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Top 25 Rulings of the Year 2025

Reshaping India's Direct Tax Regime

The year 2025 witnessed several landmark rulings in the field of direct taxation, with courts and tribunals addressing complex issues spanning permanent establishment, treaty abuse, capital gains, trusts, penalties, exemptions, and procedural law.

From the Supreme Court's reaffirmation of substance over form in cross-border arrangements to Tribunal decisions clarifying the scope of exemptions, rebates, and deeming provisions, these rulings have significantly influenced tax positions adopted by taxpayers and the Revenue alike.

This article presents a curated rewind of 25 key direct tax rulings delivered in 2025 that shaped legal interpretation, resolved long-standing controversies, and provided crucial guidance on the application of the Income-tax Act, international tax treaties, and allied laws.

1. ‘Hyatt International’ Having Pervasive Control Over the Hotel’s Operations Had Fixed Place PE in India: SC

Hyatt International Southwest Asia Ltd. vs. Additional Director of Income-tax [2025] 176 taxmann.com 783 (SC)

Assessee-Hyatt International was engaged in rendering consultancy services in the hotel sector. It entered into two Strategic Oversight Services Agreements (SOSAs) with an Indian company regarding the hotels in Delhi and Mumbai. For the relevant assessment years, the Assessing Officer passed assessment orders taxing the hotel-related services rendered by the assessee on the ground that it has a Permanent Establishment (PE) in India in the form of a place of business under Article 5(1) of the DTAA.

The matter reached before the High Court. The High Court held that the assessee exercised pervasive and enforceable control over the hotel’s strategic, operational, and financial dimensions. The High Court held that the assessee’s role was not confined to high-level decision making but extended to substantive operational control and implementation.

The assessee’s ability to enforce compliance, oversee operations, and derive profit-linked fees from the hotel’s earnings demonstrates a clear and continuous commercial nexus and control with the hotel’s core functions. This nexus satisfies the conditions necessary for the constitution of a Fixed Place PE under Article 5(1) of the India-UAE DTAA.

Aggrieved by the order, the assessee preferred an appeal to the Supreme Court.

The Supreme Court held that the assessee exercised pervasive and enforceable control over the hotel’s strategic, operational, and financial dimensions. Specifically, the agreement vested the assessee with powers to appoint and supervise the General Manager and other key personnel, implement human resource and procurement policies, control pricing, branding, and marketing strategies, manage operational bank accounts, and assign personnel to the hotel without requiring the owner’s consent. These rights extend well beyond mere consultancy, indicating that the assessee was an active participant in the hotel’s core operational activities.

The actual role of the assessee was not just advisory but extended to various other administrative roles. The 20-year duration of the SOSA, coupled with the assessee’s continuous and functional presence, satisfied the tests of stability, productivity, and dependence. From the nature of functions carried out by the assessee, it cannot be said that they were performing merely “auxiliary” functions.

Rather, the functions performed by the assessee, through its staff operating from the hotel premises, were not just limited to setting up a pattern of activities for the hotel but were core and essential functions, clearly establishing their control over the day-to-day operations of the hotel. Therefore, the hotel premises clearly satisfy the criteria required to be classified as a “fixed place of business” or PE.

2. Supreme Court Stays HC's Ruling Allowing Tax Relief to Tiger Global

Authority for Advance Rulings (Income-tax) vs. Tiger Global International II Holdings [2025] 170 taxmann.com 706 (SC)

The Supreme Court has stayed the Delhi High Court ruling in the case of Tiger Global International II Holdings. The Apex Court held that issues raised by the Authority for Advance Rulings (Income-tax) in the petition require thorough consideration.

What was the Delhi High Court's ruling?

The Delhi High Court, in the case of *Tiger Global International III Holdings [2024] 165 taxmann.com 850 (Delhi),* overturned the Delhi Authority for Advance Ruling (AAR) decision that denied Tiger Global exemption on capital gains from the sale of its stake in Flipkart under the India-Mauritius Double Taxation Avoidance Agreement (DTAA).

The High Court ruled that Tiger Global's transaction was legitimate and not aimed at tax avoidance, allowing it to claim tax benefits under the treaty's 'grandfathering clause' for capital gains on shares acquired before April 1, 2017. The court rejected the AAR's view that Tiger Global was merely a "see-through entity" controlled by a US-based individual.

The High Court acknowledged Tiger Global's significant economic activities, compliance with the required thresholds for expenses and liabilities, and the legitimacy of its Tax Residency Certificate (TRC) as proof of its bona fide status in Mauritius. The court further held that treaty shopping is not inherently objectionable unless explicitly shown to be solely for tax evasion.

3. Non-Compete Fee Paid to Restrict Competition Held Allowable as Revenue Expenditure Under Section 37(1): Supreme Court

Sharp Business System vs. Commissioner of Income-tax [2025] 181 taxmann.com 657 (SC)

Assessee, a public limited company, was engaged in the business of software development, hardware sales, technical training and engineering services. It filed its return of income for the relevant assessment year, declaring a net loss. During the assessment proceedings, the Assessing Officer (AO) computed the assessee's total income and made several disallowances. One of the disallowances concerned the depreciation claim on the non-compete fee.

Aggrieved-assessee preferred an appeal to the CIT(A), where it contended that the non-compete fee was nothing but a license. Assessee could exclusively carry on the business of software development, training and export of technologies by restraining M/s. Pentamedia Graphics Limited is not allowed to carry out the same activities. Thus, the payment of the non-compete fee was held to be an intangible asset entitled to depreciation under Section 32(1)(ii).

The matter, after passing through the ITAT and the High Court, was carried in appeal before the Supreme Court

The Supreme Court ruled that non-compete fee is paid by one party to another to restrain the latter from competing with the payer in the same line of business. The restriction may be limited to a specified territory or otherwise; similarly, it can be for a specified period or otherwise. The purpose of a non-compete payment is to give the payer's business a head start. It can also be for the purpose of protecting the payer's business or enhancing its profitability by insulating it from competition.

Thus, the non-compete fee seeks only to protect or enhance the business's profitability, thereby facilitating its carrying on more efficiently and profitably. Such payment neither results in the creation of any new asset nor accretion to the profit-earning apparatus of the payer. The enduring advantage, if any, of restricting a competitor in business is not in the capital field.

Following the judicial trend, it can be safely inferred that the length of time over which the enduring advantage may enure to the payer is not determinative of the nature of expenditure. As long as the enduring advantage is not in the capital field, where the advantage merely facilitates carrying on the business more efficiently and profitably, leaving the fixed assets untouched, the payment made to secure such advantage would be an allowable business expenditure, irrespective of the period over which the advantage may accrue to the payer (assessee) by incurring such expenditure.

Thus, the Supreme Court held that a payment made by the assessee as a non-compete fee is an allowable revenue expenditure under Section 37(1) of the Act.

4. Section 44C Covers Head Office Expenses, Whether Common or Solely for Indian Branches: SC

Director of Income-tax (IT)-I, Mumbai vs. American Express Bank Ltd.
[2025] 181 taxmann.com 433 (SC)

The assessee, a non-resident banking company, filed its return of income for the relevant assessment year. While computing the income, the assessee claimed a deduction for expenses incurred at the head office directly related to the Indian branches.

The Assessing Officer (AO) contended that the expenses in question should be subject to the ceiling specified in Section 44C. The assessee claimed that the expenses in question could not have been classified as head office expenditure for the reason that Section 44C presupposes that at least a part of the expenditure is attributable to the business outside India. If this presumption does not hold, and the entire expenditure is incurred solely for the business in India, Section 44C would not apply.

The AO passed an assessment order limiting the deduction under Section 44C to 5% of the gross total income. The matter reached before the Supreme Court.

The Supreme Court held that to be brought within the ambit of Section 44C, two broad conditions must be satisfied:

- The assessee claiming the deduction must be a non-resident; and
- The expenditure in question must strictly fall within the definition of 'head office expenditure' as provided in the Explanation to the Section.

The Explanation prescribes a tripartite test to determine if an expense qualifies as 'head office expenditure':

- The expenditure was incurred outside India;
- The expenditure is in the nature of 'executive and general administration' expenses; and
- The said executive and general administration expenditure is of the specific kind enumerated in clauses (a), (b), or (c) respectively of the Explanation, or is of the kind prescribed under clause (d).

This means that even if such head office expenditure can be allowed as a deduction under Section 37(1), it would not be permitted if it exceeds the ceiling limit set under Section 44C. Section 44C of the Income Tax Act does not create a distinction between common and exclusive head office expenditure. It applies to 'head office expenditure' regardless of whether it is common expenditure or expenditure incurred exclusively for the Indian branches. The term 'attributable' in Clause (c) does not create a statutory distinction between 'common' and 'exclusive' expenditure.

Thus, the question of law is answered in favour of the Revenue, and it was held that Section 44C applies to 'head office expenditure' regardless of whether it is common expenditure or expenditure incurred exclusively for the Indian branches.

5. Reduction in Share Capital of Subsidiary and Subsequent Reduction in Shareholding Is 'Transfer' Under Section 2(47): SC

Jupiter Capital (P.) Ltd. vs Principal Commissioner of Income-tax [2025] 170 taxmann.com 305 (SC)

The assessee held shares in an Indian company. The company filed a petition before the High Court for a reduction of its share capital to set off the loss against the paid-up equity share capital. The High Court ordered for a reduction in the share capital of the company. The assessee's share was reduced proportionately, and the company paid an amount to the assessee as consideration. During the year, the assessee claimed a long-term capital loss accrued on the reduction in share capital from the sale of shares of such company.

However, the Assessing Officer (AO) contended that although the number of shares got reduced by virtue of reduction in share capital of the company, yet the face value of each share as well as shareholding pattern remained the same. Thus, reduction in shares of the subsidiary company did not result in the transfer of a capital asset as envisaged in section 2(47).

The matter reached before the Supreme Court.

The Supreme Court held that section 2(47) is an inclusive definition providing that relinquishment of an asset or extinguishment of any right therein amounts to a transfer of a capital asset. While the taxpayer continues to remain a shareholder of the company even with the reduction of share capital, it could not be accepted that there was no extinguishment of any part of his right as a shareholder qua the company.

The expression 'extinguishment of any right therein' is of wide import. It covers every possible transaction which results in the destruction, annihilation, extinction, termination, cessation or cancellation, by satisfaction or otherwise, of all or any of the bundle of rights, qualitative or quantitative, which the assessee has in a capital asset, whether such asset is corporeal or incorporeal.

In the instant case, the face value per share remained the same before the reduction of share capital and after the reduction of share capital. However, as the total number of shares were reduced.

Relying upon the decision in case of *Kartikeya V. Sarabhai v. Commissioner of Income Tax reported in (1997) 7 SCC 524,* it was held that reduction of right in a capital asset would amount to 'transfer' under section 2(47). Sale is only one of the modes of transfer envisaged by section 2(47). Relinquishment of any rights in it, which may not amount to sale, can also be considered as transfer and any profit or gain which arises from the transfer of such capital asset is taxable under section 45.

Also, a company under section 66 of the Companies Act, 2013 has a right to reduce the share capital, and one of the modes which could be adopted is to reduce the face value of the preference share. When as a result of the reducing of the face value of the share, the share capital is reduced, the right of the preference shareholder to the dividend or his share capital and the right to share in the distribution of the net assets upon liquidation is extinguished proportionately to the extent of reduction in the capital. Such a reduction of the right of the capital asset clearly amounts to a transfer within the meaning of section 2(47).

Thus, it was held that the reduction in share capital of the subsidiary company and subsequent proportionate reduction in the shareholding of the assessee would be squarely covered within the ambit of the expression 'sale, exchange or relinquishment of the asset' used in section 2(47).

6. Sale Deed Executed by a General Power of Attorney Holder After the Death of the Original Owner Was Invalid: SC

M. S. Ananthamurthy vs. J. Manjula [2025] 172 taxmann.com 7 (SC)

The suit property was originally part of 1 acre 8 guntas of land in Chunchaghatta Village, Uttarahalli Hobli, Bangalore South Taluk, owned by the original owner, M @ R. He developed the land into individual plots and sold them to various buyers.

The original owner executed a General Power of Attorney (GPA) and an Agreement to Sell in favour of the holder of the GPA. After the owner's death, the holder, in her capacity as a GPA holder, executed a registered sale deed in favour of her son, appellant No. 2.

The respondents contended that the sale deed was executed after the original owner's death and was, therefore, invalid. On the other hand, the respondents claimed that after the death of the original owner, his legal heirs sold the suit property to a person through a registered sale deed.

Later, the person sold the property to another person via another registered sale deed. Finally, the person gifted the suit property to her daughter, the answering respondent, through a registered gift deed.

The High Court ruled in favour of the respondents, and the matter reached the Supreme Court.

The Supreme Court held that a power of attorney derives its basic principles from Chapter X of the Contract Act, which provides for 'Agency' along with sections 1A and 2 of the Powers of Attorney Act, 1882. The relationship between the executant of a general power of attorney and the holder of the power is one of principal and agent.

A principal is bound by the acts done by an agent or the contracts made by him on behalf of the principal. Likewise, the power of attorney in the nature of the contract of the agency authorizes the holder to do acts specified by the executant or represent the executant in dealings with third persons.

In the present case, it is evident from the contents of the GPA executed by the original owner in favour of the holder that the holder was authorized to manage the property. However, the import of the word 'general' in a POA refers to the power granted concerning the subject matter. The test to determine the nature of POA is the subject matter for which it has been executed. The nomenclature of the POA does not determine its nature.

Even a POA termed as a 'general power of attorney' may confer powers that are special in relation to the subject matter. Likewise, a 'special power of attorney' may confer powers that are general in nature concerning the subject matter. The essence lies in the power and not in the subject matter.

The holder of the POA did not choose to register the agreement to sell executed by the original owner in her favour. Even if such an argument were to persuade the Court, the document must have been registered as per section 17(1)(b) of the Registration Act. In the absence of such registration, it would not be open for the holder of the POA to contend that she had a valid right, title and interest in the immovable property to execute the registered sale deed in favour of the appellant.

7. Oral Gift of Property to Daughter on Marriage Excluded From 'One House' Limit for Section 54F Exemption: ITAT

Income-tax Officer vs. Narasimha Reddy Duthala [2025] 174 taxmann.com 1073 (Hyderabad-Trib.)

The assessee sold unquoted shares for Rs. 92.49 crore and claimed Section 54F exemption by investing Rs. 43.83 crore in a house and Rs. 10.67 crore in a capital gains account. The Assessing Officer (AO) disallowed the exemption, citing that the assessee owns more than one residential house as on the date of transfer of original asset.

The assessee claimed that one residential house property was gifted to his daughter at the time of her marriage in 2015. However, AO disputed the gift of the property in the absence of a registered gift deed at the time of the gift. On appeal, the CIT(A) allowed the exemption. The matter reached the Tribunal.

The Tribunal held that the assessee claimed to have gifted one residential house property as promised in favour of her daughter on the occasion of her marriage out of natural love and affection which was solemnised by executing a registered gift deed dated 25-6-2022 and further verified by the 'Streedhan Agreement' between the daughter of the assessee and her husband, as per which, both parties have agreed that the property has been gifted by her father in the year 2015.

Further, the assessee had also proved the gift of the property by filing the income tax return filed by the assessee's daughter for the relevant assessment year, where she claimed her residential address from the above house property gifted by the assessee.

From the details filed by the assessee, there is no dispute with regard to the gift of property to her daughter in the year 2015 on the occasion of her marriage. In so far as reasoning of the AO that in absence of registered gift deed, proper gift cannot be executed because of provisions of section 123 of the Transfer of Property Act, 1882, it is viewed that there is no dispute with regard to the legal position that gift of immovable property can be given only by way of a registered instrument signed by donor and attested at least two witnesses.

However, going by Indian Customs and Traditions, the assessee's argument that he made an oral gift to his daughter on the occasion of her marriage in the year 2015 needs to be accepted because it is common in Indian Hindu Society for property to be gifted to sons and daughters out of natural love and affection even without a registered document.

Therefore, the AO's argument that a gift cannot be considered without a valid registered gift deed is devoid of merit and accepted.

8. Step-Siblings Are 'Relatives'; Gifts Received From Them Are Exempt: ITAT

Rabin Arup Mukerjea vs. Income-tax Officer (International Taxation) [2025] 172 taxmann.com 855 (Mumbai-Trib.)

The assessee, a non-resident individual, did not have any income or source from India and, therefore, was not filing any return of income in India. The assessee had made an application under section 197 for lower deduction of tax on account of the sale of property.

The property was received by the assessee as a gift from Ms. Vidhie Mukerjea. However, the gift was given by a step-sister to a step-brother. The assessee contended that the step-sister and step-brother are relatives as per the meaning contained in Section 56(2) of the Act.

The Assessing Officer (AO) rejected the assessee's claim and held that the stepbrother and stepsister could not be treated as relatives. Thus, the receipt of the property without consideration was chargeable to tax under section 56(2)(vii). The CIT(A) also confirmed the AO's action. The matter then reached the Mumbai Tribunal.

The Tribunal held that there are five kinds of brother and sister relations in common parlance. These are: Firstly, Uterine brothers and sisters - where the mother is the same; Secondly, Consanguine brothers and sisters - where the father is the same; Thirdly, Germane (also, biological) brothers and sisters - where both the parents are the same; Fourthly, Step, that is, step brothers and step-sisters - where both the parents are different; and lastly, Adopted children who would become brother/sister through law.

Various Acts recognize stepchildren and step-siblings as relatives. For instance, section 2(15B) of the Income-tax Act, 1961 includes a stepchild within the definition of "child." By extension, stepbrother and stepsister should also be treated as siblings. This view is supported by section 45S of the RBI Act, 1934 and section 2(77) of the Companies Act, 2013, both of which include step-siblings as "relatives." While the Income-tax Act doesn't specifically define step-siblings, these provisions help infer their inclusion as relatives under tax laws.

Further, the term 'relative' as per the Black's Law Dictionary, includes a person related by affinity, which means the connection existing as a consequence of marriage between each of the married persons and the kindred of the other. If the aforesaid Dictionary meaning is to be referred and relied upon, then the term 'relative' would include step-brother and step-sister by affinity. If the term 'brother and sister' of the individual has not been defined under the Income Tax Act, then the meaning defined in common law has to be adopted, and in the absence of any other negative covenant under the Act, brother and sister should also include step-brother and step-sister who, by virtue of the marriage of their parents, have become brother and sister.

Accordingly, the gift given by the step-sister to the step-brother falls within the definition of 'Relative', that is, they are to be treated as brother and sister as per Section 56(2)(vii). Therefore, the property received by the brother from the sister cannot be taxed under section 56(2).

9. Vintage Car Not Considered Personal Effect Without Evidence of Personal Use: HC

Narendra I. Bhuva v. Assistant Commissioner of Income-tax [2025] 177 taxmann.com 540 (Bombay)

The assessee was a salaried employee. He had income from house property, share income, and dividends. The assessee filed his return of income by declaring a total income of Rs. 2.79 lakhs.

During the assessment proceedings, the Assessing Officer (AO) noticed that the assessee had purchased a vintage car for Rs. 20,000 and sold it for Rs. 21 lakhs. The assessee contended that the car was shown as a personal asset and was therefore exempt. However, AO added the entire amount of Rs. 20.80 lakhs to the assessee's income as business income on account of the sale of the motor car.

On appeal, the CIT(A) reversed the order of the AO and held the car for personal use. However, the Tribunal reversed the order of CIT(A). The matter then reached the Bombay High Court.

The High Court held that section 2(14) provides that capital assets do not include personal effects, i.e., movable property, including wearing apparel and furniture, but excluding jewellery held for personal use by the assessee or any other member of his family dependent on him. Thus, the personal effects must be for personal use to be excluded from the definition of the term 'capital assets'.

For treating a movable property as personal effects, an intimate connection between the effects and the person of the assessee must be shown. The capability of a car for personal use would not ipso facto lead to the automatic presumption that every car would be excluded from the capital assets of the assessee as personal effects.

Thus, before reaching a conclusion regarding personal effects, evidence related to personal use is necessary. In the instant case, the assessee failed to provide any evidence regarding the vintage car being put to personal use. There are several indicators showing that the car was never used by the assessee for personal use, such as:

- Assessee using the company's car for commute;
- Car not being used even occasionally by the assessee;
- The vintage car was not being parked at the assessee's residence;
- Assessee's inability to prove that he spent any amount on its maintenance for keeping the same in running condition; and
- A salaried employee is purchasing a vintage car as a matter of pride.

Therefore, what needed to be proved in this case was that the car was used as a personal asset by the assessee. It was therefore incumbent upon the assessee to lead evidence to show that he actually used the car personally. It is an admitted position that the assessee failed to adduce evidence to prove that the car was used personally by him. Therefore, the gain arising on the sale of the vintage car was liable to be taxed under the head 'Capital Gains'.

10. Fraudulent Income From Forged Challans Is Taxable Even if Fully Recovered by the Government in Subsequent Years: ITAT

Mukesh Rasiklal Shah vs. ACIT [2025] 170 taxmann.com 122 (Ahmedabad-Trib.)

Assessee, a chartered accountant, obtained refunds from the income tax department by producing forged challans. After the search and seizure operation, the Assessing Officer (AO) added such forged amount to the respective assessment years in which the assessee obtained fraudulent refunds contending that the assessee had defrauded the Govt. of India to the extent of the said amount by entering into illegal activity of encashment of refunds based on fraudulent challans.

The assessee contended that the government of India had fully recovered the alleged misappropriation of income tax refunds or money receipts. Hence, it did not constitute income chargeable to tax.

On appeal, CIT(A) confirmed the additions made by AO and the matter reached before the Ahmedabad Tribunal.

The Tribunal held that the case presented a peculiar situation where the income, accrued fraudulently by the assessee, was parked in the accounts of his family's HUF and further leveraged for economic benefits, such as investments and financial gains. The assessee had accepted engaging in the fraudulent activity, which resulted in tangible control and dominion over the funds. This conduct, coupled with the economic benefits derived from the tainted money, reinforces the principle that such income must be attributed to the assessee for tax purposes. While the taxability of the economic benefits derived from such fraudulent income is beyond the current scope, the fact that the assessee leveraged these funds for personal gains adds weight to the case for taxing the income in the year of accrual. This aligns with the established principle that income, once accrued or received, irrespective of its legality, must be taxed under the Income-tax Act, 1961.

It is an undisputable fact that the assessee has admitted to fraudulently earning income and parking the same in the accounts operated by him. The deliberate act of parking funds in the accounts he operates does not absolve the assessee of the taxability of such income. The assessee had dominion over the funds and utilised them for economic gains, including investments. This clearly establishes that the income accrued to the assessee, making it taxable in his hands. The principle that tainted or illegal income is taxable has been well established in law. The illegality of the source does not absolve the recipient from tax liability.

Further, Section 2(24) is an inclusive definition and does not differentiate between the legality or illegality of earning income. The income tax department does not condone the illegal activity of claiming fraudulent income from the government's exchequer by subjecting the amount to tax as per the statute. The taxation of the illegal amounts earned as per the rates provided in the income-tax statute cannot be deemed to have given the assessee the right to usurp or enjoy the remaining illegal amounts.

Taxability arises at the point of accrual or receipt. Even if the income is later restituted or recovered, its taxability remains unaffected for the year of accrual. Subsequent adjustments do not negate the taxability for the original period, for the matter, generation, recovery and restitution are separate transactions. Thus, restitution or recovery is treated independently for taxation purposes. Taxability remains intact for the year of accrual, and recovery does not create a retroactive exemption.

Therefore, the additions made by AO were to be confirmed.

11. Sale of Equity-Oriented Mutual Funds Is Not Akin to Alienation of 'Equity Shares' for Taxability Under India–Mauritius DTAA: ITAT

Emerging India Focus Funds, Apex Financial Services (Mauritius) Ltd. vs. ACIT, Int. Tax [2025] 175 taxmann.com 1013 (Delhi-Trib.)

The question before the Delhi Tribunal was:

> *"Whether, under the DTAA, investment in equity-oriented mutual funds should be treated as investment in shares and, accordingly, whether the resulting income qualifies as 'gains from the alienation of shares' under Article 13(3A) of the DTAA?"*

The Delhi Tribunal held that all aspects of share issuance, types, shareholder rights and liabilities, dividend rights, and transferability are governed by the Companies Act, 2013. In contrast, mutual funds in India are established as trusts under the Indian Trusts Act, 1882, and are regulated by the SEBI (Mutual Funds) Regulations, 1996. A mutual fund pools investors' money to invest in equities, bonds, or other securities as per its investment objective.

Professional fund managers manage these funds, and income/gains are distributed to investors based on the scheme's NAV, after deducting expenses and charges. Section 30 of the SEBI Act, 1992, empowers SEBI (with Central Government approval) to frame regulations covering mutual fund formation, documents, advertising, returns assurance, minimum corpus, and investment valuation.

In mutual funds, dividends arise from booked profits on portfolio sales and differ from stock dividends, which reflect company profits. Mutual fund dividends don't indicate scheme profitability; NAV falls by the dividend amount.

Selling shares carries risks of price rigging and capital gain siphoning, unlike mutual funds, where such rigging isn't possible. Under Indian law, shares and mutual funds are distinct securities with different rights, regulations, and tax treatments for investors.

While equity mutual funds may get similar tax benefits under section 10(38) or 112, gains from their sale aren't 'gains from alienation of shares' under the DTAA. DTAA provisions must be strictly interpreted; unless a security is specifically mentioned, it can't be equated to another by purposive interpretation. Accordingly, capital gains earned on the sale of equity-oriented mutual funds cannot be said to be out of alienation of shares under Article 13(3A) of the DTAA.

12. Surcharge to Be Levied on Private Discretionary Trust Shall Be Computed as per Slab Rates: ITAT Special Bench

Araadhya Jain Trust vs. Income-tax Officer [2025] 173 taxmann.com 343 (Mumbai-Trib.) (SB)

The assessee, Araadhya Jain Trust, a Private Discretionary Trust, filed its return of income for AY 2023–24, declaring income of Rs. 4,85,290. It paid tax at the "maximum marginal rate" as per section 164 read with section 2(29C) of the Income-tax Act.

While processing ITR, the Centralized Processing Centre (CPC) levied a surcharge at the highest rate on the computed tax. The assessee contended that the surcharge should not apply since the total income was below Rs. 50 lakhs. Both the CPC and the CIT(A) rejected this argument, citing that the definition of "maximum marginal rate" includes the highest surcharge, hence applicable regardless of income level.

A Special Bench was constituted by the Hon'ble President of ITAT, in terms of section 255(3) of the Income Tax Act, 1961, to decide the following issue:

> *"Whether, in the case of private discretionary trusts whose income is chargeable to tax at maximum marginal rate, surcharge is chargeable at the highest applicable rate or at a slab rates?"*

The Tribunal held that section 2(29C) of the Act defines the maximum marginal rate as the highest slab rate of income tax in the case of an individual or association of persons, as specified in the Finance Act. The section does not make any reference to the levy of surcharge.

The expression 'including Surcharge on income-tax, if any' within the bracketed portion of section 2(29C) of the Income Tax Act, would mean the surcharge as provided in the computation mechanism under the heading 'surcharge on income tax' provided in section 2 of the Finance Act.

The different rates of surcharge on income tax provided under the First Schedule to the Finance Act, 2023 for different slabs of income would become meaningless so far as discretionary trusts are concerned if the highest rate of surcharge is applied to the maximum marginal rate of tax.

In other words, the rate of surcharge has to be determined in terms with the rate prescribed under the schedule to section 2(1) of the relevant Finance Act and not at the maximum marginal rate, irrespective of the quantum of income or the rates provided under the schedule.

The Finance Act contains separate provisions for the levy of surcharge, and there is no reference to the maximum marginal rate in those provisions. Therefore, the surcharge must be computed at the rates prescribed in the Finance Act for the relevant assessment year. The levy of a surcharge at the maximum marginal rate was not justified.

Accepting Revenue's view would render the entire slab-based surcharge mechanism meaningless and cause absurd results. Accordingly, it held that a surcharge should be levied based on the slab rates applicable to the total income.

13. Cross-Objection Not Maintainable in Appeal Filed Under Section 260A: HC

Principal Commissioner of Income-tax vs. Nagar Dairy (P.) Ltd. [2025] 172 taxmann.com 111 (Delhi)

The assessee was a company and was part of the ND Group. A search and seizure operation was undertaken in terms of section 132(1) in the case of the ND Group. During that search, several documents and materials relating to the assessee were seized from the premises of APPL. The proceedings under section 153C were initiated against the assessee.

The Assessing Officer (AO) passed the assessment order by making certain additions. On appeal, CIT(A) granted partial relief to the assessee. Both the assessee and the revenue preferred an appeal to the Tribunal. The Tribunal partly allowed the appeal filed by the assessee and granted partial relief. Aggrieved-assessee filed a cross-objection to the High Court against the order of the Tribunal. The revenue objected that the cross-objection would not be maintainable in light of section 260A neither envisaging nor creating such a remedy.

The High Court held that section 260A refrains from incorporating a specific provision permitting the filing of a cross-objection. This starkly contrasts what is provisioned for at the second appeal stage before the Tribunal. Thus, while at the stage of an appeal reaching the board of the Tribunal, both the revenue as well as the assessee are statutorily enabled to prefer a cross-objection on receipt of notice of an appeal, the Legislature has not made any corresponding or parallel provision in section 260A.

It is also pertinent to note that while that cross-objection could be to ''any part of such order'' and which forms the subject matter of the appeal filed before the Tribunal, the right of the respondent stands confined to urging for consideration that the appeal does not give rise to any substantial question of law.

The above aspect is of critical significance and representative of the legislative intent of narrowing down the scope of the appeal that may come to be instituted under section 260A. If one were to countenance a right of preferring a cross-objection despite the aforenoted statutory prescription, it would result in not only widening the scope of the intended appeal proceedings but also amount to the Court by way of legal interpretation reading into section 260A the existence of a substantive right which the statute otherwise forbears.

14. Interest-Free Advances Given to Farmers to Keep Engaging Them in Using Its Cold Storage Is a Business Expediency: ITAT_

Girraj Cold Storage (P.) Ltd. vs. Income-tax Officer [2025] 174 taxmann.com 342 (Agra-Trib.)

The assessee was operating a cold storage facility. During the year, the assessee raised interest-bearing loans from banks and claimed a deduction for the interest paid on these loans. The Assessing Officer (AO) disallowed the interest paid to the banks on the ground that interest-free advances were given by the assessee to the farmers out of interest-bearing loans raised by it and made an addition to the assessee's income.

On appeal, CIT(A) upheld the order of AO. The aggrieved assessee filed the instant appeal before the Tribunal. Before the Tribunal, the assessee contended that it was running a cold storage facility and had to keep the farmers tied up with it so that these farmers could store their potatoes in its cold storage. It could earn rent from the potatoes stored in its cold storage.

The Tribunal held that the assessee had given complete details of the advances paid to the farmers during assessment proceedings. The AO asked the assessee to produce 20 farmers, and the assessee claimed to have produced 17 farmers, as two farmers had died, and one was an army personnel on duty. These farmers have also given affidavits. The assessee claimed that the AO recorded the statement of three farmers produced by the assessee before the AO, but did not record the statements of the remaining farmers produced by the assessee, as the AO held that the farmers were tutored.

The assessee asked the AO to issue a summons to the farmers. The AO did not issue a summons to the farmers to unravel the truth. Nor did CIT(A) make any enquiry and/ or verification with the farmers. The powers of CIT(A) are co-terminus with the powers of the AO, including the power of enhancement.

The ITAT held that the assessee had duly explained the business expediency of providing interest-free advances to potato growers, i.e., to tie up with the farmers so that they store their potato crop or produce in the assessee's cold storage. The assessee can earn rent from potatoes that the farmers keep in the assessee's cold storage. Revenue cannot sit in the armchair of a business person and then decide how the business will be run.

Rather, business people have to arrange their affairs, keeping in view business expediencies, to maximize their revenues and profits. Thus, the addition made by the Assessing Officer was directed to be deleted.

15. FMV Will Be the Cost of Acquisition of the Asset Received on Liquidation of Company, if Capital Gain on Such Receipt Was Taxed: HC

T.R. Balasubramanium vs. Asstt. Commissioner of Income-tax City Circle VII(2) [2025] 174 taxmann.com 328 (Madras)

The Madras High Court ruled on a case involving the computation of the cost of acquisition of an asset distributed on liquidation of the Company. The issue before the Court was to determine the cost of acquisition of the asset in the hands of the shareholders.

The assessee contended that the cost of acquisition should be computed as per Section 55(2)(b)(iii) while the AO computed the cost of acquisition as per Section 49(1)(iii)(c).

The High Court held that the unique factor that had transpired in the assessee's case was that both Section 49(1)(iii)(c) and Section 55(2)(b)(iii) would stand attracted. The transfer of shares, firstly, by way of extinguishment of right therein and in consideration of which the assessee received the asset from the company (transaction 1) and secondly, by transfer of the asset received on liquidation and in consideration of which the assessee received actual money (transaction 2).

Relevantly, as aforesaid, both transactions took place in the same financial year as the assessees sold their share of the property to MRL in the same year the asset had been distributed to them, fusing the applications of both applicable statutory provisions.

The High Court further held that the provisions of Section 46(2) as applicable to shareholders, states that where a shareholder, on the liquidation of a company, has received any money or asset from the company, he shall be chargeable to tax under the head 'capital gains' in respect of the money received or market value of the assets as on the date of distribution, reduced by dividend received by him and the resultant sum shall be the full value of consideration for the purposes of Section 48 of the Act.

The AO contended that the cost of acquisition shall be computed as per Section 49(1)(iii)(c), but the same is not the correct interpretation of the provisions. In the present case, the assessee had offered the capital gains for taxation in the same year in which the gain accrued. Therefore, the provisions of Section 55(2)(b)(iii) would come into play.

As per section 55(2)(b)(iii), where the capital asset is received pursuant to distribution of capital assets by a company on its liquidation and the assessee has been assessed to income-tax under the head "Capital gains" in respect of that asset under section 46, the cost of acquisition is the fair market value (FMV) of the asset on the date of distribution.

However, as per section 49(1)(ii)(c), where the capital asset becomes the property of the assessee on any distribution of assets on the liquidation of a company, the cost of acquisition of the asset shall be deemed to be the cost of acquisition (as increased by the cost of improvement, if any) incurred by the previous owner of the property.

In the present case, the assessee has not postponed the taxability of capital gains but is offering it for tax in the same year in which the gains have accrued. Therefore, the interpretation that income under section 46 was not assessed to tax since both the transactions fell in the same financial year and hence, section 49(1)(ii)(c) should apply, would result in unnecessarily burdening the assessee with a higher tax liability.

The matter can also be viewed from a chronological perspective—Transaction A occurs first, leading to Transaction B. Accordingly, the assessee must first compute and offer capital gains on Transaction A, followed by Transaction B. Since capital gains are taxed under section 46, section 55(2)(b)(iii) applies, allowing the fair market value on the date of distribution to be treated as the cost of acquisition.

16. AO Has Discretion to Levy a Penalty for Non-Disclosure of Foreign Assets in ITR; Penalty Is Not Mandatory: ITAT Special Bench

Vinil Venugopal vs. DDIT (Inv.) [2025] 179 taxmann.com 618 (Mumbai-Trib.)

The assessee, a resident individual, was subjected to a penalty under Section 43 of the Black Money Act for not disclosing their foreign investment in Schedule FA in the return of income. The assessee contended that the investment was made from tax-paid income through banking channels under the RBI LRS from their bank accounts and hence was not an 'undisclosed asset'.

The Assessing Officer (AO) held the assessee liable and imposed a penalty of Rs. 10 lakhs, stating that once non-disclosure in Schedule FA is established before issuance of summons, a penalty follows.

The Special Bench of Tribunal was constituted to decide the following issue:

> *"Whether the use of the word 'may' in Section 43 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 should be construed as 'shall'. In other words, whether the imposition of a penalty is mandatory once the requirements of Section 43 of the said Act are satisfied, or there is a discretion in the Assessing Officer to impose the penalty or otherwise?"*

The Tribunal held that the charging/penal provisions of a taxing statute have to be construed strictly. It is a well-established principle of interpretation of statutes that the words must be given their plain and ordinary meaning unless it leads to absurd results or consequences that could never be intended. Applying this test, the use of the word "may" would clearly indicate that it is discretionary in nature.

It is significant to note that the concluding part of Section 43 of the BM Act employs both "may" so far as the imposition of penalty is concerned and "shall" as far as the quantum of Rs. 10 lakhs is concerned. Even where the minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose the penalty when there is a technical or venial breach of the provisions of the Income Tax Act.

The interpretation that imposition of penalty is automatic, on the failure of the assessee to make the disclosure in Schedule FA, would make the provision for the opportunity of hearing being granted to the assessee before imposition of penalty redundant or superfluous. It is the fundamental principle of interpretation that the legislature can never be attributed to such redundancy or superfluousness.

Accordingly, the word "may" used in Section 43 of the BM Act has to be given its plain meaning as being directory in nature and cannot be construed as "shall". Thus, the imposition of a penalty is not mandatory. There is discretion in the AO to impose the penalty or not, depending on the facts and circumstances of each case.

17. No Gift Deed Is Required When the Donor Is a Relative: ITAT

Deb Prasanna Choudhury vs. ADIT/DCIT (International Taxation) [2025] 180 taxmann.com 265 (Kolkata-Trib.)

The assessee, an individual, received a gift through his NRE account from his sister's spouse, i.e., his brother-in-law. The assessee contended that the gift deed was not required in the case of movable property. Unsatisfied with the assessee's reply, the Assessing Officer (AO) held that since no proper gift deed was made, the amount was liable to be assessed as 'income from other sources'.

On appeal, CIT(A) upheld the additions made by the AO. The aggrieved assessee filed the instant appeal before the Tribunal.

The Tribunal held that the assessee had received the gift from his brother-in-law, and any sum received from a relative is not assessable under section 56 of the Act. The term "relative" is defined in section 56 of the Act. Thus, the spouse of the assessee's sister is also covered as a relative. Since the assessee filed a copy of the bank account evidencing the source of the gift, the same was not liable to be added to the assessee's income.

For the purpose of section 56 of the Act, there is no need or requirement for a gift deed. The AO primarily was of the view that since no proper gift deed was made, therefore, the amount was liable to be assessed as 'income from other sources' and not exempt under section 56 of the Act.

However, section 56 of the Act, which exempts from assessment any sum received that exceeds Rs. 50,000, does not require a valid gift deed. It is provided in the section itself that if the amount is received from a relative as defined therein, the same is not liable to be assessed under section 56 of the Act. Therefore, the addition made by the Assessing Officer was to be deleted

18. 'Principal Purpose Test' Can't Apply Without a Specific Section 90(1) Notification of Multilateral Instrument in DTAA: ITAT

Sky High Appeal XLIII Leasing Company Ltd. vs. Assistant Commissioner of Income-tax (International Tax) [2025] 177 taxmann.com 579 (Mumbai-Trib.)

An Ireland-based company leased aircraft to IndiGo under dry operating leases and declared nil income in its return, claiming: (i) lease rentals were not "royalty" under Article 12 of the India-Ireland DTAA, (ii) absence of a PE in India, making income taxable only in Ireland under Article 7, and (iii) exemption under Article 8 for international traffic.

Assessing Officer (AO) rejected this and invoked Multilateral Instrument (MLI) Articles 6 & 7 Principal Purpose Test (PPT) and held that the assessee's incorporation aimed at treaty benefits. The DRP upheld, citing lack of infrastructure in Ireland, assessee's control over aircraft in India (fixed place PE), and characterising the leases as finance leases.

AO passed order and held the rentals as "royalty" u/s 9(1)(vi), alternatively taxable as PE profits, denied Article 8 relief, and recharacterised the leases as finance leases. The assessee appealed before the Tribunal.

The Tribunal held that the MLI cannot be used to deny tax treaty benefits without a separate, specific notification under Section 90(1) of the Income Tax Act. This is based on the Supreme Court's binding precedent in Nestle SA [2023] 155 taxmann.com 384 (SC). The ruling clarifies that a new notification is required to incorporate the MLI's anti-abuse measures into the India-Ireland Double Taxation Avoidance Agreement (DTAA), despite both instruments being separately notified.

The Tribunal concluded that the AO failed to prove that the principal purpose of the lessors' structure was to obtain treaty benefits. It validated the lessors' business model, noting that Ireland is a globally recognised hub for the aircraft leasing industry, accounting for 60% of all global leasing activity, and that the lessors had a genuine business presence there with Irish directors and licensed service providers. It was held that genuine commercial considerations are a legally sound basis for a corporate structure and can effectively counter allegations of treaty abuse.

The Tribunal provided crucial clarity by confirming that the agreements in question are bona fide dry operating leases, not finance leases. The Tribunal based its analysis on the actual contractual terms, noting that the lessor, not the lessee, retained ownership and key ownership risks, such as residual value fluctuation. The agreements also explicitly required the return of the aircraft at the end of the term and prohibited the lessee from holding itself out as the owner.

The Tribunal definitively held that no Permanent Establishment (PE) exists in India. It applied the "disposal test" from the Supreme Court's Formula One precedent [2017] 80 taxmann.com 347 (SC), finding that the aircraft were at the exclusive operational disposal of the lessee (IndiGo), not the lessors. The lessor's rights of inspection and repossession were characterized as standard asset protection measures, not as a means of carrying on business in India.

Even if a PE had been found, the Tribunal ruled that the income would be exclusively taxable in Ireland under Article 8(1) of the India-Ireland DTAA. It was noted that this article, which explicitly includes "rental of ships or aircraft in international traffic," is a deliberate departure from the narrower OECD model and prevails over the general business profits rule, ensuring the income is not subject to source-based taxation in India.

19. No TCS on Compounding Fee or Fine Collected From Illegal Miners and Transporters of Minerals: HC

Collector Mining, Kanker vs. Deputy Commissioner of Income-tax (TDS)
[2025] 177 taxmann.com 760 (Chhattisgarh)

The assessee was granted a mining lease and was collecting compounding fees/fine from illegal miners and transporters of minerals. During the Tax Deduction at Source (TDS) survey conducted under Section 133A(2A), it was found that the assessee had not collected Tax Collected at Source (TCS) on compounding fees/fines recovered from illegal miners and transporters of minerals. The Assessing Officer (AO) passed an order under sections 206C(1C), 206C(6) and 206C(7), treating the assessee as the assessee-in-default and raising a demand with interest and penalty.

The CIT(A) upheld the order of the AO. The Tribunal partly allowed the appeal on other issues but upheld the demand for TCS, interest, and penalty on the compounding fees. The matter reached the Chhattisgarh High Court.

The Court held that a careful perusal of the provisions of section 206C(1C) would show that tax at the rate of 2% has to be collected by the assessee from the leaseholder or license holder or with whom the assessee has entered into a contract or otherwise transferred any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry.

The person must be a leaseholder or license holder, or with whom the assessee has entered into a contract, or otherwise transferred any right or interest in the mines or fields. Meaning thereby the person from whom the TCS is collectable must be the person to whom the lease or license or otherwise any express contract, right or interest has been transferred by the assessee to any mine or quarry and royalty is payable by them to the State Government through the District Mining Officer.

There is no legislative mandate to collect TCS from the person involved in illegal mining or transporting illegal minerals. Section 206C(1C) specifically obliges the assessee to collect tax from the leaseholder or license holder or with whom the assessee has entered into a contract or otherwise transferred any right or interest, either in whole or in part, in any parking lot, toll plaza, mine, or quarry.

It is a well-settled position of law that fiscal statutes are strictly construed. In the matter of CIT v. Calcutta Knitwears [2014] 43 Taxmann.com 446 (SC), the Supreme Court held that when interpreting fiscal statutes, the court must not add or substitute a word in the provision. Therefore, the obligation to collect tax under section 206C(1C) cannot be extended to the person involved in illegal mining or transporting illegal minerals.

20. Private Trust Eligible for Section 54F Capital Gains Exemption on Residential Investment: ITAT

ACIT vs. Merilina Foundation [2025] 178 taxmann.com 355 (Delhi-Trib.)

The assessee was a private trust established for the benefit of specific individuals. During the year under consideration, it sold a flat and claimed exemption under section 54F in respect of capital gains arising from the sale of the flat.

During the relevant assessment proceedings, the Assessing Officer (AO) disallowed the claim of the assessee on the ground that section 54F applied only to individuals and HUF and not to a trust. On appeal, the CIT(A) allowed the assessee's claim. Aggrieved by the order, the AO preferred an appeal to the Delhi Tribunal.

The Tribunal held that it was a fact that the assessee was a private trust, established for the benefit of specific individuals. The trust income is taxable if it is the income of the beneficiary; it is not the case with a charitable trust. Furthermore, a charitable trust is treated as an AOP because its beneficiary is the public at large. In fact, if the beneficiary of the charitable trust is identified, the trust loses its charitable character.

In the instant case, the trust purchased certain land, and the sale of the flat thereon, through collaboration, generated income from capital gains. Against this, a residential house was purchased, and an exemption under Section 54F was claimed. If the assessee trust were not in existence, the same transaction would have been carried out in the name of beneficiaries therein, and the benefit would certainly be given to those beneficiaries under Section 54 of the Act as claimed.

Therefore, the order passed by the CIT(A) in granting relief under Section 54F of the Act, as claimed by the assessee under the facts and circumstances, was found to be just and proper.

21. Money in Bank Accounts Is a Property Liable for Provisional Attachment Under Section 281B: HC

Assistant Commissioner of Income-tax vs. Mohammed Salih [2025] 171 taxmann.com 23 (Kerala)

The police seized a huge amount of cash from a car in which the assessee was riding. After recording reason to believe that income chargeable to tax had escaped assessment, proceedings were initiated in relation to the same by the issuance of notice under Section 148.

The expected demand on assessment, including penalty, would be a substantial amount exceeding two crores. The competent authority of the Department ordered provisional attachment of the Bank accounts of the assessee under section 281B.

The matter reached the Kerala High Court.

The High Court held that the word 'property' is a word of very wide connotation. It is relevant to note that section 281B(1) provides for the provisional attachment of 'any property'. The prefix 'any' to the word 'property' has much significance. It indicates that the word 'property' occurring therein is not to be comprehended in a restricted sense.

Therefore, 'any property' mentioned in section 281B(1) would take within its sweep, money lying in the bank account also. Section 281B(1) provides for the provisional attachment of any property belonging to the assessee in the manner provided in the Second Schedule to the Act. The Second Schedule to the Act is titled, 'Procedure for Recovery of Tax'. Evidently, except for the property exempted from attachment under the Code of Civil Procedure, 1908 (CPC), other properties are liable to attachment.

Section 60 CPC provides the property liable to attachment. Noticeably, section 60(1) CPC specifically states that money is an attachable property. Properties that are not liable to attachment have been specified in the proviso to the section. Therefore, money in a bank account is property liable to attachment.

There could be instances where the assessee does not own immovable property sufficient enough to secure the likely demand, but there are sufficient funds in the bank account. The power for provisional attachment is provided to protect the interest of the revenue. There is no warrant to hold that money lying in a bank account is not liable to attachment.

22. Donations Received Through Ketto Platform Transferred to Personal and Family Account Rightly Taxed Under Section 56(2)(x): ITAT

Ms. Rana Ayyub Shaikh vs. Deputy Commissioner of Income-tax [2025] 174 taxmann.com 277 (Mumbai-Trib.)

The assessee, a journalist and columnist for The Washington Post newspaper, raised donations from three campaigns on the Ketto platform. The assessee withdrew the said donation in her or her family member's account. A substantial amount of donations was transferred from her father's and sister's accounts to the assessee's account.

The Assessing Officer found that despite the time spent of more than one year from the first campaign, the assessee had unutilised funds of approximately ₹ 2.4 crores, for which no separate accounts were maintained, making it impossible to segregate the funds used for each campaign. The account in which the assessee or her family members withdrew the money was a personal savings account. Moreover, instead of engaging in relief work, the assessee opened a new account and invested in a fixed deposit in her own name. She also incurred personal expenditure from the same savings account in which the funds were received.

Assessing Officer (AO) further held that the donations allegedly received for Covid relief were taxable as the income of the assessee under section 56(2)(x). On appeal, the CIT(A) confirmed the view of the AO. The aggrieved assessee filed the instant appeal before the Tribunal.

The Tribunal held that the assessee had raised donations from three campaigns on the Ketto platform without maintaining a separate account. The sums exceeded Rs. 50,000, and all the money received was without any consideration. Receipts of such donations received in a personal account, with no liability to return, made them taxable under Section 56(2)(x).

The claim that the end use of these funds was initiated for charitable activities remained unproven. The assessee made a representation before the CBDT in connection with the taxability of funds received as a donation for COVID-19 relief. However, the facts on record showed that the assessee took this action only after the revenue issued a summons under Section 131 for an enquiry in this matter. Based on the given facts, the donations collected by the assessee were rightly taxable under Section 56(2)(x).

23. Agricultural Land Can't Be Taken Out of the Purview of Section 56(2)(x) as the Term 'Immovable Property' Isn't Defined: ITAT

Clayking Minerals LLP vs. Income-tax Officer [2025] 174 taxmann.com 1111 (Ahmedabad-Trib.)

The assessee filed the income tax return, declaring a loss for the relevant assessment year. The case was selected for 'Limited Scrutiny' to examine whether the purchase value of a property was less than the value determined by the stamp valuation authority under section 56(2)(x).

During the proceedings, the assessee contended that the property was agricultural land at the time of purchase, and it did not qualify as a "capital asset" as per section 2(14). Therefore, section 56(2)(x) was not applicable.

However, the Assessing Officer (AO) held that the provisions of section 56(2)(x) were attracted, and the difference between the purchase consideration and the stamp duty value was liable to be taxed as "income from other sources".

On appeal, the CIT(A) upheld the order of the AO. Aggrieved-assessee filed the instant appeal before the Tribunal.

The Tribunal held that section 56(2)(x) mentions the term "any immovable property". Now the issue for consideration is whether "Agricultural land" falls within the ambit of an "immovable property" as stated in section 56(2)(x). The term "immovable property" has not been defined in section 56(2)(x) or in any other section in the Income Tax Act. This renders the word to be interpreted in general parlance.

In general, the term "Immovable Property" means an asset that cannot be moved without destroying or altering it. Therefore, going by the general definition, "immovable property" would, in the view of the Tribunal, include any rural agricultural land, in the absence of any specific exclusion in section 56(2)(x).

Notably, section 56(2)(x) does not use the word "capital asset". The sale of rural agricultural land is exempt from the seller's hands since the word "capital asset" has been specifically defined to exclude agricultural land in rural areas under section 2, clause 14. Thus, the sale of rural agricultural land shall not give rise to any capital gains in the hands of the seller, as it is not considered a capital asset itself.

However, from the point of view of the "purchaser" of immovable property, section 56(2)(x) mentions "any immovable property" which, going by the plain words of the Statute, does not specifically exclude "agricultural land". Therefore, going by the plain words of section 56(2)(x), which uses the term "immovable property", agricultural land cannot be taken out of the purview of section 56(2)(x).

24. AIFs Can't Comply With Section 164 and CBDT Circular Requiring Investor Names in Trust Deed Due to SEBI Regulations: HC

Equity Intelligence Aif Trust vs. Central Board of Direct Taxes [2025] 176 taxmann.com 903 (Delhi)

The assessee, an Alternative Investment Fund (AIF), filed the instant writ petition, seeking to declare the Circular no. 13/2014 dated 28.07.2014 as ultra vires the provisions of sections 160 and 164 and further seeks to quash the order passed by the Board for Advance Rulings (BAR) under section 245R(4).

BAR, relying upon circular no. 13/2014, holds that if the names of the beneficiaries are not set out in the original Trust Deed, then such Trust would be treated as "indeterminate" and resultantly be subject to Maximum Marginal Rate (MMR) under the provisions of section 164.

The High Court held that the CBDT's clarification that the entire income of the fund would be taxed at the maximum marginal rate if the trust deed does not name the investors or specify their beneficial interests is contrary to the well-settled principles of law.

The Court applied the doctrine that the law does not compel the doing of impossibilities, holding that Category III AIFs cannot be mandated to name beneficiaries in their original Trust Deeds. This is due to SEBI regulations prohibiting the acceptance of investments or identification of specific beneficiaries prior to SEBI registration, which itself requires prior Trust Deed registration.

A Category III AIF cannot comply with the provisions of Section 164 and the SEBI Act simultaneously. Section 164 mandates the necessary mentioning of the names of the investors or their beneficial interests in the original Trust Deed, and the SEBI Act and Regulations prohibit the same. Thus, it would lead to an anomalous and incongruous situation.

The CBDT's clarification was issued in response to a request for a ruling, and as per Para 6 of the circular, it would not be operative in the jurisdiction of a high court that has taken or takes a contrary decision on the issue, which is baffling and contrary to the well-settled judicial principles of law.

An issue of law settled by a Constitutional Court, neither challenged nor set aside by a higher Constitutional Court, would be binding upon the Revenue authorities all over the country and cannot be implemented State-specific or area-specific. Moreover, it appears that the said paragraph has been deliberately inserted keeping in view the judgments in the case of India Advantage Fund [2017] 89 taxmann.com 209 and TVS Shriram Growth Fund [2020] 121 taxmann.com 238.

Consequently, the writ petition was allowed, the order of the Board for Advance Rulings was quashed, and simultaneously the clarification contained in CBDT Circular No. 13/2014 was directed to be read down to conform to the above analysis and conclusion.

25. Rebate Under Section 87A Available Even if Tax Payable on STCG on Listed Shares Under Section 111A: ITAT

Jayshreeben Jayantibhai Palsana vs. Income-tax Officer [2025] 177 taxmann.com 411 (Ahmedabad-Trib.)

The assessee, an individual, filed her return of income for the relevant assessment year, declaring short-term capital gains under section 111A. While filing the return, the assessee exercised the option under section 115BAC(1A). Upon processing the return, the Centralised Processing Centre (CPC) denied the rebate claim under section 87A in respect of short-term capital gains.

Aggrieved by the order, the assessee filed an appeal to the CIT(A), wherein the order was upheld. The matter reached the Ahmedabad Tribunal.

The Tribunal held that the amended first proviso to section 87A provides a rebate to a resident individual whose total income does not exceed Rs. 7,00,000 and who is assessed under section 115BAC(1A). The statute does not draw any distinction between normal income and income chargeable at special rates, nor does it contain any express exclusion for tax arising under section 111A.

By contrast, the legislature has inserted an express bar on the availability of the section 87A rebate in section 112A(6). The absence of a corresponding clause in section 111A is legally significant and supports the principle that – when the legislature intended to deny rebate in respect of special income (as in section 112A), it has done so expressly. In contrast, the absence of any exclusion in section 111A or in section 87A must be construed in favour of the assessee.

Section 115BAC(1A) opens with the phrase: "Notwithstanding anything contained in this Act but subject to the provisions of this Chapter.." The purpose of this clause is to enable the computation of income-tax under the concessional rate regime, subject to existing special rate provisions under Chapter XII, such as sections 111A, 112, 112A, etc. This clause governs the computation of tax and does not ipso facto affect eligibility for rebates or deductions unless specifically restricted.

Section 87A is not part of Chapter XII; it is an independent rebate provision under Chapter VIII of the Act. Therefore, the overriding clause in section 115BAC(1A) does not derogate or modify section 87A unless section 87A itself provides for exclusion, which, in the present case, it does not.

Further, the CIT(A) placed strong reliance on the Explanatory Memorandum to the Finance Bill 2025, which clarified that the rebate under section 87A is not available on tax arising from special rate incomes, including those under section 111A. However, the Finance Bill 2025 itself proposes to insert new restrictions on rebate under section 87A w.e.f. A.Y. 2026–27, which implies that the existing law (i.e., as applicable to A.Y. 2024–25) does not contain such a restriction. The Explanatory Memorandum cannot override the plain language of the statute. It is a tool of interpretation, not a source of substantive law.

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- ✓ Corporate Tax Advisory
- ✓ Corporate Structuring
- ✓ VAT Advisory
- ✓ Residential Status

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- ✓ Automate your ERPs to handle tax compliances

A Glimpse of the People Behind Taxmann

Naveen Wadhwa

Research and Advisory [Corporate and Personal Tax]

- ✓ Chartered Accountant (All India 24th Rank)
- ✓ 14+ years of experience in Income tax and International Tax
- ✓ Expertise across real estate, technology, publication, education, hospitality, and manufacturing sectors
- ✓ Contributor to renowned media outlets on tax issues

Vinod K. Singhania

Expert on Panel | Research and Advisory (Direct Tax)

- ✓ Over 35 years of experience in tax laws
- ✓ PhD in Corporate Economics and Legislation
- ✓ Author and resource person in 800+ seminars

V.S. Datey

Expert on Panel | Research and Advisory [Indirect Tax]

- ✓ Holds 30+ years of experience
- ✓ Engaged in consulting and training professionals on Indirect Taxation
- ✓ A regular speaker at various industry forums, associations and industry workshops
- ✓ Author of various books on Indirect Taxation used by professionals and Department officials

S.S. Gupta

Expert on Panel | Research and Advisory [Indirect Tax]

- ✓ Chartered Accountant and Cost & Works Accountant
- ✓ 34+ Years of Experience in Indirect Taxation
- ✓ Bestowed with numerous prestigious scholarships and prizes
- ✓ Author of the book GST – How to Meet Your Obligations', which is widely referred to by Trade and Industry

Manoj Fogla

Expert on Panel | Research and Advisory [Charitable Trusts and NGOs]

- ✓ Over three decades of practising experience on tax, legal and regulatory aspects of NPOs and Charitable Institutions
- ✓ Law practitioner, a fellow member of the Institute of Chartered Accountants of India and also holds a Master's degree in Philosophy
- ✓ PhD from Utkal University, Doctoral Research on Social Accountability Standards for NPOs
- ✓ Author of several best-selling books for professionals, including the recent one titled 'Trust and NGO's Ready Reckoner' by Taxmann
- ✓ Drafted publications for The Institute of Chartered Accountants of India, New Delhi, such as FAQs on GST for NPOs & FAQs on FCRA for NPOs.
- ✓ Has been a faculty and resource person at various national and international forums

Nirav Shah

Expert on Panel | Research and Advisory [UAE Corporate Tax]

- ✓ 25+ years of experience and practicing in the UAE
- ✓ Chartered Accountant (All India 36th Rank)
- ✓ Has previously worked with the KPMG

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