

Navigating Tax Disputes & Related Developments in India

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Tax Rulings

GAAR Not Invocable on Stock Exchange Transactions

The Hon'ble Telangana High Court, in EKGE Retail LLP held that the provisions of General Anti Avoidance Rules (GAAR) under the Income-tax Act, 1961 (IT Act) could not be invoked to examine a transaction carried out on a stock exchange where the identities of the parties are not known to each other and the transactions are carried out in a legitimate and conventional manner. The case involved an Indian entity earning long-term capital gains on slump sale. The investable surplus arising on such sale was invested in diversified portfolio of equity shares of listed companies and debt instruments. Further, with a view to earn short-term arbitrage return, equity shares were acquired pre-bonus and post declaration of bonus, equivalent number of shares were sold. Such exercise resulted in a short-term capital loss for tax purposes, which was set-off against the long-term capital gains arising on slump sale. Such exercise was held as an 'impermissible avoidance arrangement' by the tax department and accordingly, the set-off was denied.

The High Court held that absent a pre-ordained outcome or control over the price movement, a stock market transaction cannot be treated as an 'arrangement'. In order to be considered as an 'arrangement', an element of concert, design or arrangement between identifiable parties was necessary, which was absent in stock exchange transactions, since transactions were executed between unknown parties. The High Court further reaffirmed the principle that a taxpayer is entitled to arrange its affairs in such a manner so as to attract the least incidence of tax, provided it remains within the four corners of law. The High Court also held that merely because a tax benefit has flowed from the transaction, such fact cannot convert the incurring of such loss into an exercise whose main purpose was to obtain tax benefit. Accordingly, it allowed the set-off of the short-term capital loss arising on the listed shares against the long-term capital gains on slump sale.

GAAR remains a powerful weapon in the armoury of the tax department however, the present ruling sets out crucial limitations within which such weapon may be used. Facts such as ultimate objective to channelise funds productively as demonstrated by consultation with leading wealth managers, carrying out transactions in stock exchanges in a transparent manner, payment of due taxes etc. weighed in favour of the taxpayer in the present case. This is certainly expected to serve as a guiding

precedent, protecting taxpayers in case of legitimate tax planning within the four corners of law.

'Indirect Transfer' Covered under Residuary Clause of Double Taxation Avoidance Agreement, Eligible for Tax Exemption

The Hon'ble Income Tax Appellate Tribunal (Tax Tribunal), Delhi in Fireye Ireland Limited allowed the benefit of capital gains tax exemption to an Irish tax resident on sale of shares of a US LLC deriving substantial value from India, a transaction commonly referred as an 'indirect transfer'.

The Tax Tribunal held that while interpreting the terms or words used in Double Taxation Avoidance Agreement (DTAA), the ordinary meaning given to such terms in their context and in light of its object and purpose need to be given, and departure from such plain meaning is permissible only to avoid absurdity. Accordingly, the Tax Tribunal held that the term "alienation" used in Article 13 of the DTAA must be given its ordinary meaning and the expansive definition of "transfer" under the IT Act cannot be imported to interpret the term "alienation".

The Tax Tribunal further observed that since shares of a US entity were being transferred, the provisions of Article 13(5) were not attracted. The Tax Tribunal held that it was only the provisions of Article 13(6) which were attracted in the present case and hence, the capital gains arising would be taxable only in the state of residence of the seller i.e. Ireland.

The Tax Tribunal also affirmed the long-standing principle that provisions of the domestic law – including the deeming fiction relating to indirect transfer – cannot be imported to DTAA.

The Tax Tribunal also turned down the allegation of treaty abuse (under Article 6 of the Multilateral Instrument (MLI)) noting that the taxpayer was an operating company with substantial business operations, in existence since 2013, and that the internal restructuring of the group involved the transfer of 17 different entities including the US LLC.

This ruling of the Tax Tribunal is significant, in so far that it is the first ruling from a Tax Tribunal on the tax implications arising from an indirect transfer, after the Supreme Court's ruling in the case of Tiger Global earlier this year. Notably, neither the tax department placed any reliance, nor does the Tax Tribunal independently engage, with the Supreme Court ruling in the case of Tiger Global. Given this, one will have to wait and watch to see whether in a subsequent case, a different bench of the Tax Tribunal will



readily follow this ruling of the Delhi Bench or they would take a different view and refer to the Special Bench to assess the implications of Tiger Global on 'indirect transfers.' The observations of the Tax Tribunal in turning down the allegation of treaty abuse under Article 6 of MLI, by citing substance in Ireland also has far reaching and positive implications.

Controversy Surrounding Jurisdictional Assessing Officer – Faceless Assessing Officer Retrospective Amendment

In September 2026, the Hon'ble Punjab & Haryana High Court in Jyoti Sareen held the retrospective amendment carried out vide Finance Act, 2026, dealing with the powers of the Jurisdictional Assessing Officer (JAO) to issue a reopening notice, as unconstitutional. The High Court held that the amendment vitiates the "doctrine of separation of powers" and Article 14 of the Constitution of India. The High Court held that by way of the retrospective amendments, the legislature has not cured the basis of reasonings adopted by various High Courts while quashing reopening notices and merely sought to overturn the law laid down by the High Courts and substitute its opinion over the High Court's findings.

Assailing the said decision, the tax department preferred a special leave petition (SLP) before the Hon'ble Supreme Court. The Supreme Court, vide its order dated 18 September 2026 , has admitted the SLP and listed the matter for final hearing on 03 December 2026. In the meanwhile, the Supreme Court has stayed the operation of the aforesaid order of the Punjab & Haryana High Court, on the condition that the reassessment proceedings shall also remain stayed until final disposal of the matter.

Independent of the above, the Hon'ble Andhra Pradesh High Court in Bala Sreenivas Rao Somisetty has dealt with the issue and held the JAO-FAO retrospective amendment as 'unconstitutional'. Further, the High Court held that IT Act was repealed on 31 March 2026 and was not in existence on 01 April 2026, when the Finance Act 2026 came into force. Accordingly, amendment made to such repealed IT Act, by insertion of section 147A, is not sustainable under law and it has no legal sanctity.

A few other High Courts are also hearing these challenges (including the Bombay High Court) and it will be interesting to see how the courts deal with this issue. Considering that the Hon'ble Supreme Court is now seized of the controversy, its decision would decide the fate of numerous reassessment cases. These rulings may also have a bearing on other retrospective amendments (as for instance, the interplay of limitation period under section 144C and section 153 (transfer pricing amendment pursuant to ROCA Bathroom



/ Shelf Drilling case), validity of notices issued without a valid Document Identification Number etc.), introduced vide Finance Act, 2026.

Assignment of Trademark is 'Capital Gains' and Not 'Royalty', Taxable Only in Switzerland under the DTAA

The Hon'ble Tax Tribunal, Mumbai in Novartis AG , held that gains arising on assignment of trademark by a Swiss entity constitutes 'capital gains' and falls under the residuary clause of Article 13 of the India-Switzerland DTAA, taxable only in the transferor's residence state (ie Switzerland), where such assignment was territorially confined to India, and the assignor retained the corresponding rights elsewhere along-with the trade-dress and packaging associated therewith. The Tax Tribunal rejected the tax department's argument that such an assignment denotes use or right to use the trademark and therefore, constituted 'royalty' under Article 12, chargeable to tax in India.

The Tax Tribunal, examined the trademark assignment documentation and observed that the assignment agreements transferred, in perpetuity, Novartis' rights, title, interest and embedded goodwill in the trademarks in India, and prohibited Novartis from using the trademarks or claiming any right, title or interest in the trademarks in India. The Trade Marks Registry records, reflecting the Indian entities as the new owners, also independently corroborated the transfer of ownership of the trademarks.

The Tax Tribunal noted that the property assigned comprised rights in the Indian territory and excluded corresponding rights in other jurisdictions, as also its pre-existing trade dress and packaging. Consequently, the Tax Tribunal held that retention of such excluded rights cannot be equated with retention of rights sold in India. The Tax Tribunal also held that restrictions concerning trade dress required the assignee to independently develop a new and original trade dress and did not qualify the vesting of ownership in the trademarks that are expressly assigned.

The ruling establishes important principles governing classification of a particular transaction as 'alienation' of property or 'royalty' towards use or right to use such property. It clarifies that reservation of certain restrictions does not dilute the transfer of ownership in the underlying property or re-characterise the nature of the transaction. It also underscores the importance of appropriate documentation to establish the true nature of the transaction.

ESOP Expenditure Cross-Charged by Overseas Parent to Indian Subsidiary Allowable as Deduction

The Hon'ble Tax Tribunal, Bangalore, in Zepto Private Limited (formerly 'Kiranakart Technologies Private Limited') , held that expenditure incurred by an Indian company towards employee stock options granted by its Singapore holding company to the Indian company's employees is allowable as a business deduction in the hands of Indian company under section 37(1) of the IT Act.

The Singapore holding company had introduced a share option plan for employees and consultants of the Indian company. Under a cost-to-cost reimbursement arrangement, the Indian company was required to reimburse the ESOP cost attributable to its employees. The tax officer disallowed the expenditure, treating it as hypothetical and contingent liability.

Allowing the taxpayer's appeal, the Tax Tribunal followed the jurisdictional High Court ruling in

Biocon Limited and held that ESOP discount represents deferred employee remuneration. The relevant liability accrues over the vesting period as employees render services, even though the options may be exercised and shares allotted subsequently. The possibility that an employee may leave before vesting, or may not exercise vested options, does not make the liability contingent from inception. Any expenditure attributable to options that subsequently lapse or remain unvested may instead be reversed or appropriately adjusted in the relevant subsequent year.

This ruling provides helpful support for Indian group entities claiming deduction for ESOP costs cross-charged by overseas parent companies. Taxpayers should, however, ensure that the ESOP plan, inter-company reimbursement arrangement, valuation workings and accounting recognition clearly demonstrate that the cost relates to services rendered by employees of the Indian entity and is contractually recoverable from it.

Gifted Assets Taxed under Section 56(2)(X) Retain Long-Term Character; Indexation Benefit Available Only from the Year of Gift

The Hon'ble Tax Tribunal, Chennai, in Venkataswaroop Reddy Siddavarapu , considered the capital gains consequences on sale of unlisted shares received as gift from a non-relative. The taxpayer had received certain shares as gift and offered their fair market value to tax as income under section 56(2)(x) of the IT Act in the year of its receipt and subsequently sold such shares in later years. The taxpayer treated the gain as long-term capital gain, adopted the value taxed under section 56(2)(x) as the cost of acquisition and claimed indexation. The tax officer treated the shares as 'short-term capital asset', since they had been held by the taxpayer (post receipt of gift) for less than 24 (Twenty-Four) months. While the first appellate authority accepted that the shares could be long-term in nature, the indexation benefit claimed by the taxpayer was denied.

The Tax Tribunal held that taxation of a gift under section 56(2)(x) does not change the fundamental character of the transaction as a 'gift'. Accordingly, where an asset is received as gift, the period for which it was held by the donor must be included in the donee's period of holding under Explanation 1(b) to section 2(42A), read with section 49(1). The shares were therefore held to be long-term capital asset. Further, the Tax Tribunal observed that section 49(4), which deems the value taxed under section 56(2)(x) as the recipient's cost of acquisition, modifies only the cost of acquisition and does not affect the period-of-holding rule.



However, the Tax Tribunal distinguished the Bombay High Court ruling in Manjula J Shah, which permits indexation from the year in which the previous owner first held an asset acquired by gift or inheritance. It noted that, in such conventional gift or inheritance cases, the cost of acquisition and holding period are both carried over from the previous owner under the same statutory fiction. In contrast, where section 49(4) applies, the cost is independently fixed as the fair market value which was taxed in the donee's hands under section 56(2)(x). Since this deemed cost arises only when the gift is received and taxed, it cannot be indexed from a year preceding its existence. The Tax Tribunal accordingly directed that indexation be allowed from the year in which the gift was received and its value was taxed under section 56(2)(x), and not from the year in which the donor initially acquired the shares.

This ruling clarifies an important distinction for recipients of taxable gifts. While the donor's holding period may be counted for determining whether a capital asset is long-term, indexation of the cost deemed under section 49(4) is available only from the year in which such gift was received and taxed under section 56(2)(x) in the hands of the recipient.

Interest on Borrowings for Strategic Investments and Acquisition of Controlling Interests is Allowable as Deduction

The Hon'ble Tax Tribunal, Bangalore, in Pronomz Ventures LLP , upheld deduction of interest expenditure under section 36(1)(iii) of the IT Act. The taxpayer, an LLP engaged in financial consultancy, investment solutions and advisory services, had borrowed funds and invested in group entities and other companies as a promoter and strategic investor. The tax officer inter alia disallowed the interest expense, contending that the borrowings were deployed for investments in group companies which did not generate corresponding business income.

The Tax Tribunal noted that the taxpayer's investment schedule, financial statements and regulatory disclosures established that it made investments to acquire or maintain controlling interests in companies. The Tax Tribunal held that strategic investments made by a promoter entity may constitute a business activity, notwithstanding that the investments are reflected as non-current investments rather than stock-in-trade. Further, dividend income from such investments being taxable under the head 'Income from other sources' does not detract from the business purpose underlying the investments. Relying on the Hon'ble Supreme Court's decisions in S A Builders , Sharp Business Systems and L K Trust , the Tax Tribunal held that interest on borrowings deployed to acquire or maintain a controlling interest must be assessed from the standpoint of commercial expediency. The Tax Tribunal held that the expression "for the purposes of business" in section 36(1)(iii) is broader than "for the purpose of earning profits" and includes expenditure incurred to preserve, protect or advance the taxpayer's business interests.

The ruling reinforces that interest deduction under section 36(1)(iii) may be available for borrowings used for strategic group investments and acquisition of controlling stakes, provided the taxpayer can substantiate the commercial rationale and business nexus.

Other Key Updates

Transfer Pricing Issue Concerning Advertising, Marketing and Promotion Expenses to be Heard by the Apex Court

It is quite common in the current competitive environment to see Indian arm of multinational companies (MNCs) incurring advertisement expenses to increase their visibility to boost sales. However, tax authorities view this as a tool used by the Indian arm to accrue a benefit to the parent MNC in promotion of its brand in India by incurring expenditure which the parent MNC should have incurred.

It is also debated whether an Indian entity which incurs such advertising and marketing expenses provides marketing or brand building services to the parent MNC who is the brand owner. A related question which arises is whether such advertising and marketing expenditure can be subject to tax under Indian transfer pricing regulations even if the Indian entity does not charge any amount to the parent MNC.

The issue has now been listed before the Hon'ble Supreme Court on 18 November 2026. It will be particularly significant to see how the Supreme Court resolves this long-standing controversy and clarifies the circumstances, if any, in which advertising and marketing expenditure may constitute an 'international transaction' subject to Indian transfer pricing provisions.

India–Mauritius DTAA Protocol: Principal Purpose Test Now in Force

On 7 March 2024, India and Mauritius signed an amending protocol to incorporate the Base Erosion and Profit Shifting minimum-standard anti-abuse measures. The Protocol firstly replaces the treaty preamble to clarify that the elimination of double taxation is not intended to create opportunities for non-taxation or reduced taxation through tax evasion, avoidance or treaty shopping; and secondly introduces a new 'Entitlement to Benefits' article containing the Principal Purpose Test (PPT) which permits either country to deny DTAA benefits where obtaining a tax benefit is one of the principal purposes of an investment or transaction, unless granting the benefits would be in accordance with the object and purpose of the relevant treaty provisions.

The Government of India has now notified the Protocol as per which, the Protocol entered into force on 10 August 2026 and consequently, all transactions undertaken on or after 10 August 2026 will be subject to PPT.

The Notification aligns the DTAA with India's other treaties covered by the MLI. With the Protocol



now notified and in force, claims to DTAA must satisfy the additional requirements of the PPT. Accordingly, Mauritius-based investors should reassess their existing structures for eligibility to treaty benefits and seek appropriate legal advice.

Tax Department Invokes Judicial Anti Avoidance Rules to Deny DTAA Benefits

Lately, tax authorities have started to invoke Judicial Anti Avoidance Rules (JAAR) in tax assessments of foreign investors, including FPIs and have passed draft assessment orders denying DTAA benefits. The above development comes in the backdrop of a notification issued by the Central Board of Direct Taxes (CBDT), clarifying that investments made prior to 01 April 2017 would not be impacted by GAAR. Consequently, since tax authorities could not resort to GAAR for grandfathered investments, they have instead chosen to invoke JAAR in such cases.



The above development has surprised foreign taxpayers, particularly in wake of CBDT's assurance to protect grandfathered shares from GAAR. It is hoped that the government will clarify this issue soon to strengthen investor confidence and provide greater certainty in India's tax regime.

Supreme Court Issues Notice in EY's Appeal on Taxability of Secondment Reimbursements

The Hon'ble Delhi High Court, in Ernst and Young U.S. LLP (EY US) , held that cost-to-cost reimbursements made by the Indian entity to its US affiliate for seconded employees constituted fees for technical services/fees for included services (FTS) under the IT Act read with the India-USA DTAA, and were accordingly taxable in India.

The High Court treated the arrangement as, in substance, a deputation by EY US of its personnel to make available their technical knowledge, skills and know-how to the Indian entities, placing particular weight on the secondees' continuing employment lien with EY US, their continued entitlement to overseas social-security and other benefits, and the inability of the Indian entities to sever the underlying employment relationship. The Court also held that the 'make available' test under Article 12(4)(b) of the India-USA DTAA was satisfied and that the absence of a markup does not, by itself, negate taxability.

On 26 October 2026, the Hon'ble Supreme Court issued notice in the Special Leave Petition filed by EY against the aforesaid Delhi High Court judgment. Hearing in the matter is scheduled for 1 December 2026. The Supreme Court's decision is expected to bring much-needed clarity on the tax treatment of payments under cross-border secondment arrangements.

End Notes

EKGE Retail LLP vs. Assistant Commissioner of Income-tax [2026] 191 taxmann.com 514 (Telangana)

Fireeye Ireland Limited vs. Assistant Commissioner of Income-tax [2026] 191 taxmann.com 904 (Delhi-Trib.)

Jyoti Sareen vs. Union of India, [2026] 190 taxmann.com 384 (Punjab & Haryana)

Union of India vs. Bharat Industrial Enterprises (P.) Ltd., [2026] 190 taxmann.com 672 (SC)

Bala Sreenivas Rao Somisetty vs. Income-tax Officer, [2026] 191 taxmann.com 325 (Andhra Pradesh)

Novartis AG vs. Assistant Commissioner of Income-tax, [2026] 191 taxmann.com 446 (Mumbai-Trib.)

Zepto Private Limited (Formerly Kiranakart Technologies Private Limited) vs. DCIT 7(1)(1), [2026] 190 taxmann.com 523 (Bangalore-Trib.)

Venkataswaroop Reddy Siddavarapu vs. DCIT Corp. Circle – 3(1) [2026] 190 taxmann.com 1211 (Chennai-Trib.)

CIT vs. Manjula Shah [2013] 355 ITR 474 (Bombay)

DCIT vs. Pronomz Ventures Llp [TS-1364-ITAT-2026(Bang)]

S.A. Builders Ltd. vs. CIT [2007] 288 ITR 1 (SC)

Sharp Business Systems vs. CIT [2026] 181 taxmann.com 657 (SC)

L.K. Trust vs. CIT [2026] 186 taxmann.com 594 (SC)

Notification F. No. 135/2026/F. No. 500/03/2012-FTD-II dated 13 October 2026

CIT (IT)-1 vs. Ernst and Young U.S. LLP [2026] 187 taxmann.com 711 (Delhi)

See order dated 26.10.26 in SLP (Civil) no. 36320/2026.



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