MOHINDER PURI & CO.
CHARTERED ACCOUNTANTS

Corporate Update

May & June | 2025

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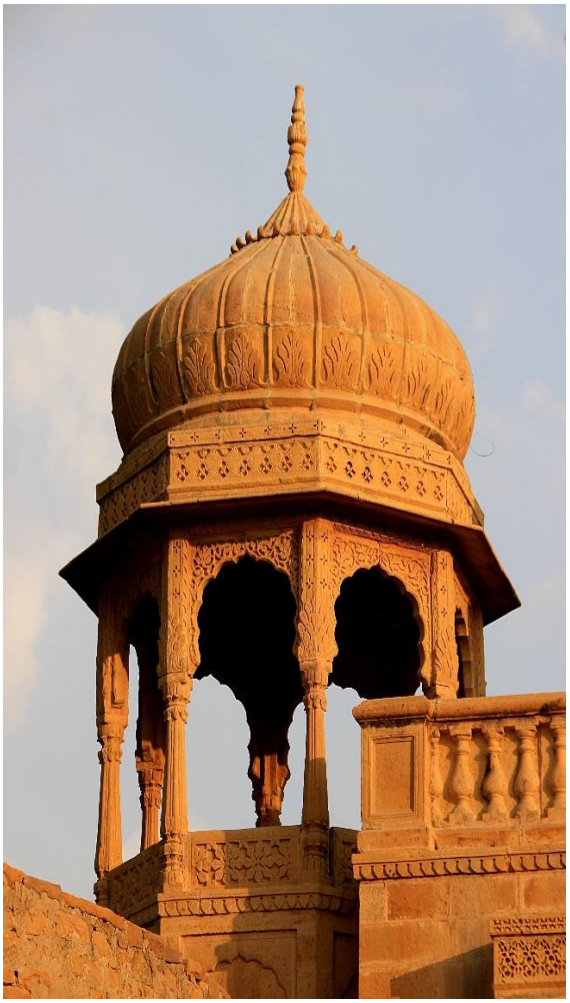
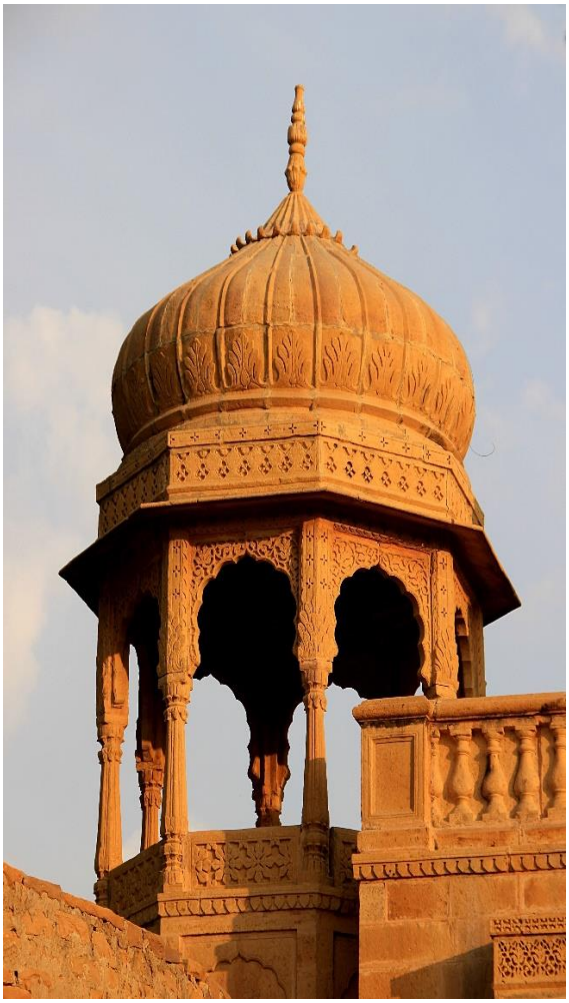


CORPORATE LAW

NOTIFICATION



FOREWORD

Dear Reader,

We enclose herewith our Corporate Update covering the Important case laws on international taxation, domestic taxation as well as under the GST Regulations.

In addition, information in respect of the revision of certain e-Forms under Company regulations is also covered. A brief information on the extension of Due Date in respect of filing of certain Income Tax Returns is also incorporated.

C.S. Mathur
Partner

DIRECT TAXES

INTERNATIONAL TAXATION

CASE LAWS

Definition of professional services as provided in Article 15 'Independent Personal Services' of the tax treaty between India and the USA is inclusive and not exhaustive

Ernst And Young U.S. LLP [TS-654-ITAT-2025(DEL)] dated May 28, 2025

Recently, the Appellate Tribunal (the Tax Tribunal), Delhi Bench inter-alia held that the definition of professional services as provided in Article 15 of the tax treaty is not exhaustive and not limited to professions governed by professional body/ organisation. It was held that receipts of assessee from professional services rendered by LLP of individuals would fall within the purview of Article 15 of the tax treaty and thus not taxable in India, in absence of fixed base in India.

On facts, the taxpayer, Ernst & Young U.S. LLP is a Limited Liability Partnership of individuals and tax resident of the USA. It is engaged in the business of providing professional services in the field of assurance, tax, transaction and business advisory services, etc to its clients across globe including India. It has no fixed base in India. During the year under consideration, the assessee had receipts from professional services rendered by its highly experienced professionals. These receipts were claimed as non-taxable in India under Article 15 of the Double Taxation Avoidance Agreement between India and the USA (the DTAA) which deals with taxability of fees received by a firm of individuals from performance of professional Services or other independent activities of similar nature.

In the course of assessment, the Assessing Officer denied benefit of Article 15 to the DTAA to the assessee holding that the said services were not professional in nature. The Assessing Officer concluded so on the premise that economists, engineers, MBA graduates, diploma holders and other trained technical personnel do not belong to a professional body which governs the profession, such as the Medical Council of India, Bar Council of India and Institute of Chartered Accountants of India. The Assessing Officer treated the receipts as Fees for Included Services (FIS) covered by Article 12 of the DTAA holding that the "make available" test was satisfied. The Dispute Resolution Panel ('DRP') rejected the objections filed by the assessee.

On appeal before the Tax Tribunal against the final assessment order, it was submitted by the taxpayer that it is a firm of individuals covered by Article 15 and that Article 15(2) gives an inclusive definition of "professional services". It was further contended that many of the services expressly mentioned in Article 15(2) are rendered by persons who do not belong to and are not governed by any professional organization with disciplinary power and control such as scientists, literary persons, artists, teachers, engineers. In this regard, the Tribunal observed as under:

- the definition of "professional services" in the Explanation (a) to section 194J of the Act specifically refers to "engineering profession' and also to "profession of technical, consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or section 194J. These activities are regarded by

the statute as professions though they have no governing professional body.

- by virtue of several notifications under the Act, all kinds of film personalities such as actors, directors, etc, persons in the profession of information technology, all sports persons such as coaches, commentators, etc have been included in the description of "professionals", though none of them belongs to any governing professional body.
- Article 15 cannot be confined to services rendered only by members of a governing professional body.

Based on the above, the Tribunal held that definition of professional service in Article 15(2) is not exhaustive, but rather an inclusive one. It held that "professional services' as defined in Article 15(2) cannot be limited to professions which are governed by professional body. Accordingly, it was concluded that the taxpayer falls within the meaning of Article 12(5)(e) and as such the benefit of Article 15 of the DTAA could not be denied to it.

It is noted that a similar view has been taken in another recent decision of the Tax Tribunal, Delhi Bench in the case of Sujan Luxury Hospitality Pvt. Ltd vs. ACIT [TS-518-ITAT-2025(DEL)] wherein SPA consultant has been considered as professional for hospitality industry and SPA training, SPA audit and SPA management services have been held as professional services. The Tribunal in this decision held that the services as referred to in Article related to 'Independent Personal Services' of the concerned tax treaties are those in which out of special field of knowledge and learning a person develops an expertise to which he/she adds his/her exclusivity and thus becomes eligible to convert special knowledge into a special services.

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Receipts of foreign company towards cloud computing services not taxable as royalty or fee for included services under India-US tax treaty

Amazon Web Services, Inc [TS-661-HC-2025(DEL)] dated May 29, 2025

Recently, the High Court of Delhi held that consideration received by the assessee, Amazon Web Services, Inc. towards provision of cloud computing services is not royalty within the meaning of Article 12(3) of the Double Taxation Avoidance Agreement between India and US (the DTAA).

On facts, the assessee is a company incorporated in US and tax resident of US. It operates a cloud computing platform in which the assessee has developed an infrastructure and permits the customers to access the hardware and software for developing their own content.

During the year under consideration, the assessee had receipts from various Indian entities for rendering cloud computing services These were claimed as non-taxable in India by the assessee on the premise that it provided standardised and automated services which could be availed by its customers by entering into a standardized contract electronically. No tax was withheld by the customers and no tax return was filed by the assessee in India.

The Revenue challenged the tax position adopted by the assessee based on the following arguments:

- The assessee provided service offerings/ intellectual property to its customers including the Application Program Interface [API] to enable the customers to develop further content and use existing content for its business.
- The Service Offering also covered the "AWS Content", the "AWS Marks", the "AWS Site". The assessee was providing copyright and trademark services to its customers for commercial exploitation. Thus, the consideration towards cloud computing services as received by the assessee constituted royalty.
- The assessee was providing technical support to its customers and also making available technology and therefore, the fees received by it was taxable as Fee for Technical Services (FTS) under the Act as well as Fee for Included Services (FIS) under Article 12 of the India-US DTAA.
- The receipts were also in the nature of right to use scientific equipment and were taxable as equipment royalty.

The matter travelled to the High Court. The High Court examined the terms of the agreement and observed as under:

- While the assessee's customers can access and use the cloud computing service, they do not acquire any right or title or any IPR that would entitle them to commercially exploit the said assets.
- The assessee's customers are granted only a non-exclusive and non-transferable license to access the standard automated services offered by the assessee. Further, the assessee does not provide the source code of the licensed software to the customers.
- The customers are solely responsible for the development, operation, maintenance and use of its content.
- AWS Content includes documentation, sample code, software libraries, command line tools and other related technology. The same is made available by the assessee only to facilitate the access and avail the assessee's services. The customers are not provided any right to commercially exploit the same.
- The customers are granted a limited, non-exclusive, revocable, non-transferable right to use AWS marks only to the limited extent for identification of the customer who is using AWS Services.
- The assessee delivers services by use of cloud computing hardware and software. The scope of royalties under Article 12(3) of the DTAA does not extend to cover charges for services, which are delivered by use of scientific equipment. The provision of such service would not amount to grant of the 'right to use' scientific equipment.
- The assessee assists and addresses various requests of its customers including answering best practice questions, guidance of configuration, etc. only as a support for availing of its services. However, it does not make available technology or technical skills, know-how or the other process to its customers within the scope of Article 12(4)(b) of the DTAA.

In view of the above facts and observations, the High Court concluded that the payments received by the assessee towards cloud computing services are neither taxable as royalty nor as FIS under Article 12 of the DTAA.

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DOMESTIC TAXATION

Surcharge is applicable at slab rates on maximum marginal rate for taxation of private discretionary trusts

Araadhya Jain Trust v. ITO [TS-366-ITAT-2025(Mumbai - SB)]

Recently, the Special Bench (SB) of Mumbai Tax Tribunal has held that in case of private discretionary trust (PDT) whose income is chargeable to tax at maximum marginal rate (MMR), surcharge shall be applicable as per the prevalent slab rates of income and not the highest applicable rate in respect of income.

A PDT is a trust registered under the Indian Trusts Act, 1882. The trustees in such trust hold the discretionary power to decide the class of beneficiaries who would be eligible to receive capital/ income from such trust. No beneficiary is allowed to have an absolute entitlement to the income/ capital of such trust and the shares of beneficiaries in such trust usually remain indeterminate.

Where beneficiaries have indeterminate/ unknown share in a trust, the taxability of such trusts are governed by the provisions of Section 164 of the Income-tax Act, 1961 (the Act) whereas, the taxability of Association of Persons (AOP)/ Body of Individuals (BOI) are governed by the specific provisions of Section 167B of the Act. While the subject decision has been rendered for provisions of Section 167B as well, our analysis below has been restricted to Section 164 considering its applicability to PDT's.

As per the provisions of Section 164, where any income or part thereof is not specifically receivable for the benefit of any one person or the individual shares of the persons for whose benefit such income is receivable are indeterminate or unknown, tax shall be charged on such income at MMR. Further, section 2(29C) of the Act has been defined to mean the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual, AOP or BOI as specified in the Finance Act of the relevant year.

The facts of the case are that the assessee is a PDT and filed its return for Assessment Year (AY) 2023-24 declaring total income of INR 0.48 million. In terms of Section 164 read with Section 2(29C) of the Act, the assessee paid tax at MMR. However, the assessee did not pay any surcharge on MMR as its total income was below the minimum threshold applicable (i.e., INR 5 million) for applicability of surcharge. While processing the return, Centralised Processing Centre (CPC) levied the highest rate of surcharge (i.e., 37%) on MMR. Aggrieved with the action of CPC, the assessee filed an appeal with Commissioner (Appeals), who whilst interpreting Section 164 read with Section 2(29C) of the Act, upheld the action of CPC in levying highest rate of surcharge on MMR.

Aggrieved with the order of Commissioner (Appeals), the assessee filed an appeal with Appellate Tribunal (Tax Tribunal). During the pendency of the appeal of the subject year, the Tribunal passed an order of the preceding year i.e., AY 2022-23 for the assessee wherein, the Tribunal held that the highest rate of surcharge would be

applicable on MMR. Considering the contrary decisions of the Tribunal in the assessee's own case as well as in cases of other assessees, the assessee filed an application requesting constitution of Special Bench (SB) with the Tax Tribunal.

Thereafter, on reference of matter before the SB of Tax Tribunal, the Tribunal formulated the issue for consideration as whether, for the purpose of computing MMR, surcharge would be applicable at the highest rate (i.e., 37%) on the highest tax rate applicable to the total income of the assessee (i.e., 30%). Thereafter, the Tribunal held as follows:

- In the case of PDT's, Section 164 of the Act provides for computation of income tax at MMR and does not contain the tax rate or any reference to levy of surcharge. Further, Section 2(29C) defines the term 'MMR' as the highest rate of income tax applicable to the highest slab of income provided under the Finance Act of the relevant year. Thus, 'MMR' under the Act is to be determined based on the rate of income tax prescribed in Paragraph A, Part (I) of First Schedule to Finance Act, 2023.

- As per Section 2(1) of the Finance Act of the relevant year/ subject year i.e., AY 2023-24, income tax shall be charged at the rate specified in Paragraph A, Part (I) of First Schedule to Finance Act 2023 and shall be increased by surcharge. However, Section 2(3) of the Finance Act which overrides Section 2(1), carves an exception for taxpayer's covered under Section 164, and provides that the tax rate shall be determined as per terms and rates prescribed in Section 164.

- Section 2(29C) of the Act refers to the highest slab of income, however, the expression 'slab' has not been mentioned in Section 2(1) of Finance Act, 2023 or even under Paragraph A, Part (I) of First Schedule to Finance Act 2023. As per Press Note dated December 01, 1965 issued by Government of India, the expression 'slab' refers to 'income' and not the 'tax'. Further, Circular No. 2/2018 which contains explanatory notes to provisions of Finance Act, 2017, refers to the expression 'slab' as the various categories of income. Thus, as per Section 164 of the Act, tax as per 'MMR' would be the 'rate of tax applicable to the highest slab of 'income' under Item (I) of Paragraph A, Part (I) of First Schedule to the Finance Act, 2023.

- The Tribunal rejected Revenue's contention on applicability of maximum surcharge of 37% to MMR and noted that such a stand would render the different rates of surcharge provided for different slabs of income in case of PDT's as futile. Once the definition of MMR refers to a rate of income tax and surcharge provided under Finance Act of the relevant year, then rates of income tax and surcharge provided under Finance Act would apply and any other interpretation would be discriminatory and lead to undesirable consequences.

- Further, the Tribunal whilst observing the object behind introduction of surcharge, rejected the Revenue's contention that the words 'if any' succeeding the words 'including surcharge on income tax' appearing in definition of MMR in Section 2(29C) would imply that where surcharge has been provided for by Finance Act, then only maximum surcharge rate will apply. While rejecting such contention, the Tribunal stated that Article 265 of Constitution of India mandates that no

tax can be collected without any authority of law and if the Finance Act would not have provided for levy of surcharge, no surcharge could have been collected.

- The Tribunal also distinguished various judicial pronouncements against the assessee by noting that the issue arising in such decisions was on the quantum of MMR and its applicability whilst, upholding the views of certain favorable judicial pronouncements relied on by the assessee.

Based on the aforesaid, the Tribunal held that in case of PDT's whose income is chargeable to tax at MMR, surcharge is to be computed based on the slab rates prescribed under the heading 'surcharge on income tax' appearing in Paragraph A, Part 1, First Schedule of Finance Act of relevant year. Accordingly, the matter of reference for which SB had been constituted was decided in favour of the assessee.

***MPCO'S Critical Note* : This is a crucial decision pronounced by the SB of Mumbai Tax Tribunal which for the time being will put at rest the controversy surrounding applicability of surcharge on MMR rate in case of PDT's/ AOP/ BOI. However, considering the likely impact subject decision will have on other assessees, it would be interesting to see if the Revenue files an appeal against such decision with the Bombay High Court.**

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Accrual of income has to be real and not hypothetical so as to attract tax under the Income-tax Act

Rare Enterprises [TS-523-ITAT-2025(Mum)]

Recently, the Mumbai Tax Tribunal has held that interest income cannot be shown as accrued in books of accounts in the absence of any real income.

The facts of the case are that the Assessee is a partnership firm, engaged in the business of trading and making investments. In Financial Year (FY) 2016-17, the Assessee had advanced loan of INR 300 million to M/s Dharti Dredging & Infrastructure Ltd. ('Dharti Ltd.'). The Assessee received interest income on such loan advanced in FY 2016-17 which was duly offered to tax as business income in the tax return filed for such year. However, subsequently, in FY 2017-18, Dharti Ltd. became a non-performing asset ('NPA'), and the Assessee did not receive any interest for the year. On account of Dharti Ltd. becoming NPA, the Assessee did not accrue any interest receivable in its books of accounts as there was no chance of receiving such an interest income. Accordingly, the Assessee proceeded to file its tax return for FY 2017-18 on October 31, 2018, without offering any interest income from Dharti Ltd. in such return.

In FY 2018-19, State Bank of India (SBI) had classified the loans which it had advanced to Dharti Ltd. as NPA and had even filed a corporate insolvency petition against Dharti Ltd. in FY 2020-21. Thereafter, in FY 2020-21, the Assessee proceeded to write off such loan granted to Dharti Ltd. as irrecoverable in its books of accounts. Subsequently, the National Company Law Tribunal admitted insolvency proceedings against Dharti Ltd..

In FY 2018-19, without making any payment of interest to the Assessee, Dharti Ltd. proceeded to deposit INR 3.6 million with the Government as withholding tax for FY 2017-18 on such interest income. Accordingly, such interest income along with corresponding withholding tax liability appeared in Form 26AS (i.e., annual tax credit statement) of the Assessee for FY 2017-18. However, the Assessee was not aware of any such deposit made by Dharti Ltd. in the absence of any withholding tax certificate issued by Dharti Ltd. to Assessee as evidence of such TDS.

During the course of tax scrutiny proceedings, the aforesaid entry in Form 26AS led to an addition of interest income of INR 36 million under the head 'other sources'. On appeal, the Commissioner (Appeals) deleted this adjustment by holding that said addition is hypothetical and does not represent 'real income'.

On appeal against the aforesaid order of Commissioner (Appeals) by the Revenue, the Mumbai Tax Tribunal noted the fact that Dharti Ltd. had become NPA and there was no chance of recovering any interest income by the Assessee. In the absence of any hope for recovery of interest income, the Assessee had not disclosed such income on an accrual basis in its books of accounts.

The Tribunal placing reliance on various Supreme Court decisions held that the important aspect to be seen is whether there is any probability of realization of debt in a realistic manner. In the absence of any such probability, no income gets accrued to the Assessee and accordingly, no tax can be levied on hypothetical income.

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Interest on delayed deposit of employees' contribution to provident fund is penal in nature

Bajaj Hindusthan Sugar Limited v. DDIT [TS-616-ITAT-2025(Mum)]

Recently, the Mumbai Tax Tribunal has held that interest on delayed deposit of employees' contribution to provident fund ('interest on delay') is not 'compensatory' but 'penal' in nature and accordingly, not allowable as a deduction under Section 37(1) of the Income-tax Act, 1961 ("the Act").

As per provisions of Section 36(1)(va) read with Section 2(24)(x) of the Act, any sum received by an assessee from its employees as contribution to provident fund shall be considered as 'income' of the assessee unless it is deposited with the relevant fund before the due date. Explanation 1 to Section 36(1)(va) defines the term 'due date' to mean the date by which the assessee as an employer is required to deposit employee's contribution under any relevant statute pertaining to such fund.

Further, Section 37(1) provides for the allowability of expenditure which is laid out or expended wholly and exclusively for the purpose of business or profession. Explanation 1 to Section 37(1) provides that any expenditure incurred by an assessee for any purpose which is an offence or prohibited by law, will be deemed to have not been incurred for the purpose of business or profession and accordingly, no

deduction shall be allowed for the same.

The facts of the case are that the Assessee claimed deduction of interest on delay under Section 37(1) treating the same to be 'compensatory' in nature in the tax return filed for Assessment Year 2023-24. Pursuant to the processing of such tax return, the Centralized Processing Centre (CPC) made a disallowance of such interest on delay in the intimation passed under Section 143(1)(a) contending the same to be 'penal' in nature.

On appeal against such intimation, the Commissioner (Appeals) rejected the appeal filed by the Assessee and upheld the disallowance made by CPC as interest on delay partakes the same nature as principal i.e., (employees contribution to provident fund) which is not allowable under Section 36(1)(va).

On further appeal before the Mumbai Tax Tribunal, the Tribunal observed as follows:

- The Supreme Court in its decision of **Checkmate Services Pvt. Ltd. v. CIT 448 ITR 519 (SC)** has duly differentiated the employees contribution from the employers' contribution to provident fund in as much as no deduction of employees contribution shall be allowed under Section 43B even when deposit of such contribution is made on or before the due date of filing of tax return;

- The legislature intended to retain the separate character of employees' and employers' contribution to provident fund by using different language in the statute for each of the said contribution;

- The amount received by way of employees' contribution is held in trust by the employer and treated as 'income' of the employer under Section 2(24)(x). Such employees' contributions are other persons income or money and only deemed to be the income of the employer to ensure that they are paid within the 'due date' specified under statute pertaining to provident fund; and

- Allowing deduction of such interest on delay would undermine the legislative intent behind Section 36(1)(va) which prioritizes timely remittance of employees contribution to safeguard their social security.

Thus, the Mumbai Tax Tribunal held that interest on delay in payment of employees contribution to provident fund being 'penal' in nature is inadmissible as a deduction under Section 37(1).

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Recourse to reassessment proceedings not a substitute of assessment proceedings

Ernst And Young Emeia Services Limited [TS-330-HC-2025(DEL)]

The High Court of Delhi has quashed the reassessment proceedings in the absence of any information that may suggest income of the Assessee has escaped assessment.

In the instant case, the Assessee, Ernst And Young Emeia Services Limited – a tax resident of United Kingdom, was engaged in providing common area services, market development services to its group entities

including Indian group entity. During FY 2017-18, the Assessee filed its tax return disclosing its income as exempt under the provisions of India-UK tax treaty and claimed that it does not have any Permanent Establishment in India. Furthermore, the Assessee relied upon the decision of Authority for Advance Ruling in the case of its Indian group entity, wherein, services provided by the Assessee were held as not chargeable to tax in India.

The Assessing Officer ('AO') issued a notice under Section 148A(b) of the Income-tax Act, 1961 ('the Act') alleging escapement of income, setting out certain information based on Form 15CA filed by the Indian company regarding the remittances made. The Assessee was asked to show cause as to why income escaping proceedings shall not be initiated in this case. The Assessee furnished response to the notice including the basis of characterizing the receipts as exempt from charge of tax. However, the AO did not agree with the view of the Assessee and proceeded to initiate the income escapement proceedings, merely holding that the Assessee has claimed the relevant receipts as exempt income in the ITR. The AO, thus, issued a notice for initiating reassessment of the alleged income.

Aggrieved by the actions of the AO, the Assessee filed a writ petition before the High Court of Delhi. While hearing the petition, the High Court of Delhi noted that the show cause notice issued by the AO was bereft of any information which would indicate that the income of the Assessee has escaped assessment. The High Court of Delhi held that there is a distinction between initiation of proceedings for scrutiny of income tax return to assess the Assessee's income chargeable to tax and initiation of proceedings for reassessment for the reason that the income of an assessee has escaped assessment. Recourse to the provisions for reassessment under Section 147 of the Act is not a substitute for the assessment proceedings. Whilst the return furnished by the Assessee may be picked up for scrutiny on any of the parameters that may be selected by the concerned authorities, the proceedings for initiation of reassessment can be initiated only if the AO finds that there is information, which suggests that the income of the Assessee has escaped assessment. The High Court of Delhi relied on its own decision in *Banyan Real Estate Fund Mauritius v. ACIT [2025] 473 ITR 466 (Delhi)*. The Court observed that the conclusion of the AO, in the instant case, is perverse inasmuch as there was no allegation that the remittance of exempt income appearing in the Form 15CA was not disclosed in the tax return nor such remittances constituted any evidence of income escaping assessment.

The High Court of Delhi also noted that the order under Section 148A(d) of the Act initiating the reassessment proceedings was entirely based on a premise that the Assessee has a Permanent Establishment in India; an allegation that was absent in the show cause notice issued under Section 148A(b) of the Act. As such, the reasons set out in the order were not in conformity with the information as set out in the show cause notice issued by the AO.

Based on the above, the High Court of Delhi held that merely claiming receipts as exempt from tax, absent any other reason, does not render the claim of Assessee suspicious. Moreover, the decision to initiate reassessment proceedings cannot be based on information or grounds that were not part of the show cause notice issued by the Revenue.

Resultantly, the notices issued by the AO as

well as order passed by the AO were quashed by the High Court of Delhi in the instant case. However, the Court clarified that this decision would not affect the rights of the Revenue for initiating a fresh proceeding against the Assessee for subject year, if otherwise permissible in law.

MPCO'S Critical Note: ***The Section 148A had been substituted with effect from September 1, 2024 by the Finance Act (No.2), 2024.***

With the above substitution, rationalization was sought to be achieved in reassessment provisions etc including the income escaping assessment. It was expected that the substitution would provide ease of doing business to tax payers as there was a reduction in time limit by which a notice for reassessment etc. could be issued.

Subject to the above, substantially the substituted provision remains the same as it was before.

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Extension of due date of filing of Income Tax Returns

The Central Board of Direct Taxes (CBDT) vide its Circular No. 06/2025 dated 27th May, 2025 has extended the due date for furnishing certain Income Tax Returns (ITRs) for the Assessment Year 2025-26.

Accordingly, the due date for filing ITRs for Assessment Year 2025–26 [i.e. ITR 1, ITR 2, ITR 3, ITR 4 and ITR 5 and 7 (in non-audit cases)], as specified below has been extended to September 15, 2025 from July 31, 2025:

ITR No.	Particulars
ITR 1	For individuals being a resident (other than not ordinarily resident) having total income up to Rs. 50 lakh, having income from salaries, one house property, other source (Interest etc.) and agricultural income up to Rs. 5 thousand.
ITR 2	For individuals and HUFs not having income from profits and gains of business or profession.
ITR 3	For individuals and HUFs having income from profits and gains of business or profession.
ITR 4	For individuals, HUFs and Firm (other than LLP) being a resident having total income-up to Rs. 50 lakh and having income from business and profession which is computed under sections 44AD,44ADA or 44 AE).
ITR 5	For persons other than (1) individual, (ii) HUF, (iii) company and (iv) person filing Form ITR-7.
ITR 7	For persons including companies required to furnish return under sections 139(4A) or 139(4B) or 139(4C) or 139(4D) only

The extension of the due date was considered necessary due to additional time required by the tax department to develop ITR utilities in line with the structural and

content revisions of the ITRs notified for AY 2025-26.

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INDIRECT TAXES

GOODS AND SERVICES TAX

GST Registration should not be cancelled without issuing proper Show Cause Notice

[M/s Virendra Singh Thakur Vs State of Madhya Pradesh, 2025 (5) TMI 1518, dated May 15, 2025]

In the given case, the facts were as under:

1. The Petitioner obtained a GST Registration on July 6, 2018 and carried on its business of Contractor.

2. The Petitioner was issued a Show Cause Notice dated July 15, 2022 for cancellation of the registration on the ground that registration had been by means of fraud, willful mis-statement or suppression of facts, as laid in Section 29(2)(e) of the Central Goods and Services Tax Act, 2017.

3. The said Show Cause Notice did not specify in which category the Petitioner's case fell i.e. he obtained registration by fraud, or willful misstatement or suppression of facts.

4. The Show Cause Notice stated as under:

   "If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be charged ex parte on the basis of available records and on merits"

5. The said Show Cause Notice did not even have the name, designation or office of the issuing authority to whom a reply to the Show Cause Notice could be sent by the Petitioner.

6. The High Court found that the Show Cause Notice was completely bereft of any detail. The High Court found that the order of cancellation that was issued did not contain any reasoning or details but only contained a cryptic one line order "***that the effective date of cancellation is July 24, 2022***".

   The High Court came to the conclusion that the said order of cancellation of registration showed complete non-application of mind and appeared to be an autogenerated order.

7. Pursuant to the above, the High Court decided that neither the Show Cause Notice nor the order of cancellation were sustainable. The High Court further observed that the very foundation of the proceedings i.e. Show Cause Notice is defective, further proceedings thereon like the recovery notice stood vitiated.

8. Accordingly, the High Court set aside the Show Cause Notice, the order of cancellation and the recovery notice.

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CORPORATE LAW

NOTIFICATION

Companies Act, 2013 - Revision in various e-forms

[Notifications No. G.S.R 357(E), G.S.R 358(E), G.S.R 359(E) dated May 30, 2025 and G.S.R 371(E), dated June 6, 2025]

The Ministry of Corporate Affairs (MCA), through various notifications, all dated May 30, 2025, have notified the revised version of annual filing forms i.e. [form for filing audited annual financial statements, annual return, intimating appointment of statutory auditor etc.] which includes Form AOC-4, AOC-CFS, AOC-4 xbrl, MGT-7, MGT-7A, MGI-15 and ADT-1. Further, through these notifications, the MCA has also notified electronic version of certain forms, which were used to be prepared physically up till now. Also, certain additional details have been prescribed to be included in the Board Report. It may be noted that all these notifications will come into effect from July 14, 2025. A brief overview of major changes includes:

1. Up till now, a statement needs to be prepared by a company, in the format provided in Form AOC-1, which would contain the salient features of financial statement of a company's subsidiary / associate / joint venture company. A signed copy of such statement was required to be annexed with the Board's report. Now, instead of such statement being physically prepared, signed and annexed with Board report, such statement in Form AOC-1 needs to be digitally signed and filed, like other e-forms.
2. Similar to Clause 1 above, up till now, the particulars of contracts / arrangements entered by a company with a related party, including transactions entered on arm's length basis, were used to be prepared in the format provided in Form AOC-2. A signed copy of such Form AOC-2 needs to be annexed with the Board's report. Now, instead of such statement being physically prepared, signed and annexed with Board report such Form AOC-2 needs to be digitally signed and filed, like other e-forms.
3. Up till now, in the Board report of a company [which is not a small company as per Sec 2(85) of the Act], should contain a statement that the company has complied with provisions relating to constitution of Internal Complaints Committee pursuant to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Now, additional details need to be mentioned in the Board report relating to number of complaints of sexual harassment, received, disposed off and pending for more than 90 days during the year.
4. Now, the Board report needs to contain an additional clause relating to compliance of the provisions of Maternity Benefit Act, 1961 by the Company.
5. Up till now, every company has been filing on annual basis, Form AOC-4 / AOC-4 CFS / AOC-4 xbrl etc. for filing of its annual audited financial statements. Along with such Form AOC-4, few companies on which CSR provisions are applicable in the relevant financial year, were also required to file Form CSR-2. Now, along with these forms, every company also needs to file e-Form Extract of Board Report and Extract of

Auditor's Report (Standalone / Consolidated). Further, in Form AOC-4XBRL to be filed by a company, now a pdf version of the audited financial statements, auditors report, Board's report etc. is also required to be attached, as explained in Clause 8 below.

6. In the revised form MGT-7 certain additional details need to be filled / documents need to be attached, like latitude, longitude, photograph of registered office showing external building and name of company prominently visible, details of Foreign institutional investors' (FIIs) holding shares of the company etc.

7. In addition to above, the MCA, vide Notification dated May 30, 2025, has also notified revised Form GNL-1 [form for filing an application with Registrar of Companies]. The revised form requires to fill additional details w.r.t compounding of offences, like period of default, reasons for default, reasons for not making good the default, why the compounding fees should not be levied, details of investigation initiated against the company under Companies Act 2013 etc. This notification will come into force from July 14, 2025.

8. Further, the MCA, vide Notification dated June 6, 2025, has also notified revised Form AOC-4 XBRL. Up till now, the audited financial statements, auditors report, Board's report etc. all used to be converted into xbrl mode, and that file was required to be attached in Form AOC-4XBRL. Now, in the revised form, along with above referred xbrl converted documents, the Company is also required to attach a pdf version of the audited financial statements, auditors report, Board's report etc.

Also, the revised xbrl form requires to fill additional details of Specified Bank Notes (SBN) held and transacted during the period from 8th November, 2016 to December 30, 2016. This notification will also come into force from July 14, 2025.

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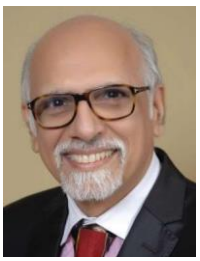

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