

## TAX INSIGHTS

By  
 Tax Research Department

**UNION BUDGET 2026**

**01.02.2026**

### KEY DIRECT TAX ASPECTS

The Union Budget 2026-27, tabled by Finance Minister Nirmala Sitharaman on February 1, 2026, is the first budget prepared in Kartavya Bhawan.

#### 1. Rates of Income Tax: Individual & HUF - Unchanged

**FY: 2026-27**

##### Old Tax Regime

Total Income (Rs)	Tax Rate
Upto 2,50,000	Nil
2,50,001 to 5,00,000	5%
5,00,001 to 10,00,000	20%
Above 10,00,000	30%

Note: Rebate of Rs. 12,500 available in case of old tax regime for total income upto Rs. 5,00,000 has been continued. Rebate of Rs. 60,000 in case of new tax regime for total income upto of Rs. 12,00,000 also continued. (applicable for resident individuals only)

##### New Tax Regime

Total Income (Rs)	Tax Rate
Upto 4,00,000	Nil
4,00,001 to 8,00,000	5%
8,00,001 to 12,00,000	10%
12,00,001 to 16,00,000	15%
16,00,001 to 20,00,000	20%
20,00,001 to 24,00,000	25%
Above 24,00,000	30%

##### Surcharge rate

Total Income (Rs)	Tax Rate
50,00,001 to 1,00,00,000	10%
1,00,00,001 to 2,00,00,000	15%
2,00,00,001 to 5,00,00,000	25%
Above 5,00,00,000 (old regime only)	37%

Maximum rate of surcharge capped @ 15% in case of dividend (for residents), long-term capital gains and short-term capital gains (under section 111A of the ITA, 1961 and section 196 of ITA, 2025)

Maximum rate of surcharge capped @ 25% in case of new tax regime

Health and education cess applicable @ 4%

#### 2. Corporate Entities

Tax Rates for Domestic Companies unchanged for FY 2026-27

##### Opting for Concessional Tax Regime

Particulars	Maximum Effective Tax Rate	Effective MAT Rates
Domestic companies opting for concessional corporate tax regime - Tax under section 200 of ITA, 2025 (corresponding to section 115BAA of ITA, 1961) - Irrespective of the level of total income	25.168%	Not Applicable
New domestic companies with manufacturing activity opting for concessional corporate tax regime - Tax under section 201 of ITA, 2025 (corresponding to section 115BAB of ITA, 1961) - Irrespective of the level of total income (Applicable to new companies set-up after 1 October 2019 and commenced manufacturing on or before 31 March 2024)	17.16%	Not Applicable

### Proposed changes

Domestic companies opting for concessional tax regime for a tax year 2026-27 and onwards shall be allowed to set-off MAT credit available as on 31 March 2026 to the extent of 25% of the tax payable for that tax year. The remaining tax credit shall be allowed to be carried forward to subsequent tax years and shall be eligible for set-off up to 15 tax years from the tax year immediately succeeding the tax year in which the credit became allowable.

### Not Opting for Concessional Tax Regime

Particulars	Maximum Effective Tax Rate	Effective MAT Rates
Having total turnover / gross receipts in FY 2024-25 upto Rs. 400 crore	29.12%	16.3072%
Having total turnover / gross receipts in FY 2024-25 exceeding Rs. 400 crore	34.944%	16.3072%

### Proposed Changes

The MAT rate for domestic companies not opting for concessional tax regime has been reduced to 14% (effective MAT rate = 16.3072%) from earlier 15% (effective MAT rate = 17.472%) from tax year 2026-27 and onwards. Further, tax paid under MAT provisions shall be considered as final tax and no resultant MAT credit shall be allowed for carry forward and set-off in subsequent years.

### 3. Rationalisation of buyback taxation

#### Existing Provision –Dividend

- Indian company –No tax
- Shareholders –Taxed as dividend (gross) + capital loss for cost base

#### Proposal –Capital Gains

- Indian company –No tax
- Shareholders (non-promoters) –Taxed as capital gains
- Shareholders (promoters\*) –Taxed as capital gains + additional tax

Particulars	Base capital gains tax(as per normal provisions)	Additional tax(Proposed)	Effective base tax rate*	Base capital gains tax(as per normal provisions)	Additional tax(Proposed)	Effective base tax rate*
Unlisted shares held by						
Domestic Company	12.50%	9.50%	22.00%	22.00%	0.00%	22.00%
Foreign Company	12.50%	17.50%	30.00%	35.00%	0.00%	35.00%
Others	12.50%	17.50%	30.00%	30.00%	0.00%	30.00%
Listed shares held by						
Domestic Company	12.50%	9.50%	22.00%	20.00%	2.00%	22.00%
Foreign Company	12.50%	17.50%	30.00%	20.00%	10.00%	30.00%
Others	12.50%	17.50%	30.00%	20.00%	10.00%	30.00%

\*Promoters:

Listed company –as defined under SEBI Buyback Regulations

Unlisted company –

- As defined in the Companies Act, 2013 or
- Person holding >10% shareholding (directly or indirectly)

#### 4. Increase in STT rates are proposed as follows:

Transaction	Rates	Payable by
Sale of options	0.15% of the option premium (existing 0.10%)	Seller
Exercise of options	0.15% of the intrinsic price (existing 0.125%)	Buyer
Sale of futures	0.05% of the traded price (existing 0.02%)	Seller

#### 5. TDS Proposals

- Electronic procedure for Lower deduction certificate – It is proposed to enable electronic filing, verification and issuance of lower rate or no rate deduction certificate to ease the compliance burden of small taxpayers.
- No TAN for TDS compliance in case of purchase of immovable property from non-resident – In case of a resident seller, buyer was not required to obtain TAN to comply with applicable TDS provisions. The said relaxation is proposed to be extended to cases where seller is a non-resident. (The proposed amendment is effective from 1 October 2026)
- TDS on supply of manpower – Supply of manpower to a person to work under his supervision, control or direction is proposed to be considered under the ambit of "work" and accordingly, subjected to TDS (1% in case of individuals / HUFs and 2% in case of others).
- No TDS on interest income of co-operative society engaged in banking – It is proposed to amend section 393(4) of the ITA 2025 (corresponding to section 193 of the ITA 1961) to not levy TDS on interest income credited or paid to a co-operative society engaged in banking (including a co-operative land mortgage bank).

#### 6. TCS Proposals

Transaction	As per the ITA 2025	Proposed in Finance Bill, 2026
Sale of alcoholic liquor for human consumption, scrap and minerals (coal, lignite or iron ore)	1%	2%
Sale of tendu leaves	5%	2%
Remittance under LRS for education other than mentioned above and for medical treatment	5%	2%
Purchase of overseas tour programme package	5%/20%	2%

#### 6. Other Proposals

**Revised Return** -Time limit is extended from 9 months to 12 months from the end of the relevant FY, subject to a fee of upto INR 5,000

**Updated Return-**

- Allowed reporting reduction in losses as compared to the loss claimed in the original return of income;
- Filing of updated return of income allowed pursuant to issuance of reassessment notice, subject to payment of an additional 10% of the aggregate tax and interest over and above the tax payable on account of updated return of income. No penalty for under-reporting or misreporting will be imposed on the income reported in such updated return of income

**Prosecution**

Prosecution for defaults such as failure to deposit TDS/TCS, willful tax evasion, failure to file return etc., has been reduced

- Maximum imprisonment reduced from 7 years to 6 months / 2 years (depending on the amount of default)
- Rigorous imprisonment replaced with simple imprisonment

No imprisonment where the amount of default does not exceed INR 1m

### **Tax and penalty rationalization on Unexplained items**

Tax on unexplained credits, investments, assets, expenditure, etc. reduced from 60% to 30%

The earlier 10% penalty on tax is abolished; such unexplained items shall now be subject to penalty for mis-reporting of income

### **Immunity from penalty –extended to mis-reporting**

General mis-reporting cases: Immunity from penalty available on payment of additional 100% of tax

Mis-reporting involving unexplained items: Immunity available on payment of additional 120% of tax

### **Relaxation on interest on late payment of penalty**

Interest on late payment of penalty shall be levied only after the date of:

Tribunal order –in cases involving DRP; or

CIT(A) order –in all other cases

### **Black Money Act**

#### **Disclosure scheme**

The Foreign Assets of Small Taxpayers Disclosure Scheme, 2026 is introduced for declaration of:

- Undisclosed foreign assets; and
- Foreign-sourced income relating to past years up to 31 March 2026

#### **Tax and penalty –assets/income up to INR 10m:**

- Tax at 30% of FMV of foreign assets/30% of foreign income; and
- Penalty at 100% of tax

**Partial disclosure relief:** Where foreign income is offered to tax but related foreign assets up to INR 50m remain undisclosed, a fee of INR 0.1m shall apply

**Prosecution relief:** Prosecution provisions to not apply under the Black Money Act for non-disclosure of foreign assets (other than immovable property) not exceeding INR 2m (retrospectively w.e.f. 1 October 2024)

### **Transfer Pricing**

#### **Rationalisation of Safe Harbour Regime**

For applicability of SHR, IT, ITeS, KPO and contract R&D services (software development services) consolidated under 'IT Services' category

- Margin: Uniform margin of 15.50%;
- Threshold for SHR: Increased to INR 20bn;
- Approval Process: Automated rule-based approval without any examination and approval by the AO;
- Time period: SHR can be opted for five years for IT services at the taxpayer's discretion;

The scope of SHR is expanded to cover provision of data centre services by eligible taxpayers on cost plus 15%

#### **Amendments to APA rules**

- Unilateral APAs for IT services to be fast-tracked, with a target to conclude within two years (extendable by six months upon request);
- The facility to file modified returns in line with an APA is now extended to AEs whose income is impacted by the APA.

#### **Fees on delay of filing Form 3CEB**

Form 3CEB (fees on delay): Now mandatory and not at AO's discretion –INR 50,000 for delay up to one month, capped thereafter at INR 0.1m

### **IFSC**

#### **Tax holiday period extended**

- Units in IFSC –Increased to 20 consecutive years out of 25 years, from the year of obtaining permission or registration (existing 10 out of 15 years); and
- Offshore Banking Unit –Increased to 20 consecutive years (existing 10 consecutive years) from the year of obtaining permission or registration
- No deduction is allowed to new units commencing operations on or after 1 April 2026 formed through splitting up, reconstruction, reorganisation or transfer of an existing business

**Rationalisation of tax rate**

Business income for non-tax holiday period–Taxed at 15%

**Exemption for transfer of aircraft or ships**

Tax holiday on transfer of aircraft or ship by eligible IFSC unit is also extended to 20 consecutive years out of 25 years from the year of obtaining permission or registration

**Deemed dividend provisions**

Deemed dividend exemption for GTC is restricted, by requiring the counterparty group entity to the GTC to be located in a country or territory outside India as may be notified by the CG

Source:

<https://www.pib.gov.in/PressReleaseDetail.aspx?PRID=2221458@=3&lang=1>

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## TAX INSIGHTS

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**UNION BUDGET 2026**

**02.02.2026**

### KEY INDIRECT TAX PROPOSALS

#### GOODS & SERVICES TAX

**Post-sale discount provisions simplified:** (Effective date to be notified)

Presently, as per section 15(3)(b) of the CGST Act, 2017, post sale discount can be reduced from the value of supply provided such discount is established in terms of an agreement entered into at or before the time of such supply, credit note is linked to the relevant invoices and ITC attributable to such discount has been reversed by the recipient of the supply.

Section 15(3)(b) of the CGST Act, 2017 is now proposed to be amended to do away with the requirement of linking the post- sale discount with an agreement and hence, post sale discount can be reduced from the value of supply by the supplier provided credit note has been issued and the recipient has reversed the ITC.

Amendment in section 34 of the CGST Act, 2017 to include reference to credit notes issued for post-sale discount (Effective date to be notified)

Section 34(1) of the CGST Act, 2017 is proposed to be amended to include credit notes issued in relation to post sale discount referred in section 15(3)(b) of the CGST Act, 2017 in addition to other scenarios provided. Provisional refund extended to refund under inverted duty structure (Effective from date to be notified)

**Refund process changes:**

Removal of threshold limit for sanction of refund claims (Effective date to be notified)

It is proposed to amend Section 54(14) of the CGST Act, 2017 to remove the threshold limit of Rs.1,000 for sanction of refund claims on account of goods exported out of India with payment of IGST.

**Appeals and dispute resolution:** (Effective from 1 April 2026)

It is proposed to insert sub-section (1A) in section 101A of the CGST Act, 2017 to empower an existing authority to exercise the powers of the National Appellate Authority, pending its constitution, for the purpose of hearing appeals under section 101B relating to conflicting advance rulings issued by Appellate Authorities. An explanation is also being inserted under sub-section (1A) to clarify that the term 'existing authority' shall include a tribunal.

**Intermediary services** (e.g. brokers, investment bankers, AIF distributors):(Effective date to be notified)

- **Export:** For cross-border intermediary services, the place of supply to be the recipient's location, enabling Indian intermediaries to claim zero rating benefits (as against tax being paid earlier)
- **Import:** Indian recipients of such cross-border intermediary services to pay GST under reverse charge (as against no tax being paid earlier).

#### CUSTOMS ACT PROPOSALS

Section 28J of the Customs Act, is being amended to provide that the Advance Ruling obtained shall be applicable for a period of five years [from the present period of three years] or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier.

A new Section 56(A) is being introduced in the Customs Act to provide special provisions for fishing and fishing related activities by an Indian-flagged fishing vessel beyond territorial waters of India. Fish harvested beyond territorial waters will not be leviable to duty and treat such fish landing in foreign port as export in the manner prescribed.

Section 67 of the Customs Act is being amended to provide movement of the warehoused goods from one customs bonded warehouse to another without proper officer's permission, subject to satisfaction of prescribed conditions.

## **CUSTOMS RULES PROPOSALS**

Baggage Rules 2016 has been superseded by The Baggage Rules 2026 to rationalize the baggage provisions, address passenger related concerns and avoid unnecessary detention of goods. The said Rules would come into effect from 2 February 2026. Some of the key changes are:

- a) Provisions for re-import and temporary import of articles being article of personal effects [other than used personal effects required for satisfying daily necessities of life],
- b) Provision of general free allowance upto specified monetary limits of duty articles other than those mentioned in Annexure-I
- c) Import of pets to be regulated in accordance with rules notified by any Ministry or Department or any authority of the Central Government.

Deferred Payment of Import Duty Rules, 2016:

- Amendment in existing Deferred Payment of Import Duty Rules, 2016 to provide deferred duty payment up to 30 days to eligible importers.
- Changes in sub-heading note 2 to Chapter 85 to align with WCO HS 2022

## **NEW EXEMPTIONS INTRODUCED FOR CERTAIN GOODS**

- Basic Customs Duty [BCD] exemption is being extended to capital goods used for use in the manufacturing of Lithium-Ion Cells to cover batteries for stationary energy storage applications i.e. Battery Energy Storage Systems (BESS), in addition to existing Electrically Operated Vehicles
- BCD exemption for raw materials for manufacture of parts of aircraft for maintenance, repair, or overhauling of aircraft or components or parts of aircraft, including engines imported by Public Sector Units under the Ministry of Defense, as per the procedure. The same shall be w.e.f. 2 February 2026
- BCD exemption to components or parts, including engines, of aircraft, for the manufacture of aircraft and parts thereof, provided that the importer adheres to the procedure set out in the IGCRS Rules 2022. This change is being made effective from 2 February 2026.
- Exemption to cover goods required for setting up of specified Nuclear Power Project, irrespective of their capacity. Further, the validity of this exemption is being extended from 30. September 2027 to 30 September 2035.
- BCD exemption to extend to 17 more drugs used for treatment of cancer. Similarly, 7 more rare diseases added for the purposes of exempting import duties on personal imports of drugs, medicines and Food for Special Medical Purposes (FSMP) used in their treatment.
- BCD and Social Welfare Surcharge [SWS] exemption was prescribed in respect of 55 groups of critical minerals vide Notification No. 36/2024-Customs dated 23 July 2024. As simplification measure, certain entries are being omitted by shifting the effective rates to tariff, redundant entries are being omitted, and some entries are being merged with Notification No. 45/2025-Customs dated 24 October 2025 [Exemption Notification].



# TAX INSIGHTS

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## Direct Tax

03.02.2026

### Expenditure incurred on software licences that enable the effective use of hardware is to be treated as capital expenditure: ITAT

ACIT v. Lodha Developers Ltd.  
 ITAT Mumbai (13.01.2026)

#### 1. Software / ERP Expenditure – Capital vs Revenue

##### Issue:

Whether large ERP/software spend (₹1.42 crore) is revenue expenditure u/s 37(1) or capital expenditure eligible for depreciation.

##### Key Findings

- Consistency principle cannot be applied mechanically.
- Each year's software expense must be tested on facts & functional role.
- Tribunal applied the "functional test":
  - Does the software merely facilitate operations?
  - Or does it augment the profit-making apparatus / IT infrastructure?

##### Why it was held CAPITAL

The expenditure involved:

- One-time acquisition of perpetual licences
- Enterprise-wide software
- Capacity-based licences
- Storage, backup, virtualisation platforms
- System-level enhancement of IT infrastructure

These resulted in enduring benefit and capital accretion.

##### Important Points

- Small, routine, time-bound licences - Revenue
- Infrastructure-level, perpetual, capacity-enhancing software - Capital

##### Outcome

- ₹1.37 crore - Capital expenditure
- ₹4.81 lakh - Revenue expenditure
- Depreciation @ 60% allowed (computer software), not 25%
- Revenue's ground partly allowed

#### 2. Debenture Redemption Reserve (DRR) & MAT – Section 115JB

##### Issue

Whether DRR of ₹37.50 crore should be added back to book profit under Explanation 1 to section 115JB.

##### Tribunal's Ruling

##### DRR:

- Is a provision for a known and enforceable liability
- Liability to redeem debentures is certain, not contingent
- Amount is earmarked exclusively for redemption

##### On Goetze (India) objection

- MAT computation is a statutory exercise
- AO must compute correct book profit
- Goetze restriction applies to AO under normal provisions, not to appellate powers or MAT correctness

##### Outcome

- DRR cannot be added back to book profit
- Assessee succeeds

#### 3. Section 14A – Interest Disallowance (Rule 8D(2)(ii))

##### Finding

- Assessee's own interest-free funds (₹1030 cr) is more than investments (₹130 cr)
- Revenue did not dispute this fact

##### Legal Presumption

Investments presumed to be made from own funds

##### Outcome

No interest disallowance under Rule 8D(2)(ii)

#### 4. Section 14A – Administrative Expenses (Rule 8D(2)(iii))

##### Held

- Only investments that actually yielded exempt income during the year should be considered

##### Authority

- ACIT v. Vireet Investment (SB) – binding precedent

##### Outcome

AO directed to recompute disallowance accordingly

#### 5. 14A Disallowance & MAT (Section 115JB)

##### Held

- Disallowance computed u/s 14A cannot be added back to book profit u/s 115JB
- Especially where no direct expenditure u/r 8D(2)(i) exists
- Assessee succeeds

# TAX INSIGHTS

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Tax Research Department

## Goods & Services Tax

03.02.2026

### Can GST authorities block the Electronic Credit Ledger (ECL) beyond the ITC actually available, thereby creating a negative balance, under Rule 86A?

Gurasees Sales Corporation v. UOI  
HIGH COURT OF PUNJAB AND HARYANA (19.11.2025)

#### Key Legal Principles Laid Down

##### 1. Rule 86A applies only to available credit

- Rule 86A allows temporary restriction on debit of ITC
- Condition precedent: ITC must be available in the ECL on the date of blocking
- If ECL balance is nil or insufficient, Rule 86A cannot be invoked
- Creating an artificial negative balance = without jurisdiction

##### 2. Rule 86A is preventive, not a recovery tool

- It does not authorize debit entries
- It only disallows utilisation
- Permanent recovery must follow:
  - Section 73 / 74 (demand proceedings)
  - Section 83 (provisional attachment)
  - Section 29 (cancellation of registration), where applicable
- Using Rule 86A to recover past ITC = misuse of power

##### 3. No prior SCN required — but only within limits

- Since Rule 86A is an emergent, temporary measure,
- Show Cause Notice not mandatory
- BUT absence of SCN does not justify negative blocking

##### 4. Negative blocking violates statutory scheme

- ITC is a statutory right, subject to conditions
- Blocking beyond available ITC:
  - Defeats the design of ECL as a fungible pool
  - Converts a provisional measure into permanent recovery
  - Bypasses safeguards under Sections 73/74

#### Precedents Followed & Settled Law

P&H HC followed and endorsed:

- Samay Alloys (Gujarat HC)
- Best Crop Science, Kings Security, Karuna Rajendra Ringshia (Delhi HC)
- All upheld by Supreme Court (SLPs dismissed in 2025)

And expressly rejected contrary views of:

- Calcutta HC
- Allahabad HC
- Andhra Pradesh HC

#### Final Outcome

- Negative ECL blocking entries quashed
- Revenue free to initiate lawful recovery proceedings
- Relief granted in favour of the assessee

# TAX INSIGHTS

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## Direct Tax

04.02.2026

### Form 26AS mismatch cannot override Section 199 if there is no double claim of TDS.

Suresh Chand Agarwal (HUF) v. ITO  
ITAT AGRA (23.01.2026)

Where income is assessed in the hands of the assessee-HUF, TDS credit must also be allowed to the HUF, even if tax was deducted in the names of the Karta or members, provided such individuals have not claimed the TDS in their own returns.

#### Legal Principles Affirmed

1. Section 199 – “Person assessable” test
  - TDS credit follows the person in whose hands income is assessed, not merely the PAN quoted by the deductor.
2. Rule 37BA – Substance over PAN tagging
  - Wrong reporting by deductor does not defeat substantive entitlement.
3. Exempt income ≠ denial of TDS credit
  - Even if compensation is exempt, TDS once deducted must be refunded to the rightful assessee.
4. Form 26AS is evidentiary, not determinative
  - It is a reconciliation tool, not a charging or disabling provision.
5. Revenue’s only safeguard: prevention of double benefit
  - If Karta/member have not claimed credit, denial to HUF is unjustified.

#### Why CPC / NFAC Failed

- CPC mechanically denied credit due to 26AS mismatch.
- NFAC ignored documentary evidence showing:
  - Karta and member explicitly disclosed non-claim of TDS in their respective returns.
- Tribunal intervened to restore fair play and factual verification.

#### Final Direction of ITAT

- Matter remanded to AO only for verification of non-claim by:
  - Karta, and
  - HUF member
- If verified, AO must allow full TDS credit of ₹9.32 lakh to HUF, irrespective of exemption.

#### Practical Use

You can rely on this decision in cases involving:

- Compulsory acquisition of HUF-owned property
- TDS wrongly deducted in individual PANs
- CPC denial under 143(1) / 154
- Refund blocked due to Form 26AS mismatch
- Cases where income is exempt but TDS is deducted

#### Checklist

- Individual returns should not claim TDS
- Non-claim should be clearly mentioned in Schedule TDS
- Attach copies during 154 / appeal proceedings
- Cite Section 199 , Rule 37BA & this ITAT ruling

#### Key Takeaway

TDS credit cannot be denied to an HUF merely because tax was deducted in the PANs of its Karta or members, where income is assessed in the hands of the HUF and there is no double claim of credit — Suresh Chand Agarwal (HUF), ITAT Agra

# TAX INSIGHTS

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## Goods & Services Tax

04.02.2026

**An electronically filed GST appeal, along with pre-deposit and supporting documents, cannot be rejected merely for non-filing of a physical (hard) copy when no notification mandates physical filing.**

TC Tours Ltd. v. Union Territory of J&K  
 J&K and Ladakh HC (24.12.2025)

### Key Legal Findings

1. Electronic filing is a valid statutory mode
  - Section 107 CGST/J&K GST Act read with Rule 108(1) permits filing of appeal:
    - “electronically or otherwise as may be notified by the Commissioner”
  - Electronic filing is the primary prescribed mode.
  - Physical filing can be insisted upon only if backed by a specific notification.
  - No such notification was produced by the Department.
2. No mandatory requirement of hard copy
  - Filing of hard copy is not mandatory under Rule 108.
  - At best, it could be a procedural requirement, curable by granting time.
  - Straight rejection is arbitrary and disproportionate.
3. Certified copy requirement already diluted
  - Amended Rule 108 removes requirement of certified copy where:
    - Order appealed against is uploaded on GST portal.
  - In this case:
    - Order dated 02-06-2021 was already uploaded.
    - Appeal was filed within limitation with documents.
  - Reliance correctly placed on:
    - Otsuka Pharmaceutical India (P.) Ltd. (Guj HC)
    - Saraogi E-Ventures (P.) Ltd. (Cal HC)
4. Natural justice violated
  - Appeal was rejected:
    - Without notice
    - Without hearing
  - Courts reiterated:
    - Appeals affecting substantive rights cannot be dismissed on procedural technicalities

### Final Holding

- Rejection of appeal for non-filing of hard copy was unsustainable.
- Impugned order set aside.
- Matter remanded to Appellate Authority for:
  - Fresh decision on merits
  - After granting opportunity of hearing

### Practical Importance

This judgment is extremely useful in cases where:

- Appeal filed on GST portal within time
- Pre-deposit paid
- Appeal rejected for:
  1. Non-filing of hard copy
  2. Non-filing of certified copy
- Orders passed mechanically in Form APL-02

### How to Use This Case Practically

In writ petitions / appeals:

- Argue that Rule 108 permits electronic filing
- Demand proof of Commissioner’s notification mandating physical filing
- Emphasise natural justice & proportionality

For ongoing cases:

- If authority insists on hard copy:
  - Submit it without prejudice
  - Record objection citing this judgment

### Key Takeaways

GST appeal filed electronically cannot be rejected for non-filing of physical copy in absence of any notification mandating such filing; procedural rules cannot defeat substantive rights — TC Tours Ltd., J&K HC

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## Direct Tax

05.02.2026

**Whether an employee welfare trust, where employees have no right to share in income, is taxable:**

- at Maximum Marginal Rate (MMR) under section 167B, or
- at normal AOP rates under section 164(1), first proviso (iv).

Deloitte Employees Welfare Trust v. ITO  
Mumbai-ITAT (05.01.2026)

### Held

- Normal AOP rates apply
- MMR under section 167B not applicable
- No surcharge leviable as income < ₹50 lakhs

A trust created bona fide by an employer exclusively for the welfare of its employees, where income is applied for employee benefit and employees have no vested or determinate right to share in income, falls within clause (iv) of the first proviso to section 164(1).

Such cases are expressly excluded from section 167B, and tax must be charged as if the income were that of an AOP at normal rates, not at MMR.

### Cases Followed

- ITO v. Shakuntala Balvantray Trust [2025]
- Araadhya Jain Trust v. ITO [2025]
- Lintas Employees Recreation Trust v. ITO [2025]

### Key Takeaway

Employee welfare trust income, though discretionary and with indeterminate beneficiaries, is taxable at normal AOP rates under section 164(1) proviso (iv) and not at MMR under section 167B; surcharge depends on income threshold.

### Key Legal Reasoning

1. Section 164(1) proviso (iv) is a special provision
  - Overrides the general charging mechanism of section 167B
  - Covers “any other fund” created by an employer for employees
2. CBDT Circular No. 577 (04-09-1990)
  - Clarifies legislative intent that trusts covered by the first proviso to s.164(1)
  - shall not attract section 167B
3. Representative assessee principle
  - Trustees receive income on behalf of employees
  - Application of income for welfare is sufficient; individual entitlement is not required
4. Surcharge is income-threshold based
  - Even where MMR applies, surcharge depends on Finance Act slabs
  - Income below ₹50 lakhs - no surcharge
  - Following Araadhya Jain Trust (SB) and Lintas Employees Recreation Trust

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## Goods & Services Tax

05.02.2026

### Final Bill and No-Claim Certificate Not Valid Grounds to Deny GST Neutralization After Verified Payment: HC

Trishul Construction v. Union of India  
HIGH COURT OF MADHYA PRADESH (21.01.2026)

#### Issue

Whether GST neutralisation reimbursement under a pre-GST works contract can be denied after completion of work merely because:

- final bill was passed, and
- no-claim certificate was submitted,

even though:

- GST was actually paid by the contractor,
- payment stood verified by GST authorities, and
- the supplementary agreement was signed by the contractor but not executed by the department.

#### Held

- Denial of GST neutralisation was illegal and arbitrary
- Final bill & no-claim certificate are not valid grounds once GST payment is verified
- Failure to execute supplementary agreement attributable to department
- Reimbursement cannot be denied when GST burden contractually lay on respondent

#### Key Ratios

Where a contractor under a pre-GST contract:

- pays GST post-1 July 2017,
- seeks GST neutralisation before completion of work,
- and GST payment is verified by the GST department,

The employer cannot deny reimbursement solely on the technical ground that:

- the final bill has been passed, or
- a no-claim certificate was submitted,

especially when the supplementary agreement was duly signed by the contractor but not executed by the employer.

#### Key Legal Reasoning

1. Substance over technicalities
  - Once GST payment is admitted and verified, denial on procedural grounds is unsustainable.
2. Timing of claim is crucial
  - Claim was raised prior to completion-subsequent final bill does not extinguish the right.
3. No fault of contractor
  - Supplementary agreement failure occurred because respondent did not sign, not due to petitioner.
4. Contractual burden of GST
  - Admitted position: GST burden was to be borne by respondent
  - Petitioner only discharged that burden to avoid default
5. Parity & non-discrimination
  - Identical GST neutralisation claims of the same contractor were allowed by:
    - SEC Railway (Nainpur)
    - SEC Railway (Chhindwara)
  - Denial in present case violated parity principle

#### Key Takeaways

GST neutralisation under a pre-GST contract cannot be denied after completion merely due to final bill or no-claim certificate when GST payment is verified and non-execution of supplementary agreement is attributable to the department.

# TAX INSIGHTS

By  
Tax Research Department

## Direct Tax

06.02.2026

**Whether TDS under section 194-IC is applicable on lump-sum cash consideration paid under an MOU for acquisition of a real estate undertaking, where:**

- the agreement is not a joint development agreement, and
- there is no area sharing arrangement.

Emami Realty Ltd. v. ACIT  
ITAT KOLKATA (12.01.2026)

### Held

- No TDS deductible under section 194-IC
- Payment under MOU did not arise from a “specified agreement” within the meaning of Section 45(5A)
- AO’s direction to initiate TDS proceedings was unsustainable

### Ratio Decidendi

For invoking section 194-IC, the payment must be made pursuant to a “specified agreement” as defined in Explanation (ii) to section 45(5A).

An agreement lacking area sharing and involving only cash consideration for transfer of a real estate business undertaking does not qualify as a specified agreement. Consequently, section 194-IC has no application.

Conditions for a ‘Specified Agreement’ (as reiterated by ITAT)

Only those agreements qualify which satisfy all of the following:

1. Registered agreement
2. Land/building owner permits developer to develop a real estate project
3. Consideration includes share in built-up area
  - with or without cash
  - area sharing is a sine qua non
4. Failure of any one condition → agreement falls outside section 45(5A) → 194-IC collapses

### Application to Facts

- MOU dated 25-03-2021
- Transaction was slump sale of Joka Project undertaking
- Unregistered
- Cash consideration only (₹57.25 crore)
- No sharing of constructed area

Therefore:

- Not a joint development agreement
- Not a specified agreement
- Section 194-IC not attracted

### Important Observations

- Section 194-IC is not a general TDS provision for real estate payments
- It is derivative of Section 45(5A)
- If 45(5A) fails → 194-IC automatically fails
- Revenue cannot re-characterise a business acquisition/slump sale as a JDA merely to trigger TDS

### Key Takeaway

No TDS under section 194-IC is deductible on cash consideration paid for acquisition of a real estate undertaking where the MOU is not a registered joint development agreement and does not involve area sharing.

# TAX INSIGHTS

By  
Tax Research Department

## Goods & Services Tax

06.02.2026

**Whether a registered person who omitted ITC in original GSTR-3B for March 2021, discovered the mistake while filing GSTR-9, and had no statutory mechanism to revise GSTR-3B.**

**Can be permitted to file a manual GSTR-3B to claim the missed ITC, despite:**

- issuance of SCN, and
- confirmation of demand for mismatch between GSTR-3B and GSTR-1.

Shivam Electric Corporation v. Union of India  
Himachal Pradesh HC(01.01.2026)

### Held

- Manual filing of GSTR-3B permitted to claim missed ITC
- Permission granted without automatic impact on confirmed demand
- Consequences to be determined by competent authority in accordance with law

### Ratio Decidendi

In absence of any statutory or electronic mechanism under the CGST Act to revise GSTR-3B for a past period, a bona fide taxpayer cannot be left remediless.

Where the petitioner:

- admits that manual filing will not automatically nullify the demand, and
- undertakes that its claim will be subject to adjudication by competent authority,

the High Court can, in exercise of writ jurisdiction, permit manual filing of return to enable consideration of the ITC claim on merits.

### Key Legal Reasoning

1. No automatic revenue loss
  - Manual filing merely enables claim
  - It does not extinguish tax demand per se
2. Procedural vacuum cannot defeat substantive right
  - ITC is a statutory entitlement under Section 16
  - Absence of mechanism cannot foreclose consideration
3. Demand order remains intact
  - Order dated 19-02-2025 continues to operate
  - Any relief depends on outcome of appeal / adjudication
4. Balance of equity
  - Court balanced revenue interest with taxpayer's right
  - Allowed filing without prejudging merits

### Statutory Provisions Involved

- Section 16, CGST Act, 2017 – Eligibility and conditions for ITC
- Section 39, CGST Act, 2017 – Furnishing of returns
- Corresponding provisions under HPGST Act

Where ITC was omitted in original GSTR-3B and no statutory mechanism exists for revision, the High Court may permit manual filing of return to enable consideration of ITC claim, without automatic impact on existing demand.

### Practical Takeaway

This judgment is extremely useful where:

- ITC was missed due to clerical/accounting error,
- mistake surfaced during GSTR-9 / audit / SCN stage, and
- department objects citing “no provision to revise GSTR-3B”.

Courts may allow manual filing as a facilitative step, while keeping revenue protection intact.

# TAX INSIGHTS

By  
Tax Research Department

## Direct Tax

07.02.2026

**Whether excessive remuneration paid to related whole-time directors, in a situation where:**

- company had huge accumulated profits, and
- no dividend was declared,

**can be disallowed under section 40A(2)(b) on the ground that it was a device for tax avoidance.**

DCIT v. Khyati Chemicals (P.) Ltd.  
Ahmedabad – ITAT (16.01.2026)

### Held

- Disallowance under section 40A(2)(b) upheld
- ITAT restored AO's disallowance of ₹2.40 crore
- CIT(A)'s reasoning of "no revenue loss" rejected
- Cross-objection of assessee dismissed

### Ratio Decidendi

- Where a closely-held company, despite having substantial accumulated profits, chooses not to declare dividends and instead routes profits to specified persons by way of disproportionately high remuneration, such payment constitutes a colourable device for tax avoidance and squarely attracts section 40A(2)(b).
- The test is reasonableness vis-à-vis market value and business needs, not merely whether tax has been paid somewhere in the chain.

### Key Findings of the Tribunal

1. Disproportionate remuneration
  - MD (CA, 30 yrs exp): ₹3.6 crore p.a.
  - Other WTD (MA Economics): ₹1.8 crore p.a.
  - CFO (CA, 35 yrs exp): ₹20–30 lakhs
  - Chief Production In-charge (40 yrs exp): < ₹20 lakhs
  - Tribunal held this disparity commercially unjustifiable.
2. Non-declaration of dividend was critical
  - Net profit: ₹16.81 crore
  - Accumulated profits: ₹64.27 crore
  - Zero dividend declared
  - Strong inference that profits were distributed as salary instead of dividend.

3. "No loss of revenue" argument rejected

ITAT categorically held:

- Section 40A(2) is anti-avoidance, not revenue-neutrality based
- Payment of tax by directors does not sanitize excessive remuneration
- CIT(A)'s view that there was "excess tax collection" was factually and legally wrong

4. Clear tax avoidance quantified

AO demonstrated that:

- Had ₹2.40 crore been paid as dividend :
  - Corporate tax + DDT would be higher
- By paying salary:
  - Tax incidence reduced by ~₹48.86 lakhs
- Tribunal accepted this as clear tax avoidance.

### Key Legal Principle Reaffirmed

Section 40A(2)(b) is meant to prevent escape from taxation by camouflaging profit distribution as remuneration, especially in closely-held companies (Reliance placed on Bombay HC in Loyal Motor Services Co. Ltd., 14 ITR 647)

### Key Takeaway

Excessive remuneration paid to related directors in lieu of dividend, resulting in tax avoidance, constitutes unreasonable expenditure under section 40A(2)(b), notwithstanding payment of tax by directors.

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

07.02.2026

**Whether a marginal increase in ITC benefit (0.009%) post-GST in a real estate project obligates the developer to pass on even a small profiteered amount to home buyers under Section 171 of the CGST Act.**

DGAP v. Pan Realtors (P.) Ltd.  
GSTAT – New Delhi(22.01.2026)

### Held

- Profiteering established despite minimal ITC increase
- ₹40,096 held as profiteered amount
- Developer directed to refund profiteered amount with interest
- Refund to be made buyer-wise, proportionate to unit area
- DGAP report accepted in full

### Ratio Decidendi

- Even a marginal increase in ITC benefit must be passed on to consumers.
- Section 171 of the CGST Act does not prescribe any de minimis threshold for profiteering. Once additional ITC benefit is quantified, however small, the supplier is statutorily bound to pass it on with commensurate price reduction or refund, along with interest.

### Key Facts & Computation

- Project: PAN Oasis, Noida
- Total units: 2,084
- Units sold before Occupancy Certificate(OC) (eligible): 1,865
- OC date: 17-01-2018
- Pre-GST ITC ratio: 8.088%
- Post-GST ITC ratio: 8.097%
- Increase: 0.009%

### Profiteering quantified:

- Base profiteering: ₹35,800
- GST @ 12%: ₹4,296
- Total: ₹40,096

### Important Legal Observations

- 1.No tolerance for “negligible profiteering”
  - Even ₹40,096 spread across 1,865 buyers was actionable
- 2.Area-based allocation reaffirmed
  - Benefit to be distributed per sq. ft., not per buyer arbitrarily
  - Consistent with Delhi HC ruling in Reckitt Benckiser (2024)
- 3.Post-OC units excluded
  - Units sold after OC treated as exempt supplies
  - Outside scope of Section 171
- 4.Voluntary acceptance doesn’t avoid interest
  - Respondent accepted DGAP findings
  - Still liable to pay interest under Rule 133(3)(b)

### Key Takeaways

Even a marginal increase of 0.009% in ITC post-GST constitutes profiteering under section 171, requiring refund with interest to home buyers.

### Practical Takeaways

- No “materiality threshold” under anti-profiteering law
- Even minor ITC variations can trigger liability
- Area-wise working must be robust and documented

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

08.02.2026

### Once a notice under section 143(2) is issued, an assessee loses the right to file an updated return under section 139(8A).

Mohammed Abdul Malik v. PCIT  
 HIGH COURT OF TELANGANA (05.01.2026)

#### Why the High Court dismissed the writ

The Telangana HC relied squarely on clause (b) of the third proviso to section 139(8A), which states:

No updated return shall be furnished where any assessment proceedings are pending or have been completed for the relevant AY.

In this case:

- Notice u/s 143(2) was already issued (scrutiny initiated)
- Assessment u/s 143(3) r/w 144B was pending / later completed
- Updated return was not filed before 143(2) notice
- Therefore, the statutory bar kicked in automatically.

#### Press Release argument rejected

The assessee relied on CBDT Press Release dated 23-12-2025 (NUDGE campaign).

HC clearly held:

- Press Release applies only to “identified taxpayers”
- Mostly targeted AY 2025-26
- Petitioner:
  - was not nudged
  - was already under scrutiny
- Administrative instructions cannot override statute

#### Important clarifications from the judgment

1. Extension to 48 months doesn't help

Even though Finance Act, 2025 extended time limit from 24 to 48 months:

- The procedural bar under the third proviso still applies
- Time availability ≠ eligibility

2. “Pending proceedings” includes scrutiny

The moment 143(2) is issued:

- Assessment proceedings are deemed pending
- Updated return becomes statutorily prohibited

3. Writ jurisdiction not available

Since:

- AO followed the law
- Alternate remedy of appeal exists
- HC refused to interfere under Article 226.

#### Practical implications

Updated return is allowed only if:

- Filed before:
  - 143(2) notice, or
  - reassessment / revision proceedings start

Updated return NOT allowed if:

- Scrutiny is initiated (143(2))
- Assessment completed
- Even voluntary disclosure after notice

What options remain for the assessee?

The HC explicitly said:

- File appeal (CIT(A))
- Raise:
  - merits of disallowances
  - penalty u/s 270A
- But cannot cure defects via 139(8A) anymore

#### Case significance

This judgment:

- Reinforces a strict reading of section 139(8A)
- Aligns with legislative intent:
- updated return is a pre-emptive correction tool, not a post-detection escape route
- Will be cited frequently in:
  - scrutiny cases
  - disputes involving delayed voluntary disclosures

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

08.02.2026

**Whether delay of more than one year in processing an exporter's GST refund attracts mandatory interest @ 6% under section 56, and whether the Court can issue directions for time-bound disposal.**

IT Preneurs Technology (P.) Ltd. v. Joint Commissioner  
Delhi High Court(13.01.2026)

### Key Holdings

Refunds cannot be kept pending indefinitely

- Once an exporter files a refund claim after completion of exports, the department is expected to act promptly, as envisaged under section 54 CGST Act.

High Court can issue mandamus for delay

- Where a refund claim remains pending for over one year, the exporter is justified in invoking writ jurisdiction for a direction to decide the claim.

Interest under section 56 is mandatory, not discretionary

The Court clearly reiterated that:

- If refund is not processed within one year, interest @ 6% becomes payable.

Department's statement binds it

- The revenue's submission that the refund order would be communicated within four weeks was accepted as a binding undertaking to the Court.

### Practical Takeaways

- Exporters: If your GST refund is stuck beyond a year, this case strengthens your right to interest + writ remedy.
- Tax officers: Administrative delay alone can trigger statutory interest liability.
- Litigation strategy: Even without final rejection, inaction itself is actionable before High Courts.
- Compliance timeline reinforced:
- Decision expected within 60 days (s.54)
- Interest kicks in after 1 year (s.56)

### Why this judgment matters

This ruling adds to a growing judicial trend that:

- Treats export refunds as a right, not a concession
- Penalises departmental lethargy
- Uses section 56 as a teeth-giving provision, not a paper promise

# TAX INSIGHTS

By  
Tax Research Department

## Direct Tax

09.02.2026

### Can an Assessing Officer (AO) reject a Nil / lower withholding certificate application under section 197 merely by saying that assessment is “premature” and TDS is needed to “protect revenue”?

Nord Anglia Education Ltd. (UK) v. DCIT (Intl. Tax)  
Delhi High Court(14.01.2026)

#### What the High Court Held

##### 1. Rule 28AA is mandatory, not optional

While deciding an application under section 197, the AO must examine the factors listed in Rule 28AA, namely:

- Tax payable on estimated income of the relevant year
- Tax payable on assessed / returned / estimated income of last 4 years
- Existing tax liabilities
- Advance tax / TDS / TCS already paid
- A bald statement like “assessment is premature” does not satisfy Rule 28AA.

##### 2. Non-consideration = non-application of mind

- The impugned order did not record consideration of any Rule 28AA factors.

Result:

- The Court held this to be a clear case of non-application of mind, rendering the order unsustainable in law.

##### 3. Tribunal orders are binding, even if appealed

The ITAT had already held (for AYs 2020-21 & 2021-22) that:

- Management & administrative support services
- Rendered on cost-to-cost basis
- Do not qualify as FTS under India–UK DTAA

The Revenue argued that appeals were pending.

- HC rejected this defence, relying on Kamlakshi Finance (SC):
- Orders of higher appellate authorities must be followed unless stayed or reversed.

##### 4. “Revenue protection” is not a magic phrase

The Court made it clear:

- Section 197 proceedings may be tentative,
- but they cannot bypass statutory safeguards
- Revenue protection ≠ ignoring Rule 28AA

#### Final Outcome

Order rejecting Nil withholding certificate quashed, Matter remanded to AO

AO directed to:

- Reconsider the application afresh
- Strictly follow Rule 28AA
- Ignore the fact that Revenue has filed appeals
- Complete exercise within 4 weeks

#### Why This Judgment Is Important

- Strengthens challenge against mechanical rejection of 197 applications
- Confirms that past favourable ITAT rulings matter
- Reinforces DTAA protection at withholding stage
- Section 197 orders must be reasoned and rule-based
- “Premature assessment” is not a legally valid shortcut

#### Key Takeaway

An AO cannot reject a Nil / lower withholding certificate under section 197 without expressly considering the mandatory factors under Rule 28AA; mere pendency of appeal or revenue-protection rationale is insufficient.

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

09.02.2026

**Whether an order passed under Section 74 of the CGST/TNGST Act after its omission by the 2024 amendment can survive in law.**

R. Chandrasekar v. Assistant Commissioner (ST)  
Madras High Court(19.01.2026)

### What the Court Held

1. Section 74 stood omitted, order under it is invalid
  - Section 74 was omitted by the 2024 amendment
  - For periods thereafter, proceedings must be under Section 74A
  - Once a provision is omitted, no order can be validly passed under it, even by mistake.
2. "Inadvertent mistake" by department is no defence
  - Revenue admitted the order was inadvertently issued under Section 74
  - Court held that jurisdiction flows from statute, not intention
  - An authority cannot derive power from a non-existent provision.
3. Order set aside, but proceedings not quashed entirely

The Court took a balanced approach:

- Impugned order set aside
- Taxpayer directed to treat the impugned order as a Show Cause Notice
- Assessee to file reply within 6 weeks
- Fresh personal hearing with 14 clear days' notice
- Fresh order to be passed on merits under Section 74A

After omission of Section 74, any adjudication must be strictly under Section 74A; an order passed under the omitted section is without jurisdiction and liable to be set aside.

### Why This Judgment Matters

- Strong ground to challenge post-2024 orders wrongly invoking Section 74
- Jurisdictional defect = fatal, even if facts involve fraud/suppression
- Relief possible without entering merits
- Transition from Section 74 → 74A must be clean
- Wrong section = order vulnerable to writ

### Practical Takeaway

- Always check section invoked in SCN / order
- If Section 74 cited after omission, raise jurisdictional challenge
- Courts may remand instead of quashing proceedings outright
- Natural justice safeguards must be re-followed

An adjudication order passed under an omitted provision (Section 74) is without authority of law and must be set aside, with proceedings to continue only under the substituted provision (Section 74A).

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

10.02.2026

### Verification of donor's creditworthiness is beyond the scope of Section 12AB- ITAT

Raya Naik Memorial Gowshala Trust v. CIT (Exemptions)  
 ITAT BANGALORE (27.01.2026)

#### Issue

Whether the Commissioner (Exemptions) can deny registration under Section 12AB by:

- Questioning the donor's creditworthiness
- Examining quantum of expenditure
- Relying on minor factual inconsistencies
- Objecting to non-ownership of assets used for charitable activities

#### Facts

- Assessee-trust operated a gaushala for abandoned and stray cattle.
- Provisional registration under Section 12A(1)(ac) (vi) was already granted.
- Application for regular registration under Section 12AB was rejected.

#### CIT(E) cited:

1. Mismatch in number of cows (website vs submission).
2. Allegedly low fodder expenditure.
3. ₹25 lakh donation – donor's ITR not furnished (creditworthiness unverifiable).
4. Land/building owned by trustee, not trust.

#### Held

The ITAT allowed the appeal and directed grant of registration.

1. Scope of Enquiry under Section 12AB

At registration stage, the Commissioner can examine only:

- (i) Charitable nature of objects
- (ii) Genuineness of activities

He cannot conduct a roving enquiry into:

- Application of income
- Adequacy of expenditure
- Source/creditworthiness of donations
- Ownership of assets

#### 2. Minor Factual Inconsistencies

Website mentioning 201 cows (capacity) vs 52 cows maintained:

- Minor inconsistencies do not establish lack of genuineness.
- Charitable objects and nature of activity were undisputed.

#### 3. Quantum of Expenditure

- Adequacy or sufficiency of expenses is not relevant at registration stage.
- Such matters fall within assessment proceedings.

#### 4. Donor's Creditworthiness

- CIT(E) exceeded jurisdiction by demanding donor's ITR.
- Verification of source of donation is an assessment issue, not a registration issue.

#### 5. Ownership of Assets

- No statutory requirement that a trust must own the premises it uses.
- Activities can be conducted on property owned by trustees.

#### Key Ratio

Registration under Section 12AB cannot be denied on grounds relating to:

- Estimated inadequacy of expenditure
- Creditworthiness of donor
- Ownership of assets
- Presumptions or technical objections

Unless the Commissioner establishes:

- Non-charitable objects, or
- Activities not genuine

Registration must be granted.

#### Judicial Precedents Relied Upon

- CIT v. Red Rose School (All HC)
- DIT v. Garden City Educational Trust (Kar HC)
- Har Nihal Charitable Trust (Chd ITAT)
- Ideal Relief Trust (Delhi ITAT)

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

10.02.2026

**Is GST applicable when: Supplier and buyer are both located in India, But goods move and are delivered entirely outside India?**

**Can this be covered under Para 7 of Schedule III (supply from non-taxable territory to non-taxable territory)?**

Snag & Bag Retail Pvt. Ltd., In re  
 AUTHORITY FOR ADVANCE RULING, TAMILNADU

### Issue

Whether GST is payable when:

- An Indian company purchases goods from Spain/USA
- Sells the same to another Indian company
- Goods are delivered entirely outside India
- Goods never enter India

And whether GST registration is mandatory in such a case.

### Facts

- Applicant (India) purchases goods from foreign vendors.
- Raises invoice on Party B (also in India) with margin.
- After receiving INR from Party B, applicant pays foreign vendor in USD.
- Goods are delivered in USA warehouse.
- Labelling done in USA.
- Goods shipped to Party B's Amazon warehouse in USA.
- Final sale to US customers via Amazon.
- Goods never enter India.

Applicant claimed transaction could fall under Para 7 of Schedule III (non-taxable supply).

### Legal Provisions Considered

- Section 9 – Levy of GST
- Section 22 – Registration requirement
- Section 97(2) – Scope of Advance Ruling
- Schedule II, Para 1(a) – Transfer of title in goods is supply of goods
- Schedule III, Para 7 – Supply from non-taxable territory to non-taxable territory without goods entering India

### AAR Findings

#### 1. It is a Supply of Goods

- Title transfers when invoice is raised in India.
- As per Schedule II, Para 1(a) → transfer of title = supply of goods.
- Therefore, supply exists between two Indian entities.

#### 2. Schedule III Para 7 Not Applicable

Para 7 applies only when:

Supply of goods is from a place in non-taxable territory to another place in non-taxable territory.

AAR held:

- Here, supply is between two persons located in India (taxable territory).
- Only movement of goods is outside India.
- Therefore, Para 7 exemption not available.

#### 3. GST Applicable

Since:

- Supplier in India
- Recipient in India
- Supply deemed to occur between persons in taxable territory
- GST payable under Section 9.

#### 4. Registration Mandatory

As taxable supply exists, Section 22 applies.

- GST registration required.

### Other Questions Rejected

AAR refused to rule on:

- Refund of ITC
- Whether transaction is export/zero-rated
- Business categorisation
- Documentation requirements

On the ground that they fall outside Section 97(2).

### Key Takeaway

Even if:

- Goods never enter India
- Movement is entirely outside India

GST is payable if:

- Supplier and recipient are both located in India
- Title transfers in India

Merchant trade structure between two Indian entities may attract GST.

# TAX INSIGHTS

By  
Tax Research Department

## Direct Tax

11.02.2026

**Whether corporate image advertisement expenditure of ₹5.02 crores: Treated as deferred revenue expenditure in books, But claimed fully as deduction under Section 37(1) in return is allowable entirely in the year of incurrence, or should be spread over several years?**

Dy. CIT (CC-1), Baroda v. Rinki Petrochemicals & Ind. Ltd.  
Gujarat HC (07.01.2026)

### Facts

- Assessee incurred ₹5.02 crore on corporate image advertisement.
- In books:
  - Treated as deferred revenue expenditure
  - Only ₹50.18 lakh debited to P&L.
- In income-tax return:
  - Added back ₹50.18 lakh
  - Claimed entire ₹5.02 crore as revenue deduction u/s 37(1).

### AO's View

- Since treated as deferred revenue in books,
- Deduction should be spread over years.
- Entire claim disallowed in year of incurrence.

### CIT(A) & ITAT

- Allowed full deduction.
- Held advertisement expense is revenue in nature.
- Revenue appealed to High Court.

### Legal Principles Considered

- Section 37(1) – General deduction for business expenditure.
- Whether advertisement expense is:
  - Capital (enduring benefit)
  - Or Revenue (business promotion expense)

### Key precedents relied upon:

- Taparia Tools Ltd. v. JCIT (SC)
- Core Healthcare Ltd. (Guj HC)
- Adani Retail Ltd. (Guj HC)
- Empire Jute (SC)
- Alembic Chemical (SC)

### High Court Decision

#### 1. No “Deferred Revenue” Concept Under Income-tax Act

- The Act does not recognize “deferred revenue expenditure” as a separate category.
- Book entries are not conclusive for tax purposes.

#### 2. No Estoppel Against Statute

Relying on Taparia Tools (SC):

Entries in books do not determine tax treatment. Assessee is entitled to claim deduction as per law, even if books show different treatment.

Thus:

- Assessee can claim full deduction in return,
- Even if it amortized expense in books.

#### 3. Advertisement Expense is Revenue in Nature

Court reiterated:

- Enduring benefit test is not conclusive.
- Every business expense may give some future benefit.
- Corporate image building does not create a capital asset.
- It is part of normal business operations.

Therefore:

- Advertisement expenses are revenue in nature.

#### 4. Entire Deduction Allowable in Year of Incurrence

Since:

- Expenditure is revenue
- Incurred wholly and exclusively for business
- Fully allowable u/s 37(1) in the same year.

### Final Ruling

- Question answered in favour of assessee.
- Revenue's appeal dismissed.
- Full ₹5.02 crore deduction allowed in year incurred.

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

11.02.2026

### Whether parallel adjudicatory proceedings by CGST and State GST authorities on the same subject matter are barred under Section 6(2)(b) of the CGST Act, 2017.

Saraswati Spinning and Weaving Mills v. State of H.P.  
 Himachal Pradesh HC (07.01.2026)

#### Facts

- Petitioner challenged:
  - DRC-01 SCNs dated 6.10.2023 & 30.11.2023 (CGST)
  - Order-in-Original dated 3.2.2025
  - DRC-07 dated 5.2.2025
- Contention:
  - State GST had also initiated proceedings on the same subject matter.
  - Section 6(2)(b) bars parallel proceedings.
- Revenue's stand:
  - Once CGST proceedings culminated in OIO, State must drop proceedings on same issue.

#### Legal Provision

Section 6(2)(b), CGST Act

Where a proper officer under the CGST Act has initiated proceedings on a subject matter, no proceedings shall be initiated by the proper officer under the State GST Act on the same subject matter.

#### Supreme Court Precedent Applied

Armour Security (India) Ltd. v. Commissioner, CGST (2025)

The Supreme Court laid down:

#### Key Principles

1. "Initiation of proceedings" = issuance of Show Cause Notice (formal adjudication).
2. Summons, inquiry, search = investigative steps, not adjudication.
3. Bar applies when:
  - Same subject matter
  - Same tax liability
  - Same contravention
4. Parallel adjudication prohibited.
5. Authorities must coordinate.
6. If overlap exists, one authority must withdraw.
7. If dispute on jurisdiction, authority first initiating proceeds.

#### High Court's Findings

The HP High Court:

- Followed Armour Security (SC).
- Held that:
  - Once one authority initiates adjudication (SCN), other cannot start parallel adjudication on same subject matter.
  - However, bona fide investigation and summons may continue if they do not amount to adjudication.
- Emphasized need for:
  - Communication between State & Central authorities.
  - Avoidance of multiplicity of proceedings.

#### Directions Issued

The Court disposed of the writ with directions:

1. Petitioner must:
  - Appear before Central authority.
  - Respond to SCN.
  - Inform State authority about CGST proceedings.
  - Comply with lawful summons.
2. Authorities must:
  - Communicate with each other.
  - Verify overlap.
  - Ensure no parallel adjudication.
  - Grant hearing before proceeding further.
3. Liberty granted:
  - Petitioner may challenge OIO dated 3.2.2025 separately.

#### Key Takeaway

Parallel adjudication by CGST and State GST on the same subject matter is barred.

However, investigation (summons, inquiry) may continue unless it amounts to formal adjudication. Authorities are legally obligated to coordinate and prevent multiplicity.

# TAX INSIGHTS

By  
Tax Research Department

## Direct Tax

12.02.2026

### Whether a heavy cash transaction (₹80 lakh) made prior to 01-04-2017 (when Section 269ST came into force) must still be intimated to the Income Tax Department?

R.V. Venkateshan vs Sanjay @ Sanjay Sait  
HIGH COURT OF MADRAS (07.01.2026)

#### Facts

- The plaintiff filed a civil suit to recover ₹80 lakh, allegedly paid in cash on 21-06-2016, based on a promissory note.
- During the pendency of the suit, the defendants sought:
  - a. Disclosure of the plaintiff's PAN, and
  - b. Forwarding of suit documents to the Income Tax Department alleging violation of Section 269ST.
- The Trial Court allowed both requests.
- The plaintiff challenged this order through a Civil Revision Petition.

#### Issues Before the High Court

1. Whether a heavy cash transaction (₹80 lakh) made prior to 01-04-2017 (when Section 269ST came into force) must still be intimated to the Income Tax Department?
2. Whether the plaintiff can be compelled to disclose his PAN to the defendants?

#### Court's Analysis

##### 1. Applicability of Section 269ST

- Section 269ST prohibits receipt of ₹2 lakh or more in cash (w.e.f. 01-04-2017).
- Violation attracts penalty under Section 271DA.

Although the transaction occurred before Section 269ST came into force, the Court relied on the Supreme Court's decision in:

Correspondent, RBANMS Educational Institution v. B. Gunashekar

In that case, the Supreme Court issued general guidelines directing courts to intimate the Income Tax Department whenever suits involve cash payments of ₹2 lakh or more.

##### 2. Reporting of Pre-269ST Transactions

The High Court held:

- Even if the transaction predated Section 269ST, such a huge cash transaction (₹80 lakh) must ordinarily be reflected in income tax returns.
- If not disclosed, it raises suspicion.
- Therefore, forwarding the plaint and related documents to the Income Tax Department for scrutiny was proper.

The Court clarified that it expressed no opinion on the merits of the civil claim, which would be decided at trial.

##### 3. Disclosure of PAN

- The Supreme Court guidelines did not require litigants to disclose PAN to the opposite party.
- Hence, the plaintiff cannot be compelled to reveal his PAN to the defendants.
- That portion of the Trial Court's order was set aside.

#### Final Decision

The Civil Revision Petition was partly allowed:

- Direction to forward plaint documents to the Income Tax Department — Confirmed
- Direction to disclose PAN to defendants — Set aside

#### Key Takeaways

1. Courts must intimate the Income Tax Department when suits involve cash transactions of ₹2 lakh or more, even if the transaction occurred before Section 269ST came into force.
2. Judicial scrutiny of large cash claims aligns with anti-black money objectives.
3. PAN disclosure cannot be compelled unless specifically supported by law.
4. The ruling strengthens compliance oversight in civil money recovery suits involving heavy cash dealings.

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

12.02.2026

**Advances received by an Indian law firm for payment to foreign patent attorneys towards overseas patent filings are liable to GST in India under the Reverse Charge Mechanism (RCM), held the West Bengal Authority for Advance Ruling.**

Medtrainai Technologies (P.) Ltd., In re  
 Authority for Advance Ruling, West Bengal (24.12.2025)

### Facts of the Case

- The applicant (an Indian company) filed patents in Japan, USA, and UK.
- It engaged an Indian law firm, Seenergi IPR, to coordinate the filings.
- The invoice raised had:
  - Part A – Amount payable to foreign patent attorneys (shown as “reimbursement”)
  - Part B – Seenergi IPR’s professional fees
- Seenergi IPR did not charge GST and advised the applicant to pay GST under Reverse Charge Mechanism (RCM) on the total amount.

The dispute was whether GST under RCM is payable on Part A (foreign attorney charges).

### Key Issues

1. Whether payment to foreign patent attorneys is merely a reimbursement and outside GST?
2. Whether Seenergi IPR acted as a pure agent under Rule 33 of CGST Rules?
3. Whether such services qualify as import of services taxable under RCM?
4. Whether exemption for legal services applies?

### Findings of the AAR

1. Not a “Reimbursement” in GST Sense
  - Reimbursement means repayment of an amount already incurred.
  - Here, the applicant paid the amount in advance, not after Seenergi incurred the expense.
  - Hence, it does not qualify as reimbursement.
2. Seenergi IPR Not a “Pure Agent”  
 Under Rule 33, to qualify as pure agent:
  - There must be a contractual agreement.
  - The supplier should not hold title to services.
  - The supplier must recover only actual cost separately.
  - All Rule 33 conditions must be satisfied.

The AAR held:

- No formal agreement was produced.
- Conditions of Rule 33 were not met.
- Therefore, Seenergi IPR was not a pure agent.

### 3. Nature of Service Received

- The real service provider was the foreign patent attorneys (Japan, UK, USA).
- Service classification:
- SAC 998213 – Legal documentation and certification services concerning patents/IPR

Thus, the applicant imported legal services from outside India.

### 4. Place of Supply (Section 13, IGST Act)

Under Section 13(2) of IGST Act:

- When supplier is outside India and service not covered under special provisions,
- Place of supply = location of recipient

Since the applicant is located in West Bengal, place of supply is India.

Hence:

- It qualifies as import of services
- It is taxable in India

### 5. Legal Services Exemption Not Applicable

The applicant relied on exemption under Notification 12/2017 (Entry 45).

AAR held:

- “Advocate” and “Senior Advocate” must be interpreted as per the Advocates Act, 1961 (India).
- Foreign attorneys are not advocates under Indian law.
- Hence, exemption does not apply.

### 6. Reverse Charge Applicability

Under:

- Section 9(3) of CGST Act
  - Notification 13/2017 Central Tax (Rate), Entry No. 2
- Legal services supplied by advocates/firm to business entities are taxable under RCM.

Since:

- The applicant is a business entity in India
- It received legal services from foreign attorneys
- GST is payable under Reverse Charge Mechanism.

### Final Ruling

Q1. Is GST payable on Japanese patent attorney charges?

Yes. Tax payable under RCM.

Q2. Does the same apply for USA & UK?

Yes. Same treatment.

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

13.02.2026

### O Cannot Disallow Entire Management Fee Without Pointing Out Specific Defects: ITAT

OSG (India) (P.) Ltd. vs DCIT  
 ITAT DELHI (04.02.2026)

#### Core Ruling

Transfer Pricing – Management Fees

Principle laid down:

The AO/TPO cannot determine ALP at NIL and disallow the entire management fee merely by calling emails/invoices “generic” without pointing out specific defects in the documents.

What happened?

- Assessee paid ₹27.89 lakh as intra-group management fees.
- TPO applied CUP and determined ALP at NIL, alleging:
  - No proof of actual rendition of services
  - No benefit demonstrated
  - No proper benchmarking
- Emails/invoices were rejected as “generic”.

#### Tribunal’s Observations

- The AO rejected emails/invoices but did not identify any specific email or invoice showing deficiency.
- However, the assessee also failed to produce strong documentary evidence conclusively proving actual services.

#### Held

- Since:
  - TPO’s rejection lacked specific findings, and
  - Assessee failed to fully substantiate service rendition,
- The matter was remanded to the TPO for fresh adjudication.

#### Important Legal Position Clarified

The Tribunal distinguished the Delhi High Court ruling in CIT v. EKL Appliances Ltd.

TPO cannot question business expediency.

- But assessee must first demonstrate that expenditure was incurred for business and services were actually rendered.

The Tribunal also reiterated (following GE Money Financial Services (P.) Ltd. v. ACIT) that:

- TPO may apply:
  - Need test
  - Rendition test
  - Benefit test
- If these fail, ALP may be determined at NIL.
- However, such conclusion must be based on specific examination of evidence, not general remarks.

#### Key Takeaway for Practitioners

1. TPO must:
  - Identify specific deficiencies in documents.
  - Conduct proper comparability analysis before applying CUP.
  - Avoid blanket observations like “generic emails”.
2. Assessee must:
  - Maintain detailed service agreements.
  - Keep documentary trail (emails, reports, presentations, review notes, cost allocation workings).
  - Demonstrate tangible business linkage.

#### Electricity Refund Issue

Where refund from electricity supplier was claimed to be adjusted against expenses in subsequent month:

- Since factual verification was required,
- Matter remanded to AO.
- If expense reduction is verified, addition to be deleted.

#### Final Outcome

- TP adjustment on management fee → Remanded
- Electricity addition → Remanded
- Appeal allowed for statistical purposes.

# TAX INSIGHTS

By  
 Tax Research Department

## Goods & Services Tax

13.02.2026

### Whether delay beyond 120 days in filing an appeal under Section 107 of the CGST/GGST Act, 2017 can be condoned by the High Court under Article 226 of the Constitution.

Hariom Industries v. State of Gujarat  
 HIGH COURT OF GUJARAT (22.01.2026)

#### Statutory Framework

Under Section 107 of the CGST/GGST Act, 2017:

- Appeal must be filed within 3 months (90 days).
- Appellate Authority may condone delay of further 1 month (30 days) if “sufficient cause” is shown.
- Total outer limit 120 days.
- No provision for condonation beyond this.

#### Facts in Brief

- Appeal filed with delay of 408 days.
- Appellate Authority rejected appeal as time-barred.
- Assessee approached High Court under Article 226 seeking:
  - Condonation of delay
  - Quashing of show-cause notice and adjudication order.

Reasons for delay cited:

- Misunderstanding order as duplicate.
- Lack of knowledge of order uploaded on GST portal.
- Illness of accountant.
- Closure of business.

#### High Court’s Observations

1. Legislative Intent Cannot Be Defeated

The Court relied heavily on:

- Asstt. Commissioner (CT) LTU v. Glaxo Smith Kline Consumer Health Care Ltd.
- Oil and Natural Gas Corporation Ltd. v. Gujarat Energy Transmission Corporation Ltd.
- Singh Enterprises v. CCE, Jamshedpur

Principle laid down:

When statute prescribes a maximum condonable period, courts cannot extend it by invoking Article 226 or Section 5 of the Limitation Act.

High Court powers are wide, but not wider than legislative mandate.

2. Section 5 of Limitation Act Not Applicable

Where special statute prescribes:

- Specific limitation period
  - Specific condonable extension
- That limit is mandatory and binding.

After expiry of 120 days:

- Appeal becomes legally non-maintainable.
- High Court cannot revive it indirectly through writ jurisdiction.

3. “Sufficient Cause” Becomes Irrelevant After 120 Days

The Court clearly held:

Even if valid reason exists, delay beyond statutory outer limit cannot be condoned.

Thus:

- Merits of explanation become immaterial once 120 days expire.

4. Taxpayer’s Duty of Vigilance

Court emphasized:

- Orders uploaded on GST portal must be regularly verified.
- Business entities must remain vigilant.
- Tax laws operate in strict timelines.
- Relaxation would disrupt revenue administration.

5. Challenge to SCN After Appeal Rejection

The Court disapproved the petitioner’s attempt to challenge the SCN only after appeal was dismissed as time-barred.

Such conduct was viewed as:

- Afterthought
- Abuse of writ jurisdiction

#### Final Held

- Condonation beyond 120 days not permissible.
- High Court cannot override statutory cap.
- Writ petition dismissed.
- Decision in favour of Revenue.

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

14.02.2026

### Whether the 12th instalment “discount” given under the Golden Harvest jewellery scheme amounted to “interest” under Section 2(28A) and therefore attracted TDS under Section 194A of the Income-tax Act, 1961.

Motor & General Sales Ltd vs. Income-tax Officer (TDS)-II  
 ITAT LUCKNOW (02.02.2026)

#### Facts in Brief

- The assessee was a franchise agent of Titan Industries Ltd. (Tanishq).
- Under the Golden Harvest Scheme (GHS):
  - Customers paid 11 monthly instalments.
  - On purchase of jewellery in the 12th month, the company contributed one instalment amount as “discount.”
  - The amount was not redeemable in cash, except refund of principal if not utilized within 400 days (without discount benefit).
- The AO treated:
  - The instalments as fixed deposits
  - The 12th instalment benefit as interest
  - Held TDS deductible under Section 194A
  - Treated assessee as assessee-in-default u/s 201(1)

Thus, it was:

Sales incentive / trade discount, not compensation for use of money.

3. Section 194A Not Applicable

Since:

- The payment was not “interest”
- It was a trading incentive
- No TDS obligation arose.

#### Final Ruling

The ITAT held:

- Discount under GHS is not interest
- No TDS required under Section 194A
- Assessee not in default under Section 201

Appeal partly allowed in favour of assessee.

#### Practical Implications

- This ruling is important for:
- Jewellery instalment schemes
- Advance-based sales promotion schemes
- Businesses offering “one instalment free” models
- Determining distinction between interest vs. trade discount

It reinforces that:

Substance of transaction matters — if payment is tied to purchase and not freely redeemable, it is not a deposit or interest.

#### ITAT’s Key Findings

##### 1. Scheme Not a “Deposit”

- Amounts were not repayable in cash at maturity.
- They could be used only for jewellery purchase.
- Therefore, it was advance against sale, not a fixed deposit.

The Tribunal relied on:

- RBI Act definition (Section 45-I(bb)) — excludes advances received in ordinary course of business.
- Companies (Acceptance of Deposits) Rules, 1975 (applicable for relevant AY).

##### 2. Discount ≠ Interest (Section 2(28A))

Interest requires:

- Money borrowed or debt incurred
- Payment for use of money

Here:

- No borrowing or debt.
- Benefit available only upon purchase of jewellery.
- If customer opted for refund, no discount was given.

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

14.02.2026

### Appeal Filed Within Extended CBIC Limitation Period Cannot Be Dismissed as Time-Barred; Non-Payment of Enhanced Pre-Deposit Is a Curable Defect: KERALA HC

Aboobaker P.P. v. Joint Commissioner, State GST Department  
Kerala HC (28.11.2025)

#### Facts:

1. The petitioner is a registered works contractor under KGST/CGST and faced assessment for 2021-22 (Ext.P2).
2. Statutory time to file an appeal under Section 107 of CGST Act expired without filing.
3. CBIC issued a notification (Ext.P5, 02.11.2023) granting an extended window for filing appeals until 31.01.2024, subject to:
  - Payment of admitted dues in full.
  - Payment of 12.5% of remaining disputed tax as pre-deposit (at least 20% via Electronic Cash Ledger).
4. Petitioner filed appeal on 28.11.2023 (within the extended window) but paid only 10% pre-deposit, without explicitly referencing Ext.P5.
5. Appellate authority rejected the appeal (Ext.P4) on the ground of delay, without pointing out the pre-deposit deficiency.

#### Contentions:

- Petitioner: Appeal was filed within the extended window; non-payment of enhanced pre-deposit is a curable defect; authorities should have informed him of the deficiency.
- Respondent (GST Department): Pre-deposit as per Ext.P5 is mandatory; non-compliance justified rejection; appeal did not expressly mention Ext.P5, so it could not be considered under the extended window.

#### High Court Observations & Findings:

1. Extended Window Validity:
  - The petitioner's appeal cannot be rejected solely for delay because it was filed within the extended window granted by Ext.P5.
2. Pre-deposit Deficiency is Curable:
  - Non-payment of the enhanced pre-deposit (12.5%) is a curable defect, not a fatal one.
  - The appellate authority should have issued a deficiency intimation, allowing the petitioner to remedy it.

#### 3. No Express Reference Needed:

- Ext.P5 did not require the petitioner to explicitly reference it in the appeal.
- The appellate authority was aware of the special circumstances; mere absence of explicit invocation of Ext.P5 cannot be a ground for rejection.

#### 4. Wider Application of Scheme Expected:

- Authorities should adopt a liberal approach to allow aggrieved parties to benefit from the extended filing period.

#### 5. Compliance Achieved Post Writ:

- Petitioner subsequently paid the balance pre-deposit (to make 12.5%), and produced acknowledgment (Ext.P6).

#### Decision:

- Ext.P4 (rejection of appeal) quashed.
  - Appellate authority directed to restore the appeal (Ext.P3) and:
    - a. Ensure petitioner complies with Ext.P5 conditions.
    - b. If any defect remains, issue intimation for cure.
    - c. Upon compliance, decide the appeal on merits, giving the petitioner opportunity to be heard.
- Outcome: In favor of the petitioner (assessee).

#### Legal Principles Established:

1. Appeals within extended window: Appeals filed under a CBIC/CGST extended window cannot be rejected solely on the ground of statutory delay.
2. Curable Defects: Non-compliance with enhanced pre-deposit under such a scheme is a curable defect, requiring notice before rejection.
3. Explicit reference to scheme not mandatory: Lack of mention of the extension scheme in appeal is not fatal.
4. Liberal approach for extension schemes: Authorities should adopt a wider application to enable taxpayers to avail relief.

# TAX INSIGHTS

By  
Tax Research Department

## Direct Tax

15.02.2026

### High Court of Gujarat quashes reopening where GST reversed and no bogus expenditure claimed

Guruvayur Infratech (P.) Ltd. v. Assistant Commissioner of Income-tax  
High Court of Gujarat (27.01.2026)

#### Core Issue

Whether reassessment under Sections 147/148 was valid when:

- The original show-cause alleged bogus purchases of ₹14.07 crore, but
- The AO, in the 148A(3) order, shifted ground and treated ₹3.67 crore (GST component) as unexplained expenditure,
- Despite the assessee having already reversed GST with interest & penalty and not claimed the amount as deduction.

#### Key Facts

- Assessee (civil construction company) made cement purchases from two vendors later found engaged in bogus billing by DGGI.
- Assessee:
  - Paid GST credit along with ₹5.13 crore interest & penalty.
  - Wrote off ₹14.07 crore as bad debts.
  - Added back the same to income (i.e., not claimed as deduction).
  - Produced CA certificate confirming the write-off.
- Scrutiny assessment under Section 143(3) was completed.
- Later, based on Insight Portal inputs, a Section 148A(1) notice alleged bogus purchases of ₹14.07 crore.
- However, in Section 148A(3) order, AO held:
  - Only ₹14.07 crore written off.
  - Balance ₹3.67 crore appropriated to GST account and claimed as expenditure.
  - Hence, income escaped assessment.

#### High Court's Findings

##### 1. AO Travelled Beyond Show-Cause Notice

The Court held that the AO:

- Initially alleged bogus purchases of ₹14.07 crore.
- Later shifted to treating ₹3.67 crore as escaped income.
- This was a new ground not put to the assessee in the show-cause notice.
- Reopening cannot be sustained on grounds beyond the original notice.

##### 2. No Escapement of Income

The Court observed:

- ₹14.07 crore was written off and added back to income.
- ₹3.67 crore was not bogus purchase expenditure.
- GST amount was paid after DGGI survey and properly reflected.
- Assessee had already borne interest & penalty.
- Ledger accounts and CA certificate supported the claim.

Therefore:

- There was no income escaping assessment.
- ##### 3. Violation of Natural Justice
- Assessee was never called upon to explain the alleged ₹3.67 crore GST claim.
  - Reopening on a ground not mentioned in the 148A(1) notice is impermissible.

#### Final Ruling

- Section 148A(3) order quashed
- Section 148 notice quashed
- Writ petition allowed
- No order as to costs

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

15.02.2026

### Whether a single consolidated Show Cause Notice (SCN) under Section 74 of the CGST Act can cover multiple financial years (April 2018 – March 2024)

Marfani Steel Impex v. Principal Commissioner, CGST & Central Excise, Nagpur  
HIGH COURT OF BOMBAY (17.01.2026)

#### Held by the Bombay High Court

The Court held that:

There is no scope for consolidating multiple financial years/tax periods in one SCN under Section 73/74 of the CGST Act.

Accordingly, the SCN covering FY 2018–19 to FY 2023–24 was quashed.

#### Key Reasoning of the Court

The Court relied on its earlier decisions in:

- Milroc Good Earth Developers v. Union of India
- Rite Water Solutions (India) Ltd. v. Joint Commissioner, CGST & Central Excise

#### Important Grounds:

1. GST is structured year-wise
- Tax liability is linked to returns for each financial year.
2. Separate Limitation Periods
- Under Sections 73(10) and 74(10), the time limit (3 or 5 years) runs independently for each financial year from the due date of annual return.
3. Statutory Scheme Does Not Permit Aggregation
- Clubbing multiple years would:
  - Merge different limitation periods
  - Blur distinct causes of action
  - Prejudice taxpayer's ability to defend year-wise
4. Definition of "Tax Period" (Section 2(106))
- Tax period relates to the period for which return is furnished — treated distinctly.
5. Violation of Year-wise Assessment Structure
- Consolidation collapses the statutory year-wise recovery framework.

#### Conflict with Delhi High Court View

The Revenue relied on:

Mathur Polymers v. Union of India

Delhi HC had permitted consolidated SCNs in fraud cases involving multi-year transactions.

Why Bombay HC Did Not Follow Delhi HC:

- Supreme Court dismissal of SLP was in limine (no merger doctrine).
- Bombay HC had subsequently taken a contrary view.
- Authorities in Maharashtra are bound by Bombay HC decisions.

The Court also relied on:

- CIT, Vidarbha and Marathwada v. Smt. Godavaridevi Saraf
- (Principle of binding precedent within territorial jurisdiction)

#### Final Order

- SCN dated 30.05.2025 quashed and set aside
- Liberty granted to department to:
- Re-issue fresh notices separately for each financial year, strictly in accordance with Section 74.

#### Practical Implications

For Taxpayers (within Bombay HC jurisdiction)

- Consolidated SCNs covering multiple FYs under Section 73/74 can be challenged.
- Strong writ remedy available.

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

16.02.2026

**Whether an assessment order passed in the name of a non-existent amalgamating company, for an assessment year subsequent to amalgamation, is:**

- A mere procedural defect curable under Section 292B, or
- A jurisdictional error rendering the assessment void ab initio

Paras Defence and Space Technologies Ltd. v. Deputy Commissioner of Income-tax  
 Bombay HC (27.01.2026)

### Key Facts

- Two companies (including Concept Shapers and Electronics Pvt. Ltd.) amalgamated with the petitioner under an NCLT-approved scheme w.e.f. 01-04-2017.
- The amalgamation was duly intimated to the department.
- For AY 2020-21 (post-amalgamation), the AO:
  - Issued notices u/s 142(1) in the name of the non-existent transferor company.
  - Passed assessment u/s 143(3) r.w.s. 144B in that name.
  - Issued demand notice u/s 156 and penalty notices in that name.
- Revenue argued:
  - It was a “technical glitch.”
  - PAN mentioned was correct.
  - Assessee participated; hence no prejudice.
  - Section 292B cures such mistakes.

Merely claiming a “technical glitch” or quoting correct PAN does not cure the defect.

3. Participation does not cure jurisdictional defect Even if the assessee responded to notices, that does not validate an invalid assumption of jurisdiction. The Court reiterated the principle laid down in Maruti Suzuki that:

Participation cannot operate as estoppel against law.

4. Sky Light Hospitality distinguished

Revenue relied on:

- Sky Light Hospitality LLP v. Asstt. CIT Bombay HC distinguished it, noting:
  - In Sky Light, there was clear material showing intention to issue notice to successor entity.
  - The Supreme Court itself in Maruti Suzuki clarified that Sky Light turned on peculiar facts.
  - The present case had no such corrective record or contemporaneous explanation.

### High Court’s Findings

1. Amalgamating company ceases to exist Once amalgamation takes effect, the transferor company loses legal existence. Proceedings against it are impermissible.

The Court relied heavily on:

- Pr. CIT v. Maruti Suzuki India Ltd.
- Saraswati Industrial Syndicate Ltd. v. CIT
- Alok Knit Exports Ltd. v. Dy. CIT

2. Not a procedural defect — it is a jurisdictional error

The Court held:

- Issuing notice to a non-existent entity strikes at the root of jurisdiction.
- Section 292B applies only to technical defects — not substantive illegality.
- Assessment for a post-amalgamation year requires the AO to be mindful of the correct legal entity.

### Final Holding

The Bombay High Court held:

- Notices u/s 142(1)
  - Show cause notice
  - Assessment order u/s 143(3) r.w.s. 144B
  - Demand notice u/s 156
  - Penalty notices
- all issued in the name of a non-existent entity are:
- Void and bad in law
  - Not curable under Section 292B
  - Quashed and set aside

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

16.02.2026

**Whether salary paid to foreign nationals directly employed in India is liable to IGST under Reverse Charge Mechanism (RCM) on the allegation that the company imported:**

**“Manpower Recruitment and Supply Services” from non-resident taxable persons.**

Huawei Technologies India (P.) Ltd. v. State of Karnataka  
Karnataka HC (05.12.2025)

### Key Findings of the Court

1. Employer–Employee Relationship Established  
The Court held that:

- There was a direct employment contract
- Employees were on the Indian payroll
- Salaries were paid into Indian bank accounts
- TDS was deducted under the Income-tax Act
- Employees were treated at par with Indian staff

Therefore, this was not a secondment arrangement, but a genuine employer-employee relationship.

2. Covered Under Schedule III – Not a Supply  
Under:

• Entry 1 of Schedule III of the CGST Act  
Services provided by an employee to the employer in the course of employment are:

- Neither supply of goods
- Nor supply of services

Hence, outside the ambit of GST.

3. Foreign Employees Not “Non-Resident Taxable Persons”

The Court clarified:

- They were residing in India
- They had a fixed place of residence
- They were not making “occasional supplies”
- They were not acting as independent suppliers

Thus, they do not satisfy Section 2(77) CGST Act.

Consequently:

- There was no “import of service” under Section 2(11) of IGST Act.

4. CBIC Circular Neutralizes Even Hypothetical Liability

The Court relied heavily on:

CBIC Circular No. 210/4/2024-GST dated 26.06.2024

It clarifies:

- In related party transactions
- Where recipient is eligible for full ITC
- If no invoice is raised
- The value shall be deemed to be “Nil”

Since:

- No invoice was raised
- Full ITC was available
- Taxable value = NIL
- No GST payable

5. Earlier Precedents Followed

The Court followed:

- Alstom Transport India Ltd. v. CCT (Karnataka HC)
- Metal One Corporation India (P.) Ltd. v. Union of India (Delhi HC)

Both cases held that salary paid in employer-employee arrangements is outside GST.

### Final Order

- Petition Allowed
- Show Cause Notice Quashed
- No IGST, Interest, or Penalty Payable

### Practical Implications

This judgment provides major clarity for:

- Companies employing expatriates directly
- MNCs operating in India
- Cases involving alleged “import of manpower service”
- RCM exposure on salary payments

It confirms:

Direct employment of foreign nationals ≠ Import of manpower services.

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

17.02.2026

### Whether the Assessing Officer (AO) can reject the Project Completion Method (PCM) regularly followed by a real estate developer without invoking Section 145(3) of the Income-tax Act, 1961.

Milan Theatres (P.) Ltd. v. DCIT  
 ITAT MUMBAI (22.02.2026)

#### Key Rulings of the ITAT

##### 1. AO Cannot Reject Method Without Invoking Section 145(3)

The Tribunal held:

- Section 145(1) mandates computation of income as per the method of accounting regularly employed.
- Section 145(3) allows rejection only if:
  - Accounts are incorrect or incomplete, OR
  - Method not regularly followed, OR
  - Notified accounting standards violated.

In this case:

- AO did not invoke Section 145(3)
- No finding of incorrect accounts
- No accounting standard violation identified
- No distortion of profits demonstrated

Result:

Rejection of PCM was jurisdictionally invalid, not merely erroneous.

The Tribunal relied on:

- United Commercial Bank v. CIT
- CIT v. Bilahari Investment (P.) Ltd.
- CIT v. Punjab Information & Communication Technology Corporation Ltd.

##### 2. Conversion of Capital Asset into Stock-in-Trade – Section 45(2)

The assessee converted its mall into stock-in-trade.

Under Section 45(2):

- Capital gains arise in year of sale of stock-in-trade
- FMV on date of conversion is deemed consideration

AO applied FMV only to 47 units instead of entire asset.

ITAT Held:

Once conversion of the entire mall is accepted:

- FMV must apply to the entire asset
- Piecemeal or truncated approach is impermissible.

##### 3. Interest Disallowance on Estimated Basis – Invalid

AO disallowed ₹3.13 crore out of capitalised interest without:

- Showing diversion of funds
- Proving lack of commercial expediency
- Reopening earlier completed assessments

Tribunal relied on:

- S.A. Builders Ltd. v. CIT (Appeals)

Held:

- Once nexus with business established, AO cannot sit in “armchair of businessman”
- Past accepted interest claims cannot be disturbed without reopening
- Disallowance deleted.

##### 4. Indexed Cost of Capitalised Interest & Assets Allowed

AO denied proportionate indexed cost relating to:

- Capitalised interest
- Elevators, escalators, AC installations etc.

Tribunal held:

- If cost is capitalised and part of asset, It must travel into indexed cost of acquisition under Section 48.
- Denial without reasoning unsustainable.

##### 5. “Without Prejudice” Computation ≠ Admission

AO treated alternate computation (filed without prejudice) as voluntary income offer.

ITAT held:

- Without-prejudice workings ≠ surrender
- Hypothetical computation ≠ binding admission
- AO cannot fasten liability based on alternate stand

##### 6. TDS Credit Cannot Be Denied for Year Mismatch

AO denied ₹24.96 lakh TDS credit citing mismatch in year of income.

Tribunal held:

- If TDS deducted and reflected in system
- AO must verify and allow credit
- Denial causes unjust enrichment of revenue

Credit allowed subject to verification.

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

17.02.2026

**Whether the manufacturer of instant noodles passed on the benefit of GST rate reduction from 18% to 12% (w.e.f. 15.11.2017) as mandated under Section 171(1) of the CGST Act, 2017, or neutralised it by increasing base prices.**

DG Anti Profiteering v. C.G. Foods  
 GSTAT – New Delhi (03.02.2026)

### Facts in Brief

- GST on instant noodles (HSN 1902) reduced from 18% to 12% via Notification No. 41/2017-CT (Rate).
- Respondent revised prices from 16.11.2017.
- DGAP found that base prices of several SKUs were increased immediately after the rate cut.
- Investigation period: 15.11.2017 to 31.12.2018.
- Total profiteering computed: ₹90,90,310.

### Legal Provision Involved

Section 171(1), CGST Act

Any reduction in rate of tax shall be passed on to recipient by way of commensurate reduction in prices.

Two elements:

- 1.Reduction in tax rate
- 2.Mandatory commensurate price reduction

DGAP Methodology-

DGAP compared:

- Average base price during 01.11.2017 – 14.11.2017 (pre-rate cut)
- Actual invoice-wise base price after 15.11.2017

### Respondent's Defence

The company argued:

- Significant rise in raw material costs (flour, palm oil, spices)
- Packaging and freight cost increase
- Diesel price increase
- No change in MRP
- GST reduction provided only 6% relief vs 40–50% cost rise
- Intense market competition

They relied on:

- Reckitt Benckiser India (P.) Ltd. v. Union of India
- (Presumption of profiteering is rebuttable)

### GSTAT Findings

1. Base Price Increased Post Rate Cut

Tribunal held:

- Respondent revised base prices contemporaneously with GST rate cut.
- Cost increases largely occurred before rate reduction.
- No cogent evidence that cost escalation neutralised full 6% benefit during investigation period.
- Presumption under Section 171 remained un rebutted.

2. Profiteering Confirmed

- Total profiteering: ₹90,90,310
- State-wise allocation made.
- Respondent directed to deposit amount in:
- Consumer Welfare Fund (CWF)
  - 50% to Centre
  - 50% to States

3. No Interest Payable

Tribunal relied on:

- CIT (Central)-I v. Vatika Township (P.) Ltd.

Reason:

- Rule imposing 18% interest became effective only from 28.06.2019.
- Profiteering period: 2017–2018.
- Fiscal provisions cannot operate retrospectively.

4. No Penalty Imposed

Section 171(3A) (penalty provision) effective from 01.01.2020.

Since violation period was earlier:

- No retrospective penalty allowed.

### Final Order Component

Profiteering Amount  
 Interest  
 Penalty  
 Direction

### Decision

Confirmed  
 ₹90,90,310  
 Not applicable  
 Not applicable

Deposit in CWF(Centre & States equally)

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

18.02.2026

**Whether interest received under Section 28 of the Land Acquisition Act, 1894 on enhanced compensation is: Taxable as “Income from Other Sources” under Sections 56(2)(viii), 57(iv) & 145A(b), OR Forms part of enhanced compensation (capital receipt) taxable under Section 45(5) — and eligible for exemption (e.g., u/s 10(37) in case of agricultural land).**

Mange Ram v. Principal Commissioner of Income-tax  
 ITAT Delhi (15.02.2026)

### Facts

- Assessee received interest under Section 28 of the Land Acquisition Act on enhanced compensation.
- AO taxed it as Income from Other Sources.
- PCIT invoked Section 263 relying on:
  - Mahender Pal Narang v. CBDT
  - Dismissal of SLP by Supreme Court.
- Assessee relied on:
  - CIT v. Ghanshyam (HUF)
  - UOI v. Hari Singh
  - Tribunal ruling in Pawan Kumar v. PCIT

3. Reliance on Mahender Pal Narang Not Decisive  
 ITAT held:

- Decision in Mahender Pal Narang rendered in specific facts.
- Supreme Court dismissal of SLP in limine does not constitute declaration of law.
- Followed Ghanshyam (HUF) and Hari Singh instead.

4. Section 263 Revision Unsustainable  
 The AO had:

- Conducted enquiry
- Applied Supreme Court judgment
- Taken a legally plausible view

Hence:

- Not a case of “lack of enquiry”
- Not an erroneous order
- Two views possible, revision u/s 263 not valid

### Legal Distinction: Section 28 vs Section 34 Interest

The Tribunal reiterated the settled distinction:

Section	Nature of Interest	Tax Character
Section 28	Accretion to value of land	Part of compensation (Capital)
Section 34	Compensation for delay in payment	Revenue receipt

As per Ghanshyam (HUF):

Interest under Section 28 is an integral part of enhanced compensation.

### Key Findings of ITAT

1. Section 28 Interest Retains Capital Character

The Tribunal held:

- Interest u/s 28 is part of enhanced compensation.
- It retains its capital nature.
- It does not become revenue income merely due to amendments in Finance (No. 2) Act, 2009.

2. 2009 Amendments Do Not Override Ghanshyam (HUF)

Insertion of:

- Section 145A, Section 145B, Section 56(2)(viii), Section 57(iv)

was intended to neutralise Rama Bai v. CIT

(which dealt with timing of taxation of interest on accrual basis)

The amendments:

- Changed year of taxability
- Did NOT change character of Section 28 interest

### Final Decision

Issue	Held
Taxability of Section 28 interest	Not taxable as income from other sources
Character of receipt	Capital (part of enhanced compensation)
Section 263 order	Quashed
Appeal	Allowed in favour of assessee

### Legal Position Emerging

Section 28 Interest = Capital Receipt

- Forms part of enhanced compensation under Section 45(5).

Finance Act 2009 Amendments

- Do not alter character of such interest.

SLP Dismissal ≠ Binding Law

- Dismissal without speaking order is not precedent.

If Land Eligible Under Section 10(37)

- Entire enhanced compensation including Section 28 interest may be exempt (subject to facts).

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

18.02.2026

**Whether, after blocking Input Tax Credit (ITC) under Rule 86A, the Proper Officer can: Refuse to initiate adjudication proceedings, and Justify continued blocking by stating that the “act of violation is not suitable for adjudication.”**

Gopal Metal Stores v. Assistant Commissioner of State Tax  
 HIGH COURT OF CALCUTTA (27.01.2026)

### Facts

- Petitioner’s Electronic Credit Ledger (ECL) was blocked under Rule 86A.
- Allegation: ITC availed on paper invoices without actual movement of goods.
- Petitioner:
  - Requested unblocking.
  - Sought adjudication under Sections 73/74 of CGST Act.
- Proper Officer:
  - Refused to unblock.
  - Refused adjudication.
  - Observed that the “act of violation is not suitable for adjudication.”
- Blocking continued for over 7 months.

3. Blocking Without Adjudication Violates Scheme of Act

The Court noted:

- Blocking had continued for 7+ months.
- Though Rule 86A permits blocking up to 1 year,
- Officer cannot abdicate statutory duty to adjudicate.

Blocking without adjudication:

“Against the very grain of the CGST Act.”

### Directions Issued

Step	Timeline
Issue SCN	Within 1 week
Assessee reply	Within 1 week
Adjudication order	Within 3 weeks
If not completed	ECL must be unblocked

### Legal Framework

#### Rule 86A, CGST Rules

Allows blocking of ITC where officer has “reasons to believe” that credit:

- Is fraudulently availed, or
- Is ineligible.

However:

- It is a protective / interim measure.
- It is not a substitute for adjudication.

### Key Findings of the High Court

1. Rule 86A Is Only an Interim Safeguard

The Court held:

Rule 86A is meant to secure revenue pending adjudication.

It cannot:

- Replace statutory proceedings.
- Operate as a final determination.

2. Refusal to Adjudicate Is Illegal

The Court strongly observed:

- Once Rule 86A is invoked,
- The officer cannot say adjudication cannot be done.

The observation that the violation was “not suitable for adjudication” was:

Unsustainable and contrary to the scheme of the CGST Act.

No adjournment permitted to petitioner.

### Legal Principles Emerging

Rule 86A ≠ Final Determination

- It is a temporary protective mechanism.

Adjudication Is Mandatory

- Blocking ITC cannot replace statutory process under Sections 73/74.

Administrative Convenience Cannot Override Statute

- Officer cannot refuse adjudication by labeling matter “unsuitable.”

Extended Blocking Without Action Is Arbitrary

- Revenue must act diligently once drastic power is exercised.

### Practical Impact

This ruling strengthens taxpayer rights in Rule 86A cases:

- Officers must issue SCN.
- Indefinite blocking without proceedings is illegal.
- High Courts may impose strict timelines.
- Judicial intolerance toward administrative inaction.

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

19.02.2026

### Section 50C – Whether addition can be made based on an original stamp valuation later rectified by the stamp authority.

Kishore Anand Shetty v. ACIT  
 ITAT MUMBAI (09.02.2026)

#### Issues Before the Tribunal

The case involved two major issues:

1. Section 50C – Whether addition can be made based on an original stamp valuation later rectified by the stamp authority.
2. Section 54F – Whether exemption can be denied where:
  - Agreement for under-construction flat pre-dated sale by more than one year, and
  - Assessee owned one other residential house.

Penalty under Section 271(1)(c) was also challenged.

#### ISSUE I — Section 50C (Stamp Duty Valuation)

##### Facts

- Assessee sold plot for ₹1.19 crore.
- Stamp authority initially valued property at ₹1.88 crore.
- AO invoked Section 50C and made addition.
- Later, stamp authority:
  - Admitted error.
  - Excluded approach road wrongly included.
  - Executed Supplementary / Clarification Deed.
  - Revised stamp value to ₹81.18 lakh.

Declared consideration (even proportionately) was higher than revised stamp value.

##### Tribunal's Ruling

Section 50C applies only to valid stamp valuation

The Tribunal held:

- Section 50C is a deeming fiction.
- It applies only where stamp duty value represents correct fair market value.
- It cannot operate on a valuation that:
  - Is factually erroneous, and
  - Stands corrected by the competent authority.

Original valuation loses legal sanctity after rectification

Once the stamp authority itself rectified the mistake:

The earlier inflated valuation ceased to have statutory relevance. Therefore:

- No understatement of consideration.
- No trigger for Section 50C.
- Addition deleted.

#### Legal Principle Emerging

Section 50C cannot be invoked if:

- Stamp valuation is subsequently corrected, and
- Declared consideration exceeds revised stamp value.

Deeming provisions cannot be used mechanically or on invalid valuations.

#### ISSUE II — Section 54F (Investment in Residential House)

##### Facts

- Assessee sold industrial property on 02-09-2013.
- Claimed exemption under Section 54F for flat:
  - Agreement dated 29-03-2011
  - Under-construction flat
  - Possession received on 02-02-2015
- AO denied exemption because:
  - Agreement pre-dated transfer by more than 1 year.
  - Assessee owned another residential house.

##### Tribunal's Ruling

1. Date of Agreement Not Decisive in Under-Construction Cases

The Tribunal relied on: CIT v. Smt. Beena K. Jain

##### Held:

- For under-construction flats,
- “Purchase” is substantially effected when:
  - Construction is completed, and
  - Possession is handed over.

Here:

- Possession on 02-02-2015.
- Within 2 years from transfer (02-09-2013).
- Time condition satisfied.

Rigid reliance on agreement date = elevating form over substance.

2. Counting of Residential Houses Under Proviso

Proviso to Section 54F(1)(a)(i):

Exemption not available if assessee owns more than one residential house other than the new asset.

##### Tribunal held:

- New flat must be excluded while counting.
- Assessee owned only one other house.
- Condition not violated.

#### Penalty under Section 271(1)(c)

Since:

- Section 50C addition deleted, and
- Section 54F disallowance reversed,
- The foundation of penalty disappeared.
- Penalty deleted.

#### Final Outcome

##### Issue

Section 50C addition  
 Section 54F exemption  
 Penalty u/s 271(1)(c)  
 Appeal

##### Result

Deleted  
 Allowed  
 Deleted  
 Allowed

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

19.02.2026

**Whether retrospective cancellation of GST registration under Section 29 is valid where:**

- ITC was allegedly availed without actual supply of goods,
- E-way bills lacked proper vehicle details,
- Another GST registration existed at the same premises,
- Dual registration was used to camouflage transactions and pass on illegitimate ITC.

Tvl. Sri Balajee Udyog v. Assistant Commissioner (ST), Chennai  
 HIGH COURT OF MADRAS (21.01.2026)

### Factual Background

- Petitioner obtained GST registration on 05.04.2022.
- Another entity, Tvl. Gaurav Metal, was already registered at the same principal place of business.
- Allegations against petitioner:
  - Huge ITC availed (₹18+ crore).
  - No genuine movement of goods.
  - E-way bills showing transport via “TMYCYCLE/TRICYCLE” (non-motorized conveyance).
  - Part B of EWB not updated.
  - Failure to furnish supplier-wise payment details.
- Registration cancelled retrospectively from date of grant.
- Appeal dismissed.
- Writ filed before High Court.

### Legal Provisions Involved

- Section 29, CGST/TNGST Act – Cancellation of registration.
- Section 16(2)(b) – ITC allowed only on actual receipt of goods.
- Section 155 – Burden of proof on taxpayer.
- Rule 21(e), GST Rules – Cancellation for ITC fraud/misuse.
- Section 74 & 122 – Fraud proceedings (against supplier).

Department relied on:

- State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd. (burden to prove actual movement of goods lies on purchasing dealer).

### Key Findings of the High Court

#### 1. Dual Registration at Same Premises

The Court noted:

- On the date petitioner obtained registration, another GST registration was active at the same address.
- No justification was shown for parallel registrations dealing in same commodity.
- Premises was found locked during inspection.
- No additional place of business declared.

The Court inferred:

The partnership firm’s transactions were intended to camouflage the petitioner’s transactions to pass on illegitimate ITC.

Thus, dual registration was treated as a device facilitating ITC misuse.

#### 2. Failure to Prove Physical Movement of Goods

The Court accepted departmental findings that:

- Huge quantities allegedly transported via non-motorized vehicles.
- Vehicle numbers absent.
- EWB Part B not updated.
- No freight/loading/unloading proof.

Following Ecom Gill Coffee, the burden lies on the claimant of ITC.

The petitioner failed to discharge burden u/s 155.

#### 3. Retrospective Cancellation Justified

Since:

- Registration obtained and used for passing ineligible ITC,
- No genuine business activity established,
- Transactions found suspicious and non-genuine,

The Court upheld retrospective cancellation effective from registration date.

### Court’s Conclusion

#### Issue

Dual GST registration  
 ITC genuineness  
 Movement of goods  
 Retrospective cancellation  
 Writ Petition

#### Finding

Unjustified and suspicious  
 Not established  
 Not proved  
 Valid  
 Dismissed

Liberty granted to revenue to recover tax and penalty passed on.

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

20.02.2026

**Whether agricultural land purchased in individuals' names (alleged benamidars) using company funds (PMPL) for the company's benefit constitutes a benami transaction under Section 2(9)(A), and whether the 2016 amended definition applies when the property continued to be held after 1-11-2016.**

**Kaluram Berva v. Initiating Officer, Pune**  
**SAFEMA – New Delhi (27.01.2026)**

### Tribunal's Findings

1. Transaction held to be Benami under Section 2(9)(A)

The Tribunal held:

- The consideration was paid by the company (beneficial owner).
- The land was registered in the names of individuals (benamidars).
- After conversion to non-agricultural use, the land was transferred to the company.
- Therefore, the property was held for the future benefit of the company.

This satisfied both limbs of Section 2(9)(A):

- Property held in one person's name
- Consideration paid by another
- Held for the immediate or future benefit of the payer

2. Fiduciary Capacity Exception Rejected

Appellants argued that individuals held land in a fiduciary capacity (as employees/agents).

The Tribunal rejected this because:

- A registered sale deed transferred full title to the individuals.
- In fiduciary relationships, legal title is not conclusively transferred.
- Once title passes through registration, it cannot be treated as fiduciary holding.
- Hence, exception under Section 2(9)(A)(ii) did not apply.

3. Rajasthan Caste-Based Land Restriction Argument Rejected

Appellants claimed:

- Rajasthan revenue laws restrict transfer of agricultural land from Scheduled Caste holders to others.
- Hence, land was purchased in SC individuals' names using company funds.

The Tribunal held:

- Statutory land restrictions do not justify entering into a benami arrangement.
- Circumventing state revenue law cannot override the Benami Act.
- Such justification actually reinforced the benami character.

4. Prospective Application of 2016 Amendment  
 Appellants relied on the Supreme Court ruling in:

- Union of India v. Ganpati Dealcom Pvt. Ltd.

However:

- That judgment was recalled on 18-10-2024.
- Tribunal relied on its earlier decision in:
  - Prism Scan Express (P.) Ltd. v. Initiating Officer

### Interpretation of "Held"

The Tribunal emphasized:

- Section 2(9)(A) covers property that is "transferred to OR held by" a person.
- Even if transfer occurred before 1-11-2016,
- If property was still held by benamidar on or after 1-11-2016, amended definition applies.
- Since land continued in individuals' names after 1-11-2016, amended law validly applied.

### Legal Principles Emerging

- Company-funded purchase in employees' names for company benefit = Benami.
- Registered title defeats fiduciary capacity defence.
- State law restrictions cannot justify benami structuring.
- Post-2016 "holding" attracts amended Section 2(9)(A), even if original purchase predates amendment.
- No perversity found in confirmation of provisional attachment.

### Final Outcome

- Appeals dismissed.
- Provisional attachment confirmed.
- Decision in favour of Revenue.

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

20.02.2026

**Whether a restaurant (Subway franchise) that increased base prices on 15-11-2017, the same date GST on restaurant services was reduced from 18% to 5% (without ITC), failed to pass on tax rate reduction benefit to consumers as required under Section 171 CGST Act.**

DG Anti Profiteering v. A J Enterprises  
 GSTAT – New Delhi (20.02.2026)

### Key Findings of GSTAT

1. Base Price Increased on Date of Tax Reduction
  - GST rate reduced via Notification No. 46/2017-CT (Rate) w.e.f. 15-11-2017.
  - On the same date, respondent increased base prices of:
    - 6" Hara Bhara Kabab
    - 6" Aloo Patty
  - Result: Final MRP remained almost unchanged despite tax reduction.
  - Tribunal held this showed intent to neutralize tax benefit and retain higher realization.

### 2. Cost Increase Defence Rejected

Respondent argued price increase was due to:

- Royalty (8%)
- Advertisement contribution (4.5%)
- Lease rent (9–10%)
- Online aggregator commission (~22.7%)
- Loss of ITC (8.21%)

However:

- No cogent documentary evidence produced.
- No proof that cost increases coincided exactly with 15-11-2017.
- Timing of price revision suspiciously aligned with tax reduction date.

Tribunal relied on:

- DGAP v. Urban Essence (Subway Franchisee)
- Reckitt Benckiser India (P.) Ltd. v. Union of India

Principle:

There is a rebuttable presumption that tax reduction must translate into price reduction. Supplier must rebut with clear and unequivocal evidence.

Respondent failed to do so.

### 3. Limitation Argument Rejected

Respondent argued:

- Six-month timeline under Rule 133 is mandatory.
- Proceedings barred by limitation.

Tribunal relied on:

- P.T. Rajan v. T.P.M. Sahir
- Nestle India Ltd. v. Union of India

Held:

- Anti-profiteering provisions are beneficial legislation.
- Time limits under Rule 133 are directory, not mandatory.
- No abatement merely due to delay.

### 4. Profiteering Established

Tribunal concluded:

- Respondent willfully increased base price to maintain same MRP.
- Benefit of GST reduction (18% → 5%) not passed to consumers.
- Violation of Section 171 CGST Act.
- Profiteered amount: ₹13,32,322

### Interest & Penalty

Interest:

Interest provision inserted via Notification No. 31/2019-CT dated 28-06-2019.

Tribunal relied on:

- DGAP v. Proctor & Gamble Group

Held:

- Interest @ 18% payable only from 28-06-2019 onward, not retrospectively.
- Interest applicable till date of deposit.

Penalty:

Section 171(3A) (penalty provision) effective 01-01-2020.

Since investigation period ended 30-09-2019:

- No penalty can be imposed retrospectively.

### Final Directions

Respondent directed to deposit:

- ₹13,32,322 (profiteered amount)
- Interest @ 18% from 28-06-2019 onward
- 50% to Central Consumer Welfare Fund
- 50% to Maharashtra Consumer Welfare Fund

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

21.02.2026

### Excess remuneration paid to partners beyond 10% of book profit is liable to disallowance under Section 40(b), rules the ITAT.

Ved Infra Manohar Farm v. ITO  
 ITAT Ahmedabad (06.02.2026)

#### Key Issues & Tribunal's Findings

##### Disallowance of Interest – Section 36(1)(iii)

Issue:

The assessee-firm advanced ₹1.12 crore as an interest-free loan to PRK HUF while claiming interest deduction on borrowed funds.

Assessee's Argument:

It had sufficient interest-free funds (customer advances and sundry creditors).

Tribunal's Finding:

- No direct nexus proved between interest-free funds and the loan advanced.
- Customer advances and sundry creditors were already utilized in construction (reflected in WIP).
- Bank statements were not produced before the AO.
- Therefore, interest-bearing funds were diverted for non-business purposes.

Held:

- Proportionate interest disallowance of ₹13.44 lakhs justified.
- In favour of Revenue.

##### Addition under Section 68 – Unsecured Loan

Issue:

₹2.14 lakh unsecured loan from Ranjanaben A. Barot.

Finding:

- Creditor was not filing ITR.
- Funds were transferred from her son's bank account.
- Creditworthiness and genuineness not established.

Held:

- Addition under Section 68 sustained.
- In favour of Revenue.

##### Disallowance of Excess Partner Remuneration – Section 40(b)

Issue:

- Firm paid ₹35 lakhs to partners.
- Book Profit: ₹1.04 crore
- As per original partnership deed: Remuneration capped at 10% of book profit (~₹10.41 lakhs).

Assessee's Claim:

Relied on a Supplementary Partnership Deed authorizing higher remuneration.

Tribunal's Observations:

- Supplementary deed was on letterhead (not on stamp paper).
- It referred to a clause unrelated to remuneration.
- Original deed clearly restricted remuneration to 10% of book profit.
- Payment of ₹35 lakhs exceeded limits prescribed under Section 40(b).

Held:

- Excess remuneration of ₹30.83 lakhs rightly disallowed.
- In favour of Revenue.

#### Core Legal Principles Reinforced

- Interest disallowance: Mere availability of interest-free funds is insufficient — nexus must be proved.
- Section 68: Assessee must establish:
  - Identity
  - Creditworthiness
  - Genuineness
- Section 40(b):
  - Remuneration must strictly comply with partnership deed AND statutory limits.
  - Post-facto or defective supplementary deeds will not override clear original terms.
  - Excess remuneration beyond permissible percentage is disallowable.

#### Practical Takeaways for Firms

- Maintain documentary proof showing fund flow nexus.
- Ensure unsecured loan lenders file ITR and demonstrate independent capacity.
- Draft partnership deeds carefully — remuneration clauses must align strictly with Section 40(b).
- Any amendment to partnership deed must be:
  - Properly executed
  - Legally valid
  - Prospectively applicable

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

21.02.2026

**Whether Input Tax Credit (ITC) can be denied merely because returns were filed beyond the time limit prescribed under Section 16(4) of the CGST Act, when the returns were filed within the extended cut-off date provided under Section 16(5) (inserted w.e.f. 16-08-2024).**

Malabar Plaza Residency & Restaurant v. Assistant State Tax Officer  
High Court of Kerala (06.11.2025)

### Facts

- ITC related to December 2019 to March 2020.
- Returns were filed on:
  - 28-12-2020, and
  - 18-11-2021
- Department rejected ITC under Section 16(4) (time-barred claim).
- Recovery proceedings were initiated under Section 73.
- Assessee relied on newly inserted Section 16(5) allowing ITC if returns were filed on or before 30-11-2021.

### Court's Findings

Section 16(5) Overrides Section 16(4)

- Section 16(5) begins with:
- “Notwithstanding anything contained in sub-section (4)...”
- Therefore, the limitation under Section 16(4) becomes irrelevant if conditions under Section 16(5) are satisfied.

Returns Filed Within Extended Cut-off

- Court noted that:
  - All returns were filed either on 28-12-2020 or 18-11-2021.
  - Both dates fall before 30-11-2021.
- Hence, statutory benefit under Section 16(5) was available.

Procedural Lapses Cannot Defeat Statutory Right

- Even though petitioner failed to respond to a rectification notice,
- Court held that procedural lapses cannot deny a statutory benefit expressly granted by law.

### Held

- Order rejecting ITC was quashed.
- Matter remanded for reconsideration.
- Department directed to grant benefit of Section 16(5), if otherwise eligible.
- In favour of Assessee

### Key Legal Principle

When a provision contains a non obstante clause (“Notwithstanding anything contained...”), it overrides conflicting provisions. Thus, If returns were filed on or before 30-11-2021, ITC cannot be denied merely on limitation grounds under Section 16(4).

### Practical Impact for Taxpayers

This ruling is significant for taxpayers who:

- Filed belated returns for FY 2019-20,
- But filed them before 30-11-2021,
- And whose ITC was denied solely on limitation grounds.

It strengthens the position that:

- Section 16(5) is a curative and beneficial provision, and
- ITC cannot be denied merely due to delayed filing if within extended cut-off.

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

22.02.2026

### Whether donation amounts spent towards Corporate Social Responsibility (CSR) obligations under Section 135 of the Companies Act, 2013 can be allowed as deduction under Section 80G of the Income-tax Act, 1961.

McKinsey Global Capabilities & Services (P.) Ltd. v. Commissioner of Income-tax(Appeals)/NFAC, Delhi (15.01.2026)

#### Facts of the Case

- The assessee claimed deduction u/s 80G for ₹20,00,000 spent on CSR.
- The Assessing Officer disallowed the claim on the ground that:
  - CSR expenditure is mandatory under the Companies Act.
  - Hence, it cannot be considered a "voluntary" donation.
- CIT(A)/NFAC upheld the disallowance.
- The matter reached ITAT Delhi.

#### Tribunal's Findings

The ITAT allowed the deduction and relied heavily on its earlier ruling in:

- Interglobe Technology Quotient (P.) Ltd. v. ACIT

#### Core Reasoning:

1. CSR is "application of income," not business expenditure
  - Explanation 2 to Section 37(1) disallows CSR as business expenditure.
  - However, CSR spend continues to form part of total income.
  - Section 80G deduction operates at the stage of computing total income (Chapter VI-A).
  - Therefore, there is no conflict between:
    - Disallowance under Section 37(1), and
    - Allowability under Section 80G.

2. CSR is not disqualified merely because it is mandatory

The Tribunal rejected the Revenue's argument that: CSR is mandatory, hence not "voluntary".

ITAT held:

- "Voluntary" in Section 80G means without reciprocal benefit.
- CSR donations are philanthropic in nature.
- There is no quid pro quo from the donee.
- Therefore, CSR donations can still qualify under Section 80G.

#### 3. Legislative intent supports allowability

- Parliament specifically barred CSR deduction under Section 37.
- However, no general prohibition exists in Section 80G.
- Only two specific exclusions exist under Section 80G(2):
  - Swachh Bharat Kosh (if CSR)
  - Clean Ganga Fund (if CSR)

By implication, other eligible donations under Section 80G are allowable, even if made as CSR.

#### 4. No allegation of failure to satisfy Section 80G conditions

Importantly:

- Revenue did not dispute compliance with other 80G conditions.
- Hence, deduction could not be denied solely because the payment was CSR.

#### Legal Principle Emerging

CSR expenditure disallowed u/s 37(1) can still qualify for deduction u/s 80G if all statutory conditions are satisfied and the donation is to an eligible institution.

There is:

- No double deduction
- No legislative bar under 80G
- No restriction except specific statutory exclusions

#### Final Decision

The appeal of the assessee was allowed.

Deduction u/s 80G was directed to be granted.

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

22.02.2026

**Whether GST proceedings under Section 73 can be initiated and concluded against a deceased sole proprietor, without issuing a show cause notice to the legal representative as required under Section 93.**

P. B. Sethi Plastics v. State of U.P.  
High Court of Allahabad (04.02.2026)

### Facts

- Sole proprietor (Buldeo Raj Sethi) died on 21-07-2020.
- GST registration cancelled in October 2020.
- Despite death:
  - SCN issued on 21-09-2023
  - Order passed under Section 73 on 20-12-2023
- Appeal filed by legal heir in 2025 (after gaining knowledge).
- Appeal rejected as time-barred.

### Court's Findings

Proceedings Against Dead Person Are Void

The Court held:

- Section 93 deals only with liability of legal representative.
- It does not authorize adjudication against a deceased person.
- Determination must be made after issuing notice to the legal representative.

Proceedings initiated and concluded against a dead person are legally unsustainable.

Section 93 Does Not Validate Defective Proceedings

Section 93 provides:

- If business continues → legal representative liable.
- If discontinued → liability payable out of estate.

But:

It does not permit issuing SCN or passing order against the deceased.

Appeal Could Not Be Dismissed on Limitation

- Legal heir had no knowledge of proceedings.
- Registration already cancelled.
- Since original proceedings were void, rejection on limitation ignored substantive illegality.

### Held

- SCN and order under Section 73 quashed
- Appellate order dismissing appeal set aside
- Liberty granted to department to proceed afresh in accordance with law
- In favour of Assessee

### Key Legal Principle

Any quasi-judicial proceedings initiated against a deceased person are null and void.

Before determination of tax liability:

- Notice must be issued to the legal representative.
- Adjudication must be against the legal representative, not the deceased.

### Practical Implications

This ruling protects legal heirs in cases where:

- Department issues SCNs to deceased proprietors.
- Orders are passed post death without substitution.
- Appeals are rejected on technical grounds of limitation.

Authorities must:

- Verify existence of taxpayer before issuing SCN.
- Invoke Section 93 properly.
- Ensure notice to legal representative.

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

23.02.2026

**Whether recurring software expenses such as: Annual Maintenance Charges (AMC), Database support fees, Licence renewal cost, Subscription charges should be treated as capital expenditure or revenue expenditure.**

Assistant Commissioner of Income-tax v. BNP Paribas India Solutions (P.) Ltd  
 ITAT Mumbai (09.02.2026)

### Facts of the Case

- Assessee: Captive service provider under STPI Scheme.
- AY: 2017–18
- Software expenses claimed: ₹28.24 crores.
- AO's view:
  - Treated expenses as capital.
  - Allowed depreciation @ 60%.
- CIT(A)'s view:
  - Held expenses to be revenue in nature.
- Revenue appealed before ITAT.

### ITAT's Findings

The Tribunal dismissed the Revenue's appeal and upheld CIT(A)'s order.

1. Nature of Expenditure: Period Cost & Recurring

The Tribunal noted:

- Expenses were recurring annually.
- Payments were for subscription for fixed period.
- No acquisition of ownership in software.
- No intellectual property rights were created.
- No capital asset came into existence.

These were "period costs" giving annual benefit only.

2. No Enduring Benefit

The classic capital vs revenue test — enduring benefit — was examined.

ITAT observed:

- No change in asset base.
- No enduring benefit beyond subscription period.
- No transfer of ownership.
- No proprietary rights acquired.

Therefore, expenditure could not be capitalized.

3. AO Failed to Prove Capital Nature

The Tribunal emphasized:

- AO did not bring material evidence showing creation of capital asset.
- Mere magnitude of expense does not convert revenue into capital.
- Recurring nature does not automatically make it capital.

### Judicial Precedents Followed

The Tribunal relied on several earlier rulings, including:

- Asstt. CIT v. Matrix Publicities and Media India (P.) Ltd.
- ACIT v. First Advantage (P.) Ltd.
- Asstt. CIT v. Boots Piramal Health Care Ltd.
- CGI Information Systems and Management Consultants (P.) Ltd. v. ITO
- CIT v. G.E Capital Services Limited

The consistent judicial position:

Subscription-based software payments are revenue expenditure.

### Legal Principle Emerging

Software expenditure is revenue in nature if:

- ✓ It is subscription-based
- ✓ It is for fixed period usage
- ✓ It is recurring annually
- ✓ No ownership/IPR is acquired
- ✓ No enduring benefit arises
- ✓ No addition to capital asset base

Such expenses are deductible u/s 37(1).

### Final Ruling

Revenue's appeal dismissed.

Software expenses allowed as revenue deduction.

### Practical Takeaways

Likely Revenue Expenditure:

- SaaS subscriptions
- Annual software licences
- AMC payments
- Cloud hosting fees
- Database access fees

Likely Capital Expenditure:

- Purchase of perpetual licence with ownership
- Development of proprietary software
- Acquisition of source code/IPR
- ERP implementation with enduring structural benefit

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

23.02.2026

**Whether tax authorities can issue a single consolidated show cause notice and adjudication order covering multiple financial years under:**

• **Section 73 (non-fraud cases), or Section 74 (fraud/suppression cases) of the CGST/SGST Act.**

**Dhanlaxmi Bank Ltd. v. State of Kerala**  
 Kerala HC (16.02.2026)

### Key Legal Finding

The Kerala High Court ruled:  
 Power under Section 74 is year-specific and limitation is year-wise. Therefore, composite SCNs are impermissible.

### Reasoning of the Court

1. Limitation under Section 74 is Year-Wise

- Under Section 74(10), adjudication must be completed within 5 years from the due date of annual return of the relevant financial year.
- Each financial year has a different limitation expiry date.
- A consolidated notice would:
  - Artificially compress adjudication time for later years.
  - Curtail statutory rights available to the assessee.

This reasoning followed binding Division Bench judgments:

- Lakshmi Mobile Accessories v. Joint Commissioner (Intelligence & Enforcement)
- Tharayil Medicals v. Deputy Commissioner, SGST Department, Thrissur

2. Prejudice to Assessee

Composite notices:

- Inflate total tax demand (multiple years clubbed).
- Increase pre-deposit burden for appeal.
- Reduce effective opportunity for defense.
- Result in consolidated adjudication contrary to statutory scheme.

The Court emphasized fairness in quasi-judicial tax proceedings.

3. No Statutory Provision Permitting Consolidation

The Court observed:

- The CGST Act does not contain any enabling provision allowing composite SCNs for multiple years.
- Consolidation is permissible only when statute provides a common limitation structure (as under old excise/customs law).
- Under GST, limitation is tied to each financial year's annual return.

Hence, consolidation lacks statutory footing.

### Delhi HC View Distinguished

The Revenue relied on Delhi High Court rulings:

- Ambika Traders v. Additional Commissioner
- Vallabh Textiles v. Additional/Joint Commissioner, CGST Delhi East Commissionerate

SLPs against these were dismissed by the Supreme Court:

- Ambika Traders v. Additional Commissioner

But Kerala HC clarified:

- Dismissal of SLP by non-speaking order does not amount to declaration of law under Article 141.
- Such dismissal does not create binding precedent.

The Court relied on Supreme Court principles from:

- Kunhayammed v. State of Kerala
- Khoday Distilleries Ltd. v. Mahadeshwara Sahakara Sakkare Karkhane Ltd.
- Indian Oil Corporation Ltd. v. State of Bihar

### Final Ruling

- Composite SCNs and consolidated orders quashed
- Liberty granted to issue separate year-wise notices
- Time during pendency of writ to be excluded for limitation

### Practical Implications

If you receive a composite SCN:

- Check whether it covers multiple financial years.
- Examine limitation year-wise under Section 73(10)/74(10).
- Raise jurisdictional objection at earliest stage.
- Consider writ remedy (especially in Kerala jurisdiction).

### Key Takeaway

Under the Kerala High Court:

Each financial year must have a separate show cause notice and separate adjudication under Sections 73/74 of CGST Act.

Composite notices are ultra vires the statutory scheme.

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

24.02.2026

**Whether, on acquisition of a hotel undertaking by way of slump sale, the assessee is entitled to:**

- 1. Depreciation on tangible assets based on revalued figures; and**
- 2. Depreciation on the excess consideration as goodwill under section 32(1)(ii).**

**Kovalam Resort (P.) Ltd. v. Deputy Commissioner of Income-tax**  
 Mumbai ITAT (30.01.2026)

### Facts in Brief

- The assessee acquired a 5-star hotel undertaking as a going concern for ₹500 crore.
- It allocated the composite consideration among land and depreciable assets based on valuation reports.
- The AO rejected this allocation and:
  - Adopted the transferor's WDV (₹60.92 crore) for depreciable assets.
  - Attributed the balance (~₹439 crore) entirely to land.
  - Disallowed depreciation of ~₹19 crore.
- The CIT(A):
  - Held AO's mechanical WDV adoption was not fully justified.
  - Yet sustained the disallowance.
  - Refused to adjudicate the alternative plea on goodwill.

### Tribunal's Key Findings

#### AO's Valuation Approach Unsustainable

The AO:

- Rejected the assessee's valuation as inflated.
- Yet substituted it with his own assumptions (generic construction rates, website land values).
- Ignored Departmental Valuation Officer (DVO) reports available on record.

The Tribunal held this approach was internally inconsistent and legally unsustainable.

#### DVO Valuation Must Be Adopted

Since departmental valuation was obtained:

- Depreciation must be computed using DVO-determined fair market values of tangible assets.
- Not on arbitrary assumptions or automatic adoption of transferor's WDV.

#### Excess Consideration = Goodwill

Once tangible assets are valued (per DVO), the balancing figure between:

Slump sale consideration minus FMV of identifiable tangible assets represents goodwill / commercial rights.

The Tribunal relied on:

- CIT v. Smifs Securities Ltd. – Goodwill is an intangible asset eligible for depreciation under section 32(1)(ii).
- ITO v. Archroma India (P.) Ltd. – Balancing figure in slump sale can constitute goodwill.
- ACIT v. Siyaram Silk Mills Ltd. – Depreciation on goodwill allowable for pre-AY 2021-22 years.

#### Selective Use of Precedent Not Permissible

CIT(A) relied on Archroma to restrict depreciation on tangible assets

but ignored the part of the same ruling allowing depreciation on goodwill.

The Tribunal held:

A judicial precedent must be applied fully and consistently, not selectively.

#### Final Directions

The ITAT directed:

- Adopt DVO valuation for land, building and other tangible assets.
- Treat balance slump sale consideration as goodwill.
- Allow depreciation on such goodwill under section 32(1)(ii).
- Recompute depreciation accordingly for all relevant years.

#### Legal Position Clarified

For pre-AY 2021-22 years:

- Excess slump sale consideration over tangible asset value = Goodwill
- Goodwill qualifies as intangible asset
- Depreciation allowable under section 32(1)(ii)

#### Practical Takeaway

In slump sale cases:

- AO cannot arbitrarily attribute excess consideration entirely to land.
- If tangible asset values are restricted (e.g., under proviso to section 32), the excess does not vanish.
- That excess normally represents business/commercial rights (goodwill) and is depreciable (for years prior to the statutory amendment removing goodwill depreciation from AY 2021-22 onward).

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

24.02.2026

### Advisory on Interest Collection and Related Enhancements in GSTR-3B Issued by GSTN

It is hereby informed that from January-2026 period onwards, the following enhancement have been made in filing of GSTR-3B:

#### **Update in Interest Computation for GSTR-3B**

From January-2026 tax period onwards, the interest calculation in table 5.1 of GSTR-3B on portal has been enhanced, providing the benefit of the minimum cash balance available in the Electronic Cash Ledger of the taxpayer from the due date of return filing until the date of tax payment (offset) in line with the proviso to Rule 88B(1) of the CGST Rules, 2017. The said change shall be applicable on the delayed returns filed for January 26' tax period for which interest shall be auto-populated in February 26' tax period's GSTR-3B. The revised interest computation formula is mentioned below for better understanding of the taxpayers.

#### **Revised Interest Computation Formula**

Interest = (Net Tax Liability – Minimum Cash Balance in ECL from due date to date of debit) × (No. of days delayed / 365) × Applicable Interest Rate

#### **1. System-Computed Interest in Table 5.1:**

The interest auto-populated on the basis of the revised computational formula mentioned above, in table 5.1 of GSTR-3B shall be non-editable and taxpayers would not be allowed to amend the auto-populated values downward. It may be noted that the interest auto-populated in GSTR-3B is only the minimum interest that is required to be paid by the taxpayer. However, the taxpayers needed to self-assess their correct interest liability, and amend the auto populated values upward, if required.

#### **2. Auto-Population of Tax Liability Breakup Table in GSTR-3B**

The 'tax liability breakup table' in GSTR-3B capture the supplies of previous tax periods, reported in current period. The tax is being paid for such supplies in current tax period. Hence, for the filing of GSTR-3B from January-2026 tax period onwards, the GST Portal shall auto-populate the "Tax Liability Breakup Table" in GSTR-3B on the basis of date of documents related to supplies reported in GSTR-1 / GSTR-1A / IFF pertaining to any previous tax period. Where the corresponding tax liability has been discharged in the current period's GSTR-3B.

GSTN Advisory on Interest Collection and Related Enhancements in GSTR-3B Page 2 of 2

This enhancement is intended to assist taxpayers in accurate reporting of tax liability and align the computation of interest as per proviso of Section 50 of CGST Act, 2017.

#### **Key Features**

- Auto-populated values are suggestive in nature.
- Taxpayers may modify upwards these values based on their own records and computations, if required.

The auto-populated breakup can be viewed at:

Login → GSTR-3B Dashboard → Table 6.1 (Payment of Tax) → Tax Liability Breakup

#### **3. Update in Table 6.1 – Suggestive Cross-Utilization of ITC**

From January-2026 period onwards, once the available IGST ITC has been fully exhausted, the GST Portal will allow to pay IGST liability in Table 6.1 of GSTR-3B using available CGST and SGST ITC in any sequence,

#### **4. Collection of Interest in GSTR-10 for Delayed Filing of Last Applicable GSTR-3B**

In case of cancelled taxpayers, if the last applicable GSTR-3B return has been filed after the due date, then the interest applicable on such delayed filing shall be levied and collected through the Final Return i.e., GSTR-10.

**Disclaimer** – This advisory has been prepared solely for educational purposes. It is not a legal advice hence, taxpayer must rely on statutory provisions for compliance requirements. For any official or legal purpose, please refer to the applicable GST laws, rules, and notifications.

# TAX INSIGHTS

By

Tax Research Department

## Direct Tax

25.02.2026

### Can the Settlement Commission, after passing a final order under section 245D(4) and concluding proceedings, invoke section 154 (rectification) to levy additional interest under section 234B?

Sidharth Carbochem Products Ltd. v. Tax Recovery Officer  
High Court of Bombay (27.01.2026)

#### Background Facts

- The assessee approached the Settlement Commission for AYs 1992-93 to 1994-95.
- Final order under Section 245D(4) dated 30-11-1999 levied interest under Section 234B only up to the date of intimation under Section 143(1).
- Assessee paid all dues; settlement stood concluded.
- Subsequently, Supreme Court rulings clarified that interest under Section 234B is leviable up to the date of the order under Section 245D(1).
- Relying on these rulings, the Settlement Commission issued a show cause notice under Section 154 and passed a rectification order (23-03-2004) levying additional interest up to the date of the 245D(4) order.
- Assessee challenged the rectification order via writ petition.

#### Important Precedent Relied Upon

Brij Lal v. CIT

The Supreme Court held:

- Settlement Commission proceedings are a self-contained code (Chapter XIX-A).
- Section 154 (rectification) applies to assessment proceedings under Chapter XIV, not to concluded settlement proceedings.
- Once a settlement order under Section 245D(4) is passed, it attains finality under Section 245-I.
- The Commission cannot reopen concluded proceedings by invoking Section 154 to levy interest under Section 234B.

Other cases referred:

- CIT v. Anjum M.H. Ghaswala
- CIT v. Hindustan Bulk Carriers

#### High Court's Ruling

##### Rectification Not Permissible

The Bombay High Court held:

- The settlement proceedings concluded on 30-11-1999.
- Once concluded, the Settlement Commission lacked jurisdiction to invoke Section 154.
- The rectification order dated 23-03-2004 was therefore without authority of law.

##### Revenue's Alternative Argument Rejected

Revenue argued interest should at least be levied up to the date of admission order under Section 245D(1).

The Court rejected this, observing:

- Accepting this argument would indirectly permit reopening of concluded proceedings.
- Supreme Court in Brij Lal had already put a "quietus" to the issue.
- What cannot be done directly cannot be done indirectly.

#### Final Outcome

- Rectification order dated 23-03-2004 quashed and set aside.
- Consequential demand notices also quashed.
- Petition allowed in favour of the assessee.

#### Legal Principle Established

Once a settlement order under Section 245D(4) is passed and proceedings are concluded:

- The Settlement Commission cannot invoke Section 154 to levy additional interest under Section 234B.
- Finality of settlement proceedings cannot be disturbed except in cases of fraud or misrepresentation.

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

25.02.2026

**Whether a home buyer who booked a flat in the post-GST period is entitled to benefit of Input Tax Credit (ITC) under Section 171 on the ground that the builder allegedly failed to pass on ITC benefit.**

DGAP v. Shrivision Towers (P.) Ltd.  
 GSTAT, New Delhi (29.01.2026)

### Background Facts

- Complaint filed alleging that the builder did not pass on ITC benefit after GST implementation (w.e.f. 01.07.2017).
- Project: “Shriram Greenfield” (Phase-I).
- The flat was booked in January 2018 (post-GST period).
- Initially, DGAP had computed profiteering of approx. ₹14.48 crore (₹2.32 lakh for complainant).
- Matter was remanded for re-investigation pursuant to Delhi High Court judgment.
- Revised DGAP report concluded no profiteering.

### DGAP Findings

After examining purchase values and ITC availed:

Particulars	Pre-GST	Post-GST
ITC to Purchase Ratio	15.25%	14.57%

- ITC ratio actually reduced in post-GST period.
- No additional benefit accrued to the builder due to GST implementation.
- Hence, no contravention of Section 171.

### Key Precedent Followed

Reckitt Benckiser India (P.) Ltd. v. Union of India

The Delhi High Court laid down guidelines for anti-profiteering computation and clarified:

If a flat is constructed and booked in the post-GST period, the price would have already factored in the ITC available under GST.

Therefore, no separate ITC benefit needs to be passed on.

The Court also held that no rigid mathematical formula can be universally applied for determining profiteering.

### Authority’s Reasoning

#### Flat booked post-GST

Since the applicant booked the flat after GST implementation, the price would have been fixed considering available ITC.

#### No automatic ITC entitlement

ITC benefit is not automatic merely because GST came into force.

#### Builder’s email assurance not binding

A general statement that ITC benefit would be passed does not create a legal right if, in fact, no additional benefit accrued.

#### No cost savings demonstrated

Post-GST ITC ratio was lower than pre-GST ratio — hence no profiteering.

### Final Decision

- DGAP revised report accepted.
- No violation of Section 171.
- Complaint rejected.
- No ITC benefit payable to home buyer.

### Legal Principle Established

A home buyer who books a flat in the post-GST period is not entitled to ITC benefit if the pricing already factors in GST-era ITC availability.

ITC benefit under anti-profiteering provisions applies only where the builder actually derives additional tax credit advantage due to GST implementation.

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

26.02.2026

### Whether GST collected by a foreign shipping company from customers should be included in “aggregate amounts” for computing presumptive income under Section 44B of the Income-tax Act.

Orient Overseas Container Line Ltd. v. DCIT (International Taxation)  
 ITAT Mumbai (19.01.2026)

#### Background Facts

- The assessee is a Hong Kong based shipping company operating ships in international traffic.
- Income offered under presumptive taxation scheme of Section 44B.
- Revenue includes:
  - Freight income
  - Ancillary charges (THC, demurrage etc.)
- The company collected GST on ancillary services, but excluded GST from gross receipts while computing income under section 44B.

#### Action by AO

The Assessing Officer held that:

- GST collected is part of amount received from customers
- Hence it should be included in gross receipts under Section 44B(2).

Addition made:

₹8.34 crore (7.5% presumptive income on GST component).

DRP confirmed AO’s view.

#### Tribunal’s Decision

##### Issue 1: Whether GST forms part of gross receipts u/s 44B

ITAT held NO.

##### Reasoning

Section 44B taxes only specified amounts

- Amount paid/received for carriage of passengers or goods.

GST is not consideration for carriage

- It is a statutory levy collected on behalf of Government.

Shipping company acts as a collecting agent

- GST is not income of the assessee.

Including GST would result in

- Tax on tax (cascading effect).

Judicial precedents on service tax exclusion apply equally to GST.

Therefore

- GST cannot be included in gross receipts for computing presumptive income under Section 44B.
- Addition deleted.

##### Issue 2: Applicability of MAT under Section 115JB

The AO computed book profit under MAT.  
 Tribunal held MAT not applicable.

Reason:

Under Explanation 4A to Section 115JB(1):

MAT does not apply to foreign companies where:

- Income from shipping is taxed under Section 44B
- And tax treaty provisions apply.

Here:

- Income taxed under Section 44B
- Covered by Article 8 of the India-Hong Kong DTAA.

MAT provisions held inapplicable.

##### Other Issues

Tribunal directed AO to verify and grant:

- TDS credit
- Advance tax credit
- Interest u/s 244A

Penalty issue under Section 270A dismissed as premature.

##### Important Legal Principles from the Case

1. GST/Service tax not part of turnover

For presumptive taxation provisions like:

- Section 44B (shipping)
- Section 44BB (oil exploration)
- Similar presumptive regimes

Indirect tax collected on behalf of government is not income.

2. Tax treaty and presumptive regime can override MAT

Foreign companies whose income is governed by:

- DTAA Article 8
- Section 44B

are outside MAT scope due to Explanation 4A.

##### Practical Implications

For foreign shipping companies:

- GST should not be included in gross receipts for section 44B computation.
- MAT under section 115JB generally not applicable when income is taxed under 44B & treaty.

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

26.02.2026

### Whether interest can be imposed in the adjudication order when the Show Cause Notice (SCN) did not quantify the interest amount.

Ziva Auto Sales v. State of Uttar Pradesh  
HIGH COURT OF ALLAHABAD (28.01.2026)

#### Facts of the Case

- GST authorities issued SCN for tax, interest and penalty for the period April 2020 – March 2021.
- However, the SCN did not quantify the amount of interest.
- Later, the adjudication order under Section 73(9) imposed:

- Tax, Interest, Penalty totaling ₹10,04,955.

The assessee challenged this before the High Court.

#### Assessee's Argument

The petitioner relied on Section 75(7) of the CGST Act which states:

The amount of tax, interest and penalty demanded in the order shall not exceed the amount specified in the notice.

Thus:

- Since interest was not quantified in SCN, it cannot be imposed later in the order.

The petitioner also relied on the earlier judgment:

- Vrinda Automation v. State of Uttar Pradesh

#### Department's Argument

The department relied on Section 75(9) of the CGST Act.

This section states:

Interest on tax short paid or not paid shall be payable whether or not specified in the order.

Thus they argued:

- Even if interest was not mentioned in the SCN, it is automatically payable.

#### High Court's Observations

The Court made three important observations:

Interest liability was already known

- The interest related to FY 2020–21.
- The department issued the SCN in November 2024.
- Therefore, the authority could easily quantify interest when issuing SCN.

Failure to do so violates procedural requirements.

Order cannot exceed the Show Cause Notice

Under Section 75(7):

- Demand confirmed in the order cannot exceed the amount mentioned in SCN.
- Since interest amount was not specified, the order went beyond the SCN.

Thus it is illegal.

Section 75(9) does not apply here

The Court clarified:

- Section 75(9) applies when interest is not mentioned in the order.
- It does not allow authorities to skip quantification in the SCN.

Therefore the department's argument was rejected.

#### Judgment of the Court

The Court held:

- Levy of interest without quantification in SCN violates Section 75(7).
- Adjudication order cannot travel beyond the SCN.

Hence:

- Show Cause Notice quashed
- Adjudication order quashed

However:

The department was given liberty to issue a fresh SCN in accordance with law.

#### Important Legal Principle

Doctrine: Order cannot go beyond the SCN

Under GST adjudication:

- SCN must clearly specify
  - Tax, Interest, Penalty
- Adjudication order cannot demand anything beyond SCN.

If it does, order becomes invalid.

#### Practical GST Litigation Insight

Taxpayers should check whether the SCN properly mentions:

- Tax amount
- Interest amount
- Penalty amount
- Grounds of demand

If any of these are missing or vague, the entire demand may be challengeable.

#### Key takeaway:

Failure to quantify interest in the Show Cause Notice makes the demand unsustainable, since an adjudication order cannot exceed the scope of the SCN.

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

27.02.2026

### Delay in filing Form 10B cannot deny Section 11 exemption – ITAT Delhi

Institute of Rehabilitation v. ITO (Exemption)  
 ITAT Delhi (18.02.2026)

#### Key Issues

1. Whether delay in filing audit report in Form 10B can lead to denial of exemption under Section 11 & 12.
2. Whether exemption can be denied when new approval details were not mentioned in the return, even though existing registration under Section 12AA was valid.

#### Facts of the Case

- The assessee was a charitable society engaged in education for deaf, dumb and mentally challenged children.
- It had:
  - Registration under Section 12A/12AA
  - Approval under Section 80G

#### AO's Action

For AY 2017-18 to 2020-21

- Exemption denied because Form 10B (audit report) was not filed within due date.

For AY 2021-22

- Exemption denied because details of fresh approval were not mentioned in the return.

CIT(A) confirmed the denial.

#### Tribunal's Decision

##### Issue 1: Delay in filing Form 10B

ITAT held that exemption cannot be denied merely due to delay.

##### Reasoning

- Filing of Form 10B is procedural in nature.
- It is directory, not mandatory.

Tribunal relied on decision upheld by the Supreme Court in CIT (Exemption) v. Anjana Foundation.

Therefore:

Delay in filing audit report cannot automatically disallow Section 11 exemption.

##### Issue 2: Non-mentioning of new approval details

The AO denied exemption because new approval details were not mentioned in the return.

Tribunal held:

- The trust already had valid registration under Section 12AA.
- Existing registration continues to protect the assessee.

The Tribunal relied on Shambhu Dayal Modern School v. ITO (Exemption).

#### Issue of Delay in Filing Appeal

The appeal before NFAC was delayed because:

- The trust depended on a person handling tax matters.
- That person passed away.
- The trust became aware of the orders only after receiving demand notices.

#### ITAT held:

- A trust relies on office bearers and professionals.
- In exceptional situations like death of the responsible person, delay should be condoned.

Thus, delay was justified.

#### Final Order of ITAT

The Tribunal:

- Set aside orders of CIT(A).
- Restored the matter to the Assessing Officer.

AO directed to:

- Consider Form 10AB and returns.
- Decide the exemption issue on merits.

Appeals allowed for statistical purposes.

#### Important Legal Principles

Form 10B filing requirement

- Filing before due date is procedural.
- Delay cannot automatically deny Section 11 exemption.

Existing 12AA registration protects the trust

Even if:

- new approval details are not mentioned in return

If valid registration exists, exemption cannot be denied without examining merits.

Courts favour substantive justice in charitable cases

Where charitable activities are genuine, procedural lapses should not defeat exemption.

#### Practical Implications for Charitable Trusts

Trusts should still ensure:

- Form 10B filing before due date
- Correct details of registration in ITR

But if delay occurs:

*Exemption may still be allowed if genuine.*

#### Core Principle:

*Procedural lapses like delayed filing of audit report should not defeat substantive charitable exemption under Section 11.*

# TAX INSIGHTS

By  
 Tax Research Department

## Goods & Services Tax

27.02.2026

### Whether general penalty under Section 125 can be imposed when late fee under Section 47 has already been levied for the same tax period.

Prajith Enterprises v. State Tax Officer  
 HIGH COURT OF MADRAS (27.01.2026)

#### Facts of the Case

- The assessee received an assessment order in Form GST DRC-07 for FY 2021-22.
- The order imposed:

Particular	Amount
Late Fee (CGST + SGST)	₹1,67,200
General Penalty	₹50,000
Total Demand	₹2,17,200

However:

- Another assessment order dated 13-05-2025 was already passed for the same tax period.
- In that order also penalty of ₹50,000 was imposed.

Thus the assessee challenged the order before the High Court.

#### Assessee's Argument

The petitioner argued:

- Late fee and general penalty relate to the same default (delay in filing return).
- Under GST law, general penalty can be imposed only when no specific penalty exists.

Since Section 47 already provides a specific late fee, imposing Section 125 penalty is illegal.

Reliance was placed on:

- Ms. Kandan Hardware Mart v. Assistant Commissioner (ST)

#### Court's Observations

The Madras High Court noted:

- Two assessment orders for the same period**  
 Authorities had passed two orders for the same tax period, which resulted in duplication of penalty.
- General penalty applies only in absence of specific penalty**

The Court clarified an important GST principle: Section 125 (general penalty) applies only when no specific penalty is provided in the Act.

Since Section 47 already prescribes late fee for delayed return filing, the general penalty cannot be imposed.

- Judicial precedent**

The Court followed its earlier ruling in: Ms. Kandan Hardware Mart v. Assistant Commissioner (ST)

which held that late fee and general penalty cannot be imposed together for the same default.

#### Decision of the Court

The High Court passed the following directions:

- General penalty of ₹50,000 dropped.
- Petitioner directed to pay only late fee of ₹1,67,200 within 30 days.

If the petitioner pays the late fee:

- The impugned order will stand quashed.
- Recovery proceedings will be dropped.

The appellate authority will then decide the appeal on merits.

#### Important Legal Principle

Specific penalty overrides general penalty  
 If GST law provides a specific penalty for a default, then:

- General penalty under Section 125 cannot be imposed.

This follows the legal rule:

- General provision cannot override a specific provision.

#### Practical GST Litigation Insight

This judgment helps taxpayers in cases where authorities impose multiple penalties for the same default, such as:

- Late fee & general penalty
- Late fee & separate penalty for same delay

Such demands can be challenged in writ jurisdiction.

#### Key takeaway:

When late fee under Section 47 is levied for delayed return filing, general penalty under Section 125 cannot also be imposed for the same period and default.

# TAX INSIGHTS

By  
 Tax Research Department

## Direct Tax

28.02.2026

### Stamp duty on renewal of mining lease is capital expenditure – ITAT Panaji

Bandekar Brothers (P.) Ltd. v. ACIT  
 ITAT Panaji (11.02.2026)

#### Core Issue

Whether stamp duty of ₹16 crore paid for renewal of mining lease for 20 years is:

- Revenue expenditure deductible under Section 37(1), or
- Capital expenditure, being cost of acquiring a capital asset.

#### Facts of the Case

- Assessee engaged in mining and export of iron ore in Goa.
- Mining operations require mining licence/lease under the Mines and Minerals laws.
- The earlier mining lease expired in 2007.

For renewal of lease for 20 years, the assessee paid:

- ₹16 crore as stamp duty/franking charges to Government of Goa.

The assessee:

- Claimed deduction under Section 37(1) as revenue expenditure.

Assessing Officer's View

- Payment was consideration for acquiring mining rights.
- Mining rights are capital assets under Section 2(14).
- Hence expenditure capital in nature.

CIT(A)/NFAC confirmed the disallowance.

#### Key Legal Questions

1. Is renewal of mining lease a capital asset?
2. Does payment of stamp duty change the nature of the expenditure?
3. If capital, can depreciation be claimed?

#### Tribunal's Decision

**Issue 1: Whether mining lease renewal is a capital asset**

ITAT held YES.

Mining lease grants:

- Right to extract minerals
- Right to carry out mining operations
- Transferable commercial rights
- Enduring benefit over 20 years

Therefore it qualifies as a capital asset under Section 2(14).

The tribunal relied on several Supreme Court decisions including:

- Gotan Lime Syndicate v. CIT
- Aditya Minerals (P.) Ltd. v. CIT
- A.R. Krishnamurthy v. CIT

#### Issue 2: Nature of stamp duty payment

Assessee argued:

- Stamp duty is legal expenditure.
- Renewal is recurring.
- No new asset was acquired.

Tribunal rejected this argument.

It held:

- Stamp duty here was not merely registration cost.
- It was consideration required to obtain the mining licence.

Thus the payment was in substance cost of acquiring mining rights.

Doctrine applied: Substance over form;

Even though payment was labelled stamp duty, the economic reality was acquisition of mining rights.

Therefore:

- Capital expenditure
- Not deductible under Section 37(1)

#### Depreciation Claim (Alternative Ground)

The assessee alternatively claimed depreciation.

ITAT accepted this argument.

Mining lease right qualifies as:

- Intangible asset
- Covered under Section 32

Examples of intangible assets include:

- Licences
- Franchises
- Commercial rights

Thus mining lease licence falls within "business or commercial rights of similar nature".

Therefore:

- Cost (₹16 crore) is capitalised
- Depreciation allowed under Section 32

#### Claim for Full Deduction Due to Suspension of Mining

Assessee argued:

- Mining operations were suspended by the Supreme Court.
- Hence entire expenditure should be allowed in one year.

Tribunal rejected this.

Principle:

Depreciation does not depend on actual operations.

Reliance placed on:

- Salgaonkar Mining Industries v. CIT

#### Final Outcome

##### Issue

Revenue deduction u/s 37(1)  
 Nature of expenditure  
 Depreciation u/s 32  
 Appeal

##### Decision

Disallowed  
 Capital  
 Allowed  
 Partly allowed.

# TAX INSIGHTS

By

Tax Research Department

## Goods & Services Tax

28.02.2026

**Whether uploading a Show Cause Notice (SCN) only on the GST portal is sufficient service when the taxpayer does not respond, and whether an ex-parte assessment without personal hearing is valid.**

Praveen Constructions v. State Tax Officer, Tirunelveli  
 Madras High Court (06.02.2026)

### Facts of the Case

1. The department issued show cause notices (SCN) by uploading them on the GST portal.
2. The taxpayer claimed they were not aware of the notices.
3. No reply was filed within the stipulated time.
4. The officer passed ex-parte assessment orders confirming the tax demand.
5. Importantly, no personal hearing was granted before passing the orders.
6. The taxpayer filed writ petitions before the Madras High Court.

- Merely sending repeated portal reminders and then passing an ex-parte order amounts to “empty formalities.”
- Such practice:
  - Does not ensure effective service
  - Leads to unnecessary litigation.

### Decision of the Court

The Madras High Court held:

- The assessment orders were passed without providing proper opportunity of hearing.
- Therefore, the orders were set aside.
- The matter was remanded to the tax authority for fresh consideration.

### Conditions Imposed by the Court

The relief was granted subject to conditions:

1. The petitioner must pay 25% of the disputed tax within 4 weeks.
2. After payment, the petitioner must file a reply with documents within 3 weeks.
3. The department must:
  - Issue 14 days clear notice of personal hearing.
  - Pass a fresh order after hearing the taxpayer.

### Important Legal Principle

When a taxpayer does not respond to portal-based notices, the GST officer should attempt alternative modes of service under Section 169 before passing an ex-parte order.

Portal service alone may not be considered effective service in such circumstances.

### Practical GST Takeaway

This judgment helps taxpayers where:

- SCN is only uploaded on the portal
- Taxpayer misses the notice
- Department passes ex-parte assessment

Courts may set aside such orders if effective opportunity of hearing was not provided.

### Petitioner’s Argument

- Notices were only uploaded on the portal, and the petitioner was unaware of them.
- Therefore, no effective opportunity of hearing was given.
- Requested the court to set aside the orders and allow a fresh hearing.
- Petitioner agreed to deposit 25% of the disputed tax amount.

### Department’s Stand

- Notices were properly uploaded on the GST portal, which is a valid service.
- However, the department admitted that no personal hearing was provided.
- Agreed that the matter could be remanded subject to payment of 25% tax.

### High Court Observations

The court made important observations on service of notice under Section 169:

1. Uploading notice on the portal is a valid mode of service.
2. However, when no response is received from the taxpayer, the officer should:
  - Apply mind, and
  - Use other modes of service prescribed under Section 169(1).

Examples include:

- Registered post (RPAD), Email, Physical service
- Other prescribed methods.