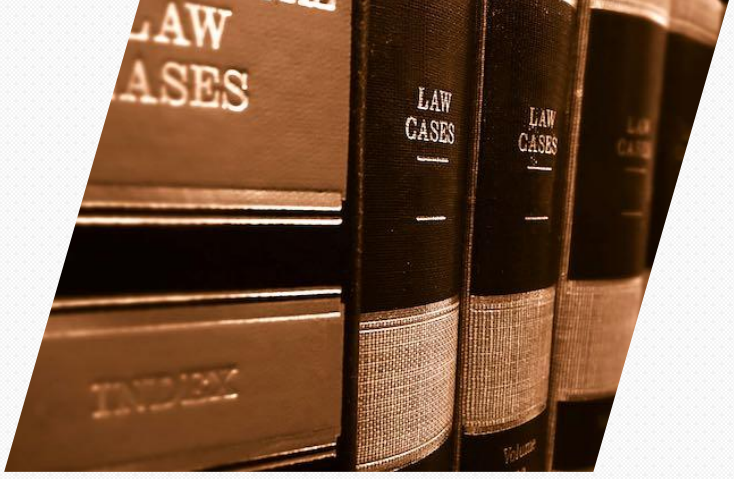
INTERNATIONAL BUSINESS ADVISORS

CONNEKT

August- 2018

Content

Direct Tax Case Laws



Case Law 1

ITAT: Preparatory work not connected to installation site is not relevant for determining Installation-PE threshold period

Delhi ITAT accepts assessee's (Incorporated in Cyprus) contention of non-constitution of 'installation PE' under clause 5(2)(g) of India-Cyprus DTAA pursuant to award of contract by another foreign entity (AMC) for placement of rock in seabed for laying of gas pipelines and other work. ITAT rejected Revenue's contention that assessee's activity went beyond 12 months threshold period prescribed for installation PE, after observing that AO and DRP wrongly concluded that assessee was involved in multifarious functions by considering the scope of work to be carried by AMC (pursuant to contract with Reliance & Niko Resources) as scope of work for assessee.

Regarding Revenue's contention that one of assessee's employee visited India prior to awarding of contract to assessee, ITAT held that auxiliary and preparatory activity, purely for tendering purpose before entering of the contract and without carrying out any activity of economic substance qua the project cannot be considered for determining threshold period. Reliance was placed upon Delhi HC ruling in National Petroleum Construction Company.

Further it was held that period for determination of PE was to be reckoned from January 4, 2008 (commencement date as per contract) till September 30, 2008 (competition date as per competition certificate) before which all the activities connected to project were completed viz. last sail out of barge/vessel on 25th September 2008. Customs authorities certified demobilisation by this date and further, all the payments relating to contract were received before September 30, 2008.

In absence of anything on record to suggest that any activity post completion has been carried out beyond completion of 12 months or the project was not completely abandoned before the period of 12 months, ITAT accepted assessee's contention that threshold period condition was not met.

Nokia Net Works Nokia Group Vs Joint Commissioner of Income-tax, Non Resident Circle, New Delhi [2018] 94 taxmann.com 111 (Delhi - Trib.) (SB)

Case Law 2

ITAT quashes time-barred assessment, despite being initiated, pursuant to CIT's direction u/s. 119

Indore ITAT held that CIT is not empowered to direct AO to issue notice u/s 143(2) after expiry of normal limitation period, thereby quashing time-barred assessment for AY 2000-01 on assessee-firm.

Direct Tax : Case Laws

It was noted that the assessee had filed revised return in April, 2001 (original return filed within time-limit) to claim refund of TDS and thereafter made an application u/s. 119 to regularize the revised return. The application was allowed by CIT (vide CIT's order of January, 2008) who directed AO to determine refund after scrutinizing the case by issuing notice u/s 143. Referring to CBDT Instruction No.13/2006 relied on by CIT, ITAT clarifies that the CBDT Instruction cannot override provisions of the Income-tax Act, and further observed that the instruction in the circular is related to condonation of delay in respect of refund due and does not empower AO to make scrutiny of the entire case, and therefore is only limited to the extent of ascertaining assessee's claim. In the present case, AO was required to ascertain whether TDS has been deducted and whether refund is due to assessee or not, therefore it was remarked that "the AO has misconstrued direction of the ld. CIT and assessed the income by making scrutiny assessment."

Shri Sanjay Kumar Garg Vs Assistant Commissioner of Income Tax, New Delhi

[2018] 56 taxmann.com 178 (Indore - Trib.)

Case Law 3

ITAT: Rejects 'artificial' division between tax and surcharge in allowing MAT credit

Delhi ITAT rules on the stage at which deduction should be allowed for MAT credit available u/s. 115JAA, holds that MAT credit, inclusive of surcharge and education cess etc should be reduced from the amount of tax determined on the total income after adding surcharge and education cess and only the resultant amount payable should suffer interest u/s. 234A/B/C.

It is to be noted that for AY 2011-12, assessee had a MAT credit of Rs. 1.05 cr (having tax component of Rs.95.83 lakh and surcharge, cess at Rs.10.25 lakh), assessee had submitted that the tax component should have been allowed deduction from the amount of tax computed on total income for subject AY immediately before the levy of surcharge and education cess etc. and surcharge, cess component should be reduced from the amount of surcharge and cess payable for the year under consideration. ITAT held that surcharge, cess etc. is part and parcel of tax and both have to be considered as one unit. It was further observed that if we split the amount of tax credit into two artificial limbs, that is, tax and surcharge etc., there can be a possibility of an assessee even losing the benefit of the full amount of surcharge etc. as the amount of surcharge etc. keeps on varying from year to year.

Further, from Sec. 140A(1) dealing with Self-assessment tax, it was concluded that the amount of tax payable for the year is determined only after reducing the amount of advance tax, TDS and MAT credit, and the interest is to be calculated on such resultant figure. The matter was remanded back to AO for allowing tax credit in view of above position.

Consolidated Securities Vs Assistant Commissioner of Income Tax, New Delhi, ITAT – Delhi

Direct Tax : Case Laws

Case Law 4

ITAT: In case where assessee was holding shares in lender company without voting rights and also held non-cumulative preference shares with fixed rate of dividend in borrower company, amount of loan in question could not be added to assessee's income as deemed dividend under section 2(22)(e)

The assessee being an individual filed return declaring certain taxable income. The assessment was completed under section 143(3). Subsequently notice under section 148 was issued after recording reason that one company 'B' gave loan of Rs. 1.87 crores to another company 'M' which had accumulated profit of Rs. 73.64 crores, where assessee was holding 32.3 per cent shares through holding companies. It was also noticed that in the borrowing company, assessee held 10,200 ordinary shares, out of the total equity of 17,502.

The assessee objected to opening of reassessment contending that provisions of section 2(22)(e) would be applicable when assessee holds 10 per cent of the voting right in the payer company and holds 20 per cent of the beneficiary owners right in the receiving company. It was also submitted that assessee did not hold requisite number of shares in either the lender company or borrower company, therefore, the provision of section 2(22)(e) did not apply. The Assessing Officer rejected contentions of the assessee and held that loan given by company 'B' to company 'M' amounted to deemed dividend in the hands of the assessee.

The Commissioner (Appeals) held that assessee was not a specified shareholder in the lending company but holding 32.3 per cent of ordinary shares through holding companies. He further noted that in company 'M' assessee was holding 3648 Preference shares of Rs. 100/-, which were entitled to fixed rate of dividend. It was opined by Commissioner (Appeals) that such shares were excluded from the definition under section 2(22)(e) of the Act. With respect to assessee holding 10200 equity shares of Company M, the Commissioner (Appeals) noted that above shares were held by 'G' Corporation, which was a partnership firm and that as partnership firm could not hold shares in its name but the shares were held by its partners.

Deemed dividend is chargeable to tax in the hands of the shareholder of lending company in case there is a loan to a shareholder or any other concern.

In the lender company 'B', assessee held shares without any voting rights, therefore the condition of 10 per cent of holding in the lender company failed.

As per the second condition, the assessee must hold more than 20 per cent in borrower company. In fact, the assessee holds 15 per cent non-cumulative preference shares of Rs. 10 each with a fixed rate of dividend in that company which are not to be considered. Further the shares held by assessee on behalf of the partnership firm are also without any voting right as the assessee is a shareholder in fiduciary capacity and not in beneficiary capacity. In view of this, there was no infirmity in the order of the Commissioner (Appeals) and the decision was given in favour of Assessee.

Assistant Commissioner of Income Tax, Circle- 31 (1), New Delhi Vs K.P. Singh - Delhi - Tribunal

Direct Tax Notification

There has been a revision in monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court.

It has been decided by the Board that departmental appeals may be filed on merits before Income Tax Appellate Tribunal, High Courts and Supreme Court keeping in view the revised monetary limits and conditions.

Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given under: -

S. No	Appeals/ SLPs in Income-tax Matters	Monetary Limit (Rs.)
1.	Before Appellate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

For further detailed regarding the notification, please refer the following notification link: -

https://www.incometaxindia.gov.in/communications/circular/circular_3_2018.pdf

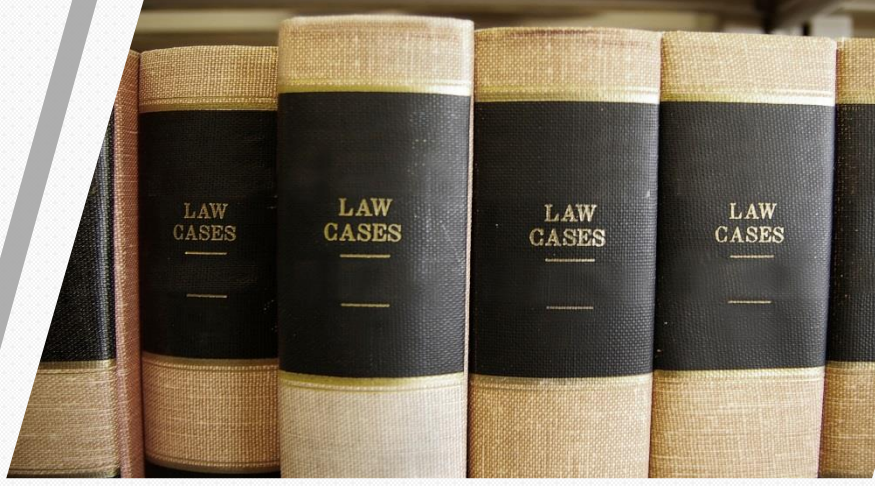
Updations in Tax Audit Report

The CBDT has notified vide Income-tax (8th Amendment) Rules, 2018 making substantial changes/additions in the Format of Tax Audit Report (Form 3CD), relating to GST, SFT, Cash Transactions, Transfer Pricing, etc. This is applicable w.e.f. 20 Aug. 2018.

Kindly refer the following link for detailed Notification :-

https://www.incometaxindia.gov.in/communications/notification/notification-33-2018.pdf

Indirect Tax : Case Laws



Case Law 1

Principle of Natural Justice-Smuggling of Contraband

There was suspicion of mis-declaration and smuggling of contraband on the Appellant Mr. Harminder Singh Chaddha and Mr. Inderjit Singh. The Customs authorities detained four containers on which Bills of Entry(BOE) were filed on behalf of the one M/s Shivani Industries. It was found that the containers were stuffed with cigarettes, radial tubeless tyres and premium brand foreign liquor. The BOEs were filed by Mr. Suman Kumar Jha, a G-Card holder for M/s. Rama Kant Sahu and the documents were apparently handed over to him by Mr. Malkiat Singh, proprietor of the importer (M/s. Shivani Industries). The goods were seized under Section 110 of the Act, and notices were issued to M/s. Shivani Industries, Mr. Inderjit Singh and Mr. H.S. Chadha. Show cause notices were served to the said parties. After detailed adjudication proceedings, demands in excess of Rs. 10 crores were confirmed against the noticee. The investigation had inter alia led to the seizure of documents in the form of electronic/digital files found in the laptop of the Appellant. Based upon all these materials, the adjudicating authority, i.e. the Commissioner concluded that Mr. H.S. Chadha was the mastermind behind these operations. As far as the appeal of Mr. Inderjit Singh is concerned, the Court is of the opinion that his involvement in the whole operation was also with knowledge. The fact that he was an employee of Mr. H.S. Chadha, in the opinion of the Court, does not in any manner absolve him of having contravened provisions of law which attracted penalty. Given that Section 112 of the Act, prescribed an outer limit of penalty amount equivalent to duty (which in this case amounted to over Rs. 10 crores), the imposition of penalty at the rate of ₹ 1 crore cannot be considered disproportionate. No question of law arise in the appeals; they are consequently dismissed.

HARMINDER SINGH CHADHA AND INDERJIT SINGH VERSUS COMMISSIONER OF CUSTOMS(PREVENTIVE) NEW DELHI [2018(7) TMI 1607-DELHI HIGH COURT]

Case Law 2

Reduction on account of Discount under GST

The applicant M/s Ultratech Cement Limited has filed an application under Section 97 of the CGST Act. Clarification was required for two questions i.e. Whether the amount paid to authorized dealers towards “rate difference” after effecting the supply of goods by the applicant to aforesaid dealers can be considered for the purpose of arriving at the 'transaction value' in terms of Section 15 of the CGST Act and Whether the amount paid to authorized dealers towards

Indirect Tax : Case Laws

""rate difference" after effecting the supply of goods would be allowed under Section 15(1) read with Section 34(1) of the CGST Act or under Section _15(3) read with Section 34(1) ibid.

Section 15 of the CGST Act states that the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of supply are not related and price is the sole consideration for the supply. The amount paid to the Dealer towards "rate difference" and "special discount" post supply are not complying with the requirements of section 15(3)(b)(i) of the CGST Act and therefore cannot be considered and allowed as discount for the purpose of arriving at the 'transaction value' in terms of Section 15 of the CGST Act.

As the applicant's facts and case are not in compliance of the provisions of Section 15(3)(b)(i) itself, their procedural compliance in other respects is immaterial and not relevant. Various case laws referred to by the applicant in their submissions are in different context and are therefore not relevant in the present proceedings before this authority. Both the questions were answered in negative.

N RE: M/S. ULTRATECH CEMENT LIMITED [ARA-34/2017-18/B-56] [2018 (7) TMI 1761 -AUTHORITY FOR ADVANCE RULINGS MAHARASHTRA]

Case Law 3

GST payable on non-tariff charges recovered by Electricity Distribution Company

The applicant M/s TP Ajmer Distribution Limited("TPADL") is engaged in the business of distribution of electricity. The Tata Power Company Limited ('TPCL') has signed a Distribution Franchisee Agreement with Ajmer Vidyut Vitran Nigam Limited ('AVVNL') to cater to the power requirements of customers in Ajmer. TPCL has formed a Special Purpose Vehicle ('SPV') called TPADL, which will be responsible for operating and maintaining the distribution network. For distribution of electricity, TPADL carries out various activities and makes separate recoveries from its customers. The applicant has submitted that as per Entry No. 25 of Notification 12/2017- Central Tax dated 28.06.2017 "Transmission or Distribution of Electricity has been exempted from levy of GST". Advance ruling has been sought whether TPADL is eligible to avail the aforesaid exemption with regards to the non-tariff charges recovered made from its customers or is it liable to pay tax on these recoveries. It was found that only services by way of transmission or distribution of electricity are exempt from tax and other services such as application fee for releasing connection, rental charges against metering equipment, testing fee for meters, charges for duplicate bill, labour charges for shifting of meters, interest /late fees/penalty for

Indirect Tax : Case Laws

delayed payment etc are taxable and liable to GST. Further, the refundable security deposit against electric meter will not be treated as consideration for supply except when security deposits are applied as consideration such as forfeiture, offsetting against future progress payments. Accordingly, it was ruled that non-tariff charges recovered from customers are not exempted and M/s TDAPL is liable to pay tax on such amount recovered from the customers

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[2018 (6) TMI 1196 - AUTHORITY FOR ADVANCE RULING – RAJASTHAN, IN RE : M/S TP AJMER DISTRIBUTION LIMITED]

ADVANCE RULING NO. RAJ/AAR/2018-19/02 Dated- May 11, 2018

Case Law-4

Diesel engines sold to SEZ units taxable as 'zero-rated' inter-state supplies

The applicant is engaged in the trading of diesel engines and its spare parts along with services of diesel engine, either on AMC basis or on an as and when required basis. Advance ruling has been sought on whether the supply of goods and on-site services to customers in SEZ area to any SEZ unit or SEZ developer is a zero-rated supply under section 16 of the IGST Act, 2017. As per Section 16(1)(b) of IGST Act, 2017 supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit shall be considered as "zero rated supply"

It was decided that since the supplies are being made only to SEZ units and entities located in Special Economic Zones therefore, the provision of Section 16 of IGST Act, 2017 will be applicable and the tax liability will be at zero rated under sub section 1(b) of IGST Act, 2017. The applicant may supply without paying tax under Bond or Letter of Undertaking or supply on payment of tax and claim refund subsequently under section 16(3)(b) of the IGST Act.

2018-VIL-114-AAR- AUTHORITY FOR ADVANCE RULING – WEST BENGAL, M/S GARUDA POWER PRIVATED LIMITED

ADVANCE RULING NO. 14/WBAAR/2018-19 Dated- 01/08/2018

Indirect Tax Notification

1. Extension of due date to File GSTR-6 till 30th September 2018

CBIC vide its notification number 30/2018 dated 30th July 2018 have extended the time limit for filing the return by an Input Service Distributor in Form GSTR-6 for the months of July, 2017 to August, 2018 till 30th September 2018.

Notification No. 30/2018-Central Tax dated 30th July 2018

http://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-30-2018-central_tax-English.pdf;jsessionid=C4D91443E240F2F6657B3937F0C01B1B

Corporate Legal & Regulatory Notifications

S.no	Notifications
1	**COMMENCEMENT NOTIFICATION**

(MCA Notification dated July 05, 2018 & July 27, 2018)

The Ministry of Corporate Affairs has notified various provisions of The Companies (Amendment) Act, 2017 vide its notifications dated July 05, 2018 and July 27, 2018. The sections which are notified along with their effective dates are as follows:

Section No. of the Companies (Amendment) Act, 2017	Corresponding Section under Companies Act, 2013	Section Title	Effective Date
Section 5	Item (c) of sub-section (1) of section 7	Incorporation of a Company	July 27, 2018
Section 6	Sub-section (1) and (4) of section 12	Registered Office of the Company	July 27, 2018
Section 15	Section 73	Prohibition on acceptance of deposits from public	August 15, 2018
Section 16	Section 74	Repayment of deposits etc. accepted before the commencement of this Act	August 15, 2018
Section 20	Section 82	Company to report satisfaction of charge	July 05, 2018
Section 75	Section 366	Companies capable of being registered	August 15, 2018
Section 76	Section 374	Obligations of companies registering under this part	August 15, 2018

http://www.mca.gov.in/Ministry/pdf/CommencementNotification05_06072018.pdf
http://www.mca.gov.in/Ministry/pdf/CommencementNotification0507_06072018.pdf
http://www.mca.gov.in/Ministry/pdf/CommencementNotiAmendment27_30072018.pdf

Legal & Regulatory

S.no	Notifications
2	**THE COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) FOURTH AMENDMENT RULES, 2018.** (MCA Notification dated July 05, 2018) The Ministry of Corporate Affairs (MCA) vide its notification dated July 05, 2018 has the amended the Companies (Appointment and Qualification of Directors) Rules, 2018 to be effective from July 10, 2018. Through the amendment, the Rule 11 has been renumbered as sub-rule (1) thereof and new provisions have been added in Rule 11 as below: • Rule 11 (2) has been inserted to empower the Central Government or Regional Director (Northern Region)/any officer authorised by the Central Government or Regional Director (Northern Region) to deactivate the Director Identification Number (DIN), of any individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time under Rule 12A of the said rules. • Rule 11 (2) provides for re-activation of such de-activated DINs only upon filing of e-form DIR-3-KYC with fee as prescribed additional fees. Further, a new Rule 12A has been inserted which provides that every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year is required to submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year. Further it has been provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March 2018, shall submit e-form DIR-3 KYC on or before 31st August, 2018. A new e-form DIR-3-KYC has also been inserted. http://www.mca.gov.in/Ministry/pdf/CompaniesAppointmentQualificationRules_06072018.pdf
3	**COMPANIES (REGISTRATION OFFICES AND FEES) THIRD AMENDMENT RULES, 2018** *(MCA Notification dated July 05, 2018)* The Ministry of Corporate Affairs (MCA) vide its notification dated July 05, 2018 has the amended the Companies (Registration offices and Fees) Rules, 2018 to be effective from July 10, 2018. The amendment prescribes the fees applicable on filing of e-form DIR-3 KYC under Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2018 as below:.

Legal & Regulatory

<table>
<tr><th>S.no</th><th>Notifications</th></tr>
<tr><td></td><td>
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<tr><th>Particulars</th><th>Fees</th></tr>
<tr><td>Fee payable till the 30th April of every financial year in respect of e-form DIR-3 KYC as at the 31st March of immediate previous year.</td><td>Nil</td></tr>
<tr><td>Fee payable (in delayed case)</td><td>INR 5000</td></tr>
</table>

http://www.mca.gov.in/Ministry/pdf/CompaniesRegistrationOfficesFeesRle_06072018.pdf
</td></tr>
<tr><td>4</td><td>COMPANIES (REGISTRATION OF CHARGES) AMENDMENT RULES, 2018
(MCA Notification dated July 05, 2018)

The Ministry of Corporate Affairs (MCA) vide its notification dated July 05, 2018 has amended the Companies (Appointment and Qualification of Directors) Rules, 2018 to be effective from July 05, 2018. Through the amendment, Rule 8(1) and Rule 12(1) have been amended to provide for intimation of satisfaction of charge to the Registrar of Companies in Form CHG-4 along with prescribed fee to be given either by the company or charge holder within a period of 300 days.

http://www.mca.gov.in/Ministry/pdf/CompaniesRegistrationChargesRules_06072018.pdf</td></tr>
<tr><td>5</td><td>COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2018.
(MCA Notification dated July 05, 2018)
The Ministry of Corporate Affairs (MCA) vide its notification dated July 05, 2018 has notified the Companies (Acceptance of Deposits) Amendment Rules, 2018 to be effective from August 15, 2018. Through this notification, MCA has amended the provisions related to Acceptance of Deposits, Deposits Insurance, Deposits Repayments Reserve etc. as mentioned below:
(i) A proviso to Rule 4(1) has been inserted providing for obtaining a Certificate from Statutory Auditor to be attached to DPT-1 stating that Company has not defaulted in repayment of deposits or interest thereof. In the case of any default made the Statutory Auditor shall certify that the default had been made good and it’s been five years that the default had been made good.
(ii) Rule 5 regarding Manner and Extent of Deposit Insurance has been omitted
(iii) Proviso to Rule 13 has been substituted, providing that the amount remaining in the Deposit Repayment Reserve Account shall not at any time fall below twenty per cent of the amount of deposits maturing during the financial year.
(iv) In rule 14(1), clause (K), the head “details of deposit insurance including extent of deposit insurance” to be provided in the Register of Deposits has been omitted;
(v) New form DPT-1 has been substituted.

http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceDepositsAmendmentRules_06072018.pdf</td></tr>
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Legal & Regulatory

S.no	Notifications
6	**COMPANIES (AUTHORISED TO REGISTER) SECOND AMENDMENT RULES, 2018** (MCA Notification dated July 05, 2018) The Ministry of Corporate Affairs (MCA) vide its notification dated July 05, 2018 has notified the Companies (Authorised to Register) Second Amendment Rules, 2018 to be effective from August 15, 2018. The key highlights of the amended rules are as below: • In sub-rule 1 of Rule 2 the meaning of "firm", "society", "subsequent society law", "trust", "Registrar of Trusts" have been added; • Rule 3 has been substituted with revised Rule-3, which prescribes in detail the documents to be filed by LLP, trusts, societies, etc. in Form URC-1 for conversion into Company under section 366 of the Companies Act, 2013. Further to streamline the provisions of Section 366 with the rules, the revised rules provides that an LLP, society, trusts, etc. with two or more members instead of seven or more members can convert into Company under section 366. • Rule 4 provides that places where the words "Limited Liability Partnership or the firm as the case may be is situated" shall be replaced by the words "Limited Liability Partnership, firm, society or trust, as the case may be, is situated". • Rule 5 has been amended to prescribe other obligations to be complied by trusts and societies for registration as Company upon conversion under Section 366 of the Companies, Act 2013. • Forms URC-1 and URC-2 have been substituted with new e-forms. http://www.mca.gov.in/Ministry/pdf/CompaniesAuthorisedRegister_06072018.pdf
7	**COMPANIES (INCORPORATION) THIRD AMENDMENT RULES 2018** (MCA Notification dated July 27, 2018) The Ministry of Corporate Affairs vide its notification dated July 27, 2018 has notified the Companies (Incorporation) Third Amendment Rules 2018 to be effective from July 27, 2018. The highlights of the notification are as follows: • For the purpose of incorporation of One Person Company, 182 days for determining whether a natural person is resident in India shall be computed with reference to the financial year. Previously it was calculated in reference to previous calendar year. • At the time of incorporation of the company, the requirement of affidavit from first subscribers and directors has been replaced with a declaration therefrom. http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporation3rdRules27_30072018.pdf

Legal & Regulatory

S.no	Notifications
8	**COMPANIES (ACCOUNTS) AMENDMENT RULES, 2018.** (MCA Notification dated July 31, 2018) The Ministry of Corporate Affairs vide its notification dated July 31, 2018 has notified the Companies (Accounts) Amendment Rules, 2018 to be effective from July 31, 2018. The key highlights to the amendments made to Rule 8 of said rules are as below: • The Board Report of Companies shall additionally disclose the below mentioned points: ➢ Whether maintenance of cost records as specified by the Central Government under section 148(1) of the Companies Act, 2013, is required by the Company and whether such accounts and records are made and maintained; and ➢ A statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. • Further Rule 8A has been inserted to deal specifically with the matters to be included in Board's Report for One Person Company and Small Company. The rule provides that the Board's Report of such companies shall be based on standalone financial statements and in abridged form containing the details as specified in these rules. http://www.mca.gov.in/Ministry/pdf/companisAccountsRules_31072018.pdf
9	**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)** **INSOLVENCY AND BANKRUPTCY CODE (SECOND AMENDMENT) BILL, 2018** (Bill No. 127 of 2018 dated July 24, 2018) The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2018 has replaced the ordinance that was approved by the Union Cabinet in the month of May. Following are the key amendments: • To provide relief to homebuyers by recognising their status as Financial Creditors, thus giving them due representation in the Committee of Creditors (CoC) and making them an integral part of the decision-making process. The Bill went on to define the expressions "allottee" and "real estate project". • Further, it also reduces the minimum voting threshold for the CoC to 66% from 75% for key decisions. • As per the amendments, the Micro Small and Medium Enterprises (MSME) sector would get a special dispensation under the Code.

Legal & Regulatory

S.no	Notifications
	• The amendments do not disqualify the promoter to bid for his enterprise undergoing Corporate Insolvency Resolution Process (CIRP) provided he is not a willful defaulter and does not attract other disqualifications not related to default. • It lays down a strict procedure for withdrawal of a case by an applicant under section 12A after admission under the Code. Such withdrawal would be permissible only with the approval of the CoC with 90% of the voting share. • The Insolvency and Bankruptcy Board of India's (IBBI) will be given a "developmental" role similar to other regulators such as IRDAI and PFRDA. It will also be given the power to regulate the working and practices of certain professionals under the IBC. • The Bill further provides that the Limitation Act, 1963 will apply to the proceedings or appeals under the IBC. http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jul/127_2018_LS_Eng_2018-07-24%2013:33:19.pdf
10	**THE SECURITIES CONTRACTS (REGULATION) (AMENDMENT) RULES, 2018** (Notification dated July 25, 2018) Rule 19A of the Securities Contracts (Regulation) Rules, 1957 has been amended in order to bring the same in line with section 31 of Insolvency and Bankruptcy Code, 2016. Accordingly, if due to implementation of the resolution plan under section 31, if the public shareholding in a listed company falls below 25 %, then company shall be required to bring back the public shareholding to 25 % within 3 years from the date of such fall. Further, if the public shareholding falls below 10 %, then company shall be required to bring back the public shareholding to 10 % within 18 months from the date of such fall. http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Jul/187645_2018-07-28%2022:24:46.pdf

Column

FOREIGN DIRECT INVESTMENT IN LIMITED LIABILITY PARTNERSHIPS (LLPs)

By – Surabhi Sharma – Regulatory

IBA

Limited Liability Partnership (LLP) model clubs the features of a corporate and partnership, has been a very successful business set-up model in India since its inception in 2008. It provides flexibility to the promoters in establishing a partnership as a legal entity separate from its partners and without the need of complying the complex provisions of Companies Act, 2013.

Prior to the liberalization of Foreign Direct Investment (FDI) in the LLPs, LLPs could only be formed by Indian residents and Indian Companies. However, the Reserve Bank of India vide its Notification No. FEMA.385/2017-RB dated March 03, 2017 allowed FDI in LLPs which were both existing and newly incorporated. This notification not only eased the way business was done in India but also addressed many hurdles such as prior approval of RBI for FDI in LLP, Reporting's relating to LLPs etc. faced by promoters brining FDI in LLPs.

General Conditions of the RBI linked with FDI in LLPs

1- Investor Eligibility

Only an individual person not being a citizen of Pakistan or Bangladesh, resident outside India or an entity incorporated outside India with the exception of entities incorporated in Pakistan or Bangladesh, who are not Foreign Portfolio Investors or Foreign Institutional Investors or Foreign Venture Capital Investors registered in accordance with SEBI guidelines can invest in LLPs in India

2- Modes of Investment

Investment can be made via. two modes. Firstly, direct investment by way of capital contribution or acquisition of existing contribution. Secondly by way profit shares in the capital structure of an LLP which falls under the category of reinvestment of earnings.

3- Eligibility of LLP

A few conditions have been laid out qualifying which FDI in LLP is permitted:

- FDI is permitted under the automatic route in LLPs operating in sectors / activities where 100% FDI is allowed through the automatic route and there are no FDI linked performance conditions.

- An Indian company or an LLP, having foreign investment, will be permitted to make downstream investment in another company or LLP engaged in sectors in which 100% FDI is allowed under the automatic route and there are no FDI linked performance conditions. Onus shall be on the Indian company / LLP accepting downstream investment to ensure compliance with the above conditions.

- FDI in LLP is subject to the compliance of the conditions of Limited Liability Partnership Act, 2008.

4- Pricing and Mode of payment

The pricing for any mode of investment in LLP shall be more than or equal to the fair price as worked out by a Chartered Accountant or a practicing Cost Accountant or an approved valuer from the panel maintained by the Central Government using any internationally accepted / adopted valuation practice as per market.

Further, the remittance towards such investment shall be made:

- by way of inward remittance through banking channels; or
- by debit to NRE / FCNR(B) account of the person concerned, maintained with an AD Category - I Bank.

<u>Procedure for investment in an LLP</u>

1. The following steps are followed for FDI in LLP by way of capital contribution by incorporating a new LLP:

I) Ascertaining the parties in an LLP. A LLP requires minimum two partners who can either be individuals or body corporates. Further body corporates need to appoint individuals as Partners/Designated Partners (DP) as their nominees.

II) Ascertaining the number of Partners and Designated Partners (DP) to be appointed in an LLP. It is mandatory to have at least one DP who shall be resident in India.

III) Application via Form LLP-1 to the Registrar of Companies is made for availability/reservation of name of the name of LLP

IV) Once the name has been approved and reserved by the Registrar of Companies Form LLP-2 is filed for incorporation of LLP

V) On incorporation execute an LLP Agreement between the parties and file the same with the Registrar of Companies in Form LLP-3 for approval.

VI) Once the procedure with the ROC is complete the parties may remit the funds towards the capital of LLP as per the mode of payment specified by RBI

VII) After receipt of capital Reporting to RBI in Form LLP-1

2. The following steps are followed for FDI in LLP by way of capital contribution by acquisition of capital in existing LLP:

I) Revise the existing LLP Agreement and file Form 3 & Form 4 for revision of LLP Agreement and change in partners respectively with the Registrar of Companies.

II) Post transfer of consideration to the existing partners file Form LLP- 2 with the RBI for reporting the acquisition in LLP.

Additionally, any LLP which has received capital contribution in the form of Foreign Direct Investment in the current year or previous year should submit form Foreign Liabilities and Assets (FLA) to the Reserve Bank on or before the 15th day of July of each year.

Hence, the new process of investment in LLP has done away with the cumbersome process of prior approval of RBI for foreign investment in LLPs under automatic route and provides for easy reporting of investments to RBI. FDI in LLPs is now a hassle-free process thus giving Foreign Companies desirous of entering into India an option to incorporate as LLPs and not only as wholly-owned subsidiaries or joint ventures.

Upcoming Compliances

Date	Compliance
August 10, 2018	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of more than 1.5 crore for the month of July-2018
August 15, 2018	Quarterly TDS Certificate in respect of tax deducted and deposited for the quarter ending June 30, 2018.
August 20, 2018	Due date for filing consolidated return in the Form GSTR-3B for the month of July-2018
August 31, 2018	Due Date for filing Income Tax return of A.Y 2018-19.

Editorial Team




About us:

IBA is a leading Financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax(GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bangalore and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

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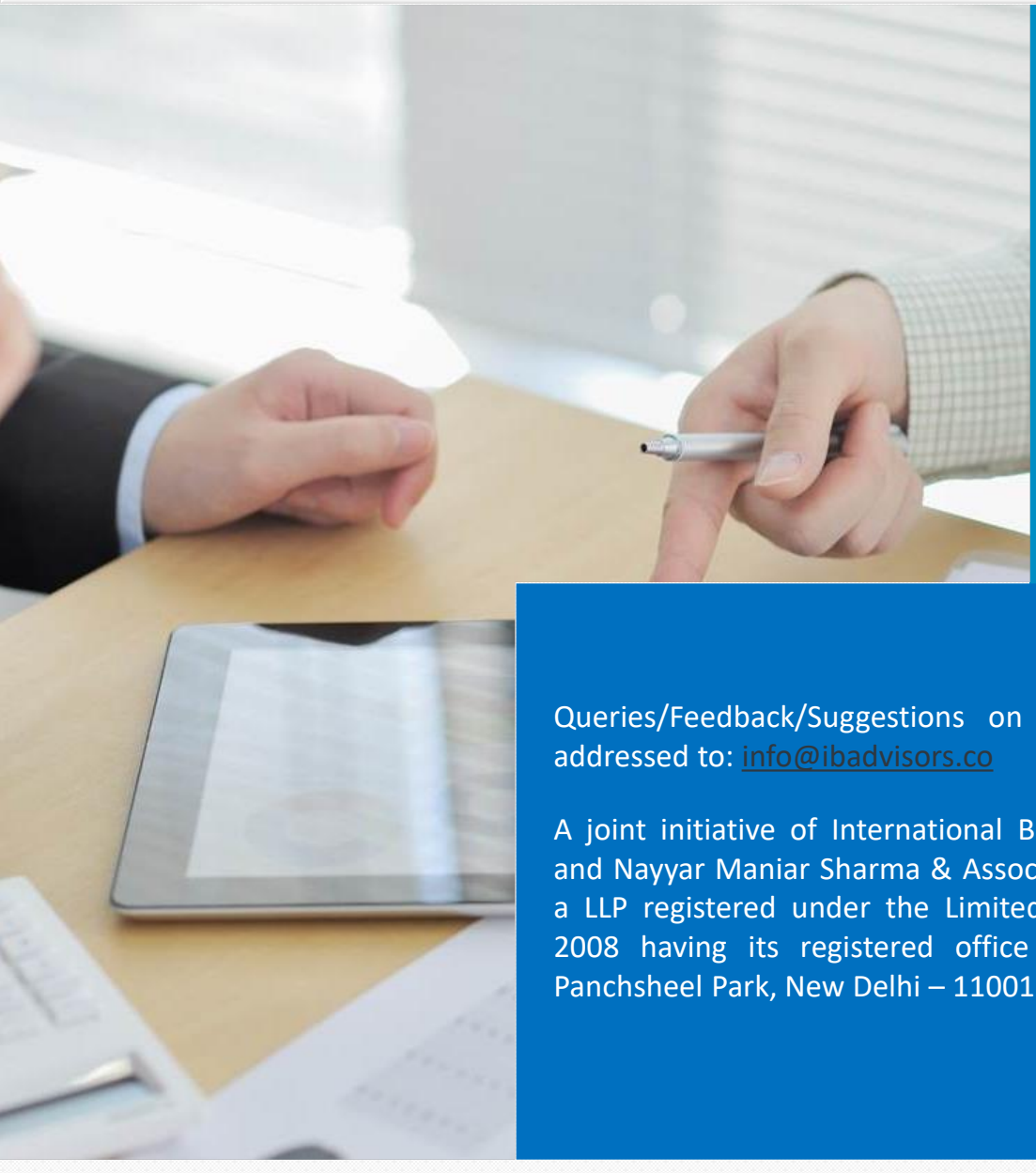

Queries/Feedback/Suggestions on this newsletter may be addressed to: info@ibadvisors.co

A joint initiative of International Business Advisors LLP (IBA) and Nayyar Maniar Sharma & Associates LLP (NMS LLP). IBA is a LLP registered under the Limited Liability Partnership Act, 2008 having its registered office at S-217, Ground Floor, Panchsheel Park, New Delhi – 110017, India.

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