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BUSINESS ADVISORS

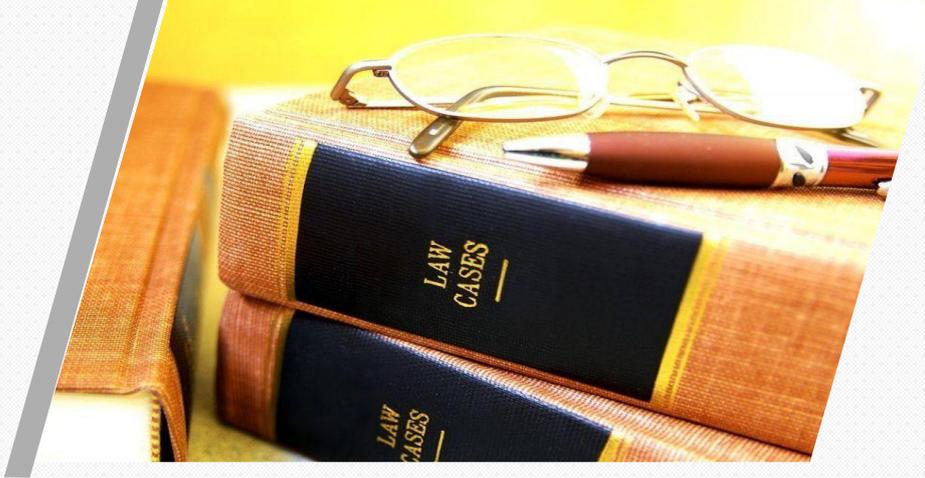
CONNEKT

May - 2021

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Direct Tax Case Laws



Case Law 1:

Where assessee claimed deduction of liquidated damages paid for delay in delivery of machinery, in view of fact that there had been only discussions and negotiations for arriving at amount of liquidated damages, but liability did not crystallise in relevant year, claim so raised was to be rejected

The assessee was engaged in the business of turnkey projects, in which, one of the conditions enumerated in the contract was delivery of equipment in time, which if not done within the stipulated time, would lead to liquidated damages. During the relevant year there was delay in delivery and, thus, liability to pay liquidated damages arose. The assessee claimed such damages under section 37(1). But, the revenue authorities rejected the claim that liability to pay damages did not crystallise in relevant year and, thus, it was not a case of payment of ascertained liability.

In the instant case, the three tests has to be satisfied by the assessee to claim a provision to be an expenditure which have been laid down by the Supreme Court in the case of Rotork Controls India (P.) Ltd. v. CIT, popularly known as 'triple test' being-

(a) An enterprise has an obligation as a result of a past event. (b) It is probable that an outflow of resources will be required to settle the obligation. (c) A reliable estimate can be made of the amount of the obligation. The assessee in the instant case satisfied test Nos.(a) and (c). The assessee

submitted that-

- i) As the contract itself stipulates the percentage of liquidated damages, which is payable based on the length of delay. In this regard, documents were referred to, to show that there is an admitted delay on the part of the assessee and therefore, the third party for whom, turnkey projects have been implemented, are bound to deduct the same and therefore, there is a certainty in the outflow.
- ii) The documents placed before the Court will clearly show that there has been negotiations, discussions before the liquidated damages was arrived at, which was much after the subject assessment year, which had held that there is no ascertained liability.
- iii) As the obligations arisen for past event existing independently on the future contract of the enterprise is recognised provision. Admittedly, in the instant case, no such past events have been placed before the Assessing Officer to show that there is every probability that the expenditure will be incurred. At best, the assessee can pitch their case as a case of possibility but, not a case of probability.

In view of above, it is held that Tribunal was right in concluding that the claim of Liquidated damages in respect of delay in delivery had not arisen during the current year under appeal.

Direct Tax : Case Laws

FFE Minerals India (P.) Ltd. v. Joint Commissioner of Income-tax

Case Law 2:

Where in course of appellate proceedings, assessee produced a valuation report for construction of new house property from registered valuer for claiming deduction under section 54F, Commissioner (Appeals) could not refuse to accept said additional evidence and reject assessee's claim for not making such claim before Assessing Officer

During assessment proceedings, the Assessing Officer computed long-term capital gain earned by the assessee on sale of house property. The grievance of the assessee was not afforded reasonable opportunity of hearing before the Assessing Officer, as he was not aware of the notices issued by Assessing Officer due to his sickness during the assessment.

He laid emphasis on the medical certificate placed before the first appellate authority. This certificate certifies the ailment of assessee from 10-1-2014 to 10-2-2014, whereas the notice under section 148 was served upon the assessee on 30-3-2013, as mentioned in the assessment order itself. On this date the assessee was not ill and could appear before the Assessing Officer. Before 10-1-2014, 4-5 notices under section 142(1) had also been issued to the assessee, but he did not bother to respond. Besides, the assessment order has been finalized on 17-2-2014 and the assessee was recovered from illness on 10-2-2014, but he still did not approach the Assessing Officer.

This shows that the assessee has been given more than ample opportunities by the

Assessing Officer before finalization of assessment order.

In the instant case, when the assessee made a claim before the first appellate authority regarding deduction u/s 54F, it was incumbent upon the first appellate authority to make enquiry into the matter or could direct the Assessing Officer to enquire into and to give report on the allowability of such claim in the facts and circumstances of the case. However, the CIT (A) has not exercised its discretionary powers judiciously and has failed to give categorical findings on the allowability of assessee's claim u/s. 54F before confirming the addition made on account of long-term capital gains.

Therefore, the matter was restored with CIT (A) to decide the appeal afresh after making proper enquiry and to record clear findings on the allowability of claim of assessee made u/s. 54F, where the assessee shall be given reasonable opportunity of being heard. Accordingly, the appeal of the assessee is allowed for statistical purposes.

Income Tax Officer v Jai Prakash Tyagi

Case Law 3:

Where the reduction in shares of profit of a partner resulting in increase in share of profit of another by itself will not constitute a 'gift' coming within purview of section 4(1)(a)

The assessee was a partner of the firm. In the course of business, there was a reallocation of shares, whereby the share of the assessee in the firm came to be brought down from 19.5 per cent to 11.25 per cent with simultaneous increase in the shareholding of another partner.

Direct Tax : Case Laws

The Assessing Officer held that the reduction in the shares of one partner, resulting in proportionate increase of shares of another partner would constitute a 'gift' in terms of section 4(1)(a) of The Gift-Tax Act, 1958.

Commissioner of Gift Tax v Smt. Bindu Joseph

Return was filed by the assessee pointing out that the transaction would not attract tax liability under the Act and as the 'additional share capital' was contributed by the other partner 'S', who had also undertaken to 'discharge various duties' for the firm, besides furnishing 'collateral securities' and 'personal guarantee' in respect of various financial transactions. With reference to the case of CGT v. D.C. Shah, where the Apex Court observed that, the 'profit sharing ratio' in a firm can vary for a number of reasons, and among them, the ability of the partner to devote time to the business of the firm was also significant factor. Also, the Apex Court had made it clear that the gift of a part of a partner's share to another partner has to be established by relevant evidence and that the 'burden of proof' in this regard was purely on the Revenue.

In the above circumstances, it is held that there was no instance of 'gift' coming within the purview of section 4(1) of the Act. The mere arithmetical figures with reference to the total profit in the year in question, which came to be reduced and reduction in the probable portion of profit of the assessee as worked by the revenue do not reflect the correct picture in this regard. The more important aspect with reference to the 'collateral security' furnished by the person concerned and the 'personal guarantee' offered by her have not been taken into consideration or dealt with by the revenue. The revenue's appeal fails and it is dismissed accordingly.

Direct Tax Notifications



1. **Amendment of notification no. 85 of 2020 for extension of date in Direct Tax Vivad se Vishwas Act, 2020**

In exercise of the powers conferred by section 3 of the Direct Tax Vivad se Vishwas Act, 2020, the Central Government makes the amendments.

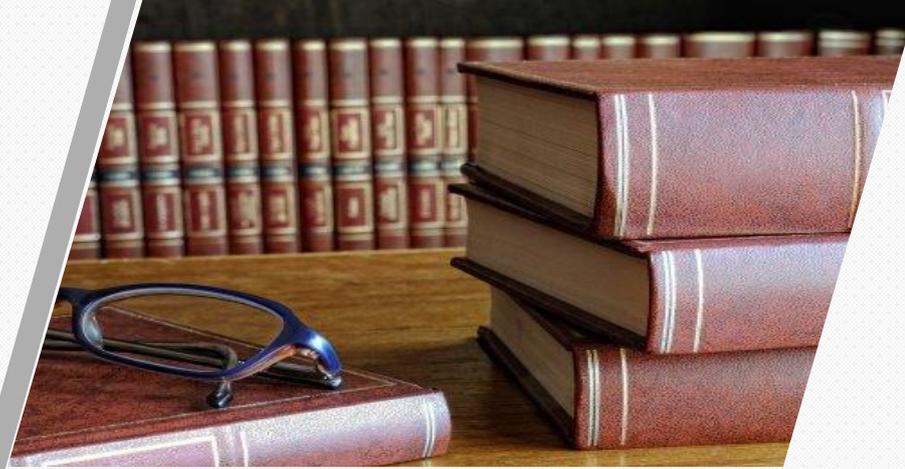
https://incometaxindia.gov.in/communications/notification/notification_39_2021.pdf

2. **Format, Procedure and Guidelines for submission of Statement of Financial Transactions (SFT) for Interest income**

Section 285BA of the Income Tax Act, 1961 and Rule 114E requires specified reporting persons to furnish statement of financial transaction (SFT).

https://incometaxindia.gov.in/communications/notification/notification_2_2021_interestincome.pdf

Indirect Tax : Case Laws



Case Law 1:

GST Input in case of CSR activities is eligible to be claimed

Applicant is engaged in manufacture and sale of sugar allied products and has undertaken activities like building of school, supply of furniture, electrical goods to school etc., in order to comply with Company Social Responsibility u/s 135 of companies Act, 2013. For performing above activities, they acquired goods and services on which GST is charged. On 24.09.2019 applicant posted an application with following questions:

1. Whether expenses incurred for CSR qualify as being incurred in business and eligible for ITC?
2. Whether ITC in respect of CSR activities restricted? If yes, whether free supply of goods as a part of CSR activities restricted and whether ITC on goods and services for construction of school building (not capitalized) restricted?

UP AAR refers Karnataka HC ruling in case of Millipore India (P) Ltd and CESTAT ruling in case of Essel Propack Ltd. to observe that since applicant is compulsorily required to undertake CSR activities in order to run the business, thus it accordingly becomes essential part of business process. Therefore, CSR activities are to be treated as incurred “in the course of business”.

Further it explains that restriction of ITC depends upon whether it is a case of gift or not. Hence by referring ruling of Hon’ble SC in case of Ku. Sonia Bhatia and citing the definition of “gift”, AAR observed that there is a clear distinction between goods supplied as Gift and supply of goods under CSR activity as former is voluntary and occasional whereas later is obligatory and regular in nature. Therefore, as CSR activities do not qualify as a gift hence its credit is not restricted.

Further in response to 3rd question of availment of ITC on goods and services used in the construction of school building, UP AAR referred ruling of Rajasthan AAR in case of M/s Rambagh Palace Hotels (P) Ltd. and observed that ITC on construction work has been specifically restricted only to the extent of capitalization. Thus, ITC on construction of school building is restricted to the extent of capitalization. Finally, UP AAR rules that CSR expenses incurred by a company qualifies as being incurred “in the course of business” and eligible for ITC and free supply of goods as a part of CSR activities is not restricted.

**[ORDER NO. 52 DATED 22-01-2020,
AUTHORITY OF ADVANCE RULING UTTAR
PRADESH]**

Indirect Tax : Case Laws

Case Law 2:

ITC not to be reversed on the grounds of non-payment of tax by the supplier

Applicant is engaged in trading of raw rubber sheets. In this case customers paid the applicant the basic price of goods plus tax applicable on the sale, But the applicant did not deposit the said tax amount to the concerned authorities and consequently, the authorities had the customer reverse the ITC claimed by him on this purchase.

It was held therein that the authority does not have the jurisdiction to reverse the input tax credit already availed by the assesses on the ground that the supplier of goods/services has not paid the tax in the press release issued by the Central Board of GST council on 4.5.2018. In the said press release, it has been mentioned that there shall not be any automatic reversal of input tax credit on part of the recipient on grounds of non-payment of tax by the supplier. Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

**[WRIT PETITION(M.D.) NO. 2127 OF 2021,
DATED 24-02-2021 BEFORE THE MADURAI
BENCH OF MADRAS HIGH COURT]**

Indirect Tax

Notifications & Circulars



CBIC vide issued Notification No. 09/2021 – Central Tax dated May 01, 2021, extending the Due Dates for GST Compliances pertaining to March and April 2021 tax period and this providing relief to the taxpayers. Please find below the summary prepared for the same-

Original Due Date	Extended Due Date	Compliance
May 11, 2021	May 26, 2021	GSTR 1 for Tax Period April 2021 for Monthly taxpayers
May 13, 2021	May 28, 2021	IFF for Tax Period April 2021 for QRMP Taxpayers
May 20, 2021	June 20, 2021	Monthly GSTR 3B with turnover up to 5 Crores in the preceding financial year For the period April 2021
May 20, 2021	June 05, 2021	Monthly GSTR 3B with turnover more than 5 Crores in the preceding financial year For the period April 2021
April 30, 2021	May 21, 2021	GSTR 4 for FY 2020-2021
April 25, 2021	May 31, 2021	GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker, during the period from 1st January 2021 to March 31, 2021
April 20, 2021	May 20, 2021	Monthly GSTR 3B of Taxpayers with turnover up to 5 Crores in the preceding financial year For tax period March 2021
April 22 & 24, 2021	May 22, 2021	Quarterly GSTR 3B (QRMP Taxpayers) for the tax period January to March 2021

Interest on GST Payment

In addition to the above-mentioned revision of due dates, CBIC has also made the following changes on the Interest applicable thereon-

Indirect Tax

Notifications & Circulars



For taxpayers, Interest shall be applicable @ 9% per annum for the first 15 days of delay after the extended due date. Thereafter, the Interest Rate shall revert back to 18% per annum on Cash Liability for the tax period March and April 2021.

Other Extensions

Also, Please Note that Any other due date for completion or compliance of any action, by any authority or by any person, which falls between April 15, 2021 and May 30, 2021; has also been extended up to the May 31, 2021.

Also, the time limit for completion of any action by the authorities related to verification and approval of registration application, to be done between May 01, 2021 to May 31, 2021 has been extended to June 15, 2021.

Reference:

14/2021-Central Tax dated 01.05.2021, 13/2021-Central Tax dated 01.05.2021, 12/2021-Central Tax dated 01.05.2021, 11/2021-Central Tax dated 01.05.2021, 10/2021-Central Tax dated 01.05.2021, 09/2021-Central Tax dated 01.05.2021, 08/2021-Central Tax dated 01.05.2021.

<https://www.cbic.gov.in/htdocs-cbec/gst/central-tax-notfns-2017>

Legal & Regulatory Notifications



S. No Notifications

1. SPENDING CSR FUNDS ON MAKESHIFT HOSPITALS AND TEMPORARY CARE COVID FACILITIES (MCA circular dated April 22, 2021)

This circular is in continuation to circular no 10/2020 dated March 23, 2020 wherein spending CSR Fund for COVID-19 is considered an eligible CSR activity. It is clarified that Companies can use their CSR funds on makeshift hospitals and covid care facilities to be considered as eligible CSR activity, under item number (i) and (xii) of schedule VII of the Companies Act, 2013.

Link: http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo5_22042021.pdf

2. MCA RELAXATIONS AMIDST SECONDARY WAVE OF COVID-19

Ministry of Corporate Affairs (MCA) vide its various circulars No. 6/7/8/2021 dated May 03, 2021 has provided various relaxations to corporates under Companies Act, 2013 (CA, 2013) and Limited Liability Partnership Act, 2008 (LLP Act, 2008), due to relapse of COVID-19 pandemic. These relaxations are provided below:

I. Relaxation on levy of additional fees in filing of certain forms under the CA, 2013 and LLP Act, 2008

(MCA general circular No. 6/2021 dated May 03, 2021)

MCA vide its General Circular dated 06/2021 dated May 03, 2021 has provided relaxation for filing forms (other than form CHG-1, CHG-4 and CHG-9) having the due date between April 01, 2021 to May 31, 2021 upto July 31, 2021 without any additional fees.

Link: http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo6_03052021.pdf

II. Relaxation of the time of filing forms related to creation or modification of charges under CA, 2013

(MCA general circular No. 7/2021 dated May 03, 2021)

MCA vide its General Circular dated 07/2021 dated May 03, 2021 has provided relaxation for filing charge forms i.e., Form CHG-1 and CHG-9 (form) as given below:

- Where the date of creation or modification of charge is before April 01, 2021 but the timeline for filing the form has not expired under section 77 of CA, 2013 as on April 01, 2021:

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Form	Relaxation of time	Relaxation of fee
Filed	period beginning from April 01, 2021 to May 31, 2021 shall not be reckoned for the purpose of counting number of days under section 77 and 78 of CA, 2013.	If the form is filed on or before May 31, 2021, the fees shall be payable as on March 31, 2021 under the fees rules for the said form shall be charged.
Not filed	the first day after March 31, 2021 shall be reckoned as June 01, 2021 for purpose of counting number of days under section 77 and 78 of CA, 2013.	If the form is filed thereafter, the applicable fee shall be charged under the fee rules after adding the number of days beginning from June 01, 2021 and ending on the date of filing plus the time period lapsed from the date of creation till March 31, 2021.

- Where the date of creation or modification of charge falls any date between April 01, 2021 to May 31, 2021 (both inclusive):

Form	Relaxation of time	Relaxation of fee
Filed	period beginning from the date of creation or modification of charge to May 31, 2021 shall not be reckoned for the purpose of counting number of days under section 77 and 78 of CA, 2013	normal fees shall be payable as per the fees rules.
Not filed	first day after the date of creation or modification of charge shall be reckoned as June 01, 2021 for purpose of counting number of days under section 77 and 78 of CA, 2013.	the first day after the date of creation or modification of charge shall be reckoned as June 01, 2021 and the number of days till the date of filing of form shall be counted accordingly for the purpose of payment of fee under the fees rules

Link: http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo7_03052021.pdf

III. Relaxation on gap between two board meetings under section 173 of CA, 2013

(MCA general circular No. 8/2021 dated May 03, 2021)

MCA vide its General Circular dated 08/2021 dated May 03, 2021 has provided a relaxation of 60 days over and above the prescribed minimum interval of 120 days for holding meetings of the

Legal & Regulatory

Board of the Companies as provided in Section 173 of the CA, 2013 i.e., now the gap between two board meetings must not exceed 180 days for first quarter ending June 30, 2021 and second quarter ending September 30, 2021.

Link: http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo8_03052021.pdf

3. RELAXATION IN THE PERIOD OF PARKING OF UNUTILIZED ECB PROCEEDS IN TERM DEPOSITS (RBI notification dated April 07, 2021)

RBI vide its notification dated April 07, 2021 with a view to provide relief to the ECB borrowers affected by the COVID-19 pandemic, have relaxed the stipulation regarding parking of ECB proceeds in term deposits with AD Category-I banks in India for a maximum period of 12 months cumulatively by the ECB Borrowers. The unutilized ECB proceeds drawn down on or before March 01, 2020 can be parked in term deposits with AD Category-I banks in India prospectively for an additional period up to March 01, 2022. Further, all other provisions of the ECB policy remain unchanged.

Link: https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12070

Column



Insight into Section 56(2)(viib)

By – Gursimaran Singh

IBA

Section 56(2)(viib) was inserted via Finance Act, 2012. The objective of introducing the section was to deter the generation and use of unaccounted money done through subscription of shares of a closely held company, at a value which is higher than the Fair Market Value (FMV) of shares of such company.

By virtue of section 56(2)(viib) of the Act, it states that, where a company, not being a company in which the public are substantially interested, receives, in any previous year, 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 shall be deemed to be the income of the concerned company chargeable to tax under the head Income from other Sources for the relevant financial year.

Applicability

Going by the above definition, the key points identified therein can be laid as follows –

- **A Private limited Company** - It means a closely held company and not being a public limited company.
- **Receives, in any previous year** – It means that the sum of money shall be received by the company as stated in point (1) above and in the relevant financial year.
- **Person being a resident** – The term resident shall be read in accordance with the Income Tax Act, 1961.
- **Any consideration for issue of shares for a value which exceeds the FMV of such shares** – The consideration shall mean the money received by the company in pursuance to the issuance of shares.

Hence the applicability can be summarised as below-

- Shares must be issued at premium (Issue Price > Face Value)
 - Consideration should be greater than FMV (Issue Price > FMV)
- } **Both conditions shall be satisfied cumulatively**

Non – Applicability

- Company receiving consideration is a company in which public is substantially interested i.e, a public company.
- Consideration is received by a Venture Capital company or Venture Capital Fund or other Notified company.

Determination of FMV

The FMV of the shares shall be higher of the following:

- As per the methods prescribed under Rule 11UA(2) which are-
 - ✓ Book value Method (NAV) and
 - ✓ Discounted Cash flow method (Allowed to a Merchant Banker Only), or
- Any other value as may be substantiated by the company to the satisfaction of the Assessing Officer.

Treatment by the Assessing Officer

There have been many cases where Assessing Officer disregarded the value ascertained using Discounted Cash flow method in Valuation report and later in Appeals, this was allowed to Assessee. Since Assessee has option to choose any of the two methods given in Rule 11UA, Assessing officer may use a method different from method used by the assessee which may become reason of disagreement.

The same can be seen in the case of; Cinestaan Entertainment (P.) Ltd. New Delhi in the ITAT Delhi Bench and Vodafone M-Pesa Ltd. v. Deputy Commissioner of Income-tax Circle 8(3)(2), Mumbai in the ITAT Mumbai.

Special Case Scenario - A new company particularly in the service sector does not have sufficient capital base at the inception and hence NAV method sometimes becomes impractical to apply. Due to this reason, lot of companies adopt DCF (Discounted Cash flow) method which requires lot of subjective analysis in terms of revenue projections, adoption of discounting factor, risk free rate of interest, inflation rate, etc.

Efforts have been made to help start-ups with the provisions of the said section. Thus, an entity will continue to be recognised as a Start-up, if its turnover for any of the financial years since incorporation and registration has not exceeded Rs. 100 crore in place of earlier benchmark of Rs. 25 crore.

A Start-up will be eligible for exemption under Section 56(2)(viib) of Income Tax Act, if it is a private limited company recognized by DPIIT (Department for Promotion of Industry and Internal Trade) and is not investing in any of the following assets (inter-alia) –

- Building or land appurtenant thereto, being a residential house, other than that used by the Start-ups for the purposes of renting or held by it as stock-in-trade, in the ordinary course of business
- A motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds ten lakh rupees, other than that held by the Start-ups for the purpose of plying, hiring, leasing or as stock-in-trade, in the ordinary course of business
- Jewellery other than that held by the Start-ups as stock-in-trade in the ordinary course of business

Moreover, consideration received by eligible Start-ups for shares issued or proposed to be issued shall be exempt up to an aggregate limit of Rs. 25 crore.

In addition, consideration received by eligible Start-up for shares issued or proposed to be issued to a listed company having a net worth of Rs.100 crore or turnover of at least Rs. 250 crore will also be exempted.

The aggregate limit of Rs. 25 crore will exclude consideration received by eligible Start-up for the following classes of persons:

- ✓ Non-Residents
- ✓ Alternative Investment Funds- Category-I registered with SEBI
- ✓ Listed company having a net worth of Rs.100 Crores or turnover of at least Rs. 250 crore provided that its shares are frequently traded on registered stock exchange

Missing Fun @ Workplace



Missing those fun and icebreaker activities, lunch breaks, quick meetings, small celebrations at office

Mother's Day



The bond of care can de-stress and heal your loves ones, our employees shared special moments with their moms on this Mother's Day.

Upcoming Compliances

Date	Compliance
May 15, 2021	Quarterly statement of TCS deposited for the quarter ending March 31, 2021
May 30, 2021	Issue of TCS certificates for the 4th Quarter of the Financial Year 2020-21
May 31, 2021	Quarterly statement of TDS deposited for the quarter ending March 31, 2021

Editorial Team



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