Price ₹ 300/- per copy

R.N.I. No. MAHENG/2012/47041 - Total Pages: 132

A Monthly Journal of
THE CHAMBER OF
TAX CONSULTANTS

THE CHAMBER'S JOURNAL

Your Monthly Companion on Tax & Allied Subjects

Vol. XIII | No. 5 | February 2025

UNION BUDGET 2025

Analysis of Tax Proposals

Log on to The Chamber's website for Online payment for programmes www.ctconline.org

Glimpses of the 13th RRC on GST held on January 9-12, 2025 at Sheraton Grand, Whitefield, Bengaluru organized by Indirect Taxes Committee

Dignitaries at the Inaugural function

CA Vijay Bhatt (President) giving his opening remark

CA Hemang Shah (Chairman) welcoming the speakers and the delegates

CA Guru Prasad Makam addressing the delegate

Adv. Nishant Shah addressing the delegate

CA. Nilesh Vasa addressing the delegate

(L-R) CA Rajat Talati, CA Naresh Sheth, CA. Vinod Awtani (Panel Member), Adv. K. Vaitheeswaran (Panel Member), CA. Vikram Mehta (Moderator), Adv. Abhay Desai (Panel Member), CA Yash Parmar

Adv. K S Naveenkumar addressing the delegate

Sr. Adv. V Raghuraman addressing the delegate

Contents

Vol. XIII | No. 5 | February 2025

From the Editor's Desk
— *Anish Thacker* **5**

From the President
— *Vijay Bhatt* **7**

Special Story — Union Budget 2025 – Analysis of Tax Proposals

Transformative Personal Tax Reforms Unveiled
— *Bhavin Marfatia* **9**

Analysis of Tax Proposals - Taxation of Charitable Trusts — *Sharad Shah* **19**

M&A, VDAs, Business Trusts and Startups
— *Raghav Bajaj & Vishal Samnani* **22**

Key Changes in TDS, TCS and Penalty Provisions — *Aayush Gupta* **26**

Are updated return provisions tax payer friendly? — *Hari Om Jindal* **33**

Proposed Amendments to Block Assessment and Related Matters — *Sandip Parikh & Mukesh Dholakiya* **43**

From Annual Scrutiny to Block Assessments: The Future of Transfer Pricing in India — *Karishma Phatarphekar & Sanjay Mistry* **49**

The Finance Bill, 2025 — IFSC related provisions — *Suresh Swamy & Nehal Sampat* **54**

Non-Resident Taxation
— *Shikha Gupta* **59**

"Safari Actually Retreats?" & Key Indirect Tax changes in Budget and what they mean for you? — *Sagar Shah* **65**

Direct Taxes - Important Judgements

Supreme Court — *Keshav Bhujle* **73**

High Court — *Jitendra Singh, Radha Halbe & Harsh Shah* **77**

Tribunal — *Nikhil Mutha, Viraj Mehta & Kinjal Bhuta* **81**

International Taxation - Important Judgements

Case Law Update
— *Dr. Sunil Moti Lala* **90**

Indirect Taxes - Important Judgements

GST — *Naresh Sheth & Jinesh Shah* **94**

Service Tax — *Rajiv Luthia & Keval Shah* **103**

Corporate Laws - Important Judgements

Case Law Update — *Makarand Joshi* **110**

Other Laws

FEMA Updates & Analysis
— *Hardik Mehta & Tanvi Vora* **119**

The Chamber News

— *Mehul Sheth & Neha Gada* **127**

Scan QR code to share feedback

THE CHAMBER OF TAX CONSULTANTS
3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai-400 020
Phone : 2200 1787/2209 0423/2200 2455
E-Mail: office@ctconline.org • Website : http://www.ctconline.org.

THE CHAMBER'S JOURNAL

EDITORIAL BOARD 2024-2025

Editor
Anish Thacker

Members
Kishor Vanjara
Pradip Kapasi
Vipul Choksi
Mahendra Sanghvi
Manoj Shah
Yatin Desai

Ex Officio
Vijay Bhatt (President)
Jayant Gokhale (Vice President)

Assistant Editors
Chirag Wadhwa
Dharan Gandhi
Fenil Bhatt
Haresh Chheda
Nikhil Tiwari
Rakesh Upadhyay
Sachin Sastakar
Siddharth Parekh
Vikram Mehta
Yatin Vyavharkar

JOURNAL COMMITTEE 2024-2025

Chairman
Ameya Kunte

Vice Chairman
Jiger Saiya

Ex Officio
Vijay Bhatt (President)
Jayant Gokhale (Vice President)

Convenors
Bhavik B. Shah • Jagruti Sheth • Toral Shah

Past President
K. Gopal • Vipin Batavia

Office Bearer
Neha Gada

Editor
Anish Thacker

Past Chairman
Paras K. Savla

Managing Council Member
Tejas Parikh

Members
Ajay Rotti
Arpit Jain
Chintan Gandhi
Janak Vaghani
Ninad Karpe
Parveen Kumar
Ritesh Kanodia
Sachin Kumar BP
Simachal Mohanty
Vinita Krishnan
Vivek Newatia
Anup Shah
Atul Bheda
Dhiren Shah
Naresh Ajwani
Pankaj Majithia
Rajkamal Shah
Rohan Umranikar
Sanjiv Chowdhary
Vijay Gilda
Viraj Mehta

MANAGING COUNCIL 2024-2025

President
Vijay Bhatt

Vice President
Jayant Gokhale

Hon. Secretaries
Mehul Sheth • Neha Gada

Hon. Treasurer
Vitang Shah

Imm. Past President
Haresh Kenia

Editor
Anish Thacker

Members
Ameya Kunte
Ashok Mehta
Dipesh Vora
Hinesh Doshi
Ketan Vajani
Mahendra Sanghvi
Niyati Mankad
Premal Gandhi
Vipul Choksi
Yatin Desai
Ankit Sanghavi
Bhavik R. Shah
Hemang Shah
Karishma Phatarphekar
Kishor Vanjara
Mallika Devendra
Paresh Shah
Tejas Parikh
Viraj Mehta

DISCLAIMER
Opinions, views, statements, results, replies, etc., published in the Journal are of the respective authors/contributors.
Neither The Chamber of Tax Consultants nor the authors/contributors are responsible in any way whatsoever for any personal or professional liability arising out of the same.

Non-receipt of the Journal must be notified within one month from the date of publication, which is the 12th of every month.

No part of this publication may be reproduced or transmitted in any form or by any means without the permission in writing from The Chamber of Tax Consultants. No part of the contents of the Journal should be used as, or be regarded as a substitute for, professional advice.

***READER'S SUGGESTIONS AND VIEWS**: We invite the suggestions and views from readers for improvement of The Chamber's Journal. Kindly send your suggestions on office@ctconline.org.*

ADVERTISEMENT RATES

Per Insertion

Fourth Cover Page (Colour)	₹ 15,000
Second & Third Cover Page (Colour)	₹ 13,500
Ordinary Full Page (B&W)	₹ 7,500
Ordinary Half Page (B&W)	₹ 3,500
Ordinary Quarter Page (B&W)	₹ 1,750

(Special discount on bulk inside colour pages)

DISCOUNT
25% for 12 insertions
15% for 6 insertions
5% for 3 insertions

Exclusive of GST
Full advertisement charges should be paid in advance.

MEMBERSHIP FEES & JOURNAL SUBSCRIPTION — FOR THE F.Y. 2024-25

Sr. No.	Membership Type		Fees	GST 18%	Total
1.	Life Membership Fees	₹	15,000	2,700	17,700
2.	Ordinary Membership Fees - Yearly (April to March) (Hard Copy)	₹	2,500	450	2,950
3.	Ordinary Membership Fees - (April To March) – with Soft Copy of Journal (E- JOURNAL)	₹	1,500	270	1,770
4.	Admission Fees - Ordinary Membership	₹	750	135	885
5.	Associate Membership - Yearly (April to March)	₹	7,500	1,350	8,850
6.	Admission Fees - Associate Membership	₹	1,000	180	1,180
7.	Student Membership - Including E-Journal (April to March)	₹	500	90	590

CHAMBER'S E-JOURNAL SUBSCRIPTION — FOR THE F.Y. 2024-25

Membership Type	Fees	GST 18%	Total
(HARD COPIES)			
Journal Subscription - Life Members	1,350	0	1,350
Journal Subscription - Non Members	2,500	0	2,500
Journal Subscription - Student Members	1,000	0	1,000
(SOFT COPIES)			
E Journal Subscription - Life Members (Yearly)	700	126	826
E Journal Subscription - Non Members (Yearly)	1,000	180	1,180
E Journal Subscription - Single Journal	200	36	236

From the Editor's Desk

My Brothers and Sisters,

On going through the Direct Tax Proposals in the Finance Bill, 2025, one notes that the Government has finally recognized the contribution of India's silent sufferers, the middle class, to India's GDP and finally done some thing for them. The increase in the basic exemption limit under the new regime and the higher threshold of the limit for rebate under section 87A of the Income-tax Act, proposed in the Finance Bill, ought to be a big sigh of relief to this section of the population, who always struggles the hardest, yet contributes significantly, to the GDP. One hopes that this mindset, of recognizing its challenges and taking steps to mitigate their hardship, spreads also to the GST law where inexplicable decisions, on edible items for one, still cause considerable consternation.

To give credit where it is due, most of the 86 clauses on direct taxes in the Finance Bill do not seem to be ambiguous and are logical, and also, are prospective. For the first time, FAQs on almost all the proposals are issued. These FAQs help explain the amendments and their rationale quite succinctly and the drafters of these FAQs should be complimented. This practice should also continue in future. The Memorandum explaining the provisions of the Finance Bill and the Notes on Clauses are also well drafted. This is appreciated and is welcomed.

The nation eagerly awaits the draft of the promised new, simple, easy to understand and relatively shorter Income-tax Act, which is slated to be introduced in Parliament in the week beginning 10th February 2025. Considerable effort in this direction, has been put in by several very senior income-tax officials of the rank of Commissioner and above to bring this out. Drafting a law that is simple, is a complex task. To keep it simple while providing for foreseen as well as unforeseen situations is difficult. Given the short time taken for this herculean task by these senior officials, one may have to be patient in commenting on the work done, but it is trite that the attempt must be lauded.

As always, the Chamber has been at the forefront of conveying the voice of the taxpayers to the right ears. The order received in the Public Interest Litigation on the rebate under section 87A which all of you would be aware by now, is testimonial to the commitment of the Law and Representation Committee. My grateful thanks to its Chairman, CA Ketan Vajani, Advisor, CA Mahendra Sanghvi and all the others who work tirelessly for the taxpayers at large in this committee. I would like to convey the Chamber's deepest gratitude to Senior Advocate, Shri Percy Pardiwalla and Advocate, Dharan Gandhi for representing the Chamber in Court and spending their valuable time without expectation of any financial gain, for this PIL.

This issue of the journal would not have come out this quickly had it not been for the unstinted efforts of two of our dedicated members from Gujarat, namely CA Dhiren Shah from Ahmedabad and CA Arpit Jain from Ahmedabad, who, were very proactive in deciding authors, identifying and allocating topics, and following up for the articles. Chairman of the Journal Committee, CA Ameya Kunte and its office bearers, CA Jiger Saiya, CA Bhavik B Shah, CA Jagruti Sheth and CA Toral Shah deserve kudos for their efforts in bringing every issue and especially this issue out, seamlessly, quickly and for their zeal to maintain the Journal's quality.

I hope you Find this issue on the Finance Bill 2025, timely and useful.

Let's keep our fingers crossed for the biggest direct tax law change in the last 12 years (the previous draft of the Direct Taxes Code was put up for consultation in 2012).

In anticipation,

ANISH M. THACKER
Editor

From the President

Dear Members,

The Government presented the Budget, 2025 on 1st February, 2025. The Budget is growth oriented with stimulation to all the sectors of economy. The budget has laid down the roadmap to reach next level in the global economy. The major highlight of the budget is the focus on the growth of the middle class. The (never before) increased limit of Income upto ₹ 12 Lakhs (and with further ₹ 75,000/- of Standard Deduction) with 100% Tax Rebate (under the new tax regime) has been talk of the town today, bringing the bundle joy to the middle class. The Honorable Finance Minister Smt. Nirmala Sitharaman also announced the introduction of the new Income Tax Act in this month, which will be easy to understand and with lesser of provisos.

Another talk of the town or to put it more appropriately - talk of the world - is **"Maha Kumbh Mela"** with **Triveni Snaan** at the holy town of **Prayagraj** in Uttar Pradesh. Barring the sad incident of stampede, the Maha Kumbh Mela has been a grand success for India. I am sure many of our members would have visited Maha Kumbh Mela and taken a dip in the holy Triveni Sangam.

On 25th January, 2025, the Chamber was invited to celebrate the Foundation Day of the Honorable Income Tax Appellate Tribunal. On behalf of the Chamber of Tax Consultants, I heartily congratulate Honorable Justice (Retd.) Shri C. V. Bhadang, President, Income Tax Appellate Tribunal and all the Honorable Members of the Income Tax appellate Tribunal on this occasion. I also thank Advocate Shri K.Gopal, President ITAT Bar Association and all the office bearers of the ITAT Bar Association for inviting us to the customary lunch function on the occasion. It was a great opportunity to listen to Honorable Shri Justice S. Ravindra Bhat, Former Judge, Supreme Court of India, who was the Chief Guest of the function. Shri Raj Tandon, IRS, Principal Chief Commissioner of Income Tax, Mumbai graced the function with his presence as Guest of Honour.

The Public Interest Litigation filed by the Chamber of Tax Consultants relating to rebate u/s. 87A has been decided by the Hon'ble Bombay High Court vide the order dated 24th January, 2025. The Hon'ble High Court has held that the assessee cannot be denied the opportunity to raise a possible claim due to Return filing utility. Though the allowance of claim has been left to the authorities under the Act, the fundamental question of allowing a taxpayer to raise a claim has been answered by the Hon'ble High Court in favour of the taxpayers. The Chamber has once again stood for the common cause affecting large segment of the tax payers and the efforts of the Chamber has been fruitful. I acknowledge the efforts of Shri Ketan Vajani, Chairman of the Law & Representation Committee, Shri Mahendra Sanghvi, the advisor to the Committee and other team members including Apurva Shah, Abhitan Mehta and Ashok Mehta. We are extremely grateful to Senior Advocate Shri Percy Pardiwala and Advocate Dharan Gandhi who have represented the Chamber in a very effective manner before the Hon'ble High Court.

During last month, the Indirect Tax Committee successfully organized the 13th Indirect Tax RRC at Bengaluru. I acknowledge the whole hearted support of 284 esteemed delegates, who attended this RRC from about 40 towns across India. The senior faculty members in the field of Indirect Tax shared their knowledge to the delegates in a very elaborated way. My sincere thanks to all the learned faculty members for their contribution for our RRC delegates. I also congratulate the Chairman CA Hemang Shah and his team for the successful RRC.

Starting from January to April, the Student Committee has organized Certificate Course on GST Law & Litigation jointly with Government Law College, Mumbai. The course is being organized every Saturday in Hybrid mode. Our sincere thanks to Dr. Mrs. Asmita Vaidya, Principal, Government Law College for her support in this collaboration. The committee also organised "Unvieling the Tech Series 2025" for the benefit of students. For the students, the forthcoming events are Debate & Essay, the details of which will be announced soon. I appeal to all the members to encourage their students to participate in these events.

The Commercial & Allied Law Committee organized a lecture meeting on a unique topic – "Recent amendments in SEBI LODR and PIT Regulations". Likewise, our Study Circle/ Study Group Committee also organized a study group meeting on Recent Judgements under the Income Tax Act, 1961.

The CTC had an opportunity to organize a lecture meeting on "Impact of Union Budget on Capital Market" jointly with Investors' Grievances Forum, Matunga Gymkhana, Matunga CPE Study Circle of WIRC, Forum of Free Enterprise & Interact Foundation. Likewise our Delhi Chapter also organized a meeting on Budget Amendments.

On 15th February, the CTC jointly with Jalgaon Branch of WIRC & WICASA of ICAI and Jalgaon District Tax Practitioners Association has organized a full day seminar on various Income Tax subjects physically in Jalgaon. I encourage our members in Jalgaon and nearby areas to attend this seminar to be addressed by senior experts.

The much awaited 48th Direct Tax RRC of the Chamber is being organized from 6th to 9th March,2025 at Raipur, the capital city of Chhattisgarh. The enrolment, which opened in the month of October, received an overwhelming response of more than 340 Delegates, which shows the spirit of knowledge sharing and fellowship amongst delegates for the Chamber. RRC is the time to meet and greet fellow professionals over knowledge sharing. All the arrangements have been made by the RRC Committee for the smooth conduct of the RRC and comfortable stay of the delegates. **I encourage local members to attend the RRC on Non-residential basis.**

This month's Journal is comprising of Special Story on the Subject "Union Budget 2025 – Analysis of Tax Proposals". I thank the Editorial Board, the Journal Committee and CA Ameya Kunte, Chairman and his team for coming out with this edition at a very short notice after the Budget announcement on 1st February,2025. I thank all the authors for their efforts for our members with special mention of CA Dhiren Shah of Ahmedabad and CA Arpit Jain of Ahmedabad for their valuable efforts.

As mentioned earlier, the Chamber's Journal is reaching the milestone of 50 years in April, 2025. I urge readers to spread the word about the Journal among their professional colleagues and help the CTC in spreading knowledge.

Jai Hind !

VIJAY BHATT
President

Transformative Personal Tax Reforms Unveiled

CA Bhavin Marfatia

Overview

The Union Budget 2025 introduces a major revamp in personal income taxation, exempting individuals earning up to INR 12 lakh from tax under the New Tax Regime defined u/s. 115BAC. The revised slabs and reduced tax rates extend benefits to higher-income groups, simplifying the tax structure and boosting transparency. By leaving more disposable income in the hands of taxpayers, the reforms aim to stimulate consumption demand and drive economic growth. The new tax slabs and rates are made lucrative so as to ensure that more number of taxpayers opt for taxation under the new regime [section 115BAC] rather than the old tax regime which was mainly based on exemptions and deductions.

A landmark announcement includes the introduction of a new Income-Tax Bill, embracing "trust first, scrutinize later" framework to streamline the taxation process. The budget also focuses on rationalizing TDS/TCS, revising rebates under section 87A, exempting NSS withdrawals, clarifying ULIP taxation, ensuring a more investor-friendly and efficient tax framework.

These changes reinforce the Government's commitment to reducing the tax burden, promoting voluntary compliance, and enhancing ease of doing business. By shifting towards a simpler, lower-tax regime, the budget lays the foundation for a transparent, growth-driven taxation system, fostering both middle-class welfare and long-term economic stability. This article focuses primarily on amendments dealing with personal taxation proposed by the Finance Bill 2025 and their potential impact on taxpayers.

The Hon'ble Finance Minister (**"FM"**) has presented her eighth consecutive Union Budget on Saturday, February 1, 2025 in Lok Sabha, marking a historic milestone. In the Budget Speech, the FM unveiled plans for a new income-tax bill, set to carry forward the principles of **"Nyaya"** (justice). The Finance Bill, 2025 (**'the Proposed Bill'**) introduces a series of direct tax proposals with sharp focus on benefiting middle class, rationalisation of TDS/TCS, encouraging voluntary compliance, reducing compliance burden, fostering ease of doing business, employment and investment. The objective of the FM is clear that the entire taxation system has to be revamped. Towards that step the FM also announced that the system of taxation would be changed to "trust first, scrutinize later" including introduction of the new Income Tax Bill in short time to come.

Among the many forward-looking proposals, noteworthy measures have been put in place to support middle-class taxpayers, acknowledging their vital contribution to the nation's progress.

This article highlights the key amendments in Personal Taxation, Rebate under section 87A, House Property taxation, Deduction under Chapter VI-A and ULIP taxation as outlined in the Proposed Bill.

Proposed Amendments

Personal Taxation – Changes in Tax Rates and Slabs under New Tax Regime

The Proposed Bill introduces a significant amendment aimed at reducing the tax burden for taxpayers with a total income upto INR 12 lakhs under the 'New Tax Regime.' The government is encouraging people to opt for this new regime over the old Tax Regime, which involves cash outflow for investment generating future income. This further reduced the administrative burden and cost of scrutiny of exemption and deduction available under the old Tax Regime.

In alignment with the options provided to domestic companies for lower tax payments, the Finance Act 2020 introduced a New Tax Regime for individuals and HUFs by inserting new section 115BAC, effective from FY 2020-21. This new tax regime offers lower tax rates compared to regular slab rates under the old Tax Regime, however, taxpayers were required to forgo certain exemptions and deductions available in the old tax regime.

In order to broaden the coverage of this newly inserted section 115BAC, the Finance Act 2023 extended this benefits to other class of taxpayers, such as associations of persons (excluding co-operative societies), body of individuals (whether incorporated or not), and artificial juridical persons under section 2(31) of the Income Tax Act, 1961 ("ITA"). In 2023, the New Tax Regime was announced as the 'default' regime, meaning tax computation will follow the new tax regime unless the taxpayer opts for the old tax regime. The intentions were clear that the Government wanted that maximum number of taxpayers opt for the new tax regime doing away with the old system of exemption/deduction based computation of total income.

Under New Tax Regime defined by section 115BAC, certain deductions or exemptions are not available, except for the following:

- Standard Deduction under section 16(ia)
- Deductions in respect of family pension under section 57(iia)
- Deduction in respect of contribution in NPS by the employer under section 80CCD(2)
- Deduction in respect of amount paid in the Agniveer Corpus Fund under section 80CCH(2) and
- Deduction in respect of new employment under section 80JJAA of the ITA

The tax leverage available to a taxpayer under the old regime and the new regime was limited and it was upon the taxpayer to weigh between the two while filing the return of income. In the Finance Bill 2025, the Government has gone a long way to promote the New Tax Regime by reducing the tax liability for taxpayers with income up to INR 12 lakh. This move benefits individuals, HUFs, associations of persons (other than co-operative societies), body of individuals

(whether incorporated or not), and artificial juridical persons as defined under Section 2(31) of the ITA, provided they have opted for the New Tax Regime. The proposed changes specifically focus on revised tax slabs and rates under Section 115BAC, making the New Tax Regime more attractive for taxpayers. Notably, no changes have been introduced for taxpayers following the old Tax Regime.

The following table outlines the existing tax rates for AY 2025-26 under the pre-amended provisions and the proposed amendments for AY 2026-27 in the New Tax Regime [section 115BAC] :

Total Income in INR (AY 2025-26)	**Tax Rate***	**Total Income in INR (AY 2026-27)**	**Tax Rate***
Up to 3,00,000	Nil	Up to 4,00,000	Nil
3,00,001 to 7,00,000	5%	4,00,001 to 8,00,000	5%
7,00,001 to 10,00,000	10%	8,00,001 to 12,00,000	10%
10,00,001 to 12,00,000	15%	12,00,001 to 16,00,000	15%
12,00,001 to 15,00,000	20%	16,00,001 to 20,00,000	20%
Above 15,00,000	30%	20,00,001 to 24,00,000	25%
		Above 24,00,000	30%
**plus applicable surcharge depending upon the income level when exceeds by INR 50.00 lacs and health and education cess @ 4% applicable in all cases.*			

Increase in limit of rebate u/s. 87A

Under existing provision of section 87A of the ITA, a resident individual can claim rebate of INR 12,500 for total income upto INR 5.00 lakhs under old Tax Regime and rebate of INR 25,000 upto total income of INR 7 lakhs under New Tax Regime. Additionally, taxpayers in New Tax Regime can get marginal relief where total income exceeds INR 7 lakhs.

The Proposed Bill proposes to increase rebate available u/s. 87A, from the existing limit of INR 25,000 to INR 60,000 effective from AY 2026-27 onwards. The increased rebate will apply to resident individual opting for the New Tax Regime, further reducing their tax liability.

Allowable Rebate as per existing provision u/s. 87A and proposed amendments are tabulated under :

Particulars	Existing (A.Y 2025-26)	Proposed (from A.Y 2026-27)
Old regime	Total Income upto INR 5 lakhs – INR 12,500	No Change
	Total Income exceeds INR 5 lakhs – No Rebate	
New regime	Total Income upto INR 7 lakhs – INR 25,000	Total Income upto INR 12 lakhs – INR 60,000
	Total Income exceeds INR 7 lakhs – Marginal Relief	Total Income exceeds INR 12 lakhs – Marginal Relief

Following illustration summarizes the computation of rebate and marginal relief u/s. 87A under New Tax Regime as per proposed amendment –

Total Income (INR)	*Tax Liability before rebate under section 87A (1)*	*Income above INR 12L (2)*	*Excess of tax over income above INR 12L (3) = (1)– (2)*	*Rebate under section 87A (4)*	*Marginal Relief under section 87A (5)*	*Net Tax Payable (6) = (1) –(4)-(5)*
12,00,000	60,000	-	-	60,000	-	-
12,25,000	63,750	25,000	38,750	-	38,750	25,000
12,50,000	67,500	50,000	17,500	-	17,500	50,000
12,75,000	71,250	75,000	(3,750)	-	-	71,250

Notes :

- *The amount of tax rebate shall not exceed amount of income tax payable under New Tax Regime*
- *Marginal Relief is the difference between the excess tax payable on the income above INR 12 lakhs and the amount of income that exceeds INR 12 Lakhs.*

Recently there has been a lot of hue and cry with respect to applicability of marginal relief u/s. 87A to income which are taxed at special rates like capital gains taxed u/s. 111A, 112 etc. We have separately dealt with the controversy with respect to applicability of section 87A on income taxed at special rate in the later part of this article.

To assess the impact of the proposed amendments in tax rates, slabs, and rebate under the New Tax Regime, a comparative analysis of tax liability under the existing provisions versus the proposed provisions will be helpful. This analysis will highlight the potential tax savings for individuals opting for the New Tax Regime.

(Figures in INR)

Income*	Existing - AY 2025-26 (FY 2024-25)			Proposed - AY 2026-27 (FY 2025-26)			Tax Saving (excluding surcharge and cess)
	Income Tax	Rebate under section 87A	Tax Liability after Rebate	Income Tax	Rebate under section 87A	Tax Liability after Rebate	
5,00,000	-	-	-	5,000	5,000	-	-
6,00,000	-	-	-	10,000	10,000	-	-
7,00,000	20,000	20,000	-	15,000	15,000	-	-
8,00,000	30,000	-	30,000	20,000	20,000	-	30,000
9,00,000	40,000	-	40,000	30,000	30,000	-	40,000
10,00,000	50,000	-	50,000	40,000	40,000	-	50,000
12,00,000	80,000	-	80,000	60,000	60,000	-	80,000
15,00,000	1,40,000	-	1,40,000	1,05,000	-	1,05,000	35,000
20,00,000	2,90,000	-	2,90,000	2,00,000	-	2,00,000	90,000
25,00,000	4,40,000	-	4,40,000	3,30,000	-	3,30,000	1,10,000
30,00,000	5,90,000	-	5,90,000	4,80,000	-	4,80,000	1,10,000

**after considering standard deduction of INR 75,000*

***Notes** :*

- *tax liability without surcharge and education cess*
- *marginal relief under section 87A is allowable under New Tax Regime for the amount being the difference between the excess tax payable on the income above INR 7 lakhs/INR 12 lakhs and the amount of income that exceeds INR 7 Lakhs/INR 12 lakhs under existing as well as under proposed provisions*

The comparative analysis of the proposed amendments indicates a significant reduction in tax liability for taxpayers opting for the New Tax Regime. No tax liability for taxpayers with income up to INR 12 lakh under the New Tax Regime, making it highly attractive for a large group of taxpayers. Revised tax slabs ensure that taxpayers earning above INR 12 lakh also benefit from reduced tax rates.

Overall, the proposed changes aim to make the New Tax Regime more attractive with

objective of reducing the tax burden for a large number of taxpayers

It is to be noted that the persons offering income to tax as per tax slab rates prescribed u/s 115BAC shall continue to avail standard deduction u/s 16 of INR 75,000 and deduction against family pension income of INR 25,000 u/s 57. However, if a taxpayer is eligible to claim a substantial amount of deduction/exemption which is otherwise not available under above 'default' tax regime, it is advisable to compare the tax liability under old tax regime (no change has been proposed in old tax regime) to decide which tax regime is beneficial to them before filing the return of income. They can opt out from the 'default' tax regime in accordance with the provisions of section 115BAC.

Rebate u/s. 87A – the controversy

With the revision in slab-based tax rates u/s 115BAC for AY 2026-27, the Bill has also proposed to amend provisions of section 87A of the Act to grant rebate of entire tax liability to resident individual if total income does not exceed INR 12,00,000. Also, benefit of marginal relief has been proposed to continue to be applicable for amount of tax payable if it exceeds the amount of income in excess of INR 12,00,000.

As per the existing provisions of Section 87A, there is no explicit restriction on claiming the rebate from short-term capital gains u/s. 111A and long-term capital gains u/s. 112, except Section 112A wherein it is clearly mentioned that rebate on income arising from long-term capital gains arising from transfer of equity shares and equity-oriented mutual funds with STT would not be allowed [sub-section (6) of section 112A].

It would be interesting to note that the tax department's return preparation utility for AY 2024-25 did not allow a rebate against such income taxable at special rates. In cases wherein the rebate u/s. 87A was claimed on special rate income intimations have been issued u/s. 143(1) wherein the Income Tax Department has not allowed the rebate u/s. 87A on income taxed under special rates. Considering the claim of rebate u/s. 87A on income taxed under special rates made by all taxpayers, the Income Tax Department changed the utility for filing the income tax return on 5th July, 2024. The amended utility did not allow computation of rebate u/s. 87A on special rates income. The change in the utility deprived large number of taxpayers to make the claim in the return of income though there were no express provisions in the existing act restricting such claim.

Representations were made at various levels however, the issue could not be settled. This resulted into filing of Public Interest Litigation (PIL) No 32465 of 2024 by the CTC before the Bombay High Court. It was argued before the Bombay High Court that a statutory right created by the proviso to section 87A cannot be extinguished or restricted through executive instructions or modifications to the utility software. A right to make a claim cannot be restricted by making changes in the utility software. Interesting arguments were advanced before the Court and the Court considering the gravity of the issue in its order dated January 24, 2025 directed the tax department to allow the taxpayers to make claim of rebate u/s 87A in return of income which may later be examined by the tax department regarding its allowability while processing returns. The Court has kept the legal issue open for examination by lower tax authorities. While the issue has not reached finality, the proposed amendment in section 87A by way of inserting 2nd proviso to section 87A

settles the issue. The proposed amendment mentions that the deduction under the first proviso, shall not exceed the amount of income-tax payable as per the rates provided in sub-section (1A) of section 115BAC. Meaning thereby rebate u/s. 87A would not be available on income taxed at special rates (e.g.: sections 111, 112 etc.).

A commendable step was taken by CTC by filing a PIL against such unilateral act by the Government of not allowing the claims to be made in return in absence of any restriction under the existing provisions of the Act. It is also appreciated that the Bombay High Court considering the gravity of issue and its applicability to a large number of tax payers has directed the Government to allow the tax payers to make a claim in the return of income which is statutory right. Though the FM has tried to settle the issue by way of proposed amendment in section 87A, the issue would continue to be litigated unless it is threadbare argued and tested before the Courts for the periods prior to the proposed amendment.

It is also interesting to note that as per the existing language of section 87A read with proposed amendment increasing the limit from INR 7.00 lacs to INR 12.00 lacs, benefit of rebate as per clause (a) of first proviso to section 87A under new regime shall be available only when the total income does not exceed INR 12.00 lacs. Further, as per the 2nd proviso proposed to be inserted in section 87A the benefit of rebate shall be available only with respect to income which is chargeable as per slab rates as provided in section 115BAC and therefore benefit of rebate is not available to income chargeable at the special rate as stated in memorandum explaining the provisions of Finance Bill 2025.

As per the literal interpretation of the term total income as appearing in the first proviso to section 87A it also includes income chargeable at special rates. For example, if a person has normal income of INR 10.00 lacs and income from long term capital gain of INR 3.00 lacs, the total income is INR 13.00 lacs. Hence as per literal interpretation of the existing language of first proviso to section 87A read with proposed amendment increasing the limit from INR 7.00 lacs to INR 12.00 lacs, the benefit of rebate u/s. 87A as per clause (a) of the first proviso shall not be available to normal income being INR 10.00 lacs since the total income is more than INR 12.00 lacs.

Viewed from a different angle, the 2nd proviso to section 87A as proposed by the Finance Bill 2025 specially prohibit to give benefit of rebate to special income i.e. in our case of INR 3.00 lacs. The balance income being INR 10.00 lacs being normal income as per section 115BAC and less than the threshold limit of INR 12.00 lacs, the benefit of rebate would therefore be available. However, still the controversy with respect to the interpretation of the term “total income” remains because there is no amendment which is proposed so as to exclude the special income from total income. This calls for a relook to the wording of existing provisions of section 87A vis-à-vis the proposed amendment to provide that to compute the threshold of total income, of INR 12.00 lacs, the special income shall be excluded.

Simplification in Provision dealing with annual value of Self Occupied Property

Existing Provision of section 23(2) provides that if a house is occupied by the owner for own residence or if it cannot be occupied due

to his employment, business, or profession carried on at any other place, the annual value of such house property shall be considered as NIL for tax purposes.

In order to simplify, the Proposed Bill proposes to amend section 23(2) with effect from AY 2026-27 so as to provide that the annual value of the property consisting of a house or any part thereof shall be taken as Nil, if the owner occupies it for his own residence or cannot actually occupy it due to any reason. Thereby the additional condition of not being able to reside therein due to business or employment or profession has been done away with.

No change is proposed in provision under section 23(4) which allows the annual value of any two self-occupied properties to be considered NIL for tax purposes in case taxpayer owns more than two self-occupied properties.

Withdrawals of Deposits from NSS Scheme

Section 80CCA of the ITA provides deductions to individuals or HUFs for deposits made under the National Savings Scheme (NSS) or payments made towards deferred annuity plans of LIC. However, the existing provisions specify that deductions for deposits under NSS made on or after April 1, 1992 are not allowed, and any withdrawal (including interest) or surrender value or bonus or annuity in accordance with the annuity plan (for which deductions were claimed earlier) is subject to tax in the year of withdrawal or receipt.

The Proposed Bill introduces an important change by exempting withdrawals made by individuals on or after August 29, 2024, from deposits (including interest) under NSS (made before April 1, 1992), for which deductions were previously claimed. This exemption is proposed to be retrospectively effective from August 29, 2024.

This amendment aims to offer relief to taxpayers by exempting the tax liability on withdrawals from older NSS deposits that had previously received a deduction under section 80CCA. However, it is important to note that this exemption will not apply to taxpayers who have opted for the New Tax Regime. Since the New Tax Regime does not allow deductions for investments under section 80CCA, taxpayers who choose this regime will not benefit from this amendment.

Deduction for Contribution to National Pension Scheme Vatsalya

As per existing provision of section 80CCD (1B) of the ITA, an individual is eligible for deduction of INR 50,000 for contribution to specified National Pension Scheme (NPS). This provision allows individuals to claim a tax benefit for contributing to their own NPS account.

In the Proposed Bill, benefit of NPS deduction is extended to contributions made to a minor’s NPS account by the minor's parent or guardian, effective from AY 2026-27. The proposed amendments regarding the NPS contributions for minors are as follows:

- A parent or guardian can claim a deduction for contributions made to the minor’s NPS account under the NPS Vatsalya Scheme
- The total allowable deduction for a taxpayer, combining contributions to both their own NPS account and the minor’s account, is INR 50,000.
- The withdrawal of funds from the minor’s account is taxable at the

time of closure or if the minor opts out of the scheme. However, partial withdrawal up to 25% of total contribution is not taxable

- In the event of the minor's death, the deposits received from the minor's NPS account will be not taxable

The proposed change in the NPS deduction is a positive step to encourage parents and guardians to contribute towards the financial future of their minor children by allowing them to benefit from the NPS deductions. By providing this benefit, the government aims to foster long-term financial planning and security for the younger generation. However, it is important to highlight here section 80CCD(1B), which allows for the deduction in respect of contributions to NPS, is not available under the New Tax Regime. As a result, taxpayers opting for the New Tax Regime will not benefit from this deduction even if they contribute to their minor child's NPS account.

Certainty for taxation of redemption proceeds from ULIPs during the lifetime

The Proposed Bill introduces a key amendment in the taxation of Unit Linked Insurance Policies (ULIPs), offering much-needed clarity on how proceeds from these investments are taxed. ULIPs, a unique type of life insurance policy combining both insurance and investment, have long been subject to ambiguity regarding their tax treatment, particularly when the premiums exceed certain thresholds.

Under Section 10(10D), exemption is provided for ULIPs issued on or after February 1, 2021, where the premium or aggregate premium payable during the policy term does not exceeds INR 2,50,000. For ULIPs not covered under Section 10(10D), they are classified as a capital asset, and the proceeds are taxable as capital gains. However, life insurance policies (other than ULIP) not covered by provision of section 10(10D) are chargeable as income from other sources under section 56 of the ITA.

Due to this discrepancy, uncertainty arose regarding the taxation of ULIPs whose premiums exceed the specified threshold. To resolve this confusion, the Proposed Bill explicitly classifies ULIPs not covered under Section 10(10D) as capital assets, aligning them with equity-oriented funds for tax purposes. As a result, redemption proceeds from such ULIPs will now be taxed under the head capital gains as per section 45 of the ITA.

The taxability of ULIP as per existing provisions vis-à-vis amended provisions is tabulated as under -

Scenarios	***Taxability of ULIPs***	
	Existing	***Proposed***
Premium =< 10%/20% of the sum assured; and Premium =< INR 2.5 lakhs	Exempt under section 10(10D)	No change

Scenarios	***Taxability of ULIPs***	
	Existing	***Proposed***
Premium =< 10%/20% of the sum assured; but Premium > INR 2.5 lakhs	• Equity Oriented Fund • Taxable as Capital Gain	No change
Premium >10%/20% of the sum assured; and Premium =< INR 2.5 lakhs	No clarity (Capital Gain or Income from Other Sources)	• Equity Oriented Fund • Taxable as Capital Gain

The proposed clarification ensures that ULIPs not covered under section 10(10D) will now be treated as capital assets, and the proceeds will be taxed as capital gains, rather than being subject to income from other sources. This change simplifies the tax treatment of ULIPs, providing investors with clear guidelines and eliminating uncertainty.

Conclusion

The amendments in personal taxation reflect the BJP-led Government's commitment to good governance, aiming to benefit both the people and the economy. By introducing reduced tax rates, higher basic exemption, and increased rebates, the government has taken significant steps to alleviate the tax burden on individuals, potentially encouraging more taxpayers to opt for the New Tax Regime. Additionally, other key amendments such as the rationalization of TDS, clarifications on trust taxation, and changes in ULIP taxation bring much-needed reforms to enhance economic growth, support the middle class, and ensure fiscal stability. Overall, these changes mark a progressive step toward a more balanced and efficient tax system. Looking ahead, with the new Income-Tax Bill on the horizon, taxpayers anticipate a similar pro-growth and taxpayer-friendly approach from the Government.

"Where there is righteousness in the heart, there is beauty in the character. When there is beauty in the character, there is harmony in the home. When there is harmony in the home, there is order in the nation. When there is order in the nation, there is peace in the world."

— A.P.J. Abdul Kalam

Analysis of Tax Proposals - Taxation of Charitable Trusts

CA Sharad Shah

Overview

Proposal in Finance Bill 2025 aims to ease some of the difficulties faced by Charitable Trusts. Those relate to (1) redefining related parties for the purpose of S. 13, (2) Incomplete application for registration/ reregistration removed from being treated as Specified Violations which may entail to cancellation of registration and (3) extending the period of validity of registration to 10 years from 5 years in the case of small trusts. However, there still leaves much to be done.

There are few proposals included in the Finance Bill 2025 laid before Parliament on 1st February, 2025 which affect the Taxation of Charitable Trusts. The same are discussed in subsequent Paragraphs.

A) Amendment as regard Specified Persons (Related Parties):

S. 13(1)(c) and S. 13(2) provides for non-exemption and consequential Taxation of excessive payments and/or benefits to certain specified persons (for easy reference, hereinafter referred to as Related Party). The definition of such Related Party is given in Sub Section (3). One of the categories included in it is

any person (for convenience, referred to as Donor) who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;

Apart from such donor, the following further parties/entities were also included as related parties.

i) Any relative of such donor (again the term relative is also widely defined)

ii) If donor is HUF, any Member of said HUF

iii) Any concern in which the donor, his relative or member of the HUF has substantial interest (20% of the Share Capital or 20% share in the profit)

The above information was very difficult to be gathered more so if the trust is in existence for many many years. Even the monetary limit of ₹ 50,000/- was fixed w.e.f 01-04-1985. It needed revision also on account of inflation.

Although a Charitable trust may not fall in other categories of related parties, by giving donation to another Charitable Trust, even a Charitable trust was also considered to be a `Specified Party' by Bombay High Court

as Back in 1994 in the case of ***Champa Charitable Trust vs. CIT (214 ITR 0675***). Therefore, this clause is very relevant.

A welcome change is proposed to be made to

i) To include a donor as Related Party only if he has contributed ₹ 1,00,000/- or more during the relevant previous year or

ii) Total contribution by the donor during lifetime of the trust exceeds ₹ 10,00,000/-

The proposal also include to omit from the list of specified persons the relatives, HUF Members or the concerns in which such donor has substantial interest.

This will partly ease out trustees and auditors in respect of information to be gathered and verified from old records, more so in case of very old trust and many times they had to rely on the donor's words.

This change will be effective from 01-04-2025

The author is of the opinion that once a charitable trust (first trust) gives donation exceeding the monetary threshold prescribed, the donee trust will not be able to give donation to the first trust. This can be an issue of interpretation in case of Trust sponsoring Private University (mother trust). If entities are independent, sponsoring trust may give initial donations to the private university, those private university may have the issue of giving any donation to the mother trust.

B) Relief as regard Specified Violations which can entail Cancellation of Registration 12AA:

S. 12AB(4) provides for cancellation of registration or of provisional registration granted u/s 12AA in case of specified violations. If such cancellation happens and if not contested at appropriate appellate level, the trust including to trustees would be liable to pay Tax at maximum marginal rate of tax on accredited income u/s 115TD which by itself is draconian provision.

1) The existing provisions include following in the list of specified violations

The application referred to in clause (ac) of sub section (1) of section 12A (read here 'application for provisional, final or renewal of registration') is not complete or it contains false or incorrect information.

Apart from false or incorrect information continue to be one of the reasons to treat it to be a specified violation, in the words of Tax Authorities themselves (by way of Memorandum explaining the Finance Bill 2025), existing provisions consider even a minor default where the application is incomplete can result in cancellation of Registration.

During the initial years of re-registration as provided in 2021, the Department has considered and denied the re-registration on account of quoting of wrong sub clause. General trend in ITAT decisions is the refer back the matter to CIT. However, orders giving effect are not received in many cases.

There is a welcome proposal to remove "Not Complete" application from the list of specified violation so as to remove from the list of reasons to cancel the registration.

There are many details which need to be provided in an application, which include:

1) Activities of the trust

2) List of Key Persons

3) Summarised details of Assets and Liabilities

4) Income Details

5) Expenditure on religious activities

Plain reading of the proposal may give relief for incomplete application but does not seem to give relief for wrong subclause of S. 12A(1)(ac), if the department treats wrong clause as False or Incorrect information.

If the clear amendments are carried out to remove unintended consequences, it will save a great number of litigations.

C) Relief to Small Trust as regard renewal of Registration

Historically, a registration u/s 12/12A/12AA was lifetime till it is specifically cancelled. However, in the recent past the period of validity has been amended on various occasions and ultimately the validity of a final registration is provided for 5 years. Small trust do find refiling of application and reprocess of registration as increased burden.

It has now been proposed that validity of registration for small trust will now be 10 years instead of 5 years.

Small trust for this purpose is a trust which has Revenue not exceeding ₹ 5 Crore in each of the two previous years immediately preceding the date of application. Effectively, this will apply to the applications made after 1-4-2025 made for any of the following:

i) Application of Re-Registration after the expiry of 5 years period.

ii) Application for Final Registration

iii) Application for making operative the Registration which has become non operative upon choosing the option for exemption u/s 10(23C).

iv) Application for Re-Registration of the trust upon modification of objects which do not confirm to the conditions of Original Registration

It is however clear that a provisional registration application will not have the advantage of validity of 10 years. Most of the time, such trusts would be new trust and therefore, otherwise also, they may not be able to fulfil he condition of history of past 2 years.

All other situation, where history of past 2 years is available with the assessee, one will be entitled to the benefit.

Once one is eligible for registration/ reregistration for a period of 10 years, such trust need not go back to Income Tax Authorities on crossing the revenue threshold and will be required to go for registration only on completion of validity period of registration.

The proposed amendments may make the Trust Assessee somewhat happy. However, it should not be forgotten that after introducing very stringent provisions in the past as regard Charitable Trust, this author feels that Trust Assessees need further relief as regard procedural aspects.

“You cannot believe in God until you believe in yourself.”

— *Swami Vivekananda*

M&A, VDAs, Business Trusts and Startups

CA Raghav Bajaj

CA Vishal Samnani

Overview

1) M&A | No more evergreening of losses through amalgamation

2) Decrypting the Virtual Digital Asset (VDA) related proposals

3) Rationalisation in taxation of REIT / InVIT

4) Sunset date for incorporation of startups extended

The article below provides analysis of the key tax proposals from Budget 2025, highlighting their impact on various sectors.

1) ***Crypto-Asset Taxation****: The Finance Bill, 2025 (FB 2025) aims to introduce a new reporting requirement in relation to crypto-assets, in line with India's commitment with respect to OECD's Crypto Asset Reporting Framework. FB 2025 proposes expanding the definition of Virtual Digital Assets (VDAs) to include a new category, and mandating reporting requirements for this new category of VDA.*

2) ***Amalgamation and Loss carry forward****: FB 2025 proposes limiting the carry-forward of unabsorbed business losses in amalgamations to only the remaining period of the original eight-year carry-forward period. Businesses undergoing restructurings should assess the impact of this proposal on their restructurings.*

3) ***Business Trusts Taxation****: FB 2025 seeks to address a tax anomaly in taxation of Business Trusts (Real Estate Investment Trust and Infrastructure Investment Trust) by extending special tax rates to long-term capital gains on specified assets, such as listed shares, which were previously excluded.*

4) ***Start-up Incentives****: To support the growing startup ecosystem, FB 2025 has proposed to extend the incorporation cutoff date for startups to avail the profit-linked tax deduction, to 31 March 2030, thereby incentivising the startup sector.*

Union Budget 2025 has announced certain key measures, to improve the ease of doing business in India, to attract foreign investment, and provide a fillip to the household consumption capacity. Further, the much-anticipated announcement regarding the new income-tax law has also created significant interest in the tax fraternity. While the rejig

of tax slabs has been the buzzword around this budget, Finance Bill 2025 (**FB 2025**) also contains several essential proposals to amend the extant Income-tax Act, 1961 (**IT Act**). Some of the proposals are discussed below:

1. M&A | No more evergreening of losses through amalgamation

1.1. IT Act provides that the unabsorbed business losses can be carried forward for 8 financial years succeeding the year in which the loss is incurred. In the case of amalgamation, IT Act provides that subject to the satisfaction of certain conditions, the unabsorbed business losses of the amalgamating company shall be regarded as the business loss of the amalgamated company for the year in which the amalgamation is effected – while this helps in incentivising the revival of loss-making/financially non-viable businesses (for instance, by way of amalgamation of such distressed business with a profitable business), it could also potentially lead to unintended evergreening of losses from the income-tax standpoint. Notably, a similar benefit (i.e. elongated period for carry forward of unabsorbed business losses) is not available in the case of demergers.

1.2. FB 2025 has proposed to end the fresh life of 8 years for carried forward of business losses, by providing that in case of amalgamation, unabsorbed business losses will be allowed for only the remainder period (i.e. the period remaining out of the 8 years from the year in which the business loss is incurred). This is proposed to apply to any amalgamation which is 'effected' on or after 1 April 2025. Notably, the term 'effected' is not clarified and hence, there can be some ambiguity as to what shall be considered as 'effected' – whether the date when the conditions of amalgamation are satisfied or the 'Appointed Date' of amalgamation as provided in scheme or when the amalgamation order is received and filed with the prescribed authorities. One hopes that this aspect is clarified during the passage of FB 2025 in the Parliament. Nonetheless, taxpayers in the midst of corporate restructurings should consider the impact of this proposal on their restructurings.

1.3. Further, what is also worth highlighting is that the Hon'ble Finance Minister, in her budget speech, announced that "*Requirements and procedures for speedy approval of company mergers will be rationalized. The scope for fast-track mergers will also be widened and the process made simpler.*". One should keep a close eye on the developments in this space of corporate restructuring also.

2. Decrypting the Virtual Digital Asset (VDA) related proposals

2.1. IT Act provides that any gains arising from the transfer of a VDA (a defined term which includes cryptocurrencies and other similar assets) are taxable in the hands of the transferor at a flat rate of 30% (plus applicable surcharge, cess).

2.2. In the past few years, crypto-assets have assumed great significance – at a global level, authorities and regulators are interested in crypto-assets as these assets are understood to have the potential to be transferred and held without interacting with traditional financial intermediaries, which can

result in lack of clarity as to the location of crypto-asset holdings. This also increases the difficulty of verifying whether associated tax liabilities are appropriately reported and assessed, which can pose a significant risk to global tax transparency.

2.3. As per the FAQs released by the Government in relation to FB 2025 [Q.9 of the FAQ No. 23], (i) India has been included in the list of 52 "*Relevant*" *jurisdictions for the purpose of CARF and (ii) the G20 Leader's New Delhi Declaration called for the swift implementation of the CARF.*

2.4. In light of specific features of crypto-assets, the OECD has developed the 'Crypto Asset Reporting Framework' – a new global transparency framework for the development of automatic exchange of information in relation to transactions in crypto-assets in a standardised manner with the jurisdictions of residence of taxpayers.

2.5. In line with this, FB 2025 has proposed to amend the IT Act (a) to amend the definition of VDA to widen the definition of VDA by including *"any crypto-asset being a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions"* within its ambit (Proposed New VDA Category) and (b) to introduce a new reporting requirement in relation to this Proposed New VDA Category – detailed rules in relation to this reporting requirement and due diligence procedure will be notified by the Government in due course.

3. Rationalisation in taxation of REIT/InVIT

3.1. The IT Act provides a special taxation regime for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) (collectively referred to as 'Business Trust'). Under this regime, any interest, dividend, and rental income (for InVITs) is tax-exempt for the Business Trust and taxable in the hands of investors on a pass-through basis. Conversely, capital gains are taxable at the Business Trust level and tax-exempt for investors.

3.2. Currently, a Business Trust is taxed at the maximum marginal rate (MMR) on capital gains. However, certain specified income streams taxable at special rates, such as short-term capital gains on the sale of listed equity shares and units of equity-oriented funds and Business Trusts (Specified Assets), have been excluded from the applicability of MMR. This benefit has not been extended to long-term capital gains arising from the sale of Specified Assets.

3.3. FB 2025 proposes to address this anomaly by extending this carve-out to long-term capital gains on Specified Assets as well.

4. Sunset date for the incorporation of startups extended

4.1. IT Act provides profit-linked deduction to an 'eligible startup' for 3 consecutive years (to be opted by the startup out of its first ten years of incorporation). 'Eligible Start-up' is defined to mean a company or a LLP engaged in eligible business (a defined expression) that fulfils the following conditions, namely:

(a) it is incorporated on or after 1 April 2016 but before the 1 April 2025 (Incorporation Cutoff Date); (b) its business turnover does not exceed INR 100 crores in the relevant financial year for which deduction is claimed; and (c) it holds a certificate of 'eligible business' from the Inter-Ministerial Board of Certification. [***Note***: "Eligible business" means a business carried out by an eligible start-up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation.]

4.2. The startup ecosystem has evolved significantly in India in the past few years. In line with the Government's continued efforts to promote startups, FB 2025 has proposed to extend this benefit for another period of five years by extending this Incorporation Cutoff Date to 1 April 2030 – this is likely to give a further boost to the booming startup sector in India.

Conclusion

Overall, the Union Budget 2025 is a forward-looking budget. One hopes that the amendments proposed in the income-tax law vide FB 2025 lead to the continued growth of the Indian economy, increase in foreign inward investment, employment generation and drive consumption forward. Further, the announcement regarding the new income-tax law is also significant – one should keep a close watch on the new law and how it will impact businesses and corporations going forward.

"If money help a man to do good to others, it is of some value; but if not, it is simply a mass of evil, and the sooner it is got rid of, the better."

— *Swami Vivekananda*

"The line between firmness and harshness, between strong leadership and bullying, between discipline and vindictiveness is very fine, but it has to be drawn. Unfortunately, the only line prominently drawn in our country today is between the 'heroes' and the 'zeros'. On one side are a few hundred 'heroes' keeping nine hundred and fifty million people down on the other side. This situation has to be changed."

— *A.P.J. Abdul Kalam*

Key Changes in TDS, TCS and Penalty Provisions

CA Aayush Gupta

Overview

Over the past few years, the government has progressively expanded the scope of TDS provisions to cover a wide range of transactions. However, Budget 2025 marks a shift towards easing tax compliance and fostering a more business-friendly environment. The proposed changes, including revisions in TDS and TCS rates and enhancing threshold limits for various payments, reflect the government's commitment to reducing compliance burden on taxpayers while ensuring efficient tax collection. These amendments are expected to simplify tax administration and promote transparency, offering much-needed relief to businesses and individuals alike. Critics of the current government have often argued that the Government either favours the ultra rich or the extremely poor sections of the society for its vested interests.

Increase in threshold limits for deduction of tax at source under various Sections for payments will definitely provide a fillip to the struggling middle class by putting more money in their pockets. The proposed amendments have signified the intent of the Government wherein incentives in small doses have been provided to the miniscule tax paying population of the nation.

Budget 2025 has focused on rationalization of TDS and TCS provisions. The new norms are directed towards easing compliance provisions for businesses and also aim at easing the procedure of tax payments by the taxpayers.

1. Enhancement of threshold for tax deduction

TDS provisions basically provide for a rate of tax deduction at source if the transaction exceeds a particular threshold. Certain thresholds for TDS applicability have been increased while TDS rates remain unchanged. The proposed changes to various kinds of payments subject to TDS are tabulated below. These amendments will be effective from 1st April 2025:

Sl. No	*Section*	*Nature of Income*	*Current Threshold*	*Proposed Threshold w.e.f 1.4.2025*
1.	193	Interest on securities	Nil	₹ 10,000/-
		Interest payable to resident individual/ HUF on any debentures issued by a public company	₹ 5,000/-	₹ 10,000/-
2.	194	Dividend for individual Shareholder	₹ 5,000/-	₹ 10,000/-
3.	194A	Interest other than Interest on securities	(i) ₹ 50,000/- for senior citizen (ii) ₹ 40,000/- in case of others when payer is bank, cooperative society and post office. (iii) ₹ 5,000/- in other Cases.	(i) ₹ 1,00,000/- for senior citizen (ii) ₹ 50,000/- in case of others when payer is bank, cooperative society and post office (iii) ₹ 10,000/- in other cases
4.	194B	Winnings from lottery, crossword puzzle, etc.	Aggregate of amounts exceeding ₹ 10,000/- during the financial year	₹ 10,000/- in respect of a single transaction
5.	194BB	Winnings from horse race		
6.	194D	Insurance Commission	₹ 15,000/-	₹ 20,000/-
7.	194G	Income by way of commission, prize etc. on lottery tickets	₹ 15,000/-	₹ 20,000/-
8.	194H	Commission or brokerage	₹ 15,000/-	₹ 20,000/-
9.	194I	Rent	₹ 2,40,000/- during the financial year	₹ 50,000/- per month or part of a month
10.	194J	Fee for professional or technical services	₹ 30,000/-	₹ 50,000/-

Sl. No	Section	Nature of Income	Current Threshold	Proposed Threshold w.e.f 1.4.2025
11.	194K	Income in respect of units of a mutual fund or Specified company or undertaking	₹ 5,000/-	₹ 10,000/-
12.	194LA	Income by way of enhanced compensation	₹ 2,50,000/-	₹ 5,00,000/-

Comments:

Winnings from lottery, crossword puzzle etc

It can be seen that a large number of working professionals engage in various kinds of recreational games like Dream 11, MPL etc during major sporting events. The increase in threshold limit will reduce compliance burden for such gaming applications and platforms wherein mandate for deduction of tax at source has now been increased to ₹ 10,000/- in a particular transaction. We have seen in the recent past that valuations of such startups had also plummeted due to regulatory hurdles and taxation issues. In light of the same, enhancing the threshold for deduction of tax at source is a welcome move.

The increased threshold limit for prize winnings in Budget 2025 simplifies compliance for distributors and offers relief to individuals with smaller prizes, reducing their tax burden. However, prize distributors may face challenges in predicting total prize amounts over the financial year. While beneficial for winners, the change requires distributors to adjust their systems to stay compliant.

Relief for Senior Citizens

Increasing the threshold U/s 194A in case of senior citizens from ₹ 50,000/- to ₹ 1,00,000/- would also be beneficial for senior citizens as majority of such assesses invest in guaranteed return schemes like fixed deposits. It is usually cumbersome for such taxpayers to first generate nominal returns on their investments and thereafter claim refund from the Income Tax Department after a year or so.

Many senior citizens are also dependent on rental income after their retirement. Earlier, TDS was deductible U/s 194I if the total payment during the financial year exceeded ₹ 2,40,000/-. However, enhancing the said limit to ₹ 6,00,000/-, should bring meaningful relief to senior citizens enhancing their financial security and ease cash flow constraints.

Dividend

The stock market had seen a correction since the month of September'2024 and the sentiment had turned negative in view of subdued earnings, continuous FII outflows and rich valuations. Some Big Bang reforms were expected in the Budget with respect to capital markets in order to revive animal spirits and cushion the volatility caused by macro global events.

The limit for deduction of tax at source U/s 194 was increased from ₹ 5000/- to ₹ 10000/- for individual shareholders holding shares or units of mutual funds. It should also be noted that TDS limit applies to dividends earned from one stock or mutual fund and not the total dividend income earned by the investor. The move along with putting an estimated ₹ 1 lakh crores in the hands of middle class should act as a booster for the stock market.

2. TDS rate reduction for Section 194LBC

Under Section 194LBC, tax is required to be deducted at the rate of 25% (in case of individual or HUF) or 30% (other than individual or HUF) when a payment is made by a securitization trust to a resident investor in respect of their investment in the trust. As this sector is now sufficiently organized and regulated, the TDS rates under this section have been reduced substantially to 10 % in case of all the assessees. The proposed amendment shall be applicable from 1st April, 2025.

Comments:

Asset reconstruction companies (ARCs) - *entities that generally deal with bad loans or assets trading below their book values would find it easier to raise funds as the government has reduced the tax deducted at source (TDS) on income from security receipts from 30% to 10%. Security receipts are issued to investors by ARCs in exchange for a share of the profits/returns in recovery/realisation of such bad loans. Value creation by ARCs is usually a challenging and arduous process and raising capital is also quite difficult. The move is expected to make these instruments more attractive to investors.*

Last year, the Association of ARCs of India had sought revision in its pre-budget memorandum, citing high TDS rates as a key concern. It argued that the then existing rate of 30% was excessive, leading to tax refunds and cash flow issues. The mismatch with the minimum marginal tax rate of 22.5% meant investors had to claim refunds, while ARCs faced working capital constraints due to funds getting blocked. The proposed amendment is favourable for all the stakeholders, i.e. ARCs and its investors.

3. Reduction in compliance burden by omission of TCS on sale of specified goods

Sub-section (1H) of section 206C mandates tax collection at source (TCS) by a seller while Section 194Q provides for tax deduction at source (TDS) by a buyer on the same transaction. This results in both TDS and TCS being made applicable on the same transaction leading to potential double compliance.

Therefore, to facilitate ease of doing business and reduce compliance burden on the taxpayers, it is proposed that provisions of sub-section (1H) of section 206C of the Act will not be applicable from the 1st April, 2025.

Comments

Under Section 206C(1H), sellers were required to collect TCS at 0.1% on sales exceeding ₹ 50 lakhs, while Section 194Q mandated TDS by buyers on the same transaction, leading to duplication. The CBDT clarified in Circular No. 13/2021 that if both TDS and TCS applied, the buyer's TDS would override the seller's TCS. However, if TCS was collected before TDS, the buyer would not be required to deduct Tax at source on the same transaction again. It is quite evident that the aforesaid provisions had overlapping implications resulting in ambiguous compliance issues and tedious workings both on the part of business owners and professionals.

By eliminating overlapping provisions on the same transactions, the government has made its intent clear to reduce burden of compliance on assesses and unnecessary regulatory hassles in a transaction. It makes the process simpler for sellers wherein they are not required to ensure compliance by buyer U/s 194Q.

4. Change in the TCS provision under section 206C(1)

The term "forest produce" is proposed to be defined as per its meaning in applicable

State Acts currently in force or as outlined in the Indian Forest Act, 1927, under Section 206C(1). Additionally, only forest produce (excluding timber and tendu leaves) obtained under a forest lease will fall within the scope of TCS.

Furthermore, the TCS rate on timber and other forest produce (excluding tendu leaves) obtained through a forest lease, as well as timber acquired by any means other than a forest lease, is proposed to be reduced from the existing 2.50% to 2%. It essentially means that traders The proposed amendment will take effect from the 1st April, 2025.

5. Enhanced limit for collecting TCS in case of remittance under Liberalized Remittance Scheme (LRS).

The threshold to collect tax at source (TCS) on remittances under RBI's Liberalized Remittance Scheme (LRS) is proposed to be increased from ₹ 7 lakh to ₹ 10 lakh. It is also proposed to remove TCS on remittances under the LRS for education purposes, where such remittance is out of a loan taken from a specified financial institution.

Comments:

Benefit Travel and Foreign Exchange Sectors: It would reduce immediate tax burden on individuals remitting funds for purposes of tourism, medical treatment, and investments abroad. In today's globalized environment, the existing limit under LRS of ₹ 7 lakhs was abysmally low and even after the proposed amendment, the limit of ₹ 10 lakhs seems to be on the lower side. If the government intends to project Rupee truly as a global currency and India as an economic superpower, then it needs to provide incentive for capital account convertibility and further enhance the limit of ₹ 10 lakhs.

Support Educational Pursuits Abroad: Exempting TCS on payments made for education purposes via specified financial institutions will ease the burden on students planning to study abroad, minimizing tax compliance processes.

6. Removal of higher TDS/TCS for non-filers of return of income- Omission of Section 206AB

Under Section 206AB and 206CCA, higher rates of TDS and TCS respectively are applicable if the payee has not filed an income tax return in cases wherein TDS/TCS of INR 50,000 or more has been deductible/ collectible. Various concerns were raised with the government, stating that it is difficult for the deductor/collector to verify, at the time of deduction/collection, whether the payee has filed their returns. In response to these concerns, Section 206AB and 206CCA have been removed with effect from 1st April 2025.

TDS/TCS at higher rates also leads to operational inconvenience and adversely affects the cash flows. The Government has demonstrated that it intends to remove compliance complexities and simplify processes to bring more people in the tax net. It is also evident that there is considerable slowdown in economic activity and non-deduction/non-collection of TDS/TCS at higher rates will mobilise working capital, particularly for small businesses. This will especially benefit them and individuals, helping them focus on growth rather than navigating cumbersome tax procedures. The move further reinforces the government's commitment to fostering a taxpayer-friendly environment and easing the business climate in India.

7. Exemption from prosecution for delayed payment of TCS in certain cases

Section 276BB of the Act prescribes prosecution for failure to remit the tax collected at source (TCS) to the Central Government. As per this provision, if a person fails to deposit the TCS as required U/s 206C of the Act, he shall be liable for rigorous

imprisonment for a minimum term of three months, extendable up to seven years, along with a fine.

It is proposed to amend Section 276BB to provide relief by ensuring that prosecution will not be initiated against a person if the TCS is deposited with the Central Government on or before the due date for filing the quarterly statement, as specified under the proviso to Section 206C(3) of the Act. The said amendment shall take effect from 01.04.2025.

Comments

This amendment effectively introduces a grace period for taxpayers who may have missed the initial deadline for depositing TCS. As long as the payment is made before the prescribed due date for filing the TCS statement, the taxpayer will be exempt from legal action or prosecution. The proposed change should ensure that minor delays in payment do not result in severe legal consequences, provided the shortfall is rectified within the stipulated timeframe.

Relaxation and easing compliances with respect to collection of TCS dues, primarily from point of view of prosecution provisions was much awaited as it has created numerous hindrances for taxpayers. It is in line with amendment made to Section 276B vide Finance Act 2024 with respect to deposit of TDS dues. It is often seen that failure to pay TDS/TCS to the credit of Central Government or delayed deposit has been misinterpreted by Revenue authorities to the detriment of assessees even in genuine circumstances and it becomes increasingly difficult to argue bonafide matters despite legal precedents/pronouncements.

Penalty

1. Non-applicability of Section 271AAB of the Act

The Finance Bill 2025 brought a significant change by removing the applicability of Section 271AAB for searches initiated on or after September 1, 2024. The concept of Block Assessment was introduced for searches after the said date. Earlier, Section 271AAB imposed penalty for undisclosed income detected during searches. However, under the amended provisions, undisclosed income detected during searches conducted between September 1, 2024, and March 31, 2025, will now attract a penalty of 50% under Section 158BFA instead. The amendment suggests a move towards standardizing penalties under Section 158BFA while eliminating the separate penalty provisions under Section 271AAB, potentially simplifying the compliance and enforcement landscape.

2. Time limit to impose penalties rationalized

The existing provisions of Section 275 of the Income-tax Act prescribe multiple time limits for imposing penalties, depending on the nature of the case. To streamline the process and enhance administrative efficiency, the Finance Bill 2025 has proposed a uniform limitation period. Under the new framework, any penalty order must be passed within six months from the end of the quarter

i. in which the connected proceedings are completed, or:

ii. the appeal order is received by the jurisdictional Principal Commissioner or Commissioner, or;

iii. the revision order is passed, or;

iv. the notice for penalty imposition is issued, whichever is applicable.

This amendment aims to simplify and standardize penalty timelines, ensuring a more efficient tax administration system. The said amendment will take effect from 1st day of April 2025.

Comments:

The removal of multiple penalty time limits in favor of a standardized six-month period is a welcome move. This will reduce ambiguity, prevent delays in tax enforcement, and ensure timely conclusion of penalty proceedings. However, the impact on complex cases involving multiple appeals and revisions remains to be seen.

3. Certain penalties to be imposed by the Assessing Officer

Budget 2025 shifts the power to impose income tax penalties from the Joint Commissioner to the Assessing Officer under Sections 271C, 271CA, 271D, 271DA, 271DB, 271E.

The shift in authority will expedite the penalty process, reducing the burden on higher tax officials. Assessing Officers, who are directly responsible for taxpayer assessments, will now have more control over compliance matters. By vesting more powers in the Assessing Officer, the government aims to speed up tax penalty proceedings and improve overall enforcement.

Additionally, Section 271BB, which prescribes a penalty for the failure to subscribe to an eligible issue of capital, is proposed to be omitted from the Act.

Comments:

While this shift may expedite enforcement, it could also raise concerns about the discretionary power given to AOs, particularly in subjective cases where penalty imposition requires careful judgment. The lack of oversight from a higher authority may lead to inconsistencies in penalty applications across different jurisdictions.

With AOs gaining greater control, taxpayers might face faster penalty resolutions, but they may also need to appeal more frequently if they perceive penalties as unjustified. This could increase litigation at appellate levels, potentially offsetting the intended efficiency gains.

4. Extending the processing period of application seeking immunity from penalty and prosecution

The Finance Bill 2025 proposes an amendment to Section 270AA of the Income-tax Act, extending the processing period for immunity applications. Currently, taxpayers seeking immunity from penalty or prosecution under Sections 270A, 276C, and 276CC must file an application within one month of receiving an assessment order U/s 143(3) or 147. The Assessing Officer is required to accept or reject the application within one month from the end of the month in which it is received. The proposed amendment extends this processing period to three months, providing additional time for the Assessing Officer to review and decide on the application. The said amendment will take effect from 1st day of April 2025.

Comments:

The amendment has been proposed on account of inputs received from stakeholders that the taxpayers are facing challenges to represent their case within the limited period.

The proposed amendment to Section 270AA(4) of the Income-tax Act, as outlined in the Finance Bill 2025, extends the Assessing Officer's processing period for immunity applications from one month to three months. This change addresses concerns that the previous one-month timeframe was insufficient for a thorough review of applications. However, it is important to note that the amendment does not alter the taxpayer's obligation to submit their immunity application within one month of receiving the assessment order U/s 143(3) or 147.

Are updated return provisions tax payer friendly?

CA Hari Om Jindal

Overview

Sub-section (1) of section 139 casts responsibility on the taxpayer to furnish a return within a definite time period during the assessment year. Alternatively, sub-section (4) of section 139 facilitates filing of a belated return after the expiry of due date and sub-section (5) of section 139 provides the taxpayer an opportunity to revise the return filed under sub-section (1) or sub-section (4) in case of any omission or wrong statement, after due date. Till the AY 2016-17, taxpayer may furnish the belated return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. It is important to note that this timeline was reduced over a period of time. From the AY 2021-22 and onward, the belated return for any previous year can be filed at any time before three months prior to the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. However, the Government had introduced new provisions for filing updated return in the Finance Act 2022, but with additional tax liability of 25% to 50%. Now, in the Finance Bill 2025, this limit is proposed to be increased to forty eight months along with 60% and 70% additional taxes for three and four years. In this article the author has explained the provision of updated return and have also compared these provisions with other tax evasion provisions relating to search and escaped assessment etc. As per author, in some cases, search provisions seems to be more beneficial as compared to updated return provisions. This anomaly needs consideration by the Government. As per author, the additional penalty is also on higher side. Further, there is no difference between the honest taxpayers and dis-honest taxpayers. Both are treated equally. Even if some incomes remains to be disclosed due to bonafide mistake, even then additional taxes have to be paid. As per author, perhaps, it seems to be against the mandate of Article 14 of Constitution of India.

Recently, the Government of India have introduced various measures for simplification and rationalisation of Income tax Act, 1961 (herein after referred to as 'ITA'). However, the amendments are so frequent that it is becoming very difficult to understand even by the so called tax experts left alone general taxpayers. Further, there is no consistency in treatment at field level. Though, the consequences of default should be commensurate with the nature of default, however, the real picture is totally different. It seems that the tax evaders are placed better as compared to bona-fide defaulters.

Though the penal consequences are generally made for habitual offenders, however, the tax provisions, recently made, are equally applicable to *bonafide* defaulters without any differential treatment. In this article, I have tried to analysis one of the provision relating to Updated Return (hereinafter referred to as 'UR') and tried to compare it with other related provisions.

Section 139 of the Act is related to the provisions for filing of Income Tax Return by taxpayers. Sub-section (1) of section 139 casts responsibility on the taxpayer to furnish a return within a definite time period which as per this section[1] is:

(a) for an assessee who is a company or a person (other than a company) whose accounts are required to be audited under the Act or under any other law for the time being in force, it is 31st day of October of the assessment year;

(b) for an assessee who is required to furnish a report under section 92E, it is 30th day of November of the assessment year; and

(c) for any other assessee, it is 31st day of July of the assessment year,

Alternatively, sub-section (4) of section 139 facilitates filing of a belated return after the expiry of due date, if such return is furnished before 3 months prior to the end of the relevant assessment year or before the completion of assessment, whichever is earlier. Similarly, sub-section (5) of section 139 provides the taxpayer an opportunity to revise the return filed under sub-section (1) or sub-section (4) in case of any omission or wrong statement, after due date, which is to be filed 3 months before the end of the assessment year or before the completion of assessment, whichever is earlier. Hence, the object of section 139 is to give reasonable time to the taxpayer to file a correct statement of his income within the duration specified under the Act.

This provision provides an additional time of approximately 5 months to an individual assessee, 2 months to a company/auditable case and 1 month to an assessee who enters into an international transaction or specified domestic transaction respectively, in a financial year to file belated or revised return.

It is important to note that this timeline was reduced over a period of time, as discussed below:

- Till the AY 2016-17, taxpayer may furnish the belated return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.
- From the AY 2017-18 to AY 2020-21, taxpayer may furnish the belated return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.
- From the AY 2021-22 and onward, taxpayer may furnish the belated return for any previous year at any time before three months prior to the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

1. Section 139 as explained in Finance Act, 2022 - Circular No. 23/2022, dated 3-11-2022

After reducing the timeline, CBDT thinks[2], that this additional timeline for filing a revised/belated return may not be adequate.

Hence, a new provision was introduced in section 139 for filing an updated return of income by any person, whether he has filed a return previously for the relevant assessment year, or not.

A new sub-section (8A) in section 139 has been introduced to provide for furnishing of updated return under the new provisions, w.e.f. 1.04.2022. Any person, for an assessment year may furnish an updated return of his income or the income of any other person in respect of which he is assessable under the Act, for the previous year relevant to such assessment year, within twenty-four months from the end of the assessment year. Now, this limit is proposed to be increased to forty eight months under Finance Bill 2025.

The provisions related to Updated Return (hereinafter referred to as 'UR') is explained by CBDT as under (***Highlighted portions are views of the Author***):

1) Any person, whether or not he has furnished a return under sub-section (1), sub-section (4) or sub-section (5), for an assessment year (herein referred to as the relevant assessment year), may furnish an updated return of his income or the income of any other person in respect of which he is assessable under the Act, for the previous year relevant to such assessment year, within twenty-four months from the end of the assessment year (**now this limit is proposed to be increased to forty eight months**).

2) This sub-section (8A) of section 139 shall not apply, if the updated return, is a return of a loss or has the effect of decreasing the total tax liability determined on the basis of return furnished under sub-section (1), sub-section (4) or sub-section (5) or results in refund or increases the refund due on the basis of return furnished under sub-section (1), sub-section (4) or sub-section (5), of such person under the Act for the relevant assessment year. **It is important to note that UR is not possible even the amount of loss claim in earlier return is reduced in UR. Therefore, even the amount of taxable income increases, still the UR is not possible.**

3) A person shall not be eligible to furnish an updated return under sub-section (8A) of section 139, if: —

   (a) search has been initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of such person, or

   (b) a survey has been conducted under section 133A, other than sub-section (2A) of that section, in the case such person, or

   (c) a notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned under section 132 or section 132A in the case of any other person belongs to such person, or

2. Circular No. 23/2022, dated 3-11-2022.

(d) a notice has been issued to the effect that any books of account or documents, seized or requisitioned under section 132 or section 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person, for the assessment year relevant to the previous year in which such search is initiated or survey is conducted or requisition is made and two assessment years preceding such assessment year.

Therefore, once any action u/s 132 or 132A or 133A, as discussed above, initiated then no UR possible for any of these AY which are covered within the scope of these sections. However, UR can be filed for any later period which is not covered within the scope of these sections.

4) Also, no updated return shall be furnished by any person for the relevant assessment year, where,

(a) an updated return has been furnished by him under sub-section (8A) of section 139 of the Act for that relevant assessment year, or (**Therefore only one UR possible for any AY. UR cannot be revised. If some income remains escaped after filing UR then the only option with the taxpayer is to approach AO to request him/her to initiated 148 proceedings**).

(b) any proceeding for assessment or reassessment or recomputation or revision of income under the Act is pending or has been completed for the relevant assessment year in his case, (**This provisions seems to be logical if the proceedings are pending. However, if the proceedings are completed and the taxpayer want to declare more income then, as per author, it should have been allowed**.)

(c) the Assessing Officer has information in respect of such person for the relevant assessment year in his possession under the Prevention of Money Laundering Act, 2002 or the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 or the Prohibition of Benami Property Transactions Act, 1988 or the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and the same has been communicated to him, prior to the date of his filing of return under the proposed sub-section (8A) of section 139 of the Act, or

(d) information for the relevant assessment has been received under an agreement referred to in section 90 or 90A of the Act in respect of such person and the same has been communicated to him, prior to the date of his filing of return under sub-section (8A) of section 139 of the Act, or

(e) any prosecution proceedings under Chapter XXII of the Act have been initiated for the relevant assessment year in respect of such person, prior to the date of his filing of return under sub-section (8A) of section 139 of the Act, or

(f) he is a person or belongs to a class of persons, as may be notified by the Board in this regard.

5) If any person has sustained a loss in any previous year and has furnished a return

of loss under sub-section (1) of section 139 of the Act and verified it in the prescribed manner, he shall be allowed to furnish an updated return where it is a return of income. **It is important to note that UR is not possible even the amount of loss claimed in earlier return is reduced in UR. Therefore, even the amount of taxable income increases, still the UR is not possible.**

6) If the loss or any part thereof carried forward under Chapter VI or unabsorbed depreciation carried forward under sub-section (2) of section 32 or tax credit carried forward under section 115JAA or under section 115JD is to be reduced for any subsequent previous year as a result of furnishing updated return for a previous year, an updated return is required to be furnished for each such subsequent previous year.

7) Sub-section (9) of section 139 provides that a return filed under sub-section (8A) of the said section 139 shall be defective unless such return is accompanied by the proof of payment of tax as required under the new section 140B.

As per the present provisions, an updated return can be filed upto 24 months from the end of the relevant assessment year. With a view to further nudging voluntary compliance, it is proposed in the Finance Bill 2025 to amend the said sub- section so as to extend the time-limit to file the updated return from existing 24 months to 48 months from the end of relevant assessment year. Rate of additional income-tax payable for updated return filed after expiry of 24 months and upto 36 months from the end of the relevant assessment year shall be 60% of aggregate of tax and interest payable. The additional income-tax payable for updated return filed after expiry of 36 months and upto 48 months from the end of the relevant assessment year shall be 70% of aggregate of tax and interest payable. It is further proposed to provide that no updated return shall be furnished by any person where any notice to show-cause under section 148A of the Act has been issued in his case after thirty-six months from the end of the relevant assessment year. However, where subsequently an order is passed under sub-section (3) of section 148A of the Act determining that it is not a fit case to issue notice under section 148 of the Act, updated return may be filed upto 48 months from the end of the relevant assessment year.

Therefore, up to 3 years from the end of relevant AY, no UR can be filed if any proceeding for assessment or reassessment or recomputation or revision of income under the Act is pending or has been completed for the relevant assessment year in his case. However, after 3 years UR cannot be filed even if show-cause under section 148A is issued unless the148A proceedings are dropped. Therefore, if show-cause under section 148A is issued till the end of 3 years from the relevant year and the taxpayer thinks that there is some escaped income, then UR can be filed.

It is also important to mention here, perhaps, in some cases, search provisions are more beneficial as compared to UR provisions. This anomaly needs consideration by the Government. I have tried to compute approx. tax liability under the two scenario of search and updated return:

AY	*2020-21*	*2021-22*	*2022-23*	*2023-24*	*2024-25*
Whether UR is allowed	**No**	**Yes**	**Yes**	**Yes**	**Yes**
Additional Income		100	100	100	100
Normal Tax Rate (MMR under New Regime)		42.74%	42.74%	39%	39%
234C Interest		5.05%	5.05%	5.05%	5.05%
234B Interest period		4 to 5 years	3 to 4 years	2 to 3 years	1 to 2 years
234B Interest (minimum %)		48%	36%	24%	12%
Additional tax liability under Updated Return		70%	60%	50%	25%
Normal tax at MMR		42.74	42.74	39.00	39.00
234C Interest		2.16	2.16	1.97	1.97
234B Interest		20.52	15.39	9.36	4.68
234 A Interest (if no return filed earlier) (approx. same as 234B)		20.52	15.39	9.36	4.68
Total tax and interest		85.94	75.68	59.69	50.33
Additional tax liability		60.16	45.41	29.84	12.58
Total tax liability		146.09	121.09	89.53	62.91
Tax Liability under search		60%	60%	60%	60%

Further, it is important to note that if the nature of additional income is covered within the scope of section 115BBE, then the above calculation would be wholly different in case of UR but tax rates will remain same for search person. The comparison is given below:

If unexplained cash income taxable u/s 115BBE				
AY	**2021-22**	**2022-23**	**2023-24**	**2024-25**
Whether UR is allowed	Yes	Yes	Yes	Yes
Additional Income (we have not considered income declared in original return for the sake of making it simple example)	100	100	100	100

If unexplained cash income taxable u/s 115BBE				
AY	**2021-22**	**2022-23**	**2023-24**	**2024-25**
If unexplained income taxable u/s 115BBE	78.00%	78.00%	78.00%	78.00%
234C Interest	5.05%	5.05%	5.05%	5.05%
234B Interest period	4 to 5 years	3 to 4 years	2 to 3 years	1 to 2 years
234B Interest (minimum 12% PA)	48%	36%	24%	12%
Additional tax liability under Updated Return	70%	60%	50%	25%
Normal tax u/s 115BBE	78.00	78.00	78.00	78.00
234C Interest	3.94	3.94	3.94	3.94
234B Interest	37.44	28.08	18.72	9.36
234 A Interest (if no return filed earlier) (approx. same as 234B)	37.44	28.08	18.72	9.36
Total tax and interest	156.82	138.10	119.38	100.66
Additional tax liability	109.77	82.86	59.69	25.16
Total tax liability	**266.59**	**220.96**	**179.07**	**125.82**
If penarly u/s 271D/DA etc. also levied	**100.00**	**100.00**	**100.00**	**100.00**
Total tax liability	**366.59**	**320.96**	**279.07**	**225.82**
Comparison under three situations				
Unexplained cash income taxability under section 147 etc. with cash penalty (we have not considered section 270A etc. penalty)	**257%**	**238%**	**219%**	**201%**
Unexplained cash income taxability under UR with cash penalty and addition tax liability	**367%**	**321%**	**279%**	**226%**
Unexplained cash income taxability under search case - there is no cash penalty	**60%**	**60%**	**60%**	**60%**

We have considered cash penalty @100% of income in the above calculation. We have not considered the impact of other penal provisions while computing the tax liability under the above scenario. If unexplained cash income is taxable under section 147 etc. then section 270A etc. penalty may also be levied. Then the total tax liability u/s 147 assessment or reassessment

would be higher. Further, it is also important to mention here that search can also cover AY 2019-20 and 2020-21. In that situation, tax rate under block assessment would remain at 60% but, under section 147 assessment would be higher. Even, if UR is also allowed for 6 years, then the tax impact would have been much higher.

The comparison of some of the penal provisions under three situations is also given below:

AY	Search cases (where search initiated between 1.04.25 to 31.03.2026)	148 A notice (if notice issued between 1.04.25 to 31.03.2026)	Updated return (if filed between 1.04.25 to 31.03.2026)
Interest under 234A/B/C	**No**	Yes	Yes
Penalty			
270A - Penalty for under-reporting and misreporting of income	No	Yes	No - In relation to income declared in UR
271AAD -Penalty for false entry, etc., in books of account.	No	Yes	No - In relation to income declared in UR
271D - Penalty for failure to comply with the provisions of section 269SS	No	Yes	Yes possible
271DA - Penalty for failure to comply with provisions of section 269ST	No	Yes	Yes possible
271E - Penalty for failure to comply with the provisions of section 269T.	No	Yes	Yes possible
Prosecution			
276C	Possible	Possible	Before filing UR possible but after filing UR seems difficult but there is no specific exclusion
276CC	Possible	Possible	Before filing UR possible but after filing there is specific exclusion

Therefore, penalties for cash transactions can also be applicable in case of UR but not applicable in case of search etc. Except prosecution provisions, which are applicable in search and 148 assessments cases, which are rarely used, most of provisions relating to UR are unfavourable to taxpayers. It is important to note that prosecutions provisions are deterrent provisions only.

Government needs funds for various socio-economic schemes. I am not saying that Government should increase tax rates etc. in search cases. But, my purpose for comparison is just to show the exorbitant tax impact under UR situation. Why the search provisions are made so friendly as compared to section 147 assessment and UR provisions, is not understandable. Government have to incurred huge cost in search process still these provisions are less taxing as compared to self-compliance through UR. It should be rationalised. There should be some rationality, coherence and consistency between various anti-tax evasion provisions.

It would also be important to note the various timelines under the three situations discussed above. I have compared the various timeline for UR, search etc. in the following table:

AY	Search cases (where search initiated between 1.04.25 to 31.03.2026)	148 A notice (if notice issued between 1.04.25 to 31.03.2026)	Updated return (if filed between 1.04.25 to 31.03.2026)	Remarks
2018-19	No	No	No	This AY will be time barred after 31.03.2025 and escaped income cannot be taxed
2019-20	Yes	No	No	This AY can be taxed only if search etc. initiated
2020-21	Yes	Yes	No	For this AY, if there is undisclosed income, taxpayer can ask the AO to initiated 148 proceedings, however, no Updated Return is possible
2021-22	Yes	Yes	Yes (with 70% additional income tax)	For this year, both the tax authorities and taxpayers have option to do compliance
2022-23	Yes	Yes	Yes (with 60% additional income tax)	For this year, both the tax authorities and taxpayers have option to do compliance
2023-24	Yes	Yes	Yes (with 50% additional income tax)	For this year, both the tax authorities and taxpayers have option to do compliance
2024-25	Yes	Yes	Yes (with 25% additional income tax)	For this year, both the tax authorities and taxpayers have option to do compliance

Therefore, limitation under search is more as compared to section 148 and section 139(8A) proceedings. Some of the other important points to be noted are:

- It should be remembered that option to file UR is not a vested right. It comes with various conditions. The tax department is not precluded for initiating search etc. or section 148 assessment proceedings or instituting prosecution proceedings even the time to file UR is not elapsed. Therefore, it is advisable to declare the correct income at the earliest possible time without waiting.
- While computing additional liability, benefit of self-assessment tax paid, if no return is filed earlier, is not allowable. It means, additional tax have to be paid even on self-assessment tax paid earlier if return is filed as UR for the first time. Therefore, in some cases, the liability of additional taxes may be more than the additional income.
- There is no difference between the honest taxpayers and dis-honest taxpayers. Both are treated equally for filing UR. Even if some incomes remains to be disclosed due to *bonafide* mistake, even then additional taxes have to be paid. Perhaps, it is against the mandate of Article 14 of Constitution of India
- There is no amendment in prosecution provisions. Prosecution for delayed filing of return can be avoided under section 276CC, however, there can be unusual situations. Now, after the proposed amendment, the Updated Return can be filed within four year from the end of relevant assessment year. The question that arise for consideration is: whether prosecution will not be initiated till the lapse of time allowed for Updated Return? Perhaps, there is no bar in initiating prosecution even time to file UR is still available. Similarly, prosecution provisions under section 276C can arise even though the taxpayer has option to file updated return. Therefore, it is advisable to declare the correct income at the earliest possible time.
- Where the taxpayer forget to file return having refund claim, then it is advisable to approach Tax Authorities for condonation of delay in filing return of income (**CIRCULAR NO. 11/2024**) because refund cannot be claimed in Updated Return.
- Perhaps there should be some clarity regarding the tax regime which can be opted while filing Updated Return. From AY 2021-22 to AY 2023-24, old tax regime was default regime and new tax regime was optional for which form 10IE have to be filed along with the return of income to be furnished under sub-section (1) of section 139 for a previous year relevant to the assessment year. From AY 2024-25, new tax regime is default regime and old tax regime is optional. Therefore, as per existing provisions, for AY 2022-23 and AY 2023-24, only old regime can be opted and for AY 2024-25 and onward, new regime can be opted. Perhaps, it would have been better if new tax regime is also allowed from AY 2021-22 to AY 2023-24 for filing UR.

Proposed Amendments to Block Assessment and Related Matters

CA Sandip Parikh CA Mukesh Dholakiya

Overview

The Finance Bill, 2025 proposes amendments to India's block assessment framework under the Income Tax Act, 1961, intended to modernize tax administration and remove ambiguities. Among the significant changes is the explicit inclusion of Virtual Digital Assets (VDAs), such as cryptocurrencies, under the definition of "undisclosed income" under Section 158B(b), ensuring these assets are taxed if discovered during a search. Additional reporting obligations introduced under Section 285BAA will require cryptocurrency entities to disclose transaction details, with penalties for non-compliance.

The bill further refines the process of computing total income for the block period, segregating disclosed from undisclosed income, thus subjecting only the latter to the 60% tax rate under Section 113. Ambiguities around determination of ALP of the partial year i.e the year in which last authorisation of the search is issued, are addressed by excluding the same from block assessment.

Procedural reforms include extending the completion deadline for block assessments to 12 months from the end of the quarter, rather than the month and revising timelines for retaining seized documents. Penalties under Section 271AAB will no longer apply to searches commenced after September 1, 2024. These measures aim to boost transparency and efficiency in India's evolving tax environment.

The Finance (No.2) Act 2024 reintroduced **Chapter XIV-B – SPECIAL PROCEDURE FOR ASSESSMENT OF SEARCH CASES** into the Income Tax Act, 1961("The Act"), laying out a specific approach to handling assessments arising from income tax searches. Since then, some practical difficulties and ambiguities have come to the forefront, prompting the **Finance Bill 2025** to propose certain amendments aimed at clarifying the enhancing administrative efficiency, and refining procedures for block assessment cases. These changes also address today's financial reality by explicitly covering **Virtual Digital Assets (VDAs)** within the definition of "undisclosed income" u/s. 158B(b), ensuring the law keeps up with modern forms of wealth storage and transfer.

This discussion examines the major amendments proposed under the Finance Bill 2025 and how they fit together to strengthen the block assessment mechanism:

1. **Definition of Undisclosed Income: Unveiling the Virtual**
2. **Computation of Total Income of the Block Period: A Clarifying Lens**
3. **Dealing with International and Specified Domestic Transactions: Resolving ALP Challenges**
4. **Time Limit to Complete Block Assessment: Ensuring Coordinated Assessment**
5. **Retention of Books of Account: Balancing Needs and Rights.**
6. **Non-Applicability of Section 271AAB to Block Assessment**

Additionally, this article explains the expanded definition of VDAs, the new **Section 285BAA** for reporting crypto-asset transactions, and clarifications on penalties and compliance obligations. Together, these amendments demonstrate the government's intention to modernize tax laws, streamline procedures, and reinforce the idea that undisclosed income—be it traditional or digital—remains subject to special scrutiny in a search scenario.

1. Definition of Undisclosed Income: Unveiling the Virtual

A major highlight of the Finance Bill 2025 is its explicit inclusion of **"virtual digital assets" (VDAs)** in the definition of **"undisclosed income"** under Section 158B(b) of the Act. This means that, starting **1st February 2025**, any VDA that is **unearthed** during a search and source of which is not credibly explained may be taxed as undisclosed income.

1.1 VDA Taxation So Far.

Before this Bill, **Section 115BBH** (introduced via the Finance Act, 2022) levied a 30% tax rate on the transfer of VDAs, with no deductions permitted except for the cost of acquisition. Concurrently, **Section 2(47A)** defined "VDA," albeit in somewhat broad terms, and **Section 194S** introduced a 1% TDS obligation on payments for VDA transfers. Despite this framework, there was still some ambiguity regarding whether all new or emerging crypto-assets were covered and how they might be treated if unearthed in a search.

1.2 Broadening the Definition in Section 2(47A)

The Bill proposes amending **Section 2(47A)** to widen the coverage of "VDA," explicitly including any crypto asset relying on cryptographically secured distributed ledger technology (like blockchain). This approach ensures that future digital assets are not overlooked, making the tax treatment more consistent and futuristic.

In parallel, Section 158B(b) is amended to include the phrase "virtual digital asset" alongside "money, bullion, jewellery." With this, VDAs are squarely considered as items that can be **treated as undisclosed income** in block assessment.

1.3 Proposed Section 285BAA for Crypto-Asset Reporting

Additionally, the Bill introduces **Section 285BAA**, which requires specific entities dealing in crypto-assets to file transaction details with the Income-tax Authority. Salient aspects include:

- ***Timely Corrections***: If a submitted report is found defective,

corrections must be made within 30 days.

- ***Non-Compliance Notices***: The authorities can issue notices if a reporting entity fails to file; compliance then becomes mandatory within a specified timeframe.
- ***Error Rectification***: Entities must notify the Department within 10 days upon discovering an error in a previously submitted report.

The government is set to define rules around record-keeping, registration, and customer due diligence for crypto-asset transactions, ensuring that anyone dealing in these assets follows standardized procedures. These requirements will come into force on **April 1, 2026**, giving stakeholders time to adapt.

1.4 Search Actions and Section 132(1)(c)

While the Bill clarifies that VDAs will be qualified as undisclosed income in block assessment, it has not proposed any amendment in **Section 132(1)(c)**, which still traditionally refers to undisclosed money, bullion, or jewellery as grounds for recording reasons for initiating a search. The absence of a reference to VDAs in **Section 132(1)(c)**, may lead to questions about whether a search can be initiated solely based on credible information of undisclosed crypto assets. Nevertheless, once the search is initiated for other reasons, any subsequent unearthed VDA will clearly fall within the scope of undisclosed income.

2. Computation of Total Income of the Block Period: A Clarifying Lens

The second important set of amendments deals with how one computes the total income for the block period under **Section 158BB**. The underlying principle is that **only undisclosed income** should face the higher tax rate of 60% under Section 113, while normal income , duly recorded in regular books of account remains outside this special charge.

2.1 Replacing "Total Income" with "Undisclosed Income" in Section 158BB(1)(i)

Previously, **Section 158BB(1)(i)** referred to the "total income" declared in a return filed under Section 158BC, creating confusion about whether an assessee should include all income (both regular and undisclosed) in that return. The Bill proposes to substitute **"total income" with "undisclosed income,"** in Section 158BB(1)(i) aligning with the spirit of block assessments, which is to tackle what was never declared or accounted for in regular books of account. However, **Section 158BC(1)(a)** still says that an assessee must disclose "total income, including undisclosed income," for the block period. Ideally, the government would also update this part of the law so that it matches the new wording in Section 158BB(1)(i), confirming that only undisclosed income is required to be disclosed in return u/s.158BC(1)(a).

2.2 Clarifying Exclusions for Regular Returns

Another issue involves **Clause (iii) of Sub-section (1) of Section 158BB**,

which previously excluded total income declared in returns filed under **Section 139, Section 142(1),** or **Section 148** from the 60% rate, without clearly stating that these returns had to be filed before the search. The Bill addresses this gap by specifying that only pre-search returns qualify for the exclusion.

2.3 Business Income of a Prior Year

Under the **existing Clause (iv) of Sub-section (1) of Section 158BB**, income determined from the regular books of account or documents maintained in the normal course of business for a previous year that ended before the date of search may still fall under the **60% tax** charged under Section 113. To address this, the Bill now proposes in **Sub-clause (a) of Clause (iv) of Sub-section (1) of Section 158BB** that if such income is duly recorded in regular books of that previous year, and the **due date** for filing the return of income has not expired before the search initiation, it will not be taxed at 60% under Section 113. However, the amendment does not explicitly limit the term "due date" to **Section 139(1)**, leaving open the possibility that **returns filed under Section 139(4)** might also qualify for exclusion.

2.4 Part-Year Scenarios

In the existing **Clause (iv) of Sub-section (1) of Section 158BB**, it is not entirely clear how to treat income determined from the regular books of account or documents for the year in which the search takes place, up to the execution of the last authorization. To resolve this ambiguity, the Bill proposes **sub-clauses (b) and (c) under Clause (iv) of Sub-section (1) of Section 158BB,** clarifying that income derived from books or documents maintained in the normal course of business during the following periods will not be taxed at **60% under Section 113**:

1. From **April 1** up to the **Search Initiation Date**
2. From the **Search Initiation Date** until the **Execution of the Final Authorization**

By separating these two segments of the year, the Bill aims to prevent confusion about which portion of the income might be undisclosed and to confirm that only genuinely undisclosed sums are subjected to the 60% rate in a block assessment.

3. Dealing with International and Specified Domestic Transactions: Resolving ALP Challenges

Existing Sub-section (3) of Section 158BB deals with how to deal with determination of arm's-length pricing (ALP) for international transactions or specified domestic transactions relating to previous year in which, last authorization of search is executed. Transfer pricing matters under Section 92CA often require detailed year-long data analysis, making partial-year assessments challenging.

3.1 Restating the Existing Exclusion

Currently, **Section 158BB(3)** states that if any income **unearthed** during a search relates to international or specified domestic transactions (from April 1 of the relevant previous year to the date of the last authorization) it should not be included in the block period's total income. Instead, it is assessed through

the normal provisions of the Act. The Bill proposes rewording this sub-section in a slightly updated manner, yet the substance remains the same: the law excludes part-year ALP transactions from the block assessment to avoid confusion and partial-year calculations.

3.2 *Interaction with Section 158BB(4)(c)*

Meanwhile the existing provision of **Clause (c) of Sub-section (4) of Section 158BB** provides that if undisclosed income from full-year transactions arises under **Section 92CA** for the block period, then standard transfer pricing provisions shall apply. It also specifies that any references to "previous year" in **Section 92CA** are effectively references to the relevant block period year, excluding the part-year that was carved out in Sub-section (3). Thus, the Bill maintains a consistent approach: part-year ALP income is dealt with under normal assessment, but any adjustment/addition/disallowances due to transfer pricing assessment of block period may be covered in the definition of undisclosed income and subjected to special charge of 60% u/s 113.

4. Time Limit to Complete Block Assessment: Ensuring Coordinated Assessment

Another key change appears in **Sub-section (1) of Section 158BE**, which sets the timeframe for completing block assessments. The Bill proposes that block assessments should be completed **within twelve months from the end of the quarter** in which the last authorization for search or requisition is executed. This measure seeks to complete block assessment proceedings of different assessees of same group in same time frame.

4.1 *Handover of Seized Books and Documents*

While this 12-month time limit is in place, it excludes up to 180 days from the date of the search's initiation until the handover of books or documents to the jurisdictional Assessing Officer. However, Chapter XIV-B does not spell out a formal method to inform the taxpayer of the actual handover date, creating potential ambiguity about exactly when the assessment window starts running.

4.2 *Balanced Approach*

Ideally, a simple notice might be issued to Assessee confirming when the investigation wing has handed over seized materials to the jurisdictional AO, ensuring that both sides i.e Assessee and revenue are on the same page regarding the final date by which the block assessment must be completed.

5. Retention of Books of Account: Balancing Needs and Rights

Section 132 of the Act governs search and seizure procedures. Currently, **sub-section (8) of Section 132** stipulates that the last date for obtaining approval to retain seized books of account or other documents is **30 days** from the date of the relevant assessment, reassessment, or recomputation order. However, in practice, when search assessments occur for multiple entities within a group, the assessment orders for different assessees might be issued at different times. Furthermore, separating the records relevant to each assessee can be challenging, especially if the search took place at a shared location. Additionally, materials from completed assessments may still be required for ongoing or pending assessment cases.

Because the retention approval deadlines vary across different orders, Assessing Officers must constantly monitor multiple, shifting cut-off dates, which can be unnecessarily burdensome.

To streamline this process, it is proposed to **amend sub-section (8) of Section 132** so that the time limit for seeking retention approval is set at **one month from the end of the quarter** in which the assessment, reassessment, or recomputation order is issued. This amendment aims to reduce administrative complexity and provide clearer, uniform deadlines for both Assessing Officers and taxpayers.

6. Section 271AAB Inapplicable to Searches Conducted on or After September 1, 2024

Chapter XIV-B of the Act provides a self-contained mechanism for assessing search cases, including provisions for penalties and immunity. Within this Chapter, Section 158BFA specifically governs the imposition of penalties on undisclosed income for the block period. Further, Section 158BH clarifies that, unless otherwise specified in Chapter XIV-B, all other provisions of the Act apply to assessments under this Chapter, thereby giving Chapter XIV-B precedence over general provisions.

Consequently, even before the Finance Bill 2025 proposed amendments to Section 271AAB, penalties on undisclosed income of the block period did not fall under its purview. However, to eliminate any potential ambiguity, the Finance Bill 2025 proposes amending sub-section (1A) of Section 271AAB to expressly clarify that Section 271AAB will not apply to searches initiated on or after September 1, 2024.

"When the mind has attained to that state when it identifies itself with the internal impression of the object, leaving the external, and when, by long practice, that is retained by the mind and the mind can get into that state in a moment, that is Samyama."

— *Swami Vivekananda*

"To succeed in life and achieve results, you must understand and master three mighty forces— desire, belief, and expectation."

— *A.P.J. Abdul Kalam*

From Annual Scrutiny to Block Assessments: The Future of Transfer Pricing in India

CA Karishma Phatarphekar

CA Sanjay Mistry

I. Overview of the Proposal

Transfer pricing (TP) has long been a focal point for the Indian Revenue department. Initially, cases were selected for TP scrutiny based on the value of international transactions, triggering annual scrutiny for many entities as the threshold was on the lower side. Thus resulted in disputes and significant judicial precedents from Indian courts, most of which were resolved in favor of taxpayers. However, while litigation provided defense, it entailed high costs and offered only annual resolutions, lacking long-term certainty.

Recognizing this, Revenue shifted its focus to TP risk parameters rather than transaction values, enabling them to concentrate on newer albeit riskier cases. This shift proved beneficial for the Revenue, as they could focus on limited cases. However, taxpayers could still only aim for annual resolutions and not long-term certainty.

Simultaneously, the Advance Pricing Agreement (APA) program, launched in 2012 with an aim to provide tax certainty for upto nine years, though progressed steadily but couldn't keep pace with the volume of applications. This created a gap in certainty, with taxpayers unable to secure long-term resolutions.

To address this, the Union Budget 2025 has proposed provisions to offer tax certainty on TP issues for a block period of three years.

II. Current Provisions for determining ALP in Transfer Pricing under the Indian Income-tax Act 1961

- The Assessing Officer (AO), with prior approval from the Principal Commissioner or Commissioner, refers the computation of the Arm's Length Price (ALP) to the Transfer Pricing Officer (TPO) for any international or specified domestic transaction (Section 92CA).
- The TPO determines the ALP in accordance with sub-section (3) of Section 92CA and sends a copy of the order to both the AO and the assessee.
- The AO then computes the total income of the assessee for the previous year under sub-section (4) of Section 92CA, in line with the ALP determined by the TPO.

III. Proposed Amendments

- Introduction of Sub-section (3B) in Section 92CA:
  - The assessee can opt to apply the ALP determined for a particular financial year to similar

transactions for the next two consecutive years by filing an application in the prescribed Form, manner, and timeframe.

- The TPO must issue an order validating the application within one month from the end of the month in which the option is exercised, subject to prescribed conditions.

• New Sub-section (4A) in Section 92CA:

- Once validated by the TPO, in the order which the TPO would pass for the first year, the TPO will also determine the ALP for the next two financial years.

- Meaning, the TPO will examine and determine the ALP for these similar transactions for the consecutive financial years in a consolidated manner.

• Introduction of Sub-section (21) in Section 155:

- Based on the TPO's order, the AO will recompute the assessee's total income for those years (subsequent two years).

• Clarification in Sub-section (1) of Section 92CA:

- No separate reference for ALP computation will be made in these cases for subsequent years.

• Exclusion from Chapter XIV-B:

- These provisions will not apply to proceedings under Chapter XIV-B, which relates to block assessment.

IV. Impact Analysis/Points for consideration

Considering that the amendment significantly alters the traditional approach to TP assessment proceedings, the potential ramifications must be carefully analysed. A comprehensive understanding of these impacts will become clearer once the necessary rules and clarifications are issued. In this section, we provide an in-depth analysis of the probable consequences of this amendment.

A. *Two-way street:*

At first glance, the proposed amendments offer businesses a promising opportunity by providing certainty for the next two years. However, there are valid considerations which the businesses must carefully evaluate before opting for block TP assessment.

Recent trends suggest that although the selection of cases for TP assessments is based on CASS (Computer-Assisted Scrutiny Selection), the references have been inconsistent. For instance, Assessment Years (AYs) 2019-20 and 2021-22 were not selected for scrutiny for many taxpayers. Under the proposed amendment, even if subsequent years are not chosen for scrutiny or referred to the TPO by CASS, opting for block assessment may make taxpayers vulnerable for the next two years, at the cost of certainty provided by the amendment.

Furthermore, it remains to be seen how the TPOs will approach the block TP assessment, as one may say that it serves as an easy mechanism for the TPOs to determine ALP for the next two years. On a positive note, if the TP audit for Year 1 concludes without adjustments, businesses may get the fruits of certainty for next 2 years.

Having said that, with or without adjustments, there is definitely a level of certainty that businesses get for 2

years, which one may call a simplified version of an APA, offering taxpayers a quicker resolution (or at least visibility) to their TP issues without going through the lengthy APA process. The current APA process includes a set of critical assumptions, and thus, needs to be assessed if the order passed by the TPO while verifying the validity of the option also includes similar conditions or assumptions. This interesting interaction between the block assessment and APA process requires careful evaluation once the rules are issued.

B. *Timing of filing the option:*

Another crucial aspect is the timing for filing this option. While the FAQs issued shortly after the Budget suggest that the option will be available to taxpayers during the TP proceedings, it needs to be seen if the option should be declared during the assessment proceedings in Year 1 or after their completion, but before the TP order is issued under Section 92CA of the Act.

A more practical approach would be to allow taxpayers to exercise this option after the TP order is issued, giving them better clarity on whether they should simply roll forward the determined ALP for the next two years. If the option is made available during the assessment proceedings, taxpayers may approach it with caution, fearing the uncertainty of determined ALP for Year 1. Also, by that date, the taxpayers may not have the visibility of the next year being referred to the TPO. Similarly, filing the option before the proceedings are even initiated would also be impractical.

Therefore, the timing of filing this option is a critical element of this amendment and warrants careful consideration.

C. *Reduction in litigation burden and effective utilisation of time and resources for both taxpayer and tax authorities*

One of the most visible impacts of this amendment is the potential reduction in litigation burden for taxpayers. The current TP proceedings necessitate the filing of detailed submissions and analysis every year along with frequent visits to the tax office, resulting in a significant expenditure of time, effort, and resources. However, there may be a one-time additional effort required by taxpayers to assess whether to opt for this option, based on the similarity of their transactions. With block assessments the taxpayer will have to deal with providing necessary clarifications/submissions in TP assessments once in three years if they opt for it.

For tax authorities, the block assessment approach could also provide significant relief to TPOs by reducing the overall workload involved in conducting annual TP assessments. By consolidating the analysis for multiple years, TPOs can focus more on reviewing complex cases or conducting detailed assessments for the years covered by the block.

D. *New transactions vs. similar transactions:*

Another critical consideration is the treatment of new transactions that occur in Years 2 and 3 of the block assessment. Under the proposed amendment, it remains to be seen whether TPOs will be able to scrutinize new transactions or business models that arise during subsequent years, even if they are not subject to full TP assessment. More so, there can be an

instance where SDT provisions are not applicable in Year 1 but cross the threshold in Years 2 and 3. Clarification is needed on whether these transactions will be tested by the TPOs to avoid potential disputes and ensure businesses are not penalized for unforeseen developments in their operations.

Equally important is the comparable issue, which still forms the basis in a majority of TP assessment cases. It is well established that comparable data varies from year to year. In fact, there can be instances where the comparables selected for determination of ALP in Year 1, may get rejected in Year 2/3 due to various quantitative/qualitative filters. This calls for flexibility in the block assessment framework to account for such variations. A rigid application may not reflect reality, and therefore, taxpayers face the risk of having their TP arrangements unfairly challenged in the future.

More importantly, the scope of "similar transactions" also needs to be well defined as inconsistency in interpreting may lead to rejection. Factors such as different selection/application of most appropriate method, similar Functions-Assets-and-Risk profile, range/size of the turnover of the company/value of international transaction etc. are few which may need to be considered while defining the term, reducing any potential for disputes.

It is also worth noting to see if the Assessee is given the right to appeal against the order of the TPO, when the option is being denied by the TPO, thereby adding another layer of litigation.

E. *Scope for Appeals/Interplay with Corporate Tax:*

One aspect to explore is the taxpayer's ability to appeal the TP assessments conducted under the block mechanism. The process for filing appeals, especially if a taxpayer disagrees with the TP determination for the initial year, needs to be well defined.

Moreover, the amendment empowers the Assessing Officer to recompute the total income for the subsequent two years by amending the assessment order, intimation, or deemed intimation under section 143(1) of the Act. While the TPO will determine the ALP in a consolidated order, the corporate tax assessments for Years 1, 2, and 3 will continue separately in the traditional manner, with the income for each year recalculated based on the consolidated TP order. Since corporate tax assessment process remains unchanged, it is important to assess whether opting for the block TP assessment essentially prepones the payment of the demand.

F. *Global Best Practices*

It is important to recognize that several major countries, including the United States, Australia, Netherlands, Germany, France, etc. employ risk-based audit systems that can lead to multi-year assessments, often referred to as block assessments. The tax authorities at the start of the audit itself determine the scope of the audit and communicate the years under audit with the taxpayers.

Crucially, the ALP determined for one year may not necessarily apply to subsequent years as variations can occur based on differing market conditions and specifics of the transaction, recognizing that many transactions do

not adhere to a single arm's length price throughout the year and may fluctuate periodically.

Moreover, several jurisdictions have empowered tax authorities to automatically test a set number of years without placing the option on the taxpayer, as has been proposed in India.

Globally, in a block assessment, term testing of the margins of the taxpayer is also considered if the industry or market is cyclical in nature. This concept should also be considered in the Indian TP block assessment rules as well as programs like the APA.

V. Recommendations

In line with the intent of the proposed amendment and considerations listed above, the government could look at some of the below recommendations to iron out ambiguity.

- Providing rules/clarifications and detailed FAQs with examples, including the clarification on the applicability;
- Providing the option to file the declaration to the Assessee after the TP order is issued for Year 1;
- Flexibility to adopt new transactions/ SDTs (reporting of which is dependent on a certain threshold);
- Avoiding rigidity while defining the term ‘similar transactions’, if FAR is similar the same should be apply irrespective of the with whom the transaction is entered into. Aggregated TNMM approach could be a good option for class of transactions that are closely inter-linked, that could be considered as a practical approach to apply ALP for 3 years;
- Aligning with Global Practices as highlighted above, instead of roll forwarding the same ALP for next 2 years;
- Instead of Block TP assessment, Block assessment could have been a game changer for certain categories of corporates (similar to eligible Assessee for DRP). However, with the proposed amendment, it is important to detail out the interplay with corporate tax assessment and appeals.

VI. Conclusion

The proposed amendments in Budget 2025 are a bold attempt to simplify and expedite the transfer pricing assessment process in line with global best practices. While the benefits of reduced litigation burden and lower administrative burden for taxpayers and tax authorities are evident, there is also the promising opportunity to refine and optimize the practical implementation of these provisions.

This also offers a valuable opportunity for the government to evaluate how effectively the principle of 'Trust First, Scrutinize Later' is being embraced in practice.

The Finance Bill, 2025 — IFSC related provisions

CA Suresh Swamy

CA Nehal Sampat

Overview

"*The Finance Bill, 2025 incorporates several proposals aimed at the development and growth of International Financial Services Centre (IFSC). These include extension of sunset clauses for various concessions/exemptions by five years, provisions for tax-neutral relocation of offshore retail funds and ETFs to IFSC, relaxation of deemed dividend provisions for treasury centres, etc. These measures provide continuity in taxation regime for IFSC entities and also help address certain ambiguities, enabling IFSC and IFSC entities to contribute to the larger vision of* "*Viksit Bharat*".

A perusal of IFSC related proposals in the Finance Bill, 2025 (FB), especially with respect to extension of various 'sunset' clauses, leaves us working in GIFT City with the thought of, "will this usher a new dawn"? Make no mistake: neither are we full of despair nor are we despondent, although a new 'sunrise' can always bring some renewed vigour.

Those who are 'not living under a rock' know that IFSC has been a key initiative of the Central Government over the past few years. Initially focused on "onshoring the offshore", the narrative in the context of IFSC has now evolved to a more "global" and "solution-oriented" approach to help India achieve the larger goal of "Viksit Bharat". The Budget announcements are a step in that direction.

This article summarises the key IFSC related announcements in the FB.

I. Extension of various sunset dates in the Income-tax Act, 1961 (ITA) [proposed amendments to section 10, section 47 and section 80LA of the ITA]

Existing provisions

The ITA provides various concessions to IFSC units. Several of these concessions have sunset clauses as tabulated below:

Section	Description	Sunset date
47(viiad)	Tax neutral relocation of offshore funds to IFSC	31 March 2025
10(4D)	Benefits available to investment division of an offshore banking unit in IFSC	31 March 2025
10(4F)	Exemption to a non-resident for income by way of royalty or interest from lease of a ship or an aircraft paid by an IFSC unit	31 March 2025
10(4H)	Exemption to a non-resident or an IFSC unit (engaged in aircraft or ship leasing) for income by way of capital gains from transfer of equity shares in a company being an IFSC unit (engaged in aircraft or ship leasing)	31 March 2026
80LA(2)	Deduction for income from transfer of aircraft or ship	31 March 2025

The sunset dates were becoming a limiting factor, especially for foreign entities evaluating setting-up a presence in IFSC.

Proposed amendments

It is now proposed to extend these sunset dates for commencement of operations of IFSC units, or relocation of Funds to IFSC, as the case may be, by a period 5 years to **31 March 2030**.

Impact of the proposed amendments

In the past, sunset clauses have generally been extended by a year or two. Extending various concessions for IFSC units by a period of 5 years signals stability of the tax regime to investors who can evaluate their initiatives and plan investments accordingly. These changes will promote IFSC in a big way and help IFSC in its journey to a fully developed, global financial centre.

II. Fund management – Safe harbour [proposed amendment to section 9A of the ITA]

Existing provisions

Section 9A of the ITA seeks to provide a safe harbour to offshore Funds that are managed from India with such onshore fund management activities not triggering a business connection or tax residency for the offshore Fund in India. The concession is subject to several conditions to be fulfilled by the offshore Fund and the onshore Fund manager.

Comparing IFSC with offshore jurisdictions, a Fund Manager in say, Singapore, who is managing an offshore Fund investing in India from Singapore is not required to comply with any such condition. Thus, IFSC is at a competitive disadvantage when compared to an offshore jurisdiction.

Vide sub-section (8A) of section 9A, the Central Government had retained powers to relax these conditions for Fund Managers in IFSC who have commenced operations by 31 March 2024. The CBDT had issued a notification on 6 June 2022, relaxing some of the conditions prescribed in section 9A for Fund Managers in IFSC.

One of the conditions to avail the safe harbour, prescribed vide clause (c) of sub-section (3) of section 9A, provides that the aggregate participation or investment, directly or indirectly, by persons resident in India in the offshore Fund, shall not exceed five per cent of the corpus of the Fund. Identifying indirect Indian resident holding in the Fund has been a challenge, and the current provisions seem to require this condition to be complied with and tested on a continuous basis.

Proposed amendments

The Central Government's power to relax conditions has now been extended for all Fund Managers in IFSC commencing operations on or before **31st day of March, 2030**. The Annexure to Part B of the Budget Speech indicates that a simplified safe harbour for Fund Managers in IFSC may be notified. Further, it is proposed to provide that the aggregate resident Indian participation in the offshore Fund should be tested on a semi-annual basis i.e. as on the 1st day of April and the 1st day of October of the previous year with a curation period of four months granted in case of a breach of the condition. However, this condition may not be relaxed for Fund Managers in IFSC.

Impact of the proposed amendments

To help IFSC compete with global Fund Management jurisdictions, one sincerely hopes that the CBDT adopts a liberal approach and relaxes as many and as much conditions as feasible for Fund Managers in IFSC.

III. Tax neutral relocation of offshore retail funds and Exchange Traded Funds (ETFs) to IFSC [proposed amendment to clause (viiad) of section 47 of the ITA]

Existing provisions

Like the tax concessions available in several tax treaties for offshore investors, section 10(4D) read with section 115AD of the ITA provides concessions in the form of exemption/lower tax rates for certain streams of income of Category III Alternative Investment Funds (AIFs) in IFSC (which largely invest in Indian capital markets).

Further, to encourage offshore Funds to 'relocate' to IFSC, the ITA was amended to provide concessions to facilitate such 'relocation' in a tax neutral manner (for the offshore Funds and their investors). Pursuant to such concessions, several offshore Funds have 'relocated' to IFSC. Section 47(viiad) requires the 'resultant Fund' in IFSC in such relocation to be set-up as an Alternative Investment Fund (AIF) under the IFSC Fund Management Regulations.

Section 10(4D) of the ITA was amended in 2024 to extend the coverage of concessions available to Category III AIFs in IFSC to retail Funds and ETFs set-up in IFSC as well. However, similar concessions to facilitate tax neutral 'relocation' of offshore Funds to retail Funds and ETFs in IFSC were absent.

Proposed amendment

It is now proposed to expand the scope of the expression 'resultant Fund' to include **Retail Schemes** or Exchange Traded Funds in IFSC, which fulfills such conditions specified in section 10(4D) of the ITA.

Impact of the proposed amendment

The proposed amendment will encourage more India focused offshore retail Funds and ETFs to 'relocate' to IFSC without facing additional tax liabilities upon such relocation.

IV. Exemption to non-residents on income from non-deliverable forwards (NDFs), offshore derivative instruments (ODIs) or over-the-counter derivatives (OTC) entered with IFSC based Foreign Portfolio Investors (FPIs) [proposed amendment to clause (4E) of section 10 of the ITA]

Existing provisions

Section 10(4E) of the ITA exempts any income from transfer of NDFs or ODIs or OTC derivatives or income distributed on ODIs, in the hands of non-residents where such contracts are entered with an offshore banking unit of an IFSC.

Proposed amendment

The regulatory framework in IFSC was amended last year to allow non-banking units in IFSC to issue ODIs. To align and update the tax regime, it is proposed to amend section 10(4E) to extend the exemption to non-residents for NDFs or ODIs or OTC derivatives entered into with FPIs being IFSC units ie effectively, extending the coverage to similar transactions with non-banking units in IFSC which are registered as FPIs.

Impact of the proposed amendment

The extension of tax exemption available under section 10(4E) to non-residents entering into NDFs/ODIs/OTC derivatives contracts with IFSC based FPIs will encourage OTC derivatives business and ODI business from IFSC.

V. Relaxation from deemed dividend provisions for treasury centres in IFSC [proposed amendment to section 2(22) of the ITA)

Existing provisions

In certain situations, section 2(22)(e) of the ITA deems loans and advances to a shareholder, where the shareholder is

the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner and in which the shareholder has a 'substantial interest', or any payment on behalf or for the individual benefit of any such shareholder, to be regarded as 'dividends', to the extent to which the underlying company has 'accumulated profits'.

The deeming provisions also do not apply to 'companies in which the public are substantially interested'. Further, an exception has been provided for loans or advances made by a company in the ordinary course of its business, where lending of monies is a substantial part of the business of the company.

'Deemed dividend' provisions are couched widely and create potential tax challenges in the hands of shareholders/recipient of loans or advance in intra-group transactions. IFSC has a framework for establishing global/regional treasury centres (GTCs) which can provide treasury services or conduct treasury activities for a group. The deeming provisions of section 2(22)(e) could create potential challenges hampering the growth of GTCs in IFSC.

Proposed amendment

It is proposed to amend section 2(22) of the ITA to provide an exception for any advance or loan between two group entities, where one of the group entity is a GTC in IFSC and the 'parent entity' or 'principal entity' of such 'group entity' is listed on stock exchange in a country or territory outside India, other than the country or territory outside India as may be specified by the CBDT in this behalf. The conditions for a 'group entity', 'principle entity' and the 'parent entity' in this regard will be prescribed.

Impact of the proposed amendments

The proposed amendments provide more clarity and certainty and will encourage multinational groups with overseas listed parents to actively consider setting-up GTCs in IFSC for managing their global treasury. A broader exception for all GTCs in IFSC could have, albeit provided more impetus. Intra group loans/advances in several situations are, nonetheless, outside the ambit of the deeming provisions and GTCs could be evaluated for such group structures without triggering any potential, additional tax incidence.

VI. Tax exemptions on dividend and capital gain for IFSC ship/vessel leasing entities [proposed amendment to clause (4H) and clause (34B) of section 10 of the ITA]

Existing provision

Clause (4H) of section 10 provides exemption to non-residents or unit of IFSC engaged in aircraft leasing on capital gains tax on transfer of equity shares of domestic companies being units of IFSC, engaged in aircraft leasing. Further, clause (34B) of section 10 provides exemption to dividend paid by a company being a unit of IFSC engaged in aircraft leasing, to a unit of IFSC engaged in aircraft leasing.

Proposed amendment

Like aircraft leasing business, in the ship leasing business as well, for commercial considerations, usually separate special purpose vehicles (SPVs) are established for one or more vessels. Therefore, similar to the regime for aircraft leasing, it is proposed to extend the exemption in–

a) clause (4H) of section 10 to non-residents or units of IFSC engaged in ship leasing on capital gains tax on transfer of equity shares of domestic companies being units of IFSC, engaged in ship leasing; and

b) clause (34B) of section 10 to dividend paid by a company being a unit of IFSC

engaged in ship leasing, to a unit of IFSC engaged in ship leasing.

Impact of the proposed amendments

The proposed amendment will bring parity for ship and aircraft leasing business in IFSC vis-à-vis other financial centres and encourage ship leasing business in IFSC.

VII. Exemption on proceeds received from life insurance policies purchased from IFSC Insurance offices [proposed amendment in section 10(10D) of the ITA]

Existing provision

Clause (10D) of section 10 provides exemption for sum received under a life insurance policy including the sum allocated by way of bonus on such policy, subject to the conditions specified therein. One of the specified condition provides that the premium payable in respect of an insurance policy issued on or after the 1st day of April, 2012 should not exceed ten per cent of the actual capital sum assured for any of the years during the term of the policy. The said provisions are also applicable to insurance policies issued by IFSC Insurance Offices.

Further, the provisos (fourth, fifth, sixth and seventh provisos) to the said clause restrict the exemption where the annual amount of premium or aggregate of premiums payable is above ₹ 2.5 lakhs for unit linked insurance policies, and ₹ 5 lakhs for life insurance policies other than unit linked insurance policies.

Proposed amendment

To provide parity to non-residents availing life insurance from insurance office in IFSC vis a vis other foreign jurisdiction, it is proposed to amend the clause (10D) of section 10 to provide that proceeds received on life insurance policy issued by IFSC insurance intermediary office shall be exempted without the condition related to the maximum premium payable on such policy as mentioned above.

It appears that the word ‘intermediary’ may have been inadvertently added (instead of restricting it to ‘insurance office’) as policies are usually issued by ‘insurance office’.

Impact of the proposed amendment

With the taxation disparity sought to be removed, this could be a catalyst for insurance offices in IFSC who can now cater to non-resident clientele. However, the restriction on the exemption on any sum received under an insurance policy issued on or after the 1st day of April, 2012 in respect of which the premium payable for any of the years during the term of the policy exceeds ten per cent of the actual capital sum assured still continue to apply.

Conclusion

In summary, the FB proposals were required for, and should have a very positive impact on, the continued growth and development of IFSC. One remains optimistic about further measures to be introduced to bolster IFSC's standing as a global financial hub. These proposals along with other steps around simplification of tax code, streamlining of TDS/TCS provisions, etc. should pave the way for IFSC entities contributing in a meaningful way to achieve the aspirations of a ‘Viksit Bharat’.

Non-Resident Taxation

CA Shikha Gupta

Overview

Over the last several years, several significant tax changes impacting non-residents have been made, for example, taxation of indirect transfers by way of retrospective amendment, changes in criteria for determination of status of residence and increase in the rates on royalty and fees for technical services income. In this backdrop, the amendments relating to non-residents, proposed in the current Bill are benevolent.

Proposal in sections 9 is in essence clarificatory in nature as opposed a real narrowing of the scope of significant economic presence. Amendment in section 115AD seems to correct an anomaly in the rate of tax on long term capital gains for foreign institutional investors ("FIIs") in line with the measures implemented in the Finance Act (No 2) 2024 to rationalize capital gains taxation. Finally, the proposal to introduce section 44BBD to provide for a presumptive taxation regime for the income of the non-resident from provision of service or technology to a resident company setting up operations or operating in the electronics manufacturing industry is a welcome measure to provide certainty and thereby a boost to a critical industry.

Section 2 discusses the lingering expectation of the adoption of complex Pillar 2 framework by India in light of its active participation and commitment to the OECD's global tax deal in the backdrop of a few other countries that have implemented domestic legislation to adopt Pillar 2 framework. However, Indian Government's acknowledgement of the US withdrawal from the OECD tax deal in the wake of Mr Donald Trump assuming charge and the resultant impracticality of implementing Pillar 2 framework seems to cast doubt on the future of India's stance on the matter. our discussion on this topic suggests that Indian companies belonging to Indian headquartered or foreign headquartered groups will continue to deal with the preparation and laying the ground for implementation of Pillar 2 in jurisdictions of their operations that have implemented the rules. These companies will however need to also watch out for any changes to the already legislated provisions in those countries in the light of US stance.

This article is divided into two sections. Section 1 discusses the impact on non-residents on account of changes in section 9, section 115AD and section 44BBD effective April 1, 2025 as proposed in the Finance Bill, 2025 ("Bill"). Changes for non-residents by way of tax exemptions on income on account of transfer of certain types of derivative

contracts/ instruments entered into with an offshore banking unit of an International Financial Services Centre or on account of life insurance policy issued by IFSC Insurance offices are not discussed.

Section 2 discusses the impact of absence of any budget announcements to adopt OECD's Pillar 2 framework.

Section 1 – Amendments impacting non-residents

1. Section 9

Section 9 is a deeming provision underpinned by the source rule of taxation that seeks to tax incomes in the hands of non-residents by applying a legal fiction. Section 9(1)(i) *inter alia* deems that all income accruing or arising, directly or indirectly through or from any business connection in India shall be deemed to accrue or arise in India. Explanation 2A of this sub-section deals with the concept of significant economic presence ("SEP") which was introduced in the Act on April 1, 2018. This concept is also nexus-based with an expansive coverage such that any transaction of goods/services/ property carried out by a non-resident with any person in India subject to exceeding the payment threshold of ₹ 2 crores would constitute Significant Economic presence. The thresholds are prescribed under Rule 11UD effective FY 21-22.

Although the concept emanates from BEPS Action 1 meant to target the digital economy, the language covering SEP in the Act is wide and ambiguous even to cover brick and mortar companies. It is also pertinent to note that there has been an overlap between equalization levy ("EL") and SEP. The 2% EL that applied to non-resident e commerce operators on digital supply of goods and/ or services is no longer applicable effective April 1, 2024 and accordingly the exemption under income tax that applied to transactions covered by EL is also no longer available. Such transactions therefore are to be tested for coverage under SEP.

In this backdrop, we analyse, the import of the amendment proposed to section 9 in the Finance Bill 2025. The Bill proposes an amendment to explanation 2A to explicitly exclude transactions or activities of a non-resident in India which are confined to the purchase of goods in India for the purpose of export from the scope of SEP.

This amendment finds a mention under simplification and rationalization measures in the explanatory memorandum. This amendment is really just clarificatory in its essence and should not change in how the concept was interpreted either before or after the amendment, for the following reasons:

1. Significant Economic Presence creates a deeming fiction and seeks to expand the nexus-based concept of business connection as was traditionally interpreted. The term business connection finds a mention in the main text of subclause (i) to clause (1) of section 9 and in Explanation 1. Clause (b) of explanation 1 already excludes income deemed to accrue or arise in India through or from purchase of goods in India for the purpose of export. Since SEP constitutes a business connection thereby implying that business connection is a wider concept including SEP into its fold, the aforementioned clause should be read to always have applied to significant economic presence and hence the exclusion now proposed in the finance bill seems to be merely clarificatory that does not alter the

essence of how SEP applied prior to the proposed amendment. The explanatory memorandum in fact states that the proposed amendment in explanation 2A is for the purpose of bringing coherence with explanation 1.

2. Clause (a) of explanation 2A applies only where the aggregate payments to the non-residents exceeds INR 2 crores. In a transaction where the non-resident is purchasing from India for the purpose of export, the question of this payment threshold getting triggered should not arise for the purchase leg of the transaction. Payments made by the buyer under the export leg of the transaction by the non-resident would also likely not be made by a person in India and hence the payment threshold should not get triggered.

The amendments of this nature seem to in fact suggest that SEP is a concept that is not within the wider realm of business connection, quite to the contrary of the language used in the explanation 2A. Also, a limited exclusion as proposed under the amendment relating to purchase and export transaction not necessarily undertaken via digital means seems to give credence to the notion that SEP applies even in cases on transactions undertaken vide non digital means.

Given the juxtaposition of the concepts of business connection, SEP and EL. plenty of ambiguity persists in applying the concept of SEP. Any amendment in connection with SEP would be welcome if it clarifies the general scope of SEP especially with respect to transactions undertaken by brick-and-mortar companies as well as other definitional and computational ambiguities. As was the case before, the only effective recourse to counter the tax consequences arising from SEP seem to continue to be the relief available under the double tax avoidance treaties. This implies that the ambiguity in navigating SEP continues in cases where treaty benefit is not available.

Hence, unless the proposed amendment is made pursuant to an issue that was leading to wide spread tax disputes, unwarranted ambiguity or compliance burden especially in cases of non-residents where treaty relief was not available, this amendment neither achieves much nor impacts adversely.

2. Section 44BBD

The Finance Bill 2025 proposes a new section 44BBD in order to provide presumptive taxation regime for non-residents engaged in the business of providing services or technology to a resident company for the purpose of setting up electronics manufacturing facility or for manufacturing or producing electronic goods, articles or thing in India. The presumptive regime deems 25% of the aggregate amount received/ receivable by or paid/payable to the non-resident on account of providing services or technology, as profits and gains of such non-resident from this business.

Upon reading the language proposed in the section, the following aspects are noteworthy:

(1) The resident company availing services or technology from the non-resident for setting up or operating manufacturing facility for manufacturing electronic goods, articles or things must do so under a scheme notified by the Central Government in the Ministry of Electronics and Information Technology and satisfies the conditions prescribed in this behalf. Currently there are multiple existing schemes notified for

semi-conductors, IT hardware, electronic components etc and it appears that the resident company should be operating under any of such schemes.

(2) There is no option to claim lower profits under the Act other than the deemed profit and gains. However. business profits attributable to a permanent establishment could be computed for taxation in India where PE exists upon application of tax treaty.

(3) No set off of unabsorbed depreciation and brought forward losses is allowed under this presumptive regime.

This regime is intended to provide certainty to non-residents. Since the deemed income would be in the nature of profits and gains from business, the taxpayers under this scheme would not have to deal with the income characterization as business income, royalty or fees for technical services or dealing with the consequences of constituting an accidental permanent establishment in India. The effective rate for non-residents is expected to be lower than 10% which is attractive even when compared to taxation of royalties and fees for technical services under the double tax avoidance treaties where the rates typically ranging from 10% to 15%.

In case transfer pricing provisions are attracted in the transaction of provision of services or technology by non-residents, the arm's length nature of such transactions would need to be demonstrated. The budget proposes to expand the scope of safe harbour for non-residents who store components for supply to specified electronics manufacturing units. This appears to be different than the nature of transactions mentioned in the section 44BBD and a transfer pricing safe harbour for the services covered in the proposed section 44BBD could also be considered for greater certainty.

Overall, this proposal complements the Government's concerted efforts to boost India's capability and self-reliance in the manufacturing of critical electronic products.

3. Section 115AD

Section 115AD deals with tax on the income of Foreign Institutional Investors ('FIIs) from securities or capital gains arising from their transfer. The proposed amendment in the Finance Bill 2025 seeks to correct the anomaly that existed in the rate of capital gains on long term capital asset other than those referred in section 112A.

As part of the overall rationalization and simplification of the capital gains tax, the Finance Act (2) 2024 sought to rationalize the long-term capital gains tax rates to 12.5% in respect of all category of assets including listed and unlisted assets. Accordingly, rate amendments were made in section 112 and 112A. In addition, to bring parity of taxation between residents and non-residents, corresponding rate amendments were made to section 115AD, 115AB, 115AC, 115ACA and 115E.

However, it seems that section 115AD(1)(iii) continued to provide for a lower rate of 10% for long term capital gains other than those referred to under section 112A. This put the FIIs in an advantageous position relative to other non-resident tax payers. This anomaly may have been the result of an unintentional miss. Hence the finance Bill 2025 seeks to correct this anomaly by providing for a rate of 12.5% with effect from Financial Year 2025-26.

The long-term capital gains other than those referred to in section 112A could cover many

securities that an FII is permitted to invest into under extant regulations framed by SEBI and RBI. After excluding for the long term capital assets covered in section 112A being equity shares, unit of equity oriented fund and unit of a business trust, the other long term capital assets that will now attract 12.5% under section 115AD will include listed bonds, listed debentures, Government securities, securities receipts issued by asset reconstruction companies, securitised debt instruments, units of certain mutual funds (other than equity oriented mutual funds and funds as specified in section 50AA), derivatives etc.

The aforementioned amendment brought about to correct the rate anomaly is step in the direction of capital gains rate rationalization and parity.

Section 2: Impact of OECD's Pillar 2 framework on Indian Entities

4. Pillar 2

One of the potential announcements though not exactly a wish-list item, being expected was adoption of the Pillar 2 under the OECD inclusive framework model. Last year, the finance minister, at the post-budget press conference reiterated Government's commitment to the OECD global tax deal, specifically emphasising that the Indian government intends to adopt the OECD's two-pillar solution. However, no such legislation was proposed in the Finance Bill 2025. At this stage, it is also premature to comment on whether the US stance and the resultant geo political dilemma that other countries including perhaps India face, jeopardizes the future of OECD's global tax deal.

Does this really matter from the standpoint of an Indian entity especially an Indian headquartered multinational group? Let us discuss this in the following paragraphs.

Globally 25+ countries out of the 140 countries participating in the Inclusive Framework have implemented domestic legislation on Pillar 2 by way of introducing one or more of Qualifying Domestic Minimum Top Up Tax, ("QDMTT"), Income Inclusion Rule (IIR) and Undertaxed Profits Rule ("UTP R") effective 2024 or later. There are still a large number of companies that still have not introduced anything on Pillar 2 and India remains in the latter category and is not therefore an outlier country.

It is widely acknowledged that India's relative revenue gain from implementation of Pillar 2 is not jaw dropping. Besides India's cautious and strategic move to not adopt Pillar 2 under the local legislation also allows it to revisit its stance and timelines given the recent US position to withdraw from the global tax deal.

From the standpoint of Indian Headquartered MNE's having a global footprint, they still need to comply with the Pillar 2 rules if implemented in the jurisdictions where they operate. This means that computations of jurisdictional GLOBE income, covered taxes and ETR, selection of safe harbour, payment of top up taxes, domestic compliances including accounting disclosures would still be required in certain jurisdictions. Based on the above. while no compliances are yet required in India, the globe rules computation would still apply at jurisdictional level where Pillar 2 rules are implemented.

From the standpoint of Indian entities of Foreign Multinational groups, the likelihood seems low for the constituent entity in India having a jurisdictional blended ETR below 15%. This is because India's nominal rate of tax is much higher than 15% barring

very few exceptions that could get evened out with the jurisdictional ETR blending in most cases. Hence practically speaking, implementation of QDMTT or UTPR in India is not a forefront issue for such entities except in very few cases. The foreign headquarted MNE would still need to include its entities in Indian in the GLOBE computations to comply with the IIR rules in the ultimate parent entity jurisdiction or UTPR rules in other jurisdictions Strictly theoretically though, absence of UTPR in India means foregoing revenue in favour of those jurisdictions that have adopted UTPR and this should matter only if such revenue loss is sizeable. Hence even in case of foreign MNEs, while no compliance is required vis a vis Indian tax administration, Pillar 2 adherence at a global level would still need to be implemented.

In summary, no news on Pillar 2 in the Finance Bill 2025 does not alter the need for preparation and participation of India MNE groups or Indian constituent entities of foreign MNE covered under under Pillar 2. While some would argue that a timely adoption of Pillar 2 by all countries in a co-ordinated manner would result in less uncertainty for the covered groups as they prepare their Pillar 2 models and processes, others would argue that countries adopting Pillar 2 later might have a chance of learning from the early adopters.

Conclusion

In summary, the Bill keeps a positive tone and momentum for attracting foreign investments. Among the amendments discussed in this article, the area that would be interesting to watch out for is the impact of section 44BBD in attracting investments in Electronics Sector and in providing tax certainty. Another area to monitor is the direction that OECD's two pillar Solution takes in the light of global political set-backs.

"The whole secret of existence is to have no fear. Never fear what will become of you, depend on no one. Only the moment you reject all help are you freed."

— *Swami Vivekananda*

"See the flower, how generously it distributes perfume and honey. When it's work is done, it falls away quietly. Try to be like the flower, unassuming despite all it's qualities."

— *A.P.J. Abdul Kalam*

“Safari Actually Retreats?" & Key Indirect Tax changes in Budget and what they mean for you?

CA Sagar Shah

Overview

Does the controversy for Input Tax Credit (ITC) used for construction of immovable property intended to be used for renting end with the retrospective amendment in section 17(5)(d) of the CGST Act, thereby nullifying the impact of the Supreme Court judgement in the case of ***Safari Retreats (P.) Ltd. [2024] 167 taxmann.com 7****.*

The amendment in GST law like:

- *In provisions of ISD, addition in schedule III would bring much needed clarity and add to the delight of the taxpayers.*
- *Certain provisions like mandatory pre-deposit in case of appeals related to penalty can be seen as added burden on genuine taxpayers.*

The amendment in customs law:

- *Prescribing statutory timelines to complete provisional assessment would ensure timely finalization of provisional assessment including in SVB cases. However, the possibility of passing of orders in hasty manner to adhere to the statutory timelines cannot be ruled out.*
- *ITC on Payment of differential GST subsequent to filing of bill of entry and clearance of goods was disputed in absence of amended/ reassessed bill of entry. However, allowing suo moto amendment in import document (Bill of entry) would reduce litigation and at the time allow the availment of ITC of GST.*

GST has been introduced as an example of co-operative federalism. Considering the same, the major changes are being discussed and taken in GST council meeting. Hence, many thought that budget has lost its relevance from Indirect Tax standpoint. However,

- The intricate dance of legislation and jurisprudence i.e., Intention of legislature vs. wordings of law vs. interpretation by judiciary basis strict reading of law
- Legislative changes needed to give effect decision in GST council meeting.

- Changes in customs law considering evolving challenges and expectations.
- The Governments proactive steps towards expectations of the business fraternity etc.

are not letting budget lose it's relevance even from Indirect tax standpoint.

In the present article, an attempt is made to discuss important budget amendments and more particularly the amendment in section 17(5) proposed in light of the Hon'ble Supreme Court's decision in case of ***Safari Retreats (P.) Ltd. [2024] 167 taxmann.com 73***. The article is divided into following sections.

- Safari actually retreats?
- GST amendments: Clarifying doubt or increasing burden?
- Customs law amendments: Providing much needed legislative support.
- Expectations not found place in budget.

Safari Actually Retreats?

The Supreme Court of India's judgement in case of the Chief Commissioner of ***GST vs. Safari Retreats (P.) Ltd. [2024] 167 taxmann.com 73***, has sparked significant discussion within the indirect tax community. This landmark judgement, delivered in October 2024, addresses the contentious issue of Input Tax Credit (ITC) on goods and services used for construction of immovable property, intended for leasing or renting. Basis interpretation of prevailing law, it has been held that the ITC can be claimed on goods and services for construction of immovable property leased for commercial purposes like leasing and renting. This was set back for restrictive interpretations adopted by tax authorities. However, the budget amendment to Section 17, which seemingly countermands the apex court's decision. This has sent ripples of uncertainty. In the ensuing paragraphs, I tried to unravel the complexities of the Supreme Court's judgement, the legislative response through the budget amendment, and other pertinent changes, casting a spotlight on the implications on the broader business landscape.

Background

The core issue in the Safari Retreats case, revolved around Section 17(5)(d) of the CGST Act, which disallowed ITC on ***goods or services*** used in the construction of immovable property, except for ***plant or machinery***. Safari Retreats Pvt. Ltd. challenged this provision, seeking clarity on whether buildings constructed for rental purposes could be classified as "plant" and covered under ***plant or machinery*** under the Act, thereby qualifying for ITC benefits.

Supreme Court's Interpretation

The Hon'ble Supreme Court provided a nuanced interpretation of the taxation statute. The Court emphasized the principle of strict interpretation and held that a taxing statute must be read as written, without adding or subtracting from its explicit language.

In its judgement, the Court held that buildings constructed for rental purposes could indeed be classified as "plant" under Section 17(5)(d), thereby allowing real estate developers to claim ITC. This interpretation was seen as a significant relief for the real estate sector, reducing the overall cost of construction for rental businesses. The court held that the expression used in Section 17(5)(d) allows ITC on ***plant or machinery*** and not on ***plant and machinery***. The court

further held that the expression plant or machinery and not on ***plant and machinery*** are to be interpreted differently. The Court has observed that even after pronouncement of the decision of Hon'ble Orrisa High Court, which was under challenge by the department, there was no amendment by the legislature.

Government's Response

However, the Union Budget 2025 introduced amendments to the CGST Act, with an attempt to nullify the Supreme Court's judgement. The amendment:

- Replaced the phrase ***plant or machinery*** in Section 17(5)(d) with ***plant and machinery***. The relevant provision is read as:

  (d) goods or services or both received by a taxable person for construction of an immovable property (other than "plant or machinery "~~plant and machinery~~") on his own account including when such goods or services or both are used in the course or furtherance of business.

- An explanation has been added providing that "for purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery".

The result of the above would be that ITC remain restricted on the goods and services used for construction of immovable properties, even if constructed immovable property is used for taxable supplies like renting, leasing. This change, applied retrospectively from July 1, 2017, has significant implications for the real estate sector.

Is Retrospective amendment valid?

The landscape of tax law is ever evolving, with landmark cases and legislative amendments often altering the terrain significantly. In general, it is expected that that the legislative changes shall be made prospectively. However, in taxing matters, the legislatures are allowed wider altitude. From time to time, the higher judiciary has accepted the same and ruled out the challenge to retrospective amendments. However, at the same time, it is settled law that while law can be amended retrospectively, the penalty including penal interest cannot be levied in light of the retrospective amendments.

The Retreat or Reaffirmation?

The amendment seemed to be a legislative retreat from the position established by the Supreme Court. It raised questions about the legislative intent and the judiciary's role in interpreting tax laws. Industry and Tax professionals were now faced with a conundrum as to how to reconcile the progressive interpretation by the judiciary with the restrictive amendment by the legislature.

It is important to navigate this complex situation by understanding:

- The nuances of both the Supreme Court's decision and the budget amendment,

- The potential risks and opportunities that arise from this legal dichotomy.
- Assess each case on its merits, considering the specific facts and circumstances, and the timing of the construction and leasing activities.
- Applicability of limitation period for past liabilities
- The jurisprudence and tax position regarding the potential interest and penalty exposure.

Does controversy really gets settled?

One of the important basis of judgement of Hon’ble Supreme Court was that construction is said to be on a taxable person’s “own account” when (i) it is made for his personal use and not for service or (ii) it is to be used by the person constructing as a setting in which business is carried out. However, construction cannot be said to be on a taxable person’s “own account” if it is intended to be sold or given on lease or license. [reference paragraph 32 of the judgement].

Thus, even after the above amendment, it can be said that the ITC on goods and services used for construction of immovable property intended to be rented/leased is eligible as the said construction cannot be said to be “on own account”.

What is on plate for taxpayers?

Immediately after presentation of budget, taxpayers have started receiving the notices to reverse the ITC availed in respect of construction of immovable property. Hence, it is important to analysed below points for past period.

- What would be fate of the pending litigation?
- Whether ITC availed in the past period be demanded considering retrospective amendment?
- Upto what period, the tax demand can be raised?
- Can suppression be alleged and provisions of section 74 be invoked?
- Can interest and penalty be demanded?

My quick take on the above points?

As explained above, the legislatures are allowed to make retrospective amendments. However, the penalty should not be imposed in light of the retrospective amendments. Further, the Finance Ministry has filed a review petition, seeking reconsideration of the Safari Retreats judgment to align judicial interpretation with the legislative framework. Considering this judicial position, my quick take on above would be as under:

- Pending litigation will be decided in light of the amended provision.
- ITC availed in the past period can be demanded in light of retrospective amendment.
- I believe that the provisions of section 74 are not invokable, and tax can be demanded under section 73. Hence, the new demands shall be raised for the period from 2021-22.
- While suppression cannot be alleged, the department may invoke provisions of section 74 and raise the demand under section 74 (which is practice in general). It is upto Appellate

Authority to consider the correctness of invokation of provisions of section 74.

- I believe that that the interest and penalties should not be levied if the reversal for the period from 2021-22 is made immediately after the provisions coming into force.
- Having said the above, the developers/ mall owners under business model (construct and rent/lease) can continue to avail ITC. Obviously, the same is prone to long drawn litigation.

Implications for the Real Estate Sector for future period

The amendment prevents developers from claiming ITC on construction-related expenses, leading to higher project costs. Businesses engaged in commercial leasing will now face higher tax burdens as they can no longer offset construction costs against GST liabilities. Further, the retrospective nature of the amendment may invite litigation from affected businesses that have already claimed ITC.

In addition to the above, the retrospective amendment in tax laws is seen as legislative and tax uncertainty by investors. This creates overall negative impression among investor and business community.

Conclusion

To conclude, the Supreme Court’s decision and the subsequent budget amendment in Section 17 have undoubtedly introduced a new dynamic in the realm of ITC on construction services. It is important to be vigilant and adaptable, ensuring to be well-versed in the latest legal developments.

As the debate continues, the dialogue between the judiciary and the legislature is far from over, and the tax community must stay engaged to navigate the shifting sands of tax law.

GST AMENDMENTS: CLARIFYING DOUBT OR INCREASING BURDEN?

A) Amendment in definition of Input Service Distributor

The amendment to Clause 61 of Section 2 and Section 20(1) and Section 20(2) of the CGST Act requires the Input Service Distributor (‘ISD’) to distribute the ITC for inter-state supplies where tax is paid on RCM.

Prior to the amendment, there was ambiguity about the distribution of ITC for inter-state supplies under RCM. The inclusion of the reference to the specific sub-sections of the IGST Act clarifies that the ISD can distribute such ITC to the relevant units or branches that have received the supplies under the reverse charge mechanism.

B) Introduction of track and trace mechanism

A new clause has been added in Section 2 to define "Unique Identification Marking" for the purpose of implementing a Track and Trace Mechanism, likely to improve tracking and transparency of goods in the supply chain.

A new section, 148A, has been introduced to implement a Track and Trace Mechanism for specified commodities.

Alongside Section 148A, the newly inserted Section 122B imposes penalties for non-compliance with the provisions related to the Track and Trace Mechanism.

This mechanism is already in force in certain countries and aims to enhance monitoring, transparency, and accountability in the movement of certain goods. By ensuring real-time tracking, the provision will strengthen compliance and prevent tax evasion or misuse of supply chain loopholes. However, the manner of implementation will define if it adds to compliance burden.

C) Addition in Schedule III of CGST Act, 2017

Supply of Goods warehoused in a Special Economic Zone (SEZ) or Free Trade Warehousing Zone (FTWZ), to any person, before clearance of such goods for exports or before clearance of such goods to the Domestic Tariff Area (DTA), shall be treated neither as supply of goods nor as supply of services.

This brings transactions relating to supply of goods warehoused in SEZ/FTWZ at par with the existing provision in GST for transactions related to Customs bonded warehouse.

D) Amendment in section 34(2) in relation to issuance of credit notes

Proviso to Section 34(2) is amended to mandate reversal of ITC by recipient to claim adjustment of outward liability.

This amendment is in line with the tax position that once the supplier reduced her liability, the recipient shall reduce her ITC. However, it may be difficult for the assessee to prove that recipient has reversed ITC unless a declaration/CA certificate is obtained. Hence, practical implementation may result in certain challenges.

E) Amendment in Section 107(6) and 112(b) mandating 10% pre-deposit for appeals on penalty-only demands.

The amendment to Section 107(6) and 112(8) introduces a requirement for a 10% mandatory pre-deposit of the penalty amount when appeal filed before the First Appellate Authority and Appellate Tribunal, in cases where the appeal involves only a penalty demand, with no associated tax demand.

The mandatory pre-deposit requirement applied only to disputed tax liabilities. However, with this amendment, even in cases involving only penalties, appellants will now be bound to deposit 10% of the penalty amount before filing an appeal. This is in line with the provision under service tax/excise law (in pre-GST regime). This should apply to appeals filed after the enactment of law.

Having said the above, there is possibility that this amendment creates added burden on genuine taxpayers who are burdened with penalty due to lack of courage at lower adjudication level to waive penalty.

CUSTOMS LAW AMENDMENTS: PROVIDING MUCH NEEDED LEGISLATIVE SUPPORT

A) Amendment to provide timeline for finalisation of provisional assessment.

Section 18 of Customs Act,1962 is amended to provide for a timeline of 2 years for finalisation of provisional assessment. This period can be extended by one year by Commission of Customs except in certain circumstances as provided in Section 18(1C). For pending provisionally assessed BEs period of 2 years will be reckoned from date of assent of Finance Bill. As per Section 18(1C), This period of 2 year will not apply in following cases:

- Where appeal is pending before CESTAT/High Court/Supreme Court
- An interim order of stay has been issued by Appellant Authorities
- Board has passed direction for keeping matter pending.
- Matter pending before Settlement Commissioner or
- Information asked by Government from Authority outside India through legal process (i.e., FTA etc.)

This amendment is a welcome move for the trade wherein the provisional assessment would now be closed in a timely manner. Practically, it is seen that cases like SVB (in case of related party imports) are pending for decision for longer time without any lapse of the importers. Timely finalisation would result in early refund (if finalisation results in refund) or lesser interest burden (if finalisation results in additional tax demand). The provisions assessment is provisional for all the purposes. Thus, before finalisation, dispute can be raised on any aspect such as value, classification etc. Timely finalisation would remove uncertainty.

However, there is possibility that the orders of finalisation would be passed in haphazard manner to adhere to the timelines. This would increase the unnecessary litigation.

B) Insertion of section 18A that provides for revision of Bill of entry and shipping bill, post clearance of goods.

Section 18A is inserted to provide for voluntary revision of bill of entry/Shipping Bills post clearance within prescribed time. Hence, any error/omission at the time of import/export can be rectified.

Importer/exporter can revise the assessment and

- If additional differential duty becomes payable, the same can be paid along with interest without penalty exposure.
- If changes result in refund, the revised entry can be considered as refund application.

Time and manner for amendment will be prescribed by Rules.

However, revision in entries shall not be allowed in cases involving Summons, Seizure,

Audits, Refunds (where re-assessment has already been done) or any other cases as may be notified from time to time.

Section 149 of the Customs Act already provides a window for re-assessment of Bill of Entries where goods have been cleared subject to the satisfaction/discretion of the relevant authority basis the documentary evidence filed at the time of clearance of the shipment. Such discretion in the hands of the officers and associated conditions, had often resulted in delays of the approvals or rejections in majority of the cases.

The amended provision will ease out on the compliance of challenging every bill of entry being self-assessment order. The newly inserted provisions under Section 18A empowers the assessee to not only revise the Bill of Entries of Shipping Bills on self-assessment basis but also regularize any inadvertent non-compliances committed at the time of clearance.

This is a welcome move for the trade and reduce litigation by allowing the revision in case of bill of entry and shipping bill. This amendment is a significant step towards

enhancing voluntary compliance and minimizing litigation risks in various cases like missing on FTA benefit on import, error in capturing actual freight or insurance value, error in selection of export scheme code at the time of export etc. Further, the ITC of differential IGST payment (paid through TR-6 challan) is getting disputed as TR-6 challan is not valid document to avail ITC. With the above amendment, the taxpayers can get revised bill of entry which can be considered as valid document to avail ITC.

C) Amendment in Import of Goods at Concessional Rate Rules, 2017 (IGCR Rules)

Rules 6 and 7 of IGCR Rules are being amended to provide certain relaxations as under:

- Increase the time limit for fulfilling end use from current six months to one year.
- Increase the time limit for which the goods that can be sent for job work from six months to one year.
- Further, the importers will now have to file only a quarterly statement instead of monthly statement.

EXPECTATIONS NOT FOUND PLACE IN BUDGET

The amnesty for customs dispute, some remarks on timelines for operationalisation of GST tribunals could add to the delight of the taxpayers. However, lets hope that wait for the same gets over soon.

CLOSING REMARKS

The Union Budget for FY 2025-26 introduces a series of significant amendments to India's indirect tax framework which results in removing ambiguity, easing compliance burden.

However, the retrospective application of certain amendments can be seen as black spots on overall good budget. This may pose challenges, causing careful study and compliance strategies.

"I realized that if something important is at stake, the human mind gets ignited and the working capacity gets enhanced manifold."

— *A.P.J. Abdul Kalam*

DIRECT TAXES
Supreme Court

Keshav B. Bhujle
Advocate

1 ***CIT vs. CITI Bank N. A. (NO. 1); [2024] 469 ITR 273 (SC): sated 12/08/2008***

Business expenditure — Banks — Government securities purchased to satisfy requirement to maintain statutory liquidity ratio — Securities purchased after interest date — Interest paid for broken period not part of purchase price — Deductible as revenue expenditure in year of purchase of securities: S. 37 of ITA 1961: A. Y. 1978-79

The assessee, which carried on banking business, subscribed to Government securities to maintain statutory liquidity ratio in relation to its business. Interest was payable on the securities every half year. In the case of a transfer between those dates, the purchaser would pay the seller the interest accrued to the seller for the broken period from the last specific date up to the date of transfer. Though the Assessing Officer brought to tax as business income the sum received by the assessee from buyers towards income for the broken period, he denied deduction of the sum paid by the assessee to sellers for the broken period.

The High Court in ***CIT vs. CITI Bank N. A. ([2003] 264 ITR 18 (Bom); 2003 SCC OnLine Bom 382)*** held that the interest paid for the broken period should not be considered as part of the purchase price, but should be allowed as revenue expenditure in the year of purchase of the securities u/s. 37 of the Income-tax Act, 1961.

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

"i) Since the tax effect was neutral, the method of computation adopted by the assessee and accepted by the Revenue could not be interfered with.

ii) On the facts of the case, the judgment in ***Vijaya Bank Ltd. vs. Addl. CIT [1991] 187 ITR 541 (SC); 1991 Supp (2) SCC 147*** would have no application."

2 ***Bank of Rajasthan Ltd. vs. CIT; [2024] 469 ITR 280 (SC): sated 16/10/2024***

A. **Capital or revenue expenditure — Interest — Interest for period from last interest payment till date of purchase — Interest paid for broken period should not be considered as part of purchase price, but allowed as revenue expenditure in year of purchase of securities.**

B. **Heads of income — Banks — Interest on securities — Whether holding of**

shares is by way of investment or forms part of stock-in-trade is within knowledge of assessee — Securities acquired as part of banking business are stock-in-trade and not investment.

C. **Banks — Business expenditure — Government securities purchased by scheduled banks to maintain statutory liquidity ratio as mandated by RBI — Securities in category "held to maturity" — Directive of RBI that banks should not capitalise broken period interest paid to seller as part of cost but treat it as expenditure under profit and loss account — On facts, if "held to maturity" securities held as investment, benefit of broken period interest not available — If held as trading asset interest deductible: Ss. 14, 18 to 21 and 28 of ITA 1961; RBI Circulars dated 21-4-1998 and 21-4-2001; CBDT Circular No. 4 of 2007;([2007] 291 ITR (St.) 384): A. Ys. 1990-91 to 1992-93:**

The assessee was a scheduled bank and was engaged in the purchase and sale of Government securities. The securities were treated as stock-in-trade in the hands of the assessee. The amount received by the assessee on the sale of the securities was considered for computing its business income. The assessee consistently followed the method of setting off and netting the amount of interest paid by it on the purchase of securities (i. e., interest for the broken period) against the interest recovered by it on the sale of securities and offering the net interest income to tax. The result was that if the entire purchase price of the security, including the interest for the broken period, was allowed as a deduction, the entire sale price of the security was taken into consideration for computing the assessee's income. The Assessing Officer allowed this settled practice while passing regular assessment orders for the A. Ys 1990-91 to 1992-93.

The Commissioner, in revision, held that the assessee was not entitled to deduction of the interest paid by it for the broken period. The Tribunal allowed the assessee's appeals holding that as the assessee held the securities as stock in trade, the entire amount paid by the assessee for the purchase of such securities, which included interest for the broken period, was deductible.

The High Court, following ***Vijaya Bank Ltd. vs. Addl. CIT [1991] 187 ITR 541 (SC); 1991 Supp (2) SCC 147***, allowed the Department's appeals.

The Supreme Court allowed the assessee's appeal and held as under:

"i) A scheduled bank is governed by the provisions of the Banking Regulation Act, 1949. The 1949 Act, read with the guidelines of the Reserve Bank of India, requires banks to purchase Government securities to maintain the statutory liquidity ratio. The guidelines dated October 16, 2000 issued by the Reserve Bank of India categorise the Government securities into three categories: held to maturity; available for sale; and held for trading. The interest on the securities is paid on specific fixed dates called coupon dates, say after an interval of six months. When a bank purchases a security on a date falling between the dates on which the interest is payable on the security, the purchaser bank, in addition to the price of the security, has to pay an amount equivalent to the interest accrued for the period from the last interest payment till the date of purchase, that is, the interest for the broken period. When the interest becomes due after the purchase of the

security by the bank, interest for the entire period is paid to the purchaser bank, including the broken period interest. Therefore, in effect, the purchaser of securities gets interest from a date anterior to the date of acquisition till the date on which interest is first due after the date of purchase.

ii) Securities in the "available for sale" and "held for trading" categories of securities are not purchased as investments but are always held by banks as stock-in-trade. Therefore, the interest accrued on these two categories of securities will have to be treated as income from the business of the bank. Thus, after the deduction of broken period interest is allowed, the entire interest earned or accrued during the particular year is put to tax. Thus, what is taxed is the real income earned on the securities.

iii) The securities of the "held to maturity" category are usually held for a long term till their maturity. Therefore, such securities usually are valued at cost price or face value. In many cases, banks hold the same as investments. Whether the bank has held "held to maturity" securities as investment or stock-in-trade will depend on the facts of each case. "Held to maturity" securities can be said to be held as an investment (i) if the securities are actually held till maturity and are not transferred before, and (ii) if they are purchased at their cost price or face value.

iv) In ***CIT vs. CITI Bank N. A. (NO. 1) [2024] 469 ITR 273 (SC) ; 2008 SCC OnLine SC 2012***, the Supreme Court approved the view taken by the Bombay High Court in ***American Express International Banking Corporation vs. CIT [2002] 258 ITR 601 (Bom) ; 2002 SCC OnLine Bom 944*** that the interest paid for the broken period should not be considered as part of the purchase price, but should be allowed as revenue expenditure in the year of purchase of securities.

v) Securities that banks acquire as a part of the banking business are held as stock-in-trade and not as an investment.

vi) In the year 1998, the Reserve Bank of India issued a circular dated April 21, 1998, stating that bank should not capitalise broken period interest paid to the seller as a part of cost but treat it as an item of expenditure under the profit and loss account. A similar circular was issued on April 21, 2001, stating that bank should not capitalise the broken period interest paid to the seller as a cost but treated it as an item of expenditure under the profit and loss account. In 2007, the Central Board of Direct Taxes issued Circular No. 4 of 2007 ([2007] 291 ITR (St.) 384), observing that a taxpayer can have two portfolios. The first can be an investment portfolio comprising securities, which are to be treated as capital assets, and the other can be a trading portfolio comprising stock-in-trade, which are to be treated as trading assets.

vii) Whether a particular holding of shares is by way of investment or forms part of the stock-in-trade is a matter which is within the knowledge of the assessee. Therefore, on the facts, if it is found that "held to maturity" securities are held as an investment, the benefit of the broken period interest will not be available. The position will be otherwise if they are held as a trading asset.

viii) The Tribunal had recorded the conclusions that interest income on

securities right from A. Y. 1989-90 was being treated as interest on securities and was taxed u/s. 28 of the Act; that since the beginning, securities were treated as stock-in-trade and this had been upheld by the Department right from the A. Y. 1982-83 onwards; that the securities were held by the assessee as stock-in-trade. Thus, as a finding of fact, it was found that the assessee was treating the securities as stock-in-trade. As the securities were held as stock-in-trade, the income thereof was chargeable u/s. 28 of the Income-tax Act, 1961.

ix) Therefore, in the facts of the case, the interest on the broken period could not be considered capital expenditure and had to be treated as revenue expenditure, which could be allowed as a deduction."

3 *Dy. CIT vs. Sunil Kumar Sharma; [2024] 469 ITR 271 (SC): Dated 21/10/2024*

Search and seizure — Assessment of third party — Undisclosed income — Notices issued solely based on loose sheets and documents — Not "books of entry" or "evidence" — Notices void and illegal — Assessee's premises searched and documents pertaining to him seized — Conditions stipulated u/s. 153C not satisfied — Statement made by assessee u/s. 132(4) retracted and not of any evidentiary value — Consolidated satisfaction note recorded for different assessment years — High Court holding assessment orders required to be quashed — Supreme Court dismissed the special leave petition filed by the Revenue: Ss. 69A, 132(4) and 153C of ITA 1961: A. Ys. 2012-13 to 2018-19

Against notices issued by the Assessing Officer, pursuant to a search and seizure operation, u/s. 153C and 143(2) of the Income-tax Act, 1961, and assessment orders making additions u/s. 69A for the A. Y. 2015-16, the assessee filed a writ petition upon which the single judge (***Sunil Kumar Sharma vs. DY. CIT [2022] 448 ITR 485 (Karn); 2022 SCC OnLine Kar 1741***) quashed the notices issued and the further proceedings and remanded the matter for consideration afresh.

On appeals, the Division Bench (***DY. CIT vs. Sunil Kumar Sharma [2024] 469 ITR 197 (Karn)***) held (i) that the notices u/s. 153C , having been issued solely based on loose sheets and documents which were termed as "diaries" but which did not come under the ambit and scope of "books of entry" or as "evidence", were void and illegal, that since the assessee's premises was searched and documents pertaining to him were seized, the conditions stipulated u/s. 153C had not been satisfied, that since the statement made by KR u/s. 132(4) was later retracted, it did not hold any evidentiary value, that the assessment orders for the A. Ys. 2015-16, 2016-17, 2017-18 and 2018-19 were required to be quashed that a consolidated satisfaction note recorded for different assessment years vitiated the entire assessment proceedings, that the order in the writ petition did not suffer from any infirmity warranting interference, and that the writ petitions were maintainable.

The Supreme Court dismissed the petition for special leave to appeal and held as under:

"i) Heard the learned counsel appearing for the petitioners. We are not inclined to interfere with the impugned judgment passed by the High Court.

ii) Hence, the special leave petitions are dismissed."

DIRECT TAXES
High Court

Jitendra Singh
Advocate

Radha Halbe
Advocate

Harsh Shah
Advocate

1 ***Sanjay Ratra vs. ACIT [2025] 170 taxmann.com 243 (Bombay)***

Reassessment - Notice - Section 148 of the Income Tax Act 1961 - issues identified by risk management strategy were not examined during the scrutiny assessment - notice valid.

Facts

The assessee filed his return of income disclosing capital gain of ₹ 66,59,598/-. Subsequently, the assessee filed revised return of income wherein the capital gain declared in the original return was kept intact. The assessment was finalised under section 143(3) of the Act accepting the returned income vide order dated 30 November 2018. On 24 March 2023, the AO issued notice under section 148A(b) based on information received under the Risk Management Strategy formulated by the Central Board of Direct Taxes (CBDT). The information indicated that the assessee had received undisclosed cash receipts of ₹ 1.30 crore and had credit card transactions amounting to ₹ 19,09,144/-, which were not examined during the original assessment. The notice stated that since the amount involved was more than ₹ 50 lakhs, a larger period under section 149(1)(b) was invoked. It also mentioned that the return of income for the impugned year under consideration had not been filed. The assessee objected to the said notice by contending that credit card expenses were incurred for the general and travel related expenditures. With respect to the cash deposits the assessee explained the reasons as to why same should not be added in his hands. The AO however rejected the objections of the assessee and issued the order under section 148A(d) of the Act holding that it is fit case for issuing the notice under section 148 of the Act. The AO also issued a notice under section 148 of the Act to initiate the reassessment proceedings. The assessee being aggrieved by the impugned notice issued under section 148 of the Act, challenged the same before the Hon'ble Bombay High Court.

Ruling of the High Court

Hon'ble Bombay High Court upheld the action of the AO in issuing the impugned notice under section 148 of the Act by observing that the issues of undisclosed cash receipts and credit card transactions were not examined during the original assessment proceedings, as the information was received after the conclusion of those proceedings. Hon'ble Court further observed that the reopening was not solely based on the incorrect statement that the return was not filed and the same was a typographical error and did not affect the basis

for reopening. The court further found that the approval for reopening was given after due consideration of the material on record and was not without application of mind. Hence, the reopening of assessment is valid.

2 ***Pr. CIT vs. International Coal Ventures (P.) Ltd. [2025] 170 taxmann.com 168 (Delhi)***

Interest income – chargeable as – section 56 of the Income Tax Act 1961 - Capital Work in progress or income from other sources income – interest on funds kept in fixed deposits, which were earmarked for acquisition of an asset, ought to be reduced from capital work in progress – cannot be treated as income from other sources.

Facts

The assessee was incorporated to ensure an adequate and dependable coal supply for its promoter companies, which include Steel Authority of India Limited (SAIL), Coal India Limited (CIL), Rashtriya Ispat Nigam Limited (RINL), National Mining Development Corporation Limited (NMDC), and National Thermal Power Corporation Limited (NTPC). During FY 2011-12, the assessee received equity contributions from its promoters and an advance of ₹ 156 crores from RINL to acquire a coal mine overseas. The assessee had made short term fixed deposits from these funds in bank. The proposal to acquire the coal mine was abandoned, and the funds were refunded to the promoters. In the meantime, the assessee had earned interest income to the tune of ₹ 11.46 crores from the short term fixed deposits and paid interest of ₹ 11.15 crores to its promoters from the same. During the course of assessment proceedings, the AO held that difference between the interest earned and paid would be chargeable to tax as 'income from other sources'. On appeal the CIT(A) rejected the assessee's contention that the interest earned should be set off against amounts capitalized as 'Capital Work-in-Progress' (CWIP). The CIT(A) further held that the interest earned was a 'revenue receipt' and not a 'capital receipt,' and therefore rightly taxed under ‘income from other sources.’

The assessee being aggrieved carried the matter in further appeal before the Appellate Tribunal. The Tribunal held that the funds were received for acquiring a coal mine, and the interest earned was inextricably linked to this purpose. Therefore, the Tribunal allowed the set-off of interest paid against interest received and the balance against CWIP. The Tribunal further held that the interest earned is not chargeable to tax under ‘income from other sources.’

The revenue - department being further aggrieved by the order of the Tribunal preferred an appeal before the Hon’ble Delhi High Court under section 260A of the Act.

Ruling of High Court

Hon’ble High Court was pleased to dismiss the appeal of the department by observing that Accounting Standard 16 and India Accounting Standard (Ind AS) 23, state that borrowing costs directly attributable to the acquisition of a qualifying asset should be capitalized. These standards explain that borrowing costs eligible for capitalization should be determined as the actual borrowing costs incurred on that borrowing during the period less any income on the temporary investment of those borrowings. Hon’ble High Court further held that interest on funds temporarily kept in fixed deposits for acquiring a capital asset should be accounted for as part of the capital cost.

Thus, the amounts received by the assessee which are directly linked to the acquisition or construction of the asset are required to be reduced from the capital cost of the said asset. Further, the funds kept in the bank was not surplus funds but were called for and earmarked for acquiring a coal mine. Accordingly, interest received on borrowed funds temporarily held in interest-bearing deposits is part of the capital cost and should be credited to CWIP.

3 *Income-tax Officer vs. Smt. Preethi [2025] 170 taxmann.com 673 (Karnataka)*

Reassessment – Notice – section 148 of the Income Tax Act 1961 - notice issued under section 148 against a deceased person is invalid in law - Proceedings against the legal representatives can only be initiated in accordance with section 159(2)(b) of the Act.

Facts

The assessee before the Hon'ble Karnataka High Court was expired on 14.10.2022. A notice dated 13.03.2023 was issued by the department under section 148 to reopen the case of the assessee for the Assessment Year 2016-17. The legal representatives of the deceased the said notice before the Hon'ble Karnataka High Court on the ground that the notice under section 148 was issued against a deceased person and therefore, the same is invalid. As the notice itself is flawed, all subsequent proceedings, including the assessment order under section 147 read with section 144 and the penalty proceedings are bad in law and the same must be set aside.

Ruling of the Hon'ble High Court

Hon'ble Karnataka High Court was pleased to allow the petition of the assessee by observing that the notice is issued against a dead person and therefore the notice is invalid in law. If the assessee had died before the notice was issued, the only procedure that would have permitted the continuation of present proceedings would be the satisfaction of the criteria under section 159(2)(b) of the Act. Any fresh proceedings against the deceased, as sought by the revenue, could only proceed if they could have been initiated against the deceased had they been alive. Hon'ble Court has further held that the proceedings pertain to the assessment year 2016-17 and according to the proviso to section 149(1)(b), a notice under section 148 cannot be issued after 31.03.2023, which is beyond the 6 year limit from the end of the assessment year 2016-17. Therefore, proceedings against the legal representative could be initiated only within this outer limit. Further, the contention of the revenue that if the intimation of demise of assessee was provided within time, the department could have initiated the fresh proceedings against the legal representative does not hold good as there is no statutory obligation on the deceased assessee to intimate the department.

4 *Chamber of Tax Consultants vs. Director General of Income Tax (systems) [2025] 170 taxmann.com 707 (Bombay)*

Rebate of Income-tax – section 87A of the Income Tax Act 1961 – the revenue is not justified in modifying its utility to prevent the assessee from claiming the rebate under section 87A at the threshold of uploading their return of income online.

Facts

The Revenue Department issued a notification announcing a modification in the utility,

effective from July 5, 2024, which unilaterally disabled assessee's from claiming the rebate under Section 87A of the Income-tax Act. Consequently, taxpayers, despite being statutorily eligible for the rebate, were effectively deprived of their entitlements due to technical modifications introduced by the Revenue Department. The assessee challenged the said modification before the Hon’ble Bombay High Court and an interim relief was granted by the Hon’ble Court by directing the Central Board of Direct Taxes (CBDT) to issue a notification extending the due date for the electronic filing of income tax returns. This was done to ensure that taxpayers eligible for the rebate under Section 87A could exercise their statutory rights without being hindered by procedural issues.

In compliance with the court’s directive, the CBDT issued a notification on December 31, 2024, extending the deadline for the submission of returns under Sections 139(4)/139(5) for the relevant assessment year in the case of resident individuals from December 31, 2024, to January 15, 2025.

The assessee had made several representations to the Revenue Department regarding the utility's failure to accommodate the claim under Section 87A. However, having been unable to obtain a satisfactory resolution, they approached the High Court for redressal of their grievances. The denial of the rebate, resulting from the modification of the utility on July 5, 2024, was challenged in the present petition. The assessee contended that the rebate under Section 87A should be allowed not only from the tax computed under Section 115BAC but also from the tax computed under other provisions of Chapter XII of the Act, unless specific provisions expressly precluded the claim.

Ruling of the Hon’ble High Court

Hon’ble High Court was pleased to allow the Petitioner by observing that the issue of whether Section 87A rebates apply solely to taxes calculated under Section 115BAC or also to taxes computed under other provisions of Chapter XII required a thorough interpretation of the provisions and their interplay. This issue would have to be addressed through an adjudicative process rather than by the Revenue preemptively modifying the utility to prevent the claim. Thus, the Revenue's modification of the utility to prevent an assessee from raising a claim under Section 87A at the threshold was unjustified, as the claim is debatable and can be tested through the statutory process.

■●■

“The purer the mind, the easier it is to control it.”

— *Swami Vivekananda*

DIRECT TAXES
Tribunal

CA Nikhil Mutha　CA Viraj Mehta　CA Kinjal Bhuta
Advocate

1 ***ARREDS Trust vs. CIT (Exemption) [ITA No. 1665/Chny/2024, dated 08/01/2025]***

Section 12AB – Rejection of Registration due to Procedural Error in Form 10A – matter set aside to the CIT(E)

Facts

The Assessee, ARREDS Trust, was established on 05/01/2005 with objectives of promoting education and charitable activities, including disaster rehabilitation. The trust was granted registration under Section 12AA on 31/08/2005, effective from AY 2005-06 onwards. Following an amendment to its trust deed on 06/06/2019, the Assessee applied for fresh registration under Section 12A(1)(ab) in Form 10A on 04/07/2019, which was initially rejected by the CIT(E) on 09/01/2020.

The Hon'ble Tribunal, in its order dated 22/06/2022, set aside the rejection order and remanded the matter to the CIT(E). Subsequently, on 08/11/2023, the CIT(E) granted registration under Section 12AA, effective from AY 2020-21 onwards.

In light of multiple extensions provided from time to time to charitable organizations post April 2021, the Assessee was required to reapply for registration under Section 12AB. On 08/11/2023, the Assessee filed an application in Form 10A under Section 12A(1)(ac)(iii) (meant for fresh registration). The CIT(E) rejected the application on 17/05/2024, on the grounds that the Assessee applied under the incorrect sub-clause, thereby leaving the Trust without valid registration under Section 12AB from that date.

Held

The Hon'ble Tribunal acknowledged that the Assessee inadvertently selected the wrong sub-clause (iii) instead of (i) under Section 12A(1)(ac) while filing Form 10A. Since the Trust was already registered under Section 12AA it should have applied under sub-clause (i) for re-registration, which would have granted it automatic registration under Section 12AB for five years (AY 2022-23 to AY 2026-27).

The Hon'ble Tribunal held that denying a legitimate registration due to a procedural mistake was contrary to the intent of the law, especially when the Assessee had been duly registered under Section 12AA before the amendment. It observed that the Assessee was eligible for re-registration under Section 12AB(1)(a) for a period of five years and that the rejection by the CIT(E) caused unintended hardship and procedural injustice, violating Article 14 of the Constitution of India.

The Hon'ble Tribunal set aside the CIT(E)'s rejection order and directed the authority to treat the Assessee's application as if it had been filed under Section 12A(1)(ac)(i). It further instructed the CIT(E) to grant registration under Section 12AB for five years from AY 2022-23 onwards.

The Hon'ble Tribunal acknowledged various CBDT Circulars extending deadlines for filing registration applications due to COVID-19 and digital glitches. It emphasized that the Assessee had applied within the extended deadline (i.e., before 30/06/2024) and hence the application should not have been rejected on a mere technical error. It also allowed the Assessee the option to file a hard copy of Form 10A under the correct sub-clause if required.

The matter was remanded back to the CIT(E) with a direction to process the Assessee's application correctly under Section 12A(1)(ac)(i). The CIT(E) was instructed to grant registration under Section 12AB(1)(a) for five years from AY 2022-23 onwards.

2

Jubilant Foodworks Ltd. vs. DCIT (ITA No.2886/DEL/2024, ITA No. 2887/DEL/2024) (AY 12-13, AY 13-14)

Section 37 – ESOP expenditure claimed during cross examination before ITAT – ITAT remitted issue to the file of AO- Shares issued below market price - Notional loss not allowable – ITAT accepted allowability of ESOP expense as business expense- decisions of higher authorities binding on lower authorities – even if SC pending – Judicial discipline to be followed

Facts

The assessee company filed its return of income for AY 202-13 declaring total income of ₹ 129 crs/- which was processed u/s.143(1) of the Act increasing the total income of the assessee to ₹ 168 crs. Subsequently the case was selected for scrutiny u/s. 143(3). The assessment was completed with determination of total income of ₹ 204 crs. The assessee filed an appeal to the CIT(A), pursuant to which the Assessing Officer passed a consequential order u/s. 143(3) r.w.s. 250 of the Act determining a total income of ₹ 129 crs and accepting the returned income. The appeal filed by the Revenue to the Hon. Tribunal was disposed of. The assessee had filed the cross objection on the issue of ESOP expenses, the Hon.Tribunal remitted the issue back to the file of AO for examination.

While giving effect to the order of that Hon. Tribunal, AO observed that assessee had not claimed the expenditure in the return of income nor during the proceedings before CIT(A). This expenditure was claimed directly during the cross objection before the Hon. Tribunal.AO observed that there is no specific provision for allowing such ESOP expenses from Section 30 to 36 of the Act. The residuary section 37 is also meant for revenue expenses incurred wholly and exclusively for business purposes. He further observed that since ESOP expenses are being claimed on account of issuance of shares at below market price, short receipt of share premium will only be a notional loss which is not allowable as per the provisions of the Act and disallowed the assessee's claim. On appeal, the CIT(A) upheld the order of the AO on the grounds that on this issue of allowability of ESOP expenses, the matter is pending before the Supreme Court and therefore claim cannot be allowed. The CIT(A) also held that claiming ESOP expenditure after 9 years of filing return of income by filing cross objections before ITAT on revenues appeal is not in accordance with law. The assessee preferred an appeal before the Hon'ble ITAT once again.

Held

Before the Tribunal it was submitted by the AR of the assessee, on the merits of the case on the relating to deductibility of ESOP expenditure, ITAT in principle had accepted the allowability of ESOP as a business expenditure. The only reason for remanding the issue to the assessing authorities was to verify the amounts claimed and not to opine on the allowability thereof. The Hon'ble Tribunal as regards merits of the case i.e. relating to deductibility of ESOP expenditure is concerned, observed that the ITAT accepted the allowability of ESOP as a business expenditure based on the findings of Special Bench, Bangalore in case of ***Biocon Ltd vs. DCIT (35 taxmann.com 335***) and subsequently upheld the abovesaid findings of Special Bench by the Hon'ble Karnataka High Court (121 taxmann.com 351). In this case, it is fact on record that on account of Nil expenditure charged to profit & loss account for the year under consideration for ESOP expenditure, no deduction was claimed by the assessee in the return of income. Considering, the fact that this issue was raised first time before ITAT, the same needed examination at the lower level, therefore, the coordinate Bench had remitted back the issue to the file of Assessing Officer. The Assessing Officer has rejected the claim of the assessee without considering the decision of the ITAT, Special Bench, Bangalore and Hon'ble Karnataka High Court. It was held that as far as the lower authorities are concerned, the abovesaid two decisions are binding on the authorities below as well as for the Tribunal. After the decision of higher wisdom, still the authorities are not respecting the same. It is clearly disrespecting the principles of judicial precedents and judicial discipline.

It was further held that during the first round of appellate proceedings, the Tribunal after consideration the facts and the position of law, allowed the additional claim of ESOP expenditure. Since this issue was first time raised in the appellate forum and not claimed in the ROI, the coordinate Bench felt that this issue needs examination and remitted the issue to the file of Assessing Officer. However, Assessing Officer applied his lower wisdom and rejected the claim of the assessee without considering the higher wisdom of Hon'ble High Court and ITAT Special Bench. The coordinate Bench felt that this issue needs examination and gave one opportunity to the Revenue, but lower authorities did not care for the opportunity and in order to keep the issue alive since the ESOP issue was pending before Hon'ble Supreme Court, they have grossly rejected the claim of the assessee. Following the decision of Hon'ble High Court in ***Biocon Ltd. (supra)***, the Tribunal directed the Assessing Officer to allow the claim of the assessee.

3 ***DCIT vs. Kruti Lalitkumar Jain ([2025] 170 taxmann.com 465 (Pune - Trib.))(AY 15-16)***

Section 54F – Sale of developmental and lease rights – invested sale proceeds in purchase of residential house – claimed deduction u/s. 54F- amount invested by entering into MoU – Later MoU was registered – deduction u/s. 54F could not be denied as investment done in a company where assessee is shareholder.

Facts

The assessee sold the developmental rights and lease rights to two different parties. The long term capital gain arising from the two transactions worked out to be ₹ 6.55Crs. From this capital gains, the assessee invested the amount in house property from KHC and claimed deduction under section 54F of the Act. During the assessment, the Assessing Officer observed that the assessee had not submitted any registered document to establish that she has purchased a residential house.

The assessee submitted a copy of MOU as an evidence for purchase of property. The Assessing Officer rejected the claim of exemption u/s 54F of the Act on the ground that (i) the assessee has not submitted a registered document to establish that she has purchased the residential house, (ii) MoU dated 21.08.2015 is un-registered, (iii) as per clauses of MoU, 1/4th right in the house property is disputed and a civil suit in this regard is still pending which shows that KHC was not the owner of the property at the time of making MoU, (v) MoU is nothing but a colourable devise with the sole purpose of evading taxes, (vi) MoU dated 21.08.2015 is nothing but a document made with family members and related concern with the purpose to suit the assessee. On appeal, CIT(A) allowed the deduction u/s. 54F of the Act recognising the fact that the sale deed was later registered by the assessee and all conditions of section 54F were satisfied.

Aggrieved by the CIT(A) order, appeal is filed by the revenue.

Held

The Hon.Tribunal observed that the moot question under consideration is whether the assessee is entitled to claim deduction u/s 54F of the Act when the actual sale deed has not been entered into within the specified period and an MoU has been entered into with a concern where the assessee and the family members are shareholders. The Tribunal held that there was no dispute that KHC with whom the MoU was entered into was absolute owner of the 3/4th share in the property which was purchased. Further it was no dispute that the entire sale consideration was invested by the assessee for purchase of property within the time period allowed u/s. 54F of the Act and has been transferred from the bank account of the assessee to the bank account of KHC as on the date of MoU. The assessee has demonstrated that the actual sale deed which was later executed and registered in 2018 contains the reference of the MoU entered in 2015 between the parties and also refers to the payment made as on the date of MoU. The Tribunal affirmed the Authorised representative's reliance on the decision of ***CIT vs. Dr. Laxmichand Narpal Nagda (211 ITR 804)*** of Bombay High Court which has held that when the whole consideration was paid, possession of the flat was obtained and the flat was actually put to use for dwelling, deduction u/s 54 cannot be denied for mere non-registration of the flat. The Tribunal also relied on the decision of Karnataka High Court in the case of ***CIT vs. Mrs. Shakuntala Devi***, which had held that that the utilization of capital gains in construction of residential house within a period of two years would suffice to claim exemption under section 54 irrespective of fact that neither sale transaction was concluded, nor registration had taken place within 2 years. Further, reliance was placed on the Hon'ble Karnataka High Court in the case of ***CIT vs. Smt. B.S. Shantakumar (233 Taxman 347)*** has held that once it is established by the assessee that she had invested entire net consideration in construction of residential house within stipulated period, it would meet requirement of section 54F and she would be entitled to get benefit of section 54F even if the construction was not completed within a period of three years. As regards to the question whether this MoU was entered with a company where the assessee and the relatives of the assessee are shareholders, the Tribunal relied on the Bombay High Court decision in case of ***Lalitkumar Kesarimal Jain vs. DCIT (180 ITD 832)*** which had held that mere fact that assessee was one of associated parties in said concern which was developing housing project, could not be a ground to deny benefit of deduction u/s 54F. The Tribunal also relied on the decision of Supreme Court in case of of ***Fibre Boards (P) Ltd. vs. CIT (376 ITR 596)*** has held that advances paid

for purpose of purchase and/or acquisition of plant/machinery, and land/building amount to utilization by assessee of capital gains under section 54G. Based on the collective rationale of all these decisions, it was held that the assessee has admittedly entered into MoU and paid an amount of ₹ 10.60 crores to KHC which finds mention in the sale deed executed subsequently, therefore, merely because the assessee and his family members are the shareholders in KUD and that the sale deed has been executed after a period of two years, the assessee cannot be denied the benefit of deduction u/s 54F of the Act.

4 *Nehal Brothers v. ITO (ITA No. 2541/Mum/2023 dt. 22.01.2025) (AY 16-17)*

Section 68 – Loan Taken – Creditworthiness doubted by AO as income was lesser than the loan given – Not necessary that loan should be advanced from its income or own funds only – enough if creditors were having sufficient funds before giving loan - Addition directed to be deleted

Facts

AO has made the addition u/s. 68 of the Act for the reason that the assessee did not discharge the onus placed upon its shoulders u/s. 68 of the Act, i.e., the assessee did not furnish the documents to prove the three main ingredients viz., the identity of the creditors, the creditworthiness of the creditors and the genuineness of the transaction. Therefore, appeal was filed before CIT(A). CIT(A) after considering the remand report, CIT(A) partly allowed the appeal wherein the addition of loans received from the above said five creditors was confirmed.

Held

Hon. ITAT held that the assessee has furnished the details of PAN and copies of their income tax returns. These documents would prove the identity of the creditors. The assessee has also furnished the copies of the financial statements of the creditors and also copies of the bank statements. A perusal of the same would show that the creditors were having sufficient balances in their bank accounts before giving loans to the assessee. The case of the AO was that the income declared by the creditors was not commensurate with the amount of loan advanced by them. It was held that it is not necessary that the loan should be advanced by the creditor out of its income or from their own funds only. There is no bar under the law that a creditor should not give loan to others out of its borrowed funds. Hence, in order to prove the creditworthiness, what is required to be seen is whether the creditor was having sufficient funds before giving loan to the assessee. Creditors were having sufficient funds before lending money to the assessee. Further, it was not the case that these creditors had deposited cash into the bank accounts before giving loan to the assessee. Hence, the creditworthiness of the creditors would also stand proved. Since the loan transaction has taken place through banking channels, the genuineness of the transaction also stood proved. Thus, the assessee has discharged its primary onus placed upon it u/s. 68 of the Act. On above basis, appeal filed by the assessee was allowed and therefore additions were directed to be deleted.

5 *M/s Bluesun Exports Pvt Ltd v. ITO (ITA No. 3174/Mum/2023 dt. 16.01.2025) (AY 09-10)*

Section 68 – Share Application Money – Information received from investigation wing on account that the lender companies are managed by Pravin Kumar Jain –Identity, Creditworthiness, Genuineness Proved – Request made to provide evidences and cross

examination – No details provided – Addition directed to be deleted

Facts

AO received information from the investigation wing that they have conducted search in Pravin Kumar Jain group of cases and found out that they were providing only accommodation entries, inter alia, in the form of giving share application money. AO placed reliance fully on the report of the Investigation wing and also the statement recorded from Shri Pravin Kumar Jain and other officials of the group. Assessee furnished all the documents to prove the share application money in terms of sec. 68 of the Act. However, AO held that the genuineness of transaction is questionable, in view of the report given by the Investigation wing and hence made addition u/s 68. Therefore, appeal was filed before CIT(A). CIT(A) confirmed the assessment order.

Held

Hon. ITAT held that it is the primary responsibility of the assessee to prove the cash credits in terms of sec. 68 of the Act, i.e., it has to prove three main ingredients, viz., identity of the creditor, the credit worthiness of the creditor and the genuineness of the transactions. If the assessee discharges the initial onus placed upon it, then the burden to disprove those documents would shift to the AO. If the assessing officer could not disprove the documents by any other credible material, then the AO cannot make addition u/s 68 of the Act. AO has primarily relied on the report given by the Investigation wing. It was further held that the AO has specifically observed in the assessment order that the revenue is not doubting the receipt of share application money, but is having doubt on the genuineness of transactions. When the assessee has received the share application money through banking channels and the said payments are duly reflected in the financial statements of these companies & also in the financial statement of the assessee company and hence there is no scope for doubting the genuineness of the transactions. It is well settled proposition of law that the AO cannot rely upon any material without confronting them with the assessee. Therefore on above basis, appeal filed by the assessee was allowed and therefore additions were directed to be deleted.

6

DCIT vs. M/s SEBCO Property Private Limited [ITA No. 1428 to 1432/Chny/2024 and ITA No. 1467 to 1471/Chny/2024 dated 15/01/2025] [AY 2017-18 to AY 2021-22]

Section 145(3) – In the context of search - Books of the assessee found to be inaccurate and unreliable - Cannot be used to determine the income.

Section 40A(3) and 37(1) – No separate disallowance if the income is estimated by adopting net profit rate.

Facts

The assessee is a resident corporate entity engaged in the real estate property development and construction activities. The assessee was subjected to search action under section 132 of the Act leading to seizure of cash of INR 9.19 Crores and certain documents. It was also found that the assessee maintained the accounts in Tally in two difference servers – Server Y and Server Z. It was concluded by the Ld. AO that the Server Y contained regular business transactions whereas the Server Z contained all unaccounted cash transactions, including bogus expenses and off the record sales. The Ld. AO issued notice under section 153A of the Act in response to which the assessee admitted income of INR 1.34 crores. Based on seized documents and digital records

including excel of stock register found in pen drive, the AO identified inflated contractor payments, unaccounted sales receipts, stock discrepancies, and personal/prohibited expenditures. The AO recomputed the assessee's profit by consolidating data from both servers and proposed an additional income of INR 48.97 crores. The Ld. AO further disallowed certain expenses as bogus expenses to contractors of INR 3.20 crores and prohibited/personal expenses of INR 2.05 crores under section 40A(3) of the Act. The opening and closing stocks values were substituted by the values reflected in the excel sheet found during the search proceedings. Aggrieved by the same, the assessee filed an Appeal before the Ld. Commissioner of Income Tax (Appeals). The Ld. CIT(A) deleted the addition made by the Ld. AO. Aggrieved by the same, the revenue is in appeal before the Hon'ble Income Tax Appellate Tribunal (ITAT).

Held

The Hon'ble Tribunal held that there existed gross discrepancies in the financial statements from the Z-server, where 'Current Liabilities' were shown on the Assets side and 'Current Assets' on the Liabilities side. These defects indicated that the Z-server accounts were incomplete and unreliable for assessing income. There was every possibility that non-income receipts were credited to the Profit & Loss Account, while income receipts were recorded as 'Current Liabilities'. Accepting the AO's computations led to exorbitant net profit rates, ranging from 107% in AY 2017-18 to 55% in AY 2020-21, with an average NP rate of 47%, which was abnormally high for this business. The fluctuation in profit rates suggested that income of one year may have been accounted in another year, supporting the CIT(A)'s rejection of books of accounts. Given these facts, the assessee's books were inaccurate, unreliable, and incomplete, and the failure to reconcile errors further justified their rejection under Section 145(3).

The Hon'ble Tribunal also upheld the findings of the Ld. CIT(A), noting that the assessee had not maintained proper stock records and the Assessing Officer relied solely on an unverified excel sheet found during the search. The assessee contended that these sheets were prepared for investor presentations and did not reflect actual cost or market value. It was established that the excel sheet calculations were inconsistent and lacked supporting cost sheets. Accordingly, the Ld. CIT(A) rightly rejected the stock valuation based on the excel sheet as unreliable and without a valid basis.

The Hon'ble Tribunal relied on the decision of wherein the Hon'ble High Court upheld the decision of Tribunal in rejecting the books of Hon'ble Allahabad High Court in case of ***Shri Venkteshwar Sugar Mills (341 ITR 588)*** accounts since the same were not properly maintained. The Hon'ble Tribunal also relied on the decision of Hon'ble Punjab & Haryana High Court in ***Mahavir Rice Mills vs. CIT (153 Taxmann.com 686***) wherein the Hon'ble High Court upheld the estimation made by rejecting the books of account of the assessee in the absence of details of stock. The same view was taken by Hon'ble Calcutta High Court in case of ***Amiya Kumar Roy & Bros. vs. CIT (206 ITR 306)*** and by Hon'ble Chennai Tribunal in the case of M/s Beach Minerals Company (ITA No.366/Chny/2023 dated 09-08-2023).

The Hon'ble Tribunal further held that once the books have been rejected and the income has been estimated on gross receipts, no separate addition/disallowances under section 37(1) and section 40A(3) of the Act would be warranted. The same view was taken by the Hon'ble High Court of Madras in case ***CIT vs. Amman Steel & Allied Industries (377 ITR 568)***.

The additional income of INR 26.92 crores offered in the return of income filed in response to notices issued under section 153A of the Act, is much more than the cash found of INR 9.19 crores and therefore, in absence of any other source of income, the benefit of telescoping would be available to the assessee. Consequently, the Hon'ble Tribunal dismissed all the appeals filed by the revenue.

7 *DCIT v. L Javerchand Jewellers Pvt.Ltd. (ITA No.1542/Bang/2024) (AY 19-20)*

Section 270A – Warrant was issued against a jewellery brand – search conducted against assessee being a major supplier of the jewellery brand – assessee admitted the undisclosed income – penalty proceedings initiated u/s. 270A of the Act – AO failed to specify exact limb of misreporting as per Section 270A(9) of the Act –gross violation of principle of natural justice - conditions stated must be strictly followed.

Facts

The assessee was a company engaged in the wholesale business of trading in gold jewellery. Search was conducted primarily against a Jewellery group to whom the assessee company was On admission of the undisclosed income by the assessee, AO passed an assessment order against the assessee quantifying the additional income at the rate of 3% of undisclosed turnover amounting to Rs. 2,88,00,000/- the assessee filed a return of income in response to notice u/s. 153C declaring the total income admitted during the course of proceedings. Subsequently, the AO initiated penalty proceedings and issued a notice u/s. 274 r.w.s 270A of the Act directing the assessee to show cause as to why an order imposing a penalty should not be made u/s. 270A of the Act for under-reporting of income in consequence of mis-reporting. On appeal, CIT(A) deleted the penalty levied u/s. 270A of the Act as CIT(A) could not find any specific reference to the applicability of clause (a) to (g) of Sec 270A(2) to the present case nor did the AO point out the specific clause u/s. 270A(9) or the clauses (a) to (f) of section 270A(9) that applies to the assessee. Aggrieved by the order, the Revenue filed an appeal.

Held

The Hon. Tribunal observed that the AO initiated the penalty proceeding u/s 270A for under reporting of income in consequence of misreporting of income. However, there was no whisper of whether the alleged income was misreported or under-reported. The AO issued a Show Cause Notice and passed the assessment order without discussing under which limb of 270A(2) & 270A(9) of the Act, penalty proceeding was levied. For the applicability of section 270A of the Act, the conditions stated therein must be strictly followed. Hon Tribunal was of the opinion that penalty u/s 270A of the Act cannot be levied when the income was arrived at based on estimation and unless the person has been communicated the specific incidence vis-à-vis action triggering the imposition of penalty, it would drastically obstruct an assessee from enforcing his right to challenge the charge alleged against him, thus resulting into a gross violation of the principles of natural justice. The legislature has used the word "may" in section 270A(1) of the Act which clearly says that it is discretionary on the part of the AO to levy penalty or not. Penalty should not be levied in a light hearted manner or in routine manner and not every additions/disallowances are liable for penalty.

The primary onus is on the revenue to prove that assessee falls under particular limb of default. The AO has to bring the case in the four corners of the sections in order to levy penalty which, the AO failed to do so. Therefore, it was held the explanation

offered by the assessee is *bonafide* and the assessee has disclosed all material facts to substantiate the explanation during the course of assessment. On the above basis, appeal filed by the assessee was allowed and therefore penalty u/s. 270A of the Act was confirmed to be deleted.

8 *Capacite Infraprojects Ltd. v. ACIT (ITA No. 6308/Mum/2024 dt. 31.01.2025) (AY 16-17)*

Section 271(1)(c) – Penalty leived on disallowance of employees contribution towards PF and ESIC u/s 36(1)(va) r.w.s. 2(24)(x) – disallowance sustained based on decision of Apex Court judgement - Issue debatable in law – No Penalty can be levied

Facts

Penalty u/s 271(1)(c) of ₹ 54,51,888/-was levied in respect of disallowance of ₹ 1,57,53,261/- made under Section 36(1)(va) read with Section 2(24)(x) of the Act. On appeal before CIT(A), CIT(A) dismissed the appeal. Being aggrieved, appeal filed before Hon. ITAT.

Held

Hon. ITAT held that deduction of ₹ 1,57,53,261/- was claimed by the Assessee under Section 36(1)(va) read with Section 43B of the Act in respect of employees' contribution towards Provident Fund (PF) and Employees' State Insurance Corporation (ESIC) by placing reliance upon the judgment of the Hon'ble Bombay High Court in the case of ***CIT vs. Ghatge Patil Transports Ltd. (2015) 53 taxmann.com 141 (Bombay), CIT vs. Hindustan Organics Chemicals Ltd. [2014] 366 ITR 1 (Bombay)*** and the judgment of the Hon'ble Supreme Court in the case of ***CIT vs. Alom Extrusions Ltd. [2009] 319 ITR 306 (SC).*** Subsequently, the Hon'ble Supreme Court in the case of ***Checkmate Services Private Ltd. vs. CIT [2022] 448 ITR 518 (SC)*** has taken a contrary view and has held that deduction for employees' contribution towards PF/ESI shall be allowed as deduction only if the deposit is made by the employer on or before the due date specified in the applicable statute in view of Section 2(24)(x) read with Section 36(1)(va) of the Act. The issue was debatable and was finally settled by the Hon'ble Supreme Court after examining the contrary views taken by the different high courts. Thus Hon. ITAT relying on decision of Hon'ble Bombay High Court in the case of ***Nayan Builders & Developers Ltd. : [2014] 368 ITR 722 (Bombay)*** deleted the penalty on account that the issue was debatable in law and thereby no penalty can be levied.

> "The organs or Indriyas together with the mind or Manas, the determinative faculty or Buddhi, and egoism or Ahamkâra, form the group called the Antahkarana or the internal instrument."
>
> — *Swami Vivekananda*

INTERNATIONAL TAXATION
Case Law Update

Dr. CA Sunil Moti Lala
Advocate

A. SUPREME COURT

1 *Income-tax Officer vs. Deccan Holdings B.V. - [2025] 170 taxmann.com 663 (SC)*

Where the Hon'ble High Court by relying on decisions of same High Court in other cases held that the dividend received by a Netherland based company from Indian company would bear a lower withholding tax rate of 5 per cent instead of 10 per cent in view of the MFN clause in DTAA between India and Netherland, since the judgments relied upon were set aside by Hon'ble Supreme Court in ***Assessing Officer (International Taxation) vs. Nestle SA [2023] 155 taxmann.com 384 (SC)/[2024] 296 Taxman 580 (SC)/[2023] 458 ITR 756 (SC)***, impugned HC order was also set aside by the Hon'ble Apex Court.

2 *Authority for Advance Rulings (Income-tax) vs. Tiger Global International II Holdings* - [2025] 170 taxmann.com 706 (SC)*

Where the Hon'ble HC held that the Mauritian assessee company was not a " shell/conduit company" as defined in the LOB clause of the Indo Mauritius Treaty (Article 27A) and accordingly allowed tax exemption under the 'grandfathering clause' (Article 13(3a)) in respect of capital gains earned by it from 'indirect transfers' of Flipkart Singapore shares acquired by it before 01.04.2017; since the issues raised in Revenue's SLP required thorough consideration, operation of impugned HC ruling was stayed by the Hon'ble Apex Court pending decision of SLP.

B. HIGH COURT

3 *Pr. Commissioner of Income Tax vs. Samsung Electronics Co. Ltd. - [2025] 170 taxmann.com 417 (Delhi)*

Where assessee, a South Korean company, had seconded employees in India who were not discharging functions or performing activities connected with global enterprise of assessee and their placement in India was with objective of facilitating activities of Indian subsidiary, collection of market information, collation of data for development of products, market trend studies or exchange of information, the Hon'ble HC held that aforesaid secondment did not result into a PE.

Facts

i. The assessee, a South Korean company, had two wholly owned subsidiaries in India i.e. Samsung India Electronics

Private Limited (SIEL) and Samsung India Software Operations Private Limited (Samsung R&D).

ii. The AO held that the premises of SIEL constituted a Fixed Place Permanent Establishment (PE) by virtue of Article 5 of the India-Korea DTAA. The AO had further held that SIEL, being a subsidiary of the assessee-company, was liable to be considered as a PE per se. It additionally held that SIEL also met the tests of a Dependent Agent Permanent Establishment as well as a Service PE.

iii. The DRP did not concur with the opinion of the AO that a Fixed Place PE, DAPE or Service PE of the assessee had come into existence. While the DRP disagreed with the AO on those aspects, it ultimately came to hold against the assessee, taking the view that by virtue of secondment of employees, a deemed PE had come into being.

iv. The Hon'ble Tribunal found on fact that the seconded employees were being posted to India pursuant to a tripartite agreement entered into between the assessee, SIEL and the concerned employees. On consideration of the statements of those seconded employees, the Hon'ble Tribunal noted that although information was exchanged and plans and strategies for the Indian market were also discussed, however, none of those statements could be interpreted as evidence of any activity of the global business of Samsung Korea being conducted in India. The Tribunal also found that the mere fact that marketing strategies and future plans pertaining to the business of the Indian subsidiary were also discussed and deliberated upon by Samsung Korea, the same would not lead to a PE coming into existence.

v. Aggrieved, the Revenue filed appeal to the Hon'ble HC.

Decision

i. The Hon'ble HC relied upon ***Progress Rail Locomotive Inc. vs. Deputy Commissioner of Income-tax (International Taxation) 2024 SCC OnLine Del 4065***, wherein it was held that a PE would be deemed to have come into existence if one were to find a Fixed Place through which the business of the enterprise seated in the other Contracting State was being carried out. Those premises must be found to be at the disposal of that enterprise and under its control and that control over premises or space should answer the test of "considerable extent" and the premises should be "an instrument (equaling or resembling an operating asset) for his entrepreneurial activity".

ii. The Hon'ble HC further relied on Hyatt International Southwest ***Asia Ltd. vs. CIT 2024 SCC OnLine Del 6546***, wherein it was explained that PE itself was a concept based upon an enterprise undertaking economic activity in a particular State irrespective of its residence. The taxability of business profits, as had been explained, is itself dependent upon a PE existing in the Contracting State notwithstanding that establishment being a constituent of a larger enterprise which may be domiciled in the other Contracting State.

iii. The Hon'ble HC agreed with the opinion expressed by the Hon'ble Tribunal, since a) the secondment of employees had not been found to be for the furtherance of the business or enterprise of the respondent. b) Those seconded employees were not discharging

functions or performing activities connected with the global enterprise of the respondent. c) Their placement in India was with the objective of facilitating the activities of SIEL. d) Collection of market information, collation of data for development of products, market trend studies or exchange of information would not meet the qualifying benchmarks of a PE. This was an aspect which had been noticed even in decision in Progress Rail (supra) where it had been held that in terms of article 5(3)(d), if a permanent establishment were to be engaged solely for the purposes of purchase of goods or merchandise, or for that matter for "collecting information" for a foreign enterprise, the same would stand excluded from the ambit of sub-clauses (1) and (2) of article 5.

iv. Further, it held that paragraph 3(b) of Article 5 would also not be applicable since it was not even the case of the Revenue that the assessee was rendering services, consultative or otherwise, to SIEL through the employees who stood seconded or placed at the disposal of the latter.

v. It concluded that as is manifest from the OECD and UN Commentary, the secondment of employees which may consist of technically trained personnel or persons with experience is an arrangement not uncommon in today's world of business. However, what was to be considered was whether the deployment of such employees was in furtherance of the business of their formal employer or intended to be utilized for the business of the enterprise with whom they are placed. In the facts of the present case, the weight of evidence which was collated unerringly leaned towards their engagement being viewed as one which was for the benefit of SIEL.

vi. Thus, it dismissed the Revenue's appeal by holding that absent any material that would have even tended to indicate that the functioning of the seconded employees was concerned with the business or the generation of income of the assessee in India, the decision of the Tribunal could not be faulted.

4 *Laqshya Media Pvt. Ltd. (TS-26-HC-2025(BOM)-TP]*

Where the Hon'ble Tribunal held 0.5% to be the ALP commission for corporate guarantee by relying on the jurisdictional High Court judgement, in the case of Everest canto cylinders Limited, the Hon'ble High Court remanded back the matter by holding that adoption of some straight jacket formula in all cases could not be approved.

Facts

The Hon'ble Tribunal after referring to the jurisdictional High Court's decision in ***CIT vs. Everest Kento Cylinders Ltd.- (2015) 378 ITR 57***, held that the charges for issuing the corporate guarantee by a parent to its subsidiary should be within the range of 0.20% to 0.50% and based on such a reading in the instant case it held that the ALP to be 0.50%. Aggrieved, the Revenue filed appeal to the Hon'ble HC.

Decision

The Hon'ble HC held that the Tribunal had not discussed as to why the facts in the present case were comparable to those in ***Everest Kento Cylinders Ltd. (supra)***. It further held that the Tribunal had also not discussed the method, if any, adopted for determining the arm's length price. The Tribunal did not benefit from the Hon'ble

Supreme Court's decision in ***Sap Labs India (P.) Ltd. vs. Income-tax Officer [2023] 149 taxmann.com 327 (SC)***. On these grounds, the Tribunal's impugned order was remanded by the Hon'ble HC for reconsidering the matter in the light of the decision in Saps Labs (supra) wherein the Hon'ble SC did not approve the adoption of some straitjacket formula in all cases. However, it clarified that this did not mean that comparable instances in other cases should not be considered. The Tribunal can always consider such material after satisfying itself on the comparability issue. The Hon'ble Supreme Court held that each case must be examined to determine whether the guidelines laid down in the Act and the Rules were followed by determining the arm's length price. There can be no absolute proposition that the range of corporate guaranteed fees or determining the arm's length price should follow a particular range or formula.

C. Tribunal

5 ***Morgan Stanley Mauritius Company Ltd [TS-807-ITAT-2024]***

The Hon'ble Tribunal allowed the carry forward of brought forward short-term capital loss under the Act to a Mauritian company which had claimed tax exemption during the current year in respect of its long-term capital gain under article 13(4) of the India- Mauritius DTAA without setting off the aforesaid brought forward short-term capital loss. It rejected Revenue's argument that the assessee could not adopt selective approach for treating LTCG arising from sale of shares as not taxable as per the DTAA and simultaneously claim carry forward of the brought forward short-term capital loss invoking the domestic law provision by holding that under the provisions of section 90(2), the assessee can choose beneficial provisions between the Act and the applicable DTTA. It concurred with the assessee's submission that as far as taxability of the LTCG during the year under was considered, it was more beneficial under article 13(4) of the DTAA however, as regards to brought forward short-term capital loss assessee opted for domestic provisions which were more beneficial than their DTAA provisions. It further held that income arising from separate streams has to be treated separately and therefore, different treatment could be sought by assessee for the LTCG arising in the year consideration and short-term capital loss which had been brought forward from earlier years.

6 ***Amarchand Mangaldas & Suresh Shroff & Co [TS -790- ITAT-2024 (Mum)]***

The Hon'ble Tribunal held that the assessee law firms were entitled to get foreign tax credit (FTC) in respect of tax withheld from professional fees paid by the clients in Japan, Singapore, Nepal, Brazil, China & Malaysia. The AO had denied the FTC as he was of the view that the aforesaid professional fees were not taxable and thus not subject to tax withholding in the abovementioned foreign jurisdictions. The Hon'ble Tribunal held that in all cases in which interpretation of residence country about applicability of a treaty, provision is not the same as that of source jurisdiction and yet the source country, levies taxes, whether directly or by way of withholding, tax credit cannot be declined.

INDIRECT TAXES
GST

CA Naresh Sheth CA Jinesh Shah

A. SPECIAL LEAVE PETITIONS

1 *Union of India and Ors vs. Shantanu Sanjay Hundekari and Anr etc. [2025-TIOL-05-SC-GST] – Supreme Court of India*

Facts and issues involved

Respondent in his capacity as a Taxation Manager rendered assistance to shipping company named Maersk in its compliances with taxation laws including the GST. Respondent, as an employee, was called upon to show cause as to why penalty equivalent to the tax alleged to be evaded by M/s. Maersk amounting to ₹ **3731,00,38,326** should not be imposed upon him inter alia applying the provisions of section 122(1A) and Section 137 of the Act, 2017.

Respondent categorically contended that there was no question of him personally availing of the benefit of any ITC nor does the SCN allege that any personal benefit is achieved by the respondent and hence, the said provisions of the CGST Act, as invoked, per se do not apply.

Bombay High Court held that a person who would fall within the purview of sub-section(1-A) of Section 122 is necessarily a taxable person as defined under section 2(107) of the CGST Act read with the provisions of section 2(94) of the CGST Act and a person who retains the benefits of transactions covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) of Section 122. In the absence of these basic elements being present, any show cause notice of the nature as issued would be rendered illegal, for want of jurisdiction as also would stand vitiated by patent non-application of mind.

Aggrieved by decision of High Court, revenue has filed a Special Leave Petition before the Honorable Supreme Court.

Discussions by and Observations of Supreme Court

High Court while allowing the Writ Petitions filed by the respondents, quashed the show cause notices issued by the revenue seeking recovery of ₹ 3731 crores holding as under in Paras 32 and 33 respectively:

"*32. For the aforesaid reasons, it is clear from the relevant contents of the show cause notice that the basic jurisdictional requirements/ingredients, are nor attracted for issuance of the show cause notice under Section 74 of the COST Act so as to inter alia invoke Section 122(1-A) and Section 137 against the petitioner. Even otherwise, it is ill conceivable to read and recognize into the provisions of Section 122 and Section*

137, of the CGST Act any principle of vicarious liability being attracted. There could be none. Thus, Respondent no. 3 clearly lacks jurisdiction to adjudicate the show cause notice in its applicability to the petitioner. Thus qua the petitioner, the impugned show cause notice is rendered bad and illegal, deserving it to be quashed and set aside.

33. The foregoing discussion would also lead us to conclude that it is highly unconscionable and disproportionate for the concerned officer of the Revenue to demand from the petitioner an amount of ₹ 3731 crores, which in fact is clearly alleged to be the liability of Maersk, as the contents of the show cause notice itself would demonstrate, The petitioner would not be incorrect in contending that the purpose of issuing the show cause notice to the petitioner who is merely an employee, was designed to threaten and pressurize the petitioner."

The issue before the High Court was one relating to the interpretation of Section 122(1-A) and Section 137 of the GST Act. High Court, after assigning cogent reasons, took the view that the respondent herein was merely an employee of the Company and he could not have been fastened with the liability of ₹ 3731 Crore. There is no good reason to interfere with the impugned orders passed by the High Court. However, the question of law as regards the two provisions referred to above is kept open.

Decision of Supreme Court

Special Leave Petitions was accordingly dismissed.

B. WRIT PETITIONS

1

Sterling and Wilson Pvt. Ltd. vs. The Joint Commissioner and Others [2025-TIOL-90-HC-AP-GST] – Andhra Pradesh High Court

Facts and issues involved

Petitioner is engaged in the business of setting up of Solar Power Plants and has been paying GST at the rate of 5% of its turnover. Since the rate of GST on inputs procured by the petitioner is higher than the GST rate paid on sale of finished goods, the petitioner claimed refund as per the provisions of Section 54 of the CGST Act, 2017.

GST Authorities rejected the refund claim and after assessing the turnover of the petitioner raised a tax demand, on the grounds that the transactions undertaken by the petitioner is a works contract service which is taxable at the rate of 18%. The petitioner objected to the same, on the ground that the activities of the petitioner would have to be treated as composite supply, as defined under Section 2(30) of the GST Act, attracting GST @ 5% on the turnover. This contention of the petitioner was rejected and the assessing authority assessed the turnover of the petitioner at rate of 18% and raised a tax demand for **₹ 63,00,19,512** (CGST ₹ 31,50,09,756 and SGST of ₹ 31,50,09,756) and a penalty of **₹ 63,00,19,512**.

Aggrieved by the above order, petitioner preferred a writ petition in High Court.

Discussions by and Observations of High Court

Section 7(1)(a) states that supply could be supply of goods or supply of services or supply of both goods and services i.e. mixed supply or composite supply. The central issue is whether the transactions in question should be treated as simple composite supplies as

defined u/s. 2(30) of the CGST Act, 2017 or as works contract as defined u/s 2(119) of the CGST Act, 2017.

The sole point of difference between a ‘works contract’ and a ‘composite supply’ is whether the final product supplied to the customer is a moveable property or immoveable property.

Hon'ble Supreme Court in ***T.T.G. Industries Ltd., Madras vs. Collector of Central Excise, Raipur (2004) 4 SCC 751 = 2004-TIOL-49-SC-CX*** held that supply of hydraulic mudguns and tap hole-drilling machines required for blast furnaces which are erected at the site of the purchaser would amount to immoveable property, which could not be shifted without dismantling it and re-erecting it at another site.

Hon'ble Supreme Court in case of ***Commissioner of Central Excise, Ahmedabad vs. Solid and Correct Engineering Works*** held as under:

25. It is evident from the above that the expression "attached to the earth" has three distinct dimensions viz. (a) rooted in the earth as in the case of trees and shrubs, (b) imbedded in the earth as in the case of walls or buildings, or (c) attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached. Attachment of the plant in question with the help of nuts and bolts to a foundation not more than 1½ ft deep intended to provide stability to the working of the plant and prevent vibration/wobble free operation does not qualify for being described as attached to the earth under any one of the three clauses extracted above…………

Hon'ble Supreme Court in case of ***Sirpur Paper Mills Limited vs. The Collector of Central Excise*** held as under:

5. ………….For example, a factory owner or a householder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property…… Just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property.

44. In the instant case all that has been said by the assessee is that the machine is fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth but because a foundation was necessary to provide a wobble free operation to the machine. An attachment of this kind without the necessary intent of making the same permanent cannot, in our opinion, constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.

The solar power plant is not trees or shrubs, which are rooted in earth or a structure embedded in the earth. The solar power module is attached to the civil foundation, which is embedded in the earth. However, the solar modules and the Solar Power Generating System have not been attached to the civil structure for the purpose of better enjoyment or beneficial enjoyment of the civil foundation. On the contrary, the civil foundation has been embedded on earth for better permanent and beneficial enjoyment of the Solar Power Generating Station.

Applying the principle laid down by Supreme Court in above cases, the property in question, viz., the Solar Power Generating System would not answer the description of immoveable property. The transaction in question would not fall within the meaning of "works contract" as defined under Section 2(119) of the GST Act.

Decision of High Court

Writ petition was allowed and order passed by assessing authorities was set aside.

2 *Udumalpet Sarvodaya Sangham vs. The Authority under Shop and Establishment Act [2025-TIOL-55-HC-MAD-GST] – Madras High Court*

Facts and issues involved

GST Authorities had uploaded notices/ orders only on the web portal and had not communicated the same to the assessee by any other mode as prescribed in Section 169 of the CGST Act, 2017.

It is the case of the petitioners that most of them are not well aware about the portal of the Department and due to unawareness of the information technology, they had relied upon the practitioners for filing their returns in the portal of the Department. It is also their case that the practitioners have uploaded their phone numbers and e-mail IDs for receipt of alerts and that in most cases, the practitioners have not informed the assesses either regarding the updation on the portal or the receipt of the e-mails which have kept the assesses in dark.

GST Authorities contended that service of notice through portal has already been held to be a valid service by the same court in another judgment and therefore, issuance of notice/order solely by uploading the same on the portal should be considered as a valid notice/order.

Discussions by and Observations of High Court

Several courts have ruled that posting of summons and orders through portal is a sufficient compliance of notice on the assessee and therefore, there is no necessity for any alert. However, it was observed that none of the Courts had dealt with Section 169 of the CGST Act, 2017 in its entirety before concluding that posting in portal itself is a sufficient compliance.

Section 169 of CGST Act lists down 6 ways [169(a) to 169(f)] any decision, order, summons, notice or any other communication under the GST Act and Rules can be served on anyone. They include:

(a) by courier directly to the assessee or his representative, OR

(b) by registered post or speed post to the last known residence or place of business of the assessee, OR

(c) by e-mail, OR

(d) by uploading on common portal, OR

(e) by publication in newspaper in the locality where the person is last known to have resided, OR

(f) If none of the above modes are possible then by affixing it in some conspicuous place at its last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

Clauses (a) to (c) of Section 169(1) would be alternative and if it was not practicable, then clauses (d) to (f) would have to be followed. Only interpreting Section 169 in such a manner would effectively comply with the principles of natural justice and also condition stipulated by Sub-section (3) to Section 169 which mandates that when such decisions, orders, summons, notices or any communication sent by the registered post or speed post, it shall be deemed to have been

received by the assessee, unless the contrary is proved.

Therefore, Section 169 mandates a notice in person or by registered post or to the registered email ID alternatively and on a failure or impracticability of adopting any of the aforesaid modes, then the State can, in addition, make a publication of such notices/ summons/orders in the portal/newspaper through the concerned officials.

Decision of High Court

Writ petition was allowed and the matters were remitted with the opportunity to the assessee to file their replies and make appropriate representation to adjudicate the matters justly.

3 ***Brunda Infra Pvt Ltd and Others vs. The Additional Commissioner of Central Tax [2025-TIOL-91-HC-Telangana-GST] – Telangana High Court***

Facts and issues involved

The matter pertains to F.Y. 2019-2020. The show-cause notice ('SCN') was issued on **31.05.2024**. The Order-in-Original ('OIO') was passed on **29.08.2024** after the maximum period of limitation prescribed under Section 73(10) of the GST Act. Under the garb of extension of limitation as per impugned notifications 13 of 2022, 9 and 56 of 2023, said OIO came to be passed.

The petitioner have called in question the legality, validity and propriety of notification Nos. 13/2022, dated 05.07.2022, 9 and 56/2023, dated 31.03.2023 and 28.12.2023, respectively.

Petitioner's submissions

Criticizing the impugned notification Nos. 9 and 56 of 2023, it is contended that on the date of issuance of these notifications, no force majeure conditions were in existence. Section 168A of the GST Act, in no uncertain terms makes it clear that limitation can be extended on availability of 'special circumstances'. In absence of force majeure circumstance on the date of issuance of notifications, these notifications cannot be said to be passed based on enabling provision.

To buttress aforesaid contention, the letter written by Secretary, Home Department to Chief Secretaries of all the States, dated 22.03.2023 was highlighted to establish that there was no need to invoke provisions of the Disaster Management Act, 2005. Thus, COVID-19 period, admittedly, came to an end before impugned notifications were issued. Paragraph Nos. 6(1), (6), (7) and (8) of said letter were relied upon.

The next limb of argument is that COVID-19 relaxations/extensions are not available to the Government. Notification Nos. 35/2020, dated 03.04.2020 and 14 of 2021, dated 01.05.2021, were referred to show that time for completion or compliance of any action was extended up to 30.06.2021. Hence, only for compliance of Section 73 of the GST Act, the time limit was extended till 31.12.2023 or 30.04.2024/31.08.2024. For any other compliance, time limit was extended only up to 30.06.2021. Thus, any extension of time beyond 30.06.2021 is impermissible even by invoking Section 168A of the GST Act.

Furthermore, the extension was made vide Notification No. 13/2022-Central Tax, dated 05.07.2022, wherein time limit under Section 73(10) of the CGST Act for F.Y. 2017-18 was extended up to 30.09.2023 by excluding the intervening period between 01.03.2020 to 20.08.2022 for recovery of erroneous refund cases u/s 73(10) and refund claims under Section 54. Assuming that above extension was valid and is in consonance with Section 168A, there was no requirement for any further extension. Thus, it appears that the

Department is using the COVID-19 pandemic as an excuse and reason to undo their failure of not completing assessments and raising demands under Section 73 within stipulated time.

Reliance was placed on CBIC Circular No. 157/13/2021-GST, dated 20.07.2021, to canvass the point that the understanding of respondent-Department is that the orders passed by Supreme Court in suo motu jurisdiction extending limitation period are not applicable to the Department. Similarly, CBIC instructions No. 2/2021, dated 22.09.2021, expects strict adherence to the timeline provided under Section 73 of the GST Act and does not take excuse of difficulties arising out of COVID-19 pandemic.

The time limit can be extended only on availability of force majeure conditions and not based on the administrative difficulties faced by the Department.

Section 168A of the GST Act provides that extension notification can be issued on the recommendation of the GST Council. So far as notification No. 56/2023 is concerned, there was no prior notification of GST Council. The decision of Implementation/Law Committee was ratified by GST Council six months after the date of issuance of notification No. 56/2023. The 'recommendation' is always prior in time, which forms basis for taking a decision, whereas 'ratification' is a subsequent exercise for a decision which has already been taken. In view of statutory mandate ingrained in Section 168A of the GST Act, subsequent 'ratification' cannot satisfy the requirement of statute i.e., 'on the recommendation of the GST Council'.

Discussions by and Observations of High Court

In the instant case, Notification nos. 9/2023, 13/2022 and 56/2023 are subject matter of challenge. A plain reading of Section 168A of CGST Act makes it clear that it gives power to the Government to extend the time limit in 'special circumstances'. The provision begins with a non-obstante clause and provides that on the recommendation of the Council, the time limit 'specified in' or 'prescribed' or 'notified' under this Act can be extended. It is noteworthy that the time limit can be extended 'in respect of actions' which cannot be completed or complied with due to 'force majeure'. Sub-section (2) of Section 168A enables the Government to issue notification with retrospective effect. The 'explanation' defines the expression 'force majeure'. In the instant case, it is not in dispute that COVID-19 Pandemic falls within the ambit of 'force majeure'.

The words 'in respect of actions' are very wide and brings within its ambit the previous actions of COVID-19 period, which could not be completed or complied with, due to force majeure. Thus, court is unable to persuade with the line of argument of petitioners that the time limit could have been extended only in relation to the period during which COVID-19 was subsisting. In the manner statute i.e., Section 168A is worded, there is no cavil of doubt that the Law makers intended to give it a broader umbrella to bring within its shadow, such actions which could not be completed or complied with, due to force majeure.

A microscopic reading of Section 168A(1) of the GST Act shows that it enables the Government to issue notification on the recommendations of the Council and extend the time limit 'specified in' or 'prescribed' or 'notified' under the Act. It is noteworthy that the Law makers have not chosen the words 'in/by the Act'. Instead, they employed the expression 'under the Act'. The expression 'under the Act' is wider than the words 'in the Act'. The expression "under the Act" is wide enough to include the notifications issued as per Section 168A of the GST Act and time

limit extended under these notifications can very well be further extended, while exercising power "under the Act".

The expression on the recommendation of Council leaves no room for any doubt that this is a condition precedent or sine qua non for the Government for taking a decision regarding issuance of notification. When the statute gives power to a particular statutory body to act in a particular way, the said decision cannot be taken by any other body. This is trite that when the statute prescribes thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden. Court is unable to follow that 'ratification' can be a substitute of 'recommendation'. The Implementation Committee/Law Committee is neither a constitutional nor a statutory body. It is an in-house creation of GST Council for convenience to run the administration. The decision taken by Implementation Committee/ Law Committee, on which Notification No. 56/2023 is based, cannot be said to be the decision of GST Council.

The parties are at logger heads on the aspect of whether the orders of Supreme Court in suo motu jurisdiction can be pressed into service. A conjoint reading of these orders make it clear that the direction of Supreme Court for excluding the period of limitation is not confined to only Arbitration and Conciliation Act, Commercial Courts Act and Negotiable Instruments Act. The directions were extended in relation to "any other laws which prescribe period(s) of limitation for instituting proceedings". It cannot be doubted that Section 73 is one of such provision whereby proceeding can be instituted. In peculiar situation like COVID-19, the Supreme Court exercised its extraordinary power and declared the law for the nation. The directions issued by Supreme Court in suo motu jurisdiction binds the entire nation and it cannot be said that the same are inapplicable in the present proceedings.

The COVID-19 Pandemic created extraordinary difficulties which could not have been anticipated, measured and solved with mathematical precision. COVID-19 was not a creation of Government. Thus, hair-splitting in many aspects must be eschewed.

Decision of High Court

Writ petitions are accordingly disposed by reserving liberty to the petitioners to avail the remedy of statutory appeal.

4 *Jyoti Tar Products Pvt Ltd and Anr vs. The Deputy Commissioner [2025-TIOL-159-HC-KOL-GST] – Calcutta High Court*

Facts and issues involved

The petitioners had filed the writ petition challenging a show-cause notice issued under Section 74(1) of the CGST Act, 2017 and W.B.G.S.T. Act, 2017 read with Rule 142(1)(a) of the Rules for the financial year 2023-24. Single Judge opined that the writ petition is not maintainable and therefore, the present intra court appeal has been preferred.

Discussions by and Observations of High Court

It is settled legal position that if the authority issuing the show-cause notice does not suffer from the vice of lack of jurisdiction, the Court seldom interferes in a show-cause notice. However, the case on hand is peculiar on facts, which has convinced court to grant certain reliefs to the appellants/assessee.

Prior to issuance of the show-cause notice, an intimation of tax ascertained as payable under Section 74(5) dated 10th July 2024 was issued to the appellants. In the said intimation,

certain particulars were given and it was stated that the appellants has claimed input tax credit against the alleged inward supply of goods from non-existing entities, whose registrations have been cancelled.

It is not in dispute that the appellants have submitted a detailed explanation and also enclosed certain documents in support of their contention and relied upon various decisions. Thus, when the authority has thought fit to exercise its powers under Section 74(5), he is enjoined upon a duty to consider the reply before it takes a decision to issue a show-cause notice under Section 74(1) of the Act. However, in the instant case, we find that the show-cause notice dated 8th August 2024 is a replica of the intimation given earlier and all that the assessing officer has said is that the reply furnished by the appellants in response to the intimation is not found to be satisfactory and therefore not acceptable. The remaining portion of the show-cause notice has been copied from the earlier intimation and the show-cause notice does not deal with any of the contentions, which were raised by the appellants in their reply to the intimation dated 18th July 2024.

Authority should consider the reply dated 18th July 2024 to the intimation issued earlier, deal with those issues and then proceed to issue a show-cause notice.

Decision of High Court

Accordingly, the appeal is allowed and the order passed in the writ petition is set aside and consequently, the show-cause notice issued under Section 74(1) of the Act dated 8th August, 2024 is set aside and the matter is remanded back to the assessing authority to consider the reply dated 18th July 2024 and if it still finds it to be not satisfactory, it will be well-open to the authority to proceed in accordance with law.

5 *Sugna Sponge and Power Private Limited vs. The Superintendent of Central Tax and Ors [2025-TIOL-53-HC-AP-GST] – Andhra Pradesh High Court*

Facts and issues involved

Even though the petitioner was paying its taxes, either by way of payment of cash or by utilizing the input tax credit, which was available in its electronic credit ledger, the Second respondent blocked the electronic credit ledger of the petitioner to an extent of ₹ 19,73,299/-, by invoking Rule 86A of the CGST Rules, 2017. The reasons given for such blockage of ITC was that the ITC was obtained from fake and non-existent suppliers. It was also stated that the ITC, on the basis of inward supply from one M/s. Prime Trading Company, was ineligible as the said ITC is on the basis of fake invoices without actual movement of goods and had been done for the purpose of generating huge number of ITC for their buyers for setting off outward liability.

This came to be challenged by the petitioner, by contending that since there was no ITC available in the electronic credit ledger of the petitioner, as on the date of the blocking order and consequently, Rule 86A could not have been invoked.

Petitioner’s Submissions

Rule 86A of the Rules, 2017, permits blocking of credit, which is actually available in the electronic credit ledger. There was no input tax credit available in the electronic credit ledger of the petitioner, as on the date of the blocking order and consequently, Rule 86A could not have been invoked.

The power, under Rule 86A of the Rules, 2017, cannot be used in a routine manner, and it is an extraordinary power granted for protection of revenue. This would require the

authority, exercising such power, to look at the past conduct of the petitioner, including the payment of taxes, made by the petitioner.

The proceedings under which, the power under Rule 86A of the Rules, 2017 has been invoked, does not contain any reasons except to state that the input tax credit from fake persons has been utilized. This bald statement does not amount to recording of proper reasons against which an appeal could be filed.

Further, Rule 86A of the Rules, 2017, requires authorization to be obtained from the commissioner. The authorization produced is not a specific authorization as it includes various other persons and is a general authorization.

Discussions by and Observations of High Court

Rule 86A of Rules 2017 permits the Commissioner, or an officer authorized by the commissioner, to exercise the power under this Rule. In this case, the authority to exercise the power under Rule 86A, was delegated, on 18.05.2023, on account of special All India Drive against the fake registrations, to Sri G. Sunil, the Assistant Commissioner, for Kurnool and Anantapur division. Hence, contention of the petitioner that there was no proper delegation of power would have to be rejected.

The petitioner's contention that the power under Rule 86A has been invoked without giving any reasons and without looking into the past conduct of the petitioner also requires to be rejected. Though the initial communication, dated 20.03.2024, had given a cryptic description of the reason for blocking ITC, the fact remains that the ground on which such ITC has been blocked can be made out. However, further details have also been given subsequently. In such circumstances, the contention that no cogent reasons are given, cannot be accepted.

Rule 86A would come into play when, (a) there was input tax credit available in the electronic credit ledger; (b) that credit has been availed; and (c) it has been availed fraudulently or it was availed even though it was ineligible to avail such credit. Consequently, Rule 86A would come into play only after the input tax credit has already been availed.

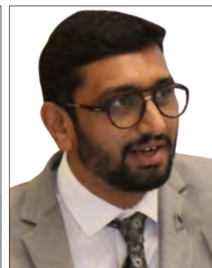
A plain reading of the rule permits the authority not to allow debit or refund of an amount equivalent to "such credit". This part of the Rule does not use the term, "such credit which is available". The language is restricted to "such credit". The term "such credit" can only mean the credit which has been created, wrongfully, by any of the means set out in sub-clauses (a) to (d) of Rule 86A(1). Court is unable to accept the interpretation that the term "such credit" means the credit which is actually available in the credit ledger.

To sum up, the scheme of this Rule is to put aside such amount of input tax credit, which has been wrongfully utilized, whether it is actually available in the credit ledger or not, and to await an appropriate order of assessment and penalty, if any, under Section 73 or Section 74 of the GST Act, read with Section 122 of the GST Act.

Decision of High Court

There is no merit in writ petition and hence, is dismissed.

CA Rajiv Luthia


CA Keval Shah

INDIRECT TAXES
Service Tax

1 ***Capital Housing Projects Pvt Ltd vs. Principal Commissioner of Central Tax Guntur GST 2024 (12)-TMI-1243-CESTAT-HYDERABAD***

Backgrounds and facts of the case

- The appellants entered into an agreement with M/S TRANSSTROY (INDIA) LTD (hereinafter referred to as the Contractor), on 16th March, 2016 to undertake "earthwork levelling works involving drilling, blasting, excavation and levelling of Hard Rock and soils to required level and slope" at Polavaram. The contractor had been awarded the work of constructing part of dam from M/S TRANSSTROY – JSC ECUES JV (hereinafter referred to as the Principal Contractor), who, in turn, was awarded the work by the Government of Andhra Pradesh for construction of dam.
- The Department's view was that as the sub-contractor was not providing any direct service to the Government, therefore, they would not be entitled for exemption under S. No. 12(d) of Notification 25/2012-ST. The Department was also of the view that, in view of the admitted position by the appellants, the nature of work performed by them was not in the nature of 'Works Contract' and therefore, they would also not be entitled for exemption under S. No. 29(h) of the Notification 25/2012.
- Issues involved:

A) Whether in the facts of the case, the services provided by the sub-contractor are in the nature of services eligible for exemption under S. No. 12(d) of Notification 25/2012.

B) If yes, then whether they are entitled for exemption under said notification when the same are not being provided to the Government directly but to the contractor, who, in turn, is providing the services to the principal contractor.

C) Whether the activities undertaken by the sub-contractor can be considered as works contract within the definition of WCS under Finance Act, 1994, in view of the factual matrix and material on record.

D) If the services are considered as WCS, then whether they will be

entitled for exemption under S. No. 29(h) of the said notification.

Arguments by Appellant Assessee

- The activities undertaken by them in terms of agreement between the sub-contractor and the contractor are clearly in relation to construction of dam, as without these activities the dam cannot be constructed and merely because the sub- contractor is not providing these services directly to the Government of Andhra Pradesh and the same are being provided to contractor, who, in turn, provides to principal contractor, who has been awarded the work for construction of dam, it would not take away the fact that these activities are in relation to construction of dam.

- Further, without prejudice to the above appellant assessee further argued that work performed by them is in the nature of WCS and it is therefore, covered under S. No. 29(h) of Notification 25/2012, therefore, on this count also, they will not be liable to Service Tax. He has argued that they have been using lubricants, spare parts, in connection with heavy machineries deployed for the activities undertaken by them on which VAT has been paid. They have also been using explosives for blasting. Therefore, in terms of definition of WCS, they are entitled for exemption under S. No. 29(h) of Notification also.

- In relation to Issue-A: The agreement between the Contractor and the appellant would clearly indicate that the work for 'Investigation, Survey, Preparation of Designs and Drawings and LP Schedules, etc., and Construction of Earth Dam Gaps I & III, etc.,' have been awarded to the Principal Contractor vide Agreement No. 01/2012-13 dt. 02.03.2013. In turn, the Contractor entrusted certain part of the project viz., the work of excavation in all soils up to SDR and in hard rock, to the appellant and therefore, the activities performed by them would be in relation to the construction of dam only.

- In relation to Issue-B: Even if the activities being provided indirectly through main contractor, then also, they are entitled for the exemption.

- In relation to Issue C & D: Stated that that their work is in the nature of WCS and it is therefore, covered under S. No. 29(h) of Notification 25/2012, therefore, on this count also, they will not be liable to Service Tax. He has argued that they have been using lubricants, spare parts, in connection with heavy machineries deployed for the activities undertaken by them on which VAT has been paid. They have also been using explosives for blasting. Therefore, in terms of definition of WCS, they are entitled for exemption under S. No. 29(h) of Notification also.

Arguments by Department

- Ld. AR contested that the nature of activities, as reflected from the agreement, indicates that they are more in the nature of site formation, blasting, excavation, etc., which cannot, by any stretch of imagination, be considered as services towards construction of dam. Moreover, the sub-contractor has

not provided any service directly to the Government and it is an admitted position that the services have been provided to the contractor, who, in turn, was awarded the work by the principal contractor, who was awarded the work by the Government of Andhra Pradesh. Therefore, when the nature of activities is not in the nature of activities by way of construction of dam and when otherwise also, it has not been provided to the Government directly, the benefit under Notification 25/2012 would not be available to them.

- Further, on the issue of benefit under S. No. 29(h) of Notification 25/2012, he has reiterated the observations made by the Adjudicating Authority that in view of the evidence on record, there was no transfer of property on which VAT has been paid and therefore, there is no question of considering these activities as activities covered under the definition of WCS.

- In relation to Issue-A: The appellant is providing certain services *viz*., Site Formation and Excavation, etc., to the Contractor, who was awarded the contract for construction of part of the dam by the Principal Contractor, who in turn was awarded the contract for construction of dam by the Government of Andhra Pradesh. There is no direct relation to the activities performed by the appellant towards construction of dam.

- In relation to Issue-B: As the sub-contractor was not providing any direct service to the Government, therefore, they would not be entitled for exemption under S. No. 12(d) of Notification 25/2012.

- In relation to Issue-C & D: As there was no transfer of property on which VAT has been paid and therefore, there is no question of considering these activities as activities covered under the definition of WCS. He has relied on various judgments in support that site formation activities, etc., are clearly distinguished from construction services and therefore, the appellants cannot avail the exemption under S. No. 29(h) also.

Decision of the Hon'ble Tribunal

- In relation to Issue-A: It is the construction of dam, as such, which is exempted and the activity of site formation cannot be brought in within the expression to consider this for exemption under S. No. 12(d) of Notification 25/2012. When the activity itself is not covered within the ambit of the notification itself, they cannot, by virtue of their ultimate assertion that the Principal Contractor being eligible for exemption will also make them exempted, is not tenable. Therefore, on this count, the appellants are not eligible to claim exemption under S. No. 12(d) of Notification 25/2012.

- In relation to Issue-B: There are layers in between the appellant and the person referred to as Principal Contractor, who is actually constructing the dam and therefore, in this case, it cannot be held that the appellants have provided service by way of construction of dam. In the absence of any specific exemption available for the activities being performed by the appellant in the post Negative List regime, their activities cannot be considered for coverage under

S. No. 12(d) of Exemption Notification 25/2012.

- In relation to Issue-C & D: Mere use of lubricants, consumables and explosives, etc., in relation to their work cannot be considered as involving transfer of property in goods involved in execution of such contract, which is leviable to tax as sale of goods, to fall within the category of WCS. Further, there is no evidence to suggest that appellants were discharging VAT on this contract by treating it as deemed sales. Thus, even their alternative claim for exemption under S. No. 29(h) of the Notification 25/2012 would also not be admissible because the nature of the work itself being provided by them to their Contractor is not in the nature of WCS and therefore, it would not be covered within the ambit of the said notification.

- Therefore, holistically evaluating the terms and conditions and the scope of work awarded to the appellant by the Contractor, the same would not be covered within the expression "by way of construction" of dam in the given factual matrix. It is also obvious that despite pleading that they have discharged VAT there is no evidence on record to suggest except for certain deductions made by the Contractor from their bill on account of VAT, to prove that there was transfer of property while executing the site formation activities. Apparently, it appears that they were getting certain reimbursements on account of VAT paid on lubricants, spares, explosives, etc., from the Contractor. However, even if the appellants are claiming that VAT has been paid on lubricants, spares, etc., the definition of WCS would entail that they were otherwise required to transfer the property in goods to ST/30396/2022 the Contractor or recipient for it to be covered within the definition of WCS. Under the VAT laws, when there is a deemed sale, the VAT is leviable unless otherwise exempted. In this case, there is no evidence adduced by the appellant that they had discharged any VAT on the services/activities performed by them to their Contractor or it was otherwise exempted. Therefore, the activities are more in the nature of service of site formation, etc., as held by the department. Therefore, on this count also, they would not be eligible for exemption under S. No. 29(h) of the Notification 25/2012.

- In view of the discussions in the foregoing paras, we hold that appellants are neither eligible for exemption under S. No. 12(d) nor under S. No. 29(h) of the Notification 25/2012-ST, dt. 20.06.2012.

- Therefore, in the light of discussions in the foregoing paras, we do not find any infirmity in the Order passed by the Adjudicating Authority and the same is sustained.

- Accordingly, the appeal filed by the appellant for setting aside the impugned order is dismissed.

2 *M/s Tata Teleservices Maharashtra Ltd. vs. Commissioner of CGST and Central Excise Belapur 2025-TOIL-124-CESTAT- MUM*

Backgrounds and facts of the case

- During the course of scrutiny of records, the Service Tax Department had observed that in the ST-3 return filed for the period October, 2009 to March, 2010, the appellants had showed the closing balance of CENVAT Credit as ₹ 4,55,32,173/- in their books of account, maintained as on 31st March,2010. However, in the ST-3 return filed for the period April, 2010 to September, 2010, they had reflected the figures of opening balance of ₹ 26,83,37,826/- as on 01.04.2010. Since there were mis-match between the figures reflected in the ST-3 returns filed for both the periods, the Department had alleged that the appellants had availed an excess CENVAT Credit of ₹ 22,28,05,653/- and accordingly, initiated show-cause proceedings against the appellants seeking for recovery of such excess amount of CENVAT Credit availed by them.
- The show-cause notice dated 16th July, 2013 (SCN-1) issued in this regard was adjudicated by the learned Commissioner issuing Order-in-Original No. (OIO-1) dated 27th December, 2013, wherein CENVAT Credit amounting to ₹ 22,28,05,653/- was disallowed and demand was upheld along with consequential interest. Besides, penalties were also imposed on the appellants u/s of the Finance Act, 1994.
- Aggrieved by said OIO, the appellants filed an appeal before the Tribunal, which was disposed on 21st March, 2016, by way of remand to the original authority, with the direction for examination/verification of the Books of Accounts for ascertainment of the fact of correct and proper availment of CENVAT Credit. Pursuant to the remand direction the learned Commissioner of Service Tax had taken up de novo adjudication proceedings and passed the Order-in-Original No. (OIO-2) dated 03.11.2016, by disallowing the equivalent amount of CENVAT Credit, which was disallowed in the previous order (OIO-1). Aggrieved by said OIO-2, the appellants had preferred appeal before the Tribunal, which was disposed on 07th January, 2019, again by way of remand to the original authority for proper quantification of the CENVAT Credit figures reflected in the ST-3 returns for both the periods vis-à-vis those captured in the Books of Accounts. In terms of the order dated 07th January,2019 passed by the Tribunal, the learned Commissioner issued Order-in-Original (OIO-3) dated 31st July, 2023 has completed the de novo adjudication proceedings. In the said order, the learned Commissioner of Service Tax has disallowed CENVAT Credit amounting to ₹ 1,70,46,954/- and allowed balance amount of the Cenvat credit of ₹ 20,57,58,699/-; he has further ordered for payment of interest on the amount disallowed and also imposed penalty of ₹ 1,70,46,954/- on the appellants. Insofar as the confirmation of the CENVAT demand of ₹ 1,70,46,954/- along with interest and imposition of penalty, the appellant has

assailed the impugned order, by way of filing this appeal before the Tribunal.

Arguments by Appellant Assessee

- In earlier two adjudication orders (OIO-1 & OIO-2), though the learned adjudicating authority had confirmed CENVAT demand of ₹ 22,28,05,653/-, but in the (OIO-3), the adjudicating authority has dropped the proceedings with regard to the CENVAT Credit of ₹ 20,57,58,699/- on the ground that there is no mis-match in the figure reflected for both the periods in ST-3 returns. With regard to the disallowance of CENVAT Credit of ₹ 1,70,46,954/-, learned Advocate has submitted that the said demand confirmed (OIO-3) cannot be sustained in as much as the grounds on which the impugned order was passed in confirming such demand was not the subject matter of the dispute in the (SCN-1) issued by the Department. Thus, he submitted that since there was no proposal for confirmation of the demand on the grounds mentioned in the present impugned order, the said order passed by the adjudicating authority is contrary to the statutory provisions as well as the settled principles of law.

Arguments by Department

- The CENVAT demand of ₹ 1,70,46,954/- in (OIO-1)be confirmed on the ground that the availment of CENVAT Credit as capital goods by the appellant is not proper and on other grounds such as wrong availment of CENVAT Credit on Rent- a-Cab services, Membership subscription, Business Exhibition services, Health services, Legal Consultancy services, Travel Agent services etc., are not proper and justified, inasmuch as those disputed services were not confirming to the definition of 'input service' provided under Rule 2(l) of the CENVAT Credit Rules, 2004.
- Learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that since the demand confirmed in (OIO-3) was proposed for recovery in the (SCN-1), it cannot be said that the adjudicating authority for the first time has taken the grounds, which were not canvassed in the show- cause notice issued by the Department. Thus, he submitted that confirmation of the adjudged demands in the impugned order is sustainable and accordingly, the appeal filed by the appellant is liable to be dismissed.

Decision of the Hon'ble Tribunal

- We find that the allegations levelled therein against the appellants was in context with mis-match of figures in ST-3 returns prepared for the period between October, 2009 to March, 2010 and April, 2010 to September, 2010. The said SCN had not proposed for disallowance of CENVAT Credit on the ground that the disputed services were not confirming to the definition of 'input service'. We find that such ground was considered for the first time by the Department in third adjudication order (impugned herein). Since the SCN is a primary document based on which the entire proceedings were initiated against the appellants for confirmation of the CENVAT demand, no new ground can be taken subsequently at the time

of adjudication stage, inasmuch as it is only the allegation levelled in the SCN, which can be addressed to or acted upon by the adjudicating authority, while passing the adjudication order. We find that the issue with regard to taking of new ground/plea in the adjudication order, which was not being alleged in the SCN, the Hon'ble SC in the case of ***CCE, Nagpur vs. Ballarpur Industries Ltd. - 2007 (215) ELT 489 (S.C.) =2007-TIOL-153-SC-CX*** have held that the SCN is a foundation in the matter to levy and recover of duty and if certain provisions have not been quoted or discussed therein, the adjudicating authority cannot invoke such statutory provisions to confirm the demand on the assessee. The relevant paragraph in the said judgment is quoted herein below: -

"*21. Before concluding, we may mention that, in the present case, the second and the third show cause notices are alone remitted. The first SCN dated 21st May,1999 is set aside as time-barred. However, it is made clear that Rule 7 of the Valuation Rules, 1975 will not be invoked and applied to the facts of this case as it has not been mentioned in the second and the third show cause notices. It is well settled that the SCN is the foundation in the matter of levy and recovery of duty, penalty and interest. If there is no invocation of Rule 7 of the Valuation Rules 1975 in the SCN, it would not be open to the Commissioner to invoke the said rule.*"

- Further, Hon’ble CESTAT relied on the judgement in case of ***Commissioner of Customs, Mumbai vs. Toyo Engineering India Ltd. 2006 (201) ELT 513 (S.C.) = 2006-TIOL-111-SC-CUS*** which dealt with the identical issue, holding that the grounds did not find mention in the SCN, then the Department cannot travel beyond such notice and the demand confirmed entirely on new grounds is liable to be set aside.

- In view of the fact that the demands confirmed in the impugned order was not dealt with or considered in the (SCN-1) issued by the Department, Hon’ble CESTAT was of the view that such demand confirmed against the appellants cannot be sustained for judicial scrutiny, in view of the settled position of law discussed supra. Therefore, the demands were set aside and the appeal is allowed in favour of the appellants.

“Failure is not the worst thing in the world. The very worst is not to try.”

— *Swami Vivekananda*

CORPORATE LAWS
Case Law Update

CS Makarand Joshi

CASE – 1 - IBC

In the matter of Fortune *Chemicals Limited – Appellant vs. Ashok Kumar Jaiswal, Resolution Professional of Aarya Industrial Products Private Limited - Respondent* at National Company Law Appellate Tribunal (NCLAT) order passed by New Delhi Bench dated 6th January 2025

Facts of the case

- Mr. Avanish Kumar Singh (the Director) was a director in two companies, namely, M/s Fortune Chemicals Ltd. (Appellant) and M/s Gomtidhara Agro & Dairy Products Private Limited (GADPPL).

- The GADPPL was incorporated on 28 February 2014 and had not filed its financial statements/annual returns since incorporation. As a result of which Mr. Avanish Kumar Singh was disqualified to be appointed a director of any other company as per provisions of Section 164(2) of the Companies Act, 2013 (the Act) for a period of five years with effect from 1st December 2017 - i.e. the date on which GADPPL failed to file financial statements and annual returns for a continuous period of three financial years.

- The Appellant participated in the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor, Aarya Industrial Products Private Limited (CD) by submitting a comprehensive resolution plan aimed at reviving the debt-laden CD.

- The Committee of Creditors (CoC) concluded that the resolution plan of the Appellant was non-complaint under Section 29A of the Insolvency and Bankruptcy Code, 2016 (IBC). The plan was rejected by the CoC and a decision was taken by the CoC to liquidate the CD.

- On 9th April 2021, the CoC voted in favour of the liquidation of the CD with 100% vote.

- The Earnest Money Deposit (EMD) amount of ₹ 25,00,000/- paid by the Appellant, on repeated requests was refunded to the Appellant on 10th May 2021.

- An application filed by the Appellant before the National Company Law Tribunal (NCLT), Kolkata Bench was dismissed vide order dated 13th September 2022 due to non-compliance of section 29A of IBC.

- Aggrieved by the order of NCLT – the appellant filed the appeal before the National Company Law Appellate Tribunal (NCLAT).

Arguments of the Appellant

- The Director of the Prospective Resolution Applicant (PRA) is disqualified to be appointed as the Director under Section 164(2) of the Act. The director was a connected person to Fortune Chemicals Limited i.e., and the Fortune Chemicals Limited was ineligible to be a resolution applicant;
- The Resolution Plan was not accompanied by an Affidavit stating that the PRA is eligible to submit a resolution plan under Section 29-A of IBC;
- The Resolution Plan did not provide clearly about the CIRP costs, thus, was non-compliant with the requirements of Section 30(2)(a) of IBC;
- The Resolution Plan was not compliant with requirements of Section 30(2)(e) of IBC regarding compliance to provisions of law;
- The Resolution Plan did identify the cause of default and did not also demonstrate how the PRA intended to address the cause of default, thus is non-complaint under Regulation 38(3)(a) IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016;
- The feasibility of the Resolution Plan was highly questionable; thus, it was non-compliant under Regulation 38(3)(b) IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016.

Arguments of the Respondent

- The Appellant was ineligible under the provisions of Section 29A of IBC to submit a resolution plan.
- In terms of Regulation 36A(8) of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016, the respondent had conducted due diligence to satisfy whether the Appellant complies with the applicable provisions of Section 29A of the IBC.
- Mr. Avanish Kumar Singh became disqualified to be appointed a director of any other company as per provisions of Section 164(2) of the Act for a period of five years with effect from 1 December 2017 and was ineligible to submit a resolution plan as per 29A of IBC.
- Mr. Avanish Kumar Singh, being a ‘connected person’, became a director of the Appellant in 2018, despite being disqualified to become a director, as the same was well within the five-year stipulated period as stated hereinabove.
- Furthermore, he falls into the category of ‘connected person’ as he was a director of the appellant and was in control and management of the appellant. Thus, the appellant clearly fell under the category of Section 29A(e) and (j) of the IBC and was ineligible to submit a resolution plan.
- The RP submitted that the Appellant never failed to adhere to any of the timelines during the CIRP of the CD. While the last date for submission of

the resolution plan was 19 February 2021 and the deadline for submission of EMD was 25th February 2021, EMD of ₹ 25,00,000/- was credited in the bank account only on 3 March 2021. On 7th April 2021, the Appellant sent an email with a proposal to waive the debt assignment clause in their resolution plan thereby reducing the resolution plan by approximately 30%.

- The Appellant had never adhered to the timelines and was non-compliant to Section 29A of IBC, 2016. It was further submitted that it is the well settled law as per judgments by the *Hon'ble Supreme Court in* ***K. Sashidhar vs. Indian Overseas bank & Ors*** *and this Tribunal in* ***Harkirat Singh Bedi vs. Oriental Bank of Commerce & Ors.,*** *that the commercial wisdom of the CoC in accepting or rejecting a resolution plan was "non-justiciable" and that the scope of judicial intervention was very limited.*

Held

- Only one resolution plan was submitted in the CIRP of the CD. The RP has brought out that this plan was not compliant with the eligibility requirements of Section 29A of IBC.
- As per provisions of Section 164 of the Act, no person who is or has been a director of the company which has not filed financial statements and annual returns for any continuous period of three years shall be eligible to be reappointed as a director of the company or appointed as a director in any other company for the period of five years from the date on which the said company continuously failed to file accounts of three years.
- The default u/s 164(2) of the Act had occurred on 1 December 2017, the date on which the GADPPL failed to file financial statements and annual returns for a continuous period of three years. Thus, Mr. Avanish Kumar Singh was ineligible to be a director as per provisions of Section 164(2) of the Act and the Appellant company also accordingly was not eligible to be a resolution applicant in terms of provisions of clause (e) of Section 29A of IBC, 2016.
- Further, it was noticed that the Appellant, after writing repeated reminders to RP, had taken back the EMD amount, and it was only as an afterthought, after nearly six months, that the Interlocutory Application was filed for consideration of the resolution plan. This clearly appeared to be an attempt to delay the process of CIRP/ liquidation.
- The CoC, in its commercial wisdom, has not accepted the resolution plan and had directed the liquidation of the Corporate Debtor. The commercial wisdom of the CoC regarding acceptance/rejection of the resolution plan was "non-justiciable".
- The Hon'ble NCLT had rightly refused to intervene in the decision of the CoC and its commercial wisdom in rejecting the resolution plan of the Appellant.
- In the facts and circumstances of the case, the Appellate Tribunal was of the opinion that there was no ground to interfere with the order of the

NCLT, and accordingly, the appeal was dismissed.

CASE – 2 – Companies Act

In the matter of *Jyoti Limited vs. BSE Limited & ANR* Hon'ble Supreme Court order dated 10th December 2024

Facts of the case

- Jyoti Limited ('hereinafter called Appellant') is the listed company incorporated under the Companies Act, 1956 had availed a loan from Dena Bank. On March 28, 2018 Dena Bank vide an Assignment Agreement, assigned the debt of the Appellant to RARE Asset Construction Private _ (hereinafter called 'RARE') whereby all amounts due and payable by the Appellant to Dena Bank became due and payable by the Appellant to RARE.

- The Appellant company made a proposal to RARE for restructuring of its debt. According to the proposal, a part of the outstanding debt of the appellant amounting to ₹ 32.80 crores was to be converted to Equity shares.

- RARE, accepted the proposal, pursuant to which the Board of Directors of Appellant passed a resolution on May 2, 2018 and allotted 59,63,636 equity shares of ₹ 10 each at a premium of ₹ 45 per share to RARE.

- Post allotment, the Appellant made an application to the Bombay Stock Exchange ['BSE'] for the listing of these newly allotted shares. This application was rejected by BSE for the reason that the Appellant had not passed a special resolution under section 62(1)(c) of the Companies Act 2013 ['the Act'] before allotting new shares of the Appellant and neither had the Appellant obtained in principle approval for listing of new shares of Appellant on BSE under Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) regulations, 2015 ['SEBI LODR'].

- As a result, the Appellant filed a petition before the Securities Appellate Tribunal ('SAT') against the rejection of the BSE to list the shares allotted to RARE.

- Before SAT, Appellant argued that since the loan was converted into equity shares under Section 9 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFESI Act'), shareholder resolution is not required and section 62(1) of the Act is not applicable, as section 9 of SARFESI Act overrides section 62 of the Act by the virtue of section 35 & 37 of SARFESI Act.

- However, SAT while disapproving the arguments of the appellant, held that,

  "10. We are of the opinion that without complying with the provisions of Section 62 of the Companies Act, namely, without getting a resolution from the shareholders no further issue of the share capital can be issued by issuance of further shares to the asset reconstruction company.

  11. The contention that Section 35 of the SARFESI Act overrides the provisions of the other acts and consequently Section 37 of the SARFESI Act is not applicable in the

given case is patently misconceived. In the first instance, Section 35 of the SARFESI Act provides that the provisions of the SARFESI Act will have effect, if any other provision under any other Act or law is not inconsistent with the provisions of the SARFESI Act. Nothing has been pointed out as to which provision of LODR Regulations or the Companies Act is inconsistent with Section 9 of the SARFESI Act. Section 9 only provides measures to be taken by an asset reconstruction company, and one such measure is, to convert any portion of debt into shares of a borrower company. The issuance of shares has to be done under the provisions of Section 62 of the Companies Act which procedure is required to be followed and which is not inconsistent with Section 9 of the SARFESI Act. Therefore, in our view Section 35 of the SARFESI Act is not applicable in the instant case.

12. *Further, Section 37 of the SARFESI Act makes it very clear that the provision of the SARFESI Act is only in addition and not in derogation with the Companies Act or the Securities Contracts (Regulation) Act, 1956 or the SEBI Act, 1992 or any other law for the time being in force. Thus, the contention that the provision of SARFESI Act supersedes the provisions of the SEBI Act or of the Companies Act is patently erroneous." (extract of SAT order)*

- Hence, being aggrieved by the order passed by SAT, the Appellant filed an appeal before the Hon'ble Supreme Court of India.

Appellants' contentions before the Hon'ble Supreme Court of India

- Section 9(1) of the SARFESI Act permits the RARE to take measures such as conversion of any portion of debt into shares of the borrower company i.e., the Appellant herein and once such power is exercised, the shares have to be listed on the Stock Exchange. Appellant further argued that only where the company, i.e., the Appellant herein, proposes to increase the subscribed capital, the consent/the resolution/approval of the shareholders is required, as mandated by Section 62(1)(c) of the Act. Since in the case at hand the Appellant had not proposed to increase the subscribed capital rather it is the RARE that has done it, no such approval of the shareholders is necessary.

Respondent's contentions:

The order of the Hon'ble Supreme Court does not discuss the contentions made by respondent BSE.

Held

- Section 9 of the SARFAESI Act authorizes RARE to convert a portion of the debt into shares of the borrower company but such authority is subject to Section 62 of the Act which in turn requires a resolution of the shareholders of the company. However, when such a proposal is not by the Appellant, the approval of the shareholders may not be necessary.

- The conversion of the debt into additional shares had taken place with the agreement of the Appellant and RARE, and it is on the basis of such an agreement between the parties that a resolution was passed on May 2, 2018 by the board of directors of the Appellant accepting the proposal to convert the debt into shares and to allot them in favour of RARE, thereby resulting in increase of the equity capital of the Appellant.

- The application for listing of the aforesaid additional shares to the BSE was made by the Appellant, and not by RARE.

- Therefore, the proposal was that of the Appellant only. Accordingly, as contemplated by Section 62(1)(c) of the Act, the approval of the shareholders would be mandatory before the shares are accepted for listing on the BSE.

- In view of the aforesaid facts and circumstances, we are of the opinion that no error or illegality has been committed either by the BSE or the SAT in refusing to accept the request of the Appellant for the listing of the shares at the BSE inasmuch as Section 62 of the Act stands duly attracted and in the light of sub-clause (c) of sub-section (1) of Section 62 of the Act, special resolution of the shareholders is necessary which is lacking in the instant case.

- Hon'ble Supreme Court of India also stated that this order has been passed by it in the peculiar facts and circumstances of this case where the appellant company itself has passed the resolution and applied for the listing of shares.

CASE – 3 – SEBI

Adjudication order in the matter of PNB Housing Finance Limited

Facts of the case

- Securities and Exchange Board of India ('SEBI') conducted an investigation in the scrip of PNB Housing Finance Limited (PNBHFL/Company) on suspected irregularity in trading activities in the scrip. On investigation, SEBI observed that on May 31, 2021 company had informed the Bombay Stock Exchange ['BSE'] and National Stock Exchange ['NSE'] ['Stock Exchanges'] vide press release titled "PNB Housing Finance Board Approves Capital Raise Proposal of INR 4,000 crore led by Carlyle". SEBI alleged that this information was an Unpublished Price Sensitive Information ['UPSI']. It is observed from the Investigation Report (IR) that on May 31, 2021 at 09:47:50 am company had informed the Exchange vide a press release titled "PNB Housing Finance Board Approves Capital Raise Proposal of INR 4,000 crore Led by Carlyle". PNBHFL disclosed that entities affiliated to Carlyle Asia Partners IV, L.P. and Carlyle Asia Partners V, L.P. had agreed to invest up to ₹ 3185 crore through preferential allotment of equity shares and warrants, at a price of Rs 390 per share in PNBHFL.

- SEBI further alleged that Mr Balveer Singh Choudhary (Noticee No. 1) and Ms Garima Maheshwari (Noticee No. 2) had communicated UPSI while

in possession of the same and Facts Tradelink Pvt Ltd (Noticee No. 3), Mark Corporation Pvt Ltd (Noticee No. 4), Mr Saurabh Hirawat (Noticee No. 5), Ms Suhani Hirawat (Noticee No. 6), Mr Dinesh Kumar Maheshwari (Noticee No. 7), Mr Dinesh Kumar Maheshwari HUF (Noticee No. 8) and Mrs Keerti Dinesh Maheshwari (Noticee No. 9) had traded in the scrip of the company while in possession of and on the basis of UPSI ('Noticees').

- SEBI further stated that during the period from November 1, 2020 to August 31, 2021 certain entities had undertaken trading in the scrip of PNBHFL. SEBI alleged that UPSI had came into existence when officials of Carlyle had first PNBHFL.

Allegations by SEBI

- Information relating to PNB Housing Finance Board Approves Capital Raise Proposal of INR 4,000 crore Led by Carlyle was UPSI and Noticees who traded in the scrip of PNBHFL had indulged in insider trading activity as per provisions of Prohibition of Insider Trading, Regulations, 2015 ['SEBI PIT'].

Contentions by the Noticees

- **Noticees argued that the information relating to Carlyle investing in PNB Housing Finance Ltd was generally available information:** It was already in the public domain that PNBHFL was actively seeking investors for a capital raise, as evidenced through the stock exchange disclosures on January 21, 2021, January 27, 2021, January 30, 2021, April 27, 2021 and April 31, 2021. It was also in the public domain that due to PNBHFL's capital needs it had started looking for co-lending tie-ups with banks, as evidenced by news reports dated January 31, 2021 and March 5, 2021 and the stock exchange disclosure dated March 5, 2021.

- Keeping in view that the Company has been looking to raise capital since last two years, the fact that information pertaining to such capital raise and consequent amendments to the trademark agreement with PNB has been publicly disclosed by the Company from time to time and that no UPSI was shared by the Company with any person during this process, no details were felt necessary to be captured in SDD, as per the requirements of the SEBI (Prevention of Insider Trading) Regulations, 2015. In case SEBI is of the view that there was any alleged violation of PIT Regulations, the proceedings ought to have been initiated against PNBHFL for the alleged violation of not maintaining SDD.

- Further, it was argued that no UPSI was shared by PNBHFL to any entity and all the information pertaining to capital raise had been publicly disclosed by the Company from time to time therefore it did not consider it necessary to capture any details in its Structured Digital Database.

- A confidentiality agreement was signed between Carlyle Group companies and PNBHFL on March 01, 2021 (hereinafter referred to 'NDA'). It was argued that the date of signing of the NDA cannot be taken as the date of commencement of UPSI, as the same is just the starting point for the due diligence of the entities involved and cannot

automatically lead to the crystallisation of the deal/transaction.

- In the present matter, the commencement of the UPSI period in the SCN/SSCN was taken as February 04, 2021, which is even before the date of signing of the NDA, which was March 01, 2021. It was submitted that as per SEBI's own order, the date of signing of the NDA cannot be taken as the commencement of UPSI period, therefore, a date which is even before the signing of the NDA cannot be taken as the commencement of the UPSI. Therefore, the allegation of UPSI period starting from February 04, 2021, in the present case is not only without any application of mind but in complete disregard to the principles laid down in the aforesaid orders.

- The allegation of commencement of UPSI period from February 04, 2021 can be negated due to the following factors submitted as below –

  a. The information as regards fundraising was already in the public domain.

  b. That the information that Carlyle Group is involved in the fundraising was also in the public domain as noted from disclosure by Company dated March 03, 2020 and a newspaper article dated March 12, 2021.

  c. As regards the amount of investment is ₹ 4,000 crore with ₹ 3185 crores being from Carlyle and the investment is being made at ₹ 390 per share, the relevant date could never have been February 04, 2021 for the reasons that the investment amount of ₹ 4,000 crore is decided by the Company itself after taking necessary approvals from its Board of Directors which was only decided on May 31, 2021. The price of ₹ 390 per share could have been decided under Regulation 164 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 as per which the relevant date for determining the price is 30 days prior to the EGM date (which was called on June 22, 2021). However, the EGM date itself could only be decided based on the outcome of the Board meeting of May 31, 2021.

- It is submitted that the Investigation Officer has failed to take into consideration that the Board of Pluto was the final authority for approval of the preferential allotment by Carlyle in PNBHFL and the approval had happened in the board meeting of Pluto on April 27, 2021 and therefore, no information about the investment by Carlyle into PNBHFL would have come into existence on February 04, 2021 as alleged in the SCN or SSCN. Further, it is important to note that the Noticee No. 2 was not even a part of said board meeting of Pluto held on April 27, 2021.

Contentions by SEBI

- SEBI stated that even though there were media articles that PNBHFL was going to raise capital but the news regarding the raising of capital by PNBHFL crystallised to concrete UPSI when there was an identified investor, timelines

to close the deal etc. The details of the counterparty was discussed and reported in the newspapers/media only during the UPSI period. The information regarding Carlyle investing in PNBHFL was not available in the media reports/ newspapers before the UPSI period. Therefore, the submissions of the Noticees that investment by Carlyle in PNBHFL was generally available information was incorrect. The investment of ₹ 3185 Crore by Carlyle was a UPSI and has been correctly identified by the investigation.

- SEBI further stated that Carlyle vide email dated June 12, 2022 and General Atlantic (GA) vide email dated September 13, 2022 forwarded a chronology of events, which took place during due diligence process. From the aforesaid chronology of events, the announcement dated May 31, 2021 had come into existence on February 04, 2021 as discussions on general issues relating to the business of PNBHFL, including seeking an update on its fundraise plans pursuant to its previous public announcement dated January 27, 2021 had taken place.

- Noticee No. 2 was a part of the discussion as an employee of Carlyle. It was observed that on February 26, 2021, an email was sent to PNBHLF by Quality Investment Holdings ['QIH'], an affiliate of Carlyle expressing interest in participating in the fundraise. From February 26, 2021, the due diligence with respect to the investment opportunity was initiated by Carlyle. The confidentiality agreement was signed between QIH and PNBHFL on March 01, 2021. However, the negotiation and finalization of the transaction documents began on April 14, 2021. Chronology reflects that on subsequent days, the discussions about investor communications and other processes took place. However, on April 27, 2021 Carlyle received approval from Pluto Investments for the investment.

- After the approval on April 27, 2021, there was a certainty that the investment of ₹ 3185 Crore by Carlyle in PNBHFL was going through. Therefore, the investment by Carlyle in PNBHFL cannot be termed as generally available information. The only generally available information was the raising of a fund by PNBHFL through permissible routes, however, the investment of Carlyle in PNBHFL was not generally available and hence, it was a UPSI.

Order

- SEBI held that the information relating to the acquisition of a stake in PNBHFL by Carlyle was UPSI. SEBI further held that Noticees who traded in the shares of PNBHFL were not based on UPSI and hence cannot be charged as insider trading. This summary is only pertaining to the determination of UPSI part of the SEBI adjudication order in the matter of PNBHFL

CA Hardik Mehta

CA Tanvi Vora

OTHER LAWS

FEMA – Updates and Analysis

In this article, we have discussed recent amendments made in FEMA through Notifications, Circulars, Master Directions, Press Notes & Press Releases.

A. Update through Notifications

1. Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Third Amendment) Regulations, 2025

The RBI has announced certain amendments to Regulation 3 of the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 [Notification No. FEMA.395/2019-RB dated October 17, 2019] (hereinafter referred to as Principal Regulation).

Regulation 3 deals with 2 key aspects - (1) the mode of Payment and (2) Remittance of sale proceeds for the following transactions:

Sr.	*Transaction*	*Schedule Reference*	*Amended*
1.	Purchase or sale of equity instruments of an Indian company by a Person Resident Outside India (PROI)	I	Yes
2.	Investments by Foreign Portfolio Investors (FPI)	II	Yes
3.	Investment by Non-Resident Indian (NRI) or Overseas Citizen of India on repatriation basis	III	No
4.	Investment by Non-Resident Indian (NRI) or Overseas Citizen of India on non-repatriation basis	VI	No
5.	Investment by other non-resident investors	V	No
6.	Investment in a Limited Liability Partnership	VI	Yes
7.	Investment by a Foreign Venture Capital Investor	VII	Yes
8.	Investment by a person resident outside India in an Investment Vehicle	VIII	Yes

Sr.	***Transaction***	***Schedule Reference***	***Amended***
9.	Issue of Indian Depository Receipts	IX	Yes
10.	Purchase or subscription of equity shares of companies incorporated in India on International Exchanges Scheme by Permissible Holder	X	No
11.	Issue of convertible notes by an Indian start-up company	Regulation 3.2	Yes

The key amendments are as follows:

a. The payment for purchase and remittance towards sale proceeds for the following transactions are now to be made from funds held in repatriable foreign currency or Rupee accounts as against NRE, FCNR(B), or Escrow accounts as prescribed under the erstwhile regulations:

- Purchase or sale of equity instruments of an Indian company by a Person Resident Outside India (PROI) – Schedule I
- Investment in a Limited Liability Partnership (LLP) – Schedule VI
- Investment by a PROI in an Investment Vehicle – Schedule VIII
- Issue of convertible notes by an Indian start-up company

(Comments: The amendment, although significant, is merely a referencing amendment wherein the erstwhile regulation specifically referred to NRE/FCNR (B)/escrow now refers to the notification related to Foreign Exchange Management (Deposit) Regulations (i.e. Notification FEMA 5(R)). This would create a cross referencing between the two notifications and thereby ensuring that the permitted accounts are in line with the latest deposit regulations. As FEMA 5(R) stands today, include NRE/FCNR (B), Escrow/SNRR and accounts of FPIs & FVCIs as repatriable accounts.

It should also be remembered that the amendment continues to use the words 'repatriable' thereby restricting the use to NRO or any other non-repatriable accounts.)

b. Amount of consideration covered under Schedule I (for Purchase or sale of equity instruments of an Indian company by a PROI) now includes swap of equity capital.

(Comments: It is a consequent change brought into the Mode of Payment and Reporting of Non- Debt Instruments Regulations in order to give effect to the amendments carried out to the Master Direction on Foreign Investment in India. The NDI Rules r.w. OI Rules permits transfers by way of swap. The Mode of Payment and Reporting of Non- Debt Instruments Regulations permitted the same for 'equity instruments' as defined in NDI Rules while it was overlooked to include the Overseas Investment equivalent of the same. Accordingly, equity capital is now included as well.)

c. Investment by Foreign Portfolio Investments (FPI) and Foreign Venture Capital Investor (FVCI)

- Under the erstwhile regulations, foreign currency account and/or SNRR used by FPI and FVCI for payment or remittance of sales proceeds were to be exclusively used for transactions under the Schedule II and VII respectively. By way of the amendment, this restriction is no longer applicable to SNRR accounts.

  (Comments: In case of FPI and FVCI, the removal of restriction in SNRR will aid the FPIs/ FVCIs to use the funds for other purposes permitted in an SNRR account.)

- FPIs are now specifically allowed to invest in Indian Depository Receipts (IDRs) from funds held in foreign currency account and/ or SNRR account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. – Schedule X

  (Comments: While Schedule X permitted NRIs, OCI as well as FPIs to investment in IDRs, Regulation 3 of the Mode of Payment and Reporting of Non-Debt Instruments provided permitted mode of payments only for NRIs and OCIs. Permission for FPIs has now been added.)

d. Issue of Indian Depository Receipts

Redemption/conversion of IDRs into underlying equity shares of the issuing company shall be in compliance with the Foreign Exchange Management (Overseas Investment) Rules, 2022 as against Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.

(Comments: Reference to erstwhile FEMA 120 which had not been updated to OI Rules, 2022 has now been rightly done.)

e. Expansion of definition of "banking channels" as a mode of payment – In case of mode of payment for all transactions listed in the table above, payment can be made from abroad through banking channels or prescribed accounts in India. Banking channels now include any rupee vostro accounts including Special Rupee Vostro Accounts.

(Comments: The expression 'banking channels' was widely used in the erstwhile regulation but wasn't defined. It was used along with the phrase inward remittance from abroad through banking channels which was explanatory in itself. The amendment now broadens the permitted routes to include through any Rupee Vostro Accounts (currently permitted SRVA) held by a person outside India.)

Master Direction – Foreign Investment in India has been accordingly amended to give effect to the above-mentioned changes.

Notification No. FEMA 395(3)/2025-RB dated 14 January 2025

2. Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Fifth Amendment) Regulations, 2025

The RBI has announced an amendment to Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 [Notification No. FEMA 10(R)/2015-RB dated January 21, 2016].

Prior to the amendment, a person resident in India (PRII), may open, hold and maintain a

Foreign Currency Account with a bank outside India, under the following circumstances subject to approval of the AD Category – I banks/Exim Bank at post-award stage before undertaking execution of such contracts under the Foreign Exchange Management (Export of goods and services) Regulations, 2015:

- The PRII is an exporter who has undertaken a construction contract or a turnkey project outside India; or
- The PRII is exporting services or engineering goods from India on deferred payment terms

  (also known as Project Exports)

After the amendment, a PRI can also hold and maintain a Foreign Currency Account with a bank outside India, for realisation of full export value and advance remittance received towards export of goods or services.

Funds in this account may be utilised by the exporter for paying for imports into India. The funds are to be repatriated into India within a period of 1 month from the date of receipt of the funds after adjusting for forward commitments, subject to the realisation and repatriation requirements as specified in Regulation 9 of Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.

Section A.4 of Master Direction – Export of Goods and Services has also been amended to this extent

Section 4.10 has been inserted to Master Direction - Deposits and Accounts to give effect to this amendment

Notification No. FEMA 10(R)(5)/2025-RB dated 14 January 2025

(Comments: Exporters in India have now been permitted an additional avenue to recover export proceeds. Exporters are now permitted to open foreign currency accounts outside India and collect export proceeds in foreign currency as well as make payments for imports from such receipts. This would immensely safeguard exporters from exchange losses in this volatile economy.

However, it should be noted that such exporters have 1 month to utilize the funds or they are required to repatriate the balance monies back to India.

The timeline for realisation of export proceeds (viz. currently 9 months) shall be satisfied when monies are received into above mentioned foreign currency account outside India.)

3. Foreign Exchange Management (Deposit) (Fifth Amendment) Regulations, 2025

The RBI has announced various amendments to Foreign Exchange Management (Deposit) Regulations, 2016 (Notification No. FEMA 5(R)/2016-RB dated April 01, 2016).

I] Amendment to SNRR account

(Changes through Notification)

Parameters	Erstwhile Regulation	Amended Regulation
Permissibility to open with	PROI permitted to open an SNRR Account with an authorised dealer bank (AD Bank) in India	PROI permitted to open SNRR Accounts with AD Banks in India or their branches outside India

Parameters	Erstwhile Regulation	Amended Regulation
Permissible transactions	Non-residents having a 'business interest' in India was permitted to open a SNRR Account with an AD Bank for the purposes of undertaking prescribed *bonafide* transactions i.e. certain specified purposes and other 'general business interests	Non-residents can open SNRR Accounts for all *'permissible current and capital account transactions with a person resident in India'*.
IFSC Unit	Business related transactions outside IFSC by IFSC units like administrative expenses, sale of scrap government incentive in INR were specifically permitted	A IFSC unit may open an SNRR account with an authorised dealer in India (outside IFSC) for its business related transactions outside IFSC. Specific list of business transactions removed and would therefore allow permissible current and capital account transactions with a person resident in India
Tenure	SNRR Accounts could be opened for a tenure which is the lesser of: (i) the tenure of the contract/ operation period/business of the account; or (ii) seven years from the date on which the account was opened.	The reference to the seven years limit is now removed. Hence, the tenure of the SNRR account should now be concurrent with the tenure of the contract/operation period/business of the account Q6 of FAQs on Accounts in India by Non-residents has also been updated accordingly.

(Clarifications in FAQs on Special Non-Resident Rupee Accounts)

The FAQs have provided detailed instructions for AD banks in relation to process to be adopted in case of debits and credits to a SNRR account. This would help PRII who receive or pay from/to a SNRR account of a PROI. The instructions ensure that the PRII do not struggle with required compliances such as those required in the case of exports, imports, ECB, FDI etc.

FAQ 3 on SNRR importantly clarifies that transactions by a domestic Indian party (PRII), would need to file Form A2 for overseas remittance in case of credit to a PROI's SNRR account.

(Comments: The amendments to regulations applicable to SNRR account should boost its use by PROI. The scope of SNRR is also expanded to units in IFSC for further boosting the use of IFSCs.

The FAQs have further clarified a number of compliance/reporting questions that are to be undertaken for transactions with and from SNRR accounts which shall streamline transactions.)

II] Transfer of funds between repatriable accounts

In the regulations, after regulation 8, the following new Regulation 9 is inserted:-

Notwithstanding anything contained in these regulations, the transfer of funds, for all bona fide transactions, between repatriable Rupee accounts maintained in accordance with these regulations is permitted."

(Comments: The relaxation of movement of funds between repatriable accounts removes the ambiguity for transfers between accounts of PROIs in India. Therefore, pursuant to this amendment, payment can be made from a repatriable INR account of a PROI to a repatriable INR account maintained by another PROI/own repatriable INR account for bonafide transactions (e.g. NRE to SNRR, SNRR to SNRR, NRE to NRE, SNRR to NRE etc). Clarity for transfers with two non-repatriable accounts of a PROI or between two PROIs should be provided. However, transfers between non-repatriable and repatriable accounts continue to be regulated with limits (e.g. NRO to NRE, NRO to SNRR etc))

Master Direction - Deposits and Account has amended to this effect.

Notification No. FEMA 5(R)(5)/2025-RB dated 14 January 2025

B. Update through Master Directions

1. Master Direction - Deposits and Accounts

2. Master Direction – Export of Goods and Services

(The above two Master Directions have been updated on 16th January 2025 to give effect to the above mentioned amendments through Notifications. Since the same have been analysed above, we have not repeated the analysis hereunder.)

3. Master Direction – Foreign Investment in India

A number on changes have been brought into the Master Direction which has been updated on January 20, 2025 & on January 16, 2025. Multiple changes in the Master Direction are an effect of amendments to NDI Rules, 2019, FEMA notifications or AP (DIR) Circulars undertaken in last few months and are covered in the analysis of that particular month's Chambers' Journal.

The following changes to the Master Direction on Foreign Investment in India have been inserted as a change/clarification:

1) In relation to Inheritance:

Para 1.3 has been amended to clarify that in case of inheritance by PROI legal heir on death of a PRII shall be held on non repatriable basis and therefore no reporting shall be required for the same.

2) In relation to Sectoral caps:

A note has been added to Para 5.2 to provide that in case a clarification is required in relation to foreign investment in a sector or related conditions, an application/request should be made to Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India.

3) In relation to Foreign Investment in Investing Companies (NBFCs):

A note has been added to Para 5.2.7 providing that an Indian investee company whose proposed activities are regulated by a financial sector regulator, may receive foreign investment to comply with the criteria of minimum

net owned funds (NOF) prescribed by such regulator. However, such investment shall only be used to comply with the minimum NOF criteria and shall not be used for any other purpose/activity. This rationalization is beneficial since under the previous framework, banks often did not agree to accept inward remittances to satisfy Minimum NOF requirements for forming an NBFC before the issuance of a license. This led to a dilemma for raising funds to meet the NOF criterion without a license. Therefore, the RBI has now clarified that such funds can be brought into India and later repatriated if the NBFC license is not granted, resolving a key regulatory hurdle.

4) ***In relation to Right Issue:***

Para 6.12.3 has been inserted for cases of rights issues referred to in Section 62(1)(a)(iii) of the Companies Act, 2013. It deals with cases wherein the Board of Directors of an Indian company decide to allot the unsubscribed portion of a Rights Issue in favour of a PROI. It is provided that such cases would need to adhere to entry routes, sectoral caps or investment limits as well as pricing guidelines and other attendant conditions as applicable for investment by a person resident outside India specified in the NDI Rules.

5) ***In relation to Issue of Employees Stock Options, Sweat Equity Shares and Share Based Employee Benefits:***

The NDI Rules were amended on 12th April 2022 in relation to Issue of Employees Stock Options, Sweat Equity Shares and Share Based Employee Benefits. This amendment has now been incorporated into the Master Direction. The following Notes to Para 6.13.1 and 6.13.2 provide further clarification in this regard –

- It should be noted that issue of 'sweat equity shares' to a person resident outside India was permitted with effect from 11th June 2015. However, issuance of equity instruments under any share-based employee benefit scheme, other than Employees Stock Options and Sweat equity shares, was permitted only with effect from 12th April 2022. Therefore, any issuance of equity instruments under any share-based employee benefit scheme may be in contravention of FEMA.
- Calculation of percentage of foreign investment is required to be done upfront on fully diluted basis at the time of issuance/grant of Employee Stock Options, sweat equity shares and Share Based Employee Benefits to persons resident outside India.

6) **In relation to deferred payment arrangement:**

A clarification by way of Note is added to the Para 7.9 of the Master Direction requiring that in case of deferred payment arrangements, the share purchase agreement/transfer agreement should contain the clause and related conditions to the deferred arrangement. The specific rules related to deferred payment arrangement have not been amended.

7) **In relation to Downstream Investment:**

- Para 9 of the Master Direction has been updated to 'clarify' that

arrangements which are available to direct investments shall also be available to for downstream investments. Therefore the deferred arrangement terms and the amendment to NDI Rules on 16th August 2024 permitting swap of equity instruments and equity capital would also be available to downstream investment transactions. The need for this clarification originated due to fact that notices were being sent to FOCCs who undertook transactions on deferred consideration terms. The government's move to permit cross-border swaps in the August 2024 NDI rules amendment was welcome by all stakeholders and further appreciated by the abovementioned permissibility to downstream investment cases as well. M & A structuring/ Restructuring deals would surely benefit from such liberalizations.

- Form DI requirement is expanded to cases where the original investment was made as a resident but later the investor entity becomes owned and/or controlled by PROI. The form is required to be filed by the investor company within 30 days from the date of reclassification

- The explanation to Para 9.1.15 included the non inclusion in DI for NRI investments on non repatriation basis. The explanation is reworded to include investments by OCIs as well and is expanded to include a company, trust or partnership incorporated outside India in compliance with Schedule IV.

8) References to the Reserve Bank:

This Para is newly added to the Master Direction. It provides that any requests for clarification pertaining to foreign investment framework may be made to the AD bank. The AD bank may, if required, forward the request to the concerned Regional Office of RBI for guidance. Such representation shall be routed through a nodal office of the AD bank specifically designated for this purpose, along with specific recommendation/observations, FEMA provisions, reason for submission to Reserve Bank and relevant documents. It further clarifies that the jurisdiction of a regional office of RBI to whom application should be made shall be as per the registered office of the Indian investee entity. This mechanism has been undertaken for RBI approval cases and is a welcome move to codify it into the Master Direction.

FED Master Direction No.11/2017-18 dated 4 January 2018 updated on January 20, 2025 & on January 16, 2025

C. Update through Frequently Asked Questions (FAQs)

New FAQs are issued for Special Non-Resident Rupee Accounts and the FAQs have been revised for FAQs on International Trade Settlement in Indian Rupees, Foreign Currency Accounts by Resident Individuals, Accounts in India by Non-residents.

We have indicated in the analysis above the changes to any provision that have been given effect in a particular FAQ. Therefore, we have not repeated the analysis hereunder.

THE CHAMBER NEWS

CA Mehul Sheth
Hon. Jt. Secretary

CA Neha Gada
Hon. Jt. Secretary

Important events and happenings that took place online/ physical between **January 1, 2025 to January 31, 2025** are being reported as under:

I. ADMISSION OF NEW MEMBERS

The details of new members who were admitted in the Managing Council Meeting held on January 24, 2025 are as under:

Type of Membership	No. of Members
Life Member	16
Ordinary Member – Half Yearly	2
Student Member	3
Associate	0
Total	**21**

II. PAST PROGRAMMES

Sr. No.	*Date*	*Topics*	*Speakers*
HYDERABAD STUDY GROUP			
1	4.1.2025	Discussion on Section 128A of the CGST Act	Adv (CA) Ramachandra Murthy
STUDENT			
1	Certificate Course on Unlocking M&A: Legal, Regulatory, and Practical Perspectives Jointly with PGCL, Mumbai		
a	4.1.2025	Introduction to M&A & Overview	Mr. Sanjay Ashar

Sr. No.	*Date*	*Topics*	*Speakers*
b	4.1.2025	Due Diligence in M & A	Mr. Mahesh Wasadikar
c	4.1.2025	Drafting and Negotiating M&A Agreements	Mr. Sharad Abhyankar
d	5.1.2025	Negotiating and Closing the Deal	Mr. Vinay Butani & Mr. Dipesh Jain
e	5.1.2025	Regulatory Considerations in M&A	Ms. Manjushree Somasundara
f	5.1.2025	Successful Completion of an M&A Transaction	Ms. Rashna Jehani
g	5.1.2025	Analysis of Real-Life M&A Cases	
2	Certificate course on GST Law and Litigation Jointly with Government Law College		
a	18.1.2025	Constitutional provisions related to GST	Mr. V. Sridharan, Senior Advocate
b	18.1.2025	Levy of GST, Scope of Supply including Schedule I, II, III	Mr. Vikram Nankani, Senior Advocate
c	25.1.2025	Classification of Goods and GST Rate Structure	Mr. Vipin Jain, Advocate
d	25.1.2025	Registration, Cancellation and Composition Scheme	CA Aditya Surte
3	24.1.2025 25.1.2025	2nd National The Chamber of Tax Consultants Indirect Tax Moot Court Competition, 2025	
4	Unveiling the Tech Series 2025: Your Gateway to Professional Excellence!		
a	27.1.2025	Mastering the Microsoft 365 Ecosystem	CA Nirav Bhanushali
b	28.1.2025	Excel at Excel: Advanced Techniques for Accountants & Lawyers	CA Vivek Gupta
c	29.1.2025	Zoho: Transforming your Practice with Seamless Accounting & other Finance Products	CA Jigar Shah
d	29.1.2025	Unleashing AI Potential : Driving Productivity in Tax, Audit, Accounts and Finance	Mr. Dhaval Kodilkar
e	30.1.2025	Power BI: Visualizing Your Data for Smarter Decisions	CA Tapas Ruparelia

Sr. No.	Date	Topics	Speakers
f	30.1.2025	RPA in Action: Automating Repetitive Tasks with Robots	CA Devesh Gupta
g	31.1.2025	Cybersecurity & Data Protection: Safeguarding the Practice and Exploring Professional Opportunities	CA Sachin Dedhia
STUDY CIRCLE & STUDY GROUP			
1	7.1.2025	Recent Judgements under Income Tax Act, 1961	CA Nikhil Tiwari
2	16.1.2025	Reassessment u/s 148 of under Income Tax Act	Mr. Dharan Gandhi, Advocate
3	30.1.2025	Recent Judgements under Income Tax Act, 1961	Mr. Vipul Joshi, Advocate
INDIRECT TAXES			
1	13th Residential Refresher Course on GST – January 9-12, 2025 - Sheraton Grand, Bengaluru		
		Keynote Address	CA Guru Prasad Makam
		Case Studies on Place of Supply for International Transactions, Zero-Rated supplies, Supply to SEZ, FTWZ, GIFT City and Refund related issues.	Adv. Nishant Shah, Mumbai
		Case Studies on Scope of Supply including Schedule I, II & III, Composite and Mixed Supply	Sr. Adv. V Raghuraman, Bengaluru
		GST portal issues: Navigating challenges	*Panelists*: CA. Vinod Awtani, Mumbai Adv. K Vaitheeswaran, Chennai Adv. Abhay Desai, Vadodara *Moderator*: CA. Vikram Mehta, Mumbai
		Input Service Distributor and Cross Charge- Challenges and Way Forward!	CA. Nilesh Vasa, Mumbai
		Preparation for the upcoming GST Appellate Tribunal	Adv. K S Naveenkumar, Bengaluru

Sr. No.	Date	Topics	Speakers
2	29.1.2025	Analysis and discussion on Issues related to Waiver Scheme u/s 128A and regularisation of ITC under Sec 16(5) & Sec 16(6)	*Group Leader :* CA Archit Agarwal *Chairman* : Adv Harsh Shah
DELHI CHAPTER			
1	10.1.2025	Search & Seizure, related challenges in the Assessment and thereafter	*Panel Member :* Mr. Tushar Hemani, Sr. Advocate *Moderator :* CA Manoj Kumar
INTERNATIONAL TAXATION			
1	17.1.2025	Study Circle - TP Implications in Business Restructuring Transaction	CA Vaishali Amin
2	24.1.2025	Study Circle -Alternative Investment Funds – An Overview	CA Mamta Shroff
3	29.1.2025	FEMA Study Circle - Cross-border Private Family Trust – FEMA perspective – Part 2	CA Dhruv Shah
PUNE STUDY GROUP			
1	18.1.2025	Hindu Undivided Family – The Concept & Its Taxation	CA Sharad Shah
SELF AWARENESS SERIES			
1	22.1.2025	Managing Challenges in Profession today : Gita's Perspective	Swami Shri Swatmanandji of Chinmaya Mission *Moderator :* CA Mukesh Trivedi
COMMERCIAL & ALLIED LAWS			
1	27.1.2025	Recent amendments in SEBI LODR and PIT Regulations	CS Anshu Agarwal
DIRECT TAXES			
1	28.1.2025	Intensive Study Group (ISG) – Direct Taxes Meeting on Recent Important Decisions Under Direct Tax	Mr. Gunjan Kakkad, Advocate

Glimpses of the 13th RRC on GST held on January 9-12, 2025 at Sheraton Grand, Whitefield, Bengaluru organized by Indirect Taxes Committee

Group Photo

Glimpses of the Income Tax Appellate Tribunal Foundation Day celebration 2025 held on January 25, 2025 at Garware Club, Mumbai organized by ITAT

(L-R) CA Anish Thacker (Past President), CA Mehul Sheth (Jt. Secretary), CA Jayant Gokhale (Vice President), Shri Raj Tandon, IRS, Principal CCIT, Justice C.V. Bhadang (Retd.), President, Income Tax Appellate Tribunal, Hon'ble Shri Justice S. Ravindra Bhat, Former Judge, Supreme Court of India, Shri Saktijit Dey, Vice President, Income Tax Appellate Tribunal, CA Vijay Bhatt, President, Adv. Aditya Ajgaonkar, CA Neha Gada (Jt. Secretary), CA Vitang Shah (Hon. Treasurer), CA Viraj Mehta, Chairman – Direct Tax Committee & Adv. Niyati Mankad, Chairperson – Student Committee.

(L-R) Adv. Rahul Hakani, Hon. Secretary – Income Tax Appellate Tribunal Bar Association, Adv. Niyati Mankad, Chairperson – Student Committee, CA Anish Thacker (Past President), CA Neha Gada (Jt. Secretary), Adv. Ajay Singh, Vice President, Income Tax Appellate Tribunal Bar Association, CA Vijay Bhatt, President, Shri Girish Agarwal, AM, Income Tax Appellate Tribunal, Sr. Adv. K. Shivram, (Past President), CA Jayant Gokhale (Vice President), Adv. Subhash Shetty (Past President), CA Vitang Shah (Hon. Treasurer), CA Bhaskar Patel, Treasurer – AIFTP, CA Mehul Sheth (Jt. Secretary), Adv. Devendra Jain & Adv. Dharan Gandhi.

THE CHAMBER'S JOURNAL

Posted at the Mumbai Patrika Channel
Sorting Office, Mumbai 400 001.
Date of Posting: 15th-16th of Every Month

No. MCS/149/2022-24
R.N.I. No. MAHENG/2012/47041
Date of Publishing 12th of Every Month

Introducing

Taxmann.com | Learning*

Empowering Professionals Beyond Boundaries.

Boost your professional skillset with **Taxmann.com | Learning**—your partner for comprehensive knowledge in **Income Tax, GST, FEMA, Accounting and more.** Learn the way that fits your goals, with sessions designed for efficiency and empowerment.

The Three Ways to Upgrade

Webinars

Compact **45 to 60-minute** sessions, live or recorded, letting you fit learning into any schedule

Workshops

3 to 5-hour focused learning sessions, live or recorded, providing access to materials, practical training, and **certificates of participation**

Masterclasses

Intensive **15 to 18-hour** courses, live or recorded, designed to enhance your productivity through immersive learning, speaker interactions, and materials

High-quality Learning—Anytime, Anywhere.

Taxmann.com | Learning transforms professional education by delivering **actionable, impactful**, and **accessible knowledge.**

*Coming Soon

Your All-Inclusive Learning Plan

Taxmann.com | Learning Subscription at ₹ 9999*/year ~~₹14500~~	Enterprise plan tailored to your specific requirements.	No-Cost EMIs— Flexible payments with no extra cost.

*Enjoy our Introductory Offer at just ₹9,999 for your first year, valid until 31st March 2025.
From the second year onward, the Standard Price will be ₹14,500 per year.

MUMBAI : 35 Bodke Building, Ground Floor, M.G. Road, Mulund (West), Opp. Mulund Railway Station, Mumbai – 400080, Maharashtra, India
Tel.: +91-9322247686 | **Email:** sales.mumbai@taxmann.com

Printed and Published by Shri Kishor D. Vanjara on behalf of The Chamber of Tax Consultants, 3 Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020 and Printed at Finesse Graphics & Prints Pvt. Ltd., 309 Parvati Industrial Premises, Sun Mill Compound, Lower Parel (W), Mumbai - 400 013. Tel.: 4036 4600 and published at The Chamber of Tax Consultants, 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020. Editor : Anish M. Thacker