JMP Advisors

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# TAX MATTERS

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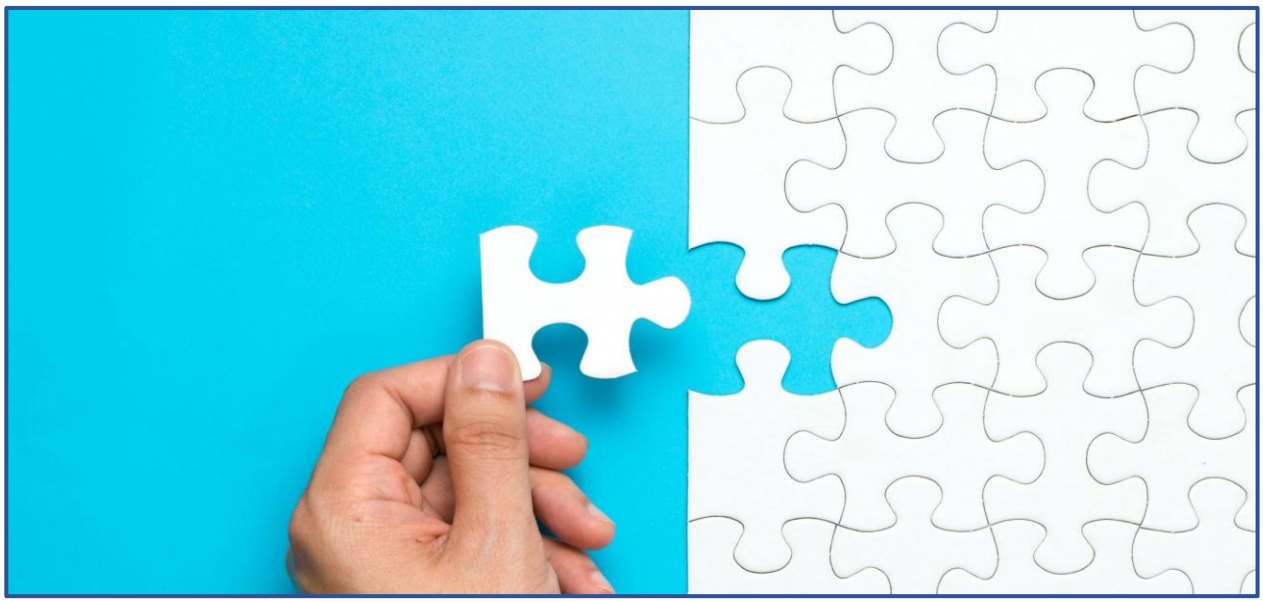

## Contents



**DID YOU KNOW?**

According to Section 397(3)(f) of the Income-tax Act, 2025 (i.e. New Act), the time limit for filing TDS correction statements is limited to two years, compared to the six-year limit under the Income-tax Act, 1961.

Based on a TRACES pop-up notification, TDS Correction statements for FY 2018–19 (Q4), FY 2019–20 to 2022–23 (all quarters), and FY 2023–24 (Q1–Q3) will only be accepted until March 31, 2026. This change effectively restricts the timeframe for submitting these TDS Correction statements.

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 August 2025:

## *Income tax rulings*

### ➢ Supreme Court delivered a split verdict in interpretation of assessment timelines provided under section 144C and section 153(3) of the Income Tax Act, 1961 ('the Act'); constitution of a larger bench sought

- *Shelf Drilling Ron Tappmeyer Ltd vs Assistant Commissioner of Income-tax*[1]

The taxpayer is a non-resident company engaged in providing oilfield services. The company had filed its Return of Income for FY 2013-14, opting out of presumptive taxation under section 44BB of the Act and reporting significant losses.

The taxpayer's return was selected for scrutiny and a draft scrutiny order was issued by the tax officer. The taxpayer filed objections with the DRP, which upheld the draft order of the tax officer. Subsequently, the taxpayer appealed to the Income Tax Appellate Tribunal ('ITAT'), which set aside the tax officer's order and remanded the matter back to the tax officer for a fresh assessment.

The limitation period for passing the fresh order expired on 30th September 2021 under section 153(3) of the Act r.w. the provisions of the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('Relaxation Act').

The tax officer passed the draft assessment order on 29th September 2021. The taxpayer filed its objections before DRP to safeguard against the disability of the objections being treated as delayed. The taxpayer has also filed a writ petition challenging the tax officer's order as the limitation period under section 153(3) of the Act read with the provisions of the Relaxation Act expired on 30th September 2021 and no final assessment order can be passed thereafter.

Issue

The pivotal legal issue was regarding the limitation period for completing the scrutiny– whether the timeline for procedures under Section 144C of the Act is distinct from the general limitation period prescribed under Section 153 of the Act or is it subsumed within that?

- Section 153 of the Act governs the timelines within which assessment, reassessment or re-computation must be completed (passing the final assessment order)

- Section 144C of the Act governs, inter alia, the procedure and timeline for raising objections before the DRP

Further, a non-obstante clause in Section 144C(4) provides:

'*The Assessing Officer shall, notwithstanding anything contained in section 153 or section 153B, pass the assessment order under sub-section (3) within one month ...*'

*Taxpayer's contention* - The taxpayer interprets the provision to mean that the timelines prescribed in Section 144C of the act are procedural requirements that operate within the broader statutory time limit set by Section 153 and cannot override or extend it. Although the tax officer is required to issue the final order within one month of receiving

[1]SLP (CIVIL) NO.25798 OF 2024

the DRP's directions, this timeline does not extend the overall limitation period prescribed under Section 153.

*Tax department's contention* – The department argues that the tax officer must act within one month of receiving the DRP's directions and the presence of a non-obstante clause ensures that the limitation period under Section 153 is automatically extended to accommodate this process. Therefore, the timelines under Section 144C take precedence over the general limitation period in Section 153.

Decision of Bombay High Court ('Bombay HC')

The Bombay HC had ruled in favour of the taxpayer, holding that the entire procedure under Section 144C of the Act, from draft order to final order, must be concluded within the timelines set out in Section 153 of the Act.

The Bombay HC also relied upon decision of the Madras High Court on the same issue in *Roca Bathrooms*[2]. The object is to conclude DRP proceedings as expeditiously as possible and therefore, the Bombay HC also noted that it cannot be said that no time limit is provided for such cases.

Split verdict of Supreme Court

After a long wait, the verdict was pronounced, but with a twist - the Hon'ble Judges gave two different verdicts.

- Justice Satish Chandra Sharma's verdict

He agreed with the Tax Department, holding that Section 153 of the Act timelines apply only up to the Draft Scrutiny Order. Once the draft order is passed under Section 144C(1) of the Act, the statutory periods prescribed in Section 144C of the Act for DRP objections and final order apply independently and in addition to the time under Section 153 of the Act. According to this view, the time for DRP proceedings and final orders would not be restricted by the Section 153(3) limitation of the Act.

- Justice B.V. Nagarathna's verdict

She held in favour of the taxpayer, ruling that the procedure under Section 144C of the Act, including DRP proceedings, must be wholly subsumed within the limitation period prescribed in Section 153 of the Act. This means the entire process - draft order, objections, DRP hearings, DRP directions and final assessment order - must be completed within the twelve-month limit under Section 153, with no additional time allowed for the DRP proceeding after completion of the time limit specified under Section 153 of the Act.

The non-obstante clause in Section 144C(1) of the Act indicates a special scrutiny procedure for eligible taxpayers but does not remove or extend the limitation period under Section 153 for the draft order, while the clauses in 144C(4) and (13) provide distinct, shorter deadlines for passing final scrutiny orders beyond the Section 153 limitation period. This ensures both timely proceedings and procedural fairness.

Because of the split opinions of the two judges on the interplay between Section 144C and Section 153 of the Act and the impact on limitation periods, the matter was ordered to be placed before the Chief Justice of India for constituting a larger bench to resolve the issue conclusively.

[2] Roca Bathroom Products (P.) Ltd. v. Dispute Resolution Panel - 2 [2021] 127 taxmann.com 332/432 ITR 192 (Mad.)

***JMP Insights -*** *The larger bench of the Supreme Court rules in favour of the taxpayer, then the pending appeals involving foreign entities and transfer pricing cases before several judicial forums, amounting to approximately INR1300 billion (amount referred to in supreme court order) could be dismissed as time-barred assessment orders.*

*If the Court affirms a strict application of Section 153, foreign companies will stand to gain from a quicker closure of assessments, enhancing predictability and reducing uncertainty. Conversely, if Section 144C is recognized as an independent framework, it would grant the tax department additional time to finalise assessments after receiving directions from the DRP. This may result in a more thorough scrutiny of complex international transactions and extended timelines before final resolution.*

## ➢ Delhi High Court Holds AIF Trust to be 'Determinate' despite absence of investor names in original trust deed

- *Equity Intelligence AIF Trust vs CBDT*[3]

The taxpayer is a Category III Alternative Investment Fund registered with Securities and Exchange Board of India (SEBI), engaged in portfolio management. It was formed under an irrevocable Trust Deed and sponsored by Equity Intelligence India Pvt. Ltd. The taxpayer had launched an open-ended scheme. The SEBI (AIF) Regulations, 2012 ('SEBI Regulation') prevent an AIF from identifying investors and accepting investor funds before receiving registration. Hence, the taxpayer had not disclosed the names or beneficial interests of investors in the original trust deed.

For FY 2017-18, the taxpayer had filed an application before the Board of Advance Rulings ('BAR') to seek clarification on the applicability of Section 164 to itself, which covers the taxation of trusts. While the application was pending, the tax officer completed the assessment under Section 143(3) and accepted the reported loss, treating the trust as a determinate trust. The BAR issued an adverse ruling, stating that without names of the beneficiaries in the original Trust Deed, the Trust would be considered indeterminate and thus liable to tax at MMR under Section 164 of the Act. In coming to this conclusion, BAR had relied on Central Board of Direct Taxes ('CBDT') Circular No. 13/2014, which requires the disclosure of beneficiary names and their interests in the Trust Deed.

The taxpayer appealed to the Delhi High Court ('Delhi HC') against both the CBDT Circular No. 13/2014 and the BAR's ruling.

The taxpayer contended that the requirement to list the beneficiary names contradicted with the SEBI Regulations and the SEBI Act. It was also legally impossible to comply, as the fund could not legally accept investments or name investors before obtaining registration. It is impossible to comply with both SEBI regulations and the CBDT circular. The doctrine of *'lex non cogit ad impossibilia'* states that the law does not compel the impossible, meaning the taxpayer should not be penalised for failing to meet an impossible requirement.

The taxpayer's also referred to CBDT Circular No. 281 of 1980. This circular clarified that it is not necessary to name all beneficiaries in the trust deed, as long as their shares are determinable.

[3] TS-979-HC-2025(DEL)

**Delhi HC's decision**

Based on analysis, the Delhi HC concluded that a trust should not be considered indeterminate merely due to the absence of investor names in the original trust deed. The key observations in the Delhi HC's decision are:

- The CBDT Circular No. 13/2014 lacks legal reasoning and fails to take into account earlier binding Circular No. 281/1980, which clarifies that the identification of beneficiaries at the time of income distribution is sufficient to qualify a trust as determinate. The Delhi HC found that circular No.13/2014 passed without reference to earlier circular was procedurally and legally unsound. Exception to Paragraph 6 of Circular No. 13/2014 limits the circular's applicability only to those jurisdictions where High Courts have not ruled otherwise. The Delhi HC accordingly read down Circular No. 13/2014.

- The Court also relied on judicial precedents, including the Karnataka HC's ruling in India Advantage Fund-VII[4] and the Madras HC's decision in TVS Shriram Growth Fund[5]. Both judgments affirmed that a trust does not become indeterminate merely because beneficiaries are named after its creation. If income allocation is based on identifiable units or contribution agreements, the trust continues to be regarded as determinate. If the income shares can be determined through later agreements or unit-based allocation, the trust is determinate under Section 164 of the Act. The Delhi HC thus squashed order of the BAR.

***JMP Insights -*** *The Delhi HC's ruling brings clarity to the tax treatment of Category III AIFs. It confirms that a trust does not become indeterminate only due to the absence of investor names in the original trust deed, if their income shares can be determined through contribution agreements or unit-based allocations. The judgment recognizes the regulatory restrictions under SEBI (AIF) Regulations against naming investors before registration and applies the doctrine of 'lex non cogit ad impossibilia'.*

*By narrowing the scope of CBDT Circular No. 13/2014 and reaffirming the validity of Circular No. 281/1980, the Court aligns tax administration with regulatory compliance. This decision brings much-needed clarity for the AIF industry and highlights the need to align tax treatment with the commercial and regulatory realities that govern trust structures.*

## ➢ Share transactions by investor held not to be an 'Impermissible Avoidance Arrangement'.

*- Anvida Bandi vs Deputy Commissioner of Income-tax[6]*

The taxpayer has been an investor in shares and securities for several years. During the Financial Year ('FY') 2019-20, the taxpayer sold shares of a company held as a long-term investment, earning significant long-term capital gains. Subsequently, the taxpayer purchased shares of M/s. HCL Technologies Pvt. Ltd.('HCL') and invested in mutual funds. Before the end of the year, the taxpayer sold some HCL shares and incurred short-term capital losses. These losses were set off against the long-term capital gains in accordance with the provisions of the Act.

[4] 2017 SCC OnLine Kar 6857
[5] 2020 SCC OnLine Mad 28112
[6] TS-1110-HC-2025(TEL)

The tax officer alleged that the timing of the purchase and sale transactions was strategically planned with the principal purpose of claiming the set-off of losses against gains, thus constituting an Impermissible Avoidance Arrangement ('IAA') under the General Anti Avoidance Rules ('GAAR') provisions in Chapter X-A of the Act. Accordingly, a reference was made to the GAAR Panel, which upheld the tax officer's view and denied the set-off of losses to the taxpayer.

Aggrieved by the order, the taxpayer filed a writ petition before the Telangana High Court ('Telangana HC'). The Telangana HC, after considering the facts and submissions, ruled in favour of the taxpayer for the following reasons:

- The essential requirement for an IAA is the existence of an arrangement between two or more parties. The tax authorities failed to establish that the purchase and sale transactions were entered into with any known or related persons or entities. Further, there was no nexus demonstrated between the purchase and subsequent sale of shares by the taxpayer, with the transactions carried out on the stock exchange where the identity of buyers and sellers remains unknown to the taxpayer.

- The Telangana HC relied on the Expert Committee Report on GAAR, which explicitly states that transactions undertaken through stock exchanges should not fall under GAAR provisions and the timing of such transactions cannot be questioned under GAAR.

The taxpayer was a regular investor engaged in transactions of purchase and sale over the years and the transactions in question were not isolated tax avoidance schemes. The Revenue failed to produce any material to prove the existence of an impermissible avoidance arrangement as defined under Section 96(1) of the Act. The timing of purchase and sale of equity shares on stock market alone, without other elements of abuse or arrangement, is insufficient to invoke GAAR.

***JMP Insights -*** *This ruling clarifies that mere tax benefits arising from bona fide investment and trading activities conducted on stock exchanges cannot be challenged under GAAR provisions without evidence of an underlying tainted arrangement.*

### ➢ ITAT distinguishes 'Fees for Professional Services' from 'Fees for Technical Services' in case of services rendered by a foreign law firm

*- Subramaniam Hariharan vs ACIT*[7]

The taxpayer, a legal practitioner operating through a sole proprietorship firm, was engaged in providing legal services in the field of Intellectual Property Rights ('IPR'). During tax year 2012-13, the taxpayer made payments to various foreign attorneys and foreign law firms for legal services rendered outside India.

The services rendered by the foreign attorneys and foreign law firms were purely professional in nature. It included filing patent applications in local jurisdictions, responding to examination reports, performing trademark searches, maintaining IPR records, and handling related procedural tasks with foreign statutory and regulatory bodies. Legally qualified professionals rendered such services authorised to practice in their jurisdictions and were essential to represent

[7] TS-1092-ITAT-2025(DEL)

Indian clients before local authorities outside India.

No tax was withheld under section 195 on payments made to such lawyers/foreign law firms.

The tax officer classified the payments to be 'Fees for Technical Services' ('FTS') and disallowed the entire expense, since the taxpayer had failed to withhold tax at source on these payments. The disallowance was partially upheld by the CIT(A). The taxpayer and the tax officer thus filed cross appeals before the Delhi ITAT.

The ITAT observed that 'Professional services", as defined in in section 194J of the Act, is distinct from 'managerial, technical or consultancy services' which constitute FTS under section 9(1)(vii).

Reference was made to the amendment to section 194J by the Finance Act, 2020, which differentiated in the rate of withholding tax on 'Fees for Technical Services (not being professional services)' and 'Fees for Professional Services',

It was further observed that Section 194M of the Act requires withholding of tax at source by individuals and HUFs on payments in the nature of Fees for Professional Services exceeding INR 5 million in a FY. However, there is no such requirement for payments made towards 'Fees for Technical Services'.

The ITAT therefore held that the Legislature, by separately defining both expressions across different sections of the Act (Sections 194J, 44AA, 40(a)(i), 40(a)(ia)), has clearly drawn a distinction between Fees for Professional Services and Fees for Technical Services. If Professional Services were meant to be included under Fees for Technical Services, there would have been no need for such explicit separation.

It emphasised the principle that special provisions override general provisions *('lex specialis derogat legi generali').* Accordingly, specific provisions dealing with Professional services override the general definition of FTS.

Since the services were rendered entirely outside India by non-residents and do not fall within the ambit of FTS, the income was not deemed to accrue or arise in India under Section 9(1)(vii). Therefore, there was no obligation on the taxpayer to withhold tax under section 195.

The ITAT placed reliance on its own decision in *Chander Mohan Lall vs ACIT*[8], and on other decisions, including *NQA Quality Systems Registrar Ltd*[9] and *Deloitte Haskins & Sells*[10], wherein it was held that professional legal services rendered by non-residents did not qualify as FTS and are not chargeable to tax in India.

Accordingly, the ITAT allowed the taxpayer's appeal and deleted the disallowance under section 40(a)(i).

***JMP Insights -*** *This ruling reinforces the distinction between 'Fees for Professional Services' and 'Fees for Technical Services' under the Act.*

*Importantly, the decision confirms that payments made to foreign legal professionals for services rendered abroad particularly while representing clients before local authorities, do not create a tax withholding obligation in India under section 195, as such*

[8] 134 taxmann.com 292 (Del Trib.)
[9] 92 TTJ 946 (Del Trib.)
[10] 2017] 184 TTJ 801 (Mum Trib.)

*income is not deemed to accrue or arise in India. The judgment also emphasises the legislative intent behind separate definitions of FTS and professional services and provides clarity on withholding of tax in case of payment of legal fees for cross boarder services and disallowances under section 40(a)(i).*

*While the ruling affirms the permissibility of payments made to foreign legal professionals for representation services, the applicability of the same treatment to consultancy services warrants further examination.*

- **Ministry of Corporate Affairs vide notification dated 4 September 2025 has expanded the scope of fast-track merger**

The Ministry of Corporate Affairs has amended Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 to expand the eligibility criteria for fast-track mergers.

This includes fast track mergers for:

- Unlisted companies which have borrowings of less than INR 2 billion and have not defaulted on repayment of loans
- Subsidiary companies of a common holding company, provided that the transferor company is an unlisted company
- Holding company and its subsidiary company, provided that the transferor company is an unlisted company
- Foreign holding companies with their wholly owned Indian subsidiaries, subject to certain conditions
- Transfer of divisions or undertakings amongst eligible companies

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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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