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Statutory Body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

TAX INSIGHTS

By

Tax Research Department

Direct Tax

01.01.2026

Whether successive resignation of key accounting personnel, resulting in operational disruption, constitutes "reasonable and sufficient cause" / "genuine hardship" for condonation of delay in filing return of income under section 119(2)(b)?

Exim Infrastructure India (P.) Ltd. v. CBDT
ORISSA HC (21-11-2025)

Core Issue

Whether successive resignation of key accounting personnel, resulting in operational disruption, constitutes "reasonable and sufficient cause" / "genuine hardship" for condonation of delay in filing return of income under section 119(2)(b).

Held

1. Sudden loss of specialised accounting staff = reasonable cause
   - Assessee was located in a remote village.
   - Employees handling accounts and income-tax compliances resigned in quick succession.
   - New incumbents had insufficient time to familiarise themselves with:
     - prior year transactions,
     - loss computation, and
     - refund claims.
   - Such disruption was beyond the assessee's control and could not be overcome despite ordinary business prudence.

2. Liberal approach mandated in section 119(2)(b) cases
   - CBDT Circulars (Nos. 7/2023 and 11/2024) require authorities to:
     - adopt a liberal and justice-oriented approach, and
     - avoid pedantic or technical reasoning.
   - An assessee derives no benefit from filing a return belatedly.

3. PCIT's reasoning held legally flawed

PCIT rejected condonation on the ground that:

- Audit report was ready and could have been filed even without staff assistance.
- HC held:
  - Filing return is not a mechanical act.
  - Knowledge of accounts, refunds, and losses is person-specific, not merely document-based.
  - Affidavits and resignation records could not be brushed aside on conjecture.

4. Meaning of "reasonable cause" clarified
   - Reasonable cause = circumstances beyond taxpayer's control which prevent compliance despite due diligence.
   - Sudden exit of employees with exclusive access to critical financial data squarely falls within this test.

Final Directions

- Order rejecting condonation set aside.
- Delay in filing ROI for AY 2024-25 condoned.
- Return and audit report to be treated as filed within time.
- Assessee entitled to:
  - refund claim, and
  - carry-forward of losses.

Key Takeaway

This judgment is a strong precedent for condonation applications, especially where delay is caused by:

- Resignation of key finance/accounts staff
- Remote or manpower-constrained locations
- Knowledge-centric compliance failures
- Documentary proof supported by affidavit

It also curtails arbitrary rejection of condonation by senior tax authorities.

Key Judicial Observation

"Sudden departure of employees with specialised knowledge disrupted operations to such an extent that timely filing became impossible despite best efforts."

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

01.01.2026

Whether a writ petition challenging a first appellate order should continue when it was originally filed due to non-constitution of GST Appellate Tribunal (GSTAT), but GSTAT has since become functional with extended timelines for filing appeals?

SNM Business (P.) Ltd. v. Addl. Commissioner of State Tax (Appeal)
ORISSA HC (04-12-2025) W. P. (C) No. 32335 of 2025

Core Issue

Whether a writ petition challenging a first appellate order should continue when it was originally filed due to non-constitution of GST Appellate Tribunal (GSTAT), but GSTAT has since become functional with extended timelines for filing appeals.

Held

1. Writ maintainable only till appellate forum is unavailable
- High Court reaffirmed settled law:
  - Writ jurisdiction can be invoked when statutory appellate forum is not functional, as an assessee cannot be rendered remediless.
- However, such writ remedy is only provisional and situational, not permanent.

2. Once GSTAT becomes functional, writ should not be kept pending
- With GSTAT now operational and
- Extended timelines notified under Notification S.O. 4220(E) dated 17-09-2025,

It would be improper for the writ court to continue adjudicating disputes which are statutorily meant for GSTAT.

3. Disputes must now be adjudicated by GSTAT
- Since:
  - Section 112 provides a complete appellate mechanism, and
  - Filing windows have been liberally extended in a staggered manner up to 30-06-2026,
- The High Court directed the assessee to pursue the statutory appeal instead of the writ.

4. Mandatory compliance with pre-deposit under section 112(8)
- Court emphasized that:
  - Even when writ was entertained earlier due to absence of tribunal,
  - Statutory conditions of appeal cannot be bypassed.
- Assessee must:
  - Pay admitted dues in full, and
  - Deposit 10% of disputed tax (subject to ₹20 crore cap), in addition to section 107 pre-deposit.

Final Directions

- Writ petition disposed of (not allowed on merits).
- Petitioner directed to:
  a. Make mandatory pre-deposit under section 112(8),
  b. File appeal before GSTAT within notified timelines as per GSTAT User Advisory,
  c. GSTAT to entertain appeal if found in order.
- High Court expressly refrained from commenting on merits of the first appellate order.

Key Takeaways

This ruling settles the transition phase jurisprudence post-GSTAT constitution:
- Writs were justified only due to absence of tribunal
- Once GSTAT is functional → statutory remedy prevails
- Pending writs challenging first appellate orders are likely to be disposed with liberty to approach GSTAT
- No waiver of pre-deposit merely because writ was earlier entertained

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TAX INSIGHTS
By
Tax Research Department

Direct Tax 02.01.2026

ITAT holds AO cannot deny alternate claim of Section 11 exemption without granting opportunity of hearing to assessee.

Goswami Bhagwan Lal Education Society v. ITO
Delhi-ITAT(27.11.2025)

Key Issues

1. Whether exemption under section 11 can be denied at the 143(1) processing stage merely because Form 10B audit report was not filed, without issuing defect notice under section 139(9).
2. Whether, after denial of exemption under sections 10(23C) and 11, the entire gross receipts can be taxed, or only the income embedded therein after allowing expenses.

Held by ITAT

1. Non-filing of Form 10B is a curable defect
- Filing of audit report in Form 10B is directory, not mandatory in a rigid sense.
- Delay or non-filing is a curable defect.
- AO must first treat the return as defective under section 139(9) and grant an opportunity to rectify.
- Denial of section 11 exemption without issuing a 139(9) notice violates principles of natural justice.

2. Such adjustment cannot be made under section 143(1)
- Denial of alternate claim under section 11 due to non-filing of Form 10B is a debatable issue.
- Debatable issues cannot be adjusted while processing return under section 143(1).
- CPC exceeded its jurisdiction.

3. Entire gross receipts cannot be taxed
- Even if exemption under section 11 is denied:
  - It does not mean the assessee loses the right to claim revenue expenditure.
- Income tax is levied on "income" and not on "receipts".

At most:
- Income should be assessed under "Income from Other Sources".
- Sections 56 & 57 apply.
- Revenue expenditure and depreciation incurred to earn income must be allowed.

4. CIT(A)'s reasoning rejected
- Chapter III (Exempt Income) cannot be interpreted to mean:
  - If exemption fails, entire receipts become taxable.
- Comparison with Chapter VIA deductions was held to be legally flawed.

Final Directions

- Matter remanded to AO.
- AO directed to:
  - Issue opportunity under section 139(9),
  - Allow assessee to file Form 10B,
  - Decide condonation of delay,
  - Re-examine allowability of exemption under section 11,
  - Recompute income after allowing eligible expenses.

Legal Propositions

- Form 10B delay curable defect
- No denial of sec. 11 exemption without hearing under sec. 139(9)
- 143(1) cannot be used for debatable disallowances
- Even without exemption, expenses under sec. 57 must be allowed
- Only surplus/income embedded in receipts is taxable

Key Takeaway

AO cannot deny an alternate claim under section 11 for non-filing of Form 10B without granting opportunity under section 139(9), nor can entire gross receipts be taxed when only income is chargeable.

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

02.01.2026

High Court clarifies pre-deposit requirement—10% at first appeal and additional 10% before Tribunal; mandates refund of excess recovery.

Vidya Trading Co. v. Senior Joint Commissioner of State Tax
Calcutta HC (24-11-2025)

Core Issue

Whether GST authorities can recover the entire tax demand when:

- the assessee has already filed first appeal, and
- time to file appeal before the GST Appellate Tribunal is still available, subject to statutory pre-deposit.

Statutory Framework

- Section 107(6), CGST/WBGST Act
- 10% of tax in dispute to be deposited for first appeal.
- Section 112(8), CGST/WBGST Act
- Additional 10% of remaining tax in dispute (over and above 107(6) deposit) for appeal before Tribunal.
- Upon making these deposits recovery proceedings are deemed to be stayed.

Held by Calcutta High Court

First Appeal (Section 107):

- Only 10% of tax in dispute is required as pre-deposit.

Tribunal Appeal (Section 112):

- Only 10% of the balance tax in dispute, in addition to the first 10%, is required.

Total Maximum Recovery Permissible:

- 20% of tax in dispute (10% + 10%)

GST authorities cannot recover the balance demand once statutory pre-deposit conditions are satisfied and appeal period is subsisting.

Refund of Excess Recovery

- Any amount recovered in excess of the cumulative statutory pre-deposit is illegal.
- Such excess recovery must be refunded.
- Refund to be made by re-credit to the Electronic Credit Ledger within two weeks.

Key Judicial Support

- AEW Technologies LLP (Cal HC)
- Supreme Infotrade (P.) Ltd. (Cal HC)

Practical Takeaways

- GST officers cannot force recovery beyond statutory pre-deposit limits.
- Even if Tribunal is not functional, assessee is protected if appeal period is alive.
- Excess recovery is automatic entitlement to refund.
- Strong precedent for writ remedy where coercive recovery is made.

In one line

Under GST, recovery beyond 10% (first appeal) plus 10% (Tribunal appeal) is unlawful, and any excess collected must be refunded.

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TAX INSIGHTS

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Tax Research Department

Direct Tax

03.01.2026

Whether disallowance under section 14A can exceed the amount of exempt income actually earned?

PCIT v. R.J. Corp. Ltd.
Delhi High Court (12.12.2025)

Core Issue

Whether disallowance under section 14A can exceed the amount of exempt income actually earned, and whether the Finance Act, 2022 amendment to section 14A applies retrospectively.

Facts in Brief

- Exempt dividend income earned: ₹50,000
- AO disallowed u/s 14A: ₹14.12 crore
- CIT(A): Restricted disallowance to 0.5% of average investments
- ITAT: Further restricted disallowance to ₹50,000 only
- Revenue appealed to High Court

High Court Ruling

Held in favour of the assessee

1. Disallowance u/s 14A cannot exceed exempt income
- Disallowance must be restricted to the actual exempt income earned during the year.
- Relied on Joint Investments (P.) Ltd. v. CIT (Delhi HC).

2. Finance Act, 2022 amendment is prospective
- Amendment clarifying that section 14A applies even when no exempt income is earned does NOT apply retrospectively.
- Followed Pr. CIT v. Era Infrastructure (India) Ltd. (Delhi HC).
- Hence, not applicable to AY 2011–12.

3. No substantial question of law
- Revenue's appeal dismissed.

Legal Principles Reaffirmed

- Section 14A disallowance is capped at exempt income (pre-FA 2022 years).
- CBDT Circulars cannot override binding High Court judgments.
- Clarificatory amendments that impose a burden are presumed prospective, unless expressly stated otherwise.

Practical Implications

For Assessments up to AY 2021–22

- If exempt income is ₹Nil or minimal, disallowance u/s 14A:
  - Cannot exceed exempt income
  - May even be Nil if no exempt income is earned

From AY 2022–23 onwards

- FA 2022 amendment applies
- Disallowance can be made even if exempt income is Nil (subject to future litigation)

Note

"For assessment years prior to FA 2022, disallowance under section 14A is restricted to the extent of exempt income earned, as held by Delhi High Court in PCIT v. R.J. Corp. Ltd. (2025)."

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

03.01.2026

Whether GST authorities have power under section 67 of the CGST Act to seize cash, merely on the suspicion that it represents unaccounted money or proceeds of clandestine taxable supplies, without linking it to any specific taxable transaction.

Puspa Furniture (P.) Ltd. v. Union of India
Calcutta High Court (10-12-2025)

Facts in Brief

- Search conducted u/s 67 at business and residential premises
- ₹24 lakh cash found and sealed
- Department alleged:
  - Cash was unexplained
  - Believed to be proceeds of clandestine supply without invoices
- Cash remained in custody of assessee but sealed, restricting its use
- Assessee challenged seizure before HC

High Court Ruling

Held in favour of the assessee

1. Cash is not "goods" under GST

- Section 2(52), CGST Act:
  - Goods includes movable property excluding money and securities
- Therefore, cash cannot be seized as "goods liable to confiscation".

2. Seizure of "documents / books / things" is limited

- Under section 67(2), seizure is allowed only if:
  - The item is useful or relevant to proceedings, and
  - Has evidentiary value for establishing a GST offence
- Cash by itself is not evidence unless:
  - It can be linked in specie to a taxable transaction
  - It forms part of a chain of proof (e.g., recorded serial numbers, matching records)

3. "Unaccounted cash" ≠ power to seize under GST

- GST law is not a recovery or wealth-seizure statute
- If cash is merely:
  - Unexplained, or
  - Suspected to be unaccounted wealth
  - Income-tax authorities, not GST, are the proper forum

4. No nexus shown in present case

- Department failed to show:
  - How the seized currency would be used as evidence
  - Any specific taxable supply to which the cash was relatable
- Hence, seizure was beyond jurisdiction

Final Directions

- GST authorities directed to:
  - Immediately de-seal ₹24 lakh
  - Allow assessee to use the cash lawfully
- Clarified:
  - Order does not validate legality of possession
  - Other authorities (Income Tax, etc.) may still act as per law

Key Precedent Followed

- Commissioner of CGST v. Deepak Khandelwal (SC, 2025)
- Cash can be seized only if it has evidentiary value, not merely because it is unaccounted

Key Takeaways

Money is expressly excluded from the definition of "goods" under the CGST Act, and GST authorities cannot seize cash under section 67 unless it is demonstrably useful or relevant to proceedings by being directly linked to a taxable transaction.

Practical Implications

What GST officers can do

- Seize:
  - Goods liable to confiscation
  - Documents, books, devices, records
- Retain material only for evidentiary purposes

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TAX INSIGHTS

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Tax Research Department

Direct Tax

04.01.2026

Whether interest on borrowed capital used to acquire a commercial property is allowable as business deduction u/s 36(1)(iii) when the asset is not put to use.

Rup Kumar Ramchandani v. ITO
ITAT Jaipur (18-12-2025)

Issues Involved

1. Whether interest on borrowed capital used to acquire a commercial property is allowable as business deduction u/s 36(1)(iii) when the asset is not put to use.
2. Whether such interest can alternatively be allowed as deduction u/s 24(b) under the head Income from House Property.

Facts in Brief

- Assessee (individual proprietor) borrowed funds to acquire a commercial property.
- Claimed interest deduction from business income u/s 36(1)(iii).
- AO disallowed ₹6.71 lakh holding:
  - Property was not put to business use during the year.
- CIT(A) upheld disallowance.
- Assessee raised alternate claim u/s 24(b) before ITAT.

Tribunal Ruling

Issue 1: Deduction u/s 36(1)(iii) – Disallowed

- Interest on borrowed capital for acquisition of a capital asset is allowable only from the date the asset is put to use.
- Assessee failed to prove business use of the commercial property during AY 2019-20.
- Reliance on UDYAM Registration (dated 27-04-2021) was rejected as it was subsequent to the assessment year.
- Assessee conceded inability to prove user.

Held:

Interest paid prior to put-to-use of the commercial property not allowable u/s 36(1)(iii).

Issue 2: Alternate claim u/s 24(b) –Allowed (Matter remanded)

- Property was not used for business, hence:
  - Annual value chargeable under section 22.
- Under section 24(b):
  - Interest on borrowed capital for acquisition of property is deductible from annual value.
- Even if:
  - Property is vacant, or
  - No rental income is earned
- Deduction u/s 24(b) is still allowable.

Held:

- Assessee is entitled to deduction u/s 24(b).
- Matter remanded to AO to:
  - Compute annual value u/s 23
  - Allow interest deduction accordingly.

Legal Principles Laid Down

Section 36(1)(iii)

- Interest on borrowed capital for acquisition of a capital asset is not deductible until the asset is put to use.
- Mere intention or future use is insufficient.

Section 24(b)

- Interest on borrowed capital for acquiring property is allowable:
  - Even if property is not let out
  - Even if no income is earned
- Deduction is against annual value, not business income.

Practical Takeaways

- Wrong head ≠ loss of deduction — assessee can still succeed under the correct head.
- Always evaluate:
  - Business use evidence (electricity bills, invoices, occupancy, etc.)
  - Alternate tax treatment under house property provisions.
- Useful in cases of:
  - Vacant commercial properties
  - Properties under transition phase

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TAX INSIGHTS

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Goods & Services Tax

04.01.2026

Whether blocking of ITC under Rule 86A can be continued or re-imposed beyond one year on the same facts, without any fresh material or proceedings, in view of Rule 86A(3) and Section 83(2) of the CGST Act.

NB International v. Commissioner, CGST
Punjab & Haryana High Court(28-11-2025)

Facts in Brief

- Petitioner's ITC of ₹82.50 lakh was blocked on 21-11-2023 under Rule 86A.
- Basis: Allegation that supplier (M/s M.S. Trading Co.) was non-existent.
- Partial unblocking done on 16-02-2024.
- Department re-blocked ITC again on same grounds.
- No SCN, adjudication or further proceedings initiated.
- Blocking continued beyond 21-11-2024 (one year).
- Petitioner filed writ seeking unblocking.

High Court Ruling

Held in favour of the assessee

1. Maximum ITC blocking period is one year
- Rule 86A(3) expressly mandates:
- Restriction shall cease after expiry of one year from date of imposition.
- Blocking beyond one year violates the statutory limit.

2. Section 83(2) & Rule 86A(3) are pari materia
- Both provisions:
  - Are protective, not recovery measures.
  - Prescribe a hard stop of one year.
- Principles laid down by Supreme Court in Kesari Nandan Mobile (2025) apply equally to Rule 86A.

3. Re-blocking without fresh material is impermissible
- Department cannot renew or continue blocking:
  - On same facts
  - Without change in circumstances
  - Without fresh material or proceedings
- Doing so would render Rule 86A(3) otiose.

4. Protective power cannot become recovery tool
- Blocking ITC is a pre-emptive measure, not:
  - A punishment
  - A recovery mechanism
- Revenue must complete investigation within one year or proceed under regular adjudication provisions.

Final Directions

- Blocking of ITC beyond 21-11-2024 declared illegal.
- Department directed to unblock ITC.
- Liberty reserved to proceed in accordance with law, if fresh grounds arise.

Key Authorities Relied Upon

- Kesari Nandan Mobile v. ACST (SC, 2025)
- State of Odisha v. Satish Kumar Ishwardas Gajbhiye
- Lohia Machines Ltd. v. UOI
- Sant Ram Sharma v. State of Rajasthan

Legal Ratio

Blocking of ITC under Rule 86A cannot continue or be renewed beyond one year on the same facts in absence of fresh material, as Rule 86A(3) and Section 83(2) prescribe a mandatory outer limit.

Note

Rule 86A(3) places a mandatory one-year cap on ITC blocking, and re-blocking on identical facts without fresh material is impermissible, as held by the P&H High Court in NB International (2025).

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TAX INSIGHTS

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Tax Research Department

Direct Tax

05.01.2026

Can the Assessing Officer tax gross receipts reflected in Form 26AS when the assessee's real income consists only of service charges, and the balance represents freight reimbursed to airlines/shipping lines?

DCIT v. MKF Logistics (P.) Ltd.
ITAT DELHI(10-12-2025)

Facts in Brief

- Assessee is a freight forwarding & handling agent.
- Customers paid a gross amount (freight + service charges).
- Assessee:
  - Retained only service charges as income.
  - Remitted freight to airlines/shipping companies.
  - Maintained a separate freight payable account.
- TDS was deducted by customers on gross billing, hence reflected in Form 26AS.
- AO treated the difference between 26AS receipts and P&L turnover as undisclosed income.

Decision of ITAT

Addition deleted. Appeal of Revenue dismissed.

Key Legal Findings

1. Real income theory prevails
   - Only income belonging to the assessee can be taxed.
   - Freight collected on behalf of airlines/shipping lines is not assessee's income.
2. Form 26AS is not conclusive of taxable income
   - Mere reflection of gross receipts in 26AS does not justify taxation, unless it is proved that such receipts are consideration for services rendered by the assessee.
3. Pass-through / reimbursement amounts are not taxable
   - Where:
     - Freight expenses are not debited to P&L, and
     - Only service income is credited,
   - AO cannot artificially treat reimbursements as income.
- Burden on Revenue
  - Addition cannot be made merely on the basis of transactions or TDS deduction.
  - Revenue must prove that gross receipts are compensation earned by assessee.
- Section 199 / Rule 37BA not violated
  - Claim of TDS credit does not automatically mean the entire gross receipt becomes taxable.
  - Taxation must align with real income, not mechanical TDS matching.

Important Observations by ITAT

"Merely on the basis of transaction, addition cannot be made unless it is proved that the gross receipt is actually for the compensation rendered by the assessee."

"Revenue authorities have to determine the real income of the assessee and tax the same."

Practical Takeaways

Freight forwarders, clearing agents, travel agents, logistics agents, commission agents can rely on this ruling where:

- Gross billing includes third-party costs
- Income is only service fee / commission
- Proper reconciliation, freight payable accounts, and supporting bills are maintained

Mismatch between 26AS and turnover alone is insufficient for addition.

AO cannot tax reimbursements without rejecting books u/s 145 or proving income character.

Supporting Jurisprudence (Reaffirmed)

- Industrial Engineering Projects (Del HC)
- Siemens AG (Bom HC)
- Krupp Uhde (Bom HC)
- KM Trade Link (Chennai ITAT)

Final Result

Revenue appeal dismissed.
Addition of ₹2.14 crore rightly deleted.

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

05.01.2026

Madras HC: Govt. authority must consider contractor's claim for differential GST

Kanthan Associates v. State of Tamil Nadu
Madras HC (15-12-2025)

Core Issue

Whether a Government contractor can seek disbursement of differential GST (6%) when the procuring authority (TNHB) incorrectly applied a lower GST rate (12%) instead of statutory 18% in payment certifications, resulting in GST shortfall and exposure to interest/penalty.

Key Facts

- Petitioner: Government works contractor (construction projects for TNHB).
- GST regime applicable from 01-07-2017.
- Statutory GST rate for construction/works contract services: 18% (Notification No. 11/2017).
- TNHB:
  - Certified and released payments by applying 12% GST.
  - Contractor followed TNHB's billing instructions and remitted GST accordingly.
- GST authorities later issued SCN for short payment, along with interest and penalty.
- TNHB itself later passed a Board Resolution (23-06-2023) accepting:
  - 18% GST for saleable projects from 01-07-2017.
  - 12% GST for Govt./Board-owned projects from 18-07-2022.

High Court Ruling

- The High Court did not adjudicate the GST rate finally, but:
  - Directed TNHB to consider the contractor's representation.
  - Required passing of a reasoned order in accordance with law.
  - Ordered consideration of disbursement of differential 6% GST, including interest and penalties that may be levied by GST authorities.
- Time limit fixed: 4 weeks.

Legal Principles Affirmed

1. GST is an indirect tax
   - The economic burden lies on the service recipient (Government authority), not the contractor.
2. Contractor bound by billing instructions
   - When GST rate is applied as per official payment certification, the contractor cannot be faulted later for short payment.
3. Change / clarification in tax law risk lies with procuring entity
   - Reiterates Government policy under:
     - G.O.(Ms) No.264 dated 15-09-2017
     - G.O.(Ms) No.296 dated 09-10-2017
   - Risk of tax regime change under GST to be borne by the procuring authority, not the contractor.
4. Consistency with earlier Madras HC rulings
   - Subaya Constructions Co. Ltd. (2019)
   - Immanuel & Company (2022)

Practical Takeaways

Government contractors can seek reimbursement of differential GST where:

- Lower GST was applied by the department,
- Statutory rate was higher,
- Contractor followed official certification.

Exposure to interest and penalty under GST law strengthens the equity of contractor's claim.
Even if payment is not ordered straightaway, HC intervention ensures administrative consideration, preventing arbitrary denial.

Outcome

Writ disposed of with direction to consider representation and disburse differential GST as per law.

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

06.01.2026

Whether income of temples / religious institutions administered by statutory bodies (like Devaswom Boards) is exempt under section 10(23BBA) of the Income-tax Act, 1961.

Madhur Sree Madanantheswara Vinayaka Temple v. ITO
HIGH COURT OF KERALA (07-11-2025)

Core Holding

Section 10(23BBA) exemption is confined strictly to the income of statutory bodies or authorities constituted to administer religious institutions — NOT to the income of the temples or religious institutions themselves.

- Exempt: Income of Devaswom Boards / Waqf Boards / similar statutory authorities
- Not exempt: Income of temples, deities, trusts, endowments, or religious institutions governed by such bodies.

Key Legal Reasoning

1. Plain reading of section 10(23BBA):
   - Exemption applies only if:
     - Income belongs to a body or authority
     - Such body is constituted by statute
     - The statute provides for administration of religious/charitable institutions
2. Crucial distinction drawn by the Court:
   - Administrator ≠ Institution
   - The statute exempts the administrator's income, not the institution's income
3. Role of the Proviso to section 10(23BBA):
   - Explicitly clarifies that income of any trust, endowment, or society is NOT exempt
   - Proviso is clarificatory, not contradictory to the main provision
4. Ownership of income matters:
   - Under HR&CE schemes, income arises from properties belonging to the deity/temple
   - Administrative bodies merely manage, they do not own the income
5. Alternate exemption route exists:
   - Temples/religious trusts may seek exemption only under sections 11, 12 & 12A
   - Section 10(23BBA) was enacted mainly because statutory boards may not qualify under sections 11/12

Treatment of Earlier Case Law

Payyannur Sree Subrahmanya Swami Temple (Kerala HC, 2019)
→ Distinguished as relief was granted based on concession, not on legal interpretation
Sri Amrithakadeswaraswamy Devasthanam (Madras HC, 2021)
→ Followed; supports taxation of individual temples
Jagannath Temple Managing Committee (Orissa HC) & Bharti Teletech (SC)
→ Distinguished; did not address whose income was being taxed

Practical Implications

For Temples & Religious Institutions

- Cannot claim exemption under section 10(23BBA)
- Must:
  - Obtain section 12A registration
  - Satisfy conditions under sections 11 & 12
- TDS refunds cannot be claimed merely by citing section 10(23BBA)

For Statutory Boards (Devaswom/Waqf Boards)

- Their own independent income, if any, may qualify under section 10(23BBA)
- Income held on behalf of temples will not qualify

For Pending Proceedings

- Issues like:
  - TDS refunds
  - Section 148A notices
  - Assessments
- Are left open to be decided factually by tax authorities

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TAX INSIGHTS

By

Tax Research Department

Goods & Services Tax

06.01.2026

Whether a not-for-profit entity incorporated as a company limited by guarantee (Section 8–type) qualifies as a "body corporate" for GST purposes, and consequently whether sponsorship services supplied by it are taxable under RCM or forward charge after the 2025 amendment.

Mining Geological and Metallargical Institute of India, In re
AAR – West Bengal (10-12-2025)

Ruling

A Section 8 / not-for-profit company incorporated under the Companies Act is a "company" and a "body corporate".

Accordingly, sponsorship services supplied by such an entity are taxable under the forward charge mechanism (FCM) after 16-01-2025.

Key Legal Findings

1. Meaning of "Body Corporate" under GST

- GST notifications explicitly adopt the definition of "body corporate" from section 2(11) of the Companies Act, 2013.
- Under Companies Act:
  - All companies incorporated under current or previous company law are body corporates
  - Only exclusions:
    - Co-operative societies
    - Entities specifically notified by Central Government
- Section 8 status / non-profit motive is irrelevant for this definition.

MGMI, incorporated in 1909 under Companies Act, 1882 (predecessor law), squarely qualifies as a company & body corporate.

2. Effect of 2025 Amendment to RCM Notifications

Notifications amended (w.e.f. 16-01-2025):

- Notification 10/2017-IGST
- Notification 13/2017-CT

Key change:

Supplier description amended to:
"Any person, other than a body corporate"

Resulting position:

Supplier of sponsorship service	GST liability
Individual / Trust / Society / AOP	RCM
Body corporate (including Sec 8)	FCM

Since MGMI is a body corporate, RCM does not apply.

3. Rejection of Applicant's Arguments

The AAR rejected MGMI's contentions that:

- Non-profit character excludes it from "body corporate"
- GST law should distinguish between commercial and charitable entities
- Section 8 companies should be treated like trusts/societies

Authority's reasoning:

- GST law taxes "business" whether or not for pecuniary benefit
- Notifications leave no interpretational flexibility—definition is borrowed directly
- Income-tax treatment (12A/12AB) is irrelevant for GST
- MGMI is not a trust under Indian Trusts Act

Final Answers by AAR

1. MGMI is a body corporate
2. MGMI is a body corporate for sponsorship services
3. GST payable by MGMI on forward charge basis

Key Takeaways

In GST, "body corporate" follows company law —not charitable intent. A Section 8 company supplying sponsorship services must pay GST under forward charge post-16.01.2025.

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

07.01.2026

Whether lawful expenditure incurred by a society running a school can be disallowed merely because the return was filed in Form ITR-7 instead of ITR-5.

New Surya Public School v. DCIT/ACIT
Delhi – ITAT (24-12-2025)

Core Holding

Mere filing of an incorrect ITR form (ITR-7 instead of ITR-5) is a procedural defect and cannot defeat the assessee's substantive right to claim lawful expenditure.
Disallowance of expenses solely on account of wrong ITR form is unsustainable.

Key Legal Reasoning

1. Procedure cannot override substance
   - It is settled law that "technicalities are handmaids of justice".
   - Only lawful tax can be collected; procedural lapses cannot be used to artificially inflate income.
2. Wrong ITR form ≠ wrong taxability
   - Filing ITR-7 does not automatically imply:
     - claim of exemption under sections 11/12, or
     - forfeiture of normal expenditure deductions.
   - What matters is real nature of income and expenditure, not the form number.
3. No mandatory 12A / 12AB registration involved
   - The assessee was not claiming exemption u/s 11 or 12.
   - Hence, filing ITR-7 (meant for charitable entities) was factually incorrect but legally curable.
4. CPC / CIT(A) approach rejected
   - CPC disallowed ₹62.71 lakh expenses mechanically u/s 143(1).
   - CIT(A) dismissed appeal solely on technical ground, without examining allowability of expenses.
   - Tribunal held this approach to be contrary to settled principles of tax law.
5. Substance over form
   - Expenses incurred for running a school, if otherwise allowable, cannot be denied for a clerical/technical error in return filing.

Directions Issued by ITAT

- Impugned order set aside
- Matter remanded to AO with directions to:
  - Treat return as if filed in ITR-5
  - Allow assessee to:
    - file financials as per ITR-5
    - substantiate expenditure
  - Complete de novo assessment after giving proper opportunity of hearing

Precedents Followed

- Care Foundation Village v. ITO (Exemption) (Delhi-ITAT)
- Filing wrong ITR form is a curable procedural defect, not a ground for denial of legitimate claims.

Practical Implications

For Societies / Schools / AOPs

- Wrong selection of ITR form:
  - does NOT justify automatic disallowance of expenses
  - can be corrected through remand / reassessment

For Ongoing Litigation

- Useful precedent where:
  - expenses disallowed at CPC stage
  - appeals dismissed on purely technical grounds
- Strong authority for "substance over form" argument

Takeaway

A wrong ITR form is a procedural lapse—not a taxing provision. Lawful expenditure cannot be denied merely because the assessee clicked the wrong form.

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

07.01.2026

Whether refund of accumulated unutilized ITC of Compensation Cess paid on inputs (coal) used in manufacture of exported goods is admissible, even when the final product is non-taxable under the Cess Act and exports are made without payment of cess.

Aurobindo Pharma Ltd. v. State of Telangana
Telangana HC (10-12-2025)

Core Holding

Refund of accumulated unutilized ITC of compensation cess paid on inputs used in manufacture of exported goods is admissible, notwithstanding that:

- the exported goods are non-taxable under the Compensation Cess Act, and
- no compensation cess is payable on the outward supply.

Departmental rejection based on CBIC Circular No. 45/19/2018-GST is unsustainable.

Key Legal Reasoning

1. Zero-rated supplies under Cess Act
   - By virtue of sections 9 & 11 of the Compensation to States Act, 2017, read with section 16 of the IGST Act, exports and SEZ supplies qualify as zero-rated supplies even under the Cess Act.
2. Refund provisions apply mutatis mutandis
   - Section 54 of the CGST Act applies mutatis mutandis to compensation cess.
   - Hence, refund of unutilized ITC of cess is permissible where:
     - cess is paid on inputs, and
     - no cess is payable on exports.
3. Circular cannot override statute
   - CBIC Circular No. 45/19/2018-GST cannot restrict refund when the statute itself allows it.
   - Circular only clarifies mode of export (Bond/LUT), not substantive eligibility of refund.
4. Payment of IGST is irrelevant for cess refund
   - Cess credit:
     - cannot be utilised for payment of IGST (proviso to section 11(2) of Cess Act),
     - but can be refunded when accumulated due to zero-rated supplies.
   - Therefore, export on payment of IGST does not bar refund of input cess.
5. Judicial consistency
   - Issue squarely covered by:
     - Patson Papers (P.) Ltd. v. UOI (Gujarat HC)
     - Atul Ltd. v. UOI (Gujarat HC)
   - SLP against Patson Papers already dismissed.

Final Directions

- Orders-in-Original and Appellate Orders set aside
- Matter remanded to original authority to:
  - reconsider refund claims,
  - apply law as laid down in Patson Papers and Atul Ltd.,
  - grant hearing and pass fresh orders within 4 months.

Precedents Followed

- Patson Papers (P.) Ltd. v. UOI
- Atul Ltd. v. UOI

Takeaway

Accumulated compensation cess paid on inputs used in exported goods cannot be stranded merely because the final product is non-taxable under the Cess Act—refund must follow the zero-rating principle.

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

08.01.2026

Whether delay in filing a revised return beyond the CBDT-prescribed six-year period can be condoned under section 119(2)(b), or alternatively, whether the High Court can grant relief under Article 226 despite expiry of the condonable period.

anneth Veedu Kesavan Nair Chandraboss v. Pr. CIT
Kerala HC(28-10-2025)

Key Facts

- Original return filed on 1-8-2017, claiming refund.
- Demand raised; rectified intimation u/s 154 issued on 7-12-2020.
- Assessee alleged incorrect salary/TDS details due to tax practitioner's error.
- No revised return filed after rectification; assessee remained inactive till 2024.
- Application for condonation u/s 119(2)(b) filed on 5-7-2024, rejected as beyond six years.
- Assessee approached HC under Article 226.

Held (Kerala High Court)

Delay not condonable; writ dismissed

- CBDT Circular prescribing a maximum six-year period for condonation is binding.
- Commissioner has no power to condone delay beyond six years.
- Article 226 cannot be used to bypass statutory time limits, especially in absence of due diligence.
- Once rectified intimation u/s 154 was issued in 2020, the assessee had sufficient opportunity to detect the error and act.
- Inaction for nearly four years (2020–2024) was fatal to the claim.

Important Observations

- Uploading of intimation on the portal is sufficient compliance by the Department.
- Mere plea of non-receipt of intimation will not help if subsequent rectification order clearly disclosed the error.
- Earlier decision allowing delay beyond six years (Mrs. Saraswathy v. CBDT) was distinguished as it involved exceptional humanitarian circumstances.

Legal Principle

Delay in filing a revised return beyond the CBDT-prescribed six-year limit under section 119(2)(b) is not condonable, and High Courts will not ordinarily exercise Article 226 jurisdiction to override such limitation, particularly where the assessee lacks due diligence.

Practical Takeaways

- Six years is an absolute outer limit for condonation of delayed revised returns.
- Rectification orders (u/s 154) reset no clock —they only alert the assessee.
- Prompt action after intimation/rectification is critical. Delay weakens writ remedies.
- Errors by tax practitioners do not excuse prolonged inaction.
- Article 226 relief is exceptional, not a substitute for statutory compliance.

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TAX INSIGHTS

By

Tax Research Department

Goods & Services Tax

08.01.2026

Whether an audit report and communication of audit findings (Form GST ADT-02) issued by a Superintendent—who is not notified as a "proper officer" under GST law and the relevant CBDT/GST Circular—can validly form the basis for initiating proceedings under section 73 of the GST Act.

Ayushi Galvano v. Commissioner (Audit), GST & Central Excise
Orissa HC (24-12-2025)

Key Facts

- Audit notice in Form GST ADT-01 was issued by an Assistant Commissioner (authorised officer).
- Audit findings (Form GST ADT-02) were prepared and communicated by a Superintendent (Audit).
- Based on ADT-02, a demand-cum-show cause notice u/s 73 was issued.
- Petitioner challenged the entire proceedings as vitiated due to lack of jurisdiction at the audit-finding stage.

Legal Framework Involved

- Section 65 – Audit under GST
- Rule 101(5) of CGST/OGST Rules – Communication of audit findings
- Section 2(91) – Definition of "proper officer"
- Circular No. 3/3/2017-GST dated 05-07-2017 – Authorisation of officers for audit functions

Revenue's Stand

- Conceded that ADT-02 was issued by Superintendent.
- Argued that:
  - ADT-01 and SCN u/s 73 were issued by a competent proper officer.
  - Any defect in ADT-02 was procedural and caused no prejudice.
  - Petitioner could raise objections during adjudication.

Held (Interim Order)

Proceedings stayed; prima facie case made out

- Audit findings must be communicated only by a "proper officer" authorised under the Circular.
- Superintendent is not designated as proper officer for Rule 101(5) purposes.
- Communication of audit findings by an unauthorised officer goes to the root of jurisdiction.
- If adjudication proceeds based on such invalid initiation, it would cause serious prejudice to the assessee.
- Balance of convenience favours the petitioner.

Court's Direction

- Revenue restrained from proceeding further with the demand-cum-SCN dated 25-08-2025.
- Matter to be heard further after filing of counter affidavit.
- Next listing: 15 January 2026.

Key Legal Takeaways

- Audit findings (ADT-02) are not a mere formality—they are jurisdictional.
- Only officers specifically authorised under Circular No. 3/3/2017-GST can communicate audit discrepancies.
- Defects at the audit communication stage can vitiate subsequent SCN u/s 73.
- Writ jurisdiction can be invoked even at SCN stage where:
  - Lack of jurisdiction is apparent
  - Continuation would cause irreparable prejudice

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

09.01.2026

The High Court quashed the assessment order, noting that the Assessing Officer allowed the assessee just three days to reply to the show cause notice.

Dhiraj Lakhamshi Shah v. NFAC (AO)
HIGH COURT OF BOMBAY (17-12-2025)

Core Issue

Whether an assessment order passed under the faceless assessment regime (section 144B) is vitiated for breach of natural justice when the assessee is granted only three days to respond to a show-cause notice proposing variations, particularly when:

- sufficient time was available with the AO, and
- an application for condonation of delay to file a revised return under section 119(2)(b) was pending.

Key Facts

- Assessee filed return of income.
- Section 119(2)(b) application filed on 4-3-2022 seeking condonation to file revised return (pending).
- AO issued SCN u/s 144B(1)(xvi) on 24-3-2022, granting only 3 days to respond.
- Assessment order passed on 18-9-2022.
- Assessee challenged the order in writ proceedings.

Revenue's Argument

- Reduced response time was justified as assessment was allegedly becoming time-barred by 31-3-2022.
- SOP mandating 7 days came into force only on 3-8-2024, hence inapplicable.

Held (Bombay High Court)

Assessment quashed for violation of natural justice

- Even assuming imminent limitation, time to pass assessment was extended till 30-9-2022.
- AO had ample time to grant minimum 7 days and comply with procedural fairness.
- Granting only 3 days is per se inadequate and violates natural justice.
- SOP's prospective applicability does not cure the defect—fair opportunity existed even prior to SOP.

Key Directions Issued

- Assessment order quashed and remanded.
- Portal to be reopened; assessee granted 7 days to file response.
- AO to pass fresh order within 2 months thereafter.
- Principal Commissioner directed to decide section 119(2)(b) application within 4 weeks.

Legal Principle

Grant of unreasonably short time to respond to a show-cause notice—especially when no real urgency exists—violates principles of natural justice and vitiates faceless assessment proceedings under section 144B.

Practical Takeaways

- 3 days' response time is inherently insufficient for SCNs proposing variations.
- Extension of limitation nullifies the "time-bar" defence of the Revenue.
- Pending section 119(2)(b) applications must be meaningfully considered where revised return can change assessment outcome.
- Writ remedy is maintainable even at assessment stage where breach of natural justice is evident.

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TAX INSIGHTS

By

Tax Research Department

Goods & Services Tax

09.01.2026

Whether an assessee providing R&D and business support services directly to its foreign parent company qualifies as an "intermediary" under GST law, thereby disentitling it to refund of accumulated/unutilised ITC on export of services made without payment of IGST under LUT.

Bluefish Pharmaceuticals (P.) Ltd. v. Union of India
Karnataka HC (11-12-2025)

Key Facts

- Petitioner provided R&D and business support services to its parent company in Sweden.
- Services were rendered as export of services, invoices endorsed "Export of Services without payment of IGST" under LUT.
- Accumulated unutilised ITC arose due to zero-rated supplies.
- Refund application under section 54 was rejected, holding petitioner to be an intermediary.
- Rejection upheld by appellate authority → writ petition filed.

Legal Framework

- Section 2(13), IGST Act – Definition of "intermediary"
- Section 16, IGST Act – Zero-rated supply
- Section 54, CGST/KGST Act – Refund of ITC

Held (Karnataka High Court)

Refund allowed; assessee not an intermediary

- Petitioner was providing services on its own account, not arranging or facilitating supply between two parties.
- Services were rendered directly to the overseas parent, satisfying conditions of export of services.
- Merely because the recipient is a foreign parent entity does not make the Indian entity an intermediary.
- Rejection of refund was contrary to settled judicial precedent.

Relief Granted

- Refund rejection order and appellate order quashed.
- Revenue directed to grant refund of accumulated/unutilised ITC.
- Refund to be issued with applicable interest.
- Time limit: within three months from receipt of order.

Precedents Followed

The Court relied on a consistent line of Karnataka HC rulings, including:

- Amazon Development Centre India (P.) Ltd.
- Columbia Sportswear India Sourcing (P.) Ltd.
- Athene Technologies India LLP
- Nokia Solutions and Networks India (P.) Ltd.

These cases uniformly hold that captive service providers / R&D units / back-office support entities rendering services on principal-to-principal basis are not intermediaries.

Legal Principle

An entity providing R&D or support services directly to its foreign parent on a principal-to-principal basis is not an "intermediary" and is entitled to refund of accumulated ITC arising from zero-rated export of services under LUT.

Practical Implications

- R&D centres, captive units, and shared service centres can strongly rely on this ruling.
- "Intermediary" classification cannot be mechanically applied merely due to group entity relationship.
- Refund rejections based solely on intermediary allegations are highly vulnerable in Karnataka.
- Interest on delayed refunds is judicially enforceable.

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TAX INSIGHTS

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Tax Research Department

Direct Tax

10.01.2026

"AMC services and agency/marketing support services are functionally distinct; therefore, segment-wise transfer pricing benchmarking is required."

Spectris Technologies (P.) Ltd. v. ITO
ITAT DELHI (07-01-2026)

1. Transfer Pricing – Segment-wise Benchmarking Mandatory

Issue

Whether AMC Services and Agency & Marketing Support Services can be aggregated for TP benchmarking.

Held

No aggregation permitted.

The ITAT reaffirmed that:

- AMC services and
- Agency & Marketing Support services are functionally distinct segments based on FAR (Functions, Assets, Risks) analysis.

Directions to TPO/AO

- Accept segmental accounts presented by the assessee.
- Conduct separate benchmarking for each segment.
- Examine assessee's comparables and allocation keys.
- Apply section 92C(2) tolerance range independently for each segment.
- Provide proper opportunity of hearing.

Important:

Merely because segmental accounts are unaudited is not a valid reason to reject them, unless specific defects are identified.

Impact

- Reinforces jurisprudence that entity-level TNMM cannot be forced when reliable segmental data exists.
- Aligns with ITAT's own decisions for AYs 2007-08 and 2008-09 in assessee's case.

2. Non-Compete Fee – Revenue Expenditure (Post SC Ruling)

Issue

Tax treatment of non-compete fee and depreciation already claimed.

Held (following SC in Sharp Business System [2025])

- Non-compete fee is revenue expenditure allowable under section 37(1).
- Earlier Delhi HC view treating it as capital asset stands overruled.

Further Direction

- AO must:
  a. Treat non-compete fee as revenue in nature, and
  b. Rework the tax treatment considering:
     - Depreciation already claimed by the assessee
     - Guidance from earlier Delhi HC judgment on depreciation mechanics, only to the extent useful for giving effect to the SC ruling.

Since the expenditure was already capitalised and merged into a block of assets, AO must recompute consequences carefully rather than mechanically disallowing depreciation.

Key Takeaways

This decision consolidates two major principles:

- Functional segregation governs TP benchmarking, not administrative convenience.
- Non-compete fees are no longer capital assets—tax treatment must align with the Supreme Court's settled position.

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

10.01.2026

Whether Input Tax Credit (ITC) can be denied to a bona fide purchaser under Section 16(2)(c) of the CGST Act merely because the supplier failed to remit GST to the Government, despite the purchaser having paid GST to the supplier.

Sahil Enterprises v. Union of India
Tripura HC(06-01-2026)

Decision in Brief

Constitutionality upheld, but provision read down

- Section 16(2)(c) is constitutionally valid (not violative of Articles 14, 19(1)(g), 265 or 300-A).
- However, it cannot be mechanically applied to deny ITC in all cases.
- The provision must be read down and applied only where:
  - the transaction is not bona fide, or
  - there is collusion, or
  - there is fraud / revenue evasion involving the purchaser.

ITC cannot be denied to a purchasing dealer who has bona fide paid GST to the supplier, merely because the supplier failed to deposit it with the Government.

Key Legal Reasoning

(a) Impossibility of Compliance

- A purchaser has no statutory mechanism to verify whether the supplier has actually paid GST via GSTR-3B.
- Law cannot compel the impossible.
- Expecting purchasers to "predict" dishonest suppliers is unreasonable.

(b) Double Taxation

- Denial of ITC would mean:
  - purchaser pays GST to supplier and
  - again pays GST to Government
  - This amounts to double taxation, contrary to the very purpose of ITC.

(c) Failure of Legislative Classification

- Section 16(2)(c) does not distinguish between:
  - bona fide purchasers, and
  - collusive/fraudulent purchasers.
- Such over-breadth invites Article 14 scrutiny, necessitating reading down.

(d) Consistent with Supreme Court-approved DVAT jurisprudence

The Court heavily relied on:

- On Quest Merchandising (Delhi HC)
- Arise India (SC)
- Shanti Kiran India (SC, 2025)

All of which protect bona fide purchasers from ITC denial due to supplier default.

What the Court Explicitly Held

- Purchasing dealer cannot be penalised for supplier's wrongdoing
- Remedy of the Department lies against the defaulting supplier, not the purchaser
- Invocation of Section 73 (non-fraud) against purchaser reinforces bona fides
- ITC must be forthwith allowed to the petitioner

What the Court Distinguished

- Safari Retreats (SC) not applicable
- (Section 16(2)(c) was not in issue there)
- Other HC rulings (Kerala, Patna, MP, Madras, AP)
- not followed because:
  - they did not consider On Quest / Arise India line, and
  - ignored practical impossibility for purchasers.

Bottom Line

Section 16(2)(c) survives constitutionally, but not administratively in its harsh form.

Bona fide buyers are protected; the burden shifts back to the State to recover tax from the actual defaulter – the supplier.

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

11.01.2026

Whether expenses on levelling and fencing of newly purchased agricultural land form part of "cost of acquisition" for claiming deduction under section 54B?

Pravinsinh Bhawansinh Vaghela v. ITO
Ahmedabad – ITAT (18-12-2025)

Core Issues Before the Tribunal

1. Whether expenses on levelling and fencing of newly purchased agricultural land form part of "cost of acquisition" for claiming deduction under section 54B
2. Whether FMV of land as on 1-4-1981 adopted at ₹5 per sq. metre could be interfered with

Key Holdings at a Glance

Issue	Decision
Sec. 54B eligibility (in principle):	Allowed
Restriction of deduction to registered purchase price :	Upheld
Levelling & fencing expenses:	Allowed as part of cost
FMV as on 1-4-1981 @ ₹5/sq.m:	Upheld
Relief to assessee :	Partial

Section 54B – Levelling & Fencing Expenses

Allowed as part of cost of acquisition

Tribunal held:

- Levelling and fencing expenses were incurred to make land fit for cultivation
- Such expenses were:
  - Explained in sworn statement
  - Not disputed by AO or CIT(A)
  - Genuinely incurred
- Hence, they are intrinsically connected with acquisition of agricultural land

Expenditure incurred to render agricultural land fit for cultivation is part of the cost of acquisition for section 54B purposes.

Important Distinction Drawn by the Tribunal

Nature of expense	Treatment
Registered purchase price	Eligible
Stamp duty & registration	Eligible
Levelling & fencing	Eligible
Other unregistered /extra consideration	Not eligible

Tribunal rejected the argument that entire cash payments beyond registered value automatically qualify under section 54B.

Interpretation of "Purchase" under Section 54B

- Tribunal adopted a strict interpretation
- Deduction restricted mainly to:
  - Amount reflected in registered sale deed
  - Statutory acquisition expenses
- Beneficial provisions cannot override statutory language

Key takeaway

Even though section 54B is beneficial, actual purchase must be demonstrable through legal acquisition documents, except where expenses are inseparably linked to making land cultivable.

FMV as on 1-4-1981 – No Interference

Facts

- Assessee claimed FMV @ ₹80/sq.m
- AO referred matter to DVO ₹3/sq.m
- CIT(A) adopted ₹5/sq.m

Tribunal held:

- Valuation is a matter of estimation
- When based on DVO report and reasonably appreciated,
- interference is unwarranted unless perversity is shown

Courts will not substitute valuation merely because a higher estimate is possible.

Bottom Line

Levelling and fencing expenses form part of cost of acquisition under section 54B when they are essential to make agricultural land cultivable.

However, section 54B deduction remains largely tied to registered purchase consideration, and valuation disputes based on DVO reports will rarely be disturbed.

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TAX INSIGHTS

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Goods & Services Tax

11.01.2026

Whether flavoured milk is classifiable under: Tariff Heading 0402 or Tariff Heading 2202?

Dodla Dairy Ltd. v. Union of India
Karnataka HC (09-01-2026)

Core Issue

Whether flavoured milk is classifiable under:

- Tariff Heading 0402 "Milk and cream, concentrated or containing added sugar or other sweetening matter" (GST @ 5%), OR
- Tariff Heading 2202 "Beverages containing milk" (GST @ 12%)?

Final Holding

Flavoured milk falls under Tariff Item 0402 99 90

- Liable to GST @ 5%
- Not a "beverage containing milk" under Heading 2202
- Impugned assessment and appellate orders quashed
- Refund with interest directed

Key Legal Reasoning

(a) Predominant Character Test

- Flavoured milk is predominantly milk
- Minor addition of:
  - sugar, and ~0.5% flavouring
  - does not alter its essential character

Mere addition of flavour does not take the product out of Heading 0402

(b) Correct Scope of Heading 2202

- Heading 2202 covers beverages where milk is incidental
- Examples in Chapter 22 show:
  - water-based drinks
  - plant/seed milk beverages
- Applying noscitur a sociis,
- "beverages containing milk" ≠ dairy milk itself

Flavoured milk ≠ milk-based beverage

It is milk with additives, not a beverage to which milk is added

(c) Special Entry vs General Entry

- Heading 0402 is a specific entry
- Heading 2202 is a general entry
- Specific entry prevails (Rule 3(a), GIR)

(d) Consistency with Settled Jurisprudence

Court followed and relied upon:

- Andhra Pradesh HC – Dodla Dairy (assessee's own case)
- Vijaya Vishakha Milk Producers Co. Ltd. (AP HC)
- Supreme Court dismissal of SLP
- Madras HC – Parle Agro Pvt. Ltd.
- Issue now judicially settled, at least at High Court & SC (SLP dismissal) level.

Penalty & Allegation of Tax Evasion

- Mere change in classification (from 2202 pre-GST to 0402 post-GST)
- does not amount to tax evasion
- Sections 74 / 122 penalties not sustainable
- Bona fide classification dispute ≠ fraud or suppression

Relief Granted

- Orders dated 22-09-2021 & 25-07-2022 quashed
- GST demand set aside
- Refund of ₹72.95 lakh with interest
- Refund to be granted within 3 months

Bottom Line

Flavoured milk remains milk for GST purposes. Addition of flavour does not convert it into a "beverage containing milk".

HSN 0402 @ 5% GST is now the dominant and judicially endorsed position.

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

12.01.2026

No requirement to furnish PAN details of debtors for claiming deduction of bad debts: ITAT

ACIT v. Indusind Media & Communication Ltd.
ITAT Mumbai (16.12.2025)

Bad Debts – PAN of Debtors NOT Mandatory

Section 36(1)(vii) read with 36(2)

Ruling

- The Assessing Officer cannot insist on furnishing PAN details of debtors for allowing bad debt deduction.
- Mere write-off in books is sufficient, provided:
  - The debt was earlier offered to tax, and
  - It is written off as irrecoverable in the accounts.

Legal Basis

- CBDT Circular No. 551 (23-01-1990)
- Supreme Court in TRF Ltd. (323 ITR 397)
- Bombay HC in Oman International Bank SAOG

Tribunal's Observation

- Decision to treat a debt as bad is a commercial/business decision.
- AO cannot add extra-statutory conditions like PAN, recovery steps, etc.

Practical Takeaway

Non-availability of PAN, address, or identity of thousands of small debtors (e.g., subscribers, franchisees) cannot be a ground to disallow bad debts, if statutory conditions are met.

Advances to Subsidiary Written Off – Allowable Business Loss

Section 28(i) / Section 37(1)

Ruling

- Advances given to a subsidiary for working capital / business expediency, if later written off due to financial erosion, are:
  - Allowable as business loss, not capital loss.

Key Factors Considered

- Subsidiary strategically important to assessee's business
- Continuous losses and complete erosion of net worth
- No intent to earn dividend or capital appreciation

Case Law Relied On

- CIT v. Colgate Palmolive (India) Ltd. (Bom HC)
- ACE Designers Ltd. (Karnataka HC)

Practical Takeaway

Commercial expediency overrides form ,even advances to subsidiaries can be revenue losses if business-linked.

Transponder Charges to Foreign Company – NOT Royalty

Section 9(1)(vi), Section 40(a)(i), Article 12 – India-Thailand DTAA

Ruling

- Payments for satellite transponder capacity do NOT constitute royalty when:
  - Satellite/transponder is owned, operated, and controlled by the service provider
  - Assessee only gets bandwidth/capacity, not possession or control

Important Findings

- DTAA definition prevails over domestic law
- Explanation 6 to section 9(1)(vi) cannot be imported into DTAA
- No PE of foreign company in India → no taxability under Article 7

Key Precedents

- New Skies Satellite BV (Delhi HC)
- Reliance Infocom Ltd. (Bom HC)
- Disney Broadcasting (ITAT Mumbai)

Practical Takeaway

Transponder / satellite bandwidth payments to non-residents are business income, not royalty, if no control over equipment → No TDS u/s 195, no disallowance u/s 40(a)(i).

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TAX INSIGHTS

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Goods & Services Tax

12.01.2026

Whether penalty under section 129(1)(b) of the CGST/UPGST Act can be imposed when goods in transit were accompanied by a valid e-way bill and tax invoice disclosing the registered owner of goods.

Aviraj Trading v. State of U.P.
Allahabad HC (8.12.2025)

Held by the High Court

- Penalty under section 129(1)(b) was wrongly imposed.
- Even if there was some contravention, penalty could only be computed under section 129(1)(a).
- The impugned penalty order (MOV-09 / DRC-08) was set aside.

Legal Reasoning

- Section 129(1)(b) applies only where the owner of goods does not come forward.
- In the present case:
  - Goods were accompanied by e-way bill and tax invoice
  - Documents clearly disclosed the registered owner
  - Documents were produced immediately after detention
- Therefore, statutory conditions for invoking 129(1)(b) were not satisfied.

The Court reiterated that:
Wrong classification of penalty provision vitiates the entire penalty order.

Directions Issued

- Authorities directed to:
  - Recompute penalty strictly under section 129(1)(a) within 3 weeks
  - Release goods immediately upon deposit of penalty under section 129(1)(a)
- Assessee granted liberty to pursue statutory remedies if further dispute survives.

Reliance Placed On

- Halder Enterprises v. State of U.P.

Practical Takeaways

1. 129(1)(a) vs 129(1)(b) is not optional
2. It depends on whether the owner is identifiable and comes forward.
3. Valid documents , registered owner = 129(1)(a) only
4. Even minor discrepancies cannot justify 129(1)(b).
5. Common departmental error
6. Officers often mechanically apply 129(1)(b) to levy higher penalty,this judgment strengthens the challenge against such orders.
7. Strong writ remedy
8. Where facts are undisputed, High Courts are entertaining writs without relegating to appeal.

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TAX INSIGHTS

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Tax Research Department

Direct Tax

13.01.2026

HC holds reassessment unjustified when based on unaudited subsequent-year trial balance.

Matrix Clothing (P.) Ltd. v. ACIT
Delhi High Court (06-11-2025)

Issues Before the Court

1. Whether reassessment under section 147 can be initiated for AYs 2014-15 and 2015-16 based on:
   - A survey in 2019, and
   - An unaudited trial balance of AY 2019-20, compared with earlier years.
2. Whether reopening is valid on the ground that Form 10DA was not furnished electronically, despite:
   - Auditor verification in tax audit report, and
   - Physical submission during original scrutiny.

Key Findings of the Court

1. Reopening Based on Subsequent-Year Material is Invalid

- The sole material relied upon by the AO was:
  - A trial balance of FY 2018-19 / AY 2019-20, found during survey in March 2019.
- The Court held:

Any material subsequent to the relevant assessment year cannot form the basis to reopen concluded assessments.

- Since:
  - Original assessments were completed under section 143(3),
  - Manufacturing expenses were fully disclosed and examined, and
  - Trial balance was unaudited and of a later year,

No "tangible material" existed for reopening.
Reopening on such basis amounts to mere suspicion and is jurisdictionally invalid.

2. Reliance on Unaudited Trial Balance is Unjustified

- Court emphasized:
  - Trial balance was provisional and unaudited
  - Figures of AY 2019-20 cannot be retro-applied to AYs 2014-15 / 2015-16
- Comparison across years without contextual parity is impermissible.

3. Form 10DA Ground Amounts to Change of Opinion

- Deduction under section 80JJAA was:
  - Verified by tax auditor
  - Supported by signed Form 10DA
  - Examined during 142(1) proceedings
- Objection regarding non-electronic filing:
  - Was never raised in original assessment
  - Is purely technical, without disputing eligibility

Reopening on this ground constitutes change of opinion, barred by Kelvinator of India Ltd. (SC).

Final Ruling

- Reassessment notices under section 148 quashed
- Orders disposing objections set aside
- Writ petitions allowed in favour of assessee

Doctrinal Principles Reaffirmed

Principle	Position
Tangible material:	Must relate to same AY
Subsequent year data:	Cannot justify reopening
Survey material:	Must have live link with escapement
Change of opinion:	Absolute bar after 143(3)
Technical lapse:	Cannot override substantive compliance

Practical Takeaways

Powerful precedent against reassessment based on:

- Subsequent-year financials
- Provisional or unaudited data
- Survey findings without AY-specific nexus

Section 80JJAA cases:

- Electronic filing lapses do not invalidate deduction
- Remedy, if any, lies under section 263, not section 147

Writ jurisdiction appropriate where:

- Reopening is jurisdictionally flawed
- Based on change of opinion or irrelevant material

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

13.01.2026

Whether a GST refund claim can be rejected solely on the ground of limitation under Section 54 of the CGST Act, when the delay is marginal and the tax payment itself is undisputed.

Celebrity Structures India (P.) Ltd. v. Assistant Commissioner of Central Tax, Bengaluru
Karnataka High Court (17-12-2025)

Key Facts

- The petitioner filed a GST refund application.
- The department initially proposed crediting the refund to the Electronic Credit Ledger, to which the petitioner had no objection.
- Subsequently, part of the refund (₹14.24 lakh) was rejected only on limitation grounds.
- Rectification application was also rejected.
- No dispute existed regarding:
  - Payment of tax
  - Eligibility of refund on merits

Legal Finding

Limitation under Section 54 is DIRECTORY, not mandatory

The Karnataka High Court held that:

- Section 54 of the CGST Act and allied refund rules are directory in nature in cases where:
  - Tax payment is undisputed
  - Refund is otherwise legally due
  - Rejection is solely on limitation, without examining merits
- Retention of tax by the department in such cases would violate Article 265 of the Constitution (no tax shall be retained without authority of law).

Reliance on Precedent

The Court followed its earlier ruling in:
Merck Life Science (P.) Ltd. v. UOI
Where it was held that:

- Refund timelines under Section 54 / Rule 89 are procedural
- They cannot defeat a substantive right to refund of tax wrongly paid

Final Decision

- Refund rejection quashed
- Limitation objection set aside
- Refund claim held to be within time
- Matter remanded to the proper officer for:
- Fresh consideration on merits
- To be completed within 3 months

Practical Takeaways

1. Strong authority for delayed refund claims.
   Especially where:
   - Delay is marginal
   - Tax payment is admitted
   - No unjust enrichment
2. Department cannot reject refund mechanically on limitation:
   Without examining substantive entitlement
3. Useful precedent for:
   - Wrong head payment cases (IGST vs CGST/SGST)
   - Transitional GST disputes
   - Procedural lapses without revenue loss
4. Writ remedy maintainable
   Where rejection is purely legal and undisputed on facts

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TAX INSIGHTS

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Tax Research Department

Direct Tax

14.01.2026

Income-tax proceedings barred during IBC moratorium; claims extinguished if not in resolution plan.

Aban Offshore Ltd. v. DCIT
ITAT Chennai (16-12-2025)

Core Issue

Whether income-tax proceedings (appeals arising from assessments under section 143(3)) can be continued or proceeded with during the moratorium period under the Insolvency and Bankruptcy Code, 2016 (IBC), and what happens to such tax claims after approval of a resolution plan.

Held

No.

- Proceedings under the Income-tax Act cannot be initiated or continued during the moratorium under IBC.
- On approval of a resolution plan, all claims not forming part of the resolution plan stand extinguished, including statutory tax dues.
- Since the Income Tax Department did not contend that its claims were outside the resolution plan, the appeals were not maintainable and were rightly dismissed in limine.

Key Legal Reasoning

1. Sections 13 & 14 of IBC
   - Once CIRP is admitted, moratorium prohibits continuation of all proceedings against the corporate debtor before any court or tribunal, including ITAT.

2. Section 31 of IBC (as interpreted by Supreme Court)
   - Upon approval of the resolution plan, claims are frozen.
   - Claims not included in the plan are extinguished.
   - This applies equally to statutory dues (Income-tax, GST, etc.).

3. Supreme Court binding precedent
   - Relied on Ghanashyam Mishra & Sons (P.) Ltd. v. Edelweiss ARC (SC):
     - 2019 amendment to section 31 is clarificatory and retrospective.
     - Government dues not part of resolution plan cannot be enforced later.

4. High Court support
   - Followed Murli Industries Ltd. v. ACIT (Bom HC):
     - Even reassessment or tax proceedings are barred once claims are extinguished.

Outcome

- Appeals for AYs 2013-14 and 2017-18 dismissed as not maintainable.
- Liberty granted only to seek restoration if CIRP outcome so warrants.

Practical Takeaways

- Income-tax proceedings are subject to IBC moratorium.
- Tax Department is an operational creditor.
- If tax claims are not included in the resolution plan, they are permanently extinguished.
- Revenue authorities must lodge claims during CIRP failure is fatal.
- Provides certainty and finality to resolution applicants.

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TAX INSIGHTS

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Goods & Services Tax

14.01.2026

Taxability of medicines/consumables to in-patients to be examined; adjudication to continue: HC

Escorts Heart Institute & Research Centre Ltd. v. Addl. Commissioner, CGST Audit
Delhi High Court (19-12-2025)

Core Issue

Whether GST is payable on medicines, consumables and medical devices administered to in-patients when:

- They are supplied as part of exempt health services, and
- No GST is separately shown on invoices raised on patients.

The Department alleged that GST was collected (embedded in MRP) but not remitted, invoking Section 76 of the CGST Act.

Key Facts

- Hospital provides exempt health services.
- Medicines/consumables are:
  - Administered to in-patients, either:
    - as part of a package, or
    - item-wise billing.
- Hospital claims:
  - No GST is charged or shown to in-patients.
  - GST is collected and paid when medicines are sold through the hospital pharmacy (retail sales).
- SCN raised demand of ₹6.66 crore alleging tax collected but not paid.

High Court's Observations

- Hospitals inevitably supply medicines, consumables and devices during treatment of in-patients.
- These may be:
  - bundled in a package, or
  - billed item-wise.
- Crucial factual question:
- If GST is not separately reflected on patient invoices, can it still be said that GST has been "collected" so as to attract Section 76?

This question cannot be decided in writ jurisdiction without detailed facts.

Decision or Directions

- No final ruling on taxability yet
- Matter remitted to adjudication

The Court directed that:

1. Adjudication proceedings will continue.
2. Hospital must file a detailed reply to SCN by 31 January 2026, along with:
   - Patient invoices
   - Procurement details of medicines /consumables
   - GST paid at procurement stage
   - Manner of billing to in-patients
3. Adjudicating authority may pass a final order, but:
   - It shall not be given effect to during pendency of the writ petition.

Practical Takeaways

In-patient vs Pharmacy Sales Distinction Remains Critical

- Retail pharmacy sales taxable
- In-patient administration as part of treatment, still a live issue, fact-dependent

Invoice Presentation Is Key

- Whether GST is:
  - separately shown, or
  - embedded in MRP,
  - can materially affect exposure under Section 76.

Documentation Will Decide the Case

Hospitals must maintain:

- Clear procurement trail
- Evidence of GST paid on inward supplies
- Consistent billing methodology
- Proof that no GST was charged to patients

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TAX INSIGHTS

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Tax Research Department

Direct Tax

15.01.2026

Whether vocational/skill-development training constitutes "education" u/s 2(15), and whether surplus generation disentitles exemption u/s 11.

Deshpande Education Trust v. ACIT
Karnataka HC (17.12.2025)

Core Legal Issue

Whether vocational training and soft-skill development for underprivileged/rural youth, carried out by a registered trust and involving collection of fees and generation of surplus, qualifies as:

- "Education" under section 2(15), or
- "Advancement of any other object of general public utility" hit by the proviso to section 2(15).

Vocational and skill-development training involving systematic instruction and a structured teaching-learning process qualifies as "education" under section 2(15). Mere charging of fees or generation of surplus does not defeat exemption under section 11, so long as surplus is ploughed back for educational purposes and there is no profit motive.

Key Findings of the High Court

1. Meaning of "Education" under Section 2(15)
   - Relied on Lok Shikshana Trust (SC) and Unique Educational Society (P&H HC).
   - "Education" is not confined to schools or colleges.
   - It includes:
     - Systematic instruction
     - Formal training
     - Structured learning process
   - Vocational education is recognised as education, especially when aimed at employability.
2. Nature of Assessee's Activities
   - Training rural youth, women, and underprivileged persons
   - Skill development in science, arts, business, commerce
   - Later affiliation with Karnataka University for a postgraduate course
   - Clearly followed a formal, organised educational framework
   - Hence, activity squarely falls under "education", not "general public utility".
3. Fees and Surplus - Not Fatal
   - Hefty fees or surplus alone ≠ business
   - Applied Queen's Educational Society (SC):
     - Distinction between earning surplus and existing for profit
     - Predominant object test is decisive
   - Surplus was:
     - Credited back to trust
     - Used only for educational objects
   - Therefore, no profit motive established.
4. Proviso to Section 2(15) Not Applicable
   - Proviso applies only when activity falls under "general public utility"
   - Since assessee's activity is "education", proviso is irrelevant

Final Decision

- Activity qualifies as "education" under section 2(15)
- Exemption under section 11 allowed
- ITAT order set aside
- Appeal allowed in favour of assessee

Practical Takeaways

1. Helps trusts engaged in:
   - Vocational training, Skill development, Employability programs, Soft-skill education,Coaching and training institutes (if structured)
2. Charging fees is permissible if:
   - Dominant purpose is education
   - Surplus is reinvested for educational objects
   - No personal or non-educational diversion
3. Revenue cannot deny exemption merely because:
   - Fees are "high"
   - Surplus is generated
   - Courses are non-traditional or vocational

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

15.01.2026

Whether pre-GST CENVAT credit transitioned into GST Electronic Credit Ledger (ECL) can be used as mandatory pre-deposit for appeals before CESTAT under section 35F of the Central Excise Act.

Army Welfare Housing Organisation v. Union of India
Delhi High Court (26.12.2025)

Core Legal Question

Can CENVAT credit lying prior to 1-7-2017, validly transitioned under section 140 CGST Act, be utilised via DRC-03 for making mandatory pre-deposit while filing an appeal before CESTAT in service tax / excise matters?

Pre-GST CENVAT credit, once transitioned into the Electronic Credit Ledger under section 140 of the CGST Act, can be utilised for making mandatory pre-deposit under section 35F of the Central Excise Act, since pre-deposit is merely an advance payment of tax, interest or penalty, which is expressly permitted under Rule 142(3) of the CGST Rules.

Key Findings of the Court

1. Nature of Pre-Deposit
   - Pre-deposit under section 35F is:
     - Not a separate or distinct levy
     - Merely an advance payment of disputed tax / interest / penalty
   - Therefore, mode of payment cannot be artificially restricted.
2. Effect of Section 140 CGST Act (Transition)
   - Section 140 statutorily recognises CENVAT credit accumulated under the old regime.
   - Once transitioned, such credit:
     - Becomes part of the Electronic Credit Ledger
     - Retains its character as usable credit
3. Rule 142(3) CGST Rules – DRC-03
   - Rule 142(3) expressly permits payment of any tax, interest or penalty through DRC-03
   - Since pre-deposit is an advance payment of these very components:
     - DRC-03 is a valid mechanism
     - ECL can be debited for the same
4. CBIC Circular dated 28-10-2022 Not Binding
   - Circular stating that DRC-03 is not a valid mode:
     - Cannot override statutory provisions
     - Is administrative, not legislative
   - Courts consistently hold:
     - Oppressive circulars cannot curtail statutory rights
     - Beneficial interpretation must prevail

Final Decision

- CESTAT order rejecting appeal set aside
- Assessee permitted to:
  - File DRC-03
  - Debit transitioned CENVAT credit
- Appeal before CESTAT directed to be restored and heard on merits

Practical Takeaways

What This Judgment Confirms

- Pre-deposit need not be paid in cash
- Electronic Credit Ledger can be used
- DRC-03 is a valid mode
- CBIC circulars cannot override statute

What Revenue Cannot Argue Now

- That pre-deposit must be only through:
  - Cash ledger
  - CBIC GST portal
- That GST provisions are irrelevant to pre-GST appeals

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TAX INSIGHTS

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Direct Tax

16.01.2026

Whether CPC can deny the benefit of the new tax regime (Section 115BAC) for AY 2023-24 merely because Form 10IE for AY 2022-23 was filed one day late, even though the option was otherwise exercised and never withdrawn.

Meenaben Maheshchandra Patel v. ITO
ITAT SURAT (16.12.2025)

Tribunal's Findings

1. Option under Section 115BAC is a continuing option
   - Once exercised validly, it automatically applies to subsequent assessment years (till AY 2023-24).
   - There is no provision to file Form 10IE again for each year.

2. Form 10IE can be exercised only once
   - The assessee cannot file a fresh Form 10IE for AY 2023-24 once it has already been exercised earlier.
   - Hence, CPC's reasoning that no Form 10IE existed for AY 2023-24 was legally flawed.

3. Delay of one day in AY 2022-23 cannot defeat AY 2023-24 rights
   - Even though Form 10IE for AY 2022-23 was filed one day after the extended due date, the option stood exercised.
   - For AY 2023-24, the option was well within the permissible period under law.

4. Assessee never withdrew the option
   - The assessee clearly mentioned in the return:
     - Form 10IE acknowledgment number
     - Date of filing
     - Intention to continue under the new tax regime

5. Revenue should not deny substantive benefits for technical lapses
   - Tax authorities must assist taxpayers in availing statutory benefits.
   - Department should collect only legitimate tax, not higher tax due to procedural hyper-technicalities.

Final Decision

- CPC and CIT(A) were not justified in taxing the assessee under the old regime.
- AO directed to compute tax under Section 115BAC for AY 2023-24.
- Appeal allowed in favour of the assessee.

Practical Takeaways

- Once Form 10IE is filed (even if disputed for an earlier year), CPC cannot ignore it for subsequent years
- No fresh Form 10IE is required or permitted once the option is exercised
- AY 2023-24 is the last year where such disputes can arise (option withdrawn from AY 2024-25 onwards)
- Strong precedent against mechanical CPC processing under old regime

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

16.01.2026

Whether the High Court, in exercise of Article 226, can direct the GST Appellate Authority to entertain an appeal filed beyond the maximum condonable limitation period prescribed under Section 107 of the CGST/GGST Act, 2017.

Harsh Deepk Shah v. Union of India
HIGH COURT OF GUJARAT (24.12.2025)

Statutory Framework

Section 107, CGST Act

- Appeal to Appellate Authority: 3 months
- Condonable delay: further 1 month
- Maximum outer limit: 120 days
- Appellate Authority has no power to condone delay beyond this.

High Court's Findings

1. Limitation under Section 107 is mandatory
   - Once the appeal is filed beyond 120 days, the Appellate Authority becomes functus officio.
   - Delay of even one day beyond the outer limit is fatal.
2. Article 226 cannot be used to override statutory limitation
   - Though High Court powers under Article 226 are wide, they are not meant to defeat legislative intent.
   - Writ jurisdiction cannot be used as a substitute for a time-barred statutory appeal.
3. Section 5 of Limitation Act is inapplicable
   - GST Act is a special statute.
   - By virtue of Section 29(2) of Limitation Act, only the limitation provided in the GST Act applies.
4. Panoli Intermediate ruling no longer helps assessees
   - Reliance on Panoli Intermediate (FB, Gujarat HC) was rejected.
   - Supreme Court in Glaxo Smith Kline Consumer Health Care Ltd. (2020) has clarified that HC cannot condone delay beyond statutory cap, even under Article 226.
5. Writ cannot revive challenge to Order-in-Original
   - Once the assessee opted for statutory appeal (albeit belatedly), HC cannot re-examine merits of the Order-in-Original.
   - No violation of natural justice or lack of jurisdiction was shown.

Final Decision

- Writ petition dismissed
- High Court refused to condone delay of 6 days
- Appellate Authority's rejection of appeal upheld
- Decision in favour of Revenue

Important Precedents Relied Upon

- Asstt. Commr. v. Glaxo Smith Kline Consumer Health Care Ltd. (SC)
- ONGC v. GETCO (SC)
- Singh Enterprises v. CCE (SC)
- Tapi Ready Plast v. State of Gujarat (Guj HC)

Practical Takeaways

- No equity beyond limitation in GST appeals
- Article 226 is not a cure for delayed appeals
- Even short delays (1–6 days) beyond 120 days are incurable

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Direct Tax

17.01.2026

No Advance Tax Precondition for Appeal where Income is Exempt u/s 10(26AAB): ITAT Bangalore

APMC Tarikere v. ITO
ITAT Bangalore (15.12.2025)

What the Tribunal Held

1. Section 249(4)(b) not applicable where no advance tax is payable
   - If an assessee files a Nil return and claims complete exemption (here u/s 10(26AAB)), the question of advance tax does not arise at all.
   - Consequently, non-payment of advance tax cannot be a ground to reject the appeal at the threshold.

2. Registration u/s 12AB strengthens the position
   - The assessee being a registered charitable entity (u/s 12AB) and claiming exemption meant that advance tax liability was absent.
   - Hence, CIT(A)/NFAC erred in invoking section 249(4)(b).

3. Proviso to section 249(4) also irrelevant
   - Since there was no liability to pay advance tax, the requirement to seek relaxation/condonation under the proviso did not arise.

4. Appeals cannot be dismissed on hyper-technical grounds
   - Dismissing the appeal without examining merits was held to be legally unsustainable.
   - Matter was remanded to CIT(A)/NFAC for fresh adjudication on merits.

Practical Significance

- Nil return + full exemption = no advance tax obligation
- Section 249(4)(b) applies only where advance tax was actually payable
- NFAC/CIT(A) cannot mechanically reject appeals for alleged non-compliance with advance tax provisions
- Helpful precedent for:
  - APMCs claiming exemption u/s 10(26AAB)
  - Charitable trusts with Nil income
  - Appeals wrongly dismissed at the admission stage

Key Note

"Where the assessee has filed return of income declaring total income of Rs. Nil, the question of payment of advance tax does not arise."

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TAX INSIGHTS

By

Tax Research Department

Goods & Services Tax

17.01.2026

Time Spent in Rectification Proceedings to be Excluded While Computing Limitation for GST Appeal: HC

Prakash Medical Stores v. Union of India
Allahabad High Court (12.12.2025)

Core Issue

Whether time spent pursuing a rectification application u/s 161, which was ultimately rejected, should be excluded while computing the limitation period for filing appeal u/s 107 under GST law.

Key Holdings

1. Underlying principle of Section 14 of Limitation Act applies to GST proceedings
   - Though Section 14 does not apply verbatim to GST proceedings, its equitable principle (exclusion of time spent bona fide before a wrong forum) does apply.
   - GST law does not expressly or impliedly exclude the application of this principle.
2. Limitation for appeal remains in abeyance during pendency of rectification
   - If a rectification application u/s 161 is filed within time, then:
     - The running of limitation to file appeal u/s 107 stops
     - It resumes only after the rectification application is decided
3. No "delay" arises once time is excluded
   - Exclusion of time under Section 14 principle is not the same as condonation of delay under Section 107(4)
   - Once time is excluded, there is no delay to condone at all
4. Rectification application need not succeed
   - Even if the rectification application is:
     - Rejected
     - Held to be not maintainable
   - The benefit of exclusion still applies, provided:
     - It was filed within limitation
     - It was pursued bona fide and with due diligence
5. Exception
   - If rectification application itself is filed beyond limitation u/s 161, then:
     - Benefit of exclusion will not apply

Application to Facts

- Ex-parte order: 23-04-2024
- Rectification filed: 23-05-2024 (within time)
- Rectification rejected: 22-10-2024
- Appeal filed: 29-11-2024

After excluding rectification period, appeal was effectively filed within 2 months 9 days, i.e. within the 3-month limitation u/s 107(1)

Final Outcome

- Order dismissing appeal as time-barred set aside
- Appeal restored and directed to be decided on merits

Practical Takeaways

- Filing rectification u/s 161 protects limitation for appeal
- Time spent in rectification must be excluded, not merely condoned
- Authorities cannot mechanically dismiss appeals ignoring Section 14 principle
- Strong protection for assessees against technical rejection of appeals

Key Note

"Limitation to file appeal would be put in abeyance from the date of filing application for rectification till the date when that application is decided."

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

18.01.2026

Whether immovable property received as a gift from husband can be taxed as unexplained money under section 69A?

Dhruti Jaysukhbhai Ranpariya v. ITO
ITAT Rajkot (31.12.2025)

Core Issue

Whether immovable property received as a gift from husband can be taxed as unexplained money under section 69A, when:

- the gift is from a relative (spouse),
- ownership and source in donor's hands are proved, and
- the property is duly recorded and disclosed.

Key Findings of the Tribunal

1. Gift from husband is exempt under section 56(2)(x)

- Husband falls within the definition of "relative".
- Therefore, gift of immovable property without consideration is not taxable.
- Natural love and affection between spouses was accepted, supported by:
  - Marriage certificate
  - Aadhaar details
  - Registered gift deeds
  - Disclosure in ITR and capital account

2. Onus of proof fully discharged by assessee

The assessee successfully established:

- Relationship → Husband–wife
- Genuineness → Registered gift deeds, POA, encumbrance certificates
- Creditworthiness → Properties purchased by husband via registered sale deeds and reflected in his balance sheet
- Disclosure → Properly recorded in assessee's books and return

3. Section 69A does NOT apply to immovable property

- Section 69A is restricted to:
- "money, bullion, jewellery or other valuable article"
- Applying ejusdem generis, "other valuable article" does not include immovable property.
- Hence:
  - Immovable property ≠ unexplained money
  - Addition under section 69A was legally unsustainable

Final Ruling

- Addition of ₹1.78 crore deleted
- Appeal allowed in favour of the assessee

Practical Takeaways

1. Wrong section = fatal to addition
2. Even if AO doubts a transaction, section 69A cannot be used for immovable property.
3. For gifts from relatives, ensure:
   - Registered gift deed
   - Donor's ownership trail (sale deeds, balance sheet)
   - Proper disclosure in both donor's and donee's accounts
4. Section 56(2)(x) is a complete code for taxing gifts
5. Once a transaction falls within its exceptions, no other deeming section should be mechanically invoked.
6. Recording in books matters
7. Assets duly recorded and disclosed significantly weaken the Revenue's case.

Key Note

Immovable property received as a gift from a spouse, duly proved and disclosed, cannot be taxed under section 69A, as the section does not cover immovable assets and the transaction is exempt under section 56(2)(x).

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TAX INSIGHTS

By

Tax Research Department

Goods & Services Tax

18.01.2026

Whether general penalty under section 125 of CGST/TNGST Act can be imposed in addition to late fee under section 47 for the same default of delayed filing of GST annual return (GSTR-9).

Tvl R P G Traders v. State Tax Officer
Madras High Court (12.12.2025)

Key Findings of the High Court

1. Section 125 is residual in nature
- Section 125 applies only when no specific penalty or late fee is prescribed for a particular contravention.
- It cannot be invoked where the Act already provides a specific consequence.

2. Late filing of annual return is specifically covered by section 47
- Section 47(2) prescribes late fee for failure to file return under section 44 (annual return).
- Once late fee under section 47 is levied:
  - No additional general penalty under section 125 is permissible.

3. Double penalisation is impermissible
- Levying both:
  - Late fee under section 47, and
  - General penalty under section 125
- for the same default amounts to over-penalisation, which is not contemplated by the GST law.

4. Error in calculation of late fee corrected
- The department wrongly doubled the late fee by:
  - Calculating the maximum late fee separately under CGST and SGST.
- Correct position:
  - Total late fee cap applies first, and
  - Then the amount is split equally between CGST and SGST.
- Accordingly:
  - Late fee reduced from ₹1,50,050 to ₹75,025.

Final Outcome

- General penalty of ₹50,000 under section 125 quashed
- Late fee sustained but reduced to ₹75,025
- Direction issued to defreeze bank account upon payment of revised late fee
- Writ petition partly allowed

Practical Takeaways

1. No section 125 penalty where section 47 applies
2. If a default is specifically penalised, the general penalty provision cannot be invoked.
3. Annual return delay, section 47(2) only
4. For GSTR-9 delays:
   - Only late fee, not penalty.
5. Check late-fee computation carefully
   - Maximum cap applies once, not separately for CGST and SGST.
   - Many departmental orders err on this aspect.
6. Useful precedent for writs and appeals
   - Especially where:
     - Bank accounts are frozen, or
     - General penalty is mechanically imposed along with late fee.

Key Note

Where a specific late fee is prescribed under section 47 for delayed filing of GST annual return, imposition of general penalty under section 125 for the same default is impermissible and liable to be set aside.

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TAX INSIGHTS
By
Tax Research Department

Direct Tax 19.01.2026

Section 264 Revision Available Even for Assessee's Own ITR Errors :HC

Swaminarayan Mandir Trust v. CIT (Exemptions)
HIGH COURT OF BOMBAY (24.12.2025)

Core Issue

Can an assessee seek revision under section 264 when the adverse tax consequence arises solely due to mistakes committed by the assessee itself in the return of income, and not due to any error by the department?

Held

Yes
The Bombay High Court decisively held that:
Important Legal Principles Laid Down

1. Choice between Appeal (s.246A) and Revision (s.264)

- An assessee has discretion to:
  - file an appeal under section 246A, or
  - seek revision under section 264
- The Commissioner cannot refuse to entertain a section 264 application merely because an appeal remedy was available.

There is no statutory compulsion to file an appeal before invoking section 264.

2. Scope of Section 264 Is Very Wide

- Powers under section 264:
  - are not confined to correcting departmental errors
  - extend even to mistakes committed by the assessee itself
- The provision is intended to:
  - prevent miscarriage of justice
  - ensure the assessee is not taxed contrary to law

Even wrong data entry / punching errors in the ITR fall within the ambit of section 264.

3. Rectification (s.154) vs Revision (s.264)

- Failure of rectification under section 154 (no "mistake apparent on record") does not bar relief under section 264.
- Section 264 allows deeper examination, inquiry, and consideration of fresh explanations/documents.

4. Goetze (India) Ltd. (SC) Not Applicable

- The Supreme Court ruling in Goetze (India) Ltd.:
  - applies to assessment proceedings
  - does not restrict the Commissioner's revisional powers under section 264

This judgment once again clarifies that Goetze cannot be used to deny relief under section 264.

Practical Impact

This judgment is highly beneficial where:

- Exemption (e.g. section 11) is denied due to:
  - wrong schedules
  - incorrect fields
  - clerical / human / software-related errors
- Time limit for:
  - revised return u/s 139(5), or
  - appeal u/s 246A has expired
- CPC adjustments under section 143(1) lead to unintended tax demands

Final Outcome

- Rejection of section 264 application quashed
- Matter remanded for fresh consideration
- Commissioner directed to:
  - give hearing
  - examine errors
  - grant relief if legally tenable
  - complete within 12 weeks

Key Note

Section 264 is a powerful remedial provision.
Even assessee-committed ITR errors do not disentitle revision.
Tax cannot be collected merely because of clerical or punching mistakes.

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TAX INSIGHTS

By

Tax Research Department

Goods & Services Tax

19.01.2026

Whether the GST department can block the Electronic Credit Ledger (ECL) under Rule 86A solely based on reports/communications of the Enforcement Wing, without independent application of mind, and without granting pre-decisional hearing.

RDTMT Steels (India) (P.) Ltd. v. ACCT (Admin), Mandya
HIGH COURT OF KARNATAKA(11.12.2025)

Held

No. Such blocking is illegal and unsustainable.

Key Findings of the High Court

1. Borrowed Satisfaction is Impermissible
   - Blocking of ECL cannot be based merely on enforcement/investigation reports.
   - The Proper Officer must form his own independent "reasons to believe".
   - Reliance on another officer's satisfaction amounts to borrowed satisfaction, which is invalid.

2. Independent Application of Mind is Mandatory
   - Rule 86A requires:
     - Examination of tangible material
     - Independent analysis of facts
     - A reasoned opinion that ITC is fraudulently availed or ineligible
   - A cryptic, mechanical order does not meet this requirement.

3. Pre-Decisional Hearing is Required
   - Blocking ECL has serious civil consequences.
   - Failure to grant pre-decisional hearing violates principles of natural justice.
   - Following K-9 Enterprises (DB, Karnataka HC), such hearing is mandatory.

4. Non-Speaking Orders are Invalid
   - Merely stating that:
     - suppliers are "non-existent", or
     - multiple e-way bills exist
     - without supporting reasoning or material, is insufficient.
   - Orders must disclose why Rule 86A conditions are satisfied.

5. Rule 86A is Drastic and Extraordinary
   - Blocking ECL:
     - Impacts liquidity
     - Disrupts business
     - Defeats GST's value-added tax structure
   - Hence, it must be exercised with extreme caution and proportionality.

Final Directions

- Blocking orders dated 19.11.2025 quashed
- Department directed to immediately unblock ECL
- Liberty reserved to proceed afresh in accordance with law

Key Notes

Blocking of Electronic Credit Ledger under Rule 86A based solely on enforcement reports, without independent formation of "reasons to believe" and without pre-decisional hearing, is arbitrary, violative of natural justice, and liable to be quashed.

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TAX INSIGHTS

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Tax Research Department

Direct Tax

20.01.2026

Whether a trust that outsourced hospital operations and earned income as a percentage of hospital turnover, without demonstrating substantial charitable activity, was entitled to approval under section 80G.

Jeevan Rekha Trust v. CIT (Exemption)
ITAT Ranchi Bench (05.01.2026)

Tribunal's Decision

80G approval rightly denied — appeal dismissed in favour of Revenue.

Key Findings of the ITAT

1. Outsourcing is not Charitable Activity
   - The trust merely provided its building to a private entity (BSCHPL) to run a hospital.
   - Income was earned as 3% of hospital turnover, which is commercial in nature, not incidental charity.
2. Commercial Character Established
   - Receipts were subject to TDS u/s 194J/194JB, indicating professional / commercial income.
   - Consistent and huge surpluses were generated year after year.
3. Inadequate Charitable Application
   - Patient relief was ~₹30 lakh, while total income exceeded ₹1 crore.
   - No credible evidence that income was applied predominantly for charitable purposes.
4. Objects vs. Actual Conduct
   - Objects spoke of running hospitals/clinics.
   - In reality, the trust did not operate the hospital—it only monetized the infrastructure.
5. Reliance on Supreme Court Ruling
   - The Tribunal relied heavily on New Noble Educational Society (SC):
   - Charitable activity cannot be camouflaged as commercial activity.

Legal Principle

A trust earning income through commercially structured outsourcing arrangements, without demonstrable and substantial charitable application, is not entitled to approval under section 80G.

Practical Takeaways

What Works:

- Direct involvement in charitable activities
- Clear evidence of dominant charitable purpose
- Substantial application of income towards beneficiaries

What Fails:

- Merely owning assets and leasing/outsourcing for profit
- Revenue linked to turnover or profit-sharing
- Token charity compared to total income
- Large recurring surpluses without charitable deployment

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

20.01.2026

Whether internal roads constructed within an Industrial Area qualify as "public roads", thereby attracting 12% GST under Entry 3 of Notification No. 24/2017-CT (Rate), or whether they are taxable at 18% as general works contract services.

RK Infracorp (P.) Ltd. v. Assistant Commissioner State Tax
Andhra Pradesh High Court (31.12.2025)

High Court's Ruling

In favour of the assessee

The High Court held that GST @ 12% is applicable, not 18%, and directed the department to redo the assessment.

Key Reasoning of the Court

1. Evidentiary Value of IALA Certificate
   - The Executive Officer of the Industrial Area Local Authority (IALA) certified that:
     - Roads facilitate industrial activity and movement of the general public
     - Roads are treated as public roads
     - Roads are maintained for benefit of all stakeholders, including the general public

2. Coverage under Notification No. 24/2017
   - Entry No. 3 covers:
   - Construction of roads for Government / Local Authority / Governmental Authority
   - other than commercial or private use

3. Nature of Use > Location
   - Merely being inside an industrial area does not make roads "private"
   - Public access and public utility are determinative

4. Department's Error
   - Revenue ignored subsequent clarificatory certificate
   - Mechanical classification under 18% was unsustainable

Operative Directions

- Assessment order set aside only to the extent of applying 18% GST on road works
- Revenue directed to:
  - Reassess tax liability
  - Consider IALA certificate
  - Pass separate year-wise orders

Legal Principle

Internal roads constructed within an industrial area qualify as "public roads" for GST purposes if the competent local authority certifies their public character and use—making them taxable at 12% under Notification 24/2017.

Practical Takeaways

For Contractors

- Always obtain:
  - Completion certificates
  - Local authority certification on public use
- Maintain documentation proving non-exclusive / public access

For Ongoing GST Disputes

- This judgment strengthens reliance on:
  - SJ Constructions (AP HC)
  - Authority-issued clarifications, even if issued later

Revenue Limitation

- Cannot automatically classify "internal roads" as private or commercial
- Functional use overrides nomenclature

Related Notifications

- Notification No. 11/2017-CT (Rate)
- Notification No. 24/2017-CT (Rate)-Entry 3

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TAX INSIGHTS

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Direct Tax

21.01.2026

Whether capital gains could be taxed in the hands of the assessee on the basis of an alleged Joint Development Agreement (JDA) when the underlying registered document was only a General Power of Attorney (GPA) and the assessee was not the owner of the land.

Smt. Neha Jain v. ITO
ITAT Hyderabad (21.11.2025)

Key Findings of the ITAT

1. Document mischaracterised as JDA
   - The addition was entirely based on Document No. 685/2016, presumed by the AO/CIT(A) to be a JDA.
   - On examination, the Tribunal found it to be merely a GPA, executed by four joint owners authorising the assessee to act on their behalf.

2. No transfer under section 45
   - The GPA did not transfer ownership, possession, or development rights.
   - It did not constitute a "transfer" of a capital asset under section 2(47) read with section 45.

3. Assessee not the owner
   - It was undisputed that the assessee did not own the land.
   - In absence of ownership of a capital asset, no capital gains can arise in the assessee's hands.

4. Foundation of reassessment fails
   - Since the very basis of reopening and addition (existence of a JDA giving rise to capital gains) was incorrect, the addition could not survive.

Final Decision

- Addition of ₹1.53 crore deleted in full
- Appeal allowed on merits
- Legal ground on validity of reassessment left open

Legal Principle

A General Power of Attorney, even if registered and mentioning a high document value, does not amount to a transfer of a capital asset nor can it be treated as a Joint Development Agreement. In the absence of ownership or transfer of development rights, no capital gains can be taxed under section 45.

Practical Significance

- Reinforces that substance of the document, not nomenclature or stamp value, determines taxability.
- Important precedent in cases where:
  - GPA is wrongly treated as JDA
  - Capital gains are sought to be taxed on non-owners
  - Reassessment is initiated on incorrect factual assumptions

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

21.01.2026

Whether a single/composite GST assessment order covering multiple assessment years (2018-19, 2019-20 and 2020-21) is legally sustainable under the CGST/APGST Acts.

Shirdi Sai Enterprises v. Deputy Assistant Commissioner of State Tax
Andhra Pradesh High Court (24.12.2025)

Held

- A single assessment order covering multiple assessment years is impermissible.
- Each assessment year constitutes a separate "adjudication" and must culminate in a separate order.
- The impugned composite assessment order was therefore set aside.
- Matter remanded to the assessing authority to pass separate assessment orders for each AY.
- Time between the original order and receipt of HC order to be excluded for limitation.

Legal Principle

Under sections 73/74 of the CGST/APGST Acts, a single composite assessment order for multiple tax periods or assessment years is invalid; separate adjudication orders must be passed for each assessment year.

Reliance Placed On

- SJ Constructions v. Assistant Commissioner (AP HC) – followed

Key Observations

- Even where registration is cancelled and no business is carried on thereafter, procedural legality of assessment cannot be compromised.
- Absence of proper service of assessment order justified the Court entertaining the writ despite delay.
- The defect goes to the root of jurisdiction, not a curable procedural irregularity.

Practical Significance

- Strong authority to challenge:
  - Composite SCNs or assessment orders covering multiple FYs
  - Recovery proceedings based on such orders
- Frequently useful in Section 73 proceedings where departments club multiple years for convenience.
- Reinforces that "tax period" ≠ "combined adjudication".

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TAX INSIGHTS

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Tax Research Department

Direct Tax

22.01.2026

No TDS provisions applicable on discount if relationship between assessee & stockist is of principal to principal: ITAT MUMBAI

DCIT (TDS) v. Novartis Healthcare (P.) Ltd.
ITAT Mumbai (08.12.2025)

Issues Involved

1. Whether discounts/margins given to stockists attract TDS u/s 194H
2. Whether TDS u/s 192 is deductible on ESOPs at the stage of grant
3. Whether interest paid for delayed payments to MSMEs attracts TDS u/s 194A

Held & Key Findings

1. Discount to Stockists – No TDS u/s 194H

- Relationship between assessee and stockists was principal-to-principal, not principal-agent.
- Sale invoices reflected outright sale; GST was charged and paid.
- Stockists:
  - Bore inventory risk
  - Sold goods in their own right
  - Earned trade margin, not commission
- Regulatory controls were industry-mandated (pharmaceutical sector) and did not create an agency relationship.
- Assessee received sale consideration; it did not pay any commission.
- Held: Section 194H not applicable on trade discounts.

2. ESOPs – TDS u/s 192 only at exercise stage

- ESOPs were granted in FY 2019-20 but exercised in FY 2022-23.
- As per CBDT Circular No. 9/2007:
  - Taxability arises only on exercise, not on mere grant.
- Section 17(2)(vi) taxes the difference between FMV on exercise date and exercise price.
- Held: No TDS obligation in year of grant; assessee not an assessee-in-default.

3. Interest on delayed MSME payments – No TDS u/s 194A

- Interest paid due to delayed payment of purchase consideration:
  - Was not in respect of money borrowed
  - Did not fall within definition of "interest" under section 2(28A)
- Additionally, assessee had voluntarily disallowed expenditure u/s 37(1).
- Held: Section 194A not applicable; no TDS or interest u/s 201(1A).

Legal Principles

Trade discounts given in a principal-to-principal sale arrangement do not constitute commission under section 194H. ESOPs attract TDS only upon exercise of options, and interest paid for delayed purchase consideration to MSMEs does not qualify as "interest" under section 2(28A).

Judicial Support Relied Upon

- Piramal Healthcare Ltd. (Bom HC)
- Unichem Laboratories Ltd. (Bom HC & ITAT)
- Wockhardt Ltd., Total Energies, Infosys Technologies (SC)
- Ahmedabad Stamp Vendors Association (Guj HC)
- Bharti Airtel Ltd. (SC)

Practical Significance

- Strong authority for pharma, FMCG & distribution-based businesses.
- Useful in:
  - TDS surveys u/s 133A(2A)
  - Defending 194H demands on distributor margins
  - ESOP-related TDS litigation
  - MSME delayed payment interest disputes
- Reinforces substance of sale vs agency test over contractual controls.

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

22.01.2026

Whether denial of Input Tax Credit (ITC) to the recipient under section 74 of the CGST/HPGST Act could survive when, subsequent to passing of demand order, the supplier paid the tax along with interest and filed the due returns.

Shivalik Containers (P.) Ltd. v. Assistant Commissioner
Himachal Pradesh High Court (24.12.2025)

Held

- The demand order denying ITC was passed solely on the ground of non-payment of tax by the supplier.
- During pendency of the writ petition:
  - The supplier filed returns for Feb–Mar 2020
  - Tax along with interest was deposited
  - ITC consequently became available to the recipient
- In light of these admitted facts, the impugned order could not be sustained.

Held:

Impugned order set aside and matter remanded for re-adjudication.

Legal Principles

Where ITC is denied to a recipient on account of supplier's default, and the supplier subsequently pays tax along with interest and files returns, the adjudicating authority must re-adjudicate the issue, as ITC becomes available under section 16.

Directions Issued

- Assistant Commissioner directed to:
  - Re-open the issue
  - Re-adjudicate the matter afresh
  - Either allow ITC or determine residual liability, if any
- Time limit prescribed: on or before 31 January 2026

Statutory Provisions Involved

- Section 16 – Eligibility and conditions for ITC
- Section 74 – Demand involving fraud /suppression (invoked earlier)

Practical Significance

- Valuable precedent for cases where:
  - ITC is denied due to supplier-side default
  - Supplier later regularises compliance
- Supports the principle that recipient should not be permanently penalised for supplier's lapse once tax reaches the exchequer.
- Useful in writs challenging:
  - Section 73/74 ITC denials
  - Recovery proceedings pending supplier compliance

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TAX INSIGHTS

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Tax Research Department

Direct Tax

23.01.2026

Whether section 153(6)(i) (twelve-month limitation to give effect to appellate/court orders) can be invoked to extend limitation for an assessment under section 153C (search assessment of "other person").

Swagat Infrastructure (P.) Ltd. v. Deputy Commissioner of Income-tax
Gujarat High Court (16.12.2025)

Held

- Proceedings were undisputedly search-based under section 153C, governed by section 153B.
- Original limitation expired on 31-12-2018.
- Due to interim stay granted by the High Court on 20-12-2018, only 11 days of limitation remained.
- Upon final disposal of the issue by the Supreme Court on 06-04-2023, limitation revived.
- As per the proviso to Explanation to section 153(9):
  - Where remaining limitation is less than 60 days, it stands extended only to 60 days.
  - Limitation therefore extended only up to 05-06-2023.
- Section 153(6)(i):
  - Applies only to regular assessments under sections 143/144
  - Cannot override or extend limitation prescribed specifically for search assessments under sections 153A/153C.
- Assessment order dated 30-04-2024 was time-barred and without jurisdiction.

For assessments under section 153C, limitation is governed exclusively by section 153B read with the proviso to Explanation to section 153(9). Section 153(6)(i), providing a twelve-month period, applies only to general assessments under sections 143/144 and is inapplicable to search assessments.

Key Legal Principles Affirmed

- Search assessments are a self-contained code with distinct limitation provisions.
- Extension of limitation after stay/interim relief:
  - Maximum extension permissible is 60 days, not 12 months.
- Revenue cannot invoke residuary or general limitation provisions to cure a time-barred 153C assessment.

Relief Granted

- Assessment order dated 30-04-2024 quashed
- Demand notice quashed
- Writ petition allowed in favour of assessee

Judicial Support Considered

- ITO v. Vikram Sujitkumar Bhatia, on validity of 153C proceedings

Practical Significance

- Highly valuable precedent for:
  - Limitation challenges in 153A/153C cases
  - Cases revived after long-pending writs or stays
- Prevents misuse of section 153(6)(i) by Revenue to resurrect time-barred search assessments
- Particularly relevant where only a few days of limitation remained when stay was granted

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TAX INSIGHTS

By

Tax Research Department

Goods & Services Tax

23.01.2026

ITC demand on 3B–2A mismatch and interest sans SCN reply remanded; 50% disputed tax to be paid in cash: HC

Sai Speed Medical Institute Pvt. Ltd. v. Assistant Commissioner GST & Central Excise
Madras High Court (09.12.2025)

Issues Involved

1. ITC demand based on GSTR-3B vs GSTR-2A mismatch (FY 2019-20)
2. ITC denied under section 16(4) CGST Act
3. Interest demand for belated payment of GST
4. Late fee for delayed GSTR-9

Key Findings

1. Section 16(4) ITC denial – quashed
- Finance (No.2) Act, 2024 inserted section 16(5) with retrospective effect from 01-07-2017.
- Hence, ITC denied solely on time-limit under section 16(4) is no longer sustainable.
- Demand of ₹44,21,912 set aside outright.

2. GSTR-3B vs GSTR-2A mismatch & interest demand – remanded
- Demand confirmed without considering SCN reply (no reply filed).
- Late fee already paid by assessee.
- Court held that:
  - Matter requires fresh adjudication on merits
  - Assessee must be given opportunity to file reply with documents

Conditional Relief Granted

- Case remanded for fresh decision on surviving issues subject to condition:
  - 50% of disputed mismatch ITC (Sl. No.1) to be deposited
  - Payment to be made in cash from Electronic Cash Ledger
  - Deposit to be made within 30 days

Additional Directions

- Assessee to:
  - File reply to SCN (DRC-01) with documents
  - Treat impugned order as addendum to SCN
- Department to:
  - Pass fresh order within 3 months
- Bank attachment:
  - Automatically vacated on compliance
- Failure to comply:
  - Department free to recover dues as if writ was dismissed

Legal Takeaways

- Section 16(5) retrospectively cures section 16(4) defaults — strong ground to challenge legacy ITC denials.
- 3B–2A mismatch alone cannot be confirmed mechanically without:
  - Opportunity of reply
  - Verification of supplier compliance
- Courts increasingly impose balanced pre-deposit conditions (often 30%–50%) while remanding GST disputes.

Practical Use

- Useful precedent for:
  - Legacy ITC denial under section 16(4)
  - 3B vs 2A mismatch demands
  - Cases where orders passed without SCN reply

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

24.01.2026

Whether section 50C can be invoked when the DVO's valuation (after correcting factual errors) comes below the actual sale consideration received by the assessee.

Mukesh Vaikunthlal Mehta v. ITO
ITAT Mumbai(01.01.2026)

Key Facts

- Property with 26 flats (1 landowner flat, 5 developer/owner flats, 20 tenanted flats).
- Sale consideration: ₹2.50 crore.
- Stamp duty value: ₹7.03 crore , AO invoked section 50C.
- DVO valuation (initial): ₹5.02 crore (adopted by CIT(A)).
- Assessee showed DVO ignored area occupied by developer-flat owners, though tenants' area was excluded.

Tribunal's Findings

1. DVO valuation suffered from a factual error
   - While tenant-occupied area was excluded, area occupied by developer/owner flats was wrongly included.
   - This inflated the "balance FSI" and hence the valuation.
2. Rectified DVO valuation
   - After excluding both tenants' area and developer-flat owners' area, FMV worked out to ₹2.42 crore.
3. Section 50C condition failed
   - Since ₹2.42 crore less than actual consideration of ₹2.50 crore,
   - Section 50C could not be invoked.

Final Decision

- Entire addition under section 50C deleted.
- Tribunal allowed assessee's appeal on core grounds.
- Other grounds (stamp duty deduction, section 54 claim) treated as academic.

Key Legal Takeaways

- Section 50C applies only when FMV/stamp value exceeds actual consideration
- DVO reports can be challenged for factual and methodological errors
- Occupied areas (tenants, developer-flat owners, etc.) must be consistently excluded when valuing redevelopment potential
- Rectification of valuation is permissible even at Tribunal stage

Practical Relevance

- Very useful precedent in redevelopment / joint property cases.
- Strengthens assessees' position where stamp duty values are unrealistic due to ignored occupancy rights.
- Highlights that DVO valuation is not sacrosanct and must reflect ground realities.

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TAX INSIGHTS

By

Tax Research Department

Goods & Services Tax

24.01.2026

Whether GST authorities can recover tax dues of one company (XRMPL) from the bank account of another company (Ramms India Pvt. Ltd.) merely because both companies share a common director.

Ramms India (P.) Ltd. v. Deputy Commissioner of Commercial Taxes (Audit)
Karnataka High Court(19.12.2025)

Key Facts

- Petitioner and XRMPL are separate private limited companies.
- One individual was director in both companies.
- SCN under section 73 and adjudication order were issued only against XRMPL.
- No recovery steps were taken against XRMPL.
- Instead, department issued GST DRC-13 (garnishee notice) to petitioner's bank and recovered ₹24.73 lakh from petitioner's account.
- Petitioner:
  - Was not a garnishee
  - Owed no money to XRMPL
  - Was never issued any SCN or demand

High Court's Findings

1. Separate juristic personality respected
   - Both companies are independent legal entities.
   - Liability of one cannot be fastened on another without statutory backing.
2. Common directorship ≠ lifting of corporate veil
   - Mere fact that one director is common:
     - Does not justify lifting corporate veil
     - Does not create joint tax liability
   - Lifting the veil requires fraud, sham, or statutory sanction, none of which existed here.
3. Section 79 recovery provisions misused
   - Garnishee proceedings under section 79(1)(c) can be invoked only against persons who hold or owe money to the defaulting taxpayer.
   - Petitioner:
     - Held no money for XRMPL
     - Owed no amount to XRMPL
   - Hence, DRC-13 attachment was without jurisdiction.

Final Decision

- DRC-13 notice quashed
- Recovery of ₹24.73 lakh held illegal
- Department directed to:
  - Consider refund claim
  - Refund amount with applicable interest
- Time-bound directions issued for refund processing

Key Legal Principles Reaffirmed

- Corporate veil cannot be lifted casually
- Common director or group connection alone is irrelevant
- GST recovery must strictly follow section 79 conditions
- SCN & adjudication against X ≠ recovery from Y
- Bank attachment without liability is violation of law

Important Precedents Relied Upon

- SJR Prime Corporation (P.) Ltd. (Karnataka HC, 2025)
- Galaxy International v. UOI (Bombay HC, 2025)

Both cases hold that DRC-13 without notice to the alleged garnishee is illegal.

Practical Significance

- Crucial protection for:
  - Group companies
  - Companies with common directors /shareholders
- Strong authority against:
  - Arbitrary bank attachments
  - "Shortcut" recoveries without SCN
- Highly useful in writs challenging DRC-13 / bank freezing

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

25.01.2026

Free testing equipment received from AE not taxable under Section 28(iv); mark-up addition also deleted: ITAT

AMD India (P.) Ltd. Vs Deputy Commissioner of Income-tax
ITAT BANGALORE (11.12.2025)

Key Holdings

1. Free testing equipment from AE – NOT taxable u/s 28(iv)

- Equipment received free of cost from AE only for testing
- Valued only for customs purposes
- No depreciation claimed
- No ownership with Indian entity; equipment to be returned / re-exported

Held:

- This is not a "benefit or perquisite" arising from business
- Hence no tax u/s 28(iv)
- Critical point: If the principal addition itself fails, any notional benefit theory collapses.

2. 12% mark-up imputed by CIT(A) – also deleted

- CIT(A) tried a middle path: treated it as "reimbursement + 12% mark-up"
- ITAT flatly rejected this

Held:

- When the original receipt is not taxable, consequential mark-up also cannot survive
- Entire addition deleted

3. Strong reaffirmation of Supreme Court & Karnataka HC law

Relied on:

- Mahindra & Mahindra (SC) – s.28(iv) applies only to real business benefits
- Sony India Software Centre (Kar HC) – free assets for limited use ≠ taxable benefit
- Tesco Bengaluru (ITAT) – identical facts
- his gives the ruling very high persuasive value in Karnataka and beyond.

Transfer Pricing – Important Filters Reaffirmed

A. RPT filter strictly applied

- RPT = 25.37%
- Filter = 25%

Held: Even marginal breach → exclude comparable

B. Turnover filter strongly upheld

- Comparables with 22x–37x turnover
- Companies like L&T Infotech, Tech Mahindra, Mindtree

Held:

- Size + brand value matter
- Not comparable with captive software service providers
- Direct rebuttal to Revenue's argument that "turnover is irrelevant"

C. Persistent Systems excluded

Because of:

- Multiple business segments
- Significant R&D
- Onsite operations
- Product / platform orientation

Held: Functionally incomparable with captive service provider

D. Provision for bad & doubtful debts = operating cost

- Arises from normal sales cycle
- Not contingent or extraordinary

Held:

- Must be treated as operating expense for PLI computation

Why this case is important

- Closes the door on creative 28(iv) additions for:
  - free tools
  - test equipment
  - temporary use assets
- Rejects notional mark-up theories where no service/reimbursement exists
- Strengthens turnover + RPT filters for captive service providers
- Aligns TP treatment with commercial reality

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

25.01.2026

HC directs assessee to approach GST Appellate Tribunal constituted by Centre against Section 107 order.

Hind Timber Merchant v. Addl. Commissioner (Grade-2 Appeals)
HIGH COURT OF ALLAHABAD (07.01.2026)

Key Holding

Writ under s.107 - Now appeal must go to GST Appellate Tribunal

- Writ was rightly entertained earlier because GSTAT was not constituted
- Now:
  - Central Govt has constituted GST Appellate Tribunal
  - Members appointed
  - Procedure & functioning rules notified u/s 111

Held:
Once the Tribunal is functional, no purpose in continuing writ proceedings.

Directions Given by the Court

1. Liberty to file appeal before GSTAT (s.112)
   - Assessee permitted to file appeal up to 30-06-2026
2. No limitation bar
   - If appeal is filed by 30-06-2026:
     - Must be entertained
     - No objection on limitation

Huge relief for taxpayers stuck due to non-constitution of GSTAT.

3. Pre-deposit already made ,valid compliance
   - Amount deposited pursuant to interim order of HC:
     - Will be treated as pre-deposit under s.112(8)
   - Assessee only needs to file:
     - Certified copy of interim HC order
     - Proof of deposit
4. Procedural safeguards
   - Tribunal Registry to:
     - Point out defects within 3 weeks
   - Assessee to cure defects within 30 days
   - Appeal to be decided purely on merits

Why this ruling matters

- Confirms transition mechanism from writs - GSTAT
- Protects assessees from limitation issues not of their making
- Avoids double pre-deposit
- Sets a template for all similar pending writs across HCs

Practical takeaway

If your writ exists only because GSTAT didn't exist, the High Court will now push you to the Tribunal, but without punishing you on limitation or pre-deposit.

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

26.01.2026

Credit for TDS deducted from salary must be allowed to employee even if employer fails to deposit it: ITAT

Ajay Kumar Goel v. Deputy Commissioner of Income-tax
ITAT KOLKATA (24.11.2025)

Key Holding

Employee cannot be denied TDS credit merely because employer didn't deposit it

- Salary paid ,TDS deducted
- Employer failed to remit TDS to Govt.
- CPC / AO denied credit and raised demand on employee

Held:

- Once TDS is deducted from salary, the tax to that extent is deemed to be paid by the employee.
- The employee cannot be asked to pay it again.

Statutory Backbone

- Section 205 – Absolute bar
- "Where tax is deductible at source… the assessee shall not be called upon to pay the tax himself to the extent tax has been deducted."
- This is a complete prohibition on demand against the employee.

Section 199 vs Section 205

- s.199- credit mechanism (Form 26AS reflection)
- s.205- substantive protection
- Procedural mismatch cannot override statutory protection

CBDT Instructions Relied Upon

- Instruction No. 275/29/2014-IT(B) (01.06.2015)
- CBDT OM dated 11.03.2016

Both categorically direct:
Taxpayers should not be put to inconvenience due to deductor's failure.

Revenue's remedy lies elsewhere

- Department is free to:
  - Proceed against employer u/s 201
  - Recover tax + interest + penalty from deductor
- But cannot shift the burden to employee
- Strong judicial discipline remarks

ITAT strongly criticised CIT(A) for ignoring:

- Coordinate Bench decisions
- High Court rulings

Reiterated:
Judicial discipline demands obedience, not convenience.

Practical Takeaways

For employees
Claim full TDS credit if:

- Salary slip shows deduction
- Bank credit is net of TDS

Even if:

- 26AS doesn't reflect TDS
- Employer has defaulted / gone insolvent

For professionals

- File rectification / appeal citing:
  - Section 205
  - CBDT Instruction (2015)
  - This ITAT Kolkata ruling
- Demand manual credit if CPC blocks auto-credit

Key Note

The employee pays tax when it is deducted — not when the employer deposits it.

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TAX INSIGHTS

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Goods & Services Tax

26.01.2026

HC dismissed writ petition as order-in-original passed by GST authority was appealable before appellate authority.

Eastern Micropor (P.) Ltd. v. Addl. Commissioner, CGST
HIGH COURT OF CALCUTTA (11.11.2025)

Key Holding

Writ against s.74 order-in-original-Not maintainable

- Assessee challenged OIO u/s 74
- Main argument:
  - Jurisdictional error: SCN clubbed multiple tax periods (2017-18 to 2022-23)
- However:
  - Statutory appeal available u/s 107

Held:

When an efficacious alternate remedy exists, writ jurisdiction will not be exercised.

Why HC refused to interfere

1. Appeal u/s 107 is adequate & effective
   - s.74 orders are expressly appealable
   - No exceptional circumstances shown
2. Belated writ approach
   - Petitioner approached HC after adjudication
   - Did not challenge SCN stage
   - This weighed heavily against the petitioner.
3. Binding precedent followed
   - Relied squarely on:
     - UBS Exports International (P.) Ltd. (Cal HC, 2025)
   - Facts being similar, HC refused to "take a divergent course".

Important nuance

Even though "jurisdictional error" was pleaded, HC held:

A jurisdictional plea alone is not enough to bypass statutory appeal after OIO is passed, unless exceptional facts exist.

Practical Takeaways

When writ will usually fail

- Challenge is to OIO under s.74
- Appeal u/s 107 is available
- No violation of:
  - natural justice
  - fundamental rights
  - lack of inherent jurisdiction
- Writ filed after adjudication

When writ may still survive

- SCN itself:
  - issued by non-proper officer
  - completely time-barred
  - issued without jurisdiction
- Patent violation of natural justice
- No appellate remedy available (rare now, post-GSTAT)

Key Notes

Once adjudication is over, GST disputes belong to the appellate ladder — not Article 226.

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TAX INSIGHTS

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Tax Research Department

Direct Tax

27.01.2026

Can depreciation be denied or reduced on a block of assets merely because some individual units within that block were not used during the year?

CIT v. Kothari Sugars and Chemicals Ltd.
Madras High Court(11.12.2025)

Final Ruling (In Favour of Assessee)

Depreciation is allowable on the entire block of assets even if:

- Certain individual units/plants in that block were not operated, and
- Complete unit-wise usage details were not available.

Once an asset enters a block, individual identity is lost.

Legal Principle

After 1-4-1999, depreciation under Section 32:

- Is block-based, not asset-based
- Requires use of the block, not use of every individual asset
- Does not require attribution of assets to specific units or plants

As long as:

- Business is continuing, and
- Assets are exclusively for business purposes,

the "put to use" test is satisfied at the block level.

Revenue's Argument Rejected

Section 38(2) (partial business use)

- Revenue argued depreciation must be proportionately reduced
- Court rejected this because:
  - Assets were not used for non-business purposes
  - Mere non-operation ≠ non-business use

Why This Judgment Matters

The Court reaffirmed the legislative intent behind introducing "block of assets":

- To avoid unit-wise or asset-wise tracking
- To eliminate disputes on individual usage
- To simplify depreciation computation

Relying heavily on:

- CBDT Circular No. 469 (23-09-1986)
- Delhi HC in Oswal Agro Mills Ltd.

Practical Tax Takeaways

AO can't disallow depreciation proportionately merely because:

- Some plants were idle
- Assets were later sold
- Unit-wise details are missing

Only adjustments allowed:

- Sale, discard, demolition - WDV adjustment under Section 43(6)

Section 32 & block concept overrides individual asset usage

Headnote

Depreciation under Section 32 is allowable on a block of assets once the block is used for business, irrespective of non-use of individual assets forming part of the block.

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

27.01.2026

Can the GST department issue a fresh / second provisional attachment order under Section 83 after the first one lapses on expiry of one year?

Imthiyaz v. Addl. Commissioner of Commercial Taxes
Karnataka High Court(19.12.2025)

Final Holding (In Favour of Assessee)

NO.

Once one year expires from the date of a provisional attachment order:

- The attachment automatically ceases to exist
- Section 83 cannot be invoked again
- No fresh / new / renewal provisional attachment order is permissible

Legal Principle

Section 83(2) of the CGST/KGST Act is absolute and mandatory:

"Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order."

There is:

- No power of renewal
- No power of re-issuance
- No power of fresh attachment on same proceedings

Any attempt to do so would:

- Render Section 83(2) otiose
- Be an indirect circumvention of law
- Amount to abuse of a draconian power

Supreme Court Backbone: Kesari Nandan Mobile (2025)

The Karnataka HC squarely follows the Supreme Court's authoritative ruling in Kesari Nandan Mobile, where it was held:

- Section 83 is draconian
- Power must be strictly construed
- What cannot be done directly cannot be done indirectly
- Allowing repeated attachments would mean:
- "filling old wine in a new bottle"
- Parliament deliberately did not provide for renewal (unlike Customs / Excise laws).

Revenue's Arguments Rejected

- "No express prohibition in the Act"
- "Fresh attachment permissible if investigation continues"

Court's answer:

A statutory authority can act only if power is conferred, not merely because it is not prohibited.

Practical Impact

On expiry of 1 year:

- Attachment stands lifted automatically
- Bank accounts must be de-frozen
- Taxpayer need not wait for DRC-23

Department:

- Cannot issue another DRC-22
- Can proceed under other recovery / adjudication provisions, if permissible

Rule 159 Misalignment Noted

The Court (via SC ruling) highlighted:

- Rule 159(2) wrongly requires written instruction for release
- This is contrary to Section 83(2)
- GST Council has already proposed amendments to fix this
- Until amended, statute prevails over rules

Operative Directions by HC

1. Provisional attachment dated 24-01-2024 ceased on completion of one year
2. All consequential proceedings stand extinguished
3. No fresh provisional attachment under Section 83 permissible
4. Revenue free to proceed under other provisions of law

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

28.01.2026

Whether the AO can make an addition on an issue not recorded in the reasons for reopening, when no addition is ultimately made on the recorded reasons.

Devi Manubhai Shah v. ITO
ITAT MUMBAI (08.01.2026)

Held (In Favour of Assessee)
No.
If the AO fails to assess or reassess the income forming the basis of reopening, he lacks jurisdiction to make any other addition/disallowance.

Legal Principles

- Section 147 permits assessment of "such income" (i.e. income forming the reason to believe) and also any other income.
- The words "and also" are conjunctive, not alternative.
- Explanation 3 to section 147 does NOT override the substantive condition that the AO must first deal with the income for which reopening was initiated.
- If no addition is made on the recorded reasons, the entire reassessment collapses.

What Went Wrong for Revenue

- Reopening was based on:
  - alleged unexplained investments,
  - banking transactions,
  - buyback of shares.
- No addition was made on any of these.
- AO made a sole addition by disallowing section 54F exemption, which:
  - was not mentioned in the recorded reasons, and
  - was independent of the alleged escapement.

Result: Addition held without jurisdiction and quashed.

Key Judicial Support

- CIT v. Jet Airways (I) Ltd. (Bom HC)
- Pr. CIT v. Lark Chemicals (P) Ltd. (Bom HC & SC)
- Sun Engineering Works (SC) distinguished and harmonised.

Practical Takeaways

Strong jurisdictional ground where:

- Reassessment ends with only "new issue" additions, and
- Original reopening issues are dropped or not assessed.

Especially useful in:

- Section 54 / 54F / 10 exemptions
- AIR / STR / Investigation Wing based reopenings
- High-value investment mismatch cases

Key Notes

In reassessment, "other income" can be taxed only if the income forming the basis of reopening is first assessed. Otherwise, the AO travels beyond jurisdiction.

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TAX INSIGHTS

By

Tax Research Department

Goods & Services Tax

28.01.2026

Whether reversal of closing Input Tax Credit (ITC) under section 29(5) CGST/APGST Act can survive after the GST registration, earlier cancelled retrospectively, is subsequently restored.

Hithaishi Infra Machine v. Assistant Commissioner ST (FAC)
HIGH COURT OF ANDHRA PRADESH (07.01.2026)

Held (In Favour of Assessee)

No.

Once GST registration is restored, the legal basis for reversal of closing ITC disappears, and any assessment order confirming such reversal becomes unsustainable.

Legal Principles

- Liability to reverse ITC under section 29(5) arises only when cancellation of registration subsists.
- Restoration of registration under section 30:
  - wipes out the consequences flowing from cancellation, and
  - revives the taxpayer's status as a registered person.
- An assessment order:
  - premised solely on cancellation of registration, and
  - non-filing of GSTR-10 / non-transfer of credit to a new registration,
  - cannot stand once cancellation itself is set aside.

What Went Wrong for the Department

- The reversal order was based on assumptions that:
  - registration stood cancelled, and
  - assessee failed to file GSTR-10 or obtain a new registration.
- These assumptions ceased to exist after the High Court restored the registration in separate proceedings.
- Therefore, the foundation of the assessment order collapsed.

Statutory Provisions Involved

- Section 29(5), CGST Act – reversal of ITC on cancellation
- Section 30, CGST Act – revocation/restoration of registration

Practical Takeaways

Strong relief where:

- Registration is cancelled (even retrospectively), and
- ITC reversal is demanded solely due to such cancellation, but
- Registration is later restored by appellate or writ proceedings.

Useful in cases involving:

- Retrospective cancellation for "non-existence" / "non-operation"
- Automatic ITC reversals on cancellation
- Demands based only on non-filing of GSTR-10

Key Notes

Once GST registration is restored, the obligation to reverse closing ITC under section 29(5) does not survive, and any demand based solely on cancellation is liable to be set aside.

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

29.01.2026

ITAT rules disallowance under Section 36(1)(iii) unsustainable where ample interest-free funds were available and no nexus with advances was established.

Ashapura Developers Vs ACIT
ITAT MUMBAI (08.01.2026)

Core Issue

Whether interest disallowance u/s 36(1)(iii) can be sustained merely because:

- interest-free advances exist, and
- partners' capital account shows a negative balance,
- despite availability of ample interest-free funds and no nexus between borrowings and advances.

Held (In Favour of Assessee)

Disallowance under section 36(1)(iii) was deleted in full.

Key Legal Findings

1. Availability of interest-free funds is decisive once it is established that:
   - assessee had sufficient interest-free funds far exceeding advances, and
   - no nexus between borrowed funds and advances is shown,
   - no disallowance can be made, even for incremental advances.
2. Negative capital balance ≠ automatic diversion

- A negative capital account by itself does not justify presumption that borrowed funds were diverted for non-business purposes, without fund-flow analysis or specific nexus.

3. Charging interest from partners neutralises diversion argument

- Where:
  - partners have debit balances, and
  - assessee charges and recovers interest from them,
  - the allegation of diversion fails, since assessee is fully compensated.

4. CIT(A) cannot contradict own factual findings

- After accepting:
  - ample interest-free funds, and
  - absence of nexus,
  - sustaining partial disallowance merely on assumptions is legally unsustainable.

Important Observations

- Net interest effect (interest paid vs interest earned) must be considered
- Business expediency need not be separately proved once own funds cover advances
- Mixed funds theory cannot override clear factual findings

Practical Takeaways

This decision is very strong for cases involving:

- Partnership firms
- Negative partners' capital
- Interest charged on partners' debit balances
- Partial disallowance by AO / CIT(A) on "incremental advances"

Can be confidently cited against mechanical 36(1)(iii) disallowances based on presumptions.

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TAX INSIGHTS

By

Tax Research Department

Goods & Services Tax

29.01.2026

Whether an importer who paid IGST on ocean freight under RCM (Entry 10 of Notification 10/2017-IGST Rate) is entitled to refund with interest, after the levy was declared ultra vires in Mohit Minerals.

Indian Potash Ltd. v. Union of India
Gujarat High Court (16.01.2026)

Held (In favour of assessee)

- Refund of IGST paid on ocean freight allowed
- Interest @ 6% p.a. payable
- Rejection of refund on limitation and procedural grounds quashed

Legal Principles

1. IGST on ocean freight under RCM is unconstitutional
- Entry 10 of Notification No. 10/2017-IGST (Rate) stood struck down in
- Mohit Minerals Pvt. Ltd. v. Union of India (Guj. HC).
- Amount paid pursuant to an ultra vires notification is tax paid under mistake of law.

2. Refund cannot be denied on limitation grounds
- Refund claims arising from mistake of law are:
  - Outside the rigour of Section 54 limitation, and
  - Governed by general principles of limitation (Limitation Act).
- Appellate authority cannot reopen limitation once issue is settled by binding precedent.
  Relied on:
- Comsol Energy Pvt. Ltd. (Guj HC)
- Joshi Technologies International (Guj HC)

3. Retention of tax without authority of law violates Article 265
- Once levy itself is invalid:
- "The State has no authority to retain such tax"
- Refund becomes a constitutional obligation, not a discretionary relief.

4. Violation of natural justice vitiates proceedings
- Show-cause notice did not specify date of personal hearing
- Assessee was effectively denied opportunity of hearing
- Order quashed on this ground also

5. Refund must carry interest
- Interest awarded at 6% per annum
- Payable from date of deposit till actual refund
- Based on Section 54 CGST Act read with constitutional principles

Final Directions by Court

- Impugned appellate order quashed and set aside
- Department directed to:
  - Process refund in Form RFD-01
  - Grant refund of IGST paid on ocean freight (July 2017)
  - Pay interest @ 6% p.a.
- Time limit: 12 weeks

Key Note

"IGST paid on ocean freight under Entry 10 of Notification 10/2017-IGST (Rate), declared ultra vires in Mohit Minerals, is refundable with interest @6%, and such refund cannot be denied on limitation or technical grounds as tax was paid under mistake of law."

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TAX INSIGHTS
By
Tax Research Department

Direct Tax 30.01.2026

Cash routing via bogus sale and lack of creditworthiness held benami under PBPT Act: SAFEMA

Shiva Jewellers v. Initiating Officer, BPU, Delhi
APPELLATE TRIBUNAL SAFEMA, NEW DELHI (16.12.2025)

Core Issue

Whether routing of demonetisation cash through a third party using bogus sale invoices could be treated as:

- a fiduciary transaction (exception under sec.2(9)), or
- a benami transaction, justifying provisional attachment under sec.24.

Key Facts

- Assessee (Shiva Jewellers) claimed sale of gold/silver to V (Veer Trading Co.).
- During demonetisation, V deposited ₹1.47 crore cash and transferred ₹67.5 lakh to assessee.
- Investigation revealed:
  - V had no real business activity
  - V was an accommodation entry provider
  - Invoices, TIN, signatures were bogus
  - Proprietors of both firms gave contradictory statements
  - No creditworthiness to handle such cash
- Assessee claimed transaction was in fiduciary capacity to route cash legally.

Held by Tribunal

- Transaction is BENAMI
- Not covered by fiduciary exception
- Provisional attachment upheld

Ratio Decidendi

1. Cash transactions are not per se excluded from benami, especially when:
   - Source of cash is unexplained
   - Transaction is part of an illicit scheme (demonetisation laundering)
2. Fiduciary capacity requires two-way obligation:
   - Mere receipt of funds without duty to return fails fiduciary test
   - One-way flow of money, no fiduciary relationship
3. Bogus documentation & accommodation entries is equals benami intent
   - Fake invoices cannot establish genuine ownership or consideration
4. Creditworthiness matters
   - Low returned income vs huge cash deposits strongly indicates benami routing

Important Observations

- Demonetisation-linked cash laundering will be strictly viewed under PBPT Act
- Tribunal relied heavily on:
  - Bank trail
  - ITR analysis
  - Statements under sec.131 IT Act
- Cited G. Bahadur v. K. Visakh (2018) — clarified that cash transactions escape benami only when source is disclosed

Practical Takeaways

- Cash transaction is not an automatic immunity under PBPT
- Fiduciary exception is narrow and strictly construed
- Accommodation entries & lack of creditworthiness is a strong benami evidence
- Demonetisation cases invite enhanced scrutiny
- Provisional attachment under s.24 can be sustained even before final confiscation

Key Notes

Routing demonetisation cash through bogus sale invoices and accommodation entry providers, without creditworthiness or genuine business, constitutes a benami transaction, not protected by fiduciary exception under section 2(9).

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TAX INSIGHTS

By

Tax Research Department

Goods & Services Tax

30.01.2026

Can a GST refund be denied merely because shipping bills couldn't be uploaded on the GST portal due to size constraints, even though exports and zero-rated supplies are undisputed?

Jyoti Agro v. Deputy Commissioner of State Tax
Gujarat High Court (08.01.2026)

Core Legal Question

Whether technical glitches / portal limitations and procedural lapses under Circular No. 125/44/2019-GST can defeat a substantive refund entitlement under Section 54 of the CGST Act.

Key Findings

- Refund cannot be rejected for portal-related technical issues
- Substantive compliance prevails over procedural lapses
- Authorities cannot deny refund when:

1. Export / zero-rated supply is undisputed
2. ITC accumulation is genuine
3. Failure is due to GSTN system constraints, not assessee fault

- Hard copies cannot be refused when electronic upload is impossible
- Filing refund under "Any Other" category is permissible when portal blocks re-filing
- Circulars are procedural, not substantive — they cannot override statutory rights

What the Department Did

- Refused hard copies of shipping bills
- Rejected refund citing improper signing / circular non-compliance
- Blocked fresh refund filing due to "already filed for same period" error
- Issued deficiency memo despite earlier rejection and re-credit
- All held unsustainable

Court's Direction

- Refund claim to be processed on merits
- Fresh application (manual or electronic) allowed
- No objection on limitation
- Order to be passed within 6 weeks
- Interest to be computed as per law

Precedent Followed

Shree Renuka Sugars Ltd. v. State of Gujarat (2023)
Settled law: Substantive benefit cannot be denied due to technical or system errors

Practical Takeaways

Portal glitches ≠ loss of refund
Always document:

- Helpdesk emails
- Error screenshots
- Attempts to submit hard copies
- "Any Other" category can be used defensively
- Writ remedy viable where portal blocks statutory right

Key Notes

GST refund cannot be denied for failure to upload shipping bills caused by portal size constraints when substantive conditions for zero-rated supply are fulfilled.

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TAX INSIGHTS

By

Tax Research Department

Direct Tax

31.01.2026

LTCG to be recomputed by adopting FMV and CII as on 1-4-1981 for inherited property: ITAT

Rajesh Velji Rathod v. ITO
ITAT MUMBAI (21.11.2025)

Held of the case

1. Full value of consideration – Section 48
   - Where jointly owned property was sold and ₹1 crore out of sale consideration was paid to confirming parties having prior contractual rights, such amount did not accrue to the sellers.
   - Even where stamp duty valuation is adopted under section 48, amount paid to confirming parties must be excluded.
   - LTCG is required to be computed on reduced consideration attributable to actual sellers only.
2. Indexation for inherited property
   - Assessee inherited property in 1981.
   - Revenue adopted CII of FY 1989-90 (172) relying on an aborted agreement executed in that year.
   - Tribunal held that there is no logic in adopting CII based on an aborted agreement.
   - CII of 100 as on 1-4-1981 must be applied, along with FMV as on 1-4-1981, since inheritance took place in that year.
3. FMV as on 1-4-1981
   - AO adopted ₹10 per sq. mtr.; assessee adopted ₹25 per sq. mtr.
   - Tribunal adopted ₹17.50 per sq. mtr. as a reasonable middle path to achieve substantial justice.
4. Section 54F
   - Investment in new residential property jointly purchased with brother is eligible.
   - Proportionate exemption allowable, subject to verification.

Key Findings

- For inherited property, indexation must begin from 1-4-1981 (CII = 100), irrespective of subsequent aborted or failed agreements.
- Amounts paid to confirming parties cannot be treated as part of "full value of consideration" under section 48.
- Tribunal may adopt a reasonable FMV by balancing competing valuation reports to avoid prolonged litigation.

Result

Appeal allowed; AO directed to recompute LTCG by:

- considering ₹1.79 crore as consideration,
- adopting FMV as on 1-4-1981 @ ₹17.50 per sq. mtr.,
- applying CII = 100, and
- allowing section 54F relief proportionately.

Practical Takeaways

- Inheritance = indexation from 1-4-1981, even if:
  - Property sold decades later, or
  - There were failed agreements in between.
- Revenue cannot rely on aborted agreements to change indexation base year.
- Payments to confirming parties reduce "full value of consideration" under section 48.
- Joint purchase does not block section 54F, as long as assessee's share is clear.

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TAX INSIGHTS

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Tax Research Department

Goods & Services Tax

31.01.2026

Acceptance of DGAP-computed profiteering amount binds builder to compensate homebuyers: GSTAT

DGAP v. Kolte Patil Developers Ltd.
GSTAT, New Delhi (09.01.2026)

Held

- Where the respondent-builder accepted the profiteering amount of ₹67,02,147 as computed by the Director General of Anti-Profiteering (DGAP) and undertook to pay the same to eligible homebuyers,
- The GSTAT accepted the DGAP report without further adjudication on merits.
- The respondent was directed to pay the profiteered amount to eligible homebuyers within three months.
- The respondent was also directed to pay applicable interest in terms of Rule 133(3) of the CGST Rules, 2017, calculated from the date of collection of excess amount till the date of refund.

Key Observations

- Acceptance of profiteering liability by the respondent dispenses with the need for detailed examination of the DGAP computation.
- Time extension may be granted where refund is to be made to a large number of homebuyers.
- Interest payment is mandatory once profiteering is established or admitted.

Key Findings

- Where the builder admits profiteering and undertakes to refund the amount computed by DGAP, the DGAP report can be accepted as such and refund with interest must be ordered under Rule 133(3).
- Voluminous nature of beneficiaries is a valid ground for granting reasonable time for compliance.

Result

- DGAP report accepted
- Respondent directed to:
  - Pay ₹67,02,147 to eligible homebuyers within three months
  - Pay interest as per Rule 133(3)
  - File compliance report with jurisdictional Commissioner
- Decision in favour of Revenue.

Practical Takeaway (GST Anti-Profiteering)

- Admission of profiteering by the supplier fast-tracks disposal before GSTAT.
- Interest liability under Rule 133(3) is automatic and non-negotiable.
- Builders should be prepared with buyer-wise refund working and compliance reporting.