

LEX LOQUITUR

A NEWSLETTER SUMMARIZING LATEST COURT RULINGS

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Preface

Dear Reader,

Courts “rule”. They actually do. Significance, application and implication of such rulings needs to be understood and appreciated.

Lex Loquitur is an endeavor to bring to you the latest rulings from the Courts and various other judicial fora. We intend to cull out the ratio of some important rulings and summarize them for your ready reference, with our observations/comments, if any.

We trust you will find it an interesting read.

We would, however, look forward to your feedback/comments.

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Warm Regards

Team Lex Loquitur

UBR LEGAL, ADVOCATES

1. Whether interest paid on borrowed funds could be set off against interest earned from advances to sister concerns when leasing business had not commenced?

Modi Business Centre Pvt. Ltd. v. DCIT - ITA No. 584 of 2003 [Bombay High Court]

Decision: Yes.

The appellant was set up with objective of constructing business centres and to let on lease the same, in addition to the business of financing. For AY 1992-93, the Assessee file return seeking deduction of interest paid against interest earned. It had borrowed money on interest from Citibank during the period from 18.02.1992 to 21.03.1992. It was the case of the Assessee before the AO that loan from Citibank was not only for expenses for furnishing the building, but the loan agreement provided for disbursement of loan for the purpose of business of the borrower. However, AO disallowed. Hence, appeal before CIT(A). The CIT(A) allowed the appeal holding that since the Assessee was in the process of converting the premises into modern business centre, it could not be said that the business had not yet commenced. CIT(A) further held that arrangement of appointing financier and its temporary utilisation is one composite transaction and therefore the interest received by the Assessee on account of temporary utilisation of loan could not be considered in isolation. However, on appeal by Revenue, the ITAT, Mumbai reversed the said decision. Hence, appeal before High Court.

The Bombay High Court set aside the order passed by ITAT and allowed the appeal. It held: (i) the ITAT erred in applying the meaning of the term "set up"; reliance placed on Ramaraju surgical was incorrect; (ii) issue of adjustment of interest income against interest is settled by decision of Gujarat High Court; affirmed by Supreme Court; in Sarabhai Management Corporation; (iii) relies on Delhi High Court and other high court judgements; (iv) relies on subsequent order passed by the ITAT for AY 1993-94 holding in favour of the appellant; (v) relies on Supreme Court in Radha Swami Satsang Case to hold that revenue cannot be allowed to take inconsistent stands for different financial years; (vi) holds that deduction is permitted under section 57(f)(iii) of the Act; (vii) rejects reliance placed on Tuticorin and other judgments by the Revenue.

2. Whether the Income Tax Department can claim interim custody of seized gold ornaments when the assessee has already disclosed ownership and paid tax on them in its Income Tax Returns?

ACIT v PK Jewellers Pvt. Ltd. - Cr. Petition No. 100679 of 2020 (482(CR.PC)/528(BNSS)) (Karnataka High Court)

Decision: No.

Two persons carrying gold were intercepted. The gold was intercepted by the police; when code of conduct was in operation; alleging that the gold was intended to be distributed to voters in wake of the State Assembly elections. A police complaint was lodged. The Respondent (a jeweller) claimed ownership of the part of gold. Based on the lead from the police, the Income Tax Department conducted search at the premises of the respondent and statements came to be recorded. The income tax department filed an application before the Ld. Magistrate seeking custody and release of the gold. The Respondent also filed similar application. Both applications were dismissed. Both filed criminal revision petitions before the Ld. Sessions Judge. The Ld. Judge allowed the application of the respondent and dismissed the application of the department. Hence, criminal application under section 482 of Cr. PC came to be filed before the Hon'ble High Court.

The Karnataka High Court at Dharwad dismissed both the petitions filed by the Income Tax Department. It held: (i) pursuant to the release order; the conditions for use of the jewellery has been relaxed by the Ld. judge post which the gold jewellery has been disposed off; (ii) the respondents have filed their income tax returns for FY 2018-2019 offering the said gold to tax; the same has been accepted under assessment order passed under section 143(1) of the Act; (iii) no demand and/or notice is pending against the petitioner; (iv) in wake of no further action take by the income tax department and subsequent developments; the prayers in petitions do not survive.



3. Whether a reassessment notice under Section 148 of the Income-tax Act is valid if issued by the jurisdictional Assessing Officer instead of the mandated Faceless Assessing Officer?

Bhilosa Industries Pvt. Ltd. v Union of India & Ors - WP No. 2174 of 2025 [Bombay High Court]

Decision: No.

The petitioner is a manufacturer. It was issued a notice under section 148 of the Income Tax Act seeking to reopen assessment for FY 2020-2021. The same was challenged in writ petition. The challenge, amongst other grounds, was on the ground that the notice is issued by the jurisdictional assessing officer (JAO) and not by the faceless assessing officer (FAO) in terms of section 151A of the Act and hence, without jurisdiction.

The Bombay High Court allowed the petition and quashed the notice and all subsequent proceedings. It held that the issue is covered by its decision in the case of Hexaware International. The Revenue agreed that the said decision has not been stayed by the Supreme Court. However, grants liberty to the Revenue to mention the matter in case decision in Hexaware is overruled by the Supreme Court, then the other issues urged would be decided.

4. Whether the rejection of a rectification application under GST without affording personal hearing is valid in law?

Seaways Shipping and Logistics Limited v State of Tamil Nadu & Ors - WP No. 24808 of 2025 [Madras High Court]

Decision: No.

The petitioner is engaged in shipping business. It filed its GSTR-3B return. It paid output tax; which was not payable. In the subsequent month; it took credit of the same amount. While filing GSTR-9 return; the same was reconciled. However; show cause notice was issued proposing to deny credit which was not shown in the GSTR-2A. The petitioner contended that it was only a reconciliation and reporting error. However; demand was confirmed along with interest and penalty. It filed a rectification application under section 161. However; it came to be rejected. Hence, petition was filed.

The Madras High Court set aside the order and allowed the writ petition. It held: (i) the order on rectification was passed without hearing the petitioner; (ii) proviso to section 161 provides that opportunity must be granted when a decision is made against the applicant; (iii) however; does not interfere with the original order as it was passed after hearing the petitioner; (iv) remands the matter back.

5. Whether goods can be auctioned under Section 130 of the CGST Act without first granting the taxpayer the option to pay fine in lieu of confiscation or release upon penalty under Section 129?

Venkateshwara Traders v Union of India & Ors - D.B. Civil WP No. 2413 of 2025 [Rajasthan High Court, Jaipur Bench]

Decision: Stay.

The petitioner is a trader. It sells arecanut. A truck transporting goods from Delhi to Gujarat was seized in Rajasthan. It was alleged that the petitioner has undervalued the goods and hence; without following seizure of the goods under section 129 of the GST Act; the goods were confiscated under section 130 of the Act. The goods were also sought to be auctioned upon confiscation. This action came to be challenged in writ petition.

The Rajasthan High Court at Jaipur stayed the auction proceedings. It noted that the Revenue has not followed the mandatory procedure under section 129 of the Act before confiscating the same under section 130. It notes that section 130(7) mandates that minimum of three months time should be granted before auction of the confiscated goods; however; in the instant case the same has been done within a month. Accordingly; stays the auction subject to petitioner furnishing bank guarantee to the extent of the value of the goods.

6. Whether tobacco products were liable to valuation under Section 4A of the Central Excise Act, 1944 after repeal of the Central Excise Tariff Act, 1985 on 01.07.2017, in absence of amendment to Notification No. 49/2008-CE (NT)?

Trimurti Fragrances & Flavours Pvt. Ltd. v. Commissioner, CGST & C. Ex., Kanpur – Excise Appeal No. 70442 of 2024 [CESTAT, Allahabad]

Decision: No.

The appellant is a manufacturer of tobacco products. It is registered with the central excise department and was paying central excise duty. With effect from 01.07.2017, GST Law was introduced. Section 174 of CGST Act repealed the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985. Notification no.49/2008 issued under section 4A of Central Excise Act referred to commodities under the First Schedule of the Central Excise Tariff Act which would be subject to MRP based assessment (less abatement). The said notification was not amended with effect from 01.07.2017; to incorporate reference to Fourth Schedule to the Central Excise Act. The said reference was introduced vide notification no. 1/2022 only. Hence; during the period from 01.07.2017 to 03.03.2021; the appellant paid central excise duty under section 4. Notice came to be issued alleging valuation under section 4A. Differential duty demand of over Rs.28 crores was confirmed with interest and equivalent penalty. The same was challenged in appeal.

CESTAT, Allahabad set aside the order and allowed the appeal. It held: (i) As per Section 174 of the GST Act, 2017, Central Excise Tariff Act, 1985 is repealed. Through Notification No.20/2017; CENVAT Credit Rules were amended where reference to First Schedule to Central Excise Tariff Act was amended to Fourth Schedule to the Central Excise Act, 1944; (ii) To make all the notifications operational a reference to Fourth Schedule was made; however, no such amendment was effected to Notification No.49/2008; (iii) the said omission to make changes has resulted in Notification losing authority of law; (iii) Through Notification No.01/2022-C.E; abatement was provided and therefore, the goods manufactured by the Appellant did not attract provisions of Section 4A during the period from 01.07.2017 to 01.02.2022; (iv) Section 38B of the Central Excise Act, 1944 introduced w.e.f. 01.07.2017 through the Taxation Laws (Amendment) Act, 2017 did not save provisions of Notification No. 49/2008 because the said Section deals with any notification issued under Central Excise Tariff Act, 1985.

7. Whether service tax is payable under reverse charge on consultancy/legal services received for winding-up proceedings when the assessee has ceased all business activities?

Lehman Brothers Advisers Pvt Ltd. v. Commissioner of Service Tax-I, Mumbai – ST Appeal No. 87205 of 2017 [CESTAT, Mumbai]

Decision: No.

The appellant was a global giant providing management and business consultancy services. The holding company in USA filed for bankruptcy under section 11 of US Bankruptcy Code. A petition was also filed before the NCLT for winding up of the appellant (subsidiary company in India). For the said purpose; the appellant engaged Management consultants (KPMG) and foreign law firms. They paid service tax on, reverse charge basis, on the fees paid to them. Subsequently; a refund claim for over Rs.5.5 crores was filed. The same was rejected. Hence, appeal.

CESTAT, Mumbai set aside the rejection orders and allowed the appeals. It held: (i) the appellant was not undertaking any business activity; hence; was not liable to pay service tax under section 66A of the Act; (ii) Rule 3(1)(iii) of the Taxation of Services (provided from outside India and received in India) Rules, 2006 would apply only when services are used in or in relation to business; if there is no business activity; the said rule does not apply; (iii) mere fact that the service tax registration had not been cancelled; it could not be considered as a “going concern”; (iv) follows decision of co-ordinate bench in the case of the appellant.

REPEAL

8. Whether reassessment under Section 147/148 based on vague AIR information without specifying bank name or account details—can sustain addition of unexplained cash deposits under Section 69A?

Dhondiram Pundalik Dhule v. ITO, Panvel – ITA No. 895/PUN/2024 [Pune ITAT]

Decision: No.

The appellant is a retired Indian Army officer. He is a senior citizen. His income is from pension and interest on deposits. A notice under section 148 of the Income Tax Act came to be issued to him for FY 2013–2014. He filed return of income declaring income of about Rs.1 lakh. However, during reassessment proceedings addition of Rs.40,40,000/- came to be made under section 69A of the Act. Appeal against such order came to be rejected by the CIT(A). Hence, appeal before ITAT.

ITAT, Pune set aside the orders and allowed the appeal. It held: (i) the re-opening was bad in law; (ii) the assessing officer had not mentioned the bank account in which the alleged cash deposits were made; (iii) there was no rebuttal to the affidavit filed by the appellant providing list of bank accounts held; along with the bank statements; denying holding any account no 2020000; (iv) the onus cast on the assessing officer was not discharged and mere reliance on AIR data was incorrect.

9. Whether sales tax retained by a manufacturer under a State incentive scheme (by paying only the Net Present Value and keeping the balance) is includible in the assessable value for levy of central excise duty?

Commissioner of Central Excise & Service Tax v. Astra Metal System Pvt. Ltd. – Excise Appeal No. 87441 of 2016 [CESTAT, Mumbai]

Decision: No.

The respondent is a manufacturer of sheet metal parts. It pays central excise duty on the final products on transaction value. The State of Goa offered sales tax deferment (incentive scheme) for units to collect sales tax and defer the payment. However, in 2005, the State Government amended the same where the unit was to pay “Net Present Value” of the sales tax amount collected i.e. deposit 25% of the sales tax collected and retain the balance 75%. The central excise department sought to levy duty on this amount of sales tax retained as “additional consideration” under section 4 of the Central Excise Act. Demand of over Rs. 70 lakhs was confirmed along with interest and equivalent penalty. On appeal, the Commissioner (Appeals) set aside the demand and allowed the appeal. Hence, appeal by the Revenue

CESTAT, Mumbai dismissed the appeal filed by the Department. It held: (i) the sales tax/VAT retained by the unit under the NPV scheme is not includible in the assessable value; (ii) the issue is no longer res integra in view of decision in the case of Uttam Galva and others; (iii) the Civil appeal filed by the department against decision in the case of Mahindra Steel has been dismissed by the Supreme Court; (iv) hence; the deferred sales tax amount cannot be a part of transaction value.



Unexplained Cash Deposit

10. Whether service tax is payable on payments received after 01.07.2010 for residential construction activities that were fully completed prior to the introduction of the levy?

Dosti Corporation (Vihar) v Principal Commissioner of Service Tax – I, Mumbai – ST Appeal no. 85746 of 2017 [CESTAT, Mumbai]

Decision: No.

The appellant is a builder. It constructs houses for sale. Construction of residential complex became taxable with effect from 01.07.2010. The revenue sought to demand service tax on the payments received after the said date; even though construction was undertaken prior to the said date. A demand of over Rs. 3 crores was confirmed along with interest and equivalent penalty. Hence, appeal.

CESTAT, Mumbai set aside the order and allowed the appeal by way of remand. It held: (i) the commissioner has not considered the certificates issued by the architect and chartered engineer certifying the work done prior to 01.07.2010; (ii) rule 3(1) of the Point of Taxation of Rules, 2011 would be applicable qua payment or qua activity needs to be examined; (iii) the commissioner is directed to take into consideration the several judgments relied upon on this issue.

11. Whether penalty can be imposed for availing inadmissible CENVAT credit later reversed during audit, when there was no suppression or mala fide intention?

CEAT Ltd. v Commissioner of CGST & C. Ex., Navi Mumbai – Excise Appeal No. 86726 of 2021 [CESTAT, Mumbai]

Decision: No.

The respondent is a manufacturer of sheet metal parts. It pays central excise duty on the final products on transaction value. The State of Goa offered sales tax deferment (incentive scheme) for units to collect sales tax and defer the payment. However, in 2005, the State Government amended the same where the unit was to pay “Net Present Value” of the sales tax amount collected i.e. deposit 25% of the sales tax collected and retain the balance 75%. The central excise department sought to levy duty on this amount of sales tax retained as “additional consideration” under section 4 of the Central Excise Act. Demand of over Rs. 70 lakhs was confirmed along with interest and equivalent penalty. On appeal, the Commissioner (Appeals) set aside the demand and allowed the appeal. Hence, appeal by the Revenue

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12. Whether financial hardship can be a ground for waiver or reduction of the mandatory pre-deposit required under Sections 35B and 35F of the Central Excise Act, 1944?

Altafhusen Mayuddin Khatri Vs. Union of India & Anr.-Special Leave Petition (CIVIL) Diary No.12185/2025 (Supreme Court)

Decision: No.

The Petitioner is the owner of 'Gutkha' (tobacco) manufacturing unit. Search was conducted and statements were recorded. First Show cause notice was issued on 21.02.2017 was issued for confiscation of goods valued at Rs. 6,71,200/-. Second Show Cause Notice was issued on 08.08.2017 demanding central excise duty of Rs 433.11 crore, along with interest and penalties, for the period October 2014 to February 2017. OIO was passed confirming the demand.

Aggrieved by the OIO, the Petitioner filed a Special Civil Application before the Gujarat High Court on the limited issue of waiver of pre-deposit for filing an appeal against the impugned orders before the CESTAT. The High Court held that Section 35F mandates pre-deposit before appeal no discretion exists to waive it, even on grounds of financial hardship. The petitioner had an alternate remedy (appeal before CESTAT), and writ jurisdiction could not be invoked to bypass statutory requirements and dismissed the petition. Thus, the petition.

The Supreme Court held that the provisions of Sections 35B and 35F are mandatory in nature, leaving no scope for waiver or reduction of the pre-deposit. It was observed that financial hardship cannot dilute the statutory safeguard provided to protect government revenue, and inability to pay cannot be a ground for invoking writ jurisdiction. Accordingly, the Court found no infirmity in the High Court's reasoning and dismissed the Special Leave Petition.

13. Whether the central authority can issue 'summons' despite proceedings already initiated by the State Authority?

Armour Security (India) Limited v Commissioner, CGST, Delhi East Commissionerate - Special leave Petition (C) No. 6092 of 2025 [Supreme Court]

Decision: No.

The Petitioner is engaged in providing security services. Petitioner received a show cause notice from the office of State Authorities demanding tax along with interest and penalty.

Thereafter, separate search was conducted and summons was issued under section 70 by Central Authorities. Petitioner communicated through letter that the petitioner is being investigated by State Authorities on similar grounds. The petitioner challenged both the summons before the High Court of Delhi on the ground that as the State Authorities had already made the investigation in respect of the same issue and therefore, the Central Authorities does not have the jurisdiction in view of Section 6(2)(b) of the CGST Act.

The High Court held that the expression "any proceeding" in Section 6(2)(b) cannot be construed to include a search or investigation. The High Court took the view that a summons or investigation pursuant to a search constitutes only a precursor to the formal proceedings. It distinguished such summons from assessment, noting that summons is primarily intended to elicit information. Hence, the petition.

The Supreme Court clarified that the bar under Section 6(2)(b) of the CGST Act, to avoid duplicity of proceedings, would be applicable only when the Central and State GST authorities initiate proceedings on the same subject matter. The Court reasoned that since the summons served are meant to be investigative, not adjudicative, they fall outside the bar Section 6(2)(b) of the CGST Act. Thus, a summons issued by the Central GST authorities under Section 70 of the Goods and Services Tax Act does not constitute "initiation of proceedings" under Section 6(2)(b) of the CGST Act. Therefore, there's no bar to issuing a summons where the State GST authorities have already issued a show cause notice on the same subject matter. Thus, a summons issued by the Central GST authorities under Section 70 of the Goods and Services Tax Act does not constitute "initiation of proceedings" under Section 6(2)(b) of the CGST Act. Therefore, there's no bar to issuing a summons where the State GST authorities have already issued a show cause notice on the same subject matter.

14. Whether reverse charge notification denying ITC to service providers are constitutionally valid or not?

Eagle Security & Personnel Versus Union of India-Writ Petition No.1687 Of 2024- (Bombay High Court)

Decision: Yes.

The Petitioner, challenged the constitutional validity of Sections 17(2) and 17(3) of the CGST and MGST Acts and the related notifications, contending that the treatment of security services provided by proprietorships and other non-corporates under the Reverse Charge Mechanism (RCM) as exempt supplies results in denial of Input Tax Credit (ITC), thereby increasing costs and adversely affecting competitiveness, unlike body corporates which continue under forward charge and can avail ITC. It was argued that such classification is arbitrary, discriminatory, violative of Articles 14 and 19(1)(g) of the Constitution and contrary to the objective of GST to prevent cascading of taxes.

The Bombay High Court held that ITC is a statutory concession, not an absolute right, and is always subject to conditions and restrictions under the CGST Act. The classification between body corporates and non-corporates for purposes of RCM is based on intelligible differentia and has a rational nexus with the object of the law; hence, it is not discriminatory under Article 14. A taxing statute is not per se a restriction on the right to trade under Article 19(1)(g), and mere increase in costs or reduced competitiveness does not make a provision unconstitutional. Matters of taxation and ITC entitlement are within the legislative domain, and courts cannot strike down or rewrite provisions on grounds of business hardship. Accordingly, the Court rejected the petition and upheld the validity of Sections 17(2) and 17(3) of the CGST/MGST Acts and the notifications issued thereunder.

15. Whether denial of property tax exemption to unaided school amount to violation of Article 14 of the Constitution of India or not?

Fr. Dr. Abraham Thalothil v. State of Kerala & Ors - WP (C) No. 24012 of 2023 [Kerala High Court]

Decision: No.

The petitioners, comprising various unaided schools and educational institutions across Kerala, approached the High Court challenging the constitutional validity of amendments introduced by the Kerala Finance Act, 2023 (Act 18 of 2023) to Section 207 of the Kerala Panchayat Raj Act, 1994 and Section 235 of the Kerala Municipality Act, 1994, which withdrew the exemption from property tax earlier available to buildings exclusively used for educational purposes and owned by unaided schools, while continuing the exemption for buildings of Government-owned, managed or aided institutions. As a result of the amendment, the petitioners became liable to pay building/property tax from 01.04.2023, leading them to contend that such exclusion created an unreasonable classification between aided/government schools and unaided schools, and was violative of Article 14 of the Constitution

The Kerala High Court held that State has wide latitude in taxation matters, and courts interfere only in cases of clear unreasonable classification. Government-owned, managed, and aided schools are established and maintained from public funds, provide free or nominal-fee education, and their infrastructure and staff costs are borne by the State. Levying property tax on such institutions would only burden the public exchequer. Unaided schools, on the other hand, collect fees from students to maintain their institutions, making them a distinct class. This distinction provides a valid intelligible differentia with a rational nexus to the object of the law, i.e., balancing revenue needs while supporting State obligations to provide affordable education. Accordingly, the Court upheld the amendment, rejected the challenge under Article 14, and dismissed the writ petitions



Tax Exemption

16. Whether the department can withhold the refund in terms of section 54(11) of GST Act unless appeal against refund order is filed or not?

Omega QMS v Commissioner, CGST, Delhi West – WP (C) No. 11815 of 2025 [Delhi High Court]

Decision: No.

The Petitioner is engaged in providing technical consultancy services both in India and to foreign clients. For F.Y. 2019-20, the Petitioner filed a refund application which came to be rejected by the Adjudicating Authority. On appeal, the Appellate Authority, set aside the OIO and granted the refund, inter alia holding that the observations of the Adjudicating Authority treating the Petitioner as an 'intermediary' and alleging that goods were made physically available by the recipient of service to the supplier of service, were without merit.

The Revenue initiated review proceedings against the appellate order and, by opinion dated 16th December 2022 under Section 54(11) of the CGST Act, expressed its intention to prefer a review and observed that processing the refund would be against the interest of the Revenue. On that basis, the Department passed an order withholding the refund that had been allowed by the Appellate Authority. Aggrieved by such withholding of refund, the Petitioner approached This High Court.

The Delhi High Court held that the Department cannot rely solely on its internal opinion under Section 54(11) of the CGST Act to withhold refund. Once the Appellate Authority had allowed the refund and no appeal or review order had been passed against such appellate order, the Department had no jurisdiction to stop the processing of the refund. The Court emphasized that the power to withhold refund under Section 54(11) is conditional it can be exercised only when the refund order is itself the subject matter of an appeal and the Commissioner, on being satisfied that grant of such refund would adversely affect the revenue, records reason and gives the assessee an opportunity of hearing. Since no appeal was pending against the Appellate Authority's order in favor of the Petitioner, the invocation of Section 54(11) was held to be unsustainable. Consequently, the Court clarified that the Department was bound to give effect to the refund order and release the amount due to the Petitioner.

17. Whether GST is applicable on trading of Gift vouchers or not?

BI Worldwide India Private Limited v. Additional Director, DGGI & Ors – WP No. 26460 of 2024 (T-Res) (Karnataka High Court)

Decision: No.

The Petitioner, is engaged in employee and customer engagement solutions, purchased vouchers/gift cards of various brands from issuers at a discount and resold them to clients at face value, earning a trading margin. The Department issued a Show Cause Notice treating trading of vouchers as taxable. The Petitioner challenged the notice, contending that such transactions were principal-to-principal trading, falling outside the scope of supply under GST, and supported its claim by relying on CBIC Circular No. 243/37/2024-GST dated 31.12.2024.

The Karnataka High Court held that Petitioner's activity amounted to pure trading of vouchers on a principal-to-principal basis. Since such trading is neither a supply of goods nor a supply of services, it falls outside the ambit of GST under Section 9(1) of the CGST Act. The Court quashed the impugned Show Cause Notice and allowed the writ petition.

18. Whether GST officers issuing summons/arrest memo are required to be cross-examined by the assessee or not?

The Commissioner of Sales Tax v Associate Cements Company Limited – Sales Tax Reference No. 20 of 2010 in Reference Application No. 02 of 2003 [Bombay High Court]

Decision: No.

The respondent is a manufacturer of cement. For the assessment year 1991-92, the Assessing Authority disallowed respondent's claim of resale of packing material (HDPE bags) on the ground that the bags were entirely consumed in the manufacture of cement. On appeal, the Deputy Commissioner (Appeals) allowed the resale claim and granted refund. However, the Additional Commissioner revised the order, withdrew the benefit, and raised a demand of ₹1.81 crore. Respondent challenged this before the Sales Tax Tribunal, which allowed respondent's appeal, holding that there was an express and independent contract for sale of HDPE bags in which cement was sold. Aggrieved, the Revenue filed Reference Applications, leading to these Sales Tax References before the High Court.

The Bombay High Court relied upon the principles laid down by the Supreme Court in *Raj Sheel v. State of Andhra Pradesh* and upheld the tribunal's finding. The Court held that HDPE bags had independent identity as commodities, their prices were separately fixed and charged, and there was sufficient evidence (invoices, price circulars, trial balances, CA certificates) showing separate consideration for their sale. Therefore, there was an express and independent contract for sale of HDPE bags, and respondent was entitled to resale benefit.



SUMMONS

19. Whether issuance of a draft assessment order within the limitation period u/s 153(3) of the Income Tax Act save the assessment from being rendered time barred or not?

ACIT (International Taxation) v Shelf Drilling Ron Tappmeyer Ltd. Etc – SLP (Civil) Nos. 20569-20572 of 2023 (Supreme Court)

Decision: No.

The respondent was engaged in shallow water drilling for clients in the oil and gas industry and qualified as “eligible assessee” under Section 144C of the Income Tax Act. For AY 2014-15, they filed returns declaring heavy losses. The Assessing Officer issued a draft assessment order in December 2016, which was contested before the Dispute Resolution Panel (DRP). The DRP rejected the objections, and the AO passed a final assessment order in October 2017. On appeal, the ITAT set aside the assessment in October 2019 and remanded the matter for fresh adjudication.

Following the remand, the AO issued fresh notices in 2021 and eventually passed a draft assessment order on 28 September 2021 just before the limitation period under Section 153(3) (as extended by TOLA) expired on 30 September 2021. The assessee challenged this before the Bombay High Court, contending that no final order could now be passed since the limitation had already lapsed. The High Court agreed, holding that the assessments were time-barred. The Revenue appealed to the Supreme Court, leading to the present case.

The Supreme Court, by a 2:1 majority, held that the assessments were time-barred and dismissed the Revenue’s appeals. The majority ruled that under Section 144C read with Section 153(3) of the Income-tax Act, an assessment must culminate in a final assessment order within the prescribed limitation period. Merely issuing a draft order within limitation, without completing the assessment process, renders the proceedings invalid. Accordingly, the High Court was correct in quashing the assessments.

20. Whether interest on fixed deposits, TDS linked refund linked to business qualifies for deduction under section 80IA of the Income Tax Act or not?

Gateway Terminals India Pvt. Ltd. v. DCIT – ITA No. 1139 of 2021 [Bombay High Court]

Decision: Yes.

The Appellant is engaged in the business of operating and maintaining a container terminal at Jawaharlal Nehru Port Trust (JNPT), which qualified as an “eligible business” for deduction under Section 80IA of the Income Tax Act, 1961. For A.Y. 2012-13, the Appellant earned interest income from fixed deposits maintained with banks for business purposes, as well as interest on refund of taxes due to wrongful deduction of TDS by its customers.

The Appellant claimed deduction under Section 80IA on the said business income. The Assessing Officer, by order dated 29.02.2016, accepted the claim of deduction under Section 80IA in respect of interest on fixed deposits but treated interest on income tax refund as “Income from Other Sources.”

Aggrieved, the Appellant preferred an appeal before the CIT(A). During the appellate proceedings, the CIT(A) issued an “Enhancement Notice” under Section 251(2), proposing to disallow deduction under Section 80IA in respect of interest on fixed deposits. By order dated 31.10.2017, the CIT(A) held that such interest was not derived from an industrial undertaking and therefore not eligible for deduction under Section 80IA, treating it as arising from surplus funds parked with banks.

The Appellant’s further appeal to the ITAT was dismissed on 28.05.2020. A Miscellaneous Application filed against the ITAT order was also rejected on 27.04.2021.

The Bombay High Court held that the appellant was entitled to claim deduction under Section 80IA of the Income Tax Act on the interest income earned in the relevant assessment year. The Court observed that the fixed deposits were not created out of surplus or idle funds, but were a business necessity, being directly linked to (i) the mandatory obligation under the License Agreement with JNPT to replace major equipment, and (ii) the directions of the Court in relation to a tariff dispute with the Tariff Authority for Major Ports (TAMP). Therefore, the interest earned thereon was inextricably connected with the eligible business of developing, operating and maintaining the port terminal. Similarly, the interest received on refund of excess TDS deducted by customers was held to be an integral part of the assessee’s business receipts, since the deduction of tax at source was directly linked with the income from the port facility. In these circumstances, both categories of interest were held to qualify for deduction under Section 80IA, and the contrary view of the lower authorities was set aside.

21. Whether consideration paid by an Indian entity to a foreign company for use of computer software amounts to royalty or not?

CIT – International Taxation – 3 v Xiocom (NZ) Limited – ITA No. 299 of 2025 [Delhi High Court]

Decision: No.

The Respondent, a New Zealand-based company, was engaged in designing and providing wireless broadband solutions in the USA and parts of Africa. For A.Y. 2010-11, the Respondent sold “off-the-shelf” software through non-exclusive license rights to Zylog Systems (India) Ltd. for use in certain areas in India. During scrutiny assessment, the Assessing Officer held that income of ₹19.24 crore received from licensing the IMS software was taxable in India as “royalty” under Section 9(1)(vi) of the Income Tax Act and Article 12 of the India-New Zealand DTAA. On appeal, the CIT(A) relied on Delhi High Court’s ruling in DIT v. Infrasoftware Ltd. and held that the right to use software granted through licensing does not amount to royalty either under the Act or under the DTAA, and accordingly deleted the addition. The ITAT dismissed the Revenue’s appeal by relying on the Supreme Court’s decision in Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (2021 INSC 137), which held that payments for resale/use of computer software under distribution agreements or EULAs are not royalty and not taxable in India. Aggrieved, the Revenue filed the present appeal under Section 260A of the Act before the High Court.

The Delhi High Court held that the issue was no longer res integra in view of the Supreme Court judgment in Engineering Analysis. Since the software supplied was standard/off-the-shelf, and no copyright rights were transferred, the payments could not be treated as “royalty” under either Section 9(1)(vi) of the Act or Article 12 of the India-New Zealand DTAA. The Court affirmed the ITAT’s finding that the receipts were not taxable in India and rejected the Revenue’s contention.

22. Can a co-operative society claim deduction under Section 80P(2)(a)(i) on interest earned from surplus funds temporarily invested in bank deposits or not?

West Bengal State Co-operative Agriculture & Rural Development Bank Ltd. v. DCIT – ITAT/ 3/ 2025 [Calcutta High Court]

Decision: Yes.

The assessee, a co-operative society, is engaged in providing long-term credit facilities to its members. For A.Y. 2013-14, it borrowed funds from NABARD and lent them to members in instalments. Since repayment to NABARD was required only twice yearly, the assessee temporarily invested surplus/floating funds in bank deposits, earning interest. It claimed deduction of such interest under Section 80P(2)(a)(i), arguing the deposits were incidental to its credit business. The AO, relying on Totgars’ Cooperative Sale Society Ltd. v. ITO (322 ITR 283), disallowed the claim, treating the interest as “income from other sources.” Similar disallowance was made in respect of interest on personal loans to members and house-building loans to staff. The CIT(A) and ITAT upheld the AO’s order. Aggrieved, the assessee appealed under Section 260A.

The Calcutta High Court held that the expression “attributable to” in Section 80P(2)(a)(i) is broader than “derived from” and includes interest earned on temporary deposits of surplus funds when such deposits are incidental to the credit business of a co-operative society. Since the surplus funds invested were not amounts due to members (unlike in Totgars’), the interest earned thereon was held to be eligible for deduction under Section 80P(2)(a)(i). The Court allowed deduction on (i) interest from bank deposits, and (ii) interest on personal loans to members. However, it upheld the disallowance of deduction for interest on house-building loans to staff, treating it outside the scope of Section 80P.



23. Whether the Assessing Officer is empowered to determine the Annual Value of a property under Section 22 of the Income-tax Act at an amount higher than the Municipal Rateable Value or not?

Tivoli Investment & Trading Co. Pvt. Ltd. v ACIT - ITA No. 5 of 2004 [Bombay High Court]

Decision: Yes.

The assessee purchased office premises and licensed them to Citi Bank for ten years (1 April 1989 to 31 March 1999) at a monthly license fee of ₹9,825/-, in addition to receiving an interest-free security deposit of ₹1,54,00,000/-. For AY 1990-91, the assessee declared ₹1,17,900/- as rental income under the head "Income from Business." The Assessing Officer, however, determined the gross annual value of the property under section 23(1)(b) of the Income-tax Act at ₹22,00,000/-, on the basis of reasonable expected rent, which was upheld by the CIT(A) and later affirmed by the ITAT. Hence the appeal.

The Bombay High Court held that under Section 22 of the Income-tax Act, the annual value of a property comprising buildings or lands appurtenant thereto is chargeable to tax under the head "Income from House Property," irrespective of whether the property is actually let out or not. Observing that the assessee had structured the transaction by showing taxes and outgoings as license fees while securing a hefty, interest-free deposit of ₹1.54 crores for ten years, the Court upheld the Assessing Officer's determination of the annual value at an amount higher than the municipal rateable value. Finding no infirmity in the orders of the AO, CIT(A), and ITAT, the Court declined to interfere.



24. Whether an unsigned contract containing an arbitration clause can be enforced under Section 45 of the Arbitration and Conciliation Act, 1996?

Glencore International AG v. Shree Ganesh Metals & Another – Civil Appeal No. 11067 of 2025 [Supreme Court]

Decision: Yes.

The appellant is a Swiss company engaged in the business of mining and commodity trading. Respondent No. 1 is an Indian proprietorship concern and is a producer of zinc alloys. Appellant and Respondent no. 1 had previously engaged in contracts for the supply of zinc metal, all containing arbitration clauses under the London Court of International Arbitration with London as the seat. In 2016, the parties negotiated a fifth contract (Contract No. 061-16-12115-S), and although Respondent No. 1 did not sign this contract, it accepted 2,000 metric tons of zinc, furnished Standby Letters of Credit, and corresponded referencing the contract, indicating its acceptance. Disputes later arose regarding payments and contract performance, leading Respondent No. 1 to file a civil suit in Delhi High Court, while appellant invoked Section 45 of the Arbitration Act to seek referral to arbitration under the unsigned contract's arbitration clause. The High Court declined the reference of arbitration made by the appellant merely because Respondent No. 1 did not sign the arbitration agreement. Hence, the appeal.

The Supreme Court held that an arbitration agreement need not necessarily be signed, so long as the contract is in writing and accepted through conduct or correspondence. In the present case, the respondent acted upon the contractual terms by receiving goods, issuing Letters of Credit, and expressly referring to the contract in communications. Respondent No. 1 further consented to the terms via email. Accordingly, the Court ruled that the High Court's refusal to refer the matter to arbitration merely on the ground of absence of signature on the arbitration agreement was unsustainable, and clarified that consent to arbitration can be inferred from conduct and exchange of correspondence even without a signed document.

25. Whether it is permissible for a non-signatory to an agreement leading to arbitration proceedings to remain present in such arbitration proceedings?

Kamal Gupta v L. R. Builders Pvt Ltd. – SLP (Civil) Nos. 4775 – 4779 of 2025 [Supreme Court]

Decision: No.

The dispute arose from a family settlement (MoU/FSD dated July 9, 2019) between Pawan Gupta and Kamal Gupta. Rahul Gupta (RG), son of Kamal Gupta, was not a signatory but sought intervention in arbitral proceedings under Sections 9 and 11(6) of the Arbitration Act. While a sole arbitrator had already been appointed in March 2024, fresh applications were filed in disposed proceedings seeking permission for RG and non-signatory companies to remain present in arbitration and to access records.

The Supreme Court held that once an arbitrator is appointed under Section 11(6), the court becomes functus officio and cannot entertain further applications in disposed proceedings. It reiterated that under Section 35, arbitral awards bind only parties to the arbitration agreement or those claiming under them, and non-signatories have no right to participate or remain present. Permitting observers would breach confidentiality under Section 42A and undermine party autonomy. The Court further ruled that Section 151 CPC cannot be invoked to enlarge jurisdiction beyond what the Arbitration Act permits, as the Act is a self-contained code with minimal judicial intervention (Section 5). The High Court's directions recognizing rights of non-signatories and granting them access to proceedings were therefore beyond jurisdiction.

26. Whether District Magistrate can re-execute Possession Orders U/S 14 Of SARFAESI Act after Illegal Re-Entry by Borrower or not?

Capri Global Housing Finance Limited v. The State of Madhya Pradesh - WP No. 21222 of 2025 [Madhya Pradesh High Court]

Decision: Yes.

The petitioner granted a mortgage loan facility to the borrower, who defaulted in repayment. Subsequently, the petitioner issued a notice under Section 13(2) of the SARFAESI Act, which the borrower failed to respond to. Thereafter, the petitioner filed an application under Section 14 of the SARFAESI Act before the District Magistrate seeking possession of the mortgaged property. The District Magistrate did not hand over possession to the petitioner, compelling the petitioner to approach the High Court by way of writ petition, resulting in the Court directing delivery of possession to the petitioner. Despite this, the borrower unlawfully re-entered and took possession of the mortgaged premises. Aggrieved, the petitioner sought recourse from the respondent authorities to regain possession, but the authorities refused to act, citing their inability to re-execute the order. Consequently, the petitioner filed a writ petition before the High Court seeking issuance of a writ of mandamus directing the respondent authorities to take appropriate steps for restoring possession and preventing further unauthorized occupation by the borrower.

The Madhya Pradesh High Court has held that the District Magistrate is empowered to re-execute possession orders under Section 14 of the SARFAESI Act in cases of unlawful re-entry by the borrower. The Court directed the respondent authorities to provide all necessary assistance to the petitioner in effecting dispossession of the borrower from the mortgaged property. It was further observed that the petitioner retains the right to approach the respondent authorities for assistance in regaining possession and may also initiate criminal proceedings for trespass. Reliance was placed on precedents, including *Kotak Mahindra Bank v. State of Maharashtra* and *HDB Financial Services Limited v. State of Maharashtra*, where the authorities were directed to re-execute possession orders. The Court reiterated that the actions of the District Magistrate under Section 14 are ministerial and not adjudicatory in nature. Additionally, the Court noted the consistency of Section 14 powers with Section 248 of the Maharashtra Provincial Land Revenue Code, entitling authorities to re-execute possession orders in such scenarios. Accordingly, the petition was allowed, mandating the authorities to extend requisite assistance to the petitioner to regain possession of the secured asset.



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