JMP Advisors®

TAX MATTERS

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Contents

DID YOU KNOW?

On 5 June 2026, the Income-tax (Amendment) Ordinance 2026 exempted from tax, the interest income and capital gains earned from Government Securities by Foreign Institutional Investors and Bank for International Settlements with effect from 1 April 2026.

The team at JMP Advisors is pleased to bring to you a gist of some of the significant developments in the direct tax space during June 2026:

➢ Bombay HC ruling provides clarity for multinationals navigating real income arising out of APA in India

- Commissioner of Income-tax (International Taxation)-2 vs Gemological Institute of America Inc.[1]

The taxpayer is a US tax resident and a global leader in gem grading and certification services. The taxpayer established a wholly owned Indian subsidiary, GIA India Laboratory Private Limited ('GIA India'). The taxpayer provided GIA India with equipment, technical know-how and expertise, charging a royalty for the same. The taxpayer offered the royalty income received from GIA India under Article 12 of India-US DTAA ('DTAA') in its Return of Income ('ROI'). The tax officer rejected the position adopted by taxpayer in the ROI, alleging that GIA India constituted a Permanent Establishment ('PE') of the taxpayer in India under the DTAA. Further, the tax officer taxed the entire royalty receipts under the Income-tax Act, 1961 ('the Act') by applying tax rate applicable to foreign company. The taxpayer filed an appeal with the Mumbai Income Tax Appellate Tribunal ('Mumbai Tribunal').

Prior to this assessment, GIA India had applied for an Advance Pricing Agreement ('APA') with the Central Board of Direct Taxes ('CBDT') to determine the Arm's Length Price ('ALP') of the royalty paid to the taxpayer. An APA was subsequently executed which reduced the royalty to be paid. To comply with the APA, GIA India reduced its royalty expense claim and issued an invoice to the taxpayer to refund the excess royalty amount back to GIA India. The taxpayer moved an additional ground before the Mumbai Tribunal, arguing that the refunded amount could no longer be treated as its taxable income under the doctrine of real income. The Mumbai Tribunal allowed the taxpayer's claim and further ruled that the taxpayer had no PE in India. The revenue filed an appeal before the Bombay High Court ('Bombay HC') against the Mumbai Tribunal's order.

The revenue argued that Chapter X of the Act is an anti-avoidance framework designed to protect the Indian tax base, and Section 92(3) explicitly bars any transfer pricing adjustment that reduces taxable income. It contended that the APA was strictly binding only on GIA India as the signatory under Section 92CC(5) and a non-signatory foreign affiliate could not claim a downward adjustment. The revenue also asserted that the royalty income had fully accrued and been received during the relevant year, meaning subsequent voluntary repayments could not alter its initial taxability. Furthermore, the revenue maintained that the taxpayer exercised strategic, operational and financial control over GIA India, thereby creating a PE in India.

The taxpayer argued that income tax can only be levied on real income actually earned and retained, not on hypothetical or non-existent income. It stated that since the excess royalty was refunded to GIA India in compliance with the APA, taxing the initial receipt would amount to taxing a hypothetical receipt. Various rulings of the Supreme Court and High Court were referred to by the taxpayer to support its argument. The taxpayer also maintained that the restrictions under Section 92(3) and Section 92C(4) apply exclusively to unilateral adjustments made by a tax officer and do not bar adjustments arising voluntarily out of a binding APA mechanism. Regarding the PE, the taxpayer argued that GIA

[1] ITXA-2306-2022 and ORS - This matter covers multiple financial years. Considering common issues in all the appeals, the common order is passed for all the financial years under appeal.

India operated as an independent legal entity bearing its own credit and client-facing risks, failing the baseline tests for a Fixed Place, Service, or Agency PE.

The issue raised before the Bombay HC involved whether a non-signatory foreign affiliate can claim a reduction of its returned royalty income based on an APA entered into by its Indian subsidiary. In relation to whether the subsidiary constitutes a PE under the DTAA, the Bombay HC observed that the arrangement between the parties did not fulfil the characteristics of a PE. The Bombay HC emphasized that controlling interest alone does not satisfy the criteria for a Fixed Place PE, no services were physically rendered in India by the taxpayer to trigger a Service PE. Further, GIA India lacked the authority to conclude contracts to establish an Agency PE. Finding no irrationality in the Tribunal's factual analysis, the Bombay HC held that no substantial question of law arose on the PE issue.

On the issue of the royalty adjustment and the real income doctrine, the Bombay HC observed that the restrictive provisions of Chapter X are anchored to adjustments executed unilaterally by a tax officer. The Bombay HC found the Revenue's approach to be inherently inconsistent. It was observed that the excess royalty, having already been denied deduction in the hands of GIA India and correspondingly taxed as higher income in India, could not again be taxed in the hands of GIA US. Since the excess amount was ultimately refunded to GIA India in light of the APA, the Court held that only the royalty actually retained by GIA US represented its real income and could be brought to tax. The Bombay HC emphasized that income tax laws aim to tax actual income rather than hypothetical receipts. Relying on various rulings of Supreme Court and High Court referred to by the taxpayer, the Bombay HC concluded that the taxpayer acted under a mandatory mechanism embedded in the APA to refund the excess royalty. Hence, the real income available for taxation was reduced to the net retained amount, justifying the Tribunal's exclusion of the refunded portion.

***JMP Insights** – It is a milestone ruling confirming that the principles of real income override narrow interpretation of transfer pricing provisions when a binding APA is in place.*

The ruling has significant implications specifically for multinational groups navigating unilateral APAs in India. It marks an important shift away from the tax officer's approach of treating foreign components of a transaction in isolation from the bilateral adjustments approved by the CBDT. It emphasized that the tax authorities should not tax the same income twice. It also highlights that in the era of complex cross-border transactions, tax authorities cannot levy tax on income that has been reversed under government-sanctioned pricing mechanisms. Tax authorities must align the taxability of foreign entities with the economic realities established by the group's APAs.

- **Delhi HC holds reimbursements of salary for seconded employees taxable as FTS**

  - Commissioner of Income Tax (International Taxation)-1 vs Ernst & Young U.S. LLP[2]

The taxpayer, Ernst & Young U.S. LLP, is a Limited Liability Partnership incorporated under the laws of the United States and a member of the EY global network. During the relevant assessment years (AYs 2018-19 to AY 2022-23), the taxpayer entered into arrangements with the Indian EY member firms.

Under the first arrangement, experienced professionals employed by the taxpayer were seconded to EY India entities for a fixed tenure, generally ranging from two to three years, based

[2] TS-903-HC-2026(DEL)

on requirements. During the period of secondment, the secondees worked exclusively for the Indian entities and performed assurance, tax, transaction and advisory functions. The salary was initially disbursed by the taxpayer into the bank account of seconded employees outside India for administrative convenience. The entire salary cost, social security contributions and other employment-related costs were reimbursed by the Indian entities on a cost-to-cost basis without any mark-up to the taxpayer. The Indian entities withheld tax under Section 192 of the Income-tax Act, 1961 on the salary paid to the secondees. Upon completion of the secondment period, the employees returned to the taxpayer.

During the taxpayer's assessment proceedings, the Tax Officer treated the reimbursed amount as taxable in India. The Tax Officer held that the payments to the taxpayer by the Indian entity represented Fees for Technical Services ('FTS') under Section 9(1)(vii) of the Act as well as FIS under Article 12(4)(b) of the India-US DTAA. The Dispute Resolution Panel ('DRP') upheld the additions made by the Tax Officer.

With respect to the secondment arrangement, the doctrine of substance over form was applied by the DRP. It was contended that the secondees never ceased to be employees of taxpayer. The deputation was only temporary and the employees were contractually required to return to taxpayer upon completion of their assignment in India, thereby demonstrating that taxpayer continued to retain an employment lien over them. However, the Delhi Tribunal deleted the additions, holding that the secondment reimbursements were merely cost reimbursements. Aggrieved by the Tribunal's orders, the Revenue filed appeals before the Delhi High Court ('HC').

The Revenue contended that the secondees were specifically deputed to implement EY's global policies, procedures and quality standards within the Indian member firms. In doing so, they transferred technical knowledge, experience, skills and organisational know-how that enabled the Indian entities to independently apply such methodologies in future. Accordingly, the 'make available' condition contained in Article 12(4)(b) of the India-US DTAA stood fully satisfied. Reliance was placed on the Delhi High Court's decision in Centrica India Offshore Private Limited.

The taxpayer, on the other hand, submitted that during the period of secondment, the employees became employees of the respective Indian entities. The Indian entities exercised complete supervision and control over the secondees, determined their day-to-day functions, undertook performance evaluation and possessed disciplinary authority. The taxpayer merely acted as a paying agent for administrative convenience and recovered only the exact salary and employment costs from the Indian entities without earning any income element.

The taxpayer further argued that the salary income had already been subjected to tax in India in the hands of the secondees. Taxing the identical reimbursement once again in the hands of the taxpayer would effectively amount to double taxation of the same income.

The Delhi HC noted that the secondees were deputed to India for a limited tenure of approximately two to three years and upon completion of their assignments, were contractually required to return to taxpayer. The continued lien of the employees with the taxpayer, coupled with their eventual repatriation to the parent entity, indicated that the taxpayer continued to retain an overarching employment relationship with the secondees.

The Delhi HC also held that the absence of a mark-up did not alter the character of the receipts where, in substance, they represented consideration for services rendered through the secondees.

The Delhi HC agreed with the Revenue's contention that the secondees were deputed to India because of their specialised knowledge, expertise and familiarity with the EY global methodologies, quality standards and business processes. The Delhi HC held that the secondees enabled the Indian entities to apply such processes independently in future, thereby satisfying the 'make available' requirement contained in Article 12(4)(b) of the India-US DTAA.

While arriving at this conclusion, the Delhi HC placed reliance on its earlier decision in Centrica India Offshore (P.) Ltd.

The Delhi HC also rejected the taxpayer's argument that the salary paid to the secondees had already been subjected to tax in India under Section 192 and, therefore, taxing the reimbursement in the hands of taxpayer would amount to double taxation. It held that the taxability of salary in the hands of employees and the taxability of consideration received by taxpayer operated independently.

The Delhi HC concluded that the Tribunal had erred in treating the reimbursements as mere cost reimbursements devoid of any income element. It held that the amounts received by taxpayer from the Indian entities pursuant to the secondment arrangements constituted taxable Fees for Technical Services under the provisions of the Income-tax Act as well as Fees for Included Services under Article 12 of the India-US DTAA.

Accordingly, the Delhi HC upheld the Revenue's appeal on the secondment issue.

***JMP Insights** – The ruling reinforces the continuing precedential value of Centrica India Offshore (P.) Ltd. and reiterates that the substance of a secondment arrangement prevails over its contractual form. The Delhi HC reaffirmed that cost-to-cost reimbursement and*

contractual supervision by the Indian entity are not determinative where the overseas entity retains the employment nexus with the secondees. The judgment also reiterates that the 'make available' test may be satisfied where secondees transfer organisational processes and specialised know-how enabling the Indian entity to independently apply such knowledge in future. Multinational groups should therefore review their secondment structures and documentation to ensure they accurately reflect the intended employer-employee relationship.

- **High-end healthcare services and premium tariffs do not dilute charitable character of a hospital; registration under Section 12AB of the Act cannot be cancelled merely on perceived commerciality**

  - Reliance Foundation Hospital Trust vs CIT (Exemptions)[3]

The taxpayer operates Sir H. N. Reliance Foundation Hospital and Research Centre, a multi-speciality tertiary care hospital engaged in providing advanced healthcare services. The trust held registration under Section 12AB and approval under Section 80G of the Income-tax Act, 1961 ('the Act').

While considering the taxpayer's application for renewal of registration under Section 12AB of the Act, the Commissioner of Income-tax (Exemptions) ['CIT(E)'] denied renewal, cancelled the existing registration retrospectively and consequently denied approval under Section 80G of the Act. The CIT(E) observed that the hospital functioned more like a premium private healthcare institution than a charitable hospital, relying upon factors such as high treatment charges, premium accommodation facilities, substantial

[3] TS-857-ITAT-2026(Mum)

receipts, generation of surplus and alleged non-compliance with Section 41AA of the Maharashtra Public Trusts Act, 1950 ('MPT') and the Indigent Patient Fund ('IPF') scheme. According to the CIT(E), the low percentage of indigent patients treated and the overall operational profile of the hospital demonstrated that its activities were not genuinely charitable.

The taxpayer contended that it continued to carry on genuine charitable activities in the field of medical relief and that neither the Act nor Section 2(15) of the Act prescribed any affordability benchmark, tariff ceiling or restriction on the scale of operations of a charitable hospital. It was further argued that no authority administering the MPT had recorded any finding that the taxpayer had violated Section 41AA or the IPF Scheme. Accordingly, the CIT(E) had exceeded the scope of enquiry permissible under Section 12AB of the Act by independently adjudicating alleged violations under another statute and by substituting statutory tests with subjective assessments regarding affordability and accessibility of healthcare.

Aggrieved by the order of the CIT(E), the taxpayer filed an appeal before the Mumbai Income Tax Appellate Tribunal ('Tribunal').

The issue before the Mumbai Tribunal was whether registration under Section 12AB of the Act could be denied or cancelled on the ground that a charitable hospital charged substantial fees, maintained premium healthcare facilities and allegedly failed to comply with obligations relating to indigent patients under the MPT and the IPF scheme.

The Mumbai Tribunal observed that medical relief occupies a distinct and independent position within the definition of 'charitable purpose' under Section 2(15) of the Act. Relying upon CBDT Circular No. 1/2009 dated 27 March 2009, the Supreme Court's decision in Ahmedabad Urban Development Authority[4] and judicial precedents including Vanita Samaj[5] and Lata Mangeshkar Medical Foundation[6] the Mumbai Tribunal held that restrictions and principles applicable to institutions falling under the residuary category of 'advancement of any other object of general public utility' cannot be imported into cases involving hospitals engaged in medical relief.

The Mumbai Tribunal further observed that the Act does not prescribe any affordability benchmark, tariff ceiling, organisational scale restriction or cap on receipts for charitable hospitals. The enquiry under Section 12AB of the Act is confined to examining the objects of the trust, the genuineness of its activities and compliance with material laws necessary for achieving those objects. The CIT(E)'s approach effectively shifted the enquiry from whether the taxpayer was engaged in medical relief to whether its model of healthcare satisfied the authority's perception of how charity ought to be delivered, which was not contemplated by the statute.

The Mumbai Tribunal held that the existence of premium healthcare facilities, sophisticated infrastructure, substantial receipts, financial resources and generation of surplus could not by themselves establish commerciality or profit motive. The law does not condemn efficiency, scale or surplus, nor does it require charitable activity to be carried on in a manner divorced from economic realities. A charitable institution does not cease to be charitable merely because it provides the best possible treatment. The Mumbai Tribunal also observed that medical relief need not be confined only to poor persons and that the presence of premium rooms and

[4] (2022) 449 ITR 1 (SC)

[5] ITA No. 7794 & 7795 of 2025 (Mumbai ITAT)

[6] ITA No.671 & 1144 of 2018 (Bombay HC)

higher-category accommodation was insufficient to dislodge the taxpayer's charitable status.

With regard to the alleged violation of Section 41AA of the MPT and the IPF scheme, the Mumbai Tribunal noted that no order, direction, decree or determination had been issued by the Charity Commissioner or any competent authority, holding that the taxpayer had violated the relevant provisions. The Mumbai Tribunal held that the CIT(E) had effectively assumed the role of the regulator under the MPT by independently interpreting the scheme, analysing patient ratios and recording findings of non-compliance. Such an exercise travelled beyond the jurisdiction contemplated under Section 12AB of the Act.

The Mumbai Tribunal further held that retrospective cancellation of registration was unsustainable in the absence of any finding that registration had been obtained through fraud, suppression of material facts, misrepresentation or concealment of relevant information. The taxpayer continued to operate the hospital, provide healthcare services and apply its resources towards medical relief in accordance with its charitable objects.

Accordingly, the Mumbai Tribunal held that the taxpayer continued to be an institution existing for the charitable purpose of medical relief, its activities remained genuine and in furtherance of its stated objects. Factors such as tariff structure, premium facilities, financial scale and generation of receipts could not by themselves establish commerciality. The Mumbai Tribunal quashed the order of the CIT(E), restored the registration under Section 12AB of the Act and directed its continuation for a further period of five years with effect from 1 April 2026.

***JMP Insights** - The ruling is a significant reaffirmation of the principles governing charitable hospitals under the Act. The Tribunal has observed that medical relief constitutes an independent and distinct category within the definition of 'charitable purpose' under the Act. Consequently, institutions engaged in providing medical relief are required to be examined within the framework applicable to that specific charitable object and not by applying the principles governing entities pursuing objects of general public utility. The decision rejects the notion that charitable status depends upon affordability benchmarks, pricing structures or organisational scale and reiterates that the law does not condemn efficiency, surplus or modern infrastructure. Equally important is the Mumbai Tribunal's finding that tax authorities cannot function as parallel regulators under other statutes and that registration of the Act cannot be denied or cancelled on the basis of alleged violations of another law, unless such violations have been established by the competent authority. The ruling also provides important safeguards against retrospective cancellation of registration and is likely to serve as a leading precedent for charitable hospitals and large philanthropic institutions.*

- **Extended reassessment timeline under Section 149(1)(c) applies to non-residents; however, addition deleted in absence of nexus with taxable income**

  - Jaspal Singh Sahney (Executor of late Devinder Singh Sahney) vs ITO (International Taxation)[7]

The taxpayer, had been residing outside India since 1992 and has regularly filed his return of income in India as a non-resident ('NRI') in respect of income chargeable to tax in India, comprising income from house property, capital gains and other sources.

The tax officer reopened the assessment under Section 147 of the Act, based on information received by the Government of India from the

[7] ITA No. 1586/Mum/2017

French Authorities under Article 28 of the India France DTAA ('DTAA'). The information stated that two entities, namely Gensor SA and First Enterprises Ltd., held bank accounts with HSBC Bank, Geneva and that the taxpayer was a beneficiary of the FINA Trust, which was the major shareholder of these entities. Based on the said information, the tax officer concluded that income chargeable to tax had escaped assessment and made an addition under Section 69A of the Act by treating the peak credit balance standing in the HSBC account as unexplained money.

The taxpayer challenged both the validity of the reassessment proceedings and the addition before the Commissioner of Income-tax (Appeals) ('CIT(A)'). The CIT(A) upheld the reopening as well as the addition. Aggrieved by this, the taxpayer filed an appeal before the Mumbai Tribunal. Since a Division Bench of the Tribunal, while deciding the taxpayer's own case for FY 2005-06, had held that the extended period of sixteen years under Section 149(1)(c) was not applicable in the case of a non-resident, for FY 2006-07, the matter was referred to a Special Bench.

The Special Bench observed that Explanation 2(d) to Section 147 refers to a "*person*" and the definition of "*person*" under Section 2(31) includes an individual without making any distinction between a resident and a non-resident. It noted that had the legislature intended to exclude a non-resident from the purview of the extended period provided under Section 149(1)(c), nothing prevented it from making a provision to that effect. In the absence of any such legislative intent, it is not possible to read such exclusion into the Section by way of interpretative process.

The Special Bench further held that the requirement of furnishing details of foreign assets in Schedule FA has no bearing on the extended period provided under Section 149(1)(c). Accordingly, it answered the reference by holding that the provisions of Section 149(1)(c) would also apply to a non-resident and that the fourth proviso to Section 139(1) would not impede the tax officer from reopening a non-resident's case in accordance with Section 149(1)(c), where income chargeable to tax in India has escaped assessment in relation to a foreign asset.

The Special Bench observed that a bare reading of the reasons recorded by the tax officer indicated that there was no prima facie finding that the amount lying in the foreign account had been sourced from India, nor even an allegation to that effect. It reiterated that the reasons for formation of belief must have a rational connection or relevant bearing with the belief that income chargeable to tax has escaped assessment and that there must exist a direct nexus or live link between the material available and such belief.

The Special Bench also placed the burden on the tax officer to establish that the foreign bank balance represented income chargeable to tax in India. Since the tax officer failed to bring any cogent material on record to establish that the peak balance added in the taxpayer's hands was essentially in the nature of income, the addition under Section 69A was deleted and the appeal was allowed.

JMP Insights – The Special Bench has provided significant *clarity on the scope and application of reassessment provisions in cases involving foreign assets and alleged undisclosed income. A key takeaway is that where income is linked to foreign assets, the extended time limit for reopening assessments may be invoked even in the case of non-resident taxpayers. The Bench clarified that this position holds so long as the basic conditions for reopening are satisfied.*

Importantly, the ruling draws a clear line between compliance requirements and reassessment powers. The obligation to disclose foreign assets in the return of income is only a reporting

requirement. It does not, by itself, justify reopening of assessments or relax the legal threshold required to form a valid belief that income has escaped assessment.

Overall, the decision reinforces a balanced approach, the reassessment powers can extend to cases involving foreign assets. It also emphasised that the initial burden rests on the Tax Officer to bring on record prima facie material indicating escapement of income. It is only upon the discharge of this burden that the onus shifts to the taxpayer. This exercise must be backed by proper material, sound reasoning and should establish a link to taxable income ensuring that both jurisdictional and evidentiary requirements are strictly met.

- **ITAT holds consistently treated investments remain capital assets regardless of transaction volume or frequency;**

  - Smt. Dolly Khanna vs Assistant Commissioner of Income Tax[8]

The taxpayer is an individual engaged in investment in shares, securities and mutual funds for over two and a half decades. The taxpayer had consistently treated such holdings as investments in the books of account and offered the income/loss arising therefrom under the head Income from Capital Gains ('CG'). For Assessment Year ('AY') 2020-21, the taxpayer declared a Short Term Capital Loss ('STCL') of INR 542.3 million and Long Term Capital Loss ('LTCL') of INR 373.5 million. The case was selected for complete scrutiny under the E-Assessment Scheme, 2019.

During the assessment proceedings, the Assessing Officer ('tax officer') re-characterised the STCL of INR 542.3 million as Business Loss under the head Profits and Gains of Business or Profession ('PGBP'). The tax officer relied upon the volume, frequency and magnitude of transactions. The tax officer retained the LTCL under the head CG.

The taxpayer filed an appeal before the Commissioner of Income Tax (Appeals) ['CIT(A)']. The taxpayer submitted that for AYs 2013-14 to 2019-20, income/loss from sale of shares had consistently been offered and accepted as capital gains, including in scrutiny assessments completed under Section 143(3) of the Income-tax Act, 1961 ('the Act') for AYs 2014-15, 2015-16 and 2016-17. The taxpayer also relied upon CBDT Circular[9] and various judicial precedents supporting the principle of consistency. The CIT(A), however, upheld the action of the tax officer observing that the taxpayer was a renowned stock market expert actively engaged in stock market activities, based on a simple Google search.

Before the Chennai Income Tax Appellate Tribunal ('Chennai ITAT'), the taxpayer contended that there had been no change in facts warranting departure from the position consistently accepted by the Revenue over several years. The taxpayer further explained that the substantial transactions during March 2020 were prompted by COVID-19-related market volatility. The Revenue, on the other hand, argued that the volume, frequency and substantial nature of the transactions indicated a profit motive characteristic of trading activity.

The Chennai ITAT observed that the taxpayer had consistently offered income/loss from sale of shares under the head CG for more than twenty-five years and that such treatment had been accepted by the Revenue, including in scrutiny assessments under Section 143(3) of the Act in past years. Relying upon the Supreme Court decision in Radhasoami Satsang v. CIT[10] and the Bombay High Court decision in CIT v. Gopal Purohit[11], the Chennai

[8] TS-843-ITAT-2026(CHNY)
[9] CBDT Circular No. 6/2016 dated 29 February 2016
[10] 193 ITR 321 (SC)
[11] 336 ITR 287 (Bom.)

ITAT held that the rule of consistency applies where no change in facts is demonstrated by the Revenue. The Chennai ITAT further relied upon CBDT Circular No. 6/2016 and held that once a taxpayer consistently adopts a particular treatment for listed shares and securities, the Revenue cannot disturb such treatment in subsequent years without any fresh material.

Applying the test of intention, the Chennai ITAT noted that the taxpayer had treated the shares as investments in the books of account, deployed only own funds, maintained no business set-up for share trading, claimed no business expenditure and engaged exclusively in delivery-based transactions. It further noted that the average holding period of 580 days and the absence of speculative transactions strongly supported the taxpayer's status as an investor.

The Chennai ITAT rejected the Revenue's reliance on the volume and frequency of transactions, observing that frequency alone is not determinative of trading activity.

The Tribunal also found merit in the taxpayer's contention regarding the internal inconsistency in the tax officer's order. Having accepted the LTCL under the head CG, the tax officer could not selectively re-characterise only the STCL arising from the same investment portfolio as business loss.

On the observations made by the CIT(A) based on a simple Google search, the Chennai ITAT held that reliance upon material gathered behind the back of the taxpayer, without affording an opportunity of rebuttal constituted a breach of the principles of natural justice. Popular perception regarding the taxpayer's reputation has no legal relevance in determining the character of income.

Accordingly, the Chennai ITAT held that the taxpayer was an investor and not a trader in shares and securities. The tax officer was directed to accept the STCL of INR 542.3 million under the head CG and permit its carry forward in accordance with law. The appeal of the taxpayer was allowed.

JMP Insights *– The ruling reiterates that where shares have consistently been treated and accepted as investments over the years, the Revenue cannot recharacterise the resulting gains or losses as business income, merely based on transaction volume or frequency and in absence of any change in facts. The Tribunal also reaffirmed the relevance of CBDT Circular No. 6/2016 and emphasised that intention remains the key test for distinguishing an investor from a trader. The Chennai 'Tribunal cautioned the Revenue Department against reliance on extraneous material such as internet searches without complying with principles of natural justice.*

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Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on coe@jmpadvisors.in.

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