LEGAL Decisions

INCOME TAX

LD/74/43 High Court of Gujarat at Ahmedabad R/ Special Civil Application No. 6142 of 2024 Mehul Ravjibhai Surani Vs. Assessment Unit Income Tax Department & Anr *16th September 2025*

High Court quashed reassessment order u/s 147 noting that it was passed without considering assessee's detailed reply in response to the notice u/s 148A(b); HC noted that AO gave a lame excuse in the affidavit-in-reply that as the Assessee had submitted irrelevant submissions, AO has not reproduced the submission in the impugned order; HC remarked that impugned order was passed in clear breach of principles of natural justice; HC therefore set aside the reassessment order and restored the matter back to the AO to pass a fresh de-novo order after providing opportunity to assessee.

LD/74/44 High Court of Chhattisgarh at Bilaspur: Tax No. 176 of 2025 Sanjay Kumar Baid Vs. Income Tax Officer *15th September 2025*

HC allowed assessee's appeal observing that provisions of Section 96 of RFCTLARR that provides for exemption from income tax would be applicable to instances where land is acquired under the National Highways Act, 1956 (Act of 1956); Reliance placed on SC ruling in Tarsem Singh's case; Once the compensation is determined under the provisions of RFCTLARR Act, benefits flowing from the provisions of this Act, including exemptions from income tax, etc., contemplated u/s 96 of RFCTLARR Act, would also have to be made applicable; If the benefit flowing from Section 96 is not given to the land-losers whose lands have been acquired under the Act of 1956, it would mean that the land-losers under the enactments are subjected to discrimination.

LD/74/45 ITAT Mumbai: ITA No. 1332/Mum/2024 H&M Housing Finance and Leasing Private Limited Vs. Deputy Commissioner of Income Tax *15th September 2025*

ITAT directed Revenue to accept assessee's lease rental income under the head 'Income from house property' as against business income, following the principle of consistency; ITAT relied on Bombay HC judgment in Banzai Estates and SC judgment in Radhasoami Satsang and Bharat Sanchar Nigam Ltd. wherein the principle of consistency was upheld; Revenue brought nothing on record to show any material change in the impugned transaction, except for the contract renewal, nor was there any material change in the business objects of the Assessee; ITAT rejected Revenue's reliance on SC judgment in Chennai Properties on facts.

LD/74/46 Bombay High Court: Writ Petition No. 1489 of 2025 Vaibhav Maruti Dombale Vs. The Assistant Registrar, ITAT Mumbai *12th September 2025*

Subsequent ruling of a superior court cannot be a ground for invoking the provisions of Section 254(2); Revenue filed MA before the ITAT, subsequent to ITAT order, requesting the Tribunal to recall its order dated September 5, 2022 by placing reliance on SC judgment in Checkmate Services; ITAT relied on the SC judgement in Saurashtra Kutch Stock Exchange; HC stated that Saurashtra Kutch judgment is not an authority for the proposition that the power u/s 254(2) can be invoked on the ground of "mistake apparent from the record" on the basis of a subsequent decision; Date when the original ITAT order was passed by the ITAT, it followed the law as it stood then and hence it could not be said that there was any error or apparent mistake.

LD/74/47 ITAT Mumbai: ITA No. 4692/Mum/2025 Mohanlal Chunilal Mutta Vs. The Income Tax Officer *12th September 2025*

ITAT observed that, considering the voluminous documentary evidences furnished by the assessee, the additions w.r.t. alleged bogus purchases were clearly unsustainable in law; AO did not find any discrepancy in the evidences furnished by the assessee and without citing any reason made an ad-hoc addition of 12.5% as the profit element; Assessee had demonstrated the complete cycle of the transaction; AO summarily rejected the submissions and failed to conduct any independent enquiry and primarily relied on the purported findings of the sales tax department; Also AO had failed to bring on record any evidence of cash being received by the Assessee.

LD/74/48 High Court of Gujarat at Ahmedabad: R/ Tax Appeal No. 1082 of 2024 The Commissioner of Income Tax (Exemption) Vs. Bhojaram Leuva Patel Seva Samaj Trust *08th September 2025*

ITAT had set aside CIT(E) order which had rejected assessee's application for registration u/s 12AB holding that the question as to whether Trust is created or established for benefit of any particular religious community or caste in violation of Section 13 would be relevant for assessment of income under Section 11 and not at the time of granting registration; Power of CIT(E) u/s 12AB is limited to decide whether Trust has fulfilled necessary requirements of registration u/s 12A; CIT cannot mix the requirement of registration of a trust with that of granting exemption u/s 13; HC dismissed Revenue's appeal.

LD/74/49 ITAT Delhi: ITA Nos. 1879 & 1878/ DEL/2022 Anuvu UK Operations Ltd. (Erstwhile Known As Global Eagle Entertainment Ltd.) Vs. Assistant Commissioner of Income Tax, *3rd September 2025*

ITAT held that consideration received by a UK based company towards providing video and audio content for in-flight entertainment (IFE) system to Indian airlines does not constitute as royalty in terms of Section 9(1)(vii) read with Article 13(4) of India-UK DTAA; Final product that emerges after compilation encoding and integration of videos as per the requirements of airlines was a copyrighted product of the assessee which is exhibited on IFE systems of the aircrafts operated by Air India, and as per the agreement assessee did not transfer any right in the copyrighted product but only permitted use of the copyrighted product; Revenue failed to show transfer of any knowhow or technical knowledge to airlines.

LD/74/50 Telangana High Court: Writ Petition No. 3201 of 2023 Smt. Anvida Bandi Vs. Deputy Commissioner of Income-Tax, *22nd August 2025*

HC quashes GAAR proceedings initiated against an assessee holding that share transactions were part of the investment portfolio of the assessee and hence not hit by GAAR provisions; Assessee sold her shares in HCL Technologies to generate a capital loss, in order to off-set the same against other long term capital gains to the tune of Rs. 44 Cr; HC quoted from the Expert Committee report on GAAR, wherein the Committee opined that sale and purchase through stock market transactions would not come under the GAAR provisions; As per HC, it was a 'pure trading' by the assessee, with no evidence of any 'arrangement' so as to attract GAAR.

LD/74/51 Chhattisgarh High Court: TAXC No. 111 of 2025 Collector Mining, Kanker Vs. The Deputy Commissioner of Income Tax (TDS) *21st August 2025*

High Court set aside the ITAT order wherein demand was raised and interest and penalty was levied for non-compliance of Section 206C(1C); Compounding fee/fine collected u/s 23A of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) cannot be subjected to proceeding under Section 206C(1C) as there is no legislative mandate to collect tax at source (TCS) on it; Section 206C(1C) only obliges the assessee to collect TCS from person from whom 'royalty' is payable to the State Government and Section 206C(1C) cannot be extended to the person involved in illegal mining or transporting illegal minerals; Terms "royalty" and "compounding fee", both, are mutually exclusive".

LD/74/52 ITAT Bangalore: ITA No. 49/Bang/2023 Sushama Rajesh Rao Vs. The Deputy Commissioner of Income Tax *18th August 2025*

ITAT held income after transfer of the asset, received by the assessee as a gift from her husband, is chargeable to tax in the hands of the husband of the assessee and not the assessee, in view of Section 64(1)(iv); Said property was sold which resulted in capital gain, and such capital gain was chargeable to tax only in the hands of the husband; ITAT rejected Revenue's argument that assessee's contention of capital gain being taxable in her husband's hand was an afterthought and so the assessee be prevented from raising this argument before the ITAT for the first time; As per ITAT, there is no option with the assessee or with AO to ignore the specific anti-avoidance rules under Section 64(1)(iv).

FEMA UPDATES

International Trade Settlement in Indian Rupees (INR)

A.P. (DIR Series) Circular No. 14 dated October 03, 2025

AD banks may permit investment of surplus balances in the Special Rupee Vostro Accounts, also in non-convertible debentures/bonds and commercial papers issued by an Indian company in terms of guidelines and limits prescribed vide the referred circular dated October 03, 2025.

Export Data Processing and Monitoring System (EDPMS) and Import Data Processing and Monitoring System (IDPMS) – Reconciliation of export/import entries

A.P. (DIR Series) Circular No. 12 dated October 01, 2025

To facilitate timely closure of entries in EDPMS and IDPMS and to reduce compliance burden on small exporters and importers, AD banks shall adopt following procedure while closing entries in EDPMS & IDPMS of value equivalent to Rs. 10 lakh per entry/bill or less:

a. Such entries shall be reconciled and closed based on a declaration provided by the concerned exporter that the amount has been realised or by the importer that the amount has been paid.

b. Any reduction in declared value or invoice value of the shipping bills/bills of entry shall also be accepted, based on the declaration by the concerned exporter or importer.

c. The declarations referred above may also be received on a quarterly basis from the exporters and importers in a consolidated manner (by combining several bills in one declaration) for bulk reconciliation and closing of EDPMS/IDPMS entries.

AD banks shall also review the charges levied for handling these small-value export and import transactions, keeping in view the revised procedure/relaxations mentioned above and ensure that the same are commensurate with the services rendered. AD banks shall not levy any penal charges (penalty) for delays in adherence to any regulatory guidelines.

The above instructions shall come into force with immediate effect. The Master Direction – Export of Goods & Services and Master Direction – Import of Goods & Services shall accordingly be updated to reflect the above changes.

Merchanting Trade Transactions (MTT) – Review of time period for outlay of foreign exchange

A.P. (DIR Series) Circular No. 11 dated October 01, 2025

As per prevalent guidelines, *the entire MTT shall be completed within an overall period of nine months and there shall not be any outlay of foreign exchange beyond four months. The commencement date of merchanting trade shall be the date of shipment / export leg receipt or import leg payment, whichever is first. The completion date shall be the date of shipment / export leg receipt or import leg payment, whichever is the last.*

In order to facilitate the traders to manage their MTT efficiently, it has been decided to increase the time period for outlay of foreign exchange from four to six months.

Foreign Exchange Management (Borrowing and Lending) Amendment Regulations, 2025

Notification No. FEMA 3(R)(4)/2025-RB dated October 06, 2025

In the principal regulations, in regulation 7 sub-regulation A, after clause (iii), the following clause (iv) shall be inserted, namely:-

"An AD bank may lend in Indian Rupees to a person resident outside India being a resident in Bhutan, Nepal or Sri Lanka, including a bank in these jurisdictions, for cross border trade transactions."

Draft Regulations on Establishment of Branch/ Office in India (2025)

On October 03, 2025, the Reserve Bank of India issued the **Draft FEMA (Establishment in India of a Branch or Office) Regulations, 2025**, proposing a complete revamp of the existing FEMA 22(R)/2016 framework governing foreign entities' presence in India.

Key Highlights of proposed changes are as under:

- **Unified Framework:** Consolidates Branch Office (BO), Liaison Office (LO), and Project Office (PO) into two categories – *Branch* and *Office.*

- **New Definition:** Introduces the term *Entity Resident Outside India (EROI)*, covering all foreign entities (excluding individuals).
- **Simplified Approval:** Dual-route system – *General Permission Route* (via AD Banks) and *Specific Approval Route* (for sensitive countries/sectors, government-controlled or NPO entities).
- **Relaxed Criteria:** Removes profit track record and minimum net worth conditions; adopts a principle-based approach by AD Banks.
- **Security Protocols:** Mandatory registration and reporting for EROIs from sensitive jurisdictions.
- **Operational Flexibility:** Allows additional business places with intimation; non-interest-bearing INR accounts; short-term deposits permitted.
- **Compliance Streamlining:** Annual Activity Certificate (AAC) filing timeline retained (6 months + 30 days) with flexibility; non-filing may lead to account freeze or closure.
- **Closure Mechanism:** Voluntary, automatic, and regulatory closure provisions with formal appeal process within RBI.
- **Ease of Exit:** Winding-up remittances allowed post-tax and legal compliance with CA certification.
- **Enhanced Oversight:** AD Banks to report establishment and closure monthly to RBI.

The draft shifts from a *rule-based* to a *principle-driven* regime—delegating more powers to AD Banks, reducing compliance burden, and improving ease of doing business while maintaining security oversight. **Comments have been invited by the RBI till 24 October 2025.**

Draft ECB Framework (Borrowing & Lending Regulations, 2025)

The Reserve Bank of India, on 3 October 2025, released the Draft FEMA (Borrowing and Lending) (Fourth Amendment) Regulations, 2025, proposing a modernised and principle-based External Commercial Borrowing (ECB) regime to replace the existing 2018 framework.

Key Highlights of proposed changes are as under:

- Net Worth–Linked Limit: Borrowing permitted up to the higher of USD 1 billion or 300% of net worth; regulated financial entities exempt.
- Market-Based Pricing: Prescriptive cost ceilings removed; ECBs to follow market-determined rates on arm's-length terms.
- Liberalised End Use: ECBs allowed for FDI-permitted sectors, land acquisition/lease for industrial projects, and M&A transactions; certain traditional prohibitions (real estate, chit funds, etc.) retained.
- Expanded Eligibility: Wider base of Indian borrowers and recognised foreign lenders, including IFSC entities and regulated overseas branches.
- Flexible Maturity: Minimum average maturity of 3 years; manufacturing sector allowed ECBs of 1–3 years up to USD 50 million.
- Currency Flexibility: Borrowings permitted in INR or foreign currency, with ability to switch between them under defined conditions.
- Security & Refinancing: Flexibility in collateral and guarantees; permitted conversion of ECB into equity and refinancing subject to conditions.
- Simplified Compliance: Streamlined Form ECB / ECB-2 reporting; late submission fees for delay; LRN cancelled if no drawdown.

This draft marks a major liberalisation of India's ECB framework, shifting from rigid limits to a risk-based, globally aligned regime, facilitating easier access to international capital while maintaining prudential oversight. **Comments have been invited by the RBI till 24 October 2025.**

The section on Legal Decisions has been contributed by CA. Sahil Garud, Disciplinary Directorate. Matter related to FEMA has been contributed by CA. Manoj Shah, CA. Hinesh Doshi, CA. Sudha Bhushan, and C.A Viral Satra, Mumbai.

DISCIPLINARY CASE

Failure to report outstanding loan liability in the audit report – Accepting appointment as an Auditor without first communicating with previous auditor and ensuring due procedure as laid down under the provisions of Companies Act, 2013 has been followed – Respondent is guilty of professional misconduct under Clauses (5) & (7) of Part I of the Second Schedule and Clauses (8) & (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

Held:

In this case, the Respondent, who was the statutory auditor for the financial years 2012–13 to 2014–15, was held guilty of professional misconduct for failing to report a significant outstanding loan of ₹19.44 crore owed by the Company to Bank, which had been classified as a non-performing asset and was under litigation before the Debt Recovery Tribunal. Despite being aware of the classification and legal proceedings, the Respondent did not report this material fact in his audit reports, nor did he disclose the associated contingent liabilities or security against the property in the financial statements, thereby failing to exercise due diligence and violating Clauses (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. Further, the Respondent accepted the statutory audit for FY 2014–15 without ensuring that the previous auditor had properly resigned or was removed in accordance with Sections 139 and 140 of the Companies Act, 2013. The Committee noted that the consent letters on record were contradictory, as the Respondent's consent was dated prior to that of the outgoing auditor, and no documentary evidence was submitted to establish written communication with the previous auditor in the manner prescribed under Clause (8) of Part I of the First Schedule. The Respondent also failed to produce minutes of appointment, resolutions passed by the Board or shareholders, or approval of the Central Government, if applicable, in accordance with Clause (9) of the First Schedule. The Committee, therefore, concluded that the Respondent had failed to comply with professional standards and statutory requirements and accordingly held him guilty of professional misconduct under Clauses (5) and (7) of Part I of the Second Schedule and Clauses (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

[PR-174A/2017/DD/229/2017/DC/1351/2020]

Acceptance of audit assignments without written communication to previous auditor – No positive evidence of prior communication – Respondent held guilty under Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949; exonerated under Clause (1) of Part II of the Second Schedule.

Held:

In this case, the Respondent was held guilty of professional misconduct for accepting the tax audit of six entities for the financial year 2017–18 without first communicating in writing with the Complainant, who was the previous auditor. The Committee noted that the Respondent merely attempted to contact the Complainant telephonically and failed to produce any positive evidence of communication in the prescribed manner, such as through Registered Post or other modes that ensure proof of delivery. As per the Code of Ethics and Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949, it is mandatory for the incoming auditor to communicate with the outgoing auditor in writing before accepting such assignments. The Respondent's failure to comply with this requirement constituted a violation of professional standards, and he was accordingly held guilty under Clause (8). With respect to the allegation of accepting audit assignments where undisputed fees of the previous auditor were pending, the Committee noted that the Complainant failed to substantiate this charge with the relevant financial statements or supporting records. It was also observed that a sum of ₹1.73 lakhs had already been paid to the Complainant, which could be construed as payment towards audit or other services, and the Complainant had not raised any formal objection with the auditee entity for non-payment of fees. Hence, in the absence of documentary evidence, the Committee exonerated the Respondent from the charge under Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

[PR/57/19-DD/79/19-DC/1374/2020]