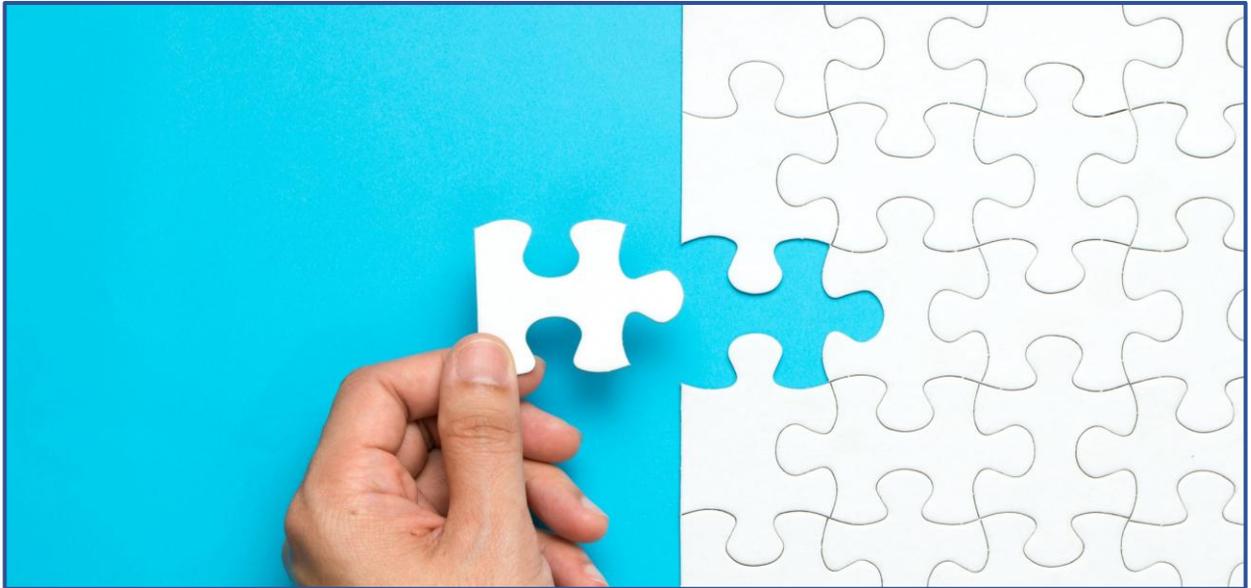


TAX MATTERS

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DID YOU KNOW?



National Institution for Transforming India ('NITI') Aayog has released the first working paper under the NITI Tax Policy Working Paper Series-I concerning tax predictability and dispute resolution for foreign investors. The working paper proposes a comprehensive framework related to Permanent Establishments and Profit Attribution to reduce litigation and boost confidence towards making India a more attractive and predictable investment destination.

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 September 2025:

Income tax rulings

➤ **No employer-employee relationship exists for consultant doctors and tax was correctly deducted at source, considering professional fees**

- The Commissioner of Income Tax vs Dr. Balabhai Nanavati Hospital¹

The taxpayer is a charitable trust running a hospital in Mumbai. The hospital operated with two classes of doctors, namely, full-time doctors who are considered as regular employees and consultant/honorary doctors are categorized as “Professionals”. Honorary doctors were appointed based on their qualifications and expertise, and payment was made to them based on the visits and treatments they carried out for the patients. The taxpayer retained a certain percentage from the billings raised on the patients while making payments to honorary doctors for maintaining its infrastructure and administrative setup. The taxpayer deducted tax under Section 194J of the Income-tax Act, 1961 (‘the Act’) as professional fees.

A survey was conducted on the premises of the Trust under Section 133A of the Act. A survey revealed discrepancies in Tax Deducted at Source (TDS), quarterly TDS returns and delay in deduction of tax. The tax officer claimed the honorary doctors as hospital employees, subject to withholding under Section 192 of the Act.

The taxpayer filed an appeal with the Commissioner of Income-tax Appeals [‘CIT(A)’]. The CIT(A) ruled in favour of the taxpayer that honorary doctors are appointed

based on their qualifications and expertise. They are paid based on patient visits and treatments. The taxpayer retains a portion of patient payments. The taxpayer does not pay fixed monthly remuneration and honorary doctors can practice independently in other hospitals. They are not provided with PF/ESIC facilities or perquisites. Honorary doctors are not obligated to adhere to a fixed schedule of attendance, but rather, they prioritize the needs of their patients. The CIT(A) determined that the taxpayer does not exercise supervisory control over honorary doctors' work and they are not required to sign attendance registers. Thus, the CIT(A) held that the honorary doctors are not employees of the taxpayer and the provisions of Section 192 of the Act are not applicable.

The tax officer filed an appeal with the Mumbai Tribunal. The Mumbai Tribunal held that honorary doctors engaged by the taxpayer were independent professionals and not employees. It observed that these doctors had full autonomy in patient care, set their own protocols, and were not under the taxpayer's control in medical decisions. The requirement to follow certain procedures was only for maintaining uniformity and reputation, not to establish an employer-employee relationship. The doctors were also not entitled to employee benefits like PF, gratuity, or HRA, confirming their independent status. Accordingly, TDS under Section 194J was correct, not Section 192. The Mumbai Tribunal relied on the Bombay High Court (‘Bombay HC’) ruling in the case of Grant Medical Foundation² which dealt with similar facts and ruled in favour of the

¹ TS-1225-HC-2025(BOM)

The ruling includes other issue but we have discussed only the critical issue of salary vis-à-vis professional fees.

²(2015) 375 ITR 49 (Bom.)

taxpayer. The tax officer further filed an appeal with the Bombay HC. The Bombay HC upheld the findings of the Mumbai Tribunal and CIT(A) that the doctors engaged by the taxpayer were not employees but independent professionals. It noted that these doctors were appointed based on qualifications and specialization, did not receive fixed monthly remuneration, and their earnings depended on the work done, with a portion retained by the hospital. They were free to practice elsewhere, had no PF, ESIC, or perquisites, and were not bound by fixed schedules or subject to real supervisory control. The Bombay HC concluded that the relationship between the hospital and the doctors did not constitute an employer-employee relationship. It emphasized that the doctors themselves declared their income under “business or profession” and did not treat the remuneration as salary, contrary to the tax officer’s contention. Therefore, no substantial question of law was raised before the Bombay HC.

JMP Insights – *The case underscores that when professionals have autonomy in work, no fixed salary, freedom to practice elsewhere, and lack employee benefits, their payments qualify as professional fees, not salary. This distinction determines TDS applicability—Section 194J for professional fees versus Section 192 for salaries—highlighting the need to assess the substance of the relationship over formal designations.*

➤ **Additional evidence submitted at the appellate stage is not necessarily admissible**

- *Pravan Kumar Neela vs Assistant Commissioner of Income Tax*³

In July 2016, during an excise operation at a check post, the authorities seized INR 16.25 million cash from Pravan Kumar Neela. The taxpayer was travelling in a private bus from one state to another state. The custody of the cash was taken over by the authorities under the Act.

The taxpayer submitted a letter declaring the seized cash to be his Income from Other Sources for the Financial Year (‘FY’) 2016-17. The taxpayer also filed his Return of Income (‘ROI’) offering this amount to tax. The tax officer contended that this amount was to be deemed to be unexplained money under the provisions of Section 69A of the Act and levied tax under Section 115BBE of the Act.

Being aggrieved, the taxpayer filed an appeal with the CIT(A). Before the CIT(A), the taxpayer filed additional evidence to substantiate the source of income by submitting financials and bank statements of a partnership firm and ROI of family members. However, the CIT(A) rejected this evidence, noting that accepting it would amount to revising the voluntarily filed return of income, which is not permissible.

The taxpayer then filed an appeal before the Kerala Tribunal, contending that the source of the seized cash was properly explained and thus, the provisions of Section 69A of the Act were not applicable. The taxpayer also submitted affidavits to the Tribunal indicating that the funds were received from

friends and relatives. The Tribunal, however, did not consider the aforesaid additional evidence and dismissed the appeal.

Being aggrieved, the taxpayer filed an appeal with the Kerala High Court ('Kerala HC'). At the outset, the Kerala HC referred to Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, which requires the Tribunal to accept additional evidence only if the taxpayer was prevented from presenting it earlier due to a lack of opportunity. The Kerala HC observed that the mere submission of such evidence does not obligate the Tribunal to admit it.

The Kerala HC noted that the affidavit explaining the source of the seized cash was not produced before the CIT(A). Moreover, the HC emphasised that the taxpayer had already declared the seized cash as Income from Other Sources in his ROI, and accepting the new claims would effectively revise that return, which is not possible under the statute. The HC thus upheld the Tribunal's ruling by observing that the affidavit, being additional evidence before the Tribunal, was nothing but an afterthought.

JMP Insights - *This judgment has highlighted the importance of proper documentation and the submission of the evidence at the assessment stage itself. It is highlighted that additional evidence in appellate tax proceedings must meet procedural standards. The ruling reinforces that Rule 29 of the ITAT Rules is not a blanket permission to introduce new evidence. The evidence will be admitted by the Tribunal only if the prescribed conditions are satisfied.*

➤ **Consideration received on transfer of undertaking under the Court-approved Scheme of Arrangement treated as Capital Receipt and not Slump Sale**

- **Grasim Industries Limited vs Deputy Commissioner of Income Tax, Central Circle⁴**

The taxpayer, a public limited company, entered into a Framework Agreement with Welspun Power and Steel Ltd. On 10 June 2008, to transfer its Sponge Iron Unit ('the Unit'), known as Vikram Ispat Unit, as a going concern to a Special Purpose Vehicle to be incorporated as Vikram Sponge Iron Ltd. ('VSIL'). Under the agreement, the transfer was to be executed through a Scheme of Arrangement under sections 391 to 394 of the Companies Act, 1956. The taxpayer was to initially hold a stake in VSIL, while Welspun would acquire a majority stake by subscribing to its shares. The total consideration for the transfer was to be paid by VSIL and funded by Welspun through a combination of equity and debt. Upon the scheme's effectiveness, the Unit would automatically vest in VSIL under Section 394(2) of the Companies Act, 1956, without any further action.

The taxpayer incorporated VSIL on 27 June 2008, and filed a Scheme of Arrangement under Section 391 of the Companies Act before the Madhya Pradesh High Court. The Court approved the scheme on 29 April 2009 and it became effective on 22 May 2009. The taxpayer filed the ROI for FY 2009-10 under the normal provisions of the Act, considering the said transfer not to be a slump sale under Section 2(42C) of the Act, as it was effected through a Court-approved scheme and not by way of sale. Therefore, it was contended by

⁴ I.T.A No.2897/Mum/2016

The ruling includes other issue but we have discussed only the critical issue of transfer under a Court-approved scheme vis-à-vis slump sale.

the taxpayer that Sections 50B and 45 of the Act were not applicable, making the transaction non-taxable.

The case was selected for scrutiny. The Tax Officer rejected the taxpayer's claim that the transfer was not a slump sale without giving reasons. An appeal was filed with the CIT(A). The CIT(A) concluded that the transfer qualifies as a slump sale despite being done through a Court-approved scheme.

The aggrieved taxpayer filed an appeal before the Mumbai Tribunal. The taxpayer argued that prior to the introduction of Section 50B of the Act, the transfer of an undertaking on a going concern basis was not taxable under Section 45 of the Act, as the cost of acquisition could not be determined under Section 48 of the Act. With the insertion of Section 50B, capital gains from a slump sale became taxable. The taxpayer emphasized that a slump sale, as originally defined under Section 2(42C) of the Act, referred specifically to a transfer only by way of sale. To support its contention, the taxpayer highlighted that the definition of slump sale under Section 2(42C) of the Act was amended by the Finance Act, 2021 to include transfers "by any means", not just sale, and aligned the term "transfer" with Section 2(47) of the Act. The Taxpayer also pointed out that the Memorandum to the Finance Bill, 2021 clarifies the amendment's purpose to include all transfers under slump sale, preventing courts from excluding non-sale transfers like exchange or relinquishment. The taxpayer submitted that a Court-approved Scheme of Arrangement does not constitute a sale, as it lacks the essential elements of a sale i.e. a contractual agreement and monetary consideration from a buyer. Therefore, the transfer should not be

treated as a slump sale under the pre-amendment definition.

The Department argued that Court approval was merely procedural and that the parties weren't bound by any modifications suggested by the High Court under the Agreement. The taxpayer argued that the transfer occurred under a scheme that was scrutinised and approved by the HC, the scheme was binding "in rem" and not just between the parties "inter se". Since the Court could accept, reject or modify the scheme, its approval was substantive, not procedural.

The Mumbai Tribunal observed that for the relevant year, the definition of slump sale under Section 2(42C) of the Act was limited to transfers by way of sale for lump sum consideration. Relying on the judicial precedents held that the transfer of an undertaking through a Court-approved Scheme of Arrangement cannot be treated as a sale, and therefore, Section 50B does not apply. It emphasised that prior to the amendments made by the Finance Acts of 2021 and 2022, the law only covered transfers by way of sale. Since the present transaction occurred before these amendments and lacked the essential attributes of a sale, it does not qualify as a slump sale under Section 2(42C) of the Act. The Mumbai Tribunal also emphasized that once a scheme receives Court approval, the transfer occurs by operation of law and no longer retains the nature of a consensual or contractual arrangement. Accordingly, the taxpayer's contention was accepted and the consideration received under the Scheme of Arrangement was treated a capital receipt not chargeable to tax.

JMP Insights – This judgment has highlighted Court's approval is not merely procedural. This reinforces the view that legal processes like Court-sanctioned schemes carry significant weight in determining the nature of a transaction. It further reinforces that the amendments introduced subsequently do not supersede the earlier provisions applicable in that year and have to be interpreted accordingly as laid down under the law.

➤ **Private trust too eligible for exemption under Section 54F and is not restricted only to individuals and Hindu Undivided Family**

- ACIT, Circle - 43(1) vs Merilina Foundation⁵

The taxpayer, a trust established in 2005, filed its ROI for FY 2010-11 electronically under the PAN of its trustee; however, taxes were paid under the taxpayer's PAN. In FY 2010-11, the taxpayer acquired land and entered into a collaboration agreement for the sale of flats, resulting in capital gains. These gains were used to purchase a residential house, for which the taxpayer claimed exemption under Section 54F of the Act.

The case was reopened under Section 147 of the Act due to large term deposits and substantial interest income. The Tax Officer argued that Section 54F exemption of the Act applies only to individuals and Hindu Undivided Families ('HUF'), not trusts. In response, the taxpayer pointed out that private trusts file their ROIs using Form ITR-5, which is also used by firms, Association of Persons (AOP) and Body of Individuals and which allows capital gains deductions under Sections 54 to 54GA of the Act, indicating

broader applicability. The tax officer rejected the claim and added the amount to the taxable income.

The taxpayer appealed to the CIT(A), explaining that due to technical issues with the e-filing system, it was unable to file returns using its own PAN and had to use the PAN of a trustee instead. The CIT(A) noted that the case was reopened because the system couldn't link the taxpayer's transactions with the ROIs filed under the trustee's PAN. Although no evidence was provided to confirm the technical issues, it was considered plausible, given the limitations of the system a decade ago. The CIT(A) further observed that if the ROIs for FY 2009-10 to FY 2011-12 are treated as those of the trustee individually, the taxes paid through the taxpayer's PAN would not be credited against any demand in the trustee's personal assessment. Hence, the CIT(A) held that the ROI filed by the taxpayer was treated as a valid ROI.

Regarding the benefit claimed under Section 54F of the Act, CIT(A) mentioned that based on various other parameters and judicial pronouncements, it is evident that under Section 161 of the Act, a representative assessee, such as a trustee, is subject to the same responsibilities and entitled to the same benefits as the beneficiary. In this case, the taxpayer was assessed under Section 161 for income meant for a sole beneficiary and therefore, the trustee is eligible for all deductions available to the beneficiary. Accordingly, the taxpayer is entitled to claim exemption under Section 54F, and the fact that it is an AOP and not an individual or HUF does not justify the denial of the exemption. Hence, the addition of income was deleted by the CIT(A).

The appeal was filed by the tax officer to the Delhi Tribunal and a cross objection was also filed by the taxpayer. The Delhi Tribunal affirmed that the taxpayer is a private trust for identified persons, not a charitable trust. The Delhi Tribunal also mentioned that a charitable trust is classified as an AOP because its beneficiaries are the general public. If the beneficiaries of a trust are specifically identified, it loses its status as a charitable trust. The Delhi Tribunal held that if the taxpayer's trust had not been in existence, the same transaction would have been carried out in the name of its

beneficiaries, who would have been entitled to claim the benefit under Section 54F of the Act. Therefore, the exemption should similarly be available to the trust and hence the order passed by CIT(A) was upheld by the Tribunal.

JMP Insights – *The implications of this ruling are significant for private trusts with identified beneficiaries. It also clarifies that the nature of the trust and identification of beneficiaries are crucial, meaning the exemption may not apply to charitable trusts or trusts with unidentified beneficiaries.*



We would like to take this opportunity to announce that JMP Advisors has recently been awarded '**Tax Expert of the Year – India**' at the '**Global 100 - 2026 Awards**' for its outstanding services. We are proud to receive this accolade and endeavour to continue providing high quality services to our clients!

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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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JMP Advisors offers advice in international taxation, domestic taxation, transfer pricing, mergers and acquisitions, Goods and Services Tax (GST), business laws and exchange control regulations and foreign investment consulting. We specialize in fiscal strategy, policy foresight and advocacy matters and are trusted advisors to high net worth families. Our team at JMP Advisors takes pride in being the best at what matters most to clients - technical expertise, innovative solutions, consistent, high quality service, reliability and ease of doing business.

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