THE MONTHLY MAGAZINE FROM CASC

VOLUME-4 ISSUE-3 MARCH 2025

CASC BULLETIN

INDEX

Date	Topic	Speaker
13.03.2025 (Thursday)	Refresher on Bank Audits	CA. G.Subhashini
27.03.2025 (Thursday)	GST Latest Developments	CA. H. Saradha

The meetings will be held at CASC at 6.30 p.m. and will be preceded by fellowship over High Tea at 6.00 p.m

CASC Annual Members are requested to renew their subscription for 2025 - 2026

EDITORIAL

"Where there is righteousness in the heart, there is beauty in the character. When there is beauty in the character, there is harmony in the home. When there is harmony in the home, there is order in the nation."

– Dr. A P J Abdul Kalam, Bharat Ratna

Dear Professional Colleagues,

As we approach the close of yet another financial year, we wish you a smooth and successful year-end closing and all assessment proceedings, and **a new financial year ahead filled with growth, innovation, and professional satisfaction!!!**

Income-tax Bill 2025 – New Opportunities and Challenges

The Finance Minister has introduced the **Income-tax Bill, 2025 (ITB 2025)** as part of the **VIKSHIT BHARAT, 2047** vision, with the aim of simplifying the income tax law, minimizing litigation, and removing redundant provisions from the existing **Income-tax Act, 1961 (ITA 1961)**. The ITB 2025 is expected to come into force from **April 1, 2026**. The **key highlights of ITB 2025** are:

- **536 sections across 23 chapters and 16 schedules, spanning 622 pages**, compared to the ITA 1961 **which had 819 sections and 11 schedules across 823 pages**.
- Introduction of the concept of "**Tax Year**".

- Significant effort has been made to remove explanations, provisos, and redundant sections. The new law is presented largely in **table form** for better readability.
- **No changes in tax rates, residential status, heads of income, or the overall structure** — these remain consistent with ITA 1961.

The ITB 2025 offers **tremendous learning opportunities for young and aspiring Chartered Accountants.** However, senior professionals will need to **"unlearn and relearn"** due to the new section numbering and reorganized structure. While the existing law is well-settled, **new interpretations and potential litigation under ITB 2025 will create fresh professional opportunities**.

GST Amnesty Scheme – Administrative Challenges

The GST Amnesty Scheme, effective from **November 1, 2024**, introduces **Forms SPL-01** and **SPL-02** to assist taxpayers in resolving past non-compliance issues with reduced penalties.

As of February 2025, Forms SPL-01 and SPL-02 are still under development and are expected to be available on the GST portal by the **first week of March 2025**. In the interim, **taxpayers are advised to pay** the demanded tax amounts by **March 31, 2025**, using alternative methods such as **Form GST DRC-03** or **the electronic liability register**. This situation indicates challenges in timely implementing of the Scheme.

While this initiative aims to **promote a more compliant tax environment** by allowing businesses to clear past liabilities without the burden of excessive interest or penalties and avoid protracted litigations, the **delayed implementation and administrative hurdles** could **undermine its effectiveness.**

Additionally, the Amnesty scheme could **pose certain challenges**. It might **dissuade diligent taxpayers** who consistently comply with the law, when defaulters receive lenient treatment. Moreover, **habitual defaulters might delay compliance**, anticipating future amnesty schemes. **Balancing these factors is crucial to fostering a fair and compliant tax ecosystem thereby improving tax collection**.

Artificial Intelligence – India's Resonance

The **Artificial Intelligence Action Summit**, held in Paris on **February 10-11, 2025**, was a landmark event for India. Co-chaired by the **Prime Minister of India** and the **President of France**, the summit gathered global leaders to discuss **AI governance, ethics, and its evolving role in society**.

India played a **pivotal role** in shaping the **leaders' statement** in the Summit emphasizing on

- **Greater access to AI infrastructure,**
- **Collaborative global framework,**
- **Responsible use of AI for public good and protecting their interest.**
- **Greater transparency and cyber security.**

While the US and China lead the AI race, India is rapidly emerging as a significant player, thanks to its thriving IT and startup ecosystem, vast talent pool, and innovative culture. In recognition of its leadership in AI governance, India will host the next Global AI Summit, further strengthening its global standing in this transformative domain. It is imperative for all professionals to **embrace AI technologies** and **explore new practice areas** to stay ahead in this rapidly evolving landscape.

Congratulations - Our Member - CA. Prasanna Kumar D - Vice President of ICAI

Our **Heartiest Congratulations** to **CA. Prasanna Kumar D** on being elected as the **Vice President** of **ICAI** for the **year 2025-26**. He has been elected as **Central Council Member** from our neighbouring state, **Andhra Pradesh**. He is now representing the **Southern Region after 8 years**, which is a **proud moment** to all of us.

On behalf of **CASC**, **CA. Uttamchand Jain (Present MC Member) and CA. Sundararajan R (Past MC Member) personally** met him to convey our **heartfelt wishes**. Our best wishes for **continued success** in his **professional journey,** with **greater contributions** to **ICAI Members and the Nation**.

Congratulations - Our Member - CA. Revathi Raghunathan - Chairperson, SIRC of ICAI

Heartiest congratulations to our member, **CA. Revathi Raghunathan**, on being elected as the **Chairperson** of **SIRC** of **ICAI** for the year **2025-26**. She is the:

- **Third woman to hold this prestigious position.**
- **Second woman from Chennai to assume this role after 70 years.**

Her remarkable achievement serves as an **inspiration for young women professionals**, encouraging them to excel in practice and leadership roles. On behalf of **CASC, CA. Uttamchand Jain (Present MC Member) and CA. Sundararajan R (Past MC Member) personally** met her to convey our heartfelt wishes.

We are **immensely proud** of her elevation and extend our best wishes for **continued success in her professional journey**, with greater contributions to ICAI members and the nation.

Congratulations - Our Members - Management Committee Members, Chengalpattu Branch of SIRC of ICAI

Our **hearty congratulations** to **our esteemed members**, who were being elected as the **Management Committee of Chengalpattu Branch, SIRC** of **ICAI** as under:

- **CA. Shivachandra Reddy - Chairman**
- **CA. Madhumitha R - Vice Chairperson**
- **CA. Sathish T S - Secretary**
- **CA. Aanand P - Treasurer**
- **CA. Ravichandran S - Member**
- **CA. Sridhar Ganesh N - Member and**
- **CA. Arumugaraj P - SICASA Nominated Member**

On behalf of C**ASC, CA. Uttamchand Jain, CA. Balaji V, CA. Madasamy C, CA. Bhuvaneswari R (Present MC Members),** CA. Kumar A P, **CA. Sathyanarayanan K, and CA. Sundararajan R (Past MC Members)** have attended the **installation function** held in PRC Residency, West Tambaram on 17th February 2025 to p**ersonally congratulate them**. **We extend our best wishes to the entire team for a successful tenure.**

Appeal

We, at Chartered Accountants Study Circle, request members to contribute articles for the bulletin and you may contact the editorial board regarding the same. We have been regularly conducting technical programmes every month. Members are requested to attend the programmes conducted by CASC and are also requested to send their suggestions and / or value additions to the services provided by CASC including this Bulletin. The same can be sent as hard copy to the office of the CASC or emailed to admin@casconline.org or any of the members of the Management Committee of the CASC. Any member interested in using the CASC platform for addressing our members on technical topics may kindly feel free to contact us by way of email at admin@casconline.org.

For and on behalf of the Editorial Board

Balaji V

Balaji V

RESPECTFUL HOMAGE

Date of Birth
12-06-1966

Date of Death
20-02-2025

CA. J. MURALI Founder Partner
J. Murali & Co.Chartered Accountants

Deeply mourned by

- The Chartered Accountants Study Circle

In every room you entered, there was light-an energy that was impossible to ignore. Your infectious smile enthusiasm and boundless energy touched everyone around you. You didn't just show up -you lit up the space, inspiring everyone to match your spirit.

You were the heartbeat of ARC, spearheading registrations, tirelessly bringing people on board for the ARC with relentless spirit and dedication that inspired others to follow your lead.

But your true magic wasn't just your work ethic that made you special-it was the joy you brought with you. Your laughter was a soundtrack to our days, and your optimism made the impossible seem within reach. You lived with an energy that reminded us all that there's no challenge too big if we face it together with a smile.

As we honor you today, we carry forward your spirit of kindness, enthusiasm, boundless energy, and your tireless dedication to bringing people together. CASC will forever be grateful indebted to you for invaluable service and you deep association with our members. You will always have a special place in our hearts.

Thank you, Murali J, for everything.

GLIMPSES FROM THE MONTHLY MEETING HELD ON 13.02.2025

SPEAKER : Adv. SAMYUKTHA BANUSEKAR **TOPIC - DIRECT TAX BUDGET ANALYSIS**

GLIMPSES FROM THE MONTHLY MEETING HELD ON 27.02.2025

SPEAKER : CA. J. SRINIVASAN **TOPIC - LANDMARK RULINGS IN GST**

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ANNOUNCEMENTS

1. The copies of the material used by the speakers and provided to CASC for distribution, for the regular meetings held twice in a month is available on the website and is freely downloadable.
2. Earlier issues of the bulletin are also available on the website in the "News" column.

The soft copy of this bulletin will be hosted on the website shortly.

READER'S ATTENTION

You may please send your Feedback / Contributions / Queries on Direct Taxes, Indirect Taxes, Company Law, FEMA, Accounting and Auditing Standards, Allied Laws or any other subject of professional interest to ***admin@casconline.org***

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RECENT JUDGEMENTS IN VAT / CST / GST

CA. V.V. SAMPATHKUMAR

Goods detention and Order u/s. 129(3): The order u/s. 129(3) of the GST Act is passed on the eight day from the date of service of notice, whereas the time line stipulated under Section 129(3) of the Act is that the order ought to be passed within a period of seven days from the date of service of such notice. In as much as admittedly, the impugned proceedings are beyond the time lines stipulated under Section 129(3) of the Act, the same is fatal to the order in terms of the order of this Court in W.P.No. 25931 of 2022. The impugned proceedings are set aside and the vehicles/goods in question shall be released forthwith. Similar view has also been expressed by this Court in W.P.Nos. 476 of 2023 and W.P.No. 33851 of 2022 dated 23.01.2023. Following the above orders, this Court is of the view that the impugned proceedings are liable to be set aside inasmuch as it is in contravention of the time lines stipulated in Section 129 of the Act. Consequently, vehicle bearing Registration No. TN-29-AB-7887 shall be released forthwith. **M/s.Madhesh @ MadesanVs The State Tax Officer, (FAC), Rowing Squad – III, Hosur, Krishnagiri District. W.P.No. 36027 of 2024 Dated : 21.12.2024.**

More Demand than SCN: It was submitted that in the event of tax, interest or penalty, which is demanded in the order is in excess of the amount specified in the notice then in terms of Section 75(7) of the Act, no such demand shall be made unless a fresh notice is issued. The Special Government Pleader submitted that they would redo the assessment after issuing a fresh notice to the petitioner. Recording the same, the impugned order is set aside. Liberty is granted to the respondent authorities to issue a fresh notice to the petitioner and thereafter, proceed to complete the assessment, in accordance with law. **M/s.Golden Enterprises Vs The Assistant Commissioner, (ST), Inspection, Coimbatore, W.P. No.36047 of 2024 DATED : 29.11.2024**

Non-Consideration of Repl: A notice in DRC 01 was issued on 29.09.2023 and the petitioner had submitted its reply on 19.12.2023 which has been duly acknowledged. However, without considering the reply, the impugned order has confirmed the proposal on the premise that no objection or reply was received from the tax payer. The Ld Special Government Pleader submitted that they would pass orders afresh taking into account the objections filed by the petitioner and after affording the petitioner a reasonable opportunity of hearing. In view thereof, the impugned order is set aside. It is

open to the respondent to consider and pass orders afresh in accordance with law after affording the petitioner a reasonable opportunity of hearing. **Afro Asia Equipments Private Limited, Vs. The Assistant Commissioner (ST) (FAC) / The Commercial Tax Officer, Nolambur Assessment Circle, W.P. No.39496 of 2024 DATED : 21.12.2024**

Rectification : The petitioner seeks liberty to file a rectification petition since the order suffers from error apparent on the face of the record including failure to take into account taxes already paid. This submission of the Ld counsel for the petitioner was not objected to by the Ld Government Advocate for the respondent. Recording the rival submissions, the Could held that the writ petition stands disposed of with liberty to the petitioner to file a rectification petition within a period of 2 weeks from the date of receipt of a copy of this order. If any such rectification petition is filed within the stipulated period, the same would be considered and orders would be passed by the Respondent in accordance with law after providing the petitioner a reasonable opportunity. Recovery proceedings shall be kept in abeyance until the disposal of the rectification petition. **Mr.Ratnavel Vs. The Assistant Commissioner (ST),Ekaduthangal Assessment Circle, W.P. No.37174 of 2024 DATED : 20.12.2024**

Penalty and Interest Petitioner submitted that the excess availed ITC was reversed in the year 2019, however the impugned order proceeds to levy interest and penalty overlooking the effect that the excess ITC which was availed has already been reversed as early as on 2019. It is further submitted by the learned counsel by the petitioner that portion of the interest which is demanded in the impugned order also stands paid. Taking into account the peculiar facts of the case, wherein, the petitioner has already reversed the ITC which is in dispute, this Court directed that the petitioner may be granted one final opportunity to put forth his objections, which was not objected to by the Ld Special Government Pleader for the respondent. Stating so , the impugned order, dated 07.12.2023 is set aside with directions . **K.C. & Sons, Vs. 1. The Deputy Commissioner (ST), GST Appeal, Chennai-6. 2.Deputy State Tax Officer, Kothawalchavadi Assessment Circle, W.P. No.38488 of 2024 DATED: 20.12.2024**

Claim of ITC when GST not remitted by supplier: The claim of Input Tax Credit was rejected on the premise that the supplier has not paid the taxes and on finding that the supplier had not filed GSTR 3B returns. It is submitted by the Ld counsel for the petitioner that if the petitioner is provided with an opportunity, he would be

able to explain the alleged discrepancies. Reliance was placed upon the judgment of this Court in Sree Manoj International Vs. DSTO in W.P.No.10977 of 2024 dated 25.04.2024, to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes. By consent of both parties and after hearing them, the WP is set aside and disposed off with conditions which included (a) The petitioner shall deposit 10% of the disputed taxes, within 4 weeks from the date of receipt of a copy of this order. (b) On complying with the condition of payment of 10%, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within 4 weeks from the date of receipt of a copy of this order etc., **M/ s.SriRenga Steels, V. The Assistant Commissioner (ST), Cholavaram Assessment Circle, WP No.38527 of 2024 DATED: 20.12.2024**

Second sales or not?: As per Section 10 of the TNGST Act,1959, the burden of proof for proving any transaction that the dealer is not liable to tax shall lie on the dealer. As such, the burden was always on the dealer to prove the point of first sale. In the instant case, the assessee had not discharged the burden of proof under Section 10 of the TNGST Act by proving the first sale. Further the finding of

fact has been arrived at consistently by the authorities that the bills purchased from M/s.SriValli Traders cannot be accepted as they are not registered dealer, the bills produced also had been found to be manipulated and there had not been any actual movement of goods. In view of the above, the Court held that there was no error or illegality in the finding of fact arrived at by the Tribunal and Writ Petition was dismissed. **G.Sekar, Vs 1.The DCTO (Additional), Tindivanam.2.The AAC CT, Cuddalore. 3.The Hon'ble STAT, Chennai. W.P.No.2721 of 2000 Dated : 02.12.2024**

Seizure /detention without reason(s): On 20.04.2022,the vehicle in which the goods were being transported was intercepted and inspected by a Squad Officer at Redhills around 5.50 p.m. Respondent passed the impugned order dated 21.04.2022, stating that on verification, it was found that as per the e~way bill, the petitioner has purchased the goods from Tvl.NAV DURGA STEEL ZONE and sold the same to MAA MAHAMAYA INDUSTRIAL LTD., but, actually, the goods were loaded in Ambattur and weighment made in Ambattur. Hence, the respondent demanded the petitioner to pay the penalty of Rs.5,11,928/~. The petitioner has also paid. The Court held that a reading of the Physical Verification Report clearly indicates that there are no reasons

justifying either seizure of the subject vehicle or detaining of the goods warrants interference u/s 129(1) r/w. sub-section 3 of Section 129 of the CGST Act, 2017. Stating that the impugned order passed by the respondent is without any merits and therefore, the same is liable to be quashed, the impugned order dated 21.04.2022 passed by the respondent is quashed. The penalty amount paid by the petitioner for releasing the goods shall be allowed to be adjusted towards the tax liability of the petitioner in the regular returns. **M/s RNYN STEEL Vs The Assistant Commissioner (ST), Adjudication Intelligence – I, Chennai – 6. W.P.No.18398 of 2022 Dated : 19.12.2024**

Exempted goods and filing of "c" forms: CST act section 8 (2) states that the tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of interstate trade or commerce not falling within Sub-Section (1)[covered by c form etc], shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State. Unless a specific notification has been issued under Sub-Section (5) to Section 8 of the CST Act, only General Notification issued under the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 will apply to the interstate transactions by

applying Section 8(2) of the CST Act. The local TNVAT Act exempted the goods from the levy of tax and no notification issued under Section 8(5) of the CST Act, the conditions of Section 8(5) of the CST Act will not apply to the facts of the case. Therefore, the court held that the tax demand proposed and confirmed in respect of VAT exempted goods in the Impugned Revision Order 22.04.2022 making liable the petitioner for non-filing c form etc is liable to be interfered and that there is no legal basis on which, the Impugned Demand can be sustained. Stating so, the Impugned Revision Order dated 22.04.2022 is set aside. **Natesan Vs. The State Tax Officer, Attur (Town) Circle W.P.No.14092 of 2022 DATED : 18.12.2024**

No discussion in the order: Since the reply of the petitioner has not been considered properly by the AO and there is no discussion in the order, the Impugned Assessment Orders are quashed. The respective cases are remitted back to the respondent to pass a fresh orders on merits and in accordance with law within a period of 6 months from the date of receipt of a copy of this Order and before final orders are passed, the petitioner shall be heard. **Mr.P.Manishankar Vs. The Assistant Commissioner (ST), Velachery Assessment Circle, W.P.Nos.18020, 18593, 18595 and 22019 of 2022 DATED : 13.12.2024**

Hearing: The petitioner appeared before the adjudicating officer on 29.10.2024 requested time to file his objections and for a personal hearing on 04.11.2024. The petitioner appeared on 04.11.2024 before the respondent and filed its reply wherein it was submitted that the goods relating to Ashok Leyland as well as Havells India were contained in the container and the goods relating to Havells India was loaded on top of the goods belonging to Ashok Leyland and thus Havells India goods were unloaded at Kathirvedu to enable the petitioner to unload the goods belonging to Ashok Leyland. However, the above reply was not found to be acceptable and the impugned order came to be passed. Petitioner, on 04.11.2024 while filing the reply, had sought for a personal hearing, however, no personal hearing was granted. Ld counsel for the respondent would submit that they would grant a personal hearing and pass orders afresh. Recording the same, the writ petition was closed by the Court. **M/s Inland World Logistics Pvt. Ltd., Vs 1. The Deputy State Tax Officer, Roving Squad IV Intelligence II, Chennai 6. 2. Assistance Commissioner (ST), O/o the Joint Commissioner (Intelligence II), Chennai 6. W.P.No.35186 of 2024 DATED: 11.12.2024**

Opportunity: Since the order has been passed without affording an opportunity of being heard before the impugned order was passed, the Court set aside the impugned order and remitted the case back to the respondent to pass a fresh order within a period of 3 months from the date of receipt of copy of this order. Any refund of the amount paid by the petitioner will be subject to final outcome of the proceeding before the respondent. **M/s.MIL Steel and Power Limited, Vs. The Assistant Commissioner (ST), Gummipoondi Assessment Circle, W.P.No.19708 of 2022 DATED: 05.12.2024**

(The Author is a Chennai based Chartered Accountant in Practice. He can be reached at vvsampat@yahoo.com)

CASE LAWS - GST

1. GST – AAR BOOKING OF PASSENGER CABS THROUGH MOBILE APP SERVICES NOT COVERED UNDER RCM

CA. VIJAY ANAND

In RE: Natural Language Technology Research, 2025 (92) GSTL 77/(2024) 23Centax105(AAR.-GST-WB), the applicant is engaged as a research and development organisation under the Department of Information Technology & Electronics, Government of West Bengal and is also engaged in the development of language tools & technology as well as Online Literary & Linguistic resources etc.

The applicant, under the direction of the Government of West Bengal, has developed a website and mobile application named "Yatri Sathi Mobile App" (hereinafter referred to as "the App"). The App has been launched on the ONDC platform and is designed as a ride-hailing Software as a Service (SaaS) platform, also categorized as a Mobility as a Service (MaaS) solution. The primary purpose of the App is to facilitate the business transaction of supply of services by connecting customer to the drivers of West Bengal. An application was made seeking advance ruling as to the following:

(i) Whether the applicant falls under the purview of the E-commerce Operator as defined in sec 2(45) of the GST Act?

(ii) Whether the applicant shall be deemed to be the service provider u/s 9(5) of the GST Act read with notification no. 17/2021-Central tax(rate) dated 18th November, 2021 for the Driver services provided by the Driver to the Customer connected by "Yatri Sathi Mobile App"?

(iii) Whether the applicant shall be liable to collect and pay GST on the services supplied by the Drivers (person who subscribed the app) to the Customers (person who subscribed the app) connected through the App considering the Applicant as service provider u/s 9(5) of the GST Act read with notification no. 17/2021-Central Tax (Rate) dated 18th November, 2021?

The authority observed as under:

1. By virtue of Notification No. 17/2017-Central Tax (Rate) dated 28.06.2017 r.w.sub-section (5) of section 9 of the GST Act and Notification No. 14/2017-Integrated Tax (Rate) dated 28.06.2017,as amended from time to time, tax on intra-State as well as inter-state supplies of services by way of transportation of passengers by a motorcab, maxicab, motor cycle, or any other motor vehicle except omnibus shall be paid by the electronic commerce operator if such services are supplied through it.

2. Further, in terms of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, following passenger transport services under Chapter Heading 9964 is taxable 5% (Central tax @ 2.5% and State tax @ 2.5% and Integrated Tax @ 5%).

a. Transport of passengers, with or without accompanied belongings by-

(a) air conditioned contract carriage other than motor cab;

(b) air conditioned stage carriage;

(c) radio taxi.

3. Any person who is an owner or operator of digital or electronic facility or platform or one who manages such platform for supply of goods or services or both, including digital products i.e. a platform which in common parlance is said to be an electronic commerce platform can be said to be an Electronic Commerce Operator.

4. In the instant case, the applicant is the owner of a digital platform namely the Yatri Sathi App and provides supply of services to the drivers by way of allowing the drivers to use the digital platform against a consideration. The applicant thus fits into the definition and qualifies to be an Electronic Commerce Operator in terms of section 2(45) of the GST Act.

5. We now proceed to examine the issue regarding applicability of section 9(5) of the GST Act in the instant case which makes the electronic commerce operator liable to pay tax in relation to the supply of certain services in the way that he is the supplier of such service when such supply of services are supplied through him.

6. In this case, the passenger transportation services is provided by a radio taxi. The expression "radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).

7. Thus, the first two arms of the conditions as laid down in Section 9(5) of the GST Act get satisfied, i.e. the instant services are notified by the Government and the supply is intra-state in nature.

8. Now, this issue narrows down to the focal point as to whether this service is supplied through the electronic commerce operator or not. The word "through" as referred to in Section 9(5) of the GST Act is not explained or defined in the relevant context. Hence that requires to be discussed in detail.

9. In this regard, the applicant himself has referred to Merriam Webster Dictionary, in accordance to which the word "through" is used as a function word to indicate means, agency, intermediary such as by means of, by agency of etc. The word "through" is also used as a function word to indicate extent, period of time such as during entire period, from the beginning to end, to and including etc. The term "through" in the context of legal interpretation, particularly with respect to provisions like Section 9(5) of the CGST Act, typically implying a level of involvement or facilitation by the electronic commerce operator that is substantial enough to consider the service as being provided via the operator's platform. This may include significant involvement in the processes of booking, payment handling, and ensuring service delivery.

10. The word 'through' in Section 9(5) of the GST Act, gives the meaning that services are to be supplied by means of/by the agency of/from beginning to the end/during the entire period by e-commerce operator. In the instant case, the business model promulgated by the applicant is unique where it merely connects the driver and the passenger and their role ends on such connection and effectively does not have any control over the subsequent business activities as the App platform does not collect the consideration and has no control over the actual

provision of service by the service provider. The business model of the applicant is as under:

- Fare determination: The fares for the ride are established through periodic notifications issued by the State Government, according to the authority granted under Section 67 of the Motor Vehicles Act, 1988. The Company has no role or involvement in the determination of such fares.
- Payment facilities: The 'Yatri Sathi' app does not specify the payment method by which customers are to pay for services the drivers provide.
- Invoice: The Driver shall be solely responsible for generating and issuing invoices, with the Company having no involvement in the invoicing process or in providing invoices to the recipient.
- Process of payment: The drivers are directly paid by the service recipient and the Company is not aware of the payment methods.
- Type of service model: Yatri Sathi' is a completely subscription-based model application where the Drivers are required to pay Rs XX (inclusive of GST) for open market rides and Rs XX for special zone rides. But no other fees like convenience fees are charged from the customer. Further, the drivers are directly paid by the recipient of the services.

- ❖ Influence over driver service quality: [(i) Failure to complete the ride, (ii) Failure to pickup customer at the allotted time, (iii) Instances of reckless or negligent driving,(iv) Involvement in verbal, physical, or any other form of harassment, (v) Violation or non-adherence to the applicable laws] : The company does not take any responsibility for the quality of service being provided by the driver. There shall also be no cancellation charges imposed for incomplete or cancelled rides. Further for any kind of harassment or ill-treatment the company shall not be held liable.

11. Thus, even though the applicant qualifies to be an electronic commerce operator, the supply of services is not made through him but such supply is independent in nature. Therefore, the applicant, though qualifies the definition of being an e-commerce operator, does not satisfy the conditions of Section 9(5) of the GST Act for discharging the tax liability by an electronic commerce operator and hence, is not the person liable for discharge of tax liability under section 9(5) of the GST Act.

Hence, the authority ruled as under:

1) The applicant very much fits into the definition of E-commerce Operator as defined in sec 2(45) of the GST Act and qualifies to be an Electronic Commerce Operator.

2) The supply by the service provider (driver) to his customers (passengers) through Yatri Sathi App does not amount to supply by the Applicant.

3) The applicant does not satisfy the conditions of Section 9(5) of the GST Act for discharging the tax liability by an electronic commerce operator and hence, is not the person liable for discharge of tax liability under section 9(5) of the GST Act.

2. GST– AMOUNT DEMANDED WITHOUT APPROPRIATE AND PRIOR SCN U/S 73(1) –DEMAND SET ASIDE

In UditTibrewal v. State of Assam 2025(92) GSTL 252 / (2024) 24Centax255 (Gau.), the petitioner has stated that he used to deal in the business of trade and supply of mobile phones, etc. The petitioner challenges the demand order before the high court on the ground that there was no proper and prior Show Cause Notice prescribed under sub-section [1] of Section 73 and the petitioner was only served with a Summary of Show Cause Notice in Form GST DRC-01, which is also not in conformity with Section 73 read with Rule 142[1][a]. The high court observed as under:-

1. The parties are not in disagreement on the fact that there was an Attachment to Determination of Tax, which was in terms of sub-section [3] of Section 73, and a Summary of Show Cause

Notice in Form GST DRC-01 and there was no proper and prior Show Cause Notice issued to the petitioner, as contemplated under sub-section [1] of Section 73.

2. Non-issuance of a proper and prior Show Cause Notice, as contemplated under sub-section [1] of Section 73 of AGST Act, 2017 and issuance of only Summary of Show Cause Notice and Attachment to Determination of Tax cannot be said to be in compliance with sub-section [1] of Section 73 and sub-rule [1] and Rule 142, a Summary of Show Cause Notice is held to be not a substitute of a Show Cause Notice, contemplated by the provisions of sub-section [1] of Section 73 to set the proceeding in motion.

3. From the provisions of Section 73, Show Cause Notice is required to be issued by the proper officer, the statement under Section 73[3] is to be issued by the proper officer as well as the Order under Section 73[9] is required to be issued by the proper officer.

4. Compliance of the provisions contained in sub-section [1] to sub-section [8] and sub-section [10] to sub-section [11] of Section 73 and sub-rule [1] of Rule 142 are conditions precedent to term an Order passed under sub-section [9] of Section 73 as a valid one.

5. Prior Show Cause Notice under sub-section [1] of Section 73 of the AGST Act, 2017 was not issued along with the Summary of Show Cause Notice in Form GST DRC-01] and the Attachment to Determination of Tax, and in terms of the observations made in the common Judgment and Order dated 26.09.2024 [supra], the impugned Order dated 30.12.2023 is found not sustainable in law and the same deserves to be set aside and quashed. It is accordingly ordered.

6. In the event the respondent authorities proceed in accordance with the provisions of Section 73[1] by issuing a valid Show Cause Notice and in compliance with the other ancillary legal provisions, it would be open for the petitioner to raise all the grounds available under the law.

Hence, the petition was disposed of accordingly.

3. GST– ITC ON TELECOMUNICATION TOWERS – NOT IMMOVABLE PROPERTY – NOT TO BE DENIED

In Bharti Airtel Ltd. v. CCGST Appeals-1, Delhi2025(92) GSTL 467/(2024) 25Centax232 (Del.),the assesse availed ITC of telecommunication towers used in telecommunications which can be dismantled at site which was denied by the adjudicating

authority and the high court holding that telecommunication towers which are capable of being moved cannot fall under the restricted items of immovable property. u/s 17(5) of the CGST Act and being illegible for input tax credit.On a writ petition, SupremeCourt observed as under:

1. While examining the principal question which arose, the Supreme Court, in Bharti Airtel Ltd v. CCE, 2024 SCC OnLine SC 3374/(2024) 24 Centax 266 (S.C.) = 2025 (391) E.L.T. 3 (S.C.).), firstly took note of the judgment rendered in Vodafone Mobile Services Limited v. CST, Delhi 2018 SCC OnLine Del 12302/2019 (27) G.S.T.L. 481 (Del.)which had found that it would be incorrect to characterize mobile towers as immovable property since they would not satisfy the test of permanency or be liable to viewed as something attached to the earth.

2. The question of whether telecommunication towers are liable to be treated as immovable property is no longer res integra and stands conclusively settled in light of the recent decision rendered by the Supreme Court in Bharti Airtel Ltd v. CCE, Pune (supra).

3. Bharti Airtel (supra), affirms the view that was taken in Vodafone Mobile Services Limited (supra), albeit in the context of Rule 2 of the Cenvat Credit Rules, 2004.

4. Telecom towers, as the Supreme Court in Bharti Airtel holds, are intrinsically moveable items and were liable to be treated as capital goods entitled to be viewed as inputs under Rule 2(k) of the 2004 Rules.

5. It is thus apparent that in Bharti Airtel (supra), the Supreme Court has conclusively held that telecommunication towers cannot be construed as being immovable property. While arriving at that conclusion, the Supreme Court had reaffirmed the concept of immovable property as was lucidly explained in CCE, Ahmedabad v. Solid and Correct Engineering Works & Others. (2010) 5 SCC 122 = 2010 (252) E.L.T. 481 (S.C.)(supra).

6. Tested on the aforesaid precepts, the stand taken by the Revenue that telecommunication towers being liable to be viewed as immovable property is rendered wholly untenable.

7. As the Supreme Court held in Bharti Airtel, telecommunication towers would clearly not qualify the five fundamental precepts which define an immoveable property. It was found that they neither qualify the test of permanency nor can they be said to be “attached to the earth”. Mobile towers, it was held, could be dismantled and moved and that they were never erected with an intent of conferring permanency. Their placement on concrete bases was only to enable those towers to overcome the vagaries of nature. Therefore, there cannot possibly be a doubt

with respect to telecommunication towers being moveable property.

8. Turning then to the provisions of Section 17(5) itself, it is pertinent to note that the said provision sets out various goods and services which would stand exorcised from Section 16(1) and thus not liable to be taken into consideration for the purposes of availing input tax credit.

9. Amongst the various goods and services which find mention in sub-section (5) are those received by a taxable person for construction of an immovable property. Clause (d) of Section 17(5), also excludes from immovable property "plant or machinery". The expression "plant and machinery" has been defined by the Explanation appearing in Section 17(5) to mean apparatus, equipment and machinery fixed to earth by foundation or structural support. However, it specifically excludes telecommunication towers from the ambit of the expression "plant and machinery".

10. The specific exclusion of telecommunication towers from the scope of the phrase "plant and machinery" would not lead one to conclude that the statute contemplates or envisages telecommunication towers to be immovable property. Telecommunication towers would in any event have to qualify as immovable property as a pre-condition to fall within the ambit of clause (d) of Section 17(5). Their exclusion from the

expression “plant and machinery” would not result in it being concomitantly held that they constitute articles which are immoveable.

11. The decision in Vodafone Mobile Services (supra) as well as Bharti Airtel (supra), though rendered in the context of the 2004 Rules, have on application of the generic principles which would apply to the concept of immovable property, have in explicit terms come to conclude that telecommunication towers are liable to be treated as movable.

12. Consequently, the denial of input tax credit, would not sustain.

Hence, the petition was allowed and the impugned order was set aside.

4. INCREASE IN GST FROM 12% TO 18% - RECIPIENT GOVERNMENT OBLIGAED TO PAY THE CONTRACTOR AT THE ENHANCED RATE

In Gangotri Construction v. State of Madhya Pradesh 2025(92) GSTL 545 (M.P.)/(2024) 24 Centax 343 (M.P.) the petitioner is engaged in the construction work and was awarded several works *vide* agreements executed with the respondent No.2 which is a Public Enterprise and classified as Government Entities in the context of Goods & Service Tax Act (GST Act). The petitioner’s activities were subjected to GST @ 12% from 30.10.2017 to 31.12.2021. Thereafter, the rate of GST has been

enhanced from 12% to 18% (9% C GST & 9% SGST) w.e.f. from 01.01.2022. However, the respondents were paying the running bills with 12% GST while the petitioner was paying 18% GST. *Vide* letter dated 26.09.2022, respondent No.2 has accepted the liability to pay additional 6% from 01.01.2022. However, approval has not been received from the State Government, consequent to which the petitioner has approached the high court court by way of writ petition which observed as under:-

1. The objections to the maintainability by Respondents No.2 & 3 owing to the availability of alternative remedy under the Arbitration Act cannot sustain as no disputed question of facts are involved in this case.

2. Respondent No.4 which is a State GST Department, which also enhanced the rate of GST from 12% to 18% and same is liable to be paid by respondent No.2 which is a Government Entity.

Hence, respondent No.2 was directed to pay the difference of GST amount to the petitioner @ 6% from 01.01.2022 to 30.09.2022 with a period of three months from the date of receipt of certified copy of this order, failing which the petitioner was entitled for interest @ 6% per annum from the date of entitlement.

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SUMMARY OF AAR/AAAR

Applicability of para 8(a) of schedule III of the CGST Act, 2017 in relation to transactions in Free Trade and Warehousing Zone

CA. AMAN GOYAL & CA. VENKADATHRI RAJARAMAN

In the case of M/s. Haworth India Private Limited (referred to as "applicant") (Order No. TN/26/ARA/2024 dated December 05, 2024) – Tamil Nadu Authority for Advance Ruling

Facts of the case

- The applicant is engaged in the manufacture and sale of office furniture. The applicant procures raw materials indigenously as well as from overseas group entities. The applicant is engaged in the outward supply of goods manufactured at its manufacturing facility and sale of goods imported from group entities.

- The applicant has proposed to operate an import and re-sale model from a Free Trade Warehousing Zone (hereinafter referred to as 'FTWZ') for operational convenience involving less documentation and swift clearance process so as to expedite

project execution. The applicant has secured a space in an FTWZ for to store imported goods. The applicant executes a lease agreement with the FTWZ unit holder and deposits the goods from the port by filing a bill of entry. The FTWZ, owned and operated by an independent third party merely clears and warehouses the imported goods. The FTWZ collects warehousing charges from the applicant.

- On receipt of purchase order from the customer, the applicant places an order with the overseas supplier for the goods. Once the goods are shipped, the applicant intimates the FTWZ unit holder and provides copy of the purchase order and other documents for clearance of goods from the port and storage of the same in FTWZ. The FTWZ unit clears the goods from the port by filing bill of entry on behalf of the Applicant and stores the same in the warehouse. The FTWZ unit hands over the import invoice and other necessary documents to the applicant. The FTWZ unit does not pay any import duty on clearance from the port.

- The applicant transfers the title of goods to customer under the cover of an invoice. The customer either clears goods from the FTWZ or makes further transfer of such goods to other customers.

Every transfer of title of goods does not result in physical delivery of goods. The goods continue to remain in FTWZ till the final customer files BOE and clears goods from FTWZ. Multiple transfers are made while goods are lying in FTWZ.

- The final customer produces transfer of title document and files BOE for re-warehousing (SEZ) / home consumption and clears the goods from FTWZ. At this juncture goods are removed from the warehouse and are taken to the premises of the Customer.

Question before AAR

- In the facts and circumstances of the case, whether the transfer of title of goods by the applicant to its customers or multiple transfers within FTWZ would result in bonded warehouse transaction covered under Schedule III of the CGST Act, 2017?

Interpretation of law by the applicant

- Entry no. 8 (a) of Schedule III, covers supply of warehoused goods to any person before clearance for home consumption. Further, explanation to the entry provides that, 'warehoused goods' shall have the same meaning as assigned to it in the Customs Act, 1962.

- FTWZ is a special category of Special Economic Zone as per section 2(za) of the SEZ Act, 2005, wherein mainly trading and warehousing and other activities related thereto are carried on. Both customs bonded warehouse and FTWZ are required to execute a bond with customs in order to import and store the goods in warehouse without payment of any duty.

- It is pertinent to note that although the provisions of bonding by a bonded warehouse and bonding by an SEZ/ FTWZ is governed by different laws with differing obligations, the rationale of bonding imported goods remains the same i.e. to avail duty benefit under the Customs Act, 1962.

- Every SEZ becomes a bonded premises under the Customs Act, 1962 by virtue of the deeming fiction created by Section 53(2) of SEZ Act, thereby it can be construed that FTWZ is in parity with bonded warehouse under Customs Act, 1962

- Since FTWZ is equivalent to a bonded warehouse, transfers within FTWZ before clearance shall fall under Schedule III of the CGST Act, 2017, thereby not attracting GST.

- Circular No.03/01/2018 clarifies the applicability of IGST on goods supplied while being deposited in customs bonded

warehouse The circular provides that Integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable.

- The value for levy of IGST on sale of goods deposited in warehouse but clearance for home consumption shall be the higher of transaction value or sale value to buyer. The said provision infers that in case of goods deposited in a warehouse, only the person who is ultimately clearing the goods for home consumption is subject to tax and the transferor is not subject to tax on such transfer of warehoused goods.

- In case of FTWZ/ bonded warehouse, the FTWZ files 'in-to bond' BOE without payment of duty for warehousing and point of taxation under customs is deferred to time of clearance from FTWZ. The transaction is subjected to levy when goods are cleared from the FTWZ.

- The supply of goods by to customers and subsequent transfers when the goods are still lying in FTWZ is outside the purview of GST.

Interpretation of law by the department

- According to explanation II to schedule III of the CGST Act 2017, the expression "warehoused goods" in the schedule shall have the same meaning as assigned to it in the Customs Act 1962. According to section 2(43) of Customs Act 1962 "warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A. According to section 2(44) "warehoused goods" means goods deposited in a warehouse.

- Even though the day-to-day activities like warehousing and clearing of goods for home consumption on payment of applicable customs duties are supervised /monitored by Customs officials posted in the FTWZ in accordance with SEZ Act 2005, read with the Customs Act, 1962, the approval/license/administrative control for FTWZ are fully governed under the provisions of SEZ Act 2005.

- Therefore, FTWZ is not a warehouse licensed under Customs Act 1962. The transactions stated by the applicant are not covered under Schedule III of the CGST Act 2017.

- Circular No.3/1/2018 dated 25.05.2018 has been issued for clarifying the scope of supply with regard to transactions in

Customs bonded warehouses and hence the same is not applicable to FTWZ which is not a warehouse as defined under the Customs Act, 1962.

Observations and Ruling of AAR

- A bonded warehouse is one of the types of warehouses sanctioned by customs authorities, specifically designed to house imported goods without the immediate burden of import duties or taxes. This allows business enterprises to store their goods without paying duties until they are ready to be released into the domestic market. On the other hand, in non-bonded facilities, duties on the items imported and kept, are already paid for. Accordingly, the bonded warehouses and unbonded warehouses differ significantly in terms of tax status.

- Warehouses as discussed within the legal framework of SEZ/ FTWZ, are nothing but 'bonded warehouses', very much akin to customs bonded warehouses.

- There is no inconstancy between the provisions of the Customs Act, the SEZ Act and the SEZ Rules with respect to warehousing. As per rule 22 of the SEZ Rules, every SEZ is required to execute Bond-cum-Legal Undertaking ("BLUT") in Form 'H' with the Customs authorities to avail the benefit of duty-free clearance. It

is to be noted here that though the Form 'H' is prescribed under the provisions of SEZ Act and Rules, the 'BLUT' executed by any SEZ is presented before the Customs authorities as the duty benefits provided for, are related to the Customs Act.

- The fact that the BLUT form is accepted and signed by the Officer of Development Commissioner/Joint/Deputy Development Commissioner, and also by the Officer of Joint/Deputy/Assistant Commissioner of Customs, corroborates the fact that the procedural requirement under the SEZ Act and the Customs Act travel together without any inconsistency.

- Allotment of eight-digit warehouse code for Customs Bonded warehouses in effect extends to other bonded warehouses under SEZ/FTWZ as well, and the scheme of Integration of SEZ cargo delivery systems through SEZ online with Customs EDI System (ICES) further proves the fact that the procedural requirement under the SEZ Act and the Customs Act are inextricably interwoven that they are bound to travel together without any inconsistency.

- The provisions of para 8(a) of Schedule III of the CGST Act, 2017, viz., "Supply of warehoused goods to any person before clearance for home consumption" applies to the instant case.

- Further, reversal of proportionate input tax credit of common inputs/input services/capital goods is not warranted in the hands of the applicant in terms of section 17(3) of the CGST Act, 2017 read with explanation 3 to rule 43 of the CGST Rules, 2017, even when the activity/transaction in question is covered under paragraph 8 (a) of Schedule III of the CGST Act, 2017, as the reversal applies only in relation to supplies from Duty Free Shops at arrival terminal in international airports to the incoming passengers.

Admissibility of input tax credit in respect of vehicles purchased for providing research data through a subscription based online platform

In the case of M/s. A2MAC1 India Private Limited (referred to as "applicant")(Order No. TN/29/ARA/2024 dated December 06, 2024) – Tamil Nadu Authority for Advance Ruling

Facts of the case

- The applicant is engaged in providing 'Collaborative Automobile Benchmarking Services' through a data management online platform. From the database, the subscribers of the applicant will get 360 degrees vehicle insights such as technology insights, cost

insights, performance insights, market insights, sustainability insights, software insights, supply chain insights etc.

- The subscription to the company's knowledge database enables their customers to:
    - Benchmark and learn from most successful competitors, the best-in-class vehicle and their future innovations;
    - Assess and address the fundamental challenges of cost, performance, supply chain and sustainability impact;
    - Access to advanced comparison features and reporting tools that allow them to share these with users across different departments, locations and geographies, and help in optimizing the designs, giving them a competitive edge.
- The clients of the applicant comprises both OEMs (Original Equipment Manufacturer) and OESS (Original Equipment Supplier).
- For vehicle benchmarking, the applicant purchases brand new cars in the domestic market, disassembles them and adds research data to the corpus knowledge database for providing various insights to the customers. Motor vehicles bought by the Applicant are wholly and exclusively used for automotive research purpose

carried out at the applicant's factory. Hence, these vehicles are temporarily registered with the Regional Transport Office.

- The cost of the vehicle bought and used for automotive benchmarking process are expensed out in the books. At the end of retention period (mostly 14 to 20 months), these cars are assembled again and sold to the secondary market upon payment of applicable GST. The cost of purchase of vehicles/cars are predominant to the business and without the same, the main revenue stream i.e., supply of services via platform subscription would fail.

Question before AAR

- Whether the input tax credit on the purchase of vehicles/cars are eligible, in terms of Section 17 (5) (a) of the Central Goods & Service Tax (CGST) Act, 2017?

Interpretation of law by the applicant

- For the company's business, the motor vehicles are indispensable tools for carrying out 'Automotive Research Study' which in turn are offered for subscription to customers. It is a business requirement to buy the latest launched and popular vehicles, the cost of which are expensed in the books as input cost.

- Motor vehicles purchased are only for research purposes in the course or furtherance of business and kept for a specific period of time before selling. As the purchase of motor vehicle and further supply satisfies the conditions laid down in Section 17 (5) (a) (A) of the Act and the ITC in this regard would be eligible.

- The term 'further supply' has not been defined in the GST Act and therefore one has to go by the definition of 'supply.' The term 'further' prefixed to 'supply' is merely in the form of an adverb and does not differentiate it from 'supply' in any way.

Interpretation of law by the department

- The applicant is not eligible to avail ITC on purchase of motor vehicle, since they are not engaged in same line of business.

Observations and Ruling of AAR

- CBIC has issued a clarification in respect of admissibility of ITC on 'demo-vehicles' in terms of Circular No. 231/25/2024-GST dated 10th Sep, 2024. The clarification clearly distinguished that the term "further supply of such motor vehicles" is applicable to a person engaged in business as an authorized dealer of a manufacturer of motor vehicles who sells the motor vehicles after

purchasing from manufacturers or any person acting as an agent to the manufacturer without buying it.

- Thus, the board clarified that ITC on the purchase of demo-vehicles by a dealer is very much available as it is falling within the scope of 'further supply of such motor vehicles'. The intention of the Government to specifically include this supply implies that the input tax credit shall not be available to other motor vehicles not used for this intended purpose.

- The exclusion under section 17(5) applies to all motor vehicle even if it is used for any activity relating to business.

- A motor vehicle specified in 17 (5) (a) of the Act, even if it is used for supplying goods or services is not eligible for availment of input tax credit, irrespective of whether or not it is used in providing taxable outward supply.

- 'Used car' becomes an 'old car' after use and can be sold only as secondhand items. Input tax credit is not available to the applicant who sells the motor vehicles after use.

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UNDERSTANDING RESALE PRICE METHOD

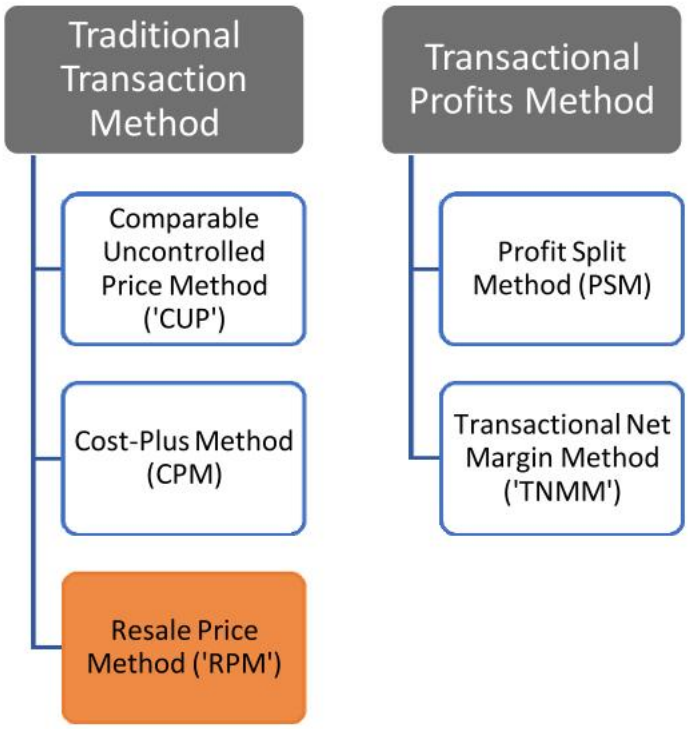
Ms. NITHYA SRINIVASAN & CA. SARANYA NAGARAJAN

A. Introduction

Any international transaction entered by a Multinational Enterprise ('MNE') with its associated enterprise, is required to be undertaken at arm's length price (ALP) and ALP is required to be determined using one of the 6 methods prescribed under section 92 C of the Income Tax Act, 1961.

In this article, we will focus on the Resale Price Method, commonly termed as RPM, one of the 6 methods prescribed under the Indian Income Tax Regulations which is applied to determine the arm's length price of certain international transactions.

The guidelines issued by the Organisation for Economic Co-operation and Development ('OECD') also suggests determining ALP of international transactions using either Traditional Transactions Method or Transactional Profits Method.



B. Importance of Choosing the Most Appropriate Method ('MAM'):

Determination of ALP of a transaction involves scrutinising the outcome of such related party transactions by comparing them to the outcome if the same had been undertaken between unrelated third parties under similar circumstances. The TP Methods serve as an important pointer to evaluate the ALP of an international transaction. Various metrics such as gross profits, prices, operating profits, financial ratios come into play depending on the type of the TP method applied.

While evaluating the best-fit TP method for a transaction, it is crucial to weigh the strengths and weakness of each of the methods. The decision to apply a certain TP method also involves the availability of data and assessing the degree of comparability of the available data.

C. Resale Price Method

RPM analysis aims to determine the arm's length gross margin earned by an entity on the resale of products purchased.

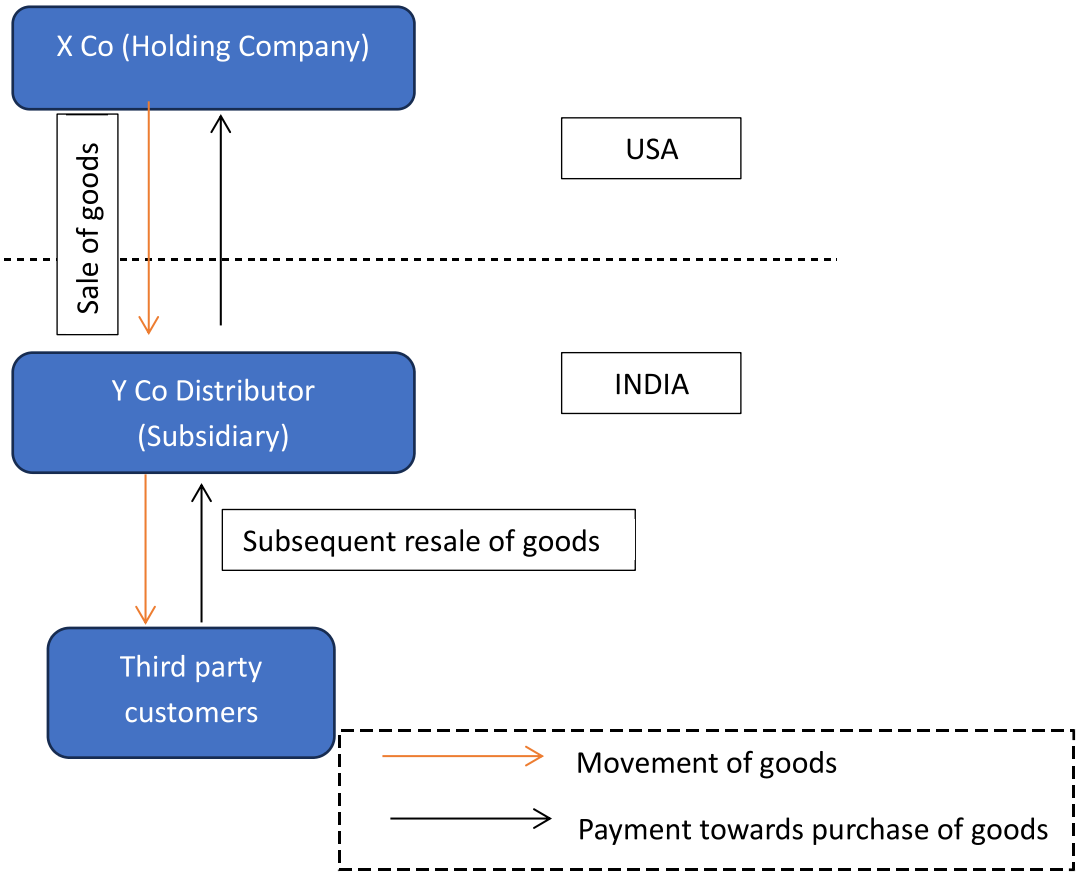
(i) What is RPM – RPM is a transfer pricing method used to determine the arm's length price of goods that are primarily procured from related parties and subsequently resold to third parties without any substantial value addition.

(ii) When to use RPM – RPM is typically used when a distributor purchases goods from related parties and sells the same to third parties. During such distribution activity, the distributor acts as a reseller and the goods/products does not undergo any change in its form.

(iii) How should RPM be used - The price at which the goods/ products are resold to customers is reduced by the normal gross margins earned by unrelated third parties to arrive at the arm's

length purchase price. Under RPM, gross margin is used as the Profit Level Indicator. The primary focus of RPM is to evaluate the price at which the products/goods are purchased from related party by comparing the gross margin at which the same is sold to a third-party customer vis-à-vis gross margin of the comparable companies. RPM could be applied only in case of tangible related party transactions.

D. Instances where Resale Price Method could be applied



In the above example, Y co can adopt resale price method to benchmark the transaction relating to purchase of goods from its parent entity X Co. The gross margin of the uncontrolled transaction between a distributor and third-party manufacturer is deemed appropriate because the market dictates the price. By applying the resale price method, the distributor can ensure that the transactions are being carried out at arm's length. RPM is useful when the companies are performing similar functions. The importance of functional comparability over product comparability for adopting RPM as MAM has also been emphasised in the Guidance note issued by the ICAI.

E. Computation of Gross Profit Margin under RPM

To arrive at the arm's length gross margin under RPM, the following steps are required to be followed:

1. Identify the purchase price of the goods/products procured from associated enterprise which is subsequently resold to third-party customers;
2. Determine the resale price of the products that is transferred;
3. Arrive at the gross margin earned on such resale;
4. Reduce the direct expenses incurred in connection with such resale;

5. Arrive at the gross profit margin;

6. The gross margin so arrived is compared with the gross margin earned by comparable companies under uncontrolled circumstances.

Under RPM, ALP = Resale Price – Gross Profit Margin

F. Comparability requirements in RPM

While evaluating the applicability of RPM, the taxpayer should consider functional comparability between the tested party and the independent comparable companies. The following factors should be considered to evaluate the functional comparability:

- The functions performed by the reseller and the comparable companies should be same or similar, i.e. in purchase, reselling, marketing and distribution functions;
- If any party undertakes value added functions such as customisation/branding, it would affect the pricing, hence such entities should not be considered during comparability analysis;
- When there is functional comparability between the entities, the nature of products/similarity of products is not required to be considered for evaluating the applicability of RPM;

- The risks undertaken both by the reseller and the independent comparable companies should be similar.
- The nature and type of assets used (warehousing/distribution network) should be considered during comparability analysis.

In case the reseller i.e. tested party of the identified comparable companies perform any additional functions, or takes more risks, then adjustments may be required to be made for the differences in the functions, assets or risks. Certain common comparability adjustments undertaken while applying RPM are:

a) Adjustments towards differences in the method of accounting of inventory between the tested party and comparable companies;

b) Adjustments owing to differences in sales terms i.e. whether on Ex-works/FOB/CIF basis;

c) Economic adjustments owing to differences in working capital, customs duty, forex fluctuations, etc.

G. Key Economic Circumstances to be considered when using RPM

In addition to the comparability analysis, economic circumstances surrounding the transaction play a key role in determining whether the selected method is appropriate.

(i) *Overall market environment* – Factors like demand, competition and pricing trends could have an influence on the pricing.

(ii) *Operational efficiency of the reseller* – The financial health of the tested party could have an impact on the pricing. i.e. if the reseller is financially stronger, the bargaining power and the flexibility in applying higher mark-ups is more.

(iii) *Geographical conditions* – If the reseller operates in a market with high labour costs, taxation, trade tariffs, inflation, currency fluctuations and regulatory constraints might have an impact on the pricing.

Adjustments to the resale price based on factors like market conditions, geographical factors, competition, risk profile, are necessary to ensure that the transaction between related parties adheres to the arm's length principle.

Owing to the above factors, taxpayers should consider whether any true-up/true-down adjustment is required to align the transaction price with ALP. Since the primary transaction for the distributor is purchase of goods, any year-end adjustment would have an impact on the purchase price. In case of true-up adjustment in the distributor's books, the cost of purchase will

have to be reduced but related customs duty costs on the same cannot be recovered and is a sunk cost in most of the countries. However, in case of true-down, the purchase cost would be increased, therefore the revised purchase price needs to be declared to the customs authorities and additional customs duty on the same would be payable. Hence, for any distributor, appropriate implementation of the transfer pricing policy is the key.

H. Use of Transaction Net Margin Method (TNMM) for a Distributor

On a plain reading about RPM, many wrongly conclude that RPM is the most appropriate method to benchmark the transactions in case of a distributor. However, the decision/ choice of the method depends on the facts of each case.

Before any transfer pricing method is proposed to be adopted to justify an international transaction, it is imperative to have a detailed understanding of the functions, assets and risks of the entity and its associated enterprise.

Therefore, though RPM can be considered as the most appropriate method for a distributor in many cases, one should be prudent while selecting any method/ appropriate PLI since the same depends on the actual functions performed and the

risks borne by both the parties to the international transaction and other economic circumstances

In addition to application of RPM, OECD guidelines suggest use of Berry Ratio as financial indicator for determining ALP in case of certain distributorship arrangements. The "Berry Ratio" (commonly a PLI used under TNMM) is used in the transfer pricing analysis to compare the ratio of a distributor's gross profit to its value added / operating expenses vis-à-vis third-party comparable companies. This ratio was formulated essentially to evaluate the return on value added services earned by distribution companies i.e. this ratio could be best used to analyze the profitability of a distributor undertaking significant value addition to the product & engaged in performing marketing services.

Berry Ratio = Gross Profit/Operating expenses

The above ratio was formulated with the idea that the cost relating to value added activities would be included in the operating expenses.

I. Interplay between RPM and Berry Ratio

Berry Ratio is one of the most misused PLI during the transfer pricing analysis at the time of transfer pricing audits, due to potential misinterpretation of the facts. Though Berry Ratio and

RPM are tools used under transfer pricing analysis, they both serve different purposes. To assess whether a pricing method or structure is reasonable in relation to a company's profitability, it is imperative to understand the actual functions of the entity i.e. to understand the actual **conduct** of the entity's functions.

- Resale Price Method

  RPM focuses on the related sales company which performs marketing and selling functions as the tested party in the transfer pricing analysis. RPM is more appropriate in a business model when the entity performs basic sales, marketing and distribution functions and there is little or no value addition by the reseller prior to resale of goods. The OECD guidelines also uphold that RPM can be used when the reseller does not add substantial value to the products. However, when the goods/products purchased from the AE are further processed and when the identity of the purchased goods is lost, RPM cannot be applied.

- Berry Ratio

  Berry Ratio was formulated by Professor Charles Berry, who proposed it as a substitute of resale price and cost-plus methods under US transfer pricing regulations. Berry ratio is most useful when operating expenses are used as a measure of profitability in distribution business.

When the MNE's create centralised hubs for selected value-added activities like procurement and distribution with low/ limited functional and risk profiles, Berry ratio could be used. In cases where one subsidiary performs marketing or distribution services, Berry ratio could be an useful tool to assess whether such subsidiary is receiving appropriate return in relation to the operating expenses incurred.

In summary, **RPM** determines the arm's length price by adjusting for the reseller's gross profit, while the **Berry Ratio** provides insight into the overall profitability, especially related to operating expenses. Berry ratio could therefore be applied in case of a limited risk distributor whereas, RPM could be applied in case of a full-fledged distributor who do not perform significant value addition to the products before resale.

It could be observed that the level of activities performed by the reseller, i.e. either acting as an agent, buy-sell distributor, those taking flash title like sogo-shosha companies, has an effect on the resale price margin. Therefore, the functional analysis and the characterisation of the tested party serve as a primary indicator for choosing the MAM. The different type of distributors and their functional and risk profile is tabulated below for ease of understanding:

Particulars	Limited-Risk Distributors ('LRD')	Full-fledged distributors ('FFD')	Commission Agents	Sogo-Shosha distributors
Background	LRD's operate under close supervision of their parent and has limited risk profile.	FFD's undertake both operational and entrepreneurial functions and manage the entire distribution and sales process right from purchase of goods from AEs till sale to the end customers.	Typically operates as a sales representative, by identifying customers and acting as intermediary between the purchaser and seller.	Sogo-shosha are Japanese trading companies that import and export products and also provide logistics and related services. They operate in array of industries and have extensive global network.
Functions performed	Performs all sales and distribution functions like procurement, storage of goods and shipping them to customers, but under the close control and supervision of the parent company. They do not get involved in strategic decision making activities.	Performs all sales and distribution activities and the risks for performance of the functions. They also hold strategic marketing responsibility. Their functions include undertaking market research, developing marketing materials, advertising and developing marketing plans.	Performs sales functions like identification of customers, introducing new products, maintains customer relationship.	Performs the functions similar to a middleman, brokers or intermediaries and deal with massive range of products. They only take flash title to goods. These entities also undertake logistics and transportation services for distribution of the products. The functions performed are merely in the nature of distributors.
Risks	Parent Entity/AE help mitigate inventory risk, market risk, credit risk.	Bears all the risks associated with the performance of the above functions – i.e. bears market risk, inventory risk, credit risk.	Does not take title to goods and therefore does not undertake market risk, or credit risk.	Inventory risk is negligible as they hold only flash title to goods.
Return	Earns stable margins without developing significant marketing intangibles.	Remunerated based on the functions performed and its risk appetite.	Receive commission at a certain percentage on sale of products.	Earn cost plus appropriate mark-up. Average returns similar to commission agent.
Commonly used Transfer Pricing Method	TNMM –return on sales	TNMM/Resale Price Method	CUP- in case of external CUTs.	TNMM (Berry ratio could be adopted as PLI)

J. Benefits and Limitations of using RPM:

Benefits of using RPM

a) Comparability requirements are less stringent than with other methods like CUP, since gross margin is used as benchmark

b) Most effective when there is sufficient data about comparable entities within the same industry

c) Focuses on the functions performed by the reseller to determine appropriate gross margin

d) This method is relatively straight forward to apply since it involves computation of margin at gross level.

Limitations of using RPM

a) Difficult to apply when there are inherent differences in the method of accounting

b) Not suitable for goods with valuable intangibles

c) Cannot be used when the reseller undertakes more value-added activities i.e. useful only for distributors who do not undertake significant value additions to the products.

K. Legal jurisprudence on RPM

There are various judicial pronouncements where the jurisdictional High Courts/Tribunals upheld the use of RPM as the most appropriate method. One could rely on these judgements as a precedence before proceeding to decide on the most appropriate method.

a) India

Case Law Reference	Nature of Issue
Burberry India Private Limited (TS- 505-HC-2024 (DEL)-TP	The Hon'ble High Court held that the assessee is engaged in the import of goods under the brand name 'Burberry' and from its AE and sells the same to its customers. Further, the assessee does not undertake any value addition to the product. Therefore, the High Court concluded that the action of the Tribunal in concluding RPM as the MAM is right.
Jushi India Fiberglass Private Limited (ITA No.1163/Mum/2024)	The Hon'ble Tribunal held that the application of any method as MAM depends on the functional profile of the tested party and based on the facts of the case, RPM was held to be the MAM for the assessee.
Matrix Cellular International Services (P) Ltd (90 Taxmann.com 54)	The Hon'ble Delhi High Court upheld the application of RPM as the most appropriate method where the business of the assessee was that of a pure trader and there was no value-addition made by the assessee before resale of products to customers.
Swarovski India Pvt Ltd v ACIT – TS-91-ITAT-2017 (Del) – TP - ITA No.5622/Del/2014 & ITA No.5497/Del/2014	The Tribunal rejected application of CUP method as MAM by the assessee. Referring to Rule 10B(1)(b), the Tribunal observed that RPM was the MAM as it was applicable where a property was purchased from an AE and resold as such without any value addition and the assessee in the instant case sold the Crystal components imported from its AEs without any value addition. It accordingly remitted the matter to the TPO to benchmark the transactions as per RPM.
KMG Infotech Ltd Vs DCIT (TS-312-ITAT-2017(Bang))	The Tribunal observed that under RPM, focus was more on the similar nature of service, rather than similarity of products. Therefore, the Tribunal held that RPM was the MAM for benchmarking the international transaction in the case of the assessee performing distribution functions in respect of earthmoving equipment.
Randox Laboratories (India) P Ltd IT(TP)A no.507/Mum./2015	The ITAT rejected adoption of TNMM and upheld the use of RPM in case of companies engaged in distribution activity, when the goods are purchased from AEs and sold to customers without further processing.

b) International jurisprudence

Case Law Reference	Nature of Issue
Kenya vs Cummins Car and General Limited, September 2024, Tax Appeals Tribunal, Case no. TAT E450 OF 2023	Cummins Car and General Limited purchased goods from related party and sold them to external customers. The transaction relating to purchase of goods from related party was benchmarked using CUP as MAM. However, the tax authorities were of the view that RPM is the MAM and CUP could not be used since there was significant time lag between the previously agreed prices and the transactions under consideration.
Denmark vs EET Group A/S, June 2024, Court of Appeal, Case No SKM2024.506.ØLR (BS-6035/2021-OLR)	EET Group A/S purchased goods from third party suppliers and resold them to its group companies (EET Group). In the TP document of EET Group A/S, a detailed comparability analysis in the form of comparison of gross margins of the tested party vis-à-vis third parties were included. The Danish Tax Agency increased the entity's income by considering net margin of comparable companies. The Eastern High Court however, ruled that EET Group A/S was right in carrying out the comparability analysis based on gross margins.
GlaxoSmithKline Transfer Pricing Case (Canada) (2012 SSC 52)	Glaxo Canada adopted RPM as the MAM for the purchase of ranitidine, an active pharmaceutical ingredient (API). The Tax Court of Canada favored the CUP Method. The Supreme Court of Canada later addressed this issue and found that the Tax Court failed to consider the license agreement between Glaxo Canada and its parent company, which granted rights to use trademarks, thereby affecting the comparability of the transaction. The Supreme Court of Canada insisted that the roles and functions of both the parties to the transaction to be kept in mind while determining the ALP and directed the Tax Court of Canada to determine ALP.
France vs Ferragamo France, June 2022, Administrative Court of Appeal (CAA), Case No 20PA03601	The Resale Price Method played a crucial role in the Ferragamo France case, serving as a key transfer pricing methodology to evaluate the arm's length nature of the transactions between Ferragamo France and its parent company. The final decision of the Administrative Court of Appeal was made in June 2022. The case elaborated on how an adjustment is required to be made to RPM when a distributor contributes significantly to the brand value apart from being engaged in the sale of products. The key issues relating to RPM discussed in this case were – (i) the additional expenses incurred by Ferragamo and whether the same had an implication of the gross margin, (ii) whether standard distribution margins under RPM are sufficient when the subsidiary actively contributes to brand value and (iii) importance of looking longer-term business trends and market development efforts while evaluating RPM.

L. Conclusion

The Resale Price Method is an essential tool for multinational enterprises seeking to establish arm's length pricing for intra-group transactions, especially in distribution and resale scenarios. By focusing on the resale price and comparing the appropriate gross margin, this method ensures compliance with tax regulations and promotes transparency in pricing. RPM requires a high degree of functionality comparability rather than product comparability. Hence, a detailed analysis showing the close functional comparability and the risk profile of the tested party and comparable companies should be clearly brought out in the Transfer Pricing study report in order to justify comparability at gross profit level under RPM. Understanding the nuances of RPM can help businesses navigate complex tax regulations and optimize their global transfer pricing strategies.

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DEVELOPMENTS IN TAX TREATIES AND ANTI - AVOIDANCE MEASURES - An Indian Perspective

ESHAAN SINGAL

Introduction

India has emerged as a key player in shaping global tax policies, particularly in addressing issues related to tax avoidance and evasion. As one of the world's fastest-growing economies, India is strategically focused on creating a robust and equitable tax framework that supports its developmental goals while fostering an investor-friendly environment. This dual approach underscores its commitment to fairness, transparency, and the protection of its tax base.

India's tax policies are evolving in response to the international trends and domestic imperatives. Over the years, India has actively participated in global initiatives such as the OECD's Base Erosion and Profit Shifting (BEPS) project, which aims to curb tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax jurisdictions. The country has also embraced multilateral instruments like the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), which seeks to streamline and update tax treaties to tackle treaty abuse and improve dispute resolution mechanisms.

Domestically, India has introduced significant amendments to its tax laws and treaties to address tax avoidance. The introduction of the General Anti-Avoidance Rule (GAAR) in 2017 marked a watershed moment, empowering tax authorities to disregard arrangements primarily aimed at avoiding taxes. Furthermore, India has renegotiated several tax treaties, notably with Mauritius, Singapore, and Cyprus, to plug loopholes that facilitated treaty shopping and capital gains tax exemptions.

Despite these advancements, challenges remain. Balancing the need for robust anti-avoidance measures with the imperative of maintaining a favorable investment climate is a delicate task. Businesses often express concerns about the complexity and unpredictability of India's tax regulations, which can lead to disputes and increased compliance costs. At the same time, India faces the challenge of aligning its domestic policies with evolving global tax norms, including the two-pillar solution proposed by the OECD for taxing the digital economy.

The impact of these developments on businesses and the economy has been multifaceted. On one hand, the strengthened anti-avoidance framework has bolstered India's ability to protect its tax revenue. On the other, the clarity and predictability brought by updated treaties and measures like the MLI have improved investor

confidence. By continuing to refine its tax policies, India aims to strike a balance between safeguarding its tax base and fostering an environment conducive to economic growth and foreign investment.

1. India's Tax Treaty Network

India has an extensive tax treaty network, with agreements in place with over 90 countries. These treaties are designed to prevent double taxation, promote cross-border trade, and curb treaty abuse.

1.1 The India-Mauritius Tax Treaty: A Turning Point

The India-Mauritius tax treaty has historically been one of the most significant and controversial. For decades, investors routed funds through Mauritius to avoid capital gains tax in India.

- **2016 Amendment:** India revised the treaty to tax capital gains on investments made after April 1, 2017. The amendment marked a shift in India's policy, prioritizing substance over form to prevent treaty shopping.
    - **Impact:** Foreign Direct Investment (FDI) from Mauritius declined sharply after the amendment, but it also signaled India's commitment to curbing tax avoidance.

1.2 Renegotiation of Other Treaties

Following the Mauritius amendment, India revised its treaties with Singapore and Cyprus, closing similar loopholes. These treaties now include anti-abuse provisions such as the **Limitation of Benefits (LOB) clause** to ensure that treaty benefits are available only to genuine investors.

2. India's Adoption of Anti-Avoidance Measures

2.1 General Anti-Avoidance Rule

India introduced GAAR in 2017 as a sweeping measure to tackle aggressive tax planning. GAAR empowers tax authorities to disregard arrangements primarily designed to obtain tax benefits.

- **Case Example:** A foreign entity investing in India through a shell company in Mauritius was scrutinized under GAAR. The tax authorities denied treaty benefits, demonstrating GAAR's effectiveness in combating treaty abuse.

2.2 Beneficial Ownership Requirements

India has implemented stringent requirements to prove beneficial ownership for claiming treaty benefits.

- **Example:** In 2021, India's tax authorities denied treaty benefits to a company claiming residence in Singapore, citing the lack of substantial business activities. This highlighted India's focus on ensuring genuine economic presence.

3. Multilateral Instrument (MLI) and India's Role

India is a signatory to the OECD's Multilateral Instrument (MLI), which allows countries to simultaneously amend multiple tax treaties to include anti-abuse measures.

- **Principal Purpose Test (PPT):** Under the MLI, India incorporated the PPT into its tax treaties, denying treaty benefits if the primary purpose of a transaction is tax avoidance.
- **Mandatory Arbitration:** India opted out of the mandatory binding arbitration provision, reflecting its preference for bilateral dispute resolution mechanisms.
- **Impact:** The MLI has transformed India's tax treaties with major partners like Japan, the UK, and Australia, aligning them with global best practices.

4. Tackling the Digital Economy

India has been a leader in addressing challenges posed by the digital economy.

4.1 Equalization Levy:

In 2016, India introduced the Equalization Levy, targeting payments for digital advertisements. It was expanded in 2020 to include e-commerce supplies and services provided by non-resident entities (though this stands deleted with effect from 1st April 2024 amidst the Pillar 1 and Pillar 2 negotiations).

- **Impact on Global Giants:** Companies like Google, Facebook, and Amazon are subject to this levy, ensuring India captures a share of the revenue generated in its market.

4.2 Push for Global Consensus:

India has advocated for a significant economic presence-based taxation model in global forums, emphasizing the need for fair taxing rights in the digital economy.

5. Regional and Domestic Initiatives

5.1 Controlled Foreign Corporation (CFC) Rules

India's CFC rules under the Income Tax Act target profit shifting by taxing income from foreign subsidiaries. These rules prevent Indian businesses from sheltering profits in low-tax jurisdictions.

5.2 Transfer Pricing Regulations

India has robust transfer pricing rules to ensure fair allocation of profits between related entities. The introduction of **Safe Harbour Rules** and **Advance Pricing Agreements (APAs)** has provided greater certainty to taxpayers.

5.3 Anti-Tax Avoidance Directive (ATAD) Influence

While not an EU member, India's tax reforms echo the principles of the EU's ATAD, focusing on transparency and preventing base erosion.

6. Challenges Faced by India

6.1 Compliance Burden

- **Issue:** Increased anti-avoidance measures and reporting requirements, such as Country-by-Country Reporting (CbCR), Master file, withholding returns have raised compliance costs for Indian businesses.

6.2 Taxation of Digital Multinationals

- **Example:** The U.S. criticized India's Equalization Levy, arguing it unfairly targets American tech giants. Such disputes highlight the complexities of unilateral measures in the absence of global consensus.

6.3 Double Taxation Risks

Despite improvements, businesses occasionally face double taxation due to mismatches in treaty interpretations. For instance, U.S. entities rendering e-commerce services in India have faced challenges in claiming equalization levy levied in India as credit in U.S. leading to taxing the same income twice.

7. Real-Life Examples of Anti-Avoidance in Action

Vodafone Tax Dispute: A Turning Point in India's Tax Policy[1]

The Vodafone tax dispute was a landmark case that brought international attention to India's tax regime and its implications for cross-border transactions. The case originated in 2007 when Vodafone Group acquired a 67% stake in Hutchison Essar, a leading Indian telecom operator, through a deal structured offshore. India's tax authorities claimed that Vodafone was liable to pay capital gains tax on the transaction, even though the deal was executed between two foreign entities. Vodafone contested the demand, arguing that Indian tax laws did not apply to the offshore transaction.

In 2012, the Supreme Court of India ruled in favor of Vodafone, stating that Indian tax authorities could not impose tax on such transactions under the existing laws. However, in a controversial

[1] (2012) 6 SCC 613; [2012] 341 ITR 1 (SC)

move, the Indian government introduced retrospective amendments to the Income Tax Act, enabling it to tax such transactions dating back to 1962. This decision faced widespread criticism, as it created uncertainty for foreign investors and damaged India's reputation as an investment destination.

The retrospective taxation policy had far-reaching consequences, sparking debates about its fairness and impact on investor confidence. Over time, recognizing the adverse effects on its business environment, India took steps to reverse this approach. In 2021, the government repealed the retrospective tax amendments and assured investors of a more stable and predictable tax regime. This marked a significant shift in India's tax policy, signaling its commitment to creating an investor-friendly environment and resolving legacy tax disputes amicably.

Cairn Energy Case: A Step Toward Resolution[2]

The Cairn Energy case was another high-profile tax dispute that highlighted the contentious issue of retrospective taxation in India. In 2006-2007, Cairn Energy, a UK-based company, restructured its Indian operations ahead of an initial public offering (IPO). India's tax authorities later claimed that Cairn owed capital gains tax on the reorganization, even though the transaction was completed before the retrospective amendments were introduced.

[2] Permanent Court of Arbitration, Case No. PCA 2016-07

In 2014, India seized and sold Cairn's shares in an Indian subsidiary, withheld tax refunds, and froze dividends to recover the alleged tax liability. Cairn challenged the tax demand through international arbitration and won the case in 2020, with the tribunal ruling that India's actions violated the bilateral investment treaty between India and the UK. The tribunal also awarded Cairn substantial damages.

Faced with mounting international pressure and the risk of damaging its global reputation, India moved to resolve such disputes. In 2021, the government repealed the retrospective tax law, offering to refund amounts collected under its provisions, provided affected companies withdrew litigation and claims for damages. Cairn Energy accepted this resolution, marking a turning point in India's approach to international tax disputes.

Implications and Evolving Stance

The Vodafone and Cairn cases underscored the challenges of retrospective taxation and its detrimental impact on investor confidence. By repealing retrospective tax laws and opting for amicable settlements, India demonstrated its intent to align with global best practices and foster a more predictable and transparent tax regime. These measures are pivotal in attracting foreign investment and positioning India as a reliable and attractive destination for global businesses.

8. Future Outlook

India's proactive approach to renegotiating tax treaties and implementing robust anti-avoidance measures reflects its commitment to establishing a fair and transparent tax regime that protects its tax base while fostering economic growth. By addressing loopholes in existing treaties and adopting measures to prevent tax evasion, India aims to create a system that is equitable, modern, and aligned with global standards.

Over the past decade, India has renegotiated several key tax treaties with jurisdictions such as Mauritius, Singapore, and Cyprus, which were often used for treaty shopping and tax arbitrage. For instance, amendments to the India-Mauritius and India-Singapore tax treaties introduced a source-based taxation model for capital gains on the sale of shares, curbing the misuse of treaty benefits. Similarly, India's adoption of the MLI under the OECD's BEPS framework has allowed it to simultaneously update multiple tax treaties to include anti-abuse provisions and improve dispute resolution mechanisms.

Domestically, India has introduced measures like the GAAR, empowering tax authorities to scrutinize arrangements that lack commercial substance and are primarily designed to obtain tax

benefits. These initiatives demonstrate India's commitment to preventing tax avoidance while ensuring compliance with international norms.

However, the challenge lies in balancing rigorous tax enforcement with the need to maintain an investor-friendly climate. Excessive enforcement or unpredictability in tax policies can deter foreign investment, as seen in high-profile disputes like Vodafone and Cairn Energy. These cases highlighted concerns about retrospective taxation and the perception of an aggressive tax regime, leading to calls for more stability and transparency.

To address these challenges, India has taken significant steps to rebuild investor confidence. The repeal of retrospective tax laws in 2021, equalization levy in 2024 and the amicable resolution of legacy disputes sent a strong signal to the global community about India's intent to foster a predictable and transparent tax environment. Additionally, the government has emphasized streamlining compliance processes and reducing litigation through measures like the faceless assessment and appeal systems.

While India has made substantial progress in reforming its tax policies, the task of balancing investor confidence with effective tax

enforcement remains ongoing. Striking this balance is crucial to ensuring that India continues to attract foreign investment while safeguarding its revenue base and promoting economic fairness. By consistently refining its approach, India is poised to emerge as a global leader in tax governance.

Conclusion

India's developments in tax treaties and anti-avoidance measures reflect its commitment to protecting its tax base while fostering a fair environment for international trade. By addressing treaty abuse, taxing the digital economy, and aligning with global standards, India has established itself as a key player in the global tax landscape.

With continued reforms and international cooperation, India is poised to navigate the complexities of the modern tax regime while safeguarding its economic interests.

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PAYMENTS FOR SUPPLIES FROM MICRO, SMALL ENTERPRISES - RECENT AMENDMENTS

CA. G. SUBRAMANIA SARMA

The Ministry of Corporate Affairs, vide its powers under section 405 of the Companies Act, 2013, vide its notification No S.O. 5622(E) dated 2nd November 2018 required all the companies who procure supplies of goods or Services from MICRO and SMALL Enterprises and whose payments to Micro and Small enterprises exceed 45 days from the date of acceptance or deemed acceptance of goods or services vide provisions of Sec 9 of the MSMED Act, 2006, to submit a half yearly return to MCA.

The return for the half year period April to September is to be filed by October and for the period from October to March by April 30. The return among other things requires the following data to be reported upon viz.,

- The amount of Payments due
- The reasons for the delay.

The relevant form specified is MSME Form I, which contains the following information

A: Initial Amount Due

- The amount outstanding as on the commencement of the order
- Particulars of the name of supplies and the payment due , giving the name of suppliers with PAN, financial years, amount due and the supply date from which it is due

B: Regular Return of Outstanding due to Micro and Small Enterprises

- Total Amount outstanding during April to September and October to March
- Particulars of the name of supplies and the payment due , giving the name of suppliers with PAN, financial years, amount due and the supply date from which it is due

C: Reason for the Delay

PRESENT AMENDMENT

The Central Government vide its Notification dated 15th July 2024, has issued an Order of Amendment to Specified Companies (Furnishing of Information about payment to Micro and Small enterprise supplies) Order 2019, which prescribes the following:

Insertion of Proviso to Section 3 of the Order

"Provided that only those specified companies which are having payments pending to any micro or small enterprises for more than 45 days from the date of acceptance or the date of deemed acceptance of the goods or services under section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006) shall furnish the information in MSME Form-1."

Particulars to be furnished in the Form

- The name of the MSE Supplier
- PAN of the MSE supplier
- Paid within 45 days both through TreDs and Paid within 45 days through other modes
- Paid after 45 days
- Outstanding amount for 45 days or less
- Outstanding amount for more than 45 days
- Reason for delay in payment or outstanding amount.

The said return is to be signed by Director / Managing Director/ Company Secretary/CEO/CFO/ Authorised Representative along with the DIN or PAN of the person Signing the form.

IMPLICATIONS OF THE AMENDMENT

A Increased Compliance Burden On The Companies

B Transparency and Accountability

C Potential Penalties.

GOING FORWARD WHAT THE COMPANY HAS DO

It is imperative that every company dealing with Micro and Small Enterprises either for procuring the goods or Services should ensure the following:

- Proper details of registration of the Supplier by seeking the registration certificate etc.
- Proper classification in the Accounts Payable or Supplier Master the classification of the Supplier.
- The date of acceptance of the supply or deemed date of supply from the Micro and Small Enterprises.
- The due date for the same, which is either 15 days or 45 days [the former where there is no agreement with the party and later when there is an agreement with the party in writing having credit period as 45 days or more].

- Trigger for the management for the payment and details of payments made.
- Where the payment is not made within the period of 45 days, the reason for the same.
- Where there is outstanding on the reporting period is more than 45 days, the reason for the same.

Data to be supplied to the Audit Committee or Board Meeting

- The details of parties who are classified as Micro and Small enterprises
- The details of Payments due and made – both quantity and amount
- The details of Payments made beyond the due date along with the reason
- The details of outstanding on the reporting date, which are more than 45 days and reasons for the same.

The auditors or Internal auditors have to ensure that the return is filed in time with proper details and discrepancies if any, since there is penal provisions for non-compliance.

For easy reference, the definitions of the Micro, Small and Medum Enterprises is given hereunder

Category	Investment (in crores)*	Turnover (in crores)**
Micro Enterprise	Rs 1/-	Rs 5/-
Small Enterprise	Between Rs 1 & < Rs 10/-	Between Rs 5 & < Rs 50/-
Medium Enterprise	Between Rs 10& < Rs 50/-	Between Rs50&< Rs 250/-

* means value of net WDV as per the latest Income Tax return filed and not as per books or original Cost

** means value of total turnover excluding export turnover.

The Union Budget 2025 has increased the above criteria of classification as follows:

Category	Investment (in crores)*	Turnover (in crores)**
Micro Enterprise	Rs 2.5/-	Rs 10/-
Small Enterprise	Between Rs 2.5&< Rs 25/-	Between Rs10 & < Rs 100/-
Medium Enterprise	Between Rs25&< Rs 125/-	BetweenRs100&<Rs 250/-

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REPLIES TO CASE STUDIES - DIRECT TAXES DISCUSSED AT 25th ARC @ AHMEDABAD

Summarised by CA.CHAITANYA

Reply to Q.No. 1

Irrespective of contractual contract of period of 60 days, 45 days alone would apply.

The question that arises is What is "Sum Payable". In Old Schedule VI, prior to Schedule III of Companies Act 2013, we had 2 terminologies. What is Interest accrued and due and What is Interest accrued but not due.

One specific scenario means is that after 31st March 24, if I go and file my income tax return on 1st April 24 can somebody said no. I can go and find my return on 1st April 24 itself. I can go and get my accounts audited. I got a tax audit report and go and upload my return before I go to sleep on 1st April 24. What happens to that situation? Just because I paid late in the month of May subsequently, do I go and revise my tax return that no, it was a mistake, I should have disallowed that amount. Because I paid subsequently, we have an accounting standard called Events occurring after the balance sheet. What is that principle of events occurring after the balance

sheet. Events occurring after the balance sheet date means Event or a circumstance has happened subsequently in relation to an outstanding on 31st March, for example, the accounting standard itself take this example. If I have an outstanding 100 Rupees from a customer on 31st March. He goes insolvent on 1st of June 24 and I signed my account on 5th of June 2024. Do I need to make a provision on 31st March? Answer is yes. I need to make a provision because that subsequent event is in relation to an outstanding amount on 31st March. But suppose there is a fire on 2nd April 24. And my entire inventory is destroyed. Do I go and make a provision on 31st March? Answer is no because on 2nd April when the fire took place, it has nothing to do on 31st March and therefore events occurring after the balance sheet date does not apply to a fire situation. I may have to go and disclose in my board report. I may include in my note to the accounts, everything but can I just go and make a provision in the financial statement? Answer is no, it does not reflect true and fair view. Now if I apply this principle to a situation of MSME and I sold goods on 20th of March. I made a payment beyond a period prescribed under section 15 of the MSME Act, and therefore the question is whether you are applying section 43B to such a situation. Institute of Chartered Accountants had issued an implementation guide on the revision in the Tax Audit Report.

And in that Guide they have given an example in which they have taken a view that yes, it is required to be disallowed in year one and it would be allowed in year 2 on the payment basis. The other argument which group rightly pointed out is that if I don't disallow in year one, then this amount will never get disallowed in any year because anyway, in the subsequent year I will get a deduction on payment billing. I don't disallow in year 1 because it has not become due on 31st March 2024. Answer is right that it will not give disallowed in any of the year, ultimately I will get a deduction in year 1. My personal view that "Sum payable" and some group referred to a service tax law, there is an accounting terminology, but if you go to a principles of law on what is "Sum payable", my personal view would be "accrued and due" if it is not due on 31st March, then there is no question of application of the sum payable to an MSME or that is small and micro. I actually got an opinion from a senior counsel for a large client because the amount involved was huge.

So. I actually got that opinion few days back from a senior counsel to take a view that payable would only show a situation where amount is accrued and due. If it is accrued but not due then I would not disallow in year 1 because ultimately I would have gone and

filed my return on 1st of April I would not know when would I make the payment. So, the resultant non disallowance in any of the year cannot take away the legal position that if it is not due I am not required to disallow. I am not required to do any disallowance as far as those amounts which are not due on 31st March 24, I know the again a market practice, the professional practice and The institute view which are against my personal view. But as I said, large industries have started taking this view and that is why for large client I actually took a senior counsel due and senior counsel is also in agreement that this amount should not be subjected to disallowance under 43B.

Reply to Q.No. 2

Let me take a last case study on 28(4) in a waiver of a loan where some debate happened between working capital loan, 41(1) and 28(4). Supreme Court in Mahindra and Mahindra took a view that 28(4) would apply only if it is other than cash or in kind.

That law got amended with 1st April 23 to say whether in kind, whether in partly in kind, partly cash. Sec 41(1), again Supreme Court in Mahindra and Mahindra said I have not claimed deduction in the past and therefore if there was no claim made in the earlier

years, there is no question of remission of a liability. Now there are 3 questions associated with. Do I make a distinction between a working capital Vs a Term Loan? Prior to Mahindra and Mahindra, you had different high courts taking a different view. Delhi, Madras, Bombay took contrary view to each other. Some judgment say not taxable at all. Some say working capital taxable. Term Loan not taxable. Now, what was the logic of working capital Taxable. You have a Supreme Court judgment 222 ITR at TVS Sundaram Iyer, where Supreme Court took a view and what are the facts in that in TVS Sundaram Ayyar, which is manufacturing the 2 Wheelers and 4 Wheelers, there was a distributor security deposit which was written back to P&L account. Because there were no distributors continue relationship and therefore it was written back to profit and loss account. The question was that TVS argued that I have never claimed this as a deduction in the past. Where is the question of 41(1).

The Supreme Court made a distinction between a trading liability versus a non trading liability. And Supreme Court said that distributors deposit, which is directly linked to your business and therefore it is nothing but a trading liability. A Write back of a trading liability would get taxable under 41(1) or Section 28 basic

principles of law. And therefore the trading liability was taxed under 28 read with 41(1). Can I extend the same principle to a working capital loan? I would believe answer is no. A borrowing for a working capital purpose is not my trading liability. It is. It is used for my trading purpose but it is not my trading liability. And therefore, based on Supreme Court judgment, I would make believe that there is no distinction between a working capital loan and a term loan. Whatever I take a view or you take a view on, one would apply to both the situations. Post Mahindra and Mahindra and post amendment to section 24. Would a write back of a loan be taxable in the Sec 28(4). 41(1), we said, not taxable. I again my personal view, it cannot be taxable. The reasons are 2. Number one. The Gujarat HC in Chetan Chemicals 267 ITR 541 takes a view under 28(4). That amount becomes taxable under 28(4) only and only if if I am in the business of lending and borrowing money. In my case I am not in the business of lending and borrowing money and therefore Section 28(4) should not apply the write back of a loan under 28(4) should not create an issue, even post amendment. Somebody can always there is a right question to say that if I am an NBFC, my business is lending and borrowing money can Chetan chemicals continue to apply? The answer would be no, because I am actually in business of lending money or borrowing money and

therefore Chetan chemical principle should not apply. For a non NBFC company the Chetan chemical principal who continue to apply. But then what is the second position? The second proposition is that a write back of a loan is not a benefit or a perquisite arising in the course of business. A bank or a company, say for example all this question becomes relevant for all IBC companies. All IBC company would write back loans to their profit and loss account, and therefore the question would be that whether all these companies would be now subject to 28(4) again, my personal view, it is neither a benefit. It is neither a Perquisite and it cannot be taxable under 28(4). The government intention was never to take this money, but yes, because of the language of the law, somebody can always argue that this extra under 28(4). But again, I would believe write back of a loan should not create the issue of the benefit or perquisite.

The last question is above the interest liability? Interest Liability would be governed by Section 43B. So if I write back a particular amount, principle would governed by 28(4) interest would get governed by 43B, But if it is a unpaid suppliers which I write back, then I would have to pay tax under 41(1). I don't have an option. In a slightly incidental issue on a MAT about write back of a loan. I know that after 115BAA, the MAT provisions are almost become

irrelevant. But whether a write back of a loan would be subject to MAT provisions. Because I will have to root through profit on this account, I cannot directly transfer to a capital reserve. That is what the accounting standard, that is what the Institute say, which is right, anyway. Again, there are 2 strong different views or in opposite view. The Supreme Court in Apollo Tyre says you go by books of accounts. What is studied there, which is as per accounting standards don't disturb books of accounts. And therefore pay tax. But you have subsection 5 and subsection 6 of Sec 115JB to say subject to other provisions of this Act will apply and therefore certain tribunals having started taking a view that if a particular credit is not an income at all by virtue of Section 4 then that write back cannot be even subject to MAT and therefore you have a Jindal judgment of a Bombay tribunal which takes a view that income, which is exempt from tax, cannot be subject to MAT provisions also. It is not an income within the meaning of Section 4 and therefore you should not pay tax. You can't have a dichotomy between for the definition of income for the purpose of MAT versus a normal tax. If it is not taxable under normal tax, you cannot be subject to a MAT provisions also, but all matters are pending before Bombay High Court, Supreme Court. Lets, see what after 20 years, what Supreme Court does as far as these provisions are concerned.

Reply to Q.No. 3

Domain name.

One of the group rightly referred to our Go-Daddy judgment of Delhi. I agree completely that judgment is almost on the same facts. Let me explain the principles and let me take the domain name versus standard service as a principle.

After 2012, when the definition of royalty was amended by inserting explanation 4,5 and 6. Expression 4 was in relation to a computer. Explanation 5 was in relation to a control over the property and explanation 6 was in relation to downlinking uplinking of a data basically to overcome Asianet satellite judgment of a Delhi HC. We are concerned with Explanation 5. When a company registers a particular domain name, What is it doing? He invites application for me. Registers my name. And pass on this information to the domain holder. It is more of an intermediatory facilitating the domain registration. Is neither transferring a knowledge. Is neither transferring an experience. Is neither transferring any data to me. It's a pure pure registration activity. In that circumstances, can somebody say that he has a control over the domain? What? Why is that control is relevant?

If you read the definition of royalty under 9(1)(vi)-IVA. That includes use or payment for use of scientific industrial equipment. So if I make a payment for a scientific industrial equipment in our Layman's language it is a rent but for law purpose it is a Royalty. What department is trying to argue is that when I make payment towards a domain name which is onto a computer platform or a cloud or a server, that server is under the control of the payer and therefore it becomes a royalty because Go-Daddy judgment was not in relation to a payer, it was in relation to a recipient of the domain registration charges.

And he filed the return that, though, TDS has been deducted this income is not subject to tax in India. It was a reverse case. It was not 201 proceedings, it was 115A proceedings that is income is not taxable in India. And therefore I would believe domain name registrations is a pure registration activity without any use or use of any technical knowledge experience, a scientific industrial equipment and therefore what the Delhi Tribunal took a view, it's more logical.

The same principle would hold good for a web hosting charges or a domain name hosting charges, or developing of a website. A developing of a website I will take slightly different view but here

a standard service argument would become relevant, and one of the group rightly referred a judgment of a Kotak securities of a Supreme Court, and let me explain what Supreme Court said in Kotak securities, which is very, very relevant. Kotak was paying an online lease charges to the Stock Exchange for trading on the securities. The question was whether Kotak should have deducted TDS under royalty definition or under FTS definition. The Bombay High Court said it is nothing but a fee for technical services and therefore you should have deducted the TDS. The Kotak challenged before the Supreme Court. And Supreme Court made a very fine distinction of what is fees for technical service. Supreme Court said if I provide you a service which is tailor made to your requirement it a fees for technical services. But if I provide a standard service which any person in the Earth can access that for a standard charges then it is not a fee for technical services. It is a facility which I am giving to the recipient. So Supreme Court made a distinction between a facility versus a service. If it is a tailor made service as a chartered accountant, I give a service of auditing services to my client. A tax advisory services advising which is tailor made to his requirement. And therefore it is a services which are rendered. But let us take an example of a mobile phone. I make payment to Vodafone Bharati or BSNL. Should I be deducting TDS or not.

Answer is No. Only reason is that it is a facility which is provided to me and the classic example of good judgment of a Madras HC is Skycell Communication 251 ITR. It is a fantastic judgment on what is facility even 20 years before the Supreme Court judgment of Kotak Security. Electricity. I buy electricity for my house and for my business. Do I need to deduct TDS on electricity payment now it is all privatised and therefore it is all make payment to a private company. The answer is no because it is a facility given to me and it is not a service given to me. Similar to mobile, similar to electricity similar to your air tickets. What I am doing is a facility versus a service. And therefore the same principle if I apply to a domain name or a web hosting, it is a facility given to me which is standard. Our tools are available on the portal I use develop and use, answer is no. But. If I specifically go to a 3rd party to say, please help me to develop Dhinal Shah and Associates web portal design specifically to my requirement. Then it would become an FTS, not a royalty. Royalty cannot come. It is a fee for technical service. It is similar to I go to SAP, go to Oracle and say help me to develop a software or ERP only to meet my requirement then what I am making a payment is for a technical services to SAP. But if I buy a module from their website which is standard, what I am buying is and, which now Supreme Court has used the terminology on

copyrighted article versus a copyright the principle. So, the same principle that a facility and a service has to make made a distinction.

Reply to Q.No. 4

The next question number 4 was in diamond grading certificates and right now debating and fighting. One of the group also referred a one judgment of Diamond services. But Diamond servicing was in relation to a royalty. The department uses FTS for the purpose of this grading of a diamond, which normally I sent to GIA, which is Geological Institute of Diamond, which is situated in US, Thailand and everywhere and one observation of a Godaddy judgment which is very critical and interesting is, in some Treaties you have a make available concept. And if I apply make available concept then also go out but one line of the Delhi Tribunal which is very interesting it says, Make Available principle presupposes that there is a transfer of a knowledge or an experience of a reasonable, enduring nature. Now that I have seen for the first time these wordings you know, Make Available. It has to be reasonable and you're in nature now enduring is like Capital versus revenue and therefore what I understand from this line is that if it is a one time then even that may not suffice I make. But if it is a reasonable long term duration that somebody is imparting training to me, I am able to use for a

reasonable long term period, then I should be able to use these for the purpose of this

Reply to Q.No. 5

Government opines that if a company is enjoying a tax deduction of a particular expense, then why should that not be taxable in the events of the recipient. That's the underlying premise on 194R.

Prior to 1st April 23 the language of 194R was like different. The Supreme Cout held that in the 28(4) the income, which is other than in the shape of a money, is only taxable. So let's give a simple example. That I have a chartered accountant. Instead of charging fees from a client, client sponsor a trip for me in Maldives. And client expends 5,00,000 rupees for my Maldives trip. I don't charge fees from the client. The first question, whether client gets a deduction, client would say yes, it is a business expense. I will sponsor my chartered accountant and therefore I should get deduction. The question is, is it taxable in my hands? Under earlier law also, these Rs 5 Lakhs will be taxable. It is nothing but perquisites or a benefit arising in the course of business or profession, and therefore ideally, I should have paid taxes. Or for example you have a TVS Ad which says that if you buy a TVS scooty I will give

a gold coin. Nobody would pay tax on the gold coin, but the TVS would claim the deduction as of business promotion or a sales promotion, or a sales incentive expense for the Gold coin. But I would never pay tax. I would never pass an accounting entry the promoter, director, dealer would take that Coin to home and use for a personal purpose. And the 3rd was about the pharmaceutical samples and pharmaceutical doctors treats which they were promoting to prescribed drugs. So, in pharma industry, it is a practice historically that the doctors, because you want your drugs to be prescribed by doctor, you try to incentivate doctor by taking them to foreign countries, taking them to different parts of the country for a pleasure trip and even to extent that there are certain machines at the doctors hospital would also be purchased by a pharma company, put it into the hospital and after some years it will be transferred to the doctor or returned to the Pharma Company. So, the government realised that Government losing tax. On one hand companies are getting deduction. On the other hand, the doctors in the case of the pharma company and the dealers or the recipient of this gold coins are not paying taxes. And for therefore, they wanted to monitor and control these expenses and therefore the amended section 28(4) after Mahindra to say that whether in cash or in kind or partly in cash partly in kind. There are some language issue initially and therefore

they amended in the subsequent budget from retrospective effect similar to section 194R and then you have an explanation to 194R similar to 28(4). So that's a basic premise on which 28(4) was amended and 194R was introduced. Now if I apply these principles to 7 different situations. 2 or 3 basic principles of 28(4) versus 194R would emerge

1. Your sales expense versus a sales promotion expense. These are 2 different things. If I want to promote my products, I incur certain expenses. To actually sell my product, I promote certain expenses and lets take an advertisement expenses. I incur advertisement expenses to promote my brand, promote my product, promote my company. The question is, is it a benefit or perquisite in the hands of the recipient because 194R is applicable only if it is a benefit or a perquisite in the hands of the recipient and not in the hands of the payer or the company.

2. If I incur an advertisement expense, if I incur a display-charges on my retail store. Or for example, you have an ice cream parlour like in Gujarat. You have a Hammond, Amul Vadilal. They give you that counters at the stockist or the dealers place that is basically to promote my branch, my expense, to promote myself. It is for my benefit and not for his benefit. In that case 194R would not apply.

3. But if it is for his benefit, then the question of applicability of 194R arises. So that's why first principle that it is whose benefit? It is for my benefit or it is for the recipient benefit. That's our first question. The second question is that you offer certain incentives, certain discounts, certain rebates, certain other things to different dealers, stockists, customers over a period of time. Are you giving in general to everybody compared to a select class of people? So, if I say that if you buy 1000 PCs, I will give you 2%. If you buy 2000 PCs, I will give you 3%. If you buy 3000. PCs, I will give you 4%. Then and if you go to the question number 7 on CBDT Circular no 12, it says sales discount cash discount rebates are, for clarification purpose, it will not be taxable and to avoid any practical difficulty. So, per se circular says it is taxable but then say since it is ultimately to reduce my sales price. And for accounting, I know that under Ind-AS it has to be netted off from the sales into financial statement that I would believe its more of a presentation. Rather than accounting principle because ultimately I debit sales incentive in my account but for presentation purpose, I net-it off from my sales in the profit and loss account. Therefore, the question is that am I giving a sales discount to everybody or am I giving a sales discount to certain class because in a target based

incentive I will not give the incentive discount in the invoice itself. I will give it a relevant point of time as and when he achieves the target, and therefore, the only question is that can I extend the circular number of circular number 12 analogy of question number 7? I can extend this analogy even to a target-based incentive and is it not a benefit or a perquisite? Again, the question is, if I come back to the first argument. That when I tell him that you sell 1000 PCs or 2000 PCs or 3000 PCs. Is it again for my benefit or it is for his benefit if he sells more, he gets higher discount, but ultimately it increases and promotes myself and therefore again the question would be that whether can I take the benefit of a circular number 12 of question number 7. That I would not deduct a TDS.

4. Groups are divided. Even personally speaking. I have my own reservation to question number 7. If I strictly go by the objective of the benefit of perquisite under 28(4) read with section 194R. My personal view is that if it is a pure target based incentive to a select class of dealers or a select class of stock. Then one question would arise that whether 194 R would apply or not. **MY PERSONAL VIEW IT SHOULD APPLY BECAUSE** it is not in general that I am reducing from. Take for example, if

you take a paint industry. Asian paints. There was standard practice of giving 40% discount in the invoice itself. Personally speaking, question number 7 or the response should not apply. But at the same time, I know the market practice and the dealers, stockists are hesitant to allow me to deduct TDS, which is always as high as 10%, but profitability itself will not be 10%. And therefore there are practical difficulties in taking certain positions and therefore one may take the shelter of response to question number 7, that any sales discount, cash discount or a similar discounts or rebates should not subject to 194R.

5. Cash discount, I would believe it's a pure and simple answer. It's a pure financing cost, so cash discount should not apply. Even cash discount for Ind AS purpose is not netted off from the face because it is a finance cost. It is only the trade discount sales, discount incentives which are target based are netted off from the sales. The cash discount is never netted off from the sales because it is a pure financing cost rather than a sales promotion or a sales incentive.

6. 2 relevant questions on bad dates versus waiver a loan. Nobody is even ready to give an opinion. I was giving an opinion to some large German company and GT was an auditor and GT

took a view that I will qualify. I will qualify tax audit report if you don't deduct TDS and the 194R on the back debts.

7. So, what is benefit and perquisites? Let's understand the principles. Benefit is something I extend to you in the form of money or in kind for doing some act. If I don't perform or act at all, there is a question of extending to a benefit and let me take a simple example. A group leader performed that role of leading the group. Collecting the views and sharing with the speaker and for which they were entitled for the momento. And therefore they acted in a particular way and for which they got a momento. In a bad debt, there is no act by either party that I extend a benefit to somebody that you don't pay me the amount. I have sold the goods to somebody for 400. He is not able to pay me ₹ 50 and therefore ultimately I write off that amount. When I write off I am not extending any benefit of an act by which he gets a benefit of ₹ 50. And therefore my personal view that bad debts cannot be subject to 28(4) interpretation of a benefit or a perquisite or a 194R at all on principles. There is no Act of doing anything by which I am entitled for something. There is no question of any benefit. There is no question of any perquisites. Arguments. The good money after bad money? Yes, somebody says about impossibility of performance somebody

said about the principles that ultimately under 36(1)(ii) and under the provisions of Sec 28, when I get a deduction, it cannot be a benefit or perquisite. Let me also slightly different context which I have seen people sometimes commit mistakes. There is a difference between a short recovery versus a bad debts. When I sell goods worth ₹ 100 he does not pay me ₹ 25 because he finds difficulty in my quality in my delivery, in my payment terms, and he has 10 problems with my supply. And then ultimately after 2 years, I write off that amount, that is not bad debts. That's a pure short recovery of my amount out of my supply. Bad debts would arrive only in a situation where somebody else is in the financial difficulty. Or for example company goes to IBC. And ultimately, the plan is approved by the NCLT and it does not pay me that amount because of the financial crunch or a financial difficulty and therefore normally when I sell good to a government, even if government pays me after 10 years, I cannot say that it is a bad debt because I cannot expect government to be an insolvent for the purpose of law. And therefore, amount receivable from a government would always be good. It could be a doubtful it could be a doubtful of recovery all these questions would arise, but ultimately when I write off its a short recovery and not bad

debts. And therefore, if I make the first step that it is a bad debts for a short recovery, I first go out of 194R or the 28(4) principal and therefore my personal view is that bad debts can never arise as a perquisite or a benefit as it is actually I have lost the money. I have not voluntarily decided that I will give you a discount of 50. You will pay not me the amount. I am extending the benefit to you and therefore you don't pay me that amount and therefore my personal view, I would not believe that the bad debts would raise any benefit or perquisite within Sec 194R. It's completely illogical and I don't think any Judiciary will uphold any such argument of the department. Same issue on waiver of a loan. Interestingly, the government says in the second circular that if the loan is waived by the bank or an NBFC, they can't incur additional cost of TDS, because if I am not recovering ₹ 50, how do I go and pay 10% TDS. Again, I would believe that same principle should get extended to even a non-bank or a non NBFC. Again, the same principle that when I am writing back the loan because he is not able to pay me, ultimately it is nothing but a pure business transaction. There is no question of extending any benefit or perquisite to somebody. I am not giving a benefit to him, please don't pay me this amount because I want to write back. I don't

think that could be an argument and therefore again same principle, 194R should not apply on principles, irrespective to the circular. But this is what I would believe that waiver of a loan again should not apply on 194R.

8. Pharma sample. There are 23 related issues on a pharma. When I am a pharma company and when I manufacture 1000 pieces. Say for example of a paracetamol tablet. I get 10 tablets. And I give it to the doctor on a sample basis. So, from an accounting perspective, what do I do? I do not pass any separate accounting entry for that. It is included in my consumption for manufacturing of that 1,000 quantity and which includes 10 quantity which is a sample. Second, when I give that paracetamol to a doctor, as per Indian Medical Council guidelines and the Drug Control Act, it is always said “not for sale but is only for sample purpose” and I cannot go and sell this in the market. Such a sale a violation of a Drug Control Act. 3rd, Can a doctor go and sell in the market and recover money? Officially answer is no. He may recover 1 10 from somebody, but that is not legal under Drug Control Act it is only for a sample purpose to test the validity of that tablet, or a paracetamol that can I prescribe to my patients. Now, again,

going by the first principle of 194R, when a pharma company gives his samples to a doctor, is it for his benefit or it is for my benefit? It is for my benefit that I want to give my 10 tablets to him a paracetamol tablet or a cardiological tablet or diabetic tablet so that doctor understands that tablet. Doctor understands the comparability between the 2 different tablets manufactured by multiple pharma companies and then he decides that whether do I prescribe this or whether do I prescribe the other tablets? It is for whose benefit. It is for my benefit that I am giving a sample. For example, any product if I want to buy in a quantity would you not take a sample? You would always take a sample. And then we said that no, I would prefer this product compared to this product. And therefore again conceptual and my personal view is Pharma samples should not be subject to 194R at all. It is for my benefit, not for the other benefit. I must admit that certain pharma companies have started deducting TDS under 194R and there are multiple complications from this. The first complication. What accounting entry will I pass because if Sundar is a doctor, and if I give him 10 tablets, the circular says you take the value, which is similarly sold to a 3rd party. Suppose that is sold for ₹ 10 so 100 is the value. I will deduct 10% on ₹ 100 he would get a

TDS credit only and only he passes an entry for income in his financial statement. Otherwise Section 199 says that if I have not shown income I would not get a TDS credit. So I pass accounting entry of ₹ 100 of samples and then by writing it off, because I can't officially sell it. So my PML impact is 0/- will show income and I will write off these 100 as distributed to so and so. But there is no marketability of that product if there is no marketability. But I will ultimately write off to P&L account, you know, so my impact on the doctors profit and loss account is zero, zero income. But I will get a credit of the ₹ 10 TDS. In the pharma company I have to show sales. Whether for a GST purpose, Whether it is a deemed consideration. And I understand from the pharma companies that they have started paying even a GST because ultimately they believe that GST is not a loss. If I pay GST, somebody will get a credit. But in this case doctors are not subject to GST. The medical services are exempt and therefore it will be a pure, pure loss of the GST. And therefore, whether it is a deemed consideration or not, that is a matter of debate. Some group leaders are of the view that since there is no consideration, the GST should not apply. The only question is that if the circular says that the 3rd party market value should replaced for the purpose of valuation, then

would that amount be subject to GST on a deemed consideration of supply portion and therefore that is one question. But as I told you, some pharma companies have started complying this law, but conceptually my personal view no 194R as far as this is concerned.

9. And the last issue is on the mobile phone to a director. This was an interesting issue for me. Independent director is neither an employee and therefore any mobile phone or any gadget given to an independent director is not subject to perquisite under section 15 because he is not an employee. He is not getting a benefit rising out of business or profession. And therefore Section 28 should not apply. And if I take a view that it is not arising out of business or profession 194R also would not apply. Then the only residuary section is section 56. Because if I pay sitting fees to an independent director, it is subject to 194J and not 192 because there is a specific provision on sitting fees payable to Independent director. Under section 56 can I say that the independent director receiving a mobile is nothing but a perquisite and therefore it is taxable. Coincidentally, if you see section 56, there is no similar principle under 56, similar to Section 28 or similar to section 15/16/17, and therefore

theoretical speaking actually it is not taxable under any other provisions of the law, neither it is subject to TDS, neither it is subject to any other compliances and the corporate or at the company would actually get a deduction. The only larger question somebody would raise will I actually get a deductions under 37(1) because it is for the business or it is not for? Business. Giving a mobile phone to a dial independent director would always argue that it incidental to my business, it is only an exclusively for the purpose of business, and therefore I should get a deduction under 37(1). One issue which one of the group rightly raised? And which is a principles of law, that Circular everywhere says that you should evaluate that whether have you passed on benefit of purpose it to other person. You don't see what happens in his hands. Whether he pays tax, whether he does not pay tax, whether he pays in a particular section or any other section you have. Only see from my perspective, you don't have to see from other perspective.

10. Now we had an old judgment of a Supreme Court in Elle Lilly, which was in relation to 195 versus 192. A part of the salary was paid outside India and part of the salary was paid in India and the argument of the taxpayer was that the amount of salary

which is paid outside India is not taxable in India under section 5 & 6 and therefore that amount of salary should not be subject to TDS because Section 192 says income received or income deemed to accrue or arise in India Section 9(1)(ii). The Supreme Court said that Section 4 is a charging section. Once there is an income, you have to discharge your tax liability under Sub section 2 by way of an Advance Tax, by way of a TDS, by way of TCS etc. And therefore 192 or entire chapter XVII-B is an administrative provision and therefore you have to actually see that whether our income is taxable under Sec 4 read with relevant provisions of section 15,28 or 45 or section 56 and then you apply an administrative provision of chapter XVII-B 194R does fall into chapter XVII-B and therefore I would also believe that one will have to look at whether it is an income in the end of the recipient or not. If it is not income, in the hands of the recipient, then the question of TDS should not arise under 194R.

Reply to Q.No. 6

Let me go to a slightly different issue on 56(2)(x). And I'm aware 56(2)(viib) has been limited in the last. Sec 56(2)(x) the group was 100% about the Khoday Distilleries judgment and the Gujarat court judgment on Jigar Jaswanth Lal. But let me give you a two minutes,

in the interest of time, a Summary. The question is that if I issue a right share at value as per Rule 11UA is ₹ 100. But I issue right share to everybody that are at discount say for example at 20 rupees. Does 56(2)(x) 10 apply? And now go based on Gujarat High Court followed accordingly Supreme Court to see that the transfer would include only after shares comes into existence. The right allotment does not create a transfer and therefore the right shares at a discount should not create 56(2)(x). The larger equation which is sometimes in practice we face, Issue shares to all the 5 shareholders at a discount of 20/-. But out of 5, 2 do not subscribe. And then, I renounce that 2 shareholders who did not subscribe to other shareholders. And therefore the post right issue, the shareholding pattern changed for. Initially it was 20-20-20-20-20. Since 2 did not subscribe, their 20% got diluted to 10. And therefore now I have 25-25-25-12.5-12.5. So, the question is that am I giving a benefit to somebody at the cost of somebody and therefore 56(2)(x) should apply? Gujarat High Court confirmed the tribunal judgment. In the tribunal Say that if a 3rd party has renounced the shares in favour of a shareholder, then to that, an extent, it is a benefit and 56(2)(x) will apply. If it is a renunciation by relative, again section 56(2)(x) exempts a relative and therefore to that an extent would not apply.

Let me go step further beyond Gujarat High Court. In my same example of 5 shareholders holding 20-20-20-20-20. I formally do not renounce a share in favour of a 3rd party. But in companies that what happens under section 62 of the companies? That when I offer share from the right basis to all the shareholders, I give them a time to subscribe. And my terms of right issue will say that if everybody does not subscribe. Then, the board will have a right to offer those shares to the other shareholders. So it is not that he renouncing my favor. It is the Board who offer the balance share to the other shareholders and the other shareholders subscribe additional shares by virtue of that right and there is no formal renouncement by X Shareholder in favour of a Y shareholder In a Jigar jashwanth lal, it was a formal renouncement by X to y, where the tribunal said you pay tax under 56(2)(x), Gujarat HC confirmed. But if I take a view slightly ahead of you. My personal view. That in a rights scenario, if the company offers those balanced shares to the other shareholders because the 1 or 2 shareholders did not agree to subscribe at a discount then 56(2)(x) also should not apply, but 2 caveats. This cannot be a more of a tax planning. I wanted to remove 2 shareholders from the company and therefore I made a substantial right issue so that that 20% stake is reduced to 2%. And then ultimately, I transferred 2% at a lesser capital and therefore, I have

a disproportionate shareholding in the company compared to Pre-Right issue. And therefore, if I am able to justify bonafides that it was a genuine right issue, do not have an intention to remove those true shareholders. If you have ultimately the company who offered those shares to existing shareholders because 2 did not subscribe, I would believe it's a arguable case that 56(2)(x) should not apply because I am not trying to pass on the benefit, but I am only trying to do. I wanted to raise [1] 100 the other shareholders did not subscribe. There was no malafide intention to pass on the benefit to other 3 shareholders. These 2 shareholder continues with the reduced state. And therefore was no malafide tax planning avenue to review to shareholders or to give a benefit to others free shareholders. So, I would still believe that the spirit of 56(2)(x) would still hold good to say I am not passing out the benefit on 3rd party and therefore there should be no tax. There was no such situation under Jigar Jaswant Lal because there was actually a renouncement of a share by a 3rd party in favour of existing shareholder.

Reply to Q.No. 7

When the transfer pricing provisions are introduced in 2001, the government issued a circular number 14 of 2001. Circular number 14 of 2001, read with section 92, subsection 3, provided that the

intention of the transfer pricing is shifting of profits from one jurisdiction to another jurisdiction and the transfer pricing provisions should not result in lowering the income of the Indian entity or increasing the losses and that is reflected in section 92 subsection 3. This circular and this language of subcircular number 14 of 2001, read with section 92, subsection 3, the market language is Base Erosion Theory. What is Base Erosion Theory? Base Erosion Theory is that India is a sovereign state. The tax base should not get eroded. So India should not lose taxes as far as this principle is concerned. So, the question is that if I borrow money from a German bank under ECB, the market rate of interest, say for example, is 7%, but since I am into initial phase of setting up, I need money, I decide not to pay interest at all. If I don't pay interest, I am not claiming deduction. If I am not claiming deduction, then I am not paying taxes. Therefore, the question is that if I am not trying to reduce my taxes by paying interest, would a Base Erosion Theory apply?

Logically, I am not paying interest. If I am not paying interest, there is no question of loss of tax to the government. Therefore, Base Erosion Theory should apply. There should be no transfer pricing adjustment.

But what happens to the foreign companies? Section 9(1)(v) on the interest definition read with the treaty would normally provide that interest would be taxable in the country in which the borrowings are utilised for the purpose of business. Therefore, the foreign companies also subject to tax in India by virtue of section 9(1)(v) read with the treaty article. Now, if hypothetically, on a 100 rupee borrowing, I would have paid 7% interest, since income is chargeable to tax, I would have done a withholding tax.

If I would have done a withholding tax as per treaty of 10%, compared to a 20% under the domestic tax, the government of India would have collected the taxes of 10% or 20% by the German company. Therefore, to that extent, the government of India would have earned taxes of 10% or 20% on that 7 rupee interest, which is 70 paisa or 1 rupee 40 paisa. This is a loss to the government of India.

This was argued before a Calcutta special bench judgment of Instrumentation Corporation, which is recently followed by Ahmedabad Bench in Shell BV, saying that the Base-Erosion principle enshrined in circular 14 of 2001, read with section 92(3), cannot apply to a foreign company. Second, Just because the Indian entity is in losses in year 1, I cannot presume that I will get a set of

losses in the future years. Therefore, you apply the Bayes-Erosion principle.

The third, which is far-reaching, which in my respectful submission, Instrumentation Corporation did not correctly interpret it. They said it is an instruction by the CDBT. It is not an order direction by the CBDT under section 119. Therefore, that circular should not apply. Based on that, Instrumentation Corporation's special bench said the foreign company would be chargeable on an arm's length basis of that 7% interest, even if the Indian company does not claim a deduction. The Shell BV case was when I was with EY. I was handling Shell BV. Now, it is handled by somebody else. The Shell BV case was, I was paying a marketing fee. I was into losses. And the question was, I paid 10 rupees. The department said, no, you should have paid 20 because the foreign company should be taxable at 20.

The department said, you are in losses, we are least concerned. What will happen in future, we are least concerned. Year 1, the arm's length price is 20.

The foreign company must pay tax on 20. And therefore, this is what is called a base erosion principle, which is enshrined in Circular

14, read with 92, subsection 3. Again, I tell you, this is a live case about what, when you go back to German client and say you can't do this, it becomes very difficult for them because they will have to comply with their law in Germany about the transfer pricing. But from an India perspective, the government is of the view that no, the foreign company must earn the arm's length interest, which is required irrespective of what the Indian company does, whether irrespective of whether the Indian company incurs a loss or not.

Reply to Q.No. 8

Black Money Act was introduced from 2016, and initially they gave amnesty scheme and then now they have started implementing the law. The government gets substantial information from the foreign governments under exchange of information article of the Double Taxation Avoidance Agreements (DTAAs). And therefore many times when notices comes, it's a very pointed question. That we understand that you have an HSBC Bank account in Singapore account number so and so in the name of so and so with a balance of so and so please confirm. Are you having an account in this bank and it's a very pointed specific question. Or if you have read before 2 months, there is an article about exchange of information from Dubai. All people who have purchased property in Dubai real estate all have received notices. About the Black Money Act that did you

disclose in your tax return or not? Or in the initial I said about ESOPs vested rights. The certain employees of a large MLC companies have started receiving notices that did you disclose in your ESOPs in the income tax return? So there are 2 principles. One is about source of money and second is about disclosure. Now this case study, it's a live case study. I am actually getting right away. In the question was a gentleman with a 70 years old. Earned huge income outside India migrated to India during assessment year 2005-06 and is a resident of India since 2005-06. He has bank account outside India. He has a pension income outside India. He has a property in Singapore. He earns rental income outside India. And he enjoys that money whenever he goes outside India. Sometimes he uses credit card, sometimes withdraw money, sometimes issues, cheques, everything. One fine, good morning, he says. Mr Shah, I hope these assets are this income. Is there any necessity to even tell to the Income Tax Department in India. I said why not? He said no, under the Double Taxation Avoidance agreements, incomes are exempt. Why should I tell to the Indian Government? And this is practically everywhere happens. Now if you go by section 3 or 4 or 5 of the Black Money Act, it says in the year in which the assessing officer comes to know about your foreign aspects, he can issue a notice. And suppose I received a notice on 25th of January 2025. That you

have a property, you have a bank account, you have these assets outside India. The law says that you apply the exchange rate on first of April 2024, convert the value into Indian rupees and pay 30% tax on the same amount. Then Section 4 says if you have already disclosed on the Sec 139(1) or Sec 139(4) or Sec 139(5) then there is no need that will be excluded. And then Section 4 also says that if you have already paid taxes under Income Tax Act, there will be no separate levy of tax under BMA or vice versa. So, there is no duplicate taxation. Then you have section 40 on the interest payment and then you have section 41/42/43 on the penalties. The first question is that suppose if I want to voluntarily disclose without income tax department being aware because I have not received notice today and Income Tax Department does not know that I have a bank account outside India. They do not know whether I have a property outside India. What do I do? On certain discussion with other lawyers professionals, I have advised that lets go and voluntarily file the application. Because legally I can't file even a return because he has not issued a notice. So, I have filed a formal letter in the month of December that I have this asset since assessment year 2005-06 till today. This is a value as on 1st April 24 and this amount I am voluntarily paying so I explain everything I prepare a chart, included a challan of payment of tax of 30% and

deposited with the government. And therefore, the first question is by mere filing this letter, can somebody say that assessing officer did not know this? It was my voluntary act that I file my Return. My personal view, the moment I file my letter, it would get dealt in the knowledge of the tax officer and therefore you would know now that I have these many assets and income and therefore I will go by Section 3 principles. Then I will apply the exchange rate of first April 2024. The second question. As per 139(8A) of the updated Return now which you can file for last 2 years. Get a return form, so I revise my return in for 2024. I file an updated return for 2023 and 2022. And upto 2021, I pay 30% flat tax. From assessment year 2005-06, still assessment at 2021-22 I will file into the BMA Act. For 2022-23 and 2023-24. I will file an updated return and for 2024-25 I will go and file my revised return because I had a time up to December 24 to file my revised return. So for 3 years. I will go under Income Tax Act for the other initial years of 14/15 years I will go under the BMA act. One group rightly that Section 4 does not refer to updated return. It does not include 139(8A). It only says 139(1), 139(4) and 139(5) which my personal view. Theoretically answer is yes, but its more seems to be a drafting error on a corresponding change made in the BMA act, and therefore if I file an updated Return I would take an argument that even subsection 2 says once you have filed taxes under Income Tax Act, you can't be subject to tax under

BMA on a duplication of tax or the double taxation. The next question is would I pay interest or not? Section 40 says that you have to pay interest under 234A as if you would have paid for failing to file the return. You pay 234B and 234C interest as if you would have paid an advanced tax at the relevant point of time. And therefore you must pay interest under 234 A/B/C by virtue of Section 40 of the BMA. Now the principle is the law says, if during financial year 24-25 the Assessing officer came to know because I filed the letter, my liability gets quantified only on 1st April 24. I have to apply exchange rate on first April 24. How would a law expect me to pay an interest for the period 2005-06 to 2021-22. Because it was not possible for me because on 1st April 24 say for example the exchange rate was ₹ 77. On 1st April 23, the exchange rate was ₹ 70. In financial year 2015-16, the exchange rate was ₹ 60. Would I pay interest on 60? Would I pay interest on 77? Law says you apply exchange rate of 77 only. How do I go and calculate interest on 60 for the Assessment Year 2015-16? In spirit, I would believe interest should be payable because I did not pay tax in time. I was holding the government taxes. In spirit, Yes, I should pay the interest. But as the law stands and as the law provides that you take exchange rate of first April 24th of the year in which, the assessing officer comes to know, it is impracticable to apply an interest % because the computation mechanism will fail. How do I

compute the interest for the period prior to the year in which the assessing officer comes to know? And therefore again, going by the goodwill principle of Supreme Court in BC Srinivas Shetty that the Computation provisions and the charging provision must come together. You have a charging provision of levy of interest under section 40, but computation mechanism failed and therefore you cannot apply section 40 in practice to compute the interest. Because how would you expect me to pay in advance tax if I would have paid advance tax of assessment of 2015-16, there was no question of application of BMA. If I would have disclosed my assets in the foreign in the tax return, there was no question of application of BMA. The BMA application is because I failed to disclose income because I failed to disclose assets and therefore you have a BMA applicability and therefore again, I would personally believe that it is a good case to argue that interest is not leviable under section 40. It is not tested by any judiciary today, but yes, again based on a senior Council view, I too a challenge to say that I will not pay interest subject to what happens tomorrow before the Tribunal or before the High Court, but it is a larger issue. Personally speaking, it will be extremely difficult for the government to levy in interest on a legal position, something which liability has quantified in year 1 and in year 7 How do I pay interest for year 1 to 6? For the previous year where I did not know what amount of liability was

there and therefore personally speaking, Section 40 should not apply. Penalties yes, lump sum 10,00,000 subject to the last budget raise that limit up to 20,00,000 and there it was 15,00,000 that up to 15,00,000 or 20,00,000, if you miss out there is no question of any penalty but if it is more than that. Again, the question is that if I voluntarily go to a department and then claim that it was my claim coming to the department voluntarily. And therefore again on a bonafide principle, it was, there is no intention to hide anything and therefore arguably the penalty should not apply at some litigation stage. But again, that's a matter of debate department will levy at a lower stage. There are contrary judgments on the penalties by the same Bombay Tribunal.

Somebody says it is leviable. You have to read strictly. Somebody says you have to understand from an object and spirit of the law perspective. If it was a bonafide mistake then penalty should not be levied. We all know Supreme Court judgment on 271(1)(c) that mens rea should not apply as far as penalty is concerned but bonafide, non disclosure, I would personally believe that penalty should not be levied. The question is how do you demonstrate your bonafides. In my case, Since I have gone voluntarily paid taxes voluntarily, I should be able to demonstrate my Bonafides.

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