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# LEX LOQUITUR

A NEWSLETTER SUMMARIZING LATEST COURT RULINGS

## CONTENT

# 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. Do write to us at:
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Warm Regards
Team Lex Loquitur
UBR LEGAL, ADVOCATES

# Matters Argued by us



**1. Whether section 2 and 3 of the Jharkhand Electricity Duty Act are valid and constitutional?**

**ESL Steel Limited & Ors. v. State of Jharkhand & Ors. – W.P.(T) No. 3228 of 2021 – [Jharkhand High Court]**

**Decision**: No.

The petitioner is a manufacturer and supplier of steel. It has a factory. It has a captive power plant. The electricity produced is used for manufacture of the final products in the factory. A challenge was mounted to the constitutional validity of section 2 and 3 of the Jharkhand Electricity Duty (Amendment) Act, 2021 effective from 07.07.2021; Jharkhand Electricity Duty (Amendment) Rules, 2021 effective from 01.04.2022; and Act of 2022 effective from 17.02.2022 levying electricity duty.

The Jharkhand High Court struck down the amendments. It held: (i) proviso to Section 3 conferred unbridled power upon the State Government to amend categories and rates without guidelines, amounting to excessive delegation; (ii) amendment altered the charging mechanism from units consumed to percentage of "net charges" without defining the term, rendering it arbitrary; (iii) rules cannot operate retrospectively in absence of enabling provision; (iv) however, increase in rates as a policy decision was not interfered with.

**2. Whether a notice under section 148 can be in the name of a partnership firm which had ceased to exist due to merger prior to the relevant assessment year?**

**J. M. Mhatre Infra Pvt. Ltd. v. Union of India & Ors. – Writ Petition (L) No. 16514 of 2023 – [Bombay High Court]**

**Decision:** No.

The petitioner is a private limited company. A firm got merged with the said company on 29.01.2010. However; notice under section 148 of the Income Tax Act came to be issued proposing to reopen assessment of the firm for FY 2015-2016. An assessment order came to be passed making additions. Hence; petition came to be filed.

The Bombay High Court set aside the notice and the order and allowed the writ petition. It held: (i) notice cannot be issued to a non-existent firm; (ii) rejects reliance placed by Revenue on section 189 of the Income Tax Act which allows assessment of firms even after dissolution; (iii) section 189 cannot apply for an assessment year during which the firm was not in existence; (iv) follows decision of the Supreme Court in Maruti Suzuki

# Matters Argued by us

**3. Whether reassessment proceedings and consequential assessment order can be sustained when no effective opportunity of hearing was granted to the assessee?**

**Hasmukh Nanalal Parekh v. Union of India & Anr. – Special Civil Application No. 10839 of 2023 – [Gujarat High Court]**

**Decision:** No.

The petitioner, an NRI, was subjected to reassessment proceedings. Show cause notice was issued granting minimal time and personal hearing request was declined. Assessment order was passed.

The Gujarat High Court set aside the proceedings. It held: (i) fixing hearing within three days without reasonable opportunity violates principles of natural justice; (ii) request for adjournment ought to have been considered; (iii) plea of limitation cannot justify denial of hearing; (iv) audi alteram partem is foundational to valid reassessment.

**4. Whether software development services provided by an Indian subsidiary to its foreign parent company constitute export of services or not?**

**Vistex Asia Pacific Pvt. Ltd. v. Union of India & Ors. – Writ Petition No. 4852 of 2022 – [Bombay High Court]**

**Decision:** Yes.

The petitioner is a subsidiary of US Based entity. It was providing software development services to its parent. It claimed that the services are exported in terms of section 2(6) of the IGST Act. It claimed refund of accumulated input tax credit under section 54 of the CGST Act read with Rule 89 of the Rules. Refund was sanctioned. However, on appeal filed by the Revenue; the Appellate authority allowed the appeal. He held that the petitioner is an "agent" of the foreign principal and hence; there is no export. Hence; petition was filed.

The Bombay High Court set aside the order and allowed the petition. It held: (i) similar issue has been decided in Sundyne Pumps case; (ii) in that case the High Court examined the agreement and held that the Indian subsidiary was not an "agent"; (iii) the CBIC vide circular dated 20.09.2021 has explained the scope of "intermediary" services; (iv) the appellate authority did not have the benefit of the said circular and judgment; and hence; remands the matter back to the appellant authority to examine the agreement in light of the judgment and the circular.

**5. Whether selective enhancement of Ready Reckoner rates only for a single project is fair, lawful and in accordance with the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995?**

**Venus Developers v. State of Maharashtra & Ors. – Writ Petition No. 871 of 2024 – [Bombay High Court]**

**Decision:** No.

The petitioner is a developer. It constructed a residential colony at Vasai – Virar (City of Thane). The ready reckoner rate for the purposes of stamp duty was about Rs. 50,000 per sq meter. However; vide notification dated 27.03.2022 (effective 01.04.2022) the same was increased to Rs. 76,000/- per sq meter solely for the project of the petitioner. The petitioner contended that its project was being singled out. Hence; petition came to be filed.

The Bombay High Court disposed off the petition. It held: (i) the contention of the petitioner that the notification is contrary to the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995 needs to be examined; (ii) the increase in the stamp duty rates is unfair; unjust and unlawful or not needs to be examined; (iii) the Deputy Collector (Stamps) is directed to decide the representation of the petitioner in twelve weeks after hearing the petitioner.

**6. Whether a notice under section 148 which is neither digitally nor manually signed is valid?**

**Ambernath City Hospital Pvt. Ltd. v. Union of India & Ors. – Writ Petition No. 2713 of 2024 – [Bombay High Court]**

**Decision:** No**.**

The petitioner is a hospital. It was issued a notice under section 148 of the Income Tax Act seeking to reopen assessment for FY 2016-2017. The notice was unnamed and unsigned. Pursuant to same; assessment order and penalty orders came to be passed. The same was challenged in writ petition.

The Bombay High Court set aside the notice and the assessment and penalty orders pursuant to the same. It held: (i) notice being unsigned; either digitally or manually; is no notice at all; (ii) relies and follows its earlier decision in case Prakash Bharadwaj case; (iii) distinguishes reliance placed on Delhi High Court judgment in Sonia Gandhi's case; (iv) notes that section 282A mandates every notice to be signed; without which it is invalid; (v) rejects reliance placed on section 292B holding that notice is invalid at inception and it is not a curable defect; (vi) rejects reliance placed on section 292BB holding that the manner/mode of service is notice is not being questioned; if revenues argument is accepted it would render section 282A otiose.

**7. Whether GST can be demanded through a single consolidated show cause notice covering six financial years in respect of free flats provided to landowners?**

**Quantum Infratech v. Union of India & Ors. – WP(C) No. 20 of 2026 –[Gauhati High Court]**

**Decision:** Interim Granted.

The petitioner is a developer. It was issued a show cause notice proposing to demand GST on flats provided free to landowners under development agreement. The show cause notice was issued for six financial years (from 2017-2018 to 2022-2023). An order confirming demand was passed. Appeal against such order was also rejected. The said order was challenged before the High Court on several grounds.

The Gauhati High Court issues notice and grants stay of recovery based on such orders. It notes that the notice and order for a consolidated period of six years has been decided by Bombay; Madras and Karnataka High Court. It notes reliance placed by the Revenue on Delhi High Court judgment and its own judgment. It holds that the issue required consideration despite ground raised by Revenue on alternate remedy.

**8. Whether recovery of IGST refund can be sustained by invoking Rule 96(10) after omission of the rule?**

**Praspack Polymers v. Union of India & Ors. – Special Civil Application No. 542 of 2025 – [Gujarat High Court]**

**Decision:** No.

The petitioner is a manufacturer exporter. It filed refund of IGST on exports. It was sanctioned. Subsequently; relying upon Rule 96(10) of CGST Rules recovery was sought to be initiated and order confirming recovery of erroneously sanctioned refund came to be passed. Such order was challenged in writ petition. The validity of Rule 96(10) was also under challenge.

The Gujarat High Court set aside the demand and allowed the writ petition. It held: (i) Rule 96(10) has been omitted with effect from 08.10.2024 and hence, would apply to pending proceedings; (ii) follows decision of Bombay High Court in Hikal Limited and its own decision in J J Polyplast; (iii) directs sanction of refund; if not already refunded.

**9. Whether CENVAT credit can be denied merely because final product is exempt?**

**Dream Plast India Pvt. Ltd. v. Commissioner of Central Excise, Pune – [CESTAT Mumbai]**

**Decision:** No.

The appellant is a manufacturer of plastic toys. The same are sold and form part of "KINDER JOY" chocolates. Toys were exempt. The appellant availed credit of duty paid on inputs and capital goods. The credit was sought to be denied on the ground that the appellant is engaged in manufacture of exempted goods; apart from recovery of amount under section 11D of Central Excise Act. Demands were confirmed along with interest and penalties. Hence; appeals.

CESTAT, Mumbai set aside the orders and allowed the appeals. It held: (i) section 5A provides for absolute exemption; however; there is no detriment attached to non-compliance thereof; except that such payment would be deemed as not having authority of law and, thereby, not duty. There is no reference to the said restriction insofar as the provisions of CENVAT Credit Rules, 2004 are concerned; (ii) The adjudicating authority has proceeded on the assumption that the discharge of such amount does not constitute duties leviable and, is exempt; as is contrary to law laid down by Gujarat High Court in creative enterprises and Bombay High Court in Ajinkya Enterprises; (iii) the eligibility of credit has to be seen on satisfaction of Rule 3; it has got noting to do with exempted final products under Rule 6; (iv) section 11D has no application in such cases; (iv) the appellant contended that they have also manufactured parts of shoes which were dutiable has not been considered by the authority at all; hence; matter is remanded to the adjudicating authority.

**10. Whether addition under section 68 can be made for book entry in partner's capital account arising from write-back of loan?**

**ITO v. Antara Tushar Motiwala – [ITAT Mumbai]**

**Decision:** No.

The Assessee is an individual. She filed return for A.Y. 2017-2018. Return was processed under section 143(1) of the Act. The case was selected for limited scrutiny on account of large increase in capital during the year. The AO made addition of Rs. 8,38,44,023/-. He rejected the contention that it was a book entry arising from adjustment in assessee's capital account in a partnership firm, M/s Lotus Investment. On appeal, CIT(A) set aside the addition. Being aggrieved; Revenue approached the Tribunal.

Hon'ble ITAT, Mumbai dismissed the department appeal. It held: (i) section 68 would apply if any fresh credits appear during the year and not to earlier years credits; (ii) it is settled position of law that under the Act a firm is treated as a separate and distinct taxable entity; refers to Supreme Court decision in A.W. Figgis & Co.; hence; income which is assessable, if at all, in the hands of the firm cannot be brought to tax again in the hands of its partners merely because corresponding entries appear in the partners' capital accounts; (iii) the Assessee cannot be expected to produce complete particulars of lender relating to a transaction undertaken more than ten years earlier, when the law itself requires does not require maintenance of such records; (iv) there is no evidence produced on record by the Revenue that the loan is fictitious; (vii) payment of interest or otherwise is a matter of the partnership agreement; (viii) write-back of a time barred loan constitutes a capital receipt and that expiry of limitation does not extinguish the debt but merely bars its enforcement. The Revenue has not brought any material on record to demonstrate that the conditions of section 41(1) or section 28(iv) are satisfied in the facts of the present case.

**11. Whether service tax demand can be confirmed solely on 26AS-ST3 mismatch?**

**M.M. Construction v. Principal Commissioner – [CESTAT Mumbai]**

**Decision:** No.

The appellant is undertaking construction for Government and Municipal Corporations. It constructed roads, drains etc. a demand of service tax of over Rs.7 crores under "works contract" service was confirmed based on comparison between TDS data (26AS) and ST-3 returns filed by the appellant. Equivalent penalty was also imposed on the appellant. Hence, appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) demand solely based on difference between income tax and service tax returns is incorrect; (ii) follows its earlier decision in Modern Road Makers and Mira Construction; (iii) the appellant claimed exemption under serial no. 12, 12(a), 13, 29(h) of Mega Exemption Notification No.25/2012; which has not been examined work order wise by the Commissioenr; (iv) remands the matter back to the Commissioner to verify each contract for eligibility to exemption.

**12. Whether networking products under CTI 8517 6290 are eligible for concessional BCD?**

**Digisol Systems Limited v. Commissioner of Customs, Goa – [CESTAT Mumbai]**

**Decision:** Yes.

The appellant is engaged in trading of 'Networking Products'. It imported 'Ethernet Switches, Access Point and Ceiling Mount Indoor and Transceivers' by filing the Bills of Entry. The said goods were classified under CTI 8517 6290 of the First Schedule to the Customs Tariff Act, 1975. The appellant claimed benefit of concessional rate of Basic Customs Duty (BCD) of 10% under Sr. No. 20 of Notification 57/2017-Customs dated 30.06.2017 in self- assessment of imports for payment of customs duty on such goods. The officer passed order under section 17(5) holding that the appellant is not entitled to exemption. On appeal; appellate authority confirmed same. Hence; appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) imported transceivers are modules that are utilised for data transmission from one imported transceivers are modules that are utilised for data transmission from one switch to another switch over LAN networks only; that the imported transceivers are used on Ethernet switch which is purely a LAN transmission device over any distance and cannot be considered as Optical Transport Network Products; (ii) follows earlier decision in Cisco Commerce India; (iii) refers to Budget Circular dated 10.07.2014.

**13. Whether testing services provided to foreign entity qualify as export of service or not?**

**Enaltec Pharma Research Private Limited v. Commissioner – [CESTAT Mumbai]**

**Decision:** Yes.

The appellant is providing testing services to a foreign entity. It received payment in convertible foreign exchange. It claimed refund of input/input services used for export of services under Rule 5 of the Cenvat Credit Rules. Refund was sanctioned. However, department filed appeal before appellate authority claiming it was not an export of service. The commissioner (appeals) allowed the department appeal. Consequently; demands under section 73 were issued. Demand of over Rs.8.73 crores along with interest and penalties were confirmed. Hence, appeal by the assessee.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) the adjudicating authority has not examined the applicability of Rule 4 of the Place of Provision of Service Rules; (ii) the issue has been decided by the Karnataka High Court in the case of Medgenome Labs; (iii) the Tribunal in case of Sai Life and Adventius has addressed the same issue; the same were not available at the time of adjudication; (v) hence; the matter is remanded.

**14. Whether refund of statutory pre-deposit made for filing an appeal under the Jharkhand GST Act is governed by Section 107(6) read with Section 115 of the Act or not?**

**State of Jharkhand & Ors. v. M/s. BLA Infrastructure Private Limited – Civil Appeal (Arising out of SLP (C) Diary No. 56452 of 2025) [Supreme Court]**

**Decision:** Yes.

The respondent-assessee filed an appeal under the Jharkhand Goods and Services Tax Act, 2017. In compliance with Section 107(6), deposited the statutory pre-deposit. The appeal was, thereafter, allowed.

Accordingly, petitioner filed a refund application. The refund application was rejected by holding that the claim was time barred. Aggrieved by such rejection, petition was filed before the Jharkhand High Court.

The High Court held that refund of pre-deposit for filing an appeal is a vested right. It observed that the word "may" in Section 54(1) is directory and cannot be read as mandatory so as to defeat a legitimate refund claim. Retention of the pre-deposit without authority of law would be contrary to Article 265 of the Constitution, and accordingly the rejection of refund as time-barred was quashed. Hence, the appeal.

On appeal by revenue, the Supreme Court held that (i) refund of statutory pre-deposit made for maintaining an appeal is relatable to Section 107(6) read with Section 115 of the Jharkhand GST Act; (ii) the interpretative exercise undertaken by the High Court under Section 54 in that context was unnecessary; (iii) the position was clarified by setting aside the interpretation of Section 54 adopted by the High Court. Accordingly, the appeal was disposed of with a direction that the amount refundable to the respondent shall be refunded with interest in accordance with law within four weeks.

**15. Whether Rule 39(1)(a) of the CGST Rules mandating distribution of ITC by an ISD in the same month is ultra vires Section 20 of the CGST Act (as it stood prior to 01.04.2025)?**

**BirlaNu Ltd. v. Union of India & Ors. – W.P. No. 14564 of 2024 [Telangana High Court]**

**Decision:** Yes.

The petitioner, registered as an Input Service Distributor (ISD), had distributed accumulated Input Tax Credit (ITC) at the end of the financial year instead of distributing it month-wise. During audit for FY 2017-18 and 2018-19, the Department alleged violation of Rule 39(1)(a) of the CGST Rules, which mandates that credit available in a month "shall be distributed in the same month", and issued a show cause notice proposing penalty under Section 122(1)(ix).

The Telangana High Court held that Section 20 of the CGST Act, as it stood prior to 01.04.2025, did not prescribe any time limit for distribution of ITC by an Input Service Distributor. It observed that the rule-making authority, while empowered to prescribe the "manner" of distribution, could not introduce a substantive time restriction not contemplated by the parent statute, and therefore Rule 39(1)(a), to the extent it mandated same-month distribution, was ultra vires. The Court further held that validly availed ITC constitutes a vested statutory right and cannot be curtailed by subordinate legislation.

**16. Whether assignment of leasehold rights in an industrial plot allotted by MIDC amounts to "supply of services" liable to GST?**

**Aerocom Cushions Private Limited v. Assistant Commissioner (Anti-Evasion), CGST & CX, Nagpur-1 & Anr. – Writ Petition No. 2145 of 2025 [Bombay High Court, Nagpur Bench]**

**Decision:** No.

The petitioner was allotted an industrial plot by MIDC on a long-term lease of 95 years. With prior consent of MIDC, the petitioner assigned its leasehold rights in the plot along with the factory building standing thereon to a third party for consideration. A show cause notice dated 20.12.2024 was issued under Section 74(1) of the CGST Act, 2017 proposing demand of GST on the ground that such assignment amounted to "supply of services" under Section 7 read with Schedule II and was taxable at 18% as "other miscellaneous services". Hence, the present petition.

The Bombay High Court held that : (i) the transaction was an assignment/transfer of leasehold rights in immovable property and not a lease or sub-lease; (ii) the petitioner's rights under the lease stood extinguished upon assignment and therefore it was a transfer of benefits arising out of immovable property; (iii) such assignment cannot be artificially classified as "other miscellaneous services" under Notification No. 11/2017-CT (Rate); (iv) the essential element of "supply of services" in the course or furtherance of business was absent; (v) the Court relied upon and subscribed to the view of the Gujarat High Court in Gujarat Chamber of Commerce and Industry v. Union of India; (vi) the law declared by another High Court is binding on authorities within the State in absence of any contrary view.

**17. Whether 'liquidated damages' received under a contract are liable to GST and whether amounts collected during search can be treated as voluntary payment under Section 74(5)?**

**Krazybee Services Private Limited v. Additional Director, DGGI & Anr. – W.P. No. 16471 of 2024 (T-RES) [Karnataka High Court]**

**Decision:** No.

The petitioner, a NBFC, had entered into agreements with Lending Service Providers (LSPs). Pursuant to alleged breach of contractual obligations by the LSPs, the petitioner received amounts described as 'liquidated damages'. A show cause notice dated 25.04.2024 was issued alleging that such amounts were taxable as consideration for "tolerating an act" under para 5(e) of Schedule II of the CGST Act. During search and inspection proceedings conducted on 23.03.2023, the petitioner had also deposited Rs. 10 crores in Form GST DRC-03, which the Department treated as voluntary payment under Section 74(5).

The Karnataka High Court held that liquidated damages arising on account of breach of contract are compensatory in character and, in light of the CBIC Circular dated 03.08.2022, cannot be construed as consideration for "tolerating an act" or as a taxable supply under the CGST Act. The impugned show cause notice was found to be premised on a misconstruction of the statutory provisions, and the amount of Rs.10 crores recovered during search proceedings could not be regarded as a voluntary payment under Section 74(5) in the absence of any prior ascertainment or adjudication of liability. The Court held that retention of the said amount was without authority of law. Consequently, the show cause notice was quashed and the respondents were directed to refund Rs.10 crores with interest at 6% per annum, in addition to refunding Rs.5 crores paid under protest within the prescribed period.

**18. Whether GST can be levied on fees received by a statutory electricity regulatory commission for discharge of its functions?**

**Karnataka Electricity Regulatory Commission v. Joint Commissioner Central Tax & Ors. – Writ Petition No. 6442 of 2025 – [Karnataka High Court]**

**Decision:** No.

The petitioner is a statutory body constituted under the Electricity Act, 2003. It performs regulatory, licensing and adjudicatory functions in relation to electricity distribution and tariff fixation. A show cause notice was issued demanding GST on regulatory fees and other charges collected by the Commission. The demand was confirmed. Hence, present petition came.

The Karnataka High Court set aside the show cause notice and the demand order and allowed the petition. It held: (i) GST is leviable only on "supply" of goods or services made in the course or furtherance of business under Section 7 of the CGST Act; (ii) the functions performed by a statutory regulatory commission are sovereign and quasi-judicial in nature and cannot be equated with business activities; (iii) regulatory fees collected for discharge of statutory duties do not constitute consideration for a taxable supply; (iv) Schedule III of the CGST Act excludes services by courts and tribunals from the ambit of supply and the Commission, while performing adjudicatory functions, acts as a tribunal; (v) classification of such receipts under any service head in notifications cannot override the charging provisions of the Act; (vi) reliance was placed on earlier decisions concerning electricity regulatory commissions wherein similar demands were set aside.

**19. Whether High Court can issue directions to the CBDT to modify its software system while granting relief to an assessee in an individual case?**

**ITO, Baroda & Ors v. Shobhan Shantilal Doshi – Civil Appeal No. 197 of 2026 (Arising out of SLP (C) No. 1806 of 2026) [Supreme Court]**

**Decision:** No.

The Respondent is a former employee of Kavy Stock Broking Ltd. TDS was deducted from the salary for A.Y. 2020-21 and 2021-22. However, the employer failed to deposit TDS. The respondent did not grant credit of such TDS due to mismatch in Form 26AS and consequently raised demand under Section 156.

Hence, the petition before the Gujarat High Court. The High Court held that in view of Section 205 of the Income-tax Act, once tax has been deducted at source, the deductee cannot be called upon to pay tax to that extent merely because the deductor failed to deposit it. The Court observed that CBDT Instructions issued under Section 119 are binding on the Department and demand arising due to TDS mismatch cannot be enforced against the employee. Accordingly, the intimations under Section 143(1) and consequential demands were quashed, with directions to ensure compliance and necessary correction in the system. The Revenue did not challenge the relief granted to the assessee on merits. However, it preferred a Special Leave Petition before the Supreme Court limited to the directions issued by the High Court requiring changes to be made in the Departmental software system.

The Supreme Court held that: (i) the relief granted to the assessee on merits remained undisturbed; (ii) grant of TDS credit may require factual verification by the Assessing Officer; (iii) software systems are meant for assistance and data processing and cannot substitute statutory adjudication; (iv) issuance of general directions to modify departmental software, beyond the lis before the Court, was unwarranted. Accordingly, set aside the directions issued by the High Court for modification of the software and disposed of the appeal.

**20. Whether gains arising on transfer of shares of a Singapore company by Mauritian resident entities are exempt from tax in India under the India-Mauritius DTAA?**

**Authority for Advance Rulings (Income Tax) & Ors. v. Tiger Global International II/III/IV Holdings – Civil Appeals Nos. 262-264 of 2026 (Arising out of SLP (C) Nos. 2640/2025, 2565/2025 & 5987/2025) [Supreme Court of India]**

**Decision:** No.

The respondent-assessees were three companies incorporated in Mauritius, holding shares in a Singapore entity whose value was substantially derived from Indian operations. Upon transfer of such shares, they claimed exemption from capital gains tax in India under the India-Mauritius Double Taxation Avoidance Agreement (DTAA), relying inter alia on valid Tax Residency Certificates and management/control situated in Mauritius. They accordingly sought advance rulings under Section 245Q of the Income-tax Act, 1961, contending that the gains were not taxable in India. The Authority for Advance Rulings rejected the applications, holding that the transaction was prima facie structured for tax avoidance and did not qualify for treaty benefits. Hence, writ petitions before the Delhi High Court.

The Delhi High Court held that the assessees, being valid tax residents of Mauritius and possessing duly issued Tax Residency Certificates, were entitled to invoke the benefits of the India-Mauritius DTAA. It observed that capital gains arising from the transfer of shares were not chargeable to tax in India in terms of the treaty, and that a mere allegation of tax avoidance, absent cogent evidence, could not justify denial of treaty protection. Accordingly, the ruling of the Authority for Advance Rulings was set aside and the assessees' claim to exemption was upheld.

The Supreme Court reversed the judgment of the Delhi High Court and held that the exemption under the India-Mauritius DTAA applies only to gains arising from the alienation of shares of Indian companies and does not extend to shares of non-resident entities, even if such entities derive substantial value from Indian assets. It further held that treaty benefits cannot be availed where the transaction is principally structured to obtain a tax advantage and lacks commercial substance, and that possession of a valid Tax Residency Certificate does not ipso facto entitle an assessee to treaty protection. The findings of the Authority for Advance Rulings that the arrangement constituted an impermissible tax avoidance structure were affirmed.

**21. Whether receipt of shares by shareholders upon court-sanctioned amalgamation amounts to taxable business income under Section 28 or is exempt under Section 47(vii) of the Income-tax Act?**

**Jindal Equipment Leasing Consultancy Services Ltd. & Ors. v. Commissioner of Income-tax Delhi-II & Ors. – Civil Appeal Nos. 152-155 of 2026 [Supreme Court of India]**

**Decision:** Yes.

The appellants, investment companies of the Jindal Group, held shares of Jindal Ferro Alloys Ltd. (JFAL) as part of their promoter holdings. Pursuant to a court-sanctioned scheme of amalgamation, JFAL was merged into Jindal Strips Ltd. (JSL), and the appellants received JSL shares in lieu of JFAL shares. They claimed exemption under Section 47(vii) of the Income-tax Act, 1961 treating the allotted shares as capital assets. The Assessing Officer treated the allotted shares as stock-in-trade and taxed the notional gain under Section 28.

The Tribunal allowed the assessees' claims, holding no taxable profit accrues unless sale/transfer occurs. The Delhi High Court reversed the Tribunal order and remitted the matters for fresh adjudication to determine whether the JFAL shares were held as stock-in-trade or capital assets. Hence, the present appeal.

The Supreme Court partly allowed the appeals and held that the High Court erred in remitting the matter on the premise that receipt of shares pursuant to amalgamation ipso facto gives rise to taxable business income under Section 28, without framing a substantial question of law under Section 260A. It observed that the determination whether the shares were held as capital assets or as stock-in-trade, and whether any income had in fact accrued, is a question of fact requiring proper adjudication. The Court clarified that the ratio in Rasiklal Maneklal is confined to capital gains and does not govern the issue of business income under Section 28. It further held that income under Section 28 arises upon accrual or realisation and cannot be presumed merely on receipt of shares in an amalgamation. Accordingly, the impugned judgment was set aside and the matter remitted to the Income-tax Appellate Tribunal for fresh adjudication on the limited issue of the nature of holding and consequential taxability in accordance with law.

**22. Whether a company can claim deduction under Section 80-IC on the basis of a manually filed return when e-filing was mandatory?**

**Commissioner of Income Tax, Chennai v. M/s. Gemini Communication Ltd – T.C.A. No. 143 of 2014 – [Madras High Court]**

**Decision:** No.

The assessee-company filed its return for AY 2008-09 manually on 30.09.2008 and subsequently filed the return electronically on 06.11.2008. The Assessing Officer denied deduction under Section 80-IC on the ground that the electronically filed return was belated and Section 80AC mandates filing of return within the due date. The assessee's appeal before the CIT (A) was dismissed. Aggrieved thereby, the assessee preferred a second appeal before the ITAT, which allowed the appeal and remanded the issue, holding that electronic filing was only procedural and the manual return could not be ignored. Hence, the present appeal.

The Madras High Court held that with effect from 14.05.2007, Rule 12(3) of the Income-tax Rules mandated companies to furnish returns electronically, either under digital signature or by electronic transmission with verification in Form ITR-V, and no statutory option existed for manual filing for AY 2008-09. It observed that the relaxation under Circular No. 3/2007 was temporary and conditional, and did not dispense with timely electronic filing. The Court further held that the CBDT, in exercise of its statutory powers, validly prescribed the mode of filing through amendments to the Rules, and such prescription did not override the Act. Since the electronic return was admittedly filed beyond the due date, the assessee was held disentitled to deduction under Section 80-IC read with Section 80AC, and the substantial questions of law were answered in favour of the Revenue.

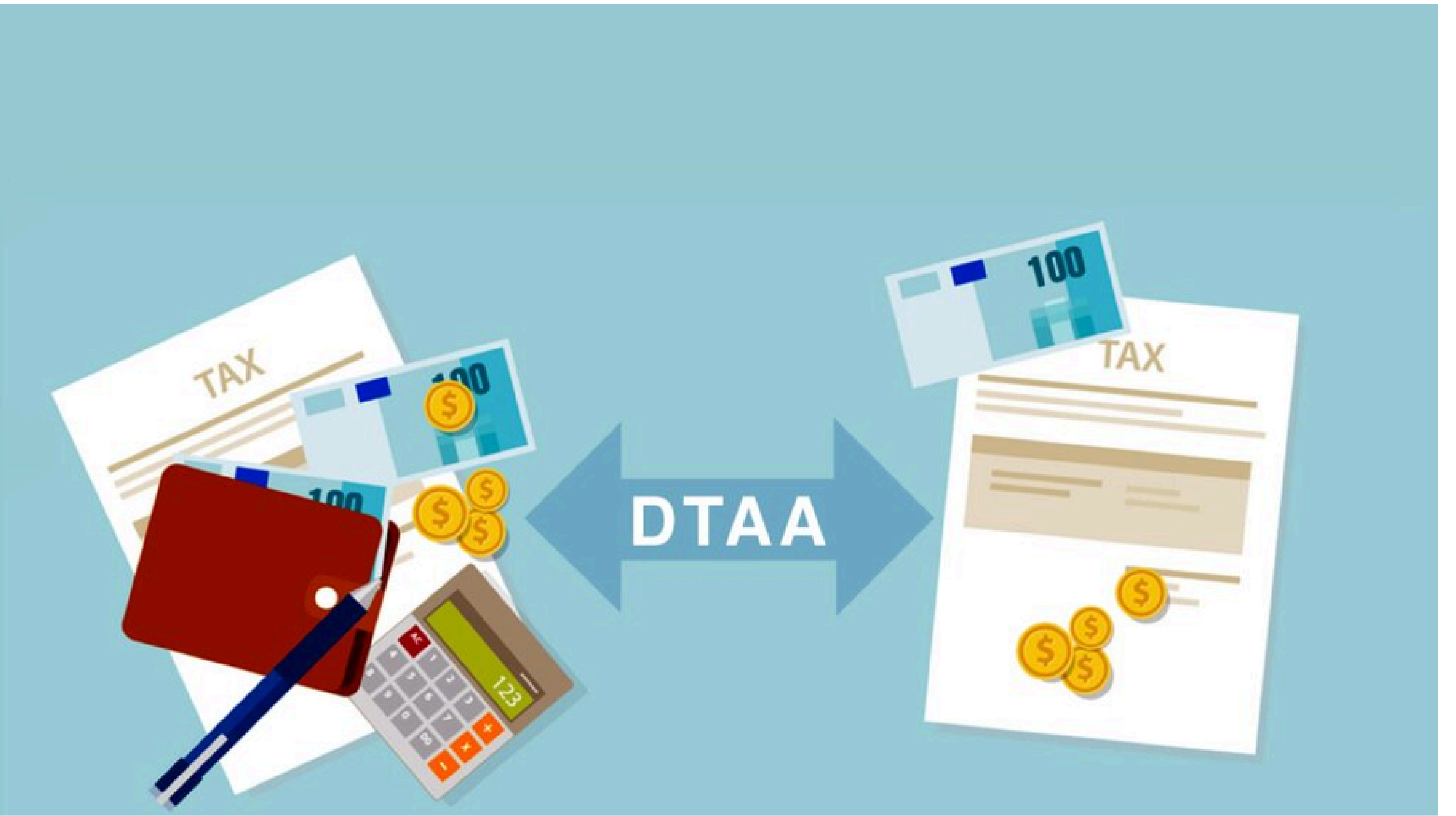
**23. Whether remote services rendered by a UK entity can constitute a 'Virtual Service PE' in India under Article 5(2)(k) of the India-UK DTAA for purposes of withholding under Section 195?**

**Ernst and Young LLP v. Assistant Commissioner of Income Tax, International Circle-1-2-2, New Delhi – W.P.(C) 16158/2025 [Delhi High Court]**

**Decision:** No.

The petitioner challenged the certificate and order dated 17.09.2025 passed under Section 195(2) of the Income-tax Act, 1961, whereby the Assessing Officer rejected its application for issuance of a Nil withholding certificate in respect of payments proposed to be made to Ernst & Young (EMEIA) Services Ltd., a UK entity. The Assessing Officer directed withholding of tax at 5.25% on the footing that the UK entity had a "Virtual Service Permanent Establishment" (PE) in India under Article 5(2)(k) of the India-UK DTAA. The petitioner contended that no services were rendered through personnel physically present in India. Hence, the present petition.

The Delhi High Court held that Article 5(2)(k) of the India-UK DTAA contemplates furnishing of services within the Contracting State through employees or other personnel, thereby requiring physical presence in India. It observed that the expression "within" has a territorial connotation and does not encompass remote or virtual rendition of services. The concept of a "virtual service PE" cannot be read into the treaty in the absence of express language to that effect. Accordingly, the impugned certificate and order were set aside.



**24. Whether the mandate of an Arbitrator stands automatically terminated upon expiry of time under Section 29A(4) of the Arbitration Act, requiring substitution in every case?**

**Viva Highways Ltd v. Madhya Pradesh Road Development Corporation Ltd & Anr. – Civil Appeal No. ___ of 2026 (Arising out of SLP (C) No. 38327 of 2025), Supreme Court**

**Decision:** No.

Arbitral proceedings were pending between the parties when an application under Section 29A(4) of the Arbitration and Conciliation Act, 1996 seeking extension of the mandate of the Arbitrator was filed before the Commercial Court, Bhopal. During the pendency of the said application, the High Court of Madhya Pradesh, by interim order in MCC No. 2699/2025, declared that the mandate of the existing Arbitrator stood terminated and directed the parties to propose the name of a substitute Arbitrator, placing reliance on Mohan Lal Fatehpuria v. M/s. Bharat Textiles & Ors. Aggrieved thereby, the appellant preferred a Special Leave Petition before the Supreme Court contending that the High Court had misconstrued the ratio of the aforesaid decision and that substitution of the Arbitrator is not an automatic consequence under Section 29A.

The Supreme Court held that the High Court had misconstrued the ratio of Mohan Lal Fatehpuria, clarifying that although Section 29A(6) empowers the Court to substitute an Arbitrator, such substitution is not an automatic or inevitable consequence of expiry of mandate under Section 29A(4) and must depend on the facts and statutory scheme, as reiterated in C. Velusamy v. K. Indhera and Jagdeep Chowgule v. Sheela Chowgule. Accordingly, the impugned order dated 02.12.2025 was quashed and set aside, the application before the Commercial Court, Bhopal was revived, and the said Court was directed to decide the request for extension of mandate expeditiously and on its own merits in accordance with law.

**25. Whether disputes between licensor and licensee relating to recovery of amounts under a leave and license agreement are non-arbitrable in view of Section 41 of the Presidency Small Cause Courts Act, 1882?**

**Motilal Oswal Financial Services Limited v. Santosh Cordeiro & Anr. – Civil Appeal No. 36 of 2026 [Supreme Court]**

**Decision:** No.

The appellant entered into a Leave and License Agreement containing an arbitration clause. Disputes arose after the appellant handed over possession in September 2020 and sought refund of security deposit, while the respondent claimed amounts towards the balance lock-in period. The respondent invoked arbitration and filed a Section 11 application before the Bombay High Court seeking appointment of an arbitrator. The appellant opposed the application contending that the dispute was non-arbitrable under Section 41 of the Presidency Small Cause Courts Act, 1882, which confers exclusive jurisdiction on the Small Causes Court. The High Court appointed an arbitrator, against which the appellant preferred an appeal before the Supreme Court.

The Supreme Court held that under Section 11(6-A) of the Arbitration and Conciliation Act, 1996, the Court is required to confine its examination to the existence of an arbitration agreement and not undertake a detailed inquiry into arbitrability. It observed that Section 41 of the 1882 Act does not, by its own force, render an arbitration clause non-existent, particularly where possession had already been handed over and the dispute pertained to monetary claims. Questions relating to arbitrability and the nature of the claim fall within the jurisdiction of the Arbitral Tribunal under Section 16 in accordance with the doctrine of competence-competence. Accordingly, the appeal was dismissed and the arbitrator was permitted to proceed with the adjudication.

**26. Whether the mandatory pre-deposit under Section 18 of the SARFAESI Act can be made before the Bank instead of the DRAT?**

**The Authorised Officer & Chief Manager, Kerala Gramin Bank v. Prajith Builders & Developers Pvt. Ltd. & Ors. – W.A. No. 2323 of 2025 [Kerala High Court]**

**Decision:** No.

The borrower had availed credit facilities from the appellant-Bank and, upon committing default, the loan account was classified as a non-performing asset, pursuant to which measures were initiated under Section 13(4) of the SARFAESI Act, 2002. The borrower challenged the said measures by filing a SA before DRT, which came to be dismissed. The borrower challenged the above order by filing a writ before the Kerala High Court.

The Ld. Single Judge disposed of the writ petition by directing deposit of certain amounts before the Bank and treated the same as compliance with the mandatory pre-deposit requirement under Section 18. Aggrieved by such direction, the Bank preferred a writ appeal before the Division Bench.

The Division Bench of Kerala High Court held that Section 18 mandates deposit before the DRAT as a condition precedent for maintaining an appeal, and there is no statutory provision permitting deposit before the Bank to be treated as compliance. The Court reiterated that the pre-deposit requirement is mandatory and cannot be circumvented through writ jurisdiction in the absence of exceptional circumstances. Accordingly, the judgment of the learned Single Judge was set aside and the writ petition was dismissed.

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