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TAX JURISPRUDENCE

CASE LAW ALERT – JULY 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
Direct Tax		
Lupin Investments Pvt. Ltd. [TS-924-ITAT-2025(Mum)]	Whether difference in buy back price and fair market value in case of buy back of shares can be added to taxable income of the assessee company by invoking provisions of Sec. 56(2)(viiia) of the Income-tax Act, 1961. ('the Act').	The Hon'ble ITAT by respectfully relying on the decisions of co-ordinate bench in <u>Vora Financial Services</u> held that the provisions of Sec. 56(2)(viiia) of the Act will not be applicable in case of buy back of own shares as it does not become the "property" for recipient of shares (i.e. assessee company) and also shares which are brought back are not "shares of any another company".
Indirect Tax		
GlobeOp Financial Services (India) Pvt Ltd vs Deputy Commissioner of State Tax [TS-601-HC(BOM)-2025-GST]	Whether Adjudicating Authority is justified in issuing order without considering the detailed submissions made by the taxpayer and instead	Hon'ble Bombay High Court quashed the impugned order, and the matter was remanded back for fresh adjudication citing lack of application of mind

	following 'cut and paste' approach in issuing the order?	and violation of principles of natural justice.
<u>Umicore Autocat India Private Limited vs Union of India & Ors. (writ petition no. 463 of 2024)</u>	Whether <i>unutilized Input Tax Credit</i> (IGST and CGST) lying in the Electronic Credit Ledger of a <i>Transferor Company</i> can legally be transferred to the <i>Transferee Company</i> when they are registered in different States?	The Hon'ble Bombay High Court held that under Section 18(3) of the CGST Act read with Rule 41 of CGST Rules, there is no restriction that prohibits ITC transfer across States; thereby directing the Petitioner to file ITC-02 by physical mode.

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

DIRECT TAX

Lupin investments Pvt. Ltd. [TS-924-ITAT-2025(Mum)]

Facts in brief & Issue involved

- ♦ The assessee, being a private limited company, has undertaken buy back of 1,90,097 equity shares at a price of Rs. 10/- per share amounting to Rs. 19,00,970/- and thereby extinguishing 1,90,097 equity shares.
- ♦ Assessee's case was selected for scrutiny assessment and the assessee was asked to explain why the provisions of section 56(2)(viiia) of the Act should not be applicable in case of buy back of shares. However, the contention of the assessee was rejected, and the AO proceeded to compute the fair market value of unquoted equity shares as per Rule 11UA at Rs. 1,836/- per share and subsequently made an addition of Rs. 34,71,17,122/-.
- ♦ The above addition was upheld by the CIT(A), aggrieved by which the assessee preferred an appeal before the Income Tax Appellate Tribunal (ITAT).

Contentions of Taxpayer

- ♦ The assessee submitted that in case of buyback of unlisted shares, the taxability is based on distributed income as per section 115QA of the act.
- ♦ The assessee strongly contended that the provisions of Sec. 56(2)(viiia) of the Act do not apply to the facts of the case by relying on various decisions of co-ordinate benches, i.e. in case of *Vora Financial Services Pvt. Ltd. Vs. ACIT [2018] 96 taxmann.com 88 (Mumbai)*.
- ♦ Additionally it was also submitted that the primary condition for invoking the provisions of Sec. 56(2)(viiia) of the Act is in cases where the shares become the

property in the hands of the recipient and also such shares are of any other company.

- ◆ Since, in case of buyback, the condition of becoming property of the recipient and shares of any other company fails, the provisions of Sec. 56(2)(viia) of the Act should not have been invoked in the hands of the assessee company.

Contentions of Revenue

- ◆ On the other hand the revenue contended that the difference between the fair market value of the unquoted equity shares as per Rule 11UA i.e. Rs. 1836/- per share and the actual buy back price i.e. Rs. 10/- per share should be taxable in the hands of company as per applicability of provisions of section 56(2)(viia) of the Act.

Observations & Decision of the Hon'ble ITAT

- ◆ The Hon'ble ITAT held that the provisions of section 56(2)(viia) of the Act, are attracted only where the receipt of shares results in the property becoming the asset of the recipient. Further, the condition that the receipt must pertain to "shares of any other company" is a necessary precondition for invoking this provision. In the case of buyback of own shares, both these tests fail i.e., the shares do not become "property" in the hands of the recipient, nor are they shares of any other company.
- ◆ In arriving at this conclusion, the Hon'ble Tribunal relied upon the ruling of the Mumbai Bench of the ITAT in the case of Vora Financial Services (P) Ltd. vs. ACIT, wherein similar facts and circumstances were examined.
- ◆ Accordingly, the Hon'ble ITAT held that the tax authorities were not justified in invoking the provisions of section 56(2)(viia) in the context of buyback of own shares.



NASA Comments

- ◆ This recent judicial pronouncement has clarified the scope of Section 56(2)(viia) of the Act. The judgment emphasizes that this provision applies specifically to transactions involving the purchase of unlisted shares of a private company being shares of another entity. Importantly, the section does not extend to scenarios involving the buy-back of company's own shares.

INDIRECT TAX

Case 1 – M/S GlobeOp Financial Services (India) Pvt Ltd vs Deputy Commissioner of State Tax [TS-601-HC(BOM)-2025-GST]

Facts in brief & Issue Involved

- ♦ The petitioner was issued a show cause notice dated 28th November 2024 by the Department, alleging that the services provided by the petitioner fall within the scope of "intermediary services" and therefore do not qualify as export of services.
- ♦ In response to the aforesaid show cause notice, the petitioner submitted detailed written submissions dated 27th January 2025 and 6th February 2025, wherein it refuted the allegations made therein by relying upon relevant legal precedents and CBIC circular.
- ♦ The adjudicating authority, i.e., the Deputy Commissioner of State Tax, passed the impugned order dated 24th February 2025, whereby a demand of ₹70.57 crore was confirmed against the petitioner.
- ♦ Being aggrieved, the petitioner filed the present writ.

Contentions of Petitioners

- ♦ The petitioner contended that the impugned order is vitiated by non-application of mind and non-consideration of detailed submissions canvassed by the petitioner.
- ♦ The reasoning in the impugned order is a verbatim copy of the statements in the show cause notice. The order fails to cite or analyse any specific legal provision, judgment, or proposition, which again demonstrates a clear lack of deliberation.

Contentions of Respondent

- ♦ The Respondent contended that the entire reply of the Petitioner has been reproduced and considered in the impugned order refuting non-application of mind and unreasoned order.
- ♦ The petitioner should have exhausted alternative remedy of filing appeal instead of the current writ.

Observations & Decision of High Court

- ♦ Section 73(9) of the CGST Act places emphasis on the words, ***after considering the representation***, made by the taxpayer. It implies that the proper officer must apply his or her mind to the representation made and only after that issue an order. The phrase 'consider' does not mean that the contents of the representation are transcribed in the impugned order and without any discussion, a conclusion is reached.
- ♦ Similarly, Section 75(6) of the CGST Act provides that the proper officer, in his order, shall set out the relevant facts and the ***basis of his decision***. Merely cutting and pasting the allegations from the show cause notice does not amount to giving any independent reasons or due application of mind to those contentions.
- ♦ Due to complete non-application of mind and violation of principles of natural justice, there is no point in directing the Petitioner to pursue the alternative remedy of appeal. A clear breach of natural justice is an exception to the general rule that statutory remedies should usually be exhausted before seeking this Court's extraordinary intervention.
- ♦ The Hon'ble High Court squashed and set aside the impugned order remanding the matter for fresh consideration and disposal within three months.



NASA Comments

- ♦ The High Court rightly criticized the adjudicating authority for issuing a mechanical order lacking independent reasoning and violating principles of natural justice. The ruling instils confidence in the taxpayers' right to a fair and just adjudication proceeding. This judgement will help many taxpayers wherein department has issued the notices without providing the detailed reasoning / basis of their contention in notices.

Case 2 – Umicore Autocat India Private Limited vs UOI & ors (Writ petition No. 463 of 2024)

Facts in brief & Issue Involved

- ♦ Umicore Anandeya India Pvt. Ltd. (Transferor Entity) is registered under GST regime in the State of Goa. It held unutilized Input Tax Credit (ITC) in its electronic credit ledger.
- ♦ Umicore Autocat India Pvt. Ltd. (Transferee Entity) functions within the same corporate group, and is registered in the State of Maharashtra. It was designated as the transferee company in an amalgamation scheme approved by judicial authorities.
- ♦ In accordance with Section 18(3) of the CGST Act, 2017 and Rule 41 of the CGST Rules, 2017, the transferee sought to transfer the ITC by filing Form GST ITC-02—the prescribed form for transfer of credit in the case of a merger, demerger, or other changes in constitution of the company.
- ♦ Upon attempting to file Form ITC-02 on the GSTN portal, the system generated an error “Transferee and Transferor should be of the same State/UT.
- ♦ Being aggrieved by such restriction in filing Form ITC-02 for transfer of credit, the transferee company has filed a writ petition seeking direction to the GSTN network to allow such transfer of credit.

Contentions of Petitioner

- ♦ The petitioner contended that under Section 18(3) of the CGST Act, 2017, read with Rule 41 of the CGST Rules, 2017, expressly permits the transfer of unutilized input

tax credit in cases where a registered person undergoes a change in constitution due to sale, merger, demerger, or amalgamation.

- ♦ The petitioner emphasized that neither Section 18(3) nor Rule 41 imposes any condition requiring the transferor and transferee to be registered in the same State or Union Territory.

Contentions of Respondent

- ♦ The rationale for registration in Section 22 of the CGST Act, 2017 is that every entity should have registration in the State from where they make taxable supplies. In case of sale, merger, amalgamation etc. of an entity in one State to an entity in another State, it will amount to “Additional Place of Business” for the Transferee and cancellation or suspension of registration of the Transferor and the new entity shall take registration in the State of Transferor and file ITC-02.
- ♦ Rule 41 implies that a ‘Registered Person’, shall be understood as a person, who is registered and granted a single registration in one State or a Union Territory and when he is permitted to transfer ITC on account of any of the contingencies stipulated i.e. sale, merger, demerger, amalgamation etc. then the Transferee entity must have presence in that State only.
- ♦ The Respondents placed reliance on the decision of the Madras High Court in the case of MMD Heavy Machinery (India) Pvt. Ltd. Vs. Assistant Commissioner, Chennai & Others and stated that the GSTN portal permits Form ITC-02 filings only when both entities are registered in the same State/UT, in line with Rule 41.

Observations & Decision of the Bombay High Court


- ♦ It is a well settled position that the intention of Legislature shall be primarily gathered from the language used, which means that attention should be paid to


what has been said as also to what has not been said. It is in the light of the aforesaid principle, that section 18(3) along with Rule 41 do not impose any such restriction while it permits the transfer of un-utilized ITC in the electronic ledger to the new transferee entity.

- ♦ The decision of MMD Heavy Machinery (India) Pvt. Ltd. Vs. Assistant Commissioner, Chennai & Others is completely distinguishable on facts as the transfer of the credit was sought from the unit of the Petitioner, which was completely shut down.
- ♦ As far as the Union of India is concerned, it does not suffer any loss, even though, the ITC is permitted to be utilized in the State of Maharashtra for CGST and IGST.
- ♦ SGST is to be collected by the State and it will be consumed by the State and permitting the SGST to be utilized in the State of Maharashtra would result in financial loss to the State of Goa. Therefore, transfer of IGST of Rs.3,69,586 and CGST of Rs.3,52,84,105/-, in the electronic credit ledger, deserve to be transferred to the Petitioner by physical mode for the time being, subject to the adjustments to be made in future.
- ♦ However, we also request the GST Council as well as the GST Network to provide for a mechanism to deal with such contingencies by updating its network.

NASA Comments

- ♦ The Bombay High Court ruled decisively in favor of the petitioner, upholding the primacy of statutory rights over systemic constraints. It not only granted immediate relief through manual ITC transfer but also nudged the government and GSTN towards systemic reform.

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- ♦ This move supports ease of doing business, aligns the GST framework with commercial realities, and sets a crucial precedent for similar restructuring cases involving multiple States.



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