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# TAX JURISPRUDENCE

CASE LAW ALERT – MAY 2025 VOL. 2

## 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 |
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| **Direct Tax** | | |
| Vidarbha Veneere Industries Ltd. [TS-363-HC-2025(BOM)] | Whether provisions of Section 50C of the Income-tax Act, 1961 applicable to the transfer of leasehold rights in land? | The Hon'ble Bombay High Court held that Section 50C applies even to leasehold rights, as what matters is how the property is "held" by the taxpayer – not whether it is owned. Accordingly, Section 50C is applicable even where the land is held by way of leasehold rights. |
| **Indirect Tax** | | |
| Indian Medical Association vs Union of India [TS-248-HC(KER)-2025-GSTW] | Whether GST is applicable on the services provided by the club to its members? | The Hon'ble Kerala High Court upheld the foundational principle of mutuality and declared that clubs and their members form a single entity, thus, services to members cannot be considered services to another person. |
| Sri Sai Vishwas Polymers vs Union of India and Another | Whether an order passed under the deleted Rule 96(10) remains legally valid? | The Hon'ble Uttarakhand High Court held that since Rule 96(10) was omitted without a saving clause, it is as if it never existed. |

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| [TS-320-HC(UTT)-2025-GST] | | Therefore, the order passed on under that rule was invalid and void. |

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

## DIRECT TAX

**Vidarbha Veneere Industries Ltd. Vs. Income Tax Officer (Bombay High Court) ITA No. 34 of 2022**

**Facts in brief & issues involved:**

- Issue under appeal was in respect of transfer of leasehold rights in a land originally transferred by Maharashtra Industrial Development Corporation (MIDC) by way of a lease.
- The taxpayer claimed that the transfer of leasehold rights does not attract provisions of section 50C which prescribes that if consideration received on transfer of land or building is less than its stamp duty value, then stamp duty value should be considered as deemed sale consideration.
- During assessment proceedings, the taxpayer argued that provisions of section 50C are specifically applicable to the transfer of land, building, or both and do not extend to transactions involving the transfer of leasehold rights/ interests in land or building. Accordingly, section 50C would not be applicable on the sale consideration received pursuant to transfer of leasehold rights.
- CIT Appeals and Tribunal rejected taxpayer's contentions. Aggrieved by which, the taxpayer had filed a petition before the division bench of the Hon'ble Bombay High Court.

**Contention of the taxpayer:**

- The taxpayer, upon combined reading of Section 50C and definition of capital asset u/s. 2(14), contended that Section 50C applies only to the transfer of land or building or both and not to leasehold rights, which merely represent a right to use the property, not the ownership. Hence, Section 50C would not be applicable.

- The taxpayer relied on the decision in Atul G. Puranik v. ITO (2011), wherein the Mumbai ITAT had held that leasehold rights do not fall within the ambit of "land or building" for the purposes of Section 50C and accordingly, submitted that Section 50C would not apply.

**Contentions of the Respondent:**

- The Revenue submitted that the taxpayer failed to consider the combined effect of Section 2(14)(a) and Section 50C, which must be read together for proper interpretation.
- Section 50C applies to capital assets being land or building or both, and Section 2(14)(a) defines a capital asset as property of any kind held by an assessee.
- Supporting the decision of Tribunal in the Taxpayer's case, it contended that the manner in which a property is held, is immaterial for applying the provisions of section 50C.

**Observation and Decision of High Court:**

- The Hon'ble Bombay High Court while holding that section 50C applies to leasehold rights in land, made the following key observations:
  - (i) The expression "consideration received or accrued as a result of transfer of a capital asset, being land or building or both" as used in section 50C has to be read in conjunction with the definition of capital asset under section 2(14).
  - (ii) Section 2(14)(a) defines "capital asset" to include "property of any kind held by an assessee," thereby emphasizing that the term used is 'held by an assessee' and not 'owned by an assessee'.
  - (iii) Land or buildings can be held in a number of ways, which can be as an owner, lessee, sub-lessee, allottee, tenant, licensee, gratuitous licensee, or any other mode permissible by law. Therefore, the expression 'held by an assessee' does

not impose any limitation on the manner in which the land or building can be held.

(iv) Also, merely because the leasehold rights in the land were granted to the taxpayer through assignment by its predecessor, such mode of transfer cannot create any exception with respect to the holding of land by the taxpayer.

(v) Moreover, the term 'transfer' as used in section 50C(1) cannot be used in a restricted sense and will have to be given the widest amplitude, considering the nature and purpose of the section thus encompasses all modes of transfer permissible and recognizable in law.

(vi) The taxpayer's reliance on the decision of the Mumbai Tribunal in the case of Atul Puranik cannot be accepted as the said decision failed to consider the effect and import of section 2(14)(a) while dealing with the issue of applicability of section 50C. The said decision is not a good law since conclusion was drawn without considering that mode of holding of a property cannot be equated with the property itself and conclusion was drawn that the land held through leasehold rights cannot be equated with land or building.

(vii) Transfer of leasehold rights in land attracts the deeming fiction of section 50C.

**NASA Comments:**

- Hon'ble Bombay High Court has adopted a broader interpretation of the statutory language and has distinguished the erstwhile rulings of the co-ordinate bench of Tribunal in the case of Atul G. Puranik and the jurisdictional high court's decision in the case of Greenfield Hotels and Estates.
- This decision will reverse the earlier decisions of the Hon'ble Bombay High Court in case of Heatex Products Private Ltd and Greenfield Hotels and Estates which were passed based on non-filing of appeal by Revenue against decision of Atul G. Puranik and has unsettled the law on applicability of section 50C qua transfer of leasehold

rights. Now, question will also arise if this decision will also affect applicability of section 50C in respect of transfer of development rights/TDR/FSI. Also, whether based on this decision, can the Taxpayer claim the benefit of fair value of the tenancy rights/leasehold rights as on 01.04.2001 which was not permitted till now.

## INDIRECT TAX

### Case 1 – Indian Medical Association vs Union of India [TS-248-HC(KER)-2025-GSTW]

**Facts in brief & issues involved:**

- Indian Medical Association ("Petitioner") runs various mutual schemes for the benefit of its member-doctors. Under these schemes, member-doctors contribute an admission / annual fee.
- Vide Finance Act, 2021, Section 7(1)(aa) was inserted in the CGST Act, 2017 with retrospective effect from 01-July-17 making the transactions by a club or association to its members a taxable supply.
- As a result, the DGGI has issued SCN to the petitioner, demanding GST on member contributions, including annual fees and mutual aid disbursements for the period FY 2017-18 to FY 2021-22.
- Aggrieved by said issue, the petitioner has preferred the present writ petition before the High Court.

**Contention of the Petitioner:**

- The petitioner contended that it is long established common law that a club or association and its members are considered one and the same entity under the principle of mutuality. The Supreme Court in case of Calcutta Club emphatically upheld the principle of mutuality.
- The Constitution, as per Article 366(12A) defined goods and services tax as a "tax on supply of goods or services or both." The scope of the legislative power granted by the Constitution to levy GST is that such a tax can be levied only where there is supply of goods/service by one person to another.
- If the legislative power granted by the Constitution is to be expanded beyond the known legal connotations, it can be done only by a constitutional amendment doing

away with the long-established and well-recognized concept of mutuality i.e., by a constitutional amendment which invests the Parliament and State legislature with the power to levy GST on self-sale/self-services between a club and its members. A statutory amendment would not suffice.

- Furthermore, the petitioner contended that it has been recognized that legislatures have the power to pass retrospective laws. However, such laws cannot be unreasonable or arbitrary. Where the retrospective law is confiscatory, it would be unreasonable and thereby unconstitutional.

**Contention of the Respondent:**

- The Respondent contended that Section 7(1)(a) and Section 2(17)(e) of the GST Act were in effect from 01-July-17, and these provisions, by themselves, rendered the supply of goods or services by clubs or associations to their members taxable from that date, regardless of the subsequent insertion of Section 7(1)(aa), which came into force on 01-Jan-22.
- Article 246A and Article 366(12A), which are the source of power for enacting GST Acts, no limitation or restriction regarding the term supply or person has been provided for.
- Further, the association is a legal entity which can sue and can be sued in its own name. Even in case of any dispute between the association and its members, the association is entitled to initiate proceedings against its members in the court of law. As such the concept of mutuality and that the association and the members are one and the same would not arise.

**Observation and Decision of High Court:**

- The Hon'ble Kerala High Court, relying on Article 246A read with Article 366(12A) and Article 265, ruled that amendments to the GST Acts introduced via the Finance Act,

2021 lacked constitutional validity and competence to tax transactions that do not qualify as "supply" under GST.

- The principle of fairness is an essential aspect of Rule of Law. The insertion of a statutory provision that alters the basis of indirect taxation with retrospective effect, so as to tax persons for a prior period when they had not anticipated such a levy and, consequently, had not obtained an opportunity to collect the tax from the recipient of their services, militates against the concept of Rule of Law.
- The Court upheld the foundational principle of mutuality.

**NASA Comments:**

- This judgement by Hon'ble Kerala High Court reinforces the mutuality shield and offers legal recourse for RWAs, professional associations, and clubs facing similar GST demands.
- The decision is a timely reminder of constitutional boundaries in tax law and may shape the future discourse before the Supreme Court.

**Case 2 – Sri Sai Vishwas Polymers vs Union of India and Another [TS-320-HC(UTT)-2025-GST]**

**Facts in brief & issues involved:**

- The petitioner is a partnership firm engaged in the manufacturing and export of gold bars and jewelry.
- The GST authorities issued a Show Cause Notice (SCN) on 26-Sept-23 on the ground that the petitioner has claimed refund in violation of Rule 96(10) of the CGST Rules.
- The GST authority passed a final order on 03-Feb-25, confirming the demand without properly considering the petitioner's submissions.

- Aggrieved by the said order due to deletion of Rule 96(10) from the CGST Rules via Notification No. 20/2024-Central Tax on 08-Oct-24, petitioner preferred present writ.

**Contention of the Petitioner:**

- Once a rule is omitted, ordinarily as a consequence thereof, the provision is to be obliterated from the statute book as completely as if it had never been passed, and the statute must be considered as if the rule had never existed. The petitioner cited the Honorable Supreme Court's judgment in Kolhapur Canesugar Works Ltd.
- Therefore, the order dated 03-Feb-25 was void-ab-initio because it was based on non-existent legal provision.

**Contention of the Respondent:**

- The respondent contended that at the time of initiating the SCN, Rule 96(10) was still in force. Therefore, the proceedings were validly initiated, and the final order passed later on was legitimate.
- The deletion of Rule 96(10) on 08-Oct-2024 should operate prospectively, i.e., it would apply only to new cases after that date, and not affect ongoing proceedings initiated earlier.

**Observation and Decision of High Court:**

- The Hon'ble Uttarakhand High Court noted that Rule 96(10) was not only deleted on 08-Oct-2024 but had also already been declared unconstitutional by the Kerala High Court in Sance Laboratories Pvt. Ltd.
- The Court emphasized the difference between omission, amendment, and repeal:
  (i) When a rule is amended or repealed, it may be saved by Section 6 of the General Clauses Act, 1897.

(ii) However, if a rule is omitted and no saving clause is added, then all proceedings under that rule must automatically cease.

- Applying the principle laid down in Kolhapur Canesugar Works Ltd., the Court held that the omission of Rule 96(10) was unconditional, with no saving clause to protect ongoing proceedings and therefore, the order is invalid in law.

**NASA Comments:**

- This judgement by Hon'ble Uttarakhand High Court will assist exporters in cases where they have been denied refund due to Rule 96(10).
- However, the impact in cases where exporters have already paid the refund demand along with interest and penalty will have to be assessed.

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