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India Tax Konnect



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a. Decisions – International tax

Subscription fees for standardised access to e-magazines not fees for technical services; Revenue's SLP dismissed: Supreme Court[1]

Facts of the case

The taxpayer, a tax resident of Germany, was part of the Springer Nature Group, a global publisher of scientific, technical, and medical content.

It entered into an agreement with its Indian group company, under which the taxpayer was responsible for promoting, selling and distributing books and journals. The agreement also required the taxpayer to undertake services such as global marketing services, inventory management, delivery, contract management, debtor management, customer services etc.

The taxpayer earned commission income for rendering the above services.

In addition, the taxpayer also received subscription fees from various Indian customers for subscribing to journals and books.

The Revenue sought to tax both the commission income and the subscription fees as fees for technical services ('FTS') under the Income-tax Act, 1961 ('the 1961 Act') as well as the India-Germany tax treaty.

High Court's decision[2]

The taxability of commission income had been conclusively settled in the taxpayer's favour in its own case for an earlier year. Accordingly, the Court followed its earlier ruling and did not undertake a fresh examination of that issue.

Thus, the principal issue before the Court was whether subscription fees received for access to standardised e-magazines, journals and digital content could be characterised as FTS.

Relying on the judicial precedents cited by the taxpayer,[3] as well as the commentary and illustrative examples in the UN Model Double Taxation Convention, the Court observed that mere access to a database or standardised technical content does not amount to the rendering of technical services. The Court emphasised that FTS contemplates specialised or customised services involving the application of expertise for the benefit of a specific customer.

The fees were for standardised content that was not specifically collected or generated for any particular entity and there was no human intervention involved.

Accordingly, the Court held that the subscription fees did not constitute FTS under the 1961 Act.[4]

Supreme Court's decision

The Revenue challenged the Delhi High Court's ruling before the Supreme Court by filing a Special Leave Petition ('SLP').

[1] *CIT* v. *Springer Nature Customer Service Centre* [2026] 189 taxmann.com 775 (SC)

[2] *CIT* v. *Springer Nature Customer Service Centre GMBH* [2025] 174 taxmann.com 77 (Delhi) – Please click here to access the May edition of the *India tax Konnect* (Page No. 2) for more details on the High Court decision

[3] *CIT* v. *Bharti Cellular Ltd.* [2009] 319 ITR 139 (Delhi); *CIT* v. *Relx Inc* [2024] 160 taxmann.com 109 (Delhi); *CIT* v. *India Capital Markets (P) Ltd* [2017] 79 taxmann.com 45 (Bombay)

[4] Explanation 2 to Section 9(1)(vii)

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After hearing the parties, the Supreme Court held that it was not inclined to interfere with the High Court's order and accordingly dismissed the SLP.

Consideration received by non-resident for granting 'live' telecast rights not taxable as royalty; Revenue's SLP dismissed: Supreme Court[5]

Background

The taxpayer, the national governing body for cricket in Sri Lanka, granted broadcasting and ancillary rights to an Indian broadcaster for the live telecast of a cricket tournament held in Sri Lanka in March 2018.

Under the arrangement, the taxpayer received licence fees from the Indian broadcaster for enabling live transmission of the matches.

The Revenue contended that the consideration received by the taxpayer was for the use of copyrighted content and, therefore, constituted royalty under the 1961 Act[6] and the India-Sri Lanka tax treaty[7] ('the SL Treaty').

High Court's decision[8]

Relying on its earlier ruling in *Fox Network Group Singapore*,[9] the Delhi High Court ruled in favour of the taxpayer and held that the consideration received for enabling live telecast of cricket matches during a specified time period could not be characterised as royalty under either the 1961 Act or the SL Treaty as royalty presupposes enduring benefits.

The payment could be treated as royalty if the Indian broadcaster was granted the right to record, preserve, re-telecast, or show those matches in future, beyond the live event. However, as no such rights were granted in the instant case, the consideration received by the taxpayer did not constitute royalty.

Supreme Court's decision

The Revenue challenged the Delhi High Court's ruling before the Supreme Court by filing a SLP.

Considering its earlier order in the case of *Shine Satellite*[10] (wherein identical issue was involved), the Supreme Court dismissed the SLP in the instant case.



[5] *CIT* v. *Sri Lanka Cricket* [2026] 189 taxmann.com 657 (SC)
[6] Section 9(1)(vi)
[7] Article 12
[8] *CIT* v. *Sri Lanka Cricket* [2026] 182 taxmann.com 537 (Delhi)
[9] *CIT* v. *Fox Network Group Singapore Pte. Ltd.* [2025] 473 ITR 528 (Delhi)
[10] *DDIT* v. *Shine Satellite Public Company Ltd.* (Civil Appeal Nos. 586-593 of 2012)

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Interest awarded by the USA arbitration and enforced through Indian Court decree not taxable in India: Delhi Tribunal[11]

Facts of the case

The taxpayer, a US resident LLC, sold its membership interest in another US LLC to a US company ('the purchaser').

The purchaser defaulted in payment of part of the sale consideration, resulting in arbitration proceedings in the USA. In the meantime, the purchaser was taken over by an Indian company which, consequently, substituted the purchaser in the arbitration proceedings.

The Arbitration Award was decided in favour of the taxpayer, and the Indian company was directed to pay the damages, including interest. As the Indian company declined to honour the Arbitration Award, the taxpayer filed a suit in the Delhi High Court for the implementation of the same.

The High Court settled the case in favour of the taxpayer and held that the damages awarded, including interest, constituted a 'decree' of the Court under the Indian Arbitration Act.

As the damages awarded had been deposited with the High Court by the judgment debtor, the amount determined by the High Court was released to the taxpayer after deduction of tax at source under section 195 of the 1961 Act.

In its India tax return filed for FY 2018-19, the taxpayer claimed that the damages and interest forming part of the decree were not chargeable to tax in India.

While the Revenue accepted that the decree damages were not taxable in India, it sought to tax the interest component under Article 11 of the India-USA tax treaty ('the USA Treaty').[12]

Taxpayer's contentions

The interest awarded by the Arbitrator, and subsequently enforced by the Delhi High Court, lost its character as interest and became part of the judgment debt. In legal terminology, a 'judgment debt' is a debt or monetary obligation that arises from a judgment, decree, or order of a court, rather than from the original underlying transaction.

The interest in the instant case related to a period of default occurring outside India between two foreign entities. The amount neither arose nor accrued in India and was merely received in India pursuant to the Civil Court's decree (under the Indian Arbitration Act) to give effect to a foreign court's order.

Article 11 of the USA Treaty applies to "interest", and not judgment debt, and accordingly, the impugned amount was not taxable in India under the USA Treaty.

The interest awarded by the Arbitrator did not arise on account of money borrowed or any debt incurred by the taxpayer and therefore, despite the use of the nomenclature 'interest' in the Arbitration Award, the impugned receipt did not qualify as "interest" under the statutory definition provided in the 1961 Act.[13]

[11] *Universal Tractor Holding LLC USA* v. *DCIT* (ITA No. 2216/Del/2022)

[12] The taxpayer had no presence or permanent establishment in India.

[13] As per section 2(28A), "interest" includes interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation).

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Judicial precedents

- Relied on the Supreme Court ruling in *Islamic Investment*,[14] wherein the Supreme Court held that once interest becomes part of a decree, it must be executed strictly under the Code of Civil Procedure. There is no provision in the 1961 Act (specifically section 195) that permits a debtor to deduct tax from a decretal amount on the premise that it contains an interest component.
- Relied on the *Sainath Rajkumar Sarode ruling*,[15] wherein the Bombay High Court held that where a claim for interest by way of compensation merges into a decree of a court, it assumes the character of a judgment debt and is not liable to deduction at source.
- Distinguished the decision in the case of *McDermott*[16] relied by the Revenue on the ground that in *McDermott case*, (a) the dispute arose in India; (b) no foreign arbitration award was involved; and (c) the interest awarded had not merged into judgment debt through a court decree under the Civil Procedure Code.

Tribunal's decision

The Delhi Bench of the Tribunal concurred with the taxpayer's submissions and the judicial precedents relied upon and held that the interest received as part of the court decree was not taxable in India.

The damages, including the interest component, had assumed the character of a judgment debt and were, therefore, beyond the purview of the 1961 Act.

Consideration paid for outright acquisition of trademark is not royalty: Mumbai Tribunal[17]

Facts of the case

An Indian company acquired a trademark from a Qatar-based hotel company through the latter's Trade Mark Protection Agent ('the agent') in Qatar. The consideration was remitted to the agent, without deduction of tax at source ('TDS').

The Indian company contended that the payment did not constitute royalty under the Income-tax Act, 1961 ('the 1961 Act')[18] as it was for the outright purchase of the trademark and not for a right to use it. Hence, no TDS obligation arose.

However, the Revenue treated the remittance as royalty, on the ground that the payment was made for assignment of trademark to the Indian company and the deed of assignment did not establish transfer of complete rights in the trademark. Accordingly, the Indian company was required to deduct TDS.[19]

Relevant provisions

Explanation 2 to section 9(1)(vi) defines the term "royalty" to mean consideration for, inter alia, the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trademark or similar property. However, the consideration that would constitute capital gains in the hands of the recipient is specifically excluded from the scope of royalty.

[14] *Islamic Investment Co.* v. *Union of India* [2004] 265 ITR 254 (SC)
[15] *Sainath Rajkumar Sarode & Others* v. *State of Maharashtra [*2021] 131 taxmann.com 332 (Bombay)
[16] *DCIT* v. *McDermott International Inc.* 2009 -TIOL-336-ITAT-Del

[17] *LSL Holdings Private Limited* v. *ITO* (ITA No. 2619/MUM/2026)
[18] Under section 9(1)(vi)
[19] Under section 195

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Indian company's arguments

Consideration paid for the purchase of a trademark cannot be equated with royalty.

Royalty is a recurring payment for the use of a trademark owned by others whereas in the instant case, the Indian company purchased the trademark outright and became the owner thereof. Accordingly, the income, if any, in the hands of recipient would be taxable as capital gains and the expenditure for the Indian company was capital in nature and not revenue.

Tribunal's decision

The Mumbai Bench of the Tribunal ruled in favour of the Indian company and held that the remittance made for acquiring a capital asset (i.e. the trademark) and did not constitute royalty. Therefore, the Indian company had no TDS obligation.

Key observations of the Tribunal included:

The documentary evidence, including the trademark assignment agreement, proof of ownership, details of the rights transferred, valuation and commercial terms of the transaction, established that the Indian company had acquired the trademark.

Relied upon *Saregama ruling*,[20] wherein it was held that payment made for transfer of ownership of copyright for a lump-sum consideration (and not merely for past and future royalties) was for outright purchase of a capital asset.

b. Decisions – Domestic tax

Section 56(2)(x) not applicable to share buy-back; GAAR Panel findings relevant in establishing commercial substance of buy-back arrangement: Mumbai Tribunal[21]

Facts of the case

The taxpayer (an Indian company) entered into a Facility Agreement with another Indian company ('ICo1').

As per the agreement, the taxpayer was to establish and operate an ammonia storage facility in ICo1's premises, and the power required to operate the facility was to be supplied by ICo1 since independent power sourcing was not commercially feasible.

The arrangement between the taxpayer and ICo1 was structured in line with the Gujarat Electricity Board's captive power policy.

As per the policy, ICo1 could supply power to an associate company in which it held minimum equity participation of 26 per cent. Accordingly, the taxpayer issued the required number of equity shares to ICo1 at INR 40 per share.

As per the arrangement, ICo1 would not claim dividend or capital appreciation on these shares. Further, upon cessation of the Facility Agreement, the shares would be bought back at the original price of INR 40 per share.

[20] *Saregama (I) Ltd.* v. *ACIT* (ITA No. 1813/Kol/2009) which relied upon *Asia Satellite Telecommunication Co. Ltd.* v. *DIT* [2011] 332 ITR 340 (Delhi) and *CIT* v. *Andhra Petrochemical Ltd.* [2015] 373 ITR 207 (Andhra Pradesh)

[21] *DCIT* v. *Sanjana Cryogenic Storages Ltd* (ITA No. 2503/Mum/2026)

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Following the merger of ICo1's relevant undertaking with another Indian company ('ICo2'), the contractual rights and obligations relating to the shares devolved upon ICo2. During the year under consideration, i.e. FY 2021-22, the Facility Agreement was terminated, and the taxpayer bought back the equity shares from ICo2 at INR 40 per share.

During assessment proceedings, the tax officer made reference to the GAAR[22] Approving Panel under the 1961 Act[23] to examine whether the entire arrangement comprising the equity participation, transfer of the facility and the eventual buy-back at INR 40 per share constituted an "impermissible avoidance arrangement"[24] ('IAA') under the 1961 Act. Based on examination of agreements and regulatory circumstances, the Approving Panel held that the arrangement was not an IAA.

However, notwithstanding the Panel's findings, the tax officer independently applied section 56(2)(x), holding that the taxpayer had "received" property upon the buy-back of shares. The fair market value ('FMV') of the shares was determined at INR 595.49 per share[25] and the differential amount (i.e. the difference between the FMV and the buy-back price) was taxed as income from other sources.

The taxpayer contended that once the Approving Panel had rejected the application of GAAR in the instant case, every other anti-abuse or substantive provision stood excluded.

Relevant provisions

Section 56(2)(x)(c) of the 1961 Act provides that where any person receives any property (other than immovable property), on or after 1 April 2017, for a consideration which is less than the aggregate FMV of the property, the excess of the aggregate FMV of the property over such consideration will be taxable as income from other sources. For the purposes of this section, the term "property" includes shares and securities.[26]

Section 68 of the Companies Act, 2013 permits a company to buy-back its own shares, subject to specified conditions.

Revenue's contentions

GAAR and section 56(2)(x) operate in distinct statutory fields, and rejection of the application of GAAR does not bar application of other charging provisions. The 1961 Act itself contemplates application of GAAR provisions in addition to, or in lieu of, other provisions determining tax consequences.

The taxable event takes place when the taxpayer receives the shares pursuant to the buy-back. The subsequent extinguishment of those shares is a distinct event and cannot retrospectively obliterate the receipt which has already taken place. Since shares are expressly included within the definition of "property", section 56(2)(x) was applicable.

The Mumbai Tribunal's decision in *Vora Financial Services*[27] was distinguishable as it dealt with the applicability of provisions of section 56(2)(viia) of the 1961 Act[28] and not section 56(2)(x) which was enacted subsequently with a wider scope.

[22] General Anti-Avoidance Rule
[23] Section 144BA
[24] Section 96
[25] As per Rule 11UA of the Income-tax Rules, 1962

[26] Clause (d) of the Explanation to clause 56(2)(vii)
[27] *Vora Financial Services (P.) Ltd.* v. *ACIT* [2018] 171 ITD 646 (Mumbai Tribunal)
[28] Where a closely held company receives, on or after the 1 June 2010 but before 1 April 2017, any property, being shares of another closely held company for a consideration which is less than the aggregate FMV of the shares, the aggregate FMV as exceeds such consideration was taxable as income from other sources

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Tribunal's decision

The Mumbai Bench of the Tribunal ruled in favour of the taxpayer and held that buy-back of its shares followed by their mandatory extinguishment did not amount to receipt of property and hence, did not attract provisions of section 56(2)(x).

Key observations of the Tribunal included:

The findings of the Approving Panel undoubtedly remain relevant as they determine the factual and commercial character of the arrangement examined by it; however, the sustainability of the impugned addition to the taxable income needs to be tested independently on the language and scheme of section 56(2)(x).

Mere inclusion of shares within the definition of "property" does not automatically trigger section 56(2)(x); the statutory requirement is not merely physical or juridical movement of an instrument from one person to another. In a typical share acquisition transaction, the shares become an asset in the hands of the recipient and can be held, enjoyed, and subsequently transferred.

However, in case of buy-back of own shares, the company does not acquire an investment in itself; the transaction results in a reduction of outstanding share capital and mandatory extinguishment of the shares.

Section 68 of Companies Act, 2013 mandates extinguishment and physical destruction of the shares bought back. The extinguishment is, therefore, not an independent commercial act undertaken at the discretion of the company after acquiring the shares; it is an integral statutory consequence of the buy-back itself. The shares bought back cannot be retained as an investment or as capital asset capable of subsequent enjoyment or transfer.

Relied on the Delhi High Court's decision in *Globe Capital Market*,[29] wherein it was held that a buy-back of a company's own shares is in substance a reduction of share capital and does not result in receipt of property of the nature contemplated by section 56(2)(x).

The Tribunal observed that, although the decision in *Vora Financial Services* was rendered in the context of section 56(2)(viia), the Revenue had failed to demonstrate any material distinction in the underlying reasoning relating to the mandatory extinguishment of a company's own shares upon buy-back and the conclusion stood reinforced by the subsequent *Globe Capital Market* ruling. Further, no contrary judicial precedent had been brought on record.

Thus, in the instant case, the fundamental condition for invoking section 56(2)(x), namely 'receipt' of property, was not satisfied.

[29] *PCIT* v. *Globe Capital Market Ltd.* [2026] 487 ITR 744 (Delhi)

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Convenience fee retained by online ticketing platform not commission in the absence of principal-to-agent relationship; no TDS under section 194H: Mumbai Tribunal[30]

Facts of the case

The Indian company was engaged in the business of operating multiplexes and cinema theatres.

It entered into an agreement with another company which operated an online ticket-booking platform ('ticketing company'). The customers booked tickets through the ticketing company's digital platform and made payments online.

The amount collected by the ticketing company from the customers comprised the face value of the cinema ticket (determined by the Indian company) and a separate convenience fee charged for providing its online booking facility.

The ticketing company remitted the entire ticket price to the Indian company, and a fixed portion of the convenience fee, while retaining the remaining convenience fee.

The ticketing company deducted TDS under section 194C of the 1961 Act on the fixed share of the convenience fee remitted to the Indian company.

The Revenue alleged that the ticketing company sold cinema tickets on behalf of the Indian company and therefore, the convenience fee retained by the ticketing company constituted constructive payment of commission by the Indian company, liable to TDS under section 194H of the 1961 Act.

In support of its contentions, the Revenue relied on the CBDT Circular of 1991,[31] the Supreme Court's ruling in *J.B. Boda & Co.*,[32] and certain clauses of the agreement between the Indian company and the ticketing company alleging the Indian company's control over the convenience fee charged to the customers.

Relevant provisions

Section 194H requires tax to be deducted on commission payments which includes any payment received or receivable by a person acting on behalf of another person for services rendered.

CBDT Circular of 1991 provides that where commission or brokerage is retained by the consignee/agent and not remitted to the consignor/principal while remitting the sale consideration, such retained commission amounts to constructive payment of the same to the consignee/agent, attracting TDS under section 194H.

CBDT Circular of 2016[33] clarifies that the fees retained by advertising companies from media companies for canvasing/ booking advertisements do not qualify as "commission" for the purposes of section 194H as the relationship between the media company and the advertising agency was that of a 'principal-to-principal'.[34]

Tribunal's decision

The Mumbai Bench of the Tribunal ruled in favour of the Indian company and held that the convenience fee retained by the ticketing company was not commission within the meaning of section 194H and accordingly, the Indian company was under no obligation to withhold tax on such retained convenience fee.

[30] *PVR Inox Limited* v. *DCIT* (ITA No. 3960/Mum/2026)

[31] Circular No. 619 dated 4 December 1991
[32] *J.B. Boda & Co. (P.) Ltd.* v. *CBDT* [1997] 223 ITR 271 (SC)
[33] Circular No. 5 dated 29 February 2016
[34] *Jagran Prakashan Ltd.* v. *DCIT (TDS)* [2012] 345 ITR 288 (Allahabad); *CIT* v. *Living Media* (ITA No. 1264 of 2007)

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Key observations of the Tribunal included:

For section 194H to apply, the payee must act 'on behalf of' another person.

Examined various clauses of the agreement and identified the following factors indicating the existence of a principal-to-principal relationship between the Indian company and the ticketing company:

- The agreement allocated consumer claims, third-party liabilities, intellectual property rights and other risks between the parties according to their respective responsibilities.
- The ticketing company guaranteed payment to the Indian company irrespective of whether it recovered the amount from the customers and was liable to pay interest for delayed remittance. Thus, the risk of non-collection was borne by the ticketing company rather than the Indian company.
- The ticketing company operated an independent digital platform, dealt with users of that platform as its customers, owned the customer data generated through the platform and could undertake promotional activities on its own account and at its own commercial risk. It was not merely executing the directions of the Indian company as the latter's marketing or ticketing agent.
- The ceiling on the convenience fee and the requirement for mutual approval to revise that ceiling were commercial safeguards and did not, by themselves, establish that the entire convenience fee first belonged to the Indian company and a portion thereof was thereafter retained by the ticketing company as remuneration for acting on behalf of the Indian company.

The Revenue's reliance on the CBDT Circular of 1991 and the Supreme Court's decision in *J.B. Boda & Co*. was misplaced as they did not dispense with the essential requirement of establishing that the recipient acted as an agent of the person alleged to be the principal. Constructive payment is only a mode of satisfying an existing payment obligation; it cannot create the underlying obligation or an agency relationship where none is otherwise demonstrated.

The Tribunal relied on the Bombay High Court rulings in *Super Religare Laboratories,*[35] *Piramal Healthcare*,[36] and *Shanthala Enterprises*[37] and the CBDT Circular of 2016.

Unpaid GST and service tax collected from customers to be included in income computation; addition under section 43B upheld: Delhi Tribunal[38]

Facts of the case

The taxpayer was engaged in the business of tours and travel.

During the assessment proceedings for FY 2017-18, the Revenue observed that the taxpayer had outstanding Goods and Services Tax ('GST') and service tax liabilities, which were collected from the customer, but not paid to the Government on or before the filing of the tax return.

Accordingly, the Revenue made an addition for the outstanding liabilities under section 43B of the 1961 Act.

[35] *CIT* v. *Super Religare Laboratories Ltd.* [2021] 133 taxmann.com 313 (Bombay)
[36] *CIT* v. *Piramal Healthcare Ltd.* [2015] 55 taxmann.com 534 (Bombay)
[37] *Shanthala Enterprises* v. *ITO (TDS)* (ITA No.1042/Bang/2025)
[38] *Naveen Tours Private Limited* v. *ITO* (ITA No. 1093/Del/2023)

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Relevant provisions

Section 43B of the 1961 Act provides that specified deductions, including tax, duty, cess or fee, are allowable only on actual payment, irrespective of the method of accounting followed by the taxpayer. However, the deduction is allowable in the year in which the liability is incurred if the payment is made on or before the due date of filing the tax return.

Section 145A of the 1961 Act prescribes the method of accounting for determining business income.

Prior to its substitution by the Finance Act, 2018, section 145A provided that the valuation of purchases and sales of goods and inventory was to be made in accordance with the accounting method regularly employed by the taxpayer, with an adjustment to include any tax, duty, cess or fee actually paid or incurred by the taxpayer.

The Finance Act, 2018 substituted the erstwhile section 145A with retrospective effect from 1 April 2017 to specifically include reference to the services as well (in addition to goods).

Taxpayer's contentions

GST and service tax liabilities were not routed through the Profit and Loss account and, therefore, no deduction was claimed in respect of such liabilities. Accordingly, the provisions of section 43B were not applicable.

Relied on the decisions in the case of *Allied Motors*[39] and *Noble & Hewitt* [40] wherein it was held that if the service tax was not routed through Profit & Loss Account, and no expenditure was claimed, provision of section 43B could not be applied.

Tribunal's decision

In view of the amended provisions of section 145A, the Delhi Bench of the Tribunal held that the taxpayer was required to consider GST while computing its income and since the taxpayer had not done so, the addition of unpaid GST and service tax was upheld.

The erstwhile provisions of section 145A did not specifically include the valuation of services. However, the amended provisions expressly covered the valuation of purchases and sales of services as well.

The decisions cited by the taxpayer were rendered under the pre-amended legal framework and therefore could not be relied upon. Further, the taxpayer did not bring on record any ruling dealing with the GST laws or the amended provisions.

[39] *Allied Motors (P) Ltd.* v. *CIT* [1997] 224 ITR 677 (SC)
[40] *CIT* v. *Noble & Hewitt (I) Pvt. Ltd.* [2008] 305 ITR 324 (Delhi)

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Repayment by a closely held company of the debt owed to its shareholder does not constitute deemed dividend: Mumbai Tribunal[41]

Facts of the case

The taxpayer was a director of an Indian company ('ICo') and held 85 per cent of its shares.

He had regularly provided funds to ICo.

ICo recognised the amount payable to him as an unsecured loan under "Short-term borrowings" in its audited balance sheet.

During FY 2019-20, the taxpayer continued to provide funds to ICo and received INR 48 lakhs as repayment of an earlier loan.

The Revenue treated the receipt by the taxpayer as 'deemed dividend' under section 2(22)(e) of the 1961 Act and accordingly, added the said amount to the taxpayer's taxable income for the year.[42]

The Commissioner of Income-tax (Appeals) ('the CIT(A)') sustained the addition on the ground that section 2(22)(e) uses the expression "any payment" and, therefore, even repayment by ICo of money previously advanced by the taxpayer would fall within the ambit of the deemed dividend provision.

Relevant provisions

Section 2(22)(e) of the 1961 Act provides that 'any payment' by a closely held company, 'by way of advance or loan to a shareholder' who is the beneficial owner of shares holding not less than ten per cent of the voting power is treated as deemed dividend in the hands of such shareholder subject to other prescribed conditions ('the deeming provision').

Tribunal's decision

The Mumbai Bench of the Tribunal ruled in favour of the taxpayer and deleted the addition of deemed dividend made by the Revenue. The payment represented repayment of an amount already owed by ICo and therefore, did not constitute a "loan or advance" given by ICo to the taxpayer for the deeming provision to apply.

Key observations of the Tribunal included:

Words "any payment" cannot be read in isolation

The words "any payment" used in the deeming provision cannot be read in isolation from the qualifying expression "by way of advance or loan to a shareholder"; the character of the payment as a loan or advance is an indispensable statutory condition for invoking the deeming provision.

The Revenue's interpretation would render the qualifying words redundant and extend the scope of the deeming provision to payments made in discharge of genuine liabilities.

[41] *Deepak Varandmal Wadhwa* v. *Assessing Officer* (ITA No. 4843/Mum/2026)

[42] Under the erstwhile tax regime, dividends were exempt from tax in the hands of the shareholders, while companies declaring or distributing dividend were required to pay Dividend Distribution Tax ('DDT') under section 115-O. The Finance Act, 2018, brought deemed dividend under section 2(22)(e) within the ambit of DDT. Thus, during the relevant FY 2019-20, deemed dividend were subject to DDT and not taxable in the hands of the shareholder. Nevertheless, the Revenue treated the impugned payment as deemed dividend and taxed it in the hands of the taxpayer.

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Commercial substance of the transaction is relevant

Where the shareholder's account carries a credit balance and the payment is made against such credit without the account becoming overdrawn, the payment merely discharges the company's existing liability and does not create any indebtedness of the shareholder to the company.

Absence of loan agreement is not determinative

The Revenue argued that there was no formal loan agreement between the taxpayer and ICo; no document to demonstrate the repayment schedule, rate of interest and other terms; and no evidence of Board approval for withdrawal or repayment of the amount to the taxpayer. The Tribunal held that such documentation might be relevant under the corporate law governing internal affairs of a company but cannot supply a missing jurisdictional fact for applying the deeming provision.

The higher closing balance as compared to the opening balance, coupled with the absence of any debit balance in the ledger account at any point during the year, substantiated the taxpayer's position that he had advanced funds to ICo and was a lender rather than a borrower.

Once the existence and character of the underlying liability were established from the books and audited accounts, the absence of a formal loan agreement, board approval, etc. could not reverse the direction of indebtedness or convert repayment of an existing liability of ICo into a loan advanced by ICo.

Judicial precedents

Distinguished the decisions in *Sunil Kapoor*,[43] *Shashi Pal Agarwal*,[44] and *Lailabi Khalid*[45] relied upon by the Revenue because those cases involved payments in the nature of loans/ advances by the companies to their shareholders, whereas in the instant case, the accepted facts showed that ICo was indebted to the taxpayer and the impugned payment represented repayment of amounts already due to him.

Concurred with the decisions relied upon by the taxpayer, particularly the Tribunal's decision in *Ravindra R. Fotedar.*[46]



[43] *Sunil Kapoor* v. *CIT* [2015] 63 taxmann.com 97 (Madras)
[44] *Shashi Pal Agarwal* v. *CIT* [2015] 370 ITR 720 (Allahabad)
[45] *Lailabi Khalid* v. *CIT* [2018] 408 ITR 385 (Kerala)
[46] *Ravindra R Fotedar* v. *ACIT* [2017] 85 taxmann.com 314 (Mumbai Tribunal)

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c. Circulars/ Notifications/ Orders

CBDT prescribes electronic reporting framework for specified transactions undertaken without PAN[47]

Background

The Income-tax Rules, 2026 require every person undertaking specified transactions to quote their Permanent Account Number ('PAN').[48] However, in the absence of PAN, a declaration in the prescribed form[49] is required to be furnished[50] to the specified person.

Such transactions include cash payments, specified sale or purchase, time deposit etc. exceeding the prescribed monetary threshold.

The specified person receiving declarations ('the reporting entity') is required to electronically furnish a statement in the prescribed form[51] containing particulars of the declarations.

To operationalise this reporting framework, the Central Board of Direct Taxes ('CBDT') has issued a notification prescribing the procedure for registration of reporting entity and submission of the prescribed statement. The notification has come into force from 15 September 2026.

Key procedure

- The reporting entity receiving declarations from non-PAN holders is required to register on the income-tax department's e-filing portal and obtain an ITDREIN,[52] if not already registered. An ITDREIN, once generated, cannot be deactivated.
- The principal officer of the reporting entity will act as the 'Designated Director' and be responsible for verifying and submitting the prescribed statements.
- The reporting entity may rectify errors by filing correction statements and withdraw inadvertently filed reports within a statement through the prescribed deletion process.
- The reporting entity is required to document and implement appropriate information security, archival and retrieval policies and procedures with clearly defined roles and responsibilities.
- The reporting relating to FY 2025-26 and earlier years (including correction/ deletion) will continue to be governed by the erstwhile framework under the 1961 Act, read with the Income-tax Rules, 1962.

[47] Notification No. 3 of 2026 dated 15 September 2026 issued by the Directorate of Income-tax (Systems), CBDT
[48] Rule 159 read with section 262(1)(f) and 262(10)(c) and (e) of the Income-tax Act, 2025
[49] Form No. 97
[50] To be filed by a person other than a company or firm undertaking specified transactions. There is a similar filing requirement for a foreign company undertaking specified transactions through an IFSC banking unit.
[51] Form No. 98
[52] Income Tax Department Reporting Entity Identification Number

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Indirect Tax

High Court cases

Shipping bill errors cannot defeat IGST refund on exports of goods notwithstanding sec 149 of Customs Act, 1962[53]

The Petitioner company filed a refund application before the Deputy Commissioner of Customs seeking refund of Integrated Goods and Services Tax ('IGST') paid on exports. The petitioner had inadvertently failed to mention payment of IGST in the shipping bills and had instead declared the exports under a Letter of Undertaking ('LUT'). The exported goods were rice (pre-packaged and labelled), attracting GST at 5 per cent. However, the Customs authorities rejected the refund application solely on the ground that amendment under section 149 of the Customs Act, 1962 could not be permitted since the invoices had been amended from LUT to IGST-paid after the export and no documentary evidence existed at the time of export as required in terms of section 149 of Customs Act, 1962.

The petitioner submitted two distinct prayers in the instant writ petition. The primary prayer was for refund of IGST paid on exports, while the alternate prayer was for allowing amendment of the shipping bills, if such amendment was required for granting the refund.

The Court observed that the respondents had not disputed the actual export of the goods and that the case did not fall within any of the three circumstances prescribed under Rule 96(4) of the CGST Rules, 2017 for withholding refund.

The Court noted that the respondents had examined the petitioner's case with reference to section 149 of the Customs Act, 1962 but had failed to examine the refund claim under Rule 96 of the CGST Rules, 2017 which specifically provides for refund of integrated tax paid on goods or services exported out of India.

The Court further observed that the goods were liable to IGST at 5 per cent and that the non-mention of tax in the shipping bills was due to an inadvertent error. Accordingly, the Court directed the respondents to process the petitioner's refund under Rule 96 of the CGST Rules, 2017 and without examining the issue of amendment under section 149 of the Customs Act, 1962 holding that the petitioner's case did not fall within any of the circumstances specified under Rule 96(4) of the CGST Rules, 2017 under which refund could be refused.

Tribunal cases

Input Tax Credit reversal is required for Duty Credit Scrips sold during 13 October 2017 to 4 July 2022[54]

The respondent company is a GST registrant engaged in manufacturing electrical equipment. The company also sold MEIS duty credit scrips during FY 2017-18 to FY 2019-20. During scrutiny, the department concluded that under section 17(2) of the CGST Act, 2017 read with Rules 42 and 43 of CGST Rules, 2017, the taxpayer should have reversed proportionate ITC attributable to the sale of MEIS scrips which were exempt supplies.

[53] *Agirex & Anr.* [R/Special Civil Application no. 5623 of 2024 – Gujarat HC]

[54] *Power Tech Global Private Limited* [Appeal No. APL/62/KLK/2026 – GSTAT Kolkata]

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While the sale of such scrips was taxable at 12 per cent from 1 July 2017 to 12 October 2017, exemption was granted from 13 October 2017 onwards under Entry 122A of Notification No. 2/2017-Central Tax (Rate). Subsequently, Notification No. 14/2022-Central Tax dated 5 July 2022 amended explanation 1 to Rule 43 of the CGST Rules, 2017 to exclude the value of duty credit scrips from the value of exempt supplies for the purposes of Rules 42 and 43 of the CGST Rules, 2017. On appeal, the appellate authority set aside the demand holding that the 2022 amendment should be applied retrospectively as it was beneficial to the taxpayer. This order was challenged by the revenue before the GST Appellate Tribunal ('GSTAT').

The revenue contended that during FY 2017-18 to FY 2019-20, MEIS duty credit scrips were exempt supplies and, therefore, proportionate ITC attributable to such exempt supplies was required to be reversed under section 17(2) of CGST Act, 2017 and Rules 42 and 43 of CGST Rules, 2017. It was argued that Notification No. 14/2022-Central Tax dated 5 July 2022 inserted clause (d) in explanation 1 to Rule 43 of the CGST Rules, 2017 excluding duty credit scrips from exempt turnover for ITC reversal purposes only from 5 July 2022.

Accordingly, the amendment was prospective and could not benefit transactions relating to FY 2017-18 to FY 2019-20. The revenue further contended that the legal precedents relied upon by the appellate authority related to different factual and legal situations and, therefore, could not justify retrospective operation of the amendment.

The taxpayer contended that the appeal was not maintainable in view of CBIC circular no. 207/1/2024-GST dated 26 June 2024, which prescribed a threshold of INR 20 lakh for filing appeals before GSTAT, since the disputed amount in each appeal was below the threshold, appeal could not have been made.

The revenue argued that the said CBIC circular did not bar the instant appeal since the total amount involved in three appeals pertaining to the taxpayer exceeded the prescribed threshold and that the issue was recurring in nature concerning interpretation of statutory provisions.

On merits it was also argued by the taxpayer that the amendment dated 5 July 2022 merely clarified legislative intent and was beneficial in nature and, therefore, should be applied retrospectively. According to the taxpayer, MEIS scrips are government incentives granted to exporters and their sale does not require consumption of taxable inputs and hence, such transactions should not be treated like ordinary exempt supplies for ITC reversal purposes. The taxpayer also submitted that all transactions were duly disclosed in GSTR-3B returns, annual returns and books of account, the department was fully aware of the MEIS transactions, and there was no fraudulent intent, wilful misstatement or suppression of facts. Accordingly, invocation of Section 74 was not justified.

The GSTAT held that the Revenue's appeal was maintainable as the CBIC circular was binding on departmental officers but not on the GSTAT, and the total amount covered by the composite order exceeded INR 20 lakhs while also involving interpretation of statutory provisions and recurring issues.

On merits, the Tribunal held that the amendment dated 5 July 2022 was not retrospective. It observed that duty credit scrips became exempt supplies from 13 October 2017 through Notification No. 35/2017 and that the exclusion of duty credit scrips from exempt turnover under clause (d) inserted in the explanation 1 in Rule 43 of CGST Rules, 2017 was brought in only by Notification No. 14/2022 dated 5 July 2022 only with effect from 5 July 2022. The Tribunal noted that the Government had the power to grant retrospective effect but had consciously not

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done so and, therefore, the amendment could not be regarded as merely clarificatory or curative.

However, the Tribunal held that section 74 had been improperly invoked as the taxpayer had disclosed the MEIS transactions in its GSTR-3B returns, annual returns and records, and the Revenue failed to establish fraud, wilful misstatement or suppression of facts with intent to evade tax. Relying on CBIC Instruction No. 05/2023-GST dated 13 December 2023, and the Supreme Court decision in *Anand Nishikawa Co. Ltd.*,[55] the Tribunal directed the proper officer to determine the taxpayer's tax liability under Section 73 after granting an opportunity of hearing and within the prescribed statutory time limits.



[55] 2005 (188) E.L.T. 149 (S.C.)

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Foreign Exchange Management Act, 1999

The Government of India amends the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019

The Ministry of Finance (Department of Economic Affairs) on 2 September 2026[56] amended the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 to permit foreign-invested e-commerce entities to undertake an inventory-based model for export of goods manufactured or produced in India.

The amendment also exempts such export activities from existing restrictions on B2C and inventory-based e-commerce models, subject to compliance with Foreign Trade Policy 2023 and applicable Export Regulations 2015.



[56] Gazette Number: CG-DL-E-03092026-275964 notification S.O. 4870(E)

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