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TAX JURISPRUDENCE

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EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER DIRECT AND INDIRECT TAXES

We are pleased to draw your attention to following important decisions which might be useful for you to take call on tax position.

Case & Citation	Issue Involved	Decision
Direct Tax		
Linklaters Singapore Pte. Ltd. [TS-476-ITAT-2026(Mum)]	Whether the consideration received by the assessee for rendering legal advisory services is taxable as Fees for Technical Services under Article 12(4)(b) of the India–Singapore DTAA, specifically examining whether the "make available" condition is satisfied, and alternatively, whether the assessee constitutes a Permanent Establishment in India under Article 5 of the DTAA.	Hon' ITAT held that the taxpayer's receipts from legal and advisory services were not taxable in India as Fees for Technical Services ("FTS") under Article 12 of the India–Singapore DTAA, as the services did not meet the "make available" test. The Tribunal also held that the taxpayer did not have a Permanent Establishment ("PE") in India because its employees' stay in India was below the prescribed threshold, and the temporary use of hotels or client premises did not create a PE. It further held that reimbursements without a mark-up were not taxable and that Article 15 of the DTAA does not apply to companies. Accordingly, the taxpayer's appeal was allowed.

Indirect Tax		
Agratas Energy Storage Solutions Private Limited vs. State of Gujarat	Whether ITC of GST on lease rental paid to the Government of Gujarat (under RCM) is available where leased land is used for construction of a factory, in view of Section 17(5)(d) of the CGST Act, 2017?	Gujarat AAAR upheld denial of ITC. Section 17(5)(d) blocks ITC on goods/services for construction of immovable property irrespective of business purpose. Restriction is absolute, unaffected by payment schedule, construction phase, vacant land, or repair/renovation activities.
D P Jain & Co. Infrastructure Private Limited vs Union of India & Ors [TS-333-HC(BOM)-2026-GST]	Whether executing a corporate guarantee in favour of subsidiaries, without any consideration, constitutes a taxable supply of service under Section 9 of the CGST Act, 2017?	Hon'ble Bombay High Court (Nagpur Bench) held that a corporate guarantee executed without consideration is not a taxable supply under GST. The Show Cause Notice and DGGI summons were quashed and set aside.

The brief analysis of above referred decisions and rulings are given below.

Case 1 – Linklaters Singapore Pte. Ltd., ITA No. 765/Mum/2026 Assessment Year: 2019-20 [TS-476-ITAT-2026(Mum)]

Facts in brief & Issue Involved

- The taxpayer, Linklater Singapore Pte. Ltd a Singapore incorporated company engaged in providing international legal and advisory services, rendered legal services to Barclays Bank Plc in relation to transactions involving Rural Electrification Corporation Ltd. ("REC Ltd."). The services included due diligence, review of documents and issuance of legal opinions under English and New York laws.

- Although the services were rendered to Barclays Bank Plc, the legal fees were reimbursed by REC Ltd. pursuant to a separate commercial arrangement between Barclays Bank Plc and REC Ltd.

- During reassessment proceedings, the Revenue sought to tax the receipts in India as Fees for Technical Services ("FTS") under section 9(1)(vii) of the Income-tax Act and Article 12 of the India–Singapore DTAA.

- The Revenue also alleged that the taxpayer had constituted a Permanent Establishment ("PE") in India due to visits by its employees and use of hotels/client premises while rendering services in India. Further, reimbursements received by the taxpayer were treated as taxable receipts and Article 15 of the DTAA was also sought to be invoked.

Contentions of Taxpayer

- The taxpayer contended that the services rendered were purely legal and professional advisory services and did not result in "making available" any technical knowledge, skill, know-how or process to the recipient as required under Article 12(4)(b) of the India–Singapore DTAA.

- It was submitted that the recipient could not independently apply the expertise in future without continued assistance from the taxpayer. The taxpayer further submitted that the actual client was Barclays Bank Plc and REC Ltd. had merely reimbursed the legal costs under a separate arrangement.

- It was also contended that the taxpayer had no office, branch or fixed place of business in India and its employees stayed in India only for 21 days, which was below the 90-day threshold prescribed under Article 5(6)(a) for constitution of Service PE.

- The taxpayer argued that Article 15 of the DTAA applies only to individuals and partnerships and not to companies. Reliance was also placed on earlier ITAT decisions in the taxpayer's own case for preceding years where identical issues had been decided in its favour.

Contentions of the Revenue

- The Revenue contended that the taxpayer possessed specialized legal expertise and that such expertise had been utilized in India for financial and managerial decision-making purposes. According to the Revenue, the legal advice and consultancy services effectively made available technical knowledge and experience and therefore constituted FTS under section 9(1)(vii) of the Act as well as Article 12 of the DTAA.

- The Revenue further argued that the use of hotels and client premises by employees of the taxpayer during their stay in India constituted a place of business resulting in existence of PE under Article 5 of the DTAA.

- The Revenue sought to invoke Article 15 of the DTAA on the basis that professional services were rendered in India through employees/personnel of the taxpayer.

Observations & Decision of the Hon'ble ITAT

- Hon' ITAT observed that mere rendering of legal and professional advisory services does not satisfy the "make available" condition under Article 12 of the India–Singapore DTAA unless the recipient is enabled to independently apply the technical knowledge or expertise in future without further assistance from the service provider.

- Relying upon the decision in CIT vs. De Beers India Minerals Pvt. Ltd., the Hon' ITAT held that although the services involved specialized expertise, such expertise was not transferred to the recipient in the manner contemplated under the treaty.

- Hon' ITAT further observed that the stay of employees in India was only 21 days and therefore the threshold for constitution of Service PE under Article 5 was not crossed. It was also held that temporary use of hotels or client premises could not constitute a fixed place PE.

- Hon' ITAT held that reimbursements without mark-up could not be treated as taxable income and Article 15 applies only to individuals or partnerships and not to a corporate entity.

- Accordingly, the additions made by the AO and sustained by the DRP were deleted and the appeal of the taxpayer was allowed.

NASA Comments

- This decision reiterates the strict interpretation of the "make available" clause under Indian tax treaties and reinforces the principle that professional legal and consultancy services do not automatically qualify as FTS merely because specialized expertise is involved.

- This decision provides important guidance for foreign law firms, consulting firms and advisory entities rendering cross-border services into India.

- Further, the decision appropriately clarifies that Article 15 relating to independent personal services cannot be invoked against corporate entities.

- Taxpayers should, however, ensure proper documentation of nature of services, clear contractual terms, and monitoring of employee presence in India to mitigate PE risk.

Case 1 – Agratas Energy Storage Solutions Pvt. Ltd. [TS-268-AAAR(GUJ)-2026-GST]

Facts in brief & issues of Applicant

- Agratas Energy Storage Solutions Pvt. Ltd. ('the Appellant'), is engaged in manufacturing of battery cells for motor vehicles.

- The Appellant entered into a 50-year lease with the Government of Gujarat for 321 acres at Sanand GIDC, Ahmedabad, which was subject to GST under RCM.

- The Appellant sought advance ruling on four questions:
  I. ITC eligibility on lease rental where factory building is to be constructed;
  II. ITC availability pre- and post-construction;
  III. ITC during repairs/renovation; and
  IV. ITC on vacant/green belt portion of land.

- The Gujarat AAR vide Advance Ruling No. GUJ/GAAR/R/2025/46 dated 03.11.2025 denied ITC on all four counts. Aggrieved by the said ruling, the Appellant preferred this appeal before the Gujarat Appellate Authority for Advance Ruling (GAAAR).

Contentions of Appellant

- Long-term lease services are procured in the course or furtherance of business under Section 16 and therefore, ITC should not be denied.

- Since a works contract does not include land, a land transaction (lease) cannot fall under section 17(5)(d) of the CGST Act 2017(d).

- ITC should be available for periods before and after construction, as the land is not used 'for construction' during those periods. The green belt/vacant portion has no construction activity and ITC thereon should likewise be admissible.

- Denial of ITC increases product cost, harming the Make in India initiative and making domestically produced goods uncompetitive.

Observations & Decision of Court

- Section 17 has an overriding effect over Section 16. Section 17(5)(d) explicitly prohibits ITC on goods and services used for construction of immovable property regardless of whether such construction is in the course or furtherance of business.

- The restriction is absolute and independent of payment schedule and bifurcating ITC eligibility based on pre/post-construction periods would allow circumvention of Section 17(5)(d) by strategic deferral of payments.

- The entire leased land, including the green belt/vacant portion, is integral to the factory premises ('part and parcel'). ITC on lease rentals for such portions is equally inadmissible. Further, since 'construction' under the Explanation to Section 17(5) includes renovation and repairs, the restriction applies to those activities as well.

- Financial hardship is not a valid ground. The court held that tax laws must be interpreted strictly, and a provision cannot be interpreted differently merely because it increases the cost for the taxpayer. Accordingly, the appeal was dismissed.

NASA Comments

- This ruling reaffirms the broad and absolute scope of the blocked credit provision under Section 17(5)(d). The AAAR has taken a consistent view that land-related services for factory construction are squarely covered, irrespective of any commercial expediency argument.

- The rejection of the pre/post-construction bifurcation and the payment-periodicity arguments puts to rest any attempt to structure lease payments so as to partially claim ITC.

- Companies leasing government land for industrial projects, particularly under the Make in India framework, must treat the GST on annual lease rentals as an absolute, non-recoverable cost in their project financials.

Case 2 - D P Jain & Co. Infrastructure Private Limited vs UOI & Ors [TS-333-HC(BOM)-2026-GST]

Facts in brief & Issue Involved

- M/s. D P Jain & Co. Infrastructure Pvt. Ltd. ("the Petitioner") is registered under GST and engaged in the construction of National and State Highways under projects awarded by NHAI and State Corporations.

- The Petitioner executed three corporate guarantees in favour of its subsidiaries as a mandatory pre-condition for sanction of term loans from State Bank of India and Bank of Maharashtra

- Each guarantee deed contained an express contractual clause declaring that the Petitioner has not received and shall not receive any security, fee, commission, or any other consideration from the borrower for providing the guarantee.

- The Directorate General of GST Intelligence (DGGI) issued summons initiating investigation for alleged non-payment of GST on the said corporate guarantees and subsequently issued a Show Cause Notice demanding GST thereon. The Revenue placed reliance on Circular No. 204/16/2023-GST dated 27th October 2023, Circular No. 225/19/2024-GST dated 11th July 2024, and Rule 28(2) of the Central Goods and Services Tax Rules, 2017, inserted vide Notification No. 52/2023-Central Tax dated 26th October 2023.

- Aggrieved by the aforesaid action, the Petitioner preferred a writ petition before the Hon'ble Bombay High Court, contending that, in the absence of any consideration, the impugned transaction cannot be regarded as a taxable "supply" under the GST law.

- The core issue before the Court was whether the execution of a corporate guarantee by a holding company in favour of its subsidiaries, entirely without consideration, constitutes a taxable supply of service under Section 9 of the Central Goods and Services Tax Act, 2017, and whether Rule 28(2) of the Central Goods and Services Tax Rules, 2017 is constitutionally valid.

Contentions of Petitioners

- The Petitioner contended that in the complete absence of any consideration, the transaction does not satisfy the foundational requirement of "supply" under Section 7 of the Central Goods and Services Tax Act, 2017, and consequently cannot attract tax liability under Section 9 thereof. The express clause in each guarantee deed, recording that no consideration was received or would be received, was advanced as conclusive evidence of the same.

- It was further submitted that the impugned Circular Nos. 204/16/2023-GST and 225/19/2024-GST, having been issued under Section 168(1) of the Central Goods and Services Tax Act, 2017, cannot by way of administrative clarification create a tax liability that does not otherwise exist under the statute. A circular cannot expand the scope of a taxable event beyond what the parent legislation permits.

- The Petitioner additionally urged that all three corporate guarantees were executed prior to 26th October 2023, being the date of insertion of Rule 28(2). As per the clarification issued vide Notification No. 12/2024-Central Tax dated 10th July 2024, the valuation of guarantees issued or renewed before 26th October 2023 is required to be governed by the pre-amendment provisions of Rule 28, under which the transaction value in the absence of any consideration is Nil. Accordingly, the amended valuation provisions cannot be given retrospective application to transactions concluded prior to their insertion.

- Reliance was also placed on the Supreme Court's ruling in Commissioner of Central Goods and Services Tax and Central Excise vs. Edelweiss Financial Services Limited (MANU/SC/0648/2023), wherein it was held that corporate guarantees extended without consideration to group companies are not liable to tax.

Contentions of Respondents

- Providing a corporate guarantee to a related party even without a separate consideration confers a commercial and financial benefit on the related entity by enabling it to obtain bank finance. This amounts to a supply of service between related persons, even if no separate charge is levied.

- Under Schedule I of the CGST Act, 2017, transactions between related or distinct persons made in the course or furtherance of business can be treated as supply even without consideration. Accordingly, the absence of consideration does not take the transaction outside the purview of GST.

- Rule 28(2) of the CGST Rules, 2017 and the departmental circulars merely prescribe the valuation mechanism for corporate guarantee transactions between related persons and are well within the Government's rule-making powers under the CGST Act. The proceedings initiated are therefore legal and proper.

Observations & Decision of the Hon'ble High Court

- The Petitioner had issued corporate guarantees to its subsidiaries solely as an internal group support mechanism to facilitate their access to bank finance, and not in the ordinary course of commercial business.

- Since no commission, fee, or consideration of any kind was charged, the transaction lacked the foundational requirement of "consideration" essential for it to qualify as a "supply" under Section 7 of the CGST Act, 2017.

- Reliance was placed on the Supreme Court's ruling in Edelweiss Financial Services, wherein it was held that for an activity to be taxable, there must be both a provider of service and a flow of consideration. In the absence of either element, taxability does not arise.

- Tax liability cannot be created through departmental circulars where the underlying transaction is not taxable under the statute itself. Accordingly, the Court held that executing a corporate guarantee to its subsidiary is not in the nature of supply and supply of service taxable under Section 9 of the CGST Act, 2017.

NASA Comments

- This ruling brings substantial relief for companies providing corporate guarantees to their group/associated companies. However, two legal questions remain open: (i) whether the Schedule I deeming provision can independently attract GST between related parties, and (ii) whether Rule 28(2) can still operate post-October 2023. Until settled, careful documentation and legal advice remain essential.

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