

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 Form SVLDRS-3 can ignore deposits made during investigation, despite Section 124(2) mandating adjustment of such deposits before computing the final payable amount?

Evershine Enterprises vs. Union of India & Ors.- Writ Petition No. 3138 of 2022- (Bombay HC)

Decision: No.

The petitioner is a developer. It was visited with show cause notices proposing demand of over Rs.2.42 crores. It made certain deposits during investigation which were sought to be appropriated. Order came to be passed confirming the demands. It filed appeal before CESTAT. In the mean time, it applied for the Sabka Vishwas Legacy Dispute Resolution Scheme. Accepting the application; Form SVLDRS-3 was issued calling upon the petitioner to deposit 50% of the tax dues. The deposits already made were not considered. Hence, petition was filed.

The Bombay High Court set aside the Form SVLDRS 3 and allows the writ petition. It held: (i) in terms of section 124(2) of the Act; deposits made during the course of investigation needs to be adjusted before arriving at final amount; (ii) the committee had not considered the challans produced by the petitioner; (iii) section 126 required the committee to “verify” the claim and not act as an appellate or adjudicating authority; (iv) rejects revenues contention that the petitioner had accepted the amounts; (v) follows decision of coordinate Bench in Code Engineers and remands the matter back to verify the claim of the petitioner.

2. Whether the tax demand confirmed in the order can exceed the amount proposed in the show cause notice under Section 75(7) of the CGST/KGST Act?

Prestige Nottinghill Investments vs. Union of India & Ors.-Writ Petition No. 18888 of 2025-(Karnataka High Court)

Decision: No.

The petitioner is a leading developer. It is engaged in construction and sale of flats. The department was of the view that it is liable to reverse pro rata credit under section 17(2) of the Act. A show cause notice was issued proposing to demand GST of Rs.2.49 crores. However; order came to be passed confirming demand of Rs.6.9 crores. It filed a rectification application. The same also came to be rejected. Hence, petition was filed.

The Karnataka High Court set aside the rejection orders and allowed the writ petition. It held: (i) the confirmation of demand was more than the proposal in the show cause notice; (ii) it was contrary to statutory mandate under section 75(7) of the CGST Act; (iii) accordingly; the matter was remitted to the original authority to decide the issues afresh keeping in mind section 75(7) of the Act.



SVLDRS Scheme

3. Whether the assessment disallowing expenditure under Section 40(a)(ia) be sustained when the order is passed without allowing time to cure defects in Form-26A and supporting documents?

ASA Global Impex Private Limited vs. Union of India & Ors.- W.P. No. 12464 of 2025- (Madras High Court)

Decision: No.

The petitioner is a contractor. It engaged sub-contractors for providing services. It did not deduct TDS under section 194 of the Income Tax Act. For assessment year 2023-2024; addition of over Rs.6 crores was made under section 40(a)(ia) of the Act. The petitioner claimed benefit of section 201 of the Act stating that the sub-contractors have paid tax on the said payments made by the petitioner. However; claim was rejected stating that: (i) CA certificates were not in prescribed form; (ii) available for only 12 parties out of 18; and (iii) Form 26AS of the said parties was not filed. Hence; petition came to be filed.

The Hon'ble Madras High Court set aside the order and allowed the writ petition. It held: (i) the assessment order was passed without hearing the petitioner; without considering the replies filed; (ii) had the petitioner been given an opportunity; it could have cured the defects; if any; and satisfied the authority; (iii) remands the matter for fresh adjudication within nine months; allows petitioner to file additional reply (manually as well as online).

4. Whether order be sustained when there is no proof of delivery of hearing notices as required under Section 37C?

Sri Sai Vishwas Polymers V. Union of India & ors. – Special Civil Application No. 4108 of 2025 (Gujarat High Court)

Decision: No.

The petitioner is exporting gold jewellery. It availed benefit of advance replenishment scheme and claim rebate of duty on exported goods. Refund was allowed. The revenue filed appeal before commissioner (appeals) on the ground that the petitioner is not entitled for refund. Appellate authority held in favour of the Assessee. Revision application came to be filed before the Government of India (under secretary). It allowed the revenues appeal ex parte. Hence; petition was filed.

The Gujarat High Court set aside the order and allowed the petition. It held: (i) section 37C of the Central Excise Act requires proof of delivery and not merely dispatch; (ii) the revenue agreed that there was no proof of service of the hearing notice or order; (iii) relies on the averment made in the petition and following its own decision in Regent Overseas Private Limited; remands the matter back to the revisionary authority.

5. Whether the additions can be made under Section 153A for unabated years without incriminating material?

Pr. Commissioner of Income Tax Central-3 V. RPS Infra Projects Pvt. Ltd.-Income Tax Appeal (IT) No. 739 OF 2024- (Bombay High Court)

Decision: No.

The respondent Assessee is a undertaking government construction projects. It filed return for AY 2014-2015. A search was conducted on the group companies; on the basis of which addition was sought to be made disallowing bogus purchases. The AO made assessment for AY 2015-2016; 16-17; 17-18; 18-19. On appeal; CIT(A) allowed the appeal of the Assessee. It held that those years fall under "unabated assessments" as there was no incriminating evidence found for those years to make addition. Therefore; provisions of section 153A of the Income Tax are not attached. It followed the ruling of the Jurisdictional High Court. Being aggrieved; Revenue filed appeal before ITAT, Mumbai. ITAT dismissed the appeal filed by the department on the ground that merely because SLP has been filed before Supreme Court cannot be a ground to not follow Bombay High Court judgment. Hence; again; appeal by Revenue.

The Bombay High Court dismissed the appeal filed by the department. It held: (i) the commissioner appeals and the Tribunal has rightly followed decision in the case of Container Corporation and Gurinder Singh Bawa; (ii) merely because a decision is challenged it does not lose its precedential value; unless it is reversed; (iii) the decision of the High Court in Container Corporation has been approved by the Apex Court in Abhisar case; iv) no question of law; much less substantial arises.

6. Whether the GST refund be rejected merely for non-submission of documents?

Epiroc Mining India Limited vs. Union of India & Ors.- Writ Petition No. 25609 of 2022- (Karnataka High Court)

Decision: No.

The petitioner is a registered Assessee. It filed a claim for refund. It was rejected on the ground that: (i) it failed to furnish any valid justification or documentary evidence to establish that input services viz. Airline; tour operator; security and hotel accommodation were used in the course or furtherance of business and (ii) it was not hit by the express restrictions contained in Sections 17(5)(g) and 17(5)(b) of the CGST Act, 2017. Appeals filed against such rejection also came to be rejected. The appellate authority held that the petitioner had not complied with procedure under circular dated 18.11.2019. Hence; writ petition was filed.

The Karnataka High Court set aside the orders and allowed the petition. It held that the authorities have; primarily; rejected the refund claims for want of documents. Accepting the petitioners contention that the documents would be produced; follows justice oriented approach and remands the matter back to the adjudicating authority to reconsider the refund claims.

7. Whether deposit during investigation has to be refunded at higher rate of interest or not?

Principal Commissioner CGST V. Parle Agro Private Ltd.- Central Excise Appeal No. 18 of 2021 (Allahabad High Court)

Decision: Yes.

The Respondent Assessee is a manufacturer of "Frooti" (Non Alcoholic Beverage Base Drinks). During a search in 1993; it was made to deposit a sum of over Rs.1.5 crores. It paid under protest. A show cause notice came to be issued demanding central excise duty of over Rs.2 crores. Commissioner confirmed the demand. CESTAT allowed the appeal partly. A refund claim was filed. It was rejected. Ultimately; CESTAT allowed holding that the amount was a deposit and not duty. Pursuant thereto; refund of principal was granted from date of refund application and interest @6% was sanctioned. Assessee filed appeal seeking refund from date of deposit and higher interest. Appellate authority allowed refund from date of deposit. Revenue filed appeal before CESTAT challenging the same. Assessee filed appeal seeking higher interest. CESTAT dismissed department appeal and allowed the Assessee appeal. Hence; appeal by Revenue.

The Allahabad High Court dismissed the appeal filed by the department and answered both questions in favour of Assessee. It held: (i) the amount was not paid towards duty; interest or penalty; as there was no self assessment or demand by the department; (ii) hence; amount paid was a mere deposit which would not attract provisions of section 11B and section 11BB of the Central Excise Act; (iii) distinguishes judgment of Supreme Court in Ranbaxy Laboratories and Hamdard on facts; (iv) rejects revenues contention that statutory interest is only 6%; (v) holds that the award of interest @12% is correct as refund was granted after 24 years of deposit.



deposit

8. Whether a Show Cause Notice (SCN) issued without conducting pre-show cause notice consultation is valid in law?

Pyramid Developers V. Union of India & Ors. -Writ Petition No. 1466 OF 2021- (Bombay High Court)

Decision: No.

The petitioner is a developer. A show cause notice came to be issued proposing to demand service tax. The said notice was challenged before the High court; in writ; on the ground that no pre-show cause notice consultation was issued. Hence; show cause notice is bad.

The Bombay High Court set aside the show cause notice and allowed the petition. In a batch of petitions; it held: (i) though Section 73 does not expressly require pre-consultation, CBEC Master Circular dated 10 March 2017 and CBIC Circular dated 19 November 2020 mandate such consultation; (ii) These circulars are binding on the department under Section 37B of the Central Excise Act (made applicable to service tax by Section 83 of the Finance Act); (iii) rejects departments reliance placed on decision of Supreme Court's in Amadeus India to contend that it cast doubt on the mandatory nature of pre-consultation; (iv) distinguishes decision of the Ld. single Judge of Madras High Court which held that such pre-scn was not mandatory; (v) holds that it a trade facilitation measure which promotes ease of doing business; (vi) directs demand to issue pre-scn; excluding the period for which petitions were pending before the court.

9. Whether the review be allowed against an order granting SVLDRS benefit when payment was delayed due to technical issues, on the ground that such benefit should not have been granted?

Cradle Runways Pvt. Ltd. vs. Assistant Commissioner, Mumbai Central- WP No. 3015 of 2021- (Bombay High Court)

Decision: No.

The petitioner filed declaration under the SVLDR Scheme. The petitioner could not make payment due to COVID 19 lockdown. It generated a fresh challan which stated the validity till 01.07.2020. However, SVLDRS form 4 (discharge certificate) was not issued on the ground that the payment was not made in time. Hence, the petition came to be filed. The High Court allowed the petition. The Department filed a review petition on the ground that benefit could not have been granted.

The Hon'ble Bombay High Court dismissed the review petition filed by the department. It held: (i) there is no error apparent on face of record calling for review; (ii) a review petition is not an appeal in disguise; (iii) the decision of Supreme Court in Yashi Construction is distinguishable on facts; (iv) the technical glitches were considered by the original Bench and hence; petition was allowed.

10. Whether manufacture of final products using some raw material supplied by the customer amounts to job work or not?

BBM Heavy Machinery Private Ltd. V. Commissioner of GST & Central Excise, Bhiwandi-Excise Appeal No. 85274 of 2022- (CESTAT Mumbai)

Decision: No.

The appellant manufacture heavy machinery/equipment. Business is run by a joint venture (JV); agreement dated 19.07.2011 entered into with M/s SMS Meer India Limited, an Indian company and M/s Officine Meccaniche BBM SPA, Italy. The department alleged that appellants had manufactured final products out of certain raw materials supplied by M/s SMS, but failed to pay the central excise duty on the the price at which the principal manufacturer sold the goods under Rule 10A of the Central Excise Valuation Rules. Demand of over Rs.1.05 crores along with interest and equivalent penalty was confirmed. Appellate authority upheld such confirmation. Hence, appeal before Tribunal.

CESTAT, Mumbai set aside the orders and allowed the appeal. It held: (i) though the appellant and M/s SMS are "interconnected undertakings"; the valuation cannot be done under Rule 9; as other conditions are not satisfied; (ii) the Revenue has failed to lead in evidence that the appellant was a "job worker" to invoke Rule 10A of the Valuation Rules; (iii) central excise duty was paid on value including value of free issue material and sales tax was paid thereon; evidencing purchase and sale transaction; (iv) relies on decisions of Tribunal in the case of Nilkamal; Ramsons Casing; and Poona Bottling (affirmed by Supreme Court).

11. Whether exemption for “cotton fabrics processed without the aid of power” is available when different stages of processing are spread across two separate units collectively use power?

Commissioner of Customs, Central Excise & Service Tax, Rajkot vs. Narsibhai Karamsibhai Gajera & Ors. – Civil Appeal Nos. 3405–3407 of 2012 – (Supreme Court)

Decision: No.

Two partnership units located within the same compound were engaged in converting grey cotton fabrics into finished cotton fabrics. Search was conducted on both units. Show cause notice was issued alleging both Units were using power in processing cotton fabrics and were wrongly claiming exemption under Notification 5/98-CE. Order-in-Original was passed imposing duty, interest and penalty. Aggrieved appeal was before CESTAT. CESTAT held that Units were separate, found no use of power at Unit No.1. Hence the appeal.

The Supreme Court held that manufacturers cannot claim central excise duty exemption for processed cotton fabrics if power is used at any stage of the manufacturing chain, even when the work is carried out through separate units, even if one stage of the integrated process uses power the entire manufacture is considered as using power. The CESTAT erred in focusing the distinct ownership and business identity of the units instead of examining the integrated nature of the process converting grey fabrics into cotton fabrics. The processes at Units 1 and 2 formed an interlinked, indispensable chain culminating in the finished cotton fabrics.

12. Whether assignment of an intangible trademark to a foreign buyer constitutes a local sale in Maharashtra or a sale in the course of export under Section 5(1) of the CST Act?

Duphar Interfran Ltd. vs. State of Maharashtra – Sales Tax Reference No. 9 of 2012 – (Bombay High Court)

Decision: Sale in nature of export.

The applicant owned well-known trademark “Crocin” registered in India. By a Brand Acquisition Agreement dated 18.01.1996 executed in London, the trademark was assigned to SKB, a company incorporated in the United Kingdom. The Commissioner of Sales Tax treated this assignment as a local sale within the State of Maharashtra, taxable at 4% under Entry C-I-26 of the Bombay Sales Tax Act, 1959. The Tribunal upheld this view. Hence, Sales Tax Reference was filed.

The Bombay High Court held Trademarks are intangible property, situs follows the owner as per the principle mobilia sequuntur personam. Upon assignment, all ownership rights in “Crocin” moved to SKB in the UK, the situs of the trademark also moved outside India. Even though the trademark was registered in India, registration does not determine situs ownership does. The assignment constitutes movement of goods (intangible property) from India to the UK, making it sale in the course of export. Once the transaction is an export, no State sales tax can be levied under Article 286 of the Constitution.



13. Whether Notifications 14/2017-ST, 15/2017-ST and 16/2017-ST shifting GST-era reverse charge liability on import freight under the Finance Act, 1994 are ultra vires?

TVS Srichakra Ltd. & Hitech Arai Pvt. Ltd. vs. Union of India & Ors. – W.P.(MD) Nos. 1139, 1143, 14856 & 14857 of 2022 – (Madras High Court, Madurai Bench)

Decision: Yes.

The petitioners challenged Notifications 14/2017, 15/2017 and 16/2017-ST (dated 13.04.2017), which imposed reverse charge liability on import freight under Section 68(2) of the Finance Act, 1994. Parallel writ petitions also sought quashing of show cause notices issued for the period April 2017–June 2017 on the same basis.

The Madras High Court allowed all petitions. It held that the Gujarat High Court in Sal Steels Ltd. and the Bombay High Court in Santhan Textiles Pvt. Ltd. have already held that these notifications are ultra vires Sections 64, 66B, 67 and 94 of the Finance Act, 1994. This Court had earlier taken the same view in Eastman Spinning Mills. The notifications attempt to expand the scope of reverse charge machinery beyond what Section 68(2) permits. Also, in Chennai & Ennore Ports Steamer Agents Association held that there is no statutory machinery to deem the importers/agents as “recipients” and, hence, the levy itself fails.

14. Whether ITC on insurance premium can be denied by classifying stock & premium as motor vehicle insurance under section 17(5) of CGST Act or not?

Arraycom (India) Ltd. v. State of Gujarat & Ors. – SCA No. 11979 of 2025 (Gujarat High Court)

Decision: No.

The petitioner is engaged in manufacture of conductive pastes, solar installations and system integration services. For FY 2020–21, it availed Input Tax Credit (ITC) on insurance premium covering stock-in-trade, business premises and electronic goods manufacturing equipment.

The department alleged that insurance premium pertained to motor vehicle insurance, thereby falling under the blocked credit category of Section 17(5). Demand was confirmed. Recovery proceedings were initiated. Hence, petition was filed.

The High Court held that insurance related to stock, business premises and manufacturing equipment, and not to motor vehicles. The department had completely misread the nature of the policy leading to an erroneous invocation of Section 17(5). Accordingly, demand was squashed.



**IMPORT PROCESS WITH
A FREIGHT FORWARDER**

15. Whether proceedings under Section 130 of the GST Act can be invoked merely because excess stock is found during survey?

Vidyarthi Dresses vs. State of Uttar Pradesh – Writ Tax No. 4971 of 2025 – (Allahabad High Court)

Decision: No.

The business premises were surveyed on 30.04.2019. The officers alleged excess stock without any actual physical counting. On this basis, proceedings were initiated under Section 130 (confiscation). The petitioner challenged the same into writ.

The Allahabad High Court held that Section 35(6) expressly provides that where goods are not accounted for, the proper officer shall determine tax liability under Sections 73/74, applying those provisions mutatis mutandis. The GST Act is a complete code. The authorities cannot bypass it and directly invoke Section 130. The issue is no longer res integra the Court followed its earlier ruling in Vijay Trading Company, affirmed by the Supreme Court, where it was held that mere excess stock at survey cannot trigger confiscation proceedings.

16. Whether refund of unutilised ITC can be denied to a 100% EOU exporter on the ground that suppliers paid GST and did not treat supplies as deemed exports?

Shah Paperplast Industries Ltd. & Anr. vs. Union of India & Ors. – Special Civil Application No. 18892 of 2023(Gujarat High Court)

Decision: No.

The petitioners, 100% Export Oriented Units, procured inputs from registered suppliers who paid GST. It used these inputs to manufacture finished goods that were exported without payment of GST under LUT. They then filed refund claims of unutilised input tax credit under Section 54(3) read with Rule 89(4). The Department initially sanctioned provisional refunds. However, after issuance of CBIC Circular in July 2022, issued show-cause notices seeking recovery of sanctioned refund. Hence, the petition.

The Gujarat High Court held that the petitioner exported finished goods under LUT as zero-rated supplies without payment of tax. They were genuine exporters. It was not “deemed-export” recipients. Since their suppliers had not opted for “deemed export” benefits and the requisite procedures were not followed for “deemed-export” classification, the case did not fall under “deemed exports.” Therefore, the refund claim under Rule 89(4) was valid. Application of Circular 172/2022 (and Rule 89(4A)) to deny refund or claw back granted refund was contrary to law and facts.

**Export Oriented
Units (EOUs) scheme**



17. Whether reassessment under Section 148 can be initiated when all details on accumulation under Section 11(2) were examined and accepted in original scrutiny?

Sir Jamsetjee Jejeebhoy Charity Fund vs. ITO (Exemption) & Ors. – W.P. No. 4941 of 2024 – (Bombay High Court)

Decision: No.

The petitioner, a charitable trust registered under Section 12A, had accumulated Rs. 3.17 crore (66.72% of its income) for charitable purposes and filed Form 10 along with a trustee resolution dated 26.09.2018. During the original scrutiny for AY 2018-19, the Assessing Officer (NFAC) issued notices under Sections 143(2) and 142(1), specifically seeking particulars of accumulation. The trust furnished complete details. The NFAC accepted the accumulation in the assessment order dated 15.02.2021. However, in August 2024, the AO issued notices under Section 148A(b), alleging that Form 10 did not specify a “particular purpose” and that the trustee resolution was “actually dated 28.01.2020.” The audit objection was treated as “information,” and reassessment was reopened under Section 148.

The Bombay High Court held that during the original scrutiny assessment, all materials relating to Section 11(2) accumulation were fully disclosed and verified by the AO. Reopening the assessment on the same issues without any new tangible material amounts to a review, which is not permissible. The reassessment cannot be used to revisit or re-examine views already accepted in the original assessment. A mere change of opinion cannot form “reason to believe” for issuing notices under Sections 148 or 148A. Accordingly, reassessment proceedings were invalid, as they sought to reopen concluded issues purely based on a change in the AO’s mind.

18. Whether the ITAT can uphold a Section 263 revision order on grounds not relied upon by the Commissioner?

Save A Family Plan (India) vs. DCIT (Exemptions) – ITA No. 81 of 2025 – (Kerala High Court)

Decision: No.

The appellant is a charitable trust. During the F.Y. 2013-14 the assessee received various donations, and made further donations to other institutions, which were also stated to be having registration under Section 12A of the Act. AO accepted the return of income. The Commissioner, however, invoked Section 263, holding that exemption under Section 11 could be granted only if donations were made to institutions with similar FCRA.

The assessee appealed before the ITAT, Cochin Bench. The Tribunal agreed that the Commissioner’s reliance on FCRA status was erroneous and accepted that donations made from current year’s income to other registered charitable institutions constitute application of income. However, it nevertheless upheld the 263 action on a new footing: that the assessment order did not verify whether the donee trusts had objects similar to that of the assessee. This ground was never part of the Commissioner’s 263 order.

The Kerala High Court held that the Tribunal’s scope in an appeal against a Section 263 order is confined to testing the validity of the grounds actually invoked by the Commissioner. Once the Tribunal accepted that the Commissioner’s only reason (FCRA categorization) was incorrect, it could not invent a new justification. This violates the principle laid down in CIT v. Chandrika Educational Trust. Donations made by one registered charitable trust to another registered charitable trust constitute application of income under Section 11(1)(a), and this is not dependent on FCRA status. The Commissioner had never alleged lack of enquiry regarding objects of the donee trusts therefore, the Tribunal could not travel beyond the scope of the 263 order.



19. Whether the Income Tax Department can withhold refund under Section 245 without any outstanding demand?

Rajneesh Agarwal vs. Income Tax Officer, Ward 22(2) – WPO 398 of 2025 – (Calcutta High Court)

Decision: No.

The petitioner, a practicing Chartered Accountant, following cash system of accounting, filed his return for AY 2018-19 declaring income of Rs. 37,09,520 and claiming TDS of Rs. 39,51,350, entitling him to a refund of Rs. 29,98,230. However, the intimation under Section 143(1) allowed TDS of only Rs. 1,68,300. On rectification, an order under Section 154 determined a gross refund of Rs. 55,54,357, out of which Rs. 22,73,833 was shown as withheld under Section 245 and Rs. 32,80,524 as net refundable, though the petitioner actually received only Rs. 18,26,159. Despite repeated representations, the balance refund remained unpaid. The petitioner filed WPA 6316/2025, during which the Department refunded Rs. 14,99,725 on 05.05.2025, leading to withdrawal of the writ on 07.05.2025 based on the Department's assurance of full refund. When the balance amount of Rs. 22,73,833 was still not released, the petitioner issued a reminder on 13.05.2025 and eventually filed the present writ petition.

The High Court held that the Department failed to establish that any amount was due or payable by the assessee within the meaning of Section 245 of the Income-tax Act, 1961. Although Section 245 empowers the Income-tax Department to set off a refund against outstanding tax dues, such power can be exercised only upon demonstration of an existing and enforceable tax liability. It is a settled principle that no tax can be recovered in the absence of a specific charging provision. Consequently, the Department cannot withhold the assessee's refund under Section 245 without first establishing a lawful tax liability.

20. Whether unsecured loans can be treated as unexplained cash credits under Section 68 when the lender has confirmed the loan and the loan was fully repaid with interest?

PCIT-4, Delhi vs. KRBL Infrastructure Ltd – ITA 494/2024 (Delhi High Court)

Decision: No.

The assessee, part of the KRBL Group, was subjected to a search under Section 132, after which assessment proceedings for AY 2014-15 were initiated under Section 153A.

During the assessment, the Assessing Officer questioned an unsecured loan of Rs. 10 crore received from Shashi Foods India Pvt. Ltd. Relying on enquiries that some of the lender's suppliers were untraceable and certain connected entities were involved in bogus purchases. The lender had confirmed the loan during survey proceedings and the loan had been repaid entirely through banking channels, with interest at 9% duly paid. The Assessing Officer still treated the loan as unexplained and disallowed the interest. On appeal, the CIT(A) deleted the addition. The ITAT affirmed this. The Revenue appealed to the High Court.

The Delhi High Court held that the addition under Section 68 could not be sustained because the assessee had fully discharged its onus by proving the identity, creditworthiness, and genuineness of the unsecured loan of Rs. 10 crore received from Shashi Foods India Pvt. Ltd. The Court noted that the lender had confirmed the loan twice during survey and in response to a Section 133(6) notice and the transaction, including interest payment and subsequent repayment, was carried out through banking channels. The Assessing Officer's reliance on alleged irregularities in the lender's own business, such as unverified suppliers or possible bogus purchases, was irrelevant to the assessee's loan transaction and could not justify the addition. Importantly, the Court reiterated that the assessee is not required to prove the "source of the source."



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Income Tax Outstanding Demand

21. Whether the High Court could review its earlier Section 11 order and hold that no arbitration agreement?

Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd. – SLP (C) No. 4211 of 2025 (Supreme Court of India)

Decision: No.

The parties entered into a contract dated 04.03.2014. The contract contained clause 25 for arbitration. Dispute arose between the parties. The petitioner filed petition u/s 11 of the act. The High Court appointed an arbitrator and proceeding was started which continued for 3 years. Thereafter, the respondent filed a review of section 11 order.

The High Court held that Clause 25 did not constitute a valid arbitration agreement and halted arbitration. Hence, the present petition.

The Supreme Court held that the Patna High Court had no jurisdiction to review its earlier Section 11 order appointing an arbitrator, as the court becomes functus officio once such an appointment is made. It further held that Clause 25 was a valid arbitration agreement, noting that the parties had previously arbitrated under the same clause, had participated in more than 70 hearings in the second arbitration, and had never disputed the clause's validity. The Court rejected the High Court's reliance on the "negative covenant" in Clause 25, observing that the Managing Director's inability to appoint an arbitrator does not extinguish the arbitration agreement; instead, the court can step in under Section 11, especially after the MD becomes ineligible under Section 12(5). The Court therefore set aside the High Court's review order and directed continuation of the arbitration with a substitute arbitrator.

22. Whether failure to "endeavour" to meet business plan projections under a management agreement can justify damages and withstand challenge under Section 34 of the Arbitration Act?

Regus South Mumbai Business Centre Pvt. Ltd. v. Marie Gold Realtors Pvt. Ltd - Commercial Arbitration Petition No. 439 of 2024 (Bombay High Court)

Decision: No.

The Petitioner challenged an arbitral award directing it to pay Rs. 10.10 crore in damages to the Respondent for failing to make "best endeavours" to achieve the revenue projections in the Business Plan under a Management Agreement for running a business centre at Fort, Mumbai. Under the Agreement (2010), Regus was to operate the centre and share 75% of net turnover with the Respondent. The Respondent incurred ₹7.8 crore to refurbish the premises. Regus furnished a Business Plan with projected revenues and undertook under Clauses 8.2 and 11.1 to "endeavour" to achieve and exceed the projections. Regus failed to meet even 32% of projected revenue during the 3-year term, and the Respondent invoked the Rs. 2.25 crore bank guarantee and terminated the Agreement in 2014.

Before the arbitrator, petitioner argued that the Business Plan was only indicative, contained calculation errors, and that failure to meet projections could result only in non-renewal under Clause 21 but not damages. The arbitrator rejected the claim of misrepresentation but held Regus liable for failing to make reasonable endeavours as contractually promised, and awarded damages equivalent to the shortfall between projected and actual MG Premium.

The High Court upheld the award. It held that "shall endeavour" is an enforceable contractual obligation, relying on Supreme Court's view in NBCC India Ltd. v. Shri Ram Trivedi. The burden to explain efforts made rested on Regus under Section 106 of the Evidence Act since the business operations were solely within its knowledge, but no evidence was led. The Court rejected Regus' contention that Clause 21 excluded damages, clarifying that parties cannot contract out of consequences for breach. The arbitrator's approach, interpretation of the Agreement, findings on breach, and computation of damages were all held to be within jurisdiction and not contrary to public policy or patently illegal. Section 34 petition was dismissed.

23. Whether terminated redevelopment rights can be treated as assets protected by the IBC moratorium?

A A Estates Pvt. Ltd. v. Kher Nagar Sukhsadan Co-operative Housing Society Ltd. & Ors. – Civil Appeal arising out of SLP(C) No. 10758 of 2025 (Supreme Court)

Decision: No.

The appellant (developer) had entered into a Development Agreement in 2005 (and Supplementary Agreements in 2014) with the Society for redevelopment of an old and unsafe building. The project required demolition of the existing structure, payment of rent compensation, and completion within stipulated timelines. Despite receiving approvals in 2012–2014, the developer failed to commence or complete work, did not pay rent to 41 out of 60 members, and significant delays persisted for nearly two decades. After issuing repeated default notices, the Society terminated the agreements through resolutions and notices dated 09.06.2019, 02.12.2019 and 06.11.2021 well before the second CIRP commenced on 06.12.2022 and subsequently appointed a new developer. During CIRP, the RP objected to permissions being granted to the new developer on the ground that development rights were “assets” of the corporate debtor protected by moratorium. The High Court rejected this objection and directed authorities to process the Society’s redevelopment proposal.

The Supreme Court held that the termination of the Development and Supplementary Agreements was validly effected long before CIRP and arose from chronic non-performance not insolvency. No physical, legal, or constructive possession was ever transferred to the developer. The agreement merely conferred a limited licence to enter the land for redevelopment. As the contract stood terminated pre-CIRP, no proprietary or enforceable rights subsisted on the insolvency date. Hence, the developer held no “asset”, “property”, or “development right” capable of protection under Section 14 of the IBC. The moratorium does not revive extinguished contracts nor freeze lawful terminations predating CIRP.

The redevelopment agreements are not automatically proprietary in nature; only where they confer enforceable or possessory rights can they qualify as assets. Here, the developer had no crystallised or subsisting right and, at best, retained a bare damages claim.

24. Whether the purchaser of an industrial unit with assured returns qualifies as a “financial creditor” under Section 5(8)(f) of the IBC or not?

Harisharan Hi-Tech Industries v. IRP of Renaissance Indus Infra Pvt. Ltd. – NCLT Mumbai (Court-V) – IA 4320/2023 in CP 979/2022 (Order dated 26.11.2025)

Decision: No.

The Applicant purchased an industrial unit through a registered Agreement for Sale (31.03.2022) and MOU (13.04.2022). It paid the entire consideration of Rs. 36.28 lakh plus GST. The Corporate Debtor had also agreed to pay an assured return of Rs. 22,914 per month, which continued until CIRP commenced. The Applicant filed its claim as a “financial creditor” under Section 5(8)(f) of the IBC. However, the IRP admitted the claim only as an “other creditor,” noting that the unit was an industrial premises and the project was an Integrated Industrial Area under MIDC, not a residential real estate project.

The Applicant argued that RERA applies even to industrial units and that “allottee” status under Section 5(8)(f) should extend to such purchasers. The IRP contended that Section 5(8)(f) applies only to real estate projects falling within RERA definitions and that purchasers of industrial/commercial units with assured returns are investors, not homebuyers.

The Tribunal held that Section 5(8)(f) protects genuine homebuyers who invest for residential shelter a facet of Article 21. Purchasers of industrial/commercial units, especially those receiving assured returns, are commercial investors and cannot be equated with homebuyers. The deeming fiction under Section 5(8)(f) is not designed for industrial units or investment-oriented transactions. The Applicant’s claim therefore does not qualify as a “financial debt,” and classification as “other creditor” is correct.

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