

TAX JURISPRUDENCE

CASE LAW ALERT – OCTOBER 2026
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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		
<u>Tata Communications Transformation Services Limited TS-1375-ITAT-2026(Mum) /ITA No. 4407/Mum/2024 (Mumbai ITAT) AY 2018-19]</u>	Whether the Taxpayer could be treated as an "assessee in default" under section 201(1)/201(1A) for non-deduction of TDS on year-end provisions for expenses, where it had suo moto disallowed 30% of such provisions under section 40(a)(ia), and whether reporting of gross figures in the tax audit suffice to fasten such liability.	The ITAT held that a suo moto disallowance under section 40(a)(ia) does not absolve the Taxpayer of its TDS obligations under Chapter XVII-B. However, gross figures in the tax audit report are insufficient to determine liability under section 201(1)/201(1A). The matter was remitted to the AO to examine the accounting entries and vendor-wise details and verify the subsequent-year TDS compliance.

Case & Citation	Issue Involved	Decision
Indirect Tax		
<u>Ernst and Young LLP vs Union of India and Others [TS-859-HC(P and H)-2026-GST]</u>	Whether, once the IGST paid under Rule 96A of the CGST Rules on account of delayed realisation of export proceeds has been refunded upon subsequent realisation, the department can still retain the interest paid on such tax by relying solely on Para 4.6 of Circular No. 197/09/2023-GST dated 17.07.2023.	• The Hon'ble High Court of Punjab and Haryana allowed the petition and quashed Para 4.6 of the Circular to the extent it denies refund of interest paid under Rule 96A(1) where the tax is subsequently refunded. • It held that a circular cannot impose a restriction not found in the Act or the Rules, and directed refund of the interest.
<u>M/s Sai Silks Kalamandir Limited (Advance Ruling Order No. 10/2026 dated 18.09.2026)</u>	Whether Input Tax Credit (ITC) on expenses incurred in the course of an Initial Public Offering (IPO) (Fresh Issue) is eligible under Section 16 of the Central Goods and Services Tax Act, 2017?	• The Telangana State Authority for Advance Ruling held that Input Tax Credit on expenses incurred in the course of an Initial Public Offering (Fresh Issue) is eligible to be claimed, provided the net proceeds are utilized for the furtherance of business. • However, ITC on the portion of expenses attributable to an "Offer for Sale" (OFS) by existing shareholders where the proceeds accrue to the shareholders and not the company is not eligible to be claimed.

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

Case 1 - Tata Communications Transformation Services Limited TS-1375-ITAT-2026(Mum) [ITA No. 4407/Mum/2024 (Mumbai ITAT) AY 2018–19]

Facts in brief & Issue Involved:

- ◆ The taxpayer filed its return of income for AY 2018–19 along with the Tax Audit Report in Form 3CD. On examining these, the Assessing Officer (TDS) observed that the taxpayer had created year-end provisions for expenses of various nature aggregating Rs. 90,89,52,854 on which TDS was applicable, but not deducted.
- ◆ While computing its total income, the taxpayer had made a suo moto disallowance of 30% of these provisions, amounting to Rs. 27,26,85,856, under section 40(a)(ia). No TDS, however, was deducted on the credit entries at the year-end.
- ◆ A show-cause notice dated 10.01.2020 was issued asking why the taxpayer should not be treated as an “assessee in default” under section 201(1)/201(1A). The taxpayer was also asked to furnish party-wise details of the credit entries and the applicable TDS sections, failing which all entries would be presumed to fall under section 194J.
- ◆ Rejecting the taxpayer’s submissions, the AO passed an order dated 20.02.2020 under section 201(1)/201(1A), treating the Taxpayer as an “assessee in default”. and determining a tax and interest liability of Rs. 2,58,38,567.
- ◆ The CIT(A) deleted the entire demand, relying on the decision of the Coordinate Mumbai Bench in Pfizer Limited v. ITO (TDS) (ITA No. 1667/Mum/2010). Aggrieved, the Revenue filed an appeal before the ITAT.
- ◆ The issue before the Tribunal was whether the taxpayer could be treated as an “assessee in default” for non-deduction of TDS on year-end provisions, where it had suo moto disallowed 30% of such provisions under section 40(a)(ia) and claimed to have deducted TDS in the subsequent year on receipt of vendor invoices.

Contentions of Taxpayer

- ◆ **Provisions were ad hoc estimates:** The year-end provisions of Rs. 90,89,52,854 were not based on any invoices from vendors but were estimated based on past experience. The taxpayer was not contractually liable to pay any person when the provisions were created and, therefore, no tax was deducted at that stage.
- ◆ **No loss to the Revenue:** 30% of the provisions (Rs. 27,26,85,856) was disallowed under section 40(a)(ia) and tax was paid thereon at the corporate tax rate of around 34%, as

against the maximum TDS rate of 10%. Such expenses stood derecognised for tax purposes in the year, and section 201(1)/201(1A) should not be invoked when the Revenue had suffered no loss.

- ◆ **TDS compliance in the subsequent year:** The entire year-end provision was either booked in the subsequent year(s) on receipt of invoices or reversed, as under:
 - (i) Rs. 76,31,57,103 - invoices received; TDS deducted and deposited within the prescribed timelines;
 - (ii) Rs. 13,83,21,655- ad hoc provision reversed, as no invoices were received; and
 - (iii) Rs. 74,74,095 - not subject to TDS, being material purchases, reimbursements, amounts below threshold, etc.
- ◆ **No finding by the AO:** Similar submissions were made before the AO, who did not record any specific finding hold that the Taxpayer to be an “assessee in default”.
- ◆ **Judicial precedents:** Reliance was placed on the decision of the Ahmedabad ITAT in PCIT Vs Sanghi Infrastructure Ltd. (ITA No. 2576/Ahd/2012), affirmed by the Gujarat High Court in PCIT v. Sanghi Infrastructure Ltd. [2018] 96 taxmann.com 370 (Guj), holding that no disallowance under section 40(a)(ia) could be made on provisions for expenses where bills were not received during the year. The taxpayer also relied on Pfizer Limited (supra), where TDS was held not deductible as the payees were not identifiable at the time of the provision, and submitted that the Revenue’s appeal against that decision, though pending before the Bombay High Court, had not been stayed.

Contentions of the Revenue

- ◆ The provisions were made after taking into account the quantum of work done by the payees and the resultant liability, and the expenditure was credited in the books of account. TDS liability is triggered at the time of credit or payment, whichever is earlier; actual payment is not necessary.
- ◆ By making a suo moto disallowance under section 40(a)(ia), the taxpayer had itself implicitly recognised that the credit entries were subject to TDS. Since a disallowance under section 40(a)(ia) arises only where tax deductible under Chapter XVII-B has not been deducted, the taxpayer is necessarily in default under section 201 as well.
- ◆ Reliance was placed on InterGlobe Aviation Ltd. v. ACIT (ITA Nos. 5347/Del/2012 and 4449/Del/2013, dated 07.01.2020), wherein it was held that taxpayer was liable to deduct tax at source on year-end provisions as the payees were identifiable and the liabilities are ascertained, and on Biocon Ltd. v. DCIT-LTU [2023] 152 taxmann.com 55 (Bangalore Trib.), where TDS was held applicable on provisions made by the assessee at the year-end.

- ◆ The decision in Pfizer Limited (supra) relied upon by the Ld. CIT(A) was not acceptable to the Revenue, and a substantial question of law against it had been admitted by the Bombay High Court on 01.04.2015 in Income Tax Appeal No. 1390 of 2013, which is pending.

Observations & Decision of the Hon'ble ITAT

- ◆ **Scheme of section 201(1):** A person required to deduct tax under the Act who fails to deduct or pay it is deemed to be an "assessee in default". Such person is not treated as being in default where the payee has furnished its return under section 139, included the sum in its income and paid tax thereon, supported by an accountant's certificate.
- ◆ **Suo moto disallowance is not a substitute for TDS compliance:** The Tribunal held that the suo moto disallowance made by the taxpayer in its return of income cannot absolve it from complying with Chapter XVII-B, and the Taxpayer continues to be liable for those compliances. What must be examined is whether TDS provision applies in the given case and, if so, whether due compliance has been made; where it has not, the consequences under both section 201(1) and section 40(a)(ia) follow.
- ◆ **Question pending before the Bombay High Court:** The Tribunal did not examine this aspect further, as the Bombay High Court has admitted a substantial question of law in Pfizer Limited (supra) on whether, in view of a 30% disallowance a TDS demand.
- ◆ **Tax audit disclosure insufficient:** The AO had relied on the Tax Audit Report, in which the auditors had disclosed only three consolidated figures under sections 194J, 194C and 194I. The Tribunal held that while such a disclosure is a good starting point, gross figures without vendor-wise amounts and the corresponding TDS liability are clearly insufficient to fasten liability under section 201(1)/201(1A).
- ◆ **Facts to be examined:** Before treating the taxpayer as an "assessee in default", it is essential to understand how the provisions were created and what accounting entries were passed- in particular, whether specific sums were credited to individual vendor accounts or the entries were passed under general expense heads as provisions to meet accounting requirements, and whether the provisions were based on estimates or actual invoices. These factors determine the nature and quantum of the TDS liability.
- ◆ **Matter remitted to the AO:** As there was no material on record other than the gross figures in the tax audit report, the matter was remitted to the AO to examine the relevant facts and determine the Taxpayer's TDS liability, verify the TDS compliance claimed in the subsequent financial year, and decide afresh in accordance with law after giving the Taxpayer a reasonable opportunity of being heard. The Tribunal did not deal with the precedents cited by either side, as each would turn on its own facts.
- ◆ The Revenue's appeal was accordingly allowed for statistical purposes.

NASA Comments

- ◆ The ruling distinguishes the disallowance under section 40(a)(ia) from the TDS obligations under Chapter XVII-B. A suo moto 30% disallowance in the return of income does not, by itself, discharge the obligation to deduct tax on year-end provisions, nor does it protect a taxpayer from proceedings under section 201(1)/201(1A).
- ◆ At the same time, the Tribunal did not hold that TDS is deductible on every year-end provision. Whether specific amounts were credited to identifiable vendor accounts, and whether a provision is an estimate or is backed by an invoice or contract, were treated as essential to determining the nature and quantum of the TDS liability.
- ◆ The ruling is a useful safeguard against demands raised merely on the basis of consolidated figures reported in Form 3CD. The AO is expected to carry out a vendor-wise examination of the accounting entries before treating a taxpayer as an “assessee in default”.
- ◆ Taxpayers creating year-end provisions should maintain a vendor-wise working of each provision and its basis, together with a reconciliation showing subsequent booking against invoices, TDS deducted and deposited, reversals, and items not liable to TDS. Such a reconciliation formed the core of the taxpayer’s case and will be verified on remand.
- ◆ Where year-end entries are found to be credits to payee accounts and TDS was deducted only in the subsequent year, the possible exposure to interest under section 201(1A) for the intervening period should also be evaluated. Where tax was not deducted at all, relief under the first proviso to section 201(1), supported by an accountant’s certificate in Form 26A, may be explored.

Case 1 - Ernst and Young LLP vs Union of India and Others [TS-859-HC(P and H)-2026-GST]**Facts in brief & Issues Involved**

- ◆ Ernst and Young LLP (Petitioner) is engaged in the export of professional services to clients located outside India. The Petitioner exported the services without payment of IGST under a Letter of Undertaking (LUT) in terms of Rule 96A of the CGST Rules, 2017.
- ◆ Rule 96A(1)(b), as applicable, required the payment for export of services to be realised in convertible foreign exchange within one year from the date of invoice, failing which the exporter was required to pay the tax along with interest under Section 50 of the CGST Act for the period of delay.
- ◆ The Petitioner could not realise the export consideration within one year and accordingly deposited the tax along with interest. The export proceeds were subsequently realised, though after expiry of the prescribed period.
- ◆ On receipt of the foreign remittance, the Petitioner claimed refund of both the tax and the interest. The refund of tax was allowed, but the refund of interest was rejected. The rejection was upheld by the Additional Commissioner (Appeals), CGST, Gurugram vide order dated 28.02.2023, relying on Para 4.6 of Circular No. 197/09/2023-GST dated 17.07.2023, which states that no refund of interest paid in compliance of Rule 96A(1) shall be admissible.
- ◆ The central issue was whether, once the tax deposited under Rule 96A has been refunded upon subsequent realisation of the export proceeds, the Department can still retain the interest paid on such tax solely on the strength of Para 4.6 of the Circular.

Contentions of Petitioner

- ◆ IGST Act only requires export payment to be received in foreign currency; it sets no time limit. The one-year limit is only in the Rules, which cannot override the Act.
- ◆ Interest is only compensation for delay in paying tax. Once the tax is refunded, the interest has no basis to stand on its own.
- ◆ Neither the Act nor the Rules allow the Department to keep the interest. A circular cannot add a restriction that the law does not provide.
- ◆ Alternatively, Section 54(1) allows refund of tax, interest and “any other amount paid”, so the amount is refundable in any case.

Contention of the Respondent

- ◆ The Department (Respondent) argued that Rule 96A only enforces the IGST Act's requirement of payment in foreign currency. Once the time limit is missed, interest becomes payable, and receiving the money later does not cancel it.
- ◆ Interest under Section 50 is compensatory and is payable for the period during which the Revenue was deprived of the tax.
- ◆ Rule 96B (relating to export of goods) provides for refund of tax upon subsequent realisation of export proceeds but makes no corresponding provision for refund of interest, which is consistent with Para 4.6 of the Circular.
- ◆ Section 54 cannot be read as creating an independent right to refund of interest that is otherwise not refundable under Rule 96A read with the Circular.
- ◆ The Article 14 plea was opposed on the ground that an exporter who realises proceeds within time cannot be equated with one who realises them late.

Observations & Decision of Hon'ble High Court

- ◆ The Hon'ble High Court observed that Section 54(1) allows refund of tax, interest on such tax and "any other amount", so it clearly covers a refund of interest.
- ◆ Rule 96A does not provide for the consequence where the export proceeds are subsequently realised and the tax is refunded, and nowhere states that the interest shall nevertheless be retained. The restriction against refund of interest is found only in Para 4.6 of the Circular.
- ◆ Having accepted the subsequent realisation of export proceeds and refunded the tax, the Revenue cannot justify retention of the interest merely by relying on Para 4.6 of the circular.
- ◆ A circular may clarify how a provision is to be administered but cannot override or alter the statute. Para 4.6, to the extent it travels beyond the Act and the Rules, must yield to the statutory provisions.
- ◆ The Court rejected the department's arguments, holding that once the tax is refunded, keeping the interest needs a clear legal basis, and the Department showed none other than the Circular. Rule 96B applies to a different situation and does not help the Department. Its other arguments were also rejected.

- ◆ Accordingly, the Hon'ble High Court allowed the petition and held that:
 - Para 4.6 of the Circular is quashed to the extent it denies a refund of interest where the tax has been refunded after export proceeds were received late.
 - The appellate order dated 28.02.2023 is set aside, and the interest must be refunded within eight weeks.
 - If the refund is delayed beyond eight weeks, interest under Section 56 will be payable on it.

NASA Comments

- ◆ This is a significant relief for exporters who were required to pay IGST along with interest under Rule 96A because export proceeds were realised beyond the prescribed time. The ruling makes it clear that once the tax is refunded on subsequent realisation, the interest paid on such tax is also refundable, as interest is compensatory and follows the principal.
- ◆ The decision reaffirms the settled principle that CBIC circulars can only clarify the administration of the law and cannot impose restrictions or liabilities that are not found in the Act or the Rules.

Case 2 - M/s Sai Silks Kalamandir Limited (Advance Ruling Order No. 10/2026 dated 18.09.2026)

Facts in brief & Issue Involved

- ◆ Applicant is a prominent South Indian clothing retailer managing brands such as Kalamandir, Kancheepuram Varamahalakshmi Silks, Brand Mandir, and KLM Fashion Mall.
- ◆ It undertook an Initial Public Offering (IPO), structured as a combined offering of a Fresh Issue and an Offer for Sale (OFS) by existing shareholders.
- ◆ The issue-related expenses for the Fresh Issue were incurred on services such as merchant banking, underwriting, legal consultancy, listing, and advertising.
- ◆ Net proceeds from the Fresh Issue were earmarked to fund capital expenditure for new stores and warehouses, working capital requirements, and debt repayments.
- ◆ The Applicant approached the Authority for Advance Ruling to seek clarity on whether Input Tax Credit (ITC) is eligible under Section 16 of the GST Act on expenses incurred in the course of the IPO (Fresh Issue).

Observations & Ruling of AAR

- ◆ The Referring to the modes of capital mobilization under the SEBI (ICDR) Regulations, 2018 (Fresh Issue, Offer for Sale, and Combined Offer), the AAR observed that the applicant's IPO falls under the category of a combined offer of fresh issue of shares and an offer for sale (OFS) by existing shareholders.

- ◆ Distinction Between "In the Course of" and "In Furtherance of" Business:

"In the course of business" refers to activities forming part of, or occurring during, the normal conduct of business.

"In furtherance of business" is a broader concept encompassing activities undertaken with the object or effect of promoting, advancing, facilitating, or supporting the business, even if they do not constitute the core or principal business activity itself.

- ◆ The AAR rejected the misconception that an inward supply must be directly incorporated into the actual goods or services sold by the taxpayer to be considered in furtherance of business. Section 16(1) intentionally adopts the broader phrase "in the course or furtherance of his business".
- ◆ The funds raised through the fresh issue were earmarked for business objectives such as setting up 30 new stores, establishing 2 warehouses, meeting working capital requirements, and repaying borrowings. IPO services facilitate access to capital that enables these operational activities, creating an indirect but substantial nexus with the furtherance of business.
- ◆ Section 17(5) lists specific categories of inward supplies where ITC is blocked; IPO expenses do not fall under any of these blocked credit categories.
- ◆ The expenses relatable to an OFS cannot be deemed part of the business of the company because the proceeds do not accrue to the company but instead go to the selling shareholders. Therefore, even if the OFS is facilitated by the company, GST paid on expenses attributable to it cannot be claimed as ITC.

NASA Comments

- ◆ The ruling provides clarity on ITC eligibility for IPO-related expenses, recognising the admissibility of credit attributable to a Fresh Issue which is for the business purposes, subject to fulfilment of the conditions prescribed under Section 16(1) of the GST Act.
- ◆ It also underscores the importance of appropriately apportioning IPO-related expenses between the Fresh Issue and the Offer for Sale (OFS), as ITC attributable to the OFS



component, where proceeds accrue to existing shareholders, is ineligible. This distinction may help companies streamline ITC claims and mitigate potential GST disputes during audits and assessments.

- ◆ GST treatment of IPO-related expenditure should be evaluated based on the purpose and business nexus of the expenditure, rather than merely the fact that it relates to an IPO.



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