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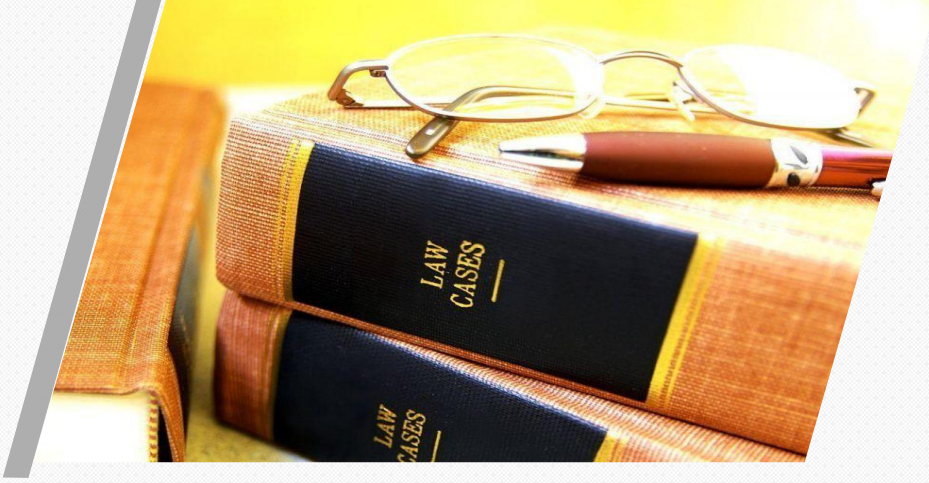
Direct Tax Case Laws



Case Law 1:

Perquisite tax on 'Employee Stock Option Plans' arises in hands of employees, on date of allotment of shares and not on date of exercise of option

Company had granted compensation in the form of employee stock options (ESOPS) to one of its employees. Such employee exercised the option under ESOP on 13th October 2011.

However, the employee allotted the shares to the taxpayer after completion of certain agreed conditions on 4th may 2012. Accordingly company had withheld tax on the perquisite value of ESOPS i.e on 4th may 2012.

A survey has conducted in the company to verify the compliance with TDS Provisions and AO had passed an order wherein interest had been levied on late payment of TDS on perquisites of TDS.

AO was of the view that taxes had to be withheld on the date of exercise of shares (13th October 2011) and not on the date of allotment of shares (4th may 2012). Aggrieved by the order passed by AO company has filed an appeal before CIT (A), wherein CIT(A) sustained the order levied by the AO. Aggrieved by the order passed by the CIT(A), company had filed an appeal with the tribunal.

Assessee contended that withholding tax obligation arises when the employer makes any payment to the employee. Hence, a perquisite is accrued to an employee only on allotment of shares. Since, shares were not allotted to the employee on the date of exercise, there would be no taxable perquisite on such date of exercise.

Tribunal noted that the exercise of the option is only an acceptance of a proposal. Upon exercise the price payable for the shares are frozen. The allotment of shares are completed when certain conditions are fulfilled and full consideration is paid.

As per section 192, withholding tax obligation arises only on payment basis and not on accrual basis. Hence, withholding tax obligation arises only at the time of allotment of shares.

Bharat Financial Inclusion Ltd. v Deputy Commissioner of Income-tax

Case Law 2:

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.

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

<u>Case Law 3:</u> Issuance of jurisdictional notice and assessment framed in the name of non-existent amalgamating company is a

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substantive illegality and not a procedural defect of the nature referred to in section 292B and hence void ab initio

The Supreme Court dismissed the Revenue's appeal against High Court's order quashing the assessment framed in the name of non-existent amalgamating company (Suzuki Powertrain India) for AY 2012-13 by following assessee's own case for AY 2011-12. It noted that the very jurisdictional notice (u/s 143(2)) was issued in the name of the amalgamating company despite the fact that AO was informed of the company's closure pursuant to amalgamation. SC held that "The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation". It was of the opinion that the issuance of jurisdictional notice and the assessment order thereafter passed in the name of non-existing company is a "substantive illegality and not a procedural violation of the nature adverted to in Section 292B" and hence such a violation is not curable u/s 292B of the Income Tax Act and as such such an assessment framed in the name of the non -existent amalgamating company is void ab initio. It further clarified that participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law.

Revenue in its defense relied on the judgement of Skylight Hospitality LLP wherein it was held that the reassessment notice issued in the name of dissolved private limited company was merely a technical error curable u/s 292B whereas the High court against whose order the Revenue had appealed before the Hon'ble Supreme Court had relied on the judgement of Spice Enfotainment wherein it was held that assessment on non-existent entity is void & not curable u/s 292B.

Considering both the cases, Hon'ble Supreme Court distinguished the Skylight Hospitality ruling from the case under consideration and held that the Skylight Hospitality ruling was passed in the "peculiar facts" of the case and is not in conflict with the Spice Enfotainment ruling relied on by High Court. Accordingly, Hon'ble Supreme Court upheld the decision of the High Court dismissing Revenues appeal.

Maruti Suzuki India Limited v Principal Commissioner of Income Tax

Case Law 4:

Where royalty and interest income were claimed as exempt as per DTAA 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 could not be considered as a part of royalty and it should be taxed

The assessee company derived its income by way of royalty and interest from a Malaysian company. It had in the earlier years credited in its books, the income by way of royalty and interest from the Malaysian company on accrual basis. Though the Malaysian company remitted the same foreign currency, as a difference in exchange rate, the assessee-company received more than what was earlier accounted in terms of Indian rupees.

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The Assessing Officer had allowed the royalty and interest credited in the accounts on accrual basis as income exempt from tax in view of Double Taxation Avoidance Agreement with Malaysia but declined to accept the claim of the assessee-company that the differential amount arising on account of exchange fluctuation is also considered as remittance of royalty and interest and shall be exempt from tax.

The statement issued by Tribunal that royalty and interest from Malaysia as valued on the last date of the earlier years was not subjected to any tax. Only income for the earlier years which have now been transfered from Malaysia has been brought to tax only to the extent of gain made on account of difference in foreign exchange rate prevailing on the last date of the financial year in which the aforesaid income had been recorded in the assessee's books of account and gain made on account of foreign exchange variation at the time when the amounts were received from Malaysia in Malaysian dollars and converted into Indian Rupees in India.

Also it was held that, this gain on account of foreign exchange variation cannot be attributable to royalty and interest earned in Malaysia, but is benefit or income arising from subsequent transaction not related to interest and royalty which has accrued earlier and was taxable.

Assessee contended that the gain made on account of Froex fluctuation will not change the character of income being on account of royalty and interest earned in Malaysia. This income, according to the assessee, is not taxable in India as it would stand excluded by DTAA. The revenue has placed reliance upon the AS 11 issued by the Institute of Chartered Accountants of India which indicates that any benefit derived on account of currency fluctuation after the year of accrual is to be considered as income/expense in the period in which they arise.

It was contended by assessee that, in terms of section 145, the assessee is entitled to follow either the cash or mercantile system of accounting. It is submitted that, in case the cash system of accounting was followed, the receipt of royalty and interest from Malaysia including exchange rate differences would be recorded as income on the date of receipt/repatriation. However, merely because the assessee followed the mercantile system of accounting, an amount received on exchange conversion on account of royalty and interest is being partly subjected to tax. This applicablity to tax under the cash or mercantile system of accounting cannot be different.

However, this submission on the part of the assessee overlooks the fact that although the revenue would in cash system of accounting record the income only on receipt of the same, yet for the purposes of taxation it would split the amount received from Malaysia on account of royalty and interest in the year in which it arose/accrued at the rate prevailing as one head of income and the income gained on account of exchange rate variation due to passage of time at the time of conversion as the other head of income.

The revenue would bring to tax the later gain arising on account of exchange rate variation to tax as income arising from a different source. The amount attributable to royalty

and interest received from Malaysia on the basis of foreign exchange rate existing on the last date of the accounting year in which this income would be receivable by the assessee as a different head of receipt excluded from tax by DTAA.

Therefore, appeal of assesse is dismissed and the case was held in favour revenue.

Ballarpur Industries Ltd v Commissioner of Income Tax

Direct Tax Notification

1. F No. 370149/230/2017-TPL : Task Force for drafting a New Direct Tax Legislation-Extension of time for submitting final report

In order to review the existing Income Tax 1961, and to draft a new direct tax law in consonance with economic needs of the country, the Government had constituted a Task Force vide Officer Order of even number dated November 22, 2017.

https://www.incometaxindia.gov.in/communications/circular/task-force-for-drafting-a-new-direct-tax-legislation-02-08-2019.pdf

2. Notification No. 55/2019 [F.No. 225/79/2019-ITA.II] / SO 2672(E) : Notification No. 55/2019 [F.No. 225/79/2019-ITA.II] / SO 2672(E)

Exemption of certain classes of persons from the requirement of furnishing a return under section 139(1) of the Act from Assessment Year 2019-20 onwards.

https://www.incometaxindia.gov.in/communications/notification/notification_55_2019.pdf

3. **Notification No. 53/2019 [F.No.203/18/2018/ITA-II]/ SO 2560(E) : Notification No. 53/2019 [F.No.203/18/2018/ITA-II] / SO 2560(E)**

M/s National Centre for Cell Science, Pune (PAN:-AAATN0848B) has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5D of the Income-tax Rules, 1962 (said Rules), from Assessment year 2019-20 onwards in the category of 'Scientific Research Association'.

https://www.incometaxindia.gov.in/communications/notification/notification_no_53_2019.pdf

4. Circular No. 14/2019 : Clarification regarding taxability of income earned by a non-resident investor from off-shore investments routed through an Alternate Investment Fund

Clarification regarding taxability of income earned by a non-resident investor from off-shore investments routed through an Alternate Investment Fund reg.

https://www.incometaxindia.gov.in/communications/circular/circular_no_14_2019.pdf

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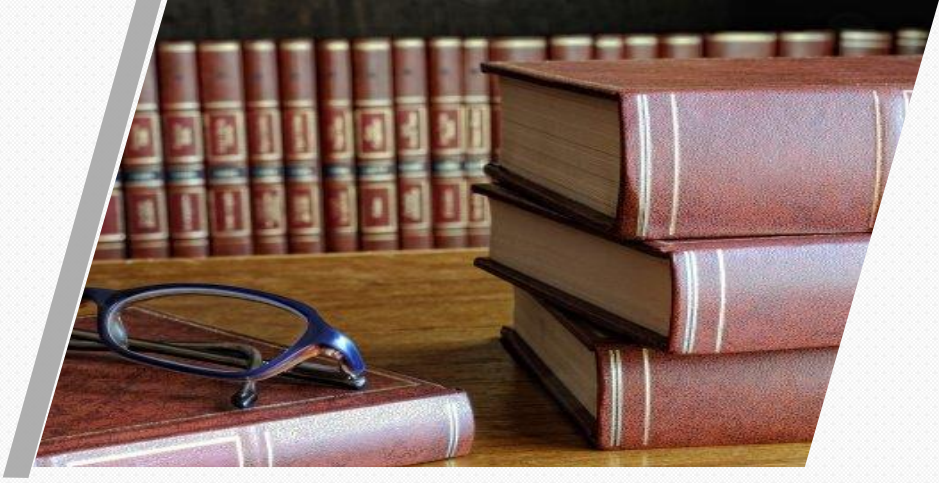

Case Law 1:

Entity with both SEZ and DTA units, doing business with each other, are eligible for SAD refund

The appellant is in manufacturing business and has two business units- one situated in DTA and the other in SEZ. The appellant's unit 1, situated in KASEZ, cleared the goods to the appellant's DTA Unit covering various bills of entry. SAD @4% was paid while clearing. The goods cleared were sold to various buyers by M/s. Rama Cylinders, Bhimasar. The app submitted refund claim of SAD paid in terms of Notification No. 102/2007 dt. 14.09.2007. No statutory provisions exist either in SEZ Act 2005 or the Rules and regulations thus made. So, the claim was rejected by the lower authorities on the grounds that the claim was required to be filed by the importer himself, whereas in this the claim was not filed by the importer. The Counsel appearing on behalf of the app submits that since the SEZ and the DTA unit belong to one entity, it does not make any difference. He submits that in this case, no consignment exists so the point (vii) of circular dated 13.10.2008 is not applicable. The authority decides that the lower authorities rejected the claim on the grounds not tenable. The Gujarat HC already decided that DTA unit had correctly filed the refund claim and on this regards the claim cannot be rejected. In the present case, the goods were supplied by SEZ Unit and received by DTA unit of the same company who sold the goods in the market therefore, in the transaction, consignment agent does not exist. In the view of the foregoing findings, the authority has set aside the impugned orders and allowed the appeals filed by the appellants with consequential relief.

M/S. RAMA CYLINDERS PVT. LIMITED VERSUS COMMISSIONER OF CENTRALEXCISE & CUS., KUTCH [APPEAL NO. C/10364/2016-DB DATED 27.11.2018]

Case Law 2:

Can recipient be eligible for interest on delayed refund from the date of receipt of refund application or not?

The petitioner was registered as a limited company & was registered under the Companies Act. The petitioners has instituted an writ petition "Whether the interest on delayed refund under section 27A of the Custom Act, 1962 is payable on expiry of period of three months from the date of receipt of refund application or whether it's payable from the date on which the order for the refund was actually made/confirmed. The petitioner was issued Advance licenses by the office of Joint controller of Imports & Exports & based on that the petitioner imported goods which are permitted duty free by Custom as per exemption notification no. 204 of 1992. The petitioners at the time of import did not pay any custom duties, since there was a delay in

Indirect Tax : Case Laws

discharge of export obligation, thereby petitioners deposited the respective amount towards respective advance license. The petitioners appealed to the Appellate tribunal & because of such appeal, petitioners become eligible for the amount that was deposited towards respective advance licenses. During the proceedings learned counsel for the petitioners has noted that the provision of Section 11BB of the Central excise act, 1944 & the provision of section 27A of Custom Act, 1962 are the same, which allows petitioner to claim interest on delayed refund from the date of receipt of receipt of application.

Therefore, the petitioner was entitled to interest on delayed refund of an expiry of three months from the date of receipt of application till the date of actual refund.

WRIT PETITION No. 14045 OF 2018 in the case of M/s JINDAL DRUGS LIMITED [No. 2019-VIL-305-BOM-CU) dated 19th June 2019]

Case Law 3:

Whether the lease agreement for a period of 99 years is a sale of immovable property?

The applicant company is establishing a "Mega Food Park", approved by Ministry of Foods Processing Industries, Government of India (MoFPI). An agreement has been entered into between the parties. The applicant wishes to enter into lease agreements for a period of 99 years with several lessees for development of the Foods Park. An advance ruling was sought on whether such lease transaction is exempt or leviable to GST. The jurisdictional officer submitted that Section 7 includes leases under the definition of supply and Schedule II classifies such leases as services. The applicant submitted that such transaction will be registered and stamp duty would be paid, thus it would be treated as sale of immovable property, hence outside of GST. The ruling authority referring to the meaning of lease under Transfer of Property Act observed that the lease can be of perpetuity, hence period is irrelevant as to determination of lease or sale. Additionally, the agreements between applicant and lessee were considered to be in nature of lease with no right to further sale and stamp duty paid was for registration of lease agreement. Therefore, it was ruled that such transaction is in the nature of lease and taxable under GST @ 18% under SAC 9972.

M/s Greentech Mega Food Park Pvt Ltd. in RAJ/AAR/2019-20/10

Indirect Tax Notification

1. Seeks to extend the last date for furnishing FORM GST CMP-08 for the quarter April -June 2019 till 31.08.2019

CBIC vide Notification No. 35/2019 – Central Tax has extended the last date for furnishing FORM CMP-08 for the quarter April 2019 to June, 2019, or part thereof, shall be the 31st day of August, 2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-35-central-tax-english-2019.pdf;jsessionid=478C16F70A08DE5BD8A1DFF2642F940C

2. Seeks to extend the due date for furnishing the declaration FORM GST ITC-04

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

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-32-central-tax-english-2019.pdf;jsessionid=E4F6A9959433652C1FCD30A1F03C85F8

Corporate Legal & Regulatory Notifications

S. No	Notifications

1. Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019

(MCA notification dated July 25, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated July 25, 2019 has further amended the Companies (Appointment and Qualification of Directors) Rules, 2014 through the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019 which shall come into force with effect from July 25, 2019.

Through the said amendment, MCA has launched a new web service "DIR-3-KYC-WEB". The key highlights as per the said notification are as follows:

a) The eform DIR-3 KYC is to be filed by an individual who holds DIN and is filing his KYC details for the first time or by a DIN holder who has already filed his KYC once in eform DIR-3 KYC but wants to update his details.

b) The web service "DIR-3-KYC-WEB" is to be used by the DIN holder who has submitted DIR-3 KYC eform in the previous financial year and no update is required in his details.

The last date for updating Director's KYC is 30th September,2019.

http://www.mca.gov.in/Ministry/pdf/ThirdAmendRules_25072019.pd

2. Companies (Registration Offices and Fees) Fourth Amendment Rules, 2019

(MCA notification dated July 25, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated July 25, 2019 has further amended the Companies (Registration Offices and Fees) Rules, 2014 through the Companies (Registration Offices and Fees) Fourth Amendment Rules, 2019 which shall come into force with effect from July 25, 2019.

Through the said amendment, the fees mentioned in the Annexure, item VII has been revised.

http://www.mca.gov.in/Ministry/pdf/FourthAmedRules_25072019.pdf

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3. Relaxation of additional fees and extension of the last date of filing of Form BEN-2 from July 31, 2019 to September 30, 2019
(MCA circular dated July 29, 2019)

The Ministry of Corporate Affairs (MCA) has extended the time limit for filing e-form BEN-2 up to September 30, 2019. Payment of additional fee shall be applicable on filing beyond September 30, 2019.

4. THE COMPANIES (AMENDMENT) ACT, 2019

The Ministry of Corporate Affairs (MCA) has notified the Companies (Amendment) Act, 2019 through Official Gazette dated July 31, 2019. The provisions of said Act shall be effective from November 02, 2018 except the provisions of Sections 6, 7, 8, 20, 21, 31, 33, 34, 35, 37, 38 and clauses (i), (iii) and (iv) of Section 14. These exceptions shall come into force on such date as the Central Government may appoint, by notification in the Official Gazette.

The key highlights of the said Amendment Act are as follows:

1. Powers of National Company Law Tribunal (NCLT) have been delegated to Central Government. However, all the applications which are pending before the NCLT as on the commencement of the Act shall be disposed of by NCLT.

2. There is insertion of a new section 10A which says, “every Company incorporated after the Commencement of said Act and having share capital shall file a declaration for commencement of business within 180 days of incorporation. A company cannot commence its business unless it complies with the following conditions:

a) Filing of declaration for commencement of business stating receipt of subscription money from all subscribers to the Memorandum.
b) Filing with the ROC a verification of its Registered Office.

3. Such class or classes of Unlisted Companies, as may be prescribed, shall hold or transfer securities only in dematerialized form. However, rules regarding the class or classes of unlisted companies to which it is applicable is awaited.
4. Charges under Section 77 can only be registered within a period of 120 days from the date of creation and modification and ad-valorem fees shall also be charged over and above the additional fees in case of delayed filings beyond 60 days. However, earlier a charge could be registered up to 300 days on payment of additional fees.

5. Every Company shall identify the significant beneficial owner in relation to a company and take necessary steps to file the same with MCA. However, earlier there was no onus on company to identify the significant beneficial owner in relation to company.

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6. New sub- section to Section 132 has been inserted defining the functions and constitution of Board of National Financing Reporting Authority (NFRA).

7. Corporate Social Responsibility

a. More clarity has been provided on the criteria defining the average net profits to be taken for the purpose of CSR expenditure. Sub-section (5) of Section 135 now read as "The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years or where the Company has not completed the period of three financial year since its incorporation, during such immediately preceding financial years" in pursuance of its Corporate Social Responsibility (CSR) Policy.

b. Any amount as mentioned in point (a) above, if remains unspent, it shall be transferred to Unspent Corporate Social Responsibility Account opened by the company in any schedule bank for that financial year, within 30 days from the end of the financial year.

c. If the company fails to utilize above said transferred amount within 3 financial years from the date of such transfer, then the company shall transfer such amount to a Fund as specified in Schedule VII, within 30 days of completion of the third financial year.

d. If the company fails to comply with any of the above said provisions, then the Company and every officer in default shall be punishable with penalty as mentioned in point 8 below.

8. Specific penalties have been defined for Sections 53, 64, 86, 92, 102, 105, 117, 121, 132, 135, 137, 140, 157, 159, 165, 191, 197, 203, 212, 238, 243. However, earlier there were no specific penalties defined under Companies Act for said sections and the penalties as per section 447 were applicable.

http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf

5. The Reserve Bank of India (RBI) relaxed norms for the end-use of money raised through External Commercial Borrowings (ECBs)
(RBI circular dated July 30, 2019)

Reserve Bank of India (RBI) vide its circular dated June 30, 2019 has rationalized the provisions for end use of ECB. Previously, ECB proceeds could not be utilized for working capital purposes, general corporate purposes and repayment of Rupee loans except when the ECB was availed from foreign equity holder for a Minimum Average Maturity Period (MAMP) of 5 years. Further, on-lending for these activities out of ECB proceeds was also prohibited.

The key features of the revised ECB norms are as follows:
1. Revised ECB Framework reflecting the previous provision and amended provision is as under:

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Particulars	ECBs Availed from	By	Permitted End-uses	MAMP (Minimum Averag Maturity Period)
Previous Provision	Foreign Equity Holder	Eligible Borrower	• Working capital purposes • General corporate purposes • Repayment of Rupee loans	5 Years
Amended Provision	Recognised Lenders	Eligible Borrower	• Working capital purposes and, • General corporate purposes	10 Years
	Recognised Lenders	NBFC's	On-lending for: • Working Capital purposes and, • General Corporate Purpose	10 Years
	Recognised Lenders	Eligible Borrowers including NBFC's	• Repayment of Rupee loans availed domestically for capital expenditure and, • On-lending for above purpose by NBFC's	7 Years
	Recognised Lenders	Eligible Borrowers including NBFC's	• Repayment of Rupee loans availed domestically for purposes other than capital expenditure and, • On-lending for above purpose by NBFC's	

2. Eligible Corporate Borrowers are now permitted to avail ECB for repayment of Rupee loans availed domestically for capital expenditure in manufacturing and infrastructure sector if classified as Special Mention Account (SMA-2) or Non-Performing Assets (NPA), under any one-time settlement with lenders.

3. Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, except foreign branches/ overseas subsidiaries of Indian banks, provided, the resultant ECB complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework. These permissions would reduce the burden of the lender banks who classified borrower's account as SMA-2 or NPA.

https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT20F2121527F10B4CB7B93F63AE8B5C4760.PDF

6. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

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NOTIFICATION No. IBBI/2019-20/GN/REG047- Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019

The Insolvency and Bankruptcy Board of India vide its Notification on July 25, 2019 has amended the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

The key highlights of the revised regulations are as follows:

1. **Constitution and working of Stakeholders' Consultation Committee**
   The revised regulations provide for constitution a Consultation Committee of Stakeholders' within 60 (Sixty) days of liquidation commencement date to advise the liquidator on matters relating to sale of assets. Such Consultation Committee shall be based on Sub-regulation 2 of Regulation 31A and shall include a) Secured financial creditors, who have relinquished their security interests under section 52; b) Unsecured financial creditors; c) Workmen and employees; d) Governments; e) Operational creditors other than Workmen, employees and Governments and f) Shareholders or partners, if any. The advice of the Consultation Committee shall not be binding on the Liquidator. However, in the event, the Liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing.

2. **Definition of Liquidation costs has been extended to include the following costs**
   - costs incurred by the liquidator for preserving and protecting the assets, properties, effects and actionable claims, including secured assets, of the corporate debtor;
   - costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern;
   - the amount repayable to financial institutions for contributions towards excess liquidation costs over the liquid assets of corporate debtor;
   - any other cost incurred by the liquidator which is essential for completing the liquidation process;
   - any cost incurred by the liquidator in relation to compromise or arrangement under section 230 of the Companies Act, 2013 has been explicitly excluded from the definition.

3. **Contribution by Financial Institutions towards liquidation costs**
   In the event, the Committee of Creditors do not approve for a plan for contribution towards Liquidation costs and where the corporate debtor does not have adequate liquid resources to complete liquidation, the liquidator shall call upon the financial creditors, being financial institutions, to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, as estimated by him, in proportion to the financial debts owed to them by the corporate debtor. However, such contribution along with interest at bank rate thereon shall form part of liquidation cost, which is paid in priority.

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4. **Compromise or arrangement under Section 230 of Companies Act, 2013**
   - Any compromise or arrangement shall be completed within ninety days of the order of liquidation.
   - The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.
   - Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of section 230. Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.

5. **Submission of Claim by Stakeholder**
   The revised regulations state that a stakeholder may submit its claim or update its claim submitted during the corporate insolvency resolution process, as on the liquidation commencement date. Along with submission of claim, a secured creditor shall inform the liquidator of its decision to relinquish its security interest to liquidation estate or to realise its security interest.

6. **Sale of Corporate Debtor as going concern**
   The amended regulations provide a process for (a) sale of corporate debtor as going concern, and (b) sale of business of corporate debtor as going concern under liquidation. It has also been specified that, in the event a corporate debtor is sold as a going concern, the liquidation process shall be closed without dissolution of the corporate debtor.

7. **Timeline for completion of Liquidation Process**
   The revised regulations require completion of liquidation process within one year of its commencement, irrespective of the pendency of applications for avoidance transactions. The revised regulations provide a model timeline for each task in the liquidation process. In the event, the Liquidator is unable to complete liquidation process within one year, he shall be required to make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation.

8. **Compliance Certificate by Liquidator**
   The revised regulations provide for submission of an application along with the final report and the compliance certificate to the Adjudicating Authority for (a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or (b) for the dissolution of the corporate debtor.

9. **Provisions for Liquidator's fee have also been revised.**

https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jul/Liquidation%20Regulations%2025072019%20final%20English_2019-07-25%2020:13:32.pdf

Legal & Regulatory

7. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

NOTIFICATION No. IBBI/2019-20/GN/REG048- Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2019

The Insolvency and Bankruptcy Board of India vide its Notification on July 25, 2019 has amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The key highlights of the revised regulations are as follows:

1. The amendments have revised the process for withdrawal of application by financial creditor, operational creditor and corporate applicant and provide for withdrawal in the following conditions:

a) before the constitution of the Committee of Creditors, by the applicant through the interim resolution professional;

b) after the constitution of the Committee of Creditors, by the applicant through the interim resolution professional or the resolution professional. In the event, the application for withdrawal is made after the issue of invitation for expression of interest, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

2. The revised regulations provide that while approving the resolution plan or deciding to liquidate the Corporate Debtor, the Committee of Creditors may:

a) Make a best estimate of the amount required to meet liquidation costs in consultation with the resolution professional.

b) Recommend sale of Corporate Debtor or sale of business of the corporate debtor as a going concern.

c) Fix the fee of the liquidator in consultation with the Resolution Professional.

https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jul/CIRP%2025072019_2019-07-25%2020:15:02.pdf

Column

Infrastructure Investment Trusts in India

By – Jai Dhami

IBA

Infrastructure investment trusts or InvITs are instruments that work like mutual funds, designed to pool small sums of money from several investors to invest into infrastructure sector that gives cash flow over a period. Part of this cash flow (after deducting expenditures) is generally distributed as dividend back to investors. InvITs are set up as a trust and registered with SEBI. InvITs are regulated and formed by complying with the SEBI Infrastructure Investment Trust Regulation, 2014. Since its inception in 2014, ten registrations have been granted by SEBI as of August 2019.

The first two InvITs which had hit the market in 2017 hadn't been rewarding to the investors and underperformed at the stock market as per reports. In January 2019, SEBI proposed a new set of frameworks for REITs and InvITs in order to provide flexibility to the issuers in terms of fundraising and increasing the access of these investment vehicles to investors, including up to 70% leverage limits and reduction in minimum allotment. These proposals were aimed at providing flexibility to the issuers in terms of fundraising and increasing the access of these investment vehicles to investors.

Advantages of InvITs:

Since the infrastructure is facing a lot of challenges in our country, InvITs are proposed to provide a suitable structure for financing/refinancing of infrastructure projects. Several existing infrastructure projects which are under development in India are delayed on account of varied reasons including increasing debt finance costs, lack of/locked up equity, project implementation delays, etc. InvITs may act as catalysts for refinancing such assets as well as creating an investment option for all types of Investors.

Some of the advantages are mentioned below:

- providing wider and long-term re-finance for existing infrastructure projects;
- freeing up of current developer's capital for reinvestment into new infrastructure projects;
- refinancing/takeout of existing high cost debt with long-term low-cost capital and help banks

free up/reduce loan exposure, and thereby help them create headroom for new funding requirements;

- it enables investors to have diversified investments in the infrastructure sector;
- global investors prefer to invest in operating infrastructure projects which earn stable yield. A successful market of InvIT will draw billions of dollars in the country from foreign institutional investors and provide the much-needed fillip for the development of the infrastructure sector of India;
- InvITs helps in accelerating infrastructure development in the country. Further, it helps investors to have diversified investments in the infrastructure sector;

Eligibility Criteria:

Some of the basic eligibility criteria for granting the registration by the regulator are as follows:

a) Sponsor

- a net worth of not less than Rs. 100 crores if it is a corporate or a company; or
- net tangible assets of value not less than Rs 100 crore in case it is a limited liability partnership
- experience of at least 5 years and where the sponsor is a developer, at least two projects of the sponsor have been completed.

b) Investment Manager

- net worth of not less than Rs. 10 crores if the investment manager is a body corporate or a company or net tangible assets of value not less than Rs. 10 crores in case the investment manager is a limited liability partnership;
- not less than five years of experience in fund management or advisory services or development in the infrastructure sector;
- has not less than two employees who have at least five years of experience each, in fund management or advisory services or development in the infrastructure sector

c) Trustee

- the trustee is registered with the Board under Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 and is not an associate of the sponsor(s) or manager;
- the trustee has such wherewithal with respect to infrastructure, personnel, etc. to the satisfaction of the Board and in accordance with circulars or guidelines as may be specified by the Board;

Conclusion:

Despite the monumental role that the government has played in making InvITs a reality in India, InvITs failed to appear to be lucrative to the investors. Even though continuous relaxation of norms and regulations have been passed over the past 5 years, InvITs are far from achieving their true potential as of now. The government along with the regulators must do their utmost to ensure the success of InvITs, given the long-term potential of these instruments as alternative sources of infrastructure funding.

IBA NEWS

Published Article

livemint

However, the move has not come as a surprise. "The writing was on the wall regarding cryptocurrencies since April last year, when the Reserve Bank of India (RBI) barred banks and financial institutions from dealing with cryptocurrencies. That was just the trailer, this report and draft bill have crystallised this matter now. If this proposal is approved, India will join the countries which have banned cryptocurrencies," said Nirav Maniar from International Business Advisors (IBA), an accounting, tax and legal advisory firm.

Co-founder & Partner, Nirav Maniar's article on Crypto : You could be fined or jailed for holding crypto

Read full article here :

https://www.livemint.com/money/personal-finance/you-could-be-fined-or-jailed-for-holding-crypto-1564412629852.html

Health Camp

Organized a health camp in association with MAX Healthcare. Cheers to Healthy Employees !

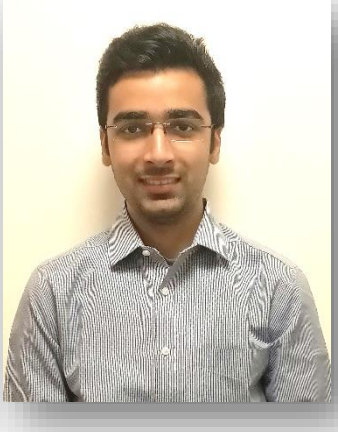
Articles' Meet

Periodical Articles' Meet to ensure their effective learning and development & career guidance

Upcoming Compliances

Date	Compliance
August 13, 2019	Due date for furnishing of Form GSTR-6 for Input Service Distributor for the month of July 2019.
August 15, 2019	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending June 30, 2019
August 20, 2019	Due date for filing consolidated return in the Form GSTR-3B for the month of July-2019.
August 30, 2019	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of July 2019
	Due date for furnishing of challan-cum-statement in respect of tax deducted undersection 194-IA for the month of July 2019
August 31, 2019	Due date for furnishing of GST Annual Return in Form GSTR-9 for the normal taxpayers for the FY 2017-18
	Due date for furnishing of GST Annual Return in Form GSTR-9A for the composition taxpayers for the FY 2017-18
	Due date for furnishing of GST Audit Report in Form GSTR-9C for the registered taxpayers with aggregate turnover of up to 2 crore for the FY 2017-18

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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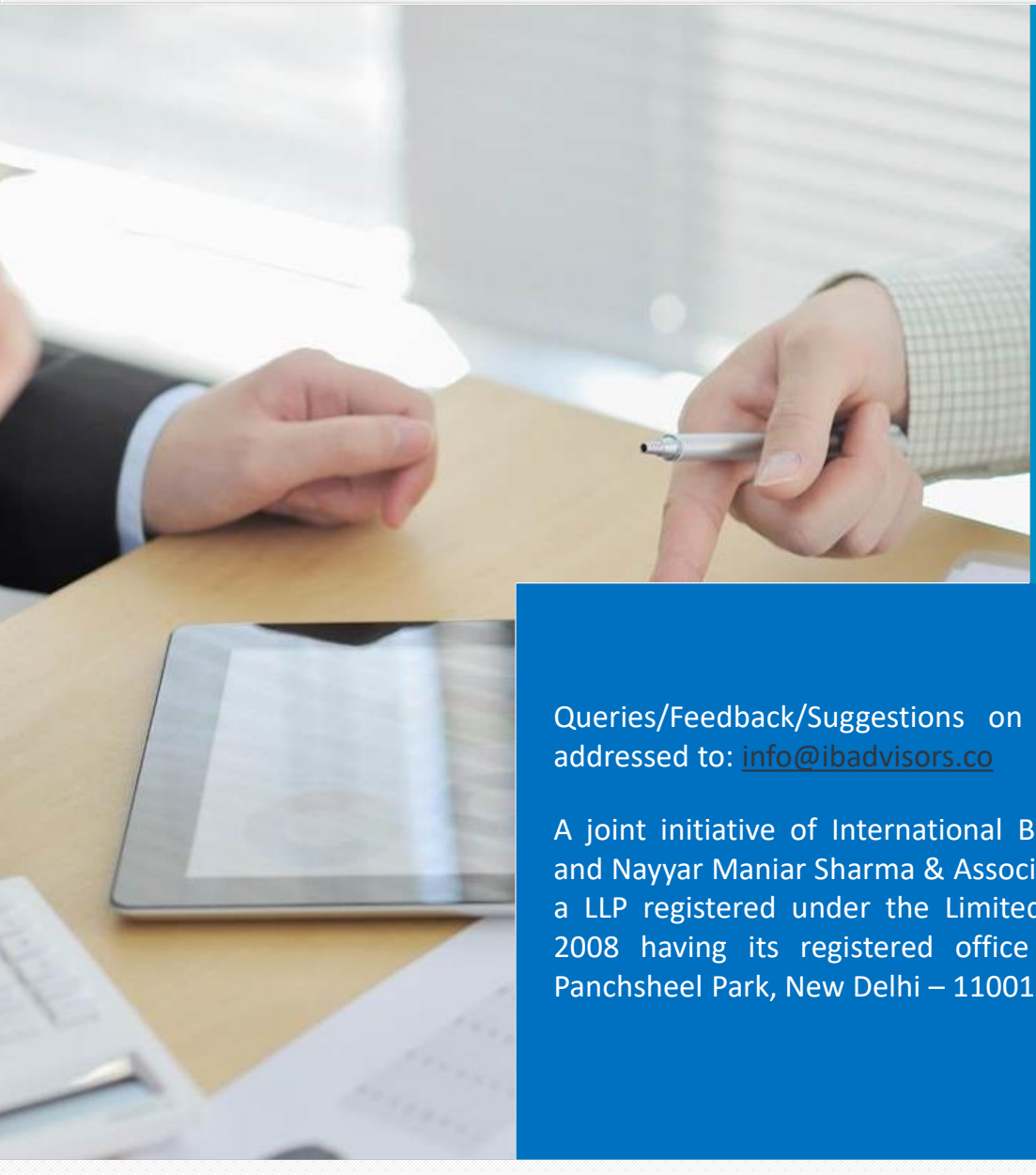

Queries/Feedback/Suggestions on this newsletter may be addressed to: info@ibadvisors.co

A joint initiative of International Business Advisors LLP (IBA) and Nayyar Maniar Sharma & Associates LLP (NMSA 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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