cyril amarchand mangaldas
ahead of the curve

tax scout

Tax Scout | April – June, 2025

Main Stories

Dear Readers,

We are delighted to present the latest issue of Tax Scout, our quarterly update on the recent developments in direct and indirect tax laws for the three months ending June 30, 2025.

Our cover story provides a detailed overview of the tax implications, in case companies opt for a share buy-back, and various changes introduced recently in relation thereto.

This version of the Tax Scout also deals with other important developments and judicial precedents in the field of taxation for this quarter.

We hope you find the newsletter informative and insightful. Please do send us your comments and feedback at cam.publications@cyrilshroff.com.

Regards,

CYRIL SHROFF
Managing Partner
Cyril Amarchand Mangaldas

India's leading law firm

Index

Index

Taxation Of Buyback Of Shares In India

Introduction

Buyback of shares is a mechanism through which a company purchases its own shares from existing shareholders at a predetermined price. This process reduces the number of shares outstanding in the market, which can lead to an increase in earnings per share and may enhance the market value of the remaining shares.

The process for buyback, in case of listed companies is usually through two methods: tender offers and open market offer. While in a tender offer, the company invites its shareholders to sell back their shares at a specific price predetermined by it, in an open market offer, it purchases its shares directly from the stock exchange at the price prevailing in the market. In case of unlisted companies, the only option for the shareholders and the company to execute a buy-back offer is through the tendering of the shares proposed to be bought back by the shareholders with the company, and the company accepting such shares and paying the pre-determined buy-back price.

Indian corporate regulations governing buyback of shares

The buyback of shares in India is governed by Section 68 of the Companies Act, 2013, which sets out a detailed framework for companies intending to repurchase their own shares. To initiate a buyback, the company must have authorisation in its articles of association and obtain approval from either the board of directors or the members through a special resolution passed by shareholders, depending on the size of the buyback, the amount involved to be distributed among the shareholders, and the proportion of shareholders expected to benefit from this.

The buyback must adhere to the following strict financial limits: the amount utilised for buyback in a financial year cannot exceed 25 per cent of the total paid-up capital and free reserves, and the post-buyback debt-to-equity ratio must not exceed 2:1. Only fully paid-up shares can be bought back, and a declaration of solvency must be filed with the Registrar of Companies to ensure the company's financial health throughout the process. The law also mandates that shares bought back must be extinguished and physically destroyed within a stipulated time frame, unless they are kept with the company to be distributed to the employees under an ESOP or under a sweat equity plan.

If a company goes through a share buyback, the intrinsic value of the company shall be consolidated in a lesser number of shares, which may result in an increase in the per share value of the company. For listed companies, in case of a bonus issue, the company will increase the number of shares by issuing new bonus shares to the existing shareholders, thereby spreading the same intrinsic value of the company over more shares, which may result in the reduction of the per-share value of shares listed in the stock market. However, in the case of a buyback, the opposite happens, and the intrinsic value of the company is distributed among a smaller number of shares, thereby potentially increasing the per-share value. Tax liability on bonus shares is triggered only when these shares are eventually sold by subtracting the original cost of acquisition from the sale value. The shareholders may not face any immediate tax outgo upon receiving these bonus shares, as taxation is deferred until the actual sale of shares. However, an immediate tax outgo is inevitable in case of share buyback, as is discussed in the subsequent parts of this article. Hence, it is highly recommended that the management of a company carefully

evaluate the advantages and disadvantages of both options and decide accordingly.

Tax Treatment of Buyback of Shares

From a tax law perspective, the regulatory environment has evolved significantly over the years. Initially, shareholders were taxed on receiving the buyback proceeds in their individual capacity, either as dividends or as capital gains. Subsequently, the tax onus shifted to the companies undertaking the buyback of shares. However, more recently the tax burden has yet again shifted to the shareholders, with proceeds treated as taxable dividend income. The following sections discuss the trajectory of the evolution of the tax landscape on buybacks:

Position before 2000

Previously, the buyback of shares was taxable in the hands of the shareholders as a combination of dividend income (on the distribution of accumulated profits) and capital gains (being the additional consideration paid to the shareholders after distribution of accumulated profits). Essentially, the difference between the cost of acquisition and the value of buyback consideration was taxable in the hands of the shareholder but split into two parts – as dividends and capital gains.

For instance, if the cost of acquisition of a share in the hands of the shareholder was INR 100 and the total buyback consideration was INR 150, then the difference, INR 50, was taxable in the hands of shareholder. If INR 25 out of the buyback consideration (i.e., INR 150) was distributed out of the accumulated profits, then INR 25 was taxable as dividend income under Section 2(22)(d) of the Income Tax Act, 1961 (**IT Act**) and the remaining income of INR 25 – the difference between the cost of acquisition (INR 100) and the non-dividend portion of buyback consideration (INR 125) – was taxable as capital gains in the hands of the shareholder.

Issue of characterising proceeds in the hands of the shareholder

This dual treatment of the buyback proceeds in the hands of the shareholders meant that the amount paid out of the accumulated profits was taxable as dividends and the remaining amount – treated as consideration for transfer of shares and gains –was taxable as capital gains. While the distribution of all accumulated profits was characterised as dividend, the distribution of any amount exceeding the accumulated profits was characterised as capital receipts. Hence, this apportionment of buyback proceeds depended on the company's financial structure and the source of funds utilised by the company for the buyback.

This led to practical challenges in the apportionment of income for the shareholders, leading to disputes on the characterisation of income, especially in instances where the company had significant accumulated profits but did not fully utilise it for the buyback. Resolving such disputes often required an analysis of the buyback funding sources used by the company.

Position between 2000 and 2013

The Finance Act, 1999, inserted Section 46A to the IT Act under which, when a shareholder receives any consideration as a result of the buyback of shares by a company, the difference between the cost of acquisition and the value of buyback consideration is deemed to be capital gains arising to such shareholder. This gain is taxable in the hands of the shareholder as either short-term or long-term capital gains, depending on the holding period of the shares. The Finance Act, 1999, also introduced sub-clause (iv) to Section 2(22) of the IT Act, which specifically excluded buyback consideration paid to a shareholder from the definition of "dividend". These amendments came into effect from April 1, 2000.

Shortly after the introduction of Section 46A of the IT Act, the Finance Act, 2003, introduced the Dividend Distribution Tax ("**DDT**") by inserting Section 115-O in the IT Act. With effect from April 1, 2003, the distribution of profits as dividends was taxable in the hands of the company, through the imposition of the DDT at a rate of 20 per cent.

Issue of structuring dividend distributions as buybacks

Hence, post 2003, dividends distributed by company was liable to a DDT of 20 per cent, whereas the capital gains tax applicable on buybacks in the hands of the shareholder was often lower than the DDT rate of 20 per cent. For instance, certain shareholders were not at all taxed on capital gains, like in situations where tax exemptions available under the Double Taxation Avoidance Agreements (**DTAA**). As a result, companies found it advantageous to distribute profits to shareholders through buybacks rather than dividends, leading to a loss of tax revenue for the government.

This was recognised in judicial decisions, such as that in ***A, In re***,[1] wherein the court observed that a buyback found to be a *colourable device* – a transaction structured primarily to avoid tax by disguising dividend distribution as a buyback –would not qualify for exemption and would instead attract DDT.

[1] A, In re, [2012] 20 taxmann.com 52.

In this case, the proposed buyback was not a *bona fide* capital restructuring scheme but was instead a mechanism designed to avoid DDT. The company had accumulated substantial reserves. Instead of distributing profits as dividends (which would have attracted DDT), it sought to repatriate profits to its Mauritius-based shareholder through a buyback. Since the introduction of DDT through Section 115-O, the company had not declared any dividends despite recording regular profits, thus reinforcing that the buyback was a *colourable device* for tax avoidance on profits distribution. Consequently, the consideration received by the Mauritius shareholder was treated not as a buyback but as a distribution of profits in lieu of dividends. Thus, the entire buyback consideration was taxable in India as *deemed dividend* under Section 2(22), and not as capital gains, which was exempt under the then applicable provisions of the India–Mauritius DTAA.

Position from 2013

To address these concerns, the legislature introduced Section 115QA through the Finance Act, 2013. This anti-abuse measure was designed to align the tax treatment of buybacks more closely with then-prevailing DDT scheme, ensuring that companies could not circumvent payment of DDT by undertaking buyback of shares.

Initially, Section 115QA applied only to the buyback of shares by unlisted companies. However, it was later recognised that listed companies were exploiting similar tax arbitrage opportunities by resorting to buybacks instead of paying dividends to avoid DDT. Consequently, the provisions of Section 115QA were extended to cover buybacks undertaken by listed companies as well, with effect from July 5, 2019,[2] to close loopholes and ensure consistent tax treatment across unlisted and listed companies.

Under Section 115QA of the IT Act, any domestic company conducting a buyback of its own shares was required to pay additional income tax on the distributed income. The taxable distributed income was calculated as the difference between the consideration the company paid to its shareholders for repurchasing its shares and the amount it originally received when issuing those shares. This distributed income was subject to buyback tax at the rate of 20 per cent (plus applicable surcharge and a health and education cess) in the hands of the company.

The company was required to pay this tax within 14 days from the date it pays any amount as consideration to shareholders. Once paid, this tax was considered final, and no deductions or relaxations were applicable on this buyback tax. Since tax was levied on the company itself, the shareholders were exempt from paying any tax on the consideration received. Such consideration was excluded from the taxable income of the shareholders as provided under Section 10(34A) of the IT Act.

Issue of computing accurate buyback income

Pursuant to the introduction of the buyback tax, the liability to pay tax on the buyback consideration was shifted to the company and was exempt in the hands of the shareholder. The buyback income was computed as the difference between the original price at which the shares were issued and the buyback

[2] Finance Act, 2019.

consideration. However, this may not reflect the accurate buyback income, especially in cases involving multiple secondary transfers, where the cost of acquisition after each transfer is different in the hands of the new shareholder.

Further, on each transfer of the shares, the seller or previous shareholder would have paid capital gains tax on the gains, if any. In such a case, the buyback income for the last shareholder should be the difference between the buyback consideration and the purchase consideration of such share, which may be much higher than the original issue price. Hence, the buyback consideration computed under Section 115QA would be much higher than the actual buyback income, leading to double taxation, particularly on such income to the extent of capital gains tax already paid by previous shareholders.

Furthermore, computation of accurate buyback income becomes more challenging in the case of dematerialised shares, where the shares being bought back are not identifiable. In such scenarios, the issue price of the shares being bought back by the company is computed in accordance with the rule of first-in-first-out ("**FIFO**") method. Hence, even if the company were to buy back shares issued subsequently at a higher issue price, computation would be based on the initial issue price, assuming that the buyback was of the shares issued first. This could lead to computation reflecting higher inaccurate buyback income.

Thus, while placing the tax burden on the company, the amendments introduced issues in accurately quantifying the buyback income by the companies.

Amendments made vide Finance Act, 2024

Significant amendments were introduced to the taxation of buyback of shares through the Finance Act, 2024. These changes, effective from October 1, 2024, shifted the tax liability from the company to the shareholders, making it taxable as dividend income. This was stipulated to make the tax treatment of buybacks consistent with the abolishment of DDT in 2020.[3]

A significant amendment involved the omission of sub-clause (iv) under Section 2(22) of the IT Act, which had excluded buyback consideration from the purview of dividend, and the insertion of a new sub-clause (f) to the definition of "dividends" under the section. This new clause specifically states that any payment made by a company to repurchase its own shares, in accordance with Section 68 of the Companies Act, 2013, will be treated as dividend in the hands of the shareholders. As a result, the entire amount received by shareholders from such buybacks is now classified as dividend income for tax purposes. This means that shareholders must include the full amount received from the buyback as part of their taxable income under the head "Income from Other Sources", which is thereby taxed at their applicable income tax slab rates.

No deductions for expenses can be claimed against this dividend income when calculating net income from other sources.[4] This means that the entire amount received from the buyback is taxable as dividend income, with no relief or deductions available to reduce the taxable base. This restriction on claiming deductions is even stricter than that applicable for dividends, wherein the shareholders can still claim deductions for interest expenses to the extent of 20 per cent of the dividend income received.[5] In contrast, for buyback proceeds, no deductions whatsoever can be claimed against the amount received as consideration.

Due to the same, the cost of acquisition incurred by the shareholder at the time of purchasing the shares would have remained unaccounted for. To address this situation, the 2024 amendments added a proviso to Section 46A of the IT Act providing that the consideration received from the buyback would be deemed "nil", which would result in the cost of acquisition being treated as a capital loss for the shareholder, as these assets have effectively been disposed of through the buyback process. This capital loss arises at the time of the buyback, but it cannot be set off against the consideration received from the buyback as it is now treated as dividend income.

Instead, the amended provisions provide that the cost of acquisition would be treated as a capital loss in the hands of the shareholder, and it can be carried forward for eight subsequent financial years to be set off against future capital gains.[6] Accordingly, if, in subsequent years, the shareholder realises any capital gains from the sale of other shares or capital assets, they are entitled to claim the capital loss being the original cost of acquisition of all the shares that were bought back, for the purpose of calculating capital gains tax in accordance with the applicable tax provisions.

Implications

The amendments introduced in 2024 have marked a fundamental shift in the tax treatment of the buyback of shares. This shift carries significant implications for the companies

[3] Finance Act, 2020.
[4] Income Tax Act, 1961, Section 57.
[5] Ibid.
[6] Income Tax Act, 1961, Section 74(2).

conducting buybacks and for the shareholders agreeing to sell their shares as part of the process. These have been discussed as follows.

i. *Withholding tax obligations for the company*

Under the revised tax regime introduced by the Finance Act, 2024, the buyback of shares is no longer taxable at the company level. This means that a company opting to buy back its own shares will not face any significant direct tax implications because of the buyback, since the tax liability now rests with the shareholders rather than the company. The shift in tax responsibility ensures that the company's tax burden remains minimal in relation to the buyback transaction itself.

However, the company is still required to fulfil withholding tax obligations at the time of the buyback. For resident shareholders, the company must deduct tax at source (**TDS**) at the rate of 10 per cent on the consideration paid.[7] For non-resident shareholders or foreign companies, the TDS rate is set at 20 per cent,[8] unless a lower rate is applicable under the relevant DTAA. This withholding tax requirement ensures that tax is collected at the source, while the ultimate tax liability is determined based on the shareholder's income tax slab rates.

ii. *Higher tax burden for recipient shareholders*

The amended provisions regarding buyback of shares have significant implications for the shareholders receiving consideration from the company for buyback. Under the pre-2024 regime, shareholders enjoyed tax-exempt buyback proceeds, with the company bearing the tax liability at 20 per cent (plus applicable surcharge and health and education cess).

Post the amendments introduced in 2024, the shareholders face a significantly higher tax burden. The entire consideration received for such buyback of shares would be taxable in the hands of the shareholder as "income from other sources" under Section 56, at the shareholder's applicable income tax slab rate. However, non-resident shareholders may still be able to benefit from the reduced tax rates applicable under the relevant DTAA.

Under the amended provisions, shareholders are not permitted to claim any deductions from the consideration received for the buyback of shares. Unlike other types of income where expenses or cost of acquisition can be deducted to reduce taxable income, the entire amount received by a shareholder from a buyback would be included in their total income as taxable income. This means there is no relief or offset available to lower the tax base for the shareholder.

In this way, the amended provisions concerning buyback of shares result in a higher and more immediate tax liability for shareholders, particularly those in higher tax brackets. This makes buybacks less attractive compared to other forms of capital distribution, as the effective return on investment for the investors may be reduced due to the higher tax outlay.

Controversies surrounding the current legal position

The existing legal position regarding taxation of buyback of shares is riddled with issues that create ambiguity regarding its interpretation and application, thereby creating challenges for companies and shareholders to clearly understand the tax implications arising out of the buyback process.

Buyback of shares from non-profit sources

A key issue with the current legal position regarding taxation of buyback proceeds is that it appears to treat the entire buyback amount as dividend income, irrespective of the source of funds used for the buyback. Under the Companies Act, 2013, dividend distribution can only be made from profits of the company.[9] However, companies can fund buybacks from accumulated profits, securities premium, or proceeds of new capital.[10] In practice, this means that while a portion of the buyback consideration may be considered as a distribution of profits and may be taxed as dividend, the remaining portion should not be taxed at high rate of tax at 20 per cent as dividend.

The amended provisions under the IT Act currently do not have any mechanism to distinguish between the portion of buyback proceeds representing accumulated profits and the portion

[7] Income Tax Act, 1961, Section 194.
[8] Income Tax Act, 1961, Section 195.
[9] Companies Act, Section 123.

representing non-profit sources. A literal interpretation of the amended provisions seems to tax the entire distribution paid on buybacks as dividend income, even when the buybacks may not be funded from profits of the company at all, leading to the artificial taxation of capital receipts as income.

In all other distributions to shareholders that are treated as deemed dividends under the IT Act, including distributions on liquidation, loan advances, or consideration paid under reduction of share capital, only the amount attributable to accumulated profits of the company are deemed as dividends under the IT Act,[11] and taxed at the applicable tax rates.

The Hon'ble SC in ***G. Narasimhan***,[12] while dealing with a case of reduction of capital, observed that any amount distributed to shareholders out of accumulated profits is considered dividend in their hands and is subject to tax as such. However, any distribution exceeding the accumulated profits, essentially, the amount representing a return of capital, does not fall within the ambit of "dividend". The SC further explained that amounts paid to shareholders on reduction of share capital, to the extent they exceed accumulated profits, are regarded as a capital receipt. This capital receipt is subject to capital gains tax, after deducting the original cost of acquisition of the extinguished shares or rights.

Even though buyback of shares is different from reduction of share capital, the reasoning adopted by the SC in this decision can be applied to construe the manner of taxing buyback proceeds also. This is because the position of law, as it stands today, raises the risk of over-taxation on buybacks, especially when funded from non-profit sources.

Tax on entire consideration, beyond "income" of shareholders

Traditionally, any consideration received by a shareholder for transfer of its right in shares to the company, specifically in case of reduction of share capital (beyond accumulated profits), or redemption of preference shares, has been interpreted as a transfer of capital asset for purposes of tax law.[13] This was also the situation in case of buyback of shares prior to 2013, which were taxed as capital gains in the hands of the shareholders, with the taxable amount being the difference between the consideration received and the original cost of acquisition. This approach ensured that only the actual gain, i.e., the "income" component was subject to tax, aligning with the principle that tax should be levied on real income rather than on the gross amount received.

However, the provisions of the IT Act post 2024 provide that the entire consideration received by the shareholder from buybacks is included in their taxable income and charged at the applicable income tax rates. This approach leads to a significant anomaly, such that if a shareholder receives the same amount as their original purchase price for the shares, there is no real gain or "income" in economic terms. However, tax is still levied on the entire consideration received, not just the income component. This results in shareholders being taxed even in situations with no actual gain from the buyback transaction.

This new regime makes it disadvantageous for a shareholder to participate in a buyback, compared to selling shares in the open market. When shares are ordinarily sold by a shareholder, the consideration received is treated as capital gains in the hands of seller, calculated by deducting the cost of acquisition from the sale proceeds. The resulting capital gains are taxed either as long-term capital gains at the rate of 12.5 per cent or as short-term capital gains at the applicable income tax slab rates, depending on the period of holding of such shares.

However, in the case of a buyback, the consideration received is not treated as capital gains at all. Instead, due to the amended definition in Section 2(22)(f) of the IT Act, the amount is classified as dividend income and is taxed under the head "Income from Other Sources". As a result, the deduction for the cost of acquisition, which is normally available for computing capital gains from sale of shares, does not apply to buyback proceeds. Therefore, the recipient shareholder would have to pay tax on the entire consideration received from the buyback, while the cost of acquisition of the shares shall be treated as a capital loss that may be set off against capital gains, if any. This is a disadvantageous position, as tax is payable on a higher amount although the "income" component is only the difference between the consideration received and the cost of acquisition of the shares at the time of issuance of shares.

Even though the 2024 amendments allow the shareholders to carry forward the cost of acquisition as capital loss in subsequent years, the same cannot be said to have adequately solved this conundrum, as will be discussed below.

Issues with treating cost of acquisition as capital loss

Under the amended provisions, shareholders are afforded limited relief such that the cost of acquisition originally incurred by the shareholder at the time of issue of the shares bought back is treated as a capital loss in the hands of the shareholder.[14]

[10] Companies Act, 2013, Section 68.
[11] Income Tax Act, 1961, Section 2(22).
[12] CIT v. G. Narasimhan, (1999) 1 SCC 510
[13] PCIT v. Jupiter Capital (P) Ltd., (2025) 472 ITR 616; Anarkali Sarabhai v. CIT, (1997) 3 SCC 238
[14] Income Tax Act, 1961, Section 46A.

CASE LAW UPDATES – DIRECT TAX

INTERNATIONAL TAX

Capital gains tax exemption under the India–Mauritius DTAA cannot be denied if the Mauritian resident entity was not established for tax avoidance

Introduction

In a decision involving the ***Essar Group***,[16] the Hon'ble Delhi ITAT dealt with the ability of a few Essar Group entities to claim benefits under the India–Mauritius DTAA. The IRA had denied capital gains exemption under Article 13(4) of the India–Mauritius DTAA, contending that the Mauritian entities did not have any substance of their own and were only set up as a sham entities for tax avoidance. However, the ITAT after going through facts and voluminous documents placed by both sides, decided in favour of the Mauritian entities.

Facts

Essar Communications Limited (**Assessee**) was incorporated in Mauritius on October 13, 2005, with its principal business activity being making and holding investments. The Assessee held valid Tax Residency Certificates (**TRC**) issued by the Mauritius Revenue Authority and Category 1 Global Business License (**GBL**) issued by the Financial Services Commission, Mauritius. Hence, the Assessee was a non-resident in India and had no PE in India.

In January and February 2007, the Assessee had infused funds in an Indian company, Essar Telecom Investments Limited (**ETIL**), which held equity shares in another Indian company part of the Essar group, Vodafone Essar Limited (**VEL**). The Assessee's investments were funded by its holding company, another Mauritian resident, Essar Communications (Mauritius) Limited (**ECML**), which had obtained a loan for this purpose from a consortium of lenders.

For this loan, the Assessee had pledged its shares in ETIL and, indirectly, even the VEL shares. However, for the greater enforceability of VEL shares, the consortium of lenders required a direct pledge over the same. However, ETIL's application to RBI for direct pledge over VEL shares was rejected, resulting in the liquidation of ETIL was in 2008 and VEL shares directly being held by the Assessee. The Assessee then sought and obtained RBI's approval for pledging the shares of VEL directly.

In 2011, pursuant to certain negotiations between Vodafone and Essar, the Assessee sold VEL shares to Euro Pacific Securities Limited (**EPSL**), a non-resident company. As Indian shares were transferred between non-resident entities, the TDS of INR 2,821 crore was withheld in India on a capital gain amounting to INR 11,772 crores in the hands of Assessee. In its return of income filed on September 2012, the Assessee claimed a refund of the TDS, asserting benefits related to capital gains under Article 13(4) of the India–Mauritius DTAA. Similarly, the Assessee's 100 per cent subsidiary in Mauritius, Essar Com Limited (**ECom**), which had also sold its VEL shares to EPSL as part of these negotiations, claimed refund of the TDS amount withheld in India.

The AO had denied these benefits under Article 13(4) by treating the Assessee and ECom as residents of India, which was also confirmed by the Ld. CIT(A). Aggrieved by the orders, the Mauritian entities approached the Delhi ITAT.

[16] Essar Communications Limited v. ACIT, (ITA No. 339 & 340/Del/2022 vide order dated June 30, 2025.

Specifically, the consideration received by the shareholder for the buyback is treated as "nil" for the purposes of computing capital gains. This capital loss, representing the original cost of acquisition of the shares bought back, may be carried forward for up to eight assessment years and set off against any future capital gains arising from the sale of other securities.[15]

Despite this provision, the utility of the capital loss is limited. Shareholders can only use this loss to offset capital gains they may realise in subsequent financial years and cannot apply it against other types of income, such as salary or business income. Further, if the capital loss arises out of buyback of shares held as long-term capital assets, such loss can only be set off against capital gains arising out of the sale of other long-term capital assets. Since long-term capital gains are typically taxed at comparatively lower rates, the tax benefit from this set-off would be limited, compared to if the loss could be allowed as deduction against income taxable at higher slab rates.

In fact, if a shareholder does not generate sufficient capital gains within the eight-year period during which the capital loss can be carried forward, the unutilised portion of the capital loss will lapse and become a permanent cost for the shareholder. This limitation means that not all shareholders will be able to fully utilise the tax benefit of their original investment cost, and the overall tax outcome may be less favourable for those with limited or no future capital gains.

Cascading effect on buyback of shares

A domestic company that receives dividends from another company (including a foreign company) and further distributes those dividends to its own shareholders is entitled to claim a deduction for that amount. This deduction is available under Section 80M of the IT Act, provided that the company distributes the dividends within a specified period before the due date for filing its income tax return. The primary objective of this cascading mechanism is to prevent the double taxation of intercorporate dividends as they move through a chain of companies, ensuring that only the ultimate recipient shareholder is taxed on such income.

With the changes introduced through the Finance Act, 2024, buyback proceeds of shares are also treated as dividends for tax purposes, However, the law does not explicitly clarify whether buyback proceeds received by a company (as a shareholder in another company) and subsequently redistributed as dividends to its own shareholders would qualify for the same deduction under Section 80M as regular intercorporate dividends.

A literal reading of the amended provisions suggests that since buyback proceeds now fall under "dividend" for tax purposes, there may be an argument that the anti-cascading mechanism under Section 80M should also apply to such proceeds. This would imply that a company receiving buyback consideration from another company should be able to claim a deduction if it redistributes the amount as dividends to its own shareholders, just as it does for regular intercorporate dividends. Such an interpretation could help avoid the cascading effect of taxation on buyback proceeds as they move through corporate structures. However, a specific clarification from the tax authorities regarding the applicability of Section 80M to buyback proceeds would be a welcome move.

Conclusion

The taxation framework governing share buybacks in India has undergone significant transformations over the years. The Finance Act, 2024 marks a pivotal change by transferring the tax burden from companies to shareholders. However, this reform has also introduced greater complexity and a higher tax burden for shareholders. It has imposed an immediate tax liability for shareholders participating in buyback of shares with limited tax relief provided to set off cost of acquisition in subsequent financial years, thereby making it only a deferred relief. This makes buybacks a less attractive option for investors.

Further, ambiguity that persists regarding several aspects of the buyback process has created compliance challenges and potential for litigation. This has the effect of leaving both companies and investors in a state of flux, as they navigate the evolving tax landscape. As a result, while buybacks may still serve certain strategic objectives, the evolving tax landscape is prompting companies to reassess their capital allocation strategies and increasingly explore alternatives that offer greater tax efficiency and certainty.

[15] Income Tax Act, 1961, Section 74(2).

Issue

Whether capital gains tax exemption under the India–Mauritius DTAA can be denied if a Mauritian resident entity is not established for tax avoidance?

Arguments

The IRA contended that the Assessee was a resident of India, as the control and management of its affairs were situated wholly in India. The IRA alleged that the Assessee's decisions were not taken independently by its board of directors or employees based in Mauritius but by a unified central command of the group companies through employees based in India. To substantiate the same, the IRA produced documents and agreements for the Assessee executed by employees of group entities in India. Relying on the change of control clauses in various loan agreements to determine control over VEL shares, the IRA alleged that the Assessee was wholly being controlled by the members of Ruia family from India.

Further, alleging that the Assessee was a sham entity with no substance incorporated only to take benefit of the India–Mauritius DTAA, the IRA pointed out that the Assessee immediately utilised the proceeds from the sale of VEL shares to repay the loan taken for the benefit of the Essar group. Therefore, the revenue authority vociferously contended that the Assessee was not eligible for the treaty benefits.

The IRA further pleaded that the Assessee neither benefited from the loans taken on the strength of the VEL shares and nor utilised the sale consideration received from the sale of VEL shares.

Contesting these allegations, the Assessee submitted the following contentions:

1. **Significant presence of Essar group in Mauritius since 1992**: The Assessee refuted as baseless the allegations of it being a sham entity, given the Essar Group's longstanding presence in Mauritius since 1992 with substantial investments and operations.
2. **Legitimate business activity**: The Assessee was incorporated in Mauritius in 2005 as a part of the Essar multinational group to undertake investments in the telecom industry in India. Incorporating a company for holding investment is a legitimate business purpose and cannot regarded as a sham entity.

3. **Liquidation of ETIL as part of lenders' requirements**: Claiming ETIL was liquidated to meet the requirements of the consortium of lenders and gain direct pledge over VEL shares, the Assessee contended the allegation of liquidating ETIL to shift the locus of shares from India to Mauritius without any commercial purpose and it being a colourable device was baseless. .

   The Assessee further submitted that the liquidation of ETIL was not carried out with a view to claim the benefits of India–Mauritius DTAA, because it could avail these benefits even without liquidation and had the option of selling the shares of ETIL, the gains from which would have been exempt from tax under Article 13(4) of the DTAA.
4. **Utilisation of loan proceeds and sale consideration**: The Assessee was a guarantor of loans granted to ECML, which did not have enough funds to repay it. Therefore, the sale of VEL shares and the immediate utilisation of proceeds to repay loans for the benefit of group companies is a transaction undertaken for commercial reasons; hence the tax authorities cannot question the business purposes of a transaction and allege the entities are paper companies.
5. **Conclusive proof of residence**: The Assessee asserted that it had a valid TRC issued by the MRA and a letter stating the TRC was issued on the basis of its control and management being located in Mauritius, not on the basis of incorporation. The Assessee also relied on the CBDT Circular No. 789 dated April 13, 2000, and the cases of ***Azadi Bachao Andolan***[17] and ***Vodafone***[18] to submit that TRC is a valid proof of residence.

[17] Azadi Bachao Andolan v. Union of India, (2003) 263 ITR 706 (SC).
[18] Vodafone International Holdings B.V. v. Union of India (341 ITR 1).

6. **Control and management not wholly in India**: The Assessee is not a resident of India as it was not incorporated in India and its control and management are not wholly in India. To have its residence in India, it must be established that the Assessee's control and management was wholly in India for the year under consideration. The Assessee submitted proofs of board minutes showing that decisions were taken in Mauritius by its board of directors based in Mauritius. The Assessee contended that allegations of having de facto control in India were baseless, as shareholders' being in India was irrelevant when the board of directors, based in Mauritius, took decisions independent of the control of shareholders and that the execution of decisions in India is irrelevant in determining the place of control and management.
7. **Non-denial of benefits in the absence of limitation of benefit (LOB) clause**: The Assessee submitted that in the absence of the LOB clause, benefit cannot be denied under the India–Mauritius DTAA. As the amendment to India–Mauritius DTAA denying capital gain benefit became applicable only from AY 2018–2019 onwards, it cannot be made applicable for securities purchased before April 1, 2017, as there was no LOB clause disallowing or disentitling from such benefits.
8. **Grandfathering of securities purchased before April 1, 2017**: Considering the LOB is applicable to the alienation of securities purchased on or after April 1, 2017, the same is inapplicable in the Assessee's case as the shares of ETIL – and, consequently, the shares of VEL – were acquired by the Assessee in January and February 2007.

In view of these submissions, it was pleaded on behalf of the Assessee that the benefit of the capital gains exemption under the India–Mauritius DTAA should not be denied.

Decision

After considering the submissions from both sides and reviewing various documents, including incorporation papers, TRCs, financial statements, minutes of board meetings, etc., the ITAT ruled that the capital gains realised by the Mauritian entities were not taxable in India by virtue of Article 13(4) of the India–Mauritius tax treaty read with Section 90(2) of the IT Act.

Observations and decision on residential status

The ITAT held that the IRA had merely made allegations and without substantiating how the control and management of the entities were wholly in India, as per Section 6(3)(ii) of the IT Act. As per the section, for a company to be a resident of India in the "previous year", the control and management of its affairs should be situated wholly in India "during that year". The ITAT noted the phrases "previous year" and "during that year" clarify that the residential status must be determined for every year separately. However, the IRA had determined the residential status based on certain events and documents pertaining to earlier years, which could not be accepted and is bad in law.

Drawing from established precedents, the ITAT reiterated that the place of control and management of a company is determined by where meetings are held and key strategic decisions are taken by the board of directors. It held that in this case, the Assessee was wholly controlled and managed by its board of directors, which held all its meetings and took all its decisions for conducting the business of the Assessee in Mauritius. All directors of the board were Mauritian-resident individuals with relevant qualifications and were non-residents in India, except one nominee director appointed by the lenders.

The ITAT also noted that the IRA only alleged the presence of unified central command in India without substantive proof. Clarifying that the execution of decision or documents is different from taking the decision, it held that mere execution of agreements in India after authorisation from the board of directors in Mauritius did not equate control and management being situated in India.

Regarding change of control clauses in loan agreements, the ITAT distinguished between shareholder / ownership control and management control. It held that shareholder control could not be relied upon for determining the de facto control and management of an entity. The IRA's allegation that Ruia family members controlled the Assessee from India was also misplaced as many members of the family were non-residents. Moreover, besides making bland allegations, the IRA did not present any concrete evidence of control being vested with them. Accordingly, the ITAT held that the Assessee was not a resident of India as per Section 6(3)(ii) of the IT Act for the year under consideration.

Observations and decision on availability of treaty benefit

The ITAT noted that the Assessee was incorporated in 2005 and acquired shares of Indian entities only in 2008. Before the Assessee's incorporation, the Essar Group had already established a substantial presence and made significant investments in Mauritius. Hence, incorporation of the Assessee in Mauritius could not be construed as only for the purpose of availing treaty benefits. Further, merely because the Assessee was an investment holding company, it cannot be considered a sham or substance-less. The Assessee had a proper functioning, with the principal activity of investing in the telecom sector in

India and had a qualified board of directors who took decisions regarding investments, raising of loans on such investments, etc. Since creation of tax-efficient SPVs for carrying out such businesses is a legitimate business activity, the Assessee cannot be considered a sham entity set up only for the purposes of claiming benefits of India–Mauritius DTAA.

The ITAT also noted that the additional justification to establish that the "Principal Purpose Test" of incorporating the company in Mauritius was not to claim capital gain exemption was first introduced through the LOB clause, effective from 1 April 2017. Therefore, the capital gain exemption claimed by the Assessee on investments before the said date cannot be denied. Relying on the SC's decision in ***Vodafone***,[19] the ITAT held that in the absence of an LOB clause and in the presence of a TRC and Circular No. 789 of 2000 for proof of residence and beneficial interest / ownership, the IRA cannot deny the benefit of the India–Mauritius DTAA to the companies in Mauritius unless it can prove that the entity was incorporated for a fraudulent purpose.

The ITAT also criticised the IRA for drawing negative inferences without analysing the commercial reasons provided by the Assessee – raising loans outside India due to favourable terms, utilising proceeds from sale of shares for repayment of loans, and structuring the same around Indian regulatory restrictions. It also noted that it is common practice in large multinational corporations for entities to source funds for the overall benefit of the group entities. The proceeds from the sale of shares were withdrawn for use immediately because holding such huge amounts of idle funds would have been commercially imprudent.

The ITAT, relying on the SC's decision in ***Azadi Bachao Andolan***,[20] also noted that the TRC was a valid proof of residence and beneficial ownership, as the TRC also had a letter issued by Mauritian authorities confirming it issued to the Assessee on the basis of control and management not merely on the basis of incorporation. Therefore, the IRA should have taken the TRC into consideration, which was a sufficient proof of residency and beneficial ownership, for the purpose of Article 13(4) of the DTAA.

Along with these observations, the ITAT ruled in favour of the Assessee and held it was entitled to claim the benefits of Article 13(4) of the India–Mauritius DTAA.

Significant Takeaways

The ITAT ruling follows precedents, including previous decisions of the SC on the availability of capital gains tax exemption available to non-residents or residents of Mauritius under Article 13(4) of the India–Mauritius DTAA for the alienation of securities acquired before April 1, 2017. It lays down a strong precedent that pursuant to the amendment of the DTAA, the LOB clause was applicable from April 1, 2017, and benefits cannot be denied for securities acquired before the introduction of the LOB clause.

In such a case, benefits can only be denied if it can be established clearly that the entity seeking benefit of the exemption was a colourable device or a sham entity established only for the purpose of obtaining benefits without having any other commercial substance. The benefit can also be denied if it can be established that the entity seeking the exemption was a resident of India for tax purposes for the assessment year in consideration. However, in such a case, too, it must be clearly established that the entity is not a resident of Mauritius and is a resident of India by demonstrating that the entire control and management of the entity was in India.

This sets a strong precedent for such investment holding structures incorporated in Mauritius and seeking capital gains tax exemption under the treaty.

> **"Treaty benefits cannot be denied to non-residents merely on the suspicion that the Mauritius entity was set up only to avail such benefits."**

[19] Vodafone International Holdings B.V. v. Union of India (341 ITR 1).
[20] Azadi Bachao Andolan v. Union of India, (2003) 263 ITR 706 (SC).

Subsequent information revealing non-genuine nature of previously disclosed transactions is sufficient for initiating reassessment

Introduction

The Bombay HC in ***Macrotech Developers Limited***[21] upheld that the IRA can initiate reassessment beyond the four-year limitation period when subsequent information reveals the potentially non-genuine nature of previously disclosed transactions.

Facts

Macrotech Developers Limited (**Assessee**), a real estate development company, filed its return for AY 2009–2010 under Section 139 of the IT Act. During the original assessment proceedings, the AO called for confirmation of an unsecured loan, to which the Assessee responded by providing comprehensive documentation including RBI letters, foreign inward remittance certificates (FIRC) issued by a bank, and the loan agreement.

The assessment order under Section 143(3) of the IT Act was passed, accepting the ITR filed for AY 2009–2010, after examining the unsecured loan that was treated as foreign direct investment. However, on March 30, 2016, the IRA issued a notice under Section 148 of the IT Act, reopening the assessment for the same AY, on the grounds that the unsecured loan received by the Assessee constituted unexplained money and such loans had been routed through layering via offshore entities located in tax havens.

The Assessee filed objections against the notice under Section 148 of the IT Act, on June 29, 2016. However, the AO vide an order dated September 28, 2016, rejected these objections stating that the Assessee had failed to disclose all material facts necessary for the assessment.

Being aggrieved by the action of the AO, the Assessee filed the present writ petition challenging both the notice issued under Section 148 of the IT Act and the order dated September 28, 2016.

Issue

Whether the IRA can initiate reassessment beyond the four-year limitation period, when subsequent information reveals the potentially non-genuine nature of previously disclosed transactions?

Arguments

The Assessee argued that the jurisdictional conditions for reassessment were not satisfied, emphasising that full disclosure of all material facts had been made during the original assessment proceedings. Further, the Assessee contended that the alleged failure to disclose, truly and fully all material facts necessary for the assessment, was not mentioned as part of the reasons recorded in the notice issued under Section 148 of the IT Act, by relying on the SC decisions in the cases of ***NDTV***[22] and ***Samson Maritime Limited***.[23]

The IRA contended that information regarding the non-genuine nature of the loan transaction was received only after the completion of the assessment order. It was also contended that *prima facie* evidence indicated the transaction was not genuine, and although the reasons recorded may not allege any failure on the part of the Assessee to disclose fully and truly all material facts necessary for the assessment, the same can be culled out after reading of the reasons recorded. The IRA distinguished the present case from ***NDTV***, arguing that the Assessee would have adequate opportunity to establish the genuineness of the transaction during reassessment proceedings.

Decision

The HC held that when subsequent information suggests that a previously examined transaction is non-genuine or bogus, the initial disclosure cannot be considered "full and true" for the purpose of the first proviso to Section 147 of the IT Act, which prohibits the IRA from re-opening assessment against a taxpayer after a stipulated period.

The Court emphasised that the objective of reassessment proceedings is to bring to tax income that has escaped assessment, and any interpretation contrary to this objective should be rejected.

The HC carefully distinguished the SC's decision in ***NDTV***, noting that in the present case, the reopening was based on information specific to the AY in question, not findings from a subsequent year and the information about routing undisclosed funds through offshore entities was not known to the assessing officer during the original assessment.

[21] Macrotech Developers Limited v. Deputy Commissioner of Income Tax, TS-461-HC-2025(BOM).
[22] New Delhi Television Ltd. v. Deputy Commissioner of Income Tax, (2020) 116 taxmann.com 151 (SC).
[23] Samson Maritime Limited v. Deputy Commissioner of Income Tax & Others, 2019 (1) TMI 544 (Bombay).

Further, the HC affirmed that the information received about the routing of funds through tax havens constituted tangible material that was not available during the original assessment. Hence, this new information formed a valid basis for initiating reassessment proceedings, even though the unsecured loan transaction was examined during the original assessment.

Significant Takeaways

For taxpayers engaged in international transactions, this decision underscores the importance of maintaining comprehensive documentation and ensuring that all aspects of cross-border transactions are transparent and genuine. The mere fact that a transaction was examined and accepted during the original assessment does not provide absolute protection against future reassessment if subsequent information raises questions about its authenticity.

The first proviso to Section 147 of the IT Act protects a taxpayer only when the credibility of the disclosed facts is not in question.

This decision strikes a delicate balance between the IRA's powers to investigate potential tax evasion and a taxpayers' rights to fair assessment. It serves as a reminder that in an era of increased information sharing and enhanced scrutiny of international transactions, transparency and genuine business substance remain paramount in tax-planning strategies.

> **"Non-genuine nature of disclosure can justify reopening of assessment."**

CASE LAW UPDATES – DIRECT TAX

TRANSACTIONAL ADVISORY

Guarantee exposure for group company is eligible for deduction as bad debt: Ruling reaffirms doctrine of commercial expediency

Introduction

The Madras HC, in ***Star Investments Pvt. Ltd.,***[24] upheld the ITAT's ruling allowing the taxpayer to claim deduction for bad debt arising from a guarantee invocation. The HC observed that the taxpayer's action of standing as guarantor for its sister concern's loan, and the consequential invocation of the guarantee by the bank, constituted a business loss eligible for deduction. It further held that expenditure incurred voluntarily on grounds of commercial expediency, even without direct and immediate benefit to the taxpayer's trade, qualifies as expended wholly and exclusively for business purposes.

Facts

Star Investments Pvt. Ltd (**Assessee**) is an investment company engaged in trading of shares and is promoted by the Balaji Group of Companies. The Assessee also promoted Balaji Industrial Corporation Ltd (**BICL**), which availed a loan from Industrial Credit and Investment Corporation of India Ltd (**ICICI**).

To secure loan disbursement and repayment, the Assessee (being BICL's promoter) pledged approximately 28.6 thousand equity shares of Balaji Distilleries Ltd (**BDL**) to ICICI, ensuring asset coverage of 1.5 times the sanctioned loan amount and provide guarantee assistance on market value basis.

Subsequently, BICL became a sick company and defaulted on loan repayment. ICICI sold approximately 25.1 thousand pledged shares at the prevailing market value to recover BICL's outstanding loan amount of approximately INR 9.4 crores. Consequently, BICL became liable to reimburse this amount to the Assessee.

However, BICL remitted only INR 1 crore to the Assessee, as full and final settlement against the outstanding amount of approximately INR 9.4 crore. The unpaid amount of approximately INR 8.4 crore was written off by the Assessee as bad debts in its books of accounts for AY 2009–2010.

The AO disallowed such deduction as bad debts, and the CIT(A) confirmed the same. On subsequent appeal, the ITAT reversed both findings of lower authorities, in favour of the Assessee. Thereafter, the IRA appealed before the Madras HC against the ITAT order.

Issue

a. *Whether the Assessee could claim deduction as bad debt, despite the absence of a direct loan transaction between the parties?*

b. *Whether Assessee's action of standing as guarantor for BICL's loan, and the consequential loss, qualified as business expenditure deductible under the IT Act for the Assessee's business purposes?*

[24] Commissioner of Income Tax v. Star Investments Pvt. Ltd, [2025] 175 taxmann.com 274 (Madras High Court).

Arguments

The IRA contended that the Assessee's business as an investment company engaged in trading shares has no nexus with the sale of pledged shares to recover BICL's outstanding loan. The IRA submitted that the write-off claimed for voluntary act of pledging shares for BICL's loan could not be considered wholly and exclusively for the Assessee's business purposes. The IRA further argued that the Assessee had not recorded any amount as recoverable from BICL in any previous year and hence, such deduction would be outside the ambit of Section 36(1) of the IT Act.

The Assessee argued that pledging shares to enable the sister concern to avail the loan was in the course of business activity as a promoter of BICL. The Assessee contended that shares were pledged and that INR 1 crore was accepted as full and final settlement due to commercial expediency and business considerations.

Decision

The HC upheld the ITAT's ruling, allowing the deduction of approximately INR 8.4 crore written off as bad debt. The HC observed that undisputed promoter relationship created a sufficient nexus between the Assessee and BICL. It held that the Assessee acted as a guarantor in the course of business of the Assessee, to enable a group company (i.e., BICL) to avail the loan from ICICI for its financing needs.

The HC noted that a claim of bad debt or business loss is a commercial decision of the taxpayer based on relevant material in its possession. Once recorded as a business loss, there is a *prima facie* presumption that it is an irrecoverable loss, unless the AO provides cogent reasons to hold it otherwise. The burden lies on the AO to adduce such reasons, which was not discharged in Assessee's case.

The HC concluded that the loss incurred by the Assessee was for the business expediency of the group company. Heavily relying on the decision of the Bombay HC in the case of ***Mahindra and Mahindra Ltd.***[25], the HC reiterated that *"a sum of money expended, not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on the business, may yet be expended wholly and exclusively for the purposes of the trade."*

The HC noted that the expenditure incurred by the Assessee on behalf of its group entity should be treated as having been incurred for business purposes and directly relatable to its own business and, hence, eligible for deduction as a business loss or as bad debt. It noted that any different reading would not reflect the true profit and gains of the Assessee.

Significant Takeaways

The HC reaffirms the well-established principle that expenditure incurred for commercial expediency, even if voluntary and not directly benefiting the taxpayer's immediate business operations, can qualify as a tax-deductible expenditure under the IT Act, so long as it serves the broader business purpose. The decision recognises and confirms that group companies often act in each other's interests for the overall business strategy of their group and that such actions should be viewed through the lens of commercial expediency rather than limited transactional analysis.

Additionally, this decision emphasises that the burden of proof lies with the IRA to demonstrate that non-genuine business expenses have been claimed as tax deductible business expenses. Mere disagreement with a taxpayer's commercial judgment, without substantive evidence, is insufficient to justify disallowance.

The reliance placed by the HC on established precedents, particularly ***Mahindra and Mahindra (supra)***, reinforces the principle that holding companies naturally have deep interests in the business operations and successes of their subsidiaries and other group companies, and financial support provided to group entities for the business preservation and growth, should constitute as allowable business expenditure.

> **"Expenses incurred by the Assessee for a group entity is allowed as a deductible business expenditure."**

[25] Mahindra and Mahindra Ltd. v. Commissioner of Income Tax, (2023) 151 taxmann.com 332 (Bombay High Court).

Section 55 of the IT Act applies to computation of cost of acquisition on liquidation over other general provisions of the IT Act

Introduction

The Madras HC, in the case of ***TR Balasubramaniam***,[26] held that for the purpose of calculating capital gains, where the cost of acquisition for assets received on liquidation of company can be determined under two provisions of the IT Act, the provision that is more specific to the facts of the case should prevail over a general provision.

Facts

The Assessee had purchased shares of a company that subsequently went into liquidation. Pursuant to the liquidation, the Assessee received immovable property towards its proportionate share in the said liquidated company. The Assessee subsequently sold the immovable property within the same year and offered the gains for taxation as capital gains. The Assessee computed the capital gains by considering the fair market value of the immovable property on the date of liquidation as the cost of acquisition under Section 55(2)(b)(iii) of the IT Act. Section 55(2)(b)(iii) specifically provides that where a capital asset becomes the property of the Assessee on the distribution of the capital assets of a company on its liquidation and the Assessee is assessed to IT under the head of "Capital Gains", in respect of that asset under Section 46, then the cost of acquisition of that capital asset shall be the fair market value of the asset on the date of distribution.

However, the IRA applied Section 49(1)(iii)(c) of the IT Act, which provides that the cost of acquisition of any asset distributed on liquidation shall deemed to be the cost of acquisition of the asset in the hands of the liquidated company for the purposes of computing capital gains. On appeal, the CIT(A) ruled in favour of the Assessee. The ITAT also agreed with the CIT(A)'s ruling and acknowledged the Assessee's arguments, but ruled in favour of the IRA, stating that it was bound by the previous decisions of coordinate benches, without referring the matter for consideration by a larger bench. Hence, the Assessee preferred this appeal to the Madras HC.

Issue

Whether the cost of acquisition of an immovable asset distributed to shareholders upon the liquidation of a company should be computed under Section 55(2)(b)(iii) or Section 49(1)(iii)(c) of the IT Act for the purpose of calculating the capital gains to be offered to tax?

Arguments

The Assessee contended that the assets received on liquidation were in consideration of the extinguishment of their shareholding rights in the liquidated company. The assets received were subjected to tax as capital gains in the hands of the Assessee at the time of distribution under Section 46(2) of the IT Act and the fair market value of the asset was regarded as the full value of consideration for computation of capital gains at the time. Therefore, Section 55(2)(b)(iii) squarely applied to the case of the Assessee. Hence, fair market value of the capital asset on the date of distribution should be the cost of acquisition of the immovable asset. Further, the Assessee submitted that although Section 49(1)(iii)(c) may also apply to its case, Section 55(2)(b)(iii), being a more specific provision, should be preferred over the latter section, which is a general provision of law.

The IRA, relying on precedents of previous ITAT benches, maintained that Section 49(1)(iii)(c) shall be applicable for computation of cost of acquisition as it is applicable for all assets received as distribution from liquidation.

Decision

The HC noted that there were two transactions – first, extinguishment of shareholding rights in consideration for distribution of assets post liquidation and second, transfer of immovable asset received on distribution for money. The Assessee had already paid tax on capital gains arising at the time of distribution of the asset, i.e., at the time of the first transaction. This would be case as contemplated under Section 55(2)(b)(iii) of the IT Act. The HC agreed with the Assessee that even though both Sections 55(2)(b)(iii) and 49(1)(iii)(c) of the IT Act are applicable, Section 55(2)(b)(iii) would prevail in the present case as it is more specific to the case of Assessee.

[26] TR Balasubramanium v. Asst Commissioner of Income-tax City Circle VII(2), TS-507-HC-2025(MAD).

The HC also criticised the ITAT for passing the order in favour of the IRA based on precedents. If the ITAT concurred with the contentions of the Assessee on merits, then they should have referred it to a larger bench.

Significant Takeaways

The case brings clarity regarding the taxation in case of distribution of assets on liquidation. If at the time of distribution of assets pursuant to a liquidation, a taxpayer has offered the gains on distribution, i.e., the FMV of the asset as capital gains to tax under Section 46(2) of the IT Act. At this point, the date of distribution of the asset becomes the date of acquisition of the asset in the hands of the Assessee for computation of the period of holding of the asset, while the FMV on which the Assessee had discharged its capital gains tax obligation becomes the cost of acquisition of asset as per Section 55(2)(b)(iii) of the IT Act. However, if a taxpayer has not offered the gains on distribution pursuant to a liquidation to tax under Section 46(2) of the IT Act, the cost of acquisition of the asset.

The case also reiterates a fundamental principle of interpretation of statutes where two laws have overlapping application. The HC affirms that in cases where two conflicting provisions have overlapping application, the special or more specific provision should prevail over the general law.

In this case, the HC also observes that the ITAT should have referred the matter for consideration to a higher bench. This is another important aspect highlighted by the judgment that lower courts may often blindly follow the precedents of the coordinate benches without considering the specific facts of the case on merits. The courts and tribunals must apply their minds in all cases and must refer the cases to higher benches in cases wherever the same is possible.

> **“ Specific provision for computation of cost of acquisition under section 55 shall prevail over a general provision of law. ”**

CASE LAW UPDATES – DIRECT TAX ROUTINE

Non-disclosure of a pending writ petition not a material concealment under Vivad Se Vishwas Scheme, 2024

Introduction

The Delhi HC, in ***Domino Printing Sciences Plc***,[27] allowed the appeal challenging the rejection of its declaration under the Vivad Se Vishwas Scheme, 2024 (**VSV**). The Delhi HC observed that the non-disclosure of a pending writ petition in the declaration form did not constitute a material concealment that would render the declaration invalid. It further held that the determination of eligibility under the VSV Scheme must be based on objective criteria and factual evidence rather than technical formalities or procedural oversights.

Facts

Domino Printing Sciences Plc (**Assessee**), a UK-incorporated company, engaged in manufacturing and selling coding & marking equipment, had incorporated a wholly owned subsidiary in India named Domino Printech India Pvt. Ltd. (Domino India) in 1996.

In 2012, the Assessee had converted Domino India, a private limited company to a Limited Liability Partnership (**LLP**). Consequently, Domino Printech India LLP (**Domino LLP**) was registered in 2016.

The Assessee had sought an advance ruling from the Authority for Advance Ruling (**AAR**) on the taxability of capital gains arising from this conversion. The AAR held that that capital gains were chargeable to tax and rejected the Assessee's application, by an order dated August 23, 2019. Aggrieved, the Assessee filed a writ petition (in year 2020) before the Delhi HC, which remained pending as on the date of the declaration under the VSV.

Subsequently, the AO issued a notice under Section 148 of the IT Act for AY 2017–2018 and assessed capital gains of INR 2,35,46,65,609, in the hands of the Assessee. The Assessee challenged the AO's order before the CIT(A), which was also pending as on the date of the declaration under the DTVSV.

To avoid prolonged litigation, the Assessee filed a declaration under the VSV, on December 23, 2024. While the Assessee duly disclosed the appeal pending before CIT(A), it did not mention the writ petition before the Delhi HC.

The IRA rejected the Assessee's declaration, citing non-disclosure of the pending writ petition constituted a material concealment. Subsequently, the Assessee filed a revised declaration on February 2, 2025, disclosing the pendency of the writ petition.

Issue

Whether in the facts and circumstances of the case, non-disclosure of the writ petition, pending before the Delhi HC, constitutes a material concealment warranting rejection under VSV?

Arguments

The IRA contended that the declaration was defective due to non-disclosure of the pending writ petition, which was central to the dispute. Further, argued that Section 90 of the Finance (No.2) Act, 2024, mandated full and true disclosure, and the failure to mention the writ petition violated this requirement. The IRA also contended that the revised declaration filed on February 7, 2025,

[27] Domino Printing Sciences Plc v. Commissioner of Income Tax (Intl. Taxation)-2, New Delhi, (TS-482-HC-2025(DEL)) / W.P.(C) 5132/2025.

should be treated as the operative date, making the Assessee liable to pay 110 per cent of the disputed tax instead of 100 per cent.

The Assessee argued that the non-disclosure was neither essential nor material since the writ petition would become infructuous upon settlement of the appeal before CIT(A). It submitted that the prescribed Form 1 did not permit disclosure of multiple disputes in the same field, and once the appeal details were filled, no other entry could be made. The Assessee also provided an undertaking to waive all rights to pursue any remedy, including the pending writ petition and also clarified that it would withdraw its writ petition as well as its appeal before the CIT(A) immediately upon the designated authority issuing a certificate under Section 92(1) of the Finance (No.2) Act, 2024 confirming the amount payable and furnishing the requisite details in prescribed form.

Decision

The HC allowed the Assessee's appeal and directed the IRA to process the declaration by treating December 23, 2024, as the filing date. The HC rejected IRA's argument of material concealment, holding that not mentioning the pendency of the writ petition could not be construed as failure to disclose a material fact. It observed that the settlement of the dispute pending before the CIT(A) would ipso facto make the writ petition infructuous.

The HC also held that the Assessee had unequivocally waived its rights to seek or pursue any remedy in relation to the tax arrears, which would preclude it from pursuing the writ petition pending before the HC. The HC noted that this waiver of right to pursue any remedy in relation to the dispute prior to pursuing the dispute under VSV would automatically preclude the Assessee from pursuing any writ petition pending before the HC if the same came up for hearing before issuance of certificate by the designated authority under the VSV.

The HC noted that post issuance of the certificate, the writ petition would be withdrawn by the Assessee as expressly clarified by it. Hence non-disclosure of the same would not be material. If Assessee's grievance is redressed and settled under the VSV, then there would not be any grievance to pursue under the writ petition and the settlement shall be dispositive of the writ petition. It further noted that there was no specific space in Form-1 to mention additional proceedings relating to the same subject matter.

The HC relied on the principle that the determination of eligibility must be based on empirical evidence and objective standards rather than technical formalities. It held that the Assessee's declaration filed on December 23, 2024, could not be treated as *non est* and ignored.

Significant Takeaways

The HC reaffirmed that the VSV should be interpreted liberally to achieve its objective of reducing litigation. The decision underscores that mere procedural oversights or technical non-disclosures do not automatically invalidate declarations under such schemes unless they constitute material concealment affecting the substance of the dispute.

It also clarifies that failure to disclose any pending writ petitions is not a material fact as the waiver to pursue remedies undertaken before making an application under VSV automatically prevents the Assessee from pursuing such pending writ petitions and therefore, has no bearing on the dispute. As part of such waiver, the Assessee shall be required to withdraw such petition if it is allowed by the HC and is listed for hearing. In any case, as per Section 91(3) of the Finance (No.2) Act, 2024, the Assessee shall have to withdraw the petition as soon as the certificate confirming the tax amount payable is issued by the designated authority under Section 92(1) of the Finance (No.2) Act, 2024.

It is pertinent to note that the Delhi HC rejected the IRA's reliance on FAQ,[28] clarifying that it applied only to cases where writ petitions challenged notices under Section 148/148A of the IT Act and no assessment order had been passed. This further clarifies that such disputes are eligible under the VSV even when related writ petitions are pending, provided the quantum of disputed tax has been determined through assessment proceedings and it is not a writ petition challenging tax notices.

The Delhi HC's approach demonstrates that taxpayers who genuinely seek to settle disputes under the VSV should not be penalised for technical lapses, particularly when they provide comprehensive undertakings to waive all rights to pursue alternative remedies.

> **"Settlement schemes should facilitate resolution, not create additional procedural hurdles."**

[28] FAQ No.26 of CBDT Circular No.12 of 2024.

Trust's receipts are not taxable on the basis of donor TDS

Introduction

The SC, in ***Aroh Foundation***,[29] dismissed the SLP of the IRA, upholding the decision of the Delhi HC that mere deduction of TDS by the donor on the amount paid by it to a trust cannot be the basis for disentitling the trust from income tax exemption under Section 11 and 12 of the IT Act.

Facts

Aroh Foundation (**Assessee**), a charitable trust registered under Section 12A read with Sections 12AA and 80G of the IT Act, is involved in charitable activities. As a registered charitable trust under the IT Act, it has exemption from income tax for its receipts received and expenses incurred for charitable purposes under Sections 11 and 12 of the IT Act.

During the year under review, the Assessee had received various grants from government and private sector sources. The donors deducted TDS under Section 194C of the IT Act–TDS on contractual payments–and under Section 194J of the IT Act–TDS on payment for professional or technical services. Based on these deductions, the IRA taxed such receipts as consultancy fees and contractual receipts. Hence, the AO denied the Assessee exemption available under Sections 11 and 12, citing that it was for the advancement of an object of general public utility outside the definition of "a charitable purpose" under Section 2(15) of the IT Act. Therefore, as per the AO's order, the receipts were for a taxable activity, liable to be taxed under Section 13(8) of the IT Act.

The Assessee filed a revision petition against the AO's order, which was dismissed. The Assessee then challenged the revisionary order by filing a writ petition before the Delhi HC. The Delhi HC ruled in favour of the Assessee holding that the receipts were not taxable merely because TDS was deducted at the time of grant of such receipts. Aggrieved, the IRA approached the SC.

Issue

Whether the grants received by the Assessee should be treated as taxable income as they were subjected to TDS deductions under Sections 194C and 194J of the IT Act or whether they should qualify for tax exemptions under Sections 11 and 12 of the IT Act as receipts for charitable purposes?

Arguments

The Assessee submitted that the grants it received were exclusively for charitable purposes as outlined in its objectives under Section 2(15) of the IT Act and not for any other purpose. It argued that TDS is only a mechanism for ease of tax collection for the government and cannot be the determining factor for identifying the nature of payment or income. Further, since the exemption against such grants have been allowed for previous years, in the absence of any material change in facts, the IRA should allow the exemptions on the basis of principle of consistency for the AY in consideration.

The IRA argued that since deductions were made under Sections 194C and 194J of the IT Act before donating to the Assessee, these were not in the nature of donations for charitable purposes. Instead, it argued that these were consultancy fees and contractual payments and the receipts ought to be taxable in the hands of the Assessee under proviso to Section 2(15) and Section 13(8) of the IT Act.

Decision

Allowing the Assessee's writ petition, the SC upheld the HC's decision that the receipts were not taxable as these were exempt from taxes under Sections 11 and 12 of the IT Act. The SC held that reliance on TDS deductions cannot be the sole basis for determining the nature of a receipt and its taxability in the hands of the recipient. Further, the Assessee had clearly shown that the receipts were for charitable objectives and not for any general public utility, commercial, or trade activities for it to be taxable under proviso to Section 2(15) of the IT Act. In the absence of any proof or cogent reason suggesting that the Assessee engaged in any trade or services in the nature of business activity, the IRA cannot assume that the Assessee' receipts were not for a charitable purpose. The HC noted that if the donor deducted TDS under a misconception, it could not be the basis for disentitling the Assessee to claim the benefit under Sections 12 and 13 of the IT Act, unless it is specifically covered by the proviso to Section 2(15).

The SC also noted that considering that there are no material differences between the fact pattern of the AY of these receipts and that of the preceding as well as subsequent years, the same receipts cannot be treated differently. If the exemption was available to the Assessee for all other years, the same should also be available for the AY in question following the principle of consistency. The principle of consistent approach and res judicata could also be applied to taxation matters, such as tax assessments by the IRA.

[29] Commissioner of Income Tax (Exemption) v. Aroh Foundation, TS-341-SC-2025 (SC); Aroh Foundation v. Commissioner of Income Tax (Exemption), TS-116-HC-2024 (DEL).

Hence, there was no rationale for disallowing the exemption available to the Assessee and holding that the receipts in question were taxable.

Significant Takeaways

This case highlights that to determine the nature and taxability of any receipt, the entire set of facts and circumstances–the consideration for which a payment is made, the treatment of the receipt in the hands of recipient, etc.–must be determined. It is not sufficient to reply upon only one factor–such as the provision of law under which TDS is deducted for a payment–to determine the taxability of a receipt. The provisions of TDS are for ease of collection of taxes and cannot be the sole determinant and basis for assessment of receipts or income. For instance, as in the present case, before denying the exemption and assessing such receipts for tax, the IRA should have analysed whether conditions under proviso to Section 2(15) of the IT were complied with when determining the nature and purpose of the receipts in the hands of the Assessee.

This case also highlights that tax assessments should be transparent, predictable, and certain for the taxpayers. The IRA should follow the principle of consistent approach in all taxation matters to ensure this. If the IRA must deviate from the usual practice, there should be cogent reasons under the law for such deviation.

> **“ TDS deducted by donor cannot disentitle the recipient trust from its charitable status. ”**

Payment to employees for stock option loss due to divestment is a capital receipt

Introduction

In ***Manjeet Singh Chawla***[30] the Hon'ble Karnataka HC provided clarity on the tax treatment of the one-time payment made to an employee to compensate for the loss in value of unexercised options under the Employee Stock Option Plan (**ESOP**). The HC ruled decisively that such a payment to the employee constitutes a capital receipt and is not taxable as a perquisite under the head of salary. The decision held that only after the employee has exercised an option and the shares under the ESOP have been allotted can the related payment or benefit be taxed as a perquisite.

Facts

The case involved an Indian employee (**Assessee**) of Flipkart Internet Private Limited, who was granted certain stock options under an ESOP floated by the ultimate parent company, Flipkart Private Limited, Singapore (**FPS**). The Assessee had not exercised any of the options. During the holding period, FPS underwent a corporate restructuring involving the divestment of a subsidiary, causing a significant reduction in the value of the shares granted under the ESOP. Consequently, FPS made a one-time, voluntary compensatory payment to all option holders to offset this loss.

Anticipating the tax implications, the Assessee applied to the tax authorities for a "Nil Tax Deduction Certificate" under Section 197 of the IT Act, submitting that the receipt was not taxable salary income. The AO rejected this application, implying that this income could potentially be considered as salary income requiring TDS deduction. The Assessee then filed this writ petition before the HC.

Issue

Whether voluntary compensatory payment by the employer to its employees as a result of loss in value of unexercised ESOP shares should be considered a non-taxable capital receipt or a taxable perquisite arising from employment?

Arguments

The Assessee contended that the payment was a capital receipt, as it was a compensation for the loss in value of a capital asset, i.e., the unexercised stock options. Therefore, the amount was not taxable as salary income. Referring to Section 17(2)(vi) of the IT Act, the Assessee argued that ESOPs become taxable only when the employee exercises the options and the shares are allotted. Since, in this case, the options under the ESOP remain unexercised, the provision was not triggered and there was no taxable perquisite.

The IRA argued that because the payment originated from the employer's group and was received by an employee, it was fundamentally a payment linked to the employment relationship and should, therefore, be taxed as a perquisite under the head of salary. It also challenged the maintainability of the writ petition, claiming the Assessee had an alternative remedy to file a revision application under the IT Act.

Decision

The HC allowed the Assessee's petition, quashed the AO's order, and directed the IRA to issue the Nil Tax Deduction Certificate. In relation to the maintainability of the writ petition, the HC found the case fit for judicial intervention, as the AO's order was illegal and arbitrary and ignored binding HC precedents on similar facts.

Agreeing with the Assessee, the HC and held that the one-time voluntary payment was compensation for the diminution in value of a capital asset; therefore, it was a capital receipt not subject to income tax. The HC affirmed that under Section 17(2)(vi) of the IT Act, taxability of ESOPs as perquisite is triggered only at the stage of exercise of the options, when the shares under the ESOP are allotted to the employee at the exercise price.

In this case, as the options had never been exercised, no benefit had accrued to the Assessee. The HC observed that these unexercised options were a capital asset in the hands of the employee and the payment was only made to offset the loss in value of the capital asset, i.e., the future right to exercise the options at a beneficial price as per the ESOP. The payment was for the erosion in value of the right itself, not a benefit arising from its exercise. Therefore, Section 17(2)(vi) of the IT Act was not triggered.

[30] Manjeet Singh Chawla v. Deputy Commissioner of TDS, [2025] 175 taxmann.com 778 (Karnataka).

Significant takeaway

This ruling follows the precedent of other HCs on similar facts and clarifies the legal status of unexercised ESOPs as distinct capital assets of the employees. The options are rights of the employees and is converted into a taxable perquisite only on the exercise of the vested options. Therefore, any compensation for the loss in their value is a capital receipt and not a taxable perquisite under the head of salary income.

This ruling also provides clarity to entities that such compensations for loss in value of capital asset cannot form part of the salary and does not require deduction of any TDS or any TDS-related compliances.

> **“ Any payment received in relation to unexercised ESOP is a capital receipt. ”**

CASE LAW UPDATES – INDIRECT TAX ROUTINE

Payments made for engineering and technical services includable in the assessable value of imported goods where they are condition of sale

Introduction

Inclusion of amounts relating to engineering and technical services has always been a bone of contention between the importers and IRA. This judgment reiterates that payments constituting a condition of sale, even if made to a third party, must be added to the assessable value if they relate to pre-importation activities facilitating the sale.[31]

Facts

Coal India Limited (**Appellant**), a Government of India undertaking, along with its subsidiary Central Coalfields Limited, wanted to import spare parts for machinery used in mining. The Appellant invited tenders for the supply of these spare parts. M/s Harnischfeger Corporation, USA, submitted its quotation on March 28, 2000, through its Indian distributor and agent, M/s Voltas Limited. The quotation specified that prices were exclusive of engineering and technical service fees, which amounted to 8 per cent of the free on board (**FOB**) value, payable on a pro rata basis against each shipment to M/s Voltas Limited in Indian rupees. Importantly, this payment was not to be deducted from the FOB amount payable to the foreign supplier.

Subsequently, a purchase order was placed on December 20, 2000, outlining the terms of payment. The purchase order also provided that the product support services be rendered by M/s Voltas Limited, including regular site visits for inspection and technical updates, assistance in identifying spare requirements, scrutiny of orders and letters of credit, provision of technical write-ups for customs clearance, etc. Payment for these services was fixed at 8 per cent of the net FOB value, payable in Indian rupees within 21 days of submission of pre-receipted bills, shipping documents, and exchange rate certificates.

The spare parts were supplied by the foreign supplier on December 21, 2001, and provisionally assessed by customs authorities upon importation. The Ld. Assistant Commissioner of Customs finalised the assessment on March 3, 2004, holding that the engineering and technical service charges paid to M/s Voltas Limited were includible in the assessable value under Rules 9(1)(a) and 9(1)(e) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (**Customs Valuation Rules**), resulting in a short levy of customs duty. This decision was upheld by the Ld. Commissioner of Customs (Appeals), who confirmed that the charges were a condition of sale and covered by Rule 9(1)(e). The CESTAT also dismissed the appeal filed by the Appellant on the ground that it was a condition of sale. Aggrieved, the Appellant approached the SC.

Issue

Whether the engineering and technical service charges paid by the Appellant to M/s Voltas Limited should be included in the assessable value of the imported spare parts under Rule 9(1)(e) of the Customs Valuation Rules?

[31] M/S. Coal India Limited v. Commissioner Of Customs (Port), Customs House, Kolkata, 2025 (5) TMI 181 - Supreme Court.

Arguments

The Appellant contended that the engineering and technical service charges paid to M/s Voltas Limited could not be included in the assessable value, as they pertained to post-importation maintenance and engineering services. Appellant also relied on the Note to Rule 4 of the Customs Valuation Rules, which excludes charges for construction, erection, assembly, maintenance, or technical assistance undertaken after importation on imported goods such as industrial plant, machinery, or equipment. The Appellant argued that the services such as regular product support visits, technical updates, guidance on maintenance, assistance in identifying spares, and help with insurance surveys were independent post-importation activities. They emphasised that M/s Voltas Limited acted as an agent providing product support to ensure optimum availability of the shovels, and the 8 per cent FOB payment towards services was merely a recompense for these services, not a condition of sale as envisaged under Rule 9(1((e).

The Appellant further submitted that the CESTAT's invocation of both Rule 9(1)(a) and Rule 9(1)(e) was contradictory and erroneous, as Rule 9(1)(e) applies only to payments not covered by Clauses (a) to (d) of Rule 9(1). They asserted that no contractual obligation existed between the Appellant and M/s Voltas Limited for these services; instead, the charges were for standalone support, lacking any nexus to the importation process. The Appellant argued that including such charges would violate the valuation provision, which focuses on the price actually paid or payable at the time of importation, excluding post-import costs. In support, the Appellant also relied on various earlier precedents dealing with post importation services.[32]

The IRA, on the other hand defended the inclusion of the charges, arguing that they formed an integral and inseparable condition of sale as explicitly stipulated in the foreign supplier's quotation and the purchase order. They highlighted that the foreign supplier's terms required the Appellant to pay an additional 8 per cent of the FOB value to M/s Voltas Limited separately, without deduction from the FOB amount payable to the supplier, indicating it was part of the overall transaction cost to make the sale effective. The services provided by M/s Voltas Limited, such as identifying actual spare requirements, scanning part numbers, scrutinising orders and letters of credit, providing technical write-ups for customs clearance, assisting in insurance surveys, and coordinating replacements were pre-importation activities performed on behalf of the foreign supplier as its agent, directly related to the procurement and smooth importation of the spares.

Decision

The Hon'ble SC undertook a comprehensive analysis of the contractual documents, statutory provisions, and precedents to affirm the inclusion of these charges. Commencing with the purchase order, the SC extracted and examined Clause 5 in detail, noting that while 100 per cent of the FOB value was payable in US dollars to the foreign supplier, product support services were to be rendered by M/s Voltas Limited upon payment of engineering and technical service charges at 8 per cent of the net FOB value on a pro rata basis in Indian rupees. The SC highlighted specific instances of services, such as determining spare requirements, assisting in customs clearance, insurance surveys, and prompt replacements, concluding these were integral to facilitating importation.

The SC then referenced the foreign supplier's quotation, which explicitly required the Appellant to pay to M/s Voltas Limited without deduction from the supplier's entitlement, underscoring this as a clear condition of sale.

Reviewing the Assistant Commissioner's order dated March 3, 2004, the SC noted the scrutiny revealed M/s Voltas Limited as the local agent, with services primarily related to identifying spares and assisting in post-import surveys, but fundamentally tied to procurement for smooth sale. The SC agreed that the Appellant had no direct contract with M/s Voltas Limited, and the charges were recompense for making the sale effective, akin to commission.

The SC found the sale conditional per the foreign supplier's quotation, fully covered by Rule 9(1)(e), and distinguished from maintenance charges under the Note to Rule 4, as these charges were not being paid under a contract for maintenance, erection, commissioning of an industrial plant, equipment, or machinery. The SC further emphasised the absence of a direct service contract between the Appellant and M/s Voltas Limited, reinforced that the payments were dictated by the foreign supplier's conditions, creating a clear nexus to the imported goods' value.

Significant Takeaway

The decision reinforces the "*substance over form*" approach in customs valuation. This principle entails that judicial scrutiny

[32] Collector of Customs (Preventive), Ahmedabad v. Essar Gujarat Ltd., Surat (1997) 9 SCC 738, Tata Iron & Steel Co. Ltd. v. Commissioner of Central Excise & Customs, Bhubaneswar (2000) 3 SCC 472, and Commissioner of Customs (Ports), Kolkata v. J.K. Corpn. Ltd. (2007) 9 SCC 401.

focuses on the actual intent and temporal context of payments, such as the 8 per cent FOB for engineering and technical service charges remitted to the local agent of a foreign supplier, rather than their nominal designation. It delineates such fees/amounts related to activities before/at the time of importation from those that apply to post-importation services and are excludable under the Note to Rule 4 and discourages strategic contractual arrangements aimed at evading customs duties.

The decision prioritises the "seller's obligation test", payments must be incorporated into the transaction value under Rule 9(1)(e) of the Customs Valuation Rules, if they are mandated by the seller as a condition of sale and pertain to pre-importation activities, such as the identification of spare parts or facilitation of customs clearance.

The ruling ensures that payment of customs duties aligns with the true economic value of the imported goods, thereby mitigating attempts at undervaluation and duty evasion.

> **"Payments made to an Indian service provider based on quotation from a foreign supplier is an integral part of the said quotation and should be exigible to customs duty in India."**

Free Trade Agreement are inapplicable until incorporated in municipal law

Introduction

The case of ***Purple Products***[33] involves a legal dispute pertaining to whether the provision under the ASEAN–India Free Trade Agreement (**AIFTA**) dated August 30, 2009, are binding on the customs department. The Bombay HC clarified the non-applicability of unincorporated treaty provisions in customs legislation. The dualist nature of India's legal system requires that international treaties must form part of domestic legislation for their enforceability.

Facts

The case revolves around the import of "tin ingots" from Malaysia by two Indian companies, Kothari Metals Ltd. And Purple Products Pvt. Ltd. (**Petitioners**). The Petitioners availed customs duty exemption under Notification No. 46/2011 dated June 1, 2011 (**Notification**), claiming that the goods met the required Regional Value Content (**RVC**) threshold of 35 per cent, based on Certificates of Origin (**COO**) issued by Malaysian authorities. Following complaints by domestic industries, the Directorate of Revenue Intelligence conducted an investigation and alleged that the actual RVC was below the required limit. The customs authorities issued SCN under Section 28 of the Customs Act, alleging that the Petitioners had falsely declared that the RVC of the goods was more than 35 per cent, a threshold necessary to qualify for exemption. In reality, the RVC was below the required level, thereby making the goods ineligible for exemption. In response to SCNs issued under Section 28 of the Customs Act, 1962, the Petitioners filed writ petitions before the Hon'ble Bombay HC arguing that the matter was not restricted to a customs issue, but involved treaty interpretation, particularly Article 24 of Appendix D of the AIFTA, which prescribes a specific dispute resolution mechanism. They contended that the IRA had no jurisdiction to decide on such issues that require interpretation of treaties like AIFTA and, therefore, the SCNs were issued without jurisdiction.

On July 9, 2019, the Bombay HC dismissed the petitions, holding that the Petitioners should respond to the SCNs and exhaust the alternative remedies available under the Customs Act before approaching the Court. Dissatisfied with this ruling, the Petitioners, approached the SC. The SC set aside the Bombay HC's dismissal and restored the writ petitions, holding that the issue of whether Article 24 of the AIFTA barred IRA from adjudicating the matter was a foundational and jurisdictional question cannot be decided by departmental officers and must be decided by the High Court. Following this, the Bombay HC heard the matter and provided its decision.

Issue

Whether IRA had jurisdiction to issue SCNs under Section 28 of the Customs Act, in relation to imports governed by the AIFTA, particularly in light of Article 24 of AIFTA?

Arguments

The Petitioners argued that Article 24 of the AIFTA provides a specialised dispute resolution mechanism, and unless the said mechanism is followed, it will result in the violation of India's obligations under the AIFTA. Hence, it is safe to presume that IRA has no jurisdiction to act under the Customs Act. Under Article 24 of AIFTA, in the event of any dispute related to origin determination or product classification, the governmental authorities of the importing and exporting countries (India and Malaysia) must first consult each other. If mutual resolution is not achieved, the treaty directs that the matter be referred to the ASEAN Dispute Settlement Mechanism. Since this formal treaty mechanism had not been invoked, IRA could not lawfully raise objections against the COOs provided by the Malaysian authorities. Additionally, as long as the COOs issued by Malaysia have not been cancelled, the Petitioners are entitled to exemption benefits under the Notification.

Petitioners emphasised that the treaty provisions override domestic customs law unless there is a specific provision to the contrary under Indian parliamentary legislation. Since there is no such contrary provision, and the Customs Act does not nullify or override the AIFTA, the Customs authorities should not be allowed to take any unilateral action. Only the Parliament has the authority under India's constitutional framework to alter treaty obligations, and such obligations cannot be overruled or diluted by subordinate or delegated legislation. Further, Article 9 of AIFTA does not permit any unilateral modification, nullification, or impairment of the concessions, and these proceedings by the Customs would virtually amount to nullifying the benefits available under the treaty.

The IRA, on the other hand, argued that international treaties cannot be directly enforced in Indian Courts unless incorporated into domestic law. Although India has entered into AIFTA, the relevant domestic implementation had to happen through the Customs Tariff (Determination of Origin of Goods under Preferential Trade Agreement DOGPTA) Rules, 2009, which did not expressly refer to Article 24 of AIFTA. Therefore, Petitioners' reliance on Article 24 of AIFTA has not got the force of law in India.

[33] Purple Products Private Limited vs. Union of India, TS-538-HC-2025(BOM).

The IRA further argued that multiple provisions under the Customs Act empower it to issue such SCNs and that it cannot be deprived of its powers to adjudicate on issues including potential misrepresentation, suppression, or fraud. It also submitted that neither Article 24 of AIFTA nor the newly added Chapter VAA of the Customs Act (which deals with origin-related disputes) renders the impugned SCNs void or illegal. The AIFTA itself cannot be used to stop the lawful adjudication process already underway. Petitioners may defend themselves during adjudication proceedings, including raising the issue of treaty applicability. Blocking the proceedings merely on the basis of unincorporated treaty provisions would amount to undermining domestic law.

Lastly, the IRA relied on the Hon'ble Gujarat HC's judgment in ***Trafigura India Pvt. Ltd. v. Union of India 2023 TIOL 737 HC AHM Cus***, which had already rejected similar arguments by importers. On the other hand, the Petitioners submitted that the Gujarat HC had not considered the binding nature of Article 24 of the AIFTA. They also argued that the treaty provisions are not inapplicable, merely because the subordinate legislation does not mention Article 24 of AIFTA. They further submitted that the ***Trafigura*** decision should not be relied upon as it was already under challenge before the SC, which has issued notice.

Decision

The Bombay HC rejected the Petitioners' contention that the IRA lacked jurisdiction to issue SCN without first invoking the specialised dispute resolution mechanism prescribed in Article 24 of AIFTA. Relying on several SC decisions, it held that the provisions of Article 24 have not been incorporated into Indian municipal law through any parliamentary legislation and, hence, could not be directly enforced by the Petitioners in Indian Courts. It reaffirmed the dualist position of the Indian constitutional law, wherein international treaties are not self-executing and require an "act of transformation" through domestic legislation so that they become enforceable rights for taxpayers.

The Bombay HC found that the Customs Act provides sufficient statutory authority for customs officers to initiate proceedings. In the instant case, proceedings are based on the substantial *prima facie* material uncovered during investigation, including findings that suggest the Petitioners misrepresented the RVC requirement of the imported goods to wrongfully claim benefits under the Notification. Hence, the results of such investigation would be the foundation that will decide whether the Petitioners are allowed to claim such benefits or not.

Further, the Bombay HC aligned itself with the decision of the Gujarat HC in the ***Trafigura*** case, where similar issues were considered. It also clarified that the recent addition of Chapter VAA and Section 28DA to the Customs Act did not retroactively affect the authority of customs officers under the pre-amended law.

It emphasised that the Petitioners could not bypass adjudicatory mechanisms under the domestic legal framework by invoking an international treaty provision that had no statutory backing in India. The Bombay HC reiterated that national courts must apply municipal laws.

Significant Takeaways

The ***Purple Products*** case reaffirms India's dualist legal system, which prioritises domestic legislation over unincorporated international treaty provisions, such as Article 24 of the AIFTA. The ruling highlights how taxpayers may be impacted by relying on treaty without understanding the position under the constitutional framework. This decision exposes a potential vulnerability in regional trade agreements, particularly when domestic authorities unilaterally initiate proceedings without adhering to agreed-upon international protocols.

The Bombay HC's judgment underscores that Indian Customs can operate independently of treaty obligations unless explicitly incorporated into domestic law.

That being said, this decision also raises the troubling issue about the efficacy and acceptability of international treaties executed by the Government of India. It could also impact the position of foreign investors because they would be wary about the availability of benefits under any international agreements executed by India with other bilateral and multilateral countries or organisations.

For the time being, it is imperative for importers to ensure and maintain robust documentation and controls to ensure compliance with rule of origin and not blindly rely on the COOs issued by the foreign countries. This would also assist them in arguing where the position is questioned under CAROTAR.

> **"Suppression of facts can be a ground for invocation of Section 28 of the Customs Act."**

Bombay High Court exempts affiliation fees from GST

Introduction

The Bombay HC, in ***Goa University***,[34] addressed the contentious issue of the applicability of GST to statutory functions of educational institutions, specifically affiliation fees and related charges collected by the university.

Facts

Goa University (**Petitioner**) serves as the apex institution for higher education in the state. Its primary mandate includes providing education, conducting research, granting affiliations to colleges, holding examinations, and conferring degrees. The university is affiliated with approximately 67 colleges and collects affiliation fees, administrative charges, penalties for defaults, prospectus fees, migration certificate charges, eligibility certificates, convocation fees as part of its statutory functions.

The Petitioner received an SCN issued by the IRA, proposing to demand GST on the affiliation fees received from affiliated colleges for the period 2017–2024. This SCN was issued based on CBIC's Circulars dated February 17, 2021, and October 11, 2021 (**Impugned Circulars**), which clarified that exemption is unavailable for every activity of the university, and GST at the rate of 18 per cent applies to other services provided by education boards and universities, including providing accreditation to an institution. Further, affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemptions provided to educational institutions. The Impugned Circulars were challenged by invoking the High Court's writ jurisdiction in this case.

Issue

a. *Whether the affiliation fees and ancillary charges collected by Goa University constitute a "supply" of service under Section 7 of the CGST Act, amenable to GST?*

b. *Whether the services qualify for exemption as educational services under Entry 66 of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 (**Exemption Notification**)?*

Arguments

The Petitioner advanced a multifaceted case emphasising the non-taxable nature of its operations, arguing that its activities are not "business" as per GST legislations, which encompasses trade, commerce, or vocation, or adventure. It relied on ***Loka Shikshana Trust v. CIT*** (1976) 1 SCC 254 and ***Unni Krishnan v. State of A.P.*** (1993) 1 SCC 645, wherein it was held that education is the systematic instruction, schooling, or training given to the young in preparation for the work of life. The Petitioner asserted that without affiliation, colleges cannot function and that fees for affiliation are integral to the educational process. Since these fees enable student admissions and examinations, it falls within the exemption provided under the Exemption Notification for services by educational institutions to students, faculty, and staff. The Petitioner also contended that affiliation charges are statutory levies, not "consideration" under Section 7 of the CGST Act.

The GST department, on the other hand, contended that the petition was premature and a stalling tactic, as Goa University has statutory remedies under the CGST Act to appeal the SCN. The affiliation fees were classified as taxable supply of services.

Relying on the Impugned Circulars, IRA argued that exemptions under the Exemption Notification are limited to core services such as fees collected for admission and examinations directly from the students, not affiliation to colleges, as clarified. Unless specifically exempted, GST would be levied on such activities.

The IRA further argued that it is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. It submitted that a strict interpretation of taxing statutes should be made, asserting that affiliation constitutes a distinct service for consideration, even without profit motive and, thus, is includible in the definition of supply.

Decision

The HC admitted the case by stating that where an authority wrongly assumes the existence of a jurisdictional fact, the order could be questioned under Article 226 of the Constitution.

The HC examined the provision of GST legislation and concluded that "business" requires "commercial" intent, absent in the university's statutory functions under the Goa University Act, 1984, which mandate affiliation for maintaining standards, not for profit. HC held that to qualify as consideration for a supply, it must have an element of a contractual relationship. Regulatory fees lack quid pro quo or any contractual obligation and, hence, cannot be treated as consideration.

The HC interpreted education expansively, encompassing affiliation as essential for admissions and examinations.

[34] Goa University v. Joint Commissioner of Central Goods and Service Tax & Ors. (2025) 29 Centax 281 (Bom.).

Affiliation was deemed integral to enable colleges to send students for university exams and degrees, aligning with UGC regulations, and state's duty to provide education to the people of India. Thus, it is exempt under Entry 66 of the Exemption Notification.

HC also held that the Impugned Circulars were contrary to the plain language of the Notification and were restricting the exemption unlawfully.

Significant Takeaways

The HC's judgment represents a pivotal affirmation of the non-commercial nature of educational functions being rendered by statutory bodies in India. The ruling underscores a key tension in the GST regime balancing revenue generation against constitutional imperatives to promote accessible education under the Constitution of India.

This judgment shields statutory universities from GST while collecting regulatory fees, etc. and emphasises that fiscal measures must not impede constitutional educational goals. It clarifies that affiliation fees, convocation charges, migration certificates, sports fees, and similar levies are exempt from GST when performed as statutory duties, potentially defending universities from tax liabilities.

It sets a precedent for exempting similar activities rendered by various statutory bodies who recover similar fees while carrying their statutory functions. This decision may encourage other statutory agencies to more vigorously argue that as long as they carry out their statutory functions, they should not be liable to pay any GST for such functions. This decision is a positive one and holds prioritising constitutional obligations over mundane miniscule revenue gains.

> **"GST cannot be recovered from universities for carrying out statutory functions."**

REGULATORY | DIRECT TAX UPDATES

Parliamentary Panel clears the Income Tax Bill, 2025

On February 13, 2025, Finance Minister Ms. Nirmala Sitharaman introduced the Income Tax Bill, 2025 (**IT Bill**) in Parliament, which is a pivotal reform aimed at modernizing the Indian income taxation framework. It aims to simplify and remove redundancies in the old law to make it more accessible for the regular taxpayer.

The Select Committee of the Lok Sabha established to examine the IT Bill and provide its recommendations on the same, unanimously adopted the IT Bill on July 16, 2025. The Parliamentary Panel has made 285 recommendations to the draft bill set to be tabled in the upcoming monsoon session of the Parliament. Once passed, it shall be applicable with effect from April 1, 2026, thereby replacing the decades old IT Act.

Although the report has not been published, following are some of the key recommendations of the Select Committee of the Lok Sabha on the IT Bill being reported by various sources:[35]

- **Deduction of inter-corporate dividends:** In the new IT Bill released in February, section 200 provides that new manufacturing domestic companies opting for a lower rate of taxation shall not be eligible to the certain deductions. In the list of deductions it had not excluded the deduction of inter-corporate dividends for such companies. Many experts commented that this was an inadvertent omission and would be rectified. It has been now reported that the Select Committee has reinstated the exclusion and allowed deduction of inter-corporate dividends under section 148 read with section 201 of the IT Bill.

- **Significant changes made to definition of Associated Enterprise (AE):** The IT Bill had structured the definition of AE in a similar manner as that of the IT Act with a notable modification in the second. The definition now included the phrase "without affecting the generality of the provisions of sub-section (1)." The IT Act previously limited the broad definition to the context "for the purposes of sub-section (1)," thereby constraining it within the framework of the specific relationships. This change aims to resolve earlier uncertainties about how the general AE definition in the first part interacts with the specific AE relationships outlined in the second part. It is reported that the Select Committee has suggested some further fine-tuning the definition of AE. This shall be an important change to be analysed as this will impact the applicability of transfer pricing provisions.

- **Section 9 of the IT Bill except a couple of changes suggested by the Select Committee:** Under the section 9 of the IT Act, income earned from a business connection in India is treated as income that accrues or arises within the country and is taxable in India. However, if a business connection involves both Indian and non-Indian operations, only the portion of the income that can be reasonably attributed to the activities conducted in India will be treated as accruing or arising in India.

  The IT Bill restricts this concept by explicitly stating that "business connection in India" shall include business carried out in India and income that is directly "attributable" to Indian operations as opposed income that is merely "reasonably attributable" to Indian operations. Hence, only the income directly attributable to the operations

[35] 20 key recommendations of Parliament Select Committee on New Income tax Bill | Taxsutra.

undertaken in India will be deemed to accrue or arise in India from a business connection. This distinction ensures that non-resident entities are taxed only on the income that truly reflects their economic activities within India, thereby promoting a more equitable and precise allocation of tax liability.

- **Significant changes to undisclosed income and block assessment:** The IT Bill had retained the timeline for completion of block assessments as stipulated under section 158BC of the IT Act, which is twelve months from the end of the month in which the last authorization for search or seizure was executed. This was contrary to proposal of the Budget 2025 to extend timeline to twelve months from the end of the quarter in which the last authorization was executed. It is possible that retention of this provision was unintentional, and this may have been changed as per recommendations of the Select Committee.
- **Concept of Tax Year retained:** The IT Bill had attempted to introduce the concept of 'tax year' and had deleted the references to 'assessment year'. Thus, the tax rates would now be provided for the tax year, and the return would be filed and assessment of income would be undertaken for a tax year. This change aims to simplify the tax process and eliminate confusion that arose from the use of multiple terms referencing different financial years. It also aligns with the terminology used globally in income tax legislations. This has been retained by the Select Committee.
- **Power to access digital space retained:** To enhance search and seizure powers related to Virtual Digital Assets (VDAs), the phrase 'any books of account or other documents' was been expanded to 'any books of account or other documents or any information stored in any electronic media or a computer system'. Additionally, the IT Bill introduced provision allowing tax authorities to access any computer system or virtual digital space by bypassing access codes as part of search and seizure proceedings. This has also been retained by the Select Committee.
- **No recommendations in relation to GAAR provisions:** The IT Bill had enhanced power of tax authorities under GAAR so as to make these procedures more stringent. For instance, the tax authorities were given the power to directly issue notice against the assessee in GAAR cases without obtaining prior approval. The limitation period to issue reassessment notices under GAAR has also been done away with, empowering the tax authorities to conduct these proceedings at any time. It has been reported that these provisions have mostly been retained and there have been no notable recommendations in relation to GAAR provisions.

Certain other changes recommended by the Select Committee include:

- Key changes in the definition capital asset have been recommended.
- The Select Committee has suggested some recommendations to clean up the wordings in the charging section, i.e., section 4 of the IT Bill and in section 6 of the IT Bill containing provision relating to residence.
- The Select Committee has recommended to include maternal as also paternal / descendant in the definition of 'Relative'.
- 'Beneficial Owner' expression has been defined by Select Committee.
- Provision with regard to entitlement to refund claim only if return filed within original due date has been recommended to be removed.
- Some changes in Capital Gains related provisions have been recommended, but the core provisions have been retained.
- Changes have been recommended to definition of investment fund
- No notable recommendations in relation to tax audit thresholds
- Sections related to assessment provisions are mostly unchanged (except block assessment procedures)
- Definition of Accountant has not changed and continues to include only chartered accountants
- Provisions in relation to 'Income from Other Sources' do not have any significant changes.
- Definition of International Transaction are mostly unchanged.
- Except AE definition, rest of the transfer pricing related provisions remain unchanged.
- No notable recommendations in relation to TDS related provisions.
- Repeal and savings clause in the IT Bill providing necessary mechanisms to allow smooth transition to the new tax legislation also do not have any recommendations.

CBDT notifies income tax return forms for AY 2025-26

The CBDT, *vide* Notification Nos. 40/2025,[36] 41/2025,[37] 42/2025,[38] 43/2025,[39] 44/ 2025,[40] 46/2025[41] and 49/2025,[42] released the various income tax return forms namely, Forms ITR-1, ITR-2, ITR-3, ITR-4, ITR-5, ITR-6, ITR-7 and ITR-U for the AY 2025-26. The key changes to forms and schedules include changes to incorporate and give effect to the changes introduced by Finance Act (No. 2), 2024.

For instance, the short-term capital gains and long-term capital gains arising from transfers before July 23, 2024 and on or after July 23, 2024 must be reported so that the revised rates may be applicable to gains from transfers after the Finance Act (No. 2), 2024. Deemed dividends under Section 2(2)(f) of the IT Act received from the buyback of shares shall have to be reported and capital loss arising from such buyback shall also have to be reported in the income tax returns.

CBDT relaxes time limit for processing of valid returns of income filed electronically after condonation of delay

The CBDT, *vide* Circular No. 7/2025[43] dated June 25, 2025, has relaxed the time limits for processing of valid returns of income filed electronically pursuant to order of condonation of delay passed under Section 119(2)(b) of the IT Act. Under Section 119(2)(b), the CBDT may authorise competent authorities being a Joint Commissioner (Appeals) or a Commissioner (Appeals) may pass an order for condoning delay in cases of genuine hardships after dealing the case on merits and admit applications, claims or any other relief under the IT Act.

As per second proviso to Section 143(1) of the IT Act, the taxpayers are required to respond to notices of intimation for adjustments from the tax authorities within a period of 30 days from such intimation. Based on such intimation and response to such intimation, adjustments may be made under section 143(1) and refund, if any may be processed for the taxpayers accordingly. However, grievances were being received that refunds were not being processed for income tax returns in some cases as a result of technical glitches. In cases of condonation of delay, the dates of sending intimation to taxpayers under Section 143(1) of the IT Act was elapsing leading non-processing of certain returns.

To remedy this, the current circular was issued directing that the valid returns of income filed electronically on or before March 31, 2024 pursuant to condonation of delay orders under Section 119(2)(b) of the IT Act, for which date of sending intimation had lapsed shall now be processed and relevant intimation to the taxpayers under Section 143(1) may be sent by March 31, 2026. However, the circular also clarifies that this extension of timeline shall not be applicable proceedings for assessment, reassessment, re-computation or revision of income under the IT Act were already completed prior to the filing of income tax return for the relevant assessment year under consideration.

CBDT notifies that expenses incurred for settlement of certain proceedings shall not be allowed as a business deduction

The CBDT, *vide* Notification No. 38/2025[44] dated April 23, 2025, has notified the list of laws in relation to which expenses incurred for settlement of proceedings shall not be allowed as business expenses. Section 37 of the IT Act provides that any expenses, not being in the nature of capital or personal expenditure, incurred wholly or exclusively for the purpose of business or profession shall be allowed as a deduction against the income calculated under the head of profits and gains from business or profession.

However, as per amendment brought about by Finance Act (No. 2), 2024, it was clarified that any expenses incurred as a result of settling proceeding initiated in relation to contravention or defaults under the specified laws cannot be allowed as a business expense deduction. Pursuant to this amendment, the current notification has been issued providing the list of laws under which expenses incurred for settlement of proceedings shall not be allowed as a deduction. The list of laws are as follows:

- the Securities and Exchange Board of India Act, 1992;
- the Securities Contracts (Regulation) Act, 1956;
- the Depositories Act, 1996;
- the Competition Act, 2002.

[36] CBDT Notification No. 40 /2025 dated April 29, 2025 [F.No.370142/3/2025-TPL]
[37] CBDT Notification No. 41 /2025 dated April 30, 2025 [F.No.370142/14/2025-TPL]
[38] CBDT Notification No. 42 /2025 dated May 1, 2025 [F.No.370142/17/2025-TPL]
[39] CBDT Notification No. 43 /2025 dated May 3, 2025 [F.No.370142/15/2025-TPL]
[40] CBDT Notification No. 44 /2025 dated May 6, 2025 [F.No.370142/16/2025-TPL]
[41] CBDT Notification No. 46 /2025 dated May 9, 2025 [F.No.370142/18/2025-TPL]
[42] CBDT Notification No. 49 /2025 dated May 19, 2025 [F.No.370142/20/2025-TPL]
[43] CBDT Circular No. 7 /2025 dated June 25, 2025 [F.No.225/30/2025/ITA-II]
[44] CBDT Circular No. 38 /2025 dated April 23, 2025 [F.No. 370142/11/2025-TPL]

REGULATORY | INDIRECT TAX UPDATES

Amendments to SEZ Rules for Semiconductor and Electronics Manufacturing

The Ministry of Commerce and Industry has notified the Special Economic Zones (Amendment) Rules, 2025 dated June 3, 2025 to facilitate investments in the semiconductor and electronics manufacturing sectors. Key highlights include:

a. Reduced Land Requirement: SEZs exclusively set up for semiconductor or electronic component manufacturing now require only 10 hectares of contiguous land, down from the general requirement of 50 hectares.

b. Relaxation on Encumbrance-Free Land: The Board of Approvals may now relax the requirement for encumbrance-free land if the area is mortgaged or leased to Central/State Governments or their agencies, with reasons recorded in writing.

c. Greater Flexibility for Overseas Entities: Rule 18(6) has been amended to provide overseas entities more flexibility in handling finished goods, allowing export, movement to bonded warehouses or Free Trade & Warehousing Zones, or supply to the Domestic Tariff Area with applicable duties.

d. NFE Calculation for Semiconductor Services: For manufacturing service providers in the semiconductor sector, the value of goods received and supplied on a free-of-cost basis will be included in Net Foreign Exchange calculations, as determined under customs valuation rules.

These amendments reflect the Government's continued focus on easing regulatory norms to boost India's positioning as a global electronics and semiconductor manufacturing hub.

Simplification of Air Cargo and Transhipment Procedures

In line with the Finance Minister's 2025-26 Budget announcement, the CBIC has issued *Circular No. 15/2025-Customs* dated April 25, 2025 to streamline and simplify air cargo and transhipment procedures for movement of high-value or perishable nature of goods in import/export. The key changes include

a. the removal of the ₹20 transhipment permit fee,

b. harmonisation of procedures for movement of unit load devices outside the customs areas for temporary imports:

   i. under a continuity bond mechanism in absence of tracking devices,

   ii. if under tracking devices, the devices should be identifiable with Unique Identity Numbers (UINs) and must be recorded during import;

   iii. device may contain a battery and Bluetooth technology for communications;

   iv. The responsibility for providing the proof of export of such ULDs along with the tracking devices, if any within the time-period specified shall be of the carriers viz. air carriers/air console agents.

Clarification on Document Identification Number (DIN) Requirement for GST Portal Communications

The CBIC has issued Circular No. 249/06/2025-GST dated June 9, 2025, clarifying that GST notices and orders issued through the GST common portal do not need to include a separate DIN, as long as they carry a Reference Number (**RFN**). Accordingly, communications such as notices or orders served through the GST portal in compliance with Section 169 of the CGST Act, 2017, and Rule 142 of the CGST Rules, bearing an RFN, shall be treated as valid without the need for an additional DIN.

GLOSSARY

ABBREVIATION	MEANING
AAR	Hon'ble Authority for Advance Rulings
AO	Learned Assessing Officer
AY	Assessment Year
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes
CCIT	Learned Chief Commissioner of Income Tax
CENVAT	Central Value Added Tax
CESTAT	Hon'ble Customs, Excise and Service Tax Appellate Tribunal
CGST	Central Goods and Service Tax
CGST Act	Central Goods and Service Tax Act, 2017
CGST Rules	Central Goods and Service Tax Rules, 2017
Customs Act	Customs Act, 1962
CT Act	Customs Tariff Act, 1975
CIT	Learned Commissioner of Income Tax
CIT(A)	Learned Commissioner of Income Tax (Appeal)
CVD	Countervailing Duty
DGFT	Directorate General of Foreign Trade
DRP	Dispute Resolution Panel
DDT	Dividend Distribution Tax
DTAA	Double Taxation Avoidance Agreement
EPCG	Export Promotion Capital Goods
ESOP	Employee Stock Options
FA	Finance Act
FAO	Faceless Assessment Officer
FMV	Fair Market Value
FTP	Foreign Trade Policy
FTS	Fees for technical services
FY	Financial Year
GAAR	General Anti-Avoidance Rules

GLOSSARY

ABBREVIATION	MEANING
GST	Goods and Services Tax
HC	Hon'ble High Court
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code, 2016
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax Act, 2017
INR	Indian Rupees
IRA	Indian Revenue Authorities
IT Act	Income-tax Act, 1961
ITAT	Hon'ble Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITO	Income Tax Officer
IT Rules	Income-tax Rules, 1962
Ltd.	Limited
LLC	Limited Liability Company
JAO	Jurisdictional Assessing Officer
MAT	Minimum Alternate Tax
NCLT	National Company Law Tribunal
NCLAT	National Company Law Appellate Tribunal
NCD	Non-convertible Debenture
NFAC	National Faceless Assessment Centre
OECD	Organisation for Economic Co-operation and Development
PAN	Permanent Account Number
PCIT	Learned Principal Commissioner of Income Tax
PCCIT	Learned Principal Chief Commissioner of Income Tax
PE	Permanent Establishment
Pvt.	Private
RBI	Reserve Bank of India
SAD	Special Additional Duty

GLOSSARY

ABBREVIATION	MEANING
SC	Hon'ble Supreme Court
SCN	Show-cause Notice
SEBI	Security Exchange Board of India
SEZ	Special Economic Zone
SGST Act	State Goods and Services Tax Act, 2017
SLP	Special Leave Petition
TDS	Tax Deducted at Source
US	United States
UTGST	Union Territory Goods and Services Tax
UTGST Act	Union Territory Goods and Services Tax Act, 2017
VAT	Value Added Tax

List of Contributors

SR Patnaik
Partner (Head – Taxation)

Kunal Savani
Partner (Taxation)

Thangadurai V.P.
Principal Associate

Bipluv Jhingan
Principal Associate

Shivam Garg
Principal Associate

Reema Arya
Consultant

Samyak Navedia
Consultant

Hansujja Padhy
Associate

DR Shashank
Associate

Navya Bhandari
Associate

Bhawna Lakhina
Associate

Cyril Amarchand Mangaldas
Advocates & Solicitors

100⁺ years of legacy | **1200** Lawyers | **Over 220** Partners

Peninsula Chambers, Peninsula Corporate Park, GK Marg, Lower Parel, Mumbai – 400 013, India
T +91 22 6660 4455 **F** +91 22 2496 3666 **E** cam.mumbai@cyrilshroff.com **W** www.cyrilshroff.com
Presence in Delhi-NCR | Bengaluru | Ahmedabad | Hyderabad | Chennai | GIFT City | Singapore | Abu Dhabi