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THE CHAMBER OF TAX CONSULTANTS

THE CHAMBER'S JOURNAL

Your Monthly Companion on Tax & Allied Subjects

Vol. XIII | No. 6 | March 2025

INCOME-TAX BILL, 2025



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Glimpses of the One Day Conference on Practical issues under FEMA jointly with BCAS held on 22nd February, 2025 at Walchand Hirachand Hall, IMC, Mumbai



(L to R)
CA Shabbir Motorwala, Co-Chairman-CTC, CA Vijay Bhatt, President-CTC, Mr. Prashant Kumar Dayal, GM-RBI, CA Zubin Billimoria – BCAS, Vice President, CA Chetan Shah, Chairman-BCAS



CA Vijay Bhatt, President-CTC giving the welcome address



CA Zubin Billimoria – Vice President addressing the gathering

(L-R)
Shri. Kamlesh Sharma, GM, Smt. Maya Parhi, GM, Shri. Prashant Kumar Dayal, GM, CA Naresh Ajwani (Moderator) , Dr. Shiv Shankar, GM, Shri. Subhash Agarwal, Dy. GM, Shri. K K Bhagat, Dy. GM – RBI





Session Chairman
CA Mayur Nayak giving brief of the session.

Sitting (L-R)
CA Kartik Badani, CA Rutvik Sanghvi (Speaker) and CA Nemin Shah

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From the Editor's Desk

My Brothers and Sisters,

> *"Your work is going to fill a large part of your life, and the only way to be truly satisfied is to do what you believe is great work. And the only way to do great work is to love what you do. If you haven't found it yet, keep looking. Don't settle. As with all matters of the heart, you'll know when you find it."* – ***Steve Jobs***

These words came to mind when I sat down to look at and read the Income-tax Bill, 2025. I was curious to understand as to whether I could find this sense of fulfilment when I sat down to read the draft that was created by a panel of 150 senior tax officials spending more than 60,000 man hours on a task that was, to put it mildly, daunting to say the least. To completely overhaul a dynamic legislation, crafted over 63 years which has been had close to 4000 amendments and put it in simple language with the objective of shortening it, making it comprehensible to a common taxpayer and yet making no major policy changes and no changes to the tax rate was like climbing Mount Everest. And, honestly, the first impression seems to be one of seeing a very decent effort put in. To reduce 819 sections to 536, to eliminate about 1200 provisos and 900 odd explanations and to shorten the word count from 512,535 to 259,676 and to add about 39 tables and 40 formulae, all while considering 20,976 suggestions from various stakeholders was a momentous feat to even attempt. The successful conclusion of that effort must therefore be certainly lauded.

At the same time, did I find something that I would love to read? Did I get that feeling that Steve Jobs talked about? To be brutally honest, I have not. Something seems to be missing. Is it because, all of us grew up with the Income-tax Act, 1961 ('The Act') as a companion of our formative years, cradling it in our arms and indeed, in our minds? Is it that we would miss all its good and not so good points because of our constant interaction? Is it that all of us probably have seen the struggle to amend it with about 100 clauses every year and have grown to get used to what it is and probably to what it will be? And are we resistant to the change to a whole new law with different words, which will need to be judicially analyzed, keeping in mind, both the text and the context? I am unable to decide, and I will leave that decision to you all.

All that I know, is that like a child faced with the prospect of digging into a dish that we have not tasted before, and that we have not been told as to what it is going to be like, I, at least am curiously expectant and cautiously optimistic. The savouring of the Income-tax Bill, 2025, has started with this edition of the Journal, and will continue for the foreseeable future. Time will tell, if the dish turns out to be tasty, or otherwise, but the joy should be in the process of analysis and the study of a curious seeker of knowledge. I am sure that like me, all of you are also curiously expectant. I wish you all the very best in your journey of exploration.

The Bill is now before the Select Parliamentary Committee, which as I write this communication, has begun its deliberations by calling the first few stakeholders, for discussion, next week, We, at the Chamber, are also expecting to be called for our deposition soon and I am sure the Law and Representation Committee is doing its work in this direction, in right earnest. We look forward to seeing a new era where tax laws are simple, stable and non-controversial, in the years to come.

Of course, this is only the beginning, and this effort of coming out with a new and simple Income-tax Act (in the making) needs to be complemented with drafting and notification of the required rules, schemes etc. and most importantly the development of the information technology engine to make the taxpayer experience a happy and seamless one. This is going to be another gargantuan effort and the officials who are out in charge should be wished the very best. Through this communication, I, on the Chamber's and all your behalf, do so with all grace and on the Chamber's behalf, commit to assist them in every way possible, in this endeavour.

The articles on the Income-tax Bill, 2025 ('The Bill') in this edition of the Journal on the "Income-tax Bill, 2025" have been contributed by erudite authors, who in the short span of time at their disposal, have come up with their analysis and point of view. I sincerely thank them from the heart for their inputs, particularly given the sort time they had. I also again sincerely applaud and compliment the Journal Committee, Chairman, Ameya Kunte, Vice Chairman, Jiger Saiya, Convenors, Bhavik B. Shah, Toral Shah and Jagruti Sheth, and especially the coordinators, Dhiren Shah and Arpit Jain, who once again, deserve special mention and thanks, for bringing this issue together.

Let us all, therefore, begin another momentous but hopefully not tumultuous journey. All the very best to us, and indeed to Mother India!

Jai Hind!

ANISH M. THACKER
Editor



From the President

Dear Members,

The much awaited new Income-tax Bill, 2025 has been introduced in the Parliament on 13th February, 2025, which will replace The Income-tax Act, 1961. The bill is proposed to be brought in force from 1st April, 2026, which will be in the Centenary Year of the Chamber. The bill has as many as 536 clauses (sections to be). To understand the provisions of the bill, the Direct Tax Committee has organized a series of 11 online meetings starting from Saturday, 29th March, 2025, the details of which, are available on the CTC Website, mailers etc. I highly appreciate the efforts of Chairman CA Viraj Mehta and his team in designing this series under the able guidance of Advisor & Past President CA Shri Mahendra Sanghvi. I also thank all the learned and highly experienced speakers for their support in spreading the knowledge to our members. I appeal to all the members to attend this series in large numbers to update themselves beforehand for the new Income-tax Bill.

The International Tax Committee of the Chamber has organized the 18th International Tax RRC at Goa from 12th to 15th June, 2025. International Taxation is a growing area of practice, especially for young members. I encourage the members, especially young members, to enroll for this educative RRC at the earliest, which will go a long way in value addition to their academic skill.

On 14th & 15th February, the Student Committee organized the 8th Dastur National Debate Competition jointly with H.R. College of Commerce & Economics, Mumbai in virtual mode. I express my sincere gratitude to Dr. Ms. Pooja Ramchandani, Principal, for her support in this collaboration. My congratulations not only to the Winning team, Runner-up Teams and Best speaker, but also to all the 26 participating teams, for the grand success of this event. I congratulate Chairperson Niyati & her team for efficiently organizing the event for the students. For the students, the forthcoming events are “CA Student Orientation Course" (Virtual Mode) and Essay Competition, the details of which will be announced soon. I appeal to all the members to encourage their students to participate in these events.

The Accounting & Auditing Committee Organized two very important online lecture meetings for the benefit of the members viz. SA 600 - Revised Special Considerations-Audit of group Financial Statements on 21st February and another on Key Learnings from

Recent NFRA orders on 28th February. Chairman CA Tejas Parikh and his team deserve compliments for arranging these timely back to back meetings.

The Chamber had once again the pleasant opportunity to join hands with the Bombay Chartered Accountants' Society and Reserve Bank of India in organizing One Day Conference on Practical issues under FEMA in physical mode on 22nd February. The Conference was well attended by 153 participants. Shri Prashant Kumar Dayal, General Manager-in-Charge, RBI, and his team of Senior officials alongwith seniors in profession, led the effective discussions of practical issues under FEMA, for which I express my sincere thanks to all the learned faculty members. I acknowledge the efforts of CA Karishma Phatarphekar and her team in selecting interesting topics for the discussion.

This month's Journal is comprising of Special Story on the Subject "Income-tax Bill, 2025". CA Ameya Kunte, Chairman of the Journal committee has selected this timely topic very aptly for the benefit of the readers. I congratulate and thank the Editorial Board, the Journal Committee and CA Ameya Kunte, Chairman and his team for coming out with this edition at a very short notice. I thank all the authors for their efforts for our members with special mention of CA Dhiren Shah and CA Arpit Jain once again for their prompt efforts.

As mentioned earlier, the Chamber's Journal is reaching the milestone of 50 years in April, 2025. I urge readers to spread the word about the Journal among their professional colleagues and help the CTC in spreading knowledge. I also encourage members to buy various publications of the Chamber, which will be useful for the professional development.

As we are in the month of March, I wish all the members for timely completion of various compliance requirements, especially timely payment in respect of statutory obligations and also that relating to MSME, in view of disallowance u/s. 43B(h) of the Income-tax Act, 1961.

And amongst compliances, do enjoy colorful festival of Holi... !

Jai Hind !

VIJAY BHATT
President

Historic Tax Reform – The Income-tax Bill, 2025





CA Sanjay Tolia CA Sanjam Goel CA Anshul Khaneja

Overview

India has embarked towards the transformative journey with the introduction of the New Income-tax Bill, 2025 and the endeavour seems to leave a profound indelible effect with a modernized tax framework. This landmark legislation strives to simplify a system that has grown increasingly complex over six decades, burdened by more than 4,000+ amendments to the original code. The new bill dramatically streamlines the India's tax framework by consolidating chapters, reducing sections and halving the word count, making the legislation more accessible to all the stakeholders. In place of dense and convoluted text, the new bill introduces user-friendly tables and formulas to facilitate clearer interpretation. Key modifications include replacing the archaic concept of the "assessment year" and "previous year" with "tax year", strengthening dispute resolution procedures, expanding the rigors of reassessment proceedings, amending the definition of associated enterprises, enhancing the scope of lower TDS/TCS certificates etc.

This article explores the bill's core objectives, examines key changes and its implications for various stakeholders, and outlines the next steps as this new bill moves through the legislative process towards becoming a law. As the bill progresses, the government will begin aligning the Rules, Forms and IT Infrastructure with the new tax law, whilst business will need to implement their own IT modifications and operational adjustments to stay ahead of the curve.

India has taken a significant step towards comprehensive overhaul of the nation's tax code with the introduction of the New Income-tax Bill, 2025. As the existing tax law has become increasingly cumbersome over six decades owing to numerous additions/ amendments and intricate language, the proposed legislation aims to achieve 5Cs: consolidation, clarity, continuity, certainty and correctness.

Many professionals have spent decades mastering the intricacies of the existing tax law. For instance, how many people know that a deduction can be found in a chapter meant for exemptions, or that the computation of income for members of an Association of Persons is contained in a chapter on income aggregation and loss set-off? Whilst this knowledge can be immensely satisfying, it is undeniable that the existing tax law has become increasingly complex and challenging to navigate, particularly for those not well-versed in its mysteries. This is where the new Bill will help. The provisions are properly organized, redundancies are eliminated, and the language is sought to be simplified.

With an endeavor to smoothen the transition to the newer tax framework, the Government has strategically set April 1, 2026, as the implementation date of the proposed legislation to provide adequate buffer period to taxpayers, businesses, and tax professionals to

adapt to the new system and ensure effective implementation.

Structural revamp of the existing framework

The existing tax law has been a bedrock of tax governance in India and plays a key role in India's economic development. However, over the years, it has been amended nearly 65 times incorporating more than 4,000 amendments since its inception, making it bulkier and more difficult to navigate. The complex language and redundant provisions have created significant challenges for both taxpayers and administrators, prompting the government to modernize the existing framework.

The proposed bill radically revamps the tax code by reducing number of chapters from 47 to 23 and cutting the total sections from 819 to 536. As the traditional style of drafting the existing law has led to extensive tax litigation in the past, the proposed legislation has adopted an innovative approach and introduced user-friendly tables and formulas to make the interpretation simpler and easy to comprehend. Accordingly, the new bill has proposed to add 39 new tables and 40 new formulas, thereby, taking the existing tally to 57 tables and 46 formulas. The word count in the bill has also been halved from 5.12 lakh words to 2.6 lakh words by eliminating redundant provisions and consolidating related sections.

Moreover, frequently asked questions (FAQs), guidance notes and explanations have also been issued to make the provisions of the new tax bill easier to understand and reduce ambiguity for taxpayers and professionals. Even references to other statues have been minimized. The government has particularly focused on retaining the key terms and phrases that have been previously interpreted by courts, thereby maintaining legal consistency and minimizing potential ambiguity which could lead to future disputes.

For instance, the TDS provisions, which were earlier scattered across multiple sections have now been consolidated into a single comprehensive table. Similarly, various deductions for salaried individuals have also been clubbed together into an easily accessible format, thus reducing the rigour to analyse and interpret the law.

The new bill also substituted the conventional verbatim language for complex calculations through formula-based explanations. Technical aspects such as the computation of Written Down Value (WDV) for block of assets, capital gains, and advance tax calculations have been simplified by making use of mathematical expressions.

The proposed legislation also trimmed the cross-referencing of multiple sections and removed redundant provisions to make it easier to navigate.

The key features of the new tax bill are summarized below:

- **Streamlined structure and language** The new tax bill simplifies various provisos and explanations into sub-sections or clauses to make it more structured and reader friendly, providing a more organized framework of the tax provisions.
- **Integrated and concise** - Duplication of provisions has been eliminated and lengthy sentences have been broken into smaller ones.
- **Minimizing litigation** - Various provisions, explanations and formulas have been introduced to provide certainty to the tax provisions.
- **Practical and Transparent** - Obsolete sections of the existing tax law have been eliminated.
- **Learn and Adapt** - The Bill incorporates the best practices from international tax jurisdictions (UK and Australia) whilst staying aligned with India's core taxation principles.

- **Enhanced digital oversight and efficient tax reforms** – The Government has granted the tax authorities broader access to a taxpayer's electronic records including emails, social media accounts and online banking during investigations. A 'new taxpayer's charter' outlines rights and obligations, aiming to enhance transparency and protect taxpayers.

Some key modifications in the proposed tax bill

1. ***Introducing the concept of 'tax year'***
   The new bill replaces the decades old concept of 'assessment year' and 'previous year' with an easy-to-understand 'tax year', aligning it with the international tax practices. The move to replace the somewhat archaic concepts of 'previous year' and 'assessment year' with 'tax year', will help modernize our tax system and will likely make it easier especially for foreign taxpayers by eliminating the need to track multiple periods.

2. ***Strengthening the content and structure of directions issued by Dispute Resolution Panel***
   The proposed bill also aims to strengthen the content and structure of the directions to be issued by the Dispute Resolution Panel by requiring the Panel to clearly state the points of determination, the decision on each point, and the reasons for those decisions. This change would likely improve the quality of the directions and potentially minimize future tax litigation.

3. ***Widening the scope of the term 'information' for reassessment proceedings***
   Also, the new bill expanded the scope of the term 'information' for initiating reassessment proceedings to include (i) the directions issued by the approving panel declaring the arrangement as impermissible avoidance arrangement under the GAAR framework; and (ii) any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

4. ***Extending the scope of lower TDS/TCS certificates to all payments/transactions***
   Whilst the existing tax law enabled the taxpayers to obtain nil/lower TDS and TCS certificates for specific type of payments/transactions, the new bill broadened its scope and extended it to all types of payments/transactions.

5. ***Clarity on permissibility of deduction from capital gains upon reinvestment in infrastructure bonds***
   The new tax bill addressed a long-standing ambiguity on the deduction allowable upon reinvestment of capital gains in infrastructure bonds under section 54EC (corresponding to clause 85 of the new bill). The proposed bill now explicitly clarifies that such deduction shall apply only to 'long-term capital gains', rather than tagging them up with the long-term capital assets. In the past, the courts have ruled that deduction under 54EC shall be available even in cases of depreciable assets held for more than 36 months, which were classified as 'short-term capital gains' under the existing law owing to deeming fiction. With this modification in the new bill, the taxpayers will now be needed to specifically generate long-term capital gains from asset transfers in order to avail the benefit of this deduction.

6. Restricting the deduction of inter-corporate dividends under concessional tax regime – Whether an oversight?

The fine print of the new bill appears to restrict the companies opting for the concessional tax rate (22%) from claiming deductions on inter-corporate dividends under section 80M (corresponding to clause 148 of the new bill), a benefit which is currently available to corporates under section 115BAA (corresponding to clause 200 of the new bill) of the existing law. Interestingly, manufacturing companies opting for concessional tax rate (15%) under section 115BAB (corresponding to clause 201 of the new bill) would still be able to claim these deductions under clause 148 of the new bill. Whilst the jury is still out whether this is a drafting oversight or is it a deliberate act, its real life implications could be far-reaching (if this restriction indeed proves to be intentional) as it would significantly impact the dividend distribution costs amongst corporates.

7. Delivering clarity on the applicability of anti-loss buying rules

The existing tax framework (section 79) restricts the private limited companies from carrying forward and setting off losses if their beneficial ownership changes by more than 49% in the year between the year of loss incurrence and the year of set-off. However, the existing law has been ambiguous about whether the 49% threshold needs to be maintained in the year of set off or throughout the intervening period (i.e., from the incurrence of loss until the set off such loss in the subsequent period). Clause 119 of the new bill (corresponding to section 79) has addressed this uncertainty by stating that the if the company's beneficial shareholding ever drops below 51% from the year the loss was incurred, the right to set off these losses is permanently lost, even if the original shareholding is subsequently restored. The proposed clarification could have substantial impact on how the private companies approach corporate restructuring and acquisitions whilst managing their tax losses.

8. Possibility of offsetting brought forward long-term capital loss against short-term capital gains in the transitional phase

Under the existing tax law, brought forward long-term capital loss can only be set off against long-term capital gain arising in subsequent years. Whilst the provision under the new bill maintains similar restrictions, the savings clause (clause 536) in the new bill appears to provide flexibility in offsetting the long-term capital loss incurred before April 1, 2026 (i.e., the proposed effective date of the new bill) against the gains arising under the head 'Capital Gains' after that date (both for short-term or long-term gains). Such a temporary benefit could provide significant relief to investors carrying long-term capital losses from the previous years.

From an international tax standpoint

9. Augmenting the meaning of undefined terms in the tax treaties

The new bill empowers the Central Government to clarify the terms that have neither been defined in the tax treaty nor in the domestic tax law, with such clarifications being effective from the effective date of the tax treaty. Whilst the proposed change aims to reduce the ambiguity and litigation, its potential impact on the existing treaty interpretation remains to be seen in the time to come.

10. Broadening the scope of the term 'associated enterprises'

The proposed bill seeks to amend the definition of Associated Enterprises ("AE"). As per current law and settled jurisprudence, two entities cannot qualify as AEs even if they are covered within the specific criteria listed in 92A(2), unless they satisfy the generic criteria listed in 92A(1). However, the proposed bill provides that it is not necessary to satisfy the generic conditions if the entities are satisfying the specific conditions, thereby extensively broadening the scope of AE. This can potentially have an effect of re-visiting the issues hitherto settled by the Indian judiciary.

Concluding remarks

In an era that glorifies radical changes, the quiet power of incremental reforms tends to be overlooked, but often, it is these methodical and ostensibly less dramatic reforms that have a more meaningful and lasting impact. The new tax bill falls into this category. There are some substantive changes to be sure, but the focus of the new bill is more towards making the law more concise, lucid and easy to understand.

In India, and in many other countries, the spotlight has long been on tax rates, treaties, anti-abuse norms, dispute resolution mechanisms and other tax policy changes. However, the introduction of the new Bill, with its strong emphasis on clarity in structure and drafting, will undoubtedly bring welcome attention to the importance of having well-structured and clearly drafted laws.

It is apt to say that new bill marks a landmark step in reforming, modernizing and streamlining India's income-tax framework. The consolidation of definitions, removal of redundant provisions, and use of tables and formulae has radically improved its readability and understanding.

A well-drafted tax law in the form of this new bill will definitely play an instrumental role in contributing to India's vision of a Viksit Bharat. However, its success hinges on complementary reforms in other areas, particularly in tax administration and dispute resolution. One hopes that this new law will mark the first of many crucial reforms needed to strengthen our tax system.

Overall, the Government has done a remarkable job in effectively meeting its stated objectives. The mammoth exercise carried out by the group of Central Board of Direct Taxes ("CBDT") officers should be lauded for achieving the twin objectives of i) drafting the proposed law in a limited time frame, and ii) reducing it content and making it easy to comprehend.

What next?

The new tax bill has been referred to a Parliamentary select committee (committee), comprising 31 members, which has been constituted by the speaker of the Lok Sabha with a mandate to examine the Bill and deliver its report on the opening day of the subsequent parliamentary session. After considering the recommendations of the Committee in refining the new tax bill, it will be passed by both the houses of the Parliament and will receive presidential assent before it is finally enacted.

Post enactment of the bill, the finance ministry will commence aligning the Rules, Forms, IT Infrastructure etc. with the new tax law and hopefully the implementation should be completed by April 1, 2026. Simultaneously, businesses also need to stay ahead of the curve and undertake their own IT modifications and operational adjustments to ensure compliance with the new tax law. It will be intriguing to see the practical impact as to how this tax reform will shape the administrative and policy framework in the years to come.

■●■

Eliminations of all Provisos and Explanations in Finance Bill, 2025 and its implications



Saurabh Soparkar
Senior Advocate

The Finance Bill, 2025 marks a significant milestone in India's legislative history, aiming to overhaul the existing Income-tax Act of 1961. A central feature of this reform is the removal of approximately 1,200 provisos and 900 Explanations, a move designed to simplify the tax code, reduce ambiguities, and enhance compliance. This article delves into the implications of this substantial legislative change, exploring its impact on taxpayers, legal practitioners, and the broader economic landscape.

Historical Context and Rationale

The Income-tax Act of 1961 has been the cornerstone of India's direct tax system for over six decades. Over the years, it has undergone numerous amendments, leading to a complex web of provisos and Explanations. These additions, intended to clarify and expand upon the original provisions, often resulted in increased complexity and interpretative challenges. The accumulation of such clauses made the law cumbersome, leading to litigation and compliance difficulties.

Recognizing these challenges, the government initiated a comprehensive review of the tax legislation. The Finance Minister, in her July 2024 announcement, emphasized the need for a tax law that is "simple, straightforward, and minimizes controversies."

Elimination of Provisos and Explanations

Historically, provisos and Explanations were appended to sections to address exceptions, particular cases, where or to clarify legislative intent. While they served specific purposes, their proliferation led to interpretative challenges. But now suddenly Provisos and Explanations have become, as if, dirty words and each one of them is sought to be eliminated. The Finance Bill 2025 removes these provisos and Explanations, integrating their essential content into the main provisions as sub-sections or clauses. This restructuring aims to present a cohesive and clear narrative within each section, reducing the need for cross-referencing and interpretation.

Need for the Provisos

The normal function of a Proviso is to carve out or except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment but a Proviso cannot be held to control the substantive enactment or to withdraw by mere implication any part of what the main provision has given

or to set at naught the real object of the main enactment. It is therefore subservient to the main provision. A proviso is not applicable unless the substantive clause is applicable to the facts of the case: 'the proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.' But in a given situation, a proviso may be read as an independent substantive enactment where the context warrants such a construction, e.g., where restricting its scope to the cases dealt with by the main enactment would render the proviso meaningless. 'Whether a proviso is construed as restricting the main provision or as a substantive clause, it cannot be divorced from the provision to which it stands as a proviso. It must be construed harmoniously with the main enactment. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation or which is declaratory in nature, requires to be treated as retrospective in operation, so that a reasonable interpretation can be given to the section as a whole.

A proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to function as an optional addendum to the enactment with the sole object of explaining the real intendment of the statutory provision.

Need for the Explanations

An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section. If it is clarificatory in nature, then the Explanation must be read into the main provision with effect from the time the main provision came into force. But if it changes the law, it is not presumed to be retrospective irrespective of the fact that the phrase used is "it is declared" or "for removal of doubts". In other words, at times, an Explanation is held to be restrictive whereas in other cases it is held to be expansive in nature.

The object of an Explanation has been explained as follows:-

(a) to explain the meaning and intendment of the Act itself.

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress

the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming a hindrance in the interpretation of the same.

An Explanation is intended to either explain the meaning of certain phrases and expressions contained in a statutory provision or, depending upon its language, to take away something from the content of a provision, and at times, by way of abundant caution, to clear any doubt regarding the meaning of a statutory provision. Ordinarily, an Explanation is not a substantive provision and is inserted to clear up any ambiguity in the section and it should be so read as to harmonise it with the section because it is an integral part of the section and has no independent existence apart from the section. Such explanations are intended more as a legislative exposition or clarification of the existing law than as an amendment or change in it. But cannot be construed to override statute or render the substance and core nugatory. Explanation is not to enlarge the scope of the original section that it is supposed to explain, if on a true reading of an explanation it appears that it has widened the scope of the main section, effect should be given to the legislative intent notwithstanding the fact that the Legislature named that provision as an explanation. In rare cases, it may even widen the scope of the main provision. But merely because a provision attached to a section bears the nomenclature 'Explanation', it cannot always be considered as conveying the true and natural meaning of the words or the provisions of the statute. An Explanation has to be read and understood only in the context for which it has been introduced and cannot be expanded to bring within its fold aspects beyond the realm of the provision.

An explanation brought on the statute book is ordinarily clarificatory in nature and has retrospective effect, as the explanation so brought to a provision in the statute simply explains the law as it has always been in the main provision. However, when the legislature has made the explanation operative prospectively by words expressed therein, its operation shall have to be confined to the future date. The same reasoning would govern the case when Parliament limits the retrospectivity of the explanation with effect from a particular date.

Implications of Removing Provisos and Explanations

Removal of Provisos and Explanations would have a mixed effect. Some, certainly good but rest, certainly leading to a further confusion. Let me first deal with the positive aspect of such a change.

Positive Effect

1. ***Enhanced Clarity and Readability***

   By integrating exceptions and clarifications directly into the main text, the law becomes more straightforward. Taxpayers and practitioners can now comprehend provisions without navigating through multiple layers of provisos and Explanations, thereby reducing misunderstandings and errors. The problem with the Provisos and the Explanations is that at times they have been interpreted as subservient to the main provision but at times, when it is so felt, they have been treated as

independent of the main provision. This gives rise to the challenge of giving the true meaning to such Provisos and Explanations end the courts have to interpret them keeping in mind the setting in which they appear.

2. ***Streamlined Compliance***

A simplified tax code facilitates easier compliance. Taxpayers can better understand their obligations, leading to timely and accurate filings. This efficiency benefits both the taxpayers and the tax administration, promoting a more effective tax system.

3. ***Alignment with International Standards***

Many countries have tax codes that are concise and free from excessive provisos and Explanations. By adopting a similar approach, India aligns its tax legislation with international best practices, potentially enhancing its attractiveness to foreign investors.

But then there are problems: Challenges and Considerations

1. ***Transitional Issues***

As noted earlier the Provisos and Explanations have been interpreted, from time to time, differently. Sometimes to curtail the meaning of the section whereas sometime to extend the same. The courts have, on the basis of the setting in which the Provisos and Explanations appear have already given the meaning to the same. Now that the Proviso and the Explanations have become redundant, and all these Proviso and Explanations are captured as subsection in the main section, the task of finding out the meaning of such independent subsection becomes slightly problematic. Earlier one always would look at the main provision and then tried to figure out as to whether the Explanation and the proviso or expand the provision of the main section. This was more evident in case of an Explanation were depending upon the setting of the main provision vis-à-vis Explanation, the same was interpreted either as "procedural" hence retrospective or "substantive' and hence prospective. In other words what was needed was to interpret such Proviso and Explanations considering the setting in which they appear so as to give meaning to them. However now such an exercise will have to be taken up from a different angle. Now that the said provision is a part of the main section the section would have to be read as a whole. Ordinarily two subsections of a section should not conflict with each other and all subsections must be given an equal importance. It may not be so easy now to scale down the reading of one subsection so as to give weightage to another subsection. Similarly, one cannot read one subsection more expansively so as to defeat the meaning of the earlier subsection. While the removal of provisos and Explanations aims to reduce ambiguity, there may be initial interpretative challenges as stakeholders adjust to the new language and structure. The shift from a complex to a simplified tax code may pose transitional challenges. Taxpayers and professionals accustomed to the old provisions will need to familiarize themselves with the new structure. Comprehensive education and awareness

programs will be essential to facilitate this transition.

2. Fate of earlier Judgments

While the removal of Provisos and Explanations aims to reduce ambiguity, there may be one more challenge. Weather all judgments delivered so far interpreting a statutory provision which contained Explanations and the Provisos, on their interpreting would hold good. One way of looking at the matter is that if the judgements proceeded only on the footing that a Proviso or an Explanation as being subservient or expansive to the main section on the ground that they are to be treated differently from the mains section, the judgments may have to be reconsidered. In any case the Assessees, where the judgments are against them would try to reargue the matter on the ground that with the change in the language, the said judgments may not hold good. I believe that Revenue also would not lag behind and where the judgements are in favour of Assessees they would also raise a contention that those judgements may not hold the field now. This is bound to lead to an avoidable dispute. The Finance Minister has stated at more than one place that there is no change in the nature of the new Bill as compared to the 1961 Act. If that be so the change brought about in drafting of the Bill, whereby erstwhile Provisos and Explanations have been captured by subsections, should ordinarily not lead to a different interpretation. But ultimately this going to be a is a minefield of litigation and probably one will see significant disputes and litigation only on the ground that Provisos and Explanations have been converted into subsections deserving a new interpretation.

Conclusion

By removing a substantial number of provisos and Explanations, the government aims to create a tax code that is clear, concise, and conducive to compliance. How far the objective is satisfied, only time will tell. Left to me I seriously doubt whether this exercise would lead to certainty and simplicity and I believe it would lead to more complexity leading to more litigation.

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"There are people in the world so hungry, that God cannot appear to them except in the form of bread."

— *Mahatma Gandhi*

Basis of Charge: Important Changes, Hits & Misses





CA Dinesh Kanabar CA Ashish Agrawal

Overview

The Income-tax Bill, 2025, proposed to replace the Income-tax Act, 1961, aims to simplify tax law, reduce redundancies, and enhance compliance. The article examines key changes in Chapter II, 'Basis of Charge,' including the introduction of the 'tax year,' changes in the residency rules, and revisions in the provisions dealing with the deemed accrual of income in India. It also explores emerging issues such as the binding nature of guidelines for taxation of distribution of capital asset or stock-in-trade under Clause 8 (corresponding to Section 9B of the Act) and changes in 'royalty' taxation. These developments mark a significant shift in tax policy, necessitating careful evaluation of their practical and legal impact.

Introduction

The Income-tax Act, 1961, has evolved over a period of time with legislative wisdom. The legislation has undergone over 4,000 amendments to provide tax incentives, streamline the law, and resolve administrative challenges. However, the complexity of the legal jargons and cross-referencing through tangled web of Provisos and Explanations makes it recondite. The litigation around the tax laws has been alarming which requires the Government to introduce amnesty schemes periodically to settle the disputed amount.

Over the last decade, the Indian tax and regulatory ecosystem has undergone revamp across all the spheres viz. introduction of Companies Act, 2013, Goods and Services Tax Act, 2017, SEBI regulations, Foreign Exchange Management (Overseas Investment) Regulations, etc. In past, various attempts have been made to overhaul the direct tax law such as introduction of the Direct Taxes Code in 2010 and 2013. Realising the need of hour and matching the pace of reforms, the Government has invited stakeholders' comments on four aspects – (i) simplification, (ii) litigation reduction, (iii) redundancy of provisions and (iv) compliance reduction. Basis the same, the Government has now tabled the Income-Tax Bill, 2025 ('the Bill') which is proposed to replace the existing Act.

The Bill subsumes around 1,200 Provisos and 900 Explanations and deletes the age-old

With inputs from Rushi Shah

redundant provisions reducing the length of the law by nearly half. The Bill has replaced few legal jargons such as 'not withstanding', 'for the purposes of', 'in accordance with'. The insertion of tables and formulas simplify the reading of complex set of TDS and exemptions provisions.

The Bill, as introduced as Money Bill, shall pass the muster of select committee and Parliament before receiving the Presidential assent. The Bill is slated to be effective from April 1, 2026.

The Bill aims to simplify tax law using concise language. In interpretation of taxing statue, meaning and intention should be derived from clear and unambiguous wording. Hence, as a tax professional, it becomes imperative to analyse whether the simplified Bill leads to any deviation from existing legal position or continues with the same framework.

Basis of Charge – Core of the Act

The Supreme Court in the case of ***Govind Saran Ganga Saran vs. CIT***[1] explained the concept of tax levy to cover four key components: (a) Character of the imposition known by its nature which prescribes the taxable event attracting the levy, (b) clear indication of the Person on whom the levy is imposed and who is obliged to pay the tax, (c) the Rate at which the tax is imposed, and (d) Measure or value to which the rate will be applied for computing the tax liability. If the above components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy is fatal to its validity.

As far as income tax levy is concerned, Chapter II – 'Basis of charge' of the Act constitutes the foundation of levy, and encapsulates three main subjects of the Act viz., what is to be taxed, to whom does such income belong and from whom tax on such income should be realised or recovered.

Charge of Income-tax

Section 4 of the Act (corresponding to Clause 4 of the Bill) imposes charge of income-tax. As per section 4(1) of the Act, the income-tax is charged for the 'assessment year' on the total income of the 'previous year' at the rates prescribed under relevant Finance Act. Under the proposed Bill, the concept of 'previous year' shall be replaced by 'tax year', whereas the concept of 'assessment year' shall be eliminated. Thus, as per the Bill, charge of income-tax is fastened in the 'tax year' itself in respect of the total income of such tax year.

Section 4(2) of the existing law lays foundation for TDS and advance tax provisions. As per section 4(2) of the Act, in respect of income chargeable to tax, the TDS and advance tax provisions need to be adhered. The Supreme Court in the case of ***CIT vs. Eli Lilly & Co. (India) (P) Ltd.***[2], in the context of section 192 observed that the TDS provisions under Chapter XVII dealing with collection of taxes and the charging provisions of the Act form one single integral, inseparable code and, therefore, the provisions relating to TDS applies only to those sums which are "chargeable to tax" under the Act.

1. *[1985] 155 ITR 144*
2. *[2009] 312 ITR 225 (SC)*

Similarly, the Supreme Court in the case of ***G.E. India Technology Centre (P.) Ltd. vs. CIT***[3] held that no tax shall be deductible under section 195 of the Act in respect of software payments which were held not chargeable to tax under the Act read with applicable tax treaty. Following the 'Pay-as-you-earn' approach, advance tax/TDS is paid during the previous year.

Clause 4(5) of the Bill covers TCS in addition to the TDS and advance tax provisions. Accordingly, in respect of income chargeable to tax, the taxes can be collected in accordance with the TCS provisions. This leads to a question whether TCS provisions can be applied only to the transactions which are chargeable to tax and hence, the TCS levy can be denied in the cases where the transaction is not chargeable to tax e.g. TCS on remittance under Liberalised Remittance Scheme ('LRS'), purchase of motor vehicles, etc.

At this juncture, reference can be drawn from the recent Madras High Court decision in the case of ***ITO vs. Thanjavur District Central Co-operative Bank Ltd.***[4] dealing with constitutional validity of section 194N imposing TDS levy on withdrawal of cash from the banks and post-offices. The Madras High Court observed that the TDS provisions falling under Chapter XVII-B of the Act are machinery provisions. After considering the object and purpose of introduction of the provision, the High Court upheld the validity of the provisions.

Following this rationale, it may be contended that the TCS provisions are introduced to expand the tax base and identify the tax leakages. Hence, challenging the validity of the TCS levy may be difficult. However, the taxpayers shall be required to claim refund of excess TCS credit by filing return of income.

Residence in India

The tax liability in taxing jurisdiction depends upon the 'residency' and 'source' criteria. Residents are taxed on their global income, whereas non-residents are taxed only on income sourced within the jurisdiction.

Section 6 of the Act (corresponding to clause 6 of the Bill) deals with 'residential status' in India. As per the Act, the residential status of an individual can be defined based on two tests: (A) 182 days stay during the previous year, or (B) a twin condition of (i) 60 days stays during the previous year and (ii) 365 days in preceding four previous years. On fulfilment of the either of the test, an individual shall be considered as resident in India. However, in the case of citizen of India, or a person of Indian origin visiting India in any previous year, the '60' days test is replaced by '182' days condition. Thus, if an Indian citizen or person of Indian origin stays in India for 182 days or more during the previous year, he would be considered as resident individual as per the condition (A) itself and no need to test the stay in India during four preceding previous years. This results into redundancy of 365 days condition in preceding four years. The Bill clarifies that in such a case, only condition (A) (i.e. 182 days criteria) is to be tested.

In pursuit of eliminating the controversies regarding interpretations revolving around

3. *[2010] 327 ITR 456 (SC)*
4. *[2024] 465 ITR 286 (Mad.)*

legal jargons, the Bill has substituted few phrases. For an instance, Explanation 1(a) of section 6(1) of the Act, provides that in case of an Indian citizen leaving India for the purposes of employment outside India, the test of '60' days shall be replaced by '182' days. The Courts have held[5] that 'for the purposes of employment outside India' would also cover self-employment in addition to the employment under employer-employee relationship. Under the new Bill, the expression 'for the purposes of' is proposed to be replaced by 'for', which raises question over relevance of judicial precedents dealing with the provisions of the Act.

The Supreme Court in the case of ***ACIT vs. Surat Art Silk Cloth Manufacturers Association***[6] dealing with interpretation of 'charitable purpose' under section 2(15) of the Act, held that the proposition 'for' has many shades of meaning but when used with the active participle of a verb it means 'for the purpose of' and connotes the end with reference to which something is done. Similarly, in the case of ***Keshar Sugar Works vs. R. C. Sharma, AIR 1951 All 122***, it was held that the word 'for' implies 'for the purpose of' or 'in respect of'. Thus, a view can be adopted that substitution of 'for the purposes of' by 'for' under the new bill does not alter the legal position and the judicial precedents shall continue to apply. However, minute reading of the Bill leads to a question whether the days spent by Indian citizen abroad for exploration of employment opportunities can be treated as 'for employment outside India' under the new Bill?

Income deemed to be received

The existing section 7 dealing with 'income deemed to be received' and section 8 dealing with the year of taxability of 'dividend income' are merged into clause 8 of the Bill.

Notably, the buyback taxation has undergone changes vide Finance (No. 2) Act, 2024. Any payment by a company in respect of buyback taking place on or after October 1, 2024, is taxable as 'dividend' income, whereas the cost of acquisition of such shares shall be taken 'nil' in the computation of capital loss. However, there exists ambiguity regarding the year of taxability of such dividend income viz. year of declaration, payment of consideration, debit of shares from demat account or extinguishment of shares. Clause 7(2)(a) of the Bill clarifies that the dividend income arising from buyback shall be taxable in the year of payment.

Income on receipt of capital asset or stock-in-trade by partner/member from firm/ other association of persons or body of individuals ('specified entity')

Under section 9B of the Act, any receipt of capital asset or stock in trade by a partner or member from specified entity in connection with its dissolution or reconstitution, is taxable in the hands of such specified entity. Section 9B(4) and (5) of the Act empowers the Central Board of Direct Taxes to issue guidelines for removal of difficulty, with prior approval of the Government. Under the existing provisions, such guidelines are binding on the income-tax authorities as well as on the taxpayer.

5. *CIT vs. O. Abdul Razak [2011] 337 ITR 350 (Kerala)*
6. *[1979] 2 Taxman 501 (SC)*

Clause 8 of the Bill simplifies the language of the provision. The Bill provides detailed manner of laying the guidelines before the Parliament and consequences of any amendment/annulment by the Parliament. However, the proposed Clause 8 does not deal with the binding nature of such guidelines. Omission of 'binding force' of the guidelines raises a question regarding the binding nature of the guidelines on the taxpayer - whether the guidelines would stand in the same footing of a circular, which is neither binding to the taxpayer nor to the judiciary.

Income deemed to accrue or arise in India

As a classical understanding of the Indian tax law, the income of a non-resident would be taxable in India only if it is received or deemed received, accrued or deemed accrued in India. If the income of a non-resident is covered within the ambit of Section 9 of the Act, it is deemed to accrue in India. While the broad framework of section 9 of the Act continues under Clause 9 of the Bill, few minor changes are noteworthy.

The provisions dealing with taxation of business profits pursuant to 'business connection' and 'salary' income are simplified. However, this could have been an opportunity to prescribe clear provisions dealing with taxation of Significant Economic Presence (SEP). A non-resident creates SEP in India, if it exceeds prescribed threshold of transactions carried out with any person in India including provision of download of data or software in India or continuously solicits business activities or engaging in interaction with specified number of users in India. In such case, only so much of income as is attributable to such transactions or activities shall be deemed to accrue or arise in India.

However, no specific method has been prescribed to define how to determine the income attributable to such specified transactions or activities. Rule 10 of the Income-tax Rules, 1962, prescribes a method for determination of income in the case of non-residents. However, the Rule 10 is generic and gives the assessing officer authority to determine income taxable in India in a suitable manner. Such wide powers to assess the income is often subjected to contention between the Revenue and the taxpayers.

The provisions of section 9(1)(vii) of the Act dealing with the taxation of "royalty" are now covered under clause 9(6) of the Bill. As per the existing law, any payment of royalty by a resident would be deemed to accrue in India, except such royalty ***in respect of any right, property or information used or services utilized*** is paid for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India. The Bill eliminates the expression *'in respect of any right, property or information used or services utilized'* as far as payment by a resident is concerned, whereas the same expression is retained with respect to payment by a non-resident person. Elimination of this phrase seems to expand the scope of exclusion (i.e. reducing scope of taxability) and hence, any royalty payment by a resident for the purposes of a business or profession carried on by such person outside India or for making or earning any income from any source outside India, would not be taxable in India.

On the other hand, clause 9(6)(a)(iii) of the Bill states that the royalty paid by a non-resident for making or earning any income ***from any sources outside India***, would be deemed to accrue or arise in India. It may have two repercussions – (i) the royalty paid by a non-resident to another non-resident can be brought to tax in India, even though it has no nexus whatsoever with India, and

(ii) the royalty paid by a non-resident for making or earning any income from source in India would not be deemed to accrue or arise in India. However, this seems to be a drafting error, which is expected to be resolved in due course.

The definition of 'Royalty' as provided in clause 9(6)(b) of the Bill includes 'transfer' of all or any rights (*including granting of license*) in respect of patent, intention, model, design, secret formula or process or trademark or similar property. The scope of the definition is now expanded to cover 'grant' of all or any rights. The Authority of Advance Ruling in the case of ***Dassault Systems K.K., In re***[7] held that grant of 'licence' has been referred to in the royalty definition to dispel the possible controversy over a licence-whatever be its nature and can be characterized as transfer. The insertion of term 'grant' appears to be clarificatory in nature on the same lines.

Similarly, there has been a lot of litigation regarding whether the term 'secret' in the royalty definition applies only to 'formula' or entire limb of 'formula, process, trademark as well as similar property'. The language could have been simplified to reduce the litigation.

Conclusion

The Bill represents a significant effort to simplify Indian tax laws while maintaining the fundamental framework of the existing Income-tax Act, 1961. By reducing redundancies, consolidating provisions, and improving readability, the Bill aims to enhance compliance and minimize litigation. However, certain ambiguities—such as the interpretation of residency rules, taxation of digital transactions, and the scope of deemed income—may still lead to new disputes.

While the Bill avoids introducing radical reforms like Controlled Foreign Corporation (CFC), taxation or inheritance tax, it also does not address critical global tax developments, such as OECD's Pillar Two framework.

As the world follows India's growth story, the tax professionals will closely track the evolution of the new law. The real test of this Bill will be its practical application—whether it truly simplifies tax administration or merely shifts litigation to a new phase. As always, the coming years will determine whether these reforms succeed in creating a more transparent and efficient tax regime.

7. *[2010] 188 Taxman 223 (AAR – New Delhi)*

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Profits and Gains of Business or Profession – What has changed in the Income-tax Bill, 2025?


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Overview

The new Income-tax Bill has been the centre of discussion in recent days. In this article, we examine the government's underlying ideology behind the Bill and evaluate how well the proposed provisions align with that vision.

Our analysis takes a deep dive into the fine print, with a particular focus on key amendments under 'Chapter IV-D: Profits and Gains of Business or Profession (PGBP)' which directly impact the computation of business income.

Overall, we find that most changes proposed in the Bill align with the stated objectives, barring a few drafting inconsistencies, which we highlight in our discussion. The key takeaway is that the new Bill is more lucid, concise, and easier to comprehend.

We hope this article provides readers with valuable insights into the Bill, especially regarding the changes affecting business income computation.

Background

The Hon'ble Finance Minister introduced the much-anticipated **Income-tax Bill, 2025 ('ITB')** in the lower house of the Indian Parliament on February 13, 2025, announcing a complete overhaul of the existing Income-tax Act, 1961 (**'the Act'**). The primary objective of the proposed bill is to make the tax law more '***concise***', '***lucid***', '***readable***', and '***easy to understand***'.

According to the Hon'ble Finance Minister, the ITB has been structured to simplify the language and remove the complexities that have long plagued the Indian tax system. The Government has clarified that the Bill has been drafted based on certain fundamental principles, for instance:

— Eliminating redundant provisions from the 1961 Act.

— Simplifying legal language to enhance clarity.

— Removing multiple cross-references, provisos, and explanations that make interpretation cumbersome.

— Ensuring transparency and ease of understanding for both taxpayers and legal professionals.

— Focus on Certainty and Litigation Reduction

One of the Government's primary motivations behind the introduction of the ITB is to minimize litigation and reduce interpretational ambiguities. The intention is not to alter the taxation policy but to improve accessibility and comprehension of the law. The CBDT has emphasized that the draftsmen have consciously avoided unnecessary alterations to the meaning of key provisions, particularly those that have been subject to prolonged legal battles.

ITB marks a historic shift in India's tax legislation, being the first comprehensive overhaul in nearly six decades. True to its intent, the Bill simplifies language and enhances clarity. By replacing the traditional, colonial-era drafting style with a modern, streamlined framework, the Government aims to create a more taxpayer-friendly and transparent system. Replacing "assessment year" with "tax year" is a much-needed reform that will streamline the applicability of various provisions. By streamlining the law, the ITB aims to bring greater certainty for taxpayers, reducing disputes and fresh interpretations that often lead to long-drawn legal proceedings.

However, certain changes may unsettle well-established legal interpretations—for instance, substituting "notwithstanding" with "irrespective" could lead to new judicial debates. Additionally, some drafting inconsistencies remain, which one hopes will be addressed before implementation.

A comparative analysis of the ITB and the existing Act reveals several noteworthy changes in *'Chapter IV – D: Profits and Gains of Business or Profession (**PGBP**),'* which are expected to impact the computation of business income.

Taxability of all kinds of 'export incentives' as business income – Unintentional Consequence?

The modifications in the ITB have raised concerns regarding the taxability of export incentives. Section 28 of the Act has traditionally included specific export incentives such as duty drawbacks of customs/ excise duty, cash assistance under Government schemes, profits from the sale of scrips, etc., within the scope of business income. However, in an attempt to simplify the language, the ITB introduces a residuary clause under Section 26(2)(e), which broadens the scope by including 'any other export incentive' within business profits.

A literal interpretation of the new provision suggests that any export incentive received or receivable by a taxpayer would now be taxable as business income. This means that not only incentives provided by the Government of India but also those extended by foreign governments or third parties would fall under the ambit of taxable business income. This modification/expansion creates an avenue for increased taxation that was likely not intended by lawmakers.

While the objective behind the ITB is to enhance clarity and comprehension of tax laws, this particular modification appears to have resulted in an unintended tax implication. The Government has consistently maintained that the ITB is not designed to expand the scope of taxability but rather to streamline the language for better understanding. However, the broad phrasing of 'any other export incentive' inadvertently extends the taxable base beyond the original intent.

The said change could significantly impact exporters who may receive incentives in various forms. Necessary clarification from tax authorities or amendments may be required to ensure that the provision aligns with the original legislative intent. The ITB's modification of the export incentive taxability framework, while aimed at simplification, has inadvertently broadened the scope of taxable income for exporters.

No deduction of income tax levied on 'income' as against 'business profits'

Presently, the provisions of Section 40(a)(ii) of the Act provide that while computing the profits under the head PGBP, any tax or rate levied on profits and gains of business or profession shall not be allowed as a deduction. However, Section 35 of the ITB states that any tax paid on 'income' shall not be allowed as a deduction while computing business income.

This new provision differs from the existing rule, which is restricted only to tax/rate levied on business profits. The proposed section now encompasses taxes paid on all kinds of 'income', significantly expanding its scope and potentially affecting businesses across various sectors.

The proposed provision clarifies that any tax related to 'income' is not allowable, thereby, eliminating the possibility of any interpretational issue.

Clarification regarding the allowability of depreciation pursuant to amalgamation/ succession etc.

The 6th proviso to Section 32 of the Act specifies the method of computing depreciation in cases of business restructuring, such as amalgamation, succession, or demerger. Tax authorities have often interpreted this provision to deny depreciation claims for assets not recorded in the books of the transferee prior to the restructuring. However, the Courts and various benches of the Tribunal have ruled that the 6th proviso does not prohibit depreciation claims for such assets; rather, it merely prescribes a method to allocate depreciation between the transferor and transferee in the year of restructuring.

The proposed section 33(5) of the ITB aims to eliminate any interpretational disputes by introducing a clear formula for allocating depreciation on assets used by both the transferor and transferee based on the number of days for which the asset was used by the predecessor and successor. This change is expected to bring greater clarity and certainty regarding depreciation treatment in restructuring scenarios.

No provision for the allowability of the Cost of Repairs of Plant, Machinery, and Furniture

Under the Act, expenses on rent, insurance, and repairs of premises are deductible under Section 30, while insurance and repairs of machinery, plant, and furniture are covered under Section 31. The ITB proposes to merge Sections 30 and 31 into Section 28. However, the new provision omits any mention of repair expenses for machinery, plant, and furniture.

On a plain reading of Section 28 of the ITB, deductions for these repair expenses might be disallowed—likely an unintentional drafting omission rather than a policy change. It is expected that this issue will be rectified in due course to maintain the original intent of the law.

Be that as it may, it would be permissible for taxpayers to claim the expenditure incurred on account of repairs of machinery, plant

and furniture under section 34 of the ITB (corresponding to section 37 of the Act).

Depreciation of intangible assets

The ITB proposes two key changes in the allowability of depreciation on intangible assets. Under the existing Act, intangible assets acquired prior to 01.04.1998 are not eligible for depreciation. The ITB removes this restriction, allowing taxpayers to claim depreciation on all intangible assets, regardless of acquisition date. This change could benefit taxpayers by enabling depreciation claims on older intangible assets; especially, in cases where the old intangible asset is acquired under a business restructuring by the successor entity.

The ITB limits depreciation claims to intangible assets exclusively used for business purposes. If an asset is used partially for business, depreciation will be allowed only in proportion to its business use.

Carry forward and set-off of losses (including business loss) on change in shareholding

As per the provisions of Section 79 of the Act, business losses are not permitted to be carried forward and set off, against the income of the previous year, in which there is a change in beneficial shareholding beyond 51% in case of closely held companies. Basis the language of the said section, a view was prevailing that the prohibition is only relevant for the year of change if shareholding and losses could be set-off in years subsequent to the year of change in shareholding.

The proposed section 119 of the ITB explicitly prohibits set-off of losses against income of any year, viz. tax year in which beneficial shareholding undergoes change beyond 51% and any subsequent tax years.

The aforesaid amendment is a significant development impacting business acquisitions and re-organisations. The amendment seems to go beyond the avowed objective of simplification of the tax laws and definitely signifies policy change regarding allowability of losses in case of change in shareholding.

Conclusion

The Government's initiative to simplify tax laws is a welcome step, but its success depends on meticulous scrutiny of the language in the proposed law. While the ITB aims to eliminate ambiguities and complex interpretations, certain provisions require re-evaluation to ensure the same are aligned with the original legislative intent. The current draft necessitates further refinement to iron out inconsistencies and unintended implications.

The road ahead will determine whether the ITB successfully achieves its goal of simplifying compliance, reducing disputes, and ensuring a more predictable tax regime for all. As the Government refines the ITB, it is crucial to strike a balance between simplification and maintaining the intended tax structure.

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Deductions and Exemptions — Income-tax Bill, 2025





CA P.V.S.S. Prasad CA T. Ram Prasad

Overview

Income-tax Bill, 2025 (ITB) is introduced in the Parliament with an avowed object of making the law simple and understandable that avoids dispute and litigation. The provisions relating to deductions and exemptions introduced in the ITB are broadly similar to Chapter VI-A and sec. 10A of the Income-tax Act, 1961 (Act) with a few changes. It is critical to analyse and understand how this transition effects implementation of the law and its interpretation in the ITB regime. In order to remove practical difficulties and ensure a smooth transition from the Act clause 535 of the ITB empowers the Central Government to issue any general or special orders, do anything not inconsistent with the provisions which appears to it to be necessary or expedient. Three years from 1st April 2026, the date on which ITB is expected to become effective, is the time limit for passing any such orders under clause 535 of the ITB by Central Government for removing any practical difficulties. Clause 536 of the ITB which is titled "Repeal and Savings" ensures a smooth transition from the Act to the ITB by preserving the continuity of rights, obligations and proceedings and thereby protects the interests of both taxpayers and revenue. In this backdrop this article outlines the key changes, revisits the basic principles and highlights some attendant issues.

1.0 Introduction

The Hon'ble Finance Minister presented Income-tax Bill, 2025 in the parliament on 13 February 2025. The main objective is to reduce dispute and litigation for the purpose of which the provisions are proposed in concise, clear and easier manner to read and understand. We propose to deal with provisions dealing with deductions and exemptions. The provisions relating to deductions that are presently in Chapter VI-A of Income-tax Act, 1961 (Act) are correspondingly introduced as Clauses 122-154 of the Income-tax Bill, 2025 (ITB). Income not forming part of the total income as per sec. 10 of the Act are correspondingly placed in the ITB in clause 11 read with schedules II-VII. It is essential to understand how these provisions are being dealt with in the light of any variation in the text of provision and related interpretation etc. It is evident that the government has been discouraging deductions under the new tax regime since the last 4-5 years and in the same manner tax holiday provisions that are part of sec. 10 of the Act are also being phased out. In this backdrop it is to be analysed as to how these provisions

are proposed to be dealt with in the ITB. In this article provisions dealing with non-residents covered in Schedule IV and some related items in other schedules are not being discussed here as there is an exclusive article being written by another author on the said topic. It is proposed to discuss only the key changes between the provisions under the Act in comparison with the corresponding clauses of ITB.

2.0 Exemptions - Sec. 10 of the Act - Clause 11 read with Schedules

2.1 Section 10(10) of the Act - Sch. III(38): Death-cum-retirement Gratuity:

Similar provisions have been provided in clause 19(1) sl. no. 3 r.w.s 19(2)(g) followed by sl. no. 4,5 and 6. One has to read Sec. 19(2)(a) and 19(2)(b) though the provision in the Act has been retained in the ITB. One needs to go through the clause and the corresponding provisions in the schedule which looks more cumbersome than the existing pattern.

2.2 Section 10(10D)-Sch II(2): Life insurance/ULIP maturity proceeds:

Provisions with respect to maturity proceeds of LIC and ULIP have been provided in Sch II(2) of ITB which are similar to that of 10(10D) of the Act. Criteria relating to Unit linked Insurance plan on or after 01-04-2023 has been dealt with clearly in Sch II(2) which is mentioned as under:

Exemption of ULIP maturity proceeds if:

- Premium to sum assured ratio is <=15% for special policies and 10% for other policies; and
- Aggregate for premium for all such policies (in all tax years during the term of all policies) <=2,50,000

Other than ULIP :

- Premium to sum assured ratio is <=15% for special policies and 10% for other policies; and
- Aggregate for premium for all such policies (in all tax years during the term of all policies) <=5,00,000

However, it is now provided that any sum received under a life insurance policy issued by an IFSC Insurance Intermediary office shall be exempt without reference to the conditions regarding the maximum amount of premium or aggregate amount of premium payable on such policy. However, the condition that the premium payable for any of the year during the term of the policy to not exceed 10% of the actual capital sum assured, continues to apply.

2.3 Section 10(12B) – Sch III(4): Partial withdrawal of amount from National Pension System Trust:

Partial withdrawal from NPS hitherto provided under sec. 10(12B) of the Act is being provided under Sch III(4)of the ITB. NPS Vatsalya scheme has been added under sub sec. (1B) of 80CCD through Finance Bill 2025. An assessee would be allowed deduction under 80CCD even in respect of deposits made into minors account (up to 2 children). However, the aggregate deduction allowable to assessee including that of a minors would be at maximum of ₹ 50,000 per year which has been clarified through FAQ 16-Q.3 along with Finance Bill 2025. It is provided as under with respect to withdrawal from NPS:

Any payment from the National Pension System Trust under the pension scheme is dealt with by new sub section 12BA of section 10 of the Act through Finance Bill 2025. The same has been provided in Sch III(4) which is as under:

Any employee or assessee being the guardian or parent of a minor.

a) Such payment is on partial withdrawal made out of his account or the account of the minor, as per the terms and conditions specified under the Pension fund Regulatory Act, 2013 (23 of 2013) and the regulations made thereunder; and

b) Exclusion shall not exceed 25% of the amount of contribution made by him.

2.4 Section 10(34B)-Sch VI (11): Dividend received by a unit in IFSC engaged in Aircraft/Ship leasing:

Sec. 10(34B) of the Act deals with a unit of IFSC primarily engaged in business of aircraft leasing receiving income by way of dividend from a company also being a unit of IFSC primarily engaged in business of aircraft leasing. It is now proposed under Sch VI(11) of ITB that this requirement of specific business of aircraft leasing has been extended to ship leasing as well in respect of both the dividend receiving unit and dividend paying unit of IFSC. In other words, both receiving and paying units should be engaged in same line of activity of Aircraft/ship leasing which has already been proposed by Finance Bill, 2025.

An interesting question that may arise is whether the tax exemption would still be allowable in a case where the dividend receiving unit is engaged in aircraft leasing activity whereas the dividend paying unit is engaged in ship leasing activity or *vice versa*?

3.0 Section 10AA- Clause 144: Tax holiday for SEZ units

Tax holiday in respect of SEZ units under section 10AA of the Act is phased out by inserting a sunset clause with respect to commencement of manufacturing by the units of SEZ to be on or before 1st April 2021. In order to facilitate the transition of this provision into ITB, clause 144 has been proposed to provide that the deduction under this provision of the Act would be available only for such number of tax years as would have been allowed under the Act if the said Act has not been repealed.

Explanation added by the Finance Act 2017 (which is effective from AY 2018-19) to sub-section 1 of 10AA reads as under:

For the removal of doubts, it is hereby declared that the amount of deduction under this section shall be allowed from the total income of the assessee computed in accordance with the provisions of this Act, before giving effect to the provisions of this section and the deduction under this section shall not exceed such total income of the assessee.

On the basis of Explanation, it is a deduction to be made from the total income computed in accordance with the provisions of the Act before giving effect to the provisions of sec. 10AA. The deduction in no case shall exceed the said total income.

Relief under sec. 10AA meant for exports cannot include in its purview turnover which is unbilled with consideration not received within 6 months from close of the financial year in which the export was made ***– BT-E-Serev (India) Pvt Ltd vs. ITO (2017) 60 ITR (Trib) 618 (DEL).***

Income from a unit in Special Economic Zone is exempt even if the activities is one of trading in course of import and re-export ***– DCIT vs. Bommidala Enterprises Pvt Ltd (2017) 164 ITD 306 (Visakhapatnam-Trib)***

Trading, warehousing and consultancy activities fall under the definition of "service" as per SEZ rules and hence eligible for deduction under sec. 10AA ***Midas DFS (P) Ltd vs. ITO (2018) 96 taxmann.com 351 (KOL-Trib)*** whereas Cochin bench of the ITAT held that activity of the assessee engaged in import of cigars and cigarettes and exporting it to duty free shops was not treated as either manufacturing or service so as to claim deduction under sec. 10AA- ***Crossings International Distributions [(TS)-(719-ITAT-2019 (KOCH)]***

The Hon'ble Supreme Court in ***CIT vs. Bommidala Enterprises Pvt Ltd (2016) 389 ITR 1 (SC)*** held that whether trading activity is a "service" in the context of sec. 10AA of the Act was not merely a question of fact, but is a question of law as well and remanded the matter back to the Andhra Pradesh High Court to go into the question of claim of exemption under sec. 10AA on the basis that it would be a question of law as well.

4.0 Deductions Chapter VI-A of the Act - Chapter VIII (clause 122-154) of ITB

4.1 Section 80C-Clause 123- Deduction in respect of life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, etc.:

In the present sec. 80C of the Act in respect of an assessee being an individual or a Hindu undivided family, contribution made to LIC, deferred annuity etc. are allowed as deduction up to ₹ 1,50,000/- and the same provision has been inserted in schedule XV read with clause 123. The essence of this popular provision is retained in the new clause 123 of the ITB as well.

4.2 Section 80CCD- Clause 124 - Deduction in respect of contribution to pension scheme of Central Government:

A deduction for contributions to the National Pension Scheme (NPS) is available for deposits made by a guardian into a minor's account (NPS Vatslya), subject to a limit of ₹ 50,000. Additionally, any amount withdrawn from the account upon the minor's death is not taxable in the hands of the guardian. It helps in creation of wealth and financial security for the minor together with tax benefits to the guardian.

NPS Vatsalya scheme has been added under sub-sec. (1B) of 80CCD through Finance Bill 2025. An assessee would be allowed deduction under 80CCD even in respect of deposits made into minors account (up to 2 children). However, the aggregate deduction allowable to assessee including that of a minors would be at maximum of ₹ 50,000 per year which has been clarified through FAQ 16-Q.3 along with Finance Bill 2025.

4.3 Section 80G - Clause 133: Deduction in respect of donations to certain funds, charitable institutions, etc:

In respect of donations as provided in clause 133 of ITB an additional clarification is given with respect to a new fund for investment as "Any regimental fund or Non-Public fund established by the Armed forces of the Union for the welfare of the past and present members of the Armed forces or their dependents" mentioned in Schedule VII(1).

4.4 Section 80IAC- Clause 140- Special provision in respect of specified business:

Section 80-IAC of the Act provided tax benefits to Start-ups incorporated between 1st

April 2016, and 1st April 2025. Clause 140 of ITB extends this period, allowing start-ups incorporated up to 1st April 2030, to qualify for deductions. This will foster innovation and economic growth. The provisions of sub-sections (5) and (7) to (11) of section 80-IA referred to in section 80-IAC have been directly incorporated in clause 140 of the ITB.

This extension has been proposed in the Finance Bill 2025 also.

4.5 Section 80LA - Clause 147: Deductions in respect of certain incomes of Offshore Banking Units and International Financial Services Centre:

The sunset date for commencement of operation of IFSC unit of Sec. 80LA(2)(d) has been extended from 31st March 2025 to 31st March 2030. This extension has been provided even in the Finance Bill 2025. This is part of the extension of sunset date for various other clauses relating to IFSC units.

4.6 Section 80M- Clause 148: Deduction in respect of certain inter-corporate dividends:

This provision allows for a deduction on the amount of dividend received by a domestic company from another domestic company, a foreign company, or a business trust, provided the dividend is distributed on or before one month prior to the due date for filing the income tax return.

However, if the domestic company has opted for the concessional tax rate under clause 200 (sec. 115BAA of the ACT), such company will not be eligible for the deduction under clause 148 (sec. 80M of the Act).

This proposal under clause 200 is unfair, as it is essential to remove the cascading effect of dividend taxation for every distribution if the same amount is passed down as dividend. Hence it is a strong case for representation to include clause 148 (80M of the Act) deduction as allowable in spite of claiming the concessional tax rate under clause 200.

4.7 Section 80TTA and 80TTB- Clause 153- Deduction in respect of interest on deposits in savings account:

This clause clubbed the deductions in respect of interest income earned by an individual from savings account and other deposits (for senior citizens) which are currently covered under sec. 80TTA and 80TTB of the Act.

5.0 Basic principles and issues relating to Deductions

In view of Chapter VI-A deductions of the Act being replicated in the ITB the jurisprudence in the context of Chapter VI-A deductions would be relevant for judicial precedence and guidance. It is therefore essential to go through some of the basic principles and the corresponding ratio laid down by the Courts of Law.

5.1 Deductions to be made from Gross total income:

The wording under Clause 121(1) refers to Gross total income from which the deductions are to be allowed (Sec. 80A of the Act). For the purpose of Chapter VI-A the gross total income has to be computed, inter alia, by deducting the deductions allowable under sec. 30 to 43D of the Act, including depreciation allowable under sec. 32 of the Act, even though the assessee has computed the total income under Chapter IV by disclaiming the current depreciation. ***Plastiblends India Ltd vs. ACIT (2009) 318 ITR 352(Bom) (FB).***

The Hon'ble Court distinguished the decision of Supreme Court in ***CIT vs. Mahendra Mills (2000) 243 ITR 56 (SC)*** and held that

an assessee will not be eligible to claim a higher deduction under Chapter VI-A by disclaiming the current depreciation. This decision was further endorsed by the Supreme Court in ***Plastiblends India Ltd (2017) 86 taxmann.com 137(SC),*** wherein it was held that sec. 80IA of the Act is a complete code in itself and accordingly the profits of the business have to be computed after making the requisite expenditure and allowances. In other words deduction linked to profits cannot be claimed on inflated profit by not claiming certain items of eligible expenditure. In a different case it had been held by the Apex Court that deductions under Chapter VI-A are from gross total income and not from income under any head – ***CIT vs. Williamson Financial Services (2008) 297 ITR 17 (SC)***.

Deductions under Chapet VI-A are distinct from "Incomes not included in total income"- ***Sundaram Clayton Ltd vs. CIT (1996) 220 ITR 281 (SC), CIT vs. JK Synthetics Ltd (1983) 143 ITR 396 (ALL)***.

Unabsorbed depreciation and carry forward losses are to be set off in arriving at the gross total income and if such gross total income becomes nil after such set off, the assessee was held not entitled to any of the relief under Chapter VI-A of the Act- ***Synco Industries Ltd vs. AO(IT) (2008)299 ITR 144 (SC).***

5.2 Deductions not to exceed "The gross total income":

The aggregate amount of deduction that can be made under Chapter VI-A should not exceed "the gross total income" of the assessee. If such gross total income is found to be at a net loss on account of the assessee's performance, no deductions under Chapter VI-A shall be allowed – ***Cloth Traders (P) Ltd vs. CIT (Addl) (1979) 118 ITR 243 (SC).***

If certain deductions are claimed in the hands of firm, Association of Persons (AOP) or a Body of Individuals (BOI) no further deductions under these sections shall be made in the hands of any partner of such firm or a member of AOP or BOI in their personal tax returns.

5.3 No ordering rule for claim of deductions:

The statute does not prescribe any ordering rule in which various deductions are to be allowed. It is for the assessee to claim in his own manner to derive the best advantage. There were few provisions in the past like Sec 80HH (9), 80-I (3) (as it stood before 1st April 1973) and 80J (3) of the Act wherein some priorities were indicated for claim of the same.

5.4 Inter head Set off of current year before claiming deductions:

On the basis of each relief giving provision, it is to be understood that each section providing a deduction or relief is a code by itself. The deduction would be available only if such eligible income earning unit results in profit in the year under consideration. If it is a loss no deduction or relief can be claimed. In a case where one of the eligible units results in profit whereas other eligible units result in loss, is it mandatory to set off the profit and loss inter-unit per se, so as to arrive at the net profit for the purpose of claim of deduction. This issue has been addressed by the Apex Court in ***CIT vs. Canara Workshops (P) Ltd (1986) 161 ITR 320 (SC)*** wherein it was held that such set off of inter-unit is not warranted, since the relief for successful undertaking cannot be diluted, merely because of the accident of the assessee running some other losing undertaking eligible for relief under the same section. This issue was further examined by the Hon'ble Apex Court by considering the ratio laid down in ***Synco Industries case (supra)***, ***Canara Workshop case (supra)*** and thereafter held that such inter-unit/undertaking set off is

impermissible. The deduction determined in sec. 80IA of the Act in the said case was held to be fully allowed in respect of such undertaking subject only to the overall limit of gross total income-***Reliance Energy Ltd (2021) 127 taxmann.com 69 (SC).***

5.5 Assessee eligible for relief under two different deductions for the same eligible activity:

In such a scenario there is no restriction on tax payer and he would be entitled to claim relief under both provisions subject to such aggregate relief from both the deduction put together should not exceed income of the eligible undertaking- ***JP Tobacco Products Pvt Ltd vs. CIT (1998) 229 ITR 123 (MP).***

A special leave petition against the said order was dismissed – ***(2000) 245 ITR (St) 71.***

5.6 80A(5) -Clause 122(5): Assessee to make a claim of relief/deduction:

It is mandatory for an assessee to make his claim of deduction in the return to be filed, if such claim is not made as per sub sec. 5, he would lose the right of such claim. ***EBR Enterprise vs. Union of India (2018) 107 taxmann.com 220 (BOM).***

A very interesting and vexed issue in this context is that whether an assessee can make a fresh claim of deduction in the return filed under sec. 153A (post search filing the return). There are number of judgements in favour/ against the assessee in this context. Hence the matter was referred to a Special Bench of ITAT Hyderabad, wherein it was ruled that in case of an abated assessment, fresh claim can be made under Chapter VI-A of the Income-tax Act, 1961, for the first time, in the return of income filed in response to the notice issued under sec. 153A of the Act, pursuant to a search conducted under sec. 132 of the Act. In case of unabated/completed assessment no fresh claims can be made under Chapter VI-A of the Act for the first time in the return of income filed in response to the issued notice under sec. 153A of the Act-***DCIT vs. SEW Infrastructure Ltd (2024) 167 taxmann.com 446 (Hyderabad-Trib) (SB).***

6.0 Transfer Pricing-inter-unit/undertaking transfer of goods or services at market value

It is essential that inter-unit transfer should happen at the market value so as to comply with the arm's length principle. Assessing officer would be within his right to recompute the profit of an undertaking if such transfers are not at arm's length/market value. These transactions would be covered as specified domestic transactions under section 92BA of the Act-Clause 164 of ITB and should comply with the obligations cast upon the taxpayer under the transfer pricing regulations.

7.0 Conclusion

The object and purpose of the Income Tax Bill 2025 has been explained in the introduction of this article. It is always a matter of concern whether the existing judicial precedence would be appropriate and applicable even in the context of provisions under the ITB, more so when similar wording continues in the provisions of the ITB. In view of the same the taxpayer is obliged to make a very critical comparison of the provisions of the Act with that of the ITB word by word and letter by letter. Now that the ITB is referred to the Select Committee of the Parliament we need to wait for the final version after considering the suggestions of all the stakeholders.

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Income-tax Bill, 2025: Capital Gains & Corporate Re-organisation — *Old Wine in a New Bottle with some Fizz*


CA Hiten Kotak


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Overview

The Proposed Bill largely aligns with the ITA provisions in terms of the overall framework of capital gains tax, tax neutrality of re-organisations as well as set-off and carry forward of losses. The continuity of use of key concepts and phraseology used under the ITA should mitigate the risk of any undesired litigation on settled issues.

Some interesting changes are, applicability of AMT to all LLPs/firms, denial of inter-corporate dividend deduction to domestic companies claiming concessional headline tax rate of 22%, reintroduction of forex fluctuation benefit to non-residents on unlisted share sale, section 79 related amendments for denying carry forward and set-off in case of 49% or more change in beneficial owner of shares, few lapses in incorporating recent Finance Bill, 2025 proposals, etc.

Some of these changes seem to be erroneous/drafting errors, while the others may have a substantive intent behind them. It will be of great help if the tax department issues clarifications to address these issues so that taxpayers have adequate time to understand the corresponding implications on their structures.

Introduction

The Income-tax Act, 1961 (**"ITA"**), has been the cornerstone of India's direct taxation system for over six decades. Over time, it has undergone numerous amendments based on economic policies, political considerations and at times, ineptness of the thinkers behind it. The Income-tax Bill, 2025 (**"Proposed Bill"**), tabled by the Finance Minister, Smt. Nirmala Sitharaman in the Parliament on 13 February 2025, is aimed at simplifying and modernizing India's tax structure. However, a closer look at the Proposed Bill raises the question: Is it truly a substantive reform, or just a rearrangement of the old tax law with minor tweaks?

This article attempts to cover provisions relating to capital gains, business reorganization and set off & carry forward of losses.

1. Capital Gains

1.1. The Proposed Bill largely reflects the established framework under the ITA and assures continuity in terms of: (i) what constitutes capital asset; (ii) trigger of capital gains provisions for

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various scenarios (transfer, liquidation etc); and (iii) tax rates (12.5%/20%/ ordinary income tax rate). The holding period in case of transfer of capital assets also remains in line with the extant law. It maintains a uniform holding period of 24 months for most assets to qualify as long-term capital gains (**"LTCG"**). Exceptions to this include listed equity shares, units of equity-oriented mutual funds, zero coupon bonds and units of Unit Trust of India, which retain a 12-month holding period for LTCG treatment, and transfer of business undertaking by way of slump sale, where the required holding period for LTCG treatment remains 36 months.

1.2. Another key provision that remains unchanged is the grandfathering of cost of listed equity shares based on their fair market value as on January 31, 2018, which was introduced to protect investors from retrospective taxation following the reintroduction of LTCG tax for on-market sale of listed equity shares. While these aspects provide stability, certain key changes, as discussed below, require closer examination to assess their broader impact. The deeming fiction for considering fair market value as the sale consideration in case of sale of land/building/unquoted shares remains consistent too.

1.3. ***Section 112 of the ITA vis-à-vis Section 197 of the Proposed Bill | A Shift in Approach***

1.3.1. Section 112 of the ITA governs the taxation of long-term capital gains on assets other than listed equity shares, equity-oriented mutual funds and units of business trust (which are covered under Section 112A, subject to fulfilment of stipulated conditions). Further, in case of transfer of assets, being unlisted shares and securities, by non-residents, tax is computed at 12.5% (excluding surcharge and cess) without giving effect to the first and second provisos to Section 48 of the ITA.

1.3.2. The first proviso to Section 48 of the ITA, introduced vide the Finance Act, 1989, allowed non-resident investors to compute capital gains in the same foreign currency which was used for undertaking the original investment. This was introduced to offset any adverse impact of Indian rupee depreciation, which could otherwise inflate taxable gains for foreign investors, without any corresponding real gain in foreign currency terms.

1.3.3. The Finance Act, 2012 amended Section 112(1)(c)(iii) of the ITA whereby it halved the LTCG tax rate for non-residents on the sale of unlisted shares from 20% to 10%, while also removing foreign exchange fluctuation benefits. This move ensured parity among non-resident investors, other than Foreign Portfolio Investors (**"FPIs"**), by providing a uniform tax rate on unlisted shares and securities and eliminating distortions caused by fluctuating exchange rates.

1.3.4. The Proposed Bill now appears to reverse this approach. A reading of Section 197 of the Proposed Bill reveals no separate exclusion referencing Section 72 (which corresponds to the existing Section 48 of the ITA). As a result, LTCG

on the sale of unlisted shares by non-residents (other than FPIs) could be taxed at 12.5%, albeit with the benefit of foreign exchange fluctuation adjustments.

1.3.5. This comes at a time when the Indian rupee has depreciated significantly against major global currencies. Between 2011 and 2025 alone, the exchange rate has nearly doubled from ₹ 45/USD to ₹ 87/USD, indicating an almost 95% depreciation. This means that USD 1 invested in 2011 will remain so in 2025 even if the underlying INR value of the investment has almost doubled. By allowing this adjustment, the government appears to be reverting to the pre-2012 computation framework, which could reduce the effective tax burden for non-residents by aligning it with their home currency gain/loss situation.

1.4. ***Indirect Transfer | Potential increase in coverage of transactions***

Presently, the ITA taxes transfer of shares in a foreign company or interest in a foreign entity, which in either case derives substantial value from Indian assets. The Finance Act, 2012, by introducing Explanation 5 to Section 9(1)(i), retrospectively overturned the Vodafone ruling by making indirect transfer of shares taxable in India if they derive significant value from Indian assets.

The Proposed Bill [Section 9(2)(d) read with Section 9(9)] attempts to refine the language of the present Explanation 5 to Section 9(1)(i) by introducing a slightly different phrasing of the provision – see below extract of the proposed Section 9(9):

"An asset or a capital asset, being any share of, or interest in, a company or entity registered or incorporated outside India, which derives substantial value from assets located in India."

In doing so, in addition to taxing transfer of (a) shares in a company registered/incorporated outside India; and (b) interest in an entity registered/incorporated outside India, it potentially seeks to also cover gains on transfer of (c) shares in an entity registered/incorporated outside India; and (d) interest in a company registered/incorporated outside India.

1.5. ***Liquidation Taxation | Expanding Coverage***

1.5.1. Explanation 1 to the definition of short-term capital asset under Section 2(42A) of the ITA, inter alia, provides that for determining whether capital gains on transfer of shares of a company in liquidation are short-term or long-term, the period subsequent to the company going into liquidation shall be excluded.

1.5.2. The Proposed Bill rewords the scope of covered assets to provide that the period of holding subsequent to the date on which the company goes into liquidation is to be excluded for all other instruments held in such company (and not limited to shares). This means that if an investor holds other forms of securities, such as debentures, in a liquidating company, their period of holding will also be frozen from the date of the company going into liquidation.

1.6. ***Transition Provisions in case of Withdrawal of Exemption |Eliminating***

Retroactive Taxation on Exempt Transfers

1.6.1. Section 47A of the ITA deals with taxability in case of violation of conditions based on which certain transfers were not regarded as such for capital gains tax purposes under Section 47 (such as transfer of a capital asset from holding company to wholly owned subsidiary and vice versa). If these conditions are breached, the previously exempted transfer is retrospectively deemed taxable in the year it originally occurred, and capital gains tax is imposed accordingly, along with applicable interest. Notably, the corresponding provision under the Proposed Bill [Section 71] is also worded on similar lines.

1.6.2. However, the transition provision under Section 536(q) of the Proposed Bill (dealing with Repeals and Savings) modifies this approach. It states that if the conditions under Section 47A of the ITA are met (leading to violation), the tax shall be levied in the year in which such conditions are breached, rather than retrospectively in the original year of transfer.

1.7. ***Amendments proposed in the Finance Bill, 2025 | Some obvious errors in the Proposed Bill which are likely to be corrected***

Taxation of REIT and InVIT

1.7.1. The Finance (No. 2) Act, 2014, introduced a special taxation regime for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) under Section 115UA of the ITA. It grants pass-through taxation for specified income streams, such as interest, dividends, and rental income, which are taxed in the hands of unit holders unless exempted. Other incomes are taxed at the maximum marginal rate, except for capital gains, which are subject to preferential rates under Sections 111A and 112.

1.7.2. The Finance Bill, 2025 proposes an amendment to include Section 112A (covering long-term capital gains on listed equity shares and equity-oriented mutual funds) within Section 115UA to ensure uniform capital gains taxation. However, the Proposed Bill omits a reference to Section 198, which corresponds to the current Section 112A, likely due to a drafting oversight that may be corrected before enactment.

Tax Neutral Relocation of Offshore Funds

1.7.3. To promote the development of International Financial Services Centres (**"IFSCs"**), the ITA provides for a tax-neutral relocation of offshore funds, provided the resulting fund is registered as a Category I, II, or III Alternate Investment Fund (AIF). The Finance Bill, 2025, proposes to expand this tax exemption to include offshore funds relocating to retail schemes or Exchange Traded Funds (**"ETFs"**) under the IFSC Authority (Fund Management) Regulations, 2022. Additionally, it extended the sunset date for such relocations from 31 March 2025 to 31 March 2030, allowing more time for fund managers to shift operations to IFSCs.

1.7.4. Despite these amendments proposed in the Finance Bill, 2025, the Proposed Bill incorrectly retains the original sunset date of 31 March 2025 instead of reflecting the extended deadline of 31 March 2030.

2. Re-organisation Provisions

In general, the provisions relating to tax neutrality of amalgamation, demerger, company to LLP conversions, etc. have largely been left untouched. However, few notable issues having an indirect impact on ownership structures are discussed below:

2.1. ***Dividend Setback | Proposed Bill Ends Inter-Corporate Dividend Deduction for 22% CTR companies***

2.1.1. The concessional tax regime (**"CTR"**) introduced under section 115BAA of the ITA was aimed at simplifying corporate taxation by offering reduced tax rates to domestic companies in exchange for foregoing various deductions and exemptions. Under the existing framework, companies opting for the 22% CTR or the 15% CTR (under Section 115BAB, applicable to new manufacturing companies) are generally not permitted to claim certain special/ additional deductions. However, two key exceptions were provided: (i) deductions for employment cost of new employees under Section 80JJAA of the ITA and (ii) deduction of inter-corporate dividends under Section 80M of the ITA. These deductions ensured encouragement to job creation and avoidance of cascading taxation on dividend income in corporate holding structure respectively.

2.1.2. The Proposed Bill retains the deduction for employment costs in both the 15% and 22% concessional tax regimes. However, a notable change is the restriction of inter-corporate dividend deduction to companies which opt/have already opted for the 22% CTR, whereby such companies would be subject to full taxation on dividends received from domestic or foreign companies, irrespective of whether they upstream dividend within the prescribed timelines.

2.1.3. Such removal of the inter-corporate dividend deduction for companies under the 22% CTR could result in a higher effective tax burden for multi-tiered corporate structures.

2.1.4. If this proposal gets enacted in the same form, it will mark a significant policy shift, potentially impacting several large and small business with corporate holding structures. Such structure may need to be reviewed and altered to address this additional cost

2.2. ***Section 79 of the ITA vis-à-vis Section 119 of the Proposed Bill | A Step Forward or Backward?***

As per Section 79 of the ITA, losses of a closely held company are allowed to be carried forward and set off only if the at least 51% of the voting power is beneficially held by persons who beneficially held the shares on the last day of the year in which losses were incurred.

The Proposed Bill carries three key changes in the corresponding Section 119 from the existing ITA.

2.2.1. Firstly, there is an amendment in the language from 'persons who

beneficially held shares of the company' to 'beneficial owner of shares of the company'.

A question that has often come up before the Indian judiciary is whether beneficial ownership can be said to have remained unchanged if the registered owner of shares, holding more than 49% of the voting power, has changed. Courts and Tribunal have taken contrary positions on this issue. The Karnataka High Court, in ***CIT vs. AMCO Power Systems Limited [[2015] 62 taxmann.com 350 (Karnataka)]***, held that a holding company inherently controls its wholly-owned subsidiary and, by extension, exercises voting power over its step-down subsidiary. However, the Delhi High Court, in ***Yum Restaurants (India) Private Limited vs. ITO [S-755-ITAT-2014 (DEL)]***, ruled that an unchanged ultimate holding company does not automatically imply unchanged beneficial ownership, placing the onus on the taxpayer to prove the existence of a separate beneficial shareholder entitled to voting rights, dividends, etc. Similarly, in ***ACIT vs. WSP Consultants India Private Limited [[2022] 140 taxmann.com 65 (Delhi - Trib.)]***, the Delhi Tribunal held that in the absence of evidence proving that the ultimate holding company was the beneficial owner, the registered shareholder would be presumed to hold beneficial ownership.

It will be interesting to see how the judiciary interprets the provisions of this section based on this change in language. One interpretation taken by the Mumbai Tribunal in the case of ***Tainwala Trading and Investments Co. Limited vs. ACIT [[2012] 22 taxmann.com 68 (Mum.)]*** (in the context of section 79) is that a person is said to be a beneficial owner of shares when they are held by someone else on his behalf, meaning thereby that the registered owner is different from the actual or the beneficial owner. This is aligned with its view of the Delhi Bench of the Tribunal in WSP Consultants India Private Limited (supra).

Notably, the term 'beneficial owner' finds place in the ITA under the following sections (i) 2(22)(e); (ii) 2(32); (iii) 10(23FB); (iv) 40A, (v) 45(2A), (vi) 94A, (vii) 102 and (viii) 139 . Guidance can be drawn from the past interpretation under these provisions for as well.

2.2.2. Second amendment pertains to the conditions under which losses can be carried forward and set off against future income. Under the existing framework, this benefit of carry forward and set-off is available if at least 51% of the voting power is beneficially held by the same shareholders who held the shares on the last day of the year in which the loss was incurred. There was ambiguity regarding whether the right to carry forward and set off losses would be restored if the shareholding was subsequently restructured to meet the 51% threshold in any future year of setting off such loss. The Mumbai bench of the Tribunal, in ***Sodexo India Services Private Limited vs. PCIT [TS-79-ITAT-2023 (Mum)],*** held that Section 79 of the ITA gets attracted in the year in

which set off is claimed and not in the year when the shareholding of the company changes.

The Proposed Bill addresses this by explicitly clarifying that once there is a change in shareholding beyond 49% compared to the year in which the loss was originally incurred, the right to carry forward and set off the loss is permanently lost. This means that even if the shareholding is later restored to meet the 51% requirement, the ability to utilize the carried-forward loss is not reinstated.

2.2.3. Third key amendment to this section is the removal of the non-obstante clause in the opening part of Section 79 of the ITA. While Section 79 of the ITA begins with "Notwithstanding anything contained in this Chapter," Section 119 in the Proposed Bill does not include a corresponding non-obstante clause.

Notably, Section 72A of the ITA (corresponding to Section 116 of the Proposed Bill) was originally introduced to allow carry forward of losses in case of amalgamation/ demerger, etc. while providing for conditions to prevent profitable enterprises from acquiring loss-making entities solely to utilize accumulated tax losses to offset taxable profits.

While both these provisions appear to deal with different issues, there has been some litigation on whether one will override the other, given that Section 72A of the ITA begins with, "notwithstanding anything contained in any other provision of this Act," whereas Section 79 of the ITA begins with, "notwithstanding anything contained in this Chapter", while both sections fall under Chapter VI - Aggregation of income and set off or carry forward of loss of the ITA. However, since the corresponding Section 119 of the Proposed Bill lacks the non-obstante clause, it will be interesting to see if there arises any situation requiring one to pit these provisions against each other.

2.3. ***The Unseen Impact of AMT | A Silent Tax Hike?***

2.3.1. Under the ITA, Alternate Minimum Tax (**"AMT"**) provisions contained in Section 115JC to Section 115JF primarily apply to non-corporate taxpayers such as Limited Liability Partnerships ("LLPs"), partnership firms, individuals, HUFs, AOPs, and BOIs - but only if they claim specific deductions under Chapter VI-A (excluding Section 80P), Section 10AA, or Section 35AD [as per section 115JEE of the ITA].

2.3.2. However, the Proposed Bill introduces a significant shift by extending AMT to all such taxpayers (including partnership firms and LLPs), regardless of whether they claim such special deductions. The widened AMT net could have a significant impact on holding structures where partnership firms and LLPs hold shares in underlying companies. Under the Proposed Bill, LTCG on the sale of such shares would be exposed to AMT at 18.5%, whereas, under normal provisions, the LTCG tax rate is only 12.5%. This disparity can create a disadvantage

for investment vehicles, particularly family offices that pool investments through partnership firms or LLPs.

2.3.3. Interestingly, while the Proposed Bill effectively expands AMT applicability to all partnership firms and LLPs, it appears to inadvertently exclude LLPs that have been converted from companies [Section 206(17) of the Proposed Bill]. This gives a strong impression that the intent is to perhaps leave regular LLPs out of AMT provisions.

2.4. ***Fast-Track Demergers | A Roadblock to Tax Neutrality?***

A fast-track demerger, carried out under section 233 of the Companies Act 2013 (**"CA 2013**"), does not require approval of the National Company Law Tribunal (**"NCLT"**) but instead requires clearance from the Regional Director (Central Government). It is a novel introduction under CA 2013 and was absent in Companies Act, 1956 (**"CA 1956"**). Fast-track demergers were introduced to provide a simplified, time-efficient alternative to traditional demergers, primarily benefiting small and closely held companies.

Under the ITA, Section 2(19AA) defines demerger as a transfer pursuant to a scheme under Sections 391 to 394 of the **CA 1956**. The corresponding provisions under the CA 2013 are found in Sections 230 to 232. However, the ITA has not been updated to explicitly reflect this transition, creating ambiguity regarding whether demergers undertaken through new mechanisms introduced under CA 2013 - such as fast-track demergers under Section 233 - qualify for tax neutrality.

The Proposed Bill appears to address this ambiguity, albeit unfavourably, by explicitly recognizing only those demergers carried out under Sections 230 to 232 of CA 2013. By not referring to Section 233 of the CA 2013, the Proposed Bill suggests that tax-neutral treatment may not extend to fast-track demergers. One would have expected a positive approach from the Government in this regard.

3. Set-off and carry forward provisions

3.1. ***Transitioning Capital Losses | A Unique Set-Off Opportunity or an Unintended Miss?***

The Proposed Bill largely retains the existing principles pertaining to carry forward and set off of losses in the ITA, ensuring continuity in how taxpayers can utilize past losses against future gains.

Head of income under which loss is incurred	***Head of income under which it can be set-off in the same year***	***Head of income under which it can be set-off in the subsequent year(s)***
House Property	Salary, House Property PGBP, Capital gains, Other Sources, Owning and maintaining race horses Restricted to INR 2 lakhs	House Property

Head of income under which loss is incurred	***Head of income under which it can be set-off in the same year***	***Head of income under which it can be set-off in the subsequent year(s)***
Profits and Gains of Business or Profession ("PGBP")	House Property, PGBP, Speculation business, Capital gains, Other sources	PGBP
Activity of owning and maintaining race horses	Only against income from race horses	Only against income from race horses
Speculation Business	Only against income from speculation business	Only against income from speculation business
Specified Business, as provided under Section 35AD of the ITA [corresponding to Section 46 of the Proposed Bill]	Only against income from specified business	Only against income from specified business
Capital Gains	Short term capital loss ("STCL") can be set-off against any income under the head 'Capital gains' Long term capital loss can be set-off only against LTCG	STCL can be set-off against any income under the head 'Capital gains' Long term capital loss can be set-off only against LTCG
Income from Other Sources	House Property, PGBP, Capital gains	N/A

However, one key transition provision under Section 536(n) of the Proposed Bill (dealing with Repeals and Savings) introduces an interesting anomaly - it allows for the set-off of capital loss (whether related to short term or long-term asset) incurred under the ITA against income under the head 'Capital Gains' under the new law for tax years beginning 01 April 2026.

This modification appears to provide a unique relief to taxpayers having long-term capital losses under the old law, as they can now offset these losses even against short-term capital gains arising under the new regime. Whether this is indeed the intent of the legislature, given that the set-off mechanism is otherwise left untouched in the new provisions, will need to be seen.

4. Conclusion

4.1. As can be seen, the Proposed Bill does not introduce significant policy changes for taxing capital gains provisions. While some of the changes seem patently erroneous and should get corrected before enactment, some other ones (like AMT on LLPs, inter-corporate dividend for 22% CTR companies etc) require better clarity from the draftsmen at the earliest, so that taxpayers have adequate time to take appropriate decisions/actions to address any anomalies at their end.

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Income-tax Bill, 2025 : Impact on Non-Residents





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Overview

In a major overhaul of tax regime in India, the government has proposed to repeal the existing tax law enacted over six decades back. The reform is based on three core principles: simplifying language and structure for improved coherence, maintaining existing tax policies, and avoiding any changes to tax rates

While no major changes have been proposed, in this article, we discuss the impact of language changes in the new bill on non-residents. We discuss the changes to the provisions in relation to scope of total income of non-residents, indirect transfer provisions, manner of carry forward of capital losses and changes to transfer pricing provisions. We also discuss the changes in relation to interpretation of terms used but undefined in tax treaties. Lastly, the article also elaborates on impact of repeal on past assessments/ audits and proceedings.

Introduction

The Income-tax Bill, 2025 (**"New Bill"**), was presented in Parliament on February 13, 2025, ushering in a significant reform aimed at simplifying the Income-tax Act, 1961 (**"Old Act"**) enacted over six decades back. This initiative seeks to enhance the clarity and accessibility of the Indian tax framework while ensuring continuity and predictability for taxpayers. The reform is based on three core principles: simplifying language and structure for improved coherence, maintaining existing tax policies, and avoiding any changes to tax rates[1].

The New Bill has effectively streamlined the Old Act, reducing its complexity and volume while preserving its essential principles. Substantive provisions in relation to tax rates, residency rules, scope of total income, computation and heads of income, the assessment and appeal procedures remain the same. Simplification changes have been made by reducing the word count, reducing number of sections, removing explanations and provisos, consolidation of related provisions at one place etc. This initiative underscores the Government's commitment to creating a more business-friendly environment with a clearer and more efficient tax system.

1. Press release dated 13.02.2025 on Executive Summary on the Comprehensive Simplification of the Income-tax Act, 1961

Although the New Bill largely retains the framework for taxation of non-residents in India, certain amendments (intended/ unintended) have been made, particularly in relation to provisions in relation to deemed accrual of income, withholding tax provisions, interplay between domestic law and Double Taxation Avoidance Agreements (**"DTAA"s**) etc. While the amendments seem minor, their full impact will be known only once they are implemented and tested before courts over time.

In this article, we discuss key provisions relevant from non-resident's perspective in the New Bill.

1. Residential status and scope of total income

Taxation in India varies for residents and non-residents, making it essential to determine the correct tax status of an individual or entity. Under the tax laws, individuals are categorized into three status categories: resident, non-resident, and resident but not ordinarily resident. The rules governing these categories remain largely unchanged, with the "182 days test" continuing to be the primary determinant for residency. However, the New Bill has simplified the language and streamlined the rules governing residential status, making them more reader friendly while retaining the existing criteria.

Similarly, for foreign corporations, the test for determining their residential status (i.e. the place of effective management (**"POEM"**)) remains unamended. The Central Board of Direct Taxes (**"CBDT"**) had previously issued circulars (example, POEM guiding principles[2] and threshold for applicability of POEM[3]) and notification in relation to POEM provisions. The question is whether these circulars/ notifications will continue to apply under the New Bill as well. The New Bill *inter-alia* provides that any instruction, notification, order or direction issued under any provision of the Old Act, so far as it is not inconsistent with the corresponding provisions of the New Bill, be deemed to have been issued under the corresponding provision of the New Bill[4]. Therefore, the notification issued under the provisions of the Old Act in relation to POEM should continue to apply.

Circulars are utilized to understand the scope and meaning of the provision to which they relate[5]. Courts have held that circulars issued by CBDT are binding under section 119 on tax authorities. Courts have also held that circulars issued by the CBDT must clearly take the form of an order, instruction, or direction to the income tax authorities[6]. If that is the case, one may argue that as per the repeal and savings clause, the circulars issued under the Old Act should thus continue to apply under the New Bill. One may also rely on section 24 of the General Clauses Act, 1897 which provides for continuance of any appointment, order, notification, rule, bye-law etc. made or issued under the repealed statute insofar as it is not inconsistent with the provisions

2. Circular No. 06 of 2017
3. Circular No. 08 of 2017
4. Section 536(2)(j) of the New Bill
5. *Yogendra vs. CWT 187 ITR 58, Ekonkar Transport vs. CBDT 219 ITR 511; CIT vs. the Statesman 198 ITR 582*
6. Section 119(1): *CIT vs. Central Bank 185 ITR 6, Janta Meal vs. ITO 186 ITR 458; Bhartiya Engineering vs. Deshpande, 130 ITR 442*

re-enacted[7]. However, an express clarification with respect to continuity of circulars issued under the Old Act will be useful to ensure certainty and avoid litigation.

In so far as scope of income of non-resident is concerned, the New Bill retains the old framework. Total income of a non-resident includes all income from whatever source derived which (i) is received or deemed to be received in India in that year by or on behalf of that person or (ii) accrues or arises, or is deemed to accrue or arise, to the person in India in that year[8].

2. Deemed to accrue or arise in India

Section 9 of the New Bill largely retains the old framework while prescribing incomes which will be deemed to accrue or arise in India. Any income accruing or arising (directly or indirectly) through or from (i) any asset or source of income in India (ii) any property in India (iii) any business connection in India or (iv) transfer of a capital asset situated in India is deemed to accrue or arise in India. In addition, income under head salaries payable under certain circumstances, any dividend paid by an Indian company outside India, interest/royalty/fees for technical services payable by resident/non-residents in certain cases is deemed to accrue or arise in India.

The changes in section 9 have been discussed below:

2.1 The Old Act provided that any income accruing or arising (directly or indirectly) 'through' transfer of a capital asset situated in India is deemed to accrue or arise in India. The New Bill now provides that income accruing or arising both 'through' or 'from' transfer of a capital asset situated in India is deemed to accrue or arise in India. The expression 'through' has been defined to mean and include 'by means of', 'in consequence of', or 'by reason of'. Addition of 'from' prior to transfer of capital asset situated in India may not have substantial impact.

2.2 The Old Act provided that royalty payable by a non-resident shall be deemed to accrue or arise in India if such royalty is paid in respect of any right, property or information used or services utilised for the purpose of:

a) A business or profession carried on by such person ***in*** India; or

b) Making or earning any income from any source ***in*** India

As such, royalty payment between two non-residents was deemed to accrue or arise from India in case where such royalty income was sourced from India. However, under the New Bill, payment of royalty between two non-residents can be deemed to accrue or arise in India even if royalty is paid in respect of right, property or information used or services utilised for the purposes of making or earning any income from any source ***outside*** India. This seems to be an unintended error and goes against the intent of section 9.

7. Supreme Court in case of *Poonjabhai Varmalidas vs. CIT [1990] 53 Taxmann 171* held that an order of income-tax officer under section 10(2)(xi) of the Income-tax Act, 1922 would continue by virtue of section 24 of the General Clause Act, 1897 under section 36(1)(vii) of the Old Act

8. Section 5(2) of the New Bill

2.3 Any income derived from a business connection in India is considered income deemed to accrue or arise in India. However, if the operations of the business connection are not entirely carried out in India, only the income that is "reasonably attributable" to the Indian operations is considered taxable in India. The New Bill refines the provision by replacing "reasonably attributable" with "attributable" when determining income derived from Indian operations. Rule 10 of the Income-tax Rules, 1962 (**"ITR**") provides that in case profit attributable to a business connection cannot be definitively ascertained, the tax authorities may resort to any of three methods namely percentage of turnover, proportionate or discretionary method.

Article 7 of Indian tax treaties states that only those profits of the non-resident enterprise shall be taxed in India which are attributable to the permanent establishment in India. Manner of attribution of profits has been a litigated matter historically. Courts have attributed profits based on different principles in different cases (FAR analysis[9], ad-hoc basis[10] or adopting a formulary approach[11]).

The change seems to reduce discretionary powers with tax authorities – however, considering Rule 10 and absent clear rules for profit attribution, uncertainty in relation to profit attribution may still remain.

3. Indirect transfer provisions

Indirect transfer provisions were added to the Old Act by Finance Act, 2012. Several amendments in form of explanations were made to the indirect transfer provisions in the Old Act – such explanations have now been converted to sub-sections. The overall framework for indirect transfer remains the same.

3.1 ***Scope of indirect transfer provisions***: The Old Act provided that an asset or capital asset being a share or interest in a company or entity registered or incorporated outside India, which derives substantial value from India, shall be deemed to be situated in India. However, few explanations used the terms 'share of, or interest in' instead of 'share or interest in'. This was leading to some confusion vis-à-vis interpretation of indirect transfer provisions. As per provisions of the Old Act, 'share' was being interpreted to be used in the context of a company incorporated outside India and 'interest' has been used in context of an entity, other than a company, registered or incorporated outside India.

The New Bill proposes to provide that an asset or capital asset, being a ***'share of, or interest in***', a company or entity registered or incorporated outside India, which derives substantial value from India, shall be deemed to be situated in India. The addition of comma after share and interest suggests that indirect transfer provision will apply to (a) share of a company registered or incorporated outside India or (b) share of an entity registered or incorporated outside India or (c) interest in company registered or

9. Morgan Stanley and Co Inc (Supreme Court)
10. Rolls Royce Singapore P. Ltd (Delhi High Court); *GE Energy Parts Inc vs. ADIT (Delhi High Court)*
11. E-funds Corporation (Delhi Tribunal), Convergys Customer Management Group Inc (Delhi ITAT)

incorporated outside India or (d) interest in an entity registered or incorporated outside India. Therefore, one will have to analyze whether put/call contracts, offshore derivative instruments, warrants etc. will come within the ambit of 'interest' to determine applicability of indirect transfer provisions.

3.2 ***Attribution of income arising from indirect transfer***: The Old Act provided that where all the assets owned, directly or indirectly, by an offshore company or, an offshore entity deriving substantial value from assets located in India, are not located in India, the income of the non-resident transferor, from transfer outside India of a share of, or interest in, such company or entity, deemed to accrue or arise in India, shall be only such part of the income as is 'reasonably' attributable to assets located in India. The New Bill proposes to remove 'reasonably' from attribution principle. This should not have much impact considering Rule 11UC of the ITR anyway provides for manner of determination of income attributable to assets in India.

3.3 ***Exemptions from indirect transfer provisions***: The New Bill retains the exemptions (small shareholder exemption, transfer from Category I Foreign portfolio investor etc.) provided under the Old Act in so far as applicability of indirect transfer provisions are concerned.

Several circulars have been issued by the CBDT to clarify aspects in relation to indirect transfer as well. An express clarification with respect to continuity of these circulars under New Bill will be useful.

The indirect transfer provisions were added in the Old Act with retrospective effect from April 1, 1962. The New Bill removes the language that share or interest in an offshore company or entity 'shall always be deemed to have been' situated in India in relation to retroactivity of indirect transfer provisions. In 2021, indirect transfer provisions in the Old Act were amended to revoke the retroactivity[12]. The amendments essentially provided the indirect transfer provisions would not apply to income accruing or arising as a result of an indirect transfer undertaken prior to May 28, 2012, subject to fulfillment of certain conditions. Considering the prospective applicability, the New Bill does not include these provisions.

4. Interplay between domestic tax law and DTAAs

Section 90 of the Old Act governs agreements with foreign countries or specified territories, while Section 91 ensures relief from double taxation in the absence of a DTAA. The New Bill has retained this framework through Sections 159 and 160. The principles in the New Bill largely mirror those in the Old Act, particularly the provision in Section 90(2) of the Old Act, which allows a non-resident taxpayer the option to apply provisions of the tax treaty or the domestic law, whichever is more beneficial. The New Bill retains the requirement for obtaining tax residency certificate for claiming relief under DTAA[13].

12. The Taxation Laws (Amendment) Act, 2021
13. Section 159(8) of the New Bill

The Old Act provided that if any term is not defined in the DTAA, then the meaning given under the Old Act should be referred to[14]. Further, if the term is not defined under the Old Act, the term will have the same meaning as given to it in the notification issued by the Central Government and will be effective from the date on which the tax treaty came into force[15]. Interpretation of terms in used but not defined in tax treaties has been a source of litigation – a question often arises as to what meaning is to be assigned to the said term, one which prevailed on date of signing the treaty (static approach) or the one prevailing on the date of application of treaty (ambulatory approach).

The New Bill clarifies India's tax treaty position in relation to terms used in such treaty. The proposed section 159(7) of the New Bill now provides as under:

a) If any term is used in the DTAA and defined both in the DTAA and the New Bill, it will have the meaning which is provided in the DTAA;

b) If any term is used in the DTAA but has not been defined in it, but is defined in the New Bill, it will have the meaning provided in the New Bill or in any explanation which is given to it by the Central Government, and the meaning will be applicable from the date of the DTAA;

c) If any term is used in the DTAA and is neither defined in the DTAA nor in the New Bill, it will have the meaning given to it in any notification issued by the Central Government, and such meaning will be applicable from the date of the DTAA;

d) If any term is used in the DTAA and is not defined in the DTAA or in the New Bill or in any notification, it will have the meaning given in any Act of the Central Government relating to taxes, or in its absence, in any other law of the Central Government, and such meaning will be applicable from the date of the DTAA.

The language proposed in the New Bill favors the ambulatory approach. This is in line with language of Article 3(2) of several Indian tax treaties wherein the expression 'under the laws of that State from time to time in force' has been used[16]. Having said this, one should bear in mind that ambulatory approach may be used for interpretating terms which are not defined in the tax treaty and cannot be used to expand the meaning of terms defined in tax treaty.

5. Transfer pricing provisions

Transfer pricing provisions require income arising from an international transaction to be computed at an arms' length price. 'International transaction' is inter-alia defined to mean transaction between two associated enterprises (**"AEs"**), either or both of whom are non-residents. Under the Old Act, the definition of AEs was divided into two sub-sections. Sub-section (1) contains a 'means' clause and defines the broad contours of the

14. Explanation 4 to section 90 of the Old Act. Important to note that Explanation 4 was not clear on following ambulatory approach for using the domestic law definition for giving meaning to undefined tax treaty term as it is made clear in Explanation 3 to section 90

15. Section 90(3) read with Explanation 3 to section 90 of the Old Act

16. For example, India's tax treaty with Australia, Luxembourg, Malaysia, South Africa etc.

term AE and is based on the participation in the management or control or capital of that enterprise. Sub-section (2) provides for circumstances when two enterprises will be deemed to be AEs.

Sub-section (2) was amended by the Finance Act, 2002 wherein the words *"for the purposes of sub-section (1)"* were added. The effect of this amendment was that unless the requirements of sub-section (2) were satisfied, sub-section (1) was not applicable. This interpretation is supported by the Memorandum to Finance Bill, 2002 which provided that *"It is proposed to amend sub-section (2) of the said section to clarify that the mere fact of participation by one enterprise in the management or control or capital of the other enterprise, or the participation of one or more persons in the management or control or capital of both the enterprises shall not make them associated enterprises, unless the criteria specified in sub-section (2) are fulfilled".*

Section 162 contains the definition of AEs in the New Bill. The New Bill proposes to amend the language of sub-section (2) to replace the words "for the purpose of sub-section (1)" with the words "without affecting the generality of the provisions of sub-section (1)". On a plain reading of the new section, it appears that general definition of AEs (as contained in sub-section (1)) is not limited by the specific scenarios provided in sub-section (2). Having said this, such a literal interpretation may lead to absurd consequences such that mere participation of one enterprise in another in form of insignificant shareholding may also result the enterprises qualifying as AEs. This does not seem to be intention of legislature in so far as transfer pricing provisions are concerned.

6. Carry forward of losses

As per Section 7 of the Old Act, bought forward long-term losses (**"LTCL**") were allowed to be set-off against long-term gains only. This continues in the New Bill. However, the savings clause in the New Bill seems to allow carry forward and set-off of bought forward LTCL incurred upto March 31, 2026 against all future capital gains (including short-term capital gains (**"STCG"**)) from tax year 2026-27 onwards[17]. This seems to be an anomaly considering STCG is taxable at rate of 20% (in case of transfer of listed shares)/35% (in all other cases) whereas LTCG is taxable at rate of 12.5%.

7. Withholding Tax Provisions

The withholding tax provisions are scattered across multiple sections in the Old Act. Specifically, Section 195 of the Old Act deals with withholding tax on payments to non-residents. The New Bill proposes a comprehensive overhaul of these provisions by consolidating them into a single section, i.e., Section 393. Section 393 categorizes TDS provisions into three broad sections: TDS on payments to residents (Section 393(1)), TDS on payments to non-residents (Section 393(2)), and TDS on payments to any person (whether resident or non-resident). While the rates largely remain the same, the new provisions have been structured in a tabular format, offering clarity, ease of reference and reducing ambiguity for both taxpayers and administrators alike. Section 195 of the Old Act which imposed an obligation on any person making payment of a sum to a non-resident which is chargeable to tax under the Old Act to withhold tax on such sum at the rates in force remains the same.

17. Section 536(2)(n) of the New Bill

Further, the New Bill proposes to permit obtaining lower withholding tax certificates for all payments/receipts. The Old Act permitted obtaining lower withholding tax certificates only in certain situations.

8. Assessments and audits

The overall assessment procedure and timelines have been retained by the New Bill. The repeals and saving provisions under the New Bill provide that:

8.1 The provisions of Old Act shall continue to apply to any proceedings (including notices, assessments, re-assessments, rectification, penalty, reference, revision and appeals) in respect of any tax year prior to tax year 2026-27 i.e. proceedings until tax year 2025-26 shall be carried out as per provisions of the Old Act – therefore, past assessments/ proceedings will be completed as per provisions of Old Act.

8.2 Penalty proceedings for tax years until 2025-26 may be initiated and any may be penalty imposed under the Old Act.

8.3 Proceedings pending on commencement of New Bill before any income-tax authority shall be continued and disposed of as if the New Bill has not been enacted.

9. Presumptive taxation for non-residents

New Bill has introduced changes to the presumptive taxation regime, including for non-residents. The previous provisions of presumptive taxation, i.e., Section 44AD and 44ADA of the Old Act, have now been clubbed into one Section 58 of the New Bill. This provision consolidates the presumptive tax regime in a tabular format, making it easier for taxpayers to navigate. Exemptions provided to certain non-residents under section 10 of the Old Act have been incorporated at one place in Schedule IV of the New Bill.

Conclusion

The New Bill does not have major surprises in form of changes. The changes proposed are majorly to simplify language and increase readability from layman's perspective. Having said this, it is expected that few drafting anomalies identified by practitioners are corrected before the New Bill is passed. In addition, as discussed above, further guidance is expected on continuity of circulars issued under the Old Act.

The New Bill will take effect from April 1, 2026, allowing necessary time for stakeholder consultation. A Parliamentary Select Committee is required to submit its report on New Bill on the first day of the next parliamentary session, basis which revisions may be made to the New Bill. The New Bill has to be approved by both houses of Parliament, followed by assent from the President of India to become law.

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Transfer Pricing in the new Income-tax Bill, 2025 – A Practitioner's Perspective



CA Akshay Kenkre

Overview

The draft Income-tax Bill, 2025 reorganises India's transfer pricing rules from the 1961 Act. The Finance Minister insists on no major changes in policy, only simpler language. Section 161 matches old Section 92, requiring transactions with Associated Enterprises (AEs) to follow the arm's length principle. Safe Harbour and Advance Pricing Agreement provisions remain mostly the same, ensuring continuity. A new feature is "block transfer pricing assessment," letting multiple years be resolved at once, which has been brought in by Union Budget 2025. Further mechanics of such Block Assessment will follow. One should note that detailed rules will determine actual changes, especially around computing the arm's length price. They must maintain robust documentation and watch for final rules. Ultimately, the Bill is best described as a reorganisation, not a reinvention, of India's transfer pricing framework. It's straightforward and transitional.

Transfer Pricing (TP) in India operates under an extensive legal framework embedded in Sections 92 to 92F of the Income-tax Act, 1961 (the Act), supplemented by corresponding rules and numerous judicial interpretations. Over the years, this framework has been reshaped to mirror anti-tax avoidance and adoption of best practices in international standards—while remaining mindful of India's distinctive economic and policy considerations. This has led to the Act being bulky with built-in inefficiencies, which needs a modern solution. Think of this like you getting board of wearing the same white shirt, which has been tailored multiple times to match your fit. The solution was revamping the law and giving it a new look and dressing.

In the upcoming Income-tax Bill, 2025 (the Bill), the finance minister has maintained that there will be no substantial deviation in existing transfer pricing and tax policies. Instead, the focus is on streamlining the legislative language by eliminating duplications and clarifying ambiguities. Nevertheless, certain structural modifications warrant attention—especially with respect to definitions (such as "associated enterprise" or "AE") and computational procedures (like the mean concept or the ±3% tolerance range).

What follows is a more detailed examination of these elements that need emphasis that is arranged logically to guide Indian TP practitioners and industry colleagues as they pad up to adapt the Bill as the eventual replacement of the Act.

1. Comparative Overview

Section 92 of Act establishes the foundational legislation around calculating income that arises from an international transaction involving an associated enterprise (AE) and also Specified Domestic Transactions (SDT). The purpose is to ensure that any income (or expenditure) is not influenced by the special relationship between the transacting parties. Where such influence is reflected in the transaction, and the transaction is undertaken at a price that would not have been undertaken between independent parties in independent circumstances, the income or expenditure must be adjusted to align with what would ordinarily be realised in a comparable transaction between unrelated entities.

Under the proposed Bill, this principle is carried forward under Section 161. Although the Bill adopts a more streamlined style by consolidating certain details previously scattered across multiple sub-sections, the core requirement—to compute and document cross-border (and certain Specified Domestic) transactions at an arm's length price (ALP)—remains intact. From a conceptual standpoint, there is no evident shift in the policy or objectives, but readers will note the reorganisation and updated referencing formats designed to enhance clarity. Throughout public statements, the Finance Minister has consistently maintained that the Bill's tax provisions should be interpreted as simplifications to existing law, rather than the introduction of new policy measures. Consequently, the scope of covered transactions does not expand beyond what is already recognised, and there are no novel obligations for taxpayers to address. In essence, Section 161 in the Bill is a direct successor to Section 92 in the 1961 Act. Taxpayers will, therefore, continue to identify AEs, choose an appropriate transfer pricing method, compute the ALP, and make any necessary adjustments in accordance with existing protocols.

Because the Bill retains the substantive elements of the current transfer pricing regime, established case law, administrative guidance, and the Transfer Pricing Rules will remain relevant in the near future. The principal benefit is the simplification of statutory wording and the rearranging of the logical flow of the transfer pricing regulations. The Bill's reorganisation may offer a more coherent presentation, though the underlying obligations related to ALP computation and documentation remain essentially the same. The experienced tax professional would definitely miss the 92 A-B-C-D-E of the Transfer pricing regime in India.

2. Associated Enterprises - Settling the unsettled

Under the existing Act, the concept of Associated Enterprises (AEs) is primarily governed by Section 92A. In sub-section (1), the statute provides a broad definition whereby one enterprise is considered an AE of another if it participates directly or indirectly in the management, control, or capital of that other enterprise. The same principle applies when a common party participates in the management, control, or capital of both enterprises. Sub-section (2) then delineates a set of specific "deeming" provisions that would trigger an AE relationship—these include substantial shareholdings above a threshold (i.e. 26%), significant loans (50% of Book Value) or guarantees, heavy reliance on unique intangibles, and similar factors.

Historically, a crucial area of contention has been whether sub-section (2) can operate independently ("disjunctive") or whether it must be read in conjunction with sub-section (1) ("conjunctive"). Tax authorities often argued that satisfying any individual condition in sub-section (2) would suffice for categorising an enterprise as an AE, whereas

taxpayers contended that sub-sections (1) and (2) had to be read together, with sub-section (2) merely amplifying the principles in sub-section (1). This debate resulted in numerous disputes before appellate forums, and the issue travelled to the Supreme Court of India, the apex court.

A landmark ruling in ***Page Industries Ltd [TS-718-SC-2021-TP]*** helped address this question definitively. In that case, the taxpayer—licensed to use the "Jockey" brand in India—was alleged by the Revenue to be in an AE relationship solely on the strength of certain conditions within sub-section (2). The Revenue did not fully evaluate whether the general provisions of control or management criteria from sub-section (1) were satisfied. The Supreme Court upheld the Karnataka High Court's position that sub-section (2) functions only as an extension of sub-section (1). Put differently, the "deeming" provisions in sub-section (2) cannot be applied in isolation; sub-section (1)'s requirement that there be actual or potential management, control, or capital participation must first be met before sub-section (2) conditions can operate.

Moving forward, the proposed **Bill** aims to remove the ambiguity that will address these interpretational issues. Under Section 162, sub-section (2) now explicitly commences with the phrase "*Without affecting the generality of the provisions of sub-section (1)…*". By doing so, the Bill confirms that sub-section (2) is not a standalone set of triggers but rather a further elaboration of the principle laid down in sub-section (1). This alignment with the **Page Industries** ruling means that taxpayers and tax authorities alike will find it more straightforward to determine whether an AE relationship exists. The Bill's language, by incorporating jurisprudential clarity, reduces the likelihood of future litigation on this point.

On the contrary - The risk of litigation - While the terminology "without affecting the generality of the provisions of sub-section (1)", should not be construed that Sub-section (1) works in general and independently of Sub-section 2, and one can be coined to be an AE despite not fulfilling the terms as mentioned in Section 162(2) of the Bill. As a draftsman, I would have preferred to retain the current language, as the Hon. Supreme Court has already provided detailed guidance on the topic. The risk of the above terminology being misinterpreted cannot be ruled out.

Next steps - In practical terms, taxpayers must continue evaluating whether there is direct or indirect participation in management, control, or capital under sub-section (1) of the proposed Section 162. Only after establishing that link does it become relevant to check the more detailed conditions described in sub-section (2). This hierarchy ensures that a transaction is not automatically categorised as an AE scenario simply by fulfilling one of the specific "deeming" criteria; a genuine inter-enterprise nexus must be demonstrated first.

From a compliance perspective, established precedents and practical guidance under the Act remain broadly applicable, as the Bill does not introduce a fundamentally new test but rather clarifies the existing one. Consequently, transfer pricing professionals, in-house tax teams, and other stakeholders can proceed with a reasonable degree of certainty that courts and tribunals will continue to apply the conjunctive reading of sub-sections (1) and (2). As a result, the updated language in the Bill serves to both codify judicial authority and enhance statutory clarity, thereby reducing the scope for interpretive disputes on the nature of AE relationships.

3. Being Mean to the concept of MEAN

Under the Act, TP regulations often relied on the notion of an arithmetic mean (weighted average) to determine the arm's length price (ALP) when the comparables were six or less than six. When multiple comparables were

used, Section 92C and the related Rule 10CA stipulated that the weighted average of various prices or profit margins would serve as the benchmark. Once this mean was calculated, taxpayers would check whether their tested party's results fell within a permissible tolerance range—commonly ±3%, or ±1% of the international transaction for specific notified categories. If the tested party's margin or price was within that window, no TP adjustment was required.

In the Bill, there is no explicit mention of computing an arithmetic mean to arrive at the ALP. Nor does the Bill elaborate on whether multiple arm's length prices should be averaged. One possible explanation is that the Bill aims to consolidate and simplify the main legislative text, potentially leaving the granular computational details—such as averaging methods or tolerance ranges—to rules or notifications. It is not unusual for primary legislation to avoid overly prescriptive technicalities, delegating them to the rule-making authorities to maintain flexibility and responsiveness to evolving business practices. Ideally, what was in the Act should have been part of this Bill, but if not, one may assume that the concept of Mean is now history. This could be one step closer to the global best practices.

From a compliance standpoint, if the final legislation and rules favour a single ALP approach, taxpayers will likely need to defend the chosen ALP more rigorously. Without a "mean ± tolerance" safe harbor, any deviation from that single ALP could prompt closer scrutiny. On the other hand, if the rules confirm a renewed "range concept," one may see a method that parallels the OECD's interquartile range analysis, diminishing the direct reliance on an average-based computation.

In sum, the Bill's silence on the concept of mean could mean that Bill drafters have opted to streamline the primary legislation, leaving the door open for Rules to clarify whether the arithmetic mean or an alternative approach will guide the ALP computation in the future. As the Bill moves closer to enactment, taxpayers and advisors should monitor the rules for details on how to calculate and validate arm's length outcomes.

4. Potential Changes to the ±3% Range Concept

Under the Act, the ±3% (sometimes ±1%) tolerance margin is applied primarily when multiple comparable data points produced more than one potential ALP, with no transfer pricing adjustment required if a taxpayer's declared figure fell within that band. The Bill suggests a reversal in approach: the tolerance margin now seems to come into play, particularly when only one result emerges from the chosen method, rather than a composite of multiple comparable outcomes.

A likely rationale for this shift is that a single benchmark can be more rigid than a set of data points aggregated into an average or range; consequently, a legislated leeway may be warranted to account for minor deviations or measurement errors. By contrast, if multiple comparables are used, the Bill may tend to reserve reliance on the concept of range rather than mean.

5. Safe Harbour and APA Provisions Under the Bill

Sections 167–170 in the Bill closely mirror the earlier statutory framework, preserving both the underlying principles and the procedural mechanisms. This continuity implies that taxpayers who have already secured safe harbour status or entered into an Advance Pricing Agreement (APA) are unlikely to face significant changes to their existing arrangements. The Bill appears to maintain the general scope of eligible transactions and

the manner in which margins or terms are negotiated.

A practical benefit of the new legislative structure may lie in its more concise organisation and streamlined referencing. By reducing repetitive clauses or cross-references, the Bill promises a more user-friendly reading experience, potentially expediting the submission and evaluation processes. What remains to be tested are the Rules. Safe Harbours and APA rely heavily on the Rules, when it comes to implementation. I expect larger industries and scenarios to be considered for Safe harbour regimes.

6. Block Transfer Pricing Assessment (A Newly Introduced Feature)

The Bill proposes an innovative approach called "block assessment" for transfer pricing, which was brought in by Union budget 2025, building on the concept previously employed in search and seizure proceedings where several years were addressed in a consolidated manner. The essence here is to permit taxpayers—if they so choose—to request the tax authority to settle transfer pricing matters for multiple financial years at once. This could potentially diminish the need for annual controversies over recurring issues, as the approved arm's length principles or pricing methods would apply to all the years covered by that block assessment.

From a practical perspective, the new system holds the promise of streamlining disputes and reducing administrative overhead. Taxpayers frequently encounter identical or very similar TP debates across consecutive financial periods. By consolidating these into a single proceeding, taxpayers and the revenue authorities can minimise repetitive reviews, accelerate the closure of pending controversies, and promote certainty around pricing policies.

However, the precise mechanics and eligibility conditions for opting into block assessment remain to be clarified. It is plausible that the Bill—or subsequent rulemaking—will prescribe thresholds relating to the volume or nature of transactions or the number of prior years' still in dispute. An important open question is how the dispute resolution framework would operate under a block assessment scenario, particularly in terms of the existing Dispute Resolution Panel (DRP) process. Whether the DRP remains available on a year-by-year basis or transforms into a multi-year resolution mechanism remains a matter for further guidance. No consequential change has been brought in the DRP provisions under the Bill.

7. Limitation of interest benefit

The Act of 1961, for the purpose of Section 94B, any borrowing obligations from Associated Enterprises were covered. Considering the definition of Associated Enterprises now also includes enterprises for which Specified Domestic Transactions apply, it was necessary to bring out the real intention behind the implementation of Section 94B. Accordingly, any expenditure against debt obligations from Associated Enterprises, which are 'Non-Residents', would be covered under the Thin Capitalisation Rules. This will further bring clarity to the legislative intent and also help in the effective deployment of the section.

8. Dispute Resolution Panel (DRP) Provisions

The Bill appears to preserve the essential framework of the DRP, closely mirroring Section 144C of the 1961 Act. Under this model, a draft assessment order is referred to the DRP, which then evaluates the taxpayer's contentions, reviews any Transfer Pricing Officer (TPO) observations and other supporting data, and ultimately issues directions that bind the Assessing Officer. This continuity suggests that neither the DRP's structure nor the mandated timeframes for

its proceedings will undergo major revision. Consequently, taxpayers already familiar with the DRP process can anticipate a similar procedural environment under the new legislation.

One distinct observation is the absence of any explicit reference to a "faceless DRP." While the broader trend toward faceless assessments and faceless appeals has become increasingly common, and a provision was added in the Act to develop a faceless DRP scheme, the Bill does not appear to extend this virtual, technology-driven model to DRP proceedings—at least not at this stage. Instead, it retains the standard in-person or document-based review process that taxpayers have come to expect.

While the new legislation retains a high-level structure for the DRP, one key difference lies in its explicit procedural references—or lack thereof. Under the earlier regime, **Section 144C** of the 1961 Act set forth a more detailed framework: it specified that the DRP would base its directions on the draft assessment order, the Transfer Pricing Officer's (TPO) findings, potential references to a valuer, and any additional evidence or enquiry it deemed necessary. By contrast, **the Bill does not provide a similarly prescriptive list**, offering no explicit guidance on what materials or processes the DRP should rely upon when finalising its directions.

This omission could create interpretative questions about the precise sources of information the DRP may use. It also leaves open the extent of the DRP's fact-finding or investigative powers—areas that were more clearly delineated under the earlier statute. In practice, taxpayers and practitioners may still expect the DRP to follow established principles—considering submissions made during the assessment and TPO process—but the Bill's streamlined language does not confirm these steps in as much detail. Consequently, **some uncertainty** may arise as to whether the DRP retains the exact evidentiary mechanisms or if it needs additional direction (potentially through subsequent rules or clarifications) to ensure that the dispute resolution process remains both comprehensive and equitable.

9. Way forward and Wishlist

A. More Detailed Guidance in Rules

Transfer Pricing in the existing Act is more driven by Rules than legal regulations. Taxpayers and practitioners alike have long called for a more prescriptive framework on how to apply the "most appropriate method," including specifics on comparability adjustments (for capacity utilisation, risk profiles, working capital, and so forth). By providing precise computations and scenarios in the rules, the authorities can reduce ambiguity and promote consistency across different tax offices. Clear guidance would also help safeguard taxpayers against arbitrary adjustments that are often rooted in subjective interpretations of comparability data.

B. Standardized Search Strategies for Comparables

A significant source of transfer pricing disputes arises from the selection—or rejection—of comparables. If the Central Board of Direct Taxes (CBDT) were to issue uniform guidelines or "model search strategies" (including database filtering techniques and industry benchmarks), this could significantly reduce litigation. Taxpayers would have a clearer blueprint for identifying comparables, while tax authorities could reference a recognised, step-by-step standard when reviewing taxpayer analyses.

C. Adoption of the Interquartile Range (IQR)

Globally, many tax administrations prefer the interquartile range to capture the "middle" 50% of comparable data, discarding outliers that may otherwise skew a straightforward mean calculation. Embracing such an approach in India's TP rules would help align the country's practice with international norms. Whether one chooses the 25th–75th percentile range or a slightly modified set of percentiles, the key is to ensure greater statistical reliability, thus narrowing the scope for controversy around extreme data points.

D. Uniform Format for Transfer Pricing Documentation

Establishing a standardised or recommended template for the Transfer Pricing Study Report (TPSR) or local file could drastically simplify compliance for taxpayers. Internationally, BEPS Action 13 guidelines encourage uniformity in TP documentation, which aids cross-border consistency. A structured format—from detailing the group profile to specific transaction data—would reduce guesswork for taxpayers and give authorities a clear checklist to assess compliance, ultimately expediting the review process.

E. Date Stamping or Electronic Upload Requirements

Although India's transfer pricing provisions already require documentation to be in place by the time the tax return is filed (contemporaneous), there can still be scepticism about "backdating" or post-facto alterations. A mechanism that mandates electronic submission or an official "date stamp" would provide an additional layer of certainty, confirming that taxpayers have prepared their TP documentation contemporaneously. This measure would bolster the integrity of the system and could minimise disputes over the authenticity or timeliness of TP studies.

10. In Conclusion

In broad terms, the draft Income-tax Bill, 2025 preserves the established foundation of India's transfer pricing architecture while introducing several textual clarifications. For businesses already accustomed to India's transfer pricing regime, the Bill generally maintains familiar concepts and procedures, such as safe harbour options and APA frameworks.

In the near term, taxpayers would be prudent to monitor any draft regulations or circulars issued by the authorities, as they are likely to fill the procedural gaps left by the Bill's more concise format. A clear, prescriptive rule set—particularly on comparability analyses, search strategies, and transfer pricing documentation—could help the Bill achieve its eventual goals of simplification and alignment with global standards. Ultimately, the extent to which the Bill reduces compliance burdens and eases litigation will depend on how effectively these details are brought out in the forthcoming rules and deployment of administrative guidance.

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Returns, Assessment, Appeals and Penalty related Provisions



CA Ketan Vajani

The Income-tax Bill, 2025 has been tabled in the parliament on 13th February, 2025. The new bill seeks to replace the age old Income-tax Act, 1961 with a new Act. The primary stated purpose of the new Act is to reduce interpretation related issues, reduce the number of provisos and explanations and make it simpler to understand for a common-man. It is hoped that the new act will also contribute towards the broad object of reduced litigation. Too good to believe as it sounds, one really wonders as to whether do we actually have any significant changes or is it just realignment exercise in a way. We are informed that there are no significant conceptual changes as regards the scope of income or the basis of charge.

In such a situation, a fundamental question that arises is whether this change is at all necessary? Could the object not have been achieved retaining the relevant sections of the old Act and doing away with the redundant provisions, there are many, in the Act ? This would have been actually desirable since all the professionals and also the tax officers have leaved with the Act for ages and have trained themselves with the reference to old section numbers and therefore a huge unlearning and relearning exercise could have been probably avoided. In any case, now that we have a road map for the new Act to be in place, let us put in our best efforts to try and understand as to what actually changes ; whether it changes for better or worse ; and also whether some further desirable changes have been missed out ?

The scope of this article is to have a comparative study of the provisions relating to Returns, Assessments, Appeals and Penalties between the present Income-tax Act, 1961 and the proposed Income-tax Bill 2025. An attempt is made to focus on the significant changes in these areas and understand the implication of the same. Few of the cosmetic changes like changing timeline from 180 days to six months, exclusion of certain time from limitation period etc. are purposefully not discussed in this article so as to ensure the required brevity.

Provisions relating to Returns [Section 139 of the ITA and Clause 263 of the ITB]

1. Compulsory filing of Return even in absence of Income chargeable to tax

Existing provision

Section 139(1) of the ITA 1961 provides that every person other than a company or a firm is required to file the Return of Income where the income chargeable to tax exceeds the maximum amount which is not chargeable to tax i.e. the threshold limit. An exception is provided to this by the seventh proviso which makes it mandatory for a person to file the return even if the income is less than the

basic threshold limit in certain circumstances like cash deposited in bank exceeding 1 Crore, foreign travel expenses exceeding Rs. 2 lakhs, electricity expenses in excess of Rs. 1 Lakhs etc. Certain further conditions are specified by Rule 12AB.

Clause 263 of Proposed Bill

There is no provision corresponding to seventh proviso to section 139(1) in the proposed Bill. However, by clause 263(1)(xi), the CBDT has been given the power to specify the conditions upon fulfilment of which the return filing will become mandatory.

Impact

As against the present conditions which are specifically listed in the statute, the power will now be available to the CBDT to specify the conditions by way of Rules/Notifications. This give more flexibility to CBDT to specify any conditions depending on the economic situations of the country and the parameters as may be thought appropriate.

2. Power to the CBDT to call for certain additional information in the Return of Income

The proposed clause 263 of the Bill empowers the CBDT to call for certain additional information in relation to credit card held by the assessee, expenditure incurred exceeding the limits to be prescribed under the heads to be prescribed, location and style of the principal place of business or profession and all the branches thereof.

Impact

The additional information which will be part of the Return of Income will enable the department to look into various expenditures incurred by the assessee and to judge whether the expenses incurred are commensurate with the income declared by the assessee in the Return of Income. This may have some challenges lying ahead in terms of the expenses being easily identified for closer scrutiny with a view to examine the same as unexplained expenditure.

3. Updated Return – Additional time line – Continuation of the Amendment proposed by Finance Bill 2025

As per section 139(8A) of the Income-tax Act, 1961, the assessee can file updated return within two years from the end of the relevant assessment year. The Finance Bill 2025 has already proposed for increased time limit of upto four years from the end of the relevant assessment year. The additional tax to be paid (as per section 140B) of the Act is proposed to be 60% for the updated return to be filed beyond two years but before 3 years from the end of the assessment year and at 70% in a case where updated return is filed beyond 3 years from the end of the assessment year.

Section 263(6)(a) of the Income-tax Bill 2025

Section 263(6)(a) of the Income-tax Bill 2025 provides for updated return which can be filed within 48 months from the end of the financial year succeeding the relevant tax year. Section 267 of the new Bill provides for Tax on updated Return. This is identical to present section 140B, as proposed to be amended by the Finance Bill 2025.

It is relevant to note that the Income-tax Bill 2025 has done away with the concept of assessment year. Instead of assessment year, we have a concept of tax year which is defined to mean twelve months period of the financial year commencing on the 1st April. To put it in simple terms, the Tax year will be the financial year. As such, the time of updated return remains the same as under the present Act, as proposed to be amended by the Finance Bill 2025, though the terminology is now somewhat different.

A request that remains unaddressed

The present provisions of updated return do not allow to furnish an updated return in a case where the updated return is a loss return. A typical situation may arise where the assessee wants to file an updated return showing lesser loss than the original return. Though, the assessee in a way is offering more income (by way of reduced carry forward of loss), the section does not permit the same. Similarly there cannot be a refund arising on account of updated return. Consider a case where the assessee has missed out to file the original return and there is a refund as per the computation of income. The assessee is not allowed to furnish a return seeking refund. Ideally in such case, the updated return should be allowed with a reduction in eligible refund to the extent of the additional tax expected to be paid by the assessee. It is unfair to deny the updated return totally just because there is a refund arising out of it. The Chamber has been requesting to address these issues by way of the pre-budget representation for couple of years now. However, this has not been considered. This issue could have been addressed at least now when we are anyways going to have a fresh legislation. But unfortunately the legacy drawbacks continue in the new era as well.

Provisions related to Assessment and Reassessment

4. Powers of Valuation Officer [Section 142A of the ITA and Clause 269 of the ITB]

Existing provision

Section 142A of the Act empowers an assessing officer to make a reference to the valuation officer for the purpose of making an assessment or reassessment. The reference can be made for the purpose of estimating the value, including FMV of any asset, property or investment. The powers available to valuation officer are as per section 38A of the Wealth-tax Act, 1957.

Proposed Provision

Section 269 of the ITB 2025 deals with the provisions in relation to reference to Valuation Officer. In so far as the powers of the Valuation Officer is concerned, the powers are being listed explicitly in section 269(3) of the ITB as against the present reference to section 38A of the Wealth-tax Act, 1957.

Section 269(3)(c) further provides that no valuation officer, engineer, surveyor or assessor shall enter any place or inspect any asset, except with the consent of the person in charge of or occupation or possession of such asset without providing at least two days'notice in writing to the person of their intention to do so. Clause (d) of section 269(3) provides that where the person refuses or evades to afford the facility, the valuation officer shall have the powers as are vested in a court under the Code of Civil Procedure, 1908.

5. Addition in respect of any issue which is not covered in the notice for reassessment – Expansion of the scope [Section 147 of the ITA and Clause 279 of the ITB]

Existing Provision

Section 147 of the Act provides for reassessment in case where the income has escaped assessment. As per the Explanation to the section, the assessing officer can assess or reassess all those income that comes to his notice subsequently in the course of such proceedings even if the procedure prescribed in section 148A was not followed in respect of such new issue.

As such at present, the relaxation available to the assessing officer is in respect of issue of notice u/s. 148A only in relation to the new issue. However in a case where finally

no addition is made in respect of the original reason for which the reassessment is initiated, the assessing officer cannot make any addition on any other issue. This is due to the fact that in such a situation the initiation of reassessment itself is invalid. This view is well supported by the Judgments in the case of ***CIT vs. Jet Airways (India) Ltd. (2011) 331 ITR 236 (Bom); Ranbaxy Laboratories Ltd. vs. CIT (2011) 336 ITR 136 (Del)*** and ***CIT vs. Mohamed Juned Dadani (2014) 355 ITR 172 (Guj).*** Though the Punjab & Harayana High Court and Karnataka High Court has expressed contrary view in this matter, it seems that the view expressed by Bombay High Court, Delhi High Court and Gujarat High Court is more logical.

Proposed Provision

Section 279 (2) of the ITB 2025 further relaxes the position and validates the proceedings even if notice is not issued u/s. 280 (corresponding to section 148 of ITA) and sanction for the issue of notice is not obtained u/s. 284 (corresponding to section 151 of ITA).

Impact

By virtue of the proposed provisions, it will not be possible for the assessee to contend that the initiation of reassessment itself is invalid even where there is no addition made in respect of the initial reasons recorded. Further, diluting the requirement of sanction as provided in present section 151 of the Act will lead to giving arbitrary powers in the hands of the assessing officer. The Courts have time and again frowned upon the arbitrary use of the powers for reassessment and have read the provisions in a judicious manner to avoid such arbitrary use of powers. Unfortunately under the proposed provisions all these rulings loose its worth considerably and may not be of much help.

6. Expanding the meaning of Information for the purpose of reassessment and also prior approval required [Section 148 of the ITA and Clause 280 of the ITB]

Existing Provision

Section 148 of the Act provides for issue of notice where income has escaped assessment. As per the proviso to the sub-section (1) no notice can be issued unless there is information with the assessing officer suggesting that the income chargeable to tax has escaped assessment. As per the second proviso, where the assessing officer has received the information u/s. 135A no notice under section 148 can be issued without prior approval of the specified authority u/s. 151 of the Act. Sub-section (3) of the section lists down six clauses specifying the information which suggests the escapement of income.

Proposed Provision

Clause – 280 of the Finance Bill 2025 corresponds to section 148 of the ITA. Sub-section (6) of the clause expands the meaning of information which suggests escapement of income. While present six clauses continue to constitute information, two additional clauses are added in the list. The two new information prescribed are as under :

(i) any directions are given by the Approving Panel under section 274(6) of the ITB – i.e. GAAR Panel and

(ii) any finding or direction contained in an order passed by any authority or Tribunal or court in any proceeding under the Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

Sub-section (5) of section 280 provides that the prior approval of the specified authority is required where the assessing officer has

received information under the scheme notified u/s. 260 (corresponding to section 135A of ITA) or where the information is on account of the two additional conditions provided in sub-section (6) as listed hereinabove.

7. No Notice of reassessment to be issued within a period of one year from the end of the relevant tax year [Section 282 of the ITB – Corresponding to section 149 of the ITA]

Existing Provision

The proviso to section 143(2) provides that the notice under the said section i.e. notice for regular assessment can be issued maximum within a period of three months from the end of the financial year in which the return is furnished. As a matter of practice, normally in a case where this time is available for issue of notice u/s. 143(2), the department would take up the case for regular assessment and not for reassessment. However, there is no explicit prohibition against the reassessment during such time.

Proposed Provision

Section 282 of the ITB which corresponds to section 149 of the ITA has proposed an additional sub-section (3) in the section. Sub-section (3) provides that no notice under section 280 (corresponding to section 148 of ITA) or section 281 (corresponding to section 148A of ITA) shall be issued within one year from the end of any tax year.

Impact

By virtue of the sub-section (3) to section 282, now there is an explicit prohibition for initiating the reassessment proceedings where the regular assessment is possible to be taken up by the department.

8. No time limit for reassessment in certain cases [Section 150 of ITA and Clause 283 of ITB]

Existing Provision

Section 150 of the Income-tax Act inter-alia provides that the notice u/s. 148 of the Act may be issued at any time for the purpose of giving effect to any finding or direction contained in an order passed by any authority in any proceeding by way of appeal, reference or revision or by a Court.

Proposed Provision

Clause 283 of the ITB 2025 has proposed similar provision in the Bill. In addition to the situations already contained in present section 150, it further provides that the limitation period shall not apply when any directions are given by the Approving Panel under section 274(6) of the Bill declaring the arrangement as an impermissible avoidance arrangement. – i.e. the GAAR panel.

9. Time limit to give effect to the appeal order [Section 153 (5) of the ITA and Clause 286 of the ITB]

Existing Provision

Sub-section (5) of section 153 provide that the order giving effect to the appeal order on account of appeal before the CIT (A) or Tribunal or High Court or Supreme Court or the revision proceedings u/s. 263 or section 264 is to be passed within a period of three months from the end of the month in which the respective order is received by the Pr. CCIT/CCIT/Pr. CIT/CIT or the order u/s. 263 or 264 is passed by the respective authority. The proviso to the sub-section, however permits the assessing officer to seek additional time of six months by way of request to the Pr. CIT or CIT in a case where it is not possible for the assessing officer to give effect to such order within the time of three months as specified.

As such, the time can be effectively extended to a period of nine months from the end of the month in which the order is either received or passed.

Proposed Provision

Clause 286 of the Income-tax Bill 2025 corresponds to section 153 of the Act and lays down various time limits by way of a table given in sub-section (1) of the said section. As per the entry No. 10 of the table, the time available for order giving effect to the appeal order on account of appeal before the CIT (A) or Tribunal or High Court or Supreme Court or the revision proceedings is to be passed within a period of six months from the end of the month in which the respective order is received by the Pr. CCIT/CCIT/Pr. CIT/CIT or the revision order is passed by the respective authority. The above time of six months is extendable to the period of nine months with the approval of the higher authorities.

Effect

The total permissible time limit to give effect to the order remains at nine months from the end of the month in which the appellate order is either received or the revision order is passed. However, the initial time limit of three months is extended to six months. As such, the assessing officer has been allowed additional time limit of three months without obtaining any approval from the higher authorities.

Provisions related to Appeals and Revision Proceedings

10. Avoiding of Repetitive Appeals [Section 158A of ITA and Clause 375 of ITB]

Existing Provision

Section 158A of the Income-tax Act carry provision for avoiding repetitive appeals. The section deals with a situation where a question of law arises in a subsequent assessment year is identical to a question of law from a previous assessment year that is already pending before High Court or Supreme Court. In such a case, the section provides that an assessee may submit a declaration that if the assessing officer or appellate authority agrees to apply the final decision taken by the courts in the earlier year to the outcome of the subsequent year, the assessee will not file an appeal on the same question of law before any appellate authority, High Court or Supreme Court. The assessee can thus avoid repetitive appeals for the identical issue.

Proposed Provision

Clause 375 of the ITB proposes make to similar provision in the Income-tax Bill 2025. An additional reference has been included covering cases where the question of law from an earlier assessment year is pending in a SLP under Article 136 in a case where the revenue has challenged the decision of the Appellate Tribunal or the jurisdictional High Court. Thus it will be possible for the assessee to make application for avoiding repetitive appeal even when the SLP filed by the revenue is pending before the Supreme Court.

11. Revision Proceedings – Exclusion of certain time from limitation – Providing minimum time available for the authorities to conclude the proceedings [Sections 263 and 264 of the ITA – Clauses 377 and 378 of the ITB]

Existing Provision

Section 263 of the Act provide for revision proceedings by the Pr. CCIT/CCIT/Pr. CIT/CIT in relation to orders that are erroneous and prejudicial to the interest of the revenue. Order u/s. 263 of the Act is to be passed within a period of two years from the end of the financial year in which the order sought to be revised was passed.

Similarly section 264 of the Act provide for revision of orders other than the orders covered by section 263 i.e. the revision of orders which are prejudicial to the assessee. Order u/s. 264 can be passed within one year from the end of the financial year in which the application is made for revision. In case of suo motu revision the same is to be passed within one year from the date of the original order.

Both the sections have specified certain periods to be excluded while computing the limitation period.

Proposed Provision

Clause 377 of the ITB corresponds to Section 263 of the present Act and Clause 378 corresponds to section 264 of the present Act. Both these clauses propose to further provide that in a case where after considering the exclusion period as specified, the time available is less than sixty days, such remaining period shall be extended to sixty days and such period of limitation shall be deemed to have been extended accordingly.

Impact

The proposed provision will ensure that the Pr. CCIT/CCIT/Pr. CIT/CIT will have at least time of sixty days even in a case where the proceedings are stayed for some time.

Provisions related to Penalty Proceedings

12. Increased time available to pass order accepting or rejecting the Immunity from Penalty and prosecution [Section 270AA of ITA – Clause 440 of ITB]

Existing Provision

Section 270AA of the Act provide for immunity from penalty and prosecution in a case where the assessee makes the payment of tax determined by the assessment order and waives the right of appeal. The section provides that the assessing officer will need to pass an order allowing the immunity or rejecting the immunity within one month from the end of the month in which application for immunity is made.

Proposed Provision

Clause 440 of the ITB 2025 deal with the provisions of immunity from penalty and prosecution under the ITB. The Bill seeks to allow time of three months as against present one month to the assessing officer to accept or reject the application for immunity. Here it is to be noted that the Finance Bill 2025 has already proposed similar amendment to the present section 270AA of the Act.

13. Changes in the prescribed authority for imposition of penalty

The penalty under the respective section is to be levied by the respective authority as specified in the respective section. There are few sections where the prescribed authority for imposition of penalty is changed from Jt. CIT under the present Income-tax Act to the assessing officer. The following table displays the sections where this change has been proposed :

Nature of Default	*Section of ITA 1961*	*Clause of ITB 2025*
Failure to deduct tax at source	Section 271C	Clause 448
Failure to collect tax at source	Section 271CA	Clause 449
Failure to comply with the provisions of section 269SS of the Act (Corresponding clause 185 of the ITB)	Section 271D	Clause 450
Failure to comply with the provisions of section 269ST of the Act (Corresponding clause 186 of the ITB)	Section 271DA	Clause 451
Failure to comply with the provisions of section 269SU of the Act (Corresponding clause 187 of the ITB)	Section 271DB	Clause 452
Failure to comply with the provisions of section 269T of the Act (Corresponding clause 188 of the ITB)	Section 271E	Clause 453

***Note** : All the above sections have already been proposed to be amended by the Finance Bill 2025 to prescribe the assessing officer as the authority for imposition of penalty instead of the Jt. CIT.*

14. Mandatory opportunity of being heard before Imposition of penalty – Proposal to remove such requirement in few cases

In various sections of the Income-tax Act, there is a mandatory requirement of providing opportunity of being heard before imposition of penalty. The ITB 2025 seeks to omit this requirement in relation to the following cases :

Nature of Default	*Section of ITA 1961*	*Clause of ITB 2025*
Failure to answer questions, sign statements, furnish information returns or statements, allow inspections etc.	Section 272A	Clause 465
Failure to comply with the provisions of section 133B of the Act (Corresponding clause 254 of the ITB)	Section 272AA	Clause 466
Failure to comply with the provisions of section 139A of the Act (Corresponding clause 262 of the ITB)	Section 272B	Clause 467
Failure to comply with the provisions of section 203A of the Act (Corresponding clause 397(1) of the ITB)	Section 272BB	Clause 468

As such, there will be no requirement of providing hearing prior to imposition of penalty in respect of all the above defaults.

For imposition of penalty the conduct of the assessee must be contumacious and malafide. Keeping this in mind, the courts

have consistently held that the levy of penalty is not justified just because it is possible to levy penalty. The imposition of penalty cannot be automatic and an opportunity of hearing is a must before the penalty can be levied. Now this principle which is one of the accepted principle of a good system of taxation is proposed to be diluted in so far as the above defaults are concerned. It seems that this approach is certainly against the spirit of a transparent and fare tax administration.

15. Change in time limit for completion of penalty proceedings [Section 275 of the ITA – Clause 472 of the ITB]

Existing Provision

Section 275 of the Income-tax Act provide for the time limits for completion of penalty proceedings. The section inter-alia provides for levy of penalty within six months form the end of the relevant month in which the appeal order is received/revision order is passed/ proceedings are completed or the financial year in which the assessment proceedings are completed as the case may be

Proposed Provision

Clause 472 of the ITB 2025 corresponds to the section 275 of the ITA. As per clause 472 of the ITB an order imposing the penalty is to be passed within six months from the end of the quarter (instead of the month) in which the appeal order is received/revision order is passed/proceedings are completed/notice of imposition of penalty is issued as the case may be.

***Note** : The provisions of section 275 are already proposed to be amended by the Finance Bill 2025 in the similar manner.*

Conclusion

As can be seen, most of the proposed provisions of the Income Tax Bill 2025 are akin to the provisions contained in the Income-tax Act, 1961. At the same time, there are few significant changes which are likely to be effected and most of the significant amendments are going to be against the interest of the assessee. This article gives the initial feel of the provisions of the Income-tax Bill 2025. Many twists and turns are bound to be visible with the passage of time as we actually travel this journey under the new regime. One really hopes that the twists and turns do not result in multiple accidents. One also hopes that post this exercise, we do not face frequent year to year amendments by way of Finance Bill each year and the tax payers and professionals do get the reasonable time to digest these provisions before new surprises and challenges erupt.

I express my sincere gratitude to the Journal Committee for allowing me to be part of this academic exercise. The assignment enabled me to look at the proposed provisions minutely and certainly added to my knowledge considerably.

■●■

Key Changes in the Income-tax Bill, 2025 — Pertaining to Non-Profit Organizations



CA Vipin Batavia

(The bill is expected to come into effect from 1 April 2026.)

The provisions related to non-profit organizations introduces significant reforms to the taxation and regulatory framework of Non-Profit Organization (NPOs) in Income-tax Bill, 2025 (ITB). These reforms aim to improve transparency, accountability, Governance structure and ensure that non-profit sector operate more efficiently and in line with current standards by modifying provisions relating to registration, income computation and categorization, violation, investment rules and various compliance requirements in simple language and bringing similar provisions together in schedules and explaining compliance in tabular format and reducing the ambiguity.

The new Bill introduces unified term **"registered non-profit organization"** for all types of different NGOs knows as institutions, universities, charitable trusts, religious trusts, NGOs etc. and it consolidates similar provisions into one section. The ITB removes redundant clauses, provisos and explanations. It presents key rules in a structured manner. The words count of provisions applicable to NPOs has been reduced from approximately 12500 to 7500. It consist total **seven parts** covering provisions as under –

1)	Registration	- Sec. 332 & 333
2)	Income of registered NPOs	- Sec. 334 to 342
3)	Commercial activities by registered NPOs	- Sec. 344 to 346
4)	Compliances	- Sec. 347 to 350
5)	Violations	- Sec. 351 to 353
6)	Donation eligibility u/s. 133(1)(b)(ii)	- Sec. 354 (Old Sec. 80G)
7)	Interpretation (For various connotations used in the Bill)	- Sec. 355

Comparative table for new provisions and corresponding old provisions with note on key changes

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
1	Sec. 2(23)	**Definition of charitable purpose**	Sec. 2(15)	Definition of charitable purpose	No Change. The definition is inclusive definition. The proviso to Sec. 2(15) has been shifted to Sec. 346.
2	Sec. 332	**Application for registration** Mandates a detailed registration process with eligibility criteria, documentation, and compliance verification by the commissioner. A table is prescribed for the procedure for obtaining and renewal of registration along with timeline and condonation provision.	Sec. 12A/12AB	Registration focused primarily on ensuring the genuineness of the activity.	Stricter scrutiny, and detailed reporting requirements. Mandatory renewal every 3-5 years & 10 years for small trusts. Who can apply for the registration and eligibility criteria for registration is provided. There are some points to be noted. **(Refer our note – 1)**
3	Sec. 333	**Switching over of regimes** Allows NPOs to switch between exemption regimes with specified conditions.	Sec. 11(7)	Allows NPOs to switch between exemption regimes.	No Change. Greater flexibility with clear guidelines.
4	Sec. 334	**Tax on income of registered NPO** Tax payable by registered NPOs on its total	No provision for Normal Income and spread over across	Exemptions based on income utilization	New concept of Regular income and Residual income. Specified income is already taxed @30%

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
		income shall be aggregate of the amounts calculated – (a) at 30% on specific income, and (b) applicable rates for taxable regular income and any residual income for such tax year under other provisions of this act	various provisions		Enhanced clarity and uniformity
5	Sec. 335	**Regular Income** <u>Includes-</u> Receipts from charitable or religious activities, receipts whether capital or revenue, income derived from property or investments, voluntary contributions, and permitted commercial activities.	Sec. 11(1)	No explicit definition of regular income	There was no provision explicitly defined the regular income being new concept.
6	Sec. 336	**Taxable Regular Income** (a) NIL income if 85% or more of regular income has been applied or accumulated u/s. 342	Sec. 11(1)	Similar requirement with more flexible interpretation	No change Stricter application rules. Accumulation only u/s. 342 (Old Sec. 11(2)) **(Refer our note – 2)**

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
		(b) Taxable Income – Shortfall of 85% of the regular income applied or accumulated u/s. 342.			
7	Sec. 337	**Specified Income** Lists specific income as per chart provided which is the same it was earlier. a) Anonymous donation, more than prescribed limit (Other than NPOs established wholly for religious purposes) (b) Amount spent for the benefit of related person, (c) Applied outside India without Board permission, (d) Investment contravention to Sec. 350, (e) Deemed corpus, if conditions violated, (f) Accumulated Income – Applied other than charitable or religious purposes for which the amount was accumulated,	Sec. 115BBC, 115BBI, 11(3), 11(4), 13(1)(c) & (d)	Similar but were scattered under various sections	All similar specified income are brought together. Detailed classification with defined the tax years. The Anonymous donations explicitly excludes NPOs established wholly for religious purpose. **(Refer our note – 3)**

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
		cease to be accumulated, not utilized for the purpose for which it was accumulated & credited or paid to other registered NPOs, (g) Income applied other than charitable or religious purposes AND (h) Any income determined by AO u/s. 344 in excess of book profit.			
8	Sec. 338	**Income not to be included in regular income.** a) Income applied outside India with Board approval. b) Corpus donations are not included in the regular income with specific direction (as per Sec. 339)	Sec. 11(1)(c) & 11(1)(d)	Income not to be included in regular income.	No change. Both the old provisions are merged.
9	Sec. 339	**Corpus Donations** Donations made with a specific direction and such donations are invested or deposited in any of the modes permitted u/s. 350 and maintained specifically for such corpus.	Sec. 11(1)(d) & 11(5)	Similar provisions without stringent documentation requirements	No Change.

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
10	Sec. 340	**Deemed Corpus Donations** A registered non-profit organization such as temples, mosques, gurdwaras, churches, or other places listed under section 133(1)(b)(vii). They can opt for donations received for renovation being corpus donations with prescribed conditions to be followed.	Explanation 3A of Sec. 11(1) & Sec. 80G(2)(b)	No explicit heading. Both the provisions are brought together.	No Change. New connotation is given as deemed corpus donations.
11	Sec. 341	**Application of Income** ***1. Allowable Income Applications for NPOs.*** a) Application is allowable on actual basis and spent for charitable or religious purposes for which it is registered and with TDS compliances and cash payments restrictions. (As per Sec. 35 & 36 of ITB)	Sec. 11	Application of Income. No clarity and there was no separate headings for similar applications.	No change Except – The new connotation of deemed accumulation of income is introduced in ITB. Refer specific Sec. 343 for deemed accumulation of income.

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
		b) 85% of donations to other registered NPOs c) Not allowed corpus donations to other NPOs. ***2. Other Applications:*** a. Invested or deposited back within 5 years for such applications were made out of corpus. b. Loan repayments within 5 years are allowed for such application were made out of loans and borrowings. ***3. Not-Allowable Claims:*** a. No depreciation claims on assets bought using application of income in past, b. No set-offs for excess application from previous years. ***4. Application of income not allowed, if applied out of following sources of funds –*** (i) Corpus,			

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
		(ii) loans & borrowings, (iii) accumulated income, (iv) deemed accumulated income			
12	Sec. 342	**Accumulated Income** Accumulation or set apart of its regular income is permitted to be accumulated for specific purpose for a period not exceeding 5 years and to be invested in prescribed mode u/s. 350.	Sec. 11(2)	There was no clarity about which income can be accumulated.	No Change. Same provisions and conditions. Except clarification about accumulation can be done only out of its regular income.
13	Sec. 343	**Deemed accumulated income** 1. To the extent 15% of regular income, after application and accumulation shall be considered deemed accumulated income and must be invested as per section 350. It is not considered accumulated income under section 342.	Sec. 11(1)(a)	There was no such provision	New connotation of deemed accumulated income is introduced. There was no such requirement of investment. No provision for how long the said investment is to be kept. Application of income will not be allowed out of deemed accumulation. (Refer Sec. 341)

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
14	Sec. 344	**Commercial activities** **Business undertaking held as property**	Sec. 11(4)	Similar concept but no explicit provision.	If income determined by AO exceeds income as per A/c such excess income would be deemed to have applied for non-charitable purposes and was taxed accordingly whereas this section does not contain similar deeming provision. However, it is classified as specified income in Sec. 337.
15	Sec. 345	**Restriction on commercial activities by registered NPOs.** **Objects other than GPU.** No commercial activities to be conducted unless such commercial activity is incidental to its objects and separate books of accounts are maintained.	Sec. 11(4A)	Similar concept but no explicit provision.	Stricter regulatory approach by explicitly restricting commercial activities for certain categories of NPOs.
16	Sec. 346	**Restriction on commercial activities by registered NPOs, carrying out advancement of any other object of GPU**	Sec. 2(15)	Similar concept but no explicit provision.	No change.

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
		Unless – (a) Such commercial activity is undertaken in the course of actual carrying out of GPU. (b) The aggregate receipts from such activities do not exceed 20% of total receipts.			
17	Sec. 347	**Books of account** The registered NPOs required to keep and maintain books of accounts and other documents as prescribed, if the income exceeds maximum amount not chargeable to tax.	Sec. 12A(1)(b)	The CBDT has notified rule 17AA which prescribes maintenance of books and other documents.	No change.
18	Sec. 348	**Audit** Where the total income exceeds maximum amount not chargeable to tax. The NPOs should furnished audit report within the prescribed time and form.	Sec. 12A(1)(b)	It was along with the provisions of requirement of accounts	No change.

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
19	Sec. 349	**Return of Income** Where the total income exceeds maximum amount not chargeable to tax. It shall furnish ITR within the prescribed time.	Sec. 139(1) & (4)	Same provisions	No change.
20	Sec. 350	**Permitted modes of Investments** The modes of investing or depositing the money under this Part, shall be such as specified in Schedule XVI and specified by the Central Government, by notification.	Sec. 11(5)	Same provisions	No change. The permitted modes are not explicitly stated within the section but now prescribed separately under schedule XVI.
21	Sec. 351	**Specified violations** (a) Application other than objects (b) Commercial activity contrary to Sec. 345 (c) Utilization for private religious purposes that do not benefit public (d) Utilization for specific religious community or caste except SC, ST, BC, Women and children (e) Activities not genuine or not in	Sec. 12AB (4) & (5)	Similar penalties but less rigorous enforcement.	No Change. It is pertinent to note that the occurrence of one or more specified violations leads to cancellation of registration.

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
		compliance with conditions of registration (f) non-compliance of any other law has been attend finality (g) False or incorrect information in registration application u/s. 332(1)			
22	Sec. 352	**Tax on Accreted Income** Levies 30% tax on accreted income when an NPO's registration is cancelled or assets are transferred to a non-NPO The incidents of levy of tax on accreted income is provided in tabular format for easy understanding.	Sec. 115TD, 115TE, & 115TF	Similar provisions with less clarity and was not written in order and there was no clarity on calculation methods.	No change. Except the word withdrawn is added along with cancellation. Even in Sec. 355 - Interpretation it defines – "The cancellation includes withdrawal."
23	Sec. 353	**Other Violations** **Special provision for computation of taxable income for such violations are occurred-** (1) fails to maintain books of accounts, (2) fails to get accounts audited, (3) fails	Sec. 13(10)	Similar Provisions	No change. It is a good provision since for particular four defaults this section provides mechanism for the computation of income. The list of not allowable expenditure mentioned in the

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
		to furnish ITR and (4)) carrying out non-permitted commercial activity; In these circumstances the regular income shall be computed as reduced by certain expenditure not permitted, shall be taxed as per Sec. 334 (At normal rate).			sub clause 3 of the Section.
24	Sec. 354	**Approval for deduction-** **(For deduction to the donor for donation made to Reg. NPOs)** Provides guidelines for obtaining approval for deductions u/s. 133(1)(b)(ii) subject to conditions prescribed. A table is provided for the procedure for obtaining and renewal of approval along with time line.	Sec. 80G (Form 10BD & Form 10BE)	Similar provisions. All such connected provisions were scattered now brought under one section.	No Change. It is pertinent to note that there is still no proposed provision for condonation of delay in case of conversion of provisional approval to regular approval and for renewal of approval.

Sr. No.	*New Sec.*	*Heading*	*Corresponding old Sec.*	*Heading*	*Note on Key Changes*
25	Sec. 355	**Interpretation** Defines terms and clarifies provisions for consistent application.	Sec. 1115BBC, 80G(5), Sec. 2(15), 10(23C) or Sec. 12AB(1), Sec. 13(3)	These interpretations were scattered along with particulars section.	The certain connotations are defined and brought together at one place. There are certain definitions to be noted - 1) Cancellation includes withdrawal 2) Residual income is defined as total income reduced by regular income and specified income. 3) Specified assets – means any assets which is established to have been directly acquired by specified person 4) Specified person – means any person which is registered under any specified provision at any time. 5) Specified provision – means Sec. 12A/12AA/12AB or Sec. 10(23C) of ITA or Sec. 332 of ITB.

ITB, 2025 has prescribed 4 schedules partly or fully applicable to registered NPOs.

Schedule No.	*Heading*	*Applicable Table Sl. No.*
Schedule – II	Income not to be included in total income.	Table: Sl. No. 1
Schedule – III	Income not to be included in total income of eligible persons.	Table: Sl. No. 27 to 29 & 36 10 to 19 and 42 to 45 & 1
Schedule – VII	Persons exempt from tax.	Table: Sl. No. 10 to 19 & 42 43, 44 or 45
Schedule – XVI	Permitted modes of investment or deposits.	All Table

Summary Review

Simplification of Terms

It is necessary to understand the term 'registered non-profit organization' since it is frequently used in the Income tax bill 2025. A Registered Non-Profit Organization refers to any entity that holds a valid registration under Section 12A, 12AA, or 12AB or Section 10(23C) of the Income-tax Act, 1961 provided that such registration has not been cancelled. The term consolidates various classifications like trusts, institutions, universities, educational institutions, and hospitals, which are used across different provisions of the Act.

Consolidation of various Provisions

Previously tax provisions related to non-profit organizations (NPOs) were scattered across multiple sections of the Income Tax Act, 1961. The Income-tax Bill, 2025 consolidates similar provisions into a single, dedicated section to simplify compliance and ensure clarity.

Redundant Provisions removed & structured format, easy to understand

The bill removes redundant provisions, such as the requirement to reinvest capital gains into capital assets. Additionally, it tabulates the registration process, making it easier to understand and follow. By clearly categorizing commercial activities, compliance requirements, and violations, the law provides a more structured approach to regulating tax-exempt charities.

Incorporation of frequent amendments

Over the past few years, tax laws for charitable entities have undergone frequent amendments, creating challenges for organizations in keeping up with evolving regulations. By consolidating and streamlining these provisions, the bill provides greater stability and predictability for tax-exempt entities.

These changes have been introduced to simplify tax compliance and make it more accessible, especially for small non-profits. By reducing complexity and legal jargon, the restructuring ensures that organizations with limited financial and legal resources can navigate tax laws more efficiently and comply with ease.

Whether under new bill existing NPOs have to obtain registration again.

Previously, registered non-profit organizations (NPOs) could claim tax exemptions under two separate regimes—Section 10(23C) and

Sections 11 to 13 of the Income Tax Act, 1961. Additionally, several common provisions applied to both regimes, including Sections 115BBC, 115BBI, 115TD, 115TE, 115TF, and 2(15).

With the Finance (No. 2) Act, 2024, new applications under the first regime (Section 10(23C)) will not be accepted after 1.10.2024. However, organizations already approved under this regime will continue to enjoy exemptions for the validity period of their approval. Once their approval expires, they must register under the second regime to maintain their tax-exempt status.

The new Bill protects the eligibility of all currently registered NPOs, ensuring that those with valid registrations under Sections 12A, 12AA, 12AB, or Section 10(23C) can continue to claim benefits, provided their registrations have not been cancelled. This provision safeguards existing organizations, allowing them to transition smoothly under the revised framework without losing tax benefits.

Notes on Key changes –

Note – 1

A) Who can apply for registration –

As per Sec. 332 (1) following persons may, for claiming benefits under this part as a registered NPOs make an application for registration. There are additions of entities who can apply for registration for claiming benefits such as-

Sub clause (d)- A university established by law or any other educational institution affiliated thereto or recognized by Government.

Sub clause (e) – An institution financed wholly or in part by Govt. or Local Authority

Sub Clause (f) – This clause contains many other entities including 10(23C) (iiiab), (iiiac), (iiiad) and (iiiae) and Central Govt. may by notification specify in this behalf. (Govt. Established Bodies)

Sub clause (g) – Any other person notified by the Board.

Comment –

The scope of registration entities is increased as stated above. Previously sub sections of Sec. 10(23C) (iii) were neither required to apply for exemption nor obtained prior approval to claim tax benefits. Additionally they were not required to apply 85% of their income or undergo any audit provision. The only requirement was filing of ITR. However under the ITB framework such institutions must now obtained registration to qualify for tax exemptions and they must also comply with all regulatory conditions as prescribed under ITB.

B) Eligibility of Registration –

As per Sec. 332 (2) – A person referred to in sub section 1 (NPOs) shall be eligible for registrations if -

a) Such person is constituted or registered or incorporated in India for carrying out one or more charitable purposes as referred in Sec. 2(23) or one or more public religious purposes or both.

b) The properties of such person **are held under irrevocable trust** for the benefit of the general public –

   i) Wholly for charitable or religious purposes or

   ii) Partly for charitable or religious purposes in India, if such person was constituted or registered or incorporated

prior to commencement of the Income-tax Act, 1961.

Comment –

1) As per sub clause (b) above the trust should be an irrevocable trust. If the trust deed doesn't contain irrevocable clause then NPOs may have to face problem in (present) renewal. Because the application for renewal of registration in form 10AB contains a clause - whether the trust deed contains irrevocable clause. The reply option in the form is Yes or No. There is no option of Not Applicable. It is pertinent to note that this requirement of irrevocable clause pops-up if you select type of constitution as trust. If you select any other type of constitution then this question does not pops-up. It means the requirement of irrevocable clause for the trust only.

2) As per clause (b–ii) above it says, where the NPOs having mixed objects i.e. partly charitable or partly religious they can get registration if such NPOs are constituted or registered or incorporated before the commencement of Income-tax Act, 1961.

   As per aforesaid clause (b-ii) the trust having mixed objects they can get registration only if those trust are created prior to commencement of Income-tax Act, 1961. This provision will create problem for the most of the trust having mixed objects and established after 1961. As per aforesaid criteria a trust can get registration if it is wholly for charitable or religious purposes and mixed trust can obtained registration if it is established before 1961. One question arises that what will happen for the trusts which are already registered and having mixed objects ? Whether they will be denied renewal? Whether they have to change their objects to fulfill the criteria? What is object to be achieved is beyond understanding. **This is an unfair provision it requires reconsideration,**

C) Re-registration on adoption or modification of objects

The ITB proposes to mandate re-registration in cases where registered NPOs has adopted or undertaken modification to its objects. Previously it was required in the cases where such adoption or modification which do not confirm to the conditions of registration. However, ITB do not imposed this condition and is removed.

D) Registration period for a smaller NPOs

The Finance Bill, 2025 has already proposed period of registration for a small NPOs has been extended from 5 years to 10 years whose total income before claiming exemption does not exceed Rs. 5 crores in each of the two financial year immediately preceding the year of application. The ITB has in Sec. 332 (5) incorporated the same provision. However, this extended registration period shall not apply to trust or institutions seeking registration for the first time irrespective of whether they apply before or after commencing activities.

Comment –

This interpretation is based on plain reading of the provision. However, even the new small trusts having income less than 5 crores should also get period of registration to 10 years.

Note – 2 –

Sec. 342 prescribed provisions for accumulation of income. The corresponding

Sec. is 11(2) of ITA. The legal framework under both ITA and ITB are the same.

However, under current ITA a trust is eligible for accumulation under clause 2 to explanation 1 of Sec. 11. The reasons for accumulation under this clause was either the income is not received or for any other reason. There is a prescribed form – 9A to be filed before the due date of filing ITR along with stating the reason any one of the above two. In case if the reason opted is income not received then accumulated income was required to be applied in the year in which said income is received and so far as any other reason is concerned the said accumulated amount was required to applied in the next year.

Comment –

There is a key legislative change that this option of accumulation is not available in ITB. It has been removed.

The registered NOPs will face practical difficulty for the income which is accrued but not received since accumulation cannot be done because they cannot meet the conditions of prescribed u/s. 342 (Current 11(2)) of investment in prescribed mode u/s. 350.

To overcome this issue the NPOs either have to go for cash system of accounting, which is not possible for Sec. 8 Company since company law prescribes mercantile system of accounting or they have to shift their investments to non-cumulative option and there will be no option for other income accrued but not received. There will be additional problem of TDS done on such accrued income and income will be reported in 26AS.

This is not a fair framework of law. This requires reconsideration. The suggested provision is to provide clause for accumulation at least for income accrued but not received.

Note – 3 –

Sec. 337 – Specified Income – In table at serial no. 1 – It is mentioned –

Any anonymous donations received by registered NPOs (Other than registered NPOs created or established wholly for religious purposes) excluding anonymous donations up to Rs. 1 Lakh or 5% of such donations received by it during the tax year whichever is higher.

1) Earlier it was not clear that the exemption available for receipts of anonymous donations received by mix trust having charitable and religious activities. There was confusion that in the mix objects if money is collected in collection box at the temple or anonymous donation received for religious activities whether that portion of anonymous donations is exempted or not. Now in the ITB it is very clearly mentioned that the exemption is available only NPOs created or established wholly for religious purposes.

2) The exclusion limit of anonymous donations, the earlier provision was 5% of total donations received by the assessee however, now the word is used 5% of **such donations** received. It means now the exclusion will be 5% of total anonymous donations received or Rs. 1 lakh whichever is higher.

3) There is exclusion in current ITA for any trust or institution established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donations is for any university or other educational institution or any hospital or medical institution run by such trust or institution. Now in the present ITB this exclusion is removed.

Note – 4 – For Capital Gain

Sec. 11(1A) of current ITA provides were capital assets, being property held under trust wholly for charitable and religious purposes is transferred and the whole or any part of net consideration is utilized for acquiring another capital assets to be so held, then, the capital gain arising from such transfer shall be deemed to have been applied.

There is no corresponding provision in ITB. Hence the capital gain arises on transfer of capital assets will be treated as regular income and the provisions will apply accordingly. However there is no clarity whether in ITB indexation will be available or not.

Note – 5 – Inter-charity donations –

Sec. 341 (1)(b) of ITB says 85% of sum paid by way of donation made to any other registered non-profit organization will be allowed as application of income.

Earlier the provision was containing the word used "any amount credited or paid to another trust". Now the said word credited or paid is replaced by the word donation. With this change now the confusion about payments made to other trust for treatment of any patient or for educational fees paid for studento school run by charitable trust is now clear.

Note – 6 – Donation to other trust –

The ITB specifies u/s. 332 that donations must be made to a registered NGOs.

Note – 7 – Approval for deduction – Sec. 354 for the purpose of deduction u/s. 133(i)(b)(ii)

It is pertinent to note that there is still no proposed provision for condonation of delay in case of conversion of provisional approval to regular approval and for renewal of approval.

While the explanatory memorandum of budget, 2024 notes says that sometimes funds or institution are unable to make application for approval u/s. 80G within the specified timelines which results in unintended consequences such as permanent exit of funds or institution from the purview of Sec. 80G.

Such provisions for condonation of delay should also be provided in the ITB as it is provided for registration provisions to mitigate the hardship faced by many NPOs.

Note – 8 – Applicability of case laws delivered under current ITA

The provisions provided in ITB are almost similar as it is under the current ITA except few key changes and certain small changes. However, the basic concept of taxation of charitable trust remains the same. Therefore the earlier case laws on various subjects will continue to apply even after ITB becomes Act.

Conclusion

The Income Tax Bill,2025 brings significant reforms to simplify the tax provisions applicable to Non-Profit Organizations (NPOs), ensure greater clarity, and make compliance understandable. It consolidates various provisions into a single part and eliminating redundant sections, provisos and explanations. It introduces more structured, transparent and accountable frame work for NPOs in simple language easy to understand and clear interpretation. While it imposes more strict compliances, clarity and consistency, facilitating better governance in the NPO sector.

(This article in written in a given shorter time therefore there may be some shortcomings or some changes might have been missed to cover. I have tried my best to provide the possible explanation.)

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DIRECT TAXES
Supreme Court



Keshav B. Bhujle
Advocate

1 ***CIT vs. Paradeep Phosphates Ltd: [2024] 471 ITR 422 (SC): dated 02/09/2024***

Revision — Powers of Commissioner — Business expenditure — Disallowance — Payments liable to deduction of tax at source — Commissioner holding expenditure to be disallowed since assessee had not deducted tax at source — Tribunal holding Commissioner not entitled to direct AO to add sum without direction to re-examine issue — High Court holding conclusion of Tribunal proper and no substantial question of law arose — Supreme Court dismissed the special leave petition filed by Revenue: Ss. 40(a)(ia) and 263 of ITA 1961: A. Y. 2007-08

For the A. Y. 2007-08, the Commissioner, in his revision order u/s. 263 of the Income-tax Act, 1961, made an addition of the payments made by the assessee towards import value of machinery, spares and raw materials to non-residents on the ground that tax was not deducted at source u/s. 195 and accordingly directed the Assessing Officer to make the assessment de novo other than the issue of disallowance of expenditure u/s. 40(a)(ia).

The Tribunal found that the Assessing Officer had allowed such expenditure as being in accordance with the scheme of the business of the assessee. The Tribunal was of the view that the direction by the Commissioner to the Assessing Officer to add the sum without a direction to the Assessing Officer to re-examine the issue was beyond the scope of the powers of the Commissioner u/s. 263 and held that the Commissioner could not unilaterally direct the Assessing Officer to disallow the expenditure when the procedure to adopt assuming jurisdiction under the provisions of section 263 remained unfulfilled and also referred to the decision in ***GE India Technology Centre P. Ltd. vs. CIT [2010] 327 ITR 456 (SC)***; wherein it was held to the effect that if there was a remittance abroad, the requirement u/s. 195(1) to deduct tax would arise only if the tax was assessable in India and that since the payment made by the assessee was for import, the issue required re-examination by the Assessing Officer and accordingly set aside the order under section 263.

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

> *"The conclusion of the Tribunal, to the extent, that the Commissioner could not have unilaterally directed the Assessing Officer to add back the sum paid towards the import of raw materials by holding that it was disallowable as expenditure could not have been issued under section 263 without the Assessing Officer re-examining the issue was beyond the jurisdiction of the Commissioner, did not suffer from any legal infirmity."*

[***CIT vs. Paradeep Phosphates Ltd. [2024] 471 ITR 419 (Orissa)***]

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

"i) We have heard learned senior counsel for the petitioner and learned counsel for the respondent-assessee.

ii) We are not inclined to interfere in the matter. The special leave petition is hence dismissed."

2 *Principal CIT vs. S. R. Ferro Alloys; [2024] 469 ITR 485 (SC): dated 13/08/2024*

Settlement of case — Assessee engaged in mining industry — Search and seizure — Income-tax survey — Settlement commission on basis of volumetric report of person not qualified and incompetent to evaluate mined ore submitted by department dismissing application for settlement for failure to make full and true disclosure of additional income — Assessment of undisclosed income can be done only with reference to incriminating material recovered from search and not post-search material — High Court holding order of settlement commission unsustainable and remanding matter to settlement commission — Supreme Court dismissed the special leave petition filed by the Revenue: Ss. 132, 133A, 153A, 245C and 245D(4) of ITA 1961

The assessee was engaged in mining. Search and seizure operations u/s. 132 of the Income-tax Act, 1961 and survey u/s. 133A were carried out against the assessee at its mines. The assessee filed an application u/s. 245C for settlement disclosing the unaccounted income on the basis of the entire record and documents recovered from the assessee during the search and seizure and also accounted for all the assets acquired out of such unaccounted income and paid the tax accordingly along with his application. The Settlement Commission passed an order for proceeding under section 245D(2C). The Settlement Commission passed an order under section 245D(4) of the Income-tax Act, 1961 declaring the settlement application filed u/s. 245C by the assessee abated on the ground of failure to make true and full disclosure of the unaccounted income on the basis of the volumetric report dated July 24, 2012 submitted by the Department which it had prepared through a private architect, one MPL in respect of the total volume of manganese ore extracted by the assessee from December 2006 to June 2012 read with another report prepared by one GIP on oral sub-contract given by the private architect.

The Madhya Pradesh High Court allowed the writ petition filed by the assessee and held as under:

"i) The private architect MPL did not possess the basic qualification of a mining expert under the Mines and Minerals (Development and Regulation) Act, 1957 or even under the 1961 Act and had been termed by the Department as domain expert which was a term alien to the 1961 Act. The Settlement Commission had erred in upholding the survey report dated July 24, 2012 merely because total station method and 3D scanning technique was used without considering the fact that the person preparing the volumetric report was incompetent and did not possess the necessary qualification to prepare the volumetric report and gross inaccuracies were writ large on the face of the report, like manganese ore being 83 per cent. and waste being 27 per cent. which was impossible. The gross production for six years determined at 16 lakhs metric tonnes was more than the estimated reserve determined as per the mining plan which was also impossible. The Settlement Commission had also

erred in rejecting the report dated June 17, 2012 prepared by the State Government, by competent revenue and mining officers, at the directions of the court. They had highlighted the fact of inaccuracies in using the 3D technique. The Settlement Commission had also arrived at a perverse finding in respect of the signature of Indian Bureau of Mines officials and partners of the assessee on the survey report. Such finding was erroneous for the simple reason that survey was done on July 12, 2012 while the ex parte report was prepared on July 24, 2012. The later report dated July 24, 2012 could not have been signed on July 12, 2012.

ii) MPL who submitted the volumetric report did not possess the qualification as prescribed under rule 8A(6) of the Wealth-tax Rules which provided for the qualification of a valuer of mines and quarries. There was no certificate on record to establish that he had carried out any work relating to mines previously. MPL described as domain expert by the Department, did not have the basic qualification of a geologist and was an architect who had a bachelor's degree in civil engineering and was engaged as a valuer for the purposes of valuation of immovable property. There was no document on record to establish that MPL was a domain expert. The domain expert who was a private person was not an expert in conducting volumetric analysis and to submit volumetric analysis report. A person whose basic findings in the report were flawed and who did not even possess the necessary qualification to work as a geologist could not have been termed an expert.

iii) The Settlement Commission was so much influenced by the volumetric analysis report that it had not considered the issue raised by the assessee regarding inadmissibility of the survey report dated July 24, 2012 for assessment of undisclosed income of the period from 2006 to 2012 since it was not an incriminating material obtained as a result of search and assessment of undisclosed income under section 133A could be done only with reference to incriminating material recovered during search and not post search material.

iv) The order of the Settlement Commission suffered from perversity to the extent the validity of volumetric report had been admitted because of withdrawal of the writ petition by the assessee. The objections to the validity of the volumetric measurement report did not stand withdrawn but were very much alive and were already raised before the Settlement Commission in the settlement application filed by the assessee and the withdrawal of the writ petition was made by the assessee with a specific liberty to raise all contentions before the Settlement Commission. The withdrawal of the writ petition did not close any of the rights of the assessee to raise the issue of illegality of the survey report before the Settlement Commission. Hence the contentions of the Department that by withdrawal of the writ petition the matter of challenge to the volumetric measurement report became final was incorrect both on facts and in law and was contrary to the liberty granted by the court while permitting the withdrawal. The Settlement Commission has erred in construing the withdrawal as admission of the assessee without appreciating the fact that the withdrawal application was with specific liberty to raise all objections to the survey report before the Settlement Commission and the withdrawal order was passed

considering the grounds raised in the said application. There was no presumption of estoppel against the assessee by withdrawal of the writ petition which was done for specific reasons and with a liberty. In its order the Settlement Commission was so much influenced by the volumetric report submitted by a private person that it had brushed aside the statutory provision as contained under the Mineral Concession Rules, 1960 in respect of mining plan and operation. It had ignored the mining plan which was a statutory document prepared under the Mines and Minerals (Development and Regulation) Act, 1957 and had a statutory force.

v) The specific request to consider the stripping ratio had been ignored by the Settlement Commission. There was a clear discrepancy in calculation of overburden by the private architect who had arrived at the overburden (waste) figure of 3.24 lakhs metric tonnes while the State Government's report had arrived at the overburden figure of 17.90 lakhs metric tonnes. This gross miscalculation of overburden in the report of the private architect gave the astronomical figure of production of manganese of 83 per cent. while that of waste was determined at 27 per cent. which could never be the case in manganese mine where the waste was more and the ore was less. The best mines of Manganese Ore India Ltd. gave waste of 90 per cent. and ore of 10 per cent. and the report of Manganese Ore India Ltd. was also placed before the Settlement Commission which had not been considered.

vi) The assessee's application had been wrongly treated as not being full and true by the Settlement Commission merely on the basis of the volumetric report submitted by an incompetent person. The Settlement Commission had not discussed how the contentions of the assessee were wrong in so far as secondary evidence was concerned. It had proceeded to determine that the private architect was an expert, that his volumetric report was based on latest technology and the fact of withdrawal of petition by the assessee and thereafter the application was treated as not being full and fair disclosure of facts. It had dismissed the report prepared by the State Government at the direction of the court and had also dismissed the statutory mining plan prepared under the Mines and Minerals (Development and Regulation) Act, 1957 and approved by Indian Bureau of Mines. The order passed by the Settlement Commission under section 245D(4) and the volumetric report prepared by the Department through a private architect were to be quashed. The matter was to be remanded to the Settlement Commission to process the assessee's application and to pass a final order afresh ignoring the volumetric report and considering all the documents recovered during the search and seizure and other material produced by the Department and pass appropriate order in accordance with law."

[***S. R. Ferro Alloys vs. ITSC; [2024] 469 ITR 438 (MP)***]

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(s) passed by the High Court. The special leave petitions stand dismissed."*

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DIRECT TAXES
High Court





Jitendra Singh
Advocate

Radha Halbe
Advocate

Harsh Shah
Advocate

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Veena Estate (P.) Ltd. vs. Commissioner of Income-tax [2025] 171 taxmann.com 472 (Bombay)

Concealment penalty - Section 271(1)(c) of the Income Tax Act 1961 - inflating value of plot of land and contributing it to stock in trade, followed by withdrawals within a short period, amounts to a device or subterfuge or conduit to facilitate tax evasion - levy of penalty justified

Facts

The assessee before the Hon'ble Bombay High Court was carrying on the business of development of real estates. The assessee had purchased a plot of land and claimed to have spent additional funds on its development and construction. The assessee, along with six others, formed a partnership named M/s Nirmal Enterprises. The plot was revalued at a higher amount and introduced into the partnership as the assessee's capital. For the assessment year 1984-85, the assessee filed its return declaring "Nil" income. The AO accepted the return filed by the assessee. The Commissioner of Income Tax ("CIT") invoking the power vested in him under Section 263 of the Act directed the AO to reassess the assessee's return for the assessment year 1984-85. In the reassessment proceedings, the AO concluded that the assessee had transferred stock-in-trade at market value and withdrawn the profits arising therefrom soon thereafter and this crucial fact was not disclosed. Further, the events were arranged in a way that allowed the assessee to enjoy the benefits of the amounts without paying the due taxes. In view this finding, the AO brought the amount of ₹ 52.92 lakhs to tax as profit on the transfer of stock-in-trade to M/s. Nirmal Enterprises. Additionally, the AO also imposed the minimum prescribed penalty of ₹ 33.34 lakhs under Section 271(1)(c) for concealment of income. On appeal, the Commissioner (Appeals) deleted the addition and the penalty imposed upon the company.

Being aggrieved by the order of the first appellate authority, the Revenue challenged the same before the Income Tax Appellate Tribunal (ITAT). The ITAT reversed the order of the Ld. CIT(A) and confirmed the addition of ₹ 52.92 lakhs to the assessee's income and also restored the penalty imposed by the AO. The Tribunal recorded a finding of fact that the transaction with the firm was only a device to evade tax.

The assessee being aggrieved by the order of the ITAT challenged the same before the Hon'ble Bombay High Court under section 260A of the Act.

Ruling of the High Court

Hon'ble Bombay High Court upheld the order of AO and ITAT by observing that from the factual findings, it is clear that the very constitution of the firm and the transaction of the assessee inflating the value of the plot of land and contributing it to the stock-in-trade, followed by withdrawals within a short period, amounted to a device or subterfuge or conduit to facilitate tax evasion. For these reasons, the AO was justified in imposing the minimum prescribed penalty, and there is no warrant to interfere with the same.

2 *Vijay Vasant Kulkarni vs. ACIT [2025] 171 taxmann.com 473 (Bombay)*

Reassessment - Section 148 of the Income Tax Act 1961 - jurisdictional challenge - re-assessment order passed in pursuant to the notice issued under section 148 - alternate and efficacious remedy by way of appeal is available - High Court should refrain from exercising its jurisdiction under article 226 of Constitution of India to quash reassessment order passed under section 147

Facts

The assessee before the Hon'ble Bombay High Court is an individual. In the return filed by the assessee for the assessment year 2015-16, the assessee had claimed deduction under section 54F of the Act. The AO finalised the assessment under section 143(3) accepting the returned of income. Subsequently, AO issued a reopening notice dated 28.03.2021 under section 148 to reopen the assessment on the ground that the deduction under section 54F should be restricted to the cost of acquisition of the assessee's share in the property. Thereafter, an order under section 147 read with section 144B was passed on 29.03.2022, making additions/disallowances related to income from house property and disallowing the deduction under section 54F of the Act. Thus, the income of the assessee was assessed at ₹ 10,86,36,149, and a demand of ₹ 2,65,22,019 was raised.

The assessee being aggrieved filed a writ petition challenging the notice issued under section 148 of the Act as well as reassessment order and notice of demand, on the ground that the reopening was on mere change of opinion and there is no failure to disclose fully and truly all material facts necessary for the assessment.

Ruling of High Court

Hon'ble High Court was refused to exercise its extraordinary jurisdiction under section 226 of the Constitution of India by observing that it is a settled position that if the audit objection is on facts, then the revenue would have no jurisdiction to reopen the case on audit. However, if the issue raised is a question of law, then certainly, reopening can be done. The issue in the present case, whether it is a question of fact or a question of law, will have to be examined in the light of the submissions made during the course of the assessment proceedings, which would again involve the determination of questions of fact, which High Court cannot go into in writ proceedings. Further, there is an alternate and efficacious remedy available by way of appeal under Act against the reassessment order passed under section 147 r.w.s. 144B of the Act.

3 ***Reliance Industries Ltd. vs. P. L. Roongta [2025] 171 taxmann.com 467 (Bombay)***

Assessment - Section 143(3) of the Income Tax Act 1961 - assessment orders passed in name of non-existing entities, even though revenue was fully aware that such entities did not exists are void in law and same were to be quashed and set aside

Facts

The assessee Reliance Industries Limited (RIL) and two other companies, namely, Reliance Polypropylene Limited (RPPL) and Reliance Polyethylene Limited (RPEL), had filed their respective returns of income for the impugned assessment year under consideration. Thereafter, the assessee-company amalgamated with RPPL and RPEL. Subsequently, the Assessing Officer had passed assessment orders under section 144 in case of the assessee-company in name of RPPL and RPEL. On appeal, the Commissioner (Appeals) upheld the order passed by the Assessing Officer. The assessee being aggrieved by the order of the first appellate authority challenged the same before the ITAT. ITAT set aside the orders passed by the Assessing Officer and the Commissioner (Appeals).

The assessee filed instant writ petition challenging the assessment orders passed in the name of non-existing entities.

Ruling of the Hon'ble High Court

Hon'ble High Court is pleased to allow the assessee's writ petition by observing that once an entity ceases to exist, it cannot be treated as a "person" under Section 2(31) of the Act, against whom an assessment order can be issued. The assessment orders in the present case were issued in the names of RPEL and RPPL, despite their cessation due to the amalgamation. The amalgamation scheme was approved on 11 January 1995, effective from 1 January 1995, while the assessment orders were passed after that date. Thus, despite the Assessing Officer being aware of the amalgamation, the assessment was conducted on an entity that no longer existed. Thus, the impugned assessment orders are void ab initio and the same are quashed.

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"All of us do not have equal talent. But, all of us have an equal opportunity to develop our talents."

— Dr. A.P.J. Abdul Kalam

DIRECT TAXES
Tribunal


CA Nikhil Mutha


CA Viraj Mehta


CA Kinjal Bhuta
Advocate

1 ***M/s. Idhayangal Charitable Trust vs. CIT(E) [ITA no. 2706/Chny/2024 (Chennai Trib.)]***

Section 2(15) – Application for registration rejected - commercial receipts from incidental activity exceeded 20% - Held that First proviso to section 2(15) not applicable to first three limbs – medical relief, education and relief to poor

Facts

The assessee is a charitable trust with the main object of providing medical relief to patients suffering from diabetes. The assessee trust was already registered u/s. 12A and 80G in 2017/2018. In FY 20-21, certain clauses of the trust deed were amended. Later the trust filed Form 10A for renewal of registration u/s. 12A & 80G of the Act and the said applications were approved for 5 years. In July 2021, the founders of the trust decided to establish a unit named MDTC. The assessee had amended a few clauses of the trust deed and the same was registered with the sub-registrar on 25.02.2024. The assessee trust filed an application in Form 10AB on 29.02.2024. The CIT(E) issued a notice seeking clarification and documents. The assessee filed a submission and explained about the source of income and the activities carried on by the trust and its unit MDTC. The CIT(E) rejected the application for registration u/s. 12AB of the Act, stating that the unit of assessee trust i.e. MDTC is providing treatment to patients who are otherwise financially affluent and can afford to pay for lab testing and consultancy services. Further, the rejection order held that the activity of MDTC is incidental and the receipts generated exceeded the permissible limit of 20% as specified under the proviso to section 2(15) of the Act. The CIT(E) also held that 50% of the total voluntary contribution received from the general public should be considered as receipts generated by MDTC resulting in significant increase in commercial activity receipts to 36.94% which was beyond the permissible limit of 20%. Against the said rejection order, the assessee filed an appeal before the Hon'ble Tribunal.

Held

Before Hon'ble Tribunal, the AR argued that the primary object of the assessee trust is to provide medical relief to the poor which does not fall in category of general public utility and therefore the proviso to section 2(15) of the Act is not applicable. The assessee had maintained two separate books of accounts for trust and MDTC and it was argued that when the incidental activity is towards the attainment of main objective of providing medical relief to public, the registration u/s. 12AB should have been granted.

The Hon'ble Tribunal while relying on Circular no.11/2018 dated 19.12.2018, held that proviso to section 2(15) does not apply to the first three limbs of the said section i.e relief to the poor, medical or educational relief, even if such entity incidentally involves carrying on commercial activities subject to the conditions stipulated u/s. 11(4A) or the seventh proviso to section 10(23C) of the Act. In the present case, the primary objective of the assessee trust was to provide medical relief to poor, which falls within the first three limbs of section 2(15) and hence the proviso to said section does not attract. Further, it was held that the assessee trust was primarily using the MDTC for testing of poor children and using only the spare capacity for outsiders at nominal prices and separate books of account for such incidental activity was maintained. Reliance was placed on the decision of Hon'ble Supreme Court in the case of ***ACIT vs. Ahmedabad Urban Development Authority [143 Taxmann.com 278]*** wherein the General Public Utility Charity has been recognized as a distinguished from "per se category" of charity i.e. education, medical relief, and relief to poor. It was further held that the CIT(E) has grossly erred in making a presumption that 50% of the amount received from the general public was receipts from the diabetic clinic without any evidence and arriving at a figure of 36.94%. Since, the proviso to section 2(15) is applicable only to the entities whose purpose is 'advancement of any other object of general public utility' and as per the circular 11 of 2008 and judicial pronouncements, the said proviso would not applicable to the assessee trust as the main objective is medical relief to poor, the order was set aside and the CIT(E) was directed to allow the continuation of registration of the assessee trust.

2 *ACIT vs. Windlass Steel Crafts LLP [ITA No. 2091/Del/2018, dated 25/02/2025] [AY 2014-15]*

Section 2(22)(e) – Deeming fiction is not applicable in the hands of a non-shareholder and also if the loan or advance are business in nature

Facts

The assessee was a partnership firm which was later converted to LLP. The assessee's case was selected for scrutiny. The Ld. AO observed that the assessee had availed loan from Windlass Engineers and Services Pvt. Ltd. (WESPL) and repaid the said loan during the year. The shareholders of WESPL were the partners of the assessee firm. The Ld. AO held that since WESPL had advanced loan to a concern (the assessee) wherein its shareholder (holding more than 10% stake in the Company) also holds more than 20% stake in the assessee firm, the amount of such loan or advance attracts provision of section 2(22)(e) of the Act. The Ld. AO made addition to the total income of the assessee as deemed dividend and brought it to tax in the hands of the assessee. Aggrieved by the said order passed by the Ld. AO, the assessee filed an appeal before the Ld CIT(A). The Ld CIT(A) relied on the decision of the Hon'ble Delhi High Court in case of ***CIT vs. Ankitech (P.) Ltd 340 ITR 14 (Delhi)*** wherein the additions were deleted on two counts: (a) The assessee who was recipient of the amount was not the shareholder in the payer company and therefore, provisions of section 2(22)(e) of the Act were not applicable (b) The money which was advanced was not in the nature of loan or advance simplicitor, but the amounts were advanced for business transaction. The additions made by the Ld. AO were deleted. Aggrieved by the said order of Ld CIT(A) the revenue filed an appeal before the Hon'ble ITAT.

Held

The Hon'ble ITAT held that that the provisions of section 2(22)(e) of the Act are attracted if the advances/loans given directly to the shareholder or to a concern in which shareholder is having a substantial interest. On strict interpretation, the transactions of the assessee will certainly fall under the deeming provisions under section 2(22)(e) of the Act. However, it was observed by the Hon'ble ITAT that the assessee had maintained the ledger account of the company wherein it was seen that the assessee has taken several amounts and also paid certain amounts back. The transactions are in the nature of business transactions like trade advances taken and returned during the year and also certain expenses are incurred on behalf of the company. It is a running account maintained by the assessee for the mutual benefits. Furthermore, The Ld. AO failed to established that how these transactions are not carried for individual benefits of the shareholder. Therefore, the grounds of the revenue were dismissed. Additionally, the Hon'ble ITAT also upheld the decision of the Ld CIT(A), wherein it was held that the deeming fiction of section 2(22)(e) is attracted only in the hands of the shareholder.

3 *Ganraj Homes LLP vs. ACIT [ITA Nos. 878, 879 & 874/PUN/2024, dated 07/02/2025]*

Section 132/133A – Search & Survey – Addition made on the basis of surmises and guesswork deleted – Extrapolation theory applied by the Assessing Officer dismissed – Addition deleted in entirety

Facts

The assessee, Ganraj Homes LLP, engaged in the real estate business and operating through its project "Ganga Acropolis," filed loss returns for assessment years 2017-18, 2018-19, and 2019-20. Ganga Acropolis is one of the premium residential projects under M/s. Ganraj Homes LLP, which is a concern of Subhash Goel Group, whose office was covered u/s 132 of the Act. The site office was covered under survey action u/s 133A of the Act. During a search and survey action, the Department discovered documents, loose diary entries, WhatsApp chats, and took statements from sales managers indicating that the firm has allegedly receive "on-money" (cash payments) on account of selling flats at less than the prevailing market price (though higher than the read reckoner value). On the basis of the evidence found (in respect of 15 flats), the AO made an addition by applying extrapolation theory on the premise that the probability of acceptance of on-money in respect of other flats cannot be ruled out. Accordingly, he calculated a sum of Rs. 2,42,12,902 for AY 2017-18 (with similar amounts for subsequent years) and added to the same to the extent of the assessee's profit-sharing ratio in the joint venture. In appeal, the learned CIT(A) upheld the action of the learned AO. Hence, the Assessee preferred an appeal before the Hon'ble ITAT.

Held

The Hon'ble ITAT observed the following in the facts of the present case:

(a) The statement recorded of Shri Subhash Goel u/s 132(4) shows that not a single question has been asked by the search party on account of receipt of any on-money on the basis of the statements recorded u/s 131 of the senior sales managers.

(b) None of the persons to whom the flats have been sold have ever been examined either by the search party during the course of search or post-search enquiries or by the Assessing Officer during the course of assessment proceedings.

(c) A perusal of the details furnished by the assessee shows that most of the flats were sold to the persons other than the persons whose names are appearing in the seized documents.

Accordingly, the Hon'ble ITAT held that the entire addition made by the Assessing Officer and sustained by the Ld. CIT(A) being on guesswork and surmises cannot be upheld.

The Hon'ble ITAT, distinguish the decision of the Hon'ble Bombay High Court in the case of ***Harish Textile Engineers Ltd vs. DCIT (2015) (379 ITR 160)*** on facts considering that the assessee in that case has accepted that it has received on-money whereas in the instant case the director/partner has completely denied to have received any such on-money. Accordingly, the Hon'ble ITAT held that extrapolation cannot be made on account of receipt of on-money for sale of shops. The Hon'ble ITAT thus deleted the additions in entirety.

4 *Assistant Commissioner of Income Tax vs. Prashant Prakash Nilawar [ITA 5689/Mum/2024 dated 12/02/2025] [AY: 2021-22]*

Section 65B of the Indian Evidence Act - Documentary evidence by way of an electronic record can be regarded as evidence only if the procedure prescribed under Section 65B is followed

Facts

The assessee is engaged in the business of land aggregator for corporates and consultancy in the same field. The assessee filed a return of income under section 139(4) of the Act declaring total income of INR 5.75 crores. A search and seizure action under section 132 of the Act was conducted in case of Rucha Group, wherein the case of the assessee was also covered. The Ld. AO completed the assessment under section 143(3) by making addition of INR 0.91 crores under section 69A of the Act as unexplained money based on the image found from the backup of mobile phone of third party and INR 9.67 crores under section 69C of the Act as unexplained expenditure for amounts expended towards various parties based on the evidence found from the camscanner app of the mobile of Shri Shailendra Rathi. Aggrieved by the said order passed by Ld. AO, the assessee filed an appeal before the Ld Commissioner of Income Tax (Appeals). The Ld CIT(A) allowed partial relief. Aggrieved by the order passed by Ld CIT(A), the assessee and the revenue filed an appeal before the Hon'ble ITAT.

Held

The Hon'ble ITAT observed that the additions made by the Ld. AO were based on the images found from the mobile of Shri Javed Shaikh and Shri Shailendra Rathi. The Hon'ble ITAT observed that there is no mention of the assessee in the image found. Moreover, the conditions of Section 65B of the Indian Evidence Act have not been complied with since the entire addition is based on image found from the mobile of Shri Javed Shaikh which is an electronic record.

The Hon'ble ITAT relied on the decision of the Hon'ble Supreme Court in case of ***Anvar P.V. vs. P.K. Basheer [2014] 10 SCC 473***, wherein it was held that any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B of such Act. The compliance with section 65B of the Act is nowhere mentioned in the entire proceedings. It was further held that addition cannot be made only on the basis of WhatsApp conversation between third parties without adducing corroborative evidence in support of such allegation. The Hon'ble

ITAT relied on the decision of the Hon'ble Supreme Court in case of ***Ambalal Sarabhai Enterprise vs. KS Infraspace LLP Ltd (Civil Appeal No. 9346 of 2019)*** wherein it was observed that the WhatsApp messages, which are virtual verbal communications, are matters of evidence with regard to their meaning and its contents to be proved during trial by evidence in chief and cross-examination. The emails and WhatsApp messages will have to be read and understood cumulatively to decipher whether there was a concluded contract or not. The Ld. A.O neither provided any evidence in support of the WhatsApp chats relied upon by him nor did he provide the opportunity to cross examine the third parties even after a specific request was made by the assessee. Therefore, the additions made by the Ld. AO were deleted.

5 *ACIT vs. Jaideep Halwasiya [ITA no. 2284/Kol/2024 (Kolkata Trib.) (AY: 2015-16)]*

Section 153C – Notice u/s. 153C for period beyond 6 assessment years - as per first proviso to Section 153C period of 6 years from date of receipt of documents by AO of such other person - Proceeding bad in law and quashed.

Facts

A search was conducted u/s. 132 of the Act on 06.02.2019 in case of Avtar Singh Kochar, wherein certain incriminating materials and digital evidences in the form of conversation and WhatsApp chats between him and the assessee was seized. A copy of seized material was received by the AO having jurisdiction over the assessee vide email dated 26.09.2022, and accordingly, a notice u/s 153C of the Act was issued on 14.10.2022. Subsequently, an assessment order was passed making an addition in respect of loss from reversal trades (F&O) of ₹ 10,90,25,940/-. Against the said order the assessee filed an appeal before CIT(A).

The CIT (A) allowed the appeal of the assessee on the legal issue that the addition was not made with reference to any incriminating material seized during the course of the search. The CIT(A) dismissed the additional ground raised by the assessee challenging the proceeding u/s 153C of the Act as the same being beyond the period of 6 assessment years from the date of receipt of documents by AO of the assessee. The CIT(A) based on the amendments made by the Finance Act 2017 held that the treatment in respect of the date of initiation of search for the purpose of sections 153C and 153A of the Act is the one and the same. Against the said order, the Revenue filed an appeal and the assessee filed Cross-Objections.

Held

Before Hon'ble Tribunal, the AR argued that for the purpose of calculating 6 assessment years, the date of initiation of search u/s 132 of the Act, shall be the date on which the books of accounts or documents or assets are received from the AO of searched person and i.e. in the present case 26.09.2022. The memorandum explaining the provisions of the Finance Bill did not provide any such explanation as assumed by the CIT (A) that the date of initiation of search for the purpose of Section 153C or 153A of the Act shall be the same. The AR relied on the Finance Act 2017 and the memorandum to the Finance Bill, 2017 and stated that the amendment was made u/s. 153A and 153C of the Act to include the period beyond 6 years upto 10 years as relevant assessment year. Further, the first proviso to Section 153C of the Act provides that the date of initiation of search u/s 132 of the Act shall be construed from the date of receiving the books of accounts or documents or seized material or requisition by the AO having jurisdiction over such other

persons. The aforesaid proviso has neither been omitted nor been modified even after the amendment made by the Finance Act 2017. Therefore, the assessment year 2015-16 falls beyond the said period of six assessment years and the reopening u/s 153C of the Act was without jurisdiction and invalid.

The Hon'ble Tribunal after perusing Section 153C of the Act and proviso thereto and also the amendment made by the Finance Act, 2017, held that six assessment years have to be reckoned from the end of the assessment year relevant to the financial year in which the books of accounts, documents or assets are received by the AO of the other person from the AO of the searched person. In the present case that happened on 26.09.2022 when the necessary documents were received on email by the AO of the assessee. Therefore, the six assessment years have to be computed from the end of the assessment year i.e. 2023-24 and the six assessment year which can be reopened u/s 153C of the Act are A.Y. 2017-18 to 2022-23. The Hon'ble Tribunal also relied on multiple decisions including the SC decision in case of ***ITO vs. Vikram Sujitkumar Bhatia (453 ITR 417),*** wherein it was held that 6 assessment years have to be computed from AY relevant to FY in which the documents or assets are received by the AO of other person from the AO of the searched persons. The notice issued u/s. 153C of the Act for AY: 2015-16 is beyond the period of 6 assessment years and the assessment order was quashed.

6 *DCIT vs. Devang Ajit Jhaveri [ITA No. 4498/Mum/2024 (Mumbai Trib.) (AY: 2011-12 and 2016-17)]*

Section 271D, 271E, 275(1)(c) (AY: 2011-12) – Penalty order passed beyond period of limitation u/s. 275(1)(c) – date of initiation of penalty should be from assessment proceedings.

151 & 149 (AY: 2016-17) - Notice u/s. 148 issued on 30/07/2022 -- beyond period of three years – sanctioning authority PCCIT or CCIT under amended section 151 and not PCIT – Notice u/s. 148 issued beyond surviving period – reassessment proceeding bad in law.

Facts

Facts 1: During the assessment proceeding, the AO noted that the assessee had obtained and repaid loan in cash, thereby violating provisions of Section 269SS and 269T of the Act. The assessment was completed and order was passed on 28/12/2018. The AO initiated a penalty and made a reference to JCIT for initiation of penalty u/s. 271D & 271E of the Act. The AO wrote a letter on 17/09/2019, almost 9 months after the completion of assessment, to make a reference for initiation of penalty for violation of u/s.269SS and 269T of the Act. Accordingly, JCIT issued notice on 26/09/2019 and passed the penalty order on 11/03/2020.

Facts 2: A notice u/s. 148 of the Act was issued on 30.06.2021 as per the erstwhile reassessment law which was considered as deemed show cause notice u/s. 148A(b) of the Act because of SC decision in case of Ashish Agarwal. An issue letter dated 30.05.2022 was issued providing information and documents available with the AO and providing a time of 2 weeks for the assessee to reply. The period of 2 weeks expired on 13/06/2022 and no reply was filed by the assessee. The order u/s. 148A(d) and notice u/s. 148 of the Act was issued on 30/07/2022 after taking prior approval of PCIT.

Held

For AY:2011-12: Before the Hon'ble Tribunal, the assessee submitted that the penalty

proceeding is barred by limitation as per section 275(1)(c) of the Act. The Hon'ble Tribunal noted that as per the said section, the penalty order is to be passed within the financial year in the course of which action for the imposition of penalty has been initiated and completed; or within six months from the end of the month in which action for the imposition of penalty was initiated; whichever is later. Emphasis was placed on phrases - 'the proceedings', and, 'in the course of which initiation of action for imposition of penalty'. The Hon'ble Tribunal held that there has to be some kind of proceedings under the Act in which the grounds for initiation of penalty are found or satisfaction is arrived or forms the basis for initiation of penalty, which in the present case was the assessment proceeding. As per Section 275(1)(c) of the Act, the first time limit expired on 31/03/2019 and the second time-limit expired on 30/06/2019. Therefore, the penalty order passed on 11/03/2020 was barred by limitation. The Hon'ble Tribunal relied on the decision of Hon'ble Delhi High Court in the case of PCIT vs. Rishikesh Buildcon (P) Ltd. [147 taxmann.com 220 (Delhi HC)] and quashed the penalty proceedings.

For AY: 2016-17: Before the Hon'ble Tribunal, the assessee submitted a chronology of events and argued that the sanction of PCIT was invalid as given from an incorrect authority as per section 151. It was further argued that the notice u/s. 148 of the Act dated 30/07/2022 was barred by limitation as it was issued beyond the surviving period prescribed by the Hon'ble Supreme Court in the case of ***UOI vs. Rajeev Bansal (2024) 167 taxmann.com 70 (SC).***

The Hon'ble Tribunal held that for AY: 2016-17, the notice u/s. 148 was issued on 30/07/2022 was beyond the period of 3 years and the alleged escapement amount was more than Rs. 50 lakhs. The appropriate sanctioning authority was PCCIT or CCIT as per the amendment u/s.151 of the Act. Since the sanction was obtained from PCIT, the same was invalid and the entire reassessment proceeding was void ab initio. Reliance was placed on para 75 and & 76 of the decision of Rajeev Bansal (supra).

The Hon'ble Tribunal further relied on para 110 to 114 of Rajeev Bansal (supra) wherein the Hon'ble Supreme Court had prescribed the calculation of surviving period with illustrations. As per the Hon'ble Supreme Court, the following period is to be excluded – (i) Period from 01.04.2021 till 04.05.2022 (date of decision of Ashish Agarwal); (ii) Period of 30 days from 04.05.2022 granted to the AO to provide information and details to assessee; (iii) Period of 2 weeks to time given to the assessee to reply. The AO will get a surviving period calculated as: 30.06.2021 (-) Date of issuance of 148 as per erstwhile law in 2021. The AO has to issue notice u/s. 148 within such surviving period which starts from the date of reply of assessee or the last date by which reply should have been filed (in case of non-reply). Referring to the facts of the assessee's case, the notice u/s. 148 of the erstwhile law was issued on 30.06.2021. Therefore, no time was available to the AO to pass an order and issue a notice u/s. 148. As a result, an additional period of 7 days was available to the AO as per the 4th proviso to Section 149 of the Act. Therefore, the time barring date for the AO to issue notice u/s. 148 was 20/06/2022 [13/06/2022 + 7 days]. Since the notice u/s. 148 was issued on 30/07/2022, the same was barred by limitation and the reassessment proceeding was quashed.

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INDIRECT TAXES
Service Tax


CA Rajiv Luthia


CA Keval Shah

1 ***M/s Jay Mahakali Industrial Service vs. Union of India & Ors 2025 (2)-TMI-561-Gujarat High Court***

Backgrounds and facts of the case

- The show cause notice dated 29th September, 2020 did not contain any of the allegation/grounds on which Order-in-Original is passed or the grounds on which the objections are disposed of in pre-consultation during the pendency of these petitions.
- These petitions are filed challenging the show cause notice issued by the respondents -authorities without granting pre- consultation to the petitioners.
- Issues involved:

  A) Whether issuance of the show cause notices (SCNs) by the respondents without pre-SCN consultation violation of Master Circular dated 10th March 2017 or not? Whether SCNs issued fall within the exceptions outlined in the Circular No. 1079/03/2021-CX dated 11th November 2021 or not?

  B) Whether the Pre-SCN Consultation is mandatory before the issuance of the SCN if the demand in dispute is more than ₹ 50,00,000/-?

Arguments by Appellant Assessee

- The Adjudicating Authority passed an Order-in-Original dealing with contentions of the petitioners confirming the demand. However, the show cause notice dated 29th September, 2020 did not contain any of the allegation/ grounds on which Order-in-Original is passed or the grounds on which the objections are disposed of in pre-consultation during the pendency of these petitions. In such circumstances, the respondents-authorities is required to issue a fresh show cause notice in accordance with law.
- The procedure of pre consultation SCN which has been held to be a mandatory by C.B.E. & C., has not been adhered to in the instant case. That apart, when the petitioner had been given an opportunity to submit the reply to the Audit Slip, which they had submitted by reply dated 16-12-2016, the same ought to have been considered by the fourth respondent prior to issuance

of the show cause notice. If, for some reasons, the fourth respondent was of the opinion that the reply given by the petitioner to the Audit Slip is not satisfactory, then at least the same should have been dealt with in the impugned show cause notice, which has not been considered.

Arguments by Department

- The case originated from the intelligence gathered from the DGGI so such pre-consulting is not required.

Decision of the Hon'ble Tribunal

- The Board vide the Circular No. F.No.116/13/2020-CX-3 Dated 11.11.2021 clarified that the exclusion from the pre-show cause notice consultation is case specific and not formation specific. Therefore, merely because in the present case, the case originated on account of investigation of the DGGI will not be a sufficient ground for not following the mandatory procedure prescribed by the Board which is binding on the department. Therefore, it was mandatory for the adjudicating authority in the present case to conduct the pre-show cause notice consultation and in absence of the same the present proceedings could be said to be bad in law and deserves to be quashed and set aside.

- Thus, for the above reasons, this Court is inclined to entertain the present writ petition, challenging the show cause notice. In the result, the writ petition is allowed, the impugned notice is set aside and the matter is remanded to the fourth respondent, for fresh consideration. The fourth respondent is directed to afford an opportunity of personal hearing to the authorized representative(s) of the petitioner, consider the reply given by the petitioner dated 16-12-2016 to the Audit Slip and after affording full and effective opportunity, consider the case and then proceed in accordance with law.

- Taking into consideration the above facts and in view of the decision of this Court in case of L AND T Hydrocarbon NEUTRAL CITATION C/SCA/18864/2021 JUDGMENT DATED: 09/01/2025 undefined Engineering Ltd. (Supra), the Court was of the opinion that none of the show cause notice except Special Civil Application No. 5685 of 2022 can be sustained in absence of pre-consultation notice. Even in Special Civil Application No. 5685 of 2022, the show cause notice contained the ingredients of the issue of liability of the petitioner but it only refers to the difference in value of income as per Form 26AS and as per Form ST-3 returns filed by the petitioner. In such circumstances, the show cause notices issued in the respective petitions are hereby quashed and set aside and therefore as a consequence the Order-in-Original if any shall also be quashed and set aside, with a liberty to the respondent-Department to initiate the proceedings or to revive the original show cause notice subject to outcome of the pending proceedings before the Hon'ble Apex Court in accordance with law.

2 *Western India Marine Corporation vs. Union of India & Ors 2025 (2)-TMI-316-Bombay High Court*

Backgrounds and facts of the case

- Vide Show Cause Notice dated 23rd March 2004, the Petitioner was called upon to show cause why service tax should not be demanded from the Petitioner. The Show Cause Notice sought to classify the services provided by the Petitioner as "Port Services" taxable under Section 65 (82) of the Finance Act, 1994. It is the case of the Petitioner that they do not have a copy of the Show Cause Notice dated 23rd March 2004.
- Vide reply dated 19th April 2004, the Petitioner replied to the said Show Cause Notice on merits inter alia stating that the services provided by the Petitioner were not classifiable as "Port Services" as they were only engaged in the business of chipping and painting of vessels. Be that as it may, over time five more Show Cause Notices were issued to the Petitioner on the same ground and the Petitioner replied to each of them. It is an undisputed fact that thereafter nothing was done by the department over the next 14 to 20 years after receipt of the replies filed by the Petitioner to the respective Show Cause Notices.
- After 14 to 20 years, the Petitioner received a notice dated 19th June 2024 calling upon the Petitioner to appear for a personal hearing on 26th June 2024 who would then proceed to adjudicate the aforesaid Show Cause Notices. It is aggrieved by this inordinate delay in adjudicating the Show Cause Notices that the present Petition is filed seeking to quash the same.

Issues involved

Violation of the principles of natural justice - inordinate and unexplained delay of more than 14 to 20 years in adjudicating the SCN.

Decision of the Hon'ble High Court

- After the replies were filed, nothing has been done by the department. When the department decided to transfer these Show Cause Notices to the call book, the same was not even intimated to the Petitioner and that they were kept pending because the issue involved in the Show Cause Notices was pending for a decision before this Court. In these facts and circumstances, we find that the explanation given for this inordinate delay does not hold any merit.
- The first two Show Cause Notices were concerned, there was no impediment in adjudicating the same on the so-called ground that the issue in the said Show Cause Notices was already decided against the department and from which an Appeal was pending before this Court. The facts of this case clearly show that the department has done nothing to adjudicate the six show causes notices issued to the Petitioner ranging from 14 to 20 years after the issuance of the said Show Cause Notices.
- The Show Cause Notices were issued as far back as ranging from 14 to 20 years and thereafter nothing was done other than transferring them to the call book and that too without intimating the Petitioner. In these circumstances, we cannot allow the Show Cause Notices to stand.

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CORPORATE LAWS
Case Law Update



CS Makarand Joshi

CASE – 1 IBC

In the matter of *Mr. Imdadali M Momin and others - Appellant vs. Pellucid Lifesciences Private Limited - Respondent* at National Company Law Appellate Tribunal (NCLAT) New Delhi dated 9 September 2024

Facts of the Case

- Six financial creditors filed an application u/s 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) against Pellucid Lifesciences Private Limited - Corporate Debtor (CD/respondent) for initiation of Corporate Insolvency and Resolution Process (CIRP), claiming a debt of ₹ 1.25 Cr (₹ 1,25,44,997.25) with interest @ 12% per annum.
- The date of default was 30 November 2022. However, no record of the default was filed with the Information Utility.
- After the application was filed, the CD repaid ₹ 99 lakhs approx (₹ 99,07,375.48), but the applicant insisted that the application should proceed since the full amount was unpaid.
- The National Company Law Tribunal (NCLT) rejected the application, because it was found that there was no clear agreement between the creditors and the CD regarding the loan terms, including the repayment schedule and the interest rate.
- Since the CD had already repaid a significant portion of the loan and raised a valid dispute regarding the interest, the application was not appropriate for the IBC process and hence NCLT rejected the application. Aggrieved by the order of NCLT, the financial creditors filed the appeal before National Company Law Appellate Tribunal (NCLAT) u/s 61 of the IBC, challenging the order passed by NCLT.

Arguments of the Appellant

- The NCLT has erred in dismissing the application u/s 7 of the IBC. The primary basis for dismissal was the view that the forum was unsuitable for money recovery, which misinterprets the IBC's purpose. Section 7 of the IBC was meant to address insolvency and corporate debt issues, not merely serve as a debt recovery mechanism. The tribunal's failure to address the core issues of debt and default and its reliance on an incorrect interpretation led to an unjust dismissal of the application.
- The NCLT did not properly evaluate the existence of debt and default, which was fundamental prerequisites for admitting a petition u/s 7 of the IBC. The facts

of the case clearly demonstrated both elements. The payment of ₹ 99 lakhs approx., was partial and made under the threat of the admission of application under CIRP, which did not nullify the default.

- NCLT could have concentrated on confirming whether a debt existed and whether there was a default, rather than whether the debt was fully settled.
- The respondent deliberately suppressed crucial material facts, thereby misleading the Tribunal. Notably, CD failed to disclose the No Dues Certificate issued by HDFC on 6 February 2021. Additionally, they misrepresented the status of their credit facility with Bank of Baroda (BOB) and withheld information regarding a letter dated 7 March 2023, in which they requested non-renewal of the facility. These omissions and misrepresentations distorted the Tribunal's understanding of the case, ultimately influencing its judgment.
- Petitions under Sections 241 and 242 of the Companies Act, 2013 (the Act), were filed, alleging that this was intended to mislead the Tribunal. However, Appellant 1 clarified that he had, in fact, filed an application under Section 169 of the Act, challenging his wrongful removal as Director, rather than under Sections 241 and 242. This misrepresentation by the respondent allegedly distorted the Tribunal's understanding of the case's context. The respondent's statements regarding the nature of the unsecured loan and interest payments were inconsistent. While they claimed the loan was an investment rather than a financial debt, this assertion was contradicted by the financial statements and other supporting evidence.
- Several judicial precedents were cited to challenge the impugned order. Notably, in ***Shrem Residency Private Limited vs. Shraman Estates Private Limited*** it was emphasized that u/s 7 of the IBC, the NCLT must admit a petition if there is clear evidence of debt and default, without delving into the merits of the dispute.
- Similarly, the Hon'ble Supreme Court in ***N. Suresh Kumar Reddy vs. Canara Bank*** reaffirmed that once a default is established; an application u/s 7 must be admitted, focusing solely on the occurrence of default rather than any disputes regarding the debt. Additionally, in ***Innovative Industries Limited vs. ICICI Bank Limited***, the Supreme Court reinforced that the NCLT is mandated to admit a petition if a default is proven, regardless of any contested issues related to the debt itself.

Arguments of the Respondent

- NCLT dismissed the application, stating the absence of a formal loan agreement and the use of IBC not as a recovery tool but for resolving insolvency issues.
- A payment of approximately ₹ 99 lakhs was made to cover the claimed debt. However, the appellants failed to provide evidence of the loan disbursement. It was contended that a payment was made to resolve the dispute covering both principal and interest. Furthermore, it was argued that the Appellants' claim for additional interest was unfounded, as TDS deductions did not entitle them to further interest. The payment details and calculations were outlined in an affidavit filed on 16 January 2024, to which the Appellants raised no objections. It was also submitted, that

proceedings under the IBC were not an appropriate forum for claiming interest in the absence of a formal loan agreement.

- The appellants belong to the same family. When the respondent company was incorporated in 2013, Appellants Nos. 1, 5, and 6 served as its promoters, shareholders, and directors. In January 2018, Appellants Nos. 5 and 6 were removed as directors. Following a family dispute in 2019, the shares held by Appellants Nos. 4 to 6 were transferred to Appellants Nos. 2 and 3. Appellant No. 1, who had been a director since the company's inception, was later removed from the board, a decision he has challenged through a petition before the NCLT, Ahmedabad. Notably, the appellants have not provided any counter arguments to these facts.
- The respondent cited the decisions of the Tribunal in cases such as ***VRG Healthcare vs. VRG Infrastructure, and Rohit Motwat vs. Madhu Sharma***, that the IBC's purpose is debt resolution, not interest recovery.
- The claim for interest was not maintainable. A similar position was adopted by this Hon'ble Tribunal in ***S.S. Polymers vs. Kanodia Technoplast and in Permali Wallace vs. Narbada Forest Industries***
- Furthermore, any funds provided were investments forming part of the promoter's contribution rather than loans. In the absence of a formal loan agreement or contract specifying loan terms, the Appellants' claims do not qualify as financial debt under the IBC. Judicial precedents, including ***Nidhi Rekhan vs. Samyak Projects Private Limited,*** have established that investors cannot assert the status of financial creditors.
- The Section 7 application appears to be a retaliatory measure following the removal of Appellant No. 1 as a director of the CD. The timing of the application, filed shortly after the director's removal, indicates that it was an attempt to exert pressure and extract money rather than a legitimate insolvency claim.

Held

- There was no loan agreement between the appellants and the CD/respondent. Additionally, no document specified the loan tenure, the prescribed rate of interest, or the frequency of interest payments—whether monthly, yearly, or at any other interval. The only document relied upon by the appellants in this regard is the ledger accounts maintained by the CD.
- Appellant-1 was a promoter-director of the CD and was removed from the board, following which the CIRP petition was filed. A separate company petition challenging his removal was already pending.
- The funds provided since 2013 appeared to be more of an investment rather than a financial debt, as they did not meet the conditions under IBC's definition of financial debt (i.e., consideration for time value of money).
- The IBC is not a debt recovery mechanism but a forum for resolving insolvency, as reaffirmed in ***Swiss Ribbons Pvt. Ltd. vs. Union of India***. The present petition was aimed at recovering interest rather than addressing insolvency.
- The Application was only the application for recovery of balance amount of interest. The CD had already paid the amount of principal and interest for the amount for which TDS was paid.

- The case was aligned with precedents set in ***VRG Healthcare P. Ltd. vs. VRG Infrastructure P. Ltd. and Rohit Motwat vs. Madhu Sharma***, which emphasize that IBC proceedings are meant for corporate insolvency resolution, not debt recovery.
- Consequently, the NCLAT found no reason to interfere with the NCLT's order, leading to the dismissal of the appeal.

CASE – 2 - Companies Act

In the matter of *Mr. Hasmukhlal Madhavlal Patel (Appellant) vs. Ambika Food Products Pvt. Ltd* - Company in the order passed by the Hon'ble Supreme Court order dated 15 June 2023.

Facts of the case

- Ambika Food Products Pvt. Ltd (hereinafter called as company), was a closely held private company. Three groups namely, H.M. Patel Group held 30.80%, Sheth Group (Respondent) held 45% and V.P. Patel Group (Respondent) held 24.20% of the paid-up share capital in the company.
- The company was advised by the Bank to infuse additional funds through equity for the term loan. In a board meeting held on December 18, 2009, the Board of Directors resolved to issue shares through a rights issue, subject to an increase in authorized capital with shareholder approval. Subsequently, at a General Meeting held on January 27, 2010, a shareholder resolution approving the increase in authorized capital was passed.
- Thereafter, the company increased its authorized capital and paid up share by rights issue of equity shares. As a result, the H. M. Group's shareholding increased to 63.58% of the paid-up share capital, the V. P. Patel Group's shareholding stood at 12.74%, and the Sheth Group (Respondent) held 23.68% of the paid-up share capital.
- However, post allotment, V.P. Patel Group and Sheth Group filed a petition in NCLT and then NCLAT for oppression and mismanagement stating that the rights issue was oppressive to them.
- NCLT and NCLAT held that increase in authorized share capital of company is valid and binding on all the shareholders. However, the allotment of shares in respect of increased share capital shall be made to all the existing shareholders of the Company as on 18 December, 2009 in proportion to their shareholding. In case if any shareholder is not willing to subscribe for additional shares, then those shares shall be allotted to other shareholders taking their options again proportionate to their shareholding.
- Further, some financial irregularities were noticed, for which an audit of the company was ordered by NCLT which was upheld by NCLAT.
- Aggrieved by order of NCLAT, Appellant filed an appeal before Supreme Court, where the main dispute was that, whether the allotment of right shares made after increase in authorized capital was oppressive to the complaining shareholders or not?

[1] Imdadali M Momin, Abasali Mohmmadau Momin, Abidali Mohmedali Momin, Mohsinali Mumtazal Momin, Mumtazali Jamalbhai Momin, Shabbirali Jamalbhai Momin, were the appellants 1 to 6.

Appellant's contentions

- Company is a private limited company. The Section 81 of the Companies Act, 1956 was not applicable to the company.
- Nevertheless, this is a case where the appellants have made an offer to all the existing shareholders and in the ratio of 1:1.
- Since the company was advised that the authorised capital must be increased so that its capital requirements could be considered, the appellants decided to go in for increase in the authorized capital.
- The Sheth Group quit in April, 2009 by resigning from the Board of Directors. They took away nearly 90 lakhs On account of their activities, the company had run into rough weather. It was, in such circumstances, the need for increase in the authorised capital was felt.
- It was further pointed out that though the Sheth Group and the V.P. Patel Group attempted to impugn the decision to increase the authorised capital as an act of mismanagement and oppression, significantly, the NCLT and NCLAT have found no merit in the same. Therefore, once the increase in the capital was not found illegal or *malafide*, it is inexplicable, it is submitted, as to how the actual allotment of the shares could be found tainted.
- The rationale in the reasoning, *viz*., that the allotment was 'defective', was insupportable as all the shareholders were given an equal opportunity to apply for shares in proportion to their existing shareholdings. They could apply for lesser number of shares. They could also apply for more number of shares. Lastly, they could exercise the choice to not apply for any shares at all. This choice was made available to all the shareholders across the Board falling in the three Groups.
- The fact of the matter is the Sheth group and the V.P. Patel Group did not apply.
- In view of the loan remaining outstanding, there was a skewed debt-equity ratio which was a clog and the result of the company writing off the loan due from the appellants group was to enable the company to present a better financial condition.

Respondents contentions

- The Company was a closely held Company. It is more or less quasi partnership and it ran on trust.
- The authorised capital was increased by the decision of the shareholders in the general meeting held on 27 January, 2010. However, the Board of Directors decided to allot shares on 18th December, 2009, which were non-existent, prior to 27 January, 2010. The action of the Board of Directors was unauthorized and impermissible in law.
- He further pointed out that both the V. P. Patel Group and the Sheth Group had formally expressed and documented their dispute with the Registrar of Companies. Due to the dealings of the appellants, the parties were at loggerheads.
- The appellants have rolled-up the initial allotment, as also the issue relating to further allotment of shares in a single decision and notice.
- It has been argued by the learned counsel in this Appeal that these members of the HM Patel Group calculated in advance and applied so as to consume the whole of increased share capital, anticipating in advance that they can get it.

- The shares of the company were not got valued and it was issued on par, viz., at face value of ₹ 10/-. The value did not do justice to the actual valuation of the company, which would have been on the higher side.
- Although the authorized capital was increased from ₹ 1 crore to ₹ 2 crores, and the entire effort was purportedly aimed at infusing fresh capital, in reality, only ₹ 21 lakh was received by the first respondent company. Apart from this ₹ 21 lakh, the remaining ₹ 69 lakh was merely accounted for by canceling the loan owed by the first respondent company to the H. M. Patel Group. This exposes the false claim of the H. M. Patel Group that they had acted *bona fide* and in the best interest of the company.It is contended that the object of the H.M. Patel Group was to wrest control of a closely held company.

Held

- The question before court was whether the act of the Board of Directors attracted the opprobrium of it being an act of oppression.
- The court observed that, the purpose of Board of Directors to increase the capital has been admittedly found to be bona-fide, an incidental gain, namely the change in the shareholding pattern is entirely the inevitable result of the refusal of the respondent's groups to apply.
- The appellants cannot be described as having acted in a defective or in an unfair manner, in the matter of allotment of further shares particularly when the contention of the respondents about the *bona fides* of the decision to increase the authorised capital has been found in favour of the appellants.
- It must be borne in mind that the whole idea was to get funds from the Bank for the expansion of the company. The case of the respondents that there were loans due to them also may not advance their case. It would have been different if the respondents had applied and sought adjustment of the consideration by cancelling loans given by them to the company and it was rejected.
- It was held that, On the whole, in the facts, the appellants cannot be described as having acted in a defective or in an unfair manner, in the matter of allotment of further shares
- The appeals are partly allowed. The direction to allot shares in the NCLAT order is set aside. The order for conducting audit will remain undisturbed.

Case – 3 - SEBI

In the matter of Insider Trading by employees of Infosys Limited and Wipro Limited in the shares of Infosys Limited dated 31 January 2025

Facts of the case

- Securities and Exchange Board of India 'SEBI' alert system had generated insider trading alerts for the scrip of Infosys Limited (INFY/Company) around the corporate announcement about "the strategic partnership of Infosys with Vanguard" made to BSE and NSE. SEBI then conducted a preliminary examination in the scrip of INFY to ascertain whether certain persons/ entities traded in the said scrip while they were in possession of/on the basis of unpublished price sensitive information in contravention of the provisions of the Securities and Exchange Board of India Act, 1992 (SEBI Act) read with the SEBI (Prohibition

of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations"

- On further examination SEBI observed that a corporate announcement was made on "the strategic partnership of Infosys with Vanguard" by INFY to BSE and NSE on July 14, 2020. SEBI alleged that the information relating to "the strategic partnership of Infosys with Vanguard" (hereinafter referred to "Vanguard deal") was Unpublished Price Sensitive Information (hereinafter referred to as "the UPSI"). SEBI further alleged that based on power point presentation on "Go To Market Command Center" shared with the employees of INFY vide email dated June 29, 2020, the UPSI came into existence on June 29, 2020. Thus, the UPSI period was from June 29, 2020 to July 14, 2020.
- SEBI further alleged that Mr. Ramit Chaudhri (Ramit/Noticee No. 2), Solution Design Head of INFY, who was directly/indirectly associated with the Vanguard deal and being an officer/ employee of INFY was a connected person and was reasonably expected to have access/be privy to the UPSI and on preponderance of probability basis prima facie he was in possession of the UPSI. Mr. Keyur Maniar (hereinafter referred to as Keyur/Noticee No. 1) was connected with Ramit through frequent telephonic communication. Further Keyur and Ramit both have worked together in Wipro BPS during the period from March 2012 to December 2014. Thus, SEBI alleged that Keyur is a connected person and is reasonably expected to have access to the UPSI and therefore, he is an insider and on preponderance of probability basis prima facie was in possession of the UPSI procured from Ramit. SEBI alleged that Keyur traded in the scrip of INFY in the F&O segment just prior to the announcement of the Vanguard deal and soon after the announcement, subsequently offloaded/ squared off his positions such that net positions were zero and generated proceeds worth ₹ 261.30 lakhs. Thus, in view of the foregoing, Noticee No. 1 & 2 (jointly referred as Noticees) were prima facie alleged to have violated the provision of SEBI Act and PIT Regulations, 2015.
- Pursuant to the said examination, SEBI passed an Interim Ex Parte Order dated September 27, 2021 (Interim Order) under Sections 11(1), 11(4), 11B(1) and 11D of the SEBI Act against Noticee No. 1 and Noticee No. 2 for the prima facie violation of the provisions of the SEBI Act and PIT Regulations by carrying out insider trading activities in the scrip of Infosys. Vide the said Interim Order, Noticees were inter alia restrained from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever until further orders, for engaging in insider trading activity.

Charge levied

SEBI alleged that Noticees violated Section 12A (d) & (e) of the SEBI Act and Regulations 3(1), 3(2) and 4(1) of PIT Regulations, 2015.

Contentions by the Noticees

- A. Vanguard deal was not UPSI as deal value was not material in nature neither t was considered as material by Infosys: Noticees contended that SEBI failed to consider the statements of INFY personnel which would clearly demonstrate that Vanguard deal was not the biggest for INFY and that it was in ordinary course of business. Further SEBI failed to consider that the deal value would not even satisfy the test of materiality for it to be

classified as price sensitive information. It was further alleged that SEBI ignored that Vanguard was a prior client of INFY and that INFY had significant presence servicing other Defined Contribution Record keeping clients. It was further alleged that SEBI classified the information about INFY-Vanguard deal as UPSI only in hindsight as SEBI had used the present cases as an illustration in its Consultation Paper dated May 18, 2023 where it has admitted that pursuant to the 2019 amendment, listed entities failed to categorise information/event as UPSI which should have been categorized as such. Noticees highlighted that INFY itself had not considered the purported UPSI as price sensitive information in accordance with its policy. Also, INFY in its March 2021 communication, had clearly specified that the Vanguard deal itself was not finalized till the morning of July 14, 2020, as the final terms and conditions were still being worked on. It was submitted that this information cannot be deemed to be crystallized so as to be considered UPSI. Noticees alleged that Vanguard contract was essentially another outsourcing deal for INFY and forms part of INFY's core business offering. The deal is in INFY's ordinary course of business and cannot be considered as UPSI. The average annual contract value of Vanguard Contract represented just 1.72% of annual revenue of INFY for FY 2019-20. Also, Vanguard Contract's contribution to financial services segment of INFY was insignificant and INFY's revenues from North America (where Vanguard is based) declined in quarter ended September 2020 pointing to lack of significance the Vanguard contract had to INFY's business. As per INFY's materiality policy, a deal was classified as 'material' if it exceeded 5% of its annual revenue. Vanguard contract did not qualify as 'material' even under INFY's materiality policy. Even under recently amended LODR Regulations, Vanguard contract would not even qualify for disclosure on the grounds that it is deemed material. There is no nexus between the price movement of INFY and Vanguard announcement. SCN has failed to analyse the prize movement in entire month and the general upward movement of the price in calendar year 2020.

Arguments by SEBI

- A. Vanguard deal was not UPSI: SEBI in this regard argued that for any information to be regarded as UPSI under Regulation 2(1)(n) of PIT Regulations it shall satisfy the following three ingredients:

  (i) It relates to the company or its securities, directly or indirectly,

  (ii) It is not generally available and

  (iii) When it becomes generally available, it is likely to materially affect the price of the securities.

- The announcement of strategic partnership was related to Infosys. Therefore, the first ingredient of Regulation 2(1)(n) of PIT Regulations is satisfied. With respect to the second point SEBI stated that the actual 'announcement' confirming the strategic partnership between Infosys and Vanguard is UPSI and not just the prospect and possibility of a strategic partnership between them. The date of announcement of UPSI was not known to the public on a non-discriminatory basis, nor was it certain that such a deal would indeed be concluded, and if so, at what terms? Finalisation of the terms and contours of the deal may would

have continued till its announcement, but on June 29, evidently, it was clear internally within INFY that the deal would be announced on and around July 14 and that all concerned officers would have to be geared towards that announcement and its implementation. The timing of the announcement is central to the allegation. In fact, it was specifically asked by senior officials of INFY to be kept confidential as noted from internal e-mail on July 07, 2020, thus the second ingredient of Regulation 2(1)(n) of PIT Regulations is also satisfied.

- With respect to the third ingredient, whether the announcement of such information was likely to materially affect the price of the securities SEBI stated that in terms of Total Contract Value (or TCV), the Vanguard deal was the single largest ever deal closed by Infosys till that date. The TCV of the Vanguard alone was singly larger than the TCV of all fresh deal wins in each of the previous three quarters and on the strength of the Vanguard deal, the TCV of all fresh wins in the July 2020 to September 2020 quarter was set to cross a new record for Infosys. In this regard SEBI highlighted that during its earnings call on July 15, 2020, the senior management of INFY repeatedly highlighted the importance of Vanguard deal. U B Pravin Rao, Chief Operating Officer and Whole-time Director. Further in response to a query from SEBI, INFY, vide e-mail dated July 28, 2021, confirmed that the largest deal referred to in UB Pravin Rao's statement was INFY-Vanguard deal. On perusal of the aforesaid statements of CEO and COO of INFY, it is to be noted that they were aware of the significance of this deal for INFY for them to repeatedly highlight the same. Further SEBI highlighted that Vanguard, vide e-mail dated July 23, 2021, informed SEBI that INFY-Vanguard deal was projected to generate fees of approximately USD 2.057 billion over a period of ten years. The TCV of Vanguard deal alone was higher than the TCV of all new deals in each of the previous three quarters. Even for Q2 of FY 2020-21, TCV of Vanguard deal was more than 65% of the TCVs of deals signed in the said quarter. The Company itself assessed the importance of the deals basis its TCV. Hence INFY-Vanguard deal satisfied all three ingredients to be classified as a UPSI under Regulation 2(1)(n) of PIT Regulations. SEBI stated that Vanguard deal was UPSI as it, did constitute expansion of business. INFY in its own presentation had identified a potential business and revenue opportunity for itself and on winning the Vanguard deal was its way to gain an early foothold. SEBI further highlighted that Even entry of the services/products offered by that company into an area or space where it previously had no footprint or if it had such a footprint, it was ancillary to the area or space may be considered as 'expansion of business. Vanguard may have been a former client but what is important is the specifics and size of the impugned deal and not the client itself.

Penalty

SEBI has barred Noticees from securities market for one year and impounded ₹ 2.60 Crores in alleged illegal gains from insider trading in Infosys Limited Stock. They have been fined for ₹ 30 lakh each with the amount payable within 45 days.

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OTHER LAWS

FEMA – Updates and Analysis




CA Hardik Mehta CA Tanvi Vora

In this article, we have discussed recent amendments made in FEMA through Notifications, Circulars, Master Directions, Press Notes & Press Releases.

A. Update through Notifications

1. Foreign Exchange Management (Manner of Receipt and Payment) (Amendment) Regulations, 2025

The Reserve Bank of India (RBI) has amended the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023 – FEMA Notification 14 (R).

The amendment pertains to payments between residents of Asian Clearing Union (ACU) member countries.

ACU is a payment arrangement whereby the participants settle payments for intra-regional transactions among the participating central banks on a net multilateral basis. The objective is to promote trade and banking relations among the participating countries.

The erstwhile regulation provided that in cases where goods were shipped to India from an ACU country but the supplier was a resident of a non ACU country, the ACU mechanism was not available. The regulation is now amended to clarify that ACU mechanism is available to transactions between a resident in the territory of one participant country to a resident in the territory of another participant country (other than Nepal and Bhutan).

Notification No. FEMA 14(R)(1)/2025-RB dated 10 February 2025

(Comments: The above amendment removes the relevance of country of shipping of goods and places higher relevance on the residential status of the supplier.)

B. Update through Master Directions

1. Master Direction - Non-resident Investment in Debt Instruments

Extant Provisions

The following regulations are applicable to non-resident investment in debt instruments in India:

1. Foreign Exchange Management (Permissible Capital Accounts Transactions) Regulations, 2000
2. Foreign Exchange Management (Borrowing and Lending) Regulations, 2018
3. Foreign Exchange Management (Debt Instruments) Regulations, 2019

Further, RBI has also been issuing necessary directions in the form of A.P. (DIR Series) Circulars under the aforesaid regulations as also directions.

The Reserve Bank of India has now issued the Master Direction - RBI (Non-resident Investment in Debt Instruments) Directions, 2025 ('Master Direction') to consolidate the directions issued

over the years pertaining to non-resident investment in debt instruments in India.

Routes of Investment in Debt Instruments

The Master Direction prescribes the following routes of investment in debt instruments by non-residents:

1. **General Route** – by way of which FPIs can invest in government securities and corporate debt securities subject to macro prudential limits and specified investment ceilings.
2. **Voluntary Retention Route** – by way of which Foreign Portfolio Investors (FPIs) can invest in government securities and corporate debt securities without being subject to macro prudential restrictions if they commit to minimum 3 years retention period.

   With an investment limit of ₹ 2.5 lakh crore, allocation of investment amount to FPIs under this Route shall be made on a 'first come, first served' basis or through an auction mechanism.
3. **Fully Accessible Route** – by way of which FPIs, Non-Resident Indians (NRIs), Overseas Citizens of India (OCIs) can invest in specified categories of central government securities without any restriction especially the new issuances of government bonds with maturities of 5, 7, and 10 years.
4. **Sovereign Green Bonds** - Eligible foreign investors can participate in the trading and settlement of Sovereign Green Bonds in India's International Financial Services Centre (IFSC).

Over the Counter (OTC) Trade Reporting

Further, the Master Direction prescribes the following reporting provisions regarding OTC trades:

1. An FPI may trade in the secondary market for Government securities through the primary members of NDS-OM, including by using the NDS-OM Web module.
2. All OTC trades in Government securities undertaken by FPIs (except transactions undertaken using the NDS-OM web module) shall be reported to the NDS-OM platform on the trade date within 3 hours after the close of trading hours and in accordance with the operational guidance issued in this regard.

Seeking/Publishing Information by RBI

The RBI may call for information/statement/clarification, which in its opinion is relevant, from non-residents, custodians, or any other entity involved with non-resident investment in debt instruments. Such persons, agencies and participants shall furnish such information/statement/clarification within such time and manner as specified by the RBI.

The RBI may publish any anonymised data related to transactions by non-residents in debt instruments.

Breach of Regulations

Any transaction/investment in breach of applicable investment limit shall need to be reversed.

Any violation by FPIs shall be subject to regulatory action as determined by SEBI. FPIs are permitted, with the approval of the custodian, to regularize minor violations immediately upon notice, and in any case, within 5 working days of the violation.

RBI/2024-25/126 FMRD. FMD.No. 10/14.01.006/2024-25 dated 7th January 2025

(Comments: RBI's step towards consolidation of regulations will bring further clarity among non-residents regarding the do's and don't's of investing in the Indian debt instruments. The delicate balance between ease of investment and meticulous reporting and compliances will go a long way in making India an attractive and safe investment destination.)

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THE CHAMBER NEWS



CA Mehul Sheth
Hon. Jt. Secretary



CA Neha Gada
Hon. Jt. Secretary

Important events and happenings that took place online/ physical between **February 1, 2025 to February 28, 2025** are being reported as under:

I. ADMISSION OF NEW MEMBERS

The details of new members who were admitted in the Managing Council Meeting held on February 25, 2025 are as under:

Type of Membership	No. of Members
Life Member	13
Ordinary Member – Half Yearly	0
Student Member	0
Associate	0
Total	**13**

II. PAST PROGRAMMES

Sr. No.	*Date*	*Topics*	*Speakers*
		MEMBERSHIP & PR	
1	3.2.2025	Lecture Meeting on Impact of Union Budget on Capital Market	CA Anish Thacker Mr. Aman Dwivedi CA Manish Choksi
2	15.2.2025	Full Day Seminar on Income Tax	CA Mahendra Sanghvi Adv. Dharan Gandhi Adv. Devendra Jain
		DELHI CHAPTER	
1	6.2.2025	Discussion on amendments in Budget 2025	Dr. Rakesh Gupta and CA Ashok Batra
		STUDENT	
1	Certificate course on GST Law and Litigation Jointly with Government Law College (*contd.*)		
	a 8.2.2025	Classification of Services	Mr. Vishal Agrawal, Advocate

Sr. No.	*Date*		*Topics*	*Speakers*
	b	8.2.2025	Intra/Inter-State Supply, Place of Supply of Goods (Section 7 to 11 of IGST Act, 2017)	CA Vikram Mehta
	c	15.2.2025	Valuation under GST	CA Rajiv Luthia
	d	15.2.2025	Place of Supply of Services	CA A. R. Krishnan
	e	22.2.2025	Time of Supply under GST	Mr. Keval Shah, Advocate
	f	22.2.2025	Reverse Charge Mechanism, TDS, TCS	CA Raj Khona
2	14.2.2025 15.2.2025		8th Dastur National Debate Competition	
INDIRECT TAXES STUDY CIRCLE				
1	13.2.2025		Important budget proposals, elaborate discussion on its impact on ISD vs cross charge and Safari Retreat judgement	CA Naresh Sheth
ACCOUNTING & AUDITING				
1	21.2.2025		SA 600 Revised Special Considerations – Audit of group financial statements (including the work of Component Auditors)	Mr. Milan Mody
2	28.2.2025		Key Learnings from recent NFRA orders	CA Padmashree Crasto
INTERNATIONAL TAXATION				
1	One Day Conference on Practical issues under FEMA jointly with BCAS			
	a	22.2.2025	Keynote address by RBI	Mr. Prashant Kumar Dayal, GM
	b		Panel discussion with RBI	Mr. Prashant Kumar Dayal, GM, Smt. Maya Parhi, GM, Shri. Kamlesh Sharma, GM, Dr. Shiv Shankar, GM, Shri. Subhash Agarwal, Dy. GM, Shri. K K Bhagat, Dy. GM – RBI
	c		Recent Developments in FEMA – Capital and Current Account Transactions	*Session Chairman* CA Mayur Nayak *Speaker* CA Rutvik Sanghvi

Sr. No.	*Date*	*Topics*	*Speakers*
	d	Panel Discussion on practical issues such as cross border share swap transactions, cross border mergers, recent foreign investment clarifications and issues on certain specific transactions from AD banker perspective	*Chairman and Moderator* CA Paresh P. Shah *Panelists* Shri. Himansu Mohanty, (Ex-General Manager, RBI) Mr. Suyog Puntambekar – AD Banker, CA Shabbir Motorwala
2	25.2.2025	Value Chain Analysis ('VCA') and Operational Transfer Pricing ('OTP')	CA Ajit Jain
		STUDY GROUP – DIRECT TAXES	
1	27.2.2025	Recent Judgements under Income Tax Act, 1961	Adv. Shashi Bekal

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STATEMENT AS PER PRESS AND REGISTRATION OF BOOKS ACT

Form IV
(*See* Rule 8)

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I, Kishor Vanjara, hereby, declare that the particulars given above are true to the best of my knowledge and belief.

Date: 10th March, 2025

Kishor Vanjara
Signature of the Publisher

Glimpses of the One Day Conference on Practical issues under FEMA jointly with BCAS held on 22nd February, 2025 at Walchand Hirachand Hall, IMC, Mumbai

(L-R) CA Chintan Shah, sitting CA Bhavya Gandhi, CA Shabbir Motorwala (Panelist), CA Paresh Shah (Chairman and Moderator), Mr. Himansu Mohanty (Panelist), Mr. Suhas Bendra (Panelist)





View of the Audience

View of the Audience



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