SNR & COMPANY
CHARTERED ACCOUNTANTS

INCOME TAX BULLETIN

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1. Shifting expenses from rented to own premises is a revenue expenditure as its capitalization serves no purpose:

Case of: NPR Auto Parts Manufacturing India Pvt. Ltd Vs ITO
Decision by: ITAT, Bangalore
Order Date: 29th April, 2026
In favour of: Assessee
Appeal No.: ITA No. 1460/Bang/2025

Facts:

- NPR Auto Parts Manufacturing India Pvt. Ltd. ("the Assessee") incurred expenditure towards dismantling, transportation, and reinstallation of existing plant and machinery in the course of shifting its operations from a rented factory premises to its own premises. No new assets were created in this process — the same plant and machinery continued to be deployed in the same line of business. The Assessing Officer treated this expenditure as capital in nature and disallowed its deduction as a revenue expense in the year under consideration. The Assessee contested this treatment before the Bangalore ITAT.

Issues Involved:

- Whether expenditure incurred on shifting plant and machinery from rented premises to own premises constitutes revenue expenditure (deductible in the year of incurrence) or capital expenditure (to be capitalised and depreciated over time).

Tribunal Observations:

- **Applicable Legal Test**

The Tribunal considered the Revenue's reliance on the Supreme Court decision in Sitalpur Sugar Works Ltd. (which holds that expenditure resulting in improvement of the profit-making apparatus is capital in nature) alongside the Assessee's reliance on Empire Jute Co. Ltd. (SC) and the Madras High Court ruling in Loyal Super Fabrics. The Tribunal held that while Sitalpur Sugar supports capitalisation where the profit-making apparatus is improved, Empire Jute and Loyal Super Fabrics clarify that the test of enduring benefit is not decisive. The real test is whether the expenditure was incurred in the capital field or in the ordinary course of carrying on business operations.

- **No New Asset Created**

The Tribunal noted that there was no material on record to suggest that any new asset was created, or that there was any expansion or modification of the profit-making apparatus. The plant and machinery remained the same and continued to be used in the same line of business. Accordingly, it held:
"If the expenditure does not bring into existence any new asset or does not alter the capital structure, but merely facilitates the conduct of business, it is to be treated as revenue in nature."

- **Practical and Tax-Neutral Perspective**

Taking an alternative and practical view, the Tribunal observed that the dispute was essentially one of timing of allowance. Whether the expenditure is allowed as a revenue deduction in one year, or capitalised and claimed as depreciation over subsequent years, the ultimate tax impact remains broadly revenue neutral over the life of the asset. Capitalising the expenditure at this stage would serve no meaningful purpose and would only create avoidable multiplicity of proceedings and computational complexities.

Tribunal Decision:

- The Bangalore ITAT ruled in favour of the Assessee, holding that the shifting expenditure is revenue in nature and is allowable as a deduction in the year under consideration. Capitalisation of such expenditure was held to be unjustified and purposeless in the given facts.

Full Judgement: NPR Auto Parts Manufacturing India Pvt. Ltd

SNR's Take

The decisive test for capital vs. revenue classification is not whether the benefit is enduring, but whether the expenditure was incurred in the capital field or in the course of ordinary business operations. Expenditure that does not create a new asset or alter the capital structure, but merely facilitates business operations, is revenue in nature - regardless of quantum or the fact that it relates to fixed assets

2. Unsigned penalty notice is akin to 'body without soul'. Defect cannot be cured by DIN:

Case Name: Dhiren Gopal Vs DCIT
Decision by: ITAT, Bangalore
Order Date: 27th April, 2026
In favour of: Assessee
Appeal No.: ITA Nos. 2571/Bang/2025

Facts:

- The Assessing Officer issued a show cause notice under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 ("the Act") to initiate penalty proceedings against the Assessee, Dhiren Gopal. The said notice did not bear any signature of the issuing authority — neither physical nor digital. The Revenue contended that the notice was nevertheless valid as it contained all relevant details as envisaged under Section 282A(2) of the Act, and that the generation of a Document Identification Number ("DIN") on the notice was sufficient to cure any defect therein. The Assessee challenged the validity of the penalty notice on the ground that an unsigned notice is inherently invalid and incapable of conferring jurisdiction upon the AO to proceed with penalty levy.

Issues Involved:

- Whether a penalty notice issued under Section 274 read with Section 271(1)(c) of the Act, bearing no signature (physical or digital) of the issuing authority, constitutes a valid jurisdictional notice — and whether the presence of a DIN cures such defect.

Tribunal Observations:

- **Applicable Legal Test**

  The Tribunal held that the expression "shall be signed" used in Section 282A(1) is unambiguous and makes signing a mandatory requirement. A notice or document under Section 282A(1) acquires legal effect only upon being signed by the tax authority, either physically or digitally. The Revenue's reliance on Section 282A(2) was specifically considered and rejected — the Tribunal observed that Section 282A(2) does not, in any manner, dispense with the requirement of signing.

- **DIN Does Not Cure an Unsigned Notice**

  The Tribunal categorically held that mere generation of a DIN on a show cause notice is not sufficient to cure the inherent defects, lacunae, omissions, or deficiency in a notice issued under Section 274 read with Section 271(1)(c). DIN is a tracking mechanism and cannot be treated as a substitute for the issuing authority's signature.

- **Jurisdictional Character of the Notice**

  Relying on the jurisdictional High Court's decision in M/s Yeshoda Electricals, the Tribunal reiterated the settled legal position that any notice, order, or approval issued without the requisite signature of the issuing authority cannot constitute a valid notice in law. The Tribunal further held that a notice under Section 274 is a jurisdictional notice — any defect therein cannot be overlooked or condoned. Non-signing of such a notice is a serious defect that renders it invalid.

- **Assessee's Failure to Object Does Not Validate the Notice**

  The Tribunal rejected the Revenue's implicit contention that the Assessee's failure to raise an objection at the earliest stage validates an otherwise defective notice. It held that a notice that is invalid in law cannot be validated merely by the Assessee's conduct or acquiescence.

- **Section 292B Does Not Apply**

  The Tribunal observed that Section 292B is a saving provision intended to prevent inconsequential technicalities from defeating the ends of justice. However, the requirement of signing a penalty notice under Section 282A is not a mere technicality — it is a substantive statutory mandate. Accordingly, Section 292B cannot be invoked to cure the absence of a signature. The Tribunal gave expression to this principle in the following terms:

  "The unsigned penalty notice is a notice with body without soul."
  Such a notice is invalid and is, in law, equivalent to no notice at all.

Tribunal Decision:

- The Bangalore ITAT allowed the Assessee's appeal, quashing the penalty notice issued under Section 274 read with Section 271(1)(c) on the ground that it bore no signature of the issuing authority. The unsigned notice was held to be invalid, incapable of vesting jurisdiction upon the AO, and consequently, the entire penalty proceedings founded upon it were rendered unsustainable.

Full Judgement: [Dhiren Gopal]

Key Takeaways

A penalty notice under Section 274 r.w.s. 271(1)(c) is a jurisdictional notice - any defect going to its root, such as absence of signature, is fatal and cannot be condoned. Section 282A(1) mandates that every notice or document issued by a tax authority "shall be signed" — this is a non-negotiable statutory requirement, and Section 282A(2) does not dilute it.
DIN on a notice is not a substitute for signature - it is merely a document tracking identifier and cannot cure an otherwise unsigned and invalid notice.

3. Purchaser's future use cannot determine land nature at sale date for invoking capital gains taxation:

Case of: Jignesh Harshadbhai Patel Vs ITO
Decision by: ITAT, Ahmedabad
Order Date: 15 May 2026
In favour of: Assessee
Appeal No.: ITA No. 1655/Ahd/2025

Facts:

- The Assessee, an individual, sold a piece of land situated beyond the specified municipal limits. The land was agricultural in nature and agricultural operations were being carried out on it until the date of transfer. The Assessee treated the sale proceeds as exempt from capital gains tax on the basis that the land did not constitute a "capital asset" within the meaning of Section 2(14) of the Income Tax Act, 1961 ("the Act").

- The Assessing Officer, however, made an addition of Rs. 44.21 lakhs under the head Long Term Capital Gains ("LTCG"), invoking Section 50C and adopting the stamp duty valuation as the deemed consideration. The AO proceeded on the basis that the purchaser was a company and that the purchaser had subsequently sought permission under Section 63AA of the Gujarat Tenancy and Agricultural Lands Laws for conversion of the land to industrial use, which had resulted in an enhanced stamp duty valuation. The AO relied on this subsequent treatment to re-characterise the land as non-agricultural for income tax purposes.

- Notably, the Revenue had accepted the identical land as agricultural in nature in the hands of co-owners of the same property - a position it did not seek to distinguish in the case of the present Assessee.

Issues Involved:

- Whether the land sold by the Assessee constituted a "capital asset" under Section 2(14) of the Act, given its agricultural character and location beyond specified municipal limits.

- Whether Section 50C could be invoked to substitute stamp duty valuation as deemed consideration in the absence of the land qualifying as a capital asset.

- Whether the purchaser's subsequent intended use of the land and the enhanced stamp duty valuation arising therefrom could alter the character of the land as on the date of transfer for income tax purposes.

Tribunal Observations:

- **Agricultural Land Outside Specified Limits - Not a Capital Asset**

  The Tribunal held that the land sold was agricultural land situated beyond the specified municipal limits and therefore fell outside the definition of "capital asset" under Section 2(14) of the Act. The evidence on record clearly established that agricultural operations were being actively carried out on the land and that it retained its agricultural character till the date of transfer.

- **Consistency with Treatment of Co-owners**

  The Tribunal noted that the Revenue had itself accepted the character of the identical land as agricultural in the hands of the co-owners. In the absence of any distinguishing facts, the Tribunal held that a different treatment in the hands of the present Assessee was untenable and impermissible.

- **Purchaser's Future Use is Irrelevant**

  The Tribunal rejected the AO's reasoning that the purchaser's status as a company and its subsequent application for industrial use conversion under Section 63AA of the Gujarat Tenancy and Agricultural Lands Laws could alter the character of the land as on the date of sale. The Tribunal held:

  "The future intended use by the purchaser cannot determine the nature of land on the date of transfer."

- **The Tribunal further emphasised:**

  "The relevant consideration under Section 2(14) of the Act is the character and location of land on the date of sale."

  Merely because agricultural land is sold to a non-agriculturist or a company does not automatically convert it into non-agricultural land for tax purposes.

- **AO's Reliance on Stamp Duty Valuation Was Without Basis**

  The Tribunal found merit in the Assessee's contention that the AO had adopted the stamp duty valuation on a reverse calculation basis, without any direct reference from the stamp valuation authority. The enhanced stamp duty valuation had arisen solely because the purchaser had sought permission for industrial use under local land laws — a subsequent and independent event. The Tribunal held that such treatment under local land laws cannot automatically determine the character of land under the tax statute.

- **Section 50C Inapplicable**

  Section 50C applies only where the asset transferred is a "capital asset". Having already determined that the land was agricultural land outside the scope of Section 2(14), the Tribunal held that the deeming fiction under Section 50C automatically becomes inapplicable — there being no capital asset in existence to which it could attach.

Tribunal Decision:

- The Ahmedabad ITAT allowed the Assessee's appeal and deleted the addition of Rs. 44.21 lakhs made under the head LTCG. The Tribunal held that the land sold was agricultural land not constituting a capital asset under Section 2(14), that Section 50C could not be invoked, and that the AO's reliance on the purchaser's subsequent conduct and stamp duty valuation was legally unsustainable..

Full Judgement: Jignesh Harshadbhai Patel

Key Takeaways

- *Agricultural land located beyond specified municipal limits is excluded from the definition of "capital asset" under Section 2(14) - no capital gains tax can arise on its transfer, regardless of the sale consideration. The relevant date for determining the character of land is the date of sale - the purchaser's subsequent intended use or actual conversion of the land is wholly irrelevant to this determination.*

4. Date for determining holding period shall be date of final & binding allotment, not provisional allotment:

Case Name: Sunshine Exports Diamonds Pvt Ltd Vs DCIT
Decision by: ITAT, Mumbai
Order Date: 29th April 2026
In favour of: Assessee
Appeal No.: ITA Nos. 5163/Mum/2025

Facts:

- The Assessee, Sunshine Exports Diamonds Pvt. Ltd., sold a commercial property and claimed the resultant gains as Long Term Capital Gains ("LTCG"), contending that the holding period commenced from AY 1991-92, when it received an initial allotment letter for 750 sq. ft. of the premises from a co-operative housing society.

- The history of allotments was as follows: 750 sq. ft. was allotted in 1991-92, a further 450 sq. ft. in 1992-93, and an additional 300 sq. ft. in 1998-99 - aggregating to a final premises admeasuring 1,595 sq. ft. Crucially, the allotment letter itself stated that it did not constitute a firm allotment and was only a letter of intent. No registered agreement for the property was executed until FY 2009-10, and the share certificate, occupancy certificate, and registered documents were issued and executed only in FY 2010-11.

- The Assessing Officer held that the Assessee had acquired enforceable rights in the property only upon execution and registration of documents in FY 2010-11, and accordingly treated the gains as Short Term Capital Gains ("STCG"), the property having been held for less than 36 months from that date. The CIT(A) confirmed the AO's order, and the Assessee appealed before the Mumbai ITAT.

Issues Involved:

- Whether the holding period for the purpose of determining the nature of capital gains (short-term vs. long-term) commences from the date of the initial provisional allotment letter in 1991-92, or from the date of final and binding allotment upon execution and registration of documents in FY 2010-11.

ITAT Observations:

- **Provisional Allotment Does Not Confer Enforceable Rights**

  The Tribunal examined the allotment letter and noted that it expressly stated that it did not constitute a firm allotment and was only a letter of intent. Accordingly, the allotment letter did not confer any enforceable right in the property in favour of the Assessee. The Tribunal held that the Assessee acquired enforceable rights in the property only in FY 2010-11, upon execution and registration of the relevant documents.

- **Identity and Extent of Property Not Finalised in 1991-92**

  The Tribunal observed that the very identity and extent of the property was not crystallised in 1991-92. The allotments were made in three tranches across three different years, and the final configuration of 1,595 sq. ft. was determined only upon issuance of the share certificate and occupancy certificate in 2010. There was therefore no single, definite, or final allotment in AY 1991-92 on which the Assessee could anchor its holding period.

- **Transfer of Property Act - Registration is Essential**

  The Tribunal noted that as per the provisions of the Transfer of Property Act, transfer of immovable property can be effected only by a registered instrument. In the absence of a registered agreement until FY 2009-10, no legal title could be said to have been transferred to the Assessee prior to that date. Accordingly:

  "The relevant date for determining the holding period would be the date of final and binding allotment, which in the present case falls in the year 2010 and not in 1991-92 as claimed by the Assessee.".

- **Distinction from Bombay HC Decision in Vembu Vaidyanathan**

  The Assessee relied on the Bombay High Court's decision in Vembu Vaidyanathan, wherein the date of allotment was treated as the commencement of the holding period. The Tribunal factually distinguished this precedent, observing that in Vembu Vaidyanathan, the allotment was final and definite and conferred a specific right in the property — unlike the present case, where the allotment was expressly provisional and specifically stated that no right was created in favour of the allottee.

ITAT Decision:

- The Mumbai ITAT dismissed the Assessee's appeal, finding no infirmity in the CIT(A)'s order confirming the AO's action. The Tribunal held that the gains arising from the sale of the property were chargeable as Short Term Capital Gains, the holding period having commenced only from FY 2010-11 - the year of final and binding allotment, execution, and registration of documents - and not from AY 1991-92 as claimed by the Assessee.

Full Judgement: Sunshine Exports Diamonds Pvt Ltd

Key Takeaways

The holding period for capital gains purposes commences from the date of final and binding allotment that confers an enforceable right in the property - a provisional allotment letter or letter of intent does not mark the start of the holding period.

A provisional allotment letter that expressly states no right is created in favour of the allottee cannot be treated as conferring title or enforceable rights - the character of the document must be examined, not merely its date.

5. Deletes Sec. 201(1A) demand, No FTS sans transfer of technical know-how to Assessee. No demand to be raised u/s 201(1A):

Case of: Chowringhee Residency Pvt. ltd Vs ITO (IT)
Decision by: ITAT, Kolkata
Order Date: 09th April, 2026
In Favour of: Revenue
Appeal No.: ITA No.2642/KOL/2025

Facts:

- The Assessee, Chowringhee Residency Pvt. Ltd., an Indian company engaged in the hospitality sector, engaged a UAE-based company to render certain services. The role of the UAE company was confined to supervisory and consultative functions - it did not transfer any technical know-how, methodology, or proprietary technology to the Assessee, nor did it have a Permanent Establishment ("PE") in India.

- The Assessing Officer (International Taxation) held that the payments remitted by the Assessee to the UAE company constituted Fees for Technical Services ("FTS") under Section 9(1)(vii) of the Income Tax Act, 1961 ("the Act") and accordingly treated the Assessee as an assessee-in-default under Section 201(1) for failure to deduct tax at source, raising a consequential interest demand under Section 201(1A). The Assessee contested this treatment on the grounds that the payments did not qualify as FTS under the India-UAE Double Taxation Avoidance Agreement ("DTAA"), and that the India-UAE DTAA did not contain a specific article on FTS.

Issues Involved:

- Whether the payments remitted to the UAE company constituted Fees for Technical Services under the India-UAE DTAA, in particular whether the "make available" threshold was satisfied.

- Whether, in the absence of a specific FTS article in the India-UAE DTAA, the Revenue could invoke Section 9(1)(vii) of the Act to tax such payments.

- Whether the Assessee could be treated as an assessee-in-default under Section 201(1) and held liable for interest under Section 201(1A).

ITAT Observations:

- **The "Make Available" Test - Core Legal Principle**

  The Tribunal undertook a detailed analysis of the "make available" clause, which is a standard feature of India's tax treaties and a threshold condition for classifying payments as FTS. It held that technology or knowledge can be said to be "made available" only when the recipient is equipped to independently apply or replicate the technology or expertise in the future, without any further assistance or recourse to the service provider. The Tribunal stated:

  "What is relevant is not the delivery of the end result of a technical service, but the transfer that empowers the recipient to replicate or apply the same technology on its own in future."

  The Tribunal further held that the **true test** is not whether the services are technical in character, but whether the recipient is left with an **enduring technical capability** that it can deploy independently in its business operations.

- **Supervisory and Consultative Services Do Not Satisfy "Make Available":**

  The Tribunal observed that the UAE company's engagement was limited to a supervisory and consultative role. No technical know-how, methodology, or proprietary expertise was transferred to the Assessee. The mere fact that the service provider deploys its own technical expertise in rendering services does not, by itself, lead to the conclusion that such expertise has been made available to the recipient. The Tribunal held:

  "The concept of 'make available' fundamentally shifts the focus of taxation from the character of the service…as a persuasive interpretative aid for understanding similar treaty language and concepts."

  Unless the "make available" threshold is satisfied, the consideration paid for such services cannot be characterised as FTS under the applicable treaty framework.

- **Absence of FTS Article in India-UAE DTAA - Domestic Law Cannot Override Treaty:**

  The Tribunal emphasised that the India-UAE DTAA does not contain a specific article on FTS. Relying on well-settled legal principles and the Karnataka High Court's decision in De Beers India Pvt. Ltd. as well as coordinate bench decisions in Right Florists Pvt. Ltd. and Raymond Ltd., the Tribunal reiterated that where a DTAA does not specifically provide for taxation of FTS, such income cannot be brought to tax by resorting to domestic law provisions under Section 9(1)(vii) of the Act. The Tribunal held that the absence of an FTS article in the DTAA reflects a conscious and deliberate choice made by the contracting states during treaty negotiation, and importing the FTS definition from the Act into the treaty would amount to rewriting the treaty - which is impermissible in law.

- **No PE in India**

  The Tribunal further noted that the UAE company had no PE in India, which reinforced the conclusion that its income was not taxable in India and that no withholding obligation arose on the Assessee.

ITAT Decision:

- The Kolkata ITAT allowed the Assessee's appeal and deleted the demand raised under Section 201(1A). The Tribunal held that in the absence of any transfer of technical know-how or satisfaction of the "make available" test, the payments remitted to the UAE company could not be characterised as FTS under the India-UAE DTAA. Consequently, the Assessee could not be treated as an assessee-in-default under Section 201(1), and the interest demand under Section 201(1A) was unsustainable.

Full Judgement: Chowringhee Residency Pvt. ltd

Key Takeaways

As per relevant DTAA, payments to a foreign service provider qualify as FTS under a tax treaty only if the "make available" test is satisfied - i.e., the recipient must be left with an enduring and independent technical capability to replicate or apply the expertise without further assistance from the service provider. Supervisory and consultative services that result solely in the delivery of an outcome - without transferring any underlying technology, know-how, or methodology - do not satisfy the "make available" threshold and cannot be characterised as FTS under applicable treaty provisions.

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