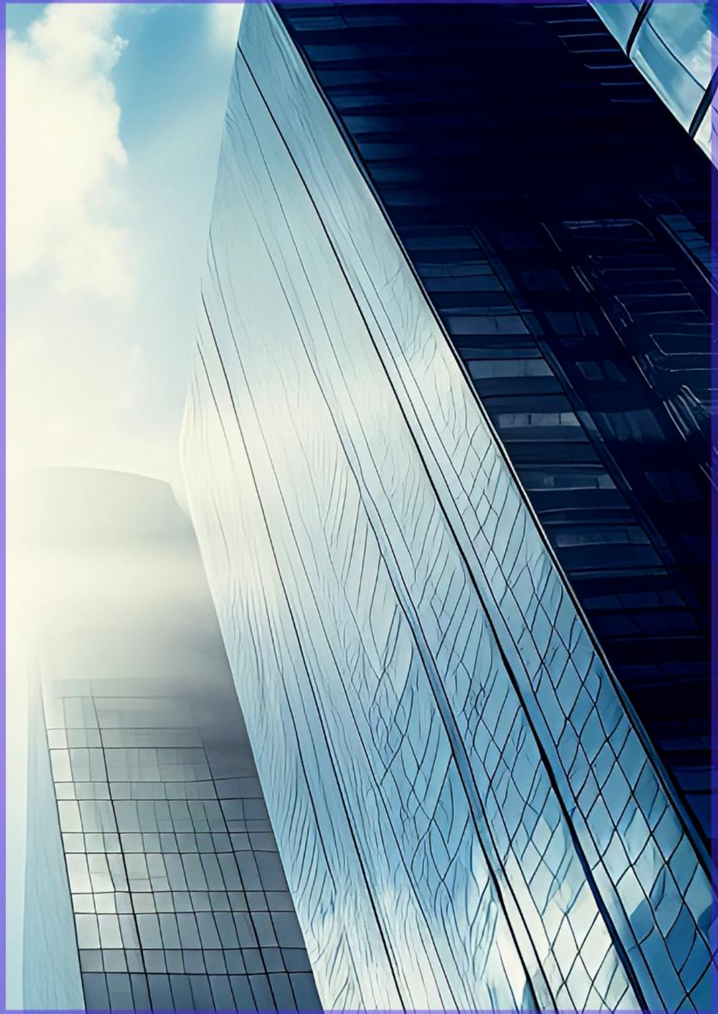
India Tax Konnect



November 2025

KPMG. Make the Difference.

a. Decisions – International tax

Foreign Tax Credit cannot be denied merely because income is exempt in India: Delhi Tribunal[1]

Facts of the case[2]

During the year under consideration, the taxpayer, an Indian company, earned income from sale of software in Japan, on which tax was deducted at source in Japan in accordance with its domestic tax laws.

The taxpayer claimed exemption under section 10A of the Income-tax Act, 1961 (the Act) in respect of the income earned by its STPI unit[3] and reported business loss from non-STPI units. It claimed foreign tax credit (FTC) for the tax deducted at source in Japan.

The Revenue, relying on Tribunal's ruling in the case of *Bank of India[4]*, rejected taxpayer's claim and held that since the corresponding income was either exempt under section 10A or set off by business loss, the taxpayer had no tax liability in India against which FTC could be granted.

Relevant provisions

Article 23(2)(a) of the Indian-Japan tax treaty (Japan Treaty), dealing with avoidance of double taxation in India, provides that where an Indian resident derives income, which may be taxed in Japan under the Japan Treaty, India will allow deduction from the tax on the income equal to the amount of tax paid in Japan. Such deduction shall not exceed that part of the income tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Japan.

Taxpayer's contentions

The Japan Treaty allows FTC in respect of such income which is taxed in Japan and to the extent to which taxes have been paid in Japan.

The issue with regard to claiming FTC has been settled by the Karnataka High Court in the case of *Wipro[5]*, wherein the Court held that FTC was allowable even when income was exempt under section 10A.

For allowance of FTC, the key criterion is whether the income is chargeable to tax[6] and includible in the total income[7] under the Act. The fact that no tax has been paid due to exemptions, deductions, or losses is not relevant for deciding allowability of FTC. There are various judicial precedents wherein FTC has been granted even in cases of returned loss.[8]

The Revenue's reliance on *Bank of India* ruling was misplaced since that decision was based on interpretation of the expression "subject to tax" used in the relevant article[9] of the India-UK tax treaty whereas the Japan Treaty does not contain such expression.

Further, in the case of *Wipro*, the Court compared the relevant articles under India-US tax treaty with the India-Canada tax treaty (similar to the India-UK tax treaty). It allowed foreign tax credit under the India-US tax treaty (similar to Japan Treaty) but denied the same under the India-Canada tax treaty because of the phrase "subject to tax" used in the latter.

1 ITA No. 585/DEL/2021 pertaining to financial year 2002-03.
2 Other grounds of appeal have not been covered in this note.
3 Section 10A provides a tax holiday for certain undertakings located in Software Technology Park of India (STPI) and engaged in the export of articles, things, or computer software.
4 *Bank of India* v. *ACIT* [2021] 125 taxmann.com 155 (Mumbai Tribunal)

5 *Wipro Ltd.* v. *DCIT* [2016] 382 ITR 179 (Karnataka)
6 Section 4
7 Section 5
8 *Sasken Technologies Ltd.* v. *JCIT* [2022] 140 taxmann.com 241 (Bangalore Tribunal); *Uniparts India Ltd.* v. *CIT* [2018] 96 taxmann.com 397 (Delhi Tribunal); *DCIT* v. *Ramco Systems Ltd*. [2023] 156 taxmann.com 640 (Chennai Tribunal)
9 Article 24 pertaining to Elimination of Double Taxation

Contd….

Direct Tax

Revenue's contentions

The Indian income-tax attributable to the Japanese income was *nil* because the income was exempt under the Act and/ or neutralised by business losses. As per the Japan Treaty, tax credit is allowed "as a deduction from the tax on the income" and "shall not exceed" the tax attributable to that income – thus, no credit can be granted where there is no tax payable in India.

Placed reliance on *Bank of India* ruling to emphasise that granting credit when no Indian tax liability exists would effectively amount to the Indian exchequer subsidising foreign governments and would lead to a situation of double non-taxation. FTC is strictly a credit mechanism against Indian tax liability and cannot be converted into a refund mechanism.

The OECD Commentary[10] and the UN Commentary provide that FTC under the credit method is limited to the amount of domestic tax payable.

Distinguished *Wipro* ruling on the following grounds:

- In the *Wipro* ruling, the taxpayer had substantial Indian tax liability on non-exempt income, and the FTC claimed was only a small part of the overall tax paid in India. Thus, the credit was restricted to the amount of Indian tax payable. In the instant case, there was no Indian tax liability against which the foreign taxes paid in Japan could be credited.
- The *Wipro* ruling predates the Supreme Court decision in the case of *Yokogawa India Ltd.*[11] where it was held that income exempt under section 10A is to be excluded at the stage of computing total income, making such income effectively non-chargeable for that year.

[10] On Article 23 (Paragraphs 32-34)
[11] *CIT* v. *Yokogawa India Ltd*. [2017] 391 ITR 274 (SC)

Tribunal's decision

Deciding the matter in favour of the taxpayer, the Tribunal followed the binding decision of the jurisdictional Delhi High Court in *HCL Comnet*[12] (which followed the Wipro decision) and held that that the taxpayer should be granted complete credit of taxes paid by it in Japan on export revenues from sale of software. Such FTC should not be restricted merely because the Indian tax liability is *nil* on account of business losses or section 10A exemption under the Act.

Replacement of ship parts is a work contract, not technical services: Delhi Tribunal[13]

Facts of the case

An Indian company made payments to a Norway-based company (FCo) for the replacement of defective parts of its ship and related installation activities, without deducting tax at source (TDS). FCo's personnel were present in India for an aggregate period of 29 days to carry out the replacement/ installation work.

The Revenue alleged that these payments were in the nature of fees for technical services (FTS) under the Act[14], read with the India-Norway tax treaty[15] (Norway Treaty), and were, therefore, subject to TDS.

Relevant provisions

As per section 9(1)(vii) of the Act, FTS means any consideration for rendering of any managerial, technical, or consultancy services, including the provision of

[12] *HCL Comnet Systems & Services Ltd* v. *DCIT* (ITA 546/2022)
[13] *Hal Offshore Ltd*. v. *ITO* (ITA No. 2084/DEL/2023)
[14] Section 9(1)(vii)
[15] Article 12(3)(b)

Contd….

services of technical or other personnel. The FTS under Article 12(3)(b) of the Norway Treaty is similarly worded as under the Act.

Article 5(3) of the Norway Treaty provides that an installation project or supervisory activities in connection therewith will constitute a permanent establishment (PE) if such project or activities continue for a period of more than three months together with other such projects or activities, if any (installation PE).

Indian Company's contentions

Routine repairs and maintenance services do not constitute FTS.[16]

The contract was primarily for sale of spare parts and replacement of defective parts through FCo's personnel, which was incidental to the supply of spare parts. Thus, the entire contract should be characterised as work contract and the payments to FCo should be construed as business profits (not FTS).

FCo's personnel stayed in India for less than three months, so no installation PE was constituted in India under the Norway Treaty. In the absence of Indian PE, the payments to FCo were not taxable as business profits in India and hence, tax was not required to be deducted at source.

Tribunal's decision

Concurring with the Indian Company's arguments, the Tribunal held that the payments made to FCo were not in the nature of FTS and hence, no TDS obligation thereon.

The contract was primarily for the sale of spare parts, with incidental replacements, and accordingly, the entire contract should be treated as a works contract.

Only the provision or transfer of technical knowledge or skill qualifies as technical services - routine repairs and refurbishments do not constitute technical services as these are merely repair works and not technical services.[17]

In case the activities performed by FCo are considered as installation contract, installation PE was not constituted due to short duration of stay in India.

b. Decisions – Domestic tax

Lumpsum consideration for sale of business is capital receipt; Artificial fragmentation of the transaction not allowed: Telangana High Court[18]

Facts of the case

The taxpayer was engaged in bottling and marketing beverages for an Indian company (ICo). As per the Licensing Agreement between the two parties, the taxpayer obtained concentrate from ICo, bottled the product, and sold it under ICo's brand name through its own marketing and distribution network.

In the financial year (FY) 1997-98, the taxpayer entered into an agreement to sell its beverage business to ICo as a going concern, including assets, liabilities, marketing network, goodwill, and included a non-compete covenant restraining the taxpayer from engaging in similar business activities.

---

16 *Lufthansa Cargo India Pvt. Ltd*. v. *DCIT* [2004] 91 ITD 133 (Delhi); *Hindustan Aeronautics Ltd.* v. *State of* Karnataka [1984] 55 STC 314 (SC); *BHEL–GE Gas Turbine Services Pvt. Ltd.* v. *ADIT* [2012] 24 taxmann.com 25 (Hyderabad Tribunal)

17 *BHEL–GE Gas Turbine Services Pvt. Ltd* (supra)

18 *CIT* v. *Spectra Shares and Scrips Limited* (ITA No. 412 of 2010)

Contd….

The taxpayer contended that as the entire business was sold for a lumpsum price and no individual values were assigned to separate assets, the consideration received from ICo was a capital receipt, not taxable under the Act.

However, the Revenue rejected the taxpayer's claim, allocated values to individual assets and non-compete fee, and treated portions of the consideration as capital gains (short-term and long-term) and as revenue receipts under section 28(ii) of the Act.

Relevant provisions of the Act

Section 28(ii)(c) provides that any compensation received by a person at or in connection with the termination of the agency arrangement is taxable as business income.

Section 28(ii)(e) dealing with the taxability of consideration received for termination of business contract and the provisions relating to taxability of slump sale were introduced in the Act in the subsequent years and thus, were not relevant for the year under consideration.

Revenue's contentions

Since the purchaser (i.e., ICo) had valued individual assets for the purpose of determining the total purchase price, the transaction cannot be characterised as slump sale, which requires transfer of a business undertaking without values being assigned to individual assets and liabilities. Consequently, the entire consideration should be bifurcated based on such valuations.

The taxpayer functioned essentially as an agent or distributor. Compensation received for the loss of this arrangement was merely compensation for loss of future income streams rather than compensation for loss of a capital asset or a source of income. Accordingly, part of the consideration was taxable as revenue receipt under the Act.

Since the taxpayer was entirely dependent on ICo for the concentrate and operated under ICo's brand, any goodwill associated with the business belonged to the principal company (i.e. ICo) rather than the taxpayer. Thus, no amount could legitimately be attributed to goodwill belonging to the taxpayer.

The taxpayer, being merely a local bottler and distributor, could not effectively compete with ICo. Hence, the amount attributed to non-compete arrangements should not be treated as a capital receipt.

Taxpayer's contentions

While the transaction falls withing the definition of slump sale under the Act, however slump sale provisions were not applicable to the year under consideration.

The Licensing Agreement was entered into on a principal-to-principal basis. In the absence of agency relationship, the consideration was not taxable as revenue receipt under section 28(ii)(c) of the Act.

The transaction constituted a complete transfer of the business undertaking, resulting in the complete extinguishment of its source of income. Accordingly, the consideration received from ICo was capital in nature, not revenue.

Contd….

High Court's decision

The High Court decided the matter in favour of the taxpayer and upheld that the consideration received for transfer of entire business undertaking was capital receipt and not taxable as revenue receipt. Key observations included:

All transactions encompassed by section 45 relating to capital gains must fall under the governance of its computation provisions. A transaction to which those provisions cannot be applied must be regarded as never intended to be the subject of the charge under the said section.[19]

Given that the consideration for the slump sale was not taxable under section 45 of the Act for the relevant year, the Revenue cannot artificially fragment the transaction to tax portions thereof under separate heads of income.[20]

The Licensing Agreement between the taxpayer and ICo was on a principal-to-principal basis, and the taxpayer did not act as an agent as it only purchased the concentrate from ICo and bore the business-related risks and costs. Accordingly, the transaction is not covered by section 28(ii)(c) of the Act.

Since the sale of business undertaking resulted in complete loss of taxpayer's source of income, and restricted its ability to undertake a similar business, the consideration was capital in nature.[21]

[19] *CIT* v. *B.C. Srinivasa Setty* [1981] 128 ITR 294 (SC)
[20] *CIT* v. *D.P. Sandu Bros. Chembur (P.) Ltd.* [2005] 273 ITR 1 (SC)
[21] *Kettlewell Bullen & Co. Ltd.* v. *CIT* [1964] 53 ITR 261 (SC)

Long-term capital gains taxable at 22 per cent (instead of 20 per cent) if the taxpayer opts for the concessional tax regime: Delhi Tribunal[22]

Facts of the case

The taxpayer, a domestic company, opted for the concessional tax regime under the Act[23] for the FY 2020-21. The total income, except for long-term capital gains (LTCG), was offered to tax at the rate of 22 per cent. LTCG was offered to tax at the rate of 20 per cent as per the specific provisions under the Act.[24]

The Revenue taxed the LTCG at the rate of 22 per cent (instead of 20 per cent) contending that since the taxpayer opted for concessional tax regime, the applicable rate of tax for total income (including LTCG) was 22 per cent.

Relevant provisions

Chapter XII of the Act deals with determination of tax in special cases/ income categories, including sections 112 and 115BAA.

Section 112 provides that capital gains arising from transfer of long-term capital asset will be taxable at the rate of 20 per cent.

Section 115BAA provides that a domestic company can choose to have its income-tax liability computed at the lower rate of 22 per cent (as against the normal corporate tax rate of 30 per cent), subject to fulfilment of the prescribed conditions. The section overrides the Act but is subject to the other provisions of Chapter XII (which includes section 112).

[22] *Maharishi Education Corporation P. Ltd*. v. *ITO* (ITA No. 2639/Del/2025)
[23] Section 115BAA
[24] Section 112

Contd.…

Tribunal's decision

The Tribunal held that since the taxpayer opted to be taxed under the concessional tax regime, the rate of tax applicable in respect of total income—including LTCG — is 22 per cent.

The order does not provide a detailed explanation for the above conclusion.

Seniority/ designation abroad does not affect employment status in India for the purposes of residency exception: Chennai Tribunal[25]

Facts of the case

The taxpayer, an individual, was working with a US-based company (USCo) since 2011 as its 'President', with defined remuneration and responsibilities.

His remuneration details were duly disclosed in USCo's statutory filings in USA and in his US tax returns. He was granted employment visa by the US authorities, naming USCo as his employer.

In his India tax returns filed for the FYs 2014-15 to 2017-18, the taxpayer claimed non-resident status under the Act[26] since he left India in 2011 for employment purposes and had stayed in India for less than 182 days during each of these years.

However, the Revenue alleged that the taxpayer was a resident for the purposes of the Act and sought to tax his global income in India.

Relevant provisions of the Act

Section 6(1) provides that an individual is treated as resident in India for a FY if he is present in India for at least 182 days during that year, or for at least 60 days in that year and 365 days or more aggregating in the four preceding years (residency conditions).

Explanation 1(a) to section 6(1) provides that an Indian citizen who leaves India in any FY for the purposes of employment outside India will not be treated as resident in India unless he stays in India for 182 days or more during that year (employment exception).

Revenue's contentions

The taxpayer was physically present in India for over 60 days in each relevant year and 365 days in the preceding four years, thereby satisfying the residency conditions.

The taxpayer was not an employee who had left India for employment abroad. He was holding a key managerial position in USCo and had complete control over its operations. He was an honorary member and the President of USCo, and his family members were managing the affairs of USCo and exercised full control over its activities. Therefore, the employment exception provided under the Act was not applicable in the instant case.

[25] *ACIT v. Paul Dhinakaran* (Multiple appeals and cross-appeals - ITA No. 1562/ Chny/ 2025 considered as lead case)
[26] Section 6(1) read with Explanation 1(a) thereto

Contd.…

Tribunal's decision

The Tribunal upheld that the taxpayer was a non-resident for the purposes of the Act and accordingly, his global income was not taxable in India. Key observations included:

The expression "employment" used in the Act does not discriminate based on designation or seniority. Whether the individual serves in a junior capacity or as a senior executive does not matter if the individual is under a contract of service. Taxpayer's role as 'President' does not negate the character of employment.

Once the residency conditions are not met, the status of non-resident cannot be disturbed merely on assumptions regarding control or family association.

Incorporation documents of USCo, employment letter issued by USCo to the taxpayer, statutory filings by USCo, tax returns filed by the taxpayer in USA, and his visa documents collectively established that the taxpayer left India in 2011 for the purpose of employment and continued such employment during the relevant years.

Settlement for civil suit withdrawal not a taxable transfer in the absence of legally enforceable right vested in the property: Mumbai Tribunal[27]

Facts of the case

The taxpayer was a non-resident individual. Following her grandmother's death, executors and trustees were designated in accordance with the will to administer the grandmother's estate. Among the properties bequeathed was an immovable property in India (the impugned property).

Over time, disputes arose amongst the descendants regarding interpretation of the will and entitlement to various assets. A civil suit was filed by the taxpayer in the Bombay High Court claiming her right to inheritance in the impugned property.

While the suit was pending adjudication, the trustees/ executors of the will sought to sell the impugned property to an Indian company (the Purchaser). During negotiations with the trustees, the Purchaser required a clear, encumbrance-free title to the said property. It approached the taxpayer for unconditional withdrawal of the civil suit and paid money by way of settlement.

The deed of conveyance for the sale of the impugned property was executed between the trustees and the Purchaser. The taxpayer was not a party to the sale deed.

The taxpayer argued that the Chy sum received from the Purchaser was not in the nature of income and hence, not taxable under the Act.

However, the Revenue treated the said receipt as taxable capital gains holding that withdrawal of the suit amounted to extinguishment of rights in a capital asset.[28]

The core issue before the Tribunal was whether sum received for withdrawal of civil suit constituted capital gains, or whether it was a capital receipt not chargeable to tax under the Act.[29]

[27] *Shireen J. Dastur* v. *ITO* (International Taxation) (ITA No. 2204/ Mum/ 2022)

[28] Section 45 read with section 2(14) and 2(47)

[29] The alternate argument relating to taxability of compensation as income from other sources was not pressed upon by the Revenue before the Tribunal

Contd.…

Relevant provisions of the Act

Section 2(14) provides definition of the term "capital asset" which includes property of any kind held by taxpayer, whether or not connected with business or profession.

Section 2(47) provides that "transfer", in relation to a capital asset, includes the sale, exchange or relinquishment of the asset; or the extinguishment of any rights therein.

Taxpayer's contentions

There was no transfer or extinguishment of capital asset - what was extinguished was the right to claim a share in the estate of the deceased grandmother.

Even assuming for the sake of argument that there was a transfer, the computation mechanism under section 48 of the Act failed because there was no cost of acquisition for the alleged asset.[30]

Revenue's contentions

The taxpayer was one of the right holders in the impugned property. As the said property went into sale by the trustees/ executors of the will, the taxpayer was in receipt of money directly from the Purchaser for withdrawal of the civil suit.

The settlement between the taxpayer and the Purchaser was covered within the meaning of "transfer" under the Act as it arose out of relinquishment of rights in the capital asset (i.e. the immovable property).

The sum received by the taxpayer was part of the consideration paid by the Purchaser for the purchase of immovable property.

Tribunal's decision

The Tribunal ruled in favour of the taxpayer and held that the settlement for civil suit withdrawal was not transfer under the Act and the sum received from the Purchaser was not taxable as capital gains. Key observations included:

Since the chance of an heir succeeding to the estate or a mere right to sue cannot be transferred, the right to claim share in the estate of the deceased grandmother given up by the taxpayer in lieu of consideration, was not a property (capital asset) for the purposes of the Act.

Under the Act, a "transfer" is constituted where there is extinguishment of any rights in the capital asset. In the instant case, the taxpayer would have acquired right in the impugned property only if the court had adjudicated the civil suit in her favour. Since the civil suit was withdrawn before the adjudication, there was no legally enforceable right over the impugned property available to the taxpayer, which could be extinguished. Hence, there was no transfer of a capital asset by the taxpayer, except for acceptance of the Purchaser's offer to withdraw her civil suit to enable the Purchaser to acquire a clear title to the property.

Cited jurisdictional Bombay High Court decision in the case of *Abbasbhoy A. Dehgamwalla*[31], wherein it was held that a mere right to sue cannot be transferred and does not constitute a capital asset. The court also observed that for the purpose of invoking chargeability for capital gains arising from capital asset, the right to capital asset must fall within the expression "property of any kind" used in the definition of "capital asset" under the Act.

[30] *CIT* v. *Srinivasa Setty* [1981] 128 ITR 294 (SC)

[31] *CIT* v. *Abbasbhoy A. Dehgamwalla* [1992] 195 ITR 28 (Bombay)

Supreme Court cases

ITC cannot be denied to purchaser owing to seller's default in depositing the tax[32]

The taxpayer purchased goods from registered selling dealers and paid value-added tax (VAT) as per invoices. The seller dealers, although registered at the time of transaction, did not deposit the collected VAT with the government. Subsequently, their registrations were cancelled. The department denied input tax credit (ITC) to the purchasing dealer under section 9(2)(g) of the Delhi VAT Act, 2004 (DVAT Act), citing non-deposit of tax by the seller.

The department contended that ITC cannot be allowed if the selling dealer fails to deposit the tax with the government. Against this, the taxpayer's contention was that they acted in good faith, paid tax to registered dealers, and had valid invoices. Denial of ITC would be unjust.

The Supreme Court upheld the Delhi High Court's decision in favour of the taxpayer. The High Court had relied on the precedent set in *Quest Merchandising India Pvt. Ltd.*[33], wherein the High Court had read down section 9(2)(g) of the DVAT Act to exclude *bona fide* purchasers from its ambit. The Court held that:

- If the purchasing dealer has valid invoices and the selling dealer was registered at the time of transaction, ITC cannot be denied.
- Remedy lies in proceeding against the defaulting selling dealer, not punishing the *bona fide* purchaser.
- Only in cases of collusion between the buyer and the seller can ITC be denied under section 40A of DVAT Act.

Accordingly, the Supreme Court dismissed the appeal filed by the Department.

SCN issued basis scrutiny of returns quashed when ASMT-10 not issued[34]

The petitioner is engaged in manufacturing and selling of food products. The petitioner received a show-cause notice (SCN) under section 73(1) of the CGST Act, 2017 on alleging wrongful availment of ITC for FY 2017-18. The alleged discrepancy was pursuant to scrutiny of returns in Form GSTR-9C and due to non-furnishing of details in Table 14 of Form GSTR-9C.

The petitioner contended that Table 14 of GSTR-9C was optional for the relevant period as per multiple notifications issued by the Central Board of Indirect Taxes and Customs (CBIC), hence non-furnishing the table cannot be termed a discrepancy; that Section 61 of the CGST Act, 2017 read with rule 99 of the CGST Rules, 2017 mandates issuance of Form GST ASMT-10 before invoking section 73 of the CGST Act, 2017; that the SCN was issued without jurisdiction, violating the statutory procedure in view of the Rajasthan High Court judgment in *Goverdhandham Estate Pvt. Ltd*[35]., affirmed by the Supreme Court, which held that SCNs issued without following procedure under section 61 of the CGST Act, 2017 read with rule 99 of the CGST Rules, 2017 as invalid.

In response to the submissions made by the respondent's counsel suggesting that the matter could be remanded to the Department for initiating the issuance of Form GST ASMT-10, the petitioner submitted that the limitation period for issuing the SCN had already expired on 30 September 2023. Furthermore, the interim stay granted subsequently on 13 December 2023 cannot be construed to extend or revive the limitation period.

[32] *Shanti Kiran India (P) Ltd* [(2025) 35 Centax 222 (S.C.)]
[33] 2018 (10) G.S.T.L. 182 (Del.)
[34] *Pepsico India Holdings Pvt. Ltd.* [WP(C)/6960/2023]
[35] 12025 26 Centax 400 Raj.

Contd….

The Revenue contended that Table 14 of GSTR-9C was mandatory, and its non-filing led to discrepancy. Section 73(1) of the CGST Act, 2017 was validly invoked, and that Form GST ASMT-10 was not necessary to be issued. The petitioner was given five opportunities for personal hearing, but he did not respond. Statutory remedy of replying to the SCN should be availed before approaching the High Court.

The High Court held that section 61 of the CGST Act, 2017 and rule 99 of the CGST Rules, 2017 prescribe a mandatory procedure before issuing SCN under section 73 of the CGST Act, 2017 in case of scrutiny of returns. Since no Form GST ASMT-10 was issued, hence the SCN was without jurisdiction. Notifications from CBIC clearly made Table 14 optional for FY 2017-18 to 2022-23. The Rajasthan High Court judgment was found applicable and having been affirmed by the Supreme Court, binding. Accordingly, the High Court concluded that the SCN was ultra vires, issued without authority of law, and barred by limitation.

Therefore, the Court allowed the writ petition and set aside the impugned SCN.

Where refund allowed at appellate stage, interest applicable from date of filing original refund application[36]

The series of events involved in this case are captured in the table below:

Event	Date
Petitioner filed a refund application	23 April 2020
Adjudicating authority rejected the refund	14 Sept 2020
Petitioner filed appeal before appellate authority	14 Dec 2020
Appellate authority allowed the refund	27 Oct 2023
Petitioner re-filed the refund	28 Nov 2023
Adjudicating authority sanctioned the refund	15 Jan 2024
Refund amount got credited in the bank account	5 Feb 2024

[36] *Altisource Business Solutions India Pvt Ltd* [2025-VIL-1041-BOM]

No interest was paid to the petitioner on sanction of the refund as refund was sanctioned on 15 January 2024 i.e. within 60 days of filing the second refund application (28 November 2023). The petitioner, thus, filed a writ before the Bombay High Court.

The petitioner's contention was that there was a delay of 1232 days beyond the expiry of 60 days from the date of the original refund application dated 23 April 2020. Therefore, interest at the rate of six per cent per annum provided under section 56 of the CGST Act, 2017 should have been paid along with the refund amount.

Against this, the revenue contended that the refund was allowed only by the order of the appellate authority, subsequent to which, the petitioner re-filed the refund on 28 November 2023. The refund was sanctioned on 15 January 2024 and credited to the bank account on 5 February 2024. Thus, the refund was granted within 60 days from the date of the second refund application dated 28 November 2023. Therefore, there was no obligation for payment of any interest under section 56 of the CGST Act, 2017.

The Bombay High Court relied upon its earlier judgement in the case of *Lupin Limited*[37] as the facts of this case were identical with *Lupin*.

Therein, the High Court had observed the following:

a) The first part of section 56 of the CGST Act, 2017 directs the interest to be paid at the rate of six per cent per annum if the tax ordered to be refunded under section 54(5) of the CGST Act, 2017 is not refunded within 60 days from the date of receipt of refund application.

[37] 2025-VIL-835-BOM

Contd.…

b) Proviso to section 56 of the CGST Act, 2017 provides for interest to be paid at the rate of nine per cent where refund arises from an order passed by an adjudicating authority, appellate authority, etc. and it is not refunded within 60 days from the date of application filed consequent to such order (second refund application).

c) Explanation to section 56 of the CGST Act, 2017 mentions that the order passed by the adjudicating authority, appellate authority, etc. shall be deemed to be an order passed under section 54(5) of the CGST Act, 2017.

A conjoint reading of first part of section 56 of the CGST Act, 2017 along with the proviso and the explanation make it evidently clear that the legislature intended to give, to the order passed by the appellate forum, the status of an order passed under section 54(5) of the CGST Act, 2017. Therefore, the interest which is liable to be paid shall be governed by clause (1) as well as by the proviso. Accordingly,

a) If amount was not refunded within 60 days from the date of the first refund application – interest payable at at the rate of six per cent per annum, and also;

b) if upon the order being passed by the appellate forum, if the refund is not disbursed within a period of 60 days of filing second application - interest at at the rate of nine per cent per annum;

The existence of the proviso does not mean that interest at the rate of six per cent would not be payable for the period after the expiry of 60 days from the date of filing first refund application till 60 days from the date of filing second refund application. In other words, the proviso merely enhances the interest payable to a person for the period commencing after the expiry of 60 days from the date of filing second refund application.

Accordingly, the High Court allowed the writ petition with a direction to the respondents to pay appropriate interest to the petitioner.

Notifications

Amendments relating to GST registration[38]

The notification makes the following rules called the Central Goods and Services Tax (Fourth Amendment) Rules, 2025, effective from 1 November 2025.

- Rule 9A inserted to provide for grant of GST registration within three working days from the date of submission of application based on data analysis and risk parameters.
- Rule 14A inserted to introduce an electronic registration option for taxpayers having monthly output tax liability (CGST, SGST, IGST and compensation cess) not exceeding INR 2.5 lacs. The broad guidelines regarding this rule are:

  a) Persons not opting for Aadhaar authentication [except notified persons under section 25(6D) of the CGST Act, 2017] not eligible for this option.

  b) Person registered under this rule in a State/Union Territory (UT) not eligible to obtain another registration in the same state/UT against the same PAN.

  c) Upon successful Aadhaar authentication, GST registration to be granted within three working days from submission of application.

[38] Notification No. 18/2025-Central Tax dated 31 October 2025

Contd….

d) Persons intending to withdraw from this option can file an application in this regard (detailed procedure regarding withdrawal application form, issuance of acknowledgement, verification by officer, etc. has also been provided in the notification).

- Necessary amendments made in the respective forms relating to GST registration.

Circulars

Proper officer for sections 74A, 75(2), 122 of the CGST Act, 2017 and rule 142(1A) of the CGST Rules, 2017[39]

CBIC had issued circular no. 1/1/2017-GST dated 26 June 2017, circular no. 3/3/2017-GST dated 5 July 2017, and circular 31/05/2018-GST dated 9 February 2018 to assign proper officers for various functions under GST. However, no proper officer was assigned for sections 74A, 75(2), 122 of the CGST Act, 2017 and rule 142(1A) of the CGST Rules, 2017.

The circular 254 issued by CBIC:

- Clarifies that the proper officers for the purposes of sections 74A, 122 of the CGST Act, 2017 and rule 142(1A) of the CGST Rules, 2017 shall be the Additional or Joint Commissioner of Central Tax, Deputy or Assistant Commissioner of Central Tax or Superintendent of Central Tax.
- Prescribes monetary limits for section 74A and section 122 of the CGST Act, 2017 based on amount of CGST and/or IGST involved in the SCN/ order.
- Clarifies that the proper officer for section 75(2) of the CGST Act, 2017 [i.e. where section 74 case converted into a section 73 case by the appellate authority / tribunal / court] shall be the same adjudicating authority as was for the SCN issued under section 74(1) of the CGST Act, 2017.
- Clarifies that where an SCN involves demand of CGST and IGST both, the proper officer to be determined on the basis of the combined amount (CGST and IGST).
- In cases where a statement is issued under sub-sections (3) and (4) of section 73/74/74A of the CGST Act, 2017 for a subsequent period after the SCN has been issued under sub-section (1) of section 73/74/74A of the CGST Act, 2017:

a) Proper officer to be determined based on the highest amount of tax specified in the SCN and statement across all tax periods.

b) If SCN was issued by a proper officer based on his monetary limits (Officer 1), but tax demanded in the subsequent statement exceeds his monetary limits, the proper officer for the issuance of statement to be decided basis the prescribed monetary limits (Officer 2). Officer 1 to issue a corrigendum to make the earlier SCN and statement (if any) answerable to Officer 2.

c) Proper officer to be determined solely based on the tax demanded (excluding penalties).

d) For notices issued by Audit Commissionerate of Central Tax, the proper officer of the jurisdictional Central Tax Commissionerate to make the statement to be issued answerable to the adjudicating authority mentioned in the earlier SCN.

[39] Circular 254/11/2025-GST dated 27 October 2025

Foreign Exchange Management Act, 1999

The Reserve Bank of India (RBI) issues trade relief measures to support exporters

The RBI on 14 November 2025[40] issued trade relief measures for exporter relating to specific sectors who are having outstanding export credit facilities classified as 'Standard' with the specified regulated entities as of 31 August 2025. The key relief measures are as below:

- Moratorium on term loan instalments both principal and interest falling due between 1 September 2025 and 31 December 2025.
- For working capital facilities, interest payment may be deferred during this period, with interest accruing on a simple interest basis. Accrued interest may be converted into a funded interest term loan (FITL) repayable by 30 September 2026.
- Pre-shipment and post-shipment export credit facilities disbursed till 31 March 2026, may be granted an extended tenor of up to 450 days.
- Packing credit availed before 31 August 2025, where goods dispatch were not dispatched, liquidation may be permitted through any legitimate alternate source including domestic sales or alternate export orders.

RBI extends the time period for export realisation and shipment of goods

The RBI on 13 November 2025[41] issued second amendment to Foreign Exchange Management (Export of Goods and Services) Regulations, 2025 as below:

- Period for realization and repatriation of full value of export for goods/services exported form India is extended from nine months to fifteen months from the date of export from India.
- Period for shipment of goods is increased from one year to three years from the date of receipt of advance payment or as per agreement, whichever is later.

[40] Direction No. RBI/2025-26/96 DOR.STR.REC.60/21.04.048/2025-26 dated 14 November 2025

[41] Notification No. FEMA 23(R)/(7)/2025-RB dated 13 November 2025

KPMG in India addresses:

Ahmedabad
Commerce House V, 9th Floor, 902,
Near Vodafone House, Corporate
Road, Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Hyderabad
Salarpuria Knowledge City,
Orwell 6th Floor, Unit-3, Survey
No 83/1, Plot No 2, Raidurg,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Noida
Unit No. 501, 5th Floor,
Advant Navis Business Park, Tower-A, Plot# 7, Sector 142, Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Bengaluru
Embassy Golf Links Business Park,
Pebble Beach, 13/02,
'B' Block, 1st & 2nd Floor,
Off Intermediate Ring Road,
Bengaluru – 560 071.
Tel: +91 80 6833 5000

Jaipur
Signature Towers, Office No. 402,
Fourth Floor,
S Plot No. DC-II, Lal Kothi District
Shopping Center, Tonk Road,
Jaipur – 302 001.
Tel: +91 141 – 672 1000

Pune
9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex, Mundhwa
Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Chandigarh
Elante Offices,
Unit No. A505, 5th Floor, Plot No.178-178A, Industrial Area Phase-1,
Chandigarh – 160 002.
Tel: +91 172 664 4000

Kochi
Syama Business Centre, 49/179, 3rd
Floor, NH 47, Bypass Road, Vytilla,
Kochi – 682 019.
Tel: +91 484 302 5600

Chennai
KRM Towers, Ground,
1st, 2nd, & 3rd Floor, No. 1, Harrington
Road, Chetpet,
Chennai – 600 031.
Tel: +91 44 3914 5000

Kolkata
Unit No. 604,
6th Floor, Tower – 1, Godrej
Waterside, Sector – V, Salt
Lake, Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai
Lodha Excellus, Apollo Mills
Compound, 2nd Floor,
N M Joshi Marg, Lower Parel,
Mumbai- 400 011.
Tel: +91 22 3989 6000

Vadodara
Ocean Building, 303, 3rd Floor, Beside
Center Square Mall,
Opp. Vadodara Central Mall, Dr. Vikram
Sarabhai Marg, Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada
PR heights, 4th Floor,
NH 16 Service Rd,
opp. Manipal Hospital Road, Tadepalle,
Andhra Pradesh – 522 501.
Tel: +91 0864 536 2000

Gurugram
Building No.10, 8th Floor, DLF Cyber
City, Phase II,
Gurugram,
Haryana – 122 002.
Tel: +91 124 307 4000

kpmg.com/in

Follow us on:
kpmg.com/in/socialmedia