ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

RECENT DEVELOPMENTS IN DIRECT & INDIRECT TAX – FEBRUARY 2026

CONTENTS

DIRECT TAX - RECENT CASE LAWS

ITAT Bangalore[1]: Section 263 Revision Upheld Against Family Discretionary Trust

FACTS OF THE CASE

- The assessee is a private discretionary trust settled by an individual settlor out of natural love and affection for the beneficiaries.
- During the relevant assessment year, the trust received partnership interests and investments in unlisted shares aggregating to approximately INR 669 crore pursuant to a duly executed settlement deed. The trust filed its return of income declaring NIL income.
- The assessment was completed, without any modification to the returned income and without discussion on the taxability of the settled assets.
- Subsequently, the Principal Commissioner of Income-tax **(PCIT)**, upon examination of the assessment records, observed that the trust deed permitted addition of beneficiaries beyond the settlor's relatives. Accordingly, he formed a prima facie view that the trust did not fall within the exclusion carved out under the proviso to section 56(2)(x) of the Income-tax Act, 1961 **(the Act)**, and that the receipt of partnership interests/shares without consideration required examination. PCIT invoked section 263 and held that the assessment order was erroneous and prejudicial to the interests of the Revenue.

REVENUE'S STAND

- The Revenue contended that the Assessing Officer **(AO)** had failed to examine a core scrutiny issue, namely capital/investments and the taxability of property received without consideration.
- It was argued that section 56(2)(x) the Act taxes receipt of money or property without consideration, subject to limited exclusions. The exclusion for trusts applies only where the trust is created "solely for the benefit of relatives" of the individual. In the present case, trust deed empowered the trustee to add "any person or class of persons" as beneficiaries. Therefore, the trust was not exclusively for relatives and did not qualify for the statutory exclusion.
- In these circumstances, the non-speaking assessment order justified exercise of revision under section 263.

ASSESSEE'S STAND

- The assessee contended that the trust was intended to benefit only the settlor's relatives and that the enabling clause permitting addition of beneficiaries was never exercised. To remove ambiguity, the assessee executed a supplementary deed (post revision order under section 263 the Act) restricting beneficiaries strictly to relatives.
- It was further contended that the AO had examined the return and supporting documents, and that the PCIT was merely substituting his view; an order could not be termed erroneous solely because it lacked elaborate reasoning.

TRIBUNAL DECISION

- The Tribunal upheld the invocation of section 263 the Act and dismissed the assessee's appeal.
- It observed that the assessment order was cryptic and bereft of reasoning. The AO had neither made any enquiry on the substantial receipt of INR 669 crore nor any discussion or verification on the applicability of section 56(2)(x) of the Act.

[1] Buckeye Trust vs. PCIT, ITA No.1051/Bang/2024

- On perusal of the trust deed, the Tribunal noted that the beneficiaries were not restricted solely to relatives, as the trustee was empowered to add any person or class of persons or charity. Accordingly, the exclusion under the proviso to section 56(2)(x) of the Act was not automatically available and required examination.
- The subsequent supplementary deed did not cure the absence of enquiry at the assessment stage. The Tribunal reiterated that an AO is both an adjudicator and an investigator and cannot mechanically accept claims without verification. An order passed without necessary enquiry constitutes an error prejudicial to the interests of the Revenue, warranting revision under section 263 of the Act.
- The Tribunal clarified that it had not expressed any view on the merits of taxability and that the assessee would be at liberty to substantiate its claim in fresh proceedings.

ELP Comments

The ruling underscores that the conditions for exemption under section 56(2)(x) of the Act especially in case of private family trusts, must be strictly construed. Any clause in the Trust deed permitting addition of non-relatives may jeopardize such exemption, even if unexercised—making careful drafting of trust deeds critical. This is particularly more relevant for High and Ultra High networth Individuals planning high-value trust settlements. Water-tight documentation and meticulous drafting of trust deeds in such cases become very important which captures the objective proactive scrutiny management to mitigate revision risk.

ITAT Pune[2]: Goodwill on Intra-Group Amalgamation Disallowed; Buy-Back Tax Upheld

FACTS OF THE CASE

- The assessee company is a wholly owned subsidiary of Aptara Inc., USA.
- Maximize Learning Private Limited **(MLPL)** a fellow subsidiary (i.e. wholly owned subsidiary of Aptara Inc., USA), amalgamated with assessee company under a High Court-approved scheme of amalgamation in financial year (FY) 2014-15.
- Consideration payable to MLPL's shareholders on account of merger was INR 6.07 crores which was adjusting against MLPL's share capital of INR 10 lakh, the balance amount of Rs. 5.97 crores was recorded by the assessee as goodwill on which depreciation was claimed. Assessing officer **(AO)** disallowed the claim of the depreciation.
- Subsequently, the assessee undertook a buy-back of shares from Aptara Inc., USA and reported negative distributed income, contending that the "amount received" on issue should reflect the entire business value of MLPL taken over. The AO restricted "amount received" to the face value of shares, computed distributed income, and levied additional tax under section 115QA of the Act.

REVENUE'S STAND

- Revenue contended that the goodwill was a colourable device, as the amalgamation occurred between commonly controlled entities without any real change in ownership or demonstrable business benefit. It was argued that the arrangement facilitated fund movement in connection with the buy-back.
- For section 115QA of the Act purposes, the Department maintained that only the actual amount received on issue of shares (i.e., face value) could be reduced, and that the assessee's valuation-based approach was hypothetical and impermissible.

ASSESSEE'S STAND

[2] Aptara Technologies Private Limited vs. PCIT, ITA No.1051/Bang/2024

- The assessee submitted that the goodwill represented excess consideration over net assets under a court-approved scheme and was validly recognised in accordance with AS-14 and settled jurisprudence permitting depreciation on goodwill.
- In respect of the buy-back, it contended that the "amount received" should be determined based on the per-share business value, resulting in no distributed income and consequently no liability under section 115QA of the Act.

TRIBUNAL'S DECISION

- The Tribunal distinguished goodwill arising in third-party amalgamations from intra-group mergers under common control. In the present case, it noted absence of independent consideration, no change in ownership, and no material increase in business or profitability post-merger. The goodwill was held to be artificially created, and depreciation was disallowed.
- On buy-back taxation, the Tribunal held that section 115QA of the Act requires computation of distributed income as buy-back consideration reduced by the amount actually received on issue of shares.
- Since the goodwill itself was artificial, the "amount received" could not include inflated or notional values of shares against recording of goodwill. The amount received was confined to face value of such shares. Accordingly, the additions by the assesseing officer was upheld, and the buy-back was viewed as a colourable device to avoid dividend distribution tax.

ELP Comments

While the depreciation of goodwill is not eligible for deduction under the Act any more, this judgment clarifies that under section 115QA of the Act, "amount received" on issue of shares is likely to be restricted to 'actual' consideration received by the Company and not basis the fair value of shares not backed with underlying assets base. Multinational groups undertaking internal restructurings and buy-backs should ensure demonstrable commercial substance, arm's length support and robust valuation documentation to withstand scrutiny on grounds of colourable device.

ITAT Ahmedabad[3]: Foreign Salary Credited to NRE Account Not Taxable in India

FACTS OF THE CASE

- The assessee, a non-resident individual, earned salary income from employment with a company in Seychelles for services rendered outside India. The salary was credited to his NRE account in India.
- The Assessing Officer **(AO)**, pursuant to directions of the Dispute Resolution Panel **(DRP)**, treated the salary as taxable in India under section 5(2)(a) on the ground that it was "received" in India.

REVENUE'S STAND

- The Revenue contended that since the salary was credited to the assessee's NRE account in India, it constituted income "received in India" under section 5(2)(a). Accordingly, the salary was taxable in India in the hands of the non-resident.

ASSESSEE'S STAND

[3]Kaushal Ganpatbhai Patel vs. ITO, I.T.A. No. 434/Ahd/2025

- The assessee submitted that the salary accrued and was earned for services rendered outside India and was therefore received outside India. The subsequent remittance to the NRE account in India was merely an application of income already received abroad and did not amount to receipt in India.

TRIBUNAL DECISION

- The Tribunal held that "receipt" of income under section 5(2)(a) of the Act refers to the first occasion when the assessee obtains control over the income, whether real or constructive. In the present case, the salary accrued and was constructively received outside India at the place of employment.
- The subsequent credit to the NRE account was only a remittance of income already received and did not trigger taxability in India. Accordingly, the salary addition was deleted. The consequential additions relating to foreign currency investment and bank deposits were also directed to be deleted.

ELP Comments

The ruling reiterates that for non-residents, taxability under section 5(2)(a) of the Act hinges on the first point of receipt of income. Mere remittance of foreign-earned salary to an NRE account in India does not amount to receipt in India. The decision provides clarity for globally mobile employees on structuring salary remittances and reinforces the distinction between "receipt of income" and subsequent application of funds.

Bombay High Court[4] Directs Grant of Long-Pending FBT Refunds; ITBA Glitches No Defence

FACTS OF THE CASE

- Lintas India Pvt. Ltd. **(the Petitioner)** filed Fringe Benefit Tax **(FBT)** returns for AYs 2006-07 to 2009-10 claiming refunds aggregating to substantial amounts.
- The refunds were either not issued or were converted into demands due to denial of advance tax credit.
- Despite filing rectification applications and multiple follow-ups over several years, no effective action was taken by the Department. The Petitioner therefore invoked writ jurisdiction seeking directions for grant of refunds along with statutory interest.

REVENUE'S STAND

- The Department contended that the delay was due to technical constraints in the ITBA system. It was submitted that online rectification for the relevant years was unavailable and that uploading manual rectification orders in respect of FBT returns resulted in system errors, preventing finalization of refund processing.

COURT'S RULING

- The Court noted that the material facts and the Petitioner's entitlement to refunds, including wrongful denial of advance tax credit, were not disputed. The only explanation offered was internal technical glitches in the Department's system.
- The Court held that systemic or technical deficiencies cannot justify indefinite denial of legitimate refunds. The Department, being the creator of the system, cannot rely on its own infrastructural limitations to defeat statutory rights. It is incumbent upon the authorities to adopt alternative means, including manual processing, to grant lawful relief.

[4] Lintas India Pvt. Ltd. (BHC) WRIT PETITION (L) NO. 40356 OF 2025

- Accordingly, the Court directed the Department to process the pending rectification applications, grant the refunds along with interest under section 244A of the Act read with section 115WL of the Act, rectify the erroneous demands and complete the exercise within eight weeks. The matter was listed for compliance.

ELP Comments

This ruling reinforces that administrative or IT system constraints cannot override statutory refund rights. The decision is a significant reminder that the Revenue must ensure functional mechanisms for giving effect to lawful entitlements and cannot defer compliance on account of internal technical limitations.

INDIRECT TAX - RECENT CASE LAWS

Bombay HC (Nagpur Bench) reiterates that Section 74 SCNs cannot be clubbed across multiple financial years

FACTS OF THE CASE

- ICAD School of Learning Pvt. Ltd. (**Petitioner**) challenged a show cause notice (**SCN**) issued under Section 74 of the CGST Act covering the period April 2018 to March 2023 in a consolidated manner.
- The Department alleged short payment of GST on composite supply of commercial training services along with hostel facility and wrongful availment of ITC.
- The primary ground of challenge was that the SCN impermissibly clubbed multiple financial years (**FYs**) into a single proceeding under Section 74.
- The Petitioner relied on earlier Division Bench rulings in Milroc Good Earth Developers[5] and Rite Water Solutions (India) Ltd.[6], wherein the Bombay HC had held that consolidation of different tax periods/FYs in a single SCN is not permissible under the scheme of the CGST Act.
- Revenue relied on the contrary view of the Delhi HC in Mathur Polymers[7], contending that consolidated SCNs are permissible, particularly in cases involving alleged fraudulent ITC.

RULING OF BOMBAY HC

- The HC quashed the SCN and consequential order, holding that there is no scope for consolidating various FYs/tax periods while issuing SCNs under Section 74.
- The Court emphasized that:
  - GST liability is tied to each FY, with annual returns forming the basis of assessment;
  - Sections 73(10) and 74(10) prescribe limitation year-wise from the due date of annual return for the relevant FY;
  - Clubbing different FYs collapses separate limitation periods and statutory safeguards;
  - "Tax period" under Section 2(106) and assessment machinery (Sections 39, 44, 37, 50, etc.) operate FY-wise.
- The Court held that dismissal of SLP against Mathur Polymers in limine does not result in merger and does not override subsequent Bombay HC judgments.
- Hence, Authorities in Maharashtra are bound by the subsequent Bombay HC rulings, which prevail over the Delhi HC view.

ELP Comments

This decision reinforces the structural integrity of the GST framework, which is fundamentally year-specific in assessment and limitation design. The Bombay HC has now consistently upheld this view in Milroc Good Earth Developers, Rite Water Solutions (India) Ltd., and the present ruling, while distinguishing Mathur Polymers, the Court

[5] TS-871-HC(BOM)-2025-GST

[6] Writ Petition No. 466/2025 decided on 28/11/2025

[7] TS-746-HC(DEL)-2025-GST

clarified that the dismissal of the SLP against the Delhi HC's decision does not confer binding finality, as the dismissal was in limine and without a reasoned adjudication on merits.

From a practical standpoint, taxpayers receiving consolidated SCNs covering multiple FYs under Sections 73/74 may consider challenging jurisdiction at the threshold and in cases where re-issuance is permitted, fresh SCNs must independently satisfy year-wise limitation requirements.

Bombay HC (Nagpur Bench) holds assignment of long-term industrial leasehold rights not taxable as 'supply' under Section 7 of CGST Act

FACTS OF THE CASE

- Aerocom Cushions Private Limited and Vidarbha Beverages (**Petitioner**), were industrial units holding 95-year leasehold rights in plots allotted by MIDC.
- In both matters, the Petitioners assigned their leasehold rights (along with factory buildings constructed thereon) to third-party assignees for consideration, after obtaining prior approval from MIDC and paying prescribed transfer/additional premium.
- The Department issued SCNs under Section 74 of the CGST Act alleging suppression and proposing demand of GST, interest and penalty on the ground that such assignment amounted to "supply of services" under Section 7(1) read with Schedule II.
- Revenue sought to classify the transactions either as lease/letting of building under Clause 2(b) of Schedule II or under "other miscellaneous services" taxable at 18% under Notification No. 11/2017-CT (Rate), notwithstanding that the transactions resulted in complete extinguishment of the Petitioners' leasehold rights and were not in the nature of sub-leases.
- The Petitioners challenged the SCNs contending that the transactions constituted transfer of benefits arising out of immovable property through registered deeds of assignment, and therefore fell outside the scope of "supply" under Section 7 of the CGST Act.

RULING OF BOMBAY HC

- The HC quashed the SCNs, holding that assignment of long-term leasehold rights amounts to transfer of benefits arising out of immovable property, and not a taxable supply under Section 7.
- The Court followed the Gujarat HC ruling in Gujarat Chamber of Commerce and Industry[8], holding that such assignment:
  - Is not a lease or sub-lease;
  - Results in extinguishment of the assignor's rights;
  - Constitutes transfer of immovable property benefits;
  - Falls outside the scope of "supply" under Section 7 read with Schedule II.
- The Court emphasized that Schedule II merely classifies a transaction as supply of goods or services once it qualifies as a "supply" under Section 7 and cannot independently expand the charging provision.
- It further observed that the essential requirement of the transaction being "in the course or furtherance of business" was not satisfied in cases involving one-time assignment of leasehold ownership rights.
- The Court also rejected classification under "other miscellaneous services" (Notification No. 11/2017-CT (Rate)), holding that such residuary entry cannot be stretched to cover transfer of immovable property interests.

[8] 2025 (1) TMI 516 (Guj.)

- Relying on Godavari Devi Saraf[9], it held that the Gujarat HC's view is binding on authorities within the State in absence of any contrary ruling by the jurisdictional High Court or the Supreme Court.

ELP Comments

These twin rulings significantly advance jurisprudence on the taxability of assignment of leasehold rights under GST. The Bombay HC has now unequivocally endorsed the Gujarat HC's reasoning that such assignments are in the nature of transfer of immovable property benefits and do not constitute "supply".

Importantly, the Court distinguished between (i) GST on lease premium charged by the development corporation (which may be exempt under Entry 41 of Notification 12/2017-CT (Rate)), and (ii) assignment by the lessee to a third party, which it held to be outside GST altogether. The element of "in the course or furtherance of business" was also found absent, further weakening Revenue's case.

The issue is currently under examination by the Supreme Court in Life Science Chemicals, and earlier, the Bombay HC (Principal Bench) in Panacea Biotec Limited had remanded a similar matter for reconsideration in light of the Gujarat HC ruling. These recent Nagpur Bench rulings now create stronger judicial consensus in favour of non-taxability.

Supreme Court clarifies limits of residuary classification: "Sharbat Rooh Afza" held to be a fruit drink under UPVAT

FACTS OF THE CASE

- M/s Hamdard (Wakf) Laboratories[10] **(Appellant)** manufactures "Sharbat Rooh Afza", a non-alcoholic beverage concentrate containing approximately 10% fruit juice (pineapple and orange), along with invert sugar syrup and herbal distillates.
- During the period 01 January 2008 to 31 March 2012, the Appellant classified the product under Entry 103 of Schedule II (Part A) of the UPVAT Act, 2008, treating it as a "fruit drink" taxable at 4%.
- The Revenue authorities rejected this classification and taxed the product at 12.5% under the residuary entry (Schedule V), holding that:
  - The product was a "sharbat" and not a "fruit drink";
  - Under food regulatory norms, it was described as a "non-fruit syrup" since it contained less than 25% fruit juice.
- The Appellate Authority, Tribunal and Allahabad High Court upheld the Revenue's view, primarily relying on regulatory classification and the absence of the word "sharbat" in Entry 103.
- Aggrieved, the Appellant approached the Supreme Court.

RULING OF SUPREME COURT

The Supreme Court allowed the appeals and held that "Sharbat Rooh Afza" is classifiable as a "fruit drink" under Entry 103, taxable at 4%. The Court's reasoning is significant on multiple doctrinal aspects:

- ***Common parlance test prevails over regulatory description:*** The Court reiterated that in the absence of a statutory definition under the taxing statute, classification must be based on commercial and popular understanding. Regulatory definitions under food laws operate in a different domain and cannot automatically determine fiscal classification.

[9] 1977 (9) TMI 24 - BOMBAY HC

[10] TS-37-SC-2026-VAT

- ***Essential character test applied to composite products:*** Though invert sugar syrup constituted approximately 80% of the product, the Court held that quantitative predominance is not decisive. The fruit component imparted the product its essential beverage character. Sugar merely functioned as a carrier and preservative medium. Thus, classification must follow the component that gives the product its distinctive identity, not the one that constitutes the highest percentage by volume.
- ***Inclusive entries must be construed broadly:*** Entry 103 used the expression "including fruit drink and fruit juice." The Court emphasized that inclusive entries expand scope and cannot be read narrowly by importing conditions (such as minimum fruit content) not expressly prescribed by the legislature.
- ***Burden of proof lies on the revenue:*** The Supreme Court strongly reiterated that classification affects chargeability; therefore, the burden lies on the Revenue, especially when seeking to classify goods under a residuary entry. In the absence of trade evidence, consumer surveys, or market material, residuary classification was unsustainable.
- ***Residuary entry as a last resort:*** Relying on settled precedents, the Court cautioned against consigning goods to the "orphanage of the residuary clause" when a specific entry reasonably covers the product.
- ***Persuasive value of uniform treatment in other states:*** While VAT being a State subject, the Court noted that the same product was taxed as a fruit drink in several other States under similarly worded entries. Though not binding, such uniformity supported the plausibility of the assessee's classification.
- ***Where two plausible views exist, the one favourable to the assessee must prevail:*** The Supreme Court observed that classification under Entry 103 was at least a reasonably plausible view, particularly in light of uniform treatment in other States under similarly worded entries. Relying upon *Alladi Venkateswarlu v. State of Andhra Pradesh*[11], the Court reiterated that where two interpretations of a taxing entry are reasonably possible, the interpretation favourable to the assessee must be preferred.

ELP Comments

This ruling is jurisprudentially important far beyond the classification of a single beverage product.

First, the judgment draws a clear boundary between regulatory compliance regimes and fiscal classification principles. Businesses operating in highly regulated sectors often face attempts by tax authorities to borrow definitions from regulatory frameworks to justify higher tax incidence. The Supreme Court has clarified that unless expressly incorporated, such definitions are not determinative for tax purposes.

Second, the Court's application of the essential character test in a VAT context is noteworthy. The ruling confirms that fiscal classification must focus on the component that imparts commercial identity rather than numerical predominance. This reasoning may have persuasive value under GST in disputes involving composite food preparations, nutraceuticals, flavoured beverages, and processed products.

Third, the emphatic restatement that the burden of classification lies on the Revenue—particularly in residuary classification—strengthens the defensive position of taxpayers in classification litigation.

Fourth, the decision reflects judicial reluctance to permit expansive use of residuary entries merely because a product does not perfectly align with a narrow interpretation of a specific entry. This principle continues to hold relevance under GST, where classification disputes frequently turn on fine distinctions between competing headings.

[11] (1978) 2 SCC 552

GSTAT, New Delhi reiterates: Reconciliation mismatch does not justify Section 74 invocation; Appellate authority cannot convert proceedings into Section 73

FACTS OF THE CASE

- M/s Sterling & Wilson Pvt. Ltd.[12] **(Appellant)** was issued proceedings under Section 74 of the CGST Act, 2017 for FY 2018-19 on account of alleged short payment of tax arising from differences between GSTR-1 and GSTR-3B.
- The discrepancies primarily related to:
  - Timing differences in reporting of advances;
  - Adjustments through debit and credit notes;
  - Variations arising during the early implementation phase of GST.
- The Proper Officer confirmed demand of tax along with interest and penalty under Section 74, alleging suppression.
- Before the First Appellate Authority, the Appellant contended that the issue was purely reconciliatory and did not involve fraud or wilful misstatement.
- The First Appellate Authority observed absence of clear ingredients of Section 74; however, instead of remanding the matter, it effectively sustained the demand by treating it under Section 73.
- The matter was carried to the GST Appellate Tribunal **(GSTAT)**.

RULING OF GSTAT, NEW DELHI

The Tribunal addressed two interconnected issues — improper invocation of Section 74 and limits of appellate jurisdiction.

- ***Section 74 cannot be invoked merely on reconciliation mismatch:*** The Tribunal emphasized that Section 74 is a penal provision and can be invoked only when fraud, wilful misstatement, or suppression of facts with intent to evade tax is established. Mere differences between GSTR-1 and GSTR-3B, without independent evidence of deliberate intent, do not satisfy the statutory threshold of Section 74. Reconciliation discrepancies, timing differences, or return reporting inconsistencies cannot automatically be equated with suppression.

  Invocation of Section 74 requires specific findings supported by material evidence — not merely arithmetical comparison of returns.

- ***Appellate authority cannot convert Section 74 demand into Section 73 demand:*** The Tribunal held that if the appellate authority concludes that ingredients of Section 74 are absent, it cannot directly substitute proceedings under Section 73. Determination under Section 73 must originate from the Proper Officer following due adjudicatory procedure and conversion at the appellate stage amounts to exceeding statutory jurisdiction.

  Accordingly, the matter was remanded for fresh consideration under Section 73.

ELP Comments

This decision is particularly significant in the context of widespread reconciliation-based GST demands.

The Tribunal has drawn a clear jurisprudential line between:

- *Short payment due to reconciliatory differences, and*

[12] 2026 (2) TMI 726 - GSTAT NEW DELHI

- *Short payment involving deliberate suppression or fraud.*

Section 74 is not a catch-all provision for every mismatch between GSTR-1 and GSTR-3B. It is a jurisdictional provision that requires proof of intent. Mechanical invocation merely because tax appears payable undermines the statutory scheme.

The ruling also prevents a procedural shortcut whereby appellate authorities downgrade Section 74 proceedings to Section 73. Such substitution would dilute the structural separation between adjudication and appellate review. If the foundation of Section 74 collapses, the order must be annulled. Any fresh proceedings under Section 73 must originate from the Proper Officer and be tested independently on limitation and merits.

Given the volume of GST demands based purely on return mismatches — especially in the formative years of GST — this judgment is likely to be relied upon extensively in defending Section 74 proceedings lacking demonstrable mens rea.

Tripura HC reads down Section 16(2)(c) and holds that ITC cannot be denied to bona fide purchaser for supplier's failure to remit tax

FACTS OF THE CASE

- M/s Malaya Rub-Tech Industries[13] (**Petitioner**) a registered partnership firm, engaged in the business of rubber products, purchased input materials from a registered supplier during March 2018 to November 2018 and availed Input Tax Credit **(ITC)** on the basis of valid tax invoices. The inputs were used in the manufacture of taxable finished goods.
- A Show Cause Notice **(SCN)** was issued under Section 73 of the CGST Act alleging wrongful availment of ITC on the ground that the supplier had failed to deposit the tax with the Government. An order was passed confirming the demand and ITC was denied. Aggrieved, the Petitioner approached the Tripura High Court.

RULING OF TRIPURA HC

- The HC observed that neither the SCN nor the impugned order recorded any finding that the transaction between the Petitioner and the supplier was fraudulent, collusive, or lacking bona fides. Notably, proceedings were initiated under Section 73 (applicable to cases other than fraud or suppression). If there had been any allegations of fraud, wilful misstatement or suppression of facts, proceedings ought to have been initiated under Section 74.
- The HC placed reliance on its earlier Division Bench decision in M/s Sahil Enterprises[14], and reiterated that Section 16(2)(c) of the CGST Act must be read down to avoid arbitrariness under Article 14 of the Constitution. The HC held that a bona fide purchasing dealer cannot be penalized for the failure of the selling dealer to deposit tax collected from him. Imposing such a burden would require the purchaser to ensure compliance by the supplier, which is an obligation that is practically impossible to discharge.
- Accordingly, the High Court set aside the demand order and directed the Department to allow the ITC claimed by the Petitioner.

ELP Comments

This ruling reinforces the principle that a bona fide recipient cannot be penalised for the supplier's default. It brings significant relief, especially as tax authorities increasingly denying ITC just because the supplier has not paid tax, even when there is no fraud or wrongdoing involved.

[13] 2026 (2) TMI 654 - TRIPURA HIGH COURT

[14] 2026 (1) TMI 385 - TRIPURA HIGH COURT

The decision is in line with several HC rulings, including D.Y. Beathel Enterprises[15], K.V. Joshy[16], and National Plasto Moulding[17], which held that recovery should first be pursued against the defaulting supplier. A similar position existed in the pre-GST regime, where the Hon'ble Supreme Court in Shanti Kiran India Pvt. Ltd.[18] and the Hon'ble Delhi HC in Quest Merchandising India Pvt. Ltd[19], affirmed by the Supreme Court in Commissioner of Trade and Taxes v. Arise India Limited[20], affirming protection to bona fide purchasers.

Further, pursuant to the 27th GST Council Meeting, the Press Release dated 04.05.2018 clarified that there should be no automatic reversal of ITC in the hands of the buyer and that recovery should ordinarily be made from the supplier, except in exceptional circumstances.

However, divergent views continue to exist, with certain HCs including in Aastha Enterprises[21], M Trade Links[22], Shree Krishna Chemicals[23], Baby Marine Exports[24], have upheld denial of ITC under Section 16(2)(c) where the supplier fails to remit tax.

Until the issue is conclusively settled by the Hon'ble Supreme Court, conflicting precedents are likely to result in continued litigation and uncertainty. Mechanical denial of ITC in such cases risks imposing a double tax burden on bona fide purchasers, which undermines the core objective of the GST framework.

Tamil Nadu Authority for Advance Ruling ("AAR") held that ITC not admissible on construction of mall intended for leasing

FACTS OF THE CASE

- M/s Super Chips[25] (**Applicant**), engaged in the business of constructing commercial buildings and leasing them to various tenants. The Applicant discharges GST on the rental income earned from the leasing the commercial building. For the construction of the said building, the Applicant has procured various goods and services such as cement, sand, steel, paints, aluminium, wires, air conditioning plants, contractor services, architect fees etc.
- The advance ruling has been filed to sought clarity on the admissibility of the Input tax credit **(ITC)** on input and input services used for construction of mall intended to be let out on rent.
- The Applicant raised *inter alia* the following key arguments in support of ITC eligibility:
  - The mall qualifies as "plant" by applying the functionality test; therefore, ITC on goods or services used for its construction should be admissible.
  - The construction is not on the taxable person's "own account," and hence the restriction under Section 17(5)(d) of the CGST Act should not apply.

RULING OF TAMIL NADU AAR

The Tamil Nadu AAR ruled that ITC is not admissible on the goods and services used for construction of mall (immovable property) intended for letting out on rental basis. Key findings of the AAR include:

[15] TS-190-HC(MAD)-2021-GST
[16] 2025:KER:80543
[17] WP(C)/2863/2022
[18] TS-691-SC-2025-VAT
[19] TS-314-HC-2017(DEL)-VAT
[20] 2018 (1) TMI 555 – SC order
[21] 2023 (77) G.S.T.L. 372 (Pat.)
[22] 2024 (87) G.S.T.L. 4 (Ker.)
[23] (2025) 28 Centax 105 (M.P.)
[24] 2025 (102) G.S.T.L. 51 (Mad.)
[25] TS-1077-AAR(TN)-2025-GST

- Section 17(5)(d) of the CGST Act blocks ITC in respect of goods or services used for construction of an immovable property (other than plant and machinery) on one's own account, even if such goods or services are used in the course or furtherance of business.
- The term "plant and machinery" specifically excludes land, building, or civil structures. Since a mall qualifies as a building, it falls outside the ambit of plant and machinery.
- Section 17(5)(d) was amended vide Finance Act, 2025, substituting the phrase "plant or machinery" with "plant and machinery." Consequently, the Applicant's argument that the Mall independently qualifies as "plant" loses significance post-amendment.
- Section 17(5)(d) clearly blocks ITC where an immovable property is constructed "on own account," and accordingly, the Authority interpreted this restriction to apply even when the property is intended to be leased or rented out.

ELP Comments

The Hon'ble Supreme Court in Safari Retreats[26] observed that construction may be regarded as being on a taxable person's "own account" where (i) it is made for his personal use and not for service or (ii) it is to be used by the person constructing it as a setting in which business is carried out. The Court further indicated that construction cannot ordinarily be said to be on a taxable person's "own account" where the property is intended to be sold or given on lease or licence. However, the Hon'ble Supreme Court did not render a conclusive finding on this specific aspect.

Notably, the Tamil Nadu AAR in the present ruling has not examined this dimension in detail nor clarified why construction intended for leasing would nevertheless qualify as being on "one's own account."

Although the Tamil Nadu AAR has adopted a strict view, the interpretation of the expression "own account" continues to present an arguable position. Accordingly, this issue is likely to remain a subject of litigation, and a careful evaluation should be undertaken on a case-to-case basis.

Orissa HC on refund of double GST payments: Article 265 overrides Section 54 limitation

FACTS OF THE CASE

- Proceedings under Section 74 of the CGST Act were initiated against Rajendra Narayan Mohanty[27] (**Petitioner**) for FY 2019–20 based on scrutiny showing that TDS credits had been received in several months, but GSTR-3B returns disclosed NIL liability.
- In response, the Petitioner explained that he had discharged the differential tax liability (CGST and SGST) along with interest by utilising his electronic credit ledger through Form DRC-03 dated 08.02.2021, coinciding with filing of the annual return for FY 2019-20. However, the Petitioner inadvertently once again deposited Rs. 6,01,645 each under CGST and OGST via DRC-03 dated 18.09.2022 from his electronic cash ledger, thereby paying the same liability twice for the same period.
- Section 74 proceedings were dropped by order dated 08.11.2024, the authority recording that the Petitioner had already filed the annual return and paid all differential taxes and interest through DRC-03 and that such compliance was "genuine".
- On realising the double payment, the petitioner filed a refund application in Form RFD-01 on 23.08.2025 enclosing both DRC-03s and a cancelled cheque to facilitate re-credit/payment.

[26] Civil Appeal No. No. 2948 of 2023

[27] TS-95-HC(ORI)-2026-GST

- The department issued a SCN in RFD-08 alleging that the refund was filed beyond the limitation period of 2 years prescribed under Section 54(1) read with Explanation 2(h) ("in any other case, the date of payment of tax").
- The Order was passed rejecting the refund solely on limitation, even while the department expressly recorded that the same amount had been paid twice.

RULING OF ORISSA HC

- The Court recorded that the Petitioner had discharged the same tax liability for FY 2019–20 twice i.e., once via Credit Ledger and again via Cash Ledger, as admitted by the department themselves in the RFD-06 order.
- On the basis of the DRC-03 forms, refund application and order-sheet, the HC held that there was "unimpeachable evidence" of double payment and found the officer's remark of "no supporting documents attached" to be factually incorrect.
- The Court held that retention of one set of the tax amount was hit by Article 265, since keeping tax paid twice, after the liability had already been accepted as discharged in the Section 74 proceedings, amounted to collection without authority of law.
- Relying on Delhi Metro Rail Corporation[28], Comsol Energy[29], Binani Cement[30], Joshi Technology[31] and other such related decisions, the Court held that amounts paid under mistake / without authority of law are not governed by Section 54 CGST, but by Article 265 and general limitation principles.
- The Court expressly concluded that "the period stipulated for making application under Section 54 of the GST Act is not applicable in the nature of claim for refund made by the petitioner" and that in a case of tax deposited twice under mistaken notion, the matter "falls within the fold of Article 265… but not under Section 54"; therefore, rejection on the basis of Section 54(1) read with Explanation 2(h) was "inapplicable" and liable to be quashed.
- The Court rejected Revenue's attempt, at the hearing stage, to re-characterise the case under Explanation 2(d) to Section 54 ("refund consequent to judgment/order of appellate authority/tribunal/court"), holding that an order of the Joint Commissioner on a refund application is not such an appellate/ court order and that new reasons cannot be added later per Mohinder Singh Gill[32].
- On this reasoning, the writ petition was allowed, the RFD-06 order rejecting refund was quashed and the petitioner was permitted to file a fresh refund application within a fortnight. The department was directed to grant refund in light of the judgment and to communicate the decision within 7 days, failing which the amount would carry 6% p.a. interest from the date of the original refund application.

ELP Comments

This judgment clarifies that where tax is paid twice for the same liability due to a mistake, the second payment is not tax due under the Act but an amount collected without authority of law, thereby attracting Article 265 of the Constitution rather than the refund mechanism under Section 54 of the CGST Act. Once the Court found clear evidence of double payment and noted that Section 74 proceedings had already accepted the earlier discharge as valid, it held that retention of the second payment was unconstitutional and could not be defended on the basis of the two-year limitation under Section 54. Practically, this provides a strong ground to challenge refund rejections in duplicate-payment cases, especially where the department accepts that the original liability stood discharged.

[28] TS-503-HC(DEL)-2023-GST

[29] TS-1241-HC(GUJ)-2020-GST

[30] 2013 (288) ELT 193 (Guj)

[31] 2016 (339) ELT 21 (Guj)

[32] (1978) 1 SCC 405

Recently, the Karnataka High Court in case of Merck Life Science[33], held that the terms "may make application" under Section 54 indicate a directory, not mandatory, timeline. Legitimate refund claims cannot be denied merely because they are filed beyond two years. Similar views were also expressed by Jharkhand High Court in BLA Infrastructure Pvt. Ltd.[34] and Madras High Court in Lenovo India Pvt. Ltd.[35] Further, in M/s Gujarat State Police Housing Corporation Ltd.[36], the Gujarat HC allowed refund despite time-bar objections, emphasizing that unjust retention of funds violates constitutional principles.

Bombay HC quashes personal penalties u/s 122(1A) on Shemaroo's CFO/CEO/JMD – "Any person" under 122(1A) confined to taxable persons, no vicarious liability for employees and no retrospective penalty before 01.01.2021

FACTS OF THE CASE

- Petitioners[37] were the CFO, CEO and Joint Managing Director of M/s Shemaroo Entertainment Ltd. **(Shemaroo)**, all sued in their individual capacity. Further, they were not registered as taxable persons under GST in their personal names.
- Pursuant to a search under Section 67(2) in September 2023 on four firms (Uttam Movies, Mangal Entertainment, JDS Motion Pictures, JV Media Solutions), investigation was extended to Shemaroo; premises were searched, statements of petitioners were recorded, they were arrested under Section 132(1)(b)/(c) and subsequently bailed.
- Department alleged that Shemaroo had availed ineligible ITC of ~Rs. 70.25 crore and passed on ~Rs. 63.35 crore through fake invoices without actual supply (circular trading) for FY 2017-18 to 2021-22 and issued a SCN under Section 74 to Shemaroo. On the same date, separate SCNs were also issued to the Petitioners proposing personal penalty under Section 122(1A) for FY 2017-18 to 2021-22, mirroring the allegations against Shemaroo.
- Petitioners relied on Shantanu Sanjay Hundekari (Bombay HC[38], upheld by SC[39]) to contend that employees cannot be saddled with such penalty.
- After replies and personal hearing, the department passed an Order imposing penalty of Rs. 1,33,60,60,889 each on the three petitioners under Section 122(1A) CGST i.e., an amount equivalent to the combined alleged fake ITC availed and passed on by Shemaroo.
- Department's defence in writ was that Section 122(1A) is applicable to "any person" (read with Section 2(84) "person"), not just taxable persons, and that these senior officers controlled and managed the Company, were responsible for fake transactions and could thus be penalised. They also argued Section 122(1A) could apply since it existed on the date of SCN covering July 2017–March 2022.
- Petitioners challenged the Order under Article 226, arguing:
  - they are not "taxable persons" under Section 2(107);
  - Section 122(1A) is tethered to Section 122(1) which applies only to taxable persons;
  - no finding that they retained any benefit of the impugned transactions or that transactions were conducted at their instance;

[33] TS-939-HC(KAR)-2025-GST
[34] 2025 (2) TMI 352 – Jharkhand High Court
[35] (2023) SCC Online Mad 7810
[36] (2024) 1 TMI 1409
[37] TS-105-HC(BOM)-2026-GST
[38] 2024(89) G.S.T.L. 62 (Bom.)
[39] (2025)27 Centax 14 (S.C.)

- Section 122(1A) inserted *w.e.f.* 1.1.2021 cannot be retrospectively applied from 01.07.2017 to 31.12.2020 in view of Article 20(1); and
- Penalties of Rs. 133.60 crore imposed are grossly disproportionate.

RULING OF BOMBAY HC

- The Court held that Section 122(1) clearly operates *qua* a "taxable person" as defined in Section 2(107), i.e., one registered or liable to be registered u/s 22 or 24. Section 122(1A) expressly references clauses (i), (ii), (vii), (ix) of Section 122(1) and therefore cannot be read in isolation. It's opening words "any person" must be understood in the context of a taxable person to whom Section 122(1) applies.
- Section 122(1A) requires that: *(a)* the person retains the benefit of a transaction covered by clauses (i), (ii), (vii) or (ix) of Section 122(1); and *(b)* the transaction is conducted at that person's instance. The HC found no material or specific findings in the impugned order or in the department's reply to show that the Petitioners personally retained any benefit of the alleged fake ITC or that the transactions were conducted at their instance. Hence, the basic jurisdictional ingredients of 122(1A) were absent.
- Relying heavily on its earlier judgment in Shantanu Sanjay Hundekari **(Maersk case)**, upheld by the Supreme Court *(supra)*, the Court held that employees of a taxable person cannot be fastened with penalty under Section 122(1A) in the absence of material that they are taxable persons and have retained benefits of the impugned transactions. It reiterated that there is no principle of vicarious liability in Section 122 Act and it is "ill-conceivable" to read such vicarious liability into these provisions.
- Following Shantanu Hundekari *(supra)*, the Court held that "any person" in 122(1A) necessarily refers to a taxable person capable in law of retaining tax benefits of the specified transactions. Mere employment status (CFO/CEO/JMD) of Shemaroo does not convert the petitioners into taxable persons *qua* the company's GST affairs; there was no evidence of their independent taxable-person status in respect of the impugned supplies.
- Section 122(1A) was inserted by Finance Act 2020, effective 1.1.2021. The SCN and order covered July 2017–July 2023, but the provision was not on the statute for the period from 01.07.2017 to 31.12.2020. Applying Article 20(1), the Court held that no person can be subjected to a penalty under a law not in force at the time of the alleged acts. Hence, Section 122(1A) could not be applied retrospectively for 01.07.2017 to 31.12.2020, rendering the order unsustainable at least for that period.
- The Court rejected the argument of the department that, because "any person" is used in 122(1A) and "person" is broadly defined in Section 2(84), penalty can be imposed on any individual. It held that such reading ignores the structural tether to Section 122(1) and the taxable-person requirement. The Court also distinguished Mukesh Kumar Garg (Delhi HC)[40] on facts, noting that there the issue was fake-firm creation and ITC fraud with an appealable order and the Delhi HC was not dealing with the jurisdictional question under 122(1A) and vicarious liability as in Shantanu *(supra)* and the present case.
- The Court held that for want of basic jurisdictional requirements under Section 122(1A) and due to impermissible retrospective application, the SCNs and consequent Order imposing Rs. 133.60 crore penalty each on the petitioners are illegal and without jurisdiction. Accordingly, the writ petition was allowed.

[40] 2025 (5) TMI 922 – Delhi High Court

ELP Comments

This ruling materially fortifies the evolving limits on personal penalty exposure under Section 122(1A) of the CGST Act. The provision, by its plain text, fastens liability only upon a person who both retains the benefit of specified fraudulent transactions and at whose instance such transactions are carried out, thereby requiring a clear nexus of instigation and benefit rather than mere association.

Further, the invocation of Article 20(1) of the Constitution provides a substantive constitutional basis to contend that Section 122(1A), being penal in character, cannot be applied retrospectively. As the provision was not in force at the time of the alleged act or omission, its application to prior periods would amount to retrospective penalisation, which is impermissible in law. This constitutional safeguard assumes particular significance in ongoing proceedings where authorities seek to extend the reach of Section 122(1A) to transactions predating its insertion.

However, the Delhi HC in Bhupender Kumar[41] sustained a penalty of around Rs. 285 crore against a GST consultant where prima facie material indicated that he orchestrated and benefited from fraudulent ITC routed through numerous fictitious firms. Notably, on retrospectivity, the Court linked applicability to the date of issuance of the show cause notice. The SC has since stayed the Delhi HC ruling involving retrospective penalty proceedings under Section 122(1A) against a non-taxable person in an ITC fraud context, signalling that both the substantive reach of the provision and its temporal application are under active scrutiny.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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[41] TS-609-HC(DEL)-2025-GST

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