

January, 2025

TAX Bulletin

Volume - 176

17.01.2025



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12, Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100

VISION STATEMENT

“The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.”

MISSION STATEMENT

“The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.”

Objectives of Taxation Committees:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

January, 2025

TAX Bulletin

Volume - 176

17.01.2025



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12, Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100



The Institute of Cost Accountants of India

Statutory Body under an Act of Parliament

www.icmai.in

Certificate Courses Offered by the Tax Research Department

1. Certificate Course on GST (CCGST)
2. Advanced Certificate Course on GST (ACCGST)
3. Advanced Certificate Course on GST Audit and Assessment Procedure (ACGAA)
4. Certificate Course on TDS (CCTDS)
5. Certificate Course on Filing of Returns (CCFOF)
6. Advanced Course on Income Tax Assessment and Appeals (ACIAA)
7. Certificate Course on International Trade (CCIT)

Admission Link - <https://eicmai.in/advsc/DelegatesApplicationForm-new.aspx>

Modalities

Description	Course Name						
	CCGST	ACCGST	ACGAA	CCTDS	CCFOF	ACIAA	CCIT
Hours	72	40	30	30	30	30	50
Mode of Class	Offline/ Online	Online					
Course Fee* (₹)	10,000	14,000	12,000	10,000	10,000	12,000	10,000
Exam Fee* (₹)	1,000 per attempt						
Discounts	20% Discount for CMA Members, CMA Qualified and CMA Final Pursuing Students						

*18% GST is applicable on both Course fee and Exam fee

Eligibility Criteria for Admission

- ▲ Members of the Institute of Cost Accountants of India
- ▲ Other Professionals (CA, CS, MBA, M.Com, Lawyers)
- ▲ Executives from Industries and Tax Practitioners
- ▲ Students including CMA Qualified and CMA Pursuing

On passing the examination with 50% marks a Certificate would be awarded to the participant with the signature of the President of the Institute

Course Details

<https://icmai.in/TaxationPortal/OnlineCourses/index.php>

Courses for Colleges & Universities by the Tax Research Department

Modalities

Eligibility

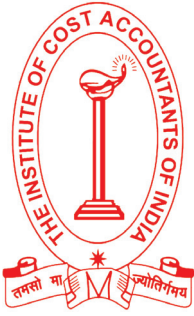
- ▲ B.Com/ BBA pursuing or completed
- ▲ M.Com/ MBA pursuing or completed

Description	Courses for Colleges and Universities	
	GST Course	Income Tax
Batch Size	Minimum 50 Students per Batch per course	
Course Fee* (₹)	1,000	1,500
Exam Fee* (₹)	200	500
Duration (Hrs)	32	32

For enquiry about courses, mail at: trd@icmai.in

*18% GST is applicable on both Course fee and Exam fee

Behind every successful business decision, there is always a **CMA**



Chairman's Message



CMA Rajendra Singh Bhati
Chairman Direct Taxation Committee

One most important report on Advance Pricing Agreement has been published by the CBDT on 10th January, 2025 under the name 'Annual APA report for the FY 2023-24'. The report includes a brief on APA Programme of India, Data and Qualitative Analyses in this regard, Statistics regarding Unilateral APAs and Bilateral APAs and the Dispute Resolution Processes.

Another important data that has been published on Direct Tax Collections for F.Y. 2024-25 shows that there has been an increase in 19.94% on collections of Tax.

In the first fortnight of the Year the Income Tax Department has also made available the updated version of the JSON Schema for ITR-5, ITR-6, and ITR-7 on 17th January, 2025. Also, Common Offline Utility: Version (V1.1.11) for ITR 1 to ITR 4 has been released on 9th January, 2025.

On the departmental front, the most important activity for this fortnight has been the conduct of the Examination for the Taxation Courses on 12.01.2025. There has been a pass percentage of 70% of the students. We wish the candidates all the best for their future and also wish the best for the candidates who were unable to clear this time, to keep themselves motivated and try harder for the next time.

An important webinar has been conducted on this fortnight on the topic 'e-Assessment under Income Act, 1961' on 07.01.2025. CMA Niranjana Swain had been the faculty for the session.

On the part of the department, classes for the Taxation Courses has continued in this fortnight with participation of students across corporates in this ensuing batch. The publication of Tax Bulletin is done regularly.

I wish the best regards to the department and the Resource Persons for their efforts.

CMA Rajendra Singh Bhati

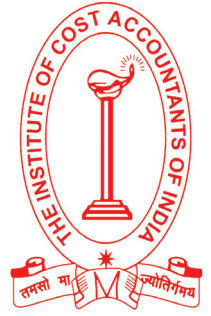
Chairman – Direct Taxation Committee

The Institute of Cost Accountants of India

17.01.2025



Chairman's Message



CMA Dr. Ashish P. Thatte

Chairman Indirect Taxation Committee

Some of the important updates on the Indirect Taxation front in the last fortnight, would be:

- On account of a technical glitch, CBIC extended the due date for filing periodical GST returns for month/ quarter ending 31 December 2024. For understanding, draft GSTR-2B for the month/ quarter ending 31 December 2024 will be generated on 16 January 2025 (earlier 14 January 2025) and the same can be recomputed if any action is taken in Invoice Management System on or after 16 January 2025.
- Biometric-based Aadhaar Authentication and Document Verification for the GST registration applicants in Rajasthan was rolled out on 7 January 2025.
- From January 2025 onwards, the manual entry of HSN has been replaced by selecting correct HSNs from the given Drop Down. Further, Table 12 of Form GSTR-1 and Form GSTR-1A is bifurcated into two tabs viz., B2B and B2C, to report these supplies separately. Further, validation checks regarding value of supplies and tax thereof is also introduced for both these tabs. However, in the initial phase, these validations are kept in a warning mode only and hence, failure to meet this check will not impact the filing of Form GSTR-1 and GSTR-1A.

The Exam for the Taxation Courses has been conducted on 12.01.2025. There has been a good participation in the exams and a major chunk of the students who have appeared has also passed the examination. We wish all the participants who have passed the examination, a very best for their future endeavours.

In January 2025, two important webinars have also been conducted by the department:

- (i) On 03.01.2025 a webinar has been conducted on the topic, 'GST Amnesty Scheme: CMA Knowledge Perspective'. Faculty for the session has been CMA Anil Sharma
- (ii) Again on 10.01.2025 a webinar has been conducted on the topic, 'GST Registration Cancellation and Revocation: An updated detailed guide'. Faculty for the session has been CMA Mahendra Saini.

On the TRD side, the classes for the Taxation Courses continued in this fortnight. Tax Bulletins are published regularly and all other activities are being carried on seamlessly by the department. Quiz is also being conducted every Friday for the members.

Ashish Thatte

CMA (Dr) Ashish P Thatte

Chairman – Indirect Taxation Committee

The Institute of Cost Accountants of India

17.01.2025

TAXATION COMMITTEES 2024 - 2025

Indirect Taxation Committee

Permanent Invitees

CMA Bibhuti Bhusan Nayak - President
CMA T C A Srinivasa Prasad - Vice-President

Chairman

1. CMA Dr. Ashish P. Thatte

Members

2. CMA Navneet Kumar Jain
3. CMA Avijit Goswami
4. CMA Dr. K Ch A V S N Murthy
5. CMA Rajendra Singh Bhati
6. CMA Manoj Kumar Anand
7. CMA Dr. V. Murali
8. CMA Mallikarjun Gupta, Co-opted

Secretary

CMA Kushal Sengupta, Director

Direct Taxation Committee

Permanent Invitees

CMA Bibhuti Bhusan Nayak - President
CMA T C A Srinivasa Prasad - Vice-President

Chairman

1. CMA Rajendra Singh Bhati

Members

2. CMA Dr. Ashish P. Thatte
3. CMA Manoj Kumar Anand
4. CMA Chittranjan Chattopadhyay
5. CMA Dr. V. Murali
6. CMA Suresh Rachappa Gunjalli
7. CMA Dr. K Ch A V S N Murthy
8. CMA Rajagopal, Co-opted
9. CMA Mrityunjay Acharjee, Co-opted
10. CMA Sachin Kathuria, Co-opted

Secretary

CMA Kushal Sengupta, Director

EDITORIAL BOARD

CMA B M Gupta
CMA Pulak Saha
CMA Niranjana Swain
CMA Ajith Sivadas

CMA Rahul Chincholkar
CMA Mrityunjay Acharjee
CMA S. P. Padhi

ACKNOWLEDGEMENTS

CMA Ashok B. Nawal
CMA Mrityunjay Acharjee
CMA Amit Sarker
CMA Vishwanath Bhat
CMA Bhogavalli Mallikarjuna Gupta
CMA T K Jagannathan
CMA Shiba Prasad Padhi
CMA Niranjana Swain

CMA Navneet Kumar Jain
CMA Anil Sharma
CMA Arindam Goswami
CMA Manmohan Daga
CMA Shiba Prasad Padhi

TEAM TAX RESEARCH DEPARTMENT

CMA Kushal Sengupta - Director - Tax Research
CMA Priyanka Roy - Deputy Director - Tax Research
CMA Debosmita Sengupta - Assistant Director - Tax Research
Ms. Mukulika Poddar - Senior Officer - Tax Research

Expression of Interest

Expression of Interest (Eoi) is invited from experienced and knowledgeable professionals to be Resource Persons who would be able to share their Knowledge, Deliver, Contribute, Strengthen and Guide the activities of the Tax Research Department of the Institute

Scope of work:

- Deliver articles, class lectures, seminars, and workshops as per the academic schedule.
- Prepare and update course materials, including syllabus, lecture notes, and presentations.
- Conduct online sessions through MS Teams or Google Meet platform effectively, ensuring student engagement and interaction.
- Conduct off-line classes on Direct & indirect Taxation courses for College/University students.
- Prepare & update various Guidance Note, hand book etc. on contemporary topics on Direct & Indirect Taxation.
- Any other technical guidance if required.

Eligibility criteria for resource persons:

- Possess at least a PhD/ Possess a Professional Degree as Cost & Management Accountant, Chartered Accountant, Company Secretary.
- Post Qualification experience of at least 10 years.
- Proficiency in matters related to Direct Tax, Indirect Tax and Customs and their practicality.
- Proficiency in English communication.
- Having sufficient exposure in practicing / implementing / teaching Management Accounting techniques / framework.

How to apply:

Interested persons are requested to kindly submit their Bio-data to the google link:

<https://forms.gle/CSxtmNKUyMKfvQad9>
within 17th February, 2025 at 4.00 P.M.

Disqualifications:

Resource Person shall be de-empanelled and removed from the panel, if he

- has suppressed any material information while seeking empanelment
- has acted against the interest of the Institute
- has conducted in a manner which is unbecoming of a selected Resource Person

Confidentiality:

Empanelled Resource Persons will make their best efforts to not to disclose any of the information related to work allotted by the Institute.

Terms:

- The Institute may relax any of these guidelines for shortlisting of candidates in deserving cases.
- Panel of resource persons will be reviewed every year.
- The Institute may discontinue the panel of resource persons at any time without any notice assigning any reason.
- Empanelment is not binding on the Institute.
- Institute reserves the right to allocate the work among resource persons as per the requirements.
- Decision of the Institute is final in all respects.



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
www.icmai.in

Behind every successful business decision, there is always a **CMA**

C O N T E N T S



Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.

Please send the articles to
trd@icmai.in / trd.dd2@icmai.in

PAGE NO.

ARTICLES

01	GST Amnesty Scheme, 2024 – Panacea for taxpayers - CMA Shiba Prasad Padhi	01
02	Analysis of the Supreme Court Case: Chief Commissioner of Central Goods and Services Tax & Ors. vs. M/s Safari Retreats Pvt. Ltd. & Ors. - CMA Bhogavalli Mallikarjuna Gupta	04

NOTIFICATIONS

Indirect Tax	08
--------------	-----------

CIRCULARS

Indirect Tax	12
--------------	-----------

JUDGEMENT

Indirect Tax	13
--------------	-----------

Direct Tax	15
------------	-----------

TAX CALENDAR

Indirect Tax	19
--------------	-----------

Direct Tax	19
------------	-----------

PUBLICATIONS

E-Publications of Tax Research Department	20
---	-----------



GST Amnesty Scheme, 2024 – Panacea for taxpayers



CMA Shiba Prasad Padhi

Practicing Cost Accountant

Section 146 of The Finance Act (No. 2) Act, 2024 No. 15 of 2024 dated 16.08.2024 inserted Section 128A in respect to Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods in The Goods and Services Tax (GST) Act, 2017. Procedure and conditions for closure of proceedings under section 128A in respect of demands issued under section 73 was made as per Rule 164 which was inserted in The Goods and Services Tax (GST) Rules, 2017 vide Notification No. 20/2024 - CT dated 08.10.2024 and this became effective w.e.f. 01.11.2024.

Many taxpayers who made any default in obligation of their tax liability during the period 1st July, 2017 to 31st March, 2020 i.e. FY 2017-18, 2018-19 and 2019-20 can be benefitted out of the provision of Sec. 128A which is termed as Amnesty Scheme – 2024. Such default made can be in form of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts.

The following taxpayers can avail benefit of the Amnesty Scheme – 2024:

- Taxpayers to whom Show Cause Notice has been issued and no order has been passed yet (Sec. 73(1) and/or Sec. 73(3) invoked and 73(9) not yet done)
- Adjudication order passed but no appeal or revision order passed yet (Sec. 73(9) order invoked but 107(11) or 108(1) not yet made)
- Appeal or revision Order Passed but no Tribunal

Order yet (Sec.107(11) or 108(1) order passed but 113(1) not yet made)

In the above cases, if a taxpayer pays the full amount of tax payable as per the notice or statement or the order, on or before 31.03.2025, then no interest u/s 50 and penalty under The Goods and Services Tax (GST) Act, 2017, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, upon fulfilment of certain conditions.

As per provision of Sec. 75(2) of The Goods and Services Tax (GST) Act, 2017, where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued u/s74(1) is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued us/ 73(1).

Process to go through by a taxpayer to avail benefit of the Amnesty Scheme:

- Taxpayer to whom Show Cause Notice has been issued and no order has been passed yet has to file FORM SPL-01 on-line in the portal (User Service>My Applications>Apply for waiver Scheme) in case of Application for waiver of interest or penalty or both.
- In case Adjudication order passed but no appeal or revision order passed yet or in cases where Appeal

or revision Order Passed but no Tribunal Order passed yet, FORM SPL-02 can be filed on-line for making Application for waiver of interest or penalty or both.

3. Proper Officer will issue a Notice by FORM SPL-03 within 3 months from receipt of the application is found ineligible as per Section 128A.
4. Applicant will get an opportunity to respond to the Proper Officer by submitting an Application in FORM SPL-04 within one month from the date of issue of FORM SPL-03.
5. Proper Officer will issue an Acceptance Order in FORM SPL-05, if the applicant is found eligible within three months from receipt SPL-01, SPL-02 or SPL-04 or within four months from the date of issuing FORM GST SPL-03 in case no reply was received, concluding the proceedings under Section 128A.
6. In case the Proper Officer is not satisfied with the reply given by the applicant, then he will issue a Rejection Order in FORM SPL-07.
7. If no order is issued within this time limit, the application shall be deemed to be approved, and the proceedings shall be deemed to be concluded and an order approving the application shall be made available on common portal in FORM GST SPL-05.

Preparedness required by a Taxpayer to avail benefit of the Amnesty Scheme:

1. Notice/Statement issued to the Taxpayer whether issued through the portal or by e-mail or sent by post or any other means is required to be studied to know whether the same fulfil the condition in respect to charging section and tax period or not.
2. In case any order has been passed against such Notice/Statement, the same also required to be studied in the same line.
3. Tax amount demanded in the said Notice/Statement/Order is to be completely paid by the taxpayer vide DRC-03 or by making the payment against the debit entry created in the Part II of the Electronic

Liability Register (ELR), for notices or statements yet to be adjudicated orders issued under Section 73, 107, or 108, on or before 31.03.2025. Payment of complete Tax is one of the eligibility condition for waiver scheme.

4. The taxpayer has to ensure and confirm whether any appeal application filed against the order before filing SPL-02. In such case whether any application filed for the withdrawal of appeal also need to be ensured.
5. In case any appeal or writ petition file against the order withdrawn before the Appellate Authority, Appellate Tribunal, High Court, or Supreme Court, then whether the same has been withdrawn or not.
6. In cases where an appeal or writ petition has been filed, the applicant is required to withdraw the same before filing the application and enclose the order of withdrawal along with the application. If the order for withdrawal has not been issued by the concerned authority till the date of filing the application, the applicant must submit a copy of the application and document filed for withdrawal. The final order for withdrawal must be uploaded within one month of its issuance.

Important points that a Taxpayer should know about the Amnesty Scheme – 2024:

1. This Scheme applies to IGST and compensation cess also, provided full payments are made for all demanded taxes.
2. Where payment has been made via FORM GST DRC-03, the applicant shall submit FORM GST DRC-03A to adjust the liability accordingly before applying in FORM GST SPL-02.
3. For cases involving re-determined tax order u/s73, taxpayers must settle the full amount within 6 months from the date of issue of the order
4. No refunds are available for interest or penalties already paid under this provision
5. Demands made for wrongly availed transitional credit under Sec. 73 are covered under the Scheme.



6. If proceedings have been made u/s 74 (for reason containing fraud or any willful misstatement or suppression of facts), then the same needs to be converted to S. 73 as per provisions of S. 75(2).
7. For cases involving re-determined tax order u/s 73, taxpayers must settle the full amount within 6 months from the date of issue of the order.
8. The amount previously demanded due to a violation of Section 16(4), which is now not payable because of the retrospective insertion of sub-Section (5) and sub-Section (6), can be deducted from the total demand when calculating eligibility for a waiver of interest or penalty. This deduction is allowed under sub-rule (5) of Rule 164.

Conclusion:

Amnesty Scheme – 2024 has indeed created an opportunity to all those taxpayers to settle their disputes pertaining to FY 2017-18 to 2019-20 by paying the disputed tax amount only. Penalty u/s is 10% of disputed tax amount but interest is usually a huge amount as the disputed tax amount can be from 5- to 7-year-old. If a taxpayer reasonably believe that possibility of getting any favourable order at higher forum is bleak, then to avoid cost of dispute and botheration thereof, Amnesty Scheme – 2024 is really a good option to follow. Practicing professionals and tax consultants have a major role to play for handholding the taxpayers to understand the applicable provision, eligibility and process to be followed in detail that includes filing of different types of Forms, making payment and taking benefit of the waiver scheme.

A **Analysis of the Supreme Court Case:** Chief Commissioner of Central Goods and Services Tax & Ors. vs. M/s Safari Retreats Pvt. Ltd. & Ors.



CMA Bhogavalli Mallikarjuna Gupta

Co-opted Member, Indirect Taxes Committee

The case before the Supreme Court revolved around the interpretation and constitutional validity of Section 17(5) of the Central Goods and Services Tax Act, 2017 (CGST Act), particularly clauses (c) and (d). These clauses restrict the availability of input tax credit (ITC) on goods and services used in constructing immovable properties, except under certain circumstances. The dispute arose when M/s Safari Retreats Pvt. Ltd., engaged in constructing shopping malls for leasing purposes, sought to claim ITC on inputs used for construction. The provisions barred such claims, prompting the applicant to challenge the statutory framework as arbitrary, discriminatory, and violative of Articles 14 and 19(1)(g) of the Constitution of India.

This case is crucial for defining the scope of ITC under GST, which aims to avoid tax cascading and ensure smooth tax credit flow within the supply chain.

Reasons for Filing the Writ

1. Nature of Business and Input Tax Accumulation:

- M/s Safari Retreats constructed shopping malls with the intent to lease out commercial spaces. The construction required substantial inputs, including materials like cement, steel, and equipment, along with services such as architecture, legal consultancy, and engineering. These goods and services attracted

GST, leading to the accumulation of input tax credit worth over ₹ 34 crores.

- The applicant argued that the rental income from leasing the mall premises constitutes a taxable supply under the GST framework, allowing ITC against the GST paid during construction.

2. Denial of ITC by Revenue Authorities:

- The authorities rejected the claim for ITC, citing Section 17(5)(d) of the CGST Act, which prohibits ITC on goods and services used in the construction of immovable property when such property is used “on one’s own account.”
- The applicant contended that the phrase “on one’s own account” does not apply to properties used for generating taxable supplies, such as rental income.

3. Constitutional Challenges to Section 17(5):

- The applicant argued that the denial of ITC violated the principles of equality (Article 14) by treating businesses that construct properties for sale differently from those constructing for leasing.
- Further, the denial was claimed to infringe Article 19(1)(g) & 300A by imposing unreasonable restrictions on the right to trade.



4. Judicial References

The assessee challenged clauses (c) and (d) of Section 17(5) of the CGST Act, arguing that these provisions unjustly restrict the availability of Input Tax Credit (ITC) for businesses constructing immovable properties intended for taxable supplies such as renting or leasing. The submissions emphasized that this restriction violates the fundamental principles of GST, designed to eliminate cascading taxes and ensure tax neutrality.

- Cascading Effect and Tax Neutrality
- Assessee contended that GST laws aim to remove the cascading effect of taxes, as stated in the objects of the Constitution (122nd Amendment) Bill, 2014. This principle was reinforced in *Union of India v. Mohit Minerals Pvt. Ltd.* (2022), where the Supreme Court highlighted the seamless transfer of ITC across stages of value addition. Denying ITC for construction costs leads to a tax-on-tax scenario, contradicting the core philosophy of GST.
- For instance, if an assessee incurs GST on materials and services for constructing a mall, the denial of ITC results in those taxes being absorbed into the rent, which is also subject to GST. This cascading tax effect was deemed arbitrary and against the legislative intent.
- Functional Purpose of Immovable Property
- The argument further clarified that ITC denial under Section 17(5)(d) is acceptable only for immovable properties used for personal purposes, such as office or factory buildings. However, when the immovable property forms the backbone of taxable supplies (e.g., renting spaces in malls or providing hotel accommodation), ITC denial becomes unreasonable. The Supreme Court's judgments in *CIT v. Taj Mahal Hotel* (1971) and *Karnataka Power Corporation v. CIT* (2002) support this distinction, stating that immovable properties with specific business functions should be considered "plants" for tax purposes.
- The High Court of Orissa applied this functional test in its judgment, reinforcing the principle that properties primarily used for taxable outputs should qualify for ITC.
- Interpretation of "On Its Own Account"
- Assessee argued for a purposive interpretation of the phrase "on its own account" under Section 17(5)(d). They submitted that this phrase should apply only to immovable properties used for personal purposes and not to those used for taxable outputs. Reliance was placed on *Indian Social Action Forum (INSAF) v. Union of India* (2021) and *Delhi Transport Corporation v. DTC Mazdoor Congress* (1991), emphasizing the need for pragmatic statutory interpretation to avoid outcomes that thwart legislative intent.
- Constitutional Validity and Equality
- The assessee argued that clauses (c) and (d) violate Article 14 of the Constitution by treating unequal entities equally. A developer constructing immovable property for sale is not in the same position as one constructing it for renting or leasing, as the latter involves an uninterrupted taxable supply chain. This distinction was supported by the functional test applied in *Anand Theatres v. CIT* (2000), where buildings designed for specific functions, such as cinema halls, were treated as "plants."
- Case Law Supporting ITC for Functional Use
- Key judgments such as *Indcon Structural Pvt. Ltd. v. CCE* (2006) and *Victory Aqua Farm Ltd. v. CIT* (2016) underscored the importance of applying functionality tests. The assessee drew parallels to these cases, asserting that malls and similar structures should qualify as "plants" if they serve an integral role in business operations.
- Impact of Denial on ITC Flow
- Finally, the assessee highlighted the absurd consequences of denying ITC for construction-related expenses. They argued that the denial disrupts the seamless ITC chain, as

acknowledged in *Union of India v. Bharti Airtel Ltd.* (2021). The cascading tax burden resulting from such denial would not only inflate operational costs but also burden end consumers, defeating GST's purpose as a destination-based tax.

5. Reliefs Sought:

- A declaration that Section 17(5)(d) does not apply to immovable properties intended for leasing or renting.
- Alternatively, a directive to “read down” Section 17(5)(d) to allow ITC for taxable supplies such as renting.
- A writ of mandamus directing authorities to grant ITC.

Contentions of the Revenue:

1. Legislative Intent:

- The GST framework restricts ITC on immovable property to prevent misuse, as immovable property, once constructed, often exits the taxable supply chain.
- Section 17(5)(d) reflects this intent by barring ITC on construction materials used to create immovable property for personal use.

2. Classification Justified:

- The distinction between construction for sale and construction for rental purposes is based on intelligible differentia. The former often involves non-taxable supplies after issuance of a completion certificate, justifying ITC restrictions.

3. Statutory Nature of ITC:

- ITC is not a fundamental right but a statutory concession. The legislature has the authority to prescribe conditions for its applicability.

4. No Violation of Equality:

- The prohibition applies uniformly to all

entities engaged in constructing immovable property. There is no arbitrary classification, and the restriction is rationally connected to the objective of preventing ITC misuse.

5. Cascading Tax Effect Inevitable in Certain Cases:

- The denial of ITC in cases involving immovable property is an intended consequence of GST provisions. Allowing ITC in such cases would disrupt the tax chain and lead to revenue loss.

Court's Analysis

1. Interpretation of Section 17(5)(d):

- Definition of “Plant or Machinery”:
- The court examined whether a shopping mall could be classified as “plant or machinery,” which is exempt from ITC restrictions under Section 17(5). By applying the functionality test, the court considered whether the immovable property (shopping mall) serves as an essential tool for the business or merely as a setting for its operations.
- Phrase “On His Own Account”:
- The court deliberated whether this phrase could exclude properties like malls that are leased out for generating taxable income. A broader interpretation could undermine the ITC restriction, while a narrow reading might result in cascading taxes.

2. Constitutional Challenges:

- The court emphasized that tax laws must strike a balance between legislative objectives and constitutional guarantees. While classification in tax statutes enjoys wide latitude, it must satisfy the test of intelligible differentia and rational nexus.
- The court noted that GST aims to promote seamless ITC across the supply chain. Denying ITC for goods and services used in taxable supplies could defeat this purpose.



3. Judicial Precedents:

- Reference was made to prior cases such as Eicher Motors Ltd. vs. Union of India and Bharat Sanchar Nigam Ltd. vs. Union of India, which stressed the need for harmonious construction of tax provisions.

4. Remand for Detailed Examination:

- Given the complexities involved, the court remanded the matter to the Orissa High Court to determine whether a shopping mall qualifies as “plant” under Section 17(5)(d) and whether the ITC restriction violates constitutional principles.

Final Order

The Supreme Court refrained from issuing a definitive ruling on the constitutional validity of Section 17(5)(d). Instead, it directed the High Court to re-examine the case in light of the functionality test and broader GST principles. The outcome is expected to provide greater clarity on ITC eligibility for immovable properties used for taxable supplies.

Impact on Business

1. Potential ITC Availability:

If the High Court rules in favor of the applicant, businesses engaged in constructing commercial properties for leasing could claim ITC, reducing their tax liability and cost burden.

2. Clarification of “Plant or Machinery”

The case will establish whether commercial buildings like malls can be categorized as “plant” under the CGST Act, setting a precedent for other industries.

3. Policy Reforms:

A favourable ruling might prompt amendments to GST provisions to explicitly include or exclude

certain properties, ensuring consistency and avoiding future disputes.

4. Tax Neutrality:

Allowing ITC for such constructions aligns with the GST objective of eliminating cascading taxes, making businesses more competitive.

Recent Changes

In the recently concluded 55th GST Council Meeting, the Council recommended a retrospective amendment to Section 17(5)(d) of the CGST Act. This amendment seeks to replace the phrase “plant or machinery” with “plant and machinery,” citing it as a drafting error that needed rectification. This change aims to bring greater clarity to the interpretation of the provision and address potential ambiguities in its application.

In connection with this amendment, the Ministry of Finance has also filed a review petition in the Supreme Court. This petition challenges the eligibility of input tax credit (ITC) on commercial properties, signaling the government’s intent to resolve disputes surrounding ITC claims and ensure consistency in taxation policies. The issue remains significant for stakeholders, as it could impact the scope of ITC utilization for businesses operating in commercial spaces.

Disclaimer

The opinions and views presented in this article are solely those of the author(s) and do not necessarily represent the official stance, policy, or position of any organization, institution, employer, or entity. The content is provided for informational purposes only and should not be considered as legal, financial, or professional advice. Readers are advised to consult with professionals for guidance relevant to their specific circumstances. The author(s) and publisher accept no responsibility for any consequences resulting from the use of the information contained herein. All content is provided “as is,” and no guarantees are made regarding its accuracy, completeness, or timeliness.

NOTIFICATIONS

INDIRECT TAX

GST (Central Tax)

Notification No. 01/2025 – Central Tax

New Delhi, the 10th January, 2025

G.S.R.....(E).- In exercise of the powers conferred by the first proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 –Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely:–

In the said notification, after the fifth proviso, the following proviso shall be inserted, namely:-

“Provided also that the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the said rules for the registered persons required to furnish return under sub-section (1) of section 39 of the said Act for the tax period December, 2024, shall be extended till the thirteenth day of January, 2025 and for the registered persons who are required to furnish return

under proviso of the said sub-section, for the tax period October to December, 2024, shall be extended till the fifteenth day of January, 2025.”

[F. No. CBIC-20001/10/2024-GST]

Notification No. 02/2025 – Central Tax

New Delhi, the 10th January, 2025

G.S.R.....(E).- In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the return in FORM GSTR-3B electronically, through the common portal, by the registered persons, as specified under-

- (i) Sub-section (1) of section 39, for the month of December 2024, till twenty-second day of January, 2025:
- (ii) Proviso to sub-section (1) of section 39, for the quarter of October, 2024 to December, 2024, for the class of registered persons mentioned in column (2) of the Table given below, till the date mentioned in the corresponding entry in column (3) of the said Table, namely :-

TABLE

S. No.	Class of registered persons	Due Date
(1)	(2)	(3)
1.	Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	Twenty-fourth day of January, 2025
2.	Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	Twenty-sixth day of January, 2025

[F.No. CBIC-20001/10/2024-GST]



Notification No. 03/2025 – Central Tax

New Delhi, the 10th January, 2025

G.S.R.....(E).- In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the return by a non-resident taxable person, in FORM GSTR-5, under sub-section (5) of section 39 of the said Act read with rule 63 of the Central Goods and Services Tax Rules, 2017 for the month of December, 2024 till the 15th day of January, 2025.

[F. No. CBIC-20021/2/2025-GST]

Notification No. 04/2025 – Central Tax

New Delhi, the 10th January, 2025

G.S.R.....(E).- In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 under sub-section (4) of section 39 of the said Act read with rule 65 of the Central Goods and Services Tax Rules, 2017, for the month of December, 2024 till the 15th day of January, 2025.

[F. No. CBIC-20021/2/2025-GST]

Notification No. 05/2025 – Central Tax

New Delhi, the 10th January, 2025

G.S.R.....(E).– In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act, in FORM GSTR-7 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central

Goods and Services Tax Rules, 2017, for the month of December, 2024, till the 12th day of January, 2025.

[F. No. CBIC-20021/2/2025-GST]

Notification No. 06/2025 – Central Tax

New Delhi, the 10th January, 2025

G.S.R.....(E).- In exercise of the powers conferred by first proviso to sub-section (4) of section 52 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the statement, containing the details of outward supplies of goods or services or both, effected through an e-commerce operator, in FORM GSTR-8, under sub-section (4) of section 52 of the said Act read with rule 67 of the Central Goods and Services Tax Rules, 2017 for the month of December, 2024 till the 12th day of January, 2025.

[F. No. CBIC-20021/2/2025-GST]

Customs (Non - Tariff)

Notification No. 01/2025-Customs (N.T.)

New Delhi, the 14th January, 2025

G.S.R. 36(E). - In exercise of the powers conferred by clause (aa) of sub-section (1) read with sub-section (2) of section 7 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 12/97-Customs (N.T.) dated the 2nd April, 1997, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 193 (E), dated the 2nd April, 1997, namely:-

In the said notification in the Table, against serial number 4 relating to the State of Gujarat, in column (3) and (4), after item (xvi) in column (3) and the entries

relating thereto in column (4), the following item and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)
		“(xvii) Virochannagar, Ahmedabad	Unloading of imported goods and the loading of export goods or any class of such goods.”

[F. No. CBIC-50394/111/2022]

Notification No. 02/2025-Customs (N.T.)

New Delhi, dated 15th January, 2025

G.S.R. (E). - In exercise of the powers conferred by section 7, read with sections 30, 30A, 41, 41A, 53, 54, 56, Sub-section (3) of section 98 and sub-section (2) of section 158 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following amendments in the Sea Cargo Manifest and Transshipment Regulations, 2018, namely:-

1. Short title and commencement —

- (1) These regulations may be called the Sea Cargo Manifest and Transshipment (First Amendment) Regulations, 2025.

- (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Sea Cargo Manifest and Transshipment Regulations, 2018 —

- (1) In the TABLE after FORM-XII:
 - i. against Sr. No. 6, in column (3), for the entry, the entry “31.03.2025” Shall be substituted.

Notification No.03/2025-Customs (N.T.)

New Delhi, 15th January, 2025

S.O. ... (E).— In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:-

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

TABLE-1

Sl. No.	Chapter/ heading/ sub-heading/ tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	1137
2	1511 90 10	RBD Palm Oil	1180
3	1511 90 90	Others – Palm Oil	1159
4	1511 10 00	Crude Palmolein	1189
5	1511 90 20	RBD Palmolein	1192
6	1511 90 90	Others – Palmolein	1191
7	1507 10 00	Crude Soya bean Oil	1074
8	7404 00 22	Brass Scrap (all grades)	5249



TABLE-2

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	858 per 10 grams
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	961 per kilogram
3.	71	<p>(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi- manufactured forms of silver falling under sub-heading 7106 92;</p> <p>(ii) Medallions and silver coins having silver content not below 99.9% or semi- manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage.</p> <p>Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.</p>	961 per kilogram
4.	71	<p>(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units;</p> <p>(ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage.</p> <p>Explanation - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.</p>	858 per 10 grams

TABLE-3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Ton)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	6448 (i.e., no change)"

2. This notification shall come into force with effect from the 16th day of January, 2025.

[F. No. 467/01/2025-Cus.V]

CIRCULARS

INDIRECT TAX

Customs

Circular No. 01/2025-Customs

F. No. 450/78/2020-Cus. IV (Part)

New Delhi, dated 1st January, 2025

Subject: Roll out of Automated Out of Charge for AEO T2 and T3 Clients - reg.

Madam/sir,

Sustained efforts by CBIC in simplifying trade procedures, enhancing transparency, and adopting best practices have enabled it to achieve steady improvements across various trade facilitation indicators. As part of a broader initiative to enhance trade efficiency, improve compliance, and reduce the administrative burden on businesses, CBIC has decided to roll out Automated Out of Charge in case of AEOs T2 and T3 where there is no requirement of CCR verification.

2. In the first phase, the BEs of AEO T2 & T3 clients, meeting the following criteria will be eligible for Auto-OOC on web based goods registration:
 - (a) Not selected for examination or scanning or for any PGA related NoC
 - (b) Assessment is complete
 - (c) Authentication of BE by way of OTP is complete for duty deferment
3. The Auto-OOC will be allowed on risk basis for the eligible BEs. However, in case of any intelligence, the option for “HOLD” is provided in Customs Systems to over-ride the Auto-OOC by the concerned officer of customs.
4. The facility to be rolled out from 1st January of 2025 and will be another significant measure for facilitating genuine trade and reduce overall dwell time. A detailed advisory will be issued by DG Systems.
5. This Circular may be given wide publicity by issuing suitable Trade Notice/Public Notice. All Stakeholders under your jurisdiction may be informed suitably of these changes. Any difficulty faced by stakeholders may be brought to notice of the Board.



JUDGEMENTS

INDIRECT TAX

Negative blocking of credit is permissible where assessee's ECL had been blocked without availability of any credit: HC

Facts of the case :

Tvl. Skanthaguru Innovations (P.) Ltd. v. Commercial Tax Officer - [2024] (Madras)

In the present case, the petitioner challenged the blocking of their Input Tax Credit (ITC) under Rule 86A, arguing that since their Electronic Credit Ledger (ECL) had a Nil balance and the ITC had already been used, the blocking was unjustified. It was also contended that the State Authorities lacked jurisdiction, as the Central Authorities were already investigating the matter.

Decision of the case :

The High Court noted that Rule 86A permits blocking of ITC even if it is no longer available in the ECL or has already been used, as long as it was fraudulently claimed since the word "available" shall be interpreted in such a way that ITC has to be available in ECL, at any point of time, for purpose of debiting ECL. It further clarified that both Central and State Authorities have separate jurisdictions and can act independently in investigating fraudulent claims. The Court also upheld the blocking orders and confirmed that the authorities could continue investigating the larger fraud claim.

Penalty u/s 129(1)(b) to be set aside as invoice and e-way bills contained name of firm which is sufficient to prove ownership of goods: HC

Facts of the Case :

Vishal Chobia v. State of U.P. - [2024] (Allahabad)

In the present case, assessee's claim of ownership of goods detained by GST Authority was rejected and the

authority had imposed penalty under section 129(1)(b) of CGST Act, 2017. The assessee filed writ petition and contended that penalty could have been levied under section 129(1)(a) but the authority, despite specific assertion in claim that goods were owned by assessee, found same as incorrect. The Authority submitted that in relation to ownership, Aadhar Card and Pan Card had not been produced.

Decision of the Case :

The Honorable High Court noted that the registration certificate pertaining to GSTIN indicated status of assessee as proprietor of Vishal Enterprise. Further, GSTIN provided specific details pertaining to legal name of business as 'Vishal Chobia', trade name as 'Vishal Enterprise' and the constitution of business as 'proprietorship' which was 'Aadhar authenticated'.

In view of the specific indications in the official records about M/s. Vishal Enterprise, being the proprietorship of the assessee, turning a blind eye by the officers to the said aspect and refusing to recognize the assessee as deemed owner of the goods being the consignee cannot be sustained. Therefore, it was held that the impugned order was to be set aside.

No GST on amount collected towards penalty imposed by LPG corporation for non-attendance of leakage complaint: HC

Facts of the case :

Aswathy Gas Agencies v. Indian Oil Corporation Ltd. - 169 taxmann.com 740 (Kerala)

In the present case, the writ petition was filed by the LPG distributors appointed by the LPG Corporation challenging the levy of penalty and GST on such penalties. The LPG Corporation imposed penalties on the distributors for not attending a leakage complaint as per Marketing Discipline Guidelines 2018. The GST department raised demand of GST on the amount of

penalty. Aggrieved by the demand, the LPG distributors filed a writ petition before the Kerala High Court.

■ **Decision of the case :**

The Honorable High Court observed that the GST department's contention relied on the argument that the penalties constituted a 'supply of services' by the LPG Corporation to the distributors. However, no 'supply of service' was affected by the LPG Corporation to the LPG distributors while imposing penalties. It clarified that, under GST law, the demand for GST can only arise if there is a supply of goods or services.

Further, the amounts sought to be recovered were not towards tolerating an act/situation. Instead, the amounts sought to be recovered were for not following the terms of the agreement/MDG framed by the LPG Corporation. Thus, the Kerala High Court held that the LPG Corporation was not entitled to collect GST from the LPG distributors.

No prohibition on issuing consolidated SCN for multiple periods under the CGST Act: HC

■ **Facts of the Case :**

X L Interiors v. Deputy Commissioner (Intelligence), SGST Department - [2024] (Kerala)

The assessee, a partnership firm, was issued a single show cause notice invoking the provisions of Section 74 of the CGST Act, alleging suppression of turnover, etc. in six financial years. The assessee filed writ petition and contended that separate notices should be issued for each year as sections 73 and 74 of the CGST Act do not contemplate the sending of a single consolidated show cause notice for more than one financial year.

■ **Decision of the case :**

Kerala High Court noted that nothing in Section 74 prohibits the issuance of a consolidated show cause notice for multiple years. The term 'period' in Section 74(3) is not restricted to a single financial year. No prejudice is caused as the assessee can raise year-specific contentions in reply. However, considering the

voluminous documentation of 1622 pages, the time for reply was extended by one month.

Tax liability to be discharged in each state based on work done for barrage construction in Telangana and Maharashtra: HC

■ **Facts of the case :**

L and T PES JV v. Assistant Commissioner of State Tax - [2025] (Telangana)

The petitioner JV received a contract from State of Telangana for construction of a barrage in Telangana. The execution of contract was spread between Telangana and Maharashtra. The petitioner raised separate bills for works executed in both States with corresponding GSTINs. However, the TDS deducted by department on total value of bills was remitted only to Telangana. Therefore, the petitioner approached the department for refund of excess TDS but the same was rejected. It filed writ petition and contended that the entire TDS amount was deposited with the State of Telangana and no reason to deny refund.

■ **Decision of the Case :**

The Honorable High Court noted that the place of supply of service in both States can be assessed/determined only on the basis of actual works executed in each State and also as per terms of agreement as specified in Explanation to section 12(3) of IGST Act. Since, the place of supply is determined depending on proportion of work executed and it falls under category of intra-State supply under Section 8 of IGST Act with respect to proportion of works executed in respective States by contractors registered in respective States, the tax liability shall be discharged individually in each State to extent of proportion of works executed therein.

Therefore, it was held that petitioner should approach adjudicating authority with relevant material and on such submission, adjudicating authority should consider same and pass appropriate orders for refund of TDS amount in event of petitioner furnishing appropriate, cogent documents in proof of discharge of liability in State of Maharashtra.



DIRECT TAX

Designated Authority has no power to reopen a concluded settlement under DTVSV Act: HC

Facts of the case :

S A N Garments Manufacturing (P.) Ltd. vs. PCIT - [2025] (Delhi)

The assessee filed its return of income for the relevant assessment year and declared its income. Subsequently, notice under section 148 was issued, and the assessment was completed by making certain additions. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A).

During the pendency of the appeal, the Direct Tax Vivad Se Vishwas Act, 2020 (DTVSV Act) was enacted. The assessee made a declaration to settle the tax arrear. The Designated Authority (DA) issued Form No. 3 and Form No. 5, determining the balance amount payable and the amount deposited by the assessee. However, the DA again issued a fresh Form No. 3, which was a modified version of the earlier Form No. 3.

Aggrieved-assessee filed a writ petition before the Delhi High Court contending that the DA had effectively sought to reopen a concluded settlement.

Decision of the case:

The High Court held that Section 5(2) of the DTVSV Act mandates the DA to determine the amount payable by the declarant within a period of 15 days from the date of receipt of the declaration. Rule 7 of the DTVSV Rules expressly provides that the order of the DA with respect to the payment of the amount made by the declarant as per the certificate granted under section 5(1) shall be in Form No. 5.

It is clear that once a declarant is issued a certificate (Form No. 5) in terms of section 5 of the DTVSV Act, and the declarant deposits the determined amount, the DA is proscribed from initiating any action or proceedings in respect of the 'tax arrear'. The dispute stands settled.

It was fairly stated that no provision under the DTVSV Act empowers a Designated Authority to reopen a concluded settlement. As noted above, a plain reading of the provisions of the DTVSV Act indicates that once a final certificate is issued under section 5(1), all disputes regarding the 'tax arrear' stand concluded.

In the instant case, the assessee deposited the determined amount and was issued Form No. 5 by the DA. Thus, all disputes with regard to the 'tax arrear' stood concluded. Therefore, the issuance of the impugned certificate was without the authority of law.

Reduction in share capital of subsidiary & subsequent reduction in shareholding is 'transfer' u/s 2(47): SC

Facts of the case :

Jupiter Capital (P.) Ltd. vs Principal Commissioner of Income-tax - [2025] 170 taxmann.com 305 (SC)

The assessee held shares in an Indian company. The company filed a petition before the High Court for a reduction of its share capital to set off the loss against the paid-up equity share capital. The High Court ordered for a reduction in the share capital of the company. The assessee's share was reduced proportionately, and the company paid an amount to the assessee as consideration. During the year, the assessee claimed a long-term capital loss accrued on the reduction in share capital from the sale of shares of such company.

However, the Assessing Officer (AO) contended that although the number of shares got reduced by virtue of reduction in share capital of the company, yet the face value of each share as well as shareholding pattern remained the same. Thus, reduction in shares of the subsidiary company did not result in the transfer of a capital asset as envisaged in section 2(47).

The matter reached before the Supreme Court.

Decision of the case :

The Supreme Court held that section 2(47) is an

inclusive definition providing that relinquishment of an asset or extinguishment of any right therein amounts to a transfer of a capital asset. While the taxpayer continues to remain a shareholder of the company even with the reduction of share capital, it could not be accepted that there was no extinguishment of any part of his right as a shareholder qua the company.

The expression 'extinguishment of any right therein' is of wide import. It covers every possible transaction which results in the destruction, annihilation, extinction, termination, cessation or cancellation, by satisfaction or otherwise, of all or any of the bundle of rights, qualitative or quantitative, which the assessee has in a capital asset, whether such asset is corporeal or incorporeal.

In the instant case, the face value per share remained the same before the reduction of share capital and after the reduction of share capital. However, as the total number of shares were reduced.

Relying upon the decision in case of *Kartikeya V. Sarabhai v. Commissioner of Income Tax* reported in (1997) 7 SCC 524, it was held that reduction of right in a capital asset would amount to 'transfer' under section 2(47). Sale is only one of the modes of transfer envisaged by section 2(47). Relinquishment of any rights in it, which may not amount to sale, can also be considered as transfer and any profit or gain which arises from the transfer of such capital asset is taxable under section 45.

Also, a company under section 66 of the Companies Act, 2013 has a right to reduce the share capital, and one of the modes which could be adopted is to reduce the face value of the preference share. When as a result of the reducing of the face value of the share, the share capital is reduced, the right of the preference shareholder to the dividend or his share capital and the right to share in the distribution of the net assets upon liquidation is extinguished proportionately to the extent of reduction in the capital. Such a reduction of the right of the capital asset clearly amounts to a transfer within the meaning of section 2(47).

Thus, it was held that the reduction in share capital of the subsidiary company and subsequent proportionate reduction in the shareholding of the assessee would be squarely covered within the ambit of the expression 'sale, exchange or relinquishment of the asset' used in section 2(47).

AO can't treat unexplained cash as income u/s 69A if assessee accounted for it under presumptive taxation: ITAT

Facts of the case :

Imran Ibrahim Badshah vs. ITO - [2025] (Mumbai - Trib.)

The assessee was engaged in the business of imitation jewellery and declared the gross profit at 8% of gross receipt as his income under section 44AD. On enquiry, the Assessing Officer (AO) revealed that the assessee had furnished the computation of income for receipt under section 44AD; however, they could not furnish a certain amount, which remained unexplained. The AO treated such an amount as unexplained and added it under section 69A.

On appeal, the CIT(A) affirmed the addition made by the AO. Aggrieved by the order, an appeal was filed to the Mumbai Tribunal.

Decision of the Case :

The Tribunal held that though it was a fact that the total deposits of 1.25 crores (approximately) were made in the bank account maintained with the Co-operative Bank Ltd. The assessee has shown the amount of 1.08 crores (approximately) as a gross receipt and claimed that the differential amount was from the savings out of the profits earned from the earlier years and the household savings of the family, which was deposited in the bank during the demonetisation period.

The AO and the CIT(A), considering that the assessee furnished no details, respectively, made and affirmed the addition under section 69A. Instant Court has thoughtfully considered the rival claims of the parties and the determination made by the authorities below. Admittedly, the assessee has not done any other business except the imitation jewellery. Even otherwise, no material was available on record by which it can be construed that the assessee has earned any other income other than from the admitted business.

Thus, considering the peculiar facts and circumstances in totality, it would be appropriate, as both the parties have also agreed in the open court, to treat such an amount as business receipts. Therefore, the same can



be subjected to profit at 8 percent of the said amount, which can be added to the assessee's income. Hence, the AO was directed to apply the profit at the rate of 8% and add the same to the assessee's income. Accordingly, the additions under section 69A were deleted.

Fraudulent income from forged challans is taxable even if fully recovered by Govt in subsequent years: ITAT

Facts of the case :

Mukesh Rasiklal Shah vs. ACIT - [2025] (Ahmedabad - Trib.)

Assessee, a chartered accountant, obtained refunds from the income tax department by producing forged challans. After the search and seizure operation, the Assessing Officer (AO) added such forged amount to the respective assessment years in which the assessee obtained fraudulent refunds contending that the assessee had defrauded the Govt. of India to the extent of the said amount by entering into illegal activity of encashment of refunds based on fraudulent challans.

The assessee contended that the government of India had fully recovered the alleged misappropriation of income tax refunds or money receipts. Hence, it did not constitute income chargeable to tax.

On appeal, CIT(A) confirmed the additions made by AO and the matter reached before the Ahmedabad Tribunal.

Decision of the case:

The Tribunal held that the case presented a peculiar situation where the income, accrued fraudulently by the assessee, was parked in the accounts of his family's HUF and further leveraged for economic benefits, such as investments and financial gains. The assessee had accepted engaging in the fraudulent activity, which resulted in tangible control and dominion over the funds. This conduct, coupled with the economic benefits derived from the tainted money, reinforces the principle that such income must be attributed to the assessee for tax purposes. While the taxability of the economic benefits derived from such fraudulent income is beyond the current scope, the fact that the assessee leveraged these funds for personal gains adds weight to the case for taxing the income in the year of accrual. This aligns

with the established principle that income, once accrued or received, irrespective of its legality, must be taxed under the Income-tax Act, 1961.

It is an undisputable fact that the assessee has admitted to fraudulently earning income and parking the same in the accounts operated by him. The deliberate act of parking funds in the accounts he operates does not absolve the assessee of the taxability of such income. The assessee had dominion over the funds and utilized them for economic gains, including investments. This clearly establishes that the income accrued to the assessee, making it taxable in his hands. The principle that tainted or illegal income is taxable has been well established in law. The illegality of the source does not absolve the recipient from tax liability.

Further, Section 2(24) is an inclusive definition and does not differentiate between the legality or illegality of earning income. The income tax department does not condone the illegal activity of claiming fraudulent income from the government's exchequer by subjecting the amount to tax as per the statute. The taxation of the illegal amounts earned as per the rates provided in the income-tax statute cannot be deemed to have given the assessee the right to usurp or enjoy the remaining illegal amounts.

Taxability arises at the point of accrual or receipt. Even if the income is later restituted or recovered, its taxability remains unaffected for the year of accrual. Subsequent adjustments do not negate the taxability for the original period, for the matter, generation, recovery and restitution are separate transactions. Thus, restitution or recovery is treated independently for taxation purposes. Taxability remains intact for the year of accrual, and recovery does not create a retroactive exemption.

Therefore, the additions made by AO were to be confirmed.

Reassessment justified as info relating to unexamined cash receipts was recd. after original assessment's conclusion

Facts of the case:

Sanjay Ratra vs. Assistant Commissioner of Income-tax - [2025] 170 taxmann.com 243 (Bombay)

The assessee-individual filed his return of income disclosing capital gain income. The said return of income was selected for a scrutiny assessment, and an assessment order under section 143(3) was passed accepting the return of income.

Subsequently, the Assessing Officer (AO) issued a reopening notice upon the assessee based on information received that the assessee had received cash of a certain amount, which was undisclosed. Further, the credit card transaction of a certain amount was also required to be verified. The assessee filed objections to the reopening notice and submitted that the cash receipt was from the sale of the property, and the assessee made his submission on the merits as to why the same could not be added as income in his hands.

The AO rejected the assessee's submission and issued a reassessment order under section 148. Aggrieved by the order, the assessee filed a writ petition before the Bombay High Court.

Decision of the case :

The High Court held that the issue of alleged cash receipt was not examined during the regular assessment proceedings since the information from AO was received after the conclusion of the assessment proceedings. The assessment proceedings were concluded on 30 November 2018, whereas the information on the alleged cash receipt was received on 21 February 2022.

Furthermore, from the questionnaire issued to examine issues in the regular assessment proceedings, there was no query on credit card expenses or alleged cash receipts. Therefore, neither issue appears to have been examined.

The assessment order further records that the assessment was limited scrutiny assessment only for verification of deduction under Chapter VI. The assessee has not enclosed the submissions made during the assessment proceedings in the present petition, and therefore, the writ petition was rejected.



TAX CALENDAR

INDIRECT TAX

Due Date	Returns
Jan 18th, 2025	CMP-08 (For Oct - Dec, 2024)
Jan 20th, 2025	GSTR-5A (For Dec, 2024)
	GSTR-3B (For Dec, 2024)
Jan 22nd & 24th, 2025	GSTR-3B (For Oct-Dec, 2024 under QRMP Scheme)

DIRECT TAX

Due Date	Returns
Jan 30th, 2025	Quarterly TCS certificate in respect of quarter ending December 31, 2024.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under sections 194-IA, 194-IB, 194-M and 194S (by specified person) in the month of December, 2024.
Jan 31st, 2025	Quarterly statement of TDS for the quarter ending December 31, 2024.
	Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending December 31, 2024.
	Intimation by Sovereign Wealth Fund in respect of investment made in India for quarter ending December, 2024.



E-PUBLICATIONS

Of

TAX RESEARCH DEPARTMENT

Guide Book for GST Professionals

Handbook for Certification for difference between GSTR-2A & GSTR - 3B

Impact of GST on Real Estate

Insight into Customs-Procedure & Practice

Input Tax Credit and In depth Discussion

Taxation on Co-operative Sector

Guidance notes on Preparation and Filing of Form GSTR 9 and 9C

Guidance Note on Anti Profiteering

Handbook on GST on Service Sector

Handbook on Works Contract under GST

Handbook on Impact of GST on MSME Sector

Assessment under the Income Tax Law

Impact on GST on Education Sector

International Taxation and Transfer Pricing

Handbook on E-Way Bill

Handbook on Filing of Returns

Handbook on Special Economic Zone and Export Oriented Units

For E-Publications, Please Visit Taxation Portal
<https://icmai.in/TaxationPortal/>

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successfully conduct all Taxation Courses.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

Disclaimer:

The Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, users should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in these documents does not cover every situation and is not intended to replace the law or change its meaning.

The opinion expressed in Article is fully based on the views of the experts. This information is provided for public services only and is neither an advertisement nor to be considered as legal and professional advice and in no way constitutes an attorney-client relationship between the Institute and the User. Institute is not responsible or liable in any way for the consequences of using the information given.



Contact Details:

Tax Research Department

12, Sudder Street, Kolkata - 700016

Phone: +91 33 40364714/ +91 33 40364798/ +91 33 40364711

E-mail: trd@icmai.in



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12, Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100