Tax
INFORM

A Fox Mandal & Associates publication - for private circulation only.

Issue LXII | March 2026

FoxMandal
Solicitors & Advocates

www.foxmandal.in | info@foxmandal.in

4 DIRECT TAX

Recent Case Laws

10 Goods & Services Tax

Recent Case Laws

Notifications/Circulars

Highlights of the Issue

DIRECT TAX

Domestic Tax Rulings:

- Supreme Court rules that Benami Act attachments cannot be challenged before NCLT under the IBC.
- Bombay High Court holds that pure reimbursement under a cost-sharing arrangement without profit element is not liable to TDS under Section 40(a)(ia).
- Bombay High Court holds that an infrastructure developer is eligible for Section 80-IA deduction even if payments are periodic and ownership remains with the Government.
- Gujarat High Court holds that consideration received on transfer of self-generated trademarks prior to April 1, 2002 is not taxable as capital gains.
- Bombay High Court holds that deposits in a foreign account opened during non-residency are not taxable absent nexus with Indian income.

INDIRECT TAX

Goods and Services Tax:

Case Laws:

- Bombay High Court holds that assignment of leasehold rights is not liable to GST.
- Bombay High Court holds that importers are not liable to IGST on ocean freight under CIF contracts.
- Kerala High Court holds that ITC restriction under Section 16(3) applies only to the portion on which depreciation is claimed.
- Gujarat High Court holds that inter-state transfer of ITC on amalgamation is permissible.
- Punjab and Haryana High Court holds that regulatory fees collected by Electricity Commissions are not subject to GST.

Notifications/Circulars:

- CBIC extends deferred payment facility for customs duty to Eligible Manufacturer Importers (EMI).

DIRECT TAX

A. Recent Case Laws

S. Rajendran v. Deputy Commissioner of Income Tax (Benami Prohibition) & Ors. [Civil Appeal No. 7140 of 2022]

Supreme Court holds that Benami Act attachments cannot be challenged before NCLT under the IBC

The Supreme Court has held that proceedings under the Prohibition of Benami Property Transactions Act, 1988 ("Benami Act") are "not in the nature of inter se disputes between private parties… nor are they recovery proceedings capable of being subsumed within insolvency resolution," but constitute "a sovereign exercise aimed at identifying and extinguishing benami transactions."

Accordingly, the Court ruled that orders of attachment under the Benami Act cannot be challenged before the National Company Law Tribunal ("NCLT") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), as such disputes arise "dehors the insolvency" and must be pursued before the statutory authorities under the Benami Act.

Rejecting the applicability of the moratorium, the Court clarified that Section 14 of the IBC is intended to protect the corporate debtor from "creditor actions" and not to "shield tainted assets from sovereign actions against crime." It further held that property held benami does not form part of the liquidation estate, as "where the corporate debtor is merely an ostensible holder, the property never forms part of its estate and cannot be administered in liquidation." The appeals were dismissed with costs, with the Court observing that invoking IBC jurisdiction in such cases was "not bonafide" and amounted to a "complete abuse of the process."

Pr. Commissioner of Income Tax-14 v. Pfizer Products India Pvt. Ltd. [Income Tax Appeal No. 2479 of 2018]

Bombay High Court holds that reimbursement without income element does not attract TDS under Section 40(a)(ia)

The Bombay High Court held that payments made under a cost-sharing arrangement, which are "purely in the nature of reimbursement… without any markup" and "did not have any income/profit component embedded with it," do not attract tax deduction at source under Chapter XVII-B of the Income-tax Act, 1961.

The Court clarified that "when the inherent nature of the payment itself is not income, mere levy of service tax would not change the nature of such a payment," and therefore such reimbursements cannot be treated as income liable to TDS.

In this case, the assessee paid ₹14.51 crore to its group entity towards cross-charges for shared employee and facility costs under a cost-sharing arrangement. The Assessing Officer disallowed the expenditure under Section 40(a)(ia) for non-deduction of TDS. However, both the CIT(A) and ITAT found that the payments were on a cost-to-cost basis without markup and contained no income element.

Upholding these findings, the High Court held that no disallowance could be made, noting further that the payee had already furnished its return of income, included the receipts and paid taxes, and therefore the assessee could not be treated as an assessee in default in view of the second proviso to Section 40(a)(ia) read with Section 201(1), which is "beneficial, declaratory and curative in nature."

Commissioner of Income Tax Central-II v. Patel Engineering Ltd. [Income Tax Appeal Nos. 1146 of 2004 & 934 of 2008]

Bombay High Court holds that infrastructure developer eligible for Section 80-IA deduction despite periodic payments and absence of ownership

The Bombay High Court considered "the correct interpretation of Section 80-IA (4) of the Income-Tax Act, 1961 and whether… the assessee is a developer of infrastructure facilities and eligible for deductions" under the said provision.

In this case, the Assessing Officer disallowed the deduction on the grounds that "the assessee is only a civil contractor and not a developer of the infrastructure," that "the assessee was paid periodically for the works executed," and that "no financial risk was undertaken by the assessee." The Revenue further contended that the assessee did not own the infrastructure and had developed only part of the project.

The Tribunal, however, allowed the deduction, and the High Court upheld this view. The Court noted that Section 80-IA was introduced "to incentivize the private sector to participate in infrastructure development," and that the provision was subsequently "liberalized to provide that any enterprise carrying on the business of either (i) developing, (ii) operating and maintaining or (iii) developing, operating and maintaining an infrastructure facility, would qualify for deduction."

Upholding the Tribunal's findings, the High Court held that the assessee was a developer of infrastructure facilities and therefore entitled to deduction under Section 80-IA(4), dismissing the Revenue's appeals.

Commissioner of Income Tax v. Zydus Lifesciences Limited [R/Tax Appeal No. 1234 of 2007 & R/Tax Appeal No. 1235 of 2007]

Gujarat High Court holds that transfer of self-generated trademarks prior to April 1, 2002 is not chargeable to capital gains.

The Gujarat High Court held that transfer of self-generated intangible assets such as trademarks, prior to the amendment to Section 55(2) of the Income-tax Act, 1961 (I-T Act), does not attract capital gains tax where the cost of acquisition is indeterminable. It reaffirmed that the charging provision under Section 45 fails in absence of a computable cost under Section 48, and that the amendment including trademarks within the scope of "cost of acquisition" is prospective from April 1, 2002.

In this case, the Assessee transferred 22 self-generated trademarks along with associated business rights to a joint venture entity for ₹29.10 crore under a Deed of Assignment dated June 15, 2000. The Assessing Officer treated the consideration as taxable, either as capital gains by taking cost as nil or alternatively as business income under Sections 28(iv) and 41(1). The Assessee contended that the trademarks were self-generated with no ascertainable cost of acquisition and that the transaction occurred prior to the statutory amendment bringing such assets within the capital gains framework.

By judgment dated March 12, 2026, the Gujarat High Court dismissed the Revenue's appeals and upheld the Tribunal's order. The Court held that the Assessee had transferred only trademarks and not the goodwill of the entire business, and that such self-generated trademarks, in absence of determinable cost, do not constitute taxable capital assets under the pre-amendment regime. It further held that the amendment to Section 55(2) inserting trademarks as capital assets applies prospectively and cannot be invoked for Assessment Year 2001–02 and rejected the applicability of Sections 28(iv) and 41(1) to tax the consideration.

Commissioner of Income Tax (IT)-4 v. Shri Dipendu Bapalal Shah [Income Tax Appeal No. 1593 of 2019]

Bombay High Court holds that foreign deposits of a non-resident are not taxable absent nexus with Indian income

The Bombay High Court held that, under Section 5(2) of the Income-tax Act, 1961, "a non-resident… having money in a foreign country cannot be taxed in India if such money has neither been received… nor has it accrued or arisen… in India."

The Court emphasised that "the provisions of Section 68 or 69 cannot enlarge the scope of section 5(2)," and that income accruing or arising outside India is not taxable unless it is received in India or shown to be relatable to income arising in India.

In the present case, the assessee was a non-resident since 1979 and held a foreign bank account with HSBC Geneva opened in 1997. The Assessing Officer made an addition of ₹6.13 crore based on deposits in the said account. However, the Court noted that "the source of the deposits… [was] nowhere conclusively established… from India," and held that the Revenue had failed to discharge the burden of proof.

Accordingly, the Court upheld the deletion of the addition, holding that in absence of any material linking the deposits to income accruing or arising in India, the same could not be brought to tax.

INDIRECT TAX

Goods & Services Tax

Recent Case Laws:

Hindustan Equipment Craft v. Assistant Commissioner of State Tax & Ors. [Writ Petition No. 1257 of 2026]

Bombay High Court holds that assignment of leasehold rights is not liable to GST.

The Bombay High Court held that assignment of leasehold rights by an original lessee to a third party constitutes transfer of benefits arising from immovable property and does not qualify as a “supply” under Section 7 of the Central Goods and Services Tax Act, 2017 (CGST Act). It clarified that such transactions lack the essential element of supply in the course or furtherance of business and cannot be artificially classified as “services” under Schedule II or residual entries.

In this case, the Assessee, holding a 95-year lease from Maharashtra Industrial Development Corporation (MIDC), assigned its leasehold rights in an industrial plot along with building to a third party with prior consent of MIDC. The tax authorities issued a show cause notice and confirmed demand under Section 74, treating the transaction as supply of services taxable at 18% under “other miscellaneous services”. The Assessee contended that the transaction resulted in extinguishment of its rights and constituted transfer of immovable property.

By judgment dated February 27, 2026, the Bombay High Court allowed the writ petition and quashed the demand. The Court held that the transaction amounted to transfer of benefits arising from immovable property and not a lease or sub-lease, and therefore fell outside the scope of GST. It further rejected classification under residual service entries and followed the Gujarat High Court ruling in Gujarat Chamber of Commerce and Industry, holding that such assignments are not exigible to GST.

Firmenich Aromatics Production India Pvt. Ltd. v. Union of India & Ors. [Writ Petition No. 385 of 2019]

Bombay High Court holds that importers are not liable to IGST on ocean freight under CIF contracts.

The Bombay High Court held that importers under Cost, Insurance and Freight (CIF) contracts cannot be treated as recipients of ocean freight services for the purposes of levy under the Integrated Goods and Services Tax Act, 2017 (IGST Act). It reaffirmed that a separate levy on ocean freight violates the concept of “composite supply” under Section 2(30) read with Section 8 of the Central Goods and Services Tax Act, 2017 (CGST Act), as transportation and insurance are already embedded in the value of imported goods on which IGST is paid.

In this case, the Assessee challenged the levy of Service Tax and IGST on ocean freight under reverse charge mechanism, pursuant to various notifications issued under the Finance Act, 1994 and the IGST Act. The Revenue sought to impose tax on transportation services provided by foreign shipping lines to foreign exporters, contending that importers were liable under reverse charge. The Assessee argued that it was neither the service provider nor the recipient and that such levy lacked territorial nexus and amounted to double taxation.

By judgment dated February 26, 2026, the Bombay High Court allowed the writ petition and quashed the impugned show cause notice and communications. The Court held that importers are not recipients of ocean freight services and that the levy under reverse charge is unsustainable. It further relied on Union of India v. Mohit Minerals Pvt. Ltd. and its earlier decision in Sanathan Textiles Pvt. Ltd., holding that such levy is contrary to the scheme of composite supply and beyond the charging provisions.

Emerson Process Management (India) Pvt. Ltd. v. Union of India & Ors. [R/Special Civil Application No. 7006 of 2024]

Gujarat High Court holds that inter-state transfer of ITC on amalgamation is permissible.

The Gujarat High Court held that Section 18(3) of the Central Goods and Services Tax Act, 2017 (CGST Act) read with Rule 41 of the CGST Rules permits transfer of input tax credit (ITC) pursuant to amalgamation, and there is no statutory restriction limiting such transfer to entities within the same State. It clarified that administrative or portal-based restrictions cannot override the statutory framework and that denial of ITC transfer must be grounded in express legal prohibition.

In this case, the Assessee underwent an amalgamation pursuant to an order of the National Company Law Tribunal (NCLT), resulting in transfer of all assets and liabilities including unutilised ITC. When the Assessee attempted to transfer ITC through Form GST ITC-02, the GST portal rejected the request stating that the transferor and transferee must be in the same State. The Assessee contended that no such restriction exists under the CGST Act or Rules and that the denial was contrary to the statutory scheme.

By judgment dated March 5, 2026, the Gujarat High Court allowed the writ petition and quashed the rejection. The Court held that inter-state transfer of ITC on amalgamation is permissible and that the portal restriction is de hors the statute. It further directed the authorities to accept Form ITC-02 manually and process the transfer within six weeks until an appropriate system mechanism is implemented.

Haryana State Electricity Regulatory Commission v. Union of India & Ors. [CM-2828-CWP-2026 in/and CWP-19113-2024]

Punjab and Haryana High Court holds that regulatory fees collected by Electricity Commissions are not subject to GST.

The Punjab and Haryana High Court held that fees collected by statutory regulatory bodies while discharging functions under the Electricity Act, 2003 do not constitute "consideration" for supply under Section 7 of the Central Goods and Services Tax Act, 2017 (CGST Act). It clarified that regulatory and quasi-judicial functions performed by such commissions are not activities undertaken in the course or furtherance of business, and therefore fall outside the ambit of GST.

In this case, the Haryana State Electricity Regulatory Commission challenged a show cause notice seeking to levy GST on tariff petition fees and licence fees collected in exercise of its statutory powers. The Revenue contended that such collections constituted consideration for services. The Petitioner argued that the fees were incidental to discharge of statutory and quasi-judicial functions and not in the nature of commercial services.

By judgment dated February 26, 2026, the Punjab and Haryana High Court allowed the writ petition and quashed the show cause notice. The Court held that regulatory functions cannot be artificially characterised as taxable supplies and that such commissions operate with the trappings of a tribunal. It further relied on Central Electricity Regulatory Commission v. Union of India and noted that the issue has attained finality with dismissal of the Special Leave Petition by the Supreme Court.

Notifications/Circulars

CBIC Circular No. 08/2026-Customs, dated February 28, 2026

CBIC extends deferred payment facility for customs duty to Eligible Manufacturer Importers (EMI).

The Central Board of Indirect Taxes and Customs (CBIC) has operationalised the extension of deferred payment of customs duty to “Eligible Manufacturer Importers” (EMI) pursuant to Notification No. 12/2026-Customs (N.T.). The facility, effective from April 1, 2026, is governed by the Deferred Payment of Import Duty Rules, 2016 and aims to facilitate faster clearance of imports and improve liquidity for eligible manufacturers.

Key eligibility conditions prescribed for EMIs include:

- Must qualify as both importer and manufacturer (or send goods for job work under Section 143 of the Central Goods and Services Tax Act, 2017 (CGST Act));
- Minimum customs transaction history (25 documents, relaxed to 10 for MSMEs);
- Aggregate turnover exceeding ₹5 crore and at least two years of business operations;
- Full GST compliance with no instances of tax collected but not deposited;
- No insolvency, prosecution, or conviction under indirect tax laws.

The circular prescribes a detailed application and approval mechanism through the AEO portal, with post-approval facilitation via ICEGATE. Deferred duty must generally be paid by the 1st day of the following month (or March 31 for March clearances), with flexibility for earlier payment. The facility is available up to March 31, 2028, and is expected to enable eligible importers to transition towards AEO T2/T3 accreditation while benefiting from streamlined customs processes.

Click Here to Read the Circular.

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

Copyright © 2026 - Fox Mandal & Associates LLP | The contents of this publication are for general information only and should not be relied upon as a substitute for professional legal advice, which should always be sought in relation to any specific matter prior to acting in reliance upon any such information. The opinions, estimates and information given herein are made in best judgment, utmost good faith and as far as possible based on data or sources, which are, believed to be reliable. Notwithstanding we disclaim any liability in respect of any claim which may arise from any errors or omissions or from providing such advice, opinion, judgement, or information.

www.foxmandal.in

info@foxmandal.in

Offices at:

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

Follow us: