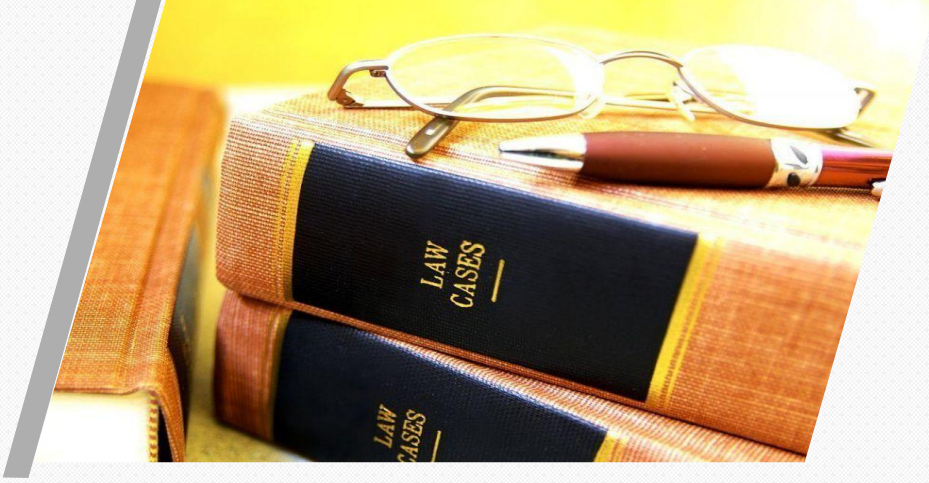
INTERNATIONAL BUSINESS ADVISORS

CONNEKT

September- 2019

Content

Direct Tax Case Laws



Case Law 1:

Where assessee had executed an agreement to sell in respect of a house property and purchased a new residential property within one year from date of agreement to sell, even though sale deed could not be executed within time, section 54F relief was to be granted to assessee in respect of purchase of new residential property

The assessee had entered into an agreement for sale of his agricultural land on 13-8-2010. The assessee had claimed exemption under section 54F on grounds that it had purchased a residential property out of long-term capital gain on 22-4-2010 i.e within one year of the transfer of the land. The Assessing Officer noticed that the transfer of the land had taken place on 3-7-2012, however, the assessee had purchased the residential house on 22-4-2010 which was beyond the time allowed as per the provision of section 54F.

He had disallowed the claim of exemption under section 54F and made addition in the total income of the assessee. On appeal, the Commissioner (Appeals) held that no right was created by virtue of sale agreement which could be considered as transfer with the meaning of section 2(47). Thus, he disallowed the claim of exemption of the assessee. On second appeal, the Tribunal upheld the decision of the Commissioner (Appeals).

Revenue authorities held that the transfer of the land took place on 3rd July 2012, and in such circumstances, the residential house should have been purchased by the assessee within the preceding one year, i.e. on or after 4th July 2011.

HC noted in the case of Sanjeev lal v CIT, Supreme Court held that when an agreement to sell in respect of immovable property is executed, a right is created in favour of the buyer and when such a right is created in favour of the buyer the seller is restrained from selling the said property to someone else because the buyer gets a legitimate right to enforce a specific performance of the agreement.

The Supreme Court, while considering the provisions of Section 2(47) of the Act held that if a right in respect of any capital asset is extinguished and that right is transferred to someone else, it would amount to transfer of a capital asset. The Supreme Court held that once an agreement to sell is executed in favour of some person, the said person gets a right to get the property transferred in his favour and, consequently, some right of the buyer is extinguished.

In the instant case, the new residential house was purchased by assessee on 22nd April 2010, whereas the agreement to sell the agricultural land at Rs.4 crore was entered into on 13th August 2010. An amount of Rs.10 lakh was also received by assessee as part of the agreement. On 3rd July 2012, the sale-deed came to be executed by assessee in favour of the purchaser of the land.

Therefore, HC held that the date on which assessee decided to sell the land, i.e. 13th

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August 2010, was considered as the date of transfer thus, assessee was entitled to the benefit under the provisions of Section 54F because long term capital gain earned had been used for purchase of new asset on 22nd April 2010.

Kishorbhai Harjibhai Patel v Income Tax Officer.

Case Law 2:

Where AO treated share application money received from non-residents as income of assessee and brought same to tax under head 'income from other sources', in view of fact that assessee had received said amount from non-residents and, moreover, shares had been subscribed at face value and there was no premium whatsoever, provisions of section 56(2)(viib) would not apply and, therefore, impugned addition made by Assessing Officer was to be deleted.

The assessee is a company engaged in the business of commercial training of computer gaming, art and animation. The AO noticed from the audited financials of the assessee that assessee has shown a sum of Rs.5,09,04,876 under the head 'Other current liability' i.e Share application money received. However, it is in excess of Authorized capital. The individuals who provided share application money were all non-residents.

The query of the AO was two-fold: (i) How the assessee received share application money in excess of authorized share capital of assessee; & (ii) receipt of share application money is liable to be taxed as income from other sources u/s. 56(2)(viib) of the Act. As per section 56(2)(viib), where a private company, receives from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares will taxable under the head other sources.

In reply to the aforesaid query of AO, the assessee pointed out that:

- The provisions of section 56(2)(viib) applies only to issue of shares. Since the assessee has received only share application money, those provisions are not attracted
- The aforesaid provisions are applicable only when shares are issued for a consideration which exceeds face value in such shares. Since there was no premium charged by the assessee, there is no question of invoking the aforesaid provisions
- The aforesaid provisions are applicable only for receipt of consideration for issue of shares by a person, who is a resident and since the persons from whom the assessee received share application money were non-residents, the aforesaid provisions are not applicable.

The assessee submitted the fact that share application money received exceeds the authorized share capital of assessee will have no effect on the genuineness of transaction as it was only lack of awareness that the assessee received share application money beyond authorized share capital. The assessee also submitted that it would take necessary steps to increase its authorized share capital.

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The assessee also submitted that even the provisions of section 68 of the Act cannot be applied by the AO because the assessee has established the identity of the share applicants, their creditworthiness and genuineness of the transaction.

The AO, however, was of the view that the act of receiving share application money in excess of authorized share capital of assessee was not in accordance with law and therefore money received cannot be considered as towards share application money. The AO therefore treated the money received from non-residents as income of the assessee.

AO contended that Money received in excess of Authorized Share Capital cannot be termed as received for 'equity contribution'. In view of the above, the money received and claimed as in excess of Authorized Share Capital can only fall under the head 'Income from Other Sources' under the Income Tax Act, 1961. Hence, an amount of Rs. Rs.5,09,04,876/- is treated as 'income from other sources' and is added to the returned income.

On appeal by the assessee, the CIT(Appeals) confirmed the action of the AO. Aggrieved, the assessee appealed before the Tribunal.

The assessee submitted that, it had applied to the Registrar of Companies for increase in authorized share capital of 32,90,000 equity shares and application money received from various share applicants was converted into equity shares under Board Resolution allotting shares to the various share applicants. As far as invoking the provisions of section 56(2)(viib) is concerned, those provisions are applicable only for receipt of consideration for issue of shares from a resident and not in the case of a non-resident.

Secondly, those provisions are applicable only when the shares are issues over and above the face value of such shares. Admittedly, the shares have been subscribed at face value and there is no premium.

Tribunal held that, the aforesaid provisions of law are not attracted. So, Tribunal held that the addition made by the AO and confirmed by the CIT(A) is unsustainable and the same is directed to be deleted.

Edulink (P.) Ltd. v Income-tax Officer

Case Law 3:

Where transaction of sale of shares of an Indian NBFC by assessee-promoter, a Mauritian Company, through IPO was not sham, capital gain arising out of sale of such shares could not be taxed in India as per provision of article 13 of India-Mauritius DTAA, and therefore, certificate under section 197 for no/less deduction of tax could not be denied.

The assessee was a Mauritius based company. The assessee had also been issued a Tax Residency Certificate (TRC) by Mauritius Revenue Authority. The assessee was formed with an intent to promote an Indian Non-banking Financial Company named ICFL.

In order to acquire shares of ICFL, assessee had raised capital from various investors across the globe between 2011 and 2015 to acquire approx. 97.3% of the total share capital of ICFL. In 2018, the Taxpayer proposed to dispose of approx. 1.85 crores of the IFCL shares for a total consideration of INR 1058.68 crores.

Under section 195 of the ITA, tax is required to be withheld at source on payments made to a non-resident if they are chargeable to tax in India. Section 197 of the ITA permits

an AO to issue a certificate allowing for non-deduction of such tax or deduction at lower rates in appropriate cases.

Thus, the Taxpayer made an application to its AO in India for a 197 Certificate on the basis that no tax would be payable in India on the gains derived by it from the sale of IFCL shares due to applicability of Article 13 of the Mauritius Treaty, and in the absence of any income chargeable to tax, there could be no withholding tax.

The AO rejected the application of the assessee under section 197 of the Act and held that the entire transaction was not genuine. The AO held that the entire tax structure was created to avoid tax liability. The AO based his reasoning on the fact that the Taxpayer had not carried out any other business transactions or commercial activities in Mauritius, had not maintained an establishment nor had incurred administrative expenses in Mauritius.

The court accepted the Taxpayer's contention that at the stage of deciding whether a 197 Certificate should be issued, a detailed inquiry is not required and if the Taxpayer prima facie proved its case, the tax authorities could not deny the 197 Certificate.

The Court after reading PARA 4 of Article 13 of India-Mauritius DTAA, held that capital gain on shares was not taxable in India. Court also referred to the Circular issued by the Central Board of Direct Taxes, to state that the TRC would be sufficient proof of residency in Mauritius as well as for beneficial ownership of shares for obtaining treaty benefits.

On the question of genuineness of the transaction, the Court stated that the AO could reject the application under section 197 only if he could prima facie demonstrate that the entire transaction right from its inception was a sham/Bogus. However, the Court observed that merely because the Taxpayer had not transacted any other business, had no administrative expenditure or employment structure, it would not be sufficient by itself to create a prima facie case of a fraudulent transaction.

Although such factors may be used to establish that the transaction was a sham in the assessment proceedings. Thus, the Court rejected the order of AO and directed the withheld tax to be returned. However, the Court recognized the difficulty to recover tax from non-residents if it was determined payable in the normal assessment and thus ruled that the withheld amount should not be released without adequate protection of recovery.

1st Condition is that assessee should maintain shareholding in the Indian company equivalent to 200% of the disputed tax amount as security against potential future tax liability until 31.12.2021 (i.e., until the extended date for completion of assessment proceedings for the relevant tax year);

And 2nd condition is that, the assessee immediately inform the tax authorities if the value of the maintained shareholding dropped below 125% of the disputed tax amount, and provide additional security to the extent of shortfall below 200% to the satisfaction of the tax authorities. With all such condition certificate under section 197 is issued to the assessee.

Indostar Capital v ACIT

Case Law 4:

Income from leasing out of shops & other commercial establishments to be treated as business income and not income from

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house property in the given case since it was not a case of giving shops on rent simplicitor rather assessee desired to enter into a business of renting out commercial space to interested individuals and business houses and the rental income received included additional charges for other common amenities.

Assessee is a private limited company and is engaged in the business of leasing out of shop space in shopping malls. The assessee filed the return AY 2008-2009 declaring the income received from such activity of leasing out of shops and other commercial establishments to various persons as business income. The assessee, in addition to receiving rental income had also received certain charges from the licensees such as common amenities charges, maintenance charges, advertisement charges. The Assessing Officer held that the income was from house property and not the business income. The issue eventually reached the tribunal. The tribunal by the impugned judgment held that the income was the business income.

Hon'ble High Court also upheld the decision of the Tribunal. It was held that whether the assessee's income from immovable property is income derived from business or from house property is always a mixed question of law and facts. In the given case the significant features are that the assessee had obtained loan from the bank for its mall-complex project. The assessee had entered into lease and license agreement with individuals for letting out commercial space. Majority of these licensees was for a period of 60 months. In addition to providing such commercial space on lease, the assessee also provided range of common amenities. These facilities included installation of elevators, installation for Fire Hydrant & Sprinkler system, installation of central garbage collections and disposal system, installation of common dining arrangement for occupants and the staff, common water purifier etc.

Thus, the assessee did not simply rent a commercial space without any additional responsibilities. The assessee executed lease and license agreements and also provided range of common facilities and amenities upon which the occupiers could run their business from the leased out premises. The charges for such amenities were also broken down in two parts. Charges for several common amenities was included in the rentals. Only on the consumption based amenity such as electricity, the occupant would be charged separately.

All factors thus clearly indicate that assessee desired to enter into a business of renting out commercial space to interested individuals and business houses and hence, such income is to be treated as business income.

Principal Commissioner of Income Tax v Krome Planet Interiors (P.) Ltd

Direct Tax Notification

1. Generation/Allotment/Quoting of Document Identification Number in Notiee/Order/Summons/letter/correspondence issued by the Income-tax Department - reg.

The board has decided that no communication shall be issued by any income tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 20 19 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.

https://www.incometaxindia.gov.in/communications/circular/circular_19_2019.pdf

2. Any person, who has not been allotted a permanent account number but possesses the Aadhaar number

Any person, who has not been allotted a permanent account number but possesses the Aadhaar number and has furnished or intimated or quoted his Aadhaar number in lieu of the permanent account number in accordance with sub-section (5E) of section 139A, shall be deemed to have applied for allotment of permanent account number and he shall not be required to apply or submit any documents.

https://www.incometaxindia.gov.in/communications/notification/notification59_2019.pdf

3. Consolidated circular for assessment of Startups - Reg.

In order to provide hassle-free tax environment to the Startups, a series of announcements have been made by the Hon'ble Finance Minister in her Budget Speech of 2019 and also on 23rd August 2019. To give effect to these announcements, the Central Board of Direct Taxes (CBDT) has issued various circulars/ clarifications in the matter.

https://www.incometaxindia.gov.in/communications/circular/circular_22_2019.pdf

4. Exception to monetary limits for filing appeals specified in any Circular issued under Section 268A of the Income-tax Act, 1961-Reg

Direct Tax Notification

Board has decided that notwithstanding anything contained in any circular issued U/S 268A specifying monetary limits for filing of departmental appeals before Income Tax Appellate Tribunal (IT AT), High Courts and SLPs/appeals before Supreme Court, appeals may be filed on merits as an exception to said circular, where Board, by way of special order direct filing of appeal on merit in cases involved in organised tax evasion activity.

https://www.incometaxindia.gov.in/communications/circular/circular_23_2019.pdf

5. CBDT Consolidated Circular Clarifies Law On Assessment Of Startups U/s 56(2)(viib) Of Income-tax Act & Recovery Of Demand

The CBDT has issued Circular No. 22/2019 dated 30th August, 2019 by which it has provided clarity on several aspects relating to the assessment of startups under section 56(2)(viib) of the Income-tax Act, 1961 and the recovery of demand therefrom.

http://itatonline.org/info/cbdt-consolidated-circular-clarifies-law-on-assessment-of-startups-u-s-562viib-of-income-tax-act-recovery-of-demand/

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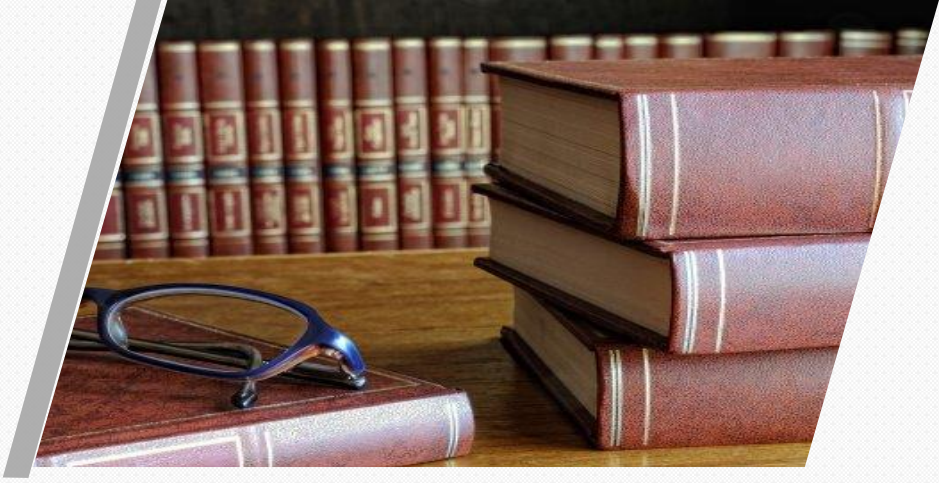


Case Law 1:

Export Benefit for SEZ supplies allowed despite non-availability of "Bill-of-Export"

The assessee's grievance was that Export Promotion Capital Goods (EPCG) Committee rejected the application for submission of "Bill-of-Export" as an evidence against supplies to SEZ which would fulfil export obligations. Hence, the assessee was unable to redeem its EPCG License thereby resulting in its name being put in the denial entry list for benefits under the Foreign Trade Policy. The adjudicating authority of the Bombay High Court noted that a similar issue had come up in the case of Larsen & Turbo Limited vs Union of India, the only difference being in the present case there was nexus to the import of capital goods which was not available in the Larsen case. Relying upon the judgement passed in "Rochem Separation Systems India Pvt Ltd" and "Electromech Material Handling System India Pvt Ltd." wherein it was held that non-availability of Bill of export would not lead to denial of export benefits, HC set aside the impugned minutes of the EPCG Committee. The assessee also submitted the revised ANF-5B which was highlighted in the Deficiency Letter issued by DGFT. Therefore, the petition filed by the assessee was allowed and it was held that the absence of bill of export by itself will not lead to denial of the supplies made to SEZ as exports.

BEICO Industries Private Limited vs. Union Of India [TS-448-HC-2019(BOM)-CUST] {WRIT PETITION NO. 3034 of 2019 Dated 21st June 2019}

Case Law 2:

Can Multiple companies allowed to have the same principle place of business in their GST registration certificate if they are working in a same community?

The applicant is a Private limited company registered under the Companies Act,2013. The applicant is engaged in the business of sub leasing office space as "co-working spaces" to different entities. Applicant provides dedicated landline, fax number & high - speed internet connection etc. to the multiple offices operated under one roof. Applicant has sought an advance ruling "whether GST registration allowed for multiple companies operated from same address, provided that they follow all the GST rules related to the "Principal place of business". Applicant has argued that leasing & maintaining offices in big cities are unaffordable and unfeasible to most of the startup as the theirs rental and maintenance cost is very high due to this many startup prefer co – working spaces where they have same address and same electricity bill except the suit or desk number. These startups also displaying their GST registration number in the shared space, co – working is basically a type of workplace where they share the same work environment i.e. making a community in the same area. The applicant

Indirect Tax : Case Laws

has also argued that there is no prohibition under the GST law from obtaining GST registration to a shared office space, if there is a rental agreement between landlord and lessee along with the agreement between lessee and sub lessee. In addition to this, applicant has to upload monthly utility bill such as electricity bill etc. while applying for GST registration

Therefore, it was held that the GST registration allowed to the multiple companies functioning in a "co-working space", these companies have to upload the rental agreement as discussed earlier along with a copy of monthly utility bill.

AUTHORITY FOR ADVANCE RULINGS – KERALA in M/s SPACELANCE OFFICE SOLUTIONS PVT LTD [No. KER/55/2019) dated 15th JULY 2019]

Case Law 3:

Non-Availability of credit for GTA service provider for transporting Exempt supplies but not exempted from paying GST.

The applicant is a service provider providing transport services to various manufacturers of motor vehicles. The applicant will be providing the services with own vehicles but without having LR/GR. So, the service will be a Non-GST Supply- Hence no levy of GST on the amount charged. Since there is no GST over services in certain cases, the question arises about mode of availment of ITC. Advance Ruling is sought regarding whether transportation by own vehicles on the basis of Invoices and E-way bill without LR/GR by the applicant will be covered under exempted supply/ Non-GST supply and the proportionate availment of ITC under Rule 42 of CGST Rules 2017. The Authorities find that the applicant is carrying supplier's invoice and e-way bill while providing transport service. Now, Transport of Goods by road other than by a GTA or a courier agency are exempt from tax under entry no. 18 of Notification No. 12/2017 dated 28.06.2017. To issue an e-way bill, it is mandatory to mention the transport document no. Therefore, it is mandatory for GTA to issue the transport document and without issuing LR/GR, goods cannot be transported. Hence the applicant's intention of providing service without issuing LR/GR is not correct and not acceptable. The Authorities have thus ruled that the applicant is a registered GTA Service provider under GST and is not exempted from paying GST. Also ruled that the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

AUTHORITY FOR ADVANCE RULING-RAJASTHAN in M/s K M TRANS LOGISTICS PVT. LTD. [ADVANCE RULING NO. RAJ/AAR/2019-20/19 dated 29.08.2019 F.NO. AAR/KMT/2019-20/140-143]

Indirect Tax Notification

1. Seeks to waive the late fees in certain cases for the month of July, 2019 for FORM GSTR-1 and GSTR-6 provided the said returns are furnished by 20.09.2019

CBIC vide Notification No. 41/2019 – Central Tax waives the amount of late fee payable under section 47 of the said Act, by the certain class of taxpayers as mentioned in the Notification No. 41/2019 – Central Tax.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-41-central-tax-english-2019.pdf;jsessionid=4E021DAD5679D3708DC8973E4EB129B5

2. Seeks to extend the last date in certain cases for furnishing GSTR-7 for the month of July, 2019.

CBIC vide Notification No. 40/2019 – Central Tax seeks to extend the date furnishing GSTR-7 for the month of July 2019 to 20th September 2019 for those registered persons whose principal place of business is in the state of Jammu & Kashmir as well as the districts mentioned in column (3) , of the State as mentioned in column (2) of the Table as mentioned in the Notification No. 40/2019 – Central Tax

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-40-central-tax-english-2019.pdf;jsessionid=E62BA755FDF090CBC1E7FE42312A8656

3. Seeks to waive filing of FORM ITC-04 for F.Y. 2017-18 & 2018-19.

CBIC vide Notification No. 38/2019 – Central Tax hereby notifies the registered persons required to furnish the details of challans in FORM ITC-04 are not be required to furnish ITC-04 for the period July, 2017 to March, 2019:

Provided that the said persons have furnished the details of all the challans in respect of goods dispatched to a job worker in the period July, 2017 to March, 2019 but not received from a job worker or not supplied from the place of business of the job worker as on the 31st March, 2019, in serial number 4 of FORM ITC-04 for the quarter April-June, 2019

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-38-central-tax-english-2019.pdf

4. Seeks to extend the date from which the facility of blocking and unblocking of e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017 shall be brought into force to 21.11.2019.

CBIC vide Notification No. 36/2019 – Central Tax Seeks to extend the date from which the facility of blocking and unblocking of e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017 from 21.08.2019 to 21.11.2019.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-36-central-tax-english-2019.pdf;jsessionid=90803A6D15F1979670ABDE677007ABB1

Corporate Legal & Regulatory Notifications

S. No	Notifications

1. Commencement for various provisions of Companies (Amendment) Act, 2019

(MCA notification dated August 14, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated August 14, 2019 has notified various provisions of Companies (Amendment) Act, 2019 which shall come into force with effect from August 15, 2019.

Through the said amendment, provisions of sections 6, 7, 8, 20, 31, 33, 34, 35, 37, 38 and clauses (i), (iii) and clause (iv) of section 14 of the said Act shall come into force as per the details provided hereunder:

S. No.	Section of		Title
	Companies (Amendment) Act, 2019	Companies Act, 2013	
1.	Section 6	Section 26	Matters to be stated in prospectus
2.	Section 7	Section 29	Public Offer of Securities to be in Dematerialized Form
3.	Section 8	Section 35	Civil Liabilities for Mis-statements in Prospectus
4.	Clause (i), (iii) and (iv) of section 14	Section 90	Register of significant beneficial owners in a company
5.	Section 20	Section 132	Constitution of National Financial Reporting Authority
6.	Section 31	Section 212	Investigation into Affairs of Company by Serious Fraud Investigation Office
7.	Section 33	Section 241	Application to Tribunal for Relief in Cases of Oppression, etc
8.	Section 34	Section 242	Powers of Tribunal
	Section 35	Section 243	Consequences of Termination or Modification of Certain Agreements
9.	Section 37	Section 272	Petition for Winding Up
10.	Section 38	Section 398	Provisions Relating to Filing of Applications, Documents, Inspection, etc., in Electronic Form

http://www.mca.gov.in/Ministry/pdf/CommencemntNotification_14082019.pdf

Legal & Regulatory

2. Investor Education and Protection Fund (IEPF) Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2019
(MCA notification dated August 14, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated August 14, 2019 has notified various provisions of IEPF Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 through IEPF Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2019 The provisions of these rules other than sections 6 (i), 6 (iv), 6 (v), 6(vi), 6(vii) and 6 (viii) shall come into force from August 20, 2019. However, the provisions outlined under the Sections 6 (i), 6 (iv), 6 (v), 6(vi), 6(vii) and 6 (viii) shall come into force from September 20, 2019.

The key highlights as per the said notification are as follows:

a) New forms have been issued viz. Form No. IEPF-1A which is meant to function as a statement of the amounts that have been credited to the Investor Education and Protection Fund in any given period ; Form No. IEPF-2, on the other hand, is a statement of all unpaid and unclaimed amounts, along with the details of the Nodal Officer; Form No. IEPF-4 can be used for providing a statement of the shares transferred to the IEPF fund within a given period. Lastly, Form No. IEPF-5 can be used as an application to the relevant authority to claim unpaid shares and amounts out of the IEPF.

b) The amendment allows companies which has transferred money to the Fund under Section 205 of the Companies Act, 1956 to file the statement in excel template within sixty days of notification of these amended rules if the companies:

i. have not filed the statement; or
ii. have filed the statement in any format other than in excel template

http://www.mca.gov.in/Ministry/pdf/IEPF2Rule_23082019.pdf

3. Companies (Share Capital and Debentures) Amendment Rules, 2019
(MCA notification dated August 16, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated August 16, 2019 has amended the provisions of Companies (Share Capital and Debentures) Rules, 2014 through Companies (Share Capital and Debentures) Amendment Rules, 2019 which shall come into force with effect from August 16, 2019.

Through the said amendment, MCA has amended the provisions in respect of quantum of holding of equity shares with Differential Voting Rights (DVR) by the Company and the creation of Debenture Redemption Reserve (DRR).

Legal & Regulatory

The key changes which have been made in the provisions relating to differential voting rights are as follows:

a) Earlier, one of conditions for issuance of equity shares with differential rights by the Company was that shares with differential rights should not exceed 26% of total post-issue paid up equity capital of the Company at any point of time. However, as per the amended rules, MCA has increased this limit to 74% of the total voting power at any point of time.

b) Earlier, the cap of 26% was based on the "post-issue paid up equity capital" however, it has been now changed to 74% of the "voting power".

c) Further, the condition on companies issuing shares with differential rights having consistent track record of distributable profits for the last three years has been done away with.

The key changes which have been made in the provisions relating to creation of DRR account are as follows:

a) Non-Banking Financial Companies registered with Reserve Bank of India and Housing Finance Companies registered with National Housing Bank have been exempted from creation of DRR in case of public issue of debentures.

b) Listed companies have been exempted from creation of DRR.

b) The quantum of funds to be transferred to DRR by unlisted companies has been lowered down from 25% to 10% of "outstanding value of debentures".

http://www.mca.gov.in/Ministry/pdf/ShareCapitalRules_16082019.pdf

4. Clarification under section 232(6) of the Companies Act, 2013
(MCA circular dated August 21, 2019)

The Ministry of Corporate Affairs (MCA) vide its circular dated August 21, 2019 has provided clarification regarding 'appointed date' referred to in section 232(6). The Ministry has examined the related provisions of Companies Act, 2013 along with applicable rules and orders passed by the Courts/ NCLT and has clarified that the following can be taken as 'appointed date':

1. The date mentioned in the scheme which may be a calendar date or a date of occurrence of any specific event or fulfilment of any precondition agreed under the scheme;

2. Acquisition date or date of transfer of control for the purpose of confirming to accounting standards;

3. Any specific calendar date may be taken as appointed date provided that the date should be

preceding the date of filing of the application for scheme of merger/ amalgamation

4. Any date depending upon occurrence of specific event which has to be indicated in the scheme. If the said date is the date subsequent to the date of filing the order with the Registrar under section 232(5), the Company shall file an intimation of the same with the Registrar within 30 days of such scheme coming **into** force.

http://www.mca.gov.in/Ministry/pdf/GeneralCircular_21082019.pdf

5. Companies (Incorporation) Seventh Amendment Rules, 2019
(MCA notification dated August 28, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated August 28, 2019 has further amended the Companies (Incorporation) Rules, 2014 through the Companies (Incorporation) Seventh Amendment Rules, 2019 which shall come into force with effect from August 28, 2019. Through the said amendment, MCA has introduced new form “e-form RD GNL-5” and substituted “e-form RD-1”.

http://www.mca.gov.in/Ministry/pdf/SeventhAmendmentRules_28082019.pdf

Column

Ind AS 116 - Re-birth of Lease Accounting

By – Ayush Bhatia

IBA

Background :

The International Accounting Standards Board (IASB) issued IFRS 16 Leases, which requires lessees to recognize assets and liabilities for most leases. Based on the IFRS Convergence status hosted on the ICAI website, Ind AS 116 (corresponding to IFRS 16) has been issued by the National Advisory Committee on Accounting Standards (NACAS). Ind AS 116 has been made effective for accounting periods beginning on or after from 1 April 2019.

Lease as per the new standard :

A lease is a contract, or part of a contract, that conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration. To be a lease, a contract must convey the right to control the use of an identified asset, which could be a physically distinct portion of an asset such as a floor of a building.

A contract conveys the right to control the use of an identified asset if, throughout the period of use, the customer has the right to:

(a) obtain substantially all of the economic benefits from the use of the identified asset; and (b) direct the use of the identified asset (i.e., direct how and for what purpose the asset is used)

Lessee Accounting :

Initial recognition and measurement

Lessees are required to initially recognize a lease liability for the obligation to make lease payments and a right-to-use asset for the right to use the underlying asset for the lease term. The lease liability is measured at the present value of the lease payments to be made over the lease term. The right-to-use asset is initially measured at the amount of the lease liability and adjusted for lease prepayments, lease incentives received, the lessee's initial direct costs and an estimate of the restoration, removal and dismantling costs.

Exceptions to Ind AS 116 :

a) Lessees are permitted to make an accounting policy election, by class of underlying asset, to apply a method such as Ind AS 17 operating lease accounting and not recognize lease assets and lease liabilities for leases with a lease term of 12 months or less (i.e., short-term leases).

b) Lessees are also permitted to make an election, on a lease-by-lease basis, to apply a method similar to current operating lease accounting to leases for which the underlying asset is of low value (i.e., low-value assets).

Subsequent measurement :

Lessees accrete lease liability to reflect interest and reduce the liability to reflect lease payments made. The related right-to-use asset is depreciated in accordance with Ind AS 16 Property, Plant and Equipment. For lessees that depreciate the right to-use asset on a straight-line basis, the total of interest expense on lease liability and depreciation generally results in higher total periodic expense in the initial periods of a lease. Right-to-use assets are subject to impairment testing under IAS 36 Impairment of Assets.

Presentation :

Right-to-use assets are either presented separately from other assets on the balance sheet or disclosed separately in the notes. Similarly, lease liabilities are either presented separately from other liabilities on the balance sheet or disclosed separately in the notes. Depreciation expense and interest expense cannot be combined in the statement of profit and loss.

Lessor Accounting :

The accounting by lessors under the new standard is substantially unchanged from previously applicable Ind AS 17. Lessors classify all leases using the same classification principle as in IAS 17 and distinguish between two types of leases: operating and finance leases. For operating leases, lessors continue to recognize the underlying asset.

Key differences from Ind AS 17 :

a) Classification of Lease in hands of lessee - Leases were recorded as per their classification into Operating and Finance Lease, however as per the new standard, Lessee will follow Single Lease Accounting. There is no classification as operating or finance Lease for lessee.

b) Accounting and Presentation in financial Statement by lessee - Under Operating lease, assets were not recorded in books and recognized lease payments as expense in the profit and loss account, from now onwards, Lessee will recognize assets and liabilities for all leases with a term of more than 12 months, unless the underlying asset is of low value.

   Lessee would recognize depreciation expense on the right of use asset and interest expense on the lease liability, classify the lease payments into principal and interest component.

c) Disclosures Requirements of lessor & lessee – As per the new standard, additional requirements of disclosure have been mandated for lessor and lessee such as disclosure of maturity analysis of lease payments; quantitative and qualitative explanation of significant changes in carrying amount of new investment in finance lease.

Way Forward :

Ind AS 116 has brought significant change from previously applicable Ind AS 17, in particular for lessee. Entities should perform an assessment as soon as possible to determine how their lease accounting will be affected. Entities will also need to ensure that they have the processes (including internal controls) and systems in place to collect the necessary information to implement the new standard.

IBA NEWS

Independence Day Celebration

Celebrated Independence Day at office.

Everyone was energized, cheerful and motivated to make this occasion special, memorable and a tribute to our freedom fighters.

Offsite @ 2019

Organized the annual offsite to Bhimtal.

It was a great source of fun, enjoyment & learning with lovely weather and awesome experience, Rejuvenated and relaxed trip with successful team building activities, town hall meeting, award ceremony, party, trekking etc.,

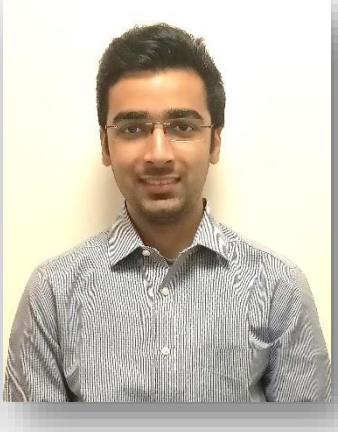
Achievers @ IBA

At IBA, we believe in nurturing talent and enabling youth to unleash their potential. Proud to announce our newly qualified CAs and Rankholders

Upcoming Compliances

Date	Compliance
September 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 August 2019
September 13, 2019	Due date for furnishing of Form GSTR-6 for Input Service Distributor for the month of August 2019.
September 15, 2019	Second instalment of advance tax for the assessment year 2020-21
September 20, 2019	Due date for filing consolidated return in the Form GSTR-3B for the month of August 2019.
September 30, 2019	Annual return of income for the assessment year 2019-20 if the assessee (not having any international or specified domestic transaction) is (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).
	Audit report under section 44AB for the assessment year 2019-20 in the case of a corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on September 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 August 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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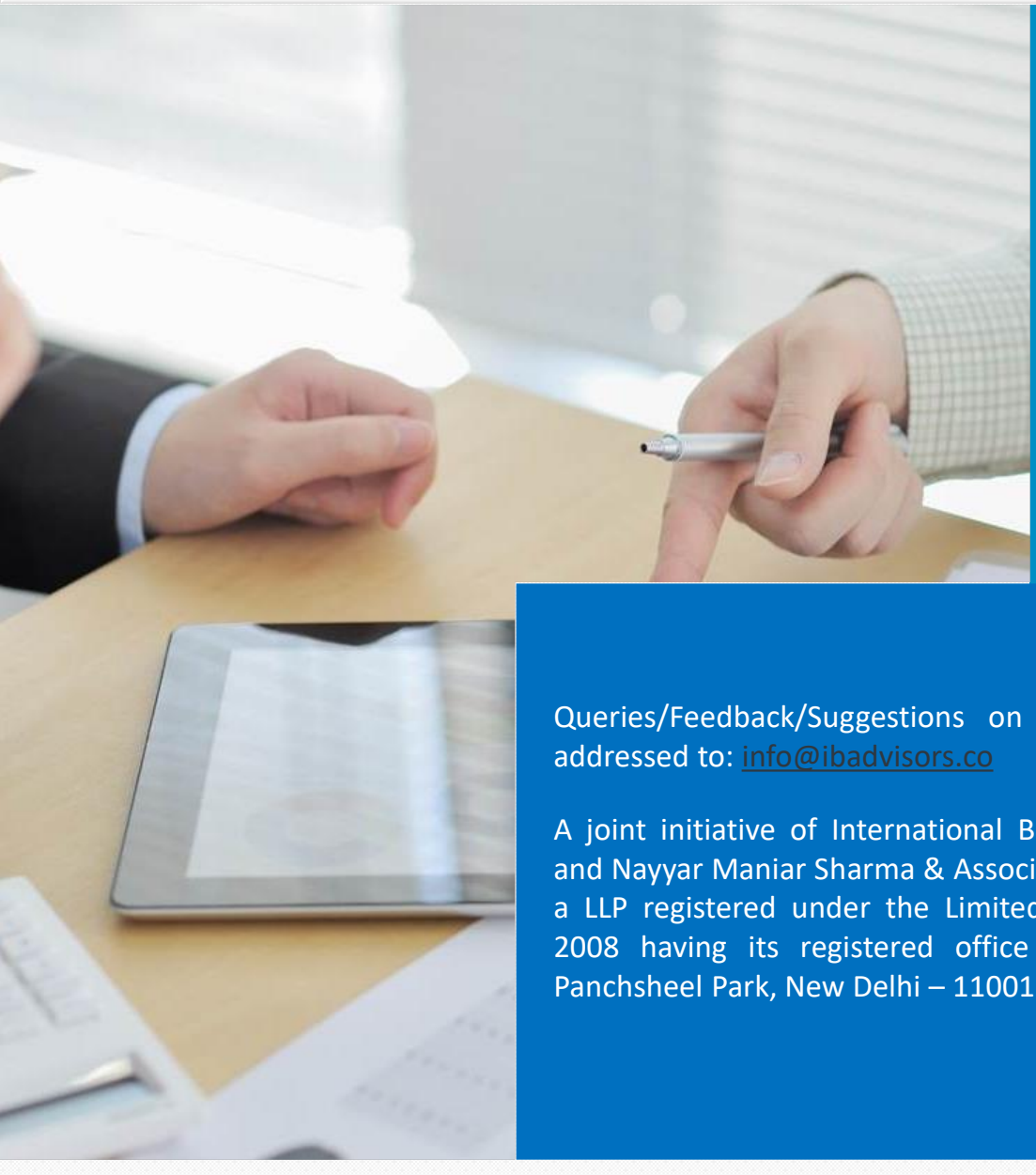

Queries/Feedback/Suggestions on this newsletter may be addressed to: info@ibadvisors.co

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