

Corporate Update

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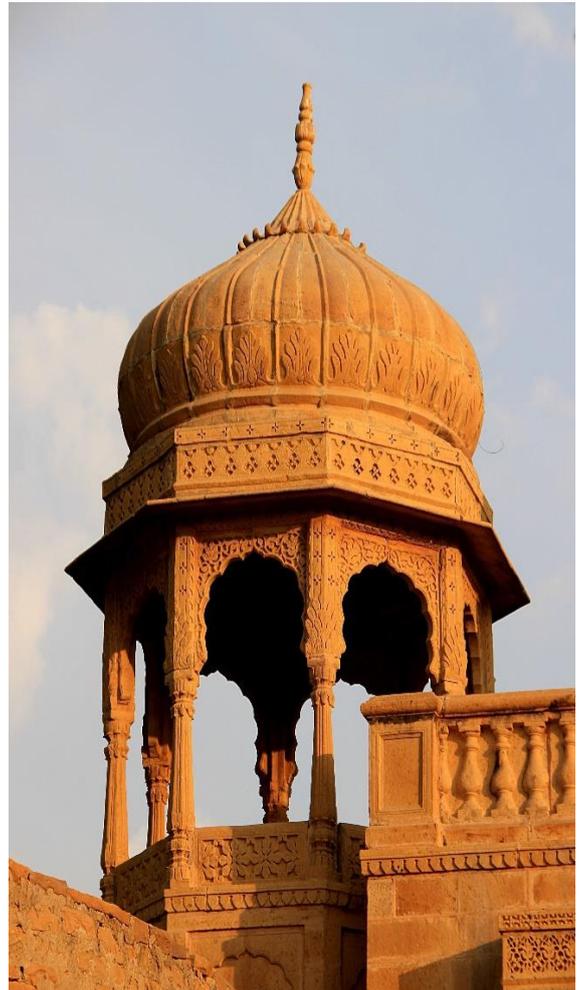
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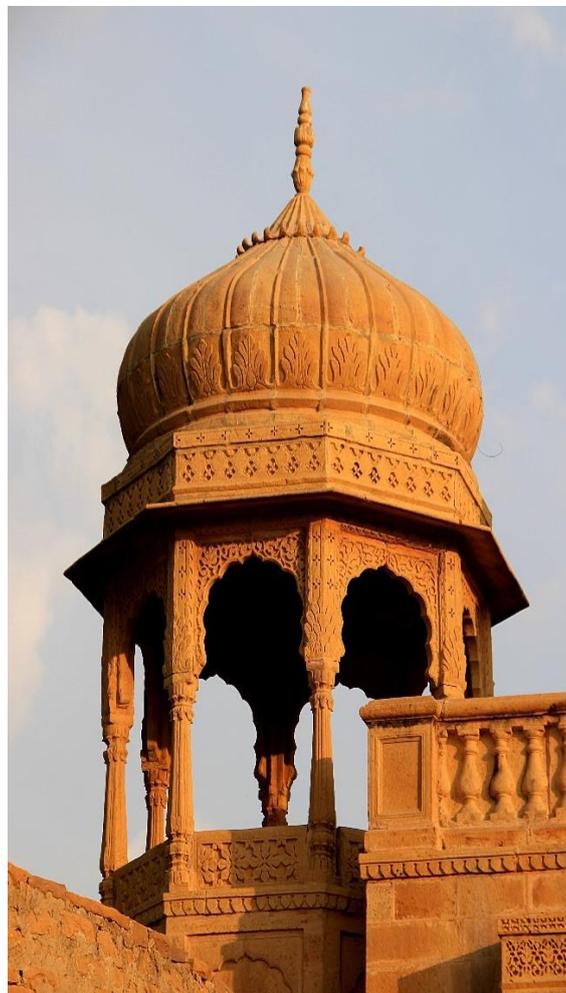
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FOREWORD



Dear Reader,

The amendments in the Income-tax Act as proposed by the Budget as was presented on February 1, 2026 are presently pending for approval by the Parliament. It is hoped that in the current session of the Parliament, presently underway, the same may be approved, subject to such changes as may be accepted by the Government.

The Government has now also introduced a new draft of Income-tax Rules, in substitution of current Rules, for public comments. These draft rules mainly take into account the changes made by the Income-tax Act 2025 and are likely to be finalized by the end of March 2026.

This Update covers important judgements on International and Domestic taxation, as well as Notes on changes under the Foreign Exchange Management (FEM) Act and the regulations thereunder.

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DIRECT TAX

INTERNATIONAL TAXATION

High Court holds virtual service PE cannot be read into the tax treaty in absence of specific provision/ amendment in existing tax treaty

Clifford Chance PTE Ltd [TS-1603-HC-2025(DEL)]

Recently, the High Court of Delhi held that the concept of virtual service permanent establishment (PE) is not contemplated in the tax treaty between India and Singapore and the language which is not explicitly included in treaty provisions cannot be artificially read into such provisions. The Court held that until Article 5(6) of the tax treaty is renegotiated, the existing treaty framework cannot be extended to virtual PE.

On facts, the assessee is a non-resident company engaged in the business of legal advisory services. It is tax resident of Singapore. It filed NIL tax returns in India. In the course of assessment, the tax officer held that the taxpayer constituted a service PE owing to the physical presence of its employees in India and also a virtual service permanent establishment in terms of Article 5(6)(a) of the India-Singapore tax treaty. It was observed that the duration of physical presence of the employees in India was immaterial, where the aggregate duration of provision of services by the taxpayer exceeded 90 days. Accordingly, the tax officer proposed additions to the income.

On objections filed by the assessee, the Dispute Resolution Panel (DRP) concluded that as long as the aggregate period of continuation of service within India is more

than 90 days, service PE is triggered and consequent profits attributable to PE becomes taxable in India. The DRP thus upheld the draft assessment order.

When the matter travelled to the Tribunal, it was held that in order to constitute a service PE, actual performance of services “within” India by employees “physically present” in India is necessary. The Tribunal observed that the taxpayer furnished services only for 44 days in India after excluding vacation period, business development days and common days and as such, it did not meet the 90 days threshold for constituting service PE in India. In support of its case, the taxpayer had filed the time sheets of the employees before the tax officer and the Tribunal, which depicted the days on which the employees worked for the Indian clients, and also the details of bills made out to the clients in India. The time sheets also captured the leave record extracted from the HR system. Further, the taxpayer also furnished a declaration that the employees did not work on client projects during their vacation period.

On appeal by Revenue, the High Court of Delhi concurred with the views of the Tribunal that only the days on which actual services were rendered by the employees of the taxpayer were to be considered while computing the threshold limit of 90 days. Regarding Revenue’s contention that even when the employees were not physically present in India, services continued to be rendered virtually, for more than 90 days, the High Court held that the words “within a Contracting State” and “through employees or other personnel” under Article 5(6)(a) of the tax treaty contemplate rendition of services in India by the employees of the non-resident enterprise. The term “within” has a certain territorial connotation and in the absence of personnel physically

performing services in India, there can be no furnishing of services “within” India. The High Court concluded that a plain reading of the whole provision reveals that it is such rendition of services by employees present within the country which would constitute a service PE. It further held that “virtual” service PE is not contemplated by the tax treaty. While the High Court acknowledged the concerns of Revenue regarding taxability of foreign entities in the increasingly open global virtual economy, it opined that taxability of entities in such instances always remains subject to the applicable provisions of the tax treaty. The law on the issue is clear and unambiguous and the tax treaty must be interpreted strictly. It observed that it is not for courts to read in concepts which are not expressly provided for by the treaty and the developments in the international tax domain in certain tax jurisdictions cannot alter treaty interpretation. As such, the High Court rejected the Revenue’s contention regarding existence of “virtual” service PE.

The High Court distinguished the decision of the Tribunal, Bangalore Bench in the case of ABB FZ-LLC (2017) 166 ITD 329 (Bang) and the decision of High Court of Madras in Verizon Communications Singapore Pte. Ltd. (2014) 361 ITR 575 (Madras), which were relied upon by the Revenue. Regarding reliance placed by the Revenue on the decision of Hyatt International Southwest Asia Ltd. [2025] 176 taxmann.com 783 (SC), the High Court noted that the Supreme Court in the said case dealt with the question of existence of fixed place of business or PE in India of a UAE resident under Article 5(1) of the India-UAE tax treaty and whether income derived under the Strategic Oversight Services Agreement from Indian hotels was taxable in India under Article 7 of that tax treaty. The Supreme Court had held that the relevant test is the continuity of business presence in the aggregate and not the

stay/duration of any particular individual, i.e once continuity of business operations is established, the intermittent presence or return of a particular employee becomes immaterial and insignificant for constituting a PE. The High Court held that the said decision is distinguishable on facts, as there was no argument in the instant case with respect to the stay of any one particular individual in India; rather the aggregate time of stay of employees of the taxpayer in India has been taken into consideration to examine whether the threshold mandated by the tax treaty has been met.

In view of the above, the High Court upheld the decision of the Tribunal and decided the issue in favour of the assessee.



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Milestone receipts towards furnishing of plans, drawings and designs do not qualify as FTS, being inextricably linked to supply of equipment

Bombardier Transportation GmbH [TS-36-ITAT-2026(DEL)]

Recently, the Tax Tribunal, Delhi Bench inter-alia held that receipts of non-resident taxpayer towards achieving the milestones of project management plan, works programme, quality assurance plan and preliminary design are not taxable in India as fees for technical services (FTS), being inextricably linked to the supply of passenger rolling stock.

On facts, the taxpayer, Bombardier Transportation GmbH, is a company

incorporated in Germany and a tax resident of Germany. It is engaged in the business of manufacturing and supply of passenger rolling stock (trains) and railway applications. It formed a consortium with Bombardier Transportation India Ltd. and the consortium entered into contract with Delhi Metro Rail Corporation for design, manufacture, supply, testing, commissioning of certain nos. of rolling stock. As per the Tender documents, the entire Work was divided into cost centres and the contract consideration was apportioned among various cost centres which were further classified into milestones. During the year under consideration, the taxpayer received payments towards achieving milestones, namely:

- project management plan: furnishing of diagrams indicating organizational structure, qualification of personnel to be deployed etc.;
- works programme: submission of proposed work programme and proposed design submission programme;
- quality assurance plan: furnishing of the proposed method of achieving the Tenderer's quality objectives with regard to requirement of the contract; and
- preliminary design: designing the overall system and system configuration, identification of functioning of each system, sub-system, equipment, etc.

In the assessment proceedings, the tax officer subjected to tax these milestones receipts as FTS under Article 12 of India-Germany tax treaty. The DRP upheld the view of the tax officer.

On appeal, the Tribunal held that mere furnishing of plans, designs and drawings does not amount to rendering of managerial, technical or consultancy services within the meaning of Article 12(4) of the tax treaty. The plans, drawings and designs as

furnished by the taxpayer were not independent activities, the ultimate object was of supply, installation and maintenance of rolling stock. The milestones were only preparatory and the activities were inextricably associated with the supply of rolling stock. The object of furnishing of plans, drawings and designs was to ensure that the taxpayer understood the tenderer's requirement. In this regard, the Tribunal relied on the ruling of Authority for Advance Ruling in the case of Rotem Company vs. Director of Income Tax [279 ITR 165 (AAR)].

The Tribunal thus held that the activities under aforementioned milestones did not give rise to separate independent activity/service that could be severed from the main object of supply of equipment. It was concluded that such activities were not in the nature of managerial, technical or consultancy services and as such, the receipts did not qualify as FTS under Article 12 of the tax treaty.



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Delhi High Court upholds the decision of ITAT that Indian subsidiary would not form fixed place, service and agency PE of foreign assessee in India

CIT (International Tax-1) v. EXL Service.com Inc. [2025] 181 taxmann.com 874 (Delhi)

In a recent judgement the Hon'ble High Court of Delhi (HC) upheld the decision of Hon'ble ITAT that Permanent Establishment (PE) of the assessee would not be established in India under Article 5 of India-

USA DTAA as the assessee does not carry out its core activities from any fixed place in India. Also, it does not form agency PE of the assessee as it does not have any authority to conclude contract on behalf of the assessee and all the customers of the assessee were located outside India.

On the facts of the case, the assessee is a US company engaged in developing and deploying business process outsourcing solutions including transaction processing services and Internet/voice-based customer care services for its customers located in the USA and the UK. It also performed sales and marketing function, contract negotiations and conclusion of contracts and customer relationship management.

It entered into a service agreement with its Indian subsidiary for provision of internet and voice-based customer care services and backroom operation services to the customers of the assessee. The Assessing officer held that the assessee had established a PE in India under article 5 of the India-USA DTAA and under section 9(1)(ii), respectively, holding that its income was taxable in India.

On appeal before ITAT, the revenue authorities submitted that – (a) Indian subsidiary carried out entire activity for performance of the contract, (b) carried out marketing job, (c) assessee was technically dependent on the Indian subsidiary, (d) facilities in India were at the disposal of the assessee, and (e) CEO of both the companies who signed contracts was the same person.

On the issue of fixed place PE of the assessee, the Hon'ble ITAT referred to the judgement of **Formula One World Championship Ltd 394 ITR 80 (SC)** wherein it was held that for fixed place PE to

be established the fixed place must be at the disposal of the foreign enterprise through which the business of the enterprise must be wholly or partly carried on. The place would be treated as at the disposal of the enterprise when it had the right to use the said place and has control thereupon. This was not the case in the present situation. On the issue of service PE, the Hon'ble ITAT noted that the significant part of the activities was provided by the assessee from the USA and the Indian subsidiary's function was delivery of outsourced services from India. Also, the revenue had not brought anything on record to show that the employees of the assessee were seconded to the Indian subsidiary, and it was accordingly held that there was no service P.E.

The Hon'ble ITAT also referred to the judgement of **eFunds IT solution and Ors. 399 ITR 34 (SC)** in detail and found that the facts of the said case are *pari materia* same as that of the assessee.

Considering the facts of the case and judgement in the case of **eFunds IT solution and Ors. (supra)** it was held by ITAT that the assessee did not have fixed place and service PE in India.

On the issue of Agency PE, the Hon'ble ITAT relying on the decision in the case of **Morgan Stanley & Co. Inc. 292 ITR 416 (SC)** held that based on the activities undertaken by Indian subsidiary it had no authority to conclude any contract on behalf of the US enterprise and all customers were based out of US. Hence, it was held that there was no Agency PE of the assessee.

Further, reference was made to the judgment in the case **Morgan Stanley & Co. (Supra)** wherein it was concluded that if the transactions between a PE and the foreign Associated Enterprise are found to have

taken place at Arms' Length Price, then there was no question of attributing any income to the PE. In view of the same, the Hon'ble ITAT noted that the transfer pricing adjustments made in the case of Indian subsidiary have been deleted which will have bearing on the appeal filed by the assessee in the present case.

The aforesaid decisions of the ITAT were upheld by the Hon'ble HC of Delhi.



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DOMESTIC TAXATION

Excess FTC claim does not amount to under-reporting of income and would not attract penalty under Section 270A of the Income-tax Act, 1961

Recently, the Karnataka High Court in the case of *Srinivasa Gandhi Sampath v. Assistant Commissioner of Income-tax, Bengaluru [2025] 181 taxmann.com 308 (Karnataka)* held that an incorrect claim of excess Foreign Tax Credit ('FTC') does not allow income tax authorities to assume jurisdiction under section 270A of the Income Tax Act, 1961 ('Act') if the assessed income is not greater than returned income determined vide intimation order.

On law, section 270A of the Act is a penalty provision which can be invoked if there is under-reporting of income or mis-reporting of income. Under-reporting of income occurs when the assessed income exceeds the income determined in the intimation order.

Misreporting of Income involves misrepresenting or suppressing facts, such as false entries in books, failure to record investments, claiming false expenses, or omitting international/domestic transactions.

On facts, the assessee had filed his Income Tax Return ('ITR') for AY 2017-18, declaring its income and claiming deduction of certain Foreign Tax Credit ('FTC'). The ITR was processed and his returned income was accepted vide intimation order. Thereafter, the case was selected for scrutiny.

On detailed examination of the information during the assessment proceedings, it was found that the assessee was employed in an MNC which required him to work in India, as well as abroad and the assessee received a salary package. The assessee had received salary income from his foreign employer and the foreign tax was paid thereon. The assessee had also claimed an additional FTC on account of US stock unit income. During the course of assessment proceedings, the claim of the assessee for FTC was dismissed basis the Form 16 and Form 12BA issued by the Indian employer. Accordingly, though the income of the assessee as per intimation order / ITR was accepted vide the assessment order, but its claim of refund out of TDS was reduced on account of the excess claim of FTC.

Thereafter, a notice u.s. 270A of the Act was issued calling upon on the assessee to show cause as to why penalty under Section 270A should not be imposed against the petitioner for alleged under-reporting of income on account of excess claim of FTC / refund. The assessee made replies to the show cause notice u.s. 270A.

Thereafter, an order imposing penalty under section 270A of the Act was passed for under-reporting of income on account of

excess claim of FTC. Aggrieved by the penalty order, the assessee filed writ petition before the High Court of Karnataka. The assessee took the stance that there cannot be an under-reporting of income when its returned income / income as per intimation order is assessed income and hence, the penalty order passed u.s. 270A is illegal and deserves to be quashed. The assessee placed reliance on the following judgments :- (1) CIT v. Reliance Petroproducts (P.) Ltd. [2010] 322 ITR 158 [passed in context of erstwhile Section 271(1)(c) of the Act to hold that making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars] ; and (2) Pr. CIT v. Prafulbhai Vallabhdas Fuletra [2023] 157 taxmann.com 754 (Gujarat) [passed in context of section 270A to hold that there is no under-reporting of income, if assessed income was not greater than the income determined in the ITR/intimation order].

The revenue took the stance that there was a deliberate excess claim of FTC with aim to incorrectly reduce income tax liability and encash refund out of TDS made by his employers and this amounted to underreporting of income by misrepresenting the facts. Also, the revenue claimed that writ petition of the assessee was not maintainable on account of alternate remedy of appeal being available in the law.

The Hon'ble high court after hearing both the sides and perusing the material on record held that –(i) the availability of alternate remedy by way of an appeal would not tantamount to taking away the jurisdiction of the High Court under Article 226 of the Constitution of India and hence, the writ was maintainable ; and (ii) the penalty order is illegal and is to be quashed as the necessary ingredients of Section 270A had not been satisfied i.e. under-

reporting of the income not found on merits of the case.



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Compensation for relinquishment of licensed user rights is taxable as a revenue receipt

Hindustan Unilever Ltd. [TS-123-ITAT-2026(Mum)]

Recently, the Mumbai Bench of Tax Tribunal has held that compensation received for relinquishment of licensed user rights on termination of assignment agreement is a taxable 'revenue' receipt under Section 28 of the Income-tax Act, 1961 rather than a capital receipt.

The facts of the instant case are that the Assessee is a company engaged in the manufacture, trading and marketing of personal care goods. The Assessee had entered into a 10-year long exclusive license agreement ('assignment agreement') for the use of trademark "Savlon" on certain bathing products. Subsequently, the aforesaid agreement was prematurely terminated. As such, the licensed user rights were relinquished by the Assessee for which it received compensation. The Assessee claimed that such compensation was in exchange for giving up of steady source of income from use of such trademark and as such, was a 'capital' receipt not chargeable to tax in India.

In tax scrutiny proceedings, the tax officer considered such compensation to be 'revenue' in nature based on the contention

that the revenue earning capacity of the Assessee is not solely dependent on the use of trademark "Savlon" and it comprises of manufacturing of several brand of soaps, cosmetics etc. The Commissioner (Appeals) also sustained the aforesaid addition made by the tax officer.

On further appeal, the Mumbai Bench of Tax Tribunal upheld the subject addition and observed as follows:

- None of the clauses of the termination agreement prohibit the Assessee from carrying on business of manufacturing soap and sale of soap within or outside India. The only prohibition which resulted from such agreement was on usage of the trademark "Savlon".
- The compensation under the termination agreement was only for relinquishment of licensed user rights granted to the Assessee and for releasing NR Jet Enterprises Ltd (NR Jet), the Licensor, from various obligations cast on it under the agreement.
- The license to use the trademark "Savlon" was granted to the Assessee in its ordinary course of business and as per the termination clause of the assignment agreement, the assignment of such license to the Assessee was not in perpetuity. Further, the Assessee was not given any right to exercise the option to purchase such trademark from NR Jet.
- The grant of license to use the trademark did not result in creation of any monopoly right of enduring nature in favour of the Assessee. Further, the termination agreement did not affect the trading/profit making apparatus of the Assessee as it was engaged in manufacturing several soap brands. Such termination

was a normal incident of the Assessee's business.

Thus, the Tax Tribunal held that the aforesaid compensation is a taxable 'revenue' receipt.



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Shares received under amalgamation taxable as business income if shares held as stock in trade

Nalwa Investment Ltd. [TS-13-SC-2026(SC)]

Recently, the Supreme Court rendered an important judgment concerning the taxability of a shareholder in a scheme of amalgamation. The Court held that if shares were held as stock in trade in the amalgamating company, subsequent allotment of shares of the amalgamated company will give rise to taxable business income.

Under the Indian domestic tax law, transfer of a capital asset being shares in the amalgamating company, in exchange for shares of an amalgamated company cannot be regarded as 'transfer' for capital gains tax purpose. As such, the aforesaid receipt of shares is not liable to capital gains tax, in the hands of the shareholder. However, no such exemption has been provided in the statute where such shares are held as stock in trade in the amalgamating company.

In the facts of this case, the Assessee was an investment company which held promoter stake in its group companies. Pursuant to

amalgamation of certain group companies, the Assessee received shares of the amalgamated company. The Assessee claimed exemption from capital gains tax, stating that the shares were originally held as investments and thus, were to be regarded as capital assets. However, the capital gains tax exemption was denied by tax authorities on the premise that the shares were held as stock in the trade in the amalgamating company.

In second appeal, the Tax Tribunal held that the aforesaid capital gains tax exemption shall be available, irrespective of whether the shares were held as stock in trade or investment. As such, the factual question as to whether the shares were in the nature of investment or stock in trade was not examined. The High Court of Delhi held that the capital gains exemption is available only if shares were originally held as investment in the amalgamating company. Conversely, where shares were held as stock in trade (and therefore, not a 'capital asset'), the difference between market value of shares of amalgamated company and book value of shares of amalgamating company shall be taxable as business income. The matter was restored to the Tax Tribunal by the High Court to examine whether the shares in question were investments or stock in trade.

On further appeal, the Supreme Court upheld the view of the High Court and held that even if shares are originally held as stock in trade, receipt of shares pursuant to amalgamation shall be taxable as business income. However, the significance of this decision revolves around the point in time when tax incidence arises on such business income. This is because amalgamation only results in substitution of shares rather than receipt of any tangible consideration.

On this point, the Assessee argued that even if the transaction results in business

income, no real income arises, in as much as there is no sale or exchange, which gives rise to business income. The Assessee cited the real income theory to contend that the statute scheme does not envisage taxation of notational / hypothetical income.

The Supreme Court held that the taxability of business income arises only when such profits are ascertainable and commercially realizable. Mere sanction of amalgamation scheme only results in substitution of rights, rather than any realizable income. The Court held that it is only at the stage of allotment of shares that the Assessee receives realizable instruments which are capable of being valued in money's worth.

In other words, the benefit crystallizes in the hands of shareholder, only at the time of allotment, when the shares are in identifiable form and capable of being traded.

Notably, the Supreme Court illustrated situations where allotment of shares pursuant to amalgamation would also fail the test of commercial realizability. Such situations could arise where allotted shares are subject to a lock-in period for sale, or where shares of a closely held company are allotted for which no open market exists.

Further, as regards determination of certain facts on whether shares of the amalgamating company are realizable, placed under restrictions or held as investments, the Supreme Court remanded the matter back to the Tribunal for fresh adjudication.



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Delhi ITAT holds that CIT(A) cannot substitute charge and modify the penalty, while dealing with allegation and ground of challenge of levy of penalty under wrong charge

Recently, the Income Tax Appellate Tribunal, Delhi ('ITAT-Delhi') in the case of Umri Pooph Pratappur Tollway Private Limited v. ACIT Delhi [TS-1728-ITAT-2025(DEL)] held as above.

Section 270A of the Act is a penalty provision which can be invoked if there is under-reporting of income or misreporting of income. Under-reporting of income occurs when the assessed income exceeds the income determined in the assessment order. Misreporting of Income may involve misrepresenting or suppressing facts, failure to record investments, claiming false expenses, or omitting international/domestic transaction etc.

Penalty for under-reporting of income is levied at the rate of 50% of the tax payable on the under-reported income (Sub-section (7) of Section 270A). Where the under-reported income arises in consequence of any misreporting, penalty is levied at the rate of 200% of the tax payable on the under-reported income [Sub-section (8) of Section 270A].

On facts, the assessee is engaged in development of roads on build, operate and transfer basis and claimed depreciation at the rate of 25% on right under service agreement as intangible asset. The Assessing Officer ('AO') denied assessee's claim and made addition to the income of the assessee. He initiated penalty proceedings under section 270A for under-reporting of

income as a consequence of misreporting of income for the A.Y 2018-2019. A show cause notice was issued to the assessee u.s. 270A(2) of the Act for under-reporting of income. However, the order for levy of penalty was issued to the assessee for under-reporting income as a consequence of misreporting at the rate of 200% of the tax payable on such income. Aggrieved by the penalty order passed by the AO, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) ('CIT(A)').

CIT(A) sustained the order of penalty of the assessing officer. However, he directed to impose penalty of 50% of the amount of the tax payable on the resulting under-reported income. He also rejected the contention of inconsistency in the show-cause notice and the order of penalty imposed by the assessing officer.

Aggrieved by the order of the CIT(A), the assessee filed an appeal before the Hon'ble Delhi Tribunal.

The ITAT was of the considered view that if proceedings were initiated invoking subsection (8) of Section 270A of the Act, which is an aggravated form of fiscal violation and notice is for lighter form, then the penalty could not have been levied for aggravated violation. Though vice versa may be legal. ITAT was further of the view that as first appellate authority, CIT(A), while dealing with allegation and ground of challenge of levy of penalty under wrong charge CIT(A) cannot substitute the charge and modify the penalty order.



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REGULATORY

FOREIGN EXCHANGE MANAGEMENT FRAMEWORK

Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026

The Reserve Bank of India ('RBI') has issued the Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026 dated January 13, 2026 ('New Regulations'), in supersession of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 ('Existing Regulations'). The New Regulations are intended to promote ease of doing business, especially for small exporters and importers, and to empower authorised dealers ('AD Bank') to provide quicker and more efficient service to their customers. The New Regulations shall be effective from October 01, 2026.

The key changes introduced under the New Regulations are as follows:

1. Payment/ Realization timeline

a. Time period for making import payment

In terms of Regulation 9 of the New Regulations, the AD Bank shall monitor its Import Data Processing Monitoring System (IDPMS) entries and follow up with the respective importer for making payment for its imports within the period specified in the underlying contract. Provided that

the AD Bank may, on request from the importer citing reasons for the delay, allow extension of time for making payment, beyond the period specified in the contract, if the AD Bank is satisfied of the reasons cited.

In our view, the AD may not have the power to grant extension beyond the provision of the contract.

Under the Existing Regulations, the remittances against imports are required to be completed not later than six months from the date of shipment. AD Bank may permit settlement of import dues delayed due to disputes, financial difficulties, etc.

Accordingly, the six-month timeline for making import payments has been removed and the payment is required to be made in accordance with the terms of the underlying contract or any extension thereof, as may be permitted by the AD.

b. Realisation period for Export proceeds

In terms of Regulation 5 of the New Regulations, the amount representing the full export value of goods and services shall be realised and repatriated by the exporter within the period specified below:

- (a) fifteen months from the date of shipment in case of goods (other than goods exported to a warehouse outside India) and from the date of invoice in case of services
- (b) fifteen months from the date of sale of goods from the warehouse in case of goods exported to a warehouse outside India

(c) as per payment terms of the contract, in case of project exports:

Provided that where the export of goods and services is invoiced or/and settled in Indian Rupees, the period for realisation and repatriation of full export value shall be eighteen months, from the date of shipment in case of goods (other than goods exported to a warehouse outside India), from the date of invoice in case of services, and from the date of sale of goods in case of goods exported to a warehouse outside India.

Under the Existing Regulations, the time period for realisation and repatriation of export proceeds of goods/ software/ services is fifteen months from the date of export and in case the goods are exported to a warehouse outside India, the date of shipment. There is no separate timeline prescribed for realization and repatriation of export proceeds which are invoiced or/ and settled in Indian Rupees.

c. Delay in realization of export proceeds beyond one year

In terms of Regulation 13 of the New Regulations, if the export proceeds of an exporter remain unrealised for a period beyond one year from the due date of realisation or extended period, if any, allowed by the AD Bank, the exporter shall undertake further exports only against receipt of full advance or an irrevocable Letter of Credit.

The above-mentioned condition for obtaining an irrevocable Letter of Credit for undertaking further exports,

is not specified under the Existing Regulations.

2. Advance Payments

a. For exports

In terms of Regulation 19 of the New Regulations, advance payment terms shall be governed by AD Banks's internal policy and Standard Operating Procedures. Further, in terms of Regulation 10(1) of the New Regulations, an exporter shall route the advance amount, and realisation of export proceeds, if any, through the same AD Bank. However, an exporter may route the transactions through any other AD Bank provided the exporter has intimated the change to both the AD Banks.

Under the Existing Regulations, an exporter is under an obligation to ensure that the shipment of goods is made within three years from the date of receipt of advance payment. Provided that in the event of the exporter's inability to make the shipment, partly or fully, within three years from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of three years, without the prior approval of the Reserve Bank.

b. For imports

In terms of Regulation 10(3) of the New Regulations, the AD Bank may permit advance remittance for import after satisfying itself of the genuineness of the requirement for advance remittance. The AD Bank

may consider specifying thresholds for advance payment, beyond which, the payment may require a standby Letter of Credit or a guarantee.

Under the Existing Regulations, detailed provisions have been laid down in case of advance payments against imports inter alia the requirement for obtaining an unconditional, irrevocable standby Letter of Credit or a guarantee in case the amount of advance remittance for import of goods exceeds USD 200,000/-.

3. Import not materialized

In terms of Regulation 12(1) of the New Regulations, where an importer is unable to import within the contract period, or the extended period, the importer shall repatriate the advance payment made, if any. Further, in terms of Regulation 12(2), if the advance payment is not repatriated by the importer within the contract period or extended period, if any, allowed by the AD Bank or where the IDPMS entry has not been marked-off, any future advance payment for imports by the importer shall require an unconditional, irrevocable standby Letter of Credit or a guarantee from an international bank of repute or a guarantee of an AD Bank in India, which is issued against a counter-guarantee of an international bank of repute.

Under the Existing Regulations, the above requirements are not specified.

4. Interest payable on advance payment received for export or delayed payments for imports

In terms of Regulation 10(4) of the New Regulations, an exporter or importer,

shall ensure that the interest payable on advance payment received for export or on delayed payment for imports, shall not exceed the all-in-cost ceiling of trade credit in terms of the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, as amended from time to time.

Under the Existing Regulations, the rate of interest is capped as follows:

- In case of advance payment received for export, the rate of interest, if any, payable on the advance payment shall not exceed 100 basis points above the London Inter-Bank Offered Rate (LIBOR)/ any other widely accepted/ Alternative Reference Rate.
- In case of delayed payments for imports due to disputes, financial difficulties, etc., the interest payable, if any, on such delayed payments or usance bills is payable only for a period of up to three years from the date of shipment at the rate prescribed for trade credit from time to time.

5. Uniform reporting - Export Declaration Form ('EDF')

In terms of Regulation 3(1) of the New Regulations, an exporter of goods shall furnish to the specified authority, a declaration in the Export Declaration Form ("EDF") specifying the amount representing the full export value of goods, at the time of export. Further, under Regulation 3(2), an exporter of services shall furnish to the AD Bank, a declaration in EDF specifying the amount representing the full export value of services, within 30 days from the end of month in which invoice for services has been raised, provided that:

- a. the exporter of services who has exported services to one or more recipients in a month, may submit a single EDF for all such exports;
- b. the exporter of services other than software, may submit an EDF on or before the date of receipt of payment;
- c. the AD Bank may, on a request from the exporter citing reasons for delay, extend the period for submission of the EDF after satisfying itself about the reasonableness of the request.

Under the Existing Regulations, every exporter of goods or software in physical form is required to furnish the EDF and every exporter of software in non-physical form is required to furnish the SOFTEX form, evidencing full value of the goods or software. There is no requirement for furnishing an export declaration with respect to export of services.

6. Reduction in export realisation

In terms of Regulation 6 of the New Regulation, the AD Bank may, on request from the exporter citing reasons for under-realisation or non-realisation of full export value, allow reduction in realisation of export value, provided the AD Bank is satisfied of the reasons cited. Provided that where the export value is up to INR 10 lakh (or its equivalent in foreign currency) per shipping bill (for goods) or invoice (for services), the reduction of export value (including non-realisation of full export value) may be permitted based on a declaration from the exporter.

Under the Existing Regulations, the detailed directions in relation to reduction in invoice value of export are contained in the Master Direction on Export of Goods and Services, as amended from time to

time. One of the key conditions in relation to reduction in invoice value is that the AD Bank shall approve the reduction if such reduction does not exceed 25% of invoice value. However, this condition is not specified in the New Regulations.

7. Set-off of import and export transactions

In terms of Regulation 7 of the New Regulations, the AD Bank may allow set-off of export receivables against import payables from/ to the same overseas buyer or supplier or with their overseas group or associate companies, within the stipulated period for realisation of export proceeds or extended period, if any, allowed by the AD Bank.

Under the Existing Regulations, the detailed directions in relation to set-off of export receivables against import payables are contained in the Master Direction on Export of Goods and Services, as amended from time-to-time *inter-alia* including that set-off of export receivables against goods shall not be allowed against import payables for services and vice versa. However, this condition is not specified in the New Regulations.

8. Merchanting Trade Transaction (MTT)

In terms of Regulation 16(1) of the New Regulations, a person undertaking Merchanting Trade, in accordance with the Foreign Trade Policy, shall ensure that:

- a. the period between the outward remittance and inward remittance or vice versa does not exceed six months. Provided that the AD Bank may, on request citing reasons for delay, allow extension of time, if the

AD Bank is satisfied of the reasons cited.

- b. outward remittances are sent only to the overseas seller and inward remittances are received only from the overseas buyer. Provided that the AD Bank may, on request from the customer citing reasons, allow receipt from and/ or payment to any third party, if the AD Bank is satisfied of the reasons cited.
- c. the documents evidencing the MTT are provided to the AD Bank, to establish the genuineness of the transactions

Under the Existing Regulations, the detailed directions in relation to MTT are contained in the Master Direction on Import of Goods and Services, as amended from time to time *inter alia* including that (i) the entire MTT should be completed within an overall period of nine months, (ii) there should not be any outlay of foreign exchange beyond six months and (iii) third party payments for export and import legs of the MTT are not allowed.

9. Internal Policy and Standard Operating Procedure (SOP) for handling transactions

Under the New Regulations, an AD Bank shall put in place a separate, comprehensive, well-documented internal policy and SOP, for handling transactions (including the reporting thereof) related to export and import of goods and services as well as MTT, in accordance with the Act, and Rules, Regulations and Directions issued thereunder. The policy should at least include the following:

- a. List of documents, timelines and

charges for each process and approval.

- b. Extension of the time-period for export realisation and repatriation / import payments.
- c. Adjustment (under, over and non-realisation) of export proceeds to be realised and repatriated.
- d. Advance receipts for exports and advance payments for imports.
- e. Delegation of powers for internal approvals for each process.
- f. Export factoring and import factoring.

Further, while laying down internal policy and SOP, the AD Bank shall ensure that the responsibility for approving transactions is clearly delegated across internal levels. The policy and SOP shall also have an escalation process for handling customer grievances and an appeal mechanism wherein the appeal is handled at a higher internal level. The higher internal level should take a final decision based on the genuineness of the submissions made by the customer.

Also, the AD Bank shall ensure that the charges levied for handling transactions and associated processes are reasonable and proportional to the services rendered. The AD Bank shall not levy any charges or penalty on its constituent (exporter or importer or merchant trader) for any regulatory delay/violation by the constituent. The AD Bank shall disclose policy and the main features of the SOP on its website.



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Foreign Exchange Management (Guarantees) Regulations, 2026

RBI has issued the Foreign Exchange Management (Guarantees) Regulations, 2026 on January 6, 2026 ("**New Guarantee Regulations**"), superseding the Foreign Exchange Management (Guarantees) Regulations, 2000 ("**Erstwhile Guarantee Regulations**"). The New Guarantee Regulations further amend the guarantee related provisions under Master Direction for External Commercial Borrowings, Import of Goods and Services and Reporting under Foreign Exchange Management Act, 1999 ('Act'). The New Guarantee Regulations are effective from the date of their publication in the Official Gazette i.e. January 7, 2026.

The key provisions under the New Guarantee Regulations *inter-alia* include the following:

1. Scope and key definitions

Under the New Guarantee Regulations, save as otherwise provided in the Act or rules or regulations or directions issued under the Act or with the general or special permission of the Reserve Bank of India, no person resident in India shall, except in accordance with these regulations, be a party (principal debtor, surety or a creditor) to a guarantee where any of the other parties to the guarantee is a person resident outside India.

In terms of Regulation 2 of the New Guarantee Regulations, the definition of certain terms i.e. "*creditor*", "*guarantee*", "*principal debtor*" and "*surety*" have been included as follows:

- "Creditor" means a person to whom the guarantee is given

- "Guarantee" including a "counter-guarantee" means a contract, by whatever name called, to perform the promise, or discharge a debt, obligation or other liability (including a portfolio of debts, obligations or other liabilities), in case of default by the principal debtor
- "Principal debtor" means a person in respect of whose default the guarantee is given
- "Surety" means a person who gives a guarantee

2. Permission to act as surety or principal debtor

In terms of Regulation 5 of the New Guarantee Regulations, residents may act as surety or principal debtor for guarantees subject to certain exemptions, provided that –

- a. the underlying transaction for which the guarantee is being given or arranged is not prohibited under the Act or rules or regulations or directions issued under the Act; and
- b. the surety and the principal debtor are eligible to lend to and borrow from each other, respectively, under the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018.

3. Permission to obtain guarantee as a creditor

In terms of Regulation 6 of the New Guarantee Regulations, a person resident in India being a creditor may arrange or obtain a guarantee in its favour, subject to the condition that where the principal debtor and surety both are persons resident outside India,

the creditor shall ensure that the underlying transaction is not prohibited under the Act, or rules or regulations or directions issued under the Act.

4. Reporting Requirements and applicability of Late Submission Fee

In terms of Regulation 7(1) of the New Guarantee Regulations, the guarantees covered under these regulations shall be reported –

- a. by the surety where he is a person resident in India; or
- b. by the principal debtor who has arranged the guarantee and where the surety is a person resident outside India; or
- c. by the creditor where the surety and the principal debtor both are persons resident outside India or where the creditor has arranged the guarantee.

In terms of Regulation 7(2) and 7(3) of the New Guarantee Regulations, the person having the obligation to report the guarantee shall report (a) issuance of guarantee, (b) any subsequent change in guarantee terms, namely, guarantee amount, extension of period or pre-closure, and (c) invocation of guarantee, if any, in the Form GRN. The reporting shall be made to the AD Bank on a quarterly basis within 15 calendar days from the end of the respective quarter for onward submission to RBI. The AD Bank shall submit the returns received to the RBI in the manner and format advised for this purpose within 30 calendar days from the end of the respective quarter.

A person resident in India who does not meet the abovementioned reporting obligations, may do such reporting along with LSF or make payment of LSF where such reporting has been done with a delay, in accordance with following formula:

The Late Submission Fee shall be ₹7500 + 0.025% x A x n, rounded upwards to the nearest hundred, where,

- a. “n” is the number of years of delay in submission, rounded-upwards to the nearest month and expressed up to 2 decimal points; and
- b. “A” is the amount involved in the delayed reporting in INR.



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