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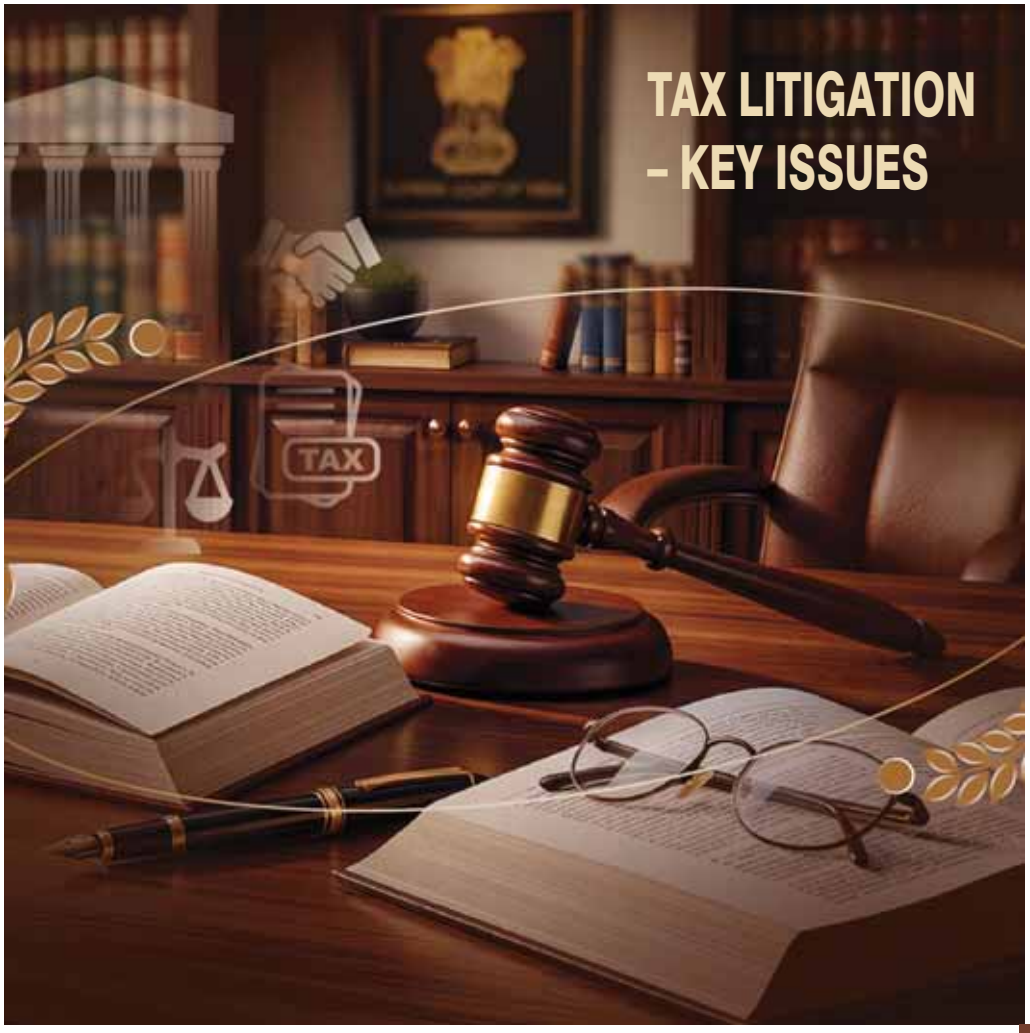

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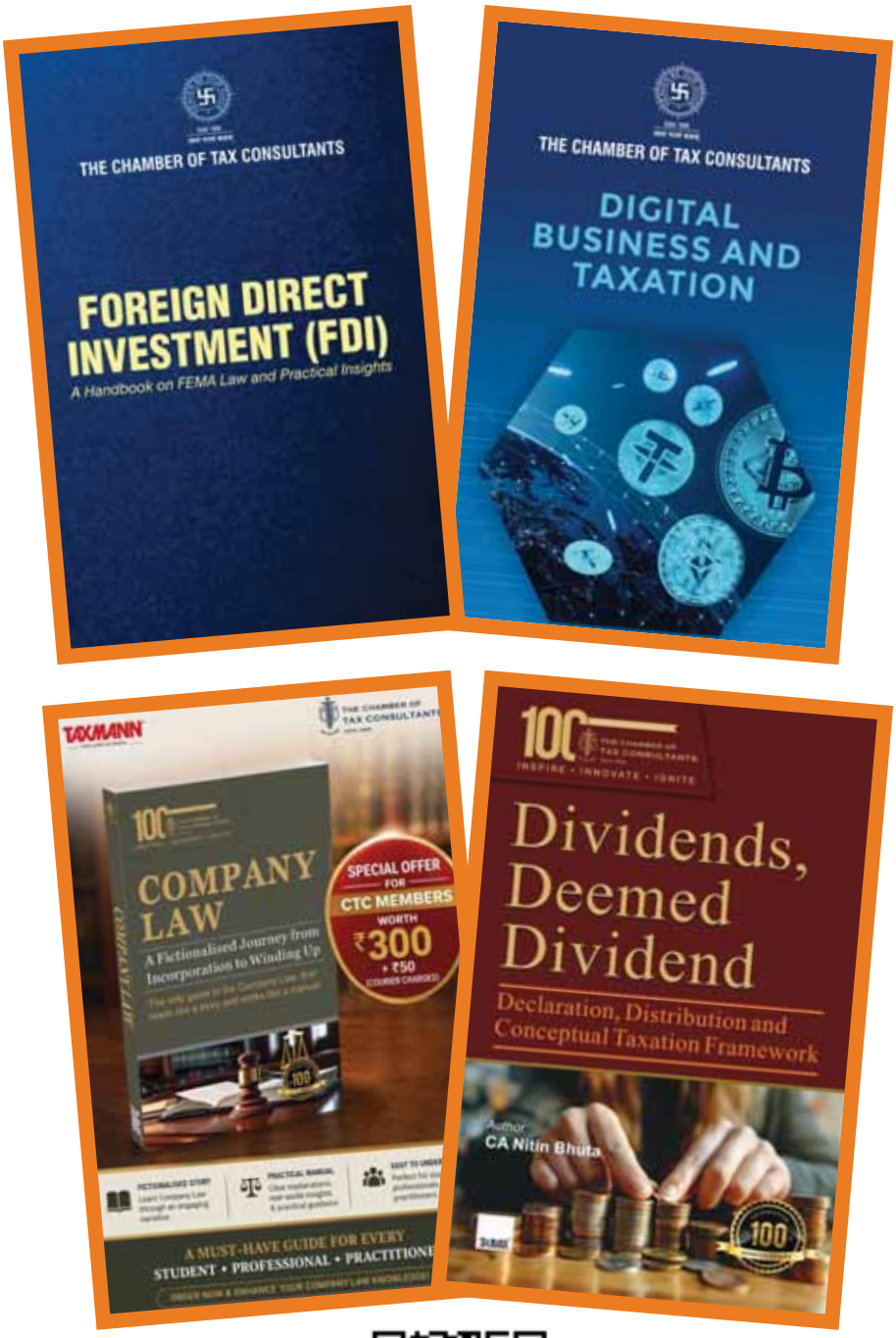

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From the President

CA Neha Gada

Respected Seniors and my dear friends

As we step into another month of professional engagement and collective growth, I am delighted to share with you the latest developments, initiatives and knowledge-sharing endeavours of the Chamber of Tax Consultants. We are witnessing rapid changes in business, economic and legal environment. However, individually as well as collectively, our commitment to learning, collaboration and professional excellence continues to guide our journey.

There is a constant change in the global geopolitics. This is constantly affecting Indian Economic stability and its trade relations. The India-US trade relations are running through a patchy road. The global crude oil rates are fluctuating. International confrontations are continuous affecting weaker economies. These and various other factors not elaborated here, have made it necessary for the Indian Government to secure India's economic and trade and more specifically energy interests. Indian Government alongwith various ministries and other stakeholders including the Reserve Bank of India are taking consistent steps to maintain its trade and foreign investments, control the level of inflation, preserve currency stability and capital movement. All these factors affect businesses engaged in international domain. For tax professionals, keeping abreast of these developments is essential to understand the wider economic environment in which our clients operate.

The 57th meeting of the GST Council, held on October 8, 2026, marked an important step towards simplifying GST administration and strengthening ease of compliance. The recommendations focused on streamlining registration, improving return filing and reconciliation, expediting refunds, simplifying adjudication procedures and facilitating trade being a welcome initiative. Among the other significant proposals are removal of arrest provisions under GST, an increase in the prosecution threshold from ` 1 crore to ` 5 crore, a reduction in the general penalty from ` 25,000 to ` 10,000, and measures to improve the refund mechanism

It can be seen that the recommendations made by the GST Council continue the trend of procedural simplification, more transparency and facilitative approach to tax administration. At the same time, it is necessary for tax professionals to appreciate the evolving framework in order to provide necessary help to taxpayers in making them aware of the changes that happen.

The Hyderabad Tax Summit, held on October 10, 2026, was a memorable occasion for professional learning and exchange. We were privileged to have Hon'ble Shri Sushil Kumar Sharma, Vice-President, GST Appellate Tribunal (GSTAT), State Bench, Telangana, as Keynote speaker. With insightful and practice-oriented discussions on cash credits, GST disputes and search operations, the Summit brought together important areas of tax practice under one roof. I extend my heartfelt appreciation to Hyderabad Chair Mr. Neelesh Vithalani, Vice-Chair Mr. V S Sudhir, Secretaries Mr. Naishadam Chandrashekar & Srinivas Maddury and Treasurer Mr. Srinarayan Toshniwal, along with their entire team, for their dedicated efforts in organising this enriching programme. Their initiative and commitment to knowledge-sharing are truly commendable.

In an increasingly innovation-driven economy, intellectual property is not merely a legal asset, it is a source of business value, competitive advantage and long-term growth. The Commercial & Allied Laws Committee addressed this relevant subject through its Take Care Series – Episode 2, focusing on **How to Take Care of Your IP in India.** The initiative highlights the importance of understanding, protecting and effectively managing intellectual property rights.

making continued effort to expand the scope of professional learning beyond conventional tax practice.

Iam delighted to share that the Chamber of Tax Consultants has brought out two insightful podcasts this month, reflecting the Chamber's continued commitment to fostering knowledge, inspiring young professionals and addressing issues of practical relevance.

The first podcast, **"Integrity, Knowledge & Vision: Lessons from the Journey of Adv. V. Lakshmikumaran,"** conceptualised by the Student Committee, offers a wide-



ranging conversation on tax law, taxation, leadership, ethics, policymaking and the future of India. Tracing his remarkable journey from the Indian Revenue Service to leaving a secure government career to establish one of India's leading law firms, Adv. Lakshmikumaran shares the choices, principles and vision that have shaped his professional journey. The podcast offer valuable lessons on professional integrity, the courage to pursue one's convictions and the importance of building a lasting legacy.

The second podcast, **"GST Issues on Co-operative Societies"**, organised by the Indirect Tax Committee of the CTC, addresses a subject that is particularly relevant to many of us. Several members serve as office-bearers, committee members or managing committee members of their respective co-operative housing societies. GST issues concerning such societies often involve complex interpretations and unsettled legal positions. This discussion provides a valuable opportunity to understand the challenges, examine practical concerns and gain insights into the GST implications affecting co-operative housing societies.

Both podcasts are available on the Chamber's YouTube channel, **"CTC Connect"**. I encourage all members to watch these sessions and benefit from the knowledge and perspectives shared.

I also urge members to follow the Chamber's social media handles to stay updated on its seminars, knowledge-sharing initiatives, podcasts and other professional activities. Let us continue to make the most of these platforms and strengthen our collective commitment to continuous learning and professional excellence.

This month's Journal focuses on **"Tax Litigation – Key Issues"**, a subject of immense practical relevance to tax professionals as well as member in industry. Litigation is not confined to appearances before adjudicating authorities or courts; it begins with a careful assessment of facts, a timely response to notices and a well-considered strategy at every stage of the proceedings. This issue brings together a diverse range of topics.

The articles explore the procedural, strategic and substantive dimensions of tax litigation. I am confident that the content of this month's journal will serve as a valuable reference for members seeking to strengthen their understanding of dispute resolution and making them more prepared.

I express my sincere gratitude to all the authors for sharing their knowledge, research and professional experience. My special appreciation goes to the Journal Committee, led by CA Ameya Kunte, along with Ms. Vinita Krishnan, Ms. Shruti Lohia and Ms. Priyanka Limaye, for their dedicated efforts in conceptualising, coordinating and bringing together this comprehensive issue. Their commitment to quality content and professional knowledge dissemination is deeply appreciated.

As we celebrate the auspicious festival of Dussehra, may the victory of good over evil remind us of the enduring values of truth, integrity, courage and righteousness. In our professional lives, these values must remain the foundation of our conduct, our advice and our service to society. May this festive season bring renewed energy, wisdom and prosperity to our members and their families.

Wishing you and your families a very Happy and Prosperous Dussehra!

Jai Hind!

Warm Regards,

CA Neha Gada
President

From the Editor's Desk

CA Anish M. Thacker

My Brothers and Sisters,

" Businesses must engage constructively with government and regulators. Legal recourse will always remain available, but every disagreement need not begin as litigation. There is considerable value in engaging early, placing evidence on the table, taking part seriously in consultations and working towards solutions before differences become disputes, "

— **Smt. Nirmala Sitharaman**[1]

These words of our Hon. Finance Minister tell us a lot. They convey that tax litigation, which is becoming more expensive and time consuming, is avoidable and can certainly be managed better if both sides come forward and engage constructively to come to a reasonable approach. The tone from the top, from the policy makers has always been positive. The situation on ground, unfortunately tells us a different story.

Statistics presented recently before Parliament revealed that as of July 2026, there were about 5.4 lakh appeals pending before the Commissioner of Income-tax (Appeals), about 43,500 before the Income-tax Appellate Tribunal, about 41,000 before High Courts and 6,880 appeals before the supreme Court. The statistics also showed that although about 2.24 lakh appeals were disposed off in the previous financial year by the First Appellate Authority, around 1.79 lakh new appeals were added signalling that litigation continues to flourish, and the quality of assessment orders leaves a lot to be desired. Recent Transfer Pricing assessments still point to the fact that transfer pricing continues to be a major source of disagreement between taxpayers and tax officers. The key question is, how does one reduce tax litigation?

Two things, in my view, need careful attention, the first being imparting of proper training to the Assessing Officers and proper knowledge management by the Income-tax Department. At one recent interaction, a senior ranking officer of the Central Board of Direct Taxes mentioned that the main objective of introduction of the faceless assessment scheme was to have orders of uniform (good) quality across the country. The Technical units were set up to assist the officers in taking uniform positions on issues. Unfortunately, we are not seeing this happen at all. The orders are being passed without appreciation of facts and law and if we see the orders of the resultant litigation at the Tribunals and

1. *At the AIMA 53rd National Management Convention on 22nd September 2026 at New Delhi*

Courts, there is anything but uniformity and good quality that characterises these orders. The imparting of proper training to the officers, in the faceless era and the strength of the knowledge management for which the technical units assume paramount importance, are critical. The second thing that assumes significance is reduction of the time taken to resolve the disputes. In this regard, the initiative taken by the Income-tax Appellate Tribunal is salutary. Cases get fixed within a couple of months of appeals being filed, at least at the bigger stations and disposals are timely without being unnecessarily quick. The block is at the First appellate authority level and at the High Court level and this does need careful attention.

Another qualitative metric that needs to be kept in mind is that disputes must not be allowed to age beyond a point. Truly the old adage that 'Justice delayed is justice denied' is trite and the time taken for resolution of legacy disputes is to be carefully monitored. The longer they remain unresolved the greater is the disservice done to the nation. We have seen that the Government is trying to monitor the aging of the disputes and trying to get legacy cases heard but the success in this direction has been tepid.
Alternative dispute resolution mechanisms like Advance Pricing Agreements (APA), Mutual Agreement Procedure (MAP), Applications to the Board of Advance Rulings (BAR) and safe harbours in transfer pricing have had their own respective journeys and their own reasons for success at times and lukewarm responses at others. These are however important initiatives, and the endeavour must be to make these implementable and useful for taxpayers to access.

Lastly, we have had many schemes where disputes have been attempted to be reduced, the last one being the Vivad se Vishwas Scheme in 2020. The efficacy of these schemes has been oft debated. I have a view that these schemes are not



efficacious. As these schemes are not the subject matter of this issue of the Journal, let me not go down this road any further. This issue of the Journal deals with "Tax Litigation Issues" and discusses various facets of direct tax litigation in depth. As usual, the Journal Committee has roped in excellent authors from various parts of the country to deal with these issues. I express deep gratitude to the authors for their contribution. I also thank Vinita Krishnan, Vice Chairperson of the Journal Committee, Priyanka Limaye, Shruti Lohia and Abhitan Mehta (although his name comes first if we go by alphabetical order, he gives way to the ladies in the spirit of 'Ladies First'!) for their efforts in putting this issue together.

By the time this issue will be in your hands, we will all be celebrating Navratri and looking forward eagerly to the festivals of Dussehra and Diwali. At the same time, thanks to the extension given for completing tax audits, we will also be up to our ears in work. Truly for us, our work is our celebration. Let us celebrate in our own quintessential way, by working hard and delivering value to our stakeholders. I wish you all the Best for the season ahead.

" Inspiration does exist,
but it must find you working. "

— Pablo Picasso

Jai Hind!

CA Anish M. Thacker
Editor

ANATOMY OF TAX NOTICE

Listen to me

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* See Disclaimer on page 4



Dhanesh Bafna *Chandni Shah* *Rishabh Malhotra*

Overview

A tax dispute does not always begin with the merits. Quite often, it begins with the notice itself. In some cases, the validity of the notice may determine the fate of the entire proceeding long before the substantive issues are examined.

Before responding on merits, the taxpayer should pause and ask a more fundamental question: ***has the Revenue validly assumed jurisdiction at all?*** *Was the notice issued by the correct authority, within limitation, duly signed, authenticated and bearing a valid Document Identification Number ('DIN')? Was it properly served? Were the mandatory statutory preconditions satisfied? In an appropriate case, a defect in any of these areas may not merely affect the conduct of the proceedings, but the very authority to undertake them.*

Judicial decisions over the years demonstrate that disputes are often won at this threshold stage. Questions of jurisdiction, authentication, service and hearing rights have increasingly assumed centre stage, particularly in the faceless regime where the entire proceeding is conducted through electronic interfaces, automated communications and virtual hearings.

This article therefore shifts the focus from the question most taxpayers instinctively ask on receiving a notice - ***"How should I answer this?"*** *- to the question that should precede it:* ***"Is this a valid notice that I am required to answer at all?"*** *It examines the principal checks that taxpayers and advisers should undertake immediately upon receipt of a notice, the consequences of defects in the notice or communication process, and the circumstances in which those defects may be capable of invalidating the proceedings altogether.*

Preliminary Checklist upon Receipt of a Notice

Upon receipt of a notice, the taxpayer should examine:

(a) the **jurisdiction and statutory authority** of the issuing officer;

(b) whether the notice has been **duly signed and authenticated** in the manner prescribed by law;

(c) whether it has been **issued within the applicable limitation period**;

(d) the **validity of the DIN** and other prescribed identifiers or authentication features;

(e) whether the taxpayer has been **correctly identified** and the notice validly served at a recognised physical or electronic address;

(f) the **authenticity of the communication and its source**; and

(g) whether all m**andatory statutory preconditions, approvals and procedural safeguards** have been complied with.



Any defect identified at this stage should be examined to determine whether it goes to the root of the proceedings or merely constitutes a procedural irregularity. Where appropriate, the assessee may respond on merits without prejudice to the jurisdictional or procedural objection, which should be raised promptly and supported by the relevant records. Some of the more frequently litigated issues in this regard relate to jurisdiction, limitation, signing and authentication of notices, validity of DIN, service of notices and the taxpayer's right to an effective hearing. These issues are discussed below.

Jurisdiction of the Issuing Authority

A notice under the income tax law must emanate from an authority possessing the requisite jurisdiction and statutory competence to initiate proceedings. Accordingly, issues may arise where:

a. ***The issuing officer lacks territorial or assigned jurisdiction:*** For instance, in accordance with the orders/directions/notifications issued under section 120 r.w. section 124 of the Income-tax Act, 1961 (corresponding to Section 241 and Section 242 of the Income-tax Act, 2025) the taxpayer falls within the charge of another officer, and the issuing officer has assumed jurisdiction in the absence of authority vested in him.

b. ***Jurisdiction has been transferred to another authority:*** For instance, where

A notice under the income tax law must emanate from an authority possessing the requisite jurisdiction and statutory competence to initiate proceedings.

jurisdiction has been transferred to another authority, but the erstwhile authority nevertheless continues the proceedings. Or, where jurisdiction has been transferred in violation of provisions contained in section 127 of the 1961 Act (Section 243 of the 2025 Act) and, based on such invalid transfer, the new officer continues to assume jurisdiction.

c. ***The statute vests the relevant power in an authority of a specified rank/ designation or authority vests only after mandatory approvals from higher authority:*** For instance, an Additional Commissioner or Joint Commissioner may exercise Assessing Officer functions only where the jurisdiction or function has been validly assigned in accordance with section 2(7A), Section 116 and Section 120 of the 1961 Act (Corresponding to Section 2(12), Section 236, Section 241 of the 2025 Act, respectively). Reassessments initiated/ completed without mandatory sanction under section 151 of the 1961 Act (Section 284 of the 2025 Act) would render them *void ab initio*.

d. ***A statutory scheme, notification or faceless mechanism allocates the function to a specified authority or mechanism:*** For instance, the recent Jurisdictional Assessing Officer ('JAO') – Faceless Assessing Officer ('FAO') controversy concerning reassessment powers under sections 144B (Section 273 of the 2025 Act read with Rule 176 of the Income-tax Rules, 2026), 151A (Section 532 of the 2025 Act) and 147A (Section 279(3) of the 2025 Act) of the 1961Act illustrates the importance of identifying the precise statutory source of jurisdiction to perform a particular action by an officer under law. Conflicting High Court decisions were passed where taxpayers challenged 148 notices (Section 280 of the 2025 Act) issued by the JAO instead of the FAO, followed by the retrospective insertion of section 147A by the Finance Act, 2026 (Section 279(3) of the 2025 Act). The constitutional validity and effect of that amendment remain under judicial consideration.

Jurisdiction cannot be assumed or conferred merely by consent or participation; it must flow from the statute and applicable valid orders, directions, notifications or mechanisms prescribed under law. In the absence of valid jurisdiction, the defect may go to the root of the proceeding and render the notice, and consequential actions founded upon it, without jurisdiction and thus bad in law.

Further, participation in the proceedings does not necessarily cure a complete absence of jurisdiction. Equally, while sections 292B and 292BB of the 1961 Act (Section 522 and Section 523 of the 2025 Act) may cure certain procedural, technical or service-related defects, they do not ordinarily validate proceedings initiated by an officer who never possessed jurisdiction in the first place.

Putting it into Practice

Accordingly, on receiving notice, the taxpayer should promptly verify:

(i) the statutory competence of the issuing authority, the jurisdiction assigned under sections 120 and 124 of the 1961 Act (sections 241 and 242 of the 2025 Act) or if any faceless, centralised, or special jurisdictional allocation applies to the taxpayer.

Where the statute prescribes a period for assumption of jurisdiction, compliance with such period ordinarily constitutes a condition precedent to the validity of the proceedings. A notice issued beyond the prescribed period is therefore not a mere procedural irregularity but may render the proceedings without jurisdiction.

(ii) in cases of transfer, whether a transfer order under section 127 has been passed, whether jurisdiction has been validly transferred under section 127 (section 243 of the 2025 Act) after providing an opportunity of hearing to the taxpayer (where applicable), after recording and communicating reasons for such transfer, whether jurisdiction has been assumed in accordance with the effective date of that transfer, etc. A challenge can be made to the transfer order itself in appropriate cases and also against the subsequent actions arising post invalid transfer.

(iii) where section 124 applies (section 242 of the 2025 Act), the objection should be raised within the prescribed period, rather than being deferred until appellate proceedings.

(iv) the approval or sanction, including the statutory rank of the approving authority

Notices Issued beyond Limitation

Limitation provisions occupy a central place in tax administration and represent the legislative balance between the Revenue's power to assess or reassess income and the taxpayer's right to certainty and finality. Accordingly, where the statute prescribes a period for assumption of jurisdiction, compliance with such period ordinarily constitutes a condition precedent to the validity of the proceedings. A notice issued beyond the prescribed period is therefore not a mere procedural irregularity but may render the proceedings without jurisdiction.

Upon receipt of a notice, the taxpayer should identify the applicable limitation provision and determine the statutory event from which the limitation period is to be reckoned, since the relevant date may vary depending upon the proceeding involved.

The importance of identifying the legally relevant event is illustrated by the decision of the Delhi High Court in ***Suman Jeet Agarwal vs. ITO [(2022) 449 ITR 517]***. In the context of reassessment notices, the Court examined whether mere generation, internal processing or digital signing of a notice within the limitation period was sufficient, or whether the communication had to be electronically dispatched so as to leave the Department's system. The principle emerging from the decision is that the date appearing on a notice, or the date on which it is digitally generated, may not necessarily be determinative; the relevant event must be identified with reference to the statutory framework governing the particular proceeding.

Putting it into Practice

Upon receipt of a notice, taxpayers should:

(i) immediately verify the applicable limitation provision,

(ii) determine the last permissible date for issuance of the notice,

(iii) check the dates of generation, signing, dispatch, approval and service, all of which may not coincide

(iv) preserve all records bearing upon the relevant event, including portal histories, communication logs, digital-signature records, e-mails, screenshots and other supporting evidence.

(v) examine whether jurisdiction has been assumed within the statutory time frame.

Any objection should be raised at the earliest opportunity, while identifying the statutory event that determines limitations.

Unsigned Notices: Signing and Authentication

Section 282A of the 1961 Act (section 502 of the 2025 Act) deals with the signing and authentication of notices and other departmental communications. While sub-section (1) requires notices and other documents to be signed and issued in the prescribed manner, sub-section (2) provides for deemed authentication where, *inter alia*, the name and office of the income-tax authority are printed, stamped or otherwise written on the document.

The controversy, therefore, is whether deemed authentication under sub-section (2) can substitute the requirement of signature under sub-section (1). The distinction is material because sub-section (1) concerns documents "required to be issued", whereas sub-section (2) addresses the authentication of documents already "issued, served or given". *In Reuters Asia Pacific Ltd./[2024] 110 ITR(T)* ***609 (Mumbai- Trib.)***, the Mumbai Tribunal treated signing and authentication as distinct statutory concepts.

In ***Prakash Krishnavtar Bhardwaj vs. ITO [2023] 451 ITR 27 (Bombay)***, the Bombay High Court held that an unsigned notice may be incapable of conferring jurisdiction, since compliance with the requirement of signature under section 282A (1) stands on a different footing from mere authentication under section 282A(2). While a contrary view has been taken by the Delhi High Court in ***Suman Jeet Agarwal (Supra)*** and in ***Asro Arcade vs. ITO [2026] 186 taxmann. com 313 (Delhi***), the controversy was revisited in ***Nikhil Nagindas Modi vs. DCIT [2026] 189 taxmann.com 645 (Bombay)***, where the Bombay High Court expressly disagreed with the approach in Asro Arcade and held that a document may satisfy the requirement of authentication and yet fail to comply with the separate statutory requirement of signature. The Court further emphasised that the presence of a DIN cannot substitute a mandatory signature.

A similar controversy is being dealt with by High Courts under the GST law as well in the context of electronically issued notices and orders that do not bear a visible signature. While the Rajasthan High Court in *Star Raison Landmarks (D.B. Civil* ***Writ Petition No. 8893/2024)*** held that unsigned notices and orders are non est in law, the Telangana High Court, in the Full Bench decision in ***Gudla Vanaja (W.P. No. 20397 of 2025)***, upheld the validity of such documents on the ground that they are electronically authenticated through the GSTN system, notwithstanding the absence of any visible physical or digital signature on the PDF made available to the taxpayer.

It would be interesting to watch how this controversy evolves further under both the Income-tax Act and the GST law, as the distinction between signing and authentication goes to the very root of the validity of

statutory proceedings and raises fundamental questions regarding accountability, certainty and due process in an increasingly digital tax administration

Putting it into Practice

The judicial position remains unsettled, making it important for taxpayers to examine the original notice for signature and the applicable law, rules, notifications, and the latest judicial position applicable in the relevant jurisdiction to challenge an unsigned notice.

Notices without Document Identification Number ("DIN")

The CBDT introduced the DIN framework through Circular No. 19/2019 to strengthen transparency, accountability and the audit trail of departmental communications. The Circular mandated that departmental communications bear a computer-generated DIN, subject to limited exceptions involving recorded reasons, prescribed approval and subsequent regularisation. It further provided that communications issued otherwise than in conformity with its requirements would be treated as invalid and deemed never to have been issued.

In ***Brandix Mauritius Holdings Ltd. [(2023) 456 ITR 34 (Del)]***, the Delhi High Court quashed the impugned notices and orders for failure to comply with the DIN requirements prescribed by CBDT Circular No. 19/2019. The decision highlights the importance of complying with the DIN framework, particularly where the governing Circular itself treats non-compliant communications as invalid.

The legal position was subsequently revisited through the insertion of sections 292BA and 292BC by the Finance Act, 2026 (corresponding to section 522(2) and (3) of the 2025 Act). Section 292BA retrospectively provides that an assessment shall not be rendered invalid merely on account of a mistake, defect or omission in quoting a computer-generated DIN, provided the assessment order is otherwise referable to such DIN.



However, Circular No. 19/2019 contemplated two distinct requirements, namely, generation of a DIN and quoting of such DIN in the communication. A contextual reading of section 292BA and the Explanatory Memorandum suggests that the amendment is directed towards defects in the manner of quoting an otherwise validly generated DIN, rather than dispensing with the requirement of DIN

The principle emerging from decisions such as Lok Developers vs. DCIT is that statutory service must be undertaken with due care and that the Department cannot lightly disregard primary or updated contact details available in its own records.

generation itself. This interpretation is reinforced by CBDT Circular No. 4/2026, which prospectively withdrew Circular No. 19/2019 but continues to recognise issuance without DIN only in exceptional circumstances subject to prescribed safeguards and approvals.

The 2026 amendments therefore do not justify an assumption either that every DIN defect automatically invalidates communication or that every DIN-related defect necessarily stands cured.

Putting it into Practice

Taxpayers should verify whether the communication bears a valid DIN. Where the DIN cannot be independently verified through the Department's verification facility, taxpayers should preserve appropriate screenshots, evidencing the same. If the DIN is absent altogether, it should be examined whether the DIN appears in any accompanying communication. If the answer is negative, the defect may be challenged before the appropriate authorities.

Electronic Service and Communication of Notices

While the preceding issues concern the validity of the notice itself, disputes under the faceless regime increasingly arise from the manner in which notices and hearing communications are delivered. A hearing link may not be received, a real-time alert may not be generated, or the notice may be transmitted to an outdated or unrelated email address. Such controversies ordinarily require examination of both the mode of service and the address or electronic destination used.

Section 282 of the 1961 Act read with Rule 127 of the Income-tax Rules, 1962 governs the service of notices and other communications. The corresponding framework under the 2025 Act is contained in section 501 and Rule 232 of the Income-tax Rules, 2026. In addition, Rule 176 of the 2026 Rules contemplates electronic delivery through the registered account, registered email address or Mobile App together with a real-time alert mechanism.

However, the statutory framework does not suggest that failure to receive a real-time alert would, in every case, invalidate the underlying communication. The better view appears to be that the alert serves as an additional notification mechanism, whereas delivery through a recognised electronic mode may independently constitute service. The enquiry would therefore ordinarily focus on whether the notice was transmitted through a recognised mode, sent to a recognised electronic destination and whether the alleged defect caused prejudice.

It is therefore necessary to distinguish between non-receipt of a real-time alert and non-delivery of the underlying notice. While the former may not, by itself, establish invalid service, the latter directly affects whether the assessee was placed in a position to know of and respond to the proceedings. The practical significance of this distinction is most evident in cases where notices are transmitted to an outdated, secondary or unrelated email address.

Although Rule 127 of the 1962 Rules and Rule 232 of the 2026 Rules recognise multiple

email addresses for service, the availability of several permissible addresses does not justify mechanical reliance upon historical contact details when more current information is available in the Department's records. The principle emerging from decisions such as ***Lok Developers vs. DCIT*** is that statutory service must be undertaken with due care and that the Department cannot lightly disregard primary or updated contact details available in its own records.

Accordingly, where a notice is sent to an obsolete or unrelated address, the taxpayer should immediately place the defect on record and preserve evidence of the date on which the communication was first discovered.

Putting it into Practice

Taxpayers should:

(i) verify both the mode of service adopted and the address or electronic destination used by the Department;

(ii) preserve the complete communication trail, including portal histories, e-mail headers, profile-update acknowledgements, the e-mail address used for correspondence and evidence of the date of first access;

(iii) specifically demonstrate the prejudice caused, including curtailed response time, inability to furnish evidence or denial of an effective opportunity of hearing, since mere non-receipt of a real-time alert may not, by itself, be sufficient; and

(iv) maintain and periodically review the communication details appearing on the e-filing portal and other departmental records;

One of the most important safeguards under the faceless assessment regime is the taxpayer's right to seek a personal hearing through video conferencing.

Right to an Effective hearing through Video Conferencing

One of the most important safeguards under the faceless assessment regime is the taxpayer's right to seek a personal hearing through video conferencing. The legislative framework recognises that written submissions may not always suffice, particularly where substantial additions are proposed, complex factual disputes arise, or adverse material requires explanation.

Under section 144B(6)(viii) of the 1961 Act, and the corresponding framework contained in section 273 read with Rule 176(3)(g) and (h) of the 2025 Act and 2026 Rules, a taxpayer may seek a personal hearing through video conferencing. The Department's Note on Faceless Assessment also prescribes the procedure for making such a request through the e-filing portal.

The right has also received judicial recognition. In ***Ritnand Balved Education Foundation vs. NFAC [2021] 437 ITR 114 (Delhi)***, the Delhi High Court recognised that, where a hearing is specifically sought in accordance with the statutory framework, the Revenue cannot ordinarily complete the assessment without considering and dealing with such request. The common thread running through the decisions on the subject is that the law contemplates an effective opportunity of hearing, and that mere scheduling of a virtual interaction as a procedural formality is also not sufficient.

Accordingly, where the facts so warrant, the assessee should not hesitate to seek a video-

conference hearing to effectively explain factual, legal or technical issues arising in the proceedings.

Closely connected with the right to a hearing is the question of maintaining an adequate record of what transpired during the hearing. The Department's Note on Faceless Assessment states that, following a successful video-conference hearing, a recording link would ordinarily be available under the e-Proceedings module. While there is no absolute right to receive every recording or transcript, its availability assumes importance where there is a dispute regarding the submissions made during the hearing or the extent of opportunity actually afforded. However, it is to be noted that the absence of a recording may not, by itself, invalidate the assessment; the material enquiry is whether the defect caused prejudice or impaired the assessee's ability to effectively present or preserve its case.

Where a jurisdictional or other foundational defect is identified, it should be raised promptly and supported by the relevant factual and electronic record. Equally important, taxpayers should not overlook the availability of writ jurisdiction as an effective remedy in appropriate cases.

Putting it into Practice

Taxpayers should:

(i) make hearing requests through both the written response and the prescribed portal facility;

(ii) clearly identify the issues requiring oral explanation and preserve acknowledgements, timestamps and related records;

(iii) retain hearing invitations, attendance details, recording links and a contemporaneous note of oral submissions;

(iv) immediately place on record any failure to provide a requested hearing, hearing link or recording; and

(v) specifically demonstrate the prejudice caused, including inability to explain factual issues, address adverse material or effectively present the case.

Looking Ahead

The discussion above demonstrates that the validity of a tax notice is often not a mere technical issue. Where a jurisdictional or other foundational defect is identified, it should be raised promptly and supported by the relevant factual and electronic record. Equally important, taxpayers should not overlook the availability of writ jurisdiction as an effective remedy in appropriate cases. Courts have repeatedly interfered where notices or proceedings were issued without jurisdiction, beyond limitation, in breach of mandatory statutory requirements or in violation of principles of natural justice.

Accordingly, while appellate remedies will ordinarily remain available, taxpayers should carefully evaluate whether the case warrants invocation of writ jurisdiction, particularly where the defect goes to the root of the proceedings or concerns the very assumption of jurisdiction. In many cases, the real controversy may not be whether the proposed addition is sustainable on the merits, but whether the proceedings themselves were validly initiated and lawfully conducted.

■

STAY OF DEMAND AND REFUND ADJUSTMENT:KEY ISSUES, JUDICIAL PRINCIPLES AND PRACTICAL REMEDIES



Pratik D. Vora

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Overview

This article examines how the law balances collection of tax against the right of appeal. Pending appeal, interest accrues, refunds of other years are set off and garnishee proceedings are initiated, often without any officer weighing the merits.

The discretion under section 220(6) is a power coupled with a responsibility, to be exercised on the merits and not as a tax gatherer and every stay order must rest on a prima facie case, the balance of convenience and irreparable injury. The 20 per cent benchmark in the Board's memoranda is a guide, not a fetter and a covered issue deserves a complete stay. A high pitched assessment and genuine hardship remain independent grounds, with a recourse to review application before the Principal Commissioner The assessee may offer security in place of cash deposit.

No set off under section 245 is valid without prior intimation, a stayed demand cannot be adjusted and recovery must wait while the time to appeal runs or a stay application is pending. The CIT(A) and the ITAT has inherent independent power for stay. ITAT's power of full stay now subject to the 2020 amendment, whose mandatory 20 per cent pre-deposit may yet be tested on constitutional grounds.

Introduction

A notice of demand under section 156 of the Income-tax Act, 1961 (the Act) is usually the beginning of the unfolding of the dispute. While the appeal is pending, interest runs, garnishee notices go to bankers and refunds of other years are set off, often without any officer doing the balancing act. The difficulty lies less in the statute than in practice. References to sections are to the Act unless otherwise stated.

A. Approach of the Assessing Officer while dealing with Stay of Demand

1. Legal framework

Under section 220(1) the amount specified in the notice of demand under section 156 is payable within thirty days of its service and no coercive action should be taken till that period expires. Section 220(3) permits the Assessing Officer (AO), on an application made before that date, to extend the time

or allow instalments, a power to reschedule payment rather than to suspend it, so that an instalment order is not an order under section 220(6)[1]. On default the assessee is deemed to be in default under section 220(4).

Section 220(6) empowers the AO, where an appeal has been presented under section 246 or 246A, to treat the assessee as not being in default in respect of the amount in dispute, in his discretion and subject to such conditions as he thinks fit, for so long as that appeal is pending. The sub-section prescribes no time limit for the application, but it is advisable to file it before the thirty days run out, because once that period is breached the assessee is in default and runs the risk of garnishee proceedings in the meantime.

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Instruction No. 1914 of 1993[2] remains the basic charter. Part C provides that a stay is to be granted only for valid reasons, of which the mere filing of an appeal is not one and illustrates the situations in which the disputed demand can be stayed. In granting the stay the AO may require suitable security, part payment and an undertaking to cooperate in the early disposal of the appeal and may reserve the right to review the order and to adjust refunds. The decision is to be conveyed by a speaking order within two weeks.

The discretion under section 220(6) is "a power coupled with a responsibility", to be exercised on the assessment history, the points in appeal, the chances of recovery and the hardship of immediate payment and the AO "should not act in the role of a mere tax-gatherer".

The Office Memoranda of 29 February 2016 and 31 July 2017[3] partially modify the Instruction for demands disputed before the Commissioner (Appeals) (CIT(A)): the AO shall grant stay till the disposal of the first appeal on payment of 20 per cent of the disputed demand and a higher or lower percentage may be fixed only on a reference to the Principal Commissioner (PCIT), the memorandum again illustrating the situations, such as a higher sum where the addition was confirmed in earlier years and a lower sum where it was deleted or the jurisdictional High Court (HC) has decided in the assessee's favour.

2. The judicial approach: discretion and the factors to be weighed

The discretion under section 220(6) is "a power coupled with a responsibility", to be exercised on the assessment history, the points in appeal, the chances of recovery and the hardship of immediate payment and the AO "should not act in the role of a mere tax-gatherer"[4].

1. *Gajanana Agencies vs. ITO (1994) 210 ITR 865 (Ker).*
2. *CBDT Instruction No. 1914 dated 2 December 1993.*
3. *CBDT Office Memorandum F. No. 404/72/93-ITCC dated 29 February 2016, as modified by Office Memorandum of the same number dated 31 July 2017.*
4. *M.L.M. Mahalingam Chettiar vs. ITO (1967) 66 ITR 287 (Mad); N. Rajan Nair vs. ITO (1987) 165 ITR 650 (Ker); Aluminium Corporation of India Ltd vs. C. Balakrishnan (1959) 37 ITR 267 (Cal).*



In ***KEC International and Mumbai Metropolitan Region Development Authority***[5] the Bombay HC laid down the parameters that every order on a stay application must satisfy. The authority must briefly set out the assessee's case. Stay should normally be granted where the assessed income far exceeds the returned income so as to make the demand arbitrary, where the issue stands concluded by a decision of a higher forum, where the order is in breach of natural justice or where the view taken is contrary to that of the preceding years without any material change in facts or law. Otherwise the authority must decide, on the likelihood of success in appeal, what part of the demand should be deposited and give short reasons. The lack of financial hardship "would not be a sole ground to direct deposit" where the assessee has a strong arguable case. Throughout, the authority acts as a quasi-judicial body balancing the protection of the Revenue against the need to mitigate hardship. These parameters are the yardstick against which every order under section 220(6) is tested.

B. Stay Application before the AO: Key Do's and Don'ts

(a) File within the thirty days, with a copy to the PCIT and the appeal annexed.

(b) Deal with each addition separately on merits, putting the covered issue first with the earlier appellate orders.

(c) Quantify how far the assessment is high pitched[6].

(d) Prove hardship with documents, seek rectification of any error in the demand, ask for a hearing and pay the undisputed portion.

As to the don'ts: do not rest on the filing of the appeal, do not rely on oral assurances and do not offer 20 per cent as a matter of course on a covered issue.

C. Steps to be Taken if the AO Rejects the Stay Application

Where the AO asks for 20 per cent or more of the disputed demand, the first course is a review by the PCIT under para 4(C) of the 2016 memorandum. The percentage is a guide, not a fetter: the Supreme Court (SC) in *LG Electronics* clarified that the authorities may "grant deposit orders of a lesser amount than 20%, pending appeal" and the Delhi HC in Sushen Mohan Gupta called it guidance not "etched in stone"[7].

5. *KEC International Ltd vs. B. R. Balakrishnan (2001) 251 ITR 158 (Bom); Mumbai Metropolitan Region Development Authority vs. DDIT (E) (2015) 273 CTR 317 (Bom).*
6. *Valvoline Cummins Ltd vs. DCIT (2008) 307 ITR 103 (Del); CBDT Instruction No. 96 dated 21 August 1969.*
7. *PCIT vs. LG Electronics India (P) Ltd (2018) 18 SCC 447; Sushen Mohan Gupta vs. PCIT (2024) 161 taxmann.com 257 (Del).*

Where the assessment is high pitched, the review application should take resort to Part B(iii) of Instruction 1914, which requires intervention where the assessment is unreasonably high pitched or the deposit would cause genuine hardship and survives the 2016 modification[8]. A grievance may also be lodged with the Local Committee on High-Pitched Scrutiny Assessments, whose finding enables the Principal Chief Commissioner to direct that no coercive recovery be made[9].

Where the PCIT also declines, a writ lies where the order is non-speaking, ignores a covered issue or treats the percentage as mandatory. Every stay order must rest on a *prima facie* case, the balance of convenience and irreparable injury, failing which it is liable to be set aside[10]. A stay application before the CIT(A), discussed in Part G, may be filed alongside.

D. Unjust Recovery of Tax Demand by the Department

1. Adjustment of refund under section 245 without intimation

Section 245(1) permits a refund found due to be set off against the sum "remaining payable under this Act", but only "after giving an intimation in writing to such person of the action proposed to be taken". The power is discretionary, it can be exercised only against a sum actually remaining payable, which excludes a stayed demand and the intimation is a condition precedent. The Delhi HC in Glaxo Smithkline Asia held that a mechanical invocation "can lead to misuse of the power" and the Bombay HC in Hindustan Unilever held that the AO "must record reason why the objection is not sustainable and also communicate it to the party"[11]. An adjustment made without intimation or without dealing with the objections is liable to be set aside in a writ, with refund and interest.

2. Bank attachment after the CIT(A) order or DRP directions on a covered issue

Once the CIT(A) confirms the addition or a final order is passed under section 144C(13), garnishee notices often follow at once. The Bombay HC in *UTI Mutual Fund*[12] laid down that no recovery should be made pending the time for filing an appeal or the disposal of a stay application "and for a reasonable period thereafter" and that attached funds should not be withdrawn without "reasonable prior notice". Where the issue stands decided in the assessee's favour in an earlier year, a demand on the same issue cannot be collected by adjusting refunds, an adjustment held "wholly arbitrary" in *HDFC Bank* and "unjust, unequitable and unfair" in ***Maruti Suzuki***[13]. The response is to file the appeal and stay application before the Income Tax Appellate Tribunal (ITAT), to write to the AO and the bank citing ***UTI Mutual Fund (supra)*** and to seek restoration of any funds withdrawn.

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8. *Flipkart India (P) Ltd vs. ACIT (2017) 396 ITR 551 (Kar).*
9. *CBDT order F. No. 225/101/2021-ITA-II dated 23 April 2022, para E(i)(b).*
10. *Dabur India Ltd vs. CIT (TDS) (2023) 291 Taxman 3 (Del); ALM Industries Ltd vs. DCIT (2023) 455 ITR 319 (All).*
11. *Glaxo Smithkline Asia (P) Ltd vs. CIT (2007) 290 ITR 35 (Del); Hindustan Unilever Ltd vs. DCIT (2015) 377 ITR 281 (Bom).*
12. *UTI Mutual Fund vs. ITO (2012) 345 ITR 71 (Bom).*
13. *HDFC Bank Ltd vs. ACIT (2013) 354 ITR 77 (Bom); Maruti Suzuki India Ltd vs. DCIT (2012) 347 ITR 43 (Del).*

3. Higher demand or adjustment of other years' refunds despite stay on 20 per cent

An order under section 220(6) cannot be varied informally. Para 4(E)(iii) of the 2016 memorandum permits refunds to be adjusted only "to the extent of the amount required for granting stay and subject to the provisions of section 245". In *Jindal Stainless*[14] the Delhi HC held that refunds can be adjusted only up to 20 per cent unless para 4(B)(a) of the 2016 memorandum applies, that is, unless the PCIT has, on a reference by the AO, directed payment of a higher percentage.

E. Withholding of Refund against Tentative Demand

Section 245(2), which replaced section 241A in 2023, permits the refund to be withheld pending assessment for recorded reasons with the PCIT's approval. The Board has prescribed the procedure and limits for withholding[15] and a withholding that does not comply is open to challenge.

F. Key Controversies

1. 20 per cent of the outstanding demand or of the disputed demand?

Section 220(6) protects the disputed demand, of which interest on the disputed additions forms part, while the undisputed portion is payable in any event. The Bombay HC in ***Keva Fragrances***[16] held that advance tax and TDS paid must be counted in computing the 20 per cent. Budget 2026 proposes 10 per cent of the disputed tax excluding interest, but the memorandum giving effect to the same is yet to be issued.

2. Furnishing security

Instruction 1914 permits "suitable security" and section 254(2A) allows "security of equal amount". The ITAT in ***Tata Education and Development Trust***[17] granted interim stay on an undertaking not to encash identified investments and referred to a Special Bench the manner in which security is to be accepted under the first proviso to section 254(2A), but the reference was withdrawn as academic once the appeals were decided and the question remains open.

3. Recovery where the issue is covered in favour of the assessee

Circular No. 530[18] binds the AO where the issue has been decided in the assessee's favour in its own case and the 2016 memorandum does not displace it. In General Insurance Corporation the Bombay HC extended the ground of conflicting HC decisions to conflicting views of ITAT Benches and in ARCIL Retail Loan Portfolio it granted unconditional stay where identical additions had been deleted by the CIT(A) in the case of sister trusts[19].

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14. *Jindal Stainless Ltd vs. DCIT (2023) 154 taxmann.com 649 (Del).*
15. *CBDT Instruction No. 02 of 2023 dated 10 November 2023.*
16. *Keva Fragrances (P) Ltd vs. ACIT (2019) 106 taxmann.com 345 (Bom).*
17. *Tata Education and Development Trust vs. ACIT, S.A. Nos. 147 and 148/Mum/2020 (ITAT Mum), orders dated 27 June 2020 and 24 July 2020.*
18. *CBDT Circular No. 530 dated 6 March 1989, as modified by Circular No. 589 dated 16 January 1991.*
19. *General Insurance Corporation of India vs. DCIT (2019) 111 taxmann.com 412 (Bom); ARCIL Retail Loan Portfolio 001-D-Trust vs. PCIT (2019) 264 Taxman 61 (Bom).*

4. *Refund of amounts recovered in excess of 20 per cent*

Courts have directed refund with interest of amounts adjusted beyond the benchmark in ***Jindal Stainless (supra)***, Neo Structo and Graphite India, absent a reasoned decision of the PCIT under para 4(B)(a)[20].

5. *Does a stay of recovery bar the set off of refunds under section 245?*

The Delhi HC in ***Maruti Suzuki (supra)*** rejected the argument that set off is not recovery and held that where a stay of recovery "in simplistic and absolute terms is passed", recovery by adjustment is "improper and inappropriate".

G. Stay before the CIT(A)

Sections 250 and 251 contain no express power to stay recovery. The power is nevertheless incidental to the appellate jurisdiction on the reasoning of the SC in ***Mohammed Kunhi***[21]. That decision concerned the ITAT, but its reasoning applies equally to the CIT(A). Paulsons Litho Works and Tin Manufacturing recognised an independent power exercisable without any prior rejection by the AO and the Bombay HC in Gera Realty Estates held the jurisdiction to be inherent[22]. A stay application can therefore be filed directly, with a copy to the AO, although the faceless regime offers no specific window for it.

H. Stay before the ITAT

1. *Powers of the ITAT*

Mohammed Kunhi (supra) holds that the ITAT has "the power to grant stay as incidental or ancillary to its appellate jurisdiction", to be exercised "only when a strong *prima facie* case is made out".

2. *Can a stay application be filed directly before the ITAT?*

The ITAT has held that the requirement in Rule 35A(2)(v) to state whether a stay application was made to the revenue authorities is a matter of disclosure, not a condition of maintainability, so that an application made directly to the ITAT is maintainable[23].

3. *The AO continues coercive action despite the ITAT stay*

A miscellaneous application before the ITAT comes first, then a writ, as in ***Huawei***[24], where adjustments made while an ITAT restraint was in force were set aside.

4. *Impact of the Finance Act, 2020 amendment to section 254(2A)*

Since 1 April 2020 the first proviso permits stay only where the assessee "deposits

20. *Neo Structo Construction (P) Ltd vs. ACIT (2023) 292 Taxman 162 (Guj); Graphite India Ltd vs. DCIT (2022) 448 ITR 292 (Cal).*
21. *ITO vs. M. K. Mohammed Kunhi (1969) 71 ITR 815 (SC).*
22. *Paulsons Litho Works vs. ITO (1994) 208 ITR 676 (Mad); Tin Manufacturing Co. of India vs. CIT (1995) 212 ITR 451 (All); Gera Realty Estates vs. CIT(A) (2014) 368 ITR 366 (Bom).*
23. *Rule 35A, Income-tax (Appellate Tribunal) Rules, 1963; DHL Express (India) Pvt Ltd vs. ACIT (2011) 140 TTJ 38 (Mum); Honeywell Automation India Ltd vs. DCIT (2011) 138 TTJ 373 (Pune); Broswel Pharmaceutical Inc vs. ITO (2004) 83 TTJ 126 (All).*
24. *Huawei Telecommunications (India) Co. (P) Ltd vs. ACIT, W.P.(C) 10867/2024 (Del), 17 March 2025.*

not less than twenty per cent" of the sum payable "or furnishes security of equal amount". In ***Tata Education and Development Trust (supra)*** it was urged that the proviso is directory, since a proviso cannot cut down the substantive power under section 254(1) and that a mandatory reading would deny a full stay even on a covered issue. The reference to a larger Bench was withdrawn as academic when the appeals were decided. In *Hindustan Lever*[25] the Mumbai Bench held that "it cannot be open to us to grant a stay in violation of these basic statutory provisions" and granted stay on security of 20 per cent. The practical course is to offer security and argue over its form.

5. Outer limits to the ITAT stay

The third proviso vacates the stay after 365 days "even if the delay in disposing of the appeal is not attributable to the assessee". The SC in *Pepsi Foods*[26] struck down those words, so that the stay stands vacated "only if the delay in disposing of the appeal is attributable to the assessee".

6. Wording of section 220(6) and the DRP route

Section 220(6) applies where an assessee "has presented an appeal under section 246 or section 246A". An assessee that opts for the Dispute Resolution Panel appeals directly to the ITAT and should file the stay application with the appeal and intimate the AO.

I. The Position under the Income-tax Act, 2025

Section 220(6) is now section 411(12), section 245 is section 438 with the intimation requirement intact and section 254(2A) is section 363(6) to (8), with the 20 per cent condition and the 365 day limit retained. Circulars and instructions under the old Act continue under section 536(2)(j)[27].

Conclusion

Discretion cannot be surrendered to a percentage, a covered issue deserves a complete stay, a stay of recovery covers set off and an intimation must precede adjustment. Put on record, these principles are enforced by the courts.

■

25. *Hindustan Lever Ltd vs. DCIT (2022) 143 taxmann.com 2 (Mum Trib), order dated 26 September 2022 in ITA No. 2125/Mum/2022.*
26. *DCIT vs. Pepsi Foods Ltd (2021) 7 SCC 1; (2021) 433 ITR 295 (SC).*
27. *Income-tax Act, 2025, sections 363, 411, 438 and 536.*

MAPPING THE CONTOURS OF REVISIONARY POWER UNDER THE INCOME-TAX ACT



Ashish Mehta *Apurva Chaudhary*

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Overview

Every statute needs a safety valve, and under the Income-tax Act, 1961, revision by the Commissioner operates in two directions. Section 263 permits the Commissioner to revise an assessment order that is erroneous insofar as it is prejudicial to the interests of the revenue; Section 264 permits revision of other orders, but only in a manner that is not prejudicial to the taxpayer.

*The authors examine the judicial guardrails surrounding Section 263. These include the conjunctive twin conditions laid down in **Malabar Industrial Co Ltd vs. CIT**, the bar on revision based on a mere change of opinion, the protection for a plausible view adopted by the Assessing Officer, and the impact of Explanation 2, inserted in 2015, on the adequacy of enquiry. They highlight why a well-documented assessment record remains the taxpayer's strongest defence.*

The authors turn to Section 264, an underutilised, time-bound remedy that can offer quicker relief than the multi-tier appellate route, and contrast it with an application to the CBDT under Section 119.

*They analyse the Supreme Court's ruling in **Deputy CIT, CPC vs. Om Siddhakala Associates**, which confirms that Section 264 cannot be used to make a claim that ought to have been made through a revised return.*

Every statute needs a safety valve, and under the Income-tax Act, 1961 (**"Act"**), that valve comes fitted with two very different settings. Section 263 lets the Commissioner of Income Tax (**"CIT"**) swoop in when an assessment has gone too easy on the taxpayer; Section 264 lets the CIT step in when an order has gone too hard. Both wear the label "revision", yet one is a sword wielded cautiously by the revenue, and the other, a shield too rarely picked up by taxpayers. This article examines why the first is bound by stringent judicial guardrails, and why the second deserves far more attention than it typically receives.

Invoking 263 often leads to multiplicity of proceedings as the 263 order passed by CIT is challenged before the Income Tax Appellate Tribunal (**"Tribunal"**) (on various jurisdictional and merits related

Section 263(2) provides for the outer time limit for invocation of revisionary powers, such that 263 proceedings cannot be initiated once 2 years have lapsed from the end of the financial year in which the order proposed to be revised was passed. A plain reading of the provisions mandates satisfaction of twin conditions for invocation of Section 263.

grounds as may be applicable) and the order which is passed by the Assessing Officer to give effect to the 263 directions from the CIT is contested before the CIT (Appeals) or Dispute Resolution Panel (as may be applicable), which then follows the routine appellate hierarchy of Tribunal, High Court and Supreme Court.

The authors discuss both these sections at length (263 followed by 264) and attempt to map some salient contours of these provisions and provide practical insights and judicial precedents on the subject.

I. Revision Under Section 263

Section 263(1) of the Act reads as under:

> *"The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer or the Transfer Pricing Officer, as the case may be, is erroneous insofar as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify,*
>
> *(i) including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment; or*
>
> *(ii) an order modifying the order under section 92CA; or*
>
> *(iii) an order cancelling the order under section 92CA and directing a fresh order under the said section."*

Section 263(2) provides for the outer time limit for invocation of revisionary powers, such that 263 proceedings cannot be initiated once 2 years have lapsed from the end of the financial year in which the order proposed to be revised was passed. A plain reading of the provisions mandates satisfaction of twin conditions for invocation of Section 263.

A. Twin Conditions: Erroneous and Prejudicial to the Revenue

The exercise of revisionary jurisdiction under Section 263 hinges on the simultaneous satisfaction of two conditions:

(i) the order of the Assessing Officer (**"AO"**) must be erroneous; and

(ii) it must be prejudicial to the interests of the revenue.

These are conjunctive requirements, and the absence of either renders the invocation of Section 263 impermissible.



The Supreme Court in ***Malabar Industrial Co. Ltd. vs. CIT reported in [2000] 243 ITR 83 (SC)*** established the authoritative framework for this provision. The Court held that the CIT must be satisfied of these twin conditions. If either condition is absent, section 263 cannot be invoked. The Court further explained that an incorrect assumption of facts, an incorrect application of law, an order passed without application of mind or in breach of natural justice may render an assessment order erroneous. However, the provision is not intended to correct every error or to substitute the CIT's opinion for that of the AO.

In respect of the phrase ***"prejudicial to the interests of the revenue"***, it was held that it is a phrase of wide import and is not confined merely to loss of tax. Yet, the existence of a possible revenue loss alone does not satisfy the statutory test. The prejudice must arise from an erroneous order.

The existence or lack thereof is one of the hottest contested topics as its determination goes to the very root of the applicability or otherwise of the revisionary provision's invocation.

B. Change of Opinion

Another hotly contested topic is the validity or otherwise of exercise of revisionary powers under Section 263 merely because the CIT holds a different opinion on the same facts. Initiation of proceeding (be it 263 or reassessment proceedings under the Act) based on change of opinion is disapproved by the judiciary. It is an important facet of rule of law to maintain consistency and certainty in proceedings. This argument of change of opinion often arises in situations where the AO (in the original assessment proceedings) had raised queries, examined replies and accepted the taxpayer's position as a possible/plausible/admittable position.

In ***CIT vs. Sat Pal Aggarwal [2007] 293 ITR 90 (P&H)***, the Punjab and Haryana High Court held that where during reassessment proceedings, the assessee had agreed to certain additions on discrepancies pointed out by the AO, the invocation of jurisdiction by the Commissioner under Section 263 on those very facts was a "change of opinion" which was not permissible under the law.

The Court held that every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interests of the Revenue.

In ***CIT vs. Nirav Modi [2017] 390 ITR 292 (Bom),*** the Bombay High Court held that section 263 cannot be used to direct a fuller/further enquiry when the AO had already conducted an enquiry and adopted a possible view. The power may be exercised in cases of lack of enquiry, but not merely because the CIT considers the enquiry made was inadequate.

C. Debatable Issues and Two Views Possible

The principle laid down in ***Malabar Industrial case (supra)*** is clear on debatable questions of law to hold that where two views are possible and the AO adopts one legally possible view, the assessment cannot be treated as erroneous merely because the CIT prefers the other view. The Court held that every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interests of the Revenue, for example when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the ITO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the ITO is unsustainable in law.

D. Understanding the term 'erroneous in so far as it is prejudicial to the interest of revenue'

This term was not defined until 2015, when an explanation was inserted in Section 263. The explanation reads as under:

> *"Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—*
>
> *(a) the order is passed without making inquiries or verification which should have been made;*
>
> *(b) the order is passed allowing any relief without inquiring into the claim;*
>
> *(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*
>
> *(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee,*

rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."

Accordingly for an order to be considered / deemed to be erroneous and prejudicial to interest of revenue, the facts should fall within any one of the aforesaid clauses. This explanation also elevates the importance of enquiries made by the AO during the proceedings proposed to be revisited by the CIT under Section 263. Failure to make inquiries on the part of the AO, coupled with prejudice to revenue makes the order vulnerable for revision under section 263. It is pertinent to also note that for making an assessment on the adequacy of enquiry, the entire assessment records need to be seen by the CIT as just a review of the assessment order may not be sufficient (as generally only discussions around additions / adjustments would find place in the assessment order and therefore whether mind was applied on other points not ultimately considered for making additions / adjustments will not find a mention in the assessment order). While defending an invocation of Section 263, taxpayers need to ascertain whether during the original proceedings (subject matter of proposed review) the AO made relevant enquiries on the same topic / proposed adjustment, responses filed by taxpayers in response to such enquiries, follow up questions from AO if any to be able to defend allegations around lack of proper enquiry. If the AO accepted the position of the taxpayer, a review cannot be mounted and upheld merely because the CIT holds a different view or is of the view that the AO should have rather chosen a different view.

Maintaining and referring to these specific questions, responses thereto and any relevant further documentation in that regard will go a long way in assisting taxpayers defend the invocation of Section 263 by alleging lack of or inadequate enquiry. The other two limbs of the explanation namely not following binding orders, directions, instructions, etc or jurisdictional court rulings is more of a factual assessment.

It is clear that invocation of 263 proceedings is surrounded by a lot of litigation around interpretation and one will need robust documentation to be able to prove that relevant enquiries were made, a possible view was opted for by the AO after due application of mind and therefore invocation of revisionary powers is not permissible.

II. Revision Under Section 264

We now turn to the beneficial revisionary provision, which is the other side of the coin. Section 264 empowers the CIT to revise any order passed by a subordinate authority, either suo motu or on an application by the taxpayer. Unlike section 263, the power under section 264 is generally exercised to grant relief to a taxpayer and reads as under:

264. Revision of other orders.

(1) In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or

> *Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.*

A reading of the provision reminds us of the famous quote:

> *"For every ailment under the sun*
> *There is a remedy, or there is none;*
> *If there be one, try to find it;*
> *If there be none, never mind it."*

Section 264 can remedy for a number of ailments suffered by the taxpayers and broadly, the provision enables the CIT to call for and examine records and pass an order that is not prejudicial to the taxpayer. These proceedings can be initiated by the CIT on his own or on an application by the taxpayer.

Basic requirements:

(i) there must be an order passed by an authority subordinate to the CIT;

(ii) the taxpayer may apply for revision, ordinarily within 1 year;

(iii) the matter should not be one that is the subject of an appeal, or capable of being appealed where the taxpayer has not waived the appellate remedy, subject to the statutory framework; and

(iv) the CIT cannot pass an order prejudicial to the taxpayer

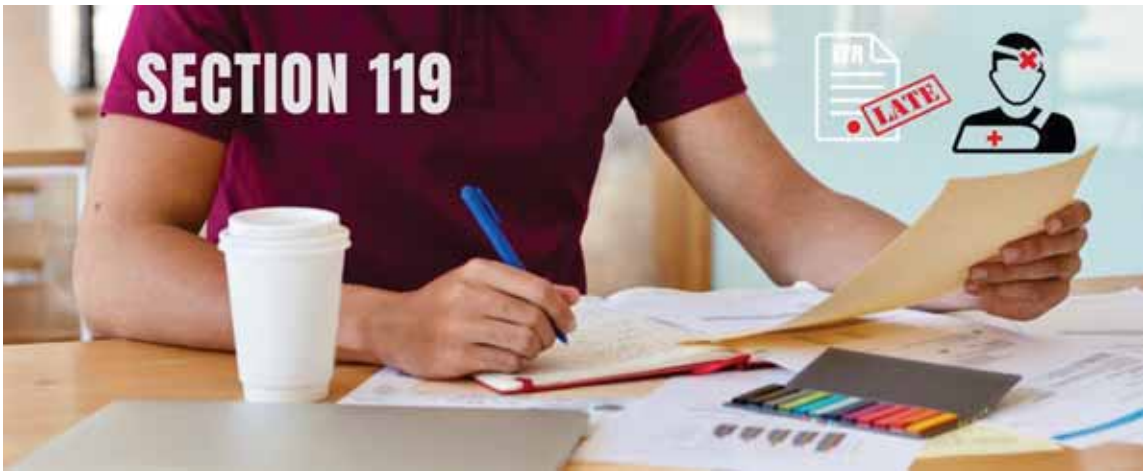
(v) The revisionary orders are required to be passed in a time bound manner (within one year from the end of the financial year in which application is filed)

A. An Underutilized Remedy for Assessees

In practice, Section 264 can be especially valuable where the taxpayer's substantive position is strong but the procedural route to obtain relief has been lost or was not properly exercised. It may also work well in situations wherein the taxpayer's claim under section 154 has been rejected as it's not an error apparent from the record, but the CIT under Section 264 has more powers to pass beneficial orders in favour of taxpayer as compared to an AO under section 154.

Timing can also be a factor working in opting for a Section 264 application. Let's assume a practical situation wherein a company faces an adjustment or addition which is very easily defendable on merits of the case and the company wishes to go

Section 264 however remains underutilised despite its broad remedial potential. It may be useful where an appeal is missed or unavailable, commercially disproportionate, or where the taxpayer seeks rectification of an obvious hardship that does not require appellate adjudication.



for liquidation soon. If it were to opt for the normal appellate route, the company may possibly have to go through multiple appellate levels of CIT (Appeals), Tribunal, High Court, Supreme Court (with any of the aggrieved party approaching the higher appellate forum). If a quick closure is intended and facts are strong, one may give the normal appellate route a miss and opt for Section 264 which is time bound and is likely to give an outcome in much shorter timeline.

Section 264 however remains underutilised despite its broad remedial potential. It may be useful where an appeal is missed or unavailable, commercially disproportionate, or where the taxpayer seeks rectification of an obvious hardship that does not require appellate adjudication.

It may be particularly relevant for matters such as a missed statutory claim, an incorrect computation, an unintended concession miss, or a failure to consider material already on record. However, it must be noted that section 264 is not a substitute for filing a timely revised return or an appeal.

B. Revision under Section 264 vis-à-vis Application under Section 119

Taxpayers often are faced with having to make a choice between filing an application under Section 264 before the PCIT/ CIT or approaching the Central Board of Direct Taxes (**"CBDT"**) under Section 119. Section 119 empowers the CBDT to issue orders, instructions, and directions for administration of the Act. Section 119(2)(b) allows the CBDT to admit applications for claims of exemption, deduction, refund, or other relief after expiry of the specified period. It is an administrative remedy, whereas Section 264 is a quasi-judicial revisionary power.

Section 119 empowers the Central Board of Direct Taxes to issue instructions and, in prescribed circumstances, authorise income-tax authorities to admit delayed claims, process refunds, grant exemptions, deductions or other relief where genuine

hardship is established. It is commonly invoked for condonation of delay in making a claim.

Section 264, on the other hand, concerns revision of a specific order passed by a subordinate authority. It is a revisionary remedy before the CIT. Thus, where a taxpayer seeks condonation of delay in making a belated claim, section 119 may be the appropriate route. Where there is an erroneous or prejudicial order requiring correction, section 264 may be considered, subject to its limitations.

C. The Supreme Court Decision in Om Siddhakala Associates

The Supreme Court's recent decision in ***Deputy CIT, CPC vs. Om Siddhakala Associates [2026] 189 taxmann.com 305 (SC)*** is relevant in the present context.

The taxpayer in this case had filed a return without claiming the tolerance limit under section 43CA. It did not file a revised return within the prescribed period. Following processing under section 143(1) and issuance of a demand under section 156, the taxpayer sought relief through a revision application under section 264. The Supreme Court held that section 264 could not be used to make a claim that ought to have been made through a revised return within the statutory time limit. The revision application was, in substance, an attempt to revise the return *"under the garb of a revision"*. The taxpayer was consequently held liable to tax based on the return originally filed.

The decision clarifies that section 264 is a valuable but limited remedial mechanism. It can correct an order in appropriate cases; it cannot be used to bypass a statutory requirement or revive a claim that the taxpayer failed to make within the prescribed framework.

III. Conclusion and Key Takeaways

If Section 263 is the revenue's sword, the courts have ensured that it stays sheathed unless both edges are sharp. The order must be erroneous and prejudicial to the revenue, and neither edge alone will cut. After Malabar Industrial, a plausible view adopted by the AO after due enquiry cannot be overturned merely because the CIT prefers another. A change of opinion is not a ground for revision, and a debatable issue is not an error. Explanation 2 has given the revenue a keener blade where enquiries were never made, so the taxpayer's best armour remains the assessment record: questions asked, answers given and positions accepted.

Section 264, by contrast, is the shield that taxpayers too often leave leaning against the wall. It is time-bound and beneficial, and it spares the taxpayer the multi-tier appellate marathon. It can rescue a strong case stranded by a lost procedural route. Om Siddhakala Associates, however, is a timely reminder that a shield is not a time machine. It cannot revive a claim that belonged in a revised return.

The safety valve works in both directions, and the skill lies in knowing which setting to turn, and when. Or, to borrow from the verse: where a remedy exists, find it; where the statute has already closed the door, never mind it.

■

PENALTY PROCEEDINGS: CONTROVERSIES AND EMERGING COMPOSITE ASSESSMENT ORDERS



Piyush Bafna

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Overview

Penalty proceedings are separate from assessment proceedings and thus require independent examination of statutory violations, the charge communicated to the assessee and limitation period. This article considers the earlier and substituted versions of section 275, the distinction between under-reporting & misreporting and the protection for bona fide explanations u/s 270A. It examines judicial principles governing consistency between the assessment record, show-cause notice and penalty order, including implications of change in the charge and divergent Tribunal approaches related thereto. The article also considers implications of unsupported misreporting allegations used to deny immunity. It further examines the newly introduced composite-order procedure under section 274(4), its commencement and its consequences for the penalty defense, first appeal and financial burden. The true test of the success of composite-order regime will be whether it can shorten the process without diminishing the scrutiny that a penalty demands or the safeguards that the assessee deserves.

1. Introduction

A. The validity of a penalty must be examined with reference to the default which the statute penalises, the charge communicated to the assessee and the period within which the order could lawfully be passed. Mere addition to income is in itself not sufficient to levy a penalty as law still requires fulfilment of the statutory ingredients and procedure laid down. Yet, penalty proceedings often proceed on

B. This article examines select controversies under the Income-tax Act, 1961, particularly section 270A, applicable from AY 2017-18. The earlier section 271(1)(c) authorities remain relevant to procedural safeguards, subject to the differences in the statutory language. The Finance Act, 2026 has now provided for a composite assessment and penalty order in specified cases. Its implications require examination against this existing jurisprudence.

2. Limitation for passing the penalty order

A. Before its substitution with effect from 1 April 2025, section 275(1) contained three clauses.

Provision	*Applicable cases*	*Time limit for passing the penalty order*
Clause (a)	Where the relevant assessment or other order was the subject-matter of an appeal.	**Later of:** (i) the end of the financial year in which the proceedings, in the course of which penalty action was initiated, were completed; or (ii) six months from the end of the month in which the Principal Commissioner or Commissioner received the appellate order.
Proviso to clause (a)	Orders passed by the Joint Commissioner (Appeals) or Commissioner (Appeals) on or after 1 June 2003.	**Later of:** (i) the end of the financial year in which the proceedings, in the course of which penalty action was initiated, were completed; or (ii) one year from the end of the financial year in which the Principal Commissioner or Commissioner received the appellate order.
Clause (b)	Where the relevant assessment or other order was the subject-matter of revision under section 263 or 264.	Six months from the end of the month in which the revision order was passed.
Clause (c)	Any other case.	**Later of:** (i) the end of the financial year in which the proceedings, in the course of which penalty action was initiated, were completed; or (ii) six months from the end of the month in which action for imposition of penalty was initiated.

B. The Finance Act, 2025 substituted section 275 with effect from 1 April 2025. The prescribed period is six months from the end of the quarter containing the applicable statutory event. They are set out below.

Provision	Event from which the quarter is identified
Section 275(1)(a)	Completion of the connected proceedings where the relevant order is not under appeal.

Provision	Event from which the quarter is identified
Section 275(1)(b)	Passing of the revision order under section 263 or 264.
Section 275(1)(c)	Receipt of the first appellate order by the jurisdictional Principal Commissioner or Commissioner, where no further appeal under section 253 is filed.
Section 275(1)(d)	Receipt of the Tribunal's appellate order by the jurisdictional Principal Commissioner or Commissioner.
Section 275(1)(e)	Issue of the penalty notice in any other case.

C. The above substitution created uncertainty about the time limit applicable to pending penalty proceedings. In ***Rajesh Bihari Khetwani***[1], the first appellate order was passed in September 2024. Under the earlier provision, the Assessing Officer had time until 31 March 2026 to impose penalty, and the penalty order was passed on 25 June 2025. The assessee contended that the amended provision, effective from 1 April 2025, applied to the pending proceedings. On that computation, the time limit would have expired on 31 March 2025, making the penalty order time-barred. The Tribunal rejected this contention: an amendment effective from 1 April 2025 could not require the officer to have passed the order by 31 March 2025, before the amendment became effective. It therefore applied the earlier provision in that case and held the penalty order to be within time.

Under the amended law, the limitation is linked to the receipt by jurisdictional Commissioner, therefore now it is crucial for the assessee to obtain evidence of the relevant receipt date where the statute makes receipt decisive.

D. Under the amended law, the limitation is linked to the receipt by the jurisdictional Commissioner; therefore, it is now crucial for the assessee to obtain evidence of the relevant receipt date where the statute makes receipt decisive. Under the earlier provision, the Delhi High Court in ***GE Energy Parts***[2] held that receipt of the Tribunal's order by the Commissioner (Judicial) was sufficient for computing limitation and the Department could not extend that period by delaying transmission to the jurisdictional Commissioner, since the provision did not restrict receipt

1. *Rajesh Bihari Khetwani vs. ITO, ITA No. 7184/Mum/2025 (ITAT Mumbai), 16 April 2026, paras 15–19.*
2. *GE Energy Parts Inc. vs. DCIT, W.P.(C) No. 5577/2018 and connected matters (Delhi HC), 20 August 2019, paras 25–34.*

The assessee must establish limitation objection through the relevant dates, after accounting for statutory exclusions. Thus, unless section 275 provides, a assessee's request to keep proceedings in abeyance does not per se extend limitation, nor does section 275 entitle the assessee to insist that the officer await the conclusion of every quantum appeal.

to that authority. The substituted provision, however, expressly refers to receipt by the jurisdictional Principal Commissioner or Commissioner. This change in wording must therefore be carefully considered before applying the GE Energy (supra) decision to proceedings governed by the amended provision.

E. With regard to the penalties that are independent of the assessment of income, like the penalties under sections 271D and 271E, the Tribunal in *Hissaria Brothers*[3] held that the pendency of the quantum appeal did not extend the limitation for imposing those penalties.

F. Therefore, careful examination of the limitation period before entering into the merits of the penalty is warranted. The assessee must establish a limitation objection through the relevant dates, after accounting for statutory exclusions. Thus, unless section 275 provides, an assessee's request to keep proceedings in abeyance does not per se extend limitation, nor does section 275 entitle the assessee to insist that the officer await the conclusion of every quantum appeal.

3. Under reporting and misreporting

A. Section 270A requires a distinction between the existence of under-reported income and its classification as income under-reported in consequence of misreporting. Sub-section (2) identifies the situations constituting under-reporting. The ordinary penalty is 50% of the tax on under-reported income. The higher rate of 200% of tax requires an established circumstance under sub-section (9). The difference in rates follows from the statutory classification of default, and the Assessing Officer cannot select the higher rate merely because the addition is substantial.

B. Section 270A(9) specifies six cases of misreporting: (a) misrepresentation or suppression of facts; (b) failure to record investments in the books of account; (c) claim of expenditure not substantiated by any evidence; (d) recording of any false entry in the books of account; (e) failure to record any receipt in books of account having a bearing on total income; and (f) Non-reporting of international, deemed international or specified domestic transactions covered by Chapter X.

3. *CIT vs. Hissaria Brothers [2016] 386 ITR 719 (SC), Civil Appeal No. 5254/2008, 22 August 2016.*

The Full Bench of the Bombay High Court in Mohd. Farhan A. Shaikh held that a clear assessment finding does not cure an omnibus penalty show cause notice under section 271(1)(c) as the assessee must know the charge from the statutory notice itself.

Each clause has distinct requirements. Merely treating revenue expenditure as capital does not establish that the claim is "not substantiated by any evidence". Similarly, omission of income from the return does not, by itself, establish "failure to record any receipt in books of account". The officer is required to establish the ingredients of the particular clause before treating the addition or disallowance as misreporting.

C. The Delhi High Court has rejected misreporting where the assessee and the officer arrived at different section 14A disallowances from the same disclosed material[4]. Similarly, in the transfer pricing context, the Mumbai Tribunal has sustained deletion where the transactions were reported, prescribed documentation was maintained, and the adjustment arose from a benchmarking difference[5]. These decisions make it clear that the officer must establish how the facts satisfy the ingredients of the particular clause of section 270A(9).

4. Satisfaction in assessment and consistency of the charge

A. The assessment order, the show-cause notice and the penalty order should disclose a consistent case against the assessee. These documents serve different purposes. The assessment order records the basis for initiation; the notice communicates the accusation which needs to be answered, and the final order should adjudicate that accusation after considering the reply. A statement that a penalty is initiated separately does not, by itself, explain why the facts constitute misreporting. Section 274(1), as amended from 1 March 2026, expressly requires the opportunity to be afforded through a show-cause notice.

B. The Full Bench of the Bombay High Court in *Mohd. Farhan A. Shaikh* held that a clear assessment finding does not cure an omnibus penalty show cause notice under section 271(1)(c) as the assessee must know the charge from the statutory notice itself. *Manjunatha Cotton and Ginning Factory* likewise requires the relevant ground to be specified and rejects initiation on one

Failure to delete inapplicable limb, or a notice which invokes both ordinary under-reporting and misreporting without specific particulars, prevents assessee from filing an informed reply.

4. *Prem Brothers Infrastructure LLP vs. NFAC [2022] 142 taxmann.com 38 (Delhi), paras 7–9.*
5. *ACIT vs. Alibaba Cloud India LLP, ITA No. 3496/Mum/2026 (ITAT Mumbai), 14 August 2026, paras 5–10.*

ground followed by imposition on another[6]. Applied to section 270A, this supports the requirement to specify whether the allegation concerns under-reporting or misreporting and, in the latter case, the particular clause of sub-section (9) invoked.

Absence of a charge or reasons in the assessment order

C. Where neither under-reporting nor misreporting is identified, or misreporting is stated without any finding connecting the conduct to the criteria laid down in section 270A(9), the defect concerns application of mind to the statutory condition. In ***GE Capital US Holdings***[7], the assessment order invoked misreporting without findings that brought the conduct within section 270A(9). Further, the notices were also ambiguous. The Delhi High Court rejected the denial of immunity u/s 270AA and held in favour of the taxpayer.

A general notice despite a charge in the assessment order

D. Failure to delete an inapplicable limb, or a notice which invokes both ordinary under-reporting and misreporting without specific particulars, prevents the assessee from filing an informed reply. The officer should inform the assessee what conduct he alleges constitutes misreporting and which clause of section 270A(9) applies. Merely using the word "misreporting" does not explain the charge. In ***G.R. Infraprojects***[8], the Rajasthan High Court found that neither the assessment order nor the subsequent show-cause notices identified the applicable part of section 270A(9). Even the penalty order failed to do so. The Court held the initiation of proceedings invalid and set aside the penalty and directed to grant immunity u/270AA.

Under-reporting in the assessment followed by a misreporting notice

E. If the officer changes the charge from under-reporting to misreporting, he must explain which clause of section 270A(9) applies and why, and give the assessee an opportunity to answer the revised charge. In ***Ethirajulu Vajravel Kumaran***[9], the initial under-reporting allegation was followed by a misreporting notice and a 200% penalty. The Tribunal deleted the 200% penalty because the subsequent notice alleging misreporting remained vague, and the Revenue had not challenged the appellate finding on this defect.

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6. *Mohd. Farhan A. Shaikh vs. DCIT [2021] 434 ITR 1 (Bom.) (FB), paras 182–192. CIT vs. Manjunatha Cotton and Ginning Factory [2013] 359 ITR 565 (Karn.).*
7. *GE Capital US Holdings Inc. vs. DCIT (International Taxation) [2024] 468 ITR 746 (Delhi), paras 22–24 and 29–34.*
8. *G R Infraprojects Ltd. vs. Assistant Commissioner of Income-tax [2024] 158 taxmann.com 80 (Rajasthan)/[2024] 297 Taxman 231 (Rajasthan)[02-01-2024]*
9. *DCIT vs. Ethirajulu Vajravel Kumaran, ITA Nos. 1650–1655/Chny/2025 (ITAT Chennai), 21 October 2025, paras 64–74.*

Under-reporting in the notice followed by misreporting in the order

F. In ***Jaina Marketing and Associates***[10], the Delhi High Court upheld deletion of the 200% penalty for mis-reporting where the notices alleged under-reporting, although the assessment referred to both expressions. In the immunity context, Neil Builders similarly rejected a subsequent misreporting justification when the notice had alleged only under-reporting[11].

A change between the clauses of section 270A(9)

G. In ***Samson Perinchery***[12], the Bombay High Court held that penalty cannot be imposed on a fresh ground of which the assessee had no notice. Applying this principle, an allegation of expenditure unsupported by evidence under section 270A(9)(c) cannot be replaced, for the first time in the penalty order, by an allegation of a false entry under clause (d) or an unrecorded receipt under clause (e). The officer must give the assessee an opportunity to answer the new factual allegation, else penalty proceedings get vitiated.

Misreporting in the notice followed by ordinary under-reporting penalty

H. A reduction in the rate does not necessarily cure defective initiation. In ***Ishwar Chand Agro***[13], the Tribunal



quashed proceedings where the initiated misreporting case ultimately became ordinary under-reporting, without proper identification and communication of the statutory charge.

I. There is, however, a contrary approach. Allied Photographics[14] treats section 270A as involving under-reporting with different penal consequences, distinguishes its wording from section 271(1)(c), and permits an initially deficient notice to be cured by adequate communication and opportunity before the final order.

5. *Bona fide* explanation and the absence of automatic penalty

A. Section 270A(6)(a) excludes an amount where the explanation is *bona fide* and all material facts necessary to substantiate it have been disclosed. The explanation must address the reason for the claim or omission and its supporting evidence. The Chennai Tribunal[15] has held that a bona fide

10. *PCIT (Central)-2 vs. Jaina Marketing and Associates, ITA No. 500/2024 (Delhi HC), 23 September 2024, paras 1–3.*
11. *Neil Builders Pvt. Ltd. vs. ACIT, W.P.(C) No. 12906/2021 (Delhi HC), 12 July 2024, paras 3–10.*
12. *CIT vs. Samson Perinchery [2017] 392 ITR 4 (Bom.), para 6.*
13. *Ishwar Chand Agro Pvt. Ltd. vs. DCIT, ITA No. 785/Del/2026 (ITAT Delhi), 5 August 2026, paras 9–15.*
14. *Allied Photographics India Ltd. vs. NFAC, ITA No. 3540/Mum/2023 (ITAT Mumbai), 30 April 2024, paras 6–9.*
15. *Chitra Jaikumar vs. ITO, ITA No. 2412/Chny/2024 (ITAT Chennai), 31 January 2025, paras 5–6.*

exemption claim with full disclosure attracted this exclusion and that the word "may" in section 270A(1) did not make penalty automatic. The Mumbai Tribunal has also accepted a substantiated computational error and rejected the proposition that every difference between returned and assessed income necessarily attracts penalty[16].

B. Conversely, acceptance of an addition or a surrender merely to avoid litigation does not establish *bona fides*. The assessee is still required to give a credible explanation for the default.

C. The exclusions are themselves qualified. Section 270A(8) overrides sub-sections (6) and (7) where misreporting is established. The assessee must therefore first answer the alleged sub-section (9) default.

6. Penalty where the returned income is accepted

Acceptance of a regular return

A. Where income assessed equals the income determined under section 143(1)(a), the comparison required by section 270A(2)(a) ordinarily discloses no under-reporting.

Acceptance of the first return filed under section 148

B. Section 270A(2)(b) expressly covers a first section 148 return where the assessed income exceeds the maximum amount not chargeable to tax. Acceptance of that return does not, by itself, remove the statutory default. Section 270A(3)(i)(b) prescribes the corresponding computation: assessed income for a company, firm or local authority, and the excess over the maximum non-taxable amount for other persons. The first section 148 return does not automatically absolve from levy of penalty. In ***Sanjay Sharma***[17], the Mumbai Tribunal upheld ordinary under-reporting penalty despite acceptance of that return, tax deduction at source and availability of the receipts in Form 26AS, because no statutory exclusion was established.

The Finance Act, 2026 has altered this position from 1 March 2026. Qualifying misreporting cases can now obtain immunity or waiver upon payment of additional income-tax equal to 100% of the tax on under-reported income, besides the assessed tax and interest.

C. That conclusion however, does not make every such case misreporting. The six defaults in section 270A(9) remain to be proved, and a substantiated *bona fide* explanation may attract section 270A(6)(a). ***Natarajan Anandh Kumar***[18] requires that explanation to be considered even in the first-return situation. Section 270A(11A) also protects income disclosed in a valid updated return filed within the time specified in a section 148 notice, where the assessee pays the additional income-tax required

16. *Suhas Sudhakar Joshi vs. DCIT, ITA No. 7984/Mum/2025 (ITAT Mumbai), 18 May 2026, paras 14–18.*
17. *Sanjay Sharma vs. Assessment Unit, Income-tax Department, ITA No. 2207/Mum/2026 (ITAT Mumbai), 14 July 2026, paras 4.4–4.8.*
18. *Natarajan Anandh Kumar vs. DCIT [2024] 466 ITR 201 (Mad.), W.P. No. 29829/2023, 23 January 2024, paras 8–11.*

under section 140B(3A), including the further 10% of tax and interest. Such income cannot form the basis of penalty under section 270A.

7. Misreporting as a ground for denying immunity

A. The classification as underreporting or misreporting has consequences beyond the percentage of taxes as penalty. Before 01.04.2025, u/s 270AA, initiation in the circumstances specified in section 270A(9) excluded immunity. ***Schneider Electric***[19] held that the allegation has a specific statutory foundation. The distinction assumes significance where an assessee accepts the tax liability but disputes the accusation of misreporting.

B. In ***Shanaji Becharji Baraiya***[20], the Gujarat High Court held that a first section 148 return attracted the ordinary under-reporting provision, but none of the six misreporting circumstances was established on the facts. The contention that the income would otherwise have escaped assessment did not justify the more serious classification. The refusal was quashed and immunity was granted.

C. However, in ***Spunwell Syntex***[21], the Rajasthan High Court held that omission of the specific sub-clause from the notice was not, by itself, fatal where the assessment order had already informed the assessee of the alleged default and denied to grant immunity u/s 270AA.

D. The Finance Act, 2026 has altered this position from 1 March 2026. Qualifying misreporting cases can now obtain immunity or waiver upon payment of additional income-tax equal to 100% of the tax on under-reported income, besides the assessed tax and interest.

8. Composite assessment and penalty orders

Commencement and scope

A. Section 274(4), inserted by the Finance Act, 2026 with effect from 1 March 2026, applies to the specified draft order under section 144C, assessment under section 143 or reassessment under section 147 made on or after 1 April 2027, for AY 2026-27 or an earlier assessment year. It provides that a section 270A penalty, if any, must form part of said order.

B. The words "if any" preserve the necessity of establishing penalty liability. The amendment does not direct a penalty upon every addition, extend the combined procedure to every penalty provision, or dispense with section 274(1).

A shorter period for the penalty defence

C. Under section 274(4), that response must be considered before passing of the specified composite order. An assessment questionnaire concerning deductibility cannot automatically serve as a penalty

19. *Schneider Electric South East Asia (HQ) Pte Ltd. vs. ACIT [2022] 443 ITR 186 (Delhi), paras 6–10.*
20. *Shanaji Becharji Baraiya vs. ITO, R/Special Civil Application No. 12968/2023 (Gujarat HC), 12 August 2025, paras 9.1–9.4 and 11.*
21. *Spunwell Syntex (P.) Ltd. vs. Income-tax Officer [2026] 190 taxmann.com 27 (Rajasthan)[25-08-2026]*

notice alleging suppression or false entries. In the author's view, the notice must separately identify the proposed default and allow a meaningful response from the assessee about levy of penalty.

D. The difficulty is sharper where the proposed assessment variation changes close to the time limit. The officer must then examine whether the altered variation also changes the penalty accusation. A final addition on a new basis cannot carry a predetermined misreporting conclusion from an earlier proposal. Administrative convenience may not justify the omitted opportunity or hearing.

The first challenge will carry greater responsibility

E. Grounds against the addition and grounds against penalty must be distinctly framed. Even if the addition survives, the penalty may fail because its statutory ingredients or procedural conditions are absent. In the DRP route, the proposed penalty must also be addressed in objections to the draft order. Though the procedure is combined, rejection of the quantum ground must still leave the independent penalty grounds for adjudication.

F. The financial burden can arise before quantum finality.

The new proviso to section 220(2) gives limited relief. For the specified assessments or reassessments made on or after 1 April 2027, interest on the section 270A penalty demand is excluded up to the section 250 order, or up to the section 254 order where the assessment follows DRP directions. That relief concerns interest on the penalty demand. It does not itself suspend recovery of the penalty principal.

At the Tribunal stage, the first proviso to section 254(2A) refers to a deposit of at least 20% of the specified aggregate, which includes penalty, or security of equal amount. The financial impact of



discussion aforesaid is explained in table below –

Illustrative demand	***Tax and penalty***	***20% benchmark***
	` lakh	***`. lakh***
Tax alone	10	2
Tax plus 50% for under-reporting penalty	15	3
Tax plus 200% for misreporting penalty	30	6

The distinction between under-reporting and misreporting thus affects the resources required to contest the demand. Security may avoid an immediate cash deposit, but it can still restrict access to assets or credit. The classification thus deserves a considered decision at assessment, particularly where the underlying tax issue remains reasonably contestable.

Whether consolidation will reduce litigation

G. Fewer separate orders may reduce repeated proceedings, but an earlier penalty decision may also bring into the first appeal penalty-related issues which would have otherwise disappeared after quantum relief. The workload thus, should be assessed by the issues requiring adjudication and not merely the number of appeals filed. The rule that deletion of the underlying addition removes the foundation of the corresponding income-linked penalty should remain relevant, together with the consequential machinery in section 275(2) and (3)[22].

9. Conclusion

Before levying the penalty, the statutory default must be identified by AO, communicated to the assessee and should ultimately be established in the order. Further, the assessee's explanation must receive an independent application of mind. A composite order regime from 01.04.2027 may reduce duplication where these requirements are observed in the assessment proceedings itself. However, the success of the composite procedure will depend on the quality of the penalty determination within it. If penalty is appended routinely to every assessment variation, the well-intentioned reform may instead increase the disputed demand, financial burden to obtain stay and the work of the appellate authorities. The existing judicial safeguards should therefore guide the implementation of the composite order regime u/s 274(4).

■

22. K.C. Builders vs. ACIT [2004] 265 ITR 562 (SC).

ONE ARRANGEMENT, MANY INQUISITIONS: THE OVERUSE OF GAAR IN INDIA



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Overview

The article critically examines India's GAAR, tracing its historical evolution from the pre-statutory "substance over form" doctrine through the Shome Committee reforms to its 2017 enactment, and questions whether tax authorities have invoked GAAR beyond its intended scope. Through an analysis of recent decisions, the article argues that GAAR—conceived as an exceptional, last-resort mechanism—is increasingly invoked contemporaneously with SAAR, JAAR, treaty override provisions, and the PPT under the MLI, turning it into a general discretionary power for tax authorities.

The central point of this article is to highlight the contemporaneous and overlapping invocation of anti-avoidance measures by tax authorities Multiple, duplicative anti-abuse inquiries over a single arrangement, each with different burdens of proof and procedural safeguards, impose an undue burden on taxpayers and enable tax authorities to engage in doctrinal forum-shopping when scrutinising arrangements. The article concludes with concrete recommendations, including reading down Section 90(2A) and clarifying the interplay between anti-avoidance rules, with the aim of restoring GAAR's last-resort character and promoting a more predictable, internationally consistent anti-avoidance framework for both taxpayers and tax authorities.

1. Introduction

While tax planning within the framework of law is legal[1], the past decade has seen aggressive tax planning resulting in shifting of profits and a mismatch between where value is created and where income is taxed[2]. From a policy perspective, tax avoidance is fundamentally undesirable as it severely erodes the tax base, undermines horizontal

1. *Mc Dowell & Co. Ltd. vs. Commercial tax Officer [1985] 22 Taxman 11 (SC).*
2. *Parthasarathi Shome, Taxation History, Theory, Law, and Administration (Springer 2021) 329.*

equity[3], and distorts economic neutrality[4]. Thus in efforts to curb such practices, countries across the globe, including India, have introduced or amended their tax laws to introduce specific and general rules to strike at unacceptable tax avoidance practices.

Some rules target specific and identifiable means of tax avoidance and are therefore termed specific anti-avoidance rules (**"SAAR"**). These rules focus on a specific and narrow mischief such as thin capitalisation and transfer pricing. However, over-time SAAR became obsolete to counter the more creative forms of tax avoidance[5]. To address this limitation, the legislators introduced general anti-avoidance rules (**"GAAR"**). Arguably, the very existence of GAAR indicates that the legislators themselves cannot predict the structures taxpayers might eventually contrive[6]. GAARs are, accordingly, structured in a broad and open-textured language[7].

In India, GAAR was first introduced under Chapter X-A of the Income Tax Act, 1961 (**"Act"**) through the Finance Act, 2012[8] and became effective from 1st April 2017. The introduction of GAAR was taken as a shock by the stakeholders, as the market was not prepared for such a paradigm shift in tax policy[9]. This article traces the historical trajectory of GAAR's evolution in India, examines the underlying rationale for its introduction, discusses the interplay between several anti-avoidance rules and, through a doctrinal analysis, interrogates whether tax authorities have invoked GAAR indiscriminately.

In India, GAAR was first introduced under Chapter X-A of the Income Tax Act, 1961 ("Act") through the Finance Act, 2012 and became effective from 1st April 2017.

2. Historical Evolution of GAAR

Before the statutory enactment of GAAR, the tax authorities invoked the judicial anti-avoidance rule (**"JAAR"**), particularly the 'substance over form' doctrine, which allowed them to dispense with the legal form and consider the real substance of the transactions. However, given the subjectivity inherent in the JAAR standard, the Supreme Court (**"SC"**) in the *Vodafone International Holdings BV* case highlighted the need for a legislatively enacted GAAR[10]. It is said that the GAAR provisions codify the 'substance over form' doctrine[11].

3. *Department of Economic Affairs, Final Report on General Anti Avoidance Rules (GAAR) in Income-tax Act, 1961 (30 September 2012) (Shome Committee) 20.*
4. *Rebecca Prebble and John Prebble, 'Does the Use of General Anti-Avoidance Rules to Combat Tax Avoidance Breach Principles of the Rule of Law? A Comparative Study' (2010) 55 Saint Louis University Law Journal 21.*
5. *ibid.*
6. *Rebecca Prebble and John Prebble (n 4).*
7. *Christophe J. Waerzeggers and Cory Hillier, 'Introducing a General Anti-Avoidance Rule (GAAR): Ensuring That a GAAR Achieves Its Purpose' (2016) Tax Law Technical Note 1.*
8. *Finance Act 2012, chapter X-A.*
9. *Shome Committee (n 3) 38.*
10. *Vodafone International Holdings B.V. vs. Union of India [2012] 17 taxmann.com 202 (SC).*
11. *Shome Committee (n 3) 21; Office of the Director General of Income Tax (International Taxation), Draft guidelines regarding implementation of General Anti Avoidance Rules (GAAR) in terms of section 101 of the Income Tax Act, 1961 (28 June 2012).*

In consistent with the international trend, GAAR was first proposed in the draft Direct Taxes Code Bill, 2009, and later carried into the Direct Taxes Code Bill, 2010 (**"DTC Bill 2010"**) to deter tax avoidance practices[12]. A committee under the chairmanship of the Director General of Income Tax (International Taxation) was constituted to give recommendations for implementation of GAAR provisions and suggest safeguards so that these provisions would not be applied indiscriminately[13]. Stakeholders expressed concerns regarding wide discretionary powers given to tax authorities, tax treaty override under GAAR affecting India's international obligations, absence of grandfathering provisions, re-examination of court-approved transactions, and cumbersome and costly litigation each time a transaction is evaluated under GAAR.

The DTC Bill 2010 itself never came into force and eventually lapsed upon the dissolution of the 15th Lok Sabha. The government eventually decided to incorporate GAAR in the Finance Bill, 2012 under Chapter X-A of the Income Tax Act, 1961[14]. However, considering the issues highlighted by stakeholders and committees, the finance minister, to provide more time to both taxpayers and tax authorities, deferred the applicability of GAAR provisions by one year[15].

Although the revenue department had already undertaken consultations and published draft guidelines, there was a need for a "far more widespread consultative process" and greater clarity[16]. Accordingly, an expert committee on GAAR, headed by Dr. Parthasarathi Shome, was constituted to finalise the GAAR guidelines and provide a roadmap for implementation (**"Shome Committee"**)[17]. The Shome Committee recommended drastic changes in both approach and application of GAAR, together with deferment of implementation of GAAR by three years[18].

The government adopted recommendations of the Shome Committee, including the main-purpose test (in contrast to one of the main purposes), an INR three crores threshold for tax benefit to a taxpayer in a year, fixed time limits, reasoned show cause notice, an exemption for Foreign Institutional Investors (**"FIIs"**) that forego treaty benefits, and limiting consequences to the impermissible part of an arrangement only. The government, however, did not immediately accept recommendations on the three-year deferral, composition

12. *Direct Taxes Code Bill 2010, s 123.*
13. *Chairman, CBDT, OM F.NO. 500/111/2009-FTD-1 (27 February 2012).*
14. *There was a critical difference between Finance Bill 2012 and DTC Bill 2010. While the DTC Bill 2010 required that the 'main purpose' of an arrangement be to obtain a tax benefit, the Finance Bill 2012 scrutinised arrangements with the 'main purpose' or 'one of the main purposes' of obtaining a tax benefit. Thus, the Finance Bill 2012 was arguably broader in scope.*
15. *Press Information Bureau, 'Opening Remarks made by the Finance Minister Shri Pranab Mukherjee at the beginning of the discussion on Finance Bill 2012' (PIB, 07 May 2012) <http://www.dea.gov.in/files/press_release_documents/FM_remark_FinanceBill2012.pdf> accessed 09 October 2026.*
16. *Press Information Bureau, 'Constitution of an Expert Committee on GAAR to undertake stakeholder consultations to finalise the guidelines for GAAR' (PIB, 13 July 2012) <https://www.pib.gov.in/newsite/PrintRelease.aspx?lang=2&reg=48&relid=85331&utm_> accessed 09 October 2026.*
17. *Shome Committee (n 3).*
18. *The Shome Committee recommended that GAAR should apply from assessment year 2017-18.*

The Central Board of Direct Taxes ("CBDT") issued Circular No. 7/2017 ("2017 circular") by way of clarificatory guidance on GAAR . It clarified, among other things, that GAAR and SAAR provisions may co-exist and are applicable as may be necessary in the facts and circumstances of the case.

of the Approving Panel, limiting GAAR to "abusive, contrived and artificial arrangements" only, excluding cases where SAAR applied, non-override of treaty anti-avoidance provisions, excluding revenue-neutral intra-group transactions, the broader principle distinguishing tax planning from tax avoidance, and a negative list for GAAR's invocation.

Around this time, the OECD/G20 Base Erosion and Profit Shifting Project (**"BEPS Project"**) was launched in 2013. The political and revenue pressures created by the 2008 financial crisis, along with public backlash against corporate tax avoidance, provided the impetus for the launch of the BEPS Project[19]. India was an active participant in the BEPS Project, and thus, the government deemed it appropriate to implement GAAR provisions as a part of a comprehensive regime to deal with base erosion, profit shifting, and aggressive tax avoidance and further deferred its implementation[20]. Finally, vide the Finance Bill 2015, it was provided that GAAR shall be effective from assessment year 2018-19 onwards[21].

Ahead of GAAR's implementation, the Central Board of Direct Taxes (**"CBDT"**) issued Circular No. 7/2017 (**"2017 circular"**) by way of clarificatory guidance on GAAR[22]. It clarified, among other things, that GAAR and SAAR provisions may co-exist and are applicable as may be necessary in the facts and circumstances of the case. On whether GAAR will be invoked to deny treaty eligibility in case there is compliance with the Limitation of Benefits (**"LOB"**) test, the 2017 circular provided that adoption of anti-abuse rules in tax treaties may not be sufficient; however, if an avoidance case is "sufficiently addressed" by LOB in the treaty, GAAR should not be invoked. It further provided that GAAR would not be invoked where a court or tribunal had "explicitly and adequately" considered the tax implications of an arrangement while sanctioning it. Finally, the 2017 circular confirmed that GAAR would not ordinarily be invoked solely on the basis that an entity was located in a tax-efficient jurisdiction, and that there are adequate procedural safeguards in place to ensure GAAR is invoked in a fair and rational manner. Taken together, these clarifications were intended to narrow the scope for arbitrary invocation of GAAR, yet, as the recent decisions examined in Section 3 of the article demonstrate, several of the 2017 circular's "clarifications" have themselves become sites of contested interpretation.

19. *Ruth Mason, The Transformation of International Tax (2020) 114 The American Society of International Law 353.*
20. *Finance Bill 2015, page 5 <https://www.indiabudget.gov.in/budget2015-2016/ub2015-16/memo/mem1.pdf> accessed 09 October 2026.*
21. *ibid.*
22. *CBDT, Circular No. 7/2017, 'Clarification on implementation of GAAR provisions under the Income Tax Act, 1961' (27 January 2017).*

Arguably, the government accepted many of the Shome Committee's recommendations but set aside those that would have limited the revenue's discretion. The Shome Committee had proposed that GAAR should apply only to abusive, contrived, and artificial arrangements, and with tax mitigation kept distinct from tax avoidance[23], a concern echoed by the DTC Bill 2010 Standing Committee, which warned against penalising *bona fide* transactions or generating avoidable litigation[24]. IMF also provided that GAAR should be invoked as a last resort[25]. The Shome Committee recorded concerns of all stakeholders that GAAR would end in harassment and litigation, as GAAR would be widely invoked by the tax authorities to rule genuine transactions as impermissible[26]. Against this backdrop, it is relevant to consider whether, in recent decisions, tax authorities have applied GAAR beyond its intended scope, vindicating these very apprehensions.

3. Recent decisions

The Shome Committee was significant in the historical evolution of GAAR as it considered comments from stakeholders and the general public, and its recommendations highlighted the spirit of GAAR provisions and influenced the eventual statutory framework to a limited extent. Against this backdrop, it would be relevant to consider whether, in recent decisions, the courts, tribunals, and AAR have interpreted the



application of GAAR provisions in light of the underlying intent of GAAR.

3.1 Ayodhya Rami Reddy (Telangana High Court, June 2024)[27]

In this case, Ramky Estate and Farms Limited ("**REFL**") issued shares to the assessee and Oxford Ayyapa Consulting Services Private Limited (**"Oxford"**). Oxford subsequently transferred its shares to the assessee. Following a bonus allotment at a 5:1 ratio by REFL, the face value of shares fell from ` 115/share to ` 19.20/share. Accordingly, when the assessee sold the initial shares at ` 19.20/share to Advisory Services Pvt. Ltd (**"ADR"**), they incurred a short-term capital loss. Allegedly, Oxford funded the purchase by ADR, and the

23. *Shome Committee (n 3) 36.*
24. *Standing Committee on Finance, Fifteenth Lok Sabha, 'The Direct Taxes Code Bill, 2010' (Ministry of Finance, 49th report, March 2012).*
25. *Christophe J. Waerzeggers and Cory Hillier (n 7).*
26. *Shome Committee (n 3) 34.*
27. *Ayodhya Rami Reddy Alla vs. Principal Commissioner of Income-tax (Central) [2024] 163 taxmann.com 277 (Telangana).*

money was returned by way of rotation of funds from within the group entities itself. The assessee sought to set off this short-term capital loss against long-term capital gains made on another sale of shares in Ramky Enviro Engineers Limited. The assessing officer (**"AO"**) invoked GAAR and treated these transactions as an Impermissible Avoidance Agreement (**"IAA"**). The assessee challenged the initiation of proceedings on the ground that the transactions are covered under SAAR provisions, not GAAR. The Telangana High Court upheld the invocation of GAAR, holding that the arrangement lacks "any logical or practical justification", and is designed to "sidestep tax obligations". It also observed that GAAR provisions are designed to act as an "all-encompassing safety net" to capture all illicit arrangements.

In this case, the assessee alleged that the transaction fell under Section 94(8) – a SAAR provision relating to bonus stripping, but at the relevant time, the provision did not extend to shares. In such a situation, it can be said that the SAAR did not "adequately" address the mischief of tax avoidance, and hence, the invocation of GAAR was justified. Having said that, the High Court's another observation complicates this justification: it notes that "Section 94(8) might be relevant in a simple, isolated case of the issuance of bonus shares, provided such issuance has an underlying commercial substance". This leaves the position unclear on whether the High Court upheld invocation of GAAR because Section 94(8) (or SAAR) inadequately addressed tax avoidance or because the bonus share issuance itself lacked underlying commercial substance—two doctrinally different grounds for invoking GAAR.

On the SAAR-GAAR interplay, the High Court held that the Shome Committee's stance that SAAR supersedes GAAR pertained to international agreements, and not domestic cases. This distinction is, however, difficult to reconcile, as the Shome Committee placed no such qualification[28]. Furthermore, the High Court held that the applicability of either GAAR or SAAR to an arrangement depends upon the specifics of each case. This position aligns with the 2017 circular which stated that "the provisions of GAAR and SAAR can coexist and are applicable, as may be necessary, in the facts and circumstances of the case"[29]. Thus, while invocation of GAAR may be justified where SAAR inadequately addresses tax avoidance, the absence of any statutory or administrative guidance on what constitutes "adequate" treatment of the mischief of tax avoidance leaves this threshold indeterminate. In the context of Section 94(8), the Bangalore ITAT in *Sri. B.G. Mahesh* has further muddied the waters as it inferred that the intention of the legislature was to exclude the shares of companies from the ambit of Section 94(8) of the Act and held that "for what the law has not envisaged and has specifically excluded cannot be read into the same by the Assessing Officer"[30]. Nonetheless, it remains unclear whether

28. *Shome Committee (n 3) 49, "In view of the above, the Committee recommends that where SAAR is applicable to a particular aspect/element, then GAAR shall not be invoked to look into that aspect/element".*
29. *Ayodhya Rami Reddy Alla (n 27).*
30. *Deputy Commissioner of Income-tax, Circle -5(1), Bangalore vs. B.G. Mahesh [2014] 43 taxmann.com 158 (Bangalore - Trib.).*

Section 94(8)'s mischief of bonus stripping failed to "adequately" address the situation of shares, or whether this was instead a deliberate legislative gap.

The Canadian decision in *Alta Energy Luxembourg S.A.R.L.* offers a useful analytical framework for resolving this very question. The majority in that case inferred that while the treaty specifically provided for SAAR denying treaty benefits to certain defined Luxembourg holding companies, there was no SAAR denying treaty relief to conduit companies in general (which was held to be foreseeable); thus, it was intended by the contracting parties that other companies with limited economic ties to Luxembourg could claim treaty relief[31]. The question therefore effectively is whether a particular tax outcome is one that lawmakers simply failed to anticipate, or whether its absence from the statute is itself evidence of a deliberate legislative choice. Perhaps the Telangana High Court in *Ayodhya Rami Reddy* should have considered whether Section 94(8)'s non-extension to share transactions was an unforeseen lacuna, or a considered legislative decision to exclude such arrangements from the SAAR's ambit.

Further, practitioners have questioned why Parliament found it necessary to amend Section 94(8) of the Act to cover shares if GAAR already covered the case of bonus stripping in shares[32]. More importantly, this raises the question of what role, if any, remains for SAAR: if tax authorities may invoke GAAR as an "all-encompassing safety net" notwithstanding a taxpayer's compliance with the specific SAAR enacted to govern the transaction, even genuine and otherwise SAAR-compliant transactions remain exposed to GAAR scrutiny. Thus, in the foreseeable unavoidable litigation, it would be worthwhile to see how the courts or tribunals interpret *Ayodhya Rami Reddy* on the issue of invocation of GAAR in a SAAR-occupied field.

Read together with the 2017 circular, *Ayodhya Rami Reddy* effectively converts the "adequately" addressed safe harbour into a broad reinforcement of tax authorities' discretion to overlook SAAR provisions.

3.2 Anvida Bandi (Telangana High Court, August 2025)[33]

In this case, the assessee, a regular investor, sold shares of one company and earned long-term capital gains which were set off against short-term capital loss incurred on sale of shares of another company. These transactions were executed through the stock exchange, as a part of the investment portfolio, yet GAAR was invoked on the basis of timing of the transactions. The Approving Panel determined that the transactions constitute an IAA.

31. *Her Majesty The Queen vs. Alta Energy Luxembourg S.A.R.L [2022] 144 taxmann.com 23 (SUPRIME COURT OF CANADA); Also see Pranshu Goel, 'Synergy or Conflict? SAAR and GAAR in Tax Laws Understanding the Intersection between SAAR and GAAR' (2024)164 taxmann.com 75.*
32. *Venkat Ramanan and Bhavana Kulluru, 'GAAR in practice: Lessons from Ayodhya Rami Reddy Alla and Anvida Bandi' (LKS, 28 January 2026) <https://www.lkslaw.com/insights/articles/gaar-in-practice-lessons-from-ayodhya-rami-reddy-alla-and-anvida-bandi> accessed 09 October 2026.*
33. *Smt. Anvida Bandi vs. Deputy Commissioner of Income-tax [2025] 177 taxmann.com 726 (Telangana).*

The Telangana High Court, taking note of the Shome Committee report, held that the timing of transactions should not be questioned and the sale and purchase through stock market transactions should not come under GAAR provisions. The High Court thus held that the transactions were genuine, and thus, fell outside the scope of GAAR.

The facts of *Ayodhya Rami Reddy* and *Anvida Bandi* are arguably similar, except that the transactions in *Ayodhya Rami Reddy* were carried off the market, unlike in *Anvida Bandi*. Practitioners argue that the mere fact that tax-efficient share trading is carried out off the market should not ipso facto result in the same being constituted as IAA[34]. This view was upheld by the CIT(A)[35] in *Vallabh Roopchand Bhansali* that not routing transactions through the exchange is a permissible commercial consideration, but the Mumbai ITAT disagreed with the CIT(A) holding that the transactions cannot be regarded as "tax planning" as it created an artificial capital loss for the purposes of tax avoidance[36].

Upon Revenue's petition, the matter reached the SC, which ruled that GAAR can apply even to pre-2017 investments as rule 10U(2) allows tax authorities to invoke GAAR where an arrangement is abusive, regardless of when the investments were made, so long as the benefit was obtained after enactment of Chapter X-A.

Nonetheless, these cases serve as an example of how the tax authorities exercise wide discretion and invoke GAAR to scrutinise investments on limited grounds that are contrary to the underlying intent of GAAR.

3.3 Tiger Global (SC, January 2026)[37]

The Mauritius-incorporated assessees sold their shares in Flipkart Private Limited (**"Flipkart"**) (Singapore) to Fit Holdings S.A.R.L (Luxembourg), owned by Walmart. Flipkart substantially derived value from Indian assets. Thus, there was an indirect transfer of Indian shares. While the assessees' investment pre-dated 1st April 2017, their board approved the sale after that date. The assessees approached the AAR seeking confirmation that capital gains were exempt under Article 13(4) of the India-Mauritius Double Taxation Avoidance Agreement (**"DTAA"**). The AAR rejected the application on the ground that the management and control were not in hands of the assessees, and that the transaction was *prima facie* designed to avoid taxation. The assessees thereafter challenged the order of the AAR before the Delhi High Court, which ruled in their favour.

The Delhi High Court held that GAAR was inapplicable as Article 13(3A) of the DTAA and rule 10U(1)(d) of the Income Tax Rules, 1962 (**"ITR"**) grandfathered the relevant transaction, and held that rule 10U(2) does not override rule 10U(1)(d). Further, it was

34. *Venkat Ramanan and Bhavana Kulluru (n 32).*
35. *The Commissioner of Income Tax (Appeals) ("CIT(A)").*
36. *ACIT vs. Vallabh Roopchand Bhansali [2024] 166 taxmann.com 488 (Mumbai – Trib).*
37. *Authority for Advance Rulings (Income-tax) vs. Tiger Global International II Holdings [2026] 182 taxmann.com 375 (SC).*

The Delhi ITAT held that GAAR cannot be invoked where the assessee falls within one of the conditions prescribed under Rule 10U of the ITR, and thus, since the tax benefit was below the monetary threshold of 3 crores, and the shares were acquired before 2017 (hence, grandfathered), treaty benefits could not be denied.

ruled that where there is a LOB provision in the DTAA, tax authorities cannot deny treaty benefits to the assessees by invoking GAAR[38].

Upon Revenue's petition, the matter reached the SC, which ruled that GAAR can apply even to pre-2017 investments as rule 10U(2) allows tax authorities to invoke GAAR where an arrangement is abusive, regardless of when the investments were made, so long as the benefit was obtained after enactment of Chapter X-A. The SC therefore diluted the express grandfathering under rule 10U(1)(d) by treating the "without prejudice" phrase in rule 10U(2) as a non-obstante clause. More importantly, the SC disregarded the safeguards governing the invocation of GAAR, substituted its view for the fact-intensive inquiry by the Approving Panel, and concluded that the transactions constituted an IAA merely on the basis of *prima facie* view of AAR[39]. Based on this *prima facie* view, the SC relied on Section 96(2) of the Act and shifted the burden of proof, of disproving avoidance, onto the taxpayer. Finally, the SC also held that JAAR co-exists with GAAR, and the tax authorities may invoke either.

The *Tiger Global* judgment thus raises questions regarding the scope of applicability of GAAR, for it allows the tax authorities to scrutinise even pre-2017 investments and deny treaty benefits.

3.4 Veg 'N' Table (Delhi ITAT, October 2023)[40]

The assessee, an investment holding company incorporated in Mauritius, acquired certain shares in an Indian company prior to 2014, and sold them in the assessment year 2018-19. The assessee consequently claimed exemption under Article 13(4) of the DTAA. The AO, based on certain factors, such as no operating or passive revenue from the principal activity, no operating expenses, no remuneration to the company's directors, and repatriation to a UK company immediately after deriving capital gains, denied treaty benefit and held that the assessee is a conduit entity set up in Mauritius to avoid tax. The Delhi ITAT held that the AO failed to provide clinching evidence to substantiate efforts to evade tax. The ITAT opined that by virtue of Section 90(2A) of the Act, the overriding effect of the treaty stood diluted, and thus GAAR could be invoked even in cases

38. *Tiger Global International III Holdings vs. Authority For Advance Rulings (Income-tax) [2024] 165 taxmann.com 850 (Delhi).*
39. *Rajesh Simhan, Afaan Arshad, and Utkarsha Singh, 'Tiger: An Uneasy Approach to Treaty Override' (Taxsutra, 04 February 2026) <https://www.taxsutra.com/dt/experts-corner/tiger-uneasy-approach-treaty-override> accessed 08 October 2026.*
40. *Veg 'N' Table vs. Deputy Commissioner of Income-tax [2023] 156 taxmann.com 389 (Delhi - Trib.).*

where treaty provisions were beneficial to the assessee.

3.5 Reverse Age Health Services Pte Ltd (Delhi ITAT, February 2023)[41]

In this case, the assessee, a Singapore-based company, acquired shares of a company and thereafter sold them in 2018, giving rise to short-term capital gains of roughly 2 crores. The assessee claimed exemption under Article 13(4A) of the India-Singapore DTAA, which was denied by the AO on the grounds that the assessee was a shell company and had no commercial substance. The Delhi ITAT held that GAAR cannot be invoked where the assessee falls within one of the conditions prescribed under Rule 10U of the ITR, and thus, since the tax benefit was below the monetary threshold of 3 crores, and the shares were acquired before 2017 (hence, grandfathered), treaty benefits could not be denied.

As evidenced by this ruling, the tax authorities have invoked GAAR without following the prescribed conditions for its applicability, harassing small taxpayers.

3.6 Hinduja Group Demerger (Bombay High Court, pending)[42]

The Approving Panel characterised the demerger of Digital, Media and Communication Business undertaking of NXTDigital into HGSL, resulting in total tax reduction of HGSL of INR 281.59 crores, as an IAA under Chapter X-A of the Act. It determined that the dominant purpose of the demerger was to set off the demerged undertaking's losses and depreciation against HGSL's income. The petitioners have argued that the transaction is squarely covered under Section 74A(2) of the Act, and once the Act itself permits such a transfer, GAAR cannot be invoked.

Interestingly, before the demerger was sanctioned, the Income Tax Authorities were given a notice, but they did not raise any objections at that stage[43]. This raises the question whether GAAR should be invoked to scrutinise court-sanctioned schemes and arrangements. While the Shome Committee answered this in the negative[44], the 2017 circular provided that GAAR will not be invoked where the court has "explicitly and adequately considered the tax implication while sanctioning an arrangement"[45]. The

41. *Reverse Age Health Services Pte Ltd. vs. Deputy Commissioner of Income-tax [2023] 147 taxmann.com 358 (Delhi - Trib.).*
42. *Hinduja Global Solutions Limited, Bombay Stock Exchange Disclosure under Listing Regulations and Listing Obligations (31 October 2025) <https://hgs.com/wp-content/uploads/2025/10/SE-Disclosure.pdf> accessed 08 October 2026; Also see Aditi Goyal, Aishwarya Palan and Paras Arora, 'India's GAAR after Tiger Global: What foreign investors need to know' (Trilegal, 24 June 2026) <https://trilegal.com/news-insights/news-insights-thoughtleadership-aditi-goyal-indias-gaar-after-tiger-global-what-foreign-investors-need-to-know> accessed 08 October 2026.*
43. *Hinduja Global Solution Limited vs. Principal Commissioner Of Income Tax [2025] WP 4867/2025 [Bombay High Court, 19 December 2025].*
44. *Shome Committee (n 3) 35.*
45. *CBDT, Circular No. 7/2017 (n 22).*

Ahmedabad ITAT has gone further and held that where the scheme has been sanctioned by the High Court and tax authorities do not raise any objections at the right stage, their consent to the impugned scheme is implied[46]. Yet since other tribunals have also held that only routine tax consequences, and not commercial substance under GAAR provisions, could be examined at the NCLT approval stage[47], whether GAAR can still be invoked despite such court sanction remains an open question.

3.7 Amanora Future Towers Pvt. Ltd. (Pune ITAT, December 2020)[48]

In this case, the tax authorities recharacterized compulsorily convertible debentures issued by the assessee as equity on the basis that the transactions were aimed at reducing the tax bill by claiming deduction of interest on debentures. To support their view, they relied on thin capitalisation rules and GAAR, despite the fact that the said rules were not even applicable to the relevant assessment year. The Pune ITAT, therefore, held that the AO could not have recharacterized the form of the transaction. Further, the mandate of a SAAR (transfer pricing in this case) cannot be extended to allow the AO to recharacterize a transaction, where the power to do the same is not granted.

The mere existence of a tax benefit in the hands of one group entity should not, without more, justify invocation of GAAR where there is no actual loss or deferral of overall tax revenue. This is consistent with the Shome Committee's recommendation as well that GAAR should not be invoked in such intra-group transactions[49]. The tax authorities, hence, should not use their wide discretion to expand the scope of their mandate under Chapter X-A of the Act.

3.8 Accion Africa-Asia Investment Company Ltd. (Delhi ITAT, October 2023)[50]

The assessee, a Mauritius investment holding company, derived long-term capital gains on the sale of shares of two Indian companies. The assessee claimed treaty relief under Article 13(4) of the India-Mauritius DTAA, under which long-term capital gains derived by a Mauritius tax resident are taxable only in Mauritius. The AO denied treaty relief and held that the assessee has been set up through a scheme of arrangement for the sole purpose of claiming exemption under the DTAA. The AO, without invoking the

46. *KIFS International LLP vs. ACIT [2024] IT Appeal No. 682/Ahd/2023 [Ahmedabad ITAT, 08 February 2024]; Dalmia Power Ltd. vs. Assistant Commissioner of Income Tax, Circle-1, Trichy [2020] 269 Taxman 352 (SC). In fact, once a scheme is sanctioned by the NCLT, it operates as a judgment in rem and is thereafter binding on all stakeholders including the tax authorities.*
47. *Panasonic India (P.) Ltd., In re [2022] 138 taxmann.com 570 (NCLT-Chd.)/[2023] 237 COMP CASE 331 (NCLT-Chd.) [19-05-2022]; Also see Rajesh Simhan and Sarthak Parnami, 'When Does Tax Efficiency Become Tax Avoidance? The Hinduja Demerger and the (Over) Reach of GAAR' (Anagram Partners, 12 January 2026) <https://anagrampartners.in/insights/when-does-tax-efficiency-become-tax-avoidance-the-hinduja-demerger-and-the-over-reach-of-gaar/> accessed 08 October 2026.*
48. *M/S. Amanora Future Towers Pvt. Ltd., Pune vs. Deputy Commissioner of Income-Tax, Circle - 1(1) [2020] Pune (ITA 772/2018); Deputy Commissioner of Income-tax vs. Kolte Patil Developers Ltd. [2021] 126 taxmann.com 281 (Pune - Trib.).*
49. *Shome Committee (n 3) 35.*
50. *Accion Africa-Asia Investment Company vs. ACIT (International Taxation) [2024] 161 taxmann.com 582 (Delhi - Trib.).*

GAAR was conceived as an overarching anti-avoidance rule to counter arrangements that exploit legal provisions in a manner that is abusive or impermissible. Its use in cases involving genuine commercial arrangements or legitimate tax planning, or otherwise "undeserving cases" therefore, represents an expansion of GAAR beyond its intended scope.

GAAR provisions, regarded it as an IAA. The Delhi ITAT held that in the absence of cogent evidence, the AO has introduced the "theory of impermissible tax avoidance arrangement and Conduit Company" only to defeat the assessee's claim for exemption under Article 13(4) of the DTAA.

Once again, this case indicates how the tax authorities in India exercise their discretion to hold genuine commercial transactions as an IAA.

3.9 Property Plus Realtors (Delhi ITAT, January 2026)[51]

Property Plus Realtors, a partnership firm, paid substantial commission to Softech International Pvt. Ltd. (**"SIPL"**), a company subsequently taken over by two of the firm's partners. The PCIT[52] considered the arrangement a device to shift profits to SIPL, and hence, a colourable device created for tax avoidance. The petitioner contended that the PCIT cannot invoke JAAR to circumvent the monetary threshold and other safeguards under the GAAR provisions.

Here, similar to the *Accion Africa-Asia Investment Company Ltd* case, the tax authorities imported GAAR-like conclusions (IAA, lack of commercial substance) into proceedings under Section 263 of the Act, without formally invoking GAAR.

Taken together, these decisions suggest that the apprehensions voiced by the Shome Committee and the DTC Standing Committee that GAAR would be invoked indiscriminately, generate avoidable litigation, and convert a last resort anti-avoidance mechanism into a general discretionary power have, at least in a meaningful subset of cases, been borne out in practice. GAAR was conceived as an overarching anti-avoidance rule to counter arrangements that exploit legal provisions in a manner that is abusive or impermissible. Its use in cases involving genuine commercial arrangements or legitimate tax planning, or otherwise "undeserving cases" therefore, represents an expansion of GAAR beyond its intended scope. Such overreach risks converting an exceptional anti-avoidance mechanism into a general discretionary power to deny tax benefits.

4. Interplay between anti-avoidance rules

Given that Section 100 of the Act provides that GAAR applies "in addition to, or in lieu of, any other basis for determination of tax liability"[53], it is relevant to consider how GAAR interacts with other anti-avoidance

51. *Property Plus Realtors, Delhi vs. Pr, CIT Central Delhi 2 [2026] ITA 3406/2025.*
52. *Principal Commissioner of Income Tax ("PCIT").*
53. *Income Tax Act 1961, s 100.*

rules provided under the domestic laws and in tax treaties. It is argued that the tax authorities invoke multiple, overlapping anti-avoidance standards contemporaneously which impose an undue burden on the taxpayers. Thus, it is suggested that anti-avoidance rules should not apply contemporaneously where there are overlaps between them.

4.1 GAAR and SAAR

The Shome Committee had recommended that "where SAAR is applicable to a particular aspect/element, then GAAR shall not be invoked to look into that aspect/element"[54] a recommendation consistent with *generalia specialibus non derogant*. However, this recommendation did not flow into the Act. The draft guidelines on implementation of GAAR provided that in an exceptional case of abusive behaviour by the taxpayer that defeats SAAR, tax authorities can invoke GAAR[55]. Thereafter, the 2017 circular clarified that SAAR and GAAR could co-exist and apply if the facts require so.

In *Ayodhya Rami Reddy*, the tax authorities invoked GAAR to treat a bonus-stripping transaction in shares as an IAA, notwithstanding that Section 94(8) — the SAAR specifically designed to counter bonus stripping — did not, at the relevant time, extend to shares. Thus, where there is a "gap" in the SAAR, tax authorities should not invoke GAAR and leave it to the Parliament to fill it. Studniberg argues that if a SAAR cannot be read as prohibiting taxpayers' conduct even when interpreted purposively, i.e., where there is a gap, neither the tax authorities should be given a second chance by applying GAAR, nor the taxpayers be denied the opportunity to pursue tax planning strategies on account of perceived gap[56].

A LOB clause in the DTAA sets out criteria for qualifying treaty benefits, acting as an anti-abuse measure. It is a SAAR to prevent tax abuse and deter treaty shopping.

4.2 GAAR and JAAR

The pre-GAAR era was governed by JAAR – specifically, the "substance over form" doctrine, as articulated in *McDowell*[57]. The Shome Committee observed that Section 97(1)(a) of the Act under Chapter X-A is the codification of this doctrine[58]. The interplay between GAAR and JAAR is delineated— GAAR is confined to post-2017 investments, and JAAR can be invoked in pre-2017 investments. A natural inference from this analysis is that Chapter X-A is that the judicial doctrine ought to operate as subsumed within — rather than parallel to — the statutory regime for post-2017 investments. However, *Tiger Global* held that GAAR, and in the alternative, JAAR can also

54. *Shome Committee (n 3) 49.*
55. *Press Information Bureau (n 16).*
56. *Brian M Studniberg, 'Minding the Gap in Tax Interpretation: Does Specificity Oust the General Anti-Avoidance Rule Post-Copthorne?' (2012) 38 Queen's Law Journal 209. Also see Judith Freedman, 'Interpreting Tax Statutes: Tax Avoidance and the Intention of Parliament' (2007) 123 Law Quarterly Review 53.*
57. *Mc Dowell & Co. Ltd (n 1).*
58. *Shome Committee (n 3) 27.*



apply for pre-2017 investments[59]. On this basis, it is unclear whether the threshold for JAAR, which is requirement of establishing sham, colourable device or abuse, is now diluted[60].

Where GAAR is found inapplicable, the tax authorities may nevertheless invoke JAAR[61]. This sets a dangerous precedent as it allows tax authorities to exercise wide discretion to declare arrangements as IAA, and circumvent GAAR's procedural safeguards, as concluded in *Property Plus Realtors* as well.

For example, consider Rule 10U(1)(b) of the ITR, which provides an exemption from application of GAAR to FIIs where they forego treaty benefit under the DTAA and have invested in listed securities, or unlisted securities, with the prior permission of the competent authority. Thus, while there should be no GAAR exposure to the FIIs who subject themselves to domestic laws, it does not provide them a safe harbour from invocation of other anti-avoidance rules, including SAAR and JAAR. The value of the FIIs exemption lies in the procedural certainty vis-à-vis GAAR only. Therefore, the FIIs, regardless of whether they claim treaty benefit, may be subjected to anti-avoidance inquiries.

59. *Authority for Advance Rulings (Income-tax) vs. Tiger Global International II Holdings (n 35) [48].*
60. *Kamini Toprani and Parul Jain, 'GAAR Gets Grandfathered' (Nishith Desai Associates, 10 April 2026) <https://www.nishithdesai.com/research-and-articles/hotline/tax-hotline/gaar-gets-grandfathered-15569> accessed 08 October 2026.*
61. *Authority for Advance Rulings (Income-tax) vs. Tiger Global International II Holdings (n 35) [48].*

4.3 GAAR and DTAAs

Section 90(2A) of the Act states that Chapter X-A shall apply even in cases where it is not beneficial to the assessee in comparison with the DTAA[62]. The intersections between domestic law and provisions of a treaty must be informed by the principle of *pacta sunt servanda*. However, from the cases examined in section 3 of the article, tax authorities routinely deny tax treaty benefits by relying on Section 90(2A) of the Act and thus cross the line of interpreting statutes in harmony with international obligations[63]. As *Tiger Global* and *Veg 'N' Table* illustrate, Section 90(2A) has been read as a general licence for domestic GAAR to override treaty protections, including express grandfathering and LOB clauses, irrespective of whether the treaty itself contains an anti-abuse mechanism.

A LOB clause in the DTAA sets out criteria for qualifying treaty benefits, acting as an anti-abuse measure. It is a SAAR to prevent tax abuse[64] and deter treaty shopping. Accordingly, where there are anti-avoidance rules provided in a tax treaty, the GAAR provisions should not apply, overriding the treaty[65]. The 2017 circular clarifies that if a case is "sufficiently addressed" by LOB in the treaty, GAAR would not be invoked; however, it does not provide any further guidance on the circumstances in which an arrangement can be regarded as being "sufficiently addressed" by the LOB clause. The Delhi High Court in *Tiger Global* found the LOB provisions in the India-Mauritius DTAA to be comprehensive and held that once LOB provisions are incorporated in the DTAA, it would be those provisions which would govern and be determinative of an allegation of treaty abuse[66]. The Delhi High Court unequivocally provided support for a harmonious construction of domestic laws and international obligations. Authors argue that anti-abuse provisions in DTAAs have been rendered redundant by Section 90(2A) of the Act[67], i.e., Parliament has undermined India's international obligations. Arguably, Section 90(2A) constitutes a unilateral amendment to the substantive rights recognised in the treaty, and a DTAA must be amended jointly by both contracting parties. Moreover, the Delhi High Court in *New Skies Satellite BV* held that amendments to domestic law cannot be read into treaty provisions without amending the treaty itself[68]. Thus, it is suggested that Section 90(2A) of the Act should be read down so that GAAR overrides treaties only where the relevant treaty does not itself contain anti-abuse rules to counter tax avoidance.

4.4 GAAR and PPT

India entered the Multilateral Convention to Implement Tax Treaty Related Provisions

62. *Income Tax Act 1961, s 90(2A).*
63. *Rajesh Simhan, Afaan Arshad, and Utkarsha Singh (n 37).*
64. *Shome Committee (n 3) 49.*
65. *ibid.*
66. *Tiger Global International III Holdings vs. Authority For Advance Rulings (Income-tax) (n 36).*
67. *Deepak Chopra, Anmol Anand, and Priya Tandon, 'GAAR: Treaty Override Rider?' (AZB & Partners, 29 March 2023) <https://www.azbpartners.com/bank/gaar-treaty-override-rider/> accessed 09 October 2026.*
68. *Director of Income-tax vs. New Skies Satellite BV [2016] 68 taxmann.com 8 (Delhi).*

to Prevent Base Erosion and Profit Shifting (**"MLI"**) in 2019. The MLI will be applied alongside existing tax treaties, modifying their application to implement the BEPS Project. A key provision of the MLI is PPT, which envisages "denial of benefits under a DTAA where it is reasonable to conclude, having considered all the relevant facts and circumstances that one of the principal purposes of an arrangement or transaction was to obtain a benefit, directly or indirectly, under a DTAA"[69].

While the question of whether PPT in India's tax treaties is currently in force is open[70], one of the key questions that arises is overlap of the applicability of PPT and GAAR. The CBDT has clarified that PPT is not intended to interfere or interact with GAAR, SAAR, or JAAR; such rules operate independently[71].

A comparison of PPT and GAAR would reveal that PPT is broader in scope than GAAR, as while it can be invoked if "one of the principal purposes" of an arrangement is to obtain a tax benefit, GAAR can be invoked only if the "main purpose" of the arrangement is to obtain a tax benefit. Therefore, once it has been established that the PPT cannot be invoked in a given facts and circumstances, the enquiry should stop there, and no re-determination should be done under GAAR.

Looked at from a different angle, PPT is the GAAR's analogue at the treaty level. The Mumbai ITAT has recently affirmed that the PPT standard is similar to GAAR[72]. The tribunal elaborated that for an assessee to be entitled to treaty benefit under DTAA, it must be established, based on the totality of facts, that the transactions were driven by bona fide commercial considerations, consistent with the assessee's legitimate business objectives and not undertaken principally to secure a tax advantage. It requires a substantive examination of commercial rationale, governance framework, economic substance and functional control in relation to the transaction[73]. Professor Chand, on a similar footing, argued that domestic anti-abuse rules should not be used to counter treaty abuse, especially when the contracting states have opted for anti-abuse treaty measures like PPT, LOB or other SAARs[74]. Tax authorities should not therefore undermine the common intention of the contracting parties by

69. *CBDT Circular No. 01/2025, 'Guidance for application of the Principal Purpose Test (PPT) under India's Double Taxation Avoidance Agreements-Reg' (21 January 2025).*
70. *Currently, there is an open issue on whether PPT could operate domestically without a notification issued under Section 90 of the Act. The Mumbai ITAT in Sky High Appeal XLIII Leasing Company Limited vs. ACIT International Taxation [2026] 186 taxmann.com 231 (Mumbai - Trib.) held that PPT cannot operate domestically unless it is incorporated by notification under Section 90(1) of the Act.*
71. *CBDT Press Release, 'CBDT issues clarification on Circular 01/2025' (15 March 2025).*
72. *Sky High Appeal XLIII Leasing Company Limited vs. ACIT International Taxation [2026] 186 taxmann.com 231 (Mumbai - Trib.).*
73. *Fullerton Financial Holdings Pte. Ltd. vs. Assistant Commissioner of Income-tax (International Taxation) [2025] 180 taxmann.com 241 (Mumbai - Trib.).*
74. *Vikram Chand, 'The Interaction of the Principal Purpose Test (and the Guiding Principle) with Treaty and Domestic Anti-Avoidance Rules' (2018) 46 Intertax 115.*

invoking GAAR in a treaty abuse situation. Contemporaneous application of both would result in overlapping enquiries and also be in violation of India's international obligations.

Thus, arguably, once India has ratified the MLI and the DTAAs provide for anti-abuse measures like PPT and LOB, it raises the question of what role, if any, remains for GAAR in such cases. This reading simply recognises that the PPT is, in substance, GAAR transposed to the treaty plane, and that invoking both contemporaneously is a duplication of the same inquiry under two different labels, imposing uncertainty and burden on taxpayers. As practitioners have observed, a meaningful coexistence is possible only where there is no overlapping[75]. However, here, the co-existence of PPT and GAAR only risks subjecting the taxpayer to overlapping anti-avoidance inquiries.

Ensuring such a delineation between GAAR and PPT will not render GAAR redundant, for at least two reasons. First, GAAR may justifiably be invoked in domestic cases, and second, where the relevant DTAA does not itself incorporate an anti-abuse measure such as PPT.

The pattern of contemporaneous invocation of anti-avoidance rules imposes a disproportionate burden on taxpayers for two related reasons. First, each anti-avoidance regime carries a distinct standard of proof, procedural safeguard, and threshold — a taxpayer defending a single arrangement may be required to simultaneously rebut a SAAR-based disallowance, a GAAR-based IAA determination, and a JAAR-based "colourable device" characterisation, each with different burdens and appellate pathways. Second, it allows tax authorities a form of doctrinal forum-shopping: where GAAR's specific safeguards are not satisfied (for instance, the monetary threshold or the requirement of Approving Panel reference), authorities may instead resort to Section 263 proceedings grounded in JAAR (as in the case of *Property Plus Realtors*), or stretch an inapplicable SAAR, to reach the same substantive conclusion without engaging GAAR's procedural protections at all. This is precisely the "harassment and litigation" that the Shome Committee anticipated when it recorded stakeholder concerns that GAAR would be widely invoked to treat genuine transactions as an IAA.

5. Conclusion

GAAR was conceived as an exceptional, last-resort mechanism. This design of the provisions was central to the bargain under which GAAR was ultimately accepted by stakeholders and enacted into law. The decisions examined in this article suggest that this bargain has not been consistently honoured. In case after case, tax authorities have invoked GAAR in circumstances that strain its originally intended scope: to fill gaps that Parliament may have deliberately left in a SAAR, to override express treaty

75. *Pramod Kumar, 'JAAR, GAAR and SAAR: Coexistence Without Overlapping?' (Taxsutra, 17 June 2024) <https://www.taxsutra.com/dt/experts-corner/jaar-gaar-and-saar-coexistence-without-overlapping> accessed 09 October 2026.*



grandfathering and LOB protections via Section 90(2A), to recharacterize genuine commercial arrangements as impermissible, and to import GAAR's substantive conclusions into JAAR or Section 263 proceedings without engaging GAAR's own procedural safeguards at all. The pattern across the body of decisions as a whole substantiates the very apprehensions the Shome Committee and the DTC Standing Committee voiced at GAAR's inception.

The difficulty is not with GAAR's existence, but with the erosion of the boundaries meant to confine its exercise to genuinely deserving cases. Each of the overlaps traced in this article — with SAAR, with JAAR, with DTAAs, and now with the PPT — reflects the same underlying problem: tax authorities retain the discretion to select whichever anti-avoidance standard offers the lowest procedural threshold. Applying these anti-avoidance rules contemporaneously imposes on taxpayers the cumulative burden of defending against multiple, duplicative inquiries into the same arrangement, each governed by different standards of proof and different procedural protections.

The recommendations below are offered in that spirit: not to disarm the tax administration's legitimate anti-avoidance mandate, but to restore the discipline and last-resort character that GAAR's own architects intended it to carry.

1. **Define "adequate" SAAR treatment.** The government should issue statutory or administrative guidance clarifying what constitutes "adequate" treatment of the mischief of tax avoidance by a SAAR, so that GAAR cannot be invoked merely by characterising any SAAR as “insufficient” on the facts of a given case.

2. **Preserve the specific-over-general principle in SAAR-GAAR interplay.** Consistent with the Shome Committee's recommendation and the maxim *generalia specialibus non derogant*, where a SAAR is applicable to a particular aspect of a transaction,

GAAR should not be invoked to revisit that same aspect.

3. **Read down Section 90(2A).** GAAR should override treaty protections only where the relevant DTAA does not itself contain an anti-abuse mechanism (such as a PPT or LOB clause). Where a treaty already embeds such a mechanism, that mechanism, and not domestic GAAR — should govern exclusively, consistent with the principle of pacta sunt servanda.

4. **Clarify the interplay between PPT and GAAR to avoid duplicative inquiry.** Given that the PPT operates, in substance, as GAAR transposed to the treaty plane, the government should clarify that where a treaty's PPT applies, domestic GAAR should not be invoked contemporaneously to conduct what is effectively the same anti-abuse inquiry under a different label.

5. **Introduce procedural and substantive safeguards for invoking PPT** such as defined thresholds, a reasoned show-cause requirement, and a mechanism for independent review so that PPT does not become, in effect, an unsafeguarded substitute for GAAR.

Taken together, the CBDT should acknowledge the interaction and overlaps between anti-avoidance rules and accordingly, issue guidelines to define the contours of each anti-avoidance rule. Overall, the tax authorities should avoid contemporaneous invocation of overlapping anti-avoidance standards. Contemporaneous or cumulative action against the same arrangement where their respective inquiries substantively overlap is undesirable as this imposes a disproportionate and avoidable burden on taxpayers and generates the very harassment and litigation the Shome Committee sought to prevent.

■

" Books are infinite in number and time is short.
The secret of knowledge is to take what is essential.
Take that and try to live up to it. "

Swami Vivekananda

WRIT JURISDICTION IN INCOME-TAX PROCEEDINGS: WHEN DOES THE HIGH COURT INTERVENE?



Neha Sharma

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Overview

The Income-tax Act, 1961 and the Income-tax Act, 2025 provide an elaborate hierarchy of statutory appellate remedies. While exhaustion of alternate remedies is an established rule of judicial restraint, it is not an absolute bar to writ jurisdiction under Article 226 of the Constitution. Writ intervention assumes particular significance where the challenge goes to the assumption or exercise of jurisdiction, breach of fundamental procedural safeguards or constitutional validity, rather than the correctness of an assessment on merits.

This article examines the evolving contours of writ jurisdiction across significant income-tax controversies. It analyses High Court intervention in cases involving breaches of natural justice, particularly in faceless proceedings; non-compliance with the pre-reassessment procedure under Section 148A; absence of the statutory foundation for reassessment; and premature conclusion of penalty proceedings pending connected quantum appeals. It also considers judicial review of GAAR invocation, challenges to delegated legislation and CBDT notifications, and enforcement of statutory duties through mandamus where consequential orders or refunds remain pending. Finally, the article examines constitutional challenges to retrospective fiscal amendments, an issue of renewed importance following the Finance Act, 2026. Throughout, it distinguishes errors appropriately addressed through statutory appeals from jurisdictional and constitutional infirmities warranting review by a writ court.

Introduction

The Income-tax Act, 1961 ("the Act"), and now the Income-tax Act, 2025, provide an elaborate statutory appellate mechanism for resolution of disputes arising thereunder. Ordinarily, an assessee aggrieved by an assessment, reassessment or penalty order is expected to exhaust the remedies provided under the Act.

The requirement to exhaust alternate remedies is a rule of judicial discretion and policy rather than an absolute bar to exercise of writ jurisdiction. The Supreme Court[1] has repeatedly recognised the following exceptions to the rule of alternate remedy,

1. *Calcutta Discount Co. Ltd. vs. ITO [1961] 41 ITR 191 (SC); Whirlpool Corporation vs. Registrar of Trade Marks (1998) 8 SCC 1; UOI vs. Ajit Jain [2003] 260 ITR 80 (SC).*

Where the challenge concerns non-compliance with statutory preconditions, breach of procedural fairness, absence or excess of jurisdiction, ex-facie erroneous order or constitutional limits on legislative or delegated authority, the assessee may invoke the writ jurisdiction of the High Court under Article 226 of the Constitution of India.

namely (a) infringement of fundamental rights, (b) violation of principles of natural justice, (c) proceedings wholly without jurisdiction, and (d) challenge to the vires of legislation. Further, the existence of an alternate remedy has been held not to preclude writ intervention where the controversy involves a pure question of law not requiring adjudication of disputed facts[2].

In income-tax writ litigation, therefore, the essential inquiry is whether the grievance concerns an appealable error on merits or a jurisdictional illegality affecting the lawful exercise of statutory power. Where the challenge concerns the latter, the assessee may invoke the writ jurisdiction of the High Court under Article 226 of the Constitution of India.

Violation of Principles of Natural Justice

Violation of principles of natural justice is a recognised ground for exercising writ jurisdiction notwithstanding an alternate remedy. The opportunity contemplated by law must be real, effective and meaningful, and not merely formal.

The transition to faceless assessments has changed the medium of interaction between assessees and the Revenue but has not diluted procedural fairness. Writ courts have accordingly intervened where adverse material relied upon to frame an assessment had not been furnished, adequate opportunity to respond had been denied, or the determination travelled beyond the show-cause notice. In ***Catchy Prop-Build (P.) Ltd. vs. ACIT (2022) 448 ITR 671 (Del)***, the Court held that an order under Section 148A(d) could not be based upon an allegation not made in the notice under Section 148A(b), since the assessee had never been called upon to answer that allegation. Similarly, in ***Bharat Aluminium Co. Ltd. vs. Union of India (2022) 442 ITR 101 (Del)***, the Court set aside an assessment where, *inter alia*, a personal hearing sought by the assessee had not been granted and additions were made without following the prescribed procedure.

In the faceless regime, similar issues may arise where portal-related limitations prevent filing of a response, inadequate time is granted, or submissions made by the assessee are demonstrably not considered. However,



2. *Godrej Sara Lee Ltd. vs. Excise and Taxation Officer (2023) 3 SCC 702 (SC).*

where the defect is procedural and curable, writ intervention ordinarily results in setting aside of the impugned order and remitting the proceedings from the stage at which the violation occurred, rather than terminating the proceedings altogether.

Reassessment Proceedings: Enforcing Statutory Preconditions

The power of reassessment enables the Revenue to disturb an assessment that has otherwise attained finality. Consequently, the statutory conditions governing assumption and exercise of such jurisdiction have historically generated significant writ litigation.

Prior to the Finance Act, 2021, before reopening an assessment, the Assessing Officer ("AO") was required to record "reason to believe" that income chargeable to tax had escaped assessment. Although the statute did not then provide a pre-148 notice procedure, the Supreme Court in ***GKN Driveshafts (India) Ltd. vs. ITO [2003] 259 ITR 19 (SC)*** prescribed procedural safeguards, namely, the assessee could seek a copy of the recorded reasons, file objections against the reopening and require disposal of those objections by a speaking order before continuing with the reassessment proceedings. Since no statutory appeal was provided against the order disposing of such objections, the assessees often challenged the assumption of reassessment jurisdiction by the AO by way of a writ before the High Courts.

The Finance Act, 2021 substantially overhauled the reassessment framework and codified the law laid down in ***GKN Driveshafts (supra)*** into Section 148A, subject to specified exceptions. Broadly, it contemplated issuance of a show-cause notice by the AO accompanied with the relevant information which suggests escapement of income, submission by the assessee, consideration of the assessee's response and thereafter, passing of a speaking order, with the prior approval of the specified authority, determining whether it is a fit case for issuance of notice under Section 148.

The mandatory character of this procedure, for reopening notices issued on or after 01 April 2021, came to the fore immediately after the new regime took effect. Despite substitution of the reassessment provisions from 1 April 2021, the AOs issued reopening notices under Section 148, as it stood prior to the Finance Act, 2021 and did not follow the procedure prescribed under Section 148A. The validity of such notices was challenged in writ jurisdiction before various High Courts which then quashed such notices. In U***nion of India vs. Ashish Agarwal [2022] 444 ITR 1 (SC)***, the Supreme Court also recognised the applicability of the substituted regime. However, exercising its powers under Article 142, the Court directed that the erstwhile notices be treated as show-cause notices under Section 148A(b), followed by the procedure under the substituted provisions.

Non-compliance with Section 148A: Section 148A prescribes statutory safeguards required to be mandatorily observed, subject to the exceptions under the provision, before issuance of a notice under Section 148. Non-compliance with such requirements may

In Union of India vs. Ashish Agarwal [2022] 444 ITR 1 (SC), the Supreme Court also recognised the applicability of the substituted regime. However, exercising its powers under Article 142, the Court directed that the erstwhile notices be treated as show-cause notices under Section 148A(b), followed by the procedure under the substituted provisions.

constitute a jurisdictional breach rendering the proceedings susceptible to writ intervention. Further, in the absence of any appellate remedy under the Act against the order passed under Section 148A, the alternate remedy would also not be a bar. Illustratively, the courts have quashed reassessment proceedings for non-compliance with Section 148A:

- Where the assessee was granted less than the prescribed seven / thirty days' time to file a response to the show-cause notice issued under Section 148A(b) [***Bangalore Thulaseedas Srinath vs. ITO [W.P. No. 14325 of 2024, Decision dated 25.06.2024 (Karnataka HC)] & J J Foods (P.) Ltd. vs. DCIT [2026] 190 taxmann.com 431 (Delhi)***].

- Where the AO failed to furnish underlying material or demonstrate independent application of mind, thereby denying the assessee a meaningful opportunity under Section 148A [***Jyoti CNC Automation Ltd. vs. ACIT [2026] 190 taxmann.com 534 (Gujarat)***].

- Where the AO failed to consider the reply and documentary evidence submitted by the assessee in response to the show-cause notice under Section 148A and proceeded on suspicion without material demonstrating escapement of income [***Venus Infrabuild vs. DCIT [2026] 189 taxmann.com 114 (Gujarat)***].

- Where, despite obtaining prior approval of the specified authority under Section 148A(a) for conducting an inquiry, the AO proceeded to issue the show-cause notice under Section 148A(b) without conducting such inquiry; the Court held that the statutory procedure under Section 148A had to be followed sequentially and quashed the consequential reassessment proceedings [***Satish Thourani vs. Union of India [2026] 188 taxmann.com 296 (Chhattisgarh)***].

Initiation of reassessment proceedings when no 'information' available with the AO: An assessment can be reopened only if there exists "information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment". The material relied upon must satisfy the statutory description of "information" and bear a rational nexus with the assessee and alleged escapement. In the absence thereof, the initiation of reassessment proceedings itself may be challenged in a writ court.

A distinction must, however, be drawn between the existence of information and its sufficiency or correctness. In ***Subodh Agarwal vs. State of U.P. [2023] 149 taxmann.com 448 (All.)***, the Court held that existence or non-existence of information may be examined, but its sufficiency cannot ordinarily be subjected to such scrutiny. Therein, an audit objection supported by specific underlying material was held to constitute the statutory information necessary for initiation. Whereas in ***Zazsons Exports Private Limited vs. ACIT [Writ Tax No. 813 of 2024, decision dated 02.02.2026 (All. HC)***], the Court held that although an audit objection may constitute valid "information", independent application of mind by the AO to such information is a sine qua non for initiating reassessment. On facts, the material gave rise at best to suspicion and was insufficient to confer reassessment jurisdiction.

Thus, at the threshold, the writ court ordinarily examines whether the jurisdictional foundation exists, rather than conclusively determining whether income has escaped assessment.



Correspondingly, the mere assertion of a jurisdictional objection does not require writ intervention in every reassessment. In ***Nitin Enterprises vs. ITO [W. P. No. 24088 of 2026, Decision dated 11.08.2026 (Telangana HC)***], the Court declined to interfere with proceedings under Sections 148A and 148 at a preliminary stage, holding that objections involving examination of the material could appropriately be considered in statutory proceedings. The decision reinforces that writ jurisdiction is not intended to become a forum of first resort against every show-cause notice or preliminary order in reassessment proceedings.

Issues already covered in the assessment: In ***CIT vs. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC)***, the Supreme Court held that the "review of assessment" under the garb of reassessment is impermissible and a mere change of opinion cannot justify reopening. Whether an opinion was actually formed must be discerned from the assessment record. Thus, the absence of discussion of an issue in the assessment order is not conclusive where a specific query was raised, answered and considered by the AO [***Idea Cellular Ltd. vs. DCIT [2008] 301 ITR 407 (Bom.)***].

The principle in ***Kelvinator (supra)*** must, however, be distinguished from cases involving fresh tangible material arising after the original assessment. In ***Sanand Properties (P.) Ltd. vs. JCIT [2026] 488 ITR 337 (SC)***, the Supreme Court upheld reopening where subsequent proceedings yielded specific tangible material that had not been considered in the original assessment. The mere presence of some underlying documents in the original record did not, in the circumstances, establish that the AO had already formed an opinion on the issue.

Penalty Proceedings Before Finality of Quantum Proceedings

Although penalty proceedings are distinct from assessment proceedings, writ courts have, in appropriate cases, intervened where continuation or culmination of the penalty proceedings is inextricably linked to a pending quantum appeal.

In ***Yamaji Ramchandra Rithe vs. Union of India [2026] 186 taxmann.com 486 (Bom.)***, the Court dealt with a challenge to the penalty order under Section 271D while the assessee's appeal against the underlying assessment order was pending. Despite the Revenue's objection concerning alternate remedy, the Court quashed the penalty order and directed that the penalty proceedings remain in abeyance until disposal of the quantum appeal, since the former's continuation depended upon the latter's outcome.

The principle cannot, however, be applied indiscriminately. Where the penalty concerns an independent statutory default and does not depend upon sustainability of a finding under challenge in quantum appeal, then

the existence of an efficacious appellate remedy would ordinarily weigh against writ intervention.

Delegated Legislation and CBDT Notifications

Article 265 mandates that no tax shall be levied or collected except by authority of law. Rules, schemes, circulars and notifications issued under the Act must therefore remain within the authority conferred by the parent legislation.

A CBDT circular or notification may be susceptible to a writ challenge where:

- it overrides, detracts from or conflicts with the Act, or amends a provision having statutory force [***Kasturi & Sons Ltd. vs. UOI [2011] 240 CTR 200 & Chamber of Tax Consultants vs. UOI [2017] 87 taxmann.com 92 (Delhi)***]

- it imposes a burden higher than the Act, adds a new condition, or is prejudicial to assessees [***Keshavji Ravji & Co. vs. CIT [1990] 183 ITR 1 (SC)***]

- it prescribes limitation period to claim refund of tax erroneously deducted when no such limitation is provided for in the Act [***Sun Pharmaceutical Industries Ltd. vs. ITO [2025] 480 ITR 164 (Delhi)***]

- it trenches on quasi-judicial functions, dilutes statutorily conferred discretion, or directs a particular assessment or disposal contravening the proviso to Section 119(1) of the Act [***Footcandles Film (P.) Ltd. vs. ITO [2023] 453 ITR 402 (Bom.)***]

- it exempts or excludes persons or classes from taxing provisions without statutory authority [***The Provincial Superior, & Others vs. UOI [2021] 438 ITR 548 (Kerala)***]

- it inserts eligibility conditions, terms or a casus omissus unknown to the statute [***Sar Senapati Santaji Ghorpade Sugar Factory Ltd. vs. ACIT [2024] 161 taxmann.com 166 (Bom.)***]

- it is not traceable to the proper administration of the Act, is de hors the Act, or lacks the character of a Board order / instruction / direction [***Shiela Sen Gupta vs. UOI (WP(C) No.4120 of 2014, Decision dated 07.08.2014 (Delhi HC)***]

Where a notification or scheme allegedly exceeds the parent enactment, enlarges statutory jurisdiction or modifies substantive safeguards beyond the authority delegated by Parliament, its validity may be examined in writ jurisdiction.

Therefore, where a notification or scheme allegedly exceeds the parent enactment, enlarges statutory jurisdiction or modifies substantive safeguards beyond the authority delegated by Parliament, its validity may be examined in writ jurisdiction. Importantly, a statutory appellate authority cannot adjudicate upon the vires of the statutory framework under which it functions. Therefore, where the validity of a notification, rule or scheme forming the source of the impugned action is itself questioned, statutory appeal does not constitute an efficacious remedy.

Invocation of GAAR: Judicial Review of the Statutory Process

The General Anti-Avoidance Rule ("GAAR") under Chapter X-A confers wide powers upon the Revenue to declare an arrangement

an impermissible avoidance arrangement and determine its tax consequences. The powers are accompanied by the mandatory procedure prescribed under Section 144BA of the Act.

For writ jurisdiction, the distinction between the merits of a GAAR determination and the legality of its invocation assumes significance. In ***Ayodhya Rami Reddy Alla vs. PCIT [2024] 466 ITR 497 (Telangana)***, the Court declined to interfere with proceedings initiated under Section 144BA involving issue and subsequent sale of bonus shares and set-off of the resulting short-term capital loss. The Court rejected the contention that applicability of the specific anti-avoidance provision under Section 94(8) excluded GAAR. Further, since the statutory process had been followed and the challenge substantially concerned the applicability of GAAR to the arrangement, the Court declined to exercise writ jurisdiction.

A contrasting result followed in ***Smt. Anvida Bandi vs. DCIT [2025] 177 taxmann.com 726 (Telangana)***, where the same High Court set aside directions of the Approving Panel under Section 144BA(6). The Revenue had substantially relied on the timing of genuine stock-exchange transactions resulting in a short-term capital loss but failed to establish the statutory foundation for an "arrangement" attracting Section 96 of the Act.

Therefore, where the statutory GAAR process is followed and the material discloses an arrangement requiring factual examination, the High Court may decline interference. Conversely, where the foundational statutory conditions for invoking GAAR are themselves absent or mandatory safeguards under Section 144BA have been bypassed, Article 226 may be invoked notwithstanding that the controversy has a factual setting.

Administrative Inaction: Orders Giving Effect and Withheld Refunds

The exercise of writ jurisdiction is not confined to correcting unlawful action. The High Court may, through the writ of mandamus, also require a statutory authority to perform an obligation it has failed to discharge.

This assumes significance where the assessee does not seek reconsideration of the underlying dispute, but implementation of an adjudication already rendered in its favour or a direction given to the AO. In such cases, an unexplained failure on the part of the AO to pass an order giving effect, release refund, or act within a statutory timeframe may justify recourse to Article 226.

In ***Laqshya Media Ltd. va. ACIT [2026] 187 taxmann.com 87 (Bom.)***, the Court considered the failure of the AO to pass a consequential assessment order after remand by the appellate authority. The Court held that the time available for completing the consequential proceedings under Section 153 had expired and accordingly directed the AO to accept the income returned by the assessee.

Thus, an assessee can invoke the writ jurisdiction of a Court not only against absence or excess of exercise of statutory power, but also against administrative inertia in implementing binding appellate directions or discharging a statutory obligation.

Constitutional Validity of Retrospective Amendments

Two distinct questions arise in relation to retrospective fiscal amendments. The first is one of statutory construction: whether Parliament has in fact made the provision retrospective. The presumption against

retrospectivity articulated in ***CIT vs. Vatika Township (P.) Ltd. [2014] 367 ITR 466 (SC)*** assumes significance at this stage. The second arises where retrospectivity is express: whether Parliament has validly cured the underlying defect and whether the validating provision withstands constitutional scrutiny.

While Parliament possesses legislative competence to enact retrospective fiscal and validating legislation, including legislation curing the statutory defect underlying an earlier judicial decision, such power is subject to constitutional limitations. In ***State of A.P. vs. McDowell & Co. [1996] 3 SCC 709***, the Court observed that a law can be struck down by courts on two grounds, viz., (1) lack of legislative competence, or (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other provision under the Constitution.

Therefore, even where Parliament retrospectively seeks to cure the jurisdictional basis of proceedings, whether the amendment has removed the underlying defect and whether its retrospective operation withstands constitutional scrutiny remain matters for judicial review. In ***Niko Resources Ltd. vs. UOI [2015] 374 ITR 369 (Gujarat)***, a retrospective Explanation to Section 80-IB(9), which adversely affected an accrued tax holiday, was held constitutionally invalid.

This issue has assumed renewed significance following the Finance Act, 2026, which introduced certain retrospective amendments to the Act addressing, *inter alia*, the authority of Jurisdictional Assessing Officers in the pre-reassessment process and issuance of notices under Section 148, the limitation framework governing assessments under the DRP mechanism, and defects in quoting DIN. These validating amendments have, in turn, raised constitutional questions as to the permissible limits of retrospective legislation, particularly where the amendment seeks to neutralise jurisdictional or limitation-based consequences recognised in earlier judicial decisions.

Conclusion

The availability of writ jurisdiction in income-tax matters ultimately turns less upon the nomenclature of the proceeding and more upon the nature of the illegality alleged in the challenge. Article 226 is not intended to substitute the appellate hierarchy under the Act. The challenges concerning factual appreciation, computation or correctness of conclusions on merits must ordinarily travel through that hierarchy.

The position is different where the challenge concerns authority to commence or continue proceedings, breach of mandatory statutory preconditions, denial of meaningful opportunity, validity of delegated or retrospective legislation, or failure to discharge a binding statutory obligation. Recent jurisprudence concerning reassessment, penalty, faceless proceedings, GAAR and implementation of appellate orders demonstrates the continuing importance of this distinction.

The guiding inquiry is therefore not merely whether an alternate remedy exists, but whether the alleged infirmity is one that can effectively be addressed within the statutory appellate framework. Where the challenge goes to the assumption or exercise of statutory power itself, the impugned action remains amenable to challenge in a writ court under Article 226 of the Constitution of India, irrespective of the availability of a statutory appellate remedy.

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TRANSITION FROM AUTHORITY FOR ADVANCE RULING TO THE BOARD FOR ADVANCE RULING – TAX CERTAINTY IS DESIRABLE BUT SEEMS ELUSIVE!



Neeraj K Jain *Tavish Verma*

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Overview

*The Authority for Advance Rulings (**"AAR"**) was established to provide upfront certainty to non-resident investors and mitigate potential tax disputes.*

Historically, the quasi-judicial forum delivered binding rulings on complex international transactions.

However, persistent vacancies and extensive backlogs crippled its functionality, converting a mechanism designed for expeditious resolution into another layer of litigation.

*The Finance Act, 2021 replaced the Authority for Advance Rulings (**"AAR"**) with the BAR. Section 245-OB was inserted to constitute Boards of two senior revenue officers instead of judicial members. In other words the transition replaced the judicial body, AAR with the Board for Advance Rulings(**"BAR"**).*

Crucially, rulings issued by the board lack binding force and are subject to statutory appeal before the High Court.

This transition addresses administrative staffing bottlenecks but fundamentally undermines upfront tax certainty. The absence of binding determinations reduces the forum to an advisory, non-final stage before court litigation.

*Recent disputes, including **The Authority for Advance Rulings (Income Tax) and Others vs. Tiger Global International II Holdings**, does confirm that protracted appellate litigation persists.*

The AAR was designed to give an authoritative determination at first instance. A BAR ruling does not, so the applicant cannot plan on the basis of the ruling alone. A favourable ruling remains open to challenge by the Assessing Officer and an adverse BAR ruling no longer binds the Revenue, as a result applicants lost confidence in a forum whose rulings were merely appealable.

Consequently, practical tax certainty for international taxpayers remains elusive.



1. AAR: History and Objective

1.1. The Finance Act, 2021 replaced the Authority for Advance Rulings (**"AAR"**), with a Board for Advance Rulings (**"BAR"**)[1]. The AAR had been constituted to avoid disputes on the assessment of tax liability and to provide tax certainty on transactions undertaken, or proposed to be undertaken, principally by non-residents.

1.2. The Central Government, by notification, appointed the date from which the AAR ceased to operate, in exercise of the power conferred by the Finance Act, 2021[2].

1.3. Simultaneously, section 245-O was amended and section 245-OB inserted, empowering the Central Government to constitute one or more Boards for Advance Rulings, each comprising two members not below the rank of Chief Commissioner of Income-tax[3]. This represented a marked change from the qualifications prescribed for the erstwhile AAR, whose Chairman was

1. *Finance Act, 2021 (India), inserting the proviso to section 245-O and section 245-OB of the Income-tax Act, 1961.*
2. *Notification No. S.O. 3562(E), dated 1 September 2021, Central Board of Direct Taxes, appointing that date as the date from which the Authority for Advance Rulings ceased to operate.*
3. *Section 245-OB(2), Income-tax Act, 1961; section 381(2), Income-tax Act, 2025, prescribing the composition of the Board for Advance Rulings.*

required to be a retired Judge of the Supreme Court, a retired Chief Justice of a High Court, or a High Court Judge of at least seven years' standing[4].

1.4. The Indian advance-ruling mechanism has analogues in several other jurisdictions, e.g. regimes in Australia, New Zealand, the United States, Germany and Japan, among others.

1.5. In several of these jurisdictions, the advance-ruling function sits within the tax administration itself rather than in a separate judicial body; for example, commentary suggests this is so in Japan, South Africa and Malaysia, with the Netherlands and Sweden cited as examples of systems designed for efficiency and independent expertise respectively. These comparative statements have not been verified against primary foreign legislation in this review and should be independently confirmed before reliance.

1.6. In India, the AAR pronounced rulings on applications before it, and under section 245S of the Income-tax Act, 1961, such rulings were binding on both the applicant and the tax department in respect of the relevant transaction[5]. This binding character was recognised by the Supreme Court in ***Columbia Sportswear Company vs. Director of Income Tax, Bangalore***, which held that the AAR exercised judicial power and constituted a tribunal for the purposes of Articles 136 and 227 of the Constitution[6].

1.7. In its initial years, the AAR pronounced rulings on complex questions of international tax, however, in the later years, prolonged vacancies in the offices of Chairman and Vice-Chairman impaired or marred the AAR's disposal rate and eroded confidence in the mechanism. As summarised in the table above, the Supreme Court observed in ***National Co-operative Development Corporation vs. Commissioner of Income Tax, Delhi-V*** that the average time taken by the AAR had come to substantially exceed its statutory target, owing to an increasing backlog of pending applications and a low disposal rate[7].

1.8. The Memorandum to the Finance Bill, 2021 attributed this backlog to the non-availability of eligible persons to fill the posts of Chairman and Vice-Chairman, and identified the consequent delay as the principal reason for introducing an alternative mechanism[8].

The BAR, as constituted by the Finance Act, 2021, comprises two members each of the rank of Chief Commissioner.

4. *Section 245-O(3)(a), Income-tax Act, 1961, as it stood prior to amendment, prescribing judicial qualifications for the Chairman of the Authority for Advance Rulings.*
5. *Section 245S, Income-tax Act, 1961, including sub-section (3), which withdraws the binding effect of an advance ruling pronounced on or after the date on which the Board for Advance Rulings takes over.*
6. *Columbia Sportswear Company vs. Director of Income Tax, Bangalore, (2012) 11 SCC 224 : [2012] 7 SCR 187.*
7. *National Co-operative Development Corporation vs. Commissioner of Income Tax, Delhi-V, [2020] 13 SCR 527, paragraphs 12 to 15.*
8. *Memorandum explaining the provisions of the Finance Bill, 2021 (India).*

Advance rulings serve an important function in a modern tax administration: they enable taxpayers, particularly investors contemplating significant transactions, to obtain clarity on their tax position before undertaking the transaction, and thereby promote certainty, transparency and predictability.

1.9. The BAR, as constituted by the Finance Act, 2021, comprises two members each of the rank of Chief Commissioner[9]. All applications pending before the AAR, together with the relevant records, were transferred to the BAR. Unlike AAR rulings, orders of the BAR do not bind either the applicant or the Department, and either party may appeal to the jurisdictional High Court[10]. Advance rulings already pronounced by the AAR were expressly grandfathered, and the amendments made by the Finance Act, 2021 do not apply to them[11].

1.10. The Income-tax Act, 2025 carries the advance-ruling mechanism forward in substance, under sections 380 to 389, read with the corresponding Income-tax Rules, 2026[12]. The Act retains the BAR structure, the short withdrawal window, the six-month outer limit for pronouncement, and the right of appeal to the High Court.

2. Ineffective Resolution by the Erstwhile AAR

2.1. The case for revamping the AAR did not arise from doubt about the utility of the advance-ruling mechanism itself. Advance rulings serve an important function in a modern tax administration: they enable taxpayers, particularly investors contemplating significant transactions, to obtain clarity on their tax position before undertaking the transaction, and thereby promote certainty, transparency and predictability.

2.2. The difficulty lay in the manner in which the institution functioned. Persistent vacancies and prolonged delays gradually undermined confidence in the mechanism. The institution intended to prevent prolonged tax litigation increasingly became another stage in that litigation.

2.3. The institutional status of the erstwhile AAR was considerably stronger than that of the BAR. As noted above, the Supreme Court in Columbia Sportswear recognised the AAR as a tribunal exercising judicial power, whose rulings, while being binding on the Revenue, were subject to judicial review by the jurisdictional High Court and, thereafter, the Supreme Court[13]. This

9. *Section 245-OB(2), Income-tax Act, 1961; section 381(2), Income-tax Act, 2025, prescribing the composition of the Board for Advance Rulings.*
10. *Section 245W, Income-tax Act, 1961; section 389, Income-tax Act, 2025, providing a right of appeal to the jurisdictional High Court against a ruling or order of the Board for Advance Rulings.*
11. *Finance Act, 2021 (India), inserting the proviso to section 245-O and section 245-OB of the Income-tax Act, 1961.*
12. *Sections 380 to 389, Income-tax Act, 2025, read with the corresponding Income-tax Rules, 2026, and Form No. 120.*
13. *Columbia Sportswear Company vs. Director of Income Tax, Bangalore, (2012) 11 SCC 224 : [2012] 7 SCR 187.*

architecture was designed to give the taxpayers an authoritative determination at first instance, while preserving constitutional judicial review.

2.4. The challenge, therefore, was not the absence of legal authority. It was the institution's inability to discharge that authority in a timely and effective manner. Institutional standing could not compensate for institutional dysfunction.

2.5. One of the most persistent criticisms of the erstwhile AAR was the chronic vacancy in the office of Chairman and other key positions. The restrictive judicial qualifications prescribed under the erstwhile section 245-O contributed to this difficulty[14]. Whenever key positions fell vacant, hearings were adjourned and applications remained pending well beyond the statutory expectation of an expeditious ruling, a difficulty felt most acutely by non-resident investors who had approached the AAR precisely to avoid the delay associated with ordinary assessment and appellate proceedings.

2.6. Such administrative failures themselves generated further litigation, illustrating how a mechanism intended to reduce litigation could become the subject of litigation because it was unable to function. The underlying difficulty of vacancy-driven delay is independently corroborated from the Supreme Court's observations in *National Co-operative Development Corporation*[15].

2.7. The experience of the AAR also demonstrates that, even when functioning, its rulings did not invariably provide the certainty expected of them. A notable example is ***Formula One World Championship Ltd. vs. Commissioner of Income Tax, International Taxation-3, Delhi & Anr.***[16] Formula One World Championship Ltd. (**"FOWC"**), a United Kingdom company, had licensed commercial rights relating to the Indian Grand Prix at the Buddh International Circuit to Jaypee Sports International Ltd. FOWC and Jaypee approached the AAR on whether FOWC had a permanent establishment in India under the India-United Kingdom tax treaty.

2.8. The AAR concluded that FOWC did not have a permanent establishment in India and treated the relevant payment as royalty. The Delhi High Court took a different view on the permanent-

The challenge, therefore, was not the absence of legal authority. It was the institution's inability to discharge that authority in a timely and effective manner. Institutional standing could not compensate for institutional dysfunction.

14. *Section 245-O(3)(a), Income-tax Act, 1961, as it stood prior to amendment, prescribing judicial qualifications for the Chairman of the Authority for Advance Rulings.*
15. *National Co-operative Development Corporation vs. Commissioner of Income Tax, Delhi-V, [2020] 13 SCR 527, paragraphs 12 to 15.*
16. *Formula One World Championship Ltd. vs. Commissioner of Income Tax, International Taxation-3, Delhi & Anr., [2017] 2 SCR 152.*

establishment question, holding that FOWC had a fixed-place permanent establishment because of the degree of control it exercised over the circuit during the race. The Supreme Court upheld that conclusion[17].

2.9. The case illustrates a structural limitation of the mechanism. An institution created to provide certainty on a tax issue was itself overruled only after the matter travelled through the High Court and the Supreme Court. By the time the legal position was settled, the advance-ruling mechanism had ceased to perform its primary function of preventing prolonged litigation.

2.10. The more recent litigation involving *Tiger Global* provides a different, and in some respects more instructive, illustration, and its final resolution in 2026 confirms that the structural concern persists under the BAR regime as well as under the erstwhile AAR.

2.11. In 2020, *Tiger Global*'s Mauritius-incorporated entities had sought an advance ruling that gains from selling their stake in Flipkart's Singapore holding company were exempt under the India-Mauritius tax treaty. The erstwhile AAR rejected the applications at the threshold, holding that the transaction was, *prima facie,* designed for avoidance of income-tax within proviso (iii) to section 245R(2) of the Income-tax Act, 1961[18].

2.12. The Delhi High Court quashed that order on writ petitions filed by the assessees, holding that their Tax Residency Certificates and the grandfathering clause of the treaty entitled them to exemption[19]. The Supreme Court allowed the Revenue's appeals, set aside the High Court's judgment, and restored the AAR's order, holding that the AAR had correctly exercised its threshold, gatekeeping jurisdiction[20]. The Revenue appealed.

2.13. The Supreme Court framed the core issue as whether the AAR was right to reject the applications on the ground of maintainability, by treating the transaction as *prima facie* designed for tax avoidance[21]. The Court held that the word "*prima facie*" in section 245R(2) requires only an initial, threshold satisfaction, considerably short of proof, and that the burden lies on the applicant to displace that threshold finding[22].

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17. *Formula One World Championship Ltd. vs. Commissioner of Income Tax, International Taxation-3, Delhi & Anr., [2017] 2 SCR 152.*
18. *Id., paragraphs 6.8 to 6.10, recording the AAR's findings and the rejection of the applications under proviso (iii) to section 245R(2) of the Income-tax Act, 1961.*
19. *Id., paragraph 5.10, recording the Delhi High Court's judgment dated 28 August 2024 in W.P.(C) Nos. 6764, 6765 and 6766 of 2020.*
20. *The Authority for Advance Rulings (Income Tax) and Others vs. Tiger Global International II Holdings (with connected Civil Appeal Nos. 263 and 264 of 2026), 2026 INSC 60, judgment dated 15 January 2026 (Pardiwala and Mahadevan, JJ.), paragraphs 51 to 52.*
21. *Id., paragraphs 11 and 11.1, framing the core issue for consideration.*
22. *Id., paragraphs 32 to 35, discussing the threshold, prima facie standard of satisfaction under section 245R(2) of the Income-tax Act, 1961; the Court applies the test for a prima facie case laid down in Balvir Singh vs. State of Uttarakhand, AIR 2023 SC 5551, and Martin Burn Ltd. vs. R.N. Banerjee, AIR 1958 SC 79.*

2.14. For future applicants, this confirms that the BAR, like the erstwhile AAR, retains a wide gatekeeping discretion. An application can be refused admission on a comparatively modest evidentiary showing by the Revenue that the arrangement is designed for avoidance, without the BAR needing to reach a conclusive finding on the merits of treaty eligibility. The corresponding provision in the Income-tax Act, 2025 preserves this threshold bar in identical terms[23].

2.15. The Supreme Court, in ***The Authority for Advance Rulings (Income Tax) and Others vs. Tiger Global International II Holdings*** and connected appeals, allowed the Revenue's appeals, set aside the Delhi High Court's judgment, and restored the AAR's order. The Court held that the AAR had correctly exercised its gatekeeping jurisdiction under the proviso to section 245R(2) to reject, at the threshold, an application *prima facie* designed for tax avoidance, and that a Tax Residency Certificate alone was not conclusive once the General Anti-Avoidance Rule framework applied[24].

An application can be refused admission on a comparatively modest evidentiary showing by the Revenue that the arrangement is designed for avoidance, without the BAR needing to reach a conclusive finding on the merits of treaty eligibility.

2.16. On the ultimate merits, the AAR's position was restored, but the procedural history reveals the deeper problem identified throughout this article. As recorded in the table above, an application made in 2020 reached final resolution only in 2026, after consideration at three judicial levels.

2.17. The lesson is not that the AAR, or now the BAR, will sometimes be right and sometimes wrong. The more fundamental problem is that either outcome can arrive too late. Where the forum is wrong, the taxpayer must litigate for years to obtain the correct position. Where it is right, as in *Tiger Global*, the Revenue may equally have to litigate for years before that position is confirmed.

2.18. The recurring problem is not the identity of the members constituting the advance-ruling forum. It is the institutional design of the mechanism itself. An advance-ruling authority must satisfy three conditions if it is to achieve its stated objective: it must be independent enough to command taxpayer confidence; it must possess sufficient legal authority for its rulings to have meaningful consequences; and it must have the institutional capacity

23. *Section 384(3)(c), Income-tax Act, 2025, reproducing in substance proviso (iii) to section 245R(2) of the Income-tax Act, 1961.*
24. *The Authority for Advance Rulings (Income Tax) and Others vs. Tiger Global International II Holdings (and connected Civil Appeal Nos. 263 and 264 of 2026), 2026 INSC 60, judgment dated 15 January 2026 (Pardiwala and Mahadevan, JJ.).*



to deliver rulings within a genuinely useful timeframe.

2.19. The erstwhile AAR struggled principally with the third requirement, capacity and timeliness. The BAR, by contrast, raises concerns under the first and second, independence and binding force, while the *Tiger Global* litigation shows that even where the forum reaches the correct result, the timeliness problem has not been resolved.

2.20. The reform of the AAR was therefore understandable, but reform should not merely replace one institutional weakness with another. The objective should be a mechanism that combines the accessibility and expertise of the Revenue administration with the independence, authority and procedural discipline of a judicial forum, so that the BAR does not become merely another preliminary stop before the High Court or the tax appellate hierarchy.

3. The Current Statutory Position on Appeal against BAR Rulings

3.1. For rulings and orders passed by the BAR itself, section 245W, inserted by the Finance Act, 2021, governs the right of appeal, and is reproduced in substance as section 389 of the Income-tax Act, 2025[25]. Sub-section (1) expressly grants a right of appeal to the High Court to "the applicant", if aggrieved by a ruling or order of the BAR, within sixty days of communication of that ruling or order, extendable by a further thirty days on sufficient cause[26].

3.2. The statute does not, on its face, grant the Revenue an equivalent express

25. Section 245W, Income-tax Act, 1961, inserted by the Finance Act, 2021; section 389, Income-tax Act, 2025.
26. Section 245W(1), Income-tax Act, 1961; section 389(1), Income-tax Act, 2025.

right of appeal in section 245W(1). Instead, the applicable Income-tax Rules clarify that an appeal under this provision may be filed "by the assessee, or the Assessing Officer on the directions of the Principal Commissioner or Commissioner", using the same procedure as the jurisdictional High Court prescribes for appeals generally[27]. This Rule indicates that the Revenue's right to appeal an adverse BAR ruling is exercised through the Assessing Officer, acting on the directions of the Principal Commissioner or Commissioner, rather than through a separately worded statutory clause naming the Revenue as a party entitled to appeal.

3.3. Section 245W(2) and (3) separately empowers the Central Government to notify a scheme for filing such appeals by the Assessing Officer, to impart efficiency, transparency and accountability, but expressly bars any direction modifying the Act for that purpose after 31 March 2023[28]. No such scheme appears to have been notified within this review, and this should be independently verified against the official gazette before the position is treated as settled in any given appeal.

4. Reading *Tiger Global* judgement together with the Statutory Appeal Regime

4.1. Three consequences follow for the Revenue's practical ability to appeal :-

First, for advance-ruling matters that originated before the Board for Advance Rulings took over, and that proceeded by writ before a High Court, the Revenue's remedy against an adverse High Court judgment remains the special leave petition under Article 136 of the Constitution, as *Tiger Global* itself demonstrates. This constitutional remedy is unaffected by, and exists independently of, section 245W.

Second, for rulings and orders passed by the BAR itself, the Revenue's statutory appeal to the High Court proceeds through the Assessing Officer, on the directions of the Principal Commissioner or Commissioner, as contemplated by Rule 44FA and its successor Rule 202, rather than as an express, freestanding right granted to the Revenue by the text of section 245W(1)[29].

Third, because BAR rulings are no longer binding in the manner that AAR rulings were[30], an adverse BAR ruling

27. *Rule 44FA, Income-tax Rules, 1962, inserted by the IT (Sixteenth Amendment) Rules, 2022, with effect from 31 May 2022; Rule 202, Income-tax Rules, 2026.*
28. *Section 245W(2) and (3), Income-tax Act, 1961, the proviso to sub-section (3) barring any direction under the scheme after 31 March 2023.*
29. *Rule 44FA, Income-tax Rules, 1962, inserted by the IT (Sixteenth Amendment) Rules, 2022, with effect from 31 May 2022; Rule 202, Income-tax Rules, 2026.*
30. *Section 245S, Income-tax Act, 1961; the proviso to section 245N(a), Income-tax Act, 1961, inserted by the Finance Act, 2021, preserving the binding effect of rulings pronounced by the erstwhile AAR before the Board for Advance Rulings took over.*

exposes the Revenue to a different risk calculus than under the AAR regime. Under the BAR regime, because the ruling is not binding and is appealable as of right by the aggrieved applicant, and appealable by the Revenue through the Assessing Officer, the statutory appeal under section 245W is intended to function as the primary channel of challenge, reserving Article 226 and Article 136 for jurisdictional or other extraordinary grounds.

5. Withdrawal of Pending Applications before the BAR: Whether the BAR has Jurisdiction

5.1. The transition from the AAR to the BAR created a problem that the Finance Act, 2021 had not anticipated. Section 245Q(3) allows an applicant to withdraw an application only within the short window set out in the table above[31]. When the AAR ceased to operate, every application still pending, in which no order under section 245R(2) had been passed, was automatically transferred to the BAR. For many of these transferred files, that window had expired years earlier, while the application sat before a Chairman-less AAR.

5.2. A significant number of applicants, having lost confidence in a forum whose ruling was no longer binding but merely appealable, sought to withdraw their transferred applications, whether because they had obtained certainty through other means or because the commercial rationale for the ruling had lapsed with time. This posed the BAR a genuine jurisdictional dilemma.

5.3. Section 245Q(3), read literally, offered no window for withdrawal at that late stage, and section 245-OB, which constitutes the BAR and vests it with all the powers previously exercisable by the AAR, does not, without more, confer on the BAR any power to permit withdrawal beyond the specific window carved out by statute[32].

5.4. This left applicants with an unenviable choice: press on with a hearing before a forum many no longer trusted, or approach the jurisdictional High Court by writ petition contending that continuation of the proceedings, without any statutory power in the BAR to release them from it, infringed their right to withdraw from a quasi-judicial proceeding they had not bargained to pursue under a different, non-binding, appealable regime. The availability of a statutory forum does not, without more, oust the writ jurisdiction of the High Court in a case involving a pure question of jurisdictional competence.

5.5. Parliament eventually addressed the problem. The Finance (No. 2) Act, 2024 amended sections 245Q and 245R, with effect from 1 October 2024, inserting a

31. *Section 245Q(3) and (4), Income-tax Act, 1961, the proviso to sub-section (4) inserted by the Finance (No. 2) Act, 2024 (Act No. 15 of 2024), with effect from 1 October 2024.*
32. *Section 245-OB(2), Income-tax Act, 1961; section 381(2), Income-tax Act, 2025, prescribing the composition of the Board for Advance Rulings.*

proviso permitting applicants to seek, by the date set out in the table above, withdrawal of applications transferred to the BAR from the erstwhile AAR that were still awaiting an order under section 245R(2)[33]. The BAR was empowered to treat such applications as withdrawn by the further date noted in the table[34]. The Memorandum explaining this amendment candidly records that applicants cited the non-binding nature of the BAR's ruling, the change in forum, and the passage of time as their reasons for wanting out[35].

5.6. The need for this curative amendment is the surest indicator that the BAR, absent express statutory sanction, did not have jurisdiction to entertain withdrawal of a transferred application filed beyond the original window. Any order the BAR may have passed allowing such withdrawal before the amendment came into force rested, at best, on an assumed jurisdiction that Parliament has since had to expressly supply.

5.7. Practitioners advising clients whose applications were transferred from the AAR, but who missed even the extended window created by the Finance (No. 2) Act, 2024, for instance because the ruling stage under section 245R(2) had already been crossed, should recognise that no general withdrawal jurisdiction survives thereafter. Recourse, if any, would have to be founded on Article 226 of the Constitution rather than on any residuary power vested in the BAR.

Section 383(3) of that Act reproduces the short withdrawal window of the predecessor provision, with no express residuary power permitting later withdrawal.

5.8. This gap has not been closed by the Income-tax Act, 2025. Section 383(3) of that Act reproduces the short withdrawal window of the predecessor provision, with no express residuary power permitting later withdrawal[36]. The curative amendment of 2024 was a one-time, transaction-specific fix tied to the 2021 transition, and it does not supply a standing mechanism for any future transfer of applications between forums. The jurisdictional hiatus identified in this article is therefore better described as a continuing structural gap in the 2025 Act, rather than a problem fully resolved by the 2024 amendment.

Conclusion

The transition from the AAR to the BAR was, in our assessment, a legislative response to a real and long-standing malady: chronic non-functioning born of unfilled judicial vacancies. But the remedy chosen has introduced infirmities of its own: an in-house

33. *Section 245Q(3) and (4), Income-tax Act, 1961, the proviso to sub-section (4) inserted by the Finance (No. 2) Act, 2024 (Act No. 15 of 2024), with effect from 1 October 2024.*
34. *Section 245R(2), fifth proviso, Income-tax Act, 1961, inserted by the Finance (No. 2) Act, 2024 (Act No. 15 of 2024).*
35. *Section 245R(2), proviso (iii), Income-tax Act, 1961; section 384(3)(c), Income-tax Act, 2025, barring an application that relates to a transaction or issue designed prima facie for avoidance of income-tax.*
36. *Section 383(3), Income-tax Act, 2025, which, like section 245Q(3) of the predecessor Act, permits withdrawal only within thirty days from the date of the application, with no express residuary power for later withdrawal.*

forum whose rulings, being non-binding and appealable, may defer rather than resolve tax controversy, and a jurisdictional hiatus on withdrawal of transferred applications that Parliament was compelled to cure through the Finance (No. 2) Act, 2024, itself an admission of the gap.

The *Tiger Global* litigation, finally resolved by the Supreme Court in January 2026 after six years and three levels of adjudication, underscores that correcting the identity or seniority of the decision-makers does not, by itself, cure the timeliness problem that originally prompted reform.

As the mechanism carries forward into the Income-tax Act, 2025 substantially unchanged in structure[37], three modest reforms would restore it closer to its founding promise.

First, statutorily fixed timelines for constituting Boards and filling vacancies, with an automatic default mechanism said to be analogous to that now available for the GST Appellate Tribunal, so that administrative delay never again defeats the object of Chapter XIX-B of the Income-tax Act, 1961 and its successor provisions.

Second, a review of whether restoring binding effect, subject as before to the High Court's supervisory jurisdiction recognised in Columbia Sportswear, would better serve the mechanism's dispute-avoidance purpose than an appeal as of right.

Third, express statutory clarity, going forward, on the residuary powers of the BAR over matters, such as withdrawal or abandonment of an application, not explicitly addressed by Chapter XIX-B of the Income-tax Act, 1961 or Part 2 of Chapter XX of the Income-tax Act, 2025, so that neither applicants nor the Board are again left to litigate a question of jurisdiction that should have been settled at the drafting stage.

The tax certainty is desirable but it seems elusive!

■

"Thinking is the capital,
Enterprise is the way,
Hard Work is the solution"

A.P.J. Abdul Kalam

37. Sections 380 to 389, Income-tax Act, 2025, read with the corresponding Income-tax Rules, 2026, and Form No. 120.

NAVIGATING MUTUAL AGREEMENT PROCEDURE : A WAY TO ACHIEVE TAX CERTAINTY



Rajesh Simhan *Ayesha Vakil*

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Overview

*Cross-border taxation presents a problem familiar to private international law, namely, that the same income or transaction may be connected to more than one jurisdiction, leading to disputes in allocation of taxing rights. These may continue despite the existence of Double Taxation Avoidance Agreements. The mutual agreement procedure (**"MAP"**) gives competent authorities a means to address these disputes together, rather than leaving taxpayers to seek relief separately in each jurisdiction.*

This article traces MAP from its functioning to the limits of an accepted settlement. It first examines eligibility and procedure in India, particularly in transfer pricing, permanent establishment and income characterisation disputes, before considering how domestic appeals, interest and penalties shape the relief available. Against this background, it analyses whether a MAP outcome can extend to other transactions or years, drawing on Indian decisions that distinguish a taxpayer's reliance on comparable facts from Revenue's compulsory application of a negotiated settlement. Through the above, the article highlights MAP's value in securing coordinated relief, while recognising that delays and India's opposition to MAP arbitration leave resolution uncertain.

Introduction

Cross-border taxation often results in the same income or transaction having connections with more than one country, each claiming a right to tax it. Double Taxation Avoidance Agreements (**"Tax Treaty/Treaties"**) allocate taxing rights between those countries thereby avoiding economic or in some cases, juridical double taxation. However, in practice, the mere fact that a Tax Treaty has been entered into between two countries does not prevent disagreement on its application or domestic law in matters such as existence of

In practice, the mere fact that a Tax Treaty has been entered into between two countries does not prevent disagreement on its application or domestic law in matters such as existence of permanent establishments ("PEs"), income characterisation or the arm's length price dealings between associated enterprises.

permanent establishments (**"PEs"**), income characterisation or the arm's length price dealings between associated enterprises. The mutual agreement procedure (**"MAP"**) offers a mechanism for competent authorities, as defined in the applicable Tax Treaty, to resolve taxation that is not in accordance with the treaty and by doing so, offers tax certainty. However, while MAP offers greater certainty, its scope is limited by its intersection with domestic laws of the contracting states.

An important clarification is that access to MAP may be given even when Indian tax authorities apply domestic anti-abuse provisions to a particular transaction.

This article examines the eligibility and functioning of the MAP process, issues relating to availability of MAP, the Indian disputes in which MAP is particularly relevant, and its interaction with domestic remedies and advance pricing agreements.

Part A - Eligibility and Functioning

Application of MAP as a treaty remedy

MAP offers a time-bound means of resolving taxation that is inconsistent with a Tax Treaty. Separately, it also allows competent authorities to resolve, by mutual agreement, any difficulties or doubts arising as to the interpretation or application of the Tax Treaty. Under Article 25 of the Organisation for Economic Co-operation and Development Model Tax Convention (**"OECD Model Convention"**)[1] and United Nations Model Tax Convention (**"UN Model Convention"**)[2], a taxpayer may present a case where the actions of one or both contracting states "result or will result" in taxation not in accordance with the convention. The competent authorities must then "endeavour" to resolve the issue raised. The language used in the Model Conventions demonstrates the requirement of a genuine attempt at resolution, though not a guarantee that the authorities will agree or that the taxpayer will obtain relief[3].

A taxpayer in order to invoke MAP may approach the competent authority designated by its MAP clause. Under India's Tax Treaties, the application is ordinarily made to the competent authority of the taxpayer's country of residence. That said, the taxpayer must separately meet the requirements of residence and other applicable conditions for availing treaty benefits in order to get recourse to MAP. An important clarification is that access to MAP may be given even when Indian tax authorities apply domestic anti-abuse provisions to a particular transaction[4]. Further, this application for MAP must be done in accordance with the applicable filing period, which is commonly three years from the first notification of the action giving rise to the objection[5].

1. *Article 25 (para 1) states that "Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention."*
2. *Ibid.*
3. *Klaus Vogel on Double Tax Conventions, vol. II, at 1983 (5th ed.).*
4. *Central Board of Direct Taxes, MAP Guidance, F. No. 500/09/2016-APA-I, dated 7 August 2020, Part B, "Access and Denial of Access to MAP."*
5. *OECD, Mutual Agreement Procedure Peer Review Report, India (Stage 2) (2021), at 29, 31.*



Further, the words "will result" in a MAP clause permit a case to be raised before a final assessment where a proposed action makes taxation that is in breach of a Tax Treaty identifiable. As per the OECD Model Tax Convention, a taxpayer must establish that the "actions of one or both" contracting states leads to a taxing risk which is not merely possible but probable[6]. That said, India has limited use of MAP to cases where the tax risk is certain[7]. Where a taxpayer had challenged an assessment notice in court and obtained a stay before a draft assessment order was issued, while also seeking MAP, India's competent authority said the stay prevented the underlying taxation from being established and indicated it was not eligible for MAP proceedings until assessment proceedings advanced. While the general position taken by India remains refusal to admit draft orders to MAP, exceptions may be made on a case-by-case basis[8].

The subject of the application for MAP must concern taxation that is said to breach a provision of the Tax Treaty. In this regard, the scope of taxes covered, usually provided in Article 2 of the Tax Treaty, is relevant to determine scope and should be read alongside the substantive provision invoked and the MAP clause. Importantly, a dispute confined to treatment under Indian domestic law without an identifiable treaty objection, does not qualify merely because it arises in a cross-border assessment.

India has also reiterated that pursuing domestic remedies is not, as a rule, a bar to MAP and a taxpayer may pursue both, subject to managing their interaction and preserving domestic deadlines. MAP is thus an additional remedy given to taxpayers, rather than functioning as an alternate forum to litigation.

MAP in the Indian context

In the Indian context, MAP becomes most relevant in case of transfer pricing and PE profit attribution related issues. Central Board of Direct Taxes (**"CBDT"**) guidance expressly

6. *OECD, Model Tax Convention on Income and on Capital (2025) at 1133.*
7. *OECD, Peer Review Report, supra note 4, para. 80.*
8. *Ibid.*

identifies adjustments to associated-enterprise transactions, determination of a PE and attribution of profits, income characterisation and other treaty disputes as typical cases[9].

A recurring transfer-pricing pattern is an upward adjustment to an Indian service provider's remuneration while the overseas associated enterprise has already been taxed without a matching deduction or corresponding adjustment. While litigation in the domestic forum may remove the Indian adjustment; MAP can instead coordinate the arm's-length outcome and relief in the other State.

PE disputes raise a related but distinct problem. India may assert that a foreign enterprise carries on business through an Indian fixed place, agent or service presence, while the residence State rejects either the PE or the profits attributed to it. MAP may address the existence of the asserted nexus, attribution and the resulting double taxation. A negotiated attribution figure in the context of MAP does not necessarily mean that either competent authority has accepted the other's technical PE analysis[10].

MAP may also address disputes over royalty, fees-for-technical-services and business-profits characterisation, residence conflicts, treaty tiebreakers, denial of treaty relief and foreign-tax-credit mismatches. Each requires examination of the actual article, including any conditions for technical services, beneficial ownership or credit relief.

Functioning of MAP

The MAP procedure has two broad stages. The first stage takes place between the taxpayer and the competent authority receiving the MAP request[11]. The taxpayer sets out the tax action complained of the treaty provision it considers breached, the relevant facts and years, and the relief sought. An Indian resident applying to India ordinarily does so in Form 55 under rule 121 of the Income-tax Rules, 2026 read with section 159 of the Income-tax Act, 2025. The receiving authority first examines whether the request falls within the Tax Treaty's MAP clause and has been made with the information needed to consider it. It then considers whether the objection is justified. If the authority can remove the treaty-inconsistent taxation through action within its own jurisdiction, it may resolve the case unilaterally.

At the second stage, if unilateral resolution is insufficient, the competent authorities exchange positions and negotiate[12]. Discussions may need coordination among more than two authorities where connected disputes involve several treaty partners. That said, each authority's powers and the relief available remain governed by the relevant Tax Treaty. An agreement reached by the authorities is not imposed on the taxpayer and the taxpayer is free to choose whether to accept it or not. In the event the taxpayer accepts the resolution, they will then be required to withdraw the corresponding domestic challenges raised[13]. In the event that negotiations close without an agreement,

9. *CBDT, MAP Guidance, supra note 3, Part A, "Introduction and Basic Information".*
10. *ADIT, New Delhi vs. E-Funds IT Solution Inc., (2018) 13 SCC 294, paras. 23-26.*
11. *Klaus Vogel on Double Tax Conventions, supra note 2, at para 31 of Article 25.*
12. *Id at para 37 of Article 25.*
13. *CBDT, MAP Guidance, supra note 3, Part D, "Implementation of MAP outcomes".*

India aims to resolve MAP cases within an average of 24 months, but CBDT's guidance clarifies that this is an objective, not a guaranteed timeline.

the OECD Model Convention allows for the taxpayer to submit the case for arbitration. However, India's stated position has been not to accept arbitration in the Tax Treaties entered into by India[14]. Therefore, the risk always remains that a reference to MAP does not actually result in an outcome for the taxpayer.

Further, the Indian competent authorities may deny access to MAP in certain situations including when an application is filed after the period prescribed by the relevant Tax Treaty; and when it is an issue covered by an Income-tax Settlement Commission settlement order or an Authority for Advance Rulings ruling.

India aims to resolve MAP cases within an average of 24 months, but CBDT's guidance clarifies that this is an objective, not a guaranteed timeline[15]. Delay, incomplete information, differing technical positions and the involvement of more than one jurisdiction can affect the outcome dragging it to an average closure time of 34 months[16].

An interesting aspect that is relevant in the context of the India-United States of America ("US") Tax Treaty is that where MAP is initiated through the US competent authority and accepted by its Indian counterpart, assessing officers must keep collection of outstanding taxes in abeyance upon receipt of a bank guarantee[17]. This is especially useful where there are transfer pricing adjustments and where the tax demands are significant.

Part B - Intersection of MAP with Indian Domestic Law

At the outset, MAP is an additional remedy for the taxpayer. Taxpayers may ordinarily pursue domestic appeals while seeking competent-authority assistance and such approach is usually adopted in practice. In the ordinary course, MAP does not operate to suspend appeal deadlines, assessment or recovery. The exception is where the treaty provides for the same, such as the case in that of the India-US Tax Treaty.

The interaction changes when domestic adjudication reaches a decision on merits. CBDT's guidance states that India's competent authority will not depart from an Income-tax Appellate Tribunal (**"ITAT"**) order deciding the relevant dispute on merits[18]. Instead, it may seek correlative relief from the treaty partner, and the MAP case is closed as resolved by a domestic remedy. If the ITAT merely sets the dispute aside for fresh adjudication, the guidance contemplates renewed access after that adjudication, if requested[19].

From a strategic perspective, the choice is consequently not simply "MAP or appeal". An appeal may be necessary to preserve rights, to test a pure legal issue or resist domestic recovery. MAP offers a different outcome: the possibility of a coordinated outcome across states. A taxpayer must consider and

14. *OECD, Peer Review Report, supra note 4, 99.*
15. *CBDT, MAP Guidance, supra note 3, Part A, "Timeframe for Resolving and Implementing MAP Cases."*
16. *OECD, Peer Review Report, supra note 4.*
17. *CBDT, Instruction No. 10/2007, dated 23.10.2007*
18. *CBDT, F. No. 500/09/2016-APA-I, dated 10 June 2022.*
19. *CBDT, MAP Guidance, supra note 3.*

strategize whether advancing domestic merits proceedings will narrow the negotiating space before bilateral relief has been secured.

Interest and Penalties

Connected interest and penalties have been a subject of litigation in Indian jurisprudence. CBDT's MAP guidance expressly leaves interest and penalties to domestic administration while providing for variation where their amounts are linked to issue settled by way of MAP resolution[20].

In ***Toyota Kirloskar Motor Private Limited vs. Union of India***[21], the Karnataka High Court held that while MAP resolution modifies the transfer pricing adjustment to alleviate double taxation, it does not automatically eliminate domestic penalty proceedings under section 271(1)(c) of the Income-tax Act, 1961 (**"ITA, 1961"**). Statutory interest levied under sections 234B and 234C of the ITA, 1961 must be recomputed in accordance with domestic law, reflecting the adjusted income[22]. The same principle was reflected in ***BBC Global News***[23] wherein the ITAT held that interest computation should follow the tax liability as finally determined for those years treated. It treated interest under section 234B of the ITA, 1961 as a domestic-law consequence of the assessed tax, not as relief under the MAP resolution.

The OECD commentary distinguishes interest and administrative penalties directly linked to a covered tax from independent compliance penalties. Where interest or a penalty is computed by reference to a tax liability or adjustment reduced through MAP, the OECD commentary contemplates a corresponding reduction. However, other administrative penalties concerning domestic law compliance issues remain outside scope of MAP. These include independent compliance penalties under sections 271AA and 271G of the ITA, 1961 for documentation defaults under section 92D of the ITA, 1961[24].

Application of MAP resolution to other transactions

A MAP outcome resolves a Tax Treaty dispute submitted to competent authorities. It is not, without more, a precedent for another transaction or year, or an admission of the legal position on which the compromise was reached. In ***ADIT vs. E-Funds IT Solution Inc.***[25], the revenue argued that the taxpayers' acceptance of profit attribution to Indian PEs under an earlier India-US MAP established a PE in subsequent years. The Supreme Court rejected that inference holding that the US competent authority had not accepted India's technical PE position, and that the compromise eliminated double taxation for the years concerned. The resolution was not a decision for determining PE existence for later years.

This does not make a MAP resolution irrelevant outside its agreed scope. Where the taxpayer seeks to rely on it, the outcome may provide a benchmark for other transactions if the record establishes why they are comparable. In ***Amazon Development Centre***[26],

20. *Id, Part C, "Technical Issues".*
21. *[2020] 422 ITR 138 (Karnataka).*
22. *Turner Broadcasting Systems Asia Pacific Inc. vs. DDIT [2016] 380 ITR 412 (Delhi).*
23. *BBC Global News Ltd. vs. DCIT, International Tax, 189 taxmann.com 436 (Delhi–Trib.)*
24. *Mumbai v. Aura Spinwell Limited, ITA No. 997/Mum/2024; I.T.A. Nos. 809 & 810/Mds/2011.*
25. *(2018) 13 SCC 294.*
26. *Amazon Development Centre (India) (P.) Ltd. vs. ITO, 93 taxmann.com 30 (Bangalore–Trib.).*

the India-US MAP was used to settle issues on IT-enabled-service transactions. Because neither the accounts nor the assessment orders distinguished the remaining non-US transactions, and no factual or transactional distinction was shown to the Tribunal, the ITAT directed application of the MAP margin to that remainder[27].

Similarly, ***J.P. Morgan Services India***[28] also involved a taxpayer seeking to extend US MAP treatment to a small non-US portion for which no material transactional distinction had been identified. The Bombay High Court upheld the result but reserved the broader question whether MAP parameters can be projected into a statutory arm's-length-price determination without further adjustment or consideration.

The position of using MAP as a benchmark, however, appears to change when Revenue, rather than the taxpayer, seeks to impose the extension. In ***Aon Consulting (P.) Ltd. vs. Principal CIT***[29], the taxpayer accepted an India-US MAP framework for US transactions but continued to contest the adjustment for non-US transactions. The revenue argued in favour of application of the US framework to non-US transactions. The Delhi High Court held that acceptance of a negotiated settlement for US transactions by way of the MAP resolution could not foreclose the taxpayer's challenge to transactions outside it. Expanding on this reasoning, the Court stated that-

> *"It is important to note that MAP procedure is based on an agreement between the competent authorities of the contracting states, which is accepted by the Assessee.*

The position of using MAP as a benchmark, however, appears to change when Revenue, rather than the taxpayer, seeks to impose the extension.

> *The effect of imputing a framework arrived at between competent authorities of India and the US in respect of US Transactions to Non-US Transactions has an effect of imposing a consensual and negotiated settlement regarding one set of transaction to another where there is no such consensus. This in effect seeks to foreclose a right of an assessee to dispute a TP adjustment on the basis of the assessee's acceptance of an agreement in a situation, which is materially different.*[30]*"*

The Court required the non-US arm's-length price to be determined under section 92C and Rule 10B, rather than substituted with the MAP framework.

The cases thus distinguish evidential use of an accepted MAP outcome from its compulsory application. A close reading of Indian jurisprudence till date reveals that while a taxpayer may seek to establish that the same result is appropriate for comparable, uncovered transactions, revenue cannot treat the taxpayer's consent to one bilateral compromise as consent to another adjustment.

This is consistent with the principles of tax certainty for businesses. Under MAP, certainty does not mean that one negotiated margin becomes the rule for every transaction. A business should be able to rely on an earlier MAP outcome as a useful reference where

27. *Id.*
28. *PCIT vs. JP Morgan Services India, 274 Taxman 281 (SC); See also Bundy India Ltd. vs. DCIT, 180 taxmann.com 49 (Ahmedabad–Trib.); Dell International Services India (P.) Ltd. vs. DCIT, 160 ITD 270 (Bangalore–Trib.).*
29. *171 taxmann.com 336 (Delhi).*
30. *Id.*



the facts are genuinely comparable, while remaining free to settle one dispute without conceding its position in another. The practical boundary is the scope of the agreement, beyond which the facts and the applicable tax rules must be examined afresh.

Conclusion

MAP's benefit lies in coordinating relief between contracting states rather than leaving the taxpayer to litigate independently in each jurisdiction. Its usefulness in Indian transfer pricing, PE attribution and treaty characterisation disputes is substantial. Combined carefully with a bilateral APA, it can resolve contested years while reducing the prospect of recurrence.

But on the other hand, the challenge remains around certainty of obtaining a resolution around MAP. Considering that MAP does not provide for an obligation to find a resolution, coupled with India's reluctance to accede to arbitration to resolve MAP disputes, it allows for the issue to linger without actually obtaining a resolution. The biggest challenge around MAP continues to be around the time taken for resolution and more importantly, the lack of certainty in obtaining a resolution. Recent trends suggest that the competent authorities in India are moving in the direction towards resolution of disputes rather than letting them continue, which then allows for MAP to actually be the tool of resolution for the taxpayer rather than a mere paper right.

■

ADVANCE PRICING AGREEMENTS



Mayur Khanna

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Overview

Advance Pricing Agreements (APAs) have emerged as one of the most consequential tools in India's transfer pricing landscape, offering multinational enterprises a structured mechanism to achieve certainty on the arm's length price of international transactions before disputes arise.

This article provides a comprehensive yet accessible overview of India's APA programme – covering the eligibility criteria for taxpayers and transactions, the three types of agreements (Unilateral, Bilateral, and Multilateral), the step-by-step process from pre-filing consultation through signing and renewal, and the post-agreement compliance obligations including the Annual Compliance Report, Modified Return of Income, and the management of Critical Assumptions.

The article also highlights the tangible benefits of APAs – from litigation avoidance and elimination of double taxation to the nine-year certainty horizon available through a single agreement with rollback.

Drawing on the CBDT's Annual APA Report for FY 2025-26, the article presents the latest programme data: 220 APAs signed in a single year (the highest ever), 1,035 cumulative agreements, ` 51,000 crores of income finalised, and first-ever bilateral APAs with France, Ireland, Indonesia and Sweden. The article closes with India's growing recognition as a global benchmark in APA practice

1. What is an Advance Pricing Agreement?

An Advance Pricing Agreement (APA) is an agreement entered into between a taxpayer and the tax administration (CBDT in India) that determines, in advance, the Arm's Length Price (ALP) or specifies the manner in which the ALP shall be determined, in respect of an international transaction with an Associated Enterprise (AE). The fundamental purpose of an APA is to eliminate the uncertainty inherent in transfer pricing by resolving pricing disputes before the underlying cross-border transaction occurs — or at least before a dispute crystallises.

The fundamental purpose of an APA is to eliminate the uncertainty inherent in transfer pricing by resolving pricing disputes before the underlying cross-border transaction occurs — or at least before a dispute crystallises.

India launched its APA programme through Finance Act, 2012, by inserting Sections 92CC and 92CD into the Income-tax Act, 1961, effective 1st July 2012. The operative rules (Rules 10F to 10T of the Income-tax Rules, 1962) were notified on 30th August 2012. With the enactment of the Income-tax Act, 2025 and Income-tax Rules, 2026, the statutory references have been updated while the essential architecture of the programme remains intact.

Legislative basis: Sections 168 & 169, Income-tax Act, 2025

Operative rules: Rules 103-120, Income-tax Rules, 2026

Rollback introduced: Finance (No. 2) Act, 2014 — Rules notified 14 March 2015

Administering authority: CBDT (Principal CCIT International Taxation — five APA Teams)

2. Eligibility to enter into an APA

Any person who has undertaken or proposes to undertake an international transaction with an Associated Enterprise is eligible to apply for an APA. Key eligibility parameters are set out below.

2.1 Who May Apply

- Any resident taxpayer or a non-resident having a Permanent Establishment in India who has, or proposes to have, an international transaction with an AE.
- The transaction must relate to pricing — i.e., transfer pricing provisions under Chapter X of the Income-tax Act must be attracted.
- There is no minimum transaction value threshold prescribed for filing an APA application, though the CBDT exercises administrative discretion in accepting de minimis filings.

2.2 Eligible Transactions

- Sale or purchase of goods (tangible property) between AEs.
- Provision or receipt of services, including IT/ITeS, KPO, SWD, management services, and intra-group services.
- Licensing or use of intangibles — royalties, licence fees, know-how payments.
- Financial transactions — interest on loans, guarantee fees.
- Cost-sharing and cost-contribution arrangements.
- Any other transaction that may be characterised as an international transaction under Section 92B of Income-tax Act, 1961 (S. 163 of the Income-tax Act, 2025).
- Deemed international transactions under Section 92B(2) — covered since the 2024 annual report.

2.3 Applicability of Rollback

Rollback provisions (inserted by Finance (No. 2) Act, 2014) allow the ALP or the methodology agreed in the APA to apply to up to four preceding assessment years, provided the transaction and facts are materially the same. A taxpayer can accordingly obtain transfer pricing certainty for a maximum combined period of nine years

(five APA years + four rollback years) through a single application.

Maximum APA period: 5 years (prospective)

Maximum rollback period: 4 years (prior to commencement of APA period)

Combined certainty horizon: Up to 9 years in a single APA

3. Types of APAs

India's APA programme recognises three types of agreements, distinguished by the number of tax authorities involved. The choice of type depends on the nature of the transaction, the residence of the AE, the availability of a tax treaty, and the taxpayer's objective.

Type	*Parties Involved*	*Objective*	*Key Feature*
Unilateral APA (UAPA)	Taxpayer + CBDT only	Certainty under Indian TP law	Does not bind the foreign tax authority; risk of double taxation remains
Bilateral APA (BAPA)	Taxpayer + CBDT + Competent Authority of treaty partner	Certainty in both jurisdictions simultaneously	Eliminates double taxation; requires treaty between India and partner country
Multilateral APA (MAPA)	Taxpayer + CBDT + Competent Authorities of two or more treaty partners	Certainty across multiple jurisdictions in one agreement	India signed its first MAPA in FY 2024-25; further MAPAs signed in FY 2025-26; Eliminates Double Taxation

3.1 Choosing Between UAPA and BAPA

- UAPA is quicker to conclude (median 36 months in FY 2025-26 vs. 38 months for BAPA) but offers no protection against a corresponding adjustment or double taxation in the AE's jurisdiction.
- BAPA is preferable where the transaction is high-value, the AE's jurisdiction imposes withholding taxes or challenges deductions, or the AE's home country actively scrutinises transfer prices.
- A UAPA application may be converted to a BAPA (and vice versa) after filing, subject to CBDT acceptance.
- In FY 2025-26, 103 BAPA applications were filed (a new record) reflecting growing taxpayer confidence in bilateral resolutions.

4. Process of an APA

The APA process in India is structured and sequential. Both UAPA and BAPA follow a broadly similar lifecycle, though BAPAs involve the additional step of competent authority negotiations with the treaty partner. The typical stages are described below.

1. Pre-Filing Consultation

Before formally filing, the taxpayer may request a pre-filing consultation with the APA team. This is an informal, no-commitment meeting that allows the taxpayer to understand the scope of the APA, the documentation likely to be required, and the indicative pricing approach CBDT may adopt. Pre-filing consultation is encouraged and significantly improves the quality of the formal application.

2. Filing the Application

The formal APA application (UAPA: filed with Pr. CCIT International Taxation, New Delhi; BAPA/MAPA: filed with the Competent Authority in FT&TR Division, CBDT) must include inter alia: a description of the taxpayer's business and group structure; details of the covered international transaction(s); the proposed TP methodology and its justification; functional analysis; and supporting documentation. Application fees are payable on filing (now standardised for IT-services UAPAs under the Income-tax Rules, 2026).

3. Processing & Due Diligence

The APA team conducts detailed due diligence — site visits, information requests, economic analysis, and functional interviews. For UAPAs, the team prepares a position paper which is reviewed by Pr. CCIT (International Taxation) and then submitted to the FT&TR Division of CBDT for approval of the final negotiating position.

4. Negotiation

For UAPAs: negotiation takes place between the APA team and the taxpayer based on the CBDT-approved position. For BAPAs/MAPAs: the Indian Competent Authority (JS, FT&TR-I or FT&TR-II) conducts negotiations with the Competent Authority of the treaty partner. Positions are exchanged and discussed through in-person and virtual meetings. Once a Mutual Agreement is reached, the taxpayer is given 30 days to concur.

5. Signing of the Agreement

Once negotiation concludes, a draft Agreement is prepared and submitted for approval of the designated CBDT Member (Legislation). The Agreement is signed by JS, FT&TR-I or FT&TR-II on behalf of CBDT and by the taxpayer. The signed APA sets out the TP method, the ALP (or the manner of determination), critical assumptions, and the APA period.

6. Renewal

A taxpayer may apply for renewal of an APA upon expiry. Renewal applications are generally processed more expeditiously, as the APA teams can leverage prior due diligence. In FY 2025-26, 86 out of 136 UAPAs signed were renewals (average time: 29 months) and 22 out of 84 BAPAs signed were renewals (average time: 23.5 months).

Processing Timelines (FY 2025-26)

Type	Median Time	Average Time	Cases Resolved within 24 months
Unilateral APA (UAPA)	36 months	40 to 80 months	~45%
Bilateral APA (BAPA)	38 months	41 to 47 months (cumulative)	~25%

5. Post-APA Compliances

Execution of the APA is not the end of the taxpayer's obligations. The agreement imposes ongoing annual compliance requirements to ensure that the pricing methodology agreed continues to be properly implemented.

5.1 Annual Compliance Report (ACR)

For each year covered by the APA (including rollback years), the taxpayer must file an Annual Compliance Report (ACR) in the prescribed form (Form 3CEF/Form 52). The ACR must be filed within 30 days of the due date for filing the return of income for the relevant year. The ACR documents how the taxpayer has implemented the pricing methodology agreed in the APA, demonstrates that the critical assumptions have been met, and provides the arm's length outcome computed in accordance with the APA terms.

5.2 Modified Return of Income

Where an APA has been entered into (or renewed) and the return for any year covered by the APA has already been filed on the basis of a different transfer price, the taxpayer is required to file a modified return within three months of the date on which the APA is entered into (or such further period as the CBDT may allow). The modified return is governed by Section 92CD of the Income-tax Act, 1961 (Section 169 of the Income-tax Act, 2025). The Assessing Officer will complete the reassessment based on the modified return, and any consequent refund or demand flows from that assessment.

5.3 Compliance Audit

The CBDT (through the APA teams) conducts a compliance audit of the APA implementation as part of the ongoing administration of the programme. The compliance audit examines whether the taxpayer has accurately applied the agreed methodology, correctly computed the ALP, and duly satisfied all critical assumptions. If the audit reveals material non-compliance, the APA may be revised or cancelled.

5.4 Critical Assumptions and Revision

Every APA sets out critical assumptions — conditions which must remain true for the pricing terms to remain valid (e.g., stable functional profile, no material change in business model, no change in applicable

Where an APA has been entered into (or renewed) and the return for any year covered by the APA has already been filed on the basis of a different transfer price, the taxpayer is required to file a modified return within three months of the date on which the APA is entered into (or such further period as the CBDT may allow).

law beyond a stated threshold). If a critical assumption is breached, the taxpayer must promptly notify the CBDT. Depending on the nature of the breach, the APA may be revised to reflect changed circumstances, or in extreme cases, cancelled. The APA is not cancelled solely on account of a change in law; however, significant amendments (such as the Safe Harbour reform under the Income-tax Rules, 2026) may necessitate a revision of critical assumptions.

5.5 New: APA and Safe Harbour Interplay (FY 2025-26 Development)

The Income-tax Rules, 2026 introduced an expanded Safe Harbour regime for IT services. Taxpayers who were mid-way through APA negotiations when the budget announcement was made faced uncertainty about whether entering an APA would foreclose Safe Harbour eligibility for future years. CBDT vide Office Memorandum dated 24 March 2026 clarified that a Critical Assumption would be built into UAPAs (and BAPAs) enabling the APA not to apply to transactions that are covered by the new Safe Harbour regime from AY 2026-27 onwards. This reform removed a significant source of uncertainty and materially contributed to the record number of APA signings in FY 2025-26.

Annual Compliance Report: Due within 30 days of ITR due date for each APA year

Modified Return: Within 3 months of entering into the APA (for years already assessed)

Compliance Audit: Conducted by APA team on a periodic basis

Breach of critical assumption: Taxpayer must notify CBDT; APA may be revised or cancelled

CBDT vide Office Memorandum dated 24 March 2026 clarified that a Critical Assumption would be built into UAPAs (and BAPAs) enabling the APA not to apply to transactions that are covered by the new Safe Harbour regime from AY 2026-27 onwards. This reform removed a significant source of uncertainty and materially contributed to the record number of APA signings in FY 2025-26.

6. Benefits of APAs

1. Tax Certainty

The most fundamental benefit: the APA fixes, in advance, the TP methodology and the ALP (or the manner of its computation) for the agreed period. This eliminates the risk of TP adjustments, penalties, and interest for the covered years and transactions.

2. Litigation Avoidance

TP audits, appeals, and tribunal proceedings consume years and management bandwidth. An APA provides a binding, litigation-free outcome — the 1,035 APAs signed till March 2026 have prevented litigation for over 5,500 assessment years.

3. Relief from Double Taxation (BAPAs/ MAPAs)

A bilateral or multilateral APA binds both competent authorities, ensuring the agreed price is accepted in both jurisdictions and eliminating economic double taxation.

4. Long Time Horizon

A single APA covers up to five prospective years plus four rollback years — effectively up to nine years of certainty in a single agreement. Renewal extends this seamlessly.

5. Collaborative Engagement

The APA process is founded on mutual co-operation rather than adversarial assessment, providing direct engagement with CBDT and — in BAPAs — with treaty partner competent authorities.

6. Reduced Compliance Burden on Renewal

Renewal APAs are processed significantly faster than original applications (UAPA renewals: average 29 months; BAPA renewals: average 23.5 months in FY 2025-26), as prior due diligence is leveraged.

7. Revenue Assurance for Government

The 1,035 APAs signed through March 2026 have delivered finality on approximately ` 51,000 crores of income, generating estimated tax receipts of ` 15,000 crores — litigation-free.

8. OECD Recognition

India's programme has been recognised by the OECD as the third fastest-growing APA programme globally (103% growth), with 220 APAs in FY 2025-26 among the highest ever reported by any country in a single year.

7. APA Data — CBDT Annual Report FY 2025-26

The data below is drawn from the CBDT's eighth Annual APA Report (July 2026), covering activity through 31 March 2026.

7.1 Programme Highlights at a Glance

1,035 **Total APAs Signed (Cumulative)** As at 31 March 2026	**220** **APAs Signed in FY 2025-26** Highest ever in a single year	**84** **BAPAs in FY 2025-26** Record; +29% over FY 2024-25	**5,500+** **Assessment Years Covered** Cumulative certainty provided
` 51,000 Cr **Tax Finality (Income)** Estimated cumulative	**` 15,000 Cr** **Tax Collected** Estimated litigation-free	**841** **Applications Pending** Under processing as at 31 March 2026	**12** **Treaty Partners (BAPA)** Countries in FY 2025-26

7.2 Year-wise APA Signings Since Inception

Financial Year	*UAPAs Signed*	*BAPAs Signed*	*Total*
2013-14	5	0	5
2014-15	3	1	4
2015-16	53	2	55

Financial Year	*UAPAs Signed*	*BAPAs Signed*	*Total*
2016-17	80	8	88
2017-18	58	9	67
2018-19	41	11	52
2019-20	50	7	57
2020-21	18	13	31
2021-22	49	13	62
2022-23	63	32	95
2023-24	86	39	125
2024-25	109	65	174
2025-26	136	84	220
TOTAL (cumulative)	**751**	**284**	**1,035**
Note: UAPA total of 751 includes two cases with both BAPA and UAPA components.			

7.3 Assessment Years Covered (Certainty Delivered)

Period	APA Years	Rollback Years	Total Years
Agreements signed till 2023-24	2,626	804	3,430
Agreements signed in FY 2024-25	840	130.5	970.5
Agreements signed in FY 2025-26	1,093	239	1,332
CUMULATIVE TOTAL (till 31 March 2026)	4,559	1,173	5,732

7.4 Processing Timelines — UAPA (FY 2025-26)

Duration Band	*No. of UAPAs Signed in FY 2025-26*
Within 12 months	31
13–24 months	33
25–36 months	24
37–48 months	12
49–60 months	6

Duration Band	*No. of UAPAs Signed in FY 2025-26*
61–72 months	11
More than 72 months	19
TOTAL	**136**
~45% of UAPAs resolved within 24 months; ~65% within 36 months. Average time improved from 59.73 months (FY 2022-23) to 40.80 months (FY 2025-26).	

7.5 Industry-wise Distribution — UAPAs Signed in FY 2025-26

Industry / Sector	*No. of UAPAs*
Information Technology (IT / ITeS / SWD / KPO)	55
Manufacturing & Banking/Insurance	13
Consultancy	7
Pharmaceutical	6
Non-Banking Investment Advisory Services	6
Trading & Logistics	6
Automotive	5
Engineering Services	4
Industrial / Commercial Goods	4
Healthcare	4
Others (Consumer goods, F&B, Energy, Cement, Media, etc.)	26
TOTAL	**136**

IT and IT-enabled services dominate at 55 UAPAs. FY 2025-26 also saw APAs covering animation services, clinical trials, and non-banking investment advisory — signalling the programme's broadening scope.

7.6 Transfer Pricing Methods Used

TP Method	UAPA Transactions (FY 2025-26)	BAPA Transactions (FY 2025-26)	Combined
TNMM (Transactional Net Margin Method)	239	265	504
Other Method (negotiated/combined)	168	109	277

TP Method	UAPA Transactions (FY 2025-26)	BAPA Transactions (FY 2025-26)	Combined
CUP (Comparable Uncontrolled Price)	14	5	19
Profit Split / Residual Profit Split	1	7	8
Cost Plus Method	0	0	0
Resale Price Method	0	0	0
TOTAL	422	386	808

TNMM dominates at ~57% of transactions. FY 2025-26 saw increased use of Profit Split / Residual Profit Split in BAPAs, reflecting resolution of complex, multi-segment cases.

7.7 BAPA Signings by Country — FY 2025-26

Treaty Partner	*BAPAs Signed in FY 2025-26*	*Cumulative BAPAs Signed (till March 2026)*
USA	39	147
Finland	9	12
Singapore	8	19
United Kingdom	7	32
Japan	6	31
Denmark	3	10
South Korea	3	7
Australia	3	9
France	2	2 (FIRST EVER)
Sweden	2	2 (FIRST EVER)
Ireland	1	1 (FIRST EVER)
Indonesia	1	1 (FIRST EVER)
TOTAL	84	284

FY 2025-26 saw first-ever BAPAs with France, Ireland, Indonesia and Sweden. The USA remains the single largest bilateral partner with 147 cumulative BAPAs.

8. Mutual Agreement Procedure (MAP) — Companion Mechanism

The MAP (Article 25 of applicable DTAA) is a retrospective dispute resolution mechanism enabling competent authorities to eliminate double taxation. Unlike the prospective APA, MAP resolves disputes that have already crystallised. India has substantially improved its MAP resolution rate, reducing its inventory from 947 cases (2020) to 365 (2025) — a 61% reduction.

MAP inventory reduction (2020–2025): 947 → 365 (≈61% reduction in six years)

Average TP MAP resolution time: Reduced from 64.86 months (2016) to 39.78 months (2025)

India-Japan recognition: Awarded "Best Co-operation in Transfer Pricing MAP cases" at OECD FTA MAP Forum 2024 — cases resolved in avg. <17 months

OECD recognition: India's APA programme ranked 3rd fastest-growing globally (103% growth) — announced at Tax Certainty Day, Paris, October 2025

9. India's APA Programme in the Global Context

India's APA programme now commands global recognition. The IRS Annual APA Report 2025 reveals that India accounted for 35% of all bilateral APAs executed by the IRS in 2025 — more than any other country — confirming that the India-USA BAPA corridor is among the most active bilateral relationships in global transfer pricing. At the OECD Tax Certainty Day (Paris, October 2025), India's programme was recognised as the third-fastest growing globally with 103% growth. Most tellingly, the UN Committee of Experts on International Cooperation in Tax Matters at its 31st Session (Geneva, October 2025) observed that extensive guidance now exists on bilateral APAs and that the remaining gap is on the unilateral side — many developing countries still need to build unilateral APA experience before progressing to bilateral arrangements. India's bilateral APA programme, with 284 BAPAs across 12 treaty partners, is implicitly the reference model. The programme is no longer benchmarked against others — it is itself the benchmark.

10. Looking Ahead — Key Developments & Practitioner Notes

1. New Income-tax Act, 2025 & Rules, 2026

APA applications and draft agreements must reference the updated statutory provisions under the Income-tax Act, 2025 and Income-tax Rules, 2026.

2. Safe Harbour + APA Co-existence (CBDT OM, 24 March 2026)

IT-services entities mid-stream in APA negotiations can now enter APAs for pre-2026-27 years without foregoing Safe Harbour eligibility from AY 2026-27 onwards, following CBDT's Office Memorandum dated 24 March 2026.

3. Expanding BAPA Network

India signed first-ever BAPAs with France, Ireland, Indonesia and Sweden in FY 2025-26; practitioners advising MNEs with AEs in jurisdictions that have recently joined the bilateral network should actively evaluate BAPA eligibility.



4. Early Filing Imperative

Early filing — ideally in April of the year preceding the first APA year — is strongly encouraged by CBDT and competent authorities to enable genuine advance certainty.

5. Deemed International Transactions

From FY 2024-25, APAs have begun covering deemed international transactions under Section 92B(2); practitioners should assess whether back-to-back arrangements or global vendor contracts attract this provision.

6. Profit Split in BAPAs

The increased use of the Profit Split/Residual Profit Split method in BAPAs in FY 2025-26 signals CBDT's willingness to resolve complex, multi-segment transactions — a departure from the near-exclusive TNMM dominance of prior years.

■

" The future depends on what you do today. "

Mahatma Gandhi

SUPREME COURT



Keshav B. Bhujle
Advocate

1 PRINCIPAL CIT VS. RAJESH KUMAR GUPTA (2026) 490 ITR 755 (SC): 2026 SCC ONLINE SC 1835 DATED 20-07-2026

Revision — Order erroneous and prejudicial to the Revenue — Tribunal setting aside order of revision on finding that assessment order was not erroneous, and no independent prejudice to interest of Revenue established by Principal Commissioner — High Court affirmed the order of the Tribunal — Supreme Court dismissed the special leave petition filed by the Department: S. 263 of ITA, 1961: A. Y. 2015-16

In the instant case, the Tribunal allowed the assessee's appeal and set aside the order dated March 31, 2021 passed by the Principal Commissioner of Income-tax, Agra-1 u/s 263 of the Income-tax Act, 1961.

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

"i) Having heard learned counsel for the Revenue and having perused the record, we find that the finding recorded by the Tribunal remains that there was no error in the order of the assessing authority. Apart from that, we find (from that order passed u/s. 263 of the Act) that the Principal Commissioner of Income-tax has not recorded any independent finding as to the original assessment order dated December 13, 2017 found "prejudicial to the interests of the Revenue". For valid action u/s. 263 of the Act, the twin conditions of the assessment order being erroneous and being prejudicial to the interests of the Revenue are required to be recorded independently.

ii) In view of the above discussion, we find that the present appeal has no merit as in the first place, the Tribunal has clearly found that the assessment order was not erroneous and in any case, no independent prejudice to the interests of the Revenue has been established by the Principal Commissioner of Income-tax.

iii) The appeal lacks merit and is, accordingly, dismissed."

[*PCIT vs. Rajesh Kumar Gupta; (2026) 490 ITR 754 (All)*]

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

"i) We have heard Mr. S. Dwarakanath, the learned Additional Solicitor General.

ii) Delay condoned.

iii) After going through the impugned order passed by the High Court [***Pr. CIT vs. Rajesh Kumar Gupta (2026) 490 ITR 754 (All).***] as well as the order passed by the Income-tax Appellate Tribunal1, we are not inclined to entertain the special leave petition.

iv) Accordingly, the special leave petition is dismissed."

2 DIT (INTERNATIONAL TAXATION) VS. STAR CRUISES (INDIA) (P) LTD. (2026) 490 ITR 428 (SC): 2026 SCC ONLINE SC 1442 DATED 30-07-2026

TDS — Non-resident — Shipping business — Certificate of withholding — Non-resident conducting "ship cruises" originating and terminating at Mumbai port through assessee and providing entertainment on board for additional payment — Possibility of passengers de-boarding at intermediate ports — Providing ancillary services would not take away from meaning of "carriage" — Meaning adopted by AO is restrictive — Activity of non-resident amounts to carriage of passengers — Determination of non-resident's income at statutory presumptive rate of 7.5 per cent. of gross cruise fare receipts for tax deduction — Supreme Court affirmed the order of the Tribunal and the High Court and dismissed the appeal filed by the Revenue: Ss. 44B and 195 of ITA, 1961: A. Ys. 2006-07 to 2008-09

M/s. Star Cruises (India) Pvt. Limited is the assessee-respondent. Superstar Libra Ltd. ("SLL"), a non-resident entity, operated a cruise known as "Superstar Libra" in India. The assessee, the agent of SLL, was responsible for conducting the cruise and collecting revenue from the sale of cruise packages and shore excursions in India.

For the A. Ys. 2006-07 to 2008-09, the assessee applied for a certificate for deduction of tax u/s 195 of the Income-tax Act, 1961 on the remittances by the assessee to the non-resident, applying section 44B of the Act under which the estimated income was 7.5 per cent. of the cruise fare collected by the assessee.

The Assessing Officer, *vide* order dated March 30, 2007, held that section 44B of the Act is applicable in cases of carriage of goods, passengers, etc., and, in the view of the Assessing Officer, the term "carrying" means taking or transporting from one place to another or from one port to another. SLL conducted cruise services originating from and terminating at Mumbai port, i.e., a round trip. During the round trip, SLL extended hospitality and provided entertainment. Therefore, the activity of SLL falls under entertainment and hospitality and does

not include carriage of passengers/goods within the meaning of section 44B of the Act. Consequent to such view, the Assessing Officer estimated the deemed income at 25 per cent. of the cruise fare collected for and on behalf of SLL, not at 7.5 per cent. as claimed by the assessee.

The Commissioner (Appeals) allowed the assessee's appeal and set aside the assessment order dated March 30, 2007. The Commissioner (Appeals) appreciated all the circumstances of the case u/s. 44B of the Act and held that the deemed income of SLL was estimated at 7.5 per cent. of the receipts received from the cruise fare.

The Tribunal dismissed the appeal filed by the Revenue. The Tribunal's finding of fact is summarised as follows:

"A. While rejecting the Assessing Officer's interpretation of the term "carriage", it affirmed that a round-trip voyage constitutes two separate acts of carriage, i.e., from station A to station B and back to station A. Further, the assessee also offered one-way cruises, and passengers booking round-trip cruises are entitled to disembark at intermediate ports without being compelled to return to Mumbai.

B. Booking slips establish that the primary fees collected from passengers were for cabin and transport fares. Any on-board entertainment, whether included or paid separately, was incidental to the main business of operating ships.

C. Central Board of Direct Taxes Circulars Nos. 763 and 169 dated February 18, 1996 and June 23, 1975, respectively, clarify that carriage payments include handling charges and that section 44B of the Act was designed to simplify the computation of taxable profits for foreign shipping enterprises. Since SLL is a non-resident entity engaged in the business of operating ships, it fulfils the essential conditions under the said section.

D. It directed that SLL's income be assessed at the statutory presumptive rate of 7.5 per cent. of gross cruise fare receipts for tax deduction u/s. 195 of the Act rather than 25 per cent. of income estimated by the Assessing Officer."

The Bombay High Court dismissed the appeal filed by the Revenue.

The Supreme Court granted leave in the matters on the following two questions, namely:

"(i) Whether on the facts and circumstances of the case and in law, the Hon'ble High Court was justified in upholding the Hon'ble Income-tax Appellate Tribunal's decision that the assessee is engaged in the business of operation of ships and is entitled to be assessed under section 44 B of the Income-tax Act ?

(ii) Whether on the facts and circumstances of the case and in law, the Hon'ble High Court was justified in upholding the Hon'ble Income-tax Appellate Tribunal's decision without appreciating that the fact of the case that the business activity of the assessee was primarily that of providing hospitality and entertainment on-board the cruise ship and not that of mere transportation of passengers?"

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

"i) We have taken note of the arguments and perused the record. In the civil appeals, we are not defining the meaning of the word "carriage", but we are examining its application to the facts of the case. To sum up, we may note with disapproval the construction placed by the Assessing Officer on SLL's activity. The Assessing Officer insists that, to attract the meaning of the word "carriage", the movement should be from place "A" to place "B".

ii) We find it difficult to confine the meaning of the word "carriage" as attributed by the Assessing Officer. The appellate authority and the Tribunal, being competent authorities to examine the facts in issue, as noted supra, have held that the activity established by SLL does not fall outside the expression of "carriage" as per section 44B of the Act. In the facts and circumstances of this case, SLL, being a foreign entity, was providing cruise services in India through the assessee. The finding recorded is that the possibility of passengers de-boarding at intermediate ports was not taken into account by the Assessing Officer. On a voyage, the providing of ancillary services does not take away from the meaning of "carriage" as per section 44B of the Act. The meaning adopted by the Assessing Officer is restrictive in the facts and circumstances of this case. The illegality was factually corrected by the impugned orders.

iii) We do not wish to reiterate the same reasoning, but are satisfied that, in the facts and circumstances of the case, the view taken in respect of the subject assessment years, namely that section 44B of the Act is attracted to the estimated income of SLL, does not warrant interference.

iv) The civil appeals fail and are accordingly dismissed."

■

"So long as the millions live in hunger and ignorance,
I hold every person a traitor who,
having been educated at their expense,
pays not the least heed to them!"

Swami Vivekananda

HIGH COURT





Jitendra Singh
Advocate

Radha Halbe
Advocate

Harsh Shah
Advocate

1 RUHAAN SHELTERS (P.) LTD. VS. INCOME-TAX OFFICER [2026] 190 TAXMANN.COM 880 (BOMBAY HC)

Reassessment - time limit for issuance of notice - section 149 of the Income Tax Act 1961 - only profit element embedded in contractual receipts can be considered for the purposes of determining escaped income – thus, impugned re opening notice issued after 3 years for taxing the profit embedded in contractual receipts which is less than statutory threshold limit of ` 50 Lakhs is barred by limitation

Facts

The Assessee before the Hon'ble Bombay High Court is a company carrying on the business activity of development of real estates. The assessee had not filed its return of income for AY 2013-14 owing to an internal management dispute. A notice under section 148A(b) was issued to initiate the reassessment proceedings on the ground that Form 26AS reflected contractual receipts aggregating to ` 3.25 crore. Thereafter, the AO passed an order under section 148A(d) and issued a notice under section 148, recording that the income embedded in the contractual receipts constituted an asset exceeding ` 50 lakh and had escaped assessment. Subsequently, in the reassessment proceedings, the AO estimated the profit element at 8% of the gross receipts and made an addition of only ` 26.06 lakh. Aggrieved by the reassessment proceedings, the Assessee approached the Hon'ble Bombay High Court.

Ruling of the High Court

Hon'ble Bombay High Court was pleased to allow the writ petition by observing that impugned notice is issued under section 148 beyond the period of three years from the end of the relevant assessment year, and thus, two cumulative conditions must be fulfilled, namely, (i) the income escaping assessment must be represented in the form of an asset, and (ii) such escaped income must amount to or be likely to amount to ` 50 lakh or more. Failure to satisfy either of these conditions would render the reassessment proceedings without jurisdiction. In the present case the alleged escaped income was not the gross contractual receipts of ` 3.25 crore but only the profit component embedded therein. Significantly, the AO himself had estimated such profit at 8% of the gross receipts both in the impugned reassessment proceedings

as well as in the Assessee's case for the subsequent assessment year. Consequently, the escaped income, as quantified by the AO, amounted to only ` 26.06 lakh. Since the profit element constituted the income chargeable to tax and such amount admittedly fell below the statutory threshold of ` 50 lakh prescribed under section 149(1)(b), the condition precedent for invoking the extended limitation period is not fulfilled. Thus, notice issued under section 148 and all consequential proceedings were without jurisdiction and liable to be quashed.

2 PAPU RAM VS. ASSISTANT COMMISSIONER OF INCOME-TAX [2026] 190 TAXMANN.COM 548 (RAJASTHAN HC)

Reassessment - Section 147 of the Income Tax Act 1961 - Explanation to amended section 147 enlarges scope of reassessment proceedings - AO is empowered to assess any issue relating to escaped income which subsequently comes to notice during reassessment proceedings, even without separate compliance with section 148A - validity of reassessment not dependent upon addition being made on original issue forming basis of reopening - challenge to constitutional validity of Explanation rejected

Facts

The Assessee, a proprietary concern engaged in construction activities, was subjected to reassessment proceedings for AY 2018-19 on the basis of information received from the National E-Assessment Centre regarding certain payments received from a joint venture. Following the procedure prescribed under section 148A, a notice under section 148 was issued. During the course of reassessment proceedings, the AO came across further information suggesting escapement of income and issued a show-cause notice proposing to enlarge the scope of reassessment. Ultimately, the reassessment order was passed on the basis of search-related material, while no addition was made on the issue that had originally formed the basis for reopening. The Assessee challenged the reassessment proceedings and also questioned the validity of the Explanation to amended section 147 before the Hon'ble Rajasthan High Court.

Ruling of the High Court

Hon'ble Rajasthan High Court upheld the reassessment proceedings and dismissed the writ petition filed by the assessee. Hon'ble Court undertook a comparative analysis of the erstwhile and amended provisions of section 147 and observed that the Explanation to the amended provision consciously preserves and expands the legislative intent underlying Explanation 3 to the erstwhile section 147. The Court noted that the legislature has expressly empowered the AO to assess or reassess income in respect of any issue relating to escaped income which subsequently comes to notice during reassessment proceedings, irrespective of the fact that the procedure under section 148A had not been followed in relation to such subsequent issue.

Hon'ble Court further held that the judicial precedents rendered in the context of the unamended provision, requiring an addition

on the original issue forming the basis of reopening before any other addition could be made, are no longer applicable after the legislative changes introduced by the Finance Act, 2021. According to the Court, the amended provision reflects a clear legislative intention to widen the scope of reassessment and permit examination of any subsequently discovered escaped income. Relying upon decisions of the Supreme Court relating to statutory interpretation and the scope of explanatory provisions, the Court rejected the challenge to the constitutional validity of the Explanation, holding that even if an Explanation enlarges the scope of a substantive provision, it must be given full effect where such enlargement reflects a clear legislative intention.

Hon'ble Court also rejected the contention that only information already available with the AO at the commencement of reassessment proceedings could be relied upon for enlarging the scope of reassessment. It held that the expression "any issue" used in the Explanation is of wide amplitude and includes information or material that may come to the notice of the AO from an entirely different source, including search proceedings. The Court further held that where reassessment proceedings are already pending, the Revenue is entitled either to widen the scope of such reassessment on the basis of search material or to independently initiate proceedings under the relevant provisions. Accordingly, the reassessment order is upheld, and the writ petition was dismissed.

3 TEVA PHARMACEUTICALS USA INC. VS. DEPUTY COMMISSIONER OF INCOME-TAX [2026] 190 TAXMANN.COM 547 (DELHI HC)

International Taxation - Section 9 of the Income Tax Act 1961 - mere payment by an Indian resident to a non-resident does not result in income accruing or arising in India in absence of any real territorial nexus or statutory deeming provision - AAR cannot decline to answer application after admitting same by embarking upon enquiry into commercial wisdom or alleged tax avoidance - protective assessment does not justify withholding of refund - reassessment proceedings and AAR ruling quashed; refund directed to be granted. [Sections 5, 147, 148 and 149]

Facts

Teva USA, a wholly owned subsidiary of Teva Israel, and Ranbaxy USA were parties to agreements concerning the sale of generic Atorvastatin in the United States. Pursuant to a settlement arrangement, Ranbaxy India remitted approximately ` 1,851 crore directly to Teva Israel, on which tax of around ` 784 crore was deducted at source. Teva Israel approached the Authority for Advance Rulings seeking a ruling that the receipt constituted business income not taxable in India in the absence of any business connection or permanent establishment. The AAR declined to answer the questions raised and instead observed that the income belonged to Teva USA and that the arrangement appeared to be designed for tax avoidance. Based on the AAR's observations, reassessment proceedings were initiated against Teva USA. Simultaneously, the Revenue framed a protective assessment in the hands of Teva Israel and withheld the refund claimed by it. Aggrieved thereby, both Teva

USA and Teva Israel approached the Hon'ble Delhi High Court.

Ruling of the High Court

Hon'ble Delhi High Court was pleased to allow the writ petition filed by the assessee. While examining the validity of reassessment proceedings initiated against Teva USA, the Court held that the entire dispute related to contractual and commercial rights arising in the United States and that neither the underlying agreements nor the income-producing activities bore any real and substantive nexus with India. Hon'ble Court rejected the Revenue's contention that every payment made by an Indian resident to a non-resident automatically gives rise to income accruing or arising in India. It observed that section 5(2)(b) and section 9 operate within defined limits and do not contemplate a universal source rule based solely upon the residence of the payer. In the absence of any business connection, territorial nexus or applicable deeming provision under section 9, the receipt could not be brought to tax in India. Consequently, the notices issued under section 148 and all consequential proceedings against Teva USA for AYs 2012-13 and 2013-14 were held to be without jurisdiction and were quashed.

Hon'ble Court further examined the AAR's order and held that it had travelled far beyond the limited jurisdiction conferred upon it under Chapter XIX-B of the Act. Having admitted the application under section 245R(2), the AAR could not subsequently invoke the proviso relating to tax avoidance and refuse to answer the questions placed before it. The Court observed that the AAR had effectively undertaken a roving enquiry into the commercial wisdom of the parties, speculated upon alleged collusion and anti-competitive arrangements, and even recorded findings against Teva USA despite it not being an applicant before the Authority. Such findings were held to be without jurisdiction. The Court therefore set aside the AAR ruling and held that the payment received by Teva Israel from Ranbaxy India was not chargeable to tax in India.

In relation to AY 2014-15, the Court additionally held that reassessment proceedings were barred by limitation. It observed that the Revenue had wrongly invoked the extended limitation period under section 149(1)(b) by treating deposits in Teva Israel's bank account as assets of Teva USA. The existence of a qualifying asset, according to the Court, is a jurisdictional fact and such asset must belong to the Assessee against whom reassessment proceedings are initiated. The Court also noted that the Revenue had introduced the asset-related allegation for the first time in the order under section 148A(d) without confronting the Assessee in the show-cause notice. Consequently, the proceedings were held to be time-barred and the notice issued under section 148 was quashed.

Lastly, Hon'ble Court addressed the refund due to Teva Israel. While recognising the validity of a protective assessment, it emphatically held that there is no concept of "protective recovery" under the Act. Since the Revenue itself maintained that the income belonged to Teva USA and not Teva Israel, there was no legal basis for indefinitely withholding the refund claimed by Teva Israel. The Court therefore directed the Revenue to grant refund of approximately ` 783 crore together with applicable interest, subject to furnishing of suitable corporate guarantees and security. Accordingly, all the writ petitions were allowed.

4 AJAY SURENDRA PATEL VS. DCIT [2026] 190 TAXMANN.COM 397 (GUJARAT)

Liability of directors - Section 179 of the Income Tax Act 1961 - Public limited company - Lifting of corporate veil - Mere substantial shareholding by a director does not alter the status of a public limited company - Revenue must establish that non-recovery of tax dues was attributable to gross negligence, misfeasance or breach of duty of the director - In absence of such finding, liability under section 179 cannot be fastened upon the director

Facts

The assessee was inducted as a director of a company incorporated as a public limited company and resigned shortly thereafter. Subsequently, tax dues of the company remained unpaid, leading to proceedings against the assessee under section 179 of the Act. The Revenue sought to fasten liability on the assessee by treating the public limited company as, in substance, a private company on the basis of his substantial shareholding and by alleging gross negligence, misfeasance and breach of duty. The assessee being aggrieved by the action of the revenue under section 179 of the Act challenged the same before the Hon'ble Gujarat High Court. Before the Hon'ble High Court, the assessee contended that he had neither managed the affairs of the company nor operated its bank accounts or participated in its financial and tax matters, and that he had ceased to be a director before the assessment and consequential demand.

Ruling of the High Court

Hon'ble High Court was pleased to allow the petition filed by the assessee by observing that a company incorporated as a public limited company cannot be treated as a private company merely because one director holds substantial shares or the shares are not offered to the public. The Court further held that invocation of Section 179 requires a specific finding that the non-recovery of tax dues was attributable to the director's gross negligence, misfeasance or breach of duty. In the absence of any finding that the assessee had siphoned off funds, defrauded the Revenue, or contributed to the non-recovery of tax dues through any such conduct, the requirements of Section 179 were not satisfied. Accordingly, the order fastening liability upon the assessee was quashed and set aside. ■

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1 JOSEPH DOMNIC DSOUZA VS. ITO, WARD 24(2)(1), MUMBAI [ITA NO.7483/MUM/2026 (MUMBAI TRIB)] (AY: 2016-17)

Sec. 271(1)(c) – Penalty proceedings – Validity – Where assessment order specifically records initiation of penalty u/s. 271AAC of the Income Tax Act, 1961 and contains no satisfaction for initiation u/s. 271(1)(c) of the Act - subsequent initiation and levy of penalty u/s. 271(1)(c) of the Act cannot be sustained due to jurisdictional defect

Facts

The assessee was a non-resident and had not filed his return of income for the relevant assessment year. Reassessment proceedings were initiated and due to non-compliance of notices by the assessee, the AO completed the assessment u/s. 147 r.w.s. 144 and 144B of the Income Tax Act, 1961 determining total income at ` 55,62,000 on account of alleged unexplained cash deposits in a Bank of Baroda account u/s. 69 r.w.s 115BBE. Further, the AO recorded that penalty proceedings u/s. 271AAC and 272A(1)(d) were being initiated. Subsequently, the penalty proceedings were intiated u/s. 271(1)(c) instead of 271AAC and the AO passed the penalty order u/s. 271(1)(c) holding that assessee has concealed particulars of income. Before the CIT(A), the assessee did not file any submissions as no notices were received on registered email id. In the absence of assessee's submissions, the CIT(A) confirmed the penalty. Aggrieved, the assessee appealed before ITAT.

Held

Before the Hon'ble Tribunal, the AR submitted that the jurisdictional defect could be adjudicated independently of the pending quantum appeal. The assessment order recorded a direction for initiation of penalty u/s. 271AAC of the Act whereas there was no satisfaction recorded for initiation of penalty u/s. 271(1)(c). It was argued that proceedings initiated under one penal provision could not subsequently culminate in levy of penalty under another provision having different statutory charge and conditions. On the other hand, the DR submitted that the assessee had neither filed return of income nor satisfactorily explained source of alleged cash deposits during assessment proceedings. The DR further contended that since assessee had not made effective compliance before the

lower authorities the AO was justified in levying the penalty. As regards pendency of quantum appeal the DR made submission that if appropriate the penalty order be restored to the file of CIT(A) for deciding the penalty appeal after disposal of quantum appeal proceedings.

The Hon'ble Tribunal observed that the assessment order was the primary and contemporaneous record of the satisfaction of the AO. In the present case, the AO had specifically initiated penalty proceedings u/s. 271AAC and had not recorded any satisfaction regarding concealment of income or furnishing of inaccurate particulars so as to attract section 271(1)(c) of the Act. Section 271(1B) of the Act which deems satisfaction where the assessment order contains a direction for initiation of penalty u/s. 271(1)(c) presupposes the existence of such a direction. In this case, not only such a direction was absent, but the direction actually recorded for initiation under a different and specific penal provision. Sections 271AAC and 271(1)(c) operate in distinct statutory fields and embody different conditions, charges and consequences. It was further held, that penalty proceedings are not automatic or inevitable sequel to every addition made in the assessment. Further, it was held that the pendency of the quantum appeal also did not affect this conclusion since the validity of the penalty proceedings was a separate jurisdictional issue. The non-compliance attributed to the assessee before the lower authorities also cannot cure the absence of jurisdiction. The Tribunal also held that a remand is not to be ordered as a matter of ritual where the undisputed record itself establishes that the proceedings suffer from an incurable jurisdictional infirmity. Thus, the Hon'ble Tribunal held that the penalty-imposed u/s. 271(1)(c) travelled beyond the jurisdiction assumed by the AO and could not be sustained.

2 ITO, WARD-1, MAHBUBNAGAR VS. MEGHANA ENTERPRISES [MA NO.32/HYD/2026 (HYDERABAD TRIB)] (AY: 2018-19)

Sec. 254(2) – Miscellaneous application – Retrospective amendment by Finance Act, 2026 inserting Sec. 147A – Subsequent amendment cannot constitute a mistake apparent from record in an order passed on the basis of law prevailing on the date of the order – Recall of concluded order not permissible u/s. 254(2)

Facts

The reassessment proceedings were initiated u/s. 148 of the Income-tax Act 1961 for AY:2018-19 and the notice u/s. 148 of the Income-tax Act, 1961 was issued by the Jurisdictional Assessing Officer (JAO). The assessee challenged the validity of the notice before ITAT on the ground that in view of the faceless assessment provisions u/s. 144B, the JAO did not have jurisdiction to issue the notice. The Hon'ble ITAT by order dated 12.11.2025 quashed the notice issued u/s. 148 and the consequential reassessment proceedings relying upon the legal position and judicial precedents prevailing at the relevant time, including the decision of the Hon'ble Jurisdictional Telangana High Court in ***Kanakala Ravinder Reddy vs. ITO 156 taxmann.com 478 (Telangana)***. Thereafter, the Finance Act, 2026 introduced Section 147A with retrospective effect from 01.04.2021, dealing with the meaning of Assessing Officer for the purposes of Sections 148 and 148A and providing that such Assessing Officer

would mean an officer other than the National Faceless Assessment Centre or the assessment unit referred to in Section 144B. In view of the retrospective amendment the Revenue filed Miscellaneous Application before the ITAT seeking to recall of the Hon'ble Tribunal's earlier order.

Held

Before the Hon'ble Tribunal, the AR argued that the Hon'ble Tribunal had already granted liberty to both parties to seek restoration of the appeal if the issue was finally settled by the Supreme Court. It was argued that the subsequent insertion of Section 147A could not by itself justify recalling the Hon'ble Tribunal's earlier order. Relying on the Telangana High Court's decision in ***PCIT-4, Hyderabad vs. Vinod Ojha ITA No. 92 of 2026*** the AR argued that a subsequent amendment does not make an earlier order which was correct according to the law prevailing at the time a mistake apparent from the record u/s. 254(2). The assessee also relied upon the Hon'ble Tribunal's decision in ***DCIT vs. TMEIC Industrial Systems India Pvt. Ltd. M.A.No.38/Hyd/2026*** and requested dismissal of the Revenue's M.A. The DR on the other hand, argued that the Hon'ble Tribunal's earlier order which quashed the Section 148 notice on the ground that the JAO lacked jurisdiction u/s. 144B should be recalled because Section 147A was subsequently inserted by the Finance Act, 2026 with retrospective effect from 01.04.2021. Relying on the decision of Hon'ble Supreme Court in ***M.K. Venkatachalam vs. Bombay Dyeing & Manufacturing Co (1958) 34 ITR 143*** it was contended that a retrospective amendment can render an earlier order based on the previous law a mistake apparent from the record capable of rectification. The DR further argued that the Hon'ble Jurisdictional High Court's decision in ***PCIT-4, Hyderabad vs. Vinod Ojha*** did not decide the validity or scope of Section 147A and therefore did not prevent the Hon'ble Tribunal from considering the retrospective amendment.

The Hon'ble Tribunal held that its earlier order dated 12.11.2025 which quashed the Section 148 notice issued by the JAO was passed on the basis of the law prevailing at that time. Therefore, the subsequent retrospective insertion of Section 147A by the Finance Act, 2026 could not by itself constitute a mistake apparent from the record u/s. 254(2). The Hon'ble Tribunal relied upon Hon'ble jurisdictional High Court decision in case of ***PCIT-4, Hyderabad vs. Vinod Ojha***, and the Hon'ble Bombay High Court decision in ***CIT vs. Sudhir S. Mehta*** and ***ITO vs. Infantry Security & Facilities*** wherein it was held that a subsequent amendment or subsequent change in law cannot ordinarily be used u/s. 254(2) to reopen an order that was correct according to the law existing when it was passed. Section 254(2) permits rectification of an apparent mistake, but does not confer a power of review. The Hon'ble Tribunal also noted that the constitutional validity of Section 147A itself was under challenge as the Punjab and Haryana High Court had declared the amendment unconstitutional in ***Jyoti Sareen vs. Union of India and Others [2026] 190 taxmann.com 384 (P & H)*** against which the Revenue had approached the Supreme Court. Since the validity and effect of the amendment remained a debatable issue the Hon'ble Tribunal held that it could not be adjudicated in proceedings u/s. 254(2).

3 VIVEK TRIVEDI VS. ACIT, CIRCLE 42(3)(1), MUMBAI [ITA NO.6613/MUM/2026(MUMBAI TRIB)] (AY: 2020-21)

Sec. 270A – Penalty for under-reporting of income – Return furnished for the first time in response to notice u/s. 148 – Where reassessment accepted returned income without any addition and income was fully subjected to TDS penalty could not be sustained merely because return was not filed u/s. 139(1) particularly where assessee furnished a *bona fide* explanation and disclosed all material facts attracting exclusion u/s. 270A(6)(a)

Facts

The assessee was employed as a ship captain and had not filed his return of income for the relevant assessment year within the time prescribed u/s. 139(1) of the Income Tax Act, 1961. On the basis of information available on the insight portal regarding purchase of an immovable property, salary receipts, and interest income reassessment proceedings were initiated and notice u/s. 148 of the Income Tax Act, 1961 was issued. In response, the assessee filed his return declaring total income of ` 31,57,840. During reassessment proceedings, the assessee furnished the purchase agreement, bank statements, housing-loan certificate, details of redemption of mutual funds and fixed deposits, EPF statement and other documentary evidence. The AO verified the material and accepted that the property investment was substantially financed through a housing loan of ` 1.30 crore with the balance explained through redemption of investments. The salary and interest income disclosed in the return were also verified and accepted. The reassessment proceedings were completed accepting the returned income of ` 31,57,840 without any variation or addition. Since, the tax liability was fully covered by TDS there was no outstanding tax demand. However, the AO initiated penalty proceedings u/s. 270A on the ground that the assessee had furnished the return for the first time in response to notice u/s. 148. In the penalty proceedings, the AO treated the entire assessed income of ` 31,57,840 as under-reported income and levied penalty at 50% of the tax payable on such income. The assessee also explained that owing to the nature of his employment as a ship captain he remained at sea for prolonged periods with limited connectivity and was unaware of the return-filing requirements. The CIT(A) upheld the penalty holding that section 270A(2)(b) applied despite the AO accepting the returned income without making any additions. Aggrieved, the assessee appealed before the ITAT.

Held

The Hon'ble Tribunal observed that section 270A contains a composite statutory scheme under which it is necessary to first determine whether the case falls within any of the circumstances specified in sub-section (2), thereafter compute the amount of under-reported income in accordance with sub-section (3), and then examine the exclusions provided in sub-section (6). These provisions cannot be read in isolation. Even if section 270A(2)(b) is attracted because the return was furnished for the first time u/s. 148 the entire assessed income cannot automatically be treated as under-reported income. In the case of an individual covered by section 270A(3)(i)(b)(B) the amount of under-reported income is statutorily determined with reference to the difference between the assessed income and the maximum amount not chargeable

to tax. The Tribunal further noted that in the present case the income assessed was exactly the income disclosed by the assessee in the return filed u/s. 148. There was no addition, disallowance or variation in the reassessment and no unexplained investment or undisclosed receipt was detected. The Tribunal also noted that salary income had already been subjected to TDS and had been reported to the Department. The Tribunal also held that the CIT(A) erred in treating section 270A as entirely objective and in disregarding the assessee's explanation. Section 270A(6)(a) expressly excludes under-reported income where the assessee offers an explanation which is found to be bona fide and has disclosed all material facts necessary to substantiate such explanation. In the facts of the case, the assessee's explanation regarding his employment as a ship captain, prolonged periods at sea and lack of awareness regarding the return-filing requirement was required to be considered along with the fact that TDS had been deducted, the income had been reported by the employer, the property investment was fully explained, all supporting documents were furnished during reassessment and the returned income was accepted in toto.

Further, the Tribunal held that the failure of the assessee was essentially a procedural default in not furnishing the return within the time prescribed u/s. 139(1), rather than a case involving suppression or discovery of undisclosed income. Once the explanation was found bona fide and all material facts had been disclosed and verified, the income fell within the exclusion provided u/s. 270A(6)(a). The mere fact that the return was furnished for the first time pursuant to notice u/s. 148 could not by itself justify levy of penalty.

4 K.R. PRADEEP VS. DCIT [ITA NO. 428/BANG/2026 DATED 19/08/2026] [AY 2018-2019] [BANGALORE ITAT]

Section 69A – Unexplained foreign currency found during search – Contradictory explanations regarding source – Subsequent confiscation by ED does not entitle assessee to claim Loss

Facts of the case

The assessee filed his return of income for A.Y. 2018-19 declaring total income of INR 5,88,06,210. A search and seizure operation under section 132 of the Income-tax Act, 1961 was conducted on 21/09/2017 at the assessee's premises in connection with search proceedings in the Coffee Day Group cases. In the original assessment completed under section 143(3) read with section 153D, the Ld. Assessing Officer (AO) made an addition of INR 50,00,000 on account of unaccounted foreign currency. The matter was subsequently set aside by the Hon'ble ITAT for fresh consideration. During the set-aside proceedings, the assessee reiterated his earlier submissions. The Ld. AO, however, treated foreign currency valued at INR 48,38,000 as unexplained money under section 69A read with section 115BBE.

Meanwhile, the Enforcement Directorate (ED) confiscated the foreign currency under section 13(2) of Foreign Exchange Management Act, 1999(FEMA). and imposed a penalty of INR 50,47,008.70 for contravention of the applicable foreign exchange regulations. The Ld. CIT(A) upheld the addition, against which the assessee preferred an appeal before the Hon'ble ITAT.

Held

The assessee contended that confirmations and other evidence had been furnished to establish the identity of persons from whom the foreign currency had allegedly been received. It was further submitted that the currency related to financial years 2014-15 and 2015-16, that INR 9,96,545 had already been recorded in the books and that, since the currency had been confiscated by the ED, the corresponding amount should be allowed as a loss. The assessee also challenged the proceedings on limitation, contending that section 153(5), rather than section 153(3), governed the order giving effect to the earlier Hon'ble ITAT order.

The Hon'ble ITAT rejected the limitation argument, observing that section 153(5) applies where effect is given to an appellate order otherwise than by making a fresh assessment or reassessment. The Hon'ble ITAT therefore upheld the applicability of section 153(3) in the present proceedings.

On the substantive issue, the Hon'ble ITAT noted that the assessee had furnished contradictory explanations regarding the source and purpose of the foreign currency. Before the Income-tax authorities, the assessee stated that the currency represented travel/daily allowances received from various companies and required to be refunded, whereas before the ED he stated that the currency had been given by his sister-in-law for charitable purposes and establishing a trust. The Hon'ble ITAT also noted that the assessee had not produced evidence establishing purchase of the foreign currency from authorised dealers. Accordingly, the explanation was not considered satisfactory for purposes of section 69A of the Act.

The Hon'ble ITAT further distinguished the FEMA and Income-tax proceedings, observing that the ED proceedings concerned violation relating to possession of foreign currency, whereas the Income-tax proceedings concerned its unexplained nature and source under section 69A. The subsequent confiscation therefore did not justify allowance of the amount as a loss. Finding no infirmity in the Ld. CIT(A)'s order, the Hon'ble ITAT dismissed the assessee's appeal.

5 BHANSALI ENGINEERING POLYMERS LTD. VS. DCIT [ITA NO. 3601/MUM/2026 DATED 27/08/2026] [AY 2018-19] [MUMBAI ITAT]

Section 35(1)(iv) – Capital Expenditure on R&D Building – DSIR approval and Form 3CL not statutory preconditions

Facts of the case

The assessee, a listed entity engaged in manufacturing chemicals, particularly Acrylonitrile Butadiene Styrene (ABS) and Styrene Acrylonitrile (SAN) resins, filed its return for A.Y. 2018-19 declaring total income of INR 149,99,56,200, subsequently revised to INR 148,87,47,550. The case was selected for complete scrutiny, inter alia, for examining deduction.

The assessee claimed deduction of INR 1,12,08,649 under section 35(1)(iv) in respect of capital expenditure incurred on construction of an R&D building used for scientific research related to its business. The assessee furnished a DSIR approval certificate, bills and supporting documents. The Ld. Assessing Officer (AO) disallowed

the claim on the ground that the R&D facility was not approved by DSIR for the relevant year and that Form No. 3CL certifying the eligible expenditure had not been issued. The Ld. AO accordingly added INR 1,12,08,649 to the returned income. The Ld. CIT(A) agreed that DSIR approval and Form 3CL were not prerequisites for section 35(1)(iv) but nevertheless sustained the disallowance on the ground that expenditure on construction of an R&D building was excluded from the provision.

Held

The Hon'ble ITAT examined the statutory scheme of sections 35(1)(iv) and 35(2). It noted that section 35(1)(iv) permits deduction in respect of capital expenditure on scientific research related to the business carried on by the assessee, while section 35(2)(ia) provides for deduction of such capital expenditure, with the relevant exclusion relating to expenditure incurred on acquisition of land. The Hon'ble ITAT held that the provision does not exclude expenditure incurred on construction or acquisition of a building used for scientific research.

The Hon'ble ITAT further held that the requirement of approval of an in-house R&D facility by the prescribed authority is contained in section 35(2AB), whereas no such requirement is incorporated in section 35(1)(iv) read with section 35(2) of the Act. Similarly, Form No. 3CL is prescribed in connection with a claim under section 35(2AB) and has no application to a claim for actual capital expenditure under section 35(1)(iv). Accordingly, the statutory restrictions applicable to section 35(2AB) could not be imported into section 35(1)(iv) of the Act.

The Hon'ble ITAT also examined the Ld. CIT(A)'s reliance on ***CIT vs. Hindustan Lever Ltd (2004) (268 ITR 332) (Bom HC)*** and found that the decision did not support the proposition that expenditure incurred on construction of a building used for scientific research was excluded from section 35(1)(iv). Conversely, reference was made to ***CIT vs. Sandoz (India) Ltd (1994) (206 ITR 385) (Bom HC)*** which recognised that capital expenditure on an asset integrally connected with scientific research related to the assessee's business could fall within section 35(1)(iv) of the Act.

Since the expenditure was incurred on construction of an R&D building used for scientific research connected with the assessee's business, and its genuineness and quantum were not disputed, the Hon'ble ITAT held that the conditions of section 35(1)(iv) read with section 35(2) were satisfied. The disallowance of INR 1,12,08,649 was therefore deleted and the assessee's grounds were allowed.

6 PH4 FOOD AND BEVERAGES PVT. LTD. VS. DCIT [ITA NO. 242/BANG/2026 DATED 31/08/2026] [AY 2021-22] [BANGALORE ITAT]

Section 56(2)(viib) – FCCDs convertible into Equity in future – Cannot be equated with Issue of Shares – Deeming provision cannot travel beyond statutory language

Facts of the case

The assessee, a private company engaged in the food and beverages business, issued equity shares at ` 352 per share and Fully

and Compulsorily Convertible Debentures (FCCDs) at ` 704 per instrument during A.Y. 2021-22. For the FCCDs, an independent IBBI-registered valuer determined the value at ` 703.89 per share under the Discounted Cash Flow (DCF) method. In contrast, an internal valuation prepared for an earlier equity issue had valued the shares at ` 352.60. The FCCDs were issued for approximately ` 18.15 crore towards investment in subsidiaries, business expansion, repayment of loans and emergency funding requirements.

The Assessing Officer considered the difference between the two valuations and invoked section 56(2)(viib), adopting ` 352.60 as the fair market value. Since 1,10,505 FCCDs were issued to resident investors at ` 704 each, the Ld. AO treated the excess of approximately ` 351.40 per FCCD as taxable consideration and made an addition of ` 3,88,31,457 under section 56(2)(viib). The Ld. AO also treated FCCDs as quasi-equity instruments on the basis of RBI guidelines and FDI policy. The assessee contended that FCCDs were debt instruments until conversion and that section 56(2)(viib), as applicable for the relevant year, covered consideration received for issue of shares and not FCCDs. It also challenged the rejection of the registered valuer's report.

Held

The Hon'ble ITAT examined the statutory language of section 56(2)(viib), which applied where a closely held company received consideration from a resident person for issue of shares exceeding the fair market value of such shares. The Hon'ble ITAT noted that the provision did not refer to securities, debentures, convertible securities or instruments convertible into shares.

The Hon'ble ITAT held that FCCDs issued during the relevant year, which were contractually convertible into equity shares only at a future date, could not be equated with an issue of equity shares for purposes of section 56(2)(viib) of the Act. Treating the amount received on FCCDs as consideration for issue of shares would require reading words into the statutory provision that the legislature had not used. Such an interpretation was impermissible, particularly because section 56(2)(viib) operated as a deeming provision bringing a capital receipt within the tax net.

Accordingly, the Hon'ble ITAT held that the consideration received on issue of FCCDs was outside the scope of section 56(2)(viib) of the Act. Accordingly, the addition of ` 3,88,31,457 was deleted and the assessee's appeal was allowed.

7 INTERMARKET INDIA PVT. LTD. VS. DCIT [ITA NO. 2993/MUM/2026 DATED 31/08/2026] [AY 2013-14] [MUMBAI ITAT]

Sections 28/37 – Abandoned project – Expenditure on expansion of existing business can remain revenue in character despite initial capitalisation

Facts of the case

The assessee was engaged in manufacturing and trading textile products. During the

relevant period, it undertook a project at Bharuch, Gujarat, for setting up a manufacturing facility for towels. The project required approvals from the concerned authorities, including approval for procurement of water. In connection with the project, the assessee incurred architectural fees, expenses for drawings and commencement permissions, site preparation, excavation, civil work and fencing, consultancy charges for electrical systems and plant design, professional fees and miscellaneous expenditure. These amounts were accumulated as capital work-in-progress in earlier years.

The project could not be completed because the requisite approvals, particularly approval for the proposed water supply, were not obtained. The assessee therefore abandoned the project and wrote off the capital work-in-progress in its profit and loss account in the previous year relevant to A.Y. 2013-14. It claimed the write-off as allowable business expenditure under sections 28/37, contending that the project represented expansion of its existing business and did not create a new business, independent source of income or enduring capital asset. The Assessing Officer treated the expenditure as capital in nature and disallowed the claim. The Ld. CIT(A) upheld the disallowance of ` 3,05,80,830, relying, *inter alia*, on the assessee's earlier capitalisation having regard to the fact that the expenditure was incurred over several years and written off of such cumulative expenditure distorts the profit of the relevant year.

Held

The Hon'ble ITAT examined the true commercial character of the expenditure in light of the purpose for which it was incurred and the business context of the project. It distinguished expenditure incurred for establishing a new business or profit-making apparatus from expenditure incurred in connection with an existing business, including expansion thereof. Where expenditure facilitates the existing business and no new enduring asset ultimately comes into existence, it may retain the character of revenue expenditure.

The Hon'ble ITAT found that the Bharuch project was not an unrelated or new line of business. Manufacturing towels formed part of the assessee's existing line of business, and the project was undertaken as an expansion thereof. The project was abandoned because the required water-supply approval was not obtained, and no completed manufacturing facility or independent capital asset yielding an enduring advantage came into existence.

The Hon'ble ITAT further held that expenditure initially capitalised as capital work-in-progress could not, by itself, determine its legal character. Accounting treatment alone is not conclusive of whether expenditure is capital or revenue for income-tax purposes. The Hon'ble ITAT also rejected reliance on the matching principle as determinative, observing that an accounting principle cannot override the substantive provisions governing deductibility.

The Hon'ble ITAT thus concluded that the expenditure was allowable as business expenditure in the year of write-off. Hence, the disallowance was deleted, and the assessee's appeal was accordingly allowed. ■

CASE LAW UPDATE



Dr. CA Sunil Moti Lala
Advocate

I. PERMANENT ESTABLISHMENT

I. SERVICE PE

1 CIT, IT VS. CLIFFORD CHANCE PTE. LTD. [2026] 190 TAXMANN.COM 37 (SC) [25-08-2026] - SLP (CIVIL) DIARY NO(S). 38973 OF 2026 – [AY 2020-21]

Notice issued in Revenue's SLP filed against impugned order of High Court that where assessee, Singaporean company, engaged in business of legal advisory services, had only rendered services to its Indian clients for 44 days, excluding vacation, business development days and common days, it did not meet 90 days criteria to constitute a service PE in India during relevant year. [India-Singapore DTAA]

Assessee, a non-resident company engaged in legal advisory services, provided legal advisory services to Indian clients partly through two employees who visited India and were present for 120 days. AO held that assessee had a service PE in India owing to physical presence of its employees in India as aggregate duration of provision of services by assessee exceeded 90 days. Tribunal held that actual performance of services in India by employees physically present in country is necessary to constitute service PE and since assessee had only rendered services to its clients for 44 days, excluding vacation, business development days and common days, it did not meet 90 days criteria to constitute a service PE in India. High Court by impugned order held that since Article 5(6)(a) of the DTAA contemplates that an enterprise shall be deemed to have a permanent establishment in contracting state through its employees or other personnel only if activities within contracting state continue for a period aggregating to 90 days in any fiscal year and since assessee had only rendered services to its clients for 44 days, excluding vacation, business development days and common days spent by its employees in India, it did not meet 90 days criteria to constitute a service permanent establishment in India.

Therefore, order passed by Tribunal did not require any interference. Hon'ble Supreme Court ruled that notice was to be issued in SLP filed by revenue against impugned order. ***[Notice issued in SLP against Commissioner of Income-tax, International Taxation vs. Clifford Chance Pte Ltd. [2025] 181 taxmann.com 254 (Delhi)/[2026] 308 Taxman 431 (Delhi)/[2026] 485 ITR 407 (Delhi)]***

2 CIT, IT VS. CLIFFORD CHANCE PTE. LTD. [2026] 190 TAXMANN.COM 37 (SC) [25-08-2026] - SLP (CIVIL) DIARY NO(S). 38973 OF 2026 – [AY 2020-21]

Notice issued in Revenue's SLP filed against impugned order of High Court that article 5(6) of India Singapore DTAA only contemplates rendering of services by employees present within country, concept of virtual service PE does not find mention in DTAA and, thus, cannot be read into DTAA. [India-Singapore DTAA]

Assessee, a non-resident company engaged in legal advisory services, provided legal advisory services to Indian clients. The department argued that even when the employees were not physically present in India, services were continued to be rendered virtually, for more than 90 days. It was the view of the AO that as a result of rapid digitalisation, services including consultancy services can be provided virtually without the physical presence of employees in the contracting state. AO issued draft assessment order proposing to tax a certain sum, alleging a virtual service PE. Tribunal rejected revenue's allegation of a virtual service PE in absence of such a concept in DTAA. Moreover, since concept of a virtual service permanent establishment did not find mention anywhere in DTAA, in absence of any such provision, contention of revenue that a virtual service permanent establishment of assessee had been established could not be accepted. High Court by impugned order held that Article 5(6) of DTAA only contemplates rendering of services by employees present within country, concept of virtual service PE does not find mention in DTAA and, thus, cannot be read into DTAA. Further, Assessee, a non-resident company engaged in legal advisory services, provided legal advisory services to Indian clients but no employee visited India and services to Indian clients were rendered from outside India. Therefore, order passed by Tribunal did not require any interference. Hon'ble Supreme court ruled that notice was to be issued in SLP filed by revenue against impugned order. ***[Notice issued in SLP against Commissioner of Income-tax, International Taxation vs. Clifford Chance Pte Ltd. [2025] 181 taxmann.com 254 (Delhi)/[2026] 308 Taxman 431 (Delhi)/[2026] 485 ITR 407 (Delhi)]***

II. BUISNESS PROFITS

I. MERE PAYMENT BY AN INDIAN RESIDENT TO NON-RESIDENT IN THE ABSENCE OF BUSINESS CONNECTION – NOT TAXABLE

1 TEVA PHARMACEUTICALS USA INC. VS. DY CIT [2026] 190 TAXMANN.COM 547 (DELHI) [15-09-2026] - W.P.(C) NOS. 10711 & 10714 OF 2017 & OTHERS, CM APPL. NO. 52016 OF 2019 & OTHERS – [AY 2012-13, 2013-14 AND 2014-15] - [TS-1480-HC-2026 (DEL)]

Where Teva Israel, a non-resident, received ` 1,851 crores from Ranbaxy India subject to TDS of ` 784 crores and claimed the same as refund which was denied on protective basis in lieu notices issued u/s 148 to Teva USA – the High Court held that said receipt of 1851 Crores was not chargeable to tax in India in absence of business connection and refund due to Teva Israel could not be withheld merely on account of reassessment proceedings against Teva USA which were also quashed. [India – USA DTAA]

Teva USA, a US subsidiary of Teva Israel, and Ranbaxy USA entered into agreements in USA concerning 180-day exclusivity for generic Atorvastatin (a drug that Teva USA and Ranbaxy USA wanted to sell in the USA market). This agreement was in dispute in a US court. This exclusivity dispute, and the settlement that followed, was entirely a matter of US pharmaceutical regulation and US contract law, with no part of the underlying transaction taking place in India. In the original agreement it was agreed that 15% of the profits would be paid to Teva USA by Ranbaxy USA. But due to the dispute between the parties and pursuant to settlement of the dispute, an amended agreement was entered into by virtue of which 50 per cent of profits earned by Ranbaxy USA on sale of Atorvastatin during the exclusivity period was to be paid to Teva Israel. Although Teva USA was the entity contractually entitled to receive Ranbaxy's payment, but Teva USA assigned that entitlement to Teva Israel by a Letter of Assignment as Teva US was only the marketing company and manufacturing activities/rights were with Teva Israel. Further, it was also decided that Ranbaxy India, the parent company to Ranbaxy USA would remit the payment directly to Teva Israel. Consequently, Teva Israel (the non-resident manufacturer-parent in Israel) received ` 1,851 crores from Ranbaxy India (parent company to Ranbaxy USA) subject to TDS of ` 784 crores (deducted by Ranbaxy India)

Teva Israel filed return declaring nil income and claimed refund of TDS. Revenue denied the refund and withheld the amount as it believed that income paid to Teva Israel, was actually accrued to Teva USA and, accordingly, protective assessment was framed in hands of Teva Israel and notices u/s. 148 were issued against Teva USA. Teva Israel had also filed application under section 245Q seeking advance ruling that receipt was business income not chargeable to tax

in India in absence of business connection/PE and was not taxable as royalty/FTS. AAR declined to pronounce ruling upon taxability in India, observed that income belonged to Teva USA and invoked clause (iii) of proviso to section 245R(2) treating transaction as *prima-facie* designed for avoidance of tax. Further, AAR had held that the agreement lacked commercial sense. AAR proceeded on a hypothesis or conjecture that there "might have been a tacit understanding" between Teva USA and Ranbaxy for the exclusivity period and proceeded to observe that "only such an understanding" could explain the enhancement of Teva's share from 15% to 50% in the settlement. Then, based on this conjecture, the AAR premised its conclusion that the arrangement was collusive and constituted a "sham and make belief arrangement", and was prima-facie designed for avoidance of tax. As against the (a) ruling of the AAR, (b) denial of refund to Teva Israel, (c) notices issued u/s 148 to Teva USA, both Teva Israel and Teva USA filed writ petitions before the High Court.

Judgement

As regards taxability in hands of Teva Israel

High court ruled that AAR, having admitted application under section 245R(2), was not justified in declining to answer questions raised by applicant by holding that income belonged to Teva USA and by treating transaction as *prima facie* designed for avoidance of tax without any factual fulcrum and jurisdictional foundation. The High court ruled that AAR exceeded its jurisdiction by making findings regarding commercial wisdom, collusion and sham arrangement without determining whether receipt was chargeable to tax in India. It concluded that the amount received by Teva Israel from Ranbaxy India was not chargeable to tax as it had no semblance or nexus with any activity in India in the absence of a business connection in India and that a singular factor that money had gone from India could trigger the charging section.

As regards Refund claim of Teva Israel:

The High Court noted that the refund claim of Teva Israel, was withheld on protective basis pending s. 148 proceedings for AY's 2012-13, 2013-14 and 2014-15 against Teva USA. High court ruled that though protective assessment may be made where there is doubt as to recipient of income or assessee in whose hands income is assessable, there is no concept of protective recovery. It ruled that Refund due to Teva Israel could not be withheld merely because proceedings had been initiated against Teva USA. Teva Israel was entitled to refund of TDS along with applicable interest, subject to furnishing of guarantees/security.

As regards notices issued u/s 148 to Teva USA

High court ruled that mere payment by an Indian resident to a non-resident ipso facto does not constitute income accruing or arising in India. Since Revenue had failed to demonstrate any nexus, much less a real and substantive nexus, between impugned receipt and territory of India, mere payment by an Indian resident to a non-resident ipso facto did not constitute an income accruing or arising in India and transaction neither fell within any of specific deeming provisions under section 5(2)(b) nor of section 9 and, in absence of both, jurisdictional foundation for issuance of notice under section 148 collapsed. ***[BP Israel, In re [2021] 124***

taxmann.com 133/434 ITR 283 (AAR - New Delhi) set aside, GVK Industries Ltd. vs. ITO [2015] 54 taxmann.com 347/231 Taxman 18/371 ITR 453 (SC), CIT vs. Phra Phraison Salarak (1928) 6 ILR 598, Johnson Matthey Public Ltd. Company vs. CIT [2024] 162 taxmann.com 865/299 Taxman 334/465 ITR 649 (Delhi) (para 167), CIT vs. Alpine Solvex Ltd. [2005] 144 Taxman 67/276 ITR 92 (Madhya Pradesh), and Authority for Advance Rulings (Income-tax) vs. Tiger Global International II Holdings [2026] 182 taxmann.com 375/485 ITR 214 (SC) distinguished]

II. DESIGN RECEIPTS INEXTRICABLE TO OFFSHORE EQUIPMENT SUPPLY ARE BUSINESS PROFITS, NOT ROYALTY/FTS

1 DY CIT VS. PAUL WURTH ITALIA SPA [2026] 189 TAXMANN.COM 1009 (DELHI - TRIB.) [07-08-2026] - IT APPEAL NO. 5254 (DELHI) OF 2017 AND OTHERS - [AYS 2010-11, 2012-13, 2013-14, 2014-15 AND 2015-16] - [TS-1219-ITAT-2026 (DEL)]

Where assessee, an Italian company, supplied designs for indigenous equipment and civil works from outside India under separate contracts with title and risk passing offshore and receipts in foreign currency, such consideration was akin to sale of a product, hence not taxed in India as royalty or fees for technical services under Article 13 of DTAA or section 9, but could only be characterized as business profits under Article 7. [India–Italy DTAA]

Assessee, a company incorporated in Italy, was engaged in business of providing plants and equipment for iron and steel industry. It entered into separate offshore supply agreements as well as agreements for supply of imported designs for indigenous equipment and for civil/structural works. It claimed non-taxability in India for offshore supplies, including aforesaid designs supplied from outside India, contending title/risk passed offshore and receipts were in foreign currency. For AY 2012-13, AO treated total receipts of about ` 371.06 crores (including offshore supply of about ` 334.60 crores and receipts for designs for indigenous equipment of about ` 26.80 crores and for civil works of about ` 9.66 crores) as revenue attributable to a PE and taxed profits accordingly. For later years, AO followed same approach of attributing profits on these receipts to a PE. In appeal for assessment year 2012-13, while granting relief on offshore supply of equipment (including integrated designs) on ground that no fixed place PE existed, CIT(A) held that receipts of about ` 26.80 crores for designs relating to indigenous equipment and about ` 9.66 crores for designs relating to civil works were taxable in India as royalty/FTS under Article 13 and Act and taxed them at 10%, treating these as standalone design supplies not inextricably linked to equipment supply. Similar re-characterisation of such design receipts was made by CIT(A) for AY's 2013-14, 2014-15 and 2015-16. Tribunal ruled that since supply of designs was akin to sale of a product and as such, income thereof could only be characterised as business profits and assessed in terms of Article 7 of DTAA, consideration for supply of designs/

drawings relating to indigenous equipment and civil works was not taxable in India as 'Royalty' or 'Fees for Technical Services' under Article 13 of the DTAA read with Section 9 but was treated as business income not taxable in India under Article 7 ***[Outotec (Finland) Oy vs. Dy. CIT (International Taxation) [2019] 109 taxmann.com 69 (Kol - Trib.) followed]***

III. INTEREST

I. A FOREIGN ARBITRAL AWARD'S "INTEREST" COMPONENT, ONCE IT MERGES INTO A JUDGMENT DEBT, FALLS OUTSIDE THE SCOPE OF TAXABLE INTEREST UNDER SECTION 2(28A)

1 UNIVERSAL TRACTOR HOLDING LLC USA VS. DY CIT, IT [2026] 190 TAXMANN.COM 827 (DELHI - TRIB.) [15-09-2026] - IT APPEAL NO. 2216 (DELHI) OF 2022 - [AY 2019-20] - [TS-1475-ITAT-2026 (DEL)]

Where assessee, a US resident, received an interest component awarded under a foreign arbitral award enforced as a decree by Delhi High Court due to a defaulted business transaction, such interest merged into a judgment-debt and did not constitute taxable 'interest' income in India under section 2(28A) read with article 11 of the DTAA. [India-USA DTAA]

Assessee, a USA-resident LLC, had agreed to sell its 49 per cent membership interest in a US company to another US company for USD 1.2 million in instalments. After buyer defaulted, dispute was referred to arbitration; during this period an Indian company was substituted for buyer in arbitration. A foreign arbitral award directed payment of damages, including an interest component computed at about ` 2.48 crores, and other costs. As award was not honoured in USA, assessee sought enforcement in India, and Delhi High Court declared foreign award enforceable and deemed it a decree, directing deposit of amounts in INR. Assessee filed a return for AY 2019-20, claiming damages / interest were not chargeable to tax in India and declaring NIL income. In draft assessment order under section 144C(1), AO proposed to tax entire amount. On objections, DRP accepted assessee's claim that decree damages were not taxable but held that interest component under award was taxable in India under Article 11(2) of India–USA DTAA. Final assessment under section 143(3) read with section 144C(13) assessed income of about ` 2.48 crores on this interest component. Tribunal ruled that though nomenclature of "interest" had been used in Arbitral Award, same did not attract definition of "interest" under section 2(28A) and therefore, damages, including interest had assumed character of a "judgement debt" and was beyond the purview of Indian Income Tax Act. Amount of interest received, as part of decree of court, was not eligible to tax and accordingly, same was deleted.

IV. FEES FOR TECHNICAL SERVICES (FTS/FIS)

I. ACQUISITION OF TECHNICAL KNOW-HOW

1 HINDUSTAN ZINC LTD. VS. DY CIT (ASSESSMENT) [2026] 190 TAXMANN.COM 219 (RAJASTHAN) [05-09-2026] - D.B. INCOME TAX APPEAL NO. 65 OF 2009 – [AY 1994-95]

Where assessee entered into an agreement with UK company (DML) for technical know-how and services and payments were made from a UK grant account through Crown Agents while corresponding rupee amount was deposited by assessee with Indian Government, such consideration for technical know-how/services was chargeable to tax in India as fees for technical services under relevant provisions and India–UK DTAA, regardless of payment mechanism. Thus, disallowance under section 40 was justified since payment was not to Government or specified entities, section 196 was not applicable despite involvement of Indian and UK governments in funding arrangement. [India–UK DTAA]

Assessee executed Chanderiya lead-zinc smelter project and entered into an agreement dated 28.02.1987 with DML for basic engineering, technical know-how, training and technical assistance. Under U.K.–India aid arrangement, foreign currency payments to DML were released by Crown Agents out of grant account, while assessee certified DML's invoices and deposited corresponding rupee amount with Government of India. For A.Y. 1994-95, assessee claimed about ` 8.10 crores under Section 35AB; AO allowed about ` 3.99 crores and disallowed balance u/s 40(a)(i) High court ruled that consideration for technical know-how/services payable to DML was income chargeable to tax in India as FTS under Sections 4, 5 and 9 and Article 13(7) of the DTAA, notwithstanding that remittance was made by Crown Agents in United Kingdom, Thus, disallowance under section 40(a)(i) was rightly made. Intervention of Crown Agents as agency administering and releasing U.K. grant did not divest assessee of its character as contracting person on whose behalf and towards whose contractual liability payment was made and, thus, disallowance under section 40(a)(i) read with section 195 was attracted. Since amount under consideration was not income payable to Government, Reserve Bank or any other entity falling within that provision, presence of Government of India and U.K. Government in financing arrangement did not make DML's contractual consideration a payment to Government and, thus, section 196 was not attracted. ***[Engineering Analysis Centre of Excellence (P.) Ltd. vs. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC), Transmission Corpn. of A.P. Ltd. vs. CIT [1999] 105 Taxman 742/239 ITR 587 (SC), and Grasim Industries Ltd. vs. S.M. Mishra, CIT [2011] 10 taxmann.com 355/332 ITR 276/199 Taxman 184 (Bombay) distinguished, Order of Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur in ITA No. 84/JU/1999 order dated 20-02-2009 affirmed]***

II. SECONDMENT OF EMPLOYEES

1 CATERPILLAR INDIA (P.) LTD. VS. DY CIT [2026] 189 TAXMANN.COM 468 (CHENNAI - TRIB.) [07-08-2026] - ITA NO. 718 (CHNY) OF 2023 - [AY 2016-17]

Where seconded employees from overseas AEs worked under assessee's control and supervision and tax was deducted under section 192 on salaries, reimbursement of actual salary to AEs was merely reimbursement without income element and could not be treated as fees for technical services requiring TDS under section 195

Assessee had seconded employees from overseas AEs who worked under its control and supervision and tax was deducted under section 192 on salary payments. Assessing Officer disallowed ` 37.33 crores under section 40(a)(i), treating reimbursement of secondment expenses to AEs as fees for technical services requiring deduction of tax under section 195. Commissioner (Appeals) directed deletion of disallowance after verification of tax deducted under section 192. Tribunal ruled that since seconded employees worked under control and supervision of assessee and reimbursement of actual salary to AE was merely in nature of reimbursement without any element of income, such reimbursement could not be treated as FTS requiring separate deduction of tax under section 195. Therefore, disallowance under section 40(a)(i) was unwarranted and Department's challenge was dismissed.

V. ROYALTY

I. BROADCASTING SERVICES

1 ACIT VS. TIMES CONTENT LTD. [2026] 190 TAXMANN.COM 119 (DELHI - TRIB.) [03-09-2026] - IT APPEAL NOS. 5328, 5331, 5333 (DEL) OF 2024 - [AYS 2016-17, 2017-18 AND 2018-19] - [TS-1415-ITAT-2026(DEL)]

Where assessee paid composite media rights fees to a non-resident licensor for live and non-live cricket broadcasts without deducting tax, live broadcasting rights were held not to constitute royalty under section 9(1)(vi), while non-live/repeat telecast rights constituted royalty, accordingly, 7 per cent of total payment was attributable to non-live rights and, since no TDS was deducted thereon, corresponding disallowance under section 40(a)(i) was confirmed

Assessee-company was engaged in live streaming of sports events outside India. It entered into a media rights agreement with a British Virgin Islands company, which had obtained rights from Star Middle East FZ LLC, UAE, whose rights emanated from

ICC. Assessee held sub-licensed rights to broadcast live and non-live (post-match) cricket content via digital delivery systems in specified US territories and paid a composite media rights fee covering live and non-live broadcasting. AO treated payment as royalty and, since tax had not been deducted under section 195, made a disallowance under section 40(a)(i). CIT(A) held that payments for live events were not royalty under section 9(1)(vi) and adopted a 95:5 split between live and non-live (post-match) components. CIT(A) restricted disallowance to 5 per cent allocable to non-live rights. It was noted that as per ComScore data, live broadcast viewership was 93 per cent, and viewership of non-live broadcast was 7 per cent. Tribunal ruled that live broadcast of matches did not carry any copyright and, thus, these payments could not be held as 'royalty' within meaning of section 9(1)(vi). However, repeat telecast i.e., non-live telecast was not out of scope of 'royalty'. Thus, 7 per cent of total payment made was allocated to non-live broadcast rights and since no TDS was made on such payment though same was held as royalty income under section 9(1)(vi), disallowance under section 40(i)(a) of such payment was confirmed. ***[CIT vs. Sri Lanka Cricket [2026] 189 taxmann.com 687 (SC), CIT vs. Sri Lanka Cricket [2026] 182 taxmann.com 537/309 Taxman 200 (Delhi) followed]***

II. OUTRIGHT PURCHASE OF A TRADEMARK IS A CAPITAL TRANSFER, NOT ROYALTY; THUS, NO TDS U/S 195

1 LSL HOLDINGS (P.) LTD. VS. ITO INT TAX WARD - 3(1)(2) [2026] 189 TAXMANN.COM 940 (MUMBAI - TRIB.) [18-08-2026] - IT APPEAL NO. 2619 (MUM) OF 2026 - [AY 2019-20] - [TS-1307-ITAT-2026(MUM)]

Where assessee remitted amount to a non-resident for outright acquisition of a trademark under a duly evidenced assignment agreement and not for use of any rights, such remittance constituted consideration for transfer of a capital asset and not royalty, hence no income was chargeable to tax in India and assessee could not be treated as assessee-in-default for non-deduction of tax

Assessee made a remittance of ` 65.5 lakhs for acquisition of trademark 'Jamawar' from a non-resident. AO treated remittance as 'royalty' under section 9(1)(vi) and held assessee as assessee-in-default for failure to deduct TDS under section 195, raising demand of ` 10.42 lakhs. Assessee contended that remittance was consideration for transfer of a capital asset, not chargeable to tax in India, and furnished evidence including trademark assignment agreement, proof of ownership, nature of rights transferred, valuation, and TRC of recipient. Tribunal ruled that since remittance was for outright purchase of trademark, a capital asset, and not mere payment of royalty, no income was chargeable to tax in India and, thus, assessee could not be treated as assessee-in-default under section 201.

VI. ARTISTES AND ATHLETES

I. RELEASE FEE FROM IPL FRANCHISES

1 ENGLAND AND WALES CRICKET BOARD LTD. VS. ACIT, IT [2026] 189 TAXMANN.COM 1011 (DELHI - TRIB.) [21-08-2026] - IT (IT) APPEAL NO. 41 (DELHI) OF 2026 - [AY 2023-24] - [TS-1327-ITAT-2026(DEL)]

Where UK-based assessee received release fees from IPL franchises for permitting English players to participate in IPL, Assessing Officer sought to tax them under Article 18(2) as income of entertainers/ athletes, since release fee was received by assessee and not by players themselves, and represented 10 per cent of league fee paid by franchises to players, it was not taxable in India under Article 18 of the DTAA. [India-UK DTAA]

Assessee, a UK based company, received 'release fee' from IPL franchises for permitting English players to participate in IPL. AO held that amount received by assessee from IPL franchises for allowing English players to participate in IPL was taxable in India under Article 18(2). Tribunals noted that in a similar case, High Court held that where payment was made to Event Management Company based outside India to bring artists in India, payment made to agent did not arise from personal activities, clause (2) of Article 18 would not apply. It was also noted that assessee was entitled to receive release fee which would be equivalent to 10 per cent of League Fee that was actually paid by franchise to player. Tribunal ruled that release fee received by assessee from IPL franchises was not taxable in India under Article 18 of the DTAA as it was not received by athlete/player. ***[DIT (International Taxation) vs. Wizcraft International Entertainment (P.) Ltd. [2014] 45 taxmann.com 24/223 Taxman 250/364 ITR 227 (Bom) followed]***

VII. OTHERS

I. SECTION 197 CERTIFICATE CANNOT BE DENIED ON THE BARE ASSERTION OF A PROPOSED SLP

1 A/DY CIT VS. GODADDY.COM [2026] 190 TAXMANN.COM 84 (SC) [31-08-2026] - SLP (CIVIL) DIARY NO. 45711 OF 2026 – [AY 2026-27] - [TS-1372-SC-2026]

SLP dismissed against order of High Court that where assessee providing domain registration and web hosting services sought a nil-rate certificate under section 197, but authority rejected application merely stating that Department proposed to file SLP against earlier High Court ruling in assessee's

favour, since application under section 197 must be decided as per Act and DTAA and not on revenue considerations, order was unsustainable and nil-rate certificate was directed to be issued

Assessee was engaged in business of providing domain name services, including domain name registration, web hosting, web designing, SSL certification, etc. It filed an application under section 197 for grant of certificate for nil rate of tax. Competent Authority rejected application and issued a consequential certificate under section 197, stating only that Department proposed to file an SLP against earlier High Court's decision affirming assessee's case. High Court held that Competent Authority deciding an application under section 197 had an obligation to decide application as per provisions of Act, while having due regard to treaties between two countries and he should not be driven or swayed by Revenue targets/ considerations. Further, since no reason was assigned other than bald assertion that Department was proposing to file an SLP against order of High Court and limitation of filing SLP had passed and order could not be sustained. Therefore, order and consequential certificate were to be quashed, and authority was to be directed to issue a certificate at 'nil' rate. Hon'ble Supreme court held that since no case for interference was made with impugned order of High Court, SLP was to be dismissed. ***[SLP dismissed against Godaddy.Com LLC vs. Assistant/Deputy Commissioner of Income-tax, International Taxation [2026] 184 taxmann.com 4 (Delhi)/ [2026] 310 Taxman 29 (Delhi)]***

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A. DECISIONS BY HIGH COURT

1 KRISHNA INDUSTRIES VS. COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX [2026] 190 TAXMANN.COM 626 (DELHI) – DELHI HIGH COURT

Facts and issues involved

The Petitioner, Krishna Industries, is a proprietorship concern of Mr. Mohan Lal engaged in the manufacture of plastic products. The dispute relates to ITC claimed by the petitioner on invoices issued by M.R. Enterprises.

Proceedings were initially initiated by the State GST authorities for Financial Year 2017–18 via Show Cause Notice dated 23.09.2023 proposing, inter alia, a demand in relation to ITC claimed from M.R. Enterprises. Following a reply dated 10.10.2023, an order dated 28.12.2023 was passed The Petitioner approached the High Court in a writ petition, and by order dated 05.03.2024, the High Court directed the proper officer to re-adjudicate after affording a personal hearing. Pursuant thereto, the State GST authority passed a fresh order dated 29.07.2024 under Section 73 of the CGST Act.

In the interim, investigation conducted by the Directorate General of GST Intelligence ["DGGI"] revealed that M.R. Enterprises had passed on inadmissible ITC to various recipients without actual supply of goods Consequently, DGGI issued a Show Cause Notice dated 02.08.2024 under Section 74 of the CGST Act in respect of alleged inadmissible ITC availed from M.R. Enterprises **bearing GSTIN No. 07BDIPS1163G1ZI**.

A further Show Cause Notice dated 04.08.2024 was issued by Respondent No. 1, CGST Delhi North, under Section 74 of the CGST Act in respect of alleged ineligible ITC availed from M.R. Enterprises **bearing GSTIN No. 07EJVPS7789Q1ZC**.

The Petitioner submitted its reply dated 31.08.2024 asserting statutory bar under Section 6(2)(b), genuine receipt of goods, and absence of fraud or suppression. The proceedings culminated in the Order dated 10.01.2025 (confirming demand of ` 6,12,000/- towards alleged ineligible ITC, with interest and penalty) and the Order dated 31.01.2025 (confirming demand of ` 6,12,000/- towards inadmissible ITC, with interest and penalty). The Petitioner

approached the High Court seeking quashing of the Show Cause Notices dated 02.08.2024 and 04.08.2024 issued under Section 74 of the CGST Act, as well as the Orders dated 31.01.2025 and 10.01.2025 passed pursuant thereto.

Petitioner's submissions

Learned counsel for the Petitioner submitted that the proceedings initiated by the Central GST authorities are barred by Section 6(2)(b) of the CGST Act. According to learned counsel, the State GST authority had already initiated proceedings concerning the ITC claimed by the Petitioner from M.R. Enterprises and the said proceedings had culminated in the fresh order dated 29.07.2024. Thus, according to him, the subsequent proceedings initiated by the Central authorities pertain to the same subject matter.

It was further submitted that the two Central proceedings have resulted in duplication of proceedings and overlapping demands. It was submitted that both proceedings concern the same assessee, the same Financial Year and the same alleged ITC of ` 6,12,000/-. Mere change in the statutory provision invoked cannot enable the authorities to initiate proceedings in respect of a subject matter which had already been dealt with by the State GST authority. Reliance was placed upon Section 6(2)(b) of the CGST Act and the judgments in ***Armour Security (India) Ltd. vs. Commissioner, CGST, Delhi East Commissionerate 177 taxmann.com 478 (SC)*** and ***Metalax Industries vs. GST Officer 170 taxmann.com 731 (Delhi)***.

The Petitioner also contended that the Impugned Orders were non-speaking orders, specifically disputing the allegation of bogus transactions and asserting that the goods had actually been received at its premises.

It was lastly submitted that there was no fraud, wilful misstatement or suppression of facts so as to justify invocation of Section 74 of the CGST Act. The demand and penalty imposed upon the Petitioner are, therefore, stated to be unsustainable.

Respondent's submissions

It was submitted that the State proceedings and the subsequent Central proceedings are materially different. The State proceedings were initiated under Section 73 of the CGST Act, whereas the proceedings initiated by the Central authorities under Section 74 were founded upon intelligence and investigation which allegedly revealed fraudulent availment of ITC through transactions not accompanied by actual supply of goods.

It was further submitted that the State proceedings did not adjudicate upon the allegation that the transactions were bogus or that the invoices issued by the supplier were not accompanied by actual supply of goods. The subsequent investigation, according to the Respondents, brought to light material which formed the basis of the proceedings under Section 74.

It was next submitted that the two Central proceedings themselves concern M.R. Enterprises bearing different GSTINs and arise from separate investigative proceedings. Thus, according to the Respondents, the fact that the supplier is described by the same trade name cannot, by itself, establish identity of the supplier, transactions or subject matter.

Discussion by and observations of the High Court

Scope and meaning of "same subject matter" under Section 6(2)(b)

Honorable Supreme Court in ***Armour Security (supra)*** has explained that the expression

"same subject matter" has to be understood with reference to the particular liability, deficiency or contravention which is sought to be adjudicated. Where the proceedings concern the same liability or the same contravention, the statutory bar would operate. Conversely, distinct infractions would not become the same subject matter merely because they relate to the same assessee, the same period or involve a similar tax liability.

The State proceedings in the present case were initiated u/s 73 of the CGST Act in respect of Financial Year 2017-18 and included a demand concerning ITC claimed by the Petitioner from M.R. Enterprises. The subsequent proceedings initiated by the Central GST authorities, on the other hand, were under Section 74 of the CGST Act and were founded upon investigation and intelligence concerning alleged fraudulent availment of ITC through invoices which, according to the Department, were not accompanied by actual supply of goods.

Thus, although there is a factual nexus between the two sets of proceedings inasmuch as both relate to ITC claimed by the Petitioner and refer to M.R. Enterprises, the nature of the allegation forming the basis of the subsequent proceedings is materially different. The mere fact that the State proceedings also concerned ITC claimed from an entity described as M.R. Enterprises does not, by itself, establish that the State authority had adjudicated the very same contravention which forms the foundation of the subsequent proceedings under Section 74.

Relevance of Different GSTINs, Financial Year, and Quantum

The distinction is further borne out from the fact that the two Central proceedings themselves refer to M.R. Enterprises bearing different GSTINs, namely GSTIN No. 07BDIPS1163G1ZI and GSTIN No. 07EJVPS7789Q1ZC. The difference in GSTINs is a relevant circumstance while determining whether the proceedings relate to the same supplier and the same subject matter.

The Petitioner has placed considerable emphasis on the fact that the proceedings relate to the same Financial Year and involve ITC of ` 6,12,000/-. These circumstances, however, cannot by themselves establish identity of subject matter. For the statutory bar under Section 6(2)(b) to operate, it is necessary to establish identity of the liability or contravention which forms the subject matter of the two proceedings.

In the present case, the subsequent proceedings under Section 74 are founded upon intelligence and investigation concerning alleged bogus transactions and fraudulent availment of ITC without actual supply of goods. The Petitioner has not placed sufficient material before this Court to establish that this very contravention had already been adjudicated upon by the State GST authority in the proceedings culminating in the order dated 29.07.2024.

The judgment of the Supreme Court in ***Armour Security (supra)*** furnishes the controlling principle. This Court is, therefore, unable to accept the contention of the Petitioner that the proceedings initiated by the Central GST authorities under Section 74 are, on the material placed before this Court, ex facie barred by Section 6(2)(b) of the CGST Act.

Decision of Court

The present Petition, along with the pending application, stands disposed of. The Petitioner shall, however, be at liberty to avail the statutory remedy of appeal u/s 107 of the CGST Act against the Orders dated 10.01.2025 and 31.01.2025.

2 ADV INDUSTRIAL SERVICES (P.) LTD. VS. UNION OF INDIA [2026] 190 TAXMANN.COM 323 (TELANGANA) – TELANGANA HIGH COURT

Facts and issues involved

Petitioner is engaged in the business of renting and leasing prefabricated warehouse buildings. The dispute arose pursuant to an investigation initiated by the DGGI, Hyderabad Zonal Unit, regarding alleged availment of ineligible ITC in respect of works contract services received for construction of warehouses.

During the course of investigation, the Department alleged that the petitioner had availed ineligible ITC amounting to ` 19,33,34,320 u/s 17(5) of the CGST Act. Under protest, the petitioner reversed/paid the said amount, out of which ` 15,99,60,570 was reversed from the unutilized ITC balance through Form GST DRC-03 and ` 3,33,73,750 was paid in cash through Form GST DRC-03.

Subsequently, a Show Cause Notice dated 15.12.2023 was issued u/s 74 of the CGST Act proposing recovery of the said amount along with applicable interest and penalty. The adjudicating authority confirmed the demand of ` 19,33,34,320 along with interest and penalty and appropriated the amount already paid/reversed by the petitioner. Aggrieved by the Order-in-Original, the petitioner preferred an appeal before the Appellate Authority. The Appellate Authority, after examining the applicability of Section 17(5)(c) and Section 17(5)(d) of the CGST Act, allowed the appeal and set aside the Order-in-Original dated 13.09.2024.

Consequent upon the Order-in-Appeal dated 16.09.2025, the petitioner filed an application in Form GST-RFD-01 seeking refund of ` 19,33,34,320. The petitioner furnished the DRC-03 challans, relevant GSTR-3B details and Chartered Accountant's Certificate relating to unjust enrichment. However, the refund authority rejected the refund claim, inter alia, on the ground that the Department had reviewed the Order-in-Appeal, found the same to be not legal and proper, and had decided to prefer an appeal before the GSTAT. The refund authority also relied upon the capitalization of the warehouse-related expenditure and depreciation entries in the petitioner's books.

Thus, Petitioner preferred the impugned writ. The issue before the High Court was whether the refund authority could refuse to give effect to the Order-in-Appeal which had set aside the demand, merely because the Department proposed to challenge the said appellate order, and whether the consequential refund could be withheld without complying with the statutory requirements under Section 54(11) of the CGST Act.

Petitioner's submissions

The Petitioner contended that in terms of Section 107(16) of the CGST Act, the Order-in-Appeal was final and binding upon the parties, subject to the statutory remedies provided under the Act. It was submitted that as on the date of the refund rejection order dated 12.01.2026, there was no order passed under Sections 108, 113, 117 or 118 of the CGST Act modifying, staying, or setting aside the Order-in-Appeal dated 16.09.2025. Therefore, the said Order-in-Appeal continued to remain operative and binding.

The Petitioner further contended that mere contemplation or filing of an appeal does not operate as a stay of the order under challenge and that a subordinate authority cannot disregard the order of a superior appellate authority merely because the Department proposes to challenge the same.

It was further submitted that the setting aside of the demand gave rise to a consequential refund claim in respect of the amount which had already been paid / reversed and appropriated towards the said demand.

The Petitioner also contended that the absence of an express direction for refund in the Order-in-Appeal could not authorize the refund authority to reopen the substantive issue relating to admissibility of ITC which had already been adjudicated by the Appellate Authority.

With regard to withholding of refund, the Petitioner submitted that if the Department intended to withhold the refund on account of the proposed further proceedings, the statutory mechanism under Section 54(11) was required to be followed.

Respondent's submissions

The Respondents contended that the refund proceedings under Section 54 constituted an independent statutory process and that setting aside of the demand did not dispense with the statutory requirements governing refund.

It was submitted that the Order-in-Appeal merely set aside the demand and did not specifically direct sanction of refund. Therefore, according to the Respondents, the refund authority was required to independently examine the petitioner's entitlement to refund.

The Respondents further contended that the Order-in-Appeal had been reviewed and the Department had decided to challenge the same before the GSTAT. It was therefore submitted that sanctioning the refund during the pendency of further proceedings could have financial consequences for the Revenue.

The Respondents also relied upon the capitalization of the warehouse-related expenditure and depreciation schedules and contended that the said accounting treatment was relevant for examining the petitioner's entitlement to refund.

Discussion by and observations of the High Court

The first issue considered by the High Court was whether the Order-in-Appeal dated 16.09.2025 remained operative and binding on the date of the refund rejection order dated 12.01.2026.

The Court observed that Section 107(16) of the CGST Act makes an order passed by the Appellate Authority binding upon the parties, subject to the statutory remedies contemplated under Sections 108, 113, 117 and 118. The Court noted that as on 12.01.2026, there was no order passed by any competent forum modifying, staying, or setting aside the Order-in-Appeal. The Department's appeal before the GSTAT was filed subsequently on 25.03.2026.

Accordingly, the Order-in-Appeal dated 16.09.2025 remained operative and binding as on the date of the impugned refund rejection order. The subsequent filing of an appeal could not retrospectively render the Order-in-Appeal inoperative.

The Court further observed that the mere decision to challenge an appellate order, or the subsequent filing of an appeal, did not amount to a stay or suspension of the operation of the Order-in-Appeal. The refund authority, while processing the refund claim, had effectively reopened and disregarded findings which had already been adjudicated upon by the Appellate Authority. The Court held that an internal review or administrative decision to challenge the Order-in-Appeal could not nullify, suspend, or render the appellate order inoperative.

The Court further observed that if the Department considered that the Order-in-Appeal required reconsideration, the remedy lay in pursuing the statutory appellate or revisional mechanism and not in disregarding the operative appellate order while processing the refund claim.

The Court thereafter examined the nature of the refund claim. Since the Appellate Authority had allowed the appeal and set aside the Order-in-Original, the demand of ` 19,33,34,320/- ceased to have legal effect. Consequently, the amount paid by the petitioner towards the said demand could not continue to be retained merely on the basis of the demand which had been set aside. The Court held that the refund constituted consequential relief arising from the Order-in-Appeal, subject to the statutory procedure prescribed under Section 54 of the CGST Act.

The Court also observed that the absence of an express direction for refund in the Order-in-Appeal did not extinguish the petitioner's right to seek consequential refund. The refund authority was required to examine whether the statutory requirements for processing the refund claim were satisfied and could not re-adjudicate the substantive demand which had already been set aside.

The Court thereafter considered Section 54(11) of the CGST Act. The said provision contemplates withholding of refund where the order giving rise to the refund is the subject matter of an appeal or further proceeding, or where other proceedings are pending, subject to the statutory conditions prescribed therein. In the present case, the Court noted that on the date of the impugned order, no appeal was pending against the Order-in-Appeal. The Department filed the appeal before GSTAT only on 25.03.2026.

Further, the impugned order did not record any opinion of the Commissioner that grant of refund was likely to adversely affect the Revenue on account of malfeasance or fraud on the part of the petitioner. The petitioner was also not afforded an opportunity of hearing before the refund was withheld on the ground that the Order-in-Appeal was under review or proposed to be challenged. Therefore, the Court held that the Department could not circumvent the specific mechanism under Section 54(11) by rejecting the refund under Section 54(8) merely because the Order-in-Appeal was under review or the Department proposed to pursue further proceedings.

Decision of the High Court

The impugned refund rejection order was quashed and set aside and the matter was remanded to the refund authority for fresh consideration and disposal of the refund application in accordance with law.

B. RULINGS BY GST APPELLATE TRIBUNAL

1 CONDUENT BUSINESS SERVICES INDIA LLP VS. COMMISSIONER OF CENTRAL TAX BENGALURU EAST GST COMMISSIONERATE [2026] 190 TAXMANN.COM 509 – GSTAT, BENGALURU

Facts and Issues involved

The dispute arose pursuant to an audit conducted under Section 65 of the CGST Act for the period July 2017 to March 2020, during which the Department raised objections relating to excess ITC vis-à-vis GSTR-2A and irregular transitional credit availed through TRAN-1. The audit findings communicated to the appellant involved total issues amounting to ` 19,28,456/-. In respect of the agreed liabilities, the appellant voluntarily deposited tax of ` 7,78,693/- along with applicable interest through Form GST DRC-03, prior to issuance of the Show Cause Notice. The appellant, however, disputed the remaining unagreed proposals and penalty liabilities.

The Final Audit Report was issued and thereafter, SCN No. 222/2022-23 dated 25.01.2023 was issued u/s 74 proposing recovery of tax, interest and penalties across all issues. The Adjudicating Authority, *vide* Order-in-Original No. 04/2023-24 dated 12.06.2023, confirmed agreed tax and interest, dropped Section 74 penalties for Issues 1 & 3 (finding no deliberate suppression as records were available on the departmental portal) and confirmed penalty for Issue 2. Revenue challenged the dropping of Section 74 penalties for Issues 1 & 3 pursuant to a Review Order passed by the Commissioner. The First Appellate Authority (Joint Commissioner of Central Tax (Appeals-1), Bengaluru), *vide* Order-in-Appeal No. 105/2024-25 dated 01.10.2024, reversed the OIO and imposed 100% penalty under Section 74 across Issues 1 & 3.

Appellant's submissions

The Appellant raised a preliminary objection alleging that appellate proceedings before the First Appellate Authority were vitiated by inherent institutional bias, as the Departmental appeal was instituted pursuant to a Review Order passed by a superior officer (Commissioner of Central Tax), while the appeal was heard by a subordinate officer (Joint Commissioner (Appeals).

Section 74 is an extraordinary provision requiring positive mens rea elements viz. fraud, willful misstatement, or suppression of facts with intent to evade tax and cannot be invoked mechanically. All relevant records, including GSTR-3B, GSTR-2A, and TRAN-1 declarations, were fully available on the departmental portal, establishing that there was no positive act of deliberate suppression or intentional misstatement. Further, routine audit discoveries under Section 65 do not automatically trigger extended limitations or penal provisions under Section 74.

Reliance was placed on the ***Apex Court rulings in Tata Steel Ltd. vs. Union of India 189 taxmann.com 520 (SC)*** and ***Anand Nishikawa Co. Ltd. vs. CCE 188 ELT 149 (SC)***, as well as the ***Karnataka High Court ruling in CCE & ST vs. Adecco Flexion Workforce Solutions Ltd. 26 STR 3 (Kar***).

Discussion by and observations of the GSTAT

The quasi-judicial architecture under Section 107 of the CGST Act is a creation of statute. Parliament has explicitly structured the hierarchy of appellate mechanisms. When an officer exercises quasi-judicial authority under statutory authorization, that jurisdiction is exercised independently under the command of the statute, not as a delegate of executive orders. The administrative review conducted by the Commissioner under Section 107(2) is merely an executive decision to seek legal determination; it does not constitute a judicial directive binding against the Appellate Authority on merits. In the absence of personal animus, financial interest, or direct subject matter prejudice, the preliminary challenge to the jurisdiction of the First Appellate Authority fails.

Section 74 is an extraordinary provision. It empowers the Revenue to invoke an extended period of limitation and visit the taxpayer with onerous penalties of 100%. However, the statute deliberately conditions this power upon the existence of specific, positive mens rea elements: fraud, willful misstatement, or suppression of facts with intent to evade tax. In the absence of these specific elements, any tax shortfall falls strictly within the domain of Section 73.

Applying the ratio of the Supreme Court in ***Tata Steel Ltd. vs. Union of India 189 taxmann.com 520 (SC)***, the Tribunal highlighted:

- The extended period and penal provisions under Section 74 cannot be triggered by mechanically reciting statutory terms like 'suppression' or 'willful misstatement'.
- The Show Cause Notice itself must explicitly set forth the underlying foundational facts demonstrating a conscious, deliberate device to evade tax. A failure to disclose foundational facts in the SCN is a jurisdictional defect that cannot be cured later.
- The Proper Officer must record independent, subjective satisfaction based on concrete material. The mere existence of an audit observation under Section 65 or a CAG query does not automatically translate into 'suppression' under Section 74.

There is no positive act of deliberate suppression or intentional misstatement alleged or established against the Appellant. The First Appellate Authority erred in law by holding that the original authority had "no option" but to impose a Section 74 penalty once tax demanded under Section 74 was confirmed. The finding of the Appellate Authority that the contravention would have continued unabated 'but for the audit verification' misconstrues the legal definition of suppression. Routine audit discoveries under Section 65 do not automatically trigger extended limitations or penal provisions.

Decision of GSTAT

The allegation of bias against the First Appellate Authority is rejected. The imposition of Section 74 penalties on Issues 1 and 3 by the First Appellate Authority is unsustainable. In terms of the Supreme Court's mandate in Tata Steel Ltd (supra), audit mismatches and pre-SCN payments in the absence of positive proof of deliberate suppression cannot attract Section 74 penalties.

C. RULINGS BY ADVANCE RULING AUTHORITY

1 DH MAINTENANCE LTD. [2026] 190 TAXMANN.COM 450 – WEST BENGAL AAR

Facts and Issues involved

The applicant, M/s. DH Maintenance Limited, is engaged in providing common area maintenance and facility management services in respect of a commercial building. The applicant also pays electricity charges to the electricity distribution company, CESC Limited, in respect of electricity consumed in the commercial building and proposes to recover the actual electricity charges from the respective unit holders based on their individual consumption towards HVAC and non-HVAC usage, along with common area electricity consumption distributed among the unit holders on the basis of their respective super-built-up area. CESC raises a monthly electricity bill in the name of the landowner of the building.

The Applicant proposes to recover the electricity charges from the unit holders strictly on the basis of the actual electricity charges incurred by it as under:

- Reimbursement at the unit rate of electricity being charged by CESC for consumption of electricity other than HVAC;

- Reimbursement at the unit rate of electricity being charged by CESC for consumption of electricity specifically for HVAC;

- For common area consumption, the amount recoverable would be the amount payable to CESC against the total electricity consumption for a month, reduced by the amount already recovered under the above two heads, divided among all unit holders based on the super-built area of their individual units; and

- A separate element called 'Common Area Maintenance' (in short, CAM) charge at an agreed-upon rate, applicable uniformly on a per-unit area basis.

The applicant has sought an advance ruling as to whether recovery of electricity charges from occupants/unit holders, at actual cost based on consumption, as charged by the electricity distribution company without any markup, including electricity attributable to HVAC operations and common area consumption, qualifies as reimbursement in the capacity of a pure agent and whether GST would be leviable on the same, more specifically, in terms with Circular No. 206/18/2023-GST dated 31-10-2023 issued in this regard by Ministry of Finance, Department of Revenue, (Tax Research Unit).

Applicant's submissions

When Circular No. 206/18/2023-GST dated 31.10.2023 is read conjointly with Rule 33

of the CGST Rules, 2017, the Applicant would qualify as a pure agent in respect of reimbursement of electricity charges. The use of the expression 'deemed' in the aforesaid Circular indicates that once the prescribed conditions are satisfied, the reimbursement of electricity charges would not form part of the value of the maintenance service for the purpose of levy of GST.

Electricity possesses the characteristics of "goods" classified under Tariff Heading 2716. The Applicant merely makes payment to CESC Limited for electricity consumed in the commercial building and subsequently recovers the actual corresponding amount from the respective unit holders. Thus, the Applicant acts as an intermediary or pure agent for the limited purpose of making payment of electricity charges on behalf of the unit holders. Reliance was placed on ***State of Andhra Pradesh vs. National Thermal Power Corporation Ltd.***

Discussion by and observations of the AAR

The applicant's activity is maintenance of premises and supply of electricity is an ancillary supply bundled with the principal supply of maintenance service. Clause 3.2 of the circular ibid is clearly stated, in the like cases even if electricity is billed separately, the supplies will constitute a composite supply. Clause 3.3 of Circular No. 206/18/2023-GST dated 31.10.2023 has specified the exceptions to the applicability of clause 3.2. According to this explanation of the circular, where the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc. charge for electricity on an actual basis, that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as a pure agent for this supply.

While the applicant might fail the strict contractual pure agent test under Rule 33 of the CGST Rules due to the absence of a pre-existing contractual agreement with end consumers, the explanation provided in the second sentence of clause 3.3 is a deeming provision. In the present case, the applicant proposes to change his billing pattern to one where he will charge the unit holder the same amount as charged by the DISCOM for the electricity consumed by the unit holder, as per the reading of the sub-meter installed. The remaining amount of the bill raised by DISCOM will be divided on a pro-rata basis according to the area enjoyed by the unit holder in respect of common area electricity consumption. No mark-up or profit element will be charged on these amounts. Accordingly, the explanation provided in the second sentence of clause 3.3 ibid is squarely applicable to the applicant.

Ruling of the AAR

Recovery of electricity charges by the applicant at actual cost based on consumption, as charged by the electricity distribution company without any markup including electricity attributable to HVAC operations and common area consumption as explained in the application can be deemed to be considered as recovery in the capacity of a pure agent in terms of the provisions of the CGST Act, 2017 read with the relevant portions of Circular No. 206/18/2023-GST dated 31.10.2023.

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SERVICE TAX





CA Rajiv Luthia ***Keval Shah***
Advocate

1 M/S. SELF EMPLOYED WOMEN'S ASSOCIATION (SEWA) VS. COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, KOCHI 2026 (9) TMI 413 - CESTAT BANGALORE

Background and facts of the case

- The appellant is a society registered under the Travancore Cochin Literacy, Scientific and Charitable Societies Registration Act, which organises women workers for full employment (work, income, food and social security), and imparts training to economically backward women. The members then take up employment with various customers / clients.

- The Department alleged that the activities of the appellant fell under **"Manpower Recruitment or Supply Agency Service".** A Show Cause Notice dated 27th May, 2008 was issued for the period 16th June, 2005 to 31st December, 2007. The appellant was not registered with the Service Tax department and the case was booked on intelligence gathered by the Preventive Unit.

- The Adjudicating Authority, *vide* Order-in-Original dated 30th September, 2009, confirmed the demand for 1st May, 2006 to 31st December, 2007 along with consequential interest, dropped the demand for 16th June, 2005 to 30th April, 2006 (the appellant not being a commercial concern for that period), and imposed no penalty, extending the benefit of Section 80 on finding a bona fide belief of non-taxability.

- The Commissioner (Appeals) rejected the appeal *vide* order dated 19th February, 2015, leading to the present appeal.

Arguments by Appellant Assessee

- The appellant is in the nature of a trade union organisation where the members themselves constitute the organisation, steered by an executive committee of the workers themselves. It is not engaged in the rendering of any service for supply of manpower; the organisation, which is itself the workforce, undertakes assignments with customers, and the workers and the organisation are not separately identifiable.

- **No intermediary** is present, since the workers unite and, with institutional backing, seek direct employment with clients. Reliance was placed on

the Tax Research Unit Clarification F. No. B1/6/2005-TRU dated 27.07.2005 (artisans in the gem and jewellery industry directly engaged by businesses), to contend that Service Tax applies only where a person is engaged for recruitment or supply, and on Circular No. 96/7/2007-ST dated 23.08.2007, which contemplates an employer-employee relationship between the supply agency and the individual.

- The appellant also relied on the Hon'ble Supreme Court in ***Joint Commercial Tax Officer vs. Young Men's Indian Association and State of West Bengal vs. Calcutta Club Ltd., 2019 (29) G.S.T.L. 545 (S.C.),*** on the doctrine of mutuality.

- On valuation, a statement of collections and reimbursements was produced showing that **a considerable part of the amounts collected was reimbursed as wages** to the members, and the balance collected as registration fee was small. The collection and disbursement of wages was only to prevent exploitation and did not form part of the cost of any service.

Arguments by Department

- The Ld. Authorised Representative reiterated the findings of the impugned order and submitted that the nature of the activity was rightly classifiable under Manpower Recruitment or Supply Agency Service under Section 65(68) and Section 65(105)(k) of the Finance Act, 1994 (supply of manpower being covered with effect from 16.06.2005).

- Reliance was placed on Circular No. 96/7/2007-ST dated 23.08.2007, and it was pointed out that the appellant's representation for exemption had been turned down by the Ministry of Finance vide letter F. No. 332/10/2007-TRU dated 14.09.2007. The appellant was collecting annual membership of ` 10/-, ` 300/- for cleaning training and ` 500/- for nursing training, and deducting ` 3/- per day towards provident fund and ` 5/- per member towards the passbook.

- Under Section 67(1), the taxable value is the gross amount charged, and the contention that the wages collected and disbursed should be excluded could not be accepted.

Decision of the Hon'ble CESTAT Bangalore

- The Hon'ble Tribunal held that the appellant organises women to ensure that every family obtains full employment and **is not engaged in rendering any service for the supply of manpower**. The activity therefore did not constitute Manpower Recruitment or Supply Agency Service.

- The Tribunal further held that, even if the activity were treated as supply of manpower, the evidence on record showed that a considerable part of the amount collected was reimbursed as wages to the members providing the service, and the balance charged as registration fee was negligible and did not fall within the monetary limit of taxable service.

- Accordingly, **adoption of the gross amount for assessing Service Tax without deducting the reimbursable expenses** was held to be unsustainable.

- The appeal was allowed with consequential relief, if any, in accordance with law.

2 M/S ANJU MAKHIJA VS. COMMISSIONER (APPEALS), CGST AND CENTRAL EXCISE - JODHPUR 2026 (9) TMI 1124 - CESTAT NEW DELHI

Background and facts of the case

- The appellant was neither registered with the Service Tax department nor paying Service Tax. On the basis of third-party information received from the Income Tax department for FY 2013-14 to FY 2015-16, it was observed that TDS had been deducted by various companies/firms on receipts of ` 1,40,65,334/- (gross receipts as per ITR), and the appellant was alleged to have rendered taxable services which were neither in the negative list under Section 66D nor exempt under Notification No. 25/2012-ST dated 20th June, 2012.

- A Show Cause Notice No. 15/384/2018/8297 dated 22nd October, 2018 proposed to demand Service Tax of ` 19,72,702/- for the period FY 2013-14 to FY 2015-16, along with interest under Section 75 and penalties under Sections 77 and 78 of the Finance Act, 1994.

- The demand was confirmed *vide* Order-in-Original No. 41/2020 dated 30th April, 2020, and the appeal was rejected by the Commissioner (Appeals) *vide* Order-in-Appeal No. 124/2021 dated 8th June, 2021, against which the present appeal was filed.

- The Tribunal recorded that the appellant's receipts during the period were from two sources: trading/sales (` 94,93,000/-) and rent from an immovable property (` 57,50,000/-).

Arguments by Appellant Assessee

- The appellant had filed a detailed reply dated 29th November, 2018 explaining that the receipts were from renting of immovable properties for use as residence, which are exempt, and that the value was below the threshold limit; the lower authorities did not consider these submissions.

- The trading receipts related to M/S SAWARIYA TRADERS, there was no evidence that the Appellant was the Proprietor of M/S SAWARIYA TRADERS, as per the income tax returns, she was the proprietor of another concern.

- The demand was raised solely on the basis of the **Income Tax Return/Form 26AS**, which cannot be the basis of Service Tax liability without establishing the nature of service and the purpose for which the income was received. Reliance was placed on ***Faquir Chand Gulati vs. Uppal Agencies Pvt. Ltd., 2008 (12) S.T.R. 401 (SC), Kush Constructions vs. CGST NACIN, 2019 (24) G.S.T.L. 606 (Tri.-All) and Shubham Electricals vs. CCE, 2015 (40) S.T.R. 1034 (Tri.-Del.),*** affirmed by the Hon'ble Delhi High Court.

- On limitation, the Form 26AS figures were available with the Department from the concerned year itself, and there was no evidence of fraud, wilful mis-statement or suppression. Reliance was placed on ***Pappu Crane Service vs. Commissioner and Deltax Enterprises vs. CCE, Delhi, 2018 (10) GSTL 392 (Tri.-Del)***.

Arguments by Department

- The Ld. Authorised Representative submitted that the appellant did not produce any documentary evidence, not even a copy of the agreement/contract for renting of the immovable property, which alone could prove that it was rented for use as residence.

- It was further submitted that the two passbooks and the chart prepared by the appellant could not establish that the amounts were received from renting of a residential dwelling for use as residence, and there was no infirmity in the findings of the lower authorities.

Decision of the Hon'ble CESTAT New Delhi

- The HON'BLE TRIBUNAL noted that the demand was based on third-party information from the Income Tax department. On perusal of the written replies dated 29th November, 2018, 11th March, 2021 and 16th March, 2021, it held that the observations about non-cooperation and non-furnishing of documents were **not correct**, and that the Commissioner (Appeals) had also not considered the application seeking rectification.

- **Trading/sales receipts**: There was no document connecting the appellant to M/S SAWARIYA TRADERS, so its liability was wrongly fastened on her. In any case, TRADING/SALE is outside the definition of "service" under Section 65B(44), which excludes a mere transfer of title in goods by way of sale or a transfer, delivery or supply of goods deemed to be a sale under Article 366(29A) of the Constitution.

- **Rental receipts:** "Residential dwelling" is not defined in the Finance Act, 1994. Referring to para 4.13.1 of the CBIC Education Guide dated 20.06.2012, the Bombay High Court decision in ***Bandu Ravji Nikam vs. Acharyaratna Deshbushan Shikshan Prasark Mandal and the Privy Council decision (AIR 1937 PC 46),*** the HON'BLE TRIBUNAL held that a hostel qualifies as a residential dwelling, since residence may be temporary as well as permanent. As the entire period fell in the post-negative-list era, renting of a residential dwelling for use as residence was covered by **Section 66D(m)** and was not taxable.

- **Extended period of limitation:** The appellant was under a bona fide belief that its activities were outside the ambit of "service" under Section 65B(44), and non-payment of tax or non-registration cannot by itself be treated as intentional suppression. The burden to establish a positive act of suppression or intent to evade lay on the Department, which it failed to discharge. Relying on ***Uniworth Textiles Ltd. vs. CCE, Raipur, 2013 (288) ELT 161 (SC),*** the Tribunal held that the extended period was wrongly invoked.

- **FORM 26AS**: The Tribunal held that Form 26AS/income tax returns alone cannot be the basis for confirming a Service Tax demand. Relying on ***Manoj Kumar Anand vs. Commissioner, Jodhpur, 2025 (10) TMI 1161 (Tri.-Del)*** and ***Indian Machine Tools Manufacturers Association vs. Commissioner, Panchkula, 2023 (9) TMI 815 (CESTAT Chandigarh),*** it observed that for leviability there must be clear identification of the service provider, the service recipient and the consideration paid as *quid pro quo* for the service.

- Accordingly, as both categories of receipts pertained to non-taxable activities, the demand was wrongly confirmed; the impugned order was set aside and the appeal was allowed.

3 M/S. SAGAR RESTAURANT VS. COMMISSIONER OF CGST & CX, KOLKATA NORTH COMMISSIONERATE 2026 (9) TMI 1842 - CESTAT KOLKATA

Background and facts of the case

- The appellant was registered with the Service Tax department for providing Restaurant Service. A Show Cause Notice (DGCEI) dated 16th April, 2013 was issued proposing to demand Service Tax of ` 13,20,044/- including CESS for the period 1st October, 2007 to 28th February, 2013, invoking the proviso to Section 73(1) of the Finance Act, 1994, along with interest under Section 75 and penalties.

- The Service-Tax Demand along with consequential Interest and Penalties were confirmed by the Adjudicating Authority and upheld by the Commissioner (Appeals) *vide* Order-in-Appeal No. 271-272/S.Tax-I/Kol/2017 dated 27th October, 2017, against which the present appeal was filed.

- The appellant had entered into an agreement with M/S WEST END CATERERS PRIVATE LIMITED ("WEC") for running the kitchen. Food and non-alcoholic beverages were prepared, served and sold by WEC, which raised its own bills, whereas alcoholic beverages were served and sold by the appellant, which raised separate bills. The appellant realised "License and Facility Charges" at 23% of the sales turnover of "WEC" in the restaurant.

- The Department alleged that, by providing the premises and infrastructure of the restaurant to WEC, the appellant had rendered **"BUSINESS SUPPORT SERVICE" ("BSS")** under Section 65(104c) of the Finance Act, 1994.

- A separate demand was raised under **"ADVERTISEMENT SERVICE"** on "payouts" received by the appellant on account of display of alcoholic beverages belonging to the UB Group in the restaurant.

Arguments by Appellant Assessee

- On BUSINESS SUPPORT SERVICES, the appellant submitted that WEC and the appellant were **JOINTLY** using the bar-cum-restaurant, with WEC paying 23% of the sale amount to the appellant, and that WEC charged VAT on the full bill amount. The arrangement was therefore in the nature of **"REVENUE SHARING"** involving no service element. ***Reliance was placed on Ambience Hospitality P. Ltd. vs. Commissioner of C. Ex., Delhi-IV, 2019 (21) G.S.T.L. 400 (Tri.-Del)***.

- On Advertisement Service, the appellant submitted that the amounts were not received towards ADVERTISEMENT, DISPLAY OR SALES PROMOTION, but represented **SALES INCENTIVES** in the form of STOCK and CASH received from various UB Group distributors based on the volume of sales under specific agreements. It was further contended that advertisement of alcoholic beverages

is not legally permitted in the first place. Thus, the Appellants contended that the demand of Service tax on the Sales Incentive received under the category of "ADVERTISEMENT SERVICE" is unsustainable.

Arguments by Department

- The Ld. Authorised Representative reiterated the findings of the impugned order and submitted that the appellant had provided "Business Support Service" to "WEC" by facilitating its business activities through the use of the premises and infrastructure of the restaurant.

- On the incentives, it was submitted that the appellant had displayed and promoted the sale of alcoholic beverages in its restaurant, which was akin to advertisement, and the demand under "Advertisement Service" was therefore rightly confirmed.

Decision of the Hon'ble CESTAT Kolkata

- The Hon'ble Tribunal examined the definition of BSS under Section 65(104c) of the Finance Act, 1994 and observed that a service can be classified as "BSS" only if the appellant provides **INFRASTRUCTURAL SUPPORT** to the service recipient. The HON'BLE KOLKATA CESTAT observed that and the appellant and WEC were jointly running the eatery on a revenue-sharing basis under the agreement, which entitled the appellant to 23% of the net turnover of WEC as licence and facility charges.

- The Tribunal held that once the agreement is a **revenue-sharing agreement**, there is **NO SERVICE ELEMENT** involved. It relied on Circular No. 109/3/2009-S.T. dated 23.02.2009 (movie distribution by theatres on revenue-sharing basis), which clarifies that where the parties act on a principal-to-principal basis and a fixed, pre-determined percentage of revenue is shared, one does not provide service to the other, and that BSS is a generic service of providing support to the business of the service receiver, where the principal activity is undertaken by the client. The ratio was held to be equally applicable to the present case.

- The Tribunal also followed ***Ambience Hospitality P. Ltd. (supra)***, where the Tribunal had held that running of a club by way of joint venture on a principal-to-principal basis, with revenue sharing, did not attract Service Tax. Accordingly, the demand under BSS was set aside.

- On Advertisement Service, the Tribunal observed and noted that the amounts received were **SALES INCENTIVES** in the form of stock and cash from distributors of the UB Group, based on the volume of sales, and were linked to the sale of goods. The appellant was not providing any sale of space or time for advertisement, which it could not undertake in any event as advertisement of alcoholic beverages has been banned in India since 2000. The payouts were therefore not consideration for Advertisement Service and the demand was set aside.

- As the demand of Service Tax did not survive, the question of interest and penalties did not arise. The impugned order was set aside and the appeal was allowed with consequential relief, if any, as per law.

■

CASE LAW UPDATE



CS Makarand Joshi

IBC

MR. TITUS BABU APPELLANT VS. M/S SINTEX INDUSTRIES LIMITED RESPONDENT

In the matter of *Mr. Titus Babu - Appellant vs. M/s Sintex Industries Limited Respondent* at the National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi, dated August 21, 2026

Facts of the Case

- Titus Babu, the Appellant, was an individual retail investor who purchased 1,35,000 equity shares of Sintex Industries Limited - Corporate Debtor (CD), in multiple tranches between October 31, 2017, and January 30, 2023, through his demat account with Geojit Financial Services Limited.

- Due to severe financial default, the CD was admitted into the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC).

- During the CIRP, a Resolution Plan submitted by a joint consortium led by Reliance Industries Limited (RIL) was approved by the Committee of Creditors (CoC) and subsequently sanctioned by the National Company Law Tribunal (NCLT), Ahmedabad Bench, on February 10, 2023.

- Under Clause 6.1 of the Resolution Plan and Paragraphs 4(iv) and 4(viii) of the NCLT Approval Order, the entire pre-existing equity share capital of the CD (comprising 59,92,49,762 equity shares) was reduced to zero and completely cancelled without any monetary consideration, as the liquidation value was insufficient to cover higher-priority creditors.

- As a result, the equity shares of the CD were delisted from the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE) in March 2023. Upon discovering the cancellation of his shares, the Appellant sought clarifications from the CD and lodged formal complaints across various regulatory, administrative, and redressal bodies, including the Depository Participant (Geojit Financial Services Limited), National Securities Depository Limited (NSDL), National Stock Exchange (NSE), Reserve Bank of India (RBI), Securities and Exchange Board of India SCORES portal (SEBI

SCORES), Securities Market Approach for Resolution Through ODR Portal (SMART ODR Portal), and the Share Samadhan Portal. All these forums closed or redirected his grievances on the ground that the equity capital stood lawfully cancelled and delisted pursuant to the approved Resolution Plan.

- Following the rejection of his administrative complaints, the Appellant filed Company Appeal No. 31 of 2025 before the NCLT, Ahmedabad Bench, under Section 59 read with Sections 2(55), 88, 378B, and 378ZB of the Companies Act, 2013 (the Act) and Rule 5(3) of the Companies (Management and Administration) Rules, 2014. The Appellant sought the rectification of the Register of Members, issuance of fresh equity shares, and a total monetary compensation of approximately ` 110 crore (comprising ` 82.3 crore as his 0.023% share of the ` 3,651.32 crore infused by RIL, 10% annual interest, and damages for mental agony).

- On March 6, 2026, the NCLT dismissed the appeal as non-maintainable, holding that the omission of the Appellant's name was executed with "sufficient cause"—namely, the binding force of an approved Resolution Plan under Section 31 of the IBC.

- Aggrieved by the NCLT order, the Appellant approached the NCLAT, Principal Bench, New Delhi, under Section 421 of the Act.

Arguments of the Appellant

- The appellant contended u/s 2(55) of the Act that the legal concept of a "Member" is distinct from a "Shareholder". Claimed that even if equity shares were cancelled under CIRP, his status as a "Member" survived independently in statutory records.

- Alleged that the NCLT Approval Order assigned "NIL liquidation value" only to promoter-group shareholders, leaving public retail members unaffected.

- Cited post-implementation Annual Returns showing public member counts to allege discriminatory treatment and selective retention of certain members over public retail holders.

- Claimed that omitting his name from the Register of Members without consideration was "without sufficient cause," thereby empowering NCLT/NCLAT u/s 59 of the Act 3 to grant rectification, award compensation, and order fresh share issuance.

Arguments of the Respondent

- Submitted that under Section 238 of the IBC, the provisions of an approved Resolution Plan override any inconsistent provisions or remedies under the Act.

- Under Section 31(1) of the IBC, an approved Resolution Plan is binding on all stakeholders, including members and shareholders. Reaffirmed the "Clean-Slate Principle" (*Ghanashyam Mishra* and *Essar Steel*) and Section 32A of the IBC, which wipes pre-resolution liabilities clean.

- Clarified that for a company limited by shares, "Member" and "Shareholder" are legally synonymous under Section 2(55) of the Act. Extinguishment of share capital automatically terminates membership.

- Under Section 53 of the IBC, equity shareholders sit at the absolute bottom of the waterfall mechanism. Since financial creditors were not paid in full, liquidation value for equity holders was strictly nil.

- Asserted that Section 59 of the Act is a summary rectificatory remedy for clerical / procedural errors and cannot be used to claim ` 110 Crore in damages, issue fresh shares, or challenge a concluded CIRP.

Held

- The NCLAT dismissed the appeal and affirmed the NCLT order on the following grounds:

- The omission of the Appellant's name was not wrongful or arbitrary; it flowed directly from Clause 6.1 of the approved Resolution Plan and the NCLT Approval Order. Therefore, the omission occurred *with sufficient cause*, making Section 59 of the Act inapplicable.

- For a company limited by shares, "Member" and "Shareholder" are legally synonymous under Section 2(55) of the Act. Once the underlying shareholding stands extinguished under CIRP, no surviving membership rights remain.

- The member counts in post-implementation Annual Returns pertained to restructured capital issued to successful resolution applicants and financial creditors, not a continuation of pre-CIRP holdings.

- Section 59 of the Act is strictly a narrow, rectificatory provision. It cannot be utilized to claim monetary compensation, 10% interest, damages for mental agony, or fresh share allotments.

- Reaffirmed that Section 238 of the IBC accords the Code primacy over company law remedies. Under Section 31 and Section 32A of the IBC, an approved Resolution Plan cannot be reopened, enforcing the Clean-Slate Principle.

Companies Act

REGISTRAR OF COMPANIES, WEST BENGAL – PETITIONER VS. RANJAN MEGHANI, RESPONDENT

In the matter of *Registrar of Companies, West Bengal – Petitioner vs. Ranjan Meghani, Respondent* - Calcutta High Court, order dated 1 August 2026

Facts of the Case

- Adorable Agrotech Limited, incorporated on 28 July 2010 (hereinafter called the company), initially had an authorised share capital of ` 5 lakh. Between 2010 and 2014, its authorised share capital was increased five times to ` 70.35 crore. Thereafter, the Central Government ordered an investigation under Section 210(1) of the Companies Act, 2013 (hereinafter called the Act 2013).

- The investigation revealed that the increase in capital was substantially carried out through the creation and issue of Non-Convertible Redeemable

Preference Shares, while the equity share capital remained unchanged. The inspection team found that the allotments had been made through ordinary resolutions, allegedly bypassing the requirements of Section 81(1A) of the Companies Act, 1956 (the Act 1956).

- The company allotted preference shares to a very large number of investors on single dates, including 1,431 persons on 15 September 2011 and 9,120 persons on 1 July 2013.

- The company subsequently filed various electronic forms, including Form 5 and Form 2 (Return of Allotment), with the MCA.

- The ROC treated the transactions as public offers attracting the requirements relating to prospectus and listing and, in their absence, treated the amounts collected as illegal deposits.

- Mr. Ranjan Meghani, a practicing Chartered Accountant (hereinafter called respondent), was not a promoter, executive director, manager or KMP of the company. His role was confined to professional verification and certification of the statutory e-Forms.

- The inspection report alleged that the forms contained defects and were false. It specifically recorded that the forms were filed by the company's director and were subsequently certified by the respondent, and alleged an offence u/s 628 read with Section 75 of the Act 1956.

- The ROC thereafter filed Complaint Case No. 16 of 2020 against the company and various individuals, including the respondent. He applied for discharge under Section 245(2) of the Cr.P.C.

- The Trial Court discharged the respondent. The Trial Court's reasoning, as recorded by the High Court, was that:

  "A practicing Chartered Accountant certifying e-Forms does not fall within the statutory definition of an 'officer' under Section 2(30) of the 1956 Act (or Section 2(59) of the 2013 Act), and consequently, the ROC lacked the requisite *locus standi* to institute and prosecute criminal proceedings directly against them under the Act."

- Aggrieved by the discharge, the ROC approached the Calcutta High Court under Sections 482 and 401 of the Cr.P.C., challenging the legality and correctness of the Trial Court's order.

- Question of law: The principal questions relevant to the present case were:

- Whether an independent practising Chartered Accountant who verifies and certifies statutory e-Forms in a professional capacity can be treated as an "officer" or "officer-in-default" under the Companies Act, 1956/2013 and consequently be directly prosecuted by the ROC.

- Whether such an independent professional can be prosecuted under Section 628 read with Section 75 of the Act 1956, in the absence of specific pleadings and material demonstrating mens rea, active connivance or personal knowledge of falsification.

Petitioner's Arguments

- The ROC contended that the Trial Court had adopted an excessively narrow interpretation of the expression

"officer" and had consequently erred in discharging the respondent.

- It was argued that Section 628 of the Act 1956 is expressed in wide terms and applies to "any person" who makes a false statement or conceals a material fact in a return, report or certificate required under the Act.

- According to the ROC, by putting his professional signature and certification on the statutory forms, the respondent had given "official credibility and legal sanctity" to forms which allegedly concealed the true nature of the transactions and irregularities.

- The ROC therefore sought to distinguish the respondent's liability under Section 628 from liability arising merely because he was an "officer" or "officer-in-default" of the company.

- In substance, the ROC's argument was that professional status by itself could not provide immunity from prosecution where the professional had participated in or contributed to the making of a false statutory statement.

Respondent's Arguments

- The respondent supported the Trial Court's discharge order and submitted that he was an independent practising professional, and not an "officer" or "officer-in-default" of the company.

- It was submitted that Sections 2(30) and 2(31) of the Act 1956, corresponding to Sections 2(59) and 2(60) of the Act, contemplate persons connected with the management and governance of the company.

- The respondent particularly relied upon Section 2(60)(v) of the Act, which expressly provides protection to a person who gives advice to the Board in a professional capacity from being treated as an "officer in default".

- It was further argued that the complaint itself attributed the *mala fide* intention, fabrication and physical filing of the forms to the executive director, Shri Biswajit Biswas, and did not contain any specific allegation against the Chartered Accountant showing *mens rea*, active connivance, conspiracy or personal knowledge of falsification.

- The respondent therefore contended that mere certification of the forms could not, by itself, establish criminal liability under Section 628.

- The respondent also relied upon the fact that the responsibility for filing correct particulars and ensuring compliance rested primarily upon the company and its directors.

Held

A. Whether an independent Chartered Accountant is an "officer" of the company:

- The High Court examined Sections 2(30) of the Companies Act, 1956 and 2(59) of the Companies Act, 2013 and observed:

  "a plain reading of Section 2(30) of the Companies Act, 1956, and its successor provision, Section 2(59) of the Companies Act, 2013, reveals that an 'officer' includes any director, manager, secretary, or key managerial personnel, along with any person in accordance with whose directions or instructions the Board of directors is accustomed to act."

- The Court noted that the legislative scheme demonstrates that the status of an 'officer' is intrinsically linked to executive governance, managerial control, and the internal administration of the corporate entity.

- With regard to Section 2(60)(v) of the 2013 Act, the Court observed that *Clause (v) of Section 2(60) expressly carves out a statutory protection, declaring that a person who gives advice to the Board in a professional capacity shall not be deemed to be an officer in default.*

- Specifically, regarding a Chartered Accountant, the Court held that an independent Chartered Accountant engaged to verify and certify statutory e-Forms or returns acts strictly in a professional capacity as an external expert.

- The Court further observed that expanding the definition of an 'officer' to encompass an independent professional certifier would distort the statutory architecture of company law.

- On the ROC's power to prosecute, the Court held that the ROC lacks the direct statutory *locus standi* to prosecute an independent professional under provisions designed specifically for internal corporate default, unless active criminal complicity is *prima facie* established.

B. Whether certification by the Chartered Accountant was sufficient to attract Section 628

- The Court considered the scope of Section 628 of the Act 1956, which applies to "any person" making a false statement or intentionally concealing a material fact.

- Importantly, the Court held the essence of an offence under this section is not merely the submission of an inaccurate or defective document, but the conscious, deliberate, and intentional introduction of falsehood coupled with the requisite *mens rea* (guilty mind).

- The Court emphasised that Criminal penal liability of this severity can never be fastened vicariously, on the basis of loose suspicion, or through abstract association.

- On examining the complaint, the Court found that the allegations of *mala fide* intention, physical execution and deliberate concealment were directed towards the company's director, whereas, in relation to the respondent, *the complaint merely contains a generic assertion that he certified the forms.*

- The Court found that there is a complete and absolute absence of any foundational averment, specific allegation, or material particular demonstrating that the opposite party had personal knowledge of the underlying financial fraud or that he actively connived with the management to fabricate records.

- The Court also noted that the obligation to file correct particulars and rectify defects rests upon the applicant company and its directors. An independent professional relying upon information supplied by management cannot be prosecuted without specific allegations and material showing conscious involvement.

C. Final decision

- The High Court clarified an important point regarding the scope of Section 628

- the proposition that an independent professional certifying a statutory return or e-Form can never be prosecuted under Section 628 of the Companies Act, 1956, merely because they do not fall within the narrow definition of an executive 'officer' is legally incorrect and requires qualification; active complicity with *mens rea* can attract the section.

- However, on the facts of the present case, the Court upheld the discharge because the ultimate order passed by the learned Special Court discharging the Opposite Parties from Complaint Case No. 16 of 2020 is upheld and affirmed strictly on the ground that the criminal complaint suffers from a total absence of specific pleadings and foundational ingredients of *mens rea* against the certifying professional.

SEBI

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI) VS. VEDANTA LIMITED (FORMERLY CAIRN INDIA LIMITED) & ORS.

Securities and Exchange Board of India (SEBI) vs. Vedanta Limited (formerly Cairn India Limited) & Ors. **at the Supreme Court of India (SC) Dated September 9, 2026**

Facts of the Case

- In January 2014, Cairn India Limited (subsequently merged with Vedanta Limited) (hereinafter referred to as CIL) announced an open-market share buyback offer under the Buyback Regulations with a maximum outlay of ` 5,725 crore at a price not exceeding ` 330 per equity share.

- As required under Regulation 10 of the Buyback Regulations, CIL opened an escrow account and deposited the mandated sum. During the buyback period, CIL bought back a portion of the targeted shares from the open market.

- Upon completion/closure of the buyback window, CIL applied to the Securities and Exchange Board of India hereinafter referred to as SEBI/Board). SEBI for the release of the remaining funds in the escrow account under Regulation 15B(8) of the SEBI (Buyback of Securities) Regulations, 1998 (hereinafter referred to as Buyback Regulations. SEBI granted the release of the escrow money after verifying procedural compliance with the buyback framework.

- Subsequent to the escrow release, SEBI conducted an investigation into trading activities during the buyback period based on market complaints and internal surveillance data.

- SEBI issued Show Cause Notices alleging that CIL and its key management personnel had engaged in a fraudulent scheme under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as PFUTP Regulations). The primary allegations were:

- **CIL** deliberately placed buyback orders at lower price steps or timing intervals that minimised execution, creating a false impression of support for the market price without fulfilling the full buyback commitment.

- Internal management decisions regarding capital allocation and liquidity were withheld or selectively timed, misleading public shareholders and impacting price discovery.

- The Adjudicating Officer (hereinafter referred to as AO) of SEBI passed an order holding CIL and its officers guilty of violating the PFUTP Regulations, imposing heavy monetary penalties and issuing directions regarding market access**.**

- Aggrieved by the AO's adverse order, CIL (and later Vedanta post-merger) appealed to the Securities Appellate Tribunal (hereinafter referred to as SAT).

- **SAT** ruled in favour of **CIL/Vedanta** and set aside **SEBI**'s penalty order on two major grounds:

- **SAT** held that once **SEBI** had examined the buyback fulfilment and released the escrow account under Regulation 15B(8) of the **Buyback Regulations**, it could not subsequently re-open the transaction under the **PFUTP Regulations**.

- **SAT** observed significant contradictions between **SEBI**'s 2016 preliminary investigation report and its 2017 final investigation report, alongside unresolved discrepancies in the stock exchange trade order books relied upon by the **Board**.

- Disagreed with SAT's ruling, SEBI preferred a Civil Appeal before the Supreme Court (hereinafter referred to as SC) under Section 15Z of the SEBI Act, 1992, bringing the dispute before the apex court.

Arguments by SEBI

- Interplay Between Buyback Escrow Release and PFUTP Fraud Proceedings:

- The release of escrow funds under Regulation 15B(8) of the Buyback Regulations is purely an administrative/ procedural verification of escrow mechanics.

- An escrow release does not grant statutory immunity from, nor operate as *res judicata* against, an independent investigation into market manipulation or fraud under the PFUTP Regulations.

- The two regulatory regimes serve completely different statutory objectives: one ensures financial commitment to a corporate offer, while the other protects broader market integrity against fraudulent schemes.

- Reliability of Investigation Reports and Stock Exchange Trade Data

- Proceedings under the PFUTP Regulations are civil in nature and operate under the threshold of "preponderance of probabilities."

- Discrepancies in order book timing or differences between preliminary and final reports are operational nuances that do not erode the main conclusion: that trading patterns demonstrated an intent to artificially support share prices without genuine execution.

Arguments by Vedanta/CIL

- Interplay Between Buyback Escrow Release and PFUTP Fraud Proceedings
- SEBI's approval and release of the escrow money constituted an implicit finding that CIL had executed the buyback offer in good faith and complied with the prescribed norms.
- Re-opening the exact same transaction under the PFUTP Regulations after granting procedural discharge under the Buyback Regulations leads to regulatory unpredictability and places companies in double jeopardy for closed compliance matters.
- Reliability of Investigation Reports and Stock Exchange Trade Data:
- A finding of fraud carries severe corporate and financial reputational consequences; hence, even under civil standards, the evidentiary foundation must be robust and unambiguous.
- SEBI's 2016 investigation report contradicted its 2017 report regarding key trade matching patterns and order book timelines.
- The raw order-level trade data provided by SEBI contained unresolved material discrepancies that invalidated the premise of market manipulation.

Held

The SC partially allowed SEBI's appeal, laying down key legal principles while remanding the factual determination back to SAT:

1. ***Rejection of Statutory Bar (Jurisdictional Separation):***

   The SC held that the release of escrow under Regulation 15B(8) of the Buyback Regulations does not bar a separate investigation or finding of fraud under the PFUTP Regulations.

   Escrow inquiries and fraud inquiries operate in completely different legal fields. Procedural clearance under buyback mechanics creates no statutory immunity or *res judicata* against proceedings under anti-manipulative market regulations.

2. ***Re-Adjudication Remand on Fraud (Evidentiary Rigor):***

   The SC agreed that SEBI's findings suffered from unresolved material discrepancies in the underlying trading data and internal contradictions between its 2016 and 2017 investigation reports.

   Fraud cannot be sustained on contradictory underlying evidence.

   Consequently, the SC remanded the matter back to the SAT for fresh adjudication strictly on the issue of fraud under the PFUTP Regulations, directing the SAT to re-examine the trading data with complete objectivity.

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FEMA – UPDATES AND ANALYSIS





CA Hardik Mehta *CA Tanvi Vora*

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

A. Update through Rules, Circulars, Notifications and Master Directions

1. Review of Circulars issued under Foreign Exchange Management Act, 1999 (FEMA)

Reserve Bank of India has been undertaking comprehensive review of circulars issued since 1st June 2000 as part of its ongoing initiative to rationalise the regulatory framework under FEMA.

In relation to the same, RBI regularly withdraws circulars that have ceased to be operative owing to subsequent regulatory amendments, redundancy, overlap or supersession by newer directives. The following circulars related to ECB have thus been withdrawn:

List of A.P. (DIR Series) Circulars superseded			
Sr. No.	Subject	AP (DIR) Series Circular No.	Date
1	External Commercial Borrowings (ECB) Policy - Issuance of Rupee denominated bonds overseas	17	29.09.2015
2	External Commercial Borrowings (ECB) in Indian Rupees	25	03.09.2014
3	External Commercial Borrowings (ECB) Policy - Liberalisation of definition of Infrastructure Sector	85	06.01.2014
4	Borrowing and Lending in Rupees Investments by persons resident outside India in the tax free, secured, redeemable, non-convertible bonds	81	24.12.2013
5	External Commercial Borrowings (ECB) Policy Import of Services, Technical know-how and License Fees	119	26.06.2013
6	Money Transfer Service Scheme - List of Sub Agents	49	07.11.2012
7	External Commercial Borrowings Policy - ECB by Small Industries Development Bank of India	48	06.11.2012

Appropriate amendment to Master Direction - Borrowing and Lending transactions in Indian Rupee between Persons Resident in India and Non-Resident Indians / Persons of Indian Origin has also been carried out.

(Comments: RBI regularly undertakes a clean-up exercise of withdrawing redundant circulars. The current set of circulars relate to ECB which was recently overhauled.)

RBI/2026-27/254 A.P. (DIR Series) Circular No. 21 dated 8th September 2026

2. Online submission of Form A2: Removal of limits on amount of remittance

Since 2024, RBI had permitted AD banks to frame appropriate internal guidelines with the approval of their Board, for the purpose of facilitating outward forex remittances on the basis of online / physical submission of Form A2 and other related documents.

Henceforth, RBI has permitted AD banks to frame appropriate internal guidelines with the approval of their Board or any Board Committee / Management Committee to which powers have been delegated by the Board, for the purpose mentioned above.

Appropriate amendment to Master Direction - Other Remittance Facilities has also been carried out.

(Comments: Policy tweaks to online Form A2 processing, such as document requirements, purpose-code handling and risk thresholds, no longer need to go to the full Board. A delegated committee can approve them. This should allow quicker revisions. ADs may need to record the delegation formally in a Board resolution and update their policy documents.)

RBI/2026-27/279 A.P. (DIR Series) Circular No. 23 dated 1st October 2026

3. Non-Resident Deposits - Comprehensive Single Return (NRD-CSR) (R012): Submission under CIMS Sankalan Portal

AD banks maintaining Non-Resident Deposits (NRD) Accounts were required to on monthly NRD-CSR return submission through XBRL platform to the Reserve Bank since August 2013 *vide* A.P. (DIR Series) Circular No. 19 dated August 07, 2013.

The NRD-CSR reporting was since moved to Centralised Information Management System (CIMS) Sankalan portal with the submission of March 2024 data in the month of April 2024. The return code of NRD-CSR on the CIMS is R012. The existing formats of NRD-CSR have also been recently rationalised for reporting bank-wise consolidated data under CIMS.

The access to submit a return and reporting channel will be managed by RBI. The creation of users to submit the return and access to various options available on the Sankalan portal will be managed by the admin-users of the banks. Accordingly, this circular has been issued in supersession of the A.P. (DIR Series) Circular No. 19 dated August 07, 2013.

The NRD-CSR report is required to be submitted on or before 10th of the month following the month to which the NRD data pertains. The NRD-CSR (R012) return can be submitted to RBI on CIMS through one of the three channels mentioned below:

i. ***System-to-system integration:*** The returns will be collected directly from the reporting entities' ADF server to RBI CIMS server.

ii. ***File upload on Data Portal:*** Reporting entities can login to CIMS Data collection portal, upload and submit the return specific file.

iii. ***Screen based web form on Data Collection Portal:*** Reporting entities can login to CIMS data collection portal and key in return specific information in the web form created for the return.

Other operational guidelines are included in the circular.

Appropriate amendment to Master Direction - Other Remittance Facilities and Master Direction - Reporting under Foreign Exchange Management Act, 1999 has also been carried out.

(Comments: This is a procedural, housekeeping circular, not a policy change. It does not change the NRI deposit rules. It formally aligns the rulebook with a reporting migration that has already happened. NRD-CSR reporting moved from XBRL to RBI's Centralised Information Management System (CIMS) Sankalan portal starting with March 2024 data, which was filed in April 2024. The formats have also recently been rationalised for bank-wise consolidated reporting.)

RBI/2026-27/280 A.P. (DIR Series) Circular No. 24 dated 1st October 2026

4. Amendment to Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026

The Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026 issued in January 2026 have now come into effect from 1st October 2026.

Our analysis of the Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026 can be accessed in The Chamber's Journal February 2026 edition.

The RBI has amended the regulations in September 2026 (prior to its coming into effect) to amend:

1) Time period for realisation of exports was decreased from 15 months to 9 months in case of export of goods (direct as well as from warehouse outside India) and services and from 18 months to 12 months for export of goods and services is invoiced or/and settled in Indian Rupees;

2) Exporters in the Caution List, as on September 30, 2026, as per orders issued by RBI under Regulation 16 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015, to continue to be governed by the said order till such time the exporter is removed from the Caution List; and

3) New regulation 20 inserted to provide authority to AD banks to handle transactions related to the export and import of goods and services, as well as merchanting trade, undertaken prior to 1st October 2026 which earlier required RBI approval under the erstwhile rules, regulations and directions.

(Comments: The reduction in the realisation period is the most significant of the three changes. Since the amendment was made before the Regulations came into force, the longer 15-month window announced in January 2026 never took effect, and the familiar nine-month norm continues. Exporters who had set their credit terms expecting 15 months should revisit them. Some flexibility remains, however, because the AD bank may still extend the period on the exporter's request if it is satisfied with the reasons.

The proviso on the Caution List was needed to close a transitional gap. Without it, one could have argued that the supersession of the 2015 Regulations released exporters already on the Caution List from the RBI's orders.

New regulation 20 is a welcome step. Legacy matters, such as extensions, write-offs and closure of long-pending EDPMS/IDPMS entries, can now be handled by AD banks without going to the RBI. The provision does not, however, say which standard AD banks should apply to these legacy cases: the erstwhile rules or the more liberal 2026 framework. This will need to be settled through the AD banks' internal policies and SOPs under regulation 19, or by an RBI clarification.)

RBI/2026-27/280 A.P. (DIR Series) Circular No. 24 dated 1st October 2026

■

BEST OF THE REST





Rahul Hakani
Advocate

Niyati Mankad
Advocate

1 BOMBAY GARAGE AHMEDABAD LIMITED & ORS. VS. J P ISCON PRIVATE LTD. & ANR. - DECIDED ON 29 SEPTEMBER 2026 PASSED IN SLP (C) NO. 25909 OF 2024 [SUPREME COURT OF INDIA] [2026 INSC 1066]

Specific Relief Act, 1963 — Specific performance — Oral agreement for sale of immovable property — Proof of concluded contract — Bar under Order II Rule 2 CPC (which requires a plaintiff to include the whole claim arising from a cause of action and bars a subsequent suit for a relief omitted earlier without leave of the Court) — Where the plaintiff, despite having a complete cause of action, instituted an earlier suit for injunction simpliciter without claiming specific performance or obtaining leave to reserve that relief, the subsequent suit for specific performance was barred. Liberty to institute a fresh suit under Order XXIII Rule 1(3) CPC (which permits withdrawal of a suit with liberty to institute a fresh suit in specified circumstances) did not cure the omission. An oral agreement may be enforceable, but the plaintiff must strictly prove consensus ad idem and a concluded contract. Appeal allowed; suit dismissed.

Facts

The plaintiff instituted a suit for specific performance of an alleged oral agreement for the sale of immovable property owned by the defendant company for a consideration of ` 20.50 crore. The plaintiff alleged that meetings had taken place between the parties, pursuant to which token advances aggregating ` 5,11,000 were paid in cash and a cheque for ` 5 crore was handed over. A letter dated 25 November 2006, forwarding documents relating to the property, was relied upon in support of the alleged agreement. Upon the defendants' alleged refusal to execute the sale deed, the plaintiff initially instituted a suit for permanent injunction simpliciter in 2007, which was subsequently withdrawn with a request for liberty to file a fresh suit. A subsequent suit seeking specific performance was decreed by the Trial Court and the decree was affirmed by the High Court. The defendants challenged the concurrent findings before the Supreme Court.

Issues Involved

1. Whether the subsequent suit for specific performance was barred under Order II Rule 2 CPC (bar against splitting claims or omitting available reliefs arising from the same cause of action) when the earlier suit for injunction was instituted

without seeking specific performance or leave of the Court.

2. Whether liberty under Order XXIII Rule 1(3) CPC (withdrawal of a suit with permission to institute a fresh suit on the same subject matter, where statutory conditions are satisfied) enabled the plaintiff to claim the relief omitted from the earlier suit.

Held

The Supreme Court allowed the appeal, set aside the judgments of the Trial Court and High Court, and dismissed the suit. Under Order II Rules 2(1)–(3) CPC (governing inclusion of the whole claim, omission of reliefs and the bar on subsequent suits), a plaintiff must claim all available reliefs arising from the same cause of action; omission of a relief without the requisite leave bars a subsequent suit for that relief. Liberty sought at the time of withdrawal under Order XXIII Rule 1(3) CPC did not cure the failure to obtain leave when the earlier suit was instituted. Order XXIII Rule 1(3) CPC was inapplicable because the subsequent suit introduced an additional relief omitted from the earlier suit, rather than merely re-agitating the subject matter or claim permitted by the Court. On merits, the Court reiterated that an oral agreement can support specific performance, but the plaintiff must strictly prove a concluded contract and consensus ad idem. The inconsistencies in the pleadings and evidence, absence of corroboration and failure to establish material terms undermined the plaintiff's case. The concurrent findings were held to be perverse.

2 SANOFI INDIA LTD. VS. CENTRAL BUREAU OF INVESTIGATION – JUDGMENT DATED 7TH SEPTEMBER, 2026. PASSED IN CRIMINAL APPEAL NO. 4250 OF 2026 [SUPREME COURT OF INDIA] [2026 INSC 957]

Criminal Procedure Code, 1973 — S. 482 — Corporate Criminal Liability — Non-arraignment of natural persons — Maintainability:

Indian Penal Code, 1860 — Ss. 120-B & 420 — Prevention of Corruption Act, 1988 — Ss. 11 & 12 — Direct Corporate Liability: Arraignment or identification of a natural person is not a condition precedent for initiating or maintaining prosecution against a corporation for mens rea offences. Except under specific vicarious liability regimes (e.g., S. 141 NI Act or S. 17 PFA Act), direct corporate criminal liability applies. Proceedings cannot be quashed under S. 482 CrPC merely due to non-arraignment of directors or officers, provided allegations *prima facie* disclose acts on behalf of the corporation supporting the possibility of *mens rea*; corporate attribution is to be determined at trial

Facts

The Appellant, Sanofi India Ltd., a pharmaceutical company, supplied medicines to the Rare Materials Project, Bhabha Atomic Research Centre (BARC) pursuant to tenders. The CBI filed a chargesheet alleging that Dr. P. Anand (Scientific Officer, BARC) criminally conspired with the Appellant to procure medicines at inflated rates by misclassifying items, excluding competing bidders, and ignoring lowest bids, thereby causing wrongful loss to BARC. It was further alleged that Dr. Anand received illegal gratification from the Appellant, abetted by the company. The Appellant was arrayed as Accused No. 2 alongside Dr. Anand (Accused

No. 1), but no officer, director, or employee of the Appellant company was identified or arraigned as an accused. A chargesheet was filed alleging offences under Sections 120B read with 420 of the Indian Penal Code and Sections 11, 12 and 13(2) read with Section 13(1)(b) and (d) of the Prevention of Corruption Act, 1988. No employee or official of the Appellant company was arraigned as an accused. The Karnataka High Court declined to quash the proceedings under Section 482 CrPC, leading to the present appeal before the Supreme Court.

Issues Involved

Whether the High Court ought to have exercised its power under Section 482 of the Code of Criminal Procedure, 1973, to quash the criminal proceedings instituted against the Appellant company on the sole ground that no natural person, director, or official representing its alter ego / governing mind had been identified or arraigned alongside it as an accused.

Held

The Supreme Court held that a corporation can be prosecuted for offences requiring mens rea, as recognised in ***Assistant Commissioner vs. Velliappa Textiles Ltd. (2003) 11 SCC 405*** and ***Iridium India Telecom Ltd. vs. Motorola Inc. (2011) 1 SCC 74***, and that prosecution cannot be quashed merely because a natural person has not been identified or arraigned. Drawing guidance from ***Tesco Supermarkets Ltd. vs. Nattrass [1972] A.C. 153, Meridian Global Funds Management Asia Ltd. vs. Securities Commission [1995] 2 A.C. 500*** and the ***Barclays cases***[1], the Court laid down a sequential framework for attribution: first, the primary rules arising from the company's constitution and valid delegation; secondly, the general rules of attribution arising from the authority to act on the company's behalf; and thirdly, special rules informed by the purpose of the relevant statute. The Court clarified that ***Aneeta Hada vs. Godfather Travels and Tours Pvt. Ltd. (2012) 5 SCC 661*** and ***Hindustan Unilever Ltd. vs. State of M.P. (2020) 10 SCC 751*** do not establish a universal requirement to arraign a natural person alongside a corporation, as those decisions concerned statutory schemes imposing derivative or vicarious liability. Under Section 482 of the Code of Criminal Procedure, the decisive question is whether the allegations *prima facie* disclose an offence by the corporation, not whether the individual responsible has already been identified. The appeal was considered on that basis, and the proceedings could not be quashed solely for non-identification or non-arraignment.

3 RITESH HALDAR ELITE HOUSING LLP AND ORS. VS. ELITE HOUSING LLP AND ORS. – JUDGMENT DATED 24 JUNE 2025 PASSED IN COMMERCIAL ARBITRATION APPEAL (L) NO. 14486 OF 2025 AND ANR. [2025:BHC-OS:9704-DB] [BOMBAY HIGH COURT]

Arbitration and Conciliation Act, 1996 — S. 9 — Interim Measures — Redevelopment vs. Inter Se Title Disputes vs. Right of Occupant: Redevelopment process cannot be utilized for the purpose of seeking eviction of an occupant from the old premises.

1. *The Crown Court's decision in The Queen vs. Barclays PLC & Barclays Bank PLC (Indictment No: T2017 7247-7251 & T2018 0055) and the High Court's decision in The Serious Fraud Office vs. Barclays PLC & Anr, reported in [2018] EWHC 3055 (QB)*

Possession of the permanent alternate accommodation must be handed over and the transit rent must be paid to the person, who was actually in possession of the old premises, so that their possession is not disturbed only on account of demolition. Inter se disputes qua title/entitlement are irrelevant for transit rent and repossession. However, in the absence of pending title litigation, the Permanent Alternate Accommodation Agreement (PAAA) must be executed with, and hardship compensation (corpus) paid to, the registered record-owner of the society.

Facts

Flat No. 12 in 'Spectrum' CHS was registered in society records under the name of Ritesh Haldar (Appellant). His sister-in-law, Smt. Leena Rohitesh Haldar, resided in the flat with her children, while facing marital discord with her husband Rohitesh. Ritesh described Leena as a gratuitous licensee and instituted eviction proceedings against her in the Small Causes Court. When the society entered into a redevelopment agreement with Elite Housing LLP (Developer), the developer filed a Section 9 petition seeking possession. The Single Judge directed execution of a tripartite agreement/PAAA through a Court Receiver, and ordered transit rent, corpus compensation, and ultimate possession of new Flat No. 801 to be handed over exclusively to Leena. Aggrieved by this, Ritesh and Rohitesh filed Section 37 arbitration appeals before the Division Bench.

Issues Involved

1. Whether the redevelopment process can be utilized to dispossess or evict an actual occupant (a gratuitous licensee facing eviction) from the subject premises.
2. In whose name the Permanent Alternate Accommodation Agreement (PAAA) should be executed and who is entitled to receive the hardship compensation (corpus) during redevelopment when title and occupancy are held by different parties.
3. Who is entitled to receive the transit rent/brokerage and be put back into possession of the newly constructed redeveloped flat (Flat No. 801).

Held

Partly allowing Ritesh's appeal and dismissing Rohitesh's appeal under Section 37 of the Arbitration and Conciliation Act, 1996, the High Court modified the Single Judge's Section 9 order. Relying upon ***Vipul Fatehchand Shah vs. Nav Samir CHS [Commercial Appeal(L) No. 25162 of 2023 decided on 6 October 2023]*** and ***Harshad Shah vs. Labharti Realties & Ors. [Appeal (st) No. 29617 of 2023 decided on 25 October 2023]***, the Court held that the redevelopment process cannot be utilized to evict an occupant from old premises, and thus directed transit rent, brokerage, and physical possession of redeveloped Flat No. 801 to be handed over to Leena (as actual occupant), subject to the outcome of pending eviction proceedings. However, applying the principles of Vipul Fatehchand Shah, as Ritesh is the registered owner in society records with no pending title dispute, the Court set aside the Court Receiver's appointment and directed the developer to execute the Permanent Alternate Accommodation Agreement (PAAA) directly with Ritesh and pay him the hardship compensation (corpus).

4 INCOME TAX DEPARTMENT VS. PRAWINCHARAN PRAFULCHARAN DWARY, RESOLUTION PROFESSIONAL OF JIYA ECOPRODUCTS LTD & ANR.- ORDER DATED 21.08.2026 PASSED IN COMP. APP. (AT) (INS) NO. 1171 OF 2026 & I.A. NO. 4571 OF 2026

Insolvency and Bankruptcy Code, 2016 — Section 61(2) Proviso — Condonation of Delay — Expiry of Statutory Condonable Period — Administrative Delays: Section 61 of IBC empowers this Tribunal to admit an appeal even after the prescribed period of 30 days only upto another 15 days provided the Appellant gives 'sufficient cause' for not preferring the appeal within the 30 days prescribed period. This Tribunal has not been vested with any discretionary powers after the expiry of the 15 days extended period to admit an appeal. Any condonation of delay being allowed beyond 30+15 days would be in violation of the legislative intent and statutorily impermissible.

Facts of the Case

The Income Tax Department (Appellant) filed two appeals before the National Company Law Appellate Tribunal (NCLAT), New Delhi, challenging orders passed by the NCLT, Ahmedabad. In the first appeal [Comp. App. (AT) (Ins) No. 1171 of 2026], there was a delay of 498 days in challenging an order dated 11.12.2024 approving a resolution plan. In the second appeal [Comp. App. (AT) (Ins) No. 1172 of 2026], there was a delay of 706 days in challenging an order dated 17.05.2024. The Appellant attributed the delays to administrative procedural red tape, internal approvals, officer transfers, and inaction by its Senior Standing Counsel.

Issues Involved

Whether the Appellate Tribunal (NCLAT) has the statutory jurisdiction or discretion under Section 61(2) of the Insolvency and Bankruptcy Code, 2016 to condone a delay beyond the outer limit of 30 + 15 days on grounds of administrative convenience, internal departmental procedural delays, or officer transfers.

Held

The NCLAT dismissed both applications for condonation of delay and consequently disposed of the appeal memos. The Tribunal held that under Section 61(2) proviso of the Insolvency and Bankruptcy Code, 2016, its power to condone delay is strictly limited to 15 days beyond the initial 30-day period upon showing sufficient cause. It reiterated that being a creature of statute, it has no inherent or equitable powers to extend limitation beyond 30 + 15 days. The Tribunal further noted that routine administrative delays or procedural red tape offered by government bodies do not constitute a acceptable explanation. It placed reliance on ***Postmaster General vs. Living Media India Ltd. [(2012) 3 SCC 563], Regional Provident Fund Commissioner-II vs. Ms. Mamta Binani [Comp. App. (AT) (Ins) No. 503 of 2026], and Regional Director v. Mayfair Hotels & Resorts Ltd. [Comp. App. (AT) No. 243 of 2025]***.

■

THE CHAMBER NEWS



CA Vitang Shah
Hon. Jt. Secretary



CA Viraj Mehta
Hon. Jt. Secretary

Important events and happenings that took place online / physical between **September 1, 2026 to September 30, 2026** are being reported as under:

I. ADMISSION OF NEW MEMBERS

The details of new members who were admitted in the Managing Council Meeting held on September 3, 2026 are as under:

Type of Membership

Life Members	Ordinary Members	Student Members	Associate Member	Total Members
19	**68**	**8**	**0**	**95**

PAST PROGRAMMES

DIGITAL CONNECT

2.9.2026 & 3.9.2026
Topic: **2 Days Workshop on Power Query**
Speaker: ***CA Kunjesh Shah***

PUNE BRANCH

4.9.2026
Topic: **Study Group - Key Takeaways from New Guidance Note on Tax Audit by ICAI**
Speaker: ***CA Subodh Shah***

DELHI BRANCH

5.9.2026

Topic: **The Tax Futures Summit …….. The Play of Tax in a World Without Borders**

a Keynote Address
Speaker: ***Hon'ble Justice S. Ravindra Bhat, Former Judge, Supreme Court of India***

b Substance, Beneficial Ownership and TRC – From Azadi Bachao case to Vodafone and to Tiger Global – Where is it headed?
Chairman of the Session: ***Mr. Balbir Singh***
Panelist: ***Mr. Akhilesh Ranjan, Mr. Karanjot Singh Khurana,*** *Mr. Sandeep Chaufla,* ***Prof. Stef Van Weeghel (Virtually)***
Moderator: ***Mr. Prabhat Lath***

c Global Expatriate Mobility – Impact on Corporate and Individual Taxation
Chairman of the Session: ***Mr. Saurav Banerjee***
Panelist: ***Mr. Pramod Kumar, Ms. Richa Sawhney, Mr. Chander Talreja, Ms. Divya Mittal***
Moderator: ***Mr. Aseem Chawla***

d Transfer pricing and International Tax - Convergence, Divergence or Congruence?
Panelist: ***Mr. G. S. Pannu, Mr. Jitendra Jain, Ms. Karishma Phatarphekar, Mr. Vijay Iyer, Mr. Himanshu Sinha***
Moderator: ***Mr. Gaurav Singhal***

e Recent issues on International tax including Interplay of GAAR, SAAR and JAAR
Chairman of the Session: ***Mr. Arijit Prasad***
Panelist: ***Mr. Mukesh Butani, Mr. Sachit Jolly, Ms. Suranjali Tandon, Mr. Rajat Bansal, Mr. Dhruv Janssen Sanghavi (Virtually)***
Moderator: ***Mr. Naveen Gupta***

INDIRECT TAXES

9.9.2026

Topic: **Study Circle - Section 74A under GST – Decoding the Unified Demand & Adjudication Framework**
Group Leader: ***CA Vishal V***
Mentor: ***CA Sudhir VS***

STUDY CIRCLE & STUDY GROUP

17.9.2026
Topic: **Study Circle - Charitable Trust-ITR 7 /10B/10BB and other compliance**
Speaker: ***CA Ravi Gupta***
Chairman: ***CA Vipin Batavia***

INTERNATIONAL TAXATION

11.9.2026
Topic: **Study Circle - FAST-DS 2026: A Path to FA Disclosure and Immunity — Emerging Rules, Risks & Opportunities**
Speaker *:* ***CA Srinivas Maddury***

Topic: **Masterclass 2026: The 4D Framework for Transfer Pricing Excellence**

18.9.2026

a Evolution of Transfer Pricing: From Compliance to Strategic Value Creation
Speaker: ***CA Vispi T. Patel***

19.9.2026

b Overview of Transfer Pricing Documentation Requirements, including Master File and CbCR and Compliance Frameworks
Speaker: ***CA Akshay Kenkre***

Panel Discussion on Best Practices for defensible Transfer Pricing documentation including issues on selection of most appropriate method
Moderator: ***CA Akshay Kenkre***
Panelist: ***CA Bhavesh Dedhia, CA Smita Patni CA Archana Choudhary***

26.9.2026

c Overview of Benchmarking Fundamentals: Databases, Comparability and Economic Adjustments
Speaker: ***CA Namrata Dedhia***

Panel Discussion on practical aspects of Indian and Foreign benchmarking's including issues related to economic adjustment, selection of PLI, etc.
Moderator: ***CA Namrata Dedhia***
Panelist: ***CA Vrajesh Dutia, CA Rajiv Bhutani, Dr. Gaurav Ghosh***

24.9.2026
Topic: **Study Circle-Assorted Case Studies around taxation based on residential status, Buy Back, Corporate Guarantees, etc.**
Speaker: ***CA Navaneeth SB***

HYDERABAD BRANCH

12.9.2026
Topic: **A Hands-on Workshop on AI in Audit Practice-From Trial Balance to Audit Opinion**
Speaker : ***CA K. Ananth Lakshmi Narayana***

ACCOUNTING & AUDITING

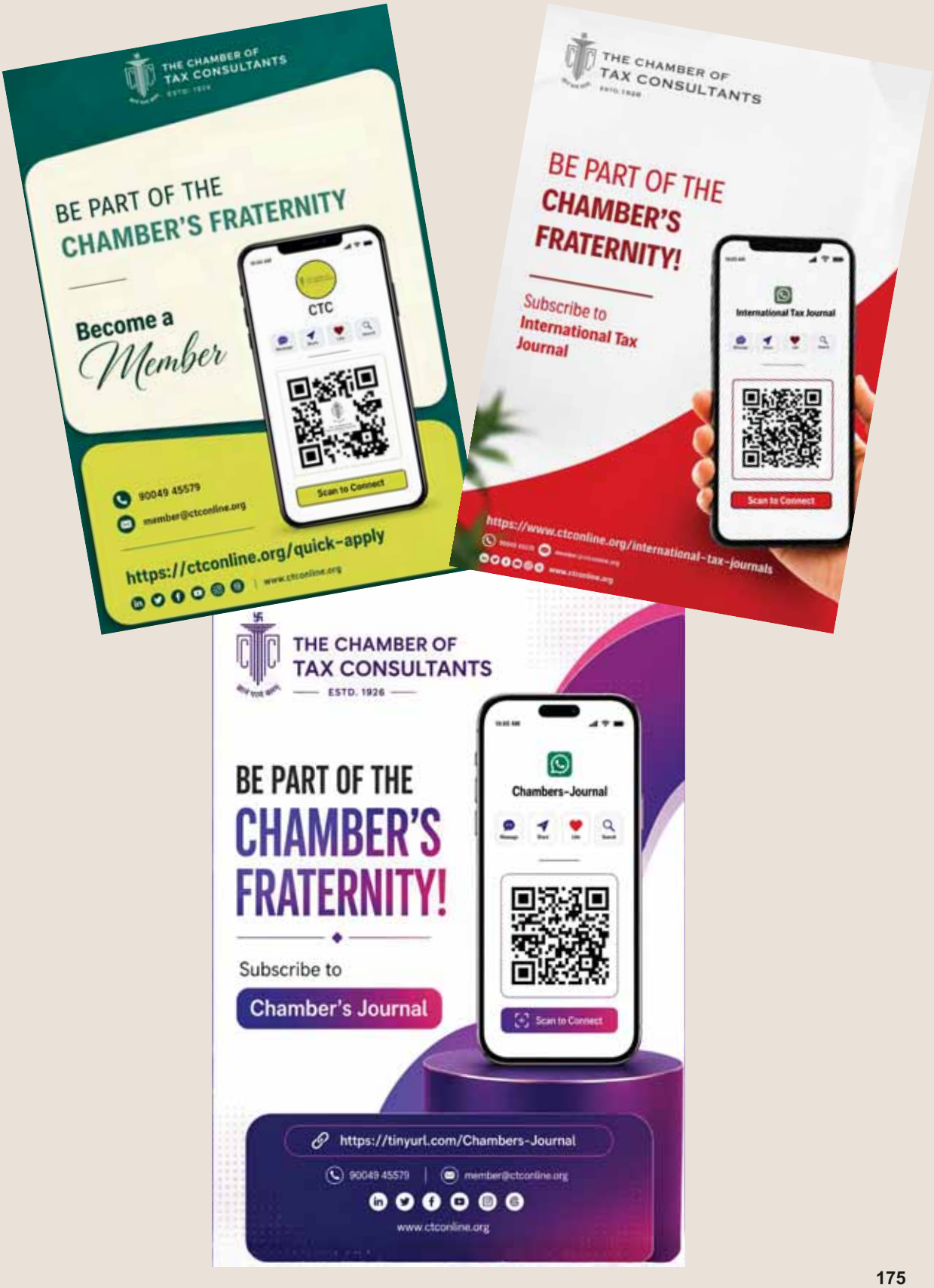
16.9.2026
Topic: **Financial Reporting Decoded: Common Errors & Practical Challenges in Financial Statements and CARO**
Speaker : ***CA Tejas Parikh***

DIRECT TAXES

18.9.2026
Topic: **ISG - Recent Important Decisions Under Direct Tax**
Speaker : ***Adv Sashank Dundu***

BENGALURU CHAPTER

24.9.2026
Topic: **Study Group - Recent Rulings on Charitable Trusts**
Speaker : ***CA Sandeep C***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