

Katalyst Kaleidoscope

October 2025: Tax and Regulatory Insights

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A. Income Tax Highlights

1. Mumbai ITAT¹: Deletes addition towards notional interest income

The assessee, incorporated as a Special Purpose Vehicle for development, operation, and maintenance of infrastructure facilities, had contracted the construction of a road through an EPC agreement. The AO noted that the assessee gave interest-free advance to the EPC contractor despite availing bank loans carrying 11% interest, computed notional interest @ 10.35% on such advances and added it as income. The assessee contended that under the EPC contract and industry practice, it was obliged to provide interest-free mobilization advance, recoverable on a pro-rata basis and that no addition can be made on notional income.

The ITAT held that 15% of the contract price was given as an interest-free mobilization advance which mobilization advance was recoverable on pro-rata basis from the bills of the principal EPC contractor and since interest on bank loans was capitalized as project cost without any claim of expenditure, no taxable income arose; it reiterated that tax cannot be levied on hypothetical income and accordingly dismissed the Revenue's appeal.

2. Delhi ITAT²: Forex fluctuation gain held as capital receipt and reduced from cost of asset, as underlying expenditure for acquiring capital asset

The assessee had entered into an agreement with foreign entities for the supply of plant and machinery and had booked a forward contract to hedge against exchange rate fluctuations. The contract was subsequently cancelled, resulting in a gain to the assessee. The Revenue treated this gain as speculative income under Section 43(5) and sought to tax, contrary to the assessee's claim that it was a capital receipt.

The matter reached the ITAT and the ITAT emphasized, that the assessee entered into the impugned agreement for purchase of plant and machinery and had taken forward contracts to hedge the aforesaid transaction of purchase. The ITAT relied on the SC judgment in **Sutlej Cotton Mills³** wherein it was held that whether the loss suffered by the assessee was a trading loss or not would depend on whether the loss was in respect of trading asset or a capital asset. The ITAT held that "any gain arising from cancellation of the forward contract would result in capital gain as it is on account of capital transaction;". Further, the ITAT noted that the assessee had reduced the capital gain arising on cancellation of forward contract from the cost of acquisition of the said machinery and even depreciation had been claimed in the subsequent AYs on the reduced amount of capital asset. Accordingly, the ITAT deleted the gains arising from cancellation of the forward contract as income and held that such gains were capital in nature, since the underlying contract pertained to the acquisition of a capital asset, i.e. plant and machinery.

¹ Solapur Yedeshi Tollway Limited [TS-1276-ITAT-2025(Mum)] dated September 25, 2025

² Dalmia Bharat Ltd [TS-1266-ITAT-2025(DEL)] dated September 24, 2025

³ Sutlej Cotton Mills Ltd.v. Commissioner of Income-tax, [1979] 116 ITR 1 (SC)

3. Delhi ITAT⁴: Allows Sec. 54F deduction, failure in time to construct property was beyond assessee's control

The assessee sold an immovable property for a specified consideration and declared long-term capital gains in the return of income; the assessee claimed deduction under Section 54F of the Act on account of advance made for purchase of the residential plot. However, due to delays and reasons cited by the builder, possession of the plot was not handed over, thereby preventing the assessee from proceeding with the construction of the residential property.

The ITAT held that, due to the failure of the seller to hand over possession of the plot of the land, the assessee could not commence the construction of the residential house. Further, the assessee was clearly impeded from taking the possession of the plot of land; the whole project got delayed due to a national level dispute, with the NHAI finally stepping in, taking over the project of construction of the highway, such reasons were beyond the control of the assessee. The ITAT stated, that due to this, the assessee surrendered its right to the said plot of land, claimed refund from the builder and subsequently purchased a new residential property. Thus, the ITAT allowed the assessee's appeal observing that the assessee was entitled to claim benefit of deduction u/s 54F given that reasons for failure to construct the residential property were beyond the assessee's control, that forced the assessee to surrender its right to the plot of land and invest in a new property.

4. Mumbai ITAT⁵: eBay Singapore eligible for DTAA benefit as STCG on sale of Flipkart Singapore's shares not taxable in India

The assessee, a Singapore-incorporated non-resident company engaged in providing e-commerce-related services to its group entities, had obtained a valid Tax Residency Certificate (TRC) of Singapore. During the relevant year, it sold shares of Flipkart Singapore (Singapore entity) to another Singapore-based company and claimed exemption under the India-Singapore DTAA. However, the Revenue contended that the assessee's management and control was situated in USA and not Singapore; therefore, the benefit was denied.

The matter reached the ITAT and ITAT held that, in view of Article 13(5) of the DTAA, the capital gains in question cannot be held as chargeable to tax in India, as it allocated exclusive taxing rights to the State of Residence of the alienator (i.e. Singapore) in respect of the gains from sale of shares. The ITAT further noted that the assessee had submitted a valid TRC and that the sale of shares of, Flipkart Singapore, to another Singaporean entity, was not taxable in India. The ITAT concurred with the assessee's contention that while Indian domestic law deems indirect transfers of Indian assets to be taxable in India, such deeming provisions cannot override treaty allocation. Further the Article 13(5) of the DTAA allocates taxing rights over such residual category gains exclusively

⁴ Rajni Kumar [TS-1278-ITAT-2025(DEL)], dated September 26, 2025

⁵ eBay Singapore Services Private Limited [TS-1343-ITAT-2025(Mum)], dated October 13, 2025

to the State of residence of the alienator, i.e. Singapore. The ITAT underscored that unlike certain other treaties (India-Mauritius and India-Cyprus) which expressly confer source-state taxing rights on shares deriving value from immovable property or local assets, the India-Singapore DTAA does not contain such 'look-through clause'. Accordingly, the gains could not be held chargeable to tax in India.

5. NITI Aayog⁶- Rationale and Recommendations for Presumptive Taxation

NITI Aayog's 'Consultative Group on Tax Policy' (CGTP) aims to advance Viksit Bharat 2047 through collaborative governance, focusing on Ease of Doing Business, FDI promotion, simplified tax laws, and a future-ready system. The rationale for Presumptive Taxation which arises from the uncertainties and litigation in traditional PE profit attribution, aiming to ensure consistency, predictability, and tax certainty, is as follows:

Reducing Discretionary Powers and Subjectivity: Fixed formulas ensure predictability in profit attribution and minimize arbitrariness.

Addressing Lack of Uniform Standards: Establishes consistent, globally aligned profit attribution methods while aligning taxation with economic realities.

Mitigating Litigation and Enhancing Certainty: Aligns with global efforts like OECD/G20 BEPS efforts for tax certainty and reduced disputes.

The strategic rationale for enhancing tax certainty and predictability are as follows:

a. Optional Presumptive Taxation Scheme: The scheme will have the following key features-

- **Advanced Pricing Agreement (APA) for PE Attribution-** The CBDT should actively promote bilateral APA negotiations involving PE attribution, for foreign enterprises with branches or project offices in India.
- **Industry-Specific Presumptive Profit Rates-** Define sector-wise deemed profit percentages on gross receipts taxable in India.
- **Optional Regime (Rebuttable Presumption)-** Foreign companies may adopt presumptive rates or opt for normal tax returns with audited books.

b. Legislative Clarity and Certainty: Codify clear, internationally aligned PE and profit attribution principles for fairness and predictability.

c. Enhanced Stakeholder Engagement: Mandate consultations with industry and experts; implement a legally enforceable Taxpayer Charter.

⁶ NITI Tax Policy Working Paper Series-I: Enhancing Certainty, Transparency and Uniformity in Permanent Establishment and Profit Attribution for Foreign Investors in India, published in October 2025

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d. Robust Dispute Resolution Mechanisms: Strengthen APA and MAP programs, promote bilateral APA for quick resolution and reduced double taxation.

Katalyst comment:

India already employs presumptive taxation approaches for certain domestic small taxpayers (Sections 44AD, 44ADA for small businesses and professionals) and for certain non-resident sectors (shipping – Section 44B, oil & gas services – Section 44BB, airlines – Section 44BBA and Section 44BBC for Cruise Ship Operators). The report aims to propose presumptive taxation for some industries such as infrastructure, construction, digital or e-commerce, marketing and distribution support.

6. NITI Aayog⁷- Decriminalisation and Trust-Based Governance

NITI Aayog's Working Paper examines the evolving contours of India's tax policy in the context of these reforms. It provides a structured analysis of the criminal provisions within the Income-tax Act, 2025, assessing their scope, necessity, and proportionality through a principled framework grounded in jurisprudence and global best practice. The table below offers a snapshot of the nature and scope of these proposed recommendations, serving as a ready reference for the detailed recommendations that follow:

Sr No	Category	Recommendations
1	Decriminalisation of specified acts of omission or commission	Reclassify acts or omissions so they are no longer criminal offences and carry no criminal liability.
2	Partial Decriminalisation or Selective Criminalisation of specified acts of omission or commission	Retain criminal sanctions for fraud, while decriminalising non-malicious failures like procedural or technical non-compliance which ensures proportionate treatment based on intent and severity
3	Retain Criminalisation of specified acts of omission or commission	Maintain criminal provisions where necessary to respond to serious misconduct.
4	Rationalisation of Punishments	Remove mandatory minimum sentences to allow proportionality in punishment. Permit judicial discretion to choose between fines and imprisonment and replace rigorous imprisonment with simple or flexible alternative
5	Simplification of Language	Redraft provisions using plain, accessible language as the same ensures clarity in compliance requirements and enforcement.

⁷ NITI Tax Policy Working Paper Series-II: Towards India's Tax Transformation: Decriminalisation and Trust-Based Governance published in October 2025

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The analysis above reflects ongoing efforts to decriminalise certain offences, in alignment with the Government of India's initiatives to foster trust-based governance and enhance ease of living and doing business.

B. Corporate Law Highlights

1. **NCLAT⁸: Selective reduction valid if fair-value paid; rejects shareholder's appeal against Reliance Retail's capital reduction**

The appellant, a shareholder of Reliance Retail Ltd holding 129 shares (0.0000014% of the authorized, issued, and paid-up capital), objected to the reduction of share capital, alleging it was against minority interest. This was challenged under Section 66 of the Companies Act, 2013, in this context that the Respondent was purportedly squeezing out shareholders and the promoters were increasing their stake.

The NCLAT held that while considering a petition for the reduction of share capital, the NCLT must be satisfied that the transaction was fair and reasonable; Selective reduction is permissible if the objecting shareholders were paid a fair value. In the present case, the non-promoter shareholders were offered INR 1,380 per share at a 56% premium of the fair value to and no grievance regarding the value was raised. An overwhelming majority voted in favor and no other shareholder appealed.

The NCLAT accordingly held that Section 66(1) permits reduction in any manner, and since the price offered was fair, the reduction was fair and reasonable, thus shareholder's appeal was dismissed.

2. **Mumbai NCLT⁹: Sanctions cross-border merger of Star Television Productions with Jio Star India**

The NCLT sanctioned a Scheme of Amalgamation of Star Television Productions Ltd. (Transferor Company, incorporated in the British Virgin Islands) with Star India Pvt. Ltd. (Transferee Company, now JioStar India Pvt. Ltd.), under Sections 230–234 of the Companies Act, 2013. The NCLT was of the view that amalgamation was to simplify the corporate structure, optimize capital and costs, and consolidate operations for business efficiency.

As per the Scheme, shareholders of the Transferor Company would receive 143 equity shares of the Transferee Company for each equity share held. The NCLT observed that no investigation proceedings were pending against either Company under Sections 210–217 of the Act. The meetings of unsecured creditors were duly held and the Scheme was unanimously approved, with an Affidavit of Compliance filed.

⁸ Naman Gurumurthi Joshi vs. Reliance Retail Ltd [LSI-1416-NCLAT-2025-(NDEL)] dated, September 29, 2025

⁹ Star Television Productions Ltd. & Anr. [LSI-1415-NCLT-2025-(MUM)] dated September 29, 2025

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3. MCA Circular¹⁰: Holding of AGM and EGM through VC or any other audio-visual means and passing of Ordinary and Special Resolution

Vide this Circular, it has been decided to allow companies to conduct their AGMs through VC or any other audio-visual means, indefinitely until further orders. This circular shall not be construed as conferring any extension of statutory time for holding AGMs for companies. The companies which have not adhered to the relevant statutory timelines shall be liable to appropriate provisions under The Companies Act, 2013.

It has also been decided to allow companies to conduct their EGM through VC or other audio visual means or transact items through postal ballot in accordance with the required framework, indefinitely until further orders.

C. SEBI and Other Highlights

1. SEBI¹¹ : Minimum information to be provided to the Audit Committee and Shareholders for approval of Related Party Transactions

SEBI Master Circular dated November 11, 2024 ("Master Circular") and SEBI Circular no. **SEBI/HO/CFD/CFD-PoD-2/P/CIR/2025/93** dated June 26, 2025, required listed entities to follow "Minimum information to be provided to the Audit Committee and Shareholders for approval of Related Party Transactions" ("RPT Industry Standards"), formulated by the Industry Standards Forum ("ISF").

The Master Circular erstwhile, provided an exhaustive list of disclosure of RPT items; however the SEBI Circular dated June 26, 2025 replaced the SEBI's disclosure list with a standardized format prescribed by ISF. In this circular, materiality thresholds are added, thereby easing the compliance for the entities.

Accordingly, with an objective of facilitating ease of doing business by the listed entities, Section III-B of the Master Circular read with Para 7 of the SEBI Circular dated June 26, 2025 is modified as under; the additional change is with reference to smaller RPT which requires reduced disclosure.

Details of the paragraph to be modified	Threshold for the approval
Paragraph 4 under Part A of Section III-B of the Master Circular shall stand substituted by the following paragraph:	<i>Provided that if a transaction with a related party, whether individually or taken together with previous transaction(s) during a financial</i>

¹⁰ MCA: General Circular No. 03/2025, dated September 22, 2025

¹¹ SEBI Circular SEBI/HO/CFD/CFD-PoD-2/P/CIR/2025/135, dated October 13, 2025

<i>The listed entity shall provide the audit committee with the information as specified in the Industry Standards on “Minimum information to be provided to the Audit Committee and Shareholders for approval of Related Party Transactions”, while placing any proposal for review and approval of an RPT”</i>	
Paragraph 6 under Part B of Section III-B of the Master Circular shall stand substituted by the following paragraph: <i>“The notice being sent to the shareholders seeking approval for any RPT shall, in addition to the requirements under the Companies Act, 2013, include the information as part of the explanatory statement as specified in the Industry Standards on “Minimum information to be provided to the Audit Committee and Shareholders for approval of Related Party Transactions”</i>	<i>year (including transaction(s) which are approved by way of ratification), do not exceed 1% of annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity or Rupees Ten Crore, whichever is lower, the listed entity shall provide ‘Minimum information to the Audit Committee or Shareholders (as the case may be) for approval of Related Party Transactions’ specified in Annexure-13A of this circular. Provided further that the above requirements, shall not be applicable to transaction(s) with a related party to be entered into individually or taken together with previous transactions during a financial year (including which are approved by way of ratification) which does not exceed Rs. One Crore.”</i>

2. SEBI¹²: Hindenburg allegations against Adani Group ‘not established’

Hindenburg Research, a US based financial research firm and short seller published a report alleging that Adicorp was used to route funds from Adani group companies to fund Adani Power. Based on these allegations, SEBI initiated a detailed investigation to examine possible material misrepresentation in financial statements and any violation of SEBI LODR Regulations, PFUTP Regulations, or related rule.

In response to the allegations, the Adani Group submitted clarifications to NSE, BSE, and SEBI. SEBI’s investigation found that APSEZ and its subsidiary had entered into financial transactions with Adicorp, a conduit entity, to route funds to Adani Power; the amounts were subsequently repaid by Adani Power to Adicorp, which then repaid APSEZ and its subsidiary. SEBI issued a show cause notice (“SCN”) to Adani group companies alleging violation of Regulation 4. However, the notice did not allege that Adicorp was a related party of APSEZ or Adani Power. Further, all monies lent were repaid with interest, with no allegation of diversion or siphoning of funds.

It was submitted that the impugned transactions were genuine business transactions, undertaken in the ordinary course, with requisite corporate approvals and all monies lent had been repaid with interest. There was no allegation of siphoning, diversion of funds, or investor loss. It was also

¹² Adani Ports & Special Economic Zone Ltd, [2025] 178 taxmann.com 483 (SEBI), dated September 18, 2025

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observed that the impugned transactions were not held as related party transactions and, therefore it was very difficult to call impugned transactions as manipulative or fraudulent transactions. Since it was already held that facts of this case do not meet the requirement of the definition of the term "Fraud", it was held that for this reason there is no violation of provisions of the PFUTP Regulations.

3. **RBI¹³: Publishes Draft framework to rationalize ECB regulations under FEMA**

The RBI has issued Draft Foreign Exchange Management (Borrowing and Lending) (Fourth Amendment) Regulations, 2025, proposing significant changes to India's External Commercial Borrowing (ECB) regime; it, inter alia, proposes the following

- (i) An eligible borrower may raise ECB up to the higher of outstanding ECB up to USD 1 billion or total outstanding borrowing (external and domestic) up to 300% of net worth.
- (ii) The cost of borrowing shall be in line with prevailing market conditions, subject to the satisfaction of the designated AD Category I bank.
- (iii) Trade Credit up to three years raised in terms of these Regulations, Export advance received in terms of these Regulations; Investments received in terms of the FEMA (Debt Instruments) Regulations, 2019; and Investments received through Convertible Notes issued in terms of the FEMA (Non-Debt Instrument) Rules, 2019; raised by an eligible borrower shall not be treated as ECB.
- (iv) The amended regulations also insert a new Reg. 3A which provides for prohibition on end-use of borrowed funds for specific activities such as chit funds, Nidhi companies, agricultural/plantation activities (except FDI sectors), real estate (with some exceptions for FDI-permitted activities and purchase or long-term leasing of industrial land) and transacting in listed/unlisted securities, except for Investment in terms of ODI Rules 2022, merger or arrangement in terms of the Companies Act, 2013, SEBI (SAST Regulations), IBC and Investment in primary market instruments issued by non-financial entities for on-lending.

4. **RBI¹⁴: Consolidation of regulations for optimizing the regulatory framework for 11 types of regulated entities**

The Reserve Bank has sought to optimise its regulatory framework by reducing regulatory burden and compliance costs through timely re-evaluation of existing instructions. The Master Directions have been prepared separately for 11 types of regulated entities including commercial banks and several other categories of banks, NBFCs, ARCs and Credit Information Companies. The

¹³RBI Press Release no. 2025-2026/1235 dated October 03, 2025

¹⁴RBI Press Release no. 2025-2026/1291 dated October 10, 2025

consolidated Master Directions have been drafted in a continuous-flow approach where the major elements of a Master Direction have been included in the main body.

Accordingly, the major drafting modifications such as advisory elements have been included as a part of the main text using appropriate language conveying the advisory nature of the instructions, FAQs have been rationalized and instructions pertaining to the responsibilities of the Board have been aggregated at a single place in each Master Direction have been made as compared to the existing approach followed by the Reserve Bank. Regulatory instructions have been consolidated on an 'as is' basis and the existing universe of regulatory instructions issued up to October 9, 2025 have been consolidated into 238 Master Directions, across 11 types of regulated entities on up to 30 functions or areas. Consequently, approximately 9000 circulars will be repealed.

The drafts of these consolidated Master Directions and the list of circulars proposed to be repealed have been placed on the Reserve Bank's website for public comments.

5. Maharashtra Govt¹⁵ approves Maharashtra Global Capability Centre Policy, 2025

India's Global Capability Centres (GCCs) are rapidly transforming the country's corporate landscape and playing a pivotal role in shaping global business strategies. In this context, the Maharashtra Cabinet has approved a GCC Policy to establish Maharashtra as a premier global destination for GCC's. The policy aims to set up 400 new GCCs, creating 4 lakh skilled jobs, by integrating industry-driven curricula and equipping the workforce with advanced digital and technical skills. It additionally, will aim to develop world-class business districts and a robust Digital Databank to map talent, resources, and connectivity, helping new GCCs identify optimal locations.

The GCC will be provided with incentives including rental assistance, green certification, patent filing aid, infrastructure funds, tax benefits, capital subsidy, tariff and interest subsidy, and duty exemptions. Priority sectors include aerospace, defence, agriculture, gems, logistics, mining, pharmaceuticals, green energy, IT and automotive. The incentives proposed to the GCC units are expected to generate an investment of INR. 50,600 crores. This Policy aims to support the Hon'ble Prime Minister's vision of Viksit Bharat 2047.

6. Bar Council of India¹⁶ Issues Revised Press Release Reinforcing Rules on Indian-Foreign Law Firm Collaborations

The Bar Council of India has issued a Press Note, whereby the Press Release dated 5th August 2025 stands withdrawn and is hereby substituted by this Press Release to bring to the attention of all legal practitioners, law firms both Indian and foreign, clients, and members of the public, the instances of unauthorized, unregistered, and impermissible collaborations or combinations

¹⁵ Maharashtra Global Capability Centre Policy, 2025 dated September 30, 2025

¹⁶ Bar Council of India- Press Release dated October 21, 2025

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between Indian law firms or advocates and foreign law firms or advocates; some of the key highlights of the Press Release are explained below.

- The Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2023 (as amended in 2025) require registration, disclosure, governance, and ethical compliance for any Indian-foreign law firm collaboration. Any arrangement that creates a joint platform, using a unified brand, involving co-branding of legal services, or shared client servicing without registration and in non-consonance with the Rules shall be deemed to be in contravention of the Rules.
- The Press Release reiterates the Supreme Court's ruling in **Bar Council of India v. A.K. Balaji & Ors. (2018) 5 SCC 379**, that foreign law firms cannot do indirectly what they cannot do directly, and that the expression "practice of law" extends far beyond courtroom advocacy, including giving legal advice, drafting contracts, and other connected services.
- A foreign law firm or a group of firms may practice foreign law and international law only in non-litigious matters and only after registration under Bar Council Rules, they cannot practice Indian law in any form, even indirectly.
- It concludes that non-compliance may lead to reprimand, suspension, or removal, and that this clarification is issued in the larger public and professional interest to reinforce uniform compliance.

7. Survey on Corporate Governance¹⁷

Excellence Enablers carries out an annual survey on Corporate Governance which covers 100 companies and is very incisive in terms of the issues covers some key aspects of this year's survey are as follows:

• Board of Directors-

- Only 18 out of 100 companies have appointed a lead independent director, something which is not mandated by law, but which seems highly desirable.
- 16 companies out of 100 had fewer than the prescribed minimum number of Independent Director ("ID").
- 29 companies out of 100 had only one WTD on the board.
- In 37 out of 100 companies, the position of Chairperson and MD/CEO was held by the same person. Considering the role and responsibilities of independent directors, there seems to be a need for significant increase in independent directors' compensation.
- Out of 492 independent directors in these 100 companies, as many as 454 are between ages of 50 and 75; given the pace and nature of change in the economy including AI, there seems to be a case for induction of younger independent directors on boards.
- Additionally, 39 out of 100 companies have 2 or more women independent directors.

¹⁷ Excellence Enablers – an M Damodaran initiative, Survey on Corporate Governance, 6th Edition

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- The number of board meetings prescribed by law is 4, but given the responsibility and scope, more board meetings seem needed; in this context, 66 companies out of 100 had 7 or more board meetings during the year.
- **Nomination and Remuneration Committee (NRC)**- The NRC is a crucial part of the governance eco system and whilst the regulatory requirement is for the NRC to meet once a year, more meetings seem required, given the number of issues; in this context, 25 companies had 2-3 meetings last year and 66 had more than 4 meetings.
- **Stakeholder and Relationship Committee**- The role of the stakeholder relationship committee needs to be expanded, as opposed to it being restricted to only shareholders and debenture holders.

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D. Goods and Service Tax Highlights

1. Gujarat HC¹⁸: Once the resolution plan is approved, all dues and liabilities not expressly provided for in resolution plan, stand extinguished

Pursuant to a petition filed u/s 9 of Insolvency & Bankruptcy Code, 2016 ('IBC'), the Corporate Insolvency Resolution Process (CIRP) was initiated by the NCLT. Post approval of resolution plan, the petitioner-corporate debtor, was issued assessment orders for F.Y. 2017-18 to F.Y. 2021-22 raising tax demands aggregating to several crores, by the GST authorities. In this regard, the Gujarat HC quashes all impugned orders, notices, and related proceedings and provides that:

- (i) **Liabilities stand extinguished:** Once the resolution plan is approved u/s 31 of IBC, all dues and liabilities of the corporate debtor, **not expressly provided** for in the plan stand extinguished.
- (ii) **Without jurisdiction and contrary to law:** The issuance of notices and orders by the GST authorities for pre-resolution periods is without jurisdiction and contrary to law and therefore, such recovery actions cannot be sustained.

Katalyst comment:

*The HC relied upon the decision of the Supreme court in case of (1) The **Committee of Creditors of Essar Steel Ltd. Vs. Satishkumar Gupta**¹⁹ reported in (2020) and (2) **Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd.**²⁰, reported in (2021) to arrive at the decision that the issuance of notices and orders by the GST authorities for pre-resolution periods is without jurisdiction and contrary to the law.*

2. Sikkim HC²¹: Refund of accumulated ITC on closure of business is impermissible

The refund of accumulated ITC of INR 4.37 crores (approx.) was allowed on closure of business by the Single Judge bench of Sikkim HC, as there is no express prohibition in Section 49(6) read with Section 54 and 54(3) of the CGST Act, for claiming a refund of ITC on closure of the unit. However, the Revenue challenged the judgement and filed the appeal before the Division Bench of Sikkim HC, which reversed the decision of the Single Judge Bench and held as under:

- (i) **Governing section:** Section 54 of the CGST Act is the section governing refund, not section 49 (6) of the CGST Act.
- (ii) **Strict adherence to section 54 (3) for refund:** The words 'in accordance with the provisions of section 54', is a clear indication that this permissibility to refund must be in accordance with the provisions of section 54 and in no other manner.

¹⁸Sintex-BAPL Ltd. Vs. State of Gujarat & Others [2025-TIOL-1533-HC-AHM-GST] dated August 28, 2025

¹⁹ [(2020) (8) SCC (531)] dated November 19, 2019

²⁰ [(2021) (9) SCC (657)] dated April 13, 2021

²¹ Union of India vs SICPA India Private Limited [TS-772-HC(SIK)-2025-GST] dated September 8, 2025

- (iii) **Supreme court case of VKC Footsteps India (P.) Ltd.²²:** The Supreme court case of VKC Footsteps relied upon by the HC, provided that the refund of accumulated ITC under Section 54(3) of the Act is permissible only due to (a) zero-rated supplies and (b) inverted duty supplies.
- (iv) **Refund u/s 54(3) not permissible:** Accordingly, the Division Bench held that Section 54(3) of the Act does not permit refund of accumulated ITC upon discontinuance of business.

3. **Gujarat AAAR²³: ITC on expenses incurred on buy-back of shares is not available**

Gujarat AAAR has upheld the decision of the AAR that the ITC on expenses relating to buyback of shares is not available as securities are neither goods nor services within the GST framework. The AAAR rejected the argument of the Applicant that the buyback is in the furtherance of business as ITC eligibility depends on the fact whether the activity involved is relating to goods or services. Further, the AAAR upholds the requirement to reverse ITC attributable to common inputs used for buyback expenses as per section 17(3) of the CGST Act, treating the transactions in securities as 'exempt supplies'.

Katalyst comment:

ITC eligibility under Section 16(1) is subject to restrictions under Sections 17(2), 17(3), and 17(5). This ruling provides the statutory exclusion of security related expenses from ITC purview even when such expenses are in nature of furtherance of business. Hence, businesses should carefully assess ITC eligibility and reversal obligations in capital restructuring exercises.

²²[2021 (52) GSTL 513 (SC)] dated September 13, 2021

²³Gujarat Narmada Valley Fertilizers & Chemicals Ltd [TS-840-AAAR(GUJ)-2025-GST] dated October 6, 2025