

LATEST CASE LAWS

- **KARNATAKA HIGH COURT:** Sri. Kewal Chand Jain v. Assistant Commissioner of Income Tax (W.P. No. 30135/2021)
- **DELHI HIGH COURT:** Commissioner of Income Tax, International Taxation-1, New Delhi v. Clifford Chance Pte Ltd (ITA 353/2025)
- **GUJARAT HIGH COURT:** Virat Alloys Private Limited v. The Assistant Commissioner of Income Tax Circle, Gandhinagar (SCA No. 5039/2024)

UPDATES

- **CBDT Notification No. 170/2025** dated 15 December 2025 Issued under: Sections 120(1) and 120(2) of the Income-tax Act, 1961

EDITOR'S COLUMN

- **SUPREME COURT :** Sharp Business System Thr. Finance Director v. Commissioner of Income Tax-III (Civil Appeal No. 4072/2014): This judgment inter alia held that non-compete fee is revenue expenditure allowable under Section 37(1) of the Act.

TAX BITES

- **ITAT, New Delhi:** Balaji Powertronics v. Deputy Commissioner of Income Tax (ITA No. 2743/Del/2022)
- **ITAT Ahmedabad:** Joshi Technologies International Inc India Projects v. The ACIT, Circle (Intl Taxn) 1, Ahmedabad (ITA No. 244/Ahd/2022)



DIRECT TAX UPDATES

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An E - Newsletter

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KARNATAKA HIGH COURT: Sri. Kewal Chand Jain v. Assistant Commissioner of Income Tax (W.P. No. 30135/2021)

[Maintainability of proceedings under Section 153C against a person whose premises were searched]

Background: The petitioner challenged assessment order u/s 153C r/w Section 144 of the Income-tax Act, 1961. His residential premises were subjected to a search u/s 132, pursuant to which certain documents were seized. Despite search being conducted at his own premises, Department treated petitioner as an “other person” and issued notice u/s 153C, followed by an assessment order. The Petitioner contended that since his premises were searched, he was a “searched person” and not an “other person”, making invocation of S. 153C wholly without jurisdiction.

Decision: The Court allowed the writ petition and quashed the entire proceedings. The Court held that once the petitioner’s premises were searched, he could only be proceeded against as a “searched person” under Section 153A, and not under Section 153C, which applies exclusively to “other persons”. The impugned proceedings were held to be without jurisdiction.

The Court further held that the assessment order was barred by limitation and therefore did not leave the control of the Department within the statutory time. The mere generation of a DIN number on the last date was held insufficient to save limitation. Hence, the writ petition was allowed.

DELHI HIGH COURT: Commissioner of Income Tax, International Taxation-1, New Delhi v. Clifford Chance Pte Ltd (ITA 353/2025)

[Delhi High Court upholds non-taxability of fees paid to international law firm, overrules Virtual PE theory]

Background: The assessee, a Singapore-based non-resident law firm, filed NIL income returns for AYs 2020-21 and 2021-22. The AO alleged that the assessee had a service Permanent Establishment (“PE”) and a virtual service PE in India under Article 5(6) of the India Singapore Double Taxation Avoidance Agreement (“DTAA”), based on the presence of its employees in India and virtual rendering of services and made additions, respectively. The Dispute Resolution Panel (“DRP”) upheld the additions. The ITAT deleted them, holding that only days of actual service rendered in India through physically present employees are relevant, and that after excluding vacation days, business development days, and common days, the threshold of 90 days was not met. Further, no PE existed as no employees were present in India. As a result, Revenue filed an appeal.

Decision: The Hon’ble High Court dismissed the appeals, holding that a service PE requires actual performance of services within India through employees physically present in the country. It upheld exclusion of vacation, business development, and common days. The Court further held that the DTAA does not recognise a “virtual service PE” and that courts cannot read such a concept into the treaty in the absence of express provision. Accordingly, the appeals were dismissed.

GUJARAT HIGH COURT: Virat Alloys Private Limited v. The Assistant Commissioner of Income Tax Circle, Gandhinagar (SCA No. 5039/2024)

[Satisfaction Note without Date Supplied to Petitioner after 2 years : Gujarat HC Quashes Notice u/s 153C of Income Tax Act]

Background: The petitioner company filed its revised return of income for the A.Y 2015-16 on 09.03.2017 declaring its income of Rs. Nil. A search was carried out in case of M/s World Window Group. It was the case of the petitioner that it has not undertaken any kind of business or transaction with M/s World Window Group. The petitioner was issued notice under Section 153(C) of the IT Act and accordingly, the petitioner-company filed its reply. It was submitted that the satisfaction note of the searched person i.e. M/s World Window Group was recorded and the petitioner has been conveyed the satisfaction note, i.e. beyond the reasonable period of limitation.

Decision: The Court quashed a Section 153C proceedings against a company after noting that the AO satisfaction note did not bear any date and that the note, though recorded in 2022 was "supplied" to the company only in 2024 i.e., after a delay of two years without any explanation. For context, Section 153C empowers the tax authority to assess the income of any person whose documents or assets are found during a search or seizure operation on a different person. Hence, the notice issued under section 153(C) becomes vulnerable. Accordingly, the Petition is allowed.

Key Highlights of the 2025 Notification/Circular:

Notification No.170/2025/ F.No. 279/Misc./ M-110/2025-ITJ dated 15/12/2025

This notification, issued under Sections 120(1) and 120(2) of the Act, allocates appellate jurisdiction to specified CIT(A). It covers appeals under Sections 246A and 248 arising from assessments pursuant to search under Section 132, requisition under Section 132A, or survey under Section 133A, as well as cases where additions are based on seized or impounded material and related penalty orders. The notification maps 47 designated CIT(A) offices to corresponding Principal Commissioners / Commissioners of Income-tax (Exemptions) as detailed in the Schedule. It comes into force from the date of publication in the Official Gazette.



EDITOR'S COMMENTS

SUPREME COURT : Sharp Business System Thr. Finance Director v. Commissioner of Income Tax-III (Civil Appeal No. 4072/2014)

[Non-Compete Fee Can Be Deducted As Revenue Expenditure Under Section 37(1) Income Tax Act]

Background: The Hon'ble The Supreme Court examined appeals concerning the tax treatment of non-compete fees. The Delhi High Court had treated such payments as capital expenditure and denied both deduction and depreciation under Section 32(1)(ii).

Department's Contentions:

The Department argued that payment of non-compete fee eliminated competition for a defined period, resulting in an enduring benefit, and therefore constituted capital expenditure. It was further contended that a non-compete right is only a negative covenant (right in personam) and not an intangible asset eligible for depreciation.

Decision of the High Court:

The Delhi High Court held that the non-compete fee conferred an enduring advantage and was therefore capital in nature, and further ruled that such right was not a depreciable intangible asset under Section 32(1)(ii).

Decision of the Supreme Court:

The Supreme Court set aside the Delhi High Court judgment and held that non-compete fee is allowable as revenue expenditure under Section 37(1). The Court held that such payment merely facilitates the carrying on of business more efficiently by restricting competition and does not result in creation of any new asset or addition to the profit-earning apparatus. Consequently, the issue of depreciation became academic, and the matters were remanded to the ITATs for fresh consideration.

Key Takeaway

Non-compete fee paid to restrict competition, without creating a new asset or altering the profit-earning structure, is deductible as revenue expenditure under Section 37(1). The mere existence of a time-bound commercial advantage or "enduring benefit" is not decisive—what matters is whether the expenditure creates a capital asset or only facilitates more efficient conduct of business.

➤ This judgment inter alia held that non-compete fee is revenue expenditure allowable under Section 37(1) of the Act.

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ITAT, New Delhi: Balaji Powertronics v. DCIT (ITA No. 2743/Del/2022)

Backward-area incentives don't inflate TP profits; excise duty refund remains a capital receipt.

The ITAT, New Delhi held that where a manufacturing unit is located in a backward area, operating profit margins for transfer pricing benchmarking must be computed after excluding excise duty, CST and income tax, as such incentives artificially inflate margins. Relying on coordinate bench rulings, the Tribunal partly deleted the TP adjustment.

It further held that excise duty refund and interest subsidy granted under backward-area incentive schemes are capital receipts, since they are intended to promote industrial development and employment, applying the “purpose test”. Accordingly, the assessee’s appeal was partly allowed.

ITAT Ahmedabad: Joshi Technologies International Inc India Projects v. The ACIT, Circle (Intl Taxn) 1, Ahmedabad (ITA No. 244/Ahd/2022)

ITAT Reinforces PSC Framework: Well-Wise Deductions and Allowable Overheads

The ITAT, Ahmedabad held that each oil well constitutes a separate undertaking, entitling the assessee to deduction under Section 80-IB(9). The Tribunal allowed depreciation on goodwill, higher depreciation at 60% on oil wells and oil-field equipment, and additional depreciation under Section 32(1)(ia), holding that extraction of mineral oil is akin to manufacture or production.

The ITAT deleted the transfer pricing adjustment, ruling that PSC-permitted overhead charges cannot be benchmarked at nil, particularly when consistently accepted in earlier years and not falling within Section 44C. However, it upheld disallowance of weighted deduction under Section 35(1)(ii) due to lack of valid approval of the recipient trust and rejected the alternative claim of business loss. Certain issues, including Section 42 deduction and MAT credit, were remanded or allowed subject to verification. Overall, the appeals were partly allowed in favour of the assessee.

- [Press Release: Initiative to encourage taxpayers to voluntarily review deduction/exemption claims identified as potentially ineligible through risk analytics](#)
- [Income tax refund your refund may be delayed if revised return not filed by december 31 2025 deadline heres why](#)