sustained. Thus, I observe that the demand confirmed in the impugned order is liable to be set aside on this ground itself.
- With respect to the merits of the case, they found that the appellant was rendering the service of arranging the transportation of goods. They did not issue any consignment note. I observe that the service of transportation of goods by road is liable to service tax under the category of GTA service, only when the service provider issues 'consignment notes'. As the appellant has not issued any 'consignment note', I hold that the service rendered by them was clearly excluded, as the said services were covered in the 'Negative List' Entry under Section 66D(P)(i)(A) of the Finance Act, 1994. Find that this view is supported by the judgment of the Hon'ble Apex court in the case of *CCE, Ahmedabad-II v. Chartered Logistics Ltd.* [(2024)16 Centac 474 (SC)].
- That the Ld. A.R. contended that the appellant had not raised the issue of not issuing 'Consignment Notes' earlier. Thus, raising this ground at this stage is only an afterthought. I observe that the legal issues can be raised at any stage. In respect of the 'GTA' service, the issue of 'Consignment Notes' is a primary requirement. It is on record that the appellant has not issued 'Consignment Notes'. Thus, to establish their case, the appellant can raise this point in support of their claim. As there is no evidence contrary to the claim made by the appellant, I hold that the objection of the Revenue on this ground is not sustainable
- Regarding the invocation of an extended period of limitation to confirm the demand, I find that the entire demand was raised and confirmed in the impugned order on the basis of data received from CBDT, which were always available with the department. Therefore, I find that suppression of the facts with the intention to evade the tax has not been established in this case. Accordingly, I hold that an extended period cannot be invoked in this case to demand service tax.

> "Our policy must not be of control, but of management — to facilitate legitimate transactions while curbing abuse."
>
> ***— Dr. Manmohan Singh***

Case Law Update



CS Makarand Joshi

IBC

In the matter of Gagan Chhabra v. SMS Vishwa JV at the Supreme Court dated 30 June 2025

Facts of the Case:

- This case involves a dispute between Gagan Chhabra, the Appellant, a lawyer who provided professional legal services, and SMS Vishwa JV - the Respondent, a joint venture.
- The appellant provided legal services to the respondent in an arbitration proceeding between the respondent and Thane Municipal Corporation.
- The respondent was formed as a joint venture on 20 August, 2008, through an agreement between three companies - M/s. SMS Paryavaran Limited (the lead member), M/s. Vishwa Infrastructures & Services Private Limited, and M/s. GSJ Envo Limited. The respondent was an unincorporated entity.
- The appellant issued a demand notice on 12 June, 2023, to the respondent, claiming an operational debt of ₹2,49,00,000/- (Rupees Two Crore Forty-Nine Lakhs). This claim arose from professional services and was based on the Memorandum of Understanding (MoU) dated 9 June, 2018, which outlined the payment method for one of the bills.
- The respondent refuted the claim via a letter dated 11 July, 2023, stating it was frivolous and malicious. Crucially, the respondent raised the objection that the demand notice was issued to an unincorporated joint venture and not to companies registered under the Companies Act 2013, thus not tenable under the Insolvency & Bankruptcy Code, 2016 (IBC/code).
- The reply also highlighted that two of its member companies, SMS Paryavaran Limited and M/s. Vishwa Infrastructures & Services Private Limited had undergone Corporate Insolvency Resolution Processes (CIRP). In the CIRP of SMS Paryavaran Limited, the appellant had previously filed a claim for the same amount (₹2,49,00,000/) as a financial creditor, which was not admitted

by the Resolution Professional (RP) and not further agitated by the appellant. A separate claim for ₹13,07,060/- as an operational creditor was admitted and dealt with in the resolution plan.

- Following the demand notice and reply, the appellant filed a Section 9 application under the IBC before the National Company Law Tribunal (NCLT), New Delhi, on 18 July, 2023. The NCLT heard arguments on maintainability and ultimately rejected the Section 9 application as non-maintainable via an order dated 14 May, 2024.
- Aggrieved by the NCLT's order, the appellant filed an Appeal before the National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi.
- The NCLAT heard the appeal, specifically addressing the maintainability objection raised by the respondent regarding the respondent not being a "corporate person". On 30 June, 2025, the NCLAT dismissed the appeal, upholding the NCLT's order, but specifically on the ground that the Section 9 application was not maintainable against the respondent because it is not a corporate person. The NCLAT noted that the NCLT had rejected the application on "different grounds".
- The appellant then filed a Civil Appeal No(s). 10218/2025 in the Supreme Court of India. The Supreme Court heard the matter on 25 August, 2025.
- The Supreme Court, having considered the provisions of Sections 3(7), 3(8), and 9 of the IBC, found no error in the view taken by the National Company Law Appellate Tribunal, New Delhi. The appeal was, accordingly, dismissed on 25 August, 2025.

Arguments of the Appellant:

- The appellant argued that the NCLT erred in rejecting the Section 9 application by holding that the outstanding debt was not an operational debt simply because it was governed by a Memorandum of Understanding (MoU) dated 9 June, 2018.
- The MoU was merely an agreement for the manner of payment for one bill of ₹2.5 crore, and therefore, the nature of the debt (arising from invoices for professional services) remained an operational debt.
- Rendering legal services falls within the meaning of "operational debt" under Section 5(21) of the IBC.
- The appellant contended that the objection regarding the joint venture being an unincorporated entity was "against the settled principles of law" and liable to be rejected.
- The appellant relied on NCLAT judgments holding that Section 69(2) of the Partnership Act (which bars suits by unregistered firms) was not applicable to Section 9 applications under the IBC, as these are "proceedings" and not "suits".
- Additionally, the appellant cited a Delhi High Court judgment stating that an aggrieved party is entitled to proceed against respondents jointly and severally.
- The appellant argued that having an MoU with the Corporate Debtor/Respondent, which made part payment, negated the need to implead all three companies separately.

Arguments of the Respondent:

- The primary argument was that the Section 9 application was not maintainable against the respondent because it is a joint venture and was never incorporated as a corporate entity.
- Proceedings under Section 9 of the IBC can only be initiated against a "corporate debtor," which, by definition under Sections 3(7) and 3(8) of the IBC, must be a "corporate person" (i.e., a company, LLP, or other limited liability entity). Since the respondent is not

a corporate person, no application under Section 9 was maintainable.

- This objection was raised from the outset in the reply to the demand notice, and the NCLT had indeed directed the appellant to file an affidavit on this maintainability issue.
- The respondent highlighted that CIRP had already been completed against two of the joint venture's members, SMS Paryavaran Limited and M/s. Vishwa Infrastructures and Services Private Limited.
- In the CIRP of SMS Paryavaran Limited (the lead member of the JV), the appellant had filed a claim for the same amount of ₹2,49,00,000/- as a financial creditor, which was not admitted by the Resolution Professional (RP) on 26 September, 2020. The appellant did not further agitate this rejection. A separate claim for ₹13,07,060/- as an operational creditor was admitted and a resolution plan approved, proposing payments to the appellant.
- The demand notice and the subsequent Section 9 application were "without jurisdiction and contrary to the IBC". The claim itself was stated to be "frivolous and malicious."

Held:

- A Section 9 application under IBC is not maintainable against an unincorporated joint venture. The respondent was formed by an agreement between three companies and is not an incorporated entity. The IBC defines a "corporate person" in Section 3(7) as a company (under the Companies Act, 2013), a Limited Liability Partnership (LLP), or any other person incorporated with limited liability under any law. Since the respondent does not fall under these definitions, it is not a "corporate person".
- Section 9 proceedings can only be initiated against a "corporate debtor". Section 3(8) of the IBC defines a "corporate debtor" as a "corporate person" who owes a debt. As the respondent is not a corporate person, it cannot be a corporate debtor under the IBC.

SEBI

SEBI Adjudication Order relating to Hindenburg Allegations against Adani Group with respect to transactions with Adicorp Enterprises Private Limited.

Facts of the Case:

- The investigation by the Securities and Exchange Board of India (SEBI) was initiated following the publication of the Hindenburg Report on January 24, 2023 which alleged that Adicorp Enterprises Private Limited (Noticee No. 3) was used as a conduit to route funds from various Adani Group companies to the publicly listed Adani Power Limited (APL/Noticee No. 2).
- The investigation was initiated against the below mentioned five entities:
  - Noticee No. 1 (APSEZ): Adani Ports & Special Economic Zone Limited
  - Noticee No. 2 (APL): Adani Power Limited
  - Noticee No. 3 (Adicorp): Adicorp Enterprises Private Limited
  - Noticee No. 4: Mr. Gautam Shantilal Adani
  - Noticee No. 5: Mr. Rajesh Shantilal Adani

  [Hereinafter referred to as 'Noticees']
- SEBI investigated financial transactions between the Noticees during the financial

year 2012-13 to 2020-21. SEBI alleged that Noticee No. 1 provided a total loan of INR 1282 crore to Noticee No. 3 between December 2012 and October 2018. Noticee No. 3 then transferred the same amount (INR 1282 Crores) to Noticee No. 2 on the same day or the next day, indicating it was used as a pass-through entity. SEBI further alleged that loan repayments done, along with interest, were also routed back from Noticee No. 2 to Noticee No. 3, which then repaid Noticee No. 1/its subsidiary, Adani Logistics Ltd. ('ALL'). SEBI further alleged that Noticee No. 3 gained 20 basis points of interest by lending at a higher rate than its borrowing rate in this transaction.

- SEBI further raised alleged red flags on loans by Noticee No. 3 due to its limited physical presence, heavy financial dealings with the Adani Group (66-67% of transactions), low net worth relative to loans, 99% of expenses being interest payments, hasty loan agreements without credit checks, and a director with a 30-year personal connection to the Adani family. The SCN used these points to support its allegation that the transactions were "in substance" Related Party Transactions (RPTs).
- On perusal of the Related Party disclosures made by Noticee nos. 1 and 2 under the relevant heads in their Annual Reports for F.Ys 2012-13, 2013-14, 2014-15, 2018-19, 2019-20, and 2020-21, SEBI observed that the above-stated loan transactions that were allegedly routed through Adicorp had not been disclosed in the Annual Reports for relevant years by Noticee nos. 1 and 2. SEBI alleged that the above lack of disclosures were corroborated by Mr. Muthukumaran Doraiswami, CFO of the Noticee no. 1, in his statement recorded on June 02, 2023 and by Mr. Shailesh Sawa, CFO of the Noticee no. 2, in his statement recorded on June 01, 2023. They have stated to have confirmed that they did not make any disclosures regarding their transactions with Adicorp.
- It was further alleged that transactions routed by the Noticee no.1 to the Noticee no.2 through the Noticee no.3 for the period FY 2012-13 were required to be submitted to the Audit Committee for its review in terms of sub-entry (2) of entry (E) of sub-clause (II) of Clause 49 of the then Listing Agreement. Similarly, with respect to the transactions done in FY 2018-19, it has been alleged that in terms of the LODR Regulations, Noticee nos. 1 and 2 were required to obtain approval from the Audit Committee before entering into transactions. However, no such approval was obtained by Noticee nos.1 and 2.
- It was further alleged that, being at the helm of the affairs of the company, both Noticee nos. 4 and 5, during the entire investigation period, were KMPs and persons in charge of the financial transactions stated above and further being responsible for managing the affairs of Noticee nos. 1 and 2, the above two Noticees i.e. Noticee nos. 4 and 5 are allegedly viewed as persons who have knowingly undertaken, and approved the transactions in violation of various regulatory requirements.

Alleged violations:

- **Against Noticee Nos. 1 (APSEZ) and 2 (APL):**
  - They structured the loan transactions through Noticee No. 3 to avoid classifying them as RPTs under the Listing Agreement and LODR Regulations.
  - The transactions, being RPTs "in substance" under accounting standards (AS-18/Ind-AS 24), were not disclosed in the Annual Reports for six financial years (2012-13, 2013-14, 2014-15, 2018-19, 2019-20, and 2020-21).
  - They failed to obtain the mandatory Audit Committee review/approvals for the transactions in FY 2012-13 and FY 2018-19.
  - They allegedly made incorrect disclosures and misrepresented Related Party facts in their Annual reports for six years.

- The alleged actions constituted violations of Section 12A of the SEBI Act and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations)

- **Against Noticee Nos. 4 (Mr. Gautam Adani) and 5 (Mr. Rajesh Adani):**
  - Being Promoters, Directors, and key members of the Finance/Management Committees that approved the loans, they were alleged to have devised and executed the scheme to conceal the RPTs.
  - They were alleged to have made wrong and false certifications of the financials of Noticee Nos. 1 and 2 for six years.
  - They were alleged to be liable for the violations of the companies (Noticee Nos. 1 and 2) by invoking Section 27 of the SEBI Act.
- **Against Noticee No. 3**
  - Noticee No. 3 was alleged to have knowingly facilitated the execution of the scheme/artifice created by the other Noticees by acting as the conduit for routing funds.

Arguments of Noticee 1

- Transaction of loan is not a related party transaction as the Noticee no. 3 was not a related party: The Noticees (nos. 2, 3, 4, and 5) rely strictly on the statutory definition of an RPT as it existed under the Listing Agreement and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) before the 2021 amendment. The pre-amendment law explicitly required an RPT to be a direct transaction between the listed entity (Notice No.1) and a statutory 'related party' (Noticee no. 2). Since Noticee no. 3 was not a legally defined related party of Noticee 1 or Noticee 2, the transaction—structured as a loan from Noticee no. 1 to Noticee no. 3 and then from Noticee no. 3 to Noticee no. 2—legally constituted two separate, non-RPT transactions.
- Compliance Obligation (Disclosure & Approval) post 2021: The subsequent LODR amendment, 2021 (which broadened the definition to cover transactions "intended to benefit" a related party, even if through an unrelated entity) is cited as definitive proof that the old law did not cover indirect transactions. Noticees contended that SEBI's case was based on a new law that did not exist at the time of the transactions. The Noticees claimed that SEBI was trying to apply the 2021 amendment to transactions that occurred between 2012 and 2018. Before the 2021 amendment, the definition of a "related party transaction" was narrower and explicitly required a direct transaction between a listed entity and a statutory related party. The 2021 amendment broadened this definition to include transactions that were structured through an unrelated entity but were intended to benefit a related party. The Noticees' argument rested on the legal principle that a law cannot be applied retrospectively to penalize actions that were not illegal at the time they were performed. They argued that because Noticee no. 3 was not a legally defined related party under the old law, the transactions were not RPTs, and therefore, no disclosure or approval obligations existed. SEBI's attempt to use the new "substance over form" rule to classify the old transactions as RPTs was, in their view, an illegal retroactive application of the law. If the transaction, in legal form, was not an RPT, then no obligation arose to comply with RPT-specific requirements. This means no Audit Committee approval, no shareholder approval, and no specific disclosure in the Annual Reports were legally mandated under the LODR Regulations for RPTs.

SEBI's Argument:

- Transaction of loan is not a related party transaction as Noticee no. 3 was not a related party: SEBI stated that the applicable accounting Standard is IndAS 24, clause 9 of which defines "related party" as a person or entity that is related to the entity that is preparing its financial statements (reporting entity). This relation is also defined in terms of control or significant influence or group entity or joint venture or associate or being a key managerial person. Para 11 of IndAS-24 states that 'providers of finance' are not treated as related parties by virtue of their normal dealings with an entity even though they may affect the freedom of action of any entity or participate in its decision making process. The same principle finds place in AS18 also. From the above, it is seen that as per the plain reading of the Listing Agreement or the LODR Regulations, if the Noticee no. 3 is to be the related party of the Noticee no. 1 or the Noticee no. 2, there should be control/ significant influence in decision making, of one entity by another, or it should be part of the same group or a joint venture. This is not alleged in the SCN. In fact, it is not an allegation in the SCN that the Noticee no. 3 is the related party of the Noticee no. 1 or the Noticee no. 2. Thus, it is held that the Noticee no. 3 is not a related party of the Noticee no. 1 or the Noticee no. 2.
- Compliance Obligation (Disclosure & Approval) post 2021: SEBI stated that before the 2021 amendment, only transactions between related parties were covered in the definition of "related party transaction". However, after the 2021 amendment, transactions between a listed entity/any of its subsidiaries and any person (which includes an unrelated party also) have also been included within the definition of "related party transaction", if the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries. SEBI further stated that it is settled law that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. Law cannot be interpreted in a manner that allows time to listed companies to adjust their transactions to the new, increased scope (glide path) while intending to punish those who have already adjusted their transactions before the coming into effect of the increased scope. The transactions between Noticees which resulted in benefit to the related party were not held to be a related party transaction by Hon'ble SAT under the pre-amended provisions. This decision, when seen along with the stand of SEBI before Hon'ble SAT, makes it clear that SEBI in the past had a view that transactions similar to impugned transactions were not covered within the definition of related party transactions .

Penalty:

Allegations not established. No penalty levied on Noticees.

Companies Act

In the matter of Drharors Aesthetics Pvt. Ltd. v. Debulal Banerjee, Delhi High Court judgment dated 11 August 2025.

Facts of the case:

- Mr. Debulal Banerjee (hereinafter called as Respondent) is the shareholder director of the company Drharors Aesthetics Pvt. Ltd. (hereinafter called as Appellant/Company)
- The respondent was appointed as director

of the company pursuant to the MoU dated 29 September, 2023, the Executive Employment Agreement dated 19 October 2023, and the Shareholders' Agreement dated 08 November, 2023. As per these agreements, the Respondent was entrusted with responsibilities relating to growth, franchise development, marketing, and day-to-day operations of the company.

- The Respondent alleged that shortly after his appointment, he was denied access to the Company's email systems, his salary was withheld, and Board meetings were convened at very short notice on *01.04.2025, 04.04.2025, 15.04.2025, and 12.05.2025* with the sole agenda of removing him from Directorship.
- Respondent claimed that these actions were carried out without due process or compliance with Sections 169 and 173(3) of the Companies Act, 2013 (the Act), which require a reasonable opportunity of hearing and adequate notice of Board meetings.
- Consequently, Respondent filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, (A&C Act) before the Commercial Court seeking interim protection.
- The District Judge granted an injunction restraining the Company from proceeding with his removal, on the ground that the notices were not proper, and the Respondent had not been given a fair chance to defend himself.
- The Appellant has challenged this order of the District Judge before the Hon'ble Delhi High Court.

Appellants' contentions:

The Appellant argued that:

- The injunction order went beyond the scope of Section 9 of the A&C Act, by virtually granting the respondent final relief, as it blocked the shareholders' statutory right under Section 169 of the Act to remove a director.
- The company further argued that notices for the board and general meetings were duly issued in accordance with the articles of association and the Act and therefore could not be challenged merely on the ground of short notice.
- The Company also justified the urgency of the meetings, alleging that the Respondent had engaged in financial irregularities, breach of fiduciary duty, and interference with statutory audits, all of which necessitated immediate action.
- It was emphasized by the Appellant that Section 9 is meant only to preserve the subject matter of arbitration and not to adjudicate disputes conclusively at the interim stage. The respondent should raise his grievances in arbitration or under the Act.
- In order to support its arguments, the appellant placed Reliance on the following cases:
- *LIC v. Escorts Ltd.* (1986) 1 SCC 264 – courts should not interfere with internal corporate management absent a statutory violation.
- *Ravinder Sabharwal v. XAD Inc.* (2018) – courts cannot restrain shareholders from exercising their statutory rights through an injunction.

Respondent's contentions:

- The impugned notices were procedurally defective, violating Section 169 and Section 173(3), as they neither gave adequate notice nor disclosed the grounds of his proposed removal.
- The Company's allegations of "substantial liabilities" and "operational challenges" were vague and unsubstantiated, showing that the removal process was motivated by mala fide intent rather than genuine governance concerns.

- Respondent's appointment arose from a binding Employment Agreement and Shareholders' Agreement, which entitled him to remuneration and equity. Ignoring these agreements, he argued, amounted to contractual and statutory violations.
- Respondent's removal, if allowed without proper process, would cause irreparable harm to his professional reputation, financial interests, and contractual rights. Reliance was placed on the following cases by the Respondent: *Jai Kumar Arya v. Chhaya Devi* (2017) – interim protection under Section 9 was upheld where a director faced removal without due process, underscoring that courts can intervene when procedural improprieties are evident.

COURT HELD:

- In this regard, after considering the arguments and documents presented by both parties, the Honourable Delhi High Court held that, the injunction granted by the District Judge, restraining the Appellant Company from convening Board and General Meetings for considering the removal of the Respondent from Directorship, was neither legally tenable nor supported by a sufficient factual foundation. The proviso to Section 173(3) of the Act permits shorter notice for Board Meetings to transact urgent business. Allegations of financial irregularities constituted such urgency. Therefore, issuance of a short notice could not by itself be treated as illegal. It is well settled that no injunction can be granted to restrain a company from holding its General Meetings or to prevent shareholders from exercising their statutory rights. The District Judge overlooked this settled principle of law.
- The Impugned Order did not examine the existence of a prima facie case, balance of convenience, or irreparable injury – all of which are essential preconditions for the grant of interim relief.
- The Impugned Order effectively paralysed the internal corporate functioning of the Appellant Company and was contrary to both statutory provisions and judicial precedents.
- The appeals succeed and are accordingly allowed. The Impugned Order passed by the District Judge is hereby set aside. The parties are at liberty to pursue remedies available under the Act or through arbitration, in accordance with law.



Fostering Growth, Together.

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 Press Releases

Statement on Developmental and Regulatory Policies

A statement on Developmental and Regulatory Policies (DRP) is a periodic announcement by the Reserve Bank of India (RBI), that outlines new and existing measures to foster economic growth (developmental) and ensure stability and fairness in the financial system (regulatory). These statements typically cover areas like liquidity, financial markets, payment systems, and the supervision of financial institutions to promote efficiency, innovation, inclusion, and resilience.

The RBI recently issued a statement on Developmental and Regulatory Policies on 1st October 2025, highlighting various developmental and regulatory policy measures relating to (i) Regulations; (ii) Foreign Exchange Management; (iii) Consumer Protection, and (iv) Financial Markets.

In relation to FEMA, the statement provided the following:

a. **Foreign Currency accounts by Indian exporters- extension of time period for repatriation from accounts held in IFSC in India**: In January 2025, RBI had permitted Indian exporters to open foreign currency accounts with a bank outside India for realisation of export proceeds. As per the amendment, the funds in these accounts were to be used for making import payment or have to be repatriated by the end of next month from the date of receipt of the funds.

   Promoting IFSC, RBI has further extended this liberalisation for foreign currency accounts maintained in IFSC in India. It has now been decided to extend the time period for repatriation, from one month to three months, in case of such foreign currency accounts maintained in IFSC in India.

   (This will encourage Indian exporters to open accounts with IFSC Banking Units and

also increase forex liquidity in IFSC. The amendments to regulations are yet to be notified.)

b. Merchanting Trade Transactions (MTT): Global uncertainties in trade are resulting in supply chain disruptions, making it challenging for Indian merchants to meet their contractual obligations in time. As per MTT rules, outlay of foreign exchange is allowed upto four months. It has now been decided to increase the period for the forex outlay from four months to six months, in case of MTT.

   (This relaxation is expected to help Indian merchants overcome the challenges they face in completing their business transactions efficiently while maintaining profitability. The detailed amendment is explained below.)

c. Relaxation in compliance requirements for Small Value Exporters/Importers: In order to ease compliance for small value goods and services exporters/importers, RBI has decided to simplify the process of reconciliation in EDPMS and IDPMS.

   As per the revised guidelines, bills can be

   - reconciled and closed by an AD bank in EDPMS or IDPMS,
   - based on a declaration by the concerned exporter or importer,
   - that the amount has been realised, for a shipping bill, or paid against a Bill of Entry,
   - for entries (including outstanding entries) in EDPMS/IDPMS of value less than INR 10 lakh per bill.
   - The revised procedure will also enable a reduction in the realisable value of bills by AD banks based on such a declaration.

(This measure is expected to reduce compliance burden on small value exporters and importers and enhance ease of doing business. The detailed amendment is explained below.)

d. Review of External Commercial Borrowing Framework: To rationalise and simplify the regulations governing External Commercial Borrowings (ECB), RBI has undertaken a review of the existing provisions under the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018.

   Based on the review, a revised framework that provides for expansion of the eligible borrower and recognized lender base, rationalization of borrowing limits, rationalization of restrictions on the average maturity period, removal of restrictions on the cost of borrowing for ECBs, review of end-use restrictions, and simplification of reporting requirements, is proposed to be introduced.

   (The ECB framework was liberalised to a great extent in 2019. Further liberalisation of the framework would benefit the Indian economy to a great extent. The amendments to regulations are yet to be notified. Vide Press Release 2025-2026/1235, the RBI has issued draft regulations for feedback from stakeholders up to 24 October 2025.)

e. Rationalisation of regulations for Establishment in India of a Branch Office or a Liaison Office or a Project Office or any other place of business: The current regulations for "Establishment in India of a Branch Office or a Liaison Office or a Project Office or any other place of business" were issued by the Reserve Bank in 2016. Vide Press Release 2025-2026/1232, the RBI has issued draft regulations for feedback from stakeholders up to 24 October 2025.

   (RBI has provided that the revised regulations (to be issued) are principle-driven and enable delegation of more powers to AD banks and reduction of compliance burden for enhancing the ease of doing business in India.)

Press Release: 2025-2026/1218 dated 1st October 2025

(Comments: The draft directions reflect a progressive shift by the RBI towards enhanced ease of doing business.)

Directions to AD Banks - Measures to provide flexibility and ease compliance burden on Exporters, Importers, and Merchanting Traders

As announced in the Statement on Developmental and Regulatory Policies dated 1st October 2025, the RBI issued another press release directing the AD banks with the following changes:

(A) Merchanting Trade Transactions (MTT)

With a view to facilitating Indian merchants to manage their MTT efficiently, keeping in view the global trade-related uncertainties, RBI issued A.P. (DIR Series) Circular No.11 dated 1st October 2025, wherein it has been decided to increase the time period for the forex outlay from four months to six months, in case of MTT. The circular has been covered in detail below.

(B) Simplified process for Closure of Shipping Bills and Bills of Entry to ease compliance burden on Exporters and Importers

RBI had issued draft Directions on 11th July 2025, open for public comments, aimed at simplifying processes related to reconciliation of small-value export transactions in the EDPMS.

The draft Directions were reviewed based on the feedback received from stakeholders, and it has been decided to also include small-value import transactions that are reported in the IDPMS under the simplified process for reconciliation/closure of such transactions.

RBI has issued A.P. (DIR Series) Circular No.12 dated 1st October 2025. The circular has been covered in detail below.

(Comments: The changes to extant directions have been made to provide operational flexibility and ease compliance burden on Exporters, Importers, and Merchanting Traders.)

Press Release: 2025-2026/1225 dated 1st October 2025

B. Amendment through A.P. (DIR Series) Circular

Merchanting Trade Transactions (MTT) – Review of the time period for outlay of foreign exchange

Currently, as per the MTT framework, the entire MTT is required to be completed within an overall period of nine months, and no outlay of foreign exchange is permitted beyond four months. The commencement date of merchanting trade shall be the date of shipment/export leg receipt or import leg payment, whichever is first. The completion date shall be the date of shipment/ export leg receipt or import leg payment, whichever is the last.

In order to facilitate merchanting traders to manage their MTT efficiently, RBI has decided to increase the time period for outlay of foreign exchange from four to six months.

(Comments: A merchanting trade transaction (MTT) is an international trade scenario where an intermediary, or "merchant," buys goods from a foreign supplier and sells them to a different foreign buyer, all without the goods ever physically entering the intermediary's home country. Accordingly, for a trade to be classified as merchanting trade i) Goods acquired should not enter the Domestic Tariff Area and ii) the state of the goods should not undergo any transformation.

The last overhaul of the framework applicable to MTT was undertaken in the year 2020. While keeping all other directions unchanged, the RBI

has liberalized the timeline for foreign exchange outlay. It should be remembered that the entire MTT should be completed within the overall period of 9 months.)

A.P. (DIR Series) Circular No. 11 dated 1st October 2025

Export Data Processing and Monitoring System (EDPMS) & Import Data Processing and Monitoring System (IDPMS) – reconciliation of export /import entries – Review of Guidelines

AD banks have been instructed by RBI to adopt the following procedure while closing entries (including outstanding entries) in EDPMS & IDPMS of value equivalent to ₹10 lakh per entry/ bill or less:

a. Such entries shall be reconciled and closed based on a declaration provided by the concerned exporter that the amount has been realised or by the importer that the amount has been paid.

b. Any reduction in declared value or invoice value of the shipping bills/bills of entry shall also be accepted, based on the declaration by the concerned exporter or importer.

c. The declarations referred above may also be received on a quarterly basis from the exporters and importers in a consolidated manner (by combining several bills in one declaration) for bulk reconciliation and closing of EDPMS/IDPMS entries.

RBI has already instructed AD banks to review the charges levied for handling these small-value export and import transactions, keeping in view the revised procedure/relaxations mentioned above, and ensure that the same are commensurate with the services rendered.



AD banks are also not permitted to levy any penal charges (penalty) for delays in adherence to any regulatory guidelines.

Comments: RBI's move to facilitate the timely closure of entries in EDPMS & IDPMS and reduce compliance burden on small exporters and importers is a sigh of relief. The streamlining and closure of EDPMS & IDPMS by AD banks and doing away with the need for RBI approval would not only save time and burden on small exporters and importers, but would also help clear many legacy outstanding entries in the EDPMS & IDPMS. The Master Direction – Export of Goods & Services and Master Direction – Import of Goods & Services shall accordingly be updated to reflect the above changes.

A.P. (DIR Series) Circular No. 12 dated 1st October 2025.

Best of the Rest



Rahul Hakani
Advocate



Niyati Mankad
Advocate

Kalyani Transco v. Bhushan Power and Steel Ltd. & Ors. [2025 INSC 1165]

Section 31 of the Insolvency and Bankruptcy Code ("IBC") — Resolution Plan once approved under S. 31 is binding on all stakeholders, Committee of Creditors ("CoC") continues till full implementation, and no claim (including CIRP EBITDA or contingent debts) can be raised dehors the Plan, CoC's commercial wisdom being paramount."

Facts:

Bhushan Power & Steel Ltd. (BPSL) was among the "dirty dozen" corporate defaulters identified by the RBI in 2017. Pursuant to RBI's direction, Punjab National Bank initiated CIRP under Section 7 of the IBC before the NCLT, which admitted the petition on 26 July 2017. Claims admitted included approximately ₹47,204 crore from Financial Creditors and ₹621 crore from Operational Creditors. JSW Steel emerged as the highest bidder and its Resolution Plan was approved by the CoC and later by the NCLT on 5 September 2019. The NCLT's approval was, however, made subject to conditions regarding the distribution of EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortisation) earned during the CIRP period, directing that such interim profits generated from the running operations of BPSL should be distributed amongst the creditors rather than retained by the resolution applicant. The NCLAT, on appeal, modified this finding on 17 February 2020, holding that the Resolution Plan, being silent on EBITDA, could not be reopened and therefore allowed JSW to retain the same. Aggrieved by this modification, the erstwhile promoters (Sanjay Singal) and various operational creditors (Kalyani Transco, Jaldhi, Medi, and Darcl) approached the Supreme Court alleging delay in implementation, arbitrary reclassification of claims, and violation of statutory provisions. The CoC and JSW also contested connected issues relating to the ED's provisional attachment under the PMLA and the operation of Section 32A IBC granting immunity to BPSL's assets.

Issues Involved:

1. Whether erstwhile promoters had locus standi to maintain appeals under Section 62 of the IBC?
2. Whether the CoC ceases to exist after approval of the Resolution Plan by the Adjudicating Authority?
3. Whether Clauses 3.1(a) and 4(iii) of the Resolution Plan allowing CoC to extend implementation period were contrary to law?
4. Whether JSW had failed in its upfront equity infusion obligations and if CCDs could be treated as equity?
5. Whether Operational Creditors ("OCs") were wrongly denied priority payments in contravention of Section 30(2) read with Regulation 38 of CIRP Regulations?
6. Treatment of EBITDA generated during CIRP and whether it must be distributed among creditors.
7. Validity of classification of Jaldhi's arbitral award claims as "contingent" and payment of pre-CIRP dues to Medi and Darcl.

Held:

The Supreme Court held that the appeals by the erstwhile promoters and operational creditors were not maintainable, as locus under Sections 61–62 of the IBC is confined to "persons aggrieved," and erstwhile promoters lose their rights once CIRP commences (*Arun Kumar Jagatramka v. Jindal Steel and Power Ltd.*, (2021) 7 SCC 474; *Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd.,* (2021) 3 SCC 475). Nevertheless, the Court examined the issues on merits and reaffirmed that the Committee of Creditors continues to subsist until full implementation of the Resolution Plan or liquidation under Section 33, read with Regulation 18(2) of the IBBI (CIRP) Regulations, 2018, and its oversight role cannot be curtailed.

On the question of EBITDA distribution, the Court interpreted Section 31(1) of the IBC, which renders an approved resolution plan binding on all stakeholders. Since the Request for Resolution Plan (RfRP) and the plan itself were silent on the distribution of profits earned during CIRP, such claims could not be raised subsequently. The Court noted that the NCLT's direction to distribute the CIRP-period EBITDA among creditors was contrary to the finality of an approved plan, as recognised in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* and *Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*. The profits generated during CIRP were thus held to accrue to the successful resolution applicant (JSW), not the creditors.

The Court further held that Operational Creditors were entitled only to liquidation value under Section 30(2)(b) and Regulation 38 (as it stood prior to the 2019 amendment), which in this case was nil, rendering JSW's ex gratia payments valid and sufficient. The use of Compulsorily Convertible Debentures (CCDs) for equity infusion was upheld, following *IFCI Ltd. v. Sutanu Sinha.* Classification of Jaldhi's arbitral award claims as contingent was found consistent with the IBC framework, and Medi and Darcl's pre-CIRP dues were rightly excluded under Sections 14, 20, 25 and 28, which allow only CIRP-period operational payments to maintain the corporate debtor as a going concern. Finally, the Court upheld that Section 32A of the IBC grants immunity to the corporate debtor and its assets from prosecution for past offences, thereby overriding the ED's attachments under the PMLA.

Reiterating that the commercial wisdom of the CoC is paramount and judicial interference is limited, the Court dismissed all appeals and upheld the Resolution Plan of JSW Steel as fully compliant with the provisions and objectives of the Insolvency and Bankruptcy Code.

Sanjabij Tari v. Kishore S. Borcar & Anr. [2025 INSC 1158]

Negotiable Instruments Act, 1881 ("NI Act") — Chapter XVII (Sections 138 to 148) — Once execution of the cheque is admitted, the presumptions under Sections 118 and 139 of the NI Act arise, and breach of Section 269SS of the IT Act does not render the debt unenforceable under Section 138 NI Act.

Facts:

The complainant (Appellant) advanced a friendly loan of ₹6,00,000/- to the accused (Respondent No.1) and was issued a cheque, which was dishonoured upon presentation. The Appellant contended that the loan was advanced by him, partly from his own borrowed funds and partly from his cloth merchant father's funds. The Respondent No. 1-Accused argued that the Appellant's meagre salary of ₹2,300/- per month showed he lacked the financial capacity to advance such a huge loan and that a blank signed cheque was given to the Appellant to enable him to obtain a bank loan. The Trial Court (2007) convicted the accused under Section 138 NI Act, finding that the loan was proved and presumptions under Sections 118 and 139 stood unrebutted. The Sessions Court (2008) upheld the conviction. However, in revision, the Bombay High Court (2009) acquitted the accused, holding that the complainant lacked the financial capacity to advance the loan. The complainant challenged the High Court order before the Supreme Court.

Issues Involved:

1. Whether the presumption under Sections 118 and 139 of the NI Act was rebutted by the accused by questioning the complainant's financial capacity?
2. Whether violation of Section 269SS of the Income-tax Act renders a cash loan above ₹20,000/- unenforceable in proceedings under Section 138 NI Act?
3. Whether the High Court, in exercise of revisional jurisdiction, could overturn concurrent findings of the Trial Court and Sessions Court without perversity in the appreciation of evidence?
4. What directions should be issued in light of the massive pendency of cheque-bouncing cases under Section 138 NI Act?

Held:

The Supreme Court allowed the appeal, setting aside the High Court's order and restoring the concurrent judgments of the Trial Court and Sessions Court. The Court held that once the execution of the cheque is admitted, the presumptions under Section 118 and Section 139 of the NI Act arise against the accused. The defence that a signed blank cheque was issued to enable the complainant to obtain a loan was deemed "unbelievable and absurd" and insufficient to rebut the presumptions. The accused failed to lead evidence regarding the complainant's financial incapacity or reply to the statutory notice, which leads to an inference of merit in the complainant's version. The Court rejected the view taken by some Courts, including the Kerala High Court in *P.C. Hari v. Shine Varghese & Anr.*, that a cash transaction above ₹20,000/- in violation of Section 269SS of the Income Tax Act, 1961, is not a 'legally enforceable debt,' clarifying that violation of Section 269SS only attracts a penalty under Section 271D, and does not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions. The Court relied upon *Bir Singh v. Mukesh Kumar* [(2019) 4 SCC 197], *Rangappa v. Sri Mohan* [(2010) 11 SCC 441], *APS Forex Services Private Limited v. Shakti International Fashion Linkers and Ors.* [(2020) 12 SCC 724], *Tedhi Singh v. Narayan Dass Mahant* [(2022) 6 SCC 735], and *MMTC Ltd. and Another v. Medchl Chemicals & Pharma (P) Ltd.*

and Another [(2002) 1 SCC 234]. The Respondent No. 1 was directed to pay ₹7,50,000/- in 15 equated monthly installments of ₹50,000/- each. The judgment also issued revised guidelines for compounding of the offence under Section 138 of the NI Act.

Kailash Maheshwari and Ors v. State of Maharashtra and Ors. Judgment dated 25/09/2025, Writ Petition No. 10587 of 2025 [Bombay High Court]

Maharashtra Cooperative Societies Act, 1960 ("MCS Act") — Ss. 75(2), 75(4) & 75(5) — Disqualification of Managing Committee members — Scope and application — Held, Registrar must distinguish between core and ancillary defaults; cannot mechanically disqualify entire Committee without identifying "whose duty it was" to comply with statutory requirements — Disqualification is a serious step, not automatic — Orders disqualifying entire Committee without applying correct tests set aside.

Facts:

The Petitioners, Managing Committee members of a housing society, were disqualified by the Dy. Registrar under S.75(5) of the Maharashtra Cooperative Societies Act, 1960, for alleged failure to comply with S.75(2) and S.75(4) regarding AGMs for 2021-22, 2022-23, and 2023-24. Revision before the Divisional Joint Registrar was dismissed, affirming that reports like the plan for disposal of surplus, rectification report of earlier audits, and annual budget had not been placed before the AGM. Petitioners approached the High Court under Art. 227 contending substantial compliance and that indiscriminate disqualification of the entire Committee was unlawful.

Issue Involved:

Whether the disqualification of the entire Managing Committee under S.75(5) of the Maharashtra Cooperative Societies Act, 1960, without distinguishing between core and ancillary defaults and without fixing individual responsibility, was justified.

Held:

The Court held that the legislative scheme of S.75, especially after the 2013 amendment, aims at strengthening accountability through mandatory AGMs, disclosures, audits, and penalties. However, S.75(5) uses the expression "whose duty it was", which requires the Registrar to identify the specific officer(s) responsible (Chairman, Secretary, Treasurer) instead of imposing blanket disqualification on all Committee members. Registrar must also distinguish between *core defaults* (e.g., failure to place audited accounts, audit reports, rectification reports) and *ancillary defaults* (e.g., surplus disposal plan where no surplus exists). Grave defaults justify disqualification; technical lapses warrant directions or penalties. Since the impugned orders failed to apply these tests, they were quashed. Matter remitted to the Registrar for fresh consideration in accordance with the law. Precedents and legislative history of the 2013 amendment were relied upon to emphasise that disqualification cannot be automatic but must be proportionate and based on credible evidence of duty and default.

> "The collector of revenue should act like a bee, which collects honey without injuring the flower."
>
> **— *Kautilya (Chanakya)***

THE CHAMBER NEWS



CA Mehul Sheth



CA Ankit Sanghavi

Important events and happenings that took place online/offline from September 1, 2025 to September 30, 2025 are being reported as under:

ADMISSION OF NEW MEMBERS:

The details of new members who were admitted in the Managing Council Meeting held on September 19, 2025 are as under:

Type of Memberships	No. of Members
Life Member	11
Ordinary Member	38
Half yearly - Ordinary	2
Digital Membership	8
Student Member	16
Associate	0
Total	75

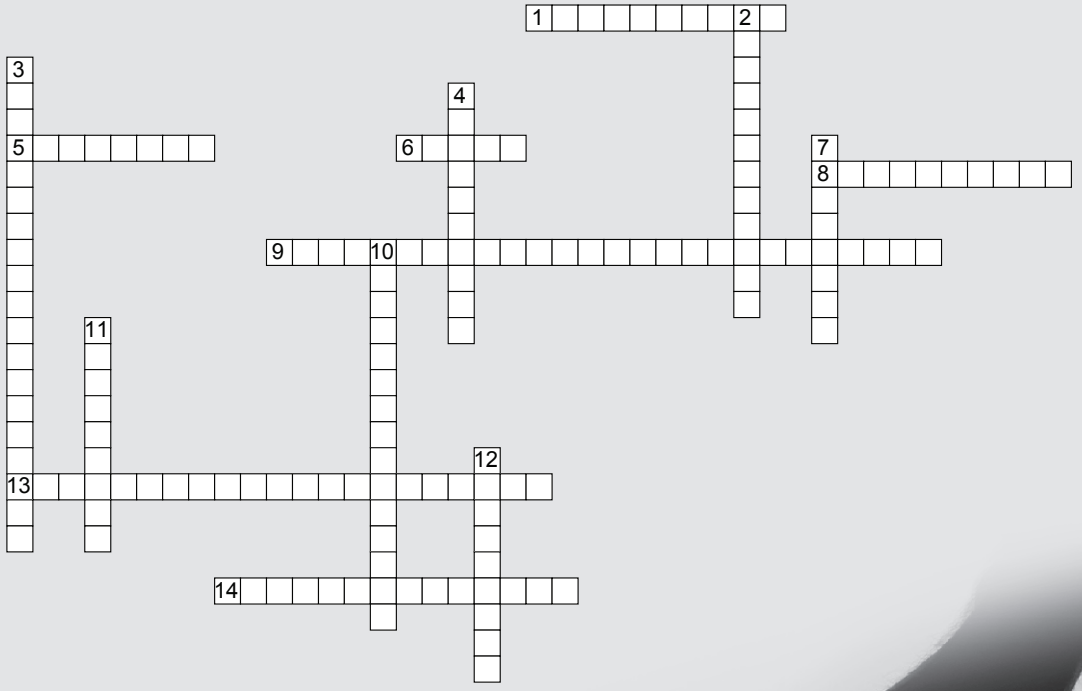
PAST PROGRAMMES

Sr. No.	Date	Topics	Speakers
Student			
1	2nd E-certificate Course on Practical Income Tax & Litigation Masterclass (contd.)		
a	03.09.2025	Aggregation of Income, set-off & carry forward of losses	CA Arwa Mahabaleshwarwala

b	04.09.2025	Overview of International Taxation & Transfer Pricing	CA Harshal Bhuta
c	05.09.2025	Taxation of Charitable institutions – Sections 11,12,13	CA Gunja Thakrar
d	08.09.2025	Deductions from Gross Total Income & other Exemptions	CA Avinash Rawani
e	10.09.2025	Tax Deducted & Collected at Source & Advance Tax	CA Mahendra Sanghvi
f	12.09.2025	Rate of tax & Special scheme of Taxation	CA Shashank Mehta
g	16.09.2025	Return of Income and Tax Audit Forms	CA Gautam Mota
h	18.09.2025	Assessment, Re-Assessment proceedings	Mr. Shashi Bekal, Adv.
i	19.09.2025	Revision & Rectification provisions	Ms. Kinjal Bhuta, Advocate
j	24.09.2025	Prohibited Transactions, Penalty & Prosecution, Fees	Mr. Paras S. Savla, Advocate
k	25.09.2025	Overview of the Provisions of Search & Seizure	Mr. Ajay Singh, Advocate
l	26.09.2025	Dispute Resolution	Mr. Rahul Hakani, Adv
m	29.09.2025	Alternative Dispute Resolution (ADR) in Income-tax	CA Nikhil Tiwari
Digital Connect			
1	3.9.2025	Meet Your 24/7 Team Player: ChatGPT Agent	CA Karan Chandwani
Direct Taxes			
1	6.8.2025	Webinar on Shares, Securities & Derivatives: A Taxation Masterclass – Part 2	CA P. V. Srinivasan
2	24.9.2025	ISG - Recent Important Decisions Under Direct Tax	Adv Ritu Punjabi
Accounting & Auditing			
1	5.9.2025	Webinar on Financial Statements of Non-corporate Entities – practical challenges in relation to Audit Trail	CA Prashant Daftary
International Taxation			
1	11.9.2025	Study Circle - Reverse Flip - Practical aspects and tax considerations	CA Karan Parekh
2	CTC Centenary Transfer Pricing Silver Series 2025 - Online Master Class		
a	19.9.2025	Evolution of 25 Years of Transfer Pricing - Reflecting on the past and anticipating the future	CA Vijay Iyer

b	20.9.2025	Local File Documentation - AE, IT, SDT, FAR, and Characterisation	CA Akshay Kenkre
c		Local File Documentation - Selection and Application of Most Appropriate Methods, including Economic Adjustments	CA Suchint Majumdar
d	24.9.2025	Master File Documentation & CBCR	CA Kedar Karve
e	26.9.2025	Form No. 3CEB - clause-by-clause analysis	CA Smita Patni
f	27.9.2025	Benchmarking - Indian (detailed) & Foreign databases (basic)	CA Hetav Vasani
g		Benchmarking of unique transactions	CA Shefali Shah
3	22.9.2025	FEMA Study Circle - Demystifying ODI Compliance: Challenges & Best Practices	CA Abhishek Bhandari
4	23.9.2025	Analysis of Sky High Leasing decision (Mumbai ITAT) holding that, pending statutory Notification, Tax Treaty benefit cannot be denied by invoking PPT enshrined in MLI	CA Himanshu Parekh and CA Monika Wadhani
Study Circle & Study Group			
1	17.9.2025	Study Circle - Critical Issues in Renewing Registration of Charitable Institutions under Income Tax Act	Group Leader - CA Deven Shah & Chairman - CA Vipin Batavia
Membership Development & Outreach			
1	17.9.2025	SAS Meeting on Time, Patience and Power: Unlocking the Compounding Advantage	Mr. Deepak Khemani
Hyderabad Study Group			
1	20.9.2025	Permanent Establishment: Judicial Insights from the Hyatt Ruling	CA Ramprasad Thutupalli
Indirect Taxes			
1	23.9.2025	Webinar on Analysis of Important Decisions under GST Laws	Sr. Adv V, Sridharan
2	26.9.2025	Study Circle - GST Issues in Non-Profit Organisations — Societies, Schools, Hospitals, Clubs, Charitable and Religious Trusts, etc	Adv. Ramnath Prabhu & Chairman - CA Sunil Gabhawalla
Delhi Chapter			
1	24.9.2025	Recent judgment in the case of Sky High and Shelf drilling	Chairman – Mr. G S Pannu - Ex-Vice President, ITAT & Panelist – Mr Sunil Aggarwal (Standing counsel at DHC) Mr Kumar Saorabh Sharma, PWC India

Crossword



Across

1. Constitutional structure balancing powers of Union and States, crucial in taxation.
5. Article 14 guarantees this, ensuring fairness in taxation.
6. Each subject of legislation in the Constitution is called an ___ in the List.
8. An Article providing freedom of trade, commerce and intercourse across India.
9. Landmark doctrine preventing overreach of Union and State taxation powers.
13. Legislature's authority to make laws, limited by constitutional scheme.
14. The legislative list where both Union and States can make laws, including on certain taxes.

Down

2. Constitutional body adjudicating disputes on taxation between Union and States.
3. These principles guide the State in governance, including fiscal equity.
4. Article that prohibits taxation without authority of law.
7. The power of the State to levy charges for public revenue.
10. Matters not enumerated in Union or State List fall here; taxation powers may also be placed here.
11. The list that includes subjects on which only States can levy taxes.
12. The list that includes subjects on which only Parliament can levy taxes.

Scan to check the Answers



Notes

Notes

Upcoming Events



14th Residential Refresher Course on GST - Jaypee Palace Hotel & Convention Centre, Agra [8th to 11th January, 2026]



4th Residential Conference on Foreign Exchange Management Act at Radisson Blue Hotel & Spa, Nashik, Maharashtra [16th to 18th January 2026]



Centenary Year – 2 Day Conference Shatabdi Summit at Hotel Sahara Star, Mumbai [30th & 31st January, 2026]



49th Residential Refresher Course on Direct Taxes, Sheraton Grand Bengaluru Whitefield Hotel & Convention Center [5th to 8th March, 2026]

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