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THE CHAMBER'S JOURNAL

CENTENARY SPECIAL ISSUE



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From the President

Dear Members,

It has been just under a month since I took charge as the President of The Chamber of Tax Consultants. (CTC). The past four weeks have been activity-packed. While this may not be evident to all members, I assure you that the CTC Core Team, committee members, Managing Council members and office bearers have been intensely engaged in numerous meetings. Over the last 30 days, we have conducted 7 academic programmes/ lecture meetings and 23 meetings of committees, chapters and office bearers. These meetings have been focused on planning in meticulous detail and drawing up the calendar of events for the unique academic programs for members in the Centenary year. Time spent in planning is time well spent. It is said that failing to plan is planning to fail. Seeing the enthusiasm levels of the committee members and the dynamic chairpersons of the committees, I am sure that we shall have a wonderful, activity-filled year ahead. This Special Issue on Direct Tax is also one more example of the academic feast that is in store for the members in the Centenary Year.

I am pleased to welcome to the Council, members of the young Brigade viz. Sushrut Chitale, Namrata Dedhia, Darshak Shah and Vishal Shah. Hinesh Doshi, Apurva Shah & Keval Shah also took over as Chairmen of committees to bring about the right balance of youth and experience. This reflects the CTC policy of recognising the talent and efforts of the younger generation and providing them with leadership opportunities. This inevitably means that some of the earlier chairpersons have to make way. But that, too, is part of the CTC tradition of ensuring change in leadership of every committee every couple of years. This ensures a constant spirit of innovation and new thought, which drives CTC to higher levels of performance for the benefit of its members. It is this sort of dynamism that has ensured the Chambers' continuous progress over the last Century, and I am sure that with the continued support of the entire membership, we shall continue to scale new heights.

Speaking of embracing fresh thought and innovative ideas, I may mention that this is something that not just the leadership,



CA Jayant Gokhale
President

but every member has to put into practice in their professional evolution. It is only the exposure to innovative ideas and the ability to acquire, process and digest new knowledge, concepts and innovative thought that makes a person truly professional. The acquisition of a qualification like CA or law is only an entry point. To be a truly successful professional, there must be continuous evolution and personal and professional growth. This is what CTC aims to provide to each of its members. In this context, I urge you to watch the interview with Shri Sanjiv Sanyal, member of the Prime Minister's Economic Advisory Council (he is a Rhodes Scholar, a trained economist and a passionate historian and author). His thoughts in regard to the CA and legal profession are something we all need to understand and imbibe. I have had the good fortune of reading Shri Sanyal's books and also listening to his lectures, and have been deeply impressed with his erudition and scholarship. This interview deals with the future of our professions and is a must-watch for any professional. (link to that talk https://www.youtube.com/watch?v=ciDw98j7-q8). Hearing such intellectuals who now hold high office in the present government (others like Mr Jaishankar, Mr Ashwini Vaishnaw) makes me confident that even in these turbulent times of arbitrary tariff wars and economic arm-twisting, India has the leadership, scientific knowledge and economic resources to continue its relentless rise on the global stage. Our professions too need to look to a global role and embrace deregulation and change. In Mr Sanyal's words, we should not concentrate on protecting our local pond, when the real challenge is to sail the high seas.

To facilitate more in-house learning activities, CTC has created a conference room facility at its newly expanded office premises. This conference room can accommodate 40+ participants and is being equipped with state-of-the-art video conferencing equipment. We expect this conference room to be inaugurated within a fortnight. Thereafter, you will see a spate of webcasts, online / hybrid meetings, which will facilitate members' participation in academic programmes.

Even as these plans materialise, our focus on the Next Gen members and students continues. On 2nd August, we commenced our 2nd e-course on Practical Income Tax & Litigation, in collaboration with the Government Law College. Ms Neha Gada, VP CTC, Ms Namrata Dedhia, Chairperson Students Committee of CTC, along with the principal of GLC, Ms Asmita Vaidya, addressed the inaugural session of the course. Mr Justice Bhadang (Retd), (presently President of the ITAT Mumbai) was the Chief Guest for this prestigious event. July 25 also saw interesting academic meetings held online by our Delhi and Hyderabad chapters.

Our committee dealing with members has also been repurposed and is now named "Members Development and Outreach Committee." The change in focus is from increasing membership to facilitation of personal and professional development of our members with knowledge inputs, and also providing an active platform for interaction and development. I am sure you will be hearing more from this committee, which shall focus on the GenNext professionals.

Having shared all this upbeat news, I have to end on a sorrowful note of informing you about the untimely demise of Padmashri CA T N Manoharan. I was fortunate to have shared a close personal friendship with him. He was also a true friend of CTC, ever willing to respond to every request of CTC. In fact, my last conversation with him was just a few months ago, when I had called him to seek his participation in a Centenary Year program. He had assured me that he was always available for the Chamber. Alas, his death has denied us the benefit of his guidance, but I am certain that his exemplary life and approach shall continue to inspire us. Let us all join in praying for his eternal peace.

Regards,

CA Jayant Gokhale
President

From the Editor's Desk

My Brothers and Sisters,

At the outset, let me thank the Chamber, President, CA Jayant Gokhale, the Office Bearers, the Managing Council and the Editorial Board Members for reposing their faith in me once again and enabling me to continue to serve as the Editor of 'The Chamber's Journal' for this landmark centenary year. I feel truly grateful and overwhelmed to have been tasked with this duty in a year in which most of us will live to our fullest, as we may not see a similar milestone in our lives. Serving the Chamber and all of you has probably been the best thing that has happened to me. I am deeply conscious of the responsibility the office of the Editor carries, particularly this year. I seek the blessings of the Almighty, my Gurus, my parents and Best Wishes from all of you.

After a grand celebration to mark the commencement of the centenary year, Jayant and his team have begun work in right earnest to make this year a memorable one for all of us. I wish Jayant and his team the very best in this regard.

We tragically lost one of the finest persons of the CA profession, Padma Shri, Shri T N Manoharan, yesterday. Manoharan Sir had conveyed his blessings to me when I became the Chamber's President in probably one of the most challenging years in this 100 year history, with some very sage words of wisdom. I will always remember the sage wisdom he gave me, with the deepest respect and gratitude. On our behalf (meaning of behalf of each and every one of us), I would like to express heartfelt condolences to his family and pray to the Almighty for 'moksha' for the departed's soul. Om Shanti.

We had introduced the concept of the six special issues of the Journal, in this centenary year, to you readers in the past. The time has now come to unveil the first of these special issues, which is on Direct Taxes. Insightful articles by erudite authors in this issue trace the journey of various parts of the Income-tax Act, 1961 ('the Act') which are fundamental and critical to take us deep into the evolution of the Act (introspection does have its advantages, as we all know) and also to try and gaze into the crystal ball as to what the future also holds. We are grateful to the authors, very eminent and senior tax professionals, who, despite their



Anish M Thacker
Editor

unrelenting professional commitments, have written well-researched, incisive and insightful articles for this issue. Grateful Thanks to CA Pradip Kapasi for his mentorship of this effort, to Chairman, Shri Ameya Kunte and Rohan Umranikar for their help in coming up with the design. The team deserves special praise for having come out with this issue despite some very serious challenges it has faced in this connection. The gratitude and praise, therefore, increase significantly.

As you would be aware, the special issues will have a look and feel different from the issues that we have come out to date, and we also have a new team, OakBridge, for publishing this journal. We are thrilled to have Shreesh Chandra and his team on board and welcome them to the Chamber's family. We are sure you all will like their work and will give us the right feedback thereon.

You will also see a change in the way the journal issues are numbered. This present issue of the Journal is numbered '2025-26: 51-05-CTCJ'. Here, '2025-26' is the financial year in which it is published, '51' is the 51st year of the Journal's publication (you may recall that the Journal completed 50 years in March 2025); '05' is the fifth issue of the financial year in question, and 'CTCJ' is CTC Journal. The Journal Committee and the Editorial board were ad idem in their view that this format of numbering will make the articles easily searchable, facilitate adding citations and simplify the referencing for the readers.

I was scrolling on the internet to find some nice quotes on income tax to embellish this editorial, as I usually do at the start of every message, but curiously, after a point, the quotes I found were not, in my opinion, apt for what I wanted to convey. I have therefore tried to convey the message I want to, in my own words, without adding weight by way of a quote, below.

Tax, in my view, is the lifeblood of a developing economy like ours and is an essential element in the balancing of the nation's budget. Also, it is an important tool to encourage hard work and enterprise (contrary to some of the sarcastic quotes we come across). A well-conceived scheme of taxation will make an economy leapfrog many notches.

Equally important is the administration of the tax law, and in my view, this aspect needs greater focus nowadays. The taxpayer experience, not only in terms of the speed at which his refund is issued post processing his tax return, but the overall experience in terms of appeal effects, rectifications, solving of grievances and indeed his experience in scrutiny assessments and first appeal proceedings, needs significant improvement and therefore attention. The role of a tax officer, i.e. to assess the correct amount of income in the most judicious manner and his attitude of service to the taxpayer, a partner in nation building, needs to be lived every moment by those in the field. A tax officer wielding power, just because he can, serves no useful purpose. It is when that power is used for the greater common good that, can say we have said to have arrived at the stage of a fair and just tax administration.

As the famous economist, Thomas Piketty, has said (on this second part):

"Taxation is neither good nor bad in itself. Everything depends on how taxes are collected and what they are used for."

Hopefully, as we are now on the cusp of a new and 'simplified' Income Tax Act, we wish that the endeavour to 'simplify' the thinking at the implementation level gains equal momentum.

Jai Hind

Anish M Thacker
Editor

Centenary Celebration of The Chamber of Tax Consultants





Justice Dr DY Chandrachud inaugurating the Centenary Celebration



Launching the new website



Justice Dr DY Chandrachud alongside Past President of the Chamber of Tax Consultants.



Justice Dr DY Chandrachud with MC Members during the event.

Justice, Taxation, and Technology: A Centenary Address for India's Future

As the Chamber of Tax Consultants celebrated a century of service and excellence, former Chief Justice of India, Justice Dr D Y Chandrachud, delivered a landmark address that was both deeply reflective and boldly forward-looking. Speaking to an audience of legal and financial professionals, he touched upon the evolution of India's taxation framework, the transformative impact of digital technology on the judiciary and professional services, and the urgent need to align legal infrastructure with India's economic ambitions.

Reproduced below is the full text of his speech—a rich narrative that offers insight into how justice, technology, and economic policy must evolve in tandem to meet the aspirations of a rising India.



Justice Dr D Y Chandrachud

Good evening Mr Justice Chandrakant Bhadang, the President of the Income Tax Appellate Tribunal, and my own distinguished former colleague at the High Court adjudication in Bombay, Mr Soli Dastur, Mr PC Joshi, Dr K Shivram and other distinguished past presidents of the Chamber of Tax Consultants. Mr Vijay Bhatt, President of the CTC; Mr Jayant Gokhale, President Elect; Ms Neha Gada, Vice President; Mr Vipul Chokshi, Chairperson of the Centenary Committee.

Esteemed members of the Chamber of Tax Consultants, distinguished colleagues from the legal and accounting professions, and all the guests present here.

It gives me great pleasure to join you for the centenary celebration of the Chamber of Tax Consultants—an institution which has been a bedrock of fiscal wisdom and professional integrity.

The institution has evolved over a period of time. What was initially a Chamber of Income Tax Consultants, having over a period of time assumed the broad avatar of the Chamber of Tax Consultants, incorporating not just direct

tax, indirect tax and now complex federal and international tax arrangements, including the GST, which has significant implications for the federal structure of the country.

The Chamber's long journey has witnessed India's economic and legal evolution. The Chamber is also in a state of flux, witnessing India's social evolution in terms of gender and inclusion. I was delighted to learn of the fact that Neha Gada is the first Vice President of the Chamber of Tax Consultants. Looking at the number of women chartered accountants and lawyers who are now a part of our profession, I'm sure that my successors—those who will follow me in future such events of the CTC—will say one day that we also have male members in the CTC.

Throughout this journey of the Chamber of Tax Consultants, it has led by example on how to navigate state power and citizen obligations to achieve commercial prosperity. A centenary celebration is not only an occasion to honor the past but also an opportunity to reflect on the future. In the spirit of reflection and progress, I want to speak about three emerging concerns facing us today.

New laws must represent a conscious evolution of thought to address the realities of the 21st century and of emerging India.

First, I shall speak about the benefits of replacing our current taxation statutes.

Second, I would wish to speak on the influence which digital technology has on professionals and their services and what the emerging economic and technological environment means to the future of the legal and accountancy professions.

And third, I will speak on the imperative of aligning our legal and judicial framework and systems with India's ambition to emerge as a global economic powerhouse.

Income Tax Bill of 2025

A new income tax bill was placed before Parliament to undergo scrutiny by the Parliamentary Select Committee. The old Income Tax Act of 1961 had about 819 sections, including alphanumeric sections like sections 80CCD and 115JB. These were the bread and butter of the prosperity of legal and tax professionals. These sections were divided into 47 chapters.

By contrast, the new Bill reduced the number of sections from 819 to 536. It removed 1200 provisos and 900 explanations. Naturally, the number of chapters went down from 47 to just 23. But the number of tables has gone up from 18 to 57, and the number of formulae from 6 to 46.

To its credit, the new Bill has excelled in removing redundancies and simplifying the language. How many trees have been cut in devoting paper to understanding whether a proviso to a section is an exception or an explanation! The wordcount of the new bill is nearly half of the old Act. This process of simplification echoes the recent overhaul of criminal legislation, which replaced the Indian Evidence Act with the Bharatiya Sakshya Adhiniyam, the Indian Penal Code with the Bharatiya Nyaya Sanhita, and the Code of Criminal Procedure with the Bharatiya Nagarik Suraksha Sanhita.

While these new laws achieve simplicity, many of them have made few substantive changes. The few changes they do bring could have also been achieved, someone will say, by amendments to the old Acts. But there was something more fundamental in the process. While new enactments retain the skeletal framework and core principles of their predecessors, they should not be mere replicas.

New laws must represent a conscious evolution

of thought to address the realities of the 21st century and of emerging India. The Income Tax Act of 1961 was enacted to serve the structural design of a tightly regulated state-controlled economic order. With economic liberalization in the 1990s, the statute witnessed the incorporation of provisions which were intended to spur growth in certain segments considered beneficial to the economy, be it export or later, electricity, greenfield projects or green energy.

But the fundamentals remain the same, with some tweaks. The state is perceived as the permissive creator of economic energy and economic enterprise. The law today must yield to present economic reality, which is that the onward evolution of our nation is conditioned on private enterprise being the source of innovation, the generator of capital, the source of leadership, and ultimately the provider of productivity and employment.

This evolution exposes the fundamental tension between legal stability on the one hand and the appetite for economic progress on the other. Think of it this way: the Income Tax Act 1961 has undergone hundreds of amendments. Its complexity has haunted taxpayers and lawyers alike. But this complexity of the law has led to periodic court interventions to clarify ambiguities.

The tussle between judicial pronouncement and legislative amendment has produced an unwelcome synthesis of uncertainty and ambiguity. The burgeoning membership of the Chamber of Tax Consultants may indicate that tax law is fertilizer for professional prosperity. Today, the 1961 Act, despite its complex structure, is abundant with case law which interprets it exhaustively.

The trade-off which Parliament is considering is whether it should enact a new statute to simplify the tax code or retain the nuanced body of case law which has evolved under the 1961 Act. The task before the Parliamentary Committee, which was constituted to scrutinize the Income Tax Bill of 2025, was to ensure that the fiscal statute emerges not simply as a new collection of old provisions, but as a demonstrably superior instrument of law.

Will the new law achieve clear language, fairer application and more efficient administration of tax? After all, tax laws are not just a means to collect revenue, but also a significant policy instrument to incentivize entrepreneurial and creative potential in a market-based economy.

Look at what is happening in the US, where you have the big, bold and beautiful bill which has just passed the House in the US. At a certain level it reflects an economic reform, but at a more fundamental level it marks a distinct policy change. So let's not be befuddled about this. Tax law in the colonial times may have been regarded by the British as a source of revenue collection, but today tax law transgresses all that and it's a powerful instrument of bringing about economic and social change.

Tax laws are not just a means to collect revenue, but also a significant policy instrument to incentivize entrepreneurial and creative potential in a market-based economy.

The new bill must therefore avoid reawakening the specter of retrospective uncertainty which the *Vodafone* case (of which I was a part) exemplified, or creating fresh ambiguities which spawn another generation of protracted and costly litigation. The health of India's economy is intrinsically linked to a tax regime which is perceived by taxpayers and investors as fair, transparent, predictable and efficient.

A regime viewed as capricious or excessively adversarial undermines its own revenue goals by discouraging compliance and investment. Think of the License Raj era, where excessive litigation terrorized tax-paying businesses. Some

of our most exceptional lawyers, like Shri Nani Palkhivala, came from a tax law practice because they were trained under the rigorous hardship of the License Raj tax laws.

A generation of citizens of my genre would listen to Nani's budget speeches year on year at the Brabourne stadium. His eloquence and amazing memory were simply mind-boggling. But his speeches reflected the courage of a fearless crusader who spoke truth to power. His anguish over all, what was wrong in the regulatory sphere of the 1970s and 1980s, is valuable to us for another reason.

The fundamental truth is that economics and finance guide the prosperity of the nation. You, as tax professionals, have that duty to the nation which goes beyond the success of your individual client before the CIT appeals, the ITAT, or, for that matter, in guiding the High Court in the nuanced art of following or distinguishing precedents.

Impact of the Digital Revolution on Professionals and their Services

The drive for clear laws, fair procedures, and efficient administration is stronger than ever thanks to digital technology. The digital revolution has opened up information to citizens. We, as professionals and the administrators of laws, no longer have a monopoly over the search for truth.

For Digital India to succeed, we must deliver professional services quickly and effectively through digital means. Strong digital institutions, especially in law and accountancy, are not extras—they are essential to how we operate. When fiscal disputes pile up, it's not just about the numbers. It affects real people and real businesses. Economic activity slows down, businesses are left waiting, and investments are delayed or lost.

This uncertainty erodes public trust and holds back our growth. The large number of unresolved fiscal disputes is a major barrier to unlocking our economic potential and achieving growth for everyone. But technology, if used wisely and fairly, can help us overcome these challenges. This shift to digital technology promises to drastically reduce the crippling costs associated with the pursuit of justice—and tax justice is no exception.

For example, the adoption of virtual hearings during the COVID-19 pandemic yielded savings of over 1200 crores of rupees annually. Imagine the good that can be achieved towards reducing litigation by a quantum of 1200 crores—enhancing judicial infrastructure, expanding legal aid services, training judicial officers and staff, and court staff and lawyers.

The Bharatiya Sakshya Adhiniyam's explicit recognition of electronic records and digital evidence will bring more efficient, transparent and reliable methods of presenting evidence—from complex financial transactions immutably recorded on blockchain ledgers, to the intricate and voluminous data trails generated by e-commerce platforms, digital marketplaces, and social media interactions. We are in the midst of a transformative era.

Online dispute resolution or ODR has already proven that it can quickly solve most consumer complaints, landlord-tenant issues, and small business disputes in just days or weeks instead of years. This success shows us a powerful model that we should urgently use for tax disputes as well.

Imagine if we had special ODR systems for simple tax issues like TDS mismatches, small mistakes in returns or low-value refund claims. Today, all these travel up right up to the Supreme Court. And I have dealt with all of them in the midst of dealing with some of the most seminal constitutional issues.

But taking these small disputes out of the legal system would free up our tribunals and courts to focus on the big, complex cases that really need their attention. By adopting ODR for straightforward tax matters, we can speed up justice, reduce the burden on our courts, and build a more efficient and trustworthy tax system.

Every problem does not have to be litigated, but we must move from a model where adversarial contexts dominate our tax landscape. If we fail to do so, we will only render our entire system dysfunctional—dysfunctional beginning with the lowest levels of fiscal administration, stretching all the way up to the Supreme Court.

While digital technology brings us closer to a future of greater efficiency and access, it also presents us with serious challenges. One of the biggest issues is the digital divide.

We heard a short while ago that the future of tax practice is traveling beyond large metropolitan areas or the global metropolises like Mumbai or Bangalore. At one time, the Indian cricket team was represented in the largest part by the Ranji cricket team from Mumbai, which reflected India. Mumbai was India. No longer.

Whether it's in athletics, whether it's in cricket, whether it's in hockey or football, whether it's in the bureaucracy, whether it is in the political landscape—the balance of power has shifted to our tier 2 and tier 3 cities.

And let's therefore understand the impact of the digital divide in bringing more and more access to our professionals in the delivery of professional services across the length and breadth of India—particularly as industrialization, particularly as the growth of trade and commerce stretches beyond the large cities into the internal heartland, the rural heartland of India.

In many parts of our country, especially in remote villages, people still do not have reliable Internet facilities. They cannot afford smartphones or data, or lack basic digital skills. For them, joining a virtual court hearing is simply out of reach.

Digitization without social empowerment can create a new kind of justice gap and make existing inequalities even worse.

Artificial intelligence and emerging developments in quantum computing will radically change the tax administration and the profession of accountancy and law. AI algorithms have an unprecedented ability to organize, collate and analyze large volumes of data.

Data computing technologies can locate patterns of behavior, note aberrations in business conduct, and provide details of compliance, which will transform the administration of revenue.

At the same time, any repository of data on such a large pan-India scale has to be ring-fenced from abuse or misuse of data.

Another major concern is the risk of bias in artificial intelligence. If the AI systems we use in courts or government are trained on old data that reflects past prejudices or unfairness, they can end up repeating and even worsening those same problems of the past.

For example, an AI tool might wrongly flag cases from certain financial frameworks as high risk just because of flawed historical data which was generated from an outmoded regulatory framework of the past. This could lead to unfair decisions about which case gets extra scrutiny or how cases are prioritized—not based on facts, but on old biases.

As a vocal champion of digitization and simplification of judicial work, I must nonetheless emphasize the importance of human expertise in adjudicating cases. True justice requires careful judgment that only people—real people and not robots—can bring.

Decisions of individual cases, even in taxation arenas, turn on nuances of legal interpretation and conduct of business, all of which cannot be reduced to the application of algorithms.

All these virtues are, of course, compatible with digitization. But the rapid advancement and increasing accessibility of deep fake technology and sophisticated cyber forgery techniques present unprecedented challenges to the very notion of evidentiary authenticity in the digital age.

This means that all of us need new skills, better technology, and possibly new laws to protect the integrity of our legal system.

Imitation cyber scams have become so rampant that the government has imposed a mandatory public service announcement warning against such scams before every phone call. I remember that as Chief Justice of India, I was shocked to discover that an industrialist had been duped into paying crores of rupees by a scammer pretending to be me over a video call.

To imagine that my name was used to rob someone and disrupt their peace made a deep mark in my mind.

Legal professionals, especially those here today, have a crucial role to play. You stand at the crossroads of law and business, and technology.

Modern business requires efficient outcomes which are arrived at with speed and objectivity. The revenue end of tax administration has adopted technology because the revenue end has capital that individual practitioners don't possess.

The incorporation of technology will increase with incredible speed as smart government plugs loopholes in compliance. Chartered accountants and lawyers—tax lawyers who provide tax-related services—do not have the choice to be left behind.

> The true potential of AI lies not in replacement, but in liberation...

Your job is not just to adapt, but to lead with integrity and wisdom.

As we navigate these changes, you must become pioneers of using new digital tools for research, case prediction, compliance and secure record keeping. But you must also be ethical guardians, making sure that algorithms used in courts or tax offices are fair, transparent and free from bias.

The role of a professional watchdog will have to be discharged by professional bodies like yours. Institutions in the private sector must leverage investment from private enterprise to watch over the manner in which data sets are deployed in tax administration.

It's also your duty to guide your clients, especially small businesses, individual taxpayers, through the maze of digital rules. And most importantly, your experience should help shape the very technology that is changing our legal landscape.

Work closely with lawmakers, with judges and developers of intellectual property to ensure that these new systems are based on principles of essence, equity, fairness and justice for all.

Technology will not replace the wisdom, judgment and ethical standards which define our professions. AI is a tool, not a substitute for the lawyer or the chartered accountant. Your role remains as vital as ever.

The true potential of AI lies not in replacement, but in liberation—freeing the skilled professional from the burdensome drudgery of routine and repetitive tasks. AI can take over repetitive tasks like reviewing documents, checking compliance, sorting out data, or drafting standard forms.

This gives you skilled professionals more time to focus on what truly matters: offering expert advice, solving complex problems, interpreting tricky legal and financial issues, and building strong, trusting relationships with your clients.

This digital transformation is not something to fear or to simply accept. It's a chance for us to shape the future.

Aligning India's Judicial Infrastructure with Our Economic Ambitions

India's dream of becoming a global economic powerhouse, a 10 trillion-dollar economy and a leader in sustainable growth depends on the strength and reliability of our legal and judicial systems.

Our laws and courts must be efficient, fair and predictable if we want to attract investment and create opportunities for all. The efficiency with which tax disputes are resolved affects financial bottom lines for investors and impacts shareholder value.

The world is watching India. But to meet our potential, our rules, infrastructure and dispute resolution forums must not just work—they must be competitive enough to keep pace with other emerging economies across the global South. We need to match or surpass global standards for speed, fairness and transparency.

Investors, both from India and around the world, want certainty. They want to know that contracts will be enforced quickly, properly, and innovation will be protected, and that disputes will be settled fairly and without delay.

Enforcing a business contract in India can still take almost four years, which is much longer than in many other countries. Long-running tax disputes can stretch on for decades, creating uncertainty and discouraging investment. Litigation cannot be the first option for good governance.

In July 2024, the Supreme Court of India organized the first Lok Adalat to dispose of cases where amicable solutions were possible. We have been speaking about protracted tax cases lying in the court docket, but the Lok Adalat made us confront the magnitude of these petty tax cases, which had been pending for over two decades at the Supreme Court.

Hundreds of dormant tax cases came before us during the Lok Adalat, and in several of them, all we had to do was to declare that the claim amount was below the statutory threshold required for the Income Tax Administration to litigate.

But those cases remained pending for years and years and years—not just adding to the docket, but affecting the very credibility of our judicial system.

Our legal and regulatory systems must move beyond just maximizing short-term revenue. Instead, we should focus on creating a business environment which supports job creation, manufacturing and innovation, especially for your young people.

New industries such as green technology and digital services to support a $10 trillion economy—we must strengthen our commercial courts and tribunals. These should be staffed by experts in areas like finance, international trade, intellectual property, corporate insolvency, competition law and new technologies such as AI and data privacy.

Litigation cannot be the first option for good governance.

These specialized courts should resolve cases quickly, ideally within 180 days, so that justice is not delayed.

At the same time, we need world-class arbitration and mediation centres in India, matching the standards of global legal institutions. This will help us resolve complex international business disputes efficiently and earn global respect.

This can happen only when we bring true professionalization to tax administration.

The dichotomy between the private and the public sectors must end, and that dichotomy must give way to a realization that one impacts the other. What is public begins with the private, and what is private, when aggregated together, becomes a matter for the public.

We need clear regulations, especially in rapidly changing fields like digital assets, green finance, artificial intelligence, advanced manufacturing and personalized medicine. By using regulatory sandboxes—safe spaces for testing new ideas under supervision—we can encourage innovation while protecting consumers and managing risk.

Crucially, the destabilizing goals of retrospective tax amendment must be permanently banished. The Income Tax Bill 2025 and indeed all future fiscal legislation must embody crystal clear drafting and minimize grey areas.

Many expert committees have strongly recommended that we simplify our tax codes, make tax administration more predictable, build a culture of trust with taxpayers, and use technology to make interactions with the tax departments smooth and easy.

This centenary is not just a celebration of 100 years of survival. It is a call to action and a challenge for the future.

These ideas deserve our full attention and should be included in our laws and policies.

Institutions like the Chamber of Tax Consultants, which is celebrating its entry into the hundredth year today, play a much bigger role than just helping with compliance or representing clients in disputes.

You hold deep knowledge, experience and high ethical standards. You are the bridge between government policies and their practical implementation. With your expertise and credibility comes a great responsibility.

You must keep pushing for reform that balances the country's need for revenue with the need to support a vibrant, innovative and job-creating economy. Your work helps businesses understand and follow the rules—not out of fear, but because the system is clear and fair. By doing this, you play a vital role in keeping our economy healthy and strong.

This centenary is not just a celebration of 100 years of survival. It is a call to action and a challenge for the future.

Today we stand at a unique moment in history. We are seeing major changes in our laws, a digital revolution in how justice is delivered, and bold economic goals for our nation. Together, these give us a once-in-a-generation chance to shape India's future.

Changing old laws is not easy. It means managing tough transitions and making sure that we keep the valuable lessons from years of legal experience alive. But updating our legal system is essential.

We need laws that are clear, modern and ready to handle the challenges of today's digital and global economy, while always protecting our constitutional values.

But equally, changes in the legal regime must be matched by change in legal culture—both within the government and on our part as citizens who have to comply with the law.

Digital technology is transforming our justice system. While we must be careful to avoid problems like bias in algorithms or leaving people behind, technology can make justice faster, more transparent and more accessible for everyone.

Technology can make justice faster, more transparent and more accessible for everyone.

This is our best hope to finally reduce the huge backlog of cases that has slowed our courts and held back our economic and social progress.

To match our big economic ambitions, we need a new way of thinking. We must commit to speed, certainty, expertise and fairness in resolving disputes, and follow the best global standards.

With this approach, we can create an environment where businesses grow through innovation and fair competition, where good jobs are created,

where investment comes in confidently, and where India takes its place as a respected leader in the world.

The Chamber of Tax Consultants, standing proudly today as a centenarian institution, embodies the spirit of transformation and enduring relevance. It carries this out by continuous learning, principled adaptation and proactive engagement with the changing tides of law, economy and technology.

Honoring this legacy should not just be about looking back—it must inspire us to come together with fresh energy and a commitment to action.

Let's use our expertise to help shape how technology is used in our justice system and regulation, making sure it truly serves justice and supports a strong economy.

We should lead the way in pushing for legal and procedural reforms which drive India's economic growth—growth that is not only fast, but which is also inclusive, fair and sustainable.

Let us then, in conclusion, make sure that the next hundred years of the Chamber are defined not just by technical tax knowledge, but by our vital role in building a just, prosperous and technologically advanced India.

We must work for a country where every citizen enjoys dignity, opportunity and justice, and where our commitment to fairness inspires the world.

The challenges are great and the responsibilities shared, but together we have the power to make a historic, positive impact on India's future.

May the Chamber of Tax Consultants continue to be a shining example of excellence and ethics for the next century and beyond.

Thank you very much.



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The concept of 'income' – Then, Now and the Future

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CA Pinakin Desai



CA Sneh Machchhar

Overview

The concept of "income" under the Indian Income-tax Act has traversed a remarkable evolution, viz. shift from an undefined term in the 1922 Act to an expansive scope and an artificial construct under the 1961 Act. Initially, Privy Council's Shaw Wallace dictum, defined income as a periodical return from a definite source, likely to flow in with regularity or expected regularity, but excluding windfalls or capital receipts. Legislative interventions, commencing with the inclusive definition in 1939, have progressively broadened this scope overriding many classical principles such as "tax on real income", "no income from self" etc. Capital receipts, once immune from tax, now face taxation in diverse forms such as capital gains, gift receipts, and tax on subsidies, often via deeming fictions that prioritize fiscal policy over economic reality. The rise of notional incomes—such as deemed dividend, custody of employee contributions, and carbon credits—further depart from determination of real income. Introduction of novel fictions of law have redefined timing, place and scope of accrual of income in cross-border and digital transactions. Looking ahead, global frameworks like the OECD's Pillar One and Two signal a future where income taxation may align with digital presence and user nexus. This article takes note of erosion of jurisprudential purity in favour of a legislative edifice driven by desire to broad base source rule, address fiscal expediency and follow international harmonization.

Legislative History: A Journey From Silence To Statutory Supremacy

The ever-expanding contours of "Income" under the Income-tax Act: From judicially crafted principles to statutory deeming fictions.

1922 Act had no definition of 'income'!!

The concept of "income" has arguably remained one of the most elusive under the Indian Income-tax Act ("ITA"). Ironically, despite being the central subject of taxation, the Act has consistently refrained from assigning a definitive meaning to the term. Section 2(24) merely offers an inclusive definition, expanding the scope rather than setting boundaries.

*Assisted by Ms. Shreya Munot, Ernst & Young LLP

The rationale is understandable. It was always realized that in the midst of diversity of complex and curious transactions or arrangements in the field of trade, commerce, industry, finance, social or domestic relationships, involving money or money's worth or articles, it would be impossible to exhaustively define the term "income". No legislature has therefore yet attempted to define income, nor have the courts, nor the economists.

As we flash back to the year 1922, the annals of history throw up some interesting features. It took some time for the authors to believe that the original Act of 1922 was bereft of formal definition of income. As per Sampath Iyengar[1]:

> *"'Income' is a word of elastic import. It has to be construed in the widest possible terms, notwithstanding its inherent limitations. The Indian Income-tax (Amendment) Act, 1939, introduced, for the first time, an inclusive definition of the word 'income' as clause (6C) of section 2 of the 1922 Act. The definition was substituted by the Finance Act, 1955, and its scope enlarged. The 1961 Act enlarged further the scope of this definition. By enacting an inclusive definition of income in this clause, as also in the one given in clause (6C) of section 2 of the 1922 Act, the legislature extended the connotation of the word 'income' so as to include within its ambit certain classes of income which, but for this inclusive definition, would have fallen outside its scope"*

The Indian Income-tax (Amendment) Act, 1939, introduced, for the first time, an inclusive definition of the word 'income' as clause (6C) of section 2 of the 1922 Act.

The first statutory definition of 'income' inserted in 1939[2], though short and concise, marked the legislature's maiden step in this direction:

> *"(6C) 'income' includes anything included in 'dividend ' as defined in clause (6A) and anything which under Explanation 2 to sub-section (1) of section 7 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (vii) of sub-section (2) of section 10 and the profits of any business of insurance carried on by a mutual insurance company computed in accordance with Rule 9 in the Schedule"*

Income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something which is often loosely spoken of as 'capital'.

Classical Judicial Exposition: Early Attempts to Define the Undefinable

In the absence of codified clarity, Indian courts performed the task of interpreting "income" with jurisprudential discipline. One of the most oft quoted decision was that of Privy Council in the case of Shaw Wallace[3] which explained the concept of 'income' as under:

> *"income . . . in this Act connotes a periodical monetary return 'coming in' with some sort of regularity, or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Thus, income has been likened pictorially to the fruit of a tree, or the crop of a field. It is*

1 *Commentary on Income Tax Act by Sampath Iyengar (13th Edition, Volume 1, Page 967).*

2 *Vide section 2(d) of Indian Income-tax (Amendment) Act, 1939.*

3 *CIT vs. Shaw Wallace* [1932] 2 Comp Cas 276.

essentially the produce of something which is often loosely spoken of as 'capital'. But capital, though possibly the source in the case of income from securities, is in most cases hardly more than an element in the process of production.

This dictum was followed in *Gopal Saran Narain Singh vs. CIT,*[4] by Lord Russell of Killowen who, however, added the important amplification:

'Anything which can properly be described as income, is taxable under the Act unless expressly exempted.'

The Golden ERA: Foundational Rules Governing Taxation of Income

In the above background, it may be interesting to size up some of the golden rules propounded by the Courts for determining whether a receipt does or does not constitute income. An insight into these traditional rules will, on comparison with the current law, demonstrate the long distance that the legislature has covered so as to expand – more often than not, by the stroke of artifice – concept of income. But, before we come to the mutilated and complex definition of today, may we narrate the norms of determination of income adopted a few decades back[5]:

Capital gains became chargeable to tax for the first time via the Income Tax and Excess Profit Tax (Amendment) Act, 1947, which inserted section 12B under the Indian Income Tax Act, 1922.

- A charging provision of law needs to be construed very strictly. It must be clearly brought out that a receipt constitutes an income receipt.
- Capital gains became chargeable to tax for the first time via the Income Tax and Excess Profit Tax (Amendment) Act, 1947, which inserted section 12B under the Indian Income Tax Act, 1922. Indian Finance Act, of 1949, virtually abolished this levy. The levy of capital gains was revived vide Finance (No. 3) Act, 1956 w.e.f. 1 April 1957. Until the year 1957 (barring two years in the middle), a capital receipt was not regarded as a chargeable receipt. There was exposure to tax only if the receipt was of a revenue nature. On the pedestal of this principle, a person paid no tax on a receipt which was in the nature of a gift; or which was an endowment out of personal veneration; or was a subsidy receipt from the Government Authority or otherwise.

In determining income, emphasis has to be on commercial principles.

- Tax could be levied on real income and not on hypothetical income. An item of income is one which a man in business would regard as his real income. If a person received any amount against a bank guarantee but the receipt is subject to dispute, it cannot be regarded as real income. Until there is a debt due and there is visibility of being able to recover the same, income could be regarded as hypothetical. A receipt does not become real income merely because it is erroneously accounted for as income.
- When one talked of dividend income, the reference was assumed to be corporate dividend paid by a company to its shareholders. It was unthinkable that a loan receipt by a shareholder from a company in profit could be visualized as dividend income of the borrower.

4 *Gopal Saran Narain Singh vs. CIT* 3 ITR 237, 242.
5 *While some of them may still survive, the outlook is far different today.*



- In determining income, emphasis has to be on commercial principles. If a person converted his capital asset into stock-in-trade, the fair value of asset as on the date of introduction of asset as stock-in-trade of business can be regarded as cost of acquisition of asset to the business. At the same time, since no income can arise from self, the difference between fair value and cost of capital asset on date of conversion could not be brought to tax as income of the taxpayer[6].
- Again, since no income can arise from oneself, withdrawal of stock-in-trade by a proprietor of business did not give rise to any income even if the fair value of stock withdrawn was much higher than the cost at which asset was acquired in the business[7].
- The concept of notional taxation was almost unknown. A man could be charged to tax on income which is actually received and not on the basis of income which he could have received. If an asset was sold at a value lower than the fair value, the taxability had to be with reference to the amount actually received. The concept of transfer pricing was wholly absent. Also, if an idle asset like a vacant house property yielded no income, there can be no tax on deemed annual value. If the shares or immovable properties were transferred at less than fair value, taxpayer can be subjected to tax only on consideration received and cannot be taxed on imputed taxation.
- Tax can be on an amount which went into the pocket and not with reference to what saves the pocket. A bargain purchase cannot be regarded as income. An allowance which is in

6 *CIT vs. Bai Shirinbai K Kooka* [1962] 46 ITR 86 (SC).
7 *Sir Kikabhai Premchand vs. CIT* [1953] 24 ITR 506 (SC).

the nature of reimbursement of expenditure does not represent income.

- In a celebrated English decision[8], an employee received a suit from employer. The Court of Appeal held that the taxable benefit was not the original cost of the suit but its second-hand value at the time of receipt. The reasoning was that it became second-hand once acquired by the employee. The court rejected the argument that the benefit should be based on the cost of stitching or the retail price.
- As per judicially coined principle, surplus in the hands of a mutual body where there is identity of contribution and participation could not be classified as income.
- The courts did not regard a family arrangement to be giving rise to any income at the stage of inter se allotment of family assets to the family members. Such allotment was interpreted as mutual adjustment and a transfer of asset from current holder of asset to a different allottee.

While the seniors in the profession may relish the memory of these golden principles, the reality will require that we catch up on the evolution and take stock of the current status to comprehend the speed with which the legislature has eliminated or truncated the impact of golden rules.

From "No Income from Self" to Taxing Artificial Gains: An Overriding Shift

"A man cannot trade with himself or make profit out of himself" – now a faded maxim?

In case of *CIT vs. Bai Shirinbai K Kooka* [1962] 46 ITR 86 (SC), the assessee held, by way of investment, shares of different companies. She had purchased these shares at a cost which was much less than market value thereof on 1 April 1945. During the course of proceedings for assessment year 1946-47, the Assessing Officer discovered that the assessee had converted her shares into her stock-in-trade and carried on a trading activity, viz., a business in shares. He therefore computed her income for the assessment year 1946-47 on the basis of profits which she made by the sale of her shares as a trading activity, the profit being calculated on the difference between the excess of sale price over market price at the beginning of the accounting year.

On appeal, the Supreme Court held that the amount assessable to tax is the amount of accretion to business i.e. increase in the value of asset from the date on which such asset was introduced to business.

The principle laid down in Kooka's case was subsequently followed by the Supreme Court in *CIT vs. Hantapara Tea Co Ltd* [1973] 89 ITR 258 and *CIT vs. Groz-Beckert Saboo Ltd* [1979] 116 ITR 125.

> The fair market value of converted asset, determined in terms of Rule 11UAB, is deemed to be consideration received by him for computing his business income.

Legislative override of the ratio of Shirin Kooka's case (supra)

- Section 2(47)(iv)[9] deems conversion or treatment of capital asset into stock-in-trade as 'transfer'; and section 45(2) brings to tax 'the profits or gains arising from' such 'transfer' in the accounting year in which the stock-in-trade is sold or otherwise transferred. For computing capital gains, the

8 *Wilkins (Inspector of Taxes) vs. Rogerson (1961) Ch 133.*

9 *Inserted vide the Taxation Laws (Amendment) Act, 1984 with effect from 1 April 1985.*

fair market value of the asset on the date of such conversion or treatment is deemed to be full value of consideration.

- Vide Finance Act, 2018, section 28(via) is inserted to provide that gains arising on conversion of inventory / stock in trade into capital asset shall be taxable as business income in the year of conversion. A corresponding amendment is made to the definition of 'income' under section 2(24) by insertion of sub-clause (xiia). The fair market value of converted asset, determined in terms of Rule 11UAB, is deemed to be consideration received by him for computing his business income. Further, section 2(42A) has been amended to provide that the period of holding of such capital asset shall be reckoned from the date of conversion or treatment.

Section 45(1) of ITA provides that any profits and gains arising from transfer of capital asset be charged to income-tax under the head 'capital gains' as income of the previous year in which the transfer took place.

Capital Receipts: From Untouchable taxation to universal taxation

Can you believe capital receipts were once immune from Income-tax?

As mentioned above, until the year 1947, there was no exposure to tax on any receipt which is capital in nature. Taxability was restricted to a revenue receipt. So deep-rooted was the philosophy that capital gains taxation introduced in the year 1947 was reversed in the year 1949. The philosophy eventually lost ground in the year 1957 whereafter there has merely been splendid growth of this form of taxation.

Gradual expansion of definition of 'transfer' of capital asset and scope of chargeability under the head 'capital gains'.

- Section 45(1) of ITA is the principal charging provision for taxing capital gains income. Section 2(24)(vi) of ITA covers any capital gains chargeable under section 45 in the definition of income. Section 45(1) of ITA provides that any profits and gains arising from transfer of capital asset be charged to income-tax under the head 'capital gains' as income of the previous year in which the transfer took place. For trigger of section 45(1) of ITA, it is essential that there must be a 'transfer' of capital asset.
  - Prior to insertion of section 9B and section 45(4), it was judicially well settled that cash / capital asset received by partner on retirement or dissolution of partnership firm neither resulted in transfer of any asset from the perspective of firm[10] nor resulted in transfer of partnership interest from partners[11].
  - Prior to insertion of section 46(2) of ITA, it was judicially well settled that, on liquidation, the asset received by shareholders as liquidation proceeds results in realisation of pre-existing right and not as a result of transfer of capital asset[12].
- Section 48 of ITA provides for mode of computation of capital gains income. Section 48 of ITA requires reduction of expenditure in relation to transfer of capital asset, cost of acquisition and cost of improvement from full value of consideration.

10 CIT vs. Dewas Cine Corporation [1968] 68 ITR 240 (SC), *Malabar Fisheries Co vs. CIT* [1979] 120 ITR 49 (SC).

11 Sunil Siddharthbhai vs. CIT [1985] 156 ITR 509 (SC), *Addl. CIT vs. Mohanbhai Pamabhai* [1987] 165 ITR 166 (SC), *Tribuvandas G Patel vs. CIT* [1999] 236 ITR 511 (SC), *CIT vs. R. Lingamullu Raghukumar* [2001] 247 ITR 801 (SC).

12 CIT vs. Madurai Mills Co. Ltd. [1973] 89 ITR 45 (SC), *CIT vs. R M Amin* [1977] 106 ITR 368 (SC).

- Judicially, it is well settled that charging provision and computation provision form an integrated code. In order to create an effective charge for capital gains income, the transaction should stand covered by charging provision as also by computation provision. Where transaction is not covered by computation provision, the transaction falls outside the scope of charging provision itself.
- Reference may be made to SC ruling in case of *CIT vs. B C Srinivasa Setty* [1981] 128 ITR 294. In this case, SC was concerned with the computation of gains arising from transfer of goodwill of business. In absence of ability to ascertain cost of acquisition of goodwill, SC held that such asset cannot be covered within the fold of section 45 of ITA.
- Reference may also be made to SC ruling in case of *Sunil Siddharthbhai vs. CIT* [1985] 156 ITR 509. In this case, SC was concerned with determination of full value of consideration accruing or received by partner on contribution of personal asset to firm. In absence of any precise determination of consideration accruing on transfer of capital asset, SC held that case of contribution of capital asset into firm is outside the scope of capital gains chapter.
- It may also be observed that in the context of capital gains chapter, SC in case of *PNB Finance Ltd vs. CIT* [2008] 307 ITR 75 held that in absence of determination of cost of undertaking, amount received on compulsory acquisition of undertaking



cannot fall within the scope of section 45 of ITA.

In above illustrative cases, the charge of capital gains failed either in absence of transfer of capital asset or in absence of ascertainment of cost or in absence of determination of full value of consideration. Legislature has since stepped in and has carried out several amendments in order to overrule these principles / judgements.

Earliest principles of taxation jettisoned by Legislative action:

- Section 9B has been inserted to provide that any receipt of capital asset or stock in trade by partners from firm, on reconstitution or dissolution of firm, shall be deemed transfer of capital asset or stock in trade by the firm. Further, for computing gains, fair market value of such capital asset or stock in trade is considered as full value of consideration accruing to the firm on transfer of asset.
- Section 45(4) has been inserted to provide that any cash or capital asset received by partner from firm on reconstitution results in taxable capital gains.

Capital receipts, though otherwise non-taxable under classical principles, are sought to be characterised as income.

- Section 46(2) has been inserted to provide for charge of capital gains in the hands of shareholders on liquidation of company. For computing capital gains, cash and fair market value of asset received is considered as full value of consideration.
- Section 55(2)(a) has been inserted to provide that capital asset being goodwill of business or profession, trademark, copyright, any other intangible asset, right to manufacture, produce or process any article or thing, tenancy rights, loom hours, route permit or any other right is considered as Nil. There is, today, no such concept as a no cost asset.
- Section 45(3) has been inserted to provide that on contribution of capital asset by partner to firm, the value recorded for such asset in the books of firm shall be considered as full value of consideration accruing to a partner in lieu of transfer of such asset by the partner.
- Section 50B has been inserted to provide that net worth of the undertaking computed in the prescribed manner shall be deemed to be cost of acquisition of undertaking.
- Apart from above, Legislature has inserted several provisions in the form of sections 50C, 50CA, 50D, 50B(2)(ii) which bring in notional taxation on transfer of capital asset. Taxpayer is subjected to tax on the consideration which he may never receive. Such notional taxation defies the theory of real income.

Legislative Attempts to Convert an Admitted Capital Receipt Into Income

The Indian tax jurisprudence had long distinguished between capital receipts, which are not inherently chargeable to tax, and revenue receipts, which form the bedrock of income taxation. However, in recent decades, a conscious and calibrated legislative shift has been witnessed. Capital receipts, though otherwise non-taxable under classical principles, are sought to be characterised as income.

The revival and reinvention of Gift taxation:

The Gift Tax Act, 1958, was India's first attempt to tax gratuitous transfers. It imposed a levy on the donor, not the recipient, with certain exemptions. The Act was eventually abolished in 1998, reaffirming the judicial view that a gift in the hands of the donee is a capital receipt—a windfall beyond the realm of taxation.

However, the landscape changed dramatically in 2004[13], when section 56(2)(v) was inserted into the Income-tax Act, marking the reintroduction of gift taxation—this time on the recipient. Simultaneously, clause (xiii) was inserted into section 2(24) to bring such receipts within the definition of income. The provision was originally narrow in scope—applicable only to individuals and limited to cash gifts. The provision was justified as an anti-abuse measure, aimed at curbing money laundering of unaccounted income under the guise of gifts. Over time, the scope has significantly expanded from cash to immovable property, shares, securities, jewellery, bullion, artworks, etc. and from individuals to all categories of taxpayers. Gift taxation, once dormant, now operates as a far-reaching revenue mobilisation tool.

Farewell to the "Purpose Test" in subsidy taxation:

The characterisation of subsidies was, for decades, governed by judicial principles laid down by the Supreme Court[14]. The settled law was that the purpose for which a subsidy is granted determined its character. If the subsidy was to aid day-to-day operations, it was a revenue receipt whereas if the subsidy was granted in the interest of overall economic development, it bore the character of a capital receipt. The Courts were clear that the form, source, and timing of the subsidy were irrelevant and only the purpose mattered.

However, with the insertion of clause (xviii) in section 2(24), the legislature effectively overruled this jurisprudence. The sub-clause now provides that any subsidy, grant, cash incentive, duty drawback, waiver, concession or reimbursement from the Government or any authority, in cash or kind, shall be treated as income[15].

The purpose test was thus discarded in favour of blanket inclusion. Further, section 145B(3) now deems such subsidy receipt to be income of the year in which it is received, irrespective of its link to capital or revenue expenditure. This legislative overhaul represents a complete departure from settled jurisprudence, replacing principle-based interpretation with a mechanical deeming fiction.

Taxing of carbon credits:

One of the more recent illustrations of this trend lies in the taxation of carbon credits. These credits (certificates) are issued under the Kyoto protocol to the industries in recognition of reduction of carbon emissions. These are tradable assets, often sold in international markets. Judicial pronouncements[16] consistently held that carbon credits are not offshoots of business activity, but represent capital receipts, not chargeable to tax. Yet, in Finance Act, 2017, the legislature inserted section 115BBG, prescribing a flat rate of tax on income from transfer of carbon credits. Notably, this taxation was enforced without even amending the definition of 'income' under section 2(24)

Carbon credits are not offshoots of business activity, but represent capital receipts, not chargeable to tax.

The Rise of Artificial Income in the Statute

Curious case of deemed dividend:

One of the earliest statutory inventions to expand the meaning of "dividend" in 1939[17]. The

13 Vide Finance (No. 2) Act, 2004.

14 Sahney Steel & Press Works Ltd. vs. CIT [1997] 228 ITR 253 (SC), *CIT vs. Ponni Sugars & Chemicals Ltd.* [2008] 306 ITR 392 (SC), *CIT vs. Chaphalkar Brothers Pune* [2018] 400 ITR 279 (SC).

15 Unless the amount of subsidy or grant has been taken into account for determination of actual cost of depreciable asset under section 43(1) of ITA.

16 CIT vs. My Home Power Ltd [2014] 365 ITR 82 *(Andhra Pradesh), CIT vs. Subhash Kabini Power Corporation Limited* [2016] 385 ITR 692 *(Karnataka), PCIT vs. L H Sugar Factory (P) Ltd* [2017] 392 ITR 568 *(Allahabad), Ambika Cotton Mills Limited* [2021] 125 taxmann.com 206 (Madras).

17 Vide section 2(6)(b) of Indian Income-tax (Amendment) Act, 1939.

amended law provided that certain non-cash or capital distributions by a company should be treated as income in the hands of shareholders. The law covered within its net distribution of debentures or debenture stock to equity shareholders; distributions made on liquidation of the company; distributions arising from capital reduction.

Capital receipts, though otherwise non-taxable under classical principles, are sought to be characterised as income.

The definition acquired a further layer of artificiality in 1955, when the legislature provided that any loan advanced by a company in which public are not substantially interested, to a shareholder, would be deemed to be dividend income. A loan, by its very nature, is a repayable liability, and not an accretion to wealth. Yet, in its bid to curb tax avoidance through closely held companies, the legislature deemed such amounts to be dividend income.

When the employers' custodial role becomes source of tax:

Under section 2(24)(x) of ITA, any sum received by an employer from employees as contribution towards provident fund, superannuation fund, or any other welfare fund is deemed to be income in the hands of the employer—even though such receipt is custodial in nature and received under an obligation to deposit the same. Section 36(1)(va) allows the employer to claim a deduction of this amount—provided it is deposited into the relevant fund within the prescribed due date under the applicable labour laws. However, even a minor delay—of a few hours or a single day—renders the amount permanently disallowable[18].

This is a textbook case of statutory artificiality—where income is deemed to arise not because of accrual or receipt in economic terms, but due to non-compliance with a compliance timeline

Income Reimagined: Jurisdictional Stretch

While the expansion of the definition of "income" has been a subject of extensive legislative and judicial development, a subtler but equally profound transformation lies in the alteration of the time, place, and person to whom income is attributed. This metamorphosis is driven not by the emergence of new income streams, but by statutory fictions that seek to modify the incidence of tax in artificial ways.

These provisions, operating under the guise of administrative convenience or anti-abuse intent, have resulted in significant deviations from commercial realities. Consider the following illustrations:

- **Timing Distortion**: Under section 45(1), capital gains is deemed to accrue in the year of transfer, even if part (or all) of the consideration is contingent, deferred, or uncertain. Statutory fiction disregards the fact that no income may have, in substance, arisen during that year.
- **Geographical fiction**: The definition of "India" under the Income-tax Act was extended to cover 200 nautical miles by way of amendment to section 2(25A) of ITA[19] pursuant to the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, thereby subjecting income earned in erstwhile international waters to Indian taxation.
- **Attribution to another person**: The clubbing provisions (sections 60 to 64 of ITA) permit attribution of income to a person other than the one who has earned it—thereby taxing a person who may have had no control or dominion over such income.

18 Checkmate Services (P.) Ltd. vs. CIT [2022] 448 ITR 518 (SC).

19 Vide Finance Act, 2007 w.r.e.f. 25 August 1976.

- **Artificial situs of accrual**: Explanation 5 to section 9(1)(i) deems capital gains earned by a non-resident from the transfer of shares in a foreign company to accrue in India if such shares derive substantial value from Indian assets. This is so even if the entire transaction takes place outside India, and the legal situs of the asset is foreign.
- **Taxation of remote presence**: The scope of business connection contained in section 9(1)(i) of ITA has been significantly expanded to cover transactions or engagement by a non-resident with persons in India. This impacts non-resident who has no physical presence in India. Non-resident is made to pay tax on income though arising outside India but having presence of users / customers in India.

Any loan advanced by a company in which public are not substantially interested, to a shareholder, would be deemed to be dividend income.

These examples reveal the manner in which legislative fictions are no longer confined to defining income, but are now instrumental in re-characterising the jurisdiction, timing, and ownership of income itself. Such provisions have far-reaching implications not only on cross-border transactions but also on the constitutional notion of territorial nexus and accrual.

A Glimpse into the Direct Taxes Code, 2010 – An Indicator of Future?

The Direct Taxes Code, 2010 (DTC), though never enacted, offered a revealing insight into the evolving legislative mindset on income taxation.

Section 33(1)(i) of the DTC proposed that "any accrual or receipt from, or in connection with, business" would be treated as income—shifting the tax base from "profits and gains" to mere receipts. This formulation risked bringing within the tax fold capital receipts, non-revenue inflows, or transactions devoid of profit, purely on account of their business nexus. Further, section 33(2)(xx) proposed that advances or security deposits received for the long-term leasing or transfer of business assets would be taxed as income. This marked a radical departure from settled principles, where such sums—being refundable and not reflective of gain—were never treated as income.

Though the DTC was ultimately shelved, its provisions signalled a clear trend - a movement from taxing income to taxing inflows.

The Road Ahead: Recalibrating Taxation in a Borderless, Digital Future

As the global economy becomes increasingly digitized, intangible, and cross-jurisdictional, the traditional tenets of income taxation face unprecedented challenges. The very notion of "income" is poised for further transformation—not merely through statutory expansions, but through multilateral consensus, data-driven enforcement, and emerging tax policy paradigms.

What lies ahead in the evolution of income taxation remains uncertain—but what is certain is that the journey is far from over.

Initiatives like the OECD's Pillar One and Pillar Two framework, Unified Approach for taxing the digital economy, and India's own Significant Economic Presence (SEP) provisions are early harbingers of a new world order—one where nexus is no longer physical, presence is defined

by user base, and income is attributed by algorithm.

What lies ahead in the evolution of income taxation remains uncertain—but what is certain is that the journey is far from over.

Epilogue to Income's Evolution: From What is Earned to What is Deemed

The odyssey of defining and taxing "income" in India has moved from a jurisprudential search for real income to a legislative architecture driven by policy imperatives, regulatory convenience, and fiscal priorities. What began as a judicial exercise in identifying recurring, source-based, and realised economic gain has now evolved into a statutory framework with deeming fictions often challenging economic reality.

This evolution is not merely terminological - it is foundational. Income today is no longer what accrues, arises, or is received in the ordinary course of commercial or personal activity. Instead, it is often what the statute declares it to be income - even if that declaration rests on fictional events, constructed transactions, or artificial situs.

Income today is no longer what accrues, arises, or is received in the ordinary course of commercial or personal activity.

While many of these measures have been justified on grounds of plugging tax leakages, curbing abuse, or harmonizing with international tax standards, they come at the cost of erosion of the classical principles of tax law, particularly those which had ensured certainty, neutrality, equity, and simplicity.



Incentives and Tax Holidays – Evolution, Economic Impact, and the Road Ahead

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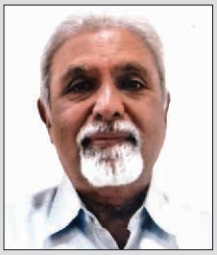

CA Pradip Kapasi

Overview

The article traces the historical evolution, economic impact, and future direction of tax incentives and holidays in India. Originating from ancient fiscal practices and colonial-era exemptions, these measures became formalized in the Income-tax Act, 1961, with provisions like Sections 80I, 80J, 10A, and 10B promoting industrialization, exports, and regional development. Over decades, incentives expanded to sectors such as infrastructure, green energy, affordable housing, and financial services hubs like GIFT City. While these have spurred sectoral growth—boosting IT exports, renewable capacity, and regional investment—they entail significant revenue foregone.

The article notes both benefits and drawbacks: incentives can catalyze jobs, technology transfer, and regional equity, but often suffer from complexity, litigation, weak monitoring, and limited impact when structural deficits persist. Global studies show that effectiveness improves when incentives are targeted, transparent, time-bound, and paired with strong governance.

Looking ahead, the author urges India to align incentives with sustainability, innovation, and ESG priorities; employ rigorous cost-benefit evaluation; streamline provisions; and ensure equitable benefits for SMEs and the informal sector. Future policy should focus on targeted high-spillover sectors (e.g., renewables, AI, semiconductors), balanced regional support, and clarity in digital economy taxation to sustain competitiveness and inclusive growth.

Introduction

The concept of offering fiscal relief to encourage desired activities is not new to India. Ancient treatises like the *Manusmriti, Arthashastra* and even vedic scriptures emphasized differential levies to promote agriculture, trade, and crafts. These trends continued to be followed by the Maurya, Gupta and Mughul empires in varied degrees. The colonial era introduced basic exemptions for certain industrial activities,

though targeted to promote manufacturing for exports to the British empire.

Tax incentives are a pivotal tool in a government's fiscal arsenal, aimed at steering economic growth and development. By offering tax reliefs or exemptions, governments can encourage investment in specific sectors, support small and medium-sized enterprises (SMEs), or stimulate activities in underdeveloped regions. The rationale behind these incentives is to offset potential market failures and to align private sector investment decisions with broader economic goals. From the perspective of businesses, tax incentives can significantly reduce the cost of capital and increase the expected return on investment, making them a powerful motivator for both domestic and foreign investors.

Tax incentives are a pivotal tool in a government's fiscal arsenal, aimed at steering economic growth and development.

Tax holidays are a critical fiscal policy tool used by governments worldwide to promote economic growth, attract investment, and encourage development in targeted sectors or regions. In India, the Income-tax Act, 1961 has historically incorporated a range of provisions aimed at stimulating economic activity, from exemptions for export-oriented units to deductions for infrastructure, housing, renewable energy, and financial services hubs.

By offering tax breaks or credits, governments aim to encourage investment and spending in areas that are deemed to be of strategic importance or in need of stimulation. These incentives can take various forms, such as reduced tax rates, tax deferrals, or credits that can offset tax liabilities. The underlying mechanics of these schemes are complex, involving careful calibration to balance the immediate cost to public finances against the anticipated long-term benefits to the economy.

While such measures have undeniably spurred growth in certain industries, they also carry fiscal costs and potential inefficiencies. Over time, India's approach to these incentives has evolved in response to changing economic priorities, budgetary constraints, and global competitiveness pressures. This write-up examines the evolution of these incentives, evaluates their economic impact, and outlines the road ahead for such policies.

Evolution

The Income-tax Act, 1961, besides establishing the clear income heads—salaries, house property, business/profession, capital gains, and other sources, formalized provisions for tax holidays and incentives. India's centrally planned economy relied heavily on public investment, but policymakers began using selective tax holidays to promote private sector participation in industrial development, especially in backward areas.

Incoming from the 1922 Act, tax holidays for new industries were preserved in sections 80I and 80J of the 1961 Act, incentivizing investment in backward areas. These eventually gave way to newer provisions in s. 80IA, 80IB, and 80IC, offering deductions for infrastructure, industrial, and regional enterprises, albeit with complex conditions and administrative challenges. Export incentives were historically provided via sections 10A and 10B for undertakings in export-related zones. With the SEZ Act of 2005, a revamped incentive framework emerged, offering phased tax holidays: 100% tax exemption for 5 years,

While such measures have undeniably spurred growth in certain industries, they also carry fiscal costs and potential inefficiencies.

followed by 50% for the next 5, with some further benefits for reinvestment in reserves. Affordable housing developers benefit from 100% deduction on specified capital expenses (excluding land and goodwill) under Section 80-IBA. Incentives for rural hospitals, food-grain logistics, mineral oil refining, and agro-processing carry tax holiday windows of 5–10 years with varying deduction scales. Green energy players like power generation units enjoy 10-year tax holidays under Section 80-IA, triggering solar sector growth. Individual incentives such as Section 80EEB enable ₹1.5 lakh deduction on EV loan interest, while customs exemptions aid green equipment imports. GIFT City's IFSC and Offshore Banking Units benefit from tax holidays, GST-free services, and other exemptions to attract financial services.

Initiatives such as "Make in India" and "Start-up India" and offering concessional tax rates across for all the taxpayers.

During the early years between the 1960s and 1980s, the Indian government focused on fostering industrialization and regional development. Tax incentives were introduced to attract investments into backward regions, with targeted provisions playing a prominent role. These aimed to stimulate economic activity in underdeveloped areas by offering tax relief to businesses setting up operations there.

Following the economic liberalization of 1991, the Income Tax Act was restructured to encourage foreign investment and promote exports. New sections such as 10A, 10B, and 80HHC became relevant for export-oriented undertakings. This period saw the emergence of Special Economic Zones (SEZs) and software technology parks, which benefited from generous tax concessions.

The early 2000s witnessed a rationalization phase. While some incentives, like those under Sections 80-IA and 80-IB, continued to support infrastructure and small-scale industries, the introduction of Minimum Alternate Tax (MAT) under Section 115JB sought to ensure that companies using tax holidays still contributed a minimum tax. The use of sunset clauses became more common to phase out long-standing incentives.

In the last decade, especially since 2015, government policy has emphasized targeted tax incentives through structured schemes. Initiatives such as "Make in India" and "Start-up India" and offering concessional tax rates across for all the taxpayers. There has also been a shift towards productivity-linked incentives to support specific manufacturing sectors, rather than broad-based exemptions.

The Income tax Act, 1961 hosts about 200 provisions that incentivise the taxpayers in different forms, prominent amongst them are.

1. Concessional rates of tax for income with certain characteristic like section 87A, 111 A, 112, and 112 A and many other provisions of similar nature, especially for non-resident Indians and foreigners.
2. Concessional rates of taxation for persons opting to be regimented by certain terms and conditions like section 115 BA to BAE.
3. Specified deductions in computing the in



computing the total income under chapter VI-A based on
a. nature of income
b. nature of payment and
c. nature of investment.

4. Rebate in computing tax payable like section 87 A.
5. Income not included in total income like section 10, 10A, 10AA, 10 BA 10C.
6. Income from property held for charitable or religious purposes.; s.11.

> Tax incentives and holidays... today have proliferated into a banyan tree that is bigger than its trunk and whose roots are impossible to locate.

7. Income of political parties and Electoral Trust section 13A and 13B.
8. Accelerated depreciation, section 32(1) (iia).
9. Investment Allowance and Deposits, sections 32 A. AB, AC & AD.
10. Development rebate, allowance, deposit, restoration, rehabilitation, s.33 to 33 ABA.
11. Research and Development expenditure, section 35.
12. Expenditure on Acquisition of patents, copyrights. Know-how, telecom rights, projects and services, sections 35A to AC.
13. Expenditure of specified businesses section 35 AD.
14. Expenditure for rural development conservation agriculture and skill development sections 35CA to CD.
15. Amortization of preliminary and other specified expenses 35. D & E.
16. Presumptive rates of taxation section 44AD to DB,
17. Exemption of income on certain specified transfers, corporatisation, de-corporatization, section 47.
18. Reinvestment oriented exemptions, sections 54 to 54 G.
19. Cary forward and set off of losses, sections 70 to 79.
20. Settlement of disputes.

Tax incentives and holidays have from a few to numerous developed over a period of 65 years and today have proliferated into a banyan tree that is bigger than its trunk and whose roots are impossible to locate. The main objective behind conferring the incentives overall period of years has been to encourage investment stimulate growth, channel eyes, capital induction, promote industrialisation, promote digitalisation, promote geographical diversification channelise expenditures on public welfare exempt income promote corporatisation benefit senior citizens and especially abled persons. Promote infrastructure, housing, hotels, hospital industry, healthcare attract foreign capital promote surrendering of expenses and allowances for lower rate of taxation. Promote settlement of disputes. Promote compliance of halide laws. Promote timely payment of taxes and expenses. Job creation employment. Promote environment for innovation, startups, promote exports and abolition of taxes.

> ...it will surely help a great deal to have system which studies the cost benefit effects before an incentive is introduced...

Economic Impact

No empirical and systematic data and studies are available for the scientific analysis of the economic impact of the tax incentives and holidays. It is perceived that the parliament and

the government has introduced these incentives over a period of six decades based on the immediate needs of the prevailing time with an assumption that the incentives have a positive and desired effect and the cost of the incentives was worth the spending and the tax foregone. While it may be largely so, it will surely help a great deal to have system which studies the cost benefit effects before an incentive is introduced, and such study is followed by the annual impact once the incentive is offered; such studies should be shared with the taxpayers and the taxmen.

The tax expenditure in the form of the revenue foregone due to incentives has been significant.

Based on some data available from the sources like Budget, Wikipedia, World Bank and few websites, some data available, without verifying the authenticity is produced for understanding the effect as an example.

The Indian Government estimated tax expenditures for certain incentives foregone for F.Y. 2022-23 for tax breaks for SEZ units under section 10AA (~17.5%), housing projects under s. 80-IBA (~11.5%), and accelerated depreciation (~5.7%). It was noted that the export incentives and SEZ benefits significantly boosted manufacturing and software exports. For instance, STPI units exported ₹2.15 lakh crore in F.Y. 2010–11. In the fields of green energy boost, tax breaks under s. 80-IA have played a vital role in growth of the solar sector, which experienced ~17.3% CAGR between 2015 and 2023. Incentives such as those under Section 80IB, IC and others attracted investments in Northeast regions, Himachal Pradesh and Jammu & Kashmir, with 10-year holidays helping reduce regional disparities. The STPI and SEZ regimes significantly boosted India's IT exports from ₹52,000 crore in the year 2000 to over ₹2 lakh crore by the year 2010. SEZ manufacturing units contributed substantially to merchandise exports, particularly in gems, jewellery, and electronics.

S. 80-IA incentives catalyzed investment in infrastructure and energy sectors like power generation, leading to rapid growth in renewable capacity (solar energy CAGR ~17.3% from 2015–2023).

The tax expenditure in the form of the revenue foregone due to incentives has been significant. For instance, in F.Y. 2022–23 for SEZ units the tax foregone u/s 10AA was Rs. 21,000 crore and for the benefit of the affordable housing u/s 80-IBA was Rs. 13,500 crore and for the accelerated depreciation u/s 32 (1) (iia) was Rs. 6,800 crores. While these costs are justified if they deliver lasting economic gains, weak monitoring has made evaluation difficult.

From the perspective of policymakers, these incentives can be seen as necessary evils to stay competitive in a global market.

It was at the same time noted that the proliferation of complex, sector-specific incentives often led to litigation, revenue leakage, and inefficiencies. The administrative burden to verify eligibility and impact became significant. Additionally, location-based incentives sometimes failed to overcome broader structural deficits like inadequate infrastructure.



The impact of taxation on economic growth is a subject of significant debate among economists. Taxation, when appropriately designed and administered, can provide the necessary revenue for government spending on infrastructure, education, and healthcare, which can stimulate economic growth. However, excessively high taxes or poorly designed tax systems can impede economic activity and deter investment.

Where well-targeted, incentives have generated significant multiplier effects...

From an economic standpoint, the effectiveness of tax incentives in promoting economic growth is a subject of considerable debate. Critics argue that they can lead to a loss of tax revenue without guaranteeing commensurate economic benefits, while proponents contend that the long-term gains in employment, technological advancement, and productivity outweigh the short-term fiscal costs.

The counter to this standpoint, the rationale is that lower taxes can lead to higher disposable income for businesses, which can then be reinvested in various ways that contribute to job creation. For example, a company might use additional funds to purchase new equipment, upgrade technology, or expand its operations, which can necessitate hiring additional staff.

From the perspective of policymakers, these incentives can be seen as necessary evils to stay competitive in a global market. Yet, economists often point out that such programs can lead to a 'race to the bottom,' where jurisdictions undercut each other to attract businesses, ultimately eroding the tax base without a commensurate return on investment. Critics also argue that tax incentives can distort market dynamics, favoring certain industries or companies over others, which may not always align with broader economic goals.

Tax incentives at times lead to economic distortion by creating an uneven playing field where businesses make decisions based on tax benefits rather than genuine market opportunities. Incentives also have an opportunity cost: the revenue forgone through tax incentives could be used for public services like education and infrastructure. There is also an equity concern: tax incentives can enhance inequality by providing benefits to large corporations while small businesses and individuals do not receive equivalent support.

Besides administrative challenges, complexity on account of the multiple overlapping provisions increased compliance burdens. Disputes over eligibility and interpretation led to serious questioning on the desirability of doling the incentives. Benefits accrued to businesses that would have invested regardless of incentives. Difficulties were faced in phasing out provisions due to lobbying by beneficiary sectors.

Where well-targeted, incentives have generated significant multiplier effects by job creation in manufacturing clusters, technology transfer in export-oriented units and ancillary service industry growth like logistics, IT support, transport and hospitality.

Transparency is critical: publishing details of beneficiaries, costs, and expected outcomes fosters accountability and public trust.

Evaluation and Improvement

Global evidence, as compiled by the IMF, OECD, UN, and World Bank, shows that the effectiveness of tax incentives is often limited. While they can influence investment decisions, particularly for highly mobile export-oriented

industries, surveys indicate they rank low among factors that investors consider when choosing locations. Empirical research supports the view that incentives are more effective when targeted and accompanied by strong enabling conditions. Erick Okoth's comparative study

Unlike the inevitability of taxation, the role of tax incentives is more nuanced.

Tax incentives tend to yield better results when they focus on sectors with high productivity possibilities, such as research and development or technology-intensive exports, and when they are embedded within a supportive framework of infrastructure, macroeconomic stability, and good governance.

Good governance is essential to maximize the benefits and minimize the costs of tax incentives. Conducting regular tax-expenditure reviews to assess their fiscal impact is highly recommended and so is the need for the approval processes to be rules-based rather than discretionary to reduce opportunities for rent-seeking and corruption. Transparency is critical: publishing details of beneficiaries, costs, and expected outcomes fosters accountability and public trust. International coordination can also help mitigate harmful tax competition.

From a cost-benefit perspective, tax incentives should only be used when their social benefits



clearly outweigh their costs measurable, and time-bound incentives reinforce the importance of fairness, proportionality, and the ethical use of revenue.

Unlike the inevitability of taxation, the role of tax incentives is more nuanced. They can be valuable tools for promoting targeted investments and addressing specific economic challenges, but their misuse or overuse can undermine fiscal capacity, create inequities, and fail to deliver the intended growth. Policymakers must therefore approach incentives with caution, designing them to be transparent, targeted, and temporary, while focusing equally on the foundational factors such as infrastructure, political stability, and human capital that truly drive sustainable investment and economic development

The evaluation underscores that structural issues such as poor infrastructure or bureaucratic

An IMF working paper examines the persistence of business tax incentives despite widespread advice favouring broad tax bases and low rates.

inefficiencies cannot be resolved by incentives alone and that optimal fiscal policy should balance revenue needs with measures that stimulate sustainable economic development in line with the UN Sustainable Development Goals. Whereas certain tax incentives yield positive but statistically insignificant effects on investment, and in some cases, negative effects on growth. Tax incentives must be carefully targeted, transparent, and complemented by good governance to be effective.

An IMF working paper examines the persistence of business tax incentives despite widespread advice favouring broad tax bases and low rates. It defines tax incentives as favourable provisions

targeting specific sectors or activities, such as tax holidays, investment allowances, or reduced rates, and links their prevalence to global tax competition. The paper outlines how incentives may attract mobile capital and address market failures but often cause significant revenue losses and investment distortions.

The net benefits are questionable once costs are considered. The analysis compares common incentives, finding that investment tax credits or reduced rates can sometimes be more effective than tax holidays.

Despite significant tax reforms, India continues to grapple with tax evasion. The informal economy, underreporting of income, and the existence of unaccounted "black money" remain major challenges. To combat these issues, the government has introduced measures such as the Benami Transactions (Prohibition) Amendment Act in 2016.

For policymakers, the focus is on designing tax incentives that are competitive yet sustainable.

For policymakers, the focus is on designing tax incentives that are competitive yet sustainable. They must balance the immediate appeal of tax breaks for businesses with the long-term fiscal health of the government. For investors, the clarity, stability, and predictability of tax incentive policies are paramount. They look for assurances that the tax benefits promised today will be honored in the future. Meanwhile, economists stress the importance of evaluating the cost-effectiveness of tax incentives, advocating for regular reviews and adjustments to ensure they are meeting their objectives.

For the tax incentives to be successful and effective the government should have clear objectives, targeted approach, transparency, monitoring and evaluation, stakeholder engagement, fiscal responsibility, and legal framework. For example, the Singapore Economic Development Board offers a range of tax incentives aimed at bolstering the city-state's position as a global business hub. These incentives are carefully calibrated to support sectors that are strategic to Singapore's economic transformation, such as finance, technology, and manufacturing. The government's clear objectives, targeted approach, and commitment to transparency have made Singapore an attractive destination for international investment.

Road Ahead

For moving forward towards the optimum and the effective use of the tax incentives and holidays, India's goal posts should not be different than what has been accepted as the benchmarks, worldwide, for the best rewards for the country. They are.

- targeted, time-bound incentives with rigorous monitoring to ensure economic outcomes.
- leverage data-driven cost-benefit evaluation (e.g., via enhanced tax expenditure reporting) to refine or sunset outdated provisions.

India's goal posts should not be different than what has been accepted as the benchmarks, worldwide, for the best rewards for the country.

- to balance simplification with social equity, ensuring small businesses and informal sectors benefit.
- align fiscal incentives with environmental goals, example being renewable energy diversification, and
- ensure institutional capacity keeps pace with evolving policies for efficient, transparent delivery and audit.

Attempting to achieve all or many of the above and begin the journey on the road ahead keeping the above referred objectives is more important for India at this stage than any other country in similar circumstances. These objectives will help India correct the serious aberrations of the past where the incentives did not lead anywhere near the goal posts as many a times the incentives were introduced to suit certain undeserving sectors and on many occasions their introduction was the knee jerk reactions.

At the cost of the repetition it is emphasised that the best practices be adopted that provide the time-Bound Benefits; that permit Data-Driven Monitoring for annual cost-benefit analyses of each incentive.; that enables targeted focus on priority sectors with high spillover effects like, renewables, Artificial Intelligence, semiconductors; that ensures balanced regional support coupled with infrastructure upgrades and corrects environmental non-alignment by linking fiscal benefits to sustainability measures.

The Road Ahead of tax incentives is likely to focus on fostering innovation and supporting industries that align with environmental, social, and governance (ESG) criteria.

Tax benefits tied to green manufacturing and EVs would require to bolster India's commitments to sustainability and clean energy adoption. Financial jurisdictions like GIFT City shall continue to innovate, offering tax holidays and exemptions tailored to global investors.

The rise of the digital economy has posed new challenges for taxation in India. E-commerce, online services, and the gig economy have created complexities in tax collection, especially when transactions are across borders. India has been working to update its tax laws to address these challenges and ensure that digital transactions are adequately taxed. The policy makers should provide sufficient tax incentives for these sunshine industries.

Environment conservation has gained prominence as countries seek to address climate change and environmental degradation. In India, environmental taxes, such as the Goods and Services Tax (GST) on renewable energy equipment and carbon taxes on polluting industries, are being explored as policy tools to promote sustainable development. While doing so the policymakers should not loose track by ignoring the need to incentivise the efforts of the taxpayer in taking steps for conservation.

The Rod Ahead of tax incentives is likely to focus on fostering innovation and supporting industries that align with environmental, social, and governance (ESG) criteria. For instance, tax breaks for companies investing in renewable energy sources or those developing technologies to combat climate change could become more prevalent. clarity, stability, and predictability in tax incentive policies to ensure long-term planning and investment.

My preferences are to introduce or strengthen steps to.

- allow all expenses incurred for earning an income and tax the real income and scrap all



provisions that disallow such expenses for unpalatable reasons, like s.40(a), 40A, 43B, 58 and a few similar fictions,

- neutralise the effect, if any, of the Trump Tarrif,
- promote digitalisation,
- protect environment and boost green energy,
- generate and sustain job creation and employment,
- incentivise innovation including by start-ups,
- incentivise the export of goods and services to countries other than USA,

While tax incentives are powerful tools for driving economic development, their deployment must be judicious and forward-looking.

- encourage Artificial Intelligence development and use,
- provide healthcare without reservations,
- monitor inflation,
- promote geographical equality,
- provide the best children education without class differentiation,
- encourage skill development,
- for sustained public hygiene and sanitation,
- women empowerment,
- ensure smooth succession,
- old age benefits with social security,
- permit deduction for the CSR expenses,
- grant tax credits in appropriate cases.

India is gradually moving towards a simplified tax regime with fewer exemptions and targeted incentives While not directly tied to sectoral tax holidays, these moves suggest a broader policy shift towards simplicity and taxpayer-friendliness. The ITB, 2025 when enacted aims to simplify direct tax structure, repeal the 1961 Act, and replace convoluted provisions with streamlined rates and definitions. It intends to enhance transparency, widen the tax base, and improve taxpayer compliance with the hope that it succeeds in preserving equity and effectively supporting informal and rural economies, and for achieving these deeper reforms of far greater force and conviction are needed.

While tax incentives are powerful tools for driving economic development, their deployment must be judicious and forward-looking. By balancing short-term benefits with long-term goals, we can craft a fiscal environment that not only sparks immediate growth but also lays the foundation for enduring economic health. The art of this balance is in recognizing that today's incentives are tomorrow's economic realities, and the true legacy of any tax policy is the future it helps to build.

Incentives and tax holidays under the Income Tax Act, 1961, have played a transformative role in shaping India's economic landscape. From fostering industrial growth to catalysing entrepreneurship, these provisions have supported development goals. However, the changing fiscal landscape, global obligations, and domestic priorities necessitate a calibrated approach going forward. A shift towards transparent, targeted, and technology-enabled incentives will not only boost economic outcomes but also strengthen India's position as a competitive, compliant, and equitable tax jurisdiction

As economies worldwide continue to evolve, the role of tax incentives as a tool for economic development becomes increasingly complex and significant. These incentives, traditionally used to stimulate investment, create jobs, and promote research and development, are now facing the challenge of adapting to a rapidly changing economic landscape. This landscape is shaped by technological advancements, shifts in global trade patterns, and the urgent need for sustainable development.

The Shifting Sands of Tax Administration – Assessment, Appeal, and Dispute Resolution

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Overview

The tax laws remain the most complicated laws in the Country and the most litigated area of law. The article examines the evolving landscape of India's tax administration, focusing on assessment, appeals, and dispute resolution. It begins by highlighting the constitutional principle that taxes can only be levied by authority of law, emphasizing the need for fairness and efficiency in tax administration. The authors trace the evolution of India's tax system, including the shift from traditional assessments to e-proceedings and the launch of the Faceless Assessment Scheme. Despite its objectives, the scheme has faced significant implementation challenges, leading to procedural lapses, litigation, and judicial interventions.

The article also analyzes the persistent complexity and high volume of tax litigation in India, driven by frequent legal changes, aggressive revenue practices, and limited taxpayer compliance. The backlog in appellate proceedings, particularly at the CIT(A) level, exacerbates delays, highlighting systemic inefficiencies. The authors discuss issues with the tenure and independence of tribunal members under the recent tribunal reform law and emphasize the need for robust reforms.

To improve tax administration, the article recommends reintroducing independent advance rulings and settlement mechanisms, enhancing safe-harbour provisions, setting strict timelines for appeal disposal, addressing manpower shortages, and fostering qualitative, taxpayer-centric litigation practices to support nation-building.

Introduction

a. Benjamin Franklin in one of his famous quotes said, *"Nothing can be said to be certain, except death and taxes."* The quote, in all its' cynicism and jest, draws parallels between the inevitability of death and the difficulty in avoiding the levy of taxes. Tax litigation and disputes add a further pinch of salt to the inevitability of taxes. To alleviate the woes

of the taxpayers, a good and efficient tax administration system becomes fundamental.

b. The proper function of a tax administration, as the name suggests, is efficiently and effectively administering the levy and collection of taxes. It is an executive function which brings to life the letter and spirit of the law by enforcing the same against subjects. Proper and effective resolution of disputes is also a key feature of a good tax administration system. Article 265 of the Indian Constitution protects the subjects by providing that no tax shall be levied or collected except by the authority of law. This is the overarching principle to be kept in mind by the tax administration to ensure that their actions are not arbitrary and do not violate the Constitution.

The proper function of a tax administration, as the name suggests, is efficiently and effectively administering the levy and collection of taxes.

c. While the object of a tax administration may undoubtedly be the protection of the public exchequer, the officers are expected to administer the law with a solicitude for the public exchequer and at the same time, with an inbuilt idea of fairness to taxpayers. The said sentiment has been expressed by the *Apex Court in ACIT vs. Rajesh Jhaveri Stock Brokers (P.) Ltd.* [2007] 291 ITR 500 and *Unichem Laboratories Ltd. vs. Collector of Central Excise* (2002) 7 SCC 145.

d. India's modern day tax administration is more than a century old. The Indian Income Tax Act, 1922 transitioned into the Income Tax Act, 1961. An attempt was made to codify and simplify the tax law by way of the Direct Tax Code. However, such efforts did not fructify. Presently, a new Bill (Income Tax Bill, 2025) has been tabled before the Lok Sabha and is being subjected to a minute scrutiny by a Select Committee of the Lok Sabha. With the fast paced and ever changing societal and business environment and needs, the tax administration is expected to play catch-up. Through focused efforts, attempts have been continuously made to align the tax administration system with the changing times and make them more robust. While the attempts may not have always been successful and most ideal, it only goes on to highlight that every tax administration system is prone to certain flaws and there is always some room for improvement.

e. The instant Article attempts to focus on the recent shift in tide in India's tax administration system, certain grey areas that continue to tarnish its' progress and suggested measures to effectively combat such obstacles to have better administration and tax dispute resolution.

India's Faceless Assessment

a. Before India embarked on the path of a full-fledged faceless assessment mechanism, for a period from 2016 to 2018, assessments were conducted electronically under the 'e-proceedings'. As per the e-proceedings FAQ issued by the Income Tax Department, e-proceedings is an electronic platform for conducting proceedings in an end to end manner using the e-Filing portal. Using the said service, any registered user (or his Authorized Representative) can view and submit responses to any notice/intimation/ letter issued by the Income Tax Department. To effectuate 'e-proceedings', various important steps were taken, some of which may be highlighted as under-

   - Rule 127 was inserted by the Income Tax (Eighteenth Amendment) Rules, 2015 w.e.f. 02.12.2015, providing the

frame work for issue of notices and other communication to the assessee. The said Rule prescribed addresses for electronic mail messages on which notices or communications could be delivered.

e-proceedings is an electronic platform for conducting proceedings in an end to end manner using the e-Filing portal.

- 'Hearing' was defined under section 2(23C) vide Finance Act, 2016 (w.e.f 1-4-2016), providing that the term "hearing" includes communication of data and documents through electronic mode.
- In the year 2017, the Income-tax Department developed an integrated platform, i.e., Income Tax Business Application (ITBA) for electronic conduct of various functions/proceedings including assessments.
- Scope of e-proceedings assessment was extended vide Instruction No. 8/2017 dated 29.09.2017 to all cases getting time barred during FY 2017-18 with option to the assessees to voluntarily opt-out from e-proceedings. Thereafter, Instruction No. 1/2018 dated 12.02.2018 was issued to cover all the pending scrutiny assessment under the e-proceeding scheme with the exception of some cases like search and seizure, re-assessment etc.

b. The system of e-proceedings was introduced on a pilot basis in 2016 in certain cities and thereafter in 2017, it was extended to 102 cities. The experience gained by the government between the period 2016 to 2018 was sufficient to rollout the scheme of E-assessment throughout the country.

c. The Tax Administration Reform Commission (TARC), with the objective to enhance the effectiveness and efficiency in the tax administration highlighted that the general perception amongst the taxpayers that the tax administration is focused on only one dimension of revenue generation [which is strengthened by the fact that how the performance of tax officials is driven by tax goals], requires to be changed. It was highlighted that what is required is a robust framework that is holistic in its' approach to issues of performance management.

d. In a laudable effort to (i) eliminate the interface between the Assessing officer and the assessee in the course of proceedings, to the extent technologically feasible; (ii) optimize the utilization of resources through economies of scale and functional specialization and (iii) introducing a team-based assessment with dynamic jurisdiction, the Legislature vide Finance Act, 2018, with effect from 01.04.2018, brought sections 143(3A) to (3C) into the Statute.

e. In terms of power conferred under section 143(3A), vide Notification No. 61 of 2019, dated 12.09.2019, the Central Government notified the E-Assessment Scheme, 2019. The assessment under the said scheme was to be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board. Subsequently, vide Notification No. 60 of 2020, dated 13.08.2020, the Central Government made amendments to the

In terms of power conferred under section 143(3A), vide Notification No. 61 of 2019, dated 12.09.2019, the Central Government notified the E-Assessment Scheme, 2019.

scheme. Vide such notification, the name of the scheme was changed to 'Faceless Assessment Scheme, 2019'. Thereafter, vide Notification No. 6/2021, dated 17.02.2021, the Central Government made further amendments to the Faceless Assessment Scheme, 2019.

f. The major objectives of the Faceless Assessment Scheme, 2019 were as follows-

- To reduce human interface between the taxpayer and tax officer to the extent technologically feasible.
- To ensure transparency in assessment proceedings.
- To ensure team based assessment with dynamic jurisdictions.
- To ensure the efficiency of the tax administration.
- To ensure that the assessments are technically sound.
- To ensure that a consistent view is taken on various issues.
- To avoid prolonged and unwanted litigations.

The Scheme which was projected as a 'Knight in shining armor' posed to be a nightmare for many taxpayers.

g. While the object of the scheme was commendable and the scheme was destined to take the image of India as an attractive investment destination and business-friendly environment to all new heights, destiny seemed to have other plans. Though the scheme was framed in a very thoughtful manner by providing sufficient safeguards to the taxpayers, its' implementation was lackluster. The officers of the department, while implementing the scheme, on several occasions, failed to adhere to the safeguards that were crafted in the scheme. In some cases, the department failed to issue intimations to the taxpayers that its' case would be conducted in a faceless manner in accordance with the scheme. In many cases, the department proceeded with the assessment without giving a show-cause notice or without affording an personal hearing despite requesting for the same. The department also made high-pitched additions without meticulously adhering to the procedure laid down in the Scheme. The department frequently violated various safeguards which were intended to protect the interests of the taxpayers and strike a chord of balance between the interest of tax administration and an idea of fairness to the taxpayer. This resulted in a flurry of Writs being filed by taxpayers across Courts in various States panning India. In most cases, the Courts quashed the assessments by observing the patent violation of the Scheme.

h. The Scheme which was projected as a 'Knight in shining armor' posed to be a nightmare for many taxpayers. While the Government sincerely wanted to alleviate the difficulties faced by the taxpayers through a well-constructed scheme, its' visibly deliberate sub-standard implementation and step-motherly treatment by the officers of the department failed to fully achieve the objects of the scheme. In short, the scheme failed to eradicate the very evil it sought to remedy, i.e. replace the goal-based performance of

The Faceless Scheme, 2019 came to be codified in section 144B vide the TOLA, 2020, with effect from 01.04.2021.

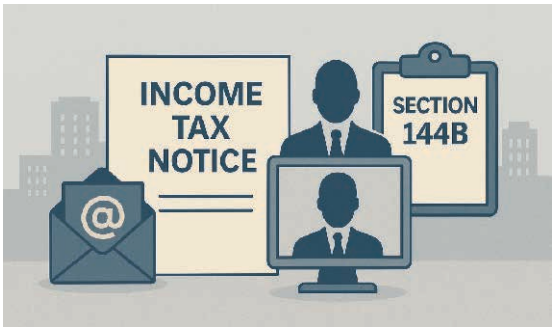
the officers with a robust framework that is holistic in its' approach.

i. Despite an unsatisfactory run at the box-office, the Faceless Scheme, 2019 came to be codified in section 144B vide the TOLA, 2020, with effect from 01.04.2021. The obvious object was to give the Scheme statutory force by having the same in a well-codified form in the Act itself to ensure transparency and to reduce frequent changes to the procedure without the parliamentary intervention. The procedure under section 144B(1) reigned supreme over other provisions of the Act, as the said provision began with a non-obstante clause overriding anything to the contrary contained in any other provisions of the IT Act. However, there was no sigh of relief to the taxpayers by insertion of section 144B. The procedural lapses that were committed during the currency of the Scheme, continued even under section 144B and Courts continued to intervene.

> Section 144B can be compared to a movie with a good story line and star-cast, failing to do well due to bad performances.

j. Section 144B was amended vide Finance Act, 2022. Sub-sections (1) to (8) were substituted with effect from 01.04.2022. Sub-section (9) was omitted with retrospective effect from 01.04.2021 (i.e. date of its' insertion). Sub-section (9) provided that the assessment shall be non-est if it is not made in accordance with the procedure laid down under section 144B. However, such omission of sub-section (9), did not deter the Courts from quashing the assessments for failure to comply with the procedure laid down in section 144B.

k. The assessments under section 144B, till date, continue to be a topic of hot discussion and continue to be widely litigated in Writ Courts. Section 144B can be compared to a movie with a good story line and star-cast, failing to do well due to bad performances.



l. The recently tabled Income Tax Bill, 2025 with the avowed object of simplification of law relating to Income Tax by removing redundant provisions, embodies the provision relating to Faceless Assessment in Clause 273 thereto. Clause 273(1) of the Bill, continues to use the non-obstante clause which was used in section 144B(1) of the IT Act (though the use of word 'notwithstanding' has been replaced with the word 'irrespective of'). However, Clause 273(1) of the Bill, gives the power to the Board to prescribe the procedure by way of Rules, which is in stark contrast to section 144B(1) of the IT Act which itself codified the procedure to be followed. If clause 273(1) of the Bill is enacted in the way it is presently drafted, it could be vulnerable to Constitutional challenge on grounds of excessive delegation and abdication

> The recently tabled Income Tax Bill, 2025 embodies the provision relating to Faceless Assessment in Clause 273 thereto.

of essential legislative functions. It would also defeat the very object behind faceless assessment, which is to ensure ease of compliance and to ensure transparency. Hence, it is suggested that while enacting the Bill, the Legislature may codify the procedure for faceless assessment in Statute itself without delegating it to the rule-making authority. Further, Clause 273 of the Income Tax Bill, 2025 does not contain a provision similar to that of section 144B(6) of the IT Act. Section 144B(6) deals with various important aspects such as authentication of electronic records, delivery of notice, order or electronic communication, submission of response by assessee, determination of time and place of dispatch and receipt of electronic record, personal hearing etc. Absence of these vital aspects in Clause 273 of the Bill is a serious drafting flaw which needs to be plugged.

m. The Faceless Assessment Scheme which stood converted into section 144B is one of the many schemes brought in to reduce interaction between authorities and taxpayers and improve transparency. The list of faceless provisions and faceless schemes notified are as under-

Section	Description	Scheme Notified
92CA(8) and (9)	Faceless determination of ALP	No scheme notified till date despite a provision
130	Faceless jurisdiction of income-tax authorities	Faceless Jurisidiction of Income-Tax Authorities under sections 130(1) and (2)
135A	Faceless collection of information	e-Verification Scheme, 2021 under sections 135A(1) and (2).
142B	Faceless inquiry or Valuation	Faceless Inquiry or Valuation Scheme, 2022 under sections 142B(1) and (2).
143(3A) and (3B)	Faceless Assessment procedure	Faceless Assessment Scheme, 2019 under section 143(3A)
144C(14B) and (14C)	DRP	No scheme notified till date despite a provision
151A	Faceless assessment of income escaping assessment	e-Assessment of Income Escaping Assessment Scheme, 2022 under sections 151A(1) and (2).
157A	Faceless rectification, amendments and issuance of notice or intimation	No scheme notified till date despite a provision
231	Faceless collection and recovery of tax	No scheme notified till date despite a provision
245D(11) and (12)	Interim Board for settlement	No scheme notified till date despite a provision

245MA(3) and (4)	Dispute Resolution Committee	No scheme notified till date despite a provision
245R(9) and 245R(10)	Board for Advance Ruling	No scheme notified till date despite a provision
246(5)	Faceless Appeal in case of JCIT(A)	e-Appeals Scheme, 2023 under section 246(5)
250(6B) and 250(6C)	Faceless Appeal Scheme	Faceless Appeal Scheme, 2021 under sections 250(6B) and (6C)
255(7) and 255(8)	Procedure of ITAT	No scheme notified till date despite a provision
264A	Faceless revision of orders	No scheme notified till date despite a provision
264B	Faceless effect of orders	No scheme notified till date despite a provision
274(2A) and (2B)	Penalty procedure	Faceless Penalty Scheme, 2021 under section 274(2A)
279(4) and (5)	Prosecution	No scheme notified till date despite a provision
293D	Faceless approval of registration	No scheme notified till date despite a provision

Indian tax law as the most litigated area of law

a. With the certainty of taxes, comes the certainty of litigation. The tax laws continue to remain the most complicated laws in the Country and the most litigated area of law. Consisting of 917 sections and 14 Schedules with a set of Rules to accompany the same, the IT Act, 1961 is one of the most complicated laws in today's date. No doubt the major aim of incumbent governments has been to simplify the same and weed out redundant provisions. The recently tabled Income Tax Bill, 2025 is also an effort in this direction.

b. Tax disputes and litigation are inherent parts of the tax landscape of the country. With a complex tax law in place and frequent amendments and changes that they undergo, the taxpayers often find themselves in disputes with the tax authorities. Tax disputes could arise due to various reasons, some of which include the complexity in law, differences in interpretation, frequent changes in the law, aggressive tax planning strategies, tax arbitrage due to different tax rates, in different jurisdictions, tax evasion through conduits and shell companies etc.

> The IT Act, 1961 is one of the most complicated laws in today's date.

c. In addition to the above, some of the reasons as discussed below can be seen as attributing to increased tax disputes-

   - Reluctance amongst taxpayers in fully disclosing their incomes and paying

due taxes is one of the root causes for tax disputes. In India, a good number of subjects continue to evade payment of taxes. Less than 10% of the population files tax returns. As a result, the brunt of taxes is concentrated on a smaller number the population. Taxes still continue to constitute one of the major sources of revenue to the Union. Income-tax constitutes 22% of the revenue as per the Budget Highlights 2025. In the wake of same, the protection of the revenue to the exchequer continues to be of paramount importance. As a result, more often than not, the administration is seen behaving like a blood hound viewing every taxpayer with a tainted lens.

The tax administration is often seen acting as a compulsive litigant, needlessly litigating matters even up to the highest Court even when such matters do not deserve to be litigated.

- In case of revenue, litigation is often a result of the vested interests of the authorities who are to decide which matters deserve to be litigated and the counsels who advice the revenue departments. The tax administration is often seen acting as a compulsive litigant, needlessly litigating matters even up to the highest Court even when such matters do not deserve to be litigated. This not only wastes the judicial resources and Court's time, but also puts the taxpayers through the ordeal and agony of prolonged litigation, often resulting in withdrawal of faith in the administration. It is often noticed that duplicative appeals are filed by the revenue before Courts arising from cross-appeals before the Tribunals. The National Litigation Policy has highlighted various measures to ensure that the Government does not act as a compulsive litigant. However, these measures are not being fully implemented in as much as there is no reduction in litigation. In CIT v. Excel Industries Ltd. [2013] 358 ITR 295, the Supreme Court ended the decision with a remark *"For the aforesaid reasons, we dismiss the civil appeals with no order as to costs, but with the hope that the Revenue implements its litigation policy a little more practically and a little more seriously."*
- Frequent changes in the law and rules, issue of Notifications and Circulars which run contrary to the letter of law, or earlier Notifications and Circulars, often contribute to tax disputes. Frequent changes in the law, leave both the officers and the taxpayers guessing as to what is the applicable position of law. Further, subordinate legislations are followed by officers on the ground that the same bind them, even though the same are inconsistent with the law. This also contributes to tax disputes.

Tax Payer Charter

a. Section 119A provides that the Board shall adopt and declare a Taxpayer's Charter and issue such orders, instructions, directions or guidelines to other income-tax authorities as it may deem fit for administration of such Charter. The said provision was inserted vide Finance Act, 2020, with effect from 01.04.2020.

b. Even prior to insertion of section 119A, a Citizen's Charter was published by the Income Tax Department in 2014. It was a declaration of its' commitment to the taxpayers.

c. The vision of the Charter was to partner the subjects in the nation building process

through progressive tax policy, efficient and effective administration and improved voluntary compliance. The vision captures the ethos of what a good administration must do.

The vision of the Charter was to partner the subjects in the nation building process through progressive tax policy, efficient and effective administration and improved voluntary compliance.

d. The said Charter also provided a list of service delivery standard which laid down timelines for various actions. Nevertheless, these timelines have only remained on paper and have not been diligently followed by the revenue authorities. For instance, the timeline committed for issue of refund was one month. However, taxpayers are seen moving from pillar to post to get their refunds, often moving the Courts.

e. Section 119A only requires the Board to adopt a Taxpayer's Charter. Instead of asking the Board to design the Charter, it is suggested that the provision itself should lay down the vision, mission and the service delivery standards as part of the taxpayer's charter. The provision must envisage strict adherence by revenue officers to the Charter and must also lay down penalties and punishment for erring revenue officers.

Tax Litigation in India: A Long-Drawn Process

a. Tax Litigation in India continues to remain a long-drawn process. This is due to lack of well-defined timelines in case of dispute resolution and redressal.

b. Section 250(6A) only provides a directory time limit of one year for the for disposal of matters by JCIT(A) or CIT(A). Similarly, section 254(2A) provides a directory time limit of 4 years for the disposal of matters by the Tribunal.



c. In terms of section 250(6B), the Faceless Appeal Scheme, 2020 came to be notified vide Notification No. 76/2020, dated 25.09.2020 to provide for e-appeal and for the online hearing and disposal of appeals relating by the CIT(A). The said scheme came to be challenged by way of series of Writs filed before various High Courts. A transfer petition was filed by the revenue seeking for transfer of the cases challenging the scheme to the Supreme Court in CBDT v. Lakshya Budhiraja [2021] 131 taxmann.com 51 (SC). Before the Supreme Court, the ASG submitted that the department was having a second look at the Scheme and sought for a period of 3 months as it may require change of law. Upon considering such submission, the matter was deferred for 3 months.

> This is due to lack of well-defined timelines in case of dispute resolution and redressal.

d. As a result of the issues in the Scheme and a process of introspection into the same, matters remained undisposed by the CIT(A), thus creating huge pendency.

e. The Faceless Appeal Scheme was revamped, resulting in the Faceless Appeal Scheme, 2021 which came to be notified vide Notification No. 139 of 2021, dated 28.12.2021.

f. Despite the revamp in the Scheme in late 2021, old and pending matters remained clogged with poor rate of disposals by the CIT(A). With disposal of low-stake matters and covered matters, high-stake matters continue to remain undisposed for very long periods of time. This has created a bottleneck holding back appeals to the Tribunal from the orders of the CIT(A) s. Presently, therefore, majority of the appeals to the tribunal are on transfer pricing issues through the route of Dispute Resolution Panel, as direct appeal to the tribunal is provided in such cases. Non transfer pricing appeals are far and few in the tribunal due to lethargic functioning of CIT(A)s.

g. It may also be relevant to highlight that once the floodgates open and the CIT(A)s begin to dispose matters, a sea of appeals would arise before the Tribunal. This could all of sudden increase the burden on the Tribunal, who having not had many matters for their disposal, would now be cramped with the weight of so many matters.

h. In the Central Action Plan, 2024-25, it was observed that as of 01.04.2024, there were approximately 3,01,102 appeals pending before the CIT(A) filed before 01.04.2022. To effectively dispose of such appeals, the Action Plan proposed targets and guidelines based on the twin categories of date of filing of appeal and the quantum of the demand involved.

i. In light of the said Central Action Plan, in FY 2024-25, a significant number of appeals was disposed. The Central Action Plan, 2025-26 claims that during the FY 2024-25, the disposal of appeals is 155% more than the previous year and is at an all-time high. The Action Plan while acknowledging that the pendency is high, also notes that the pendency of appeals as on 01.04.2025 is lower than the pendency on 01.04.2024. It notes that during FY 2024-25, 1.72 lakh appeals have been disposed of despite substantial shortages and vacancies at the level of the CIT(A) (Faceless) and JCIT(A). The Action Plan also categories the appeals into

> Non transfer pricing appeals are far and few in the tribunal due to lethargic functioning of CIT(A)s.

four categories and deals with the priority and manner of disposal of cases.

j. The above Central Action Plan clearly highlights the huge pendency of legacy appeals before the CIT(A), which were filed during the pre-faceless era and appeals filed during the faceless era which have been long-pending. It also attributes the pendency to substantial manpower shortages and vacancies at the level of the CIT(A) (Faceless) and Joint CIT(A).

Central Action Plan clearly highlights the huge pendency of legacy appeals before the CIT(A), which were filed during the pre-faceless era and appeals filed during the faceless era which have been long-pending.

k. It is the fundamental duty of the tax administration to ensure that it is well-staffed and there is proper and efficient utilization of available resources. Hence, manpower shortages cannot be any justifiable reason for delays in disposal of appeals.

l. The Central Action Plan 2025-26 also makes a highly ambitious proposal of disposal of about 2 lakh appeals. Whether such targets would be achieved or not would only be known as time would unfold. However, given that 1.72 lakh appeals have been disposed of during the FY 2024-25, the proposal seems to be achievable.

Central Action Plan 2025-26 also makes a highly ambitious proposal of disposal of about 2 lakh appeals.

Tenured Appointment of Tribunal Members

a. With regard to appointment of Tribunals, in exercise of powers conferred under section 184 of the Finance Act, 2017, the Central Government framed the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020. As per Rule 9 of the said Rules, the tenure of the Tribunal members is 4 years. This is however subject to a superannuation age limit. There is no provision for reappointment unlike the earlier Rules framed in 2017, although the members may apply make a fresh application for appointment after competing with other applicants.

b. The earlier Rules framed in 2017 were quashed by the Constitution Bench of the Supreme Court in Rojer Mathew v. South Indian Bank and Ors AIRONLINE 2019 SC 1514. In the said judgment, the Court observed that a longer tenure for members is essential for maintaining judicial independence. It was also observed that if members of the bar or from the administration or from the State judiciary are appointed at the lowest rung of the tribunal and they have a long tenure knowing that they will retire after 15 or 20 years, one would be able to attract better talent and a more committed workforce. However, despite such observation by the Court, while reframing the Rules in 2020, a fixed tenure has been continued. Further the eligibility for reappointment has also been removed.

c. The All India Federation of Tax Practitioners (AIFTP), in its detailed representation addressed to Shri Arun Jaitley, the Union Finance Minister, pointing out that section 184 of the Finance Act 2017, which mandates

the appointment of Members of the ITAT for a short tenure of only five years, will undermine the independence of the institution and lead to disastrous consequences. Some of reasons assigned for their representation were as under:

The appointment of Members of the ITAT for a short tenure of only five years, will undermine the independence of the institution and lead to disastrous consequences.

- Appointment of Members of the ITAT on tenure of five years, affects the independence of the Institution.
- Longer tenure is required for members to acquaint themselves with the law and procedure.
- Tenured appointment will deter young talent from joining the Tribunal.
- Judicial members of the ITAT are a potential source for appointment of High Court Judges to deal with taxation matters. Young professionals may not repose confidence in the institution as a career opportunity and may not join the Bench, which will be a loss not only to the Tribunal but also to the High Courts.
- There is no reason to disturb the system of appointment on permanent basis which has served well for more than 76 years.
- The proposal for tenured appointment of members of National Tax Tribunal was struck down on grounds of violating the constitutional validity. Following such precedent, tenured appointment should not be made.

d. The above mentioned points highlight the demerits of tenured appointment of Tribunal members.

e. The Legislature has enacted the Tribunals Reforms Act, 2021. The said Act has come into force on 13.08.2021. Section 252A of the IT Act provides that notwithstanding anything contained in the IT Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the President, Vice-President and other members of the Appellate Tribunal appointed after the commencement of the Tribunals Reforms Act, 2021, shall be governed by Chapter II of the said Act.

f. Section 3 of the Tribunal Reforms Act, 2021 deals with the qualifications, appointment, etc. of Chairperson and Members of Tribunal. Section 5 of the said Act deals with the Tenure of office of Chairperson and Member of Tribunal. Section 5 also on similar lines as the 2020 Rules provides for tenured appointment subject to superannuation. Section 6 of the said Act deals with eligibility of Chairperson and Members for reappointment. Proviso to section 6(1) provides that in making re-appointment, preference shall be given to the service rendered by such person. Hence, service rendered by a person has been a criteria for preference for re-appointment.

Such tenured appointment with power for reappointment being based on preference given to the service rendered by the member, affects the independence of members.

g. The Tribunal is an Independent body functioning under the Ministry of Law and

Justice. Such tenured appointment with power for reappointment being based on preference given to the service rendered by the member, affects the independence of members. It also deters young talent from joining the Tribunal. Further, the short tenure of 4 years is impractical as the same is insufficient for a person to gain enough expertise in the areas of procedure and the law. The Tribunal being the final fact finding authority requires members with highest amount of integrity, knowledge and skill. Such knowledge and skill can only be developed over time. The short period of 4 years is grossly insufficient in developing the required amount of knowledge and skill to discharge such important function. The system of tenured appointment is a threat to the Institution. In fact, as held by the Supreme Court in Rojer Mathew's case (supra), a longer tenure is essential to ensure the independence of the Tribunal and to give a sense of security to the members and attract young talent. Keeping the same in mind, the authors are of the considered view that the tenured system of appointment deserves to be scrapped and the earlier system of appointment on a permanent basis needs to be restored. Alternatively, if tenured system is to continue, the tenure may be increased to 10-15 years, as the present tenure of 4 years is grossly insufficient.

h. Proviso to section 3(1) of the Tribunal Reforms Act, 2021 provides that the person who has not completed the age of fifty years shall not be eligible for appointment as Chairperson or Member. While a person younger than 50 years can be a judge of a High Court, he cannot be a tribunal member! The minimum age limit of fifty years creates a bar on young talent from joining the bench. In case of appointment of Accountant Members, Chartered Accountants serve as big source. Under the present scheme, only those Chartered Accountants who are aged fifty years or more would be eligible for appointment. Not many experienced Chartered Accountants, who are aged 50 years and above, in their prime and having a flourishing and thriving practice, would be keen on giving up their practice to join the bench. Such minimum age limit is not encouraging. There is no rhyme and reason why young professionals should not be welcomed into the Tribunal.

Actionable Ideas To Reduce Tax Litigation And De-Clog The Appellate Pipeline

a. In this article we have highlighted how tax litigation has been at a constant rise and how the bottlenecks the Appellate pipelines are resulting in clogging of disputes without effective, efficient and timely dispute resolution.

b. In the view of the authors, some of the measures that may be adopted to reduce tax litigations and for achieving faster resolution of disputes are as under-

- Suggested Measures to reduce tax litigation-

There is no rhyme and reason why young professionals should not be welcomed into the Tribunal.

(i) The system of Authority for Advanced Ruling consisting of independent members is to be reintroduced. Presently, the Board for Advanced Ruling introduced by the Finance Act, 2021, consists of senior officers not below the rank of Chief Commissioner of Income-tax as Members. Thus, the members constituting the Board are none other than officers of the department, impacting the independence of the Board and putting to prejudice the entire scheme of advanced ruling. The system of Advanced

Rulings would facilitate certainty and predictability and enable the taxpayers to a well-reasoned decision, thus helping reduce litigation.

(ii) The mechanism of settlement of disputes through the Settlement Commission may be reintroduced. Vide the Finance Act, 2021, the Settlement Commission ceased to operate with effect from 01.02.2021 and pending cases have been transferred to Interim Board for Settlement. Hence, new cases cannot be settled after 01.02.2021. The Settlement Commission was conceived based on the recommendation of the Wanchoo Committee. In Chapter 2 of the said Report, the Committee highlighted that the door for compromise with an errant taxpayer should not remain closed for ever. In an administration of fiscal laws, whose primary objective is to raise revenue, there has to be room for compromise and settlement. A rigid attitude would not only inhibit a one-time tax-evader or an unintending defaulter from making a clean breast of his affairs, but would also unnecessarily strain the investigational resources of the Department in cases of doubtful benefit to the revenue, while needlessly proliferating litigation and holding up collections. In light of the recommendation given by the Committee, it is necessary for existence of an effective scheme of settlement.

The system of Advanced Rulings would facilitate certainty and predictability and enable the taxpayers to a well-reasoned decision, thus helping reduce litigation.

(iii) A more robust safe harbour system is suggested for reduction in the Transfer Pricing litigation. Transfer Pricing continues to be one of the most litigated areas in taxation since 2002. While we do have a system of safe harbour prevalent in the IT Act read with the IT Rules, the safe harbour rates of profit provided are on a higher side and do not match the realities of business. Hence, a more realistic approach is to be adopted by lowering the safe harbour rates after due consultation with the market participants. The Authority for Advance Rulings may be entrusted with the task of fixing sale harbour rates after due consultation with the stakeholders.

(iv) The Board may provide guidelines to focus on quality based litigation rather than on the quantitative aspects. Merely because the quantum involved in a dispute is huge, it does not make it worthwhile litigating the same, where the revenue does not have a case on merit. In fact, the National Litigation Policy also highlights a qualitative assessment of the issues. Presently, monetary limits have been framed to prevent litigation in respect of small matters. The monetary limits are subjected to revision from time to time. The same is welcome. However, the disputes must also be assessed on a qualitative basis to prevent needless litigation in respect of issues or matters which do not deserve to be litigated.

In an administration of fiscal laws, whose primary objective is to raise revenue, there has to be room for compromise and settlement.

(v) Amnesty schemes like the Direct Tax Vivad Se Vishwas Schemes are welcome

measures. The government may continue to bring such schemes from time to time to enable taxpayers to settle and resolve their disputes and reduce pending litigation. While these schemes are welcome, it is noticed that the refunds due under the schemes are unreasonably delayed without payment of interest. This gives rise to new litigation, where taxpayers move the Court to recover interest lawfully due to them on delayed refunds. In many cases, taxpayers have been successful in recovering interest from the revenue on equitable grounds for delay in issue of refund of excess taxes paid under the Vivad Se Vishwas Scheme, despite a bar on payment of interest under section 244A of the Act in terms of section 7 of the Direct Tax Vivad Se Vishwas Act, 2020.

(vi) The department may issue technical guides and materials from time to time on their understanding and interpretation on various important provisions of the Act. This will ensure clarity to the taxpayers as to the position of the department with regard to the interpretation of a particular provision and would enable them to take a well-reasoned call while undertaking transactions and making business decisions.

Disputes must also be assessed on a qualitative basis to prevent needless litigation in respect of issues or matters which do not deserve to be litigated.

(vii) The department may undertake periodical training programs for its' officers, especially in complex matters such as Transfer Pricing and International Taxation. The Transfer Pricing Officers must be completely proficient with business realities, business dynamics and changing situations and should not have unrealistic expectations from taxpayers with regard to earning of profits.

The Transfer Pricing Officers must be completely proficient with business realities, business dynamics and changing situations and should not have unrealistic expectations from taxpayers with regard to earning of profits.

Suggested Measures to faster resolution of disputes and de-clogging of Appellate pipelines-

(i) Going forward, the Act may set timelines for disposal of matters by the CIT(A) and the ITAT. Delayed disposal of appeal beyond the time limit set should liberate tax payers from interest payable on



demand sustained in appeal from the said date. This would not only ensure timely disposal of appeals and prevent clogging of matters at the appellate levels, but also bring parity with section 244A(2), as per which no interest is payable to assessee on refund if the delay is attributable to him. With respect to pending appeals, a transition time limit may be set for this purpose.

> Delayed disposal of appeal beyond the time limit set should liberate tax payers from interest payable on demand sustained in appeal from the said date.

(ii) To ensure faster and timely resolution of disputes, the shortage in manpower and vacancies in the post of the CIT(A) (faceless) and the JCIT(A) which appears to be a reason for the huge pending appeals, needs to be effectively dealt with by making the required recruitments. Proper distribution of cases should be ensured for proper utilization of resources.

(iii) While the Central Action Plans framed by the Board continue to set targets for disposal of appeals, strict measures should be taken to ensure that the targets are achieved and the variances if any are minor.

(iv) The targets for disposal of appeals set in the Central Action focus on duality of date of pendency and the quantum of demand. The qualitative aspect of the issues involved is also a relevant factor to be considered. Merely disposing a number of matters which are high-stake and long pending would not suffice where such matters are only repetitive and not involve any significant examination of legal issues. At the same time disposal of a huge number of small and insignificant matters leaving high stake and important matters pending would also not serve the purpose. Hence, the targets must be based on the trinity of factors, i.e., pendency, quantum and importance of issues involved.

Conclusion

A healthy tax administration system is key to the growth and development of the economy. It ensures active participation of taxpayers and businesses and stakeholders in the development of the economy. While the number of taxpayers and return-filers continue to grow year on year, a large number of persons persistently evade taxes and remain outside the tax net. To bring more and more persons within the tax net, it is necessary to have a well-oiled tax administration whose aim is not confined just to increase tax collection by hook or crook. The tax administration must treat the taxpayers with the dignity that they deserve. This will enhance their contribution in the nation-building exercise. As the famous saying goes, 'Rome was not built in a day'. If we want to build a Nation, we must act in concert. The constant tussle between the taxpayers and the administration must end as it would only deter the nation-building exercise and derail us from the path of becoming a 5 trillion dollar economy.

> Merely disposing a number of matters which are high-stake and long pending would not suffice where such matters are only repetitive and not involve any significant examination of legal issues.

The Future of Direct Taxes in a Digitalized Economy

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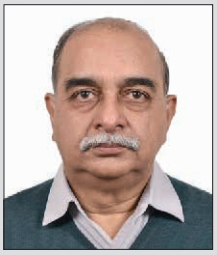

Mr Akhilesh Ranjan

Overview

The fast-moving developments in technology witnessed over the last decade or so have not only impacted business models and markets but have also led to a surge in global mobility and the geographical spread of businesses. Global tax policy has been engaged intensively with finding solutions to the tax challenges of this digitalized and globalized economy. The much heralded 2-Pillar solution agreed in October 2021, however, may be able to only partially resolve these challenges due to recent geo-political developments that have placed the multilateral reform process under considerable strain. Major direct tax issues such as the characterization of income flows in digitalized business models, the need to redefine the concept of nexus to account for the new ways of doing business, and fresh analysis of the place of accrual of income from digital services, remain to be addressed in a way that would ensure the fair and equitable taxation of cross-border incomes. Formulation of tax policy has become increasingly political, and global attention has shifted to the United Nations where an inter-governmental committee is now trying to achieve more effective and inclusive international tax cooperation, including an agreement on new ways of taxing income from services in a digitalized economy. Meanwhile, businesses are faced with increasing compliance requirements along with tax uncertainty and rising tax disputes

> Countries came together in unprecedented multilateral agreements that not only ushered in a new era of cooperation and tax transparency but also put in place strong mechanisms for checking tax evasion as well as tax avoidance.

Background

The last decade and a half saw far-reaching global developments in international tax policy and administration. The financial melt-down of 2008 had triggered a new resolve amongst nations,

both developed and developing, to delineate, preserve and protect their tax bases and optimize tax revenues. Countries came together in unprecedented multilateral agreements that not only ushered in a new era of cooperation and tax transparency but also put in place strong mechanisms for checking tax evasion as well as tax avoidance. The Multilateral Convention on Mutual Administrative Assistance in tax matters sponsored by the Organisation for Economic Cooperation and Development (OECD) together with a large number of bilateral agreements on exchange of information equipped tax



administrations with the means to track, verify and assess the financial dealings of taxpayers across the world. The Base Erosion and Profit Shifting (BEPS) project of 2012-15 introduced Country-by-Country reports by multinational enterprises (MNEs) and their exchange amongst tax administrations. The Multilateral Instrument designed under the project to speedily amend bilateral tax treaties by incorporating anti-abuse provisions such as the Principle Purpose Test (PPT) has since been ratified by 89 countries. Simultaneously, countries began enacting a host of specific as well as general anti-avoidance laws in their domestic tax legislation.

While these initiatives certainly augmented the capacities and capabilities of countries in their quest for domestic resource mobilization, they did not address the problem of profit-shifting to low-tax jurisdictions. More importantly, they failed to address the tax challenges of the digitalized economy.

The Digital Disruption

The BEPS Action 1 report did recognize the altered nature of global value chains and the emergence of new business models such as multi-sided platforms in the new digitalized economy, but stopped short of making specific recommendations on the tax challenges posed by these momentous changes and merely ended with the hope that the other BEPS measures that were being taken would resolve at least some of these issues and questions.

The OECD and the Inclusive Framework (IF) continued to work on the tax challenges of the digitalized economy and produced the Interim Report of February, 2018, a seminal document that comprehensively examined the effects of digitalization and how the ways of doing business had changed. The report noted that an enormous amount of data is now being

An enormous amount of data is now being continuously generated through the interaction between users and connected devices, and this data is being collected and processed in different ways by governments and businesses alike.

continuously generated through the interaction between users and connected devices, and this data is being collected and processed in different ways by governments and businesses

alike. Rapid advances in digital technology allow manipulation of information at high speed and low costs. The low marginal costs of maintenance and distribution of digital goods and services, combined with the global reach of the internet have allowed digitalized businesses to quickly achieve economies of scale. Traditional markets have given way to digital markets where the consumption of a specific good or service is a function of the number of other end-users consuming the same good or service (direct network effects, e.g. social media and online gaming), or where a specific group of end-users may benefit from interaction with another group of end-users (indirect network effects which entail multi-sided markets, e.g. users of social networks interacting with advertisers on an online platform).

Value creation in the new business models of the digitalized economy has become much more complex.

New business models have emerged where businesses and customers or users or clients interact through different types of interfaces, such as those in multi-sided platforms where suppliers are able to interact with users and customers across different sides of the platform. The traditional concept of value chain where value creation begins with raw materials and proceeds sequentially through steps in a linear production process, is no longer considered adequate. Value creation in the new business models of the digitalized economy has become much more complex. Studies cited in the report speak of 'value networks', which create value by using a mediating technology to create a relationship between suppliers, users and customers (as in multi-sided platforms), and 'value shops' that create value by marshalling resources in the form of hardware, software and specialized knowledge to resolve customer demands (as in single-sided models like cloud computing and medical diagnostics).

The development of new technologies and digital products has also permeated global financial markets. An entirely new type of asset referred to as crypto asset has been created by cryptography and distributed ledger technology and is rapidly growing in use and value. Since crypto assets are created by technology, they can be stored, recorded and transferred in a decentralized manner without having to go through financial intermediaries. In fact, they have created their own set of intermediaries in the form of crypto exchanges and wallet providers that facilitate purchase, sale and exchange of crypto assets as well as their storage. These exchanges and wallet providers are subject to very limited regulatory oversight, that too in only a few jurisdictions, and transactions in these assets are far from transparent. These characteristics of the new 'virtual digital assets' pose substantial risks not only to regulators and enforcement agencies, but also to tax administrations because of the ease with which they can be used to conceal income and wealth, particularly through the use of offshore intermediaries.

Response to Digitalization

All these features of the new economy prompted a shift in the global tax dialogue from analyzing the tax challenges of a 'digital economy', which would refer to a separately identifiable and ring-fenced economy, to the challenges of a 'digitalized economy', which refers to the global economy as transformed by digitalization.

Substantial work has been done in developing transparency in regard to crypto assets and the functioning of crypto exchanges. The OECD has worked with G 20 countries to develop a Crypto Assets Reporting Framework (CARF) which extends the existing framework for automatic exchange of financial account information (AEOI) to the recording and exchanging of information relating to crypto assets and exchanges. The Global Forum has already made significant

progress in implementing CARF, with more than 60 countries having already committed to join the framework. India has not made a formal commitment as yet but remains engaged in the process and has enacted the enabling legislation (new section 285BAA of the Income-tax Act) required for implementing it.

On the policy-related challenges, the 2-Pillar solution agreed to by the Inclusive Framework in October 2021 under the G20/OECD sponsored process was widely expected to provide solutions to various issues thrown up by the digitalization of the economy. The Pillar 1 framework sought to allocate a portion of 'excess' profits earned by highly profitable MNEs to the markets in which they operate, in proportion to the revenues derived from those jurisdictions and 'unconstrained by physical presence'. Pillar 2 was aimed at effectively reducing harmful tax competition and profit-shifting by ensuring that MNEs pay a minimum amount of tax on their consolidated profits regardless of where they operate.

On the policy-related challenges, the 2-Pillar solution agreed to by the Inclusive Framework in October 2021 under the G20/OECD sponsored process was widely expected to provide solutions to various issues thrown up by the digitalization of the economy.

During the last four years or so the Inclusive Framework and the OECD have made intensive efforts to flesh out the framework agreed upon in October 2021 and deliver the instruments and the documentation required to implement that agreement. On Pillar 1, a draft multilateral convention (that would be necessary for its implementation) has been drafted. On Pillar 2, comprehensive and voluminous guidance has been issued, and model rules (Global Anti-Base Erosion or GloBE rules) have been drafted for implementing countries to follow while incorporating them in their domestic legislation. More than fifty countries (including members of the European Union) have already enacted or are in the process of enacting the implementing legislation. A Multilateral Instrument to give effect to the subject-to-tax-rule (STTR) is also open for signature by countries.

However, recent geo-political events have cast a shadow on how, and if at all, the 2-Pillar solution is going to work. The US has officially declared that it does not consider itself bound by whatever is agreed upon in the Inclusive Framework. The digital services taxes (DSTs) which had been introduced or were proposed to be introduced by several countries, and which were anticipated to be one of the principal reasons for the US to consider agreeing to Pillar 1, have been or are being removed through a combination of threatened retaliatory taxes and crippling import tariffs in the US. India, for instance, abolished its Equalization Levy even before commencing negotiations with the US for a bilateral trade agreement. Further, there are no indications that the US Senate would even be willing to consider approving and ratifying the proposed multilateral convention.

Pillar 2, of course, is being implemented. But several countries that are committed to implementing the GloBE rules are still circumspect about the undertaxed profits rule (UTPR), owing to its controversial design. Most importantly, the US views the UTPR as an extra-territorial tax that it will certainly not accept and also insists on retaining its global intangibles low taxed income (GILTI) tax in preference to the income inclusion rule (IIR) of the GloBE rules. Much is being made of the recent agreement reached during the last week of June 2025 among the G7 group of advanced economies (including the US), which proposes a 'side-by-side' solution where existing US taxes like the GILTI can co-exist with the IIR

and the UTPR of Pillar2. Consequently, the US Congress has deleted the proposed retaliatory section 899 tax from the 'One Big Beautiful Bill' that has just been enacted and has re-branded the GILTI as 'net CFC tested income'. However, the G7 proposal is yet to be agreed upon by the other 140-odd countries of the Inclusive Framework. Even if the OECD manages (as it has done in the past) to achieve 'consensus' in the Inclusive Framework on the G7 agreement, such consensus is likely to entail substantial changes including a broadening of the compliance safe harbours and/or a re-defining of qualifying tax credits, that would enable the GloBE rules to live 'side-by-side' with US laws. This, however, would be very likely to compromise the integrity and effectiveness of the global minimum tax.

Unresolved Challenges

This brings us back to the questions and issues that need to be resolved to find globally acceptable answers to the tax challenges of the digitalized economy:

(a) **Issues of characterization**: The contribution of intangible assets and intellectual property (IP) in value creation is all the more pronounced in the case of digitalized businesses. Indeed, the intense use of IP assets such as software rights and algorithms that support multi-sided platforms as well as several crucial functions is central to many of these new models. This raises the issue of characterization of several income flows running through modern businesses, whether they are manufacturing or distribution businesses or any other businesses rendering different types of services.

The majority of income flows in digitalized businesses can broadly be classified as remuneration for services provided using digital technology. Under the current international tax rules it is extremely difficult to subject such income to source-based taxation in the country where the payments arise. The OECD Model Convention requires the physical presence tests of permanent establishments or fixed bases to be satisfied for source taxation to be permissible. The UN Model Convention does include a separate Article 12A (and now Article 12AA) on fees for services defined more broadly, allowing for taxation in the source country. But it has not been possible for source jurisdictions to incorporate such a provision in their treaties, particularly with OECD member countries, without including stringent conditions requiring actual transfer or making available of technology. Similarly, source countries are unable to tax payments for the use of licensed software as royalties, as confirmed recently by the Indian Supreme Court.



(b) **Issues of nexus**: It is now well-accepted that digitalization has significantly altered and accelerated the spread of global value chains in which MNEs integrate their worldwide operations. Businesses can locate different stages of their production processes in different jurisdictions and at the same time access a much larger number of customers around the world than what they were able to do earlier. Using remote technology, many digitalized businesses are now heavily involved in the economic life of a jurisdiction without any physical presence therein.

It is also well-accepted that user participation and user data have become important drivers of value creation in most new-age business models that depend on network effects, user-generated content and the collection and exploitation of data. Considering the avowed objective of the BEPS project to ensure taxation where economic activity occurs and where value is created, it should be globally acceptable that such involvement in a country's economy can create an economic nexus strong enough to bestow tax jurisdiction on that country in respect of income arising from the relevant activity.

The digitalized economy has fundamentally challenged existing international tax rules, raising complex issues around income characterization, nexus, taxing rights, gross taxation, and compliance burdens, which require globally coordinated solutions.

India was perhaps the first country to formally incorporate (in 2018) the concept of 'significant economic presence' in its domestic tax law as a factor giving rise to a business connection, income arising from which would be deemed to accrue or arise in India and would therefore be taxable in India. Since then, several countries around the globe have included this alternate tax nexus in their domestic law. However, the existing tax treaties and model conventions still do not recognize the existence of such an alternate nexus, despite the hiccups of Pillar1.

(c) **Taxing rights for income from services**: Closely allied to the issue of nexus is the question on the place of accrual of income from services, particularly in digitalized business models. Traditionally, income from services has been considered as accruing in the place where they are performed, and a source jurisdiction that utilizes the services can tax such income only if the services are performed by personnel present in that jurisdiction. But in the context of digitalized businesses, the same services that would otherwise have required physical performance can now be performed remotely and, in several cases, without human intervention. This leads to a distortion of the level playing field with regard to taxation of income from digital and other services.

(d) **Efficacy of gross basis of taxation**: While taxation of income on net basis is the established norm, taxation on gross basis in certain circumstances represents a legitimate and convenient manner of taxation. Broadly speaking, taxation of income on gross basis can be considered feasible where the marginal costs associated with the earning of the income are not significant, even though substantial costs may have gone into establishing the asset that is giving rise to the income. A number of automated digital services referred to in Article 12B of the UN Model Convention could be taken as fulfilling these criteria. However, it would be difficult to tax most other types of service incomes on gross basis and could result in over-taxation as well as difficulties in getting credit in the base jurisdiction. Yet, most developing countries are in favour of taxing all income from cross-border services on gross basis, for reasons of ease of implementation and collection of taxes.

(e) **Complexity in compliance**: The rapid increase in the scale and geographical spread of operations in digitalized businesses has forced MNEs to revamp their accounting and record-keeping systems to be able to better manage their businesses, as also to comply with the ever-increasing requirements introduced by tax administrations worldwide.

The number of data points that these systems must now incorporate has gone up exponentially with various new filing requirements like country-by-country reporting (CBCRs) and the globe information returns under Pillar 2. Tax administrations and MNEs must now make substantial investments in tax technology and the use of new technological models based on artificial intelligence.

The Indian Position

India has been taking a consistent stand with regard to all these issues concerning taxation in the digitalized economy. Right from the days of discussions on Action 1 of the BEPS project, India has maintained that the prevailing rules of nexus, which are based on physical presence in a jurisdiction, must be modified and supplemented with an alternate nexus based on the level of economic activity in a jurisdiction even in the absence of physical presence. India further believes that the arm's length standard of transfer pricing may not be adequate in correctly attributing income to such alternate nexus, as it is extremely difficult to apply the standard to transactions in digitalized businesses which often involve unique and hard-to-value intangibles.

As noted earlier in this article, the BEPS Action 1 report did recognize the broader tax challenges of the digital economy and also suggested mechanisms like excise taxes and equalization levies that countries could adopt to deal with these challenges, as long as such measures were not in conflict with their tax treaties. Considering these suggestions, India enacted the Equalization Levy in 2016 providing for a charge on gross revenues from digital advertising services remitted overseas to internet companies. The Equalization Levy was not enacted as an income-tax and therefore was not inconsistent with India's tax treaties. Besides collecting revenue, the measure also aimed to resolve the issue of characterization of such income by introducing a specific exemption from corporate tax to any income arising from the revenue stream which was subject to Equalization Levy.

At the same time, India made it known that it would still prefer a more well-rounded solution that would be consistent with income-tax principles and with tax treaties by incorporating the provisions relating to significant economic presence in the primary source rule in the Income-tax Act. An exercise was launched to draft new rules for attribution of profits to permanent establishments, which would also apply to significant economic presence. The draft rules placed in public domain for discussion enumerated the factors that should be taken into account, viz. quantum of revenue, strength of employees, assets utilized and number of users (where applicable), in determining the attributable profits. However, these draft rules could not be finalized in view of the ongoing discussions in the Inclusive Framework under Pillar1, in which India was an active participant.

The Pillar 1 formulation by which only a portion of excess profits of large and highly profitable companies would be re-allocated to market jurisdictions may not have come up to India's expectations. Considering the thresholds incorporated, the formulation would apply to only a hundred odd biggest companies and did not directly address the tax challenges posed by highly digitalized companies. Notwithstanding these perceived shortcomings, India welcomed the agreement reached in October 2021, primarily because it recognized the existence of a taxing nexus even in the absence of any physical presence, and accepted the proposition that markets also create value that should be

India has been taking a consistent stand with regard to all these issues concerning taxation in the digitalized economy.

taken into account by rules for allocation of income. These ideas were entirely in line with the principles that India had propounded over the years.

Prospects for the Future

Now that the possibility of a multilateral convention under Pillar 1 becoming a reality has become increasingly remote, global attention has shifted to the United Nations (UN), where an inter-governmental negotiating committee (INC/Tax) is in the process of drafting a Framework Convention for international tax cooperation in a more effective and inclusive manner. India has supported this initiative right from the time the initial resolutions were moved in the relevant committees of the General Assembly in 2022 and is part of the decision-making bureau of the inter-governmental committee. The Framework Convention for cooperation in international taxation is envisaged to be an umbrella document containing high-level political commitments concerning its general objectives, procedural rules and governance structure. The more specific rules establishing concrete obligations will be developed on an ongoing basis in the form of protocols, which would themselves be akin to multilateral tax treaties. The Framework Convention along with Protocols on two critical issues, viz. the taxation of cross-border services in a digitalized and globalized world, and the prevention and resolution of tax disputes are proposed to be drafted and opened for signature in 2027.

The Framework Convention along with Protocols on two critical issues, viz. the taxation of cross-border services in a digitalized and globalized world, and the prevention and resolution of tax disputes are proposed to be drafted and opened for signature in 2027.

It is the negotiation of Protocol 1 on taxation of cross-border services that is garnering the maximum attention worldwide. Going by the issues note brought out on 27 June 2025 the INC/Tax will be examining the scope of the work and nature of services to be addressed, the extent and manner in which taxing rights can be shared by source States and the manner of taxation itself, i.e. gross basis or net basis. The Protocol can potentially provide an effective solution to the tax challenges of a digitalized economy. However, the INC/Tax will have to navigate the discussions very carefully in order to get a substantial majority of countries to agree to the terms of the Framework Convention and the Protocols. The US is currently not a party to the discussions, and a large number of countries, particularly the OECD member countries are insisting that decisions in the committee must be taken by consensus, and not just by majority. The INC/Tax, however, has decided to follow the rule of majority, even while declaring its sincere intention to make all possible efforts for achieving consensus.

Hopefully, a greater degree of commonality and shared interests will develop as the discussions progress and countries will realise that this is indeed an opportunity to find an implementable and durable solution to the tax challenges of the digitalized economy that they should not allow to go waste.

Till such time as countries can agree to collaborate and develop mechanisms that ensure fair and equitable taxation of income within countries and from cross-border flows, the international tax architecture will continue to represent a fragmented and distortionary system in which every country looks only at its own interests and businesses are left to navigate their way through increasing tax uncertainty, higher compliance burdens and rising tax disputes.

India's New Direct Tax Code: Substance or Semantics

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CA Yogesh Thar

A new Direct Tax Code ("DTC") was introduced with the objective of replacing the Income-tax Act, 1961 ("ITA") in the year 2010. The objectives were to revise, consolidate and simplify the language and structure of the Direct Tax Laws. Thousands of man-hours were spent studying and analysing the provisions of the DTC. However, the project was dumped. The DTC, 2010 never saw the light of the day.

Now in 2025, after 15 years, new Bill, called the Income-tax Bill, 2025 ("the ITB"), has been introduced and tabled in the Parliament on February 13, 2025. The objectives are similar to the DTC, 2010. A select committee was formed, which has given a 4000-plus-page report. Some of the suggestions are implemented, some not.

The new ITB was withdrawn on August 8, 2025 and was introduced as a new Bill on August 11, 2025. The ITB has 536 "Clauses" which, when it becomes the Act, will be referred to as "Sections". In this Article, for the sake of simplicity, the Clauses of the ITB are also referred to as 'section'.

The objective of this article is to provide a broad overview and not to deal in detail with every provision. The overall objective is discussed, including whether it has been met and to what extent. The views expressed here are the independent views of the author alone.

Overview

The Income-tax Bill, 2025 (ITB) seeks to replace the Income-tax Act, 1961 with a concise, reader-friendly law, reducing sections from 819 to 536 and halving word count. Its stated goals—structural simplification, no policy or rate changes, and reduced litigation—mirror earlier, abandoned reform efforts like the Direct Tax Code, 2010. Key changes include replacing "Assessment Year" with "Tax Year," reorganizing exemptions into Schedules, converting many

exemptions into deductions, and altering long-used legislative phrases ("notwithstanding" to "irrespective of," "as may be prescribed" to "as prescribed").

While the ITB streamlines format—removing provisos and explanations, breaking provisions into sub-sections—it may create new interpretational uncertainties. Some provisions now reference repealed sections of the old Act, requiring cross-referencing and preservation of earlier notifications. Changes in terminology could affect established judicial interpretations, and the Ministry has left resolution to the courts, potentially undermining the aim of reducing disputes.

Though quantitative simplification is achieved, qualitative improvement in certainty remains to be proven.

Though quantitative simplification is achieved, qualitative improvement in certainty remains to be proven. The author cautions that practitioners must "unlearn" old provisions, adapt to new structures, and watch for unintended litigation triggers.

Objectives of the ITB

The Finance Minister's budget speech of 2024 made the following announcement in para 137:

> *"137. I am now announcing a comprehensive review of the Income-tax Act, 1961. The purpose is to make the Act concise, lucid, easy to read and understand. This will reduce disputes and litigation, thereby providing tax certainty to the taxpayers. It will also bring down the demand embroiled in litigation. It is proposed to be completed in six months."*

This was later supplemented in para 134 of the 2025 budget speech in the following words:

> *"134. In Part A, I have briefly underlined Taxation Reforms as one of the key reforms to realize our vision of Viksit Bharat. In respect of criminal law, our Government had earlier ushered in Bharatiya Nyaya Sanhita replacing Bharatiya Danda Sanhita. I am happy to inform this August House and the country that the new income-tax bill will carry forward the same spirit of "Nyaya". The new bill will be clear and direct in text with close to half of the present law, in terms of both chapters and words. It will be simple to understand for taxpayers and tax administration, leading to tax certainty and reduced litigation."*

The Press Release dated February 13, 2025, when the Bill was tabled in the Parliament, summarized the objectives as follows:

> *"The Income-tax Bill, 2025 has been tabled in Parliament on 13th February 2025, marking a significant step toward simplifying the language and structure of the Income tax Act, 1961.*
>
> *The simplification exercise was guided by three core principles:*
>
> 1. *Textual and structural simplification for improved clarity and coherence.*
> 2. *No major tax policy changes to ensure continuity and certainty.*
> 3. *No modifications of tax rates, preserving predictability for taxpayers.*
>
> *A three-pronged approach was adopted:*
>
> - *Eliminating intricate language to enhance readability.*
> - *Removing redundant and repetitive provisions for better navigation.*
> - *Reorganizing sections logically to facilitate ease of reference."*

The Select Committee, in its report dated July 21, 2025 has stated in para 4 that:

> *"The statement of objects and reasons of the Bill clearly states that as a result of amendments, the basic structure of the Income-tax Act,*

1961 has been overburdened and language has become complex, increasing cost of compliance for taxpayers and hampering the efficiency of direct-tax administration. Therefore, the Income-Tax Bill, 2025 has been prepared to make the law concise, lucid and easy to read and understand. The mandated function of a Select Committee on a Bill is to go through the text of the Bill, clause-by-clause, in order to see that the provisions of the Bill bring out clearly the intention behind

The objective of the introduction of the new law is thus – simplification – with a view to reducing litigation.

the measure, that there will be no procedural defect in its working, that the Bill does not offend provisions of the existing law and that the object proposed to be achieved is adequately brought out.

The objective of the introduction of the new law is thus – simplification – with a view to reducing litigation.

What we expected

The Indian Trust Act, 1882 comprises of 96 sections. 23 of those sections have illustrations below the section. Following is just one example of section 4 of that Act:

"4. Lawful purpose.-A trust may be created for any lawful purpose.- The purpose of a trust is lawful unless it is (a)… or (b)… or (c) is fraudulent, or (d)… or (e) the Court regards it as immoral or opposed to public policy. Every trust of which the purpose is unlawful is void….

Explanation – In this section the expression "law" includes, where the trust-property is immoveable and situate in a foreign country, the law of such country.

Illustrations

(a)…

(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

A genius lawyer is trained to argue in a situation of the type described in (b) above, that the "purpose" of the trust is to support A's children and such purpose is not unlawful and that merely because the means for achieving it is unlawful, the purpose does not become unlawful! In the situation described in (c) above one can argue that there is no fraud. After all, whether there is a fraud or not can be a subjective aspect on which one can go on debating till the cows come home. But with the above illustrations embedded in the Act itself, there is no scope for such arguments or convoluted interpretations. Such matters are never dragged to court to decide whether the purpose is unlawful if the means are unlawful. There is no need to go to court to decide whether



there is a fraud or not. There are as many as 23 sections in this law which have illustrations like this.

In the same manner, the Indian Contract Act, 1872 comprises 238 sections. Nearly 100 sections have illustrations below the text of the section. The Negotiable Instruments Act, 1881 has 148 sections. Around 13 sections have illustrations. The Indian Evidence Act, 1872 has 167 sections. Nearly 55 sections have illustrations. And there may be many more such legislations that I am not aware of like this.

The best way to simplify the law and to make the law concise, lucid and easy to read and understand is to introduce illustrations below all highly litigious sections.

I had thought that the best way to simplify the law and to make the law concise, lucid and easy to read and understand is to introduce illustrations below all highly litigious sections, get thereon the stamp of the Parliament, and leave no uncertainties as to its interpretation in a different manner either by the tax payers or by the tax administrator and thereby bring tax certainty and help reducing litigation. However, that is not what has happened. The way litigations are happening today shall continue.

There are several changes in the language of the law. One of the suggestions of the Select Committee was to provide clarification that the judicial interpretations developed over several years under the Income-tax Act, 1961 should apply to corresponding provisions in the Income-tax Act, 2025 and the Department should be prevented from disregarding judicial interpretations merely due to change in language, for instance use of the word "irrespective of" in place of "notwithstanding". To this suggestion, the Ministry in written replies stated as follows:

> *"It is to be submitted that such kind of provisions cannot be dealt by any provision in the IT Bill 2025.It is to be dealt by the Courts. Statutes dealing with the same or similar subject matter should be interpreted together as a whole and judicial interpretations developed over several years under the Income-tax Act, 1961 will also apply to corresponding provisions in the Income-tax Bill, 2025. The suggestion is already taken care of."*

This is indeed a diplomatic answer by the Ministry. While we appreciate that the IT Bill itself



cannot provide such clarification. But certainly, the CBDT can issue a clarification to say, for example, that: there is no difference between "notwithstanding" and "irrespective of" or that there is no difference between "in accordance with" and "as per" or between "as may be prescribed" and "as prescribed" and so on. If such a clarification is not given, then, as we shall see in the ensuing paragraphs of this Article,

There is no difference between "notwithstanding" and "irrespective of" or that there is no difference between "in accordance with" and "as per" or between "as may be prescribed" and "as prescribed" and so on.

there are different legal connotations of some of the new phrases versus old phrases. This creates uncertainties and possible litigations as to the interpretation and hence it militates against the very objective of simplification and reducing litigation. The statement of the Ministry that "it is to be dealt by the Courts" makes me feel that there is no real willingness to reduce litigation, though the subsequent part of the reply gives some solace.

What we have got

The structure of the Act has some tweaking – though there is no conceptual change. A lot of attempts to make reading of the law easy are, no doubt, very apparent. Following is a broad-level overview:

- The concepts of Assessment Year and Previous Year have been given an adieu. Now it is going to be just "Tax Year".
- The whole of S. 10 is now reduced to a small section 11. All clauses of section 10, dealing with various exemptions, are moved as different entries in 6 different Schedules.
    - Schedule II – income not to be included in TI
    - Schedule III – Eligible persons who enjoy exemptions
    - Schedule IV – Eligible NR, Foreign Cos.
    - Schedule V – Investment Funds / Business Trusts
    - Schedule VI – IFSC related entities
    - Schedule VII – Certain Funds / Authorities
- Some exemptions are converted to deductions and are moved to Tables contained under certain sections.
- Heads of income remain the same.
- Concept of GTI and TI remains the same.
- Some tweaking is done to carry forward and set off of unabsorbed depreciation and losses. But on an overall basis, at the structural level, I see no change.

The structure of the Act has some tweaking – though there is no conceptual change.

- But, there are some major changes by way of modification of language. What we are used to for several decades will be undergo change. For example:
    - Provisos are no more provisos. Some are written as a continuous part of the main provision; while some are converted into sub-sections;
    - Explanations are no more Explanations. They have also become sub-sections;

- Some sections are broken up into sub-sections – possibly to make the sentences small and reader-friendly;
- "As may be prescribed" has become "as prescribed" – and the two can have different meanings. We shall discuss this in a bit of detail later.
- Numbers are now written in numbers and not in words. For example, what is written in the IT Act as "thirty per cent" is now written as "30%" – possibly to make it more reader-friendly.
- "In accordance with" has become "as per"
- "Notwithstanding" has become "Irrespective of"

The new Act shall come into force on 1st April, 2026. This would mean that the first Tax Year will be FY 26-27. Income of TY 26-27 (i.e. FY 26-27) will be taxed in TY 26-27.

From Assessment Year to Tax Year

Section 4 of the ITA says – income-tax shall be charged for an assessment year in respect of the total income of the previous year. The new S. 4 now says – the charge of income tax for any tax year shall be on the total income of the tax year. The new Act shall come into force on 1st April, 2026. This would mean that the first Tax Year will be FY 26-27. Income of TY 26-27 (i.e. FY 26-27) will be taxed in TY 26-27. Rates of tax shall be provided by the Finance Act, 2026. The law will now evolve to say that the law applicable on the 1st day of the TY (and not the 1st day of AY) will be the law applicable. Necessarily, therefore, the Finance Bill every year will have to be passed before 1st of April, which has been the practice over the last few years – so no difficulties are foreseen.

Disintegration of Exemptions in Section 10:

Definitions are not necessarily in one place:

Section 11(1) of the ITB says that in computing the TI of any person for any TY any income enumerated in Schedules II to VI shall not be included subject to the fulfilment of conditions in these schedules. If we go to Schedule II, it also says that in computing the TI of a person for a TY the income mentioned in column B shall not be included, subject to the fulfilment of conditions mentioned in column C. It also says that the expressions used in columns B and C shall have the meaning respectively assigned to them in the Notes below the Table.

Now, Item at S. No. 1 is "Agricultural income". This expression is not defined in the Notes below the Table. This term is defined in section 2 of the Bill. The opening sentence of Schedule II does not refer to section 2 definitions at all. Now how does one deal with this? Is this not adding more complexities? This ought to be ironed out. It can be redrafted to say that "the expressions used in columns B and C shall have the meaning respectively assigned to them in the Notes below the Table, if not defined in section 2".

The opening sentence of Schedule II does not refer to section 2 definitions at all. Now how does one deal with this? Is this not adding more complexities?

Some exemptions are now found at different places instead of one; some as "deductions" instead of "exemptions":

The present section 10(10D) states, inter alia,

that for policy issued between 1.4.2003 and 31.3.2012, "premium payable for any of the years during the term of the policy" should be less than 20% to avail the exemption. The new law states that "Premium to sum assured ratio <=20%". It does not say premium for any of the years.

The opening sentence of Schedule II does not refer to section 2 definitions at all. Now how does one deal with this? Is this not adding more complexities?

Now, the term "Premium to sum assured ratio" needs to be defined. So, it is defined in the Notes below the Schedule. This definition says, "the highest percentage of annual premium payable to the actual capital sum assured, during the term of the policy".

So, the information that is available today in one section, section 10(10D), is now going to be available at three different places:

- Section 11;
- Schedule II, item 2;
- Notes below Schedule II.

We will have to learn this.

Another example of this is the exemption in respect of Gratuity. Section 10(10) today is a complete code for exemption in respect of the income by way of gratuity. Under the ITB, one will have to navigate to following six different places to get the total picture on the gratuity exemption:

- S.19(1) – In Table [Sr.no.3, 4, 5 and 6]
- S. 19(2)(g)
- Schedule III Table Sr.No 38- Income not to be included in total income

Besides, as far as gratuity and several other exemptions that are available in the computation of income chargeable under the head "Salaries", are now referred to as "deductions" instead of "exemptions". The objectives of the ITB do not include any policy change. Indeed, several changes suggested by the Select Committee have been turned down on the grounds that no policy change is envisaged in the ITB. Then why this shift from exemption to deduction is not known.

The ITB is not a self-contained code:

While we are on Schedules, it is interesting to note an entry at S. No. 16 of Schedule II, which reads as under:

> *"Any income covered under section 10(15)(iii)/(iv)(c), (iv)(d), (iv)(e)… of the Income tax Act, 1961, subject to the conditions as provided therein".*

So, this Act is not a self-contained code. One will have to refer to the provisions of the IT Act.

Similarly, entry at S. No. 38 of Schedule III refers to income u/s. 10(15)(iic), (iv)(i) etc.

So, this Act is not a self-contained code. One will



have to refer to the provisions of the IT Act. And mind well – this is a repealed Act. So, should one refer to the provisions as they stood when the Act was repealed or even earlier? Also, the sections of the ITA referred to above exempt certain types of interest income to the extent such interest does not exceed the interest calculated at the rate approved by the Central Government in this behalf. So, one needs to preserve the old Central Government notifications as well!

One of the functions for which an Explanation is added to a section is clearing up an ambiguity or a doubt in the main provision.

A subtle change in language of section 79 (new section 119)

As we know, section 79 of the ITA provides that in case of a closely held company, brought forward losses shall not be permitted to be set off in a subsequent year if more than 51% of the shareholders changes hands. In this provision, three years are relevant, namely: (a) the year of incurring the loss; (b) the year in which the change in shareholding has happened; and (c) the year in which the assessee claims set off. Section 79 talks only of the year in which the change in shareholding takes place and the year of loss. It doesn't talk of subsequent years. However, the new avatar of section 79, i.e. section 119(3) is very clearly talking of even subsequent years. One can read into S. 79 "subsequent years" only based on purposive interpretation. If one does so, then one can come to a conclusion that if there is a loss that has occurred in year 1, change in shareholding has happened in year 2 and one is setting off the loss in year 3, and since section 79 requires us to compare the shareholding on the last day of the year of loss and last day of the year of set off, if the assessee is able to re-instate the old shareholding in the year of set off, then, it should be eligible to claim the loss despite there was a break.

The new provision now uses the word "continue". It says "continue to be the beneficial owner" on the last day of the year of change in shareholding itself; i.e. year 2 in our example. The word "continue" is interpreted as "without any break". We had S. 72 where there was a requirement that for carry forward of business loss, the business in which the loss was incurred should be continued. There is a Supreme Court decision on this in the case of *Hiralal Jeramdas v. CIT 58 ITR 1 (SC)*. Here, the assessee argued that one of the meanings of the word "continue" also means "resume". But the Court negatived this argument and held that in the context of S. 72, if there is a break, even if you have resumed, you can't claim the loss. I think, the new 119(3) seems to have picked up from here and has now nailed the issue. Even if the company resumes the 51 shareholding in year 3, it won't be entitled to claim set off once the shareholding has undergone a change in year 2.

I am not sure whether the mandate for this Bill goes beyond mere simplification and it extends also to include resolving doubtful areas in one way or the other.

Explanations given a go bye

Explanations in a statute have certain roles to play. The ITB has removed all the Explanations and these have been converted into different provisions of the ITB by way of separate sections or sub-sections.

One of the functions for which an Explanation is added to a section is clearing up an ambiguity or a doubt in the main provision, so as to make it consistent with the dominant object which it seems to subserve – at times it is enacted out of abundant caution;

Example 1:

"Explanation 1 to section 15", which says that "for the removal of doubts, when advance salary

is taxed on receipt basis, it will again not be taxed on due basis". In the ITB, this is a sub-section. In the ITA, this Explanation is actually clearing up an ambiguity or a doubt. It is actually enacted out of abundant caution, because section 5 already says (by way of Explanation 2) that when income is included on an accrual basis, it will again not be included on a receipt basis. Indeed, the converse is also true. Courts have held that the same income cannot be taxed twice in the hands of the same person. The ITB says the same thing in the new S. 5 by way of sub-section (4) instead of an Explanation.

Now, therefore, an issue arises as regards the interpretation of the sub-section. Is the sub-section:

So, if a sub-section is actually in the nature of an Explanation, is there a need to change it from an Explanation to a sub-section.

- Merely explaining what is obvious – and is enacted out of abundant caution; or
- A substantive provision such that in the absence thereof, income can be taxed on receipt even if it is taxed on accrual once.

Obviously, the second interpretation will not be upheld by any Court. But, this is a case where a sub-section serves the purpose of an Explanation. The sub-section is in the nature of an Explanation. If so, why change it? Why add any possibility of a different interpretation?

Example 2:

"Explanation 2 to section 15" which says salary, bonus etc. paid to a partner of a firm is not to be regarded as salary for the purposes of the Salaries chapter. In the ITB, this is a sub-section.

Therefore, once again, a question arises as to whether the new sub-section is merely explaining what is obvious – and is enacted out of abundant caution; or is it a substantive provision such that in absence thereof, salary received by a partner would be taxable under the head "salaries"? Here again, to my mind, it is clarificatory because, for attracting the Chapter on 'Salary' would mean the existence of an employer-employee relationship which is missing in case of a partner of a firm. Secondly, we will have a specific provision under the PGBP Chapter to say that salary received by a partner will be taxable under that head.

So, really, this sub-section is also in the nature of an Explanation. It is not an independent provision by itself. Even in the absence of this sub-section, a Court would say that a partner's salary won't be taxed under the head "salaries". So, if a sub-section is actually in the nature of an Explanation, is there a need to change it from an Explanation to a sub-section – is what I am wondering.

Another function of an Explanation could be to explain the meaning and intendment of the Act.

Example 3:

Explanation to S. 14A of the ITA reads as under:

> *Explanation.—For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall*



be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.

Sub-section (3) of S. 14 in the ITB:

(3) Irrespective of anything to the contrary contained in this Act, the provisions of this section shall apply in a case where any expenditure has been incurred during any tax year in relation to income which does not form part of the total income under this Act, but such income has not accrued or arisen or has not been received during that tax year.

the ITB has redrafted all the provisos into sub-sections or separate sections. As per the above principles, the proviso plays a role within the domain of the main section.

Now, this sub-section (3) needs to be interpreted.

- Is sub-section (3) restricting the scope of disallowance under sub-section (1); or
- Is sub-section (3) expanding the scope of disallowance; or
- Is sub-section (3) merely explanatory in nature, explaining the true scope of sub-section (1)?

In other words:

- Should sub-section (3) be read as "the provisions of this section shall apply 'ONLY' in a case where no exempt income is received"; or
- Should it be read as "the provisions of this section shall apply 'ALSO' in a case where no exempt income is received"? This may mean that sub-section (1) is not wide enough to include such cases; or
- Should sub-section (3) be read as explaining the provisions of sub-section (1)?

The intention seems to be the third. In which case, the Courts might ultimately say that sub-section (3) is, in substance, in the nature of an Explanation to sub-section (1). If that is so, why make changes and increase litigation?

Provisos given a go bye

Like Explanations, provisos too have a role to play in the construction of a statute. A proviso may, as *Lord Macnaghten laid down in Local Govt. Board vs. South Stoneham Union* (1909) AC 57, p. 62 (HL), be "a qualification of the preceding enactment which is expressed in terms too general to be quite accurate". Hidayatullah J stated in *Shah Bhojraj Kuvarji Oil Mills vs. Subhash Chandra* AIR 1961 SC 1596, p. 1690, that "as a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule". In the words of Kapur J., in *CIT vs. Indo Merchantile Bank Ltd.* AIR 1959 SC 713, at p. 717 (SC), "the proper function of a proviso is that it qualifies the generality of the main enactment by providing something by way of an addendum or dealing with a subject which is foreign to the main enactment". In *Ram Narain Sons Ltd. vs. ACST* AIR 1955 765 (SC), the Apex Court observed that "a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other".

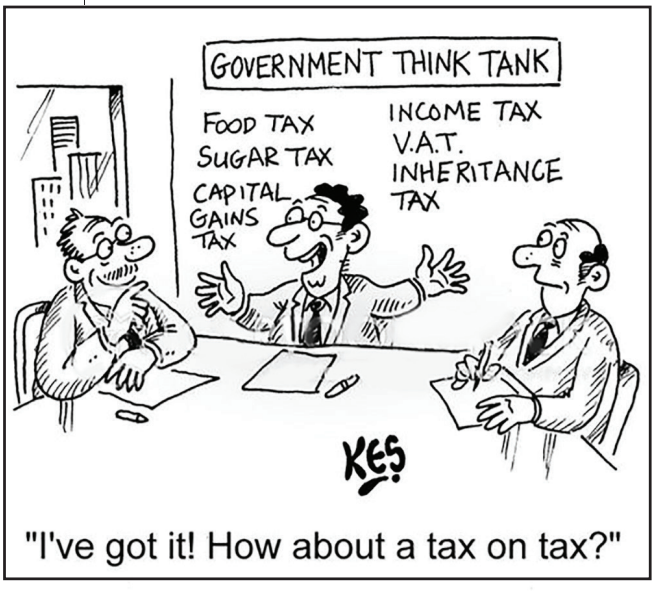
Now, the ITB has redrafted all the provisos into sub-sections or separate sections. As per the above principles, the proviso plays a role within the domain of the main section.

However, if it is drafted as a sub-section or a separate section, it will exist in its own right and hence its interpretation could travel beyond the main provision. Though on the first reading of the modified ITB, I am unable to think of any controversy that may arise as a result of different principles of interpretation applicable to provisos. One will have to keep in mind that the case law under the ITA that interpreted a proviso to a particular section may not necessarily apply when it comes to the interpretation of the parallel provision contained in a sub-section or as a separate section. For this Article, I do not have anything further to say on this aspect.

"As may be prescribed" is now "As prescribed"

Wherever the Parliament delegates powers to the Executive to frame rules according to which the statute will operate, the relevant section uses the phrase "as may be prescribed". In the ITB the words "may be" are missing. Provisions of the ITB simply say "as prescribed". Is there a difference between the two? If yes, what is it?

- Prima facie, "as may be prescribed" indicates that the rules may be enacted in future. "as prescribed" seems to say that the rules have been made already. This is a bit confusing at first blush.
- The Madras HC, in *M.E. Subramani vs. The Commissioner, Hindu Religious and Charitable Endowments (Administration),* (1976) 1 MLJ 281, had an occasion to examine the expression "as may be prescribed". It held that this phrase indicates that the rule-making authority may or may not prescribe the conditions. If the conditions are prescribed, then, the power under the relevant section is subject to those conditions. But, if no conditions are prescribed, then, the power under the section can still be exercised without any restriction, of course, subject to the other guidelines indicated by the policy and object of the Act. But it cannot be said that in absence of rules, the powers under the section cannot be exercised at all.
- The Supreme Court, in *Orissa State Prevention and Control of Pollution Board vs. Orient Paper Mills,* AIR 2003 SC 1463 also observed that the phrase "as may be prescribed" has been held to mean "if any". It is thus clear that such expression leaves the scope for some play for the workability of the provision under law. That is to say something to happen in a manner, if such a manner is in being or exists. If it does not exist, it may not happen in that manner, but it may still happen in some reasonable manner. Indeed, in the recent past, we all saw this principle applied in implementation of Section 14A. When Rule 8D was not enacted, the section was still workable and the disallowance was to be computed on some reasonable basis.
- The Patna High Court in the case of *Larsen and Toubro Ltd. vs. State of Bihar,* (2004) 134 STC 354 (Pat), observed that in paragraph 12 of the judgment of the Supreme Court, the Supreme Court has found a distinction between the words/phrase "as may be



prescribed" and the phrase "in the manner prescribed". The latter phrase does not leave any lever or play in the working of the provision. The Court observed, on its facts that "it gives a mandate against the State to prescribe the manner and the extent of the deduction. The provision does not say "as may be prescribed" or "if prescribed". One could understand the inaction/non-action on the part of the State if the provisions say "as may be prescribed" or "if prescribed". The State when has undertaken a task to prescribe the manner and the extent of the deduction in relation to any other charges then it cannot simply provide the manner and the extent relating to labour charges and go in hibernation and say that the assessing officer would observe the judgment of the Supreme Court and proceed further in the matter". The HC held that in absence of the rules, the provisions of the statute are not workable. Though the right of the State to tax a person remains intact, but in the absence of a workable provision, it would not be possible to assess the person.

This change only reminds me of a phrase often attributed to the Greek philosopher Heraclitus, namely, "nothing is permanent except change".

- The Supreme Court in *Consumer Online Foundation vs. UOI,* (2011) 5 SCC 360 (SC) observed that "we are supported by the Constitution Bench judgment of this Court in Mohammad Hussain Gulam *Mohammad and Anr. vs. The State of Bombay and Anr. (supra).* In that case, the Court found that Section 11 of the Bombay Agricultural Produce Markets Act, 1939 provided that the market committee may levy market fees subject to the maxima "as prescribed" and the Court held that unless the State Government fixes the maxima by rule, it is not open to the committee to fix any fees at all". This decision was rendered in the context of section 22A of the Airports Authority of India Act, 1994.
- *CIT vs. Essar Teleholdings Ltd* 401 ITR 445 (SC) held that Rule 8D of the Income tax Rules, 1962 is not retrospective. Although S. 14A(2) was introduced w.e.f. 1.4.2007, since Rule 8D was introduced on 24.3.2008, it was held applicable from AY 2008-09. It was held to be not retrospective. Supreme Court ruling in Shravankumar Swarup 210 ITR 886 (SC) was distinguished on the ground that the method prescribed in Rule 8D was neither well-known nor was it well settled. No Assessing Officer, even in his imagination could have applied this methodology. In *Godrej & Boyce 394 ITR 449 (SC),* the Supreme Court held that for earlier years, the disallowance should be on a reasonable basis. The language in S. 14A(2) was "as may be prescribed". New language in the ITB is "as prescribed".
- The question that needs attention is as to whether in the absence of the words "may be" will the meaning change? Can it be said that there is no lever or play in the working of the section and that in absence of the rules, the section cannot be enforced? The words "if any" cannot now be imported. Can it be said that the State having taken an obligation cannot go into hibernation and ask the assessee to follow the section on some reasonable basis? No doubt, in view of section 24 of the General Clauses Act and in view of section 536(2)(j) of the ITB, the rules framed under the ITA will continue to apply to the relevant provisions of the ITB as well, to the extent the provisions of the two statutes are inconsistent with each other. But, these questions would still be relevant for new sections where new rules may be required to be framed. The point is, the reason for the change in language is unknown. The legal

implications of the change could be different. Is this intended or not? Would the CBDT clarify this or as mentioned by the Ministry, is it for the Courts to decide?

"In accordance with" is now "As per"

This is one change where it seems from a reading of various English dictionaries that the two phrases can be used interchangeably. In fact, as per Black's Law Dictionary, seventh edition and Merriam-Webster's Dictionary, the phrase "as per" is explained as "in accordance with". Similarly, the Cambridge International Dictionary of English and the New Collegiate Dictionary both explain this phrase as meaning "according to". So, there is nothing to comment on. This change has indeed contributed to the reduction in the number of words to some extent without affecting the meaning. One only hopes that the Courts, in future, do not interpret the phrases differently.

"Notwithstanding" is now "Irrespective of"

The same can, probably, also be said about this change in the ITB as compared to the ITA. While the phrase "notwithstanding anything contained" has a large number of judicial precedents, I have not been able to lay my hands on any significant case law discussing the phrase "irrespective of". Interestingly, the Hon'ble FM referred to *Bharatiya Nyaya Sanhita* replacing the erstwhile Indian Penal Code (IPC) of 1860. But, I find that the said new law also continues to use the phrase "notwithstanding" and has not switched over to "irrespective of". It is probably because its interpretation is well established by a number of judicial rulings. Looking at the law lexicons and dictionaries, one may tend to say that there is no significant difference between the two terms. For example, the Oxford English Reference Dictionary explains the term "notwithstanding" to mean "without being affected by something; despite something" and the term "irrespective of" to mean "without considering something or being influenced by it". The Cambridge International Dictionary of English explains the term "notwithstanding" to mean "not considering or being influenced by; despite" and the term "irrespective of" to mean "without considering; not needing to allow for". Both indicate that the statement of law following these phrases would override some other statement of law. This change only reminds me of a phrase often attributed to the Greek philosopher Heraclitus, namely, "nothing is permanent except change". It explains the ever-changing nature of existence and the idea that the only constant is the process of transformation itself.

Concluding Remarks

The press release dated February 13, 2025 issued by the CBDT boasts about the certain quantitative impact of the ITB and also the certain qualitative impact. Quantitative impact includes a reduction in the number of words from 5,12,535 to 2,59,676, a reduction in 24 Chapters in the Act, reduction of the number of sections from 819 to 536. The qualitative impact it boasts of includes simplified language, consolidation of amendments, removal of obsolete and redundant provisions, structural rationalization through tables and formulae and preservation of existing taxation principles. The former is certainly achieved as stated. The latter, though achieved, will help reduction of litigation and make reading of the law simple or not is for the time to tell. As of now, let us be prepared to unlearn the old sections and memorize the new ones. It will take some time. Start now.

As of now, let us be prepared to unlearn the old sections and memorize the new ones. It will take some time. Start now.

From Tax Bar to the Bench Hon'ble Mr Justice Sanjiv Khanna

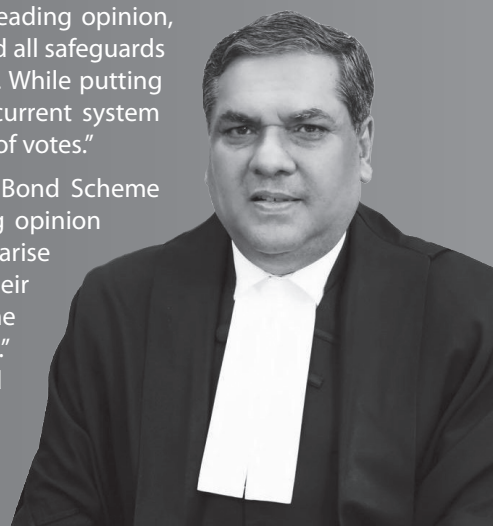
Justice Sanjiv Khanna was born into an illustrious legal family in Delhi, he is the son of former High Court Justice Dev Raj Khanna and the nephew of the renowned former Supreme Court Justice HR Khanna. He studied law at Delhi University's Campus Law Centre and began practicing law with the Delhi Bar Council in 1983. After enrolment as an advocate with the Bar Council of Delhi in 1983, he began his practice in the District Courts at Delhi. After a while, he regularly appeared in the High Court of Delhi and tribunals in fields as diverse as constitutional law, direct taxes, arbitration and commercial matters, company law, land laws, environment and pollution laws and medical negligence. He had also argued a number of criminal cases in the Delhi High Court as an Additional Public Prosecutor, and on appointment by the Court as an amicus curiae. He had a long tenure of about seven years as the Senior Standing Counsel for the Income Tax Department in the Delhi High Court. In 2004, he was appointed as the Standing Counsel (Civil) for the National Capital Territory of Delhi.

Elevated as an additional judge of the Delhi High Court in 2005, he was made a permanent judge in 2006. Whilst a judge of the Delhi High Court, he at different times was actively associated and involved with the Delhi Judicial Academy, the Delhi International Arbitration Centre and the district court mediation centres.

Elevated as a Judge of the Supreme Court of India on January 18, 2019, and now appointed the 51st Chief Justice of India, he is due to retire on May 13, 2025.

Some Important Judgments

In *Association for Democratic Reforms v Election Commission of India* (2024), a Division Bench led by Justice Khanna unanimously rejected ADR's plea seeking 100 percent VVPAT verification of votes cast on Electronic Voting Machines. Authoring the leading opinion, Justice Khanna wrote that he wished to "put on record all safeguards adopted by the ECI to ensure free and fair elections". While putting down the feature of the EVMs, he stated that the current system "ensures quick, error-free and mischief-free counting of votes."



In 2024, a five-judge Bench declared the Electoral Bond Scheme unconstitutional. Justice Khanna wrote a concurring opinion stating that the right to privacy of donors does not arise if a donation is made through a banking channel. Their identity is "asymmetrically known to the person and the officers of the bank from where the Bond is purchased." He also held that retribution, victimisation, and retaliation against donors are wrongs but they cannot be a justification for the scheme which violates voters' collective right to information.

Supreme Court



Keshav B Bhujle
Advocate

CIT(TDS) vs. Nirmal Kumar Kejriwal: (2025) 476 ITR 154 (SC): Dated 09/04/2025

Collection of tax at source — Forest produce — Timber sized, sawn into logs of different dimensions and shapes — High Court held that the product ceased to be forest produce and the assessee is not liable to collect tax at source — Supreme Court dismissed the special leave petition filed by the Revenue: S. 206C of ITA, 1961: A. Ys. 2005-06 to 2009-10:

An order was proposed against the assessee u/s. 206C(6)/206C(7) of the Income-tax Act, 1961, on the ground that the assessee did not collect any tax on the sale of timber obtained by any other mode other than a forest lease in terms of Section 206C(1) of the Act. The assessee raised an objection to the order. The Assessing Officer rejected the objections and passed the order. The Commissioner (Appeals) held that Section 206C was not applicable to the Assessee. The Tribunal upheld the order of the Commissioner (Appeals).

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

"If timber was being sized, sawn into logs of different dimensions and shapes in activity carried out in saw mills authorised by the Government, it would amount to a different produce. Even in respect of timbers which are procured as described in the table, if it is used in the process of manufacturing, the provision of Section 206C (1) of the Act would not be applicable due to the fact that the product ceased to be a forest produce. Section 206C was not applicable to the assessee."

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

"i) There is a delay of 880 days in filing the special leave petition, which has not been satisfactorily explained. Even otherwise, we have gone through the special leave petition and do not find any merit in the same.

ii) The special leave petition is, therefore, dismissed on the ground of delay as well as on the merits."

Shital Fibers Ltd. vs. CIT: (2025) 476 ITR 309 (SC): Dated 20/05/2025

Industrial undertaking — Export — Special deduction — Deduction claimed u/s. 80-IA and other sections in Chapter VI-A — Effect of sub-section (9) of S. 80-IA — Does not restrict computation of gross total income — But restricts deduction under any other provision under heading C to the extent the deduction claimed u/s. 80-IA: Ss. 4, 80HHC and 80-IA(9) of ITA, 1961: A. Y. 2002-03:

A group of appeals/petitions were referred to a Bench of three judges in view of the order dated December 10, 2015, in *Asst. CIT vs. Micro Labs Ltd.* [(2016) 380 ITR 1 (SC); (2015) 17 SCC 96; 2015 SCC OnLine SC 1307.] which records a difference of opinion between two hon'ble judges of this court.

The Court referred to the facts of the case in Civil Appeal No. 14318 of 2015. The appellant is a company that filed a return declaring net taxable income at Rs. 46,99,293 for the A. Y. 2002-2003. The appellant claimed deductions u/ss. 80HHC and 80-IA of the Income-tax Act, 1961. The return was accepted on October 31, 2002. The reassessment proceedings u/s. 147 of the Act were initiated in respect of the said assessment year by the order dated December 10, 2008, by the Assistant Commissioner of Income-tax, Range II, Jalandhar. Reliance was placed by the Revenue on the decision of the Income-tax Appellate Tribunal, Chennai (Special Bench) in the case of *Asst. CIT vs. Rogini Garments* [(2007) 294 ITR (AT) 15 (Chennai) [SB]; 2007 SCC OnLine ITAT 159.] In the said order dated December 10, 2008, u/s. 147 of the Income-tax Act, it was observed that a deduction of Rs. 90,43,347 was claimed by the appellant u/s. 80-IB on the total profit of Rs. 4,19,40,609. The appellant claimed a deduction of Rs. 1,76,90,799 u/s. 80HHC.

The return filed by the appellant was processed u/s. 143(1)(a) and a statutory notice u/s. 148 of the Income-tax Act was served upon the appellant. Based on the judgment dated July 17, 2008, of the jurisdictional Income Tax Appellate Tribunal, in I.T.A. Nos. 320 and 321, Amritsar Bench in respect of the appellant's case for the A.Ys. 2003-2004 and 2004-2005, a fresh notice u/s. 143(2) was served upon the appellant.

We may note here that in the case of *Asst. CIT vs. Rogini Garments* [(2007) 294 ITR (AT) 15 (Chennai) [SB]; 2007 SCC OnLine ITAT 159.], the Income-tax Appellate Tribunal held that in order to prevent the taxpayers from taking undue advantage of existing provisions of the Income-tax Act by claiming repeated deductions in respect of the same amount of eligible income, in-built restriction was introduced by enacting sub-section (9) of Section 80-IA with effect from April 1, 1999.

The appellant filed a response to the notice u/s. 143(2). The appellant relied upon the decision of the Madras High Court in the case of *SCM Creations vs. Asst. CIT* [(2008) 304 ITR 319 (Mad); 2008 SCC OnLine Mad 1040.] wherein it was held that sub-section (9) of Section 80-IA does not bar computation of deductions provided under different provisions of the Income-tax Act. But, it merely restricts the allowability of deductions to the extent of profits and gains of business. However, by the order dated March 12, 2009, the Additional Commissioner of the Income-tax rejected the argument of the appellant and the deductions claimed by the appellant u/ss. 80-IA and 80HHC were disallowed.

The appeal preferred by the appellant against the said order was dismissed by the Commissioner of Income-tax (Appeals). In an appeal preferred by the appellant before the Income-tax Appellate Tribunal, the appellant was unsuccessful.

Thereafter, an appeal was preferred before the Punjab and Haryana High Court, which came to be dismissed by the impugned judgment and order. The High Court relied upon its own decision in the case of *Friends Casting Pvt. Ltd.*

vs. CIT [(2012) 340 ITR 305 (P&H); 2010 SCC OnLine P&H 13097; (2011) 50 DTR 61.]. The High Court took the view that sub-section (9) of Section 80-IA bars a claim for deduction under any other provision of Chapter VI-A, if deduction u/s. 80-IA has been allowed. In fact, a decision of the Bombay High Court in the case of *Associated Capsules Pvt. Ltd. vs. Dy. CIT* [(2011) 332 ITR 42 (Bom); 2011 SCC OnLine Bom 27.] was also referred. However, the High Court did not agree with the view taken by the Bombay High Court. In addition, the High Court relied upon a decision of the Delhi High Court in the case of *Great Eastern Exports vs. CIT* [(2011) 332 ITR 14 (Delhi); 2010 SCC OnLine Del 4195].

The Supreme Court held as under:

"i) Chapter VI-A of the Income-tax Act, 1961 specifically deals with deductions to be made in computing income. It has five heads: A, B, C, CA, and D. Sub-section (5) of Section 80B defines gross total income as the total income computed in accordance with the provisions of the Act, before making any deduction under Chapter VI-A. Under Section 4(1), which is the charging section, Income-tax is chargeable on the total income of the previous year. Section 80A and 80AB refer to gross total income and not total income as contemplated by Section 4(1).

ii) Section 80HHC, which falls in part C of Chapter VI-A dealing with "Deductions in respect of certain incomes", provides for a deduction in respect of profits retained for export business. In computing the total income, the assessee is entitled to a deduction to the extent of the percentage of profit set out in sub-section (1B) of Section 80HHC. Section 80-IA deals with deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc. Sub-section (1) provides that when the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4), in computing total income, the assessee will be entitled to a deduction of an amount equal to 100 per cent. of profits and gains derived from such business for ten consecutive years. Section 80-IB deals with deductions in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. The deduction under the provision is applicable when the gross total income of an assessee includes any profits or gains derived from any business mentioned in the various sub-sections of Section 80-IB. An assessee is entitled to a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in the section.

iii) Sub-section (9) of Section 80-IA is applicable where any amount of profits and gains of an undertaking or enterprise is claimed and allowed u/s. 80-IA. The deduction is to the extent of the percentage of profits and gains derived from certain categories of business. Sub-section (9) of Section 80-IA provides that the deduction to the extent of profits or gains shall not be allowed under any other provisions under heading C of Chapter VI-A. It further provides that in no case shall the deduction allowed under any other provision of Chapter VI-A under the heading C exceed the profits and gains of such eligible business of undertaking or enterprise, as the case may be. Therefore, on a plain reading of sub-section (9) of Section 80-IA, if a deduction of profits and gains u/s. 80-IA is claimed and allowed; the deduction to the extent of such profits and gains in any other provision under the heading C is not allowed. The deduction to the extent allowed u/s. 80-IA cannot be allowed under any other provision under heading C.

iv) Sub-section (9) of Section 80-IA, on its plain reading, does not provide that when a deduction is allowed under Section 80-IA, while considering the claim for deduction under any of the provisions under heading

"C", the deduction allowed under Section 80-IA should be deducted from the gross total income. The restriction under sub-section (9) of Section 80-IA is not on computing the total gross income. It restricts deduction under any other provision under heading "C" to the extent of the deduction claimed under Section 80-IA.

v) In view of what we have held above, we find that the interpretation made by the Bombay High Court in the case of *Associated Capsules Pvt. Ltd. vs. Dy. CIT* [(2011) 332 ITR 42 (Bom); 2011 SCC OnLine Bom 27.] appears to be logical and correct.

vi) We accordingly answer the reference and direct the registry to place the appeals/ petitions before the appropriate Bench."

CIT vs. Jasjit Singh: (2025) 476 ITR 157 (SC): Dated 26/03/2025

Search and seizure — Assessment of third person — Period of six years in respect of which return to be filed by third-party assessee — Commences from date material forwarded to Assessing Officer having jurisdiction over third-party Assessee — Review petition dismissed: Ss. 153A and 153C of ITA, 1961:

In the case of *CIT vs. Jasjit Singh:* (2023) 458 ITR 437 (SC), the core issue before the Supreme Court was "when the date for filing the return for that other person (third party) commences". The assessee contended that it would commence from the date when material was forwarded to the jurisdictional Assessing Officer. The Revenue contended that the date commences from the date of search and seizure carried out u/s. 132 of the Income-tax Act, 1961.

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

"Is quite plausible that the Assessing Officer seized of material of the search party, u/s. 132, would take his own time to forward the papers and material belonging to the third party, the jurisdictional Assessing Officer. In the event if the date would virtually "relate back" as is sought to be contended by Revenue (to the date of seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is disproportionate. Hence, the appeal is dismissed."

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

"i) There is a gross delay of 433 days in filing the review petition, which has not been satisfactorily explained by the petitioner.

ii) This review petition has been filed by the petitioner seeking review of the order dated September 26, 2023 [*CIT vs. Jasjit Singh,* (2023) 458 ITR 437 (SC); 2023 SCC OnLine SC 1265.] passed in the captioned civil appeal, whereby the said appeal was dismissed.

iii) We have carefully gone through the said order and the record. In our opinion, no case for review is made out. Consequently, the review petition is dismissed on the ground of delay as also on the merits."

"Productivity is never an accident. It is always the result of a commitment to excellence, intelligent planning, and focused effort."

— Paul J. Meyer

High Court



Jitendra Singh
Advocate



Radha Halbe
Advocate



Harsh Shah
Advocate

Poonawalla Estate Stud & Agricultural Farm vs. CIT [2025] 176 taxmann.com 308 (Bombay)

Section 41(1) - Remission or cessation of trading liability – insurance claim received on death of horses – horses were treated as capital asset – insurance claim is a capital gain received on destruction of capital asset – not chargeable to tax.

Facts:

The assessee, M/s. Poonawalla Estate Stud & Agricultural Farm, engaged in breeding, rearing, and selling racehorses, received insurance claims on account of death of certain mares during the relevant assessment years (AYs 1988–89, 1990–91, 1991–92, and 1995–96). The horses, after reaching two years of age, were either sold, leased for racing, or transferred to the breeding plant and treated as capital assets (livestock plant). Although depreciation was not claimed due to Section 43(3), expenses incurred on their upkeep were claimed as revenue expenditure. Upon the death of two insured mares namely 'Certainty' and 'Gracian Flower' the assessee received insurance payouts of ₹6,00,000 and ₹1,00,000 respectively, against book values of ₹40,000 and ₹30,000. The Assessing Officer allowed the loss on death of animals under Section 36(1)(vi) and simultaneously taxed the insurance receipts under Section 41(1) as deemed profits. On appeal the first appellate authority as well as Income Tax Appellate Tribunal upheld the action of the Assessing Officer.

The assessee being aggrieved challenged the ITAT's decision, arguing that the insurance receipts were capital in nature and not taxable under Section 41(1), which applies to business profits.

Ruling of the High Court:

Hon'ble Bombay High Court was pleased to allow the assessee's appeal by observing that the horses were treated as capital assets (livestock plant) by both the assessee and the Revenue. Therefore, insurance receipts on their death were capital receipts. The death of a horse does not constitute a 'transfer' under Section 2(47), as it lacks both a transferee and a continuing asset. Hence, Section 45 (capital gains) is not applicable. Section 41(1) applies only when a deduction is allowed in one year and a recovery is made in

a subsequent year. In this case, the insurance receipts and deductions occurred in the same year, and no deduction was claimed for the two insured horses whose insurance value exceeded their book value. Thus, the insurance receipts are capital receipts, not taxable either under Section 41(1) or Section 45 for the relevant AYs.

DIT (Exemptions) Trinity Educational Trust [2025] 176 taxmann.com 562 (Madras)

Section 12AA of the Income Tax Act, 1961 – charitable or religious trust – denial of registration on the ground that the assessee sought registration after twenty years of executing trust deed - unjustified.

Facts:

The assessee-trust is carrying on the charitable activity of education and is running a school. The assessee filed an application seeking registration under section 12AA on 31.05.2012. The Commissioner (Exemptions) rejected the application on the ground that the trust deed was executed on 22.07.1991, however, the application under section 12AA was filed almost over twenty years later. Further, a clause in the trust deed appeared to be repugnant to the assessee-trust's claim that it was a public charitable trust for the benefit of general public and the powers given to the trustee were by way of a supplementary deed of trust executed on 06.04.2009, which was not permissible, since the trust deed could be amended only by the Court provided it satisfied the requirements of section 92(3) of the Code of Civil Procedure. The commissioner (Exemption also observed that the trust, although claiming to be a charitable one, was being run on commercial lines.

The assessee being aggrieved by the denial of registration challenged that same before the Income Tax Appellate Tribunal. The Tribunal allowed the appeal of the assessee and directed the Commissioner to grant the registration under section 12AA of the Act.

The department being aggrieved by the order of the Income Tax Appellate Tribunal, preferred the present appeal before the Hon'ble Madras High Court under section 260A of the Act.

Ruling of the High Court:

Hon'ble High Court was pleased to dismiss the appeal of the revenue by observing that the assessee-trust was formed for charitable activity of education. The application for registration under section 12AA cannot be rejected merely on the ground that the assessee sought registration after twenty years of executing trust deed as there is no provision which required registration to be applied within an earlier period.

Smaaash Entertainment Pvt. Ltd. vs. ACIT [WP No. 3272 of 2024 order dated 14.07.2025, Hon'ble Bombay High Court]

Section 143 (3) – Assessment – assessee company under CRIP - NCLT passed an order under section 14 of IBC imposing moratorium on the assessee – assessment order passed during the CRIP is bad in law.

Facts:

The assessee company was under Corporate Insolvency Resolution Process (CIRP) pursuant to an order dated 6 May 2022 passed by the National Company Law Tribunal (NCLT), triggering a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC). The moratorium prohibits initiation or continuation of proceedings against the corporate debtor. However, the Assessing Officer during the CRIP and moratorium period finalized the assessment order under section 144 of the Act and also

issued the notice of demand under section 156 of the Act.

The assessee being aggrieved by the assessment order passed under section 144 of the Act as well as notice of demand issued under section 156 challenged the same before the Hon'ble Bombay High Court.

Ruling of the High Court:

Hon'ble High Court was pleased to set aside the order passed under section 144 as well as notice of demand issued under section 156 of the Act by observing that Section 14 of the IBC prohibits all proceedings against the corporate debtor, including assessment proceedings under the Income Tax Act.

NOTE: Hon'ble Court had relied upon the decision of Hon'ble Supreme Court in the case of *Pr. CIT vs. Monnet Ispat and Energy Ltd* [Special Leave to Appeal (C) No(s). 6483/2018, order dated 10.08.2018 (SC)] wherein it has been held that given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income-Tax Act.

Salesforce.Com Singapore Pte. Ltd. vs. DCIT [W.P.(C) 2751/2025, Order dated 07.07.2025, Delhi High Court]

Section 148 – Reassessment – Notice – complete scrutiny assessment is in progress – No reassessment when assessment proceedings are ongoing.

Facts:

The assessee filed its return on 30 November 2018, which was selected for scrutiny due to a large refund claim. While the regular assessment proceedings were ongoing, the Assessing Officer issued a notice under Section 148A(b) on 30 March 2022, followed by a notice under Section 148, initiating reassessment proceedings for the same year. Pending the ongoing original assessment, the AO proceeded with parallel reassessment proceedings, ultimately passing a draft assessment order on 26 March 2024 under Section 144C(1), proposing to treat CRM (Customer Relationship Management) subscription receipts as Fees for Technical Services (FTS) under both domestic law and the India–Singapore DTAA. The assessee objected before the Dispute Resolution Panel (DRP) and also appealed the original assessment order dated 23 June 2022 before the ITAT. The ITAT, in a common order dated 17 May 2024, held that CRM receipts were not taxable as FTS or royalty under the India–Singapore DTAA. The Revenue's appeal against this ITAT order was dismissed by the Delhi High Court on 11 December 2024, which relied on its earlier decision in ITA No. 144/2023 (dated 14 February 2024) covering AYs 2010–11 to 2017–18. Despite these developments, the AO proceeded to pass the impugned reassessment order, again taxing CRM receipts as FTS.

The assessee being aggrieved by the above order, challenged the same before the Hon'ble Delhi High Court.

Ruling of the High Court:

Hon'ble Delhi High Court was pleased to allow the writ petition filed by the assessee and quashed the reassessment proceedings by observing that there is no legal basis for initiating reassessment proceedings under Section 148 while regular assessment proceedings were still pending. Further, reassessment under Section 147 presupposes that income has "escaped assessment," which cannot occur before the original assessment is concluded.

TRIBUNAL



CA Nikhil Mutha



CA Viraj Mehta



CA Kinjal Bhuta
Advocate

Balbir Singh Saini vs. ITO [ITA NO: 2170/Del/2022 (Delhi Trib.) (AY 2012-13)

Section 2(14) - Agricultural land situated beyond 8 km from municipal limits - Certificate accepted in co-owner's case - Inconsistent treatment not justified

FACTS:

The assessee sold agricultural land jointly with co-owners. During the assessment proceeding, the assessee submitted a certificate from the Nayab Tehsildar, Municipal Corporation, Gurgaon, stating that the land was beyond 8 kms from the nearest municipality. The assessee contented that the land cannot be treated as capital asset u/s. 2(14)(b) of the Act. The AO treated the above agricultural land as capital assets u/s 2(14) of the Act and held that the distance to be calculated from the outer limit of municipal limits. The assessee filed an appeal before CIT(A). The CIT(A) confirmed the addition made by AO. Against the order of CIT(A), the assessee filed an appeal before Hon'ble Tribunal.

HELD:

Before the Hon'ble Tribunal, the assessee argued that the agricultural land was not a capital asset, being situated more than 8 km. away from the last municipal limit of Gurgaon city. The same certificate was accepted by the AO in case of other co-owner. The assessee submitted a certificate of distance produced in the case of another co-owner, which was issued by Tehsildar/ Halka Patwari, Gurgaon, for the said agricultural land. The Tehsildar/ Halka Patwari, Gurgaon certified that the said agricultural land is situated more than 8 km and is situated at 10 km from the last municipal limit of Gurgaon. A copy of a GPS distance (aerially) measured distance certificate certifying that the distance of the subject agriculture land from the municipal limit of Gurgaon City, Gurgaon (Hr.), was also submitted. On the other hand, ld. DR relied on the findings of the lower authorities.

The Hon'ble Tribunal held that two reasons to evaluate the same set of facts of the same transaction in the hands of two assesses cannot be permitted. The Hon'ble Tribunal held that since the certificate of distance was accepted in the co-owner's case and the facts were identical, the rejection in the assessee's case was unjustified. It was held that there cannot be two views of

the same transaction. Reliance was placed on the decision of *Ashish Gupta vs. ITO* [2024] 163 taxmann.com 739 (Delhi - Trib.). The appeal of the assessee was allowed.

Aareev Foundation vs. CIT(E) [ITA no. 356/Ahd/2025 (Ahmedabad Trib.)]

Section 12AB - Application for registration filed beyond due date - CIT(E) rejected application citing delay - CBDT Circular No. 7/2024 not applicable - appeal dismissed - Remedy lies in appeal against original order.

Facts:

The original application filed by the assessee on 17/09/2023 was rejected, and the provisional registration was also cancelled. After that, the assessee filed another application seeking registration u/s. 12A(1)(ac)(iii) of the Act. This was the second application filed by the assessee seeking final approval. The CIT(E) rejected the present application on the ground that it was filed beyond the due date specified. He noted that though the assessee has filed an application within the extended time as per CBDT circular no. 7/2024, but the assessee would not benefit from para 4.1 of said circular, which provides the kind of applications that are extended by the Circular. The earlier rejection was on the ground not covered under para 4.1 of the said circular. Against the second order, the assessee filed an appeal before the Hon'ble Tribunal.

Held:

Before the Hon'ble Tribunal, the assessee was unable to controvert the findings of the CIT(E) that it was not saved by the CBDT Circular. The Hon'ble Tribunal dismissed the appeal, holding that though the application was made within the extended time limits of the circular, the circular did not apply to the said facts. However, it was noted that the remedy available to the assessee, as per law, against the denial of registration u/s. 12AB of the Act is filing an appeal against the original order denying approval. The assessee is at liberty to pursue the said course of action. It was further noted that the appeal so filed would be time-barred. However, the assessee's bona fide belief in remedying the rejection by filing a fresh application, which was held non-maintainable due to delay and confirmed by the present Tribunal order, may be considered by the ITAT while deciding on condonation of delay in that appeal as and when filed.

Sula Vineyards Ltd. vs. DCIT (ITA No. 2082/Mum/2025 dt. 16.07.2025) (AY 2023-24)

Section 36(1)(va) - delay of 1 day in remitting PF/ESIC contributions - payment failed due to technical error of bank - no disallowance warranted (Sec. 143(1))

Facts:

The return was processed u/s. 143(1) of the Act by Centralized Processing system (CPC). CPC disallowed the Employees Contribution to Employee State Insurance (ESIC) and Provident Fund (PF) u/s 36(1)(va). CIT(A) confirmed the addition by rejecting the plea of the assessee. Being aggrieved with the order, an appeal was filed before Hon'ble Tribunal.

Held:

Hon'ble Tribunal held that assessee made all efforts to make payment within the due dates as per the PF and ESIC Act, but due to a technical glitch, the payment could not be processed and the amount could not be

deposited on time. It is noted that there was no malafide intention on behalf of the assessee in depositing the payment belatedly by 01 day. The delay of 01 day in remitting the ESIC and PF contributions was caused due to a technical error on the part of the bank and was beyond the control of the assessee. The assessee also placed a copy of the letter from the State Bank of India confirming that the payment failed due to a technical error. As soon as the assessee came to know that the payment failure, the said statutory dues were subsequently discharged through another bank. The Hon'ble Tribunal held that the revenue could not establish any malafide intention on behalf of the assessee and the delay of one day due to any technical glitch in depositing the amount to the account of ESIC and PF A/c deserves to be considered liberally, and therefore addition made was directed to be deleted. On the above basis, the appeal filed was allowed.

Aditya Sapru vs. ACIT [ITA NO.1421/MUM/2025 dated 24/06/2025] [AY 2013-14]

Section 54 - Delay in filing appeal - Absence of sufficient cause- Mere reliance on CA's negligence or general plea without specific and reasonable explanation is not sufficient - Delay not condoned, appeal dismissed as time-barred.

Facts:

In this case, the assessee filed an appeal before the Hon'ble Tribunal, with a delay of 819 days, seeking relief in respect of disallowance under section 54 of the Act. The assessee contended that the delay was due to the erroneous advice of his Chartered Accountant (CA), who informed him that no further appeal was necessary after the assessee's rectification application under section 154 of the Act was allowed. In support, the assessee submitted an affidavit from the CA and claimed that the error was bona fide, unintentional, and not motivated by any mala fide intent. The Revenue, however, strongly objected to the condonation, arguing that the delay was excessive and not backed by proper or sufficient cause.

Held:

The Hon'ble Tribunal, after examining the submissions and material on record, refused to condone the delay and dismissed the appeal as time-barred. It emphasised that under section 5 of the Limitation Act, delay can only be condoned where the assessee shows "sufficient cause" for every day of delay, which was not done in this case. It was observed that merely placing the blame on the Chartered Accountant was not a valid excuse, particularly when the assessee had actively participated in the assessment and rectification proceedings and was aware of the developments. The Hon'ble Tribunal held that vigilance and diligence are expected of litigants, and one cannot seek to revive time-barred litigation merely by citing professional negligence without a detailed explanation. It noted that accepting such a general plea would set a bad precedent and undermine the discipline of limitation laws. The Hon'ble Tribunal relied on several rulings of the Hon'ble Supreme Court, including *Basawaraj vs. Special Land Acquisition Officer* (AIR 2014 SC 746), *N. Balakrishnan vs. M. Krishnamurthy* (AIR 1998 SC 3222), *State of West Bengal vs. Administrator Howrah Municipality* (AIR 1972 SC 749), *and Anshul Aggarwal vs. NOIDA* (2011) 14 SCC 578, to stress that condonation of delay is an exception and not a rule, and cannot be claimed as a matter of right. The Hon'ble Tribunal invoked the legal maxim "Interest reipublicae ut sit finis litium"—meaning it is in the public interest that litigation must come to an end. Consequently, the Tribunal held that no sufficient cause had been made out and dismissed the appeal without admitting it, thereby refusing to consider the merits of the case.

Rashmin Kantilal Vakta vs. DCIT [ITA No.829 & 830/Ahd/2025 dated 15/07/2025] [AY 2013-14 and AY 2014-15]

Section 68 and 69A - Cheque entries and cash deposits lacking sufficient substantiation, with repeated withdrawals and redeposits, raises doubts about the genuineness and commercial substance of the transactions

FACTS:

The assessee had large cash deposits in his account with Shri Renuka Mata Multi-State Urban Cooperative Credit Society Ltd. during FY 2013-14 (₹97.53 crore) and FY 2014-15 (₹88.66 crore). The Ld. AO treated the entire deposits as unexplained under section 69A, rejecting the assessee's claim that they were recorded business receipts and loans (including from the society) which had been squared up through withdrawals and repayments. The Ld. AO held the explanations and reconciliations lacked credible evidence and initiated penalty proceedings.

On appeal, the Ld. CIT(A) upheld the validity of reassessment, finding that due process under sections 148 and 143(2) was followed. On merits, the Ld. CIT(A) partly allowed relief, reducing additions to ₹19.46 crore (AY 2013-14) and ₹19.51 crore (AY 2014-15). The balance amount was sustained as the assessee failed to establish a nexus between withdrawals and deposits or provide a valid business rationale. The Ld. CIT(A) also directed verification of the actual quantum of deposits to rectify any computational errors. Both the assessee and revenue appealed before the Hon'ble ITAT.

HELD:

The Hon'ble ITAT held that the standard of proof for explaining large cash deposits is considerably high, and mere entries in books or cash withdrawal-redeposit claims, without corroborative evidence such as stock registers, VAT returns, or independent third-party confirmations, cannot establish genuineness. The Hon'ble ITAT found that the Ld. CIT(A) erred in deleting substantial portions of additions under Sections 68 and 69A without calling for a remand report from the Ld. AO, despite new evidence being produced at the appellate stage. It observed that patterns of frequent large cash withdrawals and immediate redeposits lacked commercial rationale and indicated possible accommodation entries. Regarding loan transactions, the Hon'ble ITAT reiterated that identity, creditworthiness, and genuineness must be conclusively proven, especially when the creditors are also trading parties, and mere filing of PANs or ITRs is insufficient. Consequently, except for inter-bank transfers (accepted as explained), all other components—business receipts, cash sales, loans, and redeposits—were remanded to the Ld. AO for fresh verification, with directions to examine all supporting documents, including books of accounts, confirmations, VAT records, and stock statements. The Hon'ble ITAT thus partly allowed both the assessee's and the Revenue's appeals for statistical purposes.

Vaibhav Vinod Aggarwal vs. ITO [ITA No: 928/MUM/2025 (Mumbai Trib.) (AY 2017-18)

Section 68 - Cash deposit during demonetisation - explanation supported by business turnover and debtor receipts - Partial addition sustained - Section 115BBE not applicable retrospectively

FACTS:

The assessee, a distributor of FMCG goods, made cash deposits of Rs 27,51,000/- during the demonetisation period in the Specified

bank notes (SBN). The assessee was having Rs. 12,33,605/- as cash in hand, Rs. 6,05,000/- was withdrawn from his proprietary firm, and Rs 11,07,000/- was received from debtors against goods supplied before 08th November 2016. The AO did accept the cash in hand but did not accept the explanation of the assessee by stating that there is no reason why the assessee was keeping cash in hand when he was paying bank interest in the profit and loss account. The AO allowed the benefit of Rs. 2,00,000/- only and added the balance Rs. 15,12,000/- as unexplained cash credit u/s. 68, taxing it u/s.115BBE of the Act. The CIT(A) upheld the addition.

Held:

Before the Hon'ble Tribunal, there was a delay of 408 days in filing the appeal. The notices were sent by the CIT(A) to a different email ID than the one mentioned in Form-35. Some of these notices were responded to. The email ID belonged to the accountant of a company where the assessee is also one of the directors. The said accountant did not inform the assessee about any further notice received. The final order passed by the CIT(A) was not served either physically or through the email provided in Form-35. The assessee came to know about the dismissal of the appeal only when a notice for recovery of outstanding demand was served. The Hon'ble Tribunal held that the CIT(A) had issued notices to an email ID different from the one provided in Form-35. Considering the legal principle that substantial justice should prevail over technical considerations, the delay was condoned.

The Tribunal observed that the assessee had turnover during the year of more than Rs. 32 crore, with cash sales exceeding Rs. 16 crore, i.e., 50% of the total turnover. Details of month-wise cash sales and cash deposits during the relevant financial year were submitted. In October 2016, cash deposits were Rs. 1.46 crore; cash received from debtors till 08.11.2016 was Rs. 42.67 lakhs. From 09.11.2016 to 30.11.2016, cash deposits were Rs. 85 lakhs; in December 2016, Rs. 1.42 crore; and in January 2017, Rs.1.40 crore. The assessee submitted that the pattern of cash deposits during demonetisation was not abnormal. The lower authorities did not dispute the cash sales nor reject the assessee's books of account. On the other hand, the DR contended that the assessee failed to substantiate the cash deposit.

The Hon'ble Tribunal noted assessee has shown cash received from debtors in each and every month. Such figures of cash deposits regularly and cash received from debtors are not disputed by AO. The AO's contention was that the assessee was not authorised to receive SBN post-demonetisation. However, the assessee had explained that Rs. 11,07,000 was collected against goods supplied, and it was not claimed that SBNs were received after the demonetisation date. It was held that there was no justification for treating the cash deposits against the regular sale as unaccounted money. However, to avoid the possibility of revenue leakage, the Hon'ble Tribunal restricted the disallowance to 10% of the addition made by the AO.

Furthermore, on the issue of higher tax rate u/s. 115BBE the Hon'ble Tribunal held that the enhanced rate of 60% is not retrospective and will apply to transactions undertaken from 01.04.2017.

Priti Purohit vs. ACIT (ITA No. 1868-1870/Mum/2025 dt. 09.07.2025) (AY 20-21 to AY 22-23)

Section 69A - Income offered to tax under presumptive tax i.e. Section 44AD - Assessee's statement recorded in search - Assessee submitted evidences to substantiate the claim - Onus to prove that the contention of the assessee is wrong is on the revenue - No corroboratory evidence found by Revenue - Mere statement recorded in search cannot be the basis for

addition - Presumptive Income Offered is to be accepted - Addition deleted (Section 44AD, 132(4),148)

FACTS:

Assessee's case was reopened on the basis of a search carried out in the case of MCGM group Mumbai on 25.02.2022 wherein the assessee was also covered. Assessee has shown contract receipt of Rs. 4,78,580/- and offered it under the presumptive tax scheme under section 44AD on account of income from labour contract and job work. The claim of the assessee was not accepted by the AO on the basis of the fact that during the search action, a statement of the assessee was also recorded under section 132(4) of the Act wherein, she disclosed that she is a house wife and does not have any source of income. On basis of statement recorded during the search proceedings, receipts were construed to be unexplained and an addition was made u/s 69A of the Act. On further appeal, additions were sustained. Therefore, an appeal is filed before Hon'ble Tribunal.

HELD:

Hon'ble Tribunal held that one of the reasons to suspect the activities of civil contract business is that during the search action statement of the assessee was recorded wherein she disclosed that she is house wife and not earning any income, but filing the return of income. On the basis of such a statement, the AO asked the assessee to furnish the details of business income. There is no other corroborative evidence against the assessee statement. A search was carried on 25.01.2023, however, the return of income was filed on 31.03.2021, much prior to the search action. Assessee has reasonably explained the source of cash, which is also offered for taxation under section 44AD of the Act. The Assessee has discharged her primary onus in explaining the source of money on which profit under section 44AD of the Act was offered to tax. A mere statement of the assessee is not sufficient to make an addition under section 69A of the Act. Once, the assessee has discharged her onus, there is no other burden on the assessee. The onus shifts on the AO to prove otherwise by making further investigation and to bring adverse material. Hence, it was held that the income offered by assessee under presumptive income under section was liable to be accepted. On said basis, Hon'ble Tribunal allowed the appeal and deleted the addition.

DCIT vs. Sh. Vaibhav Banka Aakarshan [ITA No. 301 and 290/JP/2025 dated 08/07/2025] [AY 2014-15 and AY 2016-17]

Section 153A - No Addition in Absence of Incriminating Material in Unabated Assessment; Section 250 & 251 - The Commissioner of Income Tax (Appeals) has no Jurisdiction to Direct Reassessment Under Section 147

FACTS:

The assessee, Sh. Vaibhav Banka, filed his original return of income on 14.10.2016 declaring a total income of ₹31.63 lakhs. A search and seizure operation under Section 132 was conducted on 13.06.2019 in the case of Dewan Group, with the assessee being one of the group members. Consequently, a notice under Section 153A of the Act was issued to the assessee, in response to which he filed a return declaring the same income. The AO, however, completed the assessment under Section 153A by making an addition of ₹42.20 lakhs—comprising disallowance of exemption under Section 10(38) amounting to ₹40.15 lakhs (alleging the long-term capital gain (LTCG) on shares to be bogus) and ₹2.05 lakhs under Section 69C towards commission purportedly paid to obtain accommodation entries. The assessee contested these additions before the CIT(A), submitting that

the assessment had attained finality as on the date of search and no incriminating material was found during the search. The Ld. CIT(A) agreed and deleted both additions. However, relying on the CBDT Instruction No. 1/2023 and the Hon'ble Supreme Court's decision in *Pr. CIT, Central-3 vs. Abhisar Buildwell (P.) Ltd* [2023] 454 ITR 212, the CIT(A) directed the Assessing Officer to initiate reassessment under Section 147. While the Revenue challenged the deletion of additions before the Hon'ble ITAT, the assessee filed a cross-objection against the CIT(A)'s direction to reopen the case.

Held:

The Hon'ble Tribunal held that the assessment for the relevant year was completed and unabated on the date of search, and since no incriminating material was found during the search, no addition could be made under Section 153A. It was observed that the assessee had substantiated the LTCG transaction through documentary evidence such as share allotment through banking channels, demat account statements, sale through SEBI-registered brokers, and timely payment of statutory taxes like STT and service tax. Thus, based on the supporting evidence placed on record it is clear that the transaction which revenue dispute has already been recorded. The Assessing Officer failed to demonstrate that the documents were forged or that any incriminating material was found during search to support the conclusion that the LTCG was bogus. Relying on the Hon'ble Supreme Court's decision in *Pr. CIT, Central-3 vs. Abhisar Buildwell (P.) Ltd* [2023] 454 ITR 212, the Hon'ble Tribunal affirmed that additions under Section 153A in respect of completed assessments are not sustainable in the absence of incriminating material. The Hon'ble ITAT also addressed the legality of the CIT(A)'s direction to initiate reassessment proceedings under Section 147 after deleting additions under Section 153A. It held that such a direction is beyond the scope of powers conferred under Section 250/251, which restricts the Ld. CIT(A) to either confirm, reduce, enhance, or annul the assessment. The Hon'ble ITAT emphasized that the CBDT Instruction No. 1/2023 is an internal administrative directive meant for the guidance of Assessing Officers and does not bind appellate authorities like the Ld. CIT(A). Referring to the Hon'ble Supreme Court's decision in *UCO Bank vs. CIT* (1999) 237 ITR 889 (SC), it reiterated that administrative instructions cannot override the Income Tax Act. The Hon'ble ITAT further cited *ITO vs. Murlidhar Bhagwan Das* (1964) 52 ITR 335 (SC) and *Parashuram Pottery Works Co. Ltd. vs. ITO* (1977) 106 ITR 1 (SC) to reaffirm that quasi-judicial finality must be respected and appellate authorities cannot give directions on matters not arising directly from the appeal. The act of directing reassessment under Section 147, when the Ld. CIT(A)'s authority ended with the deletion of additions under Section 153A, was held to be ultra vires. Therefore, the assessee's cross-objection was allowed and the impugned direction was quashed.

Bhagwan Vardhman Shwetamber Murtipujak Tapagacch Jain Sangh vs. CIT(E) (ITA No. 2378/Mum/2024 dt. 23.07.2025) (AY 12-13)

Section 263 - assessment order construed to erroneous & prejudicial to revenue was passed u/s 144 - Held that assessment order u/s 144 cannot be revised u/s 263 - Order Invalid

Facts:

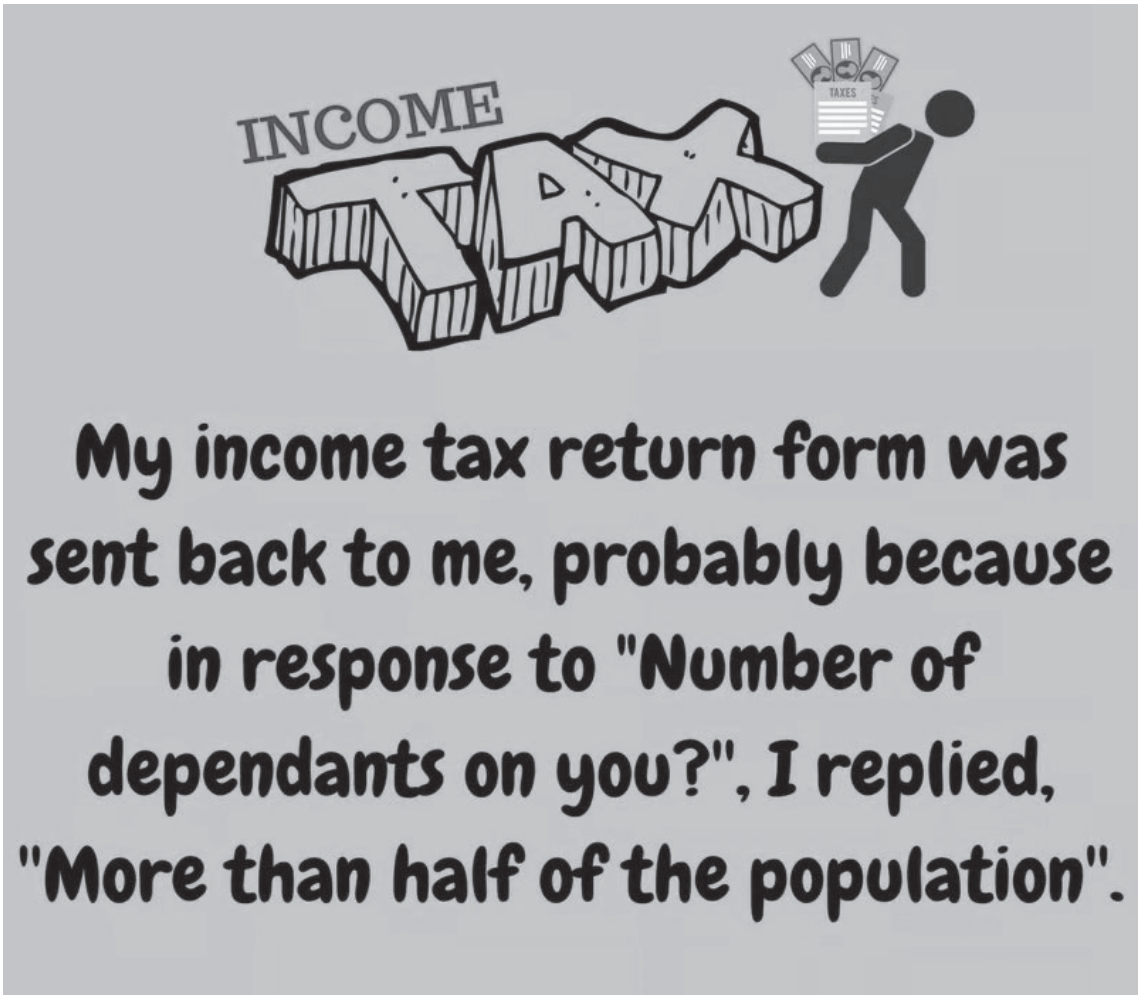
Assessee filed its return of income on 18/03/2014 declaring therein gross receipts at Rs.8,65,837/-. The return was selected for scrutiny assessment. None attended the proceedings and the AO framed the assessment exparte to the best of his judgment u/s 144 of the Act. Against the assessment order, Section 263 order was passed

and CIT(E) held that the AO did not make any enquiry and because of which the expenditure claimed by the assessee was allowed and only the balance corpus was assessed to tax which made the assessment order erroneous and prejudicial to the interest of the revenue. Being aggrieved with the order, appeal is filed before Hon'ble Tribunal.

Held:

Hon'ble Tribunal held that it cannot be denied that u/s 144 of the Act, the AO makes a best judgement assessment and, therefore, the judgement of the AO cannot be substituted by the judgement of the ld. CIT(E). Strong reliance was placed on coordinate Nagpur Bench decision of *Sanjay Dand vs. PCIT* (ITA No. 321/Ngp/2024) wherein it was held that:

'On a conspectus of the above facts, the twin conditions prescribed under section 263 of the Act are non–existent in as much as the order of the Assessing Officer neither can be held to be erroneous nor prejudicial to the interests of the Revenue so as to warrant invoking powers under section 263 of the Act and the learned PCIT fell into an error in revising the order.' On said basis, Hon'ble Tribunal allowed the appeal and directed to set aside the 263 order.



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PERMANENT ESTABLISHMENT

Zscaler Inc vs. DCIT-(2025) 175 Taxmann.com 992 (Del - Trib)

NO DAPE - In the absence of principal -agent relationship & authority to conclude contracts (INDIA-US DTAA)

The Hon'ble Tribunal held that the Indian subsidiary of the assessee,a U.S. company, offering IT ,sales and marketing support to the various customers (in India and around the globe) of the U.S company, who was engaged in providing software based security solutions, could not be treated as a DAPE ,in the absence of principal-agent relationship between the US company and its subsidiary who had no authority to conclude contracts. Further, the Indian subsidiary was remunerated at arms length for marketing and IT support service. ***Daikin Industries Ltd. vs. Asstt. CIT, International Taxation Daikin Industries Ltd. vs. Asstt. CIT, International Taxation [2018] 94 taxmann.com 299 (Delhi - Trib.)*** relied upon by the Revenue was distinguished on the ground that in the said case, the Indian subsidiary was finalising products sold by it in the capacity of a distributor which was not so in the instant case. ***Rolls Royce Singapore (P.) Ltd. vs. Asstt.DIT, [2011] 13 taxmann.com 81(Delhi)*** relied upon by the Revenue was distinguished on the ground that in the said case , the Hon'ble Tribunal had held that there existed a DAPE but the Hon'ble High Court after concluding that the Tribunal had arrived at a wrong conclusion, remanded the matter back to reconsider the issue. ***[Bharti Cellular Ltd. vs. Asstt.CIT [2024] 160 taxmann.com 12/298 Taxman 552/462 ITR 247 (SC)[Para 13], Progress Rail Locomotive Inc. vs. Deputy Commissioner of Income-tax, International-Taxation [2024] 163 taxmann.com 52/466 ITR 76 (Delhi)[Para 16], DIT vs. Western Union Financial Services Inc. [2024] 169 taxmann.com 461/472 ITR 220 (Delhi), SFDC Ireland Ltd. vs. Commissioner of Income-tax [2025] 171 taxmann.com 731 (Delhi)/(2025) 171 taxman.com 731 [Para 17] and Asstt. DIT vs. E-Funds IT Solution Inc. [2017] 86 taxmann.com240/251 Taxman 280/399 ITR 34 (SC). [Para 19] - followed.]***

DIVIDENDS

Intertek India (P) Ltd vs. ACIT–(2025) 176 Taxmann.com 186 (Del-Trib)

Refund claim of DDT by a domestic company, in excess of 10% prescribed under article 11- Rejected (India-UK DTAA)

The assessee, a domestic company claimed refund of DDT paid in excess of the rate of 10% as prescribed under the India-UK DTAA. The Hon'ble Tribunal rejected the said claim by holding that since DTAA does not get triggered at all when a domestic company pays DDT u/s 115-O, assessee could not claim benefit of lower rate of DDT as per article 11 of the India-UK DTAA. ***(DCITB vs. Total Oil India (P) Ltd-(2023) 149 taxmann.com 332 (Mum-Trib) (SB) followed)***

ROYALTY

CIT vs. Salesforce.Com Singapore PTE Ltd–(2025) 176 Taxmann.com 746 (SC)

Subscription fees received by Singapore company for providing CRM services to its clients-Not Royalty u/s 9(1)(vi) &(India-Singapore DTAA)

Assessee, a Singapore based company provided cloud based Customer Relationship Management (CRM) Services to its customers in India. Customers in India paid subscription fee for availing CRM services. AO held that subscription fee was in the nature of royalty under section 9(1)(vi). It was noted that assessee provided access to its CRM application software through remote Internet browser/server situated in Singapore and customers were provided access to application where they would input, store and retrieve proprietary data but there was no transfer of copyright in the CRM application software. The Hon'ble High Court, in the impugned order, held that since the subscribers did not have any physical access to equipments providing system service and were only using services provided by the assessee, subscription fee received by assessee for providing CRM related services to its customers in India was not taxable in India as royalty or fees for technical services. The Hon'ble Apex court dismissed the Revenue's SLP ***(CIT, International Taxation 3 vs. Sales Force.com Singapore Pte limited –(2025) 175 Taxmann.com 751(SC) followed)***

Amadeus IT Group SA vs. DCIT, IT-(2025) 176 Taxmann.com 134 (DEL-TRIB)

Booking fee/payments received by assessee, a tax resident of Spain from various airlines in respect of (i) fully automated Computer Information System (CRS) which enabled display and dissemination of information supplied by various airlines (ii) for use of Altea system [an inventory management and hosting system) - NOT ROYALTY u/s 9(1)(vi) / Article 13 (Indo-Spain DTAA)

The assessee, a tax resident of Spain, had developed (i) a fully automated Computer Information System (CRS) which enabled display

and dissemination of information supplied by various airlines, which in turn facilitated, inter alia, reservations, communications, ticketing and related functions on a worldwide basis for the travel industry. (The system was for facility of both travel agencies and airline offices worldwide.) (ii) inventory management and hosting system (Altea system) for airlines which was installed at airports and was accessed only by airlines and not by any of assessee's agents in India. The AO held that (i) booking fee received by assessee from various airlines was payment for use of process in scientific equipment and thus, was taxable as royalty both u/s 9(1)(vi) and under article 13 of the DTAA. (ii) For the same reasons as above applicable to booking fee, the payments received in relation to the Altea system was taxed as royalty. The Hon'ble Tribunal held that the aforesaid amounts would be taxable as business income and not as royalty by following its orders in the assessee's own case for earlier years some of which had already been upheld by the Hon'ble High Court. Further, the Hon'ble Tribunal noted that as held by the Hon'ble SC in assessee's own case for earlier years, there was no doubt that the PE of the assessee existed in India. However, it further noted that the Hon'ble Supreme Court had upheld the order of the Hon'ble High Court on the aspect that while 15% of the revenue earned was attributable to the said PE in India, since the assessee paid 33% of the booking fees to the distributors in India, no further income could be taxed in India. Accordingly, the additions were deleted ***(Amadeus IT Group SA Vaish Associates vs. ACIT-(2023)155 taxmann.com427(Del Trib) followed)***

Siemens Aktiengesellschaft vs. DDIT-(2025)175 Taxmann. com1012(Mum-Trib)

Income from Royalty - taxable on receipt basis and consideration received for Software supplied along with equipment - Not Royalty (India-Germany DTAA)

The Hon'ble Tribunal held that (i) income from 'Royalty' (and FTS) would be taxable on receipt basis in the hands of non-resident German Assessee (ii) Consideration received for supply of software sold as part and parcel of equipment supplied and not separately, could not be taxed as royalty. ***(DIT (IT) vs. Siemens Aktiengesellschaft [IT Appeal Nos. 2356, 2357,2384,2386, 2387, 2428 and 2429 of 2011] and Asstt. DIT (International Taxation), Circle - 2(1) vs. Siemens Aktiengesellschaft [2013] 33 taxmann. com 480/142 ITD 614/[2012] 19 ITR(T) 336 (Mumbai)/ 4502/Mum/2012 and Deputy DIT, International Taxation, 2 (1), Mumbai vs. Siemens Aktiengesellschaft 2009 taxmann. com 1019 (Mumbai) followed)***

Weir Mineral (India) Pvt Ltd [TS-764-ITAT-2025(DEL)]

Unpaid Royalty which is Irrecoverable - Not Taxable - notwithstanding TDS deduction

The Hon'ble Tribunal deleted the addition made on account of unpaid royalty which was found to be irrecoverable, notwithstanding the TDS deduction made in respect of the same, by holding that deduction of tax at source by the deductor does not confer a right of income upon the deductee. It placed reliance on the judgements of the Hon'ble Supreme Court in the case ***Shoorji Vallabhdas & Co [(1962) 46 ITR 144(SC)] and Godhra Electricity Co[(1997) 225 ITR746(SC)]*** wherein it was held that income tax cannot be levied on hypothetical income that is never realised or expected to be realised. However, as regards the TDS deducted and claimed, it held that the corresponding income can be deemed to be the income of the assessee and accordingly made an addition u/s 198.

FEES FOR TECHNICAL SERVICES

Tungsten Automation England Ltd vs. DCIT, IT-(2025) 176 taxmann.com 497 (DEL-HC)

Payments received by the assessee, a UK based company for providing services to ICO for generating electronic invoices compliant with local laws through its secure platform & granting licence to ICO to use assessee's e-portal/ software-NOT FTS under article 13(4) (INDIA-UK DTAA)

The Assessee, a UK based company, was proprietor of an e-invoicing software and provided services of generating electronic invoices compliant with local laws through its secure platform. It had provided license for using its e-portal to an Indian company GIPL in connection with services rendered to GSK, which was a non-resident company. The AO held that the payments received by the assessee for providing the aforesaid services was taxable as FTS -both under the Act as well as the under Article 13(4) of the DTAA. The Hon'ble HC held that since neither GIPL nor GIL acquired any right in source code of software operated by assessee and license granted to GIL/GIPL to use assessee's e-portal/ software was limited to term of license and neither GIPL nor GIL were granted any right to technology or source code of software which would enable them to absorb technology and independently exploit the same, services rendered by assessee did not satisfy clause (c) of paragraph 4 of article 13 of India-UK DTAA . Further, training imparted to GIPL's employees for using software or e-platform did not transmit technical know-how or process for rendering services of generating electronic invoicing .The said service was performed by assessee by use of its proprietary software and e-platform operated by it and training to use said platform did not transfer knowledge or transfer technology, which would enable GIPL to absorb technology to generate e-invoices and render subject services on its own and thus, make available condition necessary for consideration to be construed as FTS under India-UK DTAA was not satisfied. Further, the judgement in the case of ***Centrica India Offshore (P.) Ltd. vs. CIT [2014] 44 taxmann.com 300(Del-HC)*** relied upon by the Revenue was distinguished by the Hon'ble HC by holding that in the said case ,the service provider had seconded employees to the service recipient and the activity of the secondees was thus to transfer their technical ability to ensure quality control vis-a vis Indian vendors or in other words "make available" there know how to the service recipient. The secondment in that case actually led to a benefit that transmitted the knowledge possessed by the secondees to the regular employees. Therefore, in the instant case, the Hon'ble HC held that payments received by assessee for rendering the aforesaid services could not be considered as FTS within meaning of paragraph 4 of article 13 of India-UK DTAA and, thus, the said receipts were not chargeable to tax in India.

Castlewick vs. ACIT, IT-(2025) 175 Taxmann.com 914 (CHENNAI-TRIB)

In the absence of (i) Article dealing with FTS in DTAA (ii) PE in India - payments received by UAE entity from Indian customers for reviewing design and drawings for a turnkey project in India-NOT TAXABLE (India-UAE DTAA)

The assessee-company, incorporated in the UAE, received certain amount from an Indian customer for reviewing existing design and drawing for a turnkey project of water supply

distribution system in India. The Hon'ble Tribunal held that since assessee had received said amount for rendering services from outside India and there was no provision in the DTAA between India and UAE to tax FTS, the said amount would be taxed as per article 7 of DTAA applicable for business profit and in absence of a PE in India, said income would not be chargeable to tax in India ***[ABB FZ-LLC vs. ITO (International Transactions), Ward -1(1), Bangalore [2016] 75 taxmann.com 83/[2017] 184 TTJ 351/162 ITD 89 (Bangalore - Trib.), Bangkok Glass Industry Co. Ltd. vs. Asstt. CIT [2013] 34 taxmann.com 77/215 Taxman 116 (Madras) followed.]***

ACIT vs. Carborandum Universal Ltd - (20025)176 Taxmann.com 168 (CHENNAI-TRIB)

Export selling Commission paid to overseas agents (having no PE in India) for procurement of sale orders outside India-not taxable in India

Assessee-company was engaged in business and manufacture of industrial ceramics, abrasives and refractories. It paid export selling commission to its overseas agents for procurement of sale orders outside India. AO was of the view that assessee depended on overseas agents not only for cost effectiveness but also for managing its business affairs abroad, and accordingly classified the services rendered as technical services under section 9(1)(vii)(b). He, therefore, made disallowance under section 40(a)(i) for non-deduction of tax at source. The Hon'ble Tribunal held that since foreign agents rendered services outside India and had no PE in India, commission paid to them could not be taxed in India under section 9(1)(i). Thus , disallowance under section 40(a)(i) was deleted. ***[ACIT vs. Carborundum Universal Ltd. [IT Appeal Nos. 1741 and 1525 (CHNY) of 2014, dated 19-5-2016 (para 15), CIT vs. Faizan Shoes (P.) Ltd. [2014] 48 taxmann. com 48/226 Taxman 115/367 ITR 155 (Madras) (para 15) and Evolv Clothing Co. (P.) Ltd. vs. Asstt. CIT [2018] 94 taxmann.com 449/257 Taxman 171/407 ITR 72 (Madras) followed.]***

Ethiopian Airlines Group vs. ACIT, IT-(2025) 175 Taxmann.com 640 (DEL-TRIB)

Payments received by Ethiopian Airlines for providing access to standard flight stimulator facility in Ethiopia to Indian pilots through a Dubai based entity (having a group entity in India) without rendering any customised services - NOT FTS (India-Ethiopian DTAA)

The assessee, an Ethiopian airline, had entered into an agreement of providing flight simulator and pilot training services to a Dubai based entity, namely, FSTC; who in turn, had a group entity in India, namely, FSTL. The Indian entity had further executed advance training simulator service agreements with various airlines, namely, Jet Airways, Vistara, Indigo, Go air etc. for training of licensed pilot on simulator. The Indian entity performed its pilot training obligation through its Dubai based group entity; who in turn, had executed its agreement with the assessee for availing its simulator and other services at Addis Ababa. The assessee had received revenue receipts through Dubai route which were treated by the AO as fees for technical services (FTS) under section 9(1)(vii) and held liable to tax in India. The Hon'ble Tribunal held that neither the assessee nor the Dubai based entity having a group company in India for providing any services in India could be held as taxable in India. It noted that article 12(3)(b) of the DTAA did not contain any 'make available' clause. It further held that all what the assessee had done was to provide its flight simulators having standard operating mechanism to the Indian pilots in Ethiopia then having rendered any customised services to suit

their requirements. In view of the jurisdictional High Court's judgement in ***SFDC Ireland Ltd. vs. CIT [2024] 160 taxmann.com 328(Del); following apex court's landmark decision in CIT vs. Kotak Securities Ltd. [2016] 67 taxmann.com 356 (SC);*** such standard facilities could not be treated as "FTS"

Caterpillar India (P) Ltd vs. DCIT - (2025) 175 Taxmann.com 572 (CHENNAI -TRIB)

Reimbursement of Secondment charges- NOT FTS

The AO disallowed reimbursement of secondment charges paid to AE on the ground that it was in the nature of FTS and TDS was not deducted on the same. The Hon'ble Tribunal upheld the deletion of disallowance made by the CIT(A) on the ground that tax had already been deducted u/s 192. It was held that reimbursement of secondment charges paid to AE would not attract TDS under section 195 as FTS where the seconded employees had worked under the control and supervision of the assessee who had merely reimbursed the actual salary to its AE. ***(Caterpillar India (P) Ltd vs. DCIT(LTU)-(2024) 164 Taxmann.com 3(Chennai-Trib) followed)***

Siemens Aktiengesellschaft vs. DDIT-(2025)175 Taxmann.com 1012 (MUM-TRIB)

Income from FTS would be taxable on receipt basis in hands of non-resident assessee in view of the India-Germany DTAA (see case no 3 under ROYALTY)

CAPITAL GAINS

Emerging India Focus Funds, Apex Financial Services (Mauritius) Ltd vs. ACIT, IT – (2025) 175 Taxmann. com 1013 (DEL-TRIB)

Capital gains on sale of equity oriented mutual funds in India earned by a Mauritius based company - NOT TAXABLE U/S ARTICLE 13(4)(India-Mauritius DTAA)

The Hon'ble Tribunal held that under the Indian laws - shares and mutual funds were both different forms of securities and investment and had significant differences in terms of rights of investors, regulation, nature of return and taxability under domestic laws. For the purpose of taxing an income earned from selling a security a DTAA should be strictly interpreted and if any security (unit of MF) was not specifically mentioned, then by any fiction or way of purposive interpretation, a distinct nature of security (unit of MF) could not be considered a kin to one (shares) giving rise to taxable income. For the purpose of the DTAA, investment in equity oriented mutual funds could not be considered to be investment in shares and unlike as in the case of shares, capital gains earned on sale of equity oriented mutual funds would not be taxable in India under Article 13(4) of the DTAA. ***[Apollo Tyres Ltd vs. CIT [2002] 122 Taxman 562/255 ITR 273 (SC), CIT vs. Hertz Chemicals Ltd [2016] 69 taxmann.com 338/239 Taxman 431/386 ITR 39(Bombay), Vanguard Emerging Markets Stock Markets Stock India Fund vs. ACIT [2025] 172 taxmann.com 515 (Mumbai - Trib.), ITO vs. Satish Beharilal Raheja [2013] 37 taxmann.com 296/145 ITD 29 (Mumbai) and CIT (International taxation) vs. K. E. Faizal [2019] 108 taxmann.com 545/178 ITD 383 (Cochin - Trib.) followed]***

OTHER INCOME

Kia Corporation vs. ACIT-(2025) 176 Taxmann.com 246 (BANG-TRIB)

Guarantee Fee received by South Korean Company from its Indian Subsidiary-Other Income-Not Taxable in India under Article 22 (India-Korea DTAA)

The assessee, a South Korean company, received guarantee fee from its Indian subsidiary for providing corporate guarantee to enable the latter to obtain a loan from a bank. The Hon'ble Tribunal held that as the guarantee fee received by assessee did not fall under any specific article dealt with in the India-Korea DTAA, it would be taxable only in Korea as per article 22 of the DTAA dealing with other income and therefore, it would not be taxable in India. It distinguished the judgement of the honourable Delhi High Court in Johnson Matthey Public Ltd Vs CIT-(2024) 162 Taxmann.com 865 (Del-HC) by noting that the case before the Hon'ble Delhi High Court dealt with the India-UK DTAA wherein article 23 dealing with other income specifically provides for taxation in the source country whereas, in contrast, in the India-Korea DTAA, article 22,dealing with Other Income provides for exclusive taxation in the state of residence. ***(Daechang Seat Co Ltd vs. DCIT (IT)-(2023) 152 Taxmann.com163 (Chennai-Trib) followed)***

Asian Honda Motor Co Ltd vs. DCIT–(2025) 176 Taxmann.com 135 (DEL-TRIB)

Matter remanded to DRP to examine service agreement of infrastructure services for determining whether service rendered by Thailand based company (engaged in business of cars) was business income or other income under Article 22 of the DTAA (India-Thailand DTAA)

The assessee, a Thailand based company, was engaged in the business of sale of cars, spare parts, etc and also responsible for exporting of Honda motorcycle, automobile power products and components manufactured in Thailand to 80 countries around. It received certain payments in the nature of service receipts from company namely HMSI in respect of certain services viz infrastructure fee related to IT services, software service and licence fee etc. The AO held the same to be in the nature of other income taxable in India as per article 22 of the DTAA. The DRP upheld the same. The Hon'ble Tribunal found that the DRP had observed that assessee had not produced certain relevant portion of agreement specifically the annexure defining services rendered under the agreements namely service agreement of infrastructure services, Web EDI system, maintenance agreement etc which were germane to the issue. Thus, the matter was remanded back to the DRP to revisit the issue upon examining documents which were not placed before it.

"Happiness is when what you think, what you say, and what you do are in harmony."

— Mahatma Gandhi

FOREIGN TAX CREDIT (FTC)

Deepak Pragjibhai Gondaliya vs. PCIT - (2025) 175 Taxmann.com 985 (GUJ-HC)

Delay in filling Form 67 condoned- assessee allowed to claim credit of tax paid in Bangladesh (INDIA-BANGLADESH DTAA)

The assessee, resident individual, earned salary income from Bangladesh on which tax was duly paid by assessee in that country. Assessee claimed that as per article 16 of the DTAA between Bangladesh and India, assessee was entitled to credit of tax payable on amount of salary in India. Assessee filed its return which was processed and intimation under section 143(1) was issued. However, assessee submitted Form number 67 after issuance of intimation under section 143(1) and thereafter, assessee, preferred an application for condonation of delay in respect of filing of Form 67 under Rule 128. PCIT rejected the same on the ground that there was no genuine hardship shown by the assessee. The Hon'ble High Court noted that in similar cases, the Court had held that the phrase "genuine hardship" used in section 119 should be considered liberally and it was to be born in mind that no applicant would stand to benefit while lodging delayed returns. Since filing of Form 67 for claiming benefit under the provisions of the Act was procedural in nature, delay in filing the same was to be condoned so as to enable the assessee to claim credit of tax paid in Bangladesh on the salary earned by the assessee by availing benefit of the DTAA. ***[PCIT vs. Wipro Limited [2022] 140 taxmann.com 223 /288 Taxman 491 /446 ITR 1 (SC), K. S. Bilawala & Ors. vs. PCIT & Ors. (2024) 158 taxmann.com 658 (Bombay), Pankaj Kailash Agarwal vs. Asstt. CIT [2024] 161 taxmann.com 383 /464 ITR 65 (Bombay), Sitaldas K. Motwani vs. Director General of Income Tax (International Taxation) [2010] 187 Taxman 44 /323 ITR 223 (Bombay) and Bombay Mercantile Co-op. Bank Ltd. vs. CBDT [2010] 195 Taxman 106 /332 ITR 87 (Bombay) followed]***

Sterling and Wilsoin Renewable Energy Ltd [TS-691-ITAT-2025(MUM)]

Filing of Form 67 for claiming FTC - not mandatory but directory - can be filed after return

While holding as above, the Hon'ble Tribunal placed reliance on the judgement of the Hon'ble Madras HC in the case of ***Duraiswamy Kumarswamy [TS-681-HC-2023(Mad)]*** and on the coordinate bench decision in the case of ***John Arunkumar Diaz [ITA No 3647/MUM/2023 dated 15.02.2024]***

Hirachand Damji Dand-[TS -788-ITAT-2025(MUM]

Tribunal restored the matter to file of lower authorities to adjudicate assessee's eligibility for FTC (India-Kenya DTAA)

The assessee provided services to a Kenya based entity and the said entity deducted tax at source in terms of the India-Kenya DTAA and issued necessary withholding certificates. The assessee while filing his return of income claimed double taxation tax relief in terms of section 90/90A. However, the assessee's tax consultant had made an inadvertent mistake of not filling the Form 67 which is essential for claiming DTAA benefits

and thus, the Revenue denied assessee the said benefits. Subsequently, the assessee filed Form 67 and also filed a rectification application u/s 154 but the same was rejected. The Hon'ble Tribunal relied on the coordinate bench ruling in ***John Arunkumar Diaz [ITA No3647/MUM/2023 dated 15.02.2024]***] wherein it was held that filing of form 67 along with the return was not mandatory but directory. Accordingly, the matter was restored to the file of lower authorities for considering the eligibility of the assessee for FTC.

OTHERS

CIT (IT) vs. Adani Wilmar Ltd – (2025) 175 Taxmann.com 909 (GUJ)

TDS to be deducted at beneficial DTAA rates as against the rate provided in s.206AA

The assessee had paid payments to non-resident parties on account of royalty and and FTS at rates prescribed in respective DTAAs between India and the respective countries of non-residents ,such rate of tax being lower than rate of 20% as provided under section 206AA. The Hon'ble HC held that as per section 90(2), provisions of DTAA would override provisions of domestic Act where provisions of DTAA were more beneficial to the assessee. Thus, the Hon'ble High Court upheld the deletion of tax demand relatable to the difference between 20% and actual tax rate on which tax was deducted by assessee in terms of the relevant DTAAs, ***[Danisco India (P) Ltd. vs. Union of India [2018] 90 taxmann.com 295 /253 Taxman 500 /404 ITR 539 (Delhi); Commissioner of Income Tax (International Taxation) vs. Air India Ltd. [2022] 142 taxmann.com 378/289 Taxman 492/456 ITR 117 (Delhi); Commissioner of Income Tax (International Taxation) Pune vs. Serum Institute of India Ltd (Order passed in Income Tax appeal No. 548 of 2016 dated 17-12-2018) and Commissioner of Income Tax, International Taxation vs. Wipro Ltd. [2023] 146 taxmann.com 129 (Karnataka) - followed]***

DCIT vs. Formula One Marketing II Ltd – (2025) 175 Taxmann.com 91(DEL-TRIB)

Non-Resident Income s.t TDS u/s 195 - No Interest leviable u/s 234 B

The Hon'ble Tribunal held that where the assessee was a non-resident and its income was subject to tax deduction at source u/s 195, it could not be held to be a default in payment of its advance tax liability and thus, interest under section 234B was not leviable. ***(DIT vs. Mitsubishi Corporation (2021) 130 taxmann.com 276(SC) followed)***

> "Do not dwell in the past, do not dream of the future, concentrate the mind on the present moment."
>
> ***— Buddha***

GST
Recent Judgments and Advance Rulings


CA Naresh K Sheth


CA Jinesh Shah

A. WRIT PETITIONS

Kuehne Plus Nagel (P.) Ltd. vs. Union of India [2025] 175 Taxmann.com 1041 - Gujarat High Court

Facts and issues involved:

Petitioner is engaged in the business of providing services with regard to international and domestic transportation of customer's goods, clearance, warehousing and allied services. Petitioner's services to customers abroad qualify as 'export of services' under Section 2(6) of the IGST Act, 2017. Considering the business model, the RBI has permitted operation through a clearing account with global offices and granted in-principle approval for monthly pan-India sea and air cargo consolidation, allowing foreign currency receipts net of overseas payments. This net amount is reflected in the EEFC account, supported by bank advice and monthly CA certification submitted to the authorized bank per RBI norms.

As per Section 54 of the CGST Act, read with Section 9 of the IGST Act and Rule 89 of the CGST Rules, the petitioner is eligible to claim refund of such unutilized ITC.

Petitioner filed refund claim of Rs. 1,82,99,406 for the period April 2021 to June 2021 against which a show cause notice was issued in Form RFD-08. As regards the requirement of FIRCs, the petitioner pointed out that in terms of the RBI approval, it was receiving foreign currency on monthly net off basis at pan-India level and due to the said clearing mechanism, the FIRAs received and submitted by the petitioner displayed the net amounts received by the petitioner on a pan India level. Petitioner also submitted another certificate from independent CA certifying the quantum of foreign currency received for the State of Gujarat for the relevant period as part of the common clearing mechanism. The said refund claim was rejected on the grounds that petitioner had not

submitted FIRCs relevant to the export invoices in terms of Rule 89(2)(c) of the CGST Rules and that the Petitioner has submitted the Chartered Accountant Certificate providing details of the foreign currency received in respect of export of services from Gujarat without submitting the supporting documents. Petitioner preferred an appeal which was duly rejected and hence, present writ petition was filed.

Discussions by and Observations of High Court:

Petitioner had submitted following documents with refund claim:

- Approval from Reserve Bank of India
- A certificate from a Chartered Accountant provided to RBI certifying the net amount to be received by KN India on a monthly basis;
- Extract of EEFC bank statement reflecting the receipt of the amount mentioned in the CA certificate
- FIRCs for the above amount received during April to June 2021

However, both the Adjudicating Authority and the Appellate Authority have discarded the same only on the ground that the petitioner did not submit the Foreign Exchange Inward remittance Certificate (FIRC) as required by the Circular No.125/44/2019.

Hon'ble Supreme Court in case of *Union of India vs. Mangal Textile Mills (P.) Ltd.* 2011 (269) E.L.T. 3 (S.C.) has held that the Certificate issued by CA is required to be considered by the Authority as an authentic document and in the facts of the case when the CA has issued the Certificate, the respondent-Authorities bound to take into consideration the same.

On perusal of the certificate issued by CA, it is clear that the petitioner has received the convertible foreign exchange for the export of the services and therefore, only on the ground that the petitioner has submitted the FIRC as required by the Circular No.125/44/2019 issued by the CBIC, the respondent authorities were not justified in rejecting the refund claim.

Decision of the High Court:

Petition succeeds and accordingly, allowed. The impugned order dated 10.06.2024 is hereby quashed and set aside.

Tamil Nadu State Transport Corporation (Villupuram) Ltd. vs. Additional Commissioner of Central Tax, Chennai [2025] 175 taxmann.com 628 - Madras High Court

Facts and issues involved:

Petitioner faced technical difficulties in filing GSTR-3B returns from July 2017 to July 2019, due to issues with Digital Signature Certificates (DSC) of the Managing Director—first due to non-support and later due to retirement. Despite the inability to file returns, the petitioner regularly deposited the exact output tax liability into their Electronic Cash Ledger. The returns were finally filed only in August 2019, resulting in a delay in debiting the cash ledger towards tax payment. The respondent issued a Show Cause Notice dated 25.06.2021, alleging that since the tax was not debited in time, the petitioner was liable to pay interest under Section 50 r/w Section 73(1) of the CGST/TNGST Acts.

Petitioner's Submissions:

Petitioner relied upon the decision in the case of *Eicher Motors Limited vs. Superintendent of GST and Central Excise Range-II* [2024] 158 taxmann.com 593 /81 GSTL 418/102 GST 49 (Madras) wherein this Court has held that the interest liability stops accruing from the date on which the amount due is deposited in the taxpayer's electronic cash ledger and submitted that the issue raised in this writ petition is squarely covered by the aforesaid decision of this Court.

Discussions by and Observations of High Court:

The Court relied upon the Eicher Motors judgment, where it was clearly held that Interest liability does not continue beyond the date on which tax is deposited in the electronic cash ledger. The Court also referred to Rule 88B(1) of the CGST Rules, which reinforces this position by providing that interest is not chargeable if the tax was deposited in the cash ledger before the due date, even if the debit was made while filing the return later.

Further, Court noted that this Rule is clarificatory in nature and hence applies retrospectively, validating the petitioner's stand. Therefore, the Court concluded that levy of interest in this case was not sustainable, since the government already had access to the funds deposited in time. However, the Court made it clear that if there were any other lapses or dues, such as penalties for non-filing, the department is free to proceed in accordance with law.

Decision of the High Court:

Writ Petition was disposed of with no costs.

Pratik Surendrakumar Shah vs. State of Gujarat [2025] 175 Taxmann.com 781- Gujarat High Court

Facts and issues involved:

Petitioner is a former director of one M/s. Zeb IT Service Limited ('the Company') which was engaged in business of providing platform for purchase and sale of virtual currencies. The said company decided to close its business and went into voluntary liquidation. Prior to the dissolution, the Liquidator had informed the GST Department to submit any tax claims. GST registration of the company was cancelled w.e.f. 13.11.2020, and intimation of dissolution was duly sent to the Registrar of Companies.

Despite this, the State GST authority issued notices under Section 73 for the FYs 2017–18 and 2018–19 in the name of the already dissolved company and later passed demand orders against it. The petitioner, a former director, filed replies pointing out that no proceedings could be initiated against a dissolved company and requested dropping of the proceedings. However, GST authorities passed an order against the company and hence, petitioner preferred the present writ.

Petitioner's Submissions:

The company had ceased to exist, and this was duly intimated to the department. GST registration was cancelled, and the dissolution was ordered by NCLT. As the company was no longer a legal entity, no demand could be raised or pursued in its name. The impugned orders were passed without application of mind and contrary to law, despite the respondent noting the dissolved status.

Respondent's Submissions:

While admitting the dissolution, the department contended that cancellation of registration under Section 29(3) does not absolve liability to pay tax or dues for earlier periods. It was alleged that the petitioner did not furnish sufficient documents addressing the issues raised in the SCN (like excess supplies, ITC ineligibility, etc.). Further, the department claimed that the petitioner did not share dissolution documents with the State GST authority despite being aware of their jurisdiction. Hence, issuance of orders under Section 73 was justified, and no interference was called for.

Discussion by and Observation of High Court:

The Court held that proceedings initiated against a dissolved company were not tenable,

particularly when the respondent themselves acknowledged the dissolution in the order. The Court observed that raising a demand post-dissolution was without jurisdiction and violative of settled legal principles. Orders passed lacked proper application of mind, as they failed to appreciate the fact that the company had legally ceased to exist. The Court referred to the *Supreme Court's ruling in Pr. CIT vs. Maruti Suzuki (India) Ltd. (2020) 18 SCC 331*, where it was held that jurisdiction cannot be invoked against a non-existent entity, even if procedural participation occurred.

Decision of the High Court:

Impugned order is hereby quashed and set aside.

Mathai M. V. vs. Senior Enforcement Officer [2025] 175 Taxmann.com 1042 - Kerala High Court

Facts and issues involved:

Petitioner is the registered owner of a truck (KL-31 J-5759), which was engaged in the transport of bilge water from INS Vikramaditya at the Cochin Wharf on 23rd November 2024. Subsequently, on 25th November 2024, the said vehicle was moved to a truck parking area by the GST authorities. On 10th January 2025, the petitioner received a copy of a detention order indicating that a confiscation notice under Section 130 of the CGST Act, 2017 had been served on the consignor, M/s Petro Chemicals, alleging tax evasion.

Petitioner filed W.P.(C) No. 2082 of 2025 before the learned Single Judge on the grounds that he had no role in the alleged tax evasion and that the vehicle had merely been hired for transport purposes. It was claimed that neither a notice nor any copy of the detention/confiscation order had been served upon him as mandated under law. However, the learned Single Judge dismissed the writ petition, leading to the filing of the present writ appeal.

Petitioner's Submissions:

Petitioner contended that the confiscation proceedings initiated against him under Section 130 of the CGST Act, 2017 were fundamentally flawed for want of due service of notice. It was argued that no notice, as mandated under Section 130(4) read with Section 169 of the Act, had been served upon him prior to the confiscation of his vehicle. The petitioner maintained that he had no knowledge of the alleged tax evasion and was merely the owner of the vehicle hired for transporting goods. He emphasized that the statutory requirement of issuing SCN and providing an opportunity of hearing before confiscation was not complied with. In particular, the petitioner challenged the mode of service, submitting that the use of WhatsApp as a means of communication could not be considered valid under Section 169, which specifically enumerates the accepted methods of notice delivery. It was further submitted that the confiscation order dated 21st December 2024 was passed without jurisdiction, rendering the entire proceedings void ab initio. Relying on judicial precedents, including the judgment in *Lakshay Logistics vs. State of Gujarat*, the petitioner prayed for setting aside the confiscation order.

Respondent's submissions:

Respondents submitted that the petitioner had been made aware of the confiscation proceedings through multiple communications sent via WhatsApp and thus could not claim ignorance. It was contended that the vehicle had been found to be transporting sullage without valid documentation, in contravention of GST provisions. The authorities had accordingly initiated action under Section 130 of the CGST Act, 2017, and a confiscation order was passed after the driver of the vehicle provided a written statement. The respondents asserted that the

petitioner had received a copy of the order dated 10th January 2025 and had even endorsed acknowledgment. They further argued that the petitioner had approached the Court with unclean hands by failing to disclose this acknowledgment in the writ petition.

Discussions by and Observations of High Court:

Section 130(4) of CGST Act mandates an opportunity of being heard before issuing a confiscation order. That is so because the owner of the conveyance under Section 130(1)(v) has an opportunity to prove that the conveyance was used without his knowledge and connivance, or that of his agent or the person in charge of the conveyance.

Section 169 of CGST Act prescribes specific methods for serving notices such as personal delivery, registered post, email, or publication on GST portal but does not recognize WhatsApp as a valid mode for service of notice. Though WhatsApp-based communication was permitted during the COVID-19 pandemic, it no longer satisfies the requirements of due service under GST law. There is, therefore, a serious lacuna in the procedure adopted by the Respondents as far as confiscation of the Petitioner's vehicle is concerned. The Petitioner has consistently taken this stand.

Decision rendered by the Division Bench of the Gujarat High Court in the case of Lakshay Logistics (supra) would squarely apply to the case of the Petitioner wherein court set aside the order passed under Section 130 of the Act solely on the ground of non-service of notice.

Decision of the High Court:

Accordingly, the Appeal is allowed.

B. RULINGS BY ADVANCE RULING AUTHORITY

Maharashtra State Electricity Transmission Company Ltd 175 Taxmann.com 658 - Maharashtra AAR

Facts and issues involved:

Applicant, a wholly owned corporate entity of Maharashtra Government, owns and operates largest Electricity Transmission System in the state. Applicant provides services by way of transmission of electricity, which is exempt from GST under Notification No. 12/2017-CT (R).

Applicant engages services of various contractors to construct EHV Substations, EHV Lines etc. As per the Terms & Conditions of the Contract, if the contractor fails to complete all the works within the time frame stipulated as completion period, the company levies Liquidated Damages/penalty for breach of contract.

Applicant also keeps EMD/security deposit to ensure the Work/performance by the supplier. The company forfeits the EMD/ security deposit in case of non-acceptance of the work order despite being Lowest One (L1) or failure of performance by the supplier or contractor.

Applicant writes back old and unclaimed Creditors balance to income after three years from the date of completion of the contract.

Applicant also writes back old and unclaimed Earnest Money Deposit (EMD) / Security Deposit (SD) to income after three years from the date of the completion of the guarantee period as per contract.

Applicant has sought an advance ruling for applicability of GST in above cases.

Applicant's submissions:

Applicant relied on Circular No. 178/10/2022-GST dated 03.08.2022. Further, applicant referred to Advance Ruling by Haryana Authority for Advance Ruling in the case of Rites Ltd., In re [2023] 147 taxmann.com 416 /97 GST 244 (AAR - HARYANA) in which the authority decided that the following activities are outside of purview of GST and not taxable under GST:

a. Liquidated Damages (LD)/penalty recovered from contractors/ suppliers for breach of contract.

b. Forfeiture of Security Deposit or Earnest Money Deposit in case of refusal to accept the work order despite of being Lowest One (L1) or failure of performance by the supplier or contractor.

c. Old and unclaimed Creditors balance written back to income A/c after income after Three (03) Years from the date of completion of the contract.

d. Write back of unclaimed and Old EMD/SD to income A/c after Three (03) Years from the date of the completion of the guarantee period as per contract.

Discussion by and Observations of AAR:

If a contractor fails to complete all the works within the period stipulated as per the Terms & Conditions of the Contract, then, applicant recovers Liquidated Damages / penalty for breach of contract. Applicant is interested in getting services within stipulated time. The contract is for performance of work and not for breach of it. This issue is squarely covered by explanation given in para 7.1 and 7.1.4 of Circular No. 178/10/2022-GST dated 03.08.2022. The principle laid down in the circular is applicable to the penalties in the nature of liquidated damages. Hence, these activities are not in the nature of a consideration for an activity and hence, would not constitute a supply of service.

The provisions for forfeiture of Security Deposit or Earnest Money Deposit in the event of non-acceptance of the work order despite the bid being Lowest One (L1) or failure of performance by the supplier or contractor are in place to discourage non-serious supplier/contractor. The said amounts are recovered by the applicant not as a consideration for tolerating the act but as penalties for dissuading the non-serious supplier/ contractor and to discourage and deter such a situation. Therefore, such amounts recovered by applicant are not taxable as consideration is not for any supply of service.

W.r.t. writing back of unclaimed creditors and unclaimed EMD/ SD, both these transactions are an accounting entry as income and not against any supply. In the above-mentioned transactions, there are no services received or provided by the applicant. Consequently, such transactions fall outside the purview of GST and the mere writeback of unclaimed deposits does not constitute a supply since it lacks the element of consideration for any service rendered.

Ruling of AAR:

None of the activities shall be treated as supply liable to GST.

Shoft Shipyard (P.) Ltd [2025] 176 Taxmann.com 145 - Gujarat AAR

Facts and issues involved:

Applicant is engaged in the business of ship construction. The applicant received a work order dated 21.05.2009 from Goa Shipyard Ltd. (GSL) for construction of the hull of a ship and towing services. All payments were made by GSL except for one invoice dated 20.05.2010 amounting to Rs. 1.39 crore, which was withheld by GSL due to issues unrelated to the present contract.

Applicant had written off the unpaid amount in its books in FY 2012–13. Subsequently, the

applicant-initiated arbitration proceedings in 2014, which culminated in an award dated 29.09.2017 in favour of the applicant, granting the principal amount along with interest and arbitration costs of Rs. 1.75 lakh. GSL contested the award before the Hon'ble High Court, which directed it to deposit the principal amount and furnish a bank guarantee for the interest and cost.

The principal amount was received in 2020, and the interest and arbitration cost were received in 2024. Since the underlying supply was completed in the pre-GST regime, the applicant did not discharge GST on the interest and arbitration cost received.

Accordingly, the applicant sought an advance ruling on the applicability of GST on the "interest awarded under arbitration" and "costs awarded under arbitration" received in 2024.

Applicant's submissions:

Invoice was raised in pre-GST regime and that central excise on construction of hull of ship was exempted vide notification No. 63/1995 while service tax involved on towing charges has already been paid.

In terms of section 12 of CGST Act 2017, liability to pay tax arises at the time of supply and that there was no supply under GST since it had already taken place in pre-GST regime. The removal having happened in pre-GST regime, the addition in value of supply by way of interest for delayed payment in terms of section 12(6) does not pertain to value of supply under GST. Further, section 142(11)(a) of CGST Act, applicable to transaction leviable to VAT, and 142(11)(b) of CGST Act, applicable to transaction liable to ST, start with a non-obstante clause and that they override sections 12 and 13, respectively. Thus, if any transaction is leviable to VAT/ST, GST cannot be levied on the same.

Discussion by and Observations of AAR:

As per section 12 of the CGST Act, 2017, the time of supply, in respect of goods is earlier of the date of issue of invoice or the date on which the supplier receives the payment. The invoice in this case has already been issued. So, in this case there is no supply under GST owing to the fact that the manufacture, clearance, sale and the date of invoice having taken place pre-GST. This being so, the applicability of section 12(6) does not arise.

Section 13 of the CGST Act, 2017, deals with time of supply in respect of service. As is already mentioned, the invoice having been issued before the advent of GST, there is no supply under GST, & likewise, section 13(6) would not apply.

Further, authority agreed with the contention of the applicant that no GST is applicable even in terms of section 142(10), 142(11)(a) and (b) since the material portion and service portion of the transactions are leviable to VAT & Service Tax respectively consequent to which no tax is payable under GST.

Now, as far as the award of Rs. 1.75 lacs as arbitration cost is concerned, the applicant states that it has been granted under section 31A of the of the Arbitration Act, 1996. The applicant has further stated that the compensation is awarded for delayed payment of the agreed consideration though there was no contract for payment of penalty or damages in the event or delay in payment. In the present case, since authority has already held that the transactions pertain to pre-GST period, the question of the amounts falling under the ambit of GST in terms of clause 5(e) of Schedule II does not arise.

Ruling of AAR:

Applicant is not liable to pay GST on the "interest awarded under arbitration" & "costs awarded under arbitration", received by them.

"The journey of a thousand miles begins with one step."

— Lao Tzu

Service Tax



CA Rajiv Luthia



Keval Shah
Advocate

M/S Dipti Rajan Mohanty vs. Commissioner of C.G.S.T and Central Excise 2025 (7) TMI 1074 - CESTAT KOLKATA

Backgrounds and facts of the case:

- The appellant is a sole proprietorship concern engaged in providing transportation services by road. The appellant owns commercial vehicles and provides transportation services to various entities without issuing consignment notes.
- During the Financial Year 2014-15, the appellant had provided transportation services exclusively to M/s. Emami Paper Mills Ltd. (a body corporate) [EPML] through M/s. Coalsale Company Limited [CCL] as an intermediary. The total amount received by the appellant for transportation services during impugned period was Rs. 1,92,96,633/-. The transportation arrangement was structured as follows:
  - I. Original contract was between CCL and EMPL.
  - II. CCL engaged the Appellant as transporter for executing transportation works
  - III. The appellant provided transportation services from Khantapara Railway Siding to Balasore Plant at Balgopalpur of EMPL., which is a body corporate
- The appellant raised 29 commercial invoices to CCL for transportation of goods, and the bills were honoured by CCL. EMPL appointed CCL as goods transport agent for transport of goods by road and the entire payment was received from CCL.
- The respondent confirmed the demand of Rs.23,85,064/- under proviso to Section 73(1) of the Finance Act, 1994 which was determined by the adjudicating authority based on the discrepancy observed in thew data received from ITD/CBDT and appellants non filing of Form ST-3 along with interest under Section 75 and penalties under Sections 77 & 78.

Arguments by Appellant Assessee:

- Being a sole proprietorship concern engaged in the activity of transportation of various materials to various destinations by road using its own truck without issuance of consignment notes, which is not in the capacity of a Goods Transport Agency (GTA), they are not liable to pay Service Tax as the said service of transportation is covered under Negative List.

- They further stated that no tax is liable to be paid by the appellant as the Service Tax on the services provided to CCL for goods transport to EMPL has been duly discharged under reverse charge mechanism by the EMPL.
- The appellants relied on the following judicial precedents:
  a. Bajrang Enterprise vs. Commissioner [Final order No. 76671/2025 dated 03.07.2025 -CESTAT, Kolkata]
  b. Kalyani Transco vs. Commissioner [2025 (3) TMI 1103 - CESTAT KOLKATA]
  c. Chartered Logistics vs. C.C.E. Ahmedabad-II [2023 (7) TMI 883 -CESTAT Ahmedabad]
  d. Tata Power Company Ltd. vs. Commissioner [2024 (10) TMI 1062 – CESTAT, Kolkata]

Arguments by Department:

- The Ld. AR for revenue reiterates the detailed findings of Appellate Authority.

Decision of the Hon'ble Tribunal:

- The Hon'ble CESTAT held that service tax is liable to be paid for transportation service, only when such service is rendered by a 'Goods Transport Agency' which issues 'Consignment Note'. In this case, it is a fact on record that the appellant was not issuing 'Consignment Note'. Accordingly, It held that the activity undertaken by them are covered within the ambit of Negative List in terms of Section 66D of the FA, 1994 and hence, the appellant is not liable to pay Service Tax on the services rendered by them to CCL.
- Further, it was observed that transportation in this case has been rendered to CCL who in turn were to provide such service to EMPL and that EMPL have discharged Service Tax on the said service under RCM. Thus, I observe that effectively the Service Tax on this activity has already been paid by the ultimate service receiver. Accordingly, I find merit in the submission of the appellant that no Service Tax liability is cast on them in the instant case.
- In view of the above discussion and by relying on the decision cited supra, I hold that demand of Service Tax confirmed against the appellant is not sustainable. Consequently, the demand of interest and imposition of penalties also do not survive.
- I set aside the impugned order and allow the appeal, with consequential relief, if any, as per law.

M/S Pear Consultants vs. Commissioner of Central Excise and Service Tax, Ludhiana 2025 (7) TMI 1075 - CESTAT CHANDIGARH

Backgrounds and facts of the case:

- The appellant is engaged in export of services such as accounting/book-keeping services. On the basis of the third-party data received from ITD, the department entertained a view that the appellant being liable to pay service tax, has evaded the same. The department applied best judgment assessment and issued the SCN dated 23.10.2021 to the appellant by invoking the extended period of limitation.
- Aggrieved by the said OIO, the appellant filed the appeal before the Commissioner (Appeals) who has rejected their appeal as time barred.

Arguments by Appellant Assessee:

- The Appellant submits that against the OIO dated 29.09.2023, they had filed the appeal before the Commissioner (Appeals) on 16.01.2024 and the Commissioner (Appeals) heard their appeal on merits and did not raise any objection regarding the limitation during the personal hearing; but when the impugned order came, it was found that the appeal

has been dismissed by the Commissioner (Appeals) on limitation.

- The Commissioner (Appeals) sought the report from the jurisdictional division office (JDO) as to when the OIO was served to the appellant and the JDO reported that it was sent to the appellant on 04.10.2023 through speed post.
- Further, the appellant state that Commissioner (Appeals) considered the dispatch of the OIO as if the same is received by the appellant and then held that the appeal was filed after the expiry of three months from the date of receipt of the OIO. No opportunity of being heard was given to rebut that they did not receive the OIO. There is no proof bough on record by the JDO with regard to actual delivery of the OIO.

Arguments by Department:

- The Ld. AR for revenue reiterates the findings of Appellate Authority.

Decision of the Hon'ble Tribunal:

- The Hon'ble CESTAT held that there is no proof on record produced by the department to show that the OIO was delivered to the appellant on 04.10.2024.
- We also find that the Ld. Commissioner (Appeals) has not given any opportunity to the appellant to prove that they have not received the OIO within time. Further, Ld. Commissioner (Appeals) has wrongly assumed the date of dispatch as the date of communication of the order and thus, has wrongly dismissed the appeal of the appellant.
- We are of the opinion that the impugned order is liable to be set aside and we do so and remand the matter back to the Commissioner (Appeals) with a direction to decide the case on merits after affording an opportunity of hearing to the appellant and thereafter, pass a reasoned order in accordance with law within the period of two months from the date of receipt of the certified copy of this order.

M/S Hindustan Zinc Ltd vs. Commr of CGST & Central Excise, Udaipur 2025 (7) TMI 1141 - CESTAT NEW DELHI

Backgrounds and facts of the case:

- The appellant is manufacturer of High-Grade Zinc, Cadmium, Sulphuric Acid etc.
- Issue: Whether amounts collected by appellant in the form of fines/penalties, liquidated damages, forfeiture of earnest money/security deposits etc. from the contractors who failed to provide the services within the agreed stipulated time/ standards are liable to service tax under Section 66E(e)?
- They are aggrieved of the impugned OIA dated 31st July 2020 whereby the Learned Commissioner (Appeals) upheld the Service Tax demand on "Misc. Income-EMD/Security Forfeited, Miscellaneous Income-Settlement- Fines/Penalties from the contractors, Misc. Income-Liquidated damages" along with interest and penalties under Section 75, 76 and 77 of the FA, 1994.

Arguments by Appellant Assessee:

The Ld. AR for the appellant relied upon the decision of South Eastern Coalfields Ltd Vs. CCE & ST, Raipur (2021 (55) GSTL-549 (Tri. Delhi) wherein the ratio of the decision was that It is trite that an agreement has to be read as a whole so as to gather the intention of the parties. The intention of the appellant and the parties was for supply of coal; for supply of goods; and for availing various types of services. The consideration contemplated under the agreements was for such supply of coal,

materials or for availing various types of services. The intention of the parties certainly was not for flouting the terms of the agreement so that the penal clauses get attracted. The penal clauses are in the nature of providing a safeguard to the commercial interest of the appellant and it cannot, by any stretch of imagination, be said that recovering any sum by invoking the penalty clauses is the reason behind the execution of the contract for an agreed consideration. It is not the intention of the appellant to impose any penalty upon the other party nor is it the intention of the other party to get penalized.

The recovery of liquidated damages/penalty from other party cannot be said to be towards any service per se, since neither the appellant is carrying on any activity to receive compensation nor can there be any intention of the other party to breach or violate the contract and suffer a loss. The purpose of imposing compensation or penalty is to ensure that the defaulting act is not undertaken or repeated and the same cannot be said to be towards toleration of the defaulting party. The expectation of the appellant is that the other party complies with the terms of the contract and a penalty is imposed only if there is non-compliance.

Arguments by Department:

- It was alleged that the said amount was collected in lieu of 'tolerating the act' of service providers/contractors for poor performance or not meeting the obligations in full.

Decision of the Hon'ble Tribunal:

- The Hon'ble CESTAT held that amount charged, necessarily has to be a consideration for the taxable service provided under the statute and the amount which has no nexus with the taxable service is not a consideration for the service provided and therefore, would not become a part of the value of the service which is taxable. Such amounts have been held to be in the nature of penal charges on account of breach or non-performance of contractual obligations or non-adherence to contractual stipulations and are recovered with the intention to make good for the losses suffered and to act as a deterrent to ensure that the buyer or the supplier do not violate the terms of the contract entered into. These amounts cannot be termed as a 'consideration' in lieu of rendering of a service under Section 65B (44) of the Act.
- Further, it has been laid down that for an activity to be covered as a "Declared Service" under Section 66E of the Act, there must necessarily be an independent agreement to refrain or tolerate or to do an act between the parties concerned.
- Further the Hon'ble CESTAT relied on the circular no.214/1/2023-ST dated 28.02.2023 issued by CBIC wherein it was clarified that the activities contemplated under Section 66E(e) of the act ibid, were those where one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act. These are the activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity.
- Any amount recovered by the appellant per se cannot be so understood for rendering of service. For an amount to qualify as consideration there has to be quid pro quo or performance of an activity for consideration. So far as these amounts are concerned, no activity against the said amounts has been actually undertaken. There is therefore no rendering of service in terms of Section 65B (44) of the FA, 1994 and therefore, no demand in terms of Section 66 E(e) of the act would be maintainable.
- We hold that the amounts in question as confirmed by the lower authority, were certainly not towards rendition of any service, hence not leviable to service tax. The order of the lower authority can therefore not be sustained and is therefore set aside. The appeal filed is allowed with consequential relief if any as per law.

Case Law Update



CS Makarand Joshi

IBC

Shri. Dev Deepak Doshi - Petitioner vs. M/S. Dura Puf (Silvassa) Private Limited, National Company Tribunal Limited (NCLT)

In the matter of Shri. Dev Deepak Doshi - Petitioner vs. M/s. Dura PUF (Silvassa) Private Limited, Respondent in the order passed dated 2 June 2025 by the National Company Law Tribunal, Mumbai.

FACTS:

- This Company Petition is filed by Shri. Dev Deepak Doshi - Petitioner and Financial Creditor (FC) - an individual who was appointed as a Director of M/s. Dura PUF (Silvassa) Private Limited - Corporate Debtor (Respondent/CD) on 1 August 2006.
- The FC provided necessary Financial Assistance to the CD as and when needed.
- The FC advanced a Loan amount of Rupees Two Crores Twenty Lakhs only (approx.) (₹2,19,43,097/-) to the CD in various tranches which was repayable on demand.
- During February 2023, the FC had disagreements with the other Directors of the CD regarding certain key business decisions. Because of these differences, the FC was excluded from participating in the regular business affairs and decision-making processes of the CD. Faced with continued oppressive conduct by the other Directors, the FC contemplated resigning from the position of Director around October 2023.
- On 11 November 2023, the FC issued a Loan Recall Notice to the CD demanding repayment of the outstanding dues. The said notice was duly received by the CD. However, despite acknowledging the liability, the CD failed to make any payment towards the outstanding amount.
- As the oppressive acts continued and the loan amount remained unpaid, the FC resigned from directorship on 1 March 2024.
- The FC issued two further notices to the CD on 31 December 2023 and 5 March 2024 respectively, demanding repayment of the loan.

- Despite issuance of notices, the CD failed to make any payment to the FC, resulting in the filing of the Petition u/s 7 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code).

Arguments of the Petitioner/FC:

- It was submitted that the Financial Statements of the CD reflect that an amount of Rupees Two Crores Sixteen Lakhs (approx.) (₹2,15,98,097/-) was due and payable to the FC as of 31 March 2023. The statements further confirm that the said loan is classified as "payable on demand"
- The FC asserted that the petition was maintainable and that the Corporate Insolvency Resolution Process (CIRP) should be initiated against the CD for the committed default.
- The FC's claim is substantiated by multiple pieces of documentary evidence, including bank statements demonstrating the transfer of funds, the ledger account maintained in the CD's books under the FC's name, and, most importantly, the CD's Balance Sheet as on 31 March 2023, which records the outstanding amount under "Long Term Borrowings" in the name of the FC.

Arguments of the Respondent/CD:

- The CD submitted that the petition filed by the FC was non-maintainable. There was no written Agreement/Contract or document between the parties to demonstrate the nature of the transaction and the terms of the alleged financial debt. The FC failed to bring on record even a single document to demonstrate the alleged financial debt.
- The CD was a close-knit family business, and directors advanced funds from time to time as required for working capital.
- There was no specific date of repayment agreed between the parties.
- The FC unilaterally determined the date of default as 11 November, 2023, by issuing a demand notice. The CD, however, contended that the said notice was motivated by the FC's dissatisfaction with the management and functioning of the CD. It was further argued that the notice was addressed to the Board of Directors and not specifically to the Respondent. The CD asserted that mere receipt of such a letter does not constitute an event of default.
- The claim made by the FC was without any interest component. Therefore, there is no "time value of money," and the amount cannot be termed as Financial Debt u/s Section 5(8) of IBC.
- Consequently, the alleged debt does not bear the commercial effect of a borrowing, as the funds were neither utilized by the CD for its working capital requirements nor were they obtained from the FC for the purpose of meeting such operational needs.
- The FC failed to demonstrate the actual date of default of the alleged financial debt, which is a settled position of law that without which, actual default cannot be ascertained.
- The contents of the reminder letters (31 December, 2023, and 5 March, 2024) demonstrate that the FC was aggrieved due to alleged oppressive acts of the other directors of the CD.
- The CD contended that the present proceeding is a fit case for adjudication through a Civil Trial, where the terms of the alleged transaction, if any, could be properly examined and determined. The CD further submitted that the FC has circumvented this appropriate legal recourse by directly invoking the remedy available under Section 7 of the IBC.

Held:

- The NCLT held that the existence of financial debt can be proved through various documents, not just a written financial contract. Referring to *Agarwal Polysacks*

Ltd. vs. K. K. Agro Foods & Storage, it was noted that financial statements or records with an information utility are sufficient. In this case, the debt was established through the FC's bank statements, the CD's ledger, and notably, the CD's Balance Sheet as on 31 March 2023, which reflected the amount under "Long Term Borrowings" in the FC's name. The NCLT also relied on *Vidyasagar Prasad vs. UCO Bank & Anr.*, where the Hon'ble Supreme Court held that balance sheet entries amount to acknowledgement of debt.

- The NCLT rejected the CD's argument that the absence of interest disqualifies the loan as 'financial debt'. Citing *Orator Marketing Pvt. Ltd. vs. Samtex Desinz Pvt. Ltd.*, it clarified that under Section 5(8) of the IBC, interest is not mandatory and even an interest-free loan can have a "commercial effect of borrowing". The CD's own admission that the funds were for working capital, along with their classification as "Long Term Borrowings" in the balance sheet, confirmed the loan as financial debt.
- The NCLT defined 'default' as non-payment of debt when due. It was held that the FC's loan recall notice dated 11 November 2023 made the debt immediately payable. Concluding that all conditions u/s 7 of the IBC were met, the NCLT confirmed the Petitioner as a 'Financial Creditor' and that a 'Default' had occurred.
- The NCLT referred to the Hon'ble Supreme Court's ruling in *M/s. Innoventive Industries Ltd. vs. ICICI Bank*, which mandates that once the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete.

SEBI

Adjudication Order Securities Exchange Board of India in the Matter of LCC Infotech Limited (LCC)

FACTS:

- Securities and Exchange Board of India (hereinafter referred to as "SEBI") initiated the instant adjudication proceedings under section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") against LCC Infotech Limited (hereinafter referred to as "LCC"/ "Noticee") for the alleged violation of regulation 31(1) read with regulation 4(1)(e) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "LODR Regulations")
- The Show Cause Notice (SCN) dated May 21, 2025, issued by SEBI to Noticee, alleged Undisclosed Share Sale by Mr. Siddhart Lakhotia. It was observed that, during the perusal of a Draft Letter of Offer ('DLOF') submitted to SEBI in the year 2024, Mr. Siddharth Lakhotia, one of the promoters of LCC's, sold 10,000 equity shares on January 01, 2018. It was alleged that the sale of equity shares on January 01, 2018, was not reflected in the shareholding patterns filed by LCC under Regulation 31(1) of the LODR Regulations. It was further alleged that this omission persisted for eight consecutive quarters, specifically from the quarter ended March 31, 2018, to the quarter ended December 31, 2019.
- SEBI further alleged that Noticee filed an incorrect shareholding pattern for the aforementioned eight quarters, leading

to a violation of Regulation 31(1) of the LODR Regulations. Reg. 31(1)(b) of LODR Regulations obligates a listed entity to submit a statement showing holding of securities and shareholding pattern to the stock exchange(s) on a quarterly basis in the specified format and Regulation 4(1)(e) further requires that all disseminations made under the LODR Regulations must be adequate, accurate, explicit, timely, and presented in a simple language.

Contentions of the Noticee:

- Inadvertent and unintentional omission of the name of promoter: Noticee admitted that the disclosures made under the shareholding pattern for the quarter ended March 31, 2018, to December 31, 2019, did not account for Mr. Siddhart Lakhotia's share sale. The Noticee has attributed the said lapse to inadvertent and unintentional omission and contended that on July 4, 2018, BSE Ltd. issued a compulsory delisting order against the company, followed by a delisting order from NSE on August 8, 2018. They stated that during this period, shareholding details were blocked by NSDL and CDSL, which made the data unavailable to the company. Consequently, the sale of 10,000 shares by Mr. Siddhart Lakhotia was "inadvertently missed out" in the shareholding patterns. Noticee appealed to these delisting orders before the Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble SAT, through its order, changed the company's status from "delisted" to "suspended". The Noticee argued that because data was not available during this period of delisting/suspension, the details of the share sale were missed.

  Noticee further stated that corrective actions have been taken wherein it had rectified the discrepancy in the shareholding statement which had occurred from the quarter ended March 31, 2018 to the quarter ended December 31, 2019.

Contentions of SEBI:

- Inadvertent and unintentional omission of name of promoter: The Adjudicating Officer (AO), SEBI's stated that despite the delisting orders and their ramifications, LCC remained listed (as its status was changed to "suspended" by SAT, not fully delisted) and thus it was incumbent on the Noticee to comply with all LODR Regulations, including Regulation 31, "in letter and spirit". The AO emphasized the legal principle that "When a law prescribes a manner in which a thing is to be done, it must be done only in that manner". Furthermore, the AO pointed out that the violations began on April 1, 2018, whereas the first compulsory delisting order from BSE was passed only on July 4, 2018. This implied that LCC had no justification for the wrongful statement submitted for the period prior to the commencement of the stock exchange action, and therefore, LCC's submission could not be fully accepted.

  AO also noted that LCC had previously incurred monetary penalties for violations of LODR and Listing Agreement via SEBI orders dated November 12, 2024, and November 29, 2004, indicating a repetitive nature of defaults.

Penalty:

The Adjudicating Officer (AO) imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the Noticee. This penalty was levied under Section 15HB of the SEBI Act, 1992, for the violation of Regulation 31(1) read with Regulation 4(1)(e) of the SEBI LODR Regulations after considering the absence of quantifiable gain and the repetitive nature of the default.

> "It does not matter how slowly you go as long as you do not stop."
>
> ***— Confucius***

Companies Act, 2013

M/S Relisys Medical Devices Ltd vs. D. Raju Reddy

National Company Law Appellate Tribunal (NCLAT)

In the matter of M/s Relisys Medical Devices Ltd vs. D. Raju Reddy, NCLAT Delhi Bench, order dated 23 May 2018.

Facts:

- Relisys Medical Devices Ltd, the appellant herein, (hereinafter called as company/ petitioner), is a company incorporated under the Companies Act, 1956 and D. Raju Reddy (hereinafter called the respondent) is the non-resident shareholder of the company.
- On 1 December 2011, the company issued 1,92,441 Compulsory Convertible Debentures (CCDs) of Rs.10 each at a premium of Rs.60 each to the respondent. At this time, the fair value of equity shares of the company was RS. 64.22/
- On 6 August, 2013, the appellant company converted 1,92,441 CCDs into 4,29,419 equity shares of Rs.10/- each at a premium of Rs.21.37 each and allotted the shares to 1st respondent. This allotment was made at valuation of RS. 31.37/- each which was less than the fair value of shares at the time of issue of CCDs.
- As per the Foreign Exchange Management Act (FEMA) regulations, the conversion into shares of the company cannot be done at a price lower than the fair value of shares at the time of issue of the convertible securities. Therefore, this conversion was in violation of FEMA regulations.
- In order to rectify this non-compliance, the company filed a compounding application before the Reserve Bank of India (RBI). The RBI instructed the company either to unwind the excess shares allotted; or to bring in additional funds equivalent to the shares allotted and thereafter apply for compounding for the contraventions stated.
- Therefore, the company obtained a no objection certificate from the respondent for rectification of the register in the form of cancellation of 219658 equity shares of Rs.10 each excess allotted to him. Thereafter, the company filed a petition for the rectification of the register of members.
- However, the Hyderabad bench of NCLT rejected the petition because rectification of the register of members by cancelling the excess allotment of shares leads to a reduction of paid-up capital. And there is a prescribed procedure for reduction of share capital in the Memorandum of Association and Articles of Association of the company and the Companies Act, 2013 (the Act) which was not followed by the company.
- Therefore, the company is before the appellate Tribunal in an appeal against the NCLT order.

Petitioner's contentions:

- The Tribunal is not justified in dismissing the application by contending that a Company cannot be the applicant seeking rectification of its register of members.
- The Tribunal has committed a serious error by assuming that the company has not followed the procedure prescribed under its Memorandum and Articles of Association, the Act and FEMA for increasing its authorized capital when there is no shred of any document to suggest the company has not followed the procedure so prescribed.

- The only violation committed by the appellant under FEMA was to allot shares at Rs. 31.37 instead of Rs. 64.22 and that there was no other violation under FEMA and it is as a result of such undervaluation of shares that excess shares of 219658 were allotted to the respondent.
- The rectification of the register of members by cancelling the excess shares allotted is merely an accounting entry whereby the amount paid up on the excess shares sought to be cancelled is credited to the securities premium account and there is no return of capital and it does not tantamount to reduction of capital as contemplated under Section 66 of the Act.
- The appellant submitted that if this Tribunal permits, the appellant will take the necessary steps legally required for cancelling the excess shares allotted and comply with other legal formalities as well as whatever directions this Tribunal gives.

Respondent's contentions:

- Rectification of the register of members by cancelling the excess allotment of shares leads to a reduction of paid-up capital.
- There is a prescribed procedure for the reduction of share capital in the Memorandum and Articles of Association of the company and the Act, which the petitioner company has failed to follow.
- Also, the company has failed to make good, the non-compliance under applicable provisions of FEMA Regulations 2000.

Held:

- This case deals with where the CCDs have been converted into shares at the wrong share premium. The money has already been received by the company and the allocation of the same between paid up share capital and securities premium must be done.
- It is noted that the security premium account for all practical purposes is to be treated as if the security premium account were the paid-up share capital of the company as per Section 52 of the Act.
- Securities premium amount has been determined to be wrongly short, and consequently, paid-up capital has been allocated of more amount than required. Therefore, the change in composition between the security premium account and paid-up share capital will not amount to a reduction in capital as both the components are treated as paid up capital. Further reading of Section 100 of the Companies Act, 1956 (corresponding to section 66 of the Act), shows that this case is not covered under any of sub-clauses (a), (b) and (c) of Clause (1).
- As the appellant has opted to unwind the excess shares allotted, therefore, this will make a case of rectification of the wrongful calculation of share capital and securities premium and not a reduction of share capital because the security premium account is also to be treated as paid up share capital. This is a case where security premium amounts will be increased and an equal amount of paid-up capital will be decreased and there will be no change in the overall amount allocated to paid up share capital and security premium account.
- The petitioner was directed to cancel the excess allotment of 2,19,658 shares to the respondent. Instead, the total amount received through CCDs to be used to issue 2,09,761 equity shares of Rs. 10/- each at a premium of Rs. 54.22 as on 6 August, 2013. The premium amount shall be transferred to the Securities Premium Account. Further, revised balance sheets post 6 August, 2013 must be refiled and certified by a Chartered Accountant. The company must also comply with all applicable legal formalities under the Companies Act and other relevant laws.

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. Updates through Press Releases

Directions related to Closure of Shipping Bills in the Export Data Processing and Monitoring System (EDPMS) - Draft for Feedback

To streamline and monitor the realisation of export proceeds, the Reserve Bank of India (RBI) has introduced the Export Data Processing and Monitoring System (EDPMS). Over the years, EDPMS has been integrated with various systems to automate data flow and enhance monitoring efficiency. The following developments occurred over the years:

February 2014: RBI introduced EDPMS to monitor the realisation of export proceeds.

Post-2014: Automated flow of shipping bill data from Customs via ICEGATE was enabled.

January 2022: Integration of Express Cargo Clearance System (ECCS) data into EDPMS began.

January 2025: Inclusion of postal exports bill data into EDPMS was initiated.

Over the years, there has been significant increase in the number of export transactions that flow into the EDPMS, wherein each shipping bill is reconciled against payment received. With the objective of easing compliance, especially for exporters of small value goods, it has been decided to simplify the process of reconciliation in EDPMS.

Draft directions have been released to address issues related to regulatory compliance involving reconciliation of small-value exports in the EDPMS as a measure to reduce compliance burden on the small-value exporters. Comments / feedback on the draft directions have been invited. Comments / feedback are to be submitted through the link under the 'Connect 2 Regulate' Section available on the RBI's website or may alternatively be forwarded via email by 31 July, 2025, with the subject line "Feedback on draft directions on closure of shipping bills in EDPMS".

Under the draft directions it is being proposed that AD banks may adopt the following procedure while handling shipping bills of value up to INR 10,00,000 or its equivalent, per shipping bill:

a. Such bills may be reconciled and closed in the EDPMS based on a declaration provided by the concerned exporter indicating the details of the shipping bill and that the amount has been realised against the same

b. Any reduction in declared export value of the bills submitted may also be accepted based on the declaration by the concerned exporter

c. The declarations referred to in sub-paragraphs a & b above may be obtained from the exporter on a quarterly-basis

As per the draft directions AD banks may review the charges levied for handling these small-value export transactions keeping in view the revised procedure/relaxations mentioned above and ensure the same are commensurate with the services rendered. Further, AD banks shall not levy any penal charges (penalty) for delays in adherence to any regulatory prescription.

Press Release: 2025-2026/705 dated 11 July 2025

(Comments: The draft directions reflect a progressive shift by the RBI towards enhanced ease of doing business, particularly for small-value exporters. By permitting AD banks to reconcile and close lower-value shipping bills based on self-declarations, regulatory compliance is streamlined without compromising oversight. This facilitates timely export realisation tracking while reducing administrative burden on both exporters and banks, thereby promoting efficiency and cost-effectiveness in export operations.)

Financial Action Task Force (FATF) Statement

The Reserve Bank of India (RBI), referencing the Financial Action Task Force (FATF) public statement dated 13 June 2025, has provided updated guidance on jurisdictions with identified Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) deficiencies.

High-Risk Jurisdictions (Subject to a Call for Action)

FATF has reiterated its February 2020 stance on the Democratic People's Republic of Korea (DPRK) and Iran, urging member countries to apply counter-measures due to continued strategic deficiencies.

Myanmar continues to be classified as a high-risk jurisdiction since October 2022.

Jurisdictions Under Increased Monitoring (Grey List)

These jurisdictions are actively working with FATF to address identified deficiencies. The June 2025 update includes the following changes:

Added to Grey list – Bolivia, British Virgin Islands (UK)

Removed from Grey list - Croatia, Mali, Tanzania

Regulatory Implication

RBI clarifies that these advisories do not prohibit legitimate trade or business relations with the named jurisdictions. Regulated entities are expected to adopt a risk-based approach while ensuring compliance with AML/CFT obligations.

(Comments: The RBI's update aligned with the FATF's June 2025 statement reinforces the importance of applying enhanced due diligence when dealing with high-risk jurisdictions, while balancing the need to permit legitimate financial flows. Regulated entities must stay vigilant and adapt their AML/CFT frameworks in line with these evolving global risk assessments. Ongoing monitoring of the FATF grey and black lists is essential for maintaining compliance and safeguarding the integrity of cross-border financial operations.

Why it is important to FEMA? The ECB regulations, Import Export Regulations, Remittances under LRS have various

restrictions in relation to FATF countries. It is therefore prudent to be updated on the most recent list of countries forming part of the Black and Grey List.)

Press Release: 2025-2026/686 dated 10 July 2025

Latest List of FATF Counties

Black List Countries	Grey List Countries
Democratic People's Republic of Korea	Algeria
Iran	Angola
Myanmar	Bolivia
	Bulgaria
	Burkina Faso
	Cameroon
	Côte d'Ivoire
	Democratic Republic of Congo
	Haiti
	Kenya
	Lao People's Democratic Republic
	Lebanon
	Monaco
	Mozambique
	Namibia
	Nepal
	Nigeria
	South Africa
	South Sudan
	Syria
	Venezuela
	Vietnam
	Virgin Islands (UK)
	Yemen

B. Amendment by Central Government to Rules via Gazette

Foreign Exchange Management (Non-debt Instruments) Rules, 2019 amended to permit issue of bonus to non-resident shareholder in prohibited sector

The Department for Promotion of Industry and Internal Trade (DPIIT) vide Press Note 2 (2025 series) dated April 7, 2025 permitted Indian companies operating in prohibited sectors to issue bonus shares to pre-existing non-resident shareholders subject to conditions.

Subsequently in July 2025, the Central Government now accorded statutory validation to the above by amendment to the NDI Rules 2019. The FEMA (Non-Debt Instruments) Rules, 2019 have been amended to permit Indian companies operating in prohibited sectors to issue bonus shares to pre-existing non-resident shareholders. This is subject to the condition that the shareholding pattern post the issue of bonus shares should remain unchanged. Such issuance must comply with applicable legal provisions, including Section 63 of the Companies Act, 2013, and, where relevant, SEBI regulations for listed entities.

(Comments: Before sectoral prohibitions were introduced, some Indian companies in sectors that are now restricted may have already issued shares towards foreign direct investment (FDI), and non-resident investors continued to hold their stakes under grandfathering provisions. However, once FDI restrictions came into effect, there was uncertainty regarding whether these existing non-resident shareholders could participate in proportionate bonus or rights issues. The recent amendment addresses this ambiguity definitively, offering much-needed clarity and regulatory certainty for such legacy investments.)

F. No. 1/9/2024-EM dated 11 June 2025

Best of the Rest



Rahul Hakani
Advocate



Niyati Mankad
Advocate

M/S Sonali Power Equipments Pvt. Ltd. vs. Chairman, Maharashtra State Electricity Board, Mumbai & Ors. [2025 INSC 864]

Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) – Sections 18(2) and 18(3); Arbitration and Conciliation Act, 1996 – Section 43; Limitation Act, 1963 – Applicability – Conciliation vs. Arbitration:

Neither the Limitation Act applies to conciliation proceedings under Section 18(2) nor are time-barred claims excluded from such conciliation – Settlements arrived at are akin to promises to pay time-barred debts under Section 25(3) of the Contract Act.

In contrast, arbitration under Section 18(3) attracts the Limitation Act via Section 43 of the Arbitration and Conciliation Act, 1996 – Hence, time-barred claims cannot be pursued in arbitration proceedings under the MSMED Act.

Mere disclosure of unpaid dues in the buyer's financial statements under Section 22 of the MSMED Act is for transparency and does not, per se, amount to acknowledgment of debt extending limitation.

Facts:

The appellant, a registered micro and small enterprise (MSE), supplied transformers to Maharashtra State Electricity Board between 1993 and 2004. Due to non-payment, references were filed before the Facilitation Council under the Interest on Delayed Payments Act, 1993 (repealed by the MSMED Act, 2006). The Facilitation Council awarded interest on delayed payments, but the Commercial Court later set aside this award, holding that the claims were time-barred under the Limitation Act, 1963. The Bombay High Court upheld the Commercial Court's finding regarding applicability of the Limitation Act to arbitration under Section 18(3) of the MSMED Act and ruled that time-barred claims cannot be referred for conciliation either. The appellant approached the Supreme Court challenging this decision.

Issues Involved:

1. Whether the Limitation Act applies to conciliation proceedings under Section

18 of the MSMED Act, and even if not, whether time-barred debts can be referred to conciliation?

2. Whether the Limitation Act applies to arbitration proceedings under Section 18 of the MSMED Act, and whether time-barred debts can be referred to arbitration? Further, what is the effect of disclosure of the unpaid amount in the buyer's financial statements as mandated under Section 22 on extending the limitation period?

Held:

The Supreme Court allowed the appeal partly. It held that the Limitation Act does not apply to conciliation proceedings under Section 18(2) of the MSMED Act. Conciliation being a non-adjudicatory, non-coercive mechanism allows even time-barred claims to be referred, as settlement of such claims through conciliation is equivalent to a contract under Section 25(3) of the Contract Act, 1872. The Court clarified that limitation bars the remedy but not the underlying right to recover the amount due. However, for arbitration under Section 18(3), the Court upheld that the Limitation Act applies via Section 43 of the Arbitration and Conciliation Act, 1996, made applicable through the statutory fiction under Section 18(3) of the MSMED Act. The Court confirmed the binding nature of its prior decisions in *Silpi Industries vs. Kerala SRTC,* (2021) 18 SCC 790 and *Gujarat State Civil Supplies Corpn. Ltd. vs. Mahakali Foods (P) Ltd.,* (2023) 6 SCC 401. Additionally, it held that mere disclosure of unpaid amounts in a buyer's financial statements under Section 22 of the MSMED Act does not, by itself, extend the limitation period under Section 18 of the Limitation Act.

Krishna Swaroop Agarwal (Dead) Through Lr vs. Arvind Kumar [2025 INSC 859]

Transfer of Property Act, 1882 — Section 106 — Notice of termination of tenancy — Service — Section 27 of the General Clauses Act, 1897 — Deemed service — Notice sent by registered post is presumed to be served as per Section 27 of the General Clauses Act unless the contrary is proved — The endorsement 'ND' (Not Delivered) does not rebut the presumption of service under the law — Properly addressing, pre-paying, and posting by registered post suffices — Mere non-delivery, without evidence of intentional avoidance by the addressee, cannot defeat deemed service.

Facts:

The appellant, landlord of a property in Hathras, Uttar Pradesh, filed a suit for eviction and arrears of rent against the respondent-tenant due to persistent defaults from June 1999 onwards. Legal notices under Section 106 of the Transfer of Property Act, 1882, were issued by registered post but returned with the endorsement "ND" (Not Delivered). Despite prolonged litigation, the trial court decreed ejectment and awarded arrears of rent and mesne profits. However, in revision, the Allahabad High Court reversed the decree solely on the ground that the notice was not served as it was returned "ND", holding that notice under Section 106 was not effected. Aggrieved, the landlord approached the Supreme Court.

Issues Involved:

1. Whether a notice of termination of tenancy sent by registered post but returned with the endorsement "ND" constitutes sufficient service under Section 106 of the Transfer of Property Act, 1882?
2. Whether the High Court was justified in reversing the trial court's ejectment decree by holding that the notice was not served?
3. Whether Section 27 of the General Clauses Act, 1897, regarding deemed service of notices sent by registered post, applies in such circumstances?

Held:

Allowing the appeal, the Supreme Court restored the ejectment decree. It held that notice sent by registered post is presumed served under Section 27 of the General Clauses Act, unless contrary is proved. The High Court erred in disregarding this statutory presumption merely because the notice bore an "ND" endorsement. Relying on *Madan and Co. vs. Wazir Jaivir Chand* (1989) 1 SCC 264 and *C.C. Alavi Haji vs. Palapetty Mouhammed* (2007) 6 SCC 555, the Court reiterated that once properly addressed and posted, service is deemed effected even if refused or unclaimed. Further, references were made to *Vishwabandhu vs. Srikrishna* (2021) 19 SCC 549 and *Ram Murti Devi vs. Pushpa Devi* (2017) 15 SCC 230. The High Court's interference under revisional jurisdiction was found unsustainable. Accordingly, Ejectment decree was restored; tenant directed to vacate within three months and pay all arrears and mesne profits as decreed.

Amlesh Kumar vs. The State of Bihar – Judgment Dated July 9, 2025 Passed in Criminal Appeal No. __ of 2025 (Arising out of Slp(Crl.) No. 5392 of 2024) [2025 INSC 810] – [Supreme Court]

Involuntary or forced narco-analysis tests are impermissible under law, being in direct violation of Articles 20(3) and 21 of the Constitution - Consequently, a report of such involuntary test or information that is discovered subsequently is also not per se admissible as evidence in criminal or other proceedings.

Voluntary narco-analysis tests are permissible only with strict safeguards, but their results cannot be directly admitted as evidence - Information discovered consequent to such voluntary tests may be admitted under Section 27 of the Evidence Act.

An accused has no indefeasible right to demand a narco-analysis test; courts must assess such requests considering totality of circumstances, free consent, and procedural safeguards.

Facts:

The appellant, Amlesh Kumar, was implicated in a case concerning the disappearance of his wife. An FIR was registered under various IPC sections including 364 and 498A, alleging dowry demands and possible foul play. His wife remained untraceable, and co-accused allegedly confessed to disposing of her body. While his bail plea was pending, the Patna High Court accepted the investigating officer's submission to conduct narco-analysis tests on all accused, including the appellant. Aggrieved, Amlesh Kumar challenged this order before the Supreme Court, citing infringement of constitutional rights, particularly in light of the judgment in *Selvi vs. State of Karnataka.*

Issues Involved:

1. Whether the High Court erred in accepting the investigating officer's submission for conducting narco-analysis tests on accused persons during a bail hearing?
2. Whether the results of voluntary narco-analysis tests can form the sole basis of conviction?
3. Whether an accused person has a right to voluntarily seek narco-analysis testing as part of their defence under the CrPC?

Held:

The Supreme Court allowed the appeal, setting aside the High Court's order. It held that ordering narco-analysis tests without consent violated Articles 20(3) and 21 of the Constitution,

reiterating the principles from *Selvi vs. State of Karnataka* (2010) 7 SCC 263. The Court clarified that even voluntary narco-analysis test results cannot form the sole basis for conviction, although information discovered pursuant to such tests may be admissible under Section 27 of the Indian Evidence Act, 1872, supported by *Vinobhai vs. State of Kerala* (2025 SCC OnLine SC 178) and *Manoj Kumar Soni vs. State of M.P.* (2023). The Court rejected the notion that an accused has an indefeasible right to seek narco-analysis under Section 233 of the CrPC, holding instead that courts must assess such applications case-by-case, considering consent and safeguards, as per Selvi guidelines.

Chandiram Anandram Hemnani and Anr. vs. Senior Citizens Appellate Tribunal/ District Collector, Nandurbar. And Ors. – Judgment Dated June 18, 2025 Passed in Writ Petition No.7794 of 2020 [Bombay High Court, Bench at Aurnagabad]

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 — Sections 4, 5, 22 — Eviction — Right of Senior Citizens to Protect Self-Owned Property — Section 4 cannot be read in isolation but has to be read with Section 23 and also Sections 2(b), 2(d) and 2(f) of the said Act — The son and daughter-in-law cannot compel their parents to allow them to reside in their property against their desire

Facts of the Case:

The petitioners, aged senior citizens, are owners of a self-acquired bungalow in Nandurbar, Maharashtra. Their son and daughter-in-law (Respondents no. 3 and 4) were allowed to reside in the house. After matrimonial disputes and criminal proceedings initiated by the daughter-in-law, the Petitioners sought eviction of both respondents under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The Tribunal ordered eviction. However, the Appellate Tribunal reversed this order, holding the matter to be a civil dispute. Aggrieved, the senior citizens approached the Bombay High Court under Article 227 of the Constitution.

Issues Involved:

1. Whether senior citizens can invoke the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, to seek eviction of their children and daughter-in-law from self-acquired property?
2. Whether the Appellate Tribunal erred in holding the dispute as purely civil and directing the Petitioners to seek eviction via civil suit?
3. Whether the competing rights of the daughter-in-law to reside in the house can override the rights of senior citizens to enjoy their self-owned property?

Held:

The High Court allowed the writ petition and quashed the Appellate Tribunal's order, restoring the eviction order passed by the Tribunal. It held that the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, being beneficial legislation, must be interpreted purposively to protect the life and property of senior citizens. The Court relied on *Dattatrey Shivaji Mane v. Lilabai Shivaji Mane* [2018 (6) Mh.L.J. 681], *Shweta Shetty v. State of Maharashtra* [2022 (1) Mh.L.J. 279], and *Urmila Dixit v. Sunil Sharan Dixit* [2025 (2) SCC 787], emphasizing that Sections 4, 5, and 22 of the Act empower Tribunals to grant eviction to protect property rights. The daughter-in-law's claim to residence was found untenable, especially when she had purchased another property. The Court held that forcing senior citizens to initiate civil proceedings would defeat the object of the Act.

THE CHAMBER NEWS



CA Mehul Sheth



CA Ankit Sanghavi

Important events and happenings that took place online/ physical between July 1, 2025 to July 31, 2025 are being reported as under:

PAST PROGRAMMES

INDIRECT TAXES

Workshop on GST Law Jointly with GSTPAM, AIFTP (WZ), BCAS, MCTC & WIRC of ICAI- contd.

3.7.2025

a. Refunds under GST
Speakers : CA Sunil Gabhawala

5.7.2025

b. Use of AI in Taxation and Litigation practice
Speakers : CA Nikunj Shah

10.7.2025

c. Brains Trust Session
Moderator : CA Ashit Shah
Panelist : CA. A R Krishnan, Mr. Sushil, Solanki, Adv. K Vaitheeswaran

24.7.2025

Study Circle - Issues in ITC on account of Supplier Default
Group Leader : CA Yash Dhadda
Chairman : CA (Adv) Udayan Choksi

PUNE STUDY GROUP

10.6.2025

Testamentary Succession (Wills) - Analysis of Civil, Tax & Regulatory Laws
Speakers : CA Yog Bakshi

Direct Taxes

24.7.2025

ISG - Recent Important Decisions Under Direct Tax
Speakers : CA Nikhil Tiwari

INTERNATIONAL TAXATION

25.7.2025

Study Circle - Taxation of Capital Gains on Mutual Funds in the hands of NRIs - Recent Developments
Speakers : CA Nemin Shah

HYDERABAD STUDY GROUP

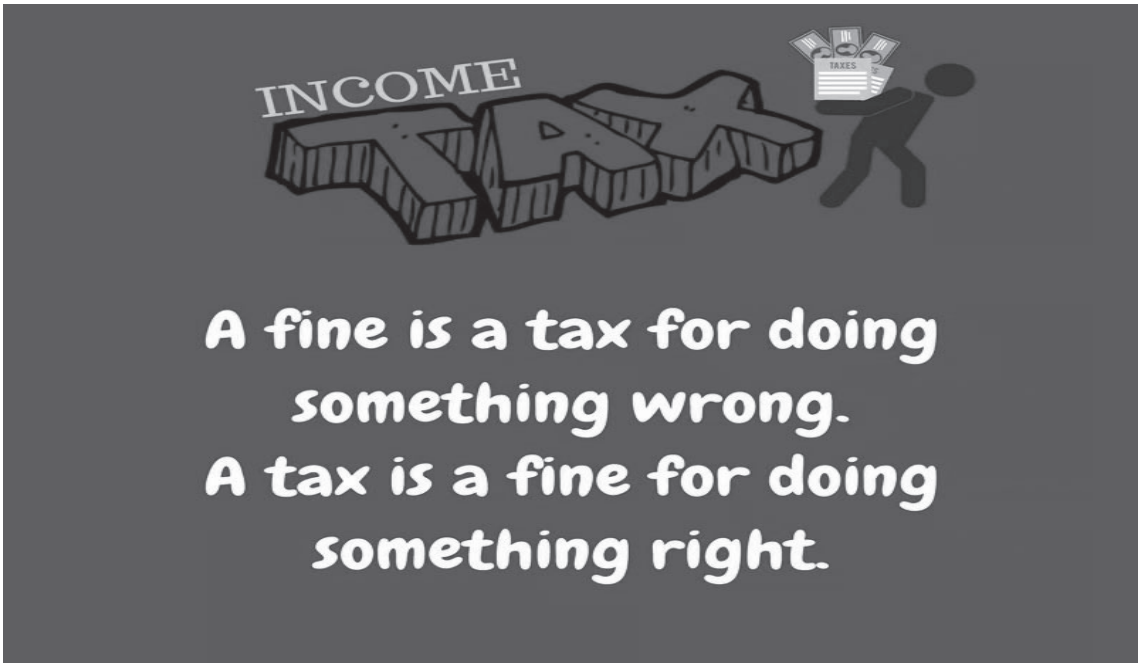
26.7.2025

Defects in Reopening of Assessment u/s 148A and Various High Court Verdicts
Speakers : CA K Sai Prasad, CA Vikas Agarwal

STUDENT

30.7.2025

Decode Your Tax Code: Income Tax Return Simplified for Students
Speakers : CA Varsha Lund



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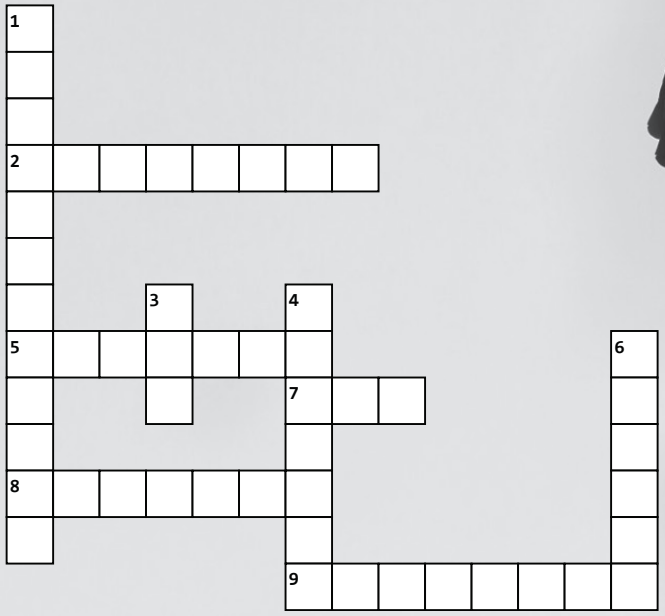

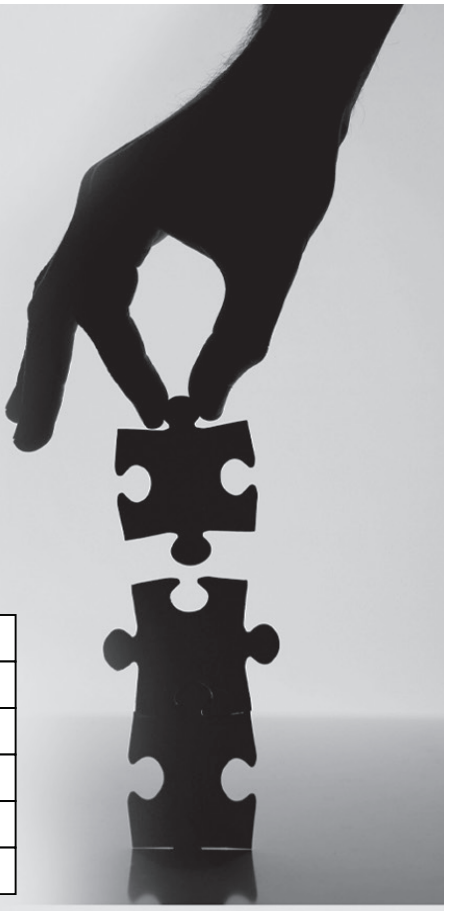

Across

2. Reviewing a client's tax situation to minimize legal liability.
5. Amount of income subject to tax after deductions
7. Tax deducted at source from payments
8. Professional examining financial accounts for compliance
9. Schedule for listing eligible expenditures

Down

1. Tax paid on profits by corporations
3. Type of tax levied on goods and services in many countries.
4. Document submitted declaring income and tax calculation
6. Central government tax on individuals and entities

Scan to check the Answers

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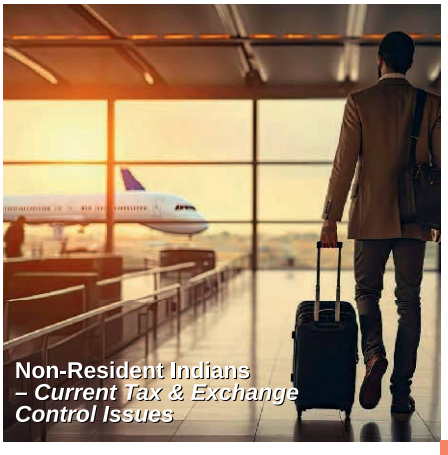

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