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Tax Scout | July – September, 2026

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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 September 30, 2026.

Our cover story examines the eligibility of cross-border partnerships for benefits under Double Taxation Avoidance Agreements in the changing international tax landscape. It explores the challenges arising from differing tax treatment of partnerships across jurisdictions and their implications for treaty access and cross-border investment structures.

This issue 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,

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Managing Partner
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India's leading law firm

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Fiscally Transparent Entities: Bridging the Gap in DTAA Protection

I. Introduction

Cross-border commerce has transformed over the past two decades. Multinational groups no longer rely exclusively on traditional corporate subsidiaries to execute global transactions. International capital flows and professional engagements frequently operate through flexible arrangements, including partnerships, LLPs, LLCs, collective investment vehicles, and business trusts. Several of these vehicles can hold assets, enter contracts, and conduct proceedings in their own name. Domestic tax laws in various jurisdictions, however, may adopt a different view, attributing their earnings directly to partners, members, or investors. Such arrangements are commonly referred to as fiscally transparent entities (**FTEs**).[1]

This divergence between legal and commercial identity for corporate purposes and fiscal treatment creates considerable friction when income crosses borders. One country may treat a partnership as transparent, while another regards the same vehicle as a separate taxpayer. An overseas firm advising an Indian client may therefore receive the fees, but its partners might have to bear the foreign tax liability. When the firm claims relief under the relevant DTAA, the IRA may question whether it satisfies the residence requirement under the domestic tax laws of its home jurisdiction if it is not independently liable to tax there.

The commercial consequences are not confined to the foreign enterprise. An Indian business may face uncertainty about withholding, contractual gross-ups, and the cost of obtaining such international services from FTEs. An investment vehicle may find its returns reduced by tax for which its participants cannot readily obtain credit. A structure adopted for commercial flexibility can thus become the starting point for recurring disputes about who is entitled to DTAA protection.

Denying relief merely because countries identify different taxpayers can frustrate the avoidance of double taxation. Granting relief automatically because income passes through an overseas vehicle can be equally problematic. The challenge is to accommodate genuine differences in taxation without extending a DTAA beyond the persons and income it protects. In the post-Base Erosion and Profit Shifting (**BEPS**) environment, this requires a framework that addresses both DTAA entitlement and the practical means of establishing it.

II. Understanding fiscal transparency

Fiscal transparency attributes income, wholly or partly, to participants assessed on their respective shares. The allocation can arise even where earnings remain within the business and no distribution is made.

Determining an FTE's eligibility for DTAA benefits requires examining whether it is a "person" recognised by the relevant DTAA. Article 3(1)(a) of the OECD Model Tax

[1] OECD, The Application of the OECD Model Tax Convention to Partnerships (1999); OECD Model Tax Convention, Article 1(2)..

Convention on Income and on Capital 2025[2] (**Model Convention**) provides that the term "person" includes *"an individual, a company and any other body of persons"*. Article 3(1)(b) separately defines a company as *"any body corporate or any entity that is treated as a body corporate for tax purposes"*. A partnership, for example, may therefore fall within the definition of "person" either through its treatment as a company or as a body of persons.

Recognition as a "person" must be followed by the examination of residence. Article 1(1) of the Model Convention provides that it applies to persons who are residents of one or both contracting states. Article 4(1) defines "resident" as a person who, under the relevant country's laws, is liable to tax by reason of domicile, residence, place of management, or another similar criterion. The definition thus requires a tax liability arising from the person's connection with that country, rather than merely from earning income there. This residence-based connection is described as fiscal domicile.

However, where that law attributes a firm's profits directly to its partners and assesses them on their respective shares, the firm is fiscally transparent. The tax then becomes payable by the partners, and the DTAA must be examined to determine whether taxation at the partner level permits relief for tax on income received through the firm.

The India–US DTAA expressly addresses this treatment. Article 3(1)(e) includes partnerships within the definition of persons, while Article 4(1)(b) recognises partnership, estate, or trust income to the extent that it is subject to tax as income of a resident, *"either in its hands or in the hands of its partners or beneficiaries"*. The clause permits taxation through participants to support DTAA protection but limits that protection to the income satisfying the resident-taxation requirement.

By comparison, Article 3(1)(e) of the India–Netherlands DTAA includes individuals, companies, other bodies of persons, and entities treated as taxable units. Article 4(1) requires liability to tax arising from domicile, residence, management, or a similar criterion, without expressly recognising taxation through participants. This DTAA does not contain any clause equivalent to the India–US clause under which partner-level taxation is expressly accepted for the purposes of determining relevant income.

The India–Switzerland DTAA similarly includes an individual, a company, a body of persons, or another taxable entity within the scope of "person" and requires residence-based liability under Article 4(1). It also contains no corresponding participant-taxation clause. Neither DTAA expressly excludes all fiscally transparent entities, and both leave the claim to be established under their general definitions of "person" and "resident", without expressly providing that taxation of participants satisfies the residence requirement.

Article 1(2) of the Model Convention provides an express rule for income earned through transparent arrangements, recognising it as income of a resident to the extent that the relevant state treats it as that resident's income for tax purposes. However, India's reservation against Article 3 of the MLI concerning fiscally transparent entities means that the MLI cannot introduce this rule into India's covered DTAAs where the existing bilateral wording lacks such a provision.

A wide range of issues can arise from such cross-border arrangements. India may regard the contractual recipient as deriving income and require that recipient to establish residence abroad. The foreign jurisdiction may respond that the recipient is not independently taxed because its participants are the taxpayers. If those participants seek relief, the objection may then be that they neither contracted with the Indian client nor received the payment directly.

This can leave the investment vehicle without relief because it is transparent, and its participants without relief because the vehicle stands between them and the income. Foreign tax credits may also become difficult where the Indian assessment and the foreign liability attach to different persons. The same economic earnings can consequently suffer tax in two jurisdictions without an effective means of relieving the overlap.

An opposite risk also exists in that relief based solely on the vehicle's location could protect income attributed to persons who are not residents of the relevant DTAA partner. A mismatch may also leave income outside the tax base contemplated by the DTAA. The appropriate enquiry must follow the relevant income and the person whose residence supports the particular claim.

This is particularly important for businesses selecting an entity form. A transparent vehicle may offer operational flexibility and a single layer of taxation in its home market, but those advantages do not resolve its treatment elsewhere. DTAA uncertainty should, therefore, be

[2] OECD (2026), Model Tax Convention on Income and on Capital 2025 (Full Version), OECD Publishing, Paris, https://doi.org/10.1787/db32e18b-en.

evaluated alongside regulatory and commercial considerations at the outset, rather than discovered only when an Indian customer asks for residence evidence before releasing payment.

III. Claiming benefits under the DTAA and related issues

The wording differs across DTAAs, and a classification accepted under one DTAA cannot automatically determine eligibility under another. In *P & O Nedlloyd Ltd.*,[3] the Calcutta HC considered reassessment notices issued to a shipping partnership constituted under English and Welsh law. The IRA sought to tax its shipping income while denying India–UK DTAA protection because the partnership was not separately recognised as a taxable unit in the United Kingdom.

The Calcutta HC examined the exception expressly provided for partnerships in the applicable India–UK DTAA as it then stood. Although Article 3(1)(f) excluded partnerships from the definition of "person", Article 3(2) included a partnership treated as a taxable unit under the IT Act. Section 2(31)(iv) included a firm within the definition of "person", while Section 2(23)(i) referred to the Indian Partnership Act, 1932, to determine firm status. Applying those provisions, the HC found that the arrangement qualified as a firm and consequently fell within Article 3(2) of the India–UK DTAA.

The HC further held that the IRA's attempt to assess the partnership under Section 4 necessarily treated it as an Indian taxable person. That status also brought it within the DTAA's express partnership provision. The IRA could not, therefore, deny DTAA coverage merely because the United Kingdom adopted a different tax treatment. The HC accordingly quashed the reassessment notice.[4]

Domestic legislation provides the route for invoking DTAA relief but does not dispense with the DTAA's conditions. Section 90(2) of the IT Act permits the more beneficial provisions to apply to an assessee covered by the DTAA. Historical disputes must be read under that legislation and the DTAA wording applicable to the relevant years. However, current compliance must also take account of the IT Act 2025, which became effective April 1, 2026, and the relevant transitional provisions.[5]

IV. "Liable to tax" and "liable to pay tax"

The expression *"liable to tax"*, used in the residence definitions of various DTAAs, is central to determining an entity's residence status. Taxation of particular income merely because it arises in that state is generally insufficient. Registration or business activity may establish a commercial presence but does not, by itself, satisfy the residence requirement under Article 4.

It is important, however, to distinguish liability to tax from actual payment of tax. A resident may have no tax payable on account of losses, deductions, credits, or an exemption. Fiscal transparency nevertheless raises an additional issue. An entity that is liable to tax but has no tax payable is not necessarily comparable to an entity whose income is taxed in the hands of its partners. While the former concerns the amount of tax payable, the latter raises the question of who bears the liability. Accordingly, the principle that actual payment is unnecessary does not, without more, establish that taxation of the partners satisfies the residence requirement for the partnership.

The IT Act, 2025 defines "liable to tax" by reference to an income-tax liability under the law of the relevant country and includes a person subsequently exempted from that liability. However, the definition does not expressly address whether taxation in the hands of partners satisfies the residence requirement for an FTE. That question must therefore be examined under the relevant DTAA, without treating fiscal transparency as equivalent to a tax exemption.[6]

International case law illustrates how other jurisdictions have addressed this gap. The separation between the recipient of income and the actual taxpayer in the residence jurisdiction received direct consideration in the Canadian decision in *TD Securities (USA) LLC*.[7] In that case, a Delaware LLC carried on brokerage operations through a Canadian branch. Canada imposed branch tax at the rate of 25 per cent, whereas qualifying US companies could claim a 5 per cent DTAA rate. The authorities denied that rate because the LLC was disregarded and not independently liable to US tax.

The LLC's entire income was nevertheless included in its corporate member's taxable income and consolidated within the US group return, with tax charged back to the LLC.

[3] P & O Nedlloyd Ltd. v. ADIT, W.P. Nos. 457 and 458 of 2005 (Calcutta HC).
[4] P & O Nedlloyd Ltd. v. ADIT, W.P. Nos. 457 and 458 of 2005 (Calcutta HC), concerning the earlier India–UK DTAA.
[5] Income-tax Act, 1961, Section 90(2); Income-tax Act, 2025, Section 1(3) and applicable repeal, savings, and transitional provisions.
[6] Section 2(66) of the IT Act, 2025.
[7] TD Securities (USA) LLC v. The Queen, 2010 TCC 186.

Examining the DTAA, protocols, technical explanations, and bilateral treatment of transparent arrangements, the Tax Court of Canada held that the LLC was to be regarded as resident and liable to tax for the claim because its income was comprehensively taxed through its US corporate member.

Subsequently, the Mumbai ITAT considered Indian aspects of a similar question in *Linklaters LLP*.[8] Linklaters LLP, a UK-based law firm structured as a partnership, rendered legal services connected with Indian engagements through overseas work and personnel visits. Since UK taxation operated through partners, the IRA contended that the firm itself was not liable to tax. The ITAT recognised the definition of "person" under the earlier Article 3(2) of the India–UK DTAA as it then stood, which expressly accommodated partnerships treated as taxable units under Indian law.

Drawing upon *TD Securities*, the Mumbai ITAT held that comprehensive UK taxation of the entire partnership income could not be disregarded merely because tax was collected through partners. It also rejected selective reliance on the OECD's exclusion of untaxed partnerships while denying its corresponding partner-level solution. The ITAT upheld eligibility provided that the entire partnership profits were taxed in the United Kingdom. Significantly, it also recognised the difficulty where non-resident partners prevented comprehensive taxation there. The decision therefore accommodated differences in collection machinery without treating the registered office as sufficient to protect every partner's share.

A similar emphasis on comprehensive taxation through resident partners supported relief for the Danish partnership in *A.P. Moller*. That dispute also underlined a separate point that management authority and return-filing responsibilities did not make the partnership the owner of the shipping income earned by the companies it managed. Therefore, it is necessary first to identify the person to whom the income is attributable before determining whether that person's residence supports a claim for DTAA relief.[9]

V. Entitlement beyond the contractual recipient

Recognising taxation through partners does not eliminate the need to establish their connection with the income. A



partner's right to a share of profits may differ from a direct entitlement to the fees earned by the firm. Where the DTAA expressly accommodates income earned through partnerships, the absence of a direct contract between the partner and the Indian payer should not, by itself, defeat relief. In other cases, the legal basis for attributing the receipt to the partner requires closer examination.

This distinction assumes significance in professional engagements, where the client ordinarily contracts with the firm rather than its individual partners. In *Schellenberg Wittmer*, the AAR rejected the partners' claim on the basis that the contractual fees belonged to the Swiss partnership, while the partners were entitled to shares of its profits.[10] Taxation of those shares abroad did not, on the AAR's interpretation of the applicable DTAA, establish entitlement to relief for the underlying fees.

Investment arrangements present a similar difficulty even though the relevant rights may be distributed among several persons. A custodian may hold legal title to securities; a manager may make investment decisions; and participants may enjoy the returns. These functions must be distinguished before determining who can claim DTAA protection. In *ING Bewaar Maatschappij*, the ITAT examined the interests of the identified Dutch participants and the capacity in which the custodian was assessed as trustee. Relief followed from those arrangements, rather than from the fund's transparent status alone.[11]

The appointment of a custodian does not necessarily establish a trust or another qualifying representative

[8] Linklaters LLP v. ITO [2010] 40 SOT 51 (Mumbai - Trib.).
[9] A.P. Moller, TS-555-ITAT-2013(Mum).
[10] Schellenberg Wittmer, In re [2012] 24 taxmann.com 299 (AAR).
[11] ING Bewaar Maatschappij I BV, TS-738-ITAT-2019(Mum)

relationship. In *ABC*, the AAR found that the gains accrued to the funds and their subsequent allocation did not establish the participants' direct entitlement or the representative relationship asserted in support of relief. The governing documents must therefore establish more than the eventual distribution of returns. They should explain who is entitled to the income and in what capacity it is received.[12]

Under the Indian IT Act, 2025, an assessment of a trustee may require examination of the beneficiaries represented. However, an assessment of a firm in its own right raises a different enquiry. Identifying this distinction at the outset helps ensure that the residence evidence relates to the person whose entitlement is being asserted. Decisions involving historical fund structures must likewise be read in the context of the arrangements, law, and periods they considered.

VI. LLCs: Separate legal identity, different tax treatment

An LLC's ability to elect corporate taxation adds a further consideration. An available election, however, is not necessarily equivalent to an election actually exercised. In *General Motors*, the Delhi ITAT accepted the claim under the India–US DTAA after considering the LLC's legal characteristics, tax classification, taxation through its owner and the particular Internal Revenue Service (**IRS**) certificate describing its relationship with a US-resident corporation. The decision supports relief on those facts and should not be understood as establishing that every disregarded LLC automatically qualifies as a resident for DTAA purposes.[13]

The enquiry must therefore go beyond showing that a person in the ownership chain is taxable abroad. Otherwise, taxation of an owner could be used to establish residence for an entity that does not independently satisfy the applicable conditions. The distinction becomes particularly important where a provision requires the LLC itself to be resident. In *Susquehanna*, the Irish Court of Appeal held that taxation of the ultimate owners did not establish the parent LLC's own liability to tax. It distinguished a provision recognising income attributed to resident owners from one conferring residence on the entity. Thus, DTAA protection for income passing through an LLC and the LLC's own residence for DTAA purposes remain separate questions.[14]

VII. One partnership, multiple DTAAs

The position becomes more complex where a partnership has partners resident in several countries. Although the Indian client receives a single invoice, the resulting income may be allocated among persons in different residence jurisdictions. The DTAA with the country in which the firm is established may protect only part of that income. The remaining shares may require examination under India's DTAAs with the partners' respective residence countries.

In *Herbert Smith Freehills*, the Delhi ITAT addressed this issue by accepting treatment under the India–UK DTAA for the share attributable to UK-resident partners and directing the examination of disputed non-UK shares under the relevant residence-country DTAAs. The ITAT held that a claim could be examined under another DTAA even if it did not qualify under the India–UK DTAA. However, the claimant would still need to meet the residence requirements, establish entitlement to the income, and satisfy the conditions of the relevant income Article under that DTAA.[15]

Apportioning income among partners requires more than a statement of their ownership interests and countries of residence. A partner's capital contribution may not correspond to the share of profits or entitlement to a particular receipt. These entitlements may also change during the year when partners join or retire, or where the partnership provides for specific allocations. If a partner is itself fiscally transparent, it may be necessary to trace the income further to identify the person taxed on such income. Year-end distributions may also not fully reflect these entitlements. For instance, a payment made after a partner's retirement may relate to income earned before retirement, while a revised profit-sharing ratio may apply only to certain receipts. The allocation must therefore be supported by the partnership arrangements and the applicable foreign tax treatment, with a clear explanation of how each partner's share has been determined.

VIII. DTAA eligibility is only the first step

Establishing residence and identifying the share of income eligible for DTAA relief are only the first steps. In *Clifford Chance*, the Bombay HC determined the extent to which professional fees could be taxed in India by reference to

[12] ABC, In re [2021] 125 taxmann.com 293 (AAR)
[13] General Motors Company USA v. ACIT [2024] 166 taxmann.com 170 (Delhi - Trib.)
[14] Susquehanna International Securities Ltd. v. Revenue Commissioners, Appeal No. 276 of 2024, Irish Court of Appeal dated May 27, 2025.
[15] Herbert Smith Freehills LLP v. CIT(A)-43 [2026] 187 taxmann.com 916 (Delhi–Trib.).

services performed in India under the applicable DTAA provision. The decision illustrates the separate enquiry into source and attribution. It does not establish that the taxation of the partners is, by itself, sufficient to confer residence for DTAA purposes on the firm.[16]

Documentation assumes particular importance in this exercise. IT Act, 2025, requires a non-resident claiming DTAA relief to obtain a tax residence certificate (**TRC**) from the relevant foreign government and furnish the other prescribed documents and information.[17] However, a TRC establishes residence without necessarily establishing entitlement to a particular receipt. A partner's TRC may not show that the Indian income was allocated to that partner. Likewise, a certificate issued to the entity may not establish the residence of all its participants or the portion of income eligible for relief.

The supporting documents should therefore explain both the basis of the claim and the allocation of income. The partnership or fund agreement, evidence of foreign tax classification, relevant tax elections, participant records, and allocation statements should be read together. Accounts and foreign tax filings may further demonstrate how the Indian receipt was included in the relevant tax computation. At the same time, the documentation sought should be relevant to the conditions being examined. Where the applicable framework permits proportionate relief, a deficiency in one participant's claim should not, by itself, defeat independently supported claims relating to other shares.

IX. Towards greater certainty

Uncertainty over DTAA entitlement affects cross-border payments long before a dispute reaches the courts. Indian payers must determine withholding obligations, while foreign firms must establish how their income is allocated and taxed. Clearer rules would allow both parties to address these obligations when payments fall due, rather than through subsequent litigation.

Greater certainty would therefore require coordinated bilateral and administrative measures. Bilateral protocols could expressly address partial transparency, tiered structures, and partnerships whose members reside in different countries. Administrative guidance could specify the supporting documents required and differentiate between the information needed at the withholding stage and that required during final assessment. Where the contracting states attribute the same income to different persons, taxpayers could also consider the mutual agreement procedure under the relevant DTAA, subject to its conditions and timelines. Such guidance would be particularly useful if accompanied by illustrations explaining the treatment of income attributable entirely to qualifying residents, partnerships with members resident in several countries, and changes in participation during an accounting period. It should clarify how entitlement is to be established without extending the substantive relief available under the DTAA. Consistent procedures would reduce recurring disputes over documentation and allow taxpayers and the IRA to focus on substantive questions of entitlement, attribution, and abuse.

These measures should facilitate the timely determination of properly supported claims, rather than confer automatic relief on every transparent entity. A clear verification process would also enable the IRA to identify specific deficiencies without allowing uncertainty over one aspect of a claim to obscure the remaining issues. The treatment of FTEs cannot be resolved by invariably preferring either the entity or its participants as the claimant. The relevant DTAA must determine whether the person seeking relief has the required connection with both the income and the residence jurisdiction. The identity of the contractual recipient, the attribution of income for tax purposes, and the claimant's residence for DTAA purposes must therefore be examined separately, even where they concern the same payment.

Businesses should undertake this analysis when establishing their cross-border arrangements and maintain current records of ownership, tax classification, and income allocation. The IRA should likewise assess each claim under the applicable provisions and supporting evidence, without presuming that transparency either establishes or defeats entitlement. Express bilateral provisions, supported by proportionate verification procedures, would help preserve India's legitimate taxing rights while providing a predictable basis for granting DTAA relief to eligible claimants.

[16] Clifford Chance v. DCIT [2009] 318 ITR 237 (Bombay HC).
[17] Section 159(8) of the IT Act.



CASE LAW UPDATES – DIRECT TAX

INTERNATIONAL TAX

Mere deputation or secondment does not constitute permanent establishment

Introduction

In ***LG Electronics***,[18] the ITAT Delhi Bench held that a fixed place PE in India cannot be established merely on account of the deputation of expatriate employees to the Indian subsidiary. This decision has deleted both the finding of a PE in India and the consequential attribution of 25 per cent of profits to that alleged PE.

Facts

South Korea-based LG Electronics Inc., Korea (**LEI** or the **Assessee**), has an Indian subsidiary, LG Electronics India Private Limited (**LEIPL**). Certain LEI employees were seconded to the Indian subsidiary, LEIPL. During a survey under Section 133A of the IT Act at LEIPL's business premises, tax authorities recorded statements from some of these expatriate employees. Relying solely on selected portions of those statements without corroborative documentary evidence, the Indian tax authorities concluded that such expatriate employees under the direct control of the Assessee, while being officially on LEIPL's payrolls. Consequently, IRA treated LEIPL as the Assessee's fixed-place PE in India. LEI appealed this finding before the ITAT.

Issue

Whether the Assessee had a fixed place PE in India during the relevant assessment years within the meaning of Article 5 of the India-Korea DTAA, solely by reason of the deputation of its expatriate employees to LEIPL?

Arguments

The Assessee submitted that the sole basis for a PE allegation was that the expatriate employees deputed to LEIPL continued to work under the Assessee's control. This conclusion had rested entirely on selective excerpts from the statements recorded during a Section 133A survey carried out at the business premises of LEIPL, totally ignoring the employment agreements executed between these expatriate employees and LEIPL. Under these employment agreements, the expatriates were engaged exclusively by LEIPL, bound by its service and disciplinary rules, liable to be terminated without cause during probation, and expressly barred from rendering any service to any other person, whether for consideration or gratuitously, without LEIPL's explicit written consent. Moreover, their salaries were paid by LEIPL and subjected to tax deduction at source (**TDS**) in India, as evidenced by Form 16s issued to them.

The Assessee emphasised that the facts mirrored those in *Samsung Korea*,[19] where the ITAT and the Delhi HC had rejected PE allegation primarily based on statements recorded during survey operations. Reliance was also placed on the co-ordinate Bench's ruling in LEIPL's own case during AY 2010–11, where the ITAT had examined employment agreements and characterised the expatriates as employees of LEIPL. The Assessee further argued that the assessment order failed to specify the precise nature of the alleged PE and, thus, was liable to be quashed.

The IRA, on the other hand, contended that the survey statements, read as a whole, revealed a coordinated

[18] *LG Electronics Inc., Korea v. Assistant/Deputy Commissioner of Income Tax, International Taxation* [TS-1337-ITAT-2026(DEL)].
[19] PCIT v. Samsung Electronics Company Ltd [TS-21-HC-2025(DEL)].

architecture of control exercised by the Assessee over the expatriate employees deployed to LEIPL. The IRA also relied on statements of certain expatriate employees suggesting that LEIPL's product range was restricted to a centrally determined "menu card" or product development road map was dictated entirely from Korea, that critical stages of product development and quality verification were conducted in Korea, and that the Assessee charged a bill of materials at the verification stage. The IRA contended that, taken together, these factors demonstrated that the Assessee's global manufacturing business was substantively carried on through LEIPL's Indian facility.

Decision

The ITAT held that the conditions necessary to constitute a fixed-place PE under Article 5 of the India–Korea DTAA were not satisfied on the facts. The ITAT found that the specific excerpts the IRA had relied on did not establish that the expatriate employees were under the Assessee's direct control, supervision, and employment. It clarified that mere prior employment with the Assessee and now with LEIPL did not, by itself, imply that such expatriate employees were still working for and on behalf of the Assessee. The ITAT similarly rejected the inference drawn from the fact that LEIPL's expatriate managing director reported to the Asia Region CEO in Singapore, observing that "a subsidiary of a company would not be working in isolation and has to work in tandem with product/marketing policy of its holding company", and that this alone could not establish that the expatriate employees worked for the Assessee.

On examining the employment agreement between LEIPL and the expatriate employees, the ITAT observed that the agreements required exclusive service to LEIPL, subjected the expatriates to LEIPL's service and disciplinary rules, and prohibited them from rendering any service to any other person, whether for consideration or gratuitously, without LEIPL's written consent. It held that the AO had erred in disregarding this contemporaneous documentary evidence in favour of selective reliance on excerpts from the Section 133A survey statements. The ITAT also noted that a co-ordinate Bench, in LEIPL's own case for AY 2010–11, had examined identical employment agreements and held that the expatriates were employees of LEIPL working under its direct control and supervision; thus, a contrary view could not be sustained on substantially similar facts in the Assessee's case. It further relied on the Delhi HC's decision in *Samsung (supra)*, which addressed materially identical facts arising from a similar survey action, affirming that secondees working to further the business of the host entity do not create a fixed-place PE for their former employer.

Applying Article 5 of the DTAA to the totality of the evidence, the ITAT concluded that the IRA had failed to establish that the Assessee wholly or partly carried on business through a fixed place in India, and accordingly ruled that no fixed-place PE existed. As a result, it reversed the finding of PE and deleted the consequential attribution of 25 per cent of profits to the alleged PE in favour of the Assessee.

Significant Takeaways

This decision can be considered as an important follow-up judgment after the Delhi HC's decision in *EY LLP*[20] for structuring secondment arrangements by several multi-national enterprises (**MNEs**) from an Indian tax perspective. It does not overrule or dilute *EY LLP*, as the issues dealt here are different. However, it demonstrates that Indian tax authorities cannot treat the presence of every expatriate employee as a taxable presence for the foreign company in India. Where the evidence shows that secondees are genuinely employed by, and exclusively working for, the Indian entity's business operations, the ITAT provides some level of comfort against the doomsday reading of the IRA.

However, this decision and earlier *EY LLP* decision examine different tax consequences arising from secondment arrangements. While *EY LLP* focused on whether services performed by secondees could result in payments being characterised as fees for technical services rendered by employees of the foreign entity to the Indian subsidiary, the present case analysed whether the presence and activities of secondees in India could lead to the constitution of a fixed-place PE of the foreign entity.

Nonetheless, the overlap between the ITAT's current decision and the Delhi HC's decision in *EY LLP* cannot be ignored. Applying the principles enunciated by the Delhi HC, the IRA may argue that since the expatriate employees remain employees of LEI, their sheer presence creates a PE of LEI in India. Until the CBDT issues a specific notification on cross-border secondments, this sword will continue to hang on all MNEs with expatriate employees in India.

This decision also underscores the importance of maintaining robust contemporaneous documentation to substantiate the

[20] *CIT (International Taxation) – I v. Ernst and Young US LLP* [2026] 187 taxmann.com 711 (Delhi).



intended secondment arrangement. The documentation should clearly demonstrate that the foreign employment is terminated or, at the very least, suspended without any enforceable lien or continuing employment nexus with the foreign entity for social security, or other employment-linked benefits. Further, the employment agreement with the Indian entity should confer on the Indian entity real day-to-day supervision, disciplinary authority, and power of termination of the secondment. It should also not contain an automatic right or assured expectation of resuming employment with the foreign entity at the end of the secondment term. The ruling emphasises that these safeguards must not merely be drafted in the documentation but must be reflected in actual conduct of the secondees.

> **“ Expatriate employees working to further the business of the entity to which they are seconded do not create a fixed-place PE for their former employer. ”**

Clarificatory Tax Amendments Widening Tax Liability Cannot Operate Retrospectively

Introduction

In ***Jindal Thermal Power***,[21] Karnataka HC delivered a significant ruling on the limits of retrospective tax legislation. It held that a clarificatory amendment which, in substance, widens the scope of a charging provision, cannot be given retrospective effect to impose a tax on an assessee. The HC read down the Explanation inserted into Section 9(2) of the IT Act by the Finance Act, 2010 (**FA, 2010**), as prospectively applicable, rejecting the IRA's contention that the amendment, framed as being "for the removal of doubts", merely clarified the pre-existing source rule governing FTS paid to non-residents. The Court held that FA 2010 amendment, by dispensing with the requirement that services be rendered in India, materially altered chargeability under Section 9(1)(vii) and could not, consistent with settled principles, operate retrospectively.

Facts

Jindal Thermal Power Company Limited (earlier known as Jindal Tractebel Power Company Limited), (**Assessee**) entered into contracts in 1995 with three overseas entities, Raytheon Ebasco Overseas Ltd. (**REOL**), Badger Energy Inc., and Energy Overseas International Inc., for offshore equipment supply, engineering, transportation, erection services, and construction materials in connection with a power project. On March 31, 1996, the Assessee deducted TDS of INR 2.02 million on a part of the payment made to REOL. The AO (TDS) subsequently passed orders under Section 201(1) of the IT Act for AYs 1996–97 and 1997–98, raising demands of INR 18.63 million and INR 152.30 million, respectively. The CIT(A) and, thereafter, the ITAT upheld the IRA's position that the Assessee was obliged to deduct tax under Section 195, holding that the payments constituted FTS chargeable under Section 9(1)(vii) of the IT Act and Article 12(4) of the India–United States DTAA, since the services were utilised in a business carried on in India.

Aggrieved, the Assessee appealed to the HC under Section 260A. During the pendency of the appeals, in *Ishikawajima-Harima Heavy Industries*,[22] the SC held that FTS income of a non-resident is taxable under Section 9(1)(vii) only where the underlying services are both rendered and utilised in India. The subsequent insertion into the Finance Act, 2007, of an Explanation to Section 9(2), with retrospective effect from June 1, 1976, dispensed with the requirement of residence, place of business, or business connection in India. This amendment did not disturb the twin-condition test laid down in *Ishikawajima-Harima (supra)*. FA 2010 thereafter substituted the Explanation to Section 9(2), again with retrospective effect from June 1, 1976, to provide that FTS income would be deemed to accrue or arise in India whether or not the non-resident had rendered services in India. On this basis, the Assessee filed a writ petition challenging the constitutional validity of the retrospective application of the FA 2010 amendment.

Issue

(i) Whether the judgment of the Co-ordinate Bench of the HC of March 16, 2009, was liable to be reversed or modified in light of the amendment to Section 9 introduced by the FA 2010?

(ii) Whether the retrospective application of the FA 2010 amendment from June 1, 1976, is unconstitutional and bad in law?

Arguments

The Assessee contended that the twin conditions laid down in *Ishikawajima-Harima* continued to govern taxability under Section 9(1)(vii), that the services giving rise to the disputed payments were rendered wholly from outside India, and that the FA 2010 amendment, though styled as a clarification "for the removal of doubts", in substance altered the chargeability by removing the rendition requirement. Therefore, these could not be applied retrospectively to fasten a liability that did not exist at the time of payment. Relying on the maxims *lex non cogit ad impossibilia and impotentia excusat legem,* the Assessee submitted that retrospective amendments cannot compel compliance with an obligation not in force at the relevant time. It was further argued that the withdrawal of CBDT Circular No. 23 of 1969 and Circular No. 786 of 2000, both of which had granted relief to non-residents, could not operate retrospectively to withdraw an accrued benefit. Even if the domestic law were to be read as amended, Article 12(4) of the India–United States DTAA, which confines fees for included services to services rendered, afforded a more beneficial position that had to prevail under Section 90(2) of the IT Act.

The IRA, on the other hand, contended that the charge under Section 9(1)(vii) had always existed and was unaltered by the FA 2010 amendment, which merely clarified that the "source rule" did not import a twin-condition requirement. It was submitted that the explanatory memorandum to the FA 2010 demonstrated that Parliament had always intended taxability to turn on the

[21] Jindal Thermal Power Company Limited (Earlier Known as Jindal Tractebel Power Company Ltd.) v Deputy Commissioner of Income Tax (TDS) and Ors, [TS-1208-HC-2026(KAR)].
[22] Ishikawajima-Harima Heavy Industries Ltd. v. DIT, [2007] 288 ITR 408 (SC), (2007) 3 SCC 481.

place of utilisation rather than the place of rendition of services, and that the twin-condition test in *Ishikawajima-Harima* did not reflect the true legislative intent. The IRA also argued that a mere change in law, even with retrospective effect, could not by itself justify reopening a concluded judgment, and that the writ petition challenging the vires of the amendment was not maintainable since any tax liability rested on the non-resident payee rather than the Assessee.

Decision

The HC held that the FA 2010 amendment to Section 9 must be read down as prospective and not retrospectively applicable from June 1, 1976. The Court observed that the legislature has progressively widened the charge under Section 9(1)(vii) under the guise of successive clarifications, first dispensing with the requirement of residence, place of business, or business connection in India and subsequently with the requirement that services must have been rendered in India. It held that a provision described as clarificatory and using the phrase "for the removal of doubts" must nonetheless be read prospectively since, in substance, it broadens the scope of a taxing statute. A provision added under the garb of a clarification cannot create a fresh charge of tax or impose liability on an assessee whose transaction was not liable to tax at the time it occurred. The Court observed that the effect of the FA 2010 amendment was to nullify the ratio of *Ishikawajima-Harima*. By altering the scope of the charging provision read with Sections 4 and 5 of the IT Act, the amendment was, in substance, creating a fresh levy of tax liability with retrospective effect, contrary to settled principles of law.

The Court further held that, even assuming the FA 2010 amendment validly altered the domestic position, Article 12(4) of the India–United States DTAA defines fees for included services by reference to services rendered, rather than merely utilised, and that under Section 90(2) of the IT Act, where two interpretations are possible between domestic law and a tax treaty, the interpretation more beneficial to the assessee must prevail.

Significant Takeaways

This judgment reinforces one of the most consequential constraints on fiscal legislative power in Indian tax jurisprudence: an amendment dressed as clarificatory cannot be used to overturn adverse judicial precedents and create, with retrospective effect, a tax liability that did not exist in law at the time the transaction occurred. The ruling sits within a well-established lineage of authority holding that the phrase "for the removal of doubts" does not offer protection to a statute where an Explanation expands, rather than merely clarifies, a charging provision. Consequently, it must be read prospectively regardless of the language Parliament chooses to describe it.

This ruling is significant for future assessments, reassessments, and review proceedings wherever the IRA seeks to invoke a retrospective "clarificatory" amendment to create a fresh charge against a taxpayer, reinforcing that the boundary between genuine clarification and a disguised fresh imposition of taxes retrospectively. The Court has also reiterated the often-contested principle that in case of difference of position between the domestic legislation and treaty provisions, the position more beneficial to the taxpayer should be adopted, providing relief to international businesses.

> **"A provision of law added by an amendment under the garb of a clarification cannot create a fresh charge of tax and impose tax liability."**



CASE LAW UPDATES – DIRECT TAX

TRANSACTIONAL ADVISORY

Advances retained as book liabilities are not "forfeited" by mere efflux of time; Section 56(2)(ix) inapplicable

Introduction

In ***Ravi Shankar Shetty,***[23] the Karnataka HC dismissed the IRA's appeal and held that advances received in connection with the procurement of land could not be treated as "forfeited" within the meaning of Section 56(2)(ix) merely because eight years had elapsed without the counterparties demanding a refund.

Facts

Engaged in the business of identifying, procuring, and facilitating the acquisition of lands for real estate projects, the case of Shri Ravi Shankar Shetty (**Assessee**) was selected for scrutiny for AY 2015–16, and notices under Sections 143(2) and 142(1) were issued. The issue before the AO concerned advances aggregating INR 218.92 million outstanding as on March 31, 2015, for procuring certain lands. The AO passed an assessment order under Section 143(3) making an addition of INR 211.10 million under Section 56(2)(ix), treating the advances as virtually forfeited on the ground that no claim for refund was made by the counterparties for nearly eight years. The CIT(A) dismissed the Assessee's appeal against the assessment order. On further appeal, the ITAT allowed the Assessee's appeal, holding that the conditions prescribed under Section 56(2)(ix) of the IT Act were not satisfied and that the addition could not be sustained.

Aggrieved, the IRA preferred this appeal before the HC.

Issue

Whether the ITAT's order deleting the addition of 211.10 million was perverse, given that the advance had been outstanding in the Assessee's books for nearly eight years without any claim for refund by the promoters, such that the advance should be treated as forfeited under Section 56(2)(ix)(a)?

Arguments

The IRA submitted that the Tribunal erred in holding that the conditions prescribed under Section 56(2)(ix) were not satisfied. It contended that the Assessee had utilised the advances to purchase assets in his own name rather than to procure land on behalf of the investor. Moreover, because these advances remained outstanding in the Assessee's books for nearly eight years without any claim being made, the IRA argued that this amounted to a virtual forfeiture. It characterised the advances as trade advances for the transfer of a capital asset which, not having been returned and having been used by the Assessee, acquired the character of income under Section 56(2)(ix).

The Assessee contended that Section 56(2)(ix) would not be attracted to the facts of the case, as there was neither a negotiation for the transfer of a capital asset nor any forfeiture. It submitted that because the advance was received for identifying, procuring, and acquiring land, it would amount to stock-in-trade rather than a capital asset. Therefore, on this ground as well the provision was not attracted.

[23] Pr. Commissioner of Income Tax, Koramangala, Bangalore & Anr. v. Shri Ravi Shankar Shetty.

Decision

The HC upheld the ITAT's order and dismissed the IRA's appeal. It held that Section 56(2)(ix) requires, as a *sine qua non*, the receipt of a sum of money as an advance or otherwise in the course of negotiations for the transfer of a capital asset. It also noted that such sum must further be forfeited, with the negotiations not resulting in a transfer of the capital asset. Since the statute uses the conjunction "and", both conditions have to be satisfied cumulatively.

On facts, the HC found that the advances received were not advances paid during negotiations for the transfer of any capital asset belonging to the Assessee but were given to the Assessee to locate and acquire land required for the business projects. The relationship between the parties was accordingly not that of a transferor and transferee negotiating a transfer of a capital asset but one where funds were made available to the Assessee to carry out a business activity. In the ordinary course of the Assessee's business, the lands proposed to be acquired would partake the character of stock-in-trade, which Section 2(14) expressly excludes from the definition of "capital asset". The first limb of Section 56(2)(ix) was accordingly not satisfied.

The HC further held that since the transaction did not involve a negotiation for transfer of a capital asset, the question of examining forfeiture did not arise. The HC held that mere efflux of time cannot amount to automatic forfeiture unless there is material to demonstrate that the recipient has become entitled to retain the advance absolutely. As the advances continued to be reflected and confirmed as a liability in the Assessee's account books and some amount had in fact been returned to the investor, the HC held that forfeiture could not be inferred from mere lapse of eight years and the absence of a refund claim. The substantial questions of law were accordingly answered in favour of the Assessee. Consequently, the IRA's appeal was dismissed.

Significant Takeaways

This ruling is particularly significant for real estate aggregators, land assemblers, and other business intermediaries who routinely hold client funds for extended periods pending the completion of land-procurement mandates. It confirms that funds advanced for business-purposes like land acquisition retains the character of stock-in-trade rather than a capital asset, placing such receipts outside the first limb of Section 56(2)(ix) altogether. Equally significant is the Court's treatment of the forfeiture limb, by holding that mere efflux of time, even an extended period such as eight years, cannot by itself constitute forfeiture in the absence of material showing that the recipient has become absolutely entitled to retain the sum.

The decision also reiterates that deeming provisions aimed at taxing forfeited advances cannot be stretched by inference from passive conduct, such as a counterparty's silence or delay in seeking repayment. The IRA must instead point to a concrete act or event, such as a forfeiture clause being invoked, a write-back in the recipient's books, or some other objective indication that the obligation to repay has been extinguished, before the charge can be attracted. Any such attempt to tax such an act must be corroborated with appropriate documentary evidence. For taxpayers and advisors structuring or defending long-term advance arrangements, in real estate and other sectors where funds are commonly advanced well before the underlying asset or service is delivered, the judgment underscores the importance of maintaining contemporaneous books that continue to reflect such advances as liabilities, securing periodic confirmations from the counterparty, and preserving documentary evidence of the business purpose for which the funds were received, since each of these factual indicia proved decisive to the outcome.

> **"Mere efflux of time cannot amount to automatic forfeiture unless there is material to demonstrate that the recipient has become entitled to retain the advance absolutely."**

ITAT reinforces the line between accounting and tax treatment of expenditure

Introduction

In a significant ruling on the interplay between accounting policy and tax characterisation of expenditure, the ITAT Mumbai Bench in ***Reliance Jio Infocomm Limited,***[24] recently deleted a disallowance of approximately over INR 110 billion. It held that expenditure incurred in an existing business for assets already installed and put to use did not create any new asset of enduring nature but merely facilitated efficient operation of the existing assets.

Facts

Reliance Jio Infocomm Limited (**Assessee**) provides digital and telecommunication services through its pan-India 4G LTE network. During FY 2018–19, while its commercial operations were fully operational with a substantial subscriber base and significant operational revenue, the Assessee claimed a revenue expenditure deduction of approximately INR 110 billion. The deduction was towards expenses incurred in an existing business to meet desired quality parameters for network assets already installed and operational. However, the Assessee had capitalised these expenses in its books of account as Capital Work in Progress (**CWIP**).

Under its accounting policy, as per Ind-AS 16, the Assessee capitalised network assets when they became available for use and functioned as intended by management, based on the prescribed desired quality parameters such as call-drop retainability, high-definition voice, and video quality, and network integration standards. Thus, since the installed and operational infrastructure had not yet achieved the desired quality benchmarks, the corresponding indirect and operating costs, such as interconnect charges, employee costs, professional fees, power and fuel, repairs and maintenance, and other similar heads of expenditure continued to be classified as CWIP in the books of account.

The IRA rejected the claim of the revenue expenditure under Section 37(1) of the IT Act, holding that treatment of expenditure both in the books of account and for tax purposes must be uniform; therefore, expenditure capitalised as CWIP in the books of account could not simultaneously be claimed as revenue expenditure for tax purposes. Since the CIT(A) consequently deleted the disallowance, the revenue department appealed to the ITAT.

Issue

Whether the accounting treatment of operational expenditure as CWIP is determinative of its character as capital expenditure under the IT Act, or whether such expenditure, if recurring and incurred for an already established business, remains deductible as revenue expenditure under Section 37(1) of the IT Act?

Arguments

The IRA submitted that the Assessee's own accounting policy adopted under applicable Ind-AS, which capitalised the impugned expenditure as part of CWIP, reflected its own understanding that the expenses were attributable to the addition, improvement, or upgradation of its telecom network. It submitted that the Assessee debited identical categories of expenses to the Profit and Loss Account only after the relevant network assets achieved the prescribed quality of service parameters, demonstrating a nexus between the disputed expenditure and capital assets under development. Consequently, the IRA contended that an expenditure cannot simultaneously be capital in the books and revenue for tax purposes merely at the option of the Assessee.

The Assessee countered the contentions by claiming that its telecom business was already set up and generating substantial revenue, in that the disputed expenditure represented routine, recurring operating costs that neither created any new capital asset nor enlarged the existing installed profit-making apparatus. It also submitted that the AO had not undertaken any specific, itemised exercise to demonstrate that the constituent expenses resulted in the acquisition or creation of an identifiable capital asset, and that the identical controversy had already been decided in its favour by the ITAT for AY 2018–19.

Decision

The ITAT held that the accounting point of capitalisation and the character of expenditure under the IT Act are two distinct concepts. While the former governs recognition and presentation in financial statements, the latter governs

[24] DCIT v. Reliance Jio Infocomm Limited [TS-1313-ITAT-2026(Mum)] .

deductibility in computing taxable income. The ITAT held that accounting treatment, while relevant, cannot substitute for an examination of the real nature of the expenditure, and whether an outgoing is capital or revenue must be determined by examining the objective behind the expenditure and what it brought about in the commercial framework of the Assessee's business.

Applying this test, the ITAT found that because the Assessee's telecom business was already established and generating substantial revenue, continuous optimisation and maintenance was necessary for the enhancement / updation of the telecom infrastructure even after commencement of operations. Merely relating to network improvement does not automatically determine the expenditure is capital in nature; what matters is whether it brings into existence a new asset or enlarges the existing profit-making apparatus or merely operates and exploits the existing apparatus.

The ITAT noted that the AO had not undertaken any individual expense-specific examination to demonstrate a nexus between the constituent expenses and the creation of a capital asset. Instead, it had treated the entire amount as a composite capital outlay merely because it was carried in CWIP. Following its own decision in the Assessee's case for AY 2018–19 and the Bombay HC rulings for a few other Reliance group entities *(Reliance Footprint Ltd. and Reliance Fresh Ltd.)*, which confirmed that capitalisation in the books does not determine the treatment for tax purposes, the ITAT upheld the deletion of the disallowance.

Significant Takeaways

A long line of judicial decisions establishes the proposition that capitalisation in the books of account does not determine the tax characterisation of an expenditure. Despite this settled position, the fact that such expenses are routinely disallowed during assessment, only to be later allowed at ITAT, leads to inefficient use of the management bandwidth, legal machinery, and time and efforts for the persons involved.

While ITAT continues to draw a workable line between "bringing an asset into existence" and "operating an asset already in existence", tax authorities are routinely mis-classifying indirect recurring operating costs that are functionally revenue in character as capital expenditure. This largely occurs in evolving, capital-intensive sectors such as telecommunication, probably owing to the huge amounts involved, the lack of technical knowledge, and the fact the expenses sit within the broader upgradation outlays carried as CWIP under an accounting policy tied to internal performance benchmarks.

Therefore, from a tax litigation standpoint, relief is available to the taxpayer if the following can be established: (i) the asset was demonstrably installed, functional, and already generating revenue before the disputed expenditure was incurred; (ii) the disputed expenditure did not itself bring any new asset into existence; and (iii) the tax officer's disallowance rested on the accounting label alone rather than a expense-wise factual inquiry into what the expenditure achieved. Assessing authorities often fail to conduct expense-wise inquiry implies that enough care is not exercised while preparing the assessment order, which exposes the disallowance of such expenditure to be set aside or reversed later by the higher appellate authorities.

Nevertheless, for capital-intensive, infrastructure-heavy businesses, such as manufacturing sector, telecom, power, which adopt phased or benchmark-linked capitalisation policies under Ind-AS, this decision offers a relevant precedent to defend revenue claims for indirect operating costs allocated to CWIP being construed as a capital expenditure.

> **"Whether an outgoing is capital or revenue must be determined by examining the objective behind the expenditure and what it brought about in the commercial framework of the assessee's business."**



CASE LAW UPDATES – DIRECT TAX ROUTINE

Retrospective Section 147A cannot validate reassessment notices issued outside the faceless scheme

Introduction

In ***Jyoti Sareen***,[25] the Punjab and Haryana HC declared Section 147A of the IT Act unconstitutional and set aside the notices issued under Section 148 to the petitioners by the respective jurisdictional assessing officers (**JAOs**). The HC held that the retrospective insertion of Section 147A did not cure the statutory defect identified by several constitutional courts. It specifically highlighted that Section 151A, read with the e-Assessment of Income Escaping Assessment Scheme, 2022 (**Faceless Scheme**), framed thereunder, mandates that notices under Section 148 be issued only by a faceless assessing officer (**FAO**) through randomised, automated allocation. The ruling is the first judicial pronouncement on the constitutional validity of Section 147A following the SC's remand of the JAO–FAO controversy to the jurisdictional HCs in *Tej Partap*[26] and is likely to have a bearing on a large body of connected litigation pending across the country.

Facts

The lead petitioner (**Assessee**) filed the return of income for AY 2020–21, which was processed under Section 143(1). She received a notice under Section 148 from the JAO, initiating reassessment proceedings for that year. Along with a large batch of connected petitioners, the Assessee challenged the notice before the HC on the ground that it had not been issued in accordance with Section 151A and the Faceless Scheme, which requires notices under Section 148 to be issued only by a randomly selected FAO through automated allocation and in a faceless manner.

While such challenges were pending across several HCs, and a large batch of SLPs arising from divergent HC rulings were pending before the SC, the Parliament, through the Finance Act, 2026 (**FA 2026**), inserted Section 147A into the IT Act with retrospective effect from April 1, 2021. Section 147A, prefaced by a *non obstante* clause, provided that for the purposes of Sections 148 and 148A, the term "assessing officer" shall mean, and shall always be deemed to have meant, an AO other than the National Faceless Assessment Centre or any assessment unit referred to in Section 144B(3), notwithstanding anything contained in any judgment, order, or decree of any court, or in Section 151A, or in any scheme framed thereunder.

Taking note of this amendment, the SC disposed of the pending appeals in *Tej Partap* without deciding the controversy on merits, setting aside the HC decisions that had quashed reassessment notices solely on jurisdictional grounds. It also remitted the matters to the respective HCs for fresh consideration, granting the taxpayers liberty to amend their writ petitions to challenge the constitutional validity of Section 147A. Pursuant to this liberty, certain petitioners, including the Assessee, amended their petitions before the HC to challenge Section 147A as *ultra vires* of Articles 14, 19(1)(g) and 265 of the Constitution of India.

[25] Jyoti Sareen v. Union of India, [TS-1442-HC-2026(P&H)].
[26] ITO v. Tej Partap Singh, [TS-615-SC-2026].



Issue

(i) *Whether the retrospective insertion of Section 147A is constitutionally valid, with regard to the doctrine of separation of powers and Article 14 of the Constitution of India?*

(ii) *Whether, even if Section 147A is held valid, the Section 148 notices issued by the petitioners' JAOs are sustainable, given that they were not issued under Section 151A read with the Faceless Scheme?*

Arguments

The Assessee contended that Section 151A and the Faceless Scheme framed thereunder mandatorily require notices under Section 148 to be issued only by an FAO. Several courts, including the HC itself, have already upheld this position. The Assessee argued that the inclusion of Section 147A does not cure the statutory basis of those judgments as it leaves Section 151A, the Scheme, and Section 130 wholly unamended. Instead, it merely seeks to declare, through legislative amendment, that JAOs have always possessed jurisdiction to issue such notices. On this basis, Section 147A amounts to an impermissible legislative attempt to overrule binding judicial precedents without removing the defect those decisions had identified. This, the Assessee submitted, breaches the doctrine of separation of powers and Article 14 of the Constitution.

The IRA submitted that the insertion of Section 147A was a valid exercise of legislative power to clarify an ambiguity that had generated divergent HC rulings and to bring certainty to a heavily litigated issue. It contended that the pre-assessment enquiry and issuance of notice under Sections 148 and 148A were always intended to remain with the JAO, with only the subsequent reassessment required to be conducted in a faceless manner under Section 144B. The IRA also relied on notifications dated October 20, 2014, and subsequent notifications dated March 31, 2021 and June 10, 2022, issued under Section 120, to argue that JAOs continued to hold jurisdiction, whether exclusively or concurrently with FAOs, to issue notices under Section 148, and that this jurisdiction had never been withdrawn.

Decision

The HC ruled in favour of the petitioners on both issues. On the constitutional validity of Section 147A, the HC reiterated that, although not expressly stated, the doctrine of separation of powers is implicit in the scheme of the Constitution of India. It also highlighted that a breach of this doctrine amounts to a negation of equality guaranteed under Article 14. The legislature may, even retrospectively, enact a validating law regarding a statute held invalid by a court. However, such a law is constitutionally permissible only if it removes the basis of the judgment by curing the very defect the court had identified. A law that merely declares the earlier judicial view to be incorrect, without curing that defect, amounts to an impermissible legislative overreach into the judicial domain. Applying this test, the HC held that Section 147A did not cure the defects on which the earlier judgments quashing JAO-issued notices were founded.

The HC also noted that the first proviso to Section 151A(2) barred the Central Government from issuing any notification excluding

Section 148 from the Faceless Scheme after March 31, 2022, and that the legislature could not achieve indirectly, through a retrospective "clarification" in Section 147A, what it was statutorily barred from doing directly. Observing that the amendment, introduced to end litigation and bring certainty, had instead generated fresh rounds of litigation across the country without altering the legal position.

On the second issue, the HC held that even independent of Section 147A, the impugned Section 148 notices could not be sustained, since Clause 3(b) of the Faceless Scheme expressly applies to the issuance of notices under Section 148 and requires that such notices be issued only by an FAO through automated allocation. The HC rejected the Revenue's narrower reading of the Faceless Scheme, holding that it would render the Scheme largely redundant. It also rejected the argument that subsequent notifications conferred concurrent jurisdiction on the JAOs, holding that once the statutory Scheme mandates randomised allocation, concurrent jurisdiction on both JAOs and FAOs cannot co-exist, and that the Faceless Scheme, having received the approval of both Houses of Parliament, would prevail over any conflicting CBDT notification. The HC accordingly allowed the writ petitions, struck down Section 147A, and set aside the Section 148 notices issued to the petitioners.

Significant Takeaways

The ruling is significant as it will hold persuasive value in the litigations before the various HCs in the country on the JAO–FAO controversy. This ruling goes well beyond the specific notices it sets aside, as it reinforces a constitutional limit on the legislature's power to use retrospective "clarificatory" amendments to reverse unfavourable judicial outcomes. The HC's reasoning confirms that a retrospective validating law survives constitutional scrutiny only where it genuinely removes the statutory foundation of the judgments it seeks to displace. A provision that merely re-asserts the government's preferred interpretation, while leaving the underlying statutory scheme untouched, will not satisfy that test, however broadly its *non obstante* clause is drafted.

This ruling also has implications extending beyond Section 147A. It provides a basis for challenging the constitutional validity of the retrospective amendments intended to override judicial rulings adverse to the IRA.

> **"The 'clarification' made by the legislature through the retrospective enactment of Section 147A that AOs for the purpose of issuance of notices under Section 148 is in defiance of and in conflict with the law laid down by the Constitutional courts."**

HC's writ jurisdiction cannot be invoked to test the sufficiency of a reassessment show cause notice at the preliminary stage

Introduction

In ***Nitin Enterprises,***[27] the Telangana HC dismissed a writ petition challenging a show cause notice issued under Section 148A(1) of the IT Act, the consequential order under Section 148A(3), and the notice issued under Section 148. The HC declined to adjudicate these objections in writ proceedings and relegated the Assessee to the statutory remedies under the IT Act.

Facts

Nitin Enterprises (**Assessee**), a partnership firm engaged in trading in electrical fittings and retail, filed its return of income for AY 2024–25 under Section 143(1). A search-and-seizure action under Section 132 was conducted in the case of another firm M/s. Polycab India Limited (**Polycab**) and its group concerns. Following this, the JAO issued a show cause notice under Section 148A(1), accompanied by an Annexure alleging that the Assessee had undertaken unexplained and unaccounted transactions during AY 2024–25. The notice referred to Polycab as the source of the alleged information but did not disclose any specific seized material, document, statement, invoice, or ledger account connecting the Assessee to the alleged transactions.

The Assessee filed replies and detailed objections, denying any transaction with Polycab. It contended that since the notice stated that the information emanated from a search, the proceedings were governed by Section 152(3) and that the jurisdictional conditions for reassessment stood unfulfilled. The JAO nonetheless passed an order under Section 148A(3) rejecting the Assessee's objections. Despite relying on additional material, specifically a parallel set of accounts and third-party statements recorded during the Polycab search, the JAO did not address the Assessee's specific objections regarding Section 152(3) and the validity of the Section 151 sanction.

Aggrieved, the Assessee invoked the HC's writ jurisdiction under Article 226 of the Constitution of India, contending that the impugned notice, order, and consequential notice were without jurisdiction, illegal, arbitrary, and contrary to the provisions of the IT Act.

Issue

(i) *Whether a show cause notice issued under Section 148A(1), and the consequential order issued under Section 148A(3) and notice under Section 148 initiating reassessment proceedings, can be assailed in a petition under Article 226 of the Constitution at the very threshold of the reassessment stage, without the Assessee first availing the statutory remedies and procedure provided under the IT Act?*

(ii) *Whether the validity of the sanction accorded under Section 151 could be examined by the HC in writ proceedings at the preliminary stage of reassessment?*

Arguments

The Assessee contended that because the entire basis of the impugned proceedings emanated from the search conducted on Polycab, Section 152(3) was directly applicable. The JAO's failure to consider this provision completely vitiated the assumption of jurisdiction. Relying of judicial precedents, the Assessee argued that Section 152(3) is not confined solely to searched persons, but also extends to all assessees whose reassessment is initiated based on, or as the result of, incriminating material found during a search conducted within the specified window.

The Assessee further submitted that reasons recorded for reopening must disclose independent application of mind, be clear and unambiguous, and establish a live nexus between materials relied upon and the belief of income escapement. More importantly, the validity of reassessment must be tested only on the reasons as originally recorded, without subsequent supplementation. On this basis, the Assessee argued that the JAO's silence on Sections 152(3) and 151 objections rendered the proceedings without jurisdiction and amenable to interference under Article 226.

The IRA contended that the impugned notice, order, and consequential notices were all issued strictly in exercise of the statutory power to reopen an assessment. This power is exercised wherever information suggesting an escapement of income comes to the AO's notice. The IRA emphasised that the Section 148 notice could not be equated with a final or concluded determination of tax liability. It maintained that the material gathered from the Polycab search provided sufficient reason for the AO to form a *prima facie* belief warranting further enquiry.

[27] Nitin Enterprises v. ITO [TS-1254-HC-2026(TEL)].



Consequently, the sufficiency or adequacy of such material could not be tested by the HC in a writ jurisdiction.

The IRA further argued that proceedings under Section 148A are by nature preliminary and investigative, intended to afford the Assessee an opportunity to explain the available information before the issuance of a formal notice under Section 148. The Assessee had already been afforded and had availed that opportunity, hence it was obligated to place its explanation, evidence, and objections, including those relating to Sections 152(3) and 151, before the AO in the reassessment proceedings, rather than ignoring the statutory process through a writ petition at a stage when no final or prejudicial order determining tax liability had been passed.

Decision

The HC held that its jurisdiction under Article 226, though wide, is not intended to be exercised as a matter of course at every stage of a statutory proceeding, particularly before the proceeding has reached finality. The statute provides a complete and efficacious mechanism for the Assessee to raise all objections, including jurisdictional objections, before the authority conducting the proceedings and, if aggrieved, before the appellate forum. The HC characterised the show cause notice under Section 148A(1) and the order under Section 148A(3) as preliminary and investigative steps leading to the formation of a final opinion on the escapement of income. It held that these steps neither impose any liability on the Assessee nor foreclose its right to place its entire case before the AO during the reassessment proceedings.

The HC found that the Assessee's objections regarding the applicability of Section 152(3) and the validity of the Section 151 sanction were substantial contentions on the matter of jurisdiction. However, it ruled that these questions of jurisdiction must, in the first instance, be examined and answered by the AO in completing the reassessment, with recourse thereafter to the CIT(A) and the ITAT, who are equally placed to examine such mixed questions of fact and law. While acknowledging that the JAO's order under Section 148A(3) had not dealt with the Assessee's specific objections on Sections 152(3) and 151, the HC held that this omission did not convert a preliminary step in the reassessment into a final and concluded order amenable to challenge under Article 226 at this stage. Any adverse determination could be appealed before the AO and, if the reassessment culminated in an adverse order, before the appellate authorities.

The HC recognised a narrow exception for cases involving a total absence of jurisdiction or a patent violation of a mandatory statutory pre-condition going to the root of the power to reassess. It found that the present case did not fall within that exception, since the contentions raised required an appreciation of material that the HC could not undertake in writ jurisdiction at the threshold. Accordingly, the HC held that the impugned show cause notice, the order under Section 148A(3), and the consequential notice under Section 148, being preliminary steps forming part of an ongoing reassessment, could not be assailed at this stage in writ jurisdiction, and dismissed the writ petition.

Significant Takeaways

The ruling reiterates the judicial position that the writ jurisdiction under Article 226 operates as a rule of discretion rather than a rule of law. It is not barred by the mere existence of an alternative statutory remedy. However, courts will ordinarily decline to exercise it at the threshold of reassessment unless the challenge falls within recognised exceptions, such as breach of natural justice, action *prima facie* without jurisdiction, a patently illusory statutory remedy, or a pure question of law requiring no further factual inquiry.

The orders under Section 148A(3)/(d) are treated as preliminary and investigative rather than final determinations of liability. The HCs have consistently held that writ jurisdiction is unfit where the grievance turns on an appreciation of the sufficiency or adequacy of the material relied upon by the AO, or on mixed questions of fact and law, and the statutory appellate hierarchy is appropriately and adequately competent to examine such jurisdictional objections.

For taxpayers and practitioners, the practical implication of this ruling is clear. Objections to jurisdictional validity should ordinarily be raised comprehensively before the AO at the Section 148A stage and preserved for the statutory appellate forums subsequently. A writ petition should be reserved for cases where the jurisdictional or procedural defect is patent and does not depend on a disputed evaluation of the underlying search material.

> **“ HC’s extraordinary jurisdiction under Article 226 cannot be converted into a forum of first resort for testing the sufficiency of every show cause notice or the correctness of every order passed at the preliminary stage of a reassessment. ”**



CASE LAW UPDATES – INDIRECT TAX ROUTINE

SC upholds supplier's tax payment as a condition for claiming ITC

Introduction

In ***Bhandari Scrap Traders v. Union of India & Ors.,***[28] the SC upheld the Gujarat HC's decision sustaining the constitutional validity of Section 16(2)(c) of CGST Act. It declined to read down the provision to protect dealers where their suppliers had failed to pay the tax to the government.

Facts

The petitioners were registered purchasing dealers who had obtained tax invoices, received goods or services, and claimed input tax credit (**ITC**) on the basis of details reflected in Forms GSTR-2A and GSTR-2B. Although their suppliers had reported the supplies in Form GSTR-1, they had failed to file Form GSTR-3B or remit the tax collected to the government. Consequently, the Revenue denied ITC under Section 16(2)(c) of the CGST Act. The Gujarat HC upheld the provision in a common judgment, against which the petitioners approached the SC.

Issue

(i) *Whether Section 16(2)(c) of the CGST Act is constitutionally valid and can be read down to protect bona fide purchasers where the supplier fails to pay tax to the government?*

(ii) *Whether the reasoning of the Delhi HC in On Quest Merchandising India (P.) Ltd. v. Government of NCT of Delhi,*[29] *which had read down Section 9(2)(g) of the Delhi Value Added Tax Act, 2004 (**DVAT Act**), could be applied to Section 16(2)(c) of the CGST Act?*

(iii) *Whether ITC under the CGST Act is a vested or absolute right, or a statutory concession subject to conditions?*

(iv) *Whether the provision violates Articles 14, 19(1)(g), 265, and 300A of the Constitution of India?*

(v) *Whether the doctrine of reading down is available where the provision is clear and unambiguous and the statutory scheme provides for reversal and re-availment of credit?*

Arguments

The petitioners contended that a purchasing dealer who holds a valid invoice, receives the supply and satisfies other statutory conditions should not lose ITC solely because the supplier fails to pay tax. They argued that the recipient has no control over the supplier's compliance and cannot access the supplier's Form GSTR-3B to verify payment. Treating a *bona fide* purchaser on a par with a colluding dealer was, therefore, arbitrary. Reliance was placed on *On Quest Merchandising India (P.) Ltd. v. Government of NCT of Delhi,*[30] *Commissioner of Trade & Tax, Delhi v. Arise India Ltd.,*[31] and *Commissioner Trade & Tax, Delhi v. Shanti Kiran India (P.) Ltd.*[32] Further, the petitioners argued that denial of ITC resulted in double taxation. They also relied on *Axel*

[28] SLP(c) No. 23931/2026.
[29] [2017] 87 taxmann.com 179 (Del.).
[30] [2017] 87 taxmann.com 179 (Del.).
[31] 2022 (60) GSTL 215 (SC).
[32] [2025] 179 taxmann.com 665 (SC).

Kittel v. Belgian State[33] to contend that credit should not be denied where the purchaser neither knew nor could have known of any fraud being committed by the seller.

On the other hand, the Revenue contended that ITC is a statutory concession available only on fulfilment of the conditions in Section 16(2). Section 155 places the burden of proving eligibility on the claimant. Further, Section 41(2), read with Rule 37A of the CGST Rules, provides for reversal of credit on supplier default and re-availment once the tax is paid. The Revenue distinguished the Delhi Value Added Tax Act,[34] 2004 (**DVAT Act**), which lacked comparable provisions, and referred to the fiscal implications of inter-state tax transfers under Section 53. Relying on *Authorized Officer, Central Bank of India v. Shanmugavelu*, it submitted that a clear and constitutionally valid provision cannot be read down.[35]

Decision

The SC dismissed the Special Leave Petitions and affirmed the Gujarat HC's judgment. It observed that the CGST and DVAT frameworks differ materially and that the protection extended to *bona fide* purchasers under the DVAT Act could not be applied to the CGST Act. The SC also noted the statutory mechanism for re-availing reversed ITC after the supplier discharges the tax liability. Accordingly, it found no ground to declare Section 16(2)(c) unconstitutional or to read it down.

The Gujarat HC had held that ITC is a statutory concession linked to actual payment of tax, rather than a vested or constitutional right.[36] The conditions under Section 16(2) must be read together. It distinguished the DVAT Act on the basis of Sections 41(2) and 155 and Rule 37A, which govern reversal, re-availment, and the burden of proof under the CGST Act. It also noted that permitting credit without receipt of tax could affect inter-state transfers under Section 53. Since Section 16(2)(c), read with the related provisions, was clear and did not suffer from constitutional infirmity, it declined to read it down.

Significant Takeaway

This judgment is significant for purchasing dealers as it upholds actual payment of tax by the supplier as a condition for ITC. *Bona fide* conduct alone does not exclude the purchaser from being denied the benefit of ITC on account of the provisions of Section 16(2)(c).[37] Where the supplier defaults, the statutory mechanism requires reversal of credit and permits re-availment once the supplier pays the tax.

The ruling also highlights the claimant's burden under Section 155 to establish eligibility for ITC. The Gujarat HC's observations on real-time verification and prompt recovery from defaulting suppliers remain relevant to addressing recipients' difficulties. Importantly, the HC left the parties' contentions in individual writ petitions open, allowing purchasing dealers to contest demands on the facts of their specific individual cases.

Businesses may therefore need to review their vendor compliance procedures carefully to safeguard ITC. Periodic checks of suppliers' return filing status on the GST portal and contractual safeguards, including indemnity clauses, may help address potential tax, interest, or penalty liabilities arising from supplier defaults.

> **"The protection available to bona fide purchasers under the DVAT Act cannot be extended to a materially different CGST framework."**

[33] (C-439/04)/
[34] [2017] 87 taxmann.com 179 (Del.).
[35] (2024) 6 SCC 641.
[36] [2017] 87 taxmann.com 179 (Del.).
[37] (2026) 154 GSTR 108 (Tri.).

Section 69 arrest authorisation must be communicated before arrest

Introduction

In ***Union of India v. Sunil Biyani,***[38] the SC held that an arrest authorisation under Section 69 of the CGST Act must be communicated before arrest. It also held that interim protection cannot be granted after dismissing a pre-arrest bail application as not maintainable.

Facts

The Directorate General of GST Intelligence (**DGGI**), Mumbai Zonal Unit, was investigating M/s Alphaneon Techsolutions Pvt. Ltd. and its group entities for alleged wrongful availment and passing on of ITC, circular invoicing, and non-payment of GST on imported services. Sunil Biyani (**Respondent**) sought adjournments against three summonses issued under Section 70 and subsequently applied for anticipatory bail. After the Sessions Court rejected his application, he approached the Bombay HC. The Department informed the HC that no arrest authorisation under Section 69 had been issued. The HC accordingly dismissed the application as not maintainable but granted protection for one week from intimation of any subsequent Section 69 order. Aggrieved by this protection, the Union of India approached the SC.

Issue

(i) *Whether a HC, while dismissing a pre-arrest bail application as not maintainable, may grant protection from arrest for a specified period?*

(ii) *Whether an order passed by the Commissioner under Section 69 of the CGST Act authorising arrest must be communicated to the person sought to be arrested before the arrest is effected?*

Arguments

The Respondent contended that an application for anticipatory bail could be maintained only after the Commissioner issued an order under Section 69 recording reasons to believe that an offence under Section 132 had been committed. Unless that order is communicated, the affected person could neither seek anticipatory bail nor challenge the authorisation. Accordingly, the requirement of communication had to be read into the provision to ensure fairness.

On the other hand, the Union of India contended that the HC could not grant interim protection after dismissing the substantive application as not maintainable. It relied on State of *Orissa v. Madan Gopal Rungta*[39] and *Hema Mishra v. State of U.P.*[40] to submit that interim relief must be ancillary to the main relief. Further, relying on *Radhika Agarwal v. Union of India,*[41] it argued that a person summoned under Section 70 does not become an accused merely because summonses have been issued.[42]

Decision

The SC set aside the HC's protective direction. It held that interim relief can only support the main relief and cannot survive dismissal of the substantive application as not maintainable. This principle applies equally to pre-arrest bail applications. Since the Respondent had merely been summoned under Section 70 and was not an accused within the meaning of *Radhika Agarwal v. Union of India*,[43] the rejection of his application was justified.

On communication, the SC held that the Section 69 authorisation must be conveyed to the person before arrest. The Commissioner's reasons to believe must reflect the underlying material and application of mind, as explained in *Radhika Agarwal (supra)*. Without communication, the affected person's ability to seek anticipatory bail or challenge the authorisation would be impaired. Referring to *Sushila Aggarwal v. State (NCT of Delhi)*[44] and *Gurbaksh Singh Sibbia v. State of Punjab,*[45] the SC emphasised the importance of personal liberty. It noted that the order could be communicated electronically using the registered email address or mobile number, in addition to other permissible modes under the Bharatiya Nagarik Suraksha Sanhita, 2023.

[38] Criminal Appeal No. 3795 of 2026.
[39] 1951 SCC 1024.
[40] (2014) 4 SCC 453.
[41] (2025) 6 SCC 545.
[42] (2024) 6 SCC 641.
[43] (2025) 6 SCC 545.
[44] (2020) 5 SCC 1.
[45] (1980) 2 SCC 565.



Significant Takeaways

This judgment provides an important procedural safeguard for persons facing GST investigations. Communication of the Section 69 order enables the affected person to seek anticipatory bail or challenge the authorisation and the recorded reasons to believe before arrest. At the same time, Courts cannot grant interim protection once the substantive bail application is dismissed as not maintainable.

The Department must, therefore, ensure that the arrest authorisation is communicated through a permissible mode before effecting arrest. The SC clarified that the communication does not obstruct the investigation and that the pending investigation should proceed uninfluenced by its observations. Persons receiving an authorisation should consider the available remedies promptly.

If implemented through legislative amendments, the 57th GST Council's recommendation to omit Section 69 of the CGST Act and revise the prosecution threshold would mark a significant shift in GST enforcement. However, the proposed changes should not be treated as an assurance against future misuse. The judicial safeguards remain important while businesses await clarity on the scope, commencement, and application of any amendments.

> **"An order authorising arrest under Section 69 must be communicated before arrest to preserve access to anticipatory bail and judicial review by the impacted person."**

Gujarat HC upholds GST on corporate guarantees but grants valuation relief

Introduction

In ***Torrent Power Ltd. & Ors. v. Union of India & Ors.,***[46] the Gujarat HC upheld GST on corporate guarantees furnished by holding companies for their subsidiaries without consideration. However, it read down the expression "whichever is higher" in Rule 28(2) of the CGST Rules and restricted the rule's operation to periods from October 26, 2023.

Facts

The petitioners were holding companies that had furnished corporate guarantees without consideration to help their subsidiaries obtain credit facilities. In some cases, the guarantees were accompanied by pledges of shares. Rule 28(2) prescribed a specific valuation mechanism for corporate guarantees. The Revenue subsequently issued notices under Section 74 of the CGST Act seeking GST at 1 per cent on the value of the guaranteed amount per annum, including for earlier periods and guarantees furnished to foreign subsidiaries. The demands also covered guarantees executed as far back as 2012.

Issue

(i) *Whether a corporate guarantee furnished without consideration, including one accompanied by a share pledge, constitutes a taxable supply?*

(ii) *Whether it is a continuous supply of services?*

(iii) *Whether Section 15(4) and Rule 28(2) are constitutionally valid?*

(iv) *Whether the rule applies to guarantees predating October 26, 2023, or to guarantees for foreign recipients?*

Arguments

The petitioners contended that a corporate guarantee furnished without consideration did not constitute a supply under Section 7 of the CGST Act. Schedule I did not dispense with the need to identify a supply of goods or services. They also argued that the guarantee was a shareholder activity rather than a business service. Alternatively, it was also contended to be an actionable claim specifically excluded under Schedule III.

On valuation, the petitioners argued that mandatory 1 percent rate was arbitrary, particularly where the actual commission paid was much lower. They also challenged the application of Rule 28(2) to guarantees furnished before October 26, 2023, and to guarantees for foreign recipients.

Further, the petitioners contended that the CBIC circulars exceeded the power under Section 168 by creating a levy and pre-determining adjudicatory facts. They argued that a *bona fide* interpretative dispute did not establish fraud, wilful misstatement, or suppression required to invoke Section 74.

On the other hand, the Revenue contended that Section 7(1)(c), read with Entry 2 of Schedule I, taxes business supplies between related persons even without consideration. The holding company and subsidiary were related persons, and the guarantee was an agreement to do an act under Entry 5(e) of Schedule II. The subsidiary was the recipient of the service. The Revenue also submitted that Rule 28(2) was supported by the valuation and rule-making powers under the CGST Act and had been introduced on the basis of the GST Council's recommendation.

Decision

The HC held that a corporate guarantee furnished by a holding company to its subsidiary is a taxable supply under Section 7(1)(c), read with Entry 2 of Schedule I. The subsidiary receives the benefit of credit, while the surety has rights of indemnification and subrogation under the Indian Contract Act, 1872. The activity is incidental or ancillary to the holding company's business and constitutes an agreement to do an act. The HC rejected the actionable claim argument, observing that a guarantee creates a secondary, contingent liability rather than a direct claim to a debt.

The HC held that the annual time of supply is determined under Section 13(2)(c) by reference to the subsidiary's recording of the outstanding guarantee, with the subsisting guaranteed amount forming the valuation base. It upheld Section 15(4) and Rule 28(2), relying on the SC's decision in *Gameskraft*. However, it read down "whichever is higher" to permit valuation on the actual commission or charge where ascertainable and lower than 1 per cent. It also held that Rule 28(2) could operate only from October 26, 2023, including for continuing guarantees, and could not impose a retroactive fiscal burden for earlier periods.

Further, the HC held that Rule 28(2), as amended, applies only to recipients located in India. It set aside the circulars to the extent

[46] [TS-592-HC(GUJ)-2026-GST].



they conflicted with its findings on valuation and temporal operation but upheld the different treatment of governmental and directors' guarantees. The HC also quashed the impugned order and notices under Section 74. It observed that a *bona fide* interpretative dispute, without a positive and deliberate act to evade tax, does not establish wilful suppression.

Significant Takeaways

This judgment is significant for holding companies providing intra-group credit support. While it upholds taxability, it permits valuation on an ascertainable actual commission below 1 per cent. Companies relying on this relief should maintain clear documentation of the charge and the arrangement. The restriction on the temporal operation of Rule 28(2) is also important for earlier-period demands. Further, the Section 74 finding reinforces the distinction between a bona fide interpretative dispute and deliberate tax evasion.

For companies with foreign subsidiaries, the finding that Rule 28(2) does not apply to recipients outside India is relevant to demands under that rule. Separately, the HC's treatment of share pledges requires attention. Where a pledge includes an independent undertaking to discharge the subsidiary's liability on default, it may be treated as a separate taxable service. Companies should, therefore, review the terms of their security arrangements rather than assume that a guarantee and an accompanying pledge constitute a single supply.

> **"An ascertainable actual commission below 1 per cent may be used to value the guarantee; Rule 28(2) operates only from October 26, 2023."**



REGULATORY | DIRECT TAX UPDATES

FAQs clarify the Foreign Assets of Small Taxpayers Disclosure Scheme, 2026

The FA 2026 introduced the Foreign Assets of Small Taxpayers Disclosure Scheme, 2026 (**Scheme**), providing a one-time opportunity to eligible taxpayers to disclose specified foreign income and assets on payment of tax or fee. FAQs[47] issued in relation to the Scheme and the accompanying Rules clarify its scope and implementation. The key takeaways are provided below:

a) The Scheme commenced on August 16, 2026. Declarations may be filed up to December 31, 2026, with March 31, 2026 being the valuation date.

b) Eligible declarants include residents and persons presently non-resident or resident but not ordinarily resident who were resident in India when the relevant undisclosed foreign income arose or the undisclosed foreign asset was acquired.

c) Undisclosed foreign assets and income not offered to tax may be declared where their aggregate value does not exceed INR 10 Million. Tax at 30%, together with an amount equal to such tax, is payable, resulting in an aggregate payment of 60%.

d) Foreign assets already offered to tax, or acquired when the taxpayer was non-resident, but not reported in the relevant return schedule, may be declared where their aggregate value does not exceed INR 50 Million. A flat fee of INR 100,000 is payable.

e) Asset-specific valuation methods apply. For several asset classes, fair market value (**FMV**) is the higher of acquisition cost and the prescribed market value; indexed acquisition cost applies where the specified valuation is not undertaken. Foreign bank accounts are valued by aggregating deposits since opening, subject to exclusions for qualifying earlier disclosures and redeposits of withdrawals. Adjustments also prevent double counting where funds are reinvested in another asset.

f) Values are reported in INR, using the prescribed currency conversion mechanism as on the valuation date. For assets other than bank accounts, a valuation variance not exceeding 20% of declared FMV does not, by itself, invalidate the declaration.

g) Declarations are filed electronically in Form 1 with supporting documents. The prescribed authority communicates the amount payable in Form 2 within one month from the end of the month of declaration.

h) Payment is due within two months from the end of the month of receipt of the order. A further two months is permitted with simple interest at 1% for every month or part thereof of delay. Benefits cease if payment is not made within four months from the end of the month in which Form 2 was passed.

i) Payment is intimated in Form 3, followed by certification in Form 4. A valid declaration and payment confer immunity from further tax, penalty and prosecution under the Black Money Act, 2015, in respect of the declared income or asset. The declared income or investment is not included in total income under that Act or the Income-tax Act, 1961.

[47] FAQs on the Foreign Assets of Small Taxpayers Disclosure Scheme Rules, 2026, Press Release dated August 14, 2026, pages 1–6.

It may be noted that the Scheme excludes specified proceeds of crime where proceedings under the Prevention of Money-laundering Act, 2002 have been initiated or are pending, and income or assets relating to years already assessed under the Black Money Act, 2015.

FAQs explain key direct tax proposals of the Finance Bill, 2026

FAQs[48] on Budget 2026-27 explain proposals relating to taxpayer compliance, penalty and prosecution, investment incentives and corporate taxation under the Income-tax Act, 2025 (**IT Act, 2025**) and corresponding provisions of the Income-tax Act, 1961. The key takeaways are provided below:

a) The revised return window is proposed to increase from nine to twelve months from the end of the relevant tax year, or completion of assessment, whichever is earlier. Revision beyond nine months would attract a fee. Non-audit business cases and trusts would have an August 31 return-filing deadline, while the July 31 deadline for ITR-1 and ITR-2 remains unchanged.

b) Employee contributions to specified welfare funds would qualify for deduction if deposited by the employer's applicable return-filing due date. This proposed tax deduction relaxation does not alter obligations under the relevant welfare legislation.

c) Supply of manpower would expressly fall within "work" for contractor TDS provisions. Simplified electronic lower/ nil TDS certificates are proposed for prescribed small taxpayers. Resident individuals and HUFs purchasing immovable property from non-residents would not require TAN from October 1, 2026.

d) From April 1, 2027, eligible investors could submit no-deduction declarations through depositories for specified listed securities and units held with them. Deductors would submit declarations quarterly instead of monthly.

e) A common assessment and penalty order is proposed for specified assessments, reassessments and draft orders made on or after April 1, 2027. Immunity would extend to misreporting cases on payment of prescribed additional income-tax, subject to conditions. Certain penalties would become automatic fees, and prosecution provisions would be rationalised.

f) Tax on specified unexplained income would reduce from 60% to 30%. Updated returns could reduce previously declared losses or be furnished pursuant to reassessment notices, subject to additional tax. Reassessment would not abate, but disclosed income would receive the specified penalty protection.

g) Proposed investment incentives include exemption for qualifying foreign companies procuring Indian data centre services up to March 31, 2047, and for qualifying equipment supplied to electronics contract manufacturers up to tax year 2030-31. Related-party data centre services would receive a 15% safe harbour margin.

h) IFSC units would receive a deduction for twenty consecutive years out of twenty-five years, and offshore banking units for twenty consecutive years. Business income would thereafter be taxable at 15%. Additional relief is proposed for qualifying visiting non-resident experts and specified presumptively taxed non-resident businesses.

i) MAT would reduce from 15% to 14% and become a final tax without fresh credit. Domestic companies moving to the new regime from tax year 2026-27 could use accumulated credit, subject to an annual 25% tax-liability cap and the existing carry-forward period.

j) Buy-back consideration would be taxed as capital gains, with additional tax for promoters. Interest deduction against dividend and mutual fund income under "Income from other sources" would be withdrawn. TCS on specified education/ medical remittances and overseas tour packages would reduce to 2%, while STT on specified derivatives would increase.

k) Relief is also proposed for co-operatives, specified disability pensions and compulsory land acquisition receipts. Associated enterprises could furnish modified returns consequential to an APA. The foreign asset disclosure scheme is addressed separately above.

It may be noted that the FAQs explain Budget proposals; their implementation is subject to the relevant legislative provisions and applicable commencement dates. Subsequent proposals concerning data centres and electronics manufacturing are addressed below.

[48] FAQs on Budget 2026-27, supplied as "FAQs-Budget-2026.pdf", sections II–XLVI. This update summarises selected key proposals.

FAQs clarify proposals under the Taxation and Other Laws (Amendment) Bill, 2026

FAQs[49] issued on August 19, 2026 explain proposed amendments to the IT Act, 2025 under the Taxation and Other Laws (Amendment) Bill, 2026 (**Bill**). The proposals seek to rationalise conditions for investment incentives and provide tax certainty. The key takeaways are provided below:

a) The exemption for income of foreign companies from providing capital goods, equipment or tooling to qualifying electronics contract manufacturers is proposed to be extended by ten years, from tax year 2030-31 to tax year 2040-41. Ownership must remain with the foreign company, while the equipment is under the contract manufacturer's control and direction. The manufacturer must be an Indian resident company operating in a customs bonded area.

b) "Specified electronic goods" would include mobile phones; laptops, all-in-one personal computers and tablets; servers and ultra small form factor devices; specified sub-assemblies; and the specified hearables, wearables and related accessories.

c) For the exemption concerning foreign companies procuring services from specified Indian data centres, the Bill proposes to remove the separate notification requirements for the foreign company and the data centre. Operation of a data centre by an Indian company under a lease model would also qualify, subject to prescribed conditions and information requirements. The existing exemption period extends up to the tax year ending March 31, 2047.

d) An exemption is proposed for qualifying foreign diamond mining companies and foreign companies acting as sightholders, brokers, aggregators or tender and auction entities for such business, on income from sales of rough diamonds in special notified zones. The exemption would extend up to the tax year ending March 31, 2041, subject to prescribed information requirements. Qualifying rough diamonds must fall within the specified tariff headings and be accompanied by a Kimberley Process Certificate.

e) Foreign companies storing components in warehouses in customs bonded areas for supply to qualifying electronics contract manufacturers would receive an exemption on income from sale of such components, up to the tax year ending March 31, 2041. The manufacturer must produce specified electronic goods on behalf of a foreign company, and prescribed information must be furnished.

f) Dividend distributed through a business trust would be exempt for unit holders even where the underlying SPV opts for the new tax regime under section 200 of the IT Act, 2025. An additional surcharge of 15% is correspondingly proposed on such SPVs.

g) Conditions for an eligible investment fund using an eligible fund manager are proposed to reduce from thirteen to five. The fund must be non-resident and resident in a treaty or notified jurisdiction; aggregate Indian resident investment must not exceed 5% of its corpus; it must not carry on, control or manage a business in India; and no person acting for it may create an Indian business connection through activities other than those of the eligible fund manager. It may be noted that these clarifications concern proposals under the Bill. The relaxation of fund conditions does not dispense with the separate eligibility requirements applicable to the fund manager.

Central Government provides TDS relief for aircraft leasing, ship leasing and specified receipts of IFSC units

The Central Government, *vide* Notification No. 74/2026[50] dated July 3, 2026,[51] Notification No. 75/2026 dated July 3, 2026, and Notification No. 80/2026 dated July 10, 2026, issued under Section 400(1) read with Section 147 of the IT Act 2025, has provided conditional relief from TDS on aircraft and ship lease rentals and specified payments to IFSC units. All three notifications are deemed to have come into force on April 1, 2026.

Notifications No. 74/2026 and No. 75/2026 provide that no tax shall be deducted under Section 393(1) (Table, Serial No. 2) on lease rent or supplemental lease rent paid to IFSC unit lessors for leasing aircraft and ships, respectively. Notification No. 80/2026 provides relief under Section 393 for identified receipts of 14 categories of IFSC units. These include specified interest, professional fees, referral fees, brokerage and factoring or forfaiting commission received by banking units; insurance commission received by insurance intermediary offices; and specified interest, dividend and factoring or forfaiting commission received by finance companies and finance units. It also covers prescribed professional, advisory, distribution, commission, credit rating, investment banking, trusteeship and technical fees, and dividend receipts, depending on the category of recipient, including fund management entities, broker

[49] FAQs on the Taxation and Other Laws (Amendment) Bill, 2026, Press Release dated August 19, 2026, sections I–VI.
[50] Notification No. 74/2026, S.O. 3609(E), dated July 3, 2026.
[51] Notification No. 75/2026, S.O. 3610(E), dated July 3, 2026.

dealers, investment advisers, registered distributors, custodians, credit rating agencies, investment bankers, debenture trustees, ITFS providers and FinTech entities. For this notification, the recipient must remain an IFSC unit, be registered under the relevant IFSCA regulation or circular, and provide qualifying financial services.

Under all three notifications, the lessor or payee must furnish and verify a statement-cum-declaration in Form No. 1(N) for each tax year, specifying the twenty consecutive tax years for which it opts to claim deduction under Section 147. The payer or lessee shall not deduct tax on eligible payments made or credited after receipt of the declaration and must report those payments in the statement of deduction of tax under Section 397(3)(b), read with Rule 219 of the IT Rules 2026. The relaxation is confined to the declared twenty consecutive tax years; withholding obligations continue for other years.

Together, the notifications provide targeted exceptions to the otherwise applicable withholding requirements, linking relief to the recipient's Section 147 deduction election and annual declaration compliance. They concern withholding rather than creating a separate exemption from tax on the underlying income, and do not provide blanket TDS relief for all receipts of IFSC units.

CBDT notifies the Income-tax (Fourth Amendment) Rules, 2026

The CBDT, vide Notification No. 120/2026,[52] dated September 17, 2026, has notified the Income-tax (Fourth Amendment) Rules, 2026 amending Rules 160, 176, 225, 246 and 256 of the IT Rules, 2026 and substituting Form Nos. 169 and 171.

The amendment clarifies and tidies up procedural and cross-referencing anomalies in the Income-tax Rules, 2026. It modernises the mode of communication under Rule 176 for faceless procedures by permitting electronic communication in place of a digital signature requirement, and removes certain redundant or erroneous sub-rules under Rule 225. It also extends two compliance deadlines under Rule 246 for registration as a valuer and under Rule 256 for registration as an authorised income tax practitioner from September 30, 2026, to March 31, 2027.

CBDT notifies the Income-tax (Fifth Amendment) Rules, 2026

The CBDT, vide Notification No. 121/2026,[53] dated September 22, 2026, has notified the Income-tax (Fifth Amendment) Rules, 2026, amending Rules 215, 218 and 219 of the IT Rules and Form Nos. 132 and 141.

Prior to this amendment, Rule 215(1) listed the deductions covered under section 393(1) of the IT Act, 2025, while Rules 218(3) and 219(5) and (8) dealt only with lower/nil deduction certificates and related procedural requirements in respect of deductions under section 393(1), without reference to section 393(2). The amendment now brings deductions under section 393(2) (relating to tax deducted at source by a resident individual or Hindu undivided family on consideration paid for transfer of immovable property) within the scope of all three rules, i.e., Rule 215(1) is amended to add Section 393(2) deductions to the table of covered deductions, Rule 218(3) is amended to insert a new clause (e) extending its application to such consideration, and Rule 219(5) is similarly amended to insert a corresponding new clause (e), while Rule 219(8) replaces its reference to "sub-section (1)" with "sub-section (7)".

The amendment comes into force from October 1, 2026, and extends the existing TDS compliance and reporting framework for immovable property transactions to cases where a resident individual or Hindu undivided family deducts tax at source under section 393(2) of the IT Act, 2025, on consideration paid or credited to a non-resident for transfer of immovable property. This closes a gap in the earlier rules and forms, which addressed deductions only under section 393(1) and did not provide a dedicated reporting schedule or lower/nil deduction certificate mechanism for such section 393(2) transactions, thereby aligning the procedural and reporting framework with the broader TDS obligations introduced for resident individuals and Hindu undivided families purchasing immovable property from non-residents.

[52] Notification No. 120/ 2026, G.S.R. 822(E) [No. 120/2026/F. No. 370142/30/2026-TPL], dated September 17, 2026.
[53] Notification No. 121/ 2026, G.S.R. 830(E) [No. 121/2026/F.No. 370142/29/2026-TPL], dated September 22, 2026.



REGULATORY | INDIRECT TAX UPDATES

Departmental Appeals before GSTAT in DGGI Common Adjudication Cases

The CBIC, vide Circular No. 256/02/2026-GST dated July 25, 2026,[54] clarified the procedure for departmental review and filing of appeals before the GST Appellate Tribunal against appellate orders arising from Orders-in-Original passed by a Common Adjudicating Authority (**CAA**) in DGGI cases. The jurisdictional CGST Principal Commissioner or Commissioner of each taxable person or noticee is the reviewing authority under Section 112(3) of the CGST Act, 2017 in respect of that person. The Commissioner having jurisdiction over the CAA examines the appellate order, seeks DGGI inputs where required and circulates comments and recommendations to the jurisdictional Commissioners concerned.

Separate departmental appeals must be filed for each taxable person or noticee before the GSTAT Bench having territorial jurisdiction over that person, rather than automatically before the Bench covering the CAA. After filing an appeal, the jurisdictional Commissioner must inform the Commissioner having jurisdiction over the CAA and provide a copy. A decision not to appeal must also be communicated. This clarification is particularly relevant to multi-state businesses facing centralised DGGI investigations, as review and appellate proceedings must be tracked taxpayer-wise notwithstanding common adjudication. Businesses should identify the relevant reviewing Commissionerate and territorial GSTAT Bench for each noticee when monitoring departmental appeals.

Extension of Annual Performance Reporting Timeline for SEZ Units

The Ministry of Commerce and Industry, vide G.S.R. 609(E) dated July 9, 2026,[55] notified the Special Economic Zones (Second Amendment) Rules, 2026 under Section 55 of the SEZ Act, 2005. The amendment replaces "one hundred eighty days" with "nine months" in Condition 7 of Form H of the SEZ Rules, 2006. Condition 7 concerns submission of the Chartered Accountant-certified Annual Performance Return to the Development Commissioner and the Specified Officer following the close of the financial year. The rules come into force on publication in the Official Gazette.

The amendment also replaces "second quarter" with "third quarter" in item (1) of Annexure I. The principal practical effect is additional time for annual-performance compliance and alignment of the associated monitoring timeline. Form H links incorrect reporting or failure to report within the stipulated period to possible withdrawal of permission for authorised operations or stoppage of further imports and Domestic Tariff Area sales. The change concerns annual-performance reporting and should not be treated as a general extension of the time allowed to utilise duty-free imported or procured goods.

Inventory-Based Cross-Border E-Commerce Export Framework under FTP 2023

The DGFT, vide Notification No. 27/2026-27 dated August 5, 2026,[56] introduced an inventory-based cross-border e-commerce

[54] Circular No. 256/02/2026-GST dated 25 July 2026, paragraph 6(a)–(e).
[55] G.S.R. 609(E) dated 9 July 2026, Special Economic Zones (Second Amendment) Rules, 2026, rules 1–3; Form H, Condition 7 of the SEZ Rules, 2006.
[56] DGFT Notification No. 27/2026-27 dated 5 August 2026, FTP paragraphs 9.13–9.19; Public Notice No. 25/2026-27 dated 5 August 2026.

export framework by inserting paragraphs 9.13 to 9.19 in FTP 2023 with immediate effect. The framework defines Exporters-on-Record (EORs), Sellers-on-Record (SORs), Export Inventory, Domestic Inventory and Export Rebates and Refunds. Eligible export-only inventory operations are to be undertaken through registered EORs. The framework covers Indian-origin goods and requires confirmed overseas orders before title transfer, rather than speculative accumulation of export inventory. Public Notice No. 25/2026-27 of the same date separately sets out the operational procedures and ANF-9A registration requirements under the Handbook of Procedures, 2023.

EORs must maintain segregated and traceable export inventory and pay SORs within seven days of acceptance or deemed acceptance, without making payment dependent on receipt from the overseas buyer. The framework regulates sharing of export rebates and refunds and prohibits EORs from diverting returned or rejected export consignments into the domestic market. The operational procedures include maintenance of a digital repository linking procurement and export records. Businesses adopting this model should review their eligibility, EOR registration, seller contracts, inventory segregation, payment processes and reverse-logistics arrangements against both the substantive FTP provisions and the corresponding Handbook procedures.

Operationalisation of Customs Tariff Concessions under India–UK CETA

The Ministry of Finance, vide Notification No. 29/2026-Customs dated July 14, 2026,[57] implemented the first tranche of tariff concessions under the India–United Kingdom Comprehensive Economic and Trade Agreement (CETA), with effect from 15 July 2026. The notification prescribes preferential Basic Customs Duty, Agriculture Infrastructure and Development Cess and, where applicable, Health Cess treatment for specified goods imported from the United Kingdom. Separate tariff tables govern eligible products, including Tariff Rate Quota (TRQ) treatment for designated goods and the applicable in-quota and out-of-quota rates.

The concession is conditional on the importer establishing that the goods qualify as originating in the United Kingdom under the prescribed origin requirements and the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. Purchase from a UK supplier or shipment from the UK does not, by itself, establish qualifying origin. The notification can affect landed-cost calculations and sourcing decisions, but eligibility and the extent of relief must be checked against the relevant tariff entry and quota conditions. Importers should map their UK-origin products to the notification, verify supporting origin documentation and assess whether quota allocation or other specific conditions apply before claiming preferential treatment.

Recognition of INR Export Realisations for FTP Benefits and Export Obligations

The DGFT, vide Notification No. 30/2026-27 dated August 20, 2026,[58] amended paragraphs 2.52 and 2.53 of FTP 2023 with immediate effect to align export-contract denomination and INR realisation provisions with the applicable foreign exchange framework. For exports outside Asian Clearing Union (ACU) member countries, contracts and invoices may be denominated in foreign currency or Indian Rupees and proceeds may be realised in either. Separate provisions govern ACU countries and Nepal and Bhutan, subject to the applicable RBI directions.

Under revised paragraph 2.53, exports to countries other than Nepal and Bhutan qualify for FTP benefits, incentives and fulfilment of export obligations at par with foreign-currency realisations where INR proceeds are received through banking channels by credit to INR accounts of persons resident outside India opened in accordance with the FEMA Deposit Regulations. Exports to Iran remain subject to paragraph 2.19 of the FTP. The amendment gives eligible exporters greater settlement flexibility, but does not dispense with the prescribed banking route, foreign exchange requirements or conditions of the relevant FTP scheme.

Simplification of Documentation under the Eligible Manufacturer Importer Scheme

The CBIC, vide Circular No. 39/2026-Customs dated September 3, 2026,[59] amended Circular No. 08/2026-Customs to rationalise data and documentation requirements under the Eligible Manufacturer Importer (**EMI**) Scheme. The scheme permits eligible manufacturers to access deferred payment of customs import duty under Section 47 of the Customs Act, 1962. The revised application reduces document uploads from ten to three: the UDYAM Registration Certificate where MSME status is claimed, a Chartered Accountant's certificate bearing UDIN in the prescribed format and an authorisation letter for the

[57] Notification No. 29/2026-Customs dated 14 July 2026, G.S.R. 628(E), tariff tables and origin conditions; CHEMEXCIL circular dated 16 July 2026 on operationalisation of India–UK CETA.
[58] DGFT Notification No. 30/2026-27 dated 20 August 2026, S.O. 4601(E), revised FTP paragraphs 2.52 and 2.53.
[59] Circular No. 39/2026-Customs dated 3 September 2026, paragraphs 3.2–5 and revised Appendices I–III to Circular No. 08/2026-Customs.



authorised signatory. Applications using the modified requirements became available from September 15, 2026.

The circular dispenses with several earlier data and upload requirements, including copies of IEC, PAN, GST registration certificates, specified GST returns, audited financial statements and premises documents, while permitting backend verification of relevant particulars. The revised CA certificate requires reasons where an applicant has negative net worth or negative net current assets. The change reduces the administrative burden of enrolment and may make the existing deferred-duty facility easier to access. It does not create a new customs duty exemption or remove the need to satisfy scheme eligibility and approval requirements. Manufacturer-importers should reassess enrolment using the revised Appendices I, II and III and coordinate the prescribed certification with their advisers.

Continuation of RoDTEP Benefits up to December 31, 2026

The DGFT, vide Notification No. 41/2026-27 dated September 30, 2026,[60] continued the Remission of Duties and Taxes on Exported Products (RoDTEP) Scheme up to 31 December 2026. The continuation covers eligible exports by Domestic Tariff Area units, Advance Authorisation holders, SEZ units and Export Oriented Units. Existing rates and value caps under Appendices 4R and 4RE, as applicable on September 30, 2026, continue unchanged during the extended period, and all other scheme terms and conditions remain unchanged.

The extension provides continuity of remission benefits for eligible exporters, including SEZ and EOU businesses, and is relevant to export pricing and benefit reconciliation for the October–December quarter. It is a continuation of the scheme, not a notification of higher rates or unrestricted eligibility. Exporters should check the applicable Appendix 4R or 4RE entry and value cap for each product and maintain the prescribed claim documentation. The instrument is included in this quarter by its notification date of September 30, 2026; its Gazette publication is reported as October 1, 2026. This notification does not establish continuation beyond December 31, 2026.

[60] DGFT Notification No. 41/2026-27 dated 30 September 2026, paragraphs 1–3; Gazette of India, S.O. 5435(E), published 1 October 2026.

GLOSSARY

ABBREVIATION	MEANING
AAR	Hon'ble Authority for Advance Rulings
AO	Learned Assessing Officer
AY	Assessment Year
CASS	Computer-Assisted Scrutiny Selection
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
CST Act	Central Sales Tax, 1956
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
DTA	Domestic Tariff Area
DTAA	Double Taxation Avoidance Agreement
EPCG	Export Promotion Capital Goods
ESOP	Employee Stock Options
EXIM	Export Import
FA	Finance Act
FAO	Faceless Assessment Officer
FMV	Fair Market Value
FTP	Foreign Trade Policy

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ABBREVIATION	MEANING
FTS	Fees for technical services
FY	Financial Year
GAAR	General Anti-Avoidance Rules
GST	Goods and Services Tax
GSTAT	Goods and Services Tax Appellate Tribunal
GSTR	Goods and Services Tax Return
HC	Hon'ble High Court
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code, 2016
IEC	Import Export Code
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
IT Act 2025	Income-tax Act, 2025
ITAT	Hon'ble Income Tax Appellate Tribunal
ITC	Input Tax Credit
ITO	Income Tax Officer
IT Rules	Income-tax Rules, 1962
IT Rules 2026	Income-tax Rules, 2026
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

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ABBREVIATION	MEANING
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
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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