Tax INFORM

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FoxMandal Solicitors & Advocates

www.foxmandal.in | info@foxmandal.in

Contents

Highlights of the Issue

DIRECT TAX

Domestic Tax Rulings:

- Assessment proceedings cannot be continued during moratorium under IBC: Bombay HC.
- Assessee entitled to depreciation on revalued cost of assets post partnership takeover: Madras HC.
- Flower bed, window projections, and service area not part of “built-up area” for Section 80IB(10) deduction: Bombay HC.
- CBDT cannot impose time limit for filing compounding applications; Clause 7(ii) already struck down: Madras HC.
- Telangana HC reaffirms that regular payments to parent company in ordinary course of business cannot be treated as ‘deemed dividend’ under Section 2(22)(e).

Circulars and Notifications:

- Notification No. 67/2025, dated June 20, 2025
- Notification No. 69/2025, dated June 25, 2025

INDIRECT TAX

Goods and Services Tax:

Case Laws:

- Blocking of input tax credit ledger under Rule 86A cannot exceed 10% of the demand: SC upholds P&H HC interim relief.
- Refund of transitioned credit upheld; SC dismisses Revenue’s SLP with cost for suppressing precedent.
- SC deprecates misuse of voluntary bail conditions; remands matter for fresh consideration.
- Inter-State transfer of ITC allowed on amalgamation despite portal constraints; Section 18(3) permits it: Bombay HC.
- Service of notices via registered email and mobile number is valid under Section 169; writ not maintainable: Allahabad HC.

Customs Duty:

Circulars and Notifications:

- Circular No. 17/2025-Customs dated June 19, 2025.
- Instruction No. 23/2025-Customs dated July 15, 2025.

DIRECT TAX

A. Recent Case Laws

Smaaash Entertainment Pvt. Ltd. v. Assistant Commissioner of Income Tax (W.P. No. 3272 of 2024)

Assessment proceedings cannot be continued during moratorium under IBC: Bombay HC.

In this case, the Bombay High Court reaffirmed that assessment proceedings under the Income Tax Act, 1961, could not be initiated or continued during the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC). The Court held that the protective umbrella of the moratorium extended not just to recovery but also to assessment proceedings, thereby rendering invalid any notices or orders issued during such a period.

When the Assessee was undergoing Corporate Insolvency Resolution Process (CIRP) and a moratorium was in operation pursuant to the order dated May 6, 2022, passed by the NCLT under Section 14 of the IBC, the Revenue issued notices under Section 143(2), conducted ex-parte assessment under Section 144, and raised a demand under Section 156 of the Income Tax Act. The Assessee, through the Resolution Professional, challenged these actions on the ground that they were violative of the IBC moratorium. The Revenue, citing the *ABG Shipyard* decision of the Supreme Court, contended that while recovery was barred, assessment proceedings could proceed.

The High Court distinguished *ABG Shipyard*, noting it dealt with the Customs Act and not the Income Tax Act. Relying instead on the Delhi High Court's decision in *Monnet Ispat and Energy Limited*, which had been affirmed by the Supreme Court, the Bombay High Court ruled that even assessment proceedings were barred during a moratorium under Section 14 of the IBC. Consequently, it quashed all proceedings, including notices and orders, and allowed the Revenue liberty to revive them once the moratorium ends. A four-week stay on the operation of the order was granted to enable the Revenue to approach the Supreme Court, with a bar on coercive action in the interim.

Sundaram Spinning Mills (P) Ltd. v. Commissioner of Income Tax (T.C.A. Nos. 586 & 587 of 2011)

Assessee entitled to depreciation on revalued cost of assets post partnership takeover: Madras HC.

In this case, the Madras High Court held that the Assessee, having taken over a partnership firm, was entitled to claim depreciation under Section 32 of the Income Tax Act, 1961, on the actual cost of the assets, including any revaluation done prior to the takeover. The Court clarified that Explanation 3 to Section 43(1) which disallows inflated cost claims to reduce tax liability, did not apply in this bona fide case of business succession.

The Assessee company was admitted as a partner in a firm in 1983, and by March 31, 1984, the firm was dissolved with the Assessee taking over all assets and liabilities. The assets had earlier been revalued in April 1982. The Assessee claimed depreciation for AY 1985–86 based on this revalued cost. However, the Assessing Officer and later the Income Tax Appellate Tribunal (ITAT) disallowed the claim by invoking Explanation 3 to Section 43(1), stating that the purpose of transfer was to claim higher depreciation.

The High Court rejected this view, holding that the Assessee was entitled to depreciation on the actual cost it paid to the retiring partners, which was consistent with the asset valuation from 1982. Citing the Bombay High Court's ruling in *Dharmanandan Diamonds Pvt. Ltd*., the Court emphasized that depreciation should be allowed on actual cost as per Rule 5 of the Income Tax Rules, 1962. The Court allowed the appeal, ruling that Explanation 3 had no application where the transaction was genuine and not tax-avoidant.

Moorthy Elumalai v. CBDT & Ors. (W.P. No. 23086 & 23094 of 2024)

CBDT cannot impose time limit for filing compounding applications; Clause 7(ii) already struck down: Madras HC.

In this case, the Madras High Court reiterated that the Central Board of Direct Taxes (CBDT) has no authority to fix a limitation period for filing applications seeking compounding of offences under Section 279(2) of the Income Tax Act, 1961. It held that Clause 7(ii) of the CBDT's Guidelines dated 16.09.2022—which imposed a 36-month time limit from the end of the month in which the complaint was filed—was ultra vires the Act and therefore unenforceable.

The Assessee faced prosecution for failure to file a return of income for AY 2013–14. The criminal proceedings were initiated on 27.07.2016, and the same is currently pending before the Magistrate's Court. The Assessee filed an application for compounding the offence on 15.09.2023, which was rejected by the Revenue as time-barred, citing Clause 7(ii) of the 2022 Guidelines.

The High Court, following its earlier ruling in *Jayashree v. CBDT & Ors*. (W.P Nos.2968 & 2970 of 2023), reiterated that Section 279(2) allows compounding "either before or after the institution of proceedings" without prescribing any limitation. It held that the CBDT's power to issue circulars under Section 119(1) does not extend to altering or restricting substantive statutory rights, such as the right to seek compounding. As Clause 7(ii) sought to impose an artificial cut-off contrary to legislative intent, the Court declared it void and directed the Chief Commissioner of Income Tax to reconsider the Assessee's application on merits.

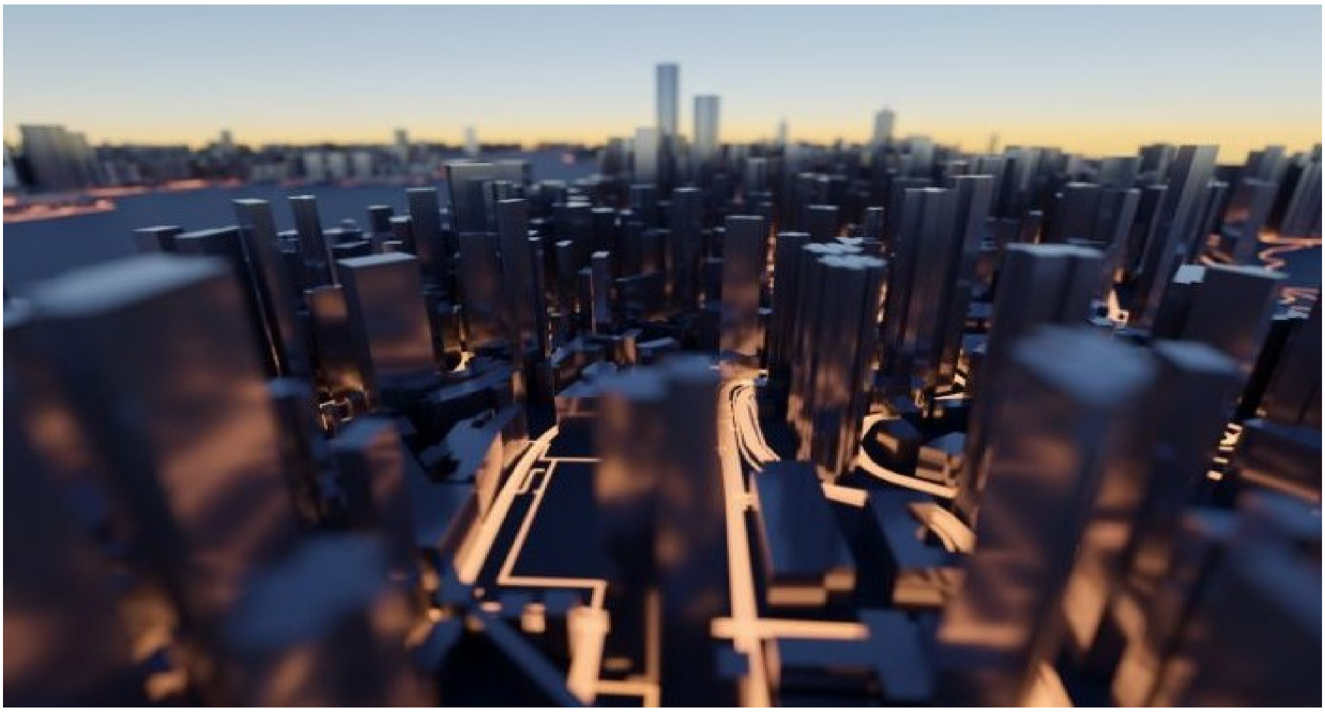
Principal Commissioner of Income Tax v. Nahar Enterprises (ITA No. 1992 of 2018)

Flower bed, window projections, and service area not part of "built-up area" for Section 80IB(10) deduction: Bombay HC.

In this case, the Bombay High Court held that flower bed areas, window projections, service areas, and cupboard projections are not to be included in the "built-up area" as defined under Section 80IB(14)(a) of the Income Tax Act, 1961, for the purpose of computing the eligibility threshold of 1000 sq. ft. under Section 80IB(10). The Court emphasized that "built-up area" includes only the inner measurements of the residential unit at the floor level, along with usable projections and balconies, and does not cover ornamental or non-habitable spaces.

The Assessee, a real estate developer, claimed deduction under Section 80IB(10) for a residential project. The Revenue disallowed the deduction on the ground that flower bed areas and projections exceeded the permissible built-up area limit. The Commissioner of Income Tax (Appeals) excluded cupboard projections, service areas, and window projections from the built-up area but included flower bed areas. On further appeal, the Income Tax Appellate Tribunal (ITAT) excluded flower beds too, treating them as ornamental features not part of the habitable unit. The Revenue challenged this decision.

The High Court upheld the ITAT's ruling. It held that flower beds are outside the residential unit, open to the sky, a few inches below floor level, and non-habitable. Similarly, cupboard projections are embedded in walls, service ducts are common utility spaces used for pipework, and window projections are unsafe and ornamental. None of these, the Court ruled, meet the statutory criteria of "built-up area." The appeal was dismissed with no substantial question of law found.



Prasad Film Laboratories Pvt. Ltd. v. Asst. Commissioner of Income Tax (I.T.T.A. Nos. 142, 144 & 180 of 2008)

Telangana HC reaffirms that regular payments to parent company in ordinary course of business cannot be treated as 'deemed dividend' under Section 2(22)(e).

In this case, the Telangana High Court held that payments made by a company to its parent entity in the ordinary course of business cannot be treated as 'deemed dividend' under Section 2(22)(e) of the Income Tax Act, 1961. The Court ruled that such business transactions do not constitute advances or loans within the meaning of the said provision and thus are not taxable as dividend income.

The Assessing Officer treated regular fund transfers from the Assessee (a private company) to its parent company as advances, arguing that they fell under the ambit of deemed dividend as per Section 2(22)(e). The Income Tax Appellate Tribunal (ITAT) remanded the matter back to the AO to assess accumulated profits and credit balances on each transfer date. The Assessee appealed against the remand, arguing that the payments were routine business transactions and could not be deemed as dividend.

The High Court relied on several precedents, including *CIT v. Raj Kumar*, *Ambassador Travels*, *Creative Dyeing*, and *Amrik Singh*, and also referred to CBDT Circular No. 19/2017. It emphasized that only advances carrying an obligation of repayment, akin to loans, fall under the deeming fiction. Commercial transactions made for business expediency do not qualify. Consequently, the Court quashed the ITAT's remand and held that the payments in question were not in the nature of deemed dividend.

B. Notifications/Circulars

Notification No. 67/2025, dated June 20, 2025

The Central Government has notified that no tax shall be deducted at source under specified sections of the Income-tax Act, 1961, in respect of certain payments made to Units in an International Financial Services Centre (IFSC), provided such Units claim deduction under Section 80LA. This relief applies to payments such as professional fees, interest, rent, freight, and management fees made by a payer to eligible IFSC units, during the ten consecutive assessment years for which deduction under Section 80LA is opted.

The notification applies to different types of IFSC entities, including BATF service providers, broker-dealers, finance companies, fund management entities, recognised clearing corporations, depositories, and stock exchanges. The nature of payments exempt from TDS spans a wide range, including advisory fees, lease interest, portfolio management fees, technical services, and penalties. The relaxation is conditional upon the payee furnishing a "statement-cum-declaration" in Form No. 1 for each relevant year. The payer must then refrain from deducting tax and report such transactions in TDS returns.

This exemption will be effective from July 1, 2025 and is intended to ease tax compliance for IFSC units approved in Special Economic Zones, supporting India's goal of promoting offshore financial services hubs. The Principal Director General of Income-tax (Systems) will prescribe procedures for secure implementation and reporting.

Click here to read the notification.

Notification No. 69/2025, dated June 25, 2025

The Central Government has notified the entry into force of the Protocol amending the India–Oman Double Taxation Avoidance Agreement (DTAA). Effective from FY 2025–26, the amendments strengthen the treaty framework by updating key provisions on residence, associated enterprises, and exchange of information, while also introducing anti-abuse measures and non-discrimination clauses.

Key highlights of the Protocol signed on January 27, 2025, include:

- Alignment of "resident" definition for non-individuals with OECD standards (Article 4).
- There is a change in rate from 15% to 10% for Royalties and Technical Fees. (Articles 7 and 8).
- Enhanced MAP (mutual agreement procedure) mechanism allowing resolution of disputes even beyond domestic limitation periods (Article 11).
- Insertion of provisions on assistance in tax collection (Article 27A) and expanded exchange of information, including banking and fiduciary data (Article 12).
- Lowering of withholding tax rates on royalties and technical fees from 15% to 10% (Articles 13 & 14).
- Non-discrimination against nationals or permanent establishments (new Article 25A).
- Limitation of benefit clause denying treaty benefits where obtaining such benefit was one of the principal purposes of a transaction (Article 27B).

The Protocol, signed at Muscat and effective from May 28, 2025, will apply in India for income derived in fiscal years beginning on or after April 1, 2026. It aligns the DTAA with international tax standards and BEPS principles, aiming to curb treaty shopping and ensure tax transparency.

Click here to read the notification.

INDIRECT TAX

Goods & Services Tax

Recent Case Laws

Deputy Director & Anr. v. Ramesh Kumar Yadav & Ors. (SLP (C) Diary No. 31866/2025)

Blocking of input tax credit ledger under Rule 86A cannot exceed 10% of the demand: SC upholds P&H HC interim relief.

In this case, the Supreme Court dismissed the Revenue's Special Leave Petition against an interim order of the Punjab and Haryana High Court, which had earlier directed that input tax credit (ITC) in the electronic credit ledger can be blocked only up to 10% of the demanded tax, in line with the pre-deposit requirement under Sections 73 and 74 of the Central Goods and Services Tax (CGST) Act, 2017. The Supreme Court found no reason to interfere, especially since the main writ petition was still pending.

The matter arose when the Revenue, citing Rule 86A of the CGST Rules, 2017, blocked the Assessee's electronic credit ledger far in excess of 10% of the tax demanded. The Assessee challenged this before the Punjab and Haryana High Court, which, relying on its earlier decision in *K.J. International*, directed the authorities to unblock ITC beyond 10% of the tax demand, equating it to the statutory pre-deposit requirement. The Revenue sought to challenge this interim relief through a Special Leave Petition (SLP) before the Supreme Court.

The Supreme Court declined to interfere at this stage and dismissed the SLP. It implicitly endorsed the High Court's prima facie view that blocking of ITC must be reasonable and aligned with statutory safeguards. The ruling adds to the growing judicial consensus limiting the discretionary use of Rule 86A, with conflicting views across High Courts now pending resolution.

Union of India & Ors. v. Ford India (P) Ltd. (SLP (C) Diary No. 28563/2025)

Refund of transitioned credit upheld; SC dismisses Revenue's SLP with cost for suppressing precedent.

In this case, the Supreme Court dismissed the Revenue's Special Leave Petition challenging the Gujarat High Court's order directing the refund of transitioned CENVAT credit to Ford India under Section 54 of the Central Goods and Services Tax (CGST) Act, 2017. The Court not only upheld the High Court's ruling but also imposed ₹10,000 as costs on the Revenue for failing to disclose that similar decisions had already been affirmed by the Supreme Court earlier in 2025.

Ford India had filed Form GST TRAN-1 and claimed transitional credit, which was later denied on a technical ground that the credit appeared in the Electronic Credit Ledger only in August 2017. The Gujarat High Court held that the authorities had wrongly adopted a hyper-technical view to deny legitimate credit and allowed Ford's refund claim under Section 54. In its reasoning, the Court relied on earlier judgments in *Intas Pharmaceuticals* and *Torrent Pharmaceuticals*, both of which had been upheld by the Supreme Court in January 2025.

Despite being aware of these precedents, the Revenue filed a Special Leave Petition (SLP) in May 2025 without mentioning the earlier SC dismissals. Condemning this omission, the Supreme Court dismissed the SLP and directed the Revenue to deposit ₹10,000 as costs with the Supreme Court Advocates-on-Record Association within four weeks.

Kundan Singh v. Superintendent of CGST & Central Excise (SLP (Crl.) No. 9111/2025)

SC deprecates misuse of voluntary bail conditions; remands matter for fresh consideration.

The Supreme Court has strongly condemned the practice of accused persons in goods and services tax (GST) evasion cases voluntarily offering to deposit amounts to secure bail and later backtracking by claiming that the conditions were either too onerous or unauthorized. The Court emphasized that such conduct undermines the sanctity of the judicial process and amounts to “approbating and reprobating.”

In this case, the petitioner was accused of ₹13.7 crore GST evasion and was arrested in March 2025. His counsel initially submitted before the Madras High Court that the petitioner had already deposited ₹2.86 crore and was willing to deposit another ₹2.5 crore in ten days post-release. Based on these voluntary submissions, the High Court granted bail. However, the petitioner later sought modification, citing personal hardship, and requested deferment of the initial ₹50 lakh deposit. The High Court allowed this and modified the bail condition.

Before the Supreme Court, the petitioner changed stance entirely, arguing that the counsel had no authority to offer any monetary condition. The Supreme Court disapproved of this tactic, noting that such backtracking unfairly forecloses judicial consideration on merits. Nonetheless, considering the averments made earlier, the Court granted interim protection and remanded the matter to the High Court for fresh adjudication on merits, setting aside both the original and modified bail orders.

Umicore Autocat India Pvt. Ltd. v. Union of India & Ors. (W.P. No. 463 of 2024)

Inter-State transfer of ITC allowed on amalgamation despite portal constraints; Section 18(3) permits it: Bombay HC.

In this case, the Bombay High Court (Goa Bench) held that unutilized Input Tax Credit (ITC) lying in the electronic credit ledger of a transferor company may be transferred to the transferee company under Section 18(3) of the Central Goods & Services Tax (CGST) Act, even if the two entities are located in different States. The Court ruled that neither Section 18(3) nor Rule 41 imposes any State-specific limitation on such transfer, and therefore, GSTN's technical inability to process inter-State transfers cannot override statutory entitlements.

The Petitioner, Umicore Autocat India Pvt. Ltd., merged with Umicore Anandeya India Pvt. Ltd., a Goa-based entity that stood dissolved pursuant to a National Company Law Tribunal (NCLT) -approved amalgamation scheme. Umicore sought to transfer the latter's unutilized Central Goods & Services Tax (CGST) and Integrated Goods & Services Tax (IGST) balances from Goa to Maharashtra. The Revenue objected, stating that the transferor and transferee must be registered in the same State to file Form ITC-02, and insisted that the petitioner obtain Goa registration first.

The Court rejected this objection, clarifying that upon merger, liabilities and credits of the transferor stand vested in the transferee, and the law does not require both to be in the same State. It distinguished *MMD Heavy Machinery* and emphasized that the inability of the GSTN portal to effectuate such transfers should not defeat substantive rights. It directed the authorities to allow manual transfer of the credit and urged the GST Council and GSTN to promptly implement a mechanism for inter-State ITC transfers post-amalgamation.

D.R. Hotels Pvt. Ltd. v. Deputy Commissioner, State GST, Lucknow (Writ Tax No. 575 of 2025)

Service of notices via registered email and mobile number is valid under Section 169; writ not maintainable: Allahabad HC.

The Allahabad High Court held that service of notices under the Central Goods & Services Tax (CGST) Act, 2017 via the email address and mobile number provided at the time of Goods & Services Tax (GST) registration constitutes valid service under Section 169(1)(c), even if such contact details later become inaccessible. The Court rejected the writ petition filed by the Assessee on the ground that an alternate statutory remedy under Section 107 of the Act was available and had not been exhausted.

The Petitioner challenged the assessment order dated 19.02.2025 and the consequential bank account freezing order dated 11.06.2025, claiming that no notice was served and that the mobile and email ID used by the department were no longer operational, as they belonged to a former accounts manager. The Petitioner argued that it was unaware of the assessment proceedings until the bank account was attached, by which time the appeal limitation period had expired.

The High Court rejected this argument, holding that notices were duly sent to the registered email and mobile number, satisfying the modes of service under Section 169. Referring also to Section 13 of the Information Technology Act, 2000, the Court held that electronic communication is valid when sent to the designated resource. Citing *Assistant Commissioner v. Commercial Steel Ltd*. and *Chhabil Dass Agarwal*, the Court ruled that no breach of fundamental rights or natural justice had occurred, and relegated the Assessee to its remedy of appeal under Section 107.

Customs Duty

Notifications/Circulars

Circular No. 17/2025-Customs dated June 19, 2025

The Central Board of Indirect Taxes and Customs (CBIC) has extended the use of ICETABs, previously deployed for import consignments, to the examination and clearance of export goods at all Customs locations across India, effective 19th June 2025. This move is aimed at enhancing speed, transparency, and digital recordkeeping in the customs examination process.

Building on the success of ICETAB implementation for imports (as per Circular No. 10/2024-Customs), the current circular mandates its application in exports. With this, examining officers can digitally access Shipping Bill details, examination orders, RMS instructions, and supporting documents without the need for paper copies. The examination report can also be directly entered into the ICETAB system.

Additionally, officers must upload four digital images of the cargo under examination to capture key aspects, which will be stored in the e-Sanchit repository for future reference. In rare cases where examination via ICETAB is not possible, prior approval from the Assistant Commissioner is required, and the reason must be documented.

A detailed advisory will be issued by DG Systems. Customs Commissioners are tasked with conducting weekly reviews to resolve implementation issues. The circular directs all field formations to issue appropriate Trade/Public Notices and sensitize both officers and stakeholders on the new system.

Click here to read the instruction.

Instruction No. 23/2025-Customs dated July 15, 2025

The Central Board of Indirect Taxes and Customs (CBIC) has issued Instruction No. 23/2025-Customs to implement relaxations granted by the Ministry of Steel via Order dated July 11, 2025, concerning mandatory adherence to Indian Standards (IS) for input steel materials under the Quality Control Orders (QCO) framework.

Two key exemptions have been notified:

- For consignments with Bill of Lading dated on or before July 15, 2025, the requirement to comply with the Indian Standard for input steel is waived.
- For final products supplied by Integrated Steel Plants (ISPs), the IS compliance requirement is waived subject to verification of BIS licences. Until BIS verification is completed, ISPs must self-declare their status to the Ministry of Steel via email, enclosing operative BIS licences and supporting documents.

CBIC has directed all Customs field formations to sensitise officers accordingly. This instruction modifies earlier Instruction No. 16/2025-Customs dated June 18, 2025. The Ministry of Steel will update the SIMS (Steel Import Monitoring System) portal to accommodate these relaxations. Any misdeclaration by ISPs may lead to debarment from SIMS.

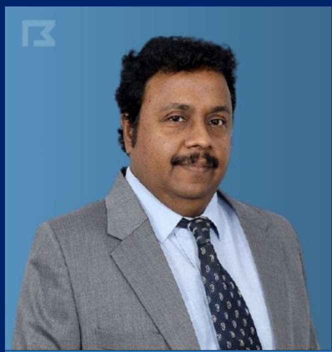
Click here to read the instruction.

Key Contacts

G.V. GOPALA RAO

DIRECTOR – TAX
BANGALORE

+91 94835 12333
GOPALA.RAO@FOXMANDAL.IN



RANGANATH H.

DIRECTOR – TAX
BANGALORE

+91 98807 44482
RANGANATH@FOXMANDAL.IN

www.foxmandal.in

info@foxmandal.in

Offices at:

Ahmedabad | Bengaluru | Chennai | Hyderabad | Kolkata | Mumbai | New Delhi | Pune

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