LATEST CASE LAWS

- **MADRAS HC:** G Square Layout Private Limited & Ors. v. DCIT (Crl. O.P. No. 22880/2025)
- **GUJARAT HC:** PCIT v. Paschim Gujarat Vij Company Ltd. (R/Tax Appeal No. 418/2024)
- **KERALA HC:** Geofin Comtrade Limited v. Asst. CIT [ITA NO.51/2024]

UPDATES

- **CBDT Notification No. 155/2025 dt. 27 October 2025**; CBDT Grants Centralized Processing Centre Power to Rectify AO Orders for Accounting Errors.
- **CBDT Notification No. No.157/2025 dt. 6th November, 2025**; CBDT concerns the determination of Arm's Length Price (ALP) for A.Y 2025-26.

EDITOR'S COLUMN

- **Supreme Court of India:** Pride Foramer S.A. v. CIT. [Civil Appeal Nos. 4395–4397 of 2010] - This judgment firmly settles the law that a non-resident company is not required to maintain a permanent establishment or an active contract in India to be treated as carrying on business for the purposes of Sections 37 and 32(2) of the Income-tax Act, 1961.
- .

TAX BITES

- **ITAT, PUNE:** M/s Bekaret Industries Private Limited vs. DCIT [ITA No.1003/PUN/2017]
- **ITAT DELHI:** Neha Gupta vs. ITO [I.T.A No. 2412/Del/2018]

ALA Legal
ADVOCATES & SOLICITORS

DIRECT TAX UPDATES

NOVEMBER, 2025

An E - Newsletter

| puneet@alalegal.in | advisory@alalegal.in | delhi@alalegal.in |

ALA Legal
ADVOCATES & SOLICITORS

LATEST CASE LAWS

MADRAS HC: G Square Layout Private Limited & Ors. v. DCIT (Crl.O.P. No. 22880 of 2025)

[Prosecution under Section 276C(2) cannot be sustained in absence of wilful intent to evade tax]

Background: In this case, the Assessee filed its return declaring an income of ₹27.31 crores and a self assessment tax liability of ₹8.72 crores, which remained unpaid at the time of filing. The Revenue alleged wilful default and initiated prosecution under Section 276C(2) despite the Assessee's explanation that funds were locked in non-liquifiable assets. Before the criminal complaint was filed, the Assessee remitted the entire outstanding amount following issuance of a show-cause notice. The Revenue nonetheless proceeded with prosecution, arguing that subsequent payment did not absolve earlier non-compliance.

Decision: The Madras High Court has held that mere delay in payment of self-assessment tax does not constitute a "wilful attempt to evade tax" under Section 276C(2) of the IT Act unless accompanied by suppression of income, false entries, or deliberate evasion. The Court observed that there was no allegation of concealment or false statement by the Assessee. Since the delayed payment was subsequently made and no wilful intent was proven, the complaint amounted to an abuse of process. Accordingly, the Court quashed the prosecution under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

GUJARAT HC: PCIT v. Paschim Gujarat Vij Company Ltd. (R/Tax Appeal No. 418 of 2024)

[Interest earned from employee loans and advances constitutes business income under Section 28(i) and not "income from other sources"]

Background: In this case, the Assessee, engaged in the business of power distribution, declared nil income for Assessment Year 2014–15 after setting off losses and unabsorbed depreciation. The AO classified interest of Rs. 2.45 crores from staff loans, deposits, and other advances, along with miscellaneous receipts of Rs. 25.02 crores, as income from other sources. The Commissioner (Appeals) partly upheld this view, holding certain miscellaneous receipts as business income. On further appeal, ITAT relied on the Orissa High Court's decision in Odisha Power Generation Corporation Ltd. and the Gujarat High Court's ruling in Gujarat Urja Vikas Nigam Ltd. v. DCIT to hold that interest from staff loans is inherently linked to the Assessee's business operations.

Decision: The Gujarat High Court has held that interest income earned by company from staff loans and advances should be treated as business income under Section 28(i) of the IT Act rather than as "income from other sources" under Section 56. The Court observed that such income is incidental and directly connected to the Assessee's core business, thereby falling within the ambit of business income. Finding no substantial question of law, the Court dismissed the Revenue's appeal, upholding that interest from staff loans and related receipts are taxable under the head "Profits and gains of business or profession.

KERALA HC: Geofin Comtrade Limited v. Asst. CIT [ITA NO.51 OF 2024]

[S.36(1)(vii) Income Tax Act: Closing Individual Debtor Accounts Not Mandatory For Bad Debt Deduction

Background: The issue concerned the assessee's claim for deduction under Section 36(1)(vii) of the Income Tax Act, 1961 in respect of bad debts. The Assessing Officer disallowed the claim on the ground that individual debtor accounts were not written off. The CIT(A), after examining the balance sheet, allowed the deduction. However, the Tribunal reversed the order, holding that individual debtor accounts must be formally closed.

Decision: The Kerala High Court held that closure of individual debtor accounts is not mandatory for claiming deduction under Section 36(1)(vii). Relying on **Vijaya Bank v. CIT (SC)**, the Court held that writing off the amount in the profit and loss account and reducing the corresponding amount from receivables in the balance sheet constitutes an actual write-off. The Tribunal's order was set aside and the matter remitted for fresh consideration.

UPDATES

Key Highlights of the 2025 Notification/Circular:

CBDT Notification No. 155/2025 dated 27 October 2025 –

Objective: streamlined rectification process, improved efficiency, and better coordination between CPC and field formations.

(Powers of CPC for Rectification of AO Orders)

- Empowers Commissioner, CPC Bengaluru to rectify mistakes apparent on record under Section 154.
- Covers rectification of:
  - tax computation errors,
  - refund determination,
  - pre-paid tax credits,
  - interest calculation under Section 244A.
- Authorizes issuance of demand notices under Section 156 for rectified cases.
- Applicable to cases where assessment orders are passed through the AO–CPC interface.

CBDT Notification No. 157/2025 dated 6 November 2025

(Tolerance Band for Arm's Length Price – AY 2025-26)

- Issued under Section 92C(2) read with Rule 10CA.
- Prescribes permissible variation between transaction price and ALP:
  - 1% for wholesale trading transactions,
  - 3% for all other international or specified domestic transactions.
- If variation is within the specified limit, the actual transaction price is deemed to be ALP.
- Applicable for Assessment Year 2025-26.
- Defines "wholesale trading" as transactions where:
  - purchase cost of finished goods is ≥ 80% of total trading cost, and
  - average monthly closing inventory is ≤ 10% of related sales.

ALA Legal
ADVOCATES & SOLICITORS

EDITOR'S COLUMN

Supreme Court: Pride Foramer S.A. v. CIT & Anr. [Civil Appeal Nos. 4395–4397 of 2010]
(Intervening period between contracts does not amount to cessation of business)

Background: The assessee, a non-resident French company engaged in offshore oil drilling, completed a drilling contract with ONGC in 1993 and secured a fresh contract only in October 1998. During the intervening period, the assessee remained actively engaged in business-related activities, including continuous correspondence with ONGC, submission of a drilling bid in 1996, incurring administrative and consultancy expenses, and pursuing tax refunds. The Assessing Officer and the Commissioner (Appeals) disallowed deduction of business expenditure under Section 37 and carry forward of unabsorbed depreciation under Section 32(2) on the ground that the assessee was not carrying on business in India. The ITAT, however, treated the intervening period as a temporary lull in business, allowed set-off under Section 71, and permitted carry forward of depreciation..

Department's Contentions:

Before the High Court, the Department contended that the assessee had ceased business in India after 1993 due to absence of (i) a subsisting contract, (ii) operational activity, and (iii) a permanent establishment in India.
It was argued that correspondence from foreign offices could not constitute business activity in India, and reliance was placed on an affidavit filed by the assessee stating that it had no permanent establishment in India.

Decision of the High Court:

While acknowledging that a mere lull in business does not necessarily imply cessation, the High Court reversed the ITAT's findings, holding that in the absence of a subsisting contract and permanent establishment in India, the assessee could not be regarded as carrying on business and was therefore not entitled to the claimed deductions and set-offs.

Decision of the Supreme Court:

The Supreme Court set aside the High Court's judgment and restored the ITAT's orders. It held that:
- Existence of a permanent establishment or an active contract is not a sine qua non for carrying on business under the Income-tax Act.
- Business encompasses all organized, continuous, and purposeful activities, including efforts to secure contracts, business correspondence, and preparatory or incidental expenditure.
- A temporary interregnum between contracts constitutes a "lull in business", not cessation.
- Absence of a permanent establishment is irrelevant for determining whether a non-resident is carrying on business under domestic tax law, except in the context of DTAA benefits.

Accordingly, the assessee was held entitled to deduction of business expenditure under Section 37 and carry forward of unabsorbed depreciation under Section 32(2).

EDITOR'S COMMENTS

- This judgment firmly settles the law that a non-resident company is not required to maintain a permanent establishment or an active contract in India to be treated as carrying on business for the purposes of Sections 37 and 32(2) of the Income-tax Act, 1961.
- The Supreme Court unequivocally rejects a physical-presence test, holding that in a globalised economy, limiting "carrying on business in India" to entities with a local office or establishment is legally untenable.

TAX BITES

ITAT, PUNE: M/s Bekaret Industries Private Limited vs. DCIT [ITA No.1003/PUN/2017]
[Payment for IT Infrastructure Not Taxable as Royalty Under Indo-Belgium DTAA]

The Income Tax Appellate Tribunal held that payments made by the assessee to its Belgian group entity for use of shared IT infrastructure facilities are not taxable as royalty under the India–Belgium DTAA. The assessee, engaged in manufacturing steel tyre cord and allied products, had availed centralized IT infrastructure support from its Belgian associate, for which cost allocations were made.

The Assessing Officer treated the payments as royalty/fees for technical services under Section 9(1)(vi) and Article 12(3)(a) of the DTAA and disallowed the expenditure under Section 40(a)(i) for non-deduction of tax at source. While the Judicial Member held that the DTAA does not cover equipment royalty, the Accountant Member opined that the IT infrastructure constituted a "plant" and hence royalty.
Resolving the difference, the Third Member held that the word "plant" appearing in Article 12 was a typographical error and the correct term is "plan", as clarified by Gazette Notification No. S.O. 54(E) dated 19 January 2001. The notification expressly excludes payments for the use of industrial, commercial or scientific equipment from the definition of royalty under the India–Belgium DTAA.

Accordingly, the Tribunal held that payments for use of IT infrastructure facilities do not constitute royalty, no tax was required to be withheld, and the disallowance under Section 40(a)(i) was unsustainable.

ITAT DELHI: Neha Gupta vs. ITO [I.T.A No. 2412/Del/2018]

[Section 50C Of Income Tax Act Not Applicable On Transfer Of Lease Hold Rights: ITAT]

The Income Tax Appellate Tribunal held that Section 50C of the Income-tax Act, 1961 does not apply to transfer of leasehold rights. During the relevant assessment year, the assessee transferred an industrial unit at Narela comprising leasehold rights. Although the assessee objected to the stamp value and sought a fresh reference to the DVO, the Assessing Officer rejected the request without reasons and proceeded to invoke Section 50C.
The Tribunal framed the core issue as whether Section 50C applies to transfer of leasehold rights. Relying on the decision of the **Karnataka High Court in V.S. Chandra Shekhar v. ACIT** and the coordinate bench ruling in **Rajiv Kumar Sharma v. CIT (NFAC)** — which applied the Supreme Court principle in **CIT v. Vegetable Products Ltd**.— the Tribunal held that Section 50C applies only to transfer of "land or building or both" and not to rights therein.
Accordingly, since the assessee had transferred only leasehold rights and not land or building, the invocation of Section 50C was held to be unsustainable and the addition was deleted.

- CBDT gives concurrect powers to CPC Bengaluru for rectification
- CBDT extends due date for furnishing Return of Income for the Assessment Year 2025-26 under the Income-tax Act, 1961
- Net direct tax collection rises 7% to ₹12.92 lakh crore between April and November: Govt

ALA LEGAL, ADVOCATES & SOLICITORS
5, Babar Lane Bengali Market New Delhi 110001
puneet@alalegal.in | advisory@alalegal.in | delhi@alalegal.in
011 – 43036677 | 9891898911 | 9911720500