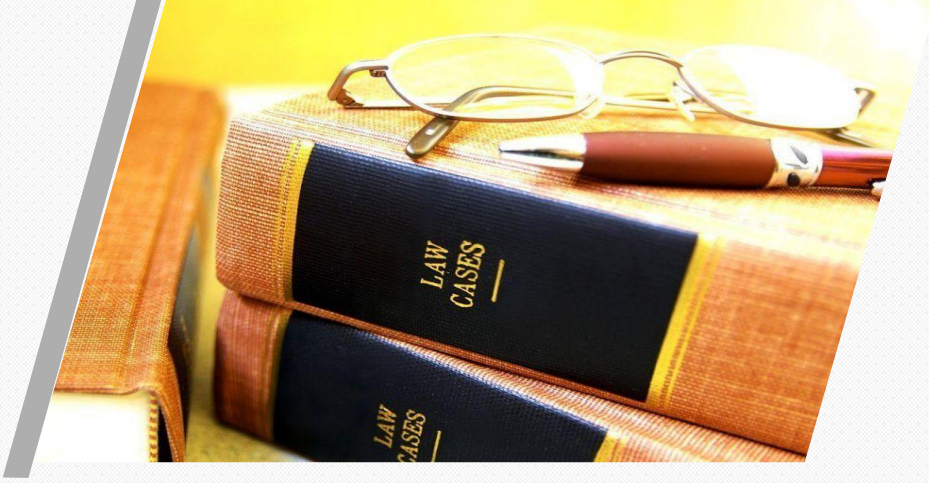
INTERNATIONAL BUSINESS ADVISORS

CONNEKT

July - 2019

Content

Direct Tax Case Laws



Case Law 1:

Where Assessing Officer rejected assessee's claim for deduction under section 54F on ground that at time of sale of capital asset, assessee was owner of more than one residential house properties, in view of fact that one residential property was co-jointly owned in name of assessee and his wife and he could not be treated as 'absolute owner' of said property, deduction under section 54F could not be denied to him.

Deduction under section 54F is allowed if the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house and also assessee should not own more than one house in his name at the time of transfer of the asset besides the house which is being purchased or constructed for availing exemption.

Assessee filed his return claiming deduction under section 54F in respect of capital gain arising from transfer of capital assets. Assessing Officer thus rejected assessee's claim for deduction on ground that he was owner of two flats on date of transfer of capital assets and therefore does not satisfy the condition under section 54F. It was submitted that the residential flat situated at Goa was actually purchased jointly in the name of assessee as well as his wife. Assessee also relied upon the case ITO v. Rasiklal N. Satra wherein it was held that word 'own' appearing in section 54F includes only such residential house which is fully and wholly owned by one person and not a residential house owned by more than one person. Since, the legislature has not amended the provisions of section 54F, it has to be held that the word "own" in Section 54F would include only the case where a residential house is fully and wholly owned by the assessee and consequently would not include a residential house owned by more than one person.

Also, the share of the assessee was transferred /gifted to his daughter Ms Alisha Ashok Chauhan by way of gift deed. Therefore, the assessee cannot be said to be the full owner of the property. Thus even if, as per the provision of section 27(1)(Deemed Ownership) of the Act, the assessee is considered to be a deemed owner of the Goa flat, but even then, assessee would still being a co-owner cannot be termed that Goa flat is fully and wholly owned by him, thus cannot be denied exemption u/s 54F.

Therefore, assessee could not be treated as 'absolute owner' of the residential flat situated at Goa and the exemption under section 54F has been allowed to the assessee.

Ashok G. Chauhan v Assistant Commissioner of Income-tax

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Case Law 2:

Provisions of section 56(2)(viib) cannot be invoked in case of assessee-company because by virtue of cash being brought into assessee-company by 'S' for allotment of equity shares with unrealistic premium, benefit had only passed on to her daughter 'V' and there is no scope in Act to tax when cash or asset is transferred by a mother to her daughter.

The assessee company has only 2 shareholders 'S' and her husband. On passing away of the husband, his shares devolved on her daughter 'V'. 'S' and her daughter 'V' has 50%-50% shares. The assessee company proposed to acquire immovable property i.e land. The value of the land was approximately Rs.23.09 crores.

Accordingly, 'S' who has funds brought in money and she was allotted 10,100 shares with a share premium of Rs.23,086 per share. After allotment of shares to 'S', revised share percentage is 75%-25%. AO opined that the assessee company has received excess price/share premium for the shares allotted to 'S' over and above the face value of shares. Accordingly, AO invoked the provisions of section 56(2)(viib) and added the said amount of Rs.23 crores to the income of the assessee.

Section 56(2)(viib) of the Income-tax Act, 1961 (Act) provides that where a closely held company issues its shares at a price which is more than its fair market value, the amount received in excess of fair market value will be charged to tax in the hands of the company as income from other sources.

Now, the assessee argued the section 56(2)(viib) was introduced by the Finance Act 2012 and the intention of introduction of this section as explained by the Finance Minister was to curb the generation of black money, which is clearly not the case here. Intent of the provision was to discourage the practice adopted by the taxpayers of subscription of shares of closely held companies at excessive and unjustifiable premium.

Assessee also said that, the benefit of such investment at an unrealistic share premium has only passed on to her daughter because they are only two shareholders in the company at that point of time. Also, in the case of the assessee company, the investors' source of investment is genuine and not in dispute. Form these facts, it is evident that in the case of the assesse company, there is no possibility of generation and use of unaccounted money resulting from the transaction of infusing cash by 'S' into the assessee company in the from of equity share premium.

Corporate veil is also lifted and it is well evident that the benefit of approx. 25% arose to the daughter due to the infusion of funds by her mother who is prescribed relative u/s 56(2)(x). Current infusion would not benefit the other shareholder inducted in future as the subsequent share have to be allotted on the basis of value computed based on the mechanism provided under section 56(2)(viib) of the Act.

The ITAT observed the facts if the case and arguments of the assessee. After duly satisfying itself about the genuineness of the source of funds, it held that section 56(2)(viib) cannot be invoked in the case of the assessee company because by virtue of cash being brought into the company by 'S' for the allotment of equity shares with unrealistic premium the benefit has only passed on to her daughter 'V' and there is

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no scope in the Act to tax when cash or asset is transferred by a mother to her daughter. Hence, the AO is directed to delete the addition made by invoking the section 56(2)(viib) in the case of the assessee company.

So, it was held that section 56(2)(viib) is not applicable where the company had only closely related shareholders and there was no possibility of unaccounted money being involved.

Vaani Estates Pvt. Ltd v ITO

Case Law 3:

Where assessee, engaged in business of manufacturing of PP bags, made payments to non-resident as commission for procuring sales order outside India, such payment would not be taxable in India

The assessee was a partnership firm engaged in the business of manufacturing of PP Bags. The assessee had paid commission of certain amount to various non-resident entities without deducting TDS. The assessee submitted that it was engaged in the business of export of its final products and for this purpose, the assessee had tie up with non-resident persons for procuring the sales orders on behalf of the assessee. After exporting the goods and receiving the payment in foreign currency, the assessee paid commission to such non-resident persons for services rendered outside India. Thus, the assessee contended that the payment made by the assessee to non-resident was not liable to tax in India and, therefore, the assessee was under no obligation to deduct TDS.

The Assessing Officer disallowed the said amount under section 40(a)(i) on the ground that the assessee has not deducted the tax at source as required under section 195

As per section 40(a)(i), an amount shall not be deducted in computing the income chargeable under the head 'Profits and gains of business or profession", if any interest, royalty or fees for technical services or other sum chargeable under this Act, which is payable outside India on which tax is deductible at source and such tax has not been deducted. The Assessing Officer also held that the payment in question is fee for technical services (FTS) because the non-residents have rendered the service of managerial in the nature which falls in the ambit of definition of fee for technical services (FTS) under section 9(1)(vii)

It is pertinent to note that the provisions of section 40(a)(i) can be applied only with respect to sum payable or paid to a non-resident towards interest, royalty or fee for technical services (FTS) or other sum chargeable under the Act which is payable to non-resident. It is found that the Commissioner (Appeals) for the assessment year 2013-14 has clearly given a finding that the payment in question is not fee for technical services but it is a regular payment to the non-resident in the nature of ordinary course of business.

Even otherwise the Commissioner (Appeals) has upheld the order of the AO only on the ground that as per section 195, the assessee was under obligation to deduct the tax at source for making the payment of commission to non-resident. Therefore, the Commissioner (Appeals) has accepted the nature of payment as commission and not fee for technical service.

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Non-residents are taxable in India only if income accrue or arise and deemed to accrue or arise in India or received or deemed to be received in India. Therefore,

the commission paid to non-resident outside India for the services rendered outside India will not fall in the category of the income received or deemed to be received in India as well as accrues or arises or is deemed to accrue or arise in India. Thus, the said amount paid to non-resident does not fall in the scope of total income of non-resident and, consequently, it is not chargeable to tax in India under the provisions of the Act.

In the absence of PE of the non-resident in India such business income is not chargeable to tax in India as per DTAA Agreement. Accordingly, in the facts and circumstances of the case when the amount paid by the assessee is not chargeable to tax in India then the assessee is not liable to deduct TDS and consequently, the provisions of section 40(a)(i) cannot be invoked for making the disallowance. In the facts and circumstances of the case the disallowance made by the Assessing Officer under section 40(a)(i) is deleted.

Satyam Polyplast v Deputy Commissioner of Income-tax

Case Law 4:

Where AO made addition to assessee's income under section 68 in respect of donation received from parties by taking a view that there were doubts about identity and genuineness of those donors, in view of fact that donation so received had already been offered as income in Income and Expenditure Account of assessee-trust, impugned addition was to be deleted.

Where assessee had given details such as names and address along with other particulars of donors, donation received by assessee did not fall within definition of 'anonymous donation' and, therefore, impugned addition made by Assessing Officer by invoking provisions of section 115BBC, was to be set aside.

The assessee-society was registered under the Societies Registration Act, 1960. It was running an educational institution. During relevant year, assessee received donations from various donors which was duly credited in income and expenditure account. In course of assessment proceedings, the Assessing Officer asked the assessee to prove the identity, creditworthiness, genuineness of the donors. The assessee produced multiple details with respect to the various donors which established the identity of those donors.

The claim of the Assessing Officer is that same is a corpus donation. Corpus donation is never credited to the income and expenditure account of the trust whereas the normal donation is credited to the income and expenditure account as income. The Assessing Officer on examination of said details opined that there were several infirmities in the details furnished by the assessee. He thus taking a view that amount received by assessee was corpus donation, added same to assessee's income under section 68, read with section 115BC.

it is clear that when an income is credited to the income and expenditure account by the assessee trust then provisions of section 68 does not apply. As in the present case the amount of donation as held by the Commissioner (Appeals) is normal income already offered by the trust, these fact has never been controverted by the revenue. Thus, the decision of the Commissioner (Appeals) that the addition under section 68 of the above donation cannot be made, is upheld.

The second issue that arises even if the donation is credited to income and expenditure account of the assessee, whether a normal donation or a corpus donation, cannot be termed as anonymous donation under section 115BBC. In order to tax unaccounted money being contributed to wholly or partly charitable or religious trusts or institutions by way of anonymous donations, section 115BBC was inserted to provide that any income by way of anonymous donations shall be included in the total income and taxed at the rate of 30 per cent. 'anonymous donation' means any voluntary contribution referred to in section 2(24)(iia), where a person receiving such contribution does not maintain a record consisting of the identity of the person making such contribution indicating the name and address of the person and such other particulars as may be prescribed.

Therefore, it is apparent that at present the simple requirement is maintaining the name and address of the donors. In the present case, the assessee has already given much more detail then the name and address of the donors. Therefore with respect to the donation from 1038 persons the assessee has shown their name and address along with other particulars. It is not the case of the revenue that assessee has not maintained and provided these details to the Assessing Officer. In view of this, it is held that the donation received by the assessee does not fall into the definition of anonymous donation. Hence, on the applicability of the provisions of section 115BBC the Commissioner (Appeals) has correctly reached the conclusion that the donation received by the assessee is not an anonymous donation as provided under section 115BBC.

Direct Tax Notification

1. Clarification regarding non-allowability of set-off of losses against the deemed income under section 115BBE of the Income-tax Act, 1961 prior to assessment-year 2017-18-reg.

With effect from 01.04.2017, sub-section (2) of section 115BBE of the Income-tax Act, 1961 (Act) provides that where total income of an assessee includes any income referred to in section(s) 68/ 69j/ 69A/ 69B/ 69Cj/ 69D of the Act, deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provisions of the Act in computing the income referred to in section 115BBE(1) of the Act till the assessment year 2016-17

https://www.incometaxindia.gov.in/communications/circular/circular_11_2019.pdf

2. Assessment of Firms'-some of the important issues to be kept under consideration by the Assessing Officers while framing assessment-reg.-

While framing assessment in case of firms, a cross-verification of interest on capital paid to the partners, remuneration payable to the working partners etc. with income-tax return of firm's partner will be desirable and any discrepancy between the tax return of a firm and its partners should be dealt with as per provisions of the Act.

AO`s are advised to apply the provisions of Chapter XVI of the Act in assessment of firms whenever required. It should be taken into consideration that under section 185 of the Act, any noncompliance by the firm or its partners with provisions of section 184 of the Act may result in denial of expenses such as remuneration, interest etc. payable to the partners which are otherwise allowable under the provisions of the Act.

In case of firms claiming carry forward and set off of losses, Assessing Officers are requested to verify such claims taking into consideration provisions of section 78 of the Act which disallow such a carry forward and set off in case of change in constitution of the firm or on succession.

It is hereby clarified that this circular would also be applicable to limited scrutiny cases if the assessee is a registered firm.

https://www.incometaxindia.gov.in/communications/circular/circular_12_2019.pdf

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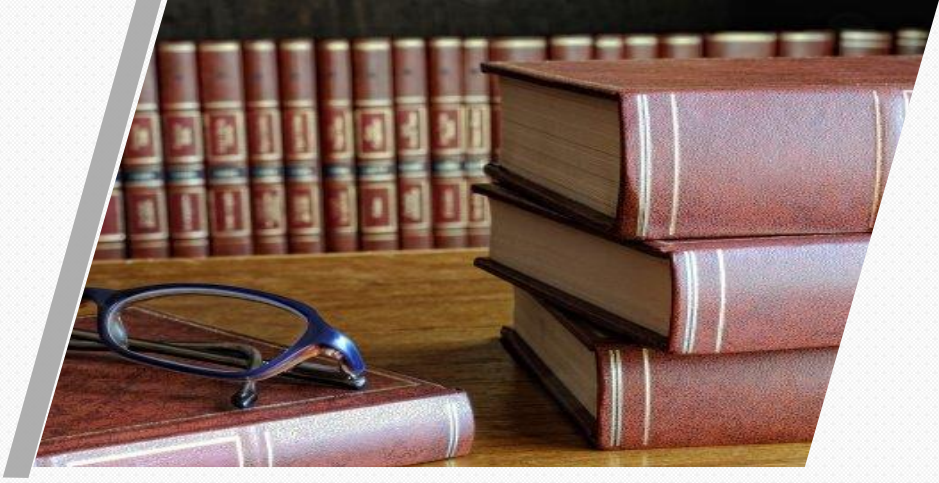


Case Law 1:

ITC not available of GST paid on Lease rent on which the resort is being constructed and capitalized

The Appellant is engaged in the hospitality and real estate business. The Applicant sought an advance ruling on whether input tax credit is available on lease rent during pre-operative period for the leasehold land on which the resort is being constructed to be used for furtherance of business, when the same is capitalized and treated as capital expenditure. The ruling authority had earlier ruled that ITC would not be available to the Appellant for the lease rent paid in this case. The Appellant had filed the instant Appeal against the above Advance Ruling on the grounds that the authority erroneously disallowed ITC on lease rental paid; and erroneously interpreted the provisions of Section 17 of the GST Act that ITC shall not be available in respect of those goods or services which have been received for construction of an immovable property even if such supplies of goods or services are used in the course of furtherance of business. However, the appellant submitted that the lease rent is paid to acquire the rights to the land and can never be said to have been used for construction of immovable property. Further, the unconstructed area would be used for auxiliary services and hence GST on lease rental in respect of the area on which no immovable property is constructed would be eligible for ITC.

The Respondent submitted that the availability of ITC on goods and services used for construction of immovable property except plant and machinery comes under blocked credit as per section 17 (5) of the GST Act. Further the Appellant's prayer for allowing proportionate credit of lease rental on the unconstructed area of the project only strengthens the point that ITC on lease rental is not available in case of construction of an immovable property. The Appellant authority observed that submission of the appellant that it is providing two types of services to the WBHIDCL namely construction service and operating service is incorrect so the Appellant's argument of ownership of the project lies with the WBHIDCL is also incorrect. Further the Appellant at the same time cannot capitalize the constructed property and not have ownership rights. Therefore, it was ruled that the ruling pronounced by the West Bengal Authority for Advance Ruling was correct and justified. Thus, the appeal fails and was disposed.

APPELLATE AUTHORITY FOR ADVANCE RULINGS- WEST BENGAL IN GGL HOTEL AND RESORT COMPANY LTD. [APPELLATE AUTHORITY ADVANCE RULING NO. 01/WBAAAR/APPEAL/2019 DATED 3RD MAY 2019]

Indirect Tax : Case Laws

Case Law 2:

Returnable Interest free security deposit not a part of "Consideration"; GST not leviable

The applicant is engaged in various services including renting of immovable property to business entities for commercial purposes, discharging GST on the rent received from the lessees. Additionally, the applicant also collects interest free security deposit to cover for the damages to the furniture, equipments, fittings, etc. which shall be returned on completion of tenure of the lease. An advance ruling was sought on whether GST would be applicable on such security deposit and notional interest. The applicant submitted that under the provisions of CGST Act 2017, deposits are not covered under "consideration" to be eligible to form part of "supply", hence it is not taxable. However, another school of thought suggested that if the rental amount is reduced by the security deposit amount to adjust the benefits accruing out of it, then in such cases GST shall be computed on notional interest. Hence, the applicant sought clarity on the leviability of GST on such security deposit. The concerned officer contented that the deposit does not form part of the "consideration", unless adjusted against it, hence interest/notional interest on security deposit received by the applicant was not liable to GST. The ruling authority referring to the definitions of "supply" and "consideration" as per the CGST Act 2017, prima facie concluded that since the deposit received by the applicant would be returned on completion of the lease, the same shall not be considered as payment made for supply and therefore, the applicant will not be liable to pay GST on such deposit.

However, the authority further opined that if any part of the security deposit amount is withheld and not paid back to the lessee, then such amount would be liable to GST. Henceforth, it was ruled that GST is not applicable on returnable interest free security deposit.

AUTHORITY FOR ADVANCE RULINGS – MAHARASHTRA IN M/s E-SQUARE LEISURE PVT LTD [ADVANCE RULING NO. GST-ARA-76/2018-19/B-172 dated 29th December 2018]

Case Law 3:

Liability to pay GST on the purchase or sale of Duty Free Import Authorisations

The applicant is registered as a Private limited company & is engaged in the trading of Export entitlement licenses such as DFIA/DFRC. The applicant has sought an advance ruling in form GST-ARA "Whether GST is applicable on sale or purchase of DFIA licenses", applicant has submitted application with officer that DCS & DFIA are export incentives that are entitled to them as per FTP. But the ruling authority is of the view that DFIA are not entitled to exemption from GST, being aggrieved applicant filed an appeal before Appellate Authority for advance ruling to determine whether GST is applicable on the sale or purchase of DFIA. On the basis of various discussion & finding, the moot point is whether DFIA is duty credit scrips (DCS) or otherwise. The meaning of the DCS & DFIA is mentioned in the FTP and DCS is granted as rewards under MEIS and SEIS whereas Duty Free Import Authorisations (DFIA) is issued to allow duty free import of inputs.

Indirect Tax : Case Laws

The applicant intent is that both DCS & DFIA are the same in the trade parlance. On examine the document submitted by the applicant, authority conclude that as per Serial no 122A of the Notification 02/2017 C.T. (rate) dt 28.062017 as amended by the notification no. 35/2017- C.T. (rate) dt 13.10.2017 that DFIA popularly known as duty paying scrips is equivalent to the duty credit scrips.

Therefore, AAAR set aside the ruling pronounced by the AAR and held that no GST is applicable on the sale or purchase of DFIA.

APPELLATE AUTHORITY FOR ADVANCE RULINGS – MAHARASHTRA in M/s SPACEAGE SYNTEX PRIVATE LIMITED [No. MAH/AAAR/SS-RJ/23/2018-19) dated 13th March 2019]

Indirect Tax Notification

1. Seeks to extend the date for blocking on E-way Bill facility

CBIC vide Notification No. 25/2019 – Central Tax dated 21st June 2019 has extended the date from which the facility of blocking and unblocking on E-way bill facility as per the provisions of Rule 138E of the CGST Rules 2017. The said rule shall now be brought into force w.e.f. 21st August 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-25-central-tax-english-2019.pdf

2. Seeks to extend the due date for furnishing of FORM GSTR-7

CBIC vide Notification No. 26/2019 – Central Tax dated 28th June 2019 has extended the due date for furnishing of FORM GSTR-7 for the persons required to deduct TDS under GST for the period October 2018 to July 2019 till 31st August 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-26-central-tax-english-2019.pdf

3. Seeks to prescribe the due date for furnishing of quarterly FORM GSTR-1

CBIC vide Notification No. 27/2019 – Central Tax dated 28th June 2019 has prescribed the due date for furnishing of quarterly FORM GSTR-1 for the taxpayers having aggregate turnover of upto INR 1.5 Crores for the quarter July 2019 to September 2019 as 31st October 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-27-central-tax-english-2019.pdf

4. Seeks to prescribe the due date for furnishing of monthly FORM GSTR-1

CBIC vide Notification No. 28/2019 – Central Tax dated 28th June 2019 has prescribed the due date for furnishing of monthly FORM GSTR-1 for the taxpayers having aggregate turnover of more than INR 1.5 Crores for the period July 2019 to September 2019 as the eleventh day of the month succeeding such month

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-28-central-tax-english-2019.pdf

5. Seeks to prescribe the due date for furnishing of FORM GSTR-3B

CBIC vide Notification No. 29/2019 – Central Tax dated 28th June 2019 has prescribed the due date for furnishing of FORM GSTR-3B for the period July 2019 to September 2019 as the twentieth day of the month succeeding such month.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-29-central-tax-english-2019.pdf

Indirect Tax Notification

6. Seeks to provide exemption to suppliers of OIDAR services from Annual Compliances

CBIC vide Notification No. 30/2019 – Central Tax dated 28th June 2019 has provided exemption from furnishing GST Annual Return in FORM GSTR-9 and Reconciliation Statement in FORM GSTR-9C for the suppliers of Online Information Database Access and Retrieval Services ("OIDAR Services").

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-30-central-tax-english-2019.pdf

7. Seeks to make amendment to CGST Rules

CBIC vide Notification No. 31/2019 – Central Tax dated 28th June 2019 has made Fourth Amendment to the Central Goods and Services Tax Rules, 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-31-central-tax-english-2019.pdf

8. Seeks to extend the due date for furnishing of FORM ITC-04

CBIC vide Notification No. 32/2019 – Central Tax dated 28th June 2019 has extended the due date for furnishing the declaration in FORM ITC-04 in respect of the goods dispatched or received from a job worker for the period July 2017 to June 2019 till 31st August 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-32-central-tax-english-2019.pdf

9. Seeks to specify class of persons who shall be entitled to claim refund

CBIC vide Notification No. 11/2019 – Central Tax (Rate) dated 29th June 2019 has specified that retail outlets established in the departure area of an international airport, beyond the immigration counters, making tax free supply of goods to an international tourist shall be eligible to claim refund under GST.

Similar notification has been issued under Integrated Tax as well.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-11-2019-cgst-rate-englishn.pdf

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-10-2019-igst-rate-englishn.pdf

10. Seeks to exempts supply of goods

CBIC vide Notification No. 11/2019 – Integrated Tax (Rate) dated 29th June 2019 has exempted any supply of goods by a retail outlet established in the departure area of an international airport beyond the immigration counters to an international tourist.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-11-2019-igst-rate-englishn.pdf

11. Clarification on the applicability of GST on additional/penal interest

Indirect Tax Notification

CBIC vide Circular No. 102/21/2019-GST dated 28th June 2019 has clarified on the applicability of GST on additional/penal interest payable on the overdue loan as to whether it would be exempt from levy of GST or taxable under GST.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-102.pdf

12. Clarification regarding determination of place of supply in certain cases

CBIC vide Circular No. 103/22/2019-GST dated 28th June 2019 has clarified on the determination of place of supply in the cases of services provided by ports and services rendered on goods temporarily imported in India.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-103.pdf;

13. Clarification on processing of refund applications

CBIC vide Circular No. 104/23/2019-GST dated 28th June 2019 has clarified the issues pertaining to processing of refund applications submitted in FORM GST RFD-01A which have been wrongly mapped on the GST common portal.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-104.pdf

14. Clarification on the treatment of secondary or post sales discount under GST

CBIC vide Circular No. 105/24/2019-GST dated 28th June 2019 has clarified on various doubts raised by trade and industry relating to treatment of secondary or post sales discount under GST.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-105.pdf

15. Seeks to extend the due date for furnishing of GST Annual compliances

CBIC vide ROD No. 6/2019 – Central Tax dated 28th June 2019 has extended the due date for furnishing of GST Annual Return in FORM GSTR-9 for regular taxpayers, FORM GSTR-9A for composition taxpayers and GST Reconciliation Statement in FORM GSTR-9C for the period July 2017 to March 2018 till 31st August 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/rod-6-2019-cgst-english.pdf

Corporate Legal & Regulatory Notifications

S. No	Notifications

1. Companies (Incorporation) Sixth Amendment Rules, 2019

(MCA notification dated June 7, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated June 7, 2019 has further amended the Companies (Incorporation) Rules, 2014 through the Companies (Incorporation) Sixth Amendment Rules, 2019 which shall come into force with effect from August 15, 2019.

Through the said amendment, the requirement of obtaining License under the provisions of the Section 8 from Registrar of Companies before incorporation has been dispensed with. Accordingly, MCA has made necessary change in the e Form INC -32 (Spice) and all information / declarations are now part of the form, hence, separate filing and processing of Form INC -12 is no longer required.

http://www.mca.gov.in/Ministry/pdf/Rules_07062019.pdf

2. Filing e-form DIR-3 KYC in accordance with Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014

(MCA circular dated June 27, 2019)

The Ministry of Corporate Affairs (MCA) has proposed a new mechanism for filing of e-form DIR-3 KYC for Financial Year 2018-19 wherein every person who has already filed DIR-3 KYC will only be required to complete his/her KYC through a simple web-based verification service, with pre-filled data based on the records in the registry. However, in case a person wishes to update his mobile no. or e-mail address, he would be required to file e-form DIR-3 KYC, as this facility of updation is not being proposed in the web-based service. In the case of updation in any other personal detail, e-form DIR-6 may be filed for updation of the same before completion of KYC through the web-based service.

The amendment in the relevant rules including the amendment related to the extension of time (allowing for adequate time) for completion of KYC through e-form DIR-3 KYC or the web-based service, as the case may be, is being notified shortly.

http://www.mca.gov.in/Ministry/pdf/GeneralCircular_27062019.pdf

Legal & Regulatory

3. Companies (Significant Beneficial Owners) Second Amendment Rules, 2019
(MCA notification dated July 1, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated July 1, 2019 has further amended the Companies (Significant Beneficial Owners) Rules, 2018 through the Companies (Significant Beneficial Owners) Second Amendment Rules, 2019 which shall come into force on the date of publication in the Official Gazette.
Through the said amendment, MCA deploys e-form BEN-2 through which a Company would need to file the SBO details as required under section 90 of Companies Act, 2013. The due date of filing the said form is July 30, 2019.

http://www.mca.gov.in/Ministry/pdf/CompaniesSignificantRules_01072019.pdf

4. Section 81 of the Companies (Amendment) Act, 2017 effective from August 15, 2019
(MCA notification dated July 1, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated July 1, 2019 has notified August 15, 2019 as the effective date for enforcing Section 81 of the Companies (Amendment) Act, 2017. Section 81 states that the particulars of charges maintained on the MCA portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges for the purposes of this section. A register kept in pursuance of this section shall be open to inspection by any person on payment of such fees as may be prescribed for each inspection.

http://www.mca.gov.in/Ministry/pdf/CommencementNotification_01072019.pdf

5. Nidhi (Amendment) Rules, 2019
(MCA notification dated July 1, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated July 1, 2019 has further amended the Nidhi Rules, 2014 through Nidhi (Amendment) Rules, 2019 which shall come into force with effect from August 15, 2019.

The key amendments are as follows:

1. A new sub-clause (da) has been inserted in Rule 3, defining "Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and saving amongst its members, receiving deposit from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the Central Government for regulation of such class of companies.

2. A new Rule 3A has been inserted specifying "Declaration of Nidhis", namely:
"The Central Government, on receipt of application (in Form NDH-4 along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules, shall notify the company in the Official Gazette.

Legal & Regulatory

Provided that a Nidhi incorporated under the Act on or after the commencement of the Nidhi (Amendment) Rules, 2019 shall file Form NDH-4 within sixty days from the date of expiry of:

(a) one year from the date of its incorporation; or
(b) the period up to which extension of time has been granted by the Regional Director under sub-rule (3) of rule 5.

Provided further that nothing in the first proviso shall prevent a Nidhi from filing Form NDH-4 before the period referred therein.

Provided also that that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).".

3. A new Rule 23A has been inserted specifying "Compliance with Rule 3A by certain Nidhis" where every Nidhi company has to get itself declared as such in accordance with Rule 3A within a period of one year from the date of its incorporation or within a period of six months from the date of commencement of Nidhi (Amendment) Rules, 2019.

4. A new Rule 23B has been inserted specifying "Companies declared as Nidhis under previous company law to file Form NDH-4" where every Nidhi companies have to file Form NDH-4 alongwith fees as per the Companies (Registration Offices and Fees) Rules, 2014. In case of failure to comply with the requirements, it will not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).

5. MCA notifies a new Form NDH-4 for filing application for declaration as Nidhi company and for updation of status by Nidhis.

http://www.mca.gov.in/Ministry/pdf/NidhiRules_01072019.pdf

6. RESERVE BANK OF INDIA

National Electronic Funds Transfer (NEFT) and Real Time Gross Settlement (RTGS) systems – Waiver of charges

(RBI notification dated June 11, 2019)

Reserve Bank of India (RBI) vide its notification dated June 11, 2019 has reviewed the various charges levied by it on the member banks for transactions processed in the RTGS and NEFT systems. In order to provide an impetus to digital funds movement, it has been decided that with effect from July 1, 2019, processing charges and time varying charges levied on banks by Reserve Bank of India (RBI) for outward transactions undertaken using the RTGS system, as also the processing charges levied by RBI for transactions processed in NEFT system will be waived by the Reserve Bank.

Legal & Regulatory

The banks are also advised to pass on the benefits to their customers for undertaking transactions using the RTGS and NEFT systems with effect from July 1, 2019.

https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT2081AAF195DF07B44E1A103FF512204578D.PDF

7. NEW PORTAL FOR ANNUAL RETURN ON FOREIGN LIABILITIES AND ASSETS (FLA)

(RBI circular dated June 28, 2019)

Reserve Bank of India (RBI) vide its circular dated June 28,2019 has replaced e-mail based reporting for filing returns on Foreign Liabilities and Assets by a web-based online system to enhance the security-level in data submission and further improve the data quality. Earlier, entities filed the annual return on Foreign Liabilities and Assets (FLA) in the soft form which could be duly filled-in, validated and sent by e-mail to the Reserve Bank by July 15 of every year. Reason behind the introduction of FLA Return is to capture the statistics relating to Foreign Direct Investment (FDI), both inward and outward in a more comprehensive manner as also to align it with international best practices.

The key features of the revised Foreign Liabilities and Assets Information Reporting (FLAIR) system are as follows:

1. The present email-based reporting system will be replaced by a web-portal interface https://flair.rbi.org.in to the reporting entities for submitting "User Registration Form" (containing entity identification and business user details, where LLPs and AIFs will no longer required to use dummy CIN).

2. These directions will come into force with immediate effect and would be applicable for reporting of information for the Financial Year 2018-19.

3. The form will seek investor-wise direct investment and other financial details on fiscal year basis as hitherto, where all reporting entities are required to provide information on FATS related variables (it was mandatory only for subsidiary companies earlier). In addition, the revised form seeks information on first year of receipt of FDI/ODI and disinvestment.

4. Reporting entities will get system-generated acknowledgement receipt upon successful submission of the form.

5. They can revise the data, if required, and view/download the information submitted.

6. Entities can submit FLA information for earlier year/s after receiving RBI confirmation on their request email.

https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT226CBAA4706347E46429D5034B4671A6F60.PDF

Column

Dividend Stripping

By – Tanvi Pahwa

IBA

What is Dividend Stripping?

Dividend stripping is the practice of buying shares for a short period before a dividend is declared, called cum-dividend and selling them when they go **Ex-dividend.** In other words, dividend stripping is an attempt to reduce the tax liability, by an investor who invests in securities (i.e. shares, stock or debentures etc.) and units (Mutual fund units or units of UTI), shortly before the record date and getting a tax free dividend/income, and exiting after the record date at a price lower than the price at which, such securities/units were purchased and incurring a short-term capital loss.

The strategy behind dividend stripping is a two-way strategy wherein-

- Investor gets tax free dividend (i.e. exempted u/s 10(34)/10(35))
- Incurs Short term capital loss (i.e. allowed to be set off and carry forward)

Hence, the taxpayer enjoys a twofold benefit i.e. earning an income that is totally exempt and claiming a capital loss that can reduce the total income of the individual.

To address this section 94(7) of the income tax was introduced. Following are the conditions which govern section 94(7):

I. Any person buying or acquiring securities and units within a period of 3 months prior to record date and,
II. Selling or transferring securities within a period of 3 months and units within a period of 9 months after the record date and

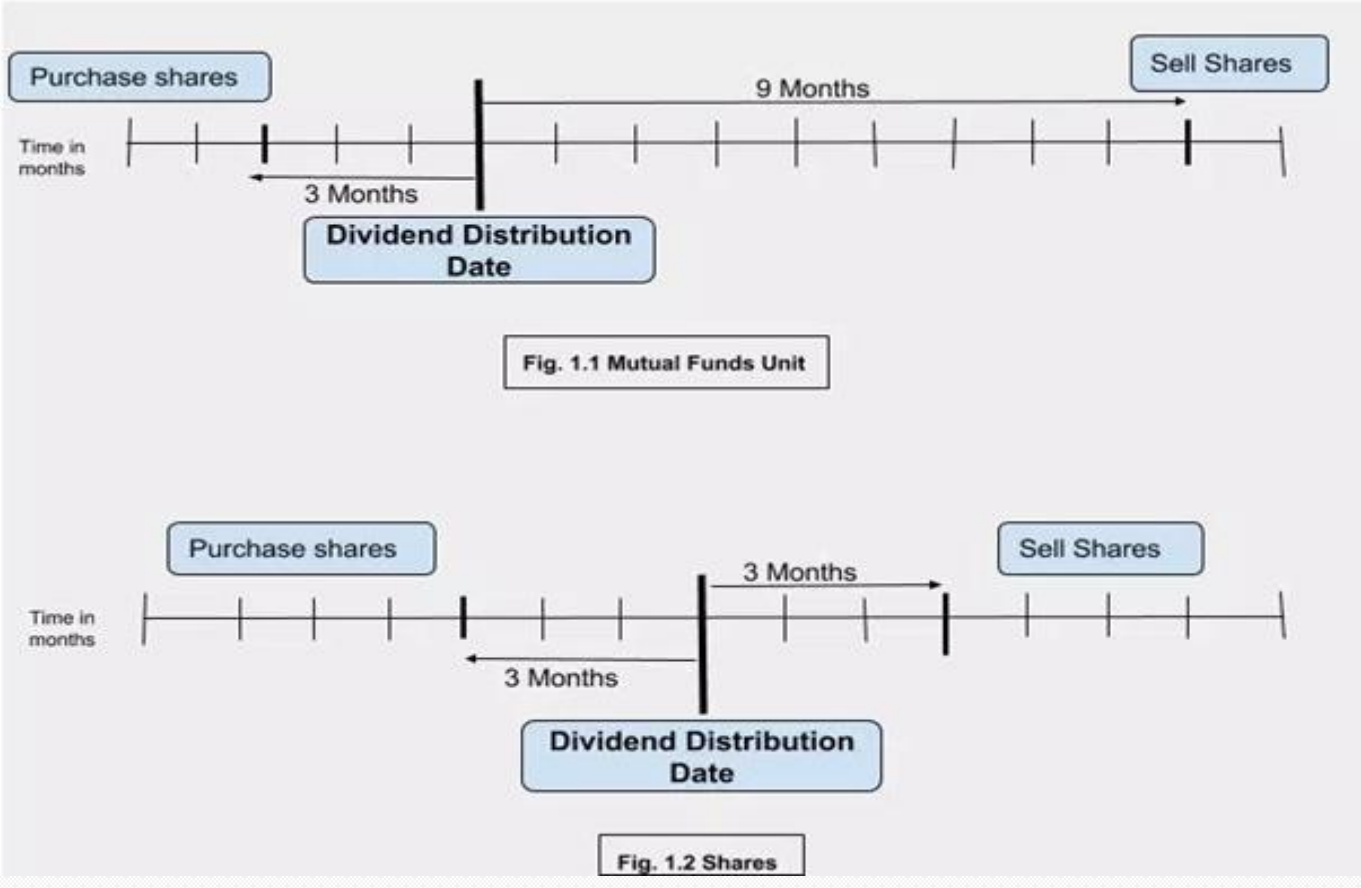


Fig. 1.1 Mutual Funds Unit

Fig. 1.2 Shares

III. Dividend or income from such securities/units is exempt from tax

IV. Loss arising from transfer of such securities or units shall be ignored to the extent income claimed to be exempt

Let us understand with an Example

Mr A is buying 1000 shares of XYZ Limited at price of Rs 100 as on 15th April. This company announced that it will pay dividend of Rs. 40 to its shareholders on 30th June 2019.

He sold the shares for Rs.150 each. He incurred a loss of Rs. 50 on each share, making a loss of Rs. 50,000.

Here since Mr A bought the shares within 3 months before the record date, section 94(7) applies to him.

The dividend earned on the shares, Rs 40,000 is exempt in the hands of the investor by the tax law.

By doing this, Mr A has not only earned a tax-free profit of Rs. 40,000 on the dividend income as per section 10(34) but also incurred loss of Rs. 50 per share, which is Rs. 50,000. He claims this loss as a short-term capital loss in his tax return to save tax against other short-term capital gain.

Particulars	Amount
Fair Value of Consideration	150,000
Cost of Acquisition	(200,000)
Loss	50,000
Dividend 94(7)	(40,000)
Balance loss can be carried forward and Set off	10,000

Hence, provisions of sec-94(7) come into force to curb the investors to gain double benefit, by way of dividend stripping.

IBA NEWS

Happy CA Day

The 70th Chartered Accountants Day of ICAI was celebrated on 1st July with great enthusiasm and zeal.

Happiness @ IBA

When your office becomes coolest place and colleagues become friends

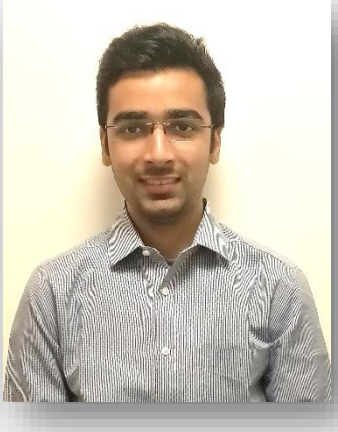
Upcoming Compliances

Date	Compliance
July 11, 2019	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of more than 1.5 crore for the month of June 2019
July 13, 2019	Due date for furnishing of Form GSTR-6 for Input Service Distributor for the month of June 2019.
July 15, 2019	Due date for issuing quarterly TDS certificates and TDS certificate in respect of salary paid and tax deducted has been extended from June 15, 2019 to July 15, 2019 for the deductors of the State of Odhisha vide order F.No. 275/38/2017-It(b), dated 24-5-2019
	Due date for issue of TDS Certificate for tax deducted undersection 194-IB in the month of May, 2018
	Quarterly statement of TCS deposited for the quarter ending 30 June, 2019
July 20, 2019	Due date for filing consolidated return in the Form GSTR-3B for the month of June-2019.
July 30, 2019	Quarterly TCS certificate in respect of tax collected by any person for the quarter ending June 30, 2019
	Due date for furnishing of challan-cum-statement in respect of tax deducted undersection 194-IA for the month of June, 2019
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of June, 2019
July 31, 2019	Quarterly statement of TDS deposited for the quarter ending June 30, 2019
	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of upto 1.5 crore for the quarter April to June 2019

Upcoming Compliances

Date	Compliance
July 31, 2019	Annual return of income for the assessment year 2019-20 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited or (d) an assessee who is required to furnish a report under section 92E.
	Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2018-19 and of foreign tax deducted or paid on such income in Form no. 67. (If the assessee is required to submit return of income on or before July 31, 2019.)

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 Bengaluru 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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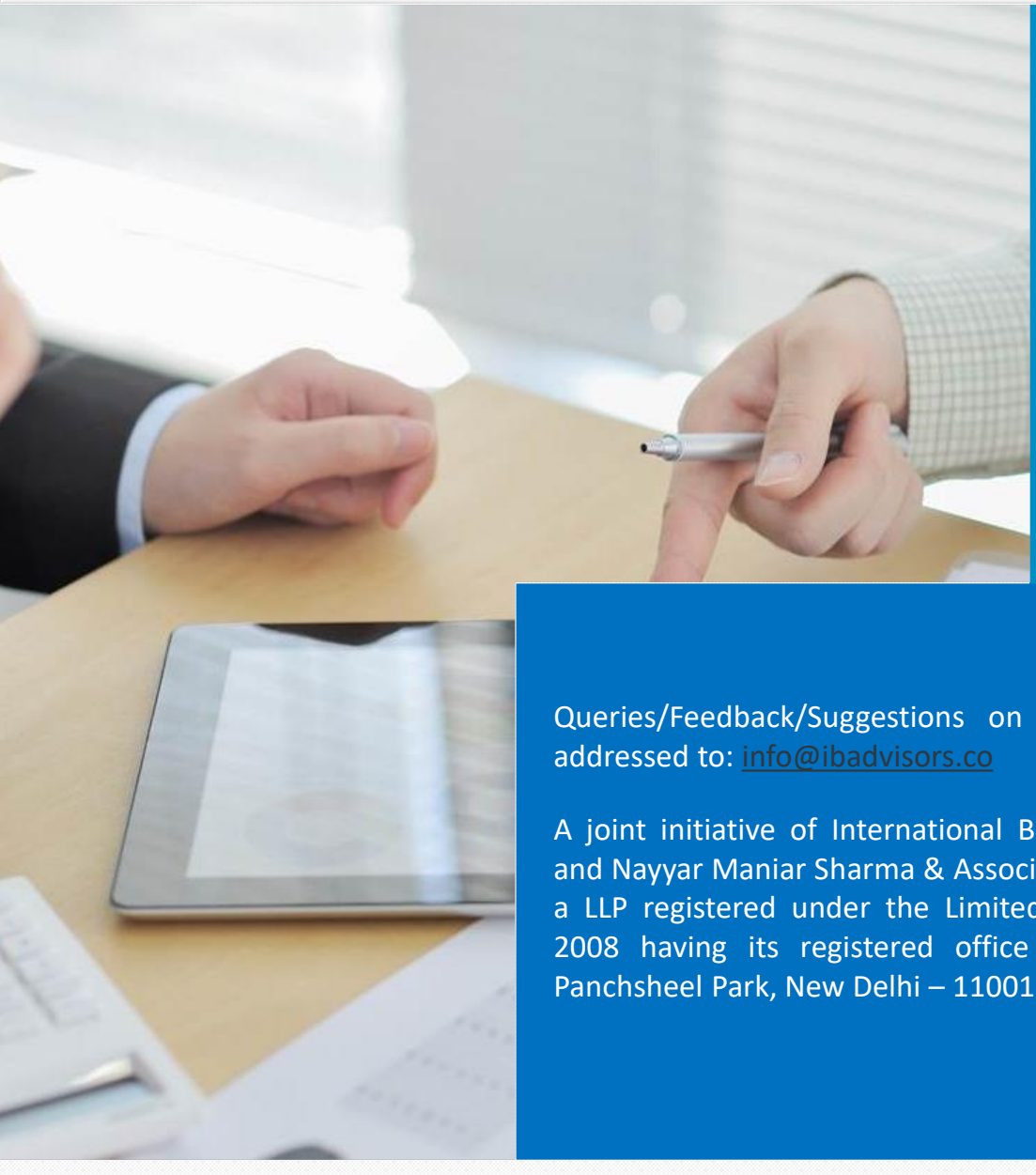

Queries/Feedback/Suggestions on this newsletter may be addressed to: info@ibadvisors.co

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