

FIN-O-SCOPE

30th Dec, 2025



Image Source: <https://natlawreview.com/article/re-assessment-notices-issued-under-erstwhile-provisions-to-be-considered-issued>

Table of Contents

Particulars	Page Number
Circular	1 - 2
Judicial precedents and case law analysis	3-11

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Top Trends

- US stocks trade mixed as investors balance strong tech earnings with caution ahead of upcoming US inflation data and Federal Reserve commentary.
- European indices edge lower amid renewed concerns over sluggish growth and uncertainty around future European Central Bank rate moves.

Top Trends

- Asian markets show a divergent trend, with Japan under pressure after recent Bank of Japan rate hikes while some emerging Asian indices see bargain buying.
- Global bond yields remain volatile as markets reassess the path of interest rates in major economies, especially the US and eurozone.
- Oil prices fluctuate within a tight range as traders weigh OPEC+ supply discipline against worries about global demand.
- Gold holds firm near recent highs as geopolitical risks and rate uncertainty keep safe-haven demand intact.
- The US dollar trades steady against major currencies, with traders awaiting fresh macro data for direction.
- Crypto markets witness choppy trading, with Bitcoin consolidating after recent gains and altcoins showing mixed moves.

CREATION & USE OF DEDICATED EMAIL ID FOR JUDICIAL FUNCTIONS

Circular Reference: F.No.-70/AT/Jud.Adm/Judicial/Del/2025-26

Issue Date: 16th December 2025

Issuing Authority: Income Tax Appellate Tribunal (ITAT), Delhi Benches, New Delhi

The ITAT Delhi has notified the establishment of a dedicated email ID judicial.delhi@itat.nic.in for exclusive use of the Judicial Section to streamline document management and communications related to appellate proceedings.

Previously, adjournment applications, consolidation applications, early hearing applications, and other judicial documents were forwarded through general email IDs (delhi.bench@itat.nic.in and delhi.zone@itat.nic.in).

Key Directive: All authorized representatives of both the Revenue Department and assessee parties must henceforth ensure that documents pertaining to judicial functions are sent ONLY to the newly created email ID judicial.delhi@itat.nic.in. Non-compliance with this directive shall result in the responsibility for any delays or non-processing resting solely with the sender, with ITAT exercising no responsibility for such delays.

Operational Implication: Documents sent to previously used email addresses will NOT be entertained, and the sender bears complete liability for any processing delays or non-receipt of acknowledgment. The Judicial Section has established a dedicated team to ensure timely processing and diarizing of all incoming communications by 17:30 hours on working days.

E-Proceeding Digital Signature Mandate & Software License FTS Classification

Case Citation: ITA No.1601/DEL/2025 (A.Y. 2022-23)

**Court/Tribunal: Income Tax Appellate Tribunal (ITAT), Delhi
Bench "D"**

Judicial Members:

- **Shri Vikas Awasthy, Judicial Member**
- **Shri M. Balaganesh, Accountant Member**

Date of Judgment: 10th December 2025

Appellant: Outsystems Singapore Pte. Ltd.

**Respondent: The Deputy Commissioner of Income Tax, Circle
International Tax 2(2)(2), New Delhi**

Facts of the Case:

The assessee is a Singapore-incorporated and tax-resident company engaged in software licensing and distribution in the Asia Pacific region. The company is appointed as Master Distributor of Outsystems software (owned by Outsystems Software em Rede, SA, Portugal) for the Asia Pacific region. During Assessment Year 2022-23, the assessee filed its return of income declaring NIL taxable income, claiming income from software licensing as exempt under applicable DTAA provisions.

The Assessing Officer raised an addition of Rs. 32,52,03,349/- treating software license fees and services as "Fee for Technical Services" (FTS) under the India-Singapore Double Taxation Avoidance Agreement (DTAA).

The assessee objected before the Dispute Resolution Panel (DRP), which vide directions dated 27.12.2024 concurred with the Assessing Officer in treating the license fee as FTS. Subsequently, the Final Assessment Order was passed on 10.01.2025.

Critical Issues Before ITAT:

Issue 1: Validity of Assessment Order Signed Manually

The assessee challenged the validity of the assessment order signed manually by the Assessing Officer despite the assessment being conducted through 'E-Proceedings' facility.

The assessee relied on CBDT Instruction No.01/2018 dated 12.02.2018, which mandates that all assessments made through E-Proceedings must be signed digitally by the Assessing Officer. Manual signing was contended to be a procedural defect rendering the assessment order invalid.

Top Trends

- US bank stocks gain modestly after select large lenders report resilient profitability but warn on credit quality and geopolitical risks.
- Tech shares globally remain supported by strong AI and cloud demand, though valuations are a growing concern for some investors.
- Indian benchmarks open soft in line with weak global cues, with profit-taking seen in recent outperformers.
- European small-cap stocks lag large caps as higher-for-longer rate fears persist among investors.
- Foreign portfolio flows into emerging markets slow as investors rotate selectively towards developed market assets.
- US Treasury curve remains inverted, continuing to signal lingering market concern about medium-term growth.
- Corporate credit spreads hold relatively tight, reflecting steady risk appetite despite macro uncertainty.

Top Trends

- Volatility indices stay above recent lows, showing investors are buying some downside protection in equities.
- Chinese equities trade mixed as markets parse policy support signals against property sector stress.
- Japanese yen remains sensitive to Bank of Japan guidance after the recent rate hike to a multi-decade high.
- European bank shares underperform on worries about slower loan growth and margin pressure if rate cuts begin.
- US consumer discretionary stocks fluctuate with shifting expectations on holiday-season spending strength.
- Global auto stocks react to ongoing headlines around EV demand, pricing pressure, and policy incentives.
- Energy sector shares move broadly in line with intraday swings in crude prices
- Real estate investment trusts remain sensitive to long-term yield moves, limiting strong upside.

Issue 2: Classification of Software License Fees as FTS

The assessee contended that software license fees cannot be treated as FTS because:

- The license granted is non-exclusive and non-transferable
- No right to sub-license, reverse engineer, or modify the software
- No specialized knowledge or skill is imparted to end customers
- The software is "off-the-shelf," not tailor-made
- Under India-Singapore DTAA's "make available" clause, FTS scope is narrowly defined
- The case is covered by Engineering Analysis Centre of Excellence P. Ltd. vs. CIT, 432 ITR 471

ITAT's Judgment:

On Issue 1 (Manual Signing Defect):

The Tribunal held that CBDT Instruction No. 1/2018 specifically provides in para 4.2 that:

"All departmental orders/communications/notifications being issued to the assessee through the 'e-Proceeding' facility are to be signed digitally by the Assessing Officer."

The Tribunal noted that the Board's instructions provide NO exceptions to this digital signature requirement. Despite the AO furnishing reasons for manual signing (charge transfer, deadline pressure, unavailability of digital signature facility through CPC), the Tribunal held:

"Since CBDT Instructions No. 1/2018 (supra) requires the Assessing Officer to sign assessment order digitally where the assessments are completed through 'E-Proceedings' facility, the assessment order would stand valid only if it is passed in accordance with the CBDT Instructions. No exception has been provided by the Board to the said conditions."

The Tribunal cited the Supreme Court judgments in Cherukuri Mani v. Chief Secretary (2015 13 SCC 722) and Chandra Kishore Jha vs. Mahavir Prasad (1999 8 SCC 266), establishing the principle that procedural deviation prescribed by statute renders action illegal, and procedures must be strictly followed.

Holding: The assessment order suffered from an incurable defect as it was signed manually despite being an E-Proceedings assessment. The assessment order is liable to be quashed on this ground alone.

On Issue 2 (FTS Classification):

Applying the undisputed facts that:

- The software is standardized, off-the-shelf
- Only limited, non-exclusive, non-transferable license is granted
- No specialized knowledge or skill is imparted
- The "make available" condition in India-Singapore DTAA is NOT satisfied

The Tribunal held that the case is squarely covered by Engineering Analysis Centre of Excellence P. Ltd. vs. CIT decision. Therefore, license fees received cannot be characterized as FTS.

Service Permanent Establishment Under DTAA: Physical Presence, Threshold Calculation & Virtual PE Concept

Case Citation: ITA Nos. 353 & 354/2025

Court: High Court of Delhi

Judges:

- Hon'ble Justice V. Kameswar Rao
- Hon'ble Justice Vinod Kumar

Judgment Delivered: 04th December 2025

Appellant: Commissioner of Income Tax, International Taxation-1, New Delhi

Respondent: Clifford Chance PTE LTD

Assessment Years: 2020-21 (ITA 354/2025) and 2021-22 (ITA 353/2025)

Factual Background:

The respondent is a non-resident company engaged in business of legal advisory services. The company filed returns of income for AY 2020-21 (29.12.2020) and AY 2021-22 (07.03.2022), both declaring NIL income.

The Assessing Officer passed draft assessment orders proposing additions of:

- AY 2020-21: Rs. 15,55,45,693/-
- AY 2021-22: Rs. 7,97,64,414/-

These additions were based on the assertion that the assessee had created a service Permanent Establishment (PE) in India, thereby making business profits taxable under Article 7 of India-Singapore DTAA.

The DRP dismissed the assessee's objections. The AO passed final assessment orders on 28.07.2023 (AY 2020-21) and 29.10.2023 (AY 2021-22) under Section 143(3) read with 144C(13).

Tribunal's Decision (14.03.2024):

The ITAT allowed the assessee's appeal, holding that no service PE was constituted in either assessment year.

Core Issues on High Court Appeal:

Question of Law A: Whether on the facts and in law, the Tribunal erred in holding that the assessee does not have a service permanent establishment in India?

Question of Law B: Whether on the facts and in law, the Tribunal erred in holding that the assessee does not have a virtual service permanent establishment in India?

Top Trends

- Healthcare stocks see selective buying as investors seek relatively defensive growth exposure.
- Industrials trade sideways as markets wait for fresh data on global manufacturing and trade flows.
- Travel and leisure stocks react to booking trends and any new signals on international mobility or restrictions.
- ESG and green-energy names remain volatile as policy timelines and subsidy expectations evolve.
- IPO activity is gradual, with investors still cautious on valuations and post-listing performance.
- M&A headlines remain active in technology and healthcare, supporting select large-cap and mid-cap names.
- Private credit continues to attract institutional interest as an alternative to traditional fixed income.
- Global hedge funds reportedly maintain relatively low net equity exposure versus historical averages.

Top Trends

- European government bonds see modest buying on softer regional data, nudging yields slightly lower.
- US housing-related stocks remain tied to mortgage rate moves and evolving rate-cut expectations.
- Payment and fintech stocks react to both regulatory headlines and data on digital transaction volumes.
- Global shipping and logistics shares track freight-rate indicators and geopolitical developments affecting trade routes.
- Latin American equity markets trade mixed, reflecting differing policy paths and commodity exposure across countries.
- Central and Eastern European markets remain sensitive to eurozone growth signals and regional energy dynamics.
- Frontier markets see light volumes, with investors highly selective on liquidity and governance.

Factual Matrix:

For AY 2020-21, two employees (Rahul Guptan and Shashwat Tewary) of the assessee were physically present in India for a total of 120 days. The threshold for constitution of service PE under Article 5(6)(a) of India-Singapore DTAA is 90 days of service furnishing within the contracting state.

The assessee proved:

- Vacation period: 36 days
- Business development days: 35 days
- Common days: 5 days (aggregated across multiple individuals)
- Actual service days: 44 days

For AY 2021-22, NO employees were physically present in India.

High Court's Analysis & Judgment:

The High Court meticulously analyzed the treaty language, comparative jurisprudence, and distinction between:

Fixed Place PE (Article 5(2)(i)):

- Concerns physical place/premises at disposal of enterprise
- Continuity and coordinated engagement across periods matters
- Hyatt principle (continuity over temporal gaps) applies

Service PE (Article 5(6)(a)):

- Explicitly requires furnishing services within the state
- "Within India" is geographical requirement tied to physical/actual performance
- Not merely related to presence of office/infrastructure

On Physical Presence Requirement:

The High Court held:

"The text of Article 5(6) of the DTAA clearly states that an enterprise shall be deemed to have a permanent establishment in a Contracting State if it 'furnishes services...within a Contracting State through employees or other personnel.' The use of the preposition 'through' indicates that the employees or personnel are the medium through which services are furnished. For services to be 'furnished within India,' there must be actual performance of such services by the employees within the geographical boundaries of India."

The Court rejected the argument that services can be furnished without physical presence of those providing them, stating that the treaty language contemplates actual furnishing "within" the state, not merely directing services into the state from outside.

On Vacation Days:

The High Court endorsed the Tribunal's exclusion:

"Vacation days represent periods when employees are not engaged in service delivery. The threshold of 90 days is designed to measure substantive service activity, not mere physical presence. Excluding vacation aligns with both commercial logic and established jurisprudence."

On Business Development & Common Days:
Similarly endorsed for exclusion as these do not constitute actual service delivery to customers/clients.

On Virtual PE:

The High Court carefully distinguished between:

- Technical capability to provide remote services
- Actual furnishing of services "within" the contracting state per treaty text

Held that virtual PE, even if conceptually recognized, must satisfy the same geographic "within India" requirement. Mere remote access or equipment placement does not satisfy this threshold without actual substantive service performance linked to India operations.

On Hyatt Argument:

The High Court distinguished Hyatt, noting it concerned a different treaty provision (fixed place PE) with different language and principles. Service PE has distinct requirements.

Court's Decision:

The High Court UPHELD the ITAT's decision, holding:

1. The assessee does NOT have a service PE in India for AYs 2020-21 and 2021-22
2. The assessee does NOT have a virtual service PE in India for these AYs
3. Business profits of Rs. 15,55,45,693/- (AY 2020-21) and Rs. 7,97,64,414/- (AY 2021-22) are NOT taxable in India in absence of PE under Article 7 read with Article 5(6) (a) of India-Singapore DTAA

The Revenue's appeals are DISMISSED

Top Trends

- US money-market funds continue to hold substantial assets as investors favor short-term instruments.
- Corporate buyback announcements provide a backstop for some large-cap US stocks.
- Dividend-focused strategies remain popular among income-seeking investors in a still-uncertain rate environment.
- Global high-yield bond issuance proceeds cautiously amid scrutiny on leverage and refinancing risk.
- European CLO and securitization markets function steadily, though spreads remain above pre-tightening levels.
- Insurance stocks globally trade in line with bond yields and catastrophe-related headlines.
- Asset management firms see flows rotate within equity and fixed-income funds as investor sentiment shifts.

Top Trends

- Sovereign wealth funds remain active in strategic sectors such as infrastructure and technology.
- Currency volatility stays moderate, with no major disorderly moves in G10 FX.
- Emerging market local-currency bonds attract selective interest where inflation is trending lower.
- Global ETF volumes stay robust, underlining their role as core trading and allocation vehicles.
- US small-cap indices underperform megacap tech, reflecting concerns about domestic growth and financing costs.
- European luxury stocks react to changing expectations on Chinese consumer demand.
- Semiconductor shares hold focus as markets watch order trends and capacity expansion plans.
- Cybersecurity names see steady investor interest given persistent high-profile breach headlines.

Non-Compete Fee as Capital Expenditure: Depreciation Ineligibility & Positive Rights Doctrine

Case Citation: Civil Appeal No. 4072/2014 and Related SLPs (Nos. 16277/2014, 24756/2014, 719/2020, and Diary 22308/2022)

Court: Supreme Court of India, Civil Appellate Jurisdiction

Judge: Ujjal Bhuyan, J.

Judgment Date: 19th December 2025

Parties:

- **Appellant:** Sharp Business Systems (through Finance Director Yoshihisa Mizuno)
- **Respondent:** Commissioner of Income Tax-III, New Delhi

Facts (Sharp Business Systems):

Sharp Business Systems was incorporated on 29.02.2000 as a 50:50 joint venture between M/s. Sharp Corporation (Japan) and Larsen & Toubro Limited (L&T).

During AY 2001-02, the assessee paid Rs. 3 crores to L&T as consideration for L&T undertaking NOT to:

- Set up any business in India of selling, marketing, trading in electronic office products for 7 years
- Assist in setting up such business
- Undertake/assist in undertaking competing business

The assessee claimed this Rs. 3 crores as a deductible revenue expenditure in its return filed on 31.10.2001.

Assessment Proceedings:

Assessing Officer (19.03.2004): Held that the non-compete fee payment created an advantage of "enduring nature" (freedom from competition for 7 years) and therefore constituted capital expenditure. The amount was added to income.

CIT(A) (02.09.2004):

- Confirmed the AO's classification as capital expenditure
- Rejected the alternative claim for depreciation, holding that there was no apparent business justification for the agreement with L&T (as L&T was not a competitor), and hence the expenditure was not for the purpose of business
- Disallowed the entire amount

ITAT (30.06.2011):

- Confirmed capital nature of expenditure
- Held that non-compete fee does NOT result in an intangible asset eligible for depreciation under Section 32(1)(ii)
- Reasoned: "Just as the right to trade freely or compete in the market is not an asset, similarly a right arising out of a non-compete agreement would not constitute a commercial right falling within the ambit of intangible asset"
- Dismissed the assessee's appeal

Delhi High Court (05.11.2012):

- Confirmed capital nature
- Held that non-compete right does NOT result in depreciable intangible asset
- Reasoned: The right acquired is "in personam only" against L&T (personal obligation), not "in rem" (good against the whole world)
- For Section 32(1)(ii) depreciation eligibility, a right must result in an intangible asset "against the entire world"
- Dismissed the appeal

Supreme Court's Analysis:

Issue 1: Revenue vs. Capital Expenditure Classification

The Supreme Court referenced established principles from Empire Jute Co. Ltd., holding that expenditure creating an "enduring benefit" is capital in nature.

In non-compete agreements, an enduring benefit of 7 years (Sharp) or similar duration creates an advantage that extends beyond the current accounting year, thus constituting capital expenditure.

Holding: Non-compete fee is capital expenditure (not revenue)—all parties (both counsel) essentially agreed on this.

Issue 2: Depreciation Eligibility - The Central Controversy

Section 32(1) of the Act provides depreciation on intangible assets including:

- Know-how
- Patents
- Copyrights
- Trade marks
- Licenses
- Franchises
- "Any other business or commercial rights of similar nature"

Two requirements for depreciation:

1. Enumerated Category: Asset must fall within one of the specific categories or "similar nature"
2. Ownership & Use: Asset must be "owned" (wholly or partly) by assessee and "used" for business purpose.

Supreme Court's Reasoning & Judgment:

The Supreme Court endorsed the Revenue's interpretation, holding:

On Ejusdem Generis:

"The principle of ejusdem generis signifies a principle of construction whereby the words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication,

Top Trends

- Telecom stocks face ongoing competition and capex concerns, capping strong re-rating potential.
- Global airline stocks respond to fuel cost movements and evolving demand indicators.
- Agricultural commodity prices show day-to-day volatility linked to weather and supply forecasts.
- US fiscal policy debates remain a background risk factor cited in some market commentary.
- Eurozone fiscal rules and national budget discussions influence regional bond spreads.
- Chinese policy support measures, including liquidity and targeted easing, are watched closely by equity and FX traders.
- India continues to draw interest as a structural growth story, supporting medium-term FPI appetite despite short-term volatility.

Top Trends

- Middle East markets track oil and regional geopolitical developments, leading to episodic sharp moves.
- African equity and debt markets remain niche, with focus on specific reform stories and commodities.
- Sustainable bond issuance, including green and social bonds, remains a notable segment of primary markets.
- Retail participation in equity markets stays elevated in several regions, especially via low-cost platforms.
- SPAC-related activity is subdued compared with prior peaks, with investors more selective on structures.
- Global REIT markets monitor office-occupancy data and refinancing needs closely.
- US high-frequency economic indicators, such as jobless claims and card spending, continue to guide short-term risk-on/risk-off swings.

given a restricted operation and are limited to matters of the same class or genus as preceding them."

The enumerated categories (know-how, patents, copyrights, trademarks, licenses, franchises) form a distinct class of **POSITIVE RIGHTS** that are:

- Affirmative rights to do or use something
- Capable of being owned and transferred
- Effective as against the world (or at least transferable)
- Created through statutory grant or contractual arrangement

Non-compete covenants, being negative obligations, fall outside this class.

On Positive vs. Negative Rights:

"The common underlying feature of the enumerated intellectual property rights is that these are positive rights, brought into existence by experience and/or reputation, granted either under a statute or under a contract and capable of being used or put to use for the purpose of business."

A non-compete right, by its very nature, is a negative covenant—an obligation not to do something. It does not grant the acquirer a positive right to use, manufacture, sell, or exploit anything.

On "In Personam" Nature:

The right acquired through non-compete fee is enforceable only against the contracting party. If L&T breaches or if the agreement expires, the right evaporates. Unlike patents, trademarks, or licenses which have inherent value and remain usable regardless of third-party actions, non-compete rights are dependent on:

- Continuity of the contracting party's compliance
- Non-sale/non-transfer of the contracting party's business
- Survival of the party itself

This personal nature disqualifies it from being a "commercial right of similar nature" to the enumerated categories.

On "Used" Interpretation:

While accepting the argument that intangible assets may be "used" passively, the Court held that "use" still implies the asset provides a functioning benefit. A non-compete covenant provides no functioning benefit—it only removes a threat. This is fundamentally different from:

- Know-how: Provides functional technical knowledge
- Patent: Provides right to manufacture/use
- Trademark: Provides right to brand/market
- License: Provides right to utilize licensed property

Critical Holding:

"In our considered view, for allowing depreciation on payment of non-compete fee, there is no distinction for allowing depreciation. Therefore, revenue cannot appraise or reprobate to contend that only positive rights are eligible for claiming depreciation on intangible asset."

However, the Court observed that while non-compete fee is capital in nature (benefit of 7-year freedom from competition), it does NOT create an intangible asset within the meaning of Section 32(1)(ii).

Therefore:

- Non-compete fee = Capital expenditure
- Capital expenditure ≠ Depreciation eligible
- Non-compete fee does NOT meet Section 32(1)(ii) criteria

Top Trends

- Japanese inflation staying above prior norms underpins expectations of a slow exit from ultra-easy policy.
- US tech mega-caps remain key drivers of index-level performance given their large weightings.
- Currency-hedged international equity products gain traction among investors wary of FX swings.
- Derivatives volumes, including index options, stay high as institutions fine-tune hedging and yield strategies.
- Global margin debt metrics are watched as a gauge of speculative positioning in equities.
- Commodity trading houses report solid activity amid ongoing volatility in energy and metals.
- Blockchain and tokenization projects in capital markets continue at a measured pace, with pilots in bonds and funds

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