

Katalyst Kaleidoscope

June 2025: Tax and Regulatory Insights

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A. Income Tax Highlights

1. ITAT Delhi: 'Look Through' approach cannot be adopted to merely recharacterize the nature of transaction of "sale of shares" to "sale of assets"¹

The assessee(s), US residents, sold shares of UEM India Private Limited to Toshiba Corporation (Japan) in AY 2016-17, pursuant to a 2013 Shareholders' Agreement (SHA), which included a "put option" enabling the assessee to exit the investment based on a predefined pricing formula and declared Long Term Capital Gains which was initially accepted by the Department; however, reassessment was initiated on the basis that the sale represented, in substance, depreciable assets, not shares, and sought to tax the gains as short-term under Section 50 and also sought to invoke section 50CA, substitute the sale price with the company's projected capitalized value.

On appeal, it was observed that the assessee had no legal or beneficial interest in the assets of the Company, and emphasized the sanctity of the SHA, which governed pricing via a pre-agreed formula and had been validly exercised via put option. The invocation of Section 50 was held untenable, as shares are not depreciable and no depreciation had ever been claimed and the question of invoking Section 50CA did not arise as since the transaction was executed in FY 2015-16 and the provision was introduced w.e.f. AY 2018-19, without any retrospective application; consequently, 'Look Through' approach of the Assessing Officer treating the transaction as short term capital gain was rejected.

Katalyst comment

This ruling squarely reiterates the legal principle laid down in the Supreme Court verdict in the case of "Bacha Guzdar", that shares and underlying assets are distinct, and that a shareholder has got no interest in the property of the Company though he has a right to participate in the profits. It is strange and unfortunate that such issues arise at all, from an average tax administration.

2. ITAT Mumbai: Transfer of tenancy rights taxable under capital gains, not under 'other sources'²

The assessee had received a residential flat under a Permanent Alternate Accommodation (PAA) agreement pursuant to redevelopment of a tenanted property, wherein tenancy rights were jointly held by the assessee and his daughter; the Assessing Officer treated the transaction as a case of property received without consideration and brought the stamp duty value of the flat to tax under Section 56(2)(x)(b)(B), classifying it as income from other sources.

On appeal, the ITAT held that tenancy rights are 'capital assets' and that, even if the transaction were to be assessed in the hands of the assessee, the capital gain would be computed by adopting the stamp duty value as the full value of consideration and treating the cost of acquisition of

¹Sangita Kshetry [ITA No.1876/Del/2023] dated February 20, 2025, pronounced May 19, 2025

²Vasant Nagorao Barabde [TS-642-ITAT-2025(Mum)] dated May 27, 2025

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tenancy rights as NIL, and since the entire gain had been reinvested in the newly allotted flat, the exemption under Section 54F would be available in full; further, where income is properly classifiable under a specific head, the fact that it may indirectly fall under another head does not justify its taxation under the latter, and accordingly held that Section 56 had no application. The assessee's appeal was thus allowed.

3. ITAT Mumbai: No capital gain on conversion of LLP at book value³

ISC Specialty Chemicals Pvt. Ltd. was converted into a Limited Liability Partnership (LLP); at the time of filing its return, a nil income return was submitted without claiming exemption under Section 47(xiiib) of the Income-tax Act. During the assessment proceedings, the Assessing Officer observed that the value of total assets exceeded ₹5 crore, thus violating one of the conditions prescribed under Section 47(xiiib) for tax neutrality. Consequently, the AO held the conversion to be a taxable "transfer" under Section 45 and made an addition of ₹14.58 crore towards capital gains.

The assessee contented that neither it nor its predecessor company had claimed the benefit of Section 47(xiiib), and therefore the provisions of Section 47A(4), dealing with withdrawal of exemption, were inapplicable, and that the entire undertaking had vested in the LLP at book value, with no independent consideration or real gain arising from the conversion; therefore, even if the conversion was considered a "transfer" under Section 2(47), the computation mechanism under Section 48 failed, as there was no determinable full value of consideration.

The Tribunal upheld that the conversion indeed constituted a "transfer" under Section 2(47), and that exemption under Section 47(xiiib) was not available due to breach of the ₹5 crore asset condition; however, since the conversion took place at book value, the full value of consideration and cost of acquisition were identical, the computation of capital gains would have been unworkable under Section 48. Accordingly, the addition of ₹14.58 crore was deleted and the appeal was partly allowed in favour of the assessee.

Katalyst comment

The ruling is confined to the taxability in the hands of the LLP and does not deal with the possible implications in the hands of the shareholders (now partners). A potential tax issue could arise in the context of shares being "converted" as interest in LLP.

³ ISC Specialty Chemicals LLP [I.T.A No. 457/Mum/2025] dated May 28, 2025

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4. ITAT Chennai: Reduction in partner's share on reconstitution not a capital asset⁴

In AY 2017–18, the assessee's profit-sharing ratio in an LLP was reduced from 12% to 5.88% pursuant to the admission of a new partner, for which he received a consideration of ₹2.38 crores; the Revenue treated the receipt as consideration for goodwill and sought to tax it as short-term capital gains. On appeal, the ITAT held that the payment was merely in respect of a realignment of profit-sharing ratios among the partners and did not constitute a "transfer" of a capital asset under Section 2(47), and that the provisions of Section 9B and amended Section 45(4), introduced by the Finance Act, 2021 to specifically tax such reconstitution-related receipts, were prospective in nature and not applicable to AY 2017–18. Accordingly, the ITAT allowed the Assessee's appeal and quashed the STCG addition.

5. Delhi High Court: Cloud computing services not taxable as royalty under the India-US DTAA⁵

The assessee, a US tax resident engaged in rendering cloud computing services, had received remittances from M/s Snapdeal Private Limited towards 'hosting and bandwidth charges', on which no tax was withheld; the Assessing Officer treated the receipts as taxable in India, characterizing them as royalties, fees for technical services (FTS), and fees for included services (FIS) under Article 12 of the India-US DTAA, on the grounds that the assessee provided technical support and made technology available to its customers. While the ITAT allowed the assessee's appeal, the Revenue challenged the decision before the High Court.

The Delhi High Court upheld the ITAT's ruling and held that the assessee merely granted customers a non-exclusive, non-transferable license to access standardised cloud services, without conferring any right to use or commercially exploit its infrastructure, software, or intellectual property; the services were delivered using AWS's proprietary systems and did not involve any "make available" of technical knowledge, skill, or know-how. As the assessee had no permanent establishment (PE) in India, attribution of business income was also ruled out. Accordingly, the Revenue's appeal was dismissed.

B. Corporate Law Highlights

1. NCLT Mumbai: Directs shareholding buyout to resolve oppression dispute between three family groups⁶

FCG Holdings Pvt. Ltd. ("HoldCo") and its subsidiary FCG Flameproof Control Gears Pvt. Ltd. ("SubCo" or the "Company") were jointly promoted by three branches of the Patel family, the M.G. Patel Group ("Petitioner"), the H.G. Patel Group, and the N.G. Patel Group, each holding a one-third stake in the group; over the period; additionally, a separate entity, FCG Hi-Tech Pvt.

⁴ [TS-798-ITAT-2025], dated June 20, 2025

⁵ Amazon Web Services, Inc [TS-661-HC-2025(DEL)]

⁶ [LSI-727-NCLT-2025-(MUM)] dated June 06, 2025

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Ltd., which owned the key Vapi industrial premises and was critical to operations, was under the control of the M.G. Patel Group. Over the time, disputes escalated between the groups, and the Petitioner approached NCLT, alleging multiple acts of oppression and mismanagement, followed by a cross-petition with counter-allegations from the other group, highlighted as below:

Sr. No.	M.G Group's contentions against H.G.	H.G Group's contentions against M.G.
1	Unjustified removal of the Petitioner from the board of HoldCo, through shorter notice to call board meeting, taking undue advantage of non-availability of the Petitioner	Unjustified appointment of Petitioner's nominee on the Board
2	Dissent of HG Patel group to the decisions of the Petitioner	Misappropriation of stock, raw materials and machinery of the Company
3	Attempts to avail confidential data from the Company such as information related to employees	Caused mass resignation by more than 200 employees
4	Shifting of responsibility of payment of statutory dues onto the Petitioner	Siphoning off of the Company's funds
5	Suspension of BIS certification of the Company	Attempts to manufacture products in FCG Hi-Tech, with the product certificates and licenses.

The ITAT observed that the group companies operated as a family-run quasi-partnership and were now caught in an irreconcilable deadlock, and that one group must exit the Holding Company to ensure business continuity; accordingly, the NCLT directed the M.G. Patel Group to buy out the H.G. Patel Group's one-third shareholding in the Holding Company. The M.G. Patel Group was also granted the liberty to engage with the N.G. Patel Group for a joint acquisition to maintain balance in the shareholding structure.

2. SC: Affirms NCLAT's order prioritizing Company's sale as "going concern" over minority shareholders' scheme of arrangement⁷

In an earlier case concerning Kamachi Industries Ltd., the company was admitted into liquidation under the Insolvency and Bankruptcy Code, 2016, wherein, during the liquidation proceedings, Narottamka Trade & Vyapaar Pvt. Ltd., a minority shareholder, proposed a Scheme of Arrangement under Section 230 of the Companies Act, 2013 as an alternative to the proposed sale; however, the Liquidator proceeded with the e-auction process and culminated the sale of the company as a going concern to the highest bidder. The NCLT approved the sale, following which the appellant challenged the decision before the NCLAT.

⁷ [LSI-654-SC-2025-(NDEL)] dated May 28, 2025

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The NCLAT upheld the NCLT's order, holding that a scheme under Section 230 cannot override the liquidation framework laid out under the IBC, which is a later and special enactment; the Tribunal observed that while Section 230 may provide an alternate route for revival, it cannot displace the IBC's structured mechanism, particularly the sale of the corporate debtor as a going concern, which better aligns with the Code's overarching goal of value maximization and business continuity. The NCLAT found that the Liquidator was right in prioritizing the e-auction, and any procedural irregularities did not warrant interference in the absence of demonstrated prejudice or fraud. Upon further appeal, the Supreme Court affirmed the NCLAT's decision and dismissed the current appeal.

3. NCLAT: Quashes NCLT order dismissing demerger of closely held family companies despite unequivocal shareholder consent

The appellant group operated two manufacturing facilities, one serving domestic markets and the other catering to exports; a Scheme was proposed to demerge the domestic manufacturing facility at Khatraj (the *Demerged Undertaking*) from Lincon Polymers Pvt. Ltd. into Lincon Polyplast Pvt. Ltd. (the *Resulting Company*).

However, the National Company Law Tribunal (NCLT), by its order dated May 2, 2025, dismissed the application citing the following grounds:

- The proposed swap ratio of 1:1 was flawed, as the valuation report incorrectly assumed that the shareholders and their respective percentages were identical in both companies. Although the joint family shareholding was the same, the individual shareholding of two members differed between the two entities;
- The assets and liabilities of the Demerged Undertaking were not clearly identified
- Mismatch between increase in share capital and actual shares proposed to be issued

On appeal, observed that, the NCLAT observed that both companies were closely held family entities with nearly identical shareholders, all of whom had filed affidavits consenting to the Scheme; accordingly, there was no question of any prejudice being caused to shareholders with respect to the valuation or swap ratio. Further, the Tribunal also noted that the list of assets and liabilities of the Demerged Undertaking had been furnished as part of the appeal, and as for the issue of share capital, it was clarified that the mismatch arose only due to an increase in the authorised share capital of the Resulting Company, and not in the actual number of shares proposed to be issued under the Scheme. In view of the above, the NCLAT set aside the NCLT order and allowed the appeal.

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C. SEBI and Other Highlights

1. SEBI: Levies penalty on MCX for non-disclosure of software payments to 63 Moons⁸

SEBI has imposed a penalty of ₹25 lakh on Multi Commodity Exchange of India Limited (MCX) for its failure to make timely and adequate disclosures regarding significant payments made to 63 Moons Technologies Limited for software support services; it was observed that MCX paid ₹222 crore per quarter for three quarters between October 2022 and June 2023, which was substantially higher than its annual profit of ₹118 crore for the financial year 2021 to 2022. Despite the materiality of these payments, the disclosure was made only in January 2023, and that too as a note to the unaudited financial results for the quarter ended December 2022, published on the BSE website.

SEBI observed that the sharp increase in quarterly payments, compared to earlier periods, could have a significant bearing on the profitability of MCX and therefore constituted material information under the LODR Regulations, and should have been disclosed promptly and transparently to the public; consequently, the said penalty was imposed.

2. SEBI: Clarifies contra-trade restrictions for promoter to relative gifts under PIT norms⁹

SEBI, through an Informal Guidance issued to Century Plyboards (India) Ltd., has clarified the applicability of contra trade restrictions under the SEBI (Prohibition of Insider Trading) Regulations in the context of a proposed off-market gift of 1,00,000 shares by Mr. Sajjan Bhajanka, promoter and designated person of the Company to his daughter, followed by subsequent open market sales, and affirmed that gifting constitutes “dealing in shares” and falls within the scope of “trading” under the Regulations, and since the proposed gift is being made within six months of Mr. Sajjan Bhajanka’s prior acquisition of 50,000 shares, it attracts contra trade restrictions under Clause 10 of Schedule B of the PIT Regulations.

Further, in response to a specific query raised by the Company regarding whether individuals forming part of the promoter group, but not privy to any unpublished price sensitive information (UPSI), would fall within the ambit of “designated persons”, SEBI clarified that while all promoters of listed companies are considered designated persons, members of the promoter group are not necessarily so unless they possess access to UPSI.

3. SEBI: Circular on Key Management Personnel (KMP) of Market Infrastructure Institutions¹⁰

To strengthen the governance framework of Stock Exchanges, Clearing Corporations and Depositories (collectively referred as Market Infrastructure Institutions (MIIs)), SEBI has issued

⁸ Multi Commodity Exchange of India Ltd [LSI-639-SEBI-2025-(MUM)] dated May 26, 2025

⁹ SEBI Informal Guidance dated February 07, 2025 [LSI-675-SEBI-2025-(MUM)]

¹⁰ SEBI Circular [SEBI/HO/MRD/MRD-PoD-3/P/CIR/2025/75] dated May 26, 2025

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circular outlining the process for appointment, reappointment, termination or acceptance of resignation of Key Management Personnel (KMP) of MIIIs as follows:

Sr. No.	Event	Guidelines
1	Appointment	➤ Independent agency to recommend candidates ➤ NRC to evaluate it further ➤ Governing Board shall take the final decision
2	Reappointment/ termination/ resignation	➤ NRC to evaluate the case ➤ Governing Board shall take the final decision ➤ Reasonable opportunity of being heard before termination
3	Cooling off period	➤ Earlier mandatory 1-year cooling-off period has been now delegated to Governing Board

4. Supreme Court: Upholds validity of restrictive covenant in PSU employment context¹¹

The present case emanates from an appeal by Vijaya Bank against the order of the Karnataka High Court (“HC”) whereby an employee was appointed in the bank and later applied for another post which had a lock-in period of 3 years and an indemnity bond of INR 2 lakhs, requiring the employee to pay ₹2 lakh in case of resignation before completing the minimum tenure; the employee resigned and challenged the lock-in period and bond before the HC, arguing that it violated his right to livelihood and constituted a restraint on trade. The HC ruled in favour of the employee, and the matter was taken to the Supreme Court.

The Supreme Court held that restrictive covenants, when applied during the subsistence of employment, are permissible to ensure exclusivity of service, and observed that the indemnity bond did not restrain future employment but merely sought to secure minimum tenure and provide for liquidated damages in case of early exit; importantly, the SC recognised the broader context of the Appellant Bank being a PSU where, in a competitive and deregulated environment, PSUs are compelled to implement policies that help retain efficient manpower and reduce attrition. Recruitment in PSUs involves a detailed and transparent process, and untimely resignation leads to administrative and financial inefficiencies.

Katalyst comment

While the applicability of ‘restrictive covenants’ have been upheld, the same has been done in view of ‘public policy’; Private Companies should view this judgment with caution as the courts may view such aspects differently in case there are no aspects of ‘public policy’ to review. i.e. the parties and dispute are ‘private’ in nature.

¹¹ Vijaya Bank v. Prashant B Narnaware, dated May 14, 2025

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D. Goods and Service Tax Highlights

1. Gujarat HC¹²: Omission of restrictive IGST refund Rule for exporters (Rule 96(10) of CGST Rules) applies to all pending proceedings prospectively

Rule 96(10) of the Central Goods and Services Tax Rules, 2017, restricted exporters from claiming a refund of IGST on exports where exemptions were availed on procurement of inputs under schemes such as Advance Authorization, EPCG, or EOU benefits; over time, the rule saw several amendments before being finally omitted via Notification No. 20/2024-Central Tax dated October 8, 2024, offering significant relief to exporters by removing these refund restrictions.

In this regard, the Gujarat HC was faced with the key question of whether the omission of the said Rule would operate prospectively or retrospectively, particularly in relation to ongoing litigation and proceedings. The HC held that:

- **Substantive Impact:** The omission of Rule 96(10) affects a substantive right—namely, the eligibility to claim IGST refunds; therefore, it cannot be considered curative or merely procedural in nature, and hence, cannot apply retrospectively
- **Prospective Legislative Intent:** The GST Council had explicitly recommended that the omission be given only prospective effect, aligning with the legislative intent behind Notification No. 20/2024
- **Effect on Pending Proceedings:** The Court clarified that the omission effectively amounts to a repeal of the rule without any saving clause; consequently, all proceedings, whether initiated or pending at the time of repeal, would be nullified, unless they had already been finally adjudicated and had resulted in a vested right.

Katalyst comment

A welcome judgement by the Gujarat HC, which should be applied by the taxpayers in cases where order denying refund or for recovery of refund has been passed before 8 October 2024, but appeal is pending before any appellate forum or High Court.

2. Bombay HC¹³: Allows refund for export to sister concern located outside India

The Bombay High Court has allowed refund of GST in respect of engineering and design services provided by the Assessee to its foreign sister concern, holding the transaction to qualify as an “export of service” under Section 2(6) of the IGST Act, 2017, which was earlier rejected on the

¹² Addwrap Packaging Pvt. Ltd. & Anr. vs UOI & ors [TS-525-HC(GUJ)-2025-GST] dated June 13, 2025

¹³ Sundyne Pumps and Compressors India Pvt Ltd. v. The Union of India [TS-530-HC(BOM)-2025-GST] dated June 17, 2025

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ground that both the Assessee and the foreign recipient were not “distinct persons”, and thus, the transaction failed to meet condition (v) of the export definition.

The Revenue argued that since both entities were part of the same corporate group, the service did not qualify as an export; on appeal, the High Court rejected this contention, allowed the refund and held as follows:

- A person is regarded as “distinct” if it has establishments in India and abroad; the definition does not require the entities to be unrelated or independent
- The Assessee was not acting as an agent of the foreign recipient, nor was there any indication of control being exercised by the sister concern.
- Relying on CBIC Circular No. 161/2021-GST and the decision in *Xilinx India Technology Services*, the Court clarified that a corporate group relationship does not preclude a transaction from qualifying as an export of services.

Katalyst comment

The refund of unutilised ITC for services provided to sister concern is normally rejected by the Revenue based on the principle of either ‘agency’ or ‘distinct person.’ The taxpayer should draft the service agreement keeping in mind the various criteria of definition of ‘export of services’ to avoid legal disputes.

3. Maharashtra AAR:¹⁴ Recovery of penalties, liquidated damages, forfeiture of earnest money deposits, unclaimed balances etc., by Maharashtra State Electricity Transmission Company Ltd (‘MSETCL’) do not amount to ‘supply

Maharashtra AAR has held that recoveries of both penalties and liquidated damages by MSETCL do not amount to consideration as per circular no. 178/10/2022 dated August 3, 2022 and hence, no GST is payable. Further, with respect to forfeiture of earnest money deposits and unclaimed balances, the AAR has clarified that such forfeiture is a mere accounting entry and not liable to GST based on circular no. 178 mentioned above.

Katalyst comment

A welcome ruling by the Maharashtra AAR; the CBIC has vide circular no. 178 of 2022 has already clarified taxability of recovery of liquidated damages, penalties, forfeiture of money deposits etc.

¹⁴ In the matter of Maharashtra State Electricity Transmission Company Ltd. [TS-517-AAR(MAH)-2025-GST] dated June 12, 2025