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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 March 31, 2025.

Our cover story provides a detailed overview of the tax challenges involved in the digital economy and analyses various measures that the Indian government has undertaken. It also discusses the recent withdrawal of the equalisation levy and concurrent developments at the global level.

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
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The Evolving Landscape of Digital Taxation: Significant Economic Presence, Equalisation Levy, and Beyond

I. Introduction

With rapid globalisation and the rise in cross-border digital transactions, many jurisdictions are struggling to tax multinational corporations effectively under the existing traditional tax systems. The fundamental concept of taxing an entity was rooted in the concept of place of incorporation and/or place of business or economic activity, which was linked to physical presence in a jurisdiction. However, with the emergence of an online presence and digital transactions, entities such as social media companies, over-the-top streaming service companies, e-commerce operators, etc., have begun generating profits from their consumers across the world, while having physical presence or even digital presence in only one country.

Faced with the challenge of being unable to tax entities with the emerging digital business models, many countries have been seeking ways to tax the digital presence of companies. Recognising this problem, Organisation of Economic Cooperation and Development (**OECD**) in 2013 adopted an action plan together with the G20 countries to tackle the global problem of tax base erosion due to the advent of the digital economy.[1] This was part of a 15-point action plan to address base erosion and profit shifting (**BEPS**) – the practice of multinational corporations shifting their profits to tax havens with low or no tax where they had minimal or no economic activity, thereby eroding the tax base of high-tax jurisdictions from where these corporations earned revenue, undermining their fiscal sovereignty.[2] These entities had succeeded in incorporating an extremely sophisticated tax-planning mechanism where they appeared to be superficially in compliance with the applicable tax regimes but were actually paying a whole lot less tax than would otherwise be payable.

Considering this was not a country-specific issue but a global taxation challenge, the BEPS Action 1 sought to address the tax challenges arising from the digitalisation of economy. In 2016, based on some recommendations outlined in a report dated October 5, 2015 (**2015 Report**) released by OECD under Action 1, in 2016, India pioneered in introducing an equalisation levy to tax non-residents earning income by virtue of having digital presence in India. Subsequently, in 2018, India also introduced the concept of significant economic presence (**SEP**) to tax the digital economic presence of entities exceeding certain thresholds.

Pursuant to the decision of India, a few other countries followed suit and implemented similar taxes on the digital economy, pressurising multilateral organisations like the OECD to establish a new framework to tax such income. This has led to OECD's two-pillar solution – Pillar One and Pillar Two. On October 8, 2021, the world's most advanced economies signed a truce agreeing to the two-pillar solution and adopting a minimum threshold tax or a global minimum

1 OECD/G20 Base Erosion and Profit Shifting Project | OECD
2 Base erosion and profit shifting (BEPS) | OECD

tax (**GMT**) rate of 15 per cent.[3] While the operational framework of implementing this digital taxation in a globalised manner is still a work in progress, many countries have started adopting to this system, with India showing its commitment to this global framework by deciding to remove the equalisation levy through the Finance Act, 2025.

Through this story, we seek to delve deeper into the intricacies of the measures taken to address the issue of digital taxation and thereafter, explore their implications, surrounding controversies, and its eventual withdrawal by the Indian government. It shall also be interesting to see how the rest of the world reacts to this ever-evolving global discourse on digital taxation.

II. The Rise of the Digital Economy and Tax Challenges

Tax challenges in digital economy

The challenge of taxing a digital economy mainly arises because of its intangibility, data-based business models, and seamless cross-jurisdiction operations, all of which enable a business to operate without facing any challenges on account of physical, digital, or resource-related shortcomings. Digital businesses, such as online platforms and service providers, can operate across borders without a physical presence, i.e., without ever setting up a local office or employing staff there. This disconnect allows some firms to minimise their tax liabilities by channelling profits to low-tax jurisdictions, a practice that erodes the tax base of the source countries where their users or customers are located.

This has posed problems for tax authorities worldwide, who are struggling to adapt their existing tax frameworks while ensuring international cooperation. In its 2015 report, the inclusive framework for BEPS Action 1 observed some of the following broad tax challenges presented by digital economy:

i) **Establishing nexus between digital presence and the revenue generated from the source jurisdiction:** One of the core tax challenges in the digital economy is linking an entity's digital presence to the revenue it generates in a jurisdiction where it has no physical operations. The rise of remote sales and user engagement complicates this further, as the traditional nexus rules do not address factors like digital user base, leaving governments unable to tax profits tied to their markets fairly.

ii) **Attribution of value created from the collection or generation of marketable location-relevant date through the use of digital products or services:** After establishing nexus, the next challenge is attributing the revenue to the digital presence and user data collection, and distributing taxing rights across jurisdictions. Digital businesses often derive substantial value from user data, such as location-specific preferences or behavioural insights collected via digital products or services. However, traditional tax frameworks struggle to attribute this value to the jurisdictions where data is generated. For instance, a social media platform may collect data from users in one country, process it in another country, and monetise it globally, making the location where the taxable value is created ambiguous, which can often lead to misallocation and unfair assignment of taxing rights.

iii) **Characterisation of income derived from such new business models:** Even if taxing rights are allocated among jurisdictions, determining the nature of income from digital business models can be a significant challenge. Digital transactions, such as online advertising, cloud services, or app sales, can blur the lines between categories such as royalties, service fees, or sales income – each of which carries different tax implications under international tax treaties.

Need for a digital tax

These challenges of establishment of nexus, attribution of profits, allocation of taxing rights, and characterisation of income – highlight the need for a tailored approach and global consensus in introducing a "digital tax". A digital tax refers to a set of fiscal measures specifically designed to address the taxation of profits generated by digital activities, particularly those of multinational enterprises operating in the digital economy that derive value from users or markets in a jurisdiction, regardless of their physical presence there.

Till a global solution could be agreed on, the 2015 report suggested implementing three potential solutions as an interim measure:

i) **Nexus based on the concept of SEP:** The concept of significant economic presence (**SEP**) was proposed to expand the traditional permanent establishment (**PE**) rules to account for digital activities. The intent was to create taxable nexus of a non-resident having a

[3] Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – 8 October 2021

significant economic presence in a jurisdiction on the basis of factors that show “a purposeful and sustained interaction with the economy of that country” instead of a physical presence – such as revenue generated from users, continued digital interactions, or data collection. Once such nexus was established, new rules would have to be created to attribute profit to the SEP.

ii) **Withholding tax on digital transactions:** This option proposed imposing a withholding tax on payments that residents made to non-residents for goods and service they purchased/availed online. The intent of the simple solution was to shift the tax collection burden to the payer in the market country, ensuring revenue was captured regardless of the service provider’s location. However, this did not cover revenue earned through business models deriving value through data collection, which does not involve actual payment to the service provider.

iii) **Equalisation levy:** This option proposed structuring an equalisation levy in the form of a tax on the gross receipts of the non-resident service provider to avoid creating new profit attribution rules for taxing SEP of a non-resident. The intent was to bring parity between domestic suppliers and offshore suppliers with digital presence in the jurisdiction. This can be interpreted as a unilateral tax on specific digital transactions designed to “equalise” the tax burden between traditional and digital businesses.

Following the OECD’s recommendations, India introduced the concept of equalisation levy and SEP to tax the digital presence of entities. However, India was not alone in its pursuit of digital taxation under its domestic laws. Several other countries, particularly in Europe, also introduced their own unilateral digital services taxes (**DSTs**), targeting revenue generated from specific digital activities. These unilateral measures, while aimed at addressing immediate concerns, triggered strong reactions from the United States of America (**US**), which viewed them as discriminatory and unreasonable.

This backdrop of discontent among countries regarding interim measures underscored the urgent need for a multilateral solution to the taxation of the digital economy. The global debate on how to tax digital services intensified, with increasing recognition of the limitations of unilateral measures and the necessity of international cooperation. In 2021, the “two-pillar solution” encapsulated this, and currently around 139 jurisdictions have agreed to this.[4]

Pillar One, the first component of the solution, focuses on the reallocation of taxing rights to market jurisdictions. It aims to address the issue of profit shifting by multinational enterprises, particularly those operating in the digital sector. Under Pillar One, the intent is to reallocate a portion of the residual profits of large multinational enterprises to market jurisdictions where their users and customers are located, regardless of their physical presence. This represents a

[4] Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – 8 October 2021

fundamental shift from traditional tax principles, which primarily allocate taxing rights based on physical presence.

The Pillar One solution is divided into Amount A and Amount B. Amount A determines the share of residual profits of multinational entities on which the jurisdictions shall have taxing rights. Although expecting implementation by 2022, the OECD extended the timelines and released a multilateral convention on Amount A in October 2023. It is now expected to come into force in 2025.[5] Amount B streamlines transfer-pricing principles, such as the application of arm's length pricing, to in-country marketing and distribution activities. The OECD has released a final report regarding this on February 19, 2024, and implemented the same in the OECD transfer-pricing guidelines, allowing countries to choose to apply them from 2025 onwards.[6]

Pillar Two, the second component of the solution, has introduced the Global Anti-Base Erosion (**GloBE**) Rules prescribing a GMT at the rate of 15 per cent for multinational entities with revenues above EUR 750 million or approximately INR 70 billion. This is to address the issue of tax competition and profit shifting by ensuring that such multinational enterprises pay a minimum level of tax on income arising from each jurisdiction, regardless of their location of operation. The OECD has already released model rules, administrative guidance, model returns, and further documents regarding Pillar Two and had expected countries to implement the same from 2024 onwards.[7] Although staggered, many jurisdictions have already taken steps towards its implementation.

Keeping up this global development, India also took some steps to capture digital taxes under its domestic laws over the years.

III. Measures taken by India

Based on the suggestions in the 2015 report, India introduced the (i) equalisation levy and (ii) SEP under its domestic tax laws.

i) **Equalisation Levy**

Concept

Drawing on the concept of equalisation levy described in the 2015 BEPS Action 1 report, India was one of the first countries to introduce equalisation levy as a separate charge on income in 2016 as a short-term interim measure. The levy aimed to level the playing field between domestic and foreign digital companies, ensuring that non-resident entities contributing to the Indian digital market without physically operating from India paid their fair share of taxes.

Initially, the levy imposed a 6 per cent tax on gross consideration received by non-resident entities for providing online advertising services and digital advertising space to Indian residents or businesses. This targeted a specific segment of the digital economy, acknowledging the significant revenue generated by digital advertising platforms from Indian users. This levy was limited to B2B transactions where the total consideration payable to the non-resident was INR 100,000 or more.

However, recognising the evolving nature of the digital economy and the expanding scope of digital transactions, the Indian government expanded the ambit of the levy in 2020. This expansion introduced a 2 per cent levy on the gross consideration received by non-resident e-commerce operators for the supply of goods or services to Indian residents or businesses through digital or electronic facilities, where such consideration exceeds INR 20 million. This broadened the scope of the levy to encompass a wider range of digital transactions on e-commerce platforms and online marketplaces, thereby also covering B2C transactions.

Double taxation and overlap with SEP

The levy was not classified as a tax on income but as a transaction-based charge on the total amount of consideration payable to the non-resident. The payer resident in India was required to collect the levy at the time of making payment to the non-resident service provider and deposit it with the government..

Section 10(50) of the IT Act specifically provided that digital advertisement services and e-commerce services chargeable to equalisation levy shall be excluded from the computation of total income of a person. Therefore, a credit for such levy was not likely to be available to the non-resident entity in its home jurisdiction, leading to double taxation on such transactions.

5 Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – 11 July 2023; Multilateral Convention to Implement Amount A of Pillar One | OECD
6 Release of Amount B report to simplify transfer pricing rules and conforming changes to the Commentary of the OECD Model Tax Convention; Pillar One - Amount B | OECD
7 Global Anti-Base Erosion Model Rules (Pillar Two) | OECD

However, if the non-resident was based out of a jurisdiction having DTAA with India and had a PE in India, then the revenue from such transactions was taxable in India in the hands of the PE and was not subject to the levy. On the other hand, if the non-resident was based out of a jurisdiction without a DTAA with India and had an SEP in India, there was confusion regarding whether the non-resident was subject to both corporate taxes on the revenue attributable to the SEP and the levy. This confusion was never clarified.

Withdrawal of 2 per cent equalisation levy and its impact

The Union Budget 2024 announced that the 2 per cent equalisation levy would not be applicable for the transactions with e-commerce operators undertaken on or after August 1, 2024. This was in alignment with India's position that it was a temporary measure and its international commitment. It was also in pursuance of a transitional agreement with the US to remove it by 2024 or the Pillar One implementation, whichever was earlier.[8]

This was a welcome move as it had a positive impact on multinational entities, easing their compliance burden and eliminating a layer of taxation on e-commerce revenues from India. The levy had applied to a broad range of digital transactions, such as online sales, platform fees, and digital content, which often led to double taxation concerns without any credit available against the same. Its removal reduced operational costs and legal uncertainties, fostering a more predictable business environment. Hence, this removal of the 2 per cent levy is a relief for the entities until the Pillar One and Pillar Two solutions are implemented in India.

Withdrawal of 6 per cent equalisation levy and its impact

The Finance Bill, 2025, has now also withdrawn the 6 per cent levy on digital advertisement services effective from April 1, 2025. This is an extension of the process of rollback of the unilateral digital tax measures, following the earlier removal of the 2 per cent levy. This is not only aligns with the Pillar One and Pillar Two global tax regime but is also in pursuance of India's goal of promoting digital economy and reducing complexities and tax burden for the digital multinational entities.

Although this move is estimated to result in the foregoing of more than INR 30 billion revenue, it is a necessary step towards showing India's commitment to the international cooperation with regard to implementing BEPS Action 1. This move will not boost India's digital advertisement sector but could also be used as leveraging factor when engaging in trade negotiations with the US, which is the base location of most digital multinational corporations.[9]

The general impact of this move is that the non-residents providing digital advertisement services and e-commerce operators will no longer be subject to equalisation levy, which ensures that such services will become cheaper in India. They shall now only be subject to the provisions of the respective DTAAs or the provisions concerning SEP under the IT Act until the implementation of Pillar One and the GMT as enumerated under Pillar Two.

ii) **Significant Economic Presence (SEP)**

Concept

India taxes income based on residence and source of the income. According to Section 5 of the IT Act, an entity resident in India must pay income tax on its worldwide income, i.e., income earned both within and outside India. On the other hand, the following income of a non-resident entity shall be chargeable to tax in India:

i) income received or deemed to be received in India in such year; or

ii) income that accrues or arises or is deemed to accrue or arise to it in India during such year.

[8] Press Release: Press Information Bureau; The United States and India Announce Extension of Agreement on the Transition from Existing Indian Equalization Levy to New Multilateral Solution Agreed by the OECD-G20 Inclusive Framework | U.S. Department of the Treasury

[9] Abolishing Equalisation Levy to cost Centre over Rs 3,000 crore in revenue loss

Section 9 of the IT Act deals with income deemed to accrue or arise in India. It provides that all income accruing/arising in India, directly or indirectly, from any business connection in India shall be construed as deemed to accrue or arise in India and, therefore, shall be taxable in India. In 2018, the concept of SEP was introduced into Indian tax law by inserting Explanation 2A to Section 9(1)(i), which provided that since an SEP would constitute a business connection in India, the revenue of non-residents having economic nexus with India would be taxable even in the absence of a traditional physical presence. This was a permanent measure compared to short-term measure of introducing of the equalisation levy.

The provision reads as follows:

"Explanation 2A.—For the removal of doubts, it is hereby declared that the significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—

(a) transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or

(b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users in India, as may be prescribed"

As can be seen from the explanation, the SEP of a non-resident can be established in two ways: (i) the revenue generated from transactions with any person in India exceeds the prescribed the threshold; or (ii) there is systematic and continuous engagement with more than the prescribed number of Indian users. This marked a significant departure from traditional tax principles, embracing a more expansive definition of economic presence that aligns with the realities of the digital age.

Rule 11UD of the Income-tax Rules, 1962 (**IT Rules**) has prescribed the following thresholds for establishing SEP:

i) **Revenue linked threshold:** If the aggregate amount of payments to non-resident is INR 20 million or more, SEP will be established.

ii) **User-linked threshold:** If the aggregate number of users with whom systematic and continuous business activities are solicited or who are engaged in interaction is 300,000 or more, SEP will be established.

Inclusion of offline transactions

However, the introduction of SEP was not without its controversies. One of the primary concerns revolved around the ambiguity in defining SEP. The broad language used in the legislation led to uncertainties regarding the scope of its applicability, particularly for businesses with complex digital footprints and an offline presence.

Although SEP was introduced to tax the digital presence of non-resident entities, the IT Act and the IT Rules do not clarify if the thresholds are limited to online transactions and interactions or extend to offline transactions as well. Further, determining the precise revenue and user engagement is challenging in such cases, leading which could lead to potential disputes between taxpayers and tax authorities.

The implementation of SEP also faced practical challenges where tax authorities encountered difficulties in accurately tracking and measuring the digital activities of non-resident entities. The lack of standardised data and reporting mechanisms further complicated the process, leading to potential disputes and compliance burdens.

Interplay with treaty benefits

Furthermore, the implementation of SEP raised concerns about potential double taxation. A non-resident located in a jurisdiction that did not have a DTAA with India would already be subject to taxation in their home jurisdictions and would also be subjected to additional tax liabilities in India based on the SEP concept.

However, for non-residents located in jurisdictions that have DTAAs with India, the concept of SEP would be of no consequence. According to Section 90 of the IT Act, the provisions of an applicable DTAA would apply and the provisions of the IT Act would apply only to the extent that they are more beneficial than the DTAA. Hence, if a non-resident can demonstrate not having a PE in India as envisaged under the DTAA, then the SEP under the domestic law, which tries to create a taxable presence without a PE, cannot be applied. However, if treaty benefit is denied to a non-resident by applying anti-avoidance rules or principles, then taxability may arise because of SEP.

Therefore, in cases where digital SEP is established but no PE exists, there would be no tax liability. However, certain requirements such as having tax residency certificates, presenting no-PE declaration, etc., may be necessary to avail treaty benefits. This shows that SEP has a very limited applicability and underscores the need for a global framework to effectively tax digital economic presence in source jurisdictions, ensuring these provisions are also incorporated in the DTAAs.

Profit attribution

Even if the SEP of an entity is established and it is clear that it has taxable receipts in India, another significant issue arises in attributing profits to the SEP in India. India has not prescribed any separate profit attribution rules specific to digital business models. Rule 10 of the IT Rules prescribes standard profit allocation rules, empowering the assessing officer to determine the income of non-residents. However, there is a lack of guidance on determining the income to be attributed basis users' digital transactions and/or online activity, which creates another potential avenue for tax disputes.

Impact

As seen earlier, the impact of SEP remains limited due to various factors such as tax treaty obligations.[10] SEP is only relevant in case of non-residents located in a country with which no tax treaty exists. Hence, the SEP measures are only an additional safeguard against profit shifting to tax enterprises located in low-tax jurisdictions without any DTAAs with source jurisdiction.

In conclusion, the introduction of SEP represented a bold and innovative attempt by India to address the unique challenges posed by the digital economy. Despite being riddled with significant controversies, SEP plays a crucial role in shaping the global debate on digital taxation. The SEP experience has underscored the importance of international cooperation and the need for a multilateral approach to ensure a fair and sustainable tax regime for the digital age.

IV. International Developments

Domestic measures undertaken by countries

After India introduced the equalisation levy, many other countries followed suit with their own versions of the levy. While Italy introduced a digital transactions levy for taxing revenues from digital services such as online advertising and data sales, Hungary introduced an advertisement tax for taxing advertising revenues based on the location of the targeted audience. France implemented a tax on the online and physical distribution of audiovisual content, alongside a broader digital services tax (**DST**), targeting large tech companies generating revenue from French users.[11]

Other European countries such as Austria, Spain, and the United Kingdom also introduced DSTs, customised to their economic contexts. Some countries also introduced specific regimes to target multinational enterprises like Diverted Profits Tax (**DPT**) in the UK and Australia. The US had introduced the Base Erosion and Anti-Abuse Tax for taxing multinational enterprises to protect their tax bases from the profit-shifting strategies.

However, the US government has criticised and viewed the levy as discriminatory against its technology companies and as a violation of tax treaties with the US. Pursuant to this, in 2021, the US entered into negotiations and agreed to allow a transitional approach to the unilateral measures adopted by India and other countries while implementing the Pillar One recommendations. India agreed to phase out the 2 per cent equalisation levy under this, withdrawing it in 2024.[12]

Moreover, like India, some other countries like Israel and Slovak Republic had also introduced the concept of SEP under domestic tax laws to tax digital presence.

Implementation of "two-pillar solution"

The multilateral convention for the implementation of Pillar One Amount A requires ratification by at least 30

10 Tax Challenges Arising from Digitalisation – Interim Report 2018 | OECD
11 Tax Challenges Arising from Digitalisation – Interim Report 2018 | OECD
12 Press Release:Press Information Bureau

jurisdictions accounting for 60 per cent of the multinational parent entities expected to be in the scope of Amount A. This presents several challenges as US is one of the main countries housing the major multinational corporations that will be required to ratify. Currently, there is no information on the status of its ratification. Moreover, implementation of Amount B transfer pricing guidelines is optional for countries.

Currently, around 27 countries such as Australia,[13] Singapore,[14] the UK,[15] and European Union countries[16] including France, Germany, Italy, etc. have enacted draft legislations for the implementation of Pillar Two. Meanwhile, the executive order of January 20, 2025 states that the US under the Trump Administration has withdrawn from OECD's global tax deal on the pillar solutions.[17]

In July 2024, India had maintained that it would not implement the Pillar Two solutions unless its concerns regarding the withholding taxes are addressed. However, recognising the importance of a multilateral solution, India has actively participated in the OECD negotiations on Pillar One and Pillar Two and its withdrawal of the equalisation levy shows its willingness to cooperate for the implementation of the solutions.

The successful implementation of Pillar One and Pillar Two hinges on international cooperation and willingness of countries to embrace a multilateral approach. Hence, it will be interesting to see how the same plays out. Even with the cooperation of all countries, it will be challenging to ensure consistent application of the GloBE Rules across different jurisdictions and to develop mechanisms for enforcing compliance.

V. Conclusion

The landscape of digital taxation is in a state of constant flux, shaped by rapid technological advancements, data-driven business models, and the ongoing global discourse under the BEPS project. The traditional tax principles, which rely on physical presence, are increasingly ill-equipped to tax the value created by digital enterprises operating seamlessly in a borderless environment.

Tax authorities will need to develop sophisticated mechanisms for tracking and valuing data, while adequately addressing privacy concerns. This necessitates reevaluating and renegotiating tax treaties for establishing PE in the context of digital presence.

The ongoing implementation of Pillar One and Pillar Two will have a profound impact on the future of digital taxation. However, their implementation will not be without its challenges. Allocation of taxing rights and application of GloBE Rules will require significant coordination and cooperation among countries.

India's decision to withdraw the equalisation levy shows its commitment to international cooperation on digital taxation. However, the manner and timing of the withdrawal raises concerns about its fiscal implications, especially as its rationale for introduction remains unfulfilled, given the absence of an alternative revenue source and implementation of two-pillar solutions still pending. The withdrawal also coincides with the Trump Administration's tariff impositions. Although, the Finance Minister has maintained that the withdrawal is not linked with the US measures,[18] it could nevertheless serve as leverage for India during tariff negotiations with the US and could help maintain good trade relations with the US.

Given these complexities, it would be interesting to monitor the ongoing international tax developments.

13 ParlInfo - Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024
14 Multinational Enterprise (Minimum Tax) Act 2024 (Declaration under Section 1(3)) Order 2024 - Singapore Statutes Online
15 Finance (No. 2) Act 2023
16 International taxation: Council reaches agreement on a minimum level of taxation for largest corporations - Consilium
17 The Organization for Economic Co-operation and Development (OECD) Global Tax Deal (Global Tax Deal) – The White House
18 Equalisation levy withdrawal not linked to Trump tariffs: Nirmala Sitharaman | India News - The Indian Express

CASE LAW UPDATES - DIRECT TAX

INTERNATIONAL TAX

The mere existence of a parent–subsidiary relationship does not automatically make the subsidiary a PE

Introduction

The Hon'ble Delhi HC, in ***Nokia Network OY***,[19] upheld the ITAT's ruling that the Indian Subsidiary did not constitute a PE of the taxpayer. The HC observed that the Indian Subsidiary operated and functioned independently in its dealings with its Indian customers and lacked the authority to conclude any supply contracts on behalf of the taxpayer. It further held that a PE must be determined by relying on empirical evidence and objective standards outlined in the DTAA rather than on subjective perceptions or fluctuating beliefs.

Facts

Nokia Network OY (**Assessee**), a tax resident of Finland, was engaged in manufacturing and trading of telecommunication hardware and software. It entered into contracts for the supply of GSM equipment to Indian telecom operators and agreements for installation services.

Initially, the Assessee operated in India through a Liaison Office (**LO**), following which it incorporated a wholly owned subsidiary in India (**Indian Subsidiary**). Post incorporation, it assigned the existing installation contracts to the Indian Subsidiary, which thereafter carried out all installation activities under separate agreements with Indian telecom operators.

The AO concluded that the LO constituted a fixed-place PE and that the Indian Subsidiary qualified as a dependent agent PE ("DAPE") under the India–Finland DTAA, which led to a portion of the Assessee's global income being attributed to India. The CIT (Appeals) upheld the AO's order and held that the Assessee's business presence in India through the Indian Subsidiary was sufficient to constitute a PE.

On subsequent appeal, the matter was referred to a Special Bench of the ITAT, which ruled that the LO did not constitute a PE and since the equipment sale occurred outside India, no income from such sales could be attributed to India. However, the Special Bench held that even in the absence of any direct evidence proving the Assessee's control over the Indian Subsidiary, the perception of the Indian Subsidiary being a projection of the Assessee would be sufficient to establish a PE.

Both the Assessee and the IRA challenged this ruling before the Hon'ble Delhi HC. The HC held that, in the absence of any adverse factual findings, the LO could not be treated as a PE. The HC remanded the issue of whether the Indian Subsidiary constituted a PE to the ITAT for reconsideration in light of certain factual discrepancies.

On re-examining the case, the ITAT held that the Indian Subsidiary operated independently under separate contracts and lacked the authority to conclude contracts binding on the Assessee. Hence, the Indian Subsidiary did not constitute a PE of the Assessee.

Aggrieved by the ITAT order, the IRA re-appealed before the Delhi HC, leading to the present judgment.

[19] Commissioner of Income Tax v. Nokia Network OY, (TS-132-HC-2025(DEL)/ Income Tax Tribunal Appeal 785/2019.

Issue

Whether the activities of the Assessee or the Indian Subsidiary constituted a fixed-place PE or DAPE of the Assessee under the India–Finland DTAA.

Arguments

The IRA contended that the Assessee's Indian Subsidiary was a "virtual projection", as the Assessee's employees were performing all kinds of work related to the Assessee and, therefore, had to be treated as a PE of the Assessee. The Indian Subsidiary also provided administrative facilities, including access to resources such as telephones and vehicles, to several expatriate employees who visited India to provide services related to the supply of equipment. In fact, the Assessee's expatriate employees provided the services that the Indian Subsidiary purportedly rendered to the Assessee and cellular operators, with the Indian Subsidiary failing to reimburse the corresponding salary payments. The convergence of identities between the Indian Subsidiary and the Assessee, as demonstrated by the aforementioned factors, resulted in the Indian Subsidiary effectively functioning as a "virtual projection" of the foreign entity. Furthermore, supply contracts and related agreements were executed in India by the Assessee's employees and such employees retained the responsibility and liability for all services delivered to customers in India by being a dependent agent to provide all the installation services to the Assessee's customer in India, hence forming a DAPE of the Assessee.

The Assessee, on the other hand, argued that the Indian Subsidiary did not function as a "virtual projection" of the foreign entity, as it operated independently, incurred its own expenses, and bore its own commercial risks. Further, the Indian Subsidiary carried out activities of installation, technical support services for the equipment installed on a principal-to-principal basis with Indian customers and, therefore, the place of the Indian Subsidiary was not at the disposal of the Assessee. The Assessee also refuted the allegation that a DAPE existed, asserting that the Indian Subsidiary was neither legally nor economically dependent on the Assessee. Considering, the contracts for the supply of equipment were concluded outside India, and the Indian Subsidiary had no authority to bind the Assessee contractually.

Decision

On reviewing facts and the ITAT's ruling, the HC upheld the ITAT's ruling that the Indian Subsidiary did not constitute a PE of the Assessee in India. While rejecting the IRA's argument of "virtual projection" and "functional integration", the HC held that such contentions were insufficient to establish a PE under the DTAA unless satisfying the disposal test, which is the paramount requirement for analysing the fixed-place PE. Accordingly, it reiterated that the existence of a PE must be determined by relying on empirical evidence and objective DTAA standards rather than on perceptions or assumptions.

The HC further observed that the Indian Subsidiary pursued an independent line of business with Indian telecom operators and lacked the authority to conclude supply contracts binding on the Assessee. Also noting that the Indian Subsidiary's onshore activities were distinct from the Assessee's offshore contracts, which were executed on a free-on-board (**FOB**) basis from Finland, the HC held that the Indian Subsidiary's activities could not be regarded as contributing to the Assessee's core business of manufacturing telecom equipment.

The HC relied on judicial precedents, including ***Formula One World Championship***[20] and ***E-Funds***,[21] which emphasise that factual evidence must take precedence over subjective assessments when determining PE status. The HC also acknowledged that a parent company naturally has an interest

[20] Formula One World Championship Ltd. v. Commissioner of Income Tax, (2017) 394 ITR 80 (Supreme Court).
[21] Assistant Commissioner of Income Tax v. E-Funds IT Solution Inc., (2017) 399 ITR 34 (Supreme Court).

in the operations of its overseas subsidiary, reflecting its right to oversee and protect shareholder interests. However, it held that mere supervision does not strip the subsidiary of its independent economic existence.

The burden was on the IRA to demonstrate that the Indian Subsidiary merely functioned as an extension of the Assessee's business and did not operate independently. However, the Assessee's initial assurances to support a nascent venture was deemed insufficient to establish a PE. The HC held that such assurances could not be construed as evidence of the Assessee using the Indian Subsidiary as a vehicle for its own business operations.

Significant Takeaways

The HC reaffirmed the internationally accepted principles for determining a PE, emphasising that its existence must be established based on tangible evidence from the relevant period and objective criteria set forth in the relevant DTAA. It reiterated that a subsidiary is presumed to operate independently unless the IRA substantiates otherwise with concrete evidence.

The judgment underscored that that mere ownership or control by a parent company does not automatically create a PE; rather, there must be demonstrable functional and economic dependence. It emphasised that the burden of proof lies with the IRA to establish that the subsidiary is operating as an extension of the foreign enterprise rather than independently.

This decision is especially important in the current phase, considering many multinational corporations are planning to set up their global capability centres in India. The HC's logic and rationale should act as guiding principles for such entities when they plan to set up their entities in India.

> **"Taxation cannot be based on perceptions or virtual projections, but is based on empirical evidence."**

Delhi HC holds secondment of employees does not automatically lead to the formation of the PE of a foreign company

Introduction

In ***Samsung Electronics Co. Ltd.,***[22] the Hon'ble Delhi HC held that a formation of a PE in India cannot be assumed in instances of secondment of employees by a foreign company to the Indian Subsidiary, in the absence of any material that could lead to such an adverse inference.

Facts

Samsung Electronics Co. Ltd. (**Assessee**), a tax resident of South Korea, had two wholly owned subsidiaries in India, namely, Samsung India Electronics Pvt. Ltd. (**SIEL**) and Samsung India Software Operations Pvt. Ltd. (**Samsung R&D**).

A survey conducted at the premises of SIEL in June 2010 recorded statements of the expatriate employees regarding their role in SIEL, who controls their work, who they report to, who pays their salary, and the frequency of their communication with the South Korean headquarters, etc. Subsequently, notices under Section 148 of the IT Act were issued for six years, i.e., AY 2004–05 to AY 2009–10. Based on the recorded statements, the AO concluded that SIEL's premises constituted fixed-place PE for the Assessee under the provisions of Article 5 of the India–Korea DTAA. The AO also held that by virtue of it being a subsidiary, SIEL was liable to be considered as a PE because it met the criteria for dependent agent PE, a service PE, and was a place of management for the Assessee's operations in South-East Asia.

When the Assessee approached the Hon'ble DRP, however, the DRP did not agree with the Ld. AO regarding treating SIEL as a PE by virtue of it being a subsidiary, considering the contention was based on surmises and conjectures. The DRP held that the corporate veil of SIEL cannot be lifted, at the option of the Ld. AO, by relying only on the employees' statements and not providing any evidence. It also clarified that the SIEL imports the goods from the Assessee in its own name and that all the transactions between the two entities were handled on principal-to-principal basis and not on a principal–agency relationship, which negated the dependent agent PE argument. Similarly, regarding service PE, the DRP noted that the India–Korea DTAA does not have a service PE clause and that the Assessee's employees had not rendered any services to SIEL. Also, while the DRP also held that it would be unfair to accept the AO's contention that SIEL be considered as at the place of management for the Assessee's South-East Asia operations in India because the AO had failed to produce any additional documents and had solely relied on the statements of certain employees. The DRP noted that there was no material on record in respect of the same.

However, it held that the secondment of employees by the Assessee would result in SIEL being treated as a deemed fixed-place PE because the employees would continue to work for the Assessee.

On further appeal before the Hon'ble ITAT, it was held that no fixed-place PE of the Assessee was constituted. The ITAT noted that while the employees' statements recorded during survey suggested seamless communication, information exchange, and discussions on plans and strategies for the Indian market by the employees seconded to SIEL with the Assessee's employees, none of the activities undertaken by the seconded employees constituted undertaking business activities on behalf of the Assessee from the premises of SIEL. The expatriate employees were only discharging the duties of the subsidiary company towards the holding company. None of the Assessee's global business activities were conducted in India.

Issue

Whether the Assessee had a fixed place PE in India as per Article 5 of the India – Korea DTAA?

Arguments

The Assessee argued that it was not enough to rely on the employees' statements alone and that no independent material apart from these was recovered to reveal any escapement of income. The Assessee also argued that the AO travelled beyond his jurisdiction to reassess issues other than those in regarding respect of which proceedings were initiated. The Assessee contended that none of the employees' statements reveal that the Assessee took key decisions regarding products, pricing, launching, etc., and instead suggested they were all in fact taken by SIEL. Similarly, these statements also do not reveal that global business management is conducted in India. The involvement of expatriate employees seconded to SIEL was with respect to decisions SIEL made for its own business activities.

In contrast, the IRA argued that the salary of expatriate employees should have been directly to their foreign bank accounts and not to the Assessee's foreign bank account. Further, the payments were made quarterly which is not a convenience for them.

[22] PCIT-3 and others vs Samsung Electronics Co. Ltd. [TS-21-HC-2025(DEL)].

The IRA further argued that the Assessee has raised the debit note on SIEL, i.e., salaries are not paid directly to the employees once the Assessee receives the same. Instead, the salaries are paid as if they are Assessee's employees, thereby making the Assessee the beneficiary of the payments not the employees.

The IRA also referred to the statements recorded from the employees that they were working to further the Assessee's business interests and that there was no principal–agency relationship between the Assessee and SIEL.

Decision

The Delhi HC upheld the ITAT's decision that basis the statements of the Assessee's seconded employees, it was clear that they were being posted to India because of a tripartite agreement between the Assessee, SIEL, and the employees concerned to facilitate SIEL's activities in India. They also did not carry out any activity pertaining or relating to the global business of the Assessee. Collection of market information, market study, information exchange, future planning and strategising for the Indian market by the Assessee could not be construed as carrying on or conducting the Assessee's business from the premises of SIEL and did not constitute a PE of the Assessee in India. In fact, the seconded employees were engaged in assisting SIEL in its business in India.

Referring to the earlier judgments of Delhi HC in ***Hyatt International Southwest Asia Ltd.***[23] (full bench) and ***Progress Rail Automotive Inc.***,[24] the Delhi HC noted that a PE is constituted when an enterprise of a contracting State is conducting its own business activities through the entity in the other contracting State. The Delhi HC further noted that the premises should also be at the disposal and control of that enterprise. The HC held that in such a case, it was important to consider whether the deployment of such employees is in furtherance of the business of the original employer (foreign company) or is intended to be utilised for the business of the enterprise with whom they are placed (i.e., Indian Subsidiary). Applying the same to the facts of this case, the Delhi HC held that it was clear from the facts that the secondment of the employees was for the benefit of SIEL and, hence, did not constitute a PE for the Assessee in India.

Regarding Service PE, the Delhi HC noted on the facts and circumstances of the case that the seconded employees were not performing services in India to the Indian entities on behalf of the Assessee and that there was no service PE clause in the India–Korea DTAA; hence, service PE would not be relevant in any case.

Significant Takeaways

While various HCs keep on regularly announcing judgments on various PE-related aspects, every judgment has unique findings. The crux of it comes from the fact-based findings unique to each case and how these impact the manner in which the issue is understood, appreciated, and analysed by the courts. Hence, positive judgments such as in this case as well as those in *Hyatt International Southwest Asia Ltd (supra)* and *Progress Rail Automotive Inc. (supra)* reinforce the importance of maintaining requisite documentation to justify and substantiate the taxpayer's position before the authorities.

It is also important to appropriately train the employees who are seconded to and working for the Indian entities regarding their manner of work, know who they are reporting to, and what they should be posting in the public domain and intimating to the IRA, if required.

“ HC holds that a PE is not constituted on secondment, in absence of any specific finding towards the same. ”

[23] Hyatt International Southwest Asia Ltd. v. Additional Director of Income-tax [2024] 166 taxmann.com 466 (Delhi).
[24] Progress Rail Locomotive Inc. v. Deputy Commissioner of Income-tax, International-Taxation [2024] 163 taxmann.com 52 (Delhi).

Karnataka HC rules secondment salary reimbursements to non-residents not taxable as fees for technical Services

Introduction

The division bench of the Karnataka HC in ***Flipkart Internet Pvt.*** Ltd.[25] held that the reimbursements made to non-resident holding company for secondment of employees are not taxable as fees for technical services; hence, withholding tax obligations do not arise for the payer under Section 195 of the IT Act.

Facts

Walmart Inc., Delaware, USA (**Walmart**), entered into a Master Service Agreement with certain senior-level employees seconded to Flipkart Internet Pvt. Ltd. (**Assessee**) to work for the Assessee in India. Under this arrangement, the secondees worked exclusively for the Assessee's benefit, which reimbursed Walmart for their salaries on a cost-to-cost basis. The Assessee filed an application under Section 195 of the IT Act seeking a NIL withholding tax certificate for these reimbursements, submitting that since the payments were not taxable under the IT Act, withholding tax obligations do not arise. However, the AO rejected the application, stating that there was no employer–employee relationship between the Assessee and the secondees and that the payments constituted Fees for Included Services (**FIS**) under both IT Act and the India–USA DTAA, making them liable for withholding tax.

The Assessee challenged this decision through a writ petition before the Karnataka HC. A single judge bench ruled in favour of the Assessee and directed the IRA to issue a NIL withholding tax certificate.[26]

Aggrieved by the decision of the HC, the IRA appealed before the division bench of the Karnataka HC.

Issue

Whether reimbursements made for services of seconded employees to non-resident entity constitutes FTS?

Arguments

The IRA argued that the application under Section 195 of the IT Act was necessary to determine the appropriate proportion of the sum payable to a non-resident chargeable to tax in India. It contended that the payment the Assessee made to the non-resident was for availing services of technical or other personnel, falling within the ambit of FTS as per Section 9(1)(vii) of the IT Act and Article 12(4) of the India–USA DTAA.

The IRA also contended that since the services rendered by seconded employees constituted FTS, the payment qualified as taxable income earned in India by Walmart. Consequently, the Assessee was obligated to withhold taxes under Section 195 of the IT Act.

On the other hand, the Assessee argued that payments made to Walmart for the reimbursement of salaries paid to seconded employees were not subject to withholding tax under Section 195 of the IT Act. It contended that these payments represented actual salary cost without any "mark-up"; therefore, it did not constitute any income that could be taxable in India. Referring to Article 12 of the India–USA DTAA, the Assessee emphasised that these payments could neither be classified as FTS nor as FIS.

In addition, the Assessee asserted that the payments were purely salary reimbursements and fell outside the purview of FTS/FIS under the India–USA DTAA. Consequently, Walmart did not earn any taxable income in India from these transactions; thus, the IRA should have issued a NIL withholding tax certificate.

Decision

The division bench of Karnataka HC upheld the reasoning in ***Abbey Business Services India (P) Ltd.***,[27] which held that a secondment agreement constitutes an independent contract of service between the taxpayer and the secondees, making the taxpayer the economic employer.

The HC ruled that Walmart, being a tax resident of the United States, is subject to the provisions of the India–US DTAA under Section 90(2) of the IT Act. It held that Explanation 2 to Section 9(1)(vii) of the IT Act does not apply to the stipulated transaction. The payment made to Walmart was not considered as FIS since the conditions under Article 12 of the DTAA were not fulfilled. It held that income can only be taxed as FIS if it involves technical or managerial services that are "made available" to the recipient, enabling it to independently apply the technology or expertise, resulting in an enduring benefit for the Assessee. The mere provision of technical services without equipping the recipient with such independent capability does not satisfy the "make available" criteria.

[25] Deputy Commissioner of Income Tax v. Flipkart Internet Pvt. Ltd. [TS-115-HC-2025(KAR)].
[26] Flipkart Internet Pvt. Ltd. v. Dy. CIT (IT), (2022) 448 ITR 268.
[27] Director Of Income Tax (International Taxation) v. Abbey Business Services India (P) Ltd. [2020] 122 Taxmann.com 174 (Kar).

On facts, the Karnataka HC affirmed the existence of an employer–employee relationship between Assessee and the seconded employees, based on the terms outlined in the Master Service Agreement. The HC noted that the Assessee had issued appointment letters to these secondees, which included essential details such as job responsibilities, contributions to the provident fund, and procurement of employment visas, which are factors indicative of a genuine employment relationship. The HC rejected IRA's argument regarding the lack of termination power over the secondees, stating that such an absence does not negate the employer–employee relationship, if the "Triple Test" of direct control, supervision, and direction by the Assessee is satisfied. It noted that holding otherwise would go against the commercial realities of global transactions.

As a result, it held that the Assessee's reimbursements to Walmart for these secondees were in the nature of salary, thereby upholding the single judge's earlier decision.

Significant Takeaways

The Karnataka HC has reinforced that withholding tax obligations only arise when payments are chargeable to tax in India. The Hon'ble SC had previously established this principle in a number of cases, including ***GE India Technology Centre***,[28] which stated that withholding tax liability under Section 195 of the IT Act arises only if payments to non-residents are chargeable to tax in India. This ruling reaffirms this principle, providing clarity on taxation related to cross-border employment arrangements.

In a similar case decided earlier, ***Ernst & Young U.S. LLP***,[29] the Delhi ITAT addressed an issue where employees seconded by EY USA to EY India member firms received reimbursement for salary

costs. The ITAT ruled that these reimbursements were not taxable as FTS as they were already taxed in the hands of the secondees working in India. This decision emphasised on avoiding double taxation and clarified that mere reimbursement does not constitute taxable income for the foreign entity.

Collectively, these rulings highlight several benefits for businesses engaging in secondment arrangements, providing much-needed tax clarity, indicating that payments made for seconded employees' salaries are not subject to withholding tax if they lack an income component for the non-resident entity. Additionally, these decisions encourage global mobility by aiming to reduce tax complexities associated with cross-border employee deployment and underscore the importance of detailed contractual agreements defining employer–employee relationships and payment structures. It also helps in employee mobility without tax playing a spoilsport.

> **"Reimbursement of salary of seconded employees is not taxable as fee for technical services."**

[28] GE India Technology Centre v. Commissioner of Income Tax (2010) 10 SCC 29.
[29] Ernst & Young U.S. LLP v. Assistant Commissioner of Income Tax [TS-335-ITAT-2023(DEL)].

Reduction in share capital would be subjected to capital gains taxes, even when there is no change in shareholding pattern

Introduction

In ***Jupiter Capital Pvt. Ltd,***[30] the Hon'ble SC agreed with the taxpayer and held that reduction of share capital leads to transfer of a capital asset under Section 2(47) of the IT Act and, therefore, is eligible to capital gains taxes in India.

Facts

Jupiter Capital Pvt. Ltd. (**Assessee**) had invested significantly in Asianet News Network Pvt. Ltd. (**ANNPL**), a company involved in news telecasting, by acquiring 149,544,130 shares at a face value of INR 10 each. Subsequently, it purchased an additional 3,806,758 shares from other parties, increasing its total holding to 153,340,900 shares, which amounted to 99.88 per cent of ANNPL's total share capital of 153,505,750 shares. Over time, ANNPL suffered substantial financial losses, eroding its net worth. To address this, ANNPL filed a petition before the Bombay HC seeking a reduction in its share capital to offset the losses against its paid-up equity share capital. The Bombay HC approved the reduction, decreasing ANNPL's share capital from 153,505,750 shares to 10,000 shares. Consequently, the Assessee's shareholding was reduced proportionately to 9,988 shares from 153,340,900 shares, while the face value of each share remained unchanged at INR 10.

As part of this reduction, the Bombay HC directed ANNPL to pay a consideration of INR 31,783,474 to the Assessee. The Assessee claimed a long-term capital loss of INR 1,644,855,840, attributing it to the reduction in its shareholding in ANNPL. However, the AO rejected this claim, arguing that the reduction in the number of shares did not constitute a "transfer" of a capital asset under Section 2(47) of the IT Act. The AO reasoned that although the number of shares held by Assessee had decreased, the face value of each share (Rs. 10) and the proportionate shareholding percentage (99.88 per cent) had remained unchanged, implying no extinguishment of rights as required for a transfer under the IT Act. The AO further noted that the term "extinguished" in the Bombay HC's order referred only to the reduction in the number of shares, not to an extinguishment of shareholder rights, and that the Assessee had neither sold nor parted with its shares to a third party.

The Assessee appealed against the AO's order before the CIT(A), which upheld the assessment order by holding that since the shareholding percentage and the face value remained constant, there was no "transfer" under the IT Act. The Assessee then preferred an appeal before the ITAT, which decided the issued in favour of the Assessee by holding that the reduction in the number of shares, coupled with the receipt of INR 3,17,83,474, constituted an extinguishment of rights under Section 2(47), thus qualifying as a transfer eligible for capital loss. For this purpose, the ITAT relied on the decision of the SC in ***Kartikeya v. Sarabhai***.[31]

The IRA then appealed to the Karnataka HC, which dismissed the appeal on February 20, 2023, affirming the ITAT's decision. The

[30] Principal Commissioner of Income Tax v. Jupiter Capital Pvt. Ltd. [2025] 170 taxmann.com 305.
[31] Kartikeya v. Sarabhai v. CIT (1998) 228 ITR 163.

Revenue subsequently filed a SLP before the SC, challenging the HC's ruling.

Issue

Whether reduction of share capital could be considered as "transfer" of capital asset for the purposes of Section 2(47) of the IT Act?

Arguments

The IRA relied on the orders passed by the AO and the CIT(A) and argued that the reduction in ANNPL's share capital did not amount to a "transfer" under Section 2(47) of the IT Act, thus, the Assessee was not entitled to claim a long-term capital loss. It emphasised that Section 2(47) defines "transfer" in relation to a capital asset as including the sale, exchange, relinquishment, or extinguishment of rights therein. As per the IRA, none of these conditions was met. The IRA submitted that while the number of shares held by Assessee decreased from 153,340,900 to 9,988, the face value of each share remained the same (i.e., INR 10) and the proportionate shareholding remained constant at 99.88 per cent. In view of this, the Assessee's shareholder rights towards voting power and entitlement to dividends were not extinguished, as the reduction affected all shareholders proportionately without altering their relative ownership or control. The IRA also asserted that the term "extinguishment" in the Bombay HC's order approving the capital reduction referred merely to the cancellation of shares not to an extinguishment of rights as contemplated under Section 2(47) of the IT Act. The IRA distinguished the decision of ***Kartikeya v. Sarabhai***[32] by contending that wherein a reduction in the face value of shares directly diminished the shareholder's rights to dividends and liquidation proceeds, which cannot be applicable to the facts of this case.

The Assessee argued that the reduction in its shareholding from 153,340,900 shares to 9,988 shares, coupled with the receipt of INR 3,17,83,474 as consideration, constituted a "transfer" under Section 2(47) of the IT Act. It submitted that through the reduction of capital amount to extinguishment of rights, thereby entitling it to claim a long-term capital loss of INR 1,644,855,840. The Assessee relied heavily on the SC's decision in *Kartikeya v. Sarabhai (supra)*, asserting that a reduction in share capital, even without a change in face value, extinguishes a shareholder's rights proportionate to the shares extinguished. The Assessee contended that Section 2(47) does not require a change in face value or percentage ownership for a transfer to occur. It pointed out that *Kartikeya v. Sarabhai (supra)* did not hinge on percentage shareholding but on the reduction of rights in a capital asset, which applied squarely to this case. The Assessee further relied on ***Anarkali Sarabhai v. CIT***,[33] where the SC had held that redemption of preference shares constituted a transfer, likening the reduction of share capital to a company buying back its shares, which falls within the ambit of "sale, exchange, or relinquishment" under Section 2(47).

Decision

The SC began by noting that the issue of whether a reduction of capital amounts to a transfer was no longer *res integra*. Quoting extensively from *Kartikeya v. Sarabhai (supra)*, the SC reiterated that Section 2(47) is an inclusive definition, encompassing not only the sale but also relinquishment or extinguishment of rights in a capital asset. It rejected the IRAs contention that a transfer requires a sale or change in percentage ownership, emphasising that relinquishment or extinguishment, even without a sale, triggers capital gains tax liability under Section 45. The SC observed that while the Assessee remained a shareholder post-reduction, its rights – quantitatively tied to 15,33,40,900 shares – were extinguished to the extent of 153,330,912 shares, replaced by 9,988 shares and INR 3,17,83,474 in cash.

The SC noted that if the 9,988 shares were valued at their face value of INR 10 each, their total worth would be INR 99,880, whereas the original 149,544,130 shares (excluding the additional purchase) were worth INR 1,495,441,300. This stark reduction in value, coupled with the payment of INR 31,783,474, underscored a loss of rights, aligning with principle laid down by the SC in *Kartikeya v. Sarabhai (supra)*. The SC also drew parallels with A*narkali Sarabhai (supra)*, where redemption of preference shares was deemed a transfer, noting that both redemption and reduction involve a company effectively repurchasing its shares, falling within scope of Section 2(47) of the IT Act.

The SC further explored the broader meaning of "extinguishment of rights", citing ***CIT v. Vania Silk Mills,***[34] which interpreted the phrase as covering any transaction that terminates or cancels a shareholder's rights, whether qualitative or quantitative. Here, the reduction from 15,33,40,900 to 9,988 shares extinguished Assessee's rights to dividends, voting power, and liquidation proceeds tied to the extinguished shares, satisfying this definition. The SC also addressed the Revenue's argument on the lack of a third-party

[32] supra.
[33] Anarkali v. CIT (1997) 224 ITR 422.
[34] (1977) 107 ITR 300.

sale, citing ***Jaykrishna Harivallabhdas***,[35] which held that receipt of consideration is not a prerequisite for a transfer for the purposes of Section 2(47) of the IT Act, reinforcing that the extinguishment itself, with or without payment, triggers tax implications. The SC thus decided the issue in favour of Assessee and disregarded the IRA's narrow interpretation of the term "transfer".

Significant Takeaways

This ruling reaffirms and extends the judicial philosophy established in precedents like *Kartikeya v. Sarabhai (supra)* and *Anarkali Sarabhai (supra)*, marking a robust stance against narrow, technical readings of tax law that could undermine the IT Act's intent to tax capital gains or losses comprehensively. The IRA's contention that no "transfer" occurred when there is no change in the Assessee's shareholding pattern under Section 2(47) of the IT Act rested on a formalistic view that a transfer requires a sale or a tangible shift in control. The SC, in a welcome move, rejected the contentions of the IRA and affirmed the settled view that reduction of share capital gains should be considered as the extinguishment of capital asset and therefore, shall be subject to capital gains taxes in India.

"Reduction of share capital amounts to transfer of a capital asset, and is subject to capital gains tax."

35 (1998) 231 ITR 108.

SC rules post-Resolution Plan tax demands invalid under IBC

Introduction

The Hon'ble SC in ***Vaibhav Goel and Anr.***[36] held that income tax demands raised after the approval of a Resolution Plan under the IBC are invalid if they were not originally included in the Resolution Plan.

Facts

The Corporate Insolvency Resolution Process (**CIRP**) was initiated for M/s. Tehri Iron and Steel Casting Ltd. (**Corporate Debtor**). The NCLT approved the Resolution Plan on May 21, 2019, which included a contingent liability of INR 168.5 million based on a tax demand notice for the assessment year 2014–15.

Subsequent to the approval of the Resolution Plan, the IRA issued demand notices for the AYs 2012–13 and 2013–14, even though no claims regarding these years were submitted to the resolution professional (**RP**) during the CIRP. In response, the monitoring professional engaged by the RP contended that the tax demands for these two AYs were legally unsustainable and filed an application with the NCLT to challenge their validity, asserting that no claims were submitted in relation to these cases before the approval of the Resolution Plan. The NCLT dismissed this application as frivolous.

An appeal was then filed before the NCLAT, which dismissed the appeal upholding the decision of the NCLT.

Aggrieved by the same, the joint resolution applicants (**Appellants**) approached the Hon'ble SC.

Issue

Whether a demand notice can be raised for tax dues post the approval of Resolution Plan by the NCLT?

Arguments

The Appellants contended that despite not receiving any claim from the IRA during AY 2014–15 up until the submission of the Resolution Plan, the Resolution Professional acknowledged the obligation to pay income tax for that AY, which was still considered a contingent liability in the Resolution Plan. It was asserted that the IRA could issue no further demand notices after the approval of the Resolution Plan.

On the contrary, the IRA argued that the NCLT and NCLAT correctly denied the Appellant's plea for relief and concessions regarding the statutory dues for the AY 2012–13 and 2013–14, noting that such matters could only be resolved by the appropriate government departments.

Decision

The Hon'ble SC addressed the implications of an approved Resolution Plan under Section 31 of the IBC, particularly concerning statutory dues owed to government authorities. The SC held that once a Resolution Plan is sanctioned by the NCLT, all claims not included in that plan are considered to be extinguished. This decision draws heavily on the precedents established in ***Essar Steel India Ltd.***,[37] and ***Ghanshyam Mishra***,[38] which collectively underscore the principle that creditors cannot pursue recovery of dues that were not part of the approved Resolution Plan.

The SC observed that once a Resolution Plan is approved, it creates a binding framework that protects the corporate debtor from any claims outside its provisions. The SC highlighted that if belated claims were permitted, it would hinder the corporate debtor's ability to recommence business operations effectively on a clean slate basis, as they would be burdened by past liabilities that had not been accounted for in the resolution process.

Applying this reasoning in this case, the IRA's demand for dues related to AYs 2012–13 and 2013–14 were held to be invalid as these claims were not included in the Resolution Plan approved on May 21, 2019. The SC clarified that such demands would obstruct the implementation of the Resolution Plan and hinder the revival of the corporate debtor's business. Upholding the doctrine of "clean slate", it ruled that all statutory dues prior to NCLT's approval stand extinguished, thereby invalidating subsequent demands raised by all government authorities including the IRA.

Significant Takeaways

The SC's ruling in this case clarifies the interaction between the IBC and IT Act, specifically that the provisions of the IBC have an overriding effect over the IT Act. The SC reiterated on the principles held in previous judgment of *Ghanshyam Mishra*

[36] Vaibhav Goel and Anr. v. Deputy Commissioner of Income Tax 2025 SCC OnLine SC 592.
[37] Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531.
[38] Ghanashyam Mishra and Sons Pvt. Ltd. through the authorised signatory v. Edelweiss Asset Reconstruction Company Ltd. through the Directors & Ors. (2021) 9 SCC 657.

(supra) and particularly addressed the issue of tax demands raised post approval of a Resolution Plan. It emphasised that once a Resolution Plan is approved under Section 31 of the IBC, it becomes binding on all stakeholders, including government authorities like the IRA.

This judgment reiterates that any claims not included in the approved Resolution Plan are extinguished, reinforcing the principle that resolution applicants should be able to restart operations on a "clean slate" without being burdened by unresolved liabilities from prior periods.

The SC's ruling aims to facilitate the smooth revival of corporate debtors by ensuring they can conduct their operations without the encumbrances pertaining to the period prior to the CIRP. It will prevent stakeholders from introducing new liabilities after the approval of a Resolution Plan, thereby fostering certainty and predictability for successful resolution applicants.

"Tax demand notices for pre-CIRP period raised after approval of Resolution Plan are invalid and, hence, unenforceable."

CASE LAW UPDATES - DIRECT TAX

ROUTINE

SC clarifies that registration under Section 12AA does not automatically guarantee tax exemptions for charitable institutions

Introduction

In ***M/S International Health Care Education and Research Institute***,[39] the SC observed that registration of a charitable institution under Section 12AA of the IT Act does not automatically guarantee exemption under Sections 10 and 11 and the Assessing Officer must ensure the genuineness of the claim.

Facts

The case involves a charitable trust registered under the Indian Trusts Act, 1882, and engaged in charitable activities such as providing education and medical aid-related services to the general public. The trust sought registration under Section 12-AA of the IT Act before the CIT to claim tax exemptions under Sections 10 and 11. However, the registration was declined on the grounds of insufficient evidence to demonstrate that the trust was actively undertaking charitable activities. The trust appealed before the ITAT.

The ITAT overturned the CIT's decision, ruling in favour of the trust and directing that the registration under Section 12AA be granted. The ITAT emphasised that the trust had adequately demonstrated its commitment to charitable activities. The HC subsequently upheld this ruling. Aggrieved, the IRA preferred an appeal before the SC.

Issue

Whether registration under Section 12AA of the IT Act can be granted on basis of proposed activities of a charitable institution?

Arguments

The arguments presented revolve around the interpretation of Section 12AA of the IT Act, particularly concerning the SC's decision in ***Ananda Social***.[40] This case had *inter alia* held that while evaluating an application for registration, an examination of the trust's activities also includes its proposed activities, and it must be ensured that these align with the broad charitable objectives of the trust. The approach would be different if a trust's registration is under scrutiny for cancellation, wherein the Commissioner must examine whether the actual activities conducted by the trust aligned with its stated objectives.

The IRA primarily argued that the precedent set in the *Ananda Social (supra)* case required reconsideration by a larger bench, emphasising that trusts must provide cogent material to demonstrate that their activities are genuinely charitable to be eligible for registration under Section 12AA of the IT Act. It asserted that the term "activities" in Section 12AA should not include *"proposed activities"*, and at the time of seeking registration, the CIT must be subjectively satisfied about the

[39] CIT v. International Health Care Education & Research Institute, (2025) 482 ITR 287.
[40] M/s. Ananda Social and Educational Trust v. Commissioner of Income Tax, (2020) 17 SCC 254.

genuineness of both the objects and activities of the trust. On the contrary, the Assessee argued that the *Ananda Social (supra)* case is not the only decision on the subject but there are many previous decisions practically taking the same view. The HC's decision upholding grant of registration does not suffer from any infirmity so as to warrant interference.

Decision

The SC reaffirmed the necessary conditions for a trust registered under Section 12AA of the IT Act to claim exemptions under Sections 10 and 11. It emphasised specifically that the trust must demonstrate that its objectives are charitable and that its activities are genuine. Therefore, it is imperative for the trust to provide credible evidence to satisfy the CIT regarding the authenticity of its charitable activities.

Furthermore, while upholding the grant of registration to the Assessee, the SC clarified that merely obtaining registration under Section 12AA of the IT Act did not automatically entitle a charitable trust to tax exemptions. When a trust files for exemption, it is the responsibility of the tax officer to scrutinise all relevant materials to determine the legitimacy of the exemption claim. If the officer finds the evidence insufficient or unconvincing, they retain the authority to deny the exemption.

Significant Takeaways

The SC has clarified that registration under Section 12AA of the IT Act is based on the charitable trust's activities, including its proposed activities, and does not require the trust to prove that its activities are genuine at the time of registration. However, when such a registered trust seeks tax exemptions under Sections 10 and 11 during assessment proceedings, it must provide cogent evidence to demonstrate genuine alignment of its activities with its charitable objects. Thus, the SC reinforced the principles laid down in the *Ananda Social (supra)* case.

The SC emphasised that mere registration did not automatically entitle a trust to claim exemptions. IRA is required to scrutinise the evidence presented during assessment to ensure that the trust's activities genuinely reflect its charitable goals. If the materials provided fail to convincingly support the claims, IRA has the discretion to deny tax exemptions.

This ruling underscores the importance for charitable trusts to substantiate their claims with credible evidence during assessment proceedings, as failure to do so may result in losing their income tax exemption status.

> **"Charitable institutions must prove genuineness of charitable activities for purposes of claiming tax exemption."**

Tax on unexplained income is equally applicable to data maintained in the computer

Introduction

The Bombay HC in ***Buniyad Chemicals***,[41] held that the expression *"books of an assessee"* as appearing in Section 68 of the IT Act encompasses data maintained in the computer (such as bank accounts); thus, monies appearing therein could be taxable as unexplained cash credits.

Facts

Buniyad Chemicals (**Assessee**) was a company incorporated under the Indian Companies Act, 1956. Information gathered during a search conducted at the business premises of the Assessee revealed the Assessee was engaged in the illegal business of providing accommodation entries in exchange for a nominal commission, i.e., provision of money-laundering services. The return of income filed for AY 2009–10 declaring NIL income was selected for scrutiny assessment. The assessment order was passed by making additions under Section 68 of the IT Act, which seeks to tax unexplained cash credits in the *"books of a taxpayer"*. Here, the additions as unexplained cash credits were made in the hands of the Assessee due to the failure to provide satisfactory explanations regarding the credits of accommodation entries appearing in the disclosed and undisclosed bank accounts of the Assessee.

In the appeals filed before the CIT (Appeals) and the Mumbai ITAT, the additions made under Section 68 of the IT Act were confirmed on the basis of previous ITAT decisions in the earlier AYs. However, the ITAT also reduced the additions to 0.15 per cent of such bank entries by adopting a flat rate of commission earned by the Assessee. Subsequently, the IRA appealed against the ITAT order before the Bombay HC.

Issue

Whether the credits appearing in the bank accounts of the Assessee amounted to *"books of an assessee"* for the purposes of making additions as unexplained cash credits under Section 68 of the IT Act?

Arguments

The Assessee argued that the provisions of Section 68 of the IT Act were inapplicable as the Assessee did not maintain any books of accounts for its illegal business, Besides, since bank statements do not constitute *"books of an assessee"*, the condition precedent of sums credited in the *"books of an assessee"* were not fulfilled for an addition under Section 68 of the IT Act. Reliance was placed on the Bombay HC decision in the matter of ***Bhaichand H. Gandhi***,[42] which held that bank passbooks could not be regarded as *"books of an assessee"* as the expression means a book maintained by the taxpayer itself or maintained on its instructions.

The Assessee also contended that the amounts appearing in the bank accounts belong to Assessee's customers and the same were already taxed in the hands of the beneficiaries. Thus, only the commission component was attributable to the Assessee, which was already offered to tax in its return of income. The Assessee relied on ***Alag Securities***,[43] where Bombay HC decided that Assessee's group company was only liable to pay tax to the extent of commission component, provided that the cash received on behalf of beneficiaries has already been taxed in their hands.

Contentions raised by the IRA were limited to the reduction of quantum of commission by the ITAT without providing a basis for the same.

Decision

The Bombay HC rejected the argument that bank statement did not amount to *"books of an assessee"*, while distinguishing the facts from those of *Bhaichand H. Gandhi (supra)*, wherein decision was based on the lack of direct involvement of taxpayer in the preparation of bank passbook. However, in this instance, the HC highlighted that it was not possible to prepare a profit-and-loss account and tax audit report and file the return of income without maintaining books of accounts. Moreover, the Assessee had encoded said data on two (2) CDs. In this regard, the HC noted that it is a well-established legal precedent that a person cannot take the advantage of their own wrongdoing or violation. Thus, a person who is required to maintain books of account under Section 68 but does not do so cannot take refuge of such non-compliance to contend that provisions of Section 68 are not applicable to their case.

41 PCIT v. Buniyad Chemicals Ltd. [2025] 172 taxmann.com 462/ Income Tax Appeal No.1796 of 2018 (Bombay High Court).
42 Commissioner of Income Tax v. Bhaichand H. Gandhi, (1983) 141 ITR 67 (Bombay High Court).
43 Principal Commissioner of Income Tax v. Alag Securities Pvt. Ltd., [2020] 425 ITR 658 (Bombay High Court).

The HC relied on the principles established in its previous judgment in ***Sheraton Apparels***,[44] adopting a liberal approach to interpret the expression *"books of an assessee"* in the IT Act in light of the ongoing technological changes, such as the advent of computers. The HC stated that modern-day businesspersons do not maintain physical "books" as done traditionally but instead record their transactions on computers. Thus, the HC presumed that the legislature anticipated and intended for the IT Act to be applied to such future developments. It also dismissed the applicability of *Alag Securities (supra)*, as the Assessee had neither identified any of the beneficiaries nor proven that such bank entries have been otherwise offered to tax. However, the HC fell short of taxing the bank receipts on gross basis.

The HC emphatically stated that the definition of the expression *"books of an assessee"* under Section 68 of the IT Act as it stood in the relevant assessment year, extended to not only the computer on which the Assessee's business transactions were recorded but also the CDs containing extracted data. Consequently, the HC held that the credits appearing in the bank accounts of the Assessee were unexplained, thus, requiring additions in the hands of the Assessee as unexplained cash credits under Section 68 of the IT Act.

Significant Takeaways

The meaning assigned to the expression "books of an assessee" in Section 2(12A) of the IT Act has far-reaching implications within the statute. While the plain language of the expression already includes data stored in the written form, such as printouts of data saved on floppy, disc, tape disks, discs, tapes, or any other form of electromagnetic data-storage devices, its precise scope has remained contentious. In this judgment, the Bombay HC reaffirmed its long-standing position that the legislature is presumed to have anticipated and intended for the IT Act to be applicable to future developments, emphasising that the provisions in the IT Act must be interpreted by taking into consideration such technological changes. Thus, the expression *"books of an assessee"* comprises not only the computer which has a taxpayer's transaction records but also electronic devices on which such data is stored. The HC notes that any alternative approach would result in the failure of the machinery provisions of the IT Act.

Notably, the Finance Act, 2022, has introduced amendments to Section 2(12A) of the IT Act to clarify beyond doubt that the expression includes data stored in any electronic/digital form. Thus, the provision has been appropriately amended to remove any scope to misuse the language to deny tax liability.

> **"Data maintained in any electronic/ digital form is within the purview of taxation as unexplained cash credits."**

[44] Sheraton Apparels v. Commissioner of Income Tax, [2002] 256 ITR 20 (Bombay High Court).

Bombay HC comes down heavily on IRA for extensive delay of 16 years in grant of refund, to fix personal responsibility of tax officers on further delay

Introduction

The Hon'ble Bombay HC in ***Nirmalkumar Mulchand Puruswani***,[45] recently disposed of a writ petition directing the IRA to grant a refund of INR 1.2 million (approx.) to the taxpayer – a refund pending for the past 16 years. It also proposed holding the delinquent officers personally responsible for recovery of interest in the event of any further delays.

Facts

The case pertains to individual Assessees (**Assessees**) related to search proceedings. The ITAT had passed an order on July 31, 2006, setting aside the assessment order passed by the tax officer and restoring the matter back to the tax officer for a *de novo* decision.

However, the matter was forwarded to the jurisdictional CIT after an interval of more than 10 years, on March 31, 2017. Moreover, the tax officer did not undertake the proceedings as directed by the ITAT in 2006. Aggrieved by the inaction, the Assessees filed a writ petition before the Bombay HC, claiming refund of the income tax paid as part of the assessment.

Issue

Whether refund is required to be paid when the IRA did not carry out any proceedings regarding the ITAT Order since 2006?

Arguments

The Assessees argued that the refund was pending because of taxes paid under the assessment orders and the deadline for implementing the Order granting refunds expired in 2006. They argued that such inaction and delay on the part of the tax department was in violation of Articles 300A and 265 of the Constitution of India and that such delays were arbitrary as per Article 14 of the Constitution of India.

The IRA, on the other hand, filed an affidavit before the HC, claiming that details of the case were not available with the department because of major restructuring of the IRA records in 2001 and 2014. The department also attempted to shift blame to the Assessee, stating they had not pursued the case since the ITAT Order in 2006, despite regularly filing income tax returns every year.

Decision

The Bombay HC noted that the IRA's arguments were vague and lacked specific details regarding the individuals responsible for maintaining departmental records or the actions taken against them for failing to retain those records. The HC also observed that the case was related to a search carried out by the IRA and should have been pursued diligently. Since it was not done, the individuals accountable for the lapse should be held accountable. The HC also observed that no reasons were provided for the failure to implement the ITAT Order of 2006, neither were any details submitted regarding actions taken against officials responsible for this default.

The HC also disapproved of the IT authorities' reluctance to assign responsibility and for the monetary imposed on the public exchequer due to their negligence and inaction.

Taking these observations in consideration, the HC held that, given the deadline had expired long ago, the refund owed to the taxpayer could no longer be delayed or avoided. The Bombay HC directed the IRA to issue orders for the grant of refund by April 15, 2025, and disburse the refund by April 30, 2025. In the event of further delay, the refund would accrue interest at the rate of 6 per cent per annum, with the interest to be personally recovered from the tax officers responsible for the delay.

Significant takeaway

The HC has consistently taken a strict stance against unnecessary delays in granting refunds. In the recent ***GMO Emerging Markets Fund case***,[46] where the refund was withheld for more than 10 years due to arbitrary reasons such as procedural lapses, the Bombay HC expressed strong disapproval, commenting that the mounting interest burden caused by each day's delay was unacceptable, especially when arising from procedural glitches.

In this case, the reason behind the harsh language used by the Bombay HC was the casual and negligent attitude of the officers concerned. The HC observed that there was no justification for subjecting taxpayers to unnecessary hardship and placing unnecessary burdening on the state exchequer due the inaction of the IRA officers.

[45] Nirmalkumar Mulchand Puruswani v. Income Tax Officer, Ward 6(3), Pune and ors. WP No.11043 and 11044 of 2024 [TS-233-HC-2025 (BOM)] dated March 17, 2025.
[46] 8 GMO Emerging Markets Fund vs. DCIT (International Taxation) & Ors. [WP (L) NO. 35390 OF 2024] [TS-973-HC-2024(BOM)].

However, the HC clarified that if the taxpayer's inaction or non-submission of requisite information was the reason for the delay in granting refund, then the taxpayer would be denied interest.[47] The judgments on this issue reinforce the importance of timely submission of requisite information by the Assessee to the IRA.

At the same time, the current judgment serves as an eyeopener for the IRA, as the HC disapproves of the IRA's casual attitude and highlights the judiciary's commitment in ensuring justice for taxpayers who have been unnecessarily subjected to unfairness, carelessness, and negligence.

> **"IRA must fix responsibility for failure to enforce refunds; personal liability could be imposed for unreasonable delays."**

[47] PCIT and DCIT, Bengaluru vs. Subash Menon [WA NO. 598 of 2023] [TS-148-HC-2025(KAR)], Maharashtra Apex Corporation Ltd vs. DCIT [ITA Nos. 239 to 255 (Bang) 2018] [TS-610-ITAT-2019(Bang)].

CASE LAW UPDATES - INDIRECT TAX

ROUTINE

SC upholds the sanctity of CIRP under IBC and quashes tax demands post approval of Resolution Plans

Introduction

The SC in ***M/S JSW Steel***[48] held that the tax authorities' persistent pursuit of pre-CIRP tax demands after the Resolution Plan's approval, which was in defiance of the judgment in ***Ghanshyam Mishra***,[49] constituted contemptuous conduct. The SC firmly reiterated that under Section 31(1) of the IBC, all claims not included in an approved Resolution Plan stand extinguished after the approval of the Resolution Plan.

Facts

Monnet Ispat and Energy Ltd. (**MIEL**) underwent the corporate insolvency resolution process (**CIRP**). Following the initiation of CIRP, an interim resolution professional was appointed, and public advertisements inviting claims against MIEL were issued. JSW emerged as the successful resolution applicant after the committee of creditors approved its Resolution Plan, which was subsequently sanctioned by the Mumbai Bench of the NCLT in 2018. JSW then took over the management of MIEL. Post the takeover, the tax authorities in Chhattisgarh issued demand notices for taxes pertaining to the period of April to June 2017, prior to JSW's acquisition under the Central Sales Tax Act, 1956, Chhattisgarh Value Added Tax Act, 2005, and Entry Tax Act, 1976. JSW contested these demands, arguing that all claims not included in the Resolution Plan were extinguished. Despite JSW's repeated communications informing the authorities of the SC's ruling, the tax officials persisted with recovery efforts, issuing further notices. Aggrieved, JSW Ispat Special Products Limited (now JSW Steel Limited) (**JSW**) filed the instant contempt petition, asserting that the tax authorities' actions constituted wilful disobedience of the SC's judgment in *Ghanshyam Mishra*.

Issue

Whether tax demand notices issued for sums not included in the approved Resolution Plan are invalid?

Arguments

The Petitioner argued that the tax demands related to a period before the Resolution Plan's approval, were not included in the plan, rendering them extinguished. It was emphasised that the ruling in *Ghanshyam Mishra (supra)* explicitly held that once a the NCLT approves the Resolution Plan under Section 31(1) of the IBC, all claims not part of the plan, including those of the government, are extinguished and binding on all stakeholders, including the Central and State governments and local authorities.

The Petitioner further contended that the tax authorities were informed of this legal position through multiple correspondences and were explicitly warned of contempt proceedings, yet they continued the recovery efforts. They asserted that the tax authorities had failed to submit their claims during the CIRP despite public notices; thus, their belated

[48] M/S JSW Steel Limited Versus Pratishtha Thakur Haritwal & Ors., Contempt Petition (Civil) No. 629 Of 2023 in Writ Petition (Civil) No.1177 Of 2020.
[49] Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited and others, Civil Appeal No. 8129 of 2019.

demands violated the IBC's framework, which ensures a successful resolution applicant such as JSW operates on a clean slate.

On the other hand, the respondent submitted that they were not parties to the insolvency proceedings before the NCLT and, thus, were not bound by the Resolution Plan or the *Ghanshyam Mishra (supra)* judgment. They argued that the judgment did not apply to them, as it did not explicitly address their specific circumstances, and that the state was entitled to recover its dues under the Chhattisgarh Value Added Tax Act, 2005, Central Sales Tax Act, 1956, and Entry Tax Act, 1976, irrespective of the IBC process.

The respondents relied heavily on the SC's decision in ***Rainbow Papers Ltd.,***[50] to assert that government dues, particularly indirect taxes collected by the debtor company, could not be extinguished by the NCLT's approval of a Resolution Plan. They maintained that MIEL had neither filed tax returns nor paid dues for the period in question, justifying their issuance of demand notices in good faith as responsible government officers. The tax authorities further contended that their actions were not intended to undermine the SC's dignity and that no case of contempt was made out, especially since JSW's miscellaneous application seeking clarification of the *Ghanshyam Mishra (supra)* judgment (M.A. No. 259 of 2022) had been dismissed as withdrawn by the SC on May 2, 2022.

Decision

The SC began by revisiting its decision in *Ghanshyam Mishra (supra)*, which resolved three pivotal issues: (1) whether an NCLT-approved Resolution Plan under Section 31(1) of the IBC binds all creditors, including government entities; (2) whether the 2019 amendment to Section 31 was clarificatory and retrospective; and (3) whether recovery proceedings for claims excluded from the plan could persist post-approval. The SC had ruled affirmatively on the first two and negatively on the third, holding that all claims, statutory or otherwise, not included in the Resolution Plan are extinguished upon approval, binding all stakeholders, including Central and State governments.

The SC further observed that JSW's case was part of the batch where pre-CIRP tax demands were quashed in *Ghanshyam Mishra (supra)*. The tax authorities' demands related to April–June 2017, well before the Resolution Plan's approval on July 24, 2018. Public notices during the CIRP had invited claims by August 7, 2017, yet the respondents submitted none, rendering their subsequent demands legally untenable.

Addressing the respondents' reliance on *Rainbow Papers Ltd. (supra)*, the SC distinguished it sharply. In *Rainbow Papers Ltd. (supra)*, the tax authorities had raised a claim during the CIRP, which the Committee of Creditors had wrongly excluded, leading the SC to protect the state's dues as a secured creditor. Conversely, in this case, the Chhattisgarh authorities failed to participate in the CIRP despite ample opportunity, making their post-approval demands a violation of the IBC's framework. The SC also relied on ***Essar Steel India Ltd.***,[51] which established the clean-slate principle, ensuring resolution applicants such as JSW are free from pre-CIRP liabilities not in the plan. The respondents' argument of non-involvement in the NCLT proceedings was dismissed, as Section 31(1) explicitly binds all stakeholders, regardless of their participation, a point clarified by the 2019 amendment.

The SC then evaluated the contempt charge. It found that the tax authorities' issuance of notices on May 17, 2022, and December 9, 2022, after JSW's warnings about the ruling in *Ghanshyam Mishra (supra)* demonstrated a disregard for judicial authority. However, the SC probed the element of wilfulness, noting the respondents' claim of acting in good faith. It considered whether their actions stemmed from misinterpretation rather than deliberate defiance. The SC also reflected on JSW's withdrawn miscellaneous application, but deemed it irrelevant to the contempt issue, as the original judgment's clarity was undisputed.

Balancing these factors, the SC concluded that while the tax authorities' actions breached the IBC and SC directives, the evolving jurisprudence warranted leniency and accordingly, decided not to hold the tax authorities to be in contempt.

Significant Takeaway

The judgment reinforces the supremacy of the IBC's framework, sending a clear message to government entities about their obligations under insolvency law. By disposing of the contempt petition with an apology from the tax authorities, the SC balanced upholding its authority with acknowledging the respondents' contrition. This ruling not only protected JSW's rights as a resolution applicant but also clarified the legal boundaries for tax authorities nationwide, ensuring the IBC's clean-slate principle remains inviolable.

Recently, the Hon'ble Bombay HC also quashed an order demanding duty drawback under Section 75 of Customs Act for non-submission of Electronic Bank Realisation Certificate

[50] State Tax Officer v. Rainbow Papers Limited, (2023) 9 SCC 545.
[51] Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta, (2020) 8 SCC 531.

(**e-BRC**) and non-realisation of the amount. The HC reasoned that the Custom Department's claim would be extinguished as per Section 31A of IBC, as it was not claimed during the CIRP.

These rulings underscore IBC's core objective – to provide successful resolution applicants with a fresh start, unencumbered by past debts, ensuring the revival of distressed entities and maximising their value. By safeguarding the clean-slate principle, the courts have consistently ensured that the insolvency framework remains predictable and reliable, encouraging participation from resolution applicants without the fear of lingering liabilities. Simultaneously, they reaffirm the judiciary's role in upholding the rule of law, signalling those deviations from judicial directives, even if unintentional, could invoke the risk of being in contempt.

> **"No liability for the pre-CIRP period can be raised after the Resolution Plan is approved by the NCLT."**

Non-applicability of GST on transfer of leasehold rights

Introduction

The Gujarat HC has ruled that the assignment of leasehold rights in land allotted by the Gujarat Industrial Development Corporation (**GIDC**)[52] constitutes a transfer of immovable property and is not subject to GST.

Facts

Multiple petitioners have approached the Gujarat HC with a common concern regarding the liability of GST on the assignment of leasehold rights of plot allotted on lease by GIDC and the constructed buildings on such plots. The GIDC, established under the Gujarat Industrial Development Act, 1962, acts as a nodal agency for the development of industrial estates in the state of Gujarat. It acquires land and undertakes infrastructure development, including road, water supply, streetlights, and drainage. Post development, it allots the plots of land to industrial entities/persons.

A licensing agreement is executed between the GIDC and the lessees for setting up industrial units, subject to approval and permission from the regulatory authorities. Licensing agreement also contains a clause wherein the GIDC agrees to execute lease deed for a tenure of 99 years in favour of the allottees/lessees upon fulfilling the terms and conditions of the licensing agreement.

On fulfilling the terms and conditions of the license agreement, the GIDC executes a registered lease deed in favour of the allottees/lessees upon payment of the applicable stamp duty. The lease deed also permits the allottees/lessees to assign the leasehold rights and interest in the plot to any other person, subject to the GIDC's approval.

Since the CGST Act came into force, revenue authorities have issued show cause notices to petitioners and assignees with leasehold rights and interest in their plots allotted by the GIDC, alleging non-payment of GST at the rate of 18 per cent on such transactions of the assignment of leasehold rights. The Petitioners made a representation seeking clarification, but received no response; hence, they decided to approach the Hon'ble HC.

Issue

Whether assignment of leasehold rights qualify as supply of services for the purpose of levy of GST?

Arguments

The Petitioners argued that although Section 7(1)(a) of the CGST Act defines "supply" to include activities such as leasing or renting of immovable property, Schedule Ill of the Act exempts the "sale of land" and "sale of building" from the levy of GST, categorising them as neither a supply of goods nor services.

Further, the Petitioners relied on the Transfer of Property Act, 1882, to argue that lease of immovable property is an interest in land and building and constitutes *"profit a prendre"*. Every such interest in immovable property is a benefit arising out of land, which should be treated as immovable property itself.[53] An assignment of leasehold rights constitutes absolute transfer of right in an immovable property. Such transfer extinguishes all the rights of the transferor in the immovable property and snaps any legal relationship with the lessor, and the assignee becomes liable for obligations under the lease deed. Thus, there is no element of service. By considering transfer of property within the meaning of "service" amounts to extending the meaning of the word "service" beyond its reasonable connotation.

It was contended that the levy of GST on assignment of leasehold rights would lead to a dual taxation as both stamp duty and GST would apply. It would also be in contravention of the object and purposes of the GST legislation.

The Petitioners also submitted that a permanent lease is as much an alienation or a sale. The mere fact that lease rent was payable did not make a permanent lease any the less alienation than a sale.

Reliance was placed on ***Munjaal Manishbhai Bhatt***,[54] wherein the Court observed that the intention behind introducing the GST regime was not to change the basis of taxation of the VAT and the service tax regime, noting that supply of land in every form was excluded from the purview of the GST Acts.

The Petitioners also argued that the intent of the GST regime was to continue only the existing taxes, as fortified by Agenda 2A to the 5th GST Council meeting. This agenda noted that service tax was not leviable on the transfer of immovable property, and included a specific proposal to impose GST on the sale of immovable property.

[52] Gujarat Chamber of Commerce And Industry & Ors. v. Union of India & Ors. 2025 (1) TMI 516 - Gujarat High Court.
[53] Anand Behera v. State of Orissa AIR 1956 SC 17, State of Orissa v. Titaghur Paper Mills Co. Ltd. (1985) Supp. SCC 285.
[54] Munjaal Manishbhai Bhatt v. Union of India, (2022) 104 GSTR 419 (Guj.).

Finally, the Petitioners contended that what was assigned to them was not merely the right to use land. Building constructed on the land was also transferred along with the rights and interest in land. The Petitioners thus earned benefit out of the land by constructing and operating factory buildings/sheds, which constituted *"profit a pendre"*, an immovable property. They asserted that since the transfer of such immovable property could not be subjected to GST, the sale of leasehold rights could not fall within the scope of supply of goods or services, considering it is not an activity but an event of transfer of leasehold right.

On the other hand, the Respondents contended that since the transfer of leasehold rights qualified as a supply of services under Section 7(1), it was taxable under the GST regime. They stated that leasehold interest was an intangible asset, which was not the immovable property itself. Contrary to the reliance the Petitioners had placed on the definition of "immovable property" in various legislations, the Respondents submitted that the meaning of the term "immovable property", more particularly when not defined in the GST legislations, should be understood in context of the provisions of the legislation with which the question had arisen – CGST Act. Furthermore, the exclusion of only the sale of land and building in Schedule III implies that other immovable property transactions, such as leasehold rights, are covered under services.

Further, the GIDC, as the owner of the land, enjoyed a bundle of rights over it, including the (i) right to own; (ii) right to construct; (i) right to give a license; (iv) right to possess and occupy; (v) right to give a lease; (vi) right to sue; (vii) right to compensation; etc. Now, when the GIDC transfers one of the rights, i.e., the right to occupy the land, in favour of the lessee, it qualifies as supply of service under the GST Act and is susceptible to GST. Consequently, its further transfer, which is also a transfer of the right to occupy/possess, will continue to remain as a supply of service. Its characteristic will not change even if the lessee of the GIDC effects absolute transfer in favour of an assignee, leaving no rights whatsoever with the lessee in respect of the said lease-hold land.

Decision

To determine the applicability of the GST, the HC acknowledged that the assignment/sale of leasehold rights encompasses various rights. The ownership in land and building includes rights such possession, enjoyment of income from, alienation, and recovery any right from the one who has improperly obtained the title. Therefore, besides the right of ownership, immovable property includes an aggregate of rights guaranteed and protected by further agreements or contracts between the owner and the lessee.

When the GIDC allots a plot of land along with right to occupy, right to construct, right to possess on a lease of 99 years, charging a premium for such allotment and periodical lease rent, the right of ownership remains with the GIDC and reverts upon the expiry of the lease period. This transaction is considered a supply of service. However, a transaction of sale and transfer of leasehold rights by the assignor to assignee divests the assignor of all and absolute rights in the property. Therefore, interest in the immovable property in the form of leasehold rights cannot be said to be different from the immovable property itself. Such transfer would be of an immovable property as per the definition provided in various statutes.

The Court also observed that the levy of GST on construction services were exclusive of the one-third of the total amount charged for such supply, accounting for the value of immovable property transferred through lease.

However, since Entry 5 of Schedule III to the CGST Act clearly provides that sale of land cannot to be treated as supply of goods or services, transfer of leasehold rights (which must be considered as sale of land) could also be out of the purview of the provisions of the scope of supply according to Section 7 of the CGST Act. Accordingly, the HC held that assignment of any land to the assignees would not be subject to GST.

Significant Takeaways

The decision reinforces the exclusion of immovable property transactions from GST. It also serves as a precedent for challenging similar GST demands and highlights the importance of distinguishing between transactions involving immovable property rights and those qualifying as services under GST. It also prevents the cascading effect of taxes by avoiding dual taxation, as stamp duty continues to apply to such transactions.

Furthermore, this ruling could potentially open the floodgates for a wave of litigations challenging the GST levied on similar transactions nationwide. Businesses who have paid GST on the assignment of leasehold rights may now seek refunds, creating a liability for revenue authorities and impacting the government's GST revenue collection targets.

The impact of this judgment extends beyond leasehold assignments to other rights arising derived from land. Transactions, such as the transfer of development rights in real estate projects, are also highly contentious. If such rights are considered benefits arising from land, they could be claimed to not attract GST, based on the rationale of this decision. This could lead to reduced tax costs for developers and builders, significantly impacting the taxation of real estate transactions, potentially lowering project costs, and encouraging investment in urban development.

"Assignment of land by a lessor to the lessee is not subject to GST."

The fees collected by electricity commissions does not attract GST

Introduction

In ***Central Electricity Regulatory Commission v. Union of India***, the Hon'ble Delhi HC concluded that GST is inapplicable on the fees collected by the Central Electricity Regulatory Commission (**CERC**) and the Delhi Electricity Regulatory Commission (**DERC**).

Facts

An inquiry was initiated against the CERC and DERC (**Petitioners**) by the GST Authorities regarding the fees collected by them including filing fees for applications, tariff determination fees, license fees, annual registration fees, and other miscellaneous levies. In response to inquiries, CERC provided detailed breakdowns of its revenue streams, disclosing amounts collected under statutory heads such as filing fees, tariff-related fees, license fees, annual registration fees, and from other miscellaneous sources. The Petitioners maintained that these were statutory levies mandated by the Electricity Act, 2003 and not proceeds from any commercial transaction initiated by them. However, GST Authorities were of the view that these activities constituted a taxable supply under section 7 of the CGST Act. They distinguished adjudicatory functions like dispute resolution functions from regulatory functions like tariff setting and licensing of the Petitioners, proposing that while the former might be exempt, the latter would be construed as taxable services.

Consequently, Petitioners received SCNs alleging that the regulatory activities were taxable supply. As per the SCNs received, such fees were towards taxable "support services" to electricity transmission and distribution, falling under Service Accounting Code (**SAC**) 998631. Therefore, the SCNs aimed to levy GST on fees collected by the CERC and DERC pursuant to their regulatory functions under the Electricity Act, 2003. Aggrieved by the SCNs, the Petitioner filed a writ in the Hon'ble Delhi HC.

Issue

Whether the Petitioner's regulatory functions attracted GST?

Arguments

The Petitioners contended that their functions under the Electricity Act, 2003 encompassing tariff regulation, issuance of licenses, adjudication of disputes, and collection of associated fees were statutory duties performed by them in public interest, devoid of any commercial objective or character. They argued that these activities served to regulate the electricity sector as a public duty, and did not constitute a "supply" of services 'in the course or in furtherance of business' as required under Section 7 of the CGST Act.

The cornerstone of their argument was their status as quasi-judicial bodies, a characterization affirmed by the Hon'ble SC in PTC India Ltd. v. Central Electricity Regulatory Commission. They contended that this status entitled them to an exemption under Schedule III of the CGST Act, which excludes "services provided by a court or tribunal established under any law for the time being in force" from GST liability. They also objected GST authorities' attempt to bifurcate their activities into adjudicatory and regulatory functions, arguing that the Electricity Act does not consider them as separate.

The Petitioners emphasized that their fees did not constitute "consideration" under Section 2(31) of the CGST Act, which defines it as payment made "in respect of, in response to, or for the inducement of" a supply. Additionally, they contended that their activities did not fall within the definition of "business" under Section 2(17) of the CGST Act. Finally, they argued that even if the term "business" were to be interpreted broadly, their lack of profit motive and statutory compulsion distinguished them from other taxable entities.

On the other hand, the Respondents anchored their position in Section 7 of the CGST Act, which defines "supply" as encompassing all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or in furtherance of business. They argued that the Petitioner's activities fit this definition, as they involved providing services to stakeholders like electricity companies in exchange for fees, which they classified as "consideration" under Section 2(31) of the CGST Act.

The Respondents leaned heavily on the expansive definition of "business" under Section 2(17) of the CGST Act. They asserted that the Petitioners' systematic collection of fees for regulatory activities constituted a 'similar activity' to trade or commerce. Absence of a profit motive is irrelevant as the clause explicitly includes activities whether or not for a pecuniary benefit. They further pointed to specific clause which includes any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

To substantiate their stance, the GST authorities cited an Office Memorandum from the Tax Research Unit of the Ministry of Finance, that distinguished between adjudicatory and regulatory functions, suggesting that while fines from adjudication might be exempt, fees from regulation are taxable. They also referenced the Fitment Committee's recommendations and the GST Council's approval during its 47th meeting, which endorsed taxing regulatory fees levied by statutory bodies like CERC and DERC as 'services'.

Analysis

The HC began its analysis with meaning of the term "supply", which requires a taxable supply to involve goods or services provided for a consideration in the course or in furtherance of business. The HC evaluated each and every element, starting with meaning of the term "business". The HC found that Petitioners' regulatory activities did not resemble trade, commerce, manufacture, profession, vocation, adventure, or wager. The HC observed that these were statutory duties imposed on them by the Electricity Act, 2003 to ensure the electricity sector's stability, and they are not to follow commercial pursuits. The Court then assessed definition of "consideration" and observed that the fees received by Petitioner were statutory levies fixed by law, not payments requiring Petitioner to render services.

The Court further pivoted to Schedule III, Entry 1, which exempts "services by a court or tribunal established under any law." Citing PTC India Ltd., it affirmed the commissions' quasi-judicial status. The Court accordingly observed that the Electricity Act's integrated mandate rendered all functions exempt under Schedule III.

The Court finally allowed the writ petitions, quashing the SCNs and setting aside the order passed by the GST Authorities and holding that the Petitioners are not liable to charge or collect any GST.

Significant Takeaways

The HC emphasised that the regulatory functions of the Petitioners under the Electricity Act, such as tariff regulation and licensing, are statutory duties imposed on them by the Electricity Act and are being performed by them in public interest. These are not commercial activities, a distinction that exempts them from GST. The ruling highlights the fact that recommendations from the GST Council and Fitment Committee are advisory in nature and lack the force of law. This distinction emphasizes that tax liability must be assessed based on statutory provisions and not advisory opinions.

The ruling will have far-reaching implications for other statutory levies imposed by government or quasi-governmental bodies in India. It may open floodgates to litigation, wherein other statutory bodies challenge the GST demanded by them over fees/commission/etc. collected while performing statutory functions

Finally, this ruling will also deter the GST officials from demanding GST over amounts collected to perform statutory functions. However, since this is a HC decision, the possibility of the same being challenged in the Hon'ble SC cannot be ruled out. Therefore, one has to wait till this matter or any other similar matter is reviewed and decided by the Apex Court.

" No GST on filing fees, tariff determination fees, license fees, annual registration fees, etc. by CERC and DERC. "

CBDT exempts TDS purchases made from IFSC units

The CBDT, *vide* Notification No. 3/2025 dated January 2, 2025, has announced that no TDS under Section 194Q will be applicable for purchases made from units of IFSC, provided both the buyer and the seller satisfy certain conditions.[55]

The conditions that the seller must meet to qualify for this exemption are as follows:

- The seller must submit to the buyer a statement-cum-declaration in the format prescribed in Form No. 1, including details of the previous years related to the 10 (ten) consecutive assessment years during which the seller seeks to claim deductions under Sections 80LA(1A) and 80LA(2).
- The statement-cum-declaration submitted by the seller must be verified in accordance with the instructions outlined in Form No. 1 for each of the relevant previous years for which the seller claims deductions under Section 80LA.

The conditions prescribed for the buyer to qualify for the exemption are as follows:

- The buyer must not deduct tax on any payment made or credited to the seller after receiving the copy of the statement-cum-declaration in the specified Form No. 1 from the seller.
- The buyer must include the details of all payments made to the seller, on which tax was not deducted under this notification, in the statement of tax deductions referred to in Section 200(3), read with Rule 31A of the IT Rules.

Additionally, the relaxation provided by this notification will apply to the seller only for the previous years relevant to the ten (10) consecutive assessment years, as declared in Form No. 1, for which the seller is claiming deductions under Section 80LA. The buyer must deduct tax on payments made or credited for any other assessment year outside of those specified.

CBDT issues clarification on implementation of Principle Purpose Test

The CBDT, *vide* Circular No. 01/2025 dated January 21, 2025, has provided clarifications on the implementation of the Principal Purpose Test (**PPT**) under India's DTAAs.[56] Introduced as part of India's obligations under the Multilateral Instrument (**MLI**) for Base Erosion and Profit Shifting (**BEPS**) to prevent tax treat abuse, the PPT will apply prospectively as follows:

- For treaties amended via bilateral negotiations (e.g., Chile, Iran, Hong Kong, China), the PPT applies from the effective date of the DTAA or its amending protocol.
- For treaties modified through the MLI:
  - (i) For withholding taxes, the PPT applies to payments made in the previous year starting after the MLI's effective date for both jurisdictions.
  - (ii) For other taxes, the PPT applies to the previous year beginning six months after the MLI's effective date for both treaty partners.

While the PPT excludes grandfathering provisions under India's tax treaties with Cyprus, Mauritius, and Singapore from its

[55] CBDT Notification No. 3/2025 dated January 2, 2025 [F. No. 275/109/2024-IT(B)].
[56] Circular No. 01/2025 dated January 21, 2025 [F. No. 500/05/2020/FT&TR-I1].

scope, the rest are governed by the specific terms outlined in their respective DTAAs.

The circular also stipulates that the PPT be applied through an objective, fact-based evaluation for each scenario. Tax authorities are advised to consult supplementary guidance, including the BEPS Action Plan 6 and the UN Model Tax Convention (2021), while accounting for India's reservations on specific matters.

CBDT introduces presumptive taxation for non-residents engaged in the operation of cruise ships

The CBDT, *vide* Notification No. 9 /2025 dated January 21, 2025, has inserted Rule 6GB in the IT Rules to prescribe conditions under Section 44BBC for non-residents engaged in the operation of cruise ships.[57] This amendment, notified on January 21, 2025, outlines the criteria that non-resident cruise ship operators must meet to qualify for the presumptive taxation regime under Section 44BBC. The new rule applies to non-residents operating passenger ships for leisure and recreational purposes, provided the ships satisfy certain technical specifications, including a carrying capacity of more than 200 passengers or a length of 75 meters or more and appropriate dining and cabin facilities for passengers.

In addition to the technical specifications, the conditions for the non-resident operator include operating the ship on scheduled voyages or shore excursions that touch at least two different seaports in India or the same port twice. The primary purpose of the ship must be to carry passengers, with no focus on carrying cargo. The operator must also comply with the procedures and guidelines, if any, issued by the Ministry of Tourism and the Ministry of Shipping. These conditions ensure that the presumptive taxation regime under Section 44BBC is applied only to genuine leisure cruise operations, contributing to the growth of the tourism sector while maintaining compliance with Indian regulations.

CBDT introduces new rules for venture capital and finance companies in IFSCs

The CBDT, *vide* Notification No. 10/2025 dated January 27, 2025, has amended the IT Rules,[58] aiming to focus on regulations for venture capital (**VC**) funds, finance companies, and retail schemes, aligning with Sections 10 and 94B of the IT Act. With the amendment to Rule 21AIA, new Rules 2DAA and 21ACA have been introduced, specifying conditions for VC funds under Section 10(23FB) and finance companies in IFSCs under Section 94B.

Rule 2DAA specifies that VC funds referred in Regulation 18(2) of the IFSC Authority (Fund Management) Regulations, 2022, be construed as Category I Alternative Investment Funds to qualify under Section 10(23FB) of the IT Act.

Rule 21ACA outlines the eligibility criteria for finance companies operating in IFSC under Section 94B, permitting activities such as lending (including loans, guarantees, securitisation, and financial leasing), factoring and forfaiting of receivables, and global/regional treasury functions (covering borrowing, hedging, intra-group financing, and financial budgeting), while requiring that interest paid to non-resident lenders on foreign debt be denominated in foreign currency.

The amended Rule 21AIA introduces conditions for retail schemes and ETFs under Section 10(4D), requiring that retail schemes maintain at least 20 investors with no single investor holding over 25 per cent of total investments, restrict investments to 25 per cent in associate entities, 15 per cent in unlisted securities, and 10 per cent in any single company, while mandating that ETFs be listed on recognised stock exchanges and comply with IFSC Regulations.

CBDT revises rules applicable for Infrastructure Debt Funds

The CBDT, *vide* Notification No. 13/2025 dated February 7, 2025, has revised Rule 2F, stipulating an Infrastructure Debt Fund (**IDF**) be established as a Non-Banking Financial Company (**NBFC**) and comply with the regulatory requirements set forth by the RBI.[59]

The amended Rule 2F mandates that IDF be allocated exclusively to:

- infrastructure projects post-commencement that have concluded a minimum of one year of successful commercial operations, or
- toll-operate-transfer projects where the IDF acts as the direct lender.

IDFs are permitted to raise capital by:

- issuing Rupee-denominated or foreign currency-denominated bonds under RBI guidelines and FEMA

[57] CBDT Notification No. 9 /2025 dated January 21, 2025 [F. No. 370142/18/2024-TPL].
[58] Notification No. 10/2025 dated January 27, 2025 [F. No. 370142/26/2024-TPL].
[59] Notification No. 13/2025 dated February 7, 2025 [F. No. 370142/9/2024-TPL].

- regulations (including the "Transfer or Issue of Security by a Person Resident outside India" rules),
- issuing zero-coupon bonds as per Rule 8B, or
- securing external commercial borrowings (ECBs) via the loan route, adhering to RBI stipulations such as a minimum tenure of five years and exclusion of foreign branches of Indian banks.

The updated rule modifies investment limitations by replacing the "sponsor" criterion with "specified shareholder". Under this revision, IDFs are prohibited from investing in projects where a specified shareholder, its associated enterprise, or its group holds a significant stake, replacing the previous restriction tied to sponsorship arrangements.

CBDT revises compliance requirements for liaison offices operated by non-resident entities

The CBDT, *vide* Notification No. 14/2025 dated February 07, 2025, has amended Rule 114DA revising the compliance timeline for non-resident entities with liaison offices in India.[60] The amendment specifies that Form 49C, required under Section 285 of the IT Act, must now be filed within eight months from the end of the financial year, replacing the previous 60-day deadline. The Notification also provides for an updated Form No. 49C in Appendix-II to align with this amendment.

CBDT issues FAQs on Guidelines for Compounding of Offences

The CBDT, *vide* Circular No. 04/2025 dated March 17, 2025, addressed FAQs to clarify the revised guidelines for Compounding of Offences under the IT Act (issued on October 17, 2024).[61] Through the FAQs, the CBDT has clarified various aspects of application filing procedure, fees, format, among others, specifying a person can file a compounding application unlimited number of times.

[60] Notification No. 14/2025 dated February 07, 2025 [F. No. 370142/2/2025-TPL].
[61] Circular No. 04/2025 dated March 17, 2025 [F. No. 285/08/2014-IT (Inv. V)].

REGULATORY INDIRECT TAX UPDATES

Customs (Administration of Rules of Origin under Trade Agreements) Amendment Rules, 2025

Originally, the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020, required importers to present a Certificate of Origin to claim preferential tariff treatment under free trade agreements. However, the term "certificate" has now been replaced with "proof" *vide Notification No. 14/2025-Customs (NT)* dated March 18, 2025. This change would essentially allow the customs authorities to accept additional documentation as well, providing option for diverse forms of origin evidence beyond traditional certificate.

Automation of refund application and processing under the Customs Act

Currently, refund application under the Customs legislations is filed manually which is time consuming. In a bid to enhance transparency and for electronic disbursal of refunds, an online processing and disbursal of Customs duty refund applications has been notified by *Circular No. 05/2025-Customs* dated February 17, 2025. Applicants will now have to file the Refund Application electronically on the ICEGATE Portal along with supporting documents. The refund amount will be credited to the bank account registered in the Customs Automated System. If there is any discrepancy, the same would be informed online. In case, the customs officer is not convinced, a show-cause Notice in case of rejection or the order for refund sanction or rejection shall be communicated electronically through ICEGATE Portal. Proper officer may pass a speaking order and also including examination of aspects relating to the unjust enrichment.

Clarifications regarding applicability of GST on certain services

The CBIC *vide Circular No. 245/02/2025-GST* dated January 28, 2025 clarified the applicability of GST on various services, based on the recommendations of the GST Council in its 55th meeting held on 21st December 2024. The following was explained:

a. *No GST is applicable on penal charges being levied by the Regulated Entities (**REs**)*: RBI instruction dated August 18, 2023 directed REs to levy penal charges in place of penal interest. It was clarified that no GST is payable on the penal charges levied by REs since the amount was not a consideration for tolerating an act or situation, rather amounts recovered to deter breach of the contract.

b. *Payment aggregators fall within the definition of 'acquiring bank' and are eligible for GST exemption*: It was clarified that GST exemption under Sl. No. 34 of notification No. 12/2017-CTR dated July 28, 2017 is available to acquiring bank in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services. Since payment aggregators fall within the definition of 'acquiring bank' given in the Explanation to the said exemption entry, the exemption was available. Further, it was also clarified that this exemption is limited to payment settlement function only, which involves handling of money, and does not cover Payment Gateway services by such aggregators.

c. *Upkeep of office of Municipal Corporation is not a function entrusted to Municipality*: The it was clarified that GST would be applicable on the services provided by facility management agency to Municipal Corporation of Delhi, for upkeep of its head quarter building at applicable rates as these services are not exempted. The exemption is available to composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Government or local authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of The Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of The Constitution of India. However, this service to the Municipal Corporation of Delhi was not supplied in relation to performing any functions entrusted to a Municipality under Article 243W of The Constitution of India.

d. It was clarified that Delhi Development Authority is not a local authority as per section 2(69) of the CGST Act.

<u>Regularisations</u>

a. The payment of GST on the supply of research and development services by government entities or research associations, universities, colleges or other institutions, against grants received from the government entities was regularized for the period July 01, 2017 to October 09, 2024, on 'as is where is' basis.

b. The payment of GST on services provided by training partners approved by the National Skill Development Corporation, for which the exemption was withdrawn *vide* Notification No. 08/2024 dated October 08, 2024. The same has not been regularized for the period October 2024 to January 15, 2025, on 'as is where is' basis.

c. The payment of GST on reverse charge basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person under composition levy was regularized for the period from October 10, 2024 to January 15, 2025 on 'as is where is' basis. The supply was brought under forward charge mechanism *vide* Notification No. 07/2025-CT(Rate) dated January 16, 2025.

d. The payment of GST on certain incidental or ancillary services to the supply of transmission or distribution of electricity, supplied by an electricity transmission or distribution utility is regularized for the period October 10, 2024 to January 15, 2025, on 'as is where is' basis. These services include metering equipment on rent, testing for meters/ transformers/ capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc.

e. The payment of GST on services supplied by Goethe Institute/Max Mueller Bhawans is hereby regularized for the period from July 01, 2017 to March 31, 2023 on 'as is where is' basis. Prior to 1st April, 2023, the Institutes did not collect GST from their students nor did they pay GST to Government as they were under the bona fide belief that their activities are exempt from GST.

Frequently Asked Questions (FAQs) on 'Restaurant Service' supplied at 'Specified Premises'

On March 28, 2025, the CBIC released FAQs on 'restaurant service' supplied at 'specified premises'. For the period prior to April 01, 2025, "specified premises" meant premises providing 'hotel accommodation' services having declared tariff of any unit of accommodation above INR 7500 per unit per day or equivalent. The term '<u>declared tariff</u>' was also defined. However, with effect from April 01, 2025, the definition of "declared tariff" shall be omitted.

Consequently, the FAQs clarify that for the period starting from 01.04.2025, the value of supply of hotel accommodation in the previous FY, i.e., the transaction value charged for the said supply, would be the basis for determining whether the premises providing hotel accommodation service mandatorily falls under the category of 'specified premises' or not in the current FY.

Any other registered person supplying hotel accommodation service can also file a declaration declaring the premises, from which the hotel accommodation services are supplied, to be a 'specified premises'. The procedural requirements for the same have also been detailed in the FAQs.

Further, the rate of tax notified by the Government for 'restaurant service' supplied in 'specified premises' would be 18% with ITC. For restaurant services supplied outside specified premises, the rate of 5% without ITC would be applicable.

Guidelines for arrest and bail in relation to offences punishable under the CGST Act

The Hon'ble Delhi HC in *Kshitij Ghildiyal vs. Director General Of GST Intelligence, Delhi, 2024 (12) TMI 1001* held that the grounds of arrest have to be communicated in writing to the arrested person. In furtherance of the same, Instruction No. 01/2025-GST dated January 13, 2025 clarified the distinction between 'reasons for arrest' and 'grounds of arrest'. The instruction mandate the 'grounds of arrest' to be communicated to the accused in writing, as an annexure to the arrest memo.

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

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