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Professional Ethics *in the* Tax and Legal Profession



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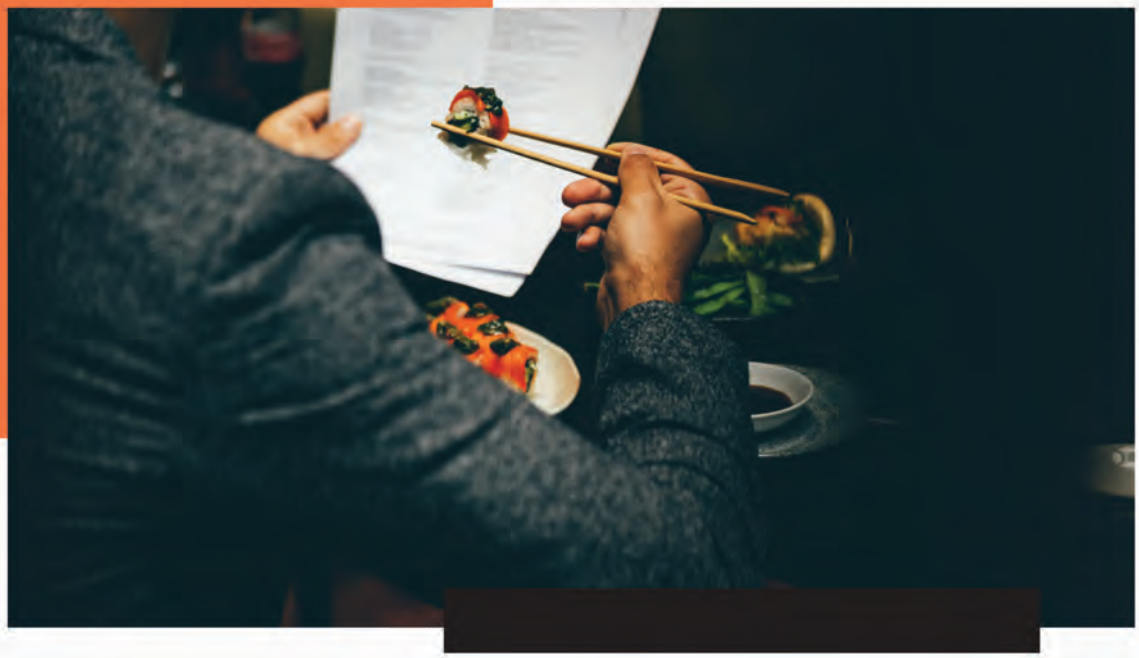

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From the President

Dear Members,

Shatabdi Manthan Finalised

The CTC team has been busy putting together the Finale Event of the Centenary Year. **The Shatabdi Manthan** will be held **on 20th June 26** at the **Yogi Sabhagriha, Dadar.** This is an appropriate occasion to recognise the contribution of thousands of our members in making this 100-year journey possible for The Chamber of Tax Consultants. The major credit for this unparalleled success of a voluntary professional body like CTC is the silent, diligent members who, through years of involvement and participation, intellectually and financially, have ensured the longevity of this remarkable body. In recognition of the role the lay membership of CTC has played in CTC reaching this landmark, **the Shatabdi Manthan** is being organised with the intent to give back to the members in some measure and recognise the crucial role played by every member in achieving this memorable landmark. We have thus kept enrolment cost at a token amount of Rs 200. Enrolment has already begun, and I appeal to members to enrol immediately since capacity is limited. We will have to strictly follow a first-come, first-served policy. If you do not want to miss this opportunity to participate in an intellectual feast followed by a networking lunch where one can network and mingle with fellow members whom you have worked with for decades. Act now to avoid disappointment.

Honouring our Stalwarts

Upon reaching this landmark century, the CTC also felt it fit to acknowledge the debt of gratitude that we owe to certain luminaries and stalwarts of the profession who have supported the Chamber over decades. They have done this selflessly, often at their own cost - in the true spirit of the committed professional. There are many such individuals who have contributed immensely and deserve to be recognised and acknowledged. However, the Council felt that the Centenary year is a fitting occasion to honour a few such individuals by conferring on them an **honorary membership** of the Chamber. In the past, such honour was bestowed upon 3 luminaries. Shri **Arun Jaitley, Shri Nani Palkhiwala and Justice Dhanuka.** They were admitted as honorary members more than 25 years ago. Since then, no person has been honoured in this manner. In this **Shatabdi Manthan** program, we shall be honouring a few more outstanding professionals. Since these stalwarts will be there to personally accept this honour, make sure you do not miss this historic occasion.

Signature Event - International Tax RRC & other Programmes

Another landmark event of CTC will be the 19th International Tax RRC, scheduled at Marriott Udaipur next month. Details are already on the website, and the enrolment is almost full. (Not more than 20 seats are available as of date), so if you want to gain from interacting with some of the top experts who will be addressing the RRC, grab the last few remaining seats immediately. I mention this particularly because the Transfer Pricing Summit that was held recently at the India International Centre - New Delhi - saw a surge in last-minute enrolment requests. Sadly, we had to refuse enrolment to nearly 20 persons as we had no capacity to accommodate them. It breaks our heart to refuse enrolment, but you will appreciate that we have to do so in order to maintain the quality of service to those who have taken the trouble to enrol early. I am sure our members will understand. This event at Delhi also marked the opening of the Delhi branch of CTC. A glance at our recent list of programmes demonstrates an increasing level of participation by members across the country. The footprint of CTC has been continuously expanding, and we shall soon be having an increasing number of programmes across the country and on the web to cater to the

huge demand for quality academic inputs which the CTC consistently provides.

Apart from the above marquee events, the usual academic programmes which include a Webinar on Income Tax Rules, another one on Arbitration, the 3rd International Taxation Course for Beginners and a separate Course on FEMA are also part of our upcoming events.

Lady to Lead CTC

The centenary year is undoubtedly a proud milestone in the Chamber's journey. However, as a dynamic organisation, this milestone should also mark a new beginning. I am delighted to announce that **for the first time ever, CTC shall be led by a lady President** as we step into the new century. The election process has been completed as per due procedure and the new team to lead the Chamber into the next century is now in place. Details about the newly elected team which will take charge on 4th July are put up on the CTC website.

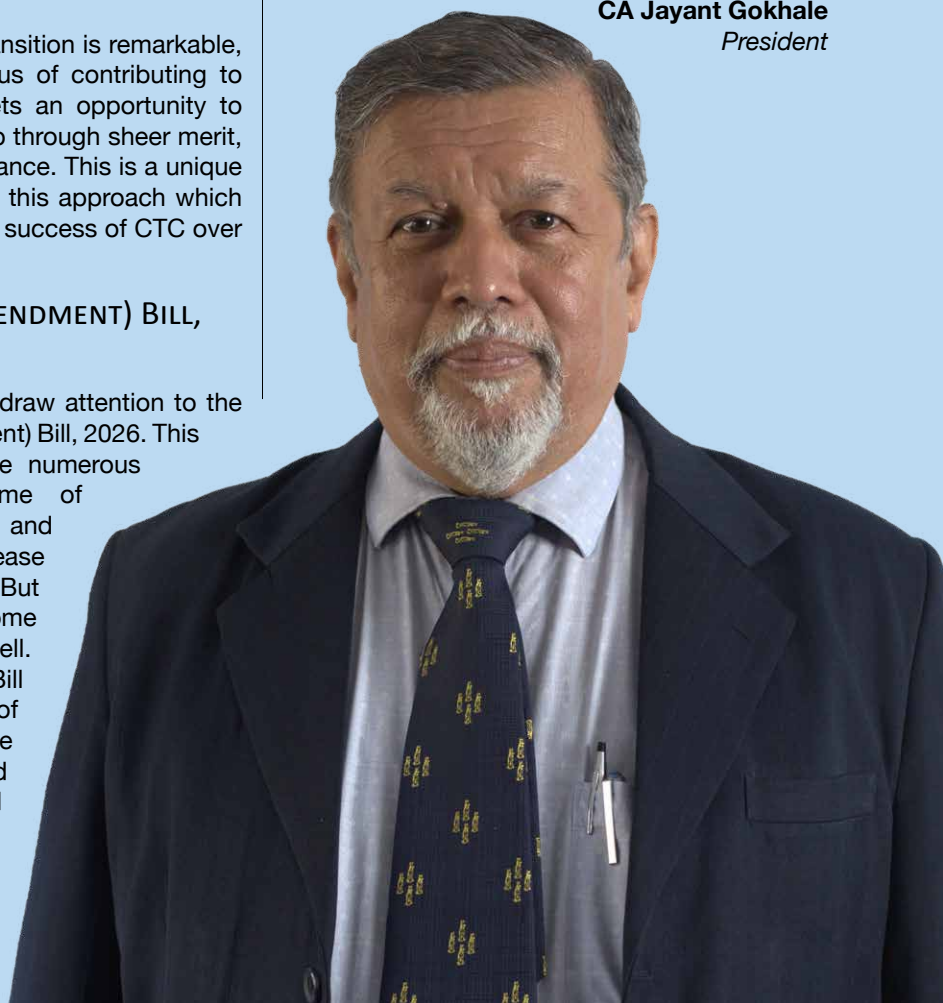
This process of smooth transition is remarkable, since any member desirous of contributing to the Chamber's activity gets an opportunity to do so and to rise to the top through sheer merit, performance and perseverance. This is a unique characteristic of CTC. It is this approach which has enabled the continued success of CTC over so many decades.

Corporate Laws (Amendment) Bill, 2026

Before signing off, I must draw attention to the Corporate Laws (Amendment) Bill, 2026. This Bill proposes to introduce numerous regulatory changes. Some of them are indeed positive and intended to promote 'ease of doing business'. But there appear to be some unwelcome features as well. A cursory reading of the Bill shows that the powers of NFRA are also sought to be significantly enhanced, and its decisions put beyond the pale of review by Civil Courts. Personally, I find this trend disturbing since the Bill gives very sweeping powers to NFRA. Further, every expansion of the role of NFRA (such as the requirement of filing details of appointment, payment of fees to NFRA, etc.) results in a corresponding diminution of the role and authority of the ICAI. More importantly, this dilutes the principle of self-regulation by professionals. Fortunately, the Bill has been referred to a Joint Parliamentary Committee (JPC) comprising members of both Houses of Parliament. I am sure that CTC shall be able to make a proper representation before the Committee on matters covered by the Bill. While we continue to support all simplification – vesting of excessive powers can result in a miscarriage of justice; and it is our duty to point out such pitfalls. I look forward to CTC continuing to play the role of an informed participant in the process of reform.

Regards,

CA Jayant Gokhale
President



From the Editor's Desk

My Brothers and Sisters,

> ***"Ethics is knowing the difference between what you have a right to do and what is right to do."***
>
> ***- Potter Stewart***

Ordinarily, every person ought to know what is right to do, and therefore, a codification of ethical principles may seem a bit chimerical. Given the deterioration in moral values, however, over time, and particularly in professional environments, there has been a strong need to codify and lay down rules for 'proper' professional behaviour, particularly in avoiding conflicts of interest. Thus, codified rules for professional ethics have taken shape in society.

Professional ethics are principles that govern the behaviour of a person or group in a business environment. Like values, professional ethics provide rules on how a person should act towards other people and institutions in such an environment.

Ethical principles underpin all professional codes of conduct. Ethical principles may differ depending on the profession; for example, professional ethics that relate to medical practitioners will differ from those that relate to lawyers or chartered accountants.

There are, however, some universal ethical principles that apply across all professions, to name a few:

- honesty
- trustworthiness
- loyalty
- respect for others
- adherence to the law
- doing good and avoiding harm to others
- accountability.

The codification of professional ethics evolved from ancient informal customs and guild rules into formal, mandatory codes designed to maintain public trust and professional integrity, heavily accelerating in the 20th century in response to major societal disruptions and scandals. Early examples include the Hippocratic Oath for medicine and later, in the 19th/20th centuries, legal and engineering codes focusing on public safety, fairness, and competition. In those days, professional ethics were closely tied to religious or moral duties. As specialized professions expanded (law, medicine), so did the need for standardized behaviour. The most significant development occurred in the 1940s-1950s. The atrocities committed in Nazi Germany forced the creation of the Nuremberg Code (1947), which redefined research and medical ethics. In the late 20th Century, professional associations adopted formal codes (e.g., engineering, accounting) designed to regulate competition and ensure public accountability.

In India, the Advocates Act of 1961 formalized

ethical standards. For Chartered Accountants, the first version of the code of conduct was released in 1963. Of course, by 2026, the codification has come a long way with the latest version evolving from voluntary principles in 1949 to a comprehensive, 13th edition effective April 1, 2026, which aligns with international standards (IESBA 2024), modernizes advertising, and addresses sustainability and the evolution of Artificial Intelligence (AI). The 2026 update enhances auditor independence, limits non-assurance services, and strengthens NOCLAR (Non-Compliance with Laws and Regulations) guidelines.

The need to study the subject of Professional Ethics and its connotation in today's extremely complex business environment has therefore become necessary. The Chamber's Journal Committee, under the sage guidance of the Editorial Board, has appropriately thought it to be the right opportunity to dedicate one Special Issue of the Centenary year to this very important subject, and this special issue has some very fine articles dealing with various facets of professional ethics. I am grateful to the Journal Committee for coming out with this issue. I would like to express deep gratitude to CA Sanjiv Chaudhary, a very revered and respected senior of mine and former Central Council Member of the ICAI, for his significant role in conceptualising and giving shape to this issue. I would like to thank all the learned authors for their excellent contributions and the Office Bearers of the Journal Committee for their contribution. I would also like to specially thank President CA Jayant Gokhale for his contribution to this special issue.

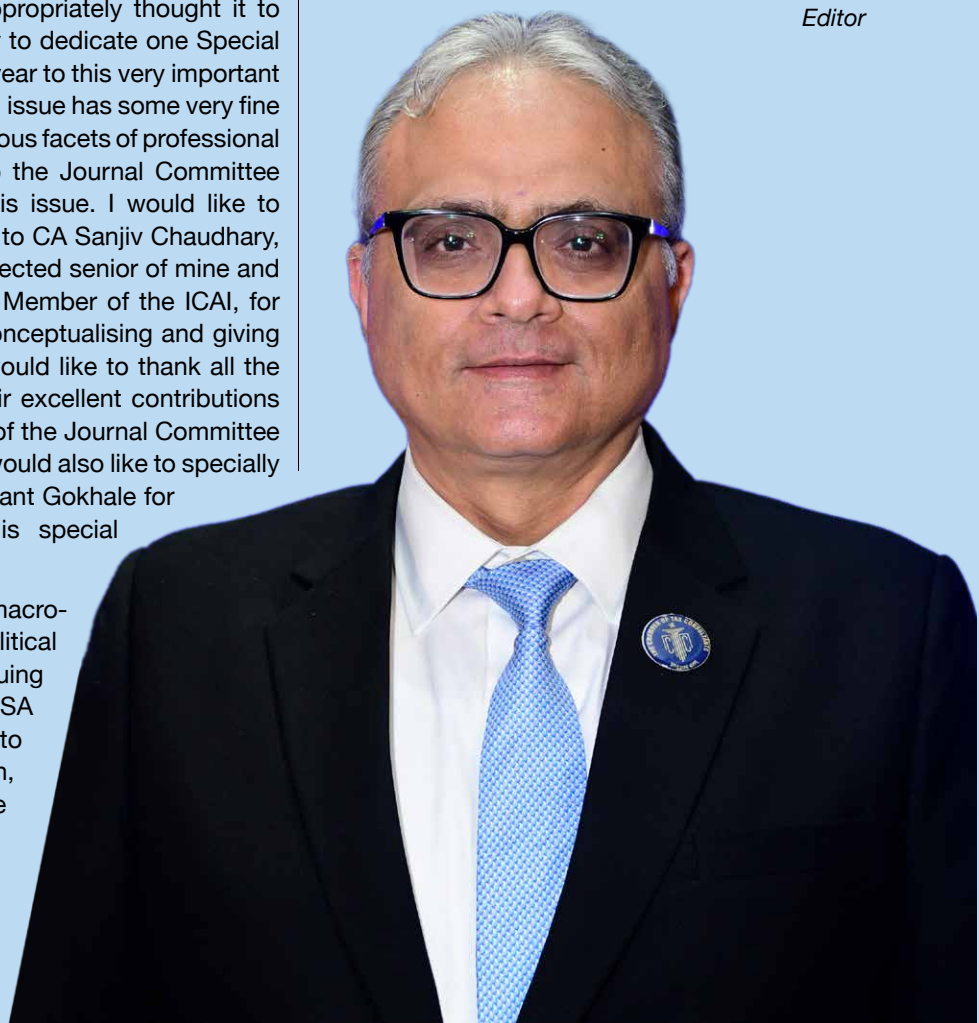
Coming to the macro-economic and political situation, the continuing conflict between the USA and Iran continues to be a cause of concern, and in this context, the recent announcements by our Honourable Prime Minister on certain recommended austerity measures, plus a certain increase in customs duty on precious metals, have set the tone for a watchful medium-term outlook. Geopolitical imbalance does no good to any country, and hopefully, we will soon see the restoration of 'normalcy'. Till then, we would do well to be circumspect and cautious about the situation.

The following quote from our Prime Minister, Shri Narendra Modi, echoes this sentiment.

"The ongoing West Asia conflict is one of the biggest crises of the decade, following the Covid-19 pandemic. India will overcome this challenge through collective public participation and responsible economic behaviour."

Jai Hind!

Anish M Thacker
Editor



Glimpses of the Seminar on AI That Actually Works:

Real Use Cases from Professional Firms Held on 30th April, 2026 at Babubhai Chinai Hall, IMC Building, Churchgate, Mumbai



Members on Dais (L-R) – CA Jigar Shah (Speaker), CA Mitesh Katira (Speaker), CA Bhavik Shah (Chairman – Digital Connect Committee) & CA Jay Kalra (Vice-Chairman - Digital Connect Committee)



CA Bhavik Shah welcoming & briefing the Delegates



View of the audience



CA Mitesh Katira giving his presentation



View of the audience



CA Jigar Shah giving his presentation

Dr Parthasarathi Shome

A Visionary in Tax Reform and Public Finance



Dr. Parthasarathi Shome is widely regarded as one of the foremost authorities in taxation, fiscal policy, and public finance. With a distinguished career spanning international institutions, academia, and public policy, he has made remarkable contributions to the evolution of tax administration and economic governance in India and across the world.

Over the course of more than two decades at the International Monetary Fund (IMF), Dr. Shome served in several significant positions, including Chief of Tax Policy and Director of the IMF Singapore Regional Training Institute. During this period, he advised numerous countries on tax reforms, fiscal restructuring, and public finance management, earning global recognition for his expertise in international taxation.

He later served as Chief Economist at Her Majesty's Revenue and Customs (HMRC), United Kingdom, further strengthening his reputation as a globally respected tax policy expert.

In India, Dr. Shome has played an instrumental role in shaping modern tax reforms. He served as Adviser to the Union Finance Minister and chaired the Tax Administration Reform Commission (TARC), which recommended major reforms aimed at creating a transparent, efficient, and taxpayer-friendly administration system.

The Commission strongly emphasized:

- taxpayer-centric governance,
- reduction in litigation,
- technology-driven administration,
- transparency and accountability,
- trust - based compliance mechanisms.

Dr. Shome also chaired the Expert Committee on General Anti-Avoidance Rules (GAAR), where his balanced recommendations helped strengthen investor confidence while ensuring fairness in tax administration.

A prolific author and respected public intellectual, Dr. Shome has written extensively on taxation, GST, public finance, inequality, and economic policy. His contributions continue to influence policymakers, tax administrators, chartered accountants, and legal professionals.

His exceptional work has earned him several prestigious honours, including Brazil's highest civilian award — Commander of the Order of the Southern Cross. He has also been featured multiple times in the Global Tax 50 by the International Tax Review.

Currently serving as Founder Chairman of the International Tax Research and Analysis Foundation (ITRAF), Dr. Shome remains an influential voice in global taxation and fiscal governance.

Beyond his professional achievements, Dr. Parthasarathi Shome represents the ideals of integrity, fairness, and ethical public service — values that continue to inspire generations of tax and legal professionals.

His career exemplifies how integrity, fairness, and public trust remain central to meaningful tax administration and professional excellence.

> "A good tax system must inspire trust, reduce uncertainty, and promote fairness."
>
> ***— Dr. Parthasarathi Shome***

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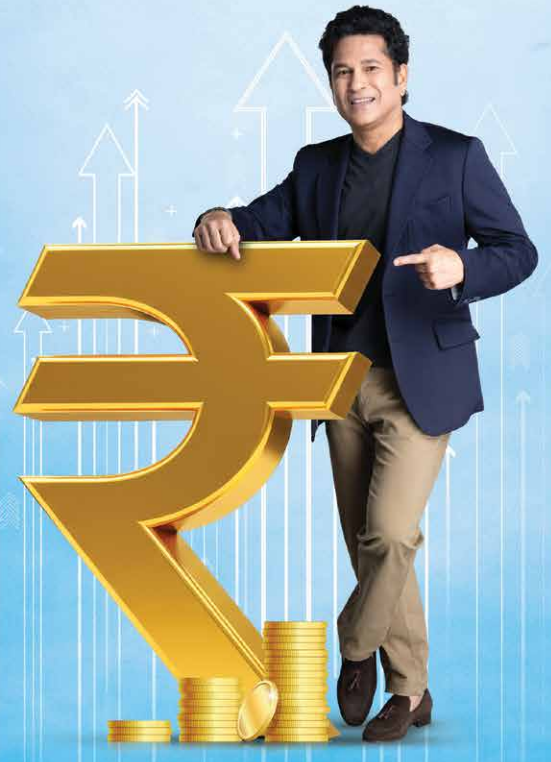

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Managing Director
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Panelists:



Justice R V Easwar (Retd.)



Mr. Rafique Dada
Senior Advocate



Mr. Saurabh Soparkar
Senior Advocate



Ms. Malathi Sridharan
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5.	Associate Membership - Yearly *(April to March)*	₹ 7,500	₹ 1,350	₹ 8,850
6.	Admission Fees - Associate Membership	₹ 1,000	₹ 180	₹ 1,180
7.	Student Membership - *Including E-Journal (April to March)*	₹ 500	₹ 90	₹ 590

Ethics as the Foundation of the Chartered Accountancy Profession: Evolution, Regulation and Global Alignment

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C N Vaze

Overview

The article outlines the ethical framework of the Chartered Accountancy profession in India, tracing its roots from ancient scriptures to modern regulatory standards. It emphasizes that professional ethics serve as a protective shield for practitioners rather than a burden by ensuring the independence and credibility required for their role as financial watchdogs. The author examines the disciplinary infrastructure of the Institute of Chartered Accountants of India, detailing the specific procedures, authorities, and penalties applicable in cases of professional misconduct. It also discusses the efforts of the Institute of Chartered Accountants of India towards alignment with international standards in the Code of Ethics. The practical difficulties faced by members within a complex domestic environment are also touched upon. The author calls for introspection and collective strength among members to uphold the dignity of the profession amidst evolving technological and regulatory demands.

Introduction

Ethics is the set of moral values. Ethics apply to all human beings. Professional Ethics are in addition to the normal rules of ethics. They apply in the context of a particular profession, like doctors, architects, lawyers, CAs, and so on. Ethics are as old as human civilization.

> Ethics are as old as human civilization.

We can proudly say that in ancient India, ethics originated, evolved, and were implemented in all walks of life. In India, even the wars were fought by following the rules of ethics. Our Puranas and other scriptures are full of ethical stories.

Code of Conduct and Code of Ethics

The commonly used terminology is Code of Conduct, in all types of institutions and organisations. However, in or around the year 2000, our Institute thought that 'conduct' is a generic term. It could be good or bad. As against this, Ethics is essentially a positive term. Ethics are either there or absent. There is no in-between stage. Therefore, one is either ethical or unethical!

It is interesting that even the underworld people have their own ethics! (usool)

Foundation of our CA Code of Ethics (COE)

I believe that three principles from our ancient scriptures are the main source of our COE. There are many such principles, but the most prominent are from the Taittireeya Upanishad:

Satyam Vada (*सत्यं वद*) Speak the truth.

Dharmam Chara (*धर्म चर*) Discharge your duties religiously.

Swadhyayan Ma Pramadah (*स्वाध्यायान्मा प्रमदः*) Never commit a default in continuous studies (updation and upgradation of knowledge and skills).

The last one is nothing but our Continuing Professional Education (CPE).

Need for a positive mindset about COE

It is necessary that we have a positive perception of our ethics. It is not a burden thrust on us, but a shield to protect us. We CAs are intellectual leaders of society and not the followers of the masses.

It is as simple as following the discipline of queues – it benefits all, and there is no injustice to anyone.

Even in today's Kaliyuga, people say in dismay that old values and ethics have disappeared! Actually, it is not correct. Old values and ethics are strong even today – the only difficulty is that everybody expects the ethics to be followed only by others.

Public mandate of the profession – Need for introspection

We should bear in mind that we are expected to play the role of 'financial police'. We are expected to critically examine the accounts, financial statements, and report whether they show a true and fair view of the financial affairs of the organization. It is an onerous task.



A policeman or a soldier has to always be vigilant. We need to be 'independent' – so as to work without fear or favour. And eternal vigilance is the cost of independence. We cannot afford to be loose in our work. It is common knowledge that whenever any fraud or scam is exposed, the first question in the minds of the public is, as to what the auditor was doing! It is an accepted fact that we, as auditors, are not investigators. Fault-



finding or detection of fraud is not our aim. Auditors have many constraints, especially time constraints and other compliances. The public is not aware of this limitation. At the same time, it is equally true that a little more diligence would expose a big scandal at an early stage, e.g., if we are particular about third-party evidence, many disasters can be avoided.

The Government and Regulators feel that there have been thousands of financial scams in our country, but there is hardly any instance where the fraud was exposed by an audit. The general perception is that we CAs are accommodative, and that we 'manage' everything. We need to seriously reflect on this public image of our profession.

Today, in my honest view, there is a crisis of credibility and a crisis of courage in our profession. I understand that in today's scenario, there are various serious constraints on our ability to become uncompromisingly ethical. One is compelled to make compromises. However, we can overcome this situation if we unite and use our collective strength to assert ourselves.

Today, people have a feeling that our disciplinary mechanism is very slow and time-consuming. They complain that our punishments are very mild and do not have a deterrent effect. This indirectly means that there is a mandate from the public that we should play our role more effectively.

We should remember and honour our Institute's motto, 'Ya Esha Supteshu Jagarti. He who is awake when the world around is asleep. This was adopted from the Kathopanishad and recommended to ICAI by none other than Maharshi Arabindo.

Evolution of Ethical Standards in India

Our Institute was established in the year 1949, under an Act of the Parliament – viz., the Chartered Accountants Act, 1949. It contained separate provisions in Chapter V pertaining to misconduct or disciplinary mechanisms. The machinery to deal with the cases of alleged misconduct was prescribed in it.

There were major amendments in the Act in the year 2006, especially in the area of disciplinary mechanisms. The Central Council also had the power to issue statements, clarifications, circulars, directions, guidelines, notifications, etc., to regulate the conduct of CAs.

The Council also issued certain standards, like Accounting Standards, Auditing Standards, and other Regulations (for members as well as students). There is a specific item of misconduct stipulated in the Second Schedule to the Act (item 1 of Part II) that a contravention of any

There were major amendments in the Act in the year 2006, especially in the area of disciplinary mechanisms.

of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council shall be misconduct.

In the year 2919, in tune with the Code of Ethics of IESBA, there were major amendments in Part

I (November Volume I) that contained principles or philosophy. The amendments were mainly in the area of ''Independence Standards'. Also, a new concept of NOCLAR (Non-Compliance with Laws and Regulations) was introduced. CA is now expected to act as a whistle-blower.

In the year 2021, the ICAI publications on the Code of Ethics were restructured. Again in the year 2026, there were significant amendments effective from 1st of APRIL, 2026.

In the year 2013, there was a minor amendment to take care of the new entity of LLP.

Further, through the mechanism of the Quality Review Board and Financial Reporting Review Board, the Council keeps monitoring the work of its members. Similarly, the mechanism of Peer Review also helps improve the quality of audits. It also acts as a preventive step to avoid a complaint of misconduct.

ICAI has also introduced the concept of Continuing Professional Education (CPE).

Role of ICAI

Code of Ethics

As stated earlier, ICAI, being the Regulatory Body of the profession, issues guidance to the members on various matters concerning the profession. Council has issued many guidelines and guidance notes for the conduct of audit or advisory functions, company audits, tax audits, bank audits, etc. ICAI also conducts courses, seminars, and workshops to train the members. Now, ICAI is promoting the use of Artificial Intelligence to enhance the skills and efficiency of members and upgrade their knowledge.

In order to ensure that our members are kept abreast of modern trends in technology and also the developments in the profession globally, ICAI holds international and national conferences where our members can network.

ICAI has also introduced the concept of Continuing Professional Education (CPE). Unfortunately, our members look at it only as a compliance and do not appreciate the spirit behind it. ICAI has published 3 volumes (now 4) to give the information/explanation about the Code of Ethics. Similarly, the Ethical Standards Board has been set up to deliberate on the various issues or queries arising in the field of ethics and to give clarification on specific queries/issues. ESB also publishes booklets on FAQs (Frequently Asked Questions) in the form of a compilation of ESB's views on several points.

Disciplinary Framework

In the Chartered Accountants Act, there is a special chapter – Chapter V that contains provisions regarding the disciplinary framework. There are about 13 sections – viz Sec.21 to 22G.

There are basically 4 authorities constituted under the Act.

1. Disciplinary Director

This consists of bureaucrats entrusted with the task of dealing with cases of misconduct, either on complaint or on information.

2. Board of Discipline

It consists of 3 members, one of whom is a Government Nominee. The Board deals with the matters under the First Schedule to the Act.

3. Disciplinary Committee

The disciplinary committee consists of 5 members, two of whom are Government nominees. There are at present 4 benches of the disciplinary committee. The disciplinary committee deals with matters of the Second Schedule to the Act.

4. Appellate Authority

This is constituted under the Chartered Accountants Act itself. It is composed of 5 members, presided over by a High Court

Judge (sitting or retired). There are two ex-Central Council Members and two Government Nominees.

Difference between 'complaint' and 'Information'

A complaint is required to be filed in the prescribed Form I with a fee of Rs. 2500/- plus GST.

For information, there is no fee. In a complaint case, the complainant is in the picture throughout the proceedings. He has a right to send rejoinders and make representations in the hearing.

As regards information, the Director Discipline/ BOD/DC deals with the information and informs the informant only of the result of the enquiry. The informant has no role to play in the proceedings.

Complaint against a firm/LLP

If a complaint is made against a firm/LLP of CAs, the Disciplinary Director first asks the firm to identify the person responsible/answerable in respect of the complaint. The signatory of the financial statements is usually primarily answerable unless the contrary is proved.

Council has jurisdiction only against individual members, and not against a firm/LLP. However, by virtue of an amendment, Council has been given the power to directly punish a firm/LLP in case a partner is held guilty and within a span of 5 years, another partner of the same firm/LLP is held guilty!

Broad procedure of disciplinary proceedings

Complaint or information once received is sent to the Respondent. Respondent is required to send a Written Statement (explanation) within 21 days.

The Respondent's WS is passed on to the complainant, who is allowed to send a rejoinder within 21 days. Rejoinder is not shared with the Respondent. Hence, whatever merits the Respondent thinks of have to be submitted at the first stage itself (with WS).

After scrutiny, the Disciplinary Directorate may ask for additional information/documents from either or both parties.

Then, the Disciplinary Directorate forms a prima facie opinion (PFO). Disciplinary Directorate



has to seek concurrence from BOD/DC, as the case may be (depending on the First or Second Schedule item of misconduct). Out of several allegations/charges, if the Respondent is found guilty even on one count, a hearing takes place. Both parties are allowed to be represented by their respective Counsel. It will be before BOD or DC.

If in PFO, one is not found guilty, the case is closed with an intimation to both parties. Similarly, after the hearing (enquiry), if the Respondent is not found guilty, the case is closed with intimation to both parties.

If, on enquiry, the respondent is found guilty, he is given one more opportunity as to what punishment is to be awarded. In that hearing, he has to attend alone, and no counsel is permitted.

For the purposes of enquiry, the BOD/DC has

been given the power of a Civil Court (Section 21C). The punishment is awarded by way of an order. This can be contested in an appeal before the Appellate Authority within 90 days. In the appeal, one can also contest the basic decision of BOD/DC to hold a respondent guilty.

Complainant has no right to appeal under the CA Act. He may have to invoke writ jurisdiction in the High Court.

Difference between First and Second Schedules

The First Schedule contains 4 parts.

	No. of items
Part I - Professional misconduct in relation to CAs in practice	12
Part II - Misconduct in relation to members	2
Part III - Misconduct in relation to members in general	3
Part IV - Other misconduct in relation to all members generally	2
Total	**19**

The Second Schedule contains 3 parts.

Part I CAs in practice	10
Part II Clauses relating to members generally	4
Part III Residuary cases of 'Other Misconduct	1
Total	**15**

Note: In the Second Schedule, one more clause has been added by the latest revision. It is regarding an appointment as an auditor under the Companies Act. [Clause (5) Part II Second Schedule.]

First Schedule items are considered to be of lesser gravity. They are ordinarily those that affect the members within themselves, e.g., non-communication with previous auditor, advertising, soliciting the work, engaging in other occupation without the Council's permission (where applicable).

Second Schedule contains items of severe nature where an outsider is adversely affected, e.g., gross negligence/lack of due diligence or not keeping the client's money in a separate account, certifying the financial statements where there is a conflict of interest, divulging the confidential information, etc.

It usually means a behaviour unbecoming of a professional, or that brings disrepute to the profession.

Punishments

(A) Schedule I

(i) Reprimand

(ii) Fine not exceeding Rs. One lakh. (proposed to be increased to Rs. Two lakhs)

(iii) Suspension for a period not exceeding 3 months (proposed to be increased to 6 months)

(B) Schedule II

(i) Reprimand

(ii) Fine not exceeding to Rs.5 lakhs (proposed to be increased to Rs. 10 lakhs)

(iii) Suspension for any length of time (including permanently)

'Misconduct' defined

Section 22 defines misconduct as any item specified either in the First or Second Schedule and 'Other Misconduct'. Now, even this other misconduct is also sought to be codified in Part IV of the First Schedule and Part III of the Second Schedule. It usually means a behaviour unbecoming of a professional, or that brings

disrepute to the profession. It also includes a case where a member is held guilty under any other law where the offence is punishable with imprisonment.

If imprisonment prescribed is up to 6 months, it is covered under the First Schedule. Otherwise, it is covered under the Second Schedule.

Principles governing the misconduct proceedings

I) These are treated as quasi-criminal proceedings. Therefore, locus standi of the complainant is not relevant. Even a stranger - a totally unconnected person - can make a complaint. There are even professional blackmailers!

II) Complainant's conduct/character is not relevant. Even if a complainant is a confirmed convict/criminal, it is immaterial. Council has no jurisdiction over outsiders. Counsel's concern, rightly, is to maintain and uphold the credibility and dignity of the profession.

III) A complaint once filed cannot be withdrawn as a matter of right. The President's permission is essential.

IV) Whether, due to one's misconduct, anybody has actually suffered or not is of no consequence, e.g., a bank lends on a wrongly certified balance sheet, but the loan is smoothly serviced and closed. Still, a complaint can lie. So also, though the accounts are wrongly certified, the income is totally tax-free. Still, the Income Tax Department can validly file a complaint.

V) Even if Respondent compensates the complainant for all losses caused by his misconduct, he is not absolved.

VI) There is a loose type of limitation of time, i.e., seven years from the date of the occurrence of the event complained against, if the President is satisfied that due to the efflux of time, production of evidence is difficult or it is otherwise not possible to conclude the proceedings.

VII) Ethics apply to a CA at all times, wherever he goes. Even if he is on a holiday tour or at a private function, ethics will apply. The reason is that the bad publicity in the media tarnishes the image of the profession, bringing disrepute. It is not necessary to see whether the CA's presence was in his capacity as a CA.

VIII) The Code of Ethics applies not merely to the audit/attest function but also applies with equal force to the advisory function.



IX) For a particular assignment, whether fees were charged or not, or whether it was actually received or not, or whether fees were adequate or not, are irrelevant points. Even for honorary work, ethics will apply.

Real-life observations/experiences

These are the usual reasons why CAs often get victimized by disciplinary action:

i) They are usually accommodative, submissive, and not assertive.

ii) They utterly lack documentation; working papers are not properly maintained. Always remember – work should not only be done, but it should be seen to be done, and the faintest of ink is stronger than the strongest of memory.

iii) There is a laxity in verifying the secretarial records, like minutes, notices, attendance records, etc.

iv) They act most of the time in good faith and do not demonstrate professional skepticism. Professional Skepticism does not mean always suspect everything. It means, 'Trust but verify'.

v) CAs are shy of asking questions and noting the answers. They are not particular in creating/maintaining the evidence of raising the queries or asking relevant questions.



vi) They are not proactive.

vii) Lack of communication skills.

viii) Failure to obtain third-party confirmation, or cross verification, even by easily available modes – like MCA site, other information available in the public domain, etc.

ix) Ignorance about the gravity of the laws like the Information Technology Act (loose or casual handling of digital signatures of clients), the Data Protection Act, and so on.

x) Lack of training for self and staff/articles.

Professional judgement v/s rule based compliance

This is a million-dollar question. Ideally, the professional judgement that is well-founded, after taking the entire perspective, should prevail, rather than a purely 'tick mark' approach. Both concepts have their pros and cons. Had the professional judgement been absolutely impartial, on objective analysis, it would have been given weightage. However, in today's Kaliyuga, such an unbiased and selfless approach is difficult to find. We experience this more in the medical profession. Now, the doctors find it risky to use their discretion based on their experience. Even for small things, they insist on expensive pathological tests and arrive at the diagnosis in a mechanical way. In the disciplinary proceedings, unfortunately, the distinction between an error and misconduct is often not appreciated.

That is why in practice, a rule-based approach is more common.

Alignment with IESBA Code

In view of globalization, it was necessary to align with international standards. Accordingly, in 2019, the Institute revised the Code of Ethics Volume I. It is further being revised to ensure that it matches the evolutions taking place in the environment of the profession internationally. However, care is taken to adapt to the Indian situation and Indian Laws.

Indian context – challenges in enforcement

In India, the situation is rather peculiar. The Indian mindset is rapidly moving away from honesty. One of the reasons is population and

competition. A law-abiding nature is rarely to be found. Even if one wants to abide by the law, the regulators' approach and corruption cannot allow one to be straightforward. CA's lack of unity means they cannot afford to be honest and assertive. If you are too duty-conscious, you may find it difficult to grow! Due to corruption, it is difficult to secure results.

In advanced countries, very small entities are not subjected to rigorous audit. However, in India, if such a policy is adopted, many of the CAs may not have any work opportunities at all. That is why the tax audit limit was kept at the same figure for many years!

The regulatory burden is also too much. A proprietary or a two-partner firm finds it difficult to keep pace with the changing regulations. CAs in upcountry areas do not get proper exposure to several aspects of our professional work. Large audits are concentrated within a select few firms.

Infrastructure costs for the office are very high. Getting good manpower is another challenge. That is why today, many CAs are fed up with audit practice. Even big and established firms are avoiding signing audits. Many firms are seriously afraid of the recent actions of NFRA.

CAs, being soft targets, are often victimized, and getting quick justice is another challenge!

CAs, being soft targets, are often victimized, and getting quick justice is another challenge!

There was a Bombay High Court decision that an auditor is a watchdog and not a bloodhound. However, in today's time of technology-driven work, this principle has been diluted.

Landmark decisions

Frankly, the precedents have not much value in our proceedings. Cases are largely fact-based. There may not be any consistency in the approach of disciplinary panels. Very rarely do cases go to the High Courts.



A couple of landmark decisions are: -

- One which was already discussed, namely that the ethics apply to a CA anywhere and everywhere and at all times.
- High Courts have held that the charge in clause (7) of Part I of the Second Schedule is that of gross negligence/lack of due diligence. It is not inefficiency. Unfortunately, in reality, even technical lapses are equated with misconduct. The Hon'ble Courts have held that there should be an element of dishonesty in order to be held guilty.

Conclusion

Many of the CAs are now finding the traditional practice not very pleasant or enjoyable. The advent of AI may totally revolutionise the methods of CA's practice. We need to be proactive and gear ourselves up to face new challenges.

The Ethical Framework of the Indian Legal Profession: Duties, Privileges, and Contemporary Challenges

Between Two Masters, Client and Courts: Loyalty, Candour, and the Quiet Erosion of Professional Independence

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Anand Prasad

Overview

The article thoroughly explores the ethical framework governing the Indian legal profession, emphasizing the dual role of advocates as both officers of the Court and representatives of their clients. It identifies inherent tensions between the duty to uphold client interests and the obligation to maintain the integrity of the Court, delving into the complexities of privilege, confidentiality, and potential conflicts of interest that arise in practice. Furthermore, the discussion highlights how the commercial environment can influence these dynamics, sometimes complicating the ethical landscape. In comparing Indian standards to those of the U.S. and the U.K., the article underscores the importance of understanding different cultural attitudes towards legal ethics. Ultimately, it conveys that effective ethical advocacy necessitates a careful balance between the responsibilities to clients and the judicial system, ensuring that advocates uphold the integrity of the justice system while effectively representing the interests of their clients. This balance is essential for the credibility of the legal profession as a whole.

Introduction: The Architecture of an Uncomfortable Role

The Indian advocate occupies an uncomfortable double role. The professional rules governing the Bar remind the advocate that he is an officer of the Court. The rules then direct him to uphold his client's interests fearlessly. Duties in the two capacities sit in latent tension. Indian professional ethics is the discipline of holding both halves together.

A fundamental question lies at the heart of this framework. To whom do advocates owe their

highest duty? Is it the client, whose interests they must advance? The Court, whose processes must they respect? Or the broader justice system, whose integrity they must preserve? The rules supply an unambiguous formal answer. Practice contests this answer every day. Today's globalised, commercial environment has only intensified the pushes and pulls.

The classical formulation has the advocate serving two masters. The first is the client who instructs him. The second is the Court before which he appears.

This article examines five intersecting pressures. First, the conflict between duty to the Court and loyalty to the client. Second, privilege and the difficulty of managing inconvenient client disclosures. Third, conflicts of interest as Indian firms scale up. Fourth, the advocate whose own interests disguise themselves as the client's. Fifth, a comparison with the standards prevailing in the United States, the United Kingdom, and internationally. The aim is to combine doctrinal analysis with real-world practice and to engage with the pulls between theory and reality.

Duty to the Court and Duty to the Client: The Foundational Tension

The classical formulation has the advocate serving two masters. The first is the client who instructs him. The second is the Court before which he appears.

The Indian Bar, following its English inheritance, treats the duty to the Court as paramount. Counsel is not the client's mouthpiece. He is an officer of the Court. As such, when a client instructs an Advocate to do things that conflict with such duties to the Court, the advocate must refuse, even at the cost of the brief.

The duty to the client demands zealous representation, confidentiality, and best efforts. The duty to the Court demands candour, fairness, and respect. The latter expressly forbids misleading the Court, fabricating evidence, or suppressing material facts where disclosure is required.

As such, an advocate must uphold the administration of justice. The judiciary has been emphatic about the priority of court duties. It has been held that the advocate's first duty is to assist the Court. Successive decisions have repeated this. The clearest cases involve falsehood. An advocate who knows his client has tendered false evidence cannot continue to lead it. If the client refuses to correct it, the advocate must withdraw. The professional standards prohibit knowingly making false statements, disqualify the advocate from conflicting matters, and require dignity before the Court. Loyalty to the client is bound by fidelity to the system.

In practice, the balance often tilts toward the client. Advocates are evaluated and compensated on outcomes. That incentive elevates client



interest above the formal hierarchy. Advocates therefore stress favourable facts and downplay weaknesses, while generally avoiding outright falsehoods. But within the boundaries of factual honesty, a working hierarchy emerges. Client interest is primary. Duty to the Court operates as a constraint.

The harder cases concern the negative space around falsehood. What is the advocate's duty when instructions are technically true but rhetorically misleading? When opposing counsel has overlooked an adverse authority? Doctrinally, the answer leans toward transparency. In practice, advocates disclose only what strategy or candour compels. The Indian Bar assumes the advocate is not the Court's research assistant. If opposing counsel has missed a case, that is opposing counsel's problem.

Ethical advocacy is not a contest where one duty wins. It integrates both.

Ethical advocacy is not a contest where one duty wins. It integrates both. The Court's willingness to credit counsel's representations is the currency in which the profession trades. Court duty does not constrain advocacy. It is the foundation that lets advocacy function.

Privilege and Confidentiality: The Difficult Disclosure

The duty of confidentiality is closely related to the duty of candour. The Bharatiya Sakshya Adhiniyam, 2023, protects advocate-client communications, the Advocate's advice, and documents shared in confidence. Newer codifications carry these protections forward.

The framework prohibits an advocate from disclosing client data without express client consent. This protection extends to the advocate's interpreters, clerks, and servants. The client does not waive privilege merely by giving evidence.

Privilege is foundational. Without confidentiality, clients would withhold the very facts that make competent representation possible. Judicial decisions have treated privilege as a substantive client right. Indian decisions have applied the principle, "once privileged, always privileged", with consistency. The privilege even survives termination of the engagement.

Two statutory exceptions, however, exist. The first covers communications made in furtherance of an illegal purpose. The second covers any fact the advocate observes during his engagement that shows a crime or fraud committed since the engagement began. These are narrower than they sound. The first applies to forward-looking conduct. A client who instructs the advocate to assist in future fraud cannot shelter the instruction behind privilege. The second covers observed facts, not communications received. A client's confession of a past crime, made to seek advice on its defence, is privileged.

The architecture creates uncomfortable cases. Suppose a client tells an advocate, in confidence, that a filed document is forged. That communication is privileged. The forgery is a past act. But the professional rules prohibit the advocate from making false statements to the Court. He now effectively vouches for a document he knows is forged. The orthodox view is that the advocate must persuade the client to withdraw the document. If that fails, he must withdraw from the brief, but cannot disclose the forgery. The system protects privilege. It does not always protect the truth.

In ordinary practice, Advocates treat privileged disclosures as sacrosanct. They proceed as if certain disclosures never occurred. It is a professional fiction, but a necessary one from a confidence-building perspective. The alternative is worse. If clients self-edit before consulting counsel, legal advice degrades across the system.

A separate question surrounds in-house counsel. Indian judicial authority has held that an in-house advocate does not enjoy protection equivalent to that of an external advocate. Many European countries also exclude in-house counsel from privilege.

Another issue is whether a foreign lawyer would be considered an advocate for the purposes of Privilege. The legal position on this aspect is also not very clear.

Conflicts of Interest: From the Strict Legal Conflict to the Commercial One

The Indian rules treat conflicts of interest in the narrow, classical way. An advocate may not represent two clients whose interests conflict. The advocate may not switch sides in the same matter and must disclose any prior connections that bear on the engagement. The advocate must also not accept a brief where he/she is likely to be a witness, nor may he/she act where he/she has a pecuniary interest in the outcome. The judiciary has summarised the position: representing conflicting interests requires the express consent of all concerned, given after full disclosure.

The judiciary has summarised the position: representing conflicting interests requires the express consent of all concerned, given after full disclosure.

These doctrines belong to the litigation Bar and apply to an advocate briefed in one matter against a specific opposing party. The conflict landscape the Indian profession actually confronts in 2026 is substantially wider.

Indian law firms have grown rapidly. A large Mumbai or Delhi firm may have hundreds of partners, multiple offices, and practice groups in corporate, dispute resolution, regulatory, tax, and competition. Their conflicts committees face questions that the Indian rules do not contemplate. Those questions concern imputation: does one partner's prior representation disqualify the whole firm? They concern the related-party doctrine: Is a client's subsidiary also a client? They concern advance waivers: can a sophisticated client consent at the outset to future conflicts? They concern the commercial conflict: a client whom the firm has agreed not to act against, even where no strict legal conflict exists. In India, answers to these questions remain unclear.

Other jurisdictions have broader rules. The American model rules govern in the United States. The English solicitors' code governs in England and Wales. They cover commercial conflicts, positional conflicts, and institutional conflicts within large firms. They include imputation rules. These frameworks recognise that modern practice is multi-client, multi-jurisdictional, and commercialised.

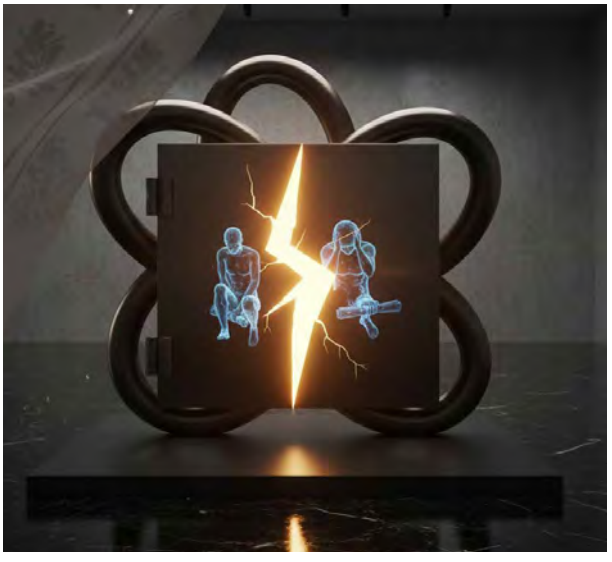
The Indian regulator provides little guidance on these questions. The existing rules predate the modern Indian law firm. As a result, top Indian firms look to international frameworks. They treat the domestic rules as a floor, not a ceiling. This works for sophisticated firms. However, as a regulation, it is less satisfactory.

The commercial conflict deserves a separate word. It is not, by definition, a legal conflict. It is a business decision. A client's engagement letter requires the firm not to act against it, even in unrelated matters. For the firm, this constrains growth. For the client, it locks up firm capacity in exchange for a steady stream of work. The Indian rules say nothing about commercial conflicts. But these conflicts shape the profession's structure with ethical consequences. A firm with too many commercial conflicts cannot oppose any major Indian conglomerate. That reduces smaller parties' access to top-tier representation.

The Advocate's Own Interest, Disguised as the Client's

The Indian rules describe most directly the conflict between two clients. The harder conflict to police and probably more common is between the Advocate and the client. The advocate running an unmeritorious application for fees does not tell himself it is unmeritorious. He calls the point arguable. The advocate, urging a settlement that suits his calendar more than the client's position, calls it pragmatism. Professional ethics requires the Advocate to notice when his own interest is doing the work he attributes to his judgment.

The most familiar version is a fee-driven litigation strategy. A complex matter generates a continuous menu of optional steps: an additional interlocutory application; a supplementary affidavit; a fresh writ. Each step is, in isolation, defensible. But the cumulative effect may be a strategy whose principal beneficiary is the advocate. The Indian system tolerates many adjournments and has long pendency. This gives the strategy more room than comparable Western systems. The professional rules do not directly address over-litigation for fees, strategic delays, or forum shopping driven by Advocate incentives. The judiciary has occasionally criticised these practices. But no settled regulatory regime polices them across the profession.



A subtler form is the reputational conflict. An advocate is known for a particular position. He has a personal stake in seeing that position prevail. The client who instructs him buys expertise, but also implicitly buys a position. The ethical question arises when the advocate's reputational stake pushes him toward an outcome more aggressive than the client's interests warrant.

Connected to opinion shopping is a distinction between an opinion and legal advice, and the Indian Bar often tends to ignore the distinction.

Junior practitioners face their own version of this pressure. A senior may direct a junior to prepare an aggressive interlocutory application that the junior privately doubts. The junior's professional development depends on the senior's continued goodwill. Refusing is not a live option. The rules treat each advocate as an independent ethical actor. The structure of practice often makes that fiction hard to sustain.

Opinion shopping is the inverse problem. A client who dislikes his first opinion seeks a second from accommodating counsel. The first opinion is buried; the second is acted on. The market provides some correction. Counsel whose opinions track the client's wishes too closely, over time, are expected to lose credibility. But the corrective is slow.

Connected to opinion shopping is a distinction between an opinion and legal advice, and the Indian Bar often tends to ignore the distinction. A legal opinion states the Advocate's view on what the law is. Legal advice recommends what the client should do, in the context of the law and the different views on its interpretation. The two are

routinely conflated, and sometimes deliberately. An opinion must be objective. Advice is openly partisan. An Advocate who delivers advice as opinion imports the latter's partisanship into the former's format. The reader cannot easily tell which he is receiving. Opinions become advocacy tools. Objectivity is compromised. Legal risk is obscured. This is a reality that goes unregulated.

The Indian Framework in Comparative Perspective

The Indian system's strengths and gaps become clearer alongside three international frameworks: the American model rules of professional conduct, the English solicitors' code of conduct, and the international principles on conduct for the legal profession.

The Indian rules and the American model rules share a common structure. Both cover duties to the tribunal, candour, loyalty, and confidentiality. But their hierarchies diverge. The American framework imposes a duty of candour requiring remedial measures, including disclosure when a client offers false evidence. The Indian rules do not go this far. The orthodox Indian response to client perjury is withdrawal, not disclosure. The American answer, in such a context, places the Court's interest higher.

> The Indian framework is rule-based but limited in scope. It is less frequently enforced than its American counterpart.

The American framework sets explicit confidentiality exceptions. It permits and, in some states, requires disclosure to prevent death, substantial bodily harm, or a crime. The Indian exceptions are narrower. The absence of a crime-prevention exception is significant.



Counsel is routinely consulted on financial transactions that may shade into fraud.

The American framework is highly codified. Conflict-of-interest rules are detailed and granular. Imputation between a partner and the firm is governed expressly. Advance waivers are addressed, too. State-level disciplinary authorities impose discipline, backed by judicial oversight. The American framework is more demanding and more rigorously enforced than India's.

The English code is notable for its outcomes-based structure. It prescribes principles and mandated outcomes rather than detailed rules. This requires more professional judgement than the rule-based Indian framework. A detailed rulebook can give false comfort that compliance equals ethics. The English approach to conflicts covers imputation, advance waivers, and commercial conflict questions. The framework emphasises the protection of public trust.

The international principles take a middle position. They are aspirational, not binding. Their content largely replicates what the Indian rules already say. Their significance for Indian practice lies in their function as a common language for cross-

border work. Indian Advocates on international matters need a recognisable standard. The international principles provide that framework.

The Indian framework is rule-based but limited in scope. It is less frequently enforced than its American counterpart. It depends heavily on professional culture rather than written guidance. On conflicts, its scope is narrow, whereas the international standard is broad. On ethical culture, it remains tradition-driven, where comparable jurisdictions are compliance-driven.

The overarching comparison yields a mixed picture. The fundamental ethical architecture is broadly aligned. The shortfall lies in the detail. The Indian rules were drafted for a Bar of sole



practitioners. They do not contemplate the large law firm, the in-house counsel, the transactional Advocate, or the cross-border engagement.

Conclusion

The ethical framework of the Indian legal profession is robust and evolving. It provides clear foundational principles. Yet it leaves significant room for interpretation. The Indian profession is not unethical; it is outdated in its formulation. Senior practitioners carry a sophisticated understanding of the duties they owe. But the formal regulatory framework has not kept pace with modern complexity. The rules remain unchanged in their essentials since the earlier era and remain focused as a code of ethics directed at court -going lawyers. The actual landscape today is far broader. It includes the transactional Advocate, the in-house counsel, the dispute resolution partner, and the tax counsel.

The tensions explored in this article are not flaws in the system. They are inevitable features of a profession at the intersection of law, morality, and human interest. A great Advocate needs more than technical competence. An advocate needs the ability to navigate these tensions with integrity.

As India's legal market globalises, demand will grow for greater transparency, stronger conflict regulation, and clearer ethical distinctions. The regulator has not yet undertaken a comprehensive modernisation. Until India does, practitioners will fill the gap with informal norms, imported standards, and best judgment. This is not despair. Much of the time, it works. But it works because individual practitioners are more ethical than the rules require.

Institutional reform must proceed on more than one front. Rule-making is the obvious lever, but not the only one. The disciplinary record of complaints, dispositions, and sanctions remains thin compared to international counterparts. Greater transparency would strengthen the deterrent effect of existing rules. Bar association ethics opinions would apply broad principles to recurring fact patterns. Continuing legal education on professional responsibility is comparatively underdeveloped.

Ultimately, the future of Indian legal ethics lies beyond stricter rules. It lies in cultivating a culture where ethical judgment is valued as much as legal skill. An ethical bar does not constrain advocacy. It is what makes advocacy possible.

Professional Ethics in Practice: Relevance, Pressures, and the Evolving Role of the Professional

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Pallavi Dinodia Gupta



Monika Bhardwaj

"In the world of professions, ethics is not always universal; one person's principle may be another's dilemma."

- Anonymous

Overview

Professional ethics remains the cornerstone of trust, integrity, and responsible conduct, but applying it in practice is increasingly complex. Modern professionals face competing interests, commercial pressures, legal constraints, and evolving stakeholder expectations, making ethical decisions less about fixed rules and more about sound judgment and accountability. Globalisation, regulation, and technology continue to reshape ethical standards, while ethical challenges often arise between client demands and professional independence. Importantly, compliance with laws does not always ensure ethical behavior, highlighting the need for deeper reflection. Real-world ethical dilemmas - such as conflicts of interest, client pressure, and biased information - require careful steering towards managing ethical responsibility. Fundamental Principles (FPs) (viz. integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour) act as practical anchors in guiding the Professionals in such situations. Recognising ethical threats (namely, self-interest, familiarity, intimidation, advocacy, and self-review risks) is highly crucial for applying safeguards and structured decision-making frameworks. Looking ahead, professionals must adapt to challenges posed by AI, data risks, and increasing stakeholder expectations for transparency and ethical accountability. We have analysed the various aspects of Professional Ethics in our article.

Professional ethics has long been regarded as the foundation of trust, integrity, and responsible conduct within every field. Yet in practice, ethical decision-making is rarely straightforward. Professionals today operate in environments shaped by competing interests, commercial pressures, legal obligations, cultural differences, and rapidly changing stakeholder expectations.



What appears principled in one context may be questioned in another, making ethics less a matter of fixed answers and more a discipline of judgment, accountability, and balance. As the professional world continues to evolve, the relevance of ethics has become even more pronounced - challenging individuals not only to know the rules, but to navigate uncertainty with competence, fairness, and integrity.

Let us analyse and deep dive into the various aspects of Professional Ethics in Practice as follows:

Evolving professional landscape: How regulation, globalisation, and technology are reshaping ethical expectations

The modern professional landscape is being reshaped by three powerful forces—regulation, globalisation, and technology—which have fundamentally altered the ethical terrain. As the industries become more interconnected and complex, traditional standards of conduct are no longer sufficient. Professionals are now expected not only to meet technical requirements but also to exercise sound judgment, demonstrate accountability, and uphold public trust in an environment where expectations continue to evolve.

Regulation today is no longer satisfied with mere legal form or contract; it increasingly demands substance and examines actual conduct. It is no longer enough to show that a rule has been followed—the greater expectation is to prove that the outcome aligns with the spirit and intent behind it. This shift from rule-following to principle-based decision-making places greater responsibility on professional judgment.

At the same time, globalisation has blurred national and cultural boundaries. A position considered acceptable in one jurisdiction may be viewed as aggressive or questionable in another, requiring professionals to apply values that remain consistent across borders, even when legal systems differ.

Further, technology turns out to be the great enabler as well as the quiet disruptor. It has accelerated decision-making, compressed timelines, and magnified the consequences of error, while also introducing new layers of opacity through algorithms, automation, and artificial intelligence. The temptation to rely unquestioningly on technological outputs is strong, yet ethical responsibility does not diminish with automation, and it becomes more critical. Technology may transform how professionals work, but it does not absolve them from being accountable.

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Commercial pressures vs ethical responsibility – Balancing client demands, fee pressures, and professional independence

If ethics were simply about knowing the right course of action, professional life would be far less challenging. The true test lies in doing what is right, even when it comes at a cost. Modern professionals work in increasingly competitive environments shaped by fee compression, demanding clients, performance targets, and constant pressure for efficiency. In such settings, ethical compromise rarely appears as a dramatic breach. More often, it emerges quietly through shortcuts, assumptions, selective judgment, and rationalisations made in the name of practicality.

> Technology may transform how professionals work, but it does not absolve them from being accountable.

Client relationships add a further layer of complexity. Trusted advisors are valued for helping clients solve problems, yet that trust can sometimes evolve into an expectation to align, accommodate, or "make it work." A client may seek aggressive interpretations or outcomes that serve commercial interests while stretching ethical boundaries. Saying no is rarely easy, particularly when it may risk revenue, reputation, or a long-standing relationship. Yet professional independence is not measured when agreement is convenient—it is measured when resistance is necessary.

What makes these pressures particularly unsafe and risky is their subtle nature. Ethical erosion seldom occurs through one obvious act of misconduct; it develops through a series of small transgressions, each individually defensible, but collectively significant. For this reason, maintaining ethical responsibility requires more than technical compliance. It demands the courage to remain objective, to challenge when required, and to place long-term integrity above short-term commercial gain.

Ethics vs compliance – Understanding why legal permissibility does not always equate to ethical acceptability

One of the most persistent, and dangerous, confusions in professional practice is the conflation of legality with ethics. The law, by design, sets boundaries; ethics asks what we do within them. It is entirely possible, indeed, not uncommon, for a position to be legally sustainable and yet ethically questionable. Structuring a transaction to achieve a particular outcome may comply with the letter of the law, but if it undermines its intent, the question remains: "Is compliance enough?" Professionals often find themselves at this intersection, where the answer to "Can we?" is yes, but the answer to "Should we?" is far less certain.



This gap arises because compliance establishes a minimum standard, not a complete one. Regulatory frameworks cannot anticipate every scenario, and in areas involving interpretation—whether in tax, financial reporting, or advisory—there often exists a spectrum of permissible positions. Yet not all positions within that spectrum carry equal ethical weight. A technically correct approach that prioritises form over substance, or exploits ambiguity without regard to broader impact, may satisfy compliance requirements



while still falling short of ethical responsibility. In such cases, the absence of a violation can create a false sense of comfort, masking decisions that may not withstand broader scrutiny.

This is where professional judgment becomes critical—and unlike compliance, it cannot be outsourced. There is a quiet but important shift that needs to occur in professional thinking: from merely defending positions to consciously owning them. The difference is subtle, but significant. One is reactive, focused on justification after the fact; the other is accountable, grounded in foresight and integrity. Moving beyond the compliance trap, therefore, requires professionals to ask not only whether a position is defensible, but whether it is responsible—placing long-term trust and ethical clarity above short-term technical permissibility.

Real-World Ethical Dilemmas – Navigating Conflicts of Interest, Client Pressure, and Imperfect Information

Ethical dilemmas in practice rarely present themselves as clear choices between right and wrong. They are often complex, layered, and shaped by urgency, competing interests, and imperfect information. Professionals frequently operate in grey areas where the challenge is not identifying the correct answer but determining the most responsible course of action. In such situations, ethical decision-making becomes less about rules and more about judgment, awareness, and accountability.

Conflicts of interest are among the most visible of these challenges, yet they are not always resolved by mere disclosure. Perception plays a critical role—what appears manageable internally may still raise concerns externally. Trust, once questioned, is difficult to restore, making it essential for professionals not only to identify conflicts but to address them in a manner that preserves credibility and independence.

Ethical dilemmas in practice rarely present themselves as clear choices between right and wrong.

Equally significant is the challenge of working with incomplete or potentially biased information. Professionals rely heavily on client-provided data, but when that information is selective or curated, the line between trust and scepticism becomes crucial. Exercising professional scepticism is not always comfortable—it may involve asking difficult questions, challenging

assumptions, and resisting the convenience of ambiguity. Yet, in the absence of complete certainty, it is this discipline that safeguards the integrity of outcomes.

Overlaying all of this is the constant presence of pressure—whether explicit or implied. The expectation to support a particular position, achieve a desired result, or expedite decisions can subtly influence judgment. These are not exceptional and hypothetical situations, but they are everyday realities. In such moments, the professional does not stand between right and wrong, but between what is easy and what is difficult.

Let's consider a few real-life situations that commonly arise in practice:

Example 1

A transaction is technically compliant, supported by opinions and documentation, yet its substance feels misaligned with its form. The question shifts from legality to responsibility: is it enough to validate what is defensible, or is there a duty to question what is intended?

Example 2

A long-standing client offers a plausible explanation for an unusual discrepancy. Trust has been built over the years, but the explanation does not fully reconcile. The dilemma is not whether to trust, but whether trust has quietly replaced verification.

Example 3

A concern is raised by a junior team member, but is subtly downplayed in the interest of time and client importance. No instruction is given to ignore it, yet the tone suggests moving on. Later, the issue resurfaces with greater consequences, raising a deeper question: how often are ethical outcomes shaped by what is left unsaid?

These situations rarely present themselves as clear ethical crossroads. Instead, they emerge through routine engagements, familiar conversations, and seemingly manageable compromises, making them easy to overlook and therefore more significant. In such moments, rules may set the boundaries, but it is professional judgment, guided by integrity and quiet courage, that ultimately serves as the most reliable compass.

Fundamental principles as anchors – Applying integrity, objectivity, and professional judgment in complex situations

In a world of increasing complexity, there is often a tendency to search for sophisticated solutions. Yet when it comes to ethics, the most reliable safeguards remain grounded in Fundamental Principles. These principles - integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour - are not abstract ideals reserved for formal codes; they are practical anchors that guide professionals when rules are unclear, pressures are high, and decisions carry significant consequences. While regulations may establish minimum expectations, it is these enduring principles that provide stability when circumstances become uncertain.

In a world of increasing complexity, there is often a tendency to search for sophisticated solutions.

- **Integrity** lies at the core of ethical conduct. It goes beyond avoiding falsehood, requiring honesty, fairness, and moral courage. Professionals must resist the temptation to shade the truth, omit inconvenient facts, or present information more favourably than it deserves. It demands consistency between what is said and what is done, particularly under pressure. Without it, the foundation of trust on which professional relationships depend begins to erode.

- **Objectivity** requires independence of mind and impartial judgment, maintaining distance from bias, conflicts of interest, personal relationships, and undue influence. Its threats are often subtle and gradual, making them difficult to detect. Familiarity, self-interest, or pressure can quietly shape decisions without awareness. Sustaining objectivity, therefore, demands vigilance and a willingness to challenge one's own assumptions—without it, even sound decisions may lose credibility.



- **Professional competence and due care** ensure that work is performed with appropriate quality and diligence. Professionals must maintain their knowledge and skills to deliver competent service and act carefully and in line with applicable standards. In complex environments, competence requires continuous learning and adaptation, while due care reinforces disciplined, responsible execution, recognising that oversight or complacency can have significant consequences.
- **Confidentiality** safeguards the trust placed in professionals by clients, employers, and stakeholders. It requires protecting sensitive information and exercising discretion in its use and disclosure. Beyond legal obligations, it reflects respect for others' rights and interests. In a fast-moving information environment, maintaining confidentiality demands heightened awareness, as breaches—whether deliberate or accidental—can undermine confidence and damage professional credibility.
- **Professional behaviour** requires compliance with relevant laws and regulations while avoiding conduct that could discredit the profession. It calls for accountability, respect, and a commitment to uphold the reputation of one's field. Beyond avoiding misconduct, it includes responsible interactions with clients, colleagues, regulators, and the public, ensuring individual actions contribute positively to the profession's standing.

Together, these principles form a coherent framework for ethical decision-making. They do not eliminate ambiguity, but provide direction amid complexity and competing pressures. Their application calls for professional judgment—the capacity to evaluate, balance, and act with clarity and conviction. Ultimately, it is not rules alone, but the disciplined and consistent application of these principles that sustains trust and defines true professionalism in uncertain environments.

Identifying ethical threats in practice – Recognising self-interest, familiarity, intimidation, advocacy, and self-review risks

Ethical risks in professional practice are often predictable, even if their consequences are not. They rarely begin with obvious misconduct or deliberate wrongdoing. More commonly, they arise through subtle pressures, incentives, and relationships that gradually influence judgment. Since these threats can develop quietly, recognising them early is one of the most important safeguards available to any

professional. Thus, timely identification of ethical threats is the first line of defence for any professional.

Self-interest is perhaps the most visible threat. It arises when financial benefit, career advancement, bonuses, fee dependence, or personal gain has the potential to influence professional decisions. A professional may not consciously intend to act improperly, yet the desire to preserve income, secure promotion, or retain an important client can create bias. Even small incentives may affect objectivity when repeated over time.

Self-interest is perhaps the most visible threat.

Familiarity is more understated, but often more dangerous because it develops slowly. Long-standing relationships with clients, colleagues, or management can build trust, efficiency, and comfort. However, excessive familiarity may reduce professional scepticism, limit challenge, or create reluctance to question assumptions. The issue is not whether trust exists, but whether trust has begun to replace independent verification.

Intimidation threats arise when pressure discourages a professional from acting objectively. This pressure may come from senior leadership, influential clients, dominant colleagues, or organisational culture. It does not always involve direct threats. Often, it is the unspoken fear of losing relevance, damaging relationships, facing criticism, or being labelled uncooperative. Such pressure can silence necessary challenge and weaken independent judgment.

Advocacy threats occur when a professional becomes too closely aligned with the interests or position of another party. In attempting to support a client, employer, or stakeholder, the professional may begin promoting a viewpoint rather than evaluating it objectively. This is particularly relevant where professionals are expected to negotiate, defend positions, or publicly support outcomes. Once neutrality is replaced by loyalty, ethical judgment becomes vulnerable.

Self-review threats arise when professionals are asked to evaluate, approve, or rely upon their own earlier work. It is naturally difficult to remain fully objective when reassessing decisions, reports, or judgments in which one has already invested time and reputation. Errors may be overlooked, assumptions left unchallenged, or weaknesses defended rather than corrected. The more integrated professional roles become, the more common this risk can be.

What makes all of these threats significant is their subtle nature. They often appear ordinary,



reasonable, and individually manageable. Yet when ignored, they can accumulate and gradually erode independence. Recognising ethical threats, therefore, requires vigilance, self-awareness, and the willingness to question not only external pressures, but also one's own motivations and assumptions.

Safeguards and decision-making frameworks – Using structured approaches to resolve ethical conflicts and document decisions

If ethical dilemmas are inevitable in professional life, then structured responses become essential. Recognising a conflict is only the beginning; the greater challenge lies in resolving it consistently, fairly, and with sound judgment. In complex environments shaped by competing obligations, commercial pressures, and uncertainty, instinct alone is rarely enough. Professionals, therefore, require practical safeguards and disciplined frameworks that support clear and defensible decision-making.

Data will become both a valuable asset and a significant liability.

Safeguards are not about eliminating all risk—they are about managing it to an acceptable level. Independent reviews, peer consultations, team rotations, additional supervision, and clear conflict-of-interest policies are not mere procedural formalities; they are practical mechanisms designed to introduce objectivity and reduce undue influence. In some circumstances, separating advisory and decision-making roles, or even declining an engagement altogether, may be necessary where independence cannot be adequately protected. Their true purpose is not administrative compliance, but the preservation of trust and professional integrity.

Beyond safeguards, there is also a need for a disciplined way of thinking. A structured decision-making approach helps bring order to situations that might otherwise feel uncertain or overwhelming. This often involves identifying the ethical issue, gathering relevant facts, considering stakeholders, assessing threats, evaluating alternatives, and reflecting on the consequences of each possible action. Seeking advice, challenging assumptions, and asking whether the decision could withstand external scrutiny are equally valuable parts of the process.

Documentation, in particular, deserves emphasis. It should not be viewed merely as a defensive exercise, but as a reflective one. Recording the issue, options considered, consultations undertaken, safeguards applied, and reasons for the final decision creates accountability and transparency. More importantly, the act of writing down the rationale often forces clarity of thought. Articulation can expose gaps, assumptions, or inconsistencies that intuition alone might overlook. In ethical practice, a well-reasoned and well-documented process is often as important as the outcome itself.

Future of ethics in the profession – Adapting to AI, data risks, and rising stakeholder expectations

If the present professional environment is complex, the future promises to be even more so. Rapid technological advancement, expanding data reliance, and shifting societal expectations are redefining how professional responsibility will be understood and assessed. Ethics will no longer be confined to traditional issues of conduct or compliance; it will increasingly shape credibility, trust, and long-term relevance in a changing world.

Artificial intelligence is likely to become one of the defining ethical challenges of the future profession. It will enhance efficiency, improve analysis, and reshape decision-making processes, but it will also raise serious questions around bias, accountability, transparency, and overreliance on automated outputs. The professional of the future will not simply need to understand what an algorithm produces, but to interrogate how and why that result was reached. Responsibility cannot be delegated to technology merely because technology was involved.

Data will become both a valuable asset and a significant liability. As organisations gather

increasing volumes of personal, financial, and operational information, professionals will face growing responsibilities around privacy, cybersecurity, consent, and responsible use. Confidentiality will extend beyond locked files and restricted conversations to digital vigilance, secure systems, and ethical data governance. A failure to protect information may damage trust as seriously as any technical error.

Stakeholder expectations will also continue to rise. Clients, regulators, employees, investors, and the wider public increasingly expect fairness, transparency, sustainability, and responsible leadership. Professionals will be judged not only by what they deliver, but by how they deliver it—and by the wider impact their actions create. In this evolving landscape, ethics will no longer be viewed as a constraint on business. It will become a determinant of credibility, resilience, and professional legitimacy.

A Personal Reflection: Ethics as Practice, Not Posture

In my view, the future of the profession will not be defined solely by those who know the most, but by those who can be trusted the most. In a world where information and technical answers are increasingly accessible, judgment will become the true differentiator. At the heart of sound judgment lies ethics. The pressures facing professionals are unlikely to diminish. Commercial demands, technological disruption, stakeholder scrutiny, and complex dilemmas will continue to grow more nuanced. Yet the response must evolve accordingly, not through rigid certainty, but through principled adaptability. Ethics, then, is not about having perfect answers. It is about maintaining the right direction when answers are unclear. In a profession navigating constant change, that direction, grounded in integrity, guided by judgment, and sustained by courage, remains the only reliable compass.

Character is rarely revealed in dramatic moments alone—it is developed in consistent ones.



It is tempting to think of ethics as something reserved for exceptional situations, moments of crisis, scandal, or public scrutiny. In reality, ethics is formed far more often in ordinary decisions. It is present in how one responds to a casual suggestion to "take a view," in whether one asks an additional question when information feels incomplete, and in whether clarity is chosen over convenience.

Ethics is therefore not a stance adopted only when required; it is a habit built gradually over time. It is shaped through repeated choices, often small and unnoticed, that determine how a professional thinks, responds, and exercises judgment. Character is rarely revealed in dramatic moments alone, it is developed in consistent ones. Perhaps this is the most important shift in perspective: to move from viewing ethics as an obligation to recognising it as a daily practice. In the end, professions are sustained by trust, and trust is not created through declarations or policies. It is earned through decisions, quietly, consistently, and often when no one is watching.

Independence in Audit and Assurance: Safeguarding Objectivity in a Complex Ecosystem

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Overview

Auditor independence is the bedrock of trust in financial reporting. However, it faces mounting pressure in today's complex, interconnected environment. Despite robust regulatory frameworks, audit failures persist. The root cause is rarely a lack of rules; it is the gap between compliance in form and genuine independence in practice, demanding ongoing vigilance, introspection, and professional courage. Independence operates on three levels: independence of mind (internal objectivity), independence in appearance (external perception), and regulatory independence (the codified minimum). All three must align to sustain public confidence. Threats to independence often arise not from explicit violations but from subtle influences, e.g., personal relationships, financial interests, fee dependency, and informal and emotional interactions. Economic dependence on key clients, long audit tenures, and familiarity with management gradually erode professional scepticism. Mandatory rotation helps, but only when paired with robust handover processes to ensure a robust understanding of the business environment. Multi-jurisdictional audit networks face structural tensions from inconsistent definitions and divergent regulatory expectations. Fragmented and reactive rule-making creates ambiguity and compliance burdens. Recurring audit failures, lack of scepticism, conflicts of interest, and inadequate documentation point to deeper cultural and systemic gaps, not merely regulatory insufficiency. Harmonised global standards are urgently needed. The profession must adopt a principles-based approach supported by strong governance, technological integration, continuous professional education, and transparent stakeholder engagement. Firms must build cultures where challenging difficult questions are celebrated over client retention. Independence is not a static checklist; it is a living, daily commitment to truth and integrity.

"Independence, ultimately, is a commitment

to truth and integrity, telling the financial story of an entity as it is, not as someone, with bias and self-interest, wishes it to be." In addition, true integrity often requires going beyond legal compliance, making this a genuine test of "Ethical Correctness vs. Merely Legal Correctness".

Independence in audit and assurance is the bedrock of trust in financial reporting. In an increasingly complex ecosystem characterised by global networks, evolving regulations, and commercial pressures, maintaining independence has become both critical and challenging. This note examines independence through practical scenarios, regulatory expectations, and sometimes systemic gaps, while offering a forward-looking perspective grounded in professional experience and global developments.

Introduction

In an audit committee interaction, a simple but piercing question was raised: "Would your audit opinion remain unchanged if this client were not economically significant to your firm?"

The question summarises the thought process around auditor independence. While auditors operate within clearly defined regulatory frameworks, the real challenge lies in maintaining objectivity in an environment shaped by commercial realities, long-standing relationships, and increasing regulatory scrutiny.

Over the past decade, regulators such as NFRA, ICAI, PCAOB, and FRC have intensified inspections and enforcement.

Over the past decade, regulators such as NFRA, ICAI, PCAOB, and FRC have intensified inspections and enforcement. Yet, despite the explosion of rules, audit failures continue to surface. This paradox points to a deeper issue, not merely a lack of regulation, but gaps in clarity, implementation, enforcement, and alignment among stakeholders. The independence framework that exists on paper is sophisticated; the challenges lie in a consistent and honest application in practice and enforcement by supervising agencies, by all the pillars of governance, or, rightly, termed as "Lines of Defence" in the professional world.



This note explores these dimensions through practical examples, regulatory insights, and professional judgment, focusing exclusively on audit and assurance engagements. It examines certain interrelated themes, drawing on regulatory frameworks, real-world cases, and the everyday practical dilemmas that professionals face. The aim is not merely to recite regulations, but to provoke and introspect, i.e., only when each auditor internalises the spirit of independence, rather than merely complying with its letter, that the profession can truly safeguard public trust. The words "Ethically Correct, and Not Just Legally Correct" continue to be relevant.

Independence of Mind, Appearance, and Regulation: Same though Different Battles

An auditor has spent the past several years auditing a listed company. He is meticulous and applies intellectual rigour in his actions. However, his spouse's cousin, a distant relative with whom he occasionally shares a meal at family gatherings and goes for vacations, is the Chief Financial Officer of the same company. Technically, the regulator has not prohibited this. But at the next shareholder's meeting, if the audit is questioned, will anyone believe that the auditor was objective?

Independence operates at three distinct planes:

Independence of mind, the 'actual independence' referring to the auditor's internal state, the genuine ability to form conclusions based solely on evidence, not influenced by external pressures or personal bias. This is ultimately a matter of professional conscience.

Independence in appearance, an outward-facing concept, possibly a trial of public trust. Even where an auditor is, in fact, mentally (and also by regulation) independent, if circumstances exist that lead a reasonable and informed third party to conclude otherwise, the profession may suffer, and public trust may be lost. Various professional codes of ethics and a simple common sense recognise that perception matters and influences as much as reality in public trust relationships.

Independence, as per regulations, is another dimension, a codified floor of minimum requirements set by statute and professional standards. Under corporate law and various applicable codes, for instance, certain relationships categorically disqualify an auditor, regardless of their state of mind or public perception. Regulations are also the result of bad behaviour, practices, or unintended application of principles by the stakeholders.

Practical realities expose significant gaps. An auditor may comply with every prescribed rule but still fail reasonable perception tests. Conversely, an auditor may appear absolutely independent and yet conceal subconscious bias due to an obligation, say to a friend who is a director, to a past employer, or to someone with whom they share living arrangements. Sharing residential accommodation with a key managerial person of an audit client, or accepting lavish hospitality or a vacation, premium event tickets, or expensive gifts, may not only constitute a regulatory breach, but they would certainly impair independence in appearance and frequently corrupt independence of mind.

The expectation gap between various stakeholders is stark and structural:

Regulators	**Professionals**	**Public/Investors**
Emphasise enforceability and prescriptive rules	Emphasise professional judgement and context	Expect absolute, unquestionable neutrality
Focus on enumerable prohibitions and thresholds, exercise inspections	Seek clarity and workable compliance pathways	Often unaware of the complexity of audit relationships
React to failures with new rules.	Bear disproportionate compliance burdens.	Trust a professional's opinion as an absolute assurance, sometimes without being aware of the nitty-gritties or limitations.

A principle-based framework, supported by strong governance and genuine cultural commitment, is essential to reconcile these divergent expectations. The test must not merely be 'will this violate a prescribed rule', but rather 'would a reasonable and informed third party, knowing all the facts, conclude that I am independent?' Again, while it is necessary to be legally correct, true integrity often requires going beyond legal compliance, making this a genuine test of "Ethical Correctness vs. Merely Legal Correctness".

While extensive rules exist, sometimes they fail to provoke introspection of genuine principles. Auditors must subject their own relationships and obligations to honest self-examination, applying the reasonable and informed third-party test, not as an abstract standard, but as a constant, practical question, both in letter and spirit.

Financial, Business, and Personal Relationships: Where Bias Begins

A seemingly innocuous conversation between an auditor and a client's finance head on stock market trends and possible investments may later become a bias or a regulatory concern under insider trading laws. This illustrates how independence risks often arise from informal interactions, rather than explicit violations. The danger lies not in what was intended, but in what a reasonable observer would conclude.

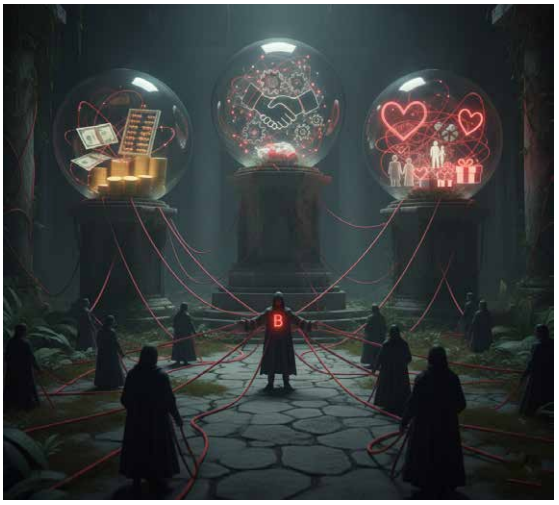
Financial relationships remain the most visible threat to independence. The Corporate law and various codes of conduct restrict financial interest in an audit client by auditors, and yet allow financial holdings by certain relatives, irrespective of their dependence on the auditor, up to a threshold, raising fundamental questions of substance over form.

A curious gap exists. The Indian Companies Act requires auditors to ask their relatives to restrict their holdings below the specified threshold. The difficulty is apparent. How can an auditor compel independent adult relatives to alter their investment portfolios or restrict their freedom in such financial matters? Regulatory frameworks often assume a level of control that auditors do not possess, particularly over extended networks of relatives and associates. This creates compliance burdens without necessarily enhancing independence in substance.



Sharing stock market tips by a key managerial person of an audit client illustrates a particularly dangerous intersection. It impairs independence of mind through a personal obligation created by mutual confidence, while simultaneously exposing both parties to liability under the Insider Trading Regulations. An auditor may invariably possess unpublished price-sensitive information. Any sharing of such information, however casual, is a potential violation of securities law, apart from its impact on audit independence.

Extended commercial, professional, and business relationships, large advisory engagements, and personal associations may further complicate independence. Long-standing friendships, shared living arrangements, and social dependencies may not always be codified



in rules but can significantly impair objectivity. The solution lies not in endlessly expanding rules, but in enforcing discipline, evaluating conflicts in substance, leveraging technology to monitor and flag relationship risks, strengthening independence declarations, and enhancing professional awareness of behavioural dimensions.

Self-interest arising from financial, business, and personal relationships is perhaps the most pervasive, though least acknowledged, threat to independence. What is needed is a cultural shift, where professionals genuinely internalise the principle that the auditor serves the public, not just the client. Tone at the Top, technology, and governance would only support that culture in practical day-to-day decisions.

Network Firms and Global Independence: Clarity of Substance, Besides Professional Practices in Silos

A global audit network accepts an engagement in one jurisdiction, sometimes unaware that another network firm provides services to the same client group. This is not hypothetical; it is a recurring observation in PCAOB and other regulators' inspection reports, illustrating the structural challenges at the heart of global network independence. Fundamental reasons, most often, are unclear structures, unwillingness to share information, and lack of substance.

Global audit networks usually operate as interconnected, yet legally independent entities that do not share obligations with each other. Regulators, however, increasingly view them as unified structures for independence purposes. The Indian audit regulator also applies a wider lens to cover an auditor as part of a common network. When an individual auditor or a firm belongs to a network, defined broadly as entities linked by shared branding, quality standards, resource sharing, or profit participation, the independence obligations of one member may be attributed to all, irrespective of any elements of controls.

This creates structural complexity on multiple fronts, including divergent regulatory interpretations between various audit regulators, inconsistent definitions of what constitutes a 'network firm' across jurisdictions, and operational challenges of tracking client relationships and service arrangements on a real-time basis across global jurisdictions and numerous entities. Besides jurisdictional issues for audit regulators and risk/ resistance in sharing confidential information by professionals, this also poses practical challenges to audit professionals who do not form any networks in substance (barring a few operating contractual arrangements on an independent basis).

Global audit networks usually operate as interconnected, yet legally independent entities that do not share obligations with each other.

India's regulatory framework adds its own layer of complexity. Various regulations, including the Corporate Law, codes of ethics, and the Reserve Bank of India guidelines for the appointment of auditors, specify that the incoming audit firm shall not be eligible if it is associated with the outgoing auditor or audit firm under the same network.

This divergence creates an environment where Indian firms within global networks face interpretative conflicts between domestic regulatory expectations and the standards their global networks apply elsewhere. Firms must invest heavily in independence monitoring systems, though the gaps may still persist due to structural and jurisdictional limitations. The absence of a meaningful consultation process amongst various stakeholders, before these divergent positions, creates additional challenges.

A globally aligned framework, supported by coordinated regulatory dialogue between various audit regulators in different jurisdictions, is essential to address these challenges. Unified global practices, to the extent feasible and practicable in respective jurisdictions, are a necessity to avoid significant compliance costs and uncertainty.

Given that the fundamental objective of maintaining independence is uniform across jurisdictions, there is a need for a globally aligned approach to its implementation. Global independence in a network context requires investment in technology, training, and governance that many firms find prohibitively expensive. Regulators must frame unified principles, aligned with jurisdictional legal obligations and global practices. This requires clearer and harmonised application guidance to professionals.

Fee Dependency and Economic Reliance: The Fear of Losing Out

A partner at a mid-size firm knows that the audit fee from its largest client constitutes not only a significant performance parameter, but also a large portion of the partner's own revenue. The client's management presses for a particular accounting treatment. The partner hesitates, not because he is uncertain of the correct answer, which he clearly knows, but because the prospect of disagreement, and its consequences for his income, are too large.

Economic dependence remains one of the most subtle yet corrosive threats to independence, precisely because it operates silently. No rule may be broken or report falsified; however, the auditor's judgment may still be compromised.

Various codes of ethics address fee dependency, including quantitative thresholds, for a single client. Even audit committees are informed, and it also considers whether an independent quality review of the engagement is appropriate.



While some jurisdictions impose such fee caps or disclosure triggers, others rely on governance mechanisms. Rigid thresholds, however, may disproportionately impact mid-sized firms auditing large regional companies, and may also adversely impact competition in the audit market. A balanced approach combining disclosure obligations, audit committee oversight, and strong professional ethics is, therefore, necessary

to address economic dependence and related consequences.

Audit committees play a critical role in mitigating this risk. Where fees continue to exceed defined thresholds, audit committees must decide whether the engagement may continue at all. Where an audit committee actively monitors fee concentration, ensures that the appointment and renewal process is genuinely competitive, and interrogates the auditor's relationship with management, the structural safeguard provided by governance can supplement the regulatory framework.

Audit committees play a critical role in mitigating this risk. Where fees continue to exceed defined thresholds, audit committees must decide whether the engagement may continue at all.

The risk of fee dependency may particularly be higher for those engagement partners whose personal remuneration is directly tied to client retention. The fear of losing revenue can influence judgment, the incentive to accommodate management preferences that should be resisted, to overlook matters that should be escalated, and to sign off on positions that would not survive independent scrutiny. In that context, the prohibition on business relationships and indebtedness with audit clients under various regulations addresses economic entanglement at one level.

Fee concentration is a structural vulnerability in the audit market. Mandatory disclosure of fee concentration to audit committees, combined with enhanced scrutiny of auditors whose revenue is unduly reliant on a single client, would be a meaningful step forward.

Auditor Rotation and Tenure: Breaking the Chains of Familiarity

After several years of auditing the same company, an audit partner can walk the corridors of the client's offices blindfolded. He knows the finance team by their first names, attends the annual strategy offsite, and has, over time, come to treat the client's management representations almost as the only truth. No one questions his technical competence. But his professional scepticism, a critical questioning mindset and curiosity, and the auditor's sharpest tool, have been eroded by the familiarity of a decade and a half.

Long auditor tenure creates a familiarity threat. A gradual erosion of professional scepticism as auditors come to identify with their clients, develop emotional loyalties, and substitute accumulated familiarity for rigorous evidence gathering. The universal regulatory response has been mandatory rotation, though only for certain classes (or covered by certain defined thresholds) of companies, under various central and sectoral regulations.

The effectiveness of rotation as a safeguard is, however, debated. A new auditor brings fresh perspective and renewed scepticism, though also faces a steep learning curve in understanding the client's business, industry, accounting policies, and risk profile. Institutional knowledge accumulated over years of audit engagement is lost in transition, and audit quality may temporarily decline during the handover period. The challenge lies in complementing rotation with strong internal review mechanisms, effective and structured handovers, and robust audit documentation practices that preserve knowledge across engagement teams.

Critically, the concept of a 'look-back period' or 'cool-off period' is also underappreciated. Various regulations address partner rotation also within a firm's engagement team, but implementation may not be uniformly enforced in practice or in substance.

Regulatory proposals for extended cooling-off periods, such as those contemplated in the Corporate Laws (Amendment) Bill, 2026, reflect genuine concerns about familiarity threats, but may also represent reactive responses to isolated failures rather than systemic analysis.

A blunt instrument applied broadly across all non-audit service relationships may impose disproportionate costs on the profession without commensurate improvements in independence. Wider stakeholder consultation before such proposals may reduce the risk of disproportionate regulatory reactions.

Rotation, when implemented thoughtfully and complemented by strong documentation and handover processes, is a powerful safeguard against familiarity. But the transition costs and inconvenience, both for auditors and the companies, particularly for complex, specialised industries, are real and must be acknowledged in the regulatory design. The objective is not a change only for its own sake, but the renewal of professional scepticism and enhanced audit quality and independence.

Professional Scepticism vs. Client Relationships: Trust, though Not Blindly

An auditor has worked with a management team she respects deeply. They have always been transparent, always provided documentation promptly, and always explained their judgments clearly. When, during a routine audit, a balance sheet item appears unusual, she accepts the management's explanation without further inquiry. 'We trust them,' she tells her team. Six months later, the item turns out to be a concealed related-party transaction and a primary tool to siphon off money.

Professional scepticism, the auditor's obligation to maintain a questioning and curious mind, critically assess evidence, and not always assume that management is infallible, is stated in every major auditing standard. Yet it is also the principle most easily sacrificed based on a good client relationship.

Codes of ethics directly address the obligation to maintain scepticism even in long-standing client relationships, recognising that trust, while essential for effective communication, must never become a substitute for evidence and verification.

Audit regulators and investigators frequently cite a lack of challenge to management as a key audit deficiency. Various audit inspections and enforcement records confirm this, observing that the audit engagement partners were grossly negligent in verifying the business rationale for various transactions, despite clear warning



signs. Unfortunately, the benefit of hindsight, which was not available to an auditor at the time of the audit, also plays a significant negative role in this process.

Professional scepticism is not merely a mindset; it must be embedded in audit processes, training, and culture. The auditor who has worked with a client for many years may develop implicit trust that facilitates efficiency and communication, but that same trust may erode the curiosity and challenge that define effective audit.

While an auditor is not required to be disruptive in a reasonable situation, the culture of the engagement team, set by the engagement partner and the firm, is critical. Where the audit partner signals that client satisfaction is the primary objective, scepticism may suffer throughout the team.

The challenge is to balance trust with verification. Auditors must remain curious, question assumptions, and seek corroborative evidence even in long-standing engagements. Automation and data analytics offer meaningful support and wider assurance. Tools that systematically flag anomalies, unusual transactions, and statistical outliers reduce the reliance on management representations and create a more objective foundation for audit conclusions. However, the technology cannot substitute for the professional's own willingness to follow the evidence and professional scepticism.

Professional scepticism is not distrust; it is disciplined curiosity. A good auditor may maintain a respectful, productive relationship with a client while rigorously questioning every significant estimate, assumption, and representation. Firms must invest in a culture where asking the difficult question is celebrated, not penalised. The firm's and the engagement partner's tone set that expectation unambiguously.

Regulatory Developments: A Landscape in Flux

An audit firm receives its audit inspection report. A finding relates to an engagement it had conducted for the related entity of an audit client several years earlier, a service the firm believed was permissible because either it was not specifically included in the list of prohibited services or the past practices of such engagements were never questioned globally. The regulator's view on management services was contrary to such practices.

The Indian regulatory landscape for auditor independence has undergone a fundamental transformation in the past few years. The audit regulator has emerged as a powerful, assertive regulator, one that has not hesitated to challenge practices long considered acceptable by the profession, even though accepted by global audit regulators, say, for instance, the definition of management services.

Such divergence in interpretation has created compliance complexity and varying practices, including voluntary adoption of policies by audit firms. Sometimes, the lack of prior consultation and meaningful alignment amongst regulators often results in practical challenges that are disproportionate to the underlying policy objective. The Ministry of Corporate Affairs (MCA) should step in early to clarify the position to remove difficulties.

The Corporate Laws (Amendment) Bill, 2026, proposes, among other things, a complete ban on non-audit services to audit clients (which may be prescribed), including a continuing cooling-off period of 3 years for such non-audit services even after rotating out as statutory auditors. This proposal, while well-intentioned, may attract criticism as a reactive response to isolated failures.

> Professional scepticism is not merely a mindset; it must be embedded in audit processes, training, and culture.

Globally, the audit regulators continue to publish firm inspection reports identifying independence violations. The SEBI (Prohibition of Insider Trading) Regulations, 2015, overlay an important additional dimension: an auditor invariably possesses unpublished price-sensitive information and must be acutely aware of the consequences of any inappropriate sharing.

A more consultative and harmonised approach among regulators, with global alignment, may ensure clarity, consistency, and effectiveness. Sometimes the contradictory rules lead to uncertainty and varying practices, and impose substantial compliance costs without commensurate improvements in audit quality.

The regulatory landscape is evolving rapidly, but not always consistently. A coordinated, principles-based framework, developed in genuine consultation with the profession, would better serve the objective of sustainable audit quality and enhanced independence than prescriptive rules that are ambiguous, subjective, or impractical in their application. Global alignment is equally critical to encourage competitiveness and create professional capacity.

Audit Failures and Ethical Breach: Lessons from the Field

History does not repeat itself, but it rhymes. The same independence failures, accumulated familiarity, fear of client loss, subordination of scepticism, and inadequate documentation appear across geographies and decades. Enforcement may seem to be often reactive. Various recent cases of audit failures call for a shift towards proactive monitoring and preventive mechanisms.

Regulatory interventions and publicly available information indicate serious ethical lapses in the audit of large corporations involving diversion of funds, artificially increasing revenues, and reducing outstanding balances. On the other hand, the regulators noticed a lack of auditor independence and scepticism, conflicting services to audit clients, a non-compliant audit documentation system, and unauthorised post-facto modification of audit work papers. The failure to challenge management's representations about the quality of underlying assets, adequacy of provisions, accumulated familiarity, and the subordination of scepticism leads to a lack of independence and objectivity. Audit regulator's intervention underscored the personal accountability of the engagement partner for independence, professional scepticism, objectivity, and overall audit quality.

Enforcement actions by audit regulators share common themes, e.g., failure to identify conflicts of interest, lack of professional scepticism and independence, and inadequate documentation. These are not one-off failures, rather they are symptomatic of deeper cultural and structural issues. All these can be addressed with investments in technology and training, consolidation of professional capacity to create larger firms that can compete in the market, and are willing to adopt an alternate practice structure to promote investment in infrastructure and talent.

A more consultative and harmonised approach among regulators, with global alignment, may ensure clarity, consistency, and effectiveness.

Systemic Challenges and the Way Forward

The profession is at an interesting stage. On one side lies an increasingly dense set of regulations, on the other, a persistent pattern of audit failures, which can certainly be prevented going forward. The path forward requires more than new rules, i.e., a fundamental rethinking of how independence is understood, monitored, and enforced.

The challenges to independence are not merely technical; they are systemic, cultural, and structural. Identifying them clearly is a precondition for addressing them effectively:

Possible Challenges	Way Forward
Over-regulation with limited enforcement	Shift from reactive rule-making to proactive, principles-based frameworks, developed with stakeholder consultation.
Ambiguity and subjectivity in rules	Harmonise definitions and standards across various audit regulators, aligned with global and uniform practices. The regulatory framework, while evolving, may follow the best international experience.
Lack of technological integration	Invest in technology-driven monitoring systems for real-time independence tracking across networks and relationships, instead of relying heavily on manual, periodic declarations. In a world where relationships, transactions, and service arrangements change continuously, this is a structural weakness. Technology investments in independence management systems are increasingly necessary, not optional.
Misalignment between regulators and professionals	Establish structured, representative consultation mechanisms before finalising significant regulatory changes
Lack of awareness and education	Embed independence principles in continuous professional development, with emphasis on behavioural dimensions.
Culture, widely prevalent self-interest, and tone at the top	Strengthen internal culture and governance within firms. Align individual compensation frameworks with audit quality, not client retention. The widely prevalent culture of self-interest within parts of the profession must be directly addressed. Firm culture and leadership tone all shape the extent to which independence is genuinely valued, versus merely performed. A profession that rewards client retention over audit quality will find that its independence frameworks, however sophisticated, are insufficient for the task.
Encourage alternate practice structure.	To encourage capital infusion and larger professional services firms, willing to invest in infrastructure, technology, training, and talent.

Independence must be viewed as a substantive dynamic construct requiring continuous attention, not a checklist-driven process in form. Addressing the systemic challenges outlined above requires collaboration among regulators, professional bodies, firms, and the broader business community.

Independence as a Living Principle

Independence in audit and assurance is not merely a regulatory requirement; it is a professional obligation and a public trust. It is not a binary state, but a dynamic, constantly tested condition that requires active maintenance through vigilance, introspection, and professional courage.

The frameworks provided by the ICAI Code, the IESBA Code, the Companies Act, SEBI regulations, RBI guidelines, NFRA, international benchmarks, and PCAOB standards collectively provide a sophisticated architecture for safeguarding objectivity.

However, as this note has sought to demonstrate, the architecture is only as strong as the professionals who inhabit it. Rules cannot substitute for integrity.

Independence, ultimately, is a commitment to truth and integrity, telling the financial story of an entity as it is, not as management wishes it to be, not as the auditor hopes for the sake of the client relationship, and not as any commercial consideration might suggest. That commitment, sustained under the pressures of a complex ecosystem, is what defines the audit professional's independence at its finest.

Non-Assurance Services to Audit Clients: Reviewing the Ethical and Regulatory Landscape

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Jayant Gokhale

Overview

The article examines the ethical, regulatory, and practical issues arising when statutory auditors provide non-assurance services (NAS) to their audit clients. It begins by emphasising that the statutory auditor's primary responsibility is towards the stakeholders and shareholders who rely on the auditor's opinion, and not towards the company management itself. Based on this principle, the article explains how providing NAS to the auditee company can create conflicts of interest and compromise auditor independence.

The author discusses the historical background of ethical restrictions on NAS, including lessons from corporate failures such as Enron and IL&FS, and explains the major threats identified by ethical codes—self-interest, self-review, familiarity, intimidation, and management participation threats. The article also outlines services that are typically prohibited under global standards and under the section 144 of the Companies Act, 2013.

Further, the article reviews international developments regarding the separation of audit and consulting functions, safeguards adopted by firms, and the Indian regulatory position under the ICAI Code of Ethics and the Companies Act. It highlights certain stricter Indian requirements, recent regulatory trends, and proposed legislative amendments, including a cooling-off period for auditors. The article concludes with practical guidance for practitioners and cautions audit firms about the significant risks involved in undertaking NAS assignments for audit clients.

Role of Statutory Auditor/ Independent Auditor (IA)

An auditor's primary role and his very *raison-d-etre*, is to provide reasonable assurance - that the financial statements (FS) audited by him give a true and fair view of the financial performance and statement of affairs of the audited entity. He is responsible for providing this statement to the stakeholders. So, in the true sense - it



is the Stakeholders (who rely on the auditor's opinion) who are the real clients of the auditor. It is they who appoint the auditor. The Company is merely the Auditee. It is for this fundamental reason that the statutory auditor's report is not addressed to the Company or its management but to the shareholders. It is the shareholders (or the government, C&AG, RBI) who are the users of the Statutory Auditor's (Independent Auditor's) services. [The Statutory Auditor or Independent Auditor as he is referred to in many ethical codes is hereafter referred to in brief as IA]. Once this conceptual clarity is noted, the fog of ethical dilemma about Non-Audit Services [NAS] would substantially clear. It is because of the wrong notion that the IA of a company is providing an audit service to the company that confusion arises. In reality, he is providing Audit services to the Stakeholder and is simultaneously seeking to provide NAS to the company – this is where the conflict arises.

Illustration. To illustrate this point, let me take the situation that a chartered accountant is engaged by Mr. X (who is seeking to acquire ABC Limited) to undertake the valuation of company ABC Limited and to provide a valuation report to Mr X. A substantial fee is agreed upon. The valuation report is to be delivered to Mr. X within 3 months. In order to carry out the valuation, he visits the offices of ABC Limited, builds a good rapport with the management of ABC Limited, and, as a result, before he completes the valuation of ABC Limited, the company offers him an assignment (for an even larger fee) to improve their accounting system for capitalisation of certain assets. It would be obvious here that, while performing the evaluation for Mr X, the CA should not be undertaking an assignment for ABC Limited for a substantial fee, as it results in a clear conflict of interest. The latter assignment may lead him to include certain items as assets and may consequently increase the value in the valuation report to be submitted to Mr X. It would be evident that, taking on work on behalf of ABC Limited, while still performing the valuation of AC Limited for Mr X, is a clear conflict of interest. This is crystal clear because the two clients whom the CA is serving are clearly different, and have opposing interests and perhaps opposing perspectives on valuation of certain items.

In a similar manner, once it is recognised that for the IA, the client is truly the stakeholder/ shareholder and the auditee is the company; taking up work on behalf of the company without the explicit approval of the shareholders is clearly a conflict of interest.

The shareholders (or the government, C&AG, RBI) who are the users of the Statutory Auditor's (Independent Auditor's) services

Financial Interest of the IA: It is clearly in the financial and economic interest of the IA firm to take both these assignments as given in the illustration above. It is fundamentally this economic interest that has led to the IA and the company obfuscating the issue by bringing in arguments about utilising the existing knowledge of the auditor, economies of operation for the management, etc.

Growth of Consulting – leveraging on the IA role: In the past, failures like Enron, ILFS, etc. have shown that it is the stakeholders and society who have suffered where the IA had a conflict of interest that gave more weightage to the Company over the interest of stakeholders.

Ever since the Enron collapse, regulators have taken a strong view that such conflicts of interest should not be permitted to vitiate the independence of the IA.

There is a long history of failures that could have been avoided had such conflict of interest not been permitted in the first place. Ever since the Enron collapse, regulators have taken a strong view that such conflicts of interest should not be permitted to vitiate the independence of the IA. As the stakes and volumes of the international consultancy fees pie have increased, this threat has grown significantly.

It is also well acknowledged that an auditor who may indicate a certain deficiency in systems or controls will be in a position to exercise strong leverage on the management to engage consultants to remedy the real or perceived deficiencies. And if the IA's own firm or an affiliate of the IA could provide the inputs, on the face of it, this seems like a win-win situation for the management and the IA firm.

Tail wagging the dog: It is for this reason that many of the major consultant firms were affiliates of the large audit firms. The inside channel that the audit firm provided to the consultancy unit became the key sourcing channel of corporate clients for IA firms and their consultancy units. Soon the consultancy unit's revenues rose significantly through companies / management whose IA was a part of or affiliate of the consultancy arms. Over time, revenues of such consultancy firms became larger than that of the audit function. This then became a classic situation of the tail wagging the dog. However, the consequences, such as the failures in Enron and, closer home, IL&FS, emphasise the need for strict regulation in this area. It is in this perspective that the entire regulatory and ethical framework needs to be viewed as we proceed to examine it in this article.

History of Ethical & Economic Restraints

The issue of such an ethical and economic conflict is not new. It is just that, of late, with the increasing fees that corporates are willing to pay for consultancy servicesthat, the problem of potential conflict has become more evident and common. Since the potential for such conflict of interest was always prevalent; various professional bodies hadalreadyalready had a set of ethical rules in place to ensure that appropriate checks and balances existed in the system to avoid a situation of absolute compromise of the Independence of the IA, as that would



eventually undermine the perception and confidence society placed in the professional. Where lawmakers felt the need to supplement this very indispensable building block of trust in the Profession; provisions were incorporated in the law (for e.g. Section 144 of the Companies Act 2013).

Eventually, the objective of all these ethical rules and legal provisions was to ensure that the public confidence in the Assurance that an IA provides remains solid. This is because the whole economic edifice of widely held listed companies (of separation of shareholding and management) is founded on the reliance upon financial statements (FS) validated by the IA. It is for this reason that the various ethical codes and laws have sought to being bring about a reasonable balance between the in independence of the IA, and the corporate entities entities' efficiency imperative (where bywhereby they can use the IA's knowledge and awareness of the ground realities to avail of certain advisory inputs at a cheaper cost rather than going over the same data with a different consultant). With this approach, the ethical code prescribed by the ICA1 (and IESBA[1],- of which ICA1 is a part) is examined hereunder. This is, of course, viewed in the backdrop of the related provisions of the Companies Act 2013 (Section 144 – which prescribes certain restrictions on NAS).

Key Threats from Non-Assurance Services

Auditor regulation bodies identify several recurring threats when audit firms provide advisory and other services to audit clients: (See Section 300 of CoE- ICAI)

a) **Self interest threat:** Excessive financial dependence on a single client, or a case of IA having material income from NAS, may make the auditor reluctant to challenge management or issue an adverse opinion;



b) **Self review threat:** If the auditor designs, implements, or maintains systems or controls that later form part of the financial statement audit, the IA is effectively reviewing his own work, and this may lead to an improper reliance on the same or an unwillingness to find deficiency in such systems and controls;

c) **Familiarity or intimidation threat:** Very close advisory relationships can erode professional scepticism and make the IA less likely to question management aggressively; and

d) **Management function / Advocacy threat:** Any service that effectively places the auditor in the role of management (such as authorising transactions, choosing accounting policies, or preparing regulated reports on behalf of the client) is widely treated as incompatible with audit independence.

What is typically prohibited?

Most jurisdictions explicitly ban auditors from providing services that would put them in the role of management or decision maker, such as:

1 IESBA is the International Ethics Standards Board for Accountants formed by the International Federation of Accountants (IFAC) of which the ICAI is a member

- Bookkeeping and accounting services
- Internal audit outsourcing
- Designing or implementing financial information systems
- Management or HR advisory
- Certain investment, actuarial, or legal services for the same audit client.

In India, Section 144 of the Companies Act restricts statutory auditors from offering several such non audit services, whether directly or indirectly. The Act also prohibits such services being rendered to the holding or subsidiary entities.

Global and national codes therefore distinguish between "permissible" advisory (e.g., recommendations, design options, training) and "prohibited" management like functions (e.g., implementation, day to day control, or reporting preparation).

Global developments: Globally, regulators and policymakers are increasingly debating whether audit should be separated, at least structurally, from consulting and other non-assurance services within the same firm. These debates are driven by concerns around conflicts of interest and instances when safeguards are not in place. "Separation" as envisaged internationally means de-linking the IA function from other NAS (like consulting, tax advisory, representation, etc.), and such de-linking or separation has thus been provided in several forms:

In India, Section 144 of the Companies Act restricts statutory auditors from offering several such non audit services, whether directly or indirectly.

a) **Operational separation:** Audit and consulting operate under the same brand but with separate leadership, reporting lines, and quality management systems for audit.

b) **Legal/structural separation:** Audit and consulting become distinct legal entities, sometimes with different equity structures or holding company arrangements.

The UK's Financial Reporting Council has been one of the most forceful voices, directing firms to separate their audit and consulting operations. In the United States, the SEC and PCAOB have not mandated a full audit–consulting split, but they have tightened independence and quality management rules:

- The SEC updated its independence rules and related guidance to address non audit services and commercial relationships;
- The latest "quality management" style standards require audit organisations to proactively identify and mitigate risks to independence, including those arising from consulting and advisory lines.

Other jurisdictions (e.g., EU member states) generally follow IESBA style ethics codes that tightly restrict certain non-assurance services, but full legal separation of audit and consulting remains rare compared with the UK style approach.

Arguments for and against separation of firms to enable NAS:

Pro - separation	Reduces conflicts of interest, strengthens public interest focus, improves audit quality perception, and aligns with the "audit as a public good" view.
Anti separation/ status quo	Integration improves efficiency and knowledge sharing; separation may weaken synergies, raise costs, and is not clearly linked to higher audit quality.



Common Safeguards and Control Mechanisms followed in other jurisdictions

To comply with ethical standards, and to address issues of independence, IA firms typically adopt a combination of technical, structural, and governance level safeguards:

a) **Pre-engagement reviews:** Independent ethics or independence committees review proposed non-assurance services, assessing threat types, magnitude, and available safeguards;

b) **Segregation of roles and teams**: Distinct teams or even separate business units handle audit and certain non-assurance services, with firewalls around information sharing and decision making;

c) **Client governance involvement:** Ensure that management and, where appropriate, the audit committee or board retain key decisions, approvals, and oversight, while the auditor merely advises;

d) **Fee and income limits:** Codes often cap the proportion of a firm's income that may come from a single audit client, and sometimes specify separate thresholds for non audit fees; and

e) **Disclosure and transparency:** Public interest entities are commonly required to disclose the nature and amount of non-assurance services received from the auditor, allowing markets and regulators to monitor dependence.

Practical Tips for IA Firms and Practitioners seeking to provide NAS

For practitioners writing or devising internal policies on non-assurance services which would fit within our applicable regulatory framework, useful starting points include documenting the following:

a) **Clear service classification matrix:** Define what services are and are not permitted for audit clients (e.g., advisory is allowed; preparation or implementation of management level reports is prohibited);

b) **Case specific independence analysis:** For each proposed non assurance service to be performed, document the threats, safeguards, and approvals/guidance permitting such service.

c) **Training and culture:** Regular training on ethical boundaries, case based discussions, and an explicit "no management function" rule help embed a culture of independence;

d) **Client communication protocols:** Early dialogues with management and audit committees about the limits of advisory support can prevent expectations of

"management by auditor" and reduce pressure on the audit team.

These measures planned in advance will enable an IA to remain aware of the limits of his potential involvement while preserving the credibility of the audit function.

Large Firms in India, particularly those having international affiliations or operating in international jurisdictions, also adopt processes similar to these as they are in harmony with their operations in other jurisdictions.

Global practices vis-a-vis Processes in India

These practices are typically based on the practices adopted by the large global firms, particularly those having international affiliations. These derive from the ethical code as prescribed in jurisdictions like the USA & UK. Large Firms in India, particularly those having international affiliations or operating in international jurisdictions, also adopt processes similar to these as they are in harmony with their operations in other jurisdictions. However, well-intentioned these may be, given the fact that the local legislative requirements are not necessarily identical to those prevalent in the Western countries, adoption of these practices may not amount to adequate compliance with the Ethical Code applicable in India. Some instances of this are as under:

a) In India, there are very specific Rules prescribed to address the independence w.r.t. fees and income limits. For e.g., by Notification No.1-CA(7)/60/2002, an IA of a PSU, Listed entity etc. cannot accept remuneration for NAS which in total exceeds the fee payable for statutory audit of the same company. This effectively caps the amount of NAS that an IA can provide to our client, and thus to a certain extent protects the independence of the IA.

b) Similarly, there are stringent limits placed on receiving fees from one or more Clients or Companies under the same management if such aggregate fees for Audit and NAS exceed 40% of fees of Firm & Partners.

c) The provisions of Section 600 of the Code of Ethics prescribed by ICAI and binding on an IA and all members in India deal with the provision of NAS by IA. This ethical prescription is formulated broadly in line with the IESBA code. However, there are numerous specific clarifications and exemptions that are given by the ESB of ICAI which need to be specifically considered. These guidances/clarifications may at times adopt a more stringent standard than the general rules mentioned in the sub-clauses of Section 600. For example, reference to FAQ's issued by ICAI may be required to



determine whether the IA of a bank or even its branch can undertake a stock audit or inspection of a client of the same bank. Such a situation is not addressed in the Ethical Code, and perhaps not even envisaged in the International literature on the topic. However, it is very much relevant in the Indian context, and the answer provided by the ICAI at Q 184 of the FAQ's on the Code of Ethics specifically prohibits this.

d) Similarly, the question of an auditor sharing information with the credit rating agency, or undertaking the compilation of financial statements under SRS 4410, is addressed in the FAQs though not specifically finding a place in the detailed guidance provided in the Code of Ethics particularly in sections 600 to 610.

Legislative Provisions restricting NAS presently

The provisions of Section 141(3)(e) of the Companies Act 2013 are also particularly relevant in this context. This clause prohibits any IA to directly or indirectly have a business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company. This by itself is extremely broad in its scope. Further, when read with Section 141 (4), any infraction of Section 141 can prove fatal to an IA because any such violation will result in the immediate and automatic vacation of the position of IA. This consequence provided in the law is so stringent that much of the theoretical checks and safeguards referred to as mentioned above may appear too inadequate to guard against a risk of an inadvertent default.

Another important aspect which is often raised by some of the international firms operating in India is that these provisions are way beyond anything prescribed under the IESBA ethical code. It is, however, worth noting that the IESBA ethical code itself recognises that the ethical code given by them is the minimum standard to be applied. IESBA has clarified that if any jurisdiction applies a higher/stricter standard, the same shall apply in the said jurisdiction.

It is therefore to be noted that, in certain situations, the ICAI has laid down certain stricter criteria which are unique to the Indian circumstances. Therefore, notwithstanding any international practice, these rules and ethical guidance shall apply in India, and any breach thereof will expose the IA and his audit firm to disciplinary action.

The practical takeaway from a comprehensive understanding of these provisions would show that while the commentary given in Section 600 to Section 610 and other provisions of the code of ethics may be important and relevant, practically any IA getting involved in rendering such NAS is fraught with risk and therefore is best avoided. All the practices of creation of a Chinese wall between the audit and consultancy wings, following practices referred to as mentioned above, etc., may not be of help if the Company Law Department or regulator were to take a different view of the matter.

It would also be interesting to note that, perhaps taking into consideration the above factors, it has been reported in the media that *"Five of the top six audit firms in India have stopped providing non-audit services to their audit clients, ... aligning with the NFRA's strict stance on conflict-of-interest issues.[2]"*

Another important aspect which is often raised by some of the international firms operating in India is that these provisions are way beyond anything prescribed under the IESBA ethical code.

2 *https://economictimes.indiatimes.com/industry/services/consultancy-/-audit/top-auditors-stop-offering-non-audit-work-to- clients/articleshow/108373895.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst*



Proposed Legislative Actions restricting NAS

The push by the lawmakers to reduce this risk of conflict of interest will be evident from the fact that in March'26 the Government has introduced The Corporate Laws (Amendment) Bill, 2026. This Bill contains the following provisions in Section. 144 of the Companies Act:

"Provided that an auditor or audit firm of such class or classes of companies, as may be prescribed, shall not provide, directly or indirectly, any non-audit services to the company or its holding company or subsidiary:

Provided further that the restriction under this section shall also apply for a period of three years after the auditor or audit firm has completed his or its term under sub-section (2) of section 139:"

Mandatory Cooling Period post IA: The proposed amendment prescribes a mandatory 3 year cooling period for any NAS after completion of an IA assignment with a company or its subsidiary. This is done with the intent of reducing any potential conflict of interest that may arise if an IA is looking to a post-tenure consultancy or other NAS contract. While this is being opposed by certain entities; it may be noted that a similar restriction is already in operation in regard to C&AG appointments in PSUs. Requirements of mandatory cooling period are also in place even today in case of audits of banks and NBFCs.

This bill is pending since it has now been referred to a Select Committee of Parliament. However, the intent of the government as also well as the approach of NFRA is also clear in this regard. The proposed legislation also further significantly enhances the supervisory powers of NFRA, proposing to give it a finality which would make it difficult to adopt a technical justification on such matters.

Viewing NAS in Indian Context:

Such NAS and consultancy constitute a significant portion of the revenue of large Internationalinternational firms. Thus, some opposition to these proposals has been expressed, saying that "such restrictions don't exist anywhere else in the world." However, it needs to be noted that the position of IA firms in India is quite distinct from the situation prevalent in other jurisdictions. Large global companies operating in the USA have just a handful of major audit entities, (mainly the 10 large firms)

who also have the scale and technical capability to render specialised NAS in areas of transfer pricing, tax reviews and IT systems reviews. In India, however, the situation is quite different. Apart from the Big 4 and top 10 firms, there are numerous large and mid-size accountancy firms and networks which can meet the requirements of most of Indian companies since these companies are not yet of the same colossal size as their US counterparts. Therefore, the argument that because this practice is not prevalent internationally, so India too should not bring in such restrictions does not appear sound. It needs to be remembered that an international practice is not necessarily a "best practice". What is more important is whether the requirements prescribed are suitable to the environment in which they are to apply in India.

What is more important is whether the requirements prescribed are suitable to the environment in which they are to apply in India.

An argument has also been made that using the Consulting or other NAS of an IA firm results in lowering the cost for the company. The economic interest of large firms who are putting forth this view is obvious. None of the large firms would want one of its competitors to get a bite in the pie (as it would reduce their own slice). It has also been mentioned that bringing such restrictions "would result in service quality deterioration as companies will have to rely on lower-tier firms to deliver crucial services like tax advisory, internal audits and consulting."[3] I believe that such a statement reveals either a strong vested interest in pushing a false narrative or a fundamental lack of understanding of the state of the auditing profession (in many of the large and mid-size firms operating in India today). Having seen the profession up close for more than four decades; I can confidently assert that entrusting such services to homegrown consultancy firms ('lower tier firms' sounds crudely snobbish) will not in anyway adversely affect the quality of tax advisory, internal audit or consulting services that are offered by Indian Chartered Accountants or Indian consultancy firms.

In any case, while one can debate over this point of view; the writing on the wall is clear to anyone who cares to read it. For all practical purposes, mid-size and smaller firms (which constitute the bulk of the membership of CTC) need to tread with caution when undertaking the provision of NAS to your CTC's membership) need to tread with caution when providing NAS to their audit clients. The international practises of documentation, creation of a Chinese wall between various departments, etc., as mentioned above, may not be adequate to meet the regulatory environment in which our firms operate.

Further, the incremental benefit to a specific firm may not be worth the risk involved. It is time for all professionals, whether from Indian firms or the international entities, to smell the coffee and understand the structural risk in allowing a conflict of interest between the IA and NAS. The risk in case of conflict of interest is too great for the Indian economy and the Indian investors. Taking this into consideration, the lawmakers and regulators are moving in a certain direction with some clarity of purpose. It would be best to take these ground realities into considerationconsider these ground realities, rather than trying to build artificial safeguards for an IA to render NAS. Where there is absolute clarity that certain services are permitted, one may certainly take up such assignments. However, where there is even an iota of doubt, it may be pragmatic to realise that the risk-reward ratio in undertaking such assignments does not seem economically worth it.

3 *Govt plans to restrict auditors from offering non-audit services-Business News | The Financial Express https://www.financial-express.com/business/news/govt-plans-to-restrict-auditors-from-offering-non-audit-services/4235867/*

Ethical Challenges in Tax Practice: Navigating the Line Between Planning and Aggression

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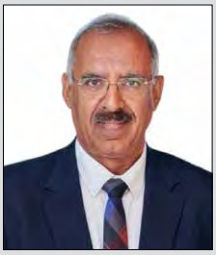

Sanjiv Chaudhary



Carla Vijian

Overview

Ethical dilemmas in tax practice rarely lie in identifying obvious evasion. They arise more often in the grey area, where a position may be technically arguable but difficult to defend once the arrangement is tested against its facts and circumstances, commercial rationale, economic purpose and substance, disclosure profile, and likely reaction by tax authorities or the public. This article examines that boundary. It distinguishes tax planning, tax avoidance, and tax evasion, and considers the ethical challenges that arise in structuring advice, dealing with aggressive client positions, exercising professional skepticism, using legal opinions and disclaimers, managing confidentiality and privilege, and responding to reputational risk. It considers the significance of the IESBA Global Ethics Standards on 'Tax Planning and Related Services', particularly the requirement for a credible basis in laws and regulations and the obligation to consider reputational, commercial, and wider economic consequences.

Introduction

Ethical dilemmas in tax practice rarely lie in identifying obvious evasion. They arise more often in the grey area, where a position may be

The International Ethics Standards Board for Accountants (IESBA) is the independent global standard-setting body that develops and issues the International Code of Ethics for Professional Accountants

* *Carla Vijian, Principal at IESBA, USA and Project Lead on its Tax Planning and Related Services project. The views expressed in this article are those of the author and do not represent the views of the IESBA.*

technically arguable but difficult to defend once the arrangement is tested against its facts and circumstances, commercial rationale, economic purpose and substance, disclosure profile, and likely reaction by tax authorities or the public. This article examines that boundary. It distinguishes tax planning, tax avoidance, and tax evasion, and considers the ethical challenges that arise in structuring advice, dealing with aggressive client positions, exercising professional skepticism, using legal opinions and disclaimers, managing confidentiality and privilege, and responding to reputational risk. It considers the significance of the IESBA Global Ethics Standards on 'Tax Planning and Related Services', particularly the requirement for a credible basis in laws and regulations and the obligation to consider reputational, commercial, and wider economic consequences.



Context Introduction

The International Ethics Standards Board for Accountants (IESBA) is the independent global standard-setting body that develops and issues the International Code of Ethics for Professional Accountants (including International Independence Standards). Its primary role is to establish high-quality, principles-based ethical standards for professional accountants worldwide, with a strong focus on serving the public interest and enhancing trust in the profession.

The revisions to the Code relating to "Tax Planning and Related Services" were formally issued in April 2024 as a final pronouncement. These provisions became effective for tax planning services or activities beginning after 30 June 2025 (i.e., from 1 July 2025), with early adoption permitted.

The twelfth edition of the Code of Ethics, as approved in 2019 by the Central Council of the Institute of Chartered Accountants of India (ICAI), is based on the 2018 edition of the Code of Ethics as issued by IESBA, and the earlier edition of 2009, as issued by ICAI, was based on the then provisions of the International Code.

Ethical Challenges in Tax Practice: Navigating the Grey Zone

Ethical dilemmas in tax practice rarely arise at the extremes. Tax evasion is unlawful. Routine compliance work is usually straightforward. The more difficult cases arise in the grey area, where the law admits more than one interpretation and the facts and circumstances are incomplete or still developing.

That grey area has become harder to navigate. Public scrutiny of tax planning has intensified compared to a decade ago. The Paradise Papers[1], the Pandora Papers[2], and sustained criticism of the tax affairs of large multinational groups[3] have changed the environment in which tax advice is received. Professional judgment now operates in an environment where tax outcomes may be

1 *See, for example, the UK House of Commons Briefing Paper, The Paradise Papers (November 2017)*
2 *See, for example, https://www.bbc.com/news/world-58780561*
3 *https://www.business-humanrights.org/es/%C3%BAltimas-noticias/mps-slam-starbucks-amazon-and-google-on-tax-uk/*

assessed not only by revenue authorities and courts, but also by auditors, boards, investors, the media, and the public.

In that setting, the question is not simply whether a position can be argued. A position may be arguable in the narrow sense that a technical case can be assembled around it. The more relevant question is whether the advice remains supportable when the arrangement is assessed against the facts, the commercial rationale, the economic substance, the intended operation of the legislation, the completeness of disclosure, and the consequences if the matter is examined in full at a later date.

The IESBA's tax planning provisions require a professional accountant to recommend or advise on a tax planning arrangement only where there is a 'credible basis' in laws and regulations.[4]. It then provides guidance to that threshold by directing attention to matters such as the facts and circumstances, the arrangement's economic purpose and substance, the reasonableness of assumptions, legislative intent, relevant literature, including court decisions and tax authority guidance, and whether the arrangement would be accepted if all relevant facts were disclosed[5].

The ethical issue does not arise merely because taxes have influenced commercial decisions.

Distinguishing planning, avoidance, and evasion

Tax legislation frequently contains elections, incentives, exemptions, reliefs, and structural consequences. Taxpayers are entitled to organize their affairs with those features in mind. The ethical issue does not arise merely because tax



hastaxes have influenced commercial decisions.

Tax avoidance is more difficult because it often occupies territory where legal form has been used to produce a tax result that is hard to reconcile with commercial reality or the law's intended operation. The concern is not that the taxpayer has obtained an advantage. The concern is that the arrangement may depend on strained interpretation, elaborate legal architecture with little substantive effect, selective presentation of facts, fragmentation of functions, circularity, or commercial claims that do not withstand close examination.

Tax evasion is different in kind because it involves illegality. It involves illegality, including concealment, fabrication, sham documentation, suppression of material facts, or deliberate non-compliance. The IESBA's Tax Planning provision explicitly states that it does not address tax evasion[6].

The practical problem is that clients rarely present a proposal as an act of avoidance or

4 Paragraphs R280.12 and R380.12
5 Paragraphs 280.12 A4 and 380.12 A4
6 Paragraphs 280.7 A1 and 380.7 A1

evasion. They are more likely to describe it as efficient structuring, prudent tax management, or market practice. That means the classificatory burden falls on the professional accountants. It cannot be outsourced to the client's preferred description, nor can it be answered by legal form alone.

Structuring advice in the grey area

At times, ethical matters in tax practice begin before any opinion is issued. They begin with



how the engagement is framed. Once the analysis starts with the question, "How do we get to this result?" the process is already at risk of becoming outcome ledoutcome-led. The more appropriate starting point would be:

- What is the transaction?
- What is its commercial purpose?
- What are the operative facts?
- What does the legislation actually address?
- What assumptions are being made?
- Where is the uncertainty?

Only then can the professional accountant assess which conclusions can be properly supported.

That sequencing is consistent with the requirement to understand the client, its business activities, the purpose, facts, and circumstances of the arrangement, and the relevant tax laws and regulations[7]. Paragraph 380.11 A1 adds that the accountant is expected to apply professional competence and due care, have an inquiring mind, and exercise professional judgment. Those are familiar ideas, but they matter acutely in tax advisory work because weak advice is often the product not of technical incompetence, but of a process that began with the answer and worked backwards.

The point is straightforward. In many problematic tax matters, the ethical line is crossed before the filing position is adopted. It is crossed as and when the professional accountant stops analyzing the arrangement and starts constructing support for it.

This shift is usually gradual. It shows when inconvenient facts begin to look peripheral, when uncertainty is translated into apparent confidence, when counterarguments are acknowledged only formally, or when the written advice becomes an exercise in validation rather than analysis. Once that happens, the quality of the technical work usually deteriorates with it.

Sound tax advice does more than announcannouncee a conclusion. It identifies the relevant facts and circumstances. It explains the reasoning. It addresses material counterarguments fairly. It identifies gaps in the factual record. It states the practical consequences if the position is challenged, including additional tax, penalties, interest, litigation exposure, and, where relevant, accounting and governance consequences. Paragraphs R280.20 and R380.20 require the professional accountant to explain the basis on which the recommendation or advice has been given. Paragraphs 280.23 A1

7 *Paragraphs R380.10*

and 380.26 A1 then encourage documentation of the purpose, circumstances, and substance of the arrangement, the identity of ultimate beneficiaries, the nature of uncertainties, the judgments reached, the discussions held, the client's response, and any disagreement.

That documentation point is important. It is not merely defensive. Good documentation improves the discipline of the analysis itself. A professional who cannot record the commercial purpose, the principal assumptions, the main uncertainties, and the basis for the conclusion with clarity should hesitate before giving the advice.

Client pressure, uncertainty, and professional judgment

Aggressive client positions can emerge through pressure. The client may say the structure is widely used. A promoter says the product is standard and already supported by counsel. Management may say the deal cannot proceed unless the tax achieves a particular outcome. The timetable is compressed. The fee may be substantial. The qualifications are expected to sit inside the memorandum, not at the front of it.

The IESBA's Tax Planning and Related Services application material areis very useful precisely because it identifies how these pressures arise in practice. Paragraphs 280.17 A2 and 380.17 A2 identify common sources of uncertainty, including difficulty in establishing an adequate factual basis, lack of clarity in the law, recent rulings casting doubt on similar arrangements, lack of clarity regarding the economic purpose and substance, and lack of clarity about the ultimate beneficiaries. Paragraphs 280.19 A2 and 380.19 A2 identify factors relevant to threats, including transparency, economic purpose and substance, the significance of the tax savings, the nature and amount of the fee, urgency, use of the arrangement for multiple clients with little modification, and the client's prior behavior or culture.

A professional who cannot record the commercial purpose, the principal assumptions, the main uncertainties, and the basis for the conclusion with clarity should hesitate before giving the advice.



Those paragraphs matter because they accurately describe the practical problem. The harder issue is often not recognized as a weak position. It is resisting the pressure to normalize weakness.

Professional skepticism has an equally important place in tax advisory work. It may not look identical to audit skepticism, but it is no less necessary. Tax planning frequently depends on assertions about purpose, control, beneficial ownership, valuation assumptions, expected conduct, or future operations. Those assertions may be true. They should not be accepted uncritically merely because they are commercially convenient.

In this context, skepticism means asking whether the stated rationale is contemporaneous or retrospective. It means examining whether a newly inserted entity has decision-making capacity or merely documentary presence. It means asking whether the allocation of functions and risks reflects operational reality. It means testing whether the arrangement would make commercial sense without the tax result. It also means identifying the ultimate beneficiaries and asking whether the analysis would materially change if every relevant fact were disclosed.

Reputational, commercial, and wider economic consequences

One of the prominent features of IESBA's Tax Planning pronouncements is that it does not stop once a credible basis has been identified. Paragraphs R280.14 and R380.14 require the



professional accountant to exercise professional judgment and consider the reputational, commercial, and wider economic consequences that could arise from stakeholders' views of the arrangement. Paragraphs 280.14 A1-A2 and 380.14 A1-A2 refer to adverse publicity, penalties, business disruption, management time, and the impact on the tax base of one or more jurisdictions.

This does not mean the Code asks accountants to become arbiters of tax morality. The Basis for Conclusions makes clear that the stand-back test is not an exercise in tax justice or political philosophy. The lesson for practitioners is not that public criticism should decide the tax answer. It is that reputational exposure is now part of the answer's practical meaning.

The lesson for practitioners is not that public criticism should decide the tax answer. It is that reputational exposure is now part of the answer's practical meaning.

A position may therefore be technically arguable and still be professionally unattractive because the structure depends heavily on opacity, the commercial rationale is thin, the outcome is difficult to explain outside specialist tax language, or the wider consequences of challenge are disproportionate.

Legal opinions, disclaimers, and second opinions

Legal opinions and disclaimers need to be viewed through the same lens. A legal opinion may be an important part of the analysis, especially in a complex or cross-border matter. A disclaimer may properly define scope or identify assumptions. But neither converts a weak position into a sound one. Nor should they be used as a substitute for the professional accountant's own judgment.

The IESBA's second opinion provisions are particularly helpful here. Paragraph 321.3 A1 recognizes that a threat to professional competence and due care may arise where a second opinion is not based on the same facts as the existing or predecessor professional accountants had or is based on inadequate evidence. Paragraph 321.3 A3 points to safeguards such as obtaining information from the existing professional accountant, describing limitations, and providing the professional accountant with a copy. Paragraph R321.4 then makes the matter more direct. If the client refuses to communicate with the existing or predecessor professional accountant, the accountant must determine whether a second opinion can be properly provided.

That is a useful answer to opinion shopping. The issue is not whether a second opinion is permissible. The issue is whether it is sought for analysis or validation.

A related difficulty arises with promoter-driven products and standardized structures. Paragraph R380.24 requires the accountant advising on a tax planning product or arrangement developed by a third party to disclose any professional or business relationship with that provider and still apply the full requirements of Section 380. That matters because aggressive tax planning often appears in product form, supported by marketing language, precedent packs, and opinion templates. The existence of a market does not relieve the professional of the need for independent judgment.

Confidentiality protects trust in the professional relationship.

Confidentiality and privilege, briefly considered.

For Indian practitioners, confidentiality and privilege require careful distinction.

ICAI's Code of Ethics- subsection 114 (refer to ICAI's Code of Ethics Volume 1 revised in 2019-20) makes clear that confidentiality is a professional duty and that it continues beyond the end of the relationship. It also explains why that duty matters, namely, because candid professional communication depends on it. But confidentiality is different from privilege.



The Bharatiya Sakshya Adhiniyam, 2023 (replaced the Indian Evidence Act of 1872), addresses professional communications and confidential communication with legal advisers in sections 132 and 134, respectively. Whether privilege exists, and how far it extends, is therefore a legal question, not simply an ethical one. In multidisciplinary tax matters, that distinction matters greatly. A chartered accountant's duty of confidentiality should not be overstated into an evidentiary shield that the law does not provide, and the involvement of legal counsel should not be treated as a device for insulating a weak arrangement from scrutiny.

The practical point is straightforward. Confidentiality protects trust in the professional

relationship. It does not excuse selective analysis, incomplete factual presentation, or overstatement of a position's strength.

A few practical illustrations

Consider three familiar situations

In the first, a client inserts an intermediate entity into a financing structure shortly before completion. The documents refer to treasury efficiency, but there is no meaningful treasury function, no relevant decision-making at that level, and no change in how financing will actually be managed. The principal effect is the tax result. The relevant question is not whether the steps can be documented. It is whether the arrangement has sufficient commercial rationale and substance to support the intended treatment.

In the second, a promoter offers a tax product supported by a standard external opinion and represented as an accepted market practice. The projected tax savings are substantial, the implementation steps are formulaic, and the client is pressed to act quickly. Here, the warning signs are cumulative. The professional accountant should assess the arrangement independently, examine the factual basis of the opinion, consider whether the structure is being sold repeatedly with little modification, and ask whether full disclosure of its purpose and beneficiaries would alter the analysis.



In the third, a long-standing client asks for a memorandum on a position effectively already taken, with a clear preference that the advice support that treatment. The professional accountant is no longer being asked only for technical analysis. He or she is being asked to validate a conclusion after the fact. In that case, the memorandum should clearly state the uncertainty, fairly address contrary arguments, explain the consequences if challenged, and avoid using qualifying or disclaiming language to preserve a conclusion that the facts do not truly support.

Conclusion

The ethical dilemma in tax practice is not that every difficult case must produce a simple answer. Tax law is complex, and judgment is unavoidable. The real question is how that judgment is exercised.

The contribution of IESBA's Tax Planning and Related Services pronouncements is to clarify the relevant threshold. A position is not ethically sound merely because a technical argument can be framed in its favor. The analysis must also take account of the facts and circumstances, the commercial rationale, the substance of the arrangement, the quality of the assumptions, the identity of the beneficiaries, the completeness of disclosure, and the consequences if the arrangement is examined in full.

That is where the line between planning and aggression is usually found. It is found in method, discipline, and the professional accountant's willingness to say that a position cannot be properly supported, even when the client strongly wishes otherwise.

Responding to Non-Compliance with Laws and Regulations (NOCLAR): Ethical Duties Beyond Confidentiality

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Amit Mitra

Overview

The accounting and tax profession has long been defined by its commitment to confidentiality. Yet the emergence of NOCLAR as a formal ethical construct introduced by the International Ethics Standards Board for Accountants (IESBA) and adopted in India by the Institute of Chartered Accountants of India (ICAI) for a certain class of companies with effect from October 1, 2022, signals a decisive reorientation of professional duty. This article examines the conceptual foundations of NOCLAR, its structured response framework, its differentiated application across professional roles, and the unique overlay of Indian statutory requirements. It argues that confidentiality, while still fundamental, must yield to the broader obligation to act in the public interest when significant breaches of law come to light.

Introduction: Confidentiality to Accountability

For generations, confidentiality has stood as one of the defining pillars of the chartered accountancy profession. It fosters trust, enables open communication between accountants and their clients or employers, and preserves the integrity of professional relationships. A client who fears that every disclosure will be exposed to the public is less likely to engage in candid dialogue with their professional advisor. The duty of confidentiality, therefore, is not merely procedural

> The emergence of NOCLAR represents a decisive shift in professional thinking.



but is the very foundation of trust on which the profession operates. Yet, in a world marked by increasing regulatory scrutiny, corporate complexity, and heightened stakeholder expectations, confidentiality can no longer be viewed as absolute. History has demonstrated from major accounting scandals to systemic financial frauds that unchecked deference to client interests, dressed up in the language of confidentiality, can cause catastrophic harm to investors, creditors, employees, and the general public. Our profession, for all its technical expertise, was expected to play a better role in its most fundamental role, which is acting in the public interest.

The emergence of NOCLAR represents a decisive shift in professional thinking. Professionals are no longer mere custodians of information; they are participants in safeguarding the public interest.

Concept, Definition, and Scope of NOCLAR

NOCLAR, as defined in the ICAI Code of Ethics, comprises acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations. These acts may be committed by:

- The chartered accountant (professional) employed in the organisation or client.
- Those Charged with Governance (TCWG) of such organisation or client.
- Management of the employing organisation or client; or
- Other individuals working for or under the direction of the employing organisation or client.

A professional is not required to conclusively establish that a violation has occurred; rather, a reasonable suspicion, based on professional judgment and observation, is sufficient to trigger obligations under the framework.

The Code of Ethics (the Code) identifies two primary categories of laws and regulations to which NOCLAR applies. The first encompasses laws and regulations that have a direct effect on the determination of material amounts and disclosures in financial statements, for example, the provisions of the Companies Act, 2013, governing financial reporting, or the Income Tax Act. The second, and arguably more expansive, category covers other laws and regulations that, while not directly affecting financial statement line items, are fundamental to the operating aspects of the organisation's business or its ability to continue operations, or where non-compliance could attract material penalties. Examples include operating licences, regulatory solvency requirements, and environmental regulations.

> NOCLAR does not extend to personal misconduct that is unrelated to the business activities of the employing organisation or client.

NOCLAR may cover a range of laws & regulations, including those relating to fraud, corruption and bribery, money laundering, terrorist financing,

proceeds of crime, securities markets, banking and financial products, data protection, taxation provisions, environmental protection, and public health & safety. An important exclusion also merits attention: NOCLAR does not extend to personal misconduct that is unrelated to the business activities of the employing organisation or client.

Ethical Foundations: Confidentiality vs Public Interest

Confidentiality is listed as one of the five fundamental principles in the Code. It requires a chartered accountant to refrain from disclosing information acquired as a result of professional and business relationships to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose.

This principle is not absolute; confidentiality may, in certain circumstances, need to yield to competing obligations. Disclosure is permitted when required by law, for instance, the obligation under Section 143 (12) of the Companies Act, 2013, to report fraud to the Central Government. Disclosure is also permitted when authorised by the client or employer, or when there exists a professional duty or right to disclose, such as to comply with quality review requirements or to respond to an inquiry by a regulatory body.

NOCLAR introduces a significant dimension to this analysis. It does not merely permit disclosure in narrow, defined circumstances; instead, it affirmatively obligates the professional to consider whether further action, including disclosure, is required in the public interest. The ethical weight shifts. Silence is no longer the default.

The duty of confidentiality has historically acted as a barrier to the disclosure of suspected NOCLAR to regulators and public authorities. Auditors and other professionals, when confronted with potential illegality, have at times chosen to resign from engagements rather than navigate the complexities of reporting obligations. The absence of structured guidance further reinforced this inertia. NOCLAR was developed to address this gap by providing a principled framework for decision-making, one that respects the importance of confidentiality while affirming that professional responsibilities do not end at the client's door.



The NOCLAR Response Framework: A Structured Pathway

The strength of the NOCLAR provisions lies in their structured, principles-based response framework, a decision-making pathway that requires the exercise of professional judgment at every stage.

a) Becoming Aware: The Identification

The NOCLAR framework is activated when a professional becomes aware of information concerning non-compliance or suspected non-compliance. Crucially, though the professional is expected to actively investigate or seek out such information, the expectation of the standard is one of passive awareness only, described as "see it, but do not seek it."

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Awareness may arise through a variety of channels, such as during an audit, while advising on tax matters, or in the course of day-to-day professional responsibilities. The exercise of professional skepticism, an attitude that includes a questioning mind and a critical assessment of evidence, plays a vital role at this stage. Red flags such as unusual transactions, evasive responses from management, inconsistencies in records, or patterns suggestive of fictitious entries may all alert the professional to the possibility of non-compliance.

b) Obtaining an Understanding

Once awareness is triggered, a professional's first obligation is to obtain an understanding of the matter. This requires a determination of: (a) the nature of the non-compliance or suspected non-compliance and the circumstances in which it has occurred or might occur; (b) the application of the relevant laws and regulations to those circumstances; and (c) an assessment of the potential consequences to the organisation, its investors, creditors, employees, or the wider public.

However, the expectations are to be calibrated appropriately, while the professional is expected to apply knowledge, expertise, and professional judgment; they are not expected to possess a level of understanding of laws and regulations beyond what is required for their role. Whether an act ultimately constitutes non-compliance is a matter to be determined by a court or other appropriate adjudicative body.

c) Addressing the Matter: Internal Escalation

The next step in the framework is internal escalation. The professional should discuss the matter with the appropriate level of management, typically at least one level above the individuals actually or potentially involved and, where appropriate, with those charged with governance.

The purpose of this communication is threefold: first, to clarify the professionals' understanding of the facts and their potential consequences, second, to encourage management or governance bodies to investigate the matter, and third, to obtain their commitment to take appropriate corrective action. Actions could include rectifying, remediating, or mitigating the consequences of non-compliance and disclosing the matter to an appropriate authority where required by law.

d) Determining Whether Further Action is Needed

The professional must assess the appropriateness of the response of superiors and those charged with governance. The relevant considerations include whether the response was timely, whether appropriate corrective action has been taken, whether the matter has been investigated adequately, and whether disclosure to an appropriate authority has been made where required.

Factors that bear upon the determination of whether further action is needed include the legal and regulatory framework, the urgency of the situation, the pervasiveness of the matter

throughout the organisation, the likelihood of recurrence, and the existence of credible evidence of actual or potential substantial harm to stakeholders or the general public.

e) Disclosure to Appropriate Authorities

Where internal mechanisms have failed, or where the nature of the non-compliance is so serious that it warrants immediate external action, the professional may determine that disclosure to an appropriate authority is warranted. Now, such disclosure is permissible under the provisions relating to confidentiality, and it constitutes an act in the public interest rather than a breach of professional duty.

Disclosure may be appropriate where, for example, the organisation is engaged in bribery, is regulated, and the matter threatens its licence to operate, is listed on a stock exchange, and the matter could adversely affect markets, or is likely to sell products harmful to public health or safety.

The appropriate authority will depend on the nature of the violation. For instance, in cases of fraudulent financial reporting involving listed entities, the appropriate authority would be the Securities and Exchange Board of India or the MCA. When making such a disclosure, the professional must act in good faith and exercise caution. The disclosure is to be made only where there is a sufficient credible basis for the concern, and only to the extent necessary to serve the public interest.

Role-based Responsibilities

a) Audit Engagements

The auditor must obtain an understanding of the matter, discuss it with appropriate levels of management and, where management is implicated, directly with TCWG, advise timely corrective action to comply with applicable auditing standards and legal reporting requirements, and consider whether further action is needed.

Where the auditor of consolidated financial statements becomes aware of non-compliance at a component level, the matter must be communicated to the group engagement partner, who must then determine whether it is relevant to other components and arrange for appropriate communication to the relevant component auditors.

Further, there is an obligation to furnish information to a proposed successor auditor. Even where the incumbent auditor has withdrawn from the engagement, they are required, upon request from the proposed auditor, to provide all relevant facts and other information concerning any identified or suspected non-compliance.



b) Tax Advisors and Other Non-Audit Services

Professionals providing non-audit services, including tax advisory, accounting, and related services, also fall within the ambit of NOCLAR. Their obligations, while somewhat less expensive than those of auditors, require them to become aware of and understand the matter, address it with management and TCWG, communicate to

the entity's external auditor where appropriate, consider whether further action is warranted in the public interest (including disclosure to appropriate authorities or withdrawal), and document their actions.

Tax professionals, in particular, often encounter non-compliance at an early stage, given their access to a client's financial and tax records. When a client refuses to rectify known non-compliance, such as deliberate income suppression, continued engagement becomes ethically untenable. Withdrawal, coupled with thorough documentation, may be the only appropriate course of action.

c) In-house Professionals

Those employed by listed entities and material subsidiaries of such entities who hold positions as higher positions and are capable of exerting significant influence over, and making decisions regarding, the organisation's resources are known as Key Managerial Personnel (KMP). There is a



"greater expectation" for such individuals to take appropriate action in the public interest compared to other professionals within the organisation. The responsibilities of KMP encompass obtaining an understanding of the matter, discussing it with superiors, and, where necessary, escalating to TCWG. Taking steps to have consequences rectified, remediated, or mitigated; disclosing the matter to the external auditor where necessary, and determining whether further action, including external disclosure, is required.

The Indian context introduces additional legal layers that create a uniquely complex regulatory environment.

For chartered accountants who are not KMP (i.e., those in more junior roles), a more limited set of obligations applies; i.e., they must seek to obtain an understanding of the matter and inform an immediate superior, with the option in exceptional circumstances to disclose directly to an appropriate authority.

The Indian Regulatory Overlay

India has aligned its ethical framework with global standards through the adoption of ICAI's Code of Ethics, which is largely based on the IESBA Code. However, the Indian context introduces additional legal layers that create a uniquely complex regulatory environment.

The Companies Act, 2013, is the most prominent source of statutory obligations for auditors. Section 143(12) requires the auditor of a company to report to the Central Government if they have reason to believe that an offence of fraud, involving an amount of INR 1 crore or more, has been or is being committed against the company by its officers or employees. This is a mandatory, statutory obligation, not a matter of professional discretion.

Section 177 of the Companies Act, 2013 mandates every listed company to establish a vigil mechanism, a form of whistleblower

mechanism, for directors and employees to report genuine concerns about unethical behaviour, actual or suspected fraud, or violations of the company's code of conduct. NOCLAR provisions complement this mechanism, internal whistleblower systems may serve as the first channel through which non-compliance is raised, and NOCLAR provides the professional with a framework for evaluating what to do once they receive or encounter such information.

SEBI's regulations impose further obligations on auditors and companies with respect to listed entities. Matters relating to fraudulent financial reporting, market manipulation, or breaches of disclosure obligations may require separate reporting to SEBI as the appropriate regulatory authority.

Standard on Auditing (SA) 250, which deals with the consideration of laws and regulations in an audit of financial statements, provides additional technical guidance. It requires auditors to obtain a general understanding of the legal and regulatory framework applicable to the entity, to remain alert to possible non-compliance, and to communicate and report as required. NOCLAR and SA 250 operate in tandem. SA 250 provides the audit-specific framework, while NOCLAR provides the broader ethical overlay applicable across professional roles.

The Companies (Auditor's Report) Order, 2020 (CARO 2020) also requires specific reporting on matters such as fraud, default in payment of dues, and non-compliance with certain regulations. Together, these statutory and regulatory requirements reinforce the NOCLAR framework in the Indian context, often converting what might otherwise be discretionary disclosures into mandatory obligations.

Practical Challenges in Implementation

Despite the conceptual clarity of the NOCLAR framework, its real-world application remains fraught with difficulty. Professionals confronting



non-compliance frequently encounter pressures from organisations. The fear of losing a client relationship, or of employment consequences for those in business roles, represents one of the most significant practical barriers. Economic dependence on a major client or employer can subtly distort professional judgment, leading to rationalisation rather than recognition of non-compliance. Ethical frameworks are easy to apply in the abstract; their application becomes far more challenging when livelihoods and relationships are at stake.

Pressure from senior management, whether

> "A taxing statute is not a promise to the taxpayer that he will be taxed only if he understands the law."
>
> ***— Nani A. Palkhivala***

explicit or implicit, to overlook or minimise instances of non-compliance is another pervasive challenge. Organisational hierarchies can create environments where raising concerns is viewed as disloyalty.

Organisations, for their part, must recognise that the efficacy of NOCLAR depends on creating an environment in which ethical concerns can be raised without fear. This requires not only the establishment of formal reporting mechanisms but also a genuine commitment to ethical culture, supported by training programmes, clear policies, and demonstrable leadership.

Case Studies

Case 1: Revenue Overstatement — The Auditor's Dilemma

During a statutory audit, the engagement partner uncovers persuasive evidence that revenue has been deliberately overstated through fictitious



invoices, seemingly to meet earnings targets communicated to analysts. When this is raised with the Chief Financial Officer, the response is dismissive, attributing the issue to an accounting error to be corrected in the next quarter. The Audit Committee, though uneasy when informed, declines to initiate an independent investigation.

At this stage, the auditor has exhausted the primary internal escalation channels. The suspected non-compliance is material, likely intentional, and undermines the reliability of the financial statements. The auditor must therefore assess the implications for the audit report; a qualified or adverse opinion may be unavoidable. Consideration must also be given to whether the reporting threshold under Section 143(12) of the Companies Act, 2013, for fraud reporting to the Central Government has been met.

If management integrity appears fundamentally compromised, withdrawal from the engagement may ultimately be necessary. Throughout, meticulous documentation of all discussions, judgments, and actions remains essential not only as a procedural requirement but as a clear record of professional conduct.

Case 2: Tax Suppression — The Advisor's Response

A tax advisor reviewing the annual return of a longstanding corporate client discovers clear evidence that a significant portion of operating income has been deliberately suppressed through fictitious expense claims. The client, when confronted, acknowledges the arrangement but refuses to correct the filings, arguing that the practice has continued for years without detection.

The advisor faces a direct ethical conflict between client loyalty and professional responsibility. The framework under NOCLAR is clear; the advisor must strongly advise rectification, explaining the legal, financial, and reputational consequences of continued non-compliance. If the client refuses, continued engagement becomes untenable to remain associated with a client whose deliberate illegality is known, as it would compromise the advisor's integrity and objectivity.

Withdrawal from the engagement is required. The advisor must also consider whether any further action, including disclosure to the tax authorities or the Financial Intelligence Unit of

the Department of Revenue, is warranted, taking into account legal permissibility, the severity of the non-compliance, and the public interest implications of the tax evasion scheme.

Documentation and Professional Safeguard

Documentation is not merely an administrative exercise; it is a professional safeguard. Specific matters to be documented include the facts and circumstances of the non-compliance or suspected non-compliance, discussions held with immediate superiors, management, and TCWG, together with their responses, the course of action considered, the judgments made, and the decisions taken, and how the professional is satisfied that they have fulfilled their obligation under the applicable provisions of the Code.

Documentation serves several interconnected purposes. First, it demonstrates adherence to ethical standards and enables a retrospective review of whether the professional acted appropriately. Second, it provides evidence in regulatory or disciplinary proceedings, protecting the professional against unfounded allegations of complicity in or ignorance of non-compliance. Third, it supports the application of a reasonable and informed third-party test.

Conclusion: Redefining Professional Responsibility

NOCLAR marks a decisive evolution in the ethical architecture. It redefines the role of professionals from passive custodians of financial information to active guardians of the public interest, entrusted with the responsibility to respond when legal and regulatory breaches come to light.

Within this evolving paradigm, confidentiality continues to remain a fundamental principle; however, it is no longer absolute or self-justifying in isolation. Where non-compliance poses a credible threat to stakeholders, the financial system, or broader societal interests, the ethical duty to act in the public interest assumes greater weight. The question is no longer simply "what am I permitted to do?" but "what am I obligated to do?"

> The framework under NOCLAR is clear; the advisor must strongly advise rectification, explaining the legal, financial, and reputational consequences of continued non-compliance.

The future of our profession will be shaped not only by technological innovation and regulatory change, but by the depth of ethical resolve demonstrated when its members are called upon to act in moments that truly matter. NOCLAR is, in this sense, both a framework and a mirror reflecting to each professional the question of whether they are truly committed to the public trust that the profession exists to serve.

> "Law is not a trade, not briefs, not merchandise, and so the heaven of commercial competition should not vulgarize the legal profession."
>
> ***— Justice V. R. Krishna Iyer***

Building an Ethical Culture in Professional Firms: Governance, Leadership, and Accountability

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*See Disclaimer on page 5



Channa Wijesinghe

Overview

This article argues that professional services firms, particularly in accounting, must treat ethical culture as a strategic imperative amid growing public scrutiny, technological disruption, and commercial pressures. Recurring scandals, including exam cheating, breaches of independence, and confidentiality failures, have eroded public trust and resulted in multimillion-dollar penalties.

In response, the International Ethics Standards Board for Accountants (IESBA) launched its Firm Culture and Governance (FCG) initiative in 2024, identifying eight foundational elements of effective ethical culture: ethical leadership; oversight and governance; independent input; firm-wide accountability; aligned incentives and rewards; open discussion and challenge; continuous education and training; and transparency.

The article outlines practical measures to operationalise these eight elements, including empowered ethics roles, culture analytics as early-warning tools, anti-retaliation reporting channels, and experiential training covering emerging risks such as AI and data integrity. It also notes that, to varying degrees, firms have already adopted most of these practices.

The author concludes by advocating for a global FCG baseline to complement the IESBA Code and quality management standards. With IESBA's June 2026 Board meeting set to decide the path forward, the article emphasises that embedding integrity by design across all firm sizes and service lines is essential to sustaining the profession's public interest mandate.

**Channa Wijesinghe, FCPA, FCA & IESBA Vice Chair. The views expressed in this article are those of the author and do not represent the views of the IESBA.*

Introduction

In an era characterised by volatility, complexity, and increasing public scrutiny, the ethical compass of organisations, in particular professional services firms, has never been more crucial. In the accounting profession, trust, integrity, and ethical behaviour are the cornerstones upon which credibility and public confidence rest.



Yet in recent times, recurring scandals involving major accounting firms across multiple jurisdictions demonstrate that ethical lapses can erode a trusted reputation in an instant. Repeated ethical failures, including exam-cheating scandals, conflicts of interest, and breaches of confidentiality and independence, have eroded public confidence in accounting firms and resulted in multimillion-dollar penalties ranging from a few million dollars to one hundred million dollars.

These failures prompted the International Ethics Standards Board for Accountants (IESBA) to undertake a strategic initiative examining how firm culture and governance influence ethical behaviour.

The IESBA's Firm Culture and Governance Working Group Final Report (International Ethics Standard Board for Accountants, January 2025) represents a pivotal effort to address these issues. It identified eight foundational elements of a potential framework: ethical leadership; oversight and governance; independent input; accountability across the firm; incentives and disincentives; open discussion and challenge; education and training; and transparency. These fundamental elements underscore the vital relationship between firm culture, governance, and ethical behaviour, highlighting that systemic ethical failures are often rooted not merely in individual wrongdoing but in organisational cultural weaknesses.

In addition, the IESBA commissioned an Academic Report on Organisational Culture and Behaviour (Tsahuridu, 2024), issued a summary of its findings from six global roundtables held in 2025 (International Ethics Standards Board for Accountants, July 2025). These developments were followed by the FCG Viewpoints in January 2026, which are designed to support global dialogue on key characteristics of elements such as ethical leadership, governance, or incentives

that influence ethical culture and behaviour in accounting firms, to inform the planned development of a global baseline (International Ethics Standards Board for Accountants, 2026). Together, these documents offer a blueprint for building ethical resilience in accounting firms.

> In the accounting profession, trust, integrity, and ethical behaviour are the cornerstones upon which credibility and public confidence rest.

This article synthesises insights from all these sources and explores what effective ethical culture and governance look like in practice. It identifies good practices under each element of firm culture and governance and outlines how firms of all sizes can embed enduring ethical practices by design. The purpose is to demonstrate that many of these good practices are already adopted, to various degrees, by different firms, in different contexts. A global baseline will support wider adoption of these practices while highlighting that suitable culture and governance mechanisms are well within reach – as experience already shows.

The Strategic Imperative of Ethical Culture and its Eight Elements

Global stakeholders and roundtable participants who engaged with IESBA over the past two and a half years agree that a well-developed ethical culture is a strategic asset for a firm. Firms that integrate ethics into their brand and leadership narrative sustain long-term trust with clients, regulators, and employees. Some stakeholders also observed that when a focus on ethics is embedded into a firm's strategy, then service quality and long-term profitability will follow naturally.

Tsahuridu (2024) highlights that ethical culture constitutes the DNA of an organisation, shaping decisions more powerfully than any written policy. The IESBA's global stakeholder engagement process has identified that a successful ethical culture will link the eight foundational elements identified in the IESBA Working Group's Report into a single, reinforcing system.

I. Ethical Leadership: Setting the tone and building trust

Effective ethical culture begins with the firm's leadership. At its core, this demands what might be called 'tone at the top' and 'walk the talk' leadership. The consistent alignment of daily actions with proclaimed values, such that tone at the top cascades into 'mood in the middle' and, ultimately, into the everyday conduct of staff at every level of the firm.

Ethical leaders must also exercise moral courage, as invariably they will have to make difficult decisions under commercial and, at times, political pressure. The leaders should openly communicate the reasoning for their decisions. This transparency will reinforce psychological safety and deepen trust across the firm. Equally important is the leaders' capacity to mentor successors, extending their influence beyond

> Tsahuridu (2024) highlights that ethical culture constitutes the DNA of an organisation, shaping decisions more powerfully than any written policy.

positional authority and embedding it in the firm's culture over time.

Some firms communicate ethical practices during periodic town halls, peer learning sessions, and small-group dialogues facilitated by designated ethics champions,

with the explicit aim of normalising ethical conversations. Others have embedded proven ethical conduct into promotion criteria and recruitment strategies, signalling that integrity is not peripheral to career advancement but central to it. When leaders from the firm share lessons drawn from real ethical dilemmas and failures, they reinforce that accountability and humility are genuine leadership strengths.

> Ethical leaders must also exercise moral courage, as invariably they will have to make difficult decisions under commercial and, at times, political pressure.

Tsahuridu's (2024) synthesis captures the dual nature of this leadership model: the most effective ethical leaders are simultaneously moral persons and moral managers, as they exemplify integrity in their own conduct while deliberately designing structures that reward it in others.

II. Oversight and Governance: Institutionalising Integrity

Ethics cannot rest on individual virtue alone. Structural oversight and governance mechanisms embed ethical expectations into the firm's management system, ensuring they persist independently of any single leader's tenure or disposition.

A growing number of firms have responded by appointing Chief Ethics Officers, Ethics Partners, or Ethics Committees with genuine authority to act and meaningful visibility at the executive level. Smaller practices, for whom such dedicated roles may be impractical, have integrated ethics oversight into existing governance by assigning ethics duties to a partner with client-facing duties or engaging external advisors as needed.

Continuous monitoring reinforces these structures. Regular culture assessments, 360-degree feedback mechanisms, and ethics pulse surveys allow firms to track whether values are lived in practice rather than merely stated. Balanced scorecards drawing on both quantitative indicators, such as incident reporting data and training completion rates,



and qualitative signals, such as employee sentiment and client trust, feed cultural insights directly into the Firm's risk management and strategy reviews, supporting cultural improvements over time.

Technology is increasingly central to this oversight function. Global firms can use data analytics to identify ethical pressure points, such as patterns of unusually high partner/staff turnover, repeated high overtime, or clustering

> Technology is increasingly central to this oversight function.

of whistleblowing activity. These might be red flags indicating cultural stress in a firm before it becomes a visible crisis.

III. Independent Input: Strengthening Challenge and Perspective

Well-designed accountability mechanisms ensure that ethical responsibility does not rest solely with leadership but extends to every partner and member of staff.

Independent input enhances objectivity and accountability by introducing a public-interest perspective and a balanced approach to risk in decision-making and overcoming the silo mentality that can occur in a partnership environment. When external voices are embedded in governance processes, they challenge partners' groupthink, hold the firm's leadership accountable, and bring expertise and credibility to ethical oversight. Staff, too, are often more willing to raise concerns with parties who are perceived as genuinely impartial.

The ability to obtain independent or external input need not follow a single blueprint, as firms are exposed to different levels of risk, dependent on the services they provide to the public.

Larger firms may appoint Independent Non-Executives or establish public interest oversight committees. In contrast, smaller firms can obtain similar benefits through periodic external reviews, consultation with professional bodies, or an external advisor. Engagement can also be situational rather than permanent: seeking an independent perspective on a specific governance reform, a key partner appointment, or partner remuneration policy, or a potential conflict of interest is often more practical than maintaining a standing committee.

Whatever model is adopted, the individuals providing independent or external perspectives must be impartial, demonstrably competent, and clearly outside the firm's chain of command and influence, with sufficient access to information to discharge their role meaningfully. Even modest arrangements of this kind, when well-designed, strengthen public trust and prevent the ethical blind spots that invariably develop within firms that predominantly operate via partnerships.

IV. Accountability Across the Firm: A Shared Responsibility

Well-designed accountability mechanisms ensure that ethical responsibility does not rest solely with leadership but extends to every partner and member of staff. This begins with clarity: every individual must understand what constitutes acceptable conduct, and the consequences of departing from it must be consistently and visibly enforced. Firms that codify expectations in conduct policies without following through on enforcement undermine the very culture they seek to build.

Accountability also requires closing feedback loops. Ethics-related information, whether gathered through surveys, appraisals, or incident logs, must be acted upon. When the leadership of the firm reviews the root causes of ethical lapses and integrates their findings into revised procedures, accountability becomes a mechanism for learning rather than for punishment. This orientation matters especially for junior staff, who are better supported through

No cultural reform can succeed if reward systems contradict ethical principles.

structured ethical development than through punitive responses to ethical conduct that may reflect limited awareness rather than poor character.

Some firms have formalised this approach by developing internal ethical decision-making processes that enable staff to analyse situations systematically, document their reasoning, and consult peers or advisors before acting. Others incorporate metrics, such as staff turnover patterns, overtime data, and complaint trends, into regular management reviews, treating them as early-warning indicators of cultural stress.

> Open dialogue is the lifeblood of ethical behaviour within a firm, and it must be deliberately cultivated rather than assumed.

It is also important to communicate the outcomes of resolved breaches internally in a tone that emphasises learning, demonstrates fairness, deters misconduct, and signals that accountability is a shared firm value among all partners and staff.

V. Incentives and Rewards that Align with Ethical Behaviour

No cultural reform can succeed if reward systems contradict ethical principles. The global stakeholder engagement process generated substantial evidence that aligning incentives and consequences with ethical conduct is among the most powerful levers available to a firm's leadership.

Generally, stakeholders believed that the most effective approach integrates non-financial metrics (including ethical conduct metrics) into performance evaluations alongside financial metrics, assessing not only what results are achieved but how they are achieved.

Contributions to ethical leadership, such as mentoring colleagues through difficult judgment calls, modelling principled conduct under pressure, can be weighted as promotion criteria in some firms that have deliberately shifted performance evaluation away from short-term financial targets towards more holistic measures focused on service quality and trust. These mechanisms send a powerful message throughout the firm that ethical behaviour is not a constraint on career advancement but a condition of it.

Feedback from stakeholders indicated that non-financial forms of recognition, such as public acknowledgement through firm-wide communications, ethics awards, and personalised appreciation from senior partners, carry significant motivational weight, particularly where they celebrate moral courage rather than simply compliance. Sharing stories of partners and staff who helped colleagues navigate difficult ethical dilemmas elevates these individuals as role models and makes concrete what exemplary ethical conduct looks like in practice.

Constructive disincentives complete the system. Proportionate consequences for misconduct,





such as reduced bonuses, exclusion from high-profile assignments, restrictions on leadership roles, or the ultimate sanction of termination, will deter unethical behaviour. When disciplinary outcomes are communicated transparently and framed as opportunities for the individual, teams, and the firm to learn, they reinforce rather than undermine the firm's broader culture.

VI. A Culture of Open Discussion and Challenge

Open dialogue is the lifeblood of ethical behaviour within a firm, and it must be deliberately cultivated rather than assumed. Its foundation is psychological safety, in which employees feel genuinely trusted and believe that raising concerns will not damage their careers. That trust begins with the firm's leadership demonstrating humility and empathy in the face of challenging circumstances.

Formal mechanisms matter, but so does everyday accessibility. Informal interactions, such as senior leaders and partners walking the floor, values-based conversations during team meetings, and ad hoc discussions of ethical dilemmas, often generate more authentic dialogue than structured webinars or annual compliance training. Regular ethical reflection sessions, in which teams discuss real cases and near misses, build the habit of collective ethical reasoning over time.

Whistleblowing systems must have multiple channels, be clearly communicated, and genuinely functional. Anonymous hotlines, independent external services, and internal ethics committees each serve different reporting preferences, and the existence of multiple channels signals that the firm is serious about receiving concerns. Mandatory follow-up with whistleblowers to close the communication loop is essential, as without it, the reporting culture stagnates. Firms that analyse whistleblowing data systematically can detect systemic root causes long before individual incidents escalate into crises.

Addressing barriers to open discussion requires sustained attention. Defensive management cultures that silence junior voices must be actively challenged, anti-retaliation norms must be visibly enforced, and governance approaches must adapt to the cultural context. In more hierarchical societies, for example, appointed intermediaries who facilitate upward feedback can be more effective than direct reporting channels.

VII. Continuous Education and Training

Ethics education transforms awareness into practical action, but only when it goes beyond

knowledge transmission to engage partners and staff emotionally and practically. Both the academic research and the IESBA roundtable discussions supported the notion that abstract knowledge of ethical principles does not, by itself, shape behaviour: practical learning experiences do.

The most effective training approaches are experiential. Case-based workshops and interactive role-play exercises connect ethical principles to lived situations, strengthen empathy, and allow partners and staff to practise ethical reasoning under realistic pressure.

Continuity matters as much as intensity. Short modular content delivered regularly sustains ethical awareness between annual training events and accommodates the realities of hybrid workplaces. Embedding ethics across all service lines of the firm ensures that shared values are not siloed within professional practice groups. Firm-wide mentorship programmes that pair junior staff with experienced colleagues provide another avenue to have ethical conversations in live situations.

Transparency functions both as a mirror and as a message, reflecting a firm's culture and signalling its intent.

In addition, for small and medium practices with limited internal resources, collaboration with professional bodies and universities to develop regionally tailored training toolkits offers a practical path to scalable implementation. Looking ahead, integrating modules on AI ethics, misinformation, and data integrity is essential to future-proofing the firm's culture against emerging challenges. When firms treat ethics as a core professional competency, on par with technical proficiency, they reposition it as part of everyday decision-making rather than an annual compliance exercise.



VIII. Transparency and Communication about Ethical Performance

Transparency functions both as a mirror and as a message, reflecting a firm's culture and signalling its intent. External disclosures, however, must move beyond compliance checklists. What builds trust is not the reporting of the incidents but a demonstration of how ethical dilemmas are handled, for example, the reasoning, the consequences, and the lessons drawn.

The global IESBA stakeholder engagement process revealed genuine concerns as firms are understandably concerned that publishing details of misconduct without adequate context risks misleading stakeholders or damaging trust rather

> "The strength of the judiciary lies in public trust."
>
> ***— Justice D. Y. Chandrachud***

than deepening it. The consensus that emerged favoured combining internal transparency with thoughtful external communication: sharing learning-focused summaries that show how breaches informed improvements, rather than publishing raw statistics that invite misinterpretation.

Internal ethics reports, such as disseminating the results of cultural assessments, lessons from investigations, and aggregate data on ethical queries, keep ethics visible within the firm and signal to partners and staff that it is genuinely monitored.

The principle of 'what gets measured gets managed' applies to ethics as much as it does to finance.

Firms that present ethical performance indicators alongside business metrics at management meetings embed ethics accountability into routine governance. Externally, firms can demonstrate ethical commitment through their websites or annual reporting mechanisms that describe the firm's ethical practices in place. The key in all cases is tailoring communication to the audience, as clients, regulators, and employees have different needs.

Conclusion: A Framework for an Era of AI, Private Equity, and Heightened Public Scrutiny

The case for a global FCG framework rest not only on the recurring failures referred to at the outset of this article, significant as they are, but also on the opportunity to structurally improve the global toolkit for managing the disruptive challenges the profession now faces.

A FCG framework would complement the existing ethics provisions of the IESBA Code, which rightly focus on individual behaviour, and can operate alongside ISQM 1, which focuses on quality management, as a recent joint IESBA/IAASB analysis has shown.

While some firms already extend ISQM 1's leadership, governance, and monitoring components in the context of quality management across all service lines, this is far from universal. Most firms now generate the majority of their revenue from non-assurance services and employ a significant proportion of staff with non-accounting backgrounds, many of whom have not received the same ethics education and training as accountants. Many smaller practices providing only taxation, valuation, or forensic services fall outside the scope of ISQM 1.

The FCG framework would focus on ethical culture rather than on the quality management mechanisms that ensure reports are appropriate for their intended purpose; and, importantly, it would also set ethical culture and governance expectations across the full breadth of the profession.

The need for an FCG architecture is greater than ever. Rapid technological development demands robust firm-level governance to ensure that AI adoption, data integrity, and emerging digital risks are managed with the same ethical rigour. At the same time, new business models – particularly the growing presence of private equity ownership – introduce commercial imperatives that can be in direct tension with the public-interest duties at the heart of the profession. Without an FCG framework with genuine authority, these pressures will invariably find the gaps.

As Treviño and Brown (2004) observed, most people are products of the context they inhabit, looking up and around before deciding how to act.

The principle of 'what gets measured gets managed' applies to ethics as much as it does to finance. Effective firms track ethical

culture through a combination of quantitative and qualitative indicators. The value of these metrics lies not in their collection but in their analysis and use. Regular discussion of ethical performance data at the firm's leadership levels keeps ethics visible, enables early intervention, and demonstrates that the firm regards its ethical performance as a serious governance matter.

An ethical firm is defined not by the absence of wrongdoing but by the presence of integrity in design, leadership, and everyday behaviour. The synthesis of IESBA research, academic evidence, and global professional dialogue will feed into the outcome of the FCG project. Some stakeholders favour a principles-based approach, complemented by Non-Authoritative Materials (NAMs), over the introduction of lengthy new standards. In contrast, others advocate developing NAMs, recognising that ethical frameworks must adapt to the enormous diversity of firm structures across the global profession.

IESBA is scheduled to decide on the way forward for this project at its June 2026 Board meeting. This article demonstrates that, to varying degrees, firms already have practices that address most of the eight FCG elements, and what is needed is the development of a global baseline that firms can use to enhance, measure, and continuously improve their ethical culture.

Ethics, culture, and governance are not separate threads but inseparable strands in the fabric of the accounting profession. By integrating strong leadership with proportionate governance, balanced incentives, active education, open communication, and transparent accountability, the profession can rebuild and sustain public confidence. How effectively individual firms can align with a global FCG baseline will determine their credibility, public trust in the markets they operate in, their future success, and, ultimately, reaffirm the accounting profession's foundational social contract to act in the public interest.



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Courtroom Lessons for Tax and Legal Professionals

When Ethics Speaks Louder Than Law

Courtrooms are often seen as places where laws are interpreted, arguments are tested, and disputes are resolved. Yet, beyond statutes and judgments, courtrooms also become powerful classrooms of ethics. Every landmark decision carries within it an important lesson — not only about legality, but about responsibility, integrity, and professional conduct.

For professionals in taxation and law, some of the most valuable ethical guidance has emerged not from textbooks, but from the observations of judges, the conduct of professionals, and the consequences of ethical failure witnessed in major cases.

The history of Indian jurisprudence repeatedly reminds us that while technical knowledge may help a professional succeed, it is ethics that determines whether the success will endure.

The Thin Line Between Tax Planning and Tax Avoidance

One of the most important ethical lessons in Indian taxation emerged from the landmark case of McDowell & Co. Ltd. v. CTO.

The case sparked a national debate on a question that continues to remain relevant even today:

"How far can tax planning go before it becomes unethical?"

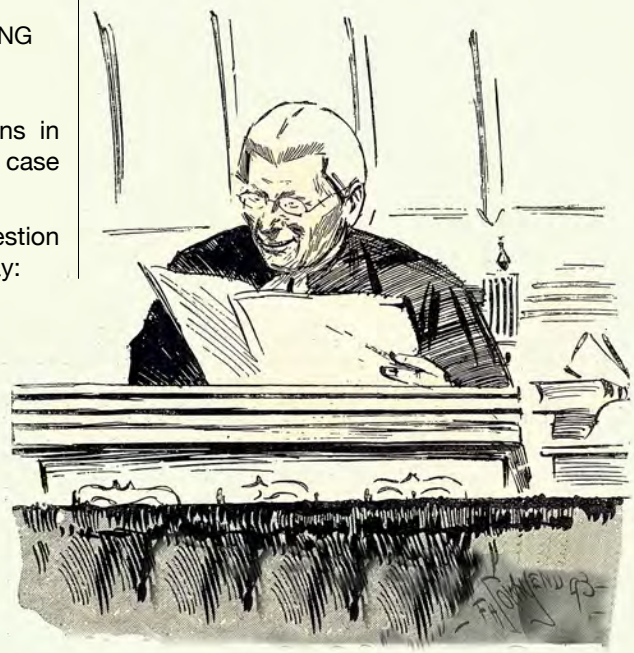
The Supreme Court strongly criticized colourable devices used for avoiding taxes and emphasized that taxation should not be reduced to a game of artificial arrangements and technical loopholes. The judgment reminded professionals that while lawful tax planning is legitimate, structures created solely to defeat the spirit of the law undermine the integrity of the system itself.

For tax professionals, the lesson was profound.

Every advisor eventually faces moments where a client asks:

- "Can this be structured differently?"
- "Is there a loophole?"
- "Can we technically defend this position?"





The ethical challenge lies not merely in identifying what is legally possible, but in recognizing what is professionally responsible.

A professional's role is not to become an architect of deception disguised as compliance. The true value of expertise lies in balancing legitimate tax efficiency with ethical responsibility.

The Cost of Silence: Lessons from the Satyam Scandal

Few corporate controversies shook India's professional ecosystem as deeply as the Satyam Scam.

The scandal exposed manipulated financial statements, inflated figures, and failures in corporate governance. However, beyond the numbers, the incident raised an uncomfortable ethical question:

"How do large-scale irregularities continue unnoticed?"

The answer often lies not merely in active wrongdoing, but in passive silence.

In many professional failures, warning signs appear long before collapse:

- unsupported transactions,
- unexplained discrepancies,
- unrealistic financial reporting,
- unusual compliance behaviour,
- or pressure to approve questionable documentation.

Yet, professionals sometimes ignore these concerns due to fear of losing clients, commercial pressure, or institutional hierarchy.

The Satyam episode demonstrated that ethics is not tested only when professionals are asked to commit wrongdoing directly. It is also tested when they are expected to remain silent.

For tax and legal professionals, silence in the face of misconduct can become complicity.

Professional courage often begins with uncomfortable questions:

- "Can this documentation be substantiated?"
- "Is this disclosure complete?"
- "Does this transaction genuinely reflect commercial substance?"
- "Would I defend this position confidently before a court?"

These questions protect not only institutions, but also the credibility of the profession itself.

Law Is Not a Trade

One of the most powerful reflections on professional ethics came from Justice V. R. Krishna Iyer, who observed:

"Law is not a trade, not briefs, not merchandise."

In a profession increasingly influenced by competition, billing pressures, and commercial expectations, this statement remains deeply relevant.

The legal and tax profession is fundamentally different from ordinary commerce because society places extraordinary trust in professionals. A lawyer, chartered accountant, or tax consultant is not merely selling a service; they are participating in the administration of justice and financial integrity.

This responsibility demands:

- honesty in advice,
- fairness in representation,
- confidentiality,
- independence,
- and integrity even when no one is watching.

A professional may win a case aggressively, exploit procedural loopholes, or secure short-term advantage for a client. But if such success comes at the cost of fairness or truth, the profession itself suffers.

Courtrooms repeatedly remind us that professional ethics cannot be sacrificed for commercial convenience.

The Duty Beyond the Client

A common misconception in professional practice is that loyalty to the client overrides

every other obligation. Indian courts, however, have consistently clarified that professionals owe duties not only to clients, but also to:

- the court,
- the law,
- institutions,
- and society.

In *Bar Council of Maharashtra v. M.V. Dabholkar*, the Supreme Court emphasized that advocacy is a noble profession and not merely a commercial occupation.

This principle applies equally to tax practice.

An ethical tax professional must protect client interests, but cannot knowingly facilitate fraud, concealment, fabricated claims, or misrepresentation. The responsibility of the profession extends beyond winning disputes or minimizing liabilities. It includes preserving public trust in the legal and taxation framework itself.

The most respected professionals are not those who simply know the law best, but those whose judgment inspires confidence.

Ethics in the Age of Technology

Today's tax ecosystem is transforming rapidly through:

- faceless assessments,
- digital audits,
- AI-assisted analytics,
- automated compliance systems,
- and real-time reporting frameworks.

While technology has improved transparency and efficiency, it has also created new ethical challenges.

Data can now be manipulated faster.

Documents can be altered digitally.

Artificial intelligence can generate sophisticated responses instantly.

Yet, technology cannot replace professional conscience.

A software program may identify a legal provision, but it cannot determine fairness. Artificial intelligence may draft an opinion, but it cannot exercise moral judgment.

In the coming years, the value of ethical professionals will increase even further because trust cannot be automated.

The Signature That Defines Character

Every professional eventually leaves behind a signature — on returns, opinions, affidavits, audit reports, representations, or advisory notes.

That signature is more than a procedural requirement.

It represents:

- personal integrity,
- professional competence,
- and ethical accountability.

A professional may forget hundreds of files during a career, but society never forgets the consequences of one unethical certification.

Reputation in taxation and law is built slowly through years of discipline and can be destroyed through a single compromise.

The courtroom teaches us this lesson repeatedly:

Laws may punish misconduct after it occurs, but ethics prevents misconduct before it begins.

Conclusion: The Legacy of a Professional

At its highest level, the tax and legal profession is not merely about interpretation of statutes. It is about stewardship of trust.

Courtrooms across India have repeatedly shown that institutions survive not because of regulations alone, but because professionals within those institutions choose integrity over convenience.

Clients may remember intelligence.

Organizations may reward efficiency.

But society ultimately respects character.

And long after arguments conclude and files are closed, it is character that defines the true legacy of a professional.

Supreme Court



Keshav B Bhujle

ITO v. Infantry Security & Facilities: (2026) 486 ITR 229 (SC): 2026 SCC OnLine SC 514: Dated 02/02/2026

Appeal to Appellate Tribunal — Rectification of mistake — On the Department's appeal, the Tribunal decides in favour of the assessee based on the law existing on the date — Subsequently decision of Supreme Court in favour of Department — High Court held, that would not render decision of Tribunal liable to rectification on ground of mistake — Supreme Court dismissed the special leave petition filed by the Department: Ss. 36(1)(va) and 254(1), (2) of ITA, 1961: A. Ys. 2017-18 to 2019-20

For the A.Ys. 2017-18 to 2019-20, the Assessing Officer disallowed certain amounts in regard to the payment of the statutory dues like the provident fund and Employees' State Insurance Corporation amounts as expenses claimed u/s. 36(1)(va) of the Income-tax Act, 1961, for the reason that such payments were made beyond the due date under the relevant legislation.

By a judgment and order dated July 26, 2022, the Tribunal allowed the appeals of the petitioner and deleted the additions made by the Assessing Officer.

Being aggrieved, the Revenue filed Miscellaneous Applications Nos. 111, 112, and 113 of 2023, u/s. 254 praying that the original orders dated July 26, 2022 passed by the Tribunal, allowing the petitioner's appeal, be set aside on the ground that the view taken by the Tribunal cannot be accepted to be a correct view, in view of the decision of the Supreme Court in *Checkmate Services Pvt. Ltd. v. CIT* [(2022) 448 ITR 518 (SC); (2023) 6 SCC 451; 2022 SCC OnLine SC 1423.] which was rendered subsequent to the orders passed by the Tribunal. It was contended that in such a decision, the Supreme Court has held that the deduction of employees' share can be allowed u/s. 36(1)(va), only if, it is deposited before the time limit under the respective statute and not before the due date u/s. 139(1) of the Income-tax Act.

By a common order dated October 20, 2023, the Tribunal allowed the miscellaneous applications filed by the Department and set aside its order dated July 26, 2022.

The assessee filed writ petitions and challenged

the common order dated October 20, 2023. The Bombay High Court allowed the writ petitions and held as under:

i) One of the factors which could have weighed in favour of the petitioner-assessee and against the Revenue is the view taken by the Tribunal that the decision of the Supreme Court in the case of *Checkmate Services Pvt. Ltd. v. CIT* [(2022) 448 ITR 518 (SC); (2023) 6 SCC 451; 2022 SCC OnLine SC 1423.] being rendered subsequent to the original decision of the Tribunal, hence the same would not be relevant for setting aside the order passed by the Tribunal.

ii) We may observe that recently, a Bench of the Tribunal in the case of *Dy. CIT v. ANI Integrated Services Ltd.* [(2024) 162 taxmann.com 899 (Mum).], had the occasion to consider the very issue as raised by the Revenue in the light of the decision rendered by the Supreme Court in *Checkmate Services Pvt. Ltd. v. CIT* [(2022) 448 ITR 518 (SC); (2023) 6 SCC 451; 2022 SCC OnLine SC 1423.] . In such case similar applications were filed by the Revenue praying that the Tribunal set aside its orders in relation to Employees' State Insurance Corporation ("ESIC" for short) (for the A.Y. 2019-20) considering the changed position in law in *Checkmate Services Pvt. Ltd. v. CIT* [(2022) 448 ITR 518 (SC); (2023) 6 SCC 451; 2022 SCC OnLine SC 1423.]. In such case the Tribunal by its decision dated May 29, 2024 (Dy. CIT v. ANI Integrated Services Ltd. [(2024) 162 taxmann.com 899 (Mum).]) did not accept the contentions as urged on behalf of the Revenue and rejected the miscellaneous applications filed by the Revenue, also considering the decision in *Beghar Foundation v. Justice K.S. Puttaswamy* [(2021) 3 SCC 1; 2021 SCC OnLine SC 31; (2021) 123 taxmann.com 344 (SC); (2021) 278 Taxman 1 (SC).] and the scope of its limited jurisdiction u/s. 254(2) of the Income-tax Act. We are in complete agreement with the view taken by the Tribunal in *Dy. CIT v. ANI Integrated Services Ltd.* [(2024) 162 taxmann.com 899 (Mum).] and which is on the very issue as urged by the petitioner.

iii) In view of the aforesaid discussion, we are of the clear opinion that the Tribunal was in a patent error in exercising jurisdiction u/s. 254(2) in passing the impugned order. The petitions accordingly need to succeed. The petitions are allowed in terms of prayer clause (a) of each of these petitions.

[*Infantry Security & Facilities v. ITO*: (2025) 474 ITR 584 (Bom): 2024 SCC OnLine Bom 3981: (2025) 347 CTR 33 (Bom):]

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

i) Heard. Delay condoned.

ii) We see no ground to interfere with the impugned judgment and order of the High Court. The special leave petition is, accordingly, dismissed.

ACIT v. Adani Power Rajasthan Ltd.: (2026) 486 ITR 226 (SC): 2026 SCC OnLine SC 510: Dated 06/01/2026

Reassessment — Notice u/s. 148 — Validity — Notice on the basis of information from the audit party — Finding that AO had disagreed with the audit party, the High Court held that the notice is invalid — Supreme Court dismissed the special leave petition filed by the Department: Ss. 147 and 148 of ITA, 1961: A.Y. 2016-17

The assessee/petitioner is a limited company. On 27/11/2016, the assessee filed its return of income for the A.Y. 2016-2017, declaring total loss under normal provisions and the book-loss as well. The return was processed, and its case was selected for scrutiny under computer-assisted scrutiny selection. A detailed scrutiny

was undertaken and the assessment order u/s. 143(3) was passed on December 17, 2019 accepting the returned total loss for the A.Y. 2016-2017 without making any addition or disallowance of any expenses.

Thereafter, the respondent Assessing Officer issued notice u/s. 148 dated 21/03/2021 asking the petitioner to file a return of income for the A.Y. 2016-2017. The petitioner, without prejudice, filed the return of income in compliance with the notice and sought for the reasons recorded for reopening and approval obtained u/s. 151 of the Act. The petitioner had been provided with a copy of the reasons and approval on May 17, 2021. In response to the same, the objections were raised on July 9, 2021 challenging the validity of the notice. The respondent disposed of the objections on November 10, 2021.

The assessee filed a writ petition and challenged the notice and the order on objections. The Gujarat High Court allowed the writ petition and held as under:

i) Here is a case where, admittedly, the audit party had expressed the opinion on a question of law. It had also pointed out to the Assessing Officer, and that the information which had been given was a question of law. This has been dealt with in Lucas T.V.S. Ltd., and even otherwise, the facts of the instant case clearly make out that when the audit party had pointed out to the Assessing Officer, it not only disagreed with the information given on the law point, but it had completely disagreed after examining the objections raised by the audit party. Twice in paragraphs 3 and 6, it has been said that on examining carefully, the objections are not acceptable and they need to be dropped. The Assessing Officer, without any conviction, when he has issued the notice, this surely is not a case where the reopening of the case is on the basis of any factual error pointed out by the audit party so as to be covered by the decision of *P.V.S. Beedies (P.) Ltd.* On the contrary, it is covered by those decisions which have been discussed in reopening on the part of the Assessing Officer, essentially on the audit party's opinion and not on the basis of his own conviction. There is no material worth the name emerging that indicates any independent application of the mind could be noticed.

ii) On the contrary, there are glaring facts that have been pointed out that the Assessing Officer had no subjective satisfaction while issuing the notice of reopening. Therefore, also, in this background, it is a settled law that any notice of reopening issued by the Assessing Officer without any independent application of mind would lay the validity.

iii) Accordingly, this petition is allowed. Notice dated March 21, 2021 along with the order dated November 10, 2021 are quashed and set aside.

[*Adani Power Rajasthan Ltd. v. ACIT*, (2023) 454 ITR 734 (Guj): 2023 SCC OnLine Guj 5059]

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

i) Delay condoned.

ii) We are not inclined to interfere with the impugned judgement and order of the High Court. Hence, the special leave petition is dismissed.

ITO v. Amitkumar Chandulal Rajani: (2026) 486 ITR 238 (SC): 2026 SCC OnLine SC 511: Dated 06/01/2026

Reassessment — Notice u/s. 148 — Validity — High Court holding that AO had recorded reasons for reopening mechanically relying on information from survey and search operation on a third person and that AO had not provided any documents, statements or any material

to assessee saying that such information was confidential and that order disposing of assessee's objections failed to consider objections in true perspective — High Court held that in absence of link between material from search and reasons recorded AO's notice u/s. 148 was without jurisdiction and invalid — Supreme Court dismissed the special leave petition filed by the Department: Ss. 147 and 148 of ITA, 1961: A. Ys. 2013-14 to 2015-16

The assessee-petitioner is an individual. The petitioner filed its original returns of income for the relevant assessment years before the due date for filing the return u/s. 139(1) of the Income-tax Act, 1961. The Assessing Officer issued notices u/s. 148 of the Act dated March 30, 2021, for all three years for reopening the assessment. The assessee filed objections which were rejected.

The assessee filed writ petitions and challenged the notices. The Gujarat High Court allowed the writ petitions and held as under:

i) The Assessing Officer has recorded the reasons in a mechanical manner, referring on the basis of the information provided by the Deputy Commissioner of Income-tax, Central Circle-1, Rajkot, which relied on the survey and the search operation carried out in the case of M/s. National Shroff and Company on September 19, 2014.

ii) There is no reference to the transaction carried out by the petitioner. The details of the transactions carried out by the petitioner appear to pertain to the reliefs from the seized material or from any other source. It is also pertinent that the respondent-Assessing Officer has not provided any documents, statements, or any material to the petitioner but, on the contrary, in the affidavit-in-reply in paragraph 9, it is averred that such information cannot be provided to the assessee because it is a confidential matter of the Department. Such a stand taken by the respondent-Assessing Officer is contrary to the provisions of the Act, inasmuch as, unless and until the petitioner is provided the material upon which the reasons are recorded, the action of the respondent is illegal.

iii) Upon perusal of the order disposing of the objections, it is observed that respondent No. 2 has not made any reference to any demand or request made by the petitioner for providing material/information relied upon from the seized material or from such searched person and employee.

iv) The Assessing Officer has failed to consider the objections of the petitioner in the true perspective and in the absence of any material from M/s. National Shroff, Rajkot pertaining to the details relating to the petitioner, so as to prove that income has escaped assessment, we are of the opinion that there is no link between the material and the reasons recorded, resulting into dissatisfaction on the part of the respondent-Assessing Officer, and in such circumstances, the Assessing Officer could not have assumed jurisdiction to issue the impugned notice for reopening.

v) In view of the foregoing reasons, these petitions succeed and are accordingly allowed. The impugned notices dated March 30, 2021, for all the assessment years are hereby quashed and set aside. The rule is made absolute to the aforesaid extent.

[*Amitkumar Chandulal Rajani v. ITO:* (2026) 486 ITR 230 (Guj): 2025 SCC OnLine Guj 5522]

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

i) Delay condoned.

ii) We do not find a good ground to interfere with the impugned order/judgment [Amitkumar Chandulal Rajani v. ITO (2026) 486 ITR 230 (Guj)] in exercise of our jurisdiction under Article 136 of the Constitution of India. Accordingly, the special leave petition stands dismissed.

High Court



Jitendra Singh



Radha Halbe



Harsh Shah

Pr. CIT v. Globe Capital Market Ltd [2026] 185 Taxmann.com 513 (Delhi)

Income from other sources - section 56 of the Income Tax Act 1961 - Certificate for deduction at lower rate - buy back of own shares under section 68 of the Companies Act resulted in extinguishment of shares - however, the same cannot be treated as acquisition of asset - Hence, provisions of section 56(2)(x) of the Act is not applicable. [Rule 11 UA of the I. T. Rules]

Facts:

The Assessee during the relevant assessment year 2018-19 made a buy-back of 28.62 lakhs equity shares during at Rs. 313.40 per share, aggregating to about Rs. 89.71 crores. The assessee also paid tax on distributed income under section 115QA of the Act. The AO during the course of assessment proceedings observed that the fair market value of shares as per Rule 11UA was Rs. 370.46 per share and therefore, held that the buy-back by the assesseee resulted in the acquisition of "property". Accordingly, the AO had added a difference of about Rs. 16.33 crores under section 56(2)(x) of the Act. The assessee, being aggrieved by the impugned assessment order, challenged the same before the first appellate authority. Ld. CIT(A) deleted the addition made by AO by observing that the transaction was not a purchase of shares simpliciter, but a buy-back of its own shares amounting to a reduction of share capital and, therefore, provisions of section 56(2)(x) read with Rule 11UA are not applicable. Department revenue, being aggrieved by the order of Ld. CIT(A), preferred an appeal before the Appellate Tribunal, Delhi. The Appellate Tribunal dismissed the appeal of the department and upheld the order passed by Ld. CIT(A).

The department, being further aggrieved by the order of the Appellate Tribunal, challenged the same before the Hon'ble Delhi High Court as per the provisions of section 260A of the Act.

Ruling of the High Court:

Hon'ble Delhi High Court was pleased to dismiss the appeal of the department by observing that in the present case, the assessee-company made a buy-back of its own shares in accordance with the Companies Act and thus, such transaction amounted to reduction of share capital which resulted in extinguishment of shares. Hence, buy-back of shares could not be regarded as acquisition of property, and therefore, addition under section 56(2)(x) of the Act by treating FMV difference as deemed income is untenable in law.

APS Hydro (P.) Ltd. v. UOI [2026] 185 Taxmann.com 408 (Delhi)

Collection and recovery of taxes - Section 220 of the Income Tax Act 1961 - department treated the assessee in default in respect of demands pertaining to AY 2011-12 to 2019-20 - However, the assessee was not served with any intimations or orders creating the demands - the department issued the impugned notice after nine years to treat the assessee as assessee in default - not justified.

Facts:

The assessee before the Hon'ble Delhi High Court was served with a notice dated 16.02.2022 and a subsequent order dated 12.05.2022 passed under section 220(1) of the Act by treating it as an assessee in default in respect of demands created by passing the intimations and orders under section 154 and 271(1)(c) of the Act for AY 2011-12 to 2019-20. However, the assessee was never served with the intimations or orders so passed. The assessee, being aggrieved by the impugned notice and order passed under section 220(1) of the Act, challenged the same before the Hon'ble Delhi High Court by way of Writ Petition.

Before the Hon'ble Delhi High Court, the assessee contended that none of the orders or intimations passed under sections 154, 143(1)(a), and 271(1)(c) were ever served upon it and that it came to know about the outstanding demand only upon receipt of the impugned notice. It was further contended that the demands pertained to various assessment years ranging from 2011-12 to 2019-20, involving substantial amounts, and had such demands been communicated, the assessee would have taken appropriate remedial action. The assessee also contended that it was against normal conduct that an assessee would remain inactive despite huge demands and that the Department could not have remained inactive for several years in respect of such demands.

On the other hand the department hand, contended that the intimations/orders were communicated to the assessee through email. The department, however, failed to furnish specific details or dates of such communication to the assessee.

Ruling of the High Court:

Hon'ble High Court was pleased to allow the writ petition filed by the assessee by observing that the assessee was treated as assessee-in-default on the basis of outstanding demands for several years without being served with the prior orders or intimations, and the department could not prove service nor explain prolonged inaction. Thus, the impugned notice issued under section 220(1) of the Act treating the assessee as an assessee in default is unsustainable and liable to be quashed.

Pr. CIT v. Nivesh Group [2026] 185 Taxmann.com 182 (Delhi)

Appeal - Section 268A of the Income Tax Act 1961 - department challenged the order passed by ITAT quashing the order passed under section 263 of the Act on the ground that the same is covered by exception carved out in para 3.1 (f) of the Circular No. 5 of 2024 - appeal arising from order under section 263 is not maintainable if tax effect quantified in consequential proceedings is below Rs. 2 crores.

Facts:

In the present case, pursuant to the order dated 26.03.2022 passed by the Pr. CIT under Section 263 of the Act, AO has passed an order dated 28.03.2023 giving effect to such order of the Pr. CIT and raised a demand of Rs. 1,03,31,014/- . However, in appellate proceedings, the order passed by Pr. CIT under section 263 of the Act was quashed. The department revenue challenged the said order before the Hon'ble Delhi High Court on the ground that para 3.1(f) of Circular No. 5/2024

provides that appeals arising from section 263 orders fell within an exception clause.

Ruling of the High Court:

Hon'ble Delhi High Court was pleased to dismiss the appeal of the department by observing that pursuant to the order under section 263, AO passed the order giving effect, resulting in a net tax effect below Rs. 2 crores. Thus, the revenue's appeal against the section 263 order is not maintainable as per CBDT Circular Nos. 5/2024 and 9/2024, and therefore, is liable to be dismissed on account of the low tax effect threshold.

GM Modular (P.) Ltd v. Pr. CIT [2026] 185 Taxmann.com 495 (Bombay)

Penalty for under reporting or misreporting of income - section 270A of the Income Tax Act 1961 - AO while passing the assessement order has reiterated the adjustment made in the intimation on account of late deposit of PF and ESIC - penalty levied alleging the under reporting on account of said disallowance is unjustified.

Facts:

The assessee before the Hon'ble Bombay High Court filed its return of income for AY 2019-20, declaring a total income of Rs. 70,11,00,620/- . The said return was processed under Section 143(1) of the IT Act, wherein an adjustment/ disallowance of Rs. 26,72,885/- was made on account of the delayed payment of employees' contribution to Provident Fund (PF) and Employee State Insurance (ESI), under Section 36(1)(va) of the Act. Subsequently, a search and seizure action under Section 132 of the IT Act was conducted, and an assessment order under Section 143(3) read with Section 153A of the IT Act was passed wherein, the AO merely reiterated the disallowance of Rs.26,72,885/- under Section 36(1)(va) of the IT Act, which was already made in the intimation issued under Section 143(1) of the IT Act, alongside other additions. The assessee challenged the assessment order before the Ld. CIT(A). The first appellate authority deleted the addition of Rs. 26,72,885/- under Section 36(1)(va) of the Act. However, on further appeal by the department, the Appellate Tribunal confirmed the disallowance of Rs. 26,72,885/- relying on the judgment of the Hon'ble Supreme Court in the case of *Checkmate Services (P.) Ltd v. CIT* [2022] 448 ITR 518 (SC).

Consequent to the ITAT order, AO passed a penalty order dated 29.01.2024 under Section 270A of the IT Act, levying a penalty of Rs. 4,67,006/- for alleged under-reporting of income in respect of disallowance under Section 36(1)(va) of the IT Act.

Aggrieved by the penalty order, the assessee filed a revision application under Section 264 of the IT Act before the Pr. CIT. However, vide the impugned order dated 20.03.2025, Pr. CIT simply rejected the application, holding that the issue is not fit for revisionary proceedings, without assigning any reasons.

The assessee, being aggrieved by the rejection of its application, challenged the order passed by Pr. CIT before the Hon'ble Bombay High Court under Article 226 of the Constitution of India.

Ruling of the High Court:

Hon'ble Bombay High Court was pleased to allow the Writ Petition filed by the assessee by observing that the disallowance under section 36(1)(va) was already made in intimation under section 143(1)(a), which was merely reiterated in the assessment order, and assessed income did not exceed processed income under section 143(1) of the Act. Hence, penalty for under-reporting under Section 270A of the Act on the disallowance made under section 36(1)(va) of the Act is unsustainable, especially when claim was bona fide, fully disclosed and supported by jurisdictional precedent. Further, the Pr. CIT is not justified in rejecting the application filed under section 264 of the Act without assigning any reasons and such refusal is unsustainable in law.

TRIBUNAL


Nikhil Mutha


Viraj Mehta


Kinjal Bhuta

Bombay Super Hybrid Seeds Limited v. DCIT [ITA No.225/ RJT/2026 dated 13/04/026] [AY 2023-24]

Section 2(1A) / Section 10(1) - Income from hybrid seed production held to be agricultural income where assessee carried out cultivation on leased land with full control, risk, and ownership of produce

FACTS:

The assessee was engaged in the business of production and sale of hybrid seeds. For this purpose, it entered into agreements with farmers whereby agricultural land was taken on lease, and the farmers were engaged to carry out cultivation activities under the supervision and control of the assessee. The assessee provided foundation seeds, technical know-how, fertilizers, pesticides, and other inputs, and also appointed coordinators to supervise the agricultural operations. The assessee incurred the entire cultivation expenditure, including land preparation, irrigation, labour, and harvesting costs, and bore the complete risk of crop failure. The agreements provided that the land would be used exclusively for the assessee and that the entire agricultural produce would belong to the assessee. During assessment, the Ld. AO held that the Assessee had not carried out basic agricultural operations and was merely procuring seeds from farmers under contractual arrangements. Accordingly, the income from the sale of seeds was treated as business income instead of agricultural income exempt under section 10(1) of the Act. The Ld. CIT(A) upheld the action of the AO. Aggrieved, the Assessee filed an appeal before the Hon'ble ITAT.

HELD:

The Hon'ble ITAT held that the assessee was engaged in agricultural activities and was eligible for exemption under Section 10(1) of the Act. It was observed that the assessee had taken land on lease and exercised effective control and possession for carrying out agricultural operations, which were performed by farmers under its supervision and direction, and thus on its behalf. The Hon'ble ITAT noted that the assessee had incurred the entire cultivation expenditure, borne all risks including crop failure, and had exclusive ownership over the produce,

thereby establishing that it was the real cultivator. On the Revenue's contention, the Hon'ble ITAT held that there is no requirement that basic agricultural operations must be personally performed by the assessee, and performance through labour or agents under supervision is sufficient. It also held that ownership of land is not a prerequisite, and activities on leased land would qualify if the assessee has sufficient control and interest. Further, the Hon'ble ITAT held that the use of scientific or technical methods does not alter the character of agricultural activity, and distinguished adverse precedents where the assessee merely procured seeds without undertaking cultivation or bearing risks. Accordingly, the Hon'ble ITAT held that income from seed production constituted agricultural income under Section 2(1A) and was exempt under Section 10(1), and deleted the addition made by the AO treating it as business income.

Mahaveer Sukhanraj Kawar v. ITO [ITA No. 872,873/Mum/2024 dated 25.03.2026] [AY 14-15 & 15-16]

Section 68 – Long-term capital gains - Penny stock - Addition based solely on Investigation Wing report without independent enquiry not justified - Documentary evidences not disproved - Transactions through demat and stock exchange -Addition deleted

Facts:

The assessee earned long-term capital gains on the sale of shares of Lifeline Drugs and Pharma Ltd. and claimed exemption under section 10(38). The Assessing Officer treated the gains as bogus on the basis of the Investigation Wing report alleging the scrip to be a penny stock and made an addition under section 68 along with commission expenditure. Ld. CIT(A) also confirmed the additions. Being aggrieved by the order, an appeal is filed before the Hon'ble ITAT.

Held:

Hon'ble ITAT held that the assessee is a regular investor in shares and has undertaken share transactions, which is evident from the materials on record. The primary reason for entertaining such doubt appears to be the Investigation Wing report and the fact that BSE suspended transaction in shares of the company in August, 2015. However, facts on record reveal that such suspension was for a temporary period, and subsequently, a transaction in shares had taken place. Coordinate Bench in case of *Smt. Ritu Jain v. ACIT* ITA No. 9358/Del/2019 and *Anoop Jain v. ACIT* ITA No. 6703/Del/2019 have also allowed and deleted a similar addition. Following the coordinate benches decision, it was held that the share transactions cannot be held as non-genuine/bogus. Accordingly, additions were held to be deleted, and the appeal filed was allowed.

Geeta Pravin Vepari v. ITO [ITA No. 7253/Mum/2025] [AY 17-18]

Section 69A – Cash Deposits – No Proper Enquiry made – No evidence found – No addition can be made

Facts:

The assessee is a Senior Citizen aged about 82 years who had been a practicing Doctor in a Charitable Clinic till she retired in December 2007. The case selected for scrutiny by the Assessing Officer for verification of the cash deposits in the bank account of the assessee made during the demonetization period. Assessing Officer made the addition u/s 69A of Rs. 12 lacs on account that the reasoning for cash deposits is unsatisfactory. On appeal before Ld. CIT(A), it was held by Ld. CIT(A) that the appellant was eligible to get relief on account of the amount of cash deposit made by her during the demonetization period, which she claimed to be her cash in hand, is Rs. 1,50,000/-. However, the remaining addition of

Rs. 10,50,000/- was confirmed due to the lack of enough supporting materials/ documents in support of the claim that it belonged to her brothers and sister. Being aggrieved by the order, an appeal is filed before the Hon'ble ITAT.

Held:

The Hon'ble ITAT held that no infirmity was pointed out by them in the evidence in the form of cash withdrawal from the bank reflected in the bank account, the e-mail communications with the siblings during the demonetization period, which itself is much earlier than the case being picked for scrutiny by the AO. Such evidence could not have been ignored without making any rebuttal from him. We agree with the ld.AR that the primary onus was already discharged by the assessee. The lower authorities did not take a holistic view of the matter involving a retired medical professional and a super senior citizen who has been regularly paying due taxes to the exchequer. Merely for the fact that there was a substantial time gap without pointing out any infirmity in the contentions of the assessee, who also filed an affidavit to this effect, and without making any effort to cross-verify her contentions from the siblings, making such an addition lacks any justification and is devoid of any merit. Accordingly, additions were held to be deleted, and the appeal filed was allowed.

ACIT v. Sanjay Goel [ITA No. 4500/ Del/2025 dated 17/04/2026] [AY 2021-22]

Section 132(4) - Statement recorded has no standalone evidentiary value without corroborative incriminating evidence

Facts:

The assessee, an individual serving as Director (Finance) with Oppo Mobiles India Pvt. Ltd., was subjected to search and seizure action under section 132 of the Act on 21/12/2021. During the course of the search, a statement under section 132(4) of the Act was recorded wherein the assessee purportedly admitted receipt of INR 10.50 crore in cash as commission @1.3% on GST refunds facilitated for the company, and further stated that such cash was utilized for the purchase of jewellery and deposits in bank accounts of family members. Subsequently, the assessee retracted the statement within a short period by filing a detailed retraction letter supported by an affidavit and medical records, contending that the admission was made under mental stress and coercive circumstances during prolonged search proceedings. The Ld. AO, however, made an addition under section 69A of the Act on the basis of the said statement. The assessee preferred an appeal before the Ld. CIT(A), who, after considering the retraction and absence of supporting evidence, deleted the addition. Aggrieved, the Revenue filed an appeal before the Hon'ble ITAT.

Held:

The Hon'ble ITAT held that the addition of INR 10.50 crore under section 69A of the Act was unsustainable as it was based solely on a statement recorded under section 132(4) of the Act, which was duly retracted within a short span along with supporting explanation and medical evidence. It was observed that no corroborative incriminating material was found during the search or brought on record by the Learned Assessing Officer to substantiate the alleged undisclosed income, including the absence of any cash, jewellery, or identifiable bank deposits. The Hon'ble ITAT emphasized that a statement, though relevant, cannot be treated as conclusive evidence unless corroborated by independent material, particularly when retracted at the earliest opportunity. It was further held that the Ld. AO failed to discharge the initial burden under section 69A of the Act to establish the existence of unexplained money or assets. Relying on settled judicial precedents [*Pullangode Rubber*

Produce Co. Ltd. v. State of Kerala (SC), *CIT v. S. Khader Khan Son* (SC), *PCIT v. Anand Kumar Jain (HUF)* (Delhi HC), *Harjeev Aggarwal* (Delhi HC), *Best Infrastructure (India) Pvt. Ltd.* (Delhi HC), and *PCIT v. Sanjay Chhabra* (Rajasthan HC)] and CBDT instruction, the Hon'ble ITAT upheld the order of the Ld. CIT(A) deleted the addition and dismissed the appeal of the Revenue.

M/s. RC Heights Pvt. Ltd. & M/s. RC Buildcon vs. DCIT [ITA Nos. 3 to 7/RJT/2025 & 941/RJT/2024 dated 13/04/2026] [AY 2019-20 to 2022-23]

Section 153C - Addition based on uncorroborated third-party documents and without cross-examination held unsustainable in law

Facts:

The assessee was engaged in civil construction projects. A search action under section 132 was conducted on a real estate group named 'RK Group', wherein an excel sheet named 'Rameshbhai-WT' was seized, showing alleged cash and bank payments made to the assessee as a contractor relating to a commercial construction project. The assessee was subjected to assessment proceedings under section 153C pursuant to such a search conducted on a third-party real estate group. The AO observed that while bank entries matched with the assessee's books, certain cash entries were not recorded and accordingly made an addition of INR 2.62 cr. as unaccounted income. The assessee contended that the document was found on third-party premises, which did not bear its name or signature and was a mere "dump document," and that no cross-examination opportunity was provided. The matter was appealed before the learned CIT(A), who held that only the profit element is taxable and estimated the income @12.5% (INR 32.80 lakhs) of the alleged unaccounted cash receipts, granting partial relief. Aggrieved, the Assessee and the AO appealed before the Hon'ble ITAT.

Held:

The Hon'ble ITAT held that the addition made by the AO solely on the basis of an excel sheet seized from a third party is arbitrary. It was observed that the said nonspeaking seized document, being unsigned and not bearing the name of the assessee, constitutes a mere "dump document" lacking evidentiary value and independent corroborative material. It was further held that no addition can be made when no cogent evidence has been brought on record to establish that the alleged transactions had actually materialized into transactions giving rise to income of the assessee. The Hon'ble ITAT further held that reliance on such third-party material, without affording the assessee an opportunity of cross-examination, amounts to a violation of the principles of natural justice, thereby vitiating the assessment. The Hon'ble ITAT, relying on various High Court and Supreme Court decisions, reiterated that entries in loose papers or third-party documents, without establishing a direct nexus with the assessee and without corroboration, cannot form the sole basis for making additions. Accordingly, the Hon'ble ITAT deleted the entire addition and allowed the assessee's appeals while dismissing the Revenue's appeals.

M/s Commitment Morality Vision Education Society v. ACIT [I.T.A. No. 3981/DEL/2017 dated 15/04/2026] [AY 2011-12]

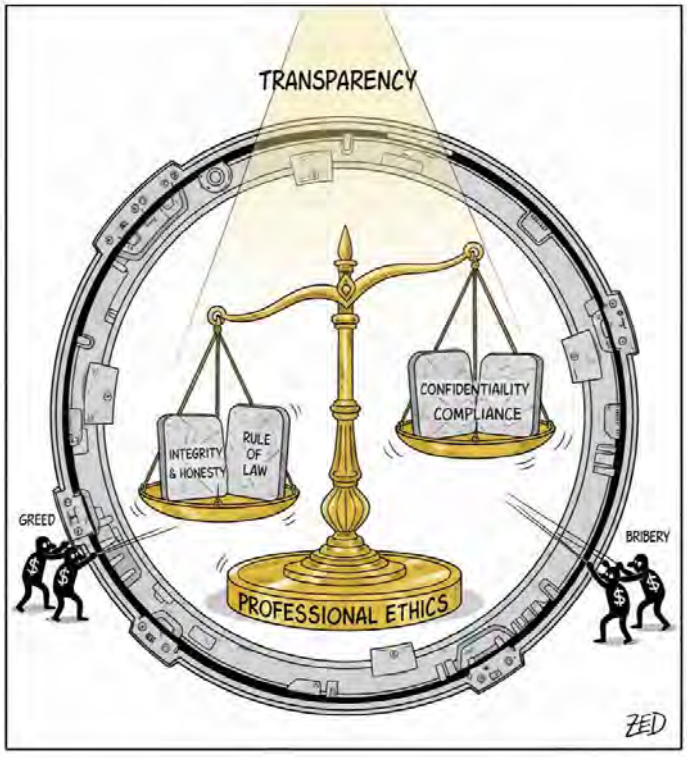
Section 153C & 11 - Charitable exemption denied where assessee acted as a conduit for fund routing; addition sustained despite claim of being a pass-through entity

Facts:

The assessee, M/s Commitment Morality Vision Education Society (CMV), was registered as a charitable trust under the Income-tax Act and claimed exemption under section 11 of the Act. A search under section 132 was conducted in the case of FIITJEE Group, during which certain documents belonging to the assessee were found at FIITJEE's premises, pursuant to which proceedings were initiated under section 153C of the Act. During the course of the assessment, it was observed that the assessee had received donations of approximately INR 23.59 crore and transferred the same to FIITJEE group entities. The Ld. AO noted that the bank account of the assessee was opened and operated under the control of FIITJEE, blank signed cheque books and documents were handed over to FIITJEE officials, and the funds were routed through the assessee and ultimately utilized for FIITJEE's business purposes, without any genuine charitable activity being carried out by the assessee. Accordingly, the Ld. AO denied exemption under sections 11 and 12 and taxed the entire receipts as income, which action was upheld by the Ld. CIT(A). Aggrieved by the same, the assessee filed an appeal to the Hon'ble ITAT.

Held:

The Hon'ble ITAT held that the assessee had allowed itself to be used as a conduit entity for routing funds of the FIITJEE group and claiming exemption without carrying out any genuine charitable activity. It was observed that although the bank account and transactions were effectively controlled by FIITJEE, the account legally belonged to the assessee, and the assessee had consciously or negligently permitted the misuse of its charitable status. The Hon'ble ITAT further noted that merely claiming to be a "pass-through entity" does not absolve the assessee from tax liability when funds are routed through its books, and accepting such a contention would create an undesirable precedent enabling misuse of charitable entities for tax evasion. The Hon'ble ITAT further held that the exemption under section 11 of the Act is available only when income is genuinely applied for charitable purposes, which was not the case here, as the funds were ultimately used for the benefit of a commercial entity, i.e., FIITJEE. Accordingly, the Hon'ble ITAT upheld the denial of exemption and confirmed the addition made by the AO, holding that the assessee must bear the tax consequences of its involvement in the arrangement, and dismissed the appeal.



THE BALANCING ACT: PROFESSIONAL ETHICS IN THE LEGAL WORLD

Case Law Update



Dr Sunil Moti Lala

PERMANENT ESTABLISHMENT

Liason Office

Deputy Director of Income-tax, International Taxation v. Mitsubishi Corporation [2026] 185 Taxmann.com 785 (Delhi - Trib) [23-04-2026] - AY 2009-10

Where assessee, a Japan-based company, closed its liaison office and set up a branch office with RBI approval, said branch office was held to be an expanded continuation of the liaison office and, therefore, constituted a PE in India, however, since attribution of income had not been properly examined in light of assessee's contentions regarding scope of its activities, matter was remanded to AO for fresh de novo adjudication. [India – Japan DTAA]

Assessee, a Japan based company, was engaged in trading activities catering to different industries. It had a LO in India which was closed in March 2008. During relevant AY, assessee obtained RBI approval and established branch office. AO treated Branch Office as a continuation of liaison office and proposed to attribute income from sales made in or through India across all divisions to branch office by treating it as a PE in India. Assessee contended that branch officer was merely catering to machinery division of Head Office (HO) and no income should be attributed to branch office. The Tribunal noted that issues raised in instant appeal were similar to issues involved in earlier AYs 2005-06 to 2008-09 which were pending before AO for de novo consideration. It was also noted that RBI had granted permission to assessee upgrade Liaison Office in India to a Branch Office. Thus, Indian branch office was to be regarded as a continuation and expanded version of earlier LO and was a PE in India. However, the matter was to be restored for de novo consideration by AO with direction to pass a fresh assessment order

after duly considering and examining assessee's submissions, including those relating to its contention that the Branch Office was merely catering to the Machinery division of the Head Office.

Service PE

Ernst and Young (EMEIA) Services Ltd. v. Assistant Commissioner of Income-tax. International Taxation [2026] 184 Taxmann.com 671 (Delhi - Trib) [20-03-2026] - IT Appeal No. 1976 (DEL) OF 2025 - AY 2022-23

Where the assessee, a UK resident, rendered global and market development support services to Indian firms entirely remotely with no physical presence of employees in India, and recovered costs on a cost-to-cost basis, Service PE conditions under Article 5(2)(k) of India-UK DTAA were not satisfied since no personnel were in India during year and receipts were not taxable in India. [India – UK DTAA]

Assessee, a tax resident of the UK, provided common area services, global services, and market development support to EY network member firms, including Indian member firms, under Area Services and Market Development Agreements. It incurred costs on behalf of members and recovered the same on a cost-to-cost basis without markup. During the year, none of the assessee's employees visited India, and services were rendered remotely via emails, conference calls, online meetings, and internal weblinks. Assessee claimed that receipts from Indian member firms were not taxable in India. UK DTAA on the ground that it had no PE in India. However, AO taxed receipts from India by holding that the assessee had Service PE/ Virtual Service PE in India under Article 5(2)(k), concluding that physical presence of employees/ personnel in India was not required. Tribunal held that as per Article 5(2)(k) of India-UK DTAA, physical presence of employees/personnel of UK enterprises in India for an aggregate period of more than 90 days in any 12 months is a must, and in absence of any physical presence of employees/personnel of assessee in India, necessary conditions to meet requirement of having a Service PE were not fulfilled. Therefore, the assessee did not have Service PE in India, and receipts from Indian member firms were not taxable in India. [*CIT v. Clifford Chance Pte Ltd* [2025] 181 Taxmann.com 254/[2026] 308 Taxman 431/[2025] 485 ITR 407 (Delhi) followed, *Hyatt International Southwest Asia Ltd. v. ADIT* [2025] 176 Taxmann.com 783/306 Taxman 241/478 ITR 238 (SC) distinguished]

Onus on AO to establish PE

Booking.Com B.V. v. ACIT, International Taxation [2026] 183 Taxmann.com 201 (Delhi - Trib)/ [2026] 217 ITD 258 (Delhi - Trib) [06-02-2026] - IT APPEAL No. 2033 (Delhi) of 2025 - AY 2018-19

Where assessee, a Netherlands-based company, operated an online accommodation booking platform hosted outside India and earned commission as an intermediary on a principal-to-principal basis without any place of business, agent, personnel or equipment in India, since AO failed to establish existence of a fixed place or dependent agent PE, commission income would not be taxable in India (India – Netherlands DTAA)

Assessee, a Netherlands-based company, operated a digital platform for online accommodation reservations. The platform was hosted outside India and enabled accommodations to list room availability and set prices independently using a self- service tool. Assessee acted as an intermediary/aggregator between bookers and accommodations and earned commission from accommodations based on a pre-arranged percentage of booking value. AO held that the assessee had a fixed place PE in India in the form of dependent agents and accommodations. Accordingly, he brought to tax the entire commission receipts from India. Tribunal noted that the assessee had no place of business, agent, personnel, or equipment in India. Further, the assessee did not have any dependent agent in India and transacted with accommodation on a principal-to-principal basis. Since AO failed to discharge the onus of establishing the assessee's fixed place PE in India and to attribute the earnings of commission income to such alleged fixed place PE, the impugned order was set aside. [*Formula One World Championship Ltd. v. CIT* [2017] 80 Taxmann.com 347 (SC) followed]

BUSINESS PROFITS

Attribution of Income to PE (Liason Office)

Deputy Director of Income-tax, International Taxation v. Mitsubishi Corporation [2026] 185 Taxmann.com 785 (Delhi - Trib) [23-04-2026] - AY 2009-10

Where assessee, a Japan-based company, closed its liaison office and set up a branch office with RBI approval, said branch office was held to be an expanded continuation of the liaison office and, therefore, constituted a PE in India, however, since attribution of income had not been properly examined in light of assessee's contentions regarding scope of its activities, matter was remanded to AO for fresh de novo adjudication. [India – Japan DTAA]

See Case no 1 under PERMANENT ESTABLISHMENT – Liason office

Commission

Principal Commissioner of Income-tax v. Cholamandalam MS General Insurance Company Ltd. [2026] 185 Taxmann.com 364 (SC) [06-04-2026] - SLP (CIVIL) Diary No(s). 10994 OF 2026 – AY 2005-06 to 2010-11, 2013-14 and 2014-15

SLP dismissed against order of High Court that where assessee, an insurance company, made payments towards reinsurance premium to non-resident reinsurers (NRRs) without deducting tax at source, since brokers were acting as independent entities merely playing role of facilitators, no tax at source was to be deducted on these payments, thus, payments made by assessee to NRRs could not be disallowed under section 40(a)(i)

High Court held that in view of decision in case of ***CIT v. Royal Sundaram Alliance Insurance Co.***

[T.C.(A), No. 41 of 2019, dated 18-1-2019], assessee insurance company was not liable to deduct tax at source on commission paid by it to several insurance companies for receipt of reinsurance premium from them -Since no case for interference was made with impugned order of High Court, SLP was dismissed. **[SLP dismissed against Principal Commissioner of *Income-tax - 4 v. Cholamandalam MS General Insurance Company Ltd.* [2025] 175 Taxmann.com 452 (Madras)]**

ITO v. Avadh Agri Exports [2026] 185 Taxmann.com 188 (Rajkot - Trib) [01-04-2026] - IT APPEAL No. 816 (RJT) OF 2025 - AY 2012-13

Where commission was paid to a non-resident foreign agent for services rendered outside India in connection with export of goods, no tax was required to be deducted at source under section 195 and, consequently, disallowance under section 40(a)(i) was not warranted.

The Tribunal followed the decision of the coordinate bench in ***Dy.CIT v. Sonpal Exports Pvt. Ltd.*** **[IT Appeal No.29 (Rjt) of 2018,dated 21-8-2025]**

Note: Also see case No 1 under SHIPPING & AIR TRANSPORT - Ocean Freight.

SHIPPING & AIR TRANSPORT

Ocean Freight

ITO v. Avadh Agri Exports [2026] 185 Taxmann.com 188 (Rajkot - Trib)[01-04-2026]- IT APPEAL No. 816 (RJT) OF 2025 -[AY 2012-13]

Where assessee made payment of ocean freight to foreign shipping lines or their agents, in view of CBDT Circular No. 723, section 172 would apply and no tax was deductible at source under section 195 and, consequently, no disallowance under section 40(a)(i) could be made.

The Tribunal followed the decision of the coordinate bench in ***Dy.CIT v. Sonpal Exports Pvt. Ltd.*** **[IT Appeal No.29 (Rjt) of 2018, dated 21-8-2025]**

Note: Also see case No 2 under BUSINESS PROFIT - Commission

DIVIDENDS

Refund of DDT in excess of rate under DTAA

Guala Closures (India) (P.) Ltd. v. ITO [2026] 185 Taxmann.com 245 (Panaji - Trib) [02-04-2026] - ITA. No. 344 (PAN) of 2017 - [AY 2013-14]

Where assessee paid DDT on dividend to Netherlands-resident shareholder, DTAA rate was applicable in view of decision of High Court in Colorcon Asia (P.) Ltd. v. Jt. CIT [2025] 181 Taxmann.com 301 (Bombay), matter remanded for fresh adjudication [India – Netherlands DTAA]

Assessee-company, engaged in manufacturing and sale of non-refillable plastic closures and nip caps, distributed dividend to its Netherlands-resident shareholder and raised an additional ground before Tribunal seeking application of 10 per cent rate under India-Netherlands DTAA to Dividend Distribution Tax (DDT) and refund of excess DDT paid. The Tribunal held that in view of the decision of the ***High Court in Colorcon Asia (P.) Ltd. v. Jt. CIT*** **[2025] 181 Taxmann.com 301 (Bombay)**, assessee was entitled to restrict tax rate on dividends distributed by it to its non-resident shareholder company to the rate of tax provided under DTAA. The issue was restored to the file of AO for fresh adjudication in light of the above-stated decision after examining the applicability of DTAA and the rate of tax under section 115-O vis-à-vis treaty provisions.

Note: The aforesaid issue in the case of *Colorcon Asia (P.) Ltd. v. Jt. CIT* [2025] 181 Taxmann.com 301 (Bombay) has now been referred to the larger bench by the Hon'ble Bombay High Court in the case of Foseco India Ltd - TS-601-HC-2026(BOM).

ROYALTY

Database

Coforge BPS America Inc. v. Assistant Commissioner of Income-tax, International Taxation [2026] 184 Taxmann.com 667 (Delhi - Trib) [09-03-2026] - IT Appeal No. 3530 (Delhi) of 2023 -AY 2021-22

Where assessee, a US-based BPO/ITES company, provided its Indian AE access to information collated from public domain US databases and did not share any proprietary techniques or methodologies, consideration received for such title process services did not constitute royalty under Article 12(3) of the India-US DTAA and was not taxable in India. [India – USA DTAA]

Assessee, a USA based BPO/ITES company, provided title-related process solutions to its Indian AE by collating title, mortgage, and property tax information from databases available in public domain in US, and provided access/extracts of such information to AE, which used data to generate title search reports for its customers - Assessee received consideration for Title Process Services on a cost-plus 10% basis and did not offer amount to tax in India, claiming non-taxability under India–US DTAA. AO held that receipts for Title Process Services were taxable in India as royalty under section 9 read with Article 12(3) of India–US DTAA. Tribunal held that since assessee merely provided access to relevant extract of existing information available in public domain and did not share its own experience, techniques, or methodology employed for searching databases or for obtaining requisite information sought by Indian AE, mere provision of relevant information extracted from databases available in public domain did not result in use of, or right to use, any commercial experience and, thus, payment received by assessee with respect to title search services did not fall within ambit of Article 12(3) of India-US DTAA. **[*Uptodate Inc. v. Dy. CIT* [2023] 150 Taxmann.com 231 (Delhi-Trib) followed]**

> "Professional excellence without integrity has no lasting value."
>
> ***— T. N. Manoharan***

Voice Termination Services

Reliance Jio Infocomm USA Inc. v. Deputy Commissioner of Income-tax (International Tax) [2026] 185 Taxmann.com 604 (Mumbai - Trib) [17-04-2026] - IT Appeal No. 7827 & 7828 (Mum) of 2025 and 2991 of 2023 - AY 2019-20 & 2020-21

Where Singapore and USA affiliates received consideration from Indian entities for voice termination, bandwidth and operation & maintenance services, following earlier orders on identical facts, such receipts were not taxable in India as 'Royalty' or 'Fees for Technical Services' under Article 12 and assessees' claims were liable to be allowed. [India – USA DTAA & India – Singapore DTAA]

One assessee, a Singapore-resident wholly-owned subsidiary of an Indian telecom company, received about Rs. 44.17 crores from its Indian group company towards voice termination, bandwidth, and annual operation & maintenance services. Another assessee, a USA-resident affiliate, received consideration from an Indian group company towards voice termination services. AO treated such receipts as process royalty/fees for technical services under section 9(1)(vi)/(vii) and Article 12 of relevant DTAAs. The Tribunal noted the provisions of Article 12 of the India-USA DTAA and the India-Singapore DTAA are pari materia, particularly regarding the scope of royalties and fees for included / technical services, including the make available condition. Following earlier orders in assessees' own cases on identical facts, receipts from voice termination, bandwidth, and annual operation & maintenance services were held to be not taxable in India as royalty/fees for technical services under Article 12. **[*Asstt. CIT v. Reliance Jio Infocomm Ltd.* [2019] 111 Taxmann.com 371 (Mumbai - Trib) followed]**

Shared service agreement

Deputy Commissioner of Income-tax (IT) v. Deloitte Toutche Tohmatsu India LLP [2026] 184 Taxmann.com 722 (Mumbai - Trib) [26-03-2026] - IT Appeal No. 8078 and 8079 (Mum) of 2025 - AYs 2018-19 and 2019-20

Where assessee made payments to a UK entity under a shared service agreement purely for internal alignment and common benefit, with no transfer of intellectual property or copyright involved, such payments could not be treated as royalty under Article 13(3) and were not taxable in India [India-UK DTAA]

Assessee, LLP, rendering professional services and part of a global network, had a Shared Service Agreement with Deloitte Holdings, UK, which was created to facilitate international alignment among member firms. Under the agreement, services included Global Brand, Global Communications, and Global Technology/ Knowledge Management. Assessee applied under section 195(2) to remit amounts under this agreement without TDS, noting that similar remittances for earlier years were allowed without TDS. AO held that payments for Global Technology, Global Communications, and Global Brand were royalties for use of computer software and literary work, treated remittances as liable to TDS, and made an addition. Tribunal followed the decision of the coordinate bench in the assessee's own case for earlier AYs wherein it was held that these payments were purely for

internal use, involved no transfer of intellectual property or copyright, and did not constitute royalty under Article 13(3) and, consequently, the assessee was not required to deduct TDS on said payments. **[*Deloitte Haskins & Sells LLP v. Dy. CIT* (IT) [2022] 141 Taxmann.com 205 (Mum-Trib) Followed]**

Surcharge /Health & Education Cess

Shell International B.V. v. Assistant Commissioner of Income-tax, (International Taxation)-1 [2026] 185 Taxmann.com 774 (Ahmedabad - Trib)[22-04-2026] - IT Appeal No. 577 (Ahd.) of 2025 - AY 2022-23

Where Article 12 read with Article 2 of India-Netherlands DTAA provided for a 10 per cent tax rate on royalty and FTS, this rate included surcharge and education cess, thus, no additional levy over and above treaty rate was permissible [India – Netherlands DTAA]

The Tribunal held that the levy of surcharge and cess over and above the taxable rate of 10 per cent on royalty and FTS is not permissible as per the treaty provisions, by relying upon various decisions of the Tribunal. It held that the levy of surcharge and cess cannot exceed the tax rate of 10 per cent as per Article 12 of the India-Netherlands tax treaty, since the Treaty provides that the tax is to be charged on royalty and FTS shall not exceed 10 per cent of the gross amount of royalty or FTS. Further, Article 2 of the Tax Treaty defines tax in India as 'income tax including any surcharge thereon'. Therefore, Article 12 read with Article 2 of the Tax Treaty makes it clear that the rate of tax at 10 per cent would encompass surcharge and education cess, as it is also in the nature of tax. Therefore, levy of surcharge and cess over and above the taxable rate of 10 per cent on royalty and FTS is not permissible as per the Treaty provisions.

FEES FOR TECHNICAL SERVICES

Online Learning Platform

Commissioner of Income-tax (International Taxation) v. Coursera Inc. [2026] 185 Taxmann.com 365 (SC)[01-04-2026] - SLP (CIVIL) Diary No(s). 10085 OF 2026 - SLP (CIVIL) Diary No(s). 10085 OF 2026 – AY 2020-21

SLP dismissed against order of High Court that where assessee, a US based company, operated a global online learning platform providing online courses and degrees from leading universities and companies, since assessee merely provided access to contents of universities/companies through platform on receipt of fees and it did not make available any technical knowledge, experience, skill, know-how, or processes, receipts of assessee were not chargeable to tax as fees for included services (FIS) [India – USA DTAA]

Assessee, a US based company, operated a global online learning platform providing online courses and degrees from leading universities and companies - AO sought to tax receipts from

provision of said services as fees for technical services (FTS) within meaning of section 9(1)(vii) and fees for included services (FIS) within meaning of paragraph 4 of article 12 of India USA DTAA - It was noted that assessee merely provided access to contents of universities/companies through platform on receipt of fees and AO had not brought on record any material to establish fact that assessee provided technical services through its online platform and further make available condition was not satisfied. The High Court held that since services provided by the assessee did not include any element of included services, receipts of the assessee could not be taxed as FTS or FIS under the provisions of the Act, as well as DTAA. Since no case for interference was made with the impugned order of the High Court, the SLP was dismissed. **[SLP dismissed against *Commissioner of Income-tax, International Taxation v. Coursera Inc.* [2025] 174 Taxmann.com 1230 (Delhi)/[2025] 305 Taxman 269 (Delhi)]**

Surveyor Fees

Principal Commissioner of Income-tax v. Cholamandalam MS General Insurance Company Ltd. [2026] 185 Taxmann.com 364 (SC) [06-04-2026] - SLP (CIVIL) Diary No(s). 10994 OF 2026 – AY 2005-06 to 2010-11, 2013-14 and 2014-15

SLP dismissed against order of High Court that where assessee paid survey fees to various non-resident surveyors outside country, since entire services of surveyors were rendered outside country, assessee was not liable to deduct TDS on survey fees paid by it to surveyors.

The High Court held that where the assessee paid survey fees to various non-resident surveyors outside the country, since the entire services of surveyors were rendered outside the country, the assessee was not liable to deduct TDS on survey fees paid by it to surveyors. Since no case for interference was made with the impugned order of the High Court, the SLP was dismissed. **[SLP dismissed against *Principal Commissioner of Income-tax - 4 v. Cholamandalam MS General Insurance Company Ltd.* [2025] 175 Taxmann.com 452 (Madras)]**

CHR Recruitment, External Information Services, IT Services, Real Estate & Corporate Travel, and Health Ecotox Services

Shell International B.V. v. Assistant Commissioner of Income-tax, (International Taxation)-1 [2026] 185 Taxmann.com 774 (Ahmedabad-Trib) [22-04-2026] - IT Appeal No. 577 (Ahd.) of 2025 - AY 2022-23

Where assessee, a tax resident of Netherlands, received cost consideration for services such as CHR Recruitment, External Information Services, IT Services, Real Estate & Corporate Travel, and Health Ecotox Services rendered to its AEs, since revenue failed to establish that such services "made available" technical knowledge to Indian entities as required under Article 12, receipts could not be taxed as FTS [India-Netherlands DTAA]

Assessee, a tax resident of the Netherlands, was engaged in providing intra-group services to its Indian affiliates. Assessee received consideration/cost recoveries during the relevant

year for services including CHR Recruitment, External Information Services, IT Services, Real Estate & Corporate Travel Services, Health Ecotox Services. AO treated such cost recoveries from Indian affiliates as taxable in India as FTS under section 9(1)(vii) and Article 12 of India-Netherlands DTAA –Tribunal noted that in assessee's own case for earlier AY s, Tribunal had held that there was a specific requirement that in order to qualify as "Fee for Technical Services", services should be rendered in a manner that "make available" technology to recipient of services. Since revenue had not been able to establish that the "make available" clause had been satisfied, said services would not qualify as FTS under the Act read with the India-Netherlands Tax Treaty. **[*Shell International B.V. v. Dy. CIT (IT)* [2024] 160 Taxmann.com 761 (Ahmedabad-Trib), *Shell International B.V. v. Asstt. CIT* (International Taxation) [IT Appeal No. 688 (Ahd) of 2023, dated 25-11-2024] and *Shell International B.V. v. Asstt. CIT* (International Taxation) [2025] 174 Taxmann.com 611 (Ahmedabad-Trib) (para 7) followed]**

CORPORATE SUPPORT SERVICES -STRATEGY & PLANNING, ADVISORY, AND MANAGE & LEAD CR FUNCTIONS

Shell International B.V. v. Assistant Commissioner of Income-tax, (International Taxation)-1 [2026] 185 Taxmann.com 774 (Ahmedabad-Trib) [22-04-2026] - IT Appeal No. 577 (Ahd.) of 2025 - AY 2022-23

Where assessee, a tax resident of Netherlands, received cost consideration for services such as Strategy & Planning, Advisory, and Manage & Lead CR functions rendered to its Indian affiliates, in absence of any material showing satisfaction of "make available" condition, such services did not qualify as FTS under DTAA and were not taxable in India [India-Netherlands DTAA]

Assessee, a tax resident of Netherlands, was engaged in providing intra-group services to its Indian affiliates - Assessee received consideration/cost recoveries during relevant year for services including other corporate support services such as Strategy & Planning, Advisory, and Manage & lead CR function - AO treated such cost recoveries from Indian affiliates as taxable in India as FTS under section 9(1)(vii) and Article 12 of India-Netherlands DTAA. Since there was no specific reference as to how 'make available' under the India-Netherlands Tax Treaty had been satisfied while rendering the above services, so as to fall within the ambit of FTS under the India-Netherlands Tax Treaty, the Tribunal held that the impugned services did not qualify as FTS under the India-Netherlands Tax Treaty. **[*Shell International B.V. v. Dy. CIT (IT)* [2024] 160 Taxmann.com 761 (Ahmedabad-Trib), *Shell International B.V. v. Asstt. CIT* (International Taxation) [IT Appeal No.688 (Ahd) of 2023, dated 25-11-2024] and *Shell International B.V. v. Asstt. CIT* (International Taxation) [2025] 174 Taxmann.com 611 (Ahmedabad-Trib) (para 7) followed]**

ARCHITECTURAL DESIGNS & DRAWINGS

ACIT v. Forum Homes (P.) Ltd. [2026] 185 Taxmann.com 71 (Mumbai-Trib) [30-03-2026] - IT Appeal No.7531 (Mum.) of 2025 - [AY 2016-17]

Where assessee obtained consultancy services in the nature of architectural design and drawings from Singapore-based entities and no technical

knowledge, know-how or skill was made available enabling assessee to apply such knowledge independently, payments were not covered as FTS under Article 12(4) of and disallowance under Section 40(a)(i) was not justified. [India-Singapore DTAA]

Assessee, a resident corporate entity engaged in the development of real estate, availed consultancy services in the nature of architectural drawings/designs and structural GFC drawings/ designs from two Singapore-based entities for a residential project and made aggregate payments of about Rs. 1.85 crores during the year. AO noted that the assessee had not deducted tax at source on the above payments and, treating payments as FTS, disallowed payment under Section 40(a)(i). Tribunal held that since consultancy/architectural design and drawings were project-specific and no technical knowledge, know-how, or skill was made available to enable the assessee to apply it independently, conditions of Article 12(4) of DTAA were not fulfilled and, thus, payments did not fall within FTS under Article 12(4) of DTAA. It concluded that, therefore, Commissioner (Appeals) rightly deleted the disallowance under Section 40(a)(i). **[*Dy. CIT v. Forum Homes (P.) Ltd.* [2021] 132 Taxmann.com 223/[2022] 192 ITD 184 (Mumbai - Trib) Followed]**

VOICE TERMINATION SERVICES

Reliance Jio Infocomm USA Inc. v. Deputy Commissioner of Income-tax (International Tax) [2026] 185 Taxmann.com 604 (Mumbai-Trib) [17-04-2026] - IT Appeal No. 7827 & 7828 (Mum) of 2025 and 2991 of 2023 - [AY 2019-20 & 2020-21]

Where Singapore and USA affiliates received consideration from Indian entities for voice termination, bandwidth and operation & maintenance services, following earlier orders on identical facts, such receipts were not taxable in India as 'Royalty' or 'Fees for Technical Services' under Article 12 and assessees' claims were liable to be allowed. [India – USA DTAA & India – Singapore DTAA]

See case no 1 under ROYALTY – Voice termination services

UNDERWRITING COMMISSION FROM INDIAN COMPANIES FOR ADR/GDR ISSUES ABROAD

DCIT(IT) v. Merrill Lynch International [2026] 184 Taxmann.com 715 (Mumbai - Trib) [26-03-2026] - IT APPEAL No. 9302 (Mum) OF 2025 - AY 2017-18

Where assessee, a UK tax resident, received underwriting commission from Indian companies for ADR/GDR issues abroad, since such commission was only for assuming liability to purchase unsubscribed shares and did not involve rendering of technical or consultancy services, it could not be taxed in India as fee for technical services or included services under section 9(1)(vii) / article 13 [India-UK DTAA]

Assessee, a tax resident of United Kingdom, acted as lead manager and underwriter to ADR/ GDR issues of Indian companies outside India - It received underwriting commission/fees from Indian companies for ADR/GDR issuances abroad - AO treated said commission as taxable

in India as 'fees for technical services' under section 9(1)(vii) and as 'fees for included services' under Article 13 of India-UK DTAA. Tribunal held that since underwriting commission was only for incurring liability of subscribing to unsubscribed portion left over by general public and assurance so given for purchasing unsubscribed shares did not require rendering of any services by underwriter, underwriting commission could not fall within definition of fee for technical services under section 9(1)(vii) and was not taxable in India as FTS/FIS under Article 13 of India-UK DTAA.

Reimbursement - Payment to self

SMEC International Pty. Ltd. v. Deputy Commissioner of Income-tax [2026] 185 Taxmann.com 787 (Delhi-Trib) [23-04-2026] - IT Appeal Nos. 2992 & 2993 (Delhi) of 2016 - [AYs 2009-10 and 2010-11]

Where Project office (in India) constituting PE of assessee, an Australian tax resident , reimbursed its Head Office actual salary cost of staff deputed for Indian projects, this inter-branch transaction was a payment to self and could not be treated as income liable to tax in India and such reimbursement could not be taxed as fee for technical services either under Act or under DTAA. [India – Australia DTAA]

Assessee, an engineering consultancy company and a tax resident of Australia, had a Project Office (PO) in India constituting its PE under Article 5 of India–Australia DTAA - It rendered services to Indian clients through PO and offered receipts to tax under section 44DA - It utilized inputs from employees of Head Office (HO) in Australia, and HO recovered cost of such staff inputs from PO on actuals without any markup - PO reimbursed HO Rs. 4.59 crores during year and claimed amount as a deduction under clause (ii) of proviso to section 44DA - AO, while computing taxable profits under section 44DA, allowed claimed reimbursement as an expense on footing that it represented staff cost paid by PO to HO on actuals - However, AO also treated reimbursement received by HO as fee for technical services under Act as well as DTAA and held it taxable in India in hands of HO. Tribunal held that since PE and HO are part of the same enterprise, payment from the branch office to HO, being payment to self, could not give rise to any income in the hands of the assessee. **[*Sumitomo Mitsui Banking Corpn. v. DDIT* [2012] 19 Taxmann.com 364/136 ITD 66 (Mumbai)(SB) [Para 8] Followed]**

Article 12 (FTS) vs Article 14 (IPS) - Scouting Services

Deputy Commissioner of Income-tax v. Indiawin Sports (P.) Ltd. [2026] 185 Taxmann.com 47 (Mumbai-Trib) [27-03-2026] - IT Appeal No. 4576 (Mum) of 2023 - AY 2020-21

Where payment was made to a New Zealand resident for scouting services (treated as FTS by AO), whose his stay in India was below 183 days with no evidence of control or employment, since applicability of Article 14 depended on existence of a fixed base in India, matter was to be remanded to verify this aspect.

Assessee-company was engaged in owning, managing and operating Mumbai team of Indian Premier League (IPL) - It made payment of certain amount to one, JW, a tax resident of New

Zealand, for his services rendered as talent scout for its IPL team - AO characterized payment as FTS under Article 12 of DTAA and made disallowance under section 40(a)(i) for failure to deduct tax under section 195 – Tribunal noted that Assessee produced passport/visit details of JW which showed that JW's aggregate stay in India during relevant period was 88 days, which was below threshold of 183 days prescribed under Article 14 - Further agreement delineated scope of work but did not prescribe manner in which such services were to be performed - Furthermore, there was no material to suggest existence of an employer-employee relationship or control indicative of dependent services - Since one of essential conditions under Article 14 was absence of a "fixed base" in India for purpose of rendering such services and this aspect required proper factual verification, matter was to be remanded to AO for limited purpose of examining whether JW had a fixed base in India within meaning of Article 14 of DTAA, and if so, to determine extent of income attributable thereto in accordance with law.

Surcharge /Health & Education Cess

Shell International B.V. v. Assistant Commissioner of Income-tax, (International Taxation)-1 [2026] 185 Taxmann.com 774 (Ahmedabad-Trib) [22-04-2026] - IT Appeal No. 577 (Ahd.) of 2025 - AY 2022-23

Where Article 12 read with Article 2 of India-Netherlands DTAA provided for a 10 per cent tax rate on royalty and FTS, this rate included surcharge and education cess, thus, no additional levy over and above treaty rate was permissible [India–Netherlands DTAA]

See Case No 1 under ROYALTY - Surcharge/ Health & Education Cess

CAPITAL GAINS

Sale of shares of real estate companies

DCIT v. Merrill Lynch Capital Markets Espana SA SV. [2026] 184 Taxmann.com 716 (Mumbai-Trib) [26-03-2026] - I.T.A. No. 9195 and 9196 (Mum) OF 2025 - AYs 2016-17 and 2017-18

Where assessee, a Spain-resident company, earned capital gains/ loss on sale of shares of Indian real estate companies, and its minuscule shareholding conferred no rights over immovable property, such gains/loss would not fall under Article 14(4) but under Article 14(6) and be taxable only in State of residence. [India–Spain DTAA]

Assessee, a Spanish-resident company registered as Foreign Institutional Investor (FII), incurred short-term capital loss of Rs. 116.11 crores in AY 2016-17 and earned short-term capital gains of Rs. 15.49 crores in AY 2017-18 from sale of shares of Indian real estate development companies - It claimed exemption under Article 14(6) of India–Spain DTAA - AO held such loss/gains taxable in India under Article 14(4) on ground that value of shares was derived from immovable property situated in India. Tribunal held that for Article 14(4) to apply, it is not sufficient that the company whose shares are transferred is engaged in real estate business or

that immovable property constitutes a substantial component of its assets; what is required is that gains arising from alienation of shares should, in substance, partake of the character of gains derived from immovable property situated in the source State. Since the assessee's holding was minuscule and did not confer any right of enjoyment, control or disposal over immovable properties held by such companies, particularly when such properties constituted business assets/ stock-in-trade of companies themselves, such gains could not be brought within ambit of Article 14(4), but would fall under Article 14(6) and would accordingly be taxable only in State of residence. **[*Assistant Director of Income Tax (International Taxation), Range - 4(1) v. Merrill Lynch Capital Market Espana S.A.S.V.* [2017] 86 Taxmann.com 161/167 ITD 194 (Mumbai), *Deputy Commissioner of Income Tax, Circle-3(2)(1), Mumbai v. Merrill Lynch Capital Market* [2018] 100 Taxmann.com 281/[2019] 174 ITD 226 (Mumbai) (para 5.4) followed]**

INDEPENDENT PERSONAL SERVICES

Article 12 (FTS) Vs Article 14 (IPS)- Scouting Services

Deputy Commissioner of Income-tax v. Indiawin Sports (P.) Ltd. [2026] 185 Taxmann.com 47 (Mumbai-Trib) [27-03-2026] - IT Appeal No. 4576 (Mum) of 2023 - [AY 2020-21]

Where payment was made to a New Zealand resident for scouting services (treated as FTS by AO), whose his stay in India was below 183 days with no evidence of control or employment, since applicability of Article 14 depended on existence of a fixed base in India, matter was to be remanded to verify this aspect.

See Case No 1 under FEES FOR TECHNICAL SERVICES - Article 12 (FTS) Vs Article 14 (IPS) - Scouting Services

FOREIGN TAX CREDIT (FTC)

Delay in filing Form 67

Naresh Dharamchand Kapadia v. Assistant Commissioner of Income-tax [2026] 185 Taxmann.com 298 (Mumbai-Trib) [30-03-2026] - IT Appeal No. 8331 (Mum) of 2025 - AY 2017-18

Where assessee, a resident individual, earned salary in Malaysia and claimed FTC in India, denial of credit solely for non-filing of Form No. 67 before due date under section 139(1) was unjustified, as requirement under rule 128 is directory and DTAA override mandates allowance of FTC, subject to verification.

Assessee, a resident individual, earned a salary in Malaysia on which tax was deducted thereon and included such income in the return filed in India, claiming FTC under section 90 – AO denied FTC solely on the ground that Form No. 67 was not furnished before the due date under section 139(1), though the same was filed during assessment proceedings. Tribunal held that requirement of filing Form No. 67 within due date

under rule 128 is directory and not mandatory and that FTC could not be denied for mere delay in filing Form No. 67, particularly when DTAA provisions override Act and Rules. **[This principle has been upheld by the Supreme Court in *Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT* [2021] 125 Taxmann.com 42/432 ITR 471/281 Taxman 19 (SC) and the same was overlooked in *Muralikrishna Vaddi v. ACIT/Dy. CIT* [2022] 142 Taxmann.com 32/196 ITD 705 (Visakhapatnam-Trib) (thus said case was distinguished]**

Varun Vijaykumar Chhabria v. Income-tax Officer [2026] 185 Taxmann.com 699 (Bangalore-Trib) [15-04-2026] - IT Appeal No.589 (Bang) of 2026 - [AY 2019-20]

Where assessee, deputed to USA, paid tax there on salary and subsequently furnished Form 67 along with revised return to claim foreign tax credit under section 90, failure to submit Form 67 by due date was merely procedural, thus, assessee could not be denied legitimate foreign tax credit when all substantive requirements and evidence of tax payment abroad were fulfilled.

Assessee, an individual, was employed with an Indian company and was deputed to the USA. Assessee drew a salary from a USA group entity and paid tax in the USA. In the original return, the assessee declared only the Indian salary. In the revised return, the assessee declared salary drawn in India as well as from the USA and claimed foreign tax credit (FTC) under section 90, and furnished Form 67 along with the revised return. The AO disallowed the FTC claim and raised a tax demand with interest. Tribunal held that filing of Form 67 within prescribed time limit i.e. on or before due date specified under section 139(1) (prior to amendment applicable from A.Y. 2022-23) was directory in nature and assessee could not be deprived of legitimate FTC merely on account of procedural delay - Since assessee had produced necessary evidence such as payment of tax and copy of US Tax Return which substantiated that assessee had indeed paid tax in USA on foreign income offered to tax in India, assessee was to be allowed claimed FTC. **[*Ms. Brinda Ramkrishna v. ITO* ([2022] 135 Taxmann.com 358/193 ITD 840 (Bangalore-Trib) followed]**

General

Whirlpool of India Ltd. v. ACIT [2026] 185 Taxmann.com 85 (Delhi-Trib) [30-03-2026] - IT Appeal No. 1307 (Delhi) of 2022 - AY 2017-18

Where assessee claimed foreign tax credit and credit was not allowed, matter was required to be remitted to AO for verification of foreign tax credit certificates before deciding grant of credit

Assessee claimed foreign tax credit. AO did not allow foreign tax credit - It was noted that in earlier years, the Tribunal had remitted the matter to AO for verification of certificates and, in effect, giving orders, AO allowed credit after reconciliation and production of certificates. Since, on facts, the assessee was entitled to foreign tax credit, subject to verification of certificates, the matter was remanded by the Tribunal.

Unilever Industries (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-1(3)(1) [2026] 185 Taxmann.com 775 (Mumbai-Trib)[22-04-2026] - IT Appeal No. 4898 (Mum) of 2024 -AY 2020-21

Where assessee claimed foreign tax credit and furnished Form 67 with

supporting documents, such statutory claim under sections 90/91 was to be verified and allowed in accordance with law if prescribed conditions were fulfilled.

Assessee claimed foreign tax credit of about Rs. 1.04 crores in respect of taxes paid in foreign jurisdictions and furnished Form 67 along with supporting documents. The AO did not grant such credit while computing tax liability. The Tribunal held that foreign tax credit is a statutory entitlement under sections 90/91, subject to fulfilment of prescribed conditions, and where the assessee has furnished the necessary details, the claim ought to be examined and allowed in accordance with law. Thus, AO was directed to verify the claim of foreign tax credit in light of documents furnished by the assessee and grant the same in accordance with law. [Matter remanded]

Vinay Dube v. ITO [2026] 185 Taxmann.com 484 (Mumbai-Trib) [15-04-2026] - IT Appeal No.9106 (Mum.) of 2025 - AY 2023-24

Where assessee earned income in India and USA and claimed foreign tax credit, but could not furnish complete US tax return for entire relevant period, and details for remaining period became available subsequently, matter was to be restored to AO for verification of foreign income and tax paid for entire year and grant of relief as per law.

Assessee, an individual, earned income both in India and the USA. In return for income, the assessee claimed relief under sections 90 and 90A against tax paid in the USA. In order to substantiate its claim of taxes paid in the USA in respect of income earned in the USA, the assessee furnished its return of income for Calendar Year 2022, which covered the period from 01-04-2022 to 31-12-2022. However, for the balance period from 01-01-2023 to 31-03-2023, the assessee could not furnish its return of income filed in the USA. AO held that relief under section 90 had been claimed without any basis and disallowed the entire claim under section 90/90A. Tribunal noted that details of foreign income and tax paid for the balance period, i.e., from 01-01-2023 to 31-03-2023, were now available with the assessee as tax return for Calendar Year 2023 had been filed in the USA. Thus, it restored this issue to the file of AO for verification of the quantum of income and tax paid by the assessee for the entire financial year 2022-23 from the tax return filed by the assessee in the USA for Calendar Years 2022 and 2023 and directed to grant relief to the assessee under sections 90 and 90A, as per law.

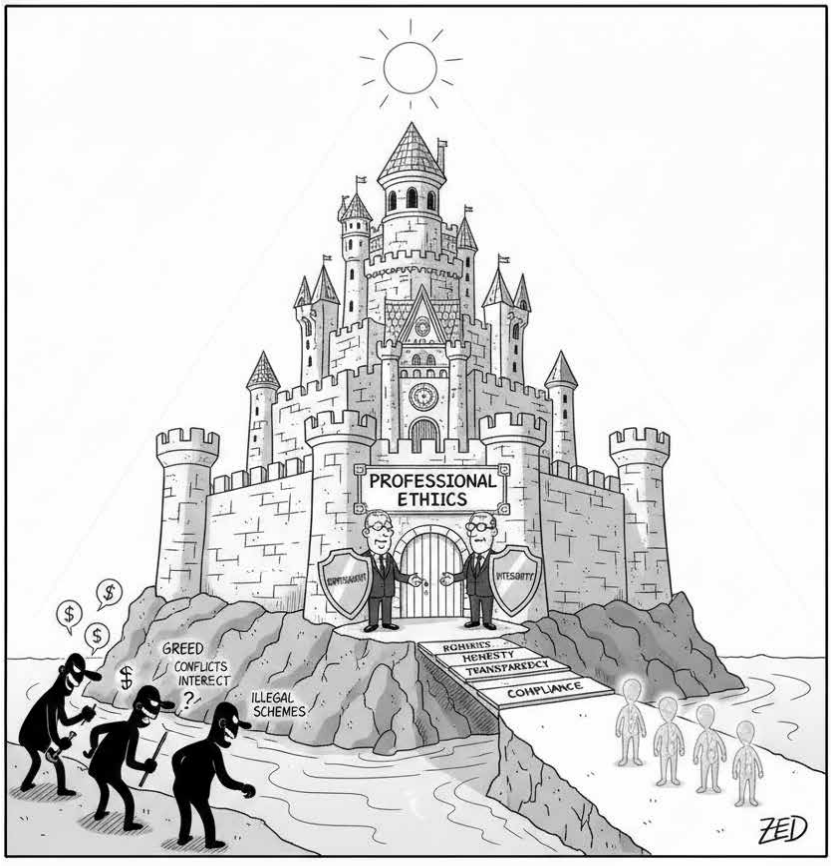
OTHERS

Reassessment – Interest on NRE Saving Account

Abhinav Jain v. Income-tax Officer [2026] 185 Taxmann.com 461 (Delhi)[13-04-2026] - W.P.(C) No. 2638 of 2023 – AY 2018-19

Where a non-resident claiming exemption on interest from NRE deposits and credit from father did not produce RBI permission or relevant documentation to establish eligibility for such account, reassessment was valid as eligibility depended on proving necessary RBI permissions.

Assessee, a non-resident individual living in Dubai, did not file an ITR for the relevant year. He maintained an NRE account with BOI and a savings account with PNB. Insight portal verification was triggered due to non-filing. AO issued section 148A(b) notice relying on NMS/Insight transactions aggregating about Rs. 9.29 crores - Assessee replied that Rs. 8.50 crores were received from his father into his NRE account and interest on NRE deposits was exempt under Section 10(4)(ii)/ Section 10(15) (fa) and had furnished bank statements, Form 26AS, his passport and UAE residence permit. AO passed an order under section 148A(d), initiating reassessment, and issued notice under section 148. The assessee filed a writ petition. The High Court held that since the assessee had not produced any RBI permission or other documentation under FEMA establishing eligibility to maintain an NRE account and claim exemption, the issue of whether necessary permissions were obtained from RBI for the assessee to open an NRE account would decide aspect of reassessment of income, and these aspects shall be looked into by the AO. Therefore, the High Court held no interference was called for with reassessment order.



THE FORTRESS OF ETHICS: PROTECTING THE PROFESSION

GST
Recent Judgments and Advance Rulings


Naresh K Sheth


Jinesh Shah

A. DECISIONS BY SUPREME COURT

TVL. Madhu Agencies v. State Tax Officer [2026] 185 taxmann.com 561 (Madras) – Madras High Court

Facts and issues involved:

Petitioner is a registered person with an aggregate turnover exceeding Rs. 5 crores for FY 2021-2022. The due date for filing the annual return, i.e., GSTR-9 for FY 2021-22, was 31.12.22. The petitioner filed the return on 13.01.2023 with a 13-day delay and paid the applicable late fee for that period. However, the petitioner failed to furnish the mandatory self-certified reconciliation statement (GSTR-9C) along with the annual return (GSTR-9) as required for registered persons with aggregate annual turnover exceeding ₹5 crore. This reconciliation statement was filed significantly later on 20.06.2025.

Consequently, the respondent issued an assessment order dated 04.12.2025 under Section 73 of the Tamil Nadu Goods and Services Tax Act, 2017, treating the date of filing GSTR-9C as the effective date of the annual return completion. The respondent levied a late fee of Rs. 84,700 for SGST and Rs. 84,700 for CGST, totalling to Rs. 1,69,400.

Petitioner's submissions:

The petitioner contended that the late fee u/s 47 of the TNGST Act is strictly applicable only for delays in filing the annual return in Form GSTR-9 and cannot be extended to cover the reconciliation statement in Form GSTR-9C. It was argued that the requirement to file a reconciliation statement is not mandatory under the primary language of Section 44 and that Section 47 does not cover violations of the Rules. The petitioner further claimed that the requirement for Form GSTR-9C only becomes mandatory via Rule 80(3) of the TNGST Rules for persons with a turnover of Rs. 5 crores and above.

Additionally, the petitioner sought the benefit of amnesty granted under Notification No. 08/25–

Central Tax, arguing that the penalty should be waived or limited. The petitioner relied upon the Kerala High Court judgment in Anishia Chandrakanth v. Superintendent, Central Tax & Central Excise, which had previously dealt with similar issues.

Respondent's submissions:

The respondent submitted that Section 44 of the Act, following its substitution in 2021, explicitly mandates that every registered person shall furnish an annual return, which may include a self-certified reconciliation statement. It was argued that Rule 80(3) of the TNGST Rules, 2017, mandates the filing of this statement along with the annual return for specific classes of dealers. The respondent maintained that Section 47 imposes a late fee for the failure to furnish a return as required under Section 44, and because Form GSTR-9C is a compulsory component for the petitioner, the annual return was not legally furnished until both GSTR-9 and GSTR-9C were filed. Therefore, the computation of the late fee until the date of filing Form GSTR-9C was justified.

Discussions by and Observations of the High Court:

The Court observed that the term return as defined in Section 2(97) includes any return prescribed or required under the Act or the rules. Analysing the language of Section 44, the Court noted that the phrase may include a self-certified reconciliation statement, effectively expanding the natural content of an annual return rather than making it optional for all. Referring to Supreme Court precedents, the Court stated that the word 'include' ordinarily adds to the natural content and that the word 'including' indicates that what follows is a part of the whole of the word preceding.

Furthermore, Rule 80(3) specifies that eligible registered persons shall also furnish a self-certified reconciliation statement... along with the annual return. The Court held that the words 'along with' in this context are mandatory and that the reconciliation statement involving audited financials only completes the annual return in Form GSTR-9. Consequently, filing Form GSTR-9 without Form GSTR-9C for a high-turnover dealer constitutes non-filing of returns as required under Section 44 of the Act.

Regarding the amnesty, the Court noted that the waiver under Notification No. 08/25-Central Tax was only available if Form GSTR-9C was filed on or before March 31, 2025; since the petitioner filed it on June 20, 2025, they were ineligible for the waiver. The Court also explicitly disagreed with the reasoning of the Kerala High Court in Anishia Chandrakanth.

Decision of the High Court:

The Court dismissed the Writ Petition and held that the levy of the late fee u/s 47 for the delayed filing of Form GSTR-9C was legally sustainable as the reconciliation statement is a mandatory part of the annual return for the petitioner.

Rollmet LLP v. Union of India [2026] 185 taxmann.com 599 (Bombay) – Bombay High Court

Facts and issues involved:

In this batch of petitions, the primary issue raised by the petitioners relates to the issuance of a single consolidated show-cause notice under Section(s) 73/74 of the CGST Act, bunding multiple financial years. It is the petitioners' contention that the same is against the mandate of Section 73(10) and 74(10) of the CGST Act, inasmuch as, according to the Petitioners, the statutory scheme requires period-wise self-assessment and a year-wise limitation, thereby rendering a composite show-cause notice without jurisdiction.

The Petitioners have contended that a coordinate Bench of this Court at Goa, in the case of *Milroc Good Earth Developers v. Union of India*, has held

that there is no provision and without jurisdiction. Per contra, the Delhi High Court has taken a different view in the case of *Mathur Polymers v. Union of India and Ambika Traders v. Additional Commissioner*. Also, the Allahabad High Court in *SA Aromatics Pvt. Ltd. v. Union of India*. In such decisions, the Division Bench of these High Courts has categorically held that a consolidated show-cause notice for various financial years can be issued, and there is no jurisdictional error on the part of the designated officer in issuing such a show-cause notice.

Petitioner's submissions:

Consolidated show-cause notices cannot be issued inasmuch as Sections 73(1)(3) and 74(1)(3) and Sections 73(10) and 74(10) are required to be conjointly read to mean that each financial year is a separate financial year and the return as defined in Section 2(97) of the CGST Act must be a return for every financial year, along with the audited financial statement.

The term 'tax period' as defined in Section 2(106) of the CGST Act also contemplates furnishing of annual returns, which contemplates the provision for an 'annual return'.

Section 73(10) and 74(10) of the CGST Act provide for a period of limitation in passing orders, being of 3 years and 5 years, respectively. Hence, once such a limitation is prescribed, show-cause notices cannot be issued by clubbing multiple years. Such a position is accepted by this Court in the case of *Milroc (supra)* and other decisions.

The decision of the coordinate Bench would govern the field and would be binding, in the context of the principle of uniformity and certainty in law. Hence, this Court is bound to follow the decision rendered on this issue in the case of *Milroc (supra)* and thereafter followed in *Paras Stones (supra)* and *Rite Water Solutions (supra).*

The scheme of the GST Law and specifically the CGST Act, 2017, does not contemplate the issuance of a single consolidated show cause notice for multiple years. The Act does not contemplate assessment beyond the financial year; hence, once the Act mandates issuance of notice in a particular manner, it has to be only in such manner and in no other way. Therefore, the issuance of a consolidated show cause notice for multiple financial years was not justified.

Respondent's submissions:

The issuance of a consolidated show-cause notice is firmly grounded in the legal provisions, as the limitation period is prescribed for each financial year. The consolidation of proceedings does not operate to extend or alter the limitation period prescribed for each individual year. Each financial year is treated as a separate and distinct period for the purposes of limitation, and even in such cases, the notices/orders have been issued within the prescribed limitation.

The issuance of a composite show-cause notice does not in any way breach any of the provisions of the CGST Act or in any manner prejudice the rights of the assessee. A consolidated show-cause notice, when issued, does not disturb/override the statutory timeline set for each financial year, as the limitation period is reckoned separately and strictly adhered to in respect of each of the years.

On a plain and conjoint reading of Section 73(1) and Section 73(3), as also Section 74(1) and Section 74(3) of the CGST Act, it is clear that the Statute does not prescribe any restriction/limitation on issuing a composite/consolidated show-cause notice covering multiple periods under assessment if they are otherwise within the statutory framework.

The transactions leading to the issuance of a composite/consolidated show cause notice are usually a maze of transactions, prima facie interconnected with each other, spread over a period of time.

The judgment of the Division Bench in the case of *Milroc (supra)* is per incuriam and sub-silentio, considering that the said judgment, according to the Respondents, does not give any reason for taking a view that a show-cause notice issued under the correct provisions of Sections 73 and

74 of the CGST Act for different tax periods is a jurisdictional issue.

The view taken by the Division Bench in Milroc (supra) is on the reliance on the judgment of the Madras High Court in the case of R.A & Co. (supra), which inter alia has relied upon the judgment of the Supreme Court in *State of Jammu and Kashmir v. Caltex India*. The Supreme Court, in such a case, upheld the assessment order, with the rider that part of the assessment order for a certain tax period, which is barred by law, would not make the entire assessment order invalid in law.

Discussions by and Observations of the High Court:

In the context of the GST law, which is evolving and considering the nature in which it operates, and its legal characteristics, in our opinion, not only on first principles, but also on the plain application of law and on the principles on which GST law is founded, there ought not to be any embargo on the department to issue a consolidated show cause notice covering different periods.

On a plain reading of the provisions, it is difficult to accept that the intention of the legislature in providing for sub-section (1) of Section 73/74 was to confine the authority of the proper officer to issue a show cause notice not for the different periods but for a specific period for which one return could be filed.

Sub-section (3) specifically uses the word 'for any period under sub-section (1)'. Further, compounded by using the words 'such periods other than those covered under sub-section (1)', it gives credence to the respondents' contention of it being permissible for the proper officer to issue a notice for different periods under sub-section (1), as permissible under sub-section (3) and (4).

Thus, to read the provision in the manner the petitioners would suggest, that there would be no authority with the proper officer to issue a show cause notice by clubbing of different periods would amount to reading something in the provisions which the legislature has avoided to provide, and in fact would amount to re-writing of the provision, which is neither permissible for the assessee to canvass nor permissible for the Court to accept.

There is no legislative indication that sub-section (10) would restrict the operation of sub-section (1). A limitation to pass any order cannot be a limitation on the issuance of a show cause notice. The limitation for passing an order is not the same as the issuance of a show-cause notice. The two are independent statutory concepts. Such statutory concepts are quite compartmentalized.

Although the Court would be bound by the decision of the coordinate bench in *Milroc (supra)*, there are significant legal issues as raised by the Respondent-Department, including reliance on the decisions of the Supreme Court, which, in the Court's opinion, deserve due consideration by a larger bench.

The observations of the Karnataka High Court, inter alia, in paragraph 8.11 of the decision *Pramur Homes and Shelters (supra)*, as relied on behalf of the petitioners, in the court's respectful opinion, for the reasons as discussed hereinabove, appear not to be in consonance with the legislative scheme of Sections 73 and 74 of the CGST Act.

Decision of the High Court:

In light of the above discussion, the following questions of law need consideration by the Larger Bench:

1) Whether the operation of sub-section (1) of Section 73/74 of the CGST Act, read with the provisions of sub-section (3), is in any manner controlled by the provisions of sub-section (10), so as to create an embargo on the department to issue a consolidated show cause notice for different years.

2) Whether the provisions of sub-section (10) of Section 73/74 of the CGST Act per se prohibit the issuance of a single consolidated show

cause notice for multiple financial years/tax periods?

3) What is the effect of Section 160 of the CGST Act on the proceedings initiated by the proper officer under Section(s) 73/74 of the CGST Act by issuance of a consolidated show cause notice for different periods?

4) Whether the decision of the Division Bench in Milroc Good Earth Developers (supra), when it holds that the proper officer lacks authority to club various financial years/tax periods, in issuing a single consolidated show cause notice under Section 73(1) & (3)/74(1) & (3) of the CGST Act lays down the correct position in law?

5) In terms of Article 141 of the Constitution of India, what is the legal position as brought about in the order of the Supreme Court in the case of Mathur Polymers (supra)?.

The proceedings, accordingly, be placed by the Registry before the Hon'ble the Chief Justice for the constitution of a Larger Bench for a decision on the aforesaid questions of law. In all matters where interim orders have been passed, such orders shall continue till the Larger Bench decides the issues.

B. DECISIONS BY GST APPELLATE TRIBUNAL ('GSTAT')

DG Anti Profiteering v. Sobha Ltd. [2026] 185 taxmann.com 198 – GSTAT, New Delhi Bench

Facts and issues involved:

The proceedings originated from an application filed by Shri Ajesh Kumar and Mrs. Savita Ahluwalia alleging that M/s Sobha Limited (the Respondent) failed to pass on the benefit of ITC on the introduction of GST w.e.f. 01.07.2017 through a commensurate reduction in the prices of a duplex villa in the project 'International City' located in Gurugram. The complainants sought allotment on 17.06.2019 and subsequently entered into a Builder and Buyer Agreement (BBA) on 08.07.2019. The Director General of Anti-Profiteering (DGAP) investigated and submitted a report dated 21.08.2025, which revealed that the ratio of credit availed to purchase value was 12.26% during the pre-GST regime and declined to 11.02% subsequent to the introduction of GST. This resulted in a difference of -1.24%, leading the DGAP to conclude that no incremental benefit accrued to the respondent and thus no contravention of Section 171 of the CGST Act had occurred.

A notice was issued to the complainants inviting their objections, if any, to the DGAP report dated 21.08.2025. However, instead of filing objections to the said report, the Complainants filed an application u/s 151 of the Code of Civil Procedure, 1908 ('CPC'), seeking a direction to the DGAP to furnish complete records submitted by the respondent during the course of investigation. Thereafter, notice was issued to the Respondent to participate in the proceedings.

Respondent's submissions:

The Complainants applied for the allotment of Duplex Villa No. E-61A and executed a Builder Buyer Agreement (BBA) dated 08.07.2019, thereby establishing a contractual relationship. The agreed price factored post-GST ITC benefits, which were not available in the pre-GST regime, and was accepted by the Complainants.

No construction had commenced at the time of execution of the BBA, and it began thereafter only. Entire consideration was paid post-GST, and the Occupation Certificate was issued on 26.02.2024. Hence, complainants have no locus to object to the DGAP report. Reliance was placed on the judgment of the Hon'ble Delhi High Court in *Reckitt Benckiser India Pvt. Ltd. v. Union of India.*

Complainant's submissions:

The preliminary objections are misconceived and based on an incorrect interpretation of the law. The property was an under-construction unit with stage-linked payments and cannot be treated as a constructed property.

The respondent has misinterpreted the Delhi High Court judgment. DGAP did not dispute the nature of the construction. The grievance relates to the non-passing of the ITC benefit, which has been misappropriated by the Respondent.

The case laws relied upon by the Respondent are distinguishable on the facts. Execution of the agreement in the post-GST period does not negate the applicability of Section 171; the burden to prove passing of ITC lies on the Respondent. Passing of the ITC benefit is a matter of evidence and cannot be dismissed at a preliminary stage.

Discussions by and Observations of GSTAT:

The foundation of the arguments on behalf of the Respondent is based upon the Judgement of the Hon'ble High Court of Delhi in Reckitt Benckiser (supra). In Paragraph 128 of that decision, the Hon'ble Court has explicitly expressed that there is no dispute with regard to the methodology to be adopted for the computation of profiteering in construction services. Clause (d) of said paragraph addresses the situation when a flat is constructed in the post-GST period and purchased after the construction is completed by making an upfront payment of the full price. The expression 'the flat is constructed in the post-GST period' by no means implies that the flat was already constructed or it was yet to be constructed. Similarly, the term 'after making upfront payment of the full price' cannot be interpreted to mean that the entire payment should have been made in one go (in a single lump sum).

Ordinarily, when a builder launches a new project, the proposed buyer opts for a 'construction-linked plan' to facilitate ease of payment and to maintain their financial equilibrium. As the construction of the flat progresses, in accordance with the plan and BBA, the builder raises demands for subsequent instalments. Such instalments are paid by the buyer from the loan amount. Suffice to say that the expressions used in clause (d) of paragraph 128 of the Judgement do not mean that.

What is crucial is that the entire spectrum of activities from inception to completion must have taken place during the post-GST period. In the present case, it is an admitted position that the booking of the unit, its allotment, execution of the agreement, the entire construction activities, as well as the receipt of payments made by the complainants, all transpired in the post-GST era. The price of the unit was determined after factoring in the benefit of ITC, which became available to the Respondent in the post-GST regime and was not admissible under the pre-GST regime, and based on prevailing rates applicable during the GST regime. The Complainants, having accepted the price so fixed, proceeded to execute the BBA on 08.07.2019, without objection.

Based upon the aforesaid uncontroverted facts, the case of the Respondent is fully covered by the findings given by the Hon'ble High Court of Delhi in paragraph 128(d) of the judgment passed in Reckitt Benckiser (supra). Thus, the Complainants have no locus standi and legal rights to contest the DGAP report.

The DGAP has rightly concluded that the ratio of credit availed to purchase value was 12.26% in the pre-GST era, which declined to 11.02% in the post-GST period. The reduction of 1.24% implies that no benefit accrued to the Respondent, and hence, the question of passing on any benefit to the recipient would not arise.

Decision of GSTAT:

The Respondent has not contravened the provision of Section 171 of the CGST Act, read with Rule 129(6) of the CGST Rules. The DGAP report dated 21.08.2025 deserves to be accepted. The preliminary objections made by the respondent are accepted.

C. RULINGS BY ADVANCE RULING AUTHORITY

Cadila Pharmaceuticals [2026] 185 taxmann.com 300 – Gujarat AAR

FACTS AND ISSUES INVOLVED:

Applicant is inter alia engaged in the manufacture and supply of Active Pharmaceutical Ingredients (API). In order to enhance their operational efficiency and cost optimization, they are setting up a Solvent Recovery Plant (SRP) for recycling solvents and a Mobile Effluent Treatment Plant (METP) for treatment and disposal of wastewater used in various stages of API production. In order to carry out the construction work of the SRP & METP plant, the Applicant has issued various Purchase Orders to three suppliers. This equipment cannot be placed directly on the land or its surface without adequate structures to support it. Therefore, the aforementioned equipment is installed and supported on Reinforced Cement Concrete (RCC) foundation coupled with steel structural support. The suppliers have issued tax invoices to the applicant from time to time to recover the consideration for the construction of the foundation and structural support for the various equipment installed in the SRP and METP plant within the factory premises of the Applicant and have discharged GST at the rate of 18%. The Applicant has availed the proportionate ITC.

Applicant has sought a ruling as to whether the applicant is eligible to avail ITC on input services used for the construction of foundation and structural support for plant and machinery installed within the factory of the Applicant, for recovery of solvents and treatment of wastewater used in the manufacturing of Active Pharmaceutical Ingredients, in terms of Section 17(5)(c) of the CGST Act, 2017?

APPLICANT'S SUBMISSIONS:

The inputs and input services procured by the applicant for the construction of foundation and structural support for various equipment at the factory of the applicant are in the course or furtherance of business.

Various equipment that is to be set up in the SRP plant and METP plant will qualify as apparatus. It can also be said to be 'machinery' as the complete SRP and METP plant is a combination of various things/components, and the harmonious working of all such components results in the desired end of manufacturing APIs.

As per CBIC Circular No. 219/13/2024- GST dated 26.06.2024, an inference can be drawn that since various equipment installed are essential and necessary for SRP and METP plant, the equipment installed for the said purpose will be covered under the definition of 'plant & machinery'.

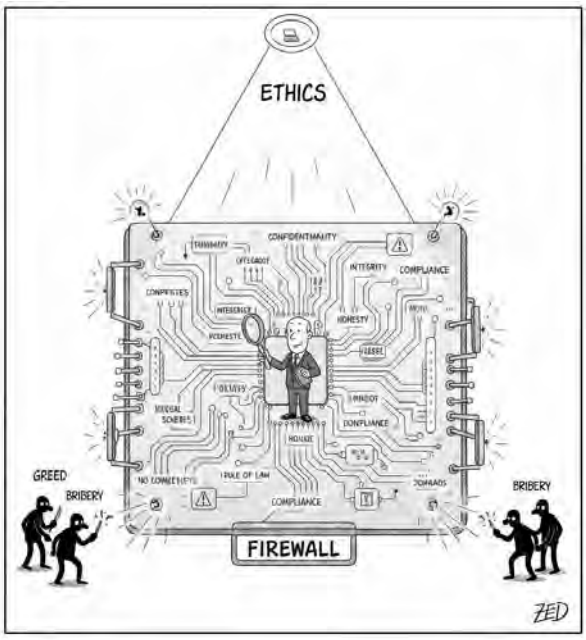
The expression plant and machinery under the Explanation to Section 17 of the CGST Act includes the foundation or structural support for such plant and machinery. Therefore, all such foundational works undertaken for the installation of plant and machinery shall be deemed to be part of plant and machinery. ITC has been availed solely in relation to the foundational and structural support provided to plant and machinery, and no ITC has been claimed in respect of civil works such as brickwork, plastering, flooring, or any other construction activity not directly attributable to the installation or support of equipment.

All the components of the equipment are capable of being dismantled and sold without being destroyed and embedded into the earth because of operational efficiency; it is not an immovable property. Reliance was placed on the ruling issued by the Appellate Authority for Advance Rulings, Gujarat, in the case of *IKEI Industries Ltd.* and on the decision of *Sirpur Paper Mills Ltd. v. CCE*.

Discussion by and Observations of AAR:

As per Section 16 of the Act, ibid, a registered person is entitled to take credit of ITC charged on any supply of goods or services or both to him, which are used or intended to be used in the course or furtherance of his business. Since the SRP and METP are used for enhancing the operational efficiency and cost optimisation in the manufacture of API, and the foundations and structural support are used for the various equipment used in SRP and METP, the input services used in the construction of foundations and structural support are used in the course or furtherance of the applicant's business.

Section 17(5)(c) of the Act, ibid, restricts the ITC of works contract services when supplied for the construction of an immovable property. However, if the said works contract services are used in the construction of plant and machinery, then the ITC of the same can be availed by the service recipient. As per the explanation, 'plant and machinery' means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both. The definition also includes foundation and structural support. The various equipment that is set up in the SRP and METP would therefore qualify as apparatus/machinery that is used to get the desired result. Since the equipment qualifies as an apparatus, they, as well as their foundation and structural support, would fall under the ambit of 'plant and machinery in view of the Explanation appended to Section 17.



PROFESSIONAL ETHICS: THE UNBREAKABLE CODE

The Chartered Engineer has summarised that the majority of machinery is mounted on RCC and steel frameworks, and specialized civil structures are essential to manage dead loads, torque, vibrations, dynamic loads, etc. These structures were made only to support the machines. Thus, when ITC on ducts and manholes used in a network of optical fibre cables (OFCs) has been allowed, ITC is also available on the foundation and structural supports. Moreover, they are also specifically included in the definition of 'plant and machinery' in the Explanation to section 17 of the CGST Act.

Further, Gujarat Appellate Authority for Advance Ruling in the case of KEI Industries Ltd. (supra), while holding that ITC on foundation and structural support relating to plant and machinery is allowed, has held that 'other civil structures' means civil structures other than foundation and structural support to plant and machinery.

Ruling of AAR:

Applicant is eligible to avail ITC on input services used for the construction of foundation and structural support for plant and machinery installed within the factory of the Applicant, for recovery of solvents and treatment of wastewater used in the manufacturing of Active Pharmaceutical Ingredients, in terms of Section 17(5)(c) of the CGST Act, 2017.

Service Tax



Rajiv Luthia



Keval Shah

Tamil Nadu Transmission Corporation Ltd. v. Commissioner of GST & Central Excise, Coimbatore. (2026) 40 Centax 352 (Tri.-Mad)

Facts of the Case:

The appellant is a State Transmission Utility (STU) 100% owned by the Government of Tamil Nadu, exclusively engaged in the transmission of electricity. Between July 2012 and March 2014, the appellant received various services, including works contracts for the erection and dismantling of transmission towers and substations, manpower supply for handling materials and safeguarding stores, and rent-a-cab services for official use. The Department alleged that the appellant was liable to pay service tax on these services under the reverse charge mechanism. Despite the appellant eventually registering and paying the tax in 2014, a show cause notice (SCN) was issued in July 2015, invoking the extended five-year period of limitation, proposing recovery of tax with interest and penalties.

Arguments by Appellant:

The appellant argued that as an STU, its core activity of transmission is exempt under the Negative List (Section 66D(k)). They contended that all essential services "for" or "relating to" this exempt activity, including works contracts and manpower, should also be exempt.

On the issue of limitation, they argued that as a government entity, there was no suppression of facts or mala fide intent to evade tax, making the invocation of the extended period illegal.

Arguments by Respondent:

The Revenue contended that while transmission charges are exempt, services which are used to provide that main service are not automatically exempt under Section 66F(1).

It was also argued that works contracts are "declared services" under Section 66E(h) and are taxable.

The Revenue also maintained that the extended limitation was valid because the appellant failed to register and pay tax until detected, and a "bona fide belief" cannot be a "blind belief".

Decision by the Tribunal:

The Tribunal ruled that the works contract and manpower services were indispensable and integrally connected to the transmission of electricity, thereby qualifying for the Negative List exemption based on a "dependence test".

While the rent-a-cab services were deemed taxable as they lacked a direct nexus to transmission.

The Tribunal found the entire SCN was barred by limitation. It held that mere non-payment or failure to register by a government entity, especially when involving complex legal interpretations, does not constitute willful suppression or fraud. The order was set aside in favor of the appellant.

Bharathi Cement Corporation Pvt. Ltd. v. Commissioner of Central Tax, Guntur. (2026) 40 Centax 277 (Tri.-Hyd)

Facts of the Case:

The appellant had a management consultancy agreement with VICAT S.A., France. Two expatriates were deputed to India to manage the appellant's operations under individual employment agreements.

The appellant paid a portion of their salary directly in India and reimbursed the remaining balance (including French social security contributions) to VICAT S.A.. The Department sought to tax these reimbursements under the category of "Manpower Recruitment or Supply Agency Service" from December 2010 to June 2013.

Arguments by Appellant:

The appellant argued that a clear employer-employee relationship existed because they exercised full control and supervision over the expats, who worked solely for the Indian operations.

They distinguished their case from the Northern Operating System decision of the Supreme Court, noting that no formal secondment agreement existed with the foreign entity.

Furthermore, the global salary was treated as "salary" under the Indian Income Tax Act, with TDS fully paid.

Arguments by Respondent:

The Revenue argued that the expats were engaged through the holding company (VICAT S.A.), making it a service arrangement rather than pure employment. They contended that the payments to VICAT S.A. were for the provision of personnel and could not be artificially bifurcated into salary and reimbursements.

They also argued that such reimbursable expenses are intrinsically linked to taxable services and must be included in the taxable value.

Decision by the Tribunal:

The Tribunal held that in the absence of a specific secondment agreement and given the appellant's direct control, the relationship was one of employer-employee.

Consequently, no service tax was leviable post-July 2012 (as employment contracts are excluded from the definition of service) or for the period prior (as the activities were in the realm of "self-service").

The Tribunal specifically noted that the Northern Operating System judgment could not be applied mechanically as the factual matrices differed significantly.

Frontier Construction Company v. Union of India. (2026) 41 Centax 363 (Gau.).

Facts of the Case:

The petitioner was engaged in construction works for the Nagaland Legislative Assembly and a government school building. The Department issued a demand for service tax (October 2014 to June 2017) based solely on data from Income

Tax Form 26AS, alleging that the petitioner had suppressed taxable turnover. The Department invoked the extended limitation period of five years to issue the show-cause notice.

Arguments by Appellant:

The petitioner argued that their services were exempt under the Mega Exemption Notification No. 25/2012-ST, as they involved civil structures for government use other than commerce or business.

They contended that Form 26AS data is not a valid sole basis for tax liability because it does not identify the nature of the service rendered.

They also challenged the extended limitation, noting that their ST-3 returns were already on record and there was no evidence of wilful suppression.

Arguments by Respondent:

The Revenue raised a preliminary objection regarding the maintainability of the writ petition, arguing that the petitioner should have utilized the statutory alternative remedy of an appeal. They asserted that the GST/Service Tax law is a complete code, and factual disputes should be settled by the appellate authority.

Decision by the High Court:

- The High Court allowed the petition, ruling that a demand based solely on Form 26AS without independent verification of whether the services were taxable or exempt is unsustainable.
- The Court held that the invocation of the extended limitation period was invalid because the Adjudicating Authority failed to record a conclusive finding of fraud, collusion, or intent to evade.
- The Court exercised its writ jurisdiction to quash the order, stating that the authority had assumed jurisdiction (via the extended period) that was not legally vested in it.



Case Law Update



Makarand Joshi

IBC

In the matter of Era Infra Engineering Ltd - Appellant / Holding Company v. Alok Kumar Agarwal – (IRP) and Ors. (Respondents) at the National Company Law Appellate Tribunal dated 30 January, 2026

Facts of the Case:

Haridwar Highways Project Limited (HHPL), the Borrower, was formed as a special company (SPV) to carry out a highway project for the National Highways Authority of India (NHAI).

Era Infrastructure (India) Limited (EIIL), the Guarantor, acted as the Principal Borrower and also gave a Corporate Guarantee for the loans.

Era Infrastructure Engineering Limited (EIEL), the Holding Company, is the parent company that owns the others and provides "shortfall undertakings" (promises to cover unpaid gaps) to the Lenders.

The Lender (a group of banks led by Axis Bank) provided three major loans totalling over ₹1,000 Crore. In June 2016, the Guarantor signed a formal agreement in favor of the Bank of India to back the loans (the Guarantee)

The Borrower failed to pay, and the account was declared a Non-Performing Asset (NPA). In April 2019, the Lender issued a formal demand for payment.

The Holding Company entered its own insolvency process in May 2018. The Lenders joined this process, filing claims based on the "shortfall" promises the Holding Company had made. In June 2024, a Resolution Plan was approved for the Holding Company. This plan included a payout to the Lenders and an agreement to share future money won in court (arbitral proceeds).

In March 2024, the original banks sold the remaining debt to NARCL (the new Lender). Despite the Holding Company's plan, the Lender (NARCL) filed new cases to start insolvency proceedings against the Borrower and the Guarantor. The Holding Company argued that the debt was already settled by their own recovery plan.

The Holding Company filed petitions to "intervene" to stop the Lender.

NCLT rejected the Holding Company's request and admitted the insolvency cases against the

Borrower and Guarantor. The NCLT ruled that:

- The Borrower and Guarantor are separate companies from the Holding Company.
- The Lender still has the right to chase the secured collateral held by the Borrower.

The Holding Company has now appealed to the National Company Law Appellate Tribunal (NCLAT). They argued that the Lender is acting unfairly because the debt was already "resolved" in the parent company's plan.

Arguments of the Appellant (The Holding Company - EIEL):

The Lenders submitted their claims during the Holding Company's insolvency process, and those claims were "resolved" in the approved plan; the debt no longer exists.

Under Section 31 of the Insolvency and Bankruptcy Code (IBC), an approved Resolution Plan is binding on everyone, including the Lenders. Therefore, the Lender cannot "re-open" the debt by suing the Borrower or Guarantor.

The Holding Company claims that the purpose of the law is to provide a fresh start. Allowing the Lender to continue chasing the same debt through the Borrower frustrates the implementation of the already approved plan.

They point to the September 2024 agreement to share arbitration winnings as proof that a new arrangement was made, which replaced the old debt.

They have a direct interest in the case and should have been allowed to intervene at the NCLT to protect the integrity of their own Resolution Plan.

Arguments of the Respondent (The Lender – NARCL and the IRP):

The Borrower, the Guarantor, and the Holding Company are distinct legal persons. Settling a claim with the Holding Company does not automatically cancel the obligations of the Borrower.

The money received from the Holding Company's plan was only for an unsecured "shortfall promise." This does not impact their right to go after the secured assets (collateral) held by the Borrower.

A specific affidavit filed during the Holding Company's case, which expressly stated that the Lenders kept their right to proceed against the Borrower and Guarantor for the remaining balance.

They contend that the agreement to share future arbitration proceeds was a private "side arrangement" and was never meant to act as a full satisfaction or waiver of the multi-crore loan.

A shareholder or a Holding Company has no legal right to block the insolvency of another company, even if it is a subsidiary, especially when a clear default on a loan has occurred.

Held:

The NCLAT held that the approval of the resolution plan in the CIRP of the holding company satisfied only the unsecured debt of lenders against the holding company and did not extinguish the secured debt owed by SPV to lenders under separate term loan agreements, nor did it affect the rights of financial creditors to proceed against the principal borrower and corporate guarantor u/s 7. The holding company`s appeal was dismissed. NCLAT upheld the NCLT`s decision to continue proceedings against the SPV for debt recovery.

Companies Act 2013

In the matter of Satinder Singh Bhasin - Petitioner- vs Govt of NCT of Delhi, Supreme Court order dated 2nd April 2026 (Writ Petition)

Facts of the case:

- Mr. Satinder Singh Bhasin (hereinafter called the petitioner) was a director of Bhasin Infotech and Infrastructure Pvt. Ltd. (BIIPL), which was engaged in the development of the 'Grand Venice' project.

- Whereas, the respondents herein were primarily allottees/homebuyers and regulatory authorities, who had initiated proceedings against the petitioner alleging mismanagement and financial irregularities.
- The dispute originated, when allottees/home buyers filed multiple FIRs registered in the states of New Delhi and Uttar Pradesh alleging non-delivery of their units and siphoning off their funds and impropriety in allotment of land with the collusion of state officials, pursuant to which the petitioner approached the Supreme Court through a writ petition for consolidation of all FIRs into single mother FIR and to be tried by one single agency and grant bail to the petitioner.
- The bail was granted to the petitioner subject to certain conditions, including the deposit of ₹50 crores.
- The said deposit was to be deposited by the petitioner in his personal capacity. However, it was found that the petitioner did not deposit the bail amount from his personal funds but instead arranged the amount through BIIPL and other group entities, treating it as a loan or financial arrangement.
- The condition requiring a deposit as a prerequisite for the grant of bail was imposed upon the petitioner in his individual capacity, but the same was arranged through BIIPL and its related entities, i.e., an amount of Rs. 24 crores was advanced by different companies at the request of the petitioner, and the remaining 26 crores was advanced by BIIPL.

The key questions were:

- Whether a condition imposed by the Supreme Court requiring a bail deposit from a petitioner in their individual capacity can be legally satisfied by borrowing funds from the petitioner's own corporate entities
- Whether such a deposit, if sourced in violation of the Companies Act, 2013 (The Act), can be treated as a valid compliance with the bail order.

Petitioner's arguments:

The petitioner argued that

- The deposit of ₹50 crores was made bona fide to comply with the bail condition imposed by the Court, and no objection was raised at the time of such deposit of funds before the trial Court.
- The amount was arranged through a combination of personal sources and group entities, and partly through the company, and therefore did not constitute an impermissible transaction.
- Even if there was any irregularity under the Act, the same would only lead to statutory consequences under that Act and would not invalidate the deposit or the bail condition compliance.
- It was submitted that the deposit was made by BIIPL for its director, the petitioner. In the books of accounts, the transfer has been shown as a surety deposit. Pertinently, there is no embargo under the Companies Act, 2013, for such a deposit to be made.
- In case there is an embargo, that would not vitiate the deposit but would be a reason for consequences in terms of the Companies Act, 2013.
- Moreover, the petitioner and BIIPL have acted bona fide to ensure the petitioner is enlarged on bail so as to enable the settlement of grievances of the respondents.
- It was submitted that the account statements reflected that for the purposes of Rs. 50 crores, an amount of Rs. 24 crores was advanced by different companies at the request of the petitioner, and the remaining 26 crores was advanced by BIIPL. Therefore, there has been no contradiction in the stand of the petitioner. As such, the amount of 24 crores has been subsequently returned by BIIPL.

Respondent's arguments:

Respondents argued that -

- Petitioner was required to deposit the bail amount in his personal capacity. However, the petitioner has used the funds of BIIPL and other related concerns to secure bail.
- The transaction clearly amounted to a loan or financial assistance to a director, which is regulated under Section 185, and such a loan could not have been granted without passing a special resolution and fulfilling statutory conditions.
- In the context of the violation of section 185, it was highlighted that-
  (a) No board approval or shareholder approval under section 185 was obtained;
  (b) The transaction had no connection with the company's business activities;
  (c) The petitioner derived a personal benefit at the cost of the company.
- The arrangement lacked any commercial justification or financial safeguards, such as security or repayment structure, indicating the absence of bona fide intent.

Court's decision:

- The court is inclined to agree with the submissions advanced by the respondents.
- The condition requiring a deposit as a prerequisite for the grant of bail was imposed upon the petitioner in his individual capacity. This condition required bona fide, if not strict, compliance.
- An alarming aspect is that no board resolution has been passed by BIIPL before disbursal of the amount to secure his bail. Similar is the case for amounts received from different entities by BIIPL for this purpose.
- On a plain reading of the above Section 185, it is evident that a company cannot directly or indirectly give a loan to its director without passing a special resolution in a general meeting or unless the funds correlate to the principal business activities of the company.
- In the present case, it cannot be said that the loan to secure bail for the petitioner was connected to the company's principal business activities by any stretch of imagination.
- Therefore, the deposit of the amount through the purported loan taken by the petitioner from BIIPL, in the absence of any documentary approval or compliance with the statutory requirements of Section 185 of the Act, cannot be sustained.
- An alarming aspect is that no board resolution has been passed by BIIPL before disbursal of the amount to secure his bail.
- The judge also noticed that not a single rupee has been invested from the personal funds of the petitioner.
- In reality, he has availed an interest-free commercial benefit from BIIPL, which does not make any sense for the Company.
- The absence of even basic safeguards, such as pledging of shares or provision of security, is representative of how these transactions lack any bona fide/lawful financial structure.
- Moreover, the submission on Rs. 24 crores being returned to the other entities holds no water, when it is established at the threshold that taking the purported loan itself violated the condition imposed by this Court.
- If the petitioner had bona fide intention, an appropriate application ought to have been made before this Court seeking leave to make such an arrangement.
- In the absence thereof, we find no reason to accept the submissions advanced by the petitioner.
- Therefore, in this view of the matter, the court found this issue to be against the petitioner and in favor of the respondents.

FEMA
Updates and Analysis



Hardik Mehta



Tanvi Vora

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

A. Update through Circulars and Notifications

Memorandum of Instructions governing money changing activities – Location of Forex Counters in International Airports in India

Residents (along with non-residents) are now allowed to exchange Indian Rupee notes at foreign exchange counters at the departure halls in the international airports established in the Duty-Free Area or Security Hold Area beyond the Immigration or Customs desk. The Master Direction on Money Changing Activities has been amended accordingly.

The following wording has been inserted under Section II – Guidelines for Grant of Authorisation for Additional Branches, Para 5(b):

"However, the Foreign Exchange Counters established in the Duty-Free Area or Security Hold Area beyond the Immigration or Customs desk shall allow residents (along with non-residents) to exchange Indian Rupee notes. The limits of carrying Indian Rupees by residents and non-residents shall be as per the para given below at (c) and (d)"

A.P. (DIR Series) Circular No. 4 dated 2nd April 2026

(Comments: RBI now permits expanded access to forex counters for both residents and non-residents. Forex counters located in duty-free area or security hold area are now permitted to exchange Indian rupee notes. Previously, this was permitted only in post-immigration / customs areas. The monetary limit for exchange of Indian notes by Residents and Non-Residents who are not citizens of Pakistan or Bangladesh or not travelling to Pakistan / Bangladesh is an amount not exceeding Rs. 25,000)

Investments in debt instruments by Non-Resident Indians (NRIs) – Amendment in Master Direction - Reserve Bank of India (Non-resident Investment in Debt Instruments) Directions, 2025

RBI has consolidated its directives regarding NRI investments in debt instruments and the usage of

these instruments as collateral for exchange-traded derivatives under Part 5(B) of Master Direction - Reserve Bank of India (Non-resident Investment in Debt Instruments) Directions, 2025

Through the Master Direction – Reserve Bank of India (Non-resident Investment in Debt Instruments) Directions, 2025, amended on April 10, 2026, the RBI has compiled and streamlined various formerly scattered instructions into a single framework.

Some of the other noteworthy amendments include:

- FPIs have been permitted to offer Government securities and non-convertible debentures/ bonds issued by an Indian company acquired in terms of these Directions as collateral to recognized Stock Exchanges in India for their transactions in exchange-traded derivative contracts.
- The mode of payment for investment in eligible instruments by all non-residents and remittance/ credit of sale/maturity proceeds thereof shall be in terms of paragraphs 2 and 4 of Schedule 1 to the Foreign Exchange Management (Debt Instruments) Regulations, 2019.

A.P. (DIR Series) Circular No. 6 dated 10th April 2026

(Comments: The amendment brings various previously scattered instructions regarding Non-Resident Indian (NRI) investments and Foreign Portfolio Investor (FPI) collateral usage into a single, cohesive framework.)

Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2026

The Government of India - Ministry of Finance has amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, to include the amendments made to the Consolidated FDI Policy of 2020 vide Press Note No. 1 (2026 Series) issued by the Department for Promotion of Industry and Internal Trade. More specifically, the sector limits and conditions on the Insurance Sector.

S.O. 2186(E) dated 2nd May 2026 - F. No. 1/5/ EM/2019

(Comments: The timely amendment to the NDI Rules brings the FDI Policy and NDI Rules on the same footing. Our detailed analysis of the amendment can be accessed in The Chamber's Journal, March 2026 Issue)

B. Amendment to FAQs

The FAQs on International Trade Settlement under FEMA, 1999 have been updated by the RBI on 16th April 2026.

The changes are summarised as follows:

- Old FAQ dealing with difficulty in cross-border payments with specific countries has been removed
- Repatriability of balances from the SRVA account has been simplified, i.e., the condition relating to examining the underlying transaction has been removed.
- Different types of investment where surplus can be invested have been amended to include that surplus balances in SRVA can also be invested in non-convertible debentures/bonds and commercial papers issued by an Indian company in terms of guidelines and limits prescribed vide AP DIR Circular No. 13 dated 3rd October 2025.
- New FAQ inserted wherein it is clarified that the details of SRVA can be found on FEDAI's website under the link 'SRVA Directory'.
- New FAQ inserted to clarify that Person Resident Outside India (PROI) may settle bona fide transactions with other PROI's using balances in repatriable INR accounts, including SRVAs & Special Non-Resident Rupee Accounts (SNRR).
- New FAQ inserted wherein it is clarified that SRVAs can be funded by inward remittances as well as transfers from other repatriable INR accounts like RVA and SNRR.

THE CHAMBER NEWS



Mehul Sheth



Ankit Sanghavi

Important events and happenings that took place online/ physical between April 1, 2026 to April 30, 2026 are being reported as under:

ADMISSION OF NEW MEMBERS

The details of new members who were admitted in the Managing Council Meeting held on April 17, 2026 are as under:

Type of Memberships	No. of Members
Life Member	7
Ordinary Member	46
Student Member	6
Associate	0
Total	59

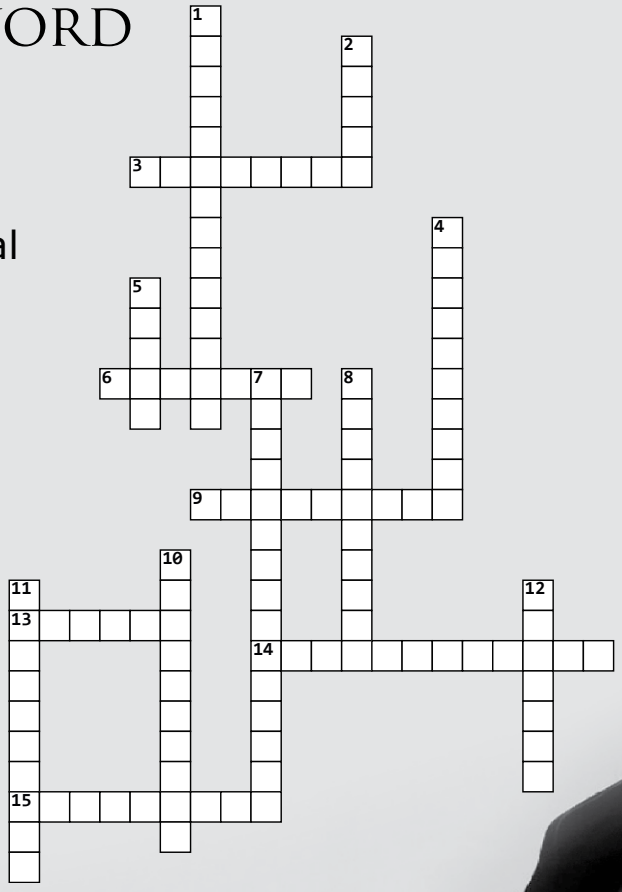
PAST PROGRAMMES

Sr. No.	Date	Topics	Speakers
Bengaluru Study Group			
1	3.4.2026	Five Recent Rulings on Charitable Trusts	Mr. Bharath Lakshminarayana
2	25.4.2026	Recent Rulings on Select International Tax Issues	MR. Bharath Lakshminarayana

Study Circle & Study Group			
1	7.4.2026	Key amendments in Finance Act 2026 alongwith important aspects of new Act/Rules relevant for immediate compliances	CA Praful Poladia
2	22.4.2026	Continued Session on "Navigating through Private Trusts and Succession Planning - Taxation and Other Issues	Group Leader : CA Ketki Mittal Chairman : CA Vishal Gada
3	28.4.2026	Lessons from Recent Tax Jurisprudence	Mr. Pramod Kumar
Commercial & Allied Laws			
1	7.4.2026	Changing times : the Companies Compliance Facilitation Scheme CCFS2026 and Overview of Proposed Changes in the Companies Act 2013	CS Gaurav Pingle
2	16.4.2026	IBC :embedded experiences from recent amendments	CS Dr K S Ravichandran
Direct Taxes			
1	8.4.2026	ISG - Recent Important Decisions Under Direct Tax	CA Sathyamurthy BB
2	24.4.2026	ISG - Recent Important Decisions Under Direct Tax	CA Shikhar Gupta
Indirect Taxes			
1	14.4.2026	Continued Session on Classification of Goods and Services under GST	Group Leader : CA Payal Shah & Chairman : CA S S Gupta
Accounting & Auditing			
1	30.3.2026	Lecture meeting on Not the Client, But You: Handling Notices Served on CA Firm	CA Padmashree Crasto
International Taxation			
1	29.4.2026	FEMA SC - Complex Issues under FEMA for NRIs	CA Mitali Shah
Digital Connect			
1	30.4.2026	Seminar on AI That Actually Works: Real Use Cases from Professional Firms	CA Mitesh Katira & CA Jigar Shah
Student			
1	Mastering Income-Tax Act 2025: Practical Insights into Computation & Compliance		
	30.4.2026	Critical Changes in Computational Provisions under Income-Tax Act 2025	CA Chirag Wadhwa
		Practical Compliance Workshop: TDS, TCS & Cross-Border Certification Requirements	CA Ravi Soni

Crossword

Professional Ethics in the Tax and Legal Profession



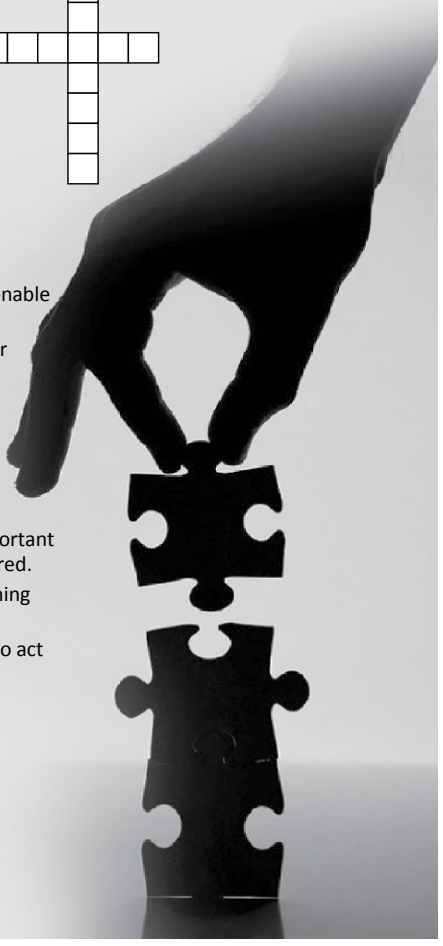
Across

3. A situation where personal interest may affect professional judgment.
6. Fairness and moral righteousness under law.
9. Legal protection for confidential lawyer-client communication.
13. Principles governing moral conduct in professions.
14. Ability to remain impartial and unbiased.
15. Core ethical value involving honesty and uprightness.

Down

1. Being responsible and answerable for one's actions.
2. Inspection of financial records for accuracy and legality.
4. Failure to exercise reasonable professional care.
5. Intentional deception for unlawful gain.
7. Duty to safeguard client information.
8. Following laws, regulations, and professional standards.
10. The act of revealing important information when required.
11. A system of rules governing professional conduct.
12. Professional obligation to act honestly and fairly.

Scan to check the Answers

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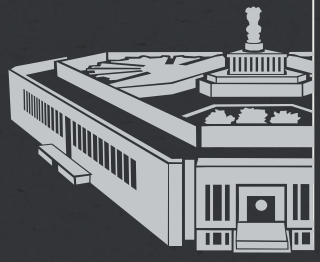



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