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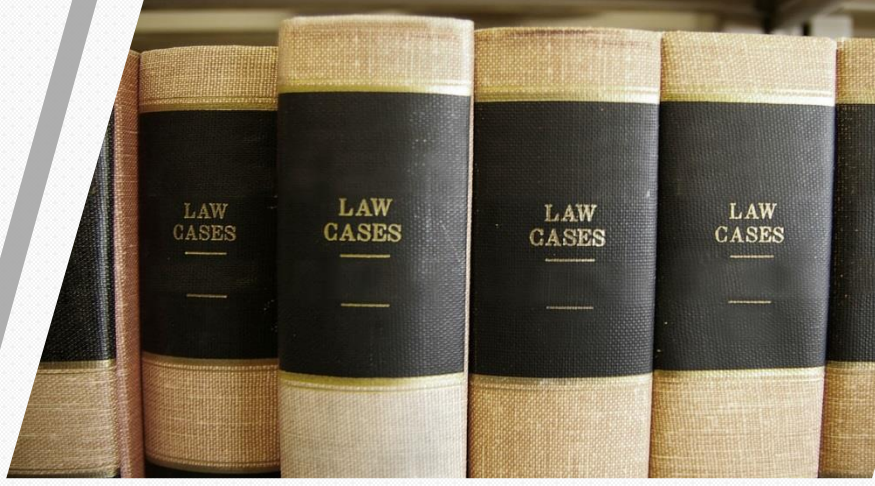
Content

Direct Tax Case Laws



Case Law 1

Principal Commissioner of Income-tax Vs. IL & FS Energy Development Company Ltd.

If no exempt income is earned in the Assessment Year in question, there can be no disallowance of expenditure in terms of section 14A read with Rule 8D even if tax auditor has indicated in his tax audit report that there ought to be such a disallowance.

Facts

The facts are that the Respondent-Assessee is a company engaged in provision of consultancy services. On 26th September 2011, the Assessee filed its return at a certain loss. The Assessee was asked to explain why disallowance should not be made under Section l4A of the Act read with Rule 8D of the Rules for normal computation of book profit for Minimum Alternative Tax ('MAT') under Section 115JB of the Act.

The response of the Assessee was that it had made investment in mutual funds and that no interest-bearing funds were invested to earn tax free income. It accordingly pleaded that no disallowance under Section 14A of the Act was called for.

However, this plea was rejected by the AO. The AO held that the Assessee had made investments in shares for the purposes of earning dividend income not chargeable to the tax. The AO noted that, even in the tax audit report, the auditors had calculated disallowance under Section 14A read with Rule 8D which included direct expenses.

High Court Decision

In the end, the High court concluded that the mere fact that in the audit report for the AY in question, the auditors may have suggested that there should be a disallowance cannot be determinative of the legal position. That would not preclude the Assessee from taking a stand that no disallowance under Section 14 A of the Act was called for in the AY in question because no exempt income was earned.

Case Law 2

Citizen Co-operative Society Ltd. Vs Assistant Commissioner of Income-tax, Circle-9(1), Hyderabad

Where assesse society was engaged in the activity of finance business and was also engaged in activity of granting loans to general public as well, it could not be termed as co-operative society meant only for its members and providing credit facilities to its members, hence not entitled to deduction under section 80P.

Direct Tax : Case Laws

Facts

Assessee i.e. Co. Operative Society filed its return on September 30th for the A.Y 2009-10 declaring Nil income. In which Assessee claimed its whole income as deduction U/S 80P.

Case went into scrutiny and the assesse was called up for presenting the Books of Accounts. The Assessing officer had arrived at the decision that the amount claimed as deduction will be disallowed. CIT went with the decision of Assessing Officer and referred to the amendment which came into effect from 1st April,2007 where section 80P (4) was inserted. The amendment barred all the Co-operative banks other than primary agriculture Credit Society or a primary Co-operative agriculture and rural development banks from claiming deduction under this section. The primary activity of the society is to provide banking facilities to its members but the society was providing loan to general public as well.

ITAT earlier observed that the assesse was regulated by Banking Regulations Act 1949 and that is why assesse was able to provide banking facilities and therefore will not be allowed deduction u/s 80P after the introduction of Section 80P (4).

After that assesse appealed to High Court and his appeal was dismissed there too as the high Court found nothing wrong with the ITAT judgement.

Then the assessee's case was presented to supreme Court where assesse said that the sole purpose of this deduction was to promote Co-Operative society this economic life of the country and this section must be interpreted reasonably so the sole purpose of this deduction was to promote Co-Operative society this economic life of the country and this section must be interpreted reasonably so that the purpose of this section is served which is the growth of Co-operative societies which with the betterment of their power to provide them better returns just like the assesse. Assessee guaranteed that whatever it did, it did for the interest of their members. So, it cannot be said that the primary objective was banking business.

But, The learned Sr. Counsel referred to the Banking Regulations Act 1949 definitions according to which the assesse clearly fall in the Banking definitions.

Supreme Court Decision

So only Co-Operative Societies are allowed deduction u/s 80P and according to section 80P(4) Co-operative Bank cannot get this deduction except Agricultural credit Society or primary agricultural Credit Society. Therefore, in the end the supreme court declared that the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members and cannot claim deduction u/s 80P(4).

Direct Tax : Case Laws

Case Law 3

Ballarpur Industries Ltd. Vs. Commissioner of Income-tax, Nagpur

When the royalty and interest income were claimed as exempt on accrual basis in earlier years, forex fluctuation gain or loss arising on receipt of such income in subsequent period could not also be considered as exempt. Such gain or loss could not be considered as part of royalty or interest income and it should be taxed on basis of AS-11.

Facts

Assessee-company had accounted for royalty and interest income on accrual basis, which were exempt under the then India-Malaysia DTAA. During subsequent period, assessee had received such income more than that was accounted in earlier years due to exchange differences.

The assessee argued that the exchange difference should be treated as part of royalty and interest income. Accordingly, it would be exempt from tax as per India-Malaysia DTAA.

High Court Decision

Gain or loss arising on account of foreign exchange variation could not bear the same character of exempt income. The revenue had correctly placed reliance on AS 11 which indicates that benefit derived on account of currency fluctuation after the year of accrual is to derived on account of currency fluctuate on after the year of accrual is to be considered as income or expense in the period in which they arise. This gain/loss on account of foreign exchange fluctuation is not part of royalty and interest nor is it any accretion to it. In this case, it is the generation of further income which is taxable in the subject assessment year when the variation in foreign exchange has resulted in further income in India. Thus, differential amount arising on account of exchange fluctuation was an extra income which would be subject to tax in the year in which it was received.

Case Law 4

Maruti Suzuki India Ltd. Vs Union of India

For availing benefit under section 35(2AB), what is relevant is not date of recognition or cut-off date mentioned in certificate of DSIR or even date of approval but existence of recognition and, thus, extending said benefit only from date of recognition would amount to reading more in law which is not expressly provided.

Facts

The Petitioner-Maruti Suzuki India Ltd. is a leading automobile company in India. It has two Research & Development Centre's ('R&D Centres'), one at Gurgaon and one at Rohtak, Haryana. The question that arises in this writ petition is Whether the Petitioner is entitled to deduction under Section 35 (2AB) of the

Direct Tax : Case Laws

Income Tax Act, 1961 (hereinafter referred to as 'the Act') in respect of the expenditure incurred by it for its R&D Centre at Rohtak for the Assessment Year ('AY') 2011-12, AY 2012-13 and AY 2013-14.

Section 35 (2AB) provides for deduction of a sum equal to two times of the expenditure incurred for scientific research (not being expenditure in the nature of cost of any land or building) on in-house R&D facilities as approved by the Prescribed Authority. The purpose behind this provision is obviously to encourage the establishment of R&D facilities in the country and also to encourage innovation and investment on innovation. The petitioner, on 30th March, 2011 wrote to the Secretary, Department of Scientific and Industrial Research (`DSIR') which is the `Prescribed Authority' as per Section 35 (2AB), that it is in the process of setting up a second R&D Centre at Plot No. 1, Sector 33B and 33C, IMT, Rohtak in addition to the one it already had at Gurgaon. In the said letter, the Petitioner informed the DSIR that its Rohtak R&D Centre is at its initial stage and that it would be seeking a formal approval for this facility under Section 35 (2AB) of the Act.

On 26th April, 2013, the DSIR informed the Petitioner that it could not consider the claims for recognition of the Rohtak R&D Centre at that stage, as the said R&D Centre was not yet functional, and hence, the Petitioner's application was closed as being premature.

On 31st March, 2014, the Petitioner applied in Form 3CK for AY 2011-12 to the DSIR, for approval of the Rohtak R&D Centre and annexed there with the Cooperation Agreement executed with the DSIR. On 2nd February, 2015, the DSIR granted its approval in Form 3CM in respect of the Rohtak R&D Centre from 1st April, 2013 to 31st March, 2015. The Petitioner claimed that since the R&D expenditure was incurred by it in the financial year which ended on 31st March, 2011, relevant to AY 2011-12, it is entitled to deduction in AY 2011-12 itself and thereafter in subsequent years for both its Gurgaon & Rohtak R&D Centre's, under Section 35 (2AB).

High Court Decision

The Court held that the Petitioner is entitled to deduction under Section 35 (2AB) of the Act for the expenditure in respect of its Rohtak R&D Centre as per the provisions of Section 35 (2AB) for AYs 2011-12, 2012-13 and 2013-14. Accordingly, the Corrigendum dated 7th May, 2015 is set aside and the Respondent No.1 DSIR is directed to issue a fresh certification in Form 3CL in respect of the expenditure on scientific research on the Rohtak R&D Centre of the Petitioner for AYs 2011-12, 2012-13 and 2013-14. Since the DSIR has already issued the certification for the Gurgaon R&D Centre's, for AYs 2012-13 and 2013-14, no orders are called for in that respect. The Respondent No.2 is further directed to give consequential deductions as per Section 35 (2AB) to the Petitioner.

Direct Tax: Notifications

S.no	Notifications
1	**CBDT has extended the date for filing of Income Tax Returns and Tax Audit reports by a month.** Filing of Income Tax Returns and Tax Audit Reports: To allow sufficient time and for the ease of compliance CBDT has extended the date for filing of Income Tax Returns and Tax Audit reports by a month. Therefore, now the Assessee can file the Return of Income and Tax Audit Reports by 31st October 2017 instead of 30th September 2017. https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF_News/News_TaxReturns.pdf
2	**Date of linking Aadhaar with PAN extended** Income tax department has extended the deadline to link PAN with Aadhaar by 4 months to December 31. The department had earlier said that tax returns filed without linking of Aadhaar and PAN would not be taken up for processing unless the two were linked by August 31, 2017. https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF_News/News_dueDate_PAN_Aadhaar.pdf

Indirect Tax : Case Laws

Case Law 1

Excise duty not payable even if exported goods are rejected and no remittance is received from the foreign recipient

Assessee exported goods to foreign country under bond in terms of Rule 19 under Notification No.42/2001 CE(NT). Out of the total export, certain quantity was found to be defective and the same was rejected by the foreign buyer. In respect of such rejected quantity the foreign buyer did not remit any foreign exchange to the appellant. The department's contention was that since the foreign remittance has not been received by the appellant, excise duty is chargeable on the said goods as same do not qualify as export. To this assessee responded that receipt of foreign exchange is not the requirement to fulfill the export of goods. He submits that the goods have been admittedly exported out of India and proof of export have been submitted. Therefore, even though certain quantities were rejected at the buyer's place no excise duty can be demanded. Further, Assessee placed reliance on the decision of Commissioner of Central Excise, Delhi-III Vs. Shyam Telecom Ltd. - 2015 (317) E.L.T. 619 (Tri. -Del.). Held that once the goods have been exported even though the goods were rejected by the buyer side, duty cannot be demanded.

Gemsons Precisions Engineering (P) Ltd. Vs. Commissioner of Central Excise, Mumbai [2017 (8) TMI 1209 - CESTAT MUMBAI]

Case Law 2

The Government has no semblance of right to retain the money collected as is in excess for Anti-Dumping Duty from importer.

The assesse M/s. Enterprise International Ltd was engaged in importing of Mulberry Silk Fabric from China through Chennai Port. Assesee has filed all the Bill of entry (BoE) for the imported goods and paid the provisionally fixed Anti-Dumping Duty (ADD) in accordance with the notification issued by government authorities. Later, the Government through a final notification finalized the ADD which resulted in reduced ADD liability amount for assesse. Assessee filed refund claim for the excess amount of ADD paid earlier and same was rejected by original authority stating that the assessee. had not requested for reassessment of BoE. The original authority also stated that the refund claim is premature and that the claim can be considered only after bill of entry is reassessed by an order of appropriate appellate authority. The assesee preferred the commissioner (Appeals) who upheld the rejection of refund stating that the refund claim is time barred. Thus, the issue is now before the Tribunal. The Tribunal noted the relevant portion of law in which the Central Government was authorized to collect ADD on the basis of provisional estimates for the imported goods into India but after final determination the Central Govt. shall issue a final notification, reducing such anti-dumping duty and shall be made of so much of the

Indirect Tax : Case Laws

antidumping duty which has been collected in excess. Tribunal also noted that the same issue was also covered in earlier decision of court of law in the case **CAPRIHANS INDIA LTD. Vs. COLLECTOR OF CUSTOMS, BOMBAY**, wherein it was held that after the issue of the final notification, the Government had no semblance of right to retain the money belonging to the importer. Tribunal holds that the rejection of refund is unjustified and allowed the appeal in favor of assesse by setting aside the order rejecting refund.

M/s. Enterprise International Ltd Vs. Commissioner of Customs, Chennai [2017 (8) TMI 1261 CESTAT CHENNAI]

Case Law 3

Manufacturer is allowed to take service tax credit against supplementary invoice & TR-6 challan

The assessee JSW Steels Ltd, is engaged in the manufacture of pig iron, steel bars and rods, flats etc. It had taken input service of manpower recruitment & supply from MultiColour Projects (India) Ltd. In this regard, it was found that the service provider had not obtained registration and accordingly an action was taken against it. The assessee had also availed Banking and Financial Services from ICICI Bank Ltd. but as the branch was located outside India, assessee discharged service tax on reverse charge basis. Pursuant thereto, it availed CENVAT credit based on TR-6 challan. Revenue disputed the CENVAT credit availed by the assessee based on invoices & TR-6 challan furnished by the service provider and consequently raised the demand sought to recover the amount. Revenue contended that supplementary invoice and challan is not an eligible document under Rule 9(1)(b) of CCR for input service provider. Revenue also contended that there is an exception carved out in Rule 9(1)(b) prohibiting credit availment through supplementary invoice in case additional duty becomes payable due to fraud, collusion or willful misstatement or suppression of facts. The hon'ble High Court in this matter observed that that Rule 9(1)(b) enables availment of CENVAT credit against supplementary invoices issued by a manufacturer or importer of inputs/capital goods, there is no reference whatsoever to input service provider. HC also noted that there is an explanation appended to Rule 9(1)(b) which clarifies that supplementary invoice would include a challan or any other similar document evidencing payment of additional duty. Therefore, HC observed that assessee was right in taking up the stand that Rule 9(1)(b) had no application to invoice or challan issued by a service provider. According to the HC, the exception carved out in Rule 9(1)(b) which prohibited availment of credit in a case of an additional amount of duty becoming payable on account of fraud, collusion or any willful misstatement or suppression of facts, etc., would not apply to the assessee. High Court accordingly decided the appeal in favor of assesse.

M/s. JSW Steels Ltd Vs. The Customs, Excise and Service Tax Appellate Tribunal [TS-213-HC-2017(MAD)]

Indirect Tax : Case Laws

Case Law 4

Restrictions on input credit utilization up to month / quarter end, ultra vires CENVAT scheme

Wherein the assessee is manufacturer of excisable goods and availing the benefit of CENVAT Credit Scheme with regard to the duties paid on inputs and capital goods as well as input services used in relation to payment of duty. The assesee Company utilized the CENVAT Credit during the month in which the excise duty for the goods cleared in the previous month was paid. However, according to the Excise Department, as per the provisions of Rule 3(4) of the CCR, the assessee could not utilize the CENVAT Credit taken in the beginning of a particular month while discharging the duty liability for the goods cleared in the previous month, and therefore the Assessee was held defaulter in payment of excise duty. Assessee made reliance on the earlier judgement and submitted that the credit under the CENVAT Scheme is “as good as tax paid”. It is submitted that in view of the objective of avoiding the cascading effect on duty paid on inputs while levying duty on final products, it is held by the Hon’ble Supreme Court in the case of Collector of Central Excise Vs. Dai Ichi Karkaria Ltd. reported in 1999 (112) ELT 353 (SC) and in the case of Eicher Motors Ltd. Vs. Union of India reported in 1999 (106) ELT 3 (SC) that utilization of legally availed CENVAT Credit is a right vested in the manufacturer the moment duty paid on inputs or input services are received by him because there is one to one correlation between the input services on one hand and final excisable product on the other hand. HC holds first proviso to Rule 3(4) of CENVAT Credit Rules, 2004 (CCR) restricting CENVAT credit utilization up to balance available on last day of month/quarter for purpose of discharging excise duty relating to that month / quarter, as ultra vires Rule 3(1) of CCR and Section 37 of Central Excise Act, 1944 (Act) and accepted assessee’s contention that said proviso seeks to enjoin upon manufacturer, the principle of one-to-one correlation which has no application under CENVAT Credit Scheme, hence same is invalid and unconstitutional. Accordingly, holds the decision in favor of the assessee.

ADVANCE SURFACTANTS INDIA LTD & Applicant(s) Vs. UNION OF INDIA[TS-212-HC-2017(GUJ)-EXC]

Indirect Tax: Notifications

S.no	Notifications
1	**Government extended the date to file GST return under Form GSTR-5A** Central Govt. notified vide notification no. 25/2017 dated 28th August'2017 the extension of due date for filing Form GSTR-5A (for Details of supplies of online information and database access or retrieval services by a person located outside India made to non-taxable persons in India) for the month of July'17 till 15th September'17. http://www.cbec.gov.in/resources//htdocs-cbec/gst/Noftn%2025-2017%20English.pdf
2	**Government extended the date to file GST return under Form GSTR-6** Central Govt. notified vide notification no. 26/2017 dated 28th August'2017 the extension of due date for filing Form GSTR-6(Return for input service distributor) for the month of July'17 and August'17 till 8th September'17 and 23rd September'17 respectively. http://www.cbec.gov.in/resources//htdocs-cbec/gst/Noftn%2026-2017%20English.pdf
3	**Government extended the date to file GST return under Forms GSTR-1, GSTR-2 and GSTR-3** Central Govt. vide notification no. 29/2017 of central GST on 5th September'2017 has extended the dates of Forms GSTR-1, GSTR-2 and GSTR-3 for the month of July to 10th, 25th and 30th September 2017 respectively; dates for August Returns extended to 5th, 10th and 15th October respectively. However, the notification for the same is yet to be issued. http://www.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-29-central-tax-english.pdf

Legal & Regulatory Notifications

S.no	Notifications
1	**MINISTRY OF CORPORATE AFFAIRS** **National Company Law Appellate Tribunal (Amendment) Rules, 2017** (MCA notification dated August 23, 2017) The Ministry of Corporate Affairs (MCA) has issued the National Company Law Appellate Tribunal (Amendment) Rules, 2017, effective from 23rd August, 2017, the notification made amendment Rule 63 of the said rules pertaining to the appearance of authorized representative before the Appellate Tribunal. As per the said amendment, for appearance before the Appellate Tribunal: A party may either appear in person or authorize one or more chartered accountant (CA), or company secretaries (CS) or cost accountants or legal practitioners or any other person. The Central Government, Regional Director, Registrar of Companies or the Official Liquidator can appoint an officer or an advocate to represent them, provided the officer appointed shall be an officer not below the rank of Junior Time Scale or company prosecutor. http://www.mca.gov.in/Ministry/pdf/NCLATAmendmentRules2017_25082017.pdf
2	**National Company Law Tribunal (Amendment) Rules, 2017** (MCA Notification No. G.S.R. 840(E) dated July 05, 2017) **Commencement of sub-sections (8) to (10) of section 212 of Companies Act, 2013 and Companies (Arrests in connection with investigation by SFIO) Rules 2017**

Legal & Regulatory

S.no	Notifications
	(MCA Notification dated August 24, 2017) The Ministry of Corporate Affairs (MCA) has notified sub section (8), (9), and (10) of section 212 regarding Investigation into Affairs of Company by Serious Fraud Investigation Office and also notified the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017. The said rules and sections specify the manner in which a person shall be dealt in case he has been found guilty of fraud under section 447 of the Companies Act, 2013, specifying the designation of the members of Serious Fraud Investigation Office, timelines for making an arrest, authority responsible for arrest, documents to be submitted and maintained for such arrest, etc. The provisions of the Code of Criminal Procedure, 1973 pertaining to arrest shall apply *mutatis mutandis* to the arrest made under the Companies Act. http://www.mca.gov.in/Ministry/pdf/companiesArrestsconnectionSFIORule_25082017.pdf http://www.mca.gov.in/Ministry/pdf/Commencementnotification_25082017.pdf
3	**SECURITIES EXCHANGE BOARD OF INDIA** **TRAI issues operational guidelines in collaboration with SEBI to curb misuse of bulk SMS in the securities market.** (TRAI notification dated August 10, 2017) The Telecom Regulatory Authority of India (TRAI) vide its notification dated 10th August, 2017 issued directions to all access providers instructing them to follow certain operational guidelines relating to usage of bulk SMSs being used for investment advice and stock tips. Investment advice and stock tips are being sent to general public through bulk SMS channel inducing them to invest in stocks of certain listed companies, indicating target prices and giving misleading/false information. Investment advice and stock tips can only be given by persons who are registered as Investment Advisors under

Legal & Regulatory

S.no	Notifications
	the SEBI (Investment Advisor) Regulations. The lack of information on the identity of senders of such SMSs became a hindrance to SEBI in taking necessary action against the senders. SEBI, in order to maintain the integrity of markets and confidence of investors, sought the help of Telecom Regulatory Authority of India (TRAI) to curb the misuse of bulk SMSs. http://www.trai.gov.in/sites/default/files/Press_release_10082017.pdf
4	**ONLINE REGISTRATION FOR INTERMEDIARIES** (Notification dated August 16, 2017) The Securities Exchange Board of India ("SEBI") on 16th August, 2017 notified commencement of a dedicated online portal "https://siportal.sebi.gov.in" in order to ease the registration mechanism for the intermediaries of securities market including Stock Brokers, Sub-brokers, Investment Advisors, Research Analysts, Portfolio Managers, Venture Capital Funds, Alternative investment Funds (AIFs), Custodians and Collective Investment Schemes (CIS), Depository Participants, Real Estate Investment Trusts (REITs), Infrastructure Investment Trusts (InvITs), Mutual Funds, Merchant Bankers, Underwriters, Registrar to an Issue and Share Transfer Agents, Debenture Trustees, Bankers to an Issue, Credit Rating Agencies. The dedicated portal aims reducing the cumbersome procedures of intermediary registration. http://www.sebi.gov.in/web/?file=../../../sebi_data/attachdocs/aug2017/1502893549981.pdf#page

Expert Opinion by IBA

Mr. Kapil Nayyar, Partner

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Column

Treatment of Gift and Perquisites under GST

By – Ravi Arora, Deputy Manager- Indirect Tax Team

IBA

As we all know that, the Goods and Services Tax (GST), the biggest economic reform, is live in India since 01 July 2017. Every new thing comes out with the new challenges, similar with the case with GST, with the passage of GST in India, there seems humongous challenges revolving around Gift and Perquisites provided by an Employer to their Employee.

In terms of GST Laws, CGST and SGST or IGST shall be levied on supply of goods or services or both. Further, the supply includes activities as specified in Schedule I to GST Act even if made without consideration. Accordingly, tax will be levied on all such activities.

Entry 2 of Schedule I states:

"Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business" "Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both".

Further, as per Section 15 of GST Laws, employer and employee are considered as "related parties". On reading of the said entry, we understand that gifts provided by an employer to employee exceeding fifty thousand are leviable to tax. However, the term "Gift" has not been defined under the GST Laws. Accordingly, the term gift is open for interpretation.

In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift.

It is pertinent to note here that the services by an employee to an employer in the course of or in relation to his employment is outside the ambit of GST (neither supply of goods or supply of

Read more at: http://www.ibadvisors.co/wp-content/uploads/2017/08/Treatment-of-Gift-and-Perquisites-under-GST1.pdf

Upcoming Compliances

Date	Compliance
September 10, 2017	GSTR-1 for July 2017
September 15, 2017	Second Instalment of Advance tax
September 20, 2017	GSTR-3B for August 2017
September 25, 2017	GSTR-2 for July 2017
September 28, 2017	TRAN-1 Return
September 30, 2017	GSTR-3 for August 2017
	Due date for convening of the Annual General Meeting by the Companies
	Due date to file revised Return on Foreign Assets and Liabilities, in case there are significant changes upon Audit of Accounts.
	Tax audit and ITR, the same has been extended to 31st October 2017
October 5, 2017	GSTR-1 for August 2017
October 7, 2017	Deposit of TDS for the month of August 2017
October 10, 2017	GSTR-2 for August 2017

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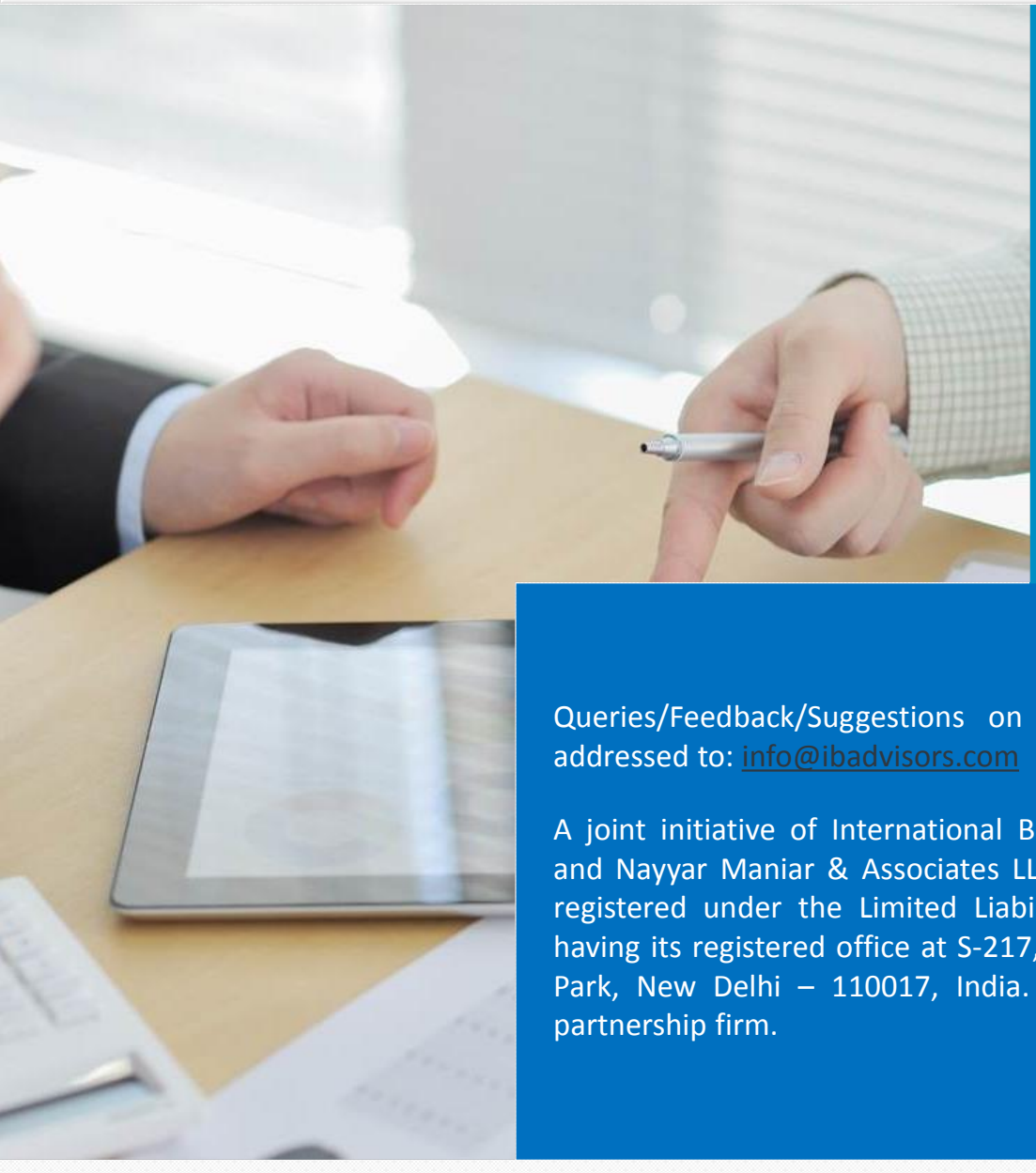

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