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From the President

CA Neha Gada

Respected Seniors and My Dear Friends

It has been a month since I took charge of President of Chamber of Tax Consultants (CTC). Last month has been filled with meetings and coordination on various fronts - interacting with various committees of CTC, talking to different Branch heads of CTC.

It has been a truly enriching month. The position of a leader is always dynamic and, at times, demanding to handle. However, imparting knowledge successfully requires deep humility and collaboration—not ego or exclusion. As your president, my ultimate commitment is to champion everyone who works tirelessly for our cause. Together, we are establishing a standard of leadership where kindness is mandatory and belittling others is obsolete. The true measure of our success lies in how many leaders we create together. Real authority never diminishes others; it lifts them up, honours their voices, and empowers them to grow.

The various committees of CTC continue to hold interesting programs with learned and erudite faculty. My sincere thanks to each of the committees and their Chairperson for the fabulous work they are doing. I am sure the members and readers have taken advantage of these programs.

In celebration of its momentous Centenary Year, CTC has proudly conferred honorary membership upon several esteemed dignitaries: Shri Justice R. V. Easwar, Shri Saurabh Soparkar, Senior advocate, Shri Percy Pardiwalla, Senior Advocate and Shri Arvind P Datar, Senior Advocate.

A felicitation ceremony was held to honour newly qualified Advocates, Chartered Accountants (CAs), Company Secretaries (CSs), and Cost and Management Accountants (CMAs) who have passed in May 2026. As part of the program, an insightful Fireside Chat on the "Future of the Profession" was led by CA Nilesh S. Vikamsey, Past President. True to the motto of "The Chamber of Tax Consultants (CTC)", the event was organized to celebrate and honour the remarkable achievement of these young professionals in successfully clearing these challenging professional exams and forging on the path of becoming a true professional.

A Joint Program with BCAS was successfully held on August 8, 2026, focusing on the Maharashtra Co-operative Housing Societies Act, 1960, and Rules, 1961. The event was designed for the benefit of housing societies at large, and the response was both phenomenal and encouraging.

Additionally, we hosted a lecture meeting on "Handling Reassessment – A Practical Approach," alongside classroom sessions covering "Foreign Tax Credit and Schedule FA Reporting in ITR." For those who missed these sessions, recordings are available on the CTC YouTube Channel (CTCConnect) for the benefit of all members.

In alignment with this year's theme AI and Technology a program titled "From Prompt to Productivity: AI-Powered Coding for Accountants" was conducted, which proved highly valuable to all participants.

Furthermore, a webinar on "Retrospective Amendments: From Legislative Intent

to Courtroom Battles" was introduced, alongside our "Take Care" series. The most recent installment of this series focused on "Care to be Taken While Purchasing a property."

Also please note that the paid program recordings are available on the CTC LMS module. Members interested in accessing these events may email manager@ctconline.org.

Advancing our advocacy efforts, CTC successfully submitted two key representations this month:

- ***Ministry of Corporate Affairs***: On the Corporate Laws Amendment Bill 2026, sent directly to the Secretary.

- ***GST Audit Upgrades***: Addressing the Quality Assurance Review (QAR) Framework.

I would also like to express my sincere gratitude to Shri Pradeep Kapasi and Shri Kishore Vanajra for their dedicated service on the Editorial Team over the past many years. At the same time, I extend a warm welcome to Shri Sujal Shah and our Immediate Past President, Shri Jayant Gokhale, as they join the Editorial Board. We look forward to their valuable contributions in these new roles.

Looking toward the horizon, we are continuously exploring modern avenues for knowledge delivery. CTC is currently planning an exciting new series of podcasts that will cover a broad spectrum of both technical and non-technical matters. I trust these sessions will be highly engaging and beneficial to your daily practice.

To ensure you never miss an announcement or event, I kindly request all members to follow our official CTC social media handles for constant, real-time updates.

Finally, as we come together to celebrate our nation's enduring spirit of freedom, strength, and unity, I wish you and your families a very Happy 80th Independence Day! Let us continue to work together, support one another, and march forward with pride.

Jai Hind !

Warm regards,

CA Neha Gada
President



From the Editor's Desk

CA Anish M. Thacker

My Brothers and Sisters,

"The soil is the great connector of our lives, the source and destination of all."

– Wendell Berry

Land is nature's greatest gift to us. The attachment of mankind towards land and the disputes that mankind has over occupation and possession thereof are replete in our history. Land gives us so much and yet mankind has treated it like its own property and used it like a chattel rather than revering it as nature's gift. The climate change that we are seeing today, and its effect are probably the consequences of such (mis)treatment. In schools, we are taught to regard the earth as our mother, the *matrubhoomi*, but in real life we treat it as anything but the mother. We treat it as a mere article that we have to possess and misuse it to a great extent.

This piece though is not about the use and misuse or abuse of land. It is about the tax consequences of ownership and transfer thereof. Land has always had special treatment as far as income-tax is concerned. Land is not eligible for depreciation. The transfer of certain land does not attract capital gains tax, etc. The tax implications of ownership and transfer of land are different than other property. To the best of my knowledge, we do not have any tax literature dedicated to the tax consequences of owning and transferring land. We at the Chamber have always sought to innovate and give to our members something that is different, yet useful in our day-to-day practice. I therefore must compliment the Journal Committee, its Chairman, Ameya Kunte alongwith Ms Ritu Punjabi, Hetal Maru, Vivek Newatia and Vijay Mehta for conceptualizing this issue and coming out with a comprehensive outline of what needs to be included therein. I would also like to express my sincere gratitude to the erudite authors who have contributed their articles and shared their wisdom and experience with us.

The Chamber's Journal is now entering a new era. Am era where it is moving from the routine to adding value in a completely different way to the readers. We will of course, try and retain the original flavour of the journal, but in the months to come, we are excited to bring to you, insight on topics that you will not only find useful in your day-to-day work but which will also open doors to thinking differently on some subjects. Please do watch this space for more.

As per the Chamber's policy, we have had some changes to our Editorial Board, the Board which has always given us sage advice and has monitored us, and the Journal with utmost rigour and which has had a motto that our quality has to be the highest. Two of our most senior members, Shri Kishor Vanjara and CA Pradip Kapasi, have retired, and in accordance with the policy, are eligible for reappointment after a year's hiatus. I would like to express

my deepest gratitude to both of them for their invaluable contribution to the journal. Kishorbhai with his immense knowledge and experience of the Chamber's functioning and a veritable treasure of the Chamber's history, has been aa guiding force for many years. Pradip, a dear friend and philosopher and guide, who once told be being editor is not about just writing editorial pieces, will be sorely missed. Both of them have left their indelible imprint on the Journal and I deeply thank them for their contribution and insight over the years.

We are excited to have the experience and expertise of two of our most loved Past Presidents on the Editorial Board. We welcome CA Sujal Shah and CA Jayant Gokhale as members. Sujal and Jayant with their diverse experience and expertise not only in their respective areas of practice namely, valuations and accounting and auditing, respectively, but their deep insight and rich experience, will add significant value to the Editorial Board.

I also deeply thank all of the Journal's Assistant Editors; my dearest friend and former Joint Secretary, CA Yatin Vyavaharkar, CA Haresh Chheda, CA Vikram Mehta, CA Rakesh Upadhyay, CA Nikhil Tiwari, my partner, CA Chirag Wadhwa, CA Sachin Sastakar, CA Siddharth Parekh, Adv. Daran Gandhi and Adv. Fenil Bhatt for their sterling contribution and for continuing to team with me this year as well. Looking forward to another year of brilliant teaming with them.

As I am about to finish this piece, I have got a pop up of Shri N. Chandrasekharan putting in his papers as the Chairman of Tata Sons. Tatas transformed during Mr. Chandrasekharan's chairmanship and grew tremendously. Such news only serves to remind us about the transient nature of everything in life.

"Time is a river, a violent current of events, glimpsed once and already carried past us."

– Marcus Aurelius

Jai Hind!

CA Anish M. Thacker
Editor



Glimpses of the Felicitation Ceremony - New Qualified Professional 2026 held on 23rd July, 2026 at Babubhai Chinai Hall, 2nd Floor, IMC Building, Churchgate, Mumbai, 400020



CA Neha Gada, President CTC giving her welcome address
(L-R): CA Hemant Parab (Advisor), Adv. Radha Halbe (convenor), CA Khyati Vasani (Vice Chairperson), CA Vishal Shah (Chairman), CA Mehul Sheth (Vice President), Ishita Desai (Convenor)



CA Nilesh S. Vikamsey sharing his views during the Fireside Chat on the Future of the Profession by CA Hrudyesh Pankhania



CA Vishal Shah, Chairman giving the brief about the event.



Dignitaries on the Dais



Group Photo

LAND AS CAPITAL ASSET VS. STOCK-IN-TRADE

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Santosh Sagar Kapilavai

Overview

Whether land is held as a capital asset or as stock-in-trade determines the head of income, the rate of tax, the computation machinery, the availability of reinvestment exemptions and the relevance of the holding period. This article walks through the sequence of several provisions in the specific context of Land, under the Income-tax Act, 2025 read with the erstwhile Act.

Conversion of Land from a Capital Asset to Stock-in-trade and vice versa in either direction involves evaluation of the conversion mechanics, viz. what constitutes conversion, the internal and external factors evidencing conversion, treatment in the books and financial statements, together with valuation, time of accrual of income and liability for payment of tax.

Distinct from conversion is the "adventure in the nature of trade," where the land was never a capital asset to begin with and the question of conversion into stock-in-trade does not arise at all, a distinction which is neither interchangeable nor curable by invoking Section 67(6) after the event.

The threshold question, whether agricultural land is a capital asset at all, continues to evolve through jurisprudential tests of agricultural character, aerial distance and population, and is complicated in practice by the expansion of municipal limits mid-holding. The article demonstrates that the exclusion, being definitional rather than exemptive, produces unexpected asymmetries, as the rural landowner who introduces cultivated land into a farmland plotting venture fares worse than his urban counterpart on identical facts, possibly an unintended consequence of drafting rather than design.

The unresolved valuation position under Section 67(6), where no manner of determining Fair Market Value is prescribed for conversion of a Capital Asset into Stock-in-Trade, in contrast with the conversion of a Stock-in-Trade into a Capital Asset, requires immediate attention. The article critically examines and identifies specific gaps where legislative or administrative clarification may help reduce ambiguity, curtail avoidable litigation and provide certainty to taxpayers.

A. Introduction

Land occupies nearly one-third area of the Earth and is a scarce resource with finite supply. Historically, land has always been a symbol of status and wealth. History has witnessed several battles for acquiring control

of land. Commercialisation of land has seen significant changes over time, and the intricate issues arising therefrom have resulted in prolonged litigation under the tax laws.

Let us visualise four distinct scenarios:

(i) A farmer sells inherited land under cultivation (12 kms beyond outer limits of a municipality).

(ii) A real estate developer acquires agricultural land (in municipal limits) as a Capital Asset, obtains conversion for non-agricultural use, reclassifies as Land under development in books, develops trunk infrastructure, and sells the plots over several tax years.

(iii) A businessman holding land as an investment for several years and introduced into business for development of flats, reclassifies the unsold flats as rental property.

(iv) A salaried employee acquires land, subdivides and develops the land with seems for a better realisation.

Each of the above scenarios raises the same threshold question, "Whether the land is a capital asset?", but the taxability in each case is resolved under different routes. Let us delve into analysing the above distinct scenarios in detail.

B. The Statutory Architecture

The relevant provisions under the Income-tax Act, 2025 ("ITA 2025") and the Income-tax Act, 1961 ("ITA 1961") are summarised below:

ITA 2025	ITA 1961	Particulars
2(20)	2(13)	Defines "business" to include any adventure or concern in the nature of trade
2(22)	2(14)	Defines "capital asset" and excludes stock-in-trade and rural agricultural land
2(101)	2(42A)	Period of holding and short-term capital asset
2(109)	2(47)	Defines "transfer" to include conversion into stock-in-trade
26(2)(j)	28(via)	Deems Fair Market Value of Stock-in-trade converted into Capital Asset as business income
53	43CA	Deems Stamp Duty Value as full value of consideration on transfer of Land held as Stock-in-trade
67(6)	45(2)	Conversion of Capital Asset into Stock-in-trade
72	48	Mode of computation of capital gains
73	49(9)	Cost of acquisition for Stock-in-trade converted into Capital Asset
78	50C	Stamp Duty Value as full value of consideration on transfer of a Capital Asset

For ease of reference, all relevant provisions herein are under ITA 2025 and the relevant provisions under ITA 1961 are correspondingly bracketed in italics.

C. Capital Asset and Stock-in-trade

Capital Asset: Section 2(22) (S. 2(14)) defines Capital Asset in the widest possible terms, i.e., *property of any kind held by an assessee, whether or not connected with his business or profession*, with specific exclusions. The broad scope of capital asset has been affirmed by the Hon'ble Apex Court in the case of ***CIT vs. B.C. Srinivasa Setty***[1], where goodwill generated in the course of business was affirmed as a Capital Asset. Section 2(22) is the entry point for taxability as a capital asset. Income under the head Capital Gains and the consequences of conversion would arise only if there is a Capital Asset.

Capital Asset specifically excludes the following from its ambit:

- Stock-in-trade (other than securities held as stock-in-trade by specified categories of investors), consumable stores or raw materials held for the purposes of business or profession;
- Rural Agricultural Land (discussed later);
- Personal Effects (movable property held for personal use, other than jewellery and specified valuable articles); and
- Specified Gold and Special bearer bonds.

Stock-in-trade: Stock-in-trade is not defined under ITA 2025 or ITA 1961. Its meaning is drawn from commercial usage and from a catena of judicial precedents. From a commercial parlance, Stock-in-trade includes goods (including land), held for sale in the ordinary course of a business, and distinct from an asset held for use in business or as an investment.

Section 2(22) is the entry point for taxability as a capital asset. Income under the head Capital Gains and the consequences of conversion would arise only if there is a Capital Asset.

- In ***CIT vs. Kasturi Estates (P.) Ltd.***[2], the Madras High Court held that where a company's memorandum of association authorised it to deal in real estate, and the company in fact plotted and sold land, the profit was business income notwithstanding that the land had been entered in the books as an investment. The classification recorded in the books, therefore, does not bind either the taxpayer or the Revenue, and the character of the asset is a question of fact to be determined from the totality of conduct.
- In ***G. Venkataswami Naidu & Co. vs. CIT***[3], the Hon'ble Apex Court held that no single test is conclusive and the character of a transaction must be inferred from the cumulative effect of all surrounding circumstances including the nature of the asset, the manner and purpose of acquisition, the conduct of the assessee before and after purchase, and the commercial context.
- In ***CIT vs. Associated Industrial Development Co. (P.) Ltd.***[4], the Apex Court held that a single assessee may

1. *[1981] 128 ITR 294 (SC).*
2. *[1966] 62 ITR 578 (Mad).*
3. *[1959] 35 ITR 594 (SC).*
4. *[1971] 82 ITR 586 (SC).*

simultaneously hold some assets as capital investment and others as stock-in-trade of the same business, and that the classification must be conducted parcel by parcel rather than presumed uniformly.

In general, Land is considered to be a Capital Asset except when treated as a Stock-in-trade of a business, or is a Rural Agricultural Land. Whether a Land is held as a Capital Asset or as a Stock-in-trade is subject to evaluation on the facts and circumstances of each case.

ICDS: Once Land is identified as Stock-in-trade, its valuation for the purpose of computing business income is further governed by the Income Computation and Disclosure Standards (ICDS), notified under Section 276(2) (S.145(2)).

As per ICDS-II on Valuation of Inventories, *Land or other property held for re-sale* are to be valued at the lower of cost and net realisable value, applied item-by-item rather than in the aggregate. Cost comprises the purchase price together with all costs of conversion and other costs incurred in bringing the inventory to its present location and condition. For Land under development, layout and infrastructure costs, statutory fees and approvals borrowing costs (where the development qualifies as a "qualifying asset" under ICDS-IX until the asset is ready for its intended sale) etc. are added to the cost.

Pertinently, ICDS-II prescribes valuation for an inventory that is held and does not deal with the valuation required at the time of conversion of a Capital Asset into a Stock-in-trade.

Financial statements: Schedule III to the Companies Act, 2013 requires inventory to be classified as a current asset (with sub-classification by nature, including "Land held for sale") and requires separate disclosure of investment property distinct from both inventory and property, plant and equipment. This disclosure is reflective of the decision taken by the Company at the balance-sheet date, and is only persuasive rather than conclusive.

D. Conversion mechanics

As such, conversion of a Capital Asset into Stock-in-trade and vice versa are transactions with oneself and ought not to be subjected to tax based on the established principle that *no man can make a taxable profit by trading with himself*[5]. However, Section 2(109) deems conversion/ treatment of a Capital Asset into Stock-in-trade as transfer and Section 67(6) (S. 45(2)) provides for a charge on the conversion of Capital Asset into Stock-in-trade with a deferral of tax liability to the year of eventual sale.

Once Land is identified as Stock-in-trade, its valuation for the purpose of computing business income is further governed by the Income Computation and Disclosure Standards (ICDS), notified under Section 276(2) (S. 145(2)).

What constitutes conversion?: The expression employed in Section 2(109) (S. 2(47)(iv)) is twofold, i.e., a Capital Asset converted, or is treated, as Stock-in-trade of a business carried on by the owner. Conversion connotes a unilateral, positive and overt act of the owner, without involving any change of ownership and is essentially a question of fact. The date and the factum of conversion are established through the cumulative conduct of the taxpayer. Internal

5. *Sir Kikabhai Premchand vs. CIT [1953] 24 ITR 506 (SC).*

Section 67(6) defers the chargeability of the resulting capital gains to the tax year in which the Stock-in-trade is sold or otherwise transferred, and substitutes the Fair Market Value of the Capital Asset on the date of conversion for the full value of consideration for the purposes of Section 72 (S. 48).

factors include a Board or Partners' resolution authorising the conversion, transfer entry in the Books of Account from Investments/ Fixed Assets to Inventory, corresponding reclassification in the Financial Statements, and internal correspondence evidencing the commercial decision. External factors include the application for change of Land Use, application for Layout or Plan sanction, execution of a Development Agreement, appointment of Architects and Contractors, commencement of infrastructure works, RERA registration and launch of marketing activity. The book entry alone is neither necessary nor conclusive, and the event is a fact based determination considering the aforementioned factors. Consistency of positions across income-tax, GST, RERA, stamp duty, financial reporting etc. ought to be ensured.

E. Conversion of a Capital Asset into Stock-in-Trade: Section 67(6)

Section 67(6) defers the chargeability of the resulting capital gains to the tax year in which the Stock-in-trade is sold or otherwise transferred, and substitutes the Fair Market Value of the Capital Asset on the date of conversion for the full value of consideration for the purposes of Section 72 (S. 48). The chargeability in this case runs as under:

- Conversion pre-supposes a transfer under Section 2(109). No tax is payable at that instance.
- Capital Gains is computed based on FMV on the date of conversion, as reduced by cost of acquisition and cost of improvement.
- Capital Gains are accrued on conversion and are chargeable to tax in the tax year in which the converted Stock-in-trade is sold or otherwise transferred.
- The actual sale consideration reduced by the FMV considered above (at conversion) and other allowable costs are subject to tax as business income.

Important principles:

- There are no express transitional provisions on whether the manner of computation, indexation benefits and rate of tax ought to be computed vis-à-vis the year of conversion or the year of sale of Stock-in-trade. Accordingly, it may be possible to argue that the law applicable at the time of accrual (conversion) should apply, over the law applicable at the time of chargeability to tax.
- The deferred Capital Gains are chargeable to tax proportionately, where the Stock-in-trade is sold in tranches over several tax years.
- Although chargeability under section 67(6) is deferred until sale of the stock-in-trade, the Board has clarified that commencement date[6] for the purposes of making investment in specified bonds under Section 85 (S. 54EC) ought to be considered from the date of sale of

6. CBDT Circular No. 791 dated 2 June 2000.

Stock-in-trade and not from the date of conversion. The same analogy may also be extended to the provisions of Section 82 (S. 54), 83 (S. 54B)[7], 84 (S. 54D) and 86 (S. 54F)[8] to the extent of capital gains arising therefrom.

Fair Market Value

- Section 67(6) requires the Fair Market Value on the date of conversion of Capital Asset into Stock-in-trade, but the manner of determination of such FMV has not been prescribed under the Rules.

- In sharp contrast, Section 26(2)(j) in the cases of conversion of Stock-in-trade into Capital Asset, expressly refer FMV to be "determined in the manner prescribed", which is linked to the guidance value for stamp duty purposes.

- This leads to a situation where the date of transfer as well as the value may be a subject matter of litigation. Accordingly, the taxpayer may obtain/ maintain (without limitation), independent registered-valuer report, comparable sale instances, municipal and stamp valuation data etc. to justify the value as on the date of conversion.

- In the author's view, Section 78 (S. 50C) may not, on a better view, apply in a case involving conversion of Capital Asset into Stock-in-trade, as the provisions apply only where the consideration received or accruing on the transfer of a capital asset being land or building is less than the value adopted or assessed by the stamp valuation authority, and there is no instrument presented for stamp valuation and no consideration for conversion. Where the converted Land is sold as Stock-in-trade, Section 53 (S. 43CA) substitutes the stamp-duty value (as on the date of sale) for the declared consideration in computing business profits, subject to the tolerance band, and does not deal with the FMV as on the date of conversion. This view remains to be tested.

F. Conversion of Stock-in-Trade into a Capital Asset: Section 26(2)(j)

Until AY 2018-19 there was no provision governing the conversion of Stock-in-trade into a Capital Asset. Vide several amendments carried out by the Finance Act, 2018 with effect from AY 2019-20, specific provisions on taxability upon conversion of Stock-in-trade into a Capital Asset came to be introduced.

Section 26(2)(j) (S. 28(via)) provides that the FMV of Stock-in-trade as on the date of conversion into a Capital Asset is chargeable as business income in the year of conversion. The chargeability runs as under:



7. *Guruvendra Singh vs. ACIT, ITA No. 144/JP/2023 (ITAT Jaipur)*
8. *Rajesh Kumar Adukia/ Sunita Adukia vs. DCIT, ITA Nos. 14 & 15/Ran/2018 (ITAT Ranchi)*

- Conversion is deemed to be a taxable event, with liability to pay in the tax year of conversion.

- Section 26(2)(j) charges the FMV of Stock-in-trade as on the date of conversion, and not merely the profit arising on conversion. In practice, the cost of the inventory is allowed as a deduction in computing business profits, and the tax is eventually on the profit.

- FMV is anchored to the value adopted for stamp-duty purposes in respect of the immovable property, as on the date of conversion.

- Section 73 (S. 49(9)) defines the cost of acquisition for the resulting Capital Asset as the same FMV considered for Section 26(2)(j).

- Section 2(101) (Explanation 1(ba) to S. 2(42A)) reckons the period of holding of capital asset from the date of conversion.

- Upon ultimate sale of Capital Asset, excess of consideration over the FMV is subject to tax as Capital Gains.

G. Is Agricultural Land a Capital Asset?

Section 2(22) (S. 2(14)) excludes certain "agricultural lands" from the definition of Capital Asset, based on distance and population. In order for the agricultural land to be excluded, such land should NOT be situated:

(i) within the jurisdiction of a municipality, municipal corporation, notified area committee, town area committee, town committee or cantonment board, having a population of not less than 10,000; or

(ii) within a measured aerial distance of the local limits of such a body:

   a. **2 km** where the population exceeds 10,000 but does not exceed 1,00,000;

   b. **6 km** where it exceeds 1,00,000 but does not exceed 10,00,000; and

   c. **8 km** where it exceeds 10,00,000.

Population ought to be taken from the last preceding census of which the figures have been published before the first day of the relevant tax year.

Two critical aspects of the exclusion merit appreciation:

Firstly, the provision is an exclusion, not an exemption. Therefore, Land outside these limits is not a capital asset at all, and consequently, its transfer does not amount to a transfer of a capital asset, and no Capital gains would arise. This is materially more favourable than an exemption, which presupposes a charge, with a subsequent relief.

Secondly, the distance is measured aerially and not by road/straight line, following the amendment effective from AY 2014-15.

Non-applicability of exclusions: The exclusions stated above do not apply to transfer of an (i) Urban Agricultural Land, and (ii) Rural Agricultural Land held as stock-in-trade.

Agricultural Land: The distance and population thresholds answer only the geographic question, and do not address the foundational aspect as to whether the land is agricultural in character to begin with. This aspect is no longer res integra.

The Apex Court[9] held that the expression "agricultural land" must be given a definite meaning, and land is agricultural only where it is actually used, or at the least ordinarily used, for agricultural purposes. Mere potentiality for agricultural use or an entry in the revenue records, raises only a rebuttable presumption and is not sufficient. The Court expressly rejected the wider view that any land capable of being used for agriculture qualifies as agricultural land.

The Gujarat High Court[10] distilled the enquiry into the following factors and ruled that the ultimate decision will have to be reached on a balanced consideration of the totality of circumstances:

(i) whether the land was classified and assessed to land revenue as agricultural land,

(ii) whether it was actually or ordinarily used for agricultural purposes and for how long,

(iii) whether such use of the land was for a long period or temporary,

(iv) whether the assessee intended to use it for agriculture,

(v) whether the income from land was rationally proportionate to the investment in land,

(vi) whether the land had ceased to be put to agricultural use, and if so, when and why,

(vii) whether permission for non-agricultural use had been obtained,

(viii) whether the land, though entered in the revenue records as agricultural, had never actually been used for agriculture at any point of time,

(ix) whether the land was situated in a developed area,

(x) whether land had been sold on a per-acre or per-square-yard basis,

(xi) whether the consideration was so high as to be explicable only by non-agricultural potential,

(xii) whether the land itself was developed by plotting and providing roads and other facilities,

(xiii) whether there were any previous sales of portions of the land for non-agricultural use.

The Apex Court[11] adopted this composite approach and held that land which had not been cultivated for four years, in respect of which permission for non-agricultural use had been applied for and obtained, and which was sold to a housing co-operative on a per-square-yard basis, was not agricultural land, notwithstanding the entries in the revenue records.

Urban Agricultural Land: Vide Explanation 1 to Section 2(5), "revenue derived from land" does not include income from the transfer of urban agricultural land, falling within the limits stated in Section 2(22) (S. 2(14)). Consequently, urban agricultural land is a capital asset and is subject to tax under the head Capital Gains, with applicable exemptions in case of reinvestment of

9. CWT vs. Officer-in-Charge (Court of Wards), Paigah [1976] 105 ITR 133 (SC).
10. CIT vs. Siddharth J. Desai [1983] 139 ITR 628 (Guj).
11. Sarifabibi Mohmed Ibrahim vs. CIT [1993] 204 ITR 631 (SC).

proceeds (such as Section 83 (S. 54B) upon reinvestment in agricultural land, and Section 86 (S. 54F) upon investment in a residential house). Pertinently, income derived from agricultural operations from an urban agricultural land continues to be treated as agricultural income.

Rural Agricultural Land held as stock-in-trade: Section 2(22) merely excludes rural agricultural land from the definition of capital asset, but does not exempt the profits of dealing in such land. Where a rural agricultural land is the trading stock of a business (e.g.: plotting ventures, land aggregation etc.), profits on sale are chargeable to tax under the head business income.

Practical difficulties: These situations produce asymmetries with real consequences that the statute perhaps does not address. Let us consider a scenario where a taxpayer having acquired rural agricultural land in 2016 and cultivating it for a decade, introduces the same into a Plotted Farmland business in 2026. Section 67(6) (S. 45(2)) would not be applicable as the Rural Agricultural Land is not a Capital Asset, and hence there is no deemed transfer, or bifurcation, or stepped-up cost. Therefore, the entire appreciation from 2016 until the eventual sale of the plots, including the appreciation accruing while the land was held and cultivated as such for agricultural purposes may be subject to tax as business income at normal rates.

In stark contrast, a taxpayer holding Urban Agricultural Land in the above scenario, would be entitled to the benefit of deemed transfer and conversion to stock-in-trade, and the FMV as on the date of conversion being deemed as the full value of consideration under Section 67(6) (S. 45(2)), and the entire appreciation up to the date of conversion may be subject to tax as long-term capital gains, and only the post-conversion appreciation may be subject to tax as business income.

Ironically, the rural landowners for whom this exclusion was intended to protect, are worse off than urban landowners, in the situation where both opt for Plotted Farmland development. This may not have been a considered legislative choice, rather a consequence of the exclusion having been drafted only for outright sale and not for conversion.

Expansion of municipal limits: Another pertinent issue arises out of the increasing frequency and extent of expansion of municipal limits around Indian cities. A Rural Agricultural Land cultivated for several years may cease to enjoy the benefit of the exclusion solely by operation of a subsequent notification extending municipal limits, or by a census revising the population upwards, both of which do not have any bearing on the taxpayer's own conduct.

As of the effective date of notification, the erstwhile Rural Agricultural Land becomes a Capital Asset. A subsequent conversion into stock-in-trade would thereupon attract Section 67(6) (S. 45(2)), with the FMV as on the date of conversion deemed as the full value of consideration, thereby ring-fencing the pre-conversion appreciation as Capital Gains. However, where the conversion occurred prior to the effective date of notification, the same may be subject to tax as business income without the benefit of Section 67(6) (S. 45(2)). The holding period for determination of long-term or short-term remains unaffected, as the notification merely changes the character of the asset, and the period of holding under Section 2(101) (S. 2(42A)) continues to apply from the original date of acquisition.

H. Adventure in the Nature of Trade

Section 2(20) (S. 2(13)) defines business to include an adventure in the nature of trade. As held by the Apex Court[12], the character of a transaction must be inferred from the cumulative effect of all surrounding circumstances. Critically, it was held that an isolated, one-off transaction is not excluded from being an adventure in trade and a single transaction bearing the hallmarks of commercial exploitation may qualify. In the context of Land, following factors have been held to be probative:

(i) intention at the time of acquisition,

(ii) whether the land was developed, plotted or improved before sale,

(iii) source of funds, borrowings pointing toward trade and own funds toward investment,

(iv) frequency and volume of comparable transactions and whether they are spread across assessment years in a manner consistent with an ongoing venture,

(v) proximity in time between purchase and sale,

(vi) whether the activity falls within the assessee's ordinary line of business.

The critical distinction, in the context of Land, may also lie on the nature of activity, viz. subdivision and development. An owner who merely divides land into plots to secure a better price on an eventual sale is taking a reasonable step to realise the best value of a capital asset, which alone does not make him a trader. In contrast, an owner who obtains layout approval, undertakes development, provides infrastructure and markets individual plots was held to have engaged in an adventure in the nature of trade even though the transaction was isolated[13].

Period of holding by itself does not convert an investment into an adventure in the nature of trade, though longer holding periods have repeatedly been considered as evidence against an intention of trade. For Agricultural Land, sustained cultivation is strong evidence against an intention to trade, whereas vacant agricultural land without any cultivation and held for a favourable exit opportunity is a strong indicator of adventure in the nature of trade.

In the case of an Adventure in the nature of trade, the Land was never a capital asset at all to begin with and the entire income is subject to tax as business income. This aspect is distinct from conversion of a Capital Asset into Stock-in-trade, where the Land admittedly was considered as a Capital Asset and is later converted into business use. These aspects are not interchangeable in as much as Section 67(6) presupposes that the asset was genuinely acquired as a capital asset and thereafter expressly converted into a Stock-in-trade with affirmative actions, whereas in the case of adventure-in-trade, the asset is not considered as a Capital Asset at all, regardless its treatment or description in the books.

A taxpayer may not be able to cure a transaction of adventure-in-trade by invoking Section 67(6) and offering a portion of the gain as capital gains, as the Land was always

12. *G. Venkataswami Naidu & Co. vs. CIT (supra)* and *CIT vs. Associated Industrial Development Co. (P.) Ltd (supra).*
13. *Raja J. Rameshwar Rao vs. CIT [1961] 42 ITR 179 (SC), P. M. Mohammed Meerakhan vs. CIT [1969] 73 ITR 735 (SC), Khan Bahadur Ahmed Alladin & Sons vs. CIT [1969] 74 ITR 651 (SC).*

trading stock to begin with, and there is no Capital Asset to convert.

Conclusion

To address the four scenarios outlined at the beginning of this article:

(i) The sale of farmer's land, being a Rural Agricultural Land actually under cultivation, is not a Capital Asset at all, may not attract tax. The same land, if so introduced into a Farmland plotting business and sold, may be subject to tax in its entirety as business income.

(ii) The real estate developer acquiring the agricultural land and reclassifying the Land after conversion may be subjected to tax two-fold, i.e., as Capital Gains under Section 67(6) based on the FMV as on the date of conversion and as Business income on the excess appreciation over FMV considered for Capital Gains. The tax liability arises proportionately in each tax year upon ultimate sale of developed plots, and not upon conversion.

(iii) The businessman reclassifying the unsold units as Capital Asset may be subject to tax under Section 26(2)(j) at Fair Market Value assessed for stamp duty purposes, even though the units are not sold. Such FMV thereafter constitutes the cost of the Capital Asset for determining the gain upon its subsequent transfer.

(iv) The salaried employee undertaking a subdivision of land to secure a better realisation is a legitimate step in realising the best value of a capital asset and may be subject to tax as Capital Gains. However, subdivision accompanied by development may be chargeable to tax as business income for being an adventure in the nature of trade. Isolated character of the venture, or ongoing employment are not relevant.

Classification of land as a capital asset or stock-in-trade is a mixed question of law and fact, determined from the cumulative effect of intention, manner of acquisition, holding pattern, development activity, accounting treatment and subsequent conduct. ITA 2025 has preserved the substance of the erstwhile provisions in ITA 1961, and the jurisprudence developed on agricultural character of land, adventure in the nature of trade, and conversion of Capital Asset into Stock-in-trade and vice versa continue to hold the field. Establishing the character of the land as on each relevant date, and supporting the fair market value as on the date of conversion with contemporaneous material are evidentiary and not interpretive, hence ought to be evaluated in detail prior to the transaction.

The manner of determination of FMV for the purposes of Section 67(6) without any corresponding Rule and the position of a Rural Agricultural Land being converted for business use being subjected to stricter rigours of tax compared to an Urban Agricultural land, though appear to be unintentional, may be suitably addressed by the lawmakers in the interest of providing certainty to taxpayers and reducing ambiguities leading to prolonged litigation.

■

RIGHTS IN LAND - TAX AND VALUATION

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K Prasanna

Overview[1]

The taxation of transactions involving land has become increasingly complex with the evolution of commercial arrangements that deal not only with ownership of land but also with various proprietary interests attached to it. Rights such as leasehold interests, development rights, tenancy rights, floor space index (FSI), transferable development rights (TDR), and similar interests possess significant economic value and are frequently transferred independently of the underlying land. Their legal characterisation assumes importance in determining whether they constitute capital assets or stock-in-trade, the nature of income arising on transfer, and the applicability of deeming provisions relating to stamp duty valuation. While the statutory framework recognises such rights in several contexts, the absence of uniform legislative language has led to divergent judicial interpretations, particularly on the scope of anti-abuse provisions that substitute stamp duty value for actual consideration. The interplay between property law principles, tax legislation, and judicial precedents has consequently created considerable uncertainty in the taxation of rights in land. A clear understanding of these concepts is essential to appreciate the tax implications of modern real estate transactions and the issues that continue to generate litigation.

1. Introduction

The real estate sector plays a significant role in India's economy, contributing to its GDP. Traditionally, real estate transactions were confined to the sale of land parcels or buildings, or to joint development. Over the years, commercial arrangements increasingly involve the transfer of development rights,

While these rights possess substantial economic value, their tax treatment has often been a subject of debate because neither the Income-tax Act, 2025 ('ITA 2025') nor ITA 1961 expressly clarifies whether the term "land" includes proprietary rights for all practical purposes.

1. *This is an AI generated summary*

leasehold interests, tenancy rights, floor space index (FSI), transferable development rights ('TDR'), easements, and similar proprietary interests, rather than the outright conveyance of land. While these rights possess substantial economic value, their tax treatment has often been a subject of debate because neither the Income-tax Act, 2025 ('ITA 2025') nor ITA 1961 expressly clarifies whether the term "land" includes proprietary rights for all practical purposes. Further, different sections employ varying terminology, such as "land", "building", "immovable property", and "rights in land", which gives rise to interpretational challenges. Therefore, determining the nature of ownership, use, transferability, and the economic benefits that accrue is pivotal to understanding taxability.



2. Ownership vs. Rights

The term 'Land' in common parlance refers to the physical surface of the earth, including everything permanently attached to it. The Transfer of Property Act, 1882 ('TOPA') or the General Clauses Act, 1987 ('GCA') defines the term 'immovable property' to include land. Section 2(22) of ITA 2025 excludes 'agricultural land'[2] from the definition of 'capital asset'. The ownership of land is regarded as a 'bundle of rights' that may encompass possession, use, enjoyment, and disposition.

The Butterworth's Words and Phrases Legally Defined, 2nd Edn., Vol. 4, page 61 defines the term "Ownership" as follows:

> *"Ownership consists of innumerable rights over property, for example, the rights of exclusive enjoyment, of destruction, alteration, and alienation, and of maintaining and recovering possession of the property from all other persons. Such rights are conceived not as separately existing, but as merged in one general right of ownership*".

The theoretical concept of 'ownership', therefore, appears to be that a person can be considered the owner if he has absolute dominion over it in all respects and is capable of transferring such ownership.

In contrast, rights in land typically include the authority to possess, use, enjoy, lease, mortgage, sell, or dispose of the property. A right could be divided into the following:

2. *Rural Agricultural Land*

(a) Freehold – Absolute ownership with unrestricted rights – can do an outright transfer[3] or exchange[4];

(b) Leasehold rights[5] – Temporary right to occupy and use the land for a definite period.

(c) Other interest – Tenancy Rights, Easements, Mortgage[6], or other benefits out of land

Each of the above rights could be exploited together for commercial or personal purposes, or separately, and the nature of the right and the manner of its exercise determine the taxability of the transaction.

The ITA 2025 (even the erstwhile Act) specifically recognizes rights in land as a separate asset and some instances are tabulated below:

Sr. No.	*Section*	*Aspect dealt under the Section*	*Relevant Extracts*
1	2(109)	Immovable Property	(b) any rights in or with respect to any land or any building or a part of a building……
2	84(1)	Compulsory acquisition of land and buildings	capital gains arising from the transfer by way of compulsory acquisition under any law, of a capital asset being land or building or any right in land or building, forming part of an industrial undertaking belonging to him….
3	87(1)(a)	Shifting of Industrial Area from Urban Area	…capital gains arising from the transfer of a capital asset, being machinery or plant or building or land or any rights in building or land …….
4	88(1)(a)	Shifting of Industrial Area from Urban Area to Special Economic Zone	…capital gains arising from the transfer of a capital asset, being machinery or plant or building or land or any rights in building or land …….
5	164(1)(b)	International Transactions	The purchase, sale, transfer, lease or use of intangible property including the transfer of ownership or the provision of use of rights regarding land use,…

3. *Sections 54–57 of TOPA*
4. *Sections 118–121 of TOPA*
5. *Sections 105–117 of TOPA; The lease should be distinguished from the term 'License' defined under Section 52 of the Easements Act, 1882, as the latter does not create any rights in property. The difference between the terms was provided by the Apex Court in Associated Hotels of India Ltd. vs. R.N. Kapoor (1960) 1 SCR 368*
6. *Sections 58–104 of TOPA*

3. Rights in land – Whether a capital asset or not?

The term capital asset is defined under Section 2(22) of ITA 2025 as "property of any kind as held by an assessee" and also provides for certain inclusions and exclusions from the asset. The Apex Court in ***Ahmed G.H. Ariff vs. CWT***[7] has held that 'Property' is a term of the widest import and, subject to any limitation which the context may require, **it signifies every possible interest which a person can clearly hold or enjoy**. The term 'held by the assessee' as against 'owned' and the dictionary meaning of 'held' is to possess or be the owner, holder, or tenant of a property, stock, land, etc. The term 'held' signifies physical, actual, constructive, and symbolic possession of property of any kind[8] and not confined to absolute ownership of land but also to any rights associated with it. Therefore, it is not possible to read the definition of 'capital asset' in a restrictive manner to mean that the property which the assessee owned by himself alone would come within the meaning of 'capital asset'[9].

The term 'transfer' under Section 2(109) includes in its ambit the extinguishment of any rights covered under Section 2(109) of ITA 2025. Further, in the context of 'immovable property' used in clause (f) and (g) to Section 2(109), the expression also includes a right in or with respect of land.

Transactions are often intertwined and lack clear demarcation, making it difficult to conclusively determine whether an asset is held as a capital asset or as stock-in-trade.

One of the exceptions to capital assets is "stock in trade" ('SIT'), and the income from SIT is taxable as business income. The SIT refers to '*all those goods or commodities in which the particular individual deals in the sense of buying and selling in the course of his business activity, and it cannot be said to include a commodity which is acquired for the purpose of being let to hire*'[10]. The distinction is selling outright in the course of business activity vs. exploitation of one's assets[11].

While the statutory definition appears straightforward, its application in practice is far more complex. Transactions are often intertwined and lack clear demarcation, making it difficult to conclusively determine whether an asset is held as a capital asset or as stock-in-trade. There are several instances in which an asset falls into the same class as stock in trade or a capital asset.

The Supreme Court in ***Raja J. Rameshwar Rao***[12] held that where a person, after purchasing land, divides the land into plots, develops the area to make it more attractive and sells the land, not as a single unit as he bought it, but in parcels, he is dealing with land as his stock-in-trade; he is carrying on business and making a profit. In ***Janki Ram Bahadur Ram***[13], the transaction of purchase

7. *[1970] 76 ITR 471 (SC) – in the context of wealth tax*
8. *CIT vs. All India Tea & Trading Co Ltd (1979) 117 ITR 525 (Cal)*
9. *CIT vs. Sujatha Jewellers [2007] 290 ITR 631 (Madras)*
10. *Extracted from Sampath Iyengar's Law of Income Tax – 13th Edition – Pg No. 648; Also Refer to FN 11*
11. *Mohmed & Co (H) vs. CIT (1977) 107 ITR 637 (Guj)*
12. *[1961] 42 ITR 179*
13. *[1965] 57 ITR 21*

of land cannot be assumed without more to be a venture in the nature of trade. However, the magnitude of the transaction of purchase, the nature of the commodity, the subsequent dealings and the manner of disposal may be such that the transaction may be stamped with the character of a trading venture. In ***G. Venkataswamy Naidu & Co.***[14], the Court framed certain factors for determination and they summarized as follows:

(i) Nature of commodity purchased;

(ii) Quantum of purchase;

(iii) Whether it is subject matter of trade;

(iv) Any improvement to quality post-purchase;

(v) Incident associated with purchase and sale; and

(vi) Whether these transactions are repeated.

The Central Board of Direct Taxes ('CBDT') through instructions[15] and circulars[16] prescribed a few parameters to distinguish between shares held as capital assets vs stock in trade. Although these instructions were issued in the context of shares, the **Madras High Court** in ***Gwl Properties Ltd***[17] applied the parameters to determine the nature of assets held by the Assessee as capital asset.

In essence, no single fact can be taken as a decisive rule for determining the character of the transaction. The cumulative effect of all the facts and circumstances must be taken into consideration.

4. Judicial precedents on certain rights – Capital Asset or Not

Over the years, courts/tribunals have considered transactions involving various forms of rights in land and ruled on their characterization. The nature of rights and how the courts have dealt with them is tabulated below (illustrative list):

Sr. No.	*Nature of Right*	*Judicial Precedents*
1	Leasehold Rights	**Sujatha Jewellers (Supra)** – Lease creates interest in land, and by sub-lease, the transferor extinguishes his right **Asian PPG Industries Ltd**[18] - Plot allotted under long-term lease by MIDC involves rights in land, and its surrender results in capital gains/loss

14. [1959] 35 ITR 594
15. Instruction No. 1827 dated August 31, 1989
16. Circular No. 4 of 2007 dated June 15, 2007
17. [2026] 183 taxmann.com 26 (Mad)
18. [2010] 38 SOT 114 (Mumbai)

Sr. No.	*Nature of Right*	*Judicial Precedents*
2	Development Rights	**Mrs Sherlyn Dias**[19] – Development rights in immovable property are valuable rights and form part of the bundle of rights attached to ownership of property. Such rights constitute "property" and a "capital asset" **Abdul Kayum Ahmed Mohd. Tamboli**[20] - A Civil contractor transferred property rights to builder, which will be a business asset.
3	Tenancy Rights	**Shiv Charan Singh**[21] – Delhi High Court observed that lease of immovable property is a transfer of the right to enjoy such property. Transfer of such tenancy right is a capital asset. **Varun Jaisingh Asher**[22] - Tenancy rights constitute a capital asset within the meaning of section 2(14) of the Act and the surrender thereof amounts to a transfer under section 2(47) of the Act.
4	Floor Space Index	**Jai Trikanand Rao**[23] – The Tribunal held that the developer had the right to sell the said flats on account of the additional FSI by virtue of loading TDR. To that extent the rights, title and interest in the said plot of land have been transferred. Hence, it is a clear case of transfer envisaged both under Capital Gains and Transfer of Property Act. **RDC Ventures**[24] - The Tribunal held that expenditure in relation to TDR is revenue in nature as FSI is related to land and buildings forming part of stock in trade of business.

5. Relevance of Stamp Duty Valuation for Income-tax purposes

Under the ITA 2025 as well as the erstwhile law, certain deeming fictions were introduced to determine the full value consideration ('FVC') of specified assets in certain circumstances. The provisions were introduced as an anti-abuse measure to discourage tax avoidance through undervaluation of immovable property transactions and to align the taxable consideration with the value adopted for stamp duty purposes ('SDV'). These

19. *[2026] 187 taxmann.com 560 (Mumbai - Trib.)*
20. *[2020] 82 ITR(T) 419 (Mumbai - Trib.)*
21. *[1984] 149 ITR 29 (Delhi)*
22. *[2026] 184 taxmann.com 174 (Mumbai - Trib.)*
23. *[2014] 41 taxmann.com 453 (Mumbai - Trib.)*
24. *[2024] 159 taxmann.com 395 (Mumbai - Trib.)*

provisions are contained in sections 78 and 53 of the Income-tax Act, 2025[25].

Both the above provisions deal with transfer relating to land or building or both and provide substitution of SDV as FVC, if the actual consideration is less than SDV. The controversy concerns whether these deeming fictions apply only to land or to buildings, or to both, and whether they extend to rights in land.

The issue first came up before the **Mumbai ITAT** in ***Atul G Putnik***[26], wherein the ITAT had observed that Section 50C was a deeming provision and it cannot be extended beyond its scope[27]. The Section provides for substitution of SDV as FVC only in case of a capital asset being land or building or both. The lease right in a plot cannot be regarded as a 'land or building'. The provisions of the act recognised rights in land (Section 54G of ITA 1961)[28] vs land as a distinct capital asset. The Tribunal finally concluded that section 50C applies only to a capital asset, being land or building or both; it cannot be made applicable to lease rights in land.

In ***Greenfield Hotels & Estates (P) Ltd***[29], the **Bombay High Court**, while dealing with question of law concerning the applicability of Section 50C of ITA 1961 to leasehold right, observed that when the revenue had not challenged the earlier ITAT order in Atul G Putnik (supra), then the subsequent ITAT order, which was decided based on Atul G Putnik, cannot be challenged unless distinguishing facts are brought on record.

The **Karnataka High Court** in ***V.S. Chandrashekar***[30] has observed that Section 50C uses the term 'land' as compared to Section 2(47) which uses the term immovable property. The legislature intends to extend the meaning of certain terms to include rights in land; it has explicitly made so. From clear and unambiguous language of Section 50C, it is clear that it cannot be extended to rights in land.

The **Bombay High Court** in ***Vidarbha Veneere Industries***[31] observed that Section 50C of ITA 1961 uses the term capital asset, being land or building or both. Hence, the term 'capital asset' as defined in Section 2(14) of ITA 1961 has to be understood in the context of Section 50C. Since the definition of capital asset includes interest, Section 50C applies to leasehold property. The High Court distinguished ***Atul G Putnik (supra)*** by stating that it did not address the effect of importing section 2(14) or Section 50C; hence, it was not good law. While the Court imported the capital asset definition into Section 50C, with due respect, it failed to consider the phrase 'being land or building or both', which specifically refers to the present state of an asset, i.e., land or building or both. Hence, I am of the view that land or building or both

25. *Corresponding to sections 50C and 43CA of ITA 1961 respectively*
26. *[2011] 11 taxmann.com 92 (Mumbai)*
27. *CIT vs. Ace Builders (P.) Ltd. [2006] 281 ITR 210 (Bom.) approved in*
28. *Also referred to Section 5(1)(xxxii) of Wealth-tax Act, 1957*
29. *[2016] 389 ITR 68 (Bombay)*
30. *[2021] 129 taxmann.com 273 (Karnataka)*
31. *[2026] 484 ITR 132 (Bombay) – The ITAT dismissed the miscellaneous application by stating that Grounds of Appeal did not challenged the applicability of Section 50C to leasehold rights.*

referred to in Section 50C of ITA 1961 does not include interest in land. The **Mumbai ITA**T in ***Vanraj Ranchhoddas Merchant***[32] held that Section 50C is not applicable for assignment of life interest in a trust. Further, the ITAT distinguished the Vidarbha Veneere ruling (supra) as the transaction was confined to a life interest under a trust and could not take the character of a transfer of land or a building.

The **Delhi ITAT** in ***Rajiv Kumar Sharma***[33] and ***Neha Gupta***[34], due to conflicting decisions of non-jurisdictional High Courts, applied the principles of **Vegetable Products**[35] and followed the view favourable to the assessee. Despite divergent rulings, Vidarbha Veneere (Supra) was followed by the **Amritsar ITAT** in ***Nasa Agro Industries***[36].

6. Conclusion

Rights in land constitute distinct proprietary interests that form part of the broader bundle of rights associated with immovable property. Although these rights originate in land, they can exist and be transferred independently of ownership of the land itself. The characterisation of the income arising from the right depends on the manner of exploitation of such right and the circumstances surrounding it. The same class of rights may therefore constitute either a capital asset or stock-in-trade depending on the factual matrix.

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The Income-tax Act, 2025 recognises this distinction by expressly referring, in several provisions, to "rights in land" as a category separate from "land" or "building". This legislative distinction is significant when interpreting provisions that use only the expression "land or building", particularly the anti-abuse provisions relating to SDV. The divergent judicial views on whether such provisions extend to transfers of rights in land have resulted in considerable uncertainty and avoidable litigation. Until the controversy is settled, taxpayers and the Revenue are likely to continue adopting conflicting positions, further adding to existing disputes.

32. *[2026] 182 taxmann.com 18 (Mumbai - Trib.)*
33. *[ITA No. 1785(Del) of 2025, dated 29-9-2025] – in the context of Section 56(2)(vii) of ITA 1961*
34. *[2025] 179 taxmann.com 567 (Delhi - Trib.)*
35. *[1973] 88 ITR 192 (SC)*
36. *[2026] 186 taxmann.com 289 (Amritsar - Trib.)*

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JOINT DEVELOPMENT AGREEMENTS (JDA)



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Kishor Phadke

Overview

The taxation of Joint Development Agreements ("JDAs") under the head "Capital Gains" has witnessed significant legislative and judicial evolution. Section 45(5A) was introduced in ITA, 1961 to remove 'hardships' suffered by assesses at large. The 'hardships' so assumed by Legislature, to a great extent, stand diluted over a period of time. But, since, 'hardship' was envisaged by Legislature, it will deserve it's logical conclusion. Situation may lead to domain of separate challenges. Present article is oriented towards complexities arising from these two streams, first stream being clarifications coming from through reasoned court decisions, and another stream being, mandate aired by Legislature. Situation of joining of the two streams would certainly be welcome. But situation of mismatch may lead to separate challenges.

"JDA", being a matter pertaining to real estate, many-fold views exist on involved issues. The present write-up is only an attempt to summarise some of the key issues and related background. The present topic of "JDA" is being discussed herein through the following four parts:

I. Situation prior to 45(5A)

II. 45(5A) introduced

III. Situation evolved … and evolving ..

IV. Situation post 45(5A)

I. Situation prior to 45(5A)

The field of taxation of real estate transactions under the "Capital Gains" head has been vexed with many controversies. The tussle between the taxpayer for postponing/ delaying and reducing the tax liability as against the zeal of revenue for fetching the tax revenue early and increasingly, has been ongoing for decades. Further, real estate taxation is based on various regulatory laws like TPA, Registration Act, and so on. Principles emerging therefrom have a dent on tax situations. Due to the acute meaning of "transfer" under the TPA, many situations existed wherein taxpayers were postponing/denying tax dues by delaying legal conveyance. Serious amendments were made in the year 1987, and section 2(47) was amended to include two new trigger points of taxation, first being "possession" under sub-clause (v) and second being "enjoyment rights" under sub-clause (vi) thereto.

As expected, situations arose where taxation started taking place at the point of granting "Power-of-attorney" or "Development

Agreement" or "Agreement to sale", provided, conditions of sub-section (v) and/or (vi) were getting satisfied. Matters became complex after decisions in the case of

a) ***Chaturbhuj Dwarkadas Kapadia vs. CIT [260 ITR 491(Bom.)]***

b) ***Dr T.K. Dayalu vs. CIT [202 Taxman 531 (Karnataka)]***

c) ***Smt. Prameela Krishna vs. ITO [221 Taxman 485 (Karnataka)]***

A reverse stream of challenges started flowing. Typically, Developers/Builders pay the consideration to land-lords in a staged manner over years, either in "funds" or in "constructed area". Difficulty of paying the taxes at the point of extending "possession" or "extending rights" was becoming a complicated issue.

II. 45(5A) introduced

1. From the Explanatory Memorandum of the year 2017 and from the "SOP" issued by CBDT, the following hardship was sought to be removed by insertion of section 45(5A).

   Triggering of tax liability in year of extending "possession"/extending "rights", despite non-transfer of legal title

   Facing tax liability even if, share of developed area/monetary consideration is not received

2. Close reading of sec. 45(5A) reveals the following characteristics/conditions -

   a) This section is only for "individuals" and "HUF"

   b) There must exist a "capital asset"

   c) The capital asset ought to be in the form of "land" or "building" or both

   d) There must exist a specified agreement (registered), popularly known as "JDA"

   e) Transfer of capital asset must take place

   f) Capital gains must arise

   g) Capital gain is chargeable on the date of getting completion certificate

   h) Stamp duty value of assessee's area (along with funds) becomes "consideration

3. Section 45(5A) starts with a non-obstante clause. Hence, it applies in all such cases where the conditions above are fulfilled.

4. Close reading of the features of section 45(5A), when matched with reality, poses some newer challenges. In some cases, the interpretation may lean in favour of assesses and in other cases, against.

5. Things become more vexed due to varying factors of each real estate deal. Hence, it is a situation, perhaps next to impossible, for anybody to lay down any "gospels" in this regard.

III. Situation evolved .... and evolving ...

6. After the pronouncements of the stiff ratios in case of Chaturbhuj and Dayalu, many similar situations occurred. There arose a fear psychosis that, extending "possession" or extending "rights" w.r.t. property, will lead to invoking of tax liability at once. Fall-outs adverse to

There arose a fear psychosis that, extending "possession" or extending "rights" w.r.t. property, will lead to invoking of tax liability at once. Fall-outs adverse to reality started emerging.

reality started emerging. The arisal of tax liability on (say) day-1 as against the futuristic period of realisation of consideration was felt as a severe pinch to many. As such, Landlords started extending a mere "license" to enter into the property to carry out development .. and so on, without extending "possession". This resulted in nullifying many assessments taking place merely on factum of extending "possession". Landmark cases in this regard are –

a) ***DCIT vs. Darshana Anand Damle [469 ITR 27 (SC)]***

b) ***Bharat J Patel vs. CIT [149 Taxmann.com 290 (Bom)]***

c) ***Balasaheb Popatrao Phadol vs. ITO [173 taxmann.com 589 (Pune - Trib.)]***

7. Further, cases started arising wherein, despite extending (say) "possession" or despite extending (say) "enjoyment rights", the Developer does not perform as per conditions of the contract; resulting in uncertainty of getting consideration. This too resulted in nullifying many assessments based on early trigger points of extending "possession"/"rights"-

a) ***CIT vs. Balbir Singh Maini [398 ITR 531 (SC)]***

b) ***S. Ranjith Reddy vs. DCIT Circle -6(1), Hyderabad [144 ITD 461 (Hyd - Trib.)***

c) ***CIT vs. Vijaya Production (P) Ltd – 186 taxmann.com 297 (Mad)***

d) ***CIT vs. Shivsagar Estates (AOP) 204 ITR 1 (Bombay)***

8. Further, the true meaning of "possession" and "enjoyment rights" became a matter of large-scale dispute. On its own peculiar facts, the apex court, in the case of "***Seshashayee Steel Pvt Ltd vs. ACIT***" held that, despite extending "possession" at an earlier date, no taxation was triggered. On the contrary, the apt date of taxation was linked to a much later date in the said case, wherein, under a compromise deed, full payment was ensured, and on the payment of the last cheque therein, the transfer for tax purposes was concluded.

a) ***Seshasayee Steels Pvt Ltd vs. ACIT [421 ITR 46 (SC)]***

b) ***Smt. Shantha Vidyasagar Annam vs. ITO [170 taxmann.com 754 (TELANGANA)]***

9. In number of cases, the consideration arising from transfer of capital asset remains futuristic, depending upon some conditions/performances, etc. In such cases, despite "transfer" of the capital asset taking place at an anterior point, the taxability was held as "apt" in future years. Leading cases in this regard are –

a) ***CIT 8, Mumbai vs. Chemosyn Ltd [371 ITR 427 (Bombay)]***

b) ***ITO 21(1)(2), Mumbai vs. Ms Indira R. Shete [138 ITD 264 (Mumbai-Trib)]***

c) ***CIT vs. Smt. Najoo Dara Deboo [38 taxmann.com 258 (Allahabad)]***

10. In the landmark decision in case of ***CIT vs. Chemosyn (supra)***, the Honorable Bombay High Court observed as under



Grievance of the revenue is that the decision of this Court in **Chaturbhuj Dwarkadas Kapadia of Bombay (supra)** *should apply to the present facts. As pointed out by the Tribunal, the issue before the Court in the above case was to determine the year in which the property was transferred for the purpose of capital gains. In this case the issue is what is the consideration received for the transfer of an asset. Thus, reliance upon* **Chaturbhuj Dwarkadas Kapadia of Bombay (supra)** *does not assist the revenue.*

As such, blanket rule/belief of taxpayers that, upon "transfer" of (say) land, capital gain was arising ipso facto, was getting watered down.

11. While all such developments were taking place, section 45(5A) came on statute. As such, one has to live with the judicial development as well as statutory developments.

IV. Situation post 45(5A)

12. When conditions of section 45(5A) are tested on the evolved legal position, some new challenges erupt. Following are some of them.

a. ***Retrospectivity*** – An issue arises, whether, 45(5A) will apply retrospectively/retroactively. One view is, no such retrospectivity is stated in section per se or in the explanatory memorandum. Other view, as per stated object, is that, the said section is for 'hardship removal', hence, ought to be retrospective. One will have to wait and watch for the legal developments on this point, since, at present, courts are divided on this issue. Perhaps, better view is, retrospectivity should be upheld only in cases of genuine difficulties faced by assesses, and not otherwise.

b. ***En-masse application/Title of "JDA" not decisive*** – There exists a popular belief that, every JDA falls u/s 45(5A) after 1/4/2017. It is felt, only when, essential conditions thereto are satisfied, this section could trigger. For example, if "possession" is not extended but only a "license" is extended, Section ought not to get invoked. Similarly, if "transfer" is to happen after getting the completion certificate of the constructed area, again, per se, Section 45(5A) does not get triggered. If consideration is not in plausible foresight due to non-performance, again, section

should not trigger… and so on. At times, JDAs are entered into, wherein, mere license to construct, etc. is given without any extension of "legal possession". Literal reading of section 45(5A) reveals that, for triggering 45(5A), condition of "transfer" must be fulfilled. Hence, despite the title of such documents being "DA" or a "JDA", same will not, ipso facto, trigger section 45(5A).

c. ***Capital assets other than "land"/"building"*** – As per express wording, only these two capital assets are covered in the section. As a sequel, parties may argue not to include (say) lease rights/ development rights/tenancy rights in arena of section 45(5A). Perhaps, the answer lies in 'similar issue' pending before various courts, as regards scope of section 50-C/43CA. Arguments could still exist that, Section 50-C/43CA is punitive as against, Section 45(5A) being a hardship removal section, deserving different interpretations. Time will address this issue.

d. ***Sale-deed cases*** – In many cases, Sale-deed is executed (total conveyance) and, consideration gets decided as extension/handing over of "area" to be constructed. Issue arises, whether, even a Sale-deed gets covered u/s 45(5A). One may argue that, getting constructed area in future, is, a hardship by itself as regards paying taxes on date of Sale-deed. A literal reading tilts in favour of coverage u/s 45(5A).

e. ***Should date of "transfer" be forwarded*** – A cohesive reading of section 45(5A) along with section 54/54F/54EC tells us that, the requisite investments in eligible new assets is to be ensured within a prescribed period stated in each of these sections. Now, the same issue of "hardship" becomes relevant herein, i.e. one can't invest in new assets without getting the consideration. It may be argued that, date of transfer should also be aligned (on principle of equitable construction) with the date of completion certificate. Principle emerging from the case of ***CIT vs. Manjula Shah 355 ITR 474 (Bom)*** could be relevant here. Else, the assured exemptions will become meaningless leading to doctrine of impossibility. And if the date of transfer gets so forwarded, claim of indexation till such forwarded date of deemed transfer may also follow as a sequel. Other view could be that, remedy lies with "Legislature" and not in it's interpretation. One has to await appropriate court view in this regard as well.

f. ***Consideration of area allotment*** – There are two broad methods in which, constructed areas are allotted to landlords. Method-1 is that, entire land/building is extended to Developer for getting constructed area/tenements. Method-2 is that, only net area (after removing retained area) is extended to Developer for getting constructed super-structure. In Method-1 (i.e. GROSS deal), the stamp duty value of the constructed area (including land value) becomes consideration. In Method-2 (i.e. NET deal), stamp duty value of the super-structure becomes the consideration. The

two Methods can lead to large differences in capital gains working. Risks and opportunities exist in computation under these two Methods. One has to be careful of wording deployed in the JDAs.

g. ***Option of DVO does not exist*** – Typically, in all real estate deals where, stamp duty value is to prevail over agreed consideration, an option of reference to DVO is extended. Same is missing in mechanism of Section 45(5A).

h. ***Invoking of proviso to Section 45(5A) prior to C-C*** - In many (almost all) situations, landlords start selling some few of the tenements decided to be allotted to the landlord even before getting the C-C. issue arises, whether, such part allotment sale leads to inking of the proviso to Section 45(5A). In other words, whether benefit of forwarding entire capital gain from (say) "transfer" of land/ building gets taxed if few of the entitlements are sold at an earlier stage. Strong views, in favour of this proposition, and against too, exist. Wording of the proviso is not very clear either way. Better view could be, that, difference exists between right to get a "share" from JDA, as against, results of such a right. Getting a percentage/fixed area is akin to a right to get "share" from JDA, whereas, tenements per se, is result/effect of such right. Right of getting a share is (say) a tree, whereas, tenements could be fruits of such tree. If so interpreted, the proviso of section 45(5A) ought not to trigger for transfer of few tenements before getting a C-C. And in such a case, taxation will be confined to the extent of tenements transferred at an early date, as against entire share in JDA. Considering far- reaching real life situations in this regard, better view and clarity will be emerge after getting speaking court decisions on this point.

i. ***Cost of tenements, if sold by landlord prior to getting C-C*** – Taking the above point forward, a corollary issue arises as well as regards cost of such tenement sold by landlord prior to the C-C date. As per scheme of section 45(5A) read with 49(7), SDV on date of C-C is to be "consideration" of the new tenement at one hand, and, is to be cost of such new tenements on the other hand. Before conclusion of this crucial step, at an anterior point of time, futuristic rights in tenements are sold by landlords. Now, whether, one should forward the event of sale of such futuristic tenements, to the date of C-C, or, treat these two events as two separate transactions, is troublesome issue. In the later case, difficulty arises in ascertaining SDV value (and correspondingly, "cost" of the tenement) of such futuristic event. Better view could be, to make "best estimate", based on registration document of the JDA and, discharge tax liability in first place; and then; to correct the working once C-C takes place.

j. ***Cost of new tenements in hands of landlord*** – Cost of new tenements is to be decided as per provisions of section 49(7) of ITA, 1961. The said section provides that, full

value of consideration deemed u/s 45(5A) will be cost of the new tenements. This mechanism u/s 49(7) appears to be getting invoked in all cases, where, capital gain arises from transfer of land/ building as so referred to in section 45(5A). Consider a case of some "JDA" wherein, legal possession gets extended in May-2015, and, completion certificate is issued in May-2019. Let us also assume that, in such a case, the assessee has offered his tax in AY 2016-17 for (say) ₹ 5 CR, relying on **Chaturbhuj Kapadia case (supra)**. Section 49(7) says, all situations referred to in section 45(5A). Now, section 49(7) does not confine/restrict the mechanism herein for situations/ assessments taking place u/s 45(5A). Distinction exists between the two sets of wordings i.e. a mere "referred to" at one hand, and "subjected to taxation" u/s 45(5A) on the other hand. As such, an aggressive view may be taken to claim SDV on the C-C date (say) ₹ 7 CR, as cost of the new tenements by claiming satisfaction of the words "referred to" in section 49(7). Such a view is plausible on literal construction, though it remains against the first principles of denial of undue/unjust claims.

k. ***Non-grant of possession even after C-C*** – Some interesting issues arise, wherein, owing to diverse situations, Developers refrain from allotting the tenements to landlords. Now, despite the C-C being granted, the "consideration" is not fetched by landlords in such cases. Such cases lead to the same hardship as was so sought to be removed by the Legislature. Perhaps, one may argue that, consideration did not "arise" in such cases, due to which, section 45(5A) does not hold the field. As per various court decisions, the term "arise" ought to be such point of time, when, the other party is willing to extend the consideration to the first party.

l. ***Cases of assesses other than individual/HUF*** – Section 45(5A) expressly denies this new regime to assesses other than individuals and HUFs. Such assesses ought to make out their claims of apt taxation by considering the evolved law on the point, rather than, considering their cases as "left-outs". With the evolved law, a fair taxation of capital gains, aligning with realistic exchange of "possession"/"enjoyment rights" as against consideration received or near the point of receipt (on deeper meaning of the term "arisal" as against "accrual") is certainly available to such assesses.

m. ***New ITA 2025 situations*** – On a comparison of section 45(5A) of the ITA, 1961 with section 67(14) of ITA, 2025, situation of any major "change" is not apparent. Similar is the case of section 49(7) of ITA, 1961 with Entry 20 of Section 73(1) of the ITA, 2025.

Conclusion

As stated in opening para, the true/real/ rationale interpretation of Section 45(5A) is yet to emerge. One has to wait and expect the courts to address the anxieties so that, quietus prevails at end.

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TENANTS AND TAX ISSUES

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Sailee Gujarathi

Overview

This article, referenced to the Income-tax Act, 2025, examines the direct-tax treatment of the surrender of tenancy rights for obtaining ownership property by tenants in the process of redevelopment of buildings. The aspects of capital asset nature, its surrender being a taxable transfer, how cost of acquisition, full value of consideration, year of taxability and reinvestment relief under a PAAA are determined, and when deeming provisions apply. It further analyses the taxability of the various monetary receipts, drawing on recent tribunal and High Court rulings.

1. Introduction

1.1 There is an old joke in the by-lanes of South Mumbai that the surest way to own a flat in the island city was never to buy one, but to rent one in 1955 and simply outlive the building.

1.2 Redevelopment of old and dilapidated buildings is today a pan-India phenomenon. Mumbai alone holds a housing society redevelopment pipeline valued at more than ₹ 1.5 lakh crore currently.

1.3 In many of these cases, the occupant is not an owner but a tenant. Tenancy is a peculiar and valuable right which found its origin in the colonial era enacted through various laws in different parts of the country. In a nutshell, these rights arose either through long term lease contracts, from historical goodwill, heavy upfront payments, or continuous occupancy recognised by rent control laws.

1.4 On redevelopment, the tenant surrenders these tenancy rights and, in return, receives an ownership property usually accompanied by a set of monetary receipts — hardship compensation, corpus, rent/transit compensation, shifting charges and the like.

1.5 In this manner a tenancy is converted into ownership. This article examines the direct-tax treatment of that conversion and of the various receipts in the hands of the tenant. The instrument used is generally the Permanent Alternate

Accommodation Agreement ("PAAA") or its local equivalent.

The current article is drafted with reference to provisions of Income-tax Act, 2025 (referred as 'Act'). The corresponding provisions of the erstwhile Income-tax Act, 1961 are referred at '1961 Act' or 'erstwhile section', as required.

A tenancy right conferring exclusive possession, protection against eviction, heritability and transferability satisfies the characteristics of a property owing to the broad nature of the definition of 'capital asset'.

A) TAXATION ON CONVERSION OF TENANCY RIGHTS

2. Tenancy right as a "capital asset" and its surrender as a "transfer"

2.1 As per section 2(22)(a) of the Act, "*capital asset means property of any kind held by an assessee, whether or not connected with his business or profession……*"

2.2 A tenancy right conferring exclusive possession, protection against eviction, heritability and transferability satisfies the characteristics of a property owing to the broad nature of the definition of 'capital asset'. This is further supported by express reference to tenancy as one of the categories of capital asset in section 90(3) of the Act which deals with cost of acquisition of various capital assets.

2.3 As per the provisions of Section 2(109) of the Act, transfer inter alia includes sale, exchange, or relinquishment of an asset or extinguishment of any rights therein. Therefore, the surrender of tenancy rights in the process of obtaining ownership rights should result in transfer.

2.4 Various judicial precedents have as a general proposition recognised tenancy rights as capital asset and held that the surrender of tenancy rights constitutes a transfer for the purposes of the Act- ***CIT vs. D.P. Sandu Bros. Chembur (P.) Ltd. [2005] 273 ITR 1(SC***).

2.5 It may, however, be noted that a contrary view has also found expression in certain decisions. In ***CIT vs. Mrs. Shirinbai P. Pundole [1981] 129 ITR 448 (Bombay)***, the Hon'ble High Court appears to have proceeded on the footing that the conversion of tenancy rights into ownership rights did not amount to a transfer. Although this line of reasoning appears to be relatively less prominent in the jurisprudence and the decision does not elaborate the underlying rationale in detail, it is indicative of the existence of a contrary judicial approach.

3. Cost of acquisition, indexation and period of holding

3.1 As per the provisions of Section 90(3) of the Act, the cost of acquisition of tenancy rights shall be nil, if the same was not acquired by incurring any specific monetary cost (either by the current owner or the earlier owner).

3.2 The above provision of law (section 55(2)(a) of 1961 Act) was introduced after the celebrated decision in the case of ***CIT vs. B.C. Srinivasa Setty (1981) 128 ITR 294 (SC)*** – In this case, it was held that where an asset has no ascertainable cost,

the computation machinery fails and the charge fails with it. Based on such reasoning, pre-1995 tenancy surrenders escaped tax despite being a capital asset and a taxable transfer (Ref - ***D.P. Sandu Bros. Chembur (P.) Ltd. (supra)***).

3.3 Thus, three consequences follow: (a) a self-generated tenancy has nil cost, so the entire consideration is the gain; (b) a tenant who genuinely paid a premium to acquire the tenancy retains that price as cost, and is taxed only on the true appreciation, provided the payment is documented; and (c) a tenant who inherited the tenancy takes the previous owner's cost as per section 73 of the Act, which may itself be nil, but is entitled to include the previous owner's period of holding— frequently the very fact that makes the gain long-term.

3.4 The benefit of indexation and substitution of fair market value as on 1 April 2001 is available in relation to an existent cost of acquisition as per section 72 and 90(9) of the Act respectively. No such benefit will be available if the cost is nil as per point 3.2(a) above.



4. Full value of consideration

4.1 In typical cases, the tenants receive an immovable property in exchange/ in consideration for surrender of the tenancy rights. In such cases, the full value of consideration is not prescribed under the provisions of the law and should be regarded as the fair market value of the immovable property with ownership rights received by the tenant.

4.2 If the consideration received or accruing as a result of the transfer of a capital asset is not ascertainable or cannot be determined, Section 80 of the Act provides that the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration.

4.3 In practical situations, the stamp duty value on the execution of PAAA is regarded as the full value of consideration on the date of its execution.

5. Year of taxability

5.1 As per section 67(1) of the Act, capital gains are charged to tax in the year of transfer. There is no specific date for transfer of tenancy rights prescribed under section 67(1) of the 2025 Act. Based on judicial precedents, transfer should be regarded to have happened in the year in which the rights in the property are legally and effectively relinquished/extinguished by the tenant and actual control or possession of the premises is transferred.

While in most cases, the date of execution and registration of the PAAA would be regarded as the date of transfer, the clauses of the agreement and actual conduct of the parties are required to be evaluated to ascertain the date of transfer.

5.2 For a tenant, multiple dates arise in the event of surrender of tenancy – execution/registration of the PAAA and surrender; handing over of possession; and receipt of the new flat, etc.

5.3 Different points of transfer have been upheld by different judicial precedents based on different facts, illustratively as below:

(a) In ***Chaturbhuj Dwarkadas Kapadia vs. CIT (2003) 260 ITR 491 (Bom.)*** the transfer was regarded as the point at which the developer, under an irrevocable arrangement, obtains complete control.

(b) However, ***CIT vs. Balbir Singh Maini (2017) 398 ITR 531 (SC)*** held that there is no "transfer" where the arrangement is unregistered and permissions are pending.

(c) In ***Jigar Sevantilal Shah vs. Income-tax Officer [2026] 185 taxmann.com*** 818, it was held that where tripartite redevelopment agreement expressly provided tenancy rights would remain with assessee until alternate accommodation property was handed, no transfer or surrender occurred until possession handover.

(d) In ***Megji Mathradas vs. JCIT [2000] 75 ITD 52 (Mum.)***, the date of transfer for surrender of tenancy rights was linked to phase-wise payments and possession.

(e) In ***Mrs. Aarti Sanjay Kadam vs. ITO [2018] 172 ITD 362 (Mum.)***, it was held that capital gains on transfer of land shall be chargeable to tax only in the year of receipt of consideration.

As can be seen from above, there is no universal yardstick to determining the date of transfer. While in most cases, the date of execution and registration of the PAAA would be regarded as the date of transfer, the clauses of the agreement and actual conduct of the parties are required to be evaluated to ascertain the date of transfer.

5.4 As per section 67(14) r.w.s 67(15) of the Act, which are applicable for redevelopment projects, the capital gain is taxable in the year in which the certificate of completion of the project is issued by the competent authority. However, as per definition of 'specified agreement' in section 67(15) of the Act, the provisions apply to persons 'owning' land or building. Since, the tenants are not owners of the land/building, provisions of section 67(14)/67(15) should not be applicable to transfer of tenancy rights. Therefore, the benefit of deferral of capital gains tax to the year of completion should not be available to the tenants.

6. Availability of reinvestment benefits

6.1 The benefit of exemption for reinvestment of the net consideration

is available under section 86 of the Act [erstwhile section 54F], where the transfer relates to a long-term capital asset other than a residential house, subject to other statutory conditions. Accordingly, capital gains arising from the surrender of tenancy rights in exchange for a flat allotted under a PAAA, without any separate monetary consideration, should qualify for such exemption, with the flat so allotted being regarded as the reinvestment. This position has been upheld in recent rulings reiterating the same principle.

(a) ***Anant Ramchandra Dhotre vs. ITO [2026] 187 taxmann.com 867 (Mumbai);*** and

(b) ***Vasant Nagorao Barabde vs. DCIT [2025] 174 taxmann.com 1015 (Mumbai)***

6.2 A particularly useful point from recent decisions is that the exemption should not be denied merely because the claim was not made in the original return, if the facts otherwise justify the relief and the assessee has in substance complied with the conditions. This provides a strong remedial principle for pending assessments and appeals. This position has been upheld in various judicial precedents including recent decision in the case of ***M/s Dollar Chunilal Modi HUF vs. ITO (ITA No. 7189/Mum/2025)***.

7. Consideration deemed as stamp duty value

7.1 As per section 78 of the Act [erstwhile section 50C], the stamp-duty value is required to be substituted as full value of consideration on the transfer of land or building or both if it is higher than the actual consideration.

7.2 The debate whether the phrase 'land and building' should extend to 'rights in land and buildings' including tenancy rights has been subject matter of litigation in a number of judicial precedents. It has been consistently held that a legal fiction cannot be extended beyond the purpose for which it is enacted and thus, the deeming provisions should not apply to transfer of tenancy rights. The position has been upheld in several decisions including:

(a) ***Kishori Sharad Gaitonde vs. ITO (ITA 1561/M/09) (Mum.)***

(b) ***Fleurette Marine Novelle Hatam vs. ITO (International Taxation) [2015] 61 taxmann.com 362 (Mumbai)***

7.3 However, a word of caution in relation to applicability of section 50C to rights in land. In ***Vidarbha Veneere Industries Ltd. vs. ITO [2026] 484 ITR 132 (Bombay)***, it was held that section 50C would apply to leasehold rights in land, departing from earlier decisions of Tribunals regarding the position on rights in immovable property.

8. Stamp-value fiction on the recipient

8.1 As per the provisions of section 92(2)(i) of the Act (erstwhile section 56(2)(x)), where a property is received without consideration or for a consideration lesser than the fair market value/stamp duty value, the difference between the stamp duty value of the property and the consideration is liable to tax as income from other sources.

8.2 In few cases, the revenue has attempted to tax the receipt of ownership property under section 56(2)(x) by contending that the same is received gratuitously. The Tribunal upheld that the new flat is not received for inadequate consideration but in exchange for the old flat/right, which is extinguished — it is a swap, not a gift — and so falls outside the provision of section 56(2)(x) of the Act - ***Anil Dattaram Pitale vs. ITO (2025) 173 taxmann.com 51 (Mum.).***

8.3 Recent Tribunal rulings apply the same reasoning to hold that a flat received for surrender of tenancy rights is not taxable under this head, the surrendered tenancy being genuine consideration. Further, no tax could be levied under 'income from other sources' once the same was taxable under the head 'capital gains'.

9. Claim of cost of acquisition of ownership property on its subsequent transfer

9.1 Section 90(3) of the Act applies to the determination of the cost of acquisition of the original tenancy rights and cannot be mechanically applied to the ownership flat allotted in exchange for their surrender.

9.2 The extinguishment of the tenancy rights constitutes the consideration furnished by the assessee, while the ownership flat represents the consideration received in the exchange.

9.3 Consequently, the fair market value of the ownership flat on the date of such exchange or acquisition should constitute its cost of acquisition for computing capital gains arising on a subsequent transfer even in absence of payment of monetary consideration.

Recent Tribunal rulings apply the same reasoning to hold that a flat received for surrender of tenancy rights is not taxable under this head, the surrendered tenancy being genuine consideration.

9.4 The Mumbai ITAT has upheld this position in below decisions-

(a) ***Sarjit Ghanshyam Desai vs. ITO [2026] 186 taxmann.com 732 (Mumbai);*** and

(b) ***Balmukund P. Acharya vs. ITO [2011] 133 TTJ 640 (Mumbai)***

B) TAXABILITY OF VARIOUS RECEIPTS BY TENANTS

10. Hardship Compensation

10.1 In substance, hardship compensation is paid to offset the inconvenience, displacement and loss of enjoyment suffered by the occupant during redevelopment. Several tribunal decisions have held that hardship compensation is a capital receipt simpliciter.

10.2 The lead decision on such an issue is the decision of the Hon'ble Bombay High Court in the case of ***Sarfaraz S. Furniturewalla vs. Afshan Sharfali Ashok Kumar [2024] 166 Taxmann.com 425***. While this decision was rendered in the context of Section 194-I for deduction of TDS on the rent payable to the tenant by the developer-builder, its rationale that the payment could not be considered

as revenue receipt in hands of tenant is widely followed by various Tribunal decisions as under:

(a) ***Krishnakan Sharma vs. ITO [2025] 174 taxmann.com 905 (Mumbai)***

(b) ***Ajay Parasmal Kothari vs. ITO [2024] 159 taxmann.com 570 (Mumbai)***

10.3 However, one must examine that terms of hardship compensation for the frequency of payment (one time v/s recurring, actual linkage to displacement, reasonability of consideration, intention of payment, and the agreement clauses identifying it as a part of redevelopment composition compensation) to ascertain its true nature.

10.4 The possibility of the tax authorities adopting a contrary view on account of below reasons cannot be ruled out:

- The decision of the Bombay HC was held in the context of section 194-I (not taxability of any receipts) of the 1961 Act;
- The said decision did not evaluate the primary proposition whether such amounts would have been payable to the tenants in the absence of an underlying joint development agreement;
- Such contrary view may also apply to rent discussed in para 12 below.

11 CORPUS

11.1 Corpus is usually paid to a society, member or tenant to absorb future capital burden which includes the amounts payable for defraying costs, charges and expenses for major maintenance, repair, and upkeep of the said new project and infrastructural facility.

11.2 Since, it is meant to meet a capital hardship or to form part of the capital bargain, the receipt is regarded as capital receipt not subject to tax in the following decisions:

(a) ***Jitendra Kumar Soneja vs. ITO [2016] 72 taxmann.com 318 (Mumbai)***

(b) ***Narayan Devarajan Iyengar vs. Income-tax Officer [2023] 152 taxmann.com 188 (Mumbai)***

11.3 However, it is imperative to look at the actual nature of such payment and ascertain that such payment is not a disguised payment of any other nature which may be taxable.

12 Rent/transit compensation.

12.1 A tenant displaced during redevelopment usually needs alternative accommodation and is compensated for this through periodic payments. The rent may be paid through pure reimbursement model (the developer pays actual rent) or as a fixed allowance model (fixed monthly amount is paid irrespective of actual rent). While judicial precedents of various Tribunals currently hold that rent receipt is not taxable since it is intended to be paid for inconvenience of alternate accommodation.

12.2 The decision of Hon'ble Bombay High Court in the case of Sarfaraz S. Furniturewalla (supra) is the leading decision on this subject and has been followed by various tribunals thereafter including ***ITO (TDS) vs. N. Rose Developers (P.) Ltd. [2025] 171 taxmann.com 652 (Mumbai)***

12.3 Further, the Madras High Court in ***P. Madhusudhan Rao vs. ACIT (2019) 109 taxmann.com 103 (Mad.)*** held such alternate-accommodation payments should not be included as capital gains.

12.4 However, in few cases, the amount of rent received in excess of rent spent has been subject to tax as income from other sources - ***Parag Hanumant Tambe vs. ITO (ITA 1518/Pun./2017).***

12.5 The inclusion of a transit accommodation clause, proof of actual residence elsewhere, documentation of rental receipts, and clarity whether developers are paying directly to the tenant or to the landlord on behalf of the tenant in the PAAA would strengthen the argument that such rental receipts are not taxable in the hands of the tenant.

13. Reporting in AIS/Form 26AS and valuation

In the age of the Annual Information Statement, no redevelopment receipt is invisible. When the PAAA or the conveyance of the new flat is registered, the Sub-Registrar reports the transaction through the Statement of Financial Transactions (SFT) machinery. Consequently, the below practical consequences may follow:

13.1 Mismatch management. The AIS will often reflect a large stamp value against the tenant's PAN with no corresponding income declared (because, correctly, the receipt is a capital receipt or an exempt/ rolled-over gain). This is a classic trigger for a section 143(1) adjustment or a "high-value transaction" notice. The tenant must proactively use the AIS feedback facility to record the correct character ("capital receipt on redevelopment/exchange of asset"), and preserve the PAAA, the surrender deed and the valuation to substantiate it.

13.2 TDS credit and refunds. Where the developer has deducted TDS on a receipt that is considered as not taxable (e.g., transit rent), the tenant may claim the TDS credit in the relevant Schedule TDS of the return. done. While the ITR does not provide a specific field to disclose a non-taxable capital receipt, the receipt need not be offered to tax merely because TDS has been deducted. However, the taxpayer should retain appropriate documentation to explain the claim, if called upon to do so.

14. Concluding thoughts

Redevelopment does not make a tenancy disappear; it converts one form of property into another. The surrender of protected tenancy rights, the receipt of a new ownership flat and the accompanying monetary payments must, therefore, be analysed according to their true nature, rather than their labels or their appearance in the AIS. The proper valuation and complete documentation are as critical to taxation as to the commercial aspects.

■

SECTION 56(2)(X) AND LAND TRANSFERS

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Ronak Doshi *Vrushti Galani*

Overview

In every land transfer, apart from legal documents, title transfer, etc, for tax purposes, two values often are discussed and debated: the negotiated price (i.e. consideration) and the stamp authority's valuation. While the price closes the deal, the stamp valuation increasingly dictates the tax outcome. Where the gap between them exceeds statutory tolerance, section 56(2)(x) of ITA 1961 taxes the recipient on the difference. This article examines the scope of section 56(2)(x) in relation to immovable property and analyses inter-alia, issues on who is covered in scope, meaning of 'land or building', the timing of receipt, value gap measurements, valuation safeguards, interplay with section 50C, and the statutory exclusions.

1. Introduction, the Journey so far and 'Persons' covered under the ambit

The present Section 56(2)(x) of ITA 1961 [corrs. Section 92(2)(m) of ITA 2025][1] has travelled a distinctive legislative path. Its origins lay in preventing money laundering and taxing unaccounted or undisclosed income, rather than just reviving gift taxation. However, it was not intended to disturb genuine commercial and business transactions. In its present form, the provision travels much further and casts a considerably wider net. The spate of increased judicial pronouncements on this section itself shows that the law, and the interpretation of the provision, remain far from settled and continue to evolve.

After gift-tax was abolished for gifts made on or after October 1, 1998, the Legislature progressively re-introduced recipient-based taxation through sections 56(2)(v), (vi), (vii) and (viia) of the ITA 1961. Sections such as 56(2)(v), 56(2)(vi), 56(2)(viia) of the ITA 1961

The present provision applies to 'sum of money', 'immovable property' and 'property other than immovable property' received on or after April 1, 2017, by 'any person' from 'any person'. The exclusions of the provision are specifically dealt at para 9 of this Article.

1. *Note: References to ITA 2025 and ITR 2026 are provided only at the first mention of the relevant section and rule.*

A question arises as to whether Government constitutes a "person" for the purposes of section 56(2)(x), and whether allotment of land or houses under Government schemes could attract the provision?

were broadly confined to 'sum of money' received by individuals, HUFs and certain closely held companies. However, receipt of immovable property entered section 56 framework for the first time through the Finance (No.2) Act, 2009, vide sub-section (vii), effective from October 1, 2009. At that point in time, the application was limited to recipients being individuals and HUFs. Subsequently, Finance Act, 2017 consolidated section 56(2)(vii) and section 56(2)(viia) of ITA 1961 into the present section 56(2)(x) of ITA 1961. Accordingly, the present provision applies to 'sum of money', 'immovable property' and 'property other than immovable property' received on or after April 1, 2017, by 'any person' from 'any person'. The exclusions of the provision are specifically dealt at para 9 of this Article.

The definition of "person" is given under section 2(31) of the ITA 1961 [corrs. Section 2(77) of ITA 2025] and is defined in an inclusive manner to include Individuals, HUFs, Firms, LLPs, Companies, AOPs, Trusts, Local authority, etc.

While Government is not included in above definition, a question arises as to whether Government constitutes a "person" for the purposes of section 56(2)(x), and whether allotment of land or houses under Government schemes could attract the provision? Presently, in the non tax context, there are divergent views on whether Government constitutes "person". On first blush it appears that, except for the exclusions provided under first proviso to section 56(2)(x) of ITA 1961 read with rule 11UAC of ITR 1962 [corrs. Rule 58 of ITR 2026], receipt of immovable property from Government could be covered by the provision. However, having regard to the intent and purpose of section 56(2)(x) of ITA 1961, property received from Government even though not covered under Rule 11UAC arguably should fall outside the purview of the section 56(2)(x).

A question also arises as to whether the provision is applicable to Non-Residents? The provision applies to any person being a recipient of immovable property. On combined reading of section 5(2) read with section 9(1)(viii) of ITA 1961 [corrs. section 5(2) r.w.s. 9(8) of ITA 2025], it appears that if a Non Resident is in receipt of immovable property in India, he would fall within the scope of section 56(2)(x) read with exclusions thereto. Nonetheless, DTAA Article dealing with "Other Income" under relevant DTAA, if more beneficial would apply. Certain DTAA would allocate exclusive rights of taxation to country of residence, but predominant DTAA would also give rights to state where income arises and hence it is important that provisions of the article relating to other income is analysed in detail to evaluate if any tax is to be paid in the context of such immovable property under the applicable DTAA.

The last question which would arise is as to whether a person, being resident in India, who is subject to tax on his global income, would be taxed under the provision, if he is in receipt of immovable property outside India for Nil or in-adequate consideration. While prima-facie, on plain reading, he would be covered, however, considering serious practical difficulty which arises because statutory machinery is linked with "Stamp Duty Value" (circle rate) ("SDV") assessed by an authority of a Central and State Government in India, which cannot be operationalized for foreign real estate and applying ratio of Supreme

Court in ***B. C. Srinivasa Setty [1981]128 ITR 294*** and observation on impossibility of performance in ***Engineering Analysis Centre of Excellence Private Limited vs. CIT & Anr [CA Nos. 8733-8734 of 2018] SC***, a better view is that provisions fail when there is a receipt of immovable property outside India

2. Framework of Section 56(2)(x)

Section 56(2)(x)(b) [corrs. Section 92(2)(m)(ii) of ITA 2025] applies to receipt of 'immovable property' and Section 56(2)(x)(c) [corrs. Section 92(2)(m)(iii) of ITA 2025] provides for taxation of receipt of 'property other than immovable property', subject to the fulfilment of conditions. Section 56(2)(x)(b) provide that where such immovable property is received without consideration and its SDV exceeds ₹ 50,000, the entire SDV is taxable. Where it is received for consideration, the excess of SDV over consideration is taxable only if it exceeds the higher of ₹ 50,000 and 10% of the consideration. 'Consideration' in this context refers to quantified/quantifiable price money due for the property.

Explanation (d) to Section 56(2)(vii) [corrs. Section 92(5)(f) of ITA 2025] define "property" – "*mean the following capital assets of the assessee, namely, "immovable property being land or building or both*". The term immovable property is not defined. Therefore, ordinarily the expression "immovable property" as per section 3(26) of the General Clauses Act, 1897 which defines "immovable property" to include "*land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth*". A interpretative question arises whether receipt of land or building falls under Section 56(2)(x)(b) or Section 56(2)(x)(c) of the Act. On literal reading and substituting the definition of 'property' under Section 56(2)(x)(c), it will read as "*property, being immovable property (part 1) in the nature of land or building or both, other than immovable property (part 2)*" . If immovable property (part 2), is given wider ordinary meaning, then such construction leads to an anomaly, what is excluded cannot be wider than what is first included. Therefore, the meaning of term immovable property should be restricted to capital asset being land or building or both and fall within the ambit of Section 56(2)(x)(b). Such view can also be supported by the interpretation of first proviso to Section 56(2)(x) which excludes only 'property' and not 'immovable property'. If any wider interpretation to the term 'immovable property' is given, then such additional scope may not enjoy the benefit of exclusion. Furthermore, one may also refer meaning of 'immovable property' for the purposes of Section 194IA [corrs. Section 393 and 402(19) of ITA 2025]– "means any land (other than agricultural land) or any building or part of building" Accordingly, on harmoniously better view is that, for the purposes of section 56(2)(x)(b), the expression "immovable property" should be confined to land or building or both.

If the expression "immovable property" is read restrictively as referring only to land or building or both, a strong argument emerges that rights or interests in land or building should not be brought within its scope.

Whether the expression "land or building or both" should be construed to include rights, interests or benefits in land or building for the purposes of section 56(2)(x)? If the expression "immovable property" is read restrictively as referring only to land or building or both, a strong argument emerges that rights or interests in land or building should not be brought within its scope. This view is supported by the language used in other provisions, such as sections 35(2)(ia), 54G(1), 54GA(1), 269UA(d), and the Explanation to

The legislative intent behind Section 56 was not to tax ordinary business transactions. On this basis, the better view is that immovable property should constitute a capital asset in order to fall within the purview of Section 56(2)(x).

section 155(5A) [corrs. section 45(11)(d), 87(1), 88(1) of ITA 2025, respectively], where the legislature has expressly referred to rights or interests separately wherever it intended to include them. By contrast, provisions such as sections 50C [corrs. section 78 of ITA 2025] and 194-IA are confined to "land or building or both". On this reasoning, rights, interests or benefits in land or building should arguably fall outside section 56(2)(x). However, courts have taken divergent views on this issue, depending on the nature of the right, interest or benefit involved and the factual matrix of the transaction. A detailed analysis on whether "right" in relation to land or building is covered or not is made in Chapter 2 to this journal.

The next issue is whether the expression "immovable property" in section 56(2)(x)(b) is restricted to immovable property that constitutes a "capital asset". A purely literal reading of the provision could bring within its scope immovable property held as stock-in-trade. However, such an interpretation would render the expression "capital asset" in the definition of "property" largely redundant. Further, the exemptions under the first proviso are available in respect of "property" being a capital asset, and not otherwise. Similarly, the step-up in cost for property taxed under section 56(2)(x) is provided only under section 49(4) [corrs. section 73(1),Table Sl No.17 of ITA 2025] , in the context of capital gains, and there is no corresponding mechanism under sections 28 to 44DB [corrs. Section 26 to Section 64 of ITA 2025] dealing with business income. Thus, including stock-in-trade within the provision may therefore result in double taxation. Moreover, the legislative intent behind Section 56 was not to tax ordinary business transactions. On this basis, the better view is that immovable property should constitute a capital asset in order to fall within the purview of Section 56(2)(x).

This leads to the next question: Does 'agricultural land' fall within the scope of section 56(2)(x) of the ITA 1961? Judicial views on this issue are divergent. One line of decisions[2], proceeding on the wider meaning of "immovable property" and in the absence of any specific exclusion, has held that agricultural land may fall within the ambit of section 56(2)(x). Another line of decisions[3] restricts the provision to agricultural land that constitutes a capital asset; consequently, rural agricultural land that is not a capital asset under section 2(14) [corrs. Section 2(22)(iii) of ITA 2025] would fall outside its scope.

3. When is immovable property 'Received'?

The timing of taxation under section 56(2)(x) turns upon the year in which the recipient receives the immovable property. The mercantile method of accounting cannot

2. *Clayking Minerals LLP vs. ITO [2025] 213 ITD 1 (Ahd Trib.); Satendra Koushik vs. ITO [2019] 177 ITD 286 (Jaipur Trib.)-Para 10, as an obiter; ITO vs. Trilok Chand Sain [2019] 174 ITD 729 (Jaipur Trib.). However, Trilok was later distinguished by Mubarak Gafur Korabu (below), later followed in Dipti Garg (below)*
3. *Mubarak Gafur Korabu vs. ITO [2020] 117 taxmann.com 828 (Pune Trib.), Dipti Garg vs. ITO [2024] 162 taxmann.com 347 (Jaipur Tribunal); Sujata Prakash Jawale ITA 7572/Mum/2025 dated 13.03.2026*

prepone the incidence of the provisions, ambit covers only 'received' and not receivable. Although the statute employs the word "receives", it does not define the expression. The absence of a statutory definition has given rise to an important question: Does receipt occur only upon registration of the agreement, or can it arise earlier?

Land and existing Building

One school of thought treats 'registration' as the decisive event because legal title ordinarily passes upon execution and registration of the agreement to sell. However, another set[4] adopts a more substance-oriented approach by recognising that receipt may occur when the recipient acquires de facto ownership or substantial obligations have been discharged and the right to enjoy the property has accrued, notwithstanding that formal registration follows at a later date (i.e. de jure ownership).

Building or flat under construction

For under-construction building/flats (with multiple events - allotment letter, agreement to sell, date of registration to agreement to sell, date of payments, date of possession) where the agreement is registered long before the unit exists, the date of possession upon full payment is the better view, on the ownership principles in ***CIT vs. Podar Cement (P.) Ltd. (1997) 226 ITR 625 (SC)***. Accordingly, when the possession has been handed over and the amount is paid, the person is entitled to receive income from the property in his own right[5]. The recipients should document each milestone of under construction building/flats, anticipating that the tax department may adopt different dates for SDV.

Accordingly, the determination of the year of taxability cannot always be answered by referring solely to the registration date. The substance of the transaction, the rights transferred, the stage of possession and the surrounding documentation collectively determine when the immovable property can truly be said to have been "received."

4. Agreement Date or Registration Date: Which SDV Applies?

Recognising commercial realities of real estate sector (with multiple events - allotment letter, agreement to sell, registration, date of payments, date of possession), the first and second provisos to section 56(2)(x) [corrs. section 92(4)(a) of ITA 2025] permit the adoption of the SDV as on the agreement date, instead of the registration date, where two conditions are cumulatively satisfied:

- the agreement fixing the consideration precedes the registration; and
- the whole or part of the consideration has been paid on or before the agreement date through prescribed banking channels or electronic modes (thus, cash payment[6], postdated cheques[7] are insufficient)

The legislative objective is twofold. First, it protects genuine purchasers from being taxed merely because SDVs increase during the intervening period. Secondly, it discourages

4. *ITO vs. Rakhi Agrawal ITA No.94/Jab/2018 dated 27.10.2020*
5. *CIT vs. Rajasthan Mirror Manu. Co. [2003] 260 ITR 503 (Raj)*
6. *ACIT vs. Himalaya Darshan Developers (Guj) Pvt. Ltd. (2021) 88 ITR(T) 94 (Ahd Trib)*
7. *Siddhulal Patidar vs. ITO (2024) 111 ITR(T) 541 (Indore Trib)*

the creation of back-dated agreements intended to secure a lower valuation.

The expression "agreement" should be read in substance, not merely by title. An allotment letter[8], irrevocable power of attorney[9] or any other enforceable arrangement fixing the consideration may qualify, if it records a concluded bargain between the parties. It may be registered or unregistered or even oral, provided it satisfies section 10 of the Contract Act; in such cases, the date of advance payment may mark the agreement date. Courts have therefore treated surrounding facts and substance, and not nomenclature alone, as decisive.

A practical aspect often overlooked is that the proviso is beneficial, but its application is not automatic. For instance, where the consideration is ₹ 1,000 and the SDV declines (though rarely) between the agreement date (₹ 1,500) and the registration date (₹ 1,200), the SDV as on the registration date may actually be more favourable to the recipient. Accordingly, the benefit of the proviso should be evaluated in light of the commercial facts of each case, rather than being invoked as a matter of course.

5. The 10% Tolerance Limit

As originally enacted, any excess of SDV over consideration beyond ₹ 50,000 was taxable. Recognising that circle rates are locality-wide indicators which cannot capture property-specific factors accurately, the Finance Act, 2019 introduced a tolerance of 5% of consideration, raised to 10% by the Finance Act, 2020 from April 1, 2021[10].

Illustration for quick glance:

Particulars	*Property 1*	*Property 2*	*Total*
Purchase consideration (PC)	1000	1000	2000
Stamp duty value (SDV)	1060	1120	2180
Difference/Excess	60	120	180
Tolerance (higher of ₹ 50 and 10%)	100	100	200
Taxable under section 56(2)(x)	Nil	120	–

Broadly, following aspects merits attention:

- The benefit of tolerance limit is not available for cases of 'no consideration', it only applies to inadequacy of consideration.
- The 10% tolerance is measured with reference to the consideration (i.e.10% of 1000), not the SDV.
- If the difference exceeds the tolerance limit, entire excess amount is taxable and

8. *Plethora of decisions for and against on whether 'allotment letter' is considered as agreement or not;*
9. *Sanjay Dattatraya Dapodikar vs. ITO, ITA 1747/Pun/2018 dated 30.4.2019.*
10. *However, 5% to 10% has been read with retrospective effect being clarificatory/curative in nature vide various judgment. Some mentioned are Sri Sandeep Patil vs. ITO 2020 (10) TMI 923 (Bang), Joseph Mudaliar vs. DCIT (2021) 191 ITD 719 (Mum Trib.), Maria Fernades Cherly vs. ITO (2021) 187 ITD 738 (Mum Trib.)*

not the amount beyond tolerance limit (i.e. Property 2, entire 120 is taxable and not only 20 (120-100))

- The tolerance limit applies qua each property[11], not to the aggregate of all properties acquired during the year. The aggregate difference (180) between PC and SDV is less than 10% of aggregated PC (200), still section 56(2)(x) applies to Property 2.

6. Stamp duty value – is it the last word?

While the SDV is a statutory benchmark, practically, it is seen that for certain genuine reasons also, the actual transaction value may be lower or may differ from the SDV.

The law also acknowledges the same and hence the third proviso to section 56(2)(x)(b) [corrs. section 92(4)(b) of ITA 2025] and section 50C, which provides that where the taxpayer claims before the AO; that the SDV exceeds the FMV of the property as on the relevant date, the AO may refer the valuation to the Departmental Valuation Officer ("DVO").

This is because SDV and FMV are not always the same. Factors such as location, access to amenities, irregular size or shape, encumbrances, peculiar features, or distress/auction sales can result in significant differences between SDV and FMV. The controversy is particularly evident in cases involving auction purchases from banks, financial institutions, or statutory authorities including Government auctions, where appellate authorities have examined whether the difference between the auction price and SDV justifies invoking section 56(2)(x). It is observed that in case of auctions[12], a correct value of the property is one where there is a purchaser and a seller ad idem on the price (actual price). The market value is thus, the value which the highest bidder is willing to pay in the facts and prevailing circumstances and not a notional price. While there are appellate orders to support this view, it is also advisable to have a valuation report and evidence documented to demonstrate that the fair value of property is not same as SDV. Accordingly, it can be safely and judicially deduced that the value determined by the stamp authority becomes untenable and accordingly, addition u/s. 56(2)(x) is not warranted.

7. Is Reference by AO to DVO mandatory or optional and whether DVO's valuation report is binding and final?

The reference to DVO is permissible only where the SDV has not been disputed before any appellate, revisional or other authority under the Stamp Act, as the legislative intent is to avoid parallel adjudication by two valuation authorities.

The reference mechanism is taxpayer driven, and the AO cannot make a suo motu reference to the DVO. However, once the taxpayer disputes the SDV on the ground that it exceeds the FMV of the property, the AO is under a mandatory obligation to refer the

11. *ACIT vs. Sunil B. Dalal [2022] 145 taxmann.com 313 (Mum Trib). However, based on some peculiar facts in the case of Mahesh Bhikhubhai Varotaraia vs. ITO ITA No. 253/Rjt/2019 dated 09.02.2023 have considered large piece of agricultural land having nine survey/purchases as one transaction.*
12. *Krishi Utpanna Bazar Samittee vs. DCIT, ITA No. 2043 of 2012, Pune Trib dated 20.3.2014, ITO vs. Southern Steel Ltd., reported as [2018] 61 ITR (Trib.) 126 (Hyd.), ITO vs. Mahavir Enterprises [2023] 202 ITD 253 (Mum Trib), Virambhai Hargovanbhai Patel vs. DCIT, ITA No. 421/Nag/2022 dated 14.08.2024*

valuation to the DVO. Although the provision employs the expression "may", it is well settled through judicial interpretation[13] that, in this context, "may" must be read as "shall". Consequently, where the statutory conditions are satisfied, the AO has no discretion to refuse a reference to the DVO.

The only precondition to make reference to DVO is if the SDV is higher then FMV. There is no condition that such reference cannot be made if the property is received without consideration. Accordingly, unlike the first and second provisos which are confined to receipts for consideration, the better view is that the third proviso applies even to immovable property received without consideration. Otherwise, it would be taxing a recipient on an inflated SDV when the DVO's fair value is lower and would tax an amount that is not income in any rational sense

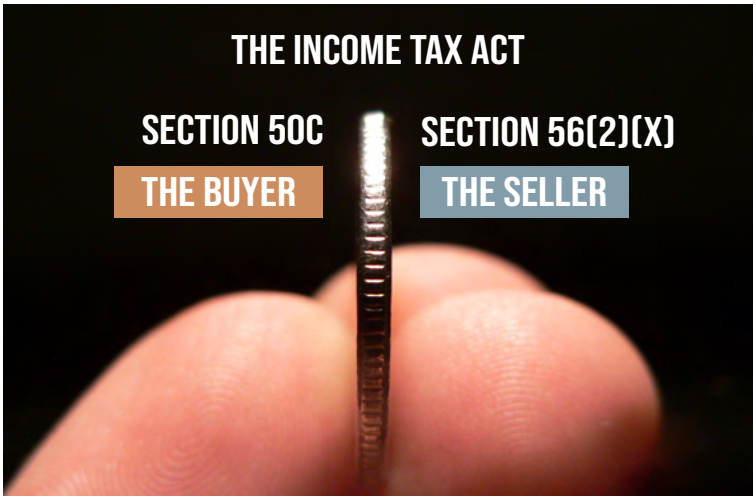
The valuation process before the DVO is governed by section 142A of the ITA 1961 [corrs. section 269 [14]of ITA 2025]. DVO should provide proper valuation report disclosing the valuation methodology, market analysis, comparable instances, appreciation or depreciation factors, guideline or DLC rates with suitable adjustments, and property-specific characteristics such as location, size, shape, frontage, connectivity or other peculiar features (e.g., rocky terrain), together with reasons for every adjustment. If the report is unsupported by reasons, ignores material evidence or proceeds on incorrect assumptions, it may be rejected or a fresh valuation directed.

The next question is whether the DVO's report binds the AO. While a reference to the DVO may be mandatory once the taxpayer raises a valid objection, the report itself is not necessarily binding in an absolute sense. Section 142A(7) requires the AO, on receipt of the valuation report, to give the taxpayer an opportunity of being heard. This suggests that the DVO's report is an important piece of valuation evidence, but not a mechanical command. The AO must consider the report, examine the taxpayer's objections, and arrive at a reasoned conclusion.

Once a reference is made, the AO cannot complete the assessment without awaiting the DVO's report, nor can a provisional assessment be passed subject to its receipt. If the AO nevertheless completes the assessment, the CIT(A), exercising coextensive powers, may consider the DVO's report and grant relief, while the Tribunal or the High Court may remand or set aside the assessment for fresh determination after considering the DVO's valuation.

Judicial decisions consistently emphasise that while the SDV is rebuttable, the burden of rebuttal rests upon the taxpayer. So, if the taxpayer neither disputes the SDV under the Stamp Act nor raises the statutory objection before the AO, the valuation generally may not be challenged for the first time in appellate proceedings[15]. Nor in the presence of alternative remedies the writ can be filed.

13. *Aavishkar Film (P.) Ltd. vs. ITO [2019] 178 ITD 613 (Mum Trib), Jyothy Labs Ltd. vs. ACIT [2025] 181 taxmann.com 351 (Mum Trib), Ram Bhuvan Yadav vs. DCIT [2025] 176 taxmann.com 363 (Raipur Trib.)*
14. *Earlier reference Valuation Officer and Powers were given reference to Wealth Tax Act, now it is included in the Section 2(110) and 269(3) itself*
15. *Gouli Mahadevpura vs. ITO (2013) 356 ITR 90 (Kar.)*



8. Section 50C and Section 56(2)(x): Two sides of the same transaction

Section 50C and section 56(2)(x), though operating in different charging provisions, are complementary in-scope (i.e. land and building both) and valuation provisions governing the two ends of the same transaction. While section 50C substitutes the SDV as the deemed full value of consideration in the hands of the transferor for the purpose of capital gains, whereas section 56(2)(x) taxes the recipient where immovable property is acquired for inadequate consideration or without consideration by reference to the SDV. In essence, both sections are *pari materia*[16] in valuation provision and intended to operate harmoniously in respect of the same transaction. Accordingly, the tax department should ordinarily adopt a consistent position in the hands of both parties, and the same transaction should not receive divergent factual or valuation treatment. On that premise, judicial principles governing one provision should ordinarily have persuasive value while interpreting the other. However, recently Mumbai Tribunal[17], while examining the applicability of section 56(2)(x) to leasehold rights, declined to apply precedents rendered under section 50C relating to the transfer of leasehold rights, thereby giving rise to a fresh interpretational controversy.

Having said that, consistency in scope and valuation does not necessarily translate into identical tax consequences. For instance, the transfer of development rights may attract section 50C in the hands of the transferor where such rights constitute a capital asset falling within the expression "land or building or both". However, the developer may receive the same rights as stock-in-trade in the ordinary course of business, in which case section 56(2)(x) may not apply.

The real inquiry, therefore, is not whether the two provisions always produce identical tax consequences, but whether the same transaction can legitimately receive divergent factual or valuation treatment. The answer should ordinarily be in the negative. Differences in outcome must arise from the statutory architecture of the provisions, and not

16. *Jyothi Bhanoth vs. ACIT ITA No.265/Hyd/2019 dated 21.01.2021, Omprakash Mittal vs. ITO ITA No.243/Ind/2021 dated 20.06.2022*
17. *Amit Gajanan Khedkar vs. ITO [2026] 186 taxmann.com 116 (Mum - Trib.)*

from inconsistent positions adopted by the tax department.

9. Statutory Exclusions

Despite the wide ambit, the first proviso to section 56(2)(x) [corrs. Section 92(3)(a) to (i) of ITA 2025] excludes receipts, with or without consideration and irrespective of the SDV, from thirteen specified sources or occasions listed below. These exclusions recognise that not every transfer with or inadequate consideration is motivated by tax avoidance and to avoid hardship in genuine cases. While these exclusions appear straightforward, their application is often fact intensive.

Such receipts include –

- from a relative;
- on the occasion of the marriage of the individual;
- under a will or by inheritance;
- in contemplation of death;
- from a local authority;
- from or by institutions referred to in section 10(23C), subject to the carve-out for interested persons u/s. 13(3) [corrs. Schedule VII [Table Sl. No 10 - 19] rws 355(h);
- from or by trusts registered under section 12A/12AA/12AB, subject to the carve-out for interested persons u/s. 13(3) [corrs. Section 332 of ITA 2025];
- transactions not regarded as transfer under specified clauses of section 47 [corrs. Section 70];
- receipts by a trust created solely for the benefit of relatives;
- receipts from persons prescribed under Rule 11UAC;
- specified COVID-19-related receipts.

Talking about relative as defined u/s. 2(41) of the ITA, 2025 has expressly clarified that a lineal ascendant includes both maternal and paternal ascendants, removing the ambiguity that existed under the ITA, 1961. While judicial precedents had already interpreted lineal ascendants/descendants to cover both maternal and paternal lines, the 2025 Act codifies this position for ascendants; however, it does not expressly provide a similar clarification for lineal descendants.

Apart from the above specific exclusions, it is also relevant to examine whether immovable property received pursuant to a bona-fide family settlement attracts section 56(2)(x). Now, if the receipt is from a relative as referred above, it is excluded. However, sometime the family members being part of family settlement may not strictly fall within relative definition referred to above, but nonetheless are part of family settlement. In such cases, a question may arise as to whether receipt by extended family members under family settlement is taxable or outside the ambit of the provision. Now, a bona fide family settlement is generally regarded as a mechanism to resolve or avoid family disputes by recognising pre-existing rights/ antecedent rather than effecting a transfer for consideration. Accordingly, where the

arrangement satisfies the principles laid down by the Supreme Court in ***Kale vs. Deputy Director of Consolidation [1976] 3 SCC 119***, a strong arguable[18] view exists that section 56(2)(x) ought not to apply, since the receipt is in the nature of a family realignment rather than a taxable acquisition. Courts have consistently held that if there is inter se transfer amongst family members under family settlement, it is not a taxable transfer. Applying same rationale, it is strongly arguable that in case of genuine and bonafide family settlement, a receipt by one individual of an immovable property is not subject to provision of section 56(2)(x).

10. Conclusion

"Attachment is to the price we pay; wisdom lies in understanding the value supported by evidence."

In land transfers, the bargain may end with the price, but the tax story often begins with value. The taxpayer's approach must therefore be preventive, not reactive: verify the SDV of the land or building before fixing the price; pay at least part of the consideration through banking channels on or before the agreement date and preserve the original agreement; obtain a contemporaneous valuation report recording property-specific factors; raise objections to the SDV before the AO at the earliest and seek a DVO reference where appropriate; and ensure that the positions of the buyer, seller and co-owners are aligned. The value gap is best treated as a transaction risk — to be measured, explained and documented when the bargain is struck, not discovered years later in an assessment order.

In land transfers, the bargain may end with the price, but the tax story often begins with value. The taxpayer's approach must therefore be preventive, not reactive.

18. *Govind Kumar Khemka vs. Asstt. CIT [2020] 181 ITD 586 (Delhi- Trib.) observed non applicability of section 56(2)(vii)(b), when property received from brothers under family settlement not being a commercial transaction.*

■

" Always aim at complete harmony of thought and word and deed. Always aim at purifying your thoughts and everything will be well. "

Mahatma Gandhi

LAND TRANSACTIONS IN PARTNERSHIP

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Nehal Sheth *Preyashi Tated*

Overview

Land is the asset class most exposed to the many deeming fictions that govern the taxation of partnerships and LLPs, because its book value and its stamp duty or fair market value rarely agree. This article traces the tax consequences of land at every stage of a partnership or LLP's life-cycle: its introduction as capital under Section 45(3); its exit on a partner's retirement or the firm's reconstitution under the linked charges in Sections 9B and 45(4); the effect of a revaluation exercise and the goodwill it can generate; and the conversion of the entity itself between firm, LLP and company under Sections 47 and 47A.

On the exit side, the article traces the pre-2021 judicial case laws (A.N. Naik, Dynamic Enterprises, Electroplast Engineers) that culminated in the Supreme Court's Mansukh Dyeing ruling, and explains how the Finance Act, 2021 replaced this uncertainty with two parallel charging provisions — Section 9B (taxing the firm's deemed transfer at fair market value) and the substituted Section 45(4) (taxing value extracted by a partner beyond their adjusted capital account). It uses a worked illustration and contrasts Mansukh Dyeing with the 2025 Gokulakrishna ruling to show how "mere revaluation without receipt" escapes tax.

Further sections cover goodwill's altered tax treatment, apportionment under Rules 8AA/8AB, unresolved definitional grey zones, practical valuation challenges (circle rates, TDR/FSI, encumbered land), and the conditions governing firm-to-company and company-to-LLP conversions under Sections 47/47A.

Taxation of Land Transactions Involving Partnerships and LLPs — Introduction and Retirement of Partners, Revaluation and Goodwill, and Conversion under Sections 45(3), 45(4), 9B, 47 and 47A[1]

Introduction

Land is the most litigated asset class in transactions between a partner and a firm,

1. *Unless otherwise stated, all references to "Section(s)" in this article are to the provisions of the Income-tax Act, 1961.*

because its book value and its stamp duty value rarely match. This gap has occupied assessing officers and tribunals for over three decades. This article examines how Sections 45(3) and 45(4) of the Income-tax Act 1961 ('the Act') — the latter now read together with Section 9B after the Finance Act, 2021 — interact with Sections 50C and 56(2)(x) of the Act whenever land is the asset involved.

The article covers the entry side (introduction of land as capital), the exit side (retirement or reconstitution accompanied by distribution of land), the pre-2021 case law that led to the 2021 amendments, and the definitional issues that arise on both sides.

I. Entry: Introducing Land as Capital

Section 45(3) of the Act applies whenever a partner — or, on the same logic, a member of an association of persons or body of individuals — transfers a capital asset to the firm in which they hold that status. The phrase 'by way of capital contribution or otherwise' is deliberately wide: it covers not only a formal contribution to capital but any mode by which the asset passes into the firm's books, including a credit to a current account.

The provision exists because a transfer to one's own firm is not an arm's-length transaction.

Why a Deeming Fiction Is Needed

The provision exists because a transfer to one's own firm is not an arm's-length transaction. Under Section 48 of the Act, capital gains are ordinarily computed on the consideration actually received or accruing — a formula that assumes a price fixed through negotiation between unrelated parties. A partner contributing an asset to a firm in which they hold a stake is not subject to that market discipline and could otherwise record almost any value. Section 45(3) of the Act removes that latitude by deeming the amount recorded in the firm's books on the date of transfer to be the full consideration under Section 48 of the Act, regardless of the asset's fair market value.

Section 45(3) — Key Computational Features

Aspect	*Position under Section 45(3)*
Consideration	Deemed to be the value recorded in the firm's books on the date of transfer, irrespective of fair market value.
Cost of acquisition/ indexation	Computed ordinarily, with reference to the partner's own original cost and holding period; unaffected by the deeming fiction.
Taxpayer	The contributing partner. The firm features only as the entity whose book entry fixes the deemed consideration.
Character of gain	Determined by the ordinary rules applicable to that class of asset (short-term or long-term); Section 45(3) substitutes only the consideration figure.

II. The Pre-2021 Legal Position on Retirement and Reconstitution

Before turning to the current exit-side law, it is useful to recall the case law that led Parliament to rewrite Section 45(4) of the Act in 2021, since the problem the amendments were designed to address is itself a guide to how the current provisions should be read.

Evolution of the Pre-2021 Judicial Position

Case	*Year*	*Holding*
CIT vs. A.N. Naik Associates [2004] 136 Taxman 107 / 265 ITR 346 (Bom.)	2004	The word 'otherwise' in the erstwhile Section 45(4) covered a subsisting firm distributing assets to a retiring partner, not only dissolution; a family-settlement-driven reconstitution was held taxable.
CIT vs. Dynamic Enterprises [2013] 359 ITR 83 (Karn. FB)	2013	Where a retiring partner took only cash representing the value of their share, and no capital asset was actually distributed, there was no transfer and Section 45(4) did not apply.
PCIT vs. Electroplast Engineers [2019] 104 taxmann.com 444 (Bom.)	2019	Followed Dynamic Enterprises: goodwill credited to retiring partners' capital accounts, followed by a purely cash settlement, was not a transfer of a capital asset by the firm.
CIT vs. Mansukh Dyeing & Printing Mills [2022] 449 ITR 439 / 145 taxmann.com 151 (SC), decided 24 November 2022	2022 (facts pre-2021)	The firm went through a family settlement diluting one partner's share on admission of new partners, followed by retirements and a fresh reconstitution, and finally a revaluation of land and building with a surplus of over ₹ 17 crore credited to partners' accounts, part of which was withdrawn. The Court held that the revaluation credit, once actually drawn upon, was in substance a distribution taxable under the erstwhile Section 45(4). The A.N. Naik line was approved.

The above decisions reflect two competing approaches under the erstwhile Section 45(4) of the Act. While *A.N. Naik Associates* adopted a broader interpretation of the expression "otherwise", *Dynamic Enterprises* and *Electroplast Engineers* emphasised that taxation required an actual distribution of a capital asset. The Supreme Court in M*ansukh Dyeing* approved the broader approach, but on facts involving revaluation of assets, credit of the surplus to partners' capital accounts and subsequent withdrawal of such amounts.

This divide created a familiar planning route: a firm would revalue land, credit the appreciation and any self-generated goodwill to partners' capital accounts, and let a partner retire by drawing cash against the inflated balance — arguing that, because no specific asset had formally changed hands, no 'transfer' within Section 2(47) had occurred. *Mansukh Dyeing* closed this route, but only on facts that predated the 2021 amendments.

III. Exit: Retirement and Reconstitution — Sections 9B and 45(4)

The Finance Act, 2021 fundamentally altered the taxation of retirement and reconstitution of firms by replacing the erstwhile Section 45(4) of the Act with a new computational mechanism and simultaneously introducing Section 9B of the Act. Unlike the pre-2021 regime, where the controversy centred on whether a 'transfer' had occurred, the current framework imposes two distinct charging provisions operating independently but capable of applying to the same transaction.

Section 9B introduces an independent deeming transfer: whenever a partner receives a capital asset or stock-in-trade from the firm on dissolution or reconstitution, the firm is deemed to have transferred that asset to the partner in the year of receipt, at fair market value, taxable as capital gains or business income depending on the asset's character.

Section 45(4), operating in parallel, taxes the firm on the excess of money or the value of any capital asset received by a partner over the balance in that partner's capital account, with revaluation and self-generated goodwill stripped out of that balance before the comparison.

Section 9B Compared with Section 45(4)

Feature	*Section 9B*	*Section 45(4)*
Trigger	Partner receives a capital asset or stock-in-trade on dissolution or reconstitution.	Partner receives money or a capital asset (not stock-in-trade) in excess of their capital account balance.
Deemed transferor	The firm	The firm
Value adopted	Fair market value of the asset	Formula prescribed under Section 45(4) read with Rule 8AB, i.e. excess of money/asset value over the adjusted capital account balance
Character of gain	Capital gains or business income, per the asset's character	Capital gains
Applies to money	No	Yes
Applies to stock-in-trade	Yes	No
Purpose of the provision	Taxes the transfer of assets from the firm to the partner	Taxes extraction of value by the partner over and above the adjusted capital account balance

Simultaneous Operation of Sections 9B and 45(4)

CBDT Circular No. 14 of 2021 (dated 2 July 2021), read with Rule 8AB, clarifies that Sections 9B and 45(4) are independent charging provisions and may apply simultaneously to the same reconstitution or dissolution. Accordingly, a single transfer of land to a partner may result in two separate tax computations—one under Section 9B of the Act and another under Section 45(4) of the Act. Rule 8AB prescribes the manner of attributing the amount chargeable under Section 45(4) of the Act to the remaining capital assets of the specified entity. On the subsequent transfer of such assets, Section 48(iii) of the Act allows deduction of the amount so attributed, thereby mitigating double taxation. However, this mechanism does not merge or set off the independent tax liabilities arising under Sections 9B of the Act and 45(4) of the Act, since Section 9B taxes the deemed transfer of the asset at fair market value, whereas Section 45(4) taxes the excess value received by the partner over the adjusted capital account balance.

A Worked Illustration

A firm holds a single parcel of land as a capital asset, acquired in 2011 for ₹ 15 lakh and recorded in the books at that figure. A fifth partner is admitted; the land is revalued to ₹ 60 lakh; and the four original partners agree to allot the land to two of them in settlement of a partial reduction in their shares, recording the land at a settlement value of ₹ 40 lakh.

Facts

Particulars	*Amount*
Cost of acquisition of land	₹ 15 lakh
Fair market value on reconstitution	₹ 60 lakh
Book/settlement value recorded in books	₹ 40 lakh
Asset distributed	Land
Recipient	Retiring partner

Tax Consequences

Provision	*Tax Consequence*
Section 9B	The firm is deemed to have transferred the land at its fair market value (FMV) of ₹ 60 lakh. Capital gains are computed by deducting the indexed cost of acquisition from the FMV. Accordingly, the deemed consideration is ₹ 60 lakh, and the taxable capital gain is computed after deducting the indexed cost of ₹ 15 lakh.

Provision	*Tax Consequence*
Section 45(4)	Independently, the firm computes the excess of the money and/or the FMV of the capital asset received by the partner over the partner's adjusted capital account balance (excluding revaluation and self-generated goodwill). Only such excess is chargeable to tax under Section 45(4).
Rule 8AB	Prescribes the manner of attributing the amount taxed under Section 45(4) to the remaining capital assets of the specified entity. On their subsequent transfer, Section 48(iii) allows deduction of the amount so attributed, thereby mitigating double taxation.
Section 48(iii)	On a subsequent transfer of the firm's remaining capital assets, the amount attributed under Rule 8AB is allowed as a separate deduction while computing capital gains, thereby mitigating double taxation of the gain already taxed.

IV. Judicial Developments under the Post-2021 Regime

The Chennai Tribunal's decision in Gokulakrishna provides useful guidance on the taxation of partnership reconstitutions. Although the case related to Assessment Year 2017-18 and the amended Sections 9B and 45(4) were held to be prospective, the Tribunal's reasoning is relevant in understanding the distinction between a mere realignment of partnership rights and an actual distribution of money or assets.

Facts and Decision

In ***Gokulakrishna vs. DCIT [2025] 175 taxmann.com 720 (Chennai-Trib.)***, an incoming partner acquired a 51% interest in an LLP by contributing capital. A portion of the contribution was credited to the current accounts of the existing partners in their sacrificing ratio. The Assessing Officer treated the credit as consideration for goodwill and sought to tax one of the existing partners whose profit-sharing ratio reduced from 12% to 5.88%.

The Tribunal deleted the addition on two independent grounds:

- **No transfer under Section 2(47) of the Act.** The admission of a new partner and the consequential realignment of profit-sharing ratios did not amount to a transfer of a capital asset, since no partner has an exclusive interest in any specific asset of the firm during its subsistence.

- **Prospective operation of the amended law.** Sections 9B of the Act and the substituted Section 45(4) of the Act, introduced by the Finance Act, 2021, were held to apply prospectively from Assessment Year 2021-22 and were therefore inapplicable to Assessment Year 2017-18.

Comparing Gokulakrishna with Mansukh Dyeing

Because both decisions arise from a reconstitution accompanied by a change in profit-sharing arrangements, it is worth setting out precisely how their facts and holdings diverge.

Mansukh Dyeing (Supreme Court) Compared with Gokulakrishna (Chennai Tribunal)

Issue	*Mansukh Dyeing (SC)*	*Gokulakrishna (Chennai ITAT)*	*Significance*
Nature of transaction	Reconstitution followed by retirement of partners after revaluation of assets	Admission of a new partner with a realignment of profit-sharing ratio	The two cases deal with materially different factual situations.
Revaluation of assets	Yes. Land and building were revalued and the surplus was credited to partners' capital accounts.	No revaluation of the firm's assets was involved at the time of admission of the partner.	Mere admission of a partner was the issue in Gokulakrishna.
Retirement of partners	Yes. Partners retired after revaluation.	No. The LLP continued with all existing partners.	Mansukh Dyeing involved an exit of partners; Gokulakrishna did not.
Actual distribution/ receipt	Yes. The revaluation surplus was ultimately withdrawn by the retiring partners.	No. Only book entries were passed by crediting the existing partners' current accounts; no money or capital asset was distributed by the LLP.	This is the fundamental factual distinction between the two decisions.
Change in profit-sharing ratio.	Incidental to the overall restructuring; not the basis of taxation.	Central issue. Existing partners' profit-sharing ratio was diluted upon admission of the new partner.	A mere realignment of profit-sharing ratio was held not to constitute a transfer.
Provision considered	Erstwhile Section 45(4) (pre-Finance Act, 2021).	Section 45(1) and Section 2(47). Sections 9B and substituted Section 45(4) were referred to only to hold that they apply prospectively.	The decisions operate under different statutory frameworks.
Core issue before the Court	Whether withdrawal of the revaluation surplus by retiring partners amounted to a taxable distribution.	Whether admission of a new partner and consequential dilution of profit-sharing ratio constituted a transfer.	The legal questions themselves were different.

Issue	*Mansukh Dyeing (SC)*	*Gokulakrishna (Chennai ITAT)*	*Significance*
Decision	Taxable. The revaluation credit, once actually withdrawn, amounted in substance to a distribution attracting the erstwhile Section 45(4).	Not taxable. No transfer of a capital asset occurred merely because of the admission of a new partner and the corresponding change in profit-sharing ratio.	The outcomes are driven by different facts rather than conflicting legal principles.
Key principle emerging	Substance prevails over form; an actual extraction of value by retiring partners may attract tax.	Mere reconstitution or change in profit-sharing ratio, without an actual distribution of money or assets, does not amount to a transfer.	The two decisions are complementary rather than contradictory.

A combined reading of *Mansukh Dyeing* and *Gokulakrishna* indicates that the two decisions operate in different factual and statutory settings. *Mansukh Dyeing* addresses cases where a revaluation surplus is ultimately realised by retiring partners through an actual distribution, whereas *Gokulakrishna* concerns a mere reconstitution involving a change in profit-sharing ratios without any distribution of money or capital assets. Accordingly, Gokulakrishna does not dilute the ratio of *Mansukh Dyeing*; rather, it clarifies that a mere reconstitution or book adjustment, unaccompanied by an actual receipt, does not by itself give rise to a taxable event.

Does Mansukh Dyeing Continue to Govern the Post-2021 Regime?

The decision in Mansukh Dyeing was rendered in the context of the erstwhile Section 45(4) of the Act, where the taxable event was the distribution of a capital asset by the firm. The Supreme Court therefore had no occasion to interpret Section 9B of the Act or the substituted Section 45(4) of the Act, both of which were introduced by the Finance Act, 2021 and are differently structured. While Gokulakrishna Trading Co. has proceeded on the footing that the amended provisions require an actual receipt of money, capital asset or stock-in-trade by the partner, the Supreme Court has not yet examined the scope of the substituted provisions. Accordingly, the extent to which the reasoning in Mansukh Dyeing applies to the post-2021 regime remains an open question. Until judicial guidance emerges, the applicability of Sections 9B of the Act and Section 45(4) of the Act to cases involving a mere revaluation of assets and credit to partners' capital accounts is likely to remain a contentious issue.

V. Revaluation, Goodwill and Their Tax Consequences

Revaluation by Itself Does Not Trigger Tax

Mere revaluation of a firm's land does not, by itself, constitute a taxable event. A revaluation entry merely restates the carrying value of an

existing asset and does not involve a transfer. The tax consequences arise only where, on reconstitution or retirement, a partner actually receives money or a capital asset from the firm to attract the operation of Sections 9B of the Act and/or Section 45(4) of the Act. The Chennai Tribunal in Gokulakrishna reaffirmed that a mere revaluation or realignment of profit-sharing ratios, without an actual distribution of money or assets, does not by itself give rise to a taxable event.

Whether mere Revaluation Constitutes "Receipt" under Sections 9B and 45(4)?

An additional interpretative issue under the substituted provisions is the meaning of the expression "receives" used in Sections 9B of the Act and Section 45(4) of the Act. Unlike the erstwhile Section 45(4) of the Act, which was triggered by the distribution of a capital asset, both the substituted provisions proceed on the basis that the partner must first receive money, a capital asset or stock-in-trade in connection with the reconstitution or dissolution of the specified entity. A mere upward revaluation of land accompanied by a corresponding credit to the partners' capital accounts does not, by itself, place the asset or money in the hands of the partner. It may therefore be argued that, absent an actual receipt, the statutory trigger under Sections 9B of the Act and Section 45(4) of the Act is not attracted. The issue, however, has not yet been examined by the higher judiciary under the post-2021 regime.

Goodwill: A Distinct Tax Treatment

Goodwill stands on a different footing. The Finance Act, 2021 withdrew the benefit of depreciation on goodwill of a business or profession, thereby reversing the position laid down by the Supreme Court in ***CIT vs. Smifs Securities Ltd. Rule 8AA(5)***, inserted by Notification No. 76/2021, further provides that the portion of the gain computed under Section 45(4) which is attributable to self-generated goodwill or any other self-generated asset shall be treated as short-term capital gain, irrespective of the period for which the underlying business has been carried on.

Apportionment under Rule 8AA and Rule 8AB

Where the gain computed under Section 45(4) relates to more than one asset, Rule 8AA and Rule 8AB require such gain to be apportioned amongst the underlying capital assets. Accordingly, different assets may receive different tax treatment even though they form part of the same revaluation exercise.

Apportionment of Gain under Rule 8AA

Component	*Increase in Value*	*Share of Taxable Gain*	*Character*
Patent (part of depreciable block)	₹ 15 lakh	One-third	Deemed short-term, since it forms part of a depreciable block (irrespective of the block's actual holding period)

Component	*Increase in Value*	*Share of Taxable Gain*	*Character*
Self-generated goodwill	₹ 30 lakh	Two-thirds	Deemed short-term under Rule 8AA(5), irrespective of the business's actual age.

The above illustration is adapted from the example contained in CBDT Circular No. 14 of 2021 to explain the apportionment mechanism under Rule 8AA.

No depreciation is available on either component. Further, Explanation 2 to Rule 8AB, read with Sections 43(1) and 43(6)(c), makes it clear that any increase in the value of a depreciable block must arise from the actual cost of an asset acquired during the year. A mere revaluation does not constitute actual cost and, therefore, cannot increase the written-down value of the block, irrespective of whether the increase is attributed to goodwill or any other asset.

VI. Definitional Grey Zones: Reconstitution, Dissolution and 'No Payout, No Tax'

Both Sections 9B and 45(4) are triggered only where a partner actually receives money, a capital asset, or stock-in-trade. A change in profit-sharing ratio, or the admission of a new partner, that is not accompanied by an actual payout does not, on a plain reading, attract either provision. Revaluing land and re-crediting capital accounts without any actual distribution keeps the transaction outside both provisions, at least until an actual receipt occurs in a later year.

A second grey zone lies in the boundary between reconstitution and dissolution.

Reconstitution vs. Dissolution

Scenario	*Tax Implications*	*Reason*
Reconstitution — firm continues with a changed constitution	Sections 9B and, where applicable, Section 45(4)	The statutory conditions for both provisions are capable of being satisfied where a partner receives money or assets on reconstitution.
Dissolution — firm is dissolved and its assets are distributed	Section 9B clearly applies. The applicability of Section 45(4) requires careful examination in light of the statutory scheme and the facts of the case.	Section 9B expressly covers both dissolution and reconstitution, whereas Section 45(4) operates in the context of receipt by a partner in connection with reconstitution and must be read together with the definitions incorporated from Section 9B.

The distinction between reconstitution and dissolution can have significant tax implications. Whether the business continues through a reconstituted firm or is wound up altogether should therefore be determined by the underlying commercial arrangement rather than by tax considerations alone. Given the simultaneous operation of Sections 9B and 45(4) and the absence of extensive judicial guidance under the post-2021 regime, each restructuring should be analysed on its own facts before implementing the proposed course of action.

VII. Practical Challenges in Applying Sections 45(3), 9B and 45(4) to Real Estate Transactions

Practical Challenges in Real Estate Land Transactions

Issue	*Practical Challenge*
Circle rate vs. fair market value	In developing or peripheral areas, stamp duty values may differ significantly from the actual market value. Even where Section 50C is inapplicable, a substantial difference between the book value and market value may invite scrutiny regarding the genuineness of the valuation adopted.
Capital asset vs. stock-in-trade	The character of land may change during the project lifecycle. Incorrect classification determines whether Sections 45(3), 9B and 45(4) or business taxation provisions such as Section 43CA apply, leading to disputes on both taxability and computation.
Valuation of encumbered or litigated land	Determining the fair market value of land subject to litigation, encumbrances, title defects or development restrictions requires significant judgment, and valuation discounts are often challenged during assessment.
Valuation of TDR, FSI and development rights	Existing provisions provide limited guidance on determining the fair market value of Transferable Development Rights (TDR), Floor Space Index (FSI) and similar development rights distributed on reconstitution.
Allocation under Rule 8AA and Rule 8AB	Where the revaluation involves land, buildings, depreciable assets and self-generated goodwill, allocating the gain amongst different assets for Rule 8AA and Rule 8AB requires careful valuation and is likely to be a recurring area of dispute.
Timing of reconstitution and valuation	Admission, retirement, revaluation and asset distribution often occur on different dates. Identifying the relevant date for determining the fair market value under Sections 9B and 45(4) can become contentious.
Negative or insufficient capital account balances	Application of the formula under Section 45(4) may give rise to computational issues where the retiring partner's adjusted capital account is negative or significantly reduced after excluding revaluation and self-generated goodwill.

Issue	*Practical Challenge*
Recognition of goodwill	Distinguishing genuine business goodwill from goodwill recognised primarily to facilitate a partner's exit remains a fact-intensive exercise and is likely to attract scrutiny.
Compliance and valuation burden	Every reconstitution may require determination of the fair market value of multiple assets and reporting in Form No. 5C, resulting in increased compliance costs and extensive documentation requirements.
Multiple assets distributed to different partners	Where different partners receive different assets or combinations of money and assets, applying Sections 9B, 45(4) and the attribution mechanism under Rule 8AB on a partner-wise basis becomes computationally complex.
Revaluation of stock-in-trade	Revaluation of land held as stock-in-trade and its credit to partners' capital accounts raises the question whether Section 45(4), being confined to the capital gains chapter, has any application at all, and whether only Section 9B and the ordinary business-income provisions govern the eventual receipt by a partner.
Revaluation Reserve vs. partners' capital accounts	The manner in which a revaluation surplus is booked — credited to a Revaluation Reserve Account as against the individual capital accounts of partners — may itself become a point of dispute in determining whether a distribution capable of attracting Section 45(4) has taken place, making the underlying accounting treatment a matter of practical significance.

VIII. Conversion of Firms, LLPs and Companies under Sections 47 and 47A

A business holding land as its principal asset may need to change its legal form for reasons unrelated to tax — raising capital, limiting liability, or preparing for succession. Whether a conversion attracts capital gains depends on the route used, whether that route is expressly exempted under Section 47, and, where it is, whether the attached conditions are respected for the prescribed period. Because book values for land diverge most sharply from market value, land-holding entities have the most at stake in getting this right.

Three conversions are commonly encountered: a firm converting into a company, a company converting into an LLP, and an LLP converting into a company.

Conversion Routes Compared

Conversion Route	*Relevant Provision*	*Tax Position*	*Key Conditions / Issues*	*Judicial Position*
Firm → Company	Section 47(xiii); revived by Section 47A(3) on breach	Exempt, subject to conditions	All assets and liabilities become the company's; partners become shareholders in the same proportion as their capital accounts; no consideration other than shares; ≥ 50% aggregate shareholding maintained for 5 years.	Exemption withdrawn on breach under Section 47A(3)
Firm → Company (Statutory Vesting)	Sections 366–374 of the Companies Act, 2013	Generally not regarded as a transfer	Conversion takes place through statutory vesting rather than conveyance	Texspin Engineering supports non-taxability
Company → LLP	Section 47(xiiib); revived by Section 47A(4) on breach	Exempt only if all prescribed conditions are satisfied	Turnover ≤ ₹ 60 lakh and total assets ≤ ₹ 5 crore in each of 3 preceding years; all assets/liabilities transfer; shareholders become partners in the same proportion; ≥ 50% profit share maintained for 5 years; no payout from accumulated profits for 3 years	Celerity Power LLP and ISC Speciality Chemicals LLP hold that failure to satisfy Section 47(xiiib) results in a taxable transfer

Conclusion

The Finance Act, 2021 has fundamentally reshaped the taxation of land transactions between partnerships, LLPs and their partners. Section 45(3) continues to govern the entry of land into a firm or LLP, while Sections 9B and the substituted Section 45(4) now provide a comprehensive framework for retirement and reconstitution. Together with the attribution mechanism under Rule 8AB, these provisions have significantly increased both the computational complexity and the compliance burden associated with such transactions.



The case law confirms that outcomes turn on the precise facts of each transaction. Mansukh Dyeing and Gokulakrishna arise from different factual and statutory settings and should be read as complementary rather than conflicting authorities. Similarly, the conversion of firms, LLPs and companies remains governed by a mix of statutory exemptions and judicial principles, with the tax outcome depending on the route chosen and continued compliance with the prescribed conditions.

Several issues remain unresolved even after the 2021 reforms — among them, the interaction between Section 50C and Section 45(3), the application of the amended provisions to complex reconstitution structures, and the tax treatment of LLP-to-company conversions. Further guidance from the CBDT and the courts on these points would go a long way toward providing certainty.

Until such clarity emerges, practitioners are best served by careful transaction structuring, sound valuation support and thorough documentation. As reliance on fair market value, capital account adjustments and statutory formulae grows, the commercial rationale behind each step — and the record supporting it — will matter as much as the legal provisions themselves.

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" Learning gives creativity,
Creativity leads to thinking,
Thinking leads to knowledge,
Knowledge makes you great. "

Dr. APJ Abdul Kalam

CAPITAL GAINS - ROLLOVER EXEMPTIONS AND TDS IN LAND AND IMMOVABLE PROPERTY



Abhay Agrawal

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Overview

This article examines the principal capital-gains rollover exemptions and withholding obligations arising from transactions in land and immovable property. It analyses Sections 54, 54B, 54D, 54EC, 54F and 54H of the Income-tax Act, 1961, with particular emphasis on eligible assessees, qualifying assets, reinvestment periods, monetary ceilings, holding conditions and the Capital Gains Account Scheme. The discussion incorporates recent legislative developments, including the ₹ 10 crore ceiling under Sections 54 and 54F, the revised long-term capital-gains regime for land and buildings, aggregation of consideration in joint property transactions under Section 194-IA, and the corresponding framework under the Income-tax Act, 2025. Selected judicial decisions are examined to highlight recurring controversies concerning multiple residential units, acquisition in the name of family members, use of leasehold industrial premises, temporary non-availability of specified bonds and compliance with CGAS timelines. The article also addresses TDS obligations in purchases from resident and non-resident sellers, procedural transitions from April 2026, and the consequences of non-compliance, offering practical guidance for dispute prevention.

1. Introduction & The Evolving Statutory Landscape

Taxation of immovable property transactions is a complex area of direct tax law, requiring careful coordination between the charging provisions and the statutory rollover exemptions. Recognising that capital gains reinvested in specified residential, agricultural, industrial assets or notified bonds do not necessarily represent freely disposable income, the Income-tax Act provides relief through Sections 54, 54B, 54D, 54EC and 54F.

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These provisions form the principal framework for capital-gains reinvestment relief and have undergone significant legislative changes in recent years, including revised tax rates, monetary ceilings, tighter compliance conditions and corresponding restructuring under the Income-tax Act, 2025.

Finance Act, 2023 introduced a statutory monetary cap of ₹ 10 crore on eligible investments and Capital Gains Account Scheme (CGAS) deposits under Sections 54 and 54F, effective Assessment Year 2024-25 onwards, curbing high-net-worth capital tax shields.

Finance (No. 2) Act, 2024 executed a major structural reform of the capital gains taxation regime. For transfers of land and buildings executed on or after 23 July 2024, the general LTCG tax rate was rationalized to 12.5%, accompanied by the removal of statutory cost inflation indexation benefits. To prevent tax hardship on historical investments, a statutory grandfathering mechanism was enacted for resident individuals and HUFs. Under this mechanism, resident individuals and HUFs transferring land or buildings acquired prior to 23rd July 2024 can compare their tax liability calculated at 12.5% without indexation against 20% with indexation, paying whichever yields lower tax liability. Concurrently, Section 194-IA was amended to mandate that the ₹ 50 lakh withholding threshold must be evaluated against the aggregate consideration paid/payable across all joint buyers and joint sellers.

Income-tax Act, 2025 entered into force on 1 April 2026, creating a dual operational framework. While legacy assessments, pending proceedings, and transfers executed prior to 1 April 2026 remain governed by the provisions of the 1961 Act, all ongoing tax deductions and property compliances transition to corresponding provisions under the 2025 Act, such as Section 393 for withholding tax.

The Finance Act, 2026 refined the procedural mechanics of the 2025 Act regime. A notable relief is the waiver u/s 397 of the requirement for resident individual and HUF purchasers to secure a Tax Deduction and Collection Account Number when deducting tax on property acquisitions from non-resident sellers, taking effect from 1 October 2026.

Resident individuals and HUFs transferring land or buildings acquired prior to 23rd July 2024 can compare their tax liability calculated at 12.5% without indexation against 20% with indexation, paying whichever yields lower tax liability.

Understanding these rollover provisions, judicial interpretations, and withholding tax mandates u/s 194-IA and Section 195 is essential for navigating modern real estate transactions.

2. The Rollover Provisions

Although Sections 54, 54B, 54D, 54EC, and 54F share the overarching objective of encouraging capital reinvestment, their internal mechanics, eligible assessee classes, statutory timelines, reinvestment targets, and quantitative limits differ. A key structural distinction separates provisions requiring reinvestment of net capital gains (Sections 54, 54B, 54D, and 54EC) from Section 54F, which requires reinvestment of total net consideration. Additionally, while Sections 54B and 54D extend rollover benefits to both short-term and long-term capital assets, Sections 54, 54EC, and 54F apply strictly to long-term capital assets.

Section 54 - Reinvestment of Residential House Capital Gains

Section 54 applies exclusively to Individual and HUF assessees transferring a long-term residential house property. To qualify, the taxpayer must purchase one residential house in India within one year before or two years after the transfer date, or construct one residential house within three years after the transfer date. The quantum of exemption is equal to the capital gain realized or the actual reinvested amount, whichever is lower. Additionally, where the amount of long-term capital gain does not exceed ₹ 2 crore, the assessee may, at his option, purchase or construct two residential houses in India. This option is available only once in the lifetime of the assessee. Effective AY 2024-25, eligible investments

Section 54 applies exclusively to Individual and HUF assessees transferring a long-term residential house property.

in the new house property and deposits under Capital Gains Account Scheme (CGAS) are capped at ₹ 10 crore. The newly acquired residential property carries a statutory lock-in period of three years, during which any transfer triggers the prescribed adjustment to its cost of acquisition while computing applicable capital gains on such transfer.

Section 54B - Relief on Transfer of Agricultural Land

Section 54B applies to Individual and HUF taxpayers transferring land that has been used by the assessee or their parents for agricultural purposes in the two years immediately preceding the date of transfer. The original asset may be either short-term or long-term. The taxpayer must purchase replacement agricultural land within two years from the transfer date. Exemption is available up to the full extent of the capital gain reinvested, without any statutory monetary limit. The newly acquired agricultural land is subject to a three-year lock-in period during which any transfer triggers the prescribed adjustment to its cost of acquisition while computing applicable capital gains on such transfer. It



The taxpayer must purchase replacement agricultural land within two years from the transfer date. Exemption is available up to the full extent of the capital gain reinvested, without any statutory monetary limit.

is important here to take a note that revenue authorities frequently challenge Section 54B claims where revenue records describe land as agricultural, but actual cultivation is unverified. To satisfy the evidentiary burden, the taxpayer must demonstrate actual agricultural user during the relevant statutory period, through documentary evidence, such as:

a) 7/12 extract entries, Khasra/Girdawari records, and revenue cultivation logs;

b) Electricity usage records for agricultural tube wells and irrigation pumps;

c) Purchase invoices for seeds, fertilizers, and pesticides, alongside crop sales receipts;

d) Agricultural income disclosures in filed Income Tax Returns.

Section 54D - Compulsory Acquisition of Industrial Property

Section 54D is available to any category of assessee where capital gain arises from the compulsory acquisition, under any law, of a capital asset comprising land, building, or any right in land or building forming part of an industrial undertaking belonging to the assessee. The original asset must, in the two years immediately preceding the date of transfer, have been used by the assessee for the purposes of the business of that industrial undertaking, covering both short-term and long-term assets. To claim exemption, the assessee must purchase land or building or any right in land or building or construct a building, within three years after the transfer date for shifting or re-establishing the industrial undertaking. The exemption equals the lower of the capital gain realized or the reinvested amount, with no monetary ceiling, subject to a three-year lock-in requirement, period during which any transfer triggers the prescribed adjustment to its cost of acquisition while computing applicable capital gains on such transfer. It is important here to take a note that Section 54D requires a direct nexus between the acquired asset and active industrial operations. The replacement investment must be demonstrably connected with shifting or re-establishing the existing industrial undertaking or setting up another industrial undertaking. A passive investment in real estate, having no functional nexus with the industrial undertaking, would ordinarily not satisfy the provision.

Section 54EC - Investment in Specified Capital Gains Bonds

Section 54EC allows any category of assessee deriving LTCG from the transfer of land, building, or both to claim rollover relief. The taxpayer must invest the capital gains

Section 54D is available to any category of assessee where capital gain arises from the compulsory acquisition, under any law, of a capital asset comprising land, building, or any right in land or building forming part of an industrial undertaking belonging to the assessee.

into long-term specified bonds issued by the National Highways Authority of India, Rural Electrification Corporation, or other notified

Section 54EC allows any category of assessee deriving LTCG from the transfer of land, building, or both to claim rollover relief.

bodies within six months from the transfer date. The aggregate investment eligible under Section 54EC is capped at ₹ 50 lakh. Original restriction introduced from 1 April 2007 limited investment to ₹ 50 lakh during a financial year; and the later second proviso, applicable from Assessment Year 2015-16, restricted the aggregate investment relating to one transfer across the year of transfer and the succeeding financial year to ₹ 50 lakh. The specified bonds are subject to a mandatory 5-year lock-in period, and any pledge or loan drawn against them constitutes a deemed conversion into cash, revoking the exemption.

Section 54F - Reinvestment of Gains from Other Long-Term Assets

Section 54F provides relief to Individual and HUF taxpayers transferring any long-term capital asset other than a residential house (such as commercial premises, vacant plots, or securities). The taxpayer must purchase one residential house in India within one year before or two years after the transfer, or construct one within three years. Unlike Section 54, Section 54F requires reinvestment of total net consideration. If partial net consideration is invested, proportional exemption is granted. Effective from Assessment Year 2024-25, the exemption under Section 54F is effectively restricted to an investment of ₹ 10 crore. Similarly, net consideration exceeding ₹ 10 crore is disregarded for the purposes of deposit under the Capital Gains Accounts Scheme. The assessee must not own more than one residential house, other than the new asset, on the date of transfer and must comply with the restrictions on purchasing or constructing an additional residential house within the prescribed periods. Further, where the new asset is transferred within three years, the capital gain earlier exempted is deemed to be long-term capital gain of the year of such transfer.

Section 54F provides relief to Individual and HUF taxpayers transferring any long-term capital asset other than a residential house (such as commercial premises, vacant plots, or securities).

Section 54H - Reinvestment Timeline for Delayed Compensation

Where the original asset is compulsorily acquired and the compensation is not received on the date of transfer, Section 54H provides that the prescribed period for acquiring the new asset, or for depositing or investing the relevant capital gain under Sections 54, 54B, 54D, 54EC or 54F, shall be reckoned from the date on which such compensation is actually received. The relief is therefore conditional upon delayed receipt of compensation and does not generally alter the statutory timelines in cases where compensation is received on the date of transfer.

Transition to the Income-tax Act, 2025: Renumbering with Substantive Continuity

Under the Income-tax Act, 2025, effective from 1 April 2026, the rollover provisions corresponding to Sections 54, 54B, 54D, 54EC and 54F are contained in Sections 82 to 86, respectively. While the provisions have been recast within the new "tax year" framework, their core eligibility conditions,

The Court adopted a purposive interpretation of the beneficial provision and declined to deny relief where completion of the transfer had been prevented by circumstances beyond the assessee's control.

reinvestment timelines and consequences of non-compliance have largely been retained. The ₹ 10 crore ceilings under the erstwhile Sections 54 and 54F continue under Sections 82 and 86, while Section 85 preserves the ₹ 50 lakh limit for investment in specified bonds, subject to the applicable transition and savings provisions.

3. Evolving Judicial Principles on rollover provisions

3.1 Purposive Construction and Legal Impossibility

In ***Sanjeev Lal vs. CIT (2014) 365 ITR 389 (SC)***, the assessee had executed an agreement to sell within the prescribed period, but completion of the conveyance was delayed by an interim civil-court order. On the peculiar facts, the Supreme Court held that the enforceable rights created under the agreement, followed by eventual conveyance, were sufficient to satisfy the statutory timeline under Section 54. The Court adopted a purposive interpretation of the beneficial provision and declined to deny relief where completion of the transfer had been prevented by circumstances beyond the assessee's control.

3.2 Multi-Unit Residential Structures – Restrictive Amendment

Significant litigation historically centered on whether acquiring adjacent or multi-story apartments constituted "a residential house". Subsequent amendment has settled the controvery.

In ***CIT vs. Gita Duggal [2013] 357 ITR 153***, the Delhi High Court held that "a residential house" includes a residential building comprising multiple residential units, provided the structure is developed or used as a residential facility. SLP dismissed in [2014] 52 taxmann.com 246 (SC).

In ***CIT vs. Devdas Naik [2014] 366 ITR 12***, the Bombay High Court affirmed that independently acquired adjacent flats merged structurally to function as a singular residential unit satisfy Section 54.

In ***Krishnagopal B. Nangpal vs. Dy. CIT [2026] 484 ITR 272***, the Bombay High Court evaluated a dispute governed by the unamended text of Section 54. The assessee had invested capital gains into seven row houses. The Bombay High Court held that under the unamended statutory text, "a residential house" was not restricted to a single residential unit. The Court ruled that restrictive statutory amendments are prospective and cannot be retrospectively applied to deny beneficial relief for earlier assessment years.

3.3 Property Acquisition in Name of Family Members: The Jurisdictional Divide

A point of litigation under Sections 54 and 54F involves acquiring the new residential house in the name of a spouse or child. High Courts remain split on this issue:

In ***CIT vs. Gurnam Singh [2010] 327 ITR 278***, the Punjab & Haryana High Court granted Section 54B exemption where new agricultural

land was acquired jointly in the names of the assessee and his son, provided the purchase funds were provided entirely by the assessee.

In ***CIT vs. Dinesh Verma (2015) 60 taxmann.com 461 (P&H)***, the Court restricted section 54B relief to the amount invested by the assessee in the replacement property and declined relief in respect of the portion attributable to the wife. The Court emphasised that section 54B contemplates purchase by the assessee.

In ***CIT vs. Kamal Wahal (2013) 351 ITR 4 (Delhi)***, the Delhi High Court held that Section 54F does not expressly require the new residential house to be purchased exclusively in the assessee's own name. Applying the rule of purposive construction to this beneficial provision, the Court allowed the exemption where the house was purchased in the wife's name, the entire investment came from the assessee's sale proceeds, and the wife made no contribution.

In ***Prakash vs. ITO (2009) 312 ITR 40 (Bom.)***, the Bombay High Court, Nagpur Bench, denied exemption under Section 54F where the property was purchased and constructed exclusively in the name of the assessee's adopted son. The Court noted that the assessee intended from the outset to transfer the property to his son and consequently retained no legal title, control or domain over the new asset.

The judicial position is not uniform. While Gurnam Singh and Kamal Wahal adopt a purposive approach where the assessee funds the entire investment, Dinesh Verma and the jurisdictional Bombay High Court ruling in Prakash emphasize ownership, legal title and domain in the assessee. As a matter of



prudent tax planning, the replacement asset should therefore be acquired in the assessee's own name

3.4 Establishment of new industrial undertaking

In ***CIT vs. Hemsons Industries (2001) 251 ITR 693 (AP)***, the Andhra Pradesh High Court held that relief under Section 54D could not be denied merely because the replacement factory was established on leasehold land. Since the assessee had acquired leasehold rights and constructed the new factory building within the prescribed period for setting up the industrial undertaking, the statutory conditions were held to be satisfied.

3.5 Temporary unavailability of specified bonds in statutory six-month window

A practical issue arises when specified bonds are temporarily unavailable during the statutory six-month window.

In ***Aspi Ginwala vs. ACIT [2012] 20 taxmann.com 75 (Ahmedabad - ITAT)***, the tribunal held that where bonds were physically unavailable in the market

during the six-month period, an investment executed immediately upon bond issuance should not be disallowed.

Taxpayers relying on this principle should maintain contemporaneous proof of attempted subscriptions.

3.6 Capital Gains Account Scheme and Compliance Windows

Where the capital gain (under Sections 54, 54B, or 54D) or net consideration (u/s 54F) is not fully utilized to acquire or construct the new asset before filing the return of income, the unutilized portion must be deposited into an authorized Capital Gains Account Scheme (CGAS) account. Section 54 and Section 54F require CGAS deposits to be completed on or before the due date for furnishing the return of income u/s 139(1). However, courts have extended judicial leniency:

In ***CIT vs. Rajesh Kumar Jalan (2006) 286 ITR 274***, the Gauhati High Court held that deposits made within the extended return filing period u/s 139(4) satisfy the statutory requirement.

In ***CIT vs. K. Ramachandra Rao (2015) 56 taxmann.com 163***, the Karnataka High Court affirmed that if the assessee utilizes the capital gains to construct a residential house within the statutory period allowed by the substantive provision, exemption cannot be denied merely because the deposit was not made before the Section 139(1) deadline.

In ***Humayun Suleman Merchant vs. CCIT (2016) 387 ITR 421 (Bom.)***, the Bombay High Court held that the unutilised net consideration must be deposited in the notified Capital Gains Account Scheme on or before the due date under Section 139(1). Where the assessee neither utilised the entire amount before filing the return nor deposited the balance under Section 54F(4), exemption was rightly restricted proportionately to the amount actually invested.

Although the Gauhati and Karnataka High Courts have adopted liberal approaches in particular factual settings, the Bombay High Court in ***Humayun Suleman Merchant vs. CCIT (2016) 387 ITR 421*** has taken a stricter view. Taxpayers should execute CGAS deposits on or before the statutory Section 139(1) deadline.

4. Withholding Provisions

4.1 Section 194-IA

Section 194-IA places withholding obligations on purchasers acquiring resident-owned immovable property. Provision excludes "agricultural land" as defined for the section, effectively rural agricultural land outside the specified municipal and distance limits. The purchaser (transferee) must deduct tax at the rate of 1% on the sum paid or the SDV whichever is higher, where the total consideration or Stamp Duty Value (SDV) reaches or exceeds ₹ 50 lakh. If the transferor fails to furnish an active PAN, the withholding rate increases to 20% u/s 206AA, subject to the relevant operative

Section 194-IA places withholding obligations on purchasers acquiring resident-owned immovable property.

provisions. Tax must be deducted at the time of payment or credit, whichever is earlier, including advance payments and staggered instalments.

Under Explanation (aa) to Section 194-IA, "consideration" extends beyond the base agreement value to include mandatory ancillary charges paid to the seller, such as car parking fees, club membership fees, electricity and water facility charges, and advance maintenance deposits. Unbundling these payments into separate contracts does not reduce the taxable base for TDS evaluation.

Further, from 1 October 2026, Section 397 exempts resident individuals and HUFs purchasing immovable property from non-residents from obtaining TAN. The relaxation is procedural and does not alter the substantive withholding obligation or applicable tax rates.

4.2 Joint Property Transactions & Mandatory Aggregation

Prior to 1 October 2024, taxpayers frequently contended that the ₹ 50 lakh threshold applied independently to each co-buyer or co-seller. For instance, two co-buyers acquiring property for ₹ 80 lakh (paying ₹ 40 lakh each) argued that Section 194-IA did not apply.

To adrress this interpretive ambiguity, the Finance (No. 2) Act, 2024 amended Section 194-IA effective 1 October 2024. The amendment mandates that where a transaction involves multiple transferors or transferees, the ₹ 50 lakh threshold is evaluated by aggregating the total amounts paid or payable by all transferees to all transferors for the property.

Consider a property transfer executed in November 2025 with an agreed sale consideration of ₹ 80 lakh (SDV: ₹ 85 lakh), involving two co-buyers (Co-Buyer A paying ₹ 40 lakh and Co-Buyer B paying ₹ 40 lakh). Because aggregate consideration (₹ 80 lakh) exceeds the ₹ 50 lakh threshold, Section 194-IA applies to the entire transaction. Co-Buyer A must deduct 1% on his ₹ 42.5 lakh (SDV higher) payment (₹ 42,500), and Co-Buyer B must deduct 1% on her ₹ 42.5 lakh (SDV higher) payment (₹ 42,500), yielding total TDS of ₹ 85,000.

4.3 Cross-Border Acquisitions & Section 195

Where immovable property is purchased from a non-resident seller, Section 194-IA does not apply; the withholding obligation is governed by Section 195, which operates without any minimum monetary threshold. Tax is deductible only from the portion of the payment chargeable to tax in India [Supreme Court in ***GE India Technology Centre (P.) Ltd. vs. CIT (2010) 327 ITR 456 (SC)***], but the buyer should not ordinarily restrict deduction to a self-computed estimate of the seller's capital gain.

Where only a part of the sale consideration is claimed to be taxable, the buyer may seek determination of the appropriate taxable proportion under Section 195(2), while the seller may obtain a lower or nil deduction certificate under Section 197. The applicable rate must be determined with reference to the date of transfer, nature and period of holding of the property, surcharge, cess and any applicable treaty relief.

4.4 Transition to Income-tax Act, 2025 and Finance Act, 2026 Framework

For payments or credits on or after 1 April 2026, Section 194-IA is replaced by Section 393(1), Table Serial No. 3(i), of the Income-tax Act, 2025. Form 26QB is replaced by the consolidated Form 141, with property transactions reported in Schedule B, while Form 16B is replaced by Form 132, issuable within 15 days from the due date for filing Form 141.

Further, from 1 October 2026, Section 397 exempts resident individuals and HUFs purchasing immovable property from non-residents from obtaining TAN. The relaxation is procedural and does not alter the substantive withholding obligation or applicable tax rates.

4.5 Consequences of Non-Compliance

The consequences of default must be identified with reference to the statute governing the relevant deduction event. For transactions up to 31 March 2026, failure to deduct or deposit tax is governed by Sections 201 and 201(1A) of the Income-tax Act, 1961, together with the applicable late-filing fee, penalty and prosecution provisions under Sections 234E, 271H and 276B.

For deduction events on or after 1 April 2026, the corresponding consequences arise under the Income-tax Act, 2025. Section 398 treats the defaulting purchaser as an assessee in default and continues interest at 1% per month for delayed deduction and 1.5% per month for delayed payment after deduction, while the relevant fee, penalty and prosecution provisions of the 2025 Act apply separately.

5. Conclusion

Capital-gains relief in property transactions depends upon both substantive eligibility and strict procedural compliance. Recent amendments have introduced monetary ceilings, revised tax rates, aggregation rules and a new framework under the Income-tax Act, 2025, while judicial decisions continue to shape the interpretation of beneficial provisions. Taxpayers should identify the law applicable to the relevant transaction date, observe reinvestment, CGAS and TDS timelines, and preserve contemporaneous evidence of ownership, utilisation and source of funds. Careful structuring and documentation at the transaction stage remain the most effective safeguards against future litigation.

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" praise publicly,
but criticize privately "

Dr. APJ Abdul Kalam

GST ON LAND TRANSACTIONS, JDAS, AND LEASES

NAVIGATING THE LABYRINTH OF SCHEDULE III, REVERSE CHARGE, AND THE DEEMING FICTIONS



Aanchal Kapoor

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Overview

This article provides a comprehensive, jurisprudential analysis of the high-stakes intersection between the Goods and Services Tax (GST) regime and India's real estate sector. It dissects the fundamental conflict between aggressive tax authority demands and the strict statutory dichotomy of the CGST Act: while Schedule III clearly excludes the sale of land and completed buildings from the tax net, Schedule II captures under-construction properties as taxable services. By decoding this delicate legislative interplay, the piece serves as a definitive guide for navigating the complex statutory interpretations, constitutional boundaries, and fierce legal battles shaping the industry today.

Key Themes Explored:

- ***The Statutory Dichotomy:*** *A precise breakdown of how CGST Act resolves the overlap between tax on immovable property and sale of lad and building.*
- ***The Completion Certificate (CC) Threshold:*** *Analysis of how the timing of financial consideration dictates whether a project escapes the GST net or triggers tax liability.*
- ***TDR and RCM Liabilities:*** *An examination of the legal fiction that unbundles "development rights" from underlying land, shifting massive tax liabilities onto developers via the Reverse Charge Mechanism.*
- ***The Valuation Paradox:*** *Coverage of the deeply flawed, mandatory 1/3rd land abatement rule, highlighting recent High Court decisions striking it down as unconstitutional.*
- ***The Leasing Imbroglio:*** *Insights into the ongoing legal battles over long-term lease premiums, subleasing, and conditional exemptions.*
- ***Multi-crore GST exposures in Joint Development Agreements (JDAs)*** *and property transactions explained with practical example, recent case laws and graphical presentation.*

"In the realm of taxation, land is not merely earth and soil; it is a canvas of complex statutory interpretations, constitutional boundaries, and fierce legal battles."

The Real Estate Conundrum: Is GST Applicable on Immovable Property?

Ask a tax authority issuing a multi-crore Show Cause Notice on a long-term lease transfer or development right, and the answer seems to be a resounding yes. Ask Schedule III of the CGST Act, and the answer is an unequivocal no. This fundamental contradiction sits at the very heart of the real estate sector's most high-stakes legal battles today.

When it comes to land and immovable property, the Goods and Services Tax (GST) regime often resembles a jigsaw puzzle with missing pieces. Constitutionally, "Immovable Property" has traditionally been considered a State subject under Entry 49, List II of the Seventh Schedule, read with Article 246 of the Constitution of India. However, Entry 49 strictly leads to taxes on the existence of land and building, whereas GST is a tax on transactions involving land and building. Drawing overriding power from Article 246A of the Constitution of India, there is no constitutional bar against imposing GST on immovable property.

Despite this, land and completed buildings were deliberately kept outside the taxability net under GST for economic reasons through Schedule III. This was decided during the 7th GST Council meeting, with the understanding that the matter would be revisited after GST implementation. Under the GST framework, while "Goods" are restricted to movable property, immovable property is encompassed within the definition of "Services" as per Section 2(102) of the CGST Act—spanning activities such as its construction or leasing. This marks a stark departure from the erstwhile Service Tax Regime, where Section 65B(44) of the Finance Act, 1994, explicitly excluded the "Transfer of title in Immovable Property" from the definition of a service.

As we delve into the intricate interplay between GST and land transactions, it becomes imperative to dissect the statutory scaffolding, trace the evolution of rate regimes, and examine the watershed judicial pronouncements that have shaped this domain. This article embarks on a comprehensive jurisprudential analysis of Entry 5 of Schedule III, the reverse charge mechanism in Joint Development Agreements (JDAs), the highly litigated land abatement rules, and the enduring controversy surrounding long-term leases. To navigate these disputes, let's decode how the statutory architecture converts real estate transactions into taxable events through statutory provisions.

1. The BEDROCK: Schedule III and Schedule II

The Central Goods and Services Tax (CGST) Act, 2017, resolves this overlap via a strict statutory dichotomy.

Out of the GST Net (Schedule III, Entry 5): The "sale of land and sale of building" is constitutionally excluded from being treated as a supply of goods or services.

Within the GST Net (Schedule II, Entry 5(b)): The "construction of a complex, building... intended for sale to a buyer" is explicitly deemed a supply of service, unless the entire consideration is received after the formal

The dichotomy appears clear: a fully constructed, CC-cleared property is an immovable asset out of the GST net, while an under-construction property is a taxable service.

issuance of a Completion Certificate (CC) or its first occupation.

The dichotomy appears clear: a fully constructed, CC-cleared property is an immovable asset out of the GST net, while an under-construction property is a taxable service. But reality is rarely this binary.

The CC Threshold: How Does the Timing of Consideration Alter the Character of Supply?

Under the CGST Act, the time of supply and subsequent tax liability are ruthlessly anchored to the formal issuance of the Completion Certificate (CC). When assessing a project's tax exposure, counsel must pose two critical questions:

- **The Advance Payment Trap:** Does a fractional pre-CC advance infect the entire contract value? Consider a buyer who remits a token ₹ 5 Lakh booking advance while an apartment is still under construction. Because this mere fraction of the consideration is received prior to the issuance of the CC, does it simply trigger a proportionate tax on the advance itself? No. By activating Schedule II, Entry 5(b), the developer is statutorily bound to discharge GST on the entire contract value of the unit (post land-abatement).

- **The "Single Penny" Rule:** Can delayed consideration completely insulate a project from the GST net? What if a developer internally capitalizes the entire construction, formally secures the CC from the municipal authority, and only then opens the project for bookings and payments? Since not a single penny was received prior to the CC threshold, does the transaction successfully bypass the definition of a taxable service? Absolutely. The transaction legally matures into a pure "sale of building" under Schedule III, escaping GST entirely.

2. Developed Plots: When Does Land Become a Service?

A burning issue that has repeatedly tested the tribunals and Advance Ruling Authorities (AAR) is the taxability of "developed plots." When a landowner or developer carves a large parcel of land into subdivided plots, lays down drainage, electricity, roads, and boundary walls, does the subsequent sale constitute a "sale of land" (exempt under Schedule III) or a "works contract/construction service"? Initial AARs created panic in the industry by holding that the sale of developed plots is a taxable supply of services, reasoning that development activities change the nature of the land. However, sound jurisprudence dictates a different approach. The development works mandated by planning authorities are incidental to the dominant intention of the transaction—which remains the transfer of title in the land.

The development works mandated by planning authorities are incidental to the dominant intention of the transaction—which remains the transfer of title in the land.

The Regulatory Resolution: CBIC Circular No. 177/09/2022-GST dated 03.08.2022

To quell an escalating industry-wide panic, the CBIC intervened via Circular No. 177/09/2022-GST on August 3, 2022, clarifying that the sale of developed land fundamentally remains a non-taxable "sale of land" under Sr. No. 5 Schedule III of the CGST Act. **The tax net only catches the independent contractors hired to perform the actual infrastructural work; their specific services to the developer remain taxable, but the subsequent sale of the developed land itself to the buyer does not.**

3. Backdoor Taxing of Land : TDR

Transfer of Development Rights (TDR) means the supply of 'Development Rights' by the owner of the land to a Developer, Builder, or Construction Company for constructing a complex, building, or civil structure. Here, the landowner avails 'Construction Service' from the Developer against a consideration—wholly or partly—in the form of the constructed structure by getting possession thereof.



Note: TDR must be distinguished from Transferable Development Rights, which are certificates issued by public authorities when land is acquired for public purposes by the Government in consideration of surrender of land by the owner without monetary compensation (as per NITI Aayog Guidelines, also covered under Income Tax). The TDR Certificate inter-alia should mention the area surrendered and the cost of that area as per the circle rate.

Service Tax Differentiation vs. GST on TDR Sales

The Service Tax Era (Pre-GST): Under the erstwhile service tax regime held TDR to be immovable property. Consequently, TDR transfers were treated as non-taxable land transactions.

The GST Regime (Post-2017): Under the GST framework, the composite transaction of land development is unbundled.:

- **Land Sale:** Remains outside GST purview under Entry 5 of Schedule III of the CGST Act, 2017.
- **TDR Supply:** Treated as a distinct supply of service provided by the landowner to the developer in consideration for construction services or revenue share.

The Paradigm Shift: *Prahitha Constructions Pvt. Ltd. vs. Union of India*

The conclusion of the Telangana High Court's ruling in ***Prahitha Constructions Pvt. Ltd. vs. Union of India (2024) 159 taxmann.com 437*** represents a monumental victory for the Revenue Department and a severe

compliance reality for the real estate industry. By fundamentally de-linking "development rights" from the "underlying land," the High Court cemented the legal fiction that transferring TDR is structurally different from selling real estate. The petitioner has challenged the aforesaid ruling before the Supreme Court but had not stayed the operation of the impugned judgment.

RCM Liability on TDR: The "Backdoor Entry" Mechanism

Recognizing the severe cash-flow strain and valuation disputes of taxing TDR upfront, the Government overhauled the regime effective April 1, 2019, via Notifications 4/2019-CT(R) and 5/2019-CT(R).

- For residential projects, the supply of TDR is exempt to the extent it correlates with residential apartments sold before the issuance of the CC.
- There is no exemption for commercial properties.
- For units that remain unsold on the date of the CC, there is no exemption, and GST is payable.
- Crucially, this GST liability falls squarely on the Developer under the Reverse Charge Mechanism (RCM).

The time of supply for this liability is deferred to the issuance of the CC or first occupation, whichever is earlier. This deferment aligns the tax outflow with the realization of the project's completion, though it places a heavy compliance burden on the developer to precisely track inventory on the CC date.

The formula for calculating this RCM liability is intricate. It is capped at 1% for affordable housing and 5% for other residential apartments, calculated on the value of the unbooked apartments:

RCM Tax Liability = min(TDR Value × 18% × Unbooked Carpet Area/Total Carpet Area, Statutory Cap)

4. The Leasing Imbroglio: GST on Long-Term Leases

Can a 99-year lease be equated to a sale of land? This question lies at the heart of the debate over the taxability of upfront lease premiums (salami). The industry vehemently argued that a long-term lease practically deprives the lessor of all economic ownership, making it akin to a sale of land, and hence, exempt under Entry 5 of Schedule III.

This argument met a formidable roadblock in the Bombay High Court's decision in Builders Association of ***Navi Mumbai vs. Union of India [2018] 92 taxmann.com 134 (Bombay)*** which was further affirmed by the Hon'ble Supreme Court. This case establishes the baseline rule that one-time lease premiums for long-term land leases are inherently taxable under Goods and Services Tax (GST). The Court validated that leasing land by a statutory authority like the City and Industrial Development Corporation of Maharashtra Limited (CIDCO) universally qualifies as a taxable "supply of service" under Schedule II of the CGST Act, explicitly rejecting the argument that such leases equate to an outright sale.

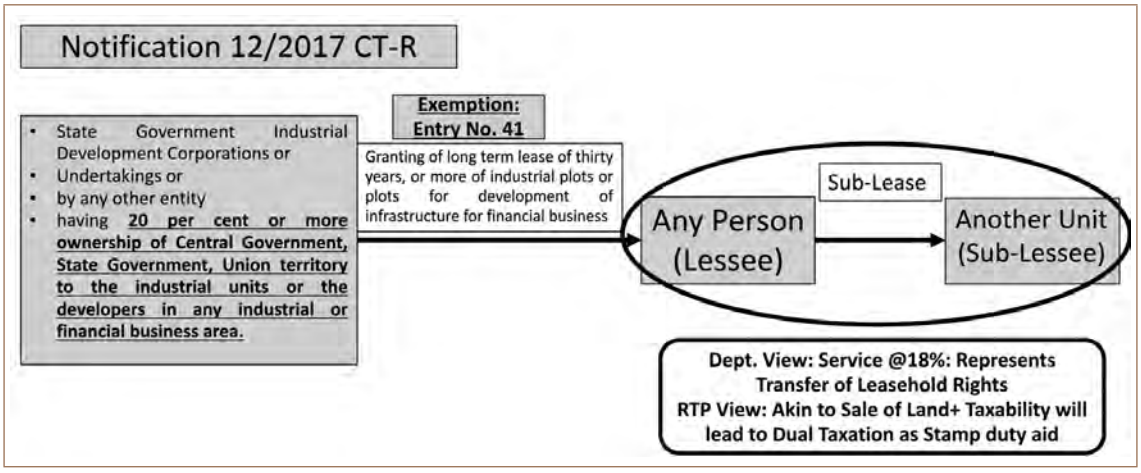
In contrast to the judicial focus on the transaction's inherent nature, attention is

brought towards the Entry 41 of Notification No. 12/2017-CT (Rate) offers a highly conditional exemption. It exempts the upfront amount payable for long-term leases (30 years or more) granted by government entities (having 20% or more ownership) strictly for industrial plots or financial business infrastructure.

While CIDCO inherently qualifies as an eligible government entity, the transactions in this specific dispute were not shielded by Entry 41 due to the land's end-use. CIDCO allotted these specific plots on a 60-year lease for residential-cum-commercial and hotel purposes. Because the development was not strictly for industrial units or financial business infrastructure, the leases failed the core condition of Entry 41, rendering the premium taxable. (Additionally, Entry 41B, which proportionally exempts residential apartment projects, only took effect on April 1, 2019, making it inapplicable to the instant case).

Crucially, while upholding the general tax demand, the Supreme Court expressly left the question of statutory exemptions open. This ensures that although a lease premium is fundamentally categorized as a taxable service, developers can legally bypass the GST levy if their specific projects strictly meet the notification's specific industrial or financial criteria.

The Sub-Lease Battlefield & The Gujarat Chamber of Commerce Ruling (2025)



The Paradigm Shift: Gujarat Chamber of Commerce & Industry (2025) 170 taxmann.com 251

While the initial grant of a lease by the state poses one set of challenges, a completely different debate sparks when an allottee decides to assign or transfer those long-term leasehold rights to a third party. Recently, GST authorities began issuing Show Cause Notices and summons demanding 18% GST on these third-party assignments, treating them as a taxable supply of services.

This culminated in a landmark ruling by the Gujarat High Court in January 2025 (***Gujarat Chamber of Commerce and Industry vs. Union of India***). Addressing the transfer of 99-year leasehold rights in GIDC (Gujarat Industrial Development Corporation) estates, the Court delivered a massive victory for the assessees. The High Court ***[2025 (1) TMI 516 - GUJARAT HIGH COURT]*** held that, the assignment of leasehold rights by the lessee to a third-party assignee is not a taxable supply of services under section 7(1)(a) of the GST Act read with Schedule II and Schedule III, and GST is not leviable on such transaction. The special leave petitions were dismissed in view of dismissal of a similar special leave petition 2026 (7) TMI 1434 - SC Order.

5. The Valuation Paradox and Land Abatement

When an under-construction apartment is sold, the transaction inherently involves two components: the transfer of an undivided share of land (exempt) and the construction service (taxable). To simplify valuation, Notification No. 11/2017-CT(R) introduced a mandatory deeming fiction—a flat 1/3rd deduction from the total gross amount charged towards the value of land. While intended as a simplification measure, this one-size-fits-all approach is deeply flawed.

The Litigative Issue: Equating Unequal Geographies

The Litigative Issue: Equating Unequal Geographies While intended as a simplification measure, this one-size-fits-all approach is deeply flawed. Real estate prices in India vary wildly; in prime metropolitan areas, land value can constitute 70-80% of the total property price. A fixed 33.33% deduction effectively forces the buyer to pay GST on a significant portion of the land value, leading to severe cascading and an unconstitutional levy on immovable property.

- ***Munjaal Manishbhai Bhatt vs. Union of India (2022) 138 taxmann.com 117***: The petitioner entered into a tripartite agreement for the purchase of a plot and construction of a bungalow, with separate and distinct considerations for both. Yet, revenue authorities insisted on applying the mandatory 1/3rd deduction. The Gujarat High Court struck down the mandatory nature of the 1/3rd deduction, ruling that Section 15 of the CGST Act mandates valuation based on actual transaction value. A delegated legislation cannot override the parent statute by imposing an inflexible deeming fiction when the actual land value is clearly ascertainable. The Court ruled the provision arbitrary, discriminatory, and violative of Article 14 of the Constitution.

- ***Avigna Properties (P.) Ltd. vs. State Tax Officer [2023] 151 taxmann.com 422:*** The Madras High Court held on similar lines that the one-third abatement is applicable only in cases where the bifurcation of construction and sale of land is not possible. The deeming fiction will not apply where the taxpayer can provide the actual amount of consideration received towards construction service and land cost.

6. Old vs. New Rate Regimes and ITC Dynamics

The real estate sector underwent a tectonic shift on April 1, 2019, moving from a high-

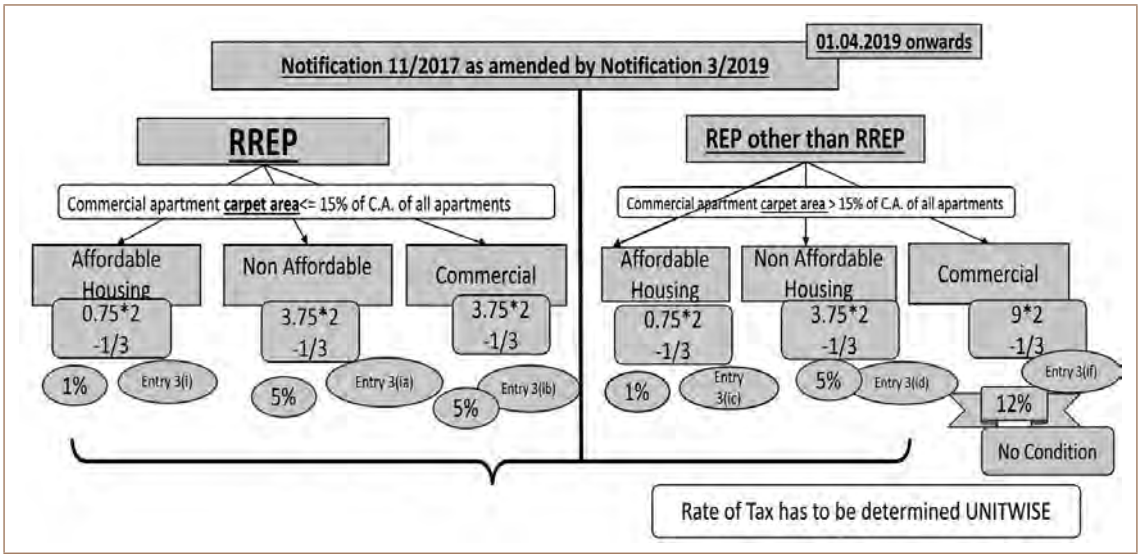
rate, ITC eligible regime to a low-rate, no-ITC regime.

The Old Regime (Pre-April 2019): Under construction residential properties were taxed at 12% (18% less 1/3rd land abatement), and affordable housing at 8%. The developers could avail Input Tax Credit (ITC) on all input materials and services. This regime, while logically sound on value-addition principles, was plagued by developers failing to pass on ITC benefits to buyers, leading to widespread anti-profiteering litigation.

The New Regime (Post-April 2019): The rates were slashed to 1% for affordable housing and 5% for other residential properties (effective rates post-abatement). However, the commercial properties in Residential Real estate projects (RREP) are taxable at deduced rate of 5% with all applicable conditions. The catch? The absolute denial of ITC. As per the legal proviso, if a registered landowner pays taxes on Final Sales, they can take the credit of the Construction Service provided by the developer.

Conditions and Repercussions of the New Regime:

- ***Residential Real Estate Projects (RREP):*** Commercial properties inside an RREP (where commercial carpet area <= 15% of total) are taxable at a reduced rate of 5% with all applicable conditions.
- ***Real Estate Projects (REP) other than RREP:*** Commercial properties are taxable at 12% (18% with 1/3rd land abatement) with no conditions and ITC available.
- ***The 80% Procurement Threshold:*** Developers must procure 80% of their inputs and input services from registered persons. Any shortfall invites a reverse charge liability at 18% (except for capital goods and cement, which must be purchased from registered suppliers).
- ***Output Tax to be paid in Cash*** by debiting Electronic Cash Ledger.



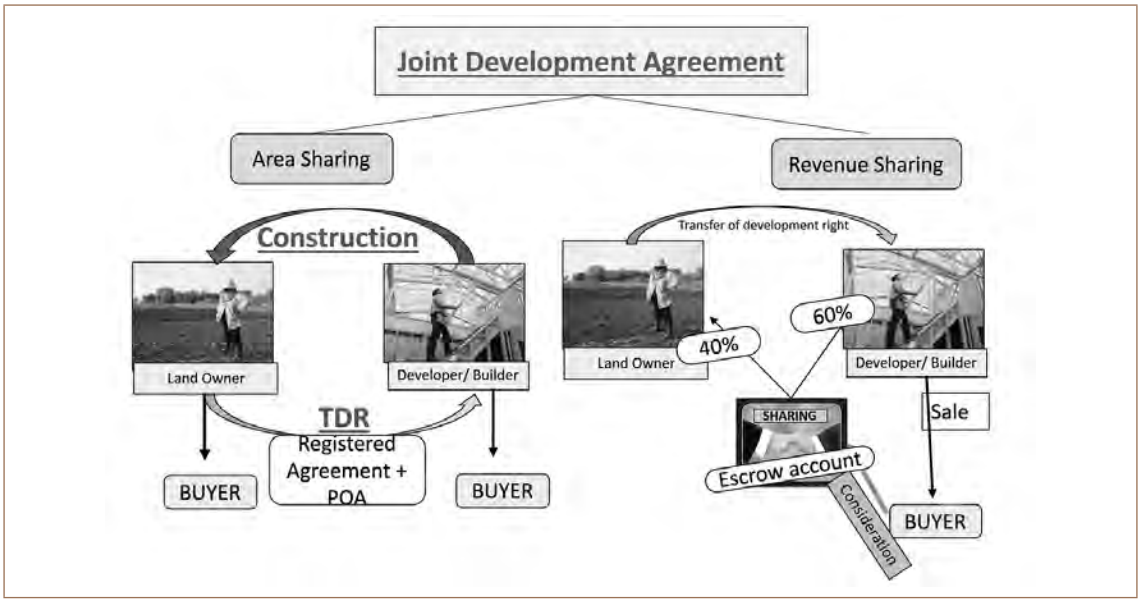
Valuation for 80% Procurement Threshold (RCM)

Illustrative list of goods/services inclusion in the 80% threshold calculation from unregistered persons:

Particulars	Whether included in 80%
Bank charges	No banks always registered, so bank charges will not be taken for 80%
Electricity	Not included for the minimum purchase requirement of 80%
Diesel, Motor Spirit, HSD, Natural gas	Not included for the minimum purchase requirement of 80%
Salaries, wages	Not included for the minimum purchase requirement of 80%
TDR/FSI/Long Term Lease Premium	Not included for the minimum purchase requirement of 80%
Exempted Goods/Services	Included
Purchase of Land from Unregistered Person	No, As per Schedule III, not a supply
Purchase from Composition	No, as composition are not considered unregistered

7. Joint Development Agreements (JDAS): The Operational Matrix

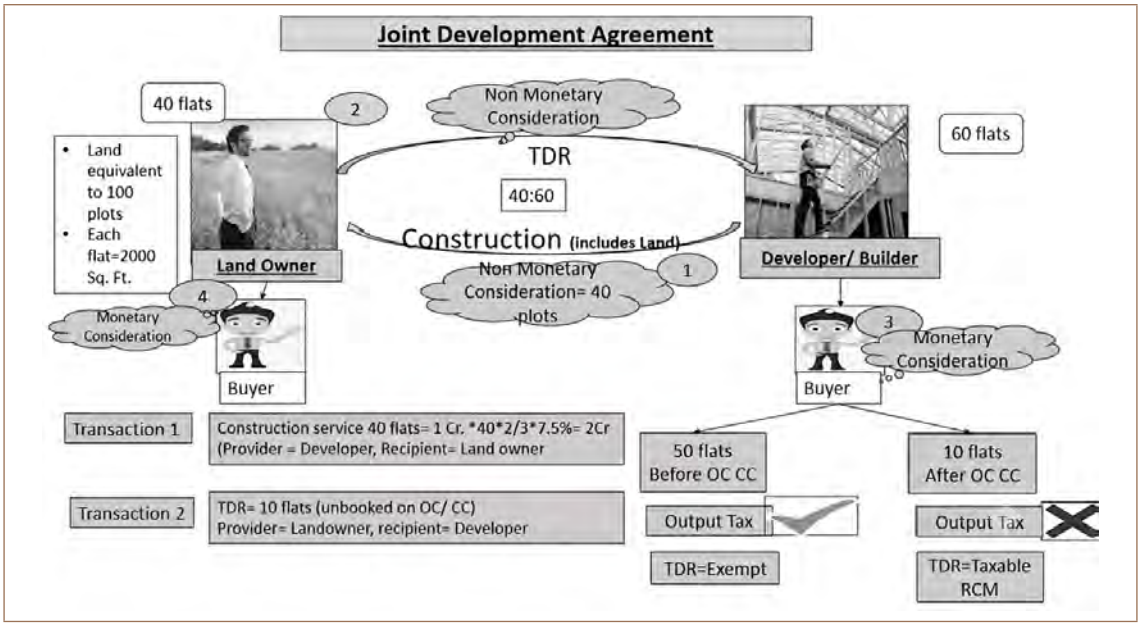
The Joint Development Agreement (JDA) is the most prevalent model for real estate development in India. Typically, a landowner lacking capital or expertise collaborates with a developer. The landowner transfers Development Rights (TDR) to the developer, and in return, the developer allocates a portion of the constructed area (area sharing) or a percentage of the sales revenue (revenue-sharing) to the landowner.

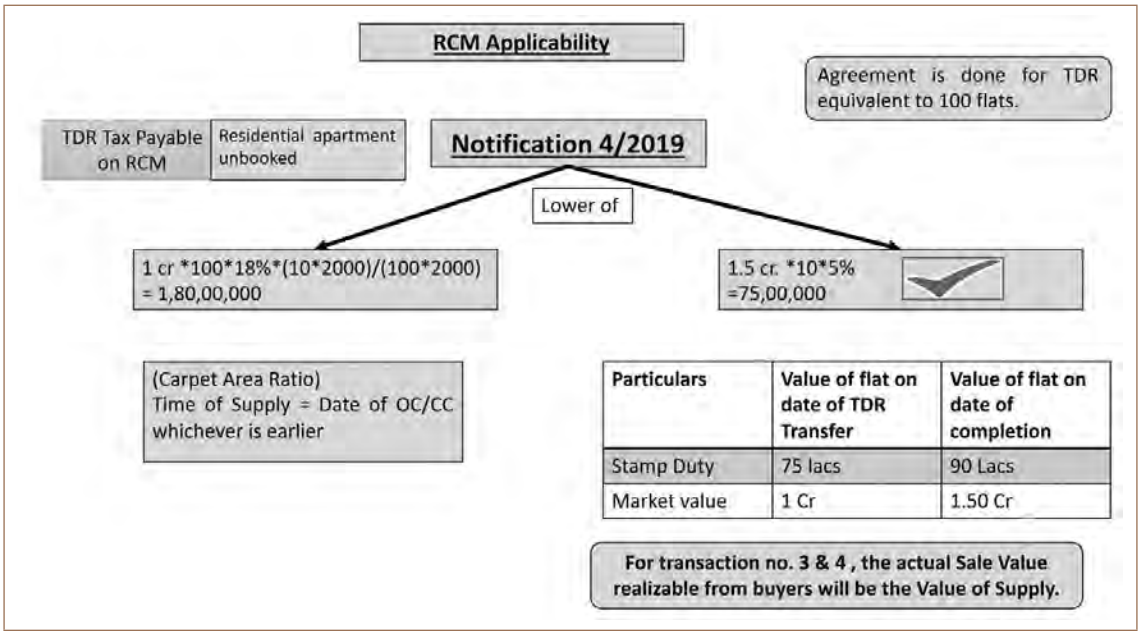


Transactions in JDA Agreement

Sr. No.	*Nature of Supply*	*Supplier*	*Recipient*	*Consideration*
1	Transfer of Development Rights (TDR)	Land Owner	Builder	Non Monetary
2	Construction Services	Builder	Land Owner	Non Monetary
3	Construction Services	Builder	End Buyer	Monetary
4	Construction Services	Land Owner	End Buyer	Monetary

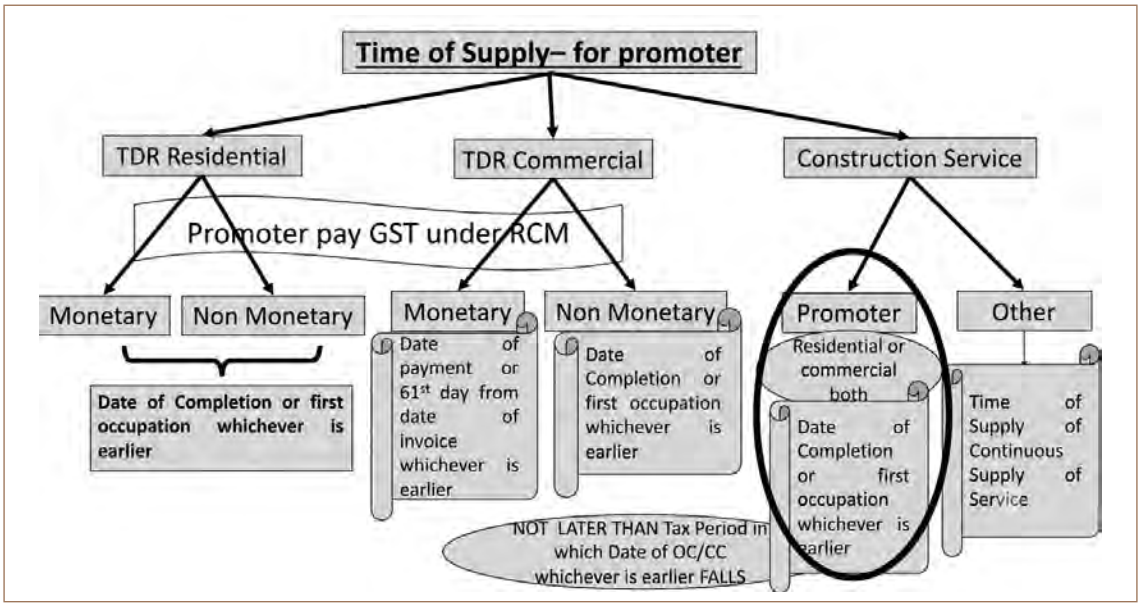
JDA Valuation





Time of Supply Mechanics for Promoters

The GST law establishes strict "Time of Supply" rules for promoters across different project categories:



COMMERCIAL vs. RESIDENTIAL

Particulars	*Residential*	*Commercial*
Taxability of TOR	18% (Max. 1%/5%) RCM basis	18% RCM basis
Exemption of TOR	If property is sold before QC/CC	No exemption
Time of supply of TOR	Date of Completion or first occupation whichever is earlier	At the time of QC/CC (if money consideration, then at the time of TDR)
Construction Rate	1%/5%(including Commercial of RREP) (Effective)	12% (Effective)
ITC	Not available	Available
9(4) RCM	Yes	No

8. Levy of GST on Sale of Incomplete Building – Scope of Entry 5(b) of Schedule II and Section 7 of CGST Act, 2017

M/s Rohan Corporation India Pvt. Ltd. vs. UOI 2025 (4) TMI 549 - KARNATAKA HIGH COURT

This ruling tested the levy of GST on a transaction involving the sale of an incomplete building and whether it falls under Entry 5(b) of Schedule II.

Held: When constructed immovable property—whether fully or partially constructed—is sold "as such" without providing any construction service subsequently, it does not attract Paragraph 5(b) of Schedule II and Section 7 of the CGST Act.

Reasoning: There is no supply of goods or services in such a transaction. Consequently, whether the building has received a completion certification or not becomes irrelevant. Entry 5(b) contemplates only a construction service provided by a builder/promoter to a service recipient. Sale of land is neither a supply of goods nor services. Since no subsequent construction service was contemplated between the parties, the sale of the incomplete building falls under Entry 5 of Schedule III.

Conclusion: The High Court quashed the impugned order rejecting the refund claim, affirming that the transaction was neither exigible nor amenable to the levy of GST.

9. Treatment of Incidental and Ancillary Charges

While core construction might be taxed at 5%, ancillary services like architect fees, legal counsel, and project management consultancies are strictly taxed at 18%. Developers must ensure these are not artificially bundled with the construction contract to claim lower rates, as the revenue department views them as distinct supplies.

The CBIC's Circular No. 177/09/2022 dated 03.08.2022 heavily dictates the treatment of incidental charges collected in addition to basic property values:

i. ***Preferential Location Charges (PLC):*** Considered part of the Basic Selling Price. Covered by Circular 177/09/2022 as a Composite Supply. (Box Pricing is often introduced by builders to avoid disputes).

ii. ***Car Parking:***

Mandatory: Made part of Stamp Duty and Selling Price, rendering it a Composite Supply.

Optional: Treated as an independent supply (Not a composite supply) and taxed at 18% GST.

iii. ***Interest on Delayed Payment:*** Taxed at the same rate as the Original Supply (Composite Supply) pursuant to Section 15(2)(d) read with Section 12(6)/13(6) of the CGST Act.

iv. ***External/Infrastructure Development Charges (EDC/IDC):*** Electricity and Water Supply charges remitted to authorities can theoretically claim Pure Agent benefits, though this is rarely adhered to and remains highly disputable. While a circular existed in the Service Tax era, no such exclusion circular exists in GST; rather, Section 15 of GST adds reimbursements for valuation purposes.

10. Conclusion: The Road Ahead

The intersection of GST and real estate remains a volatile landscape defined by conflicting statutory fictions. Several fundamental issues guarantee future legal battles. The constitutional validity of the mandatory one-third land abatement faces a Supreme Court showdown, as High Courts have struck down this inflexible fiction when actual land values are ascertainable. Similarly, taxing development rights separately from underlying land leaves the ultimate taxability of TDR a multi-crore open question pending before the Apex Court. Jurisdictional clashes over the tax-exempt status of third-party lease assignments and the "as is" sale of incomplete structures will inevitably trigger prolonged disputes. This is compounded by ambiguity surrounding ancillary charges like EDC/IDC, where "Pure Agent" claims remain highly vulnerable. Until the legislature harmonizes these valuation paradoxes, stakeholders must rely on meticulous drafting and vigilant compliance.

***Disclaimer**: The views and opinions expressed in this article are solely for educational and informational purposes and do not constitute legal or tax advice.*

■

THE MAN WHO SIGNED BUT NEVER PAID - BENAMI LAW AND THE INCOME-TAX ACT AT WORK



Sagar Tilak

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Overview

This article examines the definition of "Benami Transactions" in the Prohibition of Benami Property Transaction Act with respect to land transactions, with a focus on bulk land acquisition by corporates and HNIs through aggregators, a model built on front purchasers, employees, relatives and persons from protected categories. The article shows why each element of that model now fails.

The definition's two limbs, transfer and holding, operate independently, so a benamidar who continued to hold land on or after 1 November 2016 is covered even where the purchase predates the amendment. The fiduciary exception is confined to recognised relationships of entrustment and does not extend to employees or persons merely trusted with funds; the trust-law shield stands repealed by section 56(1), and the Supreme Court in Manjula has settled that the 2016 amendments operate retrospectively insofar as they are procedural and curative, with no limitation period.

The article discusses various recent judgements and the retrospective reach of the 2016 amendments. The article then examines the two-way traffic between the Benami Prohibition Unit and the Income-tax authorities. Statements recorded become reopening material, while statements and returns filed in tax proceedings become the foundation of benami action, often self-incriminating. It closes with practical guidance on pre-acquisition diligence and the defences that remain open.

'The Man Who Signed but Never Paid'

Section 2(9)(A) of the Benami Act and Land Acquisitions: Bulk Purchases through Aggregators, Recent Decisions, and the Interface with Income-tax Proceedings

In early 2018, Bhanupratap Singh explained to the benami authorities at Raipur his role in a land purchase worth over half a crore. He had received small sums two hundred rupees here, two thousand there from Prem Singh Saluja, a transporter of Kharsia, and in exchange signed registry papers whenever called. The land at Kunkuni village stood in his name; he had never paid for it, never possessed it, never held the deeds. So, he was the man who signed the registry but did not pay for the property. However, Prem Singh Saluja paid the consideration but did not hold the title to the property. His statement set two machines of the State moving against one property: the Prohibition of Benami Property Transactions

Act, 1988 and the Income-tax Act, 1961. How those machines are interlinked is the subject of this article, built entirely on the recent decisions that now define the field: ***Prem Singh Saluja vs. ITO [2025] 171 taxmann.com 498 (Raipur-Trib.)***, the Supreme Court's judgment in ***Manjula vs. D.A. Srinivas [2026] 186 taxmann.com 357 / 488 ITR 407 (SC)***, and the Appellate Tribunal's rulings in Domendra Dhariwal, Kaluram Berva, Laxmi Chand Maravi and Yoosaf N.A.

I. Section 2(9)(A): the definition of benami transaction and how it is relevant to land transaction

Section 2(9)(A) of the Prohibition of Benami Property Transactions Act, 1988 (PBPT Act) defines a "benami transaction" as:

"a transaction or arrangement-

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration."

This definition is subject to four exceptions: If the said transaction or arrangement is by the HUF karta, the fiduciary, the spouse or child funded from known sources, and joint purchases with specified relatives from known sources.

The definition has two independent terms 'transferred to' and 'held by'. In ***Kaluram Berva vs. Initiating Officer, Pune [2026] 183 taxmann.com 459 (SAFEMA-AT)***, the Tribunal held that where the benamidar continues to hold the land on or after 1 November 2016, the amended definition applies even if the original transfer predates

The exceptions to the definition of Benami Transaction are conditional and narrow.

the amendment; the argument that a completed transfer cannot be a continuing offence was rejected because the 'holding' limb is satisfied afresh so long as the proxy holds. The land transactions in most cases are entered for further developments and transfers. The 'future benefit, direct or indirect' is tailor-made for land aggregation structures, where the corporate buyer's benefit is deferred by design until conversion, permission or consolidation. The exceptions to the definition of Benami Transaction are conditional and narrow.

The acquisition of land in bulk is likely to be covered by PBPT to a great extent. It is a common practice in India, especially by Corporates and HNIs, to acquire land through aggregators. The land aggregator usually verifies the land titles, settles the disputes, and negotiates the price. Once these functions are completed, the aggregator receives the funds from the corporate or HNI for whom he is aggregating the land, as he may not have adequate funds of his own to acquire the land from the locals. Once the land is acquired from the locals, he executes the back-to-back transfer deeds to transfer the land to the corporate/HNI. Now let us map the definition of Benami Transaction onto the standard bulk-acquisition model of corporates and HNIs. The Land aggregators assemble bulk land parcels using front purchasers, employees, labourers, relatives, persons from protected categories due to various reasons, including land ceiling laws, agriculturist-only rules and tribal-land bars that prevent direct purchase, and because staggered benami purchases suppress price discovery. Every element of that model has now been litigated on facts, and lost.

The corporate land bank in employees' names: Kaluram Berva

In Kaluram Berva, agricultural land in Rajasthan was registered in the names of Scheduled Caste individuals because State revenue law barred acquisition by others. The consideration came wholly from a company, and after conversion to non-agricultural use the land was transferred back in the company's name. The Tribunal held both limbs of section 2(9)(A) of the PBPT Act satisfied. The registration in the individuals' names, whereas the consideration was paid by the company, satisfied clause (a) of section 2(9)(A) of the PBPT Act. The holding of the land by those individuals for the company's future benefit realised upon conversion satisfied clause (b) of section 2(9)(A) of the PBPT Act. In this particular case, the fiduciary capacity exception failed structurally as the properties were acquired in the name of those individuals in their individual capacity and not in fiduciary capacity for the company. The consideration was paid by the company, but the land was acquired in the name of those individuals without bringing the company on record, as it would have failed the objective of the transaction, as the land could be acquired only because those individuals belong to the Scheduled Caste. Thus, the land acquisition by a company in the name of individuals was held as a benami transaction under the PBPT Act.

Tribal land through a labourer: Laxmi Chand Maravi

Laxmi Chand Maravi vs. Initiating Officer [2026] 183 taxmann.com 206 (SAFEMA-AT) is the tribal-land companion. Lands in Janjgir-Champa were purchased in the name of a tribal labourer employed in the funder's mines, to sidestep section 165(6) of the Chhattisgarh Land Revenue Code, which bars transfer of tribal land to non-tribals without permission. The analysis of bank transactions showed that the consideration was routed from accounts linked to the funder's mining business, and the benamidar had even applied to the Collector for permission to sell parcels to the funder. The Tribunal noted that by pleading the fiduciary exception the appellants had impliedly admitted the transaction fell within section 2(9)(A) of the PBPT Act. It then dismantled the exception: no power of attorney, no recital in the sale deeds of purchase for the funder's benefit, no statutory permission, and mere entrustment of consideration creates no trust. If 'fiduciary capacity' covered everyone who trusts another, every benami transaction would be exempt. Critically, the Tribunal invoked section 56(1) of the PBPT Act, which repealed sections 81, 82 and 94 of the Indian Trusts Act, section 66 CPC and section 281A of the Income-tax Act. The Parliament deliberately stripped away resulting-trust reasoning so that 'held in trust' cannot be availed as a shield.

The HNI's MOU with an employee: *Manjula v. D.A. Srinivas*

The recent judgment of the Hon'ble Supreme Court in the case of Manjula is in relation to the HNI variant. The plaintiff, barred by sections 79A and 79B of the Karnataka Land Reforms Act from buying agricultural land, funded purchases during 2006–2011 in the name of an employee of his father's companies, under MOUs contemplating reconveyance, and later sued on a Will allegedly executed by the employee. The Court restored the rejection of the plaint under Order VII Rule 11 CPC. The courts observed that a suit ostensibly on a Will, whose own pleadings disclose

a benami arrangement, is barred, as the substance prevails over form. The most significant issue dealt with in the judgment is with respect to the fiduciary capacity as an exception to Benami Transaction under section 2(9)(A) of the PBPT Act. It is held that the fiduciary exception under section 2(9)(A) of the PBPT Act is confined to legally recognised relationships of entrustment, such as the enumerated categories of trustee, executor, partner, director and depository participant, and cannot be extended to the relationship between an employer and employee; any additional category would require notification by the Central Government. The MOUs, designed to circumvent land-reform law, were void under section 23 of the Contract Act. Hon'ble Supreme Court further held that, once a transaction is judicially declared benami and the finding attains finality, the property is liable to confiscation under section 27 of the PBPT Act without the procedure under sections 24 to 26 of the PBPT Act. Further, the Central Government was directed to appoint an Administrator.

Manjula also resolved the significant question that had haunted aggregated land banks. Holding that the prohibition and the power of confiscation existed in the original 1988 Act and that the 2016 amendments cured an unworkable statute by supplying machinery. The Court ruled that the amendments, insofar as they are declaratory, procedural, curative and machinery-oriented, operate retrospectively, while penal provisions creating offences or enhancing punishment operate prospectively. The Act prescribes no limitation for initiating action, and the provisions 'can be invoked in respect of earlier benami transactions as well'.

Read with Kaluram Berva's holding doctrine, the conclusion for legacy land banks is absolutely clear: 'the parcels were bought before 2016' is no longer a defence to attachment and confiscation; it survives only against prosecution.

The family as proxy, and the aggregator's war chest

In ***DCIT (BP) vs. Domendra Dhariwal [2024] 167 taxmann.com 291 (SAFEMA-AT)***, properties of about ₹ 4 crores were acquired in the names of a wife and two minor sons against the funder's lifetime salary of ₹ 63.95 lakhs. The Adjudicating Authority's refusal to confirm attachment was reversed by the Appellate Tribunal as perverse. The Tribunal held that both the limbs of section 2(9)(A) of the PBPT Act are satisfied. In such a situation, the exception for property acquired in the name of a spouse or child would ordinarily operate. However, there is a rider to that exception which requires that the properties must have been acquired out of known sources of the person providing consideration. In the absence of known sources, the benefit of the exception was rejected.

In ***Yoosaf N.A. vs. Initiating Officer (BPU) [2026] 186 taxmann.com 645 (SAFEMA-AT)***, ₹ 50.13 lakhs were seized in transit. The defence claimed that the amount was contributed by friends and relatives for investment in land. However, it failed to provide the identity and details of the persons who contributed those funds. In the absence of the details of contributors, the transaction was held as a benami transaction under section 2(9)(D) of the PBPT Act. The Tribunal held that cash is a tangible movable property under section 2(26) of the PBPT Act. The two parties are sufficient for a benami transaction. As

the providers/contributors are untraceable, it amounts to a Benami Transaction.

II. The interplay: how BPU material travels into Income-Tax proceedings and back

The transaction, once held benami, faces attachment, confiscation and prosecution as a consequence under the PBPT Act. However, the identity of the real owner gets exposed as a result of those proceedings. That exposure triggers the invocation of sections under the Income Tax Act which deals with unexplained investment, undisclosed income, etc. The Beneficial Owner under the PBPT is the assessee in whose hands the income generated from the benami property should have been taxed. However, the said income has been taxed in the hands of the benamidar. This situation would have been tax-neutral under the Income Tax Act as the revenue had collected tax from the benamidar though not from the Beneficial owner. However, since the introduction of section 115BBE of the Income Tax Act, the consequences under the Income Tax Act have substantially changed as the unexplained investment and undisclosed income result in a much higher rate of tax than earlier. Hence, the information of benami transactions from BPU to Income Tax Authorities plays a significant role. Similarly, information relating to the material found during the course of search under the Income Tax Act gets shared by Income Tax Authorities with BPU. The sharing of information between Income Tax Authorities and BPU is two-way. However, in practice, the information sharing from Income Tax Authorities to BPU is more, as there is no power of search or survey to the BPU under the PBPT Act. Hence, the information collection by the Income Tax Department during the course of survey/ search/assessment triggers the benami proceedings in the BPU.

BPU to Assessing Officer: Prem Singh Saluja

The case of Saluja is the template for the outbound flow of information from BPU. The statements of the benamidar, the broker and the seller recorded by the Benami Prohibition Unit under section 19(1) of the PBPT Act became the 'information' on which the AO recorded reasons to believe and reopened the assessment under section 147 of the Income Tax Act, and added ₹ 51,53,100 under section 69 of the Income Tax Act, 1961. The AO framed the assessment on the assessee as the beneficial owner, adding the entire amount in his hands. The order of the ITAT decided two important issues. First, with respect to the digital sanction, the approval under section 151 of the Income Tax Act communicated on the ITBA portal on 29 March 2018 validated a notice issued that day, though the manual letter followed on 31 March. It held that the portal date is the date of approval. Second, and most important, the benami adjudication restructures the tax quantum: the Adjudicating Authority under section 26(3) of the PBPT Act held the transaction benami with two beneficial owners Saluja and Bhatia Energy and Minerals Pvt. Ltd. Hence the entire addition could not be made in Saluja's hands alone; it needs to be allocated between the joint beneficial owners, as emerging from the order under the PBPT Act.

Income Tax Authorities to BPU: Yoosaf and Domendra Dhariwal

The return traffic of information is equally established. In ***Yoosaf N.A. vs. IO (BPU) (supra)***, the benami proceedings were initiated based on information relating to cash seizure which was shared by the Income Tax Authority. The sequence began with police seizure, then a sworn statement recorded by the DDIT (Investigation) under section 131 of the Income-Tax Act. During the course

Just the payment of consideration out of tax paid funds at the time of acquisition may not be sufficient, as the ownership of the seller may turn out to be Benami in future.

of the statement, the Benamidar claimed full ownership of cash; however, the source of funds was unexplained. It became the foundation of the Initiating Officer's action under section 2(9)(D) of the PBPT Act as the real owner was untraceable. Interestingly, the appellant's affidavit offering to declare the entire ₹ 50.13 lakhs as income and pay tax was held to be no bar to benami proceedings in light of section 60 of the PBPT Act, which makes its provisions additional to other laws. The Income Tax Act exists to collect tax on unexplained money at 60 per cent plus surcharge, while the PBPT Act exists to confiscate the property entirely and fine up to 25 per cent besides. The filing or offering to file an ITR after being caught was called an afterthought strategy to save half the seized amount.

In Domendra Dhariwal, the case was constructed from classic assessment material, service records, ITRs and the arithmetic of disclosed income against investments. The Adjudicating Authority's attempt to demand more from the Initiating Officer was condemned as a perverse shifting of the burden once means, funding and benefit were demonstrated.

Notice the asymmetry the cases reveal, because it decides tactics. When BPU material travels into the Income Tax file, it arrives as third-party evidence, and the taxpayer retains his procedural defences like cross-examination, borrowed satisfaction, the discretion inherent in section 69 of the Income Tax Act, etc. However, when Income Tax material travels to the Benami Prohibition Unit, it usually arrives as the taxpayer's own statements and returns, for instance a statement under section 131 of the Income Tax Act, an affidavit, a disclosure in ITR, etc. The case of Yoosaf shows how such self-generated material becomes irretrievable. In that case, an unchallenged, unretracted statement claiming ownership of unexplained cash is the whole of the department's case under section 2(9)(D) of the PBPT Act, and no later offer to pay tax can recall it. The statements of the parties under the Income Tax Act become self-incriminating for the proceedings under the PBPT Act. The first twenty-four hours of any search, survey, seizure or summons are therefore the decisive hours. A statement drafted with only the implications under the Income Tax Act in mind without considering the possible implications under the PBPT Act and even under other statutes like the Prevention of Money Laundering Act, Prevention of Corruption Act, etc., which may be invoked subsequently, may turn out to be self-incriminating.

III. Practical advice

The property transactions require evaluation from a much broader perspective. Just the payment of consideration out of tax paid funds at the time of acquisition may not be sufficient, as the ownership of the seller may turn out to be Benami in future. Hence, undertaking/disclosures of the seller to the effect that he is the real and ultimate owner may be obtained. The bulk land acquisition by corporates and HNIs through land aggregators is quite exposed to the PBPT Act. There may not be a straightjacket answer to the question whether all the land acquisition transactions through land aggregators are benami transactions or not, as the facts of each case are different. However, who paid or provided the consideration is the key question. The law requires that the person



who pays/provides the consideration needs to get the title to the property. However, if the consideration is provided to the land aggregator to acquire the land from the locals and then a back-to-back transfer of land from the aggregator to the corporate or HNI is executed, then there is a definite exposure to the PBPT Act. The financial capability of the land aggregator will be the deciding factor. Hence, the bulk land acquisition through land aggregators will have to be evaluated from a PBPT Act perspective based on the facts of each case. However, never structure around protective land legislation: the circumvention motive proves the benami colour, the MOUs are void under section 23 of the Contract Act, and section 56(1) of the PBPT Act has removed the trust-law safety wall. Assume legacy holdings are reachable: Manjula's retrospectivity ruling and Berva's holding doctrine leave 'pre-2016' as an argument to preserve, but of course not a shield to rely on. In defence, fight the interface, insist on cross-examination of statement-makers, attack borrowed satisfaction, use adjudication findings on plural beneficiaries for protection from the section 69 quantum (Saluja) of the Income Tax Act, seek abeyance of assessment pending the benami appeal, and where money has actually been surrendered under a statutory scheme like voluntary disclosure of income, then press for corresponding moderation of attachment. Above all, evaluate the benami, Income Tax and allied laws as a single brief to mitigate possible implications under all these laws.

Table of Authorities (all discussed above)

Manjula vs. D.A. Srinivas, [2026] 186 taxmann.com 357 / 488 ITR 407 (SC, 8 May 2026)

Prem Singh Saluja vs. ITO, [2025] 171 taxmann.com 498 / 211 ITD 496 (Raipur-Trib., 29 January 2025)

DCIT (BP) vs. Domendra Dhariwal, [2024] 167 taxmann.com 291 (SAFEMA-AT, 3 July 2024)

Kaluram Berva vs. Initiating Officer, Pune, [2026] 183 taxmann.com 459 (SAFEMA-AT, 27 January 2026)

Laxmi Chand Maravi vs. Initiating Officer, [2026] 183 taxmann.com 206 (SAFEMA-AT, 5 February 2026)

Yoosaf N.A. vs. Initiating Officer (BPU), [2026] 186 taxmann.com 645 (SAFEMA-AT, 14 May 2026)

Note: This article reflects the position of law as at July 2026 and is intended for an article in an academic publication; it is not legal advice on any specific matter.

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STAMP DUTY ON LAND DEALS

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Gopal Malpani

Overview

*Stamp duty is a **State levy** applicable to various **legal instruments**, including sale deeds, lease deeds, transfer deeds, gift deeds, court orders, and NCLT-approved schemes of merger, demerger, and arrangement.*

*Since it involves **immediate cash outflow**, it plays a critical role in structuring property and corporate transactions.*

Levy at different rates as framed by different states.

State specific industrial policy for certain stamp duty exemptions & concession.

The applicable duty varies across States depending on the nature of the instrument, location of the property, valuation methodology, and State-specific legislation.

In addition to basic stamp duty, States may impose registration fees, surcharges, cess, or local levies.

For mergers and demergers, stamp duty may be calculated on the value of immovable property, shares issued, subject to differing State provisions and statutory caps.

Judicial precedents and important rulings have clarified important issues such as valuation, applicability of exemptions, treatment of composite schemes.

Set-off of duty paid in other States.

Factors such as embedded plant and machinery, guideline values, share valuation, and appointed date versus effective dates significantly influence duty liability.

With increasing adoption of e-stamping and digital registration, compliance has become more efficient.

Proper assessment and payment of stamp duty are essential to ensure legal validity, admissibility, enforceability, and successful registration of instruments while minimizing litigation and financial risks.

Stamp duty is one of the taxes levied normally by State on every instrument and is at time important aspects for any transactions/business decision/take over/ collaboration and since its immediate cash outflow so very critical for decision making.

Important aspects for stamp duty

- **Instrument:**

  Certain common instruments:

  – Sale Deed/Transfer Deed.

  – Gift Deed.

  – Partition Deed.

  – Decree/order of Court.

  – Lease Deed.

  – Sale Certificate.

  – NCLT order/Regional Director order sanctioning the scheme of Arrangement.

- **Jurisdiction**

  Mainly pertaining to location of the property.

- **State subject (Except certain instruments)**

  State has power to levy and normally instruments covered under schedule of the respective state Stamp Act under various and different articles.

- **Nature over Nomenclature**

  Important to understand nature rather nomenclature or title of instrument.

- **Time of payment of stamp duty**

  In case of suo motto payment either before execution or to be lodged before Collector of Stamps within 30 days of the execution (State subject) and upon receipt of demand notice duty to be paid within stipulated time.

- **Certain specific exemptions/remission on duties.**

  Certain states have exemptions of duties industry based, for instance Maharashtra as per IT policy grants certain exemption for IT unit, certain states for renewable energy and many more.

- **Correct Mode of payment of stamp duty**

  Each state have prescribed mode of payment, either online or through offline Bank transaction or through purchase of Stamp paper.

Structure of stamp duty on land transactions Land related transfer/deals instruments always attract stamp duty Conveyance/Sale Deed/Transfer Deed/Agreement

Sr. No.	*States*	*Stamp Duty with Respect to Immovable Property*	*Additional duties in form of Cess/ surcharge/upkar/ transfer duty etc.*	*Effective Rate*	*Registration Fees*
1	Maharashtra	5%	1% or 2% varies district wise	6% or 7% varies district wise	1% upper cap 30,000/-

Sr. No.	*States*	*Stamp Duty with Respect to Immovable Property*	*Additional duties in form of Cess/ surcharge/upkar/ transfer duty etc.*	*Effective Rate*	*Registration Fees*
2	Gujarat	3.5%	40% of Stamp duty i.e: 1.4% effective	4.9%	1%
3	Karnataka	5%	12% of Stamp duty i.e: 0.6% effective	5.6%	2%
4	Tamil Nadu	7%	NA	7%	2%
5	Delhi	3%	4%	7%	1%
6	Rajasthan	6%	33% of stamp duty	8%	1%
7	Madhya Pradesh	5%	4.5% may vary district wise	9.5%	3%
8	Harayana	5%	2% MCG depending on zone/area	7%	50,000/-
9	West Bengal	5%/6%/7% depending on zone and Value		5%/6%/7% depending on zone and Value	1%
10	Telangana	5.5%	1.5% or nil depending on the area/zone	7%	0.5% or 2% depending on the area/ zone
11	Andhra Pradesh	5%	1.5%	6.5%	1%

Key Points/Important factors:

- Normally there is no upper cap on stamp duty under conveyance article.
- Check Industry wise any specific exemption available as per state policy.
- Stamp and other charges are subject to dynamic changes off late by State Government and can be verified by respective departments.
- Over and above stamp duty some other levy in form of Cess/surcharge/local taxes/upkar/etc.
- Over and above some nominal user or scanning charges also levied.
- Some states have reduced rates for female and marginally reduced rate if jointly owned by male and female.

- Depending on the age of the structure depreciation available on structure (documentary evidence for proving the age required).
- Rural and urban rates have some differences in some states.
- Reduced rates for agriculture land in certain states.
- Structure/things appurtenant to land may be considered under conveyance.

Implications on mergers and demergers in various states. Point of time for conveyance (appointed date v. effective date)

1. Levy on Shares Value or immovable properties Stamp duty on merger/demerger in certain states

Sr. No.	*States*	*Stamp Duty with Respect to Immovable Property*	*Stamp Duty with Respect to Shares Issued*	*Upper Cap (In Crores)*	*Registration Fees*
1	Maharashtra	5%	0.7%	50	1% upper cap ₹ 30,000/-
2	Gujarat	1%	1%	50	1%
3	Karnataka	5%	5%	25	2%
4	Tamil Nadu	2%	0.6%	NA	
5	Delhi	3%	3%		1%
6	Rajasthan	4%	1%	25	1%
7	Madhya Pradesh	5%	0.5%	25	0.8% of the Stamp duty amount (However clarification required)
8	Harayana	1.5%	1.5%	7.5	₹ 50,000/- upper cap
9	West Bengal	2%	0.5%	NA	1%
10	Telangana	NA	2%	20	0.5% or 2%
11	Andhra Pradesh	NA	2%	NA	1% or 0.5%

Key Points/Important factors:

- Stamp and other charges are subject to dynamic changes off late by State Government and can be verified by respective departments.

- Depending on the age of the structure depreciation available on structure (documentary evidence for proving the age required).

- Certain states have exemptions of duties industry based, for instance Maharashtra as per IT policy grants certain exemption for IT unit, certain states for renewable energy and many more.

- Structure/things appurtenant to land/ plant and machinery (in certain cases) may be considered under immovable properties.

- Book value vs. guide lines value of the immovable properties getting transferred.

- Face value vs. fair value (if fair value is lesser and accordingly the ratio is determined, still many a times Stamp authorities are reluctant to consider fair value and cant go below face value).

- Plant and machinery also considered as immovable properties, particularly if embedded or fasten to earth (So you get discussed).

State specific important points/factors/ provisions

1. Maharashtra

- Has capping of 10% (of the shares issued and consideration paid) as well, so if subsidiary merger into holding company then effectively can achieve nil stamp duty as per interpretation. Or in event value of shares nominal against value of immovable properties then can achieve capping at 10% of the value of shares issued and consideration paid.

- Cross holding of shares acquired post appointed date are not reduced while computing consideration, so at times big set back, also if company become subsidiary post appointed date and no shares issued then also authorities may levy on shares acquisition value.

- In case of Demerger Value of shares issued and consideration paid is also compared with value of the demerged undertaking and which ever is higher is considered, same may be applied to merger as well as explanation in the charging article provides language "With reference to the value of Transferor Company".

- Further cap of 50 crore is normally considered per company.

- IT company and IT enabled exemption 75% remission, subject to certificate from Directorate of Industries.

- Normally valuation of shares and immovable properties considered as on appointed date.

- Plant and Machinery embedded to earth also considered as immovable properties.

- For equity shares, NAV method valuation is minimum and normally accepted method, unless ratio derived through some other method.

- If debentures issued are mentioned under consideration clause then even that may be construed as consideration pursuant to the scheme.

Important Case Laws Stamp duty:

- ***Bharti Airtel Ltd vs. The Chief Controlling Revenue***

Pertaining to levy of stamp duty on shares value and not on value of the demerged undertaking and also pertaining to the reduction of debts from net demerged undertaking.

- ***Chief Controlling vs. Reliance Industries Ltd (old but worth noting)***

  The issue wherein two orders sanctioning the same scheme had been passed in Gujarat and Maharashtra. The Hon'ble High Court answered the issue that the two orders pertaining to the same scheme are separate, independent instruments and cannot be considered as the same document so shall be stamped separately.

- ***Schaeffler India Limited vs. Chief Controlling Revenue Authority, Pune, Maharashtra ("Maharashtra Revenue Authority")***

  Dealt with the question of levy of stamp duty on orders of the National Company Law Tribunal ("NCLT") sanctioning composite schemes of amalgamation involving multiple transferor companies.

  The Bombay High Court agreed with the decision of the Gujarat High Court in ***Ambuja Cements Limited vs. Chief Controlling Revenue Authority***, on the non-applicability of Section 5 of the Stamp Act to an order sanctioning such a scheme because a composite scheme of amalgamation between multiple companies is treated as one integrated arrangement and not a bundle of separate transactions for which stamp duty is payable.

  Accordingly, the Bombay High Court observed that the amalgamation of Luk India does not constitute a distinct transaction within the scope of Section 5 of the Stamp Act. Consequently, no separate or additional stamp duty is leviable in respect of the amalgamation of Luk India with Schaeffler.

  In light of the above findings, the impugned orders were quashed and set aside. The Bombay High Court held that Schaeffler is liable to pay stamp duty only on the instrument, namely the NCLT Mumbai Order, in accordance with Article 25(da) of the Stamp Act, subject to the cap of INR 25,00,00,000.

Other important reference cases very critical to note:

- ***Hindustan Lever vs. State of Maharashtra***
- ***Li Taka Pharmaceuticals Ltd & Anr. vs. State of Maharashtra***

2. Gujarat

- Has started adopting fair value in case of unlisted companies, earlier it was face value.
- Limit of 50 crore per company.
- In case transferee/resulting company not listed and transferor/demerged company listed then rate of transferor/demerged is applied to the number of shares issued.
- As per definition of Gujarat Stamp Act normally any plant and machinery also considered as immovable property.
- Transfer of Long lease also considered as immovable property.

Important Case Laws Stamp duty:

- ***Alembic Pharmaceuticals Ltd vs. Chief Controlling Revenue Authority***

  In case transferee/resulting company not listed and transferor/demerged company listed then rate of transferor/demerged is applied to the number of shares issued. Hon'ble Supreme Court has upheld the levy by department.

- ***Chief Controlling Revenue Authority vs. Costal Gujarat Power Ltd.***

  Instrument relating to several distinct matters or distinct transactions. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instrument, each comprising or relating to one of such matters or distinct transactions, would be chargeable under this Act.

Other recent important case law

- ***Ambuja Cements Limited vs. Chief Controlling Revenue Authority***

3. Karnataka

- Surcharge is over and above 5% levied on immovable property and also over and above upper cap of ₹ 25 crore.

- Language used is properties so stamp duty levied on all types of properties movable and immovable, so makes it very difficult at times to assess value.

- Normally forwarded to Teksok for valuation.

- Also on cancellation of shares so Holdco and subsidiary.

Important Case Laws Stamp duty:

- ***Prestige Exora Business Parks Limited vs. State of Karnataka (Karnataka High Court)***

  Karnataka High Court held that statutory upper limit of maximum stamp duty INR 25 crores under the Karnataka Stamp (Second Amendment) Act, 2022 is not applicable to the additional duty levied under section 3B the Karnataka Stamp Act, 1957. *Facts*- The National Company Law Tribunal, by its order dated 22.04.2022, sanctioned a scheme of arrangement between Prestige Exora Business Parks Limited and Pluto Cessna Business Park Private Limited, along with their respective shareholders and creditors. Under this scheme.

- ***Quikr India Private Limited vs. State of Karnataka (Karnataka High Court)***

  Quikr was directed to obtain a valuation of the movables from the Technical Consultancy Services Organisation of Karnataka (TECSOK).

  The court observed that there were shortcomings on both sides in arriving at the correct valuation of the shares covered by the amalgamation scheme. While Quikr had produced an affidavit and a chartered accountant's report, it had not furnished the valuation, if any, prepared when the scheme was submitted to the tribunal or when the tribunal passed its order. Recording Quikr's undertaking to produce that valuation report, the court set aside the

September 17, 2021 order and remitted the matter to the district registrar for fresh consideration.

Tamil Nadu

- Levy on shares have been removed.
- Normally AE values properties and at times also on plant and machinery.
- While most states insists for adjudication of the NCLT order, Tamil Nadu normal practice is direct registration of the order along with the deed.
- In Tamil Nadu while there is reduced rate levy on NCLT order compared to conveyance however on Fast track merger orders issued by Regional Director, there is some ground level challenge and at times levied as per conveyance as against merger entry.

Important Case Laws Stamp duty:

- ***The State of Tamil Nadu vs. M/S Serene Estate Private Limited***

  Accordingly, the authorities will be entitled to collect the stamp duty by calculating 2% of the market value of the immoveable property and no levy on shares shall be allowed, and excess duty if any collected shall stand refunded to the writ petitioners; Further the Stamp Duty if any paid, while presenting the order relating to amalgamation in other States shall be taken into account, while calculating the Stamp Duty payable in the State of Tamil Nadu and after setting off the amount already paid, only the balance amount if any alone can be demanded.

4. Delhi

- Entire Assets side (including movable and immovable properties both)at times of the transferor Company's Balance Sheet are made subject to stamp duty due to interpretation issues, while can also be levied on networth of transferor Company, viz a viz on value of the shares issued.
- Can also attract duty on holding subsidiary matters.
- Immovable properties plus 4% MCD charges are levied.

Important Case Laws Stamp duty:

- ***Delhi Towers Ltd. vs. GNCT of Delhi***

  It was held that the notification dated 25th of December, 1937 is applicable and binding in the matter of wholly owned subsidiary and holding company and therefore.

- ***Ambuja Cements Ltd. vs. Collector of Stamps***

  The Collector of Stamps, Delhi through its notice demanded payment of stamp duty calculated at 3% amounting to ₹ 218.87 crores, along with a penalty of ₹ 69 crores. The notice relied on the precedent set in ***Delhi Towers Ltd. vs. GNCT of Delhi (2009 SCC OnLine Del 3959)*** to classify the merger as a "conveyance" requiring stamp duty. However, the Transferee Company argued that vide Notification no. 13 dated 25.12.1937 issued by the Central Government (1937 Notification), the transaction was not exigible to stamp duty.

Court conclusion

The Delhi Towers Ltd. case clarified the application of stamp duty in cases of mergers and amalgamations, specifically highlighting that court orders sanctioning such schemes qualify as "conveyances" under the Indian Stamp Act. Furthermore, the Court **reaffirmed the applicability of the 1937 Notification** which provides an exemption from stamp duty on instrument evidencing transfer of property between companies, matter has been appealed by the authorities (State).

Rajasthan

- Levy on Cancellation of shares as well, that is state provides to levy duty on shares cancelled as well pursuant to the scheme.
- Surcharge cess over and above stamp duty.
- Plant and machinery challenge.

Important Case Laws Stamp duty:

- ***Himachal Futuristic Communications ... vs. State of Rajasthan***

  Initially single bench court held that if only there was immovable property in the state of Rajasthan worth much lesser than the Value of the Shares issued, charging article shall apply in totality and stamp duty assessed was around ₹ 25 crore on shares, although on immovable properties, would have been much lesser.

  As sequitur to aforesaid consideration and discussion, we hold that the appellant would be liable for payment of stamp duty only on the market value of the properties situated in the State of Rajasthan required to be assessed in accordance with the statutory scheme of the Stamp Act of 1998. The demand for payment of stamp duty in excess of such liability is in excess of authority under the Stamp Act of 1998 and further in the result, order dated 07.06.2019 passed by the learned Single Judge is held unsustainable in law and the same is set aside. Writ petition is also allowed. Order and notice dated 07.03.2018 issued by Respondent No. 2, The Collector (Stamps), Jaipur Circle-III (Annexure P-1 and Annexure P-2 attached with the writ petition) to the extent of including value of shares issued pursuant to the scheme of arrangement and amalgamation are also quashed. Respondent No. 2 is directed to carry out fresh assessment of duty payable by the appellant-company in accordance with the directions issued by this Court.

Madhya Pradesh

- Upkar, janpad, surcharge over and above cap approximately: Additional 4.5% extra depending on district.
- Plant and machinery embedded to earth also considered under immobile properties.

Important Case Laws Stamp duty:

- ***Grasim Industries Ltd. vs. The State of Madhya Pradesh***

Haryana

- Relatively lower upper cap of ₹ 7.5 Crore on scheme.

- Set off at times may be challenge, like other states.

West Bengal

- Advisable to have some immovable property transferred pursuant to the scheme, else levy on only shares issuance is much higher as per certain judgements.

- Set off is challenge.

Important Case Laws Stamp duty:

- ***Dalgreen Agro Pvt. Ltd vs. State of West Bengal & Ors***

  If there is no immovable properties in the state of West Bengal and shares are issued under the scheme then Stamp duty rate shall be as per rate of conveyance that may be as high as 6%.

- **Indorama**

  Similar as Dalgreen

- **Emami Biotech Limited**

  Was held that order sanctioning the scheme of amalgamation/arrangement is instrument and subject to stamp duty and notification of 1937 shall not apply to the State of West Bengal. So even if scheme between holding company and subsidiary, stamp duty shall be leviable as computed bystamp authorities.

Telangana

- New amendment proposed to levy on immovable properties as well but not yet passed and implemented.

- Registration fees is leviable if we intend to register the order and ground level challenge for registration is additional duty at times insisted by authorities as per conveyance.

- WOS and Holdco.

Andhra Pradesh

- Registration fees is leviable if we intend to register the order and ground level challenge for registration is additional duty at times insisted by authorities as per conveyance.

- WOS and Holdco.

Important Case Laws Stamp duty:

- ***M/s. Sreenivasa Pharma Private Limited vs. The Commissioner And...***

  Pertains to the merger of subsidiary company into Holding Company, was held that since no shares were issued so no stamp duty shall be levied under article 20(d) although immovable property was getting transferred.

Set off of stamp duty paid in other states is one of the critical aspects

Under **Section 19** if an instrument or copy is **executed outside** but is liable to a higher stamp duty upon being received or utilized within the state, you can set off (deduct) the stamp duty already paid in the other state from the total duty owed in the state. You are only required to pay the differential incremental duty. Although ground level challenges are there for availing set off, but its critical provision, and beneficial in the states where upper cap is there Stamp duty comparative between normal conveyance (Even BTA and Slump Sale) and conveyance through scheme (any form of arrangement, merger, demerger, slump sale) sanctioned by National Company Law Tribunal (NCLT):

Points	*Conveyance*	*Conveyance through NCLT order*
Upper cap	No upper cap	Many states have upper cap
Stamp duty rates	Normally higher	Many states have lower rates than conveyance
Set off	If multiple states then normally set off not available	If multiple states then normally set off may be available, depending on the facts of matter and state policy
Time of payment	Normally paid Suo motto before execution or within 30 days to be lodged with Collector of Stamps/ District Registrar.	Since order is executed instrument so duty paid post order, by lodging with Collector of Stamps/District Registrar for adjudication within prescribed days



Stamp duty is statutory levy and is mandatory on instrument to be valid. **The Stamp Act, 1899** and specific State Stamp Act, provides that an instrument chargeable with stamp duty which is not duly stamped is generally inadmissible in evidence unless the applicable duty and penalty are paid in accordance with law. Such an instrument may also be refused registration or authentication where stamping is a statutory precondition.

Failure to comply with the statutory stamp duty requirements can therefore delay or impede registration, affect admissibility in judicial proceedings and result in additional financial liability

Emerging Developments

Several States have adopted **electronic stamping (e-Stamping)** to streamline the payment of stamp duty and reduce the incidence of counterfeit stamp papers. E-stamping facilitates secure electronic payment, quicker verification and greater transparency in property transactions, although the implementation framework differs across States, also online registration is emerging trend.

Conclusion

Stamp duty remains one of the most significant statutory levies. Since valuation principles, applicable rates, concessions, cesses and procedural requirements vary across States, parties should carefully examine the relevant State legislation before executing any instrument. Proper stamping and registration not only ensure statutory compliance but also strengthen the legal validity, evidentiary value and enforceability of property documents, thereby reducing the risk of future disputes and financial exposure.

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SPECIFIC PERFORMANCE IN LAND AND REAL ESTATE TRANSACTIONS





Ravi Sawana *Sahil Parghi* *Gopal Machiraju*

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Overview

The Specific Relief (Amendment) Act, 2018 has transformed specific performance from an exceptional remedy into the primary remedy for breach of contract. In the context of land and real estate transactions, decrees for specific performance frequently involve execution of sale deeds, enforcement of Joint Development Agreements (JDAs), leases, development rights, easements, and other proprietary interests in land. Such decrees invariably carry significant tax consequences.

This article examines the intersection of the Specific Relief Act, 1963 (SRA) with the Income-tax Act, 2025, the Central Goods and Services Tax Act, 2017, and applicable stamp duty laws. It analyses key direct tax and GST issues including timing of transfer, taxation of JDAs, TDR/FSI transactions, leasehold rights, easementary rights, substituted performance, and compensation awarded under Section 21 of SRA. Further, it highlights the stamp duty and registration consequences associated with decrees directing conveyance of immovable property.

The article argues that the tax consequences flow not from the decree itself but from the legal character of the underlying transaction being enforced. Effective dispute resolution in real estate matters therefore requires careful consideration of tax allocation, valuation, registration, compensation and execution issues at the stage of pleadings, settlements and decree drafting.

I. INTRODUCTION

A decree of specific performance compels actual performance of a contract. When it comes to disputes pertaining to immovable property, viz. land, the performance of such a contract may take the form of execution of a sale deed, completion of joint development, enforcement of a lease, grant of access over land, or conveyance of development rights. The remedy under law

The amended Section 10 of the SRA reverses that position. It now mandates that specific performance "shall be enforced", subject only to the limited exceptions contained in Sections 11(2), 14 and 16 of the SRA.

therefore does not end with a court order, it comes with tax consequences under the Income-tax Act, 2025 (**"ITA 2025"**), Central Goods and Services Tax Act, 2017 (**"CGST Act"**) and state Stamp Duty Acts.

The Specific Relief Act, 1963 (**"SRA"**) as amended by the Specific Relief (Amendment) Act, 2018 (**"2018 Amendment"**) has increased the need to review these tax consequences arising from contractual obligations. Specific performance is no longer approached as an exceptional remedy discretional to the Court; it is an alternative and an ordinary discretionary remedy that the contract in fact should be specifically enforced. SRA also recognizes substituted performance under Section 20 and grant of compensation under Section 21.

This article examines the interplay between these civil remedies and their direct and indirect tax consequences in the context of Agreements to Sell (**"ATS"**), Joint Development Agreements (**"JDAs"**), and such allied property disputes.

II. LEGAL FRAMEWORK: SPECIFIC RELIEF ACT 1963 AS AMENDED

A. Section 10: Presumptive Enforcement

The 2018 amendment altered the remedial framework under SRA. Prior to the amendment, specific performance was a discretionary remedy, and courts could, in appropriate cases, refuse performance even where a valid contract was established. The amended Section 10 of the SRA reverses that position. It now mandates that specific performance "shall be enforced", subject only to the limited exceptions contained in Sections 11(2), 14 and 16 of the SRA. The Supreme Court confirmed this shift in ***B. Santoshamma vs. D. Sarala***[1]. The Apex Court recognised that the amendment substantially curtails judicial discretion and places specific performance as the primary remedy for breach of contract. The inquiry is therefore no longer whether specific performance is equitable in the abstract, but whether the case falls within any of the statutory exceptions to enforcement.

B. Section 14: Infrastructure Contracts

Section 14(3)(a), inserted by the 2018 Amendment, excludes notified infrastructure contracts from the remedy of specific performance. In such cases, parties may be restricted to compensatory

1. *(2020) 19 SCC 80*

Section 20 permits an aggrieved party to secure performance through a third party after giving thirty days' notice and recover the resulting costs from the defaulting party.

relief. This distinction is significant because the tax treatment of compensation may differ from that applicable to transfer or performance of the underlying property transaction.

C. Section 20: Substituted Performance

Section 20 permits an aggrieved party to secure performance through a third party after giving thirty days' notice and recover the resulting costs from the defaulting party. Once substituted performance is elected, a claim for specific performance is barred. The choice between substituted performance and litigation can therefore materially affect the resulting tax consequences.

D. Section 21: Court-Awarded Compensation

Section 21 empowers courts to award compensation either in substitution for or in addition to specific performance. The distinction is important from a tax perspective because compensation awarded in lieu of specific performance does not result in transfer of property, whereas compensation awarded in addition to specific performance accompanies a completed transfer.

III. DIRECT TAX IMPLICATIONS

A. Transfer of Immovable Property and Agreements to Sell

Section 2(109) of the ITA, 2025[2] defines "transfer" in an inclusive manner and includes therein, transactions enabling enjoyment of immovable property[3] and transactions involving delivery of possession of immovable property in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882[4] (**"TPA"**). In ***CIT vs. Balbir Singh Maini***[5], the Supreme Court held that transfer of a property pursuant to a part performance in terms of Section 53A of the TPA, requires the existence of a registered agreement.

If the agreement is unregistered, no transfer of property in law, can be said to have taken place, even if possession has been handed over.

If the agreement is unregistered, no transfer of property in law, can be said to have taken place, even if possession has been handed over. In such cases, Revenue may contend that even if there is no transfer of property in law, there is transfer of title in fact and hence, the transferor has enabled enjoyment of property in favour of the transferee. By executing an agreement to sell in respect of an immovable property, a right in personam is created in favour of the transferee/vendee. When such a right is

2. *Corresponding to Section 2(47) of the Income-tax Act, 1961*
3. *Clause (f) to Section 2(109)*
4. *Clause (g) to Section 2(109)*
5. *(2017) 398 ITR 531 (SC), followed in Seshasayee Steels (2020) 14 SCC 774*

created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee, in whose favour the right in personam is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed. Hence, the transfer has taken place when ATS was executed[6]. However, depending on the facts, one may oppose such a contention by asserting that the purchaser acquires no irrevocable rights of enjoyment and the contract remains executory pending adjudication, with the parties' rights and obligations continuing to be subject to adjudication and completion.

Year of Transfer - Where a decree for specific performance culminates in the execution of a sale deed, taxability depends on whether a transfer had already occurred under the original agreement. If the earlier arrangement had already resulted in a transfer within the meaning of section 2(109), the sale deed executed pursuant to the decree does not constitute a fresh transfer, and the taxable event occurs in the year of the original transfer rather than the year of execution of the sale deed.

Valuation - A related valuation issue may arise where a decree for specific performance enforces an earlier ATS. The Revenue may seek to apply Section 78 by adopting the stamp duty value prevailing on the date of execution of the decree and registration of the sale deed, potentially triggering corresponding implications for the purchaser under Section 92(2)(m). The parties may, however, contend that the decree merely enforces rights crystallised under the original agreement and does not result in a fresh transfer, warranting adoption of the stamp duty value as on the date of the original transfer. Given the potential appreciation in property values during litigation, valuation and consideration provisions should be carefully addressed in decrees and settlement arrangements.

A decree for specific performance results in execution of the transaction originally contemplated by the parties. However, for income-tax purposes, the decree does not necessarily determine the year of transfer.

B. Joint Development Agreements, Development Rights, TDR and FSI

i. Specific Performance and the Year of Transfer

A decree for specific performance results in execution of the transaction originally contemplated by the parties. However, for income-tax purposes, the decree does not necessarily determine the year of transfer. Where the property was already transferred pursuant to the original agreement between the parties which satisfies the rigours of Section 2(109) read with dicta laid down in *Balbir Singh Maini (SC)*, the subsequent execution of documents pursuant to a decree for specific performance may merely evidence or perfect an existing transfer rather than constitute a fresh transfer.

6. *Sanjeev Lal vs. CIT [2014] 365 ITR 389 (SC)*

ii. Specific Performance of JDAs

Specific performance suits involving JDAs frequently concern the enforcement of development rights rather than an outright transfer of land. Where a Society/developer obtains a decree for specific performance of a registered JDA, the taxation of the landowner should ordinarily continue to be governed by the special deferred-taxation regime[7] and not by general principles relating to transfer or possession. The decree merely enforces the JDA and does not ordinarily alter the statutory timing rule for taxation.

iii. Impact of Litigation Delays in Redevelopment Projects

Although specific performance proceedings may not alter the point of taxation, prolonged litigation can have substantial economic consequences. Delays in implementing a redevelopment project may postpone the issuance of the completion certificate for several years. Since the value of the developed property may appreciate considerably during the intervening period, the eventual capital gains liability may be substantially greater than it would have been had the project proceeded without dispute. Parties involved in redevelopment litigation should therefore carefully evaluate the tax implications of appreciation occurring during the pendency of proceedings.

iv. Specific Performance and Capital Gain Exemption

It is often contended that the date of execution of the PAAA constitutes the date of transfer for capital gains purposes. If that position is accepted, entitlement to capital gain exemption may depend upon whether the new residential unit is constructed within the prescribed period from the date of such transfer. Where redevelopment is delayed by litigation culminating in a decree for specific performance, the replacement premises may be delivered long after the expiry of the statutory period. In such cases, the decree does not necessarily change the original transfer date but may become relevant in explaining the reasons for the delay. Herein, two situations may arise – (a) where the delay is caused by the Developer; or (b) where the delay is caused by the members of the Society.



7. *Section 67(14) of ITA*

- ***Delay caused by Developer default***

  Where redevelopment is delayed due to the developer's default, society members may contend that they had substantially complied with their obligations and that the delay in obtaining the replacement premises was beyond their control[8]. In such circumstances, the specific performance proceedings may support a liberal interpretation of capital gains exemption provisions, particularly where the redeveloped premises are ultimately obtained through enforcement of contractual rights.

- ***Delay Caused by Members' or Society's Default***

  The position may differ where the delay in redevelopment is attributable to the default of the society or its members. If the developer obtains a decree for specific performance, the findings may establish that the delay was caused by the members' own conduct. The Revenue may then argue that the failure to satisfy the conditions for capital gains exemption resulted from the assessee's default rather than circumstances beyond his control, thereby weakening the exemption claim.

v. Monetary compensation in decree for specific performance

Where members of a co-operative housing society, other than the performance of JDA obligations by the Developer, are also awarded monetary compensation pursuant to a decree for specific performance or a settlement entered into during redevelopment litigation. The tax treatment of such compensation depends upon its true character. Where the payment is intrinsically connected with the transfer of development rights, surrender of occupancy rights, or consent to redevelopment, it may be regarded as additional consideration forming part of the capital gains computation. Conversely, where the compensation is awarded solely for delay in delivery of the redeveloped premises or for the inconvenience suffered by members during the pendency of the project, then it can be argued that this is a capital receipt and is unconnected with the underlying JDAs. However, Revenue may contend that such compensation merely compensates loss of use of money or delayed performance and therefore does not assume the character of consideration for transfer.

If the compensation is paid for the relinquishment or modification of proprietary or contractual rights under

If the compensation is paid for the relinquishment or modification of proprietary or contractual rights under the redevelopment arrangement, then the nature of the right surrendered and the purpose for which the compensation is awarded assume critical significance in determining its tax treatment.

8. *CIT vs. Sambandam Udaykumar (2012) 345 ITR 389 (Kar.)*

the redevelopment arrangement, then the nature of the right surrendered and the purpose for which the compensation is awarded assume critical significance in determining its tax treatment.

capital asset and the point at which such transfer is regarded as having occurred. Complexities may arise where leasehold land is subject to restrictions on assignment, where substantial lease premiums are payable, or where compensation is

Section 20 of the SRA enables an aggrieved party to obtain substituted performance through a third party and recover the resulting expenditure from the defaulting party. The exercise of this remedy may have significant tax implications because, once substituted performance is elected, Section 20(3) bars a subsequent claim for specific performance.

C. Leases and Assignment of Leasehold Rights

A distinct set of issues arises where a decree for specific performance enforces the creation, assignment, surrender or transfer of leasehold rights. In such cases, the tax consequences depend upon the nature of the interest transferred and the capacity in which the transferor holds the property. For instance, different considerations may arise where the decree compels the assignment of an existing leasehold interest, the grant of a fresh lease, the surrender of tenancy rights, or the transfer of leasehold property in the course of a redevelopment transaction. In ***A.R. Krishnamurthy vs. CIT***[9], it has been held that interests and rights in immovable property including leasehold rights are capital assets and that consideration received for transfer thereof may attract capital gains.

The decree itself does not determine the incidence of taxation; rather, the relevant inquiry is whether the transaction results in the transfer or extinguishment of a

awarded in addition to the consideration originally agreed between the parties. In such situations, careful attention must be paid to the nature of the rights created, transferred or relinquished under the decree in determining the timing and character of the resulting tax liability.

D. Easementary Rights, Right of Way and Other Property Rights

Specific performance may also relate to easements, rights of way, access rights and other similar proprietary interests over land. Where such rights are transferable and possess an independent proprietary character, they may constitute capital assets. Accordingly, consideration received for their creation, transfer, modification or extinguishment may attract capital gains taxation depending on the nature of the right and transaction. The drafting of consent terms therefore becomes important in identifying whether consideration is attributable to transfer of a capital asset or to periodic user rights.

9. *[1989] 176 ITR 417 (SC); Vidarbha Veneer Industries Ltd. vs. ITO [2026] 484 ITR 132 (Bom.)*

E. Substituted Performance under Section 20 of SRA and Tax Characterisation of Contractual Rights

Section 20 of the SRA enables an aggrieved party to obtain substituted performance through a third party and recover the resulting expenditure from the defaulting party. The exercise of this remedy may have significant tax implications because, once substituted performance is elected, Section 20(3) bars a subsequent claim for specific performance. The dispute consequently shifts from enforcement of contractual or proprietary rights to a claim for monetary recovery.

Where the amount recovered merely reimburses the actual expenditure incurred in procuring substituted performance, such recovery is ordinarily compensatory in nature and should not, by itself, constitute consideration for the transfer of a capital asset. However, the position may be materially different where the settlement, decree or substituted arrangement also involves the assignment, surrender, extinguishment or modification of contractual rights. In ***CIT vs. Tata Services Ltd.***[10], the Bombay High Court held that a right to obtain conveyance of immovable property under an agreement for sale constitutes a capital asset capable of assignment. Accordingly, where the aggrieved party relinquishes rights capable of specific performance in return for a monetary settlement, the receipt may assume the character of consideration for the transfer or extinguishment of a capital asset and attract capital gains consequences. Similar principles emerge from K***ettlewell Bullen & Co. Ltd. vs. CIT***[11] and ***CIT vs. Saurashtra Cement Ltd.***[12], where the Supreme Court emphasised that the true tax character of compensation depends upon the nature of the right affected and what the payment is intended to replace. Consequently, where substituted performance is accompanied by the relinquishment of development rights, release of contractual claims, waiver of enforcement rights, or reallocation of commercial entitlements under a redevelopment arrangement, the character of the receipt must be determined by reference to the underlying rights surrendered rather than the description given to the payment.

F. Compensation under Section 21 of SRA

(i) Compensation in Substitution for Specific Performance – Section 21(2) of SRA

Where the court awards compensation under Section 21(2) instead of compelling performance, no transfer of property ultimately takes place. Rights under an ATS constitute a capital asset, and compensation received by the buyer may be regarded as consideration for extinguishment of such rights, attracting the capital gains provisions. This position finds support from ***Vijay Flexible Containers vs. CIT***[13].

10. *(1980) 122 ITR 594 (Bom.)*
11. *(1964) 53 ITR 261 (SC)*
12. *(2010) 325 ITR 422 (SC)*
13. *[1990] 186 ITR 693 (Bom)*

To minimise controversy, it is advisable that parties drafting consent decrees should clearly segregate transfer consideration from compensation for delay or breach, as such characterisation may materially influence the tax consequences for both parties.

In the seller's hands, the payment does not result in a transfer of the property. The seller may contend that the amount represents expenditure incurred to extinguish an adverse contractual claim or clear title to the property, though its tax treatment would depend on the facts of the case.

(ii) Compensation in Addition to Specific Performance – Section 21(3) of SRA

Where specific performance is granted and compensation is awarded in addition for delay, breach or consequential loss, the transfer of the property continues to be governed by the ordinary capital gains provisions.

The additional amount awarded for delay, breach or consequential loss presents a separate characterization issue. Revenue may seek to assess such amount independently as damages arising from the breach and taxable under the residuary provisions relating to income from other sources. Conversely, the taxpayer may contend that the compensation is inextricably linked to the underlying ATS right and the transfer ultimately effected pursuant thereto and should therefore assume the same character as the principal transaction.

To minimise controversy, it is advisable that parties drafting consent decrees should clearly segregate transfer consideration from compensation for delay or breach, as such characterisation may materially influence the tax consequences for both parties.

IV. GOODS AND SERVICES TAX

The GST consequences of a decree of specific performance depend on the nature of the underlying transaction. A decree merely enforces an existing obligation and does not alter its character. Accordingly, sale of land remains outside GST, whereas transactions involving development rights, leasing, construction or other commercial rights over land may attract GST.

A. JDA Enforcement: Reverse Charge on TDR and FSI

A JDA typically involves transfer of development rights by the landowner and construction services by the developer. Accordingly, enforcement of a JDA may involve taxable supplies notwithstanding that the arrangement relates to land.

A decree of specific performance enforcing a JDA therefore does not merely enforce a land transaction but may compel performance of independently taxable supplies under the CGST Act. Notification No. 05/2019-Central Tax (Rate) dated 29.03.2019 brings services by way of transfer of development rights or FSI, including additional FSI, and long-term lease of land

A decree of specific performance enforcing a JDA therefore does not merely enforce a land transaction but may compel performance of independently taxable supplies under the CGST Act.

A distinction must be drawn between the grant of a lease and the assignment of an existing leasehold interest.

for construction of a project by a promoter, within the reverse charge mechanism, with the promoter/developer liable to discharge GST. While Notification No. 04/2019-Central Tax (Rate) dated 29.03.2019 provides a conditional exemption for TDR/FSI used for construction of residential apartments, while preserving reverse charge liability to the extent attributable to residential apartments remaining unbooked on completion certificate or first occupation. Accordingly, in decrees or consent terms enforcing JDAs, parties should expressly address valuation, timing, reverse charge liability, allocation of GST burden and treatment of unsold inventory at completion.

B. Enforcement of Easementary rights or right of way over land

Where a decree of specific performance enforces an easementary right or right of way over land, GST implications would depend on the legal character of the right being enforced. If the right of way is merely appurtenant to, and inseparable from, a conveyance of land, with no separate consideration attributable to such right, it should ordinarily follow the character of the underlying sale of land and remain outside GST. However, where the decree enforces a standalone right of access, easement, licence, wayleave, corridor right or similar permission to use another person's land for consideration, the transaction may be treated as a supply of service, since Schedule II of the CGST Act specifically treats any lease, tenancy, easement or licence to occupy land as a supply of services. Accordingly, decrees or consent terms involving rights of way should clearly record whether the right is an incident of land ownership or a separately enforceable commercial access right, as that characterisation would determine the GST treatment.

C. Lease Enforcement: Grants, Rentals and Assignment of Leasehold Rights

A distinction must be drawn between the grant of a lease and the assignment of an existing leasehold interest. The former is expressly treated under Schedule II as a supply of services. Accordingly, where a decree compels the execution, renewal or continuation of a lease, it ordinarily enforces a taxable supply. Lease rentals, premiums and other charges payable under the lease generally depend on the underlying leasing service, subject to available exemptions.

The position is less straightforward where the decree relates to the assignment of leasehold rights. In ***Gujarat Chamber of Commerce and Industry vs. UoI***[14], the Gujarat High Court held that assignment of an existing leasehold estate constitutes transfer of an interest in immovable property rather than a supply of services. Accordingly, while a decree enforcing a fresh lease ordinarily involves a taxable supply, a decree enforcing assignment of an

14. 2025 (94) G.S.T.L. 113 (Guj.)

existing leasehold interest may fall outside GST. The said decision has been maintained in the Apex Court as well[15].

The decision reinforces the importance of characterisation in specific performance proceedings. A decree compelling the grant of a fresh lease ordinarily enforces a taxable supply. However, where the decree gives effect to an assignment of an existing leasehold interest, the transaction may be capable of being characterised as a transfer of immovable property rather than a supply of services. The tax consequences therefore depend not on the decree itself but on whether the right being transferred is a newly created right of occupation or an existing proprietary interest already vested in the assignor.

D. Substituted Performance

GST applies to services supplied by the substitute contractor engaged to complete the project. However, amounts recovered from the defaulting party are generally compensatory in nature and, consistent with CBIC Circular No. 178/10/2022-GST, should ordinarily fall outside the GST net. Care must nevertheless be taken in drafting settlements to avoid characterisation of such payments as consideration for waiver of rights or tolerance of breach.

E. Section 21 Awards

Section 21 of the SRA empowers the court to award damages for non-performance of a contract, either in substitution for or in addition to specific performance. Such damages are compensatory in nature and are intended to recompense the aggrieved party for the loss suffered as a result of the breach. Accordingly, damages awarded under Section 21 should not attract GST. The CBIC Circular No. 178/10/2022-GST dated 03.08.2022 clarifies that payments which are purely compensatory and intended to make good a loss, injury, or damage are not consideration for any supply. Therefore, where an award under Section 21 is framed as compensation for the consequences of contractual non-performance, it should fall outside the ambit of GST.

The CBIC Circular No. 178/10/2022-GST dated 03.08.2022 clarifies that payments which are purely compensatory and intended to make good a loss, injury, or damage are not consideration for any supply.

V. STAMP DUTY AND REGISTRATION

A decree of specific performance has significant stamp duty and registration consequences. While the decree compels performance of the underlying contract, the transfer of immovable property cannot ordinarily be completed without complying with the applicable stamp and registration laws.

Under most State Stamp Acts, an instrument effecting a transfer of immovable property is chargeable as a conveyance. In a specific performance, the relevant question is whether the conveyance is completed through a sale deed executed

15. *Order dated 21.07.2026 in SLP No. 24684 / 2026*

pursuant to the decree or whether the decree itself operates as the instrument of transfer. The answer determines both the timing and quantum of stamp duty.

Maharashtra presents a particularly important example. Under the Maharashtra Stamp Act, 1958, a decree or order of a civil court effecting a transfer of property may itself be treated as a conveyance for stamp-duty purposes. As a result, the decree-holder may be required to pay duty by reference to the value prevailing at the time the decree takes effect, notwithstanding that the underlying agreement was entered into many years earlier.

When it comes to issues pertaining to registration, a decree for specific performance is itself the result of judicial proceedings. Instruments executed pursuant to the decree may still require registration under the Registration Act, 1908. Failure to complete the registration process may create obstacles in perfecting title and dealing with the property thereafter.

Accordingly, parties seeking specific performance should consider stamp duty and registration consequences at the decree-drafting stage itself. A decree that clearly identifies the operative conveyancing instrument, allocates responsibility for duty and registration costs, and addresses the treatment of duties previously paid is

Instruments executed pursuant to the decree may still require registration under the Registration Act, 1908. Failure to complete the registration process may create obstacles in perfecting title and dealing with the property thereafter.

less likely to generate post-decree disputes or delay the ultimate transfer of property.

VI. CONCLUSION

Specific performance in land and real estate disputes is not merely a civil remedy but a transaction with potentially significant fiscal consequences. Whether the decree enforces a conveyance, JDA, lease, development right or easementary access, the applicable tax treatment depends upon the legal character of the underlying right being enforced.

Parties must therefore address issues relating to timing of transfer, valuation, registration, GST liability, stamp duty and compensation at the stage of pleadings, settlements and decree drafting itself. A decree that is legally successful but fiscally unstructured may give rise to unintended tax costs and execution disputes. Effective relief lies not merely in obtaining a decree for specific performance, but in ensuring that the resulting transaction is tax-efficient, registrable, executable and commercially workable.

■

" Great dreams of great dreamers are always transcended. "

Dr. APJ Abdul Kalam

FUTURE OF AUDIT PROFESSION – NFRA'S FRAMEWORK FOR AI GOVERNANCE IN AUDIT



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John Searle's famous 'Chinese Room' thought experiment reminds us that producing the right answer is not the same as understanding it. Searle imagined a person locked in a room who does not know a word of Chinese, but who follows a rulebook to match incoming Chinese characters with appropriate responses. To anyone outside, the room appears fluent in Chinese. Inside, there is no understanding at all, only symbol matching. Today's AI tools are, in essence, that room: fast, increasingly persuasive, and without genuine understanding. As AI becomes more embedded in statutory audits, National Financial Reporting Authority's (NFRA) recent guidance echoes the same principle; technology may process information, but it does not 'understand' business context, fraud motivation, management intent, or economic substance. It predicts the likely answer based on patterns. An auditor, however, must understand the substance behind a transaction, challenge inconsistencies, and exercise professional scepticism. Responsibility of judgement and opinion always rests with auditors (the human element remains central).

Statutory audit is going through a real shift in how technology is used. Data analytics, automated tools and techniques, and increasingly artificial intelligence including generative AI and agentic AI are moving beyond being efficiency aids and are becoming core to how risks are assessed, evidence is gathered, and conclusions are reached. This is no longer a futuristic concept but a reality. These tools help auditors test the entire population and are also useful in testing large & complex transactions (example – derivative transactions, ECL models etc). Use of such tools also exposes the auditors to risks that were not envisaged for example: automation bias, outputs that are opaque or non-deterministic, data privacy exposure and the possibility that use of such technology narrows professional scepticism instead of deepening it.

Take an example of digital lending company which uses AI based tools to evaluate and assess the creditworthiness of borrowers and disburse loans. The auditor of this company uses AI tools to validate the system considering a large database. This creates a situation where AI is auditing another AI and in between all this the human auditor needs to be in control and make the judgement as regards the true and fair view of the financial

results. Such situations are becoming increasingly common and challenging.

Consider how such an engagement actually plays out. The lender's credit model takes in application data, bureau scores and bank statements, and approves or rejects thousands of loans with no manual intervention. The auditor's own tool re-performs the scoring across the full loan book, compares actual disbursements with what the model should have produced, and flags exceptions. Both machines have done exactly what they were built to do. Human judgement is still required at three distinct points. First, whether the assumptions and data underlying both models are appropriate for the period under audit, particularly where lending policy changed during the year. Second, whether the flagged exceptions have actually been investigated and resolved, rather than merely listed in a working paper. Third, whether the combined result, taken together with everything else in the file, supports a true and fair view. None of these three can be delegated to either machine, and this is precisely the position NFRA's principles are designed to protect.

Against this backdrop, NFRA issued the first paper in its Staff Series on Technology in Audit "General Principles for Technology Adoption in Audit" in July 2026. It sets out a principles-based framework, along with specific do's and don'ts and the changes firms need to make to their audit quality systems, for how statutory auditors should evaluate, deploy and govern technology. It should be noted that none of this is new law and each principle restates an obligation that already exists under the Standards on Auditing, the Standards on Quality Control, or the Code of Ethics.

The ten principles are as follows:

Principle 1 — Technology neutrality, principles-based application. The Standards on Auditing have always been technology-neutral, SA 500, for instance, asks whether evidence is sufficient and appropriate, not how it was generated. These guidelines follow the same logic and focus on outcomes i.e. sufficiency of evidence, quality of risk assessment, integrity of the opinion. It does not mandate or prohibit any specific tool or vendor. Using a tool is never a substitute for meeting the obligations/requirement of the underlying standard.

Principle 2 — Non-delegable auditor responsibility. The audit opinion remains the auditor's. Technology can inform and speed up professional judgement, but it cannot replace it, and it cannot be cited to explain away a wrong conclusion. The report is signed by, and belongs to, an identified auditor.

Principle 3 — Audit evidence standards apply regardless of source. Output from an automated tool becomes audit evidence only once the auditor has evaluated its relevance and reliability the same way they would for any other source. Understanding where it came from, assessing the risk of manipulation or error, and testing accordingly are important steps which must be followed by the auditors. The standard does not distinguish between audit evidence based on whether it is manual or automated.

Principle 4 — Professional scepticism must be actively preserved. The auditors are expected to apply the same level of professional scepticism on the output derived from an AI tool. In today's world where deadlines are shrinking there is a significant risk that auditors would rely on an output or a conclusion derived by an AI tool without challenging the result or correlating the same

with other facts and using his or her own past experience. Human experience in no way can be replaced by an AI tool.

Principle 5 — Risk-based, proportionate governance. Validation and review should match the risk a tool poses. A translation aid does not need the scrutiny that an agentic tool selecting and testing samples does. Treating every tool the same either overburdens low-risk usage or under-scrutinises genuinely high-risk tools. The auditors would need to guard carefully against tools that are used in verification of audit data for example use of an audit tool to validate complex derivative transactions.

Principle 6 — Explainability commensurate with materiality. The extent of explainability and documentation with respect to any output generated using a tool, needs to be proportionate with how material the output is to the audit opinion. These principles are already mentioned in SA 500 on reliability and SA 230 on documentation. These standards require a level of understanding and documentation proportionate to the matter under consideration.

Principle 7 — Governance needs to precede deployment. A firm's quality control system should treat technology like any other resource whose risks are identified and addressed before the said resource is deployed. Tools need validation and approval under firm policy before use on a live engagement, and any material change including a model update, a new data source, a vendor change triggers re-validation. Validating a tool once is not a basis for assuming it stays reliable indefinitely. The firm's policies would have to include a process for periodic revalidation of AI tools including the risks it poses. There should also be a formal roll-out process which is formally documented in the audit manual.

Principle 8 — Data stewardship. Client and personal data processed through any tool must be protected consistently with the firm's confidentiality obligations, the Digital Personal Data Protection Act, 2023, and any other applicable legal requirements regardless of which tool is doing the processing. This would require formal documentation of such guidelines and process to ensure compliance.

Principle 9 — Transparency requirements. Where technology materially shapes the audit approach, the auditor must be able to explain that use. This follows from the existing obligation under SA 260 and SA 265 to explain the audit strategy and approach to those charged with governance.

Principle 10 — Continuous monitoring, not one-time approval. Approving a tool before deployment is only a starting point. Outputs can sometimes be non-deterministic, and the same input can produce a different result on a different occasion. The auditors also need to understand that with machine learning the technology moves or changes quickly and hence the auditors must keep monitoring a tool's performance through its working life and re-approve it when warranted. The audit manuals and guidelines will have to be updated to incorporate this principle.

NFRA has also listed specific do's and don'ts for using audit technology. These would go a long way in helping the firms in adopting technology in a more guided manner.

Do's and Don'ts for Using Audit Technology

Do's	*Don'ts*
Validate data before it is fed into any tool e.g., check completeness of the GL extract before running an AI tool.	Don't treat full-population testing by a tool as replacing the need for substantive risk assessment – 100% coverage of a dataset does not mean the right risks were tested for.
Test IT general controls at the source system e.g., access controls and change management over the ERP before relying on data pulled from it.	Don't use unvalidated spreadsheets, macros or scripts on live engagements without firm-level sign-off, even if a team member built it for convenience.
Document why a tool was chosen for a procedure, along with its version and configuration e.g., recording which version of a sampling tool was used and its parameters, so the work can be reconstructed later.	Don't accept a tool's "low risk" classification without periodically testing it e.g., re-checking a sample of items the tool tagged as low-risk to confirm the tagging still holds.
Evaluate service organisation controls for cloud or third-party tools e.g., reviewing a vendor's SOC 1/SOC 2 report before relying on a cloud-hosted analytics platform.	Don't rely on a vendor's claims about accuracy without independent evaluation by the firm.
Understand the logic behind a tool's risk-scoring, not just accept its flagged exceptions e.g., asking why a tool marked certain vendor payments as high-risk before following up.	Don't change a tool's configuration or data source mid-engagement without reassessing the impact on planned procedures.
Retain an audit trail that lets another experienced auditor or regulator, unconnected with the engagement, understand what the tool did.	Don't let efficiency gains from technology compress the time available for review and challenge.

NFRA also flags two points that sit outside the ten principles but matter equally. Data handled through any tool remains subject to the Digital Personal Data Protection Act, 2023, and the Information Technology Act, 2000, with particular focus on where a vendor's model or infrastructure is hosted outside India. And over-reliance on machine output is treated not merely as a quality lapse but as an ethics issue it can amount to a failure of the fundamental principles of professional competence, judgement and due care under the Code of Ethics.

Firms already using or piloting audit technology should map their existing tools against these ten principles, confirm that validation and re-approval processes are documented and ensure that documentation clearly shows the extent of human review behind any technology-assisted output. As data analytics and AI become more embedded in day-to-day audit work, this framework is likely to be the reference point NFRA inspections come back to.

This also gives a preview of what inspections may look like. It is reasonable to expect inspection teams to ask pointed questions on technology: which tools were used on the engagement and for what procedures; where is the record of firm-level approval and validation; who reviewed the output, and what did that review actually involve beyond a sign-off; and can the firm reproduce the result today using the version and configuration recorded in the file. A firm that cannot answer these questions from its audit file will find the conversation difficult, whatever the quality of the underlying audit work. Building the file with these questions in mind costs little during the engagement and saves a great deal afterwards.

Tips for practical implementation

- ✓ Review and revise the audit manual to include a specific section on use of AI tools
- ✓ Formulate SOPs as regards selection, testing, implementation, change management of such tools. This should include process as regards access rights, formal authority structure for deployment of tools.
- ✓ Reports, certifications which need to be maintained by the firm to ensure that the tools comply with the requirements and best practices
- ✓ Updating of the engagement letter, communication with TCWG as regards use of AI tools. Additionally, the audit firms would also have to map the requirements of the DPDP Act and formulate guidelines to ensure compliance with the same.
- ✓ Standard clauses which need to be included in the contracts with the vendors from whom such tools are procured.
- ✓ Training on use of AI tools to staff is going to be the need of the hour. These programs should also highlight the risk involved and precautions to be taken.
- ✓ Guidelines for retaining the trail and documentation of the results of AI tools. There could also be situations where the firms migrate from one tool to another and hence at such times, the audit trail needs to be carefully preserved.

One common risk which we all face is of unapproved or 'shadow' use of AI. Team members pasting client information into public chatbots to summarise an agreement, draft a note/document or explain an accounting treatment. This violates many principles mentioned above example: there is no validation, no approval, no record, and client data may have left the firm's environment altogether. It directly engages Principles 7 and 8 and, depending on the data involved, the DPDP Act as well. A clear internal policy on what is and is not permitted, backed by practical training and periodic checks, is the minimum step that needs to be taken, and it needs to cover articled staff as much as qualified staff/members.

For small and medium sized firms, the framework can look daunting, and complex. A good starting point would be a simple inventory of everything already in use, including spreadsheet macros, scripts built by staff and any AI-based utilities. One of the partners/senior members can take the responsibility of technology management & governance. The initiative should include formulation of guidelines based on the principles mentioned in NFRA framework.

Daniel Kaheman, was a noble prize-winning Israeli- American psychologist best known for his work on psychology of judgement and decision making as well as behaviours economics, in his famous book 'Thinking, fast and slow' he explains that humans have:

System 1 – Fast, intuitive thinking

System 2 – Slow, analytical thinking.

Generative AI is incredibly fast (like system1). Professional scepticism resembles system 2 – it deliberately slows down to question assumptions and evaluate evidence. NFRA is effectively telling auditors: Don't let AI speed eliminate system 2 thinking.

Global scenario

NFRA's paper is part of a wider global move by audit regulators to catch up with AI adoption in the profession. The IAASB, after global roundtables through the second half of 2025 involving over 240 stakeholders, decided in February 2026 to develop non-authoritative guidance on applying its existing quality management and auditing standards to AI, rather than amend the standards themselves at this stage. The stake holders believed that existing International Standard on Quality Management (ISQM) 1 and International Standard on Auditing (ISA) 220 (Revised) provide a strong foundation for managing technology-related risks. At the same time, stakeholders noted that the IAASB could assist by developing additional practical guidance to help address challenges associated with emerging technologies.

The UK's Financial Reporting Council went further, issuing formal guidance in March 2026 for firms using generative and agentic AI in audit which is built around four pillars covering system design, certification, staff training and governance, and human-in-the-loop review, and addressing three risk categories: deficient output, misuse of output, and non-compliant methodology.

In the US, the PCAOB has so far limited itself to inspection focus and a research project on audit technology opened in May 2026, without issuing binding AI-specific rules, leaving firms to rely on existing standards in the interim.

Set against this backdrop, NFRA's principles place India broadly in step with, and on some points ahead of, where global audit regulators currently stand.

Concluding remarks

As the use of AI tools and agentic AI is becoming increasingly prevalent, the need for a more detailed implementation guide or FAQ or an auditing standard itself should be considered by the ICAI and NFRA. Specific guidelines for small and medium-size firms would be helpful in ensuring responsible adoption of AI in audit. The future of audit quality will depend not only on capabilities of AI, but also on the robustness of governance surrounding its use. Finally, "Let AI not cloud audit judgment".

References:

- NFRA's Staff Series paper (July 2026)
- Searle's original 1980 Chinese Room paper
- IAASB's February 2026 roundtable outcomes
- FRC's March 2026 Generative and Agentic AI Guidance
- PCAOB's Data and Technology research project (May 2026)

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WHEN THE CITATION DOES NOT EXIST: GENERATIVE AI, PROFESSIONAL RESPONSIBILITY AND INDIAN COURTS



Eklavya Malvai *Mohammad Kaif*

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Artificial Intelligence ('**AI**') has fundamentally transformed the legal landscape and the manner in which legal professionals undertake complex tasks such as drafting, legal research and document review. AI tools can assist in reviewing contracts, researching legal issues, summarising case law and analysing large volumes of documents in a matter of seconds.

However, the efficiency of AI must be balanced against the need for accuracy and human oversight. AI-generated outputs may appear authoritative and legitimate at first blush, while containing incorrect assertions or references to non-existent judicial precedents - commonly referred to as "hallucinations".

The usage of AI generated research is increasingly influencing the Indian legal system. A recent decision of the Supreme Court underscores the risks of relying on AI-generated legal research without adequate verification. In that case, the Supreme Court set aside an order of the National Company Law Tribunal ('**NCLT**') after finding that the Tribunal had relied upon non-existent judicial precedents and propositions that were generated through AI hallucinations.

Background

Jammu and Kashmir Bank Limited ('**JKBL**') had extended a credit facility to Pan India Utilities Distribution Company Limited ('**PIUDCL**'), for which Essel Infraprojects Ltd. ('**EIL**') acted as a corporate guarantor. Subsequently, PIUDCL failed to repay the loan and consequently, an application was filed by JKBL against EIL to initiate corporate insolvency resolution process under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('**IBC**') for recovery of its outstanding debt before NCLT. The NCLT, upon finding existence of a default in debt, passed an order admitting the application.

Against the order passed by the NCLT, the suspended director of EIL ('**Appellant**') filed an appeal before the National Company Law Appellate Tribunal ('**NCLAT**') on the ground

that, pursuant to a corporate restructuring, its liabilities had been transferred to another company. The appeal filed by the Appellant was dismissed by the NCLAT.

In response to the order of NCLAT, an appeal was preferred before the Supreme Court on merits as well as technical grounds wherein it was pointed out by the Appellant that the citations/judgments relied upon by the NCLT to arrive at the findings are fake, non-existent and AI-generated. Further, even where the citations relied upon by the NCLT were correct, the excerpted paragraphs from the judgment(s) were not traceable to the actual judgments. It is noteworthy that an affidavit was filed by JKBL stating that the fake AI generated precedents were not cited by them in their submissions but were suo moto relied upon by the NCLT based on their own research.

Court observations

The SC set aside the orders of NCLT and NCLAT and held as under:

a) ***Human oversight remains essential***: The Court recognised that judges and lawyers may adopt AI as an aid to adjudication and legal practice. However, it emphasised that human judgment and oversight must remain central at every stage. The use of AI cannot displace the responsibility of legal professionals and adjudicators to independently assess and verify the material relied upon.

b) ***Perils of using AI unregulated***: The court compared the use of AI hallucinated material/precedents with the release of methyl isocyanate in the province of law and justice - invisible, insidious and catastrophic by the time anyone notices. It held that such use of AI hallucinated material not only contaminates but takes away the very lifeblood of judicial determination.

c) ***AI hallucinated material violates sanctity of law***: The court remarked that there is absolutely no hesitation on their part to declare a decision, supported by relying on hallucinated AI generated precedent, as no decision in the eyes of the law, irrespective of whether such material had a direct or indirect bearing on the decision-making. Even if an iota of fake or hallucinated material enters the decision-making process, such decision is to be set aside as it would violate the sanctity of adjudication.

d) ***Zero tolerance for unverified AI-generated authorities***: The court acknowledged the increasing involvement of use of AI by professionals to adapt to the increasing workload. However, the court cautioned on the use of unregulated AI in legal practice and underscored the need to have control over the usage and application of AI. SC ordered the courts to adopt a zero-tolerance policy for both Bar and Bench for producing, citing or using AI generated precedents without verification.

e) ***Disciplinary action by Bar Council of India***: The Supreme Court noted that it is a misconduct on the part of an advocate to cite AI generated judgements without verification. It called upon the Bar Council of India to constitute a

> committee and deliberate on this issue of members of the bar submitting such fake and hallucinated material before the Court as if they are precedents of law. The Bar Council has been called upon to take up this issue with utmost seriousness and prescribe a guiding principle to prevent such occurrences, along with the disciplinary action that will follow a violation of the norms.

The Supreme Court called for corroboration and coordination between the Bar and Bench to identify, decide and apply AI for adjudication and determination of disputes.

The Supreme Court stopped short of adjudicating the matter on its merits and remanded the matter back to NCLT for fresh adjudication in accordance with law.

Our view

The SC in its ruling has not placed a bar on the use of AI as an assistive technology in legal proceedings but has rather cautioned against use of unverified content for such purpose. It is to be noted that efforts to regulate the use of AI in legal proceeding are already underway - recently, the SC has released '*[Draft] Regulations for Use of Artificial Intelligence in Courts, 2026*' for public consultation which, *inter-alia*, (a) state that the use of AI in court processes shall at all times remain strictly subservient to human judgment and judicial authority permit use of AI for legal research; (b) permit the use of AI in multiple aspects of functioning of courts such as legal research, precedent retrieval, etc.; (c) require disclosures by any party or its representative of the fact that any AI tool has been used for preparation or submission of any document, pleading or evidence under a specified format. Given the rampant infiltration of AI in the intellectual work ethic, a sense of caution prior to relying on any content developed by AI is the need of the hour for advocates and courts.

The key takeaway is that the Supreme Court has not prohibited the use of AI in legal practice. Rather, it has drawn a clear distinction between using AI as an assistive tool and relying upon AI-generated material without independent verification. AI may accelerate legal research and improve efficiency, but the responsibility for the accuracy of material ultimately placed before a court continues to rest with the human professional.

Advocates should therefore be mindful that reliance on unverified or hallucinated material may have professional and disciplinary implications, particularly where such material is presented to a court as an authentic legal authority. Notably, under the Indian legal framework, Section 35 and Section 36 of the Advocates Act, 1961 provide that if any advocates are involved in a professional or other misconduct, disciplinary proceedings can be initiated against them.

Apart from Advocates, chartered accountants also regularly appear before tribunals for tax matters and before the lower income-tax authorities such as a dispute resolution panel, Commissioner of Income-Tax (Appeals), etc as well. The observations of the Supreme Court would have a bearing on the chartered accountants and expose them to reputational damage and monetary liabilities as well on account of such professional misconduct.

Further, AI tools are transforming how tax compliance, audit, documentation and

client communication functions are handled. There is growing reliance on online service providers which leverage use of AI for prepare tax returns automatically based on reviewing underlying documents uploaded by a taxpayer. Any hallucination by the AI under this process may expose the taxpayer to interest and penalties as well. Hence, taxpayers and chartered accountants should be cognizant while using such facilities and ensure that there is no element of hallucination in the submission.

Recent instances involving major accounting, consulting and legal firms have also highlighted the broader professional risks associated with AI-generated hallucinations, including reliance on non-existent citations or studies. Such instances have resulted in reputational damage and, in certain cases, monetary consequences for the professionals or firms concerned.

These developments underscore a broader point: while AI can significantly enhance the capabilities and efficiency of professionals, human oversight remains essential at every stage. Professionals must ensure that AI-generated hallucinations do not translate into inaccurate submissions, professional misconduct, reputational damage or other legal and financial consequences.

Key takeaway

For legal and other professional advisers using AI tools, the decision highlights the need to:

- treat AI-generated legal research as a starting point rather than a substitute for independent legal research and professional judgment;
- independently verify every case, citation, statutory provision and quotation before relying on AI-generated material in any submission, opinion or advice;
- ensure appropriate human review before AI-generated content is incorporated into documents intended to be filed before a court, tribunal or regulatory authority; and
- develop appropriate internal protocols for the use of AI, particularly where AI tools are used for legal research, drafting or analysis involving confidential or client information.

The views of the author(s) in this article are personal and do not constitute legal/ professional advice of Xander Law Associates'.

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" The greatest sin is to think yourself weak "

Swami Vivekananda

SUPREME COURT



Keshav B. Bhujle
Advocate

1 ACIT VS. BHARAT PETROLEUM CORPN. LTD. (2026) 488 ITR 622 (SC): (2026) SCC ONLINE SC 1166 DATED 23-02-2026

Reassessment — Notice after four years — Failure to disclose material facts — AO not stating which facts assessee failed to disclose — All details filed in original scrutiny assessment — Assessment reopened on change of opinion — High Court held that the reassessment was impermissible and quashed the notice — Supreme Court dismissed the special leave petition filed by the Department on the ground of delay and on merits: Ss. 147 and 148 of ITA, 1961: A. Ys. 2013-14 and 2014-15

In the case of the assessee respondent, the Assessing Officer issued notices u/s. 148 of the Income-tax Act, 1961, to reopen the assessment for the A. Ys. 2013-14 and 2014-15, on the grounds, (i) that the assessee had claimed exemption for both years u/s. 10(34) of the Act, of dividend income received from a trust of which the sole beneficiary was the assessee, that since the trust was not a company and was not required to declare dividend as mandated by the Companies Act, 2013, and nor was the trust covered u/s. 115-O, the amount distributed by the trust to the assessee did not qualify for exemption u/s. 10(34) and (ii) that in the A. Y. 2014-15, the assessee also had wrongly claimed the benefit of investment allowance deduction u/s. 32AC. The Assessing Officer rejected the objections raised by the assessee.

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

"i) Merely making this bald assertion is not enough. It is now well settled that reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible, and no addition can be made to those reasons. Further, no inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to reach the conclusion as to whether there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for the concerned assessment year. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on the material on record. What is important is that he must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year,

so as to establish the vital link between the reasons and the evidence. That vital link is a safeguard against the arbitrary reopening of a concluded assessment.

ii) In the present case, admittedly there are no details given by the Assessing Officer (the first respondent) as to which fact or material was not disclosed by the petitioner that led to its income escaping assessment. There is merely a bald assertion in the reasons that there was a failure on the part of the petitioner to disclose fully and truly all material facts, without giving any details thereto. This being the case, the impugned notice is bad in law on this ground alone, and the petitioner would be entitled to succeed in this writ petition.

iii) We find that in fact, there was no failure on the part of the petitioner in disclosing fully and truly all material facts for the assessment year 2013-2014. In response to the notice issued by the Assessing Officer, in the original assessment proceedings, the petitioner furnished details with respect to the claim of exempted income from the Bharat Petroleum Corporation Ltd. Trust. Firstly, the claim of dividend income was very much in the return of income as well as the details of the dividend distribution tax paid. Even in the response furnished by the petitioner in respect of the disallowance u/s. 14A of the Act, the petitioner disclosed the details of the exemption claimed under section 10(34) of the Act, which included the income received from the Bharat Petroleum Corporation Ltd. Trust. Further, the details furnished by the petitioner were considered by respondent No. 1 in the original assessment proceedings (u/s. 143(3)) and also specifically noted that income from the Bharat Petroleum Corporation Ltd. Trust had been claimed as exempted. Respondent No. 1 thereafter proceeded to disallow expenses u/s. 14A of the Act. It was clear that the Assessing Officer in the scrutiny proceedings was very much aware of all these facts. Once we look at all these facts, we are clearly of the view that there was no failure to disclose fully and truly all material facts in relation to the A. Y. 2013-2014, which would vest the first respondent with the jurisdiction to initiate reassessment proceedings u/s. 147 and 148 of the Income-tax Act. he reopening in the present case is merely based on a "change of opinion", which is impermissible.

iv) Merely because the Assessing Officer is now of the opinion that the deduction is wrongly granted, cannot vest him with the jurisdiction to reopen the assessment, especially in a case where reassessment proceedings are initiated when there is already a scrutiny assessment u/s. 143(3) and which is after a period of four years from the date of the relevant assessment year and there has been no failure to disclose fully and truly all material facts in relation to the concerned assessment year.

v) For all the aforesaid reasons, we find that the impugned notice dated March 23, 2021 and the impugned order dated February 17, 2022 are unsustainable and hence, deserve to be quashed and set aside."

[Bharat Petroleum Corpn. Ltd. vs. ACIT: (2025) 478 ITR 358 (Bom): 2025 SCC OnLine Bom 2570:]

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

"i) There is a delay of 124 days in filing this special leave petition, and we do not find any plausible and bona fide explanation to condone this inordinate delay.

ii) Even on the merits, we see absolutely no reason to interfere with the impugned order in exercise of our jurisdiction under Article 136 of the Constitution of India.

iii) The special leave petition is, accordingly, dismissed on the ground of delay as well as on the merits."

2 DY. IT VS. GTPL HATHWAY LTD. (2026) 488 ITR 636 (SC): (2026) SCC ONLINE SC 1143 DATED 27-01-2026

Reassessment – Notice u/s. 148 – High Court quashing notice u/s. 148 issued for reassessment to disallow deduction of payment towards principal plus interest under finance lease, to disallow a sum under foreign exchange loss, which the assessee had computed netting loss and profits and claiming bank charges for raising foreign currency as revenue expenditure, and depreciation on goodwill – Supreme Court dismissed the special leave petition filed by the Department: Ss. 43(6)(c) and 148 of ITA, 1961: A. Y. 2017-18

The assessee filed a return of income for the A. Y. 2017-18 declaring a total income of ₹ 39,69,64,650 on October 31, 2017 and thereafter filed a revised return of income on February 9, 2019 declaring a total income of ₹ 83,33,75,590. The case of the assessee was selected for scrutiny and after considering the reply of the assessee in response to the notice issued u/s. 142(1) of the Act; the assessment order u/s. 143(3) of the Income-tax Act, 1961 was passed on December 9, 2019, accepting the returned income of ₹ 2,96,81,980 as per the computation of income submitted by the petitioner.

Thereafter, the Assessing Officer issued a notice u/s. 148 dated March 27, 2021 for reopening of the assessment proposing to disallow deduction of payment towards principal plus interest under finance lease, to disallow a sum under foreign exchange loss, which the assessee had computed netting loss and profits and claiming bank charges for raising foreign currency as revenue expenditure, and depreciation on goodwill. The assessee filed a return of income in response to the said impugned notice, on April 21, 2021 and requested for reasons recorded for reopening. On receiving the reasons recorded for reopening, the assessee filed its objections for reopening. By an order dated January 7, 2022, the Assessing Officer rejected the assessee's objections.

The assessee filed a writ petition challenging the notice and the order of rejection. The Gujarat High Court allowed the petition and held as under:

"i) The Assessing Officer has considered the material already filed at the time of the regular assessment in the form of balance-sheet, return of income, computation of income, audit report, etc., and on the basis of such material has found and reason to believe that the income has escaped in the absence of any fresh tangible material having

access with formation of such belief. Therefore, it was necessary for the respondent-Assessing Officer to form a reason to believe that the escapement of the income on the material which was made available at the time of regular assessment.

ii) In the light of the above observations, if the reasons recorded are perused, it appears with regard to the issue of claim of lease rent which is stated to be principal plus interest amounting ₹ 17,37,80,816 is concerned, the petitioner assessee has explained the same in the objections raised in response to the impugned notice and submitted that the same is in the form of the financed lease transactions entered into by the petitioner with Cisco and such transactions are accepted by the Revenue as the petitioner has taken equipment on financial lease since 2012-2013. The petitioner has also placed on record the notices issued during the regular course of assessment for the A. Ys. 2012-13, 2013-14 and 2014-15 and assessment orders for earlier years accepting the same as expenditure.

iii) Thus, the Assessing Officer ought to have taken into consideration the nature of repetitive nature of transactions in the form of the lease rent which is claimed by the assessee from year to year from 2012-13 onwards, and no addition was made since then.

iv) With regard to the claim of ₹ 37,80,000 on account of the applicable gain/loss on foreign currency transactions, the petitioner has explained in detail in the objections with regard to the nature of claim by making as reproduced hereinabove from pages 71 and 72 of the paper book to the effect that the petitioner had unrealised loss of ₹ 6,81,93,099 which was added as income and on the other hand, the petitioner has deducted the unrealised gain of ₹ 6,90,80,060 and also claimed net expenses of ₹ 37,78,154 in the profit and loss for computation of the book profit and it cannot be disputed that the petitioner has explained that the claim of the assessee for bank charges for raising foreign currency of ₹ 46,65,115 is required to be considered as a part of the revenue expenditure. Thus, in effect, the petitioner has claimed ₹ 46,45,115, i.e., ₹ 37,78,154 plus ₹ 8,86,961 (₹ 6,90,80,060 - ₹ 6,81,93,099) by giving effect to the said amount in the computation of income. Thus, it cannot be said that there is escapement of income on the part of the petitioner as the petitioner has neither claimed profit/gain or loss of unrealised foreign exchange and, therefore, the reasons recorded by the respondent-Assessing Officer to form *prima facie* conclusion that there is likelihood of any gain on account of revenue expenses incurred by the petitioner is also without any basis in the absence of any fresh tangible material available with the respondent-Assessing Officer as the fact remains that the petitioner has unrealised gain and unrealised loss which is not claimed and duly reflected in the computation income as the petitioner has claimed only bank charges expenditure for hedging of foreign currency.

v) In view of such fact, it cannot be said that the Assessing Officer has formed reason to believe with regard to the income which had escaped the assessment.

vi) With regard to issue of depreciation on goodwill, the provisions of section 43(6)(c) of the Act was not amended at the relevant point of time for the A. Y. 2017-18 and, therefore, the amended provision denying the depreciation on goodwill which came into effect from April 1, 2021 could not have formed the basis for reopening to come to the conclusion that there is escapement of income by claiming of depreciation on goodwill.

vii) In view of the foregoing reasons, the respondent-Assessing Officer could not have assumed the jurisdiction to reopen the assessment. Therefore, this petition succeeds and is accordingly allowed. The impugned notice dated March 27, 2021 for the A. Y. 2017-2018 issued u/s. 148 of the Income-tax Act, 1961 is hereby quashed and set aside. The order disposing of objections is also consequently quashed and set aside."

[GTPL Hathway Ltd. vs. Dy. CIT (2026) 488 ITR 626 (Guj). 2025 SCC OnLine Guj 5496]

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

"i) Delay condoned.

ii) Having heard the learned counsel appearing for the petitioners and having gone through the materials on record, we find no good ground to interfere with the impugned order passed by the High Court.

iii) The special leave petition is, accordingly, dismissed."

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HIGH COURT







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1 PADMABEN ZINABHAI TRIVEDI VS. ITO [2026] 188 TAXMANN.COM 313 (GUJARAT HC)

Reassessment - Section 147 of the Income-tax Act, 1961 - Capital Gains - value disclosed on the basis of registered valuer report is higher than the FMV estimated by AO - amendment by Finance Act, 2012 to section 55A(a) is prospective in nature - reopening based on such reference invalid and liable to be quashed

Facts

Assessee, during AY 2010-11, sold land for approximately ₹ 92.66 lakhs. As the property had been held prior to 01.04.1981, she adopted the fair market value (FMV) as on 01.04.1981 at ₹ 81 per sq. metre based on a registered valuer's report and accordingly computed long-term capital gains in her return of income. After the expiry of four years from the end of the relevant assessment year, the AO issued a notice under section 148 seeking to reopen the assessment. The reopening was based on a sale instance of land in 1982 obtained from the Sub-Registrar's office, pursuant to which the AO worked backwards and estimated the FMV as on 01.04.1981 at approximately ₹ 1 per sq. metre. Relying upon section 55A(a), the AO alleged that the Assessee had adopted an inflated cost of acquisition, resulting in escapement of long-term capital gains. Aggrieved, the Assessee challenged the reassessment notice before the Hon'ble Gujarat High Court.

Ruling of the High Court

The Hon'ble Gujarat High Court was pleased to allow the writ petition filed by the Assessee by observing that under the unamended provisions of section 55A(a), applicable to the relevant assessment year, a reference to the Valuation Officer could be made only where the value adopted by the Assessee, based on a registered valuer's report, was considered by the AO to be **less than** its fair market value. In the present case, however, the Assessee had adopted the FMV at ₹ 81 per sq. metre, whereas the AO sought to substitute it with a substantially lower value of ₹ 1 per sq. metre. Therefore, the conditions prescribed under section 55A(a) were not satisfied. The Court further held that the amendment made by the Finance Act, 2012 substituting the words "*is less than its fair market value*" with "*is at variance with its fair market value*" is prospective in nature

and applicable only from 01.07.2012. Since the year under consideration preceded the amendment, the reassessment proceedings could not be justified on the basis of the amended provision. Relying on the decision of the Bombay High Court in ***CIT vs. Puja Prints [(2014) 360 ITR 697 (Bom)***], the Court held that the AO had erroneously invoked section 55A(a). Consequently, the notice issued under section 148 was quashed and the reassessment proceedings were set aside.

2 DELHI TAX BAR ASSOCIATION VS. UNION OF INDIA [2026] 188 TAXMANN.COM 810 (DELHI HC)

Section 115BAC of the Income-tax Act, 1961 read with Sections 22D of the High Court Judges (Salaries and Conditions of Service) Act, 1954 and 23D of the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 – applicability of new tax regime to judges' statutory allowances – allowances excluded from computation of salary income and not merely exempt or deductible – overriding provisions under special statutes prevail over section 115BAC

Facts

The Assessee, Delhi Tax Bar Association, challenged CBDT Office Memorandum dated 12.09.2025, which clarified that upon opting for the new tax regime under section 115BAC, allowances payable to Judges of the High Courts and Supreme Court, such as rent-free official residence, conveyance allowance, sumptuary allowance and leave travel concession, would not be available as the new regime permits concessional tax rates without exemptions and deductions. The Assessee contended that Sections 22D of the High Court Judges (Salaries and Conditions of Service) Act, 1954 and 23D of the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 do not grant an exemption or deduction but specifically provide that such allowances shall not be included in the computation of income chargeable under the head "Salaries". It was further submitted that the CBDT clarification was contrary to the statutory provisions and constitutional protections available to Judges under Articles 125 and 221 of the Constitution. The Assessee also pointed out practical difficulties as the return filing utility did not provide a mechanism for reporting such receipts under the new tax regime. Aggrieved thereby, the writ petition was filed before the Hon'ble Delhi High Court.

Ruling of the High Court

The Hon'ble Delhi High Court, while granting interim relief, observed that the non-obstante clauses contained in Sections 22D and 23D confer overriding effect on those provisions over all provisions of the Income-tax Act, including section 115BAC. The Court *prima facie* held that the allowances covered by the said provisions are taken outside the computation mechanism itself and are not merely exemptions or deductions. Therefore, an amount which is not included in income at all cannot be regarded as an exemption or deduction prohibited under the new tax regime. The Court further observed that the challenge raised by the Assessee required detailed consideration. Pending final adjudication, it permitted all Judges of the Supreme Court and High Courts to file their return of income or revised return by disclosing the allowances covered under Sections 22D and 23D under the category

"Receipts not in the nature of income". The Court also directed that such returns shall not be processed further until subsequent orders are passed in the matter.

3 SATISH THOURANI VS. UNION OF INDIA [2026] 188 TAXMANN.COM 296 (CHHATTISGARH)

Reassessment - Section 148A of the Income-tax Act, 1961 - Approval obtained for inquiry under Section 148A(a) but no inquiry conducted - Notice under Section 148A(b) issued without complying with Section 148A(a) is bad in law - consequential order under Section 148A(d) and notice under Section 148 are also invalid and liable to be quashed

Facts

The Assessee challenged the validity of the reassessment proceedings initiated under the Income-tax Act, 1961, by filing a writ petition before the High Court. The challenge was directed against the show cause notice issued under Section 148A(b), the order passed under Section 148A(d), and the consequential notice issued under Section 148.

The grievance of the Assessee was that, while issuing the notice under Section 148A(b), the AO had specifically recorded in the annexure to the notice that prior approval of the specified authority, namely the Chief Commissioner of Income-tax (CCIT), had been obtained under Section 148A(a) for conducting an inquiry. However, despite obtaining such approval, the AO admittedly did not conduct any inquiry whatsoever under Section 148A(a). Instead, the AO straightaway proceeded to issue the show cause notice under Section 148A(b), thereafter passed an order under Section 148A(d), and ultimately issued a notice under Section 148 reopening the assessment.

The Assessee contended that once the AO had invoked Section 148A(a) by obtaining prior approval of the specified authority to conduct an inquiry, it was incumbent upon him to actually undertake such inquiry before proceeding further. The omission to conduct the inquiry rendered the entire reassessment proceedings contrary to the statutory scheme contemplated under Section 148A.

Ruling of the High Court

The High Court held that once the AO had obtained prior approval of the specified authority under Section 148A(a) for conducting an inquiry, it was incumbent upon him to actually conduct such inquiry before proceeding to issue a notice under Section 148A(b). Having himself considered an inquiry to be necessary, the AO could not bypass this mandatory step and proceed directly with the reassessment proceedings.

In the present case, although approval under Section 148A(a) had been obtained, no inquiry was conducted before issuing the notice under Section 148A(b). Consequently, the Court held that the notice issued under Section 148A(b) was invalid in law. As the subsequent order under Section 148A(d) and the notice under Section 148 were founded upon the invalid notice under Section 148A(b), they were also quashed.

4 SUN AERO LTD. VS. PCIT [2026] 188 TAXMANN.COM 391 (DELHI)

Block Assessment - 158BC of the Income-tax Act, 1961 - non issuance of notice under section 143(2) of the Act vitiates the entire assessment - addition in block assessment cannot be based on material gathered after conclusion of search, especially where the transaction had already been examined in regular assessment proceedings

Facts

The Assessee, a wholly-owned subsidiary of Sun Air Hotels Ltd., had transferred development rights to its holding company for a consideration of ₹ 21 crore during relevant AY 1995-96. The Assessee claimed exemption under section 47(v) of the Act, which was accepted by the AO in a regular assessment completed under section 143(3). Subsequently, a search under section 132 was conducted on 21.11.2000. The AO finalised the block assessment order under section 158BC of the Act treating the sum of ₹ 21 crore as undisclosed income by concluding that the Assessee is not a wholly-owned subsidiary of its holding company. The conclusion arrived by the AO was based on material that emerged during post-search investigations. On appeal, first appellate authority set aside the addition on the ground that the transaction had already been disclosed in the regular books of account and examined during regular assessment proceedings. Revenue carried the matter before the Hon'ble Delhi High Court and the High Court remanded the matter to the ITAT for fresh consideration. Pursuant to remand, the Tribunal allowed the Revenue's appeal and declined to entertain the Assessee's legal objections, including the plea that no incriminating material was found during the search and that no notice under section 143(2) had been issued. The Assessee being aggrieved by the order of the Appellate Tribunal, filed an appeal before the Hon'ble Delhi High Court.

Ruling of the High Court

The Hon'ble Delhi High Court allowed the appeal of the Assessee and held that issuance of notice under section 143(2) is a mandatory jurisdictional requirement even in block assessment proceedings under section 158BC. Relying upon the decisions in ***ACIT vs. Hotel Blue Moon [(2010) 321 ITR 362 (SC)]*** and ***Pr. CIT vs. Silver Line [(2016) 383 ITR 455 (Del)]***, the Court observed that failure to issue such notice is not a procedural irregularity but a fatal defect which renders the entire assessment invalid. Since the Revenue was unable to demonstrate that any notice under section 143(2) had been issued, the block assessment was liable to be quashed. The Court further observed that Chapter XIV-B permits assessment only of undisclosed income unearthed as a result of search. Any material collected after the conclusion of the search cannot be regarded as material found during the course of search. In the present case, the AO's conclusion that the Assessee was not a wholly-owned subsidiary was based on post-search investigations and not on incriminating material discovered during the search operation itself. Moreover, the transaction in question had already been disclosed and examined in the regular assessment completed under section 143(3). Accordingly, such post-search material could not form the basis for making an addition in block assessment proceedings. Consequently, the High Court quashed both the block assessment order and the Tribunal's order and allowed the appeal filed by the Assessee. ■

TRIBUNAL





CA Nikhil Mutha *CA Viraj Mehta* *CA Kinjal Bhuta*
Advocate

1 RAJESH FURIA VS. ITO [ITA NO. 1672/MUM/2026] (MUM ITAT) (AY 18-19)

S. 45 - Capital gains - Redeveloped flat received in lieu of the original flat is a continuation of the existing capital asset and not a new independent capital asset-The period of holding is to be reckoned from the date on which rights in the original property/redevelopment crystallised and not from the date of the Permanent Alternate Accommodation Agreement - Gain on sale of the redeveloped flat is assessable as long-term capital gain - eligible for indexation and exemption under sections 54/54F

Facts

Assessee had purchased a Flat in FY 06-07. Pursuant to a redevelopment agreement executed with the developer during the financial year 2012-13, the old building was demolished and a new flat was allotted to the assessee having the original carpet area, 30% additional area under the redevelopment scheme, 185 sq. ft. received as a gift from the assessee's mother and an additional 55 sq. ft. purchased for ₹ 6,00,000/-. The new flat was handed over under the Agreement for Permanent Alternate Accommodation dated 12.01.2018 and this was sold by the assessee on 20.01.2018 for a consideration of ₹ 1,95,48,000/-. The assessee treated the gain arising from such sale as long-term capital gain and claimed the benefit of exemption under section 54F of the Act in respect of purchase of another residential flat. AO held that the transfer of the old flat to the developer under the redevelopment arrangement constituted an independent transaction from the subsequent sale of Flat No. 503. Since the new flat was allotted to the assessee on 12.01.2018 and sold by the assessee on 20.01.2018, the AO held that the holding period was less than twenty-four months and, therefore, the gain arising from the sale constituted short-term capital gain and accordingly exemption u/s 54/54F was also denied. CIT(A) upheld the action of the Assessing Officer. Being aggrieved, an appeal was filed before the Hon'ble Tribunal.

Held

Hon'ble Tribunal held that the original ownership rights indisputably originated in the year 2006 and those rights continued throughout the redevelopment process. The Development Agreement executed

on 15.02.2013 specifically recognised and crystallised the assessee's enforceable right to receive the permanent alternate accommodation comprising the original area, the additional area receivable free of cost under the redevelopment scheme and the additional area agreed to be purchased from the developer. Thus, even assuming, for the sake of argument, that the period of holding is reckoned from the date of the Development Agreement, 15.02.2013, the capital asset was held by the assessee for almost five years before its sale on 20.01.2018, which is well beyond the statutory period prescribed for treating the asset as a long-term capital asset. The gains arising therefrom are liable to be assessed as Long-Term Capital Gains. Consequently, the assessee is entitled to the benefit of indexed cost of acquisition in accordance with law. Further, it is an admitted position that the assessee invested the capital gains in purchase of another residential house within the period prescribed under section 54/54F of the Act. Therefore, having held that the gains are Long-Term Capital Gains, the denial of exemption under section 54/54F of the Act by the Assessing Officer and the learned CIT(A) cannot be sustained. Accordingly, gain was accordingly held as LTCG and exemption u/s 54/54F was allowed and appeal was thereby allowed.

2 MANOJ DEVSHICHHADVA VS. ITO [ITA NO. 7534/MUM/2025] (MUM ITAT) (AY 18-19)

S. 56 – Redevelopment - Alternate permanent accommodation received by tenant-Mere execution and registration of redevelopment agreement, without completion of project and delivery of possession, does not amount to "receipt" of immovable property - Allotment of alternate premises in lieu of surrender of tenancy rights is for valuable consideration and cannot be taxed under section 56(2)(x). [S. 2(47), 45, 56(2)(x)]

Facts

Assessee had entered into two registered agreements dated 12.12.2017, which were registered on 13.12.2017, with respect to premises Nos. C-1 and C-50 having stamp duty values of ₹ 54,79,000/- and ₹ 83,91,000/-. Agreements were executed in lieu of the assessee's tenancy rights in four existing shops. New premises had not actually been received since only agreements had been executed and the redevelopment project was still in progress. Assessing Officer, however, rejected these explanations by holding that registration of the agreements had given absolute rights to the assessee over the new premises and, therefore, the properties were received by the assessee during the relevant year. Accordingly, the Assessing Officer invoked section 56(2)(x) of the Act and added the entire stamp duty value of ₹ 1,38,70,000/- as "income from other sources" in the hands of the assessee. CIT(A) upheld the action of the Assessing Officer. Being aggrieved, appeal was filed before Hon'ble Tribunal.

Held

Hon'ble Tribunal held that there is no dispute that the assessee was occupying the existing premises as a tenant and, under the redevelopment scheme, agreed to surrender his tenancy rights in exchange for permanent alternate accommodation. Also, there is no dispute that the redevelopment project has not been completed to date. The learned counsel

has placed on record the status of the project as reflected on the RERA portal, which shows that construction is still incomplete and no occupation certificate has been obtained. Consequently, admittedly, no possession of the alternate premises has been handed over to the assessee even as on the date of hearing before us. The transaction is not one of receipt of property without consideration. The permanent alternate accommodation is being allotted in lieu of surrender of valuable tenancy rights. Thus, the redevelopment agreement is based upon reciprocal consideration, viz. the relinquishment of tenancy rights by the assessee in consideration of allotment of permanent alternate accommodation. Such a commercial exchange cannot be equated with a gratuitous transfer so as to attract section 56(2)(x) of the Act. Relying on other Mumbai ITAT decision and above contentions, the Hon'ble Tribunal deleted the addition made and appeal of the assessee was allowed.

3 FLORENCE NIGHTINGALE EDUCATION SOCIETY VS. DCIT, CENTRAL CIRCLE 29, [ITA NO. 5586/DEL/2025 (DELHI TRIB)] (AY 2017-18)

Section 68 – creditworthiness cannot be judged solely on declared income – unsecured loans received and repaid through banking channels with supporting evidence cannot be treated as unexplained cash credits

Facts

The AO upon perusing the balance of unsecured loans, observed an increase of ₹ 1,33,95,888 during the year under consideration. The AO made an addition for the same u/s. 68 of the Act alleging that the assessee failed to establish the genuineness and creditworthiness of the lenders. The AO also alleged that details submitted by the assessee regarding total outstanding unsecured loans do not tally even with audited Balance Sheet filed and thus the entire outstanding unsecured loans balance as on 31.03.2017 of ₹ 2,77,67,387 was treated as unexplained u/s. 68 of the Act.

Aggrieved, the assessee filed an appeal before CIT(A) who accepted the assessee's explanation in respect of the opening loan balances and granted relief to that extent. The balance addition amounting to ₹ 1,23,00,000 was sustained by CIT(A) holding that the lenders lacked the creditworthiness to advance loans since their returned income was low. Aggrieved, the assessee appealed before the ITAT.

Held

Before the Hon'ble Tribunal, the AR argued that the earning capacity of the lender cannot be the sole basis for determining creditworthiness rather, it is the lender's ability to arrange and advance unsecured loans. It was submitted that the loans were received through proper banking channels and also repaid along with interest. The assessee had furnished evidences of loan confirmations, ledger accounts, bank statement evidencing subsequent repayment to the parties. Reliance was placed on the decision of coordinate bench in the case of ***Real Innerspring Technologies Pvt. Ltd [ITA No. 647/Del/2023]***. On the other hand, the DR

contended that CIT(A) has given sufficient relief to the assessee with regard to the unsecured loans and relied on the decision of ***J.K. Global vs. ITO (2024) 167 taxmann.com 15 (Mum. ITAT)***.

The Hon'ble Tribunal accepted the contentions of the assessee and held that the earning capacity alone cannot be the sole criterion for determining creditworthiness. Lender's ability to arrange and advance the funds is relevant. The lenders have made the payment through banking channel and all the lenders have filed the confirmations of the same. The loan was subsequently repaid along with interest through banking channels. Relying on the decision of its coordinate bench in the case of ***Real Innerspring Technologies Pvt. Ltd (supra)***, the Hon'ble Tribunal held that the assessee has taken unsecured loan and repaid the same along with interest proves the genuineness of the transaction. The Hon'ble Tribunal further distinguished the decision relied upon by the DR in the case of ***J.K. Global (supra)***. It observed that, in ***J.K. Global (supra)***, it was held that repayment of unsecured loan does not automatically prove the genuineness if the assessee fails to establish the lender's identity and creditworthiness. In present case, there is no issue with the identity and with regard to creditworthiness. The appeal was allowed.

4 ANKIT AGARWAL VS. ITO [ITA NO. 5213/MUM/2024 DT. 21.07.2026] (AY 2016-17)

Section 69C – Trading in Shares – STCG declared – Tax Paid at 15% - Information received from Investigation that shares traded are bogus transactions – No independent Evidence brought out that transactions are bogus – All evidences submitted – Addition deleted

Facts

Assessee disclosed STCG on sale of shares of Stampede Capital Ltd. On Basis of Investigation Wing information, it was alleged that assessee has claimed bogus LTCG by indulging in penny stock. On basis of information received, addition was made by AO. CIT(A) confirmed the addition of AO. Being aggrieved appeal was filed.

Held

The Hon'ble Tribunal held that there was no claim of LTCG. Assessee has infact traded in shares and paid tax on STCG. Further, all the relevent documents are filed and thus discharging the onus of proof. There was no ban on the script in the year under consideration and there is no independent evidence to establish that transaction constituted LTCG. Therefore, on the said basis appeal of the assessee was allowed and addition was directed to be deleted.

5 JAMEWAAR APPARELS PRIVATE LIMITED VS. DCIT, CIRCLE 7(1)(1) [ITA NO. 1006/BANG/2026 (BANG TRIB)] (AY: 2023:24)

Section 115BAB – concessional tax rate benefit cannot be denied where Form No. 10-ID was filed within extended due date and option was accepted in the initial assessment year.

Facts

The assessee filed its revised return of income for AY 2021-22 on 21.02.2022. On the same date, Form No. 10-ID was also filed, which was within the extended due date. In the said return, the assessee had claimed the benefit of concessional tax rate u/s. 115BAB of the Act. The said return was processed u/s. 143(1) of the Act, accepting the returned income and the applicability of section 115BAB of the Act. For AY 2022-23 also, the assessee's return opting for taxation u/s. 115BAB of the Act was processed and accepted. For AY 2023-24 i.e., the year under consideration, the assessee filed its return of income on 29.10.2023 along with Form No. 10-ID, claiming the benefit of section 115BAB of the Act. However, while processing the return u/s. 143(1) of the Act, the CPC denied the benefit of section 115BAB of the Act and computed tax liability u/s. 115BAA of the Act. Aggrieved, the assessee preferred an appeal before the JCIT(A). However, it was dismissed in limine on the ground of delay of 56 days. Though the appeal was dismissed on delay, the JCIT(A) had also adjudicated on merits. Aggrieved, the assessee filed an appeal before the Hon'ble Tribunal.

Held

Before the Hon'ble Tribunal, the AR contended that the assessee was entitled to the concessional rate of tax u/s. 115BAB as Form No. 10-ID had been filed along with the return of income for AY 2023-24 on 29.10.2023. The AR pointed out that the JCIT(A) denied the benefit u/s. 115BAB(7) of the Act alleging that the assessee was incorporated and commenced manufacturing operations on 15.07.2020; was required to file Form No. 10-ID on or before the due date for filing the return of income for AY 2021-22. The JCIT(A) proceeded on the assumption that Form No. 10-ID was filed for the first time only on 29.10.2023 during AY 2023-24 and upheld the denial of the concessional tax rate by the CPC. The DR on the other hand, contended that the assessee had failed to comply with the mandatory requirement prescribed u/s. 115BAB(7) of the Act.

The Hon'ble Tribunal held that when the issue was otherwise examined on merits by the learned JCIT(A), the dismissal of the appeal in limine on the ground of delay does not advance the case of the Revenue. On merits, the Hon'ble Tribunal held that the assessee had filed Form No. 10-ID on 21.02.2022 along with the revised return for AY 2021-22, which was within the extended due date. It was further noted that the return for AY 2021-22 was processed u/s. 143(1) accepting the claim u/s. 115BAB and the

same position was followed for AY 2022-23. It was held that the Revenue had proceeded on an incorrect factual premise that Form No. 10-ID was filed for the first time on 29.10.2023. Since the assessee had already complied with the requirements of section 115BAB(7) in the initial assessment year denial of the same in the relevant year was not justified. It was held that the assessee was entitled to the concessional rate of tax u/s.115BAB and the intimation to that extent was directed to be rectified.

6 DCIT VS. M/S. SONY INDIA PVT LTD [ITA NO. 5416 & 5580/DEL/2024 (DELHI TRIB)] (AY 2007-08 & 2008-09)

Section 244A – interest on refund – adjustment of partial refund cannot be made against principal before interest – earlier refund to be adjusted first against interest component.

Facts

The assessee had claimed depreciation on software licences at the rate of 60% treating the same as computer software. Although the claim was initially disallowed by the AO later the same was allowed by the Hon'ble Tribunal. Pursuant thereto, the AO passed an Order Giving Effect (OGE) u/s. 254/154 of the Act, granting refund to the assessee. The refund comprised principal refund of ₹ 31.97 crore and interest u/s. 244A of ₹ 18.95 crore. Prior to passing of the said OGE, the assessee had already received a partial refund of Rs. 13.15 crore. While computing the balance refund payable, the AO adjusted the said partial refund first against the principal component of refund and thereafter against the interest component u/s. 244A of the Act. The assessee filed an appeal before CIT(A) challenging that the earlier partial refund should first be adjusted against the interest component and thereafter against the principal amount. The CIT(A) accepted the assessee's contention and directed the AO to recompute the refund accordingly. Aggrieved, the Revenue preferred an appeal before the Hon'ble Tribunal.

Held

The DR argued that the CIT(A) had erroneously assumed jurisdiction over the appeal as an Order Giving Effect (OGE) to the ITAT's order is not an appealable order u/s. 246A of the Act. He submitted that the assessee's grievance pertained only to the computation of interest u/s. 244A in the appeal effect order which could not be challenged before the CIT(A). On merits, the DR relied on the decisions of the Hon'ble Supreme Court in ***CIT vs. Gujarat Fluoro Chemicals [(2014) 42 taxmann.com 1 (SC)]*** and the Hon'ble Delhi High Court in ***CIT vs. Indian Farmer Fertilizer Co-operative Ltd. [(2016) 71 taxmann.com 37 (Delhi)]*** to contend that interest on interest under section 244A is not permissible. On the other hand, the AR submitted that the appeal against the OGE passed by the AO was maintainable u/s. 246A of the Act, as such order partakes the character of an assessment order and is appealable. Reliance was placed on various judicial precedents in support of his contention. On the issue of computation of refund u/s. 244A, the AR submitted that the AO had erred in adjusting the earlier partial refund of ₹ 13.15 crore first against the principal component

of refund instead of the interest component as the approach adopted by the AO resulted in short grant of refund. The AR submitted that although the Act does not provide any specific mechanism for adjustment of partial refunds, the principle contained in the Explanation to section 140A(1) should be applied whereby payments are first adjusted towards late fee, then interest and thereafter towards tax liability. The AR submitted that the assessee was not claiming interest on interest but only interest on the outstanding principal refund after appropriately adjusting the earlier partial refund against the interest accrued up to the date of such refund. It was argued that the Supreme Court's decision in Gujarat Fluoro Chemicals (supra), which prohibits grant of interest on interest, was distinguishable since the present dispute concerned only the correct method of adjustment of partial refund and not a claim for interest on interest.

The Hon'ble Tribunal held that an OGE passed pursuant to an ITAT order partakes the character of an assessment order and is therefore appealable u/s. 246A. Reliance was placed on the decisions of the Hon'ble Bombay High Court in ***Caltex Oil Refining (India) Ltd. vs. CIT*** and ***Empire Industries Ltd. vs. CIT***, and the Hon'ble Calcutta High Court in ***Kooka Sidhwa & Co. vs. CIT***. The impugned order having been passed u/s. 254/154 of the Act, was specifically appealable u/s. 246A(1)(c) of the Act. Accordingly, the Revenue's objection to the maintainability of the appeal was rejected. On the issue of computation of refund u/s. 244A, the Hon'ble Tribunal noted that the Act does not prescribe any specific mechanism for adjustment of a partial refund. Following the decision of the Hon'ble Delhi High Court in ***India Trade Promotion Organisation vs. CIT***, and drawing support from the Explanation to section 140A(1), it held that a partial refund should first be adjusted towards the interest component and thereafter towards the principal tax refundable. The Hon'ble Tribunal distinguished the decisions in ***Gujarat Fluoro Chemicals (supra)*** and Indian Farmer Fertilizer Co-operative Ltd., observing that those decisions prohibit payment of interest on interest, whereas the present dispute merely concerned the mechanism of adjusting a partial refund and did not involve any claim for interest on interest. Accordingly, the Hon'ble Tribunal upheld the order of CIT(A).

■

" Don't look back—forward, infinite energy,
infinite enthusiasm, infinite daring,
and infinite patience—then alone can
great deeds be accomplished. "

Swami Vivekananda

CASE LAW UPDATE



Dr. CA Sunil Moti Lala
Advocate

I. PERMANENT ESTABLISHMENT

SUPERVISORY PE

1 BECHTE LTD. VS. ACIT, IT [2026] 188 TAXMANN.COM 987 (DELHI - TRIB.) [28-07-2026] - IT APPEAL NO. 1977 (DELHI) OF 2025 - [AY 2022-23]

Where assessee, a UK company, rendered engineering, procurement support and technical advisory services to its AE from outside India and no employee visited India under service agreement effective from 1-1-2020, no PE could be said to exist in India and, therefore, receipts could not be taxed as business income under section 44DA

Assessee, UK company, rendered engineering, procurement support and technical advisory services to its AE from outside India and claimed that no employee visited India under service agreement effective from 1-1-2020. AO proposed to tax receipts only as FTS, however DRP, relying on findings for earlier years, held that assessee had PE in India and directed taxation of receipts as business income under section 44DA. Tribunal ruled that in absence of any employee visiting India pursuant to new agreement, no PE could be said to exist in India and, therefore, receipts could not be taxed as business income under section 44DA. [*Ernst & Young (EMEIA) Services Limited vs. Asstt. CIT. International Taxation [2026] 184 taxmann.com 671 (Delhi - Trib.) followed*]

OFFSHORE PRINCIPAL-TO-PRINCIPAL SALES DO NOT CREATE A DAPE OR FIXED PLACE PE IN INDIA

1 AUDI AG VS. DY. CIT, IT [2026] 187 TAXMANN.COM 996 (MUMBAI - TRIB.) [10-06-2026] - IT APPEAL NO. 6741 (MUM.) OF 2025 - [AY 2023-24]

Where assessee, a German automobile manufacturer entered into supply and importer agreements with SAVWIPL, a legally independent company responsible for Indian market, SAVWIPL did not constitute assessee's PE in India since cars were manufactured outside India and sold to SAVWIPL on a principal-to-principal basis through offshore sales; consequently, no business profits from such sales were taxable in India. [India-Germany DTAA]

Assessee, a German automobile manufacturer, had entered into a supply agreement and an importer agreement with group entities, which were subsequently amalgamated into Skoda Auto Volkswagen India Pvt. Ltd. (SAVWIPL), a legally independent Indian company exclusively responsible for Indian market. AO held that SAVWIPL constituted both a Fixed Place PE and a Dependent Agent PE of assessee in India under Article 5 of the DTAA and attributed about ₹ 51.03 crores as business income taxable in India, which was upheld by DRP. Tribunal ruled that since cars were manufactured outside India and sold to SAVWIPL on a principal-to-principal basis, with offshore sales constituting a separate and independent activity, SAVWIPL could not be regarded as assessee's PE in India and no business profits from such offshore sales were taxable in India under section 9 or Article 5 of the DTAA. [***Audi AG vs. DDIT ITA No.6880/Mum/2016 dated 16-12-2019 followed***]

DAPE

1 UPS ASIA GROUP PTE. LTD. VS. ACIT (IT) [2026] 187 TAXMANN.COM 990 (MUMBAI - TRIB.) [24-06-2026] - IT APPEAL NO. 1363 (MUM) OF 2025 - [AY 2022-23]

Where assessee, a Singapore-based company engaged in supply chain management and logistics, was treated by AO as having a business connection and agency PE in India, since in earlier years it was held that assessee did not have business connection or PE in India, following that view, such determination and consequent addition to income was not sustainable- Further, since Indian AE had been remunerated at arm's length price and no transfer pricing adjustment had been made in respect of alleged DAPE, no further attribution of revenues or profits to alleged business connection or PE in India was warranted. [India–Singapore DTAA]

Assessee, a Singapore-incorporated company engaged in supply chain management, freight forwarding and logistics services, filed its return declaring about ₹ 30.86 lakhs. Its India-related activities involved an Indian AE. The Case was selected for scrutiny, and AO issued a draft assessment proposing to assess

total income at about ₹ 4.44 crores, holding that assessee had a Business Connection under Section 9(1)(i) and that its Indian AE constituted a DAPE in India under Article 5 of the DTAA. It was noted that Tribunal in assessee's own case for earlier assessment years had held that assessee did not have a business connection in India under section 9(1)(i) and that its Indian associated enterprise did not constitute a PE in India under Article 5 of the DTAA. Further, it was noted that Indian AE had been remunerated at arm's length price and no adjustment had been made by TPO in case of the alleged DAPE. Tribunal thus ruled that on facts, no further attribution of revenues/profits to alleged Business Connection/PE in India was warranted Following aforesaid order, impugned order passed by AO was to be set aside. [***UPS Asia Group Pte. Ltd. vs. Asst. CIT (International Taxation) IT Appeal No. 4797 (Mum) of 2023, dated 28-10-2024 followed***]

MERE HOLDING -SUBSIDIARY RELATIONSHIP DOES NOT RESULT IN PE

1 ACIT (IT) VS. MCKINSEY & COMPANY LME LTD. [2026] 186 TAXMANN.COM 1256 (MUMBAI - TRIB.) [20-05-2026] - [TS-933-ITAT-2026(MUM)] - IT APPEAL NO. 1818 (MUM.) OF 2024 - [AY 2018-2019]

Where assessee, a UK based company, providing advisory support services to Indian AEs, was alleged by revenue to have a PE in India based on holding-subsidiary relationship but no cogent evidence substantiating such PE was brought on record, plea to tax receipts as business profits under Article 7 of the DTAA was to be rejected. [India – UK DTAA]

Assessee, a UK based company, rendered advisory support (borrowed services) to its Indian AE. It filed a revised return declaring Nil income, claiming treaty benefits and asserting that receipts were business income with no PE in India under Article 5 of India-UK DTAA. AO rejected assessee's plea and treated both borrowed services and reimbursements as FTS taxable in India under Article 13 of the DTAA. Revenue contended that assessee had a PE in India under Article 5 based on holding-subsidiary relationship and that income should be taxed as Business Profits under Article 7. Tribunal ruled that since Revenue had failed to bring on record any cogent material or evidence to substantiate that assessee had a PE in India, plea to tax receipts as business profits under Article 7 of DTAA was rejected. [***Asstt. CIT vs. Mckinsey & Company Lme Ltd. IT Appeal No. 2759 (Mum.) of 2023 followed]***

II. BUSINESS PROFITS

NO TDS ON FOREIGN REMITTANCES BY INDIAN BRANCH TO HO

1 UNITED AIRLINES INC. VS. ACIT (IT) [2026] 188 TAXMANN.COM 345 (DELHI) [08-07-2026] - W.P.(C) NO. 8966 OF 2026 – [FY 2026-27]

Where assessee, an Indian branch office of a U.S. company, made remittances to its U.S. Head Office and Competent Authority declined to issue a certificate under section 195(2) holding that no tax was deductible since there was no payer-payee relationship, no adverse action could be taken against assessee in respect of such remittances merely for non-deduction of tax at source

Assessee, an Indian branch office of a U.S. company, made remittances to its U.S. Head Office and applied under section 195(2) for a certificate authorising non-deduction of tax at source. Competent Authority declined to issue certificate, holding that remittances by a branch office to its Head Office did not involve a payer-payee relationship and, therefore, section 195 was inapplicable. The High Court disposed of the writ petition filed by the assessee holding that in such circumstances, no certificate under section 195(2) was required to be issued and, once Competent Authority itself had held that tax was not required to be deducted, no action prejudicial to assessee could be taken for non-deduction of tax on such remittances.

BUSINESS DEVELOPMENT EXPENSES TREATED AS HEAD OFFICE EXPENDITURE

1 SHELADIA ASSOCIATES INC VS. ACIT (IT) [2026] 187 TAXMANN.COM 172 (HYDERABAD - TRIB.) [03-06-2026] - [TS-877-ITAT-2026(HYD)] - IT APPEAL NO. 574 (HYD) OF 2026 - [AY 2023-24]

Assessee, a US company with PE in India, claimed Technical Support and Business Development expenses as direct project costs but Assessing Officer treated them as Head Office expenditure under Section 44C- Matter was remanded to AO to verify whether said expenses fell within the definition of HO expenditure and if so, to compute the admissible deduction u/s 44C

Assessee, a US company, operated in India through a branch office and five project offices constituting a PE. It claimed Backstopping Technical Support and Business Development expenses as direct project costs for Indian operations.AO treated these as Head Office expenditure under Section 44C and disallowed entire amounts. Tribunal ruled that once expenditure falls within nature of Head Office expenditure under Section 44C, statutory limitation applies even if incurred wholly for Indian operations. Therefore, matter was remanded to AO to verify whether subject expenses fell within meaning of 'Head Office expenditure' as defined in Explanation to Section 44C and, if so, to compute deduction admissible within statutory limits prescribed under Section 44C. [***DIT (IT) vs. American***

Express Bank Ltd. [2025] 181 taxmann.com 433/484 ITR 137/[2026] 308 Taxman 246 (SC) followed, Sheladia Associates Inc. vs. ACIT (Int. Taxn) IT Appeal No. 423 (Hyd.) of 2023, dated 16-10-2024, Sheladia Associates INC vs. ADIT (Int. Taxn) IT Appeal No. 537 (Hyd.) of 2023, dated 21-06-2024 distinguished]

HEAD OFFICE EXPENSES INCURRED OUTSIDE INDIA CLAIMED AS ATTRIBUTABLE TO INDIAN BRANCH

1 DDIT(IT) VS. AMERICAN EXPRESS BANK LTD. [2026] 187 TAXMANN.COM 866 (MUMBAI - TRIB.) [17-06-2026] - IT APPEAL NOS. 3487 & 3508 (MUM) OF 2004 - [AY AND 1999-2000]

Where direct head office expenses incurred outside India were claimed as attributable to an Indian branch, such expenses must be examined to determine if they constitute 'head office expenditure' under Explanation to section 44C, requiring a detailed factual analysis – Matter remanded

Assessee, a non-resident banking company with a Mumbai branch as its PE. AO observed debits of direct head office expenses claimed as attributable to the assessee claimed these were direct expenses allowable under section 37(1). The AO applied section 44C, noting the expenses included salary, travel, other employee-related and relocation expenses. Tribunal ruled that direct head office expenses incurred outside India and claimed as attributable to Indian branch required examination to determine whether they qualified as 'head office expenditure' under Explanation to section 44C, involving detailed factual analysis of nature of expenditure. Since AO had not undertaken such exercise, matter was remanded for de novo adjudication. [*DIT (IT)-I, Mumbai vs. American Express Bank Ltd. [2025] 181 taxmann.com 433/[2026] 484 ITR 137/308 Taxman 246 (SC) followed*]

NRI DESK EXPENSES INCURRED BY OVERSEAS BRANCHES CONSTITUTES HO EXPENDITURE U/S 44C

1 BANK OF AMERICA VS. ACIT [2026] 188 TAXMANN.COM 1061 (MUMBAI - TRIB.) [22-07-2026] - [TS-1135-ITAT-2026(MUM)] - IT APPEAL NOS. 8681, 9162 (MUM.) OF 2004 & 2284, 2283 (MUM.) OF 2005 - [AY 1999-2000 AND 2001-02]

Where assessee, a foreign bank with a PE in India, claimed deduction for NRI desk expenses incurred by overseas branches for soliciting NRI deposits, such expenses constituted head office expenditure and fell within purview of section 44C, not eligible for separate deduction under section 37(1).

Assessee, a foreign bank headquartered in USA with a PE in India, claimed deduction of overseas-branch expenses incurred for Indian operations, including NRI desk expenses for soliciting NRI deposits. AO found that assessee claimed ₹ 2.28 crores as NRI desk expenses incurred by overseas branches on salary, travel, other employee-related and

relocation costs, treated them as general and administrative, and brought them within section 44C, refusing a separate allowance under section 37(1). Commissioner (Appeals) directed allowance of these expenses under section 37(1) holding them outside scope of section 44C. Tribunal ruled that expenses incurred by overseas branches on NRI desks soliciting NRI deposits were to be treated as 'head office expenditure' under section 44C rather than allowable as a separate deduction under section 37. [***Director of Income-tax (IT)-I, Mumbai vs. American Express Bank Ltd. [2025] 181 taxmann.com 433/[2026] 484 ITR 137/308 Taxman 246 (SC) followe***d]

OVERSEAS/BRANCH COST INCLUDING DATA PROCESSING TREATED AS HO EXPENDITURE U/S 44C

1 BANK OF AMERICA VS. ACIT [2026] 188 TAXMANN.COM 1061 (MUMBAI - TRIB.) [22-07-2026] - [TS-1135-ITAT-2026(MUM)] - IT APPEAL NOS. 8681, 9162 (MUM.) OF 2004 & 2284, 2283 (MUM.) OF 2005 - [AY 1999-2000 AND 2001-02]

Where assessee, a foreign bank with Indian PE, claimed deduction for overseas-branch costs including data processing and branch expenses which were treated by revenue as head office expenditure under Section 44C, matter was remanded to verify if expenditures fulfilled tripartite test for 'head office expenditure' as per Supreme Court ruling in American Express Bank Ltd.

Assessee, a foreign bank with Indian PE, claimed deduction of overseas-branch costs incurred for Indian operations, including data processing charges and other branch expenses. For AY 1999-2000, AO treated data processing cost of about ₹ 7.21 crores as general and administrative expenses covered by Section 44C and restricted deduction accordingly; assessee claimed such costs were not general administration and sought allowance outside Section 44C. For AY 2001-02, AO disallowed overseas-branch expenditure attributable to Indian operations of about ₹ 7.14 crores by invoking Section 44C and Section 40(a)(i) for non-deduction under Section 195. Tribunal ruled that in view of Supreme Court's decision in American Express Bank Ltd, matter was remanded to AO to verify whether impugned expenditures satisfied tripartite test necessary to qualify as 'head office expenditure' under Explanation to Section 44C. [***Director of Income-tax (IT)-I, Mumbai vs. American Express Bank Ltd. [2025] 181 taxmann.com 433/[2026] 484 ITR 137/308 Taxman 246 (SC) followed***]

DEDUCTION U/S 36(1)(VIIA) TO BE GIVEN EFFECT PRIOR TO COMPUTING RESTRICTION U/S 44C

1 BANK OF AMERICA VS. ACIT [2026] 188 TAXMANN.COM 1061 (MUMBAI - TRIB.) [22-07-2026] - [TS-1135-ITAT-2026(MUM)] - IT APPEAL NOS. 8681, 9162 (MUM.) OF 2004 & 2284, 2283 (MUM.) OF 2005 - [AY 1999-2000 AND 2001-02]

Where assessee, a foreign bank with Indian PE claimed deduction for head office expenditure under section 44C and for provision for bad debts under section 36(1)(viia), deduction under section 36(1)(viia) is to be given effect prior to computing restriction under section 44C, since it is not expressly excluded from 'adjusted total income', and computation of head office expenditure restriction should follow such sequence

Assessee, a foreign bank with Indian PE, claimed deduction under section 36(1)(viia) and also deduction of head office expenditure subject to section 44C. For AY 1999-2000, AO computed deduction under section 44C and thereafter worked out other deductions, including section 36(1)(viia). CIT(A) directed that deduction under section 36(1)(viia) be computed on gross total income and before computing restriction under section 44C. Revenue challenged these directions. Tribunal ruled that deduction under section 36(1)(viia) has not been expressly excluded for computation of 'adjusted total income' as per Explanation to section 44C and thus, effect of deduction under section 36(1)(viia) has to be given prior to computation of deduction under section 44C. Therefore, computation under section 44C should be made after giving effect to deduction under section 36(1)(viia).

" Be strong! … You talk of ghosts and devils.
We are the living devils.
The sign of life is strength and growth.
The sign of death is weakness. Whatever is weak, avoid!
It is death. If it is strength, go down into hell and get hold of it!
There is salvation only for the brave.
"None but the brave deserves the fair."
None but the bravest deserves salvation. "

Swami Vivekananda

GST





CA Naresh Sheth *CA Jinesh Shah*

A. DECISIONS BY HIGH COURT

1 SOUTH INDIAN BANK LTD. VS. ADDITIONAL COMMISSIONER OF CENTRAL TAX & CENTRAL EXCISE [WRIT PETITION NO. 23546 OF 2024] – KERALA HIGH COURT

Facts and issues involved

The petitioner is a banking company registered under the Companies Act. They approached the High Court challenging show cause notices issued under Section 74 of the CGST Act and an Order-in-Original passed under Section 73 of the CGST Act. The proceedings were initiated following investigations by the Directorate General of Goods and Service Tax Intelligence (DGGI), Kochi Zonal Unit, which alleged that banking companies were availing ineligible Input Tax Credit (ITC) on capital goods in contravention of Sections 16(3) and 17(4) of the CGST Act, 2017. Specifically, the petitioners had exercised the option under Section 17(4) to avail 50% of the eligible ITC, while the remaining 50% lapsed as per the statutory provision. This lapsed 50% was capitalized to respective assets, and the petitioner's claimed depreciation on these gross-block assets under the Income Tax Act, 1961. The Department contended that because depreciation was claimed on this lapsed tax component, the petitioners became ineligible to receive ITC for the entire tax component under the stipulations of Section 16(3).

Petitioner's submissions

The petitioner argued that Section 17(4) provides a specific option for banking companies to claim 50% of eligible ITC in lieu of the apportionment procedure contemplated under Section 17(2). They further contended that under Rule 38 of the CGST Rules, the remaining 50% portion for which credit is not claimed must be reversed in FORM GSTR-3B. The primary purpose of the prohibition in Section 16(3) is to prevent a "double benefit" where a taxpayer claims both ITC under the CGST Act and depreciation under the Income Tax Act for the same amount. The petitioners maintained that there cannot be a case of any double benefit being accrued because no ITC was claimed for the 50% portion on which depreciation was sought.

Respondent's submissions

The department opposed these contentions by relying on the specific language used in Section 16(3) of the CGST Act. They argued that the statute provides for a complete prohibition on the tax component from claiming Input Tax Credit, for which the depreciation is claimed. According to the Department's interpretation, claiming depreciation on any part of the tax component after opting for Section 17(4) invalidated the claim for the eligible 50% of the ITC.

Discussion by and observations of the Court

The Court observed that Section 16(3) provides that where a registered person claims depreciation on the tax component of the cost of capital goods the input tax credit on the said tax component shall not be allowed. The Court noted that the expression "the said tax component" is of crucial importance and indicates that the prohibition applies only to the specific portion for which depreciation is claimed, not the entire tax component. Section 17(4) is a special provision designed to address the practical difficulties for the banking companies in segregating taxable and exempt supplies. Under this provision, a fiction has been created where the 50% lapsed credit is treated as covering exempt supplies. The Court reasoned that since depreciation claimed for tax attributable to exempt supplies under Section 17(2) does not attract the prohibition of Section 16(3), applying such a restriction to the un-availed portion under Section 17(4) would constitute an unreasonable classification. Furthermore, the Court held that once the 50% credit lapses under Section 17(4), the unavailed ITC cannot have the nature of a tax component, for the purpose of taking credit.

Decision of the High Court

The Court quashed the impugned show cause notices and the Order-in-Original to the extent the prohibition is imposed under Sec. 16(3) of the CGST Act, in respect of the 50% of the tax component, for which the petitioners did not avail the depreciation. The Court clarified that the claiming of the depreciation for 50% of the tax component for which no input tax credit availed, would not take away the benefit of input tax credit for the entire tax component. Regarding the Order-in-Original that included other disputes, the Court permitted the petitioner to invoke statutory appellate remedies and ordered that the period during which the writ petition was pending be excluded for the purposes of calculating the limitation period for filing such an appeal.

2 M.M. MOTORS VS. SENIOR JOINT COMMISSIONER OF REVENUE [2026] 188 TAXMANN.COM 384 (CALCUTTA) – CALCUTTA HIGH COURT

Facts and issues involved

The petitioner challenged an order passed under Section 73 of the WBGST/CGST Act, 2017, and the accompanying summary in Form GST DRC-07 for the tax period April 2018 to March 2019. Following a show-cause notice issued on December 20, 2023, under Section 73(1), the proper officer digitally signed the final adjudication order under Section 73(9) on April 30, 2024, at approximately 21:15:13 hours. Although the order was signed on the final day of the extended limitation period prescribed under Section 168A, it was uploaded to the GST portal in Form DRC-07 on the subsequent

day, May 1, 2024. Aggrieved by the demand, the petitioner had previously preferred an appeal under Section 107 by making the required pre-deposit, which resulted in a variation of the demand and the issuance of a fresh demand in Form APL-04. The petitioner subsequently filed this writ petition to contest the competence of the proper officer to enforce an order served beyond the extended limitation period of April 30, 2024.

Petitioner's submissions

The petitioner contended that the time period for passing orders for the financial year 2018-19 was lastly extended up to the 30th of April, 2024 via notifications issued under Section 168A. It was argued that under Rule 142(5) of the WBGST/CGST Rules, 2017, the proper officer is obligated to upload the summary of the order, and because the order impugned was uploaded on 1st May, 2024 beyond the time prescribed, the entire proceeding was vitiated. The petitioner asserted that without service of an order on the registered taxpayer in the manner prescribed in the Act, and the said Rules, the passing of an order by a proper officer is not complete. Relying on Sections 2(1)(d), 2(1)(p), 2(1)(t), 2(1)(za), and Section 13 of the Information Technology Act, 2000, the petitioner maintained that for an issuance of an order to be complete, the same not only should be signed but also should be set in a motion for the same to be delivered to the taxpayer. The petitioner cited several precedents, including ***Daujee Abhushan Bhandar (P.) Ltd. vs. Union of India*** and ***Sreema Rice Mill vs. Union of India***, to support the view that "issue" and "service" should be treated as interchangeable or interlinked for the purpose of limitation.

Respondent's submissions

The Respondent Department maintained that the order was valid as it was digitally signed by the proper officer on 30th April, 2024, which was within the limitation period extended by Notification No. 56/2023. The Department argued that Section 169 deals with the manner of service of the order(s) or notices and does not deal with the scope and effect of passing of an order. It was further submitted that no foreign interpretation is permitted while interpreting a taxing Statute and that the Court must read the provisions with no additions and no subtractions. The Respondent relied on the Supreme Court decision in ***R.K. Upadhyaya vs. Shanabhai P. Patel***, which established a "clear distinction" between the "issue of notice" and "service of notice," asserting that issuance of the notice within the period of limitation was sufficient to vest the [officer] with the power. The Department also emphasized that the petitioner had already engaged with the merits of the case in an appeal and could not now impeach the order on a jurisdictional ground that ignores the statutory distinction between issuance and service.

Discussion by and observations of the Court

The Court observed that Section 73 of the Act employs the expression 'issue' in sub-sections (2), (9) and (10) thereof, while the word 'service' is used in sub-section (1) regarding show-cause notices. It was noted that the legislature has used the words 'issue' and 'service' distinctly" and that ordinarily, issue of a notice or order means to formally make it out of the authority's hands by signing, dating, and sending the documents for dispatch. The Court found that Section 169 identifies the methods of service but deals with term 'service' and not the term 'issue'. The Court highlighted that the CGST Act intentionally departed from previous regimes like the Finance Act, 1994, where limitation was interlinked with service.

Referring to the Supreme Court's reasoning in R.K. Upadhyaya, the Court noted that once a notice is issued within the period of limitation, jurisdiction becomes vested, and while service is a condition precedent to making of the order the requirement of issue of notice is satisfied when a notice is actually issued. The Court rejected the application of the Information Technology Act, 2000, for determining service, stating that the said Act does not borrow the provision of Section 13 of the Information Technology Act on the issue of service. The Court concluded that the statutory scheme of the said Act appears to distinguish between the act of issuing the orders under Section 73(9) and the act of serving the order, and the period of limitation is confined to the issuance of the order and not on the service thereof.

Decision of the High Court

An order passed within the period of limitation would be enforceable only when the same is served, but the period of limitation is confined to the issuance of the order and not on the service thereof. Consequently, the factum of issue cannot be interlinked to service for the order to be complete. The Court clarified that uploading of the order on the following date, following the issuance of the order does not render the same void or barred by limitation.

3 STATE BANK OF INDIA VS. COMMERCIAL CGST & CE, SLG COMMISSIONERATE [2026] [WPA NO. 433 OF 2026] – CALCUTTA HIGH COURT

Facts and issues involved

The GST Department issued a composite Show Cause Notice (SCN) under Section 74 of the CGST Act,2017 covering FY 2018-19 to FY 2023-24, alleging short payment of IGST due to fraud/suppression. Prior to the issuance of the notice, the GST authorities had requested documents for these years, and the petitioner had provided fifty-six inter-branch invoices and calculation worksheets. On December 12, 2025, the adjudicating authority issued an order-in-original (OIO) rejecting the petitioner's objections, including the challenge to the single SCN for multiple periods. The OIO confirmed a GST demand of ₹ 5,48,56,775 (IGST), along with applicable interest under Section 50 and an equal penalty of ₹ 5,48,56,775, resulting in a total liability of approximately ₹ 10,97,13,550. The authority justified the order by stating that the petitioner's reply was unjustified in lack of the invoices/relevant details supporting the claim The short issue involved in the present writ petition is whether the respondents could have issued a composite show cause notice under Section 74 of the CGST Act for multiple financial years, namely FY 2018–19 to FY 2023–24.

Petitioner's submissions

The petitioner contended that the single show-cause notice clubbing multiple financial years is not only illegal and de hors the statute but also without jurisdiction. They argued that under Section 74, each financial year is a separate unit for the purpose of limitation and that the five-year limitation period must run from the due date for furnishing of annual return for the relevant financial year. The petitioner submitted that for the financial years 2018-19, 2019-20, and 2020-21, the demand totaling ₹ 2,76,84,879 was already barred by limitation because the SCN was issued on June 25, 2025, beyond

the prescribed timelines. Furthermore, the petitioner argued that the invocation of Section 74 was motivated, illegal, arbitrary and without jurisdiction as the department failed to establish the fundamental ingredients of fraud, wilful misstatement, or suppression of facts. It was also alleged that the authority ignored vital documentary evidence, thereby violating the principles of natural justice.

Respondent's submissions

The Revenue challenged the maintainability of the writ petition, asserting that the petitioner should have exhausted the statutory appellate remedy under Section 107 of 2017 Act. They argued that limitation is a mixed question of law and fact which requires a detailed enquiry not suitable for a writ court. The respondent maintained that there was no inherent lack of jurisdiction in issuing the notice or passing the order. On the merits of the limitation argument, the Revenue suggested that in cases of fraudulent availment of benefit, the extended period under Section 74 was applicable and that any period/periods could be interpreted broadly to allow for consolidated adjudications.

Discussion by and observations of the Court

The Court observed that Section 74(10) specifically uses the expression "for the financial year," which signifies that the 2017 Act considers each and every financial year as a separate unit. It was reasoned that since taxing statute should be interpreted and construed strictly, the clubbing of multiple financial years for a single SCN is not permitted under Section 74. The Court noted that the expression "any period" used in the statute must be read as "tax period," which is determined based on the filing of monthly or annual returns. The Court remarked that by clubbing years, the Revenue sought to lay their hands on the previous assessment years having been barred by limitation, an action that is not permissible in law. Referencing the "golden rule," the Court stated that when the law requires an act to be done in a particular manner and time, all other modes are expressly forbidden. On the issue of maintainability, the Court held that while an alternative remedy exists, it is not an absolute bar when an act is wholly without jurisdiction or de hors and in violation of the statutory provisions.

Decision of the High Court

The Court allowed the writ petition and quashed and set aside the composite show-cause notice dated June 25, 2025, and the consequential order-in-original dated December 12, 2025. The Court held that the clubbing of multiple financial years was illegal, without jurisdiction and not tenable in law.

4 DILIP BABUBHAI PATEL VS. STATE OF GUJARAT [2026] 187 TAXMANN.COM 1063 (GUJARAT)

Facts and issues involved

The petitioner is engaged in manufacturing of wooden pallets and boxes. Under the erstwhile Gujarat Value Added Tax Act, 2003, the petitioner purchased raw materials at a tax rate of 15% and sold finished goods at 5%, resulting in an accumulated Input Tax Credit (ITC) of ₹ 23,74,689/- as of June 30, 2017. Upon the introduction of the GST regime on July 1, 2017, the petitioner migrated its registration and carried forward

this accumulated transitional credit into its Electronic Credit Ledger (ECL) by filing Form GST TRAN-1 under Section 140 of the GST Acts. Under the GST regime, the petitioner faced a similar inverted duty structure where inputs were taxed at 18% (9% CGST + 9% SGST) and finished goods at 12% (6% CGST + 6% SGST), leading to a total accumulated ITC of ₹ 28,54,987/- by March 31, 2018. The petitioner filed an application for a refund of SGST amounting to ₹ 23,50,000/- in Form GST RFD-01A. The respondent sanctioned a refund of only ₹ 4,75,324/- and rejected the balance claim of ₹ 18,74,676/- on the grounds that the amount represented transitional credit from the VAT regime, which was allegedly not admissible for refund under Section 54(3) of the GST Acts.

Petitioner's submissions

The petitioner contended that once transitional credit is migrated under Section 140, it forms an integral part of the ITC available under the GST enactments and the statute recognizes no distinction between such credit and credit earned post-GST. It was argued that Section 54(3) of the GST Acts, which provides for the refund of "unutilised input tax credit" in cases of an inverted duty structure, does not expressly exclude transitional ITC. The petitioner submitted that Section 140 was a beneficial provision to protect vested rights and that denying the refund would result in the credit remaining permanently blocked in the ECL due to the ongoing inverted duty structure. Regarding the second proviso to Section 142(3), the petitioner argued it was only intended to prevent double benefit by ensuring an assessee does not claim a refund under the old law after transitioning the credit to GST, but it does not prohibit a refund under the GST regime once transitioned. The petitioner also cited the breach of principles of natural justice, noting that the rejection occurred without the mandatory procedure prescribed under Rule 92 involving a show-cause notice and a hearing.

Respondent's submissions

The Revenue contended that Chapter XX of the GST Acts constitutes a complete code governing the migration and that Section 140 was never intended to permit conversion of such pre-GST credit into cash refund. The Department argued that the two remedies viz. transitioning credit for future utilization under Section 140 or claiming a cash refund under the existing law (VAT) are mutually exclusive and cannot be simultaneously invoked. Heavy reliance was placed on the second proviso to Section 142(3), which expressly provides that no refund shall be granted in respect of CENVAT or VAT credit where the balance has already been carried forward under the GST Acts. Furthermore, the Revenue argued that Section 54(3) authorizes refunds only for ITC accumulated under the GST regime and does not extend to credit that merely migrated into the GST regime. Referring to Rule 89(5), the Revenue emphasized that "Net ITC" is defined as credit "availed on inputs during the relevant period," and since transitional credit was not availed during the GST tax period in question, it must be excluded from the refund computation.

Discussion by and observations of the Court

The Court observed that a clear demarcation exists between the utilization and the refund of ITC. It noted that while Section 140 protects the interests of taxpayers by allowing them to carry forward credit, the statutory bar under the second Proviso to Section 142(3) of the GST Acts gets triggered once that credit is transitioned. The Court reasoned that taxpayers must choose either receipt of a cash refund of the pre-GST accumulated credit under the old law or to transit the balance into the GST regime; if they choose

the latter, they forfeit the refund claim but retain the right to utilize the credit. The Bench held that the Parliament never intended the refund of credit accumulated under erstwhile regime as per Section 54, but only under GST regime. Regarding the petitioner's reliance on precedents, the Court distinguished the case of Torrent Pharmaceuticals Ltd., noting it did not examine the operation of Section 142(3). While acknowledging the procedural failure to provide a hearing under Rule 92, the Court found that remanding the matter on that ground alone would be an exercise in futility given the clear legal bar on the cash refund. However, the Court highlighted that under Rule 93, any rejected refund amount must be re-credited to the ECL for future utilization.

Decision of the High Court

The High Court held that the refund claim under Section 54(3) for such transitioned credit was impermissible due to statutory bar under second proviso to Section 142(3). Consequently, the prayer for a cash refund of ₹ 18,74,676/- was denied. However, the petition was partly allowed as the Court directed that the rejected amount should be re-credited in ECL of GST regime for future utilization under Section 140.

5 CHEMPLAST SANMAR LTD. VS. ASSISTANT COMMISSIONER [2026] 187 TAXMANN.COM 1000 (MADRAS) [08-06-2026] – MADRAS HIGH COURT

Facts and issues involved

The petitioner underwent a complex restructuring involving the merger of M/s. Sanmar Speciality Chemicals Limited into the petitioner and the demerger of a division of the petitioner into M/s. Chemplast Cuddalore Vinyls Limited, sanctioned by the National Company Law Tribunal (NCLT) with an effective date of April 1, 2018. Consequently, unutilized Input Tax Credit (ITC) and tax liabilities were transferred under Section 18(3) of the GST Enactments. Following the filing of returns, a departmental audit under Section 65 was conducted for the period 2017-18 to 2020-21, culminating in an Audit Report (Form GST ADT-02) dated February 28, 2023. This led to Show Cause Notices (SCNs) under Section 73 and subsequent Assessment Orders dated October 10, 2023, which were later set aside via writ, resulting in revised orders (DRC-07) on May 24, 2024, confirming demands of ₹ 3,31,38,004 for 2018-19 and ₹ 3,36,21,987 for 2019-20. Parallelly, a scrutiny of returns under Section 61 led to ASMT-10 on May 16, 2023, and an intimation in DRC-01A on December 5, 2023. Dissatisfied with the petitioner's reply, the respondent issued the impugned SCNs under Section 74 on May 10, 2024, proposing massive demands of ₹ 624,81,52,060 for 2018-19 and ₹ 83,45,92,000 for 2019-20 based on unreconciled ITC mismatches in Table 12F of Form GSTR-9C.

Petitioner's submissions

The petitioner challenged the impugned SCNs primarily on the ground that they were issued without mentioning any of the ingredients for invoking the extended period of limitation under Section 74. It was argued that since the Department was already aware of the relevant facts regarding the merger and demerger through the prior audit report (ADT-02), the issuance of fresh notices under Section 74 for the very same tax period was contrary to the law settled in ***Nizam Sugar Factory vs. CCE***. The petitioner further contended that once an earlier order was passed based on the same facts, the Department could not allege suppression of facts to justify the

extended period. Additionally, the petitioner asserted that the NCLT order dated April 26, 2019, precluded any case for fraud, wilful-misstatement, or suppression of facts to evade tax as required by Section 74.

Respondent's submissions

The Revenue contended that the impugned SCNs were justified as there were significant discrepancies between the Audit Financial Statement of the Petitioner and the GSTR-9 and GSTR-9C. It was argued that the petitioner failed to reply to the SCNs dated May 10, 2024, and should be relegated to give a proper reply rather than seeking writ intervention. The Department maintained that the proceedings arose from a distinct process of scrutiny of returns under Section 61, which is separate from the audit under Section 65. The respondent asserted that suppression of facts being disclosed as was required for invoking section 74, the limitation period stood extended, and the notices were within the prescribed time limits when considering statutory extensions under Section 168A and various notifications.

Discussion by and observations of the Court

The Court observed that audit-based and scrutiny-based proceedings could run separately and that the impugned SCNs arose from a scrutiny of returns that revealed unreconciled ITC not fully addressed in the earlier audit. The Bench held that the principle in Nizam Sugar Factory was inapplicable because the Department discovered new discrepancies during the scrutiny of GSTR-9C. The Court noted that even if the charges of fraud or any wilful-misstatement or suppression of facts to evade tax are eventually not established, Section 75(2) allows for the conversion of a Section 74 notice into a Section 73 notice, but this is only possible after orders are passed. Regarding limitation, the Court found that the SCNs were within time even for section 73 action due to extensions provided by Notification No. 56/2023 and the exclusion of the COVID-19 period as per Supreme Court orders. The Court concluded that jurisdictional/foundational fact for invoking Section 74 existed as the mismatch in GSTR-9C *prima facie* suggested a suppression of facts.

Decision of the High Court

The High Court dismissed the writ petitions, ruling in favour of the Revenue. The Court held that the SCNs could not be challenged at the threshold as the Proper Officer had the jurisdiction to issue them based on the observed discrepancies.

B. RULINGS BY GST APPELLATE TRIBUNAL

1 MANORANJAN DASH VS. COMMISSIONER, ODISHA COMMISSIONERATE OF CT GST AND ORISSA [2026] 188 TAXMANN.COM 445 – GSTAT, NEW DELHI

Facts

The appellant was served with a show cause notice under Section 73 of the Central Goods and Services Act, 2017 (the Act), alleging the claim of excess Input Tax Credit amounting to ₹ 5,67,237/- each under CGST Act and SGST Act. Following the confirmation of

the demand, interest, and penalty by the adjudicating authority, the appellant filed an appeal before the First Appellate Authority. The First Appellate Authority subsequently reduced the total demand to ₹ 1,02,012/- towards tax, ₹ 98,680/- towards interest, and ₹ 10,202/- towards penalty. Aggrieved by this modified order, the appellant preferred the present appeal before the Appellate Tribunal. The Registry issued a defect notice to the appellant asserting that they had not made the statutory pre-deposit and had failed to pay the required court fees, specifically noting a payment of only ₹ 3,000/- against a minimum requirement of ₹ 5,000/- under Rule 110(5).

Petitioner's submissions

The learned Counsel for the appellant contended that all defects except the statutory pre-deposit and court fees had been rectified. It was argued that against the original demand of ₹ 11,34,474/- towards tax, ₹ 2,52,878/- towards interest, and ₹ 56,724/- towards penalty, the appellant had already made a pre-deposit of 10% of the disputed tax, amounting to ₹ 1,13,447/-, during the first appellate proceedings. Referring to Section 112(8) of the Act, the counsel submitted that a taxpayer must pay 100% of the admitted tax and a sum equal to ten per cent of the remaining amount of tax in dispute. The appellant maintained that since the tax confirmed by the first appellate authority was ₹ 1,02,012/-, the required pre-deposit for the Tribunal appeal was only ₹ 10,201/, which was already duly covered by the initial deposit of ₹ 1,13,447/- reflecting in their Electronic Liability Register. The petitioner relied on the precedent of ***M/s Ashirwad Food Industries vs. Union of India [W.P.(T) No. 469 of 2026]***, where the High Court of Jharkhand held that if a prior deposit at the first appellate stage suffices, the Tribunal should not insist upon any further pre-deposit.

Discussion by and observations of the GSTAT

The Tribunal examined the statutory provisions under Section 107(6) and Section 112(8) of the Act, noting that Section 112 envisages a pre-deposit in addition to the amount paid under sub-section (6) of section 107. The Bench observed that the First Appellate Authority had significantly reduced and modified the original demand to ₹ 1,02,012/-. The Court found merit in the appellant's argument that the initial pre-deposit of ₹ 1,13,447/- made during the first appeal was more than sufficient to cover the ₹ 10,201/- required for the current appeal. The Bench concluded that the rationale used by the Hon'ble High Court in the case of ***M/s Ashirwad Food Industries (supra)***, which stated there would be no question of making any further pre-deposit for instituting an appeal when previous deposits are substantial, squarely applies to the present case.

Decision of GSTAT

The Tribunal held that no further pre-deposit is required to be made under the Section 112 of the Act and ordered accordingly. ■

SERVICE TAX





CA Rajiv Luthia

Keval Shah
Advocate

1 ANIL LINGAPPA PALLE VS. COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, PUNE I 2026 (7) TMI 1002 - CESTAT MUMBAI

Backgrounds and facts of the case

- The appellant filed the said appeal against the Order-in-Appeal dated 31st January, 2025 passed by the Commissioner (Appeals-I), Central Tax, Pune, whereby the O-I-O dated 29th June, 2024 was partly modified, reducing the service tax demand to ₹ 1,52,243/- along with equal penalty and interest on the re-quantified amount.

- The demand arose out of a SCN dated 28th December, 2020 issued for the period FY 2015-16, invoking the extended period of limitation under Section 73(1) of the Finance Act, 1994. The O-I-O was passed Ex-Parte, as the appellant claimed to have had no knowledge of either the SCN or the initiation of adjudication proceedings, and became aware of the same only upon receipt of the O-I-O on 05.07.2024.

- The appellant raised the plea of non-service of the SCN before the Ld. Commissioner (Appeals), which was rejected on the ground that sufficient opportunities were granted to the appellant during the appellate proceedings and hence the issue of non-service, natural justice and limitation would not come in the way of confirming the demand.

Arguments by Appellant Assessee

- The Appellants submitted that the SCN dated 28th December, 2020 was never served upon the appellant, and hence the appellant had no opportunity to reply to the impugned SCN, produce evidence in support of the same, avail the opportunity of personal hearing at the adjudication stage.

- It was submitted that non-service of the SCN is a violation of the principles of natural justice as well as Section 73 of the Finance Act, 1994, and the demand is liable to be set aside on this ground alone.

- Further, it was contested by the Appellants that reasoning of the Ld. Commissioner (Appeals) that subsequent opportunities granted at the appellate stage cured the defect of non-service

was contested as legally unsustainable, since participation at the appellate stage cannot substitute for the statutory adjudication process contemplated under Section 73.

- The appellant placed on record a sworn affidavit dated 24th January, 2026 stating that the SCN was never served and that its existence came to light only upon receipt of the O-I-O on 5th July, 2024.

Arguments by Department

- The Ld. Authorized Representative for the revenue reiterated the findings of the Ld. Commissioner (Appeals).

- Further, in response to the Tribunal's direction, the department produced a communication dated 6th March, 2026 from the Assistant Commissioner (L&T), CGST, Pune-I, which confirmed that the office copy of the SCN did not bear any dispatch number, and hence its dispatch could not be verified.

Decision of the Hon'ble CESTAT Mumbai

- The Hon'ble Tribunal held that service of a SCN is not an empty formality but the very foundation of adjudication proceedings under Section 73 of the Finance Act, 1994. Unless served, the Noticee is deprived of the statutory right to reply, produce evidence, contest the allegations and avail an opportunity of personal hearing.

- The Hon'ble Tribunal noted the deliberate distinction in the language of Section 73, which requires the notice to be "served" and not merely "issued". The burden of proving service rests upon the department, and mere production of a copy of the notice or reliance on its date cannot substitute this mandatory requirement.

- Since the department failed to produce any dispatch register, postal receipt, acknowledgment due, delivery report or other contemporaneous evidence of service, and the appellant's affidavit of non-service remained uncontroverted, the Tribunal accepted that the SCN was never served.

- The Tribunal further held that subsequent opportunities granted during appellate proceedings cannot cure the foundational defect of non-service, as the right to contest allegations commences at the SCN stage itself, and appellate proceedings cannot substitute the statutory adjudication contemplated under Section 73.

- As service of the SCN was not established even within the extended period of limitation, the proceedings were held to be vitiated for violation of the principles of natural justice and the demand was held to be barred by limitation. Consequently, the impugned Order-in-Appeal dated 31.01.2025 was set aside and the appeal was allowed with consequential relief, if any, in accordance with law.

2 M/S KOTAK SECURITIES LIMITED VS. ADDITIONAL DIRECTOR GENERAL (ADJUDICATION), DGGSTI-NEW DELHI 2026 (7) TMI 1191 - CESTAT NEW DELHI

Backgrounds and facts of the case

- The Appellant is engaged in the business of Stock Broking Services providing a trading facility to its clients for trading in equity shares, mutual funds, securities and currency derivatives, and also provides Margin Trading Facility ("MTF") to its clients.

- Clients desirous of trading are required to pay-off their settlement obligations by the settlement date (T+2 days). In case of delay in meeting these obligations, or in maintaining the requisite margin under MTF, the clients are liable to pay Delayed Payment Charges ("DPC") to the Appellant.

- On the basis of intelligence that the Appellant had not discharged service tax on DPCs, a SCN dated 09th March, 2018 was issued alleging that "DPC" is consideration for the Appellant agreeing to tolerate the clients' act of deviating from the agreed obligation to settle payment by the stipulated date, and therefore amounts to a declared service under Section 66E(e) of the Finance Act, 1994.

- The Ld. Adjudicating Authority, vide O-I-O, confirmed the demand of service tax on DPC along with penalty under Section 78 and interest by invoking the extended period of limitation, though cum-tax benefit was allowed and penalties under Sections 76 and 77 were dropped. Hence, the Appellants are before the Hon'ble CESTAT Delhi against the said Order.

Arguments by Appellant Assessee

- The Ld. Senior Counsel for the Appellant submitted that the issue of chargeability of service tax on DPC has been consistently decided in favour of assessee's by various Benches of the Tribunal, holding that DPC is not includible in the taxable value and does not constitute a declared service under Section 66E(e), relying on a catena of decisions including Globe Capital Market Limited, India Infoline Limited, Religare Securities Limited, SMC Global Securities Ltd., Balajee Loha Ltd., Shriram Insight Share Brokers Ltd., South Eastern Coalfields Ltd. and K.N. Food Industries Pvt. Ltd.

- Further, the Appellants places reliance on contractual clauses of the agreement, including the terms and conditions and the rights and obligations of the beneficial owner and depository participants as prescribed by SEBI, to demonstrate that DPC is compensatory in nature and not consideration for any service.

Arguments by the Department

- The Ld. Authorised Representative for the Revenue opposed the appeal, submitting that by choosing not to exercise its legal right to square off or liquidate a defaulting client's portfolio, the Appellant renders a distinct economic service of tolerating the client's default, and that DPC is the direct consideration for this voluntary commercial arrangement of tolerating the delay.

Decision of the Hon'ble CESTAT Delhi

- The Hon'ble Tribunal held that the issue of taxability of DPC stands well settled by a catena of decisions, and relied on the decision in RELIGARE SECURITIES LTD. (as followed in INDIA INFOLINE LIMITED and GLOBE CAPITAL MARKET LIMITED), holding that DPC is a penal charge recovered only from clients who delay payment, has nothing to do with the stock-broking service of sale/purchase of securities, and is in fact penal interest compensating the broker for payments already made to the Exchange on behalf of clients.

- The Hon'ble Tribunal noted Circular No. 102/21/2019-GST dated 28th June, 2019, clarifying that levy of additional/penal interest does not fall within entry 5(e) of Schedule II of the CGST Act, and the CBIC FAQ on the Banking, Insurance and Stock Broker Sector, which clarifies that no GST is leviable on interest/delayed payment charges for settlement obligations or margin trading facility, such charges being in the nature of interest on loans/advances.

- The Hon'ble Tribunal also relied on CBEC Circular No. 137/25/2011-ST dated 03rd August, 2011, which clarifies that delayed payment charges received by stock brokers are not includible in taxable value, being penal charges for delay in payment and not charges for providing taxable services.

- Holding that the Department has consistently recognised, through circulars under both the service tax and GST regimes, that DPC is not consideration for taxable services, the Tribunal held that DPC is not taxable as a declared service under Section 66E(e) of the Finance Act, 1994.

- Consequently, the impugned order confirming the demand of service tax on DPC was set aside and the appeal was allowed.

3 SHRI BHALANG SINGH PHANBUH VS. COMMISSIONER OF CGST & CENTRAL EXCISE, SHILLONG 2026 (7) TMI 525 - CESTAT KOLKATA

Backgrounds and facts of the case

- A SCN dated 08th November, 2019 was issued to the appellant, based solely on details contained in Form 26AS of the Income Tax Returns, for the period FY 2014-15 to FY 2017-18, invoking the extended period of limitation under Section 73 of the Finance Act, 1994 and demanding service tax of ₹ 6,25,966/-.

- The adjudicating authority confirmed the demand vide O-I-O ("OIO") dated 14th August, 2020, which was passed during the COVID pandemic and was not received by the appellant at the relevant time. The appellant became aware of the OIO only when the CGST authorities passed an order dated 27th September, 2022 attaching its bank account for alleged default in payment of service tax confirmed vide the said OIO.

- The appellant thereafter made repeated efforts to obtain a copy of the OIO from the jurisdictional authorities vide letters dated 25th November, 2022 and 4th January, 2023, but received no response.

- On the OIO not being provided/served by the Jurisdictional Authorities, the appellant approached the HON'BLE MEGHALAYA HIGH COURT by way of Writ Petition WP(C) No. 213 of 2023. The High Court, vide order dated 20th July, 2023, declined to entertain the petition but granted liberty to the appellant to approach the proper appellate authority.

- The Appellant then filed RTI application dated 23rd February, 2024 seeking a copy of the OIO, in response to which the Department, vide letter dated 2nd April, 2024, provided/served the copy of OIO No.10 dated 14th August, 2020.

- The Appellant filed an Appeal before Ld. Commissioner (Appeals) on 23rd April, 2024 i.e. withing one month of service/receipt of OIO. However, the Ld. Commissioner (Appeals) dismissed the appeal without going into the merits on the ground that the Appeal has was filed beyond the appealable period of 60 days plus condonable period of 30 days. Hence, aggrieved with the impugned Order, the Appellant approached the HON'BLE CESTAT, KOLKATA.

Arguments by Appellant

- Appellant submitted that if the entire chronology of events – the follow-up letters seeking the OIO, the writ proceedings before the High Court, the RTI application and the Department's response thereto – is read harmoniously, it would show that the appellant made bona fide and continuous efforts to obtain the OIO, and the appeal was in fact filed within one month of its actual receipt.

- The Appellant placed reliance on the decision of the Kolkata Bench of the Tribunal in Shri G. Pradeep Pillai (Service Tax Appeal No. 75532 of 2024), where the Tribunal, after setting aside the order of the Commissioner (Appeals) on limitation and condoning the delay, proceeded to decide the appeal on merits itself, holding that remand was unnecessary where the record was complete.

- Further, the Appellant submitted that the entries in Form 26AS relied upon by the Revenue were recorded under Sections 194C and 194IB of the Income Tax Act, 1961, which reflect amounts paid by the appellant and not amounts received by him; therefore, the quantification of the demand based on these entries was erroneous.

- Appellants further submitted that the impugned SCN was based purely on the basis of FORM 26AS data without independent verification or investigation, and was accordingly time-barred, with the extended period of limitation not being invokable. In support of this contention, the Appellant relied on various Judicial Precedents holding that where a demand is raised solely on the basis of FORM 26AS/Income Tax Return data, without corroborative verification, the demand cannot sustain.

Arguments by the Department

- The Ld. Authorized Representative for the Revenue submitted that the appeal before the Commissioner (Appeals) was filed well beyond the condonable period of 30 days over and above the normal period of 60 days, and accordingly justified the dismissal of the appeal on that ground, while also reiterating the findings of the adjudicating authority.

- He further contested that Form 26AS clearly established that the appellant

had received amounts from HPCL, ABC India Ltd. and others, which the Revenue had correctly treated as consideration received for services provided, thereby justifying confirmation of the demand.

- He further added the Appellant was called upon to furnish details of Balance Sheet and Profit & Loss Account, and that it was only upon verification of these documents that the Department issued the notice – thereby justifying the demand for the extended period as well.

Decision of the Hon'ble CESTAT Delhi

- On the question of limitation for filing the appeal before the Commissioner (Appeals), the Hon'ble Tribunal held that reading the appellant's follow-up letters, the High Court proceedings, the RTI application and the Department's response harmoniously, the appellant had made all efforts to obtain a copy of the OIO, and there would have been no need to approach the High Court had the OIO already been received. Since the appeal was filed within one month of actual receipt of the OIO on 2nd April, 2024, it was held to have been filed within the permissible period, and the order of the Commissioner (Appeals) dismissing the appeal on limitation was set aside.

- Taking up the appeal on merits with the consent of both sides, the Hon'ble Tribunal examined the Form 26AS entries under Section 194C of the Income Tax Act (applicable to payments made to contractors/sub-contractors) and found, on perusal of the actual Form 26AS, that these entries in fact represented amounts credited to/received by the appellant, and not amounts paid by him as contended; the appellant accordingly had no case on merits in respect of these entries.

- In respect of the entries under Section 194IB (applicable to TDS on rent), the Tribunal noted that these related to premises let out by the appellant to AMRIT HATCHERIES PVT. LTD. and HPCL; since no evidence was placed on record to substantiate the appellant's claim of exemption on the ground that the premises were leased for poultry/dairy activities, no proper defence was made out by the appellant on this count either.

- On the question of limitation for the demand itself, the Tribunal held that the SCN was issued purely on the basis of Form 26AS data, without any further enquiry into the nature of services rendered, and noted the unexplained delay of about three years between an earlier query raised on the appellant in 2016 and the eventual issuance of the SCN in 2019.

- Hon'ble Tribunal relied on various Judicial precedents, including Homeopathic Medical Publishers, Tabassum Enterprises, Rishu Enterprise, Quest Engineers & Consultant Pvt. Ltd. and Nimeshbhai Gunvantbhai Patel, and held that a service tax demand raised solely on the basis of Form 26AS/Income Tax Return data, without corroborative evidence establishing taxable services, is not legally sustainable, and that the extended period of limitation under Section 73 was accordingly not invokable.

- Consequently, the confirmed demand was set aside on the ground of limitation, and the appeal was allowed with consequential relief, if any, in accordance with law.

■

CASE LAW UPDATE



CS Makarand Joshi

IBC

M/S EXTOL INDUSTRIES LIMITED VS. ABHINAV BHATNAGAR AND ORS

In the matter of Ms. Teena Saraswat Pandey, Resolution Professional of *M/s Extol Industries Limited vs. Abhinav Bhatnagar and Ors* – in an order passed by the National Company Law Tribunal dated 2 June 2026

- The Corporate Insolvency Resolution Process (CIRP) was initiated against M/s Extol Industries Limited - the Corporate Debtor (CD) by Bank of Baroda - the Financial Creditor (FC).

- Due to the continuous default in repayment of the financial debt, the FC initiated corporate insolvency resolution proceedings by filing an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) before the National Company Law Tribunal (NCLT), Indore Bench.

- NCLT admitted the application petition vide its order dated 24 March 2025. In the same order, Ms. Teena Saraswat Pandey was appointed as the Interim Resolution Professional (IRP) and later as the Resolution Professional (RP) during the first meeting of the Committee of Creditors (CoC) held on 24 March 2025.

- Following the commencement of CIRP, the RP requested complete financial, operational, and statutory records from the Suspended Management/Directors (Respondents No. 1 to 3) in order to carry out statutory obligations, including the preparation of the Information Memorandum (IM). Despite multiple emails, reminders, and a personal visit to Bhopal on 31 March 2025, the Respondents failed to provide essential records.

- Owing to continuous non-cooperation, the RP filed an Interlocutory Application under Sections 19(2) and 19(3) of the IBC. The primary missing records identified by the RP included:

  1. Signed and Board-approved Audited Financial Statements for FY 2022-23 and FY 2023-24.

  2. A detailed itemized asset register with acquisition dates, cost,

improvements, expected useful life, and depreciated value.

3. A segregated list of creditors and debtors containing complete names, addresses, and amount details.

4. A Provisional Financial Statement as of the insolvency commencement date (24 March 2025).

- The NCLT, vide order dated 24 September 2025, directed the RP to submit an affidavit listing the outstanding items (submitted on 14 October 2025), and directed the Respondents to file their reply affidavit.

Arguments of the Appellant

- Submitting answers such as *"Kindly download from ROC website"*, *"Not Applicable"*, or *"Kindly refer NCLT filings"* does not meet the positive statutory duty of cooperation mandated under Section 19 of the IBC.

- Filings in XBRL format are merely structured summary regulatory representations and do not replace legally binding, signed Audited Financial Statements under Sections 129 and 134 of the Companies Act, 2013 (the Act). XBRL files lack complete Notes to Accounts, accounting policies, auditor qualifications, narrative contingent liabilities, and cash-flow assumptions essential for the IM.

- Classification of the CD as an NPA or a non-operational entity does not extinguish its legal obligation under the Act to maintain proper financial records and books of accounts annually. Shifting responsibility to the FC or public portals is an evasion of statutory duty.

- Although an IM was compiled using publicly available Registrar of Companies (ROC) records and creditor claims, missing key asset, liability, creditor, and debtor details hinders complete verification and exposes any potential resolution applicant to material post-resolution risks.

Arguments of the Respondents

- Respondent No. 1 was the sole person managing affairs prior to CIRP, while Respondents No. 2 & 3 had no active involvement or access to financial/ operational records.

- Respondent No. 1 provided all available login credentials (GST, Income Tax, TAN, TDS, MCA) and handed over physical possession of the registered office, factory premises, and symbolic possession of the single wind turbine asset located at Ratlam.

- The CD had been non-operational/ classified as a Non-Performing Asset (NPA) since 2016/2017, resulting in limited operational data. Furthermore, certain physical records maintained at the factory were lost to theft, for which First Information Reports (FIR dated 12 October 2025) were registered.

- Downloads in Extensible Business Reporting Language (XBRL) format from the MCA portal constitute the complete financial record; no separate, detailed balance sheets with sub-headers exist beyond what was shared via email on 2 December 2025.

- Form-G was issued twice, an IM was prepared and circulated, a resolution plan was evaluated by the CoC (rejected on commercial considerations), and

a second round of EOI was invited—proving that adequate information was available to progress the CIRP without deliberate non-cooperation.

Held

- It was noted that the Respondents failed to fully discharge their mandatory obligations under Section 19(1) of the IBC, rendering responses that were partial and evasive.
- XBRL summary downloads do not substitute for complete, signed, and board-approved financial statements with Notes to Accounts and schedules as mandated under Sections 129 and 134 of the Act.
- NPA or dormant status does not absolve a company of its statutory duty to maintain books of accounts. A prior failure to prepare books or provisional balance sheets cannot be used as a shield to frustrate the CIRP.
- Generic figures in balance sheets or referencing public portals do not satisfy the requirement for itemized, segregated lists of creditors/debtors (with addresses and amounts) and detailed asset registers (with acquisition dates and depreciated values).
- The argument that CIRP has progressed is not a defence against non-cooperation under Section 19 of the IBC.
- The Respondents (collectively and individually) were directed to furnish all required documents and information to the RP within 30 days of the order. Failure to comply within the timeframe gives the RP liberty to file a fresh application to initiate non-compliance proceedings against defaulting directors under the law.

Companies Act

N.S.J.L. NIDHI LTD. & ORS. VS. REGIONAL DIRECTOR (WESTERN REGION), MINISTRY OF CORPORATE AFFAIRS

In the matter of *N.S.J.L. Nidhi Ltd. & Ors. vs. Regional Director (Western Region), Ministry of Corporate Affairs. Bombay High Court Judgment dated 27 April 2026*

Facts of the Case

- The writ petition was filed by N.S.J.L. Nidhi Ltd. and its directors (hereinafter called as petitioners) challenging the order of the Adjudicating Officer (ROC) under the Companies Act, 2013 (the Act) imposing an aggregate penalty of ₹ 64 lakh for alleged non-compliance with Section 39(4) read with Section 39(5) of the Act and Rule 12(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (the Rules).
- The alleged default adjudicated under the order of ROC, related to sixteen Returns of Allotment (Form PAS-3) filed by the petitioner company between 10 February 2019 and 26 January 2021.
- While the PAS-3forms were filed within time, the list of allottees attached to the forms were uploaded without a separate

certification by the signatory of Form PAS-3 as required under Rule 12(2).

- Rule 12(2) requires that the list of allottees attached with Form PAS-3 should be certified by the signatory of the Form as being complete and correct as per the records of the company. The Adjudicating Officer treated the absence of such separate certification as a continuing default attracting penalty under Section 39(5) of the Act.

- The ROC was of the view that the penalty prescribed under Section 39(5) was mandatory. Since the default in each return had continued for more than 100 days, the maximum statutory cap of ₹ 1 lakh per default was imposed.

- As there were 16 defaults and the company had three directors, the penalty was levied separately on the company and each director, resulting in an aggregate penalty of ₹ 64 lakh (16 × ₹ 1 lakh × 4 noticees).

Arguments by the Petitioners

- The petitioners contended that Form PAS-3 itself contains an affirmation clause whereby the authorised signatory certifies that all attachments are true, correct and complete and specifically declares that the list of allottees is correct and complete as per the company's records. Therefore, there was substantial compliance with Rule 12(2).

- It was argued that the Rules do not prescribe any separate manner in which the attachment (list of allottees) is to be certified. Since the signatory had already verified the entire form and its attachments, requiring an additional certification on the attachment was merely procedural and its absence ought not to attract penalty.

- The petitioners further submitted that the omission occurred because uploading scanned, separately signed attachments increased the file size beyond the MCA portal's practical limits. The attachments were therefore uploaded electronically without a separate signature, though their correctness was never disputed.

- Even assuming there was a technical breach, the petitioners contended that the Adjudicating Officer wrongly treated Section 39(5) as prescribing a mandatory minimum penalty and failed to exercise discretion by considering the nature of the default and absence of any prejudice.

Arguments by the Respondent

- The respondents submitted that Rule 12(2) expressly requires the list of allottees to be separately certified by the signatory of Form PAS-3. According to them, this requirement is independent of the verification contained in the Form itself and non-compliance constitutes a default under Section 39(4).

- It was argued that once the return was not filed "in the manner prescribed", a penalty under Section 39(5) automatically followed and the Adjudicating Officer had **no discretion** to reduce the amount below the statutory formula of ₹ 1,000 per day subject to a cap of ₹ 1 lakh.

- The respondents also contended that in the absence of any specifically designated "officer in default", **all directors** became liable under Section 2(60)(iii) of the Act. Consequently, the penalty had to be imposed separately on the company as well as each director.

Held

- The Court held that Rule 12(2) consciously requires "dual iteration". While the affirmation clause in Form PAS-3 certifies the correctness of the return and its attachments, Rule 12(2) separately requires the signatory to certify the annexed list of allottees. Accordingly, the certification of the list and then the certification of the return of allotment is a requirement of dual iteration. This has not been done and therefore there is a default. The Court therefore upheld the finding that Section 39(5) was attracted.

- However, the Court held that the breach was technical in nature because the e-form PAS - 3 itself contained an affirmation regarding the correctness of the annexures. It observed that the *affirmation clause does render the breach, in the facts of this case... to be a technical breach. It may dilute the gravity of the breach necessitating a tempered measure of penalty but it cannot efface the breach altogether.*

- The Court extensively relied upon ***SEBI vs. Bhavesh Pabari, (2019) 5 SCC 90***, wherein the Supreme Court held that the identically worded penalty provision under Section 15A of the SEBI Act does not prescribe either a fixed penalty or a mandatory minimum penalty, and that the adjudicating authority must consider aggravating and mitigating circumstances while determining the quantum of penalty. The Court held that this interpretation squarely applied to Section 39(5) of the Act as both provisions are identically worded and relate to filing defaults.

- The Court also relied upon ***Siddharth Chaturvedi vs. SEBI, (2016) 12 SCC 119***, wherein the Supreme Court observed that interpreting the provision as imposing a mandatory fixed penalty irrespective of the facts could render it arbitrary and disproportionate, and emphasised that Section 15A must be harmoniously read with Section 15J so that adjudicatory discretion is preserved.

- Applying these principles, the Court found that the Adjudicating Officer had completely failed to consider the proportionality factors prescribed under Rule 3(12) of the Companies (Adjudication of Penalties) Rules, 2014, despite referring to those Rules in the impugned order. The Court observed that the *Impugned Order invokes Rule 3(12) but shows no application of mind to the factors to be applied for determining the quantum.*

- The Court also criticised the multiplication of penalty by the number of directors without examining their individual role under Section 2(60)(vi). It observed that "*there is not a whisper of any such analysis in the Impugned Order*", and held that merely relying upon Section 2(60)(iii) to impose the full penalty separately upon every director rendered the approach arbitrary.

- Consequently, while refusing to set aside the finding of default, the Court modified the quantum of penalty. It held that the Impugned Order w*as modified by imposing a penalty of ₹ 1 lakh for each violation jointly and severally on the Petitioners i.e. the Company and its directors instead of imposing ₹ 1 lakh separately upon each noticee.*

- The Court concluded that this modification made the penalty *reasonable and constitutionally valid, removing the vice of arbitrariness and non-application of mind.* ■

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 Press Releases

1. Rationalisation of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 – Draft Rules for Comments

The Union Budget 2026-27 announced a comprehensive review of the NDI Rules to create a more contemporary, user-friendly framework for foreign investments, consistent with India's evolving economic priorities.

The RBI has prepared a draft of the rationalized Rules based on the recommendations of the Committee, and in consultation with the Central Government and other stakeholders.

RBI has provided the following salient features of the proposed draft Rules:

a) ***Simplified and principle-based framework:*** Rationalization of provisions, harmonization of definitions and a simplified regulatory architecture to enhance clarity and reduce regulatory complexity.

b) ***Alignment with the FDI Policy:*** Clear demarcation of procedural FEMA provisions from policy and sector-specific requirements, improving regulatory coherence and facilitating timely policy changes.

c) ***Enhanced ease of doing business:*** Streamlined procedures, reduced compliance burden and greater operational flexibility through a transparent and investor-friendly regulatory framework.

d) ***Future-ready regulatory framework:*** Adoption of principle-based, investee-neutral and investor-neutral provisions aligned with evolving business practices, while preserving necessary regulatory safeguards.

The rules have been opened for wider public consultations before being finalised. Comments/feedback on the draft Rules may be submitted to the RBI before 31st August 2026.

Press Release: 2026-2027/726 dated 21 July 2026

(Comments: One of the notable change in the draft rules is the removal of the entire

erstwhile Schedule I (sector specific rules for FDI). It moves the reference to the FDI policy issued by DPIIT for ease of reference and for avoidance of duplication (and often differences) of the sectoral rules.

Overall, the draft rules have completely restructured the NDI Rules 2019 which stakeholders have become accustomed to. The change majorly shifts the reference to other documents outside the rules i.e. proposed Annexure II and Annexure III and therefore it would become prudent to follow amendments to not only the Rules but also other directions which may cause practical compliance burden of tracking two moving documents rather than one consolidated text.)

B. Update through A.P. (DIR Series) Circulars and FAQs

1. Special Rupee Vostro Accounts (SRVAs)

Over the years various circulars have been issued in relation to International Trade Settlement in Indian Rupees (INR). In order to rationalize the instructions, the RBI decided to issue the current consolidated circular and suppress the following circulars:

Annex - List of changes/consolidation undertaken in the present circular dated July 17, 2026

Sl. No.	A.P. (DIR Series) Circular No. 10 dated July 11, 2022	Corresponding para of this circular
1.	Para 1 - Introduction	Subsumed in Para 4.
	Para 2 - Broad framework for cross border transactions;	Subsumed in Para 4.
	Para 3 - Procedure for opening of SRVA and settlement in INR	Subsumed in Para 3 & 4.
2.	Para 5 - Advance against exports Para 6 - Setting-off export receivables Para 7 - Bank Guarantee	Not part of this circular. (AD bank may be guided by extant instructions as amended from time to time.)
3.	Para 8 - Use of surplus balance	Subsumed in Para 4 & 6.
4.	Para 4 - Documentation Para 9 - Reporting Requirement	Subsumed in Para 7.
5.	Para 10 - Approval Process	Superseded vide A.P. (DIR Series) Circular No. 08 dated August 5, 2025.
6.	No mention	New addition: Publication in SRVA Directory on FEDAI Website.

Sl. No.	Circular No. 08 dated November 17, 2023 and Circular No. 11 dated June 11, 2024	Corresponding para of this circular
7.	Opening of additional current account for exporter and importer	Subsumed in Para 4.

Sl. No.	A.P. (DIR Series) Circular No. 08 dated August 05, 2025	Corresponding para of this circular
8.	Opening of SRVA without referring to RBI for approval	Subsumed in Para 3.

Sl. No.	A.P. (DIR Series) Circular No. 14 dated October 03, 2025	Corresponding para of this circular
9.	Investment of surplus in NCDs, bonds and CPs	Subsumed in Para 6.

An SRVA is an additional arrangement for invoicing, payment and settlement of exports and imports in INR. All permissible capital and current account transactions under FEMA may be settled through the SRVA. AD banks maintaining SRVA are also permitted to open

additional current account for exporter/ importer, exclusively for settlement of export/ import transactions.

The FAQs on International Trade Settlement in Indian Rupees (INR) have been renamed as FAQs on Special Rupee Vostro Account (SRVA) on 30th July 2026 and the changes are summarised as follows:

- Different types of investment where balances can be invested has been amended to refer Master Direction - Reserve Bank of India (Non-resident Investment in Debt Instruments) Directions, 2025 for investments in debt instruments.
- Reporting responsibility sits with the AD bank maintaining the SRVA, not the correspondent bank.
- Insertion of new FAQ clarifying permissibility of use of SRVA for merchanting trade transactions (MTT).

The Master Direction – Export of Goods and Services has also been suitably amended to incorporate the changes.

A.P. (DIR Series) Circular No. 19 dated 17th July 2026

FAQs on Special Rupee Vostro Account (SRVA) Updated as on July 30, 2026

Master Direction on Export of Goods and Services Updated as on July 17, 2026

(Comments: The RBI has been active on the SRVA front this year. This circular is essentially a housekeeping/consolidation exercise rather than a fresh liberalisation. The FAQs clarify that no FPI licence is needed for the correspondent bank to invest SRVA surplus in T-bills/G-secs. Additionally, AD banks must periodically update SRVA details held by overseas correspondent banks in FEDAI's SRVA directory.)

C. Issuance of Press Notes by DPIIT

1. Review of FDI policy on E-commerce Sector

Currently, FDI is permitted in B2B e-commerce and marketplace model of e-commerce. While FDI is not permitted in B2C e-commerce and inventory based model of e-commerce.

In order to facilitate greater exports through easier and increased access of global markets by Indian sellers, the DPIIT has decided to liberalise the restrictions on inventory based model of e-commerce in case of export of domestically manufactured and/or produced goods and products.

Accordingly, a new Para 5.2.15.2.5. is proposed to be inserted in the FDI Policy.

DPIIT F. No. P – 15015/9/2025 – FDI Policy dated 23.07.2026

(Comments: The proposed amendment to the FDI policy provides a carve-out only to export of domestically manufactured products and good. It would not be permitted to import goods for the purpose of export under the inventory model of e-commerce. This liberalization will bring opportunities especially to regional and SME manufacturers. The objective of this amendment is to boost exports without liberalizing the domestic inventory based e-commerce.)

■

BEST OF THE REST



Rahul Hakani
Advocate



Niyati Mankad
Advocate

1 POOJA RAMESH SINGH VS. JAMMU AND KASHMIR BANK LTD. & ANR. – JUDGMENT DATED 02 JULY 2026 PASSED IN CIVIL APPEAL NO. 11950 OF 2025 [SUPREME COURT] [2026 INSC 668]

The Supreme Court held that AI-generated fake, non-existent or hallucinated judicial precedents have no place in the adjudicatory process. A judgment founded, even partly, on such unverified material is no decision in the eyes of law, being a subversion of the rule of law, and is liable to be set aside. Courts must adopt zero tolerance towards production, citation or reliance upon AI-generated precedents without verification, while recognising the legitimate use of AI only with human oversight and verification

Facts

The appellant, a suspended director of Essel Infraprojects Ltd. (corporate guarantor), challenged the orders of the NCLT admitting an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 and of the NCLAT affirming the same. Before the Supreme Court, it was pointed out that the NCLT had relied upon several purported judicial precedents, many of which were either non-existent, wrongly cited or contained AI-generated and fabricated extracts. The respondent bank asserted that such authorities had not been cited by its counsel but had been independently relied upon by the Tribunal. Upon verification, the Supreme Court found that the impugned orders were indeed founded upon fake and hallucinated authorities.

Issues

Whether reliance by a court or tribunal on unverified AI-generated, fake or hallucinated judicial precedents vitiates the adjudicatory process, warranting setting aside of the resultant order?

Held

Allowing the appeal, the Supreme Court held that a decision based upon fake or hallucinated AI-generated precedents is no decision in the eyes of law and amounts to a subversion of the rule of law. Declaring zero tolerance towards the production, citation or reliance on such material, the Court observed that it is misconduct for advocates to cite unverified AI-generated precedents and a serious lapse for judges to rely upon

them. While recognising the permissible use of AI with human supervision, the Court directed the Bar Council of India to frame guiding principles and consider disciplinary measures. Consequently, the orders passed under Sections 7 and 14 of the Insolvency and Bankruptcy Code, 2016 by the NCLT and affirmed by the NCLAT were set aside, the Section 7 application was restored for fresh adjudication on merits, and the Court clarified that it had expressed no opinion on the merits of the insolvency dispute. In reaching this conclusion, the Court independently examined the purported precedents relied upon by the NCLT and found that they were either non-existent, wrongly cited or contained fabricated AI-generated passages, rendering the adjudicatory process fundamentally vitiated.

2 TEJAS J. SHAH & AMISHA T. SHAH & ORS. VS. MANTRI TECHNOLOGY CONSTELLATIONS PVT. LTD. (NOW KNOWN AS BUOYANT TECHNOLOGY CONSTELLATIONS PVT. LTD.) & ORS. – JUDGMENT DATED 27 JULY 2026 PASSED IN CIVIL APPEAL NOS. 4289-4290 OF 2025 [SUPREME COURT] [2026 INSC 746]

Insolvency and Bankruptcy Code, 2016 — S. 14 — Moratorium — Scope — Consumer proceedings — Moratorium under S. 14 operates only against the corporate debtor and cannot be enlarged to extend protection to promoters, directors, subsidiaries, landowners or other respondents unless the statute expressly so provides. In the absence of any statutory bar, consumer proceedings may continue against non-corporate debtor respondents, and the Consumer Commission cannot, at the interlocutory stage, foreclose inquiry into their liability merely because CIRP has been initiated against the corporate debtor.

Facts

The appellants, homebuyers in the "Mantri Manyata Energia" project, entered into construction and sale agreements with Respondent No. 1, under which possession was to be delivered by 31-12-2018. Despite substantial payment, possession was not handed over, leading the appellants and other homebuyers to file a consumer complaint before the NCDRC alleging deficiency in service and unfair trade practices against Respondent Nos. 1 to 7. During pendency of the complaint, CIRP was initiated against Respondent No. 1 under Section 9 of the Insolvency and Bankruptcy Code, 2016, and a moratorium under Section 14 came into force. The appellants sought continuation of the complaint against Respondent Nos. 2 to 7, but the NCDRC rejected the applications and adjourned the complaint sine die, holding that the proceedings could not be split.

Issue Involved

Whether, upon commencement of CIRP and imposition of a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 against the corporate debtor, the NCDRC was justified in refusing to continue the consumer complaint against the remaining respondents, who were not protected by the statutory moratorium.

Held

Allowing the appeals in part, the Supreme Court held that the moratorium under Section

14 of the Insolvency and Bankruptcy Code, 2016 is confined to the corporate debtor and cannot be judicially expanded to cover promoters, directors, subsidiaries, landowners or other persons not expressly protected by the statute. Relying upon ***P. Mohanraj vs. Shah Brothers Ispat Pvt. Ltd. [(2021) 6 SC 258], Ansal Crown Heights Flat Buyers Association vs. Ansal Crown Infrabuild Pvt. Ltd. [(2024) 5 SCC 745]***, and ***Saranga Anilkumar Aggarwal vs. Bhavesh Dhirajlal Sheth [2025 INSC 314]***, the Court reiterated that the protective sweep of a moratorium must remain within the statutory limits and should not eclipse remedies under the Consumer Protection Act. The NCDRC erred in prematurely concluding that liability could arise only against the corporate debtor while simultaneously observing that liability was yet to be adjudicated. As no statutory bar existed against Respondent Nos. 2 to 7, the complaint was directed to proceed against them, while proceedings against Respondent No. 1 would continue to remain governed by the moratorium under Section 14 IBC.

3 EMPLOYEES PROVIDENT FUND ORGANISATION VS. RACHNA JHUNJHUNWALA & ANR. – ORDER DATED 28 JUY 2026 PASSED IN CIVIL APPEAL NO(S). 9768/2026 [SUPREME COURT]

Insolvency and Bankruptcy Code, 2016 - Though provident fund dues are excluded from the liquidation estate under Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Code, 2016, liability towards interest under Section 7Q and damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, if not determined and finalized before commencement of CIRP, constitutes a contingent liability - A resolution plan excluding such uncrystallized claims cannot be faulted merely because no provision is made for them, as the "clean slate" principle and adherence to CIRP timelines under the IBC outweigh contingent, undecided claims.

Facts

The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) on 01.05.2023. Pursuant to the public announcement, the Employees' Provident Fund Organisation (EPFO) lodged a claim of ₹ 22,49,956 comprising provident fund dues, interest for delayed payment under Section 7Q and damages for default in payment of contributions under Section 14B of the EPF Act. The Committee of Creditors approved the resolution plan, which provided only ₹ 73,120 towards admitted provident fund dues under Section 7A, while excluding the claims towards interest and damages. The Adjudicating Authority approved the plan and the NCLAT upheld the approval, holding that the claims for interest and damages had not crystallized before commencement of CIRP and could not be adjudicated owing to the moratorium. Aggrieved, the EPFO preferred the present appeal before the Supreme Court.

Issue Involved

Whether interest payable under Section 7Q and damages leviable under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, which had not been determined or finalized prior to commencement of CIRP, are protected from exclusion under Section 36(4)(a)(iii) of

the Insolvency and Bankruptcy Code, 2016, and whether a resolution plan excluding such unadjudicated claims is liable to be rejected.

Held

Dismissing the appeal, the Supreme Court held that although provident fund dues are excluded from the liquidation estate under Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Code, 2016, the employer's liability towards interest under Section 7Q and damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, if not determined and finalized before commencement of CIRP, remains merely a contingent and uncrystallized liability. The Court observed that while the Committee of Creditors may, in its commercial wisdom, provide for a lump sum to meet contingent liabilities, failure to do so does not render the resolution plan invalid, particularly where the admitted provident fund dues have been provided for. Reiterating the "clean slate" principle and the need for certainty in insolvency resolution, the Court relied upon ***Tata Steel Ltd. vs. Varsha (2026 SCC OnLine SC 1349) and Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta, (2020) 8 SCC 531***, to hold that successful resolution applicants cannot be burdened with uncertain or undecided claims after approval of the resolution plan. As the plan violated neither Section 30(2) nor any statutory mandate of the IBC, there was no ground to interfere with its approval, and the appeal was accordingly dismissed.

4 NEELKANTH MANSIONS & INFRASTRUCTURE PRIVATE LIMITED VS. THE DISTRICT DEPUTY REGISTRAR, CO OPERATIVE SOCIETIES, THANE & ORS - JUDGMENT DATED 25 JUNE 2026 PASSED IN WRIT PETITION NO. 3530 OF 2026 [BOMBAY HIGH COURT]

Maharashtra Ownership Flats Act, 1963 — S. 11(3) — Deemed conveyance — Layout development — Utilisation of TDR — Government Resolution dated 22-6-2018, para 2(C)(vi)(2) — Scope — Held, mere utilisation of TDR does not, in every case, restrict deemed conveyance only to the plinth and appurtenant area — Where TDR is distributed across all buildings in the layout and does not create any imbalance in proportionate land entitlement, the Competent Authority must follow the principle of conveyance of land proportionate to the built-up area utilised in each building — Conveyance restricted to plinth and appurtenant area is only a transitional solution to be adopted in rare cases where proportionate division of land becomes impossible due to selective loading of TDR

Facts

The petitioner-developer challenged an order of the Competent Authority granting unilateral deemed conveyance under Section 11(3) of the Maharashtra Ownership Flats Act, 1963 in favour of the respondent housing society comprising twelve row houses. The society sought conveyance of 929.84 sq. mtrs., being its proportionate share of the layout land and recreational area. The developer contended that since substantial TDR had been utilised in the layout, para 2(C)(vi)(2) of the Government Resolution dated 22-6-2018 mandated conveyance only of the plinth and

appurtenant area. The Competent Authority rejected the objection and granted conveyance based on the proportionate built-up area utilised by the society, leading to the present writ petition.

Issues Involved

Whether, in a layout where TDR has been utilised, para 2(C)(vi)(2) of the Government Resolution dated 22-6-2018 imposes an absolute restriction limiting deemed conveyance to the plinth and appurtenant area, or whether the Competent Authority can grant conveyance of land proportionate to the built-up area utilised by a society where TDR has been distributed across all buildings in the layout and does not create any imbalance in land entitlement.

Held

Dismissing the writ petition, the High Court held that Section 11(3) of the Maharashtra Ownership Flats Act, 1963 and para 2(C)(vi) of the Government Resolution dated 22-6-2018 must be interpreted to secure the flat purchasers' legitimate land entitlement. Para 2(C)(vi)(2) is not an absolute prohibition against proportionate land conveyance whenever TDR is utilised; it merely provides a transitional arrangement where selective use of TDR makes proportionate land division impossible. Where TDR is uniformly distributed across all buildings, the Competent Authority should endeavour to convey land proportionate to the built-up area utilised by each building rather than mechanically restricting conveyance to the plinth and appurtenant area. The Court relied upon ***Lok Housing and Construction Ltd. vs. State of Maharashtra [Writ Petition No. 6418 of 2017 decided on 26 March 2025], ACME Enterprises vs. Deputy Registrar, Co-operative Societies [Interim Application No. 4859 of 2025 decided on 4 November 2025]*** and ***Upvan Woodlands CHSL vs. Upvan Developers [Writ Petition No. 11551 of 2025 decided on 15 June 2026]*** to reiterate that societies need not await completion of the entire layout for conveyance; distinguished ***Rai Residency Pvt. Ltd. [Writ Petition No. 8030/2025 decided on 1 October 2025],*** Rashesh Co-operative Housing Society Ltd. and Valentine Properties Pvt. Ltd. as turning on different facts; referred to ***Rashesh Co-operative Housing Society Ltd. [Writ Petition No. 12257/2024 decided on 11 February 2025]*** for the meaning of "appurtenant area"; and applied ***Garment Craft vs. Prakash Chand Goel, (2022) 4 SCC 181,*** holding that no interference under Article 227 of the Constitution was warranted as the Competent Authority had correctly granted the society only its lawful proportionate entitlement.

5 DLF HOMES PANCHKULA PVTLTD VS. SURINDER PAL SINGH & ORS. JUDGMENT DATED JULY 24, 2026 PASSED IN CM(M) 1248/2022, CM APPL. 49631/2022, CM APPL. 20963/2025, CM APPL. 20964/2025 & CM APPL. 29491/2026 [DELHI HIGH COURT]

Consumer Protection Act, 1986 – Ss. 12(1)(c), 13(6) – Consumer Protection Act, 2019 – S. 35(1)(c) – Representative complaint – "Same interest" – Subsequent reconstitution of complainant class – Maintainability. An order granting permission to maintain a representative complaint is not immune from scrutiny where subsequent material developments fundamentally alter the composition of the represented class.

"Sameness of cause of action" is not synonymous with "sameness of interest"; the consumer forum must examine whether the surviving complainants continue to satisfy the statutory requirement of "same interest" and the conditions of impleadment before permitting the representative complaint to proceed. The matter was remitted to the NCDRC for a fresh determination.

Facts

The petitioner-developer challenged, under Article 227 of the Constitution, the NCDRC's order dismissing its application questioning the maintainability of a representative consumer complaint under Section 12(1)(c) of the Consumer Protection Act, 1986. The complaint related to DLF's residential project "The Valley", Panchkula, initially instituted by three allottees alleging delay in possession and allied deficiencies. During the pendency of the proceedings, the original complainants settled their disputes and withdrew, while several other allottees were impleaded subject to specified conditions. The petitioner contended that the subsequently impleaded allottees belonged to distinct categories, including subsequent purchasers, persons who had accepted possession, settlements or compensation, or approached other forums, and therefore no longer constituted a homogeneous class possessing the "same interest".

Issues Involved

1. Whether the representative character of the consumer complaint had attained finality by virtue of the earlier NCDRC and Supreme Court orders, thereby precluding any further challenge to its maintainability?

2. Whether subsequent withdrawal of the original complainants and impleadment of different allottees materially altered the representative class so as to require a fresh examination under Section 12(1)(c)?

3. Whether the NCDRC had correctly applied the statutory requirement of "same interest", as explained by the Supreme Court, while permitting the complaint to continue as a representative proceeding?

Held

Allowing the petition, the High Court held that although an order granting permission under Section 12(1)(c) cannot ordinarily be reopened on account of routine developments, the doctrine of finality or res judicata does not bar examination where subsequent material events fundamentally alter the composition of the represented class. Relying principally upon ***Brigade Enterprises Ltd. vs. Anil Kumar Virmani, (2022) 4 SCC 138***, the Court reiterated that "sameness of cause of action" is distinct from "sameness of interest" and that the latter constitutes the essential statutory foundation of a representative complaint under Section 12(1)(c) (corresponding to Section 35(1)(c) of the 2019 Act). Referring to various judgments on the scope of Article 227, the Court held that the NCDRC failed to undertake the necessary complainant-wise enquiry regarding the surviving complainants' "same interest" and compliance with the impleadment conditions. Accordingly, the impugned order was set aside and the matter remitted to the NCDRC to determine afresh whether the complaint could continue as a representative complaint, a joint complaint, or in any other manner permissible under the Act.

■

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 **July 1, 2026 to July 31, 2026** are being reported as under:

PAST PROGRAMMES

INDIRECT TAXES

16.7.2026
Topic: **Study Circle - Issues in Reverse Charge Mechanism**
Group Leader : CA Ashwin
Chairman : CA Rashmin Vaza

BENGALURU CHAPTER

17.7.2026
Topic: **Study Group - Recent Delhi HC ruling in EY US LLP**
Speaker *:* ***CA K Prasanna***

INTERNATIONAL TAXATION

18.7.2026
Topic: **Online Classroom Sessions on Reporting of Foreign Assets under Schedule FA**

a Foreign Tax Credit - Intricacies and Practical Aspects
Speaker: ***CA Mahesh Nayak***

b Foreign Assets Schedule of ITR - Reporting and Issues
Speaker: ***CA Rutvik Sanghvi***

COMMERCIAL & ALLIED LAWS

23.7.2026
Topic: **Webinar -TC Series E1: Legal aspects to take care of when purchasing Property**
Speaker: ***Adv. Aananya Daniel***

MEMBERS' DEVELOPMENT & OUTREACH

23.7.2026
Topic: **Felicitation Ceremony - New Qualified Professional 2026**
Speakers: ***CA Nilesh Vikamsey & CA Hrudyesh Pankhania***

DIRECT TAXES

28.7.2026
Topic: **Lecture Meeting on Handling Reassessment – A Practical Approach**
Speaker: ***Sr. Adv. Tushar Hemani***

" Do not believe in a thing because
you have read about it in a book.
Do not believe in a thing because
another man has said it was true.
Do not believe in words because
they are hallowed by tradition.
Find out the truth for yourself.
Reason it out. That is realization. "

Dr. APJ Abdul Kalam

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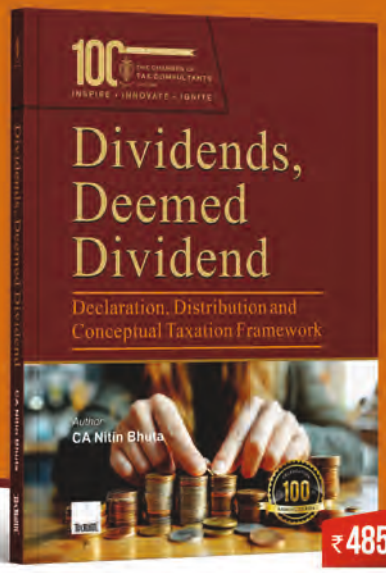

Highlights

The Core

142 pages · 21 chapters 34 pages on Section 2(22)/2(40) alone

~40 provisions mapped. ITA 1961 → ITA 2025
44-point audit checklist

11 Posers 61 judgments · 30 DTAA countries

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- → Section 2(40), ITA 2025
- → Withholding
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- → DTAA & MLI
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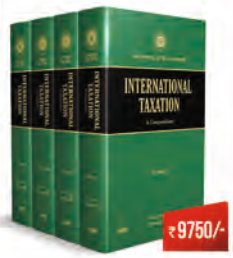

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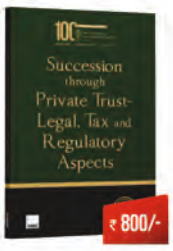

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