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India Tax Konnect

June 2025

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a. Decisions – International Tax

Definition of ‘professional services’ under India-USA tax treaty is 'inclusive’ and not exhaustive: Delhi Tribunal[1]

Facts of the Case[2]

The taxpayer, a limited liability partnership and a tax resident of the USA, was engaged in providing professional services in the areas of assurance, tax, transaction, and business advisory. During the year under consideration, the taxpayer received consideration for professional services rendered by its employees to its Indian group entities.

The taxpayer did not offer the aforesaid receipts to tax in India on the ground that these receipts are fees for ‘professional services’ which were taxable only in the USA under the India-USA tax treaty (treaty)[3].

However, the Revenue alleged that these receipts are not for ‘professional services’ as the taxpayer’s employees who rendered these services were economists, engineers, MBA graduates, diploma holders and other technical personnel, who were not members of any professional body which governs the profession (such as Medical Council of India, Bar Council of India). The Revenue held that these receipts are taxable in India as Fees for Included Services (FIS)[4].

Relevant treaty provisions

Article 15 of the treaty exempts income derived by a USA-tax resident firm of individuals from Indian taxation where such income is from the performance of professional services or other independent activities of a similar character, unless such firm has a fixed base in India. In the instant case, it is an undisputed fact that the taxpayer does not have a fixed base in India.

In this regard, the article defines the term ‘professional services’ to include independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

Article 12 deals with the taxation of FIS on gross basis. Article 12(5)(e) of the treaty provides that FIS does not include amounts paid to a firm of individuals for ‘professional services’ as defined in Article 15. Thus, if the services are concluded to be professional services in the instant case, the consideration for such services cannot be regarded as FIS.

Tribunal’s Decision

The Delhi Bench of the Tribunal allowed the taxpayer’s appeal and held that the services provided by the taxpayer are in the nature of ‘professional services’ within the meaning of Article 15 and not taxable as FIS.

Definition of ‘professional services’ under the treaty is an inclusive definition and not an exhaustive one.

It covers several categories of persons (such as scientists, literary persons, artists, teachers, engineers) which neither belong to, nor are governed by, any professional organisation with disciplinary power and control.

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[1] ITA No.2168/Del/2023
[2] Other grounds of appeal are not covered in this note
[3] Article 15 – Independent Personal Services
[4] Article 12 - Royalties and Fees for Included Services

Confining the scope of ‘professional services’ under Article 15 to persons who are governed by a professional organization, would mean re-writing the said article, which is not permissible.

For interpreting meaning of the term ‘professional services’, the Tribunal also noted that under the Income-tax Act, 1961 (the Act), there are various activities which are considered as ‘professional services’ even though the persons rendering those services are not governed by any professional body[5].

b. Decisions – Domestic Tax

Compensation paid for not transferring shares is not deductible while computing capital gains arising from a subsequent transfer: Hyderabad Tribunal[6]

Facts of the case

In an earlier year, the taxpayer entered into an agreement to sell the shares of another Indian company held by it to a third-party (Buyer 1). However, due to delays in completing necessary formalities, the transaction was not consummated, and the taxpayer had to pay compensation to Buyer 1.

During the year under consideration, the taxpayer transferred those shares to another buyer (Buyer 2) and claimed compensation paid to Buyer 1 as deduction while computing capital gains.

As per the Act[7], the expenses incurred wholly and exclusively in connection with the transfer are allowable as deduction while computing the capital gains.

The Revenue disallowed the deduction arguing that the use of the term ‘wholly and exclusively’ suggests that the expenditure must have proximate and perceptible nexus with the transfer resulting in capital gain[8]. In the instant case, discharging of liability by the taxpayer towards Buyer 1 has no impact on transfer of shares to Buyer 2.

Additionally, expenses incurred in discharging contractual obligation to indemnify Buyer 1 is penal in nature and cannot be claimed as deduction for computing capital gains[9].

Tribunal’s Decision

The Hyderabad Bench of the Tribunal ruled in favour of the Revenue, affirming that compensation paid by the taxpayer to Buyer 1 (for non-transfer of shares) is not a deductible expense for the purposes of computing capital gains arising on subsequent transfer of shares to Buyer 2.

Transaction with Buyer 1 and the actual sale of shares to Buyer 2 were two independent transactions and were in no way connected. Compensation paid by the taxpayer to Buyer 1 cannot be brought within the meaning of an expenditure incurred wholly and exclusively in connection with the transfer of shares to Buyer 2.

[5] Explanation (a) to section 194J of the Act, notification no. S.O 18E dated 12 January 1977, notification no. 385E dated 4 May 2001 and notification no. 88 dated 21 August 2008

[6] *Fusion Lastek Technologies Private Limited* v. *DCIT* (ITA No. 1094/Hyd/2024)

[7] Section 48

[8] *Shri Kanniah Photo Studio* v. *ITO* [2015] 62 taxmann.com 357 (Madras); *Smt. Sita Nanda* v. *ITO* [2001] 119 Taxmann 227 (Delhi)

[9] *PCIT* v. *Agribiotech Industries Ltd* [2020] 113 taxmann.com 391 (SC)

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Interest on delay in EPF payment is penal in nature, not deductible as business expenditure: Mumbai Tribunal[10]

Facts of the case

The taxpayer paid interest[11] due to delay in deposit of employees' contribution to the Employee Provident Fund (EPF) and claimed the deduction of such interest under section 37(1) of the Act, treating the same as compensatory in nature[12]. The deduction was disallowed by the Revenue.

Section 37(1) is a residual provision which allows deduction of expenses incurred wholly and exclusively for the purposes of business. However, an expenditure incurred for any purpose which is an offence, or which is prohibited by law is deemed to be not incurred for the purposes of business.

Another section which could be relevant for this note is section 36(1)(va) which allows the deduction to the employer for the EPF contribution if it deposits, on or before due date prescribed under the applicable regulation, the amount received from its employees towards EPF contribution.

Revenue's contentions

Delayed payment of employees' contribution to EPF constitutes a breach of the EPF Act and the interest paid is a statutory levy to penalise such delay[13].

Interest on delay in deposit of employees' contribution partakes the nature of the principal liability — which in this case is employees' contribution to EPF. Since the principal itself is not deductible under section 36(1)(va) of the Act, when deposited after the due date prescribed under the relevant law[14], the interest in relation thereto should also not be deductible.

Since allowability of employees' contribution is specifically covered under section 36(1)(va), it cannot be allowed under the residual provision like section 37(1) as the specific provision overrides the general provision.

Tribunal's Decision

The Mumbai Bench of the Tribunal upheld disallowance of interest on delayed deposit of employees' contribution to EPF account of the respective employees.

Further, emphasising the legislative purpose behind section 36(1)(va), the Tribunal reiterated that these provisions prioritise timely remittance of employee's contributions by the employer and safeguard their social security. Allowing interest deductions for such default would undermine the legislative intent.

Consideration received on surrender of tenancy rights is taxable as 'capital gains', not as 'income from other sources' – Mumbai Tribunal[15]

Facts of the case

The taxpayer and his daughter were tenants in a residential building located in Mumbai. The said building underwent redevelopment. Pursuant to the Permanent Alternate Accommodation (PAA) Agreement entered with the developer, the

[10] *Bajaj Hindusthan Sugar Limited* v. *DDIT* (ITA 814/MUM/2025)
[11] Under Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act)
[12] This interest was also reported in Tax Audit Report under clause 21(a)(ii) which requires disclosure of any expenditure by way of penalty or fine for violation of any law for the time being force.
[13] *CIT* v. *Pamwi Tissues Ltd.* [2009] 313 ITR 137 (Bombay)
[14] *Checkmate Services (P.) Ltd.* v. *CIT* [2022] 448 ITR 518 (SC)
[15] *Vasant Nagorao Barabde* v. *DCIT* (ITA No.5372/MUM/2024)

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taxpayer and his daughter surrendered their tenancy rights in the old flat and were allotted a new flat. There was no separate payment to the developer for the acquisition of the new flat.

The Revenue invoked section 56(2)(x) the Act and treated the stamp duty value (SDV) of the flat as income from other sources in the hands of the taxpayer on the ground that the new flat was received for an inadequate consideration.

Section 56(2)(x) of the Act provides that where a person receives any immovable property for a consideration which is less than its SDV, then the excess of SDV over the consideration paid is taxable in the hands of the recipient of the immovable property as 'income from other sources'.

Taxpayer's contentions

Surrender and relinquishment of tenancy rights constitutes 'transfer' under the Act and accordingly, gains arising from such transfer were taxable as capital gains[16].

Since the full value of consideration (i.e. SDV of the flat) has been reinvested by way of allotment of new residential flat by the developer, the entire amount of capital gain shall be eligible for deduction under section 54F[17] of the Act. Consequently, there is no capital gain chargeable to tax either in the hands of the taxpayer or his daughter.

Additionally, the taxpayer challenged the applicability of section 56(2)(x), arguing that if an income falls within a specific head of income (i.e. capital gains in the instant case), the fact that it may indirectly be covered by another head of income, will not make the income taxable under the later head[18].

Revenue's contention

The registered PAA Agreement, named the taxpayer as the first tenant, thus, making him the primary recipient of the new flat. Accordingly, the stamp duty value of the flat was taxable in the hands of the taxpayer (and not his daughter) under section 56(2)(x).

Further, claim of deduction under section 54F was not made either by the taxpayer or his daughter in their respective return of income filed for the year. Since no new claim is permissible without filing a revised return of income, the claim for deduction during the appellate proceedings is not allowable[19].

Tribunal's Decision

The Mumbai Bench of the Tribunal held that that surrendering tenancy rights amounts to a transfer of a capital asset under the Act, thereby, giving rise to capital gains.

Considering that the entire consideration for surrender of tenancy rights (being SDV of the flat) has been reinvested in the newly allotted residential flat, the capital gain so computed is eligible for deduction under section 54F.

Applicability of section 56(2)(x) is ruled out in the present case since the income is chargeable to tax under specific head of income, i.e., capital gains.

Placing reliance on the Supreme Court ruling in the case of *Goetze*, wherein it was held that there is nothing that impinges the power of appellate authorities to entertain new claims, the claim of the taxpayer for deduction under section 54F was allowed.

[16] Section 45
[17] Section 54(1)(a)
[18] *CIT* v. *D.P. Sandu Bros. Chembur (P) limited* [2005] 273 ITR 1(SC)
[19] *Goetze (India) Ltd.* v. *CIT* [2006] 284 ITR 323 (SC).

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Visa category stamped on passport relevant to determine the purpose of visit for determining tax residency under the Act: Chennai Tribunal[20]

Facts of the case[21]

The taxpayer, an individual, was an Indian citizen. He had business and financial interests in various countries outside India.

The taxpayer claimed that he was not an Indian resident under the Act[22], as he had not stayed in India for 182 days or more in any of the three financial years (FYs) under consideration, thereby, declaring only India-sourced income in the Income Tax Returns (ITRs).

The taxpayer computed his stay in India based on the dates stamped on his passport. Further, the taxpayer travelled abroad for business purposes, however, the visas were expressly issued to the taxpayer for 'social' or 'tourist' purposes.

However, by placing reliance on the information obtained from the FRRO[23], the Revenue noted that the taxpayer was in India for 182 days or more during the two FYs and for more than 60 days (but less than 182 days) in India during the third FY. The taxpayer was treated as a 'resident' for all the three FYs and his global income was brought to tax in India by the Revenue.

Residency Rules under the Act

An individual is regarded as a 'resident' in India for a FY if:

a) his stay in India is for 182 days or more during the relevant FY; or
b) his stay in India in the relevant FY is for 60 days or more and for 365 days or more during the preceding four FYs (the 60-days rule)

However, this 60-days period is extended to 182 days in case of an individual (being Indian citizen) who leaves India for employment outside India[24]. There are judicial precedents which have held that the word 'employment' is to be interpreted widely to include business or profession.

In other words, an Indian citizen would be considered a non-resident under the Act if, in any FY, he leaves India for the purposes of employment/ business and his stay in India during that FY is for less than 182 days.

In the instant case, broadly two issues arose before the Tribunal – (i) whether the FRRO data can be relied upon to determine the number of days of stay in India; and (ii) whether the 60-days rule or the extended 182-days period would apply, since the taxpayer left India for business purposes during the relevant FYs.

Taxpayer' contentions

The FRRO data cannot be relied upon for the purpose of calculation of taxpayer's period of stay in India. Only the dates stamped upon the passport should be considered for reckoning the period of stay. Further, as the taxpayer had left India for the purposes of business, the 60-days rule was not applicable.

Accordingly, the taxpayer was a non-resident for the purposes of the Act since the stay in India was less than 182 days in all the FYs.

The depiction of social visit or tourist purpose on the visas by respective countries was a mere formality and did not negate the business intent of his travels.

[20] *DCIT* v. *M. Mahadevan* (ITA No. 1824/Chny/2024; ITA No. 1825/ Cheny/2024; ITA No. 1826/ Chny/2024)
[21] Other grounds of appeal are not covered in this note
[22] Section 6
[23] Foreigners Regional Registration Office
[24] Explanation 1(a) to section 6(1)(c)

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The frequent travels to countries such as Singapore and Malaysia were in relation to the business interests in those countries. Given the frequency of the visits, no person can be expected to travel to the same country multiple times just for tourist purposes. Therefore, the inference drawn by the Revenue that these frequent visits were for social/ tourist purposes (and not for business purposes) was incorrect.

The taxpayer submitted UAE tax residency certificate and relied on the India-UAE tax treaty to assert his status as a tax resident of the UAE (not India) during the relevant FYs.

Tribunal's Decision

The Tribunal upheld that the taxpayer was a 'resident' in India for the purposes of the Act and his global income was chargeable to tax in India. Key observations of the Tribunal include:

The FRRO data is an acceptable and reliable source for determining the period of stay of the taxpayer in India. Visa granted by foreign countries clearly specified the visit as for social or tourist purposes. One may travel to the same country multiple times for tourist purposes or to revive social contacts.

Merely because the taxpayer has business interests in those countries does not necessarily suggest that all visits of the taxpayer to those countries would always be for business purpose – unless demonstrated otherwise by documentary evidence.

Considering the category of visa stampings on the passport and information obtained from FRRO, the taxpayer was not eligible for relief from 60-days rule as he did not leave India for employment/ business purpose.

Accordingly, the FY in which the stay was less than 182 days, but 60-days rule was met, the taxpayer would be regarded as 'resident' under the Act.

Rejected taxpayer's argument *qua* his tax residency status to be in UAE under India-UAE tax treaty. Merely furnishing the tax residency certificate from UAE did not confer the residential status to the taxpayer in UAE.

c. Circular/Notification/Order

CBDT extends deadline to process ITRs filed for FY 2022-23 till 30 November 2025

The Central Board of Direct Tax (CBDT)[25] has extended the timeline prescribed under the Act[26] for the processing of electronically filed valid ITRs for FY 2022-23 to 30 November 2025.

Section 143(1) of the Act provides for processing of ITRs filed by a taxpayer, sending intimation about proposed tax adjustments, if any, and determining consequent amount of tax payable/ refund due. Further, as per the section, no intimation relating to processing of ITRs shall be sent to a taxpayer after the expiry of nine months from the end of the FY in which the ITR was filed.

Accordingly, the timeline for sending intimation for the ITRs pertaining to FY 2022-23 filed during FY 2023-24 was 31 December 2024 which has lapsed but now stands extended to 30 November 2025.

[25] F.No.225/205/2024/ITA-II dated 9 June 2025 Second proviso to section 143(1)
[26] Second proviso to section 143(1)

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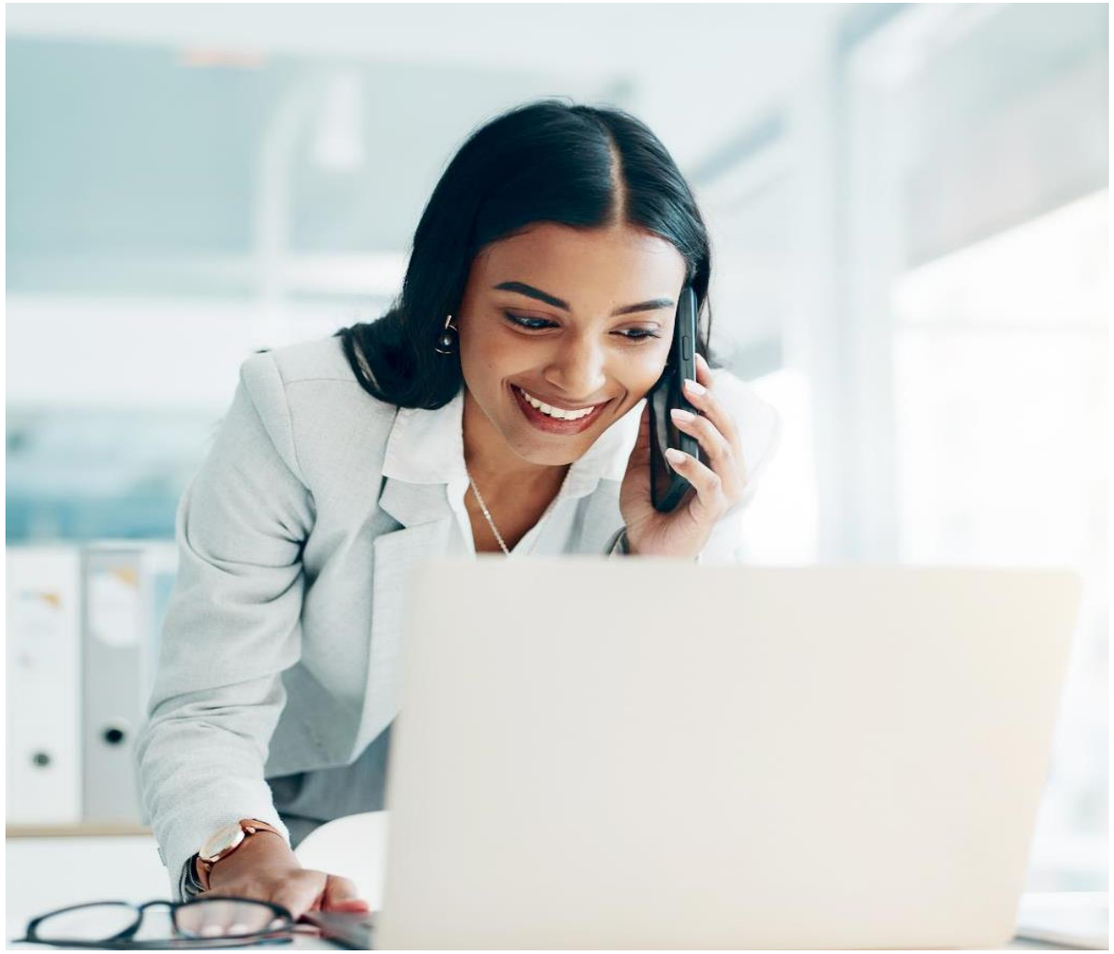
Direct Tax

However, the extended timeline shall not apply in the following cases:

(i) ITRs selected for scrutiny

(ii) ITRs remaining unprocessed for any reason attributable to the taxpayer

Further, no tax refund shall be made in cases where PAN and Aadhaar are not linked[27].



[27] Circular No.03/2023 dated 28 March 2023 vide F.No.370142/14/2022-TPL

a. High Court decisions

Cross examination can be denied if statements of witnesses are mere corroborative[28]

The Director General of GST Intelligence (DGGI) investigated the petitioner for allegedly acting as a commission agent for third-party goods sold in local markets without discharging GST. The DGGI searched the premises of the petitioner and found hand-written kaccha ledgers, parchas, etc. These kaccha ledgers, parchas, mentioned the details of various entities who purchased said goods from the petitioner. The DGGI also recorded statements of witnesses and mentioned such statements in the show cause notice (SCN). During adjudication, the petitioner requested the cross-examination of the witnesses. However, the adjudicating authority rejected such request, *inter alia*, on the ground that the statements in question were only corroborative of undisputed documentary evidence already on record, and thus, did not warrant cross-examination. Against such denial of cross-examination, the petitioner approached the Delhi High Court.

The petitioner's contention was that the denial of cross-examination violated principles of natural justice, and the orders were arbitrary and unconstitutional.

Against this, the revenue contended that the denial of cross-examination was justified as the statements were mere corroborative of undisputed documentary evidence. The petitioner had an alternative statutory remedy of appeal under section 107 of the CGST Act, 2017 and should pursue that route instead of filing writ petition. The adjudicating authority relied on precedents (e.g., *Mohammed Muzzamil Vs CBIC*[29], *K.L. Tripathi v. SBI*[30]) to argue that cross-examination is not an absolute right

In light of this background, the Delhi High Court observed that cross-examination is not an unfettered right and must be justified by showing prejudice or disadvantage to the party to whom it is not granted. The adjudicating authority rightly denied cross-examination since the statements were corroborative and not central to the decision. The petitioner failed to demonstrate how the denial of cross-examination caused prejudice. The Court emphasized that writ jurisdiction cannot be used to bypass statutory appellate remedies, especially when factual disputes are involved and directed the petitioner to file an appeal under section 107 of the CGST Act, 2017 within 30 days, directing to the respondent that it be considered on merits without limitation issues.

Simultaneous levy of entertainment tax and service tax on broadcasting services[31]

A batch of petitioners had filed writ petitions before various high courts challenging the levy of entertainment tax on Direct to Home (DTH) services by states in the pre-GST era. The current judgement arises from Special Leave Petitions (SLPs) filed by the aggrieved parties against the outcome of such writ petitions·

The petitioner's contentions were:

1) **Double Taxation**: Imposing both service tax and entertainment tax on DTH services leads to unconstitutional double taxation. The Union Government is levying service tax on the provision of broadcasting services under Entry 97 - List I of the Seventh Schedule to the Constitution (Entry 97), and the same activity is being sought to be subjected to entertainment tax under Entry 62 - List II of the Seventh Schedule to the Constitution (Entry 62).

[28] *Vallabh Textiles* [2025-VIL-377-DEL]
[29] 2020-VIL-589-TEL-CU
[30] 1984 (1) SCC 43

[31] *Asianet Satellite Communications Ltd* [2025-VIL-39-SC]

Contd….

Indirect Tax

2) **Legislative Competence**: The state legislatures lack the competence to impose an entertainment tax on DTH services, as broadcasting falls under the Union List. DTH services are broadcasting services, which fall under Entry 31 - List I of the Seventh Schedule to the Constitution (Entry 31); thus, only the Union can legislate or tax them. The state cannot treat such services as entertainment services and seek to levy tax under Entry 62.

3) **Aspect Theory**: They contended that the aspect theory should not apply, as the DTH service is a single transaction that should be taxed once.

4) **Public vs. Private Entertainment**: DTH services constitute private entertainment and should not be subjected to entertainment tax. It was contended that Entry 62 only covers public entertainment and does not include private viewing. It was also contended that taxing private entertainment (like DTH at home) infringed the right to privacy and freedom of speech.

The revenue's contentions were

1) **Separate Taxing Power:** Entry 31, being a regulatory entry, cannot narrow down the scope of Entry 62, which is a specific taxation entry. Also, Entry 97, being a residuary entry used for the levy of service tax, cannot curtail the scope of a specific taxing Entry 62.

2) **Wide Interpretation of Entries:** Entry 62 must be given the widest possible interpretation, allowing states to tax DTH services as entertainment and assigning a restrictive meaning to entertainment would be myopic.

3) **Aspect Theory Application:** The same transaction can be taxed differently by the Union and State governments based on different aspects i.e. service vs. entertainment. They emphasized that service tax and entertainment tax can co-exist and can be harmonized as they concern different aspects.

4) **Public vs. Private Entertainment:** The Constitution does not restrict the entertainment tax to public entertainment only, and must be given a broad, liberal and expansive interpretation.

The Hon'ble Supreme Court ruled that:

1) **No Overlap in Taxing Powers:** The Lists in the Seventh Schedule separately enumerate regulatory and taxation powers. The power to regulate matters mentioned in a specific entry cannot be read to include taxation powers in the same matter. Therefore, the power of the Union to regulate broadcasting services under Entry 31 does not jeopardize the State's power to levy tax on entertainment under Entry 62 (Para 8.2.10 to Para 8.2.17)

2) **Aspect Theory Validity:** The same transaction (DTH service) can have multiple aspects —broadcasting (service) and entertainment (content) - and both can be taxed separately by the Union and the States, respectively. As a result, one aspect of an activity, say broadcasting service, can be amenable to service tax, while the other aspect of the same activity, namely, providing (of) entertainment to television viewers (as that is the object of broadcasting) can be amenable to 'luxury tax' under Entry 62. Therefore, there can be two taxes levied on different aspects of the same transaction. (Para 11.18 and 17.27)

3) **Broad Interpretation of Entertainment:** While interpreting expressions in the Lists of the Seventh Schedule, a wide meaning should be given to the entries. With technological advancement, 'entertainments' used in Entry 62

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must be interpreted broadly to include content accessed in private spaces, such as homes, through television or digital devices, and not confined to traditional or public forms. (Para 10.13)

Therefore, the Supreme Court upheld the levy of entertainment tax by applying the 'aspect theory' and held that the aspect of entertainment received by the viewers using set top boxes is separate from the aspect of broadcasting services, which is concerned with transmitting signals of the content to the subscribers, and both can be separately taxed

Interest on delayed filing of GSTR-3B cannot be demanded without issuance of SCN if the corresponding tax was paid in returns[32]

The petitioner had reported the supplies in GSTR-1 and paid the tax on them through GSTR-3B, however, the GSTR-3B was filed late. The petitioner received a scrutiny notice (ASMT-10) for non-payment of interest on delayed filing of such GSTR-3B. In response to the ASMT-10, the petitioner admitted such interest liability. Immediately after such admission, without issuance of any SCN, the petitioner was issued an order along with DRC-07 confirming demand of such interest. Aggrieved by such order, the petitioner approached the Calcutta High Court.

The respondent's contention was that no SCN is required to be issued for recovery of self-assessed tax or interest on such self-assessed tax in terms of section 75(12) of the CGST Act, 2017. The petitioner himself admitted the interest liability, so there was no irregularity on the part of the respondents to determine the liability *suo-motu* and to recover the same under section 75(12) of the CGST Act, 2017.

Against this, the petitioner contended that the expression 'self-assessed tax' as per explanation to section 75(12) of the CGST Act, 2017 would only include the tax payable on outward supplies as per GSTR-1, but not included in GSTR-3B. Once, tax is included in GSTR-3B, the same cannot be treated as 'self-assessed tax' to be recovered under section 75(12) of the CGST Act, 2017.

After analyzing various provisions under GST including section 75(12) of the CGST Act, 2017, the Calcutta High Court observed that this is not the case where the self-assessed tax furnished in GSTR-1 has not been included in GSTR-3B. Once, the self-assessed tax as per GSTR-1 is included in GSTR-3B, section 75(12) of the CGST Act, 2017 cannot be invoked as is clear from explanation to that section. In terms of sub-section (3) to section 61 of the CGST Act, 2017 [dealing with scrutiny of returns], if the explanation furnished by the petitioner in response to ASMT-10 is found unacceptable, the officer is required to initiate appropriate action under sections 65/66/67/73/74 of the CGST Act, 2017 and not under section 75(12) of the CGST Act, 2017.

Accordingly, the court set aside the order and quashed the demand. However, because the petitioner had already admitted the liability, the court ordered the petitioner to treat the order as a SCN and furnish a reply to the same.

Refund of unutilized ITC on closure of business allowed[33]

The Sikkim High Court allowed refund of unutilized ITC on closure of business. We have already covered this in our flash news, link to which is provided below:

Please click here for detailed flash news

[32] *Kuddus Ali, Proprietor of Kuddus Ali Construction* [TS-388-HC(CAL)-2025-GST]

[33] *SICPA India Private Limited and Another* [WP (C) No. 54 of 2023] (Sikkim High Court)

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Indirect Tax

Relevant date for refund of excess tax arising out of settlement is the date of settlement agreement[34]

The petitioner, Delhi Metro, had entered into a rental agreement with M/s Kamal Sponge Steel and Power Limited (KSSPL). Disputes arose between Delhi Metro and KSSPL. Rental agreement required parties to resolve disputes by referring to a conciliator, who would make a settlement agreement which shall be final and binding on both the parties.

The various relevant dates involved in this case are captured in the table below:

Date	Event
Jul 2017 to Mar 2019	Period of dispute
24 Jul 2020	Meeting with conciliator where KSSPL and Delhi Metro agree to reduce rent by 40%
8 Sep 2020	MD Delhi Metro approves minutes of 24 July meeting
9 Oct 2020	Conciliation agreement entered into between the parties
17 Jan 2021 and 21 Mar 2021	As rent was reduced, petitioner filed refund claims for excess GST paid earlier during 2017-2019
3 Mar 2021 and 18 May 2021	Refund rejection by adjudicating authority as filed beyond two years after the relevant date i.e. date of payment of tax (Jul 2017-to Mar 2019)
<<No date mentioned>>	Petitioner filed appeal before Commissioner (Appeals) against rejection of refund
3 Aug 2021	Settlement agreement duly executed under section 73 of the Arbitration & Conciliation Act, 1996 (A&C Act)
1 Feb 2022	Refund rejection by Commissioner (Appeals)

The petitioner contended that in the absence of conciliation, it was not possible for Delhi Metro to ascertain the exact amount payable by KSSPL. Thus, the relevant date for refund would be as per clause (d) to explanation 2 of section 54 of the CGST Act, 2017 i.e. the date of the conciliation agreement (9 Oct 2020).

Against this, the respondent contended that the relevant date for refund would be as per clause (h) to explanation 2 of section 54 of the CGST Act, 2017 i.e. the date of payment. The petitioner had two opportunities to adjust the amount of excess tax paid:

a) By issuing credit note under section 34 of the CGST Act, 2017;

b) By claiming refund within 2 years from date of payment of tax as per clause (h) to explanation 2 of section 54 of the CGST Act, 2017.

The petitioner neither issued the credit note within the time limit of section 34 of the CGST Act, 2017 nor claimed a refund within the time limit as per section 54 of the CGST Act, 2017.

In this case, the Delhi High Court ruled that in situations where the value of the subject matter contract is disputed, the exact extent of tax payable is not ascertainable at the initial stages. In such circumstances, the tax payments to the Department are made in advance by the concerned assessee, and it is only when the dispute is subsequently resolved/settled that the exact extent of tax payable/refundable becomes ascertainable.

In terms of section 73 of the A&C Act, if the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. Upon signing, such agreement shall be final and binding on the parties. As per section 74 of the A&C Act, the settlement agreement has the same status as that of an arbitral award. And in accordance with section 36 of the A&C Act, if the time for making an application for setting aside an arbitral award has expired, the arbitral award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court.

[34] *Delhi Metro Rail Corporation Limited* [2025-VIL-524-DEL]

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Accordingly, on a conjoint reading of sections 73, 74 and 36 of the A&C Act, a conciliation agreement is equivalent to a decree of the Court and thus, the date of finalization of the settlement agreement shall be the deemed date of communication of the judgment/decree under explanation 2(d) to section 54 of the CGST Act, 2017. Thus, the refund applications could be filed within 2 years from 3 August 2021 or even 9 October 2020. Therefore, the refund applications filed in the instant case are not time-barred.

Consequently, impugned orders rejecting the refund are set aside.

b. Circulars

Document Identification Number (DIN) not required where verifiable Reference No. (RFN) is generated through GSTIN[35]

The Central Board of Indirect Taxes and Customs (CBIC) had earlier issued circular 122/41/2019-GST dated 5 November 2019 read with Circular 128/47/2019-GST dated 23 December 2019 requiring DIN to be generated and quoted on all communications sent to taxpayers/other concerned persons by any office of CBIC.

It is observed that the documents generated through GSTIN bear RFN which is verifiable at **Goods & Services Tax (GST) | User Dashboard.** On verification, it gives requisite details about the document (Date of RFN generation, Date of issuing the Document, Module, Type of Communication and Name of the Office issuing the Document).

This circular, thus, clarified that quoting of DIN is not required for communications issued through GSTIN having verifiable RFN, and such communication bearing RFN is to be treated as a valid communication.

[35] Circular No. 249/06/2025-GST dated 9 June 2025

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Foreign Exchange Management Act

The Reserve Bank of India (RBI) relaxes reporting of partly paid units issued by Investment Vehicle

The RBI *vide* A.P DIR circular[36] amends reporting requirements for partly paid units issued by investment vehicles to non-resident investors. The changes are as below:

- Investment vehicles that have issued partly paid units to persons resident outside India prior to 23 May 2025 can now report such issuance on FIRMS portal through Form InVI within 180 days from the date of aforementioned circular and no late submission fees will be applicable for such filings.
- However, partly paid units issued on or after 23 May 2025, must be reported in Form InVI within 30 days from the date of issue.

The RBI eases shipping vessel import norms

The RBI vide A.P DIR circular[37] eases shipping vessel import norms, thus allowing importers to make advance payment up to USD 50 million without furnishing a bank guarantee or an unconditional, irrevocable Standby Letter of Credit (SBLC) subject to the conditions mentioned in Imports Master Direction.

[36] A.P. (DIR Series) Circular No. 06/2025-26/40 dated 23 May 2025
[37] A.P. (DIR Series) Circular No. 07/2025-26/55 dated 13 June 2025

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Unit No. 501, 5th Floor,
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S Plot No. DC-II, Lal Kothi District
Shopping Center, Tonk Road,
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Koregaon Park Annex, Mundhwa
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