



Monthly Newsletter
June 2026

AO can't make additions contrary to binding directions of DRP

- ❑ The Dispute Resolution Panel (DRP) in the case of assessee directed the Assessing Officer (AO) to not make any addition under section 40(a)(i) of the Income-tax Act, 1961 (Act) in case the Revenue Authorities have not challenged the same issues in earlier years. However, the AO, in disregard to the DRP's direction, made an addition under section 40(a)(i) and raised a huge tax demand.
- ❑ The assessee filed a writ petition before the Delhi High Court against the AO's assessment order. The High Court held that the DRP issued clear and unambiguous directions that if the Revenue has not preferred any appeal against the Tribunal's orders, the AO shall not make any addition. The DRP's order was binding on the AO, and he was duty-bound to follow it. The AO failed to examine the issue as directed by the DRP. Thus, the additions under section 40(a)(i) were set aside.

LX Pantos India (P.) Ltd. vs. Assessment Unit National Faceless Assessment Centre, Delhi [2026] 186 taxmann.com 267 (Delhi)

Dismissal of Review Petition in the case of Engineering Analysis

- ❑ Review petition dismissed against the 2021 landmark ruling of the Supreme Court on the non-taxability of amount paid by resident Indian end-user / distributors to non-resident computer software manufacturers / suppliers, as consideration for resale / use of computer software through EULAs / distribution agreement. Such payments were held to be not in the nature of 'royalty' for use of copyright in computer software, under the DTAA with India.

Commissioner of Income-tax vs. Engineering Analysis Centre of Excellence (P.) Ltd. [2026] 186 taxmann.com 775 (SC)

Reassessment proceedings

- ❑ A Special Leave Petition (SLP) filed by the Revenue Authorities against High Court Ruling on the issuance of reassessment notice u/s 148 of Act has been dismissed by the Hon'ble Supreme Court. The High Court ruled that the notice issued to the assessee, a foreign company, for reopening of assessment on the ground that the assessee had Dependent Agent Permanent Establishment (DAPE) and Fixed Place PE in India, without

tangible material for forming a belief, was unjustified.

Assistant Commissioner of Income-tax vs. GE Steam Power Systems [2026] 186 taxmann.com 705 (SC)

Reimbursement of salary cost of seconded employees, not FTS

- ❑ The assessee, a Japanese company, engaged in research and development of Honda products, received reimbursement of salary cost of employees seconded to its Indian affiliate under a secondment agreement, on cost-to-cost basis. Such reimbursement was treated as Fees for Technical Services (FTS) by the AO and confirmed by the DRP. The Income Tax Appellate Tribunal (ITAT) however, ruled that since the employees worked under control and supervision of Indian company with salary determined and paid by Indian company, reimbursement received by assessee on cost-to-cost basis was not in nature of FTS and, thus, was not taxable in India.
- ❑ While arriving at the above conclusion, the Hon'ble ITAT placed primary reliance on the terms of the Secondment Agreement and the Contracts of Employment, executed with the seconded employees. The significant clauses of the agreements, which demonstrated the existence of an employer-employee relationship between the seconded employees and the Indian affiliate during the period of secondment, inter alia, included the following:
 - The assessee shall release the seconded employee from its work for the period of secondment;



- The seconded employee of the assessee shall solely work for the Indian company during the period of secondment;
- During the period of secondment, the seconded employee shall work under the sole control, direction and supervision of the Indian company and under the rules, regulations, policies, guidelines and other practices, as applicable to the other employees of the Indian company;
- The cost (salary) of employment of seconded employees shall be borne by the Indian company;
- The Indian company shall bear the risk and responsibility of seconded employees during the period of secondment;
- The seconded employee during the period of secondment shall cease to provide any services to the assessee and shall work only for the Indian company;
- The seconded employee shall have no authority to conclude / negotiate contracts in India on behalf of the assessee;
- The Indian company shall have the right to evaluate / promote / discipline / suspend / terminate the seconded employee at any point of time in accordance with the applicable policies, without seeking permission from the assessee;
- The Indian company shall determine the salary of the seconded employee based on its policy and standards;
- Some of the salary items shall be paid by the assessee in Japan on behalf of the Indian company for administrative convenience, which shall be fully reimbursed on cost-to-cost basis by the Indian company to the assessee in Japanese Yen.

online gaming activities by expanding the scope of taxable actionable claims relating to betting and gambling.

- ❑ In a significant development, the Supreme Court of India has upheld the constitutional validity of the GST framework applicable to online gaming. The judgement is a major setback to the real-money gaming industry as it overturns earlier lower court rulings favouring gaming companies and dismisses the argument that 'games of skill' require different tax treatment under the GST framework for actionable claims. The Court ruled that online games involving monetary stakes, constitute "betting and gambling" for GST purposes, irrespective of whether such games involve elements of skill, including games such as rummy, poker, and fantasy sports.
- ❑ The ruling is expected to have far-reaching financial implications for the online gaming sector, involving revival of substantial GST demands issued to gaming operators, validation of tax notices issued to online gaming companies, significant impact on existing business models of fantasy sports, poker, rummy, and other real-money gaming platforms.

Honda R & D Company Ltd. vs. Assistant Commissioner of Income-tax, International Taxation [2026] 186 taxmann.com 1061 (Delhi - Trib.)

Supreme Court upholds 28% GST on Online Gaming

- ❑ Pursuant to the decision taken in the 50th GST Council Meeting held on 11.7.2023, the Central Goods and Services Tax (Third Amendment) Rules, 2023 were brought into force with effect from 1.10.2023. The amendments introduced a uniform GST regime for online gaming, casinos, and horse racing by imposing GST at the rate of 28% on the full-face value of bets or deposits, including transactions undertaken through offshore gaming platforms targeting Indian users. The legislative framework significantly altered the tax treatment of

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