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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

TAX INSIGHTS

By
Tax Research Deparment

Date: 11.11.2025

DIRECT TAXATION

TDS refund cannot be denied solely due to non-reflection in Form 26ASif the assessee furnishes valid Form 16A certificates - ALLAHABAD HIGH COURT

(U.P. Rajya Nirman Sahakari Sangh Ltd. vs. Union of India, Ministry of Finance, Dept. of Revenue, WRIT - C No. 16125 of 2018,OCTOBER 8, 2025)

Fact of the case:

- The assessee, a co-operative society exempt under section 80P, filed applications seeking refund of TDS deducted from its income.
- The refund was supported by Form 16A certificates issued by deductors.
- However, the Assessing Officer (AO) refused to grant refund, arguing that the corresponding TDS entries were not reflected in Form 26AS.
- The assessee filed a writ petition under Article 226 of the Constitution.

Issue:

Whether the Assessing Officer can deny a refund of TDS merely because the amount is not reflected in Form 26AS, even though the assessee produces valid Form 16A TDS certificates.

Decision:

Yes — Refund cannot be denied merely for mismatch with Form 26AS.

The Court held:

1.The law is settled by earlier rulings —

- Court On Its Own Motion v. CIT [2013] 352 ITR 273 (Delhi)
- Rakesh Kumar Gupta v. Union of India [2014] 365 ITR 143 (Allahabad)

— that if the assessee produces valid Form 16A certificates, refund must not be denied merely because of a mismatch in Form 26AS.

2.The AO is duty-bound to verify the correctness of Form 16A by contacting the deductor or AO(TDS) if needed.

3.The taxpayer should not suffer because of a deductor's failure to upload correct TDS details.

4.The CBDT Instruction No. 05/2013 dated 08.07.2013 supports this position.

5.Once Form 16A certificates are accepted, the assessee becomes entitled to refund.

Key Takeaway:

- TDS refund cannot be denied solely due to non-reflection in Form 26AS if the assessee furnishes valid Form 16A certificates.
- The AO is obligated to verify such claims and grant refund once satisfied that tax has been deducted and deposited.

GOODS & SERVICES TAX

Advance Ruling on Classification and rate of GST on export of men's woven pyjama sets.

Link Up Textiles (P.) Ltd., In re
Authority for Advance Ruling, Tamil Nadu
C. Thiyagarajan and B. Suseel Kumar, Members
Order No. TN/42/AAR/2025 | Dated: October 8, 2025

Facts of the Case:

The applicant, M/s Link Up Textiles (P.) Ltd., a GST-registered textile exporter, was engaged in the manufacture and export of men's pyjama sets consisting of a woven top (shirt/kurta) and woven bottom (pyjama/trouser) made of 67% cotton, 29% polyester, and 4% spandex. The products were made exclusively to order for an overseas buyer, with packing specifications requiring two sets per pack.

The total pack value exceeded ₹1,000 (₹1,371 per pack), but the per-set value was ₹686. The applicant had previously classified the goods under HSN 61072100 and discharged IGST at 12%. Since the garments were woven, the applicant sought an advance ruling to confirm the correct HSN classification under Chapter 62 and the applicable GST rate, given that each individual set was valued below ₹1,000.

Issues for Determination:

1. The correct HSN classification of men's pyjama sets consisting of woven top and bottom.
2. The applicable GST rate when two pyjama sets are packed together with a combined value exceeding ₹1,000, though the value per set is below ₹1,000.

Findings and Observations:

The Authority noted that the garments in question were woven nightwear sets predominantly composed of cotton. Under Chapter 62, such apparel falls under heading 6207, covering "Men's or boys' nightshirts, pyjamas, and similar articles." Accordingly, the goods were classifiable under HSN 620721, which specifically covers "Nightshirts and pyjamas of cotton."

Regarding the rate of tax, the AAR referred to Notification No. 01/2017-Central Tax (Rate) dated 28 June 2017, which prescribes different rates for apparel based on the sale value per piece:

- Entry 223, Schedule I – 5% GST for apparel valued up to ₹1,000 per piece;
- Entry 170, Schedule II – 12% GST for apparel valued above ₹1,000 per piece.

The Authority held that the term "per piece" refers to a single, independently usable apparel item. In this case, each pyjama set—comprising one shirt and one pant—constituted one piece of apparel. The fact that two such sets were packed together for export did not alter the rate determination. Since the per-set value was ₹686, the goods qualified for the lower rate of 5% GST (2.5% CGST + 2.5% SGST).

Ruling:

1. Classification: Men's woven pyjama sets (shirt and pant) made predominantly of cotton are classifiable under HSN 620721 – "Men's or boys' nightshirts and pyjamas of cotton."
2. Applicable GST Rate: Where the value per pyjama set (comprising one top and one bottom) does not exceed ₹1,000, the applicable GST rate is 5% (2.5% CGST + 2.5% SGST) as per Entry No. 223 of Schedule I to Notification No. 01/2017-Central Tax (Rate) dated 28 June 2017.

Key Takeaways:

- Classification: Woven men's pyjama sets are to be classified under HSN 620721, not under 6107, which applies to knitted garments.
- Valuation Principle: The GST rate for apparel is determined per piece, even if multiple pieces are packed together.
- Rate of Tax: If the value of each pyjama set is below ₹1,000, GST at 5% is applicable, notwithstanding that the aggregate pack value exceeds ₹1,000.
- Export Context: The absence of domestic sales and export-specific design or IP restrictions do not affect classification or valuation under GST law.

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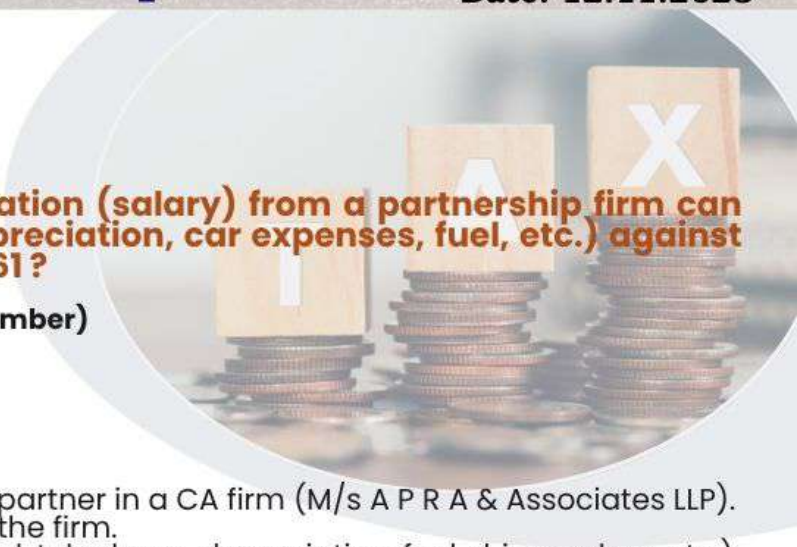
TAX INSIGHTS

By
Tax Research Deparment

Date: 12.11.2025

DIRECT TAXATION



Whether a partner who receives remuneration (salary) from a partnership firm can claim business-related expenses (e.g. depreciation, car expenses, fuel, etc.) against such income under the Income-tax Act, 1961?

Atul Kumar Gupta v. Income-tax Officer
Bench: ITAT Delhi 'SMC' (Vikas Awasthy, Judicial Member)
Appeal No.: ITA No. 3516 (Delhi) of 2025
Assessment Year: 2018–19
Date of Order: October 24, 2025
Decision: In favour of the assessee.

Key Facts:

- The assessee, a Chartered Accountant, was a partner in a CA firm (M/s A P R A & Associates LLP).
- He received ₹24,00,000 as remuneration from the firm.
- Claimed ₹6,76,456 as business expenses (travel, telephone, depreciation, fuel, driver salary, etc.).
- The Assessing Officer (AO) disallowed these expenses, holding they are not allowable against partner's remuneration.
- CIT(A) upheld the disallowance.
- The assessee appealed before the ITAT.

Tribunal's Ruling:

1. Section 28(v) explicitly treats any interest, salary, bonus, commission or remuneration received by a partner from the firm as "profits and gains of business or profession."
2. Therefore, any expenditure incurred wholly and exclusively for earning such income is deductible under Sections 32 (depreciation) and 37 (business expenses).
3. The assessee had been consistently allowed such deductions in prior years — hence, under the rule of consistency, similar treatment must be continued unless facts change.
4. The Tribunal relied on:
   - CIT v. Ramniklal Kothari [1969] 74 ITR 57 (SC)
   - Aman Tandon v. ACIT (ITAT Delhi, 2019)
   - Anil Gupta v. ITO (ITAT Delhi, 2014)
5. Accordingly, the ITAT held that the expenses and depreciation claimed were allowable, and directed deletion of the disallowance.

Held:

- Remuneration received by a partner from the firm is business income under section 28(v).
- Hence, any expenditure incurred wholly and exclusively for earning such income — including depreciation — is allowable under sections 32 and 37.
- The rule of consistency also requires such deductions to continue if allowed in earlier years.

Key Takeaway:

- Partners (especially professionals) receiving remuneration from their firms can validly claim business-related expenses (including depreciation on car, telephone, fuel, etc.) against such income, provided such expenses are genuinely incurred and linked to professional activities.

GOODS & SERVICES TAX

Whether Rule 86A permits blocking of future or non-existent ITC in the electronic credit ledger when the ledger balance is Nil on the date of blocking?

Rawman Metal & Alloys v. Deputy Commissioner of State Tax
W.P. (L) No. 10928 of 2025
Date of decision: 7 October 2025
Coram: M.S. Sonak & Advait M. Sethna, JJ.

Facts of the Case:

- The petitioner's electronic credit ledger balance was "Nil" when the department passed an order on 9 December 2024, blocking ITC of ₹12.84 lakh under Rule 86A.
- The assessee contended that since no ITC was available on the blocking date, the action was ultra vires Rule 86A.
- The department argued that blocking could extend to future credits corresponding to fraudulently availed ITC, even if no balance existed.

Issues for Determination:

- Whether Rule 86A permits blocking of future or non-existent ITC in the electronic credit ledger when the ledger balance is Nil on the date of blocking?

Held:

- Rule 86A allows blocking only of "credit of input tax available" in the ledger.
- When the available ITC balance is Nil, no jurisdiction exists to invoke Rule 86A.
- The rule's language is clear and unambiguous — it cannot be stretched to permit "negative blocking" or to freeze future credits.
- Being a fiscal provision, Rule 86A must be strictly construed; no "legislative intent" can override the plain text.
- The department has other remedies (e.g., recovery under Sections 73/74, provisional attachment under Section 83) for fraudulent ITC.
- The Court preferred the view of Gujarat, Telangana, and Delhi High Courts (e.g., Samay Alloys, Laxmi Fine Chem, Best Crop Science, Karuna Rajendra Ringshia) and disagreed with the Calcutta High Court's contrary view in Basanta Kumar Shaw.
- The Supreme Court had already declined to interfere with the Delhi HC's decision in Karuna Rajendra Ringshia (SLP dismissed 9 July 2025).

Outcome:

1. Blocking order dated 9 December 2024 quashed.
2. Directed restoration of blocked ITC of ₹12,84,273 within 15 days.

Key Takeaways:

- Rule 86A can be invoked only to the extent of ITC actually available in the electronic credit ledger on the date of blocking.
- Blocking of non-existent or future ITC amounts to negative blocking, which is ultra vires the rule and therefore invalid.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 13.11.2025

INTERNATIONAL TAXATION

Whether consideration received by the US-based assessee from licensing of software and providing support and maintenance services to Reliance Jio Infocomm Ltd. (RJIL) is taxable in India as:

- **Royalty / Fees for Technical (Included) Services (FTS/FIS) under Article 12 of India–US DTAA, or**
- **Business income not chargeable to tax in India in the absence of a Permanent Establishment (PE).**

Case: Enea Software Inc. v. Deputy Commissioner of Income Tax (International Taxation)
Bench: ITAT DELHI BENCH 'D'
Order Date: 31 October 2025
Assessment Year: 2022–23

Key Facts:

- The assessee, a US tax resident, licensed proprietary telecom software to RJIL and also rendered support and maintenance services.
- Total receipts: ₹4.97 crores (₹4.69 cr for software + ₹27.84 lakh for support).
- The AO and DRP treated the payments as royalty/FTS under Article 12 of the India–US DTAA, relying on the "make available" clause.
- The assessee relied on ITAT's earlier decision in its own case (Openwave Mobility Inc. v. DCIT [2024]) where identical receipts were held non-taxable as business income.

[Sections Involved: Section 9, Section 90 of the Income-tax Act, 1961
Relevant DTAA: India–USA Double Taxation Avoidance Agreement (Article 7 & Article 12)]

Practical Implication:

- Payments for software licensing and related support from Indian customers to US entities are not taxable in India if:
  - The license is for use of copyrighted article (no transfer of copyright),
  - The service provider does not make available technical knowledge, and
  - The foreign company has no PE in India.

Decision:

- The entire receipts of ₹4.97 crores from software licensing and support services are non-taxable in India.
- The addition made by the Assessing Officer under FTS/FIS provisions was deleted.
- Appeal allowed in favour of the assessee.

TAX CALENDER

DUE DATE	COMPLIANCE	PERIOD	DESCRIPTION
14 November'25	TDS certificate (Form 16B) TDS certificate (Form 16C) TDS certificate (Form 16D) TDS Certificate (Form 16E)	Sept, 2025	Issuing TDS certificates for tax deducted under section 194-IA, 194-IB, 194M, 194S
15 November'25	TDS Certificate (Form 16A)	July to Sept,2025	Quarterly TDS certificate (Other than salary)

GOODS & SERVICES TAX

ITC Allowed on Cables Laid Outside Factory for Power Transmission- Advance Ruling

Case: Alleima India (P.) Ltd.,
Order No.: GUJ/GAAR/R/2025/44 (Application No. Advance Ruling/SGST & CGST/2024/AR/27)
Date of Order: 16 October 2025
Members: Sushma Vora & Vishal Malani

Facts of the Case:

- Applicant: Alleima India Pvt. Ltd., manufacturer having plants in Mehsana (Gujarat) and Hosur (Tamil Nadu).
- The company expanded its Mehsana plant, increasing production capacity, and required 4500 KVA (66 KV) additional power.
- To meet the demand, Gujarat Energy Transmission Corporation (GETCO) required the company to lay underground cables (2.78 km) from GETCO's substation to the factory switchyard.
- Two options were offered:
  i. GETCO executes the work itself, or
  ii. The applicant executes it at its own cost under GETCO's supervision.
- The applicant chose the second option and engaged an approved vendor (M/s Rajesh Power Services Pvt. Ltd.) for supply and installation.
- The applicant sought an advance ruling on whether Input Tax Credit (ITC) was admissible on:
  i. Wires/cables
  ii. Electrical equipment
  iii. Supervision charges
  iv. Installation services

  even though the installation was outside the factory premises.

Applicant's Arguments:

1. All Section 16(2) conditions fulfilled (tax invoice, receipt of goods/services, tax payment, return filing).
2. Section 17(5) not applicable:
   - Work not for construction of immovable property;
   - Cables and switchyards are movable and modular (can be dismantled, coiled, or relocated).
3. Covered under "plant and machinery" as per Explanation to Section 17(5).
4. Relied on:
   - Circular No. 219/13/2024-GST (dated 26-6-2024) — clarifies ITC eligibility for ducts/manholes used in optic fibre networks.
   - Elixir Industries (P.) Ltd., In re [2024] — on identical facts, ITC was allowed.

Ruling:

- The a:pplicant is eligible to avail ITC on procurement of capital goods and related services — wires, cables, electrical equipment, supervision charges, and installation services — used for transmission of electricity from the DISCOM's power station to the factory premises, even though installed outside the factory.
- [Section 16, CGST/GGST Act, 2017 – In favour of the assessee.]

Key Takeaways:

- ITC allowed for capital goods and services used in power-cable infrastructure laid outside factory premises, if:
- Used in course of business;
- Not part of immovable property; and
- Qualifies as plant and machinery.
- Ownership with DISCOM/GETCO does not bar ITC if cost is capitalised and conditions of Section 16 are met.
- Reinforces the Elixir Industries precedent and aligns with CBIC Circular 219/13/2024.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 14.11.2025

DIRECT TAXATION

Income Tax Act, 1961 - Section 260A and Section 119(2)(b) - Appeal by revenue challenging ITAT's acceptance of an assessee's appeal against condonation of delay in filing Form 10B for AY 2018-19 - Court finds ITAT lacked jurisdiction to entertain appeal against rejection of application.

HIGH COURT OF DELHI
Delhi Maharashtriya Educational and Cultural Society
v.
Commissioner of Income-tax (Exemptions)
OCTOBER 28, 2025

FACT OF THE CASE:

- The assessee was a society registered under the Societies Registration Act and engaged in the welfare activities, eligible for exemption under sections 11 to 13.
- The assessee filed its return of income for the assessment year 2018-19 within the extended time under the relevant CBDT circulars, declaring nil income after claiming exemption under sections 11 and 12, and disclosed the details of the audit report dated 30-09-2018.
- However, due to an inadvertent error on the part of the auditor/tax professional, the audit report in Form 10B could not be uploaded along with the return. Upon noticing the omission, the assessee uploaded the audit report on 16-11-2018, resulting in a delay of 16 days.
- The Assessing Officer processed the return under section 143(1) and denied the exemption under sections 11 and 12 on the ground that the audit report had been filed belatedly; the rectification application under section 154 was also rejected.
- The assessee filed an application under section 119(2)(b) seeking the condonation of delay, explaining that the delay was inadvertent and bona fide due to the mistake of the auditor/tax professional; however, the Commissioner (Exemptions) rejected the condonation application holding that such lapse could not constitute reasonable cause.

HELD THAT:

- Having noted the facts, it is viewed that the facts clearly enumerate that the return was filed within the time stipulated i.e., on 31-10-2018. It is the case of the petitioner that a reference to the audit report dated 30-9-2018 was made in the ITR and that it was only on 15-11-2018; it came to the knowledge of the petitioner that the audit report has not been uploaded, so in that sense a delay on 16 days had occurred, surely in filing the audit report is a bona fide mistake. The averments made in the application are primarily that the audit report could not be uploaded because of the mistake on the part of the Tax Professional/Auditor. [Para 23]
- The ground for the respondents to reject the application is primarily relying upon the judgment of the Supreme Court in the case of Ranka v. Rewa Coalfields Ltd. AIR 1962 SC 361, wherein, the Supreme Court held that every delay needs to be explained with cogent evidences. [Para 24]
- The respondents have also stated that even otherwise the intimation under 143(1) was passed on 23-3- 2020, whereas the appellant/petitioner has filed the application seeking condonation of delay on 2-3-2022, i.e., after two years which again reflects casual approach of the petitioner/assessee. [Para 26]
- Suffice to state, the law in this regard is well settled, i.e., any mistake on the part of the Auditor should not result in hardship or prejudice to the assessee. [Para 27]

In view of the aforesaid discussion, the order dated 14-6-2024 passed by the respondent under section 119(2)(b) for the assessment year 2018-19 is set aside. The respondents shall pass a fresh order on the application filed by the petitioner/applicant under section 119(2)(b) within a period of eight weeks from the receipt of the copy of the order and thereafter proceed in accordance with law. The present petition is disposed of. [Para 32]

GOODS & SERVICES TAX

The GSTN has issued Advisory on Simplified GST Registration Scheme:

- The GSTN has issued Advisory No. 365 dated November 01, 2025, for Simplified GST Registration Scheme has been introduced to reduce the compliance burden and enhance the ease of doing business for small taxpayers.
- In pursuance of Rule 14A of the Central Goods and Services Tax (CGST) Rules, 2017, a Simplified GST Registration Scheme has been introduced to reduce the compliance burden and enhance the ease of doing business for small taxpayers.
- As per Rule 14A (Option for taxpayers having a monthly output tax liability below the prescribed threshold limit), any person who, on his own assessment, feels that his total output tax liability on the supply of goods or services, or both, to registered persons will not exceed Rs.2.5 lakh per month (including CGST, SGST/UTGST, IGST, and Compensation Cess) shall be eligible to register under this scheme. However, a person registered under this rule in a State or Union Territory shall not be eligible to obtain another registration in the same State or Union Territory under this rule against the same PAN.

Key Features Implemented on the GST Portal:

- While applying for registration in FORM GST REG-01, applicants should select "Yes" under the "Option for Registration under Rule 14A."
- Aadhaar authentication is mandatory for the Primary Authorized Signatory and at least one Promoter/Partner.
- Registration shall be granted electronically within three working days from the date of generation of the Application Reference Number (ARN), subject to successful Aadhaar authentication.
- Taxpayers opting for registration under Rule 14A are advised to take note of the following conditions, in case they intend to withdraw from the Scheme at a later stage.

- All returns due from the effective date of registration up to the date of filing the withdrawal application must be filed.
- The taxpayer must have filed:

  (a) Returns for a period of minimum three months, if applying for withdrawal before 1st April 2026, or

  (b) Returns for a period of minimum one tax period, if applying for withdrawal on or after 1st April 2026.

- No amendment or cancellation application for registration availed under rule 14A should be pending.
- No proceedings under Section 29 (cancellation of registration) for registration availed under rule 14A should be initiated or pending.

The Advisory can be accessed at: https://www.gst.gov.in/newsandupdates/read/635

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TAX INSIGHTS

By
Tax Research Deparment

Date: 17.11.2025

DIRECT TAXATION

Jurisdiction of Reassessment: Matter Remanded for Consideration of Subsequent GST Proceeding Outcome.

HIGH COURT OF DELHI
Vedanta Ltd
vs.
Assistant Commissioner of Income-tax Delhi

NOVEMBER 3, 2025

Issue:

The assessee was subject to reassessment based on information from DGGI intelligence alleging availment of bogus ITC from a copper sale - repurchase transaction, but subsequent closure of main ITC issue by GST department occurred after impugned reassessment order, since closing of proceedings by GST would directly impact reassessment, matter was to be remanded for reconsideration in light of GST order.

Assessment year 2019-20 - Assessee entered into an agreement with one 'X' for sale of copper concentrate when its copper plant was closed down due to environmental concerns - Subsequently, plant was restored for operation and assessee repurchased copper concentrate - Assessing Officer received information from Directorate General of GST Intelligence, DGGI in respect of wrongful availment of ITC without actual receipt of goods at declared place of business of the assessee - Accordingly, Assessing Officer issued notice section 148A(1) and thereafter, passed an order under section 148A(3) - It was noted that assessee had brought to notice an order passed by GST department wherein main issue in respect of availment of ITC was stated to have been closed - Furthermore, impugned order under section 148A(3) was passed prior to GST order - Whether since closing of proceedings by GST department would have an impact and bearing on section 148A proceedings, impugned order was to be set aside and matter was to be remanded for reconsideration, in view of said GST order.

Fact of the Case:

- The assessee entered into sale transaction of copper concentrate when its copper plant was closed down due to environmental concerns. Said transaction was entered into through four agreements with one 'X', for sale and repurchase of copper. Thereafter, when copper plant was directed to be restored for operation, the assessee repurchased the copper concentrate.
- The Assessing Officer received intelligence from the Directorate General of GST Intelligence, in respect of wrongful availment of Input tax credit without actual receipt of goods at the declared place of business of the assessee.
- According to the revenue, there was bogus ITC amounting to more than Rs. 424 crore which was availed of. On the basis of the investigation report of the DGGI, the Assessing Officer, Income Tax issued the notice under section 148A(1).

Thereafter, order under section 148A(3) was passed.

Held:

- This case is governed by the provisions of section 148A, as amended and brought into effect from 1-9-2024.
- Notably, the impugned order was passed prior to the GST order, and thus, obviously the said order of the GST department, could not have been taken into consideration by the concerned officer.

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- Moreover, the closing of the proceedings by the GST Department would have an impact and bearing on the section 148A proceedings and, therefore, the impugned order deserves to be set aside, and the matter deserves to be remanded for reconsideration, in view of the GST order dated 11-7-2025.
- Accordingly, the impugned order is set aside. The matter is remanded for being considered afresh, after bearing in mind the GST order dated 11-7-2025.
- Insofar as the legality and validity the impugned notice is concerned, the submission made on behalf of the assessee, that there has to be independent reasoning given by the Income Tax Department and hence the said notice is itself unsustainable, is left open at this stage, for being canvassed at a later stage, if the need so arises.

GOODS & SERVICES TAX

Scope of Action for Unaccounted Stock: Tax Determination vs. Confiscation under Section 130.

HIGH COURT OF ALLAHABAD
State of U.P.
v.
Additional Commissioner Grade-2

NOVEMBER 10, 2025

Issue:
Where registered persons were found with excess or unaccounted stock during survey and departmental authorities initiated confiscation and penalty proceedings, since statute specifically provides for tax determination on unaccounted goods through sections 35(6), 73 and 74, recourse to confiscation under section 130 was inapplicable.

Facts of the Case:
Respondents were registered persons under GST – Business premises were surveyed - Discrepancies as excess or unaccounted stock were alleged – On survey basis, confiscation or penalty proceedings were initiated and orders were passed - State filed writ petitions challenging impugned orders passed by departmental authorities.

Held:
Section 35(6) contemplates that where goods are not accounted for, Proper Officer shall determine tax and sections 73/74 apply - Since statute provided specific route for tax determination on unaccounted goods, recourse to confiscation under section 130 could not be taken - Issue stood settled, hence interference with impugned orders was unwarranted - Writ petitions were dismissed - Amounts, if any, deposited by respondents were directed to be refunded

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TAX INSIGHTS

By

Tax Research Deparment

Date: 18.11.2025

INTERNATIONAL TAXATION

HIGH COURT OF DELHI
Canon India (P.) Ltd.
vs.
Deputy Commissioner of Income-tax
NOVEMBER 10, 2025

Issue:

Case 1:

Assessment years 2003-04 and 2005-06: Assessee earned certain income from its operations in Japan, on which taxes were withheld in Japan in accordance with domestic tax laws of that jurisdiction - In its return, assessee claimed Foreign Tax Credit (FTC) - Assessing Officer disallowed FTC claim on ground that in same year, income corresponding to Japanese receipts was either exempt under section 10A or neutralized by brought-forward business losses, resulting in no tax liability in India.

It was noted that in case similar to assessee, High Court held that assessee was eligible for entire credit of foreign taxes deducted in Japan, even if taxability was nil consequent to deduction under section 10A brought forward losses - Whether thus, following aforesaid view, assessee was to be granted complete credit of taxes paid by it in Japan on export revenues from sale of software and not restricted owing to nil tax liability on account of business losses or section 10A deduction. [Ref: Section 9, read with sections 90 and 91, of the Income-tax Act, 1961 and article 23 of DTAA between India and Japan - Income - Deemed to accrue and arise in India (Elimination of double taxation - Eligibility of relief)]

Case 2:

Assessment year 2005-06 - Assessee filed its original return with nil income under normal provisions after set-off of brought-forward losses and paid MAT claiming FTC of same amount - Separately, it filed an application seeking refund of entire Japanese taxes withheld under India–Japan DTAA read with Section 90(2) - [Ref: Section 244A, read with section 90, of the Income-tax Act, 1961 - Refunds - Interest on (Foreign tax credit)]

Fact of the Case:

- The assessee-company was engaged in trading and distribution of imaging and optical products. During assessment year 2003-04, assessee earned income from its operations in Japan, on which taxes were withheld in Japan in accordance with domestic tax laws of that jurisdiction. The assessee filed its return, claiming Foreign Tax Credit (FTC) under section 90, read with Article 23 of the India-Japan DTAA.
- The Assessing Officer disallowed the FTC on ground that in same year, income corresponding to Japanese receipts was either exempt under section 10A or neutralized by brought-forward business losses, resulting in no tax liability in India.
- The DRP upheld said disallowance.

Held:

Case 1:

- The question whether the assessee is entitled to claim Foreign Tax Credit (FTC) in India for taxes withheld in Japan, even though the income was exempt under section 10A or neutralized due to brought forward losses, resulting in no Indian tax liability and thereby resulting into a refund, has been decided in favour of the assessee by the decision of the Delhi ITAT in the case of assessee itself [ITA No. 468/Del/2021], wherein the Tribunal, relying on Karnataka High Court's decision in the case of Wipro Ltd. v. DCIT [2015], allowed the appeal and held that the assessee is eligible for entire credit of foreign taxes deducted in Japan,

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even if the taxability was nil consequent to the deduction under section 10A brought forward losses.

- In the HCL Comnet case, the question which are similar to the question in the impugned case, the Delhi High Court has given a clear acceptance to the decision of Karnataka High Court in Wipro Ltd., In view of the Delhi High Court decision in HCL Comnet (supra), it is held that the issue under consideration is no longer res integra. It is viewed in light of the above judicial precedents, that the assessee be granted complete credit of taxes paid by it in Japan on export revenues from sale of software and not restricted owing to nil tax liability on account of business losses or 10A deduction under the Income Tax Act, 1961.

Case 2:
It was noted that assessee had merely determined tax payable on MAT under section 115JB and had offset same with Foreign Tax Credit - Whether since there was no excess advance tax/TDS/TCS/tax paid to Indian exchequer, after taking into account FTC, no interest under section 244A was available to assessee.

GOODS & SERVICES TAX

Quick Recap: The 56th GST Council meeting: Next-generation GST reforms

Held on September 3, 2025
Effective from September 22, 2025

The key recommendations cover rate rationalisation, significant tax reductions on common man items, health, and key economic drivers, and process reforms.

RATE RATIONALISATION AND STRUCTURE

- The Council approved a rationalisation of the current four-tiered tax rate structure into a citizen-friendly two-rate structure:
- Standard Rate: 18%
- Merit Rate: 5%
- Special De-merit Rate: 40% (for a select few goods and services)

Automobiles Made Affordabe

Items	From %	To %
Petrol & Petrol Hybrid, LPG, CNG Cars(not exceeding-1200 cc & 4000mm)	28	18
Diesel & Diesel Hybrid Cars (not ecceeding-	28	18
Three Wheeled Vehicles	28	18
Motor Cycle (350cc & Above)	28	18
Motor Vehicle for Transport Of Goods	28	18

Save on Daily Essentials

Items	From %	To %
Hair Oil, Shampoo, Toothpaste, Toilet Soap Bar, Tooth Brushes, Shaving Cream	18	5
Butter, Ghee, Cheese & Dairy Spreads	12	5
Pre-packaged Namkeens, Bhujia & Mixtures	12	5
Utensils	12	5
Feeding Bottles, Napkins for Babies & Clinical Diapers	12	5
Swing Machines & Parts	12	5

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Relief In Healthcare Sector

Items	From %	To %
Individual Health & Life Insurance	18	Nil
Thermometer	18	5
Medical Grade Oxygen	12	5
All Diagnostic Kits & Reagents	12	5
Glucometer & Test Strips	12	5
Corrective Spectacles	12	5

save On Electronic Appliances

Items	From %	To %
Air conditioner	28	18
Television(above 32")	28	18
Monitor & Projectors	28	18
Dish Washing Machine	28	18

Others

Items	From %	To %
Renewable Energy Devices and Parts	12	5
Hotel accommodation services(<=7500)	12	5
Beauty And Physical wellbeing service, Gym, Yoga services etc	12	5

Affordable Education

Items	From %	To %
Maps, Charts & Globes	12	Nil
pencils, Sharpener, Crayons & Pastels	12	Nil
Exercise Books & Note books	12	Nil
Eraser	5	Nil

Uplifting Farmers & Agriculture

Items	From %	To %
Tractor Tyers & Parts	18	5
Tractors	12	5
Specified Bio-Pesticides, Micro-Nutrients	12	5
Drip Irrigation System &Sprinklers	12	5
Agricultural, Horticultural or Forestry machines for Soil Preparation, Cultivation, Harvesting & Threshing	12	5

MEASURES FOR FACILITATION OF TRADE

- Sanction of risk-based provisional refund to facilitate refund claims on account of zero-rated supply of goods or services or both (i.e. export of goods or services or both or supply to a Special Economic Zone developer/unit for authorised operations.
- Proposal for Risk-Based Provisional Sanction of refunds arising out of inverted duty structure (IDS).
- Amendment in CGST Act to provide for GST Refunds in respect of low value export consignments.
- Simplified GST Registration Scheme for Small and Low-Risk Businesses.
- Introduction of Simplified Registration Scheme for small suppliers supplying through electronic commerce operators.

OTHER MEASURES PERTAINING TO LAW & PROCEDURE

The Council recommended retail sale price-based valuation under GST for Pan Masala, Cigarettes, Gutkha, Chewing Tobacco, Zarda, Scented tobacco and Unmanufactured Tobacco. Accordingly, consequent amendments in CGST Rules, 2017 and notifications will be carried out.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 19.11.2025

Income Tax

Reassessment Invalidated: Jurisdiction Fails When Notice Served on Surrendered PAN

HIGH COURT OF GUJARAT
Panchsheel Mercantile Co-Op Bank Ltd.
v.
Assistant Commissioner of Income-tax ·
16.10.2025

Facts of the Case

- Assessee: A Cooperative Society.
- Assessment Year: 2018-19.
- PAN Status: The assessee surrendered its old PAN (AAACT8950B) in June 2019 and was allotted a new PAN (AADAT9507D). It had been regularly filing returns and undergoing scrutiny assessments (for AY 2014-15 to 2017-18) under the new PAN.
- Trigger for Reassessment: The AO received information flagged on the CBDT Insight portal concerning transactions (cash deposits, withdrawals, foreign remittances) totaling ₹5.49 crore, which were linked to the old PAN.
- Proceedings: The AO issued the notice under Section 148A(a), followed by the subsequent order under Section 148A(d) and notice under Section 148, all on the old, surrendered PAN.

Assessee's Argument

The assessee argued that:

- The old PAN was surrendered because it was inadvertently allotted with the status of 'Company' instead of 'Association of Person'.
- All compliances were made on the new PAN, and the Revenue was informed of the surrender multiple times.
- The transaction information cropping up under the old PAN was due to a mistake by the transacting banks (Kotak Mahindra Bank, HDFC Bank, Yes Bank) in reporting the transactions on the old PAN, not due to the assessee quoting or using the old PAN.

The High Court held that

- It is a settled position of law that the revenue authority cannot issue notices on a PAN which is already surrendered.
- Since the old PAN (AAACT8950B) had been surrendered and the assessee was filing returns under the new PAN (AADAT9507D) for the relevant and previous assessment years, the impugned order under Section 148A(d) and the notice under Section 148 were quashed and set aside.
- The court granted the Revenue the liberty to initiate fresh proceedings by issuing notice on the new PAN in accordance with the law.

Conclusion

The Court agreed with the assessee that once a PAN is validly surrendered and the department is duly informed, proceedings cannot be validly initiated on that obsolete PAN. The fundamental jurisdictional requirement of serving the notice upon the correct legal identity of the assessee was not met.

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Goods & Service Tax

Assigning proper officer under section 74A, section 75(2) and section 122 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.

Circular No. 254/11/2025-GST

Assignment of Proper Officer (Table-I)

The circular assigns the following officers for general functions under the specified sections and rules:

S. No.	Designation of the Officer	Functions Assigned Under
1	**Additional/Joint Commissioner** of Central Tax	* **Section 74A** (Sub-sections (1), (2), (3), (6), (7), (8), (9), (10)) * **Section 122** (Penalties) * **Rule 142(1A)** (Issuance of FORM GST DRC-01A)
2	**Deputy/Assistant Commissioner** of Central Tax	* **Section 74A** (Sub-sections (1), (2), (3), (6), (7), (8), (9), (10)) * **Section 122** (Penalties) * **Rule 142(1A)** (Issuance of FORM GST DRC-01A)
3	**Superintendent** of Central Tax	* **Section 74A** (Sub-sections (1), (2), (3), (6), (7), (8), (9), (10)) * **Section 122** (Penalties) * **Rule 142(1A)** (Issuance of FORM GST DRC-01A)

Monetary Limits for Section 74A (Table-II)

For issuing Show Cause Notices (SCNs) and passing orders under Section 74A (tax not paid/short paid, etc., for FY 2024-25 onwards) and Section 20 of the IGST Act (read with Section 74A), monetary limits are prescribed to determine the appropriate Proper Officer.
The determination is based on the amount of tax (including cess) not paid or wrongly availed/utilized.

Sl. No.	Officer of Central Tax	Monetary Limit for Central Tax (CGST)	Monetary Limit for Integrated Tax (IGST)	Combined Limit (CGST + IGST)
1	**Superintendent**	Not exceeding ₹ **10 Lakh**	Not exceeding ₹ **20 Lakh**	Not exceeding ₹ **20 Lakh**
2	**Deputy/Assistant Commissioner**	Above ₹ 10 Lakh and not exceeding ₹ **1 Crore**	Above ₹ 20 Lakh and not exceeding ₹ **2 Crore**	Above ₹ 20 Lakh and not exceeding ₹ **2 Crore**
3	**Additional/Joint Commissioner**	Above ₹ **1 Crore** (without limit)	Above ₹ **2 Crore** (without limit)	Above ₹ **2 Crore** (without limit)

Clarification on Combined Demand (Para 5.2)

Where an SCN involves both Central Tax (CGST) and Integrated Tax (IGST), the combined amount (Column 5) is used to determine the proper officer, irrespective of whether the individual CGST or IGST component exceeds its respective limit (Columns 3 or 4).

Clarification on Subsequent Statements (Para 5.3)

When a subsequent Statement (under sub-sections (3) and (4) of Section 73/74/74A) is issued:

- The Proper Officer is determined based on the highest amount of tax demanded across the SCN and the Statement(s).
- If the tax demanded in the Statement exceeds the monetary limit of the officer who issued the original SCN, the original officer must issue a corrigendum to make the SCN and Statement answerable to the higher-ranked officer who is now competent to adjudicate.
- The determination of the Proper Officer is based solely on the amount of tax demanded, excluding penalties.

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Proper Officer for Penalty under Section 122 (Table-III)

For issuing SCNs and passing orders under Section 122 (Penalties) and Section 20 of the IGST Act (read with Section 122), specific monetary limits for penalty amount are prescribed.

Sl. No.	Officer of Central Tax	Monetary Limit for Central Tax Penalty	Monetary Limit for Integrated Tax Penalty	Combined Limit (CGST + IGST Penalty)
1	**Superintendent**	Not exceeding ₹ **10 Lakh**	Not exceeding ₹ **20 Lakh**	Not exceeding ₹ **20 Lakh**
2	**Deputy/Assistant Commissioner**	Above ₹ 10 Lakh and not exceeding ₹ **1 Crore**	Above ₹ 20 Lakh and not exceeding ₹ **2 Crore**	Above ₹ 20 Lakh and not exceeding ₹ **2 Crore**
3	**Additional/Joint Commissioner**	Above ₹ **1 Crore** (without limit)	Above ₹ **2 Crore** (without limit)	Above ₹ **2 Crore** (without limit)

Clarification on Combined Penalty (Para 7.2)

Similar to tax demand, if the SCN involves penalty related to both Central Tax and Integrated Tax, the combined amount of penalty (Column 5) determines the Proper Officer.

Proper Officer for Section 75(2) (Para 6)

- Section 75(2) applies when an Appellate Authority, Tribunal, or Court rules that an SCN issued under Section 74(1) (involving fraud/suppression) is not sustainable because the charges of fraud were not established.
- In such cases, the Proper Officer must determine the tax payable, treating the notice as if it were issued under Section 73(1) (other cases).
- The Proper Officer for this purpose shall be the same officer who was the adjudicating authority for the original Section 74(1) SCN.

Customs

Circular No. 28/2025-Customs

Online Module for Section 65 Permissions:

CBIC has operatonalised a dedicated online module on ICEGATE 2.0 to facilitate the submission and processing of applications for permissions under Section 65 of the Customs Act, 1962.

Key Details and Categories

Category	Full Form	Applicable Warehouse Section
MOOWR	Manufacture and Other Operations in Warehouse Regulations, 2019	Section 58 (Licensed Warehouses)
MOOSWR	Manufacture and Other Operations in Special Warehouse Regulations, 2020	Section 58A (Special Licensed Warehouses)

User Instructions

User Manuals: Detailed User Manuals for both trade and departmental officers are available from DG Systems at the provided link: https://www.icegate.gov.in/guidelines/warehouse-licensing. Users are advised to study these manuals.

User Group	Support Email	Purpose
All Users (Trade/Departmental)	icegatehelpdesk@icegate.gov.in	Reporting any difficulty in using the module.
Departmental Officers	saksham.seva@icegate.gov.in	Escalating issues for timely resolution.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 20.11.2025

Income Tax

The Income Tax Appellate Tribunal (ITAT) quashed the revisionary order passed by the Principal Commissioner of Income-tax (Pr. CIT) under Section 263 of the Income-tax Act, 1961.
The ITAT held that the assessment order passed by the Assessing Officer (AO) was neither erroneous nor prejudicial to the interests of the Revenue, as the AO had conducted detailed inquiries and adopted a plausible view in law on all three issues in dispute.

Key Issues and Tribunal's Findings

The Principal CIT had invoked Section 263 jurisdiction based on three issues where he alleged the AO failed to make adequate verification. The ITAT examined each issue:

1. Depreciation on Goodwill (Section 32(1))

- **Pr. CIT's Objection:** The AO failed to examine the impact of the post-amendment provisions which excluded goodwill from intangible assets eligible for depreciation, considering the Supreme Court's decision in Smifs Securities Ltd. was pre-amendment.
- **ITAT Finding:** The AO had specifically enquired about this claim, and the assessee furnished detailed replies and relied on judicial precedents. The ITAT noted the Gujarat High Court decision in Pr. CIT v. Aculife Healthcare (P.) Ltd. which held that depreciation on goodwill representing excess consideration paid for the acquisition of a going concern is allowable under Section 32(1) even post amendment. Therefore, the view taken by the AO was a plausible view in law and could not be termed erroneous merely due to disagreement from the Pr. CIT.

2. Provision for Warranty (Section 37(1))

- **Pr. CIT's Objection:** The AO did not verify whether the three preconditions laid down by the Supreme Court in Rotork Controls India (P.) Ltd. for recognizing a provision were satisfied.
- **ITAT Finding:** The assessee has been consistently making the provision for warranty based on a scientific and historical trend, and this practice was accepted by the Department in earlier years. The ITAT specifically noted that in the assessee's own case for AY 2004-05, the Tribunal had upheld the allowability of such provision by following the Rotork Controls ratio. Since the AO accepted the claim in line with the settled judicial position for the assessee, the order was not erroneous or prejudicial to the Revenue.

3. Deduction under Section 80G on CSR Expenditure (Section 80G read with Section 37(1))

- **Pr. CIT's Objection:** The expenditure incurred under Corporate Social Responsibility (CSR) obligations is not allowable as business expenditure due to Explanation 2 to Section 37(1). Therefore, allowing a deduction under Section 80G for the same expenditure was incorrect.
- **ITAT Finding:** The AO conducted detailed verification of the donations (calling for receipts, bank statements, and 80G certificates) and after due verification, accepted the claim. The ITAT emphasized that several judicial authorities have consistently held that donations made under CSR obligations to institutions registered under Section 80G continue to be eligible for deduction under that section. The AO's view was a possible view supported by judicial pronouncements.

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Conclusion on Section 263 Jurisdiction

The ITAT reiterated the principle established by the Supreme Court in cases like Malabar Industrial Co. Ltd. v. CIT and CIT v. Max India Ltd.:

- An order of the AO cannot be held to be erroneous merely because the Pr. CIT holds a different opinion.
- The twin conditions required for invoking Section 263—that the order must be both erroneous and prejudicial to the interests of the Revenue—were not satisfied.

The AO had taken a plausible view after conducting due inquiries and applying his mind to the facts and the law on all issues. Therefore, the assumption of jurisdiction by the Principal CIT under Section 263 was unjustified.

Goods & Service Tax

Wintage Engineers & Consultants (P.) Ltd.
v.
Union of Indi

Decision Date: 28-10-2025
Result: In favour of assessee

Key Issue

Whether an amount deposited under protest via DRC-03 during investigation, and not appropriated in any proceeding, can be adjusted towards the mandatory 10% pre-deposit required for filing an appeal under Section 107(6) of the CGST/UPGST Act.

Held

✓ Yes.

The Allahabad High Court held that an amount deposited under protest can be utilised as mandatory pre-deposit, provided it has not been appropriated towards any confirmed demand.

The Court set aside the orders rejecting the appeal for non-payment of the 10% pre-deposit and directed the appellate authority to treat the protest deposit as pre-deposit.

Reasoning

1. Petitioner had deposited ₹31,95,976 under protest (IGST refund amount) during investigation.
2. This amount was never appropriated against any demand.
3. Under Section 107(6), an appellant must deposit 10% of the disputed tax for the appeal to be maintainable.
4. Since the amount already deposited under protest exceeded the required 10%, the petitioner was deemed to have complied.

The Court relied on:

- Supreme Court judgment in VVF (India) Ltd. v. State of Maharashtra (2023) – protest deposits can be counted towards pre-deposit.
- Its earlier decision in R M Dairy Products LLP v. State of UP (2025) – same principle under GST.

The Court emphasized that there is no statutory bar preventing adjustment of protest deposits toward pre-deposit, and such amounts cannot be ignored.

Directions Issued

- Impugned orders rejecting the appeal for non-deposit of pre-deposit set aside.
- Matter remanded to the first appellate authority.
- Authority must:
  - Treat the protest deposit as satisfying pre-deposit requirement.
  - Decide the appeal on merits via a reasoned order.
  - If any shortfall remains, intimate the petitioner, who must pay within 15 days.

Principle Laid Down

If an assessee deposits any amount under protest (DRC-03) during investigation and such amount is not adjusted or appropriated, it can be used to satisfy the mandatory 10% pre-deposit requirement under Section 107(6) of the CGST Act for filing an appeal.

Practical Takeaway

For GST appeals dismissed as "non-maintainable" for want of the 10% pre-deposit, any unadjusted amount paid under protest can be claimed as fulfillment of the requirement, supported by this judgment and the Supreme Court's ruling.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 21.11.2025

Income Tax

Availability of TDS credit in later year when entire capital gains were already taxed in earlier year.

Yogesh Gandhi v. ACIT (AY 2023-24)
Order dated 12-11-2025
ITAT DELHI

Core Issue

- The assessee sold a property in FY 2018-19 (AY 2019-20) and declared the entire sale consideration of ₹2.97 crore in that year, paying full capital gains tax.
- However, the buyer paid only ₹1.97 crore then (with TDS ₹47.24 lakh).
- The balance ₹1 crore was paid much later, in AY 2023-24, with TDS of ₹23.92 lakh.
- The assessee claimed the TDS in AY 2023-24. CPC allowed only ₹8.69 lakh.
- CIT(A) rejected the claim saying returns of AY 2019-20 and AY 2023-24 were not filed before him.

ITAT Ruling

✓ TDS on later part-payment must be allowed where income was already taxed earlier

ITAT held:

1. Income can be taxed only once.
2. The assessee offered the full sale consideration in AY 2019-20, and tax was already paid.
3. TDS deducted in a later year must be given credit in that later year, even if the corresponding income is not taxable in that year, if the income was already taxed earlier.
4. Form 26AS for both years matched the declared sale consideration, proving no income escaped taxation.
4. CIT(A)'s refusal (due to non-filing of returns before him) was incorrect because all supporting documents including computation, 26AS for both years, sale deed, development agreement, confirmation from buyer—were already submitted.
5. Section 199 and Rule 37BA must be applied in a manner that avoids double taxation or denial of legitimate TDS credit.

Held

The assessee is eligible to claim full TDS of ₹23.92 lakh in AY 2023-24.

Key Principle Evolved

If the entire capital gains were taxed in the year of transfer, then TDS deducted on subsequent installments must be allowed as credit in the year of deduction, even though the income is not taxable again in that later year.

Why this ruling is important

- Clarifies treatment of TDS on deferred consideration in property sales.
- Particularly relevant for NRI sellers, where TDS is mandatory under section 195.
- Reinforces that TDS credit cannot be denied simply because income is not offered in the same year—especially where it was already taxed earlier.

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Goods & Service Tax

Can proceedings be initiated under Section 74 (fraud/suppression – extended limitation) when the SCN does not allege or establish fraud, wilful misstatement, or suppression?

Neeyamo Enterprise Solutions (P.) Ltd.
v.
Commercial Tax Officer

Madras High Court ,2025

Key Principles Laid Down

1. **Section 74 can be invoked only if the SCN alleges:**
   - Fraud, or
   - Wilful misstatement, or
   - Suppression of facts to evade tax
   - These are jurisdictional facts and a mandatory precondition.
2. I**n this case**:
   - The SCNs did NOT allege fraud, suppression or wilful misstatement.
   - No material was disclosed supporting such allegations.
   - Hence, extended period cannot be used.
3. **Outcome**
   - SCNs and orders under Section 74 were quashed.
   - Department given liberty to proceed under Section 73 (normal period) if applicable.

Important Judicial Observations

A. "By reason of fraud/suppression" is crucial
Non-payment or short-payment alone is insufficient.
There must be an intentional act to evade tax.

B. **SCN must contain:**
- Allegation
- Material evidence
- Clear description of misconduct
- Absence of these → Entire proceedings void.

C. **Use of word "determination" in SCN**
Court held this shows pre-determination, making SCN invalid.

D**. Circular Binding on Department**
CBIC Circular (13-12-2023) clarifies:
Section 74 cannot be used mechanically without evidence of fraud/suppression.

Result

✓ SCN under Section 74 invalid
✓ Orders quashed
✓ Liberty to initiate fresh proceedings under Section 73
✓ No remand because jurisdictional facts missing

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TAX INSIGHTS

By

Tax Research Deparment

Date: 22.11.2025

Income Tax

Reassessment Must Be Faceless (Section 147/148 Proceedings)- AP High Court

Smt. Prameela Pasumarthi
v.
DCIT
Order dated 28-10-2025

Core Holding

✓ Reassessment proceedings under sections 147, 148A, and 148 must mandatorily be conducted in a faceless manner by the National Faceless Assessment Centre (NFAC) after Notification No. 18/2022 dated 29-03-2022.

✓ Therefore, Jurisdictional Assessing Officers (JAOs) have no authority to issue notices under sections 148A(b), 148A(d), or 148.

✓ All such notices issued by JAOs are invalid, without jurisdiction, and liable to be quashed.

Reasoning of the Court

1. Section 151A and Notification 18/2022 require faceless reassessment
   - From 29-03-2022, reassessment proceedings must be:
     - Faceless,
     - Through automated allocation,
     - Conducted only by Faceless Assessing Officer (FAO),
     - Managed by NFAC.

2. JAO-issued notices violate the scheme
   - Section 151A empowers the Central Government to create a mandatory scheme for:
     - Reassessment under s.147,
     - Issuance of notice under s.148 and s.148A,

Enquiry and show-cause procedures.

3. Followed binding precedents

The Court followed multiple High Court decisions, including:
- Bombay HC in Hexaware Technologies Ltd.
- Bombay HC in Prakash Pandurang Patil (affirmed by Supreme Court in 2025)
- Telangana HC in Kanakanala Ravindra Reddy

All held that reassessment after 29-03-2022 must be faceless.

4. No concurrent jurisdiction
   - FAO has exclusive jurisdiction for faceless reassessment.
   - JAO cannot issue notices.
   - Allowing both to act would create chaos and defeat the scheme.

5. Prejudice need not be shown

If a statutory mandate is violated, prejudice is presumed

Final Directions

The High Court:

✓ Set aside:
- Notices under 148A(b)
- Orders under 148A(d)
- Reassessment notices under 148

✓ Set aside all consequential proceedings.

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Goods & Service Tax

Whether cancellation of GST registration and dismissal of statutory appeal solely on limitation—without deciding merits—could be sustained where adequate opportunity of hearing was not provided.

Vipul Kumar Singh
v.
State of U.P.
Decision Date: 11-11-2025
Court: Allahabad High Court

Held

No. The High Court quashed both the cancellation order and the appellate order and directed a fresh adjudication after providing proper notice and personal hearing.

Key Points

- A show cause notice (SCN) dated 14.05.2024 proposed cancellation of the petitioner's GST registration.
- The proper officer cancelled the registration on 19.06.2024 via Form GST REG-19.
- The appeal under Section 107 was filed but dismissed solely on the ground of limitation, without examination of merits.
- The Court held that principles of natural justice were violated since:
- No proper opportunity was given before cancellation.
- The appellate authority refused to consider merits.

Directions Issued by Court

1. Fresh SCN must be issued to the petitioner via email or registered post (Sections 29, 107, 169 CGST/UPGST Acts).
2. The petitioner must be granted a personal hearing.
3. The matter must be re-adjudicated and a fresh order passed within 8 weeks.
4. The earlier cancellation order and the appellate order were quashed and set aside.

Outcome

- Matter remanded; relief granted to the assessee.

Sgnificance

This judgment reinforces that:

- GST registration cannot be cancelled mechanically.
- Appellate authorities must consider merits, even where delay exists, especially if cancellation occurred without due process.
- Proper service of notice under Section 169 and opportunity of personal hearing are essential.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 23.11.2025

Income Tax

No Gift Tax on Amount Received From Brother-in-Law Even Without Gift Deed – ITAT Kolkata

Deb Prasanna Choudhury
v.
ADIT/DCIT

Order Date: 04-11-2025 | AY 2012-13
Bench: Kolkata ITAT 'C'

Core Holding

✓ A gift received from a "relative" (brother-in-law = spouse of sister) is not taxable under Section 56,
✓ even if no gift deed is executed in India or the deed is imperfect,
✓ as long as the gift is through banking channels and the relationship is proved.
➡ Addition deleted – appeal allowed in favour of assessee.

Why the ITAT deleted the addition?

1. **Section 56 exemption does NOT require a gift deed**
·Section 56(2)(vii)/(x) exempts amounts received from "relatives".
·Definition of "relative" includes brother-in-law (spouse of sister).
·Law does not insist on a gift deed for claiming exemption.
2. **Gift received through NRE account – banking channel is confirmed**
·Funds came directly from the brother-in-law's SBI NRE account.
·Bank statements and identity proofs were provided.
·AO never disputed the relationship or bank trail.
3. **AO's objection about gift deed being made in USA was irrelevant**
·Gift deed executed abroad and without recipient's signature was cited as defect.
·Tribunal held: Even without gift deed, exemption is valid, as long as donor is a relative.
4. Source of donor's funds (Rs. 55 lakh) is not to be taxed in assessee's hands
·CIT(A) claimed donor's sale of mutual funds was unexplained.
·ITAT held: If source is in doubt, addition must be made in donor's hands, not donee's.
5. AO ignored evidence in remand proceedings
·AO failed to comment on documents provided (passport, bank statements, gift deed, relationship proof).
·ITAT found this a serious lapse.

Key Legal Principles Established

1. Gifts from relatives are exempt irrespective of gift deed formalities.
2. "Brother-in-law" is valid "relative" under Section 56.
3. If money flows through banking channels and identity is proved, AO cannot tax it.
4. If donor's source is doubted, addition must be made in donor's assessment—not donee's.

Important Extract

"Section 56 does not require a valid gift deed. If amount is received from a relative, the same is not taxable. Since the relationship and banking channel transactions were undisputed, exemption must be allowed."

Final Decision

·Addition under Section 56(2)(vii) deleted
·Gift from brother-in-law held exempt
·Appeal allowed in full

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Goods & Service Tax

Liquidated Damages for Breach of Concession Agreement Held Non-Taxable Under GST – AAR Gujarat

AAR – Gujarat
JBM Ecolife Mobility Surat (P.) Ltd.(03-11-2025)

Held:
Not taxable.
Liquidated damages payable by the applicant to SSL constitute genuine pre-estimated compensation for loss arising from breach of contractual obligations and not consideration for any supply, nor do they fall under "agreeing to tolerate an act" under Section 7 of CGST Act.

Key Findings:

- The concession agreement expressly characterizes the damages as "mutually agreed genuine pre-estimated loss" (Clause 1.2.1(y)).
- No independent contract exists where SSL agrees to tolerate the applicant's breach.
- The purpose of the penalties/damages is to ensure performance and operational discipline, not to provide a service.
- CBIC Circular 178/10/2022 (liquidated damages as non-supply) and Circular 245/02/2025 (penal charges not taxable) squarely apply.
- Damages are merely a flow of money, not a consideration for any supply.

Consequences:

- No GST is payable on the liquidated damages.
- Questions on rate, SAC, and ITC do not arise.
- Important Precedents Relied On:
- Anmol Industries (Calcutta HC) – locus standi for AAR
- GSPC (JPDA) Ltd., AAAR Gujarat
- ·Achampet Solar, AAAR Telangana
- SECL, CESTAT – penal clauses not consideration for tolerating an act.

Ruling (Summary):
1.GST not payable on liquidated damages/compensation paid by the applicant.
2.Since (1) is negative, rate/SAC not required.
3.ITC question not applicable.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 24.11.2025

Income Tax

Whether a return filed under the presumptive taxation scheme u/s 44AF can be treated as defective u/s 139(9) for not attaching statements relating to turnover/gross receipts, thereby denying refund.

HIGH COURT OF TELANGANA
Mohd. Amzad
v.
Income-tax Officer

Writ Petition Nos. 21351 and 21352 of 2006
OCTOBER 16, 2025

Held – In Favour of the Assessee

1. Section 44AF is a "special provision" with overriding effect
   - Section 44AF was inserted later (w.e.f. 1-4-1998) and is a self-contained presumptive scheme for retail traders.
   - Section 139(9) (defective return) existed earlier (inserted in 1988).
   - Since Section 44AF was introduced to benefit a specific class—small retail traders—the Legislature intended it to override general requirements of Sec. 139(9).

Conclusion:
👉 When an assessee opts for 44AF, the requirements of Sec. 139(9) (filing statements, books, audit report, etc.) do not arise.

2. 44AF does not mandate the compliances required under Sec. 139(9)
   - A return under 44AF is valid even without books of account or detailed statements of turnover/G.R.
   - Therefore, treating the return as "defective" for not attaching such documents was illegal.

3. AO's order treating the return as invalid was unjustified
   - The assessee's turnover was within the limit (below ₹40 lakh).
   - He estimated his income at 5% of turnover, exactly as per Section 44AF.

Hence, the AO's refusal to process refund was improper, illegal and unjustified.

Outcome

- AO's orders were quashed.
- Assessee held entitled to refund of ₹1,25,098.
- Department directed to issue refund within 90 days.

Significance of the Judgment

✓ Strengthens the legal principle that special presumptive provisions override general procedural requirements.
✓ Confirms that for small traders under presumptive tax schemes, non-maintenance of books or statements cannot invalidate the return.
✓ Reinforces legislative intent to simplify compliance for small retail businesses.

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Goods & Services Tax

Whether an ex-parte GST adjudication order (FY 2019-20) should be set aside where the assessee failed to reply to the SCN because its accountant did not inform about the SCN and the subsequent order.

Swarn Cosmetic (India) v. Union of India
Delhi High Court
Order dated 31-10-2025

Held – In favour of the Assessee (Matter Remanded)

1. Lack of response to SCN due to accountant's lapse → Matter remanded

- SCN dated 31.05.2024 gave an opportunity to file reply, but no reply was filed.
- Assessee stated that their accountant failed to inform them of the SCN and the order.
- Court accepted that the SCN "escaped attention" of the assessee.

Following earlier decisions (Sugandha Enterprises, DJST Traders), the Court held that principles of natural justice were violated.

✓ Impugned adjudication order set aside.
✓ Matter remanded for fresh adjudication with opportunity to file reply and personal hearing.

- Assessee allowed time till 30 November 2025 to file reply.
- Personal hearing to be communicated to the petitioner at the specified mobile & email.

Cost of ₹20,000 imposed to be paid to CGST Department.

2. Challenge to CBIC Notifications extending limitation kept open

Assessee had also challenged:

- Notification 9/2023-CT (31-3-2023)
- Notification 56/2023-CT (28-12-2023)
- Parallel Delhi State Notifications

These notifications extend the time limit for adjudication under Sections 73/75, citing Section 168A (COVID-related extensions).

Court's approach:

- Validity of Central Notifications is already pending before Supreme Court in
- HCC-SEW-MEIL-AAG JV v. ACST (SLP 4240/2025).
- Validity of State Notifications is pending before the Delhi High Court itself (Engineers India Ltd. batch).

✓ Therefore, challenge in this case kept open.
✓ Any fresh adjudication order will be subject to the outcome of the SC & HC decisions on these Notifications.

Key Legal Principles Recognised

1. Natural justice dominates adjudication under GST – a taxpayer must be given a real and effective opportunity to reply and be heard.
2. Ex-parte orders are liable to be set aside when non-response is due to procedural mishap (e.g., accountant's failure).
3. Validity of extension notifications under Section 168A is a larger national issue and currently sub-judice before the Supreme Court; hence, High Court avoids ruling on it.

Final Directions

- Impugned order set aside.
- Petitioner to file reply by 30-11-2025.
- Adjudicating Authority to grant fresh hearing and pass order afresh.
- Matter remanded subject to ₹20,000 cost.
- Outcome of adjudication to be subject to SC & HC rulings on the validity of extension notifications.

IMPORTANT TDS THRESHOLD & RATE

Section	Nature of Payment	Threshold	Effective TDS Rate
192	Salary	—	As per income-tax slab rates
192A	Premature withdrawal from EPF	₹50,000	10%
193	Interest on securities	₹10,000	10%
194	Dividend	₹10,000	10%
194A	Interest (other than on securities)	- For banks/PO/co-op: ₹50,000 - For senior citizens: ₹1,00,000 - Other cases: ₹10,000	10%
194B	Lottery / Game winnings	₹10,000	30%
194BA	Online gaming winnings	—	30%
194BB	Horse race winnings	₹10,000 (aggregate)	30%
194C	Payments to contractors / sub-contractors	- Single transaction: ₹30,000 - In a FY: ₹1,00,000	**1%** (if individual/HUF); **2%** (others)
194D	Insurance commission	₹20,000	**2%** (note: reduced rate)
194DA	Life insurance policy pay-outs	₹1,00,000	**2%** (new)
194H	Commission / Brokerage	₹20,000	**2%** (revised)
194I	Rent	₹50,000 / month	- **10%** for land/building/furniture - **2%** for plant & machinery
194J	Professional fee	₹50,000	**10%** (rate unchanged)
194T *(New section)*	Partner's remuneration (firm → partner)	₹20,000 (aggregate in FY)	10%

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TAX INSIGHTS

By

Tax Research Deparment

Date: 25.11.2025

Income Tax

No penalty for concealment when assessee voluntarily disclosed unrecorded cash income in return filed pursuant to notice u/s 148- ITAT DELHI

DCIT v. Ajay Vision Education (P.) Ltd.
ITAT Delhi Bench 'G'
Order dated 10 Nov 2025
Assessment Years: 2016–17, 2017–18, 2018–19, 2019–20L.

Result: Revenue's appeals dismissed. Penalties deleted.

I. Penalty u/s 271(1)(c) (AY 2016-17)

No penalty for concealment when assessee voluntarily disclosed unrecorded cash income in return filed pursuant to notice u/s 148.

Findings

- Assessee included unrecorded cash income in return filed in response to section 148 notice.
- AO nevertheless levied penalty u/s 271(1)(c) alleging concealment.
- CIT(A) deleted penalty because:
  - Income was voluntarily disclosed.
  - AO only used section 132(4) statement as basis without further detection.
  - Notice u/s 274 did not properly specify the charge.

ITAT's Ruling

- Followed CIT v. Mahendra C. Shah (Guj.), where voluntary disclosure accepted without investigation cannot attract concealment penalty.
- No reason to interfere with CIT(A)'s deletion.
- Penalty u/s 271(1)(c) deleted.

II. Penalty u/s 270A (AYs 2017-18 to 2019-20)

Penalty invalid because the AO failed to specify whether proceedings were for "under-reporting" or "misreporting".

Defects in Notice

- Notice u/s 274 r.w.s. 270A did not specify:
  - Whether penalty was for "under-reporting" or "misreporting".
  - Which limb of section 270A(2) or 270A(9) was violated.
- Even the assessment order was silent on the specific limb.

ITAT's Ruling

- Penalty notices must clearly specify the charge — a settled law under:
  - Pr. CIT v. Sahara India Life Insurance Co. Ltd. (Delhi HC)
  - Manjunatha Cotton & Ginning Factory (Karnataka HC)
  - SSA's Emerald Meadows (SC)
- Since notice was vague, penalty cannot survive.
- Penalty u/s 270A for all three years deleted.

Important Precedents Relied Upon

- CIT v. Mahendra C. Shah (Guj.) – Voluntary disclosure accepted by AO cannot lead to penalty.
- CIT v. SSA's Emerald Meadows (SC) – Penalty invalid if notice does not specify exact limb.
- Pr. CIT v. Sahara India Life Insurance Co. Ltd. (Delhi HC) – Defective notice makes penalty unsustainable.
- CIT v. Virgo Marketing (Delhi HC) – AO must clearly state the reason and limb of penalty.

Outcome

All four appeals by the Revenue (AYs 2016–17 to 2019-20) were dismissed.
All penalties u/s 271(1)(c) and 270A were deleted.

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Goods & Services Tax

Recovery of interest under section 50(1) can be initiated only after issuance of Form GST DRC-01D and providing the taxpayer an opportunity to reply and be heard.

Bombay Art (HUF) v. Union of India
Gujarat High Court
10 Oct 2025

Result: Recovery held invalid; DRC-01D mandatory before recovery of interest.

Core Holding

Recovery of interest under section 50(1) can be initiated only after issuance of Form GST DRC-01D and providing the taxpayer an opportunity to reply and be heard.
Any recovery—such as bank account attachment under section 79—without following Rule 142B + Rule 88C procedure is illegal.

Facts in Brief

- Petitioner (HUF) filed returns but was alleged to have short-paid interest on delayed payment of tax.
- Department directly issued:
  - Notice under DRC-13 to the bank, attaching ₹23.17 lakh.
- Without waiting for response or granting hearing, the department sought recovery.
- Petitioner paid ₹7.5 lakh under protest.
- Petitioner challenged attachment and recovery as violating statutory procedure.

Court's Findings

1. DRC-01D is mandatory before any recovery of interest (Rule 142B + Rule 88C).
The department must:

1. Issue intimation in Form DRC-01D
2. Allow the taxpayer to file a reply
3. Grant opportunity of hearing
4. Only then proceed under section 79 (recovery)

Skipping these steps invalidates recovery proceedings.

2. Recovery & Bank Attachment Without DRC-01D Is Illegal

- Bank account attachment via DRC-13 before issuing DRC-01D violates:
  - Section 75(4) (opportunity of hearing)
  - Section 79 (recovery only after adjudication/intimation)
  - Rules 88C & 142B (procedure for recovery of interest)

3. Issue is no longer res integra
Court relied on earlier Gujarat HC judgments:

- Rajkamal Builder Infrastructure (P.) Ltd. v. UOI
- Reliance Formulation (P.) Ltd. v. Asst. Commissioner of State Tax (2025)

Both held that interest recovery requires prior DRC-01D and hearing.

Outcome / Directions

- Impugned DRC-13 attachment and recovery action quashed.
- Department directed to:
  a. Start proceedings afresh, strictly following rules.
  b. Issue DRC-01D first.
  c. Provide reply opportunity and personal hearing.
- Petition allowed in favour of assessee.

Practical Takeaways

For Taxpayers

- If interest recovery is initiated without DRC-01D, you may challenge recovery/attachment immediately.
- Payment made "under protest" can strengthen your case for refund or adjustment.

For Department

- DRC-01D is not optional.
- Bank attachment before DRC-01D → liable to be struck down.

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TAX INSIGHTS

By
Tax Research Deparment

Date: 26.11.2025

Income Tax

Whether loss arising on sale of shares allotted on conversion of partly convertible debentures (PCDs) is a "speculation loss" under the Explanation to Section 73(1).

HIGH COURT OF GUJARAT
Abhar Holdings (P.) Ltd.
v.
Deputy Commissioner of Income-tax
R/TAX APPEAL NO. 2596 of 2010
JULY 16, 2025

Held — In favour of assessee

Loss on sale of shares received on conversion of PCDs is not a speculation loss; Explanation to s. 73(1) not applicable.

Key Principles

1. **Conversion of PCDs = creation of shares, not purchase**
   - Shares allotted on conversion are created out of the company's capital.
   - There is no "purchase" of shares by the assessee.
   - Hence, there is no "purchase and sale" of shares, which is a prerequisite for deeming fiction under Explanation to s. 73(1).
2. **Explanation to s. 73 applies only where business consists of purchase & sale of shares of other companies**
   - Since the assessee never purchased shares, Explanation cannot apply.
3. **Gujarat HC precedent followed**
   - AMP Spinning & Weaving Mills (P.) Ltd. v. ITO (Guj HC) — distinction between "creation" vs. "transfer" of shares.
   - Special Bench ITAT ruling relied upon earlier was reversed.
4. **Result**
   - Loss on sale of such allotted shares is ordinary business loss, eligible for set-off against other income.

Outcome

Order of Tribunal treating loss as speculation loss set aside.
Substantial question of law answered in favour of assessee.

Income Tax Slab Applicable For FY2025-26

Regime	Income Slab	Tax Rate
Old Regime (unchanged)	Up to ₹ 2,50,000	0%
	₹ 2,50,001 – ₹ 5,00,000	5%
	₹ 5,00,001 – ₹ 10,00,000	20%
	Above ₹ 10,00,000	30%
Regime	**Income Slab**	**Tax Rate**
New Regime (Section 115BAC)	Up to ₹ 4,00,000	0%
	₹ 4,00,001 – ₹ 8,00,000	5%
	₹ 8,00,001 – ₹ 12,00,000	10%
	₹ 12,00,001 – ₹ 16,00,000	15%
	₹ 16,00,001 – ₹ 20,00,000	20%
	₹ 20,00,001 – ₹ 24,00,000	25%
	Above ₹ 24,00,000	30%

Other important points:

- Under the new regime, the rebate under Section 87A has been increased — so if your net taxable income is up to ₹ 12 lakh, your tax liability can be zero.
- 4% Health & Education Cess is applicable on the tax liability.

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Goods & Services Tax

TDS & TCS Under GST

Tax Deducted at Source (TDS) under GST (Section 51)

TDS is a mechanism where the recipient of goods or services (the deductor) is required to deduct a small percentage of tax when making payments under a business contract.

Aspect	Details
Deductor	Specified Government entities: Department/establishment of Central/State Government, Local authorities, Governmental agencies, PSUs, and bodies with >=51% government equity/control.
Transaction Limit	Applicable only if the **total value of supply** under a single contract **exceeds ₹2.5 Lakhs**.
Rate	**2%** of the taxable value of supply. (1% CGST + 1% SGST/UTGST or 2% IGST).
New Update (Metal Scrap)	**From October 10, 2024**, any **registered person** receiving supplies of **metal scrap** (under Chapters 72 to 81) from another registered person must deduct 2% TDS if the value exceeds ₹2.5 Lakhs.

Compliance (The Deductor's Responsibility)

- **Payment & Return:** The deducted TDS must be paid to the government by the 10th day of the next month by filing Form GSTR-7.
- **Invoice-level Reporting Update:** The format of GSTR-7 has been amended to require invoice-level reporting of TDS details instead of aggregated amounts, significantly enhancing reconciliation.
- **Credit to Supplier (Deductee):** Once the deductor files GSTR-7, the TDS amount is automatically reflected as credit in the supplier's Electronic Cash Ledger following the acceptance of the TDS filed by the deductor for use in paying their future tax liabilities.

Tax Collected at Source (TCS) under GST (Section 52)

TCS is a mechanism where the E-commerce Operator (ECO) collects tax from the consideration received on behalf of the actual supplier (seller) who supplies goods or services through their platform.

Aspect	Details
Collector	The **Electronic Commerce Operator (ECO)** (e.g., Amazon, Flipkart).
Applicability	Compulsory for all specified taxable supplies made through the ECO's platform where the payment is collected by the ECO.
Rate	**0.5%** of the net value of taxable supplies. (0.25% CGST + 0.25% SGST/UTGST or 0.5% IGST).
Rate Change	This rate was **reduced from 1% to 0.5%** (effective from **July 10, 2024**)

Compliance (The E-commerce Operator's Responsibility)

- **Payment & Return:** The collected TCS must be deposited to the government by the 10th day of the next month by filing Form GSTR-8.
- **Compulsory Registration:** Both the ECO and the sellers supplying goods/services through the platform must be compulsorily registered under GST, regardless of their annual turnover limit.
- **Credit to Seller:** The TCS amount is credited to the seller's Electronic Cash Ledger automatically, following the acceptance of the TCS filed by the ECO. Sellers may then utilize this credit to offset their GST liability.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 27.11.2025

Income Tax

If a spouse is only a joint holder of a foreign investment for administrative convenience, and the actual investor spouse has already disclosed the investment in his/her own Schedule FA, then penalty under the Black Money Act cannot be levied on the joint holder for non-disclosure.

PCIT v. Aditi Avinash Athavankar
Bombay High Court
15 Oct 2025
Assessment Year: 2017-18
Subject: Penalty under Black Money Act – Non-disclosure in Schedule FA

Fact of the case

- The assessee (wife) was a joint holder in certain foreign investments actually made by her husband.
- Her name appeared only for administrative convenience.
- Husband disclosed the investments in his own ITR in Schedule FA.
- The Assessing Officer imposed penalty on the wife under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 for not reporting the asset in her Schedule FA.

Tribunal's View

- Penalty under the Black Money Act is discretionary, not automatic.
- Since:
  - the investment was joint,
  - the husband had already fully disclosed it, and
  - there was no intention to conceal,
  - no penalty should be levied.

High Court's Decision

Held: No penalty on the wife. Appeal dismissed.

- The record clearly showed:
  - The wife was not the real investor.
  - Her name existed only for operational or administrative purposes.
  - The husband had properly reported the foreign investment in his ITR.
- Therefore, no "undisclosed foreign asset" existed in the wife's hands.
- The Tribunal's decision was based on sound discretion and no question of law arose.

Key Extracts

- Penalty is discretionary, not automatic.
- Joint holding that is already fully disclosed by one spouse cannot trigger penalty for the other spouse.
- No substantial question of law arises
- appeal dismissed.

Significance of the Judgment

- Provides relief in cases of joint foreign holdings where disclosure is already made by the primary investor.
- Reinforces that technical non-disclosure by a secondary holder does not amount to black-money default when substantive disclosure exists.
- Helps avoid duplicative or unwarranted penalties.

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Goods & Services Tax

Validity of appellate order denying GST refund on alleged intermediary services without proper examination of documents.

Commscope India (P.) Ltd. v. Addl. Commissioner (Appeals-I)
Telangana High Court
15-10-2025

Held of the case:

- The High Court set aside the appellate authority's order which denied refund of accumulated ITC relating to zero-rated export of services. The order was found non-speaking, suffered from non-application of mind, and was passed without scrutinising agreements, invoices, or other material to determine the nature and place of supply of services.

- Since the appellate authority has no power to remand, it was required to record its own findings after proper examination of the evidence. Its cryptic conclusion that the petitioner was an intermediary under section 2(13) of the IGST Act was unsustainable.

- Matter remanded to the appellate authority for fresh adjudication with reasons and after providing due opportunity to the petitioner.

Key Points

1. Background
- Petitioner sought refund of accumulated ITC on zero-rated export of services without payment of tax for Oct 2021–Mar 2022.
- Refund Sanctioning Authority allowed refund of ₹1,43,97,841, recording compliance with Section 54 and Rule 89(4).
- Department filed an appeal under Section 107(2) raising two issues:
  (i) wrong computation of turnover,
  (ii) failure to verify agreements and nature of service / place of supply.

2. Appellate Authority's Order
- Rejected department's plea that foreign inward remittances were NIL.
- Acknowledged that agreements and corporate documents had been furnished.
- However, conclusively held—without analysis—that petitioner was acting as an intermediary, hence place of supply under Section 13(8)(b) was India.
- Set aside refund.

3. High Court's Findings
- Appellate authority failed to conduct any independent scrutiny of agreements, invoices, or scope of services.
- The conclusions in paras 20–22 of the appellate order were cryptic, unsupported, and did not answer the core issue—whether services satisfied export conditions under Section 13(3) to (13) of IGST Act.
- No remand power under Section 107(11); therefore appellate authority must itself evaluate evidence and decide.
- The impugned order was vitiated by:
  - absence of reasons,
  - non-application of mind,
  - failure to examine documents,
  - failure to record findings on nature and place of supply.

4. Consequence
- Impugned order set aside.
- Matter remitted to appellate authority for fresh decision.
- Petitioner directed to appear before authority on 27.10.2025.

Result

✓ In favour of the assessee.
✓ Matter remanded for fresh decision.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 28.11.2025

Income Tax

Reassessment invalid where notice issued to company that ceased on conversion to LLP- Bombay High Court

Erangal Comtrade and Consultancy LLP v. ACIT
Bombay High Court
03-11-2025
AY: 2017-18
Held: In favour of assessee

A reassessment notice issued under section 148 in the name of a non-existent company—which had already been converted into an LLP prior to the relevant assessment year—is void ab initio and liable to be quashed. Participation in proceedings cannot cure a notice issued to a non-existent entity. The Court relied on the Supreme Court decision in Pr. CIT v. Maruti Suzuki India Ltd. (2019).

Facts

- The assessee-company was converted into an LLP on 17-03-2016, thereby ceasing to exist.
- For AY 2017-18, the LLP filed its return declaring interest income from fixed deposits (FDs) that vested in it upon conversion.
- Assessment under section 143(3) was completed, taxing the interest income of ₹50.35 lakh, though TDS credit of ₹5.04 lakh was denied because banks deducted TDS under the PAN of the erstwhile company.
- The LLP filed a rectification application and an appeal—both remained pending.
- Despite full disclosure during scrutiny, the AO issued a section 148 notice to the erstwhile company, alleging non-filing of return and escapement of income relating to FDs (₹22.11 crore) and interest (₹50.35 lakh).
- LLP objected, pointing out that:
  - the company did not exist in AY 2017-18;
  - the income had already been assessed.
- AO nevertheless passed a reassessment order in the name of the non-existent company, treating:
  - ₹22.11 crore as unexplained investment (section 69), and
  - ₹50.35 lakh as undisclosed income,
  - raising a demand of ₹16.57 crore.

Held

- Since the company had ceased to exist on 17-03-2016, issuance of a section 148 notice to it for AY 2017-18 was illegal and without jurisdiction.
- A non-existent entity cannot file a return; hence the foundation of the reopening was itself untenable.
- Issue is settled by Maruti Suzuki (SC)—a notice issued to a non-existent entity is invalid and participation in proceedings does not cure the defect.
- Followed Bombay High Court decision in Diversey India Hygiene (P.) Ltd.
- The Court therefore:
- Quashed the section 148 notice, and
- Set aside the reassessment order dated 30-03-2022 as it stemmed from an invalid notice.

Other issues (non-disposal of objections; no escapement of income) were not examined.

Goods & Services Tax

Whether a single ITC transaction can give rise to multiple GST demands across different financial years.

Devi Industrial Engineers v. Commissioner of CGST
High Court of Delhi
10 Nov 2025

Facts

- The petitioner, Devi Industrial Engineers, received Input Tax Credit (ITC) from M/s Haryana Excell Forging.
- Only one transaction took place in FY 2018-19.
- Despite this, the GST authorities issued three identical DRC-07 notices for FYs 2017-18, 2018-19, and 2019-20, claiming duplicate demands.
- Petitioner challenged the DRC-07 notices for FYs 2017-18 and 2019-20, arguing that they were duplicate demands.

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Decision:

- DRC-07 for FY 2018-19 (the actual transaction year) was upheld.
- DRC-07 for FYs 2017-18 and 2019-20 were quashed as duplicate and unjustified.
- The court emphasized that one transaction cannot generate multiple demands across different financial years.
- The decision applies only to the petitioner and its unique facts; penalties and deposited amounts are without prejudice, and the petitioner's directors can seek remedies under the law.

Significance:

- Confirms that GST authorities cannot issue duplicate demands for the same ITC transaction across multiple FYs.
- Reinforces the principle of relevance of the actual transaction period for ITC disputes.

Whether the GST order could be validly passed without serving the SCN on the portal and without providing the petitioner an opportunity of hearing.

Speed Wings Logistics Solutions (P.) Ltd. v. State of Haryana
High Court of Punjab & Haryana
25 Sep 2025

Facts:

- Petitioner, a registered transporter, was subjected to scrutiny of GST returns for FY 2020-21 under ASMT-10 for liability mismatch.
- A Show Cause Notice (SCN) and reminder were allegedly issued by the department.
- Petitioner filed a reply, but the SCN was not reflected on the GST portal and no hearing was granted before passing the order dated 25.02.2025.

Issue:

Whether the GST order could be validly passed without serving the SCN on the portal and without providing the petitioner an opportunity of hearing.

Decision:

- The order was set aside for breach of natural justice.
- Revenue acknowledged that the SCN and reminder were not available on the portal.
- Matter was remanded to the competent authority to decide afresh after granting proper opportunity of hearing.
- Court did not express any opinion on the merits of the case.

Significance:

- Reinforces the principle that natural justice must be followed in GST proceedings.
- SCN must be properly served and accessible on the portal, and the assessee must be granted a hearing before any order is passed.

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TAX INSIGHTS

By

Tax Research Deparment

Date: 29.11.2025

Income Tax

Whether a prior benami transaction can be nullified by a subsequent assessment under the Income Tax Act showing the same amount as undisclosed income.

Smt. Mina Kiranbhai Shah v. Initiating Officer, BPU SAFEMA, New Delhi
18 Nov 2025
Relevant Law: Prohibition of Benami Property Transactions Act, 1988 (Sections 2(9), 24) & Income Tax Act, 1961 (Sections 68, 148)

Facts:

- During a survey at a bank, large amounts of old high-denomination cash were deposited in accounts of six individuals.
- Cash eventually flowed to the appellant's account through a proprietorship firm (M/s Shiv Traders) with no business activity.
- Account operators admitted the cash was not theirs; funds were later transferred to the appellant, who was the beneficial owner.
- Adjudicating Authority held the transactions were benami, confirming a provisional attachment order (PAO).
- Appellant claimed ignorance, stating her husband handled transactions, and that the amount was from a property sale.
- Appellant also argued the amount had been subsequently assessed as undisclosed income under Section 148 of the Income Tax Act.

Decision:

- Ignorance of the transaction does not absolve the appellant; the fact that it occurred in her account makes her liable.
- There was no document to substantiate a genuine property sale or other legitimate source.
- Subsequent IT assessment or surrender of the amount as undisclosed income does not nullify a benami transaction that took place earlier.
- The PAO and confirmation of benami transaction were upheld.
- Appeal dismissed in favor of the revenue.

Significance:

- Clarifies that benami proceedings under the Benami Act are independent of Income Tax assessments.
- Simply declaring money as undisclosed income in a later tax assessment cannot undo a prior benami transaction.
- Beneficial owners cannot escape liability by claiming ignorance if funds are in their account.

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Goods & Services Tax

Whether detention and penalty under Section 129(3) can be imposed when e-way bill is later produced before seizure.

Singhal Enterprises v. State of U.P.
High Court of Allahabad
Writ Tax No. 120 of 2021
Date: 07.11.2025

Facts:

- Petitioner, a GST-registered proprietorship, purchased MS bars from Chhattisgarh.
- Seller issued tax invoice, e-way bill, and other documents.
- On arrival in UP, petitioner directed delivery to Steel Center, Ghazipur.
- Due to a server glitch, intra-state e-way bill could not be generated immediately.
- Vehicle intercepted during unloading; e-way bill was produced before seizure.
- Authorities imposed penalty under Section 129(3) CGST Act.

Contentions:

- **Petitioner:** No tax evasion; documents genuine; server glitch unavoidable; e-way bill produced before seizure.
- **Revenue:** Detention justified due to destination mismatch at interception.

Issues:

1. Whether detention and penalty under Section 129(3) can be imposed when e-way bill is later produced before seizure.
2. Whether mere destination mismatch constitutes tax evasion.

Observations of the Court:

1. Goods were genuine and accompanied by valid documents; only destination mismatch existed.
2. Server glitch was uncontroverted; petitioner had no mens rea to evade tax.
3. E-way bill produced before seizure – crucial under Section 129.
4. Change of delivery point alone does not amount to contravention if goods and documents are valid.
5. Relied on:
   - Sleevco Traders v. Additional Commissioner (Allahabad HC, affirmed by SC)
   - Satyam Shivam Paper Pvt. Ltd. (SC)

Decision:

- Detention and penalty quashed.
- Impugned orders dated 10.04.2019 and 14.09.2020 set aside.
- Refund of any amounts deposited directed within 2 months.

Legal Principle:

Goods cannot be detained, nor penalty imposed, if a genuine e-way bill is produced before the seizure order, even if it was initially not generated due to technical issues.

Mere mismatch of delivery location does not indicate tax evasion.

Practical Takeaways:

1. Maintain genuine invoices and transport documents.
2. If e-way bill generation fails due to technical issues, produce it promptly.
3. Authorities cannot penalize if no intent to evade tax exists.

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TAX INSIGHTS

By

Tax Research Deparment

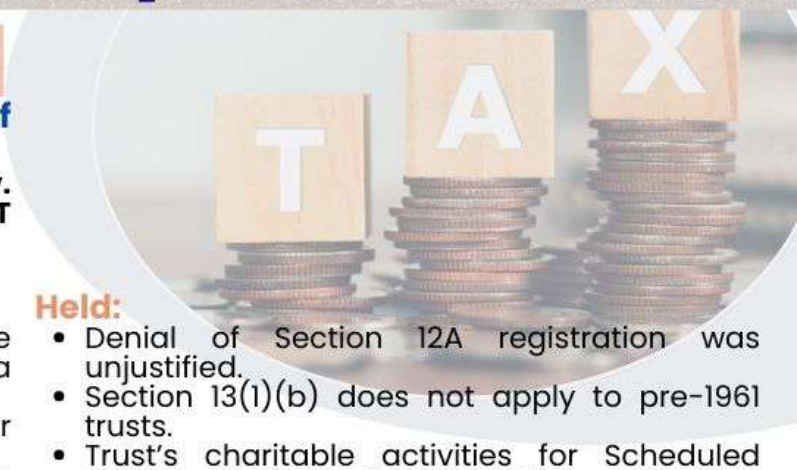
Date: 30.11.2025

Income Tax

Denial of registration under Section 12A of the Income-tax Act, 1961

Shree Mahyavanshi Samaj Bombay Trust v. Commissioner of Income-tax (Exemption), ITAT Mumbai

Date: 31-10-2025



Facts:

1. The assessee is a trust formed in 1956 for the welfare of the Mahyavanshi Samaj (a Scheduled Caste).
2. The trust obtained provisional registration under Form 10AC valid up to A.Y. 2024-25.
3. It carried out charitable activities since A.Y. 2021-22 and applied for regular registration under Section 12A.
4. The CIT(E) rejected the application, claiming:
   - The application was delayed.
   - The trust's activities benefited a particular community, allegedly violating Section 13(1)(b) and clause (d) of Explanation to Section 12AB(4).

Contention of the Assessee:

- The trust was established before the Income-tax Act, 1961, hence Section 13(1)(b) is inapplicable.
- The beneficiaries belong to a Scheduled Caste, which is exempt under Explanation 2 to Section 13(1)(b).

Tribunal's Findings:

1. Section 13(1)(b) applies only to trusts created after the commencement of the Income-tax Act, 1961.
   - Trusts formed pre-1961 are not covered.
   - The assessee submitted its registration dated 29.06.1957 issued by the Charity Commissioner.
2. Activities were for the benefit of Mahyavanshi Samaj (Scheduled Caste).
   Exempt under Explanation 2 to Section 13(1)(b).
3. CIT(E) wrongly rejected the application.

Held:

- Denial of Section 12A registration was unjustified.
- Section 13(1)(b) does not apply to pre-1961 trusts.
- Trust's charitable activities for Scheduled Castes do not constitute violation.
- Order of CIT(E) set aside; registration under Section 12A granted.

Key Legal Takeaways:

1. Section 13(1)(b) is not applicable to trusts formed before 1961.
2. Trusts benefiting Scheduled Castes, Scheduled Tribes, backward classes, women, or children are exempt from the "particular community/caste" restriction.
3. CIT(E) cannot reject Section 12A registration solely based on delayed filing if statutory exceptions apply.

This case reinforces that pre-1961 trusts and SC/ST-benefitting trusts enjoy protection under the Act, and authorities must consider historical context and statutory exemptions before rejecting registration.

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Goods & Services Tax

GST demand under Section 73 – Natural justice / opportunity to be heard

Business Aircraft Management Services (P.) Ltd.
v. State of Karnataka
High Court of Karnataka
24-10-2025

Facts:

1. The assessee received a pre-intimation notice (Form GST ASMT-10) and an intimation notice (Form GST DRC-01A) regarding alleged short payment of GST.
2. Notices were sent to the assessee's email, but emails landed in the Junk folder, so the assessee did not see them and did not respond.
3. Subsequently, a show-cause notice under Section 73 was issued for under-reported output GST.
4. As the assessee did not respond, the Assistant Commissioner issued an ex-parte demand order under Section 73(9) & (10) confirming GST demand of Rs. 16,15,303/-, including interest and penalty.
5. The assessee approached the High Court, arguing that failure to respond was bona fide and due to unavoidable circumstances (emails in Junk folder).

Contention of the Assessee:

- Notices were not received in the inbox.
- Non-response was not deliberate, but due to technical email issue.
- The assessee requested an opportunity to be heard before confirming the demand.

High Court Observations:

1. Natural justice requires that the assessee must have an opportunity to respond to notices before demand is confirmed.
2. The inability to respond due to emails going to Junk folder is a bona fide reason, constituting sufficient cause.
3. Ex-parte order under Section 73 cannot stand if the assessee was deprived of the opportunity to be heard.
4. A justice-oriented approach requires giving the assessee one more opportunity to reply and contest the proceedings.

Order:

1. The impugned GST demand order (13.03.2024) is set aside.
2. Matter remitted back to the Assistant Commissioner for fresh consideration after the assessee submits reply to show-cause notice dated 26.12.2023.
3. The assessee is directed to appear before the authority on 10.11.2025 and can submit documents, replies, and explanations.
4. Any amount recovered shall be subject to the final outcome of the proceedings.
5. If the assessee fails to appear, the order will stand automatically recalled.

Key Legal Takeaways:

- Section 73 proceedings must comply with principles of natural justice.
- Non-service of notices (even if electronic) can invalidate ex-parte orders.
- Courts are inclined to provide another opportunity if failure to respond is bona fide and due to unavoidable circumstances.
- Justice-oriented approach overrides rigid procedural enforcement in cases of genuine non-receipt.