

# TAX CHRONICLE

JULY 2025

## CONSTRUCTION & REAL ESTATE

### TASK FORCE MEMBERS GST AND INCOME TAX

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**WESTERN INDIA REGIONAL COUNCIL**  
**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**  
(Statutory Body under an Act of Parliament)

# Table of CONTENT

03	From the Desk of the Chairman
04	Address by Chairman - Task Force of GST & Income Tax
06	Construction and Real Estate Taxation
09	OIDAR and Import of Services: Decoding the GST Implications
11	GST in Real Estate: Resolving Ambiguities in Taxation of Construction and Completed Properties
14	Input Tax Credit in Bill-to-Ship-to Transactions: A Landmark Ruling on Physical Delivery Requirements
17	How AI Can Help Accountants and Tax Consultants in Notice Replies, Appeals, and Day-to-Day Work
21	GST on Transfer of Development Rights: Analyzing the Landmark Ruling on Joint Development Agreements
24	Digital Due Process: High Court Validates GST Portal Notice Service Despite Natural Justice Concerns
29	A Commonly Misunderstood Issue: Applicability of Tax Audit u/s 44AB(e) vis-à-vis Section 44AD (4)
32	Construction Sector & Its related GST Implications
37	Taxation of Joint Development Agreements under the Income Tax Law
41	GST on Real Estate Sector
43	GSTAT Procedure Rules, 2025

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## Institute Motto

From ignorance, lead me to truth  
From darkness, lead me to light  
From death, lead me to immortality  
Peace, Peace, Peace...

असतो मा सद्गमय ।  
तमसो मा ज्योतिर्गमय ।  
मृत्योर्मा अमृतं गमय ।  
ॐ शान्तिः शान्तिः शान्तिः

## Vision Statement

The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.

## Mission Statement

The Cost and Management Accountant professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.

# From the Desk of the Chairman

**CMA ARINDAM GOSWAMI**  
Chairman, ICMAI-WIRC



## Dear Esteemed Members and Students,

As I pen this final communiqué for the Tax Chronicles of my tenure, I am filled with immense pride and gratitude. The journey we have traversed together through this quarterly initiative has been both enriching and purposeful. From its inception, Tax Chronicles was envisioned as a bridge—connecting the worlds of academia, professional practice, and policy-making—to empower Cost and Management Accountants with sharper tax insights and relevant knowledge.

One of the milestones I am particularly proud of is the establishment of the **Taskforce on Direct and Indirect Taxation**—a vibrant and forward-looking platform fostering research, dialogue, and continuous learning on tax matters that shape businesses and professions today. I take this opportunity to extend my heartfelt appreciation to **CMA Nanty Shah, Hon. Secretary and Chairman of the Taskforce on Direct & Indirect Taxation**, whose relentless commitment, visionary coordination, and diligent curation have nurtured this publication into a knowledge-driven resource for both members and students.

*“The beautiful thing about learning is that nobody can take it away from you.”*

— B.B. King

The theme of this edition—**Construction and Real Estate**—is both timely and impactful. This sector, foundational to national infrastructure and economic growth, has undergone dynamic transformations through regulatory changes and tax reforms. From the complexities of GST on construction contracts to the subtleties of Joint Development Agreements (JDAs), and the evolving challenges in input tax credit and valuation—this issue captures them all with depth and clarity. I sincerely hope the curated articles and expert commentaries will enable each one of you to confidently navigate this evolving tax environment and add strategic value in your respective fields.

This quarter has also witnessed significant policy advancements and legislative updates, particularly in the GST regime as it applies to real estate transactions, along with progressive developments in income tax jurisprudence. Our editorial team has diligently compiled these key updates to keep you informed and ahead in this fast-changing domain.

I am also pleased to share that the **Tax Research Department of ICMAI**, in collaboration with the **ICMAI Raipur Chapter**, is hosting an Indirect Tax Conclave on **Saturday, 28th June 2025 at New Circuit House, Civil Lines, Raipur**. The conclave, themed **“GST Appellate Tribunal: Structure, Functioning and Emerging Jurisprudence”**, will explore the practical challenges and opportunities of this critical institutional reform. The deliberations and knowledge shared at this event will be captured and subsequently featured in the upcoming editions of Tax Chronicles for the wider benefit of our readers.

*“Leadership is not about being in charge. It is about taking care of those in your charge.”*

— Simon Sinek

As I conclude this chapter, I wish to convey my deepest gratitude to every contributor, member, taskforce colleague, student, reader, and well-wisher who supported and enriched the Tax Chronicles during my tenure. It has been a privilege to serve alongside such an inspiring community. I am confident that the seeds we have planted through this initiative will continue to grow, fostering excellence and leadership in the CMA profession for generations to come.

Let us remain committed to the pursuit of knowledge, the elevation of our profession, and dedicated service to the nation.

Warm Regards,

**CMA Arindam Goswami**

Chairman

Western India Regional Council

The Institute of Cost Accountants of India

# Address by Chairman Task Force of GST & Income Tax

## CMA NANTY SHAH

Chairman, WIRC Task Force on Income Tax and GST

Hon. Secretary, WIRC of ICMAI



It gives me immense pleasure to present to you the **4th and final edition of the “TAX Chronicles”**, published under my tenure as Chairman of the Task Force on GST and Income Tax at the Western India Regional Council (WIRC) of the Institute of Cost Accountants of India.

This edition holds a **special place**—both in sentiment and in significance. **July 2025** marks **eight years since the implementation of the Goods and Services Tax (GST)** in India, a historic reform that reshaped the indirect tax landscape. As professionals who have stood at the intersection of compliance and counsel, we have not just witnessed this journey—we have participated in shaping its contours.

From the introduction of GST Appellate Tribunal Procedure Rules, 2025 to streamlining of GST registration norms and continuing refinements to compliance forms such as GSTR-3B, the current phase is pivotal. These structural changes reflect a maturing ecosystem—aimed at **transparency, time-bound dispute resolution, and ease of doing business**. And through every reform, every litigation, and every interpretative dilemma, the CMA fraternity has remained steadfast in upholding clarity, fairness, and economic efficiency.

The **WIRC Task Force on Income Tax and GST** has functioned actively throughout the year under the visionary guidance of the **Chairman of WIRC** and within the broad framework of the **Professional Development Committee of WIRC of The Institute of Cost Accountants of India**. Aligned with the Institute’s commitment to continuous learning and professional excellence, the Task Force has played a pivotal role in enhancing the knowledge ecosystem among members and stakeholders.

Throughout the year, a wide array of **Continuing Education Programmes (CEPs)** were conducted, covering diverse and dynamic topics across the domains of **Goods and Services Tax (GST)** and **Income Tax**. These sessions were thoughtfully curated to address current issues, emerging trends, and practical challenges faced by professionals in practice and in industry. The consistent participation and engagement of members across the region reflect the growing relevance and impact of these initiatives.

This year also witnessed the successful organization of the 2nd Regional Tax Conclave at Surat, which drew enthusiastic participation from professionals, industry stakeholders, and thought leaders alike. The conclave served as a vibrant platform for deliberations on evolving tax landscapes, recent judicial trends, and policy insights.

Another significant development during the year was the constitution of a Select Committee for reviewing the Draft Income Tax Bill, signalling the government’s intent to undertake meaningful reform in direct tax legislation. The finalized version of this bill is anticipated to be unveiled in the latter half of July 2025, potentially marking a watershed moment in India’s tax policy framework.

## A Chronicle of Technical Rigor and Thought Leadership

The **TAX Chronicles**, launched with the vision to foster analytical dialogue and offer practical perspectives, has grown over its editions to become a **trusted quarterly repository** of nuanced tax analysis:

### 1st Edition – Appeals and Constitutional Boundaries

- CMA Dr. Sanjay R Bhargava set the tone with a comprehensive overview of GST appellate mechanisms.
- CMA Vandit Trivedi provocatively questioned the legitimacy of dual jurisdiction under GST enforcement—triggering national-level debate.
- CMA Dipak Joshi decoded the 53rd Council’s evolving resolutions.
- From ITC on construction services (CMA Dr. Shailendra Saxena) to Invoice Management Systems (CMA Harpreet Singh), the edition offered actionable clarity for practitioners and taxpayers.

### January 2025 Edition – Engineering Special

- CMA Bhadresh Variya's case-based treatment of ITC in demerger scenarios, and CMA Ashvin Ambaliya's leasehold interpretation, bridged law with real-world tax planning.
- CMA Mihir Vyas, CMA Ajay Prajapati, and CMA Ritu Dash Choudhury contributed to deep dives on corporate guarantees, sector-specific taxation, and micro tax updates respectively.

Landmark judgments were brought to life by CMA Mitul Maniya—whose contributions consistently explored power, timelines, and judicial proportionality

### April 2025 Edition – Textile Industry Special

An exclusive thematic focus on one of India's most GST-impacted industries—the **Textile Sector**—saw **multi-dimensional analysis** from:

- CMA Dnyanda Limaye, CMA Prakash Ganatra, CMA Pranab Chatterjee, and CMA Deepali Lakdawala on industry structure, job work, and supply chains.
- CMA CS Meet Jogatar offered a comparative global taxation lens.
- CMA Peri A.N. Murty and CMA Jyoti Chaudhary contributed on strategic costing and KPIs.
- CMA Shirish Shah, CMA Pankaj Kannaujiya, and CMA Hirav Shah enriched the discussion with compliance frameworks and policy impact analysis.

Each article—carefully curated, peer-reviewed, and thematically aligned—has aimed to **raise the standards of professional literature** in taxation.

### Gratitude & Closure

A project of this magnitude is never the work of one—it is a **collective endeavor**, and I express my deepest appreciation to:

- The **entire Staff of WIRC**, whose behind-the-scenes dedication ensured timely, high-quality publication and coordination.
- My fellow **Office Bearers**:
  - **CMA Arindam Goswami**, Chairman
  - **CMA Mihir Narayan Vyas**, Vice Chairman
  - **CMA Chaitanya Mohrir**, Treasurer
- My **Regional Council colleagues**:
  - CMA Mahendra Bhombe, CMA Manisha Agrawal, CMA Vivek Bhalerao
- Our **distinguished Central Council Members**:
  - CMA Ashwinkumar Dalwadi, CMA Neeraj Joshi, CMA (Dr.) Ashish Thatte, CMA Harshad Deshpande

To every author, advisor, and reader—**thank you for your contributions and confidence**. Together, we have laid a foundation of credible knowledge and created a professional publication that is **worth archiving, citing, and building upon**.

### Looking Ahead

As the baton of leadership passes on, I believe the time is ripe to further deepen our engagement with emerging GST issues—be it litigation management, artificial intelligence in tax, ESG-linked taxation, or Center-State harmonization challenges.

The 4th Edition may mark the end of one editorial cycle, but it also **ushers in a new chapter for strategic tax thinking within the CMA community**. Let us continue to write, debate, and refine policy as not just number crunchers—but as **economic visionaries**.

With unwavering faith in the profession's future,  
Warm regards,

#### CMA Nanty Nalinkumar Shah

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# Construction and Real Estate Taxation

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## Abstract

This article analyzes the evolving landscape of taxation in the construction and real estate sectors from a Cost and Management Accountants' perspective. It covers capital vs. revenue expenditure classification, depreciation, entity structuring, interest deductibility, GST/ITC issues, capital gains, and energy-efficiency incentives, with a spotlight on recent Indian reforms including the New Income Tax Bill, capital gains regime, and ICMAI's advocacy for expanded audit roles. Guidance is provided on compliance, modeling, and strategic tax planning. The piece aims to equip CMAs with technical insights and practical strategies to optimize cash flows, manage risks, and contribute to sustainable sectoral growth.

## 1. Introduction

Construction and real estate are integral to economic development yet complex in terms of taxation. For CMAs, navigating capital vs. revenue expenditure, depreciation rules, GST fitments like ITC, evolving capital gains frameworks, financing structures, and sustainability incentives is crucial. These professionals are increasingly influential in tax compliance, strategy, and internal control frameworks—more so in a dynamic policy environment marked by the New Income Tax Bill and Budget 2024 reforms.

## 2. Indian Tax Reform: New Income-Tax Bill & Professional Scope

### 2.1 New Tax-Law Simplification

The proposed New Tax Bill aims to overhaul the Income-tax Act—reducing chapters from 47 to 23 and sections from 800+ to 536—with effect from April 1, 2026. It proposes including CMAs under the definition of “accountant” for functions like tax audits. This has sparked debate: ICMAI asserts CMAs are equipped through their curriculum, while ICAI presses for audits to remain exclusive to CAs.

#### Implication for CMAs:

- Expansion into statutory tax-audit roles.
- Need to align skills and institutional recognition.
- Advocate clarity in roles without diluting standards.

## 3. Capital vs. Revenue Expenditure in Construction

### 3.1 Standards on Classification

Indian tax law distinguishes capital expenditures (CapEx) which are added to asset cost and depreciated, from revenue expenditures (RevEx) fully deductible in the year incurred. CMAs need to assess items like pre-construction costs, site setup, and GST/ITC judgements carefully.

### 3.2 Capital Gains and Indexation Changes

Budget 2024 overhauled capital gains: indexation benefit removed except for pre-1 April 2001 assets, and LTCG tax set at 12.5%. While some sellers benefit, others may face increased tax, especially without indexation; holding periods and indexed costs are fundamental for gain/loss analysis.

## 4. Depreciation Strategies and Tax Planning

### 4.1 Accelerated Depreciation

Construction and real estate assets—primarily buildings—draw depreciation at 5% p.a. under I-T rules. CMAs should explore options to front-load depreciation under certain conditions, where allowed, to optimize tax payouts and cash flow.

### 4.2 Cost Segregation Equivalent in India

Though formal cost segregation isn't prevalent, segregating components (e.g., plant, machinery, fittings) may allow higher depreciation rates—aligning with international practice. CMAs must structure CapEx tracking to take fuller depreciation benefits.

## 5. Entity Structuring & Financing

### 5.1 Choice of Entity

Real estate can operate under SPVs, LLPs, trust structures, or direct ownership. With concessional corporate tax rates (22%, 25% for SMEs) and AMT/ MAT regimes, CMAs play a strategic role in modeling tax flow outcomes and optimal structures.

### 5.2 Interest Deductibility

Interest on borrowing is viable under business income clauses, conditioned by its connection to income generation. Complexity arises for capital creditors or related parties—CMAs must monitor deductibility rules, especially in intra-group financing.

## 6. GST, ITC & Real Estate

### 6.1 Input Tax Credits (ITC)

For ongoing projects and commercial rentals, ITC is crucial for cost recovery. Supreme Court rulings in 2025 have upheld ITC eligibility on commercial property construction—boosting developer cash flow.

#### CMA Action Points:

- Maintain structured GST ledgers for CapEx vs. RevEx classification.
- Collaborate with tax counsel for GST-ITC documentation.
- Audit trail aligned with GST filings and returns.

## 7. Capital Gains Regime & Real Estate

### 7.1 LTCG & Holding Periods

Budget 2024's impact on LTCG requires CMAs to re-evaluate holding strategies. High-growth assets purchased post-2001 might attract higher taxes without indexation, while older properties see lowered absolute rates.

#### Strategic Interventions:

- Track asset-centric holding periods and valuation norms under Sec 50C.
- Assess capital gain reinvestment exemptions (Sec 54/54F) and titling for cost benefit distribution

## 8. Energy-Efficiency & Sustainability Incentives

India is reinforcing green-building mandates (e.g., GRIHA/IGBC ratings). Federal incentives under Sec 80IA, 35(2AB), and separate green credits can reduce tax liability while attracting funding and CSR-linked investment. CMAs can drive ESG value by integrating such incentives into project appraisal.

## 9. Tax Audits, Internal Control & Compliance

### 9.1 Tax Audits & Professional Roles

The New Tax Bill's potential inclusion of CMAs as accountants augments their role in tax audits. Effective participation depends on strong accounting systems, controls, and tax-focused audits.

### 9.2 Internal Controls & Governance

CMAs should streamline:

- Accurate ledger systems aligned with PST codes and depreciation schedules.
- Periodic internal audit of GST and tax processes.
- Coordinated documentation across legal, engineering and finance teams.

## 10. Tech, Data & CMA Strategic Insight

With advances in project information systems (ERP), CMAs can leverage data analytics and dashboards for CapEx forecasting, tax ratio monitoring, and scenario modeling (e.g., capital gains simulating holding timelines). They must collaborate closely with finance, project, and tech teams to ensure tax visibility across the project lifecycle.

## 11. The Evolving Role of CMAs

CMAs are uniquely positioned to contribute as:

- Tax Strategists – Proactive entity and project design, CapEx planning, financing mix.
- Compliance Enablers – Robust documentation and controls aligned with evolving audit frameworks.
- Interdisciplinary Integrators – Bridging tax and engineering/technical due to their broad training.
- Advocacy Figures – Engaging institutions (ICMAI) and regulators for tax legislation clarity.
- ESG & Sustainability Advisors – Coordinating green building incentives and compliance with ESG norms.

## 12. Conclusion

The construction and real estate sector is undergoing a pivotal transformation in India—from tax-simplification reforms and capital gains overhaul to ITC rulings and expanded roles for CMAs. These shifts demand an adaptive, analytical, sustainability-aware CMA skill set.

By deeply understanding capital vs. revenue treatment, depreciation accelerations, GST-ITC, entity structuring, audits, and green incentives, CMAs can enhance financial efficiency, compliance integrity, and strategic planning in their firms.

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# OIDAR and Import of Services: Decoding the GST Implications

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## Introduction

The rapid digitization of global economies has challenged traditional tax frameworks, prompting nations to adopt unilateral measures to tax cross-border digital transactions. While the World Trade Organization (WTO) discourages customs duties on electronic transmissions, countries like India, France, and the UK have introduced specialized levies such as the **Digital Services Tax (DST)** or embedded taxes within existing regimes. In India, the **Goods and Services Tax (GST)** captures digital transactions through provisions for **Online Information and Database Access or Retrieval (OIDAR) services** and **Import of Services**. However, the thin line between these categories often leads to confusion. This article demystifies their distinctions, tax liabilities, and practical challenges.

## 1. OIDAR: Definition and Scope

### Legal Framework

OIDAR is defined under **Section 2(17) of the IGST Act, 2017** as services:

- Delivered via the **internet or electronic networks**,
- **Automated** (minimal human intervention),
- Impossible to render without information technology.

### Examples:

- **AI-driven advisory services** (e.g., robo-advisors like Scripbox).
- **SaaS platforms** (e.g., Zoom, Google Workspace).
- **Streaming services** (e.g., Netflix).
- **E-learning platforms** (pre-recorded courses).

### Taxability

- **Supplier Liability:** Overseas OIDAR providers must register and pay GST if the recipient is a **Non-Taxable Online Recipient (NTOR)**—an unregistered person in India.
- **Intermediary Liability:** If a foreign intermediary facilitates the supply, they become the deemed supplier.
- **Reverse Charge Mechanism (RCM):** Applies if the recipient is GST-registered.

### Key Amendment (2023):

The NTOR definition was broadened to include **all unregistered recipients**, irrespective of purpose (business or personal), simplifying compliance but expanding the tax base.

## 2.. Import of Services: The Overlapping Grey Area

### Definition

**Import of Services** (Section 2(11) of IGST Act) occurs when:

- A supplier is **outside India**,
- The recipient is **in India**,
- The service is **not OIDAR**.

## Tax Treatment

- **RCM:** GST is paid by the Indian recipient if registered.
- **Exemption:** For non-commercial use by individuals (Notification No. 9/2017-IGST).

### Critical Difference from OIDAR:

- **Human Intervention:** Import of Services may involve human effort (e.g., consulting), while OIDAR is automated.
- **Supplier Obligation:** OIDAR places compliance burden on foreign suppliers; Import of Services shifts it to Indian recipients.

## 3. Key Challenges and Judicial Interpretations

### (A) Classification Dilemmas

#### (1) E-books vs. Digital Libraries:

- **E-books** (downloadable) may qualify as **goods** (HSN 4901) or **services** (HSN 9984).
- **Digital libraries** (online access) are OIDAR.

#### (2) Live vs. Recorded Classes:

- **Pre-recorded courses:** OIDAR (automated).
- **Live sessions:** Import of Services (human involvement).

### (B) Advance Rulings

- **NCS Pearson Inc. (Karnataka AAAR):** Online exams with automated scoring were held as OIDAR. Post-2023, even minimal human intervention may exclude a service from OIDAR.
- **Amogh Ramesh (Maharashtra AAAR):** Supply of online games was deemed OIDAR, not goods.

### (C) Compliance Hurdles

- **Place of Supply (POS):** Circular No. 242/36/2024 mandates suppliers to record the recipient's state in invoices for OIDAR/money gaming services.
- **Intermediary Liability:** Foreign platforms (e.g., app stores) may face GST obligations for facilitating OIDAR.

## 4. Comparative Analysis: OIDAR vs. Import of Services

Parameter	OIDAR	Import of Services
Automation	Fully automated	May involve human effort
Supplier Liability	Foreign supplier/NTOR nexus	Indian recipient (RCM)
Exemption	None for NTOR	Non-commercial use exempt
Examples	Netflix, SaaS	Consulting, live training

## 5. Way Forward

- **Clarify Definitions:** CBDT/CBIC should issue guidelines to distinguish OIDAR from Import of Services.
- **Simplify Compliance:** Single-window registration for foreign OIDAR suppliers.
- **Global Alignment:** India should advocate for a multilateral solution under OECD's **Inclusive Framework on BEPS**.

## Conclusion

India's GST framework for digital transactions is progressive but complex. While OIDAR captures automated services, Import of Services fills the gaps for human-driven supplies. Businesses must carefully classify transactions to avoid dual taxation or compliance lapses. As digital economies evolve, policymakers must balance revenue objectives with ease of doing business.

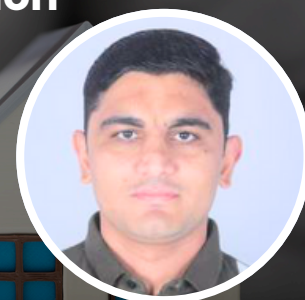
# GST in Real Estate: Resolving Ambiguities in Taxation of Construction and Completed Properties

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## Introduction

The Indian real estate sector, a significant contributor to GDP and employment, has faced persistent tax ambiguities under the Goods and Services Tax (GST) regime. The classification of construction activities—whether as a **supply of services** or **sale of immovable property**—has led to disputes, litigation, and compliance challenges. The crux of the issue lies in interpreting **Schedule II (Entry 5(b))** of the CGST Act, which deems construction for sale as a **taxable service** unless the transaction occurs after:

1. **Completion Certificate** issuance, or
2. **First Occupation**, whichever is earlier.

This article examines the legal framework, judicial precedents, and unresolved ambiguities, proposing a balanced approach for policymakers and stakeholders.

## 1. Legal Framework: GST on Real Estate

### Key Provisions

- **Schedule II (Entry 5(b))**: Construction of buildings for sale is treated as a service, unless consideration is received post-completion certificate/first occupation.
- **Schedule III (Entry 5)**: Sale of land and buildings (post-completion) is neither goods nor services, thus outside GST.
- **Section 7(1A)**: Clarifies classification but does not expand the scope of "supply."

## Taxability Scenarios

Stage of Transaction	GST Applicability	Reasoning
Under-construction property sale	Taxable (18% GST)	Treated as a service under
Post-completion certificate/first occupation	No GST	Covered under Schedule III (exempt)
Partial construction + partial payment	Pro-rata GST on construction component	Mixed supply (land exempt, construction taxable).

## 2. Ambiguities in Interpretation

### (A) Defining "First Occupation"

- **Statutory Void**: The CGST Act lacks a definition, leading to conflicting interpretations.
- **CBIC FAQ (2019)**: Suggests alignment with state laws on occupancy certificates, but this contradicts the phrase "**whichever is earlier**" in Schedule II.
- **Judicial Conflict**:
  - **AAR Rulings**: Some authorities equate "first occupation" with formal occupancy certificates (e.g., Savfab Buildtech, UP AAR 2024).
  - **High Court Rulings**: Karnataka HC in Rohan Corporation (2024) held that physical possession suffices, irrespective of bureaucratic delays in certification.

### (B) Completion Certificate Delays

- **Practical Reality**: Many projects face delays in obtaining certificates due to municipal backlogs or pending dues.

- **Taxpayer Dilemma:** Developers risk GST liability even after project completion if authorities delay certification.

### (C) Completion Certificate Delays

- **Practical Reality:** Many projects face delays in obtaining certificates due to municipal backlogs or pending dues.
- **Taxpayer Dilemma:** Developers risk GST liability even after project completion if authorities delay certification.

## 3. Judicial Precedents and Their Implications

### Key Cases

#### 1. Larsen & Toubro Ltd. vs State of Karnataka (2013)

- **Held:** Construction is a "works contract" only after buyer agreement. Pre-agreement construction costs are not taxable.
- **GST Impact:** Reinforces that GST applies only to post-agreement construction services.

#### 2. Munjal Manish Bhai Bhat vs Union of India (Gujarat HC, 2021)

**Held:** No "supply" exists without a buyer agreement. Pre-sale construction is not taxable.

#### 3. Savfab Buildtech (UP AAR, 2024)

**Controversy:** Ignored physical possession, ruling that GST applies until formal occupancy certificates are issued.

### Judicial Trends

- **Literal vs. Purposive Interpretation:** Courts increasingly favor **substance over form**, recognizing practical challenges in real estate.
- **Legislative Intent:** The phrase "**whichever is earlier**" suggests Parliament intended to exempt transactions post-physical readiness, not bureaucratic compliance.

## 4. Policy Recommendations

### (A) • **Legislative Definition:** Amend CGST Act to define "first occupation" as:

- Physical possession by buyer, **or**
- Issuance of occupancy certificate.

- **Alignment with RERA:** Deem projects "complete" if RERA mandates possession delivery.

### (B) **Relief for Delayed Certificates**

- **Deemed Completion:** If authorities delay certification beyond a stipulated period (e.g., 6 months), occupation should be deemed lawful.

### (C) **GST Council Reforms**

- (1) **Uniform ITC Policy:** Restore ITC for developers to reduce cascading taxes.
- (2) **Single-Window Clearance:** Integrate GST registration with RERA approvals.

## 5. Conclusion: Toward a Balanced Approach

The GST regime's treatment of real estate reflects a tension between **revenue objectives** and **practical feasibility**. While Schedule II aims to tax under-construction projects, its ambiguous phrasing has led to litigation. Judicial precedents increasingly emphasize **economic reality** over procedural formalities, urging reforms such as:

- **Clear statutory definitions** for "first occupation."
- **Protection for developers** against administrative delays.
- **Harmonization with RERA** to streamline compliance.

Until legislative clarity emerges, stakeholders should:

- **Document possession dates** meticulously.
- **Leverage judicial rulings** favouring substance-based interpretations.
- **Advocate for GST Council reforms** to align taxation with industry realities.

# Input Tax Credit in Bill-to-Ship-to Transactions: A Landmark Ruling on Physical Delivery Requirements

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## Introduction

The **availment of Input Tax Credit (ITC)** under the GST regime has been a contentious issue, particularly in **bill-to-ship-to transactions**, where goods are directly dispatched to a third-party customer instead of the registered buyer. A recent **Patna High Court judgment** has provided crucial clarity, ruling that **physical receipt of goods by the buyer is not mandatory** for claiming ITC if the transaction follows a structured **bill-to-ship-to model**.

This article examines the **facts, legal reasoning, and implications** of the judgment, along with its impact on supply chain efficiency and GST compliance

## (1) Background of the Case

### Facts

- The petitioner (a registered dealer) entered into transactions where:
  - **Supplier** issued invoices to the dealer ("**bill-to**" party).
  - **Goods were shipped directly** to the dealer's customers ("**ship-to**" party) to **reduce logistics costs**.
- **Taxes were duly paid** on these supplies.
- The **tax authorities denied ITC**, arguing that since the dealer did not **physically receive** the goods, the conditions of **Section 16(2)(b) of the CGST Act** were not satisfied

### Key Issue

**Whether ITC can be denied solely because the registered person did not physically receive the goods in a bill-to-ship-to transaction?**

## (2) Patna High Court's Ruling

The court **allowed ITC**, making the following key observations:

### (A) Physical Receipt Not Mandatory Under GST Law

- The court relied on the **Explanation to Section 16(2)(b)**, which states: "The goods shall be deemed to have been received by the registered person when they are delivered to another person on the direction of such registered person."
- This **expands the definition of "receipt"** beyond physical possession.

### (B) Circular No. 193/31.12.2024 Supports ITC in Bill-to-Ship-to Models

- The **CBIC circular** clarifies that **direct dispatch to a third party** (on buyer's instructions) **qualifies as receipt** for ITC purposes.
- This is a **departure from the excise regime**, where physical receipt was strictly enforced.

### (C) Remand for Verification of Transaction Structure

- The court **remanded the case** only to verify:
  - (1) **Existence of a formal agreement** between dealer and supplier
  - (2) **Proof that goods reached the intended "ship-to" party.**

**Final Decision**

- **ITC cannot be denied** merely due to lack of physical receipt if the transaction follows a **genuine bill-to-ship-to model**.

**3. Critical Analysis of the Judgment****(A) Clarity on Bill-to-Ship-to Transactions**

- The ruling **validates a common supply chain practice** used by e-commerce, manufacturing, and wholesale businesses.
- **No need for artificial movement of goods** to the buyer's warehouse just for tax compliance.

**(B) Key Legal Principles Established****1. "Receipt" is a Legal, Not Physical, Concept**

- GST law recognizes **constructive receipt** (delivery to a third party on buyer's instructions).

**2. Substance Over Form**

- Authorities must examine the **economic reality** of transactions, not just paperwork.

**3. Harmonization with CBIC Guidance**

- The judgment aligns with **Circular No. 193/2024**, reducing litigation.

**(C) Unresolved Issues**

- **Fraud Prevention:** How will authorities distinguish **genuine transactions** from fake bill-to-ship-to claims?
- **Documentation Requirements:** What level of proof is needed to establish the **buyer's instructions**?

**4. Implications for Businesses & Tax Authorities****(A) For Businesses**

- ✓ **Supply Chain Efficiency:** No need for **double transportation** just to satisfy tax officers.
- ✓ **ITC Certainty:** Legitimate bill-to-ship-to transactions **will not face arbitrary denial**.

**Compliance Risks:** Must maintain:

- **Tripartite agreements** (buyer-supplier-ship-to party).
- **Delivery proofs** (LRs, GRNs from ship-to party).

**(B) For Tax Authorities**

- **Shift in Audit Focus:** From **physical receipt** to **transaction authenticity**.
- **Need for Clear Guidelines:** To prevent harassment of genuine cases.

**(C) Judicial Trends**

- This ruling follows **Madras HC's stance** in Safire Tanks (2023), which also upheld ITC in drop-shipment models.
- Contrasts with **early GST adjudications**, where officers rigidly demanded physical receipt.

**5. Way Forward: Ensuring Compliance****(A) Best Practices for Businesses****1. Document Instructions to Supplier**

- Use **written agreements/MOUs** specifying ship-to details.

**2. Maintain Delivery Proofs**

- **E-way bills, GRNs, and acknowledgments** from the ship-to party.

**3. Reconcile Invoices & Movement**

- Ensure **invoice, e-way bill, and delivery details match**.

**(B) Recommendations for Tax Policy**

- **Standardize Bill-to-Ship-to Documentation:** CBIC should prescribe a **declaration format**.
- **Clarify Fraud Detection Mechanisms:** Help officers distinguish **genuine vs. sham transactions**.

**Conclusion**

The **Patna High Court's judgment** is a **landmark victory** for businesses using **bill-to-ship-to models**, affirming that **ITC cannot be denied due to lack of physical receipt**. By recognizing constructive receipt, the ruling **reduces compliance costs** and aligns GST with modern supply chain practices.

**Key Takeaways:**

1. **ITC is allowed** if goods are shipped to a third party on **buyer's instructions**.
2. **Documentation is critical**—maintain agreements and delivery proofs.
3. **Tax officers must examine substance**, not just physical movement.

**Next Steps for Businesses:**

- Review existing **bill-to-ship-to transactions**.
- Strengthen **documentation processes** to avoid disputes.

# How AI Can Help Accountants and Tax Consultants in Notice Replies, Appeals, and Day-to-Day Work

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Artificial Intelligence (AI) is no longer just a futuristic concept; it is now a critical partner in the daily work of accountants and tax consultants. Whether it is drafting replies to complex notices, managing appeals, or handling routine but time-consuming tasks in GST and Income Tax, AI-powered tools have transformed the landscape. With tools like ChatGPT, automation software, and cloud platforms, consultants can work faster, smarter, and with greater accuracy. This article explores how AI can support notice replies, appeals, day-to-day tasks, and how accountants can stay future-ready by upgrading their skills.

## 1. How AI Can Help Draft Replies to Notices

Tax notices are often detailed, complex, and time-sensitive. Preparing accurate, professional replies is critical to compliance and client satisfaction.

Key Benefits:

- Quick analysis of notices and related tax data.
- Drafting of structured, legally sound replies.
- Time-saving and accuracy improvement.

How AI Assists:

- Notice Reading: AI can swiftly read GST or Income Tax notices and highlight key issues.
- Summary Preparation: AI tools can summarize complex notices for quicker understanding.
- Reply Drafting: ChatGPT and similar tools can draft tailored replies based on the notice type, assessment year, and tax matter.
- Cross-Referencing: AI can auto-search case laws, past notices, and relevant tax provisions.
- Auto Templates: AI can customize standard reply templates for various tax situations.

Example Applications:

- GST Notice: AI can identify mismatches between GSTR-3B and GSTR-2A, and suggest probable explanations or supporting evidence.
- Income Tax Scrutiny: AI can help draft responses for queries on high-value transactions, capital gains, or unreported incomes.

## 2. How AI Supports in Appeals

Appeal processes require precision in drafting and adherence to legal structures.

AI Contributions:

- Drafting appeal applications with accurate sections and grounds.
- Preparing annexures, computation sheets, and supporting arguments.
- Summarizing relevant case laws efficiently.
- Tracking appeal due dates and submissions.

ChatGPT's Assistance:

- Drafting initial appeal letters with proper language.

- Preparing point-wise replies.
- Suggesting arguments based on previous case laws.
- Reviewing the structure and tone for professional representation.

### 3. AI in GST and Income Tax for Daily Operations

Day-to-Day Support:

- GST Reconciliation: AI can automatically match GSTR-2A with purchase records.
- ITC Mismatch: AI highlights incorrect input credits and wrong entries.
- Data Collection: AI quickly pulls Form 26AS, AIS, TIS, and bank interest details.

Filing Returns:

- Auto-calculation of tax liabilities.
- Preparation of GSTR-1, GSTR-3B using extracted data.
- Auto-population of ITR forms based on AIS and TIS.

Additional Support:

- Generating GST registration applications.
- Drafting responses to GST portal queries.
- Preparing client communication for document collection.
- Creating monthly compliance checklists.
- Preparing Standard Operating Procedures (SOPs) for the accounting team

### 4. How ChatGPT Helps Accountants and Tax Consultants

- Drafting Support:
- Professional emails for clients.
- GST registration and other application drafts.
- Replies to routine GST and Income Tax queries.
- Client notices for pending document submissions.

Process Automation:

- Generating task lists and compliance calendars.
- Providing simple explanations to clients regarding notices and tax matters.
- Drafting SOPs for accounting workflows.

### 5. AI Tools Every Accountant Should Learn

Tool: QuickBooks Online Purpose: Cloud-based bookkeeping and tax management.

Tool: Zoho Books Purpose: GST-enabled accounting software with automation.

Tool: Tally Prime (Cloud) Purpose: GST and financial management with cloud functionality.

Tool: Excel with AI Add-ins Purpose: Predictive analysis and automated calculations.

Tool: ClearTax Purpose: GST filing, reconciliation, and ITR preparation.

Tool: Power BI Purpose: Data visualization and financial reporting.

Tool: Google Workspace Purpose: Collaboration, document sharing, and task management.

Tool: ChatGPT Purpose: Drafting notices, emails, SOPs, and tax responses.

Tool: Grammarly Purpose: Language and tone correction for professional writing.

Tool: Zapier Purpose: Workflow automation between different software platforms

### 6. What AI Cannot Do

Despite its benefits, AI has limitations.

- AI cannot negotiate with tax authorities.
- AI cannot offer customized tax planning.
- AI cannot handle face-to-face assessments or hearings.

- AI cannot make ethical or risk-based professional judgments.

AI is a powerful assistant but not a replacement for human accountants. Human judgment, ethical decision-making, and relationship management remain critical.

## 7. The Future of Accounting and Taxation with AI

Changing Roles:

- Data entry will be largely automated.
- Accountants will shift from return filing to tax advisory.
- Manual reconciliations will be replaced by automated systems.
- Compliance work will evolve into strategic consulting.

Global Opportunities:

- Outsourced accounting for USA, UK, Australia.
- Growing demand for international tax compliance.
- Advisory roles in cross-border taxation and transfer pricing.

Key Future Skills:

- Proficiency in AI-powered tools.
- Cloud accounting expertise
- Process automation using tools like Zapier.
- Data visualization through Power BI or Tableau.

## How AI Will Disrupt Accounting and Taxation

Current Process vs AI-Driven Process:

- Manual Data Entry → Automated Data Capture
- Batch Bookkeeping → Real-Time Bookkeeping
- Paper-Based Filings → Automated Return Preparation
- Routine Audits → Smart Audits with AI
- Human-Tracked Compliance → AI-Powered Compliance Alerts
- Delayed Reporting → Instant Financial Dashboards

Future Working Style in Accounting:

- Less focus on manual work, more on analysis.
- Heavy use of AI software for tax, audit, and reporting
- Cloud-based work, enabling global client servicing.
- Continuous learning in technology and advisory skills.
- Strategic client engagements with a consulting focus.

Role Transformation:

- Data Entry Clerk: Redundant.
- Bookkeeper: Role minimized.
- Tax Preparer: Transition to review and advisory roles.
- Auditor: Focus on analytics and high-risk assessments.
- Consultant: High growth potential.
- Tech-Savvy Accountant: Essential for future success

## Global Taxation Scope:

Growth Areas:

- Outsourced Bookkeeping: High global demand.
- International Tax Filing: Increasing complexity.
- Payroll Processing: Growing need across countries.
- Transfer Pricing: Rising demand for advisory services
- IFRS and GAAP Financial Reporting: Expanding market.
- Business Process Automation: Growing consulting opportunities.

**Conclusion:**

AI is revolutionizing accounting and taxation, but it is not here to replace accountants. Instead, it is an enabler that makes work faster, more accurate, and less manual. The future belongs to accountants who embrace AI, master cloud platforms, and shift their focus to advisory and strategic services. Human accountants will always be needed for complex tax planning, negotiations, client management, and ethical decision-making.

By adopting AI, accountants can free up time from routine tasks and focus on adding value to their clients through insights, strategies, and international opportunities. The key to future success is to upgrade skills, adopt technology, and continuously evolve with the changing landscape of global accounting and taxation.

# GST on Transfer of Development Rights: Analyzing the Landmark Ruling on Joint Development Agreements

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## Introduction

The taxation of **Transfer of Development Rights (TDR)** and **Floor Space Index (FSI)** under the Goods and Services Tax (GST) regime has been a contentious issue, particularly in joint development agreements (JDAs) between landowners and developers. A recent judgment by the **Bombay High Court** has provided much-needed clarity, holding that **GST under Reverse Charge Mechanism (RCM)** does not apply to development rights transferred under private agreements, as opposed to those obtained from municipal authorities.

This article examines the **legal framework, judicial reasoning, and implications** of the ruling, along with unresolved questions on forward charge liability and exemptions for government-related TDR transactions.

## 1. Background of the Case

### Facts

- A developer entered into a **Joint Development Agreement (JDA)** with a landowner on **April 7, 2022**, to construct a multi-storied residential complex.
- **Consideration:** The landowner was to receive **₹7 crores + two apartments** in the completed project.
- The agreement was governed by the **Maharashtra Apartment Ownership Act, 1970**, and did not involve TDR/FSI issued by municipal authorities.

### Key Issue

- Whether the transfer of development rights under the JDA falls under **Entry 5B of Notification No. 13/2017-CT(R)**, attracting GST under **Reverse Charge Mechanism (RCM)**?

### Revenue's Argument

- The tax authorities contended that the transaction was taxable under **Entry 5B**, which covers: "Supply of services by way of transfer of development rights or FSI (including additional FSI) for construction of a project by a promoter."
- A **show-cause notice** was issued, demanding GST on the development rights at **18% under RCM**.

## 2. Bombay High Court's Ruling

The court **quashed the GST demand**, making the following key observations:

### (A) Entry 5B Applies Only to TDR/FSI from Planning Authorities

- The language of **Entry 5B** specifically refers to TDR/FSI **as per Development Control Regulations (DCR)**.
- The rights in this case were **privately negotiated** between the landowner and developer, **not** derived from municipal authorities.
- Thus, the transaction **did not qualify** as a taxable service under this entry.

### (B) No 'Transfer' Under GST Law

- The court emphasized that **private contractual rights** do not constitute a 'transfer' as envisaged under GST law.

- The agreement merely facilitated **construction rights** in exchange for a share in the built-up area, not a statutory TDR/FSI transfer.

### (C) Compliance with Maharashtra Apartment Ownership Act ≠ Taxable Supply

- The deed of declaration under the state law was for **regulatory compliance**, not for creating a GST-liable service.
- Merely adhering to state laws **does not automatically attract GST**.

#### Final Decision

- The **show-cause notice and GST demand were quashed**, as the transaction was outside the scope of **Entry 5B**

## 3. Critical Analysis of the Judgment

### (A) Clarity on TDR/FSI Taxation

- The ruling **narrows the scope** of taxable TDR transactions, limiting it to **municipal/government-issued FSI/TDR**.
- **Private JDAs** (where landowners grant construction rights in exchange for flats/cash) **do not attract RCM**.

### (B) Unresolved Issues: Forward Charge Liability?

- The judgment **did not examine** whether GST could apply on a **forward charge basis** (i.e., if the landowner is a business entity supplying development rights as a service).
- **Possible Scenarios:**
  1. **If Landowner is a Developer:** Could argue that granting development rights is a **service**, liable under **forward charge**.
  2. **If Landowner is an Individual:** Likely **not taxable**, as individuals are not GST-registered.

### (C) Exemptions for Government-Related TDR

- The **ELP commentary** raises an important point:
  - **Notification No. 12/2017-CT(R)** exempts TDR/FSI supplied by **governmental authorities** under **Article 243W** (municipal functions).
  - Developers acquiring TDR from municipal bodies **may still claim exemptions**

## 4. Critical Analysis of the Judgment

### (A) For Developers & Landowners

- **JDAs with Private Landowners:** No GST on RCM for development rights.
- **TDR from Municipalities:** Must evaluate if **Notification 12/2017 exemptions apply**.
- **Forward Charge Risk:** Landowners in business may still need to assess GST liability.

### (B) For Tax Authorities

- **Narrow Interpretation of Entry 5B:** Limits revenue from private JDAs.
- **Potential Litigation:** Authorities may still contest forward charge applicability.

### (C) Judicial Trends

- This ruling aligns with **Karnataka HC's stance** in Safal Constructions (2023), which held that **private development rights are not taxable under RCM**.
- Contrasts with **AAR rulings** that sometimes broadly interpret 'supply' in JDAs

## 5. Way Forward: Need for Legislative Clarity

- **Clarify Entry 5B:** CBIC should explicitly exclude **private JDAs** from RCM.
- **Exempt Landowners:** Individuals transferring rights should not be treated as service suppliers.
- **Harmonize State & Central Laws:** Align GST treatment with state-**specific RERA and municipal laws**.

## Conclusion

The Bombay High Court's judgment provides **much-needed relief** to developers and landowners by excluding private JDAs from GST under RCM. However, the **ambiguity on forward charge liability** and **government-issued TDR** exemptions leaves room for further litigation.

## Key Takeaways:

1. **No RCM on private development rights**—only applies to municipal TDR/FSI
2. **Forward charge liability remains uncertain**—landowners in business should evaluate GST exposure.
3. **Exemptions for government-supplied TDR** may still apply under **Notification 12/2017**.

For now, stakeholders must **document agreements carefully** and **monitor further judicial developments** to ensure compliance.

# Digital Due Process: High Court Validates GST Portal Notice Service Despite Natural Justice Concerns

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**A recent High Court judgment affirms that uploading notices on the GST portal constitutes valid service under the CGST Act, raising important questions about digital compliance and taxpayer rights in India's evolving tax landscape.**

## Executive Summary

In a significant ruling that reinforces the digital-first approach of India's Goods and Services Tax (GST) regime, a High Court has upheld the validity of serving notices through the GST portal, even without physical delivery or personal service. The judgment in [Case Name] establishes that uploading notices in the "Additional Notices and Orders" section of the GST portal satisfies the service requirements under Section 169 of the Central Goods and Services Tax Act, 2017 (CGST Act), when read with the Information Technology Act, 2000.

This decision comes at a time when the intersection of digital governance and constitutional rights continues to evolve, particularly regarding the balance between administrative efficiency and due process protections for taxpayers.

## Case Background and Factual Matrix

The dispute arose when a taxpayer received an assessment order dated July 8, 2024, demanding ₹24,59,347.22 towards GST, interest, and penalty through Reference No. ZD330724093205F. The petitioner's primary contention was the absence of any prior notice or show cause notice, which they argued denied them the fundamental opportunity for proper representation before the assessment was finalized.

Approaching the High Court under Article 226 of the Constitution of India, the petitioner sought to quash the assessment order on grounds of violation of natural justice principles. The case presented a classic confrontation between traditional notions of service and the digital transformation of tax administration in India.

The tax authorities, represented by the respondents, maintained that proper service had been effected by uploading the requisite notices on the GST portal's designated section for "Additional Notices and Orders." This position reflected the government's broader stance on digital service mechanisms introduced to streamline tax administration and reduce compliance costs.

## Legal Framework and Statutory Provisions

### The CGST Act Framework

Section 169 of the CGST Act, 2017, provides multiple modes of service, with subsection (1)(d) specifically recognizing service through the common portal as legally valid. This provision represents a departure from traditional service methods, acknowledging the digital nature of the GST ecosystem.

The legislative intent behind this provision was to create a unified electronic interface that would serve as the primary communication channel between tax authorities and assessees. This approach was designed to eliminate delays associated with physical service while ensuring comprehensive record-keeping and accessibility.

## Information Technology Act Integration

The judgment also relied heavily on Section 13(2)(a)(i) of the Information Technology Act, 2000, which establishes that the receipt of an electronic record is deemed complete when it enters the recipient's designated computer system. In the GST context, the common portal serves as this designated system, creating a legal fiction of service upon upload.

This integration of IT Act provisions with tax legislation demonstrates the holistic approach Indian courts are taking toward digital governance, recognizing that electronic systems can fulfill traditional legal requirements when properly structured and implemented.

## Court's Analysis and Reasoning

### Deeming Fiction and Burden of Proof

The High Court emphasized that the deeming fiction created by Section 169(1)(d) of the CGST Act is robust and stands unless rebutted by "strong proof inferring failure to serve." The court found that the petitioner had failed to produce such evidence, noting that mere non-receipt or lack of actual knowledge does not invalidate service when the statutory requirements are met.

This reasoning places a significant burden on taxpayers to demonstrate not just that they didn't receive notice, but that the system itself failed to properly effect service. The court's approach suggests that ignorance of portal updates, regardless of cause, cannot serve as a defense against properly uploaded notices.

### Mandatory Portal Monitoring Obligation

A crucial aspect of the judgment is the court's finding that assesseees have an affirmative obligation to regularly monitor the GST portal for updates. The court reasoned that the GST framework creates a single electronic interface specifically to centralize all communications, and participants in this system cannot claim ignorance of their monitoring responsibilities.

This obligation represents a significant shift in the taxpayer-authority relationship, effectively making taxpayers responsible for proactively checking for notices rather than relying on active service by authorities. The implications of this duty extend beyond mere procedural compliance to fundamental questions about the nature of due process in digital governance.

### Natural Justice in Digital Context

The court concluded that since service was deemed proper under the statutory framework, the consequential assessment order did not violate principles of natural justice. This finding suggests that digital service, when compliant with statutory requirements, satisfies constitutional due process standards even without traditional indicia of receipt or acknowledgment.

However, this aspect of the judgment has attracted criticism for potentially undermining substantive due process rights in favor of procedural compliance with digital systems.

## Judicial Precedent and Conflicting Authorities

### Earlier High Court Decisions

The judgment appears to diverge from a line of High Court authorities that have taken a more protective approach toward taxpayer rights in digital service contexts. Several High Courts have previously quashed ex parte orders in cases where:

- Show cause notices were not properly located within the correct portal modules
- Dashboard design ambiguities prevented taxpayers from accessing relevant notices
- Technical glitches or system failures affected notice accessibility

These earlier decisions generally held that the absence of proper notice under the correct module, combined with denial of response opportunities, constituted violations of natural justice principles.

## The Portal Design Evolution

The conflicting judicial approaches partially stem from the evolution of the GST portal itself. Early versions of the portal suffered from significant design and navigation issues that made it genuinely difficult for taxpayers to locate relevant notices. Courts dealing with these earlier systems were more sympathetic to taxpayer claims of non-receipt.

As the portal has undergone improvements and standardization, courts appear increasingly willing to place the burden of monitoring on taxpayers, assuming that a reasonably designed system provides adequate notice when properly used.

## Practical Implications for Tax Practice

### Compliance Strategies

This judgment reinforces several critical compliance practices for GST-registered entities:

**Regular Portal Monitoring:** Businesses must establish systematic procedures for checking the GST portal, including the "Additional Notices and Orders" section, at regular intervals. This cannot be delegated without appropriate oversight and backup systems

**Documentation Protocols:** Taxpayers should maintain detailed records of their portal access, including screenshots and timestamps, to demonstrate their monitoring efforts in case of disputes.

**Professional Representation:** Given the technical complexities and legal implications of digital service, businesses should consider engaging qualified GST practitioners to manage portal monitoring and compliance.

### Risk Assessment Framework

The decision creates several risk factors that businesses must evaluate:

**Technology Dependence:** Companies become vulnerable to their own technological capabilities and internet connectivity issues, as these cannot excuse non-compliance with monitoring obligations.

**Human Resource Allocation:** The ongoing obligation to monitor portals requires dedicated personnel or systems, representing an additional compliance cost.

**Legal Defense Challenges:** The high burden of proof for challenging digital service makes it more difficult to contest notices on procedural grounds.

## Constitutional and Policy Considerations

### Due Process Evolution

This judgment represents part of a broader evolution in how Indian courts conceptualize due process in the digital age. The traditional understanding of notice and opportunity to be heard is being reinterpreted to accommodate electronic systems and virtual interactions.

While this evolution reflects practical necessities of modern governance, it raises questions about whether digital due process provides equivalent protection to traditional methods, particularly for taxpayers with limited technological sophistication or resources.

### Administrative Efficiency vs. Individual Rights

The court's approach prioritizes administrative efficiency and system-wide consistency over individual-specific considerations. While this serves the broader goal of effective tax administration, it may disadvantage taxpayers who face genuine technological barriers or systemic access issues.

The balance struck by this judgment suggests that courts are increasingly willing to accept some individual hardship in service of systemic efficiency, particularly where statutory frameworks provide clear digital alternatives to traditional processes.

## Future Implications and Recommendations

### For Tax Authorities

Tax authorities should consider several improvements to enhance the fairness and effectiveness of digital service:

**System Reliability:** Ensuring consistent portal availability and performance to support the legal presumption of proper service.

**User Interface Design:** Maintaining clear, intuitive navigation that allows taxpayers to easily locate relevant notices and communications.

**Backup Communication:** Developing supplementary notification systems (email alerts, SMS notifications) to complement portal-based service.

### For Taxpayers and Practitioners

The judgment suggests several adaptive strategies:

**Technology Investment:** Businesses should invest in reliable internet connectivity and backup systems to ensure consistent portal access.

**Process Documentation:** Maintaining comprehensive records of portal interactions to support any future legal challenges.

**Professional Development:** Tax practitioners must stay current with portal functionality and digital compliance requirements.

### For Legislative Consideration

The conflicting judicial approaches suggest potential areas for legislative clarification:

**Service Standards:** More detailed statutory guidance on what constitutes adequate digital service, including system performance standards.

**Exception Mechanisms:** Clear procedures for addressing genuine system failures or access issues that prevent proper notice receipt.

**Transition Provisions:** Consideration of different standards for taxpayers with varying levels of technological sophistication or access.

### Conclusion

The High Court's validation of GST portal notice service represents a significant step in the digitalization of India's tax administration. While the decision provides clarity on the legal validity of electronic service methods, it also highlights the evolving nature of due process in digital governance.

The judgment's emphasis on taxpayer monitoring obligations reflects a broader shift toward self-service compliance models that characterize modern tax systems. However, the apparent conflict with earlier protective precedents suggests that the judicial approach to digital due process remains unsettled.

For tax practitioners and businesses, this decision underscores the critical importance of proactive portal monitoring and systematic compliance procedures. The high burden of proof for challenging digital service makes prevention far more valuable than cure in GST compliance contexts.

As India's digital tax infrastructure continues to evolve, finding the appropriate balance between administrative efficiency and taxpayer protection will remain a crucial challenge. This judgment contributes to that ongoing conversation while providing immediate practical guidance for current compliance obligations.

The ultimate success of digital service mechanisms will depend not only on their legal validity but also on their practical accessibility and reliability. Courts, tax authorities, and taxpayers all have roles to play in ensuring that the digitalization of tax administration enhances rather than undermines the fundamental principles of fair and effective governance.

## A Commonly Misunderstood Issue: Applicability of Tax Audit u/s 44AB(e) vis-à-vis Section 44AD (4)

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### Background:

The scheme of presumptive taxation was introduced by Finance Act 1994 to provide relief to small taxpayers from the tedious job of maintenance of books of account and from getting the accounts audited. The objective of a presumptive taxation scheme is to encourage voluntary compliance by taxpayers engaged in small and medium level businesses. The main thrust is to simplify both tax compliance and collection.

Over the years, the scheme has been broadened through various amendments to include a wider range of businesses and higher turnover limits, aligning with the evolving commercial landscape.

Though the presumptive taxation regime was introduced with the intent to simplify compliance for small and medium businesses, the interpretation and practical application of these provisions especially when a taxpayer exits the scheme often leads to confusion

### A Peep into the Presumptive Taxation Scheme – Section 44AD

Applicability–

**Eligible Taxpayer:** Resident Individual, HUF and partnership firm not claiming any tax holidays

**Eligible Business** – Section 44AD can be opted for by taxpayers engaged in any business, except the following:

- Professions notified under Section 44AA(1)
- Businesses earning income from commission or brokerage
- Agency businesses
- Businesses involving plying, hiring, or leasing of goods carriages (which fall under Section 44AE)

**Turnover Limit:** The scheme can be availed only if the total turnover or gross receipts from the eligible business during the financial year:

- Do not exceed Rs 2 crore, or
- Up to Rs 3 crore, if at least 95% of receipts are through digital modes or banking channels (effective from FY 2023–24 onwards)

### Taxable income:

In case of an eligible assessee engaged in an eligible business a sum equal to 8% of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax.

Any deduction allowable under the provisions of section 30 to 38 shall be deemed to have been already given full effect.

### Key Amendments Introduced by the Finance Act, 2016 – Section 44AD

The Finance Act, 2016 brought significant changes to the presumptive taxation scheme under Section 44AD, which continue to impact how small businesses plan their tax compliance. The major amendments are summarized as follows:

- ✓ **Disallowance of Partner Remuneration and Interest** – Salary & interest paid to the partners by the firm as per Sec. 40(b) not deductible
- ✓ **Reduced Rate for Digital Transactions** – A lower presumptive income rate of 6% (instead of 8%) is applicable for turnover or receipts received through digital modes or banking channels
- ✓ **Advance Tax Payment Requirement** – Advance tax to be paid on or before 15th of March of the Financial year; levy of interest under sections 234B and 234C are additionally triggered.
- ✓ **Restriction on Re-entry into the Scheme**

Perhaps the most significant amendment is the introduction of sub-section (4), which restricts re-entry into the presumptive scheme. If a taxpayer opts for presumptive taxation and then opts out in any of the following five assessment years, they are barred from claiming the benefit of Section 44AD for the next five assessment years following the year of opting out.

### **Extract of subsection 4 and 5 of section 44AD–**

(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB

A close reading of subsection (4) of Section 44AD reveals the intent behind the provision. It mandates that once an eligible assessee engaged in an eligible business opts for the presumptive taxation scheme, they must consistently follow it for a period of five assessment years. If the taxpayer chooses to opt out before completing this five-year term, they become ineligible to avail the scheme for the subsequent five assessment years.

Further, under subsection (5), if the taxpayer opts out prematurely and their total income exceeds the basic exemption limit, they are then required to

- Maintain regular books of account as per Section 44AA(2), and
- Get their accounts audited under Section 44AB(e)

In essence, the audit requirement is not automatically triggered on opting out; it becomes applicable only if the taxpayer:

- Exits the presumptive scheme before completing the five-year block, and
- Has total income exceeding the basic exemption threshold.

This mechanism ensures that taxpayers do not switch in and out of the scheme arbitrarily. The overall objective behind these provisions is to discourage inconsistent use of the scheme and prevent its misuse by switching in and out to gain a tax advantage.

### Let's have a clarity by way illustration:

Thus, for year ending 31.3.2025 (AY 2025-26) even if the tax payer is not opting for presumptive scheme, he is not subjected to tax audit under clause (e) of 44AB as he has stayed in the scheme for more than 5 years before opting out of presumptive regime and shifting to normal provisions.

S.NO	AY	BUINESS TURNOVER	44AD	OTHER INCOME (SALARY & INTEREST)
1	2018-19	14,25,000	y	3,12,000
2	2019-20	75,25,000	y	7,84,700
3	2020-21	32,55,000	y	3,41,000
4	2021-22	16,05,000	y	1,12,200
5	2022-23	68,95,000	y	4,82,000
6	2023-24	53,65,000	y	4,02,400
7	2024-25	43,45,000	y	4,07,000
8	2025-26	Business turnover 1.5 crore , business loss of (Rs 22 Lakh)	N	4,40,000

The presumptive taxation scheme under Section 44AD is designed to simplify tax compliance for small businesses by offering relief from detailed bookkeeping and audit requirements. However, the amendments introduced through the Finance Act, 2016 have added a layer of discipline to its usage. By introducing a five-year lock-in period and restricting re-entry on premature exit, the law ensures that taxpayers use the scheme with a long-term commitment rather than as a tool for short-term tax planning. Additionally, the requirement for mandatory audit in case of early withdrawal—where income exceeds the basic exemption limit—serves as a safeguard against potential misuse.

## Construction Sector & Its related GST Implications

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In this article, Construction Sector & its GST implications will be discussed. As we know, Construction Sector is a significant contributor to India's GDP and employment also. This sector has seen many transformative changes over the years and especially after the introduction of GST this sector has seen many changes. This section provides an overview of the Construction Sector post-GST implementation and its objectives.

Goods and Services Tax (GST) plays a significant role in the taxation of construction activities across India. Hence to understand the taxation of Construction sector we have to first look into pre-GST era. To determine Completion of service in case of construction service, one has to look an event specified into contract / agreement entered with builder.

Service Tax on under Construction Property is levied on the Services provided by Builders or Real Estate Developers or any other person, where Building Complexes, Civil Structure or part thereof are offered for sale but the Payment is received before the Issuance of Completion Certificate by a Competent Authority.

When the Service Tax on under construction property was first levied, many Real Estate Developers and Builders had appealed to the Courts against the applicability of Service Tax on Under Construction Property and the Court had also issued a Stay Order for the same. But, the Courts eventually decided in the favour of the Govt. as a result of which Service Tax on under Construction Property was then liable to be paid.

The Govt. then also mentioned the activities which would be considered as Declared Services and Construction of Complex, Building, Civil Structure or part thereof has been stated as a Declared Service. In the light of the above, Service Tax on Construction was liable to be paid as per the Service Tax Rates in force

Further, as per Service Tax act clause (b) of section 66 E, if the service provider receives the entire consideration after issuance of completion certificate by competent authority no service tax was payable by the service provider. Hence as per Finance Act, 1994 any sum received as advance for flat booking or as sale consideration before the issue of completion certificate by the competent authority such as municipal corporation, service tax was payable on the same consideration.

At present, or in past also across the country, divergent business models and practices are being followed in the construction sector. Some of these business models and practices could be region specific. One of such model followed might be Tripartite Business Model (Parties in the model: (i) landowner; (ii) builder or developer; and (iii) contractor who undertakes construction). Issue involved in this matter is regarding the liability to pay service tax or GST on flats/houses agreed to be given by builder/developer to the land owner towards the land /development rights and to other buyers.

The important transaction in this respect might be (a) sale of land by the landowner which is not a taxable service; and (b) construction service provided by the builder/developer. The builder/developer receives consideration for the construction service provided by him, from two categories of service receivers: (a) from landowner: in the form of land/development rights; and (b) from other buyers: normally in cash.

Goods & Services Tax (GST) plays a major role in the taxation of construction activities across India. Understanding when and how GST applies can help stakeholders in the Construction sector ensure compliance and optimise their tax liabilities. Following are the key aspects of GST applicability on construction.

GST rates for Real Estates sector was effective from 1<sup>st</sup> April, 2019 after implementation of GST. Then they were categorised into (i) Affordable housing properties: Effective GST rate of 1% without ITC and (ii) Residential properties outside affordable segment-effective GST rate of 5% without ITC.

Affordable Housing Scheme means A residential house/flat of carpet area of up to 90 sqm. in non-metropolitan cities/towns and 60 sqm. in metropolitan cities having value up to Rs. 45 lacs (both for metropolitan and non- metropolitan cities). In this respect Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai.

In this respect one time option was given only to existing projects as of 01.04.2019. For new projects only new rates will be applicable. One time option was to be exercised once by 10<sup>th</sup> May, 2019. The old rates were 8% or 12% on ongoing projects (buildings where construction and actual booking have both started before 01.04.2019) and which have not been completed by 31.03.2019. So any project which were existing on 31.03.2019 had an option to opt for either old scheme or new scheme. That scheme option had to be exercised by 10<sup>th</sup> May, 2019. But all new projects had no such option and any project which started after 31.03.2019 has to be under new scheme only. And hence new rates of either 1%(affordable housing scheme) & 5%(non-affordable housing scheme) has to be followed by them.

Further, for availing new rates of 1% or 5% there are two conditions-

- (i) The taxpayer will not avail Input Tax Credit (ITC); and 80% of inputs and input services (Other than capital goods, Transfer of Development Rights, Joint
- (ii) Development Agreement, Floor Space Index, long term lease (premiums)) shall be purchased from registered persons. That means any raw materials for construction of the property has to be purchased from registered dealer to the extent of 80%. On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis. In case of shortfall, tax will have to be paid on reverse charge basis to the extent of shortfall only. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM.
- (iii) Hence, in order to come into new scheme from old scheme the ITC availed had to be reversed as per certain parameters as on 31.03.2019. They were computed on percentage booking basis, percentage of invoicing & consideration received and lastly percentage of completion of construction.
- (iv) Although Capital goods are out of the criteria for purchase only from registered dealer, but it is advisable to purchase each and every capital goods also from registered dealers only for avoiding any future dispute.

It may be noted here that, supply of Transfer of development right, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted subject to the condition that, the constructed flats are sold before the issuance of completion certificate and tax is paid on them. Further, the date on which builder shall be liable to pay tax on Transfer of development Right, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate shall be the date of issue of completion certificate.

### **Service Accounting Code (SAC) for Construction Activities**

Services included under construction services of all types including residential, commercial, industrial and civil engineering work fall under the category of SAC (Services Accounting Code) 9954 which is classification code under goods and services tax in India for construction services. The SAC for some of the main construction activities are as follows:-

Sr. No.	Type of Service	Service Code (SAC)
1	Construction Services Of Single Dwelling Or Multi Dwelling Or Multi-Storied Residential Buildings	995411
2	Construction Services Of Other Residential Buildings Such As Old Age Homes, Homeless Shelters, Hostels Etc.	995412
3	Construction Services Of Industrial Buildings Such As Buildings Used For Production Activities (Used For Assembly Line Activities), Workshops, Storage Buildings And Other Similar Industrial Buildings	995413
4	Construction Services Of Commercial Buildings Such As Office Buildings, Exhibition & Marriage Halls, Malls, Hotels, Restaurants, Airports, Rail Or Road Terminals, Parking Garages, Petrol And Service Stations, Theatres And Other Similar Buildings.	995414
5	Construction Services Of Other Non-Residential Buildings Such As Educational Institutions, Hospitals, Clinics Including Veterinary Clinics, Religious Establishments, Courts, Prisons, Museums And Other Similar Buildings	995415
6	Construction Services Of Other Buildings N.E.C	995416
7	Services Involving Repair, Alterations, Additions, Replacements, Renovation, Maintenance Or Remodelling Of The Buildings Covered Above.	995419
8	General Construction Services Of Highways, Streets, Roads, Railways And Airfield Runways, Bridges And Tunnels	995421
9	General Construction Services Of Harbours, Waterways, Dams, Water Mains And Lines, Irrigation And Other Waterworks	995422
10	General Construction Services Of Long-Distance Underground/ Overland/ Submarine Pipelines, Communication And Electric Power Lines (Cables); Pumping Stations And Related Works; Transformer Stations And Related Works.	995423
11	General Construction Services Of Local Water & Sewage Pipelines, Electricity And Communication Cables & Related Works	995424

## Types of Construction Activities covered by GST

1. Private Construction: Involves residential projects intended for individual use, such as single-family homes and villas.
2. Commercial Construction: Includes buildings designed for business purposes, such as offices, retail spaces, hotels, and malls.
3. Residential Complexes: Encompasses the development of flats, housing societies, and apartment complexes

It is necessary to determine whether a particular contract is Goods or Services. Reason being there are separate set of rules such as point of taxation, place of provision of supply. Contracts for construction, building, modification, installation of immovable property (building, civil structure, railways, bridge, roads, etc.) shall be considered to be services

## GST on Under-construction Properties

Classification as Supply of Service: Any property that is still under construction and intended for sale is classified as a supply of service under GST laws.

GST Liability: Applicable GST rates are charged on the value of the under-construction property. Developers and contractors are responsible for remitting GST based on the property's construction stage and value.

## GST exemption for completed properties

Ready-for-Sale Properties: Properties that are fully constructed, completed, and available for immediate sale are exempt from GST. Since these properties are not in the Construction phase, they do not attract GST. There are several factors which influence GST applicability on construction service. The first such factor is type of construction i.e. either residential or commercial. Different GST rates and rules may apply depending on whether the project is residential, commercial or industrial.

There are several exemptions and concessions available under GST law for the construction sector:

- (a) Affordable Housing Project:** Construction work on affordable housing is taxed at a reduced GST rate of 1%, applicable to residential properties with a carpet area of up to 60 square meters in metropolitan cities and up to 90 square meters in non-metropolitan cities, valued at ₹45 lakhs or less.
- (b) Property Resale:** GST is not applicable when reselling properties.

- (c) Buying/Selling Apartments for Residence:** Transactions involving the purchase or sale of apartments intended for residential use are exempt from GST.
- (d) Buying/Selling Land:** GST does not apply to transactions involving land.
- (e) Pradhan Mantri Awas Yojana (PMAY):** Construction or enhancement services provided through pure labour contracts under PMAY are exempt from GST.
- (f) Single Residential Units:** Construction services through pure labour contracts for a single residential unit or part of a residential complex are also exempt from GST.

It may be noted here that, EMIs, or advance payment made for the purchase of under-construction houses will attract the GST. Similarly, Supply of land and buildings of which whole of consideration is received after completion certificate or possession will be out of the purview of GST. Such contracts will continue to attract the stamp duty. It may be noted here that, every builder receives advance for sale of the under construction property and GST needs to be paid on the same. Then the builder prepares the final bill for sale of the property. On the sale of the property the final amount is only known. When the final amount is determined the builder has to make proper entries for the advance adjustment as well as final GST payable after such adjustment.

It is possible that there are more than one site for any construction entity. Since, transfer of inputs/ capital equipment from one site to another is quite common in this sector. Therefore, construction companies operating from multiple locations in different states, then it would require to pay GST on stock/ Assets transfers from its premises in one state to its premises in another state.

## Registration

Further, in case of construction companies having multiple business verticals within the state and if a construction company opts to take separate registration for each such business vertical, then the entity can also do so. Concept of centralized registration for all the projects has ended which was in existence in the service tax regime and construction companies having a site in multiple States will be required to obtain registration in each State from where the construction activity/ supplies are being undertaken even though the project is for a very small period or for a small value. Registrations can be obtained permanently or temporarily as casual taxable person in such cases.

Under GST, Construction of any property is considered as service and businesses exceeding the turnover threshold must register under GST. The turnover for registration under GST is Rs.20.00 lakhs for services sector. As construction activity is classified under service, hence registration has to be obtained at the turnover level of Rs.20.00 lakhs. The registration process involves submitting relevant documents and information on the GST portal. After submission of the relevant documents as required for registration the certificate for registration is issued. No business is authorised to start any business before obtaining registration certificate.

## GST Rates for Construction Services

The standard GST rate for construction services is generally 18%. This rate is applicable generally for construction of commercial complexes. On the other hand affordable housing projects are subject to a reduced GST rate of 1% (without Input Tax Credit). Similarly all other residential complexes are subject to GST rates of 5% (Without Input Tax Credit). At the same time construction of certain infrastructure projects like roads and bridges attract 18% GST rate (Post change in rates from 18.07.2022). After this change, road, bridge, tunnel, or terminal for road transportation for use by general public has been substituted from 6 percent to 9 percent; thereby increasing the overall rate of GST on road construction service from 12% to 18%. All other construction services also attract GST rate of 18%. Similarly any repair or maintenance service also attract 18% GST.

Construction of commercial apartments in a Residential Real Estate Project (RREP), which begins on or after 01-04-2019 or in an ongoing project where the promoter has opted for the latest rates effective from 01-04-2019, the effective GST rate is 5% with no ITC available on the same.

## Input Tax Credit

As explained in the above paragraph Housing projects attracts GST rate of 1% (affordable housing scheme) & 5% (non-affordable housing scheme) & 5% (non-affordable housing scheme). All these projects are not eligible for Input Tax Credit. Similarly all other construction services such as Commercial Complex, Roads, bridge, tunnel, or terminal for road transportation for use by general public may avail Input Tax Credit and are subject to 18% GST rate. In this it may be noted here that, the GST rates for construction materials vary depending on various types of materials such as cement is taxed at 28%, bricks at 12%, and sand at 5%. In addition to the above materials the other raw materials needed for construction are Iron & Steel taxed at 18%, Granite & marble blocks at 12%, Granite & marble not in blocks at 18%, Pipes & tubes fittings at 18% etc. The entity can avail ITC of the same other than the projects of residential units.

Understanding the eligibility of Input Tax Credit (ITC) paid during construction is very crucial for developers, contractors & property owners. According to Section 17(5), clauses (c) & (d) of the GST Act, ITC is restricted in the following scenarios. Expenses incurred for Works contract services specifically for constructing immovable property are not eligible for ITC. ITC can only be claimed for expenses related to input services that are used to complete the supply of works contract services or for constructing plant & machinery. Similarly, Costs associated with the renovation or repair of a property do not qualify for ITC. Properties that are still under construction and intended for sale are subject to GST as they are classified as a supply of service, hence GST may be claimed for under-construction property under certain conditions. Completed properties are exempt from GST, hence ITC can't be claimed after the certificate of completion is received from the proper authority. To claim GST for under construction property one has to see that-

- (i) Property is registered under GST;
- (ii) Contracts & Agreements for scope of the work;
- (iii) Proper documents for GST compliant invoices and other documents such as e-way bills, challans, LR copies etc. for claiming ITC; Utilise available exemptions and concessions wherever applicable; The payment for the invoices has been made to the supplier of materials within specified period of time;
- (iv) Accurate invoicing and compliance of GST regulations to avoid penalties; Input Tax Credit Records (Records of GST paid on materials to claim ITC wherever eligible).

## Conclusion

In conclusion understanding GST in construction is essential for developers, contractors, and property owners to ensure compliance and optimize financial outcomes. The GST on construction services generally stands at 18%, while affordable housing projects benefit from a reduced GST rates on construction services of 1% & non-affordable housing projects at 5%. For under construction properties GST is applicable as these are considered a supply of service, whereas completed properties ready for sale are exempt from GST. Navigating the intricate landscape of tax regulations, particularly within the realm of construction projects, demands a comprehensive understanding of the Central Goods and Services Tax (CGST) Act, 2017. In this dynamic environment, where every transaction is scrutinized, clarity and adherence to the law become paramount. Within the provisions of the CGST Act, there exists a nuanced framework distinguishing between works contracts and pure labour contracts. This framework delineates the tax implications based on the nature of the services rendered.

# Taxation of Joint Development Agreements under the Income Tax Law

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## Introduction

AJDA is a legal contract between a land owner and a developer, outlining the terms of a collaborative development project. In a JDA, the landowner provides the land, while the developer contributes expertise, capital, and resources to plan, construct, and market the project. The profits from the development are typically shared between the landowner and the developer based on a predetermined agreement.

## Documents in Joint Development Agreement

- Joint Development Agreement
- General Power of Attorney
- Allocation Agreement
- Commencement Certificate
- Completion Certificate

## Capital Gain under the Income Tax

As per Section 45(1), any profit or gain arising from transfer of a capital asset is taxable on accrual basis during the previous year in which such transfer takes place. However, every transfer of a capital asset does not give rise to taxable capital gain because some transactions are either not treated as transfer under Section 47 or they are excluded from the preview of capital asset under Section 2(14) or they enjoy exemption for reinvestment of capital gains or sales consideration. Section 45 also contains sub-sections (1A) to (6) which define the chargeability of capital gains in respect of specific transactions.

## Section 45(5A) – Taxability of The Joint Development Agreements

Any capital gains arising to an assessee, being an individual or a Hindu Undivided Family, from the transfer of a capital asset, being land or building or both, under a Joint development agreement for the development of a project shall be chargeable to tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. If an assessee, being individual or HUF, enters into a Joint development agreement with a builder or joint developer, capital gain arising from transfer of capital asset, being land or building or both, under such agreement shall be chargeable to tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.

## How to Calculate Capital Gains –

Particulars	Amount
Full value of consideration (Higher of actual consideration and stamp duty value plus monetary consideration)	xxx
Less:	
(a) Cost of acquisition	(xxx)
(b) Cost of improvement	(xxx)
(c) Expenditure in connection with transfer	(xxx)
Less:	
(a) Exemption under Section 54 to 54 GB	(xxx)
Short-term capital gains or Long-term capital gains	xxx

## Factors for Calculation of Capital Gains

For computation of capital gains in such case, the following factors are considered:

- (a) Period of holding;
- (b) Full value of consideration;
- (c) Cost of acquisition;
- (d) Cost of improvement;
- (e) Expenditure incurred in connection with transfer;
- (f) Exemptions allowed under Section 54 to 54GB.

It should be noted that indexation was also a key factor for computing long-term capital gain from the transfer land or building or both under JDA. However, the Finance (No. 2) Act, 2024 removed the indexation benefit and introduced a uniform tax rate of 12.5% on long-term capital gains. This change aims to simplify capital gains computation for both taxpayers and the tax authorities. As per the amendment, capital gain from long-term capital assets transferred on or after 23-07-2024 shall be taxable at a rate of 12.5%. Further, no indexation benefit is allowed while computing capital gain.

To ease the transition to these new rules, the Government has introduced a grandfathering provision. This provision allows resident individuals and resident HUFs to still apply indexation on land or building acquired before 23-07-2024 and pay tax at the old rate of 20% if the tax under the new law (i.e., tax calculated at 12.5% without indexation benefit) results in a higher amount.

## Full Value Consideration in case of The Joint Development Agreements

It refers to the total value that the landowner receives from the developer in exchange for their land. The stamp duty value of the land or building in respect of the owner's share in developed project on the date of issuing of certificate of completion by the competent authority as increased by any monetary consideration received (whether in cash, cheque or any other mode) shall be deemed to be the full value of the consideration received or accruing to the owner as a result of the transfer of the capital asset.

## Period of Holding in case of The Joint Development Agreements

The Period of Holding Shall be counted from the date of acquisition or purchase of land till the date of transfer under the JDA, even though Capital Gain is Taxable in the Year of Project completion Period of Holding shall be counted up to the date of transfer.

## Cost of Acquisition

The Cost of Acquisition of land or building under the Joint Development Agreement shall be computed as per the general provisions of the Income Tax Act, 1961.

The cost of acquisition of share in the developed project, being land or building, in the hands of the landowner shall be the amount which is deemed as full value of consideration for the purpose of computing capital gains under this provision.

## Cost of Improvement

The Cost of Improvement of land or building under the Joint Development Agreement shall be computed as per the general provisions of the Income Tax Act, 1961

## Indexation Benefits

This involves adjusting the cost of acquisition of the land for inflation when the period of holding is more than 24 months.

## Pre-July 23, 2024

Indexation: Landowners could avail indexation benefits to reduce the taxable capital gains.

Tax Rate for LTCG: LTCG from the transfer of land is taxed at a concessional rate of 20% with indexation benefits.

### Post-July 23, 2024

Removal of Indexation: The Finance Act, 2024 removed the indexation benefits for LTCG from the transfer of land. This means, for properties purchased on or after July 23, 2024, the cost of acquisition will no longer be adjusted for inflation. Tax Rate for LTCG: LTCG from the transfer of land is now taxed at a flat rate of 12.5%.

However, landowners who have bought property before July 23, 2024 can choose between:

Paying a 12.5% LTCG tax without indexation benefits

or

**Paying a 20% LTCG tax with indexation benefits.**

**Long-Term Capital Gains (LTCG):** If the land was held for more than 24 months before the transfer, the capital gain is considered long-term. LTCG is generally taxed at a concessional rate.

**Short-Term Capital Gains (STCG):** If the land was held for 24 months or less before the transfer, the capital gain is considered short-term. STCG is taxed at the applicable income tax slab rates.

### Year in Which Capital Gain is Taxable

Liability to pay Tax in case of an Individual or HUF shall arise in the Year in which Certificate of Completion for the Whole or Part of the Project is issued by the Competent Authority. In case the share of the owner in the Project is transferred on or before the issue of Certificate of Completion, the Capital Gains shall become Taxable in the Previous Year in which such transfer takes place and shall be computed as per the general provisions of The Income Tax Act, 1961 without considering the special provisions.

### Exemption from the Capital Gains

Assesse can claim Exemption from the Capital Gains under the Sections 54 to 54GB of the Income Tax Act, 1961

### Deduction of Tax U/S 194-IC

The developer making payment to the resident landowners (in the form of advance or non-refundable deposit) under JDA is required to deduct tax at source (TDS) @10%. The Landowners, at the time of filing their Income Tax Return, can either claim refund of TDS or adjust against other liabilities (if any).

### Section 43CA / Section 50C

Provisions of Section 43CA/ Section 50C of The Income Tax Act, 1961 apply in case Transfer of Immovable Property Transactions to discourage acceptance of cash payments by sellers in real estate transactions

### Selected Case Laws on Joint Development Agreement under the Income Tax

#### Is Security Deposit Received under JDA Taxable?

In the case of **DCIT v. Nagam Suguna [2022] 135 taxmann.com 198 (Hyderabad - Trib.)** the Hon'ble Tribunal held that the assessee shall not be liable to be taxed for entering into a JDA when neither the assessee have received any consideration nor handed over possession of the immovable property during the relevant assessment year.

#### Facts of the Case

In the said case the assessee entered into a development agreement and three others to extend her land for joint development with a company. The Joint Development Agreement (JDA) stated that Rs. 7 crores was to be paid to the assessee, and possession of the property was to be handed over to the developer. The Assessing Officer (AO) held that the transaction had culminated in the transfer of immovable property, thereby attracting long term capital gain. Accordingly, he treated Rs. 7 crores as long-term capital gain in the hands of the assessee which was also upheld by the CIT (A)

### **Ruling by the Hon'ble Hyderabad Tribunal**

The Tribunal held that the assessee had contributed her immovable property for the joint development of the property. Eventually, when her share in the developed property is sold, she will benefit from gain or loss, as the case may be, unless the assessee opts to retain the developed property. The Tribunal noted that the amount received by the assessee of Rs. 7 crores was only an interest-free refundable security deposit for ensuring the project is completed as per the terms of the agreement and permitting the developer to develop the project on her land cannot be construed that the possession of the immovable property of the assessee was vested with the joint developer as per the provisions of the Act.

Considering all the above facts and circumstances the Hon'ble Tribunal held that the assessee shall not be liable to be taxed for entering into a JDA when neither the assessee have received any consideration nor handed over possession of the immovable property during the relevant assessment

### **Granting License to developer to enter the property for construction under JDA Taxable?**

#### **Anugraha Shelters (P) Ltd v. CIT [2022] 134 taxmann.com 352 (Bangalore-Trib.)**

##### **Facts of the Case**

The assessee was a builder and filed its return of income for the assessment year 2006-07. During the year under consideration, the assessee had entered into a Joint Development Agreement (JDA) with a developer to construct an apartment project in respect of land owned by it. As per the agreement, the assessee had transferred 65% share of undivided interest in the above land and, in consideration, received 35% of the built-up area in the apartment project. The assessee also received 10 lakhs as a refundable deposit for handing over the property to the builder. The Assessing Officer (AO) held that there was the transfer of assets within the meaning of Section 53A of the Transfer of Property Act. Thus, he invoked provisions of section 2(47)(v) and computed capital gains. On appeal, the CIT(A) upheld the order of AO. Aggrieved-assessee filed the instant appeal before the Tribunal.

##### **The Hon'ble Tribunal Ruling**

The Tribunal held that the last paragraph of the supplementary joint development agreement provides that the developer was granted irrevocable permission and license to enter the scheduled property to construct residential apartments as per the plan to be obtained. It was specifically mentioned that the license so granted shall not be considered possession delivered in part performance of the contract under section 53 (sic. 53A) of the Transfer of Property Act, nor any property right shall be deemed in favour of the developer.

A careful perusal of the provisions of section 53A of the Transfer of Property Act would show that the transferee should have taken possession in part performance of the contract and has done the same act in furtherance of the contract. In the instant case, the development agreement clearly specified on that possession of the property was not given, and what was given was only a license to enter the property. Thus, the provisions of section 2(47)(v) did not apply to the assessee. Accordingly, the order passed by the CIT(A) was set aside, and AO was directed to delete the assessment of short-term capital gains.

### **Summary**

The current Article discusses only a select issues and Case Laws with reference Real Estate Taxation under Income Tax Act, 1961, there are lot of Case Laws and debatable issues addressed with reference to Real Estate Transactions by various Legal Forums like ITAT, High Court and Supreme Court Taxpayers and Professionals should carefully arrive at the conclusion after having a thorough understanding of the various rulings.

## GST on Real Estate Sector

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### Introduction

- Buying a home, dream for many people in our country. The rates of Real Estate are increasing day by day especially in Metro & Tier II cities.
- Let us see how Goods and Service tax impact the pricing of the real estate sector and whether it actually helps in reducing the cost to the builders.
- Sale of Land and Building is covered under Schedule III, i.e., Negative List of supply which simply means that the sale of Land and Building is not leviable to GST. But the non-coverage is only specific to completed building and not an under-construction property.
- Hence when we pre-book a residential or commercial property then GST is
- applicable on the same.

### GST rates applicable on Real Estate Sector:

Particulars	GST Rate	ITC
Affordable Housing [ $\leq 60$ SQ M for Metro Cities and $\leq 90$ SQM for Non-Metro cities and the value should be $\leq 45$ Lakhs	1%	No
Non-Affordable Residential	5%	No
Commercial Property	12%	Yes

The conditions to be fulfilled for taking the benefit of reduced rates are as follows:

- ✓ No Input tax credit can be claimed by the builders
- ✓ 80% of inputs & input services are procured from registered persons; if not then tax @ 18% should be paid under RCM.
- ✓ If cement is purchased from unregistered persons then GST @ 28% shall be paid by the builder under Reverse Charge Mechanism.
- ✓ Commercial apartments having carpet area of not more than 15% of total carpet area of all apartments are also included in non-affordable residential projects only.

So, when we pre-book residential or commercial properties; we pay GST at the above-mentioned rates to the builder.

## Taxability of activities connected with Real Estate:

Particulars	GST Rate	Remark
Rent paid on commercial property	18%	If the landlord is not registered then tax on rent shall be paid under Reverse charge Mechanism
Rent on residential property	-	Rent on residential property is exempt but if the tenant is a registered person, then tax shall be paid on Rent under Reverse Charge Mechanism. But if the tenant is a proprietor and he proves that he uses the property only for personal use then he need not to pay tax under RCM on rent.
Maintenance Charges	-	Maintenance Charges upto ₹7,500/-permonth is exempt under GST for residential units but if it exceeds ₹7,500/-then entire amount is taxable @ 18%. However the association can claim ITC on common services procured for the society. <b>Note: GST is applicable only if the Resident Welfare Association [RWA] has turnover exceeding ₹20lakhs i.e. ,liable to get registered under GST.</b>
Works Contract Services	18%	Full ITC is allowed
Long term leases (≥ 30 years)	18%	
Joint Development Agreements (JDA) or Transfer Development Rights (TDR)	18%	

## Joint Development Agreements:

A Joint Development Agreement (JDA) is a contract between a landowner and a developer for the development of real estate (typically residential or commercial buildings) on the landowner's property for which the land owner receives payment either in cash or share in property sale.

## Transfer Development Rights:

TDR's are issued by government to those who surrender their land to the government for any development project. The recipient of such TDR can sell the same to any builder for consideration.

## Pricing Impact on Real Estate due to GST:

Particulars	ITC	GST Rates	Pricing Impact
Affordable Housing [≤ 60 SQM for Metro Cities and ≤90 SQM for Non-Metro cities and the value should be ≤ 45 Lakhs]	No	1%	It may seem that the reduced GST rate will benefit The consumers ;but because of ITC blockage the cost to the builders will rise and ultimately affect the final buyers who Purchases the Properties from the builders.
Non-Affordable Residential Projects	No	5%	
Commercial Property	Yes	12%	As the flow of ITC in this case is seamless, the cost of property to the builder is reduced and the benefit of the same can be Passed to the final buyers.

## GSTAT Procedure Rules, 2025

### Rule 1 & 2: Title, Commencement, and Definitions

**Provision Summary:** The rules are officially cited as the Goods and Services Tax Appellate Tribunal (Procedure) Rules, 2025, and are deemed effective from the date of their publication. Key definitions streamline the interpretation and application of the Rules:

- **Act:** Refers to the Central/State/UT Goods and Services Tax Acts, as applicable.
- **Appellate Tribunal:** Denotes the GSTAT constituted under Section 109 of the Act.
- **Authorised Representative:** Includes Central/State Government representatives and professionals holding valid authority (e.g., vakalatnama under Section 116).
- **Bench:** Covers both the Principal Bench and State Benches as established under Sections 109(3) and 109(4).
- **Certified Copy:** Either the original or an authenticated reproduction, including those attested by departmental or authorised representatives.
- **GSTAT Portal:** The official digital platform designated for the e-filing and management of cases.
- **Interlocutory Application:** Supplementary requests like stay petitions, delay condonation, rectification, or early hearing applications.
- **Party:** Either appellant or respondent involved in the proceedings.
- **President / Vice-President:** The Presiding Officers appointed under Section 109.
- **Form:** Refers to prescribed templates (e.g., FORM-01, FORM-02) under these rules.
- **Rules:** Denotes the CGST, SGST, or UTGST Rules of 2017, as relevant.

### Rule 3 & 4: Computation of Time and Format of Orders

**Provision Summary: Time Computation:** The initial day of any prescribed period is excluded. Tribunal holidays or consecutive non-working days are also omitted from the count. **Order Format:** All Tribunal orders, rulings, and directions must:

- Be issued in the name of the President or a Member;
- Bear the signature of the Registrar or another authorised officer;
- Be physically stamped with the official seal when issued in hard copy.

### Rule 5 to 9: Administration, Benches, and Working Hours

**Provision Summary: Official Seal:** Designed at the discretion of the President and retained in the custody of the Registrar. **Custody of Records:** Tribunal records remain under the Registrar's control, and cannot be removed without authorisation, except for internal administrative movement. **Bench Sittings:** Convened at locations as notified by the Central Government. **Tribunal Hours:** Default session timings are:

- Morning: 10:30 AM – 1:30 PM
- Afternoon: 2:30 PM – 4:30 PM

The President may modify these hours. **Office Hours:** GSTAT offices function from 9:30 AM to 6:00 PM on working days, unless otherwise directed.

### Rule 10 to 14: Inherent and Discretionary Powers

**Provision Summary: Inherent Powers:** The Tribunal retains discretion to pass orders necessary to advance justice or prevent misuse of its process. **Judicial Calendar:** The annual working calendar is to be prepared jointly by the President and Members. **Case Listing (Rule 12 content):** Appeals filed before 12:00 noon may be listed on the next working day, if found complete. Post-noon filings (up to 3:00 PM) require special approval.

**Power to Exempt or Extend:** The Tribunal may:

- Waive compliance with procedural formalities upon showing of sufficient cause.
- Grant time extensions for procedural acts—even post expiry—on valid justification.

**Rule 15 to 17: Role of Registrar and Delegation of Powers****Provision Summary: Registrar's Functions:**

- Supervise daily operations;
- Notify filing procedures;
- Scrutinise, register and manage appeal documents;
- Oversee service of notices;
- Maintain records and registers;
- Process applications such as those for inspection, amendments, or corrections.

**Adjournment (Rule 16):** Requests for adjournment are ordinarily made to the concerned Bench. The Registrar may allow adjournment only in rare and exceptional cases on direction of the Tribunal. **Delegation (Rule 17):**

- The President may assign certain responsibilities to the Vice-President of a State Bench.
- Registrar's powers may be delegated to subordinate officers like Deputy, Joint, or Assistant Registrars.

**Rule 18: Filing of Appeals**

**Provision Summary:** All appeals before the GST Appellate Tribunal must be **filed electronically** through the designated GSTAT Portal, using the prescribed formats. Each appeal should adhere to the following structuring norms:

- **Title Format:** Must include the Tribunal's name.
- **Structured Content:** Drafted in numbered paragraphs for clarity.
- **Identification:** Names, GSTINs, addresses, and parental details of all parties must be specified.
- **Party Numbering:** A system of sub-numbering applies in cases where the appellant or respondent is deceased and replaced by legal heirs or successors.

**Scope of Appeal Filing:**

- A **single appeal** is permissible against one appellate order, even when the said order addresses multiple show cause notices.
- However, **separate appeals** are required in the following cases:
  - Multiple orders-in-original culminate in one appellate order.
  - A single order affects multiple distinct persons.

**Rule 19: Date of Presentation**

**Provision Summary:** While electronic filing is the norm, in rare and permitted instances of **manual submission**, the Registrar will formally endorse the filing date by signature, which then becomes the effective date of presentation.

**Rule 20: Appeal Format and Structure**

**Provision Summary:** Appeals must be drafted with precision and professional formatting:

- **Grounds of Appeal:** Should be concise, separated under clear headings, and written double-spaced on A4-sized paper.
- **Ancillary Submissions:** Documents such as cross-objections and interlocutory applications must be:
  - Typed,
  - Paginated
  - Properly indexed and
  - Physically tagged (where applicable).

**Rule 21: Accompanying Documents**

**Provision Summary:** The following documents must **accompany the appeal:**

- **Certified Copy** of the impugned order.
- Relevant Documentary Evidence relied upon by the appellant.

Where appeals are filed by the department, **attested copies** may be submitted in lieu of certified ones. **Digital Filing Compliance:**

- All documents must be uploaded on the GSTAT Portal.

- Final acknowledgment serves as conclusive evidence of filing.
- The Registrar may return defective documents for rectification. Upon resubmission, the case is treated as a fresh filing and a **new registration number** is assigned.

### **Rule 22: Endorsement and Verification**

**Provision Summary:** All appeals, pleadings, and written submissions must:

- Carry the **name and signature** of the party or their authorised representative.
- Be **verified** in accordance with prescribed norms under the rules, ensuring authenticity and accountability.

### **Rule 23: Translation Requirements**

**Provision Summary:** For documents presented in any language other than **English**, the following norms apply:

- Must be **translated**, either:
    - Jointly affirmed by both parties, or
    - Certified by the authorised representative.
1. Appeals **will not be listed** unless compliant translations are submitted

### **Rule 24 & 25: Scrutiny and Admission of Appeals**

**Provision Summary: Scrutiny Process:**

- The Registrar has the authority to scrutinise filings for procedural compliance.
- Defective filings will be returned for correction with a specified deadline (7 days), extendable up to 30 days in appropriate cases.
- Non-compliance may result in rejection of the appeal by a speaking order.

### **Registration:**

- Once an appeal passes scrutiny and is found to be in order, it is **formally admitted** and assigned a **unique appeal number**, then entered in the Tribunal's register of cases.

### **Rule 26 & 27: Minor Rectifications and Calling of Records**

**Provision Summary: Clerical Errors:** The Registrar may rectify obvious clerical or typographical errors **ex-parte**, i.e., without notice to the other party, **until the respondent enters appearance**. **Calling Records:** After admission, the Tribunal may direct the Registrar to call for original records from the adjudicating authority to assist in adjudication.

### **Rule 28: Production of Authorisation**

**Provision Summary:** When an appeal is filed by a person other than the party directly involved, **suitable authorisation** is mandatory. Examples include:

- A board resolution,
- Power of attorney,
- Vakalatnama.

The Registrar is empowered to demand additional evidence to establish the validity of the authorisation if any doubt arises.

### **Rule 29: Interlocutory Applications**

**Provision Summary:** All **interim reliefs or procedural requests** (such as stay, early hearing, condonation of delay, rectification, or exemption from filing certain documents) must be submitted:

- In **GSTAT FORM-01**,
- Accompanied by a **supporting affidavit**.

This rule ensures that such applications are legally valid and appropriately grounded.

**Rule 30 & 31: Miscellaneous Procedural Aspects**

**Provision Summary: Torn or Damaged Documents (Rule 30):** Any document submitted in a damaged or defaced condition must carry a remark in the index and be **authenticated by the receiving officer. Grounds of Appeal (Rule 31):**

- The Tribunal confines its adjudication to **grounds specifically raised** in the appeal.
- However, additional grounds may be permitted **at the Tribunal's discretion**, provided that the other party is given a reasonable opportunity to respond.

**Rule 32: Rejection or Amendment of Appeal Forms**

**Provision Summary:** In the interest of procedural integrity, **the Registrar is empowered** to scrutinize whether all required documents have been filed with the appeal. If any document is missing:

- The appellant may be permitted **a maximum of 30 days** to cure the defect.
- Failure to comply may result in **rejection** of the appeal.

Where an appeal is filed **manually**, an authorised officer of the Tribunal may:

- Return or reject the appeal for non-compliance with procedural requirements.
- Record the reason for rejection with proper notation.

**Rule 33: Joining of Parties**

**Provision Summary:** The identity of the **respondent** in an appeal is determined by the party initiating the proceedings:

- If the **taxpayer** is the appellant, the **Jurisdictional Commissioner** (CGST/SGST/UTGST) shall be the respondent.
- If the appeal is filed by the **Commissioner**, the **taxable person** becomes the respondent.

**Rule 34: Endorsing Copies to Respondent**

**Provision Summary:** The Tribunal mandates a fair hearing process by ensuring that a **copy of the appeal** and all accompanying documents is:

- Duly served upon the respondent.
- Additionally served upon the concerned **Commissioner**, irrespective of who initiated the appeal

**Rule 35: Cross-Objections and Ancillary Applications**

**Provision Summary:** Any forms or applications filed under CGST, SGST, or UTGST Rules—whether **cross-objections, stay applications**, or others—shall:

- Be **treated and processed** under the same procedural standards as primary appeals.
- Undergo scrutiny and listing procedures in a manner **consistent with Rule 18 onward**, ensuring uniformity.

**Rule 36: Reply by Respondent**

**Provision Summary:** The respondent is permitted to file a **formal reply** to the appeal, with the following conditions:

- Time limit: **Within one month** from the date of receipt of appeal documents.
- The reply must also be **served on the applicant**, either physically or through the GSTAT Portal.

**Rule 37: Rejoinder**

**Provision Summary:** If required, the **appellant may submit a rejoinder** to the respondent's reply:

- Only **with the permission of the Bench**.
- A copy of the rejoinder must be **shared with the respondent**, maintaining procedural parity.

**Preliminary Orders and Directions**

**Provision Summary:** Before proceeding to final hearing, the Tribunal may issue:

- Preliminary orders to clarify procedural ambiguities.
- Directions to streamline the hearing, identify legal issues, or require submission of additional evidence or documentation.

These may be issued suo motu or upon request from either party.

**Rule 38: Preparation and Publication of Daily Cause List**

**Provision Summary:** The Registrar must publish the cause list for the next working day, following GSTAT FORM CDR-01. The list includes case number, date/time of hearing, Bench composition, and party names with their representatives.

**Rule 39: New Cause List and Adjournment due to Non-Sitting**

**Provision Summary:** In case of unexpected non-functioning (holiday or unavailability), the Registrar prepares a revised list. Adjourned matters are rescheduled and displayed on the notice board and portal.

**Rule 40: Service of Notices and Communications**

**Provision Summary:** All notices/orders are served per Section 169 of the CGST Act. The Tribunal may order substituted service (e.g., email, portal, newspaper) where conventional service fails. Service on authorised representatives is deemed valid.

**Rule 41: Hearing of Appeal**

**Provision Summary:** The appellant presents first, followed by the respondent. The appellant has a right of reply.

**Rule 42: Action on Default by Appellant**

**Provision Summary:** If the appellant fails to appear, the Tribunal may dismiss for default or decide on merits. Restoration may be sought upon showing sufficient cause.

**Rule 43: Ex Parte Hearing of Appeals**

**Provision Summary:** If only the appellant appears, the Tribunal may proceed ex parte against the absent respondent

**Rule 44: Continuance After Death or Insolvency of Party**

**Provision Summary:** Appeal abates unless legal heirs/representatives continue it within 60 days. Tribunal may condone delay upon sufficient cause.

**Rule 45: Production of Additional Evidence**

**Provision Summary:** Fresh evidence is permitted only if required for justice or if previously denied by lower authority. Tribunal must record reasons.

**Rule 46: Evidence by Affidavit**

**Provision Summary:** Tribunal may accept affidavits. Cross-examination, including via video conferencing, may be ordered.

**Rule 47: Adjournment of Appeal**

**Provision Summary:** Tribunal may grant adjournments with conditions at any stage.

**Rule 48: Proceedings Open to Public**

**Provision Summary:** Hearings are public unless the Tribunal orders otherwise.

**Rule 49: Interlocutory Applications**

**Provision Summary:** Procedures for interlocutory applications follow Rule 29 (initial scrutiny, registry procedures, and defect rectification), with necessary modifications.

**Rule 50: Reference to Larger Bench**

**Provision Summary:** If Members of a Bench differ on any point, the matter is referred to a larger Bench by the President.

**Rule 51: Order to Be Signed and Dated**

**Provision Summary:** Orders must be written, signed, and dated. The order date depends on its pronouncement or dictation date. Reserved matters must mention the date of pronouncement and signing.

**Rule 52: Publication of Orders**

**Provision Summary:** Tribunal may release selected orders to law reporters, press, or other platforms as per specified terms.

**Rule 53: Court Diary**

**Provision Summary:** Court Officer must maintain a daily diary in FORM GSTAT-CDR-02, noting: history of the case, order summaries, and execution status. Registrar must review fortnightly

**Rule 54: Order Sheet**

**Provision Summary:** All orders, including interim ones, must be recorded in an order sheet and signed by the Members or Court Officer (for procedural matters). Must include appeal number, date, and key facts.

**Rule 55: Court Diary Maintenance on GSTAT Portal**

**Provision Summary:** Entries on the portal must reflect whether a case is adjourned, partly heard, reserved, or disposed. Next hearing date must be recorded.

**Rule 56: Law References and Citations**

**Provision Summary:** Before hearings, parties must submit a list of legal authorities relied on—statutes, judgments, reports, or references.

**Rule 57: Calling of Cases in Court**

**Provision Summary:** Cases to be called in the order of the daily cause list unless Bench directs otherwise.

**Rule 58: Regulation of Court Work**

**Provision Summary:** Deputy/Assistant Registrar must ensure smooth court functioning. Court Officer to maintain decorum and forward records to Deputy Registrar for order verification and communication.

**Rule 59: Registers to Be Maintained**

**Provision Summary:** Registry officers must maintain the following:

- CDR-03: Register for unnumbered petitions
- CDR-04: Register for numbered/admitted petitions
- CDR-05: Register for interlocutory applications

**Rule 60: Arrangement of Records in Pending Matters**

**Provision Summary:** Records for each case to be arranged in four files:

- Main File
- Miscellaneous Application File
- Process File
- Execution File

**Rule 61: Contents of Main File**

**Provision Summary:** Includes: Index, order sheets, final order, appeal/petition, replies, evidence, and arguments.

**Rule 62: Contents of Process File**

**Provision Summary:** Includes summons, affidavits of service, vakalatnama, postal acknowledgements, and correspondence.

**Rule 63: Contents of Execution File**

**Provision Summary:** Relevant in case of enforcement actions. Contains: Execution application, orders, civil court correspondence (if any), and outcome report.

**Rule 64: File for Miscellaneous Applications**

**Provision Summary:** A consolidated file may be maintained for all IAs. Must include diary, title page, affidavit, order sheets, and relevant documents

**Rule 65: Preservation of Records****Provision Summary:**

- Physical documents: 5 years after final order
- Registry-held documents (e.g., orders): 15 years

**Rule 66: Retention, Preservation and Destruction of Records**

**Provision Summary:** The Record Keeper must:

- Scrutinize records within 3 days of receipt
- Prepare an index of documents

Registrar may order destruction after:

- 5 years (physical records)
- 15 years (Registry orders/documents)

**Rule 67: Inspection of Records**

**Provision Summary:** Any party or their authorised representative can apply in GSTAT FORM-03 for record inspection, on payment of a prescribed fee.

**Rule 68: Grant of Inspection**

**Provision Summary:** Registrar must approve inspection requests. Applies to both pending and disposed cases.

**Rule 69: Procedure to Apply for Inspection****Provision Summary:**

- Apply 2 days in advance (exceptions with Registrar's permission)
- Timing: 10:30 AM to 1:30 PM
- Not allowed on the day of hearing or preceding day for pending cases

**Rule 70: Mode of Inspection****Provision Summary:**

- Supervised by authorised officer
- Time slots: 10:30 AM–12:30 PM and 2:30 PM–4:30 PM
- No markings/damage allowed
- Any violation is reported and logged

**Rule 71: Maintenance of Inspection Register****Provision Summary:**

- Deputy/Assistant Registrar to maintain GSTAT CDR-06
- Inspector must sign register and application

**Rule 72: Appearance of Authorised Representative**

**Provision Summary: Legal practitioners and authorised reps must file:**

- Vakalatnama
- Memorandum of Appearance
- OR a Letter of Authorisation

Must be signed by the party or on its behalf.

### **Rule 73: Consent for Engagement or Change of Representative**

#### **Provision Summary: In ongoing matters:**

- Consent from earlier counsel required
- OR permission from Tribunal, with service of revocation notice to previous counsel
- Consent not required in Section 112(3) cases (Commissioner's appeals)

### **Rule 74: Restrictions on Appearance**

#### **Provision Summary:** A person who has:

- Drafted pleadings
- Advised a party
- Acted in any connected matter

Cannot represent the opposing side in that matter unless permitted by Tribunal.

### **Rule 75: Restriction on Party's Right to Be Heard**

**Provision Summary:** When a party has a legal representative, the Tribunal may restrict the party from addressing it directly.

### **Rule 76: Empanelment of Special Authorised Representatives**

**Provision Summary:** Tribunal may appoint technical experts, valuers, or special representatives. Their fees are fixed in consultation with the Tribunal.

### **Rule 77: Professional Dress for Authorised Representatives**

#### **Provision Summary:** Must wear professional attire:

- As per Bar/Council norms
- In absence of norms:
  - Men: White shirt with black coat/tie
  - Women: White dress/sari with black coat
- Summer relaxation (Apr 15–Aug 31): Black coat not mandatory
- Regular employees ≠ departmental reps

### **Rule 78: Title of Affidavits**

**Provision Summary:** Every affidavit must begin with: "Before the Goods and Services Tax Appellate Tribunal (GSTAT)" Must include the cause title of the appeal/application, ensuring clarity and jurisdictional context.

### **Rule 79: Form and Contents of the Affidavit**

**Provision Summary:** Follows Order XIX, Rule 3 of CPC, 1908: Must state facts only, not legal opinions or inferences. Must specify **how the deponent has knowledge** –either personally or through other sources. Ensures affidavits are factually grounded and legally tenable.

### **Rule 80: Persons Authorised to Attest**

**Provision Summary:** Attestation only by: Advocate Notary Attestor must affix their official **seal and signature**, establishing authenticity.

### **Rule 81: Affidavits of Illiterate or Visually Challenged Persons**

**Provision Summary:** Special procedure for affidavits by: Illiterate persons Persons not conversant with the affidavit language Visually challenged individuals Attestor must **read/explain/translate** the affidavit and certify the explanation on record.

### **Rule 82: Identification of Deponent**

**Provision Summary:** If the attesting officer **does not personally know the deponent**, a third-party identifier (known to both) must: Identify the deponent, and Sign the affidavit as identifier.

**Rule 83: Annexures to the Affidavit**

**Provision Summary:** All documents filed with the affidavit: Must be referred as **Annexures** Must be numbered, titled, and **endorsed** by the attester. Attester must **sign each annexure** and provide name/designation.

**Rule 84: Application for Production of Documents**

**Provision Summary:** Tribunal can direct any party or third-party to produce documents: Suo motu or on application. Application must specify: Relevance Custody (who holds it).

**Rule 85: Return of Documents**

**Provision Summary:** Original documents may be returned: After appeal period expires or After final disposal. Subject to: Retention of certified copies. No prejudice to appeal record.

**Rule 86: Extracts from Records**

**Provision Summary:** Parties can apply for: Certified copies or extracts from pleadings, orders, or any record. Fee and inspection rules apply.

**Rule 87: Marking of Documents**

**Provision Summary:** Registrar shall: Mark documents: Appellant side: A1, A2... Respondent side: R1, R2... Maintain exhibit register. Ensures proper referencing and traceability in case records.

**Rule 89: Form and Contents of Summons**

**Provision Summary:** Must state: Purpose (appearance/documents) Tribunal's name Description of documents required. Must be signed by Registrar or authorized officer.

**Rule 90: Oath or Affirmation**

**Provision Summary:** Witnesses examined under: Oath or solemn affirmation Administered under Oaths Act, 1969.

**Rule 91: Recording of Deposition**

**Provision Summary:** Deposition to include: Verbatim Q&A To be recorded by Bench or its officer. Must be **read and signed** by both Bench and witness.

**Rule 92: Presence of Parties**

**Provision Summary:** Witness examination must be: In presence of all parties, or Upon notice to absentees.

**Rule 93: Discharge Certificate to Witness**

**Provision Summary:** On conclusion, **GSTAT FORM-05** to be issued to the witness.

**Rule 94: Witness Allowance**

**Provision Summary:** Paid out of Tribunal's budget, following: Civil Court norms, or Tribunal's discretion.

**Rule 95: Commission for Examination**

**Provision Summary:** Tribunal may appoint a **Commission** to record evidence where: Personal appearance isn't feasible. Must specify time, location, scope.

**Rule 96: Procedures for Commission**

**Provision Summary:** Commissioner may: Administer oath Allow cross-examination Record all steps.

**Rule 97: Submission of Report**

**Provision Summary:** Must submit: Witness testimony Documents received Notes, orders.

**Rule 98: Time Limit for Pronouncement**

**Provision Summary:** Tribunal must pronounce final order: Within **60 days** of: Final hearing date or Date of last written submission. Enforces time-bound justice.

**Rule 100: Signing of Orders**

**Provision Summary:** Orders must be: Signed and dated by all hearing members Last signature date = Order date.

**Rule 101: Corrections in Orders**

**Provision Summary:** Tribunal can correct: Clerical or arithmetical errors in: Orders, judgments, proceedings Ensures procedural clarity and minor redressals.

**Rule 102: Rectification of Mistakes**

**Provision Summary:** Rectification of apparent error on record: Can be done suo motu or on application Within **3 months** of order date Limited scope to avoid re-arguing the case.

**Rule 103: Review of Orders**

**Provision Summary:** No inherent review power unless: Specifically provided under the Act Prevents unnecessary prolongation or re-litigation.

**Rule 104: Publication of Orders**

**Provision Summary:** Significant rulings may be published in: Official journals Law reports Portal or recognised platforms Enhances jurisprudential development and precedential value.

**Rule 105: Orders to Be Communicated**

**Provision Summary:** Orders to be communicated to: All parties Adjudicating/Appellate authority Other relevant statutory authorities.

**Rule 106: Maintenance of Order Sheet**

**Provision Summary:** Registrar must maintain: Authenticated order sheets with: Bench details Case summary Proceedings and final directions.

**Rule 107: Procedure on Death or Insolvency After Order**

**Provision Summary:** If party dies or goes into liquidation after order: Legal representative or insolvency professional may: Pursue rectification File appeal or Seek execution.

**Rule 108: Consolidation of Appeals**

**Provision Summary:** Tribunal may consolidate multiple appeals: With common legal or factual issues Avoids duplication of proceedings and inconsistent outcomes.

**Rule 109: Withdrawal of Appeal**

**Provision Summary:** Appeals may be withdrawn with: Permission of Tribunal Tribunal may impose: Costs or conditions Prevents forum shopping or tactical withdrawals.

**Rule 110: Dismissal of Non-Prosecuted Appeals**

**Provision Summary:** If appellant fails to: Appear or Pursue the matter Tribunal may dismiss the case for default.

**Rule 111: Restoration of Appeal**

**Provision Summary:** Dismissed appeals may be restored if: Application filed within 30 days Tribunal is satisfied of sufficient cause.

**Rule 112: Remand Proceedings**

**Provision Summary:** When matters are remanded, Tribunal may: Specify time frame Call reports Re-fix for fresh hearing.

**Rule 113: Return of Appeal Documents**

**Provision Summary:** After disposal, documents may be returned on application: Certified copies retained by Registry.

**Rule 114: Compliance of Tribunal Orders**

**Provision Summary:** Registrar to track and ensure implementation of Tribunal directions: Follow-up with GST authorities if needed Strengthens **enforceability** of appellate verdicts.

**Rule 115: Electronic Filing and Hybrid Proceedings**

**Provision Summary:** Mandatory e-filing of all pleadings and applications via the **GSTAT Portal** Tribunal may conduct proceedings: In **hybrid mode** (physical + virtual) Or **completely virtual** based on discretion Registrar to manage: All e-filings Records, service, and digital communication.

**Rule 116: Certified Copies**

**Provision Summary:** Any party can request certified copies of: Orders Pleadings Proceedings Process via **GSTAT FORM-06** Requires **prescribed fee**.

**Rule 117: Form of Certificate**

**Provision Summary:** Certified copies must: Contain a **true copy statement** Be **signed** and **sealed** by certifying officer Include **date of certification**.

**Rule 118: Filing of Orders from Higher Courts**

**Provision Summary:** Orders of **High Court or Supreme Court** affecting Tribunal cases must be: Filed before Registrar Tribunal to issue fresh orders per such directions.

**Rule 119: Compliance of HC/SC Orders**

**Provision Summary:** Tribunal **must comply** with directions of: Higher courts Registrar to: Immediately place the matter before appropriate Bench.

**Rule 120: Inspection by Tribunal Officials**

**Provision Summary:** Registrar or authorised officer may inspect: Records, systems, and registers of any Bench Findings to be reported to the **President**.

**Rule 121: Instructions to Registry**

**Provision Summary:** **President or Registrar** may issue: Practice directions Guidelines Internal instructions for Registry.

**Rule 122: Dress Code for Tribunal Officers**

**Provision Summary:** Officers must wear: Black coat with white shirt/trousers/saree Coat not mandatory during summer.

**Rule 123: Filing Defects and Compliance**

**Provision Summary:** Registrar can: Identify **minor defects** in filings Notify counsel for correction Impose **timelines** for rectification

**Rule 124: Power to Relax**

**Provision Summary:** Tribunal may relax any provision of the Rules to: Avoid **undue hardship** Serve **interest of justice**.

## Voices Behind Past Editions of Tax Chronicles



**CMA ARINDAM GOSWAMI**



**CMA NANTY SHAH**



**CMA MIHIR NARAYAN  
VYAS**



**CMA (DR.) SANJAY R  
BHARGAVE**



**CMA DIPAK N JOSHI**



**CMA HARPREET SINGH**



**CMA (DR.) SHAIENDRA  
SAXENA**



**CMA TUSHAR RAMANI**



**CMA BHADRESH VARIYA**



**CMA ASHVIN AMBALIYA**



**CMA IYER PARMESWARAN  
VYTHILINGAM**



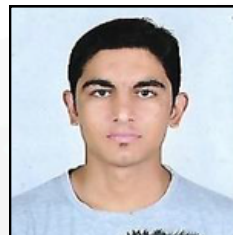
**CMA MITUL MANIYA**



**CMA VANDIT TRIVEDI**



**CMA RITU DASH  
CHOUDHURY**



**CMA AJAY  
PRAJAPATI**



**CMA MAITHILI S  
MALPURE**



**CMA DNYANDA  
JAYANT LIMAYE**



**CMA PRAKASH  
GANATRA**



**CMA PRANAB KUMAR  
CHATTERJEE**



**CMA DEEPALI  
DARSHAK  
LAKDAWALA**



**CMA CS MEET  
JOGATAR**



**CMA PERI APPALA  
NARASIMHA  
MURTY**



**CMA SHIRISH SHAH**



**CMA PANKAJ  
KANNAUJIYA**



**CMA JYOTI  
CHAUDHARY**



**CMA HIRAV SHAH**