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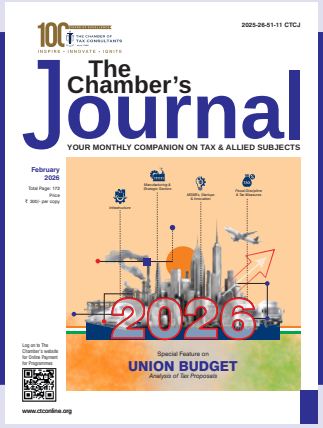

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From the President

CA Jayant Gokhale

Dear Members,

Reflections on the Finance Bill 2026

As is customary, the post budget issue of the journal contains analysis of the changes proposed in the Finance Bill 2026 by eminent experts. Thus, this issue carries some excellent articles by eminent professionals. These represent a balanced cross-section of views and insights which include interesting perspectives from industry, profession and jusrists. I had hoped that there would be minimal changes in the Tax laws, especially since the new Income Tax Act is just coming into force. But these hopes were dashed by some 'rationalisation measures' and numerous procedural changes that have been introduced. While the motives for doing so may be very noble, it is rightly said that the road to hell is paved with good intentions. These procedural remedies or removal of hardships is typically too little too late and will probably lead to an increase in litigation.

Prima facie, this would be an earning opportunity for our members. But as a patriotic citizen one is saddened by such changes, which in the name of speedy resolution, at times violate principles of natural justice. This will not just increase litigation but will impede the country's progress to becoming a global economic powerhouse. International investors and corporations are looking primarily at a clear, simple and consistent tax regime. Continually changing the law/rules (and consequent changes in system requirements, resultant bugs, glitches and extensions) is not the way to project our economic progress and attract international investors and partners. I believe that more than tweaks in our tax laws - what we badly need is a change in the mindset of our bureaucrats. My wait continues.

Celebrating the Centenary Milestones

On a brighter note, I am happy to report that the Shatabdi Summit held last month has been greatly appreciated by every participant & faculty. The unique feature of this 2 day summit was that all technical sessions did not feature a single lecture. All the subjects were dealt with by expert panellists who shared their views in response to specific and well-structured questions. Without sounding too self-congratulatory, I can say that all the members who did not attend have missed something fantastic. The event also garnered excellent media coverage and projected the CTC and its Centenary Celebrations in a very positive light. I am sure that the success of this unique format will lead to similar such events in later years. January also saw CTC successfully conduct of 2 more high profile events viz. The Indirect Tax RRC at Jaypee Palace Hotel, Agra and the FEMA RRC at Raddison Blu Nasihik. In keeping with the Centenary celebration spirit, we had record enrolments at both the RRCs. Notably, 60% of the participants came from outside Mumbai. This sends a clear signal that the time is ripe for CTC to expand its footprint nationally. Rules enabling this have recently been adopted by the Managing Council and positive action in this regard should follow in the next couple of months.

Feedback on Programmes

Another matter of pride is that innumerable participants met me personally at or after the event. Every one appreciated the fantastic academic content and rich learnings from

the sessions. They were also high praise for the excellent arrangements and attention to detail which made their participation and stay thoroughly enjoyable. Not a single person had any grievance or adverse comment. This is the result of the enormous effort put in by the respective committees, their chairpersons, technical and organisational team members, who made these events so perfect. It is this attention to detail and the continual pursuit of perfection that characterises the CTC and each of its programmes and RRCs. A special appreciation for all those who have made such flawless events a reality.

Other Academic Programmes

As always, our other not so high-profile academic activities which are at the core of the CTC ethos continued. The students committee (Jointly with HR College) continued their excellent work, conducting the Dastur Debate last week. There were 40 entries from across the country. The quality of debates was excellent and reassures me that the Gen Z has it in them to continue the rich legacy of CTC in the field of advocacy. Seminars/meetings jointly with other sister bodies on topics of immediate relevance such as Budget, TDS etc were also held successfully.

Whats in Store

I may mention that 2 big events are already on the cards. The Direct Tax RRC which is a signature event of the Chamber shall take place at Bengaluru next month. Enrollment for the same is at a record level, as befits the centenary year. And has been stopped. A special Program to mark the conclusion of the centenary year is on the drawing board and shall take place in late June. Members may take note of the same. We anticipatee extremely high response to the event. I would hate to disappoint even a single member due to lack of space. So please take note and enroll early. Looking beyond the Centenary year, we are also planning to have a special meeting of the Managing Council next month to chalk out a forward looking strategy to reposition CTC to better serve its members evolving requirements over the coming decades. All thoughts and ideas in this regard are welcome. Please feel free to communicate with any of the managing council members or with me directly; to suggest any improvements, course corrections, strategies which you believe that the Chamber should adopt to raise our standards of performance and service delivery. Awaiting your inputs for our journey ahead together.

Regards,

CA Jayant Gokhale
President



From The Editor's Desk

CA Anish M. Thacker

My Brothers and Sisters,

I am partial to the number'9'. I was born on the 9th (not of February) so '9' is my birth and lucky number. Therefore, when I learnt that the Hon. Finance Minister (FM) was going to present her ninth consecutive budget, on 1st February 2026, on a Sunday, my hopes were high that this would be a budget of bold reform. I had hoped that there would be measures that address the threat of AI to our Back Office Process based exports, measures on the Direct Tax front that were progressive, that would bring stability and that would give taxpayers confidence that the present government is mindful to their concerns.

The budget when presented, rightly spoke of the three Cs, cautious optimism, conservative approach and continuity of policy reform. It unfortunately fell short of another 'C' , namely courage. The courage to address the shortcomings of the present appeal process, the courage to reduce taxes for the middle class and to strengthen compliance mechanism, the courage to give foreign investors the confidence that the Government is keen to alleviate concerns about tax uncertainty, to speak of a few hopes.

This is not a criticism. In fact as far as the Chamber is concerned, I am pleased to report that five of the representations made by the Law & Representation Committee have been accepted and the proposals to (a) allow deduction of employees' contribution to provident fund, if these are paid before the due date if filing of the return of income, (b) taxing buy back proceeds as capital gains, (c) date of revising returns to be extended by three months (with payment of fees) (d) allowing filing of updated returns in loss cases and (e) reducing the rates of income in the nature of unexplained cash credits, unexplained expenditure etc., to 30 percent; all of which my colleagues at the Council Ketan, Mahendrabhai and Team made so diligently, have found place in the Direct Tax Proposals, which is salutary. I would like to compliment the Law & Representation Committee for continuously doing good work and having the ears of the drafters available to them and their relevant, comprehensible and sensible representations.

Some proposals which will create a stir amongst the tax professionals are the proposals to retrospectively overrule the impact of certain court decisions. The retrospectivity is one concern, but by no means the sole one. The proposal to pass a penalty order with the assessment order also represents unsettling of the law that was in place for decades if not for a century. Far reaching amendments like this one, probably need stakeholder consultation. The intention is probably laudable but the misconceived notion that all that this may do is reduce multiplicity of proceedings, should be dispensed with. There are several other such widely debatable proposals and I would urge proper stakeholder consultation to take place before the Finance Bill gets passed. But then, this is a government in a hurry.

Evidence of this may be once again probably found in the putting out of 400 plus pages of draft rules to give effect to the Income-tax Act, 2025, on Saturday 7 February with just two weeks given for representation and stakeholder consultation. It is probably trite that machines, having faster data processing capabilities, may be able to process data faster, but the human mind, always capable of wonders, after due reflection and contemplation, needs to be given some time and space to do its work.

A landmark signing of trade agreements with the EU, the US and others, also signal the intention of the government to place India in a position of reckoning in the world's economic order. One should see the impact of these, in the medium term and keep one's fingers crossed that we seize the moment.

With so much happening, we, tax professionals, also have our plates full. We should be thankful that our inherent qualities of industry, curiosity and balance, continue to hold us in good stead.

We hope that the readers find the analysis on various tax proposals presented in this current edition of the Chamber Journal insightful. I am grateful to the Journal Committee members Mr Dhiren Shah and Arpit Jain and the other team to design and execute this edition in to a very short time of one week.

On cautious optimism, this quote from Helen Keller, who I greatly admire, comes to mind and it is with this quote that I end this communication.

"No pessimist ever discovered the secrets of the stars, or sailed to an uncharted land, or opened a new heaven to the human spirit"

Jai Hind

CA Anish M. Thacker
Editor



Glimpses of the Shatabdi Summit - The Centenary Conference held on January 30-31, 2026 at Hotel Sahara Star, Mumbai



Lighting of the Lamp by the Dignitaries

Group Photo with Past President





CA Vipul Choksi, Chairman Centenary Committee giving his welcome speech. Sitting (L-R) CA Neha Gada (Vice President), CA Jayant Gokhale (President), Mr. Arijit Basu, Chief Guest and Keynote Speaker, CA Mehul Sheth (Hon. Jt. Secretary)



CA Jayant Gokhale (President) giving his opening remarks. Sitting (L-R) CA Neha Gada (Vice President), CA Vipul Choksi, Chairman Centenary Committee, Mr. Arijit Basu, Chief Guest and Keynote Speaker, CA Mehul Sheth (Hon. Jt. Secretary)

Glimpses of the Shatabdi Summit - The Centenary Conference held on January 30-31, 2026 at Hotel Sahara Star, Mumbai





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***Panel Discussion** on the topic **"The Triple Lens: Accounting, Tax & FEMA in the Capital Market Maze (Including Investments in Companies outside India)"** - Sitting (L-R) CA Jayesh Gandhi (Panel Member), CA Anil Sathe (Moderator), CA Vishal Gada (Panel Member), CA Keval Shah*



***Panel Discussion** on the topic **"Start-ups Unplugged: Beyond Valuations & Ventures"** - Sitting (L-R) CA Sujal Shah (Panel Member), CA Anand Bathiya (Panel Member), CA Ninad Karpe (Moderator), Mr. Runal Dahiwade (Panel Member)*

Glimpses of the Shatabdi Summit - The Centenary Conference held on January 30-31, 2026 at Hotel Sahara Star, Mumbai



Panel Discussion *on the topic* ***"Bulls, Bears & Beyond: The Capital Markets Dialogue"*** *- Sitting (L-R) CA Vishal H. Shah, Mr. Madhusudan Kela (Panel Member), Mr. Ravi Dharamshi (Moderator), Mr. Raamdeo Agrawal (Panel Member); CA Vishal D. Shah*



Panel Discussion *on the topic* ***"Related Party Transactions - Nuances (Covering Domestic, International, Indirect Tax, Corporate Law & SEBI Reporting)"*** *- Sitting (L-R) CA Tanvi Vora, CS Savithri Parekh (Panel Member), CA Apurva Shah (Moderator), CA Yogesh Thar (Panel Member), CA Viraj Mehta.*



Panel Discussion *on the topic* ***"AI: Friend, Foe and Future?"*** *- Sitting (L-R) CA Sumit Jhunjhunwala, Mr. Pallav Chaturvedi (Panel Member), Mr. Kapish Mandhyan (Panel Member), CA Jiger Saiya (Moderator), Mr. G.Sambasivan (Panel Member)*



Panel Discussion *on the topic "****Institutionalizing the Tax Practice****" - CA Ameya Kunete giving the Introduction, Sitting (L-R) Mr. Nishith Desai (Panel Member), CA Vaibhav Manek (Moderator), CA Dinesh Kanabar (Panel Member), CA Shabbir Motorwala*



Panel Discussion *on the topic* ***"GST @8: Learning Curves & Leapfrogs"****: Sitting (L-R) CA Namrata Dedhia, Mr. Deepak Garg (Panel Member), CA A. R. Krishnan (Moderator) Mr. Rohan Shah (Panel Member), CA Keval Shah*



Panel Discussion *on the topic* ***"From Private to Public: Professional's Critical Role in IPOs"****: CA Bhavesh Joshi giving the Introduction, Sitting (L-R) Mrs. Deena Mehta (Panel Member), CA Neha Gada (Moderator), Mr. Sudhir Bassi (Panel Member), Mr. Jeevan Sonparote (Panel Member), CA Dipesh Vora*



Panel Discussion *on the topic "****Succession Planning – Trust, Transparency & Tax"****: Sitting (L-R) CA Bandish Hemani, Dr. (CA) Anup Shah (Panel Member), Mr. Girish Venkatraman (Moderator), Adv. Bijal Ajinkya (Panel Member), CA Ashok Mehta*



Session *on* ***"In Conversation with a Legend"*** *- Sitting (L-R) CA Ankit Sanghavi, Mr. Niranjan Hiranandani, CA Naushad Panjwani, CA Vitang Shah*





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UNION BUDGET 2026 AND DIRECT TAXES: STABILITY, THE GUIDING METHOD; CLARITY, THE UNFINISHED TASK



Pramod Kumar

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Overview

In his fifth decade of tax law experience, the author reflects on India's Union Budget 2026 as a mature, continuity-focused exercise rather than one of dramatic reform. Moving beyond headline-grabbing changes, he values the Budget's emphasis on preserving and strengthening existing direct tax frameworks with a steady, pragmatic hand.

Key positives include calibrated improvements to the transfer pricing regime: a market-aligned 15.5% safe harbour margin, a substantially increased eligibility threshold (₹ 300 crore to ₹ 2,000 crore), rule-based implementation, simplified functional categories, fast-track APAs with strict timelines, and modified return filing for concluded agreements – measures that enhance certainty and realism.

The refined share buyback taxation addresses past distortions by shifting incidence closer to shareholder economics, though differential treatment of promoters (potentially dividend-like rates) versus others (capital gains) raises horizontal equity concerns, justified as anti-arbitrage.

Other welcome steps include MAT rate reduction to 14%, decriminalisation via higher prosecution thresholds (₹ 10 lakh), extended revised return windows (even post initiation of reassessment proceedings), and reduced appellate pre-deposit (20% to 10%).

However, the author critiques combined assessment-penalty orders for blurring distinctions and risking more litigation, retrospective amendments for institutional harm, and missed opportunities to overhaul the strained appellate system – proposing a specialised upper tribunal, expert witnesses, and hot-tubbing to strengthen dispute resolution.

Ultimately, while praising the Budget's realism and incrementalism, he argues that true tax certainty demands bolder structural reform beyond procedural tweaks.

In my fifth decade of engagement with tax law, in varied roles – including as a counsel, as an adjudicator, and as an advisor – my perspective on the annual exercise of

The true essence of India's Union Budget, in that sense, emerges not only from the scale of change it proclaims but predominantly from the principles and structural choices it consciously seeks to preserve, nurture, and strengthen. Union Budget 2026 belongs to that quieter category.

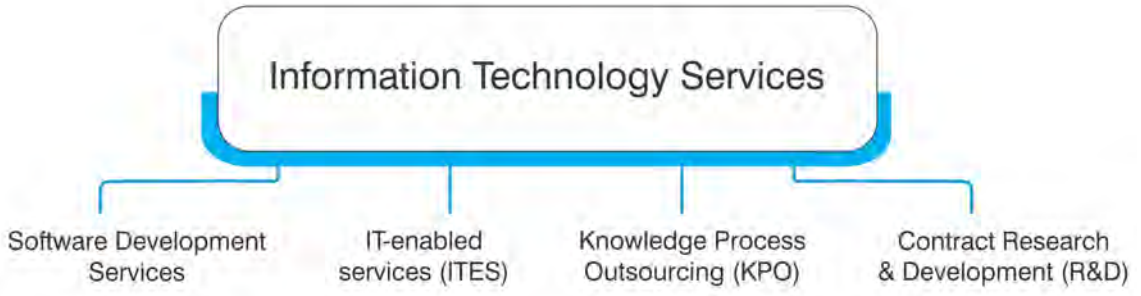
Budget-making has settled quite significantly, and perhaps into a more conservative and measured understanding. The early fascination with noise and novelty in bold reform and dramatic rate adjustments tends, with time, to give way to a more measured admiration of continuity and endurance. Rather than focusing on the ephemeral noise of headline-grabbing proposals, one increasingly looks for the quieter signals of institutional maturity. The true essence of India's Union Budget, in that sense, emerges not only from the scale of change it proclaims but predominantly from the principles and structural choices it consciously seeks to preserve, nurture, and strengthen. Union Budget 2026 belongs to that quieter category. It does not seek to dazzle, nor does it claim to remedy every perceived imperfection. Instead, it proceeds on the premise that the existing framework of direct taxation is broadly robust, and that the exigencies of the moment call for a steady hand rather than structural re-engineering. However, whether that premise is sound is a question that warrants careful—and not uncritical—examination of the Budget proposals.

One of the most constructive aspects of the Budget, from a practitioner's standpoint, is the calibrated reform of the safe harbour regime and the expansion and procedural streamlining of Advance Pricing Agreements. The adoption of a 15.5 per cent operating margin for eligible international transactions

This recalibration brings the safe harbour closer to market realities and materially enhances its practical acceptability.

under the safe harbour regime marks a significant departure from the considerably higher margins—often in the range of 17 to 20 per cent (and in some cases even higher)—that were routinely pressed into service by the tax administration in transfer pricing audits. This recalibration brings the safe harbour closer to market realities and materially enhances its practical acceptability.

Equally significant is the substantial enhancement of the monetary threshold for safe harbour eligibility—from ₹ 300 crore to ₹ 2,000 crore—which meaningfully expands access to certainty mechanisms for mid-sized and large taxpayers alike. Making the safe harbour implementation a rule-based process, without discretionary involvement, is indeed very thoughtful and deserves to be applauded. The rationalisation of categories by clubbing erstwhile sub-segments such as software development services, IT-enabled services (ITES), knowledge process outsourcing (KPO), and contract R&D into broader functional groupings under the amended safe harbour rules reflects a conscious move away from artificial micro-classification towards a substance-oriented approach.





On the APA front, the strengthening of the programme—including the introduction of a fast-track APA mechanism with a prescribed completion timeline of two years, extendable by only six months and that too at the instance of the taxpayer—signals a clear emphasis on administrative discipline, certainty, and time-bound dispute prevention. The facilitation of filing modified returns pursuant to concluded APAs, enabling both the taxpayer and the associated enterprises to give effect to agreed transfer pricing outcomes for covered assessment years, demonstrates a welcome sensitivity to implementation bottlenecks that practitioners have long highlighted. Taken together, these measures represent pragmatism in action—a mature, solution-oriented approach that replaces rigidity with realism and brings a welcome breath of fresh air to India's transfer pricing certainty regime.

Another area where the Budget reflects a conscious attempt at realism and systemic course correction is in its approach to the taxation of share buybacks. The recalibration of the buyback tax framework seeks to address long-standing distortions that had arisen from taxing buybacks at the company level on a gross basis—historically at an effective rate of approximately 23–26 per cent (20 per cent plus applicable surcharge and cess)—while simultaneously denying capital loss recognition or meaningful tax symmetry at the shareholder level. It was felt that this design not only impaired neutrality vis-à-vis dividends, but also produced outcomes that were commercially misaligned.

The Budget's refined approach—by aligning tax incidence more closely with shareholder-level economics and clarifying computational aspects relating to consideration, cost of acquisition, and timing—moves meaningfully towards restoring coherence and predictability in this area, while reducing the scope for interpretational disputes that had begun to surface in assessments and appellate proceedings. Within this broader reform, the proposal to subject promoters and ordinary shareholders to differentiated tax outcomes in the context of buybacks has understandably generated discussion within the professional community. Under the revised framework, promoter shareholders participating in buybacks may, in effect, bear tax at rates aligned with dividend taxation—potentially reaching 30 per cent plus surcharge and cess, depending on their marginal slab—whereas

The Budget reflects a conscious attempt at realism and systemic course correction is in its approach to the taxation of share buybacks.

non-promoter shareholders may be taxed under capital gains provisions, with long-term gains typically subject to tax at 10–20 per cent (plus surcharge and cess) and short-term gains at applicable slab rates.

A concern has been expressed, which merits serious consideration, that differential treatment of the same corporate action, based primarily on shareholder classification, may unsettle principles of horizontal equity and tax neutrality, while introducing additional layers of compliance and classification risk. However, the policy rationale appears to be grounded in a pragmatic assessment of economic reality—namely, that promoters, by virtue of their influence over corporate decision-making, informational access, and proximity to capital allocation choices, are differently placed from public shareholders in the design and utilisation of buyback mechanisms.

Seen in this light, the differential approach is best understood not as a value judgment on shareholder status, but as a targeted response to historical patterns of tax arbitrage, where buybacks were frequently deployed as a substitute for dividend distributions in promoter-driven contexts. Viewed from a policy perspective, the measure represents an attempt—albeit an imperfect one—to strike a balance between neutrality and anti-avoidance. While differential taxation carries the risk of over-inclusiveness and will require careful and restrained administration to avoid unintended inequities, it also reflects a conscious effort to recalibrate incentives without undermining the legitimacy of buybacks as a capital distribution tool per se. In that sense, the buyback provisions exemplify the Budget's broader philosophy—one that privileges commercial realism and corrective precision over blunt uniformity, and signals a maturing approach where tax law responds to experience rather than abstraction.

Viewed from a policy perspective, the measure represents an attempt—albeit an imperfect one—to strike a balance between neutrality and anti-avoidance.

The Budget has introduced consequential refinements to the Minimum Alternate Tax (MAT) regime, both in terms of rate structure and forward relevance, pointing to a calibrated tapering rather than an abrupt dismantling. The reduction in the MAT rate to 14 per cent, from the earlier 15 per cent (with corresponding surcharge and cess), brings MAT closer to the effective corporate tax incidence applicable under the concessional regime of section 115BAA. This narrowing of the rate differential reduces friction between parallel tax regimes and diminishes the incentive for arbitrage based purely on tax rate considerations. Equally significant is the Budget's implicit acknowledgement that MAT credit is approaching the end of its policy life. With a growing number of companies having transitioned to section 115BAA—where MAT does not apply—the stock of unutilised MAT credit has increasingly assumed the character of a legacy entitlement rather than a continuing feature of corporate tax planning. The revised MAT rate appears designed to facilitate a soft landing for companies still within the MAT framework, while signalling that MAT credit is not intended to remain a permanent element of the system. As these aspects are

The revised MAT rate appears designed to facilitate a soft landing for companies still within the MAT framework, while signalling that MAT credit is not intended to remain a permanent element of the system.

addressed separately in a dedicated article, I do not propose to explore them further here.

As for what is termed as decriminalization of minor offences, the reforms in rationalizing thresholds for criminal prosecution proceedings are indeed very thoughtful and were long overdue, and it gives statutory effect to the tax administration's stand taken in the last several years of not resorting to prosecution proceedings except in cases involving significant tax implications. Section 276CC of the Income-tax Act, 1961, introduced during the peak of the Emergency period in 1975, criminalised the mere non-filing of income-tax returns with effect from 1st April 1975, and the only exception available was where the difference in tax payable on regular assessment vis-à-vis taxes paid or deducted at source was less than ₹ 3,000. The amendment to section 276CC reflects a 33,233 per cent increase vis-à-vis the earlier prosecution threshold—a subtle policy tweak that signals a clear change in legislative philosophy. A similar threshold of ₹ 10,00,000 has been introduced in sections 276B, 276BB and 276C for delays in depositing TDS and TCS, and for income additions.

When one reflects on the time taken to revise this threshold, a systemic issue comes to the fore. Does it really make sense to prescribe a standalone monetary threshold for prosecutions? The relevance of ₹ 10,00,000—applicable uniformly for non-filing of returns, concealment of income, and delayed deposit of TDS—is not the same for every assessee, ranging from small traders to large business conglomerates. If a taxpayer with an income of ₹ 40 lakhs is found to have concealed income of ₹ 10,00,000, it may reasonably be viewed as a serious offence warranting examination for criminal prosecution. However, where a company with a returned income of ₹ 40,000 crores is found to have concealed income of ₹ 10,00,000, the element of mens rea required to justify criminal prosecution may be altogether absent. A more rational approach could, therefore, be to prescribe some kind of a dynamic



Delays at the first appellate stage have ceased to be episodic and have instead assumed a structural character. These challenges are compounded by a growing dissonance between legislative intent and judicial engagement with the statutory framework governing the Tribunal, as well as a widening gap between judicial reasoning and academic discourse in complex domains such as tax treaties, anti-avoidance rules, and evolving global consensus.

threshold—the higher of ₹ 10,00,000 or 10 per cent of the average income of the last three years, or average tax deductions in the last three years—as the case may be. This would ensure that the threshold remains realistic and proportionate, and that a criminal prosecution is aligned with serious fiscal misconduct, not technical or marginal defaults. Prosecution must be reserved for cases involving substantial revenue implications, where severe penal consequences are normatively justified.

Yet another important dimension of the Budget lies in its continuing refinement of procedural aspects of tax administration—particularly in relation to revised returns, appellate pre-deposit requirements, rationalisation of return-filing timelines, and allied compliance processes. Taken together, these amendments reflect a conscious effort to reduce friction in the tax lifecycle and to align procedures more closely with the realities of compliance and dispute resolution. The expanded and more flexible framework for filing revised returns under section 139(5) acknowledges a practical concern faced by taxpayers this year and is a telling example of a tax administration willing to recognise—and correct—procedural missteps. The time limit for filing revised returns, only until 31 December 2025, introduced just last year, was manifestly unrealistic. In tax-audit cases, it left barely a 20-day window for revision—an impossibly narrow timeframe by any reasonable standard. This has now been rectified. More importantly, the option to file a revised return has been extended even to situations where reassessment notices are issued. This gives assessees a meaningful opportunity to correct errors and regularise their position, potentially avoiding the adversarial and resource-intensive reassessment process altogether. Equally significant is the reduction in the quantum of what could, for all practical purposes, be termed the pre-deposit requirement for pursuing appellate remedies. The calibrated lowering of this threshold from 20 per cent to 10 per cent of the basic tax liability reflects a recognition that appellate remedies must remain real and accessible, and not be undermined by financial impediments. The staggering and rationalisation of return-filing timelines also merit attention. By smoothing compliance deadlines across different categories of taxpayers and reducing artificial clustering of due dates, the administration seeks to ease systemic pressure—both on taxpayers and on the technological infrastructure supporting filings.

What is more difficult to justify, however, is the move towards combined assessment and penalty orders in an environment where a substantial proportion of additions do not survive appellate scrutiny. Such consolidation blurs the well-established distinction between the determination of tax liability and the imposition of penal consequences. Penalty proceedings are premised on an independent application of mind and are best anchored to an assessment that has attained a degree of finality. Embedding penalties at the assessment stage presumes the correctness of additions at precisely the point where they are most contestable. This risks diluting the conceptual foundation of penalty jurisprudence and transforming penalties from

instruments of deterrence into mechanisms of pressure. From a systemic standpoint, the approach may well prove counterproductive—hardening positions, elevating disputes at the first appellate level, and increasing, rather than reducing, the volume and intensity of litigation. In a Budget otherwise marked by a welcome sensitivity to procedural fairness and dispute-management realities, this reform appears somewhat misaligned with the broader trajectory of incremental but meaningful procedural rationalisation.

I may also add that, whatever the justification, retrospective amendments—particularly when designed to pre-empt judicial outcomes—raise serious credibility concerns. One must carefully weigh the pros and cons of this approach and bear in mind the time-tested principle that ends cannot justify the means. While I firmly believe that the stand being taken by some of the taxpayers on all three major issues—the JAO–FAO controversy, the DRP order effect timeframe controversy, and the impact of DIN absence—was highly pedantic and devoid of substantive merit, I also believe that the remedy invoked to address these concerns is deeply problematic in principle and institutionally corrosive. History shows that, in the long run, the manner of securing a legal victory can matter more to institutional health than the victory itself.

There are many other facets of the Budget's direct tax proposals that are being addressed in dedicated articles. Let me now turn to the missed opportunities. To me, this Budget also represented an opportunity to address serious concerns relating to the functioning of the dispute-resolution architecture, the persistence of tax uncertainty in high-stakes interpretational domains, and the limited progress in translating procedural rationalisation into a genuinely taxpayer-centric experience.

With nearly half a million appeals pending before Commissioners (Appeals), the system is visibly strained. Delays at the first appellate stage have ceased to be episodic and have instead assumed a structural character. These challenges are compounded by a growing dissonance between legislative intent and judicial engagement with the statutory framework governing the Tribunal, as well as a widening gap between judicial reasoning and academic discourse in complex domains such as tax treaties, anti-avoidance rules, and evolving global consensus. Taken together, these fault lines suggest that incremental procedural adjustments may no longer suffice.

The time may therefore be ripe to revisit the structure of the appellate hierarchy itself. Long-standing concerns—articulated as early as the first Law Commission reports—regarding the necessity of two full appellate tiers before matters reach the High Courts have acquired renewed urgency. It is time to seriously evaluate the appellate mechanism from this perspective and explore all the possible options to cut down the delays in this process.

As for the oft-stated Government concern on the need to have more seasoned people to adjudicate upon tax litigation with huge ramifications, one possible reform could be the creation of a higher, specialised appellate forum, akin in spirit to the UK's Upper Tribunal, entrusted with deciding appeals involving substantial questions of law, high monetary thresholds, or complex international tax issues, while routine appeals continue through the conventional route. The rapporteur mechanism could also be considered for this proposed upper

tier. Members of such a forum could be drawn, based on seniority, expertise, and demonstrated performance, from existing institutions such as the ITAT and other relevant adjudicatory bodies. This paradigm shift can also bring in institutional changes, which can, on one hand, address the concerns that the Government has expressed time and again before the Hon'ble Supreme Court, and ensure that independent and judicious adjudication on tax disputes improves in terms of domain expertise, judicial skills, and judicial maturity.

There is a compelling case, in line with best practices in major tax jurisdictions worldwide, for the exceptional—rather than routine—introduction of expert witnesses (including domain specialists, economists, and policymakers) in significant tax litigations before Tribunals and Courts, particularly in complex areas such as transfer pricing, tax treaties, and valuation. The concurrent examination of experts ("hot-tubbing") should also be permitted. Such mechanisms would provide judicial bodies with reliable technical input, reduce the influence of advocacy-driven manoeuvrings, and enable judges to optimise their legal skills on truly interpretive issues. Ultimately, this would enhance the depth, coherence, and technical robustness of decisions, thereby strengthening tax certainty and aligning India's dispute-resolution framework with global standards.

Equally important is the need for more robust and responsible involvement of policymakers in the positions adopted before judicial forums, supported by statutory safeguards to ensure systemic consistency rather than case-specific expediency. A statutory mechanism must also be legislated for a transparent and consistent official response to the judicial rulings—particularly of the highest courts. One of the major threats to tax certainty is an overenthusiastic interpretation of the judicial rulings—whether by the field officers or by the legal teams—neither of which can substitute for the official position of the tax administration.

The Budget reflects a mature recognition that certainty is often achieved not through dramatic statutory upheaval, but through disciplined calibration of existing frameworks. Yet, stability cannot become a substitute for addressing deeper structural concerns.

While India's Budget 2026 has done many things right in the realm of direct tax proposals—particularly in preserving stability, promoting pragmatism, and reflecting administrative realism—it also highlights the limits of incrementalism. The Budget reflects a mature recognition that certainty is often achieved not through dramatic statutory upheaval, but through disciplined calibration of existing frameworks. Yet, stability cannot become a substitute for addressing deeper structural concerns. If meaningful tax certainty is to be achieved, greater ambition is required in reforming the dispute-resolution architecture, strengthening appellate capacity, and ensuring closer alignment between legislative intent, administrative action, and judicial interpretation. The next phase of reform must therefore move beyond procedural refinement and engage more directly with systemic design. Only then can stability truly become an instrument of confidence, rather than merely a method of restraint.

■

BUYBACK – TAXATION OR EXPERIMENT? DIVIDEND – SIN INCOME?



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Yash Vejani

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Overview

The taxation of buyback would be characterised as capital gains instead of dividend. The promoters will face an additional levy of income tax so that buy back is not a route to extract funds. Results in benefit to public shareholders of listed companies. However, various concerns arise on computation and drafting. Also results in harsh tax consequences for majority of non-resident investors.

Interest deduction (upto 20% of income) against dividend income is done away. Dividend would be taxed on gross basis. The objective or rationale behind the change has not been brought out.

Background

The taxation of shareholder payouts in India has undergone a significant evolution over the past decade. Buyback taxation has been recalibrated multiple times. In 2024 there was the shift from buyback tax on the company to characterization of buyback as dividend.

The Finance Bill 2026 proposes to change the characterization of buyback from dividend to capital gain and introducing a targeted additional tax on promoters effectively bringing the tax rate applicable to dividend (22% domestic company and 30% others) i.e. benefit of concessional tax rate on capital gain would not be available to promoter shareholder. New regime is proposed to be effective from April 1, 2026.

Taxation of Buybacks – Present regime

The taxation buyback as dividend had two major concerns following concerns –

- The benefit of cost of acquisition of shares was not available, entire amount was regarded as dividend and capital loss was to be claimed for the amount of cost of acquisition – which cannot be set off against dividend income.

  In practice, many shareholders lacked sufficient capital gains to absorb the capital losses arising from buybacks, while the dividend income was fully taxed.

- Benefit of concessional rate of tax on capital gains was not available.

Legislative Intent Under Finance Bill 2026

The stated objectives are twofold:

1. In the interest of minority shareholders; and

2. to disincentivize misuse of tax arbitrage, promoters will pay an additional buyback tax.

To achieve the latter objective, an additional income-tax has been introduced for promoters under S. 69. This additional levy effectively aligns the total tax cost borne by promoters with their applicable income-tax or corporate-tax rates.

Primary/unintended negative impact

It is equally important to look at the benefits of present regime which would no longer be available once buyback is characterised as capital gains –

- The benefit of **slab rate, rebate and Schedule III (Chapter VI-A deduction)** would no longer be available to small taxpayers.

- Benefit of S. 148 (80M) (pass through of dividend income) would not be available – as buyback would be regarded as capital gain and not dividend income.

- No set off against business loss – set off against capital loss.

Therefore, even for small taxpayers it would be case to case, which regime would have been more beneficial. Alternatively, if cost of acquisition of shares is allowed as deduction in computing dividend income, would have been most optimal tax regime for small taxpayers.

A. Decoding the Section

Capital Gain Taxation of Buyback

S. 69(1) (46A) provides that consideration received on buyback of securities shall be chargeable to tax under the head "Capital Gains". The cost of acquisition of the shares shall be allowed as a deduction.
Where the shareholder qualifies as a promoter, tax liability shall comprise:

- income-tax payable on the capital gains computed under the normal provisions; and

- an additional income-tax on such capital gains

The additional tax is levied at differential rates depending on whether the promoter is a domestic company or any other person, and whether the gains are short-term or long-term.

Sr. No.	*Income*	*Rate where promoter is a Domestic Company*	*Rate where promoter is other than Domestic Company*
A	*B*	*C*	*D*
1.	Short-term capital gains referred to in S. 196 arising from the transfer of such securities.	2%	10%
2.	Long-term capital gains referred to in S. 197 or S. 198 arising from the transfer of such securities.	9.5%	17.5%

It is pertinent to note that, rates have been captured in S. 69 (46A) itself and not as part of relevant sections capturing special rates like 196, 197, etc.

Some issues for consideration

Drafting anomalies

- As the rate of additional income tax has been provided in the computation section – whether it will disentitle the benefits conferred by other sections – like benefit of buying residential house, set off of losses, etc. The better view seems to be that all the benefits will continue and placement of rate of additional income tax as part of S. 69 should not frustrate other benefits conferred by the Act.

As the rate of additional income tax has been provided in the computation section – whether it will disentitle the benefits conferred by other sections – like benefit of buying residential house, set off of losses, etc.

- S. 198 (112A) for taxation of long term capital gain on listed shares provides a de minimis of Rs. 1,25,000. The language is not very clear whether the de minimis would be available for levy of additional income tax to the promoters. The literal reading of the language would suggest that the de minimis would not be available – as additional income tax is on the capital gain referred to in S. 198 and not capital gains suffering a tax in S. 198.

S. 198 (112A) for taxation of long term capital gain on listed shares provides a de minimis of Rs. 1,25,000. The language is not very clear whether the de minimis would be available for levy of additional income tax to the promoters.

- The levy of surcharge on additional income tax has not been explicitly brought out. Therefore, the entire income tax on buyback from promoters or additional income tax would be outside the scope of levy of surcharge. However, it is expected that the same would be clarified.

Scope

- Presently, S.50CA on fair value of shares is not applicable to buyback of shares as S. 46A deems the full value of consideration to be Nil. Going forward, as buyback price would be the consideration S. 79 (50CA) would apply to buyback of shares. Hence, low value buyback will be hit by S. 79 (50CA).

- Dividend income from buyback of shares as stock in trade was also taxable as Income from Other Sources. However, going forward shares held as stock-in-trade will be taxed under the head Profits and Gains of Business or Profession.

- Redemption of Preference shares as per SC[1] is purchase of shares and consequently would be covered by S. 69 (46A). Consequently, redemption of preference shares held by promoters will suffer additional income tax.

1. *Anarkali Sarabhai v. CIT [1997] 224 ITR 422 (SC)*

The levy of surcharge on additional income tax has not been explicitly brought out.

- Buyback of ESOP entitlement was always covered by S. 46A (69). No impact of characterization of buy back of shares. However, the levy of additional income tax is also on ESOP entitlement to promoters. Hence, effective tax rate of promoters on buy back of ESOP right would increase.

- Buy back pursuant to Scheme of Arrangement (S. 230 of Companies Act), a debate was whether buyback pursuant to a scheme would be regarded as dividend especially due to the change of language by ITA, 2025. However, now all the buyback including through a scheme would be covered by S. 69 (46A).

Cross-border considerations

- Characterization of buy back for DTAA is far from being settled. Further, specific exclusion of buyback from dividend under domestic law has not been reinstated will add further fuel to the debate.

- Depending on the tax treaty, the tax payer will have different classification which would result in lesser tax. The one's entitled to grandfathering or capital gains exemption will prefer capital gain classification (like Netherlands) – which would be aligned to domestic law. Others may prefer dividend classification for the lesser rate of tax.

- Alternatively, Promoters may want to opt for NCLT approved capital reduction



u/s 66 of Companies Act. The payout would be regarded as dividend, to the extent of accumulated profits. Therefore, gets over the characterisation issue.

- S. 69 (46A) proposes to equate buy back tax for promoters with dividend tax rate. However, for non-residents, dividend rate is capped at 20% - which is not coming through for buy back of shares held by non residents. Hopefully, this is changed with the Bill is being passed.

- Indirect Transfer – shares of foreign company deriving value from shares of Indian Company would be covered by S. 69 (46A). On literal interpretation, even the additional income tax would be levied if the shareholding is more than 10%. However, in the context it is possible to argue that the definition of promoter intends to only cover and domestic company and not a foreign company.

- In the case of non-resident promoters, whether the additional income-tax should be characterised as dividend income or capital gains for the purposes of tax treaties. This classification has a direct bearing on the availability of treaty-based concessional rates?

- In Colorcon Asia Pvt. Ltd. [TS-1623-HC-2025 (Bom)], the Bombay High Court held that the additional tax on dividends under S. 115-O formed part of the income-tax statute and was subject to the limitations imposed by S. 90 read with the relevant DTAA. Applying similar reasoning, it remains unclear whether the additional tax on buyback consideration can be regarded as dividend ?

- Prima facie, the foreign tax credit of entire taxes being paid in India should be available in foreign jurisdiction. However, income characterisation and additional income tax may pose some challenge in selected jurisdictions.

Definition of Promoter

For listed companies, for the definition of "promoter" reference is made to SEBI (Buy-back of Securities) Regulations, 2018, ultimately refers to SEBI (ICDR) Regulations, 2018 and would include persons classified as promoter group.

For listed companies, for the definition of "promoter" reference is made to S. 2(69) of the Companies Act, 2013 and a person who holds, directly or indirectly, more than 10% of the shareholding in the company would be regarded as promoter.

S. 2(69) reads as follows –

(69) "promoter" means a person –

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or in directly whether as a share holder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

The emphasis of the control and disclosure in annual return. The definition is not very extensive and create avenues for family members not being regarded as promoters. For example, if the family members are not reflected in the annual return as promoter as

they do not control the affairs will take them out of the ambit of promoters for additional income tax on buy back ?

Compared to the SEBI definition, the Companies Act definition is not very extensive and may require recalibration.

Coverage – Promoter

- SEBI provides an exclusion to various funds and financial institutions from the definition of promoter. However, no such exclusion is for unlisted companies. Therefore, for example if an AIF is holding more than 10% in a private company it would be regarded as a promoter and consequently, will suffer additional tax.

- 10% shareholding test – shares held "directly or indirectly" are to be aggregated. It is far from clear on what would indirectly cover ?

  - Shares held by immediate family members – even if they are major ?

  - Shares held by HUF, Partnership, Trust ?

  - Shares held by closely held LLP or Companies ?

- The Courts[2] generally have not allowed a look through approach, the phrase indirectly would require a positive establishment that the holder is hold for and on behalf of the promoter. However, the overall facts and circumstance would decide the actual interpretation of the phrase 'directly or indirectly'.

- Further, it is not very clear that whether a registered shareholder or the beneficial shareholder is to be considered. For example, shares of a partnership is registered in the name of a partner. Whether the shares would be considered for the partner or partnership or both ?

To conclude, the change certainly helps the public shareholders and practically closes the route of buyback for non-residents. However, it would be interesting to watch out, how the concept of promoter evolves from unlisted company.

Whether interest expense can be claimed as business expenditure continues to be an open question.

No deduction of Interest Expense against Dividend Income

Presently, interest and certain deductions (like banker commission) were permissible against dividend and mutual fund income, subject to a cap of 20% of such income.

Finance Bill proposes to tax dividend income and income from mutual fund units on a gross basis and not allow deduction of interest or expenditure incurred for earning such income. No rationale has been brought our for such amendment.

This is substance provides for a gross basis of taxation for dividend income. Gross basis of taxation is encouraged for sin income or income taxed at a concessional rate.

2. *HDFC Bank Ltd. vs. ACIT [2018] 100 taxmann.com 428 (Bombay)*



However, dividend taxation has neither of the traits.

Whether interest expense can be claimed as business expenditure continues to be an open question. Judicial precedents recognising commercial expediency like ***S.A. Builders Ltd. vs. CIT (2007) 158 Taxman 74 (SC), Sharp Business System vs. CIT [2025] TS 1685 (SC)*** – Interest on loan for Commercial expediency was allowed as business expenditure.

B. Conclusion

The Finance Bill 2026 represents a calibrated effort to restore balance to the buyback taxation framework by reintroducing capital gains treatment while selectively targeting promoters through an additional tax. In doing so, it corrects the disproportionate tax burden imposed on minority shareholders under the 2024 regime and realigns buybacks with established principles of capital taxation.

However, several unresolved issues remain. Ambiguities surrounding the definition of "promoter," particularly in the context of unlisted companies and institutional investors, may lead to outcomes misaligned with legislative intent. Further, the lack of clarity on the interaction of the additional tax with capital gains exemptions, set-off provisions, and treaty benefits is likely to result in interpretational challenges.

The blanket disallowance of interest deductions on dividend and mutual fund income is not justified, especially for leveraged investment structures and may affect capital allocation decisions.

Targeted clarifications would go a long way in aligning tax outcomes with legislative intent, reducing uncertainty, and ensuring that the regime does not inadvertently penalise institutional and minority investors.

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eRECALIBRATION OF THE MAT FRAMEWORK: TRANSITION TO THE NEW TAX REGIME





Abhishek Mundada *Rushi Shah*

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Overview

The Finance Bill, 2026 has proposed significant amendments to the Minimum Alternate Tax ("MAT") framework under the Income-tax Act, 2025, effective from 1 April 2026. Under the proposed regime, domestic companies continuing under the old regime shall not be permitted to utilise accumulated MAT credit. Conversely, domestic companies opting for the concessional tax regime under sections 200 or 201 shall be allowed to utilise accumulated MAT credit, subject to a cap of 25% of the tax liability for the relevant tax year. Further, no fresh MAT credit shall accrue in respect of MAT paid for tax years commencing on or after 1 April 2026, for both domestic and foreign companies.

This article analyses the proposed amendments and examines their implications across tax computation, transition planning, corporate restructuring, advance tax obligations, and financial reporting.

Introduction

Tax incentives have long been employed as a fiscal policy tool to promote exports, manufacturing, employment generation, and the development of priority sectors. Over time, however, the extensive use of profit and investment-linked deductions significantly narrowed the corporate tax base, allowing several companies with substantial book profits to pay little or no tax under the normal provisions of the Income-tax Act.

To address this imbalance, Minimum Alternate Tax ('MAT') was introduced by the Finance Act, 1987 to ensure a minimum tax outgo from companies reporting significant book profits, irrespective of the availability of deductions. For this purpose, the MAT provisions[1] deem "book profit" as total

Presently, the MAT applies to all companies, including foreign companies (subject to the prescribed conditions and certain exemptions).

1. *Section 115JB of the Income-tax Act, 1961 ('the 1961 Act') and section 206 of the Income-tax Act, 2025 ('the 2025 Act')*

income and levy tax at the rate of 15% (plus applicable surcharge and education cess). The MAT provisions have evolved over the period since their introduction. Presently, the MAT applies to all companies, including foreign companies (subject to the prescribed conditions and certain exemptions).



Excess of MAT paid over the tax liability computed under the normal provisions results in MAT credit, which can be carried forward for a period of fifteen years. MAT credit can be set off against future tax payable under the normal provisions (i.e. excluding MAT provisions), to the extent such liability exceeds the MAT payable for the relevant year.

In recent years, the legislature has progressively phased out legacy profit-linked deductions and introduced a concessional corporate tax regime in 2019. Under this framework, the domestic companies are taxed at reduced rates, largely without the benefit of deductions, with the objective of simplifying the tax structure, reducing litigation relating to deduction eligibility/interpretation, and enhancing certainty of tax outcomes.

Section	Eligibility^	Tax Rate*
115BAA[2]	Existing domestic company	22%
115BAB[3]	New manufacturing domestic company (commencing production on or before 31 March 2024)	15%

^ - subject to fulfilment of prescribed conditions
(*plus, applicable surcharge and cess)
(collectively referred to as the 'New regime')

Notwithstanding the concessional rates, the companies enjoying tax holidays or carrying forward accumulated MAT credit have largely continued under the old regime, as a transition to the new regime entails forfeiture of tax holiday benefits and lapse of unutilised MAT credit[4]. Recognising this as a key impediment to wider adoption of the new regime, the Finance Bill, 2026 ('the Finance Bill') proposes targeted amendments

2. *Corresponding to section 200 of the 2025 Act*
3. *Corresponding to section 201 of the 2025 Act*
4. *Section 115JAA(8) of the 1961 Act*

to the MAT provisions under the Income-tax Act, 2025 ('the Act') to enable a smoother transition. The proposed amendments are slated to be effective from 1 April 2026[5].

Proposal under the Finance Bill

MAT rate reduction

Under the existing provisions, companies are subject to MAT at the rate of 15% on book profits. A concessional MAT rate of 9% applies to companies operating units in an International Financial Services Centre ('IFSC') and deriving income solely in convertible foreign exchange[6].

While the concessional MAT rate for IFSC units remains unchanged, the Finance Bill proposes to reduce the MAT rate for all other companies from 15% to 14%.

Particulars	*MAT Rate**	
	Existing	*Proposed*
IFSC unit	9%	9%
Other than IFSC unit	15%	14%

* plus, applicable surcharge and cess

MAT framework for companies continuing under the Old Regime

No MAT credit utilisation under the old regime

Under the proposed amendments, a company continuing under the old regime shall not be permitted to utilise accumulated MAT credit in respect of taxes payable for the tax year 2026-27 and onwards. Consequently, the tax liability of such a company would effectively be the higher of:

Under the proposed amendments, a company continuing under the old regime shall not be permitted to utilise accumulated MAT credit in respect of taxes payable for the tax year 2026-27 and onwards.

(a) tax payable under the normal provisions; or

(b) MAT liability

Illustration:

A Ltd. has accumulated MAT credit of INR 10,00,000 as on 31 March 2025. The taxable income for the previous year 2025-26, and tax year 2026-27 is INR 20,00,00,000 each. The Company is taxable at 29.12% under normal provisions[7]. It is assumed that the company has no book profit adjustment, and accordingly, the book profit is also INR 20,00,00,000. The liability under the old regime can be calculated as under:

Particulars	PY 2025-26	TY 2026-27
Gross total income/Book profit	20,00,00,000	20,00,00,000
Tax under normal provisions @29.12% [A]	5,82,40,000	5,82,40,000

5. *The proposed amendments shall be effective from 1 April 2026. Hence, any reference to the provisions of the 1961 Act under this article should be read in conjunction with the corresponding provisions under the 2025 Act*
6. *Section 115JB(7) of the 1961 Act*
7. *25% tax rate plus 12% surcharge and 4% cess*

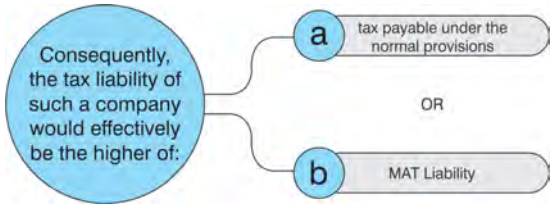
Particulars	PY 2025-26	TY 2026-27
MAT liability @17.472%[8]/ 16.307%[9] [B]	3,49,44,000	3,26,14,400
MAT credit available [C]	**2,32,96,000**	**Not allowed**
Net liability	3,49,44,000 [A] – [C]	5,82,40,000 Higher of [A] or [B]
Effective Tax Rate (ETR)	**17.472%**	**29.12%**

As a result, notwithstanding the reduction in the MAT rate, the inability to utilise MAT credit may lead to a higher ETR for companies that continue under the old regime.

In this context, the proposed continuity of accumulated MAT credit upon transition to the new regime assumes critical significance, as it provides a mechanism to monetise past MAT payments and mitigate the adverse tax impact illustrated above.

No 'fresh' MAT credit – Tax year 2026-27 onwards

Where a company continues under the old regime, MAT payable for tax years 2026-27 onwards shall be treated as 'final tax' without fresh accumulation. Consequently, any excess MAT taxes paid over and above the normal tax liability shall not be eligible for carry forward as 'MAT credit'.



From the accounting perspective, no fresh 'MAT credit' asset shall be recorded in the books of accounts from tax year 2026-27 onwards.

MAT Implications on Transition to the New Tax Regime

Set-off of MAT credit under the New Regime

Taxpayers holding unutilised MAT credit as on 31 March 2026 shall be permitted to carry forward such credit upon transitioning to the new regime on or after tax year 2026-27. Accordingly, unlike existing provision under section 115JAA(8) of the 1961 Act, MAT credit shall not lapse on account of exercising the option to be governed by the new regime on or after the tax year 2026-27. Further, it is not

From the accounting perspective, no fresh 'MAT credit' asset shall be recorded in the books of accounts from tax year 2026-27 onwards.

mandatory to migrate to the new regime in FY 2026-27 itself to be eligible to get the benefit of accumulated MAT credit as on 31 March 2026 (i.e. FY 2025-26). Even where such an option is exercised anytime in future tax year(s) after 2026-27, the benefit of the aforesaid accumulated MAT credit would be available. The MAT credit set-off shall be available against the tax liability payable under the new regime and shall not be restricted to the tax liability of specified income(s).

Utilisation mechanism

MAT credit available as on 31 March 2026 can be set off against the tax liability payable under the new tax regime. However,

8. *15% tax rate plus 12% surcharge and 4% cess*
9. *14% tax rate plus 12% surcharge and 4% cess*

The MAT credit shall continue to be available for set-off for a period of 15 years from the year in which it first becomes available. The proposed amendments do not extend or renew the tenure of MAT credit.

utilisation of such MAT credit shall be restricted to 25% of the tax computed under the normal provisions of the relevant year.

Illustration:

X Ltd., a domestic company, has accumulated MAT credit of INR 1,00,000 as on 31 March 2026. The Company opts for the new regime and is therefore eligible to utilise the accumulated MAT credit as on 31 March 2026 against the tax liability for the tax year 2026-27 and subsequent years. The tax liability and MAT utilisation for the relevant years shall be as under:

Tax Year	Tax liability	MAT credit to be utilised*	Balance tax to be paid**	Balance MAT credit
2026-27	2,00,000	50,000	1,50,000	50,000
2027-28	5,00,000	50,000	4,50,000	-

*Lower of (A) Maximum MAT credit usable in a tax year (25% * Tax liability) and (B) balance of accumulated MAT credit
** Balance tax liability, which may be discharged by way of TDS/TCS/Foreign tax credit/advance tax

Thus, for a company with an effective tax rate of 25.17% under section 200 of the 2025 Act, the minimum effective tax rate shall come to 18.8% [i.e. 25.17% less (25.17%*25%)] in a given tax year after availing maximum utilisation of the MAT credit. However, given that there could be different types of income in a given year which would impact the effective tax rate/liability, actual comparison needs to be done basis absolute tax liability and MAT credit utilisation available.

Credit window of 15 years remains unchanged – no fresh life

The MAT credit shall continue to be available for set-off for a period of 15 years from the year in which it first becomes available. The proposed amendments do not extend or renew the tenure of MAT credit. The unutilized MAT credit as of the end of 15th year shall lapse. Accordingly, for tax year 2026-27 (assumed new regime is opted), MAT credit accumulated from financial year 2011-12 onwards would be allowed to be set-off to the extent of 25% of tax liability arising for the said year.

No MAT credit utilisation for the companies governed by section 199[10]

The MAT credit utilisation is allowed only to the companies opting for the new regime under section 200 or 201 of the 2025 Act. Companies governed by section 199[11], which are subject to tax at the effective tax rate of 29.12%[12], are not eligible to utilise accumulated MAT credit.

Accordingly, such companies must undertake a careful comparative evaluation of the tax cost under section 199 vis-à-vis sections 200 or 201, as applicable, before determining the optimal tax regime.

10. *Corresponding to section 115BA of the 1961 Act*
11. *Domestic manufacturing companies set-up and registered on or after 1 March 2016*
12. *25% tax rate plus 12% surcharge and 4% cess*

No revival of lapsed MAT credit

The transition of MAT credit to the new regime is available only to the domestic company that continues to be governed under the 'old regime' as on 31 March 2026. Where the company has already transitioned to the new regime on or before AY 2026-27 (i.e. under the 1961 Act), any unutilized MAT credit would have lapsed in the year of transition, and it shall not revive again[13].

Variation in MAT credit pursuant to assessment/appellate proceedings of past years

The Finance Bill clarifies that the quantum of MAT credit available for set-off shall stand modified pursuant to any order passed under the Act[14]. Accordingly, any variation in the assessed tax liability of past years may result in a corresponding increase or reduction in the MAT credit for the subsequent years.

Where the company has already transitioned to the new regime on or before AY 2026-27 (i.e. under the 1961 Act), any unutilized MAT credit would have lapsed in the year of transition, and it shall not revive again.

For instance, where MAT credit is utilised in tax year 2026-27 and, pursuant to reassessment or appellate proceedings for an earlier year, the eligible MAT credit is subsequently reduced, such utilisation may result in a short payment of tax for tax year 2026-27. In such cases, the company may be exposed to interest liability under the Act.

However, the provisions do not provide any mechanism to give effect of such variation. Typically, Section 288 of the 2025 Act[15], covers matters for amendment of the income based on subsequent event/information. However, there is no specific reference of carrying out MAT variations as above under section 288. Accordingly, this may lead to certain interpretation issues for carrying out such consequential impact, especially in a situation where the time limits for assessment/ rectification proceedings have been time barred for the given tax.

Enabling provisions under the Repeal and Savings clause

The Finance Bill introduces consequential amendments to Section 536 'Repeal and Savings' of the 2025 Act to expressly enable the transition and continued availability of accumulated MAT credit of domestic companies as on 31 March 2026, thereby ensuring a seamless shift to the new regime without unintended lapses.

Foreign companies – No further accumulation, but utilisation of accumulated credit allowed

As the 'new regime' is applicable exclusive to domestic companies and does not extend to foreign companies, the foreign companies shall be allowed to utilize the accumulated MAT credit as on 31 March 2026, to the extent normal tax liability exceeds MAT liability.

13. *FAQ No. 14 ('Rationalisation of Corporate Tax Regime') from FAQs issued by Central Board of Direct Taxes on Finance Bill, 2026*
14. *As per proposed section 206(3)(d) and 206(4)(d) of the 2025 Act*
15. *Corresponding to section 155 of the 1961 Act*

Notably, the foreign company shall be subject to MAT at the revised rate of 14%. No fresh accumulation of MAT credit shall be allowed beyond 31 March 2026.

No changes for Alternate Minimum Tax

Further, taxpayers other than companies remain subject to Alternate Minimum Tax (AMT) at the rate of 15% on adjusted total income. No amendments have been proposed to the AMT provisions, and the existing regime shall continue to apply without alteration.

MAT credit lapses on the conversion of the company into an LLP

Section 115JAA(7) of the 1961 Act clarifies that MAT credit shall lapse on the conversion of a company into a limited liability partnership. Similarly, it is proposed to clarify under section 206 of the 2025 Act that the accumulated MAT credit as on 31 March 2026, shall lapse on conversion of domestic company under new regime or foreign company into LLP.

Implications

Trade-off – Old Regime (with tax holiday) vs. New Regime (with 25% MAT credit utilization)

Pursuant to the proposed amendments, the effective tax rate (ETR) of a domestic company opting for the new regime, after utilisation of accumulated MAT credit, would be approximately 18.78% (inclusive of surcharge and cess). However, migration to the new regime entails irreversible forfeiture of specified profit-linked deductions, including deductions under sections such as 80-IA[16], 10AA[17], etc.

Accordingly, domestic companies are required to undertake a holistic evaluation of their tax position before exercising the option to migrate to the new regime.

Particulars	2026-27	2027-28
MAT credit as on 31 March, 2026	60,000	60,000
Tax liability under Old Regime	**42,000**	**50,000**
Tax Liability under New Regime	60,000	52,000
Maximum MAT Credit adjustment	15,000	13,000
Tax Payable under New Regime after MAT Credit	**45,000**	**39,000**
Beneficial Regime	**Old Regime**	**New Regime**

The illustration demonstrates that the optimal regime may vary across years, depending upon the availability of MAT credit and the relative tax cost under each regime.

The following illustrative factors are important for the analysis:

- Amount of accumulated MAT credit as on 31 March 2026

16. *Section 138 of the 2025 Act*
17. *Section 144 of the 2025 Act*

- Balance the tax holiday period
- Projected income for the future during the balance of the tax holiday period
- Taxable income under both regime factoring in tax losses set-off, tax holiday, income taxable at differential rate(s), etc.
- Corresponding tax liability under the old regime and the new regime.

While the Act expressly allows carry forward and set-off of accumulated losses and unabsorbed depreciation in the case of tax-neutral amalgamation and demerger, the provisions are silent with respect to the transition of MAT credit in such restructuring transactions.

It is important to note that, as per section 200(6) and 201(2)(c) of the 2025 Act, once a domestic company exercises an option to migrate under the new regime for any tax year, such option cannot be withdrawn subsequently. Consequently, the decision to migrate warrants a forward-looking, multi-year tax impact analysis, rather than a year-specific comparison.

Transition of MAT credit on amalgamation/ demerger of entities

While the Act expressly allows carry forward and set-off of accumulated losses and unabsorbed depreciation in the case of tax-neutral amalgamation and demerger, the provisions are silent with respect to the transition of MAT credit in such restructuring transactions. In the absence of an explicit statutory mechanism, the allowability of MAT credit in the hands of the amalgamated or resulting entity has consistently remained a matter of litigation.

Judicial precedents have, however, recognised the continuity of MAT credit in the context of amalgamations. The ITATs in the case of ***SKOL Breweries Ltd. v. ACIT***[18] and other cases[19] allowed set-off of MAT credit of the amalgamating company in the hands of the appellant assessee, being the amalgamated company.

However, in the case of demerger, the judiciary seems divided. While the Ahmedabad bench of ITAT in the case of ***Adani Gas Ltd. v. ACIT***[20] allowed the MAT credit to both the demerged and the resulting company, in the case of ***DCIT v. TCS E-Serve International Limited***[21] and ***DCIT v. Brandon & Co. (P.) Ltd.***[22], the ITAT held that the demerged entity is allowed to carry forward MAT credit without any restriction.

Advance tax liability

As per section 424 of the Act[23], the MAT credit is treated at par with TDS/TCS credit and reduced from 'assessed tax' for the purpose of calculation of advance tax liability and interest

18. *ITA No. 313/Mum/07*
19. *M/s. Ranganathan Industries Private Limited (ITA No.2434/Mds/2004), Caplin Point Laboratories Ltd (ITA No.667/Mds/2013), Capegemini Technology Services India Limited v. DCIT (ITA No. 1857/Pun/2017), Ambuja Cements Ltd. v. DCIT [2019] 179 ITD 436 (Mumbai)*
20. *ITA Nos. 2241 & 2516/Ahd/2011*
21. *ITA No.2779/Mum/2018*
22. *ITA No. 1972/Mum/2017*
23. *Corresponding to section 234B of the 1961 Act*



for short payment. Accordingly, utilisation of MAT credit under the new regime shall offset the advance tax liability to the tune of 25% of the tax liability of the relevant tax year.

Re-recognition of MAT credit in books of accounts

The Guidance Note on Accounting for Credit Available in respect of Minimum Alternative Tax issued by ICAI provides that the MAT credit can be recognised as an asset only when and to the extent there is convincing evidence that the company will be able to utilize the MAT credit against the normal tax liability.

In view of this principle, companies lacking reasonable certainty of MAT credit utilisation under the old regime within the prescribed fifteen-year period may not have recognised MAT credit in their books of account. However, pursuant to the proposed amendments permitting set-off of accumulated MAT credit against tax payable under the new regime, companies would be required to re-evaluate the recoverability of such MAT credit and, where the recognition criteria are met, record the MAT credit as an asset in the books of account.

Conclusion

The amendments proposed under the Finance Bill recalibrate the MAT framework by restricting MAT credit utilisation under the old regime while permitting limited monetisation of accumulated MAT credit upon transition to the concessional tax regime. This represents a conscious policy shift aimed at facilitating migration to sections 200 and 201, without extending the life of MAT credit or allowing fresh accumulation. However, the revised framework does not yield uniform outcomes, as the benefit of transition remains contingent upon the applicable tax rate, residual profit-linked deductions, and the quantum and remaining life of accumulated MAT credit.

Accordingly, companies must undertake a fact-specific, multi-year evaluation of tax costs and cash flows before exercising the option to transition, ensuring alignment with long-term effective tax and financial reporting objectives. ■

Penalties and Prosecution





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Overview

Penalties and prosecution are enacted as deterrent to tax evaders and tax delinquents. In the year 1976, far reaching amendments were made to provisions for levy of penalty and for prosecutions. They were hailed as harsh and severe provisions to ensure tax compliance. It's 50 years since then and experience shows that merely having harsh provisions is not sufficient, they need to be implementable to deter a potential tax evader.

The authors feel that, on reading some of the provisions of Finance Bill, 2026, it may be perceived that the government has bent down a little. But the perceived leniency seems to be towards implementing the provisions relating to prosecution with ease. With the proposed amendments by Finance Bill 2026, the Government is sending a clear message to the honest taxpayers, that tax delinquents will no more be able to get away by paying only tax when caught.

Taxpayers are the economic assets of any country. A country looking at growing it's economy, has to get out of mentality that income earners are Enemy of the State.

A clear message is going to the tax evaders and the tax delinquent that they may have a way out of being prosecuted, but not without suffering financial loss, over and above the regular tax, by mandatory penalty. This is a message to the honest taxpayers that the dishonest will not be spared.
The Article discusses amendments proposed by Finance Bill 2026 relating to penalties, prosecutions and Black Money Act. The article discusses:

(a) Changes in assessment and penalty provision and impact thereof

(b) Rationalizing the prosecution provisions

(c) Introduction of immunity scheme under FAST-DS 2026.

This are in line with the recommendations of the Niti Aayog in report titled "Towards India's Tax Transformation: Decriminalization and Trust-Based Governance" published in October 2025, wherein it was proposed to revamp the existing prosecution structure to enhance ease of doing business in India.

The Finance Bill 2026 ('the Bill') makes a decisive shift in India's direct tax policy architecture, the government has opted to draw out from an enforcement-centric model to a compliance-driven, trust based framework

to align the policies with the long-term vision of Viksit Bharat 2047.

Assessment and Penalty proceedings integrated into a single order

The Bill proposes a humongous change in the assessment procedure by integrating assessment and penalty proceedings into a single proceeding. The Bill proposes to amend section 471 of ITA, 2025 which governs the procedure for imposition of penalty, by way of introducing sub-section (4) to integrate the penalty proceedings with assessment proceedings itself.

The Bill proposes that show cause for penalty for under-reporting or mis-reporting of income provided u/s 439 of ITA, 2025 shall be part of the draft assessment order and it shall be imposed along with the assessment or reassessment order itself.

The legislative intent is to eliminate duplication and delays in levy of penalty.

The Bill proposes that show cause for penalty for under-reporting or mis-reporting of income provided u/s 439 of ITA, 2025 shall be part of the draft assessment order and it shall be imposed along with the assessment or reassessment order itself.

It is believed that by combining the proceedings, the alleged compliance burden will reduce.

However, the challenge herein is that "assessment of income chargeable to tax" and "levy of penalty" are altogether two distinct concepts in the eyes of law. The revenue also needs to realise that different rules of evidence apply for assessment and for penalty. In very simple terms, for making assessment merely because explanation given its not substantiated, addition/disallowance may be made. But for penalty even for under reporting as per section 439, unsubstantiated explanation being bona fide, is sufficient to save assessee from penalty. As far as penalty for misreporting is concerned, the burden of proof will be on department to prove that the circumstance as per subsection 11 are satisfied.



Time will tell whether the experiment to pass simultaneous orders for assessment and penalty will be successful. Such a proposal has

been mooted earlier too including by Kelkar Committee on tax reforms.

Currently, the assessing officer had to only initiate penalty proceedings and subsequently under a separate penalty proceeding, the assessing officer would decide whether penalty is leviable.

It has been observed in many cases that even if the addition was confirmed, if all material facts were furnished before the assessing officer, the penalty was not levied.

Further as the penalty will be considered levied at the stage of passing assessment

As far as penalty for misreporting is concerned, the burden of proof will be on department to prove that the circumstance as per subsection 11 are satisfied.

order, to ensure that the interest liability on non-payment of such value is not inflicted on the assesses, amendment is made in Section 411(3)(b) (S 220(2) of the ITA 1961) of the Act defining that interest on such demand will accrue only post passing of the order by the first appellate authority.

The Bill also proposes to reduce quantum of pre-payment of demand from the existing 20% to 10%, although the same will have to be notified from a separate circular, which is also limited to the core tax demand granting benefit of liquidity to the assessee till the disposal of the case before the first appellate authority.

Therefore, bifurcation of demand pertaining to principal tax value, interest, if any and penalty will be critical in stay proceedings.

Similar amendments have also been implemented in Income Tax Act, 1961.

Consequential amendment in Section 379 of the Act.

Consequential amendment has also been made in Section 379 of the ITA 2025which governs the functioning of the Dispute Resolution Committee (DRC) for small and medium taxpayers.

Earlier the DRC had powers to waive penalty "imposable" and grant immunity from prosecution. Post merger of the orders of assessment and penalty, unless necessary amendment was made inserting the word "imposed", the DRC would have been rendered redundant as penalty would have been already "imposed" at the time of assessment. Thus, amendment is made in Section 379 of the Act, to grant immunity from penalty even if the same was "imposed".

Similar amendments have also been implemented in Section 245MA Income Tax Act, 1961.

Tax on unexplained transactions and penalty implications thereof

Sections 102 to section 105 of ITA, 2025 provide for taxation of income, where transaction are unexplained. Section 195 provides rates at which the income under section 102 to 105 will be subjected to tax.

Similar provisions exists under the 1961 Act being section 68 to 69 C and section 115BBE.

To better appreciate the proposed amendment of section 195, appreciating the history of section 115BE is essential.

Section 115BBE was first introduced under the 1961 Act by F. A. 2012 with effect from 01.04.2013. When introduced, the provision merely provided flat rate of 30% tax and there

was no provision treating self-offered income and additions made by the assessing officer separately.

Demonetization of currency was announced in the year 2016, which form part of previous year relevant to AY 2017-18. To deter unscrupulous assessee's from depositing their unaccounted cash during the demonetization in their bank accounts and offer the same to tax at the rate of 30% under section 115BBE, the section was amended by T. L. A 2016 with effect from 01.04.2017 and the tax rate was raised to 60% for all assesses.

Under ITA 2025 similar provisions were enacted and Section 443 provided for penalty at the rate of 10% off tax payable under section 195. It was also provided that the penalty under section 439 will not be chargeable for the income subjected to tax under section 195.

Now the need for provision to deter suo moto deposit of unexplained cash no more arises. Further, the current provisions of separate penalty under section 439 and the provisions of 195 and 443 creates multiplicity of penalty proceedings. Therefore, the law is reverted to pre 2016 era to provide for 30% tax. It is not concession, but merely an effort to streamline the provisions.

The Bill now proposes to reverse the said amendment and reduce the tax to be levied u/s 195 of the ITA 2025 from the current rate of 60% to 30%.

Penalty leviable has been classified into two categories "under reporting" and "misreporting" depending on nature of the violation. The quantum of penalty varies depending on the category.

Simultaneously, section 443 is deleted, and it is proposed that the additions in section 195 shall be treated as misreporting under section 443 attracting a higher rate of penalty.

Pay "Additional Tax" and get immunity from penalty and prosecution

Section 439 of ITA, 2025 provides for levy of penalty for additions made in assessment order. Penalty leviable has been classified into two categories "under reporting" and "misreporting" depending on nature of the violation. The quantum of penalty varies depending on the category. Section 440 provided for immunity from penalty under section 439 if the specified conditions are satisfied.

Presently, immunity from penalty u/s 440 of ITA, 2025 (S. 270AA of ITA, 1961) was available only in the cases of underreporting of income. No immunity was available, if the penalty was classified as misreporting of income u/s 439(11).

The Bill now proposes to include the term "misreporting" u/s 439(11)(a) to (g) into the immunity provisions of section 440, and immunity will be available subject to payment of "additional tax" equal to 100% of such tax on such mis-reported income and 120% of such tax payable in cases of unexplained transactions under section 195(1)(b).

Further once the assessee is granted immunity u/s 440 of the Act from levy of penalty on payment of "additional tax", the assessee is also granted immunity from prosecution.

Further, the Bill also proposes to introduce immunity from levy of penalty, in cases wherein the assessee files an updated return and pays additional tax as prescribed. This means that even if post receipt of re-assessment notice, if the assessee wishes to

suo-moto offer his undisclosed income and pay taxes thereof, the revenue is allowing that option but with additional tax outflow as provided by amendment to Section 263(6) of ITA 2025.



The amendment relating to updated return for re-assessment proceedings and immunity from section 439 for such cases, raises a question, why penalty u/s 439 should not be charged in all other cases of updated returns.

Though strong arguments can be made that no penalty is attracted for updated returns otherwise than in case of Section 280 notice, including the argument that additional tax payment has already been made while filing updated return. But a clarificatory amendment would help to put the issue at rest.

Sweetening of "penalty" by calling it "fees"

The Bill has proposed to convert "penalties" for certain defaults into mandatory "fees". Such instances are failure to get accounts audited, or failure to furnish TP report, or failure to furnish SFT/reportable accounts. The fees are also staggered determined based on either the period or on the quantum of income.

It serves as a push to ensure compliance within a reasonable time frame.

These "fees" are mandatory and will have to be paid before filing of such forms/reports. Currently, penalties were levied post issuance of notice by the assessing officer and at the assessing officer's discretion. If there was a genuine delay and reasonable cause was explained, the assessing officer had the powers not to levy penalty. Also, the penalty could also be challenged before the appellate authorities.

Post the amendment, the amount is "fees" and is "mandatory", thus some penalties "which may have been levied" earlier are now "must be paid compliance fees".

Further litigation that may stem from this amendment is whether such "fees" paid by the assessee will be eligible for deduction u/s 34 of ITA, 2025 as it is not in the nature of "penalty" and therefore is compensatory in nature allowable as business deduction.

Penalty for non-furnishing data pertaining to crypto-asset transaction:

Insertion of a new penal provision u/s 446 of the Act wherein penalty is proposed to be levied for non-furnishing of information

regarding crypto-asset transactions for Rs. 200/day and additional Rs. 50,000 for furnishing inaccurate particulars or for non-correction of the same. This is to ensure deterrence against non-reporting or misreporting of crypto-asset transactions.

Rationalizing prosecution provisions

One of the most significant structural reforms introduced by the Bill is the comprehensive rationalization of prosecution provisions, comprising sections 473 to 485 and section 494 (S. 275A to 278A and 280 of the ITA 1961).

It reflects a policy shift by the legislature to balance enforcement with ease of compliance, ensuring that prosecution is reserved for wilful and high-value tax offences, while technical and low-value defaults are addressed through civil consequences.

Under existing provisions of the Act, prosecution provisions prescribed rigorous imprisonment, often without adequate monetary thresholds or differentiation between genuine lapses and deliberate evasion.

The Bill proposes to make amendments to these sections which are guided by the following core principles:

1. Replacement of rigorous imprisonment with simple imprisonment (The term "rigorous" is completely deleted from the ITA)

2. Reduction in maximum imprisonment period which spanned from 3 months to 7 years earlier is now capped to 2 years for general offences and 3 years for subsequent offences.

3. Introduction of monetary thresholds for determining the imprisonment periods.

It reflects a policy shift by the legislature to balance enforcement with ease of compliance, ensuring that prosecution is reserved for wilful and high-value tax offences, while technical and low-value defaults are addressed through civil consequences.

For majority of the provisions where earlier prosecution was possible, now the consequences will be as below:

- For tax evasion/non-deposition/non-withholding/underreporting of income
- not exceeding ₹ 10 lakh – Fine only
- from ₹ 10 lakh to ₹ 50 lakh – Simple imprisonment up to 6 months/fine/both
- Exceeding ₹ 50 lakh – Simple imprisonment up to 2 years/fine/both

4. Further in cases where there was a failure to deposit tax deducted or payment of tax in case of winnings from crossword puzzles or winnings from lottery for cases where the winnings were wholly or partly in kind or but the part in cash was not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, on non-deposition of the amount earlier there was mandatory prosecution without any monetary limit which has now been completely decriminalized.

5. Further it is important to note that similar benefit is not extended to cases where the winnings are from online games or consideration from virtual digital assets where the consideration is in partly or fully in kind, they are still

subjected to prosecution but on a graded threshold basis as explained above. This is in line with the government effort to discourage investments in virtual digital assets.

The cumulative effect is a humane, proportionate, and rational prosecution regime, substantially lowering the risk of criminal exposure for taxpayers. Although now as the imprisonment is simple, the enforcement of the same may be quicker than earlier. Amendments under the ITA 2025 take effect from 1 April 226 and amendments under the ITA 1961 take effect from 1 March 2026.

Amendments in Black Money Act and voluntary disclosure of foreign income & assets

The Black Money (UFIA) & Imposition of Tax Act, 2015 ("BMA") was enacted to combat undisclosed foreign income and assets through stringent tax, penalty, and prosecution provisions.

However, over time, genuine hardship emerged to taxpayers, particularly but not limited to the cases involving:

- Inherited foreign assets
- ESOPs/RSUs acquired during foreign employment
- Bank accounts etc operated during days as student
- Dormant or low-value foreign bank accounts

To address these cases, the Bill introduces Foreign Assets of Small Taxpayers Disclosure Scheme, 2026 ("FAST-DS 2026") **FAST-DS 2026**, a one-time voluntary disclosure scheme for small taxpayers. FAST-DS 2026 is a time bound scheme permitting declaration of foreign assets & income, with payment of prescribed tax or fee based on the nature and source of acquisition granting immunity from penalty and prosecution.

a) Operative Period and Eligibility

The operative window is to be notified by the Central Government and will remain open only for a limited period.

Eligible declarants

Any person who for any previous year in respect of specified foreign income or assets,

- failed to furnish ITR or failed to disclose such assets or income in ITR filed **prior to the commencement of this scheme or**
- such asset or income has escaped assessment within the meaning of Section 147 of ITA, 1961

Ineligible cases

- income or assets which represents "proceeds of crime" for which proceedings have been initiated or is pending under the PMLA, 2002 or
- income or asset relating to an AY for which assessment proceedings have been **completed** under the BMA, 2015.

b) Tax/Fee Structure under FAST-DS 2026

The FAST-DS 2026 has prescribed types of assets or income which are eligible to be declared under this scheme and the respective amounts payable on such declaration.

Sr No.	Type of assets or income	Amount Payable	Conditions
1	Amount payable where "undisclosed assets located outside India" or "undisclosed foreign income" are declared	Sum of: (i) Tax @ 30% of value of undisclosed assets located outside India as on 31.03.26 (ii) Tax @ 30% of value of undisclosed foreign income (iii) 100% of tax calculated above	The aggregate value of undisclosed foreign assets and income shall not be > Rs.1 Crore.
2	Where the foreign asset was acquired during NR status or from income already offered to tax, but was not disclosed in the ITR	Fees of Rs.1 Lakh	The value of undisclosed foreign assets shall not be > Rs. 5 Crore.

Thus, the scheme provides an opportunity to pay off 60% of the value of asset or income or fees of Rs.1 lacs, thereby granting immunity from harsh penalties and prosecution. On acceptance of the declaration, taxpayer will be required to pay amount within 2 months (additional 2 months with interest @ 1% per month)

c) Key aspects of declaration

- Multiple assets can be declared in a single declaration. Once declared, it shall be deemed that disclosure for subsequent years is made.
- Declaration will be invalid if material particular is false or violation of any condition.
- Amount paid under this scheme is non-refundable.
- Income or assets declared in this scheme shall not be assessed under the ITA or BMA.
- Apparently, declarant cannot seek revision, rectification, appeal, or set-off in already completed BMA proceedings.
- Upon declaration, assessing officer is bound to consider it while finalizing assessments pending under ITA or BMA.

Thus, one will have to be mindful of the proceedings time barring on 31.03.2026 as the date of commencement is still uncertain and assessing officer may push for closure of proceedings to recover tax and impose penalty, without granting benefit of Scheme.

d) Issues under FAST-DS 2026

Despite its noble intent, FAST-DS 2026 raises several interpretational issues:

- The Scheme defines "Undisclosed Foreign Income" as the amount of income from a source outside India which was "chargeable to tax but has not been offered to tax". While BMA, does not include the words chargeable to tax under the Act. If this definition is to be adopted, it will narrow down the scope of BMA as well.

- The scheme is yet to define as to what will be the "value of the undisclosed asset".

- Declarant is restricted from filing rectification or revision as stated above. However, whether similar restriction is not placed on assessing officer or not is not clarified.

- There is no clarity whether declarant can file a revised declaration in case of genuine error.

- The one-time fees of Rs.1 Lac is payable for initial year of disclosure. However, cases such as dividend reinvestment, whether levy of Rs.1 Lac is for each year of dividend reinvestment's non-disclosure in ITR?

Overall, FAST-DS 2026 reflects an approach to provide an opportunity to defaulters for addressing non-compliance although it does not differentiate between bonafide and malafide intentions. Eligible taxpayers should also examine the possibility of filing Updated ITR vis-à-vis opting in the FAST DS - 2026 as the amount of tax payable is staggered in the updated return provisions while it is flat in the FAST DS – 2026.

e) Also, the Bill proposes to amend the prosecution provisions of sections 49 and 50 of the BMA to mention that the they shall not apply in respect of non-filing of tax return or non-disclosure of foreign assets in the tax return if the aggregate value of such foreign assets (other than immovable property), does not exceed ₹ 20 lakh at any time during the relevant previous year . It is important to note that immovable property continues to be excluded from this relief, regardless of value. The amendment is applied retrospectively from October 1, 2024. The amendment brings the prosecution provisions in alignment with the penalty framework under the BMA and significantly reduces criminal exposure for resident taxpayers in cases involving small-value foreign bank accounts, shares, securities, or similar movable assets.

It is important to note that immovable property continues to be excluded from this relief, regardless of value. The amendment is applied retrospectively from October 1, 2024.



Conclusion

There seems to be a method in the madness unleashed by changes relating to updated return, penalty and prosecution. It seems as if the government intends to treat all businesses, public or private, delinquent or compliant, as economic assets of the country. But unlike the earlier safe passages to delinquent tax payers, one of which was called by Hon'ble Supreme Court as "escape route for tax dodgers", now the proposal of treatment of delinquent taxpayer is completely different.

Government offers immunity from prosecution only if due taxes, interest and also penalty, may be partial, has been paid. A delinquent taxpayer can avail of immunity from prosecution even after being caught, but financial cost will be heavy.

The picture is completed by reduction in the period of sentence and also providing that imprisonment will be simple and not rigorous. This looks like a concession to dishonest taxpayers but there is more than what meets the eye.

Government has in the past made attempts to persuade higher echelons of judiciary to either form Special Courts for income tax cases or in any other manner ensure fast track disposal of income tax cases, but without success. The moment the sentence for an offence is softened to a period not exceeding 3 years and simple imprisonment instead of rigorous imprisonment, the possibility of fast tracking is a distinct possibility in near future.

Sentence is proposed softened but we may see more instances of prosecution proceedings being concluded.

And this will be the real deterrent to dishonest and delinquent tax payers.

■

Union Budget 2026: Continuity, Clarity and a Shift Towards Trust-Based Tax Administration





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Overview

Union Budget 2026 signals a calibrated shift towards more practical approach and trust-based tax administration. *The Budget reinforces policy predictability, procedural simplification and a facilitative regulatory ethos, with a clear intent to reduce compliance friction and strengthen India's ease of doing business. From a direct tax perspective, it advances the transition towards the proposed new Income-tax law by rationalising procedures, extending timelines for return revision and moderating enforcement-driven compliance.*

Alongside this, the Budget introduces pragmatic compliance relaxations, including extended filing deadlines for small taxpayers, restoration of longer revision windows and enhanced flexibility under the updated return framework. Notably, taxpayers are now permitted to reduce reported losses and file updated returns even after reassessment proceedings have commenced, subject to additional tax – encouraging early dispute resolution and voluntary self-correction.

Overall, while Union Budget 2026 signals a welcome shift towards simplification and trust-based compliance, sustained restraint in retrospective amendments will be crucial. There is a strong expectation that once the new Income-tax law is implemented, clearer legislative drafting and reduced interpretational ambiguity will lead to fewer disputes and a more stable tax environment conducive to long-term business and investment growth.

A defining thread running through the Union Budget 2026 is one of continuity anchored in purpose. Eschewing headline-driven announcements, the Government has prioritised the strengthening of the underlying architecture of economic growth by reinforcing policy predictability, streamlining compliance, and advancing a more trust-based regulatory ethos. The renewed focus on simplification, particularly in income-tax administration and dispute resolution, underscores a deliberate effort to reduce compliance friction and enhance India's overall ease of doing business.

From a direct tax perspective, the Budget marks a meaningful progression towards

Measures such as extended timelines for return revisions, along with calibrated relaxations in compliance mechanisms, reflect a conscious shift away from an enforcement-centric model towards a more proportionate, facilitative, and taxpayer-aligned framework.

the proposed new Income-tax law, with a clear emphasis on procedural rationalisation. Measures such as extended timelines for return revisions, along with calibrated relaxations in compliance mechanisms, reflect a conscious shift away from an enforcement-centric model towards a more proportionate, facilitative, and taxpayer-aligned framework. Taken together, these initiatives signal the Government's intent to reduce administrative complexity, provide a clearer articulation of legislative intent, and foster a culture of voluntary and transparent compliance.

While the Union Budget 2026 proposed a wide array of amendments across tax and regulatory provisions, the most significant reforms centre around tax return filing mechanisms, litigation and dispute resolution processes, and clearer articulation of legislative intent. These measures collectively reflect the Government's focus on simplifying compliance, reducing interpretational ambiguities, and fostering a more efficient and taxpayer-friendly tax administration framework.



Amendments to Close Gaps in Tax Administration—At What Cost?

The Union Budget 2026 seeks to address a series of long-standing technical and administrative issues that, over recent years, have been the subject of extensive litigation and sustained debate within the tax ecosystem, largely on account of the significant revenue implications and systemic consequences involved. Prominent among these issues is the question of jurisdiction and authority in the context of the faceless assessment regime, specifically, the extent to which the Jurisdictional Assessing Officer retains the power to issue pre-assessment enquiry notices and initiate reassessment proceedings, notwithstanding the operational role assigned to the National Faceless Assessment Units. This controversy has raised fundamental concerns regarding statutory delegation, overlap of functions, and the boundaries of administrative authority under a digitised assessment framework.

Equally contentious has been the interpretation of statutory timelines governing the issuance of final assessment orders pursuant to proceedings before the Dispute Resolution Panel (DRP). A key point of dispute has been whether the time limit prescribed under section 144C(12) of the Income-tax Act, 1961, stipulating an outer cap of nine months, operates as a mandatory jurisdictional condition or merely as a procedural guideline. Divergent views adopted by tax authorities and appellate forums have resulted in substantial litigation, with taxpayers consistently arguing that any assessment order passed beyond the prescribed period is void ab initio for want of jurisdiction.

Another significant area of dispute pertains to the legal validity and enforceability of notices and orders issued without a Document Identification Number (DIN), as mandated under section 282B and the related CBDT



circulars. The DIN framework was introduced as a technology-driven safeguard aimed at ensuring the authenticity of communications, enabling end-to-end digital traceability, and curbing unauthorised or backdated actions by the tax administration. Courts have generally viewed compliance with the DIN requirement as a substantive safeguard rather than a mere procedural formality, holding that failure to adhere to this requirement vitiates the proceedings unless specific statutory exceptions are demonstrably satisfied.

In a majority of cases across multiple High Courts, these controversies have been adjudicated in favour of taxpayers, with courts placing significant reliance on principles of strict statutory construction, jurisdictional discipline, and adherence to procedural safeguards as integral components of natural justice. Notwithstanding this evolving body of jurisprudence, and before these issues could be conclusively settled by the Supreme Court, the Government has opted to intervene legislatively through amendments proposed in the Union Budget 2026. This intervention assumes particular significance in light of the Government's earlier policy stance against retrospective amendments, especially in the field of taxation, which has been consistently projected as a key pillar for enhancing investor confidence and long-term certainty.

Given that the amendments seek to legislatively override judicial interpretations that were largely taxpayer-favourable, questions are likely to arise regarding their constitutional validity, particularly on grounds of arbitrariness, violation of legitimate expectations, and retrospective impairment of vested rights. It is therefore foreseeable that these provisions will be subject to renewed constitutional scrutiny, with the eventual judicial outcome playing a determinative role in shaping the contours of tax administration and dispute resolution in the transition to the proposed new income-tax regime.

On one hand these amendments will expedite and release a whole bunch of litigation pending at various forum and thus help in reaching tax finality in these matters, but on the other hand, it would also leave the taxpayer with uncertainty on eventually succeeding in any matter of tax controversy if the legislature chooses to intervene that too with a retrospective amendment, every time it seems to loose a battle in the court of law.

Easing Compliance Through Calibrated Procedural Reforms

Beyond the litigation-centric reforms, the Union Budget 2026 proposes a series of targeted amendments across the tax return filing, assessment, and reassessment framework, aimed at addressing procedural inefficiencies and closing identified compliance gaps. A notable intervention in this regard is the introduction of a distinct compliance category for small taxpayers deriving income from business or profession, including partners of firms, through the extension of the statutory due date for filing returns from 31 July to 31 August. This modification appears to be grounded in a pragmatic recognition of the compliance challenges faced by such taxpayers, particularly in aligning return preparation with the availability of audited financial information, and is likely to aid in more accurate initial filings.

A notable intervention in this regard is the introduction of a distinct compliance category for small taxpayers deriving income from business or profession, including partners of firms, through the extension of the statutory due date for filing returns from 31 July to 31 August.

From an administrative standpoint, this segmentation also enables staggered return processing and more efficient allocation of departmental resources, thereby reducing peak-period congestion within the return-filing ecosystem.

Another significant and taxpayer-facilitative measure is the reinstatement of the extended timeline for revising returns, permitting revisions up to twelve months from the end of the relevant tax year, subject to payment of a nominal additional fee. This change marks a departure from a more rigid compliance framework and reinforces the principle that voluntary rectification of genuine errors or omissions should be encouraged rather than penalised. By providing a broader window for self-correction, the amendment is expected to reduce downstream disputes arising from inadvertent inaccuracies, limit the need for reassessment proceedings triggered by minor discrepancies, and promote greater accuracy and finality in return filings. Collectively, these measures signal a calibrated shift towards a compliance regime that balances procedural discipline with administrative flexibility, in line with the Government's stated objective of fostering a more facilitative and trust-based tax administration.

Trust-Based Compliance Through Expanded, Updated Return Mechanisms

The updated return framework, introduced by the Finance Act, 2022 through the insertion of section 139(8A), has, in practice, operated as a quasi-voluntary disclosure or amnesty mechanism. It permits taxpayers to regularise non-compliance by disclosing omitted income, correcting errors, or filing returns that were not furnished within the prescribed timelines, subject to payment of additional tax. While the framework was designed to incentivise voluntary compliance, its scope was constrained by certain exclusions that, in some cases, led to anomalous and unintended outcomes.

One such anomaly arose in situations where taxpayers sought to file an updated return solely to reduce the quantum of loss originally reported in a return of loss filed under section 139(1), without any corresponding tax benefit. Under the existing provisions, such filings were expressly prohibited, notwithstanding that a reduction of loss does not result in any immediate revenue loss to the exchequer and, in fact, enhances the accuracy of carried-forward figures. The proposed amendment seeks to address this inconsistency by permitting the filing of updated returns in cases involving the reduction of losses. This change aligns the statutory framework more closely with principles of substantive fairness and accurate tax base computation, while reinforcing the underlying objective of the updated return mechanism, namely, to



facilitate voluntary self-correction rather than restrict it through overly rigid exclusions.

Another significant and distinctly taxpayer-friendly proposal relates to the relaxation of the bar on filing updated returns once assessment or reassessment proceedings have been initiated. Under the current regime, the existence or conclusion of any assessment, reassessment, recomputation, or revision proceedings for a particular assessment year acts as an absolute prohibition on filing an updated return for that year. Consequently, the issuance of a reassessment notice effectively forecloses the possibility of voluntary compliance, even where the taxpayer is willing to regularise the position at an early stage. This has often resulted in avoidable litigation and prolonged proceedings, particularly in cases involving limited issues or small variations.

In response to sustained stakeholder representations, the Union Budget 2026 proposes to permit the filing of an updated return even after the initiation of reassessment proceedings, including cases where a notice has been issued, subject to payment of an additional tax of 10%. This calibrated relaxation introduces an element of flexibility into an otherwise binary framework and creates a statutory pathway for early resolution of disputes. From a policy perspective, the measure is expected to reduce the volume of contested reassessment proceedings, conserve administrative and judicial resources, and advance the Government's stated objective of transitioning towards a facilitative, trust-based, and resolution-oriented tax administration model.

Simplification as a Catalyst for Confidence and Compliance

Overall, the renewed emphasis on simplification, certainty, and structured dispute resolution under the Union Budget 2026 reflects a deliberate policy shift away from a predominantly adversarial and litigation-intensive tax administration framework. The proposed measures, when viewed holistically, seek to address both procedural rigidities and interpretational ambiguities that have historically contributed to prolonged and often avoidable disputes between taxpayers and the revenue authorities. By rationalising compliance requirements, recalibrating procedural timelines, and introducing greater flexibility for voluntary self-correction, the framework attempts to reduce the friction points that typically trigger assessment and reassessment proceedings.

By providing a broader window for self-correction, the amendment is expected to reduce downstream disputes arising from inadvertent inaccuracies, limit the need for reassessment proceedings triggered by minor discrepancies, and promote greater accuracy and finality in return filings.

Equally important is the Budget's focus on facilitating the orderly closure of legacy disputes, thereby enabling greater finality in tax positions for both taxpayers and the administration. Such measures are expected to improve predictability and restore confidence in the tax system by reducing uncertainty around outcomes and timelines. From a systemic perspective, the anticipated reduction in litigation and administrative churn would allow tax authorities to reallocate resources towards high-risk cases and policy implementation, while enabling taxpayers to deploy managerial and financial resources towards productive, investment-driven, and growth-oriented activities. Collectively, these initiatives signal a broader transition towards a more efficient, transparent, and trust-based tax ecosystem aligned with the Government's long-term ease-of-doing-business objectives. ■

UNION BUDGET 2026: TAX CERTAINTY FOR ELECTRONIC MANUFACTURING, SPECIFIED DATA CENTERS AND RETURNING NRIS





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Overview

Union Budget 2026–27 *introduces a targeted, certainty driven approach to international taxation aimed at attracting foreign investment in three strategic areas:* ***data centres and global cloud services, electronics manufacturing, and returning NRIs/global talent****. Instead of broad tax cuts, the Budget focuses on eliminating long standing tax disputes – particularly around* ***permanent establishment (PE), profit attribution****, and* ***transfer pricing*** *– through clearly defined, ring fenced exemptions under* ***Schedule IV*** *of the Income tax Act.*

For digital infrastructure, the Budget announces a ***tax holiday until 2047*** *for foreign companies providing global cloud services using Indian data centre capacity, supported by an* ***Indian reseller requirement*** *for domestic customers and a* ***15% safe harbour*** *for related party data centre services. In electronics manufacturing, the Budget exempts income of foreign companies that provide capital goods or tooling to contract manufacturers operating in* ***customs bonded zones*** *until 2030–31, along with a* ***2% safe harbour*** *for non resident component warehousing.*

To encourage global talent mobility, the Budget offers a ***five year exemption*** *on overseas income for returning NRIs and inbound experts under notified schemes and introduces a one time* ***foreign asset disclosure*** *window (FAST–DS 2026). Overall, the article highlights how these measures reduce cross border tax uncertainty and strengthen India's competitiveness as a hub for digital infrastructure, advanced manufacturing, and skilled professionals.*

1. Executive summary

Union Budget 2026–27 marks a meaningful evolution in India's international tax and investment policy. Rather than relying on broad based rate reductions or blunt incentive schemes, the Budget signals a decisive shift toward **targeted exemptions, ring fenced income categories and safe harbour rules** designed to reduce cross border tax uncertainty in sectors where ambiguity, rather than headline tax rates, has historically deterred investment. These are sectors which has potential to attract high investments in the current landscape. This approach is not only a response to the practical pain points

faced by global investors and businesses but also a reflection of India's ambition to position itself as a global hub for digital infrastructure, advanced manufacturing, and international talent mobility. It also demonstrates a sophisticated understanding of how multinational enterprises evaluate long term deployments of capital, technology and people.

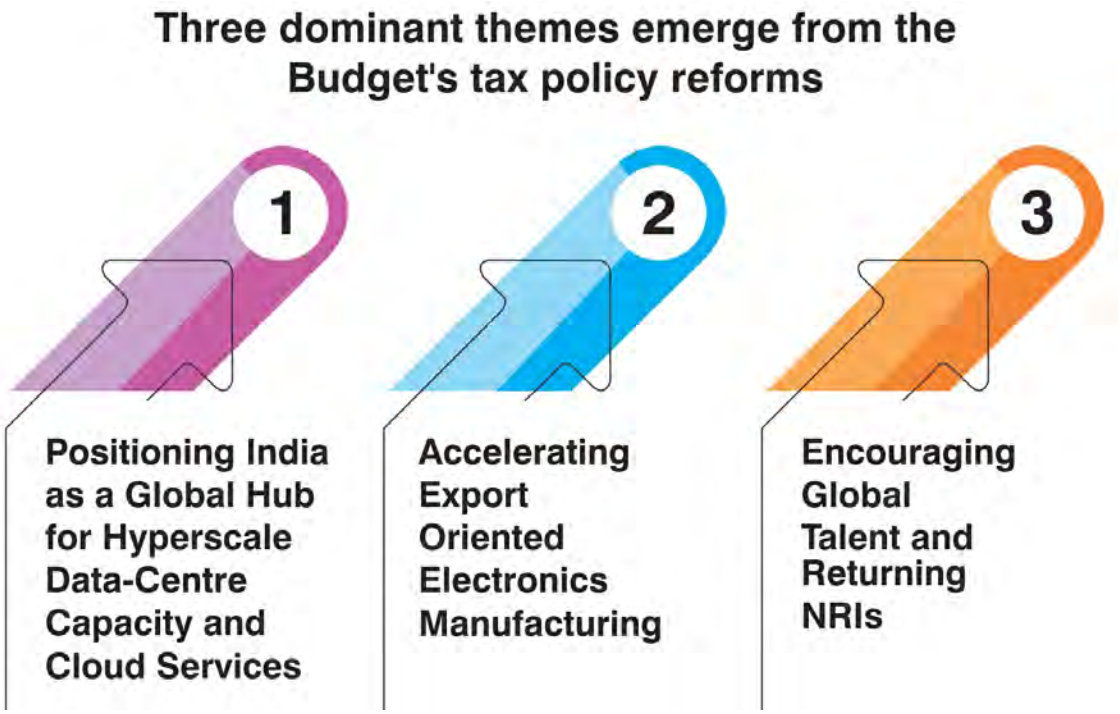
Three dominant themes emerge from the Budget's tax policy reforms:

1. **Positioning India as a Global Hub for Hyperscale Data-Centre Capacity and Cloud Services:** The Budget introduces a long-term tax holiday for foreign companies providing global cloud services using Indian data-centre infrastructure, with specific conditions to safeguard the domestic tax base.

2. **Accelerating Export-Oriented Electronics Manufacturing:** By de-risking foreign ownership and provision of high-value capital goods and tooling in bonded zones, the Budget aims to make India a preferred destination for electronics manufacturing, with clear guardrails to prevent unintended tax base erosion.

3. **Encouraging Global Talent and Returning NRIs:** A five-year ring-fenced exemption for certain overseas income is introduced to attract global talent and incentivize returning NRIs to work in India for longer periods, addressing concerns around global income taxation and residency rules.

These measures are designed to address practical pain points—permanent establishment (PE) risk, profit attribution disputes, transfer pricing uncertainty and



Hyperscale data centres involve multi billion dollar capital commitments with asset lives spanning decades. Once capacity is built, relocating it is neither feasible nor economical.

compliance friction—while retaining tax sovereignty through specific conditions such as the Indian reseller requirement for domestic cloud customers and the use of customs-bonded areas for electronics manufacturing.

2. Policy context: why exemptions, and why these sectors?

The narrative of Budget 2026 is firmly anchored in the principles of competitiveness, investment-led growth, and long-horizon infrastructure planning. The government recognizes that in the current global environment, where trade and supply chains are increasingly volatile, and technological transformation is rapid, India must offer regulatory and fiscal predictability to attract and retain investment in strategic sectors.

Data Centres: The Need for Predictability

Hyperscale data centres involve multi billion dollar capital commitments with asset lives spanning decades. Once capacity is built, relocating it is neither feasible nor economical. Investors in this sector are particularly sensitive to tax uncertainty, especially regarding the risk of PE creation and profit attribution —particularly the risk of retrospective attribution of global profits—can be a "deal-breaker," deterring global hyperscalers from establishing large-scale infrastructure in India. In such contexts, clarity often matters more than concessional rates.

Electronics Manufacturing: Supply Chain Sensitivity

Electronics manufacturing is characterized by complex, globally integrated supply chains. The location of tooling, the availability of bonded warehousing, and the terms of contract manufacturing can determine whether India is chosen as a production base. Tax uncertainty around foreign ownership of capital goods and the risk of PE or "business connection" claims can undermine India's competitiveness in this sector.

Global Talent Mobility: Residency and Taxation Concerns

For globally mobile talent, including returning NRIs and inbound experts, the decision to relocate to India is heavily influenced by residency and global income taxation rules. The risk that Indian residence will trigger full taxation of foreign income streams can deter highly skilled professionals from committing to medium-term stints in India, even when the underlying economic opportunities are attractive.

In each of these areas, tax uncertainty can be a "deal-breaker" even if the underlying economics are attractive. Budget 2026 therefore uses a narrow, ring-fenced approach: exempt the specific income stream that triggers uncertainty, impose clear conditions to prevent unintended base erosion, and supplement with safe harbours that standardise margins and reduce disputes.

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In each of these areas, tax uncertainty can be a "deal-breaker" even if the underlying economics are attractive.

3. Legislative technique: the Schedule IV "ring-fence" model

A notable innovation in the Budget's legislative design is the reliance on Schedule-based exemptions under the Income-tax Act, 2025 framework. Rather than rewriting the charging provisions across the statute, the Finance Bill proposes to insert specific categories of exempt income into Schedule IV, which lists income not to be included in the total income of eligible non-residents and foreign companies.

This technique offers several advantages:

- **Precise Scoping:** The exemptions are carefully defined in terms of who qualifies and what income is covered, reducing ambiguity and the risk of unintended beneficiaries.
- **Definitional Control:** Key terms such as "specified data centre" are defined by notification, allowing the government to retain control over eligibility and implementation.
- **Sunset Dates:** The exemptions are time-bound, with sunset dates aligned to policy objectives (e.g., 31 March 2047 for data centres, 2030–31 for electronics tooling), ensuring that the relief is available only for the intended period.

For taxpayers, this model also raises the compliance bar. Eligibility for the exemptions will depend on meticulous satisfaction of the prescribed conditions and the maintenance of robust documentary evidence, rather than reliance on broad policy intent.

4. Data centres & cloud services: tax holiday till 2047

4.1 The Exemption: Foreign Companies Providing Global Cloud Services Using Indian Data-Centre Services

Budget 2026 proposes a tax holiday until **31 March 2047** for a foreign company that provides cloud services to customers globally by using data centre services located in India. In effect, where a foreign cloud provider deploys compute and storage capacity within Indian data centres to serve **non Indian customers**, income that might otherwise be argued to accrue or be deemed to accrue in India merely because of that infrastructure linkage is proposed to be exempt.

The policy objective is clear: encourage hyperscale cloud providers to locate substantial infrastructure in India without fear that physical presence of servers or supporting personnel could lead to uncertain PE conclusions and profit attribution claims.

Importantly, the exemption does not seek to redefine PE principles in the abstract. Instead, it neutralises the tax consequence of a specific factual scenario that has historically been contentious: whether the presence of servers, racks or data centre operations creates a fixed place PE or a "place at the disposal" of the foreign enterprise.

The policy objective is clear: encourage hyperscale cloud providers to locate substantial infrastructure in India without fear that physical presence of servers or supporting personnel could lead to uncertain PE conclusions and profit attribution claims.

4.2 Guardrails: The Indian Reseller Condition for Indian Customers

To preserve India's tax base on domestic consumption, the Budget requires that services to Indian customers be provided through an Indian reseller entity. This operationally creates a bifurcated go-to-market model: global customers are contracted and billed offshore (supported by Indian data-centre services), while Indian customers are contracted through the Indian reseller.

Operationally, this condition will require cloud providers to carefully segment customer bases, align contractual terms, and ensure that invoicing accurately reflects the reseller model. From a policy standpoint, it strikes a balance between attracting global infrastructure and safeguarding the domestic tax base.

4.3 Transfer Pricing Certainty: 15% Safe Harbour on Cost for Related Data-Centre Services

Recognising that many Indian data centre operators may be related parties of foreign cloud providers, Budget 2026 proposes a **transfer pricing safe harbour of 15% on cost** for data centre services rendered to related foreign entities. This is intended to reduce transfer pricing disputes on the arm's length price for data-centre services (capacity, colocation, managed services, etc.). In practice, a safe harbour can significantly reduce audit and litigation exposure by providing a predictable markup that tax authorities are expected to accept, thereby reducing the need for complex benchmarking studies and protracted APA negotiations.

4.4 What This Solves: PE and Attribution Anxiety in Digital Infrastructure

Digital infrastructure challenges the traditional alignment between location and value creation. Servers housed in India may support global revenue streams, but the economic return is often driven by IP, customer relationships and platform development located elsewhere. A data centre in India can be argued to create a fixed place PE if the foreign enterprise has the facility "at its disposal" or exercises control, or if servers are treated as a place of business. Even where a PE determination is contestable, the uncertainty itself can deter investment. The 2047 holiday is therefore less about immediate revenue foregone and more about removing an ambiguity that could stall multi-billion-dollar capacity decisions. The reseller and safe-harbour architecture shows an attempt to strike a balance: encourage infrastructure scale-up while keeping India-customer margins and related-party pricing within controllable bounds.

The 2047 holiday is therefore less about immediate revenue foregone and more about removing an ambiguity that could stall multi-billion-dollar capacity decisions.

5. Electronics Manufacturing: Exemption for Foreign-Owned Capital Goods/ Tooling in Bonded Zones

5.1 The Exemption: Foreign Company Income from Providing Capital Goods/ Equipment/Tooling to Bonded-Zone Electronics Manufacturers (Till TY 2030–31)

Budget 2026 proposes an exemption for a foreign company's income arising from providing capital goods, equipment, or tooling to an Indian resident contract manufacturer located in a customs-bonded area (warehouse under section 65 of the Customs Act, 1962), where the contract manufacturer produces

electronic goods on behalf of the foreign company for consideration. The exemption is proposed up to tax year 2030–31.

This measure directly addresses a common feature of advanced electronics supply chains: the foreign principal (brand owner or lead OEM) finances and retains ownership of specialised machinery to protect IP, ensure quality and maintain process control, while the Indian entity performs manufacturing on a contract basis.

5.2 Why Bonded Zones Matter: Export Orientation and Definitional Precision

By limiting the exemption to contract manufacturers located in customs-bonded areas, the policy targets export-oriented manufacturing and reduces the risk of unintended domestic market leakage. Bonded areas operate under customs control and are often treated differently for domestic clearances. In practice, this condition encourages manufacturing models where inputs can be imported duty-deferred, processed, and re-exported efficiently—critical for electronics where components and tooling are globally sourced and lead times are tight.

5.3 The Risk Being Addressed: "Business Connection"/PE Claims Triggered by Equipment Ownership

A recurring concern in contract manufacturing is whether foreign ownership of machinery in India could be characterized as a business connection or PE, opening the door to assertions that global profits from product sales are taxable in India. Even if a taxpayer expects to ultimately prevail on facts (e.g., no disposal/control, no core business carried on in India by the foreign principal), litigation risk and compliance burden can be substantial. The proposed exemption provides a statutory route to neutralize that uncertainty for a defined period and under controlled conditions[i].

5.4 Logistics Certainty: Safe Harbour for Non-Resident Component Warehousing in Bonded Warehouses

Complementing the manufacturing exemption, Budget 2026 also proposes a **2% of invoice value safe harbour** for non residents undertaking component warehousing in bonded warehouses. For electronics manufacturers, near plant bonded warehousing supports just in time production, reduces line stoppages and enhances export reliability.

A standardized low-margin safe harbour discourages disputes around whether warehousing functions constitute a PE or warrant higher profit attribution, thereby supporting predictable supply chain operations. The indication that the effective tax incidence would be significantly lower than in competing jurisdictions underscores India's intent to be competitive on logistics efficiency.

6. Related Incentive: Toll Manufacturing in Bonded Zones

Budget 2026 further proposes an exemption from income tax for five years to any non-resident that provides capital goods, equipment, or tooling to a toll manufacturer in a bonded zone. Toll manufacturing models are common in global supply chains where the principal retains ownership of inputs and outputs and the Indian entity earns a processing fee. The five-year exemption complements the electronics contract manufacturing exemption by offering another pathway for foreign principals to place equipment in India to support processing/ export models with reduced tax friction.



7. Non-resident relief: MAT exemption for non-residents taxed on presumptive basis

Budget 2026 proposes to exempt from Minimum Alternate Tax (MAT) all non-residents who pay tax on a presumptive basis. This is a technical but meaningful simplification: presumptive taxation is intended to provide a simplified tax base where detailed profit computation and attribution are difficult, and MAT overlays can create compliance complexity and perceived double layers. Removing MAT in these cases aligns with the Budget's stated objective of trust-based administration and dispute prevention for cross-border taxpayers.

8. Returning NRIs/inbound experts: five-year overseas income exemption under notified schemes

8.1 The exemption: overseas (non-India sourced) income for five years

Budget 2026 proposes a five-year exemption for overseas income of an individual who was non-resident for five consecutive tax years immediately preceding the tax year during which they visit India for the first time to render services in India under a government-notified scheme. The exemption applies to income accruing or arising outside India and not deemed to accrue or arise in India, for five consecutive tax years commencing from the first tax year of visit. The aim is to attract specialised global talent to India for longer stints by mitigating concerns that Indian residence would trigger taxation of foreign income streams during the transition.

8.2 How this fits with residency status planning (NR/RNOR/ROR)

Even without this proposal, returning NRIs often transition through Resident but Not Ordinarily Resident (RNOR) status for a limited period, during which global income is generally not fully taxable (subject to exceptions such as business controlled in India). Budget 2026's exemption is conceptually distinct: it is linked to notified schemes and provides a longer, rule-based

runway for overseas income, potentially extending certainty beyond the conventional RNOR window and targeting sectors where India seeks to import know-how.

8.3 Compliance reset: FAST–DS 2026 (foreign asset disclosure window)

Budget 2026 introduces the Foreign Assets of Small Taxpayers – Disclosure Scheme (FAST–DS), 2026, described as a one-time window to disclose specified foreign income/assets with immunity from further penalty and prosecution under relevant provisions, subject to conditions and exclusions. This is relevant for returning NRIs and globally mobile employees who may have legacy or inadvertent foreign asset non-disclosures (e.g., dormant bank accounts, overseas employment equity, insurance/savings policies). By providing a structured compliance pathway, the scheme complements the Budget's broader objective of encouraging re-engagement with India's economy while reducing fear of punitive outcomes for small/legacy non-compliances.

9. Practical structuring and documentation: what taxpayers should do

These measures are expressly condition driven. Taxpayers seeking to rely on them must treat documentation as mission critical.

- **Cloud and data centres** – Segment customers accurately, structure contracts to reflect the reseller model for Indian customers, and align related party pricing with the 15% safe harbour where appropriate.

- **Electronics manufacturing** – Confirm bonded zone eligibility, clearly draft "on behalf of" manufacturing agreements, document ownership and operational control of equipment, and align warehousing margins with the 2% safe harbour.

- **Inbound talent** – Validate five year non residency, confirm notified scheme eligibility, classify income streams carefully and assess FAST–DS applicability for legacy assets.

10. Conclusion

Budget 2026's exemption package represents a deliberate, well calibrated attempt to address India's long standing challenge in cross border taxation: not the absence of incentives, but the presence of uncertainty. By targeting specific income streams that trigger disputes, embedding clear guardrails, and offering safe harbours where subjective analysis has proven contentious, the Budget reframes India's tax system as an enabler rather than an obstacle to scale.

By targeting specific income streams that trigger disputes, embedding clear guardrails, and offering safe harbours where subjective analysis has proven contentious, the Budget reframes India's tax system as an enabler rather than an obstacle to scale.

The effectiveness of these measures will ultimately depend on:

- The **precise statutory language** adopted in the final Finance Act and subsequent notifications (e.g., definitions of "specified data centre," "toll manufacturer," "notified scheme" for individuals).

- The **interpretation and administrative stance** of the tax authorities, especially on edge cases and mixed purpose arrangements.

- The **ability of taxpayers** to design and operate business and mobility models that faithfully implement the required conditions.

For businesses, investors and advisors, the immediate imperative is to translate broad policy into **robust operating structures**—with contracts, pricing, compliance systems and governance mechanisms calibrated to the new exemptions and safe harbours. Done correctly, these reforms could materially enhance India's attractiveness as a base for digital infrastructure, high end manufacturing, and globally mobile talent over the coming decades.

Footnote: The case law matrix below links key judicial principles to the policy risks addressed by Budget 2026. Citations are provided in the References section.

Case (Year)	*Court*	*Principle (short)*	*Relevance to Budget 2026 measures*
DIT v. Morgan Stanley & Co. Inc. (2007)	Supreme Court	Outsourcing alone not fixed-place/agency PE; deputation may create service PE; ALP limits further attribution.	Supports policy logic for safe harbours and limiting attribution disputes alongside nexus issues.
ADIT v. E-Funds IT Solution Inc. (2017)	Supreme Court	No PE without premises at disposal; support services do not create PE; service PE needs services furnished "within India".	Aligns with data-centre exemption goal: using India infra should not automatically trigger PE/attribution.
Formula One World Championship Ltd. v. CIT (2017)	Supreme Court	Disposal/control and core business through place → fixed place PE.	Illustrates "disposal" risk; electronics tooling exemption aims to remove disputes from mere equipment presence/ ownership.
Hyatt International Southwest Asia Ltd. (2025)	Supreme Court	Operational control via employees + premises at disposal can create fixed place PE.	Shows why "control" matters; Budget ring-fences qualifying income and requires Indian reseller for domestic market.
Server as PE (AAR approach referenced in commentary)	AAR (India)	Server can constitute PE depending on control/ functions.	Explains historic cloud PE anxiety; Budget provides explicit 2047 exemption framework.

Case (Year)	*Court*	*Principle (short)*	*Relevance to Budget 2026 measures*
Samsung Heavy Industries Co. Ltd. (2020)	Supreme Court	PE determination depends on core vs preparatory/auxiliary; attribution must be fact-based.	Supports need for clear statutory exemption for tooling/equipment to avoid arbitrary attribution claims.
Progress Rail Locomotive Inc. (Delhi HC, 2024 – commentary)	Delhi High Court	Disposal/control and core business tests; subsidiary premises not automatically at parent's disposal.	Reinforces "mere group relationship" not enough; relevant for equipment/tooling models.

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8. Bloomberg Tax/Deloitte analysis on Hyatt International Southwest Asia Ltd. (SC, 2025).

9. AAR server-as-PE commentary sources.

Disclaimer: This document is based on announcements in Union Budget 2026–27 and the Finance Bill, 2026 as introduced on 1 February 2026. Proposals are subject to enactment, subsequent rules/notifications, and possible amendments during the legislative process. Case laws are included to explain the underlying tax risks (PE/business connection/attribution/transfer pricing) that the exemptions and safe harbours aim to mitigate; they do not override statutory conditions.

■

TAXATION OF IFSC AND SEZ UNITS – BUDGET 2026







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Overview

The evolution of Section 80LA reflects India's expanding policy vision for IFSCs – from banking-focused incentives to a comprehensive tax regime supporting diverse financial and asset-leasing activities. With the Finance Bill 2026 further extending the deduction window to 20 out of 25 years, the law now offers long-term certainty to strengthen GIFT IFSC as globally competitive financial hub.

A 15% tax rate for the non-tax-holiday period ensures that GIFT IFSC remains globally competitive even beyond 2047, while steadily contributing to India's tax base. This stable, moderate regime strengthens long-term investor confidence, supports predictable policy continuity, and enables a smooth transition once the tax holiday ends.

The proposed 2026 amendments fundamentally change the MAT framework by treating MAT as a final tax for IFSC units, eliminating the creation of new MAT credits from April 1, 2026. While existing MAT credits remain usable for 15 years, foreign company branches in IFSC will face an unavoidable 9% MAT cost during the tax holiday period, creating a permanent tax outflow.

Gift City – Gujarat, India

- Gujarat International Finance Tec-City ("GIFT") is India's first internationally benchmarked financial and IT services hub. Conceived with a visionary push by Hon'ble Prime Minister Shri Narendra Modi, GIFT City International Financial Services Centre is designed to become a global financial hub.

- GIFT City is a greenfield smart city located in Gujarat, hosting India's maiden International Financial Services Centre ("IFSC"), which serves as a platform for both inbound and outbound investments. GIFT City is located near Ahmedabad and Gandhinagar, in the state of Gujarat. GIFT City consists of a Multi – Services Special Economic Zone ("SEZ") and an exclusive Domestic Tariff Area ("DTA"). It offers state-of-the-art infrastructure, seamless connectivity, and a sustainable ecosystem.

International Financial Services Centre

IFSC serve as strategic gateways for global capital flows, fostering innovation, competitiveness, and integration with international financial systems.

It offers a globally aligned regulatory environment, enabling institutions to conduct international banking, insurance, asset management, treasury centres, aircraft leasing, ship leasing and capital market activities with enhanced efficiency and flexibility.

Key unique features of IFSC

- Established in 2020, the International Financial Services Centres Authority ("IFSCA") is the unified regulator for GIFT IFSC units, mandated to develop and regulate financial institutions and services.

- IFSC-registered units are considered non-residents under Indian exchange control regulations. Various fiscal incentives are available to these units.

- IFSCA has been vested with the powers of four sectoral regulators: the Reserve Bank of India ("RBI"), the Securities and Exchange Board of India ("SEBI"), Pension Fund Regulatory and Development Authority (PFRDA) and the Insurance Regulatory and Development Authority of India ("IRDAI").

- The Single Window IT System ("SWIT") portal of IFSCA enables users to make applications and obtain approvals through a single interface, thereby reducing dependency on multiple regulators.

- IFSC aims to attract foreign investment, provide fiscal incentives, simplify business processes, and offer access to skilled talent—positioning India as a global financial services hub.

- Businesses benefit from opportunities in fintech, fund management, insurance, and capital markets, leveraging tax advantages and modern infrastructure to support global expansion.

- Before GIFT City was established, many Indian companies relied on jurisdictions like Singapore, Mauritius, Dubai, Hongkong etc. to raise capital or manage offshore investments, primarily because these locations offered more favourable tax and regulatory regimes. The IFSC framework is designed to shift such financial services activities—currently handled by overseas financial institutions and foreign branches of Indian institutions—back to India. In doing so, it aims to attract global banks, investment funds, and technology firms, create high value jobs, bring international capital onshore, and curb financial outflows.

Snapshot of IFSCA Regulations

Year	Natures of activities permitted under IFSCA regulations
2020	• Banking Regulations
	• Bullion Exchange Regulations (revised in 2025 as Bullion Market Regulations)
	• Global In-House Centres Regulations (revised in 2025)

Year	Natures of activities permitted under IFSCA regulations
2021	• Finance Company Regulations
	• Capital Market Intermediaries Regulations (revised in 2025)
	• Market Infrastructure Institutions Regulations
	• Insurance Business Registration Regulations
	• Insurance Intermediaries Regulations
	• Issuance & Listing of Securities Regulations
2022	• Fund Management Regulations (revised in 2025)
	• Offshore Education Centres Regulations
2023	• Re-Insurance Regulations
2024	• Payment Services Regulations
	• Payment & Settlement Systems Regulations
	• Listing Regulations
	• BATF (Book-keeping, Accounting, Tax & Financial Crime Compliance) Regulations
2025	• TechFin & Ancillary Services Regulations
	• KYC Registration Agency Regulations
	• Bullion Market Regulations

Evolution of IFSC

The below table depicts how the IFSC ecosystem has evolved over the years in line with Prime Ministers vision of Viksit Bharat.

Year	Particulars
2015	• Ministry of Finance notifies India's first IFSC
	• Exchange control regulations notified by RBI
2016	• Tax Reforms announced in Budget 2016
	• International Exchanges established in IFSC
2017	• Tie up with Singapore Arbitration Center for Dispute resolution
2019	• Enactment of IFSC Authority Act
2020	• Establishment of IFSCA Authority

Year	Particulars
2022	• Revised FEMA Overseas Investment regulations – relaxation for investments in IFSC entities
2025	• Relaxation from deemed dividend provisions
	• Relaxation from thin capitalisation provisions
2026	• Enhancing period of tax holiday to 20 years from existing period of 10 years

While IFSC is financial services zone to attract the global financial players, for corporates belonging from non-financial services sectors, IFSCA (Finance Company) Regulation and framework on Corporate treasury Centre are relevant.

Permitted Activities under Finance Company Regulations and Treasury Framework

As per the IFSCA (Finance Company) Regulation, 2021, a Finance Company may undertake any of the following permitted core and non-core activities:

Core Activities Non-Core Activities

• Lending in the form of loans, commitments and guarantees, credit enhancement, financial lease, securitization, and sale and purchase of portfolios • Factoring and forfaiting of receivables • Investment in securities or other permitted instruments • Buying or selling derivatives • Acting as a Global or Regional Corporate Treasury Center	• Merchant banking • Acting as an authorized person • Registrar and share transfer agent services • Trusteeship services • Investment advisory services • Portfolio management services • Operating lease of aircraft, ships, or any other equipment • International Trade Financing Services Platform • Distribution of financial products • Trading and clearing members or professional clearing members of exchanges and clearing corporations set up in IFSCs • Asset management support services • Undertaking to act as facilitators of permissible activities • Any other activity without involving a customer interface

As per the Framework for Finance Company/Finance Unit undertaking the activity of Global/ Regional Corporate Treasury Centres, a Corporate Treasury Centre may undertake any of the following permitted activities:

Permitted Activities
• Raising capital by issuance of equity shares
• Borrowing, including in the form of inter-company deposits
• Credit arrangements
• Transacting or investing in financial instruments issued in IFSC or outside IFSC
• Undertaking derivative transactions, including over-the-counter (OTC) and exchange-traded derivatives
• Factoring and forfaiting
• Acting as a re-invoicing center
• Liquidity management
• Maintaining relationships with financial counterparties
• Acting as holding company
• Management of obligations of service recipients relating to insurance and pension-related commitments
• Advisory services related to financial management, including financial risk management
• Advisory services related to funding and capital market activities

Tax Holiday for GIFT IFSC Units - A Strategic Incentive to Develop Global Financial Services in India

Policy Intent:

India's strategy to onshore offshore financial activity has relied on a calibrated mix of regulatory liberalisation and direct tax incentives. Section 80LA of the Income-tax Act, 1961 ("the Act") is one such targeted incentive, structured as a deduction from eligible income, originally designed to support Offshore Banking Units ("OBUs") in Special Economic Zones ("SEZs") and later expanded to Units in an International Financial Services Centre ("IFSC") such as GIFT IFSC.

Legislative history and key amendments:

1. Section 80LA (Section 147 of ITA 2025) was inserted effective from 1 April 2004 to grant a deduction **to scheduled banks owning an OBU in an SEZ,** with a 100% deduction for three assessment years and 50% for the next two, and with an explicit linkage to income received in convertible foreign exchange.

2. With effect from February 2006, the Section 80LA was further amended to provide deduction upto 100% for five consecutive assessment years and 50% for the next five for eligible OBU or IFSC unit.

3. Finance (No. 2) Act, 2019 further amended the provisions of 80LA and introduced sub-section 80LA(1A) of the Act. Under 80LA(1A), an IFSC unit is eligible for 100% deduction of eligible income for any 10 consecutive assessment years, at the option of the assessee, out of a block of 15 years, beginning with the year in which the relevant permission/registration is obtained by the unit.

4. As IFSC policy priorities widened to include asset leasing, Section 80LA(2) was expanded to cover income arising from transfer of leased assets by eligible IFSC units and the following amendment were made:

   - With effect from April 01, 2022, income from transfer of aircraft by an IFSC unit was included in the scope of Section 80LA(2); and
   - From April 01, 2023, income from transfer of ship by an IFSC unit was included in the scope of Section 80LA(2) and deduction limit under 80LA(1)(b) was enhanced to 100% of profit from 50%.

5. Section 147 of the Income-tax Act, 2025 (ITA 2025), provides the income-linked deduction for IFSC units under the new tax law. The Finance Bill, 2026 has enhanced the period of deduction for IFSC units to 20 years out of the block of 25 years from earlier period of 10 years under Section 147 of ITA.

   The applicable tax holiday pre and post Finance Bill, 2026 proposal would be as follows:

Particulars	Existing provision	Proposed provision
IFSC Units	100% tax holiday for **10 consecutive years out of 15 years**	100% tax holiday for **20 consecutive years out of 25 years**
Formation by splitting up/ reconstruction/reorganisation/ transfer of existing Indian business	No explicit restriction	Not permitted for units set up after 1 April 2026

Rationale for increase in tax holiday period

5.1. While the 10 years tax holiday is an attractive incentive , many industries such as banking, insurance, Aircraft leasing, Ship leasing, asset management, and fintech require a longer operational horizon to achieve full-scale maturity and sustained profitability.

5.2. Increase of tax holiday to 20 years will lead to stability and shall encourage many Indian and multinational players to make long term strategic investment in GIFT IFSC.

5.3. Increase in tax holiday for IFSC units is also align to the Government of India's "Vision India@2047" initiative and will provide necessary long-term policy stability and fiscal certainty, both of which are crucial for attracting international capital, global institutions, and large-scale financial innovation.

6. For non-tax holiday period the applicable tax rate for eligible income (as referred in Section 147(3) of ITA 2025) is proposed to be 15% (plus applicable surcharge and cess).

Applicable Rate of tax for Non-tax holiday period

Legal form	Before Proposal	Proposed
Company	22%++/25%++/30%++	15%++
LLP	30%++	
Branch of Foreign Bank/entity	35%++	

++ *Applicable surcharge and cess*

Rationale for 15% tax rate for non-tax holiday period

6.1. An applicable tax rate of 15% would maintain the global competitiveness of GIFT IFSC beyond 2047/post tax holiday period.

6.2. IFSC remains a globally attractive destination even beyond the incentive phase, while progressively contributing to the national tax base.

6.3. It will enhance long-term vision of investors, investor confidence, policy stability, and gradual tax transition beyond the tax holiday period.

7. Minimum Alternate Tax:

7.1. Section 115JB of ITA 1961 (Section 206 of ITA 2025) provides that a Minimum Alternate Tax ('MAT') would be applicable to IFSC unit at the rate of 9% instead of 14% as applicable to assessees in India.

7.2. MAT is applicable when the tax calculated under MAT provisions exceeds the tax liability determined under the normal provisions of the Act. The tax paid under MAT over and above the normal tax liability is allowed as MAT credit.

7.3. This credit can be carried forward for a period of 15 years and can be utilized in subsequent tax years when the tax payable under the normal provisions exceeds the MAT liability.

7.4. Where an IFSC unit is a domestic company and has opted for new corporate tax regime (Sections 200 or 201 of the ITA 2025), the MAT will not apply.

7.5. Foreign company operating through a branch do not have the option to opt out of MAT provisions. For these foreign companies operating through a branch in IFSC, the applicable MAT rate is 9%, plus applicable surcharges and cess.

7.6. However, branch of foreign companies or foreign companies doing business in India are not eligible for new corporate tax regime and hence would continue to be governed by MAT provisions.

7.7. The Finance Bill 2026 proposes a significant change whereby the MAT paid by the taxpayer will be treated as final tax. Consequently, no new MAT

credits will be permitted for any MAT paid for tax years commencing on or after April 1, 2026.

7.8. Any existing or accumulated MAT credit as of March 31, 2026, will still be allowed to be carried forward or set off within 15 years following the tax year in which the credit first became available, subject to certain conditions. However, MAT paid for tax years beginning on or after April 1, 2026, will not be eligible for credit.

7.9. Despite this tax holiday, foreign companies operating through branches in the IFSC are still subject to MAT at the effective rate of 9%.

7.10. The proposed amendment seeks to eliminate the mechanism for generating MAT credit on a year-by-year basis starting from 1 April 2026. Hence MAT paid by foreign branches in the IFSC during the tax holiday period will be treated as a final tax liability, resulting in an irrecoverable tax cost.

Operational and Compliance ease

8. Section 80LA(3) provides that no deduction under this section can be claimed unless an accountant's report in Form 10CCF along with certificate of registration/approval is submitted by unit in IFSC along with return of Income.

9. Though Section 80LA is deduction provision, the tax department has issued TDS exemption notification for specified income of various IFSC units including income received by Banks, Finance Company or treasury centres in IFSC during the tax holiday period vide notification dated 7th March 2024.

Relevant extract of notification is as follows:

IFSC Unit (Payee)	Nature of receipt	Relevant TDS provisions
Banking Unit	Interest income on External Commercial Borrowings/Loans	Section 195
	Commission income on factoring and forfaiting services	Section 194H
Finance Company	Interest income on External Commercial Borrowings/Loans	Section 195/194A
	Dividend Income	Section 194
	Commission income on factoring and forfaiting services	Section 194H
	lease rent or supplemental lease rent	Section 194I

10. The recipient being an IFSC unit is required to furnish statement cum declaration in Form 1 to the payer for each year during the tax holiday period.

11. Further, IFSC units are required to furnish Form 15CD for making the non-taxable remittances out of India to non-residents not being a company or to foreign company on quarterly basis.



Deemed dividend and GIFT IFSC Treasury Centres

12. Section 2(22) of ITA 1961 enlarges the meaning of "dividend". Clause (e) treats certain loans/advances by closely held companies as "dividend" to the extent of accumulated profits, where the payment is made (i) to a shareholder holding not less than 10% voting power, (ii) to a "concern" in which such shareholder has substantial interest,

13. Loans/advances made in the ordinary course of business where lending of money is a substantial part of the company's business are carved out from "deemed dividend".

14. Recognising the importance for Global/ Regional Corporate Treasury Centres, the Finance Bill, 2025 excluded Finance Company from applicability of deemed dividend provisions under Section 2(22) (e) with effect from April 01, 2025. The exclusion is subject to the condition that the parent entity or principal entity of such group is listed on stock exchange in a country or territory outside India other than the country or territory outside India as may be specified by the Board in this behalf.

15. The Finance Bill, 2026 further clarifies that, deemed dividend exemption to IFSC units would be available upon satisfaction of following conditions:

– One of the group entities is a "Finance Company" or a "Finance Unit";

– The other group entity to the transaction shall be located in a country or territory outside India.

– the parent entity or the principal entity of such group is listed on the stock exchange in a country or territory outside India.

16. The country or territory for both purposes, i.e., location of other transacting group entity and the parent or principal entity, shall be notified by the central government.

This amendment clarifies the intent of the Income-tax law to state that the transaction with overseas group entities where group's parent entity is listed outside India only be considered for deemed dividend exemption. ■

FROM UNCERTAINTY TO CERTAINTY: THE TRANSFORMED LANDSCAPE OF INDIA'S TRANSFER PRICING REGIME



Manoneet Dalal

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Overview

"India's Union Budget 2026 marks a subtle yet powerful shift in the philosophy of Transfer Pricing administration – from enforcement-led scrutiny to certainty-led compliance. A series of technical amendments, when viewed together, reveal a deliberate attempt to reduce litigation, simplify procedures, and offer predictability to multinational enterprises, particularly in the IT and ITeS sectors that anchor India's global services footprint.

Key changes include a restructured Safe Harbour framework with wider eligibility and rationalised margins, and a significantly accelerated Advance Pricing Agreement process designed to deliver outcomes within commercially relevant timelines. Retrospective clarifications to assessment and DRP timelines address years of disputes arising from procedural interpretations and limitation calculations, ensuring that cases are decided on merits rather than technicalities.

The reforms also introduce a more trust-based compliance approach through graded fees for filing delays and a refined treatment of Associated Enterprise relationships. Collectively, these measures signal an intent to align tax administration with India's ambition to remain a preferred destination for Global Capability Centres, digital services, and cross-border innovation, while fostering a more stable and predictable tax environment."

नष्टो मोहः स्मृतिर्लब्धा त्वत्प्रसादान्मयाच्युत।

स्थितोऽस्मि गतसन्देहः करिष्ये वचनं तव॥[1]

The Bhagwat Gita 18.73

The Union Budget 2026 (the Budget) has introduced sweeping changes to India's Transfer Pricing (TP) regime, aimed at providing certainty and clarity to multinational enterprises. These changes represent a strategic shift of mindset from

These changes represent a strategic shift of mindset from "*revenue collection at any cost*" to "*ease of doing business*".

1. *Confusion destroyed, clarity restored. I Stand firm, free from doubt, ready to act.*



"*revenue collection at any cost*" to "*ease of doing business*" with the aim of attracting greater foreign investment into India, which can have the desired multiplier effect of spurring the economy.

The Safe Harbour Reset: From Procedural Failure to Economic Incentive

The Budget has fundamentally reimagined Indian Safe Harbour regime, transforming it from a "restrictive, high-cost" option into a broad-based, attractive mechanism for India's Information Technology (IT) and Information technology enabled Services (ITeS) industry.

Before examining the proposed amendments, it is useful to briefly revisit the existing Safe Harbour framework. A "Safe Harbour" is a set of predefined statutory conditions which, if satisfied, relieves taxpayers from maintaining extensive TP documentation and prolonged TP audits and litigation.

In India, Safe Harbour provisions were introduced through the Finance Act 2009, and the detailed rules were notified in 2013. However, the eligibility criteria were so narrow and fragmented that very few taxpayers could qualify, and even where they did, the prescribed mark-ups were commercially unattractive. Summary of existing provisions:

- **Revenue Threshold**: Eligibility capped at a turnover of **₹ 300 crore.**
- **Fragmented Categories**: Taxpayers classified into pre-defined "buckets" like Software Development, ITeS, and Knowledge Process Outsourcing (KPO), each with its own rigid definitions and varied margins.
- **Premium Margins:** Margins typically ranged from **17% to 24%**

- **Manual Verification:** The Assessing Officer (AO) was required to examine and approve the application.

In her Budget speech, the Finance Minister proposed to fundamentally restructure the above-mentioned Safe Harbour provisions to make them more attractive to taxpayers.

While the exact nature and extent of the amendments will be set out in the detailed rules expected to follow soon, the broad contours outlined by the Finance Minister— such as raising the eligibility threshold from ₹ 300 crore to ₹ 2,000 crore, consolidating fragmented, activity-driven mark-ups (earlier linked to the nature of service and transaction intensity) into a single industry-representative mark-up of 15.5% for the entire gamut of IT and ITeS services, and introducing largely automated, rule-driven approvals—do provide substantial clarity and certainty to taxpayers.

With this amendment, the Government has effectively acknowledged the industry's decade-long grievance that Safe Harbours in the current form were commercially unviable.

To be sure, the proposed amendment would have far-reaching consequences for the IT and ITeS industry. In scale, the industry is valued at over USD 250 billion, of which nearly USD 200 billion represents exports. On a conservative estimate, if around 20% of these exports are to related parties, the figure translates to nearly USD 40 billion annually. Secondly, once the revised Safe Harbour provisions are adopted by taxpayers, there would be a significant reduction in litigation, thereby de-cluttering the judicial system. Thirdly, this is a decisive step towards aligning India's tax policy with its ambition to become a global technology powerhouse. Lastly, it would strengthen India's position in the global race for Global Capability Centres (GCCs). India faces stiff competition from jurisdictions such as Poland, the Philippines, and Vietnam, which offer high levels of fiscal predictability. With over 1,700 GCCs already operating in India, the Government has recognised that, to transition these from "back-office cost centres" to "innovation hubs" owning global R&D, it is essential to eliminate the "litigation tax" — the hidden cost of prolonged court battles.

A predictable 15.5% margin itself seems to reflect the understanding gathered by Revenue through multiple rounds of Advance Pricing Agreements (APAs) and Mutual Agreement Procedures (MAPs). Further, in some sense it also shows the Government's awareness that margins in IT and ITeS sectors have as such rationalised with the increase used of Artificial Intelligence (AI) based tools.

Fast-Track Advance Pricing Agreements (APA)

The Budget has also overhauled the Advance Pricing Agreement (APA) framework, transforming it into a high-speed 'certainty engine' by mandating a two-year conclusion timeline for **unilateral IT-related APAs**.

First, it is important to understand what an APA is. **Advance Pricing Agreement (APA)** is a customized contract between a taxpayer and the Central Board of Direct Taxes (CBDT) that pre-determines the Arm's Length Price (ALP) or the methodology for international transactions for a period of up to **9 years** (5 future years and 4 rollback years). Unlike Safe Harbour's "one-size-fits-all" rate, an APA is **bespoke**. It is tailored to the specific business model, risk profile, and functional complexity of the taxpayer.

The APA program was introduced in 2012 and quickly became a "victim of its own success"

- **Backlog**: In March 2025, cumulatively since inception over 815 APAs[2] had been signed, but the popularity led to a massive bottleneck.

- **Obsolescence Risk:** The average conclusion time for a unilateral APA is 4–5 years. In the fast-moving digital economy—where AI and software models shift every 18 months—an agreement signed in 2026 for a 2021 business model is outdated.

- **The Need for Speed:** With the IT sector transitioning to high-cost AI infrastructure, companies need pricing decisions in "real-time," not half a decade later.

To align tax administration with the speed of the modern digital economy, the Budget has introduced two major "Fast-Track" levers:

➢ **The 2-Year Deadline (Section 92CC)**

- The Budget mandates a targeted conclusion for **Unilateral APAs for IT Services** within **2 years** (24 months).

- This timeline can be extended by **6 months** only upon a specific request from the taxpayer. This shifts the burden of delay from the Tax Department to the applicant.

➢ Extended Coverage of Modified Returns (Section 92CD)

- Earlier only the entity that signed the APA could file a "modified return" to align its past tax return with the agreed terms of the APA.

- Under the proposed amended the facility to modify income tax return has been extended to the **Associated Enterprises (AEs)** of the taxpayer, in case they are filing tax return in India.

This ensures that AEs tax books are also synchronized, preventing lopsided litigation where one entity is "settled" but its related party is still being audited on the same transaction.

Safe Harbour vs. Fast-Track APA

The proposed amendments coupled with the restructured Safe Harbour regime would create a natural segmentation in the market. A question may arise, why would a taxpayer choose a complex 2-year APA over a proposed "instant" 15.5% Safe Harbour?

- **The "Premium" Tier:** Large, sophisticated players (read India-headqurtered IT companies) that presently earn more than the proposed 15.5% Safe Harbour rate would not "leave money on the table" by opting for a lower margin just for simplicity. Instead, they would like to continue to negotiate custom APAs to reflect their specific operational excellence.

- **The "Mid-Market"** Tier: Companies with limited resources (most Centres of Excellence of international MNEs) and margins closer to 17-19% range will likely choose Safe Harbour. Since for them, the 2-3% "tax premium" is worth the cost of having zero TP documentation and instant certainty.

2. *https://taxguru.in/income-tax/cbdt-releases-advance-pricing-agreement-programme-annual-report-2024-25.html*

- **The "Excluded" Tier:** Very large companies with turnover exceeding **₹ 2,000 crore** remain ineligible for Safe Harbour and must pursue the APA route if they want long-term peace.

1. Protecting Assessment Timelines

The Budget has introduced retrospective amendment to neutralize a wave of litigation that allowed high-value tax assessments to be quashed purely on procedural grounds. The proposed amendments clarify that general limitation period provided in Section 153 of the Income-tax Act, 1961 (the Act) apply only to the **Draft Order** and not on the **Final Order** passed after the directions of the DRP, in case of international tax and TP matters. With this the legislative intent that Dispute Resolution Panel (DRP) process remains a viable "fast-track" mechanism rather than a "procedural trap" has been restored. This intent had been disrupted by several High Court (HC) rulings and a split verdict in the Supreme Court (SC) which mandated that the entire assessment including the period taken by the DRP is subsumed in the general time line provided under Section 153 of the Act.

The Controversy: "Merit vs. Stopwatch"

Presently international tax and TP matters follow a "Draft-to-Final" route involving the DRP. This is a two-step process: first, a **Draft Order** is issued, and then, after the DRP gives its directions and a **Final Order** is passed by the AO.

Controversy erupted when some taxpayers argued that the overall time limit provided in Section 153 (the general deadline for all audits) is a hard "outer cap" for all types of assessments, including those wherein **Draft Order** has been issued and **Final Order** is to be passed after the direction of the DRP. Taxpayers claimed that even in cases where **Draft Order** is issued and goes to the DRP, the **Final Order** must be signed before this general clock under Section 153 of the Act runs out.

The DRP is governed through a standalone code contained in Section 144C of the Act. It is a separate body of three Commissioners who have **9 months** to decide on objections raised by the taxpayer against the Draft Order. Issue arises if the AO issues a **Draft Order** near the end of the Section 153 time period, then it becomes mathematically impossible to pass a Final Order within the time limit of Section 153 of the Act. Given this lacuna in the Act, courts were quashing tax litigation labelling them "time barred" only because the final order was passed after the general deadline of Section 153 of the Act had been breached, even though the delay was caused due to the mandatory DRP window.

Landmark Cases that Triggered the Crisis

- ***CIT vs. Roca Bathroom Products [Roca Ruling] (Madras HC)***

  The Court held that Sections 144C and 153 of the Act are **interdependent**, accordingly, it ruled that the non-obstante clause in Section 144C(13) of the Act only guides the AO within the time remaining under Section 153 of the Act. Therefore, if the time line under Section 153 of the Act expires, the Final Order is void.

- ***ACIT vs. Shelf Drilling Ron Tappmeyer Ltd. (Shelf Drilling) (SC Ruling)***

  Following Roca Ruling, the Bombay High Court also quashed the assessment in the captioned matter. Subsequently, the matter reached the Supreme Court, wherein a **rare 1:1 split verdict** was delivered.

- **Justice Nagarathna** sided with the taxpayer, stating that timelines must be strictly followed to prevent "endless" assessments.
- **Justice Sharma** sided with the Revenue, arguing that a strict reading would make the DRP mechanism "unworkable" and cause a loss of approx. **₹ 1 lakh crore**s in tax revenue.

To resolve this procedural deadlock the Finance Bill 2026 proposes to make the following retrospective amendments.

- **Defining the "Draft Order" as the Milestone**

  The Bill amends Section 153 and 153B of the Act to clarify that the general deadline applies **only to issuance of Draft Order**.

  Consequently, once the AO has issued the Draft Order within the 12/21-month limit, they have "checked the box" for Section 153 of the Act. The clock for the general audit officially stops there. Accordingly, as long as the officer sends the Draft Order on time, this requirement is met.

- **Creating a Protected "DRP Window"**

  A new sub-section (13A) is proposed to be added to Section 144C, which states that:

  - The timeline for passing a final order shall be governed **exclusively** by Section 144C.
  - This timeline would apply *"notwithstanding anything to the contrary contained in Section 153 or 153B"*.
  - Further, to negate court rulings, it has been clarified that the above understanding would be applicable even if a court has previously ruled otherwise.

The decoupling of the Final Order provides a much-needed correction to the "stopwatch" litigation popularized by recent court rulings.

By clarifying that the general clock stops once a Draft Order is issued, the Government has made it clear that litigation on hyper-technical issues where one or other view may be technically correct is an interpretational issue and not a deliberate omission of law and thus such hyper-technical issues should not be fatal to justice in thousands of cases, which should be decided on merits.

I. Summary of Retrospective Impact:

Provision	Nature of Change	Effective Date (Retrospective)
Section 153	General limitation applies only to Draft Assessment Orders.	1st April 2009
Section 153B	Search-related assessment limits apply only to Draft Assessment Orders.	1st October 2009
Section 144C	Final order timeline is independent of Section 153.	1st April 2009

With this proposed amendment the government has moved away from the "day-counting" method which had led to significant litigation. The proposed amendment is effective retrospectively from June 1, 2007, this is to ensure that orders previously invalidated by a one-day calculation error are now protected.

2. Standardising Transfer Pricing Assessment Timeline

The Budget proposes to introduce a new sub-section 92CA(3AA) in the Act, to resolve the controversy surrounding calculation of 60-day limitation period for passing TP assessment order. The proposed sub section retrospectively defines the exact dates by which the TP assessment order must be passed. With this proposed amendment the government has moved away from the "day-counting" method which had led to significant litigation. The proposed amendment is effective retrospectively from

June 1, 2007, this is to ensure that orders previously invalidated by a one-day calculation error are now protected.

Under the present Sub Section (3A) of Section 92CA of the Act, a Transfer Pricing Officer (TPO) is required to pass an order determining the Arm's Length Price (ALP) at any time **before sixty days prior to the date on which the period of limitation referred to in Section 153 or Section 153B of the Act.**

In the past, both the taxpayer and Revenue disagreed on the interpretation of the word "before".

- Revenue's Contention has been, If the assessment deadline is December 31st, 60 days prior is November 1st. Therefore, an order passed on November 1st is valid.
- Taxpayer's View has been that the law says the order must be passed before 60 days prior. If November 1st is the 60th day, the order must be passed on or before October 31st.

This technicality became a major issue following the ruling of the **Madras HC** in the case of *Pfizer Healthcare India wherein* the general assessment deadline for the relevant year was **Dec 31st 2019** and the TPO passed the order on **Nov 1st 2019**. The Madras HC conducted a literal "backward count." It determined that 60 days prior to Dec 31st falls exactly on Nov 1st. Because the statute uses the phrase **"before sixty days prior",** the Court held that Nov 1st itself must be excluded.

Consequently, the Court ruled that the TP assessment order should have been passed by October 31st. Since it was passed on Nov 1st, it was time-barred by exactly one day. This "one-day delay" resulted in the entire TP adjustment being quashed, and the taxpayer was deemed "ineligible" for the DRP process, effectively collapsing the entire assessment.

To end the confusion caused by leap years and varying month length, the Budget replaces the "counting" method with a **Fixed Calendar Formula** under the new **Section 92CA(3AA).**

If the Assessment Limitation Expires On:	The TPO Order Must Be Made By:
31st March (Non-Leap Year)	**30th January**
31st March (Leap Year)	**31st January**
31st December	**1st November**

The proposed introduction of Section 92CA(3AA) to the Act effectively nullifies the "One-Day" defence and provides clarity to both tax payer and the Revenue.

The proposed amendment reflects the Government's intent that disputes be decided on substantive merits rather than defeated on hyper-technical grounds, recognising that procedures are meant to guide the assessment process and that, absent any deliberate omission, justice should not be denied on mere interpretational issues.

3. "Trust-Based" Compliance

Presently, failure to furnish Accountant's Report (TP Audit Report in **Form 3CEB**) by the prescribed due date (presently October 31st) attracts a flat penalty of **₹ 1,00,000,** even in cases where the taxpayer filed the Form 3CEB after the due date.

The present regime categorises non-compliance by even a single day as penal in nature and does not consider the intent of the taxpayer especially in cases where the filing was done within few days of the compliance date. This penal categorisation of non-compliance was viewed severely by global compliance auditors and regulators, even if the default was purely technical and not an act of tax evasion.

Budget proposes a fundamental shift on how filing delays would be handled.

- The proposed amendment omits the corresponding penalty provision under the Income-tax Act, 2025 (the New Act) and shifts the consequence of delay to Section 428(4) of the New Act as a 'fee'.

- Instead of a flat penalty, a "Graded Fee" would be introduced based on the period of delay:

    1. **Delay up to 1 month:** A fee of **₹ 50,000.**
    2. **Delay beyond 1 month:** A fee of **₹ 1,00,000.**

By reclassifying this as a "fee" under Section 428 of the New Act, the government has decriminalized the delay. A "fee" is a compensatory payment for the late submission of a document, whereas a "penalty" is a punishment for an offense.

4. Change in the Definition of Associated Enterprise

The Budget proposes to amend the definition of Associated Enterprise in the New Act by excluding the reference to Section 144. As a result, transactions between a taxpayer and an entity located in a Special Economic Zone will no longer be regarded as falling within the ambit of Transfer Pricing provisions merely by virtue of that location. However, such transactions would still be subject to Transfer Pricing regulations where any of the other tests of Associated Enterprise under the law are satisfied.

5. Conclusion: A New Era of Tax Predictability

The Union Budget 2026 marks a decisive shift in India's fiscal philosophy, moving from an adversarial tax culture toward a "Trust-Based" ready for business framework. By resolving limitation traps, expanding the **Safe Harbour** threshold, and fast-tracking **APAs**, the government has neutralized the some of the most volatile friction points for the IT and ITeS sectors.

At the same time retrospective amendments proposed by the Government makes it amply clear that litigation based on hyper technical issues instead of merits would not be accepted.

■

TDS AND TCS PROVISIONS



Smita Patni

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Overview

The article reviews key themes emerging from the TDS and TCS amendments proposed in the Finance Bill, 2026 under the Income-tax Act, 2025. It highlights the Legislature's effort to address practical challenges observed during the initial implementation of the new Income Tax Act,2025 through targeted relief, procedural simplification and clarification-oriented measures. The reforms reflect a broader policy shift towards technology-enabled compliance, reduction of avoidable compliance burden, and improved administrative efficiency for taxpayers as well as administrator.

The amendments also focus on rationalising the tax collection framework, easing cash-flow pressures in certain cases, and improving certainty in the application of withholding provisions. Several changes are clarificatory or alignment-driven in nature, aimed at ensuring consistency, reducing interpretational ambiguity and strengthening the operational framework of the withholding tax regime.

Overall, the Finance Bill, 2026 signals a phase of consolidation and stabilisation of the withholding provisions framework , emphasising proportionality, transparency and system-based administration, while retaining its core role in advance tax collection, information reporting and widening of the tax base.

Introduction

The framework of tax deduction and collection at source (TDS and TCS) constitutes a central pillar of India's direct tax administration. Beyond its function as an advance tax collection mechanism, it also serves as a critical tool for real-time revenue mobilisation, information reporting, and expansion of the tax base. Given its wide transactional coverage and its impact across diverse categories of taxpayers, amendments to the TDS and TCS provisions assume particular significance from both a compliance and an administrative perspective.

Beyond its function as an advance tax collection mechanism, it also serves as a critical tool for real-time revenue mobilisation, information reporting, and expansion of the tax base.

The Finance Bill, 2026 ("Finance Bill") proposes a set of amendments to the withholding provisions, reflecting a legislative intent to rationalise procedures,

address identified hardships, and resolve interpretational ambiguities. The proposed changes encompass relief measures, technology-enabled procedural reforms, rationalisation of rates under the tax collection at source regime, and recalibration of penal and prosecution provisions. Collectively, these amendments indicate a continued policy emphasis on proportionality, system-driven compliance, and reduction of unintended compliance burdens, while preserving the core function of TDS and TCS as mechanisms of advance tax collection, information gathering and expanding tax base and strengthening the integrity of the tax system.

In this perspective, this article examines the amendments relating to tax deduction and collection at source proposed in the Finance Bill with reference to their statutory context, scope, and implications under the Income-tax Act, 2025 ("Act"). References to the corresponding provisions under the erstwhile Income-tax Act, 1961 have been provided, wherever relevant, by way of footnotes for contextual continuity and interpretational clarity.

Substantive Amendments Affecting Taxability And Withholding

1. Exemption of Interest on Compensation Awarded by the Motor Accidents Claims Tribunal

Under the Act, interest received on compensation awarded by the Motor Accidents Claims Tribunal (MACT) has hitherto been taxable in the hands of the recipient under section 278[1] of the Act.

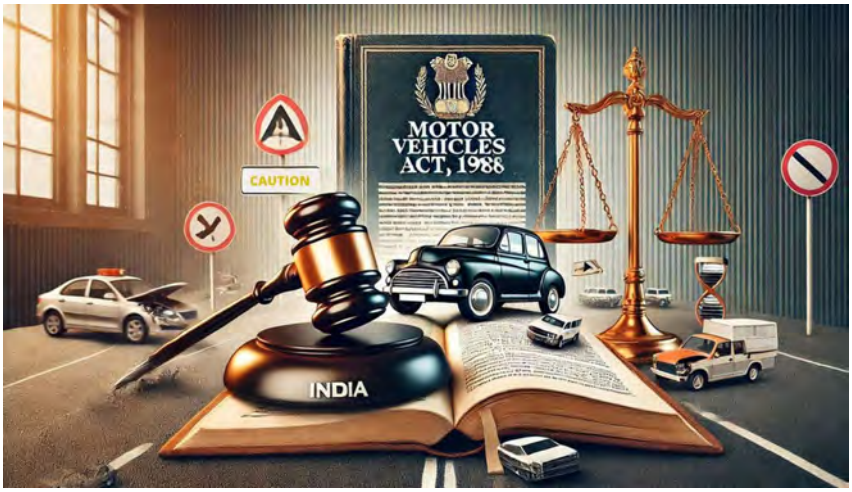
The Finance Bill proposes to exempt income in the nature of interest awarded by the Motor Accidents Claims Tribunal under the Motor Vehicles Act, 1988, where such income is received by an individual or his legal heir.

Correspondingly, section 393(4) of the Act, read with Table Sl. No. 7, Column C (c)(iv)][2], thereof, required deduction of tax at source on such interest where the aggregate amount credited or paid during the tax year exceeded ₹ 50,000.

The Finance Bill[3] proposes to exempt income in the nature of interest awarded by the Motor Accidents Claims Tribunal under the Motor Vehicles Act, 1988, where such income is received by an individual or his legal heir. The exemption is proposed to be introduced by inserting a new entry No. 38B in Schedule III, to be read with section 11[4] of the Income-tax Act, 2025. Consequent to the exemption of the underlying income, a corresponding amendment[5] is proposed in the tax deduction at source provisions to provide that no tax shall be deducted at source in respect of such interest, irrespective of the quantum thereof, where the recipient is an individual.

The exemption is confined to interest awarded by the Motor Accidents Claims Tribunal but seems to cover additional interest to be paid for delay in depositing the awarded amount. While the exemption from tax extends to interest received by both the claimant and the legal heir, the relaxation from tax deduction at source expressly refers to individuals. Accordingly, where the legal heir is a non-individual, the existing provisions relating

1. *Erstwhile 145B of ITA 1961*
2. *Erstwhile Sec 194A(ixa) of ITA, 1961*
3. *Refer Clause 108 of Finance Bill, 2026*
4. *Erstwhile Sec 10 of ITA, 1961*
5. *Refer Clause 72 of Finance Bill, 2026*



to deduction of tax at source may continue to apply, subject to the prescribed threshold[6].

The amendment represents a relief-oriented measure intended to address hardship faced by accident victims and their families, by improving post-award liquidity and reducing avoidable compliance arising from tax deduction on compensatory receipts including filing of Tax returns solely to claim TDS refunds thereafter. The proposed amendment is stated to take effect from 1 April 2026.

2. Extension of TDS Exemption to Co-operative Societies Engaged in Banking

Section 393(4)[7] of the Act specifies circumstances in which tax is not required to be deducted at source on interest income other than interest on securities. Under the existing provision of the Act, as set out in Table Sl. No. 7, Column C (a)(i), exemption from tax deduction at source is available where such interest is credited or paid to a banking company. Unlike the position under the Income-tax Act, 1961 the provision does not expressly extend the exemption to co-operative societies engaged in the business of banking, including co-operative land mortgage banks, resulting in an unintended divergence from the earlier statutory framework.

The Finance Bill[8] proposes to amend section 393(4) to extend the exemption from tax deduction at source on interest income to any co-operative society engaged in carrying on the business of banking, including a co-operative land mortgage bank. The amendment seeks to restore parity with the corresponding provisions of the Income-tax Act, 1961and is clarificatory in nature, under which co-operative banks were placed at par with banking companies for the purposes of exemption from tax deduction on interest payments. The amendment is proposed to take effect from 1 April 2026.

The Finance Bill proposes to amend section 393(4) to extend the exemption from tax deduction at source on interest income to any co-operative society engaged in carrying on the business of banking, including a co-operative land mortgage bank.

6. *FAQs-Budget-2026*
7. *Erstwhile Sec 194A(3)(iii)(a) of ITA 1961*
8. *Refer Clause 72of Finance Bill, 2026*

Procedural and Technology-Enabled Reforms in Withholding Compliance

1. Electronic Issuance of Certificates for Nil or Lower Deduction of Tax

Section 395(1)[9] of the Act governs the issuance of certificates permitting deduction or collection of tax at a lower rate or at nil rate. Under the existing framework, an application is required to be made by the payee to the Assessing Officer, who may, upon examination and his satisfaction of the estimated income and tax liability of the applicant, issue such certificate. The provision applies uniformly and is presently administered through a largely manual verification process irrespective of the quantum involved for all category of taxpayers, often resulting in procedural delays and compliance burden, particularly for small taxpayers.

The Finance Bill proposes to introduce an alternative optional electronic mechanism for the filing and disposal of applications for certificates for lower or nil deduction of tax catering to small taxpayers. Under the proposed amendment[10], an eligible payee may, at his option, electronically furnish an application before a prescribed income-tax authority, which will issue the certificate if the prescribed condition is fulfilled, or reject the application in case of failure to meet the prescribed condition or if the application is incomplete. The scope of the mechanism, including eligible taxpayers, competent authority and governing conditions, is proposed to be prescribed by rules[11].

The Finance Bill proposes to introduce an alternative optional electronic mechanism for the filing and disposal of applications for certificates for lower or nil deduction of tax catering to small taxpayers.

The proposed amendment is a compliance friendly, technology enabled procedural reform which will be system driven, expedite the process and ensure transparency and reliance while retaining safeguards through prescribed conditions.

The amendment is stated to take effect from 1 April,2026.

2. Relaxation from requirement to obtain TAN in case of transfer of immovable property by a non-resident

Section 397(1)(a)[12] of the Act mandates that every person deducting or collecting tax shall obtain a tax deduction and collection account number (TAN), subject to such exceptions as may be prescribed. Under the existing framework, a resident buyer acquiring immovable property from a resident seller is not required to obtain TAN for the purpose of deducting tax at source, and may comply with the withholding obligation using his/her permanent account number (PAN). However, where the seller of the immovable property is a non-resident, the resident buyer is presently required to obtain TAN for deducting tax under section 393(2) [Table Sl. No.17][13] of the Act, even in cases involving a single or isolated transaction.

9. *Erstwhile Section 197(1) of ITA 1961*
10. *Refer Clause 74 of Finance Bill, 2026*
11. *FAQs-Budget-2026*
12. *Erstwhile Sec 203A(1) of ITA, 1961*
13. *Erstwhile Sec 195 of ITA, 1961*

The Finance Bill[14] proposes to amend section 397(1)(c)[15] and extend exemption to a resident individual or a HUF and they shall also not be required to obtain TAN for deducting tax at source in respect of consideration paid on transfer of immovable property to a non-resident, covered under section 393(2) of the Act. Pursuant to the amendment, tax is to be deducted and reported in the challan-cum-statement that is filed with the department using the PAN of the buyer[16], in such manner as may be notified, thereby aligning the compliance mechanism with that applicable to transactions involving resident sellers.

The amendment is procedural in nature and does not alter the rate or manner of computation of tax required to be deducted under section 393(2). The relaxation is expressly restricted to resident individuals and HUF and does not extend to other categories of purchasers.

The amendment is proposed to take effect from 1 October 2026.

3. Centralised Electronic Furnishing of Declarations through Depositories

Section 393(6)[17] of the Act provides that tax is not required to be deducted at source in specified cases where the recipient furnishes a written declaration to the person responsible for paying the income. The declaration mechanism applies to specified categories of income, including dividends, interest on securities and income from units of mutual funds. Under the existing framework, such declarations are required to be furnished separately to each deductor, resulting in duplication of compliance where an assessee holds investments through multiple intermediaries.

The Finance Bill proposes to permit electronic furnishing of declarations under section 393(6) to a depository, in cases where the relevant units or securities are held in dematerialised form and are listed on a recognised stock exchange.

The Finance Bill proposes[18] to permit electronic furnishing of declarations under section 393(6) to a depository, in cases where the relevant units or securities are held in dematerialised form and are listed on a recognised stock exchange. The depository is required to transmit the declaration to the concerned deductors, who shall be mandated to act upon such declaration and report the same to the prescribed income-tax authority on a quarterly basis, before the seventh day of the month immediately following the end of each quarter as compared to the earlier monthly reporting requirement thereby easing compliance improving efficiency,. The procedural aspects relating to filing, transmission and reporting of declarations are proposed to be governed by rules.

Overall, the reform enhances ease of compliance, procedural efficiency and system-based reporting, while retaining safeguards within the statutory framework.

The amendment is proposed to take effect from 1 April 2027.

14. *Refer Clause 75 of Finance Bill, 2026*
15. *Erstwhile Sec 203A(3) of ITA, 1961*
16. *FAQs-Budget-2026*
17. *Erstwhile Sec 197(1A) of ITA, 1961*
18. *Refer Clause 72 of Finance Bill, 2026*

Clarificatory Amendments to Address Interpretational Ambiguities

1. Application of TDS on supply of manpower

The applicability of TDS provisions to payments made for supply of manpower has historically been a subject of interpretational divergence, owing to overlapping coverage under the provisions relating to payments to contractors and fees for professional or technical services. Under the Act, such payments could potentially fall for consideration under section 393(1), Table Sl. No. 6(i)[19] or (ii)[20], dealing with payments to contractors, or under Table Sl. No. 6(iii)[21], relating to fees for professional or technical services, depending on the nature of the arrangement.

In order to address this ambiguity, the Finance Bill proposes[22] to amend section 402(47)[23] by expanding the definition of the term "work" to expressly include "supply of manpower to a person to work under his supervision, control or direction". As a consequence, payments for supply of manpower meeting the test of supervision, control or direction are intended to be governed by the provisions applicable to payments to contractors under section 393(1), Table Sl. No. 6(i) or (ii), attracting deduction of tax at source at the rates specified therein, depending upon the status of the payee. The classification assumes significance, as payments falling within the scope of contractual work attract deduction of tax at source at the rates applicable to contractors, namely one per cent or two per cent, as the case may be, whereas payments characterised as professional or technical services are subject to deduction of tax at source at the rate of ten per cent.

The amendment does not draw any distinction between skilled and unskilled manpower. In the absence of an express carve-out, the expanded definition appears to encompass all categories of manpower supplied to work under the control and supervision of the recipient. This may continue to raise interpretational questions in cases involving deployment of technically qualified or specialized personnel, where the factual matrix may overlap with the characteristics of professional or technical services. While the amendment seeks to bring clarity and reduce litigation in routine manpower supply arrangements, further administrative guidance may be required to address classification issues in complex or skill-intensive engagements.

The amendment is proposed to take effect from 1 April 2026.



19. *Erstwhile Sec 194C(1) of ITA, 1961*
20. *Erstwhile Sec 194M (1) and its Ist Proviso of ITA, 1961*
21. *Erstwhile Sec 194J (1) and its Ist Proviso of ITA, 1961*
22. *Refer Clause 78 of the Finance Bill, 2026*
23. *Erstwhile Explanation (iv) to Sec 194C of ITA, 1961*

(i) Definition of "Authorised Person" for the Purposes of Section 402(27)

Section 402(27)[24] of the Income-tax Act, 2025 defines the expression "person responsible for paying" and, in the context of payments made to a non-resident in connection with the transfer of a foreign exchange asset, treats the "authorised person" as the person so responsible. While the term "authorised person" was defined under the Income-tax Act, 1961, by reference to clause (c) of section 2 of the Foreign Exchange Management Act, 1999, no corresponding definition exists under the Income-tax Act, 2025, resulting in a legislative gap. The Finance Bill[25] accordingly proposes to amend section 402(27) so as to define "authorised person" by giving reference to the said provision of the Foreign Exchange Management Act, 1999, thereby restoring clarity in identifying the entity responsible for withholding tax in such cross-border transactions.

The amendment is corrective and clarificatory in nature and is proposed to take effect from 1 April 2026.

(ii) Alignment of Statutory Cross-Reference in Section 393

Section 393(1) [Table: Sl. No. 3(i)][26] of the Act provides for deduction of tax at source on specified payments, including consideration paid on transfer of immovable property. Note 3 to Table Sl. No. 3 under the said provision prescribes the monetary threshold and stipulates that TDS is applicable where the sale consideration or the stamp duty value is equal to or exceeds ₹ 50 lakh. The reference in the Note, however, presently points to Table Sl. No. 3(iii), which deals with compulsory acquisition, whereas the threshold is intended to apply to transfers of immovable property covered under Table Sl. No. 3(i). The Finance Bill[27] proposes to amend the Note so as to align the statutory reference with the intended provision, by substituting the reference to Table Sl. No. 3(i).

The amendment is clarificatory in nature and is proposed to take effect from 1 April 2026.

(iii) Rationalisation of Tax Collection at Source (TCS) Regime

Section 394(1)[28] of the Income-tax Act, 2025 provides for collection of tax at source at different rates in respect of specified receipts. Prior to the proposed amendments, the TCS framework comprised multiple rates across transaction categories, resulting in a fragmented rate structure and varying degrees of upfront tax incidence. The Finance Bill, 2026 proposes to rationalise the TCS regime by reducing rate dispersion and moving towards greater uniformity across specified transactions.

The rate rationalisation proposed under the Finance Bill, 2026[29], in respect of specified receipts, is summarised below:

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24. Erstwhile Sec 204 of ITA, 1961
25. Refer Clause 78 of the Finance Bill, 2026
26. Erstwhile Sec 194IA(1)&(2) of ITA, 1961
27. Refer Clause 72 of the Finance Bill, 2026
28. Erstwhile Sec 206C(1) and its Table of ITA, 1961
29. Refer Clause 73 of the Finance Bill, 2026

Nature of receipt	Current Rate	Proposed Rate
Sale of alcoholic liquor for human consumption	1%	2%
Sale of tendu leaves	5%	
Sale of scrap	1%	
Sale of minerals, being coal or lignite or iron ore	1%	
Remittance under the LRS for the purpose of education or medical treatment(exceeding 10 Lakhs)	5%	
Sale of overseas tour program package (including expenses for travel, hotel stay, boarding, lodging or any similar or related expenditure)(Without threshold)	5% up to ₹ 10 lakh and 20% on amount exceeding ₹ 10 lakh	
Remittance under the LRS for other than for the purpose of education or medical treatment(exceeding ₹ 10Lakhs)	20%	20%

In the context of foreign remittances under the LRS, while the rate applicable to remittances for education and medical treatment beyond the prescribed threshold has been reduced, and overseas tour programme packages are proposed to be subject to a uniform rate of tax collection without the benefit of any threshold, the rate applicable to other categories of remittances continues to remain unchanged.

As noted in the Memorandum explaining the provisions of the Finance Bill, the rationalisation of the rate applicable to overseas tour programme packages is intended to address the observed shift of outbound travel bookings from domestic tour operators to overseas operators under the earlier TCS framework. Further, the continued application of a higher rate of tax collection at source on residual categories of remittances under the Liberalised Remittance Scheme has implications for outbound investments by individuals, including remittances towards investment undertaken pursuant to employee stock option or similar equity participation frameworks. In such cases, the tax collection at source operates as a significant upfront cash outflow, notwithstanding the availability of credit or refund at a later stage.

The proposed rationalisation reflects a calibrated policy shift aimed at moderating the cash-flow impact of tax collection at source, particularly in cases where TCS functions primarily as a reporting mechanism. The revised rates are proposed to take effect from 1 April 2026.

(iv) Binding Nature of Guidelines Issued under Section 400(2)

Section 400(2)[30] of the Act, empowers the CBDT, with the prior approval of the Central Government, to issue guidelines for the purpose of removing difficulties in giving effect to the provisions relating to tax deduction and collection at source. While the provision contemplates the issuance of

30. *Erstwhile Sec 206 C of ITA, 1961*

The proposed amendment under the Income-tax Act, 2025 adopts a broader approach by extending statutory recognition to the binding nature of guidelines issued under section 400(2) across the entire framework governing tax deduction and collection at source.

such guidelines and requires them to be laid before each House of Parliament, it does not expressly provide for the binding nature of such guidelines, giving rise to ambiguity regarding their legal effect.

The Finance Bill[31] proposes to amend section 400(2) to expressly provide that any guidelines issued thereunder shall be binding both on the income-tax authorities and on persons responsible for deduction or collection of tax. Under the Income-tax Act, 1961, the concept of binding guidelines was recognised in a limited and transaction-specific context in select provisions relating to tax deduction and collection at source, including sections 194-O[32], 194Q[33] and 194R[34], and the corresponding provisions under sections 206C(1G)[35] and 206C(1H).

The proposed amendment under the Income-tax Act, 2025 adopts a broader approach by extending statutory recognition to the binding nature of guidelines issued under section 400(2) across the entire framework governing tax deduction and collection at source.

The amendment is proposed to take effect from 1 April 2026.

Conclusion

The amendments relating to the withholding tax provisions proposed under the Finance Bill reflect a measured legislative effort to refine the operation of the Act in its initial years of implementation. The changes are primarily directed towards addressing practical issues that have emerged in practice, through a combination of targeted relief, procedural streamlining, technology-enabled compliance and clarification of interpretational aspects, without altering the fundamental structure of the withholding tax regime.

While several amendments are expressly clarificatory or alignment-oriented, their practical significance lies in the certainty and administrative consistency and compliance efficiency they seek to introduce. The Finance Bill thus represents a phase of consolidation and procedural modernisation of the withholding tax framework under the Act, with the effectiveness of these measures likely to depend on the manner in which subordinate legislation and administrative guidance are framed and implemented.

It may also be noted that the Finance Bill contains important proposals relating to rationalisation of penalty and prosecution provisions in the context of TDS compliance. Given their distinct scope and detailed implications, these aspects merit a separate and focused examination and are dealt in a separate article.

■

31. *Refer Clause 77 of the Finance Bill, 2026*
32. *Sec 393,400 & 402 of ITA 2025*
33. *Sec 393,400 & 402 of ITA 2025*
34. *Sec 393,400 & 402 of ITA 2025*
35. *Sec 394 of ITA 2025*

INDIRECT TAX REFORMS IN UNION BUDGET 2026-27: SHAPING INDUSTRY FOR A RESILIENT ECONOMY



Biren Vyas

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Overview

The article highlights the impact of recent changes in Indirect tax regulations on the industry, and the general public. The changes are a result Government's Make in India initiative and emphasizes how policy reforms are designed not only to strengthen India's export competitiveness but also to ease the burden of import duties on select products, thereby encouraging outbound trade.

On the public front, the measures aim to improve ease of living index by reducing costs of essential goods, particularly medicines for chronic diseases, ensuring wider accessibility and affordability in the healthcare sector alongwith providing benefits with respect to electronic equipments through relaxation in duty as well as providing incentives to businesses involved in fishing activities in India.

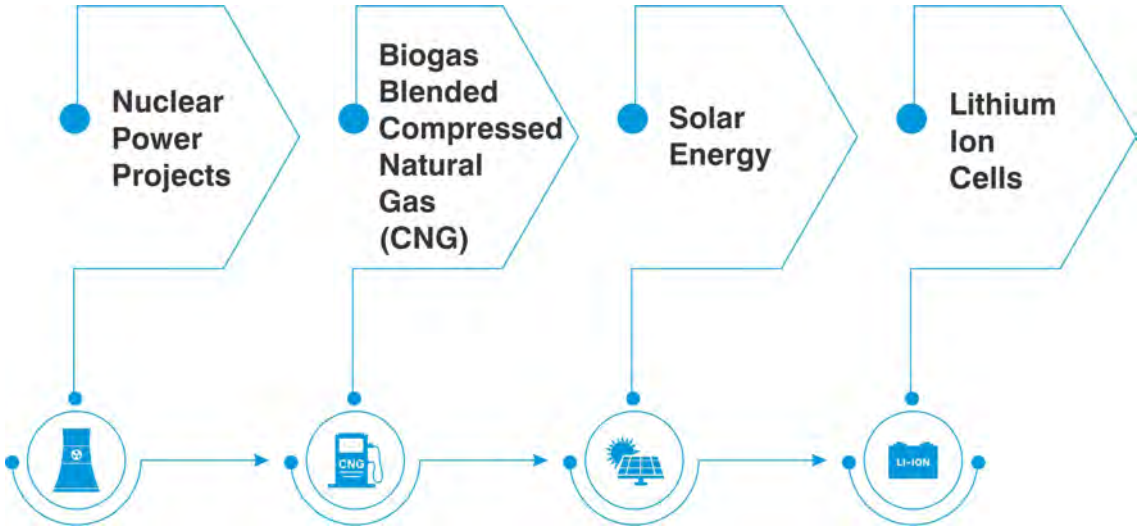
The discussion underscores the Government's proactive initiatives to streamline customs procedures and create a more conducive environment for exporters. In parallel, the Make in India program receives a significant boost, as domestic manufacturers are supported through policies that prioritize local industry and incentivize indigenous production.

Overall, the article conveys the relevant sector specific custom reforms largely, not limited to trade facilitation but extend to broader socio-economic objectives strengthening industry, promoting exports, supporting public health, and advancing the national vision of self-reliance.

The Union Budget 2026–27 represents a significant step towards modernising and tightening India's indirect tax framework, with the dual objective of boosting domestic production and enhancing global competitiveness, while continuing to protect public welfare. The Budget focuses on tariff rationalisation aimed at reducing trade frictions, unlocking exporter liquidity, and attracting investment—particularly benefiting manufacturers and export oriented MSMEs in India.

Key thrust of the Budget is the strengthening of domestic manufacturing, the promotion

Key thrust of the Budget is the strengthening of domestic manufacturing, the promotion of exports, and the enhancement of trade facilitation.



of exports, and the enhancement of trade facilitation. Demonstrating a strong commitment to public welfare, especially **Healthcare**, customs duty benefits are provided to medicines used in the treatment of cancer and rare diseases, easing the financial burden on patients and improving access to life saving treatments.

Reduced duties on critical medicines further contribute to strengthening healthcare infrastructure by lowering the cost of treatment for cancer and rare diseases. The emphasis on renewable energy also supports businesses engaged in the generation and adoption of sustainable energy solutions.

In line with India's **Energy transition objectives**, customs duty benefits are provided to the, encouraging investment in clean energy infrastructure.

To encourage use of **Renewable fuels**, the Budget provides taxation benefits/ relaxation to following energy sectors:

- Nuclear power projects.
- Biogas blended compressed natural gas (CNG)
- Solar energy
- Lithium Ion Cells

To promote exports in the textile and footwear sector, the Government has proposed duty free import of specified inputs for footwear exports, along with an extension of the time limit for completing exports.

To further boost the electrical sector performance, duty exemptions/concessions for parts and components for use in manufacturing of television, CCTV cameras, specified goods for LCD and LED TV Panels.

Collectively, these measures are designed to enhance India's global competitive edge by boosting exports and strengthening foreign exchange reserves, while simultaneously enabling small businesses and MSMEs to enhance productivity and better serve the domestic market.

Furthermore, there are few GST updates around Intermediary services, post sale discounts and liquidity for refunds inverted duty refund applications.

The measures proposed in the Union Budget are crafted to bolster the Make in India initiative by targeting cost reductions through customs exemptions and concessional rates, thereby enhancing productivity and better serving the domestic and international market.

With emphasis on indirect taxation, we aim to elucidate below the rationale behind amendments from a sectoral viewpoint.

Healthcare Sector

Healthcare has emerged as one of India's largest and fastest growing sectors, both in terms of revenue generation and employment opportunities. It encompasses a wide spectrum of services and industries, including hospitals, medical devices, clinical trials, outsourcing, telemedicine, medical tourism, health insurance, and medical equipment. This rapid expansion is driven by improved coverage, enhanced service delivery, and rising expenditure from both public and private stakeholders.

India is witnessing an alarming surge in cancer cases. Approximately 20 million new cancer cases were reported globally in 2022, with 9.7 million deaths. In India, an estimated 1.4 million new cancer cases were recorded in 2023, reflecting the growing burden of cancer on the population and the pressing need to address it.

Thermal power generated using coal continues to play a dominant role in energy production.

To aid the treatment of cancer and other rare diseases, the Union Budget proposed exemptions aimed at strengthening the healthcare sector by improving access to life-saving therapies, reduce treatment costs, and encourage domestic manufacturing of critical medical inputs as proposed in below amendments:

i. Cancer - **Customs duty exemption** for 17 drugs used for treatment of various kinds of cancers.

ii. Rare diseases - Extending Custom duty **exemption** on drugs, medicines and food imported for treatment of these diseases. 7 new rare diseases are proposed to be added to the list.

iii. Concessional rates of Basic Customs duty have been extended **to 31 March 2028** on:

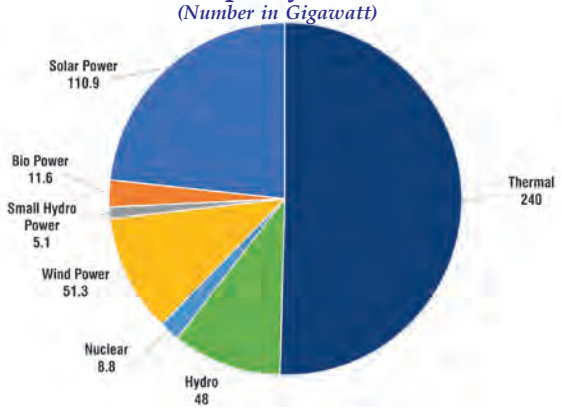
- Medical and surgical instruments,
- Other medical apparatus,
- Hospital Equipments
- Portable X-ray machine
- Goods used in manufacture of enzyme linked immunosorbent assay kits (ELISA Kits)

Energy sector

India's energy sector is at a pivotal transition point, shaped by rising demand, rapid urbanisation, and the need for secure and affordable power. For decades, the country has relied heavily on coal, which still accounts for a major share of electricity generation. Thermal power generated using coal continues to play a dominant role in energy production.

India accounts for a total of 476 GW in terms of installed power capacity out of which thermal power accounts for approximately 50% totaling to 240 GW as on June 2025.

India Installed Power Capacity Mix
(Number in Gigawatt)



Nuclear energy

Nuclear power offers significant advantages over thermal (fossil fuel based) generation by producing far lower greenhouse gas emissions, requires less fuel for the same energy output, and provides a more reliable long term energy source compared to coal or gas plants.

While thermal power is a major contributor to greenhouse gases and air pollution, carbon emissions under Nuclear based power generation is very low, nearly zero direct CO_2 emissions during operation. Moreover, thermal power requires continuous large-scale burning of coal, oil, or gas whereas Nuclear power generation requires small amounts of uranium to produce massive energy output.

Thus, Nuclear energy remains a cornerstone of India's long-term energy strategy with plans to expand capacity to 100 GW by 2047 from the current 8.8 GW in pursuit of sustainability, energy security and drive Nuclear Energy Mission introduced for Viksit Bharat.

Nuclear energy remains a cornerstone of India's long-term energy strategy with plans to expand capacity to 100 GW by 2047.

To accelerate this, Government has proposed measures to strengthen the nuclear energy ecosystem are outlined below:

Particulars	Amendment proposed
Nuclear power projects set up in India	**Basic Customs Duty exemption for goods required in setting up of Nuclear Power Projects,** irrespective of their capacity. The said exemption has been **extended till 30 September 2035** from the earlier date of 30 September 2027.

Biogas Sector

Witnessing rapid expansion, propelled by strong government initiatives, rising investments, and the country's abundant agricultural resources, this is another sector positioned as key contributor to energy security while simultaneously reducing greenhouse gas emissions.

India possesses vast biogas potential, largely driven by its sizeable livestock population and agricultural waste base. With more than 5 million biogas plants already in operation, the industry is on a growth trajectory Biopower accounts for approximately 2% of the total installed power capacity as on June 2025 quantified at 11.6 GW.

To further strengthen the Biogas generation as a source of renewable energy, the Union Budget proposes amendments as enumerated below:

Particulars	Amendment proposed
Blended Compressed National Gas (CNG) containing biogas or compressed biogas	**Previously** CNG attracted basic excise duty of 14% and biogas/ Compressed Biogas (CBG) attracted 5% GST. The amount of GST paid on the biogas/ CBG contained in blended CNG was exempted from Central Excise duty levy. **Proposed Amendment** To further promote blending in CNG, the entire value of biogas/ CBG contained in such blended CNG along with the appropriate GST paid on it, is being exempted from the value for the purpose of calculation of central excise duty on such blended CNG through Excise notification.

Solar energy

The shift to renewable energy is not just desirable, it is essential. India has set ambitious clean energy targets, driven by climate commitments, energy security needs, and falling renewable technology costs. Solar and wind power, supported by storage solutions, offer a pathway to reduce carbon emissions, diversify the energy mix, and reduce import bills.

India's solar power potential is projected to reach 10,830 GW by 2025. With around 300 sunny days each year, the country receives approximately 5,000 lakh crores kilowatt-hours of solar energy annually, equivalent to power over 140,000 metro-scale cities or more than 30 lakh smaller cities.

This annual solar energy availability surpasses the total possible output from all of India's fossil fuel reserves combined, underscoring the immense opportunity for renewable energy expansion and therefore the Budget proposes the amendment as under:

Particulars	Amendment proposed
Sodium antimonate for use in manufacture of solar glass	**Basic Customs Duty** on sodium antimonate has been **reduced from 7.5% to Nil till 31st March 2028.**

Lithium Ion Cells

India has been facing rising power shortages due to surging electricity demand, especially

during peak evening and night hours when solar generation drops. Battery Energy Storage Systems (BESS) are emerging as a critical solution, providing grid stability, storing excess renewable energy, and ensuring reliable supply during shortages.

To encourage investment and growth in the Lithium-Ion powered batteries to be used in Battery Energy Storage Systems, the Government has proposed targeted reforms in the Union Budget 2026-27. These measures are designed to strengthen the sector's competitiveness, provide fiscal support, and create a more enabling environment for domestic manufacturers with the proposed amendments:

Particulars	Amendment proposed
Import of capital goods pertaining to manufacture of lithium-ion cells	**Previously** Exemption from Basic Customs Duty was available only for capital goods used in the manufacture of lithium-ion cells for batteries of Electrically Operated Vehicles (EVs) **Proposed Amendment** The above exemption from Basic Customs Duty has now been extended to the same capital goods when used in the manufacture of lithium-ion cells for batteries Battery Energy Storage Systems (BESS) also

Electrical sector

India is experiencing significant growth in this sector, driven by domestic demand, government initiatives, and a burgeoning middle class. Key government initiatives like the Production-Linked Incentive (PLI) scheme and the 'Make in India' campaign are pivotal in boosting domestic manufacturing and reducing reliance on imports.

Electronics is expected to be one of the top three export categories for 2025-26. The digital economy target of INR 90.3 lakh crores is projected to increase the demand to around INR 16.25 lakh crores. Achieving these targets will depend on global competitiveness and optimal scale, supported by adequate fiscal and policy measures in line with National Policy on Electronics 2019.

Amendments in the union budget 2026-2027 to boost this sector are as follows:

Particulars	Amendment proposed
Goods/parts used in LCD/ LED manufacturing and CCTV camera	Extension of BCD exemption/concessional for a period of 2 year (till 31st March 2028)
Television and film shooting equipment	Customs duty exemption withdrawn for television and film-shooting equipment imported by foreign film units or television teams.
Domestic manufacturers of Microwave Ovens	Basic Customs Duty exemption for a period of 2 years (till 31st March 2028): (i) AC Synchronous Motor or AC Fan Motor (ii) Transformer (iii) Electric Heating Resistors (iv) Other Parts.

Civil and Defence Sector

India's defence sector has witnessed a profound transformation since 2014, shifting

from heavy reliance on imports to a model increasingly centred on self-reliance and indigenous production. As one of the world's leading military powers, India plays a pivotal role in safeguarding regional security and advancing its strategic objectives.

Through the Make in India initiative and a series of policy reforms, the Government has actively promoted domestic production, reduced dependence on foreign procurement, and fostered innovation in advanced military technologies. This strategic shift forms a key pillar of India's vision of Atmanirbharta (self-reliance) in defence, positioning the country as an emerging hub for cutting edge defence equipment and technology development.

To further strengthen India's civil and defence sectors, the Budget proposes a series of amendments aimed at supporting domestic manufacturers as outlined below:

Particulars	Amendment proposed
Aircraft manufacturing and repairs, maintenance, overhaul etc.	Basic Customs Duty exemption has been granted to components and parts, including engines, for manufacture of aircrafts and for manufacture of parts of such aircrafts by Public Sector Units under the Ministry of Defence, subject to fulfillment of conditions

Marine sector

The marine industry, particularly the seafood sector is significant as India commands a prominent position in the global fisheries sector, contributing nearly 8% to worldwide fish production. The country ranks 3rd in overall fish production, 2nd in aquaculture output, and 4th in seafood exports. This strong standing reflects India's vast aquatic resources, robust aquaculture practices, and growing emphasis on sustainable fisheries management.

Recognizing the growth potential, the following amendments have been proposed in the budget

Particulars	Amendment proposed
Fish caught by Indian Fisherman beyond territorial waters	**Previously** While the same landed on Indian ports – Was treated as imports attracting customs duty **Proposed Amendment** • Allow duty free treatment of fish caught by Indian flagged vessels beyond territorial waters when landed in India. • Treat such fish as export of goods when it lands directly at foreign ports. • Activities related bringing fish caught by Indian flagged vessels in the Exclusive Economic Zone (EEZ) not to be treated as Imports. • Exemption on import of fishing vessels, tugs, pusher crafts, light vessels has been extended till 31 March 2028.

MSME Sector

Micro, Small, and Medium Enterprises (MSMEs) form the backbone of India's industrial and economic landscape, contributing significantly to GDP, exports, and employment generation. Since the launch of the Make in India initiative in 2014, the Government has placed strong emphasis on empowering MSMEs to become globally competitive while driving domestic manufacturing and innovation.

The sector has benefitted from a series of policy reforms, financial incentives, and ease of doing business measures aimed at reducing import dependence, fostering self-reliance, and integrating MSMEs into global supply chains. With nearly 71 million enterprises spread across the country, MSMEs not only support large industries through supply and value chains but also play a crucial role in inclusive growth by creating jobs in rural and semi-urban areas.

By aligning MSME development with the Make in India vision, the Government seeks to transform India into a manufacturing hub, enhance export potential, and strengthen resilience against global economic challenges. This synergy between policy support and entrepreneurial dynamism positions the MSME sector as a key driver of India's long-term economic growth and industrial transformation.

To further strengthen the MSME sector and advance the Hon'ble Prime Minister's Make in India initiative, the Union Budget 2026-27 has proposed an amendment aimed at safeguarding domestic industries from the impact of cheaper imports. These measures are intended to provide a level playing field for local manufacturers, encourage innovation, and reinforce India's path toward self-reliance in manufacturing.

The key proposals are outlined below:

Particulars	Amendment proposed
MSME engaged in umbrellas (other than garden umbrellas)	Rate of Basic Customs Duty is being modified on umbrellas (other than garden umbrellas) from existing 20% to '20% or INR 60 per piece, whichever is higher'.
	Further Basic Customs Duty rate on the parts of umbrellas has also been modified from 10% to '10% or INR 25 per kg,' whichever is higher

Other Customs trade facilitation measures and tariff changes

- As a special one-time measure, eligible manufacturing units will be allowed to sell goods to Domestic Tarriff Area ('DTA') at concessional rate of duty to address the concern of utilisation of capacities due to global trade disruption.

- The Budget has also introduced several measures which will reduce physical intervention and speed up cargo clearance. This will be a trust-based framework. The systems will be recalibrated to recognize regular importers with long-standing and reliable supply chains. Once classified as trusted entities, such importers will face minimal routine verification of consignments. This risk-based clearance model is intended to reduce delays without diluting compliance oversight.

- Validity of advance rulings binding on Customs will be extended from 3 to 5 years. Government agencies will be encouraged to leverage AEO accreditation for preferential cargo clearance.

- The Customs warehousing regime will transition to a warehouse operator-centric framework. The proposed model relies on self-declaration, electronic inventory tracking, and risk-based audits. The intent is to move away from officer-dependent approvals and cut down transaction time and compliance costs for businesses using bonded warehouses.

- The above move will enhance ease of doing business and strengthen India's trade infrastructure.

- To promote exports in the textile and footwear sector, the Government has proposed to extend the exemption for import of specified goods imported by bona fide exporters for use in the manufacture of textile or leather garments till 31 March 2028. Further, the time limit for completing exports from current 6 months to 12 months.

GST amendments

- Under GST, the place of supply for Intermediary services, shall now be governed by 'Location of recipient' of services', will put the controversy pertaining to transaction qualifying as 'export of services' to an end, helping Indian service providers clarity and enhance global competitiveness of India exporters.

- The requirement of a prior agreement for post-sale discount has now been removed. This is expected to ease compliance, especially for companies with high-volume or incentive-based price structures.

- Allowing a 90% provisional refund in cases arising of inverted duty structure will significantly improve cash flows and reduce working capital pressure for affected taxpayers.

- An interim appellate framework has been proposed to fill the existing gap in the dispute resolution mechanism for advance rulings. The Government has been empowered to designate an existing authority or tribunal to hear appeals from 1 April 2026.

Conclusion

To summarise, the 2026-27 indirect tax package is a carefully designed means for durable growth and prospective investment. It ensures that businesses, both domestic and international, can operate with a view to enhance global competitiveness, boost public welfare and promote domestic industries.

If executed effectively, these reforms will translate into measurable gains across multiple dimensions of the economy. GDP growth will be supported by enhanced industrial output and export competitiveness, while job creation will flow from expanding sectors like manufacturing, energy production, and related services. At the same time, India's global competitiveness will be strengthened as tax reforms make the country a more attractive destination for foreign direct investment and integration into global value chains with improved compliance approach for industries.

Ultimately, the indirect tax package signals a long-term commitment to building a resilient, investor friendly approach in turn leading to faster economic development.

■

SUPREME COURT



Keshav B. Bhujle
Advocate

1 PRINCIPAL CIT VS. HARMINDAR SINGH BHATIA (2025) 481 ITR 244 (SC): 2025 SCC ONLINE SC 2614: DATED 10/10/2025

Association of persons/Body of individuals — Assessee, a member of the syndicates engaged in liquor business — Share of the assessee in income of the syndicate — High Court holding that assessee's share is not taxable when association of persons taxed at maximum marginal rate — Supreme Court held that income of association of persons (Syndicates) cannot be clubbed with assessees' and the order of the High Court is correct — Supreme Court dismissed the special leave petition filed by the Department: Ss. 67A and 86 of ITA, 1961: A. Ys. 2010-11, 2013-14 to 2016-17

The assessee is an individual. In a batch of cases before the Madhya Pradesh High Court the issue for consideration was that as to whether, the Income-tax Appellate Tribunal had erred in deleting the additions (of various amounts in other connected appeals) made by the Assessing Officer on the ground of the appellant's share in the profits derived by various syndicates maintaining that share of profits is taxable in the hands of the syndicate and not in the hands of the assessee as per the extant provisions of the Income-tax Act, 1961.

The Madhya Pradesh High Court decided the issue in favour of the assessee and against the Revenue and held as under:

"i) As per the scheme of the Act, the issue is covered in favour of the assessee as per clause (a) of the first proviso to section 86 read with section 67A of the Act.

ii) We are totally in agreement with the conclusion reached by both the lower appellate authority, i.e., the Commissioner of Income-tax (Appeals) as well as the Income-tax Appellate Tribunal holding that, the assessee was a member of an association of persons or body of individuals, the share of members of such association of persons or body of individuals were determinate and known. Such associations of persons or bodies of individuals were chargeable to tax on their total income at the maximum marginal rate or any

higher rate. In such a factual position and circumstances, the share of profit/ income received by the assessee from association of persons or body of individuals/syndicates falls under clause (a) of the first proviso to section 86 read with section 67A of the Act and, thus, the Assessing Officer was not justified in making the addition in the hands of the assessee on account of his share in the profits of syndicates and on account of his share of inadmissible expenses incurred by the syndicates.

iii) Therefore, we are in agreement that the Commissioner of Income-tax (Appeals) was right in deleting the addition in the hands of the assessee, and, consequently, the sole ground of the Revenue being devoid of merit is not sustainable.

iv) Thus, when tested on the anvil of the afore-noted legal principles, we are of the opinion that in these appeals no substantial question of law arises from the order of the Tribunal. This court refrains from entertaining these appeals as there is no perversity in the order passed by the Income-tax Appellate Tribunal since the Income-tax Appellate Tribunal has dealt with all the grounds raised by the appellant in the order impugned and has passed a well-reasoned and speaking order taking into consideration all the material available on record.

v) The Tribunal, being a final fact-finding authority, in the absence of demonstrated perversity in its finding, interference with the concurrent findings of the Commissioner of Income-tax (Appeals) as well as the Income-tax Appellate Tribunal therewith by this court is not warranted.

vi) In view of the aforesaid discussion, we do not find any merit in these appeals, which in our opinion, deserve to be and are hereby dismissed in limine.

PCIT vs. Ramesh Chandra Rai: (2025) 481 ITR 231 (MP): 2024 SCC OnLine MP 9709: (2025) 342 CTR 195 (MP):

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

"i) Delay condoned. Heard learned counsel for the petitioner.

ii) The income of the association of persons (syndicates) cannot be clubbed with the assessees.

iii) In view of the above, we are of the opinion that the High Court [***Pr. CIT vs. Ramesh Chandra Rai, (2025) 481 ITR 231 (MP); 2024 SCC OnLine MP 6625***.] has not erred in passing the impugned order.

iv) The present petition is, accordingly, dismissed."

2 CIT (EXEMPTION) VS. AL JAMIA MOHAMMEDIYAH EDUCATION SOCIETY (2025) 481 ITR 215 (SC): 2025 SCC ONLINE SC 2608: DATED 18/07/2025

Audit report – Delay in filing audit report – Condonation of delay – Power of Income Tax Authorities to condone delay u/s. 119 – Power should be exercised judiciously – Assessee's application for condonation of delay rejected – High Court holding that delay should have been condoned and directing the AO to process the return of the assessee on the basis that delay is condoned – Department contended before the Supreme Court that the High Court should not have condoned the delay – Supreme Court held that the delay is properly condoned by the High Court and dismissed the special leave petition filed by the Department: S. 119(2)(b) of ITA, 1961: A. Y. 2016-17

The assessee, a charitable trust, filed its return for the A. Y. 2016-17 declaring Nil income and claiming a refund, but did not file Form 10B with the return. It filed the Form 10B after a delay of 1,257 days. The assessee filed an application u/s. 119(b) of the Income-tax Act, 1961, for condoning the delay in filing Form 10B. The Application was rejected.

The Assessee filed a writ petition challenging the rejection order. The Bombay High Court allowed the writ petition and held as under:

"i) The approach in the case of the present type should be equitous, balancing and judicious. Technically, and strictly speaking, the Commissioner (Exemptions) might be justified in denying the exemption by rejecting the application for condonation of delay, but the assessee, a public charitable trust existing almost over thirty years, which otherwise satisfied the conditions for availing of such exemption, should not be denied it merely on the bar of limitation especially when the Legislature has conferred wide discretionary powers to condone such delay on the authorities concerned. The Delay is condoned.

ii) Since the delay has been condoned, the Assessing Officer shall process the assessee's return in accordance with law by giving effect to this order on the basis that Form 10B has been filed within time."

[*Al Jamia Mohammediyah Education Society vs. CIT (Exemptions), (2025) 482 ITR 41 (Bom); 2024 SCC OnLine Bom 1157*.]

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

"i) The delay in filing the present petition is condoned.

ii) Heard learned counsel for the petitioners.

iii) The submission is that the High Court has incorrectly condoned the delay while entertaining the writ petition.

iv) In view of the findings contained in paragraphs 4, 5 and 6 of the impugned judgment and order, we do not find that delay has incorrectly been condoned by the High Court.

v) The present petition is, accordingly, dismissed."

3 CIT (EXEMPTIONS) V. DIGNITY EDUCATION SOCIETY (2025) 481 ITR 222 (SC): 2025 SCC ONLINE SC 2613: DATED 07/10/2025

Charitable institution – Donation to charitable institution – Approval of institution – Registration u/s. 12AA granted and subsisting – Application for approval u/s. 80G(5) rejected by Commissioner – High Court holding that assessee is entitled to approval for purposes of section 80G(5) – Supreme Court dismissed the special leave petition filed by the Department: Ss. 12AA and 80G(5)(vi) of ITA, 1961

The assessee was registered as a charitable institution u/s. 12AA of the Income-tax Act, 1961. The assessee applied in Form 10G for approval u/s. 80G(5). The documents and details called for to process the application and to verify the objects and activities were submitted by the assessee. The Joint Commissioner and the Assessing Officer did not recommend approval u/s. 80G on the ground that the assessee ran a college and generated surplus out of fees charged from students to provide education, and was not involved in any other activities as mentioned in the application in Form 10G. The Commissioner (Exemption) rejected the application u/s. 80G(5)(vi).

The Tribunal reversed its order and directed the grant of approval to the assessee u/s. 80G.

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

"i) Since the assessee stood registered as a charitable institution u/s. 12AA, the only corollary was its application u/s. 80G(5) also deserves to be allowed, which the Tribunal had rightly noticed to be the correct legal position and had directed the Commissioner (Exemption) to grant approval to the assessee u/s. 80G(5).

ii) As such, the substantial question of law is answered in favour of the assessee and against the Revenue. Accordingly, the tax appeal deserves to be and is hereby dismissed."

[*CIT (Exemption) vs. Dignity Education Society, (2025) 481 ITR 217 (Chhattisgarh); 2024 SCC OnLine Chh 12649.*]

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

"i) Delay condoned. Heard.

ii) In the peculiar facts and circumstances of the case, we are not inclined to interfere with the well-reasoned order passed by the High Court.

iii) Hence, the special leave petition is dismissed."

■

HIGH COURT



Jitendra Singh
Advocate



Radha Halbe
Advocate



Harsh Shah
Advocate

1 DIPTI ENTERPRISES VS. ASSISTANT DIRECTOR OF INCOME-TAX, CPC [2025] 181 TAXMANN.COM 10 (BOMBAY)

Revision - section 264 of the Income Tax Act 1961 - housing project approved in 2006 and eligible for deduction under section 80IB(10) of the Act - tax determined as per the provisions of section 115JC (AMT) - unjustified - claim not made in return of income can be made during the 264 proceedings

Facts

The assessee before the Hon'ble Bombay High Court is a partnership firm carrying on the business of development of real estates. The assessee was constructing a housing project which was approved in 2006 and completed in March 2012. In its return, the Assessee had claimed 100% deduction under Section 80-IB(10) in AY 2020-21 by filing Form 10CCB. The ITR utility auto-computed Alternate Minimum Tax (AMT) under Section 115JC, determining liability of Rs. 49.97 lakhs, which was paid by the Assessee. The return was processed under section 143(1) of the Act accepting the returned income. The assessee filed an application under section 264 of the Act relying on the decision of jurisdictional appellate tribunal in the case of S.K. Ventures (ITA No.1248/Mum/2018 dated 05.03.2019) wherein it has been held that provisions of 115JC are inapplicable to projects approved/ completed prior to 01.04.2013. However, the Ld. Commissioner rejected the Assessee's revision application on the ground that no relief can be granted under Section 264 in respect of claims not made in the return and also the decision rendered by the jurisdictional Tribunal in the case of ***S.K. Ventures vs. ITO (supra)*** has not been accepted by the department and an appeal was filed against the said order and the same was pending before the High Court.

The assessee being aggrieved by the order of Ld. Commissioner, approached the Hon'ble Bombay High Court under Article 226 of Constitution of India challenging the order passed under section 264 of the Act.

Ruling of the High Court

Hon'ble Bombay High Court is pleased to allow the writ petition of the assessee by observing that revenue ought to adhere to binding precedents. Merely because an appeal is pending or the decision is 'not acceptable' would not absolve the revenue authorities from adhering to the applicable binding

judicial precedents, unless its operation is suspended by a competent court. If this healthy rule is not followed, it would lead to undue harassment to assessees and result in chaos in the administration of tax laws. Further, the Hon'ble High Court rejected the Ld. Commissioner's view that a revision under Section 264 cannot cover claims not made in the return or already accepted. The Court observed that the AMT computation in the return was automatic and unalterable, so the Petitioner never truly accepted the tax under Section 115JC of the Act. In any case, the assessee was entitled to challenge a levy if it lacks legal authority, and a bona fide mistake in paying such tax cannot justify denying legitimate relief.

2 A.G. BIOTECH LABORATORIES (INDIA) LTD. VS. ITO [2025] 180 TAXMANN.COM 850 (TELANGANA)

Agricultural income - Section 2(1A) of the Income Tax Act 1961 - income from sale of tissue-cultured plants is agricultural income as mother plants are cultivated on land and said income is exempt under section 10(1) of the Act.

Facts

The assessee before the Hon'ble Telangana High Court was engaged in micro-propagation (tissue culture). The process was such that mother plants were grown on land, then tissues were extracted from it and then multiplied in sterile lab. Once the plantlets hardened, they were sold. The assessee claimed that income from sale of tissue-cultured plants is in the nature of agricultural income within the meaning of section 2(1A) and the same is exempt from tax under section 10(1) of the Act. However, the Ld. AO treated the revenue earned from sale of tissue-cultured plants as business income and also denied the exemption claimed under section 10(1) of the Act. On appeal the Ld. CIT(A) upheld the view of the Ld. AO. The assessee being aggrieved by the order of Ld. CIT(A) preferred an appeal before the Appellant Tribunal. The Tribunal had also affirmed the view of the lower authorities and decided the issue against the assessee.

The assessee being aggrieved by the order of the Appellate Tribunal, challenged the same before the Hon'ble Telangana High Court under section 260A of the Act.

Ruling of the High Court

Hon'ble High Court was pleased to allow the claim of the assessee by observing that with effect from AY 2009-10 the Explanation to section 2(1A) deems income from saplings or seedlings grown in a nursery to be agricultural income, irrespective of whether basic operations are carried out on land. Agriculture comprises both basic operations on land (tilling, planting, sowing) and subsequent operations that foster and preserve growth. Where basic agricultural operations exist, the character of agricultural income is not lost merely because subsequent processes are sophisticated or scientific. Hon'ble High Court also rejected Revenue's contention that laboratory-based tissue culture transforms the activity into a commercial or business operation, the High Court held that the essence of the Assessee's activity remained

agricultural. The cultivation of mother plants on land through basic agricultural operations formed the foundational activity, while tissue culture was merely an advanced and efficient method of propagation, akin to grafting, layering, or hybridisation. The use of modern technology does not denature the agricultural character of an activity, just as mechanisation or hybrid seeds do not render conventional farming non-agricultural.

3 AMBERNATH CITY HOSPITAL (P.) LTD VS. UOI [2026] 182 TAXMANN.COM 268 (BOM.)

Reopening - Notice - Section 148 of the Income Tax Act 1961 – unsigned notice – not curable under section 292B of the Act – Notice invalid.

Facts

The Ld. AO issued a notice under section 148 of the Act to reopen the assessment for AY 2014-15. The Ld. AO in pursuance to the said notice passed ex parte assessment order under section 147 and penalty order under section 271(1)(c) of the Act.

The assessee challenged the notice issued under section 148 of the Act before the Hon'ble Bombay High Court on the ground that the same is unsigned and therefore, the same is non est in the eyes of law. Further, the subsequent assessment order and penalty order passed in pursuance of the said invalid notice is also bad in law and the same may be quashed.

Ruling of the High Court

Hon'ble Bombay High Court allowed the petition of the assessee by observing that the notice under section 148 issued by Ld. AO was neither signed manually nor digitally. Such defect violated statutory mandate of section 282A and is not curable under sections 292B or 292BBof the Act. Thus, impugned notice and all consequential proceedings including reassessment and penalty orders are invalid and liable to be quashed.

4 SRINIVASA GANDHI SAMPATH VS. ACIT [2025] 181 TAXMANN.COM 308 (KARNATAKA)

Penalty - Section 270A of the Income Tax Act 1961 – penalty for under-reporting/ misreporting cannot be invoked where assessed income equals returned income - excess FTC claim by itself is not under-reporting

Facts

The assessee filed his return for AY 2017–18 disclosing taxable income of Rs.10.78 crore and claimed Foreign Tax Credit (FTC). The return was processed under section 143(1) and subsequently assessed under section 143(3) without any modification to the returned income. Notwithstanding the acceptance of income, penalty proceedings under section 270A were initiated and levied on the ground

that the assessee had allegedly claimed excess FTC, resulting in reduction of tax liability and refund.

The assessee being aggrieved by the penalty order challenged the same before the Hon'ble Karnataka High Court by way of Writ Petition.

Ruling of the High Court

Hon'ble Karnataka High Court examined the validity of penalty proceedings initiated under section 270A of the Act in a case where the assessee had claimed excess Foreign Tax Credit (FTC) under Rule 128, despite the returned income and the income assessed under sections 143(1) and 143(3) being identical and accepted without variation. Hon'ble Court held that section 270A can be invoked only where the statutory conditions of "under-reporting" or "misreporting" of income are satisfied. On a plain reading of section 270A(2)(a), under-reporting arises only where the income assessed is greater than the income determined in the return processed under section 143(1). Since no variation existed between the returned income, processed income, and assessed income, the foundational jurisdictional requirement for invoking section 270A was absent. The Court further held that an erroneous or excessive claim of FTC, by itself, does not amount to under-reporting or misreporting of income within the meaning of section 270A. The provision penalises income understatement, not incorrect tax credit claims, unless such claims result in assessed income exceeding returned income or fall within the specific categories of misreporting under section 270A(9), none of which were attracted on the facts. ■

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1 ACIT VS. M/S LIGHTHOUSE LEARNING PVT. LTD. [ITA NO. 5433/MUM/2024 (MUMBAI TRIB.)] (AY: 2020-21)

Section 32 – Depreciation on Intangible Assets – Goodwill – Excess Consideration paid over and above assets acquire on amalgamation of companies – Depreciation Allowed as Amount Actually Paid on acquisition of Goodwill

Facts

Assessee has recorded Goodwill of ₹ 8,34,77,96,858 which was acquired at the time of amalgamation of its subsidiary and step-down subsidiary and claimed depreciation u/s 32(1). The assessee had made application for amalgamation of EIL (Euro Kid International Limited), KKEL (Kangaroo Kids Education Limited) and ESPIL (Euro School Properties and Infrastructure Private Limited) with the assessee and National Company Law Tribunal, Mumbai ("NCLT") had approved the scheme of merger/amalgamation. Value of consideration paid (in the form of exchange of shares) at the time of amalgamation was higher than the net assets and the differential amount of ₹ 8,34,77,96,858 is recorded as Goodwill in the books of assessee (transferee company) and depreciation is claimed on the same. AO rejected the claim of the depreciation on goodwill on the basis that goodwill was recorded by mere book entries and in its orders had compared total of depreciation on intangible assets held by the transferor company and transferee company before the amalgamation with the depreciation claimed by the assessee after amalgamation. CIT(A) allowed the assessee's appeal and hence department has filed before Hon. Tribunal.

Held

Hon. Tribunal held that Hon'ble Supreme Court in the case of ***CIT vs. Smifs Securities Ltd. (2012) 13 SCC 488 (2012) 348 ITR 302 (SC)*** held that "goodwill" is an intangible asset and is entitled to be depreciated in accordance with section 32 of the Act. It is significant to note that in ***CIT vs. Smifs Securities***, there was an amalgamation of two companies, where the company which acquired the other company paid consideration in excess of the net assets of the acquired company; the excess was attributed to goodwill, and the Supreme Court upheld the claim for depreciation on the amount so paid in excess. As per pre-amendment, goodwill was always considered as an Intangible Asset and was eligible for depreciation u/s 32. Ld. DR stressed upon the valuation of shares considered during amalgamation. But we noticed that Ld. CIT(A)

has relied upon CBDT vide circular No.279/Misc. dated 11-04-2014 which has clarified that objections/representations to the NCLT during the amalgamation process was the only opportunity to the Department to ensure that the amalgamation was not taken up with the purpose of defrauding the Revenue. Thus, in this way the circular goes in favour of the assessee once amalgamation order is passed by the Judicial Authority of NCLT to the extent that the Revenue cannot take a stand that the amalgamation process was merely for the purpose of artificial Goodwill creation in the books for tax avoidance. Assessee had very well informed the revenue about the NCLT merger application. But the revenue had not raised any objections before the NCLT. In light of the facts and Apex Court Decision, depreciation on goodwill is allowed and departments appeal is dismissed.

2 KETAN JAIN VS. ITO (CO NO. 117-118/MUM/2025 (MUM. ITAT)) (AY 14-15 & AY 15-16)

Section 148/148A – Notice u/s 148 issued –

For AY 14-15 – Notice issued post the Surviving Period – Notice is time barred

For AY 15-16 – Notice issued beyond Time Limit - Notice is time barred

Facts

Assessee's case was reopened under section 148 of the Act. The addition was made related to long term capital gain (LTCG) for sale of shares of Excel Castronics Limited amount and exemption u/s 10(38) was denied. Being aggrieved assessee filed an appeal before Ld. CIT(A). The ld. CIT(A) partly allowed the appeal of the assessee. Being aggrieved the revenue filed an appeal before us. On the other hand, the assessee have challenged the jurisdiction of the Ld. AO for issuance of notice under section 148 by filing the cross objection.

Held

For AY 14-15

Notice under section 148 of the Act was initially issued on 08.06.2021. The limitation period, read with the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA), expired on 30.06.2021. The Ld. AO issued the reassessment notice under section 148 of the Act between 01.04.2021 and 30.06.2021 by relying on the erstwhile regime. Thus, by issuing the notice on 08.06.2021, the Ld. AO availed a survival period of 22 days. Assessee submitted its reply in compliance with the notice under section 148A(b) of the Act on 10.06.2022. Thereafter, the final notice under section 148 of the Act was issued on 26.07.2022, i.e., after a lapse of 46 days from the date of submission of the assessee's reply. The final notice under section 148 was thus issued beyond the permissible survival period of 22 days. In view of the decision of the Hon'ble Supreme Court in Rajeev Bansal the Ld. AO has exceeded the permissible period of 22 days, thereby acting beyond the limitation prescribed by the Hon'ble Apex Court. Consequently, the notice issued under section 148 of the Act dated 26.07.2022 is bad in law. Thereby Cross Objection was allowed and assessee's appeal was allowed and in a way departments appeal was dismissed.

For AY 15-16

Hon. Tribunal has held that considering the order of the Hon'ble Supreme Court in Rajiv Bansal (supra) in para no.19(b) the notice under section 148 of the Act for AY 2015-16 is invalid. The said issue was duly conceded by the revenue before the Hon'ble Supreme Court so accordingly, the assessment initiated by the Ld. AO is stands dismissed. Thereby Cross Objection was allowed and assessee's appeal was allowed and in a way departments appeal was dismissed.

3 ABHUBHAI HIRABHAI DESAI V. DCIT (ITA NO. 4684/MUM/2025) (AY 14-15)

Section 148 – Reassessment made on basis of documents based on seized materials – Only recourse available is to reopen the case u/s 153C and not 148 – Reassessment Notice Quashed

Facts

Assessing Officer of one Shri Jaikishin Rohra handed over the documents which pertained to/related to the assessee, in whose case search action u/s.132 of the Act was conducted on 24.02.2014. On basis of search materials shared, case was reopened u/s 148. AO concluded that assessee had received interest of ₹ 47,68,911/- in cash which was not shown in the return of income. Therefore, the amount was added to his income. In the subsequent appeal, the asssessee inter alia contested the addition claiming that no such cash payment was made and the transactions were made through banking channels and were duly reflected in the bank account and shown in the return filed. Ld. CIT(A) however, upheld the addition so made. Being aggrieved with the same, appeal is filed before Hon. Tribunal.

Held

Hon. Tribunal held that assessee's case is intrinsically linked to a search and seizure operation in a case and the information received emanated from search proceedings. Seized paper and its contents have been discussed by the AO which evidently pertained to the assessee. The AO even initiated proceedings u/s 153C of the Act which was however, dropped. Since the said paper was seized from the premises of the third party, action u/s 153C of the Act was appropriate on the facts and the circumstances of the case. This section begins with non-obstante clause and therefore, has an overriding effect on sections 147 and 148 of the Act. As per the scheme and object of section 153C r.w.s 153A, the AO has no discretion or choice to invoke the provisions of section 147/148 instead of section 153C r.w.s. 153A of the Act. Once the case of reassessment is made out by the AO which falls in the preview of specific provisions of section 153C of the Act, the AO cannot resort to invoke the provisions of section 147/148 of the Act to assess or reassess income of the assessee. The action of the AO to initiate the proceedings under section 147/148 of the Act vitiates the entire reassessment proceedings and the assessment order. Once, the AO is satisfied that the documents seized belong to the persons other than the searched person, the AO shall proceed against such other persons and issued notice u/s 153C and assessee or reassess income of such other persons in accordance with the provisions of section 153A of the Act. Therefore, it is

mandatory for the AO to proceed u/s 153C if he is satisfied that the seized material reveals the income of such other persons to be assessed or reassessed. Tribunal relied on the jurisdictional High Court order in the case of ***Sejal Jewellary and others 171 Taxmann.com 846(Bom)*** and held that notice under section 147 of the Act and all actions consequent thereto are held to be without jurisdiction and bad in law. Thereby appeal filed by the assessee was allowed.

4 ABHISHEK JAYKETU JOSHI VS. AC CIR-42(2)(1) [ITA NO. 5775/MUM/2025 (MUMBAI TRIB.)] (AY: 2019-20)

Section 148A & Section 80GGC – Reassessment under Section 147 pursuant to Risk Management Strategy – Notice u/s. 148A(b) held invalid – disallowance of political donation – alleged accommodation entry through RUPP – donation supported by receipt, bank statement and ECI registration certificate – Addition deleted

Facts

The case of the assessee was reopened and a notice u/s. 148A(b) of the Act was issued based on Risk Management Strategy formulated by Board, pursuant to search and seizure operations conducted u/s. 132 in case of certain Registered Unrecognised Political Parties (RUPPs). It was alleged that Kisan Party of India was used to provide bogus donation entries and the assessee's name appeared in the list of beneficiaries. The order u/s. 148A(d) and notice u/s. 148 of the Act was issued. During the reassessment proceeding, the AO raised specific queries relating to donations, inter alia, rationale for making a donation to a party allegedly having no political presence in Mumbai. The assessee submitted all the relevant details. The AO disallowed the deduction u/s. 80GGC of Rs.5 lakhs and held that mere compliance with documentary formalities was not sufficient to establish genuineness. The assessee filed an appeal before CIT(A), submitting that the donation was made through banking channel and that the party was registered u/s. 29A of the Representation of the People Act, 1951. The CIT(A) held that mere payment through banking channels and possession of donation receipt did not establish the genuineness of the transaction and that the surrounding circumstances and human probabilities indicated that the transaction was not genuine. Against the said order, the assessee filed an appeal before Hon'ble Tribunal.

Held

Before the Hon'ble Tribunal, the AR challenged the notice u/s. 148A(b) of the Act, stating that the said notice was vague, generalized and borrowed information, without there being any tangible material demonstrating escapement of income in the case of the assessee. The notice merely reproduces allegations arising out of search proceedings conducted in the case of certain third parties and political organizations, without disclosing any material directly linking the assessee with the alleged accommodation entry arrangement. The AR further pointed out several factual errors in the notice u/s. 148A(b) including the wrong name of done party. It was submitted that the notice was issued without any application of mind. On merits, the AR submitted the donation receipt issued by Kisan Party of India, which clearly records the name and PAN, the amount of donation, the mode

of payment by cheque, letter issued by the Election Commission of India evidencing that Kisan Party of India is duly registered u/s. 29A of the Representation of the People Act, 1951, and such registration has never been disputed.

The Hon'ble Tribunal held that notice u/s. 148A(b) reveals that the AO repeatedly alleged that the assessee had undertaken non-genuine transactions with Aadhar Foundation, along with Kisan Party of India. This factual error was not only pointed out by the assessee in his reply to the notice under section 148A(b), but the AO himself, in the order passed u/s. 148A(d). The Hon'ble Tribunal held that notice u/s. 148A(b) was issued on an incorrect factual premise. The very foundation for formation of satisfaction regarding escapement of income stands vitiated. Such an error cannot be treated as a mere clerical lapse, as the assumption of jurisdiction u/s. 147 is contingent upon correct and specific information suggesting escapement of income in the case of the assessee. The Hon'ble Tribunal held that notice u/s. 148A(b) is vague and generalised in nature and does not enclose or disclose any material or evidence forming the basis of the allegations. The AO has relied upon statements recorded u/s. 132(4) of certain third parties and general investigation findings, but no such statements or relevant extracts thereof were ever furnished to the assessee. This approach is contrary to the scheme and object of section 148A. The provision contemplates a meaningful and effective opportunity of being heard, which necessarily presupposes that the assessee is made aware of the material on the basis of which the AO proposes to initiate reassessment proceedings. Mere reference to the existence of information or statements, without furnishing the underlying material, renders the opportunity illusory. Reliance was placed on the judgement of Hon'ble Bombay High Court, in ***Anurag Gupta vs. Income-tax Officer [2023] 150 taxmann.com 99***. The Hon'ble Tribunal further noted that while alleging that Kisan Party of India was not engaged in any political activity, reliance has simultaneously been placed on the answer to Question No. 13 in the statement recorded u/s. 132(4), which records that the party had contested elections in Bihar. Such mutually inconsistent positions further demonstrate non-application of mind at the stage of initiation of proceedings. The notice u/s. 148A(b) of the Act was quashed. The disallowance was deleted on merits as the assessee had furnished donations receipts specifying name and PAN, bank statement reflecting donation, registration certificate issued by ECI. It was held that the assessee has discharged the primary onus by furnishing documentary evidences, the burden shifts to the Revenue, which has not been discharged in the present case. Mere suspicion, conjectures, or application of human probabilities, in the absence of any corroborative material, cannot be a ground to deny a statutory deduction expressly provided under the Act.

5 AIROPLAST PRIVATE LIMITED VS. ITO [ITA NO.7409/MUM/2025 (MUMBAI TRIB.)] (AY: 2015-16)

Section 69 – share premium difference with other issuances by investee company – investment disclosed in books and supported by documentation – jurisdictional conditions not satisfied of section of unexplained investment s– addition unsustainable

Facts

The assessee had disclosed non-current investments in shares of Wavell Industries Pvt. Ltd. and JKM Holdings Pvt. Ltd. It was observed that while the assessee paid share premium at a lower rate to JKM Holdings Pvt. Ltd.; the said company had issued shares to other parties during the same year at a substantially higher premium. The AO further alleged that the allotment of shares to the assessee was not reflected in the shareholding pattern or records of JKM Holdings Pvt. Ltd. and that no details were furnished in respect of investment in Wavell Industries Pvt. Ltd. On this basis, the AO treated the investment as unexplained under section 69. The CIT(A) upheld the addition ex-parte for non-compliance. Aggrieved, the assessee appealed before the ITAT.

Held

Before the Hon'ble Tribunal, the AR challenged the applicability of Section 69 of the Act. The assessee had furnished the board resolution approving the investment, valuation reports supporting the face value and premium paid per share, board resolutions of M s JKM Holdings Pvt Ltd and M s Wavell Industries Pvt Ltd approving allotment of shares, and copies of private placement offers and allotment forms. On contrary, DR argued that documents relied upon by the assessee were not examined by the lower authorities, the matter ought to be remanded to the file of the CIT(A) for fresh verification.

The Hon'ble Tribunal held that the very first jurisdictional condition under section 69 fails, as the investment was fully recorded in the assessee's books and was noticed by the AO from the assessee's own balance sheet. There was no finding of any off-book investment, parallel consideration, or unaccounted payment. The Tribunal further held that the second condition-absence of satisfactory explanation regarding nature and source was also not met. The AO did not allege lack of funds, absence of banking trail, cash payment, circular routing, or receipt of funds from undisclosed sources. The addition was based not on the assessee's source, but on comparison of share premium paid by the assessee with other issuances by the investee company. Such pricing differences, in the absence of evidence of on-money or unrecorded consideration, cannot justify invocation of section 69, as the statute does not mandate uniform share premium across all allottees. It was further held that alleged non-reflection of the assessee's shareholding in the investee company's records cannot, by itself, warrant an addition under section 69. The provision is meant to tax unexplained investments of the assessee and cannot be applied as a vicarious consequence of perceived deficiencies in a third party's corporate records.

6 ACIT VS. AL-ARSH EXPORTS (P.) LTD. [ITA NO. 227/DEL/2024 (DELHI TRIB.)] (AY: 2014-15)

Section 68 – Investor companies responded to notices u/s. 133(6) with ITRs and bank statements – addition made as unexplained share application money - no adverse statements recorded – onus discharged by assessee – revenue's appeal dismissed

Facts

The case of the assessee was reopened u/s. 147 of the Act, based on information received from Investigation Wing that the assessee has received share application money

from 23 Companies. The AO sent a notice u/s. 133(6) of the Act to the persons who subscribed to the shares. In response to these notices, these companies filed replies along with copies of their ITR acknowledgements and bank statements. The AO concluded that the assessee had failed to prove the identity, creditworthiness and genuineness of transaction and proceeded to add the amount as unexplained share application money u/s. 68 of the Act. The CIT(A), after considering arguments made by the assessee, documents produced, remand report of the AO, deleted the addition stating that investor companies have furnished all the relevant details in response to notices u/s 133(6), including details of the source of source. There are no adverse statements of the Directors/ Employees of the investor companies to support the view of the AO. The assessee has discharged its onus and the burden was on the AO to rebut. Against the said order, the Revenue filed appeal before ITAT.

Held

Before the Hon'ble Tribunal, the AR reiterated the arguments taken before the CIT(A). The DR argued that there was non-compliance to summons u/s. 131 issued for verification of creditworthiness and genuineness of transaction of the said 23 companies.

The Hon'ble Tribunal held that in the remand report called by CIT(A), AO merely reiterated the arguments taken in the assessment order. There is nothing on record to suggest that any enquiries were conducted by the AO during the remand proceedings. The CIT(A) had requisitioned certain information qua the 23 investor companies, asking if any statements of the Directors or the employees of 23 entities were recorded, to which the AO submitted that no such statements were recorded. It was held that CIT(A) had comprehensively analysed the entire controversy before concluding that there was no merit in the additions. The onus was upon the AO to conduct enquiries before drawing any negative conclusions. The appeal filed by Revenue was dismissed.

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" God, our Creator, has stored within our minds and personalities, great potential strength and ability. Prayer helps us to tap and develop these powers. "

A.P.J. Abdul Kalam

CASE LAW UPDATE



Dr. CA Sunil Moti Lala
Advocate

I. RESIDENCE

1 SFDC IRELAND LTD. VS. COMMISSIONER OF INCOME-TAX, INTERNATIONAL TAXATION [2026] 182 TAXMANN.COM 533 (DEL)

Where assessee-company was incorporated in Ireland and there was no finding by competent authority nor did it appear from the record that assessee was resident in India or had a PE in India, impugned order and certificate requiring deduction of tax at 10 per cent from receipts arising from the reseller agreement (for sale of cloud based standardised products) were liable to be set aside (India-Ireland DTAA)

Assessee, a company resident of Republic of Ireland, operated cloud-based CRM applications and platforms which were offered as standardized products to customers, including in India through its reseller. It asserted that it had no place of business, employees, or presence in India and no PE in India and thus applied under section 197 for a nil-rate certificate in respect of receipts arising from the reseller agreement (for sale of abovementioned products). The AO issued a certificate directing payer to deduct tax at 10 per cent. The HC held that simply because a power of attorney had been given to a person residing in India and because all required formations were done by such person, a company incorporated in Ireland or in any other country outside India, could not be held to be a company resident of India within meaning of section 6(3). For such purpose, mandatory requirement is, that entire business of such company should be managed/controlled in India. Since the assessee-company was incorporated in Ireland and neither any finding was recorded by competent officer nor did it emanate from record produced before the Court, that assessee-company was resident in India or was having a PE in India, impugned order passed by competent officer so also certificate requiring deduction of tax at rate of 10 per cent was set aside. ***[Commissioner of Customs vs. Canon India (P.) Ltd. [2024] 168 taxmann.com 221 (SC) distinguished*]**.

2 BINNY BANSAL VS. DCIT (2026) 182 TAXMANN.COM 226 (BANG-TRIB): TS-18-ITAT-2026 (BANG)

Person "being outside India" referred to in Explanation 1(b) to s. 6 applies only to non-residents and not to a person like assessee who was a resident in immediately preceding year. Thus, assessee could not get benefit of extended time period of 182 days instead of 60 days as envisaged under clause (b) to Explanation 1 since he was a resident in India in immediately preceding year and that therefore, assessee was to be treated as resident of India despite being present in India for 141 days. Further, though assessee had a permanent home in both India and Singapore, but his centre of vital interests (major investments, business, and habitual abode) remained in India and thus, as per the tie-breaker test under Article 4(2), assessee was a resident of India for tax purposes (India–Singapore DTAA)

Assessee, was an Indian national, who co-founded Flipkart and later moved to Singapore in February 2019 for employment; his family relocated in March 2019. He first stayed in a service apartment (February–July 2019) and then took a two-year residential lease in Singapore from July 2019. He filed his Indian return for AY 2020-21 as a non-resident claiming treaty benefits. AO noted that assessee stayed in India for more than 365 days during last preceding four years and for 141 days in relevant previous year and, thus, assessee satisfied both statutory conditions of section 6(1)(c). Accordingly, the AO held assessee to be resident of India. Further, the AO examined Article 4(2) and held that a permanent home was available in India (including a Mantri Classic apartment, Bengaluru, and a Koramangala house for which Section 54F had earlier been claimed), treated the Singapore rental as unverified, and concluded that the centre of vital interests, habitual abode, and nationality pointed to India.

The Tribunal held that Explanation 1 to section 6(1)(c) provides for a concession for Indian citizens or persons of Indian origin who, "being outside India", come on a visit to India in any previous year and in such cases, prescribed period of 60 days in India to be considered a resident under clause (1)(c) is relaxed to 182 days. However, Explanation 1(b) applies only to non-residents and not to a person like assessee who was a resident in immediately preceding year. It concluded that since assessee was a resident in the preceding year, he could not get benefit of extended time period of 182 days instead of 60 days as envisaged under clause (b) to Explanation 1 and that therefore, assessee was to be treated as resident of India for assessment year 2020-21. Further, the Tribunal noted that application of the tiebreaker under Article 4 of the DTAA determines the assessee's residence in India or Singapore. It held that though assessee had a permanent home in both India and Singapore, but his centre of vital interests (major investments, business, and habitual abode) remained in India. Thus, tie-breaker test under Article 4(2) of the India–Singapore DTAA would determine that assessee was a resident of India for tax purposes. Consequently, it concluded that the assessee was rightly denied the Treaty benefits by the AO. [***Adarsh Developers vs. DCIT - [2024] 158 taxmann.com 81 (Kar) followed***; ***Shyam Sunder Bhartia vs. DCIT (IT) [2023] 149 taxmann.com 162 (Luck-Trib.), Atos India (P.) Ltd. vs. DCIT [2023] 152 taxmann.com 217 (Mum-Trib.),*** **and** ***Aldrin Alberto Araujo Soares vs. DCIT [2024] 162 taxmann.com 186 (Bom) distinguished***].

3 SANJAY BHASKAR VS. DCIT [2026] 182 TAXMANN.COM 66 (DEL-TRIB.) : TS-1720-ITAT-2025 (DEL)

Day of arrival in India is to be excluded in computing period of stay in India for purpose of determining residential status under section 6 (India–UK DTAA)

Assessee was a non-resident Indian since 1998 with permanent residence in the UK. For relevant assessment years, assessee filed revised returns declaring the same income as in section 139(1) returns but stated that his residential status had been inadvertently shown as resident and claimed that he was a non-resident on basis that his stay in India during each relevant previous year was less than 182 days. AO computed period of stay by counting both date of arrival and date of departure and held that assessee had stayed in India for more than 182 days in each of relevant years, and treated him as resident. The Tribunal held that the day of arrival in India was to be excluded in computing period of stay in India for the purpose of determining residential status under section 6. Accordingly, total stay of assessee in India was less than 182 days (180 days in financial year 2016-17, 173 days in financial year 2017-18 and 175 days in financial year 2018-19) and therefore, in the three previous years relevant to assessment years 2017-18 to 2019-20, status of assessee was held to be 'non-resident'. [***DIT vs. Manoj Kumar Reddy [2011] 12 taxmann.com 326 (Kar)*** and ***CIT vs. O. Abdul Razak [2011] 10 taxmann.com (Ker)*** **and** ***Pradip Kumar Joshi vs. ITO [2021] 133 taxmann.com 283 (Ahd-Trib.) and Manoj Kumar Reddy vs. ITO (IT) [2009] 34 SOT 180 (Bang) followed***].

II. PERMANENT ESTABLISHMENT

1 ERNST AND YOUNG LLP VS. ACIT [2026] 182 TAXMANN.COM 362 (DEL): [TS-34-HC-2026 (DEL)

Order rejecting application under section 195(2) seeking a Nil Withholding Tax Certificate w.r.t prospective payments to be made to E & Y, UK -Set aside and matter remanded (India–UK DTAA)

The assessee-petitioner, an Indian company, proposed to make prospective payments to Ernst & Young (EMEIA) Services Ltd., UK for service. It filed an application under section 195(2) seeking a Nil Withholding Tax Certificate, contending that the payments were not chargeable to tax in India. Petitioner's application for grant of Nil Withholding Certificate u/s 195 for the payment proposed to be made to Ernst & Young (EMEIA) Services Ltd, a UK based entity was rejected on the ground that said payment constituted business income of EMEIA which was chargeable to tax in view of the existence of a virtual service permanent establishment of EMEIA as per article 5(k) of the DTAA. The High Court after noting that the provisions of article 5(2)(k) of the India-UK DTAA was pari materia to article 5(6) of the India -Singapore DTAA, placed reliance on the jurisdictional High Court judgement in the case of ***CIT vs. Clifford Chance Pte Ltd (2024) 160 taxmann.com 424 (Del–Trib)*** (rendered in the context of the India–Singapore DTAA)

wherein it was held that the words "within the contracting state" used in article 5 has a territorial connotation and thus in the absence of personnel physically performing services in India, there can be no rendering of services within India and as such there can be no virtual service permanent establishment more so when such a concept is not contemplated by the DTAA or under the domestic Act. The High Court, in the instant case rejected the plea of the revenue that Article 5(2)(k) of the India-UK DTAA merely requires furnishing of services through employees or other personnel within the contracting state and does not mandate physical presence. It quashed the impugned order u/s 195 and remanded the matter back to the AO to pass a fresh order.

2 GE ENERGY PARTS INC [TS-14-HC-2026(DEL)]

HC quashed s. 197 order directing TDS @3.5% for AY 2025-26 and directed Revenue for lower TDS @1.5% as it had done prior to AY 2022-23 - since in AY 2022-23 the Tribunal had held that the petitioner, a Swiss co did not have a PE in India and thus the very basis of Revenue for higher rate of TDS had lost its foundation (India–Switzerland DTAA)

The Petitioner, a company incorporated in Switzerland in 2015 was engaged in the business of supplying Gas Turbines, spare parts and carried on offshore repair of machines manufactured outside India. It claimed that it did not have any PE and consequently no Tax at Source was deductible from the payments made to it. It moved applications u/s 197 every year for issuing a certificate of deducting nil tax, which applications had been decided by the Revenue by providing that a deduction at the rate of 1.5 percent be made from the payments made to the Petitioner. For AY 2025-26, however, a certificate/order had been issued requiring payment of TDS @3.5 percent. HC quashed the impugned orders and directed the Revenue to deduct tax at lower rate of 1.5% under Section 197 for the relevant AY 2025-26. HC found that prior to AY 2022-23, the Revenue had been issuing certificates at 1.5% and that the HC had set aside orders stipulating deduction at higher rate. For AY 2022-23 Revenue contended that the assessee had a PE in India, however, the Tribunal, vide order dated Oct 17, 2025, set aside such finding. Thus, the HC held that the very ground available with the Revenue to justify the higher deduction of tax had lost its foundation. It clarified that the said Tribunal order for AY 2022-23, can be challenged by way of an appeal, however no appeal till date had been filed. HC directed that the Revenue may issue certificate of higher rate than 1.5% only in case of the following contingencies: (i) if the order passed by the Tribunal for AY 2022-23 was set aside or otherwise modified, or (ii) if the Income Tax Department was in receipt of any information or evidence showing existence of assessee's PE in India. HC clarified that in case the Revenue was of the view that the assessee had a PE in India, it would have to issue a notice to the assessee eliciting its response and would issue a certificate of higher tax rate u/s 197 only if not satisfied by assessee's response.

3 SAIC MOTOR CORPORATION LTD. VS. ACIT (2026) 182 TAXMANN.COM 163 (DEL-TRIB): TS-07-ITAT-2026 (DEL)

No Supervisory PE of Chinese Co- In the absence of evidence that the seconded employees carried out any supervisory activities in India

No Fixed Place PE - in the absence of evidence that the Chinese Co had a fixed place of business at its disposal in India where it had the right to use the same or had control thereupon (India–China DTAA)

The assessee, a Chinese company, was engaged in the business of research, production and sale of passenger cars and commercial vehicles under the brand "MG". Its wholly owned subsidiary, MGMIPL was engaged in assembling vehicles under the brand "MG" in India.

During the year, the assessee entered into two types of agreements with MGMIPL viz. Technology License Agreement and KD (Knocked Down) Parts Supply Agreement, for granting of license to MGMIPL for production of the Licensed Products and for offshore supply of KD Parts to be used by MGMIPL for manufacture of motor vehicles. Further, six employees were seconded to MGMIPL by the assessee company.

The AO held that the assessee through the seconded employees performed supervisory activities in connection with manufacturing and assembling process of cars by Indian AE, thereby holding that the assessee had a Supervisory PE in India.

He further held that the assessee also had a DAPE and Fixed Place PE on supply of goods in India and proposed to add the income attributable to the PE in India. The DRP upheld the action of AO in holding that the assessee company had a supervisory PE as well as a Fixed Place PE in India.

The Hon'ble Tribunal noted that assessee had categorically denied any supervisory activity being conducted by assessee for quality of product and had also filed an affidavit in this regard wherein it had been categorically denied by Deputy Managing Director of MGMIPL that even though agreement provided inspection clause but during subject year, assessee did not have any employee or other personnel present in India for purpose of inspection. Further, not a single e-mail was found from assessee company to six seconded employees or to MGMIPL showing that assessee was controlling or directing as to how its subsidiary MGMIPL was to conduct its business. In view of aforesaid, the the Hon'ble Tribunal concluded that the assessee did not have a Supervisory PE in India as no evidence was brought on record by AO to show that seconded employees were engaged in supervisory activities by the assessee company. [***PCIT vs. Samsung Electronics CO. Ltd. [2025] 170 taxmann.com 417 (Delhi)/[2025] 303 Taxman 212 (Delhi))*** **followed**]. Further, the Hon,ble Tribunal held that there was no evidence that assessee had a fixed place of business in India which was at its disposal and where assessee had right to use the said place or had control thereupon. It thus concluded that the assessee did not have a Fixed Place PE in India and deleted the addition. **[*Formula One World Championship Ltd. vs. CIT [2017] 394 ITR 80 (para 15) followed - Voith Paper gmbh vs. DDIT [I.T.A No. 1077(Del) of 2014, dated 21-2-2020] distinguished*].**

4 KYOCERA DOCUMENT SOLUTIONS ASIA LTD. [TS-42-ITAT-2026 (DEL)]

Revenue's 'Agency PE' plea rejected since conditions under Art. 5(5) of India - unsatisfied [India-Hong Kong DTAA]

Tribunal held that no Agency PE existed for the assessee, a Hong Kong based entity in the form of its Indian AE, Kyocera Document Solutions India Private Limited (KDID), in terms of Article 5(5) of the India-Hong Kong DTAA (DTAA) and thus attribution of 35% of the offshore sales to the said Indian AE, as income of the assessee, was unsustainable. It underscored that none of the conditions of Article 5(5) were met in the case of the assessee as it could not be established that that KDID habitually bound the assessee or secured order or maintained stock for the assessee. Further the relationship between the assessee and that of KDID was on principal-to-principal basis as evident from the sales agreement. Referring to Paragraph 6 of the OECD Commentary, the Tribunal held that the AO had not demonstrated with any cogent material that that KDID was legally and economically dependent on the assessee and that KDID was not acting in the ordinary course of its business. Revenue had failed to controvert assessee's assertion that KDID was a separate legal entity and was not subject to significant control by the assessee. Infact the Tribunal concluded that the Indian AE, KDID, bore the entrepreneurial risk of its activities and was acting in ordinary course of business.

5 SONDEX WIRELINE LTD. TS-1753-ITAT-2025 (DEL)

Onus to prove PE is on Revenue- Tribunal rejected AO's bland "Deemed PE" conclusion (India–UK DTAA)

Tribunal held that the assessee (a Baker Hughes group entity), engaged in offshore supply of equipment and standard software, did not have a PE in India. It held that the onus to prove that the assessee had PE/ deemed PE in India was on the AO whereas the AO had merely assumed that the assessee had deemed PE in India as per Article 5 of India-UK DTAA. No reasoning whatsoever had been given by the AO to come to a conclusion that the assessee had PE. Further, it apparently accepted assessee's submission that in one of the earlier assessment years the assessee had accepted a 1% profit attribution only to avoid protracted litigation and buy peace with the Tax Department. It relied on the SC judgment in ***Ishikawajima Harima Heavy Industries Ltd (2007) 158 Taxman 259 (SC)*** and concluded that it was no more res integra that where the entire transaction of offshore supply of goods i.e. The transfer of ownership of goods as well as the payments thereof are carried outside India, such transactions carried outside India would not be taxable in India.

6 MCKINSEY & COMPANY LME LTD. VS. ACIT [2026] 182 TAXMANN.COM 309 (MUM-TRIB.) : TS-1751-ITAT-2025 (MUM)

Where Tribunal remanded matter for limited purpose of examining whether assessee had a PE in India under India-UK DTAA during year by a consolidated order for group companies under India-Singapore DTAA,without granting adequate hearing on existence of PE under relevant UK treaty, assessee was entitled to one more opportunity to present its case on all relevant issues including PE and Tribunal's order was to be recalled accordingly (India-UK DTAA)

Assessee-company, resident of UK, received borrowed service fees from Mckinsey India. AO held that the said fees was in nature of FTS. CIT(A) held that the said fees was in nature of 'business income'. Tribunal upheld order of CIT (A) but remanded the matter to AO for limited purpose of examining existence of PE, applying findings from group cases under India-Singapore DTAA. Assessee filed miscellaneous application (MA) seeking recall of order on the ground that it was led by group cases under different DTAA and assessee was not heard on issue of existence of PE for this year. Since Tribunal had passed the original consolidated order in case of group companies as well as assessee which no doubt was on different DTAA as group companies pertained to India-Singapore DTAA and since present assessee/applicant pertained to India-UK treaty, in the order passed on the MA, the Tribunal held that the assessee should be extended with one more opportunity to present its case before the Tribunal on all issues including existence or nonexistence of PE in India for year under consideration *qua* facts of impugned year under consideration and accordingly the Tribunal's original order was recalled accordingly.

III. BUSINESS PROFITS

1 FCS COMPUTER SYSTEMS S PTE LTD. [TS-24-ITAT-2026(DEL)]

Branch office/PE being a separate entity is entitled to claim reimbursements & procurement cost deductions as per article 7 (India–Singapore DTAA)

The assessee, a company incorporated in Singapore and part of the Planet One group was engaged in the business of providing hospitality guest service, software applications and solution and design services for individual hotels, international chain hotels and integrated resorts. The assessee had established a branch office in India for looking after the sales and distribution business in India. The assessee claimed deductions for various expenses incurred by the head office on behalf of the branch office viz software maintenance costs, call center charges and other reimbursements such as support & courier charges. The AO, without considering the fact that the aforesaid expenditure was attributable to the business of the branch in India, disallowed the same. The Tribunal held that the BO/PE was solely established with

the approval of the RBI for the distribution of procured software to the premium hotels in India, and that such expenses were mandatorily incurred by the BO/PE for its business purposes. BO would be entitled for deduction for cost of procurement of goods and services along with reimbursement of all expenses in order to determine the profits earned by the said PE in India. Denial of such deduction would result in taxation of gross receipts which would tantamount to gross injustice and also violation of Article 7 of the DTAA. **[*Hyatt International Southwest Asia (2025) 176 taxmann.com 783 (SC) and Mashreq Bank Psc. (2025) 171 taxmann.com 230 (Mum-Trib) (SB) followed*].**

2 THE UK TRADE DESK LTD. [TS-29-ITAT-2026(MUM)-TP]

No further profit attributable to PE of UK entity once Indian entity remunerated at ALP (India-UK DTAA)

Assessee was engaged in the business of providing technology and service related of internet advertising. It filed its return of income for assessment year (A.Y.) 2022-23 declaring Nil income. The AO noted that assessee had associated enterprises (AE) in India namely TTD India through which its business was carried out in India. The assessee had also declared its permanent establishment under Article 5(4) the DTAA. The assessee entered into Master Service Agreement and Marketing Service Agreement. On the basis of certain clauses of MSA, the AO was of the view that TTD India (AE) of assessee focussed on generating new lead and liaising with its existing clients to promote new products. He concluded that the Indian entity/AE was acting as dependent agent of assessee and constituted DAPE of the assessee. Accordingly, he attributed income to the PE. The Tribunal deleted the addition by holding that since the Indian entity had been remunerated at arm's length, no further profit would be attributable to the PE in India in case of assessee. **[*Morgan Stanley Co. Inc. 292 ITR 416 (SC)* and *Honda Motors Co. vs. ADIT (2018) 92 taxmann.com 353 (SC) relied upon*].**

IV. SHIPPING & AIR TRANSPORT

1 AIR FRANCE VS. DCIT [2026] 182 TAXMANN.COM 397 (DEL-TRIB.)

Collection charges received by a France-based airline company – Taxable in India – Not eligible for exemption under Article 8 - since such charges were not directly connected with operation of aircraft in international traffic (India–France DTAA)

Assessee, an airlines company incorporated in France, operated aircraft in international traffic to and from various Indian airports and claimed exemption of its aviation-related income in India under Article 8 of the DTAA. Assessee had received certain collection charges from various airports for collection of

User Development Fee (UDF) and Passenger Service Fee (PSF) from passengers on behalf of airports. It did not offer the said income to tax in India claiming the same to be exempt under Article 8. AO treated the same as taxable in India. The Tribunal followed its decision in the assessee's own case for earlier AYs and held that since the collection charges were not directly connected to assessee's business of operating aircraft in international traffic and same were taxable in India. **[*AIR France vs. ADIT [IT Appeal No. 1150 (Delhi) of 2015, dated 24-2-2023 followed*].**

2 AIR FRANCE VS. DCIT [2026] 182 TAXMANN.COM 397 (DEL-TRIB.)

Income from technical handling services provided in India by assessee, a France-based airline company - exempt under Article 8(2) read with Article 8(1) since such income arose from participation in an international pool-consequently the same was not taxable in India (India-France DTAA)

Assessee, an airlines company incorporated in France, operating aircraft in international traffic to and from India and claiming Article 8 relief, provided technical handling services in India to other airlines, including IATP pool members and non-IATP members. It claimed that such income was covered under Article 8(2) read with Article 8(1) and thus not taxable in India. The Tribunal followed its decision in the assessee's own case for earlier ays and held that assessee was a member of IATP and technical handling services were rendered as part of participation in an international pool involving reciprocity of services, which was expressly covered under Article 8(2). Furthermore, there was no restriction or bar in IATP pool manual on providing services to non-IATP members. Thus, the impugned income received was taxable in India. **[*AIR France vs. ADIT [IT Appeal No. 1150(Delhi) of 2015, dated 24-2-2023* followed].**

3 AIR FRANCE VS. DCIT [2026] 182 TAXMANN.COM 397 (DEL-TRIB.)

Interest earned by assessee, a France-based airline company, on fixed deposits made out of funds connected with its business of operating aircraft in international traffic – Not Taxable in India under Article 8(3) (India–France DTAA)

Assessee, a France based airline company, earned interest income on fixed deposits made out of funds connected with its business of operating aircraft in international traffic and claimed exemption under Article 8 of the DTAA. AO treated the same as taxable in India on the ground that it was not connected with airline operations. The Tribunal followed its decision in the assessee's own case for earlier AYs and held that fixed deposits were made out of operational funds and assessee had no other business activity, thus interest income would be deemed to be profits derived from such operation and consequently would not be taxable in India. **[*AIR France vs. ADIT [IT Appeal No. 1150(Delhi) of 2015, dated 24-2-2023* followed].**

4 AIR FRANCE VS. DCIT [2026] 182 TAXMANN.COM 397 (DEL-TRIB.)

Commission received by assessee, a France-based airline company, from domestic airlines for domestic legs of passengers' journeys forming part of an international itinerary operated by assessee – Exempt under Article 8 as such commission income was directly connected with operation of aircraft in international traffic (India-France DTAA)

Assessee, an airlines company incorporated in France, was operating aircraft in international traffic and received commission from domestic carriers in cases where a passenger's itinerary included an international leg on assessee and a domestic leg on a domestic airline. Assessee claimed such commission was directly connected with its operation of aircraft in international traffic and exempt under Article 8(1) read with Article 8(4) of the DTAA. The Tribunal followed its decision in the assessee's own case for earlier AYs and held that entire journey of passenger from starting point to destination was arranged by assessee, though, domestic leg of travel was completed by a domestic carrier and thus, commission income earned was directly connected to operation of aircraft in international traffic. Consequently, the commission income was exempt under Article 8(1) read with Article 8(4) of the DTAA. **[*AIR France vs. ADIT [IT Appeal No. 1150(Delhi) of 2015, dated 24-2-2023 followed*].**

V. DIVIDENDS

1 MITSUI KINZOKU COMPONENTS INDIA PVT. LTD. TS-1725-ITAT-2025 (DEL)

Where assessee, an Indian company, paid dividend to its Japanese parent company, since such payment was in nature of dividend covered under definition of 'dividend' under article 10 and section 115-O, assessee was entitled to claim refund of DDT (on dividends distributed by it to its Japanese parent company) in excess of 10 per cent ie the rate at which the said dividends were taxable in India in the hands of the Japanese parent under article 10 (India-Japan DTAA)

The assessee made payment of DDT u/s 115-O @ 16.61% against the payment of dividend to its shareholder company (Mitsui Mining and Smelting Company Ltd., Japan).Since the tax resident of Japan was taxable @10% dividends as per Article 10 of the DTAA and the assessee had paid DDT @ 16.16, assessee filed an application and requested AO to issue an order u/s 237 determining the refund of excess DDT paid (i.e. 6.61%), who rejected it (confirmed by CIT(A) as well) on the ground that neither the assessee had claimed the aforesaid refund in its original return of income nor had it filed any revised return of income. The Tribunal noted assessee's submission (which was not contested by the Revenue) that though it had filed a claim

u/s 237 and had also filed its return of income on due date but, due to non-availability of the required utility in the e-filing portal for claiming refund, the said claim could not be made in the return of income. Thus, relying on Bombay HC's decision in the case ***Colorcon Asia (P.) Ltd. vs. JCIT [2025] 181 taxmann.com 301 (Bom)***, the Tribunal directed the AO to accept the claim of the assessee for issuing refund as per the application filed by the assessee u/s 237 treating it as a valid application, after necessary verification. It also rejected CIT(A)'s reliance on Special Bench's ruling in ***DCIT vs. Total Oil India (P.) Ltd. [2023] 149 taxmann.com 332 (Mum-Trib)*** as the same was overruled by Bombay HC's decision in ***Colorcon Asia***.

VI. INTEREST

1 R AND B FALCON A PTY LTD. VS. ACIT [2026] 182 TAXMANN.COM 839 (DEHRADUN-TRIB.)

Where assessee, an Australian company, had no PE in India in year of receipt of interest on income-tax refund, assessee was entitled to take benefit of article 11 of India-Australia DTAA and said interest could not be treated as business profits merely because refund pertained to years when PE existed and thus, interest was to be taxed at 15 per cent

Tribunal held that PE of non-resident assessee had to be seen in year of receipt of interest income. Since assessee did not have PE in India in year of receipt of interest on income tax refund, it was entitled to take benefit of article 11 of India-Australia DTAA and, thus, interest on income tax refund was chargeable to tax at 15 per cent. **[*Dolphin Drilling Ltd. vs. DCIT [2021] 130 taxmann.com 20 (Dehradun-Trib.), BJ Services Company Middle East Ltd. vs. ACIT [2015] 60 taxmann.com 24 (Uttarakhand) and DDIT vs. Samsung Heavy Industries Ltd. [2020] 117 taxmann.com 870 (SC) followed*].**

VII. ROYALTY

1 CIT 1 VS. DXC TECHNOLOGY SERVICES SINGAPORE PTE. LTD. [2026] 182 TAXMANN.COM 406 (SC)

SLP dismissed against order of High Court that amount received by assessee, a Singapore based company, from various entities on account of sale/supply of software could not be treated as royalty within meaning of article 12(3) of the DTAA as assessee had not transferred copyright it had *qua* subject software (India-Singapore DTAA)

Assessee, a Singapore based company received consideration *qua* off-the shelf sale

of software which was brought to tax by AO treating the same as royalty. Since assessee had not transferred copyright it had qua subject software, the Tribunal concluded that the said amount could not be treated as royalty within meaning of article 12(3). The High Court held that having regard to finding of fact and enunciation of law by Supreme Court ***(Engineering Analysis Centre of Excellence (P.) Ltd. vs. CIT [2021] 125 taxmann.com 42 (SC))***, the impugned order did not require interference. The SC found no case was made out of condoning delay of 598 days, therefore, application for condonation of delay and SLP was to be dismissed. **[*SLP dismissed against CIT (IT)) vs. DXC Technology Services Singapore (Pte.) Ltd. [2024] 158 taxmann.com 431 (Delhi)*].**

2 CIT, IT VS. SRI LANKA CRICKET [2026] 182 TAXMANN.COM 537 (DEL)

Consideration received by a non-resident for enabling live telecast of cricket matches - Not royalty under section 9(1)(vi) or Article 12 (India–Sri Lanka DTAA)

The HC held that consideration received by a non-resident for enabling live telecast of cricket matches did not constitute royalty under section 9(1)(vi) or article 12 as the rights granted did not extend beyond live feed and no copyright or derivative exploitation rights were transferred. Further, since the revenue had failed to show that rights of exhibition exceeded beyond 'live feed', the HC concluded that no interference was warranted with Tribunal's order holding that such income was not taxable as royalty. ***[CIT (IT) vs. Fox Network Group Singapore Pte. Ltd [2024] 158 taxmann.com 434 (Delhi) followed*].**

3 SABRE MARKETING NEDERLAND, BV VS. ACIT (IT) (2026) 162 TAXMANN.COM 162 (DEL-TRIB) : TS-10-ITAT-2026 (DEL)

Fees received from Indian customers by assessee, a Netherlands resident for providing technology solutions and software-based services to Indian airlines without granting use or right to use any intellectual property or secret formula - Not Royalty under article 12(4) [India-Netherlands DTAA]

Assessee, a tax resident of Netherlands, was engaged in providing technology solutions to airline industry. It marketed and distributed travel related products and services to airlines, including decision support applications and implementation/support services for Sabre software packages. It primarily used software hosted on vendors' servers located outside India, entered into master agreements with airlines to facilitate these solutions and services, earned fees from activities/transactions originating in India, and received such fees outside India. AO held that receipts from Indian airlines/customers were taxable in India as 'royalties' under section 9(1)(vi) and Article 12(4) of the DTAA. The Hon'ble Tribunal held that since assessee had not given any use or right to use any IPR to customers and had not given secret process or formula to customers in India, amounts received by assessee from its Indian customers would not constitute royalty as per Article 12(4) of India-Netherlands DTAA. **[*Salesforce.*

***com Singapore Pte vs. DDIT (IT) [2022] 137 taxmann.com 3 (Delhi-Trib.) And New Skies Satellite BV [2016] 68 taxmann.com 8 (Delhi) followed*].**

4 ITO VS. BENNETT COLEMAN & CO. LTD. [2026] 182 TAXMANN.COM 365 (MUM-TRIB.) : TS-47-ITAT-2026 (MUM)

Where assessee-company paid transponder service fees to a UK-based company and deducted tax out of abundant caution since services did not involve use of any secret process and Explanation 6 to section 9(1)(vi) could not override Article 13, payments were not taxable in India as royalty (India–UK DTAA)

Assessee -company entered into an agreement with Intelsat, a UK based company for up-linking and down-linking of satellite signals for broadcasting television channels in India. Pursuant to the agreement, assessee regularly made payments towards transponder service fees. Assessee was of the view that transponder service fees paid was not chargeable to tax in India and taxes were withheld on a grossed-up basis purely out of abundant caution. AO held that transponder charges were chargeable to tax in India as royalty for 'use of' or 'right to use of process' as per Explanation 6 to section 9(1)(vi). Assessee filed appeal under section 248 seeking refund of TDS. CIT(A) held that transponder charges could not be considered as fees in relation to any secret process, thus, same was not taxable as process royalty under article 13 of the DTAA. The Tribunal noted that in a case similar to assessee, High Court held that unless provisions of tax treaty were amended jointly by both parties to incorporate amended definition of term "Royalty" by Finance Act, 2012, which inserted Explanation-6 to section 9(1)(vi), such an amendment by itself would not result in any change in definition of the term "Royalty" as defined in provisions of the tax treaty. Thus, transponder service fees payable by assessee to Intelsat were not taxable in India as royalty as per provisions of India-UK DTAA, and consequently, assessee was not liable to deduct tax at source u/s 195 on such payment. **[*DIT vs. New Skies Satellite BV [2016] 68 taxmann.com 8 (Del), ACIT, IT vs. Viacom18 Media (P.) Ltd. [2022] 134 taxmann.com 243 (Mum-Trib.), ACIT vs. Viacom 18 Media (P.) Ltd. [2022] 135 taxmann.com 321 (Mum-Trib.), ACIT (IT) v. United Home Entertainment (P.) Ltd. [2025] 175 taxmann.com 377 (Mum-Trib.) And Intelsat Global Sales and Marketing Ltd. vs. DCIT, [IT(TP)A No. 49/Chny/2018, dated 16-10-2023] followed*].**

5 JEPPESEN GMBH VS. ACIT, IT [2026] 182 TAXMANN.COM 387 (MUM-TRIB.) : TS-1761-ITAT-2025 (MUM)

Where assessee, a German company, earned receipts from Indian customers for providing flight/navigation data, restricted software licences with ancillary services and sale of printed charts, such receipts were not taxable as royalty under article 12 but constituted business income, not taxable in India in absence of permanent establishment [India-Germany DTAA]

Assessee, a company incorporated in Germany, was engaged in providing flight

and navigational informational solutions and in developing software used for flight planning and operational execution. It earned ₹ 47.61 crores from Indian customers for navigational/aeronautical data and information supplied electronically or in paper form, for restricted licences of Electronic Flight Bag and ground tools software with linked implementation, training and support, and for sale of printed charts and related items. AO held receipts to be 'royalty' under article 12 of the DTAA and section 9(1)(vi), noting that assessee compiled data from government/ public and customer sources based on its accumulated experience and that there was no material change from earlier years when similar income was offered as royalty. The Tribunal, relying on the OECD Commentary, held that where the revenue seeks to bring a payment within the last limb ie information concerning industrial, commercial or scientific experience,it must be shown not merely that the provider possesses experience or expertise, but that such experience in the nature of know-how has been transferred or imparted to the payer, enabling independent use by the payer, and that the payment is in consideration for such transfer of know-how. In the instant case, the Tribunal noted that the assessee gathered aviation-related information from government sources and other publicly available repositories, and in some cases customer-supplied information, and thereafter undertook internal processes of verification, validation, collation and formatting to produce a usable compilation in the form of navigation and aeronautical data delivered to customers. The data so supplied was not claimed to be confidential know-how of the assessee; rather, the assessee's value addition came in curation, verification and structured delivery, which undoubtedly required experience, but that experience remained embedded within the assessee's enterprise. The customers did not receive any proprietary methodology, algorithm, technical process, or internal operational skillset of the assessee; they received only the final compiled information in an agreed form for internal use, with restrictions against duplication, resale, alteration or making available to third parties. Thus, what was paid for was access to an end-product aviation data compilation rather than a transfer of assessee's industrial, commercial or scientific experience. In other words, assessee's experience was used by the assessee to produce the deliverable; it was not imparted to the customer so as to enable the customer to independently reproduce the underlying expertise. Therefore, the receipts from provision of flight information/data could not be characterised as royalty under article 12(3) merely because the assessee had applied its accumulated experience in compiling the information. The same constituted 'business income' which was not taxable in India in the absence of a PE. **[*Diamond Services International (P) Ltd. vs. Union of India [2008] 304 ITR 201 (Bom) followed*].**

6 TATA CONSULTANCY SERVICES LIMITED [TS-1724-ITAT-2025 (MUM)]

Expenses for imported software utilised for internal use and imported software for third party sale – Not Royalty – s. 40(a)(i) disallowance deleted

The Tribunal followed ruling of coordinate bench in the assessee's own case for AY 2015-16 wherein it considered the submission of the assessee that subscription was paid for the services pertaining to publication and

the same were not an information or advice given individually. The subscription services were not of the nature of transfer of right in the copyright in the article etc. Coordinate bench also held that AO had not disproved the material fact that subscription was made for use of a copyrighted article and not for transfer of right in the copyright in the article and that the assessee had not received any licence for commercial exploitation of the copyright. Accordingly, the disallowance u/s 40(a)(ia) was deleted. **[*Engineering Analysis Centre of Excellence (P) Ltd., vs. CIT 432 ITR 471(SC)* followed].**

VIII. FEES FOR TECHNICAL SERVICES

1 NORD ANGLIA EDUCATION LIMITED [TS-35-HC-2026 (DEL)]

HC quashed 15% TDS certificate w.r.t payments received for routine management & administrative support services(provided by UK entity) for not considering Rule 28AA factors which are mandatory for s. 197- Matter remanded (India–UK DTAA)

The petitioner, a company incorporated under the laws of the United Kingdom was engaged in the business of providing international education across the globe. The petitioner had a subsidiary in India, Nord Anglia Education India Pvt. Ltd. (*Nord India*, hereinafter), to which the petitioner extended routine management and administrative support services, including marketing and communication, human resources, finance, IT, and corporate development, which were subsequently recovered on a strict cost-to cost basis without any markup. According to the petitioner, the services rendered by it were purely managerial in nature and did not partake the character of FTS under Section 9(1)(vii) of the Act and more importantly, under Article 13 of the DTAA, only technical or consultancy services that *make available* technical knowledge, skill, or know-how are taxable. Managerial services are outside its scope. The services of the petitioner did not make *available* any such technical knowledge to its Indian affiliates, and as such, The consideration received by was not taxable in India. *The Tribunal,* In the case of the petitioner itself for the ays 2020-21 and 2021-22, categorically held that the consideration received for the said services, would not be taxable as FTS in terms of the provisions of the India–UK DTAA. Despite the above the AO had mechanically passed the impugned order, stating that the issuance of a Nil rate certificate would be premature, and that tax @15% must be withheld *to protect the interest of revenue.*

The High Court allowed assessee's writ petition observing that the AO failed to consider the issue from Rule 28AA perspective, which is a statutory requirement while determining the application for issuance of Nil withholding certificate.Therefore, it remanded the matter back to the AO to decide afresh in view of mandate of law, specifically Rule 28AA, and without being influenced by appeal/application filed against Tribunal orders for AY 2020-21 and 2021-22, unless the same were set aside or varied either by the jurisdictional HC or by the Tribunal. **[*Union of India vs. Kamlakshi Finance Corporation Ltd, (1991) 55 ELT 433 SC, Zscaler Inc. vs. DCIT, 2025: DHC:11752, Manpower Services***

India Pvt. Ltd. vs. CIT, (2021) 430 ITR 399 (Delhi), Virgin Atlantic Airways Ltd. vs. PCIT, W.P.(C) 5978/2021 dated 29.07.2021 relied upon].

2 ANIXTER INDIA PRIVATE LIMITED [TS-84-ITAT-2026(CHNY)]

Corporate charges paid to Singaporean AE, not taxable as FTS or business profit-Sec. 40(a)(i) disallowance deleted (India – Singapore DTAA)

Tribunal deleted the disallowance made under Section 40(a)(i) by holding that the assessee was not obliged to deduct tax at source under Section 195 against payment of corporate charges to its Singapore-based AE, Anixter Singapore Pte. Ltd, as the same was not chargeable to tax in India, either as FTS under Article 12 or as business profits under Article 7 of the DTAA.Considering the nature of services for which the corporate charges were paid by the assessee to be intra-group managerial, administrative, marketing and business support services, it held that these services did not "make available" any technical knowledge, experience, skill, know-how or processes to the assessee so as to enable it to apply such technical knowledge independently in future. It further rejected the CIT(A)'s finding that Anixter Singapore constituted a PE of the assessee in India on the ground that there was no evidence to establish the existence of a fixed place PE, nor was there any material to demonstrate that Anixter Singapore was carrying on business in India through a dependent agent satisfying the conditions prescribed under the DTAA. It concluded that mere rendering of support services from outside India or coordination activities cannot, by itself, give rise to a PE. Consequently, there was no obligation to deduct tax at source u/s 195 and thus the disallowance under Section 40(a)(i) was deleted.

3 VERITAS STORAGE (SINGAPORE) PTD. LTD. VS. DCIT [2026] 182 TAXMANN.COM 149 (DEL-TRIB.) : TS-1738-ITAT-2025 (DEL)

Where maintenance support and other services as well as Education and training services were intricately and inextricably associated with software sold by Singapore entity and were provided in connection with utilization of software, since income from sale of software was not taxable, income from sale of related and inextricably linked services could not be taxed as FTS under article 12 (India–Singapore DTAA)

Assessee-company, incorporated under laws of Singapore and engaged in business of selling software, provided maintenance support, other services education and training services in connection with utilization of software and received consideration for same. AO treated income earned from maintenance support and education and training services as FTS. The Tribunal noted that maintenance support and other services as well as education and training services were intricately and inextricably associated with software sold and were provided in connection with utilization of software as per article 5(a) of the DTAA. Further, revenue

itself had accepted that sale of software was not taxable as royalty. Thus, when income from sale of software was not taxable, income from sale of related and inextricably linked services could not be taxed as FTS. Further, neither AO nor DR could bring any evidence on record to substantiate that 'make available' condition as per Article 12(4)(b) of the DTAA was satisfied. Therefore, addition made by AO by treating 'fees for provisions for other related services' as taxable FTS was deleted. **[*TSYS Card Tech Ltd. vs. DCIT, IT [2023] 149 taxmann.com 195 (Del-Trib.)* And *Veritas Storage [Singapore] Pte Ltd vs. DCIT, IT [IT Appeal No. 1913 (Delhi) of 2023, dated 22-8-2025*] *followed.***

4 DCIT VS. EXXON MOBIL LUBRICANTS (P.) LTD. [2026] 182 TAXMANN.COM 626 (DEL-TRIB.)

Where assessee paid allocated expenses to its Singapore AE for services rendered outside India and, no tax was deductible under section 195 as the said services did not tantamount to FTS under article 12 - Consequently disallowance under section 40(a)(i) was deleted. (India-Singapore DTAA)

Assessee debited about ₹ 17.97 crores under 'Allocated Expenses' paid to its AE in Singapore for common facilities/services. It deducted tax at source on about ₹ 3.56 crores for information systems and did not deduct tax on about ₹ 14.41 crores for functional guidelines/support and other related services claiming that the services were rendered outside India and income did not accrue or arise in India. AO disallowed about ₹ 14.41 crores under section 40(a)(i) for non-deduction of tax under section 195. CIT(A) deleted disallowance, following order in immediately preceding year which had been confirmed by Tribunal. The Tribunal too followed its own order in the assessee's own case and upheld the deletion of the disallowance u/s 40(a)(i). **[*DCIT vs. Exxon Mobil Lubricants (P.) Ltd. [2020] 118 taxmann.com 51 (Del-Trib.) Followed – wherein the asssessee's plea that the impugned payments did not amount to FTS under article 12 of the DTAA was accepted*].**

5 ADDL CIT VS. IYOGI TECHNICAL SERVICES (P.) LTD. [2026] 182 TAXMANN.COM 564 (DELHI-TRIB.)

Whether payments/reimbursements made to US entity for marketing support services rendered outside India without any permanent establishment was taxable as FTS justifying disallowance u/s 40(a)(i) - Matter remanded (India–USA DTAA)

The assessee made payments to its US AE for marketing support services rendered outside India without any permanent establishment. The AO held that the services provided to AE were in the nature of fees for included services (FIS) under article 12(4) and also fell within section 9(1)(vii), interpreting the agreement (including confidentiality clauses) as satisfying the 'make available' condition. Consequently, he disallowed the said fees u/s 40(a)(i) for non-deduction of tax at source. CIT (A) deleted the said disallowance. On Revenue's appeal, the Tribunal noted that such services did not *prima facie* 'make available' technical knowledge. However, since the nature of

expenditure as well as services provided by the AE outside India were not clear and since the reimbursement of expenses seemed to be too high and the assessee failed to substantiate the costs and also since certain components (of the expenses claimed) could fall within FIS, matter was restored to AO to verify cost allocation and restrict allowable expenditure.

6 BOMBARDIER INC [TS-1758-ITAT-2025 (DEL)]

Aircraft -services not FTS- 'Make available' test not satisfied (India – Canada DTAA)

Assessee, a resident of Canada engaged in manufacturing aircraft and providing related aftermarket services received consideration (of ₹ 41.46 Cr) in pursuance to an agreement with Spicejet based on per-flight-hour support, covering supply of parts, consumables, replacements and associated maintenance services. AO taxed the consideration as FTS under section 9(1)(vii) and as FIS under Article 12(4) of the India–Canada DTAA on the premise that the services satisfied the "make available" clause. DRP rejected assessee's objection. Tribunal held that consideration received by a Canadian entity (assessee) towards service maintenance, repair and overhaul (MRO) services rendered to Spicejet could not be considered as FTS in terms of Article 12(4) of India-Canada.The agreement merely provided for collaboration and assistance between the parties and did not involve imparting or transferring any technical knowledge that would enable the recipient to independently perform similar services in future. The 'make available 'test under article 12(4) was thus not satisfied. **[*CIT vs. Goodrich Corporation - 175 taxmann.com 177 (Del HC) Goodrich Corporation, Rockwell Collins Southeast Asia Pte Ltd vs. DCIT in ITA No. 2409 & 2410/Del/2023 dated 14-11-2024 relied upon*].**

7 BOMBARDIER TRANSPORTATION GMBH [TS-36-ITAT-2026 (DEL)]

Income towards furnishing of plans, drawings & designs, being preparatory, not FTS under article 12(4) (India-Germany DTAA)

The assessee, a company incorporated in Germany, was engaged in the business of manufacturing and supply of passenger rolling stock (trains) and railway applications. Delhi Metro Rail Corporation (DMRC) had floated an International Competitive Bid for design, manufacture, supply, testing, commissioning, training and transfer of technology of 340 Electrical Multiple Units (EMU) Known as RS2 contract. For participating in the bid, the assessee formed a consortium with Bombardiar Transportation India Ltd. (BTIL). A MOU with BTIL was executed to collectively participate in the bid. The assessee was a successful bidder in an International competitor bidding for supply of rolling stock and railway applications.

A Contract Agreement-RS2 was entered into between DMRC and the Consortium on 19.07.2007 for the designing and construction

of a rail-based mass rapid transport system by procuring the design, execution & completion and remedying any defects in the works of the design, manufactures, supply, testing, commissioning, training and transfer of technology of 340 electrical multiple units (passenger rolling stock) including training of operation and maintenance personal, supply unit exchange spares, consumable spares and Operation and Maintenance Manuals and transfer of technology. As per the Contract Agreement, for the execution of entire work the assessee was to receive lump sum price (which did not include the price for transfer of technology.) As per the Tender documents, the entire Work including designs was divided into cost centers. Each of the cost centers represented major items associated with the work. The lumpsum price for the whole work was apportioned among various cost centers. Each cost centers were further classified into milestones. The apportioned lumpsum price was to be disbursed to the assessee on raising an invoice at different stages on achieving milestone activities. The AO held that the payment received by the assessee against the milestone activities specified by the assessee fell within the purview of Article 12(4) of the DTAA and treated the payments as income of the assessee in the nature of Fee for Technical Services (FTS).

The Tribunal held that the payments received by the assessee upon achieving the milestones towards project management plan, works programme, quality assurance plan and preliminary design in connection with the supply of passenger rolling stock was not taxable in India as Fees for technical services (FTS) under article 12(4) of the DTAA. It held that mere furnishing of plans, designs and drawings did not amount to rendering of services in the nature of managerial, technical and consultancy within the meaning of Article 12(4) of the DTAA. Assessee had merely furnished diagrams indicating organizational structure, qualification of personnel to be deployed etc. And the work plan involved submission of proposed work programme and proposed design submission programme which did not fall within the meaning of managerial, technical or consultancy services, thus the payments for the same did not fall within the ambit of FTS as defined in Article 12(4) of the DTAA. Further, the plans, drawings and designs furnished by the assessee was not an independent activity in itself and was only a stepping stone for achieving the ultimate object of supply, installation and maintenance of rolling stock. It was only a step in the direction of commencement of rendering of service and milestones were preparatory. **[*Rotem Company vs. Director of Income Tax 279 ITR 165 (AAR) relied upon*].**

8 ACRONIS ASIA PTE LTD. [TS-1759-ITAT-2025 (MUM)]

Distribution income of Singapore Entity could not be recharacterized FTS as FTS under the India-Singapore DTAA. Invocation of India-Switzerland DTAA (not having 'make available 'clause for Singapore based assessee on the ground that core services and software infrastructure were owned and operated by the Swiss group entity - untenable. Assessee entitled to exemption u/s 10(50) (India–Singapore DTAA vs India–Switzerland DTAA)

The Tribunal held that the revenue received by the assessee, a Singapore based entity

from Indian sub-distributors for distribution of software products and allied rights under a commercial distribution arrangement, could not be recharacterized as FTS under India-Singapore DTAA since (i) the assessee merely operated as a limited-risk distributor on a principal to-principal basis, (ii) did not own or exploit any intellectual property, (iii) did not render any technical, managerial or consultancy services and (iv) did not make available any technical knowledge, experience, skill or know-how to the Indian sub-distributors. It noted that DRP had proceeded to invoke the provisions of the India–Switzerland DTAA (DTAA) on the premise that the "core services" and software infrastructure were owned and operated by the Swiss group entity, namely Acronis International gmbh and thus assessee's income was liable to be tested under the India-Swiss DTAA, which does not contain the "make available" clause, rather than the India–Singapore DTAA. Underscoring the aspects that the assessee was an undisputed tax resident of Singapore, holding a valid TRC, and was entitled to the benefits of the India-Singapore DTAA, it held that application of a treaty to a person who is not a resident of the contracting states thereto is impermissible and contrary to the express provisions of Article 1 of the India–Switzerland DTAA. DRP's approach was fundamentally flawed and contrary to settled principles of international taxation. On assessee's claim for exemption under Section 10(50), the Tribunal noted that the consideration received from Indian sub-distributors constituted consideration for e-commerce supply or services, whereon the assessee had discharged equalization levy @2%. Having already held that the distribution revenue does not constitute FTS either under the Act or under the DTAA, the bar contained in Explanation 1 to Section 10(50) was held to be not applicable. Since the Asseessee had duly discharged equalization levy at the prescribed rate on the impugned receipts and had furnished documentary evidence thereof, the Tribunal concluded that the assessee was entitled for exemption u/s. 10(50).

IX. CAPITAL GAINS

1 AUTHORITY FOR ADVANCE RULINGS (INCOME-TAX) VS. TIGER GLOBAL INTERNATIONAL II HOLDINGS [2026] 182 TAXMANN.COM 375 (SC) : TS-38-SC-2026

Gains arising to a Mauritius company on transfer of Flipkart (Singapore) shares whose value was derived from Indian assets – taxable in India. TRC alone - insufficient to establish DTAA entitlement post-section 90(2A) and 90(4)/(5). Grandfathering under article 13(3A) covers only direct transfers, not indirect transfers under article 13(4). As arrangement was impermissible for tax purposes, Chapter X-A applied and capital gains post-1-4-2017 were held to be taxable in India (India-Mauritius DTAA)

Assessee, a company incorporated in Mauritius, held shares of Flipkart, a Singapore company which in turn invested in multiple companies in India and whose value was derived substantially from assets located in India. Assessee transferred the said shares to a Luxembourg company (as part of a broader transaction involving majority acquisition of Singapore company by Walmart, a US company). assessee claimed that capital gains arising from said transfer would not be taxable in India under DTAA. AAR rejected

claim holding that there was no foreign direct investment made by assessee companies in India and therefore no participation in investment arose, and further that as there was neither any business operation in India nor any taxable revenue generated, transaction was a preordained arrangement created for purpose of tax avoidance. The High Court set aside order of AAR and held that transaction was not designed for avoidance of tax and stood grandfathered by virtue of article 13(3A) of DTAA. On Revenue's appeal, the Supreme Court held that after insertion of section 90(2A), sections 90(4) and 90(5), and introduction of Chapter X-A along with article 27A of DTAA, mere possession of a Tax Residency Certificate (TRC) was not sufficient to conclusively establish treaty eligibility or prevent revenue from examining treaty abuse. The grandfathering benefit under article 13(3A) of DTAA is confined only to direct transfers of shares of an Indian company and does not extend to indirect transfers which fall under residual article 13(4). It further held that the impugned unlisted equity shares were transferred pursuant to an arrangement impermissible under law. Consequently, assessee was not entitled to claim exemption under article 13(4) of DTAA. Since the transactions in instant case constituted impermissible tax-avoidance arrangements attracting Chapter X-A, capital gains arising from transfers effected after 1-4-2017 would be taxable in India. **[*Tiger Global International III Holdings vs. Authority for Advance Rulings (Income-tax) [2024] 165 taxmann.com 850 (Delhi) – Set aside*].**

2 GS STRATEGIC INVESTMENTS LTD. VS. ACIT, IT [2026] 182 TAXMANN.COM 159 (MUM-TRIB.)

Where assessee, a tax resident of Mauritius, earned long-term capital gains from sale of shares of an Indian company and claimed same as not chargeable to tax in India under Article 13(4), there was no occasion, in law, to adjust or set off brought forward long-term capital losses against such non-chargeable gains and, thus, assessee was entitled to carry forward entire brought forward long-term capital losses in accordance with section 74 (India-Mauritius DTAA)

Assessee-company, a tax resident of Mauritius, was primarily engaged in investment holdings in Asian countries and had invested in India under FDI route. During the year, assessee earned long-term capital gains from sale of shares of an Indian company, NSE, and dividend income from NSE. It filed its return declaring only dividend income as taxable income and claimed long-term capital gains as not chargeable to tax in India under Article 13(4) of India-Mauritius DTAA as amended on the premise that gains from alienation of shares acquired prior to 1-4-2017 in a company resident in India were taxable only in Mauritius. Further, the assessee also had brought forward long-term capital losses pertaining to earlier assessment years which were computed under section 112 and were carried forward as per section 74. However, AO passed a final assessment order wherein exempt/not chargeable long-term capital gains from sale of NSE shares were adjusted/set off against brought forward long-term capital losses, and only balance loss was permitted to be carried forward. The Tribunal held that since long-term capital gains in question were not chargeable to tax in India by virtue of Article 13(4) read with section 90(2), there was no occasion, in law,

to adjust or set off brought forward long-term capital losses against such non-chargeable gains and, thus, assessee was entitled to carry forward entire brought forward long-term capital losses in accordance with section 74. **[*Goldman Sachs Investments (Mauritius) Ltd. vs. DCIT [2020] 120 taxmann.com 23 (Mum-Trib.)/[2021] 187 ITD 184, Goldman Sachs (Singapore) Pte. Ltd. vs. ACIT (IT) [ITA Nos. 2062 & 2063 (Mum) OF 2025,dated 10-10-2025]), ACIT vs. J.P. Morgan India Investment Company (Mauritius) Ltd. [2022] 143 taxmann.com 82 (Mum-Trib.), Atyant Capital India Fund-I vs. ADIT, IT [2025] 178 taxmann.com 19 (Mum-Trib.), Flagship Indian Investment Co. (Mauritius) Ltd. vs. ACIT (IT) [2010] 38 SOT 426 (Mum) followed*].**

X. INDEPENDENT PERSONAL SERVICES

1 VIJAY MARIAPPAN AUSTIN PRAKASH [TS-1744-ITAT-2025 (VIZ)]

Assessee's consultancy income not taxable under article 14 – Treaty benefits cannot be denied merely because the assessee was initially employee of the company paying the consultancy income (India–UAE DTAA)

The assessee, an NRI and Dubai resident was a salaried employee with Zerodha Broking Ltd till 30.09.2020 and after termination of employment he was appointed as consultant from 01.10.2020. The assessee claimed that his management consultancy income of ₹ 8,28,36,296/- was exempt under article 14 of the DTAA. Ld. AO also invoked provisions of section 9(1)(i) of the Act stating that the assessee was having a business connection in India on account of Significant Economic Presence [in short "SEP]. AO also observed that the assessee had exceeded the threshold amount prescribed under Rule 11UD of the I.T. Rules for the purpose of Significant Economic Presence. He further observed that assessee was also not covered under Article 14 of India-UAE DTAA by stating that the services rendered by the assessee did not fall within the definition of the "professional services" as defined in Article 14 of India-UAE DTAA.The AO contented that assessee had been appointed as a consultant w.e.f. 01.10.2020 in order to avoid paying tax in India which was arising to him in the earlier assessment years as salaries (since the assessee performed the same functions as he was performing during his employment with ZBL.) The Tribunal did not find any merit in the AO's findings due to the fact that change of the employment to consultant was with regard to the agreement between the concerned parties and that the assessee had been appointed as a consultant based on the said agreement for the period from 01.10.2020 to 30.09.2022. It noted that Article 14 to India-UAE DTAA defines professional services in an inclusive manner and concluded that the professional services provided by the assessee was covered under the term professional services as defined in Article 14(2) of DTAA. The assessee was entitled to avail the benefit under 90(2) and consequently the assessee's consultanty income was not taxable in India under article 14. (in the absence of a PE in India).

XI. FOREIGN TAX CREDIT (FTC)

1 VAIBHAV DAS MUNDHRA VS. ADIT [2026] 182 TAXMANN.COM 618 (KOL-TRIB.)

Foreign tax credit could not be denied to assessee merely because of delayed filing of Form No. 67 (India–Singapore DTAA)

The Tribunal held as above on the reasoning that neither section 90 nor rule 128 provides that foreign tax credit shall be disallowed for non-compliance with any procedural requirement. Therefore, the claim of the assessee was allowed and the AO was directed to verify the return of income with the computation made and give benefit of FTC in respect of taxes paid outside India by the assessee in accordance with law and the DTAA.

XII. NON-DISCRIMINATION

1 LINKEDIN TECHNOLOGY INFORMATION PVT LTD. [TS-28-ITAT-2026 (DEL)]

Sec. 40(a)(i) disallowance capped at 30% in view of article 26(3) (India–USA DTAA)

The assessee was engaged in the business of providing marketing and customer support services to linkedin Singapore Pte Ltd., a subsidiary of the assessee. It also provided contract research and development services to linkedin Ireland Unlimited Company. The assessment was reopened u/s 147 of the Act on the basis of information that the assessee company had made foreign remittances of FTS/FIS without withholding tax. Thereafter, reassessment order was passed for A.Y. 2018-19 adding an amount which equalled to 30% of total remittance. The CIT passed revision order u/s 263 on the ground that the disallowance ought to have made @ 100%. The Hon'ble Tribunal quashed the revision order under Section 263 on the ground that both the ingredients of Section 263, i.e. The order being erroneous and prejudicial to the interest of the Revenue, were not satisfied. It noted that the quantum of disallowance for resident is restricted to 30% under Section 40(a)(ia) and held that therefore to meet the requirement of discriminatory clause of Article 26(3) of the DTAA, the disallowance for payment made to non-resident, without deducting TDS, should as well be restricted to 30% under Section 40(a)(i). It further held the disallowance on non-resident payments @100% lead to less favorable treatment as compared to a similar payment to a resident under same conditions, having 30% disallowance. Such disparity would trigger the non-discrimination clause in Article 26(3) of tax treaty as excess disallowance of 70%, in case of payment to non-residents, had to be considered as discriminatory as compared to allowability of similar payment made to residents. **[*CIT vs. Herbalife India P Ltd - (2016) 69 taxmann.com 205 (Delhi) relied upon*].**

XIII. OTHERS

1 BECHTEL LTD. VS. ACIT, IT [2026] 182 TAXMANN.COM 153 (DEL-TRIB.)

Where assessee, a non-resident (UK based company), received income from Indian entity and DRP directed taxing receipts as FTS on a protective basis due to a PE, but AO instead taxed them substantively under Article 13 of DTAA ignoring DRP's binding directions, AO had exceeded his jurisdiction and flouted directions given by DRP and, thus, final order passed in violation of directions of DRP was void ab initio and was to be quashed (India–UK DTAA)

Assessee, a UK based company, entered into an agreement with Indian company RIL for providing certain engineering information, engineering services, and support services in relation to procurement of machinery and equipment in relation to construction of plant at RIL's refinery. It declared revenue received during year from engineering and procurement support services provided to RIL as non-taxable in India. AO was of view that as per section 9(1)(vii), consideration received by any non-resident taxpayer for rendering any technical, managerial or consultancy services would qualify as FTS under section 9(1)(vii) and under article 13 of India-UK DTAA at 10% (plus surcharge), and also noted existence of a PE on account of an office at RIL plant. The DRP held that assessee had a PE in India and directed that receipts, though taxable in India, be taxed as FTS under section 44DA on a protective basis. However, the AO passed final assessment order taxing receipts substantively as FTS under Article 13 at 10% (plus surcharge). The Tribunal held that since AO had computed income of assessee on substantive basis though there were specific directions given by DRP to charge income in hands of assessee on protective basis, Assessing Officer exceeded his jurisdiction and flouted directions given by DRP and, thus, final assessment order passed in violation of such directions of DRP was void ab initio and was quashed.

"A fool may buy all the books in the world,
and they will be in his library;
but he will be able to read only
those that he deserves to;
and this deserving is produced by Karma."

Swami Vivekananda

GST





CA Naresh Sheth *CA Jinesh Shah*

A. DECISIONS BY HIGH COURT

1 AEROCOM CUSHIONS PRIVATE LIMITED VS. ASSISTANT COMMISSIONER (ANTI-EVASION) [WP NO. 2145 OF 2025] – BOMBAY HIGH COURT

Facts and issues involved

Petitioner challenged a show cause notice (SCN) dated 20-12-2024 issued by respondent No. 1 which demanded GST amounting to ₹ 27,00,000 under Section 74(1) of the CGST Act, 2017 for alleged non-payment of tax on the transfer of leasehold rights. The petitioner had assigned its leasehold rights in a plot belonging to the Maharashtra Industrial Development Corporation (MIDC) at Hingna, Nagpur, to M/s. Rishita Industries for a consideration of ₹ 1,50,00,000. This assignment was carried out with the prior consent of MIDC and after payment of an additional premium. The core issue in the preset writ petition was whether the assignment of these rights constitutes a supply of services exigible to tax under the Act.

Petitioner's submissions

The petitioner argued that because they held a 95-year lease, the plot is effectively leasehold ownership property, and the rights are transferable under clause 2(u) of the lease agreement. The transaction pertains exclusively to the transfer of benefits arising out of an immovable property and has no nexus whatsoever with the business of the petitioner company. Further, they contended that the essential element of supply of service in the course of business or in furtherance of business required by Section 7(1)(a) is completely absent.

Respondent's submissions

Department contended that the transfer of rights amounts to a supply of services under Section 7(1) read with Schedule II, Clause 2(b) (which treats the lease or letting out of buildings for business as a service). The activity was classified as "other miscellaneous services" under Sr. No. 35 of Notification No. 11/2017 CT (Rate), taxable at 18%. Department's SCN recognized that the transaction was not a sub-lease because the petitioner's rights stood extinguished; instead, they viewed it as seeking compensation to transfer those rights.

Discussions by and Observations of High Court

Court noted that the notification entry cited by the Department (Sr. No. 35) includes services like washing, cleaning and dyeing services; beauty and physical well-being services. Such petty services cannot be extended to the assignment of leasehold rights in immovable property, rendering the SCN bad in law on that count alone.

Further, court observed that the assignment is a transfer of "benefits arising out of immovable property". Court relied heavily on the Gujarat High Court decision in ***Gujarat Chamber of Commerce and Industry vs. Union of India (2025)*** wherein it was held that while an initial allotment by a corporation (like GIDC or MIDC) might be a service, a subsequent assignment by the lessee to a third party is a transfer of immovable property rights not subject to GST.
Citing **Smt. Godavari Devi Saraf,** the Court noted that the law declared by another High Court is binding on the authorities until a contrary decision is given by a competent High Court in their own state.

Decision of the High Court

Court subscribed to the view that the assignment by sale and transfer of leasehold rights shall not be subject to levy of GST. Writ Petition was allowed and the Show Cause Notice dated 20-12-2024 was quashed and set aside.

2 BIRLANU LTD. VS. UNION OF INDIA [(2026) 182 TAXMANN.COM 297] – TELANGANA HIGH COURT

Facts and issues involved

Petitioner is registered as Input Service Distributor (ISD) under GST act. During the audit for the financial years 2017-2018 and 2018-2019, respondent authorities observed that the petitioner had accumulated Input Tax Credit (ITC) during each Financial Year and distributed the accumulated ITC in the last month of the financial year (March) instead of distributing it month wise. The authorities contended that this is contrary to Rule 39(1)(a) of the CGST Rules, which mandates that the credit available for distribution in a month "shall be distributed in the same month". Consequently, Final Audit Report was issued on 22.01.2024 followed by a show-cause notice dated 30.01.2024 proposing a penalty of **₹ 8,38,67,332/-** under section 122 of CGST Act,2017 without giving an opportunity of being heard.

Petitioner's submissions

Petitioner argued that Rule 39(1)(a) of CGST rules is ultra vires to Section 20 of CGST Act as its introduces a mandatory time limitation not contemplated by parent statute, which merely allows the manner of distribution to be prescribed. They contended that eligibility for ITC is a vested and indefeasible right governed by Sections 16 and 17, and procedural rules cannot extinguish substantive entitlements in the absence of revenue loss or disputes regarding eligibility. The petitioner further asserted that the use of the word "shall" in the procedural rule should be read as directory rather than mandatory, as non-compliance does not defeat the object of avoiding the cascading of taxes. Additionally, they pointed out that the 2024 amendment to Section 20(2), which expressly empowers the prescription of time limits from 01.04.2025,

proves that no such delegated authority existed during the relevant period. Finally, the petitioner challenged the invocation of the extended period of limitation under Section 74, stating there was no "suppression, misstatement, or fraud" since all disclosures were made in Form GSTR-6 on the common portal.

Respondent's submissions

Respondents maintained that Rule 39(1)(a) is intra vires the pre-amended Section 20 of the CGST Act, as the statute expressly authorises the regulation of the manner of distribution via rules, and a monthly timeline is an integral part of that manner. They argued that Section 20 and Rule 39 constitute a composite statutory scheme that must be read harmoniously, meaning the petitioner cannot selectively rely on the section while ignoring the procedural mandates of the rule. The Revenue also contended that the amendment to Section 20(2) in 2024 operates prospectively but does not render the existing rule invalid for prior periods. Furthermore, they argued that the proceedings were within their jurisdiction and that the petitioner should have exhausted alternative remedies by replying to the show-cause notice instead of filing a writ petition.

Discussions by and Observations of High Court

Court observed that Section 20 of the CGST Act, as it stood prior to 01.04.2025, is conspicuously silent with regard to the timeline for distribution of credit and only specifies that distribution occur in such manner as may be prescribed. It held that the rule-making power under Section 164 is intended for the implementation of the Act and cannot be used to introduce substantive conditions or restrictions not envisaged by the legislature.

By mandating distribution within the same month, Rule 39(1)(a) imposes an inflexible condition that has the effect of denying or forfeiting legitimately accrued Input tax credit thereby defeating the fundamental objective of the GST regime. The Court referred to precedents such as **STO v. K. I. Abraham** to affirm that a rule-making authority cannot introduce a period of limitation without an express statutory mandate. Regarding the limitation period, the Court found that the allegation of suppression was legally untenable because the particulars of ITC distribution were duly disclosed by the petitioner in its periodical returns in Form GSTR-6" and were fully available to the department on the GST portal.

Decision of the High Court

Court allowed the writ petition and declared Rule 39(1)(a) of the CGST Rules, 2017, to be ultra vires Section 20 of the CGST Act, 2017, to the extent that it mandates the distribution of ITC within the same month. The Final Audit Report dated 22.01.2024 and the show-cause notice dated 30.01.2024, along with all consequential proceedings, were quashed and set aside. The Court further ruled that the petitioner is entitled to "claim refund of any amount deposited in connection with the impugned proceedings as per law". The proceedings were held to be barred by limitation as the department could not invoke the extended period under Section 74 in the absence of suppression of facts.

3 SAHIL ENTERPRISES VS. UNION OF INDIA [(2026) 182 TAXMANN.COM 144] – TRIPURA HIGH COURT

Facts and issues involved

Petitioner, a proprietary concern engaged in trading of rubber products, had purchased goods from a registered supplier during the period July 2017 to January 2019 after duly paying applicable GST. The supplier issued valid tax invoices and reported the outward supplies in Form GSTR-1. Based on these invoices and reflections in statutory returns, the Petitioner availed Input Tax Credit (ITC) amounting to ₹ 1,11,60,830/-.

Subsequently, during an investigation, it was found that the supplier had failed to deposit the GST collected from the Petitioner with the Government and had filed Nil GSTR-3B returns. On this basis, the department blocked the Petitioner's electronic credit ledger and issued a Show Cause Notice under Section 73 of the CGST Act proposing reversal of ITC along with interest and penalty on the ground that the condition under Section 16(2)(c) of the CGST Act had not been satisfied.

Aggrieved, the Petitioner challenged the constitutional validity of Section 16(2)(c) of the CGST Act and also assailed the order confirming denial of ITC, contending that ITC could not be denied to a bona fide purchaser merely because the supplier failed to deposit tax with the Government.

Petitioner's Submissions

The Petitioner submitted that it had fulfilled all statutory conditions for availing ITC, including possession of valid tax invoices, receipt of goods, and payment of GST to the supplier. It was argued that there was no mechanism under the GST law enabling the purchaser to verify whether the supplier had actually deposited the tax with the Government.

It was contended that Section 16(2)(c), if interpreted strictly, places an impossible and onerous burden on a *bona fide* purchasing dealer, compelling the purchaser to ensure compliance by the supplier, which is beyond the purchaser's control. Denial of ITC in such circumstances would result in double taxation, as the Petitioner had already paid GST to the supplier.

The Petitioner further argued that such an interpretation of Section 16(2)(c) would be arbitrary and violative of Articles 14, 19(1)(g), 265 and 300-A of the Constitution of India, as it penalises a purchaser for the default of another person despite the transaction being genuine and bona fide.

Respondent's submissions

Revenue contended that ITC is a statutory benefit and not an absolute right. It was argued that Section 16(2)(c) clearly mandates that ITC can be availed only if the tax charged in respect of the supply has been actually paid to the Government. Since the supplier failed to deposit the tax, the Petitioner was not entitled to ITC.

The department further submitted that fiscal statutes should be granted wide latitude and courts should exercise restraint in interfering with tax legislation unless there is a clear constitutional violation. According to the Revenue, the impugned provision was valid and enforceable as per the legislative scheme of the CGST Act.

Discussions by and Observations of High Court

High Court examined the scheme of Section 16 of the CGST Act and noted that while Section 16(2)(c) requires tax to be paid to the Government, the statute does not provide any mechanism enabling the purchasing dealer to verify such payment by the supplier. The Court observed that it is practically impossible for a purchaser to monitor or control whether the supplier deposits the GST collected. The Court held that a bona fide purchasing dealer cannot be expected to do the impossible, i.e., to anticipate which supplier would default in payment of tax or to ensure post-transaction compliance by the supplier. Imposing such an obligation would render honest compliance unworkable.

The Court observed that denial of ITC to a bona fide purchaser, who has already paid tax to the supplier, would amount to double taxation, which goes against the very objective of the GST regime and the concept of input tax credit. The Court emphasised that ITC exists to avoid cascading of taxes and double levy.

While upholding the constitutional validity of Section 16(2)(c), the Court held that the provision must be read down to save it from arbitrariness. The Court ruled that Section 16(2)(c) should be applied only in cases where transactions are found to be non-bona fide, collusive, or fraudulent, and not where the purchaser has acted in good faith and complied with all statutory requirements.

Court also noted that in the present case, proceedings were initiated against the defaulting supplier, whose registration was cancelled and against whom recovery proceedings and criminal action had been taken. The Court found no allegation of fraud, collusion, or misstatement against the Petitioner

Decision of High Court

Section 16(2) (c) of the Act is held not violative of Art. 14, 19(1)(g) or 265 or 300-A of the Constitution of India. However, Section 16(2) (c) of the Act ought not to be interpreted to deny ITC to purchasers in a bona fide transaction like the petitioner and it should be read down and applied only where the transaction is found to be not bona fide or is a collusive transaction or fraudulent transaction to defraud the revenue. The respondents are directed to forthwith allow the petitioner ITC to the extent of ₹ 1,11,60,830/- denied to it.

4 VEDANT ROAD CARRIERS PVT LTD. VS. ASSISTANT COMMISSIONER OF WEST BENGAL STATE TAX [(2026) 182 TAXMANN.COM 495] – CALCUTTA HIGH COURT

Facts and issues involved

The petitioner was served with six notices to show cause on 15 March 2023, alleging that they had provided services in relation to transport of goods by road and tax paid under forward charge method and that, according to data available in GST back-office portal, the petitioner had declared its turnover of outward supply in GSTR 3B filed for the period 2018-19 which was less than the actual supplies. While the show-cause notice (SCN) was confined to the allegation that the turnover in Form GSTR 3B was less than actual supplies, the adjudication order held the petitioner liable to tax on an

entirely different ground. The adjudicating authority concluded that since the petitioner opted to pay tax under the Forward Charge Mechanism on 10 April 2018, all supplies made under the Reverse Charge Mechanism from that date until 31 March 2019 would be treated as taxable at 6% central tax under the Forward Charge Mechanism in terms of Notification No. 20/2017-Central Tax (Rate). The primary issues involved were whether an adjudication order could travel beyond the grounds specified in the SCN and whether the denial of access to data from the GST back-office portal constituted a violation of the principles of natural justice.

Petitioner's Submissions

Petitioner's argued that the adjudicating authority had starkly deviated from the notice to show-cause. It was submitted that the adjudication order proceeded on a basis entirely different from the one indicated in the SCN, a course of action impermissible under section 75(7) of the Act. The petitioner asserted that if the authority desired to pass an order on different grounds, it should have issued a fresh notice to show cause and afforded an opportunity for a hearing. Furthermore, it was highlighted that the appellate authority agreed that section 75(7) was violated but still confirmed the order by dismissing it as a technical issue. The petitioner also contended that the SCN was based on data available in GST B.O. portal which, being in the special knowledge domain of the GST authorities, was not available to the petitioner, thereby preventing an effective reply to the notice.

Respondent's submissions

The respondents argued that the adjudicating authority had taken a decision on the basis of material already on record. They submitted that since the relevant materials were already available and the issue was only a matter of calculation, the provisions of section 75(7) of the Act were not attracted. In support of this contention, the respondent relied on the judgment of the Hon'ble Allahabad High Court in the case of ***Mayank Mineral vs. State of U.P.***

Discussions by and Observations of High Court

High Court observed that the adjudication order revealed a ground entirely different from the one raised in the SCN. The Court emphasized that Section 75(7) of the Act carries a negative mandate prohibiting the confirmation of demand on any ground other than those specified in the notice. The Court stated that it is well settled that an order cannot travel beyond the confines of the preceding notice to show-cause and a person cannot be blindsided by passing an order on an entirely different point. Regarding the appellate authority's view, the Court held that the violation was not a mere technical issue as it involved the interpretation of whether supplies under the Reverse Charge Mechanism could be treated as Forward Charge Mechanism supplies under specific notifications. Additionally, the Court found substance in the petitioner's claim regarding the GST B.O. portal data, noting that if such data is within the special knowledge domain of authorities and not shared, the petitioner would not have an effective opportunity to deal with the notice. The Court distinguished the Mayank Mineral case, noting it did not involve passing an order on grounds absent from the SCN.

Decision of High Court

High Court set aside both the appellate order and the adjudication order. The matter was remanded to the file of the Proper Officer for reconsideration of the entire issue, with

a direction to afford the petitioners an opportunity of hearing. The Court ordered that the petitioner must be provided with all relevant information based on which the SCN was issued.

B. RULINGS BY ADVANCE RULING AUTHORITY

1 GOEXOTIC PLUS91 MOTORS PVT. LTD. [2026-TIOL-05-AAR-GST] – KERALA AAR

Facts and issues involved

Applicant is engaged in the business of buying and selling second-hand motor vehicles, primarily old and used luxury cars. The vehicles are procured from both registered and unregistered persons.

Before resale, the applicant undertakes minor processing activities, such as repairs and refurbishment, replacement of spare parts, etc. with the objective of enhancing the resale value of the vehicles without altering their essential nature. These activities are carried out either at the applicant's own service station or through third-party workshops.

For valuation purposes, the applicant proposed to adopt the special valuation mechanism under Rule 32(5) of the CGST Rules, 2017, whereby GST is payable only on the margin (difference between selling price and purchase price), subject to the condition that no ITC is availed on the purchase of used motor vehicles.

Applicant also incurs direct expenses such as repairs, refurbishment, and spare parts; common business expenses such as showroom rent, telephone, advertising, professional fees; and capital goods such as workshop machinery, office equipment, computer systems, and demo vehicles.

Applicant sought an advance ruling on following:

(a) Whether ITC is admissible on direct expenditures such as spare parts, repairs, and refurbishment costs incurred on second-hand motor vehicles, excluding the purchase of used vehicles, in view of Notification No. 8/2018-CT (Rate)?

(b) Whether ITC is admissible on common business expenses and capital goods, such as rent, advertisement, professional charges, and capital assets, when the applicant opts for the Margin Scheme under Rule 32(5)?

Applicant's submissions

Under Section 16(1) of the CGST Act, 2017, ITC is available on all inward supplies used in the course or furtherance of business, subject to prescribed conditions. Rule 32(5) and Notification No. 8/2018-CT (Rate) restrict ITC only on the purchase of second-hand motor vehicles and do not impose any restriction on other inward supplies. Repairs, refurbishment, spare parts, and other ancillary expenses are incurred to enhance resale value and are integrally connected with taxable outward supplies.

Supplies made under the Margin Scheme, even when the margin is nil or negative,

remain taxable supplies with a taxable value of zero, and do not qualify as exempt supplies. Since such supplies are not exempt, reversal of common ITC under Rules 42 or 43 is not triggered. Further, ITC on capital goods is admissible as long as the goods are used in the course or furtherance of business and are not specifically blocked under Section 17(5).

Discussions by and Observations of AAR

The activity of buying and selling second-hand motor vehicles, along with undertaking minor repairs and refurbishment to enhance resale value, undoubtedly constitutes a 'business' activity within the meaning of Section 2(17) of the CGST Act, 2017. The applicant's contention is that any input tax charged on inward supplies of goods or services or both, which are used or intended to be used in the course or furtherance of such business, is eligible for availment of input tax credit under Section 16(1) of the Act. However, such eligibility is not absolute and is always subject to the conditions and restrictions prescribed under the Act.

Section 16(1), while conferring the entitlement to avail input tax credit, clearly states that such entitlement is subject to conditions and restrictions. These restrictions are laid down under Sections 16(2) to 16(4), Section 17 and Section 18 of the CGST Act. Therefore, even though various goods and services may be used in the course or furtherance of business, the availability of credit on each such inward supply must be examined in light of the specific statutory restrictions.

In the present case, the restriction imposed under Rule 32(5) and Notification No. 8/2018–CT (Rate) is limited only to the purchase of second-hand motor vehicles themselves. On a plain reading of the notification, it is evident that the expression "such goods" refers only to old or used motor vehicles, and not to other inward supplies such as spare parts, repair services, refurbishment activities, common business inputs, or capital goods. Therefore, the Authority does not find any statutory basis to extend the restriction on input tax credit beyond the purchase of the used vehicles themselves.

Further, Rule 32(5) is a valuation provision and does not determine the taxability of the supply. A taxable supply valued at zero by virtue of a statutory valuation mechanism does not assume the character of an exempt supply. Since such supplies are taxable supplies and not exempt supplies, the provisions of Rule 42 and Rule 43 relating to reversal of common input tax credit do not get attracted.

Accordingly, ITC on direct expenses such as repairs, refurbishment, and spare parts, as well as common business expenses and capital goods like showroom rent, advertisement, professional fees, workshop machinery, office equipment, computer systems, and demo vehicles, remains admissible, subject to fulfilment of the conditions prescribed under Sections 16 to 21 of the CGST Act and Rules 36 to 45 of the CGST Rules.

Ruling of AAR

ITC on inward supplies such as spare parts, repairs, and refurbishment services is admissible, as Notification No. 8/2018-Central Tax (Rate) restricts ITC only on the purchase of used motor vehicles themselves.

ITC on inward supplies of goods or services such as office/showroom rent, advertisement, telephone, professional fees, and capital goods is admissible, as there is no restriction under Notification No. 8/2018-CT (Rate) or Rule 32(5) regarding such expenses.

■

SERVICE TAX





CA Rajiv Luthia

Keval Shah
Advocate

1 COMMISSIONER OF GST AND CENTRAL EXCISE, CHENNAI. VS. M/S SUNDARAM FINANCE LTD. 2025 (12) TMI 1311 – CESTAT CHENNAI

Facts of the Case

- M/S. SUNDARAM FINANCE LTD. (NBFC) (herein referred as 'Respondent') was engaged in business of granting **loan, hire-purchase and leasing** activities.
- It securitized/sold down future receivables (EMIs) to banks/trusts in accordance with RBI guidelines, mainly to help banks meet **Priority Sector Lending (PSL)** obligations.
- Post-securitization, Respondent:
  - Collected EMIs as a **servicing agent** (on which service tax was paid).
  - Earned:
    - **Profit on securitization**
    - **Profit on sell-down**
    - **Excess Spread Income** (difference between interest collected from borrowers and interest paid to banks)
- Department in SCN alleged that the above incomes were **consideration for "Business Support Services"** under Section 65(104)(c) of the Finance Act, 1994 (pre-01.07.2012) and post-01.07.2012, they constituted **"service" under Section 65B(44).**
- **Two Show Cause Notices were issued** along with Interest u/s 75 and Penalties u/s 76/77/78 of the Finance Act, 1994:
  - **1st SCN for the period covering: 2011–12 to 2014–15:** ₹ 31.75 crore
  - **2nd SCN for the period covering: April 2015–June 2017:** ₹ 32.95 crore **(invoking the extended period)**
- During the course of 1st Appeal Ld. Commissioner **dropped the demand as alleged in the 1st SCN** on above incomes. However, demand of **interest on delayed payment** of service tax on sell-down servicing fee was confirmed. Further **2nd SCN was dropped on ground of limitation**.

- On review, the Review Committee of Chief Commissioners vide Order dated 24.05.2022, has questioned the legality of the above Impugned Order in dropping the demand as not legal and proper and directed the principal Commissioner of GST & Central Excise, Chennai North to file an appeal to the CESTAT, Chennai

Issue Involved

- Whether **profit on securitization, sell-down and excess spread income** is liable to service tax as Business Support Service/Service?

- Whether the demands were **time-barred**?

Arguments by Department

- The Ld. DR for Revenue contended that Excess Spread Income on sell-down represents the differential between interest collected from borrowers and the lower interest remitted to banks, which arises only because the assessee continues to collect receivables on behalf of the assignee post-securitization. **Since earning such excess spread is intrinsically linked to the servicing and collection activity undertaken under the assignment/service agreement, it constitutes consideration for a taxable service.** Accordingly, service tax is payable on the Excess Spread Income.

Arguments of the Respondent

- The Ld. AR for the respondent submitted that in securitization/sell-down transactions, the Respondent/NBFC sells loan receivables to an SPV in the form of a trust, with banks investing in portions of such receivables, while in direct assignment the entire receivable is sold to a single bank at a discounted rate, with the interest differential booked as upfront profit. **The excess spread represents the difference between interest collected from borrowers and the amount payable to investors/banks and is retained as profit from sale of receivables. Such excess spread income is merely a return on transfer of financial assets and does not constitute consideration for any service,** and hence is not liable to service tax.

Decision of the Hon'ble Tribunal

- In relation to securitization transaction, it was held that as per **RBI guidelines**, securitization is a "true sale" resulting in **complete legal separation** of assets from the originator. Post-transfer, receivables cease to belong to Sundaram Finance.

- **Sale/assignment of receivables is a transaction in money/actionable claim, expressly excluded from the definition of "service"** under Section 65B(44).

- **Profit or excess spread is merely consideration for sale of financial assets**, not for providing any service.

- Only the **separate servicing activity (collection of EMIs) qualifies as service – and tax was already paid on that.**

- Further on the issue of classification of service under the category "Business Support Services" Hon'ble Tribunal held that helping banks meet PSL norms is **incidental, not a taxable support service as no direct services were provided to banks in relation to business operations.**

- Further w.r.t issue of limitation, it was held that **Department had prior knowledge of the business of**

the respondent hence there was no suppression or intent to evade tax. Therefore, held that extended period not invocable.

- Revenue's appeal was dismissed.

2 VARKHA DEEPAK MELWANI VS. COMMISSIONER OF CGST & CENTRAL EXCISE, MUMBAI SOUTH COMMISSIONERATE 2026 (1) TMI 1159 – CESTAT MUMBAI

Facts of the Case

- The appellant was engaged in providing **renting of immovable property services and was duly registered under Service Tax**. Due to an error on the departmental portal, an additional non-operational Service Tax registration was also allotted.

- For FY 2015-16, the department compared ST-3 returns with ITR/Form 26AS data and alleged short declaration of taxable value. On this basis, a **Show Cause Notice (SCN)** dated 30.12.2020 was issued demanding service tax of ₹ 1,39,721 along with interest and penalties. Notably, **two SCNs were issued on the same day for the same period**, one of which was later withdrawn as duplicative.

- The adjudication was completed **ex-parte**, confirming demand and penalties. The Commissioner (Appeals) condoned delay in filing appeal but **upheld the order on merits**, holding that the appellant failed to contest the demand.

- Meanwhile, the appellant **voluntarily paid the entire disputed service tax amount** in instalments.

Issue Involved

- Whether **service tax demand based solely on differences between ST-3 returns and ITR/TDS data is sustainable?**

- Whether **adjudication and appellate orders passed without proof of proper service of SCN and without effective opportunity of hearing violate principles of natural justice?**

- Whether **penalties were sustainable** in the facts of the case?

Arguments of the Appellant

- The Ld. AR for the appellant contended that the **Show Cause Notice was neither issued nor served in accordance with Section 37C of the Central Excise Act, 1944**, and that the learned Commissioner (Appeals) failed to consider the facts of the case. It was submitted that the **appeal involves a pure question of law relating to the legality of adjudication without valid service of SCN and therefore deserves consideration notwithstanding the monetary threshold under the second proviso to Section 35B(1) of the Central Excise Act, 1944.**

Arguments by Department

- Reiterated the ground raised by the Commissioner (Appeals) that the appellant's arguments regarding non-receipt of impugned SCN and therefore time barred is not tenable, **specifically,**

when already discussed by lower authority and a reasoned speaking order as already been passed, and no fresh evidence is put forth before him. Further, it was contended that **no other arguments were raised by appellant on merit in counter of service tax liability**. During the PH, it was specifically stated that appellant cannot produce the records as they were with their CA who has passed away. Further, from the impugned order, the **non-cooperative behaviour of appellant can be seen as they have not attended Personal Hearing before lower authority inspite of being scheduled six time.**

Decision of the Hon'ble Tribunal

- Hon'ble Tribunal observed that **No proof of valid service of SCN** was produced as required under Section 37C of the Central Excise Act (made applicable to Service Tax). Hence, ex-parte adjudication was flawed.
- Further, it held that Demand was **confirmed mechanically**, solely on ITR–ST-3 mismatch, without verification or corroborative evidence which was squarely covered by **CBIC instructions dated 26.10.2021**, which prohibit indiscriminate issuance of SCNs merely on ITR-TDS data without reconciliation and verification.
- Issuance of **duplicate SCNs on the same day** reflected lack of due process and administrative oversight.
- Failure to grant effective opportunity of hearing at the time of adjudication amounted to **violation of principles of natural justice.**
- Since the appellant had **voluntarily paid the entire tax amount**, continuation of demand, interest, and penalties was unjustified.
- The **impugned order of the Commissioner (Appeals) was set aside.**
- The appeal was **allowed**, holding that confirmation of demand and penalties was unsustainable in law.
- The matter was resolved based on **voluntary payment of service tax**, with no further liability.

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" When learning is purposeful, creativity blossoms.
When creativity blossoms, thinking emanates.
When thinking emanates, knowledge is fully lit.
When knowledge is lit, economy flourishes "

A.P.J. Abdul Kalam

CASE LAW UPDATE



CS Makarand Joshi

IBC

SHRI ASHISH CHATURVEDI AND SHRI SANJAY KAPOOR – APPELLANTS VS. SHRI SANJAY GARG – RESPONDENT

In the matter of Shri Ashish Chaturvedi and Shri. Sanjay Kapoor - Appellants vs Shri. Sanjay Garg – Respondent in the order passed by the National Company Law Appellate Tribunal dated 23 April 2025

Facts of the Case:

- The Corporate Insolvency Resolution Process (CIRP) of the M/s. A to Z Barter Private Limited - Corporate Debtor (CD), was initiated by the National Company Law Tribunal (NCLT) on **5 December 2018**.

- Upon admission of the petition, a **moratorium** was imposed u/s 14 of the Insolvency and Bankruptcy Code, 2016 (Code/IBC) - which mandated the cessation of all transfers or alienations of the CD's assets.

- Post-commencement of the CIRP, the Resolution Professional (RP) identified a withdrawal of ₹ **32,00,000/-** from the CD's bank account.

- The Appellants who were the Suspended Directors of the CD asserted that these payments were made to an entity to settle a pre-existing loan.

- The Appellants contended that the transactions were executed via **post-dated cheques** issued prior to the insolvency commencement date and thus occurred without their active intervention.

- During the CIRP and the subsequent liquidation process, the Appellants were repeatedly directed by the NCLT to deposit the withdrawn amount of ₹ 32,00,000/- along with interest at 12% per annum from the date of withdrawal. However, the Liquidator reported complete non-cooperation by the Appellants, including failure to hand over statutory records, financial documents, and Tally data.

- Owing to the failure of the resolution process, the CD was ordered into

liquidation on 5 January 2021, and a Liquidator was appointed.

- In an earlier round of proceedings, the NCLT had imposed a penalty of ₹ 5 lakh each on the suspended directors under Section 128(5) of the Companies Act, 2013(the Act), citing non-cooperation and failure to maintain and provide proper books of account.

- However, the Appellants challenged the said penalty before the National Company Law Appellate Tribunal (NCLAT). By its judgment dated 14 February 2022, the NCLAT set aside the penalties, holding that penal action for non-cooperation during insolvency proceedings must be pursued under the IBC and not under the Act. The NCLAT clarified that while the penalties were set aside on jurisdictional grounds, the Appellants were not exonerated, and appropriate proceedings under the IBC could be initiated.

- Following the NCLAT's direction, the Liquidator filed a new application under the IBC specifically alleging violation of the Section 14 moratorium and seeking restoration of the withdrawn funds to the liquidation estate.

- The Liquidator contended that the withdrawal of ₹ 32,00,000/- between 20 December 2018 and 13 February 2019, even if through post-dated cheques, constituted brazen disobedience of the moratorium, as the suspended directors had a continuing fiduciary obligation to prevent any depletion of the CD's assets after commencement of CIRP.

- On 16 January 2025, the NCLT passed the order and rejected the "automatic payment" defence. The NCLT ruled that the Directors had a fiduciary duty to stop all outflows once the CIRP began on 5 December 2018. Consequently, the Appellants were ordered to refund ₹ 37,64,953/- (the principal amount plus 12% interest) to ensure the creditors were not prejudiced by the illegal siphoning of funds and which was challenged in the present appeal.

Arguments of the Appellants

- It was submitted that the payment of ₹ **32,00,000/-** was a discharge of a legitimate liability and not a diversion of funds.

- The Appellants argued that they had no control over the encashment of **post-dated cheques** as the bank processed them in the ordinary course of business.

- They asserted that the NCLT had initially overstepped its jurisdiction by applying the **Act, 2013** to an insolvency-related default.

- The Appellants further claimed a violation of **Natural Justice**, arguing they were not provided an adequate hearing before the order for deposit was passed.

Arguments of the Respondent

- The Respondent argued that the **moratorium** is a statutory freeze, and directors are duty-bound to ensure no funds leave the CD's account after the CIRP date.

- It was contended that the use of post-dated cheques does not exempt the directors from the prohibition of transferring assets u/s 14.

- The Liquidator emphasized that the Appellants' **persistent non-cooperation** hindered the discovery of assets and the overall liquidation process.

- It was submitted that the directors must be held personally liable to restore the **Liquidation Estate** to protect the interests of all creditors.

Held

- Once a moratorium is imposed u/s 14 of the IBC, it creates a calm period during which any transfer, encumbrance, or alienation of the CD's assets are strictly prohibited.

- The NCLAT rejected the defence that the funds were withdrawn via post-dated cheques issued prior to the CIRP. It ruled that directors are duty-bound to ensure that no payments are cleared from the company's accounts after the insolvency commencement date, regardless of when the cheques were signed.

- The NCLAT upheld the NCLT's direction for the suspended directors to personally refund the withdrawn amount to the Liquidation Estate. The Tribunal confirmed the imposition of **12% interest**, bringing the total deposit amount to **₹ 37,64,953/-**, to compensate the estate for the loss of time-value of money.

- The substantive liability to restore diverted funds remains enforceable under the IBC's inherent powers to protect the asset pool.

SEBI

SAT ORDER RELATING TO LINDE INDIA LIMITED AND SECURITIES EXCHANGE BOARD OF INDIA

Facts of the Case

- Linde India Limited (hereinafter referred to as **"LIL / Noticee"**) is a subsidiary of Linde Plc, a global entity formed pursuant to a merger between Linde AG and Praxair Inc. in 2018. Post-merger, Linde Plc maintains a 75% stake in LIL and 100% ownership of Praxair India Private Limited (hereinafter referred to as **"PIPL"**).

- In the year 2020, LIL, PIPL, and their joint venture, Linde South Asia Services Private Limited (hereinafter referred to as "LSASPL"), entered into a Joint Venture & Shareholder Agreement (hereinafter referred to as "JV&SHA"). This agreement sought to optimize synergies by allocating specific geographic territories and product lines between LIL and PIPL.

- In January 2022, the National Stock Exchange (hereinafter referred to as "NSE") forwarded investor complaints to the Securities and Exchange Board of India (hereinafter referred to as "SEBI") alleging that the Noticee was executing Related

Party Transactions (hereinafter referred to as "RPTs") through the LSASPL structure without the requisite shareholder approval.

- Consequently, SEBI appointed an Investigating Authority in October 2023 to examine the alleged violations of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "LODR Regulations").

- It is observed that LIL had previously sought "omnibus approval" for RPTs with PIPL and LSASPL in 2019, which was rejected by the shareholders. Subsequent to this rejection, the Noticee adopted an interpretation that materiality thresholds under Regulation 23(1) of the LODR Regulations should be tested on a per-contract basis rather than through the aggregation of all transactions with a related party during a financial year.

- On April 29, 2024, SEBI passed an interim ex-parte order against the Noticee. This order was challenged before the Securities Appellate Tribunal (hereinafter referred to as "SAT"), which, on May 22, 2024, set aside the interim order and directed SEBI to pass a fresh order after providing the Noticee an opportunity for inspection of documents and a personal hearing.

- Following the personal hearing, the Whole Time Member (hereinafter referred to as "WTM") of SEBI issued a fresh order on July 24, 2024 (hereinafter referred to as the "Impugned Order"). The WTM directed the Noticee to:

  – Aggregate all transactions with a related party to test materiality thresholds.

  – Conduct a valuation of the business foregone or received under the JV&SHA.

- The primary Questions of Law for determination include whether testing the materiality threshold under Regulation 23(1) of the LODR Regulations requires aggregation of all transactions in a financial year, and whether geographical/product business allocation constitutes a "transfer of resources, services or obligations," thereby qualifying as an RPT requiring valuation.

- Aggrieved by the Impugned Order, the Noticee has filed the present appeal under Section 15T of the SEBI Act, 1992.

Contentions of The Noticee (LIL)

- **Interpretation of the "Single Contract" Theory:** The Noticee submitted that the terminology "in a contract" within the RPT framework implies that only transactions originating from a single primary contract should be aggregated. It was contended that since transactions with PIPL were executed under multiple, independent, and separate contracts, they do not warrant aggregation for the purpose of testing materiality thresholds. The Noticee asserted that, when tested on an individual basis, no single contract exceeded the threshold of ₹ 1,000 crore or 10% of annual consolidated turnover. Consequently, the Noticee argued that the rejection of the

resolution at the 85th AGM was inapplicable to these subsequent, separate contracts.

- **Business Judgment and Strategic Allocation:** Regarding the "Business Allocation Protocol," the Noticee contended that the division of territories and product lines was a strategic management decision and did not constitute a "transaction" under LODR Regulations. It was argued that such allocation did not involve a "transfer of resources, services, or obligations" and therefore did not necessitate a valuation exercise. The Noticee argued that the mandate to value "business foregone" (potential future earnings) was purely speculative and lacked a basis in existing law.

Contentions of SEBI

- **Interpretation of the "Single Contract" Theory:** SEBI rejected the Noticee's "per-contract" interpretation, framing it as an attempt to evade shareholder oversight through the "salami-slicing" of contracts. It was argued that the proviso to Regulation 23(1) of the LODR Regulations is unambiguous: a transaction must be taken together with all previous transactions with the same related party during a financial year. SEBI emphasized that the "spirit of the law" is to protect minority shareholders. Given that shareholders had explicitly rejected similar RPTs at the 85th AGM, SEBI contended that the Noticee's subsequent execution of these deals under a different legal theory was an act of bad faith.
- **Business Judgment and Strategic Allocation:** SEBI rejected this contention and stated that the Business Allocation Protocol effectively constituted a "transfer of resources". SEBI contended that by agreeing to abstain from competing in specific regions and from dealing in certain products, the Noticee was transferring future cash flows and growth opportunities to an unlisted related party (PIPL).

Held

The Tribunal found no error in the Impugned Order and **dismissed the appeal** without cost

- SAT ruled that for testing materiality under Regulation 23(1) of LODR, **all transactions** with a specific related party during a financial year must be aggregated. The phrase "in a contract" in the definitional clause does not restrict the procedural requirement of the materiality test. The purpose of the regulation is to prevent favouritism toward promoters. Splitting transactions into different contracts to stay below thresholds would defeat the law's intent.
- **Valuation is Required:** The Tribunal held that the business allocation under the JV&SHA amounted to a transfer of a "profit-making apparatus" (including goodwill and order books). This constitutes an RPT, and a valuation (using methods like Discounted Cash Flow) is necessary to ensure the transaction was fair.

Companies Act, 2013

M.K. RANJITSINH & OTHERS VS. UNION OF INDIA

Order of the Hon'ble Supreme Court of India dated 19th December 2025 in the matter of M.K. Ranjitsinh & Others versus Union of India.

Facts of the case

- The writ petition was filed under Article 32 of the Constitution of India seeking urgent judicial intervention for the protection of the Great Indian Bustard (GIB), a critically endangered species facing imminent extinction.

- The Petitioners (M. K. Ranjit Sinh, a wildlife conservationist and environmentalist) highlighted that large-scale infrastructure activities, particularly power transmission lines, renewable energy projects, and allied development, were causing frequent bird deaths due to collisions and habitat fragmentation.

- Several of these activities were being undertaken by corporate entities, including power generators and transmission companies, operating in ecologically sensitive areas of Rajasthan and Gujarat.

- In April 2021, the Hon'ble Supreme Court passed an interim order instructing that,

  – all existing and future overhead power transmission lines in identified GIB habitats in Rajasthan and Gujarat shall be converted into underground cables, wherever technically feasible. and

  – installation of bird diverters as an interim measure where undergrounding was not immediately possible.

- Post this interim order, power transmission companies, renewable energy developers and government authorities filed applications seeking relaxation from this interim order.

- Thereafter, considering the competing concerns, the Hon'ble Supreme Court constituted an Expert Committee comprising representatives from wildlife conservation, power transmission, renewable energy and technical and scientific domains.

- The Committee was tasked with functions like examining the feasibility of undergrounding, suggesting alternative mitigation measures, and recommending region-specific solutions to minimise bird mortality.

- In this final order, the Hon'ble Supreme Court addressed whether Corporate Social Responsibility (CSR) under the Companies Act, 2013(The Act) could be treated as a relevant legal mechanism for addressing environmental harm caused by corporate activity.

- The judgment therefore goes beyond wildlife protection and enters the

domain of corporate governance, fiduciary duties, and CSR obligations, particularly where corporate operations are directly.

Petitioner's arguments

- The Petitioners contended that corporate entities benefiting from natural resources cannot externalise environmental costs while internalising profits.
- It was argued that CSR obligations must extend to environmental and wildlife protection, especially when corporate activities materially contribute to ecological harm.
- The Petitioners relied on established environmental principles, including the "Species Best Interest" standard and the Polluter Pays Principle, to submit that corporations must bear the cost of species recovery and habitat protection.
- It was further argued that CSR funds provide a statutory and structured mechanism through which companies can and must contribute towards conservation efforts, including both in-situ and ex-situ measures. According to the petitioners, treating CSR as mere philanthropy would defeat its statutory and constitutional purpose.

Respondent's arguments

- The Respondents, including power and renewable energy developers, emphasized the importance of development and energy transition, particularly in light of India's international climate commitments.
- It was submitted that environmental protection measures should not be framed in a manner that renders infrastructure development unviable or disproportionate.
- While acknowledging CSR obligations, the Respondents sought to distinguish between statutory environmental compliance and CSR expenditure, arguing that CSR should not become an open-ended compensatory obligation.
- The Respondents also pointed out that various conservation initiatives were already being implemented through governmental and regulatory frameworks, independent of CSR.

Held

- The Hon'ble Supreme Court held that the legal formation of CSR in India is "intended to mark a paradigm shift from voluntary philanthropy to statutory obligation."
- Referring to Section 135 of the Act, it was also observed that Parliament has "institutionalized this duty" by mandating companies meeting prescribed thresholds to discharge social responsibility.
- It was also expressly stated that, "Corporate profit is not solely the private property of shareholders but is partly owed to the society that enables its generation."
- Relying on Section 166(2) of the Act, the Court held that, "the traditional shareholder-centric model of corporate governance has been dismantled, and directors are now legally bound to act

for the best interests of the company, its employees, the shareholders, the community, and for the protection of the environment."

- It was also clarified that the definition of "community" within the CSR framework has been expanded to explicitly include the natural world.

- Referring to Schedule VII of the Act, it was also noted that, "Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, and conservation of natural resources" are recognised CSR activities. Corporate definition of 'Social Responsibility' must inherently include 'Environmental Responsibility'."

- It further observed that, "Companies cannot assert to be socially responsible while ignoring equal claims of the environment and other beings of the ecosystem."

- Anchoring CSR in constitutional principles, the Court relied on Article 51A(g) and held that, "A corporation, as a legal person and a key organ of society, shares this fundamental duty."

- It was declared that allocation of CSR funds for environmental protection, "is not a voluntary act of charity but a fulfilment of a constitutional obligation."

- Applying the Polluter Pays Principle, the Hon'ble Supreme Court held that where corporate activities threaten endangered species, "CSR funds must, therefore, be directed towards ex-situ and in-situ conservation efforts to prevent extinction."

- In a concluding normative direction, the Hon'ble Supreme Court observed that, "power generators operating in sensitive areas must always remember that they share the environment with the Godawan… and must undertake their activities as if they are guests.

■

" Each work has to pass through these stages
— ridicule, opposition, and then acceptance.
Those who think ahead of their
time are sure to be misunderstood. "

Swami Vivekananda

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 Circulars and Notifications

1. Regulatory Overhaul of Cross-Border Guarantee Framework under FEMA – Key Changes Introduced by the 2026 Regulations

The Reserve Bank of India (RBI) has notified the Foreign Exchange Management (Guarantees) Regulations, 2026 (2026 Guarantee Regulations) to replace the earlier 2000 Guarantee framework governing cross-border guarantees i.e. Foreign Exchange Management (Guarantees) Regulations, 2000.

The 2026 Guarantee Regulations establish a unified, consolidated framework for all guarantees involving non-residents. The 2026 Guarantee Regulations allow residents to issue or obtain guarantees without prior RBI approval, provided the underlying transaction is not prohibited under FEMA and both surety and principal debtor comply with FEMA (Borrowing & Lending) Regulations, 2018. The definition of "guarantee" is broadened to include counter-guarantees and liability portfolios. Specified exemptions (e.g., authorised dealer bank branches abroad/ IFSCs, irrevocable payment commitments for FPIs, guarantees under Overseas Investment Regulations) streamline legacy frameworks while preserving oversight.

Under the 2000 Guarantee framework, cross-border guarantees were governed by a prescriptive, prohibition-based regime, permitting only narrowly defined guarantees or those with specific RBI approvals, leading to fragmented guidance. Further, resident entities could issue or act as surety only in limited cases (e.g., exporters, overseas JVs/WOS) or with RBI approval. The 2000 Guarantees framework lacked a centralised reporting mechanism; obligations were implicit or approval-linked with no uniform periodic filing.

The 2026 Guarantee Regulations introduce mandatory quarterly reporting via Form GRN for issuance, modification, invocation and closure of guarantees involving non-residents, submitted through authorised dealer banks to the RBI. A late submission fee reinforces discipline. Standalone and transaction-specific reporting (e.g., trade credit) are now consolidated under this standardised framework.

Notification No. FEMA 8(R)/2026-RB dated 6th January 2026 and A.P. (DIR Series) Circular No. 19 dated 12th January 2026

(Comments: The 2026 Guarantee Regulations represent a decisive shift toward a liberalised, principle-based framework for cross-border guarantees, reducing dependence on prior RBI approvals while strengthening oversight through eligibility conditions and structured reporting. This harmonised regime enhances ease of doing business for residents engaging in international transactions, while ensuring regulatory visibility and systemic risk monitoring through standardised disclosures. A.P. (DIR Series) Circular No. 19 dated 12th January 2026 has also provided a list circulars related to guarantees that have been superseded. Master Direction – External Commercial Borrowings, Trade Credits and Structured Obligations; Master Directions – Export of Goods and Services; Master Directions – Import of Goods and Services; Master Direction – Other Remittance Facilities; and Master Direction – Reporting under Foreign Exchange Management Act, 1999 have also been amended to incorporate the changes brought in by the new notification. Most notably, the provisions on 'Structured Obligations' under Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations have been removed and is considered to be subsumed within the Guarantee Regulations.)

2. Regulatory Overhaul of Export and Import Transactions under FEMA – Key Changes Introduced by the 2026 Regulations

The Reserve Bank of India has notified the Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026 vide Notification No. FEMA 23(R)/2026-RB dated 13 January 2026. These Regulations come into force from 1 October 2026 and supersede the FEMA (Export of Goods and Services) Regulations, 2015, creating a single consolidated framework for exports and imports of goods, services, and software.

The erstwhile regime governed exports primarily under the 2015 Regulations, while imports, services, project exports, and merchanting trade were largely regulated through separate directions and circulars. The 2026 Export Import Regulations integrate exports, imports, software, services, project exports, and merchanting trade transactions into one principal regulation, reducing interpretational gaps and regulatory fragmentation. Following are the key features of the new regime:

- The new regime consolidates export and import under one regulation, replacing fragmented rules, and enhances clarity in cross-border trade compliance. All declarations (goods, services, and software) are consolidated into a single Form EDF.

- **Export Declaration and Reporting:** Unlike the old regime, exporters of services is required to declare in EDF the amount representing the full export value of services, within 30 days from the end of month in which invoice for services has been raised. In case of exports to more than one recipient in a month, the exporter is also permitted to submit a single EDF for all exports.

- **Realisation of export proceeds:** Under the new regime, export payments must be received in India within 15 months from shipment. If the export is invoiced or settled in Indian Rupees, the time limit is 18 months. If the exporter does not receive the money within this period, they may be allowed to undertake future exports only against advance payment or an irrevocable letter of credit.

- **Small value threshold:** For transactions up to ₹ 10,00,000 (or its equivalent in foreign currency) per shipping bill or invoice, simplified closure of entries is permitted based on self-declarations by exporters or importers. No such relief was available in the old regime.

- **Set-off of export receivables against import payables:** AD Bank may allow set-off of export receivables against import payables with the same overseas buyer or supplier, or their overseas group or associate companies, within the prescribed/approved period for export realisation. This was previously permitted in a restrictive manner and subject to multiple conditions.

- **Import payments:** Import payment terms to be aligned with the period specified in the underlying contract. Previously this period was six months from the date of shipment; also there were different timelines for import of capital goods. Extension is still permissible by AD Bank on application.

- **Third party receipts and payments:** AD Bank may permit third party receipts and payments provided it is satisfied with the bonafides of the transactions. Previously it was permitted in a restrictive manner and subject to multiple conditions.

- **Advance payments for exports and imports:** AD Bank empowered to specify thresholds for advance payment beyond which payment may require a stand-by LOC or guarantee. Interest payable if any, should not exceed the all-in-cost ceiling of trade credit as specified under the Borrowing and Lending Regulations, 2018. Previously separate limits were prescribed for exports and imports.

- **Project Exports:** Provisions regarding project exports Incorporated into the New Regulations as compared to separate PEM Rules under Erstwhile Regulations. AD Bank may permit receipts/payments for project exports as per the underlying contract provided it is satisfied about the genuineness of the project.

- **Merchanting Trade Transactions (MTT):** MTT is now formally integrated into the New Regulations. MTT was governed by Master Directions and not part of the primary (Erstwhile) Regulations.

Notification No. FEMA 23(R)/2026-RB dated 13 January 2026 and A.P. (DIR Series) Circular No. 20 dated 16th January 2026

(Comments: The New Regulations represent a clear move to a unified, principle-based FEMA trade framework, consolidating key requirements on declarations, advance payments, realisation timelines, set-off and merchanting trade within the Regulations themselves and reducing reliance on scattered circulars. They also strengthen governance by requiring AD Banks to ensure greater transparency and standardisation, including publication of their internal policies and SOPs relating to export, import and merchanting transactions.

While these reforms improve clarity and ease of doing business, they also heighten procedural discipline and AD bank oversight. Accordingly, exporters and importers should review internal controls, documentation processes, invoicing cycles, treasury practices and AD bank coordination to ensure a smooth transition before 1 October 2026).

B. Proposals in Budget 2026 Speech

The Budget 2026 proposes a comprehensive review of the Non Debt Instruments (NDI) Rules to modernise foreign investment norms under FEMA.

Specifically, the budget proposes and amendment to Schedule III of NDI Rul to permit all individual Persons Resident Outside India (PROIs) to invest in the Indian stock market. Currently, NRIs & OCIs are already permitted and now it is proposed to broaden the schedule to include foreign nationals to be allowed to invest up to 10% of the paid up equity capital in listed Indian companies under the Portfolio Investment Scheme (PIS).

The 10% per person limit is proposed to be increased up from the current 5% limit. Additionally, the aggregate investment cap for all PROIs is proposed to increase to 24%, up from 10%, thereby broadening participation and supporting the objective of deepening the Indian capital markets.

The official amendment to the NDI Rules, 2019 is awaited.

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" The fire that warms us can also consume us;
it is not the fault of the fire. "

Swami Vivekananda

BEST OF THE REST





Rahul Hakani
Advocate

Niyati Mankad
Advocate

1 VINIT BAHRI AND ANOTHER M/S MGF DEVELOPERS LTD. AND ANOTHER – JUDGMENT DATED FEBRUARY 04, 2026 PASSED IN CIVIL APPEAL NO. 6588 OF 2023 [2026 INSC 114]

Consumer Protection Act, 1986 — S. 2(1)(d) — "Consumer" — Exclusion for "commercial purpose" — Scope — Mere leasing out of residential flat after taking possession does not ipso facto establish that purchase was for commercial purpose — Dominant intention test — Burden of proof lies on service provider to show close and direct nexus between purchase and profit-generating activity — In absence of cogent material, allottee remains "consumer" — NCDRC order dismissing complaint set aside; matter remanded

Facts

Appellants booked a residential unit in respondents' group housing project in 2005 and executed a Flat Buyer's Agreement on 12-06-2006, stipulating possession within 36 months with grace period. Alleging delay, unilateral layout changes, and illegal demands under various heads, appellants took possession in Jan 2015 under protest and filed consumer complaint in 2017 claiming interest, compensation, and refund of excess charges. Appellant alleged deficiency in service and unfair trade practice. Respondent-builder contended that delay compensation was already paid and that Appellants were not "consumers" as they had leased the flat to a third party. NCDRC upheld this objection and dismissed the complaint as not maintainable. Appeal before Supreme Court.

Issues

whether the NCDRC was right in dismissing the complaint filed by the appellants on the premise that they do not fall under the definition of 'consumer' for leasing out the subject property for commercial purposes, falling within the exclusion clause of Section 2(1)(d) of the Consumer Protection Act, 1986?

Held

Allowing the appeal, the Court held that S. 2(1)(d) excludes only those transactions where goods/services are obtained for a commercial purpose, determined by the dominant intention and existence of a close and direct nexus with profit-generating activity. The Explanation carves out self-employment for livelihood. Relying on ***Laxmi Engineering Works vs. PSG Industrial Institute, (1995) 3 SCC 583; Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers, (2020) 2 SCC 265; Rohit Chaudhary vs. Vipul Ltd., (2024) 1 SCC 8***; and burden-of-proof principles in ***Shriram Chits (India) Pvt. Ltd. vs. Raghachand Associates, (2024) 9 SCC***

509, the Court reiterated that the onus lies on the service provider to prove the exclusion on a preponderance of probabilities. Mere leasing of the flat, absent proof of dominant commercial intent at the time of purchase, is insufficient. NCDRC erred in dismissing the complaint; impugned order set aside and complaint restored for decision on merits.

2 SHASHIN PATEL AND ANR. VS. UDAY DALAL AND ORS.; FEBRUARY 05, 2026 PASSED IN SLP (CIVIL) NO(S). 36106 OF 2025 [2026 INSC 125]

Maharashtra Co-operative Societies Act, 1960 — Ss. 23(2), 152, 154 — Membership of co-operative housing society — Belated payment of contribution by successor of original tenant — Society having earlier resolved to admit member and such resolution never revoked — Peaceful occupation not in dispute — Held, membership cannot be denied solely on ground of delay; at best society may claim enhanced interest/charges — Revisional authority competent where statutory remedies invoked — Subsequent transfer and induction of transferee member, ratified by General Body, valid

Facts

The dispute concerns Flat No. 7 in Malboro House Co-operative Housing Society, Mumbai. The building originally belonged to M/s. Kamani Brothers Pvt. Ltd., and all seven occupants, including Narendra Patel, were tenants. After the company went into liquidation, the tenants formed a society and paid amounts to acquire the building. Six tenants paid; Narendra Patel did not pay the demanded ₹ 5 lakhs, but he continued to occupy the flat. In an AGM dated 11-8-2005, the Society resolved to admit Narendra Patel as a member upon payment, and this resolution was never withdrawn. After his death, his heirs Shashin and Bhavini Patel applied for membership and tendered the amount. The Divisional Joint Registrar, in revision under the MCS Act, directed that they be admitted as members. Certain society members challenged this before the High Court. The High Court quashed this and restored the Deputy Registrar's direction to place the matter before the General Body. Meanwhile, the Patels transferred the flat to Capital Mind Advisory Services Pvt. Ltd., and a later AGM ratified both memberships. Appeals were filed before the Supreme Court.

Issues

1. Whether successors of a long-standing occupant/tenant could be denied society membership solely due to belated payment of contribution.

2. Whether the Divisional Joint Registrar exceeded jurisdiction in directing admission of members in revision under the MCS Act.

3. Whether the High Court was justified in interfering with the revisional order in writ jurisdiction.

Held

Allowing the appeals partly, the Court held that Narendra Patel's occupation and the offer of membership upon payment of ₹5 lakhs (never withdrawn) and the AGM resolution dated 11-8-2005 were undisputed. Denial of membership while permitting continued occupation would create a "serious anomaly" and perpetual friction. The appellants had pursued statutory remedies under Ss. 23(2), 152 and 154 of the MCS Act; hence, the Joint

Registrar's exercise of revisional jurisdiction was not beyond competence. The High Court's view that the authority acted in excess of jurisdiction was unsustainable, especially when the General Body had, in AGM dated 30-9-2025, ratified the membership of the appellants and the subsequent transferee company in accordance with bye-laws and the Act. Equity demanded recognition of membership; however, objecting members were left at liberty to seek determination of a "suitable additional amount" by way of enhanced interest/charges for delay. The impugned High Court directions (paras 58(ii)–(vi)) were set aside, with parties free to pursue other remedies as per law.

3 RAJIA BEGUM VS. BARNALI MUKHERJEE - JUDGMENT DATED FEBRUARY 02, 2026 PASSED IN SLP (C) NO.6013 OF 2021 AND 20262 OF 2021 [2026 INSC 106]

Arbitration and Conciliation Act, 1996 — Ss. 8, 11 and 9 — Arbitrability — Serious allegations of fraud: Where an allegation of fraud is made with regard to the arbitration agreement itself, such a dispute is generally recognized as being in the realm of non-arbitrability. When the very existence of the arbitration agreement is under a grave cloud of doubt requiring a full-fledged inquiry, the court can sidetrack the arbitration agreement and proceed with the suit

Facts

The dispute involves a partnership firm, 'M/s RDDHI Gold', originally formed by Barnali Mukherjee and two others. Rajia Begum claimed entry into the firm via an "Admission Deed" dated 17.04.2007, asserting she acquired a 50.33% interest. Mukherjee challenged this deed as a forged and fabricated document, noting that Begum's husband (a retired partner according to the deed) continued to act as a partner until 2010. Begum sought interim relief under Section 9 and filed applications under Sections 8 and 11 to refer the matter to arbitration. While the Trial Court and First Appellate Court rejected the Section 8 plea due to serious fraud allegations, the High Court eventually referred the suit to arbitration under Article 227.

Issues Involved

Whether disputes can be referred to arbitration under Section 8, or an arbitrator appointed under Section 11, when the very existence of the arbitration agreement is seriously disputed on grounds of forgery and fabrication?

Whether the High Court was justified in using its supervisory jurisdiction under Article 227 of the Constitution to dislodge concurrent findings of the lower courts regarding the doubtful nature of the Admission Deed.

Held

The Supreme Court allowed the appeal filed by Mukherjee, setting aside the High Court's order to refer the dispute to arbitration. The Court held that since the arbitration clause was embedded in a document (the Admission Deed) whose existence was under a "grave cloud of doubt," the matter was non-arbitrable. Relying on ***A. Ayyasamy vs. A. Paramasivam [(2016) 10 SCC 386], Avitel Post Studioz Ltd. vs. HSBC PI Holdings [(2021) 4 SCC 713],*** and ***Managing Director Bihar State Food & Civil Supply Corp. Ltd. vs. Sanjay Kumar [(2025) SCC OnLine SC 1604],*** the Court restated that fraud permeating the entire contract or the arbitration agreement itself precludes arbitration. It affirmed that Section 11 applications are premature when the agreement's existence requires adjudication and noted that Article 227 should not be used to re-appreciate evidence or disturb grounded concurrent findings.

4 M/S SAISUDHIR ENERGY LTD. VS. M/S NTPC VIDYUT VYAPAR NIGAM LTD. JUDGMENT DATED JANUARY 30, 2026 PASSED IN CIVIL APPEAL NOS.12892-12893 OF 2024 [2026 INSC 103]

Indian Contract Act, 1872 – Section 74 - The Power Purchase Agreement (PPA) under the Jawaharlal Nehru National Solar Mission (JNNSM) involves public interest and environment-at-large; thus, the burden is on the party committing the breach to show no loss was caused by delay. In cases of public utility projects, the delay itself can be taken to result in loss

Arbitration and Conciliation Act, 1996 - Sections 34 & 37 - Court possesses a limited power to modify an award to apply reasonable compensation under Section 74 of the Contract Act

Facts

In 2012, M/s Saisudhir Energy Ltd. (SEL) entered into a PPA with NTPC Vidyut Vyapar Nigam Ltd. (NVVNL) to set up a 20 MW solar power plant under the JNNSM. SEL failed to meet the commissioning deadline of February 26, 2013, with a delay of two months for 10 MW and five months for the remaining 10 MW. NVVNL claimed liquidated damages under Clause 4.6 of the PPA. An Arbitral Tribunal issued a split award: the majority awarded ₹ 1.2 crores, while the minority held NVVNL entitled to the full bank guarantee amount. A Single Judge (Section 34) modified the award to grant 50% of the stipulated damages (approx. ₹ 27.06 crores), which the Division Bench (Section 37) further reduced to ₹ 20.70 crores.

Issues Involved

1. Whether the PPA under the JNNSM constitutes a public utility project, thereby exempting the employer from proving actual loss for claiming liquidated damages.

2. Whether the Court, under Section 34 or Section 37 of the Arbitration and Conciliation Act, 1996, has the jurisdiction to modify an arbitral award regarding the quantum of compensation.

3. Whether the Division Bench was justified in re-calculating the reasonable compensation already determined by the Single Judge.

Held

The Supreme Court held that the project's objective of promoting green energy involves public interest, making the principles of M/s Construction and Design Services v. D.D.A. applicable; thus, actual loss need not be strictly proved. Citing Gayatri Balasamy v. ISG Novasoft Technologies Ltd., the Court affirmed that Section 34 includes a limited power to modify awards to further the ends of justice without a full merit review. However, the Division Bench exceeded its Section 37 jurisdiction by substituting its own view for the Single Judge's plausible determination. Invoking Section 74 of the Indian Contract Act, the Court restored the Single Judge's order granting 50% of the damages (₹ 27.06 crores), allowed NVVNL's appeal, and dismissed SEL's appeal.

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THE CHAMBER NEWS



CA Mehul Sheth
Hon. Jt. Secretary



CA Ankit Sanghavi
Hon. Jt. Secretary

Important events and happenings that took place onlinephysical between **January 1, 2026 to January 31, 2026** 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 January 23, 2026 are as under:

Type of Membership

Life Member	Ordinary Member	Half yearly - Ordinary	Digital Membership
16	13	8	4

Student Member	Associate Member	Total Members
2	0	43

II. PAST PROGRAMMES

DELHI CHAPTER

06.1.2026

Topic: **Webinar on Comparative analysis of ITA 61 Vs ITA 25**

Speakers : ***Sr. Adv. N Venkatraman, ASG; Sr. Adv. V Sridharan***

COMMERCIAL & ALLIED LAWS

06.2.2026
Topic: **Corporate Social Responsibility CSR: Practical Aspects**
Speaker : ***CS Nachiket Sohani***

INTERNATIONAL TAXATION

07.1.2026
FEMA SC - Transactions of Immovable Property in India as well as Outside India
Chairman: CA Manoj Shah
Speaker: CA Kinjal Visaria

16.1.2026 – 18.1.2026
Topic: **4th Residential Conference on Foreign Exchange Management Act** at Radisson Blue Hotel & Spa, Nashik

a GD - Case Studies on Conceptual Aspects Complex and Emerging Issues under FEMA
Speaker: ***CA Vishal Shah***

b GD - Foreign Direct Investment and Overseas Direct & Portfolio Investment in Real Estate – Structuring Challenges and Opportunities
Speaker: ***CA Amithraj AN***

c Cross-Border Mergers – Practical Issues and Strategic Approaches under FEMA
Speaker: ***CA Dr. Anup Shah***

d Panel Discussion - Interactive Discussion on Contemporary Issues, Complex Controversial and Procedural aspects in form of Case Studies under FEMA
Speakers: ***CA Naresh Ajwani; CA Shabbir Motorwala & CA Paresh Shah & AD Banker***

22.1.2026
Topic: **Study Circle - Transfer Pricing in the UAE: Rules, Implementation and Certainty through APAs**
Speaker: ***CA Ajit Jain***

29.1.2026
Topic: **FEMA Study Circle - 3Rs of FEMA – Repatriation, Realisation and Retention**
Speaker: ***CA Niraj Chheda***

INDIRECT TAXES

08.1.2025 – 11.01.2026
Topic: **14th Residential Refresher Course on GST** - Jaypee Palace Hotel & Convention Centre, Agra

a GD - Industry/Sector specific Case Studies
Speaker: ***CA Parind Mehta***

b GD - Intricate Case Studies on Input Tax Credit and Valuation
Speaker: ***Adv. Vipin Jain***

c Relevance of AI in GST
Speaker: ***CA Divyesh Lapsiwala***

d Principles of Interpretation in Taxing Statutes relevant to GST
Speaker: ***Justice R. V. Easwar (Former Judge Delhi High Court), Senior Advocate***

e Issues in Cross Border Transactions – International Tax & GST
Speaker: ***Adv. Rohit Jain, CA Yogesh Thar, Adv. K Vaitheeswaran***

PUNE STUDY GROUP

10.1.2026
Topic: **Nuances of Provisions related to Charitable Trusts as per Income Tax Act, 2025**
Speaker: ***CA Kishor Phadke***

BENGALURU STUDY GROUP

10.1.2026
Topic: **Cross-Border Taxation and Transfer Pricing - discussion on three recent rulings**
Speaker: ***Mr. Bharath Lakshminarayana, Advocate***

17.1.2026
Topic: **Recent Rulings on Search and Benami law**
Speaker: ***Mr. Bharath Lakshminarayan, Advocate***

25.1.2026
Topic: **Recent Rulings on Select Corporate Tax Issues**
Speaker: ***CA Mohit Parmar***

DIRECT TAXES

16.1.2026
Topic: **ISG - Recent Important Decisions Under Direct Tax**
Speaker: ***CA Riken Shah***

20.1.2026
Topic: **Full-day seminar on "TDS and TCS Provisions – a 360° Perspective" jointly with IMC Chamber of Commerce and Industry and Bombay Chartered Accountants Society**

Topic: **Inaugural address**
Speaker: ***Smt. Malathi Shridharan (Pr.CCIT, Mumbai)***

Topic: **Presentation by TDS Wing on New Act**
Keynote & Chairman: Shri Harinder Kumar – CCIT(TDS), Mumbai
Speaker: Smt Ridhi Mishra, CIT(TDS)-1, Mumbai

Topic: **Presentation by CPC – TDS on procedural issues**
Moderator : CA Deepak Shah
CPC Representative: Shri Kamaldeep (Addl. CIT(CPC-TDS)); Shri Purshottam (ITO CPC-TDS)

Topic: **Panel Discussion 1 - Issues under Domestic TDS & TCS provisions (Issues revolving around 194R, 194Q, 194D, 194J etc)**
Keynote and Chairman: Shri Harinder Kumar, CCIT(TDS), Mumbai
Moderator: CA Shikha Gupta
Panellists: CA Ashish Jain, CA Vikas Aggarwal, Smt Riddhi Mishra, CIT(TDS)-1, Mumbai

Topic: **Panel Discussion 2 - Issues pertaining to Penalty, Prosecution and Compounding procedures under TDS/ TCS regime**
<<Practical issues while dealing with penalty/ prosecution matters as well as compounding of offence>
Chairman: Shri GM Doss, Retd.CCIT(TDS**)**
Moderator: CA Gautam Nayak
Panellist: CA Vikas Shah, Adv. K Gopal, Shri Arvind Kumar, CIT(TDS)-2, Mumbai

Topic: **Panel Discussion 3 - Issues related with TDS u/s. 195 from payments to non-residents including issues on SEP/ MLI etc.**
Keynote & Chairman: Nirupama Kotru, CCIT(IT & TP) - West Zone
Moderator: CA Kuntal Dave
Panellist: CA Rakesh Gupta; Adv Rajesh Simhan; Shri SanjayDeshmukh (Pr.CIT(IT)-3), Mumbai

STUDENT

17.1.2026
Topic: **3rd National The Chamber of Tax Consultants Indirect Tax Moot Court Competition, 2025-26 (Final)**
Speaker: ***Judges - Hon'ble Mr. Justice (Retd.) Shrikant D. Kulkarni & Hon'ble Mr. Justice Milind Jadhav***

STUDY CIRCLE & STUDY GROUP

28.1.2026
Topic: **Recent Judgements under Income Tax Act, 1961**
Speaker: ***Mr. Tushar Hemani, Senior Advocate***

CENTENARY YEAR

30.1.2026 – 31.1.2026
Topic: **Shatabdi Summit**

a Resilient Finance and Responsible Growth in India's Economic Journey: the key role of Professionals
Speaker: ***Mr. Arijit Basu***

b The Triple Lens: Accounting, Tax & FEMA in the Capital Market Maze
Panelist: CA Jayesh Gandhi & CA Vishal Gada
Moderator: CA Anil Sathe

c Start-ups Unplugged: Beyond Valuations & Ventures
Panelist: CA Sujal Shah, CA Anand Bathiya, Mr. Runal Dahiwade
Moderator: CA Ninad Karpe

d Bulls, Bears & Beyond: The Capital Markets Dialogue
Panelist: CS Savitri Parekh & CA Yogesh Thar
Moderator: CA Apurva Shah

e AI: Friend, Foe and Future?
Panelist: Mr. Pallav Chaturvedi, Mr. Kapish Mandhyan, Mr. Sambasivan Ganesan
Moderator: CA Jiger Saiya

f Institutionalizing the Tax Practice
Panelist: Sr. Adv. Nishith Desai, CA Dinesh Kanabar
Moderator: CA Vaibhav Manek

g GST @8: Learning Curves & Leapfrogs
Panelist: Mr. Deepak Garg, Mr. Rohan Shah
Moderator: CA A. R. Krishnan

h From Private to Public: Professional's Critical Role in IPOs
Panelist: Mrs. Deena Mehta, Mr. Bhavesh Shah, Mr. Sudhir Bassi, Mr. Jeevan Sonparote
Moderator : CA Neha Gada

h Succession Planning – Trust, Transparency & Tax
Panelist: Dr. (CA) Anup Shah, Adv. Bijal Ajinkya
Moderator: Mr. Girish Venkatraman

i In Conversation with a Legend
Speaker: Dr.(CA) Niranjan Hiranandani - Founder & Chairman, Hiranandani Group
Moderator: CA Naushad Panjwani


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