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a. Decisions – International tax

Virtual rendition of services do not constitute physical rendition in India; not taxable as fees for technical services under India-China treaty: Delhi Tribunal[1]

Facts of the case

The taxpayer, a tax resident of China, provided management and consultancy services to its Indian group company ('ICo') and received fees for such services.

Since the services were rendered entirely from outside India (i.e. China), the taxpayer contended that the receipts from ICo were not taxable in India as fees for technical services ('FTS') under the India-China tax treaty ('the China Treaty').[2]

The Revenue, however, treated the receipts as FTS taxable in India under the China Treaty. Relying on the decisions in *Ashapura Minichem*[3] and *Guangzhou Usha International*,[4] the Revenue contended that the place where the services were utilised, rather than from where they were rendered, determined the taxability of such services. It further argued that the services provided virtually through emails, conference calls and video conferencing were equivalent to physical rendition of services in India.

Relevant provisions

Article 12(4) of the China Treaty defines FTS as payment for the provision of services of managerial, technical or consultancy nature by a resident of one Contracting State in the *other Contracting State*.

Tribunal's decision

The Delhi Bench of the Tribunal held that the fees received by the taxpayer for rendering managerial and technical services to ICo from outside India did not qualify as FTS under the China Treaty.

Services should be rendered in India to qualify as FTS under the China Treaty.

The Tribunal relied on the Bombay High Court's ruling in the taxpayer's own case,[5] wherein it was held that services provided virtually from China to the Indian affiliate through emails, conference calls and video conferences could not be regarded as services physically rendered in India, even though the parties were virtually present during the course of rendering such services. In the absence of a specific provision in the Income-tax Act, 1961 ('the 1961 Act') or the China Treaty, virtual delivery of services cannot be equated with physical rendition of services in India.

[1] ITA 7767/DEL/2019 – Multiple appeals
[2] Article 12(4)
[3] *Ashapura Minichem Ltd. v. ADIT* [2010] 40 SOT 22] (Mumbai Tribunal)
[4] *Guangzhou Usha International Ltd., In re* [2015] 378 ITR 465 (AAR)
[5] [2026] 487 ITR 373 (Bombay)

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Existence of Indian subsidiary and group disclosures insufficient to establish permanent establishment: Delhi Tribunal[6]

Facts of the case

The taxpayer, a tax resident of the USA, was engaged in the manufacture of filtration systems.

During the relevant year, the taxpayer sold machinery, raw materials and finished goods to its Indian subsidiary ('ICo'), which carried on its own manufacturing and distribution operations in India.

The taxpayer claimed that the income from such sale constituted business profits taxable only in the USA (and not in India) in the absence of a permanent establishment ('PE') in India under the India-USA tax treaty ('the US Treaty').

However, the Revenue alleged that the taxpayer had a fixed place PE[7] and dependent agent PE ('DAPE')[8] in India under the US Treaty.

Relevant provisions

Article 5(1) of the US Treaty provides that a PE means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

Article 5(4) of the US Treaty provides that a foreign enterprise is deemed to have a DAPE where a person, other than an independent agent, acts on its behalf and habitually exercises authority to conclude contracts for the foreign enterprise; habitually maintains and regularly delivers goods from a stock on behalf of the foreign enterprise; or habitually secures orders wholly or almost wholly for the enterprise.

Revenue's contentions

The taxpayer's website mentioned that its regional headquarters was in India. Form 10-K, forming part of the Annual Report filed with the US Securities and Exchange Commission, reflected that the taxpayer had a principal manufacturing plant in Delhi, India. These facts established the existence of a fixed place of business in India.

Considering the agreement between ICo and the taxpayer, ICo's activities were wholly directed towards promoting the taxpayer's business in India.

Tribunal's decision

The Delhi Bench of the Tribunal ruled in favour of the taxpayer and held that the taxpayer did not have fixed place PE in India and ICo did not constitute DAPE of the taxpayer in India.

Key observations of the Tribunal included:

No fixed place PE in India

Form 10-K contained consolidated statements of earnings, comprehensive income, assets, liabilities, balance sheet of the taxpayer and its subsidiaries. The reliance placed by the Revenue on Form-10K for determining PE in India was misplaced as it reflected the assets of the group worldwide.[9]

[6] *Donaldson Company Inc. v. ACIT* (ITA 2327/Del/2023)
[7] Article 5(1)
[8] Article 5(4)

[9] *ADIT* v. *E Funds IT Solution Inc.* [2017] 399 ITR 34 (SC); *Oracle Systems Corporation* v. *ADIT* [2025] 182 taxmann.com 238 (Delhi)

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The principal test to ascertain constitution of a fixed place PE in India is whether the Indian premises are at the disposal of the foreign enterprise. Ownership or lease of the premises is not necessary; however, the foreign enterprise must have the right to use and exercise control over the premises for carrying on its business. Mere access to the premises is insufficient to constitute fixed place PE.[10]

In the instant case, the manufacturing facility belonged to ICo and not the taxpayer. The Revenue relied solely on information collected from the group's website without establishing that ICo's premises were at taxpayer's disposal for carrying on the latter's business in India.

Merely because ICo was the taxpayer's subsidiary, it could not *ipso facto* be held that ICo's premises were at the taxpayer's disposal.

No DAPE in India

ICo was not economically dependent on the taxpayer, considering the insignificant amount of sales made to and raw materials purchased from the taxpayer as compared to the overall turnover and purchases made during the year.

ICo owned its manufacturing facility and independently engaged logistics providers, while the sample invoices and bills of lading established that transactions with the taxpayer were undertaken on a principal-to-principal basis.

The Revenue failed to provide any evidence, or cite even a single instance, to establish that ICo had authority to conclude contracts or habitually secured orders on the taxpayer's behalf.

ICo's obligation to undertake marketing and promotional activities arose under the 'patent, trademark and know-how licence agreement', and the related income had already been offered to tax as royalty. Since the sale of machinery and raw materials constituted a separate business segment, the Revenue's reliance on that agreement to conclude that ICo's activities were wholly devoted to promoting the taxpayer's products was flawed.

Buy-back of shares by Indian subsidiary from its Dutch parent not taxable as capital gains in India under the tax treaty: Delhi Tribunal[11]

Facts of the case

The taxpayer, a tax resident of the Netherlands, held approximately 99.99 per cent of the shares of an Indian company.

During FY 2019-20, the Indian company bought back its shares from the taxpayer at a face value of INR 10 per share. Following the buy-back, the number of shares held by the taxpayer in the Indian company reduced, while its percentage shareholding remained substantially unchanged.

The Indian company had received INR 10 per share upon the issuance of these shares, accordingly, there was no buy-back tax liability for the Indian company.[12]

The taxpayer contended that since the buy-back price of the shares was same as the cost of acquisition (i.e. INR 10 per share), there were no capital gains. Even otherwise, any such gains were exempt from tax for the shareholders under the 1961 Act.[13] Additionally, buy-back of shares by an Indian company from its Dutch

[10] *Formula One World Championship Ltd.* v. *CIT* [2017] 394 ITR 80 (SC)

[11] *Perfetti Van Melle Holding B.V.* v. *ACIT* (ITAT Delhi | ITA No. 1804/Del/2023)
[12] Section 115QA
[13] Section 10(34A)

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parent company was not taxable in India under the India-Netherlands tax treaty ('the NL Treaty').

The Revenue observed that the fair market value ('FMV') of the shares as on the buy-back date was higher than INR 10 per share, and accordingly, it re-computed the capital gains by applying section 50CA read with section 46A of the 1961 Act.

Relevant provisions

Section 115QA of the 1961 Act provides for levy of additional income-tax on distributed income arising from the buy-back of shares by domestic companies. Such income is exempt in the hands of the shareholders under section 10(34A) of the 1961 Act.

Section 46A deals with the taxation of capital gains in the hands of the shareholder arising on purchase by company of its own shares. The capital gain is computed as the difference between the cost of acquisition and the consideration received.

Section 50CA provides that where consideration received or accruing on the transfer of an unquoted share is lower than its prescribed FMV, the FMV may be deemed to be the full value of consideration for computing capital gains. In this regard, Rule 11UA of the Income-tax Rules, 1962 prescribes the methodology to compute the FMV.

Section 47(iv) provides that any transfer of a capital asset by a company to its subsidiary company, will not be considered as "transfer" for the purposes of capital gains if the parent company holds the whole of the share capital of the Indian subsidiary company.

Article 13 of the NL Treaty deals with taxation of capital gains. As per Article 13(5) of the NL Treaty, capital gains from alienation of shares of an Indian company shall be taxable only in the country of residence of the alienator (i.e. the Netherlands, in the instant case), if such gains are realised in the course of a corporate organisation, reorganisation, amalgamation, division, or similar transaction, and either the buyer or the seller owns at least 10 per cent of the capital of the other.

Revenue's contentions

The buy-back resulted in an increase in the value of the shares remaining with the taxpayer because the taxpayer continued to hold approximately 99.99 per cent shares of the Indian company after the buy-back. Accordingly, the taxpayer received not only INR 10 per share but also accrued consideration equivalent to the appreciation in the value of remaining shares. The full value of consideration includes both – the sum received and accrued as a result of transfer.

Alternatively, the capital gains were to be computed by applying the provisions of section 50CA by replacing the higher FMV (INR 298.30) for the consideration received (INR 10).

The Revenue also relied on the non-obstante clause in buy-back tax provisions, contending that the company's liability to pay buy-back tax did not eliminate the possibility of a tax liability arising in the hands of the shareholder other than actual gain on buy-back. The exemption to the shareholder was contended to be available only in respect of income subjected to buy-back tax under the 1961 Act and, therefore, was not applicable in the instant case.

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Taxpayer's contentions

Notional gains are not taxable

The addition was based on a notional appreciation in the value of shares, without any corresponding transfer consideration received or realisation of gains. Capital gains could not be charged merely because the FMV of the remaining shares had increased.

Transaction covered by buy-back taxation provisions

There is no mechanism in the buy-back taxation provisions to substitute the consideration payable by the company buying back its shares with the FMV of the shares.

If FMV cannot replace the actual consideration while determining the company's buy-back tax liability under the 1961 Act, it cannot be substituted for the shareholder's consideration for capital gains purposes[14] either. Any contrary interpretation would render section 115QA(4), which treats tax paid under section 115QA as the final tax on the buy-back transaction, otiose.

Without prejudice, even if section 50CA is considered as applicable, the income, if any, arising on the buy-back transaction is exempt in the hands of shareholders under the 1961 Act. Such exemption is available irrespective of the buy-back tax actually paid by the Indian company.[15] The exemption is available so long as the transaction qualifies as buy-back as per the provisions of the Companies Act, 2013.

Other arguments

Buy-back of shares in the instant case results in transfer of a capital asset by the parent company (i.e. the taxpayer) to its wholly owned subsidiary (i.e. the Indian company) which is exempt from capital gains tax as per section 47(iv) of the 1961 Act.

Relying on the Delhi Tribunal's earlier decision in *Huntsman Investment*,[16] the taxpayer argued that even if the transaction involving buy-back of shares by the Indian company was held taxable in the hands of the taxpayer (i.e. the Dutch parent company/ shareholder) under the 1961 Act, the same was not taxable in India under the NL Treaty.

Tribunal's decision

Buy-back of shares and capital gains

The Tribunal observed that the Revenue had not rebutted the taxpayer's contention that income arising to the shareholder pursuant to the buy-back was exempt under section 10(34A) of the 1961 Act.

The Tribunal also noted that the Revenue had not established that the transaction fell outside the exemption applicable to the transfer of a capital asset by a company to its wholly owned subsidiary under section 47(iv) of the 1961 Act.

[14] Under section 46A
[15] *ACIT* v. *Magical Enterprise LLP* [2025] 170 taxmann.com 306 (Delhi -Tribunal)

[16] *Huntsman Investment [Netherlands] BV* v. *ADIT* [2026] 184 taxmann.com 602 (Delhi Tribunal)

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Exemption under the NL Treaty

The Revenue could not substantiate its position against the taxpayer's treaty-based contention and had not rebutted the arguments advanced on the applicability of Article 13(5) of the NL Treaty.

Accordingly, the Tribunal accepted the taxpayer's contentions.

Interest on rupee-denominated NCDs eligible for concessional tax rate under section 194LD: Delhi Tribunal[17]

Facts of the case

The taxpayer, a Singapore-based company, was registered as a foreign portfolio investor under the Securities and Exchange Board of India Act, 1992.

During FY 2019-20, the taxpayer earned interest on investments in non-convertible redeemable debentures ('NCDs') issued by various Indian entities and offered the same to tax at the concessional tax rate of 5 per cent (plus applicable surcharge and cess) under section 115AD read with section 194LD of the 1961 Act.

The Revenue denied the concessional tax treatment, holding that NCDs and rupee-denominated bonds ('RDBs') were distinct financial instruments and applied the tax rate of 15 per cent under the India-Singapore tax treaty to the interest income.

Relevant provisions

Section 194LD of the Act provides for tax deduction at source at the concessional rate of 5 per cent on interest income payable to eligible foreign institutional investors ('FIIs') and qualified foreign investors ('QFIs') in respect of investment made by them in RDBs of an Indian company.

Taxpayer's contentions

The terms "bond" and "debenture" were not defined under section 194LD or under any other provisions of the 1961 Act.

Relied on earlier decisions in *Heidelberg Cement AG*[18] and *Amplus Energy Solutions*[19] to contend that there is no distinction between the debentures and bonds as both are debt instruments.

Referred to an internal communication issued by the Principal Chief Commissioner of Income-tax (International Taxation), which stated that bonds included debentures for the purposes of section 194LD.

Revenue's contentions

Debentures and RDBs cannot be used interchangeably. Section 194LD was introduced to encourage foreign investment in rupee-denominated government and corporate bonds.

Following the rationale for introducing section 194LD, the Revenue argued that RDBs issued in accordance with RBI notifications in respect of borrowing, or lending, cannot be interpreted in a general way to include NCDs or any other mode of instruments.

[17] *Ascendas Property Fund (FDI) Pte. Limited* v. *DCIT* (IT(IT)A No. 210 & 211/Del/2026)

[18] *Heidelberg Cement AG* v. *ACIT* [2022] 143 taxmann.com 79

[19] *Amplus Energy Solutions Pte Ltd.* v. *ACIT* [2025] 175 taxmann.com 1070 (Delhi Tribunal)

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The internal communication relied upon by the taxpayer was an internal administrative instruction and such instruction could not benefit the taxpayer.[20]

Tribunal's decision

The Delhi Bench of the Tribunal ruled in favour of the taxpayer and held that the taxpayer was entitled to the benefit of section 194LD in respect of interest earned on rupee-denominated NCDs.

Key observations of the Tribunal included:

For the purposes of section 194LD, the relevant consideration is whether the instrument represents a debt giving rise to interest income.

As the terms “debenture” or “bond” are not defined under the 1961 Act, then, the fact that debentures and bonds are both debts instruments creating interest liability is the only relevant factor to be considered for determining if the benefit of section 194LD can be extended.

Relied on the coordinate Bench's decision in *Amplus Energy Solutions* wherein it was observed that the distinction between NCDs, compulsory convertible debentures (‘CCDs’) and optional convertible debentures (‘OCDs’) was not material for section 194LD, as these instruments represented debt instruments similar to bonds.

[20] *MD Sons* v. *ITO* (ITA No. 1413/Bang/2025)

b. Decisions – Domestic tax

Category-III AIFs not indeterminate trusts merely for not naming investors in the trust deed; Revenue’s SLP dismissed: Supreme Court[21]

Background

The taxpayer was a Category-III Alternative Investment Funds (‘AIFs’) Trust, registered with the SEBI.

It launched an open-ended scheme, executed contribution agreements with various investors and issued units to such investors.

In its tax return, the taxpayer took the position that as the share of the beneficiaries/ investors is ascertainable, it qualified as determinate trust, and its income was taxable at the normal tax rates.

To obtain clarity on future tax treatment, the taxpayer sought an advance ruling from the Authority for Advance Rulings (‘AAR’), which was later transferred to the Board for Advance Rulings (‘BAR’), post AAR abolition by the Finance Act, 2021.

The BAR held that as the names of the beneficiaries were not mentioned in the original trust deed, the taxpayer would be treated as an indeterminate trust and resultantly be taxed at the Maximum Marginal Rate (‘MMR’) under the 1961 Act.[22]

Aggrieved by the BAR’s order, the taxpayer filed a writ petition before the Delhi High Court.

[21] *The Central Board of Direct Taxes* v. *Equity Intelligence AIF Trust* (Civil Diary No.2801/2026)
[22] Section 164 read with Explanation 1 thereto

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High Court's decision[23]

The Court applied the doctrine of impossibility to read down CBDT Circular No. 13/2014[24] ('the 2014 Circular'), finding it inconsistent with SEBI Regulations[25] for AIFs.

The 2014 Circular required the AIFs to mention the investor names and their beneficial interests in the original trust deed for 'determinate trust' classification under the 1961 Act. On the other hand, the SEBI Regulations prohibited any investment from being received before obtaining SEBI registration certificate. Accordingly, naming investors or their share in the trust deed which was required at the time of registration would have violated these Regulations.

Therefore, Category-III AIFs could not be deemed indeterminate trusts solely due to the absence of investors' identity and their share mentioned in the trust deed on the execution date and should not be taxed at the MMR.

Supreme Court's decision

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

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

[23] *Equity Intelligence AIF Trust v. Central Board of Direct Taxes* [2025] 480 ITR 278 (Delhi) – Please click here to access KPMG Flash News dated 1 August 2025 for more details on the High Court decision
[24] Circular No.13/2014 [F. No. 225/78/2014-ITA.II] dated 28 July 2014 issued by the Central Board of Direct Taxes
[25] Section 12(1) and 12(1C) of the SEBI Act, 1992 read with Regulations 3, 4, 6 and 7 of the SEBI (Alternative Investment Funds) Regulations, 2012

Failure to examine taxability of accrued interest on conversion of debentures justifies revision of reassessment order: Madras High Court[26]

Facts of the case

The taxpayer subscribed to zero-coupon convertible debentures issued by an Indian company ('ICo'), with a nine-year tenure.

ICo prematurely converted the debentures into equity shares. The value of shares allotted included both the initial face value of the debentures and the accumulated interest accrued up to the date of conversion.

In the tax return filed for the relevant year, the taxpayer offered to tax only the interest income accrued during the year and did not offer to tax the balance accumulated interest that had accrued in earlier years. The tax officer concluded the reassessment proceedings for the year without making any addition and accepting the arguments provided by the taxpayer.

The Principal Commissioner of Income-tax ('the PCIT') reviewed the reassessment order and observed that the tax officer had failed to examine the taxability of the interest component embedded in the conversion. Holding the reassessment order to be erroneous and prejudicial to the interests of the Revenue, the PCIT passed a revision order under the 1961 Act,[27] remanding the matter to the tax officer for fresh determination.

The taxpayer challenged the PCIT order before the High Court by filing a writ petition.

[26] *Sanjjay Saumyha* v. *PCIT* (TCA No. 151 of 2026)
[27] Section 263

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Relevant provisions

As per section 263, where the PCIT considers that an assessment order is erroneous in so far as it is prejudicial to the interests of the Revenue, he may pass an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Taxpayer's contentions

Once a plausible view was taken by the tax officer after considering the provisions of section 145 of the 1961 Act[28] and the explanations submitted during the reassessment proceedings, the exercise of revisionary power by the PCIT merely reflected an impermissible change of opinion.

Since no cash was received on conversion of the debentures into equity shares and the taxpayer followed the cash system of accounting, no income crystallised during the relevant year.

Conversion of debentures into equity shares is explicitly regarded as not being a "transfer" under the 1961 Act[29] for capital gains purposes. Capital gains consequences could arise only when the equity shares received on conversion were eventually sold. Taxing the accrued interest upon conversion while determining the cost of acquisition of converted shares based on the original debenture cost[30] would result in double taxation, as gain on the converted shares would also be subject to tax when the shares are subsequently sold.

High Court's decision

The Madras High Court held that the tax officer's failure to conduct proper inquiry and analysis into taxability of accrued interest on conversion of debentures into equity shares rendered the reassessment order erroneous and prejudicial to the Revenue, thereby, justifying the exercise of revisionary jurisdiction under section 263 by the PCIT. The PCIT merely remanded the matter back to the tax officer and the taxpayer can raise its arguments before the tax officer.

Upon premature conversion of the debentures, ICo discharged its underlying obligation by issuing equity shares for a value which included accumulated interest (from the date of issue of debentures till the date of conversion). By accepting equity shares, that represented this accumulated interest, the taxpayer received the economic value satisfying the debt.

Rejected the taxpayer's argument of following cash system of accounting and held that tax liability is not deferred where an asset of clear monetary value (i.e. equity shares), was received in discharge of accrued interest. Receipt of income need not take the physical form of cash; settlement through the allotment of valuable shares constituted constructive receipt.

The exclusion of conversion of debentures into shares from the ambit of "transfer" for capital gains purposes does not alter the character of, or exempt from tax, the interest embedded in the value of shares issued upon conversion, which remains taxable under the 1961 Act.[31] The tax officer failed to apply these statutory provisions and accepted the taxpayer's tax return without proper analysis.

[28] Section 145 prescribes the method of accounting for determining business income
[29] Section 47(x)
[30] As per section 49(2A)

[31] Section 56 - Income from other sources

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Rejected the taxpayer's double taxation argument, holding that interest taxed upon conversion would be included in the cost of acquisition of the shares and therefore would not be taxed again on their subsequent sale.

Demerger impact cannot be ignored in valuation of shares held as stock-in-trade; cost of shares to be apportioned between retained shares and OCDs: Ahmedabad Tribunal[32]

Facts of the case

The taxpayer held 2,15,000 unlisted shares of an Indian company ('ICo') as stock-in-trade, acquired at INR 2,000 per share.

Pursuant to a scheme of demerger approved by the NCLT,[33] one of the ICo's divisions, along with its substantial real estate assets, was demerged to the resulting companies. In consideration for the demerger, the taxpayer received OCDs issued by the resulting companies.

Following the demerger, the asset base and intrinsic value of ICo's shares diminished substantially. Accordingly, the taxpayer valued the shares of ICo at INR 1,800 per share, thereby resulting in a reduction in the value of closing stock and net profit.

The Revenue, however, rejected the taxpayer's claim and revalued the closing stock of shares at its acquisition cost (i.e. INR 2,000 per share). Consequently, the Revenue added the differential amount to the taxpayer's taxable income, holding that ICDS-VIII (dealing with 'Securities') required unlisted securities held as stock-in-trade to be valued at their actual cost initially recognised.

Tribunal's decision

The Ahmedabad Bench of the Tribunal accepted the taxpayer's position of revaluing the closing stock of ICo shares to reflect the diminished value of the underlying assets post demerger.

Key observations of the Tribunal included:

ICDS-VIII provides that where a security is acquired in exchange for another security or asset, its actual cost is to be determined with reference to the fair value of the security acquired.

Following the demerger, the original cost of the shares in ICo was required to be apportioned between the retained ICo shares and the OCDs received pursuant to the demerger.

Retaining the pre-demerger cost of INR 2,000 per share without considering the impact of demerger would result in a distorted valuation.

[32] *DCIT v. Harsha Rajeshbhai Jhaveri (ITA No. 972/Ahd/2025)*
[33] National Company Law Tribunal

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Prescribed FMV for capital gain purposes cannot apply where buy-back income is exempt for the shareholder: Kolkata Tribunal[34]

Facts of the case[35]

The taxpayer held equity shares of INR 10 each in another Indian company ('ICo').

During the relevant years,[36] ICo bought back shares from the taxpayer at INR 13.50 per share and paid buy-back tax under the 1961 Act.[37]

The taxpayer claimed the income arising from buy-back as exempt under the 1961 Act.[38] In support of its contention, the taxpayer relied upon various judicial precedents.[39]

However, the Revenue invoked section 50CA, computed the FMV of the shares[40] at INR 106.83 per share and added the differential amount to the taxpayer's income.

Relevant provisions

Section 115QA of the 1961 Act provides for levy of additional income-tax on distributed income arising from the buy-back of shares by domestic companies. Such income is exempt in the hands of the shareholders under section 10(34A) of the 1961 Act.

Section 50CA provides that where consideration received or accruing on the transfer of an unquoted share is lower than its prescribed FMV, the FMV may be deemed to be the full value of consideration for computing capital gains. In this regard, Rule 11UAA read with Rule 11UA of the Income-tax Rules, 1962 prescribes the methodology to compute the FMV.

Tribunal's decision

The Kolkata Bench of the Tribunal ruled in favour of the taxpayer and held that section 50CA could not be applied to compute the income in the hands of shareholders where a buy-back of shares is covered by the buy-back tax regime.

Key observations of the Tribunal included:

The capital gains, if any, in the hands of shareholders, are exempt. The exemption provision[41] covers any income arising to a shareholder on account of a buy-back of shares. Consequently, even if the taxpayer had received additional income arising from the buy-back, such income would also be exempt under the provision.

Section 50CA, being a machinery provision for computing the full value of consideration, cannot operate where there is no chargeable capital gain.

[34] *DCIT* v. *Laser Power & Infra Private Limited* (ITA Nos. 2790 to 2795 and 2926/ Kol/ 2025)
[35] Other grounds of appeal have not been covered in this note
[36] As applicable during FY 2016-17 to 2021-22
[37] Section 115QA
[38] Section 10(34A)
[39] *PCIT* v. *Globe Capital Market Ltd.* [2026] 487 ITR 744 (Delhi); *Vora Financial Services (P.) Ltd.* v. *ACIT* [2018] 171 ITD 646 (Mumbai); *VITP (P.) Ltd.* v. *DCIT* [2022] 197 ITD 395 (Hyderabad); *DCIT* v. *Venture Lighting India Ltd.* [2023] 102 ITR(T) 354 (Chennai); *Lupin Investments (P.) Ltd.* v. *DCIT* [2025] 177 taxmann.com 80 (Mumbai)
[40] Rule 11UAA read with Rule 11UA of the Income-tax Rules, 1962
[41] Section 10(34A)

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High Court cases

Refund of GST paid on assignment of leasehold rights allowed[42]

The petitioner acquired leasehold rights in an industrial plot at Ankleshwar in February 2022 for consideration inclusive of GST and availed input tax credit ('ITC') of the GST charged by the supplier. Subsequently, the petitioner reversed the entire ITC, along with interest, through Form GST DRC-03 under protest, following the Revenue objection to the eligibility of ITC under section 17(5)(d) of the CGST Act, 2017. The Revenue confirmed the demand for reversal of ITC, interest and an equivalent penalty under section 74(1) of the CGST Act, 2017. The appellate authority upheld the demand, following which the petitioner approached the High Court.

The petitioner contended that the assignment of leasehold rights did not constitute a taxable supply under GST, relying on the Gujarat High Court's decision in *Gujarat Chamber of Commerce and Industry.*[43] It further argued that section 17(5)(d) of the CGST Act, 2017 which restricts ITC in specified cases involving the construction of immovable property, was inapplicable as no construction activity had been undertaken. The petitioner also submitted that the invocation of section 74(1) of the CGST Act, 2017 was unjustified in the absence of fraud, wilful misstatement or suppression of facts.

The Revenue defended the orders, confirming the demand and denying ITC. The dispute was examined in light of the existing judicial position that the assignment of leasehold rights in industrial plots allotted by the Gujarat Industrial Development Corporation does not constitute a taxable supply under GST.

The Court held that section 17(5)(d) of the CGST Act, 2017 presupposes an underlying taxable supply on which GST is lawfully leviable. Where the underlying transaction is not taxable, the question of restricting ITC under the said provision does not arise. Since the petitioner had merely acquired leasehold rights and had not undertaken any construction, the invocation of section 17(5)(d) of the CGST Act, 2017 was misconceived. The Court also found no basis for invoking section 74(1) of the CGST Act, 2017 and quashed the impugned adjudication and appellate orders, and directed the revenue to refund the ITC reversed and the interest paid thereon within three weeks of receipt of the judgment.

GST demand on common corporate expenses quashed in the absence of cross-charge invoices[44]

The petitioner incurred common corporate expenses, including advertisement and publicity, IT infrastructure, annual maintenance services, legal fees, litigation expenses and employee salaries, at its head office in Anand. The dispute pertained to the period from July 2017 to March 2019, during which the petitioner did not allocate these expenses to its branches and depots through cross-charging. The Revenue confirmed GST demand under section 74 of the CGST Act, 2017, along with applicable interest and penalty, on the ground that the common expenses were attributable to services provided by the head office to its branches. Aggrieved by this, the petitioner filed a writ petition before the High Court challenging the demand.

The petitioner contended that cross-charging was not a mandatory statutory requirement and that the common expenses were duly recorded in its books of account. It submitted that, in terms of CBIC Circular Nos. 199/11/2023-GST dated

[42] *Kor Chems Through Partner Sanjay Rameshchandra Soni* [TS-750-HC(GUJ)-2026-GST]
[43] *Gujarat Chamber of Commerce and Industry* [(2025) 26 Centax 150 (Guj.)]
[44] Gujarat Co-operative Milk Marketing Federation Limited [R/Special Civil Application No. 7085 of 2025]

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Indirect Tax

17 July 2023 and 210/4/2024-GST dated 26 June 2024 ('CBIC circulars'), where the head office had not issued tax invoices to its branches, the value of such services could be deemed to be nil under rule 28 of the CGST Rules, 2017. The petitioner also challenged the invocation of section 74 of the CGST Act, 2017 contending that there was no fraud, wilful misstatement or suppression of facts with intent to evade tax.

The Revenue contended that the petitioner had deliberately avoided cross-charging with fraudulent intent to evade GST and had subsequently commenced allocating expenses to its branches with effect from 1 April 2019. It submitted that the head office and branches holding separate GST registrations constituted distinct persons under section 25 of the CGST Act, 2017 and that the common services were taxable under Schedule I. The Revenue further submitted the extended period under section 74 of the CGST Act, 2017 was invocable as the petitioner had not disclosed the non-payment of tax on a cross-charge basis.

The Court allowed the writ petition and quashed and set aside the impugned Order-in-Original. The Court held that where the head office and branches hold separate GST registrations, they are distinct persons under sections 25(4) and (5) of the CGST Act, 2017 and supplies between them fall within the scope of Schedule I. However, where the head office had not issued tax invoices to its branches for the services in question, the value of such services was required to be treated as nil in terms of rule 28 of the CGST Rules, 2017 read with the CBIC circulars. Consequently, no tax liability arose in the present case. The Court further held that the essential ingredients for invoking section 74 of the CGST Act, 2017 had not been established. Mere failure to adopt cross-charging, particularly where the expenditure was duly recorded in the books of account, and the transaction would have been revenue-neutral, did not establish fraud, wilful-misstatement or suppression of facts with intent to evade tax.

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Foreign Exchange Management Act, 1999

RBI amends the Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026.

The Reserve Bank of India ('RBI') on 22 September 20261,[45] amended the Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026, effective from 1 October 2026.The key updates are as below:

- Reduction in the export proceeds realisation and repatriation period from 15 months to 9 months. For exports invoiced/settled in INR, the timeline has been reduced from 18 months to 12 months.
- Exporters on the RBI Caution List as of 30 September 2026 will continue to be governed by the existing caution orders until removed from the list.
- Authorised Dealer ('AD') Banks have been empowered to handle legacy export, import and merchanting trade transactions undertaken prior to 1 October 2026, that earlier required approval from the RBI.

[45] Gazette ID: CG-MH-E-24092026-276477 notified in FEMA 23(R)/(1)/2026-RB

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