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CHARTERED ACCOUNTANTS

MCA DTQTC's 25 Judicial Highlights of 2025- Income-tax

Key rulings shaping interpretation, compliance, and tax administration

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Temporary Lull Does Not Constitute Cessation of Business

Background

The appellant, a French non-resident company, engaged in offshore oil drilling, had a ten-year ONGC contract from 1983–1993, with no contract until 1998. During AYs 1996–97 to 1999–2000, it maintained correspondence with ONGC, submitted a bid, incurred expenses, and earned interest on tax refunds. The Assessing Officer disallowed business expenditure, set-off, and unabsorbed depreciation, upheld by CIT(A). The ITAT allowed the claims, viewing the period as a temporary lull in business. The Uttarakhand High Court overturned the ITAT, leading to Supreme Court appeals.

Issue for Consideration

Whether the appellant, without a contract or permanent establishment in India, was carrying on business to claim deductions under sections 37(1)/71 and carry forward unabsorbed depreciation under section 32(2) of the Income-tax Act.

Court's Findings

The Supreme Court held that to claim business expenditure and unabsorbed depreciation, an Assessee must show that business was carried on, but mere absence of a contract does not mean cessation of business, distinguishing a temporary lull from going out of business. The Court observed that the appellant's continuous correspondence with ONGC, bid submission, and pursuit of opportunities evidenced intent to continue business. Business conduct must be assessed from a prudent businessman's standpoint, and failure to secure a contract alone cannot indicate cessation. The High Court erred in treating absence of a permanent establishment as determinative. Under the Income-tax Act, a non-resident need not have a permanent establishment in India to be regarded as carrying on business. Permanent establishment is relevant only for treaty purposes. The Court emphasized that business continuity can be established through conduct, correspondence, and preparatory activities.

Held

The Supreme Court allowed the appeals, set aside the High Court's judgment, and restored the ITAT's orders. It held that the appellant had not ceased business during the relevant years and was entitled to claim business expenditure and carry forward unabsorbed depreciation.

MCA Analysis & Comments

The judgment reinforces that a temporary lull or lean phase does not constitute cessation of business, particularly in project-based or cyclical industries. Continuity of business intent, shown through correspondence, bidding, and preparatory activities, is sufficient to establish ongoing business. It clarifies that "business" under domestic law is distinct from "permanent establishment" under tax treaties. This protects non-resident taxpayers from overly restrictive interpretations. It also strengthens the allowability of routine administrative expenses and unabsorbed depreciation during dormant periods when business continuity is evident.

Sharp Business System v. Commissioner of Income-tax Supreme Court [2025] 181 taxmann.com 657 (SC) | Order dated: 19-12-2025

Non-Compete Fee as Revenue Expenditure and Interest Deduction on Grounds of Commercial Expediency

Background

The Assessee, Sharp Business System, was engaged in the business of importing, marketing, and selling electronic office products in India and was incorporated as a joint venture between Sharp Corporation, Japan and Larsen & Toubro Limited (L&T). During AY 2001–02, the Assessee paid ₹3 crores to L&T as a non-compete fee to restrain L&T from undertaking competing business in India for a period of seven years. The Assessee also claimed deduction of interest on borrowed funds used for investment in a subsidiary company to acquire controlling interest. Both amounts were claimed as allowable deductions under the Income-tax Act, 1961.

Issue for Consideration

Whether the non-compete fee paid by the Assessee was allowable as revenue expenditure under section 37(1) or was capital in nature, and whether interest on borrowed funds used for acquiring controlling interest in a subsidiary and advances to sister concerns were deductible under section 36(1)(iii) on grounds of commercial expediency.

Court's Findings

The Supreme Court held that section 37(1) permits deduction of expenditure incurred wholly and exclusively for business purposes, provided it is not capital in nature, and clarified that the test of "enduring benefit" is not determinative and must be applied in a commercial sense. It observed that non-compete payments are made to protect or enhance business profitability and enable more efficient conduct of business, without resulting in the creation of any new asset or addition to the profit-earning apparatus.On interest deduction, the Court ruled that acquisition of a controlling interest in a subsidiary is a matter of commercial expediency, and therefore interest on borrowed funds used for such acquisition is allowable. It further held that advances made to sister concerns and their directors were also covered by the doctrine of commercial expediency and eligible for deduction.

Held

The Supreme Court allowed the appeal and held that the non-compete fee paid by the Assessee was allowable as revenue expenditure under section 37(1). It further held that interest on borrowed funds used for investment in a subsidiary and advances to sister concerns was deductible under section 36(1)(iii). The judgment of the High Court was set aside.

MCA Analysis & Comments

This judgment provides significant clarity on the tax treatment of non-compete fees by reaffirming that such payments, when made to protect or enhance an existing business, are revenue in nature despite conferring a time-bound advantage. The ruling also strengthens the doctrine of commercial expediency, particularly in the context of strategic investments and intra-group advances. The decision reinforces a substance-over-form approach and aligns tax treatment with business realities, offering relief to taxpayers incurring strategic business expenditures.

ACIT v. Lakshmi Techno solutions (P.) Ltd. – Hyderabad ITAT [2025] 178 taxmann.com 726 | ITA No. 925/Hyd/2025 | AY 2014–15 | Order dated: 24-09-2025

Grant of development rights Is not a transfer under JDA

Background

The Assessee entered into a Joint Development Agreement (JDA) dated 16 December 2013 for development of its land, entitling it to 47.5% of the constructed area, with the developer entitled to 52.5%. The JDA expressly provided that the developer's entry was only for development, that possession was not transferred, and that the agreement did not constitute part performance under Section 53A of the Transfer of Property Act, 1882. The title deeds remained with the Assessee, and no consideration other than a refundable deposit was received.

The Assessing Officer reopened the assessment under Section 148 and treated the JDA as a deemed transfer under Section 2(47)(v) of the Income-tax Act, 1961, assessing capital gains of Rs. 32.53 crore, which was deleted by the CIT(A).

Issue for Consideration

Whether a JDA conferring only a development licence, without transfer of juridical possession or fulfilment of conditions under Section 53A of the Transfer of Property Act, 1882, constitutes a deemed transfer under Section 2(47)(v).

Court's Findings

The Tribunal held that mere permission to enter land for development constitutes a licence, not possession in part performance under Section 53A of the Transfer of Property Act. It noted that the JDA expressly negated transfer of possession, retained title with the Assessee, and did not involve receipt of enforceable consideration. Accordingly, the statutory conditions of Section 53A were not satisfied. Reliance was placed on CIT v. Balbir Singh Maini (SC), Seshasayee Steels (SC), and Shantha Vidyasagar Annam (Telangana HC).

Held

The ITAT held that the JDA was not an agreement to sell, did not result in part performance under Section 53A of the Transfer of Property Act, and therefore did not trigger a deemed transfer under Section 2(47)(v). The deletion of the capital gains addition was upheld, and the Revenue's appeal was dismissed.

MCA Analysis & Comments

The ruling reaffirms that JDAs granting only development rights, without transfer of possession in terms of Section 53A of the Transfer of Property Act, 1882, do not result in taxable transfers. By focusing on substance, contractual intent, and statutory compliance, the Tribunal curbs notional and premature capital gains taxation and brings greater certainty to JDA-related tax assessments.

Kapil Dev Nikhanj v. ACIT – Delhi ITAT [2025] TS-331-ITAT-2025 |AY 2013–14| Order dated: 13-03-2025

No tax without authority of law; Erroneous Disclosure no bar to relief

Background

The Assessee, a former international cricketer, received a one-time benefit of Rs. 1.50 crore from the BCCI in recognition of his contribution to Indian cricket. The Assessee filed his return for AY 2013–14, declaring a total income of Rs. 4.66 crore, including Rs. 1.50 crore, and later the return was revised declaring income of Rs. 4.26 crore. Further, the assessment was completed under Section 143(3) after enhancing the income to Rs. 4.62 crore. No appeal was preferred by the Assessee regarding this. Subsequently, upon legal advice and relying on judicial precedents, the Assessee contended that the receipt was exempt under Section 56(2)(vii), as the BCCI is a trust registered under Section 12AA of the Income-tax Act, 1961. An appeal filed before the CIT(A) was dismissed in limine on account of a delay of 1993 days, against which the Assessee approached the ITAT.

Issue for Consideration

Whether a one-time benefit received from BCCI, a trust registered under Section 12AA, is exempt under Section 56(2)(vii), and whether such a lawful claim can be entertained by appellate authorities despite being voluntarily offered to tax and raised belatedly.

Court's Findings

The Tribunal held that the restriction laid down in Goetze (India) Ltd. (SC) applies only to the Assessing Officer and does not restrict the powers of appellate authorities to entertain a lawful claim. It observed that tax can be collected only in accordance with law, and the Revenue cannot take advantage of an Assessee's erroneous self-assessment. Relying on the coordinate bench decision in Maninder Singh, the Tribunal held that a one-time benefit received from BCCI, being a trust registered under Section 12AA, qualifies for exemption under Section 56(2)(vii). The delay in filing the appeal was condoned, noting that the Assessee had initially offered the amount to tax out of ignorance and later acted upon correct legal advice.

Held

The ITAT held that the Rs. 1.50 crore one-time benefit received from BCCI was exempt under Section 56(2)(vii), since BCCI is registered u/s 12AA, and could not be taxed merely because it was voluntarily offered in the return of income. The bar in Goetze (India) Ltd. applies only at the assessment stage and does not restrict appellate powers. The appeal was allowed and the addition was deleted.

MCA Analysis & Comments

The ruling reinforces the principle that no tax can be levied without authority of law, even where an Assessee has mistakenly offered an amount to tax. It affirms the wide remedial powers of appellate authorities to grant lawful relief and prevents the Revenue from sustaining unsustainable additions on procedural or technical grounds. The decision also brings clarity on the tax treatment of one-time honorary or recognition payments received from charitable institutions, ensuring consistency with statutory exemptions and equitable tax administration. It ensures that income cannot be taxed merely due to an Assessee's ignorance or procedural lapse.

Nilesh Agarwal v. Income-tax Office (ITO) – Delhi High Court [2025] 179 taxmann.com 568| AY 2014-15, 2015-16 and 2016-17 | Order dated: 09-10-2025

Company prosecution is sine qua non for directors' criminal liability

Background

The Assessee-company defaulted in payment of income-tax dues for AYs 2014–15 to 2016–17, resulting in outstanding demands of approximately Rs. 4.44 crore. During recovery proceedings, the company, acting through its director, transferred a company-owned Audi car to the director's daughter-in-law without adequate consideration. The Department treated the transfer as void under Section 281 of the Income-tax Act, 1961, and initiated prosecution under Section 276 against the directors without arraigning the company as an accused. The trial court rejected the directors' objections and proceeded with the prosecution, leading to petitions before the Delhi High Court.

Issue for Consideration

Whether directors can be prosecuted independently for offences under the Income-tax Act without arraigning the company as an accused, in light of Section 278B governing vicarious liability.

Court's Findings

The Delhi High Court examined Section 278B, which creates a deeming fiction of vicarious liability when an offence is committed by a company. The court held that section 278B requires the company, the principal offender, to be arraigned first before its directors can be prosecuted on a vicarious liability basis. Relying on Aneeta Hada v. Godfather Travels (SC) and subsequent Supreme Court decisions, the Court held that arraignment of the company is a jurisdictional prerequisite, not a procedural formality. It noted that the allegations were entirely founded on the company's tax liability and transfer of company assets, with no independent or personal role attributed to the directors. The failure to implead the company was not a curable defect but a jurisdictional flaw.

Held

The High Court held that prosecution of directors without impleading the company as an accused is contrary to Section 278B and constitutes an abuse of process of law. Accordingly, the complaints and summoning orders were quashed, with liberty reserved to the Revenue to pursue other remedies in accordance with law.

MCA Analysis & Comments

This ruling reaffirms that vicarious liability under tax prosecutions can arise only when the company, as the principal offender, is prosecuted. It highlights the need for correct legal structuring of recovery and prosecution processes, careful handling of Section 281 transactions, and underscores that procedural lapses by the Department can entirely nullify prosecution. By aligning Section 278B with settled Supreme Court jurisprudence, the Delhi High Court curbs defective prosecutions against directors in isolation and underscores that jurisdictional prerequisites are fundamental.

M/s Jay Prabhu Industries LLP vs NFAC & Anr. – Gujarat High Court [2025] TS-999-HC-2025| AY 2016-17 | Order dated: 02-08-2025

Reassessment invalid if initiated or completed against a non-existent Assessee; legal existence is jurisdictional

Background

M/s Jay Prabhu Industries LLP was converted from a partnership firm into an LLP on 23 April 2014 under the LLP Act, 2008 and thereafter obtained a new PAN and filed returns disclosing all transactions. For AY 2016–17, despite the conversion being duly intimated to the Assessing Officer during reassessment proceedings with supporting documents, a notice under Section 148 dated 27 March 2021 was issued in the name of the erstwhile firm. An assessment order dated 28 March 2022 was passed under Sections 147/144B in the name of the non-existent firm, making an addition of ₹2.54 crore under Section 69A, which was challenged before the Gujarat High Court.

Issue for Consideration

Whether reassessment proceedings and an assessment order passed in the name of a non-existent entity are valid in law.

Court's Findings

The Court held that upon conversion into an LLP, the partnership firm ceased to exist in law, a fact expressly brought to the AO's notice. Relying on the Supreme Court of India ruling in PCIT v. Maruti Suzuki India Ltd., the Court ruled that an assessment framed against a non-existent entity is a jurisdictional defect and void ab initio. Procedural objections such as non-surrender of PAN, alleged non-intimation, or participation by the Assessee cannot cure the defect. The AO was found to have ignored material submissions and records demonstrating disclosure of transactions in the LLP's books and returns.

Held

The reassessment notice dated 27 March 2021, and the assessment order dated 28 March 2022, having been issued and passed in the name of a non-existent firm, were quashed as without jurisdiction.

MCA Analysis & Comments

The ruling reaffirms that jurisdiction hinges on the legal existence of the Assessee at the time of initiation and completion of proceedings. It restrains mechanical reassessments post-conversion or restructuring and clarifies that jurisdiction cannot be conferred by acquiescence or procedural lapses. The decision strengthens taxpayer protection against jurisdictionally invalid reassessments and reinforces discipline in faceless assessment proceedings.

Netflix Entertainment Services India LLP v. Deputy Commissioner of Income Tax, Circle 23(1) |Mumbai ITAT 'J' Bench [2025] 179 taxmann.com 644 | A.Y. 2021–22 | Order dated: 17-10-2025

Digital TP: value follows DEMPE and control, not market presence or hypothetical royalties

Background

Netflix Inc., USA operates a global subscription-based OTT streaming platform. Netflix Entertainment Services India LLP ("Netflix India") was incorporated as a non-exclusive distributor of access to the Netflix Service in India. Its functions were limited to marketing, invoicing, subscription collection, customer interface, and regulatory compliance, while all content, technology, intellectual property, and strategic control remained with the overseas Associated Enterprises. The Assessee was remunerated on a cost-plus basis with a fixed return and benchmarked the distribution fee under the TNMM.

Issue for Consideration

Whether Netflix India is a limited-risk distributor of access or a full-fledged entrepreneurial content and technology provider, and whether the TPO was justified in rejecting TNMM and invoking the "Other Method" under Rule 10AB by imputing a royalty-based arm's-length price.

Court's Findings

The Tribunal held that the distribution agreements and subscriber Terms of use clearly showed that Netflix India acquired no rights in content or technology. The Open Connect Appliances were found to be merely logistical cache servers for bandwidth optimisation, not indicators of technological ownership or entrepreneurial risk. The Assessee performed no DEMPE functions and bore only routine, cost-insulated risks. The royalty agreements relied upon by the TPO were functionally incomparable and based on a non-existent transaction, while the DRP's ad-hoc profit attribution lacked support under Rule 10B and economic comparability.

Held

The Tribunal held that TNMM was the Most Appropriate Method and that invocation of Rule 10AB and the royalty-based adjustment was unsustainable. Accordingly, the entire transfer-pricing adjustment of ₹4,444.93 crore was deleted. The disallowance under section 40(a)(i) did not survive due to settlement under the Vivad se Vishwas Scheme, interest was held to be consequential, and initiation of penalty proceedings was held to be premature.

MCA Analysis & Comments

This ruling is a landmark in digital-economy transfer pricing, reaffirming that value follows control and DEMPE, not mere market presence. The Tribunal decisively curbed administrative overreach by rejecting hypothetical royalty constructs and restoring discipline to Rule 10AB. For MCA purposes, the case underscores the primacy of contractual reality, FAR analysis, and OECD-aligned principles in determining arm's-length pricing for OTT and digital platform businesses.

Dr. Balabhai Nanavati Hospital v. CIT (TDS) – Bombay High Court [2025] 178 taxmann.com 437 | AY 2007-08 to AY 2012-12 | Order dated: 15-09-2025

Consultancy not employment where professional autonomy exists

Background

The Assessee, a charitable trust running a hospital, had engaged consultant/honorary doctors on its panel and deducted tax at source on the honorarium paid to them under section 194J of the Income-tax Act, 1961, treating the payments as fees for professional services. The Assessing Officer, after examining the appointment letters and agreements, held that the Assessee exercised substantial control over these doctors through conditions relating to attendance, working hours, leave and accountability, and therefore concluded that the relationship was that of employer and employee, requiring deduction of tax under section 192; accordingly, the Assessee was treated as an Assessee in default under sections 201(1) and 201(1A). On appeal, the Commissioner (Appeals) held that the doctors rendered specialised professional services based on patient requirements and were not employees, a view which was confirmed by the Tribunal, leading the Revenue to file an appeal before the High Court.

Issue for Consideration

Whether the honorarium paid by the Assessee-hospital to consultant/honorary doctors constituted salary attracting deduction of tax at source under section 192 of the Income-tax Act, 1961, or fees for professional services liable for TDS under section 194J, and consequently, whether the Assessee could be treated as an Assessee in default under sections 201(1) and 201(1A) for alleged short deduction of tax.

Court's Findings

The Bombay High Court found, on examination of the agreements and surrounding facts, that the consultant/honorary doctors rendered specialised medical services in their respective fields, did not receive employment benefits, and were engaged on a professional basis. The Court further found that the administrative controls imposed by the hospital, such as attendance requirements and adherence to hospital protocols, were inherent to ensuring patient care and discipline and did not amount to the degree of control necessary to establish an employer–employee relationship.

Held

Based on the above findings, the Court held that the honorarium paid to consultant/honorary doctors constituted fees for professional services liable to TDS under section 194J and not salary under section 192, and consequently, the Assessee could not be treated as an Assessee in default under sections 201(1) and 201(1A).

MCA Analysis & Comments

This ruling brings important clarity to the healthcare sector by reaffirming that professional autonomy and the absence of employment benefits prevail over mere administrative supervision in determining employment status. It curbs mechanical recharacterization of consultancy arrangements as employment, thereby avoiding cascading tax and compliance consequences. At the same time, the Court underscores that classification as technical services must be evidence-based and contract-specific, not assumption-driven, ensuring balanced and fair compliance.

Ramachandra Reddy Ravi Kumar v. DCIT Karnataka High Court [2025] 178 taxmann.com 491 | AY 2017-18 | Order dated: 28-08-2025

Physical issuance of notices under Sections 148A(a) & 148A(b) vitiates jurisdiction, reassessment invalid without prescribed electronic service

Background

The Assessee had duly filed its return of income for the relevant assessment year. Thereafter, the Assessing Officer issued a notice under section 148A(a) of the Income-tax Act, 1961, proposing to conduct an enquiry before initiation of reassessment proceedings. Pursuant thereto, the Assessing Officer issued a show cause notice under section 148A(b) calling upon the Assessee to explain as to why a notice under section 148 should not be issued, and accordingly initiated reassessment proceedings. Aggrieved by the said action, the Assessee filed a writ petition before the High Court contending that the notices issued under sections 148A(a) and 148A(b) were without jurisdiction and invalid in law, since they were issued in physical form instead of through the prescribed electronic mode, in violation of the statutory provisions and applicable CBDT instructions governing the manner of service of notices.

Issue for Consideration

Whether the reassessment proceedings initiated by the Assessing Officer are valid in law when the notices issued under sections 148A(a) and 148A(b) of the Income-tax Act, 1961, were served in physical form instead of through the statutorily prescribed electronic mode, and consequently, whether such notices suffer from a lack of jurisdiction and are liable to be quashed.

Court's Findings

The Karnataka High Court held that notices issued under sections 148A(a) and 148A(b) in physical form are invalid, as compliance with the prescribed electronic mode is a mandatory jurisdictional requirement under the reassessment and faceless regime. The Court rejected the Revenue's plea of substantial compliance, holding that deviation from the statutory manner vitiates the assumption of jurisdiction. Accordingly, the impugned notices and consequential proceedings were quashed, with liberty to the Revenue to initiate fresh proceedings in accordance with law, if permissible.

Held

The Karnataka High Court held that the reassessment proceedings were without jurisdiction and invalid in law since the notices under sections 148A(a) and 148A(b) of the Income-tax Act, 1961, were issued in physical form instead of through the prescribed electronic mode. Consequently, the impugned notices and all consequential proceedings were quashed, with liberty to the Revenue to initiate fresh proceedings in accordance with law, if permissible.

MCA Analysis & Comments

The Karnataka High Court's decision reinforces that strict adherence to the reassessment framework is mandatory. Issuance of notices under sections 148A(a) and 148A(b) through the prescribed electronic mode is a jurisdictional precondition and not a curable procedural lapse. The Court rightly rejected the Revenue's plea of substantial compliance or estoppel based on the Assessee's participation, reiterating that statutory procedures must be followed in the manner prescribed. It also serves as a safeguard against mechanical reopenings, while clarifying that any liberty to issue fresh notices remains subject to limitation and other statutory conditions.

KMG Wires (P.) Ltd. Vs. NFAC – Justice Bombay High Court [2025] 179 taxmann.com 565 | Writ Petition (L) No. 24366 of 2025| Order dated: 06-10-2025

No automatic additions; hearing and transparency required under faceless assessments

Background

KMG Wires P. Ltd. challenged an assessment order passed under Section 143(3) read with Section 144B for AY 2023-24 by the National Faceless Assessment Centre. The Assessing Officer (AO) disallowed purchases of Rs. 2,15,89,932 from supplier Dhanlaxmi Metal Industries, claiming no response to a Section 133(6) notice, and added peak balances of Rs. 22,66,06,740 for unsecured loans from directors, including opening balances while citing non-existent judicial decisions. The Assessee argued breach of natural justice due to non-consideration of the supplier's reply and lack of show cause notice or workings.

Issue for Consideration

Whether the assessment order violated principles of natural justice by: (a) ignoring the supplier's reply to Section 133(6) notice with supporting documents like invoices, e-way bills, and GST returns, and (b) adding peak loan balances without basis, workings, show cause notice, or verifiable precedents?

Court's Findings

The Bombay High Court found a breach of natural justice on both counts. For purchases, despite the supplier's detailed reply dated March 8, 2025 (with supporting evidence) submitted before the March 27, 2025, order, the AO proceeded as if no reply was received—an error later acknowledged by the Department. For loans, the peak balance was computed on unverified assumptions, fabricated decisions (likely AI-generated errors) without sharing workings or issuing a show cause notice, underscoring the need for due verification by quasi-judicial authorities.

Held

The Court quashed the assessment order, demand under section 156, and penalty show cause under section 274 read with section 271AAC, and remanded the matter for fresh proceedings with directions to issue a show cause notice, grant hearing and time to reply, and pass a speaking order by December 31, 2025, with prior notice of relied decisions. No findings were given on merits and all rights were kept open.

MCA Analysis & Comments

This judgment reinforces procedural safeguards under the faceless assessment regime, holding that additions cannot be sustained merely due to alleged non-response where evidence is already on record. It reiterates that peak credit additions must be supported by transparent workings and preceded by a proper opportunity of hearing. The Court's caution against reliance on unverified or AI-generated case law is particularly significant. Overall, the ruling strengthens the Assessee's right to challenge mechanical and non-speaking assessments and affirms that a breach of natural justice, by itself, warrants writ intervention notwithstanding the availability of alternate remedies.

K. Krishna Murthy v. DCIT – Supreme Court of India [2025] 171 taxmann.com 413 (SC) | Civil Appeal No. 2411 OF 2025 | AY 2011–12 | Order dated: 13-02-2025

Penalty not automatic under 271AAA; search-time disclosures with tax paid grant relief

Background

The Assessee, a land facilitator, was searched u/s 132 on 25.11.2010 in connection with land procurement activities under an MoU with Hashim Moosa for a housing society. During the search, he admitted ₹2.27 crore as income for AY 2011–12 and subsequently filed a return declaring about ₹4.77 crore, which was assessed at around ₹4.78 crore; the AO then levied penalty u/s 271AAA @10% on the entire assessed income, a view that was successively upheld by the CIT(A), ITAT and the Karnataka High Court.

Issue for Consideration

Whether penalty under section 271AAA is automatic on all search-year income, or only leviable on that portion which qualifies as "undisclosed income" of the specified previous year and does not satisfy the immunity conditions in section 271AAA(2).

Court's Findings

Penalty under section 271AAA(1) of the Income-tax Act, 1961 is discretionary and not automatic, and such discretion must be exercised judiciously and in accordance with law. It ruled that where an assessee, in a statement under section 132(4), admits undisclosed income, specifies and substantiates the manner of its derivation, and pays tax with interest—even if belatedly—penalty is not leviable by virtue of section 271AAA(2).

Held

However, penalty at the rate of 10% was upheld on ₹2,49,90,000, as the said income was neither admitted nor disclosed during the course of search but was offered only during the assessment proceedings and was found as a result of search-related investigations. The Court clarified that the expression "found in the course of search" has a wide amplitude, covering documents and evidence unearthed through post-search investigations as well. Accordingly, the penalty was restricted to ₹2,49,90,000 and deleted on the balance amount.

MCA Analysis & Comments

The governing principle is that penalty under section 271AAA is not automatic but subject to two distinct statutory tests. First, the Assessing Officer must strictly establish that the amount constitutes "undisclosed income" of a "specified previous year" and that it was found in the course of, or as a result of, the search. Second, even where this threshold is met, no penalty can be levied on that portion of income which satisfies all three immunity conditions—namely, admission in a statement under section 132(4) during search, specification and substantiation of the manner of derivation, and payment of tax together with interest, even if belated. Consequently, penalty can survive only in respect of income that fails to meet these statutory safeguards.

Equity intelligence AIF trust vs. The Central Board of Direct Taxes & Anr| Delhi High Court [2025] 176 taxmann.com 903| Judgment dated: 29-07-2025

AIFs not liable where structural conflicts exist; CBDT circular invalidated

Background

The petitioner, Equity Intelligence AIF Trust, is a SEBI-registered Category III Alternative Investment Fund launched in July 2017 to invest in listed equities. Post SEBI registration, investors were admitted through contribution agreements and units were issued, with income shares determined by NAV. The Trust has filed returns since AY 2018-19 and was assessed as a determinate trust. However, the Board for Advance Rulings (BAR), relying on CBDT Circular No. 13/2014, treated the Trust as an indeterminate trust under section 164 solely because the original trust deed did not name investors, resulting in taxation at the Maximum Marginal Rate (MMR).

Issue for Consideration

Whether a SEBI-regulated Category III AIF can be regarded as an indeterminate trust under section 164 merely because investor names are absent from the original trust deed, despite beneficiaries and their shares being determinable through contribution agreements and unit-wise NAV allocation.

Court's Findings

The Court held that determinacy under section 164 depends on the actual ascertainability of beneficiaries and their shares, not on their naming in the original trust deed. It noted that SEBI regulations prohibit acceptance or identification of investors prior to registration, rendering the CBDT Circular's requirement legally impossible to comply with. Applying the doctrine of *lex non cogit ad impossibilia*, the Court reaffirmed that AIF beneficiaries are determinable through units and NAV. It further found paragraph 6 of Circular No. 13/2014, which permits state-specific application, to be legally untenable and contrary to uniform tax administration.

Held

The Court held that Equity Intelligence AIF Trust is a determinate trust, as beneficiaries and their respective shares are clearly ascertainable post-registration. Taxation at the Maximum Marginal Rate under section 164 was therefore unsustainable. The BAR's order was quashed, and CBDT Circular No. 13/2014 was directed to be read down in conformity with the Act and judicial precedent.

MCA Analysis & Comments

This ruling harmonises SEBI's regulatory framework with income-tax law, ensuring AIFs are not penalised for statutory impossibilities arising from overlapping regimes. By rejecting a form-over-substance approach, the Court reinforces that legal and economic determinability prevails over rigid drafting formalities. The judgment also exposes the infirmity of state-specific operation of CBDT circulars and restores uniformity, certainty, and commercial realism in the taxation of AIFs.

Shivamma (dead) by LRS vs. Karnataka housing board & ORS | Supreme Court of India | Civil Appeal No. 11794 of 2025 | Judgment dated: 12-09-2025

Principled enforcement of limitation; routine government delay condonation rejected

Background

The appeal arose from a gross delay of nearly 11 years (3966 days) in filing a second appeal by a state housing authority. The High Court condoned the delay by accepting explanations based on bureaucratic inefficiency, internal correspondence delays, and negligence of officials, while also being influenced by perceived merits of the State's case. The decree-holder challenged the condonation, contending that no bona fide justification existed and that settled principles under Section 5 of the Limitation Act, 1963 were disregarded.

Issue for Consideration

Whether such inordinate delay can be condoned under Section 5 on grounds of administrative lethargy or bureaucratic inefficiency, and the permissible scope of appellate interference with discretionary orders condoning delay.

Court's Findings

The Supreme Court held that "sufficient cause" must be supported by a credible, bona fide explanation covering the entire period of delay, backed by reliable material. While appellate courts normally defer to discretionary condonation orders, interference is warranted where discretion is exercised mechanically, arbitrarily, on extraneous considerations, or contrary to law. The Court found that the High Court wrongly indulged in "merit-hunting", which is impermissible at the limitation stage. Reaffirming Postmaster General v. Living Media (2012), the Court clarified that earlier latitude shown to State litigants no longer holds the field and that explanations based on bureaucratic red-tapism or blame-shifting are mere excuses, not sufficient cause. The State stands on the same footing as a private litigant, and public interest is served by enforcing finality, diligence, and accountability.

Held

The Supreme Court held that the condonation of a delay of 3966 days was unjustified, set aside the High Court's order, dismissed the State's appeal as time-barred, imposed costs, and directed expeditious execution of the decree, reiterating that condonation is an exception, not an entitlement.

MCA Analysis & Comments

The judgment is a definitive restatement of limitation jurisprudence, decisively rejecting institutional complacency as a ground for condonation. It restores parity between State and private litigants, reinforces discipline in the exercise of judicial discretion, and strengthens the principles of finality, certainty, and rule of law. The ruling will materially impact how courts assess condonation pleas in long-delayed State appeals and acts as a strong deterrent against administrative lethargy.

Ajay Kumar Goel v. DCIT – ITAT Kolkata [2025] TS-1569-ITAT-2025| ITA No. 1533/Kol/2025 | AY 2024–25 | Order dated: 24-11-2025

TDS default liability rests with employer; employees protected from unjust demands

Background

The Assessee, a former employee of Think & Learn Pvt. Ltd. (BYJU'S), received salary income from which TDS amounting to ₹1.49 crore was duly deducted by the employer but not deposited into the Government account. While filing the return of income, the Assessee claimed credit for the TDS so deducted. However, the credit was denied in the intimation and a demand was raised on the ground that the employer had failed to remit the TDS. The JCIT(A) upheld the denial, observing that coordinate bench and High Court decisions were not binding on the Revenue.

Issue for Consideration

Whether an employee can be denied credit of TDS and fastened with tax liability where TDS has been deducted from salary but not deposited by the employer, and whether Revenue authorities are bound by judicial discipline to follow binding precedents.

Court's Findings

The Tribunal held that a combined reading of Section 205 of the Income-tax Act, 1961, CBDT Instruction No. 275/29/2014-IT(B) dated 01-06-2015, and the subsequent Office Memorandum dated 11-03-2016 makes it abundantly clear that once tax is deducted at source from salary, it is deemed to have been paid by the employee to that extent. The employee cannot be revisited with a tax demand merely because the employer failed to deposit the TDS. The Tribunal further held that recovery, if any, must be pursued against the employer under Section 201, and administrative inaction of the Revenue cannot prejudice the Assessee. Strong exception was taken to the stand of the JCIT(A) that coordinate bench and High Court decisions are not binding, with the Tribunal emphasising that judicial discipline "requires, nay, demands" that subordinate authorities follow binding precedents, failing which it would result in miscarriage of justice.

Held

The ITAT allowed the appeal and directed the Assessing Officer to grant full credit of TDS deducted from the Assessee' s salary, holding that the Assessee cannot be saddled with tax liability for the employer's default. The demand raised was accordingly unsustainable.

MCA Analysis & Comments

This ruling reaffirms the statutory protection under Section 205, shielding employees from the consequences of an employer's TDS default. The decision is particularly significant in high-value salary cases, reinforcing that TDS credit cannot be denied once deduction is established, irrespective of deposit. Equally important is the Tribunal's strong reiteration of judicial discipline, rejecting the notion that precedents are optional for the Revenue. The judgment strengthens taxpayer certainty, curbs arbitrary demands, and clarifies that recovery must be pursued from the deductor, not the deductee, thereby restoring fairness and discipline in TDS administration.

Emerging India Focus Funds, Apex Financial Services (Mauritius) Ltd. Vs ACIT, Int. Tax - Delhi ITAT [2025] 175 taxmann.com 1013 |Order dated: 25-06-2025

Treaty benefits for Mauritius investors preserved; MF units excluded from Article 13(3A)

Background

Emerging India Focus Funds, Apex Financial Services Mauritius Ltd., a Mauritius tax resident and SEBI-registered FII, earned Rs. 593.48 crore in capital gains from selling equity-oriented mutual fund units (HDFC schemes) in India during AY 2022-23. The Assessee claimed exemption under Article 13(4) of the India-Mauritius DTAA, arguing mutual fund units are not shares. The AO taxed 65% (Rs. 385.76 crore) as gains from underlying shares under Article 13(3A), based on minimum equity allocation in the funds. DRP upheld taxability of the entire amount under Article 13(3A) via purposive interpretation equating units to shares, but allowed grandfathering verification for pre-01.04.2017 units (Rs. 310.80 crore).

Issue for Consideration

Whether equity-oriented mutual fund units qualify as "shares" under Article 13(3A) of India-Mauritius DTAA (taxable in India) or fall under residuary Article 13(4) (taxable only in Mauritius).

Court's Findings

The Tribunal emphasized that DTAAs should be interpreted in which the reasonable meaning of words and phrases is preferred. As the term "shares" is not defined under the DTAA, their interpretation should be derived from Indian domestic law. The Companies Act, 2013 and the Securities Contracts (Regulation) Act, 1956, for instance, had a very clear demarcation between shares and mutual funds. When mutual funds were not explicitly included, they would be governed by Article 13(4) which allocated the taxing rights to the residence state i.e. Mauritius.

Held

The Tribunal held that gains from the sale of equity-oriented mutual funds did not constitute `alienation of shares under Article 13(3A) of the India-Mauritius DTAA. Therefore, such gains are exempt from Indian tax under Article 13(4), and the Mauritius resident is entitled to treaty benefits.

MCA Analysis & Comments

This ruling reinforces the principle that treaty provisions must be interpreted strictly and in accordance with their plain language, and that taxing rights under a DTAA cannot be expanded through purposive or administrative interpretation. The ITAT has rightly held that equity-oriented mutual fund units are distinct from "shares" under Indian domestic law, and in the absence of an explicit treaty definition, such domestic law meaning must prevail. Article 13(3A) of the India–Mauritius DTAA, introduced by the 2016 Protocol, is limited in scope to alienation of shares of an Indian company and cannot be extended to mutual fund units merely because the underlying investments are equity shares.

V Hotels Limited vs The National Faceless Assessment Centre, Delhi, and Others - Bombay High Court [2025] TS-1537-HC-2025| Order dated: 17-11-2025

IBC clean slate bars scrutiny assessments for pre-resolution periods without filed claims

Background

V Hotels Ltd underwent CIRP restoration by the Supreme Court on August 1, 2022, culminating in NCLT approval of Macro tech's resolution plan on April 26, 2024, which extinguished all pre-approval liabilities under section 31 of the IBC. The new board filed the AY 2024-25 return post-CIRP, covering FY 2023-24 (entirely pre-resolution), yet NFAC issued section 143(2) notice on June 24, 2025, and section 142(1) notice on September 26, 2025, for scrutiny. The tax department had lodged IBC claims only for AY 2018-19 and 2019-20, omitting any for AY 2024-25 or pre-resolution FY 2023-24.

Issue for Consideration

Whether NFAC notices u/s 143(2) & 142(1) for AY 2024-25 (entirely pre-resolution FY 2023-24) are valid post-NCLT section 31 approval of Macro tech resolution plan, when tax department filed no CIRP claim for that period (claims limited to AY 2018-19/2019-20), given IBC clean-slate extinguishment of unlodged pre-cut-off liabilities.

Court's Findings

Bombay High Court quashed the notices for AY 2024-25 (pre-resolution FY 2023-24) as invalid, since no CIRP tax claim was filed extinguishing liabilities post-section 31 plan approval per Ghanshyam Mishra/Vaibhav Goel clean-slate doctrine, consistent with prior quashing of AY 2020-21/2021-22 reassessments.

Held

The Bombay High Court held that the notices issued by NFAC under sections 143(2) dated 24-June-2025 and 142(1) dated 26-September-2025 for AY 2024-25 were invalid and without jurisdiction. Since the entire financial year (FY 2023-24) pertained to the pre-resolution period, and the Income Tax Department had not lodged any claim for the said period during CIRP, all such tax liabilities stood extinguished upon approval of the resolution plan under section 31 of the IBC. Consequently, the impugned notices were quashed.

MCA Analysis & Comments

This judgment confirms that the IBC clean-slate principle is not confined to old arrears or reassessment under sections 147/148; it also bars regular scrutiny under sections 143(2)/142(1) when the financial period falls within the pre-resolution cut-off and the department has not filed a corresponding claim. The ruling decisively curtails attempts by the tax department to revive unclaimed pre-CIRP liabilities through scrutiny notices, even where such liabilities relate to a period immediately preceding resolution.

Bhavnagar Dashashrimali Kantibandh v. CIT - Ahmedabad ITAT [2025] 180 taxmann.com 639| Order dated: 17-11-2025

Trust registration cannot be denied solely for community-specific objects; Section 12AB(4) addresses actual violations

Background

The Assessee is a public charitable trust constituted on 08 March 2022, was granted provisional registration under section 12AB. Its application for regular registration was rejected by the CIT(E) on the ground that the trust's objects and membership were restricted to a particular community, attracting section 13(1)(b). A subsequent application relying on CBDT Circular No. 07/2024 was also rejected as non-maintainable. The Assessee appealed before the ITAT.

Issue for Consideration

Whether registration under section 12AB can be denied at the initial stage by invoking section 13(1)(b) solely on the basis of community-specific objects, without examining the genuineness of activities.

Court's Findings

The ITAT held that the CIT(E) rejected registration solely on the basis of the trust deed without examining the activities carried out by the trust, or the application of funds. It was observed that section 13(1)(b) is relevant at the stage of granting exemption under sections 11 and 12, and not at the stage of registration under section 12AB.

Under the post-01 April 2021 regime, the scope of inquiry at the registration stage is confined to examination of objects, and verification of the genuineness of activities. Any violation of statutory provisions, including section 13, is required to be addressed through section 12AB (4).

Held

The ITAT set aside the orders of the CIT(E) and restored the matter for fresh consideration. The CIT(E) was directed to verify activities of the trust, financial statements and application of funds, and whether the objects fall within "charitable purpose" under section 2(15).

If any violation is found post-registration, appropriate action may be taken under section 12AB (4). Mere restriction of membership to a particular community does not justify denial of registration under section 12AB. The second appeal was held infructuous.

MCA Analysis & Comments

The decision clarifies that under the amended section 12AB framework, registration cannot be denied solely on the basis of community-specific objects. Registration must be granted where objects and activities are prima facie charitable, with compliance to be monitored thereafter through section 12AB (4).

Dhanraj Govindram Kella v. Income-tax Officer, Ward (2), Surendranagar Gujarat High Court [2025] 177 taxmann.com 194 | Order dated: 08-07-2025.

Post-Ashish Agarwal, limitation strictly governs Section 148 notices despite approvals

Background

The Assessee received reassessment notices for Assessment Years 2013-14, 2014-15, 2016-17, and 2017-18. Initially, the Assessing Officer issued notices under section 148 of the Income-tax Act (old regime) between 1-4-2021 and 30-6-2021 under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA). Subsequently, show-cause notices under section 148A(b) were issued, and after considering the Assessee's replies, orders under section 148A(d) along with notices under section 148 (new regime) were issued between July and September 2022. The Assessee challenged these notices, contending that the notices lacked valid approval under section 151 as amended effective 1-4-2021 and were barred by limitation under section 149(1).

Issue for Consideration

The main issues were: (i) whether the approval granted by the Principal Commissioner under section 151(i) for issuance of orders under section 148A(d) and notices under section 148 of the new regime was valid, and whether sanction under section 151(ii) was required; and (ii) whether the reassessment notices issued in 2022 were time-barred, considering the "surviving time" as per the Supreme Court's directions in Union of India v. Ashish Agarwal and Union of India v. Rajeev Bansal.

Court's Findings

The Court held that the validity of approval must be tested with reference to the original TOLA-period notices. Sanction granted by the Principal Commissioner under section 151(i) was valid, and approval under section 151(ii) was not required. However, TOLA does not revive cases already time-barred. The surviving limitation period as on 30-6-2021, after excluding the period under Ashish Agarwal, had to be respected. Consequently, the reassessment notices issued between July and September 2022 were beyond the surviving time and therefore invalid.

Held

The Court quashed and set aside the notices issued under section 148 and the orders under section 148A(d) for being time-barred. The Court clarified that for assessment years 2013-14 and 2014-15, notices issued under TOLA were valid if within surviving time, whereas for assessment years 2016-17 and 2017-18, reassessment notices issued in 2022 were invalid. Approval under section 151(i) was valid, and section 151(ii) sanction was not required. Rule was made absolute, partly in favour of the Assessee.

MCA Analysis & Comments

This case highlights the importance of adhering to the surviving limitation period when issuing reassessment notices under the new regime. While TOLA extended the time for sanction by the specified authority, it did not revive notices beyond the permissible period. Compliance with section 151(i) is sufficient, and the Principal Commissioner's approval is valid. Practically, authorities must carefully compute surviving time and ensure that notices issued under section 148, even under the new regime, fall within the extended but permissible time limits to avoid invalidation.

Principal Commissioner of Income-tax v. Jupiter Capital (P.) Ltd. Supreme Court [2025] 170 taxmann.com 305 (SC) Order dated: 02-01-2025

Capital reduction and shareholding diminution constitute 'transfer'; resulting capital loss allowable

Background

The Assessee, engaged in investment and financing activities, held 99.88% shareholding in Asianet News Network Pvt. Ltd. Due to accumulated losses and erosion of net worth, the company obtained a Bombay High Court order for reduction of share capital, reducing total shares from 15.35 crore to 10,000 and the Assessee's holding from 15.33 crore to 9,988, with face value unchanged. The Assessee received ₹3.18 crore and claimed long-term capital loss on the reduction of share capital.

Issue for Consideration

Whether the reduction in share capital resulting in a proportionate reduction of the Assessee' s shares amounted to a "transfer" under Section 2(47) of the Income Tax Act, 1961, and thereby permitted the assessee to claim long-term capital loss, even though the face value per share remained unchanged and the shareholding percentage stayed the same.

Court's Findings

The Supreme Court affirmed the High Court's decision, holding that the reduction in share capital constitutes a "transfer" under Section 2(47). The Court relied on its prior ruling in Kartikeya V. Sarabhai v. CIT, which clarified that extinguishment or relinquishment of any rights in a capital asset constitutes a transfer. Although the assessee continued as a shareholder, its rights in the original number of shares were extinguished, replaced by fewer shares and consideration of Rs. 3.18 crore. The Court also referenced Anarkali Sarabhai v. CIT and Jaykrishna Harivallabhdas, noting that receipt of consideration is not a precondition for recognizing a transfer under Section 2(47). The extinguishment of rights in shares, whether through reduction of share capital or redemption, qualifies as a transfer of a capital asset.

Held

The Supreme Court dismissed the Revenue's appeal, holding that the reduction in share capital and the consequent proportionate reduction of the Assessee' s shareholding amounted to a transfer under Section 2(47). Therefore, the Assessee was entitled to claim long-term capital loss on the reduction of its shares and the consideration received. The Court emphasized that transfer does not require sale; extinguishment of rights is sufficient.

MCA Analysis & Comments

This case confirms that reduction of share capital, even without changing the face value or shareholding percentage, triggers capital gains provisions under Sections 2(47) and 45. Companies and investors must recognize that any extinguishment or reduction in rights associated with shares, coupled with consideration, will constitute a transfer. For compliance, it is important to account for the extinguished portion of shares as a disposal of capital assets, ensuring proper reporting of capital gains or losses. The case aligns with the principle that tax liability arises from the change in shareholder rights, not merely the sale of shares.

Damani Research Foundation of Medical Sciences v. CIT (exemption) & Ors. – Bombay High Court | WP No. 1583 of 2025 | Order dated: 14-08-2025

Trust exemption allowed despite minor delay; revenue unharmed

Background

The petitioner, Damani Research Foundation of Medical Sciences, a charitable trust engaged in medical research and healthcare promotion, filed its return claiming exemption under Sections 11 and 12 of the Income-tax Act, 1961. To support its claim, it was required to furnish Form 10B, the audit report prescribed for charitable institutions. The trust, however, filed Form 10B with a delay of 27 days due to administrative reasons. The Assessing Officer rejected the exemption claim solely on the ground of this delay, despite there being no dispute as to the trust's charitable character or its adherence to substantive requirements.

Issue for Consideration

Whether a marginal delay of 27 days in filing Form 10B, when all substantive conditions for exemption are otherwise fulfilled, should result in denial of exemption under Sections 11 and 12 of the Income-tax Act.

Court's Findings

The Bombay High Court held that minor procedural lapses should not override substantial justice in cases of genuine charitable institutions. Citing Sai Dwarkabai Tai Karwa Charitable Public Trust and Kotak Family Foundation, it noted that short, unintentional delays causing no revenue loss have been condoned in similar cases. Since the trust's activities were genuine and no prejudice was caused to the Department, denying exemption for a brief filing delay was deemed overly technical and unfair.

Held

The Bombay High Court set aside the rejection order and directed that the trust's exemption claim be processed in accordance with law. It held that a 27-day delay in filing Form 10B was a mere procedural lapse and not a valid ground to deny substantive exemption. The Court emphasized that technicalities cannot defeat justice, especially when charitable intent and compliance with core conditions are undisputed.

MCA Analysis & Comments

This decision reaffirms the judiciary's liberal view in favour of genuine charitable trusts facing minor procedural defaults. The judgment underscores that substantive compliance must outweigh procedural rigidity, and minor delays in filing Form 10B should not disentitle organizations from exemption benefits. It encourages tax authorities to adopt a balanced and equitable approach, ensuring that technical non-compliances do not undermine the purpose of promoting charitable activities under the Act.

Manjeet Singh Chawla v. Deputy Commissioner of TDS| Karnataka High Court [2025] 175 taxmann.com 778 | WP No. 20212 of 2023 (T-IT) | Order dated: 02-06-2025

One-time ESOP value diminution compensation is a capital receipt, not a taxable perquisite

Background

The petitioner, Mr. Manjeet Singh Chawla, an employee of Flipkart's Indian group company, was granted stock options by Flipkart Singapore under its incentive plan. Following Flipkart's restructuring and separation of the PhonePe business in December 2022, the option value dropped significantly. To compensate employees, Flipkart made a one-time goodwill payment of USD 43.67 per option in April 2023, without any contractual obligation. When the company proposed to deduct TDS on this payment, Mr. Chawla sought exemption, claiming it was not taxable as salary. The Assessing Officer rejected his application on 15-Jul-2023, after which he approached the High Court.

Issue for Consideration

Whether a voluntary one-time ex-gratia payment made by an employer to compensate for the fall in stock option value, without any contractual or service-linked obligation, can be treated as taxable salary or perquisite under the Income-tax Act, 1961.

Court's Findings

The Court observed that the payment was not connected to employment duties or services rendered but was extended purely as a goodwill gesture following the corporate restructuring that impacted stock option value. It reiterated that stock options are taxable only upon exercise or transfer, neither of which had taken place in this case. Emphasizing the doctrine of substance over form, the Court held that the true character of the payment, not its nomenclature or employer's treatment, determines taxability. Consequently, the amount could not be regarded as either "salary" or "perquisite."

Held

The Karnataka High Court set aside the order of the tax authorities and held that the ex-gratia payment was not taxable under the head "Income from Salary." It directed that any TDS already deducted be refunded in accordance with law, reaffirming that no tax can be levied in the absence of a clear taxable event.

MCA Analysis & Comments

This ruling provides important clarity on the tax treatment of goodwill or voluntary payments made by employers, especially in restructuring scenarios. It establishes that non-contractual ex-gratia amounts, unrelated to employment services, do not automatically constitute taxable income. By emphasizing substance, intent, and timing of the payment, the judgment strengthens the principle that only real, not notional, income can be taxed. The decision also offers practical guidance to multinational employers in handling compensation-linked corporate actions fairly within the tax framework.

Parag Ramesh bhai Gathani v. Income-tax Officer, International Taxation – Gujarat High Court [2025] 180 taxmann.com 662| Order dated: 18-11-2025

Court invalidates delayed satisfaction note despite COVID and faceless scheme

Background

A search was conducted under Section 132 of the Income-tax Act, 1961 in the case of a land broker group, including Shri Suresh R. Thakkar, where certain chats referred to a land transaction involving the petitioner, Mr. Parag Ramesh bhai Gathani. Based on this material, proceedings under Section 153C were proposed against him.

The assessment of the searched person was completed in August 2021, but satisfaction under Section 153C was recorded only on 06-June-2023, almost 22 months later and later endorsed by the petitioner's Assessing Officer on 17-Oct-2023, who issued a notice on 09-Feb-2024. Alleging that such a delayed initiation was contrary to law, the petitioner challenged the action before the Gujarat High Court.

Issue for Consideration

Whether proceedings under Section 153C can be sustained when satisfaction is recorded long after completion of the searched person's assessment, in violation of statutory procedure and binding judicial precedents.

Court's Findings

The Court held that recording satisfaction under Section 153C is a mandatory jurisdictional step that must comply with the procedure laid down in CIT v. Calcutta Knit wears (2014). A delay of nearly 22 months in recording satisfaction after the searched person's assessment was found to be unjustified and contrary to CBDT Circular No. 24/2015, which mandates prompt action. The explanation of pandemic-related disruption was rejected as insufficient to override statutory requirements.

Held

The Gujarat High Court quashed the notices issued under Section 153C and all consequential proceedings, holding that the belated recording of satisfaction rendered the assumption of jurisdiction invalid. It was observed that statutory conditions are mandatory and cannot be diluted on equitable or administrative considerations. Once the required timelines under Section 153C are breached, the Court said, the proceedings become void ab initio.

MCA Analysis & Comments

This ruling underscore the importance of timely satisfaction and procedural adherence in post-search assessments. It curtails delayed jurisdictional action under Section 153C and strengthens taxpayer protection against stale proceedings. The decision will guide similar disputes where satisfaction was recorded after undue delay, ensuring greater certainty and accountability in search-related taxation.

CIT (Intl. Taxn.)-1 v. Amazon Web Services, Inc. - Delhi High Court [2025] 174 taxmann.com 1188| AYs 2014-15 and 2016-17 | Order dated: 29-05-2025

Standardised cloud computing receipts are business profits not royalty or FTS and are not taxable in India in absence of a PE

Background

Amazon Web Services Inc. (AWS), a non-resident company, provided standardised cloud computing services to Indian customers, including infrastructure, platform and software services, through automated systems hosted outside India. AWS did not have any physical presence or Permanent Establishment (PE) in India and did not file returns of income in India. The Revenue sought to tax the receipts from Indian customers by characterising them as royalty or fees for technical/included services under the Income-tax Act, 1961 and the India–USA DTAA, and consequently alleged failure to withhold tax under section 195 by Indian payers. AWS challenged the Revenue's stand, contending that the services were standardised, automated, involved no transfer of intellectual property or right to use equipment, and did not involve any human intervention.

Issue for Consideration

Whether receipts earned by AWS from Indian customers for cloud computing services constitute royalty or fees for technical/included services taxable in India, or business profits not chargeable to tax in the absence of a Permanent Establishment in India.

Court's Findings

The Court upheld the ITAT's findings that AWS services are fully automated, standardised and delivered without human intervention. Customers merely access services through an online interface and do not obtain possession, control or rights over any equipment, software, or intellectual property. There is no transfer of source code, no right to exploit IPR, and no ability to operate or control the infrastructure. The Court further held that the "make available" test under Article 12 of the India-US DTAA was not satisfied, as customers are not enabled to independently apply any technical knowledge or skills after availing the services. Reliance was placed on Engineering Analysis, Salesforce, and similar precedents distinguishing service access from transfer of rights.

Held

The receipts from cloud computing services do not qualify as royalty or FTS/FIS under the Income-tax Act or the India-US DTAA. In the absence of a PE in India, the income is not taxable in India. The ITAT's order was upheld and the Revenue's appeals were dismissed, with the Court holding that no substantial question of law arose.

MCA Analysis & Comments

The ITAT held that amounts received by AWS for standardised, automated cloud computing services were neither royalty nor FTS under the Act or the India–US DTAA, as there was no transfer of technical knowledge, skills, or rights, nor any "use" or "right to use" equipment by customers. The cloud infrastructure was used by AWS to deliver services, not placed at customers' disposal, and support services were merely ancillary and did not "make available" technical know-how under Article 12(4). The ruling provides significant clarity that cloud service fees are not taxable as royalty or FTS, offering certainty to global cloud providers and Indian customers on withholding obligations.

Vinil Venugopal Vs. DDIT (Inv.) & Ranjeeta Vinil Vs. DDIT (Inv.) – Mumbai ITAT Special Bench [2025] TS-1395-ITAT-2025 |AY 2020-21 | Order dated: 27-10-2025

Under the Black Money Act, penalty for non-disclosure of foreign assets is discretionary and not automatic

Background

The Assessee held certain foreign assets which were not disclosed in the return. The department proceeded on the footing that non-disclosure of any foreign asset per se mandates penalty under Section43 of Black Money Act and treated the provision as leaving no discretion with the AO.

Issue for Consideration

The key question was whether penalty under Section 43 of the BMA is automatic whenever a foreign asset is omitted from the return, or whether the AO has discretion to impose or waive penalty after examining the facts, intent and surrounding circumstances.

Court's Findings

The Special Bench analysed the language of Section 43 and emphasised that the provision uses the word "may", which denotes that the AO "may direct" levy of penalty, thereby conferring discretion rather than mandating automatic imposition. Having regard to the quasi-criminal nature of BMA penalties, the Bench held that principles of fairness, proportionality and mens rea assume importance and that a mechanical, consequence-based approach is impermissible. It was stated that the AO must evaluate whether the omission was deliberate or bona fide, whether voluntary disclosure was made, whether the foreign asset was inherited or dormant and whether other mitigating factors exist.

Held

The ITAT concluded that penalty under Section 43 of the BMA is not automatic and that the AO has statutory discretion to impose or waive penalty after a fact-specific enquiry. It was clarified that bona fide omissions or cases where reasonable cause exists may justify waiver of penalty, and penalty cannot be levied in a routine, mechanical manner merely because there is an omission in the return.

MCA Analysis & Comments

This ruling substantially curbs the Department's tendency to treat BMA penalties as automatic and re-centres the analysis on the taxpayer's conduct and surrounding circumstances. The ruling is positioned as a significant protection for taxpayers against indiscriminate use of stringent BMA penalty provisions and underscores the need to align penalty decisions with intent and proportionality. For the Department, the decision implies that orders under Section 43 must record a clear satisfaction on willful default, deal with the Assessee' s explanation and apply proportionality, failing which the levy may not withstand appellate scrutiny.

Hyatt International Southwest Asia Ltd. – Supreme Court [2025] TS-954-SC-2025 | AYs 2009-10 to 2017-18 | Order dated: 24-07-2025

Substantive operational control and profit-linked involvement create a fixed place PE

Background

Hyatt International Southwest Asia Ltd, a UAE tax resident, entered into long-term Strategic Oversight Services Agreements (SOSA) with Indian hotel owners for Hyatt-branded hotels, under which it exercised extensive strategic, operational, staffing, branding, and financial oversight, and earned strategic fees linked to hotel revenues. Hyatt contended that it rendered only advisory services from outside India and had no Permanent Establishment (PE) in India, whereas the Revenue held that the hotel premises constituted a fixed place PE, a view upheld by the ITAT and the Delhi High Court.

Issue for Consideration

Whether Hyatt International Southwest Asia Ltd had a fixed place Permanent Establishment in India under Article 5(1) of the India–UAE DTAA, and whether income earned under the SOSA was taxable in India under Article 7.

Court's Findings

The Supreme Court found that the SOSA vested Hyatt with pervasive and enforceable control over core hotel operations, including branding, pricing, staffing, appointment and supervision of key management, financial oversight, and operational policies. The Court held that the hotel premises were effectively "at the disposal" of Hyatt and constituted the situs through which its core business was carried on. Absence of exclusive space, ownership, or prolonged individual employee presence was held to be irrelevant, as continuity of business presence in aggregate and economic substance outweighed legal form.

Held

The Supreme Court affirmed that Hyatt had a fixed place Permanent Establishment in India under Article 5(1) of the India–UAE DTAA and that income earned under the SOSA was attributable to such PE and taxable in India under Article 7, irrespective of the global profitability of the enterprise.

MCA Analysis & Comments

This landmark ruling reinforces that economic substance, operational control, and revenue-linked commercial involvement are decisive in PE determination, not merely contractual labels or absence of exclusive premises. By affirming the contextual application of the disposal test and rejecting the advisory-services defence, the judgment significantly strengthens India's source-based taxing rights and clarifies that profit attribution to a PE is independent of global results. The decision has wide implications for multinational groups operating through strategic oversight or management models, necessitating a re-evaluation of PE exposure, governance structures, and profit attribution frameworks.

About MCA

Manohar Chowdhry & Associates (MCA) is a leading firm of Chartered Accountants, renowned for its commitment to excellence, integrity, and innovation in professional services. Guided by the vision of its founder, late CA T. N. Manoharan, Padma Shri awardee and former President of the ICAI, the firm has built a legacy of trust and technical expertise across diverse domains including taxation, assurance, advisory, and regulatory consulting. MCA continues to uphold its reputation as a thought leader in the profession—delivering insightful guidance, fostering knowledge sharing, and enabling clients to achieve sustainable growth in a dynamic business environment.

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