ICMAI
THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
भारतीय लागत लेखाकार संस्थान
Statutory Body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Headquarters: CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi – 110 003
Kolkata Office: CMA Bhawan, 12, Sudder Street, Kolkata – 700016

TAX INSIGHTS

By

Tax Research Deparment

Date: 01.12.2025

Income Tax

Section 54 exemption allowed for house purchased abroad before AY 2015-16 – amendment held prospective

Jagdish Chand Verma v. ITO
ITAT Delhi
Order dated: 12 Nov 2025
AY: 2014-15

Held

The ITAT Delhi held that Section 54 exemption cannot be denied merely because the assessee purchased the new residential property outside India, since the amendment requiring the new house to be situated in India is prospective and applies only from AY 2015-16 onwards. Therefore, for AY 2014-15, the assessee is eligible for Section 54 relief.

Facts

- Assessee, a retired individual, sold a residential flat in Delhi in Oct 2013.
- Invested the sale consideration in a residential house in Australia in March 2014.
- Claimed exemption under Section 54.
- AO completed assessment under Section 144 and disallowed:
  - Section 54 claim (no details provided).
  - Cash deposits of ₹40.51 lakh u/s 68.
- CIT(A) upheld the disallowance, holding that the amendment requiring house to be "in India" was clarificatory.

Tribunal's Findings

(A) Section 54 Exemption – Allowed

- CBDT Circular No. 1/2015 (21-1-2015) explicitly states that the amendment to Sections 54/54F is effective from 1-4-2015, applicable from AY 2015-16 onward.
- No indication in the statute that the amendment is clarificatory.
- Hence, it is a substantive and prospective amendment.

Key legal support:

- CIT v. Vinay Mishra (Karnataka HC)
- CIT v. Hosagrahar (Karnataka HC)

Both hold that investment in a house outside India before AY 2015-16 qualifies for Section 54/54F relief.

Conclusion of ITAT:

Assessee purchased the Australian property before the amendment became effective Section 54 deduction must be allowed.

(B) Section 68 Addition – Deleted

- The assessee did not maintain any books of account.
- Bank passbook is not "books of account" of the assessee.
- Therefore, Section 68 cannot be invoked for deposits in the bank account.

Key legal support:

- Baladin Ram v. CIT (SC) – bank passbook is not the assessee's books.
- CIT v. Mayawati (Delhi HC) – Section 68 cannot apply to bank deposits if no books are maintained.
- Deepak Srivastava v. ITO (ITAT Delhi, 2024) – same principle.

Final Outcome

- Section 54 deduction allowed.
- Addition of ₹40.51 lakh under Section 68 deleted.
- Appeal allowed in full.

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Date: 01.12.2025

Goods & Services Tax

Matter remanded as assessee failed to respond to SCN due to GST portal being handled by consultant – Validity of Notifications left open

Concept Eateries (P.) Ltd. v. Union of India
Delhi High Court
Order dated: 11 Nov 2025

Held

1. SCN & Order Set Aside – Matter Remanded
Where the assessee failed to file a reply to the SCN because its GST consultant (who operated the GST portal) did not notice the SCN for FY 2019–20, the Court held that the assessee was denied a proper opportunity of hearing.

Following Sugandha Enterprises v. Commissioner of DGST [2025](Delhi), the Court:

- set aside the impugned order,
- remanded the matter to the Adjudicating Authority,
- permitted the assessee to file reply up to 15 December 2025,
- directed that a personal hearing must be granted,
- imposed ₹20,000 costs on the assessee (Delhi High Court Bar Association).

2. Challenge to Notifications 9/2023-CT & 56/2023-CT – Left Open
The petitioner challenged the extension-of-time Notifications issued under Section 168A (relating to time limit for orders under Section 73 for FY 2017–18). However, since the same notifications are already under consideration by the Supreme Court in:
HCC-SEW-MEIL-AAG JV v. Asstt. CST [2025](SC),
the Delhi High Court held that:

- The challenge to the notifications will remain open.
- Any fresh order passed after remand will be subject to the Supreme Court's final verdict.

Key Points

Facts

- SCN dated 21 May 2024 was not responded to.
- The GST consultant handling the portal assumed no further notices could come for FY 2019–20 after expiry of last date.
- The adjudication order (29 Aug 2024) was passed ex parte.

Court's View

- Failure to check portal due to reliance on consultant amounts to procedural oversight, not deliberate default.
- No proper hearing opportunity was provided.
- The impugned order thus violates principles of natural justice.

On Notifications Extending Section 73 Time Limits

- Notifications 9/2023-CT (31-3-2023) and 56/2023-CT (28-12-2023) are subject to:
  - split judicial opinions by High Courts,
  - pending resolution before Supreme Court.
- Delhi HC avoids deciding validity to maintain judicial discipline.

Outcome

1. Order dated 29-08-2024 set aside.
2. Matter remanded to Adjudicating Authority.
3. Assessee allowed to file reply by 15-12-2025.
4. Fresh personal hearing to be granted.
5. Challenge to notifications kept open, subject to SC ruling.
6. Cost of ₹20,000 imposed on assessee.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 02.12.2025

Income Tax

Whether an employee who originally served in a State Government undertaking (PSEB) but was later compulsorily transferred to a Government-owned company (PSPCL) due to restructuring is entitled to full leave encashment exemption under section 10(10AA) for:

1. His service with PSEB (a State Government undertaking), and
2. His service with PSPCL (a company wholly owned by Punjab Government).

Chander Shekher Saini v. ITO
ITAT Chandigarh
13 Nov 2025
AY: 2016-17

Key Findings of ITAT

1. Employees of PSPCL are not State Government employees for Sec. 10(10AA)

- PSPCL, being a Government-owned company, is not the State Government itself.
- Therefore, Sec. 10(10AA)(i) (full exemption for Government employees) does not apply to PSPCL employees.
- For service under PSPCL (16-04-2010 to 30-11-2015), exemption is limited to the Rs. 3 lakh cap applicable to non-government employees.

2. PSEB is a qualifying State Government undertaking

- Service rendered under PSEB (18-11-1983 to 16-04-2010) qualifies for full exemption under section 10(10AA)(i).

3. Benefit cannot be denied merely because employee was compulsorily transferred to PSPCL

- The assessee did not voluntarily leave Government service.
- Transfer to PSPCL occurred due to mandatory restructuring by the State.
- ITAT applied purposive and beneficial interpretation, holding that:

"An employee cannot be deprived of exemption earned during qualifying Government service due to restructuring beyond his control."

4. Exemption allowed proportionately

- Leave encashment relatable to service under PSEB (18-11-1983 to 16-04-2010) is fully exempt.
- Leave encashment relatable to service under PSPCL (16-04-2010 to 30-11-2015) is taxable except for the restricted limit applicable to non-government employees.

5. Appeal partly allowed

- The assessee gets exemption for ₹13.03 lakh attributable to PSEB period.
- Remaining amount (relating to PSPCL period) remains taxable.

Important Legal Principles Applied

A. Literal vs. Beneficial Interpretation

- Strict literal interpretation of Sec. 10(10AA) would deny exemption since retirement occurred from PSPCL.
- ITAT held that such an interpretation would create unintended hardship and defeat the purpose of the provision.

B. Employees cannot suffer due to government restructuring

- Rights earned under pre-restructuring service cannot be extinguished.
- Leave encashment accrues over time; therefore, pro rata exemption is justified.

C. Consistency with ITAT precedents

Tribunal relied on earlier rulings, including:

- Ashwani Kumar Sharma v. ITO
- Arvind Kumar Jolly v. ITO

These held that PSU employees are not Government employees for Sec. 10(10AA), but exempted portions relatable to actual Government service.

Final Outcome

✓ Exemption allowed for leave encashment attributable to PSEB service (₹13.03 lakh).
✗ Exemption denied for the period of service with PSPCL (treated as PSU service).
➡ Appeal partly allowed.

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Date: 02.12.2025

Goods & Services Tax

Whether Section 130 (confiscation of goods) can be invoked solely on the basis of excess/unaccounted stock found during a survey, when the GST Act already provides a special mechanism for tax determination on unaccounted goods under Section 35(6) read with Sections 73/74.

Vidyarthi Dresses v. State of Uttar Pradesh
Allahabad High Court
17 Nov 2025
Writ Tax No.: 4971 of 2025

Key Findings of the High Court

1. Section 130 cannot be invoked only because excess stock is found

- The department relied only on "excess/unaccounted stock" found during a survey.
- HC held that confiscation under Section 130 requires conditions like intent to evade tax, transport without documents, etc.
- Mere existence of excess stock is not grounds for confiscation.

2. Specific mechanism exists under Sections 35(6), 73 and 74

The Court emphasized:

- Section 35(6) mandates that if goods are not recorded in the books,
- → the proper officer must determine tax liability
- → by applying Sections 73 or 74 (normal or fraud-based assessment).
- Since the Act specifically provides this mechanism, Section 130 cannot be used as an alternate route.

3. GST Act is a "complete code"

Once a dedicated provision (Sec. 35(6) + 73/74) applies to unaccounted goods, the department cannot bypass it using Section 130.

4. Issue already settled by High Court and Supreme Court

Multiple binding precedents were cited:

1. Vijay Trading Company v. Addl. Commissioner – Allahabad HC
   - Held Sec. 130 cannot apply to excess stock.
   - Affirmed by Supreme Court:
   - Additional Commissioner Grade-2 v. Vijay Trading Company [2025].
2. PP Polyplast (P) Ltd. v. Additional Commissioner Grade 2 – Allahabad HC
   - Same principle reiterated.
   - Also affirmed by Supreme Court in 2025.
3. State of U.P. v. Additional Commissioner (2025) – Follows above line of reasoning.

Since the Supreme Court has now affirmed the law twice, the position is settled.

Final Decision of the High Court

✓Impugned orders under Section 130 quashed.
✓Writ petition allowed.
✓Any amount deposited by the petitioner to be refunded within one month of producing the certified order.

Legal Principle Established

Excess/unaccounted stock found during survey does not trigger confiscation under Section 130. Instead, the officer must follow the statutory mechanism:
➡ Section 35(6) → detection of unaccounted goods
➡Sections 73/74 → assessment and tax determination
✗ Section 130 → cannot be used as a substitute.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 03.12.2025

Income Tax

Whether TDS credit relating to a property sale can be allowed in the year of transfer even though the purchaser deposited/ reported the TDS in the subsequent year.

Abdul Rahman Asad v. DCIT
ITAT DELHI
AY 2022-23
Order dated 12-11-2025

Held: Yes. TDS credit must be allowed in the year in which the income is assessable (i.e., year of transfer), provided Form 71 is duly filed.

Core Principle Established

TDS credit is linked to the year of income assessability, not the year of TDS deposit.

- Section 199(3) + Rule 37BA(3)(i): TDS credit shall be given for the assessment year in which the corresponding income is assessable.
- Section 155(20) + Rule 134: If TDS is deposited or reported in a later year, assessee can claim the credit for the correct year by filing Form 71 within 2 years.
- Therefore, even if TDS appears in Form 26AS of a later AY, credit must go to the year where the capital gain is taxable.

Facts in Brief

- The assessee, a non-resident, sold an immovable property on 15.09.2021 (PY 2021-22 → AY 2022-23).
- TDS of ₹20.99 lakh was deducted at the time of sale, but the buyer deposited and reported it only in AY 2023-24.
- Assessee declared capital gain and claimed the TDS in AY 2022-23.
- CPC allowed only ₹60,872 (other TDS), disallowed ₹20.99 lakh since not reflected in Form 26AS of AY 2022-23.
- CIT(A) confirmed denial.

Assessee's Key Argument

- Income from sale is taxable in AY 2022-23 under section 45(1) (year of transfer).
- TDS credit must also be given in the same year (s.199 + Rule 37BA).
- Form 71 was filed in time, enabling correction under s.155(20).
- Delay by purchaser cannot deny assessee's lawful credit.

ITAT's Findings

1. Assessee sold property and offered capital gains in AY 2022-23 correctly.
2. TDS was indeed deducted on sale consideration but deposited by buyer in AY 2023-24.
3. Assessee filed Form 71 through ITBA within time limit; hence the AO must apply the "matching principle":
   - Match TDS credit to the year of income.
4. Lower authorities erred in insisting that income should be shifted to AY 2023-24 merely because TDS was deposited in that year.
5. Income is taxed in year of transfer; TDS credit must follow the income, not the 26AS year.

Decision

✓ AO directed to allow TDS credit of ₹20.99 lakh in AY 2022-23
✓ Based on valid Form 71 filed
✓ Appeal allowed

Legal Significance

- Reinforces that Form 26AS mismatch cannot override statutory mandate of section 199 and Rule 37BA.
- Protects taxpayers where buyers delay TDS deposit—particularly important for NRIs selling property.
- Clarifies that section 155(20) + Form 71 creates a statutory remedy; AO cannot deny credit when procedure is followed.

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Goods & Services Tax

Date: 03.12.2025

Whether Rule 86A permits blocking of Electronic Credit Ledger (ECL) beyond the credit actually available at the time of order—creating a negative ITC balance.

hyam Sunder Strips v. Union of India
Date: 04-11-2025
Punjab & Haryana High Court

Held: No. Blocking of ITC beyond the amount available in the ECL is illegal.
Availability of ITC in ECL is a condition precedent for invoking Rule 86A.

Key Legal Holding

Rule 86A cannot be invoked unless ITC is available in the ECL.

- Officers cannot block or freeze more ITC than what exists in the ECL at the moment of passing the order.
- Negative blocking (creating an artificial negative balance) is wholly without jurisdiction.
- Rule 86A is a temporary protective measure, not a recovery mechanism.
- Department is free to proceed under Sections 73/74, 83, 29, etc., for recovery or preventive action, but cannot manufacture a negative ECL balance through Rule 86A.

Facts in Brief

- Petitioners' ECLs were blocked under Rule 86A on allegation of fraudulent/ineligible ITC.
- Blocking amounts exceeded their ledger balances resulted in negative ITC.
  - E.g., Shyam Sunder Strips: Negative ITC ₹34.43 lakh.
- Petitioners challenged this "negative blocking."

Arguments

Petitioners

- Rule 86A permits restricting only the available ITC.
- Blocking beyond available balance violates statutory language "credit... available in the electronic credit ledger."
- Relied on:
  - Samay Alloys (Guj HC)
  - Best Crop Science (Del HC)
  - Kings Security (Del HC) – SLP dismissed by SC (17.05.2025)
  - Karuna Rajendra Ringshia (Del HC) – SLP dismissed by SC (09.07.2025)

Revenue

- Rule 86A aims to curb fraud; should not be restricted by ledger balance.
- Relied on Calcutta, Allahabad & AP High Court decisions allowing blocking even when balance is nil.

Court's Findings

1. Availability of ITC is a prerequisite for invoking Rule 86A.
2. Blocking cannot exceed the ITC present → negative entry is illegal.
3. Affirmed the reasoning of:
   - Samay Alloys (Guj.)
   - Best Crop Science (Del.)
   - Kings Security (Del.) – affirmed by SC
   - Laxmi Fine Chem (Telangana)
4. Disagreed with Calcutta, Allahabad & Andhra Pradesh HCs.
5. Rule 86A is not a recovery provision; recovery must follow sections 73/74.
6. Since the blocking exceeded available ITC, orders were ultra vires.

Final Decision

✓ Impugned blocking orders set aside, to the extent they block ITC beyond the amount available in ECL at the time of the order.
✓ Negative blocking declared illegal.
✓ Department may proceed with lawful recovery proceedings separately.

Practical Impact (for GST professionals)

- Officers CANNOT create negative ITC in ECL under Rule 86A.
- Rule 86A applies only to existing balance—not past alleged availment.
- If ITC is already utilised, Rule 86A cannot be invoked.
- Taxpayers should challenge any blocking that exceeds actual balance.
- SC dismissal of SLPs makes the Delhi HC view nationally persuasive.

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TAX INSIGHTS

By
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Date: 04.12.2025

Income Tax

Taxability of Retirement Benefits: **Gratuity**

An employer must pay gratuity to an employee who has completed 5 years of continuous service when their employment ends due to retirement, resignation, or superannuation. However, if the employee dies or becomes disabled, the employer is required to pay gratuity even if the employee has not completed the full 5-year service period.The taxability of gratuity shall be as under:

Particulars	Taxability
Gratuity received during service.	Fully Taxable
Gratuity received at the time of retirement	
Gratuity received by Government Employees (Other than employees of statutory corporations).	Fully Exempt
Death -cum-Retirement gratuity received by other employees who are covered under Gratuity Act, 1972 (other than Government employees) (Subject to certain conditions).	Least of the following amount is exempt from tax: 1. (*15/26) X Last drawn salary** X completed year of service or part thereof in excess of 6 months. 2. Rs. 20,00,000 3. Gratuity actually received. *7 days in case of an employee of a seasonal establishment. ** Salary = Last drawn salary including DA but excluding any bonus, commission, HRA, overtime, and any other allowance, benefits, or perquisite.
Death -cum-Retirement gratuity received by other employees who are not covered under Gratuity Act, 1972 (other than Government employees) (Subject to certain conditions).	Least of the following amount is exempt from tax: 1. Half month's Average Salary* X Completed years of service 2. Rs. 20,00,000 3. Gratuity actually received. *Average salary = Average Salary of the last 10 months immediately preceding the month of retirement. ** Salary = Basic Pay + Dearness Allowance (to the extent it forms part of retirement benefits)+ turnover-based commission.

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Goods & Services Tax

Date: 04.12.2025

E-way Bill system under GST

1. Introduction

The E-Way Bill (Electronic Way Bill) is an electronic document generated on the GST portal for the movement of goods. It serves as proof that goods are being transported in compliance with GST laws. It is mandatory for interstate and intrastate transportation of goods above the prescribed value threshold.

2. Legal Basis

The provisions relating to the E-Way Bill are contained in:

- Section 68 of the CGST Act, 2017
- Rule 138 to 138E of the CGST Rules, 2017

These rules empower the government to require the generation of an E-Way Bill for the movement of goods.

3. When is an E-Way Bill Required?

A. Mandatory Requirement

An E-Way Bill must be generated when:

1. Movement of goods worth more than ₹50,000:
   - in relation to a supply,
   - for reasons other than supply (e.g., branch transfer, return),
   - or due to an inward supply from an unregistered person.
2. Movement of goods by road, rail, air, or vessel.

B. Even if Value is Less Than ₹50,000

Generation is optional but allowed.

C. Mandatory for Certain Goods Regardless of Value

Example: Transport of handicraft goods or interstate movement by job workers.

4. Who Should Generate the E-Way Bill?

A. Registered Supplier

When goods are supplied by a registered person—whether by their own vehicle, transporter, or hired vehicle.

B. Registered Recipient

If the supplier does not generate it.

C. Transporter

If the supplier or recipient has not generated the E-Way Bill; the transporter must generate Part A and Part B.

D. Unregistered Person

If supplying to a registered person, the recipient is treated as the supplier for compliance purposes.

5. Components of the E-Way Bill

1. Part A

Captures details of:

GSTIN of supplier/recipient, Place of dispatch, Place of delivery, Invoice details, HSN code, Value of goods, Reason for transportation

2. Part B

Captures vehicle details, such as:

- Vehicle number
- Transporter ID (TRANSIN)

Part B is mandatory for the movement of goods unless exempt.

6. Validity of E-Way Bill

Validity depends on the distance travelled:

Cargo Type	Distance	Validity
Over Dimensional Cargo(ODC)	Up to 20 km	1 day
Over Dimensional Cargo(ODC)	Every additional 20 km	+1 day
Other than ODC	Up to 200 km	1 day
Other than ODC	Every additional 200 km	+1 day

7. Exemptions from E-Way Bill Requirements

A. Goods Exempt from E-Way Bill

- LPG supplied to consumers
- Currency
- Jewellery, precious stones
- Postal baggage etc.

B. Situations Exempt

- Movement of goods within 20 km from business premises to a transporter for further transportation.
- Movement of goods by non-motorised conveyance (e.g., handcart).
- Movement between customs port and ICD/CFS.
- Movement under Ministry of Defence.

8. Cancellation of E-Way Bill

- Can be cancelled within 24 hours of generation.
- Cannot be cancelled if it has already been verified by authorities during transit.

9. Verification by Officers

Authorized officers can:

- Intercept any vehicle
- Verify the E-Way Bill (electronically or physically)
- Detain or seize goods in case of non-compliance

QR codes and RFID tags (for certain transporters) enable real-time verification.

10. Penalties for Non-Compliance

If goods are transported without an E-Way Bill:

- Penalty under Section 129:
  - For taxable goods: penalty equal to 200% of the tax payable
  - For exempt goods: 2% of the value or ₹25,000, whichever is less
- Goods and vehicle may be detained or seized.

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TAX INSIGHTS

By
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Date: 05.12.2025

Income Tax

Taxability of Retirement Benefits: **Pension**

Pension is a payment made by the employer after the retirement/death of the employee as a reward for past services. There are two kinds of pension:-
(a) Commuted Pension - Commutation of pension means immediate payment of the lumpsum amount to an employee in lieu of surrender of a portion of the monthly pension.
(b) Uncommuted Pension - When the pension is paid on a periodical basis, it is called an uncommuted Pension.

Particulars	Taxability
Uncommuted Pension	Fully Taxable. However, disability pension payable to disabled armed forces personnel shall be exempt from tax.
Family Pension	33.33% of Family Pension subject to a maximum of Rs. 15,000 shall be exempt from tax. However, the family pension received by the family members of the armed forces shall be fully exempt from tax.
Commuted pension received by an employee of the Central Government, State Government, Local Authority, and Statutory Corporation	Fully Exempt
Commuted pension received by other employees who also receive gratuity	1/3 of the full value of commuted pension will be exempt from tax
Commuted pension received by other employees who do not receive any gratuity	1/2 of the full value of commuted pension will be exempt from tax

Declaration of Foreign Assets and Income

Who Must Disclose Foreign Asset/Income?

- Any Resident in India in the previous year, even if the income for the previous year is below the taxable limit, who has foreign income or a foreign asset.
- A Resident Indian is defined as:
  - An individual who stayed 182 days or more in India in any previous year.
  - OR an individual who stayed 365 days or more in India in four preceding years, AND 60 days or more in the previous year.
  - A Hindu Undivided Family (HUF), firm, or Association of Persons (AOP) is resident in India, except where the control and management of its affairs is situated wholly outside India.
  - A company that is an Indian company, or a company having its effective place of management in India.

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Date: 05.12.2025

What is Included in Foreign Income and Assets?

Foreign Assets

Foreign assets include items located outside India, held in the taxpayer's name or in respect of which the taxpayer is a beneficial owner:

Foreign Depository account, Custodial account, Cash Value Insurance Contract or Annuity Contract, Any account in which the taxpayer has signing authority, Trustee/beneficiary/settlor in any trust created outside India, Bank Account, Foreign Equity and Debt Interest (including ESOPs), Financial Interest in any Entity/Business, Immovable Property, Any other Capital Asset.

Foreign Income

Foreign income includes income from sources located outside India, such as:

Salary, House property income, Business/professional income, Long term capital gains, Short term capital gains, Interest, dividend, royalty (not being part of business income), Fees for technical services (not being part of business income), Gross proceeds, redemption, others.

Where and When to Disclose ?

Where to Disclose

Income Tax Return (ITR) Form: Choose the correct ITR form (other than ITR-1 and ITR-4) as applicable, based on your particulars of income.
ITR-1 and ITR-4 do not have Schedule FA, Schedule FSI, and Schedule TR.

Schedules in the ITR:
Schedule FA: For furnishing details of Foreign Asset(s) and Income arising from that asset(s).
Schedule FSI: For furnishing details of Income accrued or earned from sources outside India and details of any tax relief thereon.
Schedule TR: For providing details of Summary of tax relief claimed for taxes paid or withheld outside India.
Double Taxation Avoidance Agreement (DTAA): Claim tax benefit under DTAA, if applicable, by filling Form 67 online, in addition to Schedule TR.

When to Disclose

At the time of filing the Return of Income before the due date as per Section 139(1), 139(4) and 139(5) of the Income-tax Act, 1961.

If the original return for AY 2025-26 was not filed within the time allowed u/s 139(1), a belated return can be filed till December 31, 2025.

If the original return was already filed but foreign assets and income were not declared, the return must be revised before the due date for revising the return, which is before December 31, 2025.

Consequences of Non-Disclosure

Non-disclosure, non-furnishing, or furnishing inaccurate particulars of foreign income and assets can lead to penalties and prosecution under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Penalties and Legal Actions

- Assessment proceedings may be initiated under the Black Money Act, 2015.
- If the aggregate value of an asset or assets (other than immovable property) exceeds twenty lakh rupees, a penalty of Rs. 10 lakh can be levied.
- Penalty can be imposed under Section 42 of the Black Money Act if a person with foreign assets fails to furnish the return of income and disclose the assets.
- Penalty can be imposed under Section 43 of the Black Money Act where a taxpayer fails to furnish information or furnishes inaccurate particulars about an asset located outside India in an already filed return.
- Prosecution Proceedings can be initiated for non-filing of return / non-furnishing or furnishing inaccurate particulars of foreign assets and income.

Benefits of Disclosure

Complete and accurate disclosure provides the following benefits:

- Voluntary compliance with the Black Money Act, 2015.
- Avoidance of double taxation where taxes are already paid or withheld outside India.
- Prevention from penalties and prosecution relating to non-disclosure.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 06.12.2025

Income Tax

Taxability of Retirement Benefits: **Leave Encashment Salary**

Every entity provides leaves to the employees, which can be availed of by them in emergency situations or for vacations. If these leaves are not availed of by them, they may lapse or are encashed at the year-end or are carried forward to next year, as per the service rules of the employer. The accumulated leaves standing to the credit of an employee may be availed of by the employee during the tenure of employment or may be encashed at the time of retirement or resignation. When leaves are surrendered in lieu of monetary consideration, it is known as 'leave encashment'.

The taxability of leave encashment shall be as under:

Particulars	Taxability
Received during the period of service	Fully Taxable
Received on death of the employee	Fully Exempt
Received on retirement, whether on superannuation or otherwise	
Encashment of unutilized earned leave at the time of retirement of Government employees	Fully Exempt
Encashment of unutilized earned leave at the time of retirement of other employees (not being a Government employee)	Least of the following shall be exempt from tax: a) Amount actually received b) Unutilized earned leave* X Average monthly salary c) 10 months Average Salary** d) Rs. 25,00,000 *While computing unutilized earned leave, earned leave entitlements cannot exceed 30 days for each year of service rendered to the current employer. **Average salary = Average Salary*** of the last 10 months immediately preceding the retirement. ***Salary = Basic Pay + Dearness Allowance (to the extent it forms part of retirement benefits)+ turnover-based commission.

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Date: 06.12.2025

GSTN issues additional FAQs on GSTR-9 and GSTR-9C for FY 2024-25

Query	GSTN Reply
If I paid GST on RCM for FY24-25 in GSTR3B of FY25-26. Should this liability and ITC of RCM be reported in GSTR 9 of FY 2024-25 or FY 2025-26?	This RCM Liabilities and ITC on said RCM transaction should be reported in GSTR-9 of FY 2025-26. **Explanation**- As clarified by CBIC vide Press release dated 3rd July 2019, the RCM Liability may be reported in the year, in which it was paid along with applicable interest (if any). **Relevant extract of the said press release -** Reverse charge in respect of Financial Year 2017-18 paid during Financial Year 2018-19: Many taxpayers have requested for clarification on the appropriate column or table in which tax which was to be paid on reverse charge basis for the FY 2017-18 but was paid during FY 2018-19. It may be noted that since the payment was made during FY 2018-19, the input tax credit on such payment of tax would have been availed in FY 2018-19 only. Therefore, such details will not be declared in the annual return for the FY 2017-18 and will be declared in the annual return for FY 2018-19. If there are any variations in the calculation of turnover on account of this adjustment, the same may be reported with reasons in the reconciliation statement (FORM GSTR-9C).
Ineligible ITC of 23-24, availed in FY 24-25 (Table 4A5 of GSTR 3B) and same was reversed in FY 24-25 (Table 4B1 of GSTR 3B). According to instructions of GSTR 9, we have to report ITC availed of last year FY 2023-24 in Table 6A1 of GSTR 9 of FY 2024-25 i.e. I can report ineligible ITC availed in Table 6A1 but there is no mention of how to show ITC of 23-24 reverse in 24-25 in table 7.	The ITC claimed for FY 2023-24 in the FY 2024-25 needs to be reported in 6A1. However, ITC reversal of FY 2023-24, reported in GSTR 3B for FY 2024-25, need not to report in the Table 7 of GSTR 9 of FY 2024-25. Table 6B to table 6H and Table 7A to table 7H will contain the details of ITC for the current year only (2024-25).
Table 12B of GSTR-9C for FY 2024-25 becomes reductant as Table 7J of GSTR 9 of FY 2024-25 does not consider the ITC of FY 2023-24 claimed or reversed in FY 24-25.	Table 12B capture the ITC booked in earlier FY and claimed in current FY. Therefore, this amount will neither appear in Table 12A nor in Table 12E. Hence it appears that this FY, this may create a mismatch. However, in case of any differences in Table 12F of GSTR 9C, taxpayer may provide the reason for un-reconciled differences in ITC in Table 13 of GSTR 9C.

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Date: 06.12.2025

Query	GSTN Reply
Table 7J of GSTR 9 does not consider 6A1 and therefore the amount in Table 7J does not match with the Table 4C of GSTR 3B of FY 2024-25.	Table 4C of GSTR 3B may contain the ITC of FY 2023-24 claimed or reversed in FY 2024-25. However, the Table 7J of GSTR 9 shows the net ITC pertaining to the current FY only (2024-25). Therefore, there it may create differences between Table 4C of GSTR 3B and Table 7J of GSTR 9, in cases where ITC of preceding FY (2023-24) was reported in GSTR 3B of current FY (i.e. 2024-25).
Can you guide whether ITC reversed during 24-25 pertaining 23-24, how to disclose the same in GSTR-9? whether it is to be reduced from Table 6A1 of GSTR-9 or table 7 or should not be shown at all?	ITC pertaining to 2023-24 which has been reversed in GSTR 3B of 2024-25 then such reversal will not be reported anywhere in GSTR 9 of FY 2024-25 as you need to report the reversal of ITC pertaining to current FY only in Table 7 of GSTR 9 for FY 2024-25.
ITC of FY 23-24 showing in 2B of FY 2023-24, but goods received in April 2024 i.e. FY 24-25 so ITC claimed in 3B of FY 24-25 which we need to report in 6A1 of FY 24-25. So ideally it shouldn't be reported in Table 12B of GSTR 9C as there will be no unreconciled difference but if such ITC is taken in the books in FY 2024-25 instead of FYT 2-023-24 then 12A of 9C will be high and 12E auto-populated from 7J of 9 will be less and there will be unreconciled difference in 12F for which we should give reasons or how to show this unreconciled difference?	ITC which pertain to FY 23-24 should not form part of Audited financial statement of 24-25. However, apparently the ITC amount as reported in Audited Financial Statement depends upon methodology adopted by taxpayer. Accordingly, the value in Table 12A to 12C of GSTR 9C may be reported as per the accounting methodology adopted by taxpayer. However, if in case of any differences in the Table 12F of GSTR 9C, taxpayer may provide the reason for un-reconciled differences in ITC in Table 13 of GSTR 9C.
Where is non-GST purchase reported in GSTR 9?	As there is no specified table in the notified Form GSTR 9, for reporting the Non-GST Purchase hence not required to be reported in the GSTR 9.
Whether Table 4G1 of GSTR 9 to be reported by e commerce operator only?	Table 4G1 of GSTR 9 to be reported by e commerce operator liable to pay the Tax under section 9(5) of CGST Act.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 07.12.2025

Income Tax

Taxability of Retirement Benefits: Voluntary Retirement Scheme

Voluntary retirement is an early retirement option given by an employer to its employees to take retirement before the decided age of retirement. To ensure social security for the retiring employees, employers provide 'voluntary retirement compensation' to its employees. Such compensation is taxable in the hands of the employees as profit in lieu of salary.

However, exemption under Section 10(10C) is allowed to the extent of lower of the following:

(a) Compensation received; or
(b) Rs. 500,000.

The exemption is allowed subject to the following conditions:-

(a) The voluntary retirement compensation is paid by the specified category of employer.
(b) The scheme should be drawn to result in an overall reduction in the existing strength of the employees.
(c) The employee has completed 10 years of service or completed 40 years of age. (This condition is not applicable in the case of employees of a Public Sector Company).
(d) The vacancy caused by the voluntary retirement is not re-filled by any other new hiring. Moreover, the retiring employee must not be employed in any other company or concern of the same management.
(e) The employee has not availed of any tax exemption in respect of voluntary retirement compensation in the past.
(f) The amount of compensation does not exceed 3 months' salary for each completed year of service or salary for the remaining period of employment left before such retirement. 'Salary' for this purpose shall be the total of last drawn basic salary, dearness allowance (if forms part of salary for computing retirement benefits), and commission paid to the employee.
(g) The scheme should apply to all employees, including workers and executives of a concern excluding directors of a company or a co-operative society.
(h) Employee should not claim relief under Section 89 in respect of such compensation.

Taxability of Retirement Benefits: Retrenchment Compensation

Retrenchment Compensation received by a workman under the Industrial Dispute Act, 1947, or any other law for termination of his employment is exempt from tax up to Rs. 5,00,000. The taxability of retrenchment compensation is as follows:

Particulars	Taxability
Payment of compensation under a Scheme approved by the Central Government	Fully Exempt
Payment of compensation on the closure of the undertaking due to the losses	Lower of the following is exempt: (a) Rs. 5,00,000. (b) Retrenchment compensation actually received. (c) Average wage * 15/26 * completed year of continuous service or any part thereof in excess of 6 months.
Payment of compensation on the closure of the undertaking for any other reason beyond the control of the employer	Lower of the following is exempt: (a) Rs. 5,00,000. (b) Retrenchment compensation actually received. (c) Average wage of three months.

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Date: 07.12.2025

Step-by-step guide for filling Schedules FSI, TR, and FA in the Income Tax Return (ITR) for the disclosure of Foreign Assets and Income.

1. Selecting the Appropriate ITR Form

Taxpayers with any foreign assets or income must select an ITR form that includes Schedule **FA (Foreign Assets)**.

- The two simplest ITR forms, ITR-1 and ITR-4, do not contain the required Schedule FA section.
- Important: Taxpayers with foreign assets or income should not file using ITR-1 or ITR-4, as these forms lack the necessary reporting schedules for foreign disclosures.

2. Schedule FSI: Income from Outside India and Tax Relief

Applicability and Scope:

- Schedule FSI applies to taxpayers who are residents of India.
- Taxpayers must report all income that accrues or arises from sources outside India.
- This foreign income must also be separately reported in the head-wise computation of total income, with the relevant head of income clearly indicated.

Key Information to Provide:

- **Country Code:** Use the International Subscriber Dialling (ISD) code of the country where the income originates.
- **Taxpayer Identification Number (TIN):** Enter the TIN of the assessee in the country where tax has been paid. If the country has not allotted a TIN, provide the passport number instead.
- **Tax Relief and DTAA Details:** If tax has been paid outside India and tax relief is being claimed in India, mention the relevant article of the applicable Double Taxation Avoidance Agreement (DTAA).
- **Form 67 Requirement:** Ensure that details of foreign tax credit and income are reported in Form 67 to claim the credit in India.

3.Schedule TR: Summary of Tax Relief Claimed

Applicability and Scope:

- Schedule TR provides a consolidated summary of tax relief being claimed in India for taxes paid outside India, with respect to each country.
- This schedule consolidates the detailed information furnished in Schedule FSI.

Required Entries:

Column	Description
(a) Country Code	Specify the relevant country code using the ISD code.
(b) TIN	Provide the Taxpayer Identification Number or the passport number if TIN is not allotted.
(c) Tax Paid Outside India	Mention the total tax paid on the income declared in Schedule FSI.
(d) Tax Relief Available	Specify the total tax relief available.
(e) Provision of Income-tax Act	Specify the section under which tax relief is claimed.

4.Schedule FA: Foreign Assets and Income Details

Applicability and Scope:

- Residents of India are mandatorily required to furnish details of any foreign assets in this schedule.
- This includes details of all foreign assets or accounts in respect of which you are a beneficial owner, a beneficiary, or the legal owner.
- Schedule FA need not be completed if the taxpayer is classified as "not ordinarily resident" or a "non-resident".

Definitions for Disclosure

- **Beneficial owner:** An individual who has provided consideration for the asset (directly or indirectly) and where the asset is held for the immediate or future benefit (direct or indirect) of that individual or any other person.
- **Beneficiary:** An individual who derives an immediate or future benefit (directly or indirectly) in respect of the asset, where the consideration was provided by any person other than the beneficiary.
- **Note:** If the taxpayer is both the legal owner and beneficial owner, the legal owner status should be mentioned in the ownership column.

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Date: 07.12.2025

Overview of Tables (A1 to G)
Taxpayers must furnish details of foreign assets or accounts held at any time during the relevant calendar year ending on December 31st.

Table	Asset Type	Key Details to Furnish
A1	Foreign Depository Accounts	Peak balance, closing balance, and gross interest paid or credited.
A2	Foreign Custodian Accounts	Peak balance, closing balance, and gross amounts paid or credited (interest, dividend, proceeds from sale, or other income).
A3	Foreign Equity and Debt Interest	Initial value, peak value, closing value, gross interest paid, total gross amounts paid/credited, and proceeds from sale or redemption.
A4	Foreign Cash Value Insurance or Annuity Contracts	Cash or surrender value as at year-end, and total gross amounts paid or credited.
B	Financial Interest in Any Entity Outside India	Investment value at cost, nature and amount of income accrued, portion of foreign source income chargeable to tax in India, and relevant ITR schedule where income was offered to tax. Financial interest includes owning record/legal title, or owning interests through an agent, nominee, corporation, partnership, or trust.
C	Immovable Property Outside India	Investment value at cost, nature and amount of income derived, and the portion chargeable to tax in India with reference to the ITR schedule.
D	Other Capital Assets Outside India	Investment value at cost, nature and amount of income derived, and the portion chargeable to tax in India (excluding stock-in-trade and business assets).
E	Foreign Accounts with Signing Authority	Peak balance or total investment value at cost (if not reported in Tables A1 to D).
F	Trusts Created Outside India	Amount of income derived from the trust that is chargeable to tax in India (for taxpayers serving as trustee, beneficiary, or settlor).
G	Other Foreign-Source Income	Details of any other foreign-source income not included in Tables A1 to F, along with the amount chargeable to tax in India.

5. Currency Conversion and Valuation

- **Exchange Rate Conversion:** All peak balances, investment values, and foreign-sourced income amounts must be converted into Indian currency.
- **Rate Used:** Use the telegraphic transfer buying rate of the foreign currency.
- **Relevant Dates for Rate:** The rate should be as on the relevant date:
  - The date of peak balance in the account.
  - The date of investment.
  - The closing date of the calendar year ending on December 31st.
- **Calendar Year Reference:** For Assessment Year 2025-26, the calendar year reference for foreign assets or accounts is January 1, 2024, to December 31, 2024.
- **Telegraphic Transfer Buying Rate Definition:** This is the rate of exchange adopted by the State Bank of India (SBI) for buying such currency, having regard to guidelines specified by the Reserve Bank of India (RBI).

6. Important Clarification

- **Concurrent Reporting in Schedule AL:** Even if foreign assets have been held during the previous year and duly reported in Schedule FA, such assets are still required to be reported in Schedule AL (if applicable).
- Dual reporting ensures complete transparency and compliance with all disclosure requirements.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 08.12.2025

Income Tax

Vilas Babanrao Kalokhe v. PCIT (Central)
Bombay High Court
16 Oct 2025

Core Holding
Non-payment of self-assessment tax along with the return—when the tax is subsequently paid—does not automatically amount to a "willful attempt to evade tax" under Section 276C(2) of the Income-tax Act. Since the complaint did not establish willfulness, prosecution was held to be an abuse of process and was quashed.

Key Principles Laid Down
1. Strict interpretation of penal tax provisions
   - Section 276C requires a willful attempt to evade tax.
   - Penal provisions must be interpreted strictly, and mere delay or failure is not equivalent to "evasion."
2. Difference between "failure" and "willful evasion"
   - Section 276B (TDS default) punishes mere failure to credit tax—intent is irrelevant.
   - Section 276C(2) applies only where there is a willful attempt to evade payment of self-assessment tax.
   - The legislature intentionally introduced "willful" as a requirement.
3. Delay + subsequent payment = no willful evasion
   - Assessee filed return on 05-11-2022 but paid tax on 16-01-2023.
   - Court held this is delay, not evasion—especially since tax was eventually paid with interest.
4. Complaint lacked essential averments
   - Department failed to plead:
     - how delay amounted to "willful" evasion;
     - that the assessee's financial difficulty claim was false.
   - Absence of such allegations made prosecution unsustainable.

Fact Timeline

Event	Date
Return filed	05-11-2022
Self-assessment tax due	On/before 05-11-2022
Tax actually paid	16-01-2023
AO proposal for prosecution	26-07-2024
Show-cause notice	12-08-2024
Assessee's reply (financial difficulties cited)	16-08-2024
Sanction granted	18-09-2024
Magistrate issued process	05-12-2024
HC quashed prosecution	16-10-2025

Court's Reasoning
A. No willful default established
   - Prosecution under Section 276C(2) requires intentional evasion.
   - Merely not paying tax along with the return does not satisfy this.

B. Subsequent payment negates evasion
   - Payment on 16-01-2023 indicates intention to comply, not evade.

C. Financial difficulty explanation not disproved
   - Assessee's plea of financial stress was not rebutted by the department.
   - The complaint should have averred that the explanation was "sham" or "false."

D. Abuse of process
   - Continuing prosecution when key statutory ingredients are missing amounts to misuse of the criminal process.

Judgment Outcome
- Writ Petition allowed.
- Process issued by Magistrate quashed.
- Complaint dismissed.

Important Case References
Followed
- Unique Trading Co. v. ITO (Bom HC, 2024)

Distinguished
- Kashiram v. ITO (AP HC, 1977)
- Madhumilan Syntex Ltd. v. Union of India (SC, 2007)
- Nayan Jayantilal Balu v. Union of India (Bom HC, 2021)
- ITO v. Sultan Enterprises (Bom HC, 2002)

Takeaways
Section 276C(2) cannot be invoked for mere delayed payment of self-assessment tax unless the complaint specifically pleads and establishes a willful intent to evade tax.

Corrigendum to Tax Insight Dated: 05.12.2025, Topic: Taxability of Retirement Benefits -Pension(family Pension)

Particulars	Taxability
Family Pension	**Old Regime:** ₹15,000 or 1/3rd of pension (lower). **New Regime** (for FY 2025-26): ₹25,000 or 1/3rd of pension (lower). However, the family pension received by the family members of the armed forces shall be fully exempt from tax.

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Date: 08.12.2025

Goods & Services Tax

State of Karnataka v. Taghar Vasudeva Ambrish
Supreme Court of India
04 Dec 2025

Whether renting of a residential building to a company (which then sub-lets rooms as a long-term hostel for students and working professionals) qualifies as "renting of residential dwelling for use as residence" under Entry 13 of Notification 9/2017-IGST (Rate) for the period 2019–2022, thereby exempt from GST.

Supreme Court's Key Holdings

Property IS a "residential dwelling"

- The building is approved/residential in municipal records (BBMP).
- Long-term stay (3–12 months) by students/working women = residential use, not temporary hotel-type accommodation.
- Hostel used for sleeping, living, studying = residential (relying on Bandu Ravji Nikam, Uratemp Ventures, Kashyap, dictionary meanings).
- Therefore, the building qualifies as a residential dwelling.

"Use as residence" condition is satisfied — even through sub-lessees

- Entry 13 does not require the immediate lessee (the company) to personally reside.
- It only requires that the property is used as a residence — which is fulfilled because:
  - The company sub-lets to students and working women who actually reside.
- Lease → sub-lease chain does not break the "use as residence" requirement.
- Exemption is "activity-specific," not "person-specific."

Narrow interpretation would defeat the legislative purpose

- Purpose of Entry 13: residential use should not bear 18% GST.
- If GST is imposed at the first lease step, it will be passed on to students & workers → defeats legislative intent.
- Purposive interpretation applied (citing Mother Superior, Wood Papers).

Exemption is available for period 2019–2022 (pre-amendment)

- Amendment dated 18-07-2022 inserted:
- "Exemption not available where residential dwelling is rented to a registered person."
- This is prospective, not retrospective.
- Dept cannot deny exemption for past years (2019–2022) by applying amended Entry 13 backward.
- Retrospective denial impermissible.

Explanation added from 01-01-2023 reinforces intent

- Even after amendment, exemption continues if:
  - Registered person is a proprietor renting in personal capacity,
  - For own residence,
  - Not for business.
  - Shows consistent legislative intent to protect genuine residential use.

Final Outcome

- Appeals dismissed.
- High Court judgment affirmed.
- No GST applicable on lease rentals for 2019–2022.
- All three conditions of Entry 13 satisfied.

Practical Takeaways

1. Long-term hostels = "residential dwelling"

If stay is beyond temporary, accommodation qualifies as residential.

2. Sub-letting allowed

As long as end-users reside, exemption applies even if the first lessee is a company.

3. Exemption (pre-18 July 2022) still stands

Department cannot demand GST for earlier periods based on later amendments.

4. Exemption is activity-based, not dependent on:
   - whether the lessee is a company,
   - commercial nature of the aggregator,
   - registration status of lessee (for pre-amendment period).

Summary

Renting of a residential dwelling remains exempt under Entry 13 as long as the premises are ultimately used as a residence, even if the immediate lessee does not personally reside; the exemption is activity-centric and cannot be denied retrospectively by later amendments.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 09.12.2025

Income Tax

ITAT Delhi: Holding period of previous owner counts for donee — Gifted shares treated as LTCG; Sec. 54F allowed

DCIT v. Archit Aggarwal
ITAT Delhi, A.Y. 2021-22
Order dated: 25 Nov 2025

Core Issue

Whether the assessee—who received shares as a gift from his uncle, who himself had received them as a gift from another relative—can include the holding period of both previous owners under Section 49(1) to determine whether the shares sold were long-term capital assets, thereby making the resultant gains eligible for Section 54F exemption.

Held: In Favour of the Assessee

1. Holding period of previous owner to be included

Under Section 49(1)(ii) read with Section 2(42A) Explanation 1(i), when a capital asset is acquired by way of gift, the cost and holding period of the previous owner must be taken into account.

2. Both gifts found genuine

- SK → Gift → VP
- VP → Gift → Assessee

CIT(A) accepted the documentary trail (gift deeds, affidavits, demat statements, share movement records), and ITAT agreed.

3. Shares qualify as Long-Term Capital Assets

Since Sudesh Kumari (original owner) had acquired the shares long before 31-03-2016, her long holding period flows to VP and then to the assessee.

4. Capital gains are Long-Term Capital Gains (LTCG)

Therefore, sale of the 6.51 lakh shares results in LTCG, not STCG.

5. Exemption under Section 54F allowed

Assessee invested the sale consideration in a residential property within the stipulated period; thus, 54F applies.

6. Revenue's appeal dismissed

Key Legal Principles Affirmed

1. Section 49(1)(ii): Cost of previous owner

In cases of:

- gift, will, inheritance
- or transfer without adequate consideration
- the cost to previous owner becomes cost to assessee.

2. Section 2(42A) Explanation 1(i): Holding period

The period for which the asset was held by previous owner must be added to assessee's period of holding when acquired by modes listed in Section 49(1).

3. Reliance on Bombay HC ruling in CIT v. Manjula J. Shah

This judgment settled the law that "indexed cost" and "holding period" both flow from the previous owner in Section 49 situations.

Important Findings of the Tribunal

A. Gifts were genuine

- Gift deed from Sudesh Kumari to VP
- Gift deed from VP to assessee
- Demat transfer evidence
- Affidavit from donor
- Share movement statements
- Returns of VCL showing shareholding pattern

AO doubted the genuineness on suspicion; ITAT held that suspicion cannot replace evidence.

B. AO overlooked legal provisions

AO wrongly:

- treated VP's acquisition as a purchase in 2019
- treated assessee's shares as STCAs
- denied 54F exemption

C. CIT(A)'s decision sustained

CIT(A) examined evidence thoroughly and correctly applied Section 49 and Section 2(42A).

Outcome

Revenue's appeal dismissed

Shares treated as long-term capital assets, and Section 54F exemption allowed.

Practical Takeaways

Gifts within family → holding period continuity applies

Gift deeds, affidavits, demat records critical to defend LTCG

AO cannot rely merely on "suspicion" to reject documented gifts

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Date: 09.12.2025

Goods & Services Tax

Delay in GST appeal condoned due to adjudication order being wrongly uploaded under "Additional Notices and Orders" tab on GST portal

Multireach Media (P.) Ltd. v. State of West Bengal
Calcutta High Court
Decided on 19-11-2025
In favour of: Assessee (Matter remanded)

Core Issue

Whether delay in filing a GST appeal can be condoned when the assessee failed to notice the adjudication order because it was incorrectly uploaded on the GST portal under the "View Additional Notices and Orders" tab instead of the conventional "View Notices and Orders" tab.

Held

Delay Condoned — Wrong Portal Tab Created Genuine Ignorance

The High Court held that:

- The GST portal at the relevant time had separate tabs:
  - "View Notices and Orders"
  - "View Additional Notices and Orders"
- Main adjudication orders are not expected to be placed under the 'Additional' tab, and taxpayers cannot reasonably be expected to continuously check that section.
- Since the adjudication order dated 26-09-2023 was uploaded only under the Additional Notices tab, the petitioners understandably remained unaware.
- Similar difficulties faced by taxpayers had already been recognised in earlier Calcutta HC rulings:
  - Mohammad Hasim Khan v. State of West Bengal [2025]
  - Sukumar Kundu v. UOI [2024]
- Therefore, the Appellate Authority's dismissal of the appeal as time-barred was held to be improper.

Directions Issued

- Delay in filing appeal condoned.
- Matter remanded to the Appellate Authority for fresh adjudication on merits.
- Condonation subject to payment of ₹15,000 by the petitioner to the Calcutta High Court Legal Services Committee within two weeks.
- Upon producing the receipt before the Appellate Authority, the impugned order dated 24-07-2025 shall have no effect.

Key Reasoning

1. Portal-related difficulties are a valid ground for condonation when orders are not uploaded in the correct tab.
2. Taxpayers cannot be expected to anticipate that main orders may appear under a section meant for additional notices.
3. Lack of GST Tribunal makes High Court intervention

Result

- Writ petition allowed
- Delay condoned (subject to costs)
- Appeal restored for hearing on merits

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TAX INSIGHTS

By
Tax Research Deparment

Date: 10.12.2025

Income Tax

Allowability of loss arising on conversion of loan into equity under a Corporate Debt Restructuring (CDR) package

DBS Bank Ltd. v. ACIT
ITAT Mumbai
Assessment Years: 2016-17 & 2017-18
Date of order: 18 November 2025

1. Background of the Case

The assessee, DBS Bank Ltd., had lent money to 3i Infotech Ltd.. Under a Corporate Debt Restructuring (CDR) scheme, a part of the outstanding loan was compulsorily converted into equity shares of the borrower.

- Loan converted: ₹33.50 crore
- Shares allotted: 1,69,70,618 shares @ ₹19.74
- Date of allotment: 8 Oct 2015
- Credited to Demat only on 27 Nov 2015
- Market price on credit date: ₹3.95
- Diminution in value: ₹26.79 crore
- Interest portion: ₹16.75 crore
- Net loss claimed: ₹10.04 crore

DBS wrote off the loss in its P&L and claimed:

1. Bad debt u/s 36(1)(vii)
2. Business loss u/s 28
3. Business expenditure u/s 37(1)

2. AO's Stand

The Assessing Officer disallowed the claim on these arguments:

- After conversion into shares, what assessee holds is capital asset → therefore, loss is capital loss, not business loss.
- RBI guidelines cannot override the Income-tax Act (relied on Southern Technologies & TN Power Finance).
- Bank is not a share trader → shares cannot be treated as stock-in-trade.
- If deduction fails under s.36, it cannot be allowed u/s 37.

3. CIT(A)'s Decision

CIT(A) allowed the deduction relying on ITAT's earlier order in AY 2015-16, where similar loss was allowed as business loss / bad debt.

4. ITAT Ruling (Key Principles)

4.1 Nature of a Bank's Loan Asset

- Loan is circulating capital / stock-in-trade for a bank.
- Conversion into shares under CDR is not a fresh investment.
- Conversion was a compelled restructuring measure, not voluntary.

Therefore, economic substance = erosion in value of an existing loan asset.

4.2 Loss is a Business Loss u/s 28

- Shares were acquired in substitution of loan, not as investment.
- Loss = difference between carrying value of loan and realisable value of substituted shares.
- This arises in the ordinary course of banking business → allowable u/s 28.

4.3 Reliance on Precedent

ITAT noted that in assessee's own case for AY 2015-16, identical loss was allowed.
→ Consistency principle applies.

5. Final Decision

ITAT Mumbai held in favour of DBS Bank:

- Loss on compulsory loan-to-equity conversion is allowable as:
  1. Business Loss u/s 28, or
  2. Bad Debt u/s 36(1)(vii), or
  3. Business Expenditure u/s 37(1) (alternative basis)
- AO's disallowance of ₹10.04 crore deleted.
- Revenue's appeal dismissed.

6. Key Takeaways

1. For Banks, loans = circulating capital
   - Losses on restructuring are not capital in nature.
2. Compulsory conversion under CDR is not an investment
   - It is only a recovery mechanism.
3. Diminution in value is real, measurable, and allowable
   - Either as business loss, bad debt, or business expenditure.
4. RBI norms, accounting practices, and banking realities are relevant
   - Recognising diminution is commercially necessary.
5. Precedent in same assessee's case strengthens claim

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Date: 10.12.2025

Goods & Services Tax

Eligibility of Input Tax Credit (ITC) on rooftop solar plant installed for captive power usage.

ITC Allowed on Rooftop Solar Plant for Captive Use — AAR Rajasthan (Pristine Industries Ltd.)
Order No.: RAJ/AAR/2021-22/16

1. Facts of the Case

- Applicant: Pristine Industries Ltd., manufacturer of PP/HDPE woven sacks (taxable @18%).
- Installed a 620+ kW rooftop solar power plant on the roof of its factory at Abu Road, Rajasthan.
- Electricity generated is entirely for captive consumption in manufacturing operations.
- Applicant procured solar panels, transformers, meters, wiring, and related supplies; work order included design, supply, civil work, erection, and commissioning.
- The plant was capitalised as "Plant and Machinery" in the books.

2. Core Question Raised

Whether ITC is available on:

- Inputs,
- Capital goods, and
- Input services
- used for installation of the rooftop solar plant, considering Sections 16 and 17 of the CGST/RGST/IGST Acts, especially whether it is blocked credit under Section 17(5).

3. Key Legal Principles Considered

Section 16 – Eligibility of ITC

A registered person is entitled to ITC if:

1. Goods/services are used in business.
2. Possession of valid tax invoice.
3. Goods/services have been received.
4. Tax has been paid to Government.
5. Returns furnished.

Section 17(5)(c) & (d) – Blocked Credits

ITC is NOT available for:

- Works contract or goods/services used in construction of immovable property,
- except when it is "plant and machinery."

Explanation to Section 17(5) – Definition of "Plant and Machinery"

Plant and machinery includes:

- Apparatus, equipment, machinery
- Fixed to earth by foundation/structural supports
- Used for making outward supply

But excludes:

- Land, building, civil structures
- Telecom towers
- Pipelines outside factory

4. AAR Findings

(a) Is the rooftop solar plant immovable property?

- Yes, because it is fastened to the earth via the building structure.
- Installation involves foundations, supports, and civil work.
- Hence, it is an immovable property under Section 3(26) of the General Clauses Act.

(b) Does it qualify as "plant and machinery"?

- Yes. Solar plant constitutes:
  - Apparatus / equipment / machinery
  - Fixed to earth
  - Used to generate power for manufacturing taxable supplies
- It is not excluded under the Explanation (not land, building, civil structure, telecom tower, or external pipeline).

(c) Is ITC blocked under Section 17(5)?

- No.
- Even though the plant is immovable property, it qualifies as plant and machinery, so the block on ITC does not apply.

(d) Conditions for ITC

- Goods must be capitalised as capital goods.
- Section 16 conditions must be met.
- Rule 43 applies for capital goods ITC (useful if partly used for exempt supplies; not applicable here since use is 100% for taxable manufacturing).

5. Final Ruling

✓ ITC is admissible on:

- Inputs
- Capital goods
- Input services
- used for installation of the rooftop solar power plant for captive consumption.

✓ The solar plant qualifies as "plant and machinery."
✓ Therefore, ITC is NOT blocked under Section 17(5).

6. Practical Implications

Businesses installing rooftop or ground-mounted captive solar plants may avail ITC if:

1. Plant is used in manufacture/supply of taxable goods or services.
2. Plant is capitalised as machinery.
3. It is not part of excluded civil structures.
4. ITC conditions under Section 16 are satisfied.

This ruling supports a broader understanding that renewable-energy-based captive plants generally qualify for ITC under GST.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 11.12.2025

Income Tax

Reassessment – Scope of additions – Requirement that addition must be made on the very ground recorded for reopening

PCIT v. Naveen Infradevelopers & Engineers (P.) Ltd.
16 Oct 2024

Where reassessment is initiated for a specific recorded reason, but no addition is made on that very issue, the Assessing Officer cannot sustain additions on other issues discovered during reassessment.
This flows from the binding Delhi HC precedent in Ranbaxy Laboratories Ltd. v. CIT (2011) (Delhi).

Held

- Reopening was based solely on discrepancy between declared turnover (₹52.5 cr) and bank credits (₹139 cr).
- AO ultimately made no addition on this ground; instead, he made Section 68 additions (₹65.40 cr) on unrelated issues.
- CIT(A) deleted the additions following Ranbaxy.
- ITAT affirmed CIT(A).
- High Court held that the issue is squarely covered by Ranbaxy and ATS Infrastructure (2024/2025).
- No substantial question of law arises.
- Revenue's appeal dismissed.
- Decision: In favour of the assessee.

Key Points from the Judgment

1. Reopening must stand on its own recorded reasons
If reassessment fails on the foundation reason, the AO cannot assess other escaped income.
This is a direct application of Ranbaxy Laboratories and Jet Airways (Bombay HC).

2. Explanation 3 to Section 147 does not override this rule
Explanation 3 allows AO to assess other issues only if the reassessment proceedings are validly open. If the main reason fails, the entire reassessment collapses.

3. Delhi High Court confirmed settled position
Since the recorded reason (bank-credit/turnover mismatch) resulted in no addition, the AO lacked jurisdiction to make additions on other matters.

Facts in Brief

- Notice u/s 148 issued for turnover–bank credit mismatch.
- Assessee explained difference as loan receipts.
- AO still made unrelated addition u/s 68 of ₹65.40 crores.
- CIT(A) deleted the addition — no addition made on the "reason recorded".
- ITAT upheld deletion.
- Revenue appealed u/s 260A.
- High Court dismissed the appeal.

Precedents Followed

1. Ranbaxy Laboratories Ltd. v. CIT (Delhi HC, 2011)
2. ATS Infrastructure Ltd. v. ACIT (Delhi HC, 2024/2025)

Both hold that if no addition is made on the recorded issue, reassessment cannot survive.

Final Outcome

Appeal dismissed. No interference with ITAT's order.
Additions under Section 68 deleted.

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Date: 11.12.2025

Goods & Services Tax

Nagar Nigam lost power to levy advertisement tax after introduction of GST Act: Allahabad HC

HIGH COURT OF ALLAHABAD
Saffron Communication (P.) Ltd. v. State of U.P.
WRIT TAX No. 813 of 2019
Date: 13 November 2025

Synopsis

GST — After the enactment of GST, the statutory power of municipalities in Uttar Pradesh to levy advertisement tax stood completely omitted. Consequently, Nagar Nigam had no authority to impose or recover advertisement tax post-GST. Any demand notice or recovery certificate issued thereafter is unsustainable.

Refund — Where the assessee had deposited advertisement tax in advance under pre-GST agreements, and due to the GST rollout the municipal power to levy such tax stood extinguished, refund is allowable for the portion relating to 01.07.2017–12.02.2018, subject to unjust enrichment.

Headnote

Advertisement Tax – Power of Municipality – Repeal & Saving – Post-GST Period 13.02.2018 to 12.02.2019

The petitioner, an advertising service provider, had entered into three municipal agreements for hosting hoardings. Under these agreements, advertisement tax for the first year was paid in advance. With effect from 01.07.2017, the U.P. GST Act, 2017 came into force and omitted Sections 172(2)(h) and 192 of the U.P. Municipal Corporation Act—provisions that empowered levy of advertisement tax.

Petitioner argued that after GST, the municipality ceased to have competence to levy advertisement tax. Nagar Nigam relied on the savings clause and on pre-GST contract obligations. Demand notice dated 20.09.2018 and recovery certificate dated 12.06.2019 were issued.

Held:

- By the 101st Constitutional Amendment, Entry 55 of State List was omitted and the State lost competence to levy advertisement tax.
- With the omission of municipal charging provisions under the GST enactment, the Nagar Nigam completely lacked statutory authority to levy or recover advertisement tax post-GST.
- Issue is squarely covered by Pankaj Advertising v. State of U.P. [2019] and DM Advertisers Agency v. State of U.P. [2019] — both holding that municipalities cannot impose advertisement tax after 01.07.2017.
- As no contrary judgment was shown, the demand notice and recovery certificate were quashed.
- [Sections 173, 174, UPGST/CGST Acts; Constitution (101st Amendment), Section 172(2)(h), Section 192 of UP Municipal Corporation Act]
- In favour of assessee.

Refund – Advertisement Tax – Repeal & Saving – Period 01.07.2017 to 12.02.2018

The petitioner had deposited advertisement tax in advance under pre-GST agreements. After GST commenced (01.07.2017), the municipal power to levy advertisement tax stood omitted. Petitioner sought refund for the post-GST portion of the first contract year. Nagar Nigam resisted on unjust enrichment and the savings clause.

Held:

- Refund claim for advertisement tax collected for 01.07.2017–12.02.2018 is valid.
- The relevant amount must be refunded, subject to unjust enrichment.

[Section 54 read with Section 174, CGST/UPGST Act; U.P. Municipal Corporation Act]
In favour of assessee

.

Case Review

- Pankaj Advertising v. State of U.P. [2019] 1 — followed
- DM Advertisers Agency v. State of U.P. [2019]— followed

Final Order

1. Demand notice (20.09.2018) and Recovery Certificate (12.06.2019) for advertisement tax for 13.02.2018–12.02.2019 are quashed.
2. Nagar Nigam must compute and refund advertisement tax for 01.07.2017–12.02.2018 within three months, subject to unjust enrichment.
3. Writ petition allowed; no costs.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 12.12.2025

Income Tax

ITAT Delhi: Set-off of Capital Loss Allowed Despite Different Tax Rates

Ira Sharma v. DCIT, CPC
Order dated: 18 November 2025
AY 2023-24

Key Holding

The ITAT held that set-off of:

- Brought-forward Long-Term Capital Loss (LTCL), and
- Current-year Short-Term Capital Loss (STCL)

against Long-Term Capital Gains (LTCG) is permissible under Section 70, even if the tax rates applicable to gains and losses differ.

Reason:

Section 70 uses the expression "similar computation", which refers only to the head "Capital Gains", not parity of tax rates.

Since losses arose from assets taxable at a higher rate, setting them off against gains taxable at a lower rate does not prejudice revenue.

Outcome

- AO is directed to allow:
  - Set-off of brought-forward LTCL ₹7,09,283
  - Set-off of current-year STCL ₹10,56,001
  - Set-off of current-year STCL on mutual fund redemption ₹7,50,902
- CPC and CIT(A)'s disallowance quashed.
- Appeal allowed in full.

Facts in Brief

- Assessee reported LTCG from listed shares/ NCDs/ mutual funds.
- Claimed set-off of:
  - B/F LTCL
  - Current-year LTCL
  - Current-year STCL
- CPC denied set-off, arguing losses and gains were not from the same computation due to different tax rates.
- CIT(A) confirmed the disallowance.

Assessee appealed to ITAT.

Tribunal's Reasoning

1. Meaning of "Similar Computation" (Section 70)
   - Section 70(2): STCL can be set off against either STCG or LTCG.
   - Section 70(3): LTCL can be set off only against LTCG.
   - The phrase "similar computation" only refers to the same head of income — Capital Gains, not the rate at which such gains/losses are taxed.
2. Rate Differences Are Irrelevant
   - Law does not require that the tax rate on the loss and the gain be the same.
   - The computation mechanism, not the rate, determines allowability.
3. No Loss to Revenue
   - Losses arose from assets taxable at a higher rate,
   - Gains arose from assets taxable at a lower rate,
   - Set-off reduces income taxable at lower rate, which does not prejudice revenue.
4. Precedents Relied Upon

The Tribunal followed:

- ACIT v. MAC Charles India Ltd. (ITAT Bangalore)
- Keshav S. Phansalkar v. ITO (ITAT Mumbai)

Both cases allowed capital-loss set-off despite differing tax rates.

Key Legal Principle Established

Capital losses (STCL & LTCL) may be set off against capital gains as permitted under Section 70, irrespective of whether the underlying assets are taxed at different rates.

Tax-rate parity is not a condition for set-off.

Practical Implications

- Taxpayers can:
  - Set off STCL against LTCG, even if LTCG is taxable at 10% (e.g., section 112A).
  - Set off LTCL against LTCG (regardless of rate: 10%, 20%, or special rates).
- Officers cannot deny set-off merely because:
  - STCG or LTCL relate to assets taxed at concessional or higher rates.
  - Gains are from different classes of assets.

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Date: 12.12.2025

Goods & Services Tax

SC: Writ Against CEGAT's Confiscation/Penalty Order Not Maintainable When Alternate Remedy Exists

Rikhab Chand Jain v. Union of India
Decision dated: 12 November 2025
Civil Appeal No. 6719 of 2012

Core Holding

A writ petition challenging an order of confiscation and penalty passed by CEGAT is not maintainable when the statute provides an equally efficacious alternate remedy, in this case, a reference/appeal to the High Court under Sections 115 and 130/130A of the Customs Act, 1962.

The High Court's refusal to entertain the writ petition was therefore upheld.

Outcome: Appeal dismissed.
In favour of Revenue.

Background Facts

- In 1992, authorities seized 252.177 kg of allegedly smuggled silver.
- On 7 May 1996, the adjudicating authority ordered confiscation and imposed a ₹50,000 penalty.
- On appeal, CEGAT (23 June 2000):
  - Upheld confiscation,
  - Reduced penalty to ₹30,000.
- Instead of filing a statutory reference/appeal to High Court within 180 days (under Section 130A), the appellant filed a writ petition only in 2003.
- High Court dismissed the writ petition citing:
  - Failure to exhaust statutory remedy, and
  - Lack of merit.

The matter reached the Supreme Court.

Issues Before the Supreme Court

1. Was the High Court justified in refusing to entertain the writ petition due to availability of an alternate statutory remedy?
2. Could the appellant bypass statutory remedies and directly invoke Article 226 despite delay and omission?

Supreme Court's Key Observations

1. Alternate Remedy Doctrine – Writ Not Maintainable

The Court reaffirmed well-settled principles:

- Writ jurisdiction is discretionary, not automatic.
- If an effective alternate remedy exists, writ courts should normally refuse to entertain petitions unless exceptions apply:
  - Fundamental rights violation
  - Violation of natural justice
  - Lack of jurisdiction
  - Challenge to constitutionality

None of these exceptions applied.

This aligns with rulings in:

- State of U.P. v. Md. Nooh
- Titaghur Paper Mills v. State of Orissa
- Godrej Sara Lee v. Excise and Taxation Officer (2023)

2. Remedy Before High Court Itself Is an Even Stronger Reason to Reject Writ

The Court relied on the Constitution Bench ruling in Thansingh Nathmal v. A. Mazid (AIR 1964 SC 1419):

When the statute provides a remedy before the High Court itself, the writ jurisdiction under Article 226 cannot be used to bypass that statutory mechanism.

This principle is directly applicable here because the Customs Act gave the appellant an appellate remedy before the same High Court, just in a different jurisdiction (i.e., reference jurisdiction).

3. Petitioner Cannot Claim Writ Relief After Letting Statutory Remedy Lapse

The Constitution Bench in A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani (1961) held:

If the petitioner, by his own fault, allows the statutory remedy to lapse due to limitation, he cannot seek writ relief as a substitute.

The appellant:

- Did not file a reference appeal within 180 days,
- Approached writ jurisdiction after nearly 3 years,
- Offered unconvincing explanations.

Therefore, the High Court rightly refused to intervene.

4. Delay and Laches – Writ Filed After Unreasonable Delay

Even though Article 226 has no strict limitation period, writ petitions must be filed within a reasonable period.

The appellant should have:

- Filed a reference application under Section 130A,
- Sought condonation of delay (since the Limitation Act was not excluded).

Instead, he filed a writ after years, which the Court held unjustifiable.

5. Confiscation Challenge Was Not Properly Pleaded

Though the appellant argued that confiscation was challenged before CEGAT, the writ petition lacked proper pleadings to prove:

- That the confiscation challenge was argued before CEGAT, and
- That CEGAT failed to consider it.

Thus, even on merits, the High Court was correct to reject the petition.

Final Decision

- Supreme Court upheld the High Court's order.
- Held that invoking writ jurisdiction without exhausting statutory remedy was impermissible.
- Dismissed the civil appeal.

Result: In favour of Revenue.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 13.12.2025

Income Tax

ITAT Delhi: Reopening u/s 148 invalid due to 'borrowed satisfaction' and generic reasons

Aroma Chemicals v. ACIT
AY: 2015-16
Order dated: 20-11-2025

Core Issue

Whether reassessment proceedings initiated under section 147/148 on the basis of a generic investigation report, without assessee-specific analysis or independent application of mind by the AO, are legally sustainable.

Key Holding

No.
The reopening was invalid in law as the reasons recorded amounted to "borrowed satisfaction" and failed to establish a live nexus between the information received and the assessee's alleged escapement of income.

Why the Reopening Failed

The Tribunal found multiple fatal defects in the recorded reasons:

1. No assessee-specific material
   - Reasons merely stated conclusions from a DIT (I&CI) report
   - No explanation of how or why the assessee's transactions were non-genuine
2. No independent application of mind
   - AO simply reproduced investigation findings
   - Downloading the ITR was the only "enquiry" done by AO
3. Absence of factual linkage
   - No details of:
     - Specific scrips
     - Price movements
     - Counter-parties
     - Trade timing or quantities
   - SEBI / Supreme Court observations cited without showing applicability to assessee's case
4. Reasons contained conclusions, not reasons
   - Income labelled as "bogus" and "undisclosed" without evidentiary basis
   - Contradictory statements regarding whether original assessment was completed

Result

- Notice u/s 148 dated 30-03-2021: QUASHED
- Reassessment order u/s 144 r.w.s. 147 dated 27-03-2022: VOID
- Entire proceedings held illegal and without jurisdiction

Judicial Precedent Followed

PCIT v. Meenakshi Overseas (P) Ltd. [2017] (Delhi HC)
Reopening based on investigation reports without AO's independent analysis is impermissible and amounts to borrowed satisfaction.

Practical Takeaways

- Reopening can be challenged where:
  - Reasons are cut-paste investigation reports
  - No live link between information and escapement
  - AO records conclusions instead of reasoning
- Especially relevant in cases involving:
  - Alleged accommodation entries
  - Reversal trades / F&O cases
  - Insight Portal / STR-based reopenings

Key Notes

Reassessment cannot survive where the AO merely borrows conclusions from an investigation wing report without assessee-specific facts or independent application of mind.

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Date: 13.12.2025

Goods & Services Tax

Gujarat HC: Issuance of SCN without pre-consultation notice (DRC-01A) held prima facie improper

Case: Luxor Hospital v. Union of India
20-11-2025

Issue Involved

Whether issuance of a show-cause-cum-demand notice under section 74 of the CGST/GGST Act without first issuing Form GST DRC-01A (pre-consultation notice) is legally sustainable.

Petitioner's Contention

- SCN dated 27-05-2024 was issued directly, without pre-consultation notice under:
  - Section 74(5) of CGST/GGST Act, and
  - Rule 142(1A) of CGST/GGST Rules.
- Though post-15-10-2020 amendment uses the word "may", it should be read as "shall".
- Otherwise, Section 74(5) becomes otiose/redundant.

High Court's Observations (Prima Facie)

- The Court found substance in the petitioner's submissions.
- It noted that the issue requires consideration and adjudication.
- Pending final hearing, protective relief warranted.

Ad-Interim Relief Granted

Notice issued to respondents
Petitioners to cooperate in adjudication proceedings
Respondents restrained from passing final order during pendency of writ petition

Key Legal Significance

- Reinforces judicial trend that pre-consultation under DRC-01A is not a mere formality, especially in section 74 (fraud/suppression) cases.
- Opens the door for:
  - Challenging SCNs issued straightaway without DRC-01A
  - Arguing that "may" = "shall" to give meaningful effect to Section 74(5)

Practical Takeaways

- If SCN u/s 74 is issued without DRC-01A:
  - Strong ground for writ petition
  - At least interim protection against final adjudication possible
- Particularly useful in:
  - High-pitched demands
  - Fraud / suppression allegations
  - Faceless GST adjudications

Delhi HC seeks joint affidavit to determine 'proper officer' for export-related IGST refund SCNs

Case: Talbros Sealing Material (P.) Ltd. v. Addl. Commissioner of Customs (Export)
Date: 21-11-2025

Backdrop of the Dispute

- Petitioner: Exporter of gaskets and sealing materials
- IGST paid on exports and refund claimed
- SCN issued by Customs Department alleging:
  - Wrong classification (HSN 40169340 vs 45041010)
  - Inadmissible IGST refund
  - Excess drawback & RoDTEP
- Order-in-Original passed by Customs (Export) imposing recovery, fines & penalties

Key Legal Question

Who is the 'proper officer' to issue SCN and raise demand in export-related IGST refund cases?

- Customs authorities, or
- GST authorities under CGST/IGST Acts?

Petitioner's Argument

- IGST is governed by IGST Act, and by virtue of section 20, recovery provisions of CGST Act apply
- Therefore, only a "proper officer" under CGST Act (section 73/74) can issue SCN for IGST refund
- Customs authorities lack jurisdiction for GST-side recovery

Revenue's Stand

- Customs officers are "proper officers" under section 2(2) of the Customs Act, 1962
- They are competent to issue SCN for export-related demands

High Court's Directions

Classification issue → relegated to statutory appeal u/s 107
Jurisdiction issue → requires deeper consideration
Joint affidavit directed from:

- Customs Department
- GST Department

To clarify who is the proper officer in such export-refund cases
Procedural Relief

- Petitioner permitted to file appeal on classification within 30 days
- Appeal not to be dismissed on limitation
- Matter listed for further hearing after affidavits

Why this Order is Important

- Addresses long-standing jurisdictional confusion:
  - Customs vs GST authorities
- Has serious implications for:
  - IGST refund rejections
  - Export incentive recoveries
  - Dual SCNs by different departments
- Outcome may affect:
  - Validity of past SCNs
  - Overlap of Customs & GST powers

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TAX INSIGHTS

By
Tax Research Deparment

Date: 14.12.2025

Income Tax

ITAT Hyderabad: No penalty u/s 270A for offering income under wrong head

Case: Penninti Vivekananda Rao v. ADIT (Intl. Taxation)
AY: 2020-21
Order dated: 19-11-2025

Core Issue

Whether penalty for misreporting of income under section 270A(9) can be levied merely because income was offered under an incorrect head, despite full disclosure of facts.

Facts in Short

- Assessee disclosed income from surrender of Bajaj Equity Plus Fund
- Offered as Capital Gains
- AO reclassified it as Income from Other Sources
- Penalty levied u/s 270A alleging misreporting
- CIT(A) confirmed penalty

Tribunal's Key Findings

- Income was fully disclosed in the return
- Only dispute was head of income, not quantum or concealment
- No misrepresentation or suppression of facts
- Case does not fall under clauses (a)–(f) of section 270A(9)

Legal Reasoning

- Section 270A(9) applies only where there is:
  - Misrepresentation
  - Suppression of facts
  - False entries
  - Unrecorded receipts, etc.
- Wrong head of income ≠ misreporting
- At best, it is a bonafide classification error
- Penalty under section 270A is not automatic and requires culpable conduct

Penalty Deleted

Penalty of ₹2.48 crore quashed
AO directed to delete penalty

Judicial Support

- Reliance Petroproducts (SC) – wrong claim does not mean concealment
- D.C. Polyester Ltd. (Mumbai ITAT)
- S. Saroja (Chennai ITAT)

Practical Takeaways

- Strong defence in penalty cases involving:
  - Reclassification of income
  - Change in head of income
  - Bona fide interpretation disputes
- Emphasize:
  - Full disclosure
  - Absence of false facts
  - Bonafide belief

Key Note

Penalty under section 270A(9) cannot be levied merely for offering income under an incorrect head when all material facts are fully and truly disclosed.

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Date: 14.12.2025

Goods & Services Tax

Kerala HC: State GST officers validly cross-empowered to issue CGST SCNs—no separate notification required

Pinnacle Vehicles and Services (P.) Ltd. v. Joint Commissioner (Intelligence & Enforcement)
Date: 15-01-2025

Issue

Whether State GST officers can issue:

- Authorization and
- Show Cause Notices under section 74 of the CGST Act

without a specific Government notification prescribing conditions for cross-empowerment under section 6(1) of the CGST Act.

Petitioner's Contention

- Section 6(1) of CGST Act requires:
  - Government notification on GST Council's recommendation
- In absence of such notification:
  - SGST officers lack jurisdiction to issue CGST SCNs
- Relied on Madras HC ruling in Tvl. Vardhan Infrastructure

High Court's Ruling

Challenge rejected
Jurisdiction upheld

Key Legal Findings

1. Section 6(1) itself is a statutory mandate
   - Cross-empowerment flows directly from legislation
   - It is presently unqualified
2. Notification is needed only to impose restrictions
   - Phrase "subject to such conditions as the Government shall… specify" means:
     - Conditions may be imposed later
     - Until then, full cross-empowerment operates
3. No notification ≠ no power
   - Absence of notification does not suspend empowerment
   - It only means no conditions are imposed yet
4. Harmonious GST framework
   - Prevents parallel proceedings
   - Ensures single comprehensive adjudication
   - Supported by section 6(2) safeguards

Precedents Relied Upon

- Indo International Tobacco Ltd. (Delhi HC) – cross-empowerment upheld
- Distinguished & disagreed with:
  - Tvl. Vardhan Infrastructure (Madras HC)

Outcome

- Writ petition dismissed
- SGST officers' authorization and SCN under CGST Act are valid
- Assessee relegated to statutory adjudication remedies

Practical Implications

- Strong precedent in favour of Revenue
- Weakens jurisdiction-based challenges against:
  - SGST officers issuing CGST SCNs
- Particularly relevant for:
  - Section 74 proceedings
  - Intelligence & enforcement cases

Key Note

Section 6(1) of the CGST Act itself confers cross-empowerment on SGST/UTGST officers to act as proper officers under the CGST Act; a notification is required only to impose conditions, not to activate the power.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 15.12.2025

Income Tax

No concealment penalty if no incorrect or erroneous details were supplied in ITR: Gujarat HC

Director of Income-tax (Intl. Taxation) v. Niko Resources Ltd. (13-11-2025)

Penalty under section 271(1)(c) cannot be levied merely because additions or disallowances are made, unless there is a categorical finding that particulars furnished in the return of income were incorrect, erroneous, or false.

A bona fide claim, even if ultimately disallowed, does not amount to furnishing inaccurate particulars of income.

Key Legal Principles

1. Wrong claim ≠ inaccurate particulars.
2. Disallowance of a claim made on disclosed facts does not ipso facto attract penalty under section 271(1)(c).
3. Mandatory finding by AO.
4. In the absence of a specific finding that details in the return were false or erroneous, penalty proceedings fail.
5. Reliance Petroproducts applied.
6. The Court reaffirmed the Supreme Court ruling that making an unsustainable claim in law is not concealment.
7. Debatable / bona fide issues.
8. Claims under sections 42, 80-IB(9), and depreciation on drilling platforms involved interpretation of law and were bona fide.
9. Consistency with earlier rulings.
10. Gujarat HC's own decision holding mineral oil wells as 'plant' and not 'building' further negated the penalty on depreciation issues.
11. MAT consideration (supportive ground).
12. Where tax liability ultimately arises under MAT and remains unchanged, penalty for concealment may not be justified.

Held

The Tribunal was right in deleting the penalty, as:

- All material facts were disclosed in the return,
- There was no finding of falsity or inaccuracy in particulars furnished, and
- The claims were bona fide and legally arguable.

Revenue's appeals dismissed.

Practical Significance

Strong authority against mechanical levy of penalty
Useful in cases involving:

- Section 42 (oil & gas sector),
- Section 80-IB deductions,
- Depreciation classification disputes,
- Penalty proceedings following quantum additions,
- MAT cases with no tax evasion impact

Takeaway

Section 271(1)(c) penalty fails unless the return itself contains false or inaccurate particulars—mere rejection of a bona fide claim is not enough.

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Date: 15.12.2025

Goods & Services Tax

Writ relief denied where petitioner engaged in collusive fake ITC scheme and misused GST framework

Korfex Industries (P.) Ltd. v. State of Rajasthan (07-11-2025)

Core Issue

Whether writ relief under Article 226 could be granted to quash detention/seizure proceedings under sections 67, 68, 129 and 130 of the CGST Act, when investigation revealed that the petitioner was part of a systematic fake ITC and bogus invoice racket, despite certain procedural lapses by GST authorities.

Held

Writ petition dismissed with heavy costs.

Equitable relief denied as the petitioner had approached the Court with unclean hands and had misused the GST framework to defraud the public exchequer.

Key Findings

1. Equitable jurisdiction barred by fraudulent conduct
   - Article 226 relief is discretionary and equitable.
   - A litigant engaged in fraud, collusion, or misuse of statutory provisions cannot invoke writ jurisdiction, even if procedural irregularities exist.
   - "Law protects law-abiding citizens, not those who subvert the statutory framework."
2. Fake ITC and bogus supply chain established (prima facie)
   - Petitioner colluded with non-existent, de-registered and suspended firms across Delhi, Haryana, Punjab and Himachal Pradesh.
   - Bogus entities generated artificial outward supplies, offset through fake ITC, exploiting lack of automated cross-verification in GST portal.
   - Petitioner was the ultimate beneficiary of fake credit exceeding ₹100 crores.
3. Procedural lapses do not override substantive fraud
   - Court acknowledged:
     - Vehicle had reached destination,
     - Form MOV-02 was improperly issued treating goods as "in transit",
     - Form MOV-03 extension was not issued.
   - However, procedural deviations cannot shield tax fraud, particularly when statement of driver showed goods originated from unknown persons in Delhi, contrary to documents.
4. Wide interpretation of 'contravention' under section 130
   - "Contravention" includes misuse of statutory processes, colourable transactions and exploitation of loopholes.
   - Confiscation proceedings under section 130 justified.
5. Doctrine of clean hands reaffirmed
   - Reliance placed on Tomorrowland Ltd. v. HUDCO (2025) 4 SCC 19.
   - Courts cannot become instruments to legitimise inequitable or fraudulent conduct.
6. GST as a trust-based regime
   - Exploiting systemic gaps in electronic compliance amounts to sabotage of GST architecture.
   - Court urged authorities to plug portal loopholes to prevent recurrence.

Final Order

- Writ petition dismissed
- Costs imposed: ₹5,00,000
- Authorities directed to:
  - Proceed under section 130 CGST Act, and
  - Initiate all other permissible statutory proceedings

Practical Significance

1. Strong precedent against misuse of procedural arguments in GST fraud cases
2. Confirms that fraud vitiates equitable relief
3. Supports aggressive enforcement in:
- Fake ITC cases
- Bogus invoice rackets
- Circular trading / sham supply chains

Takeaway

Even proven procedural lapses will not save a taxpayer who has colluded to generate fake ITC—Article 226 is not a refuge for fraudsters.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 16.12.2025

Income Tax

Whether an employer–bank can be treated as an "assessee in default" under sections 201(1) and 201(1A) for non-deduction of TDS on LTC payments when a High Court has expressly directed payment without deduction of tax.

State Bank of India v. Commissioner of Income-tax
Kerala HC(Y 2016-17)(18-11-2025)

Held

No. The bank was not liable to deduct tax at source and could not be treated as an assessee in default, nor could interest under section 201(1A) be levied.

Key Observations

- Section 201 applies only where there is a failure to deduct tax despite a legal obligation.
- When a binding interim order of a High Court:
  - stays the employer's circular, and
  - directs payment of LTC without TDS,
  - the employer has no liability to deduct tax "as required by law".
- Compliance with a court order cannot result in TDS default; otherwise, the payer would be exposed to contempt.
- The High Court's clarification that employees would pay tax directly if the writ failed shifts liability to the payees, not the payer.
- Consequently, sections 201(1) and 201(1A) are not attracted.

Key Supporting Principles

- Section 192 (TDS on salary) operates at the time of payment; if deduction is judicially interdicted at that time, no default arises.
- First proviso to section 201(1) recognizes situations where tax is recoverable from the payee.
- Interim judicial orders govern the field for the relevant period, even if later vacated or the main petition is dismissed.
- All-India statute principle: a bank cannot be faulted for honouring a High Court's stay order affecting its circular nationwide.

Outcome

- ITAT order set aside
- Appeal allowed in favour of the assessee (bank)

Practical Takeaway

1. No TDS default arises where non-deduction is compelled by a court order.
2. Revenue must proceed against employees, not the employer, in such cases.

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Date: 16.12.2025

Goods & Services Tax

Whether detention, seizure and penalty under section 129(3) of the GST Act are valid when goods are intercepted in transit without an e-way bill, and the e-way bill is generated only after interception, with the assessee pleading technical glitch and absence of intent to evade tax.

Birds RO System (P.) Ltd. v. State of U.P.
(Allahabad HC)(17-11-2025)

Held

Yes. Detention, seizure and penalty proceedings were legally justified.
Generation of an e-way bill after interception does not cure the violation.

Ratio

- E-way bill must be generated before commencement of movement of goods.
- If, at the time of interception, the vehicle carries only invoices and no e-way bill, the movement is in contravention of section 68 read with section 129.
- Subsequent generation of e-way bill (after interception/detention) has no legal sanctity and cannot regularize the illegality.
- Mens rea or intent to evade tax is irrelevant once statutory compliance (pre-movement e-way bill) is absent.
- Even if the consignor instructed the transporter not to move goods without an e-way bill, the statutory breach is complete once movement begins without it.

Key Observations

- Technical glitches, transporter's lapse, or bona fide conduct do not dilute mandatory compliance.
- Section 129 proceedings are strict in nature; procedural non-compliance itself justifies action.
- The Court reiterated that e-way bill compliance is not a mere technicality.

Precedents Followed

- Aysha Builders & Suppliers v. State of U.P. (Allahabad HC, 2025)
- Mohini Traders v. State of U.P. (Allahabad HC)

Outcome

- Writ petition dismissed
- Orders under section 129(3) upheld
- Decision in favour of Revenue

Practical Takeaway

- E-way bill must exist at the moment goods start moving.
- Post-interception compliance is ineffective, irrespective of bona fides or tax payment history.
- Responsibility ultimately lies with the registered person, not the transporter.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 17.12.2025

Income Tax

Innovative Cuisine (P.) Ltd. v. ACIT (25-11-2025) ITAT AHMEDABAD

Key Issues & Rulings

I. Deduction u/s 80JJAA – Additional Employee Cost

- The assessee engaged in processing and export of frozen vegetables and fruits claimed deduction u/s 80JJAA in respect of emoluments paid to 274 additional employees.
- AO disallowed the entire claim on the ground that most employees had worked for less than 240 days, without undertaking employee-wise verification.
- **ITAT held that:**
  - Deduction u/s 80JJAA is allowable employee-wise, subject to fulfilment of statutory conditions.
  - AO was not justified in making a blanket disallowance without verifying records such as salary payments, PF participation, mode of payment, and period of employment.
- **Matter remanded to AO with direction to:**
  - Verify compliance of conditions u/s 80JJAA, and
  - Allow deduction only for those employees who completed 240 days during the year.

Held:Disallowance of entire deduction was unsustainable; partial allowance after verification directed.

II. Cold Storage Subsidy – Capital vs Revenue Receipt

- Assessee received subsidy from Government of Gujarat for a new cold storage project and claimed it as capital receipt, adjusted against capital work in progress(CWIP).
- AO treated subsidy as revenue income due to lack of clarity in accounting treatment.
- **ITAT observed that:**
  - Subsidy was capital in nature based on purpose and sanction conditions.
  - However, assessee failed to produce CWIP ledger and evidence of reduction from asset cost.
- **Matter remanded to AO to verify:**
  - Treatment of subsidy in books,
  - CWIP adjustment, and
  - Non-claim of depreciation on subsidised portion.

III. Deduction u/s 80IB – Duty Drawback vs Transport Subsidy

- While computing deduction u/s 80IB, assessee excluded only part of duty drawback from profits.
- AO held that entire duty drawback credited to P&L should be excluded.
- Assessee contended that a portion represented transportation assistance, not duty drawback.
- **ITAT noted absence of:**
  - Supporting evidence,
  - Auditor's certification of actual duty drawback.
- **Matter remanded to AO** for fresh verification and adjudication.

Final Outcome

- All three issues set aside to the Assessing Officer
- Appeal partly allowed for statistical purposes

Legal Significance

- Confirms that blanket disallowance u/s 80JJAA is impermissible without employee-wise verification.
- Reiterates that purpose and accounting treatment are crucial in determining nature of subsidy.
- Emphasises importance of proper disclosure and evidentiary support for incentive-linked deductions.

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Date: 17.12.2025

Goods & Services Tax

Assignment of GIDC leasehold rights is transfer of immovable property – Not liable to GST

Gopal Iron and Steel Co. (Guj) Ltd. v. Office of Asstt. Commissioner of State Tax (28-11-2025)
HIGH COURT OF GUJARAT

Facts

- GIDC allotted an industrial plot to the petitioner on 99-year lease through a registered deed (1996).
- Petitioner constructed superstructures and mortgaged leasehold rights to a bank.
- On loan default, a one-time settlement was entered into.
- Pursuant thereto, petitioner:
  - Executed a tripartite agreement with bank and buyer,
  - Obtained GIDC permission, and
  - Executed a registered deed of assignment of leasehold rights (2019).
- Department issued SCN u/s 74, proposing GST by treating assignment as supply of service classifiable under Heading 9972.

Issue

Whether assignment of leasehold rights in GIDC industrial land in favour of a third party constitutes a taxable supply under GST.

Held

- Assignment of leasehold rights by the lessee to a third party:
  - Results in absolute transfer of rights and interest in immovable property,
  - Extinguishes all rights of the assignor in the property.
- Such assignment is transfer of benefits arising out of immovable property, not a supply of service.
- Provisions of:
  - Section 7(1)(a) (scope of supply),
  - Clause 5(b) of Schedule II, and
  - Clause 5 of Schedule III
  - are not attracted.
- Levy of GST under Section 9 is therefore unsustainable.

Decision

- Show Cause Notice quashed
- Petition allowed in favour of assessee

Assignment by sale/transfer of GIDC leasehold rights for consideration is a transfer of immovable property, excluded from GST, and cannot be treated as supply of service.

Case Followed

- Gujarat Chamber of Commerce and Industry v. Union of India

Practical Significance

- Confirms that:
  - Initial lease by GIDC → supply of service (taxable), but
  - Subsequent assignment by lessee → non-taxable transfer of immovable property.
- Provides strong precedent to challenge GST SCNs on:
  - Assignment of long-term leasehold industrial plots,
  - Particularly GIDC / MIDC / RIICO / industrial authority leases.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 18.12.2025

Income Tax

ITAT Ahmedabad: Section 11 exemption cannot be denied for non-mention of 12AB registration in ITR

Vinayaka Education Trust v. ITO (Exemption)[AY 2021-22][05-12-2025]

Core Issue

Whether exemption under sections 11 & 12 can be denied merely because the new 12AB registration number was not mentioned in the ITR, when:

- the trust had a valid 12A registration throughout the relevant previous year, and
- application for re-registration (Form 10A) was filed within CBDT-extended timelines, and
- 12AB registration (Form 10AC) was granted later.

ITAT Ruling (In Favour of Assessee)

The Tribunal held that exemption under sections 11 & 12 cannot be denied in such circumstances.

Key Findings

1. Continuity of Registration
   - The assessee's 12A registration (since 2011) was never cancelled or withdrawn and remained valid during PY 2020-21 (AY 2021-22).
2. Timely Compliance under Transition Regime
   - Application for re-registration in Form 10A was filed on 06-01-2022, well within CBDT-extended deadlines under section 119.
   - Grant of registration under section 12AB (Form 10AC) on 13-01-2022 only reinforced continuity of charitable status.
3. Proviso to Section 12A(2) is Protective
   - The proviso shields trusts from denial of exemption for intervening years where registration is granted subsequently, provided objects and activities remain unchanged.
4. Technical vs Substantive Compliance
   - Non-mention of new 12AB registration number in ITR was:
   - a timing mismatch, since return was filed before Form 10AC was issued, and
   - purely technical, not substantive.
   - Such a defect cannot override statutory entitlement to exemption.
5. Improper Adjustment under Section 143(1)(a)
   - CPC exceeded its scope by denying exemption via prima facie adjustment.
   - Rectification under section 154 was also wrongly denied.

Final Directions

- Denial of exemption by CPC and confirmation by CIT(A) set aside.
- Exemption under sections 11 & 12 allowed.
- Disallowance of:
  - Application of income – ₹3.67 crore
  - Accumulation – ₹59.97 lakh
  - deleted in full.

Practical Takeaways

- For AY 2021-22, trusts with:
  - valid pre-existing 12A/12AA registration, and
  - Form 10A filed within CBDT-extended timelines,
  - cannot be denied exemption merely due to:
  - absence of 12AB details in ITR, or
  - later effective date mentioned in Form 10AC.
- Strong authority against mechanical CPC disallowances under section 143(1).
- Useful precedent for rectification, appeal, and writ matters involving transition to section 12AB.

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Date: 18.12.2025

Goods & Services Tax

No proceedings under Section 74 of the CGST Act can be initiated where the assessee has voluntarily disclosed the short payment of tax and paid the entire tax along with applicable interest prior to issuance of the SCN.

MRF Ltd. v. AD, DGGI (28-11-2025)
Madras HC

Core Holding

No proceedings under Section 74 (fraud/suppression) can be initiated when:

- the assessee voluntarily discloses short payment of tax,
- before issuance of SCN, and
- pays the entire tax along with interest, even if payment is made through subsequent GSTR-3B.

Such an SCN is without jurisdiction and liable to be quashed.

Why Section 74 Failed

Section 74 applies only when short payment arises due to:

- fraud, or
- wilful misstatement, or
- suppression of facts with intent to evade tax

In this case:

- The assessee intimated the department on 07-01-2019 about rate confusion and offered to pay differential tax.
- Investigation began later (21-01-2019).
- Tax and interest were fully paid on 21-02-2019, i.e., before SCN (07-04-2022).
- There was industry-wide confusion on composite vs individual supply.
- No mala fide intent was established.

Voluntary disclosure negates mens rea, a mandatory ingredient of Section 74.

Section 39(9) Argument Rejected

The department argued:

- Payment was after investigation → rectification barred under Section 39(9).

HC held:

- What matters is when the assessee disclosed, not the mechanical date of payment.
- Since intimation preceded investigation, Section 39(9) bar does not apply.
- Hence, ITC denial on this ground was invalid.

Section 73 Also Not Required

- Even Section 73 (non-fraud cases) was unnecessary because:
  - tax and interest were already paid before notice.
- Once dues are fully discharged pre-notice, no SCN should survive.

Writ Maintainable at SCN Stage

The Court reaffirmed:

- Where an SCN is issued without satisfying jurisdictional facts (fraud/suppression),
- the assessee need not undergo alternate remedy.
- Article 226 intervention is justified.

Final Outcome

- SCN under Section 74 quashed
- No subsisting tax liability on SCN date
- Issue of "composite vs individual supply" left open for future adjudication

Practical GST Implications

- Voluntary disclosure before investigation is a strong shield against Section 74.
- Mere post-disclosure investigation does not convert the case into fraud.
- Departments must demonstrate intent, not assume it.
- Section 39(9) cannot be used mechanically to deny ITC.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 19.12.2025

Income Tax

Limitation for filing a rectification application under section 254(2) starts from the date of receipt/communication of the ITAT order to the assessee, not from the date on which the order is passed- Bombay HC.

Accost Media LLP v. DCIT

Core Issue

Whether the six-month limitation under section 254(2) for filing a rectification (Misc. Application) before the ITAT is to be computed from:

- the date of the ITAT order, or
- the date of receipt / communication of the ITAT order to the assessee.

Held

Limitation for filing a rectification application under section 254(2) begins from the date on which the ITAT order is served/communicated to the assessee, and not from the date of the order itself.

Key Legal Reasoning

1. Statutory Scheme (Harmonious Construction)
   - Section 254(3) mandates that ITAT must send a copy of its order to the assessee.
   - Rule 34A read with Rule 9 of ITAT Rules requires that a rectification application must be accompanied by copies of the order, at least one certified.
   - Therefore, filing a rectification application without receipt of the order is impossible.
2. Purpose of Limitation Law
   - Computing limitation from the date of order (without communication) would render the remedy under section 254(2) illusory and unjust.
   - Limitation cannot commence before the assessee has actual or constructive knowledge of the order.
3. Precedent Support
   - Followed:
     - Golden Times Services (P) Ltd (Delhi HC)
     - Pacific Projects Ltd (Delhi HC)
   - Distinguished:
     - Leena Power Tech Engineers (P) Ltd (Bom HC) — as it dealt with COVID limitation exclusion, not commencement from date of communication.

Facts

Particulars	Date
ITAT order	10-12-2024
Order received by assessee	24-03-2025
Rectification application filed	16-07-2025

Filed within six months from receipt

Outcome

- ITAT's order rejecting the rectification application as time-barred: Set aside
- However, since the assessee had already filed an appeal against the original ITAT order, the HC:
  - Did not remand the rectification application
  - Allowed all rectification grounds to be urged in the pending appeal

Practical Importance

- Strong authority (Bombay HC) that:
- "Six months" in section 254(2) runs from date of communication of the order
- Extremely useful where:
  - ITAT orders are uploaded late
  - Certified copies are delayed
  - Registry raises limitation objections mechanically

Key Notes

Accost Media LLP v. DCIT [2025]-Limitation u/s 254(2) commences from date of service of ITAT order, not date of order.

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Date: 19.12.2025

Goods & Services Tax

Infodesk India (P.) Ltd. v. Union of India

Gujarat HC(27-11-2025)

Core Issue

Whether services provided by an Indian subsidiary to its US parent company amounted to:

- "intermediary services" under section 2(13) of the IGST Act (taxable in India), or
- "export of services" / zero-rated supply under sections 2(6) and 16 of the IGST Act, entitling the assessee to refund of unutilised ITC.

Held

Services rendered by an Indian subsidiary to its foreign parent on a principal-to-principal basis, on its own account, are not intermediary services. Such services qualify as "export of services" and are zero-rated, making refund of unutilised ITC allowable.

Key Legal Reasoning

1. Nature of Services – "On Own Account"
   - The assessee:
     - Managed IT infrastructure, editorial services, customer support, software consultancy, advisory services.
     - Performed services independently through its own employees using tools like JIRA tickets.
   - It was not merely arranging or facilitating services between the parent and customers.

Hence, exclusion clause in section 2(13) applied:
"does not include a person who supplies services on his own account"

2. Bipartite Arrangement – No "Three Parties"
   - Service agreement was only between Indian subsidiary and US parent.
   - Intermediary services require three parties (supplier–intermediary–recipient).
   - No separate supply between parent and its customers was facilitated by the assessee.
3. Commercial Substance of Agreement

Key contractual features relied upon by the Court:

- Cost plus 8% markup → assessee earned profit
- Assessee bore:
  - Salaries, infrastructure costs, taxes
- No reimbursement beyond agreed service fee
- Independent dispute resolution clause (arbitration in India)

Demonstrates principal-to-principal relationship, not agency.

4. Export of Services Conditions Satisfied (Section 2(6))
   - Supplier located in India
   - Recipient located outside India
   - Place of supply outside India
   - Consideration received in foreign exchange
   - Parties not "merely establishments of same person"
5. CBIC Circulars & Precedents Applied

Relied upon

- Circular No. 159/15/2021-GST (20-09-2021) – clarification on intermediary services
- HC decisions:
  - Genpact India (P&H HC)
  - OHMI Industries (Delhi HC)
  - Ernst & Young Ltd. (Delhi HC)
  - Chromotolab (Gujarat HC)

Final Outcome

- Orders rejecting refund: Quashed
- Services held to be export of services
- Authorities directed to:
  - Process refund of unutilised ITC
  - Complete exercise within 12 weeks

Practical Takeaways

Indian captive service units / subsidiaries are not intermediaries merely because they serve a foreign parent
Cost-plus markup models ≠ intermediary
Key tests to avoid "intermediary" tag:

- Services performed on own account
- Independent pricing / profit element
- No authority to conclude contracts with third parties
- No mere facilitation or arranging role

Strong authority for:

- IT / software development
- Back-office, KPO, BPO
- Advisory & support services to foreign group entities

Key Note

Infodesk India (P.) Ltd. v. UOI [2025]-Services by Indian subsidiary to foreign parent on principal-to-principal basis are exports, not intermediary services; refund of unutilised ITC allowable.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 20.12.2025

Income Tax

Akasaki Technology (P.) Ltd. v. PCIT
Delhi HC(27-11-2025)

Issue

Whether the Commissioner (Appeals) can remand an assessment to the Assessing Officer for fresh adjudication without first deciding jurisdictional objections raised by the assessee—particularly the plea of non-issuance of notice under section 143(2)—while exercising powers under section 251 of the Income-tax Act, 1961.

Held

No.

Jurisdictional pleas raised by the assessee must be adjudicated by the CIT(A) himself while exercising appellate powers under section 251. Such issues cannot be left to be examined by the Assessing Officer on remand.

Ratio Decidendi

- When jurisdictional defects (e.g., absence of mandatory notice u/s 143(2)) are specifically raised:
  - The CIT(A) is duty-bound to decide them.
  - He cannot remand the matter to the AO without recording findings on:
    - Whether such notice was issued
    - The legal consequences of its non-issuance
    - Whether the assessment order itself is valid in law
- An invalid or void assessment order cannot be revived or cured by remand.
- The AO cannot be permitted to examine the legality of his own jurisdiction.

Court's Reasoning

- The CIT(A) merely noted the assessee's plea regarding non-issuance of notice u/s 143(2) and remanded the matter, without adjudicating the plea.
- The ITAT also failed to decide the jurisdictional issue and mechanically upheld the remand.
- This amounted to a jurisdictional infirmity at the appellate level.
- Since the CIT(A) was exercising powers under section 251, the issue had to be decided by him, not delegated to the AO.

Final Direction

- Orders of:
  - CIT(A) dated 25-10-2024, and
  - ITAT dated 07-05-2025
  - were set aside.
- Matter remanded back to the CIT(A) to decide the appeal afresh, including all jurisdictional pleas raised by the assessee.

Key Takeaways

- Jurisdictional objections go to the root of the assessment
- CIT(A) cannot grant a "second inning" to the AO to cure fatal defects
- Section 251 powers are adjudicatory, not merely procedural
- Particularly relevant in faceless/NFAC appeals, where remands are frequently made

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Date: 20.12.2025

Goods & Services Tax

ITC mismatch due to supplier non-filing of GSTR-1, and how Circular 183/15/2022-GST is applied

Karibasappa Durgappa Hadagali v. Additional Commissioner
High Court of Karnataka(24-11-2025)
Writ Petition No.: 108748 of 2025

Facts of the Case

1. Petitioner (Karibasappa Durgappa Hadagali) claimed Input Tax Credit (ITC) in GSTR-3B for FY 2017-18 to 2019-20.
2. Supplier had filed GSTR-3B but failed to file GSTR-1, or had wrongly reported certain invoices in GSTR-1.
3. This led to a mismatch between ITC claimed by recipient and ITC reflected in GSTR-2A.
4. Revenue denied ITC, and the adjudication and appeal orders were against the petitioner.

Legal Issue

- Whether ITC claimed by a registered person in GSTR-3B can be allowed even if not reflected in GSTR-2A due to supplier's failure to file GSTR-1 or incorrect reporting, by applying Circular 183/15/2022-GST.

Circular 183/15/2022-GST – Key Points

1. Applicable for FY 2017-18 and 2018-19, but can be extended by analogy to FY 2019-20 for identical errors.
2. Scenarios covered:
   - Supplier did not file GSTR-1 but filed GSTR-3B.
   - Supplier filed GSTR-1 but missed reporting some supplies.
   - Supplier wrongly reported B2B supplies as B2C.
   - Supplier reported wrong GSTIN for recipient.
3. Procedure (Para 4):
   - Tax officer should obtain details of invoices for which ITC was claimed but not reflected in GSTR-2A.
   - Verify conditions under Section 16 CGST:
     - Possession of tax invoice/debit note.
     - Receipt of goods/services.
     - Payment made to supplier for value + tax.
   - Check if reversal of ITC is required under Sections 17/18.
   - Check time limit under Section 16(4).
4. Certification requirement:
   - ITC difference > ₹5 lakh → CA/CMA certificate with UDIN confirming supplier paid tax.
   - ITC difference ≤ ₹5 lakh → Certificate from supplier suffices.
- Circular is clarificatory and applies only to ongoing proceedings for FY 2017-18 and FY 2018-19.

High Court Observations

1. The petitioner's case involved wrong GSTIN in invoices, a bona fide error.
2. Circular 183/15/2022-GST applies to bona fide errors like:
   - Wrong GSTIN
   - Missing or mismatched reporting
3. Circular can be applied to FY 2019-20 since identical errors occurred.
4. Petitioner had submitted affidavit and details of invoices as required under Circular.

High Court Orders

1. Quashed:
   - Adjudication Order (07-12-2023)
   - Order-in-Appeal (29-03-2025)
2. Next Steps:
   - Petitioner to submit reply to show-cause notice (22-09-2023) within 4 weeks.
   - Revenue authorities to consider reply and pass orders as per Circular 183/15/2022-GST.

Key Takeaways

- ITC mismatch due to supplier errors can be addressed using Circular 183/15/2022-GST, even if the supplier didn't file GSTR-1.
- Bona fide errors like wrong GSTIN, missed reporting, or filing mistakes can be rectified under the Circular.
- Certification (from CA/CMA or supplier) is essential to verify that the tax was paid and supply received.
- High Court extends the benefit to later years with identical errors (justice-oriented approach).
- Procedural compliance (reply to show-cause notice, documents, certificates) is crucial for claiming ITC.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 21.12.2025

Income Tax

HC Recognises Pandemic-Related Challenges in Delayed Filing of Income Tax Return

Rajgreen Infralink LLP v. Principal Commissioner of Income-tax
High Court of Gujarat(2 December 2025)

Facts

- Petitioner: Rajgreen Infralink LLP, engaged in real estate development.
- AY: 2021-22.
- Original due date for filing ROI under Section 139(1): 31-10-2021.
- Due to COVID-19, the CBDT extended the due date to 15-03-2022.
- LLP filed ROI on 28-03-2022, i.e., 13 days late, with declared income of ₹4.56 crore.
- Deduction of ₹4.35 crore under Section 80-IBA was denied due to delay.
- LLP filed an application under Section 119(2)(b) seeking condonation of delay.
- Revenue rejected the application (order dated 27-10-2023), citing Circular No.09/2015 and stating that the case did not constitute "genuine hardship."

Reasons for Delay (as stated by LLP)

1. Nationwide lockdown from 25-03-2020 to 19-05-2020.
2. Gradual reopening with limited office staff in Gujarat.
3. Rising COVID cases Oct-Dec 2020.
4. Second COVID wave Feb-Jun 2021.
5. Restriction of 50% office capacity, and directives to provide food & shelter to laborers on construction sites, limiting access to bills/vouchers.
6. Third COVID wave due to Omicron variant.

Contentions

- Petitioner: Delay was due to genuine hardship caused by COVID-19; Circular No.09/2015 is not applicable (it applies to refund or carry-forward loss claims).
- Revenue: Delay cannot be condoned; petitioner filed late only to claim deduction under 80-IBA; Circular No.09/2015 prohibits condonation.

Court Findings

1. Circular No.09/2015 does not apply here, as it deals with belated refund or loss carry-forward claims.
2. The reasons provided by the petitioner (COVID-related disruptions, limited staff, onsite labor obligations) constitute genuine hardship.
3. Authorities failed to apply their mind to the hardship claimed.
4. The argument that condonation should be denied merely because the petitioner is entitled to a deduction under 80-IBA is unsustainable.
5. Reliance on precedents:
   - Vrushti Aulkumar Shah v. Pr. Chief CIT [2023]- delay should be condoned liberally to avoid injustice.
   - Sitaldas K. Motwani v. DGIT – "genuine hardship" should be construed liberally.

Decision

- Impugned order dated 27-10-2023 is quashed and set aside.
- LLP's application for condonation of 13-day delay is restored to its file.
- Revenue is directed to reconsider the application in light of the Court's observations and pass a fresh order within 12 weeks.

Key Takeaways

1. COVID-19 disruption qualifies as "genuine hardship" under Section 119(2)(b).
2. Circulars cannot be applied mechanically; authorities must consider the merits and reasons for delay.
3. Even a short delay (13 days) due to extraordinary circumstances like a pandemic can be condoned.
4. Courts take a liberal approach to prevent denial of legitimate deductions due to technical delays.

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Date: 21.12.2025

Goods & Services Tax

CENVAT credit distributed by ISD failed due to technical glitches; Dept. to reflect CENVAT credit on ECL of ISD: Delhi HC

Clyde Pumps (P.) Ltd. v. Union of India
W.P.(C) No. 4400 of 2022

Facts:

1. Petitioner: Clyde Pumps Pvt. Ltd., a manufacturer with multiple units, registered as an Input Service Distributor (ISD) under GST.
2. Period Concerned: March – June 2017 (transition from pre-GST CENVAT credit to GST ITC).
3. Issue: The petitioner had pre-GST CENVAT credit of Rs. 99,18,972 to distribute among its units.
4. Problem: Due to technical glitches on the GST portal, the ISD could not file Form TRAN-1 on time, and consequently, the credit did not reflect in the Electronic Credit Ledger (ECL).
5. Department's Stand:
   - ISDs must distribute credit within the same month (Rule 39(1)(a)).
   - No ECL or TRAN-1 filing was prescribed for ISDs; hence, ITC could not be carried forward.

Legal Provisions Invoked:

1. Section 140(7), CGST Act, 2017: Transitional credit available to ISDs prior to GST is eligible for distribution in a prescribed manner.
2. Section 20, CGST Act, 2017: Manner of distribution of ITC by ISDs.
3. Rule 39(1)(a), CGST Rules, 2017: Input tax credit available in a month must be distributed in the same month (applicable post-GST).

Contentions:

- Petitioner: Portal glitches prevented timely filing of TRAN-1; substantive ITC cannot be denied due to technical reasons. Relied on precedents like Siemens Ltd. v. UOI (Bombay HC), Vision Distribution v. State GST (Delhi HC), Dell International Services (Madras HC).
- Revenue: ISD cannot carry forward credit; no ECL exists for ISDs; filing of TRAN-1 not contemplated under law.

Key Observations by Delhi HC:

1. Transitional Credit Entitlement:
   - Section 140(7) allows ITC held by ISDs prior to GST to be distributed in the prescribed manner.
   - No specific timeline was prescribed immediately after GST commencement.
2. Technical Glitch Cannot Defeat Entitlement:
   - The Court emphasized that technical issues with the GST portal cannot deny substantive ITC rights of the ISD.
   - The one-month distribution rule cannot penalize ISDs for system failures.
3. Precedents Applied:
   - Siemens Ltd. (Bombay HC): Transitional ITC must be allowed despite procedural delays.
   - Vision Distribution (Delhi HC): Credit not reflected due to system issues cannot be denied.
   - Dell International (Madras HC): ITC loss due to non-functional system cannot prejudice taxpayer.
4. Direction:
   - Delhi GST Department to reflect Rs. 99,18,972 in the ECL of the petitioner within 3 months.
   - Upon reflection in ECL, petitioner has 1 month to distribute credit to sub-offices.
   - GSTN to cooperate in reflecting credit if required.

Held:

- Substantive ITC entitlement cannot be denied due to technical or procedural issues.
- ITC disclosed in TRAN-1 must be credited to ECL for onward distribution.
- Writ petition allowed in favor of the assessee.

Key Takeaways:

1. Technical glitches do not defeat substantive GST rights.
2. ISDs can claim pre-GST CENVAT credit under Section 140(7) even if portal issues delayed filing.
3. Courts will ensure equitable treatment for taxpayers facing procedural hurdles during the GST transition.
4. Reinforces that GST rules are procedural, and failure in process due to system issues cannot bar legitimate ITC.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 22.12.2025

Income Tax

Income from sale of tissue-cultured plants is "agricultural income" and exempt from tax under section 10(1): HIGH COURT OF TELANGANA

A.G. Biotech Laboratories (India) Ltd. v. ITO (21-11-2025) 2002-03 & 2003-04

Core Issue

Whether income from sale of tissue cultured plants qualifies as:

- Agricultural income under section 2(1A), and
- Hence exempt under section 10(1),

or should be taxed as business income due to extensive laboratory-based scientific processes.

Decision

- Income from sale of tissue cultured plants is agricultural income
- Exempt from tax under section 10(1)
- In favour of the assessee

Key Reasoning of the High Court

1. Agricultural foundation is decisive
   - Mother plants were:
     - Grown on land (owned/leased),
     - Using basic agricultural operations: tilling, planting, watering, nurturing, harvesting.
   - These operations satisfy the test laid down in CIT v. Raja Benoy Kumar Sahas Roy (SC).
2. Tissue culture = advanced propagation, not manufacturing
   - Tissue culture was held to be:
     - Merely an advanced and modern method of plant propagation, and
     - Not a process severing the nexus with land.
   - Use of laboratories and scientific techniques does not change the agricultural character.
3. Agriculture is dynamic, not static
   - Legislature did not intend agriculture to be confined to primitive methods.
   - Modern tools (hybrids, greenhouses, biotech, tissue culture) are evolutionary, not transformational.
4. Controlled environment ≠ non-agricultural
   - Multiplication in sterile labs or greenhouses:
     - Does not convert agricultural income into business income.
   - What matters is origin and continuity of agricultural operations.

Key Judgments Relied Upon

- CIT v. Raja Benoy Kumar Sahas Roy (SC) – foundational test of agriculture
- CIT v. Soundarya Nursery (Madras HC) – nursery plants as agricultural income
- Puransingh M. Verma v. CIT (Gujarat HC)
- CIT v. Prabhat Agri-Biotech Ltd. (Telangana HC)
- PCIT v. Nuziveedu Seeds Ltd. (Telangana HC, 2025) – hybrid seeds

Practical Takeaways

When tissue culture income will be agricultural:

- Mother plants are grown on land
- Basic agricultural operations are performed
- Tissue culture is only a propagation/multiplication technique
- Final plants undergo hardening/growth linked to land

When exemption may fail:

- No cultivation of mother plants on land
- Activity is purely lab-based with no agricultural nexus
- Plants are "manufactured" without agricultural operations

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Date: 22.12.2025

Goods & Services Tax

No ITC Reversal if Supplier's Registration is Cancelled Post-Transaction- HIGH COURT OF ALLAHABAD

Saniya Traders v. Additional Commissioner Grade-2 (3 Dec 2025)

Core Holding

Input Tax Credit (ITC) cannot be denied or reversed merely because the supplier's GST registration was cancelled after the date of transaction, when:

- Supplier was validly registered on the date of supply
- Tax invoice and e-way bill existed
- Payment (including GST) was made through banking channels
- Supplier filed GSTR-1 and GSTR-3B, and tax stood deposited
- Transaction was reflected in GSTR-2A / GSTR-3B
- No fraud, collusion, or wilful misstatement was proved against the buyer

What the Department Did

- Treated the supplier as "non-existent" solely due to subsequent cancellation
- Ignored undisputed auto-populated GST returns
- Invoked Section 74 without establishing its foundational requirement:
- fraud, suppression, or wilful misstatement

Court's Reasoning

- ITC eligibility is tested on the date of transaction, not on future events
- GSTR-2A/GSTR-3B data cannot be brushed aside without rebuttal
- Cancellation of registration does not operate retrospectively unless explicitly so ordered
- Section 74 proceedings are penal in nature and require strict proof of fraud Practical Impact
- Strong protection for bona fide purchasers
- Limits arbitrary ITC reversals based on investigation reports or third-party defaults
- Reinforces that buyers are not tax police for suppliers' future compliance

Key Precedents Followed

- Shanti Kiran India (P.) Ltd. (SC, 2025)
- Solvi Enterprises (All HC, 2025)
- Safecon Lifescience (P.) Ltd. (All HC, 2025)

Key Takeaways

Post-transaction cancellation of supplier's GST registration cannot defeat ITC under Section 16, in the absence of fraud or wilful misstatement by the recipient.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 23.12.2025

Income Tax

A ₹5.33 lakh fixed deposit (FD) was wrongly treated by the Assessing Officer (AO) as ₹5.33 crore unsustainable; delay in appeal condoned and case remanded for fresh assessment by ITAT

Savita Devi v. ITO (ITAT Patna) – AY 2015-16 (04-12-2025)

Core Issue

A ₹5.33 lakh fixed deposit (FD) was wrongly treated by the Assessing Officer (AO) as ₹5.33 crore, leading to:

- Reopening under section 147
- Addition under section 69A
- Ex-parte best judgment assessment under sections 144 & 144B
- Dismissal of appeal by CIT(A) due to 140 days delay

Tribunal's Key Findings

1. Delay in Appeal – Must Be Condoned
   - Assessee was:
     - A housewife
     - Semi-educated, village resident
     - Not conversant with email-based proceedings
   - Notices were sent to a wrongly registered email ID
   - Tribunal held:
   - When delay is caused due to genuine hardship and lack of awareness, technicalities cannot override substantial justice.
   - *Delay condoned*
2. Additional Evidence – Admissible
   - Bank certificate & affidavit showed FD was only ₹5.33 lakh
   - Evidence went to the root of the matter
   - Tribunal admitted additional evidence under principles of natural justice
   - *Addition based on ₹5.33 crore held prima facie unsustainable*
3. Best Judgment Assessment Found Flawed
   - AO passed order without proper verification
   - Huge tax liability fastened on a person of very limited means
   - Tribunal noted this as a peculiar and serious factual error
4. Reopening & Limitation under Section 149
   - Assessee challenged reopening as:
     - Time-barred
     - Below statutory threshold for reopening
   - Since evidence was not examined earlier:
     - Issue restored to AO
     - AO directed to drop proceedings if section 149 conditions are not met.

Final Directions of ITAT

- Order of CIT(A) set aside
- Matter remanded to AO for de novo assessment
- AO to:
  - Examine bank evidence
  - Verify limitation under section 149
  - Issue notices by post as well
  - Grant adequate opportunity of hearing

Appeal allowed partly for statistical purposes

Important Legal Takeaways

1. Clerical or data errors (lakh vs crore) can vitiate entire assessment.
2. Additional evidence must be admitted if it strikes at the foundation of the assessment.
3. Delay in appeal should be liberally condoned where assessee is ill-equipped or unaware.
4. Reopening under section 147 cannot survive if:
   - Income escaped is below statutory threshold
   - Notice is beyond limitation under section 149
5. Natural justice overrides procedural rigidity, especially in faceless assessments.

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Date: 23.12.2025

Goods & Services Tax

Interest under Rule 133(3)(c) of the CGST Rules cannot be levied retrospectively on profiteering amounts for periods prior to 01.04.2020: GSTAT

GSTAT, NEW DELHI
DGAP v. Dange Enterprise (02.12.2025)

What the GSTAT Held

1. No Interest for Pre-01.04.2020 Profiteering

- The amendment to Rule 133(3)(c) introducing interest @ 18% was brought into force w.e.f. 01.04.2020.
- The amendment:
  - Creates a new liability
  - Is onerous, not beneficial
  - Is neither clarificatory nor curative
- Applying the Supreme Court's principle in Vatika Township, the Tribunal held:
- There is a strong presumption against retrospective operation of provisions imposing new burdens.

Result:
Since the investigation period (15.11.2017 to 30.06.2019) was entirely prior to 01.04.2020, no interest was payable.

2. No Penalty for Pre-2020 Period

- The penalty provision under Section 171 was inserted only in 2020.
- Alleged profiteering ended on 30.06.2019.

Result:
Penalty could not be imposed for a period when the penal provision did not exist.

3. Deposit in Consumer Welfare Fund (CWF)

- Profiteered amount: ₹4,57,683
- Recipients were recorded as "faceless"

Result:
The respondent was directed to deposit the amount equally in the Centre and State Consumer Welfare Funds, as per Rule 133(3)(c).

Why This Decision Matters

Strong Precedent on Retrospectivity

- Reinforces that anti-profiteering interest provisions are prospective, not automatic.
- Aligns with earlier GSTAT ruling in DGAP v. Procter & Gamble Group (2025).

Relief for Legacy GST Disputes

- Businesses facing anti-profiteering cases for 2017–2019 periods can:
  - Contest interest demands
  - Contest penalty proceedings

Clear Distinction Between:

Aspect	Applicability
Profiteered amount	Recoverable
Interest @ 18%	Not applicable pre-01.04.2020
Penalty	Not applicable pre-2020
CWF deposit	Applicable if recipients are unidentifiable

Practical Takeaway

When dealing with anti-profiteering cases:

- Always check the period of investigation
- Interest & penalty cannot be mechanically applied

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TAX INSIGHTS

By
Tax Research Deparment

Date: 24.12.2025

Income Tax

Whether interest paid by a bank to a political party is subject to TDS under section 194A, despite the political party's income being exempt under section 13A, and whether non-deduction warrants disallowance under section 40(a)(ia).

ITAT Bangalore Ruling — Deputy Commissioner of Income-tax vs. Vijaya Bank(AY 2010-11)(5 Dec 2025)

Facts of the Case

- The assessee, Vijaya Bank (a nationalised bank), paid interest on fixed deposits to a political party (All India Congress Party).
- The bank did not deduct TDS on such interest payments.
- The Assessing Officer (AO) held that TDS was required under section 194A and disallowed the interest expenditure under section 40(a)(ia).
- The CIT(A) deleted the disallowance, holding that since the political party's income was exempt under section 13A, no TDS was required.
- The Revenue appealed to the ITAT.

Tribunal's Analysis & Findings

No Exemption under Section 194A for Political Parties

- The Tribunal observed that Section 194A and its Explanation do not provide any exemption from TDS for interest paid to political parties.
- Therefore, tax was required to be deducted at source by the bank at the time of payment/credit of interest.

Section 13A Exemption Does Not Override TDS Provisions

- Exemption under section 13A relates to taxability in the hands of the political party, not to the TDS obligation of the payer.
- Moreover, exemption under section 13A is conditional and subject to compliance with prescribed requirements.
- Hence, mere exemption of income does not dispense with TDS liability.

Punjab & Haryana HC Decision Distinguished

- The reliance placed by the CIT(A) on CIT (TDS) v. Canara Bank was held to be misplaced, as that decision did not concern interest paid to political parties.
- Accordingly, the facts were distinguishable.

Relief via First Proviso to Section 201(1) – Matter Remanded

- The Tribunal noted that the assessee may still seek relief under the first proviso to section 201(1).
- If the assessee proves that:
  - the political party has filed its return,
  - taken the interest income into account, and
  - paid tax (or income is otherwise not chargeable),
  - then the bank shall not be treated as an assessee in default.
- Consequently, disallowance under section 40(a)(ia) may not survive.

Final Decision

- Matter remanded to the Assessing Officer.
- AO directed to verify compliance with the first proviso to section 201(1).
- Appeal of the Revenue allowed for statistical purposes.

Legal Principle

Interest paid to political parties is not exempt from TDS under section 194A.

Exemption of income under section 13A does not automatically remove the payer's TDS obligation.

Practical Significance

- Banks and financial institutions must deduct TDS on interest paid to political parties, unless statutory relief under section 201(1) is established.
- Assessees can avoid disallowance under section 40(a)(ia) only by satisfying conditions of the first proviso to section 201(1).

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Date: 24.12.2025

Goods & Services Tax

AAR Holds Rail Transportation of Empty Containers Falls Under 'Transport of Goods by Rail' (5% GST)

Hasti Petro Chemical & Shipping Ltd.,
AAR - GUJARAT(24 November 2025)

Facts of the Case

- The applicant holds a Container Train Operator (CTO) licence.
- It transports:
  - Loaded containers by rail, and
  - Empty containers by rail for repositioning/logistics.
- GST was being charged at 12% on transportation of both loaded and empty containers under Entry 9(iv).
- Customers disputed the rate for empty containers, claiming it should be 5% under Entry 9(i).
- The applicant sought an advance ruling on:
  a. Correct GST rate on transportation of empty containers by rail
  b. Implications of charging 5% instead of 12%
  c. Applicability of Entry 9(i)

Issues Before the AAR

1. Whether empty containers qualify as "goods".
2. Whether transportation of empty containers by rail falls under:
   - Entry 9(iv) – transport of goods in containers, or
   - Entry 9(i) – general transport of goods by rail.
3. Applicable GST rate and ITC conditions.

Findings & Reasoning of AAR

a. Empty Containers Are "Goods"

- Under Section 2(52) of CGST Act, "goods" includes all movable property (excluding money & securities).
- Empty containers are movable and hence qualify as goods.
- This is reinforced by:
  - Service Tax Circular No. 96/07/2007-ST
  - Definition of "goods" under Sale of Goods Act, 1930.

b. Entry 9(iv) Applies Only When Goods Are Transported in Containers

- Entry 9(iv) applies only if:
  -Goods are transported inside containers, and
  -Service is provided by a person other than Indian Railways.
- In case of empty containers, the container itself is the goods, not a medium for carrying goods.
- Therefore, Entry 9(iv) is not attracted.

c. Entry 9(i) Is the Correct Classification

- Entry 9(i) is a general entry covering:
- "Transport of goods by rail (other than services specified at item (iv))"
- Since empty containers are goods and are not covered by Entry 9(iv), they fall squarely under Entry 9(i).
- The residual Entry 9(vii) is also not applicable, as it excludes rail transport.

d. Applicable GST Rate & ITC Condition

- GST rate under Entry 9(i): 5% (2.5% CGST + 2.5% SGST).
- Mandatory condition:
  - ITC on goods or services used in supplying the service must NOT be availed.
- There is no alternative higher rate option with ITC under Entry 9(i).

Final Ruling

Question	Ruling
Correct GST rate on transport of empty containers by rail	5% under Entry 9(i)
Applicability of Entry 9(iv)	Not applicable
ITC availability	ITC must be mandatorily forgone
Residual entry 9(vii)	Not applicable

Legal Principle

Transportation of empty containers by rail constitutes transport of goods by rail and falls under Entry 9(i) of Notification 11/2017-CT(R).
Entry 9(iv) applies only where goods are transported inside containers.

Practical Impact

- Container train operators can charge GST @ 5% on transport of empty containers.
- ITC reversal / non-availment is compulsory.
- Provides industry clarity where divergent GST rates were being charged.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 25.12.2025

Income Tax

Validity of reassessment notice issued by JAO instead of FAO

Rahul Bagrecha v. DCIT
Rajasthan High Court(12 Nov 2025)

Core Legal Issue

Whether a notice under Section 148 issued by the Jurisdictional Assessing Officer (JAO), instead of a Faceless Assessing Officer (FAO), is valid under the faceless reassessment regime introduced by Section 151A and Notification dated 29-03-2022?

Decision

No.
The Rajasthan High Court held that:
Notice under Section 148 issued by the JAO (and not by FAO) is invalid, and therefore:

- The reopening notice under Section 148, and
- The assessment order under Section 147

were quashed and set aside.
Decision is in favour of the assessee.

Court's Reasoning

Faceless reassessment is mandatory

- Section 151A read with CBDT Notification No. 18/2022 dated 29-03-2022 mandates that reassessment proceedings must be faceless.
- Under this scheme, only a Faceless Assessing Officer (FAO) is empowered to issue notice under Section 148.

JAO issuing notice violates the scheme

- In this case:
  - Notice u/s 148 dated 24-03-2024 was issued by JAO
  - Assessment order u/s 147 dated 17-03-2025 followed
- Since the foundational notice itself was invalid, the entire reassessment collapsed.

Gujarat HC decision distinguished

- Revenue relied on Talati & Talati LLP (Gujarat HC).
- Rajasthan HC held it not applicable, because:
  - Gujarat HC relied on Explanation 2 to Section 148
  - It assumed FAO cannot fulfill prerequisites in search cases

Rajasthan HC disagreed with this interpretation.

Bombay HC view preferred
The Court followed Bombay HC decisions, especially:

- Abhin Anilkumar Shah v. ITO (Bom HC)
- Hexaware Technologies Ltd.
- Shree Cement Ltd.
- Sharda Devi Chhajer

These cases consistently held that:
JAO cannot bypass the faceless reassessment mechanism unless expressly permitted by the scheme

Important Legal Principle Evolved

Once faceless reassessment is notified under Section 151A, any reassessment notice issued otherwise than by an FAO is without jurisdiction and void ab initio.

Practical Impact

- Strong ground to challenge reassessment notices issued by JAO post 29-03-2022
- Even completed reassessments can be struck down if the notice is invalid
- Always check:
  - Who issued the Section 148 notice
  - Whether it complies with faceless reassessment framework
- Liberty granted to revive proceedings if:
  - Supreme Court overturns Hexaware Technologies or related judgments

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Date: 25.12.2025

Goods & Services Tax

Whether CGST & SGST can be demanded when IGST was already paid on supply of goods handed over to a common carrier.

Toyota Kirloskar Motor (P.) Ltd. v. Union of India
Karnataka High Court(27 November 2025)

Core Issue

Does handing over goods to a common carrier amount to "termination of movement for delivery" under Section 10(1)(a) of the IGST Act, so as to make the supply intra-State and liable to CGST & SGST?

Decision

No.

The High Court held that:

- Place of supply is the place where movement of goods terminates for delivery to the recipient,
- Not the place where goods are handed over to the common carrier.

Therefore:

- Supply was inter-State
- IGST already paid was correct
- Demand of CGST & SGST was illegal
- Show Cause Notice was quashed

Court's Reasoning

Interpretation of Section 10(1)(a) – IGST Act

Statutory provision:

Place of supply = location where movement of goods terminates for delivery to recipient.

Key finding:

- "Termination of movement" occurs only when goods reach the recipient's destination,
- Not when goods are merely handed over to a transporter.

Passing of title ≠ Place of supply

Revenue argued:

- Title passed at factory gate (on handing goods to common carrier)
- Hence supply completed in Karnataka → CGST & SGST applicable

Court rejected this, holding:

- Passing of title under Sale of Goods Act has no nexus with place of supply under GST
- GST law does not depend on transfer of ownership, but on movement of goods

Supply was clearly inter-State

- Goods moved from Karnataka to dealers in other States
- Movement terminated outside Karnataka
- Hence:
  - Inter-State supply
  - IGST rightly paid

Double taxation not permissible

- Petitioner had already paid:
  - IGST on goods
  - IGST on freight
- Demanding CGST & SGST in addition would:
  - Lead to double taxation
  - Be revenue neutral
  - Cause no loss to Government

Final Outcome

- SCN demanding CGST & SGST → QUASHED
- Other issues in SCN → allowed to proceed separately

Key Legal Principles Laid Down

Place of supply depends on destination, not origin

Handing goods to common carrier ≠ delivery to recipient

Passing of title is irrelevant for GST place of supply

Once IGST is paid correctly, CGST & SGST cannot be demanded

key Takeaways

For goods involving movement, place of supply under Section 10(1)(a) of the IGST Act is where movement terminates for delivery to the recipient, and not where goods are handed over to a common carrier; hence, CGST and SGST cannot be demanded when IGST is duly paid.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 26.12.2025

Income Tax

Whether substantial cash (and cheque) deposits in bank accounts of an assessee not maintaining books can be taxed as unexplained cash credits u/s 68, or treated as business receipts where business activity is found to be genuine.

Abdul Jaleel v. ITO
Bangalore – ITAT(24-11-2025)

Key Facts

- Assessee: Fruit dealer, purchasing from farmers and selling to wholesalers
- No books of account; return not originally filed
- Case reopened due to bank deposits of ~₹1.59 crore
- AO treated ₹1.29 crore bank deposits as unexplained cash credits u/s 68
- Assessee filed:
  - Affidavit confirming fruit business
  - Names of persons identifying him as fruit vendor
  - Confirmations from third parties
  - Trading & P&L showing gross receipts ₹92.80 lakh and NP @ 8%
- AO himself accepted fruit business as genuine in AY 2016-17

Tribunal's Findings

Section 68 not applicable mechanically

- When business activity is accepted as genuine, bank deposits cannot automatically be treated as unexplained cash credits, especially:
  - when no books are maintained, and
  - deposits are consistent with business operations.

Consistency principle applied

- AO had accepted the assessee's fruit business as genuine in AY 2016-17.
- Without any contrary evidence, rejecting the same business in AY 2015-16 was unjustified.

RBI / cash transaction argument rejected

- CIT(A)'s reliance on RBI restrictions on cash transactions was misplaced, as:
  - AY involved was 2015-16,
  - not demonetisation period.

Entire bank deposits treated as turnover

- In absence of books, and no contrary evidence:
  - Entire bank deposits (cash + cheque) = gross receipts from business
- Profit to be estimated on reasonable basis.

Final Directions of ITAT

- ₹1.29 crore bank deposits to be treated as gross business receipts
- Net profit to be computed @ 8%, as admitted by assessee
- Savings bank interest to be taxed as Income from Other Sources
- Deduction u/s 80TTA (₹10,000) to be allowed
- Appeal partly allowed

Practical Takeaways

For Cash-Intensive Businesses (fruit, vegetables, small traders):

- Mere absence of books does not justify addition u/s 68.
- If business is plausible and accepted, deposits should be treated as business turnover, not unexplained income.
- Once business is accepted, deposits relatable to such business must be assessed under business income, not u/s 68.
- Consistency across years is critical.

Note

Where assessee's business is found to be genuine and no contrary evidence exists, bank deposits are to be treated as business receipts and only net profit can be taxed — not the entire deposits u/s 68.

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Date: 26.12.2025

Goods & Services Tax

Whether imported industrial oil declared as "Distillate Oil" could be detained/seized on allegation of mis-declaration.

Noya Infrastructure LLP v. Union of India
Gujarat HC(09-12-2025)

Core Issue

Whether imported industrial oil declared as "Distillate Oil" could be detained/seized on allegation of mis-declaration, when:

- CRCL test report showed only cloud point deviation, and
- Merely noted "diesel-fraction characteristics" without conclusively certifying the product as diesel.

Laboratory Findings (CRCL)

- 14 parameters tested
- Only deviation:
  - Cloud Point not meeting IS 16731:2019
- Observation:
  - Product has "characteristics of diesel fraction with a small amount of heavier hydrocarbons"
- No finding that goods were:
  - Automotive Diesel (IS 1460), or
  - HFHSD, or
  - Restricted diesel product
- All other parameters (density, viscosity, flash point, distillation range, etc.) fully satisfied

High Court's Key Findings

Diesel-fraction ≠ Diesel

- Merely stating that goods have "diesel fraction characteristics" is not conclusive proof that:
  - Goods are diesel, or
  - Goods are mis-declared
- CRCL itself clarified:
- All distillate oils (HFHSD, Marine Fuel, Gas Oil, LDO) fall within diesel fraction
- Fractional similarity cannot override declared classification

Cloud Point alone cannot justify seizure

- Cloud point relevance depends on:
  - Climate
  - End-use
  - Operating environment (e.g., marine fuel in cold regions)
- IS 16731 itself states:
- Cloud point does not guarantee operability in all climates
- Cloud point deviation alone ≠ non-conformity warranting seizure

Authorities travelled beyond test report

- Detention/seizure must be strictly based on findings in CRCL report
- Revenue relied on:
  - Density ranges
  - End-use allegations
  - Diesel misuse
- But none of these were conclusively recorded in the test report
- Post-facto reasoning impermissible

"Most akin" test applied

Relying on Gastrade International v. CC (2025) 8 SCC 342, Court held:

- When expert opinion is ambiguous or non-definitive, classification must follow:
  - Rule 4 – "Most akin" test
- Goods need not perfectly match all parameters
- Test is closest resemblance, not preponderance of probability
- Goods were most akin to Distillate Oil, not diesel

Burden of proof on Revenue

- Mis-declaration must be proved conclusively
- Ambiguous lab opinion cannot shift burden to importer
- Detention under s.110 requires clear belief backed by evidence

Final Ruling

- Seizure / detention quashed
- Imported goods to be released
- Goods held to be rightly classifiable as Distillate Oil
- Importers to furnish end-use certificate (as safeguard)

Key Takeaways

Where CRCL report shows only cloud-point deviation and non-definitive diesel-fraction traits, without conclusively proving diesel, mis-declaration cannot be alleged and goods must be classified on the "most akin" test as Distillate Oil.

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TAX INSIGHTS

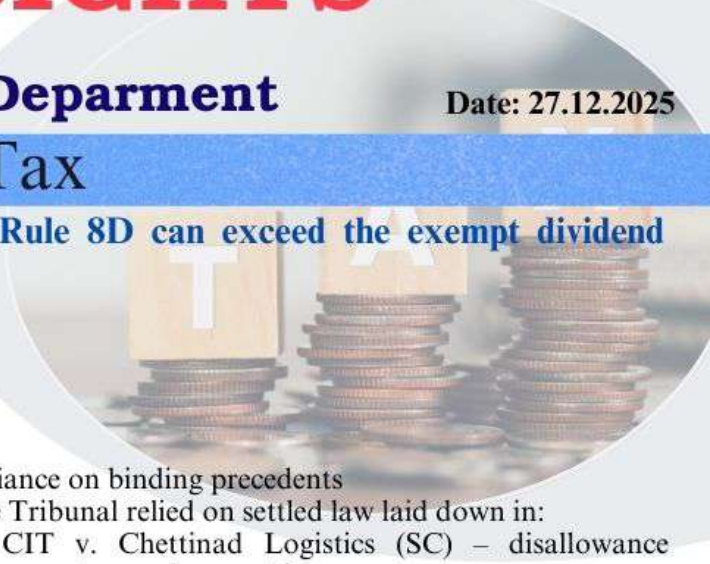
By
Tax Research Deparment

Date: 27.12.2025

Income Tax

Whether disallowance under section 14A read with Rule 8D can exceed the exempt dividend income earned during the relevant assessment year.

Jasper Industries (P.) Ltd. v. DCIT
Hyderabad – ITAT (10-12-2025)



Core Facts

- Assessee engaged in automobile dealership and servicing business
- Investments in equity instruments:
  - Opening: ₹5,302.61 lakh
  - Closing: ₹5,479.11 lakh
- Exempt dividend income earned: ₹23,000
- AO applied Rule 8D (amended) and computed disallowance @ 1% of average investments = ₹53.90 lakh
- CIT(A) sustained the disallowance relying on Maxopp Investments Ltd.

Tribunal's Findings

Disallowance cannot exceed exempt income

- Following its own coordinate bench decision in assessee's case for AY 2016-17, the Tribunal reiterated:
- Disallowance under section 14A r.w. Rule 8D cannot exceed the exempt income earned during the relevant year.
- Even where Rule 8D is invoked, the upper cap is the actual exempt income.

Rule 8D is machinery provision, not charging provision

- Mechanical application of Rule 8D without reference to quantum of exempt income leads to absurd and unjust results.
- Section 14A is intended to disallow expenditure "in relation to" exempt income, not to create artificial losses or additions.

Reliance on binding precedents

The Tribunal relied on settled law laid down in:

- CIT v. Chettinad Logistics (SC) – disallowance cannot exceed exempt income
- Cheminvest Ltd. (Delhi HC) – if no exempt income, no 14A disallowance
- Consistent ITAT jurisprudence
- Maxopp Investments does not authorise disallowance exceeding exempt income

Final Direction

- Order of CIT(A) set aside
- AO directed to restrict disallowance u/s 14A r.w. Rule 8D to ₹23,000, being the exempt dividend income
- Appeal partly allowed

Note

Even where Rule 8D is validly invoked, disallowance under section 14A cannot exceed the exempt income earned during the relevant assessment year.

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Date: 27.12.2025

Goods & Services Tax

Whether GST registration cancelled due to non-filing of returns can be restored when the taxpayer shows bona fide hardship and agrees to: file all pending returns, and pay costs.

Sakshi Enterprises v. Additional Commissioner (Appeals)
Madhya Pradesh HC(02-12-2025)

Facts

- GST registration of the petitioner was cancelled for non-filing of returns for 2024.
- Show Cause Notice was issued → cancellation order passed.
- Appeal against rejection of revocation was dismissed.
- Petitioner pleaded:
  - adverse family circumstances,
  - willingness to comply fully,
  - readiness to pay costs.

Arguments

Petitioner

- Non-filing was due to unavoidable personal hardship.
- Seeks restoration to re-enter the formal tax system.
- Relied on Mohd. Shahzar v. State of MP (2025).

Department

- Adequate opportunity of hearing was provided.
- Statutory provisions allow cancellation.
- Petitioner may seek fresh registration.

Held

Cancellation and appellate orders set aside
The High Court held that:

- Opportunity of hearing was provided, so no procedural illegality.
- However, bringing the assessee back into the tax net serves the interest of revenue.
- The GST regime aims to promote formal economic participation, not permanently exclude defaulters.

Directions by the Court

- Petitioner must:
  - File all pending GST returns, including the period of cancellation.
  - Pay costs of ₹50,000 to the department.
  - Comply within 2 months.
- On compliance, the authority must reconsider revocation of GST registration.

Legal Provisions Involved

- Section 29 & 30, CGST Act, 2017
- Rules 21, 22 & 23, CGST Rules, 2017

Key Takeaways

GST registration cancellation for non-filing is not irreversible.
Courts may grant relief where:

- default is bona fide,
- taxpayer undertakes full compliance,
- restoration advances revenue interest.

Emphasis is on substantive compliance over technical exclusion.

Practical Impact

- Strong precedent for taxpayers seeking revocation after cancellation.
- Useful in writ petitions where appellate remedies fail.
- Reinforces that fresh registration is not the only solution.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 28.12.2025

Income Tax

Whether loss on supplier advance written off in the ordinary course of real-estate business is allowable as business loss.

Bengal Omnitech Nirman Ltd. v. ACIT / ITO
Kolkata – ITAT (02-12-2025)

Core Issue

Whether loss on supplier advance written off in the ordinary course of real-estate business is allowable as business loss, even when:

- no income from the corresponding project is recognised in the Profit & Loss Account during the year due to the project completion method.

Held

Yes. The loss is allowable as business (trading) loss.
The Tribunal held that:

- Advance paid for supply of project material is revenue in nature.
- Its irrecoverability constitutes a trading loss under section 28, even if:
  - project revenue is not recognised in the same year, and
  - the amount does not qualify strictly as a "bad debt" under section 36(1)(vii).

Key Reasoning

- The assessee followed the project completion method, under which:
  - expenses accumulate as WIP, and
  - revenue is recognised only on completion.
- A trading loss has a wider scope than a bad debt.
- Real income cannot be computed without allowing legitimate business losses, irrespective of timing mismatch in revenue recognition.
- Reliance placed on CIT v. Sumangal Overseas Ltd. (Delhi HC).

Other Important Findings (All in favour of assessee)

1. Interest paid to flat purchasers – Section 37(1)
   - Interest paid on refund of booking advances due to delay in delivery is:
     - incurred wholly and exclusively for business, and
     - allowable even if project income is not recognised.
   - Such interest cannot be capitalised to WIP merely because revenue is deferred.
2. Interest paid to directors – Section 36(1)(iii)
   - Interest on unsecured loans via current account transactions with directors:
     - not excessive or unreasonable merely because rate is higher.
   - Comparable interest paid to unrelated parties and past acceptance by department supported allowability.
3. Closing stock valuation – Section 145
   - AO adopted incorrect project area, leading to artificial stock difference.
   - Since assessee computed cost per sq. ft. based on total project area, addition was:
     - factually incorrect, and
     - revenue neutral (closing stock of one year = opening stock of next).
   - Addition deleted.
4. Section 43B disallowance
   - Service tax and professional tax:
     - shown as liabilities,
     - not debited to P&L, and
     - not claimed as deduction.
   - Hence, section 43B not applicable.

Note

Loss on irrecoverable supplier advance incurred in ordinary course of real-estate business is allowable as trading loss despite non-recognition of project income under project completion method.

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भारतीय लागत लेखाकार संस्थान
Statutory Body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Headquarters: CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi – 110 003
Kolkata Office: CMA Bhawan, 12, Sudder Street, Kolkata – 700016

Date: 28.12.2025

Goods & Services Tax

HC Upholds Denial of Release of Goods in Transit Due to Doubtful Transaction; CBIC Circular Not Applicable

JJ Traders v. Union of India, [Calcutta HC (10-12-2025)]
WPA No. 2144 of 2025

Core Issues

1. Whether a writ petition under Article 226 is maintainable against detention and penalty orders under section 129, when:
   - notice was issued,
   - opportunity of hearing was claimed but disputed, and
   - factual controversies exist.
2. Whether CBIC Circular dated 31-12-2018 deeming consignor/consignee as "owner" applies where:
   - genuineness of transaction,
   - supplier existence, and
   - accompanying documents are seriously doubted.
3. Whether detained perishable goods should be released pending appeal.

Held

1. Writ Petition – Not Maintainable:
In favour of Revenue
- This was not a "no notice–no hearing" case.
- Petitioner alleged denial of personal hearing, but:
  - department asserted notice was issued,
  - impugned order recorded non-appearance.
- Such a dispute requires factual adjudication, unsuitable for writ jurisdiction.

Since the order involved detailed factual findings (weight discrepancy, dubious supplier, absence of inward e-way bills), the High Court declined to exercise Article 226 powers and relegated the petitioner to statutory appeal under section 107.

2. CBIC Circular on Deemed Ownership – Not Applicable:
In favour of Revenue
- Though petitioner was named as consignor in invoice and e-way bill, authorities found:
  - excess quantity of 1,300 kg,
  - no inward e-way bills of supplier,
  - driver's statement casting doubt,
  - inference of procurement from unidentified sources for tax evasion.

Held:
- CBIC Circular (31-12-2018) applies only when documents are in order and transaction is genuine.
- Circular cannot be used as a shield where:
  - authenticity of invoices/e-way bills is under serious doubt.
- Though binding on officers, circulars operate within the statute, not beyond it.

3. Interim Release of Perishable Goods:
In favour of Assessee
Considering:
- perishable nature of areca nuts, and
- pending dispute on ownership,

The Court directed:

- release of goods and conveyance upon:
  - payment of penalty under section 129(1)(a) (owner option), and
  - furnishing bank guarantee for balance penalty under section 129(1)(b) (non-owner option).
- Release to be effected within two days of compliance.

Key Legal Principles

- Writ jurisdiction is exceptional, not a substitute for statutory appeal.
- Disputed facts and evidentiary issues must be examined by appellate authorities, not writ courts.
- CBIC Circulars cannot override statutory scrutiny when transaction genuineness is in question.
- Courts may grant equitable interim relief for perishable goods without deciding merits.

Distinguished / Followed

- Distinguished:
  - Sandip Kumar Pandey (Cal. HC) – no dispute on supplier or documents
  - Halder Enterprises (All. HC) – transaction genuineness undisputed
- Followed:
  - ASP Traders v. State of UP (SC) – hearing requirement, but factual disputes must go to appeal

Key Takeaways

CBIC Circular deeming consignor/consignee as owner for release of detained goods does not apply where transaction genuineness and documents are seriously doubted; writ petition not maintainable in presence of disputed facts and alternate remedy.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 29.12.2025

Income Tax

Sec. 56(2)(viib) not applicable to subsidiary of public company deemed as public – ITAT Chennai

Asirvad Micro Finance Ltd. v. ACIT
ITAT Chennai(05-12-2025)

Core Issue

Whether section 56(2)(viib) (angel tax on excess share premium) can be invoked when the assessee, though incorporated as a private company, had become a subsidiary of a listed public company, and was therefore a deemed public company under section 2(18).

Facts in Brief

- Assessee (private limited microfinance company) issued shares at a premium.
- AO rejected valuation, applied Rule 11UA, and made addition of ₹42.29 crore under section 56(2)(viib).
- During FY 2015–16, Manappuram Finance Ltd., a listed public company, acquired majority shareholding, making the assessee its subsidiary.
- Assessee raised an additional legal ground before ITAT that sec. 56(2)(viib) itself was inapplicable.

Statutory Framework Applied

- Section 56(2)(viib) applies only to companies in which public are NOT substantially interested.
- Section 2(18):
- A subsidiary of a company in which public are substantially interested is also deemed to be such a company.
- Section 2(71), Companies Act, 2013:
- A subsidiary of a public company is deemed to be a public company, even if it remains private in its articles.
- Section 8, General Clauses Act:
- Reference to Companies Act, 1956 to be read as Companies Act, 2013.

Tribunal's Findings

- Once Manappuram Finance Ltd. acquired controlling stake, the assessee became:
  - a subsidiary of a public company, and
  - a deemed public company under section 2(18).
- Since section 56(2)(viib) expressly excludes companies in which public are substantially interested:
  - the charging provision itself failed.
- When the foundation (charging section) collapses, valuation disputes become irrelevant.

Result: Addition under section 56(2)(viib) deleted in toto.

Held

- Section 2(18) deems a subsidiary of a public company as a public company
- Section 56(2)(viib) does not apply to such companies
- Addition of ₹42.29 crore deleted
- Other valuation grounds rendered academic

Important Judicial Support Relied Upon

- Meredith Traders (P) Ltd. (ITAT Mumbai)
- DCIT v. Comptech Solutions (P) Ltd. (ITAT Delhi)
- Sembcorp Energy India Ltd. (ITAT Hyderabad)

Key Takeaways

1. Angel tax cannot be invoked once a company becomes:
   - a subsidiary of a listed / widely held public company.
2. Deeming fiction under Companies Act carries over to Income-tax Act where provisions align.

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Date: 29.12.2025

Goods & Services Tax

Demand raised against deceased without notice to legal representative is invalid – Allahabad HC

Sambul Shahid v. State of U.P.[Allahabad High Court,9.12.2025]

Key Issue

Whether GST demand proceedings under section 73 can be validly initiated and concluded in the name of a deceased proprietor, without issuing a show cause notice to the legal representative, by relying on section 93 (liability of legal representatives).

Facts

- Proprietor died on 26.04.2021.
- GST registration already cancelled.
- SCN dated 30.11.2024 and order dated 25.02.2025 were issued in the name of the deceased.
- No notice was issued to the legal representative.
- Revenue sought to recover dues from the legal representative relying on section 93.

Held (Decision)

- Section 93 deals only with liability to pay, not with authority to determine tax against a dead person.
- Determination of tax after death must necessarily be preceded by notice to the legal representative.
- Issuance of SCN and adjudication against a deceased person is void ab initio.
- Notice to legal representative is sine qua non for valid determination.
- Demand order quashed, with liberty to department to proceed afresh in accordance with law.

Liability provisions enabling recovery from legal representatives do not dispense with the mandatory requirement of issuing a show cause notice to such legal representatives. Determination proceedings against a deceased person are legally unsustainable.

Statutory Interpretation

- Section 73 → mandates issuance of SCN to "person chargeable with tax".
- Section 93 → fastens liability on legal representative but does not create a deeming fiction allowing adjudication against a deceased person.
- Recovery can follow only after valid determination against a living, legally representable person.

Practical Implications

1. GST demands issued in name of deceased proprietors are void, even if uploaded on portal.
2. Department must:
   - identify legal representative,
   - issue SCN to legal representative,
   - adjudicate after hearing them.
3. Section 93 cannot cure jurisdictional defects in determination proceedings.
4. Legal representatives are liable only to extent of estate, and only after valid adjudication.
5. Strong ground for writ remedy where demand is raised post death.

Comparable Principles

- Proceedings against dead persons are nullities (well-settled across tax jurisprudence).
- Natural justice cannot be bypassed by recovery provisions.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 30.12.2025

Income Tax

Whether deduction under section 10B, disallowed in an intimation under section 143(1) due to a technical e-filing glitch when the Assessing Officer examined and accepted the claim in regular assessment under section 143(3)

Halliburton Technology India (P.) Ltd. v. ACIT, [HIGH COURT OF BOMBAY (12-02-2025)]

Core Issue

Whether deduction under section 10B, disallowed in an intimation under section 143(1) due to a technical e-filing glitch, can survive when:

- the deduction was actually claimed in the return, and
- the Assessing Officer examined and accepted the claim in regular assessment under section 143(3).

Held (In Favour of Assessee)

143(1) Intimation cannot survive once 143(3) assessment accepts the claim

- The deduction under section 10B was:
  - clearly claimed in Schedule BP and Schedule 10B, and
  - examined and accepted during scrutiny assessment.
- Therefore, the 143(1) intimation merged into the 143(3) assessment.
- Any disallowance made earlier under section 143(1) automatically falls.

Prima facie adjustments under section 143(1) are limited

- Only obvious, non-debatable errors can be adjusted.
- Section 10B deduction involves:
  - factual verification (exports, realization, timelines), and
  - legal interpretation.
- Hence, disallowance of 10B deduction is outside the scope of 143(1).
- Relied on: Bajaj Auto Finance Ltd. v. CIT (Bom HC)

Technical glitch in ITR-V cannot prejudice assessee

- The Court accepted that:
  - ITR schedules correctly claimed deduction, but
  - ITR-V wrongly reflected total income due to system error.
- Such error cannot be attributed to the assessee, especially when:
  - rectification applications were filed promptly, and
  - tax was paid correctly under section 115JB (MAT).

Section 154 rectification order held invalid

- Rectification order dated 20-07-2015:
  - was never communicated till 28-01-2022, and
  - was already rendered redundant since audit objection was withdrawn.
- Held to be:
  - time-barred under sections 154(6) & 154(7), and
  - null and void.

Refund directed

- Refunds adjusted against the alleged demand were ordered to be:
  - returned with interest,
  - within 8 weeks.

Key Legal Principles Emerging

- Deduction examined and accepted in 143(3) overrides contrary 143(1) adjustment
- Debatable issues cannot be tinkered with under 143(1)
- System / technical errors in e-filing cannot prejudice substantive rights
- Uncommunicated rectification orders have no legal effect
- Strict limitation under section 154 must be respected

Practical Takeaways

- Always verify Schedule BP / deduction schedules, not just ITR-V.
- If deduction is accepted in scrutiny, earlier 143(1) disallowance becomes irrelevant.
- Pending rectification applications strengthen assessee's bona fides.

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Goods & Services Tax

Whether detention and seizure under section 129 are valid when the only defect is an incorrect PIN code in the "ship-to" address in the e-way bill, while the address itself is correct.

Rc Sales and Services v. State of Uttar Pradesh,[HIGH COURT OF ALLAHABAD (18-12-2025)]

Issue

Whether detention and seizure under section 129 are valid when:

- the consignment is accompanied by tax invoice, e-way bill and GR,
- no discrepancy is found in goods or transaction, and
- the only defect is an incorrect PIN code in the "ship-to" address in the e-way bill, while the address itself is correct.

Held (In favour of assessee)

- Detention solely for PIN code error is illegal
  - The Court held that:
    - all mandatory documents were valid and consistent,
    - the transaction was clearly "bill-to ship-to", and
    - the address of the consignee was correct, except for an inadvertent PIN code error.
  - Physical verification revealed no mismatch in goods or quantity.

- CBIC Circular is binding on officers
  - Clause 5(b) of CBIC Circular No. 64/38/2018-GST clearly provides that:

No proceedings under section 129 may be initiated where there is an error in PIN code but the address of consignor and consignee is correct, provided the validity of the e-way bill is not affected.

  - The Court reiterated that departmental circulars are binding on GST authorities.

- No intent to evade tax
  - The mistake was clerical / inadvertent, with:
    - no revenue loss,
    - no discrepancy in value, quantity or classification, and
    - no extension of e-way bill validity.
  - Hence, section 129 (detention & penalty) could not be invoked.

- Reliance on earlier precedent
  - Followed:
    - Ashok Kumar Maganbhai Patel v. State of UP

Where goods are accompanied by valid invoice and e-way bill, and the only discrepancy is a wrong PIN code while the address is correct, initiation of proceedings under section 129 is impermissible in view of CBIC Circular No. 64/38/2018-GST.

Final Directions

- Orders under section 129(3) quashed
- Detention/seizure declared unsustainable
- Refund of any amount deposited, in accordance with law

Practical Takeaways

- Minor clerical errors ≠ detention
- Section 129 cannot be invoked for technical lapses
- CBIC Circulars override contrary field action
- PIN code mismatch alone does not establish tax evasion
- Strong protection for "bill-to ship-to" transactions

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TAX INSIGHTS

By
Tax Research Deparment

Date: 31.12.2025

Income Tax

Whether AO can deny alternate exemption under section 11 for non-filing of Form 10B while processing return under section 143(1) without granting opportunity under section 139(9), and whether entire gross receipts can be taxed on such denial.

Goswami Bhagwan Lal Education Society v. ITO
ITAT DELHI (27.11.2025)

Core Issue

Whether CPC/AO can deny alternate exemption under section 11 for non-filing of Form 10B while processing return under section 143(1) without granting opportunity under section 139(9), and whether entire gross receipts can be taxed on such denial.

Held

1. Non-filing of Form 10B is a curable defect
   - Failure to upload audit report in Form 10B within prescribed time is directory, not mandatory.
   - Such lapse constitutes a curable defect.
   - AO ought to have treated the return as defective under section 139(9) and granted opportunity to rectify.
   - Straight denial of section 11 exemption without 139(9) opportunity is invalid.

2. Debatable issue – adjustment not permissible under section 143(1)
   - Denial of alternate claim under section 11 due to non-filing of Form 10B is a debatable issue.
   - Debatable matters fall outside the scope of section 143(1) adjustments.
   - CPC exceeded jurisdiction in denying exemption at processing stage.

3. Denial of exemption ≠ taxation of gross receipts
   - Even if exemption under sections 10(23C) or 11 is denied:
     - Income-tax can be levied only on "income", not on gross receipts.
   - Taxing entire receipts violates:
     - Basic principles of the Act, and
     - Accounting fundamentals.

4. Expenses must be allowed under sections 56 & 57
   - If exemption under section 11 is not allowed:
     - Income must be assessed under "Income from Other Sources".
     - Revenue expenditure incurred exclusively to earn income, including depreciation, must be allowed under section 57.
   - Disallowance of entire expenditure under section 143(1) is illegal and unjustified.

5. CIT(A)'s reasoning rejected
   - Chapter III (Exempt Income) does not authorise taxation of gross receipts on denial of exemption.
   - Comparison with Chapter VIA deductions is legally misconceived.
   - Absence of exemption does not convert receipts into income.

Final Direction

- Orders of CPC and CIT(A) set aside.
- Matter remanded to AO with directions to:
  - Grant opportunity under section 139(9),
  - Permit filing/condonation of Form 10B,
  - Re-examine alternate claim under section 11,
  - Tax only net income, not gross receipts, if exemption is ultimately denied.

Key Takeaways

- Strong authority against CPC adjustments under section 143(1)
- Helpful where Form 10B was missed or uploaded late
- Useful to counter gross-receipt taxation of trusts

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Goods & Services Tax

Whether GST registration can be cancelled for "non-existent business" under section 29 when the Department simultaneously raises tax demands for prior years, thereby presupposing that business activity existed ?

Anil Kishore Purohit v. State of Madhya Pradesh
MADHYA PRADESH HC(04-12-2025)

Core Issue

Whether GST registration can be cancelled for "non-existent business" under section 29 when the Department simultaneously raises tax demands for prior years, thereby presupposing that business activity existed.

Held

1. Mutually contradictory allegations vitiate cancellation
   - Department alleged:
     a. Business was non-existent / non-operational at the time of inspection, and
     b. Petitioner had tax liabilities for prior financial years (2019-20, 2021-22, 2022-23).
   - These two allegations cannot co-exist.
   - Tax liability necessarily presupposes business activity.
   - One cannot allege no business and unpaid tax from business simultaneously.

2. Cancellation under section 29 unsustainable
   - Cancellation of registration on the ground of fraud or non-existence was held legally unsustainable.
   - SCN, cancellation order, and appellate rejection were all founded on self-contradictory premises.
   - Such contradictions strike at the root of jurisdiction and validity of the proceedings.

3. Assessment under section 63 defeats "non-existent" allegation
   - Department issued best-judgment assessments under section 63 for three prior years based on GSTR-2B data.
   - Raising demands for sales, ITC, tax, interest, and penalty clearly assumes:
     - Existence of taxable supplies, and
     - Continuity of business activity.
   - Once assessment is made for business transactions, cancellation for "non-existence" collapses.

4. Procedural lapses further weaken department's case
   - SCN uploaded on portal but not effectively served.
   - No order passed on application for revocation of cancellation.
   - Field visit report:
     - Prepared by a single officer,
     - Without panch witnesses,
     - Without signatures of assessee or representative,
     - No contemporaneous panchnama.

5. Reliance on earlier MP HC precedent
   - Court followed Empire Steel Holdings v. Union of India
   - Held that mechanical field verifications without proper procedural safeguards cannot justify cancellation.

Final Directions

- Show-cause notice, cancellation order, and appellate rejection quashed.
- GST registration restored.
- Assessment orders under section 63 left open to be challenged separately in statutory appeal.

Key Takeaways

This judgment is a strong weapon against arbitrary GST registration cancellations, especially where:

- Department alleges "non-existent business"
- Simultaneous tax demands are raised for earlier periods
- Cancellation is based solely on a one-day inspection
- Revocation applications are ignored

Note

"There cannot be tax liabilities without doing business. Both allegations cannot co-exist."