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kcm Insight

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We are happy to present ***kcm*Insight,** comprising of important legislative changes in finance & market, direct & indirect tax laws, corporate & other regulatory laws, as well as recent important decisions on direct & indirect taxes.

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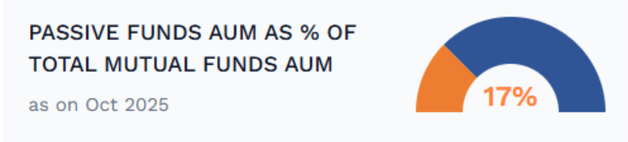
Passive Investing

Coverage

A Double-Edged Sword in Financial Markets

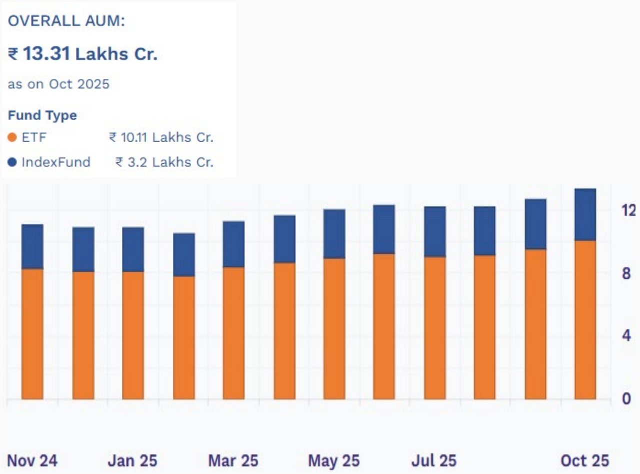
Introduction

In recent years, India's mutual fund ecosystem has been reshaped by the meteoric rise of passive investing. What was once a peripheral strategy has now moved into the mainstream: as of 2025, passive funds account for ~17% of India's mutual fund AUM. This shift benefits from lower cost, greater accessibility, and broad market exposure for investors while also introduces structural risks to market dynamics and efficiency. This article examines the phenomenon through a data-driven lens: exploring growth metrics, flow composition, index structure, and the implications for investors and regulators.



Growth Trajectory of Passive Assets

The latest publicly reported figures indicate that assets under management (AUM) in India's passive mutual fund and ETF category have surged to ~₹12.2 lakh crore in 2025. A separate industry note shows that by October 2025, passive fund AUM stood at ~₹13.67 lakh crore, reflecting a month-on-month increase of 5.2 %. According to industry reports, these funds now comprise about 17.1% of the total mutual fund industry AUM for the quarter ended September 2025.

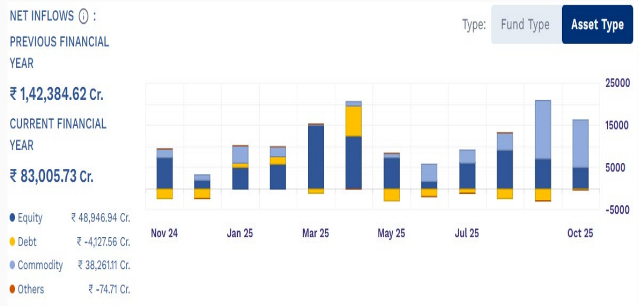


Flow & Composition Dynamics

While growth is impressive, understanding where the money is going and how the flows are structured helps illuminate risk and opportunity.

Commodity & Diversification

In October 2025, passive AUM rose due to market valuation gains and fresh inflows of around ₹16,668 crore with gold ETFs alone accounting for ₹7,743 crore of that amount (~46%). Among the retail investors, ~68% had invested in at least one passive fund by 2025.



Index Concentration & Market Structure

The structural context into which passive flows enter is critically important in financial markets.

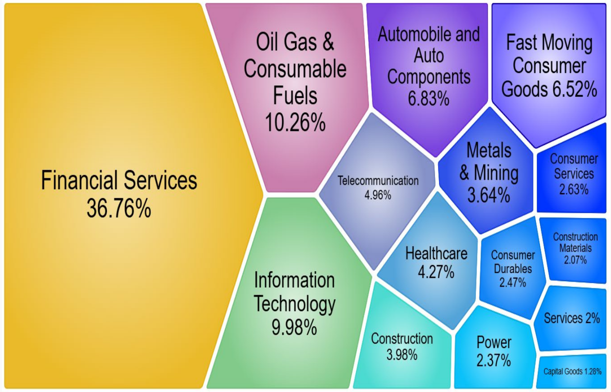
Index Coverage

NIFTY 50 index represents about 54.10% of free-float market capitalization of stocks listed on the National Stock Exchange of India (NSE) as of 30 September 2025, and its constituent stocks accounted for approximately 26.84% of the traded value of all stocks on the NSE over the prior six months. As such, large-cap stocks dominate the index and therefore the exposures of passive vehicles.

Passive Investing

Sectoral and Stock Concentration

While exact up-to-date sector-weight breakdowns are not always published in full, the high share of financial services, IT, energy & oil & gas, in large-cap indices is well-acknowledged. Because passive funds replicate indices mechanically, flows into passive vehicles effectively channel capital into a relatively small set of large-capitalization stocks and sectors.



Strengths of Passive Investing

There are several advantages that explain the rapid adoption of passive strategies:

- **Cost-efficiency:** Passive funds generally have lower expense ratios than many active funds.
- **Transparency and predictability:** A rules-based tracking mandate means investors know what they own and how exposure is constructed.
- **Accessibility and scale:** The growth of SIPs and the wider retail adoption of mutual funds mean that passive products offer an easy market exposure route.
- **Stable ownership base:** Systematic, rules-based investing (e.g., index funds, ETFs) may result in more stable flows and lower turnover.

Structural Risks: Other Edge of the Sword

Despite the merits, several structural risks must be recognized.

Valuation Distortion

Large-cap stocks with high index weight may become the automatic recipients of passive flows, regardless of underlying growth or risk fundamentals. This can drive valuations higher without commensurate fundamental justification.

Weakening Price Discovery

If an increasing proportion of market trading volume is driven by passive flows (or index flow mechanics) rather than active research-driven strategies, the market's ability to efficiently incorporate information may decline.

Liquidity Mismatch

ETFs offer intraday liquidity, but underlying securities may be less liquid or concentrated. In periods of redemption stress, this mismatch can lead to distortion or strain in underlying markets.

Concentration Risk

Sectoral and stock concentration in indices mean that passive strategies may not deliver the diversification many investors expect when they buy "index exposure". The risk is heightened given the top-heavy nature of curated indices.

Event & Flow Sensitivity

Index reconstitutions, inclusion/exclusion events, and mechanical creation/redemption flows can produce outsized impacts on individual stocks. Passive funds are subject to these flow events, which may amplify price volatility.

Passive Investing

Implications for Investors & Policymakers

- **For Investors**
  - Treat passive funds as core exposures but recognize limitations: they are not universally diversified across size, style, or asset class.
  - Examine the index methodology, weight-concentration, and sectoral profile of the fund.
  - Consider complementing passive core holdings with selective active or factor-based strategies to address concentration and pricing inefficiencies.
  - Regularly rebalance portfolio: passive funds will not automatically shift away from over-valued stocks or sectors.
  - Be aware of liquidity and redemption dynamics, particularly for smaller ETFs or schemes tracking niche indices.
- **For Policymakers and Regulators**
  - Enhance transparency and disclosure of index weightings, sector exposures, and passive-fund flows.
  - Monitor market structure effects: as passive investing grows, what is the impact on active fund flows, liquidity, and price discovery?
  - Consider whether index construction rules or rebalancing methodologies contribute unintentionally to market distortions.
  - Ensure adequate investor education: passive investing may be marketed as "set-and-forget" but understanding of underlying exposures and risks is still vital.

Conclusion

Expansion of passive investing marks a meaningful shift in how investors access capital markets. The benefits - cost efficiency, transparency, accessibility - are compelling, and the data confirms that passive strategies are now firmly embedded in investment landscape. Yet the structural implications cannot be overlooked. The combination of large-cap index concentration, surging flows into passive vehicles, and evolving asset-class composition creates a system in which passive investing serves as both an enabler and a potential fault line.

As markets mature, the challenge will be to harness the strengths of passive strategies while proactively managing the risks they bring. For investors, it means intelligent portfolio construction, diligent monitoring, and diversification across style and asset class. For regulators and market participants, it means fostering a framework where scale in passive funds supports - not undermines - robust market structure and efficient price discovery.

Disclaimer: This article is meant for educative purposes only and should not be considered as investment recommendation.

Sources of Information: News articles, publicly available research reports, AI based tools.

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Important Rulings

Adjustment in tax rate by CPC while processing of return u/s 143(1) on debatable issue not allowed

GFCL EV Products Ltd. ITA No. 1759 of 2024, ITAT Ahmedabad

Under ITA, all returns of income filed are processed by CPC u/s 143(1). While doing so, CPC is empowered to make only *prima facie* adjustments falling strictly within the six categories enumerated u/s 143(1)(a), which broadly relate to arithmetical inaccuracies or errors apparent from record. Importantly, any such variation must be preceded by a written intimation to the taxpayer seeking a response. Separately, section 115BAB grants newly incorporated manufacturing companies the option to be taxed at a concessional rate, subject to filing Form 10ID in the *first year* of incorporation. Thereafter, there is no requirement to file Form 10ID again, and only the details of earlier filing need be reported in subsequent returns. As per the proviso to section 115BAB(1), incomes not derived from manufacturing are also taxable at the concessional rate of 22%.

In the present case, the taxpayer, a company incorporated on 08.12.2021 and engaged in the business of manufacturing electric vehicles—filed Form 10ID for A.Y. 2022-23 (the year of incorporation), thereby validly exercising its option under section 115BAB within the permitted time. Manufacturing was started in F.Y. 2023-24 i.e. within the date prescribed by Section 115BAB.

For A.Y. 2023-24 (the second year), the company filed its return on 30.10.2023, declaring a taxable income of ₹4,44,816 entirely under the head "Income from Other Sources," and disclosed the details of form 10ID in ITR form. Based on the prior filing of Form 10ID, the company claimed the concessional rate of 22% in accordance with the proviso to section 115BAB(1).

However, CPC processed the return under section 143(1) without issuing any prior intimation and applying the normal tax rate of 30% instead of 22%, on the ground that the assessee had not exercised the option under section 115BAB.

On appeal, the CIT(A) held that the taxpayer was not eligible for the concessional tax rate u/s 115BAB as it had not undertaken any manufacturing activity during FY 2022-23 relevant to A.Y. 2023-24. The taxpayer challenged the order before the ITAT and demonstrated that:

- The option u/s 115BAB had been validly exercised in first year and the ITA does not require Form 10ID to be filed again in subsequent years.
- The return for A.Y. 2023-24 explicitly disclosed the continuation of the option.
- The CPC itself had accepted the claim u/s 115BAB in the preceding year's processing.
- Commencement of manufacturing before 31.03.2024 is a matter of factual verification and cannot be adjudicated through summary processing.
- Determination of the correct tax rate is a substantive eligibility issue, not a clerical error.
- No prior opportunity of hearing was granted before subjecting the assessee to a higher tax rate.

Tribunal accepted all the contentions of the taxpayer and held:

- Since Form 10ID was validly filed in A.Y. 2022-23, the assessee was eligible for the concessional regime in A.Y. 2023-24; there is no requirement for fresh filing every year.

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- Whether the assessee commenced manufacturing within the meaning of section 115BAB(2)(a) is a debatable and factual issue, unsuitable for adjustment under section 143(1).
- The CPC's action in substituting the 22% concessional rate with 30% normal rate without prior notice violated principles of natural justice.
- Even in the prior year, CPC had accepted the assessee's concessional regime; without change in facts, CPC could not deviate unilaterally.

Above ruling reasserts the position that CPC while processing return cannot travel beyond its scope and can make adjustment within the scope of six limbs provided u/s 143(1)(a) only and it is not for the CPC to step in the shoes of the adjudicating authorities to provide decision and make suo moto adjustments on debatable issues.

Beneficial withholding tax rate under DTAA overrides higher rate of TDS prescribed in section 206AA

Manthan Software Services Pvt. Ltd., SLP No. 21435/2023, Supreme Court

In the era of globalization, cross border business operations have become integral to commercial growth, often giving rise to complex tax implications, including exposure to double taxation. To mitigate such adverse tax consequences and to ensure a competitive business environment for foreign investors, government of India has entered into DTAA with various countries which provides for scope and rate of taxation for non-residents. Section 90(2) of the ITA specifically provides that provisions of DTAA or ITA which ever are more beneficial shall apply to the persons eligible for treaty benefits.

Payments to the non-residents (including foreign companies) require withholding of tax as per section 195 of the ITA which also requires the payer to apply the most beneficial rate between the ITA and the relevant DTAA which generally caps the rate at 10%/15%. However, Section 206AA was introduced in the ITA with a non-obstante clause w.e.f. 01/04/2010 which mandated a flat 20 percent withholding rate where the deductee failed to furnish a PAN, with no carve-outs for non-residents. This created significant controversy as Department begun to apply provisions of 206AA (i.e. higher rate of 20 percent) over DTAA on all payments to non-residents and foreign companies Thus, it appeared that provisions of section 206AA had the effect of undoing the provisions of DTAA besides being in violation of Article 265 of Constitution of India which states that *"No tax shall be levied or collected except by authority of law"*.

Following widespread litigation and the recommendations of the Justice Easwar Committee, the Government introduced Rule 37BC through finance Act, 2016, relaxing the PAN requirement for non-residents in respect of royalty, FTS, interest, dividends, and capital gains, provided prescribed documents such as Tax Residency Certificates (TRCs) and some prescribed details were furnished. Notably, the case of *Manthan Software Services Pvt. Ltd.* concerns the taxability of payments made in A.Y. 2012-13 to A.Y. 2016-17, i.e., years prior to the insertion of Rule 37BC.

The taxpayer, Manthan Software Services Pvt. Ltd., engaged in the business of software solutions, made payments to its overseas group entities towards sales commission for facilitating leads, customer evaluation, market outreach, and related business development activities in the foreign market. The taxpayer contended consistently before the AO, CIT(A), and the ITAT that:

- the payments were pure sales commission,
- the foreign entities had no PE in India,
- no part of the commission accrued or arose in India under sections 5 and 9, and
- the services did not qualify as Royalty or Fees for Technical/Included Services (FTS/FIS) under either the ITA or the relevant DTAAs (including the "Make Available" test under the India–US and India–Singapore DTAAs).

Despite this, the AO adopted an entirely different factual characterization. Relying on selective clauses from intra-group agreements, LinkedIn profiles of foreign employees, email communication exchanges, and even a sworn statement of an employee, the AO concluded that the payments were composite in nature, elements such as customer database access, software development support, online data maintenance, etc., amounted to Royalty, and lead generation, evaluation of clients, and consultancy-type assistance constituted FTS/FIS.

Having treated the amounts as taxable, the AO further invoked section 206AA, applying a higher 20% TDS rate, on the ground that the non-resident entities did not have PANs.

On appeal to CIT, CIT(A) upheld the order of AO in treating payment as Royalty/FTS but reduced the tax rate to 10 percent as per DTAA relying upon decision of jurisdictional ITAT (ITAT Bangalore) in case of Infosys BPO and Delhi High Court in the case of Danisco India Pvt. Ltd holding that DTAA overrides 206AA.

Both the taxpayer and the Revenue filed cross-appeals before ITAT Bangalore. The taxpayer challenged the characterization of payments as Royalty/FTS, while the Revenue argued that 206AA overrides treaty rates.

Critically, the ITAT found that the CIT(A) had not given a reasoned finding on the assessee's primary argument—that the payments were pure sales commission, not taxable in India at all and thus remanded the matter to the CIT(A) for a fresh, speaking order on (i) the true nature of the payment and (ii) whether tax was deductible at all.

However, on the Revenue's appeal regarding the applicability of section 206AA, the ITAT endorsed the CIT(A)'s view (following judicial precedents) that section 206AA cannot override section 90(2) and that treaty rates prevail where beneficial.

The Revenue challenged the ITAT's findings before the Karnataka High Court, which dismissed the appeal by following its earlier judgment in *Wipro Ltd.*, affirming that DTAA provisions override section 206AA, regardless of the section's non-obstante clause.

The matter reached the Supreme Court, where the Revenue argued that section 206AA should mandatorily apply at 20% for non-furnishing of PAN. The Supreme Court dismissed the SLP, relying on its earlier ruling in *Air India Ltd.*, thereby settling the legal position that:

"For non-residents eligible for DTAA benefits, treaty rates prevail over section 206AA, even with a non-obstante clause in section 206AA."

It is pertinent to note that the Supreme Court's affirmation pertains to payments made in A.Y. 2012-13 to A.Y. 2016-17 i.e. before the

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amendment in Section 206AA of the ITA and introduction of rule 37BC. The Court's dismissal underscores a consistent judicial position rooted in its landmark decision in *Azadi Bachao Andolan* (2003) that DTAAs, being sovereign instruments of international tax coordination, must prevail where beneficial. Various ITATs, High courts and Apex court itself have made it clear that this position does not require any interference and even without rule 37BC and for payments not covered by rule 37BC, beneficial provisions of DTAA will override section 206AA of the ITA.

Thus, the law is now firmly settled that DTAA primacy is constitutionally and statutorily preserved, and section 206AA must be read down to avoid overriding treaty protections.

Reduced Shareholding percentage due to fresh issue of shares is not a transfer

Sunita Sanjeev Aeren, ITA No. 2386 of 2023, ITAT Delhi

The taxation of capital gains often hinges on whether there is a "transfer" of a capital asset within the meaning of section 2(47) of the ITA. One recurring issue relates to whether a shareholder's *percentage* holding reducing due to a fresh allotment of shares to a third party can be treated as a transfer of a right, thereby giving rise to capital gains in the hands of the *non-transacting* shareholder. Revenue authorities have occasionally argued that dilution of shareholding amounts to relinquishment of rights and attracts tax. Courts, however, have consistently held otherwise.

The present case deals with one such issue where the taxpayer - Ms. Sunita Sanjeev Aeren, held 2.25% shareholding in each of two companies. During the relevant assessment year, each of these companies undertook a fresh issue of 30 lakh shares to another entity. As a result, the taxpayer's shareholding diluted to 0.562% in both companies. There was:

i. No sale of shares by the taxpayer,
ii. No transfer of any rights by her to any third party, and
iii. No consideration received by her.

However, despite this, the AO, treated the dilution as a "transfer of ownership and control" in respect of the underlying property held by the said companies in which the taxpayer is shareholder. AO held that before fresh issue of shares, the taxpayer's share in property was Rs. 3.37 crore which reduced to Rs. 84.30 lakhs post issue of new shares and accordingly taxed difference amount of Rs. 2.53 crores as short-term capital gain.

The taxpayer appealed before CIT(A) contending that she had not transferred any asset, right, or interest. The dilution was a mathematical consequence of a corporate action undertaken by the companies, and she played no role in the share issuance. CIT(A) accepted the contention of the taxpayer and deleted the addition.

Aggrieved with the CIT(A) order, revenue moved to ITAT contending that the fresh issue of shares caused a loss of ownership proportion and value, which amounts to relinquishment of rights in the underlying property and thus constitutes a taxable transfer as short term capital gains. However, The Tribunal upheld CIT(A)'s order and unequivocally rejected Revenue's theory of "de facto transfer. The tribunal held that whenever a company issues new shares, the percentage shareholding of existing shareholders naturally changes. This "mathematical dilution" is an inherent consequence of share issuance. It does not involve the shareholder parting with any rights and cannot be construed as transfer u/s 2(47).

The Tribunal observed that no right was offered to the taxpayer for relinquishment, nor did she participate in any transfer transaction, nor did she receive any consideration. The tribunal held that transfer under the ITA presupposes an act of Sale, Relinquishment, Extinguishment, or Exchange performed by the taxpayer for a *consideration*. However, in this case, none existed and hence, reduction in shareholding percentage due to fresh issue of shares is not transfer.

Hon'ble ITAT while passing the judgement placed reliance on ruling of Delhi High Court decision in Snerea Properties Pvt. Ltd. wherein the court has held that:

- Tax incidence lies only on transacting parties, i.e., those selling or transferring shares.
- Since no part of the shareholder's interest is transferred to a third party in a fresh issue of shares, no income arises in the hands of non-transacting shareholders.
- Dilution due to corporate actions is not taxable.

The ITAT Delhi reaffirmed the settled position that fresh issue of shares leading to dilution does not trigger capital gains taxation in the hands of existing shareholders. A shareholder's percentage holding may reduce, but unless the shareholder actively transfers any right or receives consideration, there is no transfer under section 2(47).

Gift from relative cannot be taxed u/s 56 for want of a Gift Deed

Deb Prasanna Choudhury, ITA No. 2199 of 2024, ITAT Kolkata

Section 56(2)(vii) ('Now 56(2)(x)') of the ITA seeks to tax certain sums received without consideration; however, the section carves out clear exceptions for amounts received from a relative, as defined in the provision. In practice, controversies arise when the AO questions the form or documentation surrounding the gift often asking for gift deed, even when the source, identity and relation of the donor stand clearly established. The present ruling clarifies that when the amount is received from a defined "relative", absence of a formal gift deed or its execution abroad cannot be a ground for taxation u/s 56.

The taxpayer, a non-resident individual residing in the UAE, received a sum of ₹80 lakh during FY 2011-12 through normal banking channels from his brother-in-law (husband of his sister). The funds were transferred from the donor's NRE account directly into the taxpayer's bank account. Case of the taxpayer was re-opened on account of large value transactions and among other credits in bank account, AO questioned the source of Rs. 80 lakhs received as gift from brother-in-law. The taxpayer contended before AO that:

- the donor is a "relative" under section 56(2)(vii) of the ITA.
- the gift, being movable property, does not require execution of a gift deed as per the Transfer of Property Act.
- the gift deed was nevertheless prepared later (in 2020) in the USA merely for clarification purposes; and
- all transfers were made through normal banking channels, with complete supporting bank statements.

The AO rejected the gift claim on the grounds that the gift deed was made outside India which was not signed by the recipient and the source of ₹55 lakh appearing in the donor's (i.e.

brother-in-law of the taxpayer) NRE account was "unexplained."

Accordingly, the AO taxed the entire amount of gift received as income from other sources u/s 56(2)(vii). CIT(A) also upheld the addition regarding gift received on the reasoning that the gift deed lacked validity and that ₹55 lakh in the donor's bank account was unexplained. Aggrieved, the taxpayer appealed before the ITAT contending that:

- Section 56 does not mandate a gift deed; it only requires the amount to be received from a "relative."
- The brother-in-law is expressly covered as a "relative" under Explanation (e) to section 56(2)(vii).
- The funds were transferred through banking channels, establishing identity, genuineness and relationship.

Taxpayer further contended that even assuming any source-related issue for ₹55 lakh, such addition, if warranted, should be made in the hands of the donor, not the recipient. Revenue reiterated the AO's position that absence of a valid gift deed rendered the gift unverifiable and taxable u/s 56.

After reviewing the materials, the Tribunal placing reliance on similar ruling by ITAT Ahmedabad in case of Atul H. Patel held that Section 56(2)(vii) specifically excludes from taxation any amount received from a relative and no gift deed is required under section 56 when amount is received from a relative. Thus, the AO's insistence on a gift deed, or that it was executed in the USA, could not override the statutory exemption. The Tribunal further held that if at all there is any issue with the source of ₹55 lakh, the addition should be made in the hands of the donor, not in the hands of the taxpayer."

This ruling reinforces a well-established principle that the statutory exemption under section 56(2)(vii) (Now 56(2)(x)) for gifts from relatives cannot be defeated by absence or foreign execution of a gift deed. Once the relationship is undisputed and the transaction is verifiable to be received from relative, no addition can be sustained merely on suspicion.

Set off brought forward LTCL and current year STCL allowed against LTCG despite loss and gain having different tax rates

Ira Sharma, ITA No. 1402 of 2025, ITAT Delhi

The computation of capital gains under the ITA permits intra-head adjustments of capital losses and gains under section 70. Yet, a recurring controversy arises when either the CPC or lower authorities attempt to restrict set-off of short-term capital losses ("STCL") and long-term capital losses ("LTCL") based on differences in applicable tax rates, despite no such restriction being present in the ITA. Present ruling of ITAT Delhi in Ira Sharma settles this issue once again holding that losses are to be set off as per statutory computation provisions, irrespective of tax rate differentials.

The taxpayer, filed her return of income for A.Y. 2023-24 on 05 July 2023, declaring total income of Rs. 1,04,31,190 after setting off brought-forward LTCL of Rs. 7,09,283 on sale of property, current-year STCL of Rs. 10,56,001 on sale of shares (STT paid), and STCL of Rs. 7,50,902 on redemption of mutual funds (STT paid) against LTCG from sale of shares, mutual funds and NCDs.

While processing the return u/s 143(1), the CPC proposed a variation questioning the allowability of set-off of losses and disallowed the entire set-off of above losses without considering the

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taxpayer's objections and without giving any reason.

The appeal before CIT(A) also failed on the ground that tax rate applicable to the losses differed from the tax rate applicable to LTCG against which set-off was claimed.

Aggrieved, the taxpayer appealed before the ITAT contending that:

1. Section 70(2) expressly allows STCL to be set off against STCG or LTCG, without any mention of matching tax rates.
2. Section 70(3) allows LTCL only against LTCG, which the taxpayer had adhered to.
3. The expression "similar computation" in section 70 refers to the head of income — 'Capital Gains', not to the applicable tax rate and accordingly, tax rate has no relevance to the mechanism of loss set-off.

Taxpayer placed reliance on the ruling of ITAT Bangalore in case of *Mac Charles (India) Ltd.* wherein Bench has allowed STCL taxable at a concessional rate to be set off against STCG taxable at normal rate of tax notwithstanding the fact that the taxpayer also had STCG on sale of capital assets taxable at a concessional tax rate.

On the other hand, the Revenue supported the orders of the lower authorities.

After considering the statutory provisions, the Tribunal categorically rejected the Revenue's interpretation and allowed the appeal of the taxpayer holding that in section 70(2) of the ITA, legislature used the word "similar computation" for making specific reference of the head under which the income is computed i.e. The "Income from Capital Gain" and nowhere it is provided that short term / long term capital loss can only be set off from the STCG/LTCG having same rate of tax. Similarly, sub-section (3) of section 70 provides the set off of long-term capital loss against LTCG only and here also, the term "similar computation for AY" refers the computation under the head "Income from Capital Gains" irrespective of the different rate of tax charged on various types of LTCG.

Hon'ble ITAT further observed that in the present case as such losses claimed as set off are having higher tax rate as compared to LTCG against which set off is claimed and even otherwise there is no loss to the revenue as income taxable at the higher tax rate is claimed to be adjusted against the income taxable at the lower rate and accordingly deleted the entire disallowance.

This ruling reaffirms the long-settled position that capital losses must be set off strictly in accordance with section 70, and neither CPC nor appellate authorities can deny such set-off merely due to differences in applicable tax rates. For taxpayers facing mechanical disallowances of loss set offs by CPC, this judgment provides strong judicial backing for challenging such adjustments.

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Indian Rulings

Singapore Co.'s Regional Service Agreement: No Know-How Transfer, No Royalty

BCD Travel Asia Pacific PTE Limited [TS-1488-ITAT-2025(Mum)]

The result? A judgement so "crystal clear" that it leaves everyone scratching their heads — because under Article 12(3), royalty is a defined payment for use or right to use IP or know-how. Under Article 12(4), by contrast, the logic is different: it contemplates "Fees for Technical services" only if services are "ancillary and subsidiary" to enjoyment of rights or involve a "make-available" element enabling the recipient to apply technical knowledge independently.

The Mumbai bench of ITAT has adjudicated on the issue that payment received by the Taxpayer from its Indian Associated Enterprise in terms of regional service agreement cannot be taxed as royalty under Article 12(4) of the India-Singapore DTAA. The Taxpayer was a company incorporated and fiscally domiciled in Singapore which is a part of a global conglomerate which is specialized in business travel management. The Taxpayer acts as the Asia-Pacific regional headquarters of the group which provides a bouquet of services to its subsidiaries and affiliates under a regional service agreement effective from 01 January 2016. The Taxpayer has been recovering certain costs from its Indian associate on a cost pooling mechanism with a nominal markup.

The Assessing Officer treated the impugned transaction as royalty on the ground that the payments represented consideration for imparting or making available information concerning industrial, commercial, or scientific experience, and were therefore taxable in India under section 9(1)(vi) of the Act. However, the learned CIT(A), upon appeal, observed that the AO had mechanically invoked the royalty provisions without properly examining the true nature of the arrangement. After a detailed evaluation of the underlying agreement and a careful consideration of the OECD Commentary, the CIT(A) concluded that the transaction constituted the mere provision of services rather than the transfer of any know-how, as the taxpayer only deployed its organizational expertise through regional teams and did not communicate or make available any secret, proprietary, or reproducible information to India AE.

The CIT(A), in his order, tabulated and analyzed the detailed nature of services provided under the RSA by categorizing them into nine broad functional heads. In contrast, the Assessing Officer, in the assessment order, observed that the RSA was structured in a manner that went beyond routine support services and effectively enabled the Indian AE to leverage the taxpayer's global commercial experience and proprietary systems. According to the AO, the arrangement resulted in the "making available" of industrial and commercial experience to the Indian entity, thereby rendering the corresponding payments taxable as royalty under both the DTAA and the Act. The AO's conclusion rested primarily on the expression "information concerning industrial, commercial or scientific experience" appearing in Article 12(4) of the DTAA and in clause (vi) of section 9(1) of the Act.

The appellate authority found that the RSA is an umbrella arrangement under which the regional headquarters discharges defined managerial and administrative responsibilities for multiple group entities across the Asia–Pacific region. These services are rendered by the taxpayer's regional personnel using the taxpayer's own facilities and infrastructure, and do not involve

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any transfer of know-how, processes, or confidential information to the Indian associated enterprise.

After bifurcating the relevant expenses, the CIT(A) concluded that the taxpayer provides a bundle of managerial and administrative support services to group entities. The consideration is cost-allocated with a limited mark-up, which is fundamentally inconsistent with the concept of "royalty," ordinarily correlated with the exploitation of an identifiable intangible or right.

The appellate authority invoked the OECD Commentary to Article 12 to delineate the boundary between royalties and services. Under the OECD guidance, payments qualify as royalties only where they relate to the transfer of know-how. Where the provider merely applies its expertise to perform services and the recipient obtains only the resulting output without any transfer of underlying know-how, the payment constitutes consideration for services and is taxable as business profits under Article 7.

The CIT(A) relied on GECF Asia Ltd. v. DIT (ITA No. 3524/Mum/2014), where managerial and support services (including accounting, finance, HR, and IT) provided by a Singapore entity to its Indian affiliate were held not to constitute royalty because the foreign entity applied its internal experience to perform services without transmitting knowledge enabling the recipient to independently replicate those functions. The CIT(A) considered this reasoning directly applicable to the Taxpayer RSA activities.

The Taxpayer income arises from services performed entirely in Singapore, and the RSA does not create a permanent establishment in India under Article 5 of the India–Singapore DTAA. Accordingly, taxation in India would be attracted only if the receipts qualify as "royalty." Given that the services under the RSA are managerial and administrative, delivered from outside India based on the Taxpayer regional expertise, and involve no transfer of know-how, process, or right to use any intangible, the payments do not meet the requirements of Article 12(4) and cannot be characterized as royalty under either the Income-tax Act or the Treaty.

The Tribunal affirmed the otransferred, CIT(A), holding that the receipts constitute business profits under Article 7 of the India–Singapore DTAA and not royalties, as no information or rights were transferred and no permanent establishment existed in India. The Assessing Officer's contrary view was rejected as premised on an erroneous presumption, and reliance on coordinate Bench rulings, including Van Oord, was found appropriate. The Revenue's appeals for AYs 2017–18 to 2020–21 were dismissed, and the Taxpayer cross-objections were rendered unnecessary.

In this case, it appeared that the Assessing Officer (AO) mis referenced the India–Singapore DTAA provisions. While correctly examining whether the payment constituted royalty or fees for technical services (FTS), the AO cited Article 12(4) instead of Article 12(3). Article 12(3) covers royalty, whereas Article 12(4) applies to FTS only when services are ancillary to rights or involve a "make-available" element.

The Assessing officer has relied on the phrase "information concerning industrial, commercial or scientific experience" from Article 12(4) and section 9(1)(vi), but the transaction involved managerial and administrative services under a Regional Service Agreement, without any transfer of IP or proprietary rights. The appellate authority and Tribunal correctly held these

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services as business profits under Article 7, not royalty or FTS.

FTC - Credit against Indian tax liability or an independent refund mechanism

Canon India (P.) Ltd. [2025] 180 taxmann.com 306 (Delhi - Trib.) [10-11-2025]

The taxpayer, a resident of India earned income from Japan on which taxes were withheld in Japan and claimed credit (i.e. refund) of said taxes in India. The AO disallowed the claim on ground that the said income on which taxes are withheld in Japan are either exempt under section 10A or neutralised by brought forward losses, resulting in no tax payable in India. The DRP upheld the disallowance.

The taxpayer preferred an appeal before ITAT relying on Taxpayer's own case, wherein the tribunal following the jurisdictional Delhi High court ruling in CIT v. HCL Comnet Systems and Services (which is based on decision of Wipro Ltd. v. DCIT) held that Taxpayer is eligible for entire credit (i.e. refund) of foreign taxes, even if the tax liability in India is reduced to nil due to the deduction under section 10A or brought forward losses. It argued that determinative factor is whether income is chargeable to tax under section 4 and includible in total income. The nil tax liability due to exemption or loss is not relevant for claiming FTC.

The Revenue, however, contended that section 90 of the Act read with Article 23 of the India–Japan DTAA restricts FTC to the amount of income tax payable in India, making the existence of domestic tax liability a precondition for claiming FTC. It also tried to distinguish Wipro case stating that in case of Wipro the taxpayer had substantial tax liability on non-exempt income, and the FTC claimed was only a small part of the overall tax paid in India hence was in accordance with the requirement of Clause 2 of Article 23.Whereas in instant case there was no Indian tax liability against which the foreign taxes withheld in Japan can be credited. Further in case of Wipro ltd the decision is based on expression "subject to tax" which has been used in Article 24 of India-US DTAA, whereas no such language exists in the Article 23 of India–Japan treaty.

The Revenue additionally cited Bank of India decision, where the ITAT held that FTC cannot exceed the Indian tax payable on the relevant foreign income, and that granting FTC in the absence of any Indian tax liability would effectively subsidize foreign governments. It also stated that as per paragraph 2(a) of Article 23 of India-Japan DTAA words used are "as a deduction from the tax on the income" and "shall not exceed" Indian tax attributable to that income and no credit can be granted when there is no tax payable.

Despite these arguments, the Tribunal, following the taxpayer's own earlier year's decision where the facts were identical, allowed the credit (i.e. refund) of taxes paid in Japan. On the taxpayer's cross-objection seeking interest under section 244A on the refund arising from allowance of FTC, reliance was placed on Tech Mahindra Ltd. The Tribunal, however, rejected the claim, holding that interest under section 244A is allowable only in respect of TDS, TCS or advance tax paid to the Indian exchequer. Since FTC does not constitute tax paid in India, no interest under section 244A is admissible on FTC related refunds. Accordingly, the Tribunal allowed the credit (i.e. Refund) of FTC but dismissed the cross-objection relating to interest under section 244A.

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Foreign Tax Credit has consistently been a heavily litigated issue in India, and this ruling is likely to contribute further to that litigation landscape. While granting credit (i.e. refund) of taxes paid in Japan, the Tribunal did not examine the foundational principle governing the allowance of FTC namely, the existence of a corresponding Indian tax liability and obligation of resident state to refund taxes paid in source state. Thus, there is a significant likelihood that the matter will proceed for further judicial scrutiny, before the Hon'ble Supreme Court.

Singapore entity not conduit, satisfies PPT test; Grants LTCG exemption

Fullerton Financial Holding Pte. Ltd [TS-1458-itat-2025(Mum)]

The taxpayer is an investment holding company incorporated in Singapore. During the year under consideration, it earned long-term capital gains of ₹681,32,13,572 from the sale of shares of FICCL, an Indian company, which had been acquired prior to 1 April 2017. Accordingly, the taxpayer filed a nil return, claiming exemption under Article 13(4A) of the India–Singapore DTAA.

The Assessing Officer (AO) held that the taxpayer did not satisfy the Principal Purpose Test (PPT) under Article 24A of the DTAA. According to the AO, the company was a shell entity formed solely to obtain treaty benefits, with no genuine business operations in Singapore. The AO also noted that the taxpayer's operating expenditure in Singapore did not exceed SGD 200,000 during the relevant period, which is a condition prescribed under Article 24A (3) for meeting the PPT. On this basis, the AO concluded that the exemption under Article 13(4A) was not available and that the capital gains were taxable in India.

The Mumbai ITAT held that employee costs incurred through subsidiaries or group entities and cross-charged to the taxpayer must be included in the computation of operating expenses, relying on the ruling in *BG Asia Pacific Holding (P.) Ltd.* It also noted that a certificate from a chartered accountancy firm had been furnished, substantiating the nature and quantum of expenses, and following *Jabil Circuit India (P.) Ltd.*, such certificates are to be relied upon. These facts demonstrated that the taxpayer's operating expenditure exceeded the threshold under Article 24A (3), thereby proving the genuineness of its business activities in Singapore.

Moreover, it was held by the ITAT that the taxpayer was incorporated as an Investment Holding company with tax residency certificate issued by the Government of Singapore with all the key activities and board meetings being held in Singapore. It was further held that the taxpayer is a company which is wholly owned by Government of Singapore and the ultimate beneficial owner is the Government of Singapore. Moreover, there was no treaty shopping involved as the investment were held as a long-term strategic asset as a part of its business activities. It was further held that a certificate has also been furnished by the IRAS which held that the taxpayer satisfies the prescribed expenditure test under DTAA.

Accordingly, ITAT held that the taxpayer was not merely a conduit or a shell company formed for taking the treaty benefits as it has Bonafide business activities in Singapore. Hence the capital gains arising on account of sales of shares of Indian company were accordingly exempt in hands of taxpayer.

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Liaison Office Outside PE Net

Oxbow Energy Solutions B.V. [TS-1465-ITAT-2025(Mum)]

The Taxpayer is a foreign company that has established a Liaison Office ("LO") in India and undertakes only those limited activities permitted by the Reserve Bank of India ("RBI"). The Taxpayer forms part of the Oxbow Group, which is engaged in international trade, primarily in petroleum coke. The LO's functions are restricted to liaising with refineries and user industries in India for the purpose of monitoring production, consumption, and pricing trends, and communicating such information to the group entities abroad. For Assessment Year (AY) 2021–22, the Taxpayer filed its return of income on 27.10.2021, declaring a total income of NIL. However, the Revenue authorities have taken the view that the Taxpayer has a Permanent Establishment ("PE") in India on account of the employment of highly qualified personnel at the LO. Based on this conclusion, an addition of ₹1,53,22,235 has been made to the returned income.

The Taxpayer has challenged the Revenue's position on the grounds that the LO functions solely as a communication channel between Indian parties and the group companies, and its activities are limited to collecting and disseminating information as permitted by the RBI. The LO undertakes no commercial operations and incurs only routine expenses such as salaries, rent, and administrative costs. The Taxpayer further submits that the employment of qualified personnel does not create a Permanent Establishment, as such employees neither participate in group decision-making nor have any authority to negotiate or conclude contracts in India. It is also contended that no income accrues or arises in India, since the Taxpayer has neither received any consideration from India nor entered any business transactions within India.

The Ld. DR, in support of the Revenue's position, argued that although the activities of the LO are permitted by the RBI, they are integral to the Taxpayer's core trading operations and therefore cannot be regarded as preparatory or auxiliary in nature. It was further contended that the exceptions under Article 5(4)(e) and Article 5(4)(f) of the India–Netherlands DTAA are not applicable to the Taxpayer's case. Additionally, the Ld. AO held that the Taxpayer has a business connection in India through a fixed place of business provided by the LO, thereby giving rise to a Permanent Establishment.

The Mumbai ITAT observed that the LO is engaged solely in collecting statistical information relating to competitive pricing of petroleum coke for the benefit of the group companies and does not undertake any business activities within India. The Tribunal further noted that Article 5(4), read with paragraph 2 of Article 13 of the MLI, provides that a "permanent establishment" shall not include a fixed place of business used exclusively for activities such as advertising, the supply of information, scientific research, or other functions of a preparatory or auxiliary nature.

While rendering its findings, the Mumbai ITAT relied upon the judgment of the Hon'ble Supreme Court in ***UOI v. U.A.E. Exchange Centre* [2020] 116 taxmann.com 379 / 273 Taxman 122 / 425 ITR 30 (SC)**. The Supreme Court had held that where a LO is permitted to undertake only those activities specifically approved by the RBI, and such activities are merely preparatory or auxiliary in nature, the presence of the LO in India does not constitute a Permanent Establishment. Applying this principle, the

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Tribunal noted that the Taxpayer's LO neither carries out any business operations in India nor employs personnel authorised to negotiate or conclude contracts on behalf of the enterprise. Accordingly, the ITAT held that no Permanent Establishment exists in India in respect of the LO.

Based on the above analysis, it is evident that the activities carried out by the LO fall strictly within the scope of functions permitted by the Reserve Bank of India and are limited to preparatory or auxiliary in nature. As such, these activities do not constitute a PE under the India tax regulations or the relevant provisions of the DTAA, even considering the expanded scope under the MLI. A PE exposure would arise only where the LO undertakes activities beyond those approved by the RBI or where the subsidiary engages in core income-generating business operations in India. Since neither of these conditions is met in the present case, there is no PE risk for Oxbow Energy Solutions in India.

No PE under an independent distributor model

NCR Global Solutions Ltd. v. DCIT, International Taxation [2025] 180 taxmann.com 129 (Delhi - Trib.)

In the Delhi bench of ITAT the present matter concerns the recurring controversy involving NCR Global Solutions Ltd., an Ireland based company engaged in the distribution and licensing of NCR software, hardware and related technological services, and whether its Indian subsidiary, NCR Corporation India Pvt. Ltd. (CIPL), constitutes a Permanent Establishment in India. The Taxpayer has consistently maintained that CIPL operates as a non-exclusive distributor on a principal basis and that all hardware and software purchased from the Taxpayer become the property of CIPL, which either resells them independently or uses them in its own ATM manufacturing operations. For the year in question, the Taxpayer offered royalty income to tax under the India Ireland DTAA but claimed that receipts from sale of software, hardware, exports and reimbursements were business income not taxable in India in the absence of a PE. Despite this, the Assessing Officer revived the long-standing allegation that the Taxpayer carried out its core business functions through the physical and functional presence of CIPL in India and, therefore, possessed both a Fixed Place PE and a Dependent Agent PE in India.

The AO reasoned that order procurement, sales facilitation, customer engagement and support activities undertaken by CIPL could not have been executed without a place of business in India that, in his view, stood at the disposal of the foreign enterprise. He further asserted that CIPL worked mainly or wholly for the Taxpayer, secured orders habitually on its behalf and exercised authority that effectively contributed to the conclusion of contracts for the Taxpayer. Based on these conclusions, and alleging the absence of PE specific accounts, the AO invoked Rule 10 and attributed 70 percent of an estimated 35 percent profit margin to the alleged PE, resulting in an addition of ₹33.33 crore.

The DRP treated the issue as a legacy matter, noting that it had arisen in several preceding years, and even though the Taxpayer highlighted that all such years had been decided in its favour by both the ITAT and the Delhi High Court, the DRP upheld the variation only to keep the matter alive given that the Revenue intended to pursue further appeals.

Before the Tribunal, the Taxpayer stressed that the issue was squarely covered by earlier decisions rendered in its own case for AYs 2018-19, 2019-20, 2020-21 and 2021-22, all of which held that CIPL neither constituted a Fixed Place PE nor a Dependent Agent PE of the Taxpayer. The Taxpayer drew specific attention to the distribution agreement which defined CIPL as an independent distributor with no authority to conclude contracts, assume obligations or represent the Taxpayer in any capacity. The agreement expressly stated that the relationship between the parties was one of independent contractors, that CIPL bore all risks and expenses, and that its operations were solely under its own control and management. The Taxpayer therefore argued that CIPL merely purchased goods from the Taxpayer and resold them on its own account and that no part of this arrangement conferred any authority upon CIPL to negotiate or conclude contracts on behalf of the Taxpayer or bind it in any manner.

It further submitted that no office premises, personnel or other business facilities in India were at the disposal of the Taxpayer and that the AO's findings were based on selective reading of individual clauses without appreciating the overall structure of the arrangement. The Departmental Representative fairly conceded during the hearing that the issue was covered by earlier orders of the Tribunal.

The Tribunal proceeded to examine the matter in continuity with the prior judicial record and observed that the factual matrix for AY 2022-23 was identical to the preceding years. It revisited the earlier findings, including the detailed clause by clause analysis of the distribution arrangement, where it had been categorically held that CIPL acquired products from the Taxpayer for the purpose of resale or use in ATM manufacturing and that all such sales were carried out by CIPL entirely on its own account.

The Tribunal reiterated that nothing in the record suggested that CIPL had either actual or habitual authority to conclude contracts for the Taxpayer, or that it maintained stock on behalf of the Taxpayer, or that it secured orders mainly or wholly for the Taxpayer. It also reaffirmed that the Taxpayer had no premises, office space, employees or any form of physical presence in India that could be said to be at its disposal, thereby ruling out the existence of a Fixed Place PE. Relying on the Delhi High Court's judgment in the Taxpayer's own case, the Tribunal emphasized that a subsidiary engaged in its own business operations does not by itself create a Permanent Establishment for the foreign parent.

Having confirmed the absence of any PE, the Tribunal held that no attribution of income could survive and accordingly deleted the entire addition of ₹33.33 crore. Issues relating to interest and penalty were treated as consequential or premature, while a minor TDS discrepancy of ₹16,200 was directed to be verified by the AO. In conclusion, the Tribunal followed the established judicial position and once again held that the Taxpayer did not have a Permanent Establishment in India through CIPL, resulting in the deletion of the impugned addition.

In conclusion, if the contractual arrangement between a foreign enterprise and its Indian distributor clearly stipulates independent rights, obligations, and limitations of authority such an agreement becomes decisive in determining the absence of a Permanent Establishment in India. When the agreement clearly states that the distributor operates on a principal-to-principal basis, bears its own risks, lacks authority to conclude contracts, and functions as an independent entity, the Revenue cannot infer a Fixed Place PE or Dependent Agent PE merely from the

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existence of commercial interaction. Although the Tribunal has not examined this aspect in the present order, it is well settled that even if a Permanent Establishment were hypothetically found to exist, the Revenue cannot make a further attribution of profits to the foreign enterprise once the Indian distributor has already been taxed on its own income and the underlying transactions are demonstrated to be at arm's length.

IPLC payments by Cognizant not 'royalty' under India-US DTAA; Holds non-discrimination clause overrides Sec.40(a)(i)

Cognizant Technology Solutions India Private Limited [TS-1577-HC-2025(MAD)]

Cognizant Technology Solutions India Pvt. Ltd. made payments to Sprint USA for International Private Leased Circuits (IPLC), used to connect India operations with US data centres. The key issue was whether these payments constituted "royalty" under Section 9(1)(vi) of the Income-tax Act and Article 12 of the India–US DTAA, and whether failure to deduct TDS necessitated disallowance under Section 40(a)(i).

The Assessing Officer (AO) considered the payments made by Cognizant India to Sprint USA for International Private Leased Circuits (IPLC) as royalty payments under Section 9(1)(vi) of the Income-tax Act and Article 12 of the India–US DTAA. The AO believed that these payments were for the use of foreign equipment and technology, and therefore TDS should have been deducted. Since Cognizant did not deduct TDS on these payments, the AO treated the expenditure as non-deductible under Section 40(a)(i).

The Madras High Court held that the payments made by Cognizant to Sprint USA for International Private Leased Circuits are not royalty under Section 9(1)(vi) of the Income-tax Act or Article 12 of the India–US DTAA. The Court said these payments are for telecom services, not for using any equipment or technology. It also noted that Section 40(a)(i) of the Income-tax Act, which disallows deductions for payments without TDS, cannot apply because Article 26(3) of the DTAA ensures non-discrimination, meaning US residents should be treated the same as Indian residents. The Court relied on Engineering Analysis (SC) and Delhi High Court rulings in New Skies Satellite and Herbalife International India, which confirmed that treaty rules override domestic amendments and that IPLC payments are service charges, not royalties.

The Madras High Court concluded that the payments made by Cognizant to Sprint USA for International Private Leased Circuits are not royalty because the payments were made only for telecommunication services and connectivity. The Taxpayer did not receive any rights, title, or interest in Sprint's equipment or technology, so there was no transfer or use of intellectual property. The Court also emphasized that Section 40(a)(i) cannot disallow the deduction because the non-discrimination clause in Article 26(3) of the India–US DTAA ensures that foreign residents should not be treated worse than Indian residents. Therefore, IPLC payments are considered service charges, not royalties, and the Taxpayer is entitled to claim the deduction.

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Limited risk distributor vs entrepreneur service provider

Netflix Entertainment Services India LLP [ITA No. 6857/Mum/2024]

The assessee – Netflix India, is in the business of distributing online content in India, owned by its Associated enterprise. The assessee operated in a cost-plus basis limited risk distributor model and paid distribution fee to its AE which owns the content.

The case of the assessee was selected for transfer pricing scrutiny. The Ld. TPO alleged that Netflix India is an entrepreneur service provider and not limited risk distributor as contented by the assessee. The Ld. TPO made this allegation basis the contractual agreement of Netflix India with its AE (allegations of Ld. TPO and the Hon'ble ITAT's ruling against each of such allegation is provided in subsequent paragraph).

The assessee contended that the ownership of entire content is of AE and it is provided only access of such content for further distribution without right to copy. The assessee also laid out the following facts for substantiating the FAR Analysis of Netflix India:

Overall asset base of Netflix US significantly higher (more than 4000 times) as compared to Netflix India
Revenue from India less than 1% of Netflix US's global turnover
Human capital of India only 0.68% of the global workforce

On appeal to Hon'ble ITAT, it was held as follows:

Necessary to delineate the actual contractual framework, the FAR and then testing assertions of Ld. TPO and assessee
As alleged by Ld. TPO that Open Contract Appliances (OCAs) of Netflix India lpoare critical technological assets of India necessary for providing the content to the subscriber, it was held that OCAs are only cache devices required for temporary storage of data. All the functions are performed by AE via software owned and hosted on AWS servers outside India
The Ld. TPO's allegations on the contractual framework was held as under:

TPO's allegations	Hon'ble ITAT's ruling
Netflix India is providing services to Indian subscribers on its own accountability	Mere accountability and not allocation of ownership to Netflix India
Netflix India is under obligation to promote and market Netflix service in India	Obligation to make service available and not to supply the content
Netflix India enters into agreements with Indian subscribers on its own, without any binding to AE	Preamble clarifies that such terms of use are standard global templates and not independently authored
Netflix India provides customer support	Routine distributor obligation
Netflix India is procuring licenses and permissions for distribution in India	Routine distributor obligation

Important Rulings

It was held that the DEMPE Analysis suggests that all the constituents of DEMPE is undertaken by the AE
Basis the above analysis, it was held by the Hon'ble ITAT that the recharacterization of the entity by the Ld. TPO of the assessee from limited risk distributor to entrepreneur service provider was not valid

Reader's focus

The ruling makes references to two important aspects of transfer pricing – Delineating the actual contractual framework and the FAR Analysis and DEMPE Analysis.

The above concepts find its source is BEPS Action plan 8-10 of the OECD regulations.

Delineating actual FAR vs contracts

"Accurate delineation" means identifying the real controlled transaction by looking at Functions, Assets and Risks (FAR) actually performed, used and assumed by each party, and then testing whether the contractual terms are consistent with that conduct. If contracts allocate risks or returns to an entity that does not control those risks or have capacity to bear them, the guidance reallocates the risk and related profit to the entity that in substance undertakes the relevant decisions and activities.

In practice this involves:

Analysing who performs key decision-making functions, uses significant assets, and manages economically significant risks.

Adjusting or even disregarding the written contract where independent parties would not have agreed to it, so that the arm's length outcome follows actual behaviour.

DEMPE analysis

DEMPE analysis applies specifically to intangibles and stands for Development, Enhancement, Maintenance, Protection and Exploitation of intangibles. Under Action plan 8–10, returns from intangibles must be aligned with which entities actually perform and control these DEMPE functions and bear related risks, not simply with the legal owner of the intangible.

Key points are:

Identify which group entities perform each DEMPE function, what assets they use (e.g. R&D teams, legal teams, IT platforms), and which risks they control (e.g. development risk, infringement risk).

Allocate or price intangible-related income so that each entity is remunerated at arm's length for its DEMPE contributions, and entities that only provide funding without control receive at most a risk-free or limited return

This ruling provides a good discussion on the importance and how to analyze the above concepts in similar transactions.

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GST - Advisories

GSTN issues advisory on implementation of the Simplified GST Registration Scheme under Rule 14A

The GSTN has issued an advisory dated November 1, 2025, announcing the rollout of the Simplified GST Registration Scheme introduced under Rule 14A of the CGST Rules, 2017. The scheme is intended to ease compliance for small taxpayers whose monthly output tax liability does not exceed ₹2.5 lakh, covering CGST, SGST/UTGST, IGST, and Compensation Cess. A taxpayer opting for this scheme in a State/UT cannot obtain another registration under Rule 14A against the same PAN in that State/UT.

The GST portal has now enabled this functionality, requiring applicants to select "Yes" under 'Option for Registration under Rule 14A' while filing FORM GST REG-01. Mandatory Aadhaar authentication is required for the Primary Authorized Signatory and at least one Promoter/Partner. Upon successful authentication, registration will be granted electronically within three working days from the date of ARN generation.

The advisory further specifies the conditions for withdrawal from the scheme. Taxpayers must ensure that all returns from the effective date of registration are filed, and minimum filing requirements differ depending on the withdrawal date: three months of returns if withdrawing before 1 April 2026, or one tax period if withdrawing thereafter. Additionally, no amendment/cancellation application or proceedings under Section 29 relating to the Rule 14A registration should be pending at the time of withdrawal.

GSTN issues advisory for furnishing of bank account details under Rule 10A of CGST Rules, 2017

The GSTN has issued an advisory dated November 20, 2025, reminding taxpayers of their obligation under Rule 10A of the CGST Rules, 2017 to furnish valid bank account details linked to their GST registration. This requirement applies to all taxpayers except those registered under TCS, TDS, or suo motu registration categories.

As per the rule, every eligible taxpayer must provide their bank account details within 30 days of grant of registration or before furnishing outward supply details in GSTR-1/IFF, whichever is earlier. GSTN has announced that this validation requirement will be implemented shortly on the GST Portal. Taxpayers who have not yet updated their bank details are urged to do so promptly to avoid suspension of GST registration and potential disruption in business operations.

Bank account details can be furnished online through a non-core amendment by navigating to:

Services → Registration → Amendment of Registration (Non-Core Fields).

GST – Circular

CBIC issues circular assigning proper officers and prescribing monetary limits under sections 74A, 75(2) and 122 of the CGST Act

Circular No. 254/11/2025–GST, dated October 27, 2025

The CBIC, through Circular No. 254/11/2025–GST dated October 27, 2025, has assigned proper officers for administering Section 74A, Section 75(2), Section 122 of the CGST Act, and Rule 142(1A) of the CGST Rules. These provisions relate to determination of tax for FY 2024–25 onwards, re computation of tax where fraud charges under Section 74 fail, imposition of penalties for specified offences, and issuance of pre-SCN intimation in DRC-01A.

The Circular designates Additional/Joint Commissioners, Deputy/Assistant Commissioners, and Superintendents of Central Tax as proper officers for these functions and introduces monetary limits for issuing show cause notices (SCNs) and adjudicating matters under Section 74A and Section 122. The determination of proper officers is based on the combined amount of CGST+IGST involved, ensuring uniformity across formations. The Circular further clarifies that where demand increases through subsequent statements, jurisdiction must shift to the competent officer, and the earlier SCN must be made answerable to the higher authority. For Section 75(2) matters, the proper officer will be the same adjudicating authority who handled the original Section 74 notice:

Consolidated table the same is provide below -

Proper Officers under Section 74A, Section 122 and Rule 142(1A)

Officer Designation	Functions Assigned
Additional / Joint Commissioner of Central Tax	Section 74A (all sub-sections), Section 122, Rule 142(1A)
Deputy / Assistant Commissioner of Central Tax	Section 74A, Section 122, Rule 142(1A)
Superintendent of Central Tax	Section 74A, Section 122, Rule 142(1A)

Monetary Limits – Section 74A (Tax Demand Cases)

Officer	CGST Amount	IGST Amount	Combined CGST + IGST Amount
Superintendent	Up to ₹10 lakh	Up to ₹20 lakh	Up to ₹20 lakh
Deputy / Assistant Commissioner	Above ₹10 lakh and up to ₹1 crore	Above ₹20 lakh and up to ₹2 crore	Above ₹20 lakh and up to ₹2 crore
Additional / Joint Commissioner	Above ₹1 crore	Above ₹2 crore	Above ₹2 crore

Monetary Limits – Section 122 (Penalty-Only Cases)

Officer	Penalty relating to CGST	Penalty relating to IGST	Combined Penalty (CGST + IGST)
Superintendent	Up to ₹10 lakh	Up to ₹20 lakh	Up to ₹20 lakh
Deputy / Assistant Commissioner	Above ₹10 lakh and up to ₹1 crore	Above ₹20 lakh and up to ₹2 crore	Above ₹20 lakh and up to ₹2 crore
Additional / Joint Commissioner	Above ₹1 crore	Above ₹2 crore	Above ₹2 crore

This circular provides critical operational clarity by prescribing structured monetary limits and clearly identifying the proper officers for adjudication under newly introduced provisions like Section 74A. The consolidation of jurisdictional thresholds strengthens administrative discipline and reduces interpretational disputes, particularly in cases involving combined CGST-IGST demands. Taxpayers must review the applicable officer jurisdiction while responding to notices to ensure procedural correctness and avoid invalid adjudications.

Customs – Circular

CBIC issues circular on launch of online module for permissions under Section 65 (MOOWR and MOOSWR)

Circular No. 28/2025–Customs, dated November 15, 2025

The CBIC has issued Circular No. 28/2025–Customs dated November 15, 2025, announcing the launch of a dedicated online module on ICEGATE 2.0 for processing applications related to Section 65 permissions. This module covers activities permitted under the Manufacture and Other Operations in Warehouse Regulations (MOOWR), 2019 for warehouses licensed under Section 58 of the Customs Act, and the Manufacture and Other Operations in Special Warehouse Regulations (MOOSWR), 2020 for special warehouses licensed under Section 58A. The objective of the new module is to streamline, digitize, and simplify the end-to-end application process for trade and departmental users.

Detailed user manuals for both trade and officers have been made available on ICEGATE, providing step-by-step guidance and screenshots for navigating the system. Users encountering issues may contact the ICEGATE Helpdesk or escalate matters to the dedicated Saksham Seva support channel for timely resolution. The circular also directs Chief Commissioners of Customs to issue public notices specifying the port codes for receiving and processing Section 65 applications in their jurisdictions, ensuring smooth adoption and operational readiness.

This circular marks an important step in modernizing the administration of warehouse-based manufacturing schemes under Customs. The shift to an online processing environment is expected to significantly reduce delays, enhance transparency, and provide uniformity in handling permissions under Section 65. Businesses operating under MOOWR and MOOSWR should familiarize themselves with the new module and follow jurisdiction-specific port codes to avoid disruptions in their warehousing and manufacturing workflows.

Judicial Updates

Bombay High Court quashes ITC reversal order on alleged non-existent supplier; remands matter for reconsideration

Writ Petition No. 2287 of 2025; Bombay High Court (Nagpur Bench), dated November 7, 2025

Taxpayer claimed input tax credit (ITC) in FY 2018–19 on goods purchased from a Delhi-based supplier, M/s Indian International. In June 2024, departmental verification found the supplier "non-existent," following which the Assistant Commissioner issued an order dated February 4, 2025, confirming ITC reversal of ₹29,93,216 along with interest and penalty. The adjudicating authority concluded that since the supplier was found non-existent, the invoices were invalid and hence ITC was inadmissible. The assessee challenged the order before the Bombay High Court, citing that the department had failed to consider extensive documentary evidence, including payment proofs and case laws establishing the genuineness of the transaction.

Taxpayer contended that the adjudicating authority ignored all documentary evidence proving receipt of goods, payment through banking channels, and reflection of transactions in GSTR returns. It was argued that the finding of non-existence of the supplier in 2024 could not retroactively nullify transactions completed in FY 2018–19. The petitioner further submitted that the authority's order was passed in violation of principles of natural justice and without any proper verification of the genuineness of supplies

The department maintained that ITC was rightly disallowed, as verification confirmed that M/s Indian International was not operating from the registered premises and was allegedly engaged in passing on fake credit. It relied on departmental circulars and correspondence received from Delhi authorities to establish the non-existence of the supplier and argued that the petitioner had an alternate remedy under Section 107 of the CGST Act to prefer an appeal

The Bombay High Court held that the Assistant Commissioner committed an *apparent error* by failing to consider the evidence and case laws furnished by the petitioner. The Court observed that the adjudicating authority merely concluded non-existence of the supplier based on a departmental circular and a verification letter, without disclosing details of the investigation or evaluating the documents produced by the assessee. It also noted that the alleged verification occurred in June 2024, almost five years after the relevant transactions and thus could not automatically invalidate past genuine supplies. The High Court quashed the impugned order dated February 4, 2025, and remanded the case for fresh adjudication after considering all documentary evidence submitted by the assessee. The Court also rejected the Revenue's objection on the ground of alternative remedy, observing that a patent error warranted judicial interference under Article 226.

This judgment reinforces the principle that ITC cannot be denied merely because the supplier is later found non-existent, unless the department conclusively proves that the underlying transactions were fictitious. The Court's emphasis on evaluating contemporaneous documentary evidence such as invoices, transport proofs, and payments aligns with settled jurisprudence protecting bona fide purchasers. The ruling serves as a strong reminder to adjudicating authorities to conduct independent factual analysis rather than relying solely on subsequent verification reports. It also highlights that the doctrine of alternate remedy does not bar writ jurisdiction where procedural or evidentiary lapses are evident in the adjudication process.

Demand for pre-CIRP GST dues held invalid where the company was sold as 'going concern' in liquidation

WPA 27722 of 2024; Calcutta High Court; dated November 12, 2025

Taxpayer underwent Corporate Insolvency Resolution Process (CIRP) after initiation by UCO Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC). Upon failure of the resolution process, the National Company Law Tribunal (NCLT), Kolkata, ordered liquidation on March 5, 2020. During liquidation, the corporate debtor was sold as a "going concern," and such sale was confirmed by the NCLT on December 11, 2023, with explicit observations that claims not forming part of the resolution/liquidation plan stood extinguished in terms of the Supreme Court's ruling in *Ghanashyam Mishra & Sons*. Despite this, the CGST authorities issued a show-cause notice on May 31, 2024, and subsequently passed an order dated August 31, 2024, under Section 73 of the CGST Act demanding tax, interest, and penalty for FY 2019–20. The petitioner challenged the demand as contrary to settled IBC principles.

The taxpayer argued that once the company was sold as a going concern in liquidation, all past dues preceding the sale stood extinguished. The NCLT order treated sale as a going concern equivalent to a "de facto CIRP," and therefore the "clean slate" doctrine applied. The petitioner also pointed out that for FY 2017–18, the department itself had dropped proceedings citing the NCLT's clean-slate order, and the same logic should apply to FY 2019–20, as both periods preceded the sale.

The department defended the validity of the Section 73 demand and argued that statutory dues survived. It did not dispute the liquidation sale but contended that past tax liabilities could still be recovered. The Revenue further relied on the earlier findings of liability and maintained that the petitioners were liable to pay GST dues notwithstanding the IBC proceedings.

The Calcutta High Court held that once a corporate debtor is sold as a going concern during liquidation, all past dues prior to the date of sale stand extinguished, consistent with the Supreme Court's ratio in *Ghanashyam Mishra & Sons* and its own earlier judgment in *Kashvi Power & Steel Pvt. Ltd.* The Court emphasized that corporate revival is the core objective of the IBC and that purchasers of a going concern cannot be burdened with pre-CIRP tax liabilities. The Court found no justification for initiating proceedings for FY 2019–20, especially when the same department had dropped similar proceedings for FY 2017–18 on identical grounds. Accordingly, the demand order dated August 31, 2024, was quashed in entirety.

This judgment reinforces the "clean slate" principle under the IBC and reiterates that all pre-CIRP statutory dues, including GST, become irrevocably extinguished when a corporate debtor is sold as a going concern in liquidation. Tax authorities must carefully align their actions with IBC outcomes, particularly NCLT-approved sale orders. For buyers acquiring distressed entities through the insolvency framework, the decision offers significant certainty by ensuring protection from legacy indirect tax liabilities. This precedent will be highly relevant in cases involving Section 73/74 proceedings issued after completion of CIRP or liquidation sale.

Non-submission of eBRCs/FIRCs cannot be a ground to deny refund when export remittances are already established

Writ Petition No. 15323 of 2022; Karnataka High Court; dated November 6, 2025

Taxpayer, engaged in exporting software development services, filed refund claims of unutilized ITC for FY 2018–19 and FY 2019–20 under Section 54(3) of the CGST Act. The jurisdictional officer sanctioned both refunds after verifying FIRAs and supporting documents. Subsequently, the Principal Commissioner reviewed the refund orders and filed appeals, resulting in the Appellate Authority setting aside the sanction orders on the ground that eBRCs/FIRCs were not produced. Parallelly, the Department issued a Section 73 SCN and later passed a recovery order in Form DRC-07 demanding refund reversal. The assessee challenged these orders before the Karnataka High Court.

Taxpayer argued that the finding of "non-submission" of eBRCs/FIRCs was factually wrong. FIRAs had been submitted with refund applications, and eBRCs were later furnished through email, in addition to CA certificates correlating all export receipts. The petitioner further contended that procedural lapses cannot override substantive evidence of receipt of export consideration. It was emphasized that the services were rendered on a principal-to-principal basis and not in the nature of intermediary services.

The Department contended that the refund claims were defective as eBRCs/FIRCs were not furnished and that location mismatch and terminology used in FIRAs ("intercompany receipt") proved non-fulfilment of export conditions. It sustained the view that intermediary services were supplied, and refund was correctly reversed.

The High Court held that the authorities committed a patent error in concluding that eBRCs/FIRCs had not been submitted. On examining the record, the Court found that the petitioner had indeed produced FIRAs, eBRCs, and detailed documentation correlating export proceeds. It held that minor procedural deviations, account number variations, or administrative descriptions in FIRAs cannot displace concrete evidence of export realization. Relying on earlier rulings including *Nokia Solutions and Networks India* and various High Court decisions on procedural relaxations, the Court ruled that denial of refund was arbitrary. The impugned orders and demand notices were quashed, and the Court directed the Department to grant refund with applicable interest within two months.

This judgment reinforces a consistent judicial approach: refund of unutilized ITC for export of services cannot be denied for procedural issues when substantive evidence of receipt of export proceeds exists. The Court's reliance on FIRAs, eBRCs, and correlated CA certificates aligns with the principle that procedural requirements under Rule 89(2) are directory, not mandatory. The decision is particularly relevant for exporters facing adverse review orders despite having furnished evidence post-sanction. It strengthens the view that insistence on strict formats or minor mismatches cannot override the law's objective of facilitating zero-rated exports.

SEZ unit entitled to claim refund of unutilized ITC; rejection based on Rule 89(1) held unsustainable

Writ Petition No. 4164 of 2024; Bombay High Court; Dated November 21, 2025

Important Updates

Taxpayer filed multiple refund applications for unutilized input tax credit (ITC) on input services used for authorized operations. The refund claims were rejected by the State GST authorities on the ground that under Section 54 of the CGST Act read with Rule 89(1) of the CGST Rules, only the supplier of services to an SEZ unit—not the SEZ unit itself—could file the refund claim. Subsequent appeals were also dismissed by the State Appellate Authority, which refused to follow the Gujarat High Court's decision in Britannia Industries Ltd. solely because an SLP against that decision was pending before the Supreme Court.

The petitioner argued that the Gujarat High Court's ruling in *Britannia Industries Ltd. v. Union of India* squarely held that an SEZ unit is entitled to claim refund of unutilized ITC for zero-rated supplies made without payment of tax. Since the Supreme Court had dismissed the SLP against the *Britannia* judgment on low tax effect while leaving the question of law open, the judgment continued to operate as binding law. The petitioner submitted that the authorities were duty-bound to apply the *Britannia* ratio and could not reject the refund on technical grounds.

The department maintained that Rule 89(1) explicitly restricts refund applications to the supplier supplying services to an SEZ unit. It further argued that there were no specific guidelines permitting SEZ units to claim such refunds. During the hearing, it was also contended that the authorities had not verified whether the services were used for authorized operations endorsed by the SEZ specified officer.

The High Court held that the Britannia Industries ruling is binding on all authorities until a contrary decision is rendered by any other High Court. Relying on the principle reaffirmed in Godavaridevi Saraf, the Court ruled that departmental authorities could not ignore binding precedent merely because an SLP was pending. Since the Supreme Court had dismissed the SLP in Meghmani Organochem Ltd. while keeping the question of law open, the Britannia decision continued to govern the issue. Accordingly, the rejection of refund applications on the ground that an SEZ unit is not eligible to claim refund was held illegal. However, since the issue of whether the input services were used for authorized operations was not examined earlier, the matter was remanded to the Assistant Commissioner to re-evaluate the refund claims in light of Britannia.

This decision provides important clarity for SEZ units facing refund denials under Rule 89(1). The Court has categorically affirmed that unless reversed by a competent forum, *Britannia Industries* remains binding across jurisdictions—requiring tax authorities to allow SEZ units to claim refunds of unutilized ITC on zero-rated supplies. The judgment reinforces judicial intolerance towards hyper-technical interpretations that defeat the scheme of zero-rating under Section 16 of the IGST Act. SEZ units should, however, ensure that documentation clearly establishes that the services relate to authorized operations, as this will be scrutinized in remanded proceedings.

Contributed by

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Report on Foreign Exchange Reserves

Half Yearly Report on Management of Foreign Exchange Reserves

Overview and Structure

The report details developments in India's foreign exchange reserves for the half-year ending September 2025, divided into two main parts:

1) Developments and movements in reserves, and
2) Reserve management objectives, legal framework, risk management, and transparency policies.

Key Financial Highlights

- India's foreign exchange reserves increased from USD 668.33 billion at the end of March 2025 to USD 700.09 billion at the end of September 2025.
- The primary influences on foreign exchange reserves include the RBI's market operations, government receipts, investment income, and valuation changes.[1]
- On a balance of payments basis, reserves rose by USD 4.5 billion during April-June 2025 (compared to USD 5.2 billion in the same period last year), with valuation gains accounting for most of the total increase.
- Net forward assets of the RBI stood at USD 59.40 billion as of September 2025.

External Liabilities and Reserve Adequacy

- By end-June 2025, India's net International Investment Position (IIP) was negative USD 312.8 billion, reduced from negative USD 366.8 billion a year earlier, indicating a narrowing of the gap between external assets and liabilities.
- Reserve adequacy remained strong: foreign exchange reserves covered 11.4 months of imports (up from 11.0 months at end-March 2025), and short-term debt as a percentage of reserves declined to 19.4%.

Gold Reserves and Investment Pattern

- RBI's gold holdings stood at 880.18 metric tonnes at end-September 2025, with 575.82 tonnes held domestically and the remaining with the Bank of England, BIS, or as gold deposits.
- The share of gold in total reserves increased from 11.70% at end-March to 13.92% at end-September 2025.
- Of the total foreign currency assets of USD 579.18 billion, about 85% was invested in securities, 8% in central banks/BIS, and 7.5% with commercial banks overseas.

Risk Management and Governance

- RBI's reserve management prioritizes safety and liquidity, with return optimization as a secondary goal.
- Risk management includes strict counterparty selection, currency and interest rate risk controls, regular stress tests, duration limits, and robust internal/external audit frameworks.
- Operational controls include segregation of functions, regular reconciliation, and compliance with SWIFT security and reporting standards.

Transparency and Disclosure

- RBI adheres to international best practices for transparency, making regular data and analysis available in the public domain (e.g., press releases, reports, IMF SDDS templates).

This summary outlines the major developments, reserve dynamics, positioning, and risk governance approaches highlighted in the RBI's half-yearly review for the period ending September 2025.

Contributed by *Mr. Chirag Bakshi.*

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RBI

Reserve Bank of India (Nomination Facility in Deposit Accounts, Safe Deposit Lockers and Articles kept in Safe Custody with the Banks) Directions, 2025

RBI/2025-26/95 DOR. MCS. REC. 59 / 01.01.003 / 2025-26 dated October 28, 2025

Government of India ("GOI") has notified the *Banking Laws (Amendment) Act, 2025* by making amendments to Sections 45ZA[1], 45ZC[1] and 45ZE[1] of the Banking Regulation Act, 1949 (the Act) along with notifying the *Banking Companies (Nomination) Rules, 2025*.

The objective of nomination facility is to ensure that claims by the bank are settled in a judicious and harmonious manner on the demise of a customer so that family members do not face any difficulties or hardships.

Some of the salient features of the new provisions are:

- Banks will offer nomination facility for deposit account holders, including nomination in safe deposit lockers and articles kept in safe custody.
- Individual maintaining bank account for proprietorship business will be considered as an individual account bearing nomination facility.
- Option to avail the nomination facility will be given to a prospective customer at the time of opening a new account but not coerced or forced to nominate such account.
- In case a nominee dies prior to receiving the deposit from the bank, the nomination in respect of such nominee alone shall become ineffective.
- Details of nomination, including name of nominee will be printed on the Passbook / Statement of Account / Term Deposit Receipt ("TDR") with the nomenclature "**Nomination Registered**".
- Banks have been mandated to provide wide publicity to educate both existing as well as prospective customers on the benefits of nomination facility and ensure account opening forms contain the nomination clause.

Effective date: from November 01, 2025

Master Direction – Reserve Bank of India (Repurchase Transactions (Repo)) Directions, 2025

RBI/FMRD/2025-26/142 FMRD.DIRD.04/14.03.038/2025-26 dated November 11, 2025

Master Direction – Reserve Bank of India (Repurchase Transactions (Repo)) Directions, 2025 has been released by the Reserve Bank of India ("RBI") for guidance related to the repurchase transactions ("Repo") undertaken on recognized stock exchanges, electronic trading platforms ("ETP") and the Over-the-Counter ("OTC"). Repo/ reverse repo transactions under the Liquidity Adjustment Facility and the Marginal Standing Facility do not form part of the said Directions.

The Master Direction provides for definitions, the securities eligible for repo along with the eligible participants in the repo transactions.

Eligible Securities for Repo:

- Government securities (both Central and State government)
- Listed corporate bonds and debentures
- Commercial Papers (CPs) and Certificate of Deposits (CDs)
- Units of Debt ETFs

RBI

- Municipal Debt Securities
- Any other security of a local authority as may be specified in this behalf by the Central Government

Eligible Participants:

- Any regulated entity
- Any listed corporate
- Any unlisted company, which has been issued special securities by the Government of India
- Any All-India Financial Institution ("FIs") viz. Exim Bank, NABARD, NHB, Small Industries Development Bank of India ("SIDBI") and National Bank for Financing Infrastructure and Development, constituted by an Act of Parliament and
- Any other entity approved by the Reserve Bank from time to time for this purpose

Tenor:

Repos shall be undertaken for a minimum period of one day and a maximum period of one year.

In addition to this, the Master Direction provides guidance on trading process, reporting and settlement of trades, accounting & valuation of such securities and the relevant documentation in this regard.

Effective date: Immediate effect

Reserve Bank of India (Trade Relief Measures) Directions, 2025

RBI/2025-26/96 DOR. STR. REC. 60 / 21.04.048 / 2025 dated 26 November 14, 2025

Reserve Bank of India has its ear to the ground and is proactively directing policy changes in the fast-changing business environment both globally and locally. With the view to mitigate the burden of debt servicing on account of global trade upheavals and ensuring the continuity of viable businesses, RBI has issued certain trade relief measures by way of the said Directions.

The Directions are given to all the Regulated Entities ("RE"), including Commercial Banks, Cooperative Banks, Non-Banking Financial Companies, All India Financial Institutions and Credit Information Companies.

Some of the key features of the Trade Relief Measures Directions are:

Eligibility Criteria:

The following borrowers will be eligible to avail trade relief measures:

- Borrower is engaged in exports relating to specified sectors including sea food, organic chemicals, plastic and rubber related products etc. (Two-digit HS code specified).
- Borrower had an outstanding export credit facility from a RE as of August 31, 2025
- Account(s) of the borrower with all REs classified as 'Standard' as on August 31, 2025.

Relief Measures:

- For Term Loans, RE may grant moratorium on payment of all instalments (principal and/or interest) falling due between September 1, 2025, and December 31, 2025 ("Effective period").
- For working capital facilities sanctioned in the form of cash credit / overdraft

("CC/ OD"), an RE may defer the recovery of interest applied in respect of all such facilities for the effective period.

- During the moratorium / deferment period, interest shall continue to accrue on simple interest basis.
- Accumulated accrued interest during moratorium / deferment period may be converted into a funded interest term loan which shall be repayable in one or more instalments on or after March 31, 2026 but not later than September 30, 2026.
- RE may grant enhanced credit period of up to 450 days for pre-shipment and post-shipment export credit disbursed till March 31, 2026.
- For packing credit facilities availed by exporters on or before August 31, 2025 but dispatch of goods could not take place, an RE may allow liquidation of such facilities from any legitimate alternate sources by the borrower.

Effective date: Immediate effect

Amendments to Directions - Compounding of Contraventions under FEMA, 1999

RBI/FED/2025-26/98 A.P. (DIR Series) Circular. No 15/2025-26 dated November 24, 2025

Reserve Bank of India has moved with the times with the introduction of online payment of Compounding Application fees as well as the Compounding Penalty through electronic mode.

Further, to streamline the process of receipt of compounding application fee and "sum for which a contravention is compounded" (i.e. the Compounding Penalty amount), RBI has decided to change the account details of the account where compounding application fee and compounding amount will be received through National Electronic Fund Transfer (NEFT), Real Time Gross Settlement (RTGS).

The change in the account details is for all Offices of the Reserve Bank of India handling Compounding Applications including the Central Office, Mumbai, FED CO Cell, New Delhi and 18 Regional Offices across the country.

Details of account numbers are provided in as *Annex I* to the Master Direction.

Effective date: Immediate effect

SEBI

Transfer of portfolios of clients (PMS business) by Portfolio Managers

SEBI/HO/IMD/RAC/CIR/P/2025/ 0000000138 dated October 24, 2025

Securities and Exchange Board of India ("SEBI") has streamlined the framework for the transfer of Portfolio Management Services ("PMS") business between registered Portfolio Managers.

The transfer of PMS business can be initiated either between portfolio managers within the same group or to a portfolio manager outside the group, subject to prior SEBI approval and other prescribed compliances.

Transfer between same group:

- If entire PMS business is transferred, the PMS certificate of registration has to be surrendered within 45 days from date of such transfer.
- If transfer is restricted to a select Investment approach / (s), the transferor may continue to hold the certificate of registration.

Transfer outside the group:

- Joint application has to be made by the transferor and transferee for prior approval from SEBI.
- Transferor has to mandatorily transfer the entire PMS business.
- Entire process of transfer of PMS business must be completed not later than two (2) months from the date of SEBI approval.

Effective Date: Immediate

Further extension of timeline for mandatory implementation of systems and processes by Qualified Stock Brokers (QSBs) with respect to T+0 settlement cycle

HO/47/11/12(1)2025-MRD-POD3 I/72/2025 dated October 30, 2025

Stock brokers who are designated as Qualified Stock Brokers ("QSBs") meeting the criteria of a minimum number of active clients for qualification as QSB as on December 31, 2024 were mandated to provide the optional T+0 rolling settlement cycle in addition to the existing T+1 settlement cycle in Equity Cash Markets for their existing clients by **May 01, 2025**.

Given the challenges posed to QSBs in putting in place the systems and processes, SEBI had announced an extension of timeline to **November 1, 2025**.

On the feedback received from the QSBs for ensuring readiness in system implementation, the timeline has been extended indefinitely. SEBI will provide further guidance on the revised timeline in due course.

Effective Date: To be intimated later

Ease of doing business measures - Enabling Investment Advisers ("IAs") to provide second opinion to clients on assets under pre-existing distribution arrangement

HO/38/12/11(1)2025-MIRSD-POD/ I/71/2025 dated October 30, 2025

&

Ease of doing business – Interim arrangement for certified past performance of Investment Advisers ("IAs") and Research Analysts prior to operationalisation of Past Risk and Return Verification Agency ("PaRRVA")

HO/38/12/11(1)2025-MIRSD-POD/ I/73/2025 dated October 30, 2025

SEBI

In recent years, financial influencers, often referred to as "finfluencers," have gained wide publicity and gained prominence in the investor community, especially the retail participants, through various social media platforms. However, this phenomenon has exposed a critical gap as majority of these individuals operate without formal registration or verified credentials, thereby raising serious concerns about the reliability and integrity of their advice.

The lack of stringent regulatory measures on dissemination of speculative and sometimes misleading information by finfluencers on the social media platforms in the garb of investment advice has at times lead to incorrect investment decisions and financial losses for many new first-time investors. Recognizing these risks, SEBI has been introducing various regulations, with the above-mentioned ones being in line with the ones issued earlier. The said Regulations seek to enhance transparency, safeguard investor interests as well as enhance the ease of doing business for Investment Advisers ("IAs").

Ease of doing business measures - Enabling Investment Advisers ("IAs") to provide second opinion to clients on assets under pre-existing distribution arrangement

As per the existing provisions, Investment Advisers were permitted to deduct a specified amount as fees from the portion of Assets Under Advice ("AUA") held by the client under a pre-existing distribution arrangement with any entity.

However, IAs were not allowed to charge AUA based fee on such assets. With the release of this notification, if a client desires to avail a second opinion on assets, which are under any pre-existing distribution arrangement with any entity, IAs have been permitted to charge fee on such assets, subject to a limit of 2.5% of such assets value per annum.

Effective Date: Immediate

Ease of doing business – Interim arrangement for certified past performance of Investment Advisers ("IAs") and Research Analysts prior to operationalisation of Past Risk and Return Verification Agency ("PaRRVA")

Past Risk and Return Verification Agency ("PaRRVA") as a separate entity was notified vide Regulation 16D and 16E of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008' ("Intermediaries Regulations") as an agency to provide for verification of risk and return metrics.

Any Credit Rating Agency ("CRA") may be recognized as a PaRRVA in terms of Regulation 12A of the SEBI (Credit Rating Agencies) Regulations, 1999 read with Regulation 16E of the SEBI (Intermediaries) Regulations, 2008.

As PARRVA has not been operationalised yet, an interim solution has been recommended by the SEBI, namely;

- IAs / RAs may share past performance data with client / prospective client, subject to certification by a member of ICAI / ICMAI.
- Past performance data will be communicated to clients (including prospective clients) on a one-to-one basis and not shared on public forum or online on various social media platforms.

SEBI

Violations of the provisions under this Circular will make an entity liable for enforcement action, including Summary Proceedings "under Regulation 30A(1)(c) of SEBI (Intermediaries) Regulations, 2008.

Effective Date: Immediate

Implementation of eligibility criteria for derivatives on existing Non-Benchmark Indices

HO/47/15/11(1)2025-MRD-TPD1/ I/63/2025 dated October 30, 2025

SEBI has been coming down hard on trading in derivatives to avoid market instability as well as to ensure that investors well aware of the risks of trading in derivatives only undertake such trades. In line with this thought, SEBI has implemented prudential norms for derivatives linked to Non-Benchmark Indices ("NBIs") as well. SEBI has given guidance to Stock Exchanges for introducing non benchmark derivates, which in addition to the existing eligibility criteria for derivatives on indices, including the following:

1. Minimum of 14 constituents per index,
2. Limiting the top constituent's weight to no more than 20%,
3. Capping the combined weight of the top three constituents at 45%.

Currently the prudential norms for Non-Benchmark Indices ("NBIs") are applicable for the two indices, BANKEX (derivatives traded on BSE) and FINNIFTY (derivatives traded on NSE).

This aim of this initiative, in addition to enhancing market stability and investor protection is to provide more diversification in derivatives trading.

Effective Date: BANKEX and FINNIFTY - December 31, 2025, and BANK NIFTY – March 31, 2026

MCA Notifications

Relaxation of Additional Fees and Extension of time for filing Financial Statements and Annual Returns

General Circular No. 06/2025 dated October 17, 2025

With the introduction / deployment of new e-Forms i.e. AOC-4, AOC-4 CFS, AOC-4 NBFC [Ind AS], AOC-4 CFS NBFC [Ind AS], AOC-4 XBRL, MGT-7, MGT-7 A on the Version 3 portal, it is likely that the Companies may need more than in getting themselves familiarized with the filing process. Therefore, extension in time has been granted to complete the filing of Financial Statements and Annual Returns without payment of additional fees up to **December 31, 2025**.

Companies (Meetings of Board and its Powers) Amendment Rules, 2025

Notification dated November 03, 2025

MCA vide this notification amended Companies (Meetings of Board and its Powers) Amendment Rules, 2014 and defined "**business of financing industrial enterprises**".

According to Section 186(11) of Companies Act 2013, there is no requirement of passing board resolution and special resolution in case of any loan made, any guarantee given or any security provided or any investment made by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company established with the object of and engaged in the **business of financing industrial enterprises** or of providing infrastructural facilities;

The expression **business of financing industrial enterprises** as defined vide this notification shall include:

i. with regard to a Non-Banking Financial Company registered with the Reserve Bank of India, "*business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business*"; and

ii. with regard to a Finance Company registered with the International Financial Services Centres Authority, "*activities as provided in sub-clause (a), or sub-clause (e) of clause (ii) of sub-regulation (1) of regulation 5 of the International Financial Services Centres Authority (Finance Company) Regulations, 2021 in the ordinary course of its business*".

Effective date: Date of publication in official gazette

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Abbreviations

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Abbreviation	Meaning
AA	Advance Authorisation
AAR	Authority of Advance Ruling
AAAR	Appellate Authority of Advance Ruling
AAC	Annual Activity Certificate
AD Bank	Authorized Dealer Bank
AE	Associated Enterprise
AGM	Annual General Meeting
AIR	Annual Information Return
ALP	Arm's length price
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Person
APA	Advance Pricing Arrangements
AS	Accounting Standards
ASBA	Applications Supported by Blocked Amount
AY	Assessment Year
BAR	Board of Advance Ruling
BEAT	Base Erosion and Anti-Avoidance Tax
CBDT	Central Board of Direct Tax
CBIC	Central Board of Indirect Taxes and Customs
CCA	Cost Contribution Arrangements
CCR	Cenvat Credit Rules, 2004
COO	Certificate of Origin

Abbreviation	Meaning
CESTAT	Central Excise and Service Tax Appellate Tribunal
CGST Act	Central Goods and Service Tax Act, 2017
CIT(A)	Commissioner of Income Tax (Appeal)
Companies Act	The Companies Act, 2013
CPSE	Central Public Sector Enterprise
CSR	Corporate Social Responsibility
CTA	Covered Tax Agreement
CUP	Comparable Uncontrolled Price Method
Customs Act	The Customs Act, 1962
DFIA	Duty Free Import Authorization
DFTP	Duty Free Tariff Preference
DGFT	Directorate General of Foreign Trade
DPIIT	Department of Promotion of Investment and Internal Trade
DRI	Directorate of Revenue Intelligence
DRP	Dispute Resolution Panel
DTAA	Double Tax Avoidance Agreement
ECB	External Commercial Borrowing
ECL	Electronic Credit Ledger
EO	Export Obligation
EODC	Export Obligation Discharge Certificate

Abbreviation	Meaning
EPCG	Export Promotion Capital Goods
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investor
FIFP	Foreign Investment Facilitation Portal
FIRMS	Foreign Investment Reporting and Management System
FLAIR	Foreign Liabilities and Assets Information Reporting
FPI	Foreign Portfolio Investor
FOCC	Foreign Owned and Controlled Company
FTC	Foreign Tax Credit
FTP	Foreign Trade Policy 2015-20
FTS	Fees for Technical Service
FY	Financial Year
GAAR	General Anti-Avoidance Rules
GDR	Global Depository Receipts
GMT	Global Minimum Tax
GILTI	Global Intangible Low-Taxed Income
GSTN	Goods and Services Tax Network
GVAT Act	Gujarat VAT Act, 2006
HSN	Harmonized System of Nomenclature

Abbreviations

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Abbreviation	Meaning
IBC	Insolvency and Bankruptcy Code, 2016
ICDS	Income Computation and Disclosure Standards
ICDR	Issue of Capital and Disclosure Requirements
IEC	Import Export Code
IIR	Income Inclusion Rule
IMF	International Monetary Fund
IRP	Invoice Registration Portal
IRN	Invoice Reference Number
ITC	Input Tax Credit
ITR	Income Tax Return
IT Rules	Income Tax Rules, 1962
ITAT	Income Tax Appellate Tribunal
ITR	Income Tax Return
ITSC	Income Tax Settlement Commission
JV	Joint Venture
LEO	Let Export Order
LIBOR	London Inter Bank Offered Rate
LLP	Limited Liability Partnership
LOB	Limitation of Benefit
LODR	Listing Obligations and Disclosure Requirements
LTA	Leave Travel Allowance
LTC	Lower TDS Certificate

Abbreviation	Meaning
LTCG	Long term capital gain
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MeitY	Ministry of Electronics and Information Technology
MSF	Marginal Standing Facility
MSME	Micro, Small and Medium Enterprises
NCB	No claim Bonus
OECD	The Organization for Economic Co-operation and Development
OM	Other Methods prescribed by CBDT
PAN	Permanent Account Number
PE	Permanent establishment
PPT	Principle Purpose Test
PSM	Profit Split Method
PY	Previous Year
QDMTT	Qualified Domestic Minimum Top-up Tax
RA	Regional Authority
RMS	Risk Management System
ROR	Resident Ordinary Resident
ROSCTL	Rebate of State & Central Taxes and Levies
RoDTEP	Remission of Duties and Taxes on Exported Products

Abbreviation	Meaning
RPM	Resale Price Method
SC	Supreme Court of India
SCN	Show Cause Notice
SDS	Step Down Subsidiary
SE	Secondary adjustments
SEBI	Securities Exchange Board of India
SEP	Significant economic presence
SEZ	Special Economic Zone
SFT	Specified Financial statement
SION	Standard Input Output Norms
SOP	Standard Operating Procedure
ST	Securitization Trust
STCG	Short term capital gain
SVLDRS	Sabka Vishwas (Legacy Dispute Resolution Scheme) 2019
TCS	Tax collected at source
TDS	Tax Deducted at Source
TNMM	Transaction Net Margin Method
TP	Transfer pricing
TPO	Transfer Pricing Officer
TPR	Transfer Pricing Report
TRO	Tax Recovery Officer
UTPR	Undertaxed Profits Rules
u/s	Under Section
WOS	Wholly Owned Subsidiary