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YOUR MONTHLY COMPANION ON TAX & ALLIED SUBJECTS

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From the President

CA Jayant Gokhale

Dear Members,

As we enter the Centenary Year of the Chamber of Tax Consultants (CTC), I am filled with immense pride and joy on this momentous occasion. To reach this remarkable milestone as a voluntary institution—founded without profit motive and sustained through unwavering dedication—is an extraordinary achievement. This is a testament to our unity, bonding and the collective pursuit of knowledge, ethics, and excellence. This enduring legacy is derived from our visionary founders and leaders like the Late Sarvashri B.C. Joshi, V.H. Patil, Narayan Varma, and S.N. Inamdar. There are many stalwarts who followed (too numerous to name) who have continued to guide and inspire us.

It is with a deep sense of humility and responsibility that I have taken charge as President during this historic year. I am grateful to the entire membership and especially to our past presidents, who have entrusted me with this role. I, along with our highly capable and energetic Managing Council, am committed to advancing CTC's mission and elevating our standards to even greater heights.

The Centenary Year is indeed a festive occasion, an occasion for celebration; a time to reflect on our rich collective legacy and to review, re-calibrate and redefine our targets for the future. Over the past two years, the Managing Council and Centenary Committee has carefully curated a calendar of landmark events to be held this year including RRCs, conferences and other special events that embody the spirit of CTC. Under the leadership of CA Vipul Choksi, the Centenary Committee is finalizing plans that will be rolled out through our various committees. These will be enriching, unifying experiences, promoting learning, fellowship and enhancement of professional standards; and I look forward to your wholehearted participation in ensuring the success of these special events. I am confident you will all support and participate in these programmes in large numbers to make this a landmark year in the true sense.

This sense of collective celebration was evident when a full house (500 persons) participated in our inaugural programme which took place on the annual day of the Chamber (4th July). The occasion brought together for the first time ever, all the past presidents of CTC (28 of the 32 living Presidents attended, with others being unable to attend due to age/health reasons). This grand inaugural programme of the centenary year was marked by an inspiring address by Dr. Justice D.Y. Chandrachud, former CJI; who touched upon some critical aspects of present legislation and litigation. This was followed by an insightful talk with CA Keki Mistry who shared his views on the future course of the economy. In keeping with the vision shared by these luminaries, we earlier launched a new CTC logo and Centenary tagline: **Inspire. Innovate. Ignite**. These three words reflect our ethos and ambition.

This tagline is not just a slogan—**it's a call to action**. It invites every member to contribute actively, creatively, and meaningfully. I am confident that the above combination will cause the flame of knowledge to blaze ever brighter, lighting the path of progress and professionalism. Along with this logo, CTC has launched a fully revamped, member-friendly website. This is a step towards improving accessibility, interface and engagement with our membership, especially as we reach out across India. We are also enhancing our digital presence with audiovisual materials and active social media engagement to resonate with the younger generation.

In the coming year, a new committee focused on outreach to new Chapters across the nation has been formed. Other committees have been reoriented and re-purposed to better meet evolving professional needs. At the heart of all these efforts is our unwavering commitment to providing high-quality, value-driven inputs to our members in an elegant and accessible manner, without compromising on its standard of content which has been the cornerstone of the success of CTC.

And amidst all this flurry of activity for organising the Centenary celebration; the other educational activities of the Chamber continued without pause. The International Tax Committee had its Annual RRC in June at Goa. The RRC which had a participation exceeding 300 was addressed by top current and former Government officials. These included Dr. Vinay Kumar Singh, JS (CBDT), Mr. Shobhan Kar (Formerly Director CBDT, AND Mr. Pramod Kumar, Former VP ITAT. The RRC was a grand success. Parallelly, the International Tax course for Beginners was organised by the same committee along with the Students' Committee. This too was a crowd puller with nearly 300 participants. The workshop series conducted by the Indirect Tax committee jointly with other professional bodies was also hugely successful.

The 8th Dastur National Direct Tax Moot Court Competition was also successfully conducted with participation from 16 teams across various cities. This program conducted jointly with GLC & MCA has now become a part of the national fixtures and continues to grow in prominence.

Thus, the focus of the Chamber on academic activities continues as in the past, since we recognise that the Centenary year should be not just a celebration, but an occasion to plan proactively for the future. The professional and economic landscape is evolving rapidly. CTC's mission is to prepare its members to thrive in this dynamic environment. This requires introspection, adaptation, and innovation in CTCs activities and programmes.

We have set for ourselves goals that may seem ambitious. However, I draw strength from my team. Our Managing Councils, both outgoing and incoming—have shown extraordinary resolve and unity of purpose. Above all, I have drawn great inspiration from my predecessor, Shri Vijay Bhatt. His exemplary leadership over the past year has set a benchmark in member participation. (RRC enrolments have been at all-time highs). Returning as an Office-bearer after a long gap, I have benefited greatly from his calm guidance and insights on collaborative leadership. He and other seniors have also groomed my full team of office bearers and I believe that as a team, we shall be able to live up to the trust reposed in us.

I thus sign off from on my first communication to you as President with a request to continue to your active participation and to offer your suggestions and inputs to make this a truly memorable and eventful year. Let this Centenary Year be a defining chapter in our journey; not just a celebration of the past but a springboard toward a more active, productive and enlightened future. Together, let us uphold the legacy of CTC and pave the path for future progress.

Jai Hind !

CA Jayant Gokhale
President



From The Editor's Desk

CA Anish M. Thacker

My Brothers and Sisters,

"गुरु गोविंद दोउ खड़े,
काके लागूं पाय।
बलिहारी गुरु आपणे,
गोविंद दियो बताए।"

– Sant Kabir

I feel blessed to be sharing my thoughts for the first time in the Chamber's Centenary year on this auspicious day of Guru Purnima. I also feel very humbled and grateful for being invited to serve the Chamber and this Journal for the second year. I feel tremendous nostalgia and pride in recalling the teachings and invaluable life's lessons that I have learnt from so many of my Gurus, too many to name individually. In the Chamber's context, of course Patil Saab always comes to mind. Several others however, have equally shaped the rich legacy of the Chamber over the past 99 years and which, I hope will go on for at least 101 years more.

The Chamber, as it enters this watershed year, has a lot to look forward to. Being the only homogeneous association of tax consultants where any professional who practices tax is welcome, it is uniquely positioned to shape and contribute actively to the shaping of the country's tax policy n the years to come. It does not have to worry if statutory compliance will be a shelter to its members, nor does it have to worry about Courts taking positions which may not be popular. This is in my view, the Chamber's biggest USP and I am confident that the team who has just assumed office less than a week ago, Jayant, Neha, Mehul, Vitang and Ankit will carry the legacy forward. My congratulations and best wishes to each one of them as well as the group to function as a cohesive troupe of Office Bearers. A special call out that the Chamber, in this centenary year, has its first Vice President as a lady, Neha. This probably is an attribute that we at the Chamber, ought to have had, much earlier, but, as they say, 'Better late than Never'.

At the centenary year inaugural event on 4th July, booth speakers, Justice (Retd) Dr. D.Y. Chandrachud and Shri Keki Mistry, spoke about the importance of embracing Artificial Intelligence (AI) as a necessary component in our daily lives and using it to our advantage. This got me thinking, as to how would an editorial written by AI look in the journal. I therefore asked an AI enabled application to write an editorial for a professional tax journal on the subject of 'Related Party Transactions' and, without any edits or comments whatsoever, I attach the editorial message prepared by that application, below this message, for your benefit. Please do go through it and let me have your comments and reactions. I would love to have your feedback thereon.

The Securities and Exchange Board of India (SEBI) has been the torch bearer, and a successful one at that, of good governance in behavior of related parties *inter se* and proper governance framework in relation thereto. An evolving framework with timely reactions could possibly incentivize better compliance. This issue of the Journal is on the subject of 'Related Party Transactions' and covers the Company Law, Accounting, Income-tax (including transfer pricing) and GST considerations relevant to these. I thank Ameya and the Journal Committee, specially Mr. Rohan Umranikar for their contribution in curating the very fine issue of the Journal which I am sure, you will

find timely and useful. I also express deep gratitude to the learned authors for their insightful articles.

As you would be aware, the next issue would be a special issue where the evolution of important concepts in Direct Taxes would be chronicled. The Journal Committee is burning the midnight oil to curate some thing extra special for you . As every one of you is, I too am eagerly looking forward to having the six special issues planned for this year, in my hands, to savour and delightfully read.

I sign off with a quote that will get all of us going, in this centenary year:

"Again, you can't connect
the dots looking forward; you can only
connect them looking backwards.
So you have to trust that the dots
will somehow connect in your future.
You have to trust in something
- your gut, destiny, life, karma, whatever.
This approach has never let me down,
and it has made all the
difference in my life".

- Steve Jobs

Looking forward to meaningful interaction with all of you once again.

Jai Hind!

CA Anish M. Thacker
Editor

AI's version of the Editorial for this Issue

"As we prepare to unveil the next issue of our journal, we find ourselves at a pivotal moment in the discussion surrounding related party transactions (RPTs). These transactions, often viewed through a technical lens, are not just numbers on a balance sheet; they represent the intricate web of relationships that underpin our corporate landscape.

In an era where transparency and accountability are paramount, RPTs have become a focal point for regulators, tax authorities, and corporate governance advocates. The implications of these transactions stretch far beyond compliance; they touch upon the very essence of trust in our financial systems.



As editors, we believe it is our responsibility to shed light on these complexities and foster a dialogue that encourages ethical practices and robust governance.

Related party transactions can take many forms, from sales and leases to loans and service agreements. While they are a common feature of business operations, they also carry inherent risks. The potential for conflicts of interest and the manipulation of financial results can undermine the integrity of our financial reporting. This is why it is crucial for all stakeholders—companies, investors, and regulators—to approach RPTs with a discerning eye.

Tax implications are particularly significant in this context. The principle of arm's length pricing is central to ensuring that these transactions are conducted fairly. Companies must navigate a complex landscape of transfer pricing regulations, particularly in cross-border transactions. The recent global initiatives aimed at combating base erosion and profit shifting (BEPS) have heightened the scrutiny on RPTs, compelling organizations to adopt more transparent practices.

Moreover, the accounting treatment of RPTs requires careful consideration. Disclosure is not merely a regulatory requirement; it is a commitment to transparency that builds trust with stakeholders. As we explore the accounting standards that govern these transactions, we must also reflect on the ethical responsibilities that come with them.

In India, the Foreign Exchange Management Act (FEMA) adds another layer of complexity, particularly for transactions involving foreign entities. Compliance with FEMA regulations is essential to prevent potential pitfalls and ensure that our financial practices align with national interests.

Corporate law, too, plays a vital role in regulating RPTs. Shareholder approval for significant transactions is not just a formality; it is a safeguard for minority shareholders and a testament to good governance. The involvement of independent directors and audit committees can enhance oversight, ensuring that RPTs are conducted with integrity.

As we delve into the articles and insights presented in this issue, we encourage our readers to engage with these themes thoughtfully. Let us collectively embrace the challenges and opportunities that related party transactions present. By fostering a culture of transparency and accountability, we can navigate the complexities of RPTs while upholding the principles of good governance. In closing, we invite you to reflect on the importance of ethical conduct in our professional endeavors. Together, let us strive for a deeper understanding of related party transactions and their implications in the ever-evolving world of business.

Thank you for your continued support and engagement.

Glimpses of the 98th Annual General Meeting held on 4th July 2025 at the Jade Ballroom, Hotel Sahara Star, Mumbai



Lighting of the Lamp



S/Shri Vijay Bhatt, President, welcoming the members



Shri Jayant Gokhale, President elect felicitating Shri Sharad Dalal, Past President by offering Plaque for completing 50 years in profession



Shri Vijay Bhatt, Imm. Past President felicitating Shri Kishor Vanjara, Past President by offering Plaque for completing 50 years in profession



CA Vijay Bhatt, Imm. Past President, felicitating Mr. Dhruv Parekh, GBCA & Associate, LLP, 1st Winner of The Dastur Essay Competition, 2025



CA Jayant Gokhale, President felicitating Ms Bhavya Prajapati, K. C. Mehta & CO, LLP, 2nd Winner of The Dastur Essay Competition, 2025



CA Neha Gada, Hon. Jt. Secretary, felicitating Ms Ashvi Jain, GBCA & Associates, LLP, 4th winner of The Dastur Essay Competition, 2025



CA Neha Gada, Hon. Jt. Secretary, felicitating Mr Ved Haravana, GBCA & Associates, LLP, 4th winner of The Dastur Essay Competition, 2025



CA Mehul Sheth, Hon. Jt. Secretary, felicitating Mr Shaikh Haris, CHM College, Ullhas Nagar, 5th winner of The Dastur Essay Competition, 2025



CA Mehul Sheth, Hon. Jt. Secretary, felicitating Mr Moksh Gada, GBCA & Associates, LLP, 5th winner of The Dastur Essay Competition, 2025



Shri Vitang Shah, Hon. Treasurer felicitating Ms, Mahek Talreja, GBCA & Associates, LLP, 6th winner of The Dastur Essay Competition, 2025

Glimpses of the Centenary Year Celebration held on 4th July 2025 at the Jade Ballroom, Hotel Sahara Star, Mumbai



CA Neha Gada, Vice President, showcasing Chambers film on various milestones of the Chamber's Journey



Shri Bhavik R Shah, Chairman, IT Connect Committee explain in brief about the New Website of the Chamber of Tax Consultants



Shri Vishal Shah, explaining in brief the about the New Logo of The Chamber of Tax Consultants



New Centenary Logo of The Chamber of Tax Consultants



Hon'ble (Dr.) Justice (Retd.) D.Y. Chandrachud, (Former CJI), delivering Key Note address. Seen from L to R: Ms. Neha Gada, Vice President, S/Shri Vipul Choksi, Chairman, Centenary Year Committee, Jayant Gokhale, President, Mehul Sheth, Hon. Jt. Secretary



Shri Vijay Bhatt, Imm. Past President welcoming Shri Keki Mistry. Seen from L to R: S/Shri Ankit Sanghavi, Hon. Jt. Secretary, Jayant Gokhale, President, Keki Mistry, Speaker, Ashutosh Pednekar, Moderator, Vitang Shah, Hon. Treasurer



Past Presidents with Chief Guest Hon'ble (Dr.) Justice (Retd.) D.Y. Chandrachud, (Former CJI)

Glimpses of the Centenary Year Celebration held on 4th July 2025 at the Jade Ballroom, Hotel Sahara Star, Mumbai



CA Mehul Sheth, Hoh. Jt. Secretary Giving introduction of the Chief Guest



Managing Council Members with Chief Guest Hon'ble (Dr.) Justice (Retd.) D.Y. Chandrachud, (Former CJI)



Release of Publication on "Succession through Private Trust- Legal, Tax and Regulatory Aspects"
Seen from L to R: Ms Ketki Mittal, Author, Shri Ankit Sanghavi, Hon. Jt Secretary, Shri Ashok Mehta, Chairman Research & Publication Committee, Shri Paresh Shah, Author, Shri Jayant Gokhale, President, Shri Keki Mistry, Shri Ashutosh Pednekar, Shri Vijay Bhatt, Imm. Past President, Shri Vitang Shah, Hon. Treasurer



Shri Ankit Sanghavi, Hon. Jt. Secretary introducing the Panelist and Moderator



Shri Vitang Shah, Hon. Treasurer proposing Vote of thanks



Fireside Chat on Role of Professional in evolving Governance & Economic Environment



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Glimpses of the 18th Residential Conference on International Taxation
Novotel Dona Sylvia Resort, Goa, 12th-15th June 2025



Dignitaries at the Inaugural Function



CA Vijay Bhatt (President)
giving his opening remarks



CA Karishma Phatarphekar (Chairman)
welcoming the speakers and delegates



Mr. Pramod Kumar
giving his Chairman Speech



CA Jimit Devani
addressing the audience



Fireside Chat
Dr. Vinay Kumar Singh with Mr. Sobhan Kar

Glimpses of the 18th Residential Conference on International Taxation Novotel Dona Sylvia Resort, Goa, 12th-15th June 2025



Release of Publication - Digital Business & Taxation
(L-R): CA Ashok Mehta, CA Paras Savla, CA Kirit Dedhia, CA Karishma Phatarphekar, CA Vijay Bhatt, Mr. Pramod Kumar, CA P. V. Srinivasan (Author), CA Shabbir Motorwala, CA Paresh Shah



Release of Publication - Foreign Direct Investment (FDI)
(L-R): CA Tanvi Vora, CA Chaitanya Maheshwari, CA Ujwal Natwrar, CA Kirit Dedhia, CA Karishma Phatarphekar, CA Naresh Ajwani (Author), CA Vijay Bhatt, Mr. Pramod Kumar, CA Shabbir Motorwala, CA Ashok Mehta, CA Paras Savla



CA Bhavesh Dedhia addressing the audience



CA Gautam Doshi addressing the audience



CA Sunil Moti Lala addressing the audience

Glimpses of the 18th Residential Conference on International Taxation
Novotel Dona Sylvia Resort, Goa, 12th-15th June 2025



Panel Discussion *: (L-R): CA Renu Narvekar (Panel Member), CA Karishma Phatarphekar (Moderator), CA Eric Mehta (Panel Member) & CA Shikha Gupta (Panel Member)*



Panel Discussion : *(L-R): CA Shabbir Motorwala (Panel Member), CA Anish Thacker (Moderator), CA T. P. Ostwal (Panel Member) & CA P. V. Srinivasan (Panel Member)*

View of the Delegates





Group Photo

Glimpses of the 8th The Dastur National Direct Tax Moot Court Competition 2025 held on 28th June, 2025 at ITAT Court Room and GLC College Auditorium, Mumbai





Lighting of the Lamp



CA Vijay Bhatt addressing the audience



Dr. Asmita Vaidya addressing the audience



Adv. Niyati Mankad addressing the audience



Justice Mr. Ashwin D. Bhobe addressing the audience



Justice Mr. Firdosh P. Pooniwalla addressing the audience



Semi Final Round
(L-R): Hon'ble Smt. Beena Pillai, JM, ITAT, Mumbai & Hon'ble Shri Vikram Singh Yadav- AM, ITAT, Mumbai judging the participant



Semi Final Round
(L-R): Hon'ble Shri Sandeep Singh Karhail - JM, ITAT, Mumbai & Hon'ble Shri Girish Agarwal - AM, ITAT, Mumbai



Final Round
(L-R): Hon'ble Mr. Justice Firdosh P. Pooniwalla & Hon'ble Mr. Justice Ashwin D. Bhobe judging the participant



Best Memorial - NLIU - Bhopal



2nd Best Speaker - Mridula Singh - National Law University, Odisha

Glimpses of the 8th The Dastur National Direct Tax Moot Court Competition 2025 held on 28th June, 2025 at ITAT Court Room and GLC College Auditorium, Mumbai



Best Team - National Law University, Odisha



Runner up Team - National Law Institute University, Bhopal



Group photo with Hon'ble ITAT Members

Glimpses of the 98th Annual General Meeting held on 4th July 2025 at the Jade Ballroom, Hotel Sahara Star, Mumbai



CTC Staff with President Shri Jayant Gokhale, and Imm. Past President CA Vijay Bhatt

RELATED PARTY AND INCOME TAX LAW





Prakash Sinha
Advocate

Ayush Kumar
Advocate

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* See Disclaimer on page 4

Overview

Transactions with related parties under tax laws present intricate challenges due to the diverse definitions, valuation methods, and discretionary powers vested in tax authorities. These complexities significantly impact the identification, valuation, reporting, and defence of such transactions for taxpayers.

- ***Complex Definitions of Related Parties**: The identification of related parties is arduous due to the varying definitions across different laws, which may be further influenced by personal laws, particularly when individuals and their families are involved. Certain provisions lack clarity, with terms such as "closely connected person" remaining undefined, thereby exacerbating the complexity.*

- ***Diverse Valuation Methods**: The determination of the appropriate valuation for related party transactions is challenging, as terms like Fair Market Value, Market Value, and Arm's Length Price possess different definitions depending on the applicable section of the law.*

- ***Discretionary Powers of Tax Authorities:** Tax authorities are endowed with broad discretion to determine profits when income computation proves difficult, thereby shifting the burden to taxpayers. The absence of clear criteria for "exceptional difficulties" results in subjective and potentially arbitrary decisions.*

- ***Interaction of Anti-Avoidance Rules**: Related party provisions fall under Specific Anti-Avoidance Rules (SAAR), yet the General Anti-Avoidance Rules (GAAR) can still be invoked. Despite their differing bases, both sets of rules complicate the identification, valuation, reporting, and defence of related party transactions for taxpayers.*

In any business organisation, the transactions with the related parties are not very uncommon. However, such transactions are always subject matter of debate and controversy. From the income tax prospective, such transactions are always under the scanner of Income tax authorities and therefore has invited litigations.

One of the moot questions arises that why so much litigation are there on this subject. The probable answer could be the statutory that the transactions with the related parties are tainted and require a deeper probe and

The probable answer could be the statutory that the transactions with the related parties are tainted and require a deeper probe and consequential shifting of onus on the assessee in order to satisfy that such transactions are legitimate, meet the business purpose test and are at arm's length.

consequential shifting of onus on the assessee in order to satisfy that such transactions are legitimate, meet the business purpose test and are at arm's length.

However, before the applicability of arm's length pricing in such related parties transactions, this controversy was well recognised by the Hon'ble Supreme Court and in the case of ***CIT vs. Glaxo SmithKline Asia (P) Ltd.***[1] on the issue of section 40A(2),where the hon'ble court held as under :-

> 7. *All these complications arise in cases where fair market value is required to be assigned to the transactions between related parties in terms of Section 40-A(2) of the Income Tax Act, 1961 ("the Act", for short). To get over this situation, we are of the view that the matter needs to be examined by the Central Board of Direct Taxes ("CBDT", for short). We are informed that the matter has been examined by CBDT and it is of the view that amendments would be required to the provisions of the Act if such Transfer Pricing Regulations are required to be applied to domestic transactions between related parties under Section 40-A(2) of the Act.*
>
> 8. *In order to reduce litigation, we are of the view that certain provisions of the Act, like Section 40-A(2) and Section 80-IA(10), need to be amended empowering the assessing officer to make adjustments to the income declared by the assessee having regard to the fair market value of the transactions between the related parties. The assessing officer may thereafter apply any of the generally accepted methods of determination of arm's length price, including the methods provided under the Transfer Pricing Regulations.*
>
> 9. *However, in a number of matters, we find that many a time the assessing officer is constrained by non-maintenance of relevant documents by the taxpayers as, currently, there is no specific requirement for maintenance of documents or getting specific transfer pricing audit done by the taxpayers in respect of domestic transactions between the related parties. One of the suggestions which needs consideration is whether the law should be amended to make it compulsory for the taxpayer to maintain books of accounts and other documents on the lines prescribed under Rule 10-D of the Income Tax Rules in respect of such domestic transactions and whether the taxpayer should obtain an audit report from his chartered accountant so that the taxpayer maintains proper documents and requisite books of accounts reflecting the transactions between related entities as at arm's length price based on generally accepted methods specified under the Transfer Pricing Regulations?*
>
> 10. *Normally, this Court does not make recommendations or suggestions. However, as stated above, in order*

1. *(2010) 15 SCC 150.*

> *to reduce litigation occurring in complicated matters, we are of the view that the question of amendment, as indicated above, may require consideration expeditiously by the Ministry of Finance. In the meantime, CBDT may also consider issuing appropriate instructions in that regard."*

Based on the above said recommendation of the Hon'ble Supreme court, the section 92BA was brought into the statute to cover the specified domestic transaction (including 40A(2)(b)) for the benchmarking purposes. However in 2017, the transactions covered under 40A(2) (b) were excluded from the scope of 92BA citing compliance burden on the tax payer. The issue of such repeal without saving clause was argued in the case of ***Texport overseas private limited***[2] where in the ITAT Bangalore relying upon the supreme court judgement of ***Kolhapur Canesugar Work Ltd***[3] and ***General Finance Company***[4] held that assessment order is not valid and the right course of action for the AO in such circumstances is to frame the assessment in the normal course after necessary enquiry of the 40A(2)(b) of the act. This order of the tribunal was upheld by the Karnataka high court[5].

In order to deliberate on this topic, the foremost question arises to understand the nature related parties transactions, applicable provisions for those transactions. Therefor this issue can be discussed as:-

A. Who is the assessee?

B. Who are the related parties *qua* that assessee and situs of those related parties?

C. What are the transactions with the related parties and applicable provisions?

D. Consequence of such Transactions.

E. Conclusion

A. Who is the assessee?

Since we are discussing the issue of related party transactions in the context of corporate taxation, therefore, we are considering that the assessee is a corporate entity. Further we are also considering that in such corporate entity the entity in which public are not substantially interested.

B. Who are the related Parties qua that assessee and situs of those related Parties?

The identification of the related parties, their situs and identification of the transactions with those related parties are paramount to proceed further.

The challenge is to determine who are the related parties with whom the assessee has entered into such transactions.

The challenge is to determine who are the related parties with whom the assessee has entered into such transactions is important as the provisions governing such transactions

2. *(2018) SCC OnLine ITAT 25035.*
3. *AIR 2000 SC 811.*
4. *257 ITR 338.*
5. *271 taxmann 170.*

are very dynamic as the definition of related parties/family/relative varies depending upon the circumstances. For example, if the assessee is an individual, the definition of relative is prescribed under section 2(41) of the income tax act and it states as under-

> ***"2(41) - "relative", in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual".***

Each of such terms needs a detail deliberation to derive the logical conclusion particularly in the dynamic society and family values and personal laws of governing such individuals. For example, whether it include situation like bigamy, polygamy, live in relationship etc. Therefore, this definition needs to have proper understanding because in many cases, for a corporate assessee, where the directors are the related parties, so their family members or relatives are also related parties. Although the term family has not been defined under section 2 (definition section), we may take the assistance of explanation 1 of clause 5 of section 10. As per this clause family means as under: -

> *"family", in relation to an individual, means –*
>
> *(i) the spouse and children of the individual; and*
>
> *(ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual."*

The question arises, whether such definition can be used for the purpose of Section 40A(2)(b) also, is an important aspect, wherein the author view is in affirmative however it is not supported by any judgement.

Another definition which is important for our discussion is **"person who has substantial interest in the company"**. Section 2(32) defines the term, who has the substantial interest in the company and this provision is reproduced as below-

> *"2(32) - **"person who has a substantial interest in the company"**, in relation to a company, means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent of the voting power;"*

The understanding of the above term is important because in various provisions the transaction with the person who has substantial interest in the company is subject to scrutiny and hence critical for our discussion. In order to identify the person covered under section 2(32), it is important that such person should beneficially own the share and such share should provide him the voting power not less than 20% of total voting power in the assessee company. Therefore, the differentiation must be made between the legal owner of the shares with the beneficial owner of the shares and the quantum of the voting right attached to those shares. The term beneficial owner has not been defined either under section 2(22)(e) or section 40A(2)(b). However, it has been defined under section 139. Further, the term "beneficial owner" has to understood in the context in which it has been used. The explanation 4 of section 139 defines the term "beneficial owner" and it is reproduced as below: -

> *"Explanation 4. – For the purposes of this section "beneficial owner" in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit,*

For the purpose of section 2(22)(e), it is not only the persons covered under section 2(32) who can be called related parties but any concern in which such person at any time during the previous year is beneficially entitled to 20% of the income of such concern, can also come within the mischief of deemed dividend.

direct or indirect, of himself or any other person."

Although, this definition of beneficial owner is for section 139, however for our understanding we can use this definition for our deliberation.

The term beneficial owner is important as the transactions of the corporate assessee with a concern, in which the person covered under section 2(32), has at any time during the previous year beneficially entitled of not less than 20% of the income of such concern, is covered under section 2(22)(e) and loan and advances to the concern may be taxed in the hands of the such shareholder.

As per section 2(22)(e) Explanation 3 clause b is as under: -

> *"(b) a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the income of such concern;"*

Therefore, For the purpose of section 2(22)(e), it is not only the persons covered under section 2(32) who can be called related parties but any concern in which such person at any time during the previous year is beneficially entitled to 20% of the income of such concern, can also come within the mischief of deemed dividend.

Another definition which helps us to determine the related parties is **"person having substantial interest in the business and profession of the assessee"**. This terminology has been used in section 40A (2) and it is differently worded in compared to the term **"person who has a substantial interest in the company"** as defined in section 2(32). As per section 40A(2) the definition of the person having substantial interest in the business and profession as under: -

> *"Explanation. – For the purposes of this sub-section, a person shall be deemed to have a substantial interest in a business or profession, if, –*
>
> *(a) in a case where the business or profession is carried on by a company, such person is, at **any time during the previous year**, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and*
>
> *(b) in any other case, such person is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the profits of such business or profession."*

On analysing the above said provision of section 2(32) and explanation of 40A(2)(b), the scope of explanation is wider as it covers the terms "at any time during the previous year". Thus, qua a corporate assessee, if a person is at any time during the previous year was beneficial owner of share not less than 20% voting power in the company then, that person is covered under 40A(2)(b).

Transaction with self

A very unique situation arises in the case of 80A(6), 80IA(8), or section 10AA, wherein if there are transactions of goods and services, between the eligible business as per these provisions and not eligible business/DTA units, of the same assessee, then such transaction has to be recorded at the market value and the market value in relation to any goods and services means the price that such goods and services would ordinary fetch in the open market or the arm's length price determined as per TP provision. Therefore, the transaction with self may also be covered as related parties transactions. The purpose of higher scrutiny and benchmarking on the ALP is to ensure that there is no sifting of profits from non-eligible business to a eligible business (claiming tax exemption) of the same assessee.

Close connection test

Section 80IA (10) and 115BAB(6) prescribed close connection test between the assessee claiming the benefits under these provisions or any other persons or for any other reason, the course of business between them are so arrange that the business transacted between them produced to the assessee more than the ordinary profit which might be expected to arise in such business. Such situation statutorily empowers the AO in computing the profit and gains of such business take the amount of profit as maybe

The transaction with self may also be covered as related parties transactions.

reasonably derived there from. In case that such arrangement involves specified domestic transactions as per 92BA, then it has to be benchmarked as per TP provision. The problem arises how to identify such person or arrangement and the close connection with the assessee. The term **"close connection"** has not been defined in the provision therefore there are no objective test to identify such person but it became very subjective, leading to litigation.

Associated Enterprises – The definition of Associated enterprises in section 92A is important in the context of international transactions. If the relationship between the assessee and the other party are covered as the Associated Enterprises and the transactions are international transactions as per provision of section 92B, then the TP provision will apply for benchmarking.

Situs of the related parties

The situs of the related parties are important in order to determine the applicable provision on the assessee. If due to situs, the transactions are international transactions, then the test of the associated party has to be applied and accordingly TP provisions will apply. To the contrary if the transactions are domestic transitions, then the provision of Section 92BA has to applied. For example if the director of the corporate assessee is located in India, the applicable provision could be section 40A(2)(b) wherein the benchmarking under 92BA will not be applicable after 1st April 2017. However, if the director is based outside India, the provision of section 92A, *qua* the management, control, capital, has to be tested in order to determine the associated enterprises and relevant benchmarking has to be done as per the TP provision. Hence, every such provision needs to be properly checked before applying.

C. What are the transactions with related parties and applicable provisions?

Since the transactions with the related parties are prone and has potential to avoid the tax by the assessee, these transactions need stringent compliance and hence categorised as Specific Anti Avoidance Rule (SAAR). Each of the provisions cover different nature of transactions and under each such provisions the definition of related parties varies. Like under section 2(22)(e), it covers the transactions in the nature of loan or advances to a person covered under section 2(32) or to a concern, the transaction under 40A(2) (b) is qua the expenditure paid to a director or his relative or person having substantial interest in the business and profession of the assessee. Each of such provision has been briefly discuss as below:-

i. Deemed divided under section 2(22)(e)

After the amendment in 1987, this provision has been widened to include advances or loan made to a shareholders who is the beneficial owner of shares holding 10% or more of the voting power in the company and also includes the payment made by the company on behalf of or for the individual benefits of such shareholder. Further it also includes advances or loan made to any concern in which such shareholder is a member or partners and in which he has a substantial interest. In the latter case, the advance or loan will logically have to be treated as dividend in the hands of shareholder concerned and not the concern, because the scope of sub clause is only to rope in the benefits given by a closely held company to certain shareholders directly or indirectly. It is also conceivable that payments made to a concern in which the shareholder has no interest or even less than substantial interest, if they can be shown to have been made on behalf of or for the individual benefits of such shareholders so as to attract this provision.

This provision treats loans granted by a 'closely-held' company to any of its shareholders in the same manner as it treats dividends distributed by it to them. The reason of such treatment is that there are accumulated profit in the company, and the shareholder having substantial interest in the company, can influence the distribution of such profits to themselves, in such manner, wherein the shareholders would not be liable to pay tax. In order to avoid such a tax liability, the company may grant a loan. Therefore, when such a loan is advanced to the shareholder who has a substantial Interest in the company, the inference is compelling that the loan is a made-up affair, and there is every reason to treating such loan/advances as dividend. Hence, the dividend as per this provision is deemed dividend and not real dividend. Even though such loan has been re-paid, it will still remain divided and tax accordingly. Mere subsequent repayment of such loan and advances will not reverse the effect of this provision.

However, there are few exceptions also which we are not trying to cover. The CBDT has issued the circular number 495 dated 22 September 1987, in order to clarify such provision.

The benchmarking may not be required if such person cover under section 2(32) or the concern, in whose hand this provision has been applied are resident in India. However, the benchmarking as well as reporting may be required as

per TP Provisions if such person is non-resident.

ii. Section 40A(2)

Part D of chapter III of the Income Tax Act, discuss the computation of total income from profit and gains from business and profession. While section 28 talks about the income that will be cover here, section 29 talks about computation of that income and states that the income referred to section 28 shall be computed in accordance with the provisions as per section 30 to 43D. Section 40A has the overriding effect on all such deductions. Thus, all the deductions/expenditure has which is with the list of payees (as mentioned below) has to pass the test of 40A(2).

Section 40A(2), has two limbs. The first limb is, wherein the assessee incur any expenditure for which payment has been made or is to be made to any person (the list of the payee is mentioned below). AND then the opinion of the AO on such expenditures.

The second limb talks about the opinion of the AO,

- that that such expenditure is excessive or unreasonable having regard to the **fair market value** of the goods, services for which the payment is made, or
- the legitimate need of the business or profession of the assessee, or
- the benefit derives by or accruing to him therefrom,

then **(quantification of disallowance)** so much of the expenditure as considered by AO to be excessive and unreasonable shall not be allowed as deduction.

The scope of this provision is broad as it covers not only the person who has substantial interest in the business of corporate assessee but also cover relative. Apart from this provision also cover the payment to director, their family members and relatives. The list of the person covered under this provision are not reproduced here and the reader may refer to the provision in the statute.

The term **fair market value** has not been defined for this provision. The definition of provision of fair market value as per section 2(22)(b) may not be ispo-facto applicable here because that provision is qua the capital asset where as 40A(2) is qua the expenditure. Further the rule 11U/11UA also cannot be applied because these rules are for section 56. The benchmarking of the expenditure cover under this provision as per TP provision is also not applicable from AY 2016-17. It leads to a situation wherein the assessee should have the robust documentation in order to defend any adjustment under this provision.

iii. Corporate gifting

The issue of corporate gifting can be covered under section 56(2)(x) as well as section 47(iii).

Section 56(2)(x) state that when a person receive certain sum of money or immovable property or any property and the value of such sums of money or stamp duty value of immovable property or fair market value of such property does not exceed rupees fifty thousand then such receipt is not taxable. Although there are certain exception

on the applicability of the provisions however it is important to determine whether such exclusion is applicable qua a corporate assessee. Interestingly, under the exclusion clause there are certain entries which may apply to a corporate assessee also. Like a corporate person can receive money or property under a will or by way of inheritance or transaction covered under clause (iv) or (v) or (vi) or (via), (viaa), (vib), (vic), (vica), (vicb) (vid), (vii), (viiac), (viiad), (viiae), (viiaf), of section 47. Thus, those transaction which are not regarded as transfer are under section 47 are generally not taxable under 56(2)(x). However, by way of amendment effective from 01.04.2025 clause (iii) of 47 has been restricted to the transfer of capital assets by an individual or HUF under a gift will or irrevocable trust. Therefore, receiving of property under a will or gift by a corporate assessee may not be taxable under 56(2)(x) but such gifting of the capital goods by the corporate assessee may not be exempt from term transfer and therefore taxable in the hand of transferer corporate assessee.

After this amendment the corporate assessee cannot claim the benefit of the judgement of Madras High Court in ***PCIT vs. Redington India Limited***[6].

iv. Section 80A

As per this provision the transfer of any goods or services held for the purpose of undertaking or unit or enterprises or eligible business as covered in 10AA or 10 BA to any other business carried on by assessee or vice versa, than such transfer has to be recorded at **market value** and the **market value** can be determined as per the method prescribed in the explanation and explanation is as under:-

> *"Explanation. – For the purposes of this sub-section, the expression "market value", –*
>
> *(i) in relation to any goods or services sold or supplied, means the price that such goods or services would fetch if these were sold by the undertaking or unit or enterprise or eligible business in the open market, subject to statutory or regulatory restrictions, if any;*
>
> *(ii) in relation to any goods or services acquired, means the price that such goods or services would cost if these were acquired by the undertaking or unit or enterprise or eligible business from the open market, subject to statutory or regulatory restrictions, if any;*
>
> *(iii) in relation to any goods or services sold, supplied or acquired means the arm's length price as defined in clause (ii) of section 92F of such goods or services, if it is a specified domestic transaction referred to in section 92BA."*

As discussed it covers the situation where the transaction is inter-se the same assessee (between eligible business and non-eligible business) for the goods and services. As per this provision such transaction has to be recorded at market value and TP method can be applied to

6. *430 ITR 298 (Mad).*

determine such market value. Therefore, the situation may arise where the same transaction of expenditure is covered both under 80A (6) and 40A(2) but in the former it has to be recorded at market value and recorded as per market value supported by TP provisions whereas in the later provisions such benchmarking may not be required under 92BA.

v. Section 80IA(8)

This provision covers the deduction in respect of profit and gains from industrial gain or enterprise gain in infrastructure development. As per this provision where the gross total income of the assessee include any profit and gains derived by an undertaking or enterprise from any eligible business referred in sub section 4, there shall in accordance with and subject to the precision of this sub section, be allowed in computing the total income of assessee, deduction of an amount is equal to 100% of the profit from such business for a period of ten consecutive assessment year.

As per subsection 8 where the good or services held for the purpose of eligible business are transfer to other business carried on by assessee or vice versa. The consideration for such transfer should be recorder at the market value of such good or services at the date of such transfer. The market value of the goods or services has been defined in the explanation, and it is reproduced as below:-

> *"Explanation. – For the purposes of this sub-section, "market value", in relation to any goods or services, means –*
>
> *(i) the price that such goods or services would ordinarily fetch in the open market; or*
>
> *(ii) the arm's length price as defined in clause (ii) of section 92F, where the transfer of such goods or services is a specified domestic transaction referred to in section 92BA".*

vi. Close connection test under 80IA (10)

As per this provision where it appears to the AO that owing to the close connection between assessee carrying on the eligible business as per this provision and any other person or for any other reason, the course of business between them is so arranged that the business transacted between them produced to the assessee more than the ordinary profit which might be aspect to arise in eligible business. The AO shall in computing the profit and gain of such business for the purpose of deduction under this section, take the amount of profit as may be reasonably deemed to have been derived therefrom.

This provision further states that if such transaction is to be covered under section 92BA than the amount of profit of such transaction shall be computed at arm's length price.

In the ***ACIT vs. HSBC Software Development (India) Pvt Ltd.***[7], held that the provision of the section 80IA(8) and 80IA (10) have application only in respect of domestic transaction and not to international transaction as defined in section 92B.

7. *149 taxmann.com 424*

vii. Section 10AA

This provision provides the tax holiday for a unit set up in SEZ with a tax holiday period. The provision of 80IA (8) Supra and the provision of 80IA (10) also apply for the purpose of computing the profit.

viii. Section 115BAB

This provision provides a lower rate of corporate tax on domestic company @15% subject to certain condition to be satisfied. The provision akin to 80IA(10) has been inserted in sub-section 6.

ix. Transfer pricing

As discussed above, if the related Parties is covered within the definition of associated enterprises under section 92A and the transaction are international transaction under 92B than the provision of transfer pricing has to be applied. By applying this provision, the assessee has to ensure that arm's length pricing has been computed in accordance with 92C and such transaction is reported in form 3CEB. If the transaction is not an international transaction and cover as specified domestic transaction as per section 92BA, the benchmarking has to be done if the aggregate of such domestic transaction exceed 20 crore in previous year.

x. Applicability of GAAR

The GAAR provision can be applied if the arrangement entered by the assessee is an impermissible avoidance arrangement (IAA).

"96.(1) An impermissible avoidance arrangement means an arrangement, the main purpose of which is to obtain a tax benefit, and it –

(a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;

(b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;

(c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or

(d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.

(2) An arrangement shall be presumed, unless it is proved to the contrary by the assessee, to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit."

Further as per section 97,

"(1) An arrangement shall be deemed to lack commercial substance if it involves or includes accommodating Parties.

"(3) For the purposes of this Chapter, a Party to an arrangement shall be an accommodating Party, if the main purpose of the direct or indirect participation of that Party in the arrangement, in whole or in part, is to obtain, directly or indirectly, a tax benefit (but for the provisions of this Chapter) for the assessee whether or not the Party is a connected person in relation to any Party to the arrangement."

Treatment of connected person and accommodating Parties.

"99. For the purposes of this Chapter, in determining whether a tax benefit exists, –

(i) the parties who are connected persons in relation to each other may be treated as one and the same person;

(ii) any accommodating Parties may be disregarded;

(iii) the accommodating Parties and any other Parties may be treated as one and the same person; (iv) the arrangement may be considered or looked through by disregarding any corporate structure."

The scope of GAAR is much wider as it includes transactions with **accommodating parties**. The **accommodating parties** may be a connected person or not **connected person**. This provision does not define the accommodating person however it defines connected person in the section 102(4) through an inclusive definition and covers person directly or indirectly connected with the accommodating person. However, for the invocation of the GAAR, the main purpose test of tax benefits and any one of the sin tests out of four, prescribed in section 96 must to be cumulatively satisfied, including the threshold test and administrative procedural test.

D. Consequence of such transaction

Each provisions covers different transaction and therefore and has different consequences. Like in the case of 2(22)(e) the person covers under 2(32) will be subject to tax considering such loan or advances as dividend. Whereas in the case of section 40A(2) the expenses incurred may not be allowed as deduction. Since the requirement of the benchmarking under 92BA is no more applicable, to the assessee should maintain robust documents in order to avoid & challenges the adjustment by the AO in this provision. Under 47(iii) after the amendment any gift or will by a corporate assessee is not be exempted from the term transfer and therefore capital gain tax will arise. Transaction under 80A will lead to the adjustment unless such transaction of goods of supply has been benchmarked at ALP.

The unique situation arises in 80IA(8) which provides that in case the opinion of the AO the computation of profit and gain of eligible business present exceptional difficulties the AO may compute such profit and gain in such reasonable basis as he deemed fit. The expression 'such reasonable basis' pre-supposes that the Assessing Officer has to clearly explain why he is rejecting the profit figures as put forth by the assessee from the audited accounts of the assessee. Without pointing out the errors, if any, in the accounts or altering the figures of sales or purchases.



to compare the trading results of business of two units and simply reject it is clearly not a reasonable basis, as contemplated by the proviso to section 80-1A(8)[8].

Conclusion

Any transactions with the related parties need deeper probe to identify the related parties, because as discussed above, each provision have different wording like person having substantial interest in the company, person having substantial interest in the business & profession of the assessee, family, relative, associated enterprises, connected parties etc. If the assessee is availing any tax benefit covered under 10AA, 10BA , 80A, 80IA or 115BAB or any other provisions, then the transaction inter se between the eligible unit/business and non-eligible unit/business of the same assessee can also be covered under the related party transactions. Another important aspect is the benchmarking as in some cases it is "fair market value (40A(2))", in some cases it is "market value" as in section 80A and 80IA, "Arm length price" as per section 92C & 92F. Further there is variation in the method of computation of "market value" itself between 80A and 80IA(8). Another important aspect are these are SAAR provisions and compliance of such provisions does not exclude the GAAR applicability if it satisfy the GAAR test. The CBDT has already clarified this aspect through its circular no 07/2017 dated 21.01.2017 and it is further fortified in recent judgement of Telangana High court in the case of ***Ayodhya Rami Reddy Alla***[9]. Therefore it is imperative that issues of transactions with the related party should handle with care otherwise any omission may lead to adjustments and litigations.

■

8. *CIT vs. Punjab concast steels Ltd. (2011) 336 ITR 248(P&H).*
9. *(2024) 466 ITR 497.*

DEEMED TRANSACTIONS, DISPUTED VALUATIONS : NAVIGATING THE GREY ZONES OF INDIAN TRANSFER PRICING



CA Saurabh Dhadphale

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Overview

The article delves into the evolving complexities of Indian Transfer Pricing Regulations (ITPR), particularly in the context of deemed international transactions (DITs), valuation mismatches, and royalty payments in contract manufacturing. It highlights interpretational challenges arising from overlapping provisions under ITPR and domestic tax laws, such as Sections 50CA and 50B, and explores the legal implications of transactions influenced by associated enterprises (AEs), even when conducted with unrelated parties. Through detailed case studies – including slump sales, share transfers, and the Xiaomi India ruling – the article illustrates how substance-over-form principles and economic realities increasingly shape TP assessments. It emphasizes the need for harmonization between arm's length pricing and fair market value rules, robust documentation, and functional analysis.

The article concludes with recommendations for regulatory clarity, dispute resolution mechanisms like APAs and MAPs, and capacity building among tax authorities. As India approaches 25 years of TP legislation, the piece advocates for a mature, balanced, substance-driven, administratively consistent and globally aligned framework that balances enforcement with business facilitation.

Background

The rise of globalization and evolving regulatory frameworks have driven the cross-border integration of enterprises, enabling multinational enterprises (MNEs) to operate seamlessly across jurisdictions. Taxation of intra-group international transactions thus has become a key focus. To protect the tax base and support global business expansion, transfer pricing (TP) has become a cornerstone of international taxation – ensuring that transactions between associated enterprises (AEs) comply with the arm's length principle and relevant legal standard.

In alignment with the global trend of business integration, India has implemented specific transfer pricing regulations (Indian Transfer Pricing Regulations ('ITPR')) which are set out in the Income Tax Act, 1961, ('the Act') and Income-tax Rules, 1962 ('the Rules'). However, interpreting and applying these regulations presents complex challenges, including determination of arm's length value, identification of deemed international transactions, treatment of intra-group slump sale, and pricing of royalty payments, particularly in contract manufacturing and trading businesses.

This article seeks to explore these legal and conceptual complexities in depth, supported by illustrative case studies that provide practical insights into the evolving transfer pricing landscape in India.

Introduction

The ITPR are aligned with the globally accepted principles established by the Organisation for Economic Co-operation and Development ('OECD'), particularly the Arm's Length Principle ('ALP'), which mandates that transactions between AEs be conducted as if they were between unrelated parties under similar conditions.

While the overarching aim of the ITPR is to ensure that profits are appropriately allocated and taxed in the jurisdictions where economic value is created, the MNEs often encounter significant interpretational and practical challenges in complying with these regulations.

The lack of harmony between these provisions often leads to disputes regarding the appropriate valuation approach to be adopted which would follow all the provisions.

Some of the key issues that have emerged in the Indian transfer pricing landscape include:

a) ***Application of ITPR pertaining to Deemed International Transactions ('DIT'):***

ITPR extend beyond actual international transactions and encompass certain transactions between unrelated enterprises as well. Determining when and how these provisions apply often leads to legal uncertainty and varying interpretations by both taxpayers and tax authorities. The ITPR are comprehensive

ITPR extend beyond actual international transactions and encompass certain transactions between unrelated enterprises as well.

from the perspective of identification of international transactions, especially after the amendment to section 92B(2) of the Act made vide Finance Act ('FA') 2014. This primarily seeks to cover all those transactions between the taxpayer and unrelated parties where an AE of the taxpayer has any sort of control that could impact the tax base of the taxpayer.

b) ***Valuation methodologies across TP Provisions and Other Tax Provisions:***

Multiple valuation approaches arise particularly in the context of capital transactions involving transfer of shares or business undertakings between intra-group entities attracting TP provisions as well. While the TP rules require adherence to the arm's length principle, other provisions of the Act, such as Sections 50CA (for transfer of unquoted shares) and 50B (for slump sale of undertakings), prescribe distinct valuation mechanisms. The lack of harmony between these provisions often leads to disputes regarding the appropriate valuation approach to be adopted which would follow all the provisions.

c) ***Royalty and Intangible property related payments in the context of Contract Manufacturing arrangements:***

Payments related to the use of intangibles, including royalties, have been subject to intense scrutiny in India. This particularly gains importance in

contract manufacturing arrangements since the contract manufacturers operate on a limited risk basis. There is often scepticism about whether such payments reflect economic reality or are a form of profit repatriation. Accordingly, disputes frequently arise over the justification and quantification of royalty payments.

Considering these complexities, this article aims to critically examine the evolving legal and conceptual debates within India's transfer pricing regime, supported by relevant case laws and practical illustrations.

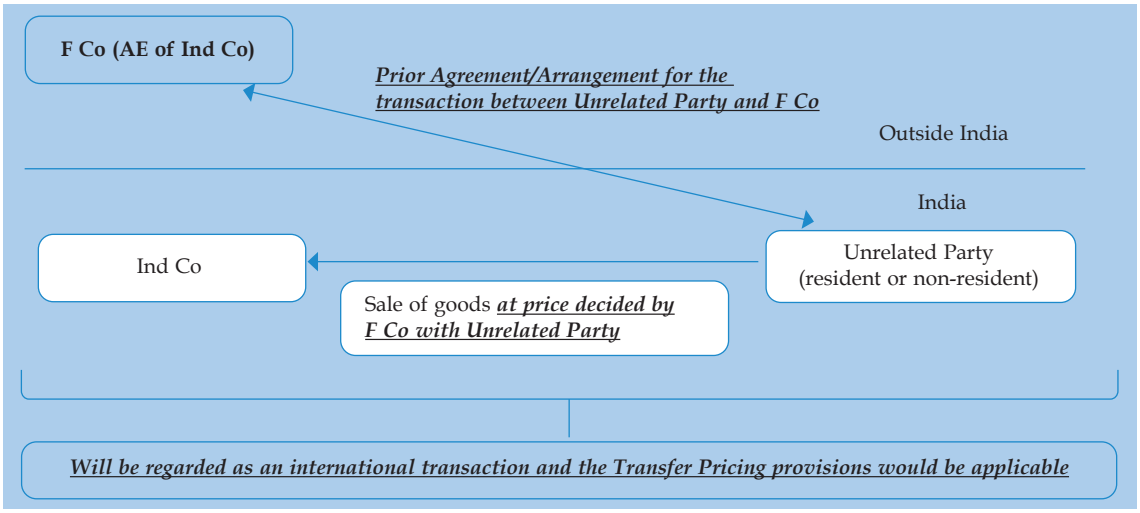
Legal framework of International Transactions and DITs

The terms 'international transaction' and 'deemed international transactions,' lie at the heart of the ITPR. Once a transaction is classified as an "international transaction" between AEs or a DIT, the taxpayer becomes obligated to comply with a series of stringent requirements, including maintaining prescribed documentation, adhering to arm's length principles and reporting in Form 3CEB. Consequently, the definition and scope of the term carry significant implications for both tax compliance and risk exposure.

Section 92B(1) of the Act defines the term "International transaction" as a **transaction between two or more AEs, either or both of whom are non-residents.** It includes:

- Purchase or sale of tangible or intangible property
- Provision of services
- Lending or borrowing of money
- Cost-sharing arrangements
- Any other transaction having a bearing on profits, income, losses, or assets of the enterprise

Sub-section (2) of Section 92B further extends the scope of Section 92B(1) by creating a deeming fiction that transactions occurring between the taxpayer and an unrelated party (resident or non-resident) in cases where there exists a prior arrangement between an AE of the taxpayer and such unrelated party or the terms of the transaction are determined in substance between the AE and such unrelated party will be considered as DIT. The scenario is explained by way of diagram provided below:

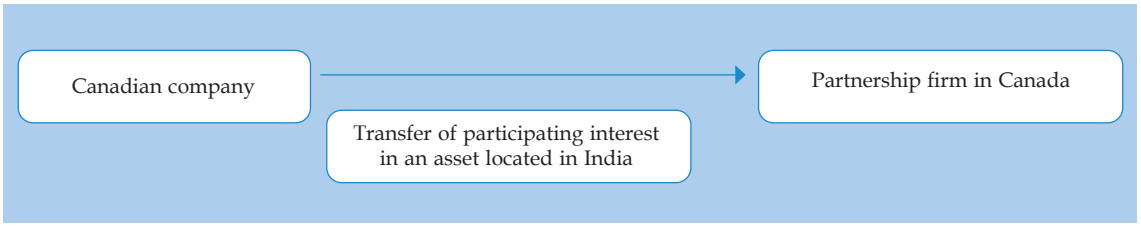


From a thorough reading of the above-mentioned provisions, it can be concluded that a transaction between the tax residents in India cannot be constituted as an international transaction, since Section 92B(1) requires transaction to occur between two or more AEs either one or both of whom are non-residents and therefore, *question of invoking deeming provisions under sub-section (2) does not arise in case of transactions between two resident entities of the same MNE group.*

Case studies and jurisprudential analysis

Case Study 1: Interplay between Valuation provisions and ITPR:

Scenario : Sale of shares by a foreign company of its Indian subsidiary to another Foreign AE.



Conflict: The transaction falls within the definition of "international transaction" and accordingly the Transfer Pricing provisions under Section 92 to 92F would apply. Further, Section 50CA dealing with the valuation of shares other than quoted shares, in case of a transfer, would also be applicable.

In such a scenario, the pertinent question as to which methodology prevails for the computation of the appropriate consideration arises. Whether the Arm's Length Price computation under the ITPR overrides the Fair Market Value computation based on the methodologies prescribed under the various other Sections (e.g., 50CA and 50B read with Rules 11UA and 11UAE respectively) of the Act covering domestic taxation as well? Or *vice versa*?

Key provisions: Section 50CA, Rule 11UA and Section 92C

Judicial precedents:

It is an accepted principle that any specific anti-avoidance rules would prevail over general anti-avoidance rules. However, which rules can be considered as specific and which as general is a moot point. In this regard, the Authority for Advance Rulings in the case of ***Canoro Resources Ltd. vs. DCIT***[1] had made the following observations/comments involving the valuation methodology under Sections 92 to 92F and the valuation methodology under Section 45(3):

- The Section 45(3) is a special provision as far as computation of capital gains resulting from capital contribution made by a partner to the firm is concerned, and Sections 92 to 92F are special provisions as far as international transactions are concerned. Since both are specific provisions, a doubt is created as to

1. *Canoro Resources Ltd. vs. DCIT [2009] 310 ITR 320 (AAR) for clarity.*

what would be the most appropriate provision for computing capital gains in the present case.

- In situations where conflicting valuation methodologies are found between the Sections of the same statute, the principle of *leges posteriores priores contrarias abrogant* becomes relevant. This Latin maxim, meaning "later laws repeal earlier conflicting laws" suggests that, where two specific provisions conflict, the provision enacted more recently should take precedence.

- When two special provisions conflict, the inconsistency should be resolved by looking at the purpose, policy, and clear intent behind each law. In this regard, Section 45(3) was introduced to tackle domestic avoidance and is not specifically intended to apply to international transactions. The wording of Section 45(3) is broad and can technically include international transactions, but the Transfer pricing provisions override the broader provisions when transactions are between AEs.

- In light of the above, when the TP provisions and Section 45(3) are read in harmony, it could be inferred that the TP provisions should prevail over Section 45(3) for international transactions and the value recorded in the firm's books should not be accepted as full consideration; instead, the arm's length price should be used for computing capital gains under TP rules.

Key considerations:

- *Need for Harmonization*: Overlaps between valuation methods under transfer pricing (ITPR) and domestic tax provisions (like Sections 50CA/50B) create interpretive conflicts. The referenced ruling highlighted differing outcomes under three valuation approaches, underscoring the need to align these frameworks.

- *Rigid FMV under Rule 11UA/11UAE*: Rule 11UA/11UAE prescribes fixed formulas, limiting adjustments based on economic or industry-specific factors.

- *Greater Flexibility in ALP determination*: ALP determination allows the use of six methods under Rule 10B, offering more flexibility. Notably, at the time of the ruling, the "Other Method" (Rule 10AB) which allows for well-documented, rationale-based approaches like Discounted Cash Flow ('DCF') was not yet introduced.

- ***Practical consideration***: While methods like DCF may be valid under TP, they are not accepted under Rule 11UA/11UAE for FMV purposes. Conversely, FMV as per Rule 11UA/11UAE may sometimes be accepted as ALP under TP rules.

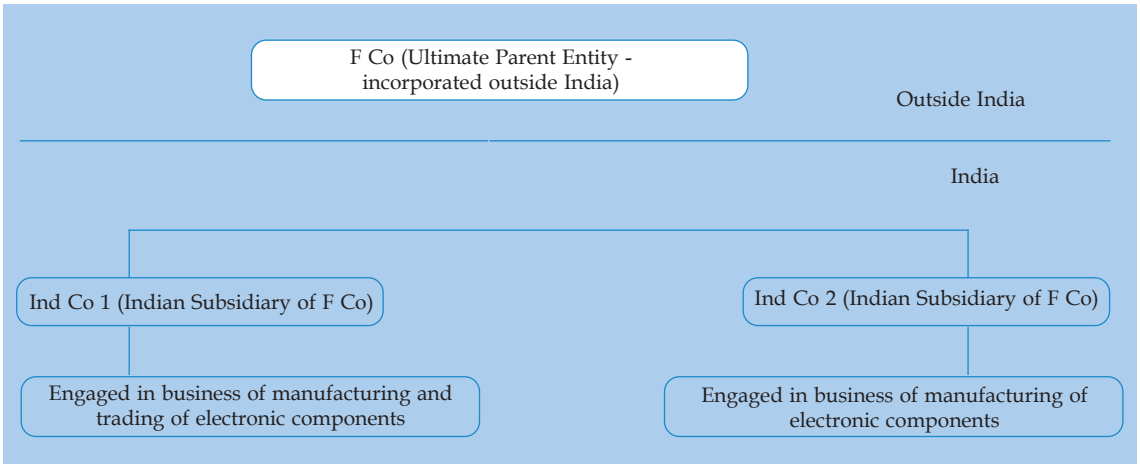
- *Key Question*: This gives rise to a critical issue – **Is every FMV an ALP, but not every ALP an FMV?**

Case Study 2: Applicability of DIT provisions:

Two case studies have been considered to explain the concept of a DIT and the applicable valuation methodologies in each scenario.

Scenario 1A: Slump sale between Indian AEs

Ind Co. 1 has transferred its trading business as a going concern to Ind Co. 2 by way of a slump sale.



Conflict: In the above-mentioned example, all the three entities i.e., F Co., Ind Co. 1 and Ind Co. 2 qualify as AEs as per the definition prescribed under Section 92A of the Act. In such a scenario would the transaction of slump sale by Ind Co.1 to Ind Co. 2 attract the Transfer Pricing provisions? Further, what methodology would be used to determine the appropriateness of the transfer price?

Key provisions: To conclude on the above, it is important to analyse the following provisions-

- Section 92(1): Any income arising from an "international transaction" shall be computed having regard to the arm's length price.

- Section 92B(1): ……."international transaction" means a transaction between two or more associated enterprises, either or both of whom are non-residents……

Conclusion

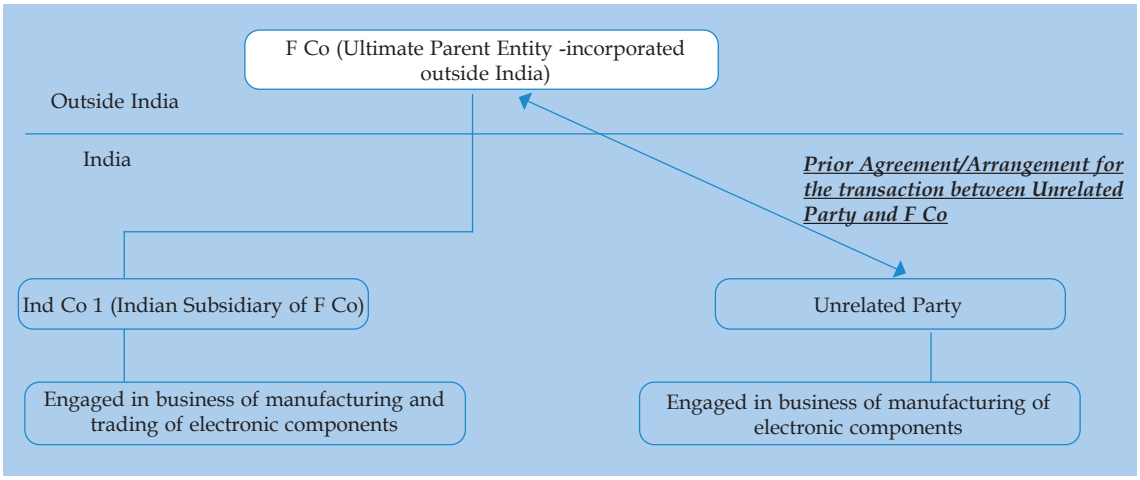
- Based on a reading of the Sections, it is clear that the transaction of slump sale by Ind Co. 1 to Ind Co. 2 would not fall within the definition of an "international transaction", since the transaction is between AEs, both of whom are residents in India. Accordingly, it can be said that the provisions relating to ITPR are not applicable to this transaction in this context.

- Accordingly, the valuation methodology prescribed in Section 50B read with Rule 11UAE would apply for the calculation of FMV.

Scenario 1B: Slump sale between Indian companies involving indirect influence by AE:

Ind Co. 1 has transferred its trading business as a going concern to an Unrelated Indian

entity by way of a slump sale. F Co. being the ultimate parent company of Ind Co. 1, has undertaken the negotiations and finalised the terms and conditions of the transfer with the Unrelated Indian entity before the actual transfer between Ind Co. 1 and the Unrelated party.



Conflict: In the above-mentioned example F Co and Ind Co. 1 are AEs as per the definition in Section 92A and any transaction between them would qualify as an international transaction under Section 92B(1). However, there is an absence of any AE relationship between Ind Co. 1 and the Unrelated entity. In such a case, would the transaction between Ind Co. 1 and the Unrelated party attract the Transfer Pricing provisions? Further, what methodology would be used to compute the appropriateness of the transfer price?

Key provisions: To conclude on the above, in addition to Section 92(1) and Section 92B(1) discussed above, it is important to analyse the provisions of Section 92B(2)-

- **Section 92B(2)**: A transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-section (1), be deemed to be an international transaction entered into between two associated enterprises, if there exists a *prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not*.

Conclusion

- Based on a reading of the aforementioned Sections, it can be concluded that the transaction of slump sale between Ind Co. 1 and the Unrelated party would fall within the ambit of deemed international transactions since the terms and conditions of sale have in substance been determined between F Co. (AE) and the Unrelated party prior to the transaction of sale. Accordingly, the transaction would attract transfer pricing provisions.

- In order to determine the appropriate methodology for computation of FMV/

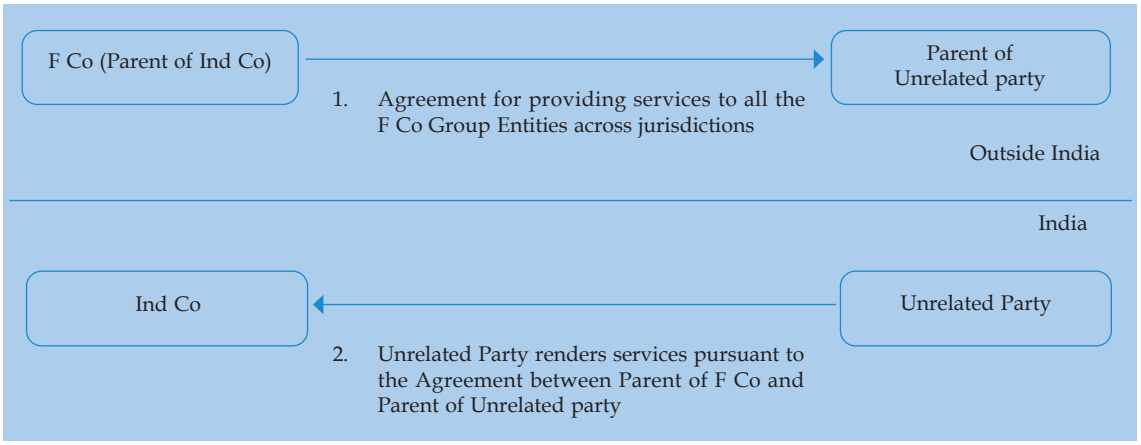
ALP, request you to refer to comments provided for Scenario 1 under Case Study 1 pertaining to "Interplay between Valuation provisions and Transfer Pricing regulations" above.

Key considerations in case of DITs:

- *Substance over Form*: The inclusion of DITs within ITPR highlights the Government's emphasis on the economic substance over legal form. By bringing unrelated party transactions including domestic transactions under TP scrutiny where foreign AE control exists, the law moves toward a substance-driven framework.

- *Litigation*: It is crucial for tax authorities to carefully evaluate the intent and commercial rationale of the transactions under discussion while determining DIT as also to distinguish genuine business transactions from those aimed at profit shifting or tax avoidance. An absence of proper training/awareness of the tax authorities pertaining to DIT, may lead to scrutiny of genuine transactions and consequently undue burden of proof on the taxpayer as well as long drawn proceedings.

- *Multiple party scenario*: The ITPR provide a clear framework for DITs involving three parties—namely, the enterprise, its AE, and a third party (a person other than the AE). However, in scenarios involving multiple third parties, it becomes increasingly challenging to assess the true nature of the transaction and determine the applicability of DIT provisions, especially when the involvement of foreign AE control or indirect influence blurs the lines of independence/arm's length behaviour. An example of a four-party transaction scenario, which could be a case of DIT has been provided below for reference:



Case Study 3: Appropriateness of payments for intangibles by contract manufacturers/ distributors - Insights from the Xiaomi India Ruling:

[TS-496-ITAT-2023(Bang)-TP] and [TS-150-ITAT-2024(Bang)-TP]:

Scenario: The Xiaomi India Ruling is pertaining to a Stay Appeal and where the hearing for the merit appeal is still pending. However, the factual structure of the case is an interesting read and also throws up an important question pertaining to the appropriateness of Intellectual Property ('IP') related payments

made by limited risk bearing entities to their AEs.

The key information with regarding the case being discussed is as follows:

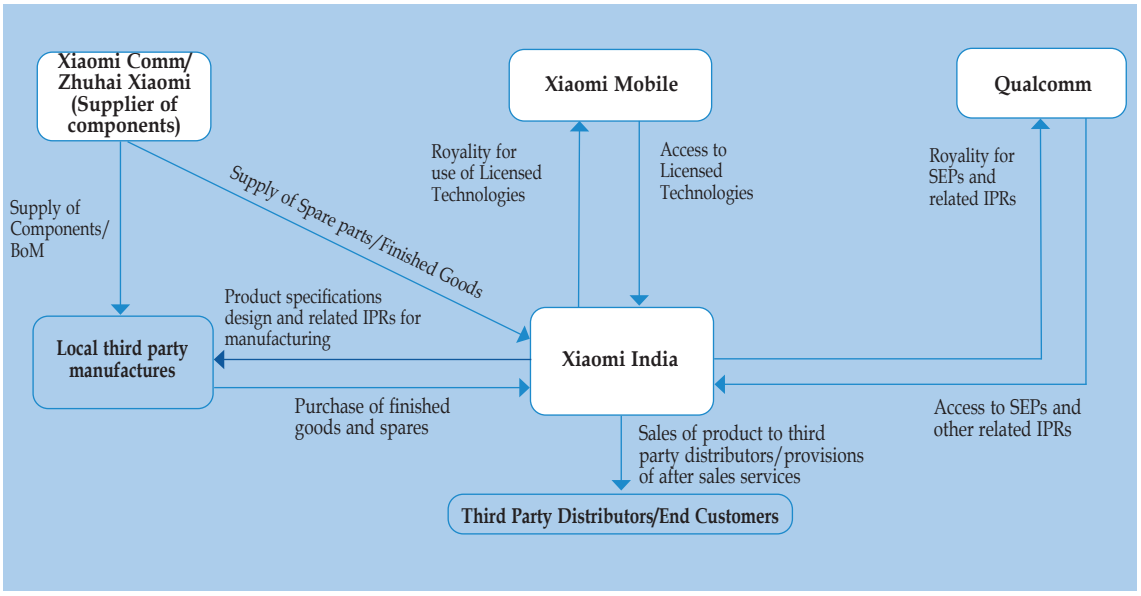
(a) Xiaomi India was engaged in the distribution of Xiaomi products in India, which were locally manufactured in India by third parties;

(b) Xiaomi India paid royalty for use of licensed technology to its Xiaomi Mobile;

(c) Payment of royalty for standard essential patents ('SEPs') and intellectual property rights ('IPRs') to Qualcomm (under the framework of DIT); and

(d) Xiaomi India in its TP Study report compared its entity level operating margin with comparable companies under the Transactional Net Margin Method ('TNMM').

(e) The transaction flow has been provided below:



Conflict: Typically, a distributor can be categorised as follows:

- Limited-Risk Distributor ('LRD') → it typically earns a routine margin and does not own or exploit intangibles.

- Full-Fledged Distributor → it may engage in marketing, brand-building, and take more entrepreneurial risk, in which case it might use or benefit from IP (generally brand and marketing related) owned by the AE.

Considering the above and the facts of the Xiaomi India case, are IP payments pertaining to technical know-how justified in limited risk distributorship set-up of Xiaomi India?

Conclusion: As mentioned above, the Xiaomi India Ruling is pertaining to a Stay Appeal and where the hearing for the merit appeal is still pending. Having said that, a few key considerations are summarised below.

Key considerations

- *Detailed FAR analysis*: A robust FAR (Functions, Assets, Risks) analysis is essential for accurately characterizing the transaction and selecting appropriate comparables. Mischaracterization can distort benchmarking. In Xiaomi India's case, reconsidering its role as a licensed manufacturer outsourcing production may be more fitting?

- *Remuneration for IP*: Transfer pricing principles require that the AE owning valuable IP be fairly compensated for its exploitation. Since Xiaomi India was the economic user and commercial exploiter of the IP in the Indian market, its royalty payments may be justified—provided they reflect a sound business rationale and are properly benchmarked. The onus to substantiate this lies with the taxpayer.

- *Documentation*: Strong, well-structured documentation is crucial, especially when multiple royalty streams exist. It must clearly differentiate between technologies, their purposes, and the associated commercial benefits to support the arm's length nature of the payments.

Summary

A summary of the case studies discussed above, and the related issues has been tabulated below:

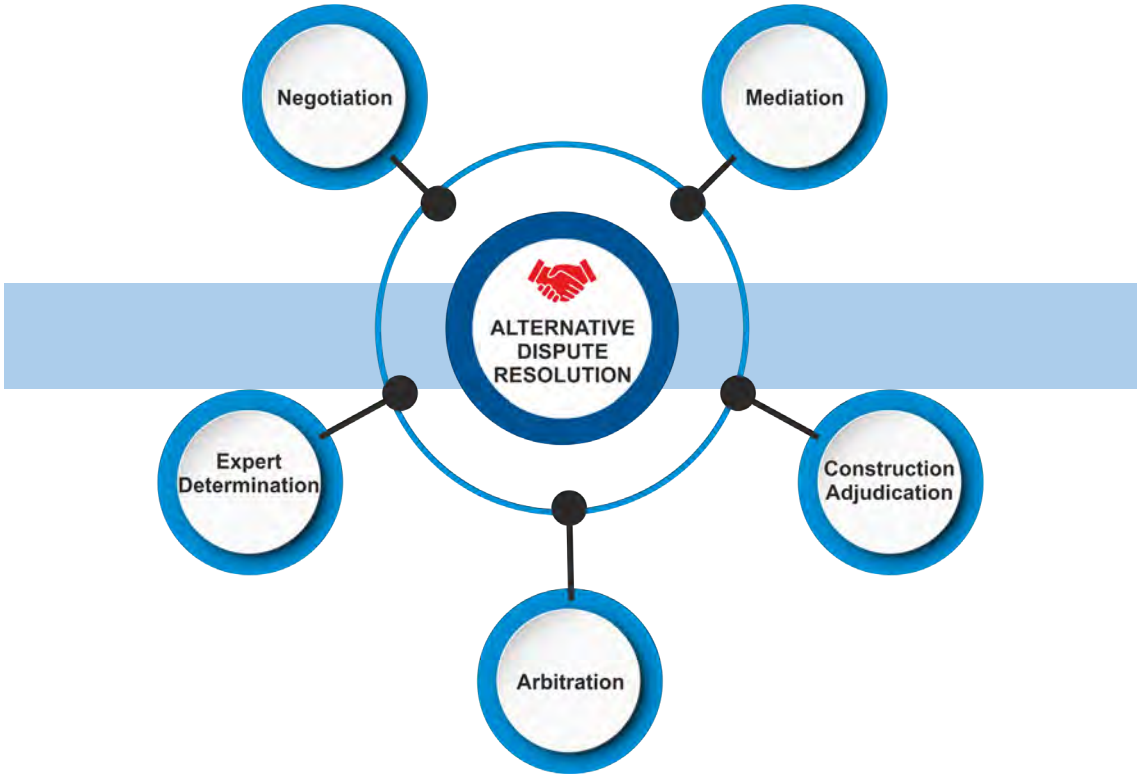
Issue	ITPR	Domestic Tax Law	Challenge
Slump Sale	ALP under Section 92C	FMV via Rule 11UAE (Section 50B)	Dual valuation burdens
Unlisted Share Sale	ALP (Discounted Cashflow Method, Comparable Uncontrolled Price Method)	FMV under Rule 11UA (Section 50CA)	Valuation mismatch risk
Royalty Payments	ALP compliance required	Deductibility under Section 37	Potential disallowance

Recommendations

Enhance functional analysis documentation: Taxpayers should maintain robust transfer pricing documentation, clearly reflecting characterisation based on FAR and DEMPE functions, along with rationale for pricing decisions.

Clarify DIT provisions: Central Board of Direct Taxes ('CBDT') The CBDT should issue detailed guidance on the scope and triggers under Section 92B(2), especially for complex multi-party arrangements, to reduce interpretational disputes.

Harmonize TP and Domestic Valuation Rules: A coordinated framework is needed to reconcile TP regulations with domestic valuation provisions under Sections 50CA and 50B, clarifying which valuation method prevails in case of overlap.



Promote Alternate Dispute Resolution Methods:

a) Advance Pricing Agreements ('APAs'): Encourage APAs for intangibles, restructurings, and intra-group transfers to enhance certainty and deliberate on amending APA rules facilitating prioritisation of high litigation complex cases.

b) Safe Harbour Rules ('SHR'): Broaden SHR coverage and align rates with market conditions to reduce compliance burdens.

c) Mutual Agreement Procedure ('MAP'): Expand India's MAP network to mitigate double taxation risks in cross-border disputes

Judicial and administrative capacity building: Judicial authorities and tax officers should receive regular training on OECD TP principles, complex intangibles, and valuation methodologies. Specialized benches or dispute resolution panels with TP expertise can accelerate resolution and ensure informed adjudication.

In conclusion, approaching its Silver Jubilee year since enactment in the year 2026, India's transfer pricing framework stands at a crossroads. As businesses evolve, so must the law. The challenge lies in aligning economic substance with legal form while ensuring that tax enforcement does not stifle legitimate cross-border enterprise. Through greater clarity, harmonization, and administrative sensitivity, India's TP regime can mature into a globally respected system.

■

PERSONAL TAX – GIFTS AND SUCCESSION



Dharan Gandhi
Advocate

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Overview

Related party transactions, in the context of individuals, are typically in the nature of gifts to relatives, trust settlements, inheritances, family arrangements, gifts or contributions to a Hindu Undivided Family. This article analyses the meaning of the term "relative" in the context of individuals and the tax nuances associated with various types of related party transactions as mentioned above.

Transactions with related parties have been watched with a close lens by the Income Tax Department. This is naturally so, because there is a tendency to shift income to close relatives so as to reduce the tax incidence. Over a period of time, a number of provisions have been inserted in the Income Tax Act, 1961 ('the Act') to take care of transactions with related parties and to ensure that there is no tax evasion.

I have been entrusted to deal with the issue of related party transactions qua an individual, including gifts and succession. The issues relating to related party transactions in the business of an individual would have similar implications as in corporate taxation and are already taken care of in another article dealing with corporate taxation, like section 40A(2), etc. Therefore, the same is not considered here. Further, I have refrained from dealing with the issue of transfer pricing and GAAR.

Meaning of the word "relative"

It would be imperative to first understand the meaning of the word "relative". The term relative has been defined in section 2(41) of the Act as under:

"relative, in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual."

At the outset, it is important to note that Section 2 itself begins with "*unless the context otherwise requires*". Thus, though the term relative has been defined in clause 41 of Section 2, however, while interpreting any provision containing the word "relative", one has to take into account a contextual interpretation and cannot just simplictor rely upon the definition of the term 'relative' as given in Section 2. Further, there are certain provisions that have already defined the term "relative" for its limited purposes, like section 56(2)(x). In the context of such a section, one will have to go by the definition as given therein.

Secondly, this definition is an exhaustive definition.

A relative in relation to an individual includes the spouse of the individual, brother, sister, any lineal ascendant or descendant. This definition is quite narrow as compared to the definition given in the context of section 56(2)(x).

Thirdly, this definition is only in relation to an individual. This definition will not extend to a Hindu Undivided Family ('HUF') or any other person.

A relative in relation to an individual includes the spouse of the individual, brother, sister, any lineal ascendant or descendant. This definition is quite narrow as compared to the definition given in the context of section 56(2)(x).

A person would be the spouse of another, from the time two individuals get legally married and till the time their marriage is subsisting. Once the marriage is terminated, the person would cease to be the spouse of other.

Brother or sister of the individual is considered as relative. There is no definition of the term brother or sister. In this regard, we may refer to section 3(e) of the Hindu Succession Act, 1956, which deals with the terms 'full blood', 'half blood' and 'uterine blood' in the context of brother and sister. It states that "*two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but; by different wives and two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands*". Going by such meaning, it would be reasonable to state that brother or sister can be either a full blood, half blood or uterine blood. However, a brother or sister should at least have one parent in common. Thus, cousins will be outside the purview of the term brother or sister. Very recently, Mumbai Bench of the Tribunal[1] has also held a step-brother (not having any parent in common), to be included within the definition of the term relative u/s 56(2)(x), by giving a broader interpretation.

Brother would also include adopted brother and sister. One may rely upon the provisions of the Hindu Succession Act, 1956, wherein an adopted son or daughter is given equal importance as a real son or daughter. In a case where child is given up in adoption, technically speaking, such a child may not be brother/sister of the other children from the biological parents; however, on a broader interpretation one may consider such child as also to be brother/sister of the other children from the biological parents.

Lineal ascendants and descendants of the individual are also considered as relatives. The terms ascendant and descendant are preceded by the term 'lineal', which means in a straight line. In relation to an individual,

A brother or sister should at least have one parent in common. Thus, cousins will be outside the purview of the term brother or sister.

his ascendants in direct line are father, grand-father, great grandfather, whereas his descendants in direct line are his son, grandson etc. Thus, father's brother or a brother's son are not falling within the straight

1. *[2025] 172 taxmann.com 855 (Mumbai - Trib.) Rabin Arup Mukerjea vs. ITO*

Lineal ascendants and descendants of the individual are also considered as relatives.

line and are therefore not lineal ascendants or descendants. The Mumbai Tribunal has held in case of ***ACIT vs. Lucky Pamnani***[2] that the maternal uncle of the father will not be a lineal ascendant of the individual. Similarly mother's sister's son is also not considered as a lineal ascendant or descendant by the Chennai Tribunal in the case of ***ACIT vs. Masanam Veerakumar***[3]. Further, ascendants also include maternal ascendants. Therefore, parents of the mother or grandparents of the mother also become relatives. In this regard, one can refer to the judgment of the Hon'ble Rajasthan High Court in case of ***CIT vs. Dhannalal Devilal***[4], wherein the Court has held that "*a son will be a lineal descendant of the mother as well as of his grandmother irrespective of whether the mother or the grandmother can form a line of succession under the Hindu law. These notions of Hindu law have not in our opinion to be imported in interpreting the words lineal descendant*".

The next question will be whether, the line of ascent has to be restricted to the male ancestors or not. So father's grandfather would be a lineal ascendant, but whether a father's mother's father would be a lineal ascendant? In this regard one may gainfully refer to the Mullas Hindu Law (21st Edition) page 845, wherein while dealing with the meaning of the term 'sapinda' in the context of Hindu Marriage Act, 1955, the Ld. Author has stated that lineal ascendants would include both male and female ascendants of the father and mother. Of course, the interpretation is in context of the Hindu Marriage Act, the purpose of which is different from that of the Income-tax Act, however, since, the Act, is silent as to the meaning of the term 'lineal ascendant', one may stretch the meaning of the term to mean both male and female ascendants.

Having gone through the meaning of the word relative, it may now be appropriate to deal with some of the transactions between related parties and their implications under the Act.

For the sake of ease I have split up the present article into 8 parts.

1. Inheritance

Under the Act, there is no provision to tax any amount or any property received by way of inheritance (either through testamentary succession or received without a will). Receipt of any asset by way of inheritance is not considered as income under the Act. It earlier used to be taxed under the Estate Duty Act, 1953. After the abolition of the said Act, receipt of any property by way of inheritance is not taxable.

In fact, receipt of a sum of money or any property without consideration or for inadequate consideration is subject matter of taxation u/s 56(2)(x) and its predecessor sections. However, in clause III of the proviso to section 56(2)(x), any sum of money or any property received by a person under a will or by way of inheritance is exempted from the application of the said section. Thus, receipt of money or any property by way of inheritance is not taxable.

2. *(2011) 135 TTJ 0607(Mum)*
3. *(2013) 157 TTJ 0141 (Chen)*
4. *(1956) 29 ITR 0165 (Raj)*

Devolution of assets on demise of any person cannot be considered as transfer and cannot be subject matter of capital gains so as to tax the estate of the deceased person or legal heirs/ representatives . In any event, Section 47(iii) of the Act, provides that transfer of capital asset by an individual or a Hindu undivided family under a will would not be considered as a transfer.

2. Succession through private trust

Succession of assets is also planned through a private trust structure, where the beneficiaries are relatives of the settlor. Taxation of private trusts is a very vexed issue and would require a separate article per se. However, I would deal with the same in a very brief manner without delving deep into the issue.

In case, if the trust is a revocable trust in terms of section 63 of the Act, then any income arising as a result of a revocable transfer of assets is to be taxed in the hands of the transferor itself as per section 61 of the Act. A revocable transfer is not recognised by the Act. However, provision of section 61 would not apply where the trust is not revocable during the lifetime of the beneficiary and where the transferor derives no direct or indirect benefit from such income.

If the trust is an irrevocable trust, then the following tax implications may arise:

a. There would be no tax in the hands of the transferor where the assets are settled irrevocably as the same is not considered as a transfer u/s 47(iii) of the Act.

b. As per section 161 of the Act, a trustee is taxed in a representative capacity in the like manner and to the same extent as the beneficiaries[5]. If the beneficiaries cannot be taxed in respect of any receipts from the settlor then, even the trustee cannot be taxed. Therefore, if all the beneficiaries in a trust are relatives of the settlor, then transfer of assets by the settlor in a trust would neither be taxed in the hands of the trustee nor in the hands of the beneficiary. This principle would equally apply when the trustee distributes the assets of the trust to the beneficiary. Logic for the above interpretation is that receipt by a person from a relative either without consideration or for inadequate consideration, is not taxable u/s 56(2)(x) of the Act. Since the settlor is relative of the beneficiary, any receipt of either assets or some of money from the settlor by the beneficiary would not be chargeable to tax. Also, this interpretation would apply irrespective of the fact whether the trust is a discretionary trust or a determinate trust.

c. In fact, clause X of the proviso to section 56(2)(x), also provides for an exemption on receipts from an individual by the trust created or established solely for the benefit of the relative of the individual.

5. *CWT vs. Trustees of H. E. H. Nizam's Family (Remainder Wealth) Trust (1977) 108 ITR 555 (SC)*

d. If, however, the beneficiaries are both relatives and non-relatives, then there would be an argument that, value of assets to the extent of share of such non-relative beneficiaries would have to be brought to tax in the hands of either the trustee in a representative capacity or in the hands of the beneficiaries who are non-relatives of the settlor. Though, there may be some defences to argue to the contrary, at present, we are restricting ourselves to the taxation in the hands of relatives. Strictly speaking, if, the beneficiaries are both relatives and non-relatives, then clause X of the proviso to section 56(2)(x) may not apply. However, even without such an exemption, one can still argue that there is no taxability insofar as a related beneficiary is concerned, as the receipt is from a relative. In any event, it is a settled law that the exemptions provided are out of abundant caution and merely because a transaction does not fall within the four corners of the exemption provision would not mean that the transactions are otherwise taxable under section 56(2)(x) of the Act.

e. The above discussion is purely in relation to the assets or some of money brought in by the settlor and not to the income which accrues to the trust.

From the perspective of transferor, any transfer of property without consideration i.e., any gifting of property by a person, is outside the ambit of the head "capital gains" by virtue of section 47(iii) of the Act.

3. Gifts

The next issue to be analysed is a gift transaction.

From the perspective of transferor, any transfer of property without consideration i.e., any gifting of property by a person, is outside the ambit of the head "capital gains" by virtue of section 47(iii) of the Act.

After abolition of the Gift Tax Act, taxability of gift was brought within the purview of the Act. This was by virtue of various clauses u/s 56(2). Today, what is alive in the said section is clause (x). As per this clause, receipt of any sum of money or any property by any person from any other person is chargeable to tax, if such receipt is without consideration. Similarly, receipt of any property for inadequate consideration as compared to its fair market value or stamp duty value is also brought to tax. The said section also provides for definition of the term 'property'. The term "property" is defined in an exhaustive manner. Similarly, the section also provides for certain exceptions. One of the crucial exceptions is any receipt of sum of money or property from any relative. Any sum of money or property received from a relative is exempt and that there is no need for any occasion to gift to a relative to claim such exemption[6].

6. *(2018) 407 ITR 179 (AP) Pendurthi Chandrasekhar vs. DCIT*

As already mentioned earlier the term 'relative' has been defined in a very broad manner.

There may arise a peculiar situation. A person may be a relative of another, but vice versa is not always possible. For example, a person receiving a property from brother of his father would be considered as a receipt from a relative. However, receipt by a person from son of his brother is not considered to be received from a relative and therefore, the same may have to be brought to tax. It would be prudent if a specific clause were inserted to the effect that where a person is treated as relative to an individual then even the individual would be treated as a relative of the person. It makes no sense to say that A is relative of B, however, B is not a relative of A. Further, in such type of cases a person can always plan his affairs by transferring his asset to his father (who is a relative), and then the father can transfer the asset to his brother (who again is a relative). Both such legs of transaction would go outside the purview of section 56(2)(x).

As already stated before, the definition of the term 'relative' is exhaustive. Therefore, something that is not getting covered within the meaning of the term 'relative' is not intended by the legislature to be exempted. First cousins of an individual are kept outside the definition of the term 'relative', though their parents are relatives of the individual.

If an asset is received by way of gift from a relative and when such capital asset is transferred by the recipient, while computing capital gains, as per section 49(1) cost of acquisition will be the cost to the previous owner who actually acquired the asset. Further, as per Explanation 1 to section 2(42A) of the Act, the period of holding in case of such asset will include the period for which the previous owner held such asset. Also, indexation under second proviso to section 48 is allowable from the year in which the asset was acquired by such previous owner, as held by the judgments of various High Courts, the lead one being the judgment of the Bombay High Court in case of ***CIT vs. Manjula J. Shah***[7].

First cousins of an individual are kept outside the definition of the term 'relative', though their parents are relatives of the individual.

Further, in such cases, section 49(4) will not come into play as section 49(4) will apply only in a case where the value of property has been subjected to tax u/s 56(2)(x). Since, receipt from relative is not subjected to tax u/s 56(2)(x), therefore, section 49(4) would not come into play. Thus, to this extent, there will be no conflict between section 49(1) and 49(4).

4. Inadequate consideration

The discussion in para 3 was in respect of receipt/transfer of any property by a person to his relative without consideration. If the transfer takes place between a person and his relative for a consideration which is less than the

7. *(2013) 355 ITR 474*



stamp duty value or the fair market value then, taxing applications in the hands of recipient remains same. That is there shall arise no tax implications on receipt of any property from a relative at less than the stamp duty value or fair market value.

However, the scenario changes from transferors perspective. Since, transfer for inadequate consideration is not gift, therefore, provisions of section 47(iii) would not apply. If the capital assets transferred fall within the provisions of section 50B, 50C or 50CA of the Act, then the provisions of those sections require adopting either the stamp duty value or the fair market value, determined in the manner prescribed, to be taken as full value of consideration. Thus, the transferor will have to pay tax on the fair market value or the stamp duty value as against the actual consideration.

Section 50C or 50CA have been primarily been inserted to plug the loophole of transfers taking place at inadequate consideration which would have or may involve an element of underhand consideration. Even section 56(2)(x) taxes a gift or receipt of property for inadequate consideration so as to avoid evasion of tax. When the purpose of both the sections are similar, it stands to no logic that recipient would not be taxed once it is received from relative but the transfer would be taxed even though transfer is too relative at the fair market value. Interestingly, a similar issue came up for a consideration before the Hon'ble Supreme Court. It was a case of transfer of property by a mother to her son for a token consideration. The case was reopened by invoking section 50C of the Act. The validity of the said reassessment proceeding was challenged and the matter reached the Hon'ble Supreme Court[8]. Considering the transaction between a mother and a son, the Hon'ble Supreme Court, was of the view that section 50C cannot be invoked and accordingly, quashed the notice u/s 148 of the Act. Thus, it is now possible to argue that section 50C or similar sections, cannot apply to transactions between relatives.

5. Family arrangement

A family arrangement is an agreement between members of the same family, intended to be for the benefit of the family either by compromising doubtful

8. *[2025] 302 Taxman 1 (SC) Mahendra Gala vs. ITO*

or disputed right or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour. Under family arrangement there is adjustment of shares, crystallisation of respective rights in the family properties. This mainly stems from any dispute or to avoid any probable dispute.

Such family settlement between the members of the family bonafide to put an end to the dispute amongst themselves is not a transfer[9]. It is also not a creation of an interest. In a family settlement, each party takes a share in the property by virtue of an independent title which is admitted to that extent by the other parties. Every party who takes benefit under it need not necessarily be shown to have under the law claim to share in property. All that is necessary to show is that the parties are related to each other in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection. Thus, transfer of properties by one person to another under a family settlement would not be considered as transfer and would therefore, not attract provisions of section 5 of the Act.

6. Clubbing

There are certain specific sections under the act to deal with transfer of assets or income to a relative so as to reduce tax incidence. One such section is section 64 of the Act which deals with clubbing of income.

In a family settlement, each party takes a share in the property by virtue of an independent title which is admitted to that extent by the other parties.

Income in the hands of the spouse of an individual by the way of salary, commission, fees or any other form of remuneration, whether in cash or in kind, received from a concern in which such individual has substantial interest, has to be clubbed in the hand of individual. Such clubbing provisions could not apply, if the spouse possesses technical or professional qualifications and the income is solely attributable to such qualifications.

Similarly, if any assets are transferred by an individual to either his or her spouse or to his/her son's wife, then any income arising from such asset, directly or indirectly has to be clubbed in the hand of such individual. However, such transfer of asset should not be for adequate consideration. If these provisions apply, then the transferor would be taxable only to the extent of the inadequate part of the consideration[10]. As per explanation 3 to section 64 of the Act, even the income arising from such assets invested by the spouse/ sons wife in any business or in any firm would also be clubbed in the hands of the individual. The income arising on transferred assets alone will be clubbed if the above relevant provisions apply to such transfer. However, income earned on such income invested cannot be clubbed[11]. Thus, income on income, would not be clubbed.

9. *CIT vs. AL Ramanathan (2000) 245 ITR 494*
10. *[1970] 76 ITR 279 (Bombay) H.N. Patwardhan vs. CIT*
11. *CIT vs. M.S.S. Rajan (2001) 252 ITR 126(Mad).*

If the two transfers are inter-connected and are parts of the same transaction in such a way that it can be said that the circuitous method has been adopted as a device to evade implications of this section, the case will fall within section 64[12].

In computing the total income of any individual, all such income arising directly or indirectly to any person or association of persons from assets transferred otherwise than for adequate consideration, shall be included to the extent to which the income from such assets is for the immediate or deferred benefit of the individual's spouse or son's wife. Where, in respect of properties settled on trust for the benefit of spouse, the spouse was assessed to tax on her share in the income of the trust under section 161(2), such assessment will not affect the validity of the inclusion of the trust income in the hands of the settler under section 64(1)(vii) and all the assessments made against the spouse beneficiary has to be annulled and tax recovered, if any, be refunded[13].

As per section 64(1A) of the Act, any income accruing arising to a minor child is to be clubbed in the hands of one of the parents provided at such income does not occur arise out of the manual work done by the child or out of the application of skilled talent or specialised knowledge and experience. Any income accruing in favour of a minor child being the beneficiary of the trust has to be clubbed. However, if a trust is created for the benefit of minor child and income during minority of the child is being accumulated and added to corpus and income from increased corpus is given to the child after his attaining majority, the provisions of section 64(1A) are not applicable[14].

7. HUF

A HUF is considered as a person separate from the individuals comprising the family. Without going into much detail into the concept of HUF, suffice it to say that transactions between the HUF and its members would attract some provisions of the Act.

As per section 64(2), any transfer of property by an individual being his individual property into the common property of HUF or throwing of the



12. *CIT vs. C.M. Kothari [1963] 49 ITR 107 (SC)*
13. *C.R. Nagappa vs. CIT [1969]73 ITR 626 (SC)].*
14. *CIT vs. M.R. Doshi [1995] 211 ITR 1 (SC).*

property by the individual into the common stock of the family would not be recognised as a valid transfer under the Act and accordingly, any income arising from such assets would be taxable in the hands of the individual itself. Any receipt by HUF of any sum of money or property from its members is not taxable u/s 56(2)(x) of the Act, as the same is considered to be received from a relative.

Similarly any transfer of property by HUF to its members on partial partition is not considered or recognised by the Act, as per section 171. Any income arising from such property is to be tax in the hands of HUF. The definition of the term 'relative' under Explanation to section 56(2)(x), from the point of view of an individual does not include HUF in which he is a member. Therefore, any receipt by an individual from HUF in which he is a member will be taxable u/s 56(2)(x) subject to fulfilment of other conditions. This certainly appears to be incongruous. Receipt by HUF from member is exempt whereas in a vice versa scenario, the transaction would become taxable. This is certainly not envisaged. It would be important to notice that courts have taken a view that receipt by a member from HUF would not be taxable u/s 56(2)(vii) and other predecessor sections in the case of ***Vineetkumar Raghavjibhai Bhalodia vs. ITO***[15]***, Dy. CIT v. Ateev V Gala***[16]***, Biravelli Bhaskar vs. ITO***[17] ***and Hemal D. Shah vs. ACIT***[18]. A property or an asset or an income belonging to HUF belongs jointly to all the members of HUF. Coparceners acquire an interest in the property by birth, whereas the other members have a right to be maintained from the family property. Therefore, when a member of HUF receives something from HUF, either sum of money or assets, the same cannot be said to have received without consideration and therefore, section 56(2)(x) cannot apply.

This transaction can also be looked from another perspective. A member would receive either on distribution of income of HUF or on partition of HUF. Distribution of income of HUF is different from partition of HUF and both the events are separately dealt with by the Act u/s 10(2) and section 171 respectively. Receipt of sum of money from the income of HUF or from the estate of the family is exempt u/s 10(2) of the Act. Coming to the issue of receipt of asset or money on partition of HUF. Any asset received on total or partial partition of HUF is not considered as transfer u/s 47(i). Receipt of such assets on partition by the member is also exempted from tax u/s 56(2)(x). Clause (IX) of the proviso to section 56(2)(x) exempts, inter alia, receipt of any sum of money or property by way of a transaction not regarded as transfer under clause (i) of section 47.

In short, any receipt of money/property by HUF from member or vice versa is not taxable.

15. *[2011] 11 taxmann.com 384 (Rajkot)*
16. *(2017) 50 CCH 0187 (Mum-Trib)*
17. *(2015) 44 CCH 0234 (Hyd-Trib)*
18. *(2017) 49 CCH 0564 (Mum-Trib)*

Gift from relative may not be taxable u/s 56(2)(x) of the Act, but the same can be brought to tax u/s 68 if the person is unable to explain the nature and source of such credit.

8. Section 68

The next aspect which one has to consider is application of section 68 in respect of cash credits from any relatives. Any loan or any gift from a relative to any person could be a subject matter of consideration u/s 68 of the Act. If a person receives a loan or a gift from any other person, then as per section 68 of the Act, he has to explain/justify:

i. identity of the donor/lender,

ii. credit worthiness of the donor/lender and

iii. finally genuineness of the transaction

After insertion of first proviso to section 68 of the Act, a person not only has to explain the three aspects as brought out above, but also the source of source i.e., the source of the lender/donor. In any event, such onus of explaining the source of source was applicable even prior to the insertion of the said proviso, where the credits are from relatives of the person[19]. To illustrate, if a person receives loan from his mother he has to explain the identity of his mother the creditworthiness of the mother to give such loan as well as the genuineness of the transaction. Apart therefrom, he will also have to explain the source from which his mother has given him the loan. Only if the above conditions are fulfilled then this loan received from the mother would not be a subject matter of addition u/s 68 of the Act as in such case initial onus is discharged and it is for the AO to show or to prove with documentary evidences that the money or the loan given by mother to son is actually money belonging to the son[20].

Gift from relative may not be taxable u/s 56(2)(x) of the Act, but the same can be brought to tax u/s 68 if the person is unable to explain the nature and source of such credit. That, merely because gift has come from a relative and the same is exempt from taxation in terms of proviso to section 56(2)(x) cannot be a ground to get away from the provisions of section 68 of the Act. A person will still be required to explain the nature and source of such gift transaction[21].

To conclude there are various provisions scattered all over the act which deal with transactions with related party. It would be advisable to understand the implications under the Act in respect of any related party transaction, before concluding the same so as to not fall on the wrong side of the law. ■

19. *[1963] 49 ITR 723 (Bombay) Orient Trading Co. Ltd. vs. CIT*
20. *2020] 423 ITR 531 (Bombay) Gaurav Triyugi Singh vs. ITO*
21. *(2017) 394 ITR 619 (Kerala) Sunil Thomas vs. ITO*

UNRAVELLING THE WEB: GST AND CUSTOMS VALUATION IN RELATED PARTY DEALS





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Overview

In the complex world of taxation, the interplay of GST and customs regulations for related party transactions presents both challenges and opportunities for businesses operating in India. This article delves into the nuances of the relevant rules and surrounding controversies that are reshaping how companies structure related party transactions.

The article elaborates the concept of 'related parties' under the GST and customs laws, cardinal principles for related party transactions and related controversies. Judicial precedents dealing with nuanced issues in related party transactions such as treatment of corporate guarantees and employee stock plans are discussed.
This articles also delves into the principles laid down by some of the pivotal rulings from the Maharashtra AAAR and the Supreme Court which have forced businesses to revisit intercompany agreements.

We will see how the Special Valuation Branch (SVB) process has evolved while still leaving some space for improvement. We also take a global perspective, comparing India's approach to related party transactions with practices in the U.S. and EU, highlighting the importance of aligning GST and customs valuations with international standards.

This article is a must-read for tax professionals and businesses alike, offering actionable insights to navigate the intricate web of compliance and seize opportunities for operational efficiency in a dynamic regulatory environment.

Introduction

In the fast-paced world of taxation, the introduction of GST has sparked a revolution for businesses across India, transforming the way they operate and interact with the tax landscape. Gone are the days of juggling multiple taxes like VAT, Service Tax, and Excise Duty; GST has unified these into a single, streamlined framework while introducing a host of new challenges. Particularly in the realm of related party transactions, the shift from the traditional 'transaction value' which is based solely on the price paid or payable to the more nuanced 'arm's length price' concept has redefined

Particularly in the realm of related party transactions, the shift from the traditional 'transaction value' which is based solely on the price paid or payable to the more nuanced 'arm's length price' concept has redefined how businesses assess fair market value.

how businesses assess fair market value. As India continues to thrive, especially with multinational corporations setting up and expanding their reach, the complexities of related party transactions have never been more pronounced. This evolving landscape demands not just regulatory savvy but also a strategic approach to financial management.

Let's dive into the intricacies of GST and customs valuation for related parties while uncovering key industry issues and insights that are shaping the future of business in India.

Behind the Scenes: What Makes a Transaction 'Related'

So, what exactly qualifies as a related party? Under Section 15 of the Central Goods and Services Tax Act, 2017 ('CGST Act), "related party" includes:

(i) officers or directors of one another's businesses;

(ii) legally recognised partners in business;

(iii) employer and employee;

(iv) any person who directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) persons where one of them directly or indirectly controls the other;

(vi) persons where both of them are directly or indirectly controlled by a third person;

(vii) persons where together they directly or indirectly control a third person; or

(viii) persons who are members of the same family;

Additionally, "persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related."

Thus, it is a wide net that captures all sorts of connections.

Key rules to remember

Any exchange of goods or services between these related parties needs to be priced right to avoid tax pitfalls. The cardinal principle is that the transaction should generally reflect fair market value. Following is a diagrammatic representation of the valuation rules (Rule 28, rule 30 and rule 31) prescribed in different scenarios for related party transactions:

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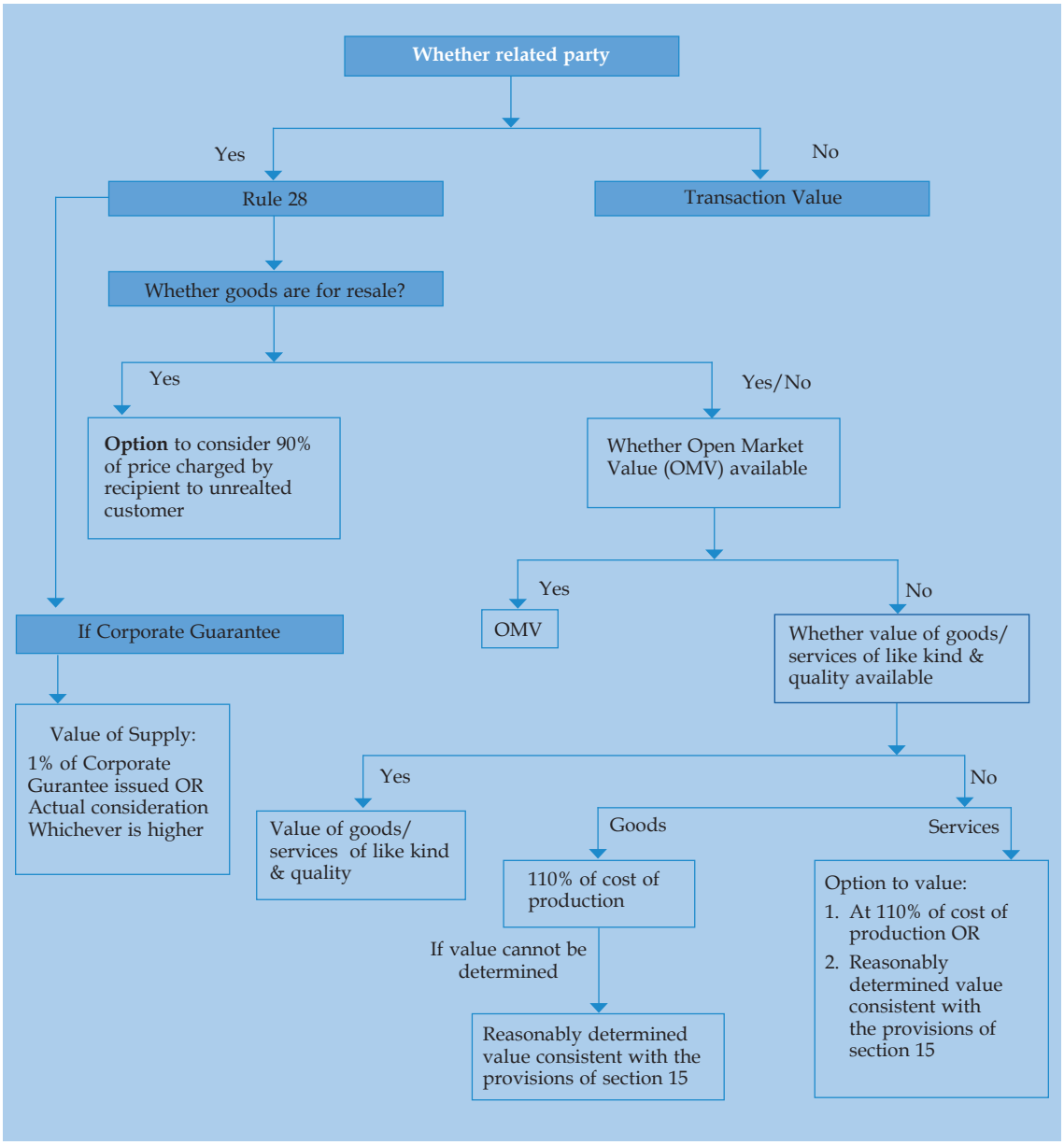

Second proviso to Rule 28(1) and proviso to Rule 28(2) provide that where recipient is eligible for full input tax credit (ITC), the value declared in the invoice shall be deemed to be the open market value.

'Open Market Value' is not defined under the GST law and can be referred to as value of supply fairly available in the open market in unconditional circumstance i.e. the value that the supply would fetch in an open market when sold to an unrelated buyer. Typical

instances where open market value is not available are:

1. Customized products or services with no comparable market transactions;
2. Newly launched products lacking an established market presence;
3. Niche markets with few comparable transactions;
4. Transactions between related parties that may not reflect market conditions and are peculiar to the relational dynamics;
5. Products or services available only in specific regions, making it hard to establish an open market value;
6. Industries with regulations limiting the availability of comparable market data.

In a nutshell, related party transactions need to be carried out at open market value or arm's length price. There is an overarching relaxation where the recipient of goods or services is eligible for full ITC. However, these principles have their exceptions and interpretational intricacies which keep businesses on their toes while they navigate the tax landscape.

While corporate guarantees can open doors, they also come with their own set of tax challenges that businesses need to navigate carefully.

We would now dive into these provisions in greater detail and try to understand some of the controversies with the help of relevant jurisprudence:

Corporate guarantees and recent clarifications

Corporate guarantees are like a safety net thrown by holding companies or related parties to support the financial commitments of their subsidiaries. Think of them as a promise to lenders that the borrower will pay up, making it easier for the subsidiary to get loans with better terms.

However, this practice has caught the eye of GST law enforcers, as these are sought to be classified as a supply of service between related parties.

Recently, the Central Board of Indirect Taxes and Customs ('CBIC ') issued Circular No. 225/19/2024-GST to clarify the GST treatment of these corporate guarantees. Here is the scoop: guarantees issued before October 26, 2023, follow the old Rule 28 (where there was no specific valuation rule for corporate guarantees), but any guarantees issued or renewed after that date must comply with the new Rule 28(2). The valuation now hinges on the 'amount guaranteed' rather than the actual loan amount, with GST valuation implied at 1% of the guaranteed amount or the actual consideration, whichever is higher, charged annually.

What's interesting here is that the GST applies to the value of the guarantee itself, and not the loan disbursed. This means businesses could find themselves facing tax liabilities on guarantees that might never even be used! It may pose a cash flow issue, as companies have to pay GST on the guarantee amount upfront, regardless of whether the guarantee is called upon or the loan is actually handed out. So, while corporate guarantees can open doors, they also come with their own set of tax challenges that businesses need to navigate carefully.

Stocks/shares issued to employees by holding/sister company

One nuanced area in GST compliance is the treatment of reimbursements between related parties, especially regarding employee stock plans like Employee Stock Purchase Plans (ESPPs). The recent clarification from the CBIC (Circular No. 213/07/2024-GST) provides essential guidance on the treatment of reimbursements for shares issued to employees under ESPPs. Specifically, when an Indian subsidiary reimburses its foreign holding company for shares allocated to employees without any markup or service fee, such transactions are classified as non-taxable under GST as 'shares' are outside the purview of GST.

The ruling from the Maharashtra Appellate Authority for Advance Ruling (AAAR) in the case of M/s Cummins India [MAH/AAAR/AM-RM/01/2021-22] further elucidates this framework. Although the case does not directly pertain to employee stock plans, it establishes that cost allocations between related parties may constitute a supply under GST. However, if the head office operates solely as a 'pure agent', recovering costs without profit, these reimbursements may be excluded from the value of supply.

This principle aligns seamlessly with the CBIC's clarification, reinforcing that reimbursement for shares issued to employees - when executed without markup - do not constitute a taxable supply.

This guidance is particularly significant for multinational corporations operating in India, ensuring that employee benefits are not misclassified as taxable services. Overall, this clarification offers the much-needed clarity for companies and tax professionals alike. However, many taxpayers find compliance with conditions to qualify as 'pure agent' practically difficult.

Valuation of seconded employees under GST

There are multiple instances of overseas entities seconding employees to their Indian group companies, prompting tax authorities to classify these arrangements as taxable manpower supply under GST. The Supreme Court ruling in case of Northern Operating Systems Pvt Ltd [2022 (5) TMI 967] clarified that if the Indian entity directs and controls the seconded employees, the arrangement is taxable. Consequently, companies are revising secondment agreements to explicitly define control and responsibilities, thereby enhancing compliance frameworks to document the degree of control over seconded employees.

Once concluded to be taxable, the next critical aspect of this analysis involves determining the valuation for seconded employees. The Delhi High Court's ruling in the case of ***Metal One Corporation India Pvt. Ltd. vs. Union of India & Ors. [2023 (11) TMI 1062]*** serves as a key reference point. The Court, relying on CBIC Circular No. 210/4/2024-GST, held that where no invoice is raised by the Indian recipient and full ITC is available, the value of the imported service may be treated as Nil. Subject to risk profiling, taxpayers can consider Nil valuation for import of services even if the Indian recipient is paying consideration to the overseas related party; however, this position should be adopted with caution, factoring in the high possibility of litigation.

Let's take an example of an overseas group entity (FCo) seconds an employee to its Indian counterpart (ICo), and the employee's annual salary is $100 where $20 are paid by FCo and $80 by ICo, with ICo reimbursing $20. GST under reverse charge may apply on

the reimbursed amount. However, if full ITC is available and no invoice is raised, Nil valuation may be considered, aligning with the Metal One precedent.

The question of notional imputation becomes relevant where ITC is not fully available. In such cases, authorities may seek to impute the value of the entire service ($100) rather than limit GST to the reimbursed portion. This distinction is particularly significant in sectoral contexts. Manufacturing or trading entities, which typically enjoy full ITC, may adopt the Nil valuation approach with relatively lower risk. Conversely, entities such as power distribution companies, which often deal with exempt supplies and limited ITC eligibility, may face greater scrutiny and potential valuation of the full service cost. Thus, while the Metal One ruling offers relief, its application must be tailored to the taxpayer's ITC profile and industry-specific considerations.

Stock transfer between branches/group companies

In domestic scenarios, although any valuation is acceptable as per second proviso to Rule 28(1), it is generally advisable to assign a reasonable value to inter-branch or inter-company stock transfers. Given separate state revenue kitties, authorities often look at skewed valuation as a mechanism of tax planning for shifting credit pools from one state to the other, even though the same fulfils the conditions of second proviso to Rule 28(1). Thus, adopting reasonable value minimises the risk of litigation.

While the Delhi High Court's ruling in case of Metal One and circular mentioned above provide a strong basis for considering nil valuation in cases where full input tax credit is available, tax authorities have increasingly begun to scrutinize claims of 'full ITC availability'. GST law mandates reversal of proportionate common ITC in case of exempt supplies. Hence, in cases where the taxpayer has even a small portion of exempt supplies not related to their main line of business, authorities are challenging the full ITC availability position and questioning the valuation flexibility provided by second proviso to Rule 28. Therefore, while the nil valuation approach may be legally supported, companies should carefully assess their supply mix and risk profile before adopting this position, especially in light of potential audits or litigation.

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Brand Usage Valuation

In the realm of GST, valuing brand usage services provided between related parties presents unique challenges as the nature of these services often blurs the lines of taxable supply. Recent rulings and regulatory interpretations offer critical insights on this topic.

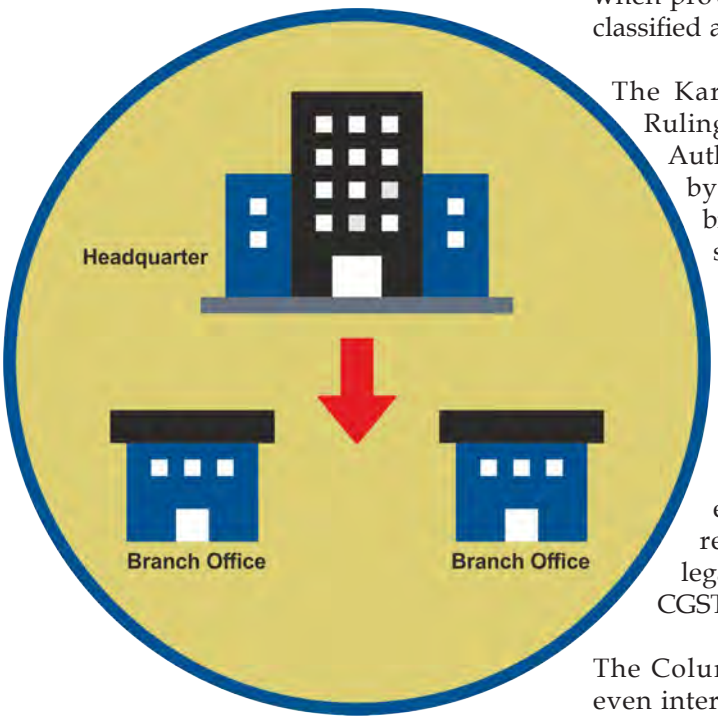
A notable example is the situation involving Mahindra & Mahindra, which received a GST Show Cause Notice regarding the use of its "Mahindra" brand name by its subsidiaries. The tax department questioned whether this intra-group brand usage constituted a taxable supply of service, particularly since no explicit consideration was charged for the brand usage. The adjudicating authority (AO) ultimately dismissed a significant portion of the GST demand, asserting that

the declared value could be accepted where the subsidiaries were eligible for full ITC. However, the AO upheld the demand in cases where group entities were not eligible for full ITC. Interestingly, the AO referenced Tata Sons' brand licensing model, where Tata group companies pay 0.25% of their annual revenue as royalty for using the Tata brand name (capped at ₹ 200 crore), to establish the open market value of the brand usage by Mahindra's subsidiaries.

This case sets a potential benchmark for valuing brand usage services between related parties under GST and underscores the practical application of Rule 28 of the CGST Rules, particularly when full ITC is not available. The adoption of a revenue-based royalty model, similar to Tata's, may influence how other companies structure and value intra-group brand arrangements. Consequently, businesses must carefully evaluate their brand licensing models to ensure that valuations are justifiable, especially in the absence of explicit consideration.

Internal services between branches

The treatment of internal services provided between branches is another area of concern under GST. In the AAAR ruling in case of Columbia Asia Hospitals Pvt Ltd [2018 (12) TMI 1604], a healthcare provider with multiple hospitals across Indian states, operated a central corporate office (India Management Office or IMO) in Karnataka. This office managed shared services such as accounting, IT, and administration for all branches. The company treated employee services from the IMO as part of employment and did not issue invoices, assuming these services were not taxable under GST. However, tax authorities questioned whether such inter-branch services, particularly when provided across state lines, should be classified as taxable supplies under GST.



The Karnataka Authority for Advance Ruling and subsequently the Appellate Authority ruled that services provided by employees at the head office to branches in other states constitute a supply of service under GST, even if no consideration is charged. This ruling confirmed that GST applies to the value of such services, including employee costs, when rendered across distinct persons (i.e., different GST registrations in different states). The decision emphasized that each GST registration is treated as a separate legal entity under Section 25(4) of the CGST Act.

The Columbia Asia ruling illustrates that even internal employee services can attract

GST if they benefit branches in other states. This has prompted many companies to reassess their internal cost allocations and invoicing practices to avoid litigation and ensure compliance. However, one may argue that any service from head office to its branches of the same legal entity cannot be referred to as a 'supply' and centralized functions such as accounting, HR, being managed at head office is a common phenomenon. The beneficiary of said services is the company at legal entity level with all its branches combined and can also be referred to as services provided by employees of head office to the employer entity as a whole. The ruling serves as a critical reminder for businesses operating across state lines to evaluate their internal service agreements and cost-sharing arrangements to mitigate the risk of litigation.

In conclusion, the complexities surrounding related party/branch transactions highlight the need for businesses to adopt robust valuation practices and clear documentation. As the interpretations of GST continue to evolve, companies must remain vigilant and proactive in their compliance strategies to mitigate risks and enhance operational efficiency. The insights gained from cases like Mahindra & Mahindra, Northern Operating Systems, Columbia Asia Hospitals serve as essential reference points for navigating the intricate landscape of related party transactions under GST.

Related Party Transactions under customs laws

At first glance, customs valuation under Section 14 of the Customs Act seems straightforward — the value of imported goods is simply the transaction value i.e. the price actually paid or payable. But when the buyer and seller are related, this simplicity quickly fades. The law recognizes that relationships can influence pricing, and so it digs deeper.

Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (Customs Valuation Rules), defines the term 'related persons' and the definition largely mirrors the definition under GST except that entities in which a person directly or indirectly owns, controls or holds even 5% or more of the voting stock or shares of both entities are deemed to be related; whereas this threshold is 25% under the GST legislation. These similar definitions under both legislations create a consistent framework across tax regimes.

The guiding principle here as well is the arm's length price — the idea that related parties should transact as if they were independent. If customs authorities believe the declared value doesn't reflect this, they can reject it and reassess. This scrutiny adds complexity, especially in global business structures where relationships are common but pricing may still be fair.

To elaborate, in a transaction between related persons, the transaction value is accepted whenever the importer demonstrates that the declared value of the goods closely approximates to

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India at or about the same time;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods.

In applying the values used for comparison, due consideration needs to be given to timing of the transaction with its comparable, commercial levels, quantity levels, adjustments/inclusions/exclusions as prescribed under rule 10 of Customs Valuation Rules and cost incurred by the seller in comparable transaction. Where the value of imported goods cannot be determined under the provisions of any of the prescribed methods, the value needs to be determined using reasonable means consistent with the principles and general provisions of Customs Valuation Rules and on the basis of data available in India.

Each step adds layers of analysis, making valuation in related party cases a nuanced and often a challenging process.

The key challenges in valuation

Transfer pricing norms typically prevent the overstatement of transaction values, ensuring that valuations are not inflated. Conversely, customs regulations focus on preventing the understatement of transaction values, effectively requiring a balancing of the price from both ends to achieve accurate and feasible valuations. While arm's length pricing under transfer pricing regulations may lend support to the declared transaction value, its acceptance for customs purposes remains subject to independent evaluation under Customs Valuation Rules.

In related party transactions, the burden of proof for no price manipulation lies with the importer, necessitating comprehensive documentation to support declared values. Nevertheless, the customs authorities are always on high alert with advanced analytics at their fingertips for any signs of price manipulation. If they suspect that the declared value is not reflective of market conditions, they may challenge it, leading to audits and disputes.

SVB and Customs Valuation: Reform is underway, but the road is still bumpy

Imagine an Indian company imports cutting-edge machinery from its overseas subsidiary. The paperwork is flawless, the duty is paid, and the shipment sails through customs. But since the buyer and seller are related, can we trust the declared price? Could it be strategically low to save on customs duty? That's where the Special Valuation Branch (SVB) steps in, playing the role of an investigator within Indian Customs. SVB is a specialized unit within Indian Customs tasked with investigating whether the declared import value reflects an arm's length price or has been undervalued to reduce customs duty liability. Importers must declare relationship with the seller at the time of filing the Bill of Entry, and if flagged, the case is referred to SVB for detailed examination.

In related party transactions, the burden of proof for no price manipulation lies with the importer, necessitating comprehensive documentation to support declared values.

SVB process has come a long way and the system got a facelift in 2016. Thanks to CBEC Circulars No. 4/2016 and 5/2016, SVB referrals are no longer automatic after every three years. Now, they are triggered only when certain parameters of related party transaction change. Although this may sound efficient, some of the parameters such as 'pricing pattern' are vague and undefined, leaving importers in ambiguity. Without clear guidelines, businesses are stuck in a guessing game, and customs officers may interpret the same transaction in wildly different ways.

Issues such as pricing adjustments (true up/true down), typically emerging after transfer pricing adjustments continued to pose practical challenges on importers. Importers were required to provisionally assess the bill of entries and go for final assessment only after such price adjustments are concluded. Interest exposure on such increment in revised valuation remains to be an open question. Thus, although the 2016 change reduced the pendency of SVB cases but the ambiguities in processes, data requirements and speed at which cases are cleared still needs a boost through a major administrative revamp.

Nevertheless, Section 18A of the Customs Act, 1962 - proposed in the Union Budget 2025 is definitely a promising step toward post-clearance flexibility. This new provision allows importers to voluntarily correct their customs declarations, even after the goods have cleared. Whether it is paying additional duty or claiming a refund, Section 18A offers a smoother, less combative route and is definitely been looked upon as a welcome relief. It gives businesses a second chance to get it right. But its success will depend on how clearly it is implemented and whether the system can finally move from ambiguity to clarity.

A Global Glimpse: How other countries handle related party valuation

India isn't alone in scrutinizing related party transactions. In the US, customs authorities allow such pricing if companies prove the relationship didn't influence the deal - using tests like circumstances of sale and test values. The EU, on the other hand, adjusts values if related pricing gives a tax advantage, aligning both VAT and customs rules with global standards.

Navigating the intricate landscape of GST and customs valuation for related party transactions is a formidable challenge that demands both vigilance and strategic foresight.

For Indian businesses operating across borders, this matters. Inconsistent pricing across countries can trigger audits and penalties, making it crucial to align GST and customs valuations with global transfer pricing policies.

Conclusion

Navigating the intricate landscape of GST and customs valuation for related party transactions is a formidable challenge that demands both vigilance and strategic foresight. As tax authorities wield the power to adjust transaction values based on the arm's length principle, businesses must prioritize transparency and robust documentation to defend their pricing strategies.

While recent rulings and clarifications have illuminated the path forward, the complexities of related party transactions, particularly in a multinational context, necessitate a proactive approach to compliance that goes beyond mere adherence to rules. By embracing best practices and staying informed about evolving regulations, businesses can not only mitigate risks but also seize opportunities for operational efficiency.

Ultimately, a well-informed and agile approach will empower companies to thrive in this dynamic tax environment, ensuring they remain resilient in the face of regulatory scrutiny.

■

RELATED PARTY TRANSACTIONS IN INDIA AND THE EVOLVING REGULATORY FRAMEWORK





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Overview

Related Party Transactions are a critical area of corporate governance, where the risk of conflict of interest is significantly heightened. Common in corporate structures, especially within business groups operating through multiple subsidiaries and joint ventures. RPTs can be commercially justified for operational synergies, economies of scale, or access to specialized services. However, they pose significant risks of conflict of interest and abuse, potentially leading to misappropriation of corporate assets and unfair practices that prejudicial to the interest of minority shareholders and compromise good governance.

The primary concern with RPTs is self-dealing, where related parties benefit at the expense of the company or minority shareholders. Indian company law, through the Companies Act and SEBI LODR has evolved to tighten RPT regulations, enhancing the responsibilities of the Audit Committee, Board of Directors, and Auditors. These regulations aim to ensure transparency, fairness, and protection for minority shareholders.

The regulatory landscape in India reflects a shift towards balancing commercial flexibility for legitimate intra-group transactions with robust oversight to protect stakeholders from conflicts of interest and abuse. The ongoing evolution of legal frameworks and accounting standards underscores the importance of vigilant regulation and independent oversight in maintaining good corporate governance.

This article underscores the importance of a robust corporate governance culture in preventing the misuse of RPTs and safeguarding stakeholder interests. In conclusion, it advocates for a balance between business expediency and fiduciary responsibility, emphasizing the need for continuous evolution in governance standards in light of complex group structures and dynamic capital markets.

1 Understanding Related Party Transaction

1.1 A related party transaction (**"RPT"**) is a transfer of resources, services or obligations between two parties, irrespective of whether a price is charged or not. RPTs are a common feature in corporate and commercial structures, particularly where business groups operate through multiple subsidiaries,

associate entities, and joint ventures. While RPTs may be commercially justified, such as for operational synergies, economies of scale, or access to specialised assets or services, they carry an inherent risk of conflict of interest and abuse, particularly when entered into without adequate checks and balances. They often become vehicles for misappropriation of corporate assets, siphoning of funds, or unfair practices that prejudice the interests of minority shareholders and compromise good governance. In view of the global prevalence and contribution to the growth of the business organisations, no jurisdiction has prohibited RPTs regardless of the risk of potential abuse. It is perceived that the risks associated with misuse and abuse of RPTs can be managed by regulations that encourage value-enhancing RPTs while penalising undesirable RPTs.

2 Conceptual Risk

2.1 The principal concern with RPTs arises from the possibility of self-dealing, whereby a related party may benefit at the expense of the company or its minority shareholders. RPTs occur when a company enters into a transaction with a person or entity that has a pre-existing relationship with the company or its management.

2.2 Related parties typically include the entity's promoters, directors, and key managerial personnel- individuals who are directly or indirectly involved in the entity's strategic and operational decision-making. Such relationships, if not appropriately governed, can be exploited to divert company resources, dilute shareholder value, or cause other forms of economic harm to the company, thereby undermining the interests of minority shareholders.

3 Corporate Governance Concerns

3.1 The evolution of Indian company law, particularly through the Companies Act,2013 (**"Companies Act"**) and Securities Exchange Board of India (Listing Obligations and Disclosure Regulations), 2015 (**"SEBI LODR"**) reflects a conscious shift towards tighter regulation and enhanced transparency in disclosures. The Audit Committee, the Board of Directors as well as the Auditors have been entrusted with the responsibility to evaluate and monitor related parties and transactions with related parties to ensure that the interests of minority shareholders or other stakeholders are not prejudicially impacted.

The principal concern with RPTs arises from the possibility of self-dealing, whereby a related party may benefit at the expense of the company or its minority shareholders.

Conflict of Interest and Potential Misuse

3.2 RPTs inherently involve parties with close relationships with the ability to influence corporate decisions, and tend to carry an elevated risk of:

3.2.1 Conflicts of interest

3.2.2 Self-dealing

3.2.3 Misappropriation of corporate assets

Need for Transparency and Fairness

3.3 All related party transactions are not necessarily harmful or prejudicial to the interests of minority shareholders. In fact, some of them may be commercially beneficial. Hence, the law requires that they should be:

3.3.1 Conducted in the ordinary course of business

3.3.2 At arm's length

3.3.3 Accompanied by strong governance measures to avoid misuse and protect minority shareholders.

Balancing Commercial Flexibility with Oversight

3.4 The transformation of the regulatory landscape of the RPTs in India reflects a gradual shift towards trust, greater transparency, accountability, and governance in corporate dealings. Over time, legal reforms have increasingly recognised the potential for conflict of interest in such transactions and have responded by strengthening disclosure requirements, approval thresholds, and oversight mechanisms.

3.5 The overarching objective remains to strike a balance between allowing commercial flexibility for genuine intra-group transactions while protecting stakeholders from conflict-driven abuse. Given the continuing complexity of corporate structures, the need for vigilant regulation, independent oversight, and evolving jurisprudence remains paramount.

4 Early Legal Framework under the Companies Act, 1956

4.1 The regulatory journey in India began with the Companies Act, 1956 (**"1956 Act"**), which provided rudimentary controls over certain contracts involving directors and their relatives. However, the framework was narrow in scope, limited in enforcement, and largely reactive. It did not account for a modern understanding of related-party dynamics, nor did it provide robust disclosure or approval mechanisms. The 1956 Act contained limited provisions for oversight of transactions with related parties and mostly relied on board-level discretion and disclosure norms, which were often vague and non-enforceable.

4.2 The terms "related party" or "related party transaction" were not formally defined under corporate laws, except under the Accounting Standards issued by the Institute of Chartered Accountants of India, dealing with certain mandatory disclosures. This resulted in significant ambiguity as there was no requirement for shareholder approval in most cases, and the oversight mechanism relied largely on self-regulation, through directors disclosing their interest under the 1956 Act and abstaining from voting on transactions in which they may be considered interested. The absence of independent board-level oversight mechanism, such as scrutiny of RPTs by the audit committees, further weakened the corporate governance framework.

Moreover, the penalties for non-compliance were minimal, reducing the deterrent effect of the law.

4.3 As a result, controlling shareholders and promoters— particularly in closely held or family-owned companies— frequently used RPTs as a means to extract private benefits. This often occurred at the expense of minority shareholders, leading to value erosion, tunnelling of corporate assets, and a weakening of investor confidence in Indian capital markets. The inadequacies of the 1956 Act highlighted the urgent need for a more robust and enforceable legal framework, eventually leading to significant reforms under the Companies Act and subsequent SEBI regulations.

AS 18 did not regulate RPTs but focused on mandatory disclosures. It required entities to ensure that revenue arising from transactions with related parties reflected the substance of the arrangement and complied with recognition criteria.

5 Emergence of Modern Standards: Accounting Norms under Indian GAAP - AS 18

5.1 Accounting Standard 18 (**"AS 18"**) governed the recognition of revenue arising from the sale of goods, rendering of services, and interest, royalties, and dividends. AS 18 did not regulate RPTs but focused on mandatory disclosures. It required entities to ensure that revenue arising from transactions with related parties reflected the substance of the arrangement and complied with recognition criteria. In substance-over-form analysis, special care had to be taken to assess whether the related party arrangements were at arm's length and met the thresholds of measurability and reliability for revenue recognition.

5.2 AS 18 came into effect in 2001. AS 18 required assessment and disclosure of (i) related parties; (ii) transactions with related parties; and (iii) identification of related party relationships. This was an annual post-facto disclosure in the financial statements issued by the companies. AS 18, however, did not require disclosure of outstanding balances in RPTs unless they were considered material. Recognising the limitations of AS 18, the Companies Act and SEBI LODR introduced requirements for pre-approval of RPTs.

6 Transition to Ind AS 24 and Alignment with IFRS

6.1 As part of India's commitment to align with International Financial Reporting Standards, Indian Accounting Standard relating to Related Party Disclosures (**"Ind AS 24"**) was issued to replace AS 18 in a phased manner and brought India's disclosure regime closer to global best practices. Ind AS 24 broadened the scope of 'related parties' and imposed stricter disclosure requirements, including on key managerial personnel compensation and transactions between government-related entities. It extends beyond legal ownership and examines factors such as control, joint control, or significant influence, as well as relationships between entities that are subjected to common control, joint control, or significant influence, to analyse whether they are related parties.

6.2 The related party framework set out under Ind AS 24 is applicable to both listed and some unlisted companies that are required to comply with Ind AS[1]. Ind AS 24 mandates disclosure of relationships, transactions, and outstanding balances, including commitments, between an entity and its related parties, regardless of whether a price is charged. These disclosures help ensure transparency and prevent the circumvention of accounting principles through informal or disguised arrangements, especially in group structures or where key management personnel exercise significant influence.

Ind AS 24 mandates disclosure of relationships, transactions, and outstanding balances, including commitments, between an entity and its related parties, regardless of whether a price is charged.

6.3 In the context of listed companies, the regulatory scrutiny of RPTs is significantly heightened under Regulation 23 of the SEBI LODR. Apart from disclosures in financial statements under Ind AS 24, listed entities must obtain prior approval from the audit committee, which plays a gatekeeping role for all related party dealings, and, in certain cases, from shareholders through a resolution. material RPTs (as defined under SEBI LODR) and material modifications to material RPTs require prior approval of shareholders. During such shareholder approval, all related parties (as defined under the Companies Act and applicable Accounting Standards) are prohibited from voting, regardless of whether they are parties to the RPTs under consideration. These safeguards are designed to address the heightened risk of abuse of corporate resources through transactions with promoters, group entities, or associates.

6.4 Unlisted companies, while not governed by SEBI LODR, must comply with Section 188 of the Companies Act, which regulates RPTs by requiring board or shareholder approval depending on certain specified thresholds. However, disclosure requirements under Ind AS 24 remain binding on Ind AS-compliant unlisted companies, ensuring a minimum standard of transparency in financial reporting. The lack of SEBI oversight, however, can sometimes lead to lower institutional enforcement, making internal governance and audit vigilance more critical in the unlisted space.

7 Companies Act, 2013: A Statutory Overhaul

7.1 Related Party as defined under Section 2(76) of the Companies Act includes:

7.1.1 Directors

7.1.2 Key managerial personnel

1. *Mandatory for all companies listed or in the process of listing on stock exchanges in India or abroad. For unlisted companies, if the net worth is INR 250 crore. Further, If a company is required to adopt Ind AS, then its holding, subsidiary, associate, and joint venture companies must also apply Ind AS, regardless of their individual net worth. Also, please note that banking and NBFC sector, have separate Ind AS applicability timeline.*

7.1.3 Their respective relatives and

7.1.4 Entities over which they have control or significant influence

7.1.5 Parent, subsidiary, associate companies, joint ventures and fellow subsidiaries

The definition also encompasses relationships that are not documented but observed through consistent behavioural patterns. These include concepts similar to deemed directors/ shadow directors.

7.2 The SEBI LODR widened the scope of the definition of 'related party' by adopting a dual-framework approach. Under SEBI LODR, the term 'related party' includes: (i) persons defined as related parties under Section 2(76) of the Companies Act; and (ii) those identified as related parties under the applicable Accounting Standards. In addition to these, SEBI LODR further expands the definition to include certain additional categories, such as every member of the promoter group and any person holding 10% (ten per cent) or more of the paid-up share capital of the listed entity at any time during the previous financial year. This inclusive and layered approach makes SEBI LODR's definition one of the most comprehensive frameworks for identifying related parties globally.

8 Oversight Mechanism and safeguards: Three – tier approval process

8.1 The enactment of the Companies Act marked a watershed moment in RPT regulation. While the Accounting Standards addressed disclosures



in financial statements, there was no formal hierarchy of approvals for related-party transactions. The Companies Act introduced a three-tier approval process for the first time, involving the audit committee, the board of directors, and shareholders.

8.2 Section 177 of the Companies Act requires approval of the audit committee for all transactions of a company with related parties or any modification of such transactions. Furthermore, Section 188 of the Companies Act identifies specific types of transactions that require the board's approval. Lastly, Section 188 of the Companies Act lays down the necessity of certain significant transactions to be approved by the shareholders. For the first time, the Companies Act imposes restrictions on the voting powers of shareholders

who are related parties and contracting counterparties.

8.3 As a corollary to the above three-tier approval regime for RPTs, the Companies Act prescribes penalties for non-compliance. At all levels of approval, the emphasis is on justifying the undertaking of a related party transaction, i.e., why the Company should not undertake the same transaction with an unrelated party.

8.4 The Companies Act also introduced a new concept of omnibus transactions with related parties. This pertains to transactions undertaken in the ordinary course of business and of a repetitive nature.

8.5 Under **Section 177 of the Companies Act,** the Audit Committee is empowered to:

- **Approve RPTs;**
- **Provide omnibus approvals for repetitive transactions; and**
- **Review and monitor RPTs to ensure compliance with the law and fairness.**

Furthermore, Section 177 of the Companies Act mandates that a committee comprising primarily of independent directors must review all related party transactions.

8.6 **Role of Audit Committee**

The Audit Committee plays a critical role in overseeing RPTs and is responsible for ensuring that such transactions comply with applicable legal and governance standards. Thus, the role of the Audit Committee includes:

8.6.1 Approval of all RPTs is a mandatory requirement.

8.6.2 Review and approval of modifications to existing RPTs.

8.6.3 Ensuring transactions are at arm's length and do not undermine shareholder value.

8.7 Specifically, the Audit Committee must:

8.7.1 Evaluate whether the RPTs are being conducted at arm's length, and if not at arm's length, whether there is appropriate justification for the same, including impact under other applicable law.

8.7.2 Determine whether the RPTs are being undertaken in the ordinary course of business.

8.7.3 Ascertain whether the



undertaking of the RPTs is in the best interest of the company and its stakeholders, having regard to principles of fairness, transparency, and accountability.

8.8 **Types of Approvals**

8.8.1 One-time Approval: Granted for specific transactions with a defined scope.

8.8.2 Omnibus Approval: Applicable for repetitive RPTs subject to:

(a) General terms and conditions, including price variation formula, if applicable;

(b) Maximum value limits;

(c) Defined periodicity (usually 1 (one) year); and

(d) Review of RPTs at regular intervals.

8.9 **Scope of Transactions Requiring Board Approval**

In addition to the Audit Committee approval, certain RPTs also require approval from the board of directors under Section 188 of the Companies Act. These are:

8.9.1 Purchase or sale of goods

8.9.2 Rendering or receiving services

8.9.3 Leasing of assets

8.9.4 Transfer of property

8.9.5 Provision of guarantees or loans

8.9.6 Appointments of related parties to office or place of profit

8.9.7 Appointment of related party as agent for purchase or sale of goods, materials, services or property; and

8.9.8 Related party underwriting the subscription of any securities or derivatives of the company.

8.10 Section 188 of the Companies Act is designed to safeguard the interests of the company and its stakeholders by regulating transactions with related parties that may otherwise result in undue advantage to related parties. Section 188 attempts to:

8.10.1 Prevent undue advantage to related parties;

8.10.2 Mandate board only for specific transactions; and

8.10.3 Mandate shareholder approval from contractually non-interested shareholders, if prescribed thresholds are exceeded.

8.11 Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides for the nature of disclosures required to be made to the board of directors and shareholders for seeking approval for RPTs.

8.12 Based on the feedback received from stakeholders over time, the Industry Standards Forum, comprising

representatives from three industry associations, namely ASSOCHAM, CII and FICCI, under the aegis of the Stock Exchanges, in consultation with SEBI, formulated the Industry Standards on "Minimum information to be provided for review of the audit committee and shareholders for approval of a related party transaction" of a listed entity (**"RPT Industry Standards"**). The revised RPT Industry Standards, notified by SEBI on 26 June 2025, will come into effect on 1 September 2025. These requirements are in addition to those prescribed under the Companies Act.

9 Exemptions from certain levels of approvals for RPTs under the Companies Act

9.1 The transactions listed in Section 188 of the Companies Act would not require any approval from the board of directors and shareholders if the RPTs are being undertaken in the ordinary course of business and at arm's length. These transactions will thus need approval only from the Audit Committee. In view of the exemption from scrutiny by the board and shareholders, these transactions impose significantly high responsibility on the members of the Audit Committee, particularly the independent directors.

9.2 Transactions between a holding company and its wholly owned subsidiary, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval, do not require approval from the Audit Committee. Please note, however, that these transactions will require a formal approval structure.

9.3 Section 179 of the Companies Act confers the powers on the board of directors to exercise all powers of the company and empowers the board to do all such acts and things as the company is authorised to exercise and do. The entire power of a company is concentrated in the hands of the board of directors. Hence, unless delegated by the board, no officer of a company is conferred with any executive powers by provisions of law. If the audit committee is exempt from considering transactions between a holding company and its wholly owned subsidiary, the power of approval for such transactions will revert to the board of directors pursuant to Section 179 of the Companies Act. Considering the overall scope of powers delegated to the Audit Committee pursuant to Section 177 of the Companies Act, it may be appropriate that the board delegates the power for consideration and approval of the transactions between the holding company and its wholly owned subsidiary to the Audit Committee through the Audit Committee charter.

9.4 It is pertinent to note that the compliance requirements for government companies[2] have been relaxed to some extent by virtue of the notification issued by the Ministry of Corporate Affairs.

2. *Notification No GSR 151 (E) dated 02nd March, 2020 issued by the Ministry of Corporate Affairs.*

For determining the materiality of transactions, all transactions between a unique pair of contracting counter-parties in a given financial year must be aggregated.

10 SEBI LODR and Listed Entity Governance

10.1 In case of listed entities, SEBI has considered it appropriate to raise the compliance expectations and impose stricter governance and approval protocols for RPTs under the SEBI LODR:

10.1.1 Definition of Related Party Transactions

In addition to expanding the definition of "Related Party" beyond the Companies Act, the SEBI LODR also substantially expanded the definition of Related Party Transactions. The definition goes beyond the transactions of a company with its related parties. SEBI LODR defines Related Party Transactions to mean transactions when the listed entity or its subsidiary is on one side of the transaction and the counterparty is a related party of the holding company or a related party of a subsidiary. This results in the identification of certain transactions, that would not otherwise be under the radar of the related party scrutiny under the Companies Act.

10.1.2 Material Related Party Transactions

SEBI LODR also identifies certain transactions as material related party transactions. For determining the materiality of transactions, all transactions between a unique pair of contracting counter-parties in a given financial year must be aggregated. If the aggregate value of such transactions between a unique set of contracting parties exceeds 10% (ten percent) of the consolidated turnover of the listed entity, computed as per the last audited balance sheet or exceeds INR 1,000 crore (Indian Rupees One Thousand Crore), whichever is lower, then these transactions are considered as material RPTs. It is pertinent to note that while the SEBI LODR refers to the audited consolidated financial statements, the provisions of Section 188 of the Companies Act refer to 10% (ten percent) of turnover as mentioned in the audited stand-alone financial statements for determining materiality under the respective legal domains.

If a related party transaction involves payments to a related party with respect to brand usage or royalty, the aggregate threshold for assessment of materiality of RPTs is reduced to 5% (five percent) annual consolidated turnover as per the last audited financial statements of the listed entity.

10.1.3 **Approval of Material RPTs and material modifications thereto**

Under SEBI LODR, material RPTs and material modifications thereto require approval from the shareholders of the listed entity. SEBI LODR do not provide any quantitative or qualitative thresholds for defining the material modifications, but leaves it to the discretion of the Audit Committee to recommend and the board of directors of the listed entity to define this concept under the policy on related party transactions.

10.1.4 **Related Party Transactions Policy**

The RPT policies assist listed entities and their subsidiaries to move away from ad-hoc decision-making to a more scientific, objective and consistent approach. The policy facilitates the audit committee and board of directors to institutionalise the decision-making process. Policies ensure that the decision-making across the corporate group is objective, data-driven, consistent, and the outcomes are predictable.

10.1.5 **Restriction on voting by all related parties on material RPTs**

Pursuant to Regulation 23(7) of the SEBI LODR, all related parties are mandatorily restricted from voting on material RPTs or any material modifications thereto, irrespective of whether such related party is a party to the particular transaction. This prohibition is intended to safeguard the independence and integrity of the shareholder approval process by preventing any undue influence from interested parties.

10.1.6 **Risk Assessment**

As part of its fiduciary obligations, the Audit Committee and the board must undertake a robust risk assessment of all RPTs, particularly those classified as material or non-arm's -length. This includes identifying and evaluating potential financial, legal, reputational, and regulatory risks that may arise from the transaction, including risks of conflict of interest, diversion of resources, or non-compliance with applicable laws such as the Companies Act, SEBI LODR, and Accounting Standards.

10.1.7 **Approval by only Independent Directors**

While the Audit Committee requires two-thirds of the Committee to be comprised of independent directors, only the Independent Directors in the case of a listed entity can approve the RPTs.

10.1.8 **Arm's Length Assessment**

To assess whether a related party transaction is at arm's length, companies and Audit Committees should adopt objective methods such as external benchmarking or transfer pricing studies. These tools help compare transaction terms with those of unrelated parties, especially for the pricing of goods, services, or financing. While not legally required under the Companies Act or SEBI LODR, such assessments are considered good governance and are often necessary for cross-border transactions under tax laws.

10.1.9 **Conflict between Confidentiality and Transparency**

The SEBI LODR require parity of information and details to be made available for the approval of RPTs when approvals are sought from the Audit Committee, the board of directors, and shareholders. While transparency is one of the prominent concepts for upholding good corporate governance, there is an inherent conflict between the disclosure of information and the confidentiality of commercially sensitive details of a transaction. The SEBI LODR expects the board and senior management to conduct themselves in a manner that meets the expectations of operational transparency to stakeholders, while maintaining the confidentiality of information to foster a culture of good decision-making. In other words, confidentiality is not to be compromised for the sake of transparency.

11 Exemptions under SEBI LODR

11.1 Under Regulation 2(zc) of the SEBI LODR, the following transactions do not constitute 'related party transactions':

(a) the issue of specified securities on a preferential basis, subject to compliance with the requirements under SEBI LODR;

(b) the following corporate actions which are uniformly applicable/ offered to all shareholders in proportion to their shareholding:

(i) payment of dividend;

(ii) subdivision or consolidation of securities;

(iii) issuance of securities by way of a rights issue or a bonus issue; and

(iv) buy-back of securities.

(c) acceptance of fixed deposits by banks/Non-Banking Finance Companies at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure of related party transactions every 6 (six) months to the stock exchange(s), in the format as specified by SEBI;

(d) acceptance of current account deposits and savings account deposits by banks in compliance with the directions issued by the Reserve Bank of India or any other central bank in the relevant jurisdiction from time to time:

Explanation: For the purpose of clauses (c) and (d) above, acceptance of deposits includes payment of interest thereon.

(e) retail purchases from any listed entity or its subsidiary by its directors or its employees, without establishing a business relationship and at the terms which are uniformly applicable/offered to all employees and directors:

Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s)

11.2 Based on the nature of transactions where there is a uniform treatment of contracting parties, the SEBI LODR have exempted the applicability of the approval requirements under Regulation 23 of SEBI LODR. These are:

11.2.1. Transactions entered into between two public sector companies.

11.2.2. Transactions entered into between a holding company and its wholly owned subsidiary, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval

11.2.3. Transactions entered into between two wholly owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

11.2.4. Transactions which are in the nature of payment of statutory dues, statutory fees or statutory charges entered into between an entity on one hand and the Central Government or any State Government or any combination thereof on the other hand.

11.2.5. Transactions entered into between a public sector company on the one hand and the Central Government or any State Government or any combination thereof on the other hand.

12 Meaning of terms used in the context of transactions with Related Parties

Ordinary Course of Business

12.1 The Companies Act uses the term 'ordinary course of business'; however, it does not define the said term. The ordinary meaning of the expression in the 'ordinary course of business' in dictionaries is 'part of doing regular business; the regular or customary condition or course of things; as things usually happen'.

12.2 Black Law Dictionary defines 'ordinary course of business' as the normal routine in managing trade or business.

12.3 In determining whether an activity undertaken by a company qualifies as being in the "ordinary course of business", a holistic assessment of the surrounding facts and circumstances is necessary. The following non-exhaustive factors may be considered in this regard:

12.3.1 whether the activity is expressly covered under the objects clause of the company's Memorandum of Association;

12.3.2 whether the activity is carried out in furtherance of the company's core business operations;

12.3.3 whether the activity is customary or routine for the nature of the company's business (such as advertising, employee training, etc.);

12.3.4 the frequency or repetitive nature of the activity;

12.3.5 whether the income derived from such activity is recognised as business income in the company's books;

12.3.6 the prevalence of such transactions within the relevant industry;

12.3.7 the existence of any established historical practice of conducting such activity;

12.3.8 the financial significance of the activity relative to the overall scale of business operations;

12.3.9 revenue generated from the activity; and

12.3.10 the extent of resources allocated towards the activity.

These factors, taken together, assist in establishing whether the transaction forms part of the company's usual and customary business practices for the purposes of compliance under Section 188 of the Companies Act and allied regulations.

At Arm's Length

12.4 The explanation to sub-section (1) of Section 188 of the Companies Act defines an "arm's length transaction" as one between related parties that is conducted as if they were unrelated, ensuring no conflict of interest. It is pertinent to note that the concept of arm's length extends beyond mere pricing—it encompasses the entire set of terms and conditions governing the transaction.

13 Reporting Formalities with Registrar of Companies, Ministry of Corporate Affairs

Statutory Requirement under Section 134 of the Companies Act

13.1 Section 134 of the Companies Act mandates the preparation of financial statements and the board's report to be laid before the shareholders at a general meeting. Sub-section (3) of Section 134 of the Companies Act stipulates the contents of the board's report, which includes, inter alia, disclosure of

particulars of contracts or arrangements with related parties referred to in sub-section (1) of Section 188 of the Companies Act, in the prescribed form.

Board's Report and Disclosure Requirement

13.2 In accordance with clause (h) of sub-section (3) of Section 134 of the Companies Act, the board's report must contain the particulars of related party transactions covered under Section 188(1) of the Companies Act. This requirement is operationalised through Rule 8(2) of the Companies (Accounts) Rules, 2014, which prescribes the use of e-Form AOC-2 for such disclosures.

Purpose and Structure of e-Form AOC-2

13.3 e-Form AOC-2, prescribed under the Companies (Accounts) Rules, 2014, is the statutory format for disclosure of related party transactions referred to in Section 188(1) of the Companies Act, including certain transactions undertaken at arm's length under the third proviso to the section. The form is structured as follows:

- Item 1: Disclosures of transactions not at arm's length basis.
- Item 2: Disclosures of material transactions at arm's length basis.

Scope of Item 1 – Non-Arm's Length Transactions

13.4 Based on a harmonised reading of Section 188 of the Companies Act and e-Form AOC-2, Item 1 should capture transactions that meet all of the following criteria:

13.4.1 The transaction is between the company and a related party;

13.4.2 The nature of the transaction falls within the categories specified under Section 188(1) of the Companies Act; and

13.4.3 The transaction is not on an arm's length basis.

Scope of Item 2 – Material Transactions on Arm's Length Basis

13.5 Item 2 of e-Form AOC-2 refers to "material contracts or arrangements or transactions" undertaken on an arm's length basis. Although the term "material" is not specifically defined under the Companies Act or the Companies (Meetings of Board and its Powers) Rules, 2014, guidance may be drawn from the monetary thresholds specified in the first proviso to Section 188(1) of the Companies Act.

Accordingly, Item 2 should include transactions that satisfy the following conditions:

13.5.1 The transaction is entered into with a related party;

13.5.2 The nature of the transaction is among those listed under Section 188(1);

13.5.3 The transaction is conducted on an arm's length basis and crosses materiality thresholds

Indian courts and regulatory bodies have increasingly recognised the potential for RPTs to undermine minority rights and corporate governance.

Determination of Materiality for Arm's Length Transactions

13.6 In the absence of a statutory definition of "material" under the Companies Act for the purpose of Item 2 of e-Form AOC-2, it is reasonable to apply the thresholds laid down in the first proviso to Section 188(1) of the Companies Act, which are as follows:

13.6.1 Goods or materials: Transactions involving sale, purchase, or supply (directly or through an agent) amounting to 10% (ten percent) or more of the company's turnover (on a standalone basis).

13.6.2 Property transactions: Buying, selling, or disposing of property of any kind (directly or through an agent) amounting to 10% (ten percent) or more of the company's net worth.

13.6.3 Leasing: Leasing of property of any kind, amounting to 10% (ten percent) or more of the turnover.

13.6.4 Service arrangements: Availing or rendering of services (directly or through an agent) amounting to 10% (ten percent) or more of turnover.

13.6.5 Office or place of profit: Appointment to any office or place of profit in the company, subsidiary, or associate company with a monthly remuneration exceeding INR 2,50,000 (Indian Rupees Two Lakh Fifty Thousand).

13.6.6 Underwriting: Remuneration for underwriting subscription to any securities or derivatives exceeding 1% (one percent) of the net worth.

For interpretation:

- "Turnover" shall have the meaning assigned under Section 2(91) of the Companies Act.
- "Net worth" shall be construed in accordance with Section 2(57) of the Companies Act.

14 Judicial and Regulatory Developments Supporting the Regime

14.1 Indian courts and regulatory bodies have increasingly recognised the potential for RPTs to undermine minority rights and corporate governance. In cases like Tata Sons v. Cyrus Mistry and regulatory actions by SEBI against IL&FS and other entities, the courts have emphasised transparency, fiduciary responsibility, and shareholder protection. These developments underscore the necessity of a robust regulatory regime to monitor and control RPTs effectively.

Case Studies

14.2 **Tata Group**: Uses third-party valuations and ensures full board review of high-value RPTs.

The Tata Group, known for its institutionalised governance culture, has adopted rigorous mechanisms to manage related party transactions in line with the SEBI LODR. For high-value or potentially sensitive RPTs, the Group companies typically obtain independent third-party valuations or fairness opinions to ensure that transactions are conducted at arm's length and are commercially justified. These transactions are not only subject to approval by the Audit Committee but also undergo full board-level review, ensuring greater scrutiny and informed decision-making. This layered approach reflects the Tata Group's commitment to fiduciary standards and the protection of minority shareholder interests.

14.3 **Reliance Industries:** Demonstrated strong governance reforms in response to past scrutiny on RPTs.

In recent years, Reliance Industries has significantly strengthened its internal controls by enhancing the role of the Audit Committee, ensuring robust disclosures, and implementing clear segregation of promoter and company interests. The company has demonstrated compliance with Section 177 and Section 188 of the Companies Act and Regulation 23 of the SEBI LODR by instituting policies that prohibit conflicted parties from participating in approvals and by mandating shareholder clearance for material RPTs.

14.4 Both conglomerates exemplify different models of RPT governance. While the Tata Group emphasises structural safeguards such as independent assessments and board-level accountability, Reliance has focused on compliance-driven reforms to rebuild stakeholder trust. Notably, both entities make detailed RPT disclosures in their annual reports in accordance with Ind AS 24, ensuring transparency and regulatory conformity.

14.5 The evolution of RPT governance in India's corporate ecosystem reflects a growing recognition of the need for procedural integrity, transparency, and shareholder protection in transactions involving related parties.

14.6 **One 97 Communications (Paytm) – SEBI Administrative Warning (2024)**

In August 2024, SEBI issued an administrative warning to One 97 Communications, the parent of Paytm, for executing RPTs that exceeded its Audit Committee's approved limits. SEBI noted that certain inter-company transactions lacked prior approval from either the committee or shareholders, despite internal classification as "material" RPTs. The case underscored the importance of aligning Audit Committee mandates with clearly defined thresholds and formal approval processes.

14.7 **Linde India – SEBI Final Order (July 2024)**

SEBI issued a ruling in July 2024 against Linde India for undertaking RPTs with its wholly owned subsidiary, Praxair India, without obtaining necessary shareholder consent. It held that all related transactions with the same party during a financial year must be aggregated to determine materiality under Regulation 23 of the SEBI LODR,

regardless of whether they arise from a single contract. SEBI rejected the company's narrow interpretation and reliance on ICSI guidance, affirming the primacy of the SEBI LODR's plain language. In September 2024, Linde India challenged the SEBI final order before the Securities Appellate Tribunal ("SAT"). The SAT, however, dismissed the appeal and upheld SEBI's findings, affirming the regulatory interpretation that all related party transactions with the same counterparty must be aggregated within a financial year to determine materiality under Regulation 23 of the SEBI LODR. Aggrieved by the SAT's ruling, Linde India subsequently approached the Supreme Court of India seeking relief. On 22 September 2024, the Supreme Court declined to interfere with the matter, observing that the SAT had already adjudicated the issue and that there was no basis for further intervention.

14.8 **Reliance Home Finance – SEBI "Bad Borrowers" Order (August 2024)**

In August 2024, SEBI took stern action against RHFL and 26 associated entities, concluding that loans to weak, interconnected borrowers constituted covert RPTs benefiting promoters at the expense of public shareholders. SEBI found that RHFL bypassed customary due diligence and provided funding to indirectly related parties, which led to violations under both SEBI LODR and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. It asserted jurisdiction over RHFL despite its regulation by the RBI, citing its listed status. A monetary penalty and a temporary bar from accessing the securities market were imposed on RHFL and its associated entities pursuant to SEBI's enforcement order. While the Securities Appellate Tribunal has granted a conditional stay on certain penalties—subject to partial deposit requirements—the matter remains sub judice, pending final adjudication. Concurrently, SEBI has initiated recovery proceedings, including the issuance of demand notices and warnings of potential asset attachment for non-compliance. The case continues to remain active, with further regulatory enforcement actions anticipated.

14.9 **Sun Pharmaceutical – Secretarial Auditor Penalty (2023)**

Following a whistleblower complaint, the Ministry of Corporate Affairs initiated an inquiry into Sun Pharma for RPTs involving its group wholesale distributor. The inquiry revealed that the Secretarial Auditor failed to identify or report material RPTs as required under Sections 188 and 204 of the Companies Act and the ICSI Guidance Note. A penalty was subsequently imposed on the auditor by the RoC for non-compliance.

14.10 **Adani Group – SEBI Probes (2023–2024)**

Pursuant to Hindenburg Research's allegations, SEBI initiated investigations into undisclosed RPTs across multiple Adani-listed entities. As of August 2023, SEBI acknowledged completion of 13 out of 24 probes related to non-disclosure of RPTs involving inter-group loans and contracts, and submitted the status to the Supreme Court. These probes addressed systemic transparency and disclosure issues in line with SEBI LODR requirements.

14.11 Key Takeaways

Theme	*Regulatory Insight*
Aggregation principle	SEBI confirmed that all transactions with the same related party in a financial year must be aggregated for materiality testing.
Alignment of internal limits	Paytm's case highlighted the mismatch between internal committee approvals and actual financial exposure.
Jurisdictional reach	SEBI asserted its authority over listed NBFCs like RHFL even where sectoral regulation exists.
Auditor accountability	Sun Pharma's penalty reinforces the proactive role expected of Secretarial Auditors in flagging RPTs.
Disclosure expectations	Adani cases underscored the need for transparent and timely disclosure of RPTs in line with SEBI LODR norms.

15 Evolving approach to RPT governance – Key focus areas

15.1 Holistic Materiality Assessment

- Focus on the aggregate value of transactions across the financial year, not isolated deals.

15.2 Enhanced Approval Mechanisms

- Mandatory prior approval from the Audit Committee.
- Board and shareholder approval are required for material RPTs.
- In case of ratification (post-facto approvals), the management will have to justify why no prior approval was obtained, substantially raising its responsibility.

15.3 Strengthened Disclosure Frameworks

- Detailed disclosures at initiation and periodic updates in financials and stock exchange filings.
- Greater transparency to safeguard minority shareholders.

15.4 Oversight of Compliance and Controls

- Increased accountability of compliance officers and internal audit functions.
- Emphasis on the role of statutory auditors in flagging governance lapses.

15.5 Investor Protection and Governance Alignment

- Ensuring fairness, transparency, and alignment with core corporate governance principles.

15.6 Challenges under the Companies Act and SEBI LODR

- Ensuring independent director oversight.
- Balancing commercial objectives with regulatory compliance.
- Complexity in inter-corporate group structures.

16 SEBI Informal Clarifications Including Bajaj Finserv

16.1 In July 2023, Bajaj Finserv, a listed entity, sought clarification from SEBI whether the reinsurance treaty between its unlisted subsidiary, Bajaj Allianz General Insurance Company (**"BAGIC"**), and Allianz SE should be treated as an RPT. Bajaj Finserv argued that Allianz SE is a related party of BAGIC (owing a 26% (twenty-six percent) stake), but not of the parent listed company.

16.2 SEBI referred to Regulation 23 and definitions in Regulation 2(1)(zc) of the SEBI LODR, which broadly define an RPT to include transactions between a listed entity (or any subsidiary thereof) and any related party of the listed entity or its subsidiaries.

16.2.1 **Materiality Threshold Application**

SEBI clarified that the INR 1,000 crore (Indian Rupees One Thousand Crore) or 10% (ten percent) of consolidated turnover threshold (whichever is lower) for defining material RPTs under Regulation 23(1) applies equally to subsidiary-level deals—even when the counterparty is not a related party of the listed parent but is related to the subsidiary.

16.2.2 **Audit Committee Approval**

Pursuant to Regulation 23(2) of the SEBI LODR, SEBI made it clear that any RPT involving a subsidiary (even if the transaction doesn't involve the listed parent directly) must be approved by the audit committee if the transaction exceeds 10% (ten percent) of the turnover threshold.

16.2.3 **Shareholder Approval Requirement**

Additionally, SEBI emphasised that any material RPT (exceeding the INR 1,000 crore/ threshold of 10% of turnover as per consolidated financial statements) requires prior shareholder approval under Regulation 23(4) of the SEBI LODR. This requirement applies even when the transaction is between a subsidiary and a related party, not involving the listed parent.

16.2.4 **Net Settlement Amount Counts**

Clarification was provided that the net settlement amount (i.e., the effective transfer of resources under the reinsurance treaty) should be aggregated for determining materiality under Regulation 23 of the SEBI LODR, ensuring a comprehensive financial reckoning.

16.2.5 **Subsidiary Compliance Obligations**

Even though listing regulations do not conventionally extend to unlisted subsidiaries, SEBI directed that they must nonetheless classify 'related parties' and 'RPTs' in line with SEBI LODR, per Regulation 23 and 2(1)(zc).

16.2.6 **Commercial and Governance Implications**

SEBI's guidance reinforces transparency and enhanced governance by requiring:

- Explicit inclusion of subsidiary-level RPTs;
- Aggregation of transactions between a set of counterparties;
- Prior audit committee scrutiny; and
- Shareholder approval for substantial related dealings, even where a subsidiary is the only party directly involved. These steps aim to protect minority stakeholders and uphold governance standards.

16.3 In essence, SEBI's guidance to Bajaj Finserv confirms that large-scale transactions between its unlisted subsidiary (BAGIC) and related counterparties (like Allianz SE) are treated as RPTs requiring both audit committee and shareholder approval, if they breach materiality.

16.4 Further informal clarifications from SEBI have emphasised that:

16.4.1 **"Ordinary course of business"** must align with the company's business objects, historical practices, and industry norms;

16.4.2 **Arm's length transactions** require pricing benchmarks, comparative analysis, and documentation akin to transfer pricing principles; and

16.4.3 **Independent directors** must act as effective gatekeepers, with active involvement in audit committees and transaction reviews.

RPT Industry Standards effective from 1 September 2025

16.5 The RPT Industry Standards endorsed by SEBI are intended to align corporate governance practices with global benchmarks. The RPT Industry Standards emphasise on substance over form, the role of independent directors and audit committees, as well as the alignment with global standards, such as the transfer pricing guidelines developed by the Organisation for Economic Co-operation and Development, all reflecting SEBI's intent to build market integrity and stakeholder confidence. They reinforce the principles of transparency, accountability, and shareholder protection. The RPT Industry Standards apply to all RPTs requiring approval or ratification on or after 1 September 2025, regardless of when the contract was executed.

16.6 The RPT Industry Standards are structured as under:

16.6.1 Part A outlines the minimum information required for the proposed RPT and applies to all RPTs.

16.6.2 Part B applies only to a specific type of RPT that is proposed to be undertaken and is in addition to Part A. Seven types of RPTs have been specified.

16.6.3 Part C applies only if a specific type of RPT proposed to be undertaken is a Material RPT as defined under Regulation 23(1) & (1A) of the SEBI LODR ("Material RPTs"); and is in addition to Part A and Part B (with respect to such RPT).

16.6.4 Para 5 of the RPT Industry Standards prescribes the minimum information to be provided to the shareholders for approval of Material RPTs

16.7 **Enhanced Disclosure and Valuation Requirements**

The new regime mandates enhanced disclosures, including the basis of pricing, counterparty relationships, and the commercial rationale behind the transaction. For all material RPTs, companies shall be required to obtain independent valuation reports, ensuring that the transaction is not only at arm's length but also commercially justifiable from a third-party perspective.

16.8 **Technology-Enabled Monitoring and Compliance**

Companies are expected to integrate their ERP and financial systems with automated compliance tools to identify and flag potential RPTs in real time. The standards encourage digitised documentation, audit trail creation, and automated alerts, all of which contribute to better internal controls and proactive compliance monitoring.

16.9 **Broader Impact and Legal Significance**

The RPT Industry Standards represent a shift from mere procedural compliance to substantive governance norms. They are expected to reduce regulatory risk, strengthen investor confidence, and improve corporate ESG ratings.

17 National Financial Reporting Authority on RPTs

17.1 The National Financial Reporting Authority (**"NFRA"**) derives its authority from Sections 132 and 133[3] of the Companies Act and empowers NFRA to:

17.1.1 Monitor and enforce compliance with accounting and auditing standards (Section 132(2)(b) of the Companies Act).

17.1.2 Oversee the quality of audit services and suggest improvements (Section 132(2)(c) of the Companies Act).

3. *Section 133 of the Companies Act provides that Central Government should prescribe accounting standards (e.g., Ind AS 24 on RPTs) which are binding on companies. NFRA ensures these are properly applied and disclosed in financial statements.*

17.1.3 Investigate professional or other misconduct committed by chartered accountants or audit firms (Section 132(4) of the Companies Act).

17.2 RPTs as a Focus Area in NFRA's Inspection Framework

As part of its inspection framework, the NFRA has identified RPTs as a critical audit area, particularly in relation to the adequacy of Internal Controls over Financial Reporting, and the recognition of impairment of non-financial assets, and revenue reporting.

17.3 Deficiencies in Internal Controls and Disclosure Procedures

NFRA's inspection highlights several recurring deficiencies in the audit of RPTs. These include the absence of adequate evidence demonstrating the existence and operational effectiveness of internal controls, particularly those relating to the identification and completeness of related parties and related party transactions. In several instances, auditors failed to apply analytical procedures to ensure completeness of RPTs, and disclosures made were found to be vague, lacking clarity and transparency.

17.4 Undisclosed Loans and Non-Compliance with Section 185 of the Companies Act

The NFRA observed cases where loans given to related parties were either not disclosed or disclosed inadequately, with no documentation to support the business rationale for such transactions, particularly in cases involving lending or the issuance of non-convertible debentures. Audit firms also failed to verify the terms and conditions of such loans or to identify prima facie violations of Section 185 of the Companies Act, in cases of indirect lending to directors or their relatives. Moreover, there was no audit trail validating the end-use of the loans advanced, and refunds, if any, from related parties were not evidenced on record.

17.5 Inadequate Audit Procedures and Risk Assessment

NFRA identified deficiencies in the design and execution of audit procedures responsive to the assessed risk of material misstatement. This included the failure to verify the reliability of projected cash flows, which formed the basis for lending to related parties, and a lack of documentation assessing the risk of fraud in undisclosed lending. Audit files often lacked documentation of Audit Committee approvals, which is a violation of corporate governance and statutory compliance requirements.

17.6 Misclassification and Inconsistencies in Financial Reporting

Regarding accounting estimates and policies, the NFRA noted inconsistent treatment and disclosure of provisions for doubtful loans to related parties, with some entities classifying significant amounts as exceptional items without adequate justification. There were also issues with reporting accuracy, such as incorrect disclosure of interest rates, terms and conditions of loans, and failure to disclose personal guarantees provided by related parties.

17.7 **Incomplete or Misleading Disclosures**

NFRA inspections further revealed several instances of incomplete or incorrect disclosures. These include non-disclosure of the date of transition of a joint venture into a subsidiary, misclassification of sales to related parties (e.g., land transactions), and failure to disclose investments in subsidiaries as RPTs. In some cases, auditors did not verify or disclose the terms and conditions of outstanding balances with related parties or the applicable interest rates.

Timely identification, fair valuation, and independent scrutiny of related party dealings must now be supported by technology, strong internal controls, and a governance-first culture.

17.8 **Emphasis on Strengthening Audit Governance and Transparency**

Taken together, these findings underscore systemic weaknesses in audit execution, documentation, and professional scepticism relating to RPTs. NFRA has emphasised the need for auditors to maintain robust documentation, ensure complete and accurate disclosures, perform comprehensive audit procedures, including verification of compliance with the Companies Act, and adopt a risk-based approach in evaluating the commercial substance and legality of RPTs. These expectations are in line with the overarching objective of safeguarding financial reporting integrity and enhancing investor confidence.

18 From Ambiguity to Accountability: The Evolving Governance of RPTs in India

18.1 For listed companies, effective RPT governance is no longer a matter of mere statutory compliance—it is a strategic imperative. Timely identification, fair valuation, and independent scrutiny of related party dealings must now be supported by technology, strong internal controls, and a governance-first culture. When implemented in letter and spirit, this framework not only mitigates regulatory and reputational risks but also strengthens the company's long-term value proposition and trust with investors.

18.2 Under Section 188 of the Companies Act, companies are required to obtain prior approval of the Board of Directors for entering into any RPT falling within the categories specified under the provision, irrespective of whether such transactions are material in nature. The obligation to seek Board approval applies to both private and public companies, including those that are listed or unlisted, unless expressly exempted under the Companies Act or relevant rules. The rationale is to ensure that the Board, as the central governing body, exercises oversight and applies its judgment to evaluate the arm's length nature and commercial soundness of RPTs.

18.3 In addition to Board approval under the Companies Act, all RPTs undertaken by listed entities, and entities intending to list, are mandatorily subject to prior approval of the Audit Committee under Regulation 23 of the SEBI LODR. This dual-layered approval framework—Audit Committee under SEBI LODR

and Board under the Companies Act—is intended to enhance transparency, prevent potential misuse of corporate assets, and promote accountability in dealings with related parties. Accordingly, companies must ensure that both the Audit Committee and Board approvals are in place for RPTs, even where the transactions do not cross materiality thresholds as defined under SEBI LODR.

18.4 The governance of RPTs has emerged as a cornerstone of corporate accountability in India's regulatory landscape. While RPTs are not inherently problematic and may often be commercially necessary, their potential to compromise transparency, fairness, and shareholder interests—especially those of minority shareholders—necessitates robust regulatory oversight. Recognising the risks inherent in RPTs, SEBI, in alignment with the Companies Act, has progressively fortified the regulatory framework by embedding principles of arm's length conduct, prior and informed board and shareholders approvals, and enhanced disclosure requirements. This shift marks a transition from a predominantly disclosure-driven approach to a substantive, governance-centric model designed to safeguard stakeholder interests, with particular emphasis on protecting minority shareholders.

18.5 During NFRA's enforcement, review and monitoring activities, the auditor's communication with Those Charged With Governance (including the Audit Committees) has been highlighted by NFRA from time to time. A need has been felt through these activities towards reinforcing the ways and

Related party relationships and transactions have been a source of major fraud in corporate history, and some of the modus operandi continue to be seen in recent corporate frauds as well.

means of communication between the Statutory Auditors and the Audit Committees in particular drawing upon the requirements in the Companies Act, the two relevant Standards on Auditing (SA 260 (R) and SA 265), other related SAs and the Standard on Quality Control ("SQC 1"). Therefore, in accordance with NFRA's obligations to suggest measures for improvement in overall audit quality and to promote awareness and significance of accounting and auditing standards, auditor's responsibilities, audit quality, and keeping in view NFRA's objectives of protecting public interest and investor protection, NFRA commenced a series of Auditor-Audit Committee Interactions.

18.6 The Auditor-Audit Committee Interactions Series 3, issued by NFRA, draws the attention of auditors to the potential questions that Audit Committees/Board of Directors may ask them regarding related party relationships, transactions, and disclosures, as required by Ind AS 24, Related Party Disclosures, and SA 550, Related Parties.

18.7 Related party relationships and transactions have been a source of major fraud in corporate history, and some of the modus operandi continue to be seen in recent corporate frauds as well. In some cases, transactions with

unrelated parties have the purpose and effect of benefiting related parties. Significant related party transactions may be classified into loans and advances, investments, supplying/ availing goods and services, and remuneration of key management personnel, etc.

18.8 NFRA's Inspection reports and penalty Orders highlighted the following major issues in RPTs: diversion of funds, absence of business rationale and arm's length basis, understatement of loans/advances, evergreening of loans/advances, circulation of funds, override of controls, absence of adequate appraisal before sanction of loans, absence of approvals of the Board/ Audit Committee, fraudulent/erroneous recognition of revenue, improper recognition of provision for doubtful receivables, lack of appropriate and complete disclosures etc.

18.9 NFRA has thus underscored the need for greater scrutiny of RPTs at all levels and a clear guidance that the regulators are watching the end-to-end conduct of the managements, boards and auditors in respect of the conduct of RPTs to ensure that all corporate actions continue to work in the best interest of the company and its stakeholders.

19 Emerging areas requiring Enhanced Oversight by Audit Committees, Boards, and Auditors

19.1 During the investigations conducted in the aftermath of IL&FS in 2018, certain systemic weaknesses were observed in the conduct of NBFC business. The crisis highlighted significant vulnerabilities within the NBFC sector, particularly with respect to risk management frameworks, corporate governance practices, and the oversight mechanisms in place. This prompted heightened regulatory and public scrutiny of NBFC operations.

19.2 In the course of these investigations, authorities identified a recurring pattern involving "Potentially Indirectly Interlinked Entities". These entities, while not directly connected, exhibited indirect linkages through one or more intermediaries or commonalities in operations, ownership, or control structures. Although no express legal framework currently defines or recognises such entities as being under common control, various red flags emerged, such as shared registered office addresses, use of common email domains, overlap in key personnel (e.g., directors being employees of group entities), and inadequate documentation practices. It was observed that such indicators ought to have prompted NBFCs and their auditors to classify these entities as 'related parties' for disclosure and compliance purposes. The absence of specific regulatory guidance underscores the heightened responsibility of independent directors and auditors to exercise professional scepticism and maintain enhanced vigilance in identifying and evaluating such relationships.

■

FEMA ASPECTS ON RELATED PARTY TRANSACTIONS IN INDIA





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Overview

This article explores the regulatory landscape governing Related Party Transactions (RPTs) under India's Foreign Exchange Management Act (FEMA) and Transfer Pricing (TP) laws. It highlights how cross-border dealings between Indian entities and foreign affiliates must comply with arm's length pricing and robust documentation to ensure transparency and prevent misuse of foreign exchange. Definitions of "related party" vary across the Companies Act, SEBI regulations, and TP laws, while FEMA emphasizes economic control over formal relationships.

The article categorizes RPTs into current account transactions (e.g., sale of goods, royalties) and capital account transactions (e.g., loans, guarantees, investments), each governed by distinct FEMA frameworks. It underscores the importance of accurate valuation, timely reporting (e.g., FC-GPR, FC-TRS, APR), and alignment with TP documentation. Resident individuals' transactions under the Liberalized Remittance Scheme (LRS) are also covered, with emphasis on permissible limits and definitions of "relative."

Recent regulatory updates include the revised Overseas Investment framework, enhanced due diligence, and digital compliance platforms like PRAVAAH. The article concludes by advocating a unified compliance approach, integrating FEMA and TP norms to build resilient, globally credible businesses.

1. Introduction

In an increasingly globalized economy, Indian businesses frequently engage in transactions with foreign affiliates, subsidiaries, and other related parties. These transactions, while often necessary for operational efficiency and strategic growth, are subject to intense regulatory scrutiny—particularly under the Foreign Exchange Management Act ('FEMA'), 1999.

When these transactions occur between related parties, they raise additional concerns around bonafide of transactions, transfer pricing implications, regulatory arbitrage etc. Hence, the Reserve Bank of India ('the RBI') has laid down specific rules to ensure transparency, fair valuation, and compliance.

FEMA governs all cross-border financial transactions involving Indian residents and non-residents. When these transactions occur between related parties, they raise additional concerns around *bonafide* of transactions, transfer pricing implications, regulatory arbitrage etc. Hence, the Reserve Bank of India ('the RBI') has laid down specific rules to ensure transparency, fair valuation, and compliance in such dealings.

From a transfer pricing ('TP') perspective, cross-border related party transactions ('RPTs') must comply with the **arm's length principle**, ensuring that the pricing mirrors what would be agreed upon between independent entities under similar conditions. While this principle is a cornerstone of TP regulations under the **Income Tax Act, 1961 ('the Act')**, it also plays a significant role in shaping the treatment of cross-border RPTs under **FEMA**.

This article provides a comprehensive analysis of FEMA and TP treatment of RPTs, covering definitions, regulatory frameworks, compliance obligations, and recent developments.

2. Understanding Related Party Transactions

Definition of Related Party

The term "related party" is defined differently across various Indian laws:

(a) Companies Act, 2013[1]

A related party with reference to a company means:

- A director or his relative
- A key managerial personnel (KMP) or his relative
- A firm in which a director, manager, or their relative is a partner
- A private company in which a director or manager (or his relative) is a member or director
- A public company in which a director or manager is a director and holds along with relatives more than 2% of its paid-up share capital
- Any, body corporate whose board of directors, managing director, or manager is accustomed to act in accordance with the advice, directions, or instructions of a director or manager (excluding professional advisors)
- Any person on whose advice, directions, or instructions a director or manager is accustomed to act (excluding professional advisors)
- Any, body corporate which is:



1. *Under Section 2(76) of the Companies Act, 2013, read with Rule 3 of the Companies (Specification of Definitions Details) Rules, 2014*

- a holding, subsidiary, or associate company of such company
- a subsidiary of a holding company to which it is also a subsidiary
- an investing company or the venturer of the company
- a director (other than an independent director) or KMP of the holding company or his relative
- such other person as may be prescribed

This definition is comprehensive and aims to capture all entities and individuals who may exert significant influence over the company's decisions.

(b) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[2]

A related party means a "related party" as defined under Section 2(76) of the Companies Act, 2013 or under the applicable accounting standards. Additionally, it includes:

- Any person or entity forming part of the promoter or promoter group of the listed entity
- Any person or entity holding **20% or more equity shares (or 10% or more, with effect from 1 April 2023)**, directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, at any time, during the immediately preceding financial year, is also deemed a related party.

This broader definition ensures that entities with potential influence over listed companies are brought under regulatory oversight, even if they do not meet the strict criteria under the Companies Act.

(c) FEMA

FEMA does not provide a single, codified definition of "related party." However, in practice and in various RBI circulars and notifications, the following terms are used in the context of related party transactions:

- **Group Companies**: Entities that are part of the same corporate group, often used in the context of Overseas Investments (OI).
- **Associated Enterprises ('AEs')**: A term enshrined in the Indian transfer pricing regulations, referring to entities that are subject to common control or significant influence, either directly or indirectly, over management, capital, or business decisions.
- **Entities under Common Control or Ownership**: Used to identify relationships that may affect pricing and reporting of cross-border transactions.

FEMA focuses more on the **substance of the relationship** and the **economic control or influence** rather than a formal legal definition. The emphasis is on ensuring that transactions are conducted at arm's length price ('ALP') and are not used to circumvent foreign exchange regulations.

Under FEMA, the term **"relative"** is not defined independently. Instead, it adopts the definition from the **Companies Act, 2013**,

2. *Regulation 2(zb) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015:*

as clarified in various RBI notifications and circulars.

Definition of "Relative" under FEMA[3]

A "relative" includes:

- Father (including stepfather)
- Mother (including stepmother)
- Son (including stepson)
- Son's wife
- Daughter
- Daughter's husband
- Brother (including stepbrother)
- Sister (including stepsister)
- Members of a Hindu Undivided Family (HUF)
- Husband and Wife

This definition is used across various FEMA provisions, especially where the relationship between individuals affects the permissibility or structure of a transaction.

(d) Related Party as per the Act

Under Section 92A of the Act, the term "associated enterprise" is used to define related parties for transfer pricing purposes. This includes entities that participate directly or indirectly in the management, control, or capital of another enterprise, or where the same persons participate in the management, control, or capital of both enterprises.

3. FEMA Framework Governing RPTs

3.1 Overview of FEMA

FEMA was enacted to regulate foreign exchange transactions and promote orderly development of the foreign exchange market in India. It replaced the more restrictive FERA (The Foreign Exchange Regulation Act, 1973) and introduced a more liberalized regime. FEMA distinguishes between:

- Capital Account Transactions: Affect assets and liabilities (e.g., investments, loans)
- Current Account Transactions: Normal business transactions (e.g., trade, services)

RPTs can fall under either category depending on their nature.

3.2 Nature of RPTs and Key FEMA Regulations Impacting RPTs

Under FEMA, RPTs involving cross-border dealings must be conducted at ALP and comply with pricing/valuation, and reporting norms. These transactions are scrutinized to prevent misuse of foreign exchange channels and ensure transparency. Typical RPTs includes:-

(i) Sale or Purchase of Goods/Services between Indian and Foreign Affiliates including payment towards Royalty or Fees for Technical Service

These are normal business import and export transactions or payment towards Royalty or Fees for Technical services where an Indian company sells to or

3. *As per Section 2(77) of the Companies Act, 2013, and Rule 4 of the Companies (Specification of Definitions Details) Rules, 2014,*

buys from its foreign parent, subsidiary, or group company. These are current account transactions and governed by FEMA current account and import-export framework[4]. Amongst other things, it is important to ensure that:-

- Export and Imports of goods/ services include evaluation of pricing terms agreed with the AE and confirming that they are not prejudicial from Indian Transfer Pricing Regulations ('ITPRs') perspective i.e. that the pricing is consistent with market rates (arm's length). This is to ensure that there is no under-invoicing or over-invoicing.

- The selection of method for computation of ALP (the prescribed methods being the Comparable Uncontrolled Price Method, Resale Price Method, Cost Plus Method, Profit Split Method, Transactional Net Margin Method, Other Method) and the selection of tested party would depend upon the functional analysis of respective parties.

- timely realization and repatriation of export proceeds (within 9 months) and import payments (within 6 months).

- Any write- back/write- offs including any transfer pricing adjustments in terms of true-up/ true- down will require detailed evaluation including applicability of any prior approval from Authorised Dealer -Bank/the RBI.

- Indian companies often pay royalties or fees for technical services to foreign affiliates for using intellectual property, trademarks, or receiving technical know-how. It is important to ensure that such payments to be within prescribed limits to be under the automatic route. Beyond those, RBI approval is needed. The Transfer Pricing authorities often allege such payments to be in the nature of profit extraction tools from India and are increasingly independently scrutinizing the same and warrant independent benchmarking of the same using the CUP methods, etc. For e.g. prior approval of the RBI is required where remittance exceeds USD 10 million for infrastructure consultancy services and USD 1 million for other consultancy services procured from outside India[5].

(ii) Loans, Guarantees, or Investments to/ from Related Foreign Entities including Transfer of Shares or Securities between Related Parties

These are capital account transactions and are governed by the Overseas Investment framework; Foreign

4. *FEMA (Current Account Transactions) Rules, 2000 [Foreign Exchange Management (Current Account Transactions) Rules, 2000 dated 3 May 2000]; RBI/FED/2016-17/12 FED Master Direction No. 17/2016-17 Import of Goods and Services (Updated as on August 29, 2024); RBI/FED/2015-16/11*
   FED Master Direction No. 16/2015-16 Export of Goods and Services (Updated as on April 29, 2025)
5. *Master Direction - Other Remittance Facilities (FED Master Direction No. 8/2015-16 updated as on 6 September 2024)*

Direct Investment Policy/Non -Debt Investments and External Commercial Borrowings ('ECB') framework[6].

- **Loans**: Indian companies can lend to foreign subsidiaries under the OI framework subject to prescribed conditions.

- **Guarantees**: Indian companies can provide Corporate/Performance guarantees etc to foreign affiliates subject to board approval and prescribed conditions.

  From a TP perspective, the above financial instruments are also required to be reported, and the interest being earned is required to be benchmarked to ensure no loss of revenue in India. Tax authorities are scrutinizing the terms of these transactions to verify that the income charged reflects market conditions and is consistent with what independent entities would agree upon. As a result, companies must conduct thorough benchmarking analyses and maintain robust documentation to support their interest rate determination.

- **Creation of Charge on Assets of Group/Associate Companies:** - An Indian entity may create a charge on the assets of its group company or associate company in India subject to prescribed conditions.

- **Investments/Transfer of shares**: This includes issue/transfer of shares between Resident and Non-Residents. All such transactions including any holding my way of nominee shareholder must be undertaken at ALP. The price must be comparable to what unrelated parties would agree upon. Valuation must be done by a SEBI-registered Category I Merchant Banker or a Chartered Accountant as the case may be, in accordance with prescribed valuation norms (Internationally accepted pricing norms e.g. DCF etc), and reporting must be done via Form FC-GPR (for issuance) or Form FC-TRS (for transfer) etc. In the realm of transfer pricing, the transfer of shares or securities between related parties is to be reported, with valuation reports serving as a tool to assess whether the transaction is conducted at an ALP.

6. *FEMA (Overseas Investment) Rules and Regulations, 2022 [Foreign Exchange Management (Overseas Investment) Rules, 2022 dated 22 August 2022 and Foreign Exchange Management (Overseas Investment) Regulations, 2022 dated 22 August 2022 - Notification No. FEMA 400/2022-RB – read with Master Direction – Overseas Investment (FED Master Direction No.15/2024-25 updated as on 24 July 2024)] ('OI Framework') ; FEMA (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 [Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 dated 17 October 2019 - Notification No. FEMA. 395/2019-RB, read Master Direction - Foreign Investment in India (FED Master Direction No.11/2017-18 updated as on 20 January 2025)]; FEMA (Non-Debt Instruments) Rules, 2019 [Foreign Exchange Management (Non-debt Instruments) Rules, 2019 dated 17 October 2019, read with Master Direction - Foreign Investment in India (FED Master Direction No.11/2017-18 updated as on 20 January 2025)]; FEMA Notification No. 3R/2018-RB (Borrowing and Lending Regulations): [Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 dated 17 December 2018 – Notification No. FEMA.3(R)/2018-RB, read with Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations (FED Master Direction No.5/2018-19 updated as on 22 December 2023)] ('FEM Borrowing and Lending Regulations')*

Gifts and maintenance to relatives abroad are allowed, provided the recipient qualifies as a "relative" under the above definition. This is particularly relevant for education expenses, Living expenses, medical support, Gifting of funds or assets.

- **Transfer Pricing Adjustments** such as **true-up, true-down,** and **secondary adjustments** are increasingly relevant in the context of RPTs under FEMA. These adjustments typically arise when the actual transaction value deviates from the ALP determined through a transfer pricing study.

- **True-Up/True-Down Adjustments**: These are self-adjustments made to align the transaction value with the ALP. A **true-up** involves recognizing additional income, while a true-down involves reversing excess income. From a FEMA perspective, such adjustments require detailed evaluation including requirement of any prior RBI or AD Bank approval including reporting obligation if any, especially if they involve remittance or write-off of foreign exchange.

- **Secondary Adjustments**: As per ITPRs (Rule 10CB of the Income Tax Rules), if a primary adjustment results in excess money remaining with the AEs, a secondary adjustment may be required. This could involve repatriation of the excess amount to India or treating it as an advance/loan, which requires detailed evaluation including requirement of any prior RBI or AD Bank approval including and reporting obligation as the case may.

(iii) Investments/Transactions by Resident Individuals with/Group/Associate entities and relevance of term 'Relative' under Liberalized Remittance Scheme (LRS): -

This includes transactions/investments by Resident Individuals and governed by FEMA LRS framework[7]

- Under LRS, resident individuals can remit up to **USD 250,000 per financial year** for permissible transactions.

- **Gifts and maintenance** to relatives abroad are allowed, provided the recipient qualifies as a "relative" under the above definition. This is particularly relevant for education expenses, Living expenses, medical support, Gifting of funds or assets.

- **Joint Holding in Accounts**

  Resident individuals can include **resident relatives** as joint holders in certain foreign currency accounts on a "former or survivor" basis. However, such relatives cannot operate the account independently.

7. *Master Direction - Liberalised Remittance Scheme (LRS) (Updated as on September 06, 2024) [Master Direction - Liberalised Remittance Scheme (LRS) (FED Master Direction No. 7/2015-16 updated as on 6 September 2024)] ('Master Direction - LRS')*

- **Gift Transactions**

  Gifts to relatives abroad are permitted under LRS, subject to prescribed limits and documentation. These transactions must not be used for prohibited purposes (e.g., lottery, margin trading).

- **Loans to NRI/PIO Relatives**

  Resident individuals can extend interest-free loans in INR to NRI/PIO relatives provided they are within the prescribed limits, conditions etc and not used for investment in real estate or stock markets.

- **Overseas Direct Investment (ODI) and Overseas Portfolio Investment (OPI)**

  Resident individuals can invest in equity/debt instruments of overseas entities, including group/associate companies subject to OI framework and LRS limit per financial year. Clubbing of LRS limits by family members is not allowed unless they are co-owners/co-partners in the investment.

3.3 FEMA: - Key Reporting compliances

Any capital or current account transactions including RPTs requires prescribed reporting under respective FEMA regulations[8]. Timely and accurate reporting is critical to avoid any penalties. Key compliances include:

- **Form FC-GPR**: For issue of shares to non-residents.
- **Form FC-TRS**: For transfer of shares between residents and non-residents.
- **Form FC**: For Indian entities investing abroad.
- **Annual Performance Report (APR)**: For Indian entities with foreign subsidiaries.
- **Form DI**: For downstream investments by Indian entities with foreign ownership.

In parallel, following are the mandatory TP compliances:

- Transfer pricing documentation report.
- Accountants Report in Form No.3CEB; and
- BEPS (Base Erosion and Profit Shifting) compliance in case the thresholds are met.

4. Recent Developments under FEMA with enhanced emphasis on RPTs

(i) Revised Overseas Investment ('OI') Framework

The OI Framework marked a major overhaul of the earlier ODI regime. Key highlights in RPT transactions include: -

- **Round-Tripping Restrictions**: The RBI reiterated that Indian entities cannot invest in foreign entities that, in turn, invest back in India with more than 2 layers, unless specifically permitted. This is particularly relevant in RPTs involving layered structures.

8. *RBI/FED/2015-16/13 FED Master Direction No. 18/2015-16 -Reporting under Foreign Exchange Management Act, 1999 (Updated as on September 16, 2024)*



- **Control-Based Investment Classification:** Investments/debts are now classified/allowed based on whether the Indian entity has control in the foreign entity. This affects the reporting and compliance obligations.

- **Enhanced Due Diligence**: Indian companies are required to conduct due diligence on foreign related parties before making investments or extending guarantees.

- **No Use of Net Worth of Group Companies**: The earlier practice of using the net worth of a holding or subsidiary company to support ODI by another group company is no longer permitted.

- **Fund-Based Exposure Adjustment:** Any fund-based exposure between the Indian entity and the group/ associate company must be adjusted while calculating the financial commitment limit.

(ii) Increased Use of Technology in Compliance

The RBI and Ministry of Finance have encouraged the use of digital platforms for compliance:

- **Single Master Form (SMF):** Continued integration of various FEMA filings into the SMF portal.

- **Digital Signatures and e-KYC:** Mandatory for filings involving foreign shareholders or directors.

- **AI Based Monitoring:** The RBI is piloting AI tools to detect anomalies in cross-border RPTs, especially in high-risk sectors.

- **PRAVAAH platform (Platform for Regulatory Application, Validation And AutHorisation):** Web-based portal launched by the RBI to streamline and digitize the process of applying for regulatory approvals, licenses, and authorizations.

5. Best Practices for FEMA-Compliant RPTs

- **Understanding the Interplay of Laws:** FEMA does not operate in isolation. Its provisions intersect with the Companies Act, SEBI's Listing Obligations and Disclosure

Requirements, and Income Tax laws, particularly transfer pricing regulations. A holistic understanding of these frameworks is essential to ensure that RPTs are not only legally compliant but also strategically sound.

- **Ensuring Arm's Length Transactions:** One of the core principles under FEMA and transfer pricing is that transactions between related parties must be conducted at arm's length. This requires proper benchmarking, valuation by qualified professionals, and documentation that can withstand regulatory scrutiny.

- **Strengthening Internal Controls and Governance:** Companies must establish clear internal policies for identifying, approving, and monitoring RPTs. This includes board-level oversight, audit committee reviews, and periodic internal audits to ensure compliance.

- **Timely and Accurate Reporting:** Non-compliance with reporting obligations—such as delays in filing FC-GPR, FC-TRS, ODI, or APR—can lead to penalties, reputational damage, and even prosecution. Leveraging digital tools and compliance platforms can help streamline these processes.

- **Staying Updated with Regulatory Changes:** The regulatory environment is dynamic. Recent updates to the Overseas Investment Rules, enhanced disclosure norms by SEBI, and RBI's emphasis on documentation and digital compliance underscore the need for businesses to stay agile and informed.

6. Conclusion

FEMA compliance in RPTs is not just a regulatory requirement—it's a strategic imperative for businesses operating in a globally connected environment. As Indian companies increasingly engage with foreign affiliates, subsidiaries and group entities, the complexity of cross-border financial dealings has grown significantly. This complexity is further compounded by evolving regulatory frameworks, heightened scrutiny from regulators and the need for robust governance mechanisms. To navigate this landscape effectively, businesses must adopt a proactive, well-informed, and integrated approach. Understanding the interplay between FEMA, Transfer pricing regulations, SEBI, and the Companies Act is crucial for managing RPTs effectively and avoiding legal pitfalls. With increasing regulatory convergence and global focus on BEPS, businesses must adopt a unified compliance approach. Ensuring consistency between FEMA filings and TP documentation enhances transparency and reduces audit risks. Transfer pricing today is no longer a mere tax compliance tool but plays a pivotal role in reinforcing FEMA compliance by promoting transparency, fair valuation, and alignment with global best practices. In essence, FEMA compliance in RPTs is not merely about avoiding penalties—it's about building a transparent, resilient, and globally credible business. Companies that embed compliance into their strategic and operational fabric are better positioned to attract foreign investment, expand internationally, and build long-term stakeholder trust.

■

ACCOUNTING FOR RELATED PARTY TRANSACTIONS



CA Akshay Oke

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Overview

The article explores the accounting and disclosure requirements for Related Party Transactions (RPTs) under Ind AS 24, emphasizing transparency in financial reporting. RPTs are common in group structures and closely held entities, and Ind AS 24 mandates disclosure to highlight potential impacts on financial statements due to related party relationships and transactions. It defines related parties broadly, including individuals with control or influence and entities within the same group or under common control. The standard requires disclosure of various transactions such as sales, services, leases, guarantees, and loans, but does not prescribe recognition or measurement rules – these are governed by other standards like Ind AS 109 and Ind AS 102.

The article includes practical case studies illustrating accounting treatments for share-based payments, financial guarantees, and interest-free loans between parent and subsidiary companies. It also addresses frequently asked questions, clarifying issues like compensation disclosure, disclosure requirements for non-executive directors, and exemptions for government-related entities. The conclusion underscores the importance of robust documentation and clear disclosures to ensure compliance and maintain the integrity of financial statements.

1. Introduction

Related party transactions are a common aspect of business operations, especially in group structures or closely held enterprises. Many entities carry on their business activities through subsidiaries, joint ventures, and associates. However, due to the potential for conflicts of interest or manipulation, financial reporting standards require transparent and consistent accounting and disclosure of such transactions. In India, Ind AS 24 (under Indian Accounting Standards) and AS 18 (under Accounting Standards for non-Ind AS entities) govern the treatment of RPTs. In this article, we are going to discuss accounting for related party transactions from an Ind AS perspective.

2. Objective

Ind AS 24's objective is to ensure that financial statements of an entity contain the disclosures necessary to draw attention to the possibility that the reported financial position and results might have been affected by the existence of related parties and by transactions and outstanding balances, including commitments, with such parties.

3. Scope

Related party disclosure requirements apply to all entities following Ind AS, including parent entities and investors with joint

control or significant influence over an investee, in their consolidated and standalone financial statements. The standard sets out how related party relationships, transactions and balances including commitments, should be identified and what disclosures should be made.

The intra-group transactions and balances are disclosed in the standalone financial statements. Intra-group transactions and balances that are eliminated on consolidation are not disclosed. However, transactions and balances between an investment entity and those of its subsidiaries, which are held as part of an investment portfolio, are measured at fair value through profit or loss and are not consolidated in accordance with Ind AS 110, and it should be disclosed in the consolidated financial statements.

4. Definition of related party

A related party is defined as "a person or entity that is related to the entity that is preparing its financial statements" (the 'reporting entity'). Related party relationships are generally symmetrical - i.e. if ABC is related to PQR for the purposes of PQR's financial statements, then PQR is related to ABC for the purposes of ABC's financial statements.

The standard's definition is divided into two parts:

- ***Persons who are related parties***

  — A person or a close member of that person's family is related to a reporting entity if that person has control, joint control or significant influence over the reporting entity or is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

  Close members of a person's family are those who may be expected to influence, or be influenced by, the person in their dealings with the entity. They include, for example, a person's children and spouse or domestic partner, children of the person's spouse or domestic partner, and dependents of the person or their spouse or domestic partner.

  Key management personnel are those persons who have the authority and responsibility for planning, directing and controlling the activities of the entity - directly or indirectly. The definition of key management personnel includes directors (both executive and non-executive).

- ***Entities that are related parties***

  - Entities that are members of the same group
  - Entities that are associates or joint ventures
  - Entities that are joint ventures of the same third party
  - Entities that are joint ventures of a third party and associates of the same third entity
  - Post-employment benefit plans

The standard sets out how related party relationships, transactions and balances including commitments, should be identified and what disclosures should be made.

- Entities under the control or joint control of certain categories of persons or close members of such a person's family

- Entities under the significant influence of certain categories of persons or close members of such a person's family (including a person who is a member of a key management personnel of the entity or of a parent of the entity)

- Entities, or any member of the group of which they are a part, that provide key management personnel services

The definition of 'control' in Ind AS 24 is a cross-reference to the definition in Ind AS 110 Consolidated Financial Statements.

The definition of 'joint control' in Ind AS 24 is a cross-reference to the definition in Ind AS 111 Joint Arrangements.

The definition of 'significant influence' in Ind AS 24 is a cross-reference to the definition in Ind AS 28 Investments in Associates and Joint Ventures.

5. Types of Related Party Transactions

A related party transaction is a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged. The definition of a related party transaction implies that transactions are disclosable only for the period in which the parties are related. For example, where a reporting entity has disposed of a subsidiary during the reporting period, only transactions with the subsidiary up to the date of disposal are related party transactions in the financial statements of the reporting entity.

The following are examples of related party transactions that require disclosure by a reporting entity in the period in which they occur:

- Purchases or sales of goods (finished or unfinished).
- Purchases or sales of property and other assets.
- Rendering or receiving of services.
- Leases.
- Transfers of research and development.
- Licence agreements.
- Provision of finance (including loans and equity contributions in cash or in kind).
- Guarantees and the provision of collateral security.
- Commitments to do something if a particular event occurs or does not occur in the future, including recognised and unrecognised executory contracts. Executory contracts are defined in Ind AS 37 as contracts under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent.
- Settlement of liabilities on behalf of the entity, or by the entity on behalf of that related party.

6. Recognition and Measurement

Ind AS 24 is a disclosure standard only. It does not establish any recognition or measurement requirements for related party transactions. Related party transactions are accounted for in accordance with the

requirements of the relevant standards. For example, in an entity's standalone financial statements, loans to other group entities are recognised and measured in accordance with Ind AS 109. Further, Ind AS 102 provides guidance when a parent transfers its equity instruments directly to employees of a subsidiary as compensation for services provided to the subsidiary.

7. Disclosures requirements

The following information about related parties should be disclosed in an entity's financial statements:

- Relationships between a parent and its subsidiaries, irrespective of whether there have been transactions between them.
- The name of its parent and, if different, the name of the ultimate controlling party.
- Key management personnel compensation.
- Details of transactions between the entity and any related parties.
- Details of balances due to, or from, related parties at the balance sheet date, including information on bad and doubtful debts.

The disclosures are required to be made separately for each of the following categories:

- The parent
- Entities with joint control of, or significant influence over, the entity
- Subsidiaries
- Associates
- Joint ventures in which the entity is a joint venturer
- Key management personnel of the entity or its parent; and
- Other related parties

The standard gives no exemption from disclosure on the grounds of sensitivity or confidentiality.

The transactions are disclosable only for the period in which the parties are related. For example, if a person became a member of the key management personnel of a reporting entity during a reporting period, no disclosure is required of any remuneration paid to that person before that person's appointment as key management personnel. Similarly, transactions with a party in the comparative period are not disclosable as related party transactions if in the comparative period that party was not related to the reporting entity.

The transactions are disclosable only for the period in which the parties are related.

Key management personnel compensation is disclosed in aggregate and for each of the five specified categories, namely

- Short-term employee benefits
- Post-employment benefits
- Other long-term benefits
- Termination benefits
- Share-based payments

Compensation includes all employee benefits as defined in Ind AS 19 and includes

employee benefits to which Ind AS 102 applies. It includes all forms of compensation paid, payable or provided (for example, through benefits in kind) by the entity, or on its behalf, in return for services rendered to the entity. Compensation includes amounts paid on behalf of the entity by the entity's parent or another group entity. Entities are not required to disclose each key manager's compensation separately.

8. Practical case studies

Ind AS 24 is purely a disclosure standard and does not establish any recognition or measurement requirements. Related party transactions are accounted for in accordance with the requirements of the respective Indian accounting standards as applicable to the transaction. The disclosures required by Ind AS 24 are in addition to those required by other Indian accounting standards.

The purpose of disclosing the information required by Ind AS 24 is to give users of financial statements knowledge about transactions (for example, whether they are at arm's length/fair value), outstanding balances, including commitments, and relationships with related parties that may affect their assessment of an entity's operations, including assessments of the risks and opportunities facing an entity.

An alternative solution to the problems posed by related party relationships and transactions would be to adjust the financial statements by measuring related party transactions as if they occurred with an independent third party and recognise any such transactions at an arm's length price (i.e., fair value).

Some of the practical case studies are illustrated below:

a. Group share-based payment arrangement

Facts of the case study:

- Parent Company: Alpha Ltd. (India)
- Subsidiary Company: Beta Ltd. (India)
- Arrangement: Employees of Beta Ltd. receive share options of Alpha Ltd. (the parent company) as part of their compensation.
- Terms: Employees will receive 1,000 options of Alpha Ltd. each, vesting after 3 years of service.
- Fair value of options at grant date: ₹ 50 per option
- Number of employees expected to complete service: 20 employees

Type of Arrangement (per Ind AS 102):

- Equity-settled share-based payment from the group's perspective.
- Subsidiary (Beta Ltd.) does not have any obligation to settle — Parent settles in its own equity.

Accounting Treatment (as per Ind AS 102):

In the books of the Subsidiary (Beta Ltd.):

Even though Beta Ltd. does not issue its own equity instruments, it must recognise the expense for the services received as if it had issued the equity instruments, with a corresponding credit to equity as a capital contribution from Alpha Ltd.

Yearly journal entry (for each of the 3 years):

Employee Benefit Expense	₹ 3,33,333
To Equity – Contribution from Parent	₹ 3,33,333

Working:

- Total FV of share options: 1,000 options × ₹ 50 = ₹ 50,000 per employee
- 20 employees × ₹ 50,000 = ₹ 10,00,000 total expense
- Vesting over 3 years: ₹ 10,00,000/3 = ₹ 3,33,333 per year

Note: Expense is adjusted each year based on the revised estimate of employees expected to vest.

ii. *In the books of the Parent (Alpha Ltd.):*

The Parent recognises the increase in its investment in the subsidiary (Beta Ltd.) with a corresponding credit to equity (if equity-settled).

No impact on P&L of the parent.

Journal entry in Parent (Alpha Ltd.):

Investment in Beta Ltd.	₹ 3,33,333
To Equity Share Option Outstanding Account	₹ 3,33,333

The subsidiary recognises an expense for the employee services received and a capital contribution from the parent.

The parent records an increase in investment in the subsidiary and credit to equity.

b. Financial guarantee given by the parent company to its subsidiary company

As per Ind AS 109, a financial guarantee contract is a contract that requires the issuer (guarantor) to make specified payments to reimburse the holder (lender) for a loss incurred because a specified debtor (borrower) fails to make payment when due.

Facts of the case study:

- Parent Co. (P Ltd.) guarantees a loan taken by Subsidiary Co. (S Ltd.) from a bank.
- Loan amount: ₹ 10,00,000
- Tenure: 5 years
- Interest: 8% p.a.
- Without guarantee, the interest rate would have been 10% (i.e., guarantee reduces cost for the subsidiary).

Accounting under Ind AS 109:

In the Books of the Parent (Guarantor – P Ltd.)

Initial recognition

- Financial Guarantee Contract is initially recognised at fair value.
- Fair value is the amount a third party would charge for issuing such a guarantee.
- One of the common methods is to calculate the present value of interest savings.

Interest saving = (10% - 8%) × ₹ 10,00,000 = ₹ 20,000 per year

PV of interest savings for 5 years @ 10% discount rate ≈ ₹ 75,816

Accordingly, ₹ 75,816 is the fair value of the guarantee.

Journal Entry at inception:

Investment in Subsidiary A/c ₹ 75,816

To Financial Guarantee Liability ₹ 75,816

Subsequent Measurement:

- Financial Guarantee Contract liability is measured at the higher of:
  - The amount initially recognised less cumulative amortisation; and
  - The expected credit loss (ECL) under Ind AS 109.
- Each year, the parent amortises the guarantee income over the guarantee period (say, straight-line):
- Annual amortisation:₹ 75,816/5 years = ₹ 15,163

Entry each year:

Financial Guarantee Liability	₹ 15,163
To Other Income (P&L)	₹ 15,163

If there is a significant increase in credit risk, ECL may exceed carrying amount — recognise ECL instead.

In the Books of the Subsidiary (S Ltd.):

Initial recognition journal entry:

Prepaid expense (guarantee premium)	₹ 75,816
To Equity – Capital Contribution	₹ 75,816

Subsequent measurement journal entry (Each year):

Guarantee expense	₹ 15,163
Prepaid expense (guarantee premium)	₹ 15,163

c. Interest free loan given by parent company to subsidiary company

Ind AS 109 requires all financial assets and liabilities to be initially recognised at fair value, regardless of whether interest is charged. Hence, even interest-free loans must be accounted for at fair value.

Facts of the case study:

- Lender (Parent Co.): Alpha Ltd.
- Borrower (Subsidiary Co.): Beta Ltd.
- Loan Amount: ₹ 10,00,000
- Tenure: 5 years
- Interest: Nil
- Market rate of interest for similar unsecured loan: 10%

Fair value calculation:

The loan will be recorded at present value of future cash flows discounted at market rate (10% in this case study).

Since repayment is in full after 5 years:

PV = ₹ 10,00,000/(1 + 10%) ₹ = ₹ 6,20,921

Difference = ₹ 10,00,000 – ₹ 6,20,921 = ₹ 3,79,079

Accounting in the Books of Subsidiary (Beta Ltd.):

Initial Recognition:	
Bank A/c	₹ 10,00,000
To Loan Liability (at fair value)	₹ 6,20,921
To Equity – Capital Contribution (from Parent)	₹ 3,79,079

Loan will then be measured at amortised cost using an effective interest method. Interest expense will be recognised over 5 years using an effective 10% rate.

Subsequent Years:

Each year, interest expense is booked (10% on opening balance), increasing the carrying value of the liability until it reaches ₹ 10,00,000 at the end of year 5.

Accounting in the Books of Parent (Alpha Ltd.):

Initial Recognition:

Parent recognises a loan receivable at fair value and the difference as an additional investment in subsidiary:

Loan Receivable	₹ 6,20,921
Investment in Subsidiary	₹ 3,79,079
To Bank A/c	₹ 10,00,000

Subsequent Years:

Parent recognises interest income using the effective interest method (10%).

Amortisation Table

Year	*Opening Balance*	*Interest (10%)*	*Closing Balance*
1	₹ 6,20,921	₹ 62,092	₹ 6,83,013
2	₹ 6,83,013	₹ 68,301	₹ 7,51,314
3	₹ 7,51,314	₹ 75,131	₹ 8,26,445
4	₹ 8,26,445	₹ 82,645	₹ 9,09,090
5	₹ 9,09,090	₹ 90,909	₹ 10,00,000

9. Frequently asked questions

a. Do an entity's key management personnel include non-executive directors and members of its supervisory board?

'Key management personnel' includes "any director (whether executive or otherwise)". As per the definition of key management personnel, all directors (whether executive or otherwise) of the entity are presumed to have the authority and responsibility for planning, directing and controlling the activities of the entity and are therefore considered as key management personnel of the entity. The term 'or otherwise' is intended to cover non-executive directors and supervisory board members, as well as those who have responsibility for the management and direction of a significant part of the business without holding the title 'director'.

b. Whether sitting fees paid to an independent director and Non-executive director is required to be disclosed in the financial statements prepared as per Ind AS?

Non-executive directors are covered under the definition of key management personnel. The sitting fees paid to directors will fall under the definition of "Short-term employee benefits" as

per Ind AS 19 and is required to be disclosed separately in accordance with the paragraph 17 of Ind AS 24.

c. Which amount should be disclosed as compensation if employee stock options are received by key management personnel?

Ind AS 24 does not specify a basis on which the compensation disclosed should be determined. One basis would be to disclose an amount based on the expense under Ind AS 102. Another basis would be to disclose amounts based on the fair value that the individual received (based on the value of the shares at the date of vesting, or at date of exercise of share options or the cash that is ultimately payable) rather than over the period of the service. An entity should adopt a consistent accounting policy for determining the amounts disclosed.

d. Whether two entities are related to each other if they have a common director?

Two entities are not related parties simply because they have a director or other member of key management personnel in common.

e. Should an entity disclose its transactions with fellow subsidiaries as a separate category?

The required disclosure categories include transactions with the parent and transactions with subsidiaries. Separate disclosure is recommended to be made in respect of fellow subsidiaries, although this is not specifically identified as a separate category in Ind AS 24.

f. Are there any exemptions for Government-related entities?

A 'government-related entity' is an entity that is controlled, jointly controlled or significantly influenced by a government. 'Government' in this context refers to government, government agencies and similar bodies, whether local, national or international.

Related party transactions with government-related entities are subject to certain disclosure exemptions, with additional disclosure requirements depending on whether the transaction is individually significant or collectively significant and its consequent effect on the financial statements.

Even if full disclosure is exempt, the entity must disclose the name of the government and the nature of the relationship, sufficient information about significant transactions with government-related entities to allow users to understand the effect on financial statements and the nature and extent of these transactions.

10. Conclusion

Ind AS 24 enhances financial statement transparency by requiring entities to disclose their related party relationships and transactions. Given the potential for conflicts of interest or non-arm's length terms, robust documentation, proper identification, and clear disclosures are critical for compliance. ■

WINNERS

Rank	*Name*	*Topic*	*Name of University / Institution*
1	**Mr. Dhruv Parekh**	Intellectual Property Rights: Balancing Creativity and Accessibility	GBCA & Associates LLP Chartered Accountants
	Ms. Moray Sahitya	Government strategies to combat corruption and white-collar crime	Master Minds
2	**Ms. Bhavya Prajapati**	Intellectual Property Rights: Balancing Creativity and Accessibility	K. C. Mehta & Co LLP, Vadodara
3	**Mr. Akash Sahu**	Intellectual Property Rights - Balancing Creativity and Accessibility	National Law Institute University Bhopal
	Mr. Sudhanwa Joshi	Data Privacy Regulations in the Digital Age	Government Law College, Mumbai
4	**Ms. Ashvi Jain**	Intellectual Property Rights - Balancing Creativity and Accessibility	GBCA & Associates LLP Chartered Accountants
	Mr.Ved Haravara	Data Privacy Regulations in the Digital Age	GBCA & Associates LLP Chartered Accountants
5	**Mr. Shaikh Haris Iqrar**	Data Privacy regulations in the digital age	Smt. CHM College, Ulhasnagar
	Mr. Moksh Gada	Intellectual property rights: balancing creativity and accessibility	GBCA & Associates LLP Chartered Accountants
6	**Ms. Mahek Talreja**	Intellectual Property Rights: Balancing Creativity and Accessibility	GBCA & Associates LLP Chartered Accountants

GOVERNMENT STRATEGIES TO COMBAT CORRUPTION AND WHITE-COLLAR CRIME



Moray Venkata Sahitya

India Ranked 85th Out of 180 Countries in the Corruption Perceptions Index 2023, Reflecting How Deeply Corruption has Infiltrated Our Systems

"Sir, your file is still under review. But, a little 'incentive' might speed things up!!!"

This seemingly harmless suggestion, whispered across government offices and corporate corridors, represents a deep-rooted issue in India—corruption. It isn't just about petty bribes; it extends to high-stakes financial frauds, corporate scams, and bureaucratic misconduct.

White-collar crimes—committed by the elite in powerful positions—don't just drain the economy; they erode public trust, discourage investments, and create an unequal society. From the infamous Harshad Mehta securities scam that shook the stock market to the Vijay Mallya fraud case that exposed banking loopholes, these financial crimes have cost the nation billions.

But the real question is—can we break this cycle?

Governments worldwide are deploying multi-dimensional strategies to combat corruption and financial crimes. India, too, has taken bold steps—leveraging technology, strengthening legal frameworks, and enhancing transparency in governance. From the Lokpal Act and whistleblower protection to Artificial Intelligence-driven surveillance in financial transactions, the fight against corruption is evolving.

But laws alone won't solve the problem. The real battle lies in changing mindsets, fostering accountability, and promoting ethical leadership at all levels. Can we envision an India where integrity triumphs over greed? Where governance is built on trust, not transactions?

As we dive into this exploration of government strategies, one thing is clear—the war on corruption isn't just the government's fight; it's ours too.

Breaking Down the Title

Every word in the title holds significance, reflecting the hidden battle against corruption and financial deception:

- **Government Strategies** – The policies, laws, and mechanisms implemented to counter corruption and financial crimes effectively.
- **Combat** – The active fight against fraud and unethical practices, ensuring legal accountability and justice.

- **Corruption** – The abuse of power for personal gain, affecting everything from government policies to business transactions.

- **White-Collar Crime** – Financially motivated, non-violent crimes committed by influential individuals, often disguised under the pretense of legality.

"Corruption is paid by the poor."
– Pope Francis

The Billion-Dollar Deception: A Case That Shook the World

In 2008, the financial world stood still as the Satyam scandal unfolded. Dubbed "India's Enron," the company's chairman, Ramalinga Raju, confessed to inflating profits by over $1 billion, misleading investors, regulators, and employees. It wasn't just an accounting fraud—it was a mirror reflecting the deep-rooted corruption within corporate structures worldwide.

This case serves as a stark reminder that white-collar crimes don't just affect businesses; they cripple economies, destroy livelihoods, and erode public trust in institutions.

"The only thing necessary for the triumph of evil is for good men to do nothing."
– Edmund Burke

A Utopian Dream vs. Reality

Imagine a country where:

- Every rupee allocated for public welfare reaches its destination.

- No bribes are needed to access basic rights and services.

- Business and governance operate with complete transparency.

A dream? Yes. But reality tells a different story. Corruption and white-collar crimes distort economies, widen wealth gaps, and infiltrate every layer of society—from billionaires evading taxes to bribery in local offices. The consequences are devastating, leaving ordinary citizens to bear the burden of systemic greed.

"The price of apathy towards public affairs is to be ruled by evil men."
– Plato

The Year is 2050 – How We Finally Eliminated Corruption

A fictional news report from the future:

"Breaking News! In the year 2050, the world has finally eradicated corruption! Governments, businesses, and citizens have united to ensure transparency at every level. AI-powered surveillance detects fraudulent transactions, blockchain secures public funds, and whistleblowers are honored as national heroes. But how did we achieve this transformation? Let's revisit the key strategies that led to this historic victory."

A Letter from the Future: A Corruption-Free World

Dear 2050,

We finally did it. Corruption is no longer a way of life. Governments are accountable, businesses are ethical, and justice is swift. AI and blockchain safeguard our financial systems, while whistleblowers are celebrated as heroes. Our children grow up in a world where integrity is the norm, not the exception. The dream that once seemed impossible is now a reality.

Government Strategies: The SWOT Analysis of Anti-Corruption Measures Strengths

- **AI-Based Fraud Detection** – Advanced algorithms detect financial misconduct in real-time. In 2025, an AI system exposed a politician's attempt to transfer illicit funds offshore.
- **Blockchain for Transparency** – Decentralized ledgers now track all government transactions, preventing fund misappropriation.
- **Stringent Anti-Corruption Laws** – Enforcing harsher penalties and mandatory audits for public servants.
- **Independent Anti-Corruption Agencies** – Strengthening institutions like the Lokpal in India and similar bodies worldwide.

Weaknesses

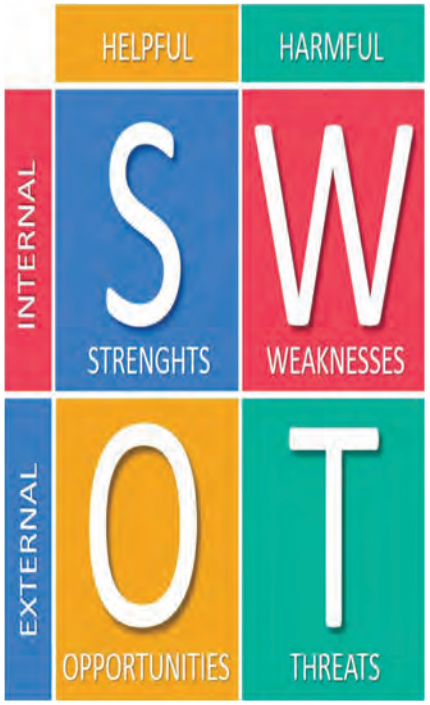
- **Loopholes in Laws** – Despite stricter policies, some individuals manipulate legal systems to escape justice.
- **Bureaucratic Red Tape** – Lengthy judicial processes delay corruption cases, enabling criminals to evade accountability.
- **Lack of Global Coordination** – Corruption networks often operate internationally, requiring stronger intergovernmental cooperation.

Opportunities

- **Whistleblower Protection** – Encouraging individuals to report corruption without fear of retaliation. In 2028, a whistleblower exposed a billion-dollar scam, prompting major policy reforms.
- Public Awareness Campaigns – Ethics and anti-corruption education are now part of school curricula, fostering a new generation of accountable citizens.
- Strengthening Digital Governance – Automating processes to minimize human discretion in decision-making and eliminate bribery.

Threats

- **Political Influence** – Corrupt officials continuously attempt to weaken anti-corruption laws.
- **Technological Exploitation** – Cybercriminals find new ways to bypass AI and digital security systems.
- **Lack of Enforcement** – Even with strong laws, without proper enforcement, corruption persists.



Winning the War: Practical Solutions for a Corruption-Free World Technological Solutions

- **AI & Big Data Analytics** – Predicting and preventing fraudulent activities before they occur.
- **Blockchain Implementation** – Ensuring financial transactions remain transparent and tamper-proof.
- **Digital Governance** – Automating bureaucratic processes to eliminate bribery opportunities.
- **Facial Recognition for Government Officials** – Preventing impersonation and unauthorized access to government funds.

Legal & Policy Measures

- **Whistleblower Protection Laws** – Encouraging more people to come forward without fear.
- **Special Anti-Corruption Courts** – Fast-tracking trials to ensure swift justice.
- **Harsher Penalties** – Strengthening laws to deter financial fraud and white-collar crimes.
- **Transparency in Political Funding** – Regulating and monitoring donations to political parties to prevent undue influence.
- **Asset Recovery Mechanisms** – Tracking and reclaiming stolen public funds from corrupt officials.

Public Awareness & Citizen Activism

- **The Role of Media** – Investigative journalism exposing corruption at all levels.
- **Educational Reforms** – Instilling ethics and governance awareness from an early age.
- **Community Watchdogs** – Local committees monitoring government spending and business practices.
- **Stronger Civic Engagement** – Encouraging citizens to actively participate in governance and policy discussions.

"A nation will not be destroyed by those who do evil, but by those who watch and do nothing."
– Albert Einstein

Global Collaboration and Treaties

- **International Anti-Corruption Treaties**: Strengthening agreements like the United Nations Convention against Corruption (UNCAC) to ensure global cooperation in tracking and prosecuting cross-border financial crimes.
- **Extradition Agreements:** Simplifying the process to extradite corrupt individuals who flee to other countries to escape justice.
- **Global Financial Task Forces**: Establishing international task forces to monitor and regulate offshore accounts and tax havens.

Corporate Accountability

- **Mandatory ESG (Environmental, Social, and Governance) Reporting**: Requiring companies to disclose their ethical practices and financial transparency, making it harder to hide corrupt activities.
- **Independent Audits**: Enforcing mandatory third-party audits for all corporations, especially those handling public funds or contracts.
- **Corporate Whistleblower Programs**: Encouraging employees to report unethical practices within their organizations by offering legal protection and financial incentives.

Strengthening Local Governance

- **Decentralization of Power**: Empowering local governments and communities to manage resources and funds, reducing the concentration of power that often leads to corruption.
- **Community Audits**: Involving local citizens in auditing public projects and expenditures to ensure funds are used appropriately.
- **Transparency Portals**: Creating online platforms where citizens can track government spending and project progress in real-time.

Ethical Leadership and Training

- **Leadership Ethics Programs**: Mandating ethics training for all public officials and corporate leaders to instill a culture of integrity.
- **Moral Education in Schools**: Integrating ethics and civic responsibility into school curricula to raise a generation that values honesty and accountability.
- **Public Service Awards**: Recognizing and rewarding individuals and organizations that demonstrate exceptional integrity and transparency in their operations.

Leveraging Media and Technology

- **Crowdsourced Investigations:** Using platforms like social media to crowdsource information and evidence of corrupt practices, enabling faster and more widespread exposure.
- **Data Journalism**: Investing in investigative journalism that uses data analytics to uncover patterns of corruption and financial fraud.
- **Transparency Apps**: Developing mobile applications that allow citizens to report corruption anonymously and track the status of their complaints.

Are We Ready to Shine the Light?

If corruption thrives in darkness, are we ready to shine the light? The fight against corruption isn't about the future—it begins today. It requires collective effort, unwavering commitment, and the courage to hold power accountable.

Governments alone cannot win this battle. Every citizen must become a watchdog. The true test is not in enacting laws but in ensuring they are enforced. Will we continue to let corruption lurk in the shadows, or will we become the light that exposes it?

Case Laws & Legal Provisions

1. Introduction

Corruption and white-collar crimes undermine the economic and ethical foundations of a nation. Governments worldwide have implemented various **legal frameworks, enforcement agencies, and landmark judicial decisions** to combat such crimes effectively. This document explores key **legislations, case laws, and references** to understand how India and global jurisdictions tackle these offenses.

2. Key Legal Provisions in India

The **Indian legal system** has multiple laws addressing corruption and financial crimes, including:

- **Prevention of Corruption Act, 1988 (PCA)**
  - **Section 7**: Public servant taking undue advantage
  - **Section 13**: Criminal misconduct by public servants
- **Indian Penal Code, 1860 (IPC)**
  - **Section 420**: Cheating and dishonestly inducing delivery of property
  - **Section 409**: Criminal breach of trust by a public servant
- **Prevention of Money Laundering Act, 2002 (PMLA)**
  - **Section 3**: Definition of Money Laundering
  - **Section 4**: Punishment for Money Laundering
- **The Companies Act, 2013**
  - **Section 447**: Fraudulent activities in corporate governance
- **Benami Transactions (Prohibition) Act, 1988**
  - **Section 3:** Prohibition of benami transactions

3. Landmark Case Laws in India

3.1. *Vineet Narain vs. Union of India (1998) 1 SCC 226*

- **Issue**: CBI and Enforcement Directorate's inefficiency in handling high-profile corruption cases
- **Judgment**: Supreme Court directed greater independence for investigative agencies
- **Impact**: Led to structural reforms in **CBI & ED**

3.2. *State of M.P. vs. Sheetla Sahai (2009) 8 SCC 617*

- **Issue**: Public officials involved in **large**-scale corruption
- **Judgment**: Supreme Court emphasized **strict action against corruption in public offices**

3.3. Nirav Modi PNB Scam Case (2018)

- **Issue**: ₹ 11,400 crore fraud in Punjab National Bank using fraudulent LoUs
- **Legal Action**: Booked under **PMLA & IPC Sections 420, 467, 120B**

- **Impact**: Strengthened financial surveillance in **banking & fraud monitoring systems**

3.4. ***2G Spectrum Case (CBI v. A. Raja, 2017)***

- **Issue**: Irregularities in allocation of telecom licenses
- **Judgment**: Special CBI court acquitted all accused due to lack of evidence
- **Impact**: Highlighted the **need for strong prosecutorial mechanisms**

4. Global Legal Framework & Case Laws

4.1. **United States – Foreign Corrupt Practices Act (FCPA)**

- **Case**: United States v. Siemens AG (2008)
- **Issue**: Siemens paid **$1.6 billion in bribes across multiple countries**
- **Judgment**: Siemens paid **$800 million in fines**
- **Impact**: Strengthened **global anti-bribery enforcement**

4.2. **United Kingdom – Bribery Act, 2010**

- **Case**: Rolls-Royce Bribery Scandal (2017)
- **Issue**: Bribery payments to secure business deals in multiple nations
- **Judgment**: Rolls-Royce paid **£671 million in penalties**

5. Government Strategies to Combat Corruption

5.1. **Institutional Framework**

- **Lokpal & Lokayuktas Act, 2013** – Anti-corruption ombudsman
- **Central Vigilance Commission (CVC)** – Monitors corruption in government institutions

5.2. **Legislative Reforms**

- **Right to Information (RTI) Act, 2005** – Enhances transparency
- **Whistleblower Protection Act, 2014** – Protects informants

5.3. **Digital Initiatives**

- **Demonetization (2016)** – Curbing black money
- **Direct Benefit Transfer (DBT) Scheme** – Reduces leakages in government subsidies

6. Bibliography

1. Books & Reports

- "Corruption and Governance in India" by Subramanian Swamy
- Law Commission of India Report No. 254 on Prevention of Corruption

2. Government Websites & Acts

- Ministry of Law and Justice, Government of India

- Prevention of Corruption Act, 1988 – **Bare Act**

3. **Judgments & Case Laws**

- SCC Online (Supreme Court Cases)
- Manupatra (Legal Database)

The **fight against corruption and white-collar crime** requires **strong legal frameworks, effective enforcement, and public participation**. Landmark judgments and evolving government strategies have strengthened the regulatory landscape. However, **continuous reforms and technological advancements** remain crucial to tackling economic crimes globally.

A Powerful Conclusion

The fight against corruption and white-collar crime is not just the responsibility of governments or law enforcement agencies; it is a collective duty that falls on every citizen, every business, and every institution. The tools and strategies to combat these issues are within our reach—advanced technology, robust legal frameworks, and an informed and active citizenry. But the true challenge lies in our willingness to act, to demand accountability, and to refuse to accept corruption as an inevitable part of life.

As we look to the future, let us envision a world where transparency is the norm, where justice is swift and fair, and where the powerful are held to the same standards as the powerless. This vision is not a utopian fantasy; it is a achievable reality if we commit to the hard work of reform and vigilance.

The words of Edmund Burke echo through time: "The only thing necessary for the triumph of evil is for good men to do nothing." Let us not be the generation that stood by and allowed corruption to flourish. Let us be the generation that stood up, spoke out, and took action. The future is not written in stone—it is shaped by our actions today. Will you be part of the change?

The future is not written in stone – it is shaped by our actions today.
Will you be part of the change?

The time to act is now. The future depends on it. ■

" It is our own mental attitude which makes the world what it is for us Our thoughts make things beautiful Our thoughts make things ugly The whole world is in our own minds Learn to see things in the proper light. "

Swami Vivekananda

INTELLECTUAL PROPERTY RIGHTS: BALANCING CREATIVITY AND ACCESSIBILITY



Dhruv Parekh

Introduction

Intellectual Property Rights (IPRs) are pivotal in promoting innovation, creativity, and economic development. By granting creators exclusive rights over their inventions and works, IPRs incentivize the generation of new ideas and technologies. However, this exclusivity can sometimes impede public access, particularly in critical sectors like education, healthcare, and information technology. This essay delves into the intricate balance between protecting intellectual property and ensuring its accessibility, examining the legal, economic, and ethical dimensions of the issue.

1. Understanding Intellectual Property Rights

According to the World Intellectual Property Organization (WIPO), intellectual property encompasses creations of the mind, including inventions, literary and artistic works, designs, symbols, names, and images used in commerce. IPRs provide legal protections that enable creators to control and benefit from their creations, fostering an environment conducive to innovation and creativity. To better understand the scope of IPRs, it's essential to explore their various types first and then the importance.

Types of Intellectual Property Rights

Patents: Protect new inventions by granting exclusive rights to use, manufacture, and sell the invention for a specified period, typically 20 years.

Trademarks: Safeguard symbols, names, and slogans used to identify goods or services, helping consumers distinguish between different products and maintain brand integrity.

Copyrights: Protect original works of authorship, including literature, music, and art, granting creators exclusive rights to reproduce, distribute, and display their work.

Trade Secrets: Encompass confidential business information that provides a competitive edge, such as formulas, practices, or processes.

Industrial Designs: Protect the aesthetic aspects of a product, such as its shape, pattern, or colour, encouraging innovation in product appearance.

Geographical Indications: Signs used on products that have a specific geographical origin and possess qualities or a reputation due to that origin, like Darjeeling tea.

Importance of IPRs

Encouraging Innovation: By granting exclusive rights, IPRs provide inventors and creators with the incentive to develop new products and services.

Promoting Economic Growth: IP-intensive industries contribute significantly to GDP and employment, driving economic development.

Facilitating Knowledge Sharing: While IPRs protect creators, they also require the disclosure of information (as in patents), which can spur further innovation.

Enhancing Competitiveness: Strong IPR protection can attract investment and foster a competitive business environment.

2. The Economic Rationale for IPRs

IPRs play a crucial role in fostering economic growth by incentivizing innovation, attracting investments, and facilitating the dissemination of knowledge. By granting creators exclusive rights, IPRs encourage the development of new technologies and creative expressions, essential drivers of a knowledge-based economy.

Incentivizing Innovation and Investment

IPRs provide a legal framework that allows inventors and creators to reap the benefits of their efforts, motivating continued innovation. This exclusivity is vital for recouping research and development (R&D) investments, especially in sectors like pharmaceuticals and technology, where costs and risks are substantial.

Contribution to Economic Growth

Empirical studies have demonstrated a positive correlation between robust IPR protection and economic performance. Countries with effective IPR regimes often experience increased foreign direct investment, higher levels of innovation, and enhanced competitiveness in global markets.

Facilitating Technology Transfer and Knowledge Dissemination

Strong IPR systems can promote the transfer of technology by providing a secure environment for sharing proprietary knowledge. Multinational corporations are more likely to invest in countries where their intellectual assets are protected, leading to the diffusion of advanced technologies and practices.

Encouraging Creative Industries

Beyond technological innovation, IPRs are vital for the growth of creative industries such as music, film, literature, and software. These sectors rely on copyrights and related rights to safeguard creators' interests, ensuring fair compensation for their work.

3. Accessibility Challenges in Key Sectors

While Intellectual Property Rights (IPRs) are designed to incentivize innovation and creativity, they can inadvertently create barriers to access in critical sectors such as healthcare, education, and technology. These challenges are particularly pronounced in developing countries, where resource constraints exacerbate the impact of IPR-related restrictions.

Healthcare

In the healthcare sector, patents on essential medicines can lead to high prices, limiting access for populations in low- and middle-income countries. For instance, extensive patent protection can delay the introduction of generic drugs, keeping life-saving treatments out of reach for many. The COVID-19 pandemic highlighted these issues, as patent disputes and proprietary technologies hindered the rapid and equitable distribution of vaccines and treatments. This situation exemplifies the "tragedy of the anticommons," where multiple patent holders can block each other's use of a resource, leading to underutilization and restricted access.

Education

Educational materials, including textbooks and academic journals, are often protected by copyrights, making them expensive and less accessible to students and educators, especially in developing regions. The shift to online learning during the COVID-19 pandemic further exposed these challenges, as many institutions struggled to provide affordable digital resources. The reliance on copyrighted materials can limit the dissemination of knowledge and hinder educational development.

Technology

In the technology sector, patents can create barriers to innovation and access, particularly when it comes to emerging technologies like artificial intelligence (AI). The complexity of patent landscapes and the high costs associated with licensing can deter smaller entities and developing countries from participating in technological advancements. Additionally, the lack of harmonization in international IP laws can complicate access to technology across borders.

Addressing the Challenges

To mitigate these accessibility challenges, several strategies can be employed:

- *Compulsory Licensing*: Governments can issue compulsory licenses to allow the production of generic versions of patented medicines, improving access to essential drugs.
- **Open Educational Resources (OER)**: Promoting the development and use of OER can reduce reliance on expensive copyrighted materials, enhancing educational access.
- **Patent Pools and Licensing Agreements:** Encouraging collaborative licensing arrangements can lower barriers to technology access and foster innovation.

By implementing such measures, it is possible to balance the protection of intellectual property with the need for accessibility in key sectors, ensuring that the benefits of innovation are widely shared.

4. Legal Framework: Global and Indian Context

The protection and enforcement of Intellectual Property Rights (IPRs) are governed by a complex interplay of international treaties and national laws. Understanding this legal framework is essential to appreciate how IPRs function globally and within India.

4.1 Global Legal Framework

At the international level, several treaties and agreements establish the standards for IPR protection:

- **World Intellectual Property Organization (WIPO)**: WIPO administers numerous treaties that harmonize IPR laws across countries. Notably, the **WIPO Copyright Treaty** and the **WIPO Performances and Phonograms Treaty** address challenges posed by digital technologies.

- **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS):** Administered by the World Trade Organization (WTO), TRIPS sets minimum standards for IPR protection and enforcement. It covers areas such as copyrights, trademarks, patents, geographical indications, industrial designs, and trade secrets.

- **Recent Developments:** In May 2024, WIPO member countries adopted a treaty requiring patent applicants to disclose the origin of genetic resources and associated traditional knowledge used in their inventions. This aims to ensure transparency and recognize the contributions of indigenous communities.

These international agreements aim to balance the rights of creators with public interest, facilitating innovation while ensuring access to knowledge and resources.

4.2 Indian Legal Framework

India's IPR regime is comprehensive, aligning with international standards while addressing domestic socio-economic considerations.

- **The Patents Act, 1970**: Governs the protection of inventions, with amendments in 1999, 2002, and 2005 to comply with TRIPS obligations.

- **The Trade Marks Act, 1999**: Provides for the registration and protection of trademarks, including service marks.

- **The Copyright Act, 1957**: Protects original literary, dramatic, musical, and artistic works, with significant amendments in 2012 and 2021 to address digital and administrative challenges.

- **The Designs Act, 2000**: Safeguards the visual design of objects, ensuring protection for industrial designs.

- **The Geographical Indications of Goods (Registration and Protection) Act, 1999:** Protects products with specific geographical origins, such as Darjeeling tea and Basmati rice.

- **The Protection of Plant Varieties and Farmers' Rights Act, 2001:** Recognizes and protects the rights of plant breeders and farmers.

- **The Semiconductor Integrated Circuits Layout-Design Act, 2000**: Provides protection for the layout designs of semiconductor integrated circuits.

- India's IPR laws are administered by the Office of the Controller General of Patents, Designs & Trade Marks (CGPDTM), under the Department for Promotion of Industry and Internal Trade (DPIIT).

Furthermore, in 2016, India introduced the **National IPR Policy**, aiming to promote

awareness, strengthen enforcement mechanisms, and encourage innovation.

India's legal framework strives to balance the protection of IPRs with public interest, ensuring that innovation and creativity flourish while safeguarding access to essential goods and knowledge.

5. Balancing Mechanisms and Policy Tools

The intricate interplay between safeguarding intellectual property rights (IPRs) and ensuring public accessibility necessitates a suite of mechanisms and policy tools. These instruments aim to uphold the rights of creators while addressing societal needs, particularly in sectors like healthcare, education, and technology.

5.1 Compulsory Licensing

Compulsory licensing permits governments to authorize the use of patented inventions without the patent holder's consent, primarily to address public health emergencies. The TRIPS Agreement under the World Trade Organization (WTO) provides for such flexibilities, enabling member states to prioritize public health over patent rights when necessary. India has effectively utilized this provision, notably in the pharmaceutical sector, to enhance access to essential medicines.

5.2 Voluntary Licensing and Patent Pools

Voluntary licensing involves patent holders granting licenses to third parties, often generic manufacturers, to produce and distribute patented products. This approach has been instrumental in expanding access to treatments for diseases like HIV and Hepatitis C. Patent pools, where multiple patent holders aggregate their patents and offer them collectively, further streamline access to complex technologies, reducing transaction costs and fostering innovation.

5.3 Open Access and Open-Source Initiatives

Open access policies promote the unrestricted sharing of research outputs and educational resources, enhancing the dissemination of knowledge. Open-source software models encourage collaborative development and sharing of technological innovations, fostering inclusivity and rapid advancement. These initiatives are particularly beneficial in academia and research, where they facilitate broader participation and innovation.

5.4 Fair Use and Exceptions

Fair use provisions in copyright law allow limited use of protected works without permission, facilitating activities like education, research, and commentary. These exceptions are vital for maintaining a balance between the rights of creators and the public's interest in accessing information. They ensure that copyright protection does not stifle creativity and the free flow of ideas.

5.5 National IPR Strategies

Developing comprehensive national IPR strategies enables countries to align their intellectual property policies with broader socio-economic goals. These strategies often encompass measures to strengthen IP enforcement, promote awareness, and support innovation ecosystems. India's National IPR Policy, for instance, aims to foster creativity and innovation while ensuring the protection of public interest.

5.6 International Agreements and Declarations

International frameworks like the Doha Declaration reaffirm the importance of balancing IPRs with public health imperatives. Such agreements emphasize the need for flexibility in IP laws to accommodate the diverse needs of member countries, particularly in ensuring access to essential medicines and technologies.

In conclusion, a combination of legal provisions, collaborative initiatives, and strategic policies is essential to harmonize the protection of intellectual property with the imperative of public accessibility. These mechanisms collectively contribute to a more equitable and innovative global landscape.

6. Case Studies and Contemporary Examples

Examining real-world instances provides valuable insights into how Intellectual Property Rights (IPRs) can be managed to foster innovation while ensuring public access. Below are notable case studies and contemporary examples that illustrate this balance:

6.1 The Doha Declaration and Access to Medicines

In 2001, the World Trade Organization (WTO) adopted the Doha Declaration on the TRIPS Agreement and Public Health. This declaration affirmed that the TRIPS Agreement should not prevent members from taking measures to protect public health. It allowed for the use of compulsory licensing to enable access to essential medicines, particularly in developing countries. This framework has been instrumental in addressing public health crises by ensuring that life-saving drugs are accessible to those in need.

6.2 The Case of the HIV/AIDS Antiretroviral Drugs

During the HIV/AIDS crisis, many developing countries faced challenges in accessing antiretroviral drugs due to patent protections. In response, countries like India issued compulsory licenses for generic versions of these drugs, significantly reducing costs and expanding access.

This approach demonstrated how IPR flexibilities could be utilized to address public health needs without undermining the incentive for innovation.

6.3 The Open Access Movement in Academic Publishing

The Open Access movement advocates for the free availability of research outputs, challenging traditional publishing models that often place academic articles behind paywalls. By promoting the unrestricted sharing of knowledge, this movement has facilitated greater dissemination of research findings, particularly benefiting researchers and institutions in low-resource settings. However, it also raises questions about the sustainability of publishing models and the protection of authors' rights.

6.4 The Case of the BRICS Patent Pool Initiative

In an effort to enhance access to essential medicines, the BRICS countries (Brazil, Russia, India, China, and South Africa) have explored the establishment of a patent pool for HIV/AIDS treatments. This initiative

aims to consolidate patents and facilitate the production of generic versions of antiretroviral drugs, thereby reducing costs and improving access in member countries. It exemplifies a collaborative approach to balancing IPRs with public health objectives.

6.5 The Role of Traditional Knowledge and Geographical Indications

Traditional knowledge and cultural expressions often face challenges in the context of IPRs, particularly concerning misappropriation and lack of recognition. Geographical Indications (GIs) serve as a mechanism to protect products that have a specific geographical origin and possess qualities or a reputation due to that origin. For instance, the protection of Darjeeling tea under GI status has helped preserve traditional practices and ensured fair economic returns to local producers. This approach balances the protection of cultural heritage with economic interests.

7. The Way Forward

Achieving a harmonious balance between safeguarding Intellectual Property Rights (IPRs) and ensuring public accessibility requires a multifaceted approach. Drawing from global best practices and India's evolving landscape, the following practices can be the best suited:

7.1 Strengthening Legal Frameworks with Public Interest Considerations

Countries should develop and implement national IPR policies that explicitly incorporate public interest considerations. For instance, India's National IPR Policy aims to foster creativity and innovation while ensuring the protection of public interest. Such policies should align with international agreements like the TRIPS Agreement, which allows for flexibilities such as compulsory licensing to address public health needs.

7.2 Promoting Open Access and Open-Source Models

Encouraging open access to research outputs and adopting open-source software models can facilitate the dissemination of knowledge and technology. Initiatives like the Budapest Open Access Initiative and Creative Commons licenses provide frameworks for sharing intellectual works while respecting the rights of creators.

7.3 Implementing Fair Use and Exceptions in Copyright Law

Incorporating fair use provisions and exceptions in copyright law can support activities like education, research, and commentary. These exceptions are vital for maintaining a balance between the rights of creators and the public's interest in accessing information, ensuring that copyright protection does not stifle creativity and the free flow of ideas.

7.4 Establishing Patent Pools and Collaborative Licensing

Patent pools, where multiple patent holders aggregate their patents and offer them collectively, can simplify access to technologies, reduce transaction costs, and mitigate the risk of litigation. Such collaborative licensing arrangements are particularly beneficial in sectors like telecommunications and biotechnology, where complex technologies often involve numerous patents.

7.5 Enhancing Public Awareness and Capacity Building

Governments and institutions should invest in public awareness campaigns and capacity-building programs to educate stakeholders about the importance of IPRs and the available mechanisms to balance protection with accessibility. This includes training for policymakers, educators, and the general public on the nuances of IPRs and their implications.

7.6 Encouraging International Collaboration and Policy Harmonization

International cooperation is essential to address global challenges related to IPRs. Countries should engage in dialogues and negotiations to harmonize policies, share best practices, and develop international frameworks that balance the protection of IPRs with the need for public access. The Doha Declaration on the TRIPS Agreement and Public Health exemplifies such collaborative efforts.

7.7 Leveraging Technology for Efficient IPR Management

The adoption of digital tools and platforms can streamline the management and enforcement of IPRs. Technologies like blockchain can enhance transparency and traceability in IP transactions, while artificial intelligence can assist in detecting infringements and managing IP portfolios more effectively.

Conclusion

Intellectual Property Rights (IPRs) serve as a cornerstone of modern innovation, fostering creativity and economic growth. However, the evolving landscape of technology, healthcare, and education necessitates a critical examination of how these rights are balanced with public access. While IPRs incentivize innovation by granting creators exclusive rights, they must not impede the dissemination of knowledge or access to essential goods and services.

International frameworks like the TRIPS Agreement and initiatives such as the Doha Declaration underscore the importance of aligning IPRs with public health and development goals. These agreements provide mechanisms, including compulsory licensing, to ensure that IPRs do not restrict access to critical medicines and technologies. Similarly, national policies, exemplified by India's National IPR Policy, aim to harmonize the protection of intellectual property with the broader objectives of societal welfare and economic development.

Case studies, such as the use of compulsory licensing in the pharmaceutical sector and the promotion of open access in academic publishing, illustrate practical applications of these principles. These examples demonstrate that with thoughtful policy design and international cooperation, it is possible to safeguard the interests of creators while ensuring that the benefits of innovation are widely accessible.

Looking forward, it is imperative to continue refining IPR frameworks to address emerging challenges. This includes adapting to digital transformations, ensuring equitable access to knowledge, and protecting traditional knowledge and cultural expressions. By fostering a balanced approach, we can create an environment where intellectual property rights contribute to both innovation and the public good.

In conclusion, the dynamic interplay between IPRs and public accessibility requires ongoing dialogue, informed policymaking, and international collaboration. Through such efforts, we can ensure that intellectual property serves its intended purpose: to promote progress and enrich society as a whole.

Bibliography

1. Understanding Intellectual Property Rights

- World Intellectual Property Organization (WIPO). What is Intellectual Property? https://www.wipo.int/about-ip/en/
- World Trade Organization (WTO). TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights. https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

2. The Economic Rationale for IPRs

- Organisation for Economic Co-operation and Development (OECD). The Economic Impact of Counterfeiting and Piracy. https://www.oecd.org/industry/theeconomicimpactofcounterfeitingandpiracy.htm

3. Accessibility Challenges in Key Sectors

- World Health Organization (WHO). (2017). Access to Medicines: Making Market Forces Serve the Poor. https://www.who.int/publications/i/item/9789241565516
- UNESCO. (2012). Global Education Digest 2012: Opportunities Lost: The Impact of Grade Repetition and Early School Leaving. https://unesdoc.unesco.org/ark:/48223/pf0000215670

4. Legal Framework: Global and Indian Context

- World Trade Organization (WTO). TRIPS and Public Health. https://www.wto.org/english/tratop_e/trips_e/pharmpatent_e.htmWorld Trade Organization
- Government of India. (2016). National Intellectual Property Rights Policy 2016. https://www.ipindia.gov.in/writereaddata/Portal/Images/pdf/National_IPR_Policy_English.pdfIntellectual Property India

5. Balancing Mechanisms and Policy Tools

- World Trade Organization (WTO). Declaration on the TRIPS Agreement and Public Health._https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm World Trade Organization

- Medicines Patent Pool. About Us. https://medicinespatentpool.org/who-we-are/about-us Global Commission on HIV and the Law+2WIPO+2UNAIDS+2

- Creative Commons. About The Licenses. https://creativecommons.org/licenses/

6. Case Studies and Contemporary Examples

- World Health Organization (WHO). Public Health, Innovation and Intellectual Property Rights. https://www.who.int/intellectualproperty/documents/thereport/ENPublicHealthReport.pdf

- World Intellectual Property Organization (WIPO). Geographical Indications: Darjeeling Tea. https://www.wipo.int/geo_indications/en/darjeeling.html

7. The Way Forward

- World Intellectual Property Organization (WIPO). Development Agenda. https://www.wipo.int/ip-development/en/agenda/

- United Nations Conference on Trade and Development (UNCTAD). The Least Developed Countries Report 2010: Towards a New International Development Architecture for LDCs. https://unctad.org/webflyer/least-developed-countries-report-2010

■

"Work for work's sake. There are some who are really the salt of the earth in every country and who work for work's sake, who do not care for name, or fame, or even to go to heaven. They work just because good will come of it. There are others who do good to the poor and help mankind from still higher motives, because they believe in doing good and love good. The motive for name and fame seldom brings immediate results, as a rule; they come to us when we are old and have almost done with life."

Swami Vivekananda

SUPREME COURT



Keshav B. Bhujle
Advocate

1 CIT VS. MEERA GOYAL (2025) 476 ITR 152 (SC) DATED 24/04/2025

Income from other sources or no income — Money received without consideration — Advance received under agreement to sell forfeited by assessee — AO assessed as unexplained income — CIT(A) and Tribunal deleted the addition — High Court held that the Tribunal was right in holding the receipt would go to reduce cost of acquisition of asset and dismissed the appeal filed by Department — Supreme Court dismissed the special leave petition filed by the Revenue: Ss. 51 and 56(2)(vi) of ITA, 1961: A. Y. 2007-08

The assessee entered into an agreement to sell certain property and Received ₹ 18 crores as earnest money. Subsequently, the assessee forfeited the earnest money and the amount was claimed as capital receipt in relation to the A. Y. 2007-08. The Assessing Officer made a reference to the Additional Commissioner, but contrary to the latter's direction, held that the entire transaction was a sham transaction in which the purchaser attempted to save tax and brought the sum of ₹ 18 crores to tax.

The Commissioner (Appeals) held that the Assessing Officer had to abide by the directions of the Additional Commissioner and gave a finding that no incriminating material which had any adverse implication in relation to the genuineness of the transaction was found in the survey at the premises of the assessee, and that the earnest money was received through banking channel and the genuineness of the receipt was not in dispute. The Tribunal agreed with the Commissioner (Appeals).

In appeal before the High Court the Department sought to tax the sum as income from other sources u/s. 56(2)(vi) of the Income-tax Act, 1961. The Delhi High Court dismissed the appeal filed by the Department and held as under:

"i) The plea based on the provisions of section 56(2)(vi) having not been invoked before the Tribunal, could not be entertained. Even otherwise, to entertain the plea based on section 56(2)(vi) the transaction should be shown to be without any consideration,

ii) The Tribunal had rightly noted that the provisions of section 51 would come into play and that once the transaction

had been held to be genuine, there was no question of the transaction being without any consideration."

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

"i) Having heard Mr. Rupesh Kumar, the learned senior counsel appearing for the appellant-Revenue and having gone through the materials on record, we find no good reason to interfere with the impugned order dated January 17, 2013 passed by the High Court of Delhi at New Delhi in I.T.A. No. 1263 of 2011 [***CIT vs. Meera Goyal, (2014) 360 ITR 346 (Delhi); 2013 SCC OnLine Del 242***].

ii) The civil appeal is, accordingly, dismissed."

2 DY. CIT VS. UNDERCARRIAGE & TRACTOR PARTS (P) LTD. (2025) 476 ITR 3 (SC) DATED 02/05/2025

International transaction – Draft assessment order – Assessee intimating AO of intention to file objection before DRP – Assessment order passed confirming draft order without waiting for prescribed time – Assessee unaware of order and filing objection before DRP – After receiving order of AO, assessee informing DRP of it and of its having filed appeal against it – DRP, notwithstanding, issuing direction and AO passing another assessment order in compliance therewith – High Court quashing direction of DRP and assessment order passed consequent thereto – Supreme Court dismissed the special leave petition filed by the Revenue and held that no reason to take different view: S. 144C of ITA, 1961: A. Y. 2015-16

In response to the draft assessment order issued by the Assessing Officer, the assessee informed the Assessing Officer of its intention of filing objections before the Dispute Resolution Penal (DRP), but the Assessing Officer passed the final assessment order confirming the draft assessment order, without waiting for the mandatory period of 30 days provided u/s. 144C(2) of the Income-tax Act, 1961. Unaware of the order, the assessee filed its objections before the DRP. Once the assessee received the assessment order, the assessee informed the DRP that the later had no jurisdiction as to the assessment order (albeit illegal) had already been passed and that the assessee had already filed an appeal before the Commissioner (Appeals) against it. Notwithstanding this, the DRP proceeded to issue directions based on which another assessment order was passed.

The Bombay High Court allowed the writ petition filed by the assessee and quashed the direction issued by the DRP and the consequent assessment order.

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

"i) Delay condoned.

ii) After having heard the learned counsel appearing for the petitioners, we find no error in the view taken by the High Court [***Undercarriage and Tractor Parts Pvt. Ltd. vs. Dispute Resolution Panel,***

(2024) 460 ITR 401 (Bom); 2023 SCC OnLine Bom 2845] .

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

3 CIT (INTERNATIONAL TAXATION) VS. SALES FORCE.COM SINGAPORE (P) LTD. (2025) 476 ITR 8 (SC) DATED 15/04/2025

Non-resident – Royalty – Taxability in India – Assessee, tax resident of Singapore – Fees for provision of customer relationship management service application – High Court held that since copyright in application never transferred to or vested in subscriber, and customer merely accorded access to application, amount was not assessable in India – Supreme Court dismissed the special leave petition filed by the Revenue: S. 9(1)(vi) of ITA, 1961 and art. 12(4)(b) of DTAA between Singapore and India: A. Y. 2011-12 to 2017-18

Assessee is a tax resident of Singapore. On the question of taxability in India of income received by assessee from provision of customer relationship management services application, the Delhi High Court held as under:

"i) Since the copyright in the application was never transferred nor vested in the subscriber, the fees were not assessable u/s. 9(1)(vi) of the Income-tax Act, 1961,

ii) Since the customer was merely accorded access to the application and it was the subscriber which thereafter input the requisite data and took advantage of the analytical attributes of the software, this would clearly not fall within the ambit of article 12(4)(b) of the DTAA between Singapore and India, and therefore, the amount was not assessable in India."

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

"i) Delay condoned.

ii) After having heard the learned counsel appearing for the petitioner, we find no error in the impugned judgment of the High Court [***CIT (International Taxation) vs. Salesforce.com Singapore Pte. Ltd., (2024) 465 ITR 257 (Delhi); (2024) 3 HCC (Del) 725***].

iii) The special leave petition is accordingly dismissed."

4 ADDL. CIT VS. ANANTHA REDDY PANNALA (2025) 476 ITR 6 (SC) DATED 28/04/2025

Reassessment – Notice – Limitation – Last date for issue of notice expiring on 31/03/2021 – High Court held that notice dated 31/03/2021 had left Income-tax Business Application portal on or after 01/04/2021 and therefore barred by limitation and unsustainable – Supreme Court dismissed the special leave petition filed by the Revenue: S. 148 of ITA, 1961

The assessee filed a writ petition challenging the notice u/s. 148 of the Income-tax Act, 1961 on the ground of limitation. The Telangana High Court allowed the writ petition and held as under:

> "The notice u/s. 148 of the Act, dated March 31, 2021 had been issued (not served) on April 1, 2021 or on a later date. Since the notice had been dispatched from the Department on or after April 1, 2021 which itself was beyond the period of limitation, the notice issued u/s. 148, dated March 31, 2021, was barred by limitation u/ss. 148 and 149. Since the notice had left the Income-tax Business Application portal on or after April 1, 2021 and that therefore, it was unsustainable."

(See ***Kalyan Chillara vs. Dy, CIT: (2024) 465 ITR 729 (Telangana)***)

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

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

ii) Delay condoned.

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

5 PRINCIPAL CIT VS. AMRUTLAL MADHAVJIBHAI BHARAD (2025) 476 ITR 1 (SC) DATED 02/05/2024

Refund — TDS — Interest on compensation for compulsory acquisition of agricultural land — High Court directing refund of TDS on interest holding delay by assessee in claiming refund not attributable to assessee in absence of form 16A by deductor and in any case no tax payable on such interest — Supreme Court dismissed the special leave petition filed by the Department on ground of delay and on merits: Ss. 194LA and 244A of ITA, 1961 and R. 31(3) of ITR, 1962 and Form 16A: A. Y. 2013-14:

On a writ petition filed by the assessee seeking refund of the tax deducted at source on the interest on the compensation for acquisition of the assessees' agricultural land and for direction for grant of refund to the assessee u/s. 244A of the Income-tax Act, 1961; allowing the petition, the Gujarat High Court held as under:

"i) The assessees were not at fault for the delay in claiming refund as no tax was payable by the assessee on interest u/s. 194LA of the Act.

ii) The words "or the deductor, as the case may be," which were inserted with effect from April 1, 2017 were not applicable.

iii) In any case the delay in claiming the refund could not be attributed to the assesses as the assesses were not made aware about the deduction of tax at source in the absence of issuance of form 16A which was mandatorily required u/r. 31(3) of the Income-tax Rules, 1962."

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

"i) There is a gross delay of 371, 390 and 374 days, respectively, in filing the special leave petitions which has not been satisfactorily explained by the petitioners.

ii) Even otherwise, we see no good reason to interfere with the impugned orders passed by the High Court [***Mohanbhai Madhavjibhai Bharad vs. Pr. CIT, (2024) 465 ITR 313 (Guj); 2023 SCC OnLine Guj 4934***].

iii) The special leave petitions are, accordingly, dismissed on the ground of delay as well as merits."

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HIGH COURT



Jitendra Singh
Advocate



Radha Halbe
Advocate



Harsh Shah
Advocate

1 COMMISSIONER OF INCOME-TAX (TDS)-1 VS. LIBERTY RETAIL REVOLUTIONS LTD. [2025] 175 TAXMANN.COM 35 (DELHI)

TDS on CAM charges - Section 194C of the Income Tax Act, 1961 – CAM charges paid to promoter for maintenance of common area/facilities that were available along with leased premises - could not be brought within meaning of 'rent' as defined in section 194-I of the Act

Facts

The assessee, engaged in the business of fashion products, operated from premises in Ambience Mall owned by the Ambience Group. The assessee paid Common Area Maintenance (CAM) charges to the Ambience Group after deducting TDS at 2% under section 194C. While finalizing the assessment, the AO held that CAM charges were part of rental activity and required TDS deduction of tax at source under section 194I at 10%. On appeal the Ld. CIT(A) upheld the AO's view. The assessee being aggrieved by the order passed by Ld. CIT(A) preferred further appeal to the Income Tax Appellate Tribunal. Hon'ble ITAT held that CAM charges were not for use of land or building but for maintenance services, and thus fell under section 194C of the Act.

The department being aggrieved by the order of the ITAT challenged the same before the Delhi High Court under section 260A of the Act.

Ruling of the High Court

Hon'ble Delhi High Court was pleased to dismiss the revenue's appeal by observing that CAM charges are essentially for maintenance of common areas and not for use of premises. These charges are shared expenses for cleanliness, utilities, and upkeep, and cannot be construed as rent. Therefore, the ITAT had correctly hold that such payments fall under section 194C of the Act.

2 DEVAT AND RAM COMPANY (P.) LTD. VS. INCOME-TAX OFFICER [2025] 175 TAXMANN.COM 72 (DELHI)

Reassessment - Section 148A - Notice issued on the basis of information received from GST department - non consideration of assessee's response solely for reason of information on portal - would render procedure under section 148A meaningless

Facts

The AO had issued a notice under section 148A(b) of the Act on the basis of information received from the GST department alleging that the assessee had made bogus purchases from a Madhumita Steel Industries Pvt. Ltd (MSIPL). The assessee responded to the said notice and explained that it had purchased MS Ingots from MSIPL and provided supporting documents including purchase bills, E-way bills, transporter records, toll receipts, GST filings, and bank statements. The assessee also pointed out that similar proceedings initiated on the basis of same information against another entity Gold Feather Pvt. Ltd (GFPL) were dropped. Despite this, the AO passed an order under section 148A(d) of the Act and held that it is a fit case for issuing notice under section 148 of the Act relying solely on the portal information and ignoring the assessee's evidence. The AO had also issued notice under section 148 of the Act.

The assessee being aggrieved by the order passed under section 148A(d) as well as notice issued under section 148 challenged the same before the Hon'ble Delhi High Court.

Ruling of the High Court

Hon'ble High Court was pleased to set aside the order passed under section 148A(d) as well as notice issued under section 148 of the Act by observing that the AO failed to meaningfully consider the assessee's response and evidence. The Court emphasized that the procedure under section 148A must be meaningful and not a mere formality. The AO's reliance solely on portal data without verifying the assessee's documents rendered the reopening invalid. The Court clarified that reopening could be initiated only if new material emerges.

3 PR. CIT VS. A. H. MULTISOFT (P.) LTD. [2025] 175 TAXMANN.COM 46 (DELHI)

Income from Other Sources - Section 56(2)(viib) of the Income Tax Act, 1961 – Share Premium - Valuation of Unquoted Shares – DCF method is one of the methods that can be adopted under rule 11UA(2)(b) for determining FMV of unquoted equity shares

Facts

The assessee, holding a 20% stake in SAFL (a company in the FM radio business), subscribed to a rights issue of SAFL shares. To fund this, it issued shares to its own shareholders at ₹ 2,772 per share, based on a DCF valuation by a Chartered Accountant. While finalizing the assessment the AO rejected the DCF valuation citing disclaimers in the report and proceeded to determine the value of the shares at book value, concluding the FMV was negative. Consequently, the AO added ₹ 30.37 crore in the hands of the assessee under section 56(2)(viib) of the Act.

On appeal, the first appellate authority upheld the AO's view. The assessee being aggrieved by the order of the Ld. CIT(A). challenged the same before the Appellate Tribunal. The Appellate Tribunal accepted the DCF valuation and reversed the order of the Ld. CIT(A).

The department being aggrieved by the above order, preferred an appeal before the Hon'ble Delhi High Court under section 260A of the Act.

Ruling of the High Court

Hon'ble Delhi High Court was pleased to dismiss the appeal filed by the department by observing that DCF is a valid method under Rule 11UA(2)(b) for valuing unquoted shares. The AO failed to point out any specific error in the data or methodology used by the expert. Disclaimers in valuation reports are standard and not grounds for rejection. Since the valuation was substantiated and no mala fide intent was shown, the FMV determined by the assessee is to be accepted.

4 JC INTERNATIONAL VS. DY. CIT [2025] 175 TAXMANN.COM 380 (HIMACHAL PRADESH)

Special category States - Deduction - Section 80-IC of the Income Tax Act, 1961 - Substantial Expansion in the manufacturing unit - eligible for deduction beyond the period of 5 years subject to fulfillment of conditions enumerated under section 80-IC(8)(ix) of the Act

Facts

The assessee, engaged in manufacturing fans and geysers, commenced operations on 28.01.2004 and claimed 100% deduction under section 80-IC for five years. In the sixth year (AY 2010-11), the assessee undertook substantial expansion by investing more than 50% of the opening book value in plant and machinery and claimed continued 100% deduction under section 80-IC of the Act. The AO denied the claim, stating that substantial expansion benefits under section 80-IC were only available to units operational as of 07.01.2003. on appeal Ld. CIT(A) allowed the claim of the Assessee. However, on further appeal by the department, the Appellate Tribunal restricting the deduction to 25%, citing the Supreme Court's decision in ***CIT vs. Classic Binding Industries***.

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

Ruling of the High Court

Hon'ble High Court is pleased to allow the appeal of the assessee by observing that Appellate Tribunal's reliance on ***Classic Binding Industries [2018] 407 ITR 429 (SC)*** was misplaced as it had been overruled by a Constitution Bench of the Supreme Court in ***Pr. CIT vs. Aarham Softronics [2019] 412 ITR 623 (SC)***. The Court, therefore, held that an assessee who sets up a new industry and avails 100% deduction under section 80-IC(3) for five years can claim the same rate of deduction beyond five years if substantial expansion is carried out within the ten-year window on fulfilment of conditions enumerated under section 80-IC(8)(ix) of the Act.

5 CIT VS. VELLORE INSTITUTE OF TECHNOLOGY [2025] 175 TAXMANN.COM 277 (MADRAS)

Exemption of income from property held under Charitable Trust - Section 11 of the Act – AO had examined the relevant issues by issuing notice under section 142(1) – merely because AO had not recorded any discussions in the assessment order with respect to the submissions made by the assessee would not give authority to Ld. CIT to initiate revision under Section 263 of the Act

Facts

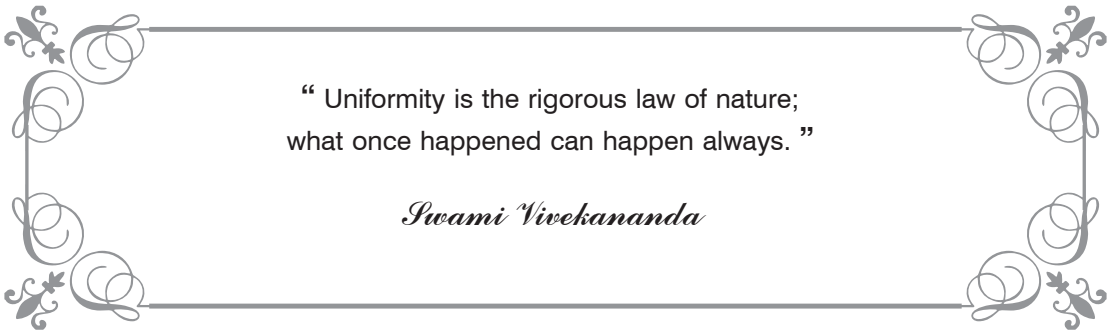
The assessee, a charitable educational institution, filed its return for AY 2009-10 claiming exemption under sections 11 and 12 of the Act. The AO issued a detailed questionnaire under section 142(1) with 34 queries, which the assessee responded to with explanations and documents. The AO passed an assessment order under section 143(3) allowing the exemption.

Subsequently, the Commissioner issued a notice under section 263, alleging that certain receipts (e.g., hostel fees, mess charges, electricity and water charges) were business income and that the AO had failed to verify the eligibility for exemption. The assessee challenged the same before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal was pleased to allow the appeal of the assessee and quashed the notice issued by Ld. CIT under section 263 of the Act.

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

Ruling of the High Court

Hon'ble High Court was pleased to dismiss the appeal of the revenue by observing that once the AO had raised queries and the assessee had responded, the absence of discussion in the assessment order implied indicates acceptance of the explanation. The Commissioner's action was deemed arbitrary and a fishing expedition, lacking a prima facie finding of error or prejudice to revenue. ■



TRIBUNAL





CA Nikhil Mutha *CA Viraj Mehta* *CA Kinjal Bhuta*
Advocate

1 UJWAL FOUNDATION VS. COMMISSIONER OF INCOME-TAX (EXEMPTION) [ITA NO. 167 AND 168/HYD/2025 DATED 6.6.2025] [AY 2025-26]

Section 12AB/80G - Non-commencement of activities at the time of application or registration cannot be the ground for denial without evaluating the trust's proposed activities

Facts

The assessee foundation was established vide Trust Deed dated 11/12/2021. The main objects of the assessee were to provide education, medical relief to the poor etc. The assessee applied for provisional registration under section 12A which was granted. Thereafter, the assessee filed application in Form 10AB seeking final registration under section 12A of the Income Tax Act, 1961 ('the Act'). The Ld. CIT(E) rejected the application on ground that no substantial charitable activities were being carried out by the assessee trust which was in violation of the provisions of section 11 and 12A of the Act. The Ld. CIT(E) has not disputed the charitable nature of the objects of the assessee trust, but the registration was denied solely on the ground that no substantial charitable activities are being carried out by the assessee trust. The assessee carried out the charitable activities in the subsequent year.

Held

The Hon'ble ITAT held that if the activities are yet to be commenced, it cannot be the case of the activities being non-genuine. If the proposed activities of the assessee trust are to achieve its objects, which are accepted as charitable in nature, then non-commencement of the activities at the time of filing the application or at the time of passing the order for grant of registration u/s 12AB cannot be a sole reason for denial of registration without considering the proposed activities of the assessee. The Hon'ble ITAT relied on the decision of the Hon'ble Supreme Court in the case of ***Ananda Social & Education Trust [2020] 114 taxmann.com 693*** wherein it has been held that the term "activity" under the provisions of section 12AA includes "proposed activities". The Ld. CIT(E) has dismissed the application summarily without discussing anything which could be held to be non-genuineness of the activities of the assessee. Only in the case where the assessee has already started or carried out its activities which were found to be not in line with the objects of the assessee, then the conditions as prescribed under section 12AB can be regarded as not satisfied. Accordingly, in the

facts and circumstances of the case, when the assessee has claimed to have carried out the charitable activities in the subsequent years, the same are required to be considered by the Ld. CIT(E). Hence, the Hon'ble ITAT set aside the impugned order of the Ld. CIT(E) and the matter was remanded to the record of the Ld. CIT(E) for fresh adjudication.

2 MAHAKOSHAL REFRACTORIES (P.) LTD. VS. INCOME-TAX OFFICER [ITA NO. 930/MUM/2025 DATED 16.6.2025] [AY 2017-18]

Section 37(1)/28(i) – Advance paid for a capital asset that became irrecoverable due to a failed deal is allowable as a deduction

Facts

The assessee-company was engaged in the manufacturing of refractories. The assessee made an advance payment of INR 20 lakhs for purchase of the land with a view to set up a factory thereon. However, the deal never went through. The assessee, thus, wrote off the amount in the books of account and claimed it as bad debt/business loss under section 37(1) of the Act. The Ld. AO disallowed the claim holding that it was not a debtor-creditor relationship pertaining to business and the advance was clearly for acquisition of a capital asset. Aggrieved by the assessment order passed by Ld. AO, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals). The Ld. CIT(A) upheld the order of the Ld. AO. Aggrieved by the said order passed by Ld. CIT(A), the assessee filed an appeal before the Hon'ble ITAT.

Held

The Hon'ble ITAT held that even if the advance written off is not allowable as a bad debt under section 37(1) of the Act, it can still be claimed as a business loss under section 28(1) of the Act. It noted that the assessee's advance for acquiring land adjacent to its factory for expansion was not disputed by the lower authorities with any contrary evidence. The amount of INR 20 lakhs spent was held to be for direct and immediate business benefit, incurred wholly and exclusively for business purposes on grounds of commercial expediency. The Hon'ble ITAT relied on the Hon'ble Bombay High Court's decision in ***Mahindra and Mahindra Ltd. vs. CIT [2023] 151 taxmann.com 332***, wherein it has been held that business losses, even if outside the scope of sections 30 to 37, are allowable under ordinary commercial principles of computing income. It was further held that treating a debt as a bad debt or as a business loss under section 28 is a commercial decision of the assessee, based on material in its possession. Once the assessee records it as a business loss in its books, it is prima facie evidence of non-recoverability, unless the AO has valid grounds to disagree. The Hon'ble ITAT, hence, allowed the appeal filed by the assessee.

3 ITO VS. NICAF LLP [ITA NO. 1880/MUM/2025 DT. 18.6.2025] [AY 2017-18]

Section 47(xiiib) – conversion of company to LLP – no amount taken out by partners – no violation of conditions prescribed – not unexplained credit in the hands of the assessee – criteria for condition u/s 68 not violated - no addition can be made (Sec. 68, 115BBE)

Facts

NICAF Private Limited is converted to NICALF LLP w.e.f. 2.12.2016, where in the balance sheet of NICALF, it was observed by AO that the assessee company had INR 11,95,410 as share capital and INR 2,71,66,498 as Reserves & Surplus before conversion. Assessee had taken both the balance as capital of the partners of M/s. NICAF LLP as per the financials of the company post conversion to LLP. The Ld. AO held that as the assessee has violated the conditions of Section 47(xiiib)(f) of the Act, where it cannot take any amount directly or indirectly to any partner, out of accumulated profit for a period of 3 years from the date of conversion and therefore treated the same as unexplained credit in the hands of the assessee and made an addition of INR 2,71,66,498 to the total income of the assessee u/s. 68 r.w.s. 115BBE of the Act. The Ld. CIT (A) deleted the addition on the ground that there has been no direct or indirect payment made to the partners' account from the LLP towards the accumulated profit for a period of 3 years and therefore held that Section 47(xiiib)(f) of the Act is not attracted as the transfer of the capital asset by private limited company to LLP has been tax neutral and as per the conditions specified in proviso (a) to (f) of the Section 47(xiiib)(f) of the Act. Being aggrieved with the order, appeal is filed before Hon'ble ITAT by the revenue.

Held

Hon'ble ITAT that though the Ld. AO has specifically mentioned that the assessee has violated the conditions u/s. 47(xiiib)(f) of the Act, he has proceeded to make addition u/s. 68 of the Act, which is specifically for credits in the books of the assessee for which the assessee offers no explanation as to the nature and source to the satisfaction of the Ld. AO. It is not the issue of credits found in the assessee's books of accounts rather it is the allegation that the assessee firm upon conversion to LLP has transferred the share capital and reserves and surplus to the partners' accounts, which is quite evident that the nature and source of the credit is not unexplained. Ld. AO has also erred in making addition in the hands of the assessee, when even assuming that there was transfer, it is the credit in the partners' account and not in the assessee's account. The violation of condition prescribed u/s. 47(xiiib)(f) of the Act is only with regard to the computation of capital gain u/s. 45 on certain transfers of a capital asset. The Ld. AO has failed to give a finding on the issue of whether the alleged transfer would be liable for capital gain and that to the same has to be in the hands of the transferor. Limited scope of the present appeal is pertaining to Section 68 addition which we have given a categorical finding that the same is not attracted. On above basis, revenue appeal filed was dismissed.

4 GOLDMAN TAPES PRIVATE LIMITED VS. ACIT [ITA NO. 547/MUM/2024 DT. 17.6.2025] [AY 2017-18]

Section 68 – Cash deposit – Cash of Specified Bank Notes ('SBN') made during demonetization period – Source of Cash Explained – Cash accepted during demonetization period a legal tender – Addition deleted

Facts

During the course of scrutiny assessment proceedings, the AO asked the assessee to explain the source of cash deposit (SBN) in the bank account during demonetisation period. Assessee filed detailed reply explaining that it has received SBNs on account of realization from the existing debtors during the demonetization period. Full details were submitted by the assessee. The Ld. AO concluded that the assessee cannot accept the demonetized currency from 09/11/2016 onwards as the same were not a legal tender with certain exceptions as notified in the gazette notification of Ministry of Finance bearing No. 2653 dated 08/11/2016 for any mandatory transactions and accordingly made the addition of ₹ 51.70 Lakhs. The Ld. CIT(A) confirmed the addition made in the assessment. Being aggrieved with the order, appeal is filed before Hon'ble ITAT.

Held

Hon'ble ITAT held that the assessee has successfully explained the source of the cash deposited in the bank accounts and has furnished complete details of realization from the debtors along with supporting evidence duly reflected in the regular books of accounts maintained by the assessee. The only reason for making the addition given by the Ld. AO is that the assessee should not have accepted the SBNs after 08/11/2016 being not legal tenders. It held that we are of the considered view that after assuming that it was not a legal tender for the assessee then the same was also not legal tender for the banks but the banks have accepted the deposit. Therefore, there is no merit in the accusation of the Ld. AO. Further, reliance was placed in coordinate bench case of ***Tamil Nadu State Marketing Corporation Ltd. vs. ACIT in ITA No. 431/Chn/2023*** as well. On said basis, Hon'ble ITAT allowed the appeal and deleted the addition.

5 VISTEX ASIA PACIFIC PRIVATE LIMITED VS. PCIT [ITA NO. 2849/MUM/2025 DT. 13.6.2025] [AY 2020-21]

Section 263 - CSR Expenses claimed as 80G deduction – debatable issue – neither erroneous nor prejudicial to the interest of revenue – 263 Order Invalid

Facts

Return was selected for scrutiny assessment and order u/s 143(3) r.w.s. 144B of the Act was framed and CSR expenditure of INR 26,93,080 which was claimed as donation u/s 80G of the Act was allowed. Ld. Pr. CIT issued a show cause notice to the assessee asking it to show cause why the assessment order should not be treated as erroneous and prejudicial to the interest of the revenue as 50% of the CSR expenditure of 26,93,080 was claimed as donation u/s 80G of the

Act. The ld. Pr. CIT went on to hold that the assessment order framed u/s 143(3) r.w.s. 144B of the Act was not only erroneous but prejudicial to the interest of the revenue and directed the AO to disallow the deduction u/s 80G of the Act in respect of donation claimed out of CSR expenditure. Being aggrieved with the order, appeal is filed before Hon'ble ITAT.

Held

Hon'ble ITAT held the issue raised by the Ld. Pr. CIT is a highly debatable issue as the Co-ordinate Benches of the Tribunal have taken a consistent view that CSR expenditure can be claimed as expenditure u/s 80G of the Act in the cases of ***Motilal Oswal Securities Ltd. (ITA No. 1795/Mum/2023, order dated 18.08.2023), Allegis Services India Pvt. Ltd. (ITA No. 1693/Bang/2019), JMS Mining Pvt. Ltd. [130 taxmann.com 118 (Kolkata Trib.)***] and ***Elan Pharma (India) Pvt. Ltd. vs. PCIT in ITA No. 2419/Mum/2025***. As the issue is highly debatable, any view taken by the AO during the course of original assessment proceedings has to be considered as a plausible view and the view taken by the Ld. Pr. CIT, howsoever plausible, was nothing but a change of opinion for which jurisdiction u/s 263 of the Act cannot be assumed. On said basis, Hon'ble ITAT allowed the appeal and directed to set aside the 263 order.

6 ST JOSEPH EDUCATIONAL TRUST VS. DCIT [ITA NO. 3293, 9394 AND 3295 TO 3297/CHNY/2024 DATED 6.6.2025] [AY 2018-19 TO 2020-21]

Section 270A/271AAB(1) – Penalty notice must clearly specify the charge; vague or omnibus notice vitiates penalty proceedings

Facts

Section 270A: The assessee is a public charitable trust running an Engineering College, registered under section 12AA of the Act and claiming exemption under section 11 of the Act. The assessee filed its return of income for AY 2018-19 declaring the gross receipts of INR 43.79 crores with Nil taxable income and disclosing the corpus donations of INR 5.88 crores. Pursuant to the search conducted at the premises of the assessee, it filed the return of income wherein the corpus donations were treated as voluntary donations since the donors refused to give the confirmation letters. Therefore, the assessee declared the total income of INR 49.67 crores and discharged the additional tax on the amount of shortfall in the application of funds. The Ld. AO accepted the return of income filed by the assessee and initiated penalty proceedings under section 270A of the Act. The assessee objected to levy the penalty by pointing out that since the returned income has been accepted during the assessment proceedings, the proposed penalty should be dropped. The Ld. AO rejected the plea of the assessee and the voluntary contribution admitted by the assessee was considered as the under-reported income. Aggrieved by the same, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) confirmed the order passed by the Ld. AO. Aggrieved by the order passed by Ld. CIT(A), the assessee filed an appeal before the Hon'ble ITAT.

The assessee submitted before the Hon'ble ITAT that the penalty notice issued is bad in law since the notice does not spell any specific charge/fault. Moreover, the Ld. AO had issued notice for underreporting of income/ misreporting of income rather that under-reporting of income or under-reporting as a consequence of mis-reporting of income.

Section 271AAB(1): Similarly for AY 2020-21, since the assessee could not submit the confirmation letters from the donors, it agreed to treat the corpus donations of INR 24 lakhs as voluntary donations. The assessee filed its return of income declaring the gross receipts of INR 49.41 crores (including INR 24 lakhs) and income of INR 78.75 lakhs representing anonymous donation under section 115BBC of the Act. The Ld. AO imposed penalty under section 271AAB(1) of the Act at the rate of 60% of the tax payable on the undisclosed income. Aggrieved by the order passed by the Ld. AO, the assessee filed an appeal before the Ld. CIT(A), however, the same was dismissed. The assessee filed an appeal before the Hon'ble ITAT.

Held

Section 270A: The Hon'ble ITAT held that before the penalty can be validly imposed, the procedural safeguard under section 274 of the Act needs to be scrupulously adhered to. Procedural safeguard ensures compliance with the principles of natural justice, giving the notice an opportunity to respond & explain why penalty should not be levied upon him. Therefore, issuing proper/legally valid notice to the assessee as stipulated u/s.274 of the Act is sine qua non for valid imposition of penalty. An omnibus SCN confuses the assessee and therefore, will not be able to defend the fault/charge which would be ultimately imposed upon him. Since the notice does not reveal whether the AO has initiated penalty for under-reporting of income as per sub-section (1) to (7) of section 270A of the Act or misreporting of income as per section (8) to (9) of section 270A of the Act, assessee couldn't be expected to defend the omnibus faults and resultantly, the fair hearing guaranteed under section 274 of the Act would stand defeated. The assessee should have been informed in the SCN with certainty and accurately of the exact nature of the fault alleged against it, which is absent in this case. Therefore, the levy of the penalty is void ab initio.

Section 271AAB(1): The Hon'ble ITAT held that when the statue requires the AO to give reasonable hearing before imposition of penalty, the AO was duty bound to give proper notice spelling out the charge/fault, under which, the AO intends to put the assessee on notice for levy of penalty, so that the assessee would be able to defend its case. Therefore, the AO was duty bound to issue notice spelling out the specific limb under which the penalty proceedings has been initiated. Omnibus notice (SCN) betrays application of mind by the AO and issuance of such kind of notices has been deprecated by the Hon'ble High Courts in several cases including the jurisdictional Madras High in the case of ***Shri R. Elangoan vs. PCIT in TCA No.770 & 771/2018 dated 30.03.2021***, wherein the Hon'ble Madras High Court upheld the action of this Tribunal, quashing the penalty proceedings finding similar notice to be bad in law being vague and ambiguous. In this case, the AO ought to have given notice under section 271AAB(1A) of the Act and should have also spelled out whether assessee case falls under sub-clause (a) or (b), so that the assessee is able to defend its case properly. Section 274 mandates the AO to have given the assessee reasonable opportunity of being heard, and it would be meaningless of the assessee is given notice which he was not empowered to issue under the law and therefore the penalty order is quashed. ■

CASE LAW UPDATE



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I. ROYALTY

1 CIT VS. COMMUNICATION GLOBAL NETWORK SERVICES LIMITED (2025) 175 TAXMANN.COM 746 (SC)

Payment to Non-Resident telecom operators - Not Royalty

The Hon'ble apex court, having regard to its judgement in ***DCIT vs. Vodafone India Pvt Ltd- (2025) 173 Taxmann.com 695 (SC)***, dismissed SLP against order of High Court holding that payments made to non-resident telecom operators by assessee, a telecommunication service provider for providing interconnect services and transfer of capacity in foreign countries was not chargeable to tax as royalty. Thus, tax was not deductible in respect of the said payments made to non-resident telecom operators.

2 CIT, INT TAX VS. AMAZON WEB SERVICES (2025) 174 TAXMANN.COM 1158 (DEL-HC)

Payment for cloud computing services - Not Royalty (India-US DTAA)

The assessee, a US company, provided cloud computing services to its customers. Assessee's customers did not acquire any right of using infrastructure and software of assessee for purposes of commercial exploitation. Thus, since charges paid by assessee's customers were for only availing services, which assessee provided by using its proprietary equipment and other assets, payments received, could not be considered as royalties within the meaning of Article 12(3) of the India-US DTAA.

3 AECOM INTERCONTINENTAL HOLDINGS, UK LTD. VS. ITO (2025) 175 TAXMANN.COM 351 (DELHI HC)

IT infrastructure and software development services-not royalty (India-UK DTAA)

The assessee, a UK based company, provided IT infrastructure and software development services to its Indian AE. The same would include the applications and software to be used by the Indian AE. Since the AE did not acquire any copyright in software, cross charges paid by the Indian AE could not be construed as royalty within the scope of article 13(3) of the India - UK DTAA. ***Engineering Analysis Centre of Excellence Private Limited vs. CIT- (2021) 125 Taxmann.com 42 (SC)*** followed.

4 DCIT VS. HINDUJA GLOBAL SOLUTIONS LTD. (2025) 175 TAXMANN.COM 411 (MUM)

Payments made towards internet, broadband and bandwidth charges to foreign parties - Not Royalty u/s 9(1)(vi)

The AO held the aforesaid payments to be royalty under the Act liable for TDS and consequently made a disallowance u/s 40(a)(i). The CIT (A) relied on the judgement of the Hon'ble Bombay High Court in the case of UTV entertainment television- 399 ITR 433 (Bom) wherein it was held that Placement charges paid by the assessee on standard fees, paid to cable operators and multi system operators for placing signals, preferred bandwidth cannot be constituted as royalty. Further, drawing support from the decision of the Hon'ble Madras High Court in the case of ***Skycell communications services Limited - 251 ITR 53(Bom), the CIT (A)*** deleted the disallowance. The honourable tribunal dismissed the revenue's appeal.

5 COURSERA INC VS. ACIT, INT TAX (2025) 175 TAXMANN.COM 71 (DELHI TRIBUNAL)

Receipts from online courses provided by a US-based company to Indian Customers - Not Royalty (India-USA DTAA)

The assessee, a US-based company, was engaged in the business of facilitating education through online medium and provided online courses to its Indian customers. The AO opined that the receipts from the aforesaid activity should be considered information consisting industrial, commercial, or scientific experience and consequently royalty, both under the Act as well as the DTAA. The Hon'ble Tribunal noted that in assessee's his own case for the earlier years, it had held that the assessee was an aggregation service provider and did not provide technical services through its online platform and, thus, receipts from online courses would not be taxable in India. Following the principle of consistency, the impugned order of the AO was set aside.

6 ACIT (INT TAX) VS. UNITED HOME ENTERTAINMENT (P) LTD. (2025) 175 TAXMANN.COM 377 (MUM)

Payment by Indian assessee engaged in broadcasting business to a UK company for rendering of transponder services - Not Royalty Under Act/DTAA (India-UK DTAA)

The AO passed order under section 195(2) holding the aforesaid payments (paid by Indian Assessee to Intelsat, UK) to be in the nature of royalty liable for TDS @ 10.51% (inclusive of surcharge and cess). The CIT (A) followed the decision of the Hon'ble Delhi High Court in the case of Intel Corporation and the decisions of the coordinate benches in the assessee's own case and held that the assessee was not liable to deduct tax at source in respect of the aforesaid payments. The Hon'ble Tribunal noted that it had been consistently held by the coordinate benches that the subject payments were not liable for TDS under section 195. Further, nothing had been brought on record in terms of the decision of the Hon'ble Bombay High Court, wherein the orders passed by the coordinate benches, had either been stayed or set aside nor any contrary decision or authority had been brought to the notice during the course of hearing. Consequently, the revenue's appeal was dismissed.

7 NEW SKIES SATELLITES BV VS. DCIT (2025) 175 TAXMANN.COM 143 (DELHI TRIBUNAL)

Receipts earned by Netherland based company for providing data transmission services, via space segment capacity on satellites - Not Royalty under Act/Article 12(4) (India - Netherlands DTAA)

The Hon'ble Tribunal noted that the issue was clearly covered by various decisions of the coordinate benches and also the judgement of the Hon'ble High Court in the assessee's own case for earlier assessment years. Accordingly, it allowed the assessee' appeal.

8 TRANS WORLD INTERNATIONAL LLC VS. DCIT (2025) 175 TAXMANN.COM 703 (DELHI-TRIBUNAL)

Consideration for broadcasting rights qua Live coverage/recorded event - Not royalty/ royalty

Assessee, a US based company received consideration for bundled rights, both for broadcasting for live and recorded coverage. The assessee offered 5% as royalty income by considering 5% of the total receipt as taxable royalty towards recorded coverage and the balance amount of 95% towards live coverage as non-taxable. The AO held that the assessee was in receipt of payment against assigning the use or right to use of copyright as the duplication of any program was possible only when such program had been stored somewhere and the person who was making the duplication work of the same had been assigned rights from the owner of the copyright program. He thus, held that the

entire consideration was royalty income under section 9(1)(vi). The Hon'ble Tribunal relied on the judgement of the jurisdictional High Court in the case of ***CIT vs. Delhi Race Club (2014) 51 Taxmann.com 550 (Del***) wherein it was held that broadcast/live telecast is not "work" within the definition of section 2(y) of the Copyright Act and also that broadcast live telecast does not come within the ambit of section 13 of the Copyright Act and that it would be suffice to state that live telecast broadcast would not have any copyright. Further, as regards the AO's contention that the assessee was covered by the term "process" as defined in explanation 6 to 9(1)(vi), it held that the same could not be imported into the provisions of the India USA tax treaty unless there is a similar change in the definition of royalty under the said Treaty. As regards the judgement of ***Viacom 18 Media Pvt ltd. vs. ADIT (2014) 44 Taxmann.com 1 (Mum)***, relied upon by lower authorities, it noted that in the said case payment pertaining to the transmission of programs by satellite was held to be royalty by applying explanation 6 to 9(1)(vi).It further held that the said case was distinguishable as in the instant case ,payment was received by the assessee for providing broadcasting rights of the program which inter alia included live and recorded content and had nothing to do with the actual transmission of programs. As regards bifurcation of receipts, while the assessee had taken the plea of 5% being taxable as royalty towards live coverage by way of TV broadcast only in "broadcast rights", considering the fact that the broadcast of recorded event was also available on other medium, the Hon'ble Tribunal allocated 10% of receipts towards recorded events which was held to be taxable. It distinguished the judgement of the coordinate bench in ***ADIT vs. Global Cricket Corporation Pte Ltd. (2022) 145 Taxmann.com 570 (Mum)*** wherein 25% was apportioned towards recorded event of "live feed". It held that the said case pertained to the game of cricket which is highly popular in India, whereas in the present case, it was for football tournament and for badminton tournament which are undoubtedly not as popular as cricket in India. Thus, in view of the above, it held that attributing 25% of the license fee towards recorded feed would not be justified in the facts of the present case.

II FTS

1 AECOM INTERCONTINENTAL HOLDINGS, UK LTD. VS. ITO (2025) 175 TAXMANN.COM 351 (DELHI HC)

Management and governance support functions provided by UK based company to its Indian AE - NOT FTS (India-UK DTAA)

Since the aforesaid Services provided by the UK based assessee company to its Indian AE did not make available technical knowledge, experience, skill, know how, or processes to the AE, the same could not be considered as FTS. The assumption that over a period of time, the assessee's Indian AE would get empowered as the assessee was providing very technical or sophisticated services which included workflow, automation, and certain technical deliverables was held to be speculative. The question was not whether over a period of time, the Indian AE would gain experience, the point to be addressed was whether the assessee transferred any technical

know-how, skill or knowledge which could be exploited by the Indian AE on its own. There was no material to indicate that any proprietary, IPR, technical know-how, skill of process was transferred or alienated to the Indian AE.

2 AECOM TECHNICAL SERVICES INC VS. ITO (2025) 174 TAXMANN.COM 1173 (DELHI HC)

Cross charges for Support Services provided by a US-based company to Indian AE - NOT FTS/FIS (India-USA DTAA)

Since the aforesaid services did not make available technical knowledge, know how, skill of process to the Indian AEs, the same could not be taxed as FTS/FIS.

3 CIT, INT TAX VS. GOODRICH CORPORATION (2025)175 TAXMANN.COM 177 (DELHI TRIBUNAL)

Amount received by a US based company for providing repair and maintenance services of aircraft equipment to Indian airline operators - NOT FTS (India-USA DTAA)

The Hon'ble Tribunal held that the assessee was not rendering any services which absolved the recipients from availing similar services in future. It noted that none of its employees had visited India for rendering any training. It concluded that the assessee had not received any amount for transfer of skill, knowledge, know how, process to its associate entity in India which could be construed as FIS within the meaning of article 12 (4) of the India-USA DTAA. The Hon'ble High Court followed its earlier decision in the case of ***CIT vs. Relx -920240160 Taxmann.com 109 (Del)*** and upheld the order of the Hon'ble Tribunal by dismissing the revenue's appeal.

4 SHELADIA ASSOCIATES VS. ADIT (2025) 174 TAXMANN.COM 931 (HYD)

Payments made by Indian assessee company to its HO in USA towards services provided by dedicated team of HO in identifying and choosing projects, analysing technical feasibility, making technical presentation, price negotiation etc- Falls in the category of FTS liable for TDS u/s 195. (India-USA DTAA)

The Hon'ble Tribunal held that since the aforesaid services were rendered in India, the same would fall in the terms of 'make available' as per Article 12 of the India-US DTAA. The assessee had relied on the judgement of the Hon'ble Karnataka High Court in ***CIT vs. ABB Inc-(2023) 152 taxmann.com 101 (Kar)***. The Hon'ble Tribunal distinguished the said judgement by holding

that in the aforesaid case, fee was paid by ICO to the assessee in the USA for risk evaluation of the proposed project and the services rendered were project specific and terminated with submission of bid by ABB India after making necessary changes or corrections in the bid based on the evaluation report. However, in the instant case, the Hon'ble Tribunal held that with the limited material available before them and in the absence of relevant communication, if any, between the parties, they found that the entire task of identifying, choosing projects, analysing technical feasibility, making technical presentation, price negotiations, monitoring, supervising of the projects were undisputedly technical services rendered by US HO. Since these services were rendered in India therefore, it fell in the terms of make available as per article 12 of the India -USA DTAA. It was not the case of seeking a review or evaluation of the proposed projects but the entire service right from selecting the project to the bidding and completion of the projects were provided by the HO.

5 EMERSON ELECTRIC COMPANY (INDIA) (P.) LTD. VS. DCIT (2025) 175 TAXMANN.COM 199 (MUM)

Payment by way of salary to a non-resident employee is liable for TDS u/s 192 and not u/s 195 as technical services-disallowance u/s 40(a)(i) Unjustified

The DRP held that the non-resident employee was working at a senior level and was an important employee of the holding company and that he was managing the business of the Indian subsidiary at their behest. Hence, the consideration paid by the assessee for getting the services should be FTS. The Hon'ble Tribunal held that neither the AO nor the DRP had brought on record any supporting or adverse material to show that the services rendered could be classified as technical services. Further, salary payment was covered by provisions of 40(a)(iii) and not 40(a)(i) and thus the disallowance u/s 40(i) r.w s. 195 was unjustified.

III. CAPITAL GAINS

1 PRASHANT KOTHARI VS. INT TAX WARD (2025) 174 TAXMANN.COM 1244 (MUM)

Simultaneous capital gains exemption under the India-Singapore DTAA and carry forward of capital loss under the Act - Permissible (India-Singapore DTAA)

The Hon'ble Tribunal held that the assessee, a Singapore tax resident was entitled to benefit/exemption of article 13(4) of the India-Singapore DTAA in respect of capital gains on sale of shares acquired prior to 1st April 2017. The amended DTAA provisions were held to be prospectively applicable. Simultaneously, the assessee was also entitled to carry forward capital losses under section 70. The AO was not justified in setting of capital losses against exempt capital gains as segregation of sources

was permissible under section 90(2). ***(DCIT v. D.B. International (Asia) Ltd. (2018) 96 taxmann.com 75 (Mum), APL Co Pte ltd vs. ADIT (2017) 185 TTJ 305 (Mum), Citicorp Investment Bank (Singapore) Ltd vs. DCIT (2017) 81 Taxmann.com 368 (Mum), Matrix Partners India Investment Holdings LLC vs. DCIT ITA No 3097/Mum/2023) followed).***

2 GENERAL ORGANISATION FOR SOCIAL INSURANCE VS. ACIT (2025) 175 TAXMANN.COM 179 (MUM)

Gains on sale of rights entitlement-not taxable in India-as per provisions of article 13(6) (India-Saudi Arabia DTAA)

The Hon'ble Tribunal held that rights entitlement is distinct from shares and therefore, unlike as in the case of shares, short term capital gains earned by assessee a Saudi Arabian company, on sale of rights entitlement is only taxable in the resident State i.e. Saudi Arabia, as per provisions of article 13(6) of the India- Saudi Arabia DTAA. ***(Vanguard Emerging Markets Stock Index Fund vs. ACIT (Int Tax) (2025) 172 Taxmann.com 515 (Mum), Navin Jindal vs. ACIT (2010) 187 Taxmann.com 283 (SC)).***

IV. DIVIDENDS

1 POLYCAB VS. ACIT (2025) 175 TAXMANN.COM 707 (MUM)

Since International Finance Corporation (IFC) enjoys unequivocal statutory immunity from taxation in India-dividend paid to IFC should be reduced while calculating DDT

The Hon'ble Tribunal noted that Section 115-O is a non obstante clause which provides that in addition to the income tax chargeable in respect of the total income of a domestic company, any amount declared, distributed or paid by such company by way of dividends whether out of current or accumulated profits shall be charged to additional income tax at the prescribed rate (DDT). However, it further noted that the statute also provides that the amount paid for dividend shall be reduced by the amounts which have been provided in sub-section(1A) of section 115-O (i.e. dividend paid to New Pension System Trust) The rational for exemption of dividend paid to Pension Trust from applicability of section 115-0 has been given in the explanatory memorandum in the Finance(No.2) Act, 2009. Thus, Clause(ii) off sub-section (1A) of section 115 -0 provides for reduction of the amount of dividend paid to any person for, or on behalf of, the New Pension System Trust covered under section 10(44). The reduction of the amount of dividend paid is because any income received by any person under the New Pension System Trust is exempt from tax. There are various other instances wherein income of certain institutions such as the RBI, SEBI, International Monetary Fund, World Bank group United Nations (along with its various bodies) etc are exempt from the levy of tax because of the overarching provisions of the respective Acts of the Parliament.

The Courts have held that the immunity available for salaries of employees of certain foreign institutions like UN World Bank etc is also available to pensions received by such employees even in the absence of specific provisions under the Act. From the above it can be inferred that when there is an agreement between the sovereign countries & diplomatic understanding which are codified as Act of Parliament that income of such institutions are exempt from tax then they need not be any specific provisions in the Income Tax Act. Now taking cue from clause (ii) of section 115-O, if the statute specifically mandates that income accrued from New Pension System being exempt under the Income Tax Act must be reduced from the quantum of dividend disbursed then by parity of reasoning and equitable statutory construction it stands to reason that income received by the IFC under any format being likewise exempt from taxation ought to be accorded identical treatment. Even if section does not specifically provide for reducing the amount of dividend paid to IFC but, under the overall scheme of overriding effect of the IPC Act, the principle enshrined in clause (ii) of sub-section (1A) of section 115-O can be applied for the legislative intent and it would be quite consistent with the statutory interpretation. Accordingly, it held that dividend paid to entities enjoying absolute immunity under the Income Tax Act such as international multinational institutions such as IFC which has been accredited with tax free status should in all form be excluded from the taxable base for the purpose of DDT.

V. SHIPPING

1 MILAHA INTEGRATED MARITIME AND LOGISTICS VS. DCIT (2025) 175 TAXMANN.COM 674(MUM)

Qatar Enterprise - eligible to claim TDS credit in respect of freight income earned from Indian voyages

The assessee, a tax resident of Qatar, earned freight income from Indian voyages and claimed TDS credit. The Honourable Tribunal held that since income on which TDS was deducted was not chargeable to tax in India due to provisions of Article 8 of the India-Qatar DTAA & nil income reported by the assessee was accepted by the Revenue, assessee was entitled for credit of TDS amount under section 199(1). (***Late Russi Dinshaw Bahadurji by his legal heir vs. ITO (ITA 1618/mum/2022 dated 27-04-23 followed***).

VI. INTEREST

1 ABU DHABHI COMMERCIAL BANK PJSC WEWORK INDIA MANAGEMENT(P) LTD VS. DCIT (INT TAX) (2025) 175 TAXMANN.COM 420(MUM)

Interest income of UAE bank from ECB loans to Indian customers through HO can be set off against its loss from PE in India under domestic law provisions

The assessee, a UAE based bank advanced External Commercial Borrowing (ECB) loans to Indian customers directly through head office without involvement of Indian branches which constituted its PE in India. Assessee earned interest income from Indian customers on ECB loans advanced to them and claimed that interest income so earned would fall within the ambit of article 11(2) of the India-UAE DTAA and, being beneficial owner of such interest income would be subject to tax on gross basis at concessional rate of 5%. However, the assessee also set of the business losses of PE against interest income and on the balance interest income computed tax at 5 %. The AO disallowed the claim of set off. The Honourable Tribunal held that since the treaty itself provided for taxability of income in terms of domestic law provisions, assessee's claim of set off of loss of PE against interest income was allowable. Further, since there was no allegation by departmental authorities that ECB loans were in violation of RBI guidelines interest income would be covered under section 115 (1)(a)(iiaa) and hence subject to concessional rate of tax at 5% with applicable cess and surcharge.

VII. OTHERS

1 DCIT VS. M. MAHADEVAN (2025) 175 TAXMANN.COM 383 (CHENNAI)

Resident In India

The assessee was into business of setting up restaurants and bakeries in India and overseas. He was claiming his status as non-resident in income tax returns filed by him and thus was not declaring his global income on account of his claim of being a non-resident. According to the assessee, only the dates stamped upon the passport of the assessee were to be taken into consideration for reckoning period of stay in India and on that basis, he claimed that he was a resident of UAE. Further, the assessee contended that the visa which was granted to him for social purposes or tourist purposes should actually be considered for business purposes as he had business interests overseas and that one would not travel to the same location frequently for social or tourist purposes. The aforesaid contention of the assessee was rejected by the AO. The AO based on information received from FRRO determined residential status of the assessee as "Resident in India" for tax purposes. The AO inter alia, observed that by merely furnishing the tax

residency certificate from UAE in the name of assessee (obtained during 2021 for the impugned past years) would not confer the residential status to assessee as per article 4 of the DTAA between India and UAE, in the Arab Emirates. The Hon'ble Tribunal held that since FRRO is an authorised government agency to keep a track upon movement of foreigners and citizens at country's borders, data of FRRO could not be doubted and the same could be relied upon for calculating period of stay of assessee in India. Since the AO had comprehensively analysed the situation to establish that Article 4 of the India - UAE DTAA was not applicable in this case and the assessee had stayed in India for more than 182 days, he was to be treated as resident in India and provisions of the DTAA would not apply. Further, since AO had clearly brought on record with demonstrative evidence that all along assessee had been showing that all control and management of his affairs was situated in India, assessee's residential status was to be determined as resident in India u/s 6(4) and his global income was to be brought to tax in India.

2 SURESH KRISHNAMOORTHY VS. ITO (2025) 175 TAXMANN.COM 679 (COCHIN)

Foreign income taxable at special rates under DTAA

The assessee filed return declaring income which included certain foreign income taxable at special rates under DTAA. However, the AO processed return at normal rates without considering the special DTAA rate. Since CIT(A) merely directed assessee to file rectification application, the Hon'ble Tribunal remanded back the matter to the CIT(A) for proper adjudication of the DTAA claim. ■

" We are responsible for what we are, and whatever
we wish ourselves to be, we have the power to make ourselves.
If what we are now has been the result of our own past actions,
it certainly follows that whatever
we wish to be in the future can be produced by our present actions;
so we have to know how to act. "

Swami Vivekananda

GST





CA Naresh Sheth *CA Jinesh Shah*

A. WRIT PETITIONS

1 PATANJALI AYURVED LTD. VS. UNION OF INDIA [2025] 175 TAXMANN.COM 22 – ALLAHABAD HIGH COURT

Facts and issues involved

Petitioner is engaged in the manufacture of FMCG goods at its three distinct manufacturing units located in Haridwar (Uttarakhand), Sonipat (Haryana), and Ahmednagar (Maharashtra), all operating under a common PAN but separate GSTINs.

The Directorate General of GST Intelligence (DGGI), Ghaziabad Zonal Unit, conducted an investigation based on information received by them which culminated into a Show Cause Notice being wherein it was alleged that the petitioner, acting as main person, had engaged in circular trading involving paper transactions only, without actual movement of goods, and had thus contravened provisions of the GST law. The said Show Cause Notice was cumulatively issued for all 3 units of the petitioner under Section 74 and Section 122 of the CGST Act.

Notably, the DGGI later dropped the tax demands under Section 74 for the unit of the petitioner in Uttarakhand, observing that the quantities of outward supplies exceeded inward supplies, suggesting no wrongful availment of ITC.

However, the penalty proceedings under Section 122 were not dropped, prompting petitioner to approach the High Court through a writ petition challenging the continuation of penalty adjudication.

Petitioner's Submissions

The heading of Section 122 is **"Penalty for certain offences"** which implies that a penalty under this provision requires a prior offence of tax evasion, for which a tax demand must first be established under **Section 73 or 74** of the CGST Act.

A reading of Section 122 of the CGST Act, 2017 suggests that the penalties under it are meant for acts that are criminal in nature. Therefore, to penalise under Section 122, a proper trial in a criminal court is required. The mere fact that the fine is termed as

'penalty' will not ipso facto indicate that it is a civil wrong.

Moreover, Section 122 of the CGST Act also does not contain any reference to proper officer, therefore it is implied that these proceedings ought to undergo prosecution by criminal courts. In other words, it is out of the jurisdiction of the GST Authorities to adjudicate a case under Section 122 as it has to be tried in a criminal court.

Moreover, Explanation 1(ii) to Section 74 of the CGST Act provides that if penalty proceedings under Section 74 stand concluded against the 'main person', criminal penalty under Section 122 and the general civil penalty under Sections 125 of the CGST Act should also stand concluded against 'all the persons'.

Therefore, proceedings under Section 122 of the CGST Act, 2017 should be dropped.

Respondent's submissions

Penalty in taxation matters constitutes a civil liability, not a criminal one, and that the heading of a section alone cannot dictate its entire legal character. Section 122 of the CGST Act is intended to safeguard revenue and imposes penalties, while Section 132 deals with criminal offences and prescribes punishment accordingly.

Explanation 1(ii) to Section 74 makes the statutory intention noticeably clear that the proper officer who initiates proceedings under Sections 73 and 74 can also initiate proceedings under Sections 122 and 125.

Tax demand of ₹ 9,08,15,881/- was issued under Section 74 of the CGST Act on account of the petitioner's wrongful availment or utilization of input tax credit (ITC). In addition, a separate penalty of ₹ 2,73,51,13,681/- was imposed under Section 122 of the CGST Act to penalize the petitioner for issuing tax invoices without any actual supply of goods and for availing or utilizing ITC without actual receipt of goods. It was contended that the demand under Section 74 and the penalty under Section 122 pertain to two separate and independent offences and are therefore not interrelated.

Moreover, the Explanation 1(ii) to Section 74 is only applicable in cases wherein the main persons to whom demand was made u/s 74 have deposited due tax along with applicable interest and penalty causing for the proceedings against the main person to have been concluded.

Discussions by and Observations of High Court

The issues deliberated by the Court were as under:

(I) Whether the "Proper Officer/ Adjudicating Officer" has the power to adjudicate on the penalty provision provided under Section 122 of the CGST Act?

(II) Whether dropping of proceedings under Section 74 of the CGST Act, 2017 will ipso facto abate the proceedings under Section 122 of the CGST Act?

Under the GST framework, a person may incur penalties under Section 122 of the CGST Act even without any tax liability under Sections 73 or 74. The Court rejected the argument that a tax demand must compulsorily precede penalty proceedings under Section 73/74, holding it to be legally unfounded.

As per relevant definitions, an offence is any act or omission punishable under current

law, and such punishment need not involve a criminal trial. Punishment can be imposed as a civil penalty also. The Court clarified that offences under Section 122 of the CGST Act are subject to civil penalties and do not require criminal prosecution.

The Court affirmed that penalties under Section 122 of the CGST Act are well within the adjudicatory powers of departmental officers, despite the absence of the term "proper officer" in the provision itself. It relied on the broader statutory framework, including Explanation 1 to Section 74 and Rules 142(1)(a) and 142(5) of the CGST Rules, which clearly authorize proper officers to initiate and conclude such proceedings. Emphasizing legislative intent and administrative consistency, the Court rejected the contention that penalties under Section 122 require criminal prosecution, upholding the departmental authority to impose civil penalties.

Explanation 1(ii) to Section 74 of the CGST Act states that if proceedings against the main person under Sections 73 or 74 are dropped, then related proceedings under Section 122 against other persons would also abate. However, when proceedings under the above-mentioned sections pertain to distinct and independent offences, the dropping of proceedings under Section 73/74 will not automatically nullify the Section 122 proceedings.

Decision of High Court

After a detailed analysis, the Court concluded that proceedings under Section 122 of the CGST Act are to be adjudicated by the adjudicating officer and do not require prosecution. It further held that the abatement of proceedings u/s 74 does not automatically lead to the abatement of proceedings under Section 122, as both relate to distinct and independent offences. Writ petition was dismissed.

2 SUNDYNE PUMPS AND COMPRESSORS INDIA (P.) LTD. VS. UNION OF INDIA [2025] 175 TAXMANN.COM 685 – BOMBAY HIGH COURT

Facts and issues involved

The Petitioner, engaged in providing engineering, management, office support, and maintenance services, along with supply of goods, primarily to related entities located outside India, filed refund claims of ₹ 13,75,244 and ₹ 25,88,634 for the quarters July–September 2021 and October–December 2021, respectively, towards unutilsed Input Tax Credit u/s 54(3) of the CGST Act, 2017. The said refund claims were rejected by the State Tax Officer and the appellate authority on the ground that the recipients of services, though located outside India, were carrying on business in India through the Petitioner, treating the Petitioner as a "mere establishment of a distinct person." Accordingly, the supplies were not considered zero-rated, rendering the Petitioner ineligible for refund of unutilsed ITC u/s 54(3) of the CGST/MGST Act. Being aggrieved by the orders rejecting refund applications, petitioner preferred the present writ petition.

Petitioner's Submissions

The overseas entities, to which supplies are made, are independent body corporates/legal undertakings incorporated under the laws of their respective jurisdictions. Since, the entire supplies are made to recipient located outside India, the said supplies qualified as "Exports

of Goods" and "Export of Services", u/s 2(5) and 2(6) of the IGST Act respectively and they are zero-rated supplies in terms of Section 16 of the IGST Act.

Further, the Petitioner had filed similar refund applications under Section 54(3) of the CGST Act for the periods April 2020 to March 2021 and April to June 2021, claiming refund of unutilsed ITC on account of zero-rated supplies. These claims were duly sanctioned, and refunds were granted. The said orders have not been challenged by the State and have attained finality.

Discussions by and Observations of High Court

State Tax Authorities have not disputed that the Petitioner fulfilled all conditions for "export of services" under Section 2(6) of the IGST Act, except condition (v), which stipulates that the supplier and recipient of services must not be merely establishments of a distinct person as per Explanation 1 to Section 8. Clause (i) of Explanation 1 to Section 8 provides that "where a person has an establishment in India and any other establishment outside India, then such establishments shall be treated as establishments of distinct persons". Further, Explanation 2 to Section 8 provides that "a person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory."

In terms of Section 2(5) of the CGST/MGST Act a person shall qualify as an agent only when the said person carries on the business of supply or receipt of goods or services or both on behalf of another. State Tax Authorities is of the view that Petitioner is not an independent contractor but an agent as defined u/s 2(5) of CGST Act, as clauses of the agreement and conduct of the parties prove that the foreign recipient has created an agency in India through the Petitioner.

Court observed that State Tax Authorities have completely lost sight of the fact that the agreement clearly provides that the Petitioner is an independent contractor and that neither the Petitioner nor its officers, directors, employees or sub-contractor are servants, agents or employees of the recipient of services. The reading of relevant clauses of the agreement does not in any way bring out that the Petitioner is providing services to the foreign recipient as its agent or that the recipient is carrying business in India through the Petitioner. Petitioner does not carry on business of supply of goods or services or both on behalf of another (foreign recipient). The Petitioner provides design and engineering services to its customers on principal-to-principal basis by employing its own manpower and other resources.

The Petitioner receives consideration at 110% of cost, as mutually agreed between the parties, in line with general commercial practices and transfer pricing norms. The mere fact that the Petitioner receives a fixed mark-up does not render the consideration a commission or imply an agency relationship. The underlying agreement does not provide for any commission; the consideration is paid strictly for the supply of goods and services.

In Court's view, to qualify as an agent u/s 2(5) of CGST Act, the person has to act on behalf of or representing the other. In such case, there would be an involvement of a 3rd party *viz*. on whose behalf supply is made. However, in the present case, there are only 2 parties, *viz*. the Petitioner and the recipients and hence, there is no "agency" relationship between the Petitioner and its recipient of services.

CBIC Circular 161/2017/2021 dated 20.09.2021 clarifies that what is sought to be covered under condition (v) to Section 2(6) of the IGST Act is the supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, which shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services". Further, the said circular has specifically clarified that the transactions between sister/group companies, holding/subsidiary companies are not covered under condition (v) to Section 2(6) of the IGST Act.

Decision of High Court

The Petitioner is not acting as an agent of the foreign recipient; both are independent and distinct legal entities. Consequently, condition (v) of Section 2(6) of the IGST Act is duly satisfied. Since all conditions prescribed under Section 2(6) are fulfilled, the services supplied by the Petitioner qualify as exports and, therefore, constitute zero-rate supplies. Accordingly, the Petitioner is entitled to a refund of unutilsed Input Tax Credit on account of such zero-rated supplies.

3 SICPA INDIA (P.) LTD. VS. UNION OF INDIA [2025] 175 TAXMANN.COM 371 – SIKKIM HIGH COURT

Facts and Issues involved

Petitioner was engaged in the business of manufacturing security inks and solutions with GST registration in the State of Sikkim. The manufacturing units of the Petitioners were in full operation in the pre-GST regime. The Petitioners in January 2019 decided to discontinue their operation in the State of Sikkim, pursuant to which the Petitioners sold all the machineries and manufacturing facilities from April 2019 to March, 2020. At the time of sale of assets the Petitioners had appropriately reversed the ITC as per the applicable provisions under the GST law.

The Petitioner had an accumulated balance of Input Tax Credit (ITC) amounting to ₹ 4,37,61,402 as on the date of closure of its business and accordingly claimed refund of the unutilsed ITC under Section 49(6) of the CGST Act. This provision allows refund of the balance in the Electronic Credit Ledger, after payment of tax, interest, penalty, or any other amount payable, in accordance with Section 54 of the CGST Act. However, the refund application was rejected on the ground that a combined reading of Sections 54(3) and 29 of the CGST Act indicates that the current legal framework does not permit refund of unutilsed ITC in cases of business discontinuation or closure.

Petitioner's Submissions

Section 49(6) of the CGST Act provides for refund of the balance in Electronic Cash Ledger and Electronic Credit Ledger after payment of tax in accordance with the provisions of Section 54 of the CGST Act which lays down the procedure for refund. Section 54(3) of the CGST Act is the exception carved out in the provision, which requires that a registered company may claim refund of unutilized ITC at the end of any tax period, provided that, no refund of unutilized ITC shall be allowed except as provided in Section 54(3)(i) and (ii) of the CGST Act. The said exception cannot take away the vested right of ITC accrued to the Petitioners

and refund thereof u/s 49(6) of the CGST. Reliance was placed on decisions of ***Shabnam Petrofils (P.) Ltd. vs. Union of India [2019] 108 taxmann.com 15/75 GST 801/29 GSTL 225 (Gujarat)/2019 SCC OnLine Guj 6910, Union of India vs. Slovak India Trading Co. (P.) Ltd. [2006] 5 STT 332 (Karnataka)/MANU/KA/0709/2006 and Eicher Motors Ltd. vs. Union of India 1999 taxmann.com 1769 (SC)/(1999) 2 SCC 361***.

Discussions by and observations of High Court

In the first instance, the argument pertaining to non-exhaustion of statutory remedy is taken up. Supreme Court in ***State of Uttar Pradesh va. Indian Hume Pipe Co. Ltd. 1977 taxmann.com 40 (SC)/(1977) 2 SCC 724*** observed that there is no rule of law that the High Court should not entertain a Writ Petition where an alternative remedy is available to a party. It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably or perversely, it is the settled practice of the Supreme Court not to interfere with the exercise of discretion by the High Court. This thereby lends a quietus to the argument raised by Learned Deputy Solicitor General.

Section 49(6) of the CGST Act provides that the balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54 of CGST Act. Section 54(1) of CGST Act provides that any person claiming refund of any tax and interest may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Further, Section 54(3) of CGST Act provides that registered person may claim refund of any unutilized input tax credit at the end of any tax period. The proviso to Section 54(3) of CGST Act provides that refund of unutilized input tax credit shall be allowed in case of (i) zero rated supplies; and (ii) inverted rate structure.

Appellate forum was of the view that Section 54(3) of the CGST Act was applicable only to the two circumstances mentioned in the said Section and would not extend to refund of unutilized input tax on account of closure of business.

Reliance was placed on decision of **Karnataka High Court in case of Slovak India Trading Company Private Limited** wherein company had applied for refund for unutilized cenvat credit, which was available, at the time of closure of unit and CESTAT allowed the refund stating inter alia that it cannot be rejected on closure of the company. The High Court agreed and opined that there is no express prohibition in Rule 5 of the CENVAT Credit Rules, 2002.

Similarly, in the instant matter there is no express prohibition in Section 49(6) read with Section 54 and 54(3) of the CGST Act, for claiming a refund of ITC on closure of unit. Although Section 54(3) of the CGST Act deals only with two circumstances where refunds can be made, however the statute also does not provide for retention of tax without the authority of law.

Decision of High Court

Writ Petition is accordingly allowed and disposed of.

4 R. T. INFOTECH. VS. ADDITIONAL COMMISSIONER GRADE 2 [WRIT TAX NO. 1330 OF 2022] – ALLAHABAD HIGH COURT

Facts and Issues involved

Petitioner is a registered supplier and is authorized user of services of mobile recharge of Bharti Airtel Ltd. for the period of 2017-18. The petitioner used services of recharged coupons from Bharti Airtel Ltd. against 7 tax invoices amounting to ₹ 1,58,46,502 wherein the petitioner claimed ITC of ₹ 28,52,370.

Notice in Form ASMT-10 was issued to petitioner for intimating discrepancy in ITC claimed and that credit appearing in GSTR-2A is not of the bills of Bharti Airtel Ltd. Not satisfied with reply of petitioner in Form ASMT-11, authorities issued SCN in Form DRC-01 stating that the ITC has wrongly been claimed as per Section 16(2)(c) of CGST Act. Adjudicating authority as well as appellate authority upheld the demand raised in impugned SCN and hence, petitioner has preferred present writ.

Petitioner's Submissions

The payment of seven bills raised by Bharti Airtel Ltd. has been duly made through R.T.G.S. The amount of tax has duly been paid to Bharti Airtel Ltd. and there is no inaction on the part of the petitioner. Petitioner has no control over the seller either to file the return on time or compel the selling dealer to deposit the amount to be paid by the petitioner with government authorities. Therefore, the petitioner cannot be left to suffer for fault on the part of the selling dealer. The recovery proceedings should be initiated against Bharti Airtel Ltd., the seller, rather against the petitioner.

Reliance was placed upon the judgment of ***Assistant Commissioner of State Tax vs. Suncraft Energy (P.) Ltd. [2023] 157 taxmann.com 352/[2024] 101 GST 308/[2022] 80 GSTL 225 (SC)/(2023) 13 Centax 189 (S.C.).***

Discussions and observations of High Court

It is not in dispute that the recharge coupons were purchased by the seven bills and CGST and SGST were charged. The record shows that the amount of GST charged over the said tax invoices were paid through banking channel i.e. by R.T.G.S. For non-discharge of duties by the selling dealer, the proceedings were initiated against the selling dealer. It is a matter of common knowledge that under the provision of the GST Act, the purchaser cannot compel the selling dealer to deposit the amount of tax realized from the petitioner with the government treasury. The purchasing dealer also cannot compel the selling dealer to file the return within stipulated time and deposit the tax collected. The purchasing dealer cannot be left at the mercy of the selling dealer. When the petitioner has discharged his duties diligently, it is the onus upon the assessing authority to duly communicate about the said fact i.e. the purchase has been made through tax invoices and payments have been made through banking channel and therefore, the authority ought to have counterpart of the selling dealer have initiated action and action has been taken with the benefit ought to have given to the petitioner. Hon'ble Apex Court in the case of ***Suncraft Energy (supra)*** had occasioned to consider that the party who has paid the tax on invoices being raised and non-discharge of duties by the counterpart of

the seller, the Court was pleased to remand the matter for making due inquiry from the supplier. Similarly, the Madaras High Court in the case of ***D. Y. Beathel Enterprises (supra)*** has taken a view that in absence of nonperformance of duty by the supplier, action must be taken against the supplier simultaneously and the purchaser alone shall not suffer.

Decision of High Court

The matter requires reconsideration. The impugned orders cannot be sustained in the eyes of law and the same are hereby quashed. The writ petition is allowed. The matter is remanded to the respondent concerned for deciding afresh bypassing a reasoned and speaking order.

B. RULINGS BY APPELLATE AUTHORITY OF ADVANCE RULING AUTHORITY

1 GEEKAY WIRES LTD. [2025] 173 TAXMANN.COM 958 – TELANGANA AAAR

Facts and issues involved

Appellant is engaged in the business of manufacturing of Steel Nails and other steel products. Appellant procures raw materials such as Steel Wire rods, Polypropylene, Copper wire, Paper tape and packing material like cartons, pallets etc. on payment of applicable GST for manufacturing of finished products.

A fire broke out in appellant's factory premises on 17.12.2022 and major quantities of finished goods i.e. Steel Nails became unfit for being sold as such and, hence, these damaged finished goods were sold as scrap in the market and applicable GST has been paid on the sale of such scrap. Since goods/ inputs purchased by the appellant were used in the manufacturing of finished goods and the finished goods became unfit for being sold as such in the fire accident, appellant sought for advance ruling with regard to eligibility of ITC on the raw materials consumed in the manufacture of finished goods which became unfit for being sold as such.

Vide the impugned order, the Advance Ruling Authority has given the following advance ruling on the questions raised by the appellant:

Sr. No.	Questions raised	Advance Ruling
1	When the raw materials purchased are already used in the manufacture of finished goods and the finished goods are destroyed in the fire accident completely.	ITC is required to be reversed

Sr. No.	Questions raised	Advance Ruling
2	When the raw materials procured are lost in the fire accident before use in manufacture of finished goods.	ITC is required to be reversed
3	When the destroyed finished goods can be sold as steel scrap in the open market and output tax liability on such supply of scrap is paid.	ITC is required to be reversed

Appeal to AAAR and appellant's submissions

Aggrieved by the decision of lower authority the appellant filed present appeal on following grounds:

- The goods/inputs received from registered taxable persons were already used in the manufacturing process and new commercial commodity had emerged which is different from inputs used in such manufacturing activity. The inputs are not destroyed in the fire accident, since by the time of fire accident, they were used in the manufacturing of finished goods and lost their identity and the relevant expenditure is then business expenditure.

- As per Section 17(5)(h) of the CGST Act, input tax credit is not available in respect of goods that are lost, stolen, destroyed, written off, or disposed of by way of gift or free samples. It is submitted that the phrase "in respect of" used in clause (h) preceding the specified events warrants a strict interpretation. Accordingly, the restriction on availment of ITC applies only to goods that have been purchased and are subsequently lost, stolen, destroyed, written off, or disposed of as gifts or free samples.

- Reliance was placed on case of S***tate of Madras vs. Swastik Tobacco Factory AIR 1966 SC 1000*** in this regard. Even though the above case was not pertaining to destruction of finished goods, a similar interpretation can be adopted for the purpose of 'in respect of used in Section 17(5)(h) of the CGST Act. Accordingly, ITC can be disallowed only 'on' those input goods which are lost, stolen, destroyed, etc.

- There has to be a matching of the identity of goods on which credit is taken and on which credit is denied u/s 17(5)(h) of CGST Act. Thus, while applying the said Section, the "identity test" of the goods needs to be considered i.e. ITC can be denied only on those specific goods on which credit is taken. Once the goods on which credit is taken are consumed in the final product and lose their identity, then, ITC reversal cannot be demanded. Appellant also relied up on the decision of ***Maharashtra Authority for Advance Ruling in General Manager Ordnance Factory Bhandara, In re [2019] 106 taxmann.com 246/26 GSTL 423 (AAR – MAH)*** wherein it was held that where inputs are used, they cease to exist and they being destroyed, lost or stolen will not arise.

Discussion by and Observations of AAAR

The issue that requires determination for the disposal of the present appeal is whether Input Tax Credit availed on inputs consumed in the manufacture of finished goods viz. Steel Nails that were destroyed in fire accident is required to be reversed.

On a combined reading of Section 2 and Section 16 of SGST Act, 2017, it can be construed that the definition of input tax is very wide and a registered person is entitled to take input tax credit on inputs, input services and capital goods if the same are used by him in course or furtherance of his business or the registered person has an intention to use such inputs, input services or capital goods in the course or furtherance of his business at the time of procurement of such goods/services.

However, availment of the input tax credit is subject to certain restrictions laid down in Section 17(5) of the Act. On a plain reading of Section 17(5)(h) of CGST Act, it is clear that ITC shall not be available in respect of goods lost, stolen, destroyed or written off. Further, the use of non-obstante clause makes it evident that the provisions of Section 17(5) of CGST Act have an overriding effect over the provisions of Section 16(1) and Section 18(1) of CGST Act. As such, the averments made by the appellant with reference to Section 16(1) of CGST Act do not merit consideration.

The wording of Section 17(5)(h) of CGST Act are simple, clear and unambiguous and any averment that seeks to restrict the plain and unambiguous meaning cannot be countenanced. As such, there is no merit in the contention of the appellant that the phrase "in respect of" used in Section 17(5)(h) indicates only 'inputs'.

Further, Maharashtra AAR in case of ***General Manager Ordnance Factory Bhandara, In re [2019] 106 taxmann.com 246/26 GSTL 423 (AAR - MAH)*** has distinguished the goods sent for testing with the goods destroyed in natural or manmade situation and has held that ITC need not be reversed where goods are sent for testing. Maharashtra AAR has, in fact, negated the contention that ITC need not be reversed where inputs are used in manufacture of final products, which are destroyed in flood, fire etc. As such, the ruling not only does not support the case of appellant herein, but it in fact also supports the view taken by the lower authority.

Ruling of AAR

The impugned Order of Advance Ruling Authority is upheld.

■

" Arise, awake, and stop not till the goal is reached.
Arise, arise once more, for nothing can be done
without renunciation. "

Swami Vivekananda

SERVICE TAX





CA Rajiv Luthia

Keval Shah
Advocate

1 M/S CALCUTTA CLUB LTD. VS. COMMISSIONER OF SERVICE TAX II, KOLKATA 2025 (6) TMI 764 - CESTAT KOLKATA

Backgrounds and facts of the case

- The appellant is a members-only club, registered as a Public Limited Company under the Companies Act, 1956. Proceedings were initiated demanding Service Tax in respect of various services being provided by them. After due process, the Adjudicating authority confirmed the demands along with interest and penalty. Being aggrieved the appellant is before the Tribunal.

- The respondent confirmed the demand on the following grounds:

  I. Service Tax Liability of ₹ 57,24,877 under Restaurant Service.

  II. Service Tax liability of ₹ 8,87,249 on Rent Hoarding and Royalty Income for the FY 2008-09 to 2012-13 under Renting of Immovable Property Service provided to M/s. Calcutta Street Advertising Pvt. Ltd. and M/s. Ganesh Departmental Stores. In this regard, the Appellant has paid the Service Tax Liability of ₹ 2,40,900 in respect of M/s. Ganesh Departmental Stores which was ordered to be appropriated.

  III. Service Tax liability of ₹ 2,49,342 was confirmed in respect of Advertising Agency Service provided by the appellant by way of display of advertisement/ banners.

Arguments by Appellant Assessee

- The Appellant submits that the primary objective of the club is to provide its members with privileges, advantages, conveniences, and accommodations of a club. The facilities of the club are exclusively for its members, their spouses, and guests accompanied by members. No outsider is permitted to use the club's facilities.

- They further stated that club dining rooms cannot under any circumstances be treated as public eating place nor can the members of the club, to whom the dining rooms belong, be treated as members of the public in relation to such dining rooms and hence they cannot be

treated as restaurant and no service tax can be imposed.

- M/S ASTOR shall not get any tenancy right within the club premises as specified under clause 2(xiv) of the agreement and further they are authorised to use the club premises only for a limited purpose of cooking and serving food to the members of the Appellant Club as per the approved menu and rate duly approved by the club. Therefore, it is amply clear that the Appellant was not engaged in any commercial activity with the objective of earning profit within the club premises by taking the place on rent and by selling of food to any outsider as claimed by the department.

- Appellant further submitted that it is not acting as a landlord but taken the service of M/S ASTOR for preparation, supply and service of cooked food for its members only.

- It was further submitted that in respect of Ganesh, the appellant has already paid ₹ 2,40,900 and the same has been appropriated by the Adjudicating authority. The balance amount of ₹ 1,17,342 along with the demand in respect of Calcutta Street ₹ 5,29,008, totalling ₹ 6,46,350 already stands paid along with interest of ₹ 5,37,008 along with penalty of ₹ 1,61,588 being 25% of ₹ 6,46,350 already stands paid by the appellant.

- The Appellant used to arrange different events/functions where only members and guests accompanied by members can participate and enjoy. In the said events, different business entities can display their advertisements/banners against which the Appellant usually collects a charge/commission. The Appellant did not have any role in making, preparation, display or exhibition of the advertisements which are essential key attributes of an advertising agency. The activities performed by the Appellant was limited to canvassing the content of advertisements prepared by the advertiser and nothing else & further relied on the TRU circular no. 96/7/2007-ST dated 23rd August, 2007.

- Show cause notice covering the period from April, 2008 to March, 2012 was issued on 22.04.2014 by invoking the extended period in terms of the proviso to Section 73(1) of the Finance Act, 1994. Therefore, the entire demand proposed in the impugned show cause notice is barred by limitation in terms of Section 73(1) of the Act as the there was no fraud, collusion, wilful misstatement, suppression of facts or contravention of any provisions in the impugned case.

Arguments by Department

- The Ld. Authorized Representative for revenue reiterates the detailed findings of Adjudicating authority wherein after proper verification of the documentary evidence placed before him and statutory provisions, he has dropped a portion of the demand and has confirmed the demands discussed above. He submits that it is on record that the appellants were running various Restaurants within the Calcutta Club premises with all the facilities given by any Restaurant including the food and beverage service, air conditioning, proper ambience for dining etc.

- They provided space to Astor, who are paying rent in form remitting 20% of the billed amount to the appellants. This is nothing but rent being received in the form of sharing of total consideration.

In respect of the Hoarding and Rental facilities given to two parties, the appellants are not opposing the Service Tax thereon.

- In respect of the advertisement being provided to their clients, the appellant is required to pay the Service Tax under the classification of Advertising Agency Services.

- Though the appellant was required to register themselves and pay the Service Tax properly, they failed to do so in respect of these services.

- The contravention came to light only on account of the detailed verification and investigation taken up by the Revenue. Hence, he justifies the invocation of the extended period.

Decision of the Hon'ble Tribunal

- The Hon'ble CESTAT held that facilities are meant purely for the usage of its members. In the Restaurants run within the Club, only Members get access to the facilities of food, beverages. They may bring in their own guests as per the rules of the club. But the Bills are raised only on Members who are liable to pay the amount in question. Thus, it is clear the facilities are not open to general public and cannot be used by any person other than a person who is Member of the club. Further it relied on the decision of the Hon'ble SC in case ***State of West Bengal vs. Calcutta Club Ltd 2019 (29) GSTL 545 (SC)*** in which it has held that of services provided by an incorporated body to their members, the same would not be liable for any Service Tax for the services provided.

- ASTOR is given the menu of various items to be prepared and supplied to the Members, who pay the amount to the Club. The Club retains 20% of the amount and gives back 80% to Astor. The overall structure of the transaction is not that of lessor and lessee between the appellant and ASTOR. Therefore, we set aside the confirmed demand of ₹ 3,21,147/-.

- If any advertisement is published in the souvenir, or any display is carried out in the Club premises, that in itself cannot make the appellant liable for payment of Service Tax under advertisement services. Therefore, we set aside the confirmed demand of ₹ 2,49,342/-.

- Prayer of appellant regarding the partial refund of service tax discharged on rental services rendered by the appellant, since they have not charged the service tax on the lessee was rejected on the ground of expiry of limitation period specified under Section 11B of the Central Excise Act, 1944.

- The appellant has disclosed all the details in their records. Appellant was under *Bona fide* belief that there is no requirement to pay the Service Tax when the Restaurant service is being provided to their members. Several decisions of the HC favoured their belief. Even in respect of ASTOR transactions, decisions were in favour of the appellant. Therefore, It was held that the Revenue has not made out any case of suppression against the appellant. We find that part of the confirmed demand pertains to the normal period of 18 months. It was held that the confirmed demand for the extended period is hit by limitation.

- The appeal was allowed on merits. On limitation, the demand confirmed for the extended period was held as time barred.

2 M/S GOODYEAR INDIA LTD VS. COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, DELHI 2025 (6) TMI 1598 - CESTAT CHANDIGARH

Backgrounds and facts of the case

- The appellant is engaged in manufacture of tyres and tubes which are sold in the domestic market as well as overseas. The appellant has engaged commission agents abroad to provide certain services with respect to their exports and have paid the commission thereof.

- The appellant appointed foreign agents outside India for procurement of purchase orders from the foreign buyers and the said purchase orders were procured by the foreign agents outside India. The purchase orders so procured, on communication to the appellant, were met by the appellant by export of its products, delivery of which was taken by the foreign agents outside India. He also submits that the foreign agents dispatch the goods to the foreign customers outside India and realize the payment from the foreign customers outside India, which is remitted to the appellant; for these services, which are rendered outside India, the appellant pays commission charges to the foreign agents.

Arguments by Appellant Assessee

- The Appellant submits that since the services are rendered and received in a territory beyond India, the same are not taxable.

- Rule invoked in the present case is sub-rule (iii) of Rule 3, which unlike sub-rule (ii), does not have any such deeming fictions, as enacted by the first and second proviso to the said sub-rule (ii). He also submits that sub- rule (iii) has altogether a different proviso which is also in relation to certain other services (not applicable in the present case). Absence of deeming fiction of law as contained in two provisos to sub-rule (ii), any services which are admittedly and unquestionably performed/rendered outside India, cannot be lawfully treated to have been performed in India and therefore, they are outside the tax fold. He also submits that if the services are not performed in India at all, there is no question of it being received in India within the meaning of Section 66A of the Act read with aforesaid rules.

- Further, the appellant placed their reliance on the decision of Hon'ble Delhi High Court in the case of ***Orient Crafts Ltd vs. UOI - 2006 (4) STR 81 (Del.)***, wherein it has been held that no service tax at all can be levied on services rendered and received outside India. Appellant referred to CBEC circular dated 19.04.2006 wherein the CBEC in para 4.2.3, has clarified the scope of Section 66A as only services received in India are taxable under these provisions.

- It was further submitted that the revenue neutrality in the present case is qua the very same assessee being the appellant herein, on account of reverse charge basis and not qua any second or third party.

- Both the show cause notices are time barred as the allegation is of mere failure to disclose and not that of suppression

and therefore, extended period of limitation cannot be invoked.

Arguments by Department

- Commission paid by the appellants is chargeable to service tax under the RCM under the head "Business Auxiliary Service" under Section 65(19) of the Finance Act, 1994 read with Section 66A.

- The Ld. AR for the revenue reiterates the detailed findings of the Adjudicating authority that the service received by the appellant are in the category of "Business Auxiliary Service", which were used by the appellant in the manufacture and export of tyres and therefore, the services of the overseas agents, though performed outside India, have been received by none other than the appellant situated in India.

Decision of the Hon'ble Tribunal

- The services have been rendered entirely outside India, the same cannot be taxed in India by invoking the Rule 3(iii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, because the said rule in its opening portion contemplates receiving of services in India, which is clearly absent in the present case.

- Section 66A, Rule 2(1)(d)(iv) and Section 68(2) cited supra provides that the RCM was introduced w.e.f. 18.04.2006 but in the present case, the said provision is not applicable because it is a clear-cut finding that the impugned services have been performed/rendered entirely outside India and the same cannot be taxed in India under the provisions of RCM.

- Regarding the issue of revenue neutrality, it was held in appellant's own case, revenue neutrality is applicable qua the same assessee on account of reverse charge basis and not towards any other party. We also find that demand of service tax being on reverse charge basis is without dispute fully CENVATABLE in view of Rule 3(1)(ixa) of CENVAT Credit Rules, 2004 inserted on 08.04.2011 with retrospective effect from 18.04.2006 which clearly provides that the service tax leviable under Section 66A of the Finance Act, is CENVATABLE.

- Regarding the issue of limitation, we find that once the service tax leviable under Section 66A, is CENVATABLE, then the question of intent to evade the tax does not arise and extended period of limitation cannot be invoked as held by the Hon'ble SC in the case of ***Nirlon Limited vs. Commr. of CE, Mumbai – 2015 (320) ELT 22 (SC)***.

- It was that the impugned orders are not sustainable on merits as well as on limitation; consequently were set aside with consequential relief.

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CASE LAW UPDATE



CS Makarand Joshi

IBC

IDBI BANK LIMITED (APPELLANT) VS. GVK ENERGY LIMITED (RESPONDENT)

In the matter of *IDBI Bank Limited (Appellant) vs. GVK Energy Limited (Respondent)* at National Company Law Tribunal, Hyderabad Bench dated 6 May 2025

Facts of the Case

- The IDBI Bank Limited - the Financial Creditor (Applicant/FC) had granted financial assistance to M/s GVK Power Ltd, the Principal Borrower towards its share in the consortium financing arrangement, by way of a Rupee Term Loan of ₹ 733.85 crore for the purpose of setting up a coal-based thermal power plant in Punjab. Additionally, working capital limits aggregating to ₹ 153.75 crore, comprising fund-based limits, were sanctioned to meet the working capital requirements of the principal borrower.

- The Principal Borrower executed various security documents, including Loan/Facility Agreements, Consortium Agreements, Deeds of Assignment, and Deeds of Hypothecation over all movable assets, and created mortgages over all immovable properties, in favour of the FC and other consortium lenders to secure the repayment of the loan and credit facilities.

- GVK Energy Limited acted as the Corporate Guarantor (Respondent/CG) to secure the repayment of the financial assistance extended to the Principal Borrower and, in that capacity, executed a Deed of Corporate Guarantee.

- The Principal Borrower defaulted in the repayment of its debt obligations along with interest, resulting in its account being classified as a Non-Performing Asset (NPA) by the FC in 2018.

- FC then recalled the credit facility and thereafter issued a notice, calling upon the CG to pay by 15 February 2019 the outstanding amounts of ₹ 989.66 crores as on 31 December 2018 with further interest and charges at contractual rates.

- Under the Security Trustee Agreement, IDBI Trusteeship Services Ltd., acting on behalf of all lenders including IDBI Bank Ltd, invoked the Corporate Guarantee through its letter dated 8 February 2019; however, as the CG failed to repay the dues despite a valid demand, an application was filed on 11 April 2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016, to initiate the Corporate Insolvency Resolution Process (CIRP) against it.

Arguments of the Appellant

- As per the definition of *financial debt* under Section 5(8) of the IBC, a *debt* must be one disbursed against the consideration for the time value of money. It is, therefore, contended that, since no debt was disbursed to the CG, there exists no *debt* and/or *default* attributable to the CG. References were also given of the revival letters.

- Principal Borrower continued to make remittances towards the debt until September 2022. As per Section 19 of the Limitation Act, 1963, each such payment gives rise to a fresh period of limitation from the date of the corresponding payment. The liability of the CG is co-extensive with that of the Principal Borrower and that the guarantee in question is a continuing guarantee. Consequently, acknowledgments of debt and remittances made by the Principal Borrower are binding upon the CG.

- Denying the allegation that the FC was using the insolvency process as a tool of recovery, it was submitted that the CG had not repaid the dues of the FC and the FC was rightfully exercising the rights provided by the IBC for initiating the Corporate resolution process against the CG.

- The Guarantee Agreement constitutes an independent contract, and the obligations of the Guarantor must be determined based on its terms. Accordingly, the Guarantor remains liable under the Guarantee Agreement, irrespective of the insolvency proceedings or the Resolution Plan of the Principal Borrower.

- Under the approved Resolution Plan of the Principal Borrower, the FC recovered only ₹ 306.02 crores against its admitted claim of ₹ 1412.80 crores. Consequently, the FC retained the right to proceed against the CG for the unrecovered balance of ₹ 1106.78 crores. It is further contended that, since the debt owed by the Principal Borrower to the FC was not been fully discharged, a default continues to subsist, and the CG, being jointly and severally liable under the Guarantee Agreement, remains equally responsible for the outstanding amount.

- Reliance was place on the judgment passed by the **Hon'ble Supreme Court in Essar Steel India Ltd., wherein, reaffirming its earlier decision in *SBI vs. V. Ramakrishna*,** the Court held that a guarantor cannot evade liability by invoking the protection of Section 31 of the IBC, and that the liability of the guarantor does not stand discharged merely by virtue of the approval of a resolution plan.

- The Deed of Corporate Guarantee executed by the CG expressly stipulated that *all obligations of the Guarantor under this Guarantee shall automatically stand extended without any further act or deed on the part of the Guarantor for the benefit of all lenders*,' including the Applicant Financial Creditor (FC), IDBI Bank Ltd. Therefore, the present application filed

by IDBI Bank Ltd. was also valid and in accordance with the law.

- For rebutting the contention that no debt was disbursed to the CG and therefore no *debt* or *default* can be attributed to the CG, it was submitted that Section 60(2) of IBC expressly provides for the initiation of CIRP against a CG.

- Further reliance was placed on the judgment of the **H*on'ble Supreme Court in K. Parmasivam v. The Karur Vysya Bank Ltd,*** wherein it was held that a FC was entitled to proceed against both the principal borrower and the guarantor, jointly and severally, in the event of default. The Hon'ble Court observed that, upon such default, the guarantor assumes the status of a debtor, or if it is a corporate entity, a corporate debtor within the meaning of Section 3(8) of the IBC.

Arguments of the Respondent

- The application, filed in April 2023, was barred by limitation, as the demand for payment was made by the FC on 8 February 2019, with a requirement to pay within seven days (i.e., by 15 February 2019).

- The provisions of IBC are not intended to be used as a tool for debt recovery. It is assed that an application to commence CIRP can be denied where the creditor is seeking to invoke the insolvency process as an inappropriate substitute for recovery proceedings.

- The application had been initiated with the intent to coerce and arm-twist the CG into paying sums which were neither due nor payable to the FC. It was also submitted that, in any event, the claims of the FC were under consideration in the ongoing CIRP of the Principal Borrower.

- A detailed resolution plan was submitted, wherein the claims of all its FC, including the alleged claim of the FC, had been categorically dealt with. In view thereof, no alleged debt and/or default could be said to exist between the FC and the Respondent, and accordingly, the basic ingredients of Section 7 application were not satisfied.

- Once the claims of the FC have been admitted and dealt-with under the resolution plan of the Principal Borrower, the FC cannot seek to re-agitate the same claims against the CG when the claims against the Principal Borrower are already under consideration in the said resolution plan.

- Following the approval of the resolution plan, no debt and/or financial debt exists in relation to the FC, and consequently, no 'default' can be attributed to the CG. It was argued that the present proceedings under Section 7 IBC are not maintainable and ought to be dismissed.

- CG was issued to secure the debt obligations of Principal Borrower under the Financing Documents, and the approval of the resolution plan of Principal Borrower has resulted in the discharge and extinguishment of the entire alleged debt.

- Accordingly, no payment obligation survives under the said Financing Documents, and the liability under the Corporate Guarantee Agreement also stood discharged/extinguished discharged.

- The Corporate Guarantee was invoked by a demand notice dated 8 February 2019 issued by IDBI Trusteeship Services Ltd., not by FC; it was argued that since IDBI Trusteeship Services Ltd. had not disbursed any funds to principal borrower or CG, no financial debt was owed to it, rendering the invocation of the Corporate Guarantee invalid and making the present application u/s 7 of the IBC untenable on this ground as well.

- As per the definition of *financial debt* under Section 5(8) of the IBC, a *debt* must be one disbursed against the consideration for the time value of money. It is, therefore, contended that, since no debt was disbursed to the CG, there exists no *debt* and/or *default* attributable to the Respondent.

Held

- The Corporate Guarantor steps into the shoes of the debtor upon the Principal Borrower's failure to repay its dues, regardless of the Principal Borrower's separate resolution under CIRP.

- The application for initiation of CIRP against the Respondent CG—having been filed was well within the prescribed limitation period and not barred by Section 10A of the IBC—and was found to be maintainable and accordingly application was admitted.

Companies Act

LBR FOUNDATION INDIA (PETITIONER) - NATIONAL COMPANY LAW TRIBUNAL (NCLT) CHENNAI BENCH DATED 4 MARCH 2025

In the matter of LBR Foundation India (Petitioner) - National Company Law Tribunal (NCLT) Chennai Bench dated 4 March 2025

Facts of the case

- LBR Foundation India, the Petitioner Company/the Petitioner, was incorporated u/s 25 of the Companies Act, 1956 (corresponding to Section 8 of the Companies Act, 2013) on 28 October 2010.

- The total issued, subscribed and paid-up share capital of the Petitioner as on the date of the petition is ₹ 21,26,28,810 comprising of 2,12,62,881 shares of ₹ 10 each.

- As on 31 March 2023, the majority shareholder of the Petitioner was M/s. Lebara Foundation UK (Overseas Parent Company) holding 2,12,59,881 shares, constituting 99.99% of the total shareholding of the Company.

- The Petitioner obtained registration under the Foreign Contribution Regulation Act and opened a FCRA account on 10 December, 2015

- However, prior to obtaining registration and opening FCRA account, the company received ₹ 27,74,67,870.23 from the Overseas Parent Company as foreign Direct investment towards share application money in tranches between 03 November 2011 and 23 December 2015.

- Pursuant to receipt of this amount, shares of ₹ 26,25,28,810 were allotted in tranches between the Financial Years 2011-12 and

2014-15 to the parent company and the remaining share application money was refunded.

- However, the petitioner company was not able to utilise the share capital money received from its parent company and hence wanted to return the same. Therefore, the company in year 2019, filed a petition for reduction of capital before National Company Law Tribunal (NCLT) by ₹ 6 Crores, and the NCLT approved the same.

- But, when the company initiated the process for repatriation of this money, the Reserve Bank of India (RBI) treated this as a transfer under the Consolidated FDI policy. Therefore, the company could reduce its capital only up to the fair value of its shares calculated as per any internationally accepted method. As a result, the company obtained a valuation report from a chartered accountant and could reduce its capital up to ₹ 3,49,50,000 only. Whereas the remaining capital still remains with the company.

- Therefore, in order to return the remaining amount to the parent company, the petitioner company has filed the present petition for obtaining approval for its capital reduction.

- Consequent to the reduction of share capital, part of the issued, subscribed and paid-up share capital held by Overseas Parent Company would stand cancelled and consequently, the overall issued, subscribed and paid-up share capital will be reduced.

Contentions of the Regional Director (RD)

- The Petitioner did not allot the shares to its parent company within 60 days from the receipt of share application money and therefore, violated Section 42(6) of the Companies Act, 2013 (the Act). However, the Petitioner and its directors have not filed the Adjudication Application under Section 454 of the Act for adjudication of such violation.

- It is stated that the Petitioner was registered under Section 25 of the Companies Act, 1956. As per the terms of the licence for the non-profit organization issued to the Petitioner Company, the income and property of the Petitioner whensoever derived, shall be applied solely for the promotion of the objects set forth in its Memorandum of Association and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus, or otherwise by way of profit, to persons who at any time are or have been members of the company or any of them or to any persons claiming through any one or more of them.

Petitioner's contentions

- The proposed reduction of equity share capital does not involve the diminution of any liability in respect of unpaid capital. It only entails payment to the shareholders of paid-up equity capital which is not used by the Petitioner due to restrictions under the Foreign Contribution Regulation Act, 2010.

- All the share application monies on a rights basis were received from the Overseas Parent Company under Section 62(1)(a) of the Act and not under Section 42 of the Act which deals with private placement. Hence, the time limit for allotting the shares i.e., 60 days from the date of receipt of share application money, provided under Section 42 of the Act is not applicable in the present case.

- The entire capital reduction process is a commercial decision made by the management and shareholders of the Petitioner. The Petitioner is exercising its statutory right to refund the excess share capital amount lying in its books without utilization. The Petitioner intends to reduce its share capital in full compliance of applicable law and in a transparent manner.

- Section 66 of the Act, empowers "a company limited by shares and having share capital may, by a special resolution, reduce the share capital by any manner" to reduce its share capital and does not, in any manner, restrict or prohibit a company registered under Section 8 of the Act from reducing its share capital.

- The Petitioner is reducing its share capital only to the extent of excess share application money received from its Overseas Parent Company and the same is not an income earned by the Petitioner.

- As per Section 66 of the Act, a company can undertake a reduction of share capital "in any manner". It is well settled law that the question of reduction of share capital is treated as a matter of domestic concern and it is the decision of the majority which will prevail. Section 66 of the Act clearly stipulates that the reduction can be affected in any manner, therefore selective reduction is also permitted in law.

- The Petitioner had earlier filed a petition for reduction of share capital vide CP 400 of 2019 involving selective reduction of share capital and the same was approved by this Tribunal vide order dated 5 April, 2021. The RD never challenged the said order and it became final.

- NCLT, Mumbai Bench in the matter of Bharat Diamond Bourse (C.P.175/MB/2021) allowed the reduction of share capital filed under Section 66 of the Act by a company registered under Section 8 of the Act namely, Bharat Diamond Bourse vide an order dated 14 March, 2024.

Held

- The Certificate of Incorporation reveals that the Petitioner was incorporated under Section 25 of the Companies Act, 1956 (now Section 8 of the Companies Act, 2013) as a company with charitable objects. As per its Memorandum of Association, it was established to support refugees, children, women, and the elderly in need. Being a Section 25 (now Section 8) company, it is permitted to apply its profits and income solely towards promoting its stated charitable purposes.

- It is seen that adjudication proceedings under Section 454 of the Act, fall within the jurisdiction of the Central Government. Hence, without delving into the merits of the averments made by the RD and the Petitioner pertaining to allotment of shares to the Overseas Parent Company, this Tribunal grants liberty to the RD to proceed with appropriate action.

- Considering the financial position of the Petitioner, the mode of reduction of share capital would not present a true and fair view of the financial position of the Petitioner. This Tribunal is of the view that, on account of the debit balance in the profit and loss account, the accounting treatment proposed to be followed by the Petitioner would cause the financial statements to portray an inaccurate view of the financial position of the Company.

- As per Section 8(1)(b) of the Act, 2013, any profits or income received by the Company should be applied only for the purpose of promoting its objects. Further, Section 8(1)(c) of the Act, imposes a restriction on the distribution of dividends. Even in the event of winding up or dissolution of a Company registered under Section 8, surplus assets have to be transferred to another company registered under Section 8 and having similar objects or be sold and the proceeds thereof credited to Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016. The object of such restrictions imposed by this provision is to ensure that there is transparency in the functioning of companies formed for charitable objects and to prevent the siphoning of funds in any capacity.

- In the case of Bharat Diamond Bourse (supra), that Regional Director (Western Region), in para 7(A) and 7 (B) of its report has raised objections that in view of Section 8(1)(c) of the Act, 2013, the company is not allowed to return of the money/assets out of its general reserve i.e., undistributed profits/reserve funds. Objections were also raised in view of the restrictions placed on a company incorporated under Section 8 of the Act, 2013, wherein in event of winding up or dissolution of Section 8 company, its assets/liabilities can only be transferred to another section 8 company registered under this section having similar objects and the assets cannot be return to shareholders of section 8 company in any circumstances. In response to the objection raised by the RD, the Petitioner in Bharat Diamond Bourse (supra) had clarified that the reduction of share capital was due to the reason that 44 Equity Shares of ₹ 1000/- each were inadvertently issued in excess to its shareholder. However, in the present case, there has not been any such inadvertence or oversight averred by the Petitioner. Rather, the Petitioner is desirous of reducing its share capital as it has not been able to use the same for its charitable objects. For the reasons stated above, the facts of the present case are distinguishable from that of the Bharat Diamond Bourse (supra) relied upon by the Petitioner to justify the maintainability of this petition.

- The donations received by the Petitioner seems to be insufficient to meet the needs of the Petitioner. Moreover, the Petitioner in its reply to the RD report dated 26.06.2024 has averred that the project of setting up the educational institution could not be carried out and that the Petitioner in the process of disposing the land. That being the case, this Tribunal fails to understand how the Petitioner has not been able to use the allotted share capital funds received from the Overseas Parent Company for fulfilling its objects.

- Any income, in this case, foreign contribution received by the Petitioner ought to be strictly applied towards promoting its objects and the Petitioner cannot escape from the same by returning the foreign contribution to the Overseas Parent Company under the guise of reduction of share capital money.

- In view of the foregoing discussions, this Tribunal is of the view that it is not just and proper to allow the reduction of the share capital of the Petitioner.

- Accordingly, the Petition, CP(CA)/73(CHE)/2023 is dismissed with no orders as to cost.

■

FEMA – UPDATES AND ANALYSIS





CA Hardik Mehta *CA Tanvi Vora*

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

A. Update through Notifications

1. Application for Opening Diamond Dollar Accounts

The Reserve Bank of India (RBI) has amended the framework governing foreign currency accounts held by residents in India. It specifically addresses the operation of Diamond Dollar Accounts (DDAs) maintained by exporters engaged in trade of rough or polished diamonds and gemstone-studded jewellery. The changes aim to streamline procedures, ensure regulatory alignment, and facilitate ease of doing business for exporters.

The amendment has revised the eligibility criteria for opening a Diamond Dollar Account (DDA) under Schedule II. Exporter firms and companies must now have a minimum 3-year track record in the import or export of diamonds and coloured gemstone-studded jewellery, as against the earlier requirement of 2 years. This change applies specifically to the annexure/form for DDA applications. All other conditions, including documentation of consignments, KYC norms, and compliance with Import–Export Code (IEC) requirements, remain unchanged.

Notification No. FEMA 10(R)(6)/2025-RB dated 29th April 2025.

(Comments: By extending the track record requirement, the RBI aims to mitigate fraud and money laundering risks by discouraging newly formed shell entities from exploiting DDAs for illicit fund flows. Additionally, the change aligns India's regulatory framework with international best practices, where stringent longevity and track record norms are imposed on accounts involved in trading high-value commodities.)

2. Exemption from declaration of exports

RBI has amended regulation 4 of Notification No. FEMA 23(R)/2015-RB to include export of Tugs or Tug Boats, Dredgers and Vessels used for providing offshore support services, subject to their re-import into India in the list of exemption from furnishing of declaration for export.

Notification No. FEMA 23(R)(6)/2025-RB dated 24th June 2025.

(Comments: RBI has allowed temporary export without declaration of offshore support vessels such as Tugs or Tug Boats, Dredgers and Vessels under FEMA, provided they are re-imported into India, easing compliance for maritime operators.)

B. Update through Circulars

1. Relaxation announced regarding import of shipping vehicles

Importers making advance remittance without bank guarantee or irrevocable standby letter of credit are generally subject to tighter conditions. Advance remittance above USD 200,000 typically required a bank guarantee from a foreign bank of repute or an irrevocable standby letter of credit.

Also, no specific relaxations existed for shipping vessels; these were treated under general import remittance rules.

With a view towards enhancing ease of doing business and keeping in view the sector-specific constraints, it has been decided to allow importers to make advance remittance for import of shipping vessel, without bank guarantee, or an unconditional, irrevocable standby Letter of Credit, up to USD 50 million, subject to the following conditions:

1. AD banks must exercise commercial judgment, ensure transaction *bonafides*, and complete KYC/due diligence of both importer and overseas manufacturer.

2. Advance payments must follow contract terms and be remitted directly to the manufacturer's account.

3. For public sector entities, AD banks must ensure Ministry of Finance waiver of bank guarantee for advances over USD 100,000.

4. Goods must be imported within six months (three years for capital goods). Importer to provide import evidence within 15 days of deadline. For milestone payments, last remittance date will be considered.

5. Before remittance, AD banks must verify necessary approvals.

6. If aircraft/aviation goods are not imported, AD bank must ensure immediate repatriation. RBI prior approval is needed for deviations.

7. AD banks must ensure ORM generation, BoE entries, and settlements as per IDPMS guidelines.

A.P. (DIR Series) Circular No. 07 dated 13th June 2025.

(Comments: RBI has provided similar relaxations in the past for advance remittances without bank guarantee in certain sector-specific cases in the past e.g. aircraft/helicopter, rough diamonds, etc. The shipping sector faces unique constraints (e.g.,

high-value contracts, long delivery timelines, international shipbuilding standards). This amendment aligns with India's Ease of Doing Business initiative by addressing the practical difficulties of obtaining guarantees for such high-value transactions.)

C. Other updates

1. FIRMS Portal User Manual updated

The Foreign Investment Reporting and Management System (FIRMS) portal is an online platform introduced by the Reserve Bank of India (RBI) in September 2018. It facilitates Indian entities and LLPs to report foreign investment transactions under the FEMA 1999 regulations in a single-window, paperless manner. The portal promotes efficiency, transparency, and accuracy in FDI compliance reporting. Prior to the portal's introduction, businesses faced challenges such as multiple disconnected forms, offline/ manual submissions, and extended processing timelines.

The FIRMS portal was launched in two phases in 2018, with the first phase making the Entity Master Form (EMF) available online, and the second phase introducing the Single Master Form (SMF). The key purpose of the FIRMS portal is as follows:

Purpose	*Description*
Entity Master Registration	Captures basic details of entities with foreign investment.
Reporting of FDI Forms	Online submission of FC-GPR, FC-TRS, LLP-I, LLP-II, CN, DRR, ESOP, DI forms.
Approval & Monitoring	Enables AD Bank review, RBI approval tracking, and compliance monitoring.
Data Management	Centralised record of foreign investments for regulatory and statistical purposes.

Over the years several RBI circulars, FIRMS portal FAQs, and User Manuals have provided guidance on the FIRMS portal and its reporting framework. The User Manuals have undergone several updates over time to incorporate solutions to practical issues and provide better guidance. The latest update to the FIRMS User Manual was issued on 1 July 2025.

The key updates to the FIRMS User Manual over the years have been summarized below:

1. Detailed guidance introduced for bulk upload of FC-GPR, FC-TRS and DI forms using CSV/XML templates. The system now auto-validates bulk data for sector caps, pricing compliance, and

formatting errors before submission. It also generates error reports identifying specific issues for correction. Further, the AD bank process for bulk upload verification has been streamlined with a batch approval feature.

2. Users of the FIRMS portal can update their registered email ID and contact number securely. Once the changes are made, the system confirms the update and notifies the user through an automated email. This ensures that contact information remains current for official communications and compliance.

3. At the time of submission the forms would be considered auto-acknowledged and the AD bank has 5 working days to process the form as either approved or sent back for modification or resubmission or rejected.

4. A new feature on the FIRMS portal allows any errors or discrepancies to be modified rather than the form being rejected and required to be filed again. The form would be returned for correction, with remarks provided to guide necessary modifications before resubmission. The applicant will receive system-generated communication with the status and remarks, also visible on the FIRMS portal. When a form is resubmitted after corrections, that resubmission date is treated as the date of reporting for LSF or compounding calculations.

5. In case of forms submitted with a delay, the AD Bank can advise Late Submission Fees (LSF), compounding, or both depending on the delay period. For delays up to three years, LSF or compounding may be suggested, or the form may be returned or rejected. For delays beyond three years, only compounding can be advised, or the form may be returned or rejected.

6. LSF must be paid to the correct Regional Office of RBI via NEFT/RTGS, with the form reference number mentioned in the transaction remarks. After making the payment, the applicant must email payment details in the prescribed format to the respective RBI office, keeping the system-generated LSF advice email in the trail. If LSF is paid late, incorrectly, or to the wrong RBI office, the amount will be refunded to the applicant's account.

7. Form Specific updates:

   a. Selection of option 'others' for reclassification of FPI to FDI.

   b. For bulk filing, the template for entering the details of multiple investors may be downloaded from the "Download Template" option available under the Menu. At present a maximum of 999 investors can be added in one form.

   c. For Bonus issue, the value of issue price per instrument is to be entered as 0 (Zero).

   d. Drop down menu options for mode of payment has been broadened along with attachments to be provided in each case.

   e. In case of excess amount of inflow in comparison to issue, the

applicant should choose between 4 options of utilization of excess portion.

f. For conversion of a company to an LLP, if an FCGPR has already been reported for FDI originally received by the company, additional reporting in Form LLP1 would be applicable, only if the LLP receives an additional capital contribution or on acquisition of profit share by a PROI in the LLP, in terms of regulation 4(6) of FEMA 395.

8. The manual has provided detailed guidelines for i) reporting related to exercise of ESOPs using trust route and/ or cashless mechanism; ii) guidelines for reporting of downstream investments; and iii) reclassification of FPI to FDI

9. Any government issued ID of the individual shall be accepted for registering as a BU

10. The list of documents to be attached with each form elaborates in detail w.r.t. when a valuation report should be attached and provides by way of example the calculation of 90 days time limit. he valuation date (i.e., the date as on which the valuation is arrived/ obtained) specified in a valuation certificate, should not be earlier that ninety days from the date of the transaction.

(Comments: Constant updatation of the FIRMS User Manual reflects RBI's continued efforts to enhance the foreign investment reporting framework under FEMA. The additions, including bulk upload functionality, improved validation processes, and clear LSF guidelines, aim to simplify compliance and reduce reporting errors. These updates promote transparency, efficiency, and timely resolution of discrepancies. Entities and AD Banks are expected to adhere strictly to the revised procedures to avoid regulatory action. Stakeholders should familiarise themselves with the latest manual to ensure accurate reporting. Timely updates of contact details and prompt action on AD Bank communications are critical for smooth compliance.)

■

" To give pleasure to a single heart by a single act is better than a thousand heads bowing in prayer. "

Mahatma Gandhi

THE CHAMBER NEWS



CA Mehul Sheth
Hon. Jt. Secretary



CA Ankit Sanghavi
Hon. Jt. Secretary

BRIEF REPORT OF 98TH ANNUAL GENERAL MEETING

At the 98th Annual General Meeting held on Friday, 4th July, 2025, the following business was transacted:

i) The minutes of the 97th Annual General Meeting held on July 9, 2024 were read and adopted.

ii) The Annual Report for the year 2024-25 was approved & adopted.

iii) The Accounts for the year ended 31st March, 2025 were adopted.

iv) CA J. L. Thakkar was appointed as Auditor for the year 2025-26 to hold office up to the next AGM.

v) Results of the elections for the year 2025-26 were declared by the Election Officer, Shri Bhavesh Vora are as follows:

- Mr. Jayant Gokhale was elected as President.
- The following fourteen members were elected to the Managing Council.

1	Ameya Kunte	8	Mehul Sheth
2	Ankit Sanghavi	9	Namrata Dedhia
3	Bhavik R. Shah	10	Neha Gada
4	Darshak Shah	11	Sushrut Chitale
5	Dipesh Vora	12	Viraj Mehta
6	Karishma Phatarphekar	13	Vishal Shah
7	Keval Shah	14	Vitang Shah

THE DASTUR ESSAY COMPETITION

Hon'ble Shri Justice Abhay Ahuja, Bombay High Court, was the judge of the Essay Competition.

The Top 3 Winners of the Essay Competition are:

S. No.	*Participant Name*	*Topic*	*Associate/College*
1	Mr. Dhruv Parekh	Intellectual Property Rights: Balancing Creativity and Accessibility	GBCA & Associates LLP Chartered Accountants
1	Ms. Moray Sahitya	Government strategies to combat corruption and white-collar crime	Master Minds
2	Ms. Bhavya Prajapati	Intellectual Property Rights: Balancing Creativity and Accessibility	K. C. Mehta & Co LLP, Vadodara
3	Mr. Akash Sahu	Intellectual Property Rights: Balancing Creativity and Accessibility	National Law Institute University Bhopal
3	Mr. Sudhanwa Joshi	Data Privacy Regulations in the Digital Age	Government Law College, Mumbai

The above top 3 winners of The Dastur Essay Competition, 2025 viz tie for the first position –i.e Mr. Dhruv Parekh (1st Winner) was felicitated by offering Memento, Certificate and Cheque, & Ms. Moray Sahitya (1st Winner- in abstentia), Ms. Bhavya Prajapati (2nd Winner) was also felicitated by offering Memento, Certificate and Cheque, tie for the third position also–i.e Mr. Akash Sahu & Mr. Sudhanwa Joshi (3rd Winner – in abstentia). Ms. Ashvi Jain & Mr. Ved Haravara (4th Winner), Mr. Shaikh Haris Iqrar & Mr. Moksh Gada (5th Winner), Ms. Mahek Talreja (6th Winner), were also felicitated by offering Appreciation Certificate and gift at the 98th Annual General Meeting.

THE NEW TEAM FOR 2025-2026

i) In the first Managing Council Meeting held on Tuesday, 4th July, 2025, the following members were appointed as Office Bearers:

S. No.	*Name*	*Designation*
1	Neha Gada	Vice President
2	Mehul Sheth	Hon. Jt. Secretary

S. No.	*Name*	*Designation*
3	Ankit Sanghavi	Hon. Jt. Secretary
4	Vitang Shah	Hon. Treasurer

ii) The following nine members were Co-opted to the Managing Council for the year 2025-26:

1	Apruva Shah	4	Ketan Vajani	7	Mahendra Sanghvi
2	Ashok Mehta	5	Hinesh Doshi	8	Vipul Choksi
3	K Gopal	6	Kishor Vanjara	9	Yatin Desai

iii) Mr. Vijay Bhatt, being Imm. Past President, is also part of the Managing Council for the year 2025-2026.

iv) *EDITOR & EDITORIAL BOARD OF THE CHAMBER'S JOURNAL*

Mr. Anish Thacker was appointed as the Editor of "The Chamber's Journal". The following were appointed as Editorial Board Members:

1 Kishor Vanjara
2 Pradip Kapasi
3 Vipul Choksi
4 Mahendra Sanghvi
5 Manoj Shah
6 Yatin Desai

The following were appointed as Asst. Editors:

1 Chirag Wadhwa
2 Dharan Gandhi
3 Fenil Bhatt
4 Haresh Chheda
5 Nikhil Tiwari
6 Rakesh Upadhyay
7 Sachin Sastakar
8 Siddharth Parekh
9 Vikram Mehta
10 Yatin Vyavaharkar

v) *COMMITTEES*

The following Committees were formed and their Chairpersons were appointed:

S. No.	*Committees*	*Chairman/Chairperson*
1	Accounting & Auditing	Sushrut Chitale
2	Centenary Year	Vipul Choksi
3	Commercial & Allied Laws	Apurva Shah
4	Direct Taxes	Viraj Mehta
5	Indirect Taxes	Keval Shah
6	International Taxation	Karishma Phatarphekar
7	Chapters Network Committee	Hinesh Doshi
8	I.T. Connect & Social Media	Bhavik R. Shah
9	Law & Representation	Ketan Vajani
10	Journal	Ameya Kunte
11	Members' Development & Outreach Committee	Vishal Shah
12	Research & Publication	Ashok Mehta
13	Residential Refresher Course	Darshak Shah
14	Student	Namrata Dedhia
15	Study Circle & Study Group	Dipesh Vora

The Chamber of Tax Consultants Celebrates Grand Inaugural of Centenary Year

The Chamber of Tax Consultants (CTC), one of India's oldest professional bodies in the field of taxation and allied laws, marked the beginning of its **Centenary Year** with a grand inaugural function at **Hotel Sahara Star, Mumbai, on Friday, July 4, 2025**.

The evening was graced by the presence of **Hon'ble (Dr.) Justice (Retd.) D.Y. Chandrachud, (Former CJI)**, *inaugurated the Centenary year by lighting of lamp and delivers keynote address on* ***"Income Tax reforms and future of judiciary"****; which was followed by Fireside chat by CA Ashutosh Pednekar as Moderator with* **Mr. Keki Mistry,** former Vice Chairman and MD of HDFC. *He highlighted India's financial evolution.*

To commemorate this historic milestone, **Hon'ble Dr. Justice (Retd.) D. Y. Chandrachud**, Chief Justice of India, also unveiled:

- Launched Chambers film showcasing the various milestones making key phases of Chamber's Journey
- A **revamped logo** symbolizing continuity with transformation
- Its **brand-new website**, designed to serve as a dynamic knowledge and networking hub for professionals

The Publication on ***"Succession through Private Trust - Legal, Tax and Regulatory Aspects"*** *was released by the hands of* ***Mr. Keki Mistry****.*

The Centenary Year celebrations will continue with a series of thought leadership events, knowledge sessions, and initiatives aimed at capacity building, member engagement, and policy dialogue.

Important events and happenings that took place online/physical between **June 1, 2025 to June 30, 2025** are being reported as under:

I. ADMISSION OF NEW MEMBERS

The details of new members who were admitted in the Managing Council Meeting held on June 24, 2025 are as under:

Type of Membership

Life Member	Ordinary Member	Student Member	Associate Member	Total Members
5	18	1	0	24

II. PAST PROGRAMMES

INTERNATIONAL TAXATION

Topic: **2nd International Taxation Course for Beginners Jointly with Student Committee** ***.....*** *contd*

2.6.2025

a Taxation of Royalty & Fees for technical services
Speaker: ***CA Bhaumik Goda***

4.6.2025

b Technical and Procedural Aspect of Form 15CA-15CB, Lower Deduction Certificate
Speaker: ***CA Naman Shrimal***

6.6.2025

c Taxation of Students, Artists, Sports persons, foreign Shipping & Aircraft Companies
Speaker: ***CA Samir Kanabar***

9.6.2025

d Taxation of Interest, Dividends, Capital Gains and Other Income
Speaker: ***CA Namrata Dedhia***

18.6.2025

e Business Connection and Concept of PE, SEP and Equalization Levy
Speaker: ***CA Monika Wadhani***

20.6.2025

f Basics of Transfer Pricing I – Overview & legal framework and compliance
Speaker: ***CA Hetav Vasani***

21.6.2025

g Basics of Transfer Pricing II – How to conduct Benchmarking study and different methods of Benchmarking
Speaker: ***CA Abhay Saboo***

23.6.2026

h Brains Trust session/Panel Discussion
Moderator: CA. Shabbir Motorwala
Panelists: CA Vispi Patel, CA Vishal Gada & Adv. Sanjay Sanghvi

12.6.2025 to 15.6.2025

Topic: **18th Residential Conference on International Taxation, Novotel Dona Sylvia Resort, Goa**

a Comprehensive discussion on Permanent Establishment under various Emerging Business Models (E.g. Global Capability Centres, Work from Anywhere, E- Commerce, Engineering, Procurement and Construction, Marketing Support Services, etc.)
Speaker: ***Mr. Pramod Kumar (Chairperson), CA Jimit Devani (Paper writer & presenter)***

b Transfer Pricing – Concept of FARM, Marketing Intangibles, Business Restructuring (Exit and Entry in India), Value Chain Analysis, DEMPE, GCCs etc.
Speaker: ***CA Bhavesh Dedhia***

c Recent Trends in MAP, APA and Exchange of Information ***(Fireside Chat)***
Speaker: ***Dr. Vinay Kumar Singh (Joint Secretary, FT& TR 1, CBDT)***
Mr. Sobhan Kar (Ex IRS, Director (APA), CBDT)

d Recent Developments in Anti Abuse – GAAR, SAAR, PPT
Speaker: ***CA Gautam Doshi***

e Important Recent Judicial Precedents in International tax and TP
Speaker: ***Dr. (CA) Sunil Moti Lala. Advocate***

f Panel discussion on emerging Transfer Pricing issues (through Case Studies)
Moderator: CA Karishma Phatarphekar
Panelist: CA Renu Narvekar, CA Eric Mehta & CA Shikha Gupta

g International Taxation Case Studies
Moderator: CA Anish Thacker
Panelist: CA T. P. Ostwal, CA P. V. Srinivasan & CA Himanshu Parekh

INDIRECT TAXES

Topic: Workshop on GST Law Jointly with GSTPAM, AIFTP (WZ), BCAS, MCTC & WIRC of ICAI

10.6.2025

a Panel Discussion on Self Re-Development of Residential/ Commercial Co-op. Societies
Moderator: CA Ramesh Prabhu
Panelists: PMC, Architect, Banker, RERA

14.6.2025

b Issues in Re-development, Self Re-Development of Co-op. Societies - under GST
Speaker: ***CA Naresh Sheth***

19.6.2025

c Issues in Re-development, Self Re-Development of Co-op. Societies - under Income Tax
Speaker: ***CA Vimal Punamiya***

21.6.2025

d Issues in Input Tax Credit under GST
Speaker: ***CA S. S. Gupta***

26.6.2025

e ISD vs Cross Charge under GST
Speaker: ***CA Divyesh Lapsiwala***

28.6.2025

f Concept of Mutuality - Issues under GST vis a vis Income Tax
Speaker: ***Sr. Adv. V. Raghuraman***

18.6.2025

Topic: GSTAT Rules and Procedures: Demystifying the New Framework
Speaker: ***Adv. Vinay Jain***

STUDENT

14.6.2025 & 8.6.2026

Topic: 8th The Dastur National Direct Tax Moot Court Competition 2025 jointly with GLC & MCA

DIRECT TAXES

19.6.2025

Topic: Amendments in Direct Tax law applicable for AY 2025-26 & Filing of Return of Income
Speaker: ***CA Avinash Rawani & CA Bhadresh Doshi***

26.6.2025

Topic: ISG - Recent Important Decisions Under Direct Tax
Speaker: ***Ms. Kinjal Bhuta, Adv.***

STUDY CIRCLE & STUDY GROUP

24.6.2025

Topic: Recent Judgements under Income Tax Act, 1961
Speaker: ***CA T. G. Suresh***

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Glimpses of the Centenary Year Celebration held on 4th July 2025 at the Jade Ballroom, Hotel Sahara Star, Mumbai



Dignitaries at the Inaugural session of the Centenary Year Celebration
Seen from L to R: Ms Neha Gada, Vice President, Hon'ble (Dr.) Justice (Retd.) D.Y. Chandrachud, (Former CJI), S/Shri Vipul Choksi, Chairman, Centenary Year Committee, Jayant Gokhale, President, Mehul Sheth, Hon. Jt Secretary, K. Gopal, Managing Council Member



Shri Vipul Choksi, delivering welcome address
Seen from L to R: Neha Gada, Vice President, Hon'ble (Dr.) Justice (Retd.) D.Y. Chandrachud, (Former CJI), S/Shri Jayant Gokhale, President, Mehul Sheth, Hon. Jt Secretary



Shri Jayant Gokhale, President welcoming the Chief Gust and Members
Seen From L to R: Ms. Neha Gada, Vice President, Vipul Choksi, Chairman, Centenary Year Committee, Hon'ble (Dr.) Justice (Retd.) D.Y. Chandrachud, (Former CJI), Shri Mehul Sheth, Hon. Jt. Secretary



Hon'ble (Dr.) Justice (Retd.) D.Y. Chandrachud, (Former CJI) Chief Guest, unveiling the New Logo of the Centenary Year and New Website.

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