KATALYST ADVISORS

Katalyst Kaleidoscope

April 2025: Tax and Regulatory Insights

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A. Income Tax Highlights

1. Delhi HC: Transfer of individual assets vide debt restructuring scheme does not amount to demerger[1]

The assessee company entered into a debt restructuring scheme of arrangement which provided for, inter alia, transferring land and investments into two separate entities, along with debts of equivalent amounts to be discharged by the transferee entities through liquidation of the transferred assets; the scheme also provided for demerger of an undertaking of the assessee.

The assessee treated the transfer of land and investments as transfer of property and accordingly claimed a long-term capital loss. However, the Assessing Officer disallowed the claim, treating all transfers under the scheme as demergers, on the ground that a single scheme cannot provide for differential treatment with respect to demergers and transfer of properties.

On appeal, the Delhi High Court held that the assessee merely created special purpose vehicles (SPVs) in order to discharge its debt. The transfer of land and investments do not satisfy the conditions of demerger as per the Income Tax Act, 1961; accordingly, it was held that the assessee rightly claimed the difference between the sale consideration (being the transfer value) and indexed cost of the respective assets as long-term capital loss.

2. Bombay HC: Stamp duty value relevant for capital gains on assignment of leasehold properties[2]

MIDC allotted land to a person by way of lease, and such person subsequently assigned the land to the assessee by way of a deed of assignment. Section 50C of the Income Tax Act,1961, states that when the consideration received as a result of the transfer of a capital asset, being land or building or both, is less than the stamp duty value, the stamp duty value of the asset shall be deemed to be the transfer value for the purposes of computation of capital gains.

The Bombay High Court applied Section 50C to the assignment of leasehold land in the following manner:

- 'Capital asset', as per the Act, means 'property of any kind held by the assessee'; a capital asset may not necessarily be owned by the assessee.

[1] DCIT v M/s. SIEL Limited, Delhi High Court [ITA No. 6300 & 6301/DEL/2015, ITA No. 457 & 5830/DEL/2016, ITA No. 5489 to 5490/DEL/2018, ITA No. 516 & 6081/DEL/2016, ITA No. 5835 & 5836/DEL/2018] dated March 26, 2025
[2] Vidarbha Veneere Industries Ltd. v ITO, Bombay High Court [Income Tax Appeal No. 34 of 2022] dated April 1, 2025

- Holding of land is merely a method in which rights to the land can be held or acquired by the person, and therefore cannot be equated in any manner with owning land or building, but rather would be a species of right to hold it.

- Land or building can be held in numerous ways, either as an owner, lessee, sub-lessee, allottee, tenant, licensee, gratuitous licensee or any other mode.

- 'Transfer' cannot be used in a restricted sense and will have to be given the widest amplitude, and would include all modes and methods of transfer as are permissible by law.

The High Court ruled that Section 50C would be relevant for computation of capital gains arising on assignment of the leasehold land.

3. Mumbai ITAT: No deemed income on gifting between step-siblings, considered as relatives[3]

The assessee received a property as a gift by way of a registered gift deed. The donor of the property was the daughter of the current wife of the assessee's father with her previous husband. The Assessing Officer contended that the assessee and the donor are not 'relatives', and therefore the receipt of property was without consideration and chargeable to tax as income of the assessee from other sources.

The Mumbai ITAT analysed the meaning of 'relative' in the context of step-siblings, and concluded that a 'relative' includes a person related by affinity. 'Brother' and 'sister' should also include step-brother and step-sister who by virtue of marriage of their parents have become brother and sister; accordingly, it was held that gift given by step-sister, i.e., donor, to a step-brother, i.e., assessee, falls within the definition of 'relative', that is, they are to treated as brother and sister.

Since the assessee received the property as a gift from his relative, it was held to be exempt from being taxed as income.

4. Mumbai ITAT: No deemed income on receipt of redeveloped flat in lieu of old flat[4]

The assessee owned a flat in a society, which entered into an agreement with a developer to undergo redevelopment, pursuant to which the assessee received a new redeveloped flat in lieu of his old flat. The Assessing Officer assessed the difference between the stamp duty value of the

[3] Rabin Arup Mukerjea v ITO, Mumbai ITAT [IT APPEAL NO.5884 (MUM) OF 2024] dated March 21, 2025
[4] Anil Dattaram Pitale v ITO, Mumbai ITAT [ITA No. 465/Mum/2025] dated March 17, 2025

new flat and indexed cost of the old flat as deemed income chargeable to tax in the hands of the assessee under Section 56(2)(x) of the Income Tax Act, 1961.

The Mumbai ITAT observed that redevelopment is extinguishment of old flat in lieu of new flat as per the redevelopment agreement, and not a case of receipt of immovable property for inadequate consideration. Accordingly, no deemed income arises in the hands of the assessee. However, relevant provisions of capital gains may be attracted.

5. Mumbai ITAT: 'Shares' to be considered distinct from 'units of equity mutual fund' for computation of capital gains[5]

The assessee, a non-resident Indian residing in Singapore, earned short-term capital gains on sale of units of equity and debt mutual funds. As per the India-Singapore DTAA, gains from alienation of property, apart from properties specified in Article 13 including shares of a company, would be taxable in the country of the seller. On this basis, the assessee claimed exemption from payment of tax on capital gains arising on transfer of units of mutual funds in India; however, the Assessing Officer did not accept the assessee's contentions, and proposed to tax the capital gains arising from equity mutual funds, considering it to be a transaction of sale of shares deriving substantial value from assets located in India.

However, the Mumbai ITAT on appeal held that 'shares' are distinct from 'units of mutual funds', and there is no specific provision under the Income Tax Act, 1961, or the DTAA to equate the two. Therefore, the assessee will be taxable on the sale of units of mutual funds in their country of residence, being Singapore.

6. Delhi ITAT: Donations made as a part of disallowed CSR expenses eligible for deduction under Section 80G[6]

The assessee company incurred expenses in the form of donations towards CSR activities as required by the Companies Act, 2013. While computing its business income, the company disallowed the CSR expenses, as per the provisions of the Income Tax Act, 1961, being expenses not incurred for business purposes. However, as Section 80G permits part or full donations to be deducted from the gross total income, the assessee claimed a deduction of 50% of the donations. The Assessing Officer, however, disallowed this claim, arguing that since the expenditure was mandated by law, it was not voluntary and therefore could not be considered a donation eligible for Section 80G benefits.

[5] Anushka Sanjay Shah v ITO, Mumbai ITAT [IT(IT)A No.174/MUM/2025] dated March 26, 2025
[6] Schenker India Private Limited v ACIT, Delhi ITAT [ITA No:- 2391/Del/2022] dated March 19, 2025

The Tribunal reasoned that the disallowance of CSR expenses means it is treated as an application of income, thus remaining part of the company's gross total income. Section 80G deductions are applied at a later stage, from this gross total income. The ITAT held that the mandatory nature of CSR expenditure under the Companies Act does not affect its eligibility under Section 80G, provided the payments are made to eligible institutions and other conditions of Section 80G are satisfied. The voluntary aspect, the Tribunal noted, relates more to the lack of a quid pro quo from the recipient, which is characteristic of both donations and CSR activities.

Therefore, the ITAT allowed the assessee the deduction against donations made as a part of CSR activities.

7. Mumbai ITAT: Interest on borrowed funds utilised to acquire substantial control deductible[7]

The assessee borrowed funds utilised to invest in compulsorily convertible debentures ('CCDs') of its subsidiary; it claimed interest expenses on the borrowed funds, though it did not earn any interest from the CCDs. During the assessment, Revenue disallowed the interest expenses, contending that the borrowings were not used for business purposes; and additionally, it did not earn any interest income from the CCDs.

The ITAT held that the investment was made to acquire controlling interest in its subsidiary, and hence, the interest expenses on borrowed funds used for strategic investments in a subsidiary are allowable.

8. Mumbai ITAT: Maximum marginal rate calculated using surcharge rate applicable to income bracket[8]

The given case discussed the method of computation of the maximum marginal rate of tax ("MMR") applicable to a private discretionary trust. The Income Tax Act, 1961, defines MMR as 'the rate of income-tax (including surcharge on income tax, if any) applicable in relation to the highest slab of income'. Accordingly, the tax rate of 30% applicable to the highest slab of income would be relevant for MMR, which is to be further increased by surcharge.

The income tax authorities contended that MMR has to be computed using the highest rate of surcharge of 37%, and different rates of surcharge applicable based on income slabs or types of income are irrelevant.

The ITAT, however, decided in favour of the assessee, stating that the words 'including surcharge on income tax, if any' signify that the surcharge has to be computed basis the income of the assessee as provided in the computation mechanism of the respective Finance Act; this is fortified

[7] DCIT v Macrotech Developers Ltd, Mumbai ITAT [ITA No. 487/Mum/2024] dated March 3, 2025
[8] Araadhya Jain Trust v ITO, Mumbai ITAT [IT Appeal No. 4272 (Mum.) of 2024] dated April 9, 2025

by the objective of levying surcharge being persons in the higher income bracket contributing more to nation building. Hence, the MMR will be calculated by adding to the rate of tax of the highest slab, 30%, a surcharge applicable to the private discretionary trust's income bracket.

Katalyst comment:

The Income Tax Bill, 2025, calculates MMR by using the highest rate of tax as well as surcharge, irrespective of income.

B. Corporate Law Highlights

1. MCA: Scope of fast-track mergers proposed to be widened[9]

While schemes of arrangement and amalgamation require the approval of the jurisdictional National Company Law Tribunal, schemes entered into between specified persons can opt for the fast-track merger process, which requires the approval of only the Regional Director. Currently, this option is available only in case of mergers between a wholly-owned subsidiary and its holding company, small companies, start-up companies, or foreign holding company with its Indian wholly-owned subsidiary.

It is now proposed to widen the scope of the classes of companies covered under the fast-track route, to include the following:

a. Merger between unlisted companies (other than not-for-profit companies) having borrowings from banks / financial institutions / body corporates of less than INR 50 Crores and no default in repayment of borrowings;

b. Merger of unlisted subsidiary/ies, which may not be a wholly-owned subsidiary, with its / their holding company (listed or unlisted);

c. One or more subsidiary company of a holding company merging with one or more other subsidiary company of the same holding company where the companies are not listed.

Katalyst comment:

The fast-track merger route involves considerably lesser timeline than the NCLT approval route; however, the entities involved must be net-worth positive. Currently, the fast-track route is not

[9] Ministry of Corporate Affairs: Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025

explicitly applicable to demergers, though it seems that it is so intended, and some Regional Directors have approved demergers under the fast-track route; such clarity is important prior to notifying the above amendment.

2. Delhi NCLAT: Tribunal's scope limited to ensure fair proceedings in capital reduction[10]

The Delhi NCLT approved a scheme of arrangement filed by a delisted company for selective reduction of its capital by cancellation of 1.09% of its shares held by public minority shareholders against payment of consideration, with value per share derived by an independent registered valuer. The minority shareholders, however, objected to the scheme and approached the Delhi NCLAT, claiming the company undervalued the shares by applying a 25% discount.

The NCLAT observed that the company has complied with all the provisions of the Companies Act, 2013, with respect to the capital reduction, which was approved by a special resolution passed by 99.9% of shareholders. Further, a court / tribunal does not have the expertise to go into the correctness or otherwise of the valuation done by independent valuers, and its only duty is to ensure the process is fair and unbiased and has not caused prejudice to the shareholders.

In the present case, the NCLAT did not find that the process was biased or unfair, and accordingly approved the capital reduction.

C. SEBI Highlights

1. SEBI: Minimum investment in specialised investment fund applicable across all strategies of an AMC[11]

The Specialised Investment Fund ('SIF') is a new asset class which was formalized by SEBI in December 2024, aiming to bridge the gap between mutual funds and portfolio management services. SIFs require a minimum investment of INR 10 lakhs, which SEBI has now clarified applies at the PAN level across all SIF strategies offered by an asset management company, and not per scheme.

[10] Shirish Vinod Shah (HUF) vs. Bharti Telecom Ltd. & Ors., Delhi NCLAT [Company Appeal (AT) No. 273 of 2019] dated April 3, 2025

[11] SEBI Clarification on Regulatory Framework for Specialized Investment Funds ('SIF') vide Circular No. SEBI/HO/IMD/IMD-I POD1/P/CIR/2025/54 dated April 9, 2025

2. SEBI: Clarification with respect to the position of a compliance officer in a listed company[12]

As per the extant SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015, a compliance officer of a listed entity is required to be in whole-time employment and not more than one level below the board of directors and key managerial personnel. SEBI has provided clarification with respect to 'one level below', which would mean one level below the managing director or whole-time director who are part of the board of directors.

In case a listed entity does not have a managing director or a whole-time director, then the compliance officer shall not be more than one-level below the chief executive officer or manager or any other person heading the day-to-day affairs of the listed entity.

3. SEBI: Shareholding pattern format modified[13]

SEBI has modified the format in which shareholding pattern is to be disclosed by listed entities to include the following disclosures:

a. Details of non-disposal undertaking, shares pledged and otherwise encumbered;
b. Outstanding convertible securities to include ESOP;
c. Capture the details of total number of shares on fully diluted basis; and
d. Promoters and promoter group with 'NIL' shareholding to be disclosed.

Katalyst comment:

The broader intent of reporting to MD / CEO seems to be justified, but 'one level below' will possibly create its own set of issues.

4. SEBI Order: Alleged diversion of funds by Gensol Engineering Limited[14]

A SEBI whole-time member passed an interim order on April 15 in relation to significant diversion of funds by Gensol Engineering Limited ("Gensol"); the order details several aspects including the following:

[12] SEBI Clarification on the position of Compliance Officer in terms of regulation 6 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015–Reg. vide Circular No. SEBI/HO/CFD/PoD2/CIR/P/2025/47 dated April 1, 2025

[13] SEBI Disclosure of holding of specified securities in dematerialized form vide Circular No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2025/35 dated March 20, 2025

[14] SEBI Interim Order in respect of Gensol Engineering Limited, Anmol Singh Jaggi and Puneet Singh Jaggi [WTM/AB/CFID/CFID-SEC1/31379/2025-26] dated April 15, 2025

a. Forged documents were provided to credit rating agencies regarding loans of INR 978 Crs borrowed from IREDA and PFC;
b. Misuse of funds borrowed for, inter alia, purchase of high-end apartments and round tripping for subscribing to preferential issue;
c. Part use of funds for purchase of EVs which were then leased to Blusmart, a related party.

In this context, SEBI has passed an order under sections 11(1), 11(4) and 11B of the SEBI Act, 1992, to the following effect:

a. Promoters Anmol and Puneet Singh Jaggi restrained from holding position of director or key managerial personnel in Gensol;
b. Gensol and above promoters restricted from dealing in securities, and open positions to be squared-off;
c. Gensol to put its already announced stock-split on hold; and
d. SEBI to appoint a forensic auditor to examine the books of Gensol and its related parties.

D. Other Highlights

1. SC: Interplay between gift, will and settlement[15]

The Supreme Court in a recent judgement has clarified the distinguishment between a 'gift', 'settlement' and 'will'. In the given case, a father executed a registered deed stating that an identified property would be gifted to his daughter upon the demise of both himself and his wife. However, few years thereafter, the father cancelled the registered deed executed in the daughter's name and created a sale deed, making her brother the sole owner of the property.

Upon the father's demise, a dispute arose between the siblings regarding ownership of the property, and the daughter filed a case contesting the unilateral cancellation of the original deed, being a 'gift deed'. On the other hand, her brother was of the view that their father executed a will with his sister by way of a deed, which can be revoked.

The Supreme Court stated that the main test to find out whether the document constitutes a will or a gift is to see whether the disposition of interest in the property is in praesenti (in the present time) in favour of the settlee or whether the disposition is to take effect on the death of the executant. It is settled law that delivery of possession is not an essential condition for validating a gift or settlement. Therefore, for the document to be valid, it is sufficient if it is proved that the same was acted upon during the lifetime of the executant.

[15] N.P. Saseendran v N.P. Ponnamma & Ors., Supreme Court [CIVIL APPEAL NO. 4312 OF 2025] dated March 24, 2025

The deed in question was registered and handed over to the daughter, meaning the deed was acted upon. Once a gift has been acted upon, the same cannot be unilaterally cancelled, unless specific provisions allowing such revocation are included in the deed itself or are permitted by law.

The Supreme Court held that the registered deed is an instrument of 'git by settlement', and the property belongs to the daughter.

Katalyst comment:

The following interplay between gift, settlement and will was brought out by the Supreme Court:

Basis	Gift	Settlement	Will
Nature	*Voluntary transfer without consideration*	*Non- Testamentary disposition; with consideration (not necessarily monetary)*	*Testamentary document; takes effect only after death.*
Transfer of Ownership	*Immediate (in praesenti)*	*Immediate (in praesenti)*	*Future -Post demise*
Unilateral Revocability	*Irrevocable*	*Irrevocable; unless explicitly provided*	*Can be freely revoked/ canceled/ amended*
Registration	*Mandatory for immovable properties*	*Mandatory of immovable properties*	*No mandatory*
Acceptance	*Required during transferor's lifetime; void if not accepted*	*Required during transferor's lifetime; void if not accepted*	*Not required*

2. SC: Unregistered power of attorney and agreement to sale do not confer title to immovable property[16]

The owner of a plot of land had executed a General Power of Attorney (POA) and an agreement to sell in favour of an agent. Following the owner's death, the agent executed a registered sale deed for the transfer of the land. However, the legal heirs of the deceased owner also separately sold the same property. The issue before the Supreme Court was whether the unregistered POA and agreement to sell could confer a valid title upon the agent to subsequently transfer the property.

The Court examined the nature of the POA, noting that it was not irrevocable, as the agent did not possess any interest in the subject matter of the agency. The mere use of the term "irrevocable" was held to be of no consequence. It reiterated the settled principle that the

[16] M. S. Ananthamurthy v J. Manjula, Supreme Court [CIVIL APPEAL NOS. 3266-3267 OF 2025] dated February 27, 2025

transfer of immovable property can only be effected through a duly executed and registered deed of conveyance.

The Supreme Court held that, in the absence of registration of both the POA and the agreement to sell, the agent could not claim to have a valid right, title, or interest in the property so as to execute a registered sale deed.

3. Online registration of properties in Maharashtra

Property buyers and sellers, with effect from May 1, 2025, can register properties online under the state's 'One State One Registration' initiative, using their aadhaar and income tax documents, and will no longer need to physically visit sub-registrar offices for registration or payment of stamp duty.

E. Goods and Service Tax Highlights

1. Karnataka HC: GST not applicable on sale of incomplete building on liquidation[17]

The petitioner purchased an incomplete building through an e-auction from the liquidator of a company and paid GST under protest on such purchase; subsequently, the petitioner filed for refund on GST paid on such purchase, which was rejected.

The Karnataka High Court in this regard held that sale of building by the liquidator is on an 'as is where is' basis with no further obligations cast on the liquidator for constructing the building; hence, no GST is applicable on the transaction of sale of a building by the liquidator to the petitioner under entry no. 5 of Schedule III of the CGST Act.

Katalyst comment:

The judgment has provided much needed clarity on scope of 'supply' and entries of schedule II (taxable service) and schedule III (neither goods nor services) relating to real estate transaction of providing of construction service and sale of a building respectively.

[17] Rohan Corporation India Pvt. Ltd. vs. UOI & Ors., Karnataka High Court [TS-924-HC(KAR)-2024-GST] dated April 15, 2025

2. Bombay HC: No GST payable on transfer of development rights ('TDR') or floor space index ('FSI') by the landowner to the developer[18]

The petitioner entered into an agreement of sale with the landowner for development of a plot of land in return for a monetary consideration and two apartments therein. The GST department contended that the petitioner is liable to pay GST on reverse-charge basis.

The Bombay High Court in this regard made a distinction between the development rights and TDR defined under the Unified Development Control and Promotion Regulations (UDCPR). The High Court clarified that the TDR / FSI as contemplated by entry 5B of Notification 11/2017-CTR dated June 28, 2017 (to levy GST) is compensation in the form of Floor Space Index (FSI) or development rights, which shall entitle the owner for construction of built up area subject to the provisions in the said regulations, and cannot be related to the rights which a developer derives from the owner under the agreement of development for constructing the building for the owners, in lieu of the owner agreeing to permit the developer to transfer certain built-up units as consideration. Thus, petitioner / builder is not liable to pay GST in the given case.

Katalyst comment:

It is pertinent to note that the court has made a distinction between the standalone transfer of TDR / FSI, and the development rights transferred under a Joint Development Agreement (JDA), relying on the definitions provided under the UDCPR. Presently, GST is applicable on transfer of development rights under the JDA. The High Court has introduced a new interpretation but its acceptance will depend upon the evolution of jurisprudence in this sector.

3. Maharashtra AAR: GST is applicable on amount recovered from employees towards canteen charges and transport expenses[19]

The Maharashtra AAR has ruled that GST is applicable on the amount recovered by the employer from employees towards canteen charges and transportation expenses. The AAR has clarified that input tax credit on the said expenses is not available to the employer, and the GST rate of transportation charges is lower subject to the condition of non-availment of input tax credit. Further, the amount contributed by the employer for these expenses should be classified as perquisites and no GST will be applicable on such contribution.

[18] Shrinivasa Realcon Private Ltd. Vs. Deputy Commissioner Anti-Evasion Branch, CGST & Central Excise Nagpur & others, Bombay High Court [TS-256-HC(BOM)-2025-GST] dated April 16, 2025
[19] Lear Automotive India Pvt Ltd. [TS-234-AAR(MAH)-2025-GST] dated April 10, 2025