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TAX JURISPRUDENCE

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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		
Turakhia Engineering Company Private Limited v. DCIT ITA No. 1249/Mum/2026 (Mumbai ITAT) Assessment Year: 2012-13	Whether interest expenditure claimed under section 36(1)(iii) can be disallowed merely because borrowed funds were advanced interest-free to a wholly owned subsidiary, when such advance was made for genuine business purposes and on grounds of commercial expediency.	The Hon'ble Mumbai ITAT held in favour of the taxpayer and allowed deduction of the entire interest expenditure. The Hon'ble Tribunal observed that the loan advanced to the subsidiary was motivated by commercial expediency, as it was intended to enable the subsidiary (SPV) to acquire industrial land for expansion of the group's business. Accordingly, the interest incurred on the borrowed funds was held to be wholly and exclusively for business purposes and therefore deductible under Section 36(1)(iii).
T Srikanth v. DCIT ITA No. 3792/Chny/2025 Assessment Year: 2017-18 Chennai ITA	Whether the deemed "full value of consideration" under Section 50C can be used for computing the exemption under Section 54F, even though the assessee had invested the actual/ net sale consideration in a new residential house.	The Hon'ble ITAT held that the deeming fiction under Section 50C is confined to the computation of capital gains under Section 48 and cannot be extended to determine the quantum of exemption under Section 54F. Since the taxpayer had invested the entire actual net sale consideration received from the transfer of the original assets in a new residential house, he was entitled to exemption under Section 54F, notwithstanding that the capital gains were recomputed using the higher stamp duty value under Section 50C. The Hon'ble ITAT accordingly directed the AO to allow exemption under Section 54F

Indirect Tax		
[Bhandari Scrap Traders v. Union of India [[2026] 188 taxmann.com 986 (SC)]]	Whether the provision of Section 16(2)(c) of CGST Act, 2017 is constitutionally valid on the grounds that: • ITC could not be denied for supplier's failure to deposit tax • Double taxation on account of first payment to the supplier and the consequent reversal of ITC by the recipient • There is impossibility of verifying payment by the supplier to the Govt. treasury	The Supreme Court affirmed the Gujarat High Court's ruling, holding that: • Section 16(2)(c) is valid and ITC is available only where the supplier has paid the corresponding GST to the Government. • ITC is a statutory concession, not an absolute right, and the recipient bears the burden of proving eligibility. • Where ITC is reversed due to the supplier's non-payment, it may be re-availed once the supplier subsequently pays the tax.
[Torrent Power Ltd Vs. Union of India & Ors. *[2026 (8) TMI 990 - Gujarat HC]*]	• 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? • Whether Rule 28(2) of the CGST Rules, 2017, prescribing a deemed valuation mechanism for corporate guarantees provided to related persons, is ultra vires the provisions of the CGST Act, 2017? • Whether Rule 28(2) can apply to guarantees executed before 26.10.2023? • Whether proceedings under Section 74 for corporate-guarantee transactions were sustainable?	• The Hon'ble Gujarat HC has upheld GST applicability on corporate guarantees given by holding companies to its subsidiaries. • However, it has also held that valuation mechanism provided in Rule 28(2) of CGST Rules, 2017 to the extent of the words "whichever is higher" is "arbitrary" in nature. • The levy on guarantees furnished prior to 26.10.2023 is struck down as violative of Articles 14 and 19(1)(g); it applies prospectively from that date for continuing guarantees. • The court has quashed the proceedings under Section 74 of CGST Act 2017 and has ordered refund of deposits made in excess by petitioner.

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

Case 1 - Turakhia Engineering Company Private Limited v. DCIT
(ITA No. 1249/Mum/2026 (Mumbai ITAT) Assessment Year: 2012-13)

Facts in brief & Issue Involved:

- The taxpayer had borrowed funds from its group company on which interest was paid. Out of these borrowed funds, it advanced an interest-free loan to its wholly owned subsidiary, which had been incorporated as a Special Purpose Vehicle (SPV) for acquiring industrial land from MIDC.

- The Assessing Officer observed that since the taxpayer paid interest on borrowed funds but did not recover interest from the subsidiary, the borrowed funds had been diverted for non-business purposes. Accordingly, interest expenditure of ₹9.79 lakh was disallowed under section 36(1)(iii).

- The taxpayer explained that the subsidiary was newly incorporated and was yet to commence business. The funds were provided to enable it to acquire industrial land, and an interest holiday was granted during its initial start-up phase under Board approval. Although acquisition of land was delayed due to MIDC formalities, the land was ultimately acquired and used for the group's business expansion.

- The dispute before the Tribunal was whether such interest-free advance to the subsidiary constituted a transaction undertaken out of commercial expediency.

Contentions of Taxpayer

- The taxpayer contended that the interest-free advance was extended to its wholly owned subsidiary purely on account of commercial expediency and not for any non-business purpose.

- It was submitted that the subsidiary had been incorporated as a Special Purpose Vehicle (SPV) for acquiring industrial land from MIDC with the objective of establishing a new business centre for the expansion of the group's overall business operations.

- Since the SPV was newly incorporated and was in its start-up phase, it had not commenced business activities and had incurred losses during the relevant year. Considering these commercial realities, the Board of Directors approved an interest holiday and, therefore, no interest was charged on the advances given to the subsidiary.

- The taxpayer further explained that the funds borrowed from another group company were temporarily channelled to the subsidiary because the opportunity to acquire industrial land from MIDC had arisen before all incorporation and registration formalities of the SPV could be completed.

- Although there was a delay in obtaining approvals and executing the lease documentation with MIDC, the acquisition of land was ultimately completed, thereby demonstrating that the transaction was genuine and undertaken solely for business expansion.

- The taxpayer also produced Board resolutions, audited financial statements, correspondence with MIDC and lease documents to substantiate that the borrowed funds had been utilised for a legitimate business purpose. Reliance was placed on the judgments of the Hon'ble Supreme Court in S.A. Builders Ltd. v. CIT and Hero Cycles (P.) Ltd. v. CIT.

Contentions of the Revenue

- The Revenue contended that the taxpayer had borrowed funds from its group company on which interest expenditure was incurred and claimed as a deduction under section 36(1)(iii).

- The Revenue observed that the borrowed funds were transferred almost immediately to its wholly owned subsidiary without charging any interest.

- The Assessing Officer rejected the assessee's explanation that the advance was for purchase of MIDC land by the subsidiary. According to the Revenue, the assessee failed to establish a sufficient nexus between the borrowing and its own business purposes.

- Merely stating that the funds were utilised for purchase of industrial land by the subsidiary was not sufficient to justify the interest-free advance, particularly when the taxpayer itself continued to bear the interest cost on the borrowed funds.

- The CIT(A) also observed that the transaction lacked the characteristics of a prudent commercial decision and distinguished the present case from situations where financial assistance is provided to protect the working capital or ongoing business operations of a subsidiary.

- Accordingly, both the Assessing Officer and the CIT(A) concluded that the advance represented a diversion of borrowed funds for non-business purposes and, therefore, the interest expenditure attributable thereto was liable to be disallowed under section 36(1)(iii).

Observations & Decision of the Hon'ble ITAT

- The Hon'ble Tribunal observed that the Assessing Officer had ignored the documentary evidence furnished by the taxpayer during assessment proceedings.

- The Hon'ble Tribunal found that the subsidiary was specifically incorporated as a Special Purpose Vehicle for expansion of the group's business and acquisition of industrial land from MIDC. The taxpayer, being the holding company, provided financial support to the newly incorporated subsidiary during its start-up phase. Since the subsidiary had not commenced operations and had incurred losses, the taxpayer granted an interest holiday with the approval of its Board of Directors.

- The Hon'ble Tribunal further noted that although there was a delay in obtaining approvals from MIDC, the industrial land was eventually allotted and leased to the subsidiary, thereby establishing that the transaction was genuine and undertaken for business purposes.

- Relying upon the principles laid down by the Supreme Court in S.A. Builders Ltd. and Hero Cycles Pvt. Ltd., the Tribunal reiterated that commercial expediency must be examined from the perspective of a businessman and not from that of the tax authorities.

- Accordingly, the ITAT allowed the deduction of interest expenditure under Section 36(1)(iii) and deleted the disallowance of ₹9.79 lakh.

NASA Comments

- This This decision reiterates the settled legal principle that an interest-free advance to a subsidiary does not automatically result in disallowance of interest under section 36(1)(iii). Where the taxpayer can demonstrate that the advance was made for genuine business or commercial purposes such as supporting a subsidiary, funding a start-up SPV, acquiring business assets, or facilitating expansion of the group's business the interest on borrowed funds continues to remain deductible.

- The ruling also emphasises the importance of maintaining contemporaneous documentary evidence such as Board resolutions, business plans, agreements, correspondence with statutory authorities and proof of utilisation of funds. Taxpayers advancing funds to subsidiaries or other group entities should ensure that the commercial rationale for such transactions is clearly documented and capable of being demonstrated during assessment proceedings. Robust documentation can significantly strengthen a taxpayer's position in establishing that the advance was made for legitimate business purposes rather than for non-business considerations.

Case 2 – T Srikanth v. DCIT ITA No. 3792/Chny/2025 Assessment Year: 2017-18 Chennai ITA

Facts in brief & Issue Involved

- In the present case, the taxpayer, represented by his legal heir, had disclosed Long-Term Capital Gain (LTCG) arising from the the sale of one shop and four parcels of land and claimed complete exemption under Section 54F on the ground that the entire net sale consideration of Rs. 2.03 crore had been invested in purchase of land and construction of a new residential house aggregating to Rs. 2.15 crore

- During assessment, the AO invoked Section 50C and substituted the actual sale consideration with the stamp duty value of Rs. 4.64 crore for computing capital gains. And computed long-term capital gains at Rs. 4.58 crore allowed exemption under Section 54F only proportionately at Rs. 2.13 crore and brought the balance capital gains of Rs. 2.45 crore to tax.

- The principal issue before the Hon'ble ITAT was whether the deemed full value of consideration determined under Section 50C can also be adopted as the "net consideration" for computing exemption under Section 54F, or whether exemption under Section 54F should be computed with reference to the actual sale consideration received by the taxpayer.

Contentions of Taxpayer

- The taxpayer contended that the entire actual sale consideration of Rs. 2.03 crore received from the transfer of the original assets had been invested in the new residential house and, therefore, the entire capital gain was eligible for exemption under Section 54F

- It was argued that Section 50C creates a legal fiction only for determining "full value of consideration" for computation of capital gains under Section 48 and cannot be extended to the computation mechanism under Section 54F.

- The taxpayer submitted that the expression "net consideration" used in Section 54F is distinct from the expression "full value of consideration" deemed under Section 50C. Hence, the denominator for calculating exemption under Section 54F should be the actual net consideration received and not the deemed value adopted for stamp duty purposes.

- It was further contended that requiring investment of the notional consideration envisaged under Section 50C would compel the taxpayer to perform an impossible act, since he could only invest what was actually received from the purchaser.

- Reliance was placed on various judicial precedents including Mrs. Baskarababu Usha v. ITO, R. Srinivasan (HUF) v. ITO, Shivkumar Lakshman v. ITO and Gyan Chand Batra v. ITO.

Contentions of the Revenue

- The Revenue supported the orders of the AO and the CIT(A).

- According to the Revenue, once Section 50C was applicable and the deemed consideration was higher than the actual consideration, the exemption under Section 54F was required to be computed with reference to such deemed consideration

- Since the investment made by the assessee in the new residential house was lower than the value adopted under Section 50C, the Revenue contended that the exemption under Section 54F was required to be allowed proportionately.

Observations & Decision of the Hon'ble ITAT

- The Hon'ble ITAT observed that the taxpayer had received actual sale consideration of Rs. 2.03 crore and had invested Rs. 2.15 crore in the purchase/construction of a new residential house. Thus, the condition prescribed under Section 54F stood fulfilled.

- The Hon'ble ITAT noted that the term "net consideration" appearing in Section 54F is distinct from the deemed "full value of consideration" under Section 50C. Section 50C creates a restricted legal fiction only for computation of capital gains under Section 48.

- The Hon'ble ITAT held that a deeming fiction cannot be extended beyond the purpose for which it has been created. Relying on the Supreme Court decision in Mancheri P. Ahmed v. Kuthiravattam Estate Receiver, it held that the fiction under Section 50C cannot be imported into Section 54F.

- The Hon'ble ITAT emphasized that where the taxpayer has invested the entire net sale consideration in a new residential house, full exemption under Section 54F cannot be denied merely because capital gains have been computed by adopting a higher deemed consideration under Section 50C.

- Following the decision in Gyan Chand Batra v. ITO and other precedents, the Hon'ble ITAT held that the meaning of "full value of consideration" under Section 50C does not govern the expression "net consideration" in Section 54F.

- Accordingly, the Hon'ble ITAT directed the AO to allow full exemption under Section 54F and held that the entire capital gain was not chargeable to tax, even if capital gains were computed by adopting the value determined under Section 50C. Since the appeal was allowed on this issue, the ground relating to whether the lands were agricultural lands was left open as academic.

NASA Comments

- This ruling reiterates that the deeming fiction contained in Section 50C is restricted to the computation provisions of Section 48 and cannot be extended to the exemption provisions of Section 54F. The decision affirms that a taxpayer cannot be expected to reinvest an amount that was never actually received merely because a higher value is deemed under Section 50C.

- The ruling provides significant relief in situations where capital gains are enhanced solely by virtue of Section 50C, but the taxpayer has fully invested the actual sale proceeds in a qualifying residential house. It strengthens the judicial position that for the purposes of Section 54F, "net consideration" refers to the actual consideration received or accruing on transfer and not the deemed consideration adopted under Section 50C.

Case 1 - Bhandari Scrap Traders v. Union of India *[[2026] 188 taxmann.com 986 (SC)]*

Facts in brief & Issues Involved

- The purchasing dealers claimed Input Tax Credit (ITC) on purchases made from their suppliers. The Department denied the ITC on the ground that the suppliers had not paid the GST to the Government as per Section 16(2)(c) of the CGST Act.

- Accordingly, Maruti Enterprise and Bhandari Scrap Traders along with other petitioners has filed a writ petition with the Gujarat High Court to examine the constitutional validity of Section 16(2)(c) of CGST Act, 2017, arguing that ITC should not be denied merely because the supplier failed to deposit the tax.

- In this regard, the Gujarat High Court in its ruling of has ruled that they are not inclined to read down Section 16(2)(c) of the CGST Act and accordingly, Section 16(2)(c) of CGST Act is held to be constitutionally valid.

- Aggrieved by this order, the petitioner Bhandari Scrap Traders has preferred a writ application before the Hon'ble Supreme Court against the order of Gujarat HC.

Contentions of Petitioner

- The Petitioner argued that Section 16(2)(c) of the CGST Act, 2017 is unconstitutional or in the alternative the provision shall be applied only to those transactions that are found to be fraudulent in nature and not in the bonafide transactions where the recipient was not aware of non-deposition of tax by their suppliers. Reliance was placed on decision of Delhi High Court in the case of On Quest Merchandising India (P.) Ltd. v. Government of NCT of Delhi [[2017] 87 taxmann.com 179]

- They also argued that Supplier's default in depositing taxes so collected with the government treasury, shall not dis-allow the ITC of recipient.

- The petitioner further submitted that, the purchasing dealer has no means of verifying the payment of taxes so collected with the government through actual payment of tax or utilization of ITC by the supplier and accordingly, the purchasing dealer shall not be compelled to do an impossible act.

- The further argued that Denial of ITC in the hands of a purchasing dealer who has already paid GST to a registered supplier, merely because the supplier has retained the tax, results in the double taxation.

Contention of the Respondent

- The Respondent submitted that ITC is not a fundamental or vested right — it is a **concession** granted by law, available only if the conditions in the statute are met, including that the tax was actually paid to the Government.

- It further submitted that the GST law itself provides a safety valve: under Section 41(2) CGST Act, 2017 read with Rule 37A of CGST Rules, a buyer who reverses credit can **re-claim it** once the supplier eventually pays the tax — so the buyer is not permanently deprived.

- The Respondent further stated that as per Section 155 of CGST Act places the burden of proving eligibility for ITC on the buyer claiming it.

- The Respondent further submitted that the old VAT cases (like *On Quest Merchandising*) do not apply, because those laws lacked the balancing provisions (Sections 41, 53, 155 and Rule 37A) now present under GST.

- The Respondent also stressed that GST being a destination-based tax involving inter-State settlement (as per Section 53 of CGST Act); allowing credit on unpaid tax would force the originating State to transfer money it never received, causing large revenue loss.

Observations & Decision of Hon'ble Supreme Court

- The Hon'ble Supreme Court dismissed the writ petitions and held that Gujarat High Court had undertaken a detailed examination of the GST framework and correctly distinguished it from the Delhi VAT regime.

- The Apex Court noted that the statutory schemes under the Delhi VAT Act, 2004 and the CGST Act, 2017 are fundamentally different and therefore parity could not be drawn between the two enactments.

- The Hon'ble Supreme Court also observed that Sections 41 of the CGST Act read with Rule 37A of CGST rules provides a mechanism under which a purchasing dealer is entitled to re-avail reversed ITC once the supplier subsequently discharges the tax liability.

- The Hon'ble Supreme Court distinguished the pending matter relating to the Tripura High Court's decision in Sahil Enterprises, observing that the detailed statutory analysis undertaken by the Gujarat High Court was absent there.

- The Apex Court observed that the purchaser can re-avail the reversed ITC once the supplier subsequently discharges the tax liability, and therefore there was no ground to read down or declare Section 16(2)(c) unconstitutional.

NASA Comments

- Businesses can no longer rely solely on possession of invoices and receipt of goods. Vendor due diligence becomes critical because supplier tax default can directly affect ITC entitlement. Hence, the burden of proving ITC eligibility continues to rest on the purchasing dealer under Section 155 of the CGST Act, 2017.

- The Court's distinction between the GST regime and VAT laws significantly reduces taxpayer reliance on earlier VAT-era judgments which were protecting bona fide purchasers.

Case 2 - Torrent Power Ltd Vs. Union of India & Ors. *[2026 (8) TMI 990 - Gujarat HC]*

Facts in brief & Issues Involved

- The petitioners, being holding companies, had furnished corporate guarantees to banks and financial institutions for loans availed by their subsidiaries, generally without charging any commission or consideration. Pursuant to insertion of Rule 28(2) of the CGST Rules and CBIC Circulars, GST authorities sought to levy GST by deeming the value of such guarantees at 1% of the guaranteed amount per annum.

- The petitioners challenged the validity of Rule 28(2), Section 15(4) of the CGST Act and related circulars, contending that a corporate guarantee without consideration does not constitute a taxable supply under GST. They also disputed the retrospective application of the provision and the initiation of proceedings under Section 74 of the CGST Act.

- The principal issues before the Court were whether corporate guarantees qualify as a taxable supply between related persons under Section 7 read with Schedule I and Schedule II of the CGST Act, and whether they are provided in the course or furtherance of business. Another major issue was whether Rule 28(2), which prescribed a deemed valuation of 1% per annum, was constitutionally valid, and whether GST can be levied on guarantees issued prior to 26.10.2023.

Contentions of Petitioner

- The petitioners argued that a corporate guarantee, when given without consideration, is merely a contingent contractual obligation and not a supply of service under Section 7 of the CGST Act. According to them, there is no independent commercial transaction between the holding company and its subsidiary that attracts GST.

- They further contended that issuance of a corporate guarantee is a shareholder or investment-protection activity undertaken to safeguard the holding company's investment in its subsidiary. Therefore, it cannot be treated as an intra-group service or a taxable supply merely because the subsidiary derives an incidental benefit from the guarantee.

- They further argued that a guarantee is an actionable claim or, alternatively, a contingent contractual obligation falling outside the scope of GST. Also, they asserted that the subsidiary is not the recipient of any service because the guarantee is actually issued in favour of the lender bank.

- The petitioners also challenged the deemed valuation mechanism under Rule 28(2), arguing that mandatory valuation at 1% per annum was borrowed from transfer pricing safe harbour provisions under income-tax law and had no nexus with the actual value of services, is arbitrary, lacks commercial basis, and results in taxation even where no commission is charged or where the actual charge is significantly lower.

- They also opposed retrospective application of the rule and challenged proceedings initiated under Section 74 on the ground that the issue involved bona fide interpretation of law and not suppression or fraud.

Contention of the Respondent

- The Revenue contended that the GST regime is fundamentally different from the erstwhile service tax regime. Further, it has argued that GST is a supply-based tax and that Schedule I specifically treats certain transactions between related parties as taxable supplies even in the absence of consideration. Since a holding company and its subsidiary are "related persons", a corporate guarantee falls within the scope of taxable supply.

- According to the Department, the subsidiary derives a direct commercial benefit from the guarantee through easier access to finance and improved creditworthiness. Hence, the subsidiary is the recipient of the service and the transaction is undertaken in the course or furtherance of business. By virtue of Sections 140 and 145 of the Indian Contract Act, there exists a legal relationship between the guarantor and the principal debtor, thereby establishing a supply of service to the subsidiary.

- The Revenue also defended Rule 28(2), contending that it merely provides a valuation mechanism where open market value is difficult to ascertain, and that the 1% benchmark was introduced based on GST Council recommendations to ensure certainty and uniformity because determining open market value of related-party corporate guarantees posed practical difficulties. The rule, according to the Revenue, merely prescribed a valuation mechanism and did not create the tax levy itself.

Observations & Decision of the Hon’ble High Court

The Gujarat High Court partially allowed the Writ Petition and held that:

- The Gujarat High Court held that a corporate guarantee provided by a holding company to its subsidiary constitutes a supply of service under Section 7 of the CGST Act read with Entry 2 of Schedule I and Entry 5(e) of Schedule II of the CGST Act. The Court observed that the guarantee creates a business benefit for the subsidiary and therefore qualifies as a taxable transaction between related parties.

- The Court rejected the petitioners’ contention that a corporate guarantee is an actionable claim or merely a shareholder activity outside the GST net. It held that the legal structure of a guarantee under the Contract Act creates enforceable rights and obligations which distinguish it from shareholder functions. Similarly, the Court concluded that issuance of a guarantee is connected with the commercial interests of the holding company and therefore satisfies the test of being in the course or furtherance of business.

- The Court upheld the constitutional validity of Rule 28(2) and Section 15(4). However, it found the expression "whichever is higher" in Rule 28(2) to be arbitrary. The statutory valuation framework permits a deemed figure where actual value is unavailable; but cannot compel a higher fictional value despite known actual consideration.

- Importantly, the Court held that GST cannot be levied on corporate guarantees for periods prior to 26.10.2023, as the corporate guarantees were executed prior to GST regime or prior to incorporation of valuation mechanism in Rule 28(2) of CGST Rules, 2017. However, it has also noted that if such guarantees continue after 26.10.2023, then the tax is leviable.

- It also quashed proceedings initiated under Section 74, holding that the issue involved bona fide interpretation of law and not fraud, suppression or wilful misstatement. Consequently, excess GST paid was directed to be refunded or adjusted.

NASA Comments

- The Gujarat High Court's ruling in Torrent Power Ltd. marks a significant departure from the Bombay High Court's decision in D P Jain & Co. Infrastructure Private Limited vs Union of India & Ors by holding that corporate guarantees furnished by a holding company to its subsidiary constitute taxable supplies under GST even in the absence of consideration.

- However, the Court has simultaneously granted significant relief by reading down the mandatory 1% valuation mechanism, disallowing levy for periods prior to 26 October 2023, and quashing Section 74 proceedings. Given the conflicting views of two High Courts on the fundamental issue of taxability, the matter appears ripe for authoritative determination by the Supreme Court.

- From a compliance perspective, taxpayers can no longer rely solely on the D.P. Jain ruling, particularly those operating within the territorial jurisdiction of the Gujarat High Court. At the same time, taxpayers continue to possess substantial grounds to contest demands based on valuation methodology, retrospective application, and penal proceedings.

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