TAX MATTERS

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DID YOU KNOW?

On 29 May 2026 the Government of India notified key operational aspects of the Code on Social Security, 2020, It retained the EPF wage ceiling at INR 15,000 per month. Accordingly, even if the monthly salary is higher, the mandatory EPF contributions is calculated only on INR 15,000, unless the employer voluntarily contributes on a higher amount.

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

➢ Supreme Court upholds GST on online gaming; taxable as actionable claims on the entire stake money

- Directorate General of Goods and Services Tax Intelligence (HQS) & Ors. vs Gameskraft Technologies Private Limited and others.[1]

The taxpayer, along with other online gaming companies, operated digital platforms that allowed users to participate in online games by depositing money into a prize pool. The taxpayer retained a portion of the amount collected in the pool as platform fees. The taxpayer treated its activity as a supply of services and charged GST on the platform fees.

Subsequently, the Directorate General of Goods and Services Tax Intelligence issued show cause notices demanding GST on the basis that the activities constituted betting and gambling involving actionable claims.

Karnataka High Court ruled in favour of the taxpayer holding the online games to be games of skill and therefore GST was payable only on the platform fees. Similar position was adopted by various High Courts in case of other taxpayers. Aggrieved by the decisions of the HCs, an appeal was filed before the Supreme Court ('SC').

Analysis of the Supreme Court

The SC examined the scope and operation of the GST regime, the taxability of actionable claims arising from betting and gambling, the legislative competence of such levy and the validity of statutory and delegated provisions governing valuation.

i. Game of Skill vs Chance

The taxpayer relied on the judicial precedents, which recognised games of skill separately from gambling and betting. Therefore, the taxpayer argued that these activities were not subject to GST. The SC rejected this argument, holding that once money or money's worth is risked on an uncertain outcome, the transaction acquires the character of betting and gambling. Relying upon the principles laid down in State of Tamil Nadu & other vs Junglee Games India Private Limited[2] and others by the same bench, SC held that even games predominantly involving skill may assume the character of betting and gambling when played for stakes.

ii. Constitutional validity of GST levy

The taxpayers challenged the constitutional validity of the GST levy on online gaming transactions on the ground that such levy travels beyond the scope of the Constitution, particularly in light of Articles 246A and 366(12A). They contended that actionable claims cannot be treated as 'goods' merely by statutory inclusion under the GST framework, especially since they were historically excluded from the definition of goods under pre-GST commercial laws. The taxpayers further argued that, under the constitutional scheme, 'services' are defined residually to mean anything other than goods, and therefore, if actionable claims are not constitutionally recognised as goods, they could at best fall within the category of services. On this basis, it was contended that Parliament could not, by legislative fiction, bring actionable claims within the definition of 'goods' for the purpose of imposing GST. The SC

[1] CIVIL APPEAL NO(S). 8241 – 8244 OF 2026

[2] TS 392 SC 2026

observed that the Constitution conferred wide legislative power to both Parliament and

State to levy GST on supply of goods or services and concluded that the GST framework operated within the scope of the Constitution. The SC observed that the definition of 'goods' as per Article 366(12) of the Constitution would not operate as a restriction confining the concept of goods only to tangible commodities. The SC held that the definition of goods under the Constitution was inclusive and therefore capable of encompassing contingent property. Relying on the past rulings in case of Sunrise Associates[3] and Skill Lotto Solutions[4], the SC reaffirmed that consideration of actionable claims as 'goods' under the GST framework was consistent with the constitutional provisions.

iii. Existence of an Actionable claim

The taxpayer strongly argued that an online gaming transaction would not give rise to an actionable claim since an actionable claim, as defined under the Transfer of Property Act, 1882, would require a legally enforceable right to beneficial interest in the prize pool.

The SC concluded that the GST framework brings specified actionable claims, which include actionable claims arising from betting and gambling within its fold. It was held that once such actionable claims are treated as 'goods' under the CGST Act, their supply becomes taxable. The SC further held that an actionable claim arises in online gaming transactions because the player acquires a contingent beneficial interest in the prize pool.

The SC also clarified that the unenforceability of wagering contracts under the Contract Act, 1872 does not negate the existence of an actionable claim for GST purposes.

iv. Role of a platform operator

The taxpayer argued that it was merely a platform operator providing a technological interface for players to participate and compete among themselves. The prize pool belonged to players and was held only in a custodial capacity by the platform. Therefore, the taxpayer should be classified as a service provider or intermediary, levying GST only on the platform fee charged to the participants.

The SC rejected the contention that the taxpayer was a mere platform operator or intermediary. It observed that the taxpayer designed the games, controlled participation, collected and managed funds and determined the manner of distribution of winnings. Accordingly, the SC held that the taxpayer was not merely supplying platform services but was facilitating a stake-based arrangement that constituted an actionable claim in the nature of betting and gambling.

v. Consideration and Valuation

The taxpayer argued that GST should be levied only on the transaction value i.e. the platform fees received for the supply. The taxpayer further argued that taxing the entire betting amount (Gross Bet Value) would lead to taxation of money that is not in the nature of income, which is contrary to GST principles.

The SC rejected this argument and held that the entire amount staked by the players constitutes consideration for the supply. The SC reasoned that when a player deposits money to participate in a game, the payment is made in respect of the opportunity to play and win, which is the actual supply. The later redistribution of a portion of the money as winnings does not alter the character of the initial transaction.

[3] (2006) 5 SCC 603

[4] (2021) 15 SCC 667

vi. Validity of Rule 31A and applicability of amendments

The taxpayer challenged the validity of Rule 31A as ultra vires the GST framework for taxing the entire betting amount instead of only the platform fees actually earned by the taxpayer. The taxpayer further argued that Rule 31A governed valuation for traditional forms of betting and gambling and never intended to apply to online gaming. With regard to the amendments in 2023 introducing valuation rules for online gaming and casinos, the taxpayer argued that these provisions indicated a new legislative framework to be effective prospectively and therefore should not apply to online gaming.

The SC upheld the validity of Rule 31A, holding that it is a valid machinery provision for determining the value of supply in cases of betting and gambling. It also clarified that Rule 31A is not limited to traditional betting scenarios, but applies to all forms of betting and gambling, including online gaming involving stakes. The SC further held that the amendments implemented in 2023 were clarificatory in nature and merely explained the existing legal position.

The SC upheld GST on betting, gambling, online gaming, fantasy sports and casino transactions, holding that stake-based participation in uncertain outcomes amounts to taxable actionable claims. It also upheld the applicability of the valuation rules and dismissed the constitutional challenges.

JMP Insights *– The Supreme Court's ruling materially expands the GST liability in the taxation of online gaming in India, decisively moving the industry away from a service-based framework (tax on platform fee) to a goods-based framework involving actionable claims (tax on full stake value). This transition fundamentally alters the tax base and significantly increases the tax exposure of gaming operators.*

A key takeaway from the judgment is the SC's substance-over-form approach in characterizing the true nature of the transaction. Despite the industry's long-standing characterization of itself as a platform service provider, the SC looked beyond contractual labels and focused on the stake-driven economic arrangement, which constitutes an actionable claim in the nature of betting and gambling. This reasoning may possibly have far-reaching implications beyond gaming, particularly for digital platforms that rely on facilitation-based business models. Another critical aspect is the SC's view that the skill-versus-chance distinction does not prevent GST from applying where money is staked on uncertain outcomes. While this distinction remains relevant in regulatory and penal contexts, the judgment clarifies that once monetary stakes are involved in uncertain outcomes, the activity may fall within betting/gambling for GST, irrespective of the skill element. This may create practical complexity, as regulatory treatment and GST treatment may now diverge depending on the presence of stakes.

From a valuation perspective, the SC's endorsement of taxing the full stake value substantially increases the tax base and the compliance burden for operators. This approach raises concerns regarding economic efficiency and proportionality, as it taxes amounts that do not accrue to the operator as income. This may increase effective tax costs and may affect profitability, pricing models and industry viability.

By treating the 2023 amendments as clarificatory, the judgment exposes businesses to substantial retrospective tax demands and ongoing litigation risk.

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- **IMAX neither has a fixed place PE nor a Service PE, without fulfillment of 90 days threshold under the India-Canada DTAA**

- IMAX Theatre Services Ltd vs ACIT[5]

The taxpayer, a Canadian tax resident, holds a valid Tax Residency Certificate and is engaged in the global business of providing maintenance services for IMAX Theatre Systems. The taxpayer entered into an agreement with an Australian vendor to provide these maintenance services to customers in India as well as other globally placed entities.

The tax officer alleged that the taxpayer constituted a Fixed Place Permanent Establishment ('PE'), as well as a Services PE in India. Consequently, the tax officer proposed to attribute profits from maintenance services. By invoking Rule 10 of the Income-tax Rules, 1962, the tax officer applied a profit rate of 25% and made an addition.

The Dispute Resolution Panel ('DRP') upheld the existence of a Fixed Place PE and a Services PE in India but reduced the profit rate to 12.5%. Aggrieved, the taxpayer appealed before the Delhi Income Tax Appellate Tribunal ('Tribunal').

Before the Tribunal, the taxpayer contended that the conditions for constituting a Fixed Place PE under Article 5(1) of the India-Canada Double Taxation Avoidance Agreement ('DTAA') were not satisfied. It was argued that remote access to the IMAX theatre systems was granted by customers for limited troubleshooting, software updates and bug fixing under their direction and control. The taxpayer possessed no overriding control or uncontrolled access, meaning the 'place of business' and 'disposal' tests failed. Relying on the Supreme Court ruling in Formula One World Championship Limited[6], the taxpayer emphasized that mere access does not equate to premises being put at its disposal.

Regarding the Service PE allegation under Article 5(2)(l), the taxpayer proved through an affidavit from the Australian vendor that the visiting engineer, Mr. Sunil Kumar, was an employee of the vendor and had visited India for only 67 days, which is well below the treaty threshold of 90 days.

The tax officer specifically highlighted Mr. Sunil Kumar's LinkedIn profile, which initially stated that he was working for IMAX on a full-time basis. The tax officer argued that subsequent updates to his profile reflecting employment with the Australian vendor were merely an afterthought, engineered after the facts were brought on record by the tax authorities.

The Tribunal observed that none of the essential conditions for constituting a Fixed Place PE, namely, the place of business, its disposal to the taxpayer, degree of permanence and carrying on of the business activity were satisfied in the present case. Accordingly, the Tribunal held that no Fixed Place PE existed under Article 5(1) of the DTAA.

With respect to the Service PE the Tribunal noted that the physical presence of personnel in India was undisputedly limited to 67 days, falling short of the 90-day treaty threshold. To determine whether services rendered remotely could independently give rise to a Service PE, the Tribunal placed reliance on the coordinate bench ruling in Ernst & Young (EMEIA) Services Limited[7], which in turn followed the principles laid down by the Delhi High Court in CIT vs. Clifford Chance Pte. Ltd.[8]. The High Court had clarified that the phrase 'within a Contracting State' requires a physical footprint and territorial nexus; Courts cannot read in judicial fictions like a 'virtual PE' if they are conspicuous by their absence in the text of the treaty.

The Tribunal further rejected the tax officer's reliance on a LinkedIn profile to determine employment status, noting that a social media profile cannot override a formal affidavit explicitly confirming the individual's employment with the

[5] TS-688-ITAT-2026(DEL)
[6] [2017] 249 taxman 192
[7] [2026] 184 taxmann.com 671 (Delhi – Trib.)
[8] 181 taxmann.com 254 (Del.) (HC)

independent Australian vendor. Consequently, the Tribunal deleted the addition and allowed the taxpayer's appeal, while deeming it unnecessary to adjudicate on the secondary issue of profit attribution.

***JMP Insights** - This ruling reinforces strict literal interpretation of tax treaties and rejects the Revenue's arguments to establish 'virtual PEs' or service PEs through remote digital interventions. By relying on the Delhi High Court's view in Clifford Chance, the* Tribunal *confirms that unless a DTAA explicitly incorporates digital or virtual presence, tax authorities cannot substitute physical presence requirements with remote access or electronic service delivery. Furthermore, the ruling reiterates that evidentiary documents like corporate affidavits carry greater legal weight in determining employment status than informal, unverified third-party data such as LinkedIn profiles.*

- **Compensation received for surrendering right to sue held to be a capital receipt; not subject to tax**

- Belani Housing Development Limited vs DCIT[9]

The taxpayer had entered into a co-operation agreement with three corporate entities for undertaking a real estate project and subsequently entered into an agreement for the purchase of land for development in Kolkata from Saregama India Limited ('SIL') for INR 161 Million (approx.) and paid INR 2.5 Million as advance. However, SIL did not have proper ownership rights. Therefore, disputes arose between the taxpayer and SIL regarding the performance of the agreement and the matter was referred to arbitration.

The Arbitrator rejected the taxpayer's claim for specific performance on the ground that SIL itself did not possess marketable title or transferable rights in the property. The taxpayer thereafter initiated multiple legal proceedings before the District Court challenging the arbitral findings. During the pendency of such proceedings, the parties entered into a settlement agreement under which SIL agreed to pay compensation of INR 18 crores in consideration of the unconditional withdrawal of all pending suits, applications, objections and claims.

During the assessment proceedings, the tax officer held that the settlement amount represented consideration received towards relinquishment or extinguishment of rights under the agreement for sale and accordingly sought to tax the receipt as capital gains under section 45 of the Income-tax Act, 1961 ('the Act').

The taxpayer contended that the compensation was received only towards the withdrawal of pending suits and claims and not for the transfer of any right in the property. It was argued that the taxpayer did not possess any enforceable right to specific performance, particularly in light of the arbitral awards, which held that SIL itself lacked transferable title in the property. Accordingly, the taxpayer merely had a 'right to sue', which is not a transferable capital asset under the law.

The Commissioner of Income-tax (Appeals) ('CIT(A)') restricted the addition to the taxpayer's share in the settlement amount, instead of the full amount received on behalf of all three corporate entities. The taxpayer had therefore filed an appeal before the Kolkata Tribunal.

The issue before the Tribunal was whether compensation received under the settlement agreement for withdrawal of pending litigation could be taxed as capital gains.

The Tribunal observed that the terms of the settlement agreement clearly demonstrated that the compensation was paid for unconditional withdrawal of all pending cases before various judicial fora. The Tribunal further noted that arbitral awards had rejected the taxpayer's claim for specific performance and had categorically held

[9] TS-714-ITAT-2026(Kol)

that SIL did not possess marketable title in the property. Accordingly, the taxpayer did not possess any legally enforceable right or interest in the property capable of transfer.

To the Tribunal held that the only surviving right available to the taxpayer was a 'right to sue', which is personal in nature and incapable of transfer under law. Therefore, compensation received for surrendering such right could not be brought to tax as capital gains under section 45 of the Act.

The Tribunal also observed that the taxpayer had devoted substantial time, effort and resources towards acquisition of the property and pursuit of the real estate project. Since the settlement effectively resulted in loss of the very source of income and impairment of the taxpayer's profit-making structure, the compensation assumed the character of a capital receipt. The Legislature brought such loss of source of income arising from breach of contract within the ambit of taxation only with effect from AY 2019-20.

Relying upon judicial precedents, including decisions of the Supreme Court in Saurashtra Cement[10] and Oberoi Hotels[11] the Tribunal held that where compensation is received for sterilisation or destruction of a source of income, such receipt falls in the capital field and is not taxable. Accordingly, the compensation was held to be a non-taxable capital receipt.

JMP Insights *- The ruling restates the settled legal position that compensation received for surrendering a 'right to sue' does not amount to consideration for transfer of a capital asset and therefore falls outside the ambit of capital gains taxation. The ruling also reinforces the principle that compensation resulting in impairment or loss of a profit-making apparatus or source of income bears the character of a capital receipt. The distinction between compensation for loss of source of income and compensation arising during the ordinary course of business continues to remain relevant while determining taxability of settlement receipts.*

- **Addition under Section 68 cannot be sustained based on utilisation of funds or advances to related parties**

- PTG Estates LLP vs. The Income Tax Officer [12]

The taxpayer, a limited liability partnership, had obtained unsecured loans aggregating to INR 20 crore during the year from multiple lenders. During assessment proceedings, the tax officer treated the said credits as unexplained under Section 68 of the Act and brought the same to tax. The addition was sustained by the CIT(A), following which the taxpayer filed an appeal before the Hyderabad Tribunal.

Before the Tribunal, the taxpayer submitted that it had discharged its initial onus by furnishing complete details of the loan creditors, including PAN, confirmation letters, loan agreements and bank statements. It was highlighted that the loans were received through banking channels and that the lenders were identifiable taxpayers with sufficient financial capacity to grant loans. The taxpayer further argued that the tax officer had not disputed the identity or creditworthiness of the lenders and that the addition was made solely on the ground that the borrowed funds were subsequently advanced to sister concerns without charging interest, which cannot be a valid basis for making addition.

The Tribunal observed that the tax officer had, in fact, accepted the existence of loan agreements, the identity of the creditors and the banking trail of transactions. The addition was made primarily on the ground that the assessee had utilised the borrowed funds to advance loans to related parties and that such conduct was not commercially prudent. The Tribunal held that such reasoning, in the absence of any defect in the documentary

[10] 325 ITR 422

[11] 236 ITR 903

[12] ITA No.1048/Hyd./2025

evidence or adverse material on record, is not sufficient to sustain an addition.

The Tribunal reiterated the settled position that once the assessee establishes the identity and creditworthiness of the creditors and the genuineness of the transaction, the burden shifts to the Revenue to disprove the same. It was emphasised that the utilisation of borrowed funds, including advances to sister concerns or related parties, cannot be a determinative factor for examining the validity of the credit. At most, where borrowed funds are not used for business purposes, the consequence may lie in disallowance of interest expenditure; however, in the present case, no such interest claim had been made by the taxpayer.

On the allegation that the transaction constituted a 'colourable device', the Tribunal noted that it was not the Revenue's case that the taxpayer's own unaccounted funds had been routed back in the guise of loans. The Tribunal observed that a possible inference that the taxpayer acted as a conduit for routing funds to related parties may raise questions of commercial prudence, but does not, by itself, bring the transaction questionable.

The Tribunal further noted that the bank statements of the lenders reflected sufficient funds with no abnormal or suspicious cash deposits or movement prior to granting loans. In the absence of any material to discredit the documentary evidence furnished by the taxpayer, the Tribunal held that the addition made by the tax authorities was unsustainable and accordingly deleted the same.

Before concluding, the Tribunal distinguished the decisions relied upon by the Revenue, including Pavankumar M. Sanghvi and NRA Iron & Steel Pvt. Ltd., noting that those cases involved failure on the part of the assessee to establish either the identity or the creditworthiness of the creditors, or cases involving accommodation entries and shell entities. In contrast, in the present case, the lenders were existing taxpayers with established financial capacity and the transactions were duly supported by documentary evidence, rendering the reliance on such precedents inapplicable. Accordingly, the Tribunal deleted the addition made under Section 68, holding that the conditions for invoking the provision were not satisfied in the absence of any adverse material against the taxpayer.

JMP Insights *- The decision underscores that robust documentation establishing identity, creditworthiness and genuineness of the transaction remains the most critical safeguard against additions under Section 68, particularly in closely-held and group financing structures.*

- **SC upholds Engineering Analysis ruling, Revenue Petitions dismissed**

- CIT vs Engineering Analysis Centre of Excellence Private Limited etc.[13]

On 2 March 2021, the SC, in the taxpayer's case held that payments for off-the-shelf software would not constitute 'royalty' as there was no transfer of copyright and no income was taxable in India.

The tax officer filed a review petition before the SC seeking reconsideration of this judgement. However, the SC observed that review petitions in connected matters had already been dismissed earlier, both on grounds of delay and merits.

Accordingly, the SC dismissed the present review petition in open court, reinforcing the finality of the 2021 judgment.

JMP Insights *- The Supreme Court's final dismissal cements the 2021 ruling as binding precedent, ensuring that payments for standard software imports are not treated as taxable royalties. This provides long-term certainty for cross-border technology transactions in India.*

[13] REVIEW PETITION (C) NOS. 1422-1497 of 2021

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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