KATALYST ADVISORS

Katalyst Kaleidoscope

February 2025: Tax and Regulatory Insights

SUMMARY OF CONTENTS

A. Income Tax Highlights 2

1. Madras HC: Profit from sale of shares treated as business income 2
2. Mumbai ITAT: Disallowance of interest paid, unsustainable on interest free loans, proven commercial expediency 2
3. Chennai ITAT: TDS liability on year-end provision accrues only for ascertained liability 3
4. Chennai ITAT: Deduction u/s 54F is allowed to assessee even when new residential property purchased in the name of wife 3

B. Corporate Law and SEBI Highlights 4

1. NCLAT: Approves amalgamation of Indiabulls Real Estate & Embassy Group accepted by "overwhelming shareholder majority" without demur 4
2. SEBI- Consultation Paper relating to secretarial compliance report, appointment of auditors and related party transactions 4
3. SEBI-Implementation of recommendations of the Expert Committee for facilitating ease of doing business for listed entities 6
4. SEBI- Circular on the Industry Standards on Minimum information to be provided for review of the audit committee and shareholders for approval of RPT 7

C. RBI Highlights 9

1. RBI- Foreign Currency Accounts opened by exporter 9
2. RBI- Key changes in Master Directions on Foreign Investment vis a vis downstream investments and other aspects 9

D. Goods and Service Tax Highlights 10

1. Gujarat AAAR: GST not payable on settlement fees paid for breach of production sharing contract 10
2. Bombay HC: If GSTN doesn't allow refund under the category of 'export of service', it can be allowed under the category of 'others' 10
3. Andhra Pradesh HC: Failure to file monthly returns, pay taxes amount to suppression of facts and penalty under section 74 is payable 11

Katalyst Kaleidoscope

February 2025: Tax and Regulatory Insights

A. Income Tax Highlights

1. Madras HC[1]: Profit from sale of shares treated as business income

In the present case, the assessee was incorporated to primarily provide consulting services. During the assessment year, the assessee did not generate any income from its primary business; instead, it borrowed funds from a partnership firm, whose partners included one of its directors. The partnership firm inturn obtained funds from three group companies of M/s. Shriram Transport Finance Corporation Limited; the funds were used by the assessee to purchase and sell shares of M/s. Shriram Transport Finance, resulting in significant short-term capital gains, which the AO classified as business income. The CIT(A) and ITAT reversed the decision of the AO, leading the Tax Department to appeal to the HC.

The HC examined whether the assessee bought shares with the commercial intent to make trading profits, noting potential unethical practices, possibility of collusion with promoters of the investee group and possible insider trading. The HC highlighted that investments are usually made from surplus funds, but here, the funds were specifically borrowed for share trading. In the absence of any other income, from the primary business activity, it was concluded that the amount was borrowed specifically for trading in shares. The HC observed that, even though the main object of the assessee was consultancy services, investment in shares out of borrowed capital was required to be treated as a business venture for trading in shares and thus, the said income should be considered as business income.

2. Mumbai ITAT[2]: Disallowance of interest paid, unsustainable on interest free loans, proven commercial expediency

In the present case, the assessee had borrowed interest bearing loan and had given interest free advances to various persons and the AO disallowed interest expenditure attributable to interest free advances. The AO was of the view that assessee should have charged interest on advances given, as it had borrowed loans at interest.

The matter went upto ITAT, which relied on the SC judgment in ***S A Builders Ltd***[3]. wherein it was held that if there was a commercial expediency in giving interest free advances, then it was not necessary that the said advance should carry interest. Further, these advances had been given during the course of carrying on business and therefore the ITAT held that the CIT(A) had rightly deleted the interest disallowance.

[1] First Choice Professional Services Private Limited [TS-979-HC-2024(MAD)], dated January 21, 2025
[2] T Bhimjyani Realty Private Ltd [TS-53-ITAT-2025(Mum)], dated January 25, 2025
[3] S.A. Builders Limited v. CIT (2007) 288 ITR 1 (SC)

3. Chennai ITAT[4]: TDS liability on year-end provision accrues only for ascertained liability

In the present case, the assessee, engaged in software development and maintenance, was subjected to a survey under Section 133A, during which it was alleged that tax had not been deducted at source on estimated year-end expenditures; the revenue dismissed the assessee's explanation and raised a demand for the non-deduction of tax at source on these expenses.

The matter reached the ITAT, which held that it was an undisputed fact that (in the relevant context) no expenditure was incurred by the assessee at year end and the provision, created in the book of accounts was solely based on estimation; ITAT further observed, that in the present case, the revenue treated the entire provision of expenditure as ascertained liability. No income accrued to the vendors at the time of creation of provision, thus, withholding tax was not applicable and the assessee cannot be deemed to be 'Assessee in default'. In the present case, the provision of Rs. 27.87 Cr was made and actual payment was made to an extent of Rs.24.76 Cr, accordingly, the liability to deduct TDS shall be on the amount of actual payment only. The ITAT rejected revenue's contention of short deduction of tax and held that since the excess provision.

4. Chennai ITAT[5]: Deduction u/s 54F is allowed to assessee even when new residential property purchased in the name of wife

The assessee sold three immovable properties for Rs 50.4 lakhs, depositing the proceeds in his and his wife's accounts. He subsequently purchased a residential property in his wife's name for Rs 44.28 lakhs and claimed the Section 54F exemption. The AO disallowed the deduction, as the property was in his wife's name, who was assessed to tax separately. The CIT(A) upheld the AO's decision, prompting the assessee to appeal to the ITAT.

The ITAT held that under Section 54F, the new residential property need not be purchased in the assessee's name or exclusively in his name. The assessee had purchased the property in his wife's name, but she was not a stranger to him, and the entire investment came from the sale proceeds, with no contribution from his wife. Referring to the High Court's decision in ***CIT vs V. Natarajan[6],*** the ITAT directed the AO to allow the deduction under Section 54F,

Katalyst comment:

In the present case, though the exemption u/s 54F was allowed in order to avoid unnecessary litigation, it is always advisable to purchase the property in the name of the person who receives the sale proceeds.

[4]Cognizant Technology Solutions India Private Limited [TS-71-ITAT-2025(CHNY)], dated February 08, 2025
[5]Vidjayane Durairaj -Vidjayane Velradjou. vs. Income Tax Officer [2024] 169 taxmann.com 625 (Chennai - Trib.)
[6] CIT vs V. Natarajan, (2006) 154 Taxman 399/287 ITR 271(Madras)

B. Corporate Law and SEBI Highlights

1. NCLAT[7]: Approves amalgamation of Indiabulls Real Estate & Embassy Group accepted by "overwhelming shareholder majority" without demur

In the present case, the companies filed a Scheme of Amalgamation, with the transferor companies submitting to NCLT Bengaluru and the transferee company to NCLT Chandigarh. While NCLT Bengaluru approved the scheme, NCLT Chandigarh rejected it due to Tax Department objections on valuation and swap ratio. The key issues were whether material information was suppressed, whether the valuation was justifiable and whether the Tribunal was justified in rejecting the scheme despite it being approved by an overwhelming majority of shareholders and creditors.

The NCLAT ruled that the NCLT erred in interfering with the Scheme, disregarding the commercial judgment of shareholders, creditors, and the Board. It upheld that the share valuation and Fair Equity Share Exchange Ratio were determined by experts using the Discounted Cash Flow method, and auditors confirmed compliance with Indian Accounting Standards. With nearly 100% approval from shareholders and creditors, and approval of the scheme from NCLT Bengaluru for the transferor companies, the overwhelming shareholder approval indicated fairness of the scheme. The NCLAT also noted that regulatory bodies had no objections and stated that in case the scheme was approved, revenue's interests should be protected. NCLAT reiterated that it is for the equity shareholders acting bonafide in the interest of their class as a whole to accept a particular scheme and if the exchange ratio, determined by a recognised CA firm who is an expert in valuation, is error-free and accepted without demur by majority of shareholders, the court should not intervene. Thus, the NCLAT gave a go ahead to the composite scheme of amalgamation.

Katalyst comment:

The decision of the NCLAT highlights the importance of shareholders' approval; it is the prerogative of the equity shareholders, acting in good faith and in the best interest of their entire class, to accept a particular scheme and once they approve a particular scheme, an authority like NCLT should not normally reject the scheme.

2. SEBI[8]- Consultation Paper relating to secretarial compliance report, appointment of auditors and related party transactions

The consultation paper focuses on enhancing the secretarial compliance report for listed entities, setting eligibility criteria for the appointment of statutory auditors, improving disclosures to the

[7] [LSI-107-NCLAT-2025-(NDEL)], dated February 06, 2025
[8] SEBI Consultation Paper dated February 07,2025

Audit Committee, Board, and shareholders and providing clarifications regarding the applicability of RPT provisions.

Secretarial compliance report of a listed entity- The LODR Regulations requires every listed entity to submit a secretarial compliance report to Stock Exchanges within 60 days from the end of each financial year; it is proposed to revise the existing format of Annual Secretarial Compliance Report (ASCR) with a view to obtain explicit confirmation from practising CS on compliance with specific provisions of securities laws. It is also proposed to mandate disclosure of ASCR in the Annual Report of listed entities and to mandate compliance with both accounting standards and secretarial standards.

Criteria for appointment of statutory auditor of a listed entity- The audit committee should consider whether the qualifications and years of experience of the signing partner of the firm appointed as statutory auditor are commensurate with the size and requirements of the listed entity.

Disclosure to the Audit Committee, Board and Shareholders at the time of appointment or reappointment of statutory and secretarial auditor of listed entity- It is proposed to amend the LODR Regulations to mandate disclosure of relevant information to the Audit Committee and / or Board of Directors, shareholders at the time of appointment or reappointment of statutory and secretarial auditors of the listed entity.

Approval of RPTs undertaken by subsidiaries of a listed entity- The proposed amendment in case of approval of RPTs by the audit committee of the listed entity is as follows

Type of Subsidiary	Approval Limit for RPT transaction
Subsidiaries that have a financial track record	Lower of- • 10% of Standalone turnover of the subsidiary • Monetary threshold of Rs. 1000 crore (subsidiaries of listed entities on Main Board) or Rs 50 crore (subsidiaries of listed entities on Main Board
Subsidiaries that do not have a financial track record	Lower of- • 10% of net worth of the subsidiary, as certified by a CA, not more than 3 months prior to the date of seeking approval • Monetary threshold of Rs. 1000 crore (subsidiaries of listed entities on Main Board) or Rs 50 crore (subsidiaries of listed entities on Main Board)

3. SEBI[9]-Implementation of recommendations of the Expert Committee for facilitating ease of doing business for listed entities

Disclosure of Employee Benefit Scheme related documents- Amended LODR requires listed entities to disclose Employee Benefit Scheme Documents, excluding commercial secrets and such other information that would affect competitive position; as such the documents uploaded on the website shall mandatorily have minimum information to be disclosed to shareholders as per SEBI (SBEB) Regulations, 2021. The rationale for redacting information from the documents and the justification as to how such redacted information would affect competitive position or reveal commercial secrets of the listed entity shall be placed before the board of directors for consideration and approval.

Single Filing System- The facility of single filing by listed entities has already been put in place by BSE and NSE beginning with the filing of statement on redressal of investor grievances and subsequently extended to corporate governance report, reconciliation of share capital audit report and disclosure of voting results.

Integrated Filing- SEBI has overhauled the new integrated filing system for Governance and Financial related periodic filings required under the LODR, which shall be applicable for the quarter ending 31/12/24 and thereafter. The mandatory disclosure as a part of Integrated Filing (Governance) shall be as follows:

- Acquisition of shares or voting rights by listed entities in an unlisted company, aggregating to 5% or any subsequent change in holding exceeding 2%
- Imposition of fine or penalty which are lower than the monetary thresholds
- Updates on ongoing tax litigations or dispute

The details of ratification of RPT are required to be disclosed along with half-yearly disclosures of RPT. Accordingly, the value of ratified RPT shall be disclosed in the specified format, as a part of Integrated Filing (Financial).

Integrated filing (Governance)	Filed within 30 days from the end of the quarter
Integrated filing (Financial)	Filed within 45 days from the end of the quarter and 60 days from the end of the last quarter and the financial year

[9] SEBI Circular SEBI/HO/CFD/CFD-PoD-2/CIR/P/2024/185

4. SEBI[10]- Circular on the Industry Standards on Minimum information to be provided for review of the audit committee and shareholders for approval of RPT

Section III-B of the SEBI Master Circular dated November 11, 2024, mandates listed entities to provide detailed information on RPTs for review and approval by the Audit Committee and shareholders, wherever required. In order to facilitate uniform approach and assist listed entities in complying with the aforementioned requirements, the Industry Standards Forum comprising of representatives from three industry associations, viz. ASSOCHAM, CII and FICCI, under the aegis of the Stock Exchanges, has formulated industry standards, in consultation with SEBI, for minimum information to be provided for review of the audit committee and shareholders for approval of RPTs.

The SEBI Master Circular stands modified to the extent that the listed entity shall provide the audit committee with the information as specified in the Industry Standards while placing any proposal for review and approval of an RPT. Further, the notice being sent to the shareholders, seeking approval for any RPT shall, in addition to the requirements under the Companies Act, 2013, shall include the information as part of the explanatory statement as specified in the Industry Standards.

Applicability of Standards [11]

- Material RPT as defined under LODR Regulations.
- Transactions with a related party, where the transactions to be entered into individually or taken together with previous transactions during a financial year, exceed lower of the following:
  - 2% of turnover of last audited consolidated financials of listed entity
  - 2% of net worth, as per the last audited consolidated financial statements of the listed entity
  - 5% of the average of absolute value of profit or loss after tax, as per the last three audited consolidated financial statements of the listed entity.

[10] SEBI/HO/CFD/CFD-PoD-2/P/CIR/2025/18, dated February 14, 2025
[11] NSE/CML/2025/05, dated February 15, 2025

Transaction Type	Threshold	Balance Sheet / P&L Items	Approvals Required	Disclosure requirement
Material RPT	As provided above	Both	Audit Committee & Shareholders	Comprehensive
Other RPT, but which is with promoter or promoter group or person/ entity in which promoter or promoter group has concern or interest	Exceed the threshold provided above Less than threshold as provided above	Balance sheet and P&L items Balance sheet items P&L items	Audit Committee Audit Committee Audit Committee	Comprehensive Comprehensive Limited
Residual RPT	Transactions with RPT taken individually or together with previous transactions > Rs one crore in a year Transactions with RPT, individually or with previous transactions < Rs one crore in a year	Both	Audit Committee	Limited Minimum

The standards in addition to the above also provides for minimum Information to be provided to the Audit Committee for review and approval of RPTs and also minimum Information to be provided to the shareholders for consideration of RPT.

Katalyst comment:

The RPT analysis website ***(rptanalysis.com)*** *is India's first platform for analyzing RPT across companies. It is powered by SES, InGovern and IIIAS jointly. As a broader point, whilst RPT is a sensitive issue and minority shareholders' interest should be protected, it is important to reduce the level of rigour considerably for RPT with 100% subsidiaries, with joint ventures or with other listed companies in the group, either because the governance issue either does not arise or there are commercial checks and balances.*

C. RBI Highlights

1. RBI[12]- Foreign Currency Accounts opened by exporter

The RBI has inserted a new sub - regulation for exporters (residents of India) under Regulation 5 of the original rules. It states that a resident exporter, may open, hold and maintain a Foreign Currency Account with a bank outside India, for realisation of full value of export and advance remittance received by the exporter towards export of goods or services.

Funds in this account may be utilised by the exporter for paying for its imports into India or repatriated into India within a period not exceeding the end of the next month from the date of receipt of the funds, after adjusting for forward commitments; provided that the realisation and repatriation requirements are met with.

2. RBI[13]- Key changes in Master Directions on Foreign Investment vis a vis downstream investments and other aspects

The RBI has made certain key changes in the said Master Directions, in the context of downstream investments, tenor of convertible debentures and preference shares, issuance of ESOPs, sweat equity shares by Indian Company to employees' resident outside India; these are as under:

- Any changes to the terms or duration of convertible debentures and preference shares must adhere to the Companies Act, 2013; the conversion price or formula will be determined upfront at the time of issuance, and upon conversion, the price must not be below the fair value calculated at issuance.

- An Indian company may issue equity instruments under Section 62(1)(a)(iii) of the Companies Act to a person resident outside India (other than an OCB); this issuance will be subject to the conditions specified in the NDI Rules for investments by persons residing outside India.

- An Indian company may issue ESOPs, "sweat equity shares" and "Share-Based Employee Benefits" to its employees or directors, or to employees or directors of its holding company, joint venture, or wholly owned overseas subsidiary, who are residents outside India.

- In case of merger or demerger of an Indian Company, the transferee company or the new company, as the case may be, may issue equity instruments to the existing shareholders of the transferor company resident outside India.

[12] Notification No. FEMA 10(R)(5)/2025-RB, dated January 14, 2025
[13] Amendments dated January 20,2025 to FED Master Direction No.11/2017-18

- The transfer of equity instruments of an Indian company between a person resident in India and a person resident outside India may be by way of swap of equity instruments and swap of equity capital of a foreign company; also, an Indian company may issue equity instruments to a person resident outside India against swap of equity instruments and swap of equity capital of a foreign company.

- The arrangements which are available for direct investment under the Rules such as investment by way of swap of equity instruments or equity capital and deferred payment arrangements or mechanism shall also be available for the purpose of downstream investment.

D. Goods and Service Tax Highlights

1. Gujarat AAAR[14]: GST not payable on settlement fees paid for breach of production sharing contract

The Gujarat AAAR has set aside the ruling by AAR and held that IGST under reverse charge mechanism is not payable on settlement fees (liquidated damages) paid to Australian Oil & Gas regulatory authority for breach of production sharing contract ('PSC'). The AAAR relied on CBIC Circular No. 178/10/2022-GST dated August 03, 2022 to state that the liquidated damages are merely a flow of money and such payments do not constitute consideration for a supply and hence, are not taxable.

Katalyst comment:

A welcome ruling by the AAAR of Gujarat; the payment of settlement fees is a consequent of breach of PSC and 'not' in pursuance of deed of settlement and therefore, no GST is payable on such payment.

2. Bombay HC[15]: If GSTN doesn't allow refund under the category of 'export of service', it can be allowed under the category of 'others'

In a writ petition challenging the GSTN portal design to the extent it does not permit the 2nd refund claim for the same period and under the same category, the Bombay HC has held that if the GSTN portal does not permit the filing of refund claims under the category "Export of Services", then the taxpayer is permitted to file the refund claims under the category "Others" on the portal.

[14] In the matter of GSPC (JPDA) Ltd. [TS-57-AAAR(GUJ)-2025-GST] dated February 11, 2025
[15] Vodafone Idea Limited vs UOI & ors [TS-50-HC(BOM)-2025-GST] dated February 7, 2025

Katalyst comment:

A welcome decision by the Bombay HC. Considering the limitations of GSTN portal, the right of assessee to get refund should not be denied by the GST authorities. The HC has given a great relief by allowing the submission of refund claims for the second time and for the same period under the category of 'others.'

3. Andhra Pradesh HC[16]: Failure to file monthly returns, pay taxes amount to suppression of facts and penalty under section 74 is payable

The Andhra Pradesh HC has dismissed the writ challenging the appellate order upholding penalty and held that the failure to file monthly returns, pay taxes amount to suppression of facts and penalty equal to tax is payable as per section 74 of the CGST Act. The HC did not accept the contentions of the assessee that (i) the failure to pay tax was due to lack of receipts from the client and (ii) annual returns were filed. The HC clarified that section 74 also provides for reduction of penalty and it is in the nature of a permanent amnesty/settlement/compounding scheme where assessee has been given an opportunity to accept wrong doing and reduce the penalty.

Katalyst comment:

The provisions of section 74 are applicable in case where there is a suspicion of suppression of facts, fraud, misstatement etc., with an intent to evade tax. If annual return is filed by the taxpayer, then it should not be claimed that facts were suppressed with an intent to evade duty. In the instant case, the taxpayer may get the relief by the Hon'ble Supreme court.

[16] Sriba Nirman Company vs. The Commissioner (Appeals), Guntur [TS-35-HC(AP)-2025-GST] dated January 30, 2025