INTERNATIONAL BUSINESS ADVISORS

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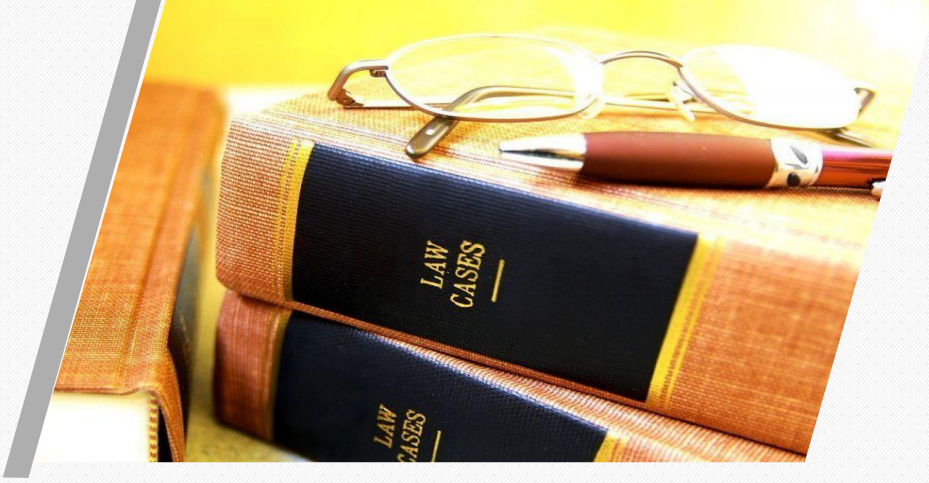
July - 2021

Content

Direct Tax Case Laws



Case Law 1:

Where assessee was entered into an agreement to sell said property on 14-2-2011 for a consideration of Rs. 2.20 crores. A token amount of Rs. 20 lakh was paid at time of execution of agreement and balance sale consideration was to be paid on or before 26-5-2011. On basis of said terms of agreement, revenue authorities opined that transfer of property took place in assessment year in question

Here assessee is the owner of an immovable property. It entered into an agreement to sell said property on 14-2-2011 for a consideration of Rs. 2.20 crores.

A token amount of Rs. 20 lakhs were paid at time of execution of agreement and balance sale consideration was to be paid on or before 26-5-2011, i.e., in the next Assessment year. On basis of said terms of agreement, revenue authorities were of the view that transfer of property took place in assessment year in question i.e., AY 2011-12.

As the date of the agreement and the date of final payment/possession fell in two different financial years, a dispute arose between the tax authorities and the taxpayer, as to the year in which the profit on the sale of this property would become taxable.

The Income Tax Department treated the date of registration of the property, as the date on which the transfer took place and had, accordingly, taxed the capital gains in the assessment year 2011-2012.

However, the Income Tax Tribunal concluded that the sale or transfer was not complete on the date of execution of the agreement and that the transfer of the property took place when the balance payment was made and possession handed over to the buyer, which happened during the financial year 2011-2012. Hence, the capital gains were taxable in the assessment year 2012-2013 and not in the assessment year 2011-2012.

The Bombay High Court stated that the sale/transfer of the property in question was complete only during the financial year 2011-2012. The court also observed that the tribunal was right in its conclusion that on facts, the agreement executed on February 14, 2011, was a mere agreement for sale of immovable property and does not constitute a transfer of title.

The decision of Bombay HC clearly established that the final transfer of title will be on the date when all the conditions, as enumerated in the agreement for sale are complied with.

Anandkumar v. Assistant Commissioner of Income Tax

Direct Tax : Case Laws

Case Law 2:

Where assessee paid amount of sale consideration received from sale of a residential house for purchase of another residential property prior to due date of filing of return of income under section 139(4), his claim for exemption under section 54 was to be allowed.

Where assessee sold residential property and utilised sale consideration for booking flat in a housing project which was yet to be constructed, since assessee had made entire payment towards investment in new flat within period of three years from date of transfer of original asset, amount was to be treated as invested in purchase/construction of new residential property and assessee was to be allowed exemption under section 54 of the Income Tax Act, 1961.

In the case of the assessee, the agreement to purchase of flat has been made on 15-10-2012. The assessee had provided detail of payments made, which showed that payments were made on 5-2-2010, 18-5-2011, 16-7-2011 and 29-8-2011. Thus, the payments have been cleared before the due date of the filing of return under section 139(4) which was 31-3-2013 in the case of the assessee.

As the investment in property has been made prior to due date of filing of return of income under section 139(4) i.e. 31-3-2013, therefore, the assessee cannot be denied deduction on the ground that amount of sale consideration has not been invested in capital gain account scheme before the due date of the filing of return under section 139(1).

Further, the assessee claimed that investment in flat is equivalent to construction of residential house and since investment has been made within three years from transfer of the original asset therefore assessee is entitled to deduction under section 54. The assessee has submitted that the CBDT in the Circular No. 471 dated 15-10-1986 and Circular No. 672 dated 16-10-1993 has considered booking of the flat as construction for the purpose of section 54 whereas according to the revenue, those circulars are only applicable to booking of flats under self-financing schemes of Delhi Development Authority and similar institutions.

In the instant case, the assessee has made entire payment within the period of three years from the date of the transfer of original asset, and, therefore, the amount has to be treated as invested in purchase/construction. The provisions of section 54 nowhere prescribe construction of the house should be completed and the prime requirement is investment in new residential house within the prescribed period. Thus, the assessee has complied the provision of section 54 in substance and, therefore, the Commissioner (Appeals) is not justified in confirming rejection of deduction under section 54.

SMT. Harminder Kaur v. Income Tax Officer Ward

Case Law 3:

Where issue raised about eligibility for deduction under section 80-IA in respect of furnace undertaking of applicant is found already pending before Income tax authority, bar in terms of section 245R (2) is

Direct Tax : Case Laws

found attracted and therefore, application is not admitted and consequently rejected.

Applicant-company engaged in business of manufacturing of graphite electrode, graphite equipment, and generation of power set up new furnace undertaking. In the return for assessment year 2018-19, the applicant had claimed deduction under section 80-IA in respect of profit derived from generation of power. Applicant has filed the present application on issue as to whether the applicant is eligible for deduction under section 80-IA in respect of its furnace undertaking on the profits and gains derived from generation of power.

The objection raised by department is that issue in respect of which the present application was filed, was one of the reasons for issue of notice under section 143(2) and, therefore, the proceeding was already pending before the Income Tax Authority prior to filing of the present application. Accordingly, the application was not liable to be admitted under section 245R(2).

As regards objection of the applicant that no specific issue of pendency was raised in the report of the Commissioner, the matter of pendency of the issue before any Income Tax Authority is required to be decided by the Authority while adjudicating the issue of admission of the application. Therefore, the issue of pendency can be raised even in the course of hearing case. Rather the conduct of the applicant is not found transparent in this case as the fact regarding prior issue of notice under section 143(2) for Assessment year 2018-19 was not mentioned in the application filed before the Authority. As the said notice was received prior to filing of the application, the applicant should have disclosed this fact in the application.

With regard to no notice under section 143(2) for the assessment year 2019-20, it is found that in the questions raised no assessment year is mentioned. Further, the eligibility of deduction under section 80-IA has to be decided in the first year of claim.

Once the claim is found eligible in the first year of claim the taxpayer is entitled for deduction in all the subsequent years and vice versa. Further, as per the provisions of the Act, it is not necessary that the issues raised in the application should be pending in all the years involved. Even if the issue is pending in a single year, it makes the application ineligible for admission under section 245R(2).

In view of the foregoing, it is found that the issue involved in the questions raised in the present application was already pending before the Income Tax Authority and the bar in terms of section 245R(2) is found attracted in this case and therefore, the application is not admitted and consequently rejected.

Authority For Advance Rulings v. Graphite India Ltd.

Direct Tax Notifications

1. **Section 48 of The Income Tax Act, 1961 on Capital Gains shows the Computation of Notified Cost Inflation Index**

   (Notification No. 73/ 2021/F.No.370142/10/2021-TPL)

   In exercise of the powers conferred by section 48 of the Income tax Act, 1961, the Central Government hereby makes the following amendment in the notification, vide number S.O. 1790(E), dated the 5th of June 2017.

   Link:
   https://www.incometaxindia.gov.in/communications/notification/notification44_2017.pdf

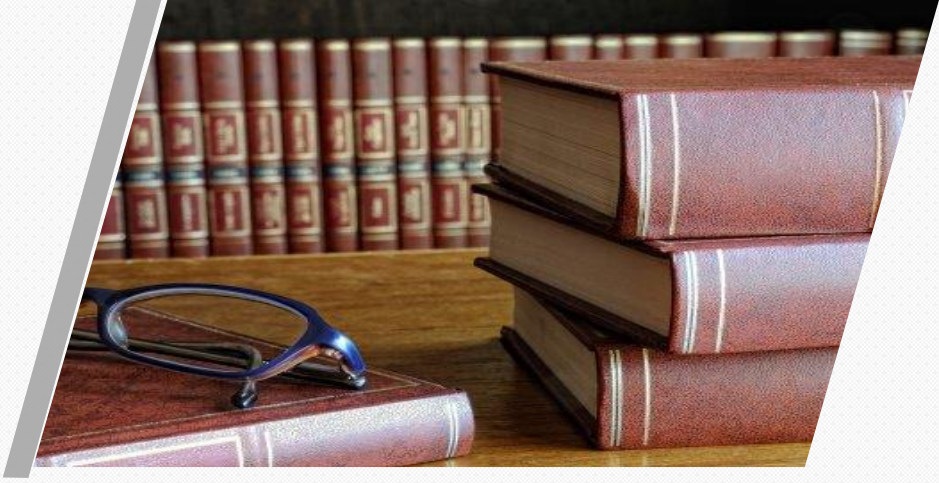
2. **In the said notification, in the Table, after serial number 20, the following serial number and entries relating thereto, shall be inserted, namely-**

Sl. No.	*Financial Year*	*Cost Inflation Index*
" 21	*2021-2022*	*317"*

   This notification shall come into force with effect from 1st day of April 2022.

   Link:
   https://www.incometaxindia.gov.in/communications/notification/notification_73_2021.pdf

Indirect Tax : Case Laws



Case Law 1:

No Reversal of ITC in respect of Normal Loss of Inputs inherent to a manufacturing process

The petitioners are engaged in the manufacture of MS Billets and Ingots. There is a loss of a small portion of the inputs, inherent to the manufacturing process. The impugned orders seek to reverse a portion of ITC claimed by the petitioners, proportionate to the loss of the input, referring to the provisions of Section 17(5)(h) of the GST Act.

The situations as set out in clause (h), however indicates loss of inputs that are quantifiable and involve external factors. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.

Such that in the case of Rupa & Co. Ltd. V. Cestat, Chennai (2015 (324) ELT 295), a certain amount of input had been utilised by the assessee in the manufacturing process, whereas the input in the finished product was marginally less. The department, thus proceeded to reverse the cenvat credit on the difference between the original quantity of input and the input in the finished product.

However, the Division Bench of the Court noticed that some amount of consumption of the input was inevitable in the manufacturing process. Therefore, the said bench held that cenvat credit should be granted on the original amount of input used notwithstanding the entire amount of input would not figure in the finished product.

In the light of the above judgement, it was held that reversal of ITC referring Section 17(5)(h) of the said act by the revenue, in case of loss of input inherent to manufacturing process is misconceived, as such loss is not covered by the situations under Section 17(5)(h) of the said act. Thus, the impugned orders to the above extent were set aside.

[Writ Petition No. 2885 of 2021, M/s ARS Steels & Alloy International Pvt. Ltd.Vs State Tax Officer, Judgement Dated: 24th June 2021]

Case Law 2:

Chhattisgarh HC grants relief to BALCO; Stays order denying ITC due to GSTR 2A-3B mismatch

Assessee was denied ITC based on mismatching of Input tax credit availed in Form GSTR-3B with the details furnished by suppliers in Form GSTR-2A for the period 2018-19. Assessee contends that prior to insertion of Section 16(2)(aa) vide Finance Act, 2021, CGST Act has no provision which empowers the Revenue Authorities to deny

credit basis matching of Forms GSTR 3B & 2A.

Chhattisgarh HC admits writ petition challenging order denying ITC on ground of mismatch of ITC availed in Form GSTR-3B with details in Form GSTR-2A for the period 2018-19.

Assessee prays that the action of authorities is in contradiction of GST Council Press release dated May 04,2018 stating that there shall not be automatic reversal of credit from buyer on non-payment of GST by seller and CBIC circular No. 59/33/2018-GST which made it clear that refund of unutilized ITC cannot be denied where same does not match with Form GSTR-2A. Therefore, Assessee relying on the decision of Madras HC in the case of DY Beathel Enterprises, pleads that ITC cannot be denied on the account of shortcoming on supplier's part. Chhattisgarh HC takes notice of submission and grants stay on recovery and restraints Revenue to take any coercive steps on assessee depositing 5% of demand within 15 days.

[Writ Petition No. 94 of 2021, M/s Balco Vs Union of India]

Case Law 3:

RWA liable to GST not on entire member's contribution but amount exceeding Rs. 7500, rules Madras HC

Assessee filed a writ petition with a request to quash CBIC Circular No.109/28/2019- GST dated July 22,2019 and Tamil Nadu AAR ruling in TVH Lumbini Square which stated that entire member's contribution towards maintenance charges collected by RWA is taxable where same exceeds Rs. 7500/month. Revenue takes the ground that exemption is only available if maintenance charges do not exceed Rs.7500 per month per member and in case charges exceed the said amount, the entire amount will be taxable and Additionally, Revenue avers that exemption, if allowed, should be allowed only to middle housing societies not to high end housing societies.

However, Madras HC rules that Resident Welfare Association (RWA) is liable to GST on member's monthly subscription only on the amount exceeding Rs 7,500 and not on entire amount.

[Greenwood Owners Association Vs Union of India]

Indirect Tax Notifications & Circulars

S. No	Notifications

1. Seeks to waive penalty payable for non-compliance of provisions of Notification No. 14/2020 dated 21st March 2020

CBIC vide Notification No. 28/2021 – Central Tax waives the amount of penalty payable by a registered person under section 125 of the CGST Act, 2017 for non-compliance of the provisions of Notification No.14/2020 – Central Tax, dated 21st March 2020 between the period from 1st December 2020 to 30th September 2021.

Notification No. 14/2020 – Central Tax had been issued requiring Dynamic Quick Response (QR) code on B2C invoice issued by taxpayers having aggregate turnover of more than 500 crore rupees in a financial year

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-28-central-tax-english-2021.pdf

https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-14-central-tax-english-2020.pdf

❖ CIRCULARS :

1. Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination)

CBIC vide Circular No. 151/05/2021 – GST seeks to clarify applicability of GST on the said services as below:

- Services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission educational institution is exempt from levy of GST under S. No. 66(aa) of Notification No. 12/2017-Central Tax (Rate)

- Input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and question papers etc., when provided by such Boards is also exempt from GST under S. No. 66(b)(iv) of the said notification.

- GST at the rate of 18% applies to other services provided by such boards to authorize them to provide their respective services.

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_151.pdf

Indirect Tax Notifications & Circulars

2. Clarification regarding applicability of GST on supply of food in Anganwadis and Schools

CBIC vide Circular No. 149/05/2021 – GST seeks to provide clarity on services provided to an educational institution by way of serving of food (catering including mid-day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations under Entry 66 (b)(ii) of Notification No. 12/2017- Central Tax (Rate) dated 28th June 2017.

Further, an Anganwadi interalia provides pre-school non-formal education. Hence, anganwadi is covered by the definition of educational institution (as pre-school). Thus, serving of food to anganwadi shall also be covered by the said entry and is exempt from levy of GST, whether sponsored by government or through donation from corporates.

https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_149.pdf

Legal & Regulatory Notifications

S. No	Notifications

1. COMPANIES (INCORPORATION) FOURTH AMENDMENT RULES, 2021

(MCA notification dated June 07, 2021)

MCA vide its notification dated June 07, 2021, has amended the Companies (Incorporation), Rules, 2014 through the Companies (Incorporation) Fourth Amendment Rules, 2021, which shall come into force with effect from June 07, 2021.

Through this Amendment, the facility of obtaining Shops and Establishment Registration is also added in the Form AGILE-PRO and consequently the existing form "AGILE-PRO" is replaced by "AGILE-PRO-S". Further, the single enabling window already provides the following services:

1. PAN Allotment
2. TAN allotment
3. EPFO Registration
4. ESIC Registration
5. Profession Tax (Maharashtra only)
6. GSTIN
7. Opening of Bank Account

Link:
https://www.mca.gov.in/bin/dms/getdocument?mds=sbRk0d1avtQVQZrw%252BKS2GA%253D%253D&type=open

2. (ACCOUNTING, AUDIT, TRANSFER AND REFUND) AMENDMENT RULES, 2021

(MCA notification dated June 09, 2021)

MCA vide notification dated June 09, 2021 has amended the IEPF (Accounting, Audit, Transfer and Refund) Rules, 2016 through (accounting, audit, transfer and refund) amendment rules, 2021 which shall come into force w.e.f. June 09, 2021.

The said rules the manner of transfer of shares under section 90(9) [after NCLT order under the provisions of SBO] to the IEPF.

The rules provide that the shares shall be credited to DEMAT Account of the IEPF Authority within a period of 30 days of such shares due to be transferred to the IEPF Fund with following important conditions:

Legal & Regulatory

- Transfer of shares by the companies to the IEPF Fund shall be deemed to be transmission of shares and the procedure to be followed for transmission of shares shall be followed by the companies while transferring the shares to the IEPF fund;
- Such shares shall be transferred to the IEPF Authority without any restrictions and no application shall be filed for claiming back such shares from the IEPF Authority;
- The voting rights on shares transferred to the IEPF Fund shall remain frozen. However, for the purpose of the SEBI (SAST) Regulations, 2011, the shares which have been transferred to the IEPF Authority shall not be excluded while calculating the total voting rights.

Link: https://egazette.nic.in/WriteReadData/2021/227437.pdf

3. THE COMPANIES (MEETINGS OF BOARD AND ITS POWERS) AMENDMENT RULES, 2021

(MCA notification dated June 15, 2021)

Ministry of Corporate Affairs (MCA) vide its notification dated June 15, 2021, has amended the Companies (Meetings of Board and its Powers) Rules, 2014 through the Companies (Meetings of Board and Its Powers) Amendment Rules, 2021, which shall come into force with effect from June 15, 2021.

Through this Amendment, Rule 4 related to the matters not to be dealt with in a meeting through video conferencing or other audio visual means has been omitted. Accordingly, now any matters can be dealt with in a meeting through video conferencing including the following matters which were previously dealt only through physical meeting:

- approval of the annual financial statements;
- the approval of the Board's report;
- the approval of the prospectus;
- the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any; and
- the approval of the matter relating to amalgamation, merger, demerger, acquisition, and takeover, in any meeting held through video conferencing or other audio visual means.

Link: https://egazette.nic.in/WriteReadData/2021/227614.pdf

4. EGM CAN BE HELD THROUGH VIDEO CONFERENCE (VC) OR OTHER AUDIO-VISUAL MEANS (OAVM) UP TO DECEMBER 31, 2021

(MCA circular dated June 23, 2021)

MCA vide circular no 10/2021 dated June 23, 2021 allowed companies to conduct their EGMs through VC or OAVM up to December 31, 2021 in accordance with MCA Circular Nos. 14/2020 & 17/2020 dated April 8, 2020 & April 13, 2020. Previously, the last date was June 30, 2021.

Legal & Regulatory

Link: https://mca.gov.in/bin/ebook/dms/getdocument?doc=MjA1NTg=&docCategory=NotificationsAndCirculars&type=download

5. ACCOUNTING STANDARDS RULES, 2021

(MCA notification dated June 23, 2021)

MCA vide notification dated June 23, 2021 has prescribed the Companies (Accounting Standards) Rules 2021, which shall come into force w.e.f. June 23, 2021.

As per the said rule threshold limit of turnover and borrowings for Small and Medium Sized Company (SMC) has been enhanced. Now, SMC means a company whose turnover (excluding other income) does not exceed Rs. 250 crore and does not have borrowings (including public deposits) in excess of Rs. 50 crores at any time during the immediately preceding accounting year. Previously, the threshold limit was Rs. 50 crore and Rs. 10 crores for turnover and borrowings, respectively.

Further, an existing company which was previously not an SMC and subsequently becomes an SMC, shall not be qualified for exemption or relaxation in respect of Accounting Standards available to an SMC until the company remains an SMC for two consecutive accounting periods.

Link: https://egazette.nic.in/WriteReadData/2021/227890.pdf

6. FURTHER RELAXATION ON LEVY OF ADDITIONAL FEES IN FILING OF CERTAIN FORMS ON MCA PORTAL

(MCA circular dated June 30, 2021)

MCA vide circular no 11/2021 dated June 30, 2021, allows further extension of timelines specified in Circular No. 06/2021 dated May 03, 2021, MCA has further granted additional time for filing of various forms (other than charge related forms) under the Companies Act and LLP Act due for filing during April 01, 2021 to July 31, 2021 up to August 31, 2021 without any additional fees.

Link: https://mca.gov.in/bin/ebook/dms/getdocument?doc=MjE2OTA=&docCategory=NotificationsAndCirculars&type=download

Column

Interest earned out of share application is adjustable towards share issue expenditure

By – Gursimaran Singh

IBA

The issue with respect to tax treatment of interest earned out of the share application money deposited with a bank due to a statutory requirement has been a matter of debate before the Courts. Being a subject matter of discussion for a number of years, closure for the same has been achieved after the Ruling of the Apex Court of India. Laid before is the case scenario wherein the Honourable Court has given its verdict to help bring resolution for such type of cases prospectively.

Case Scenario :

Whether interest accrued on account of deposit of share application money is not taxable income and whether the same is liable to be set off against public issue expenses.

Issue I : Interest accrued on account of deposit of share application money is not taxable income

Relevant Provision:

As per Section 42 (Offer or Invitation for Subscription of Securities on Private Placement) of the Companies Act, 2013 a company may, subject to the provisions of this section, make a private placement of securities. Further, the company shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of 60 days.

The monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than (inter-alia)-

- For adjustment against allotment of securities
- For the repayment of monies where the company is unable to allot securities

As per the requirement of the statute, there may arise a situation wherein interest shall arise on

the monies deposited in a separate bank account. The interest component is to be viewed as completely incidental to the compliance of the provisions and not in connection with the income earned by the company. As many would refute the fact that it is the other way around, the same is supported by judicial precedents, namely –

- CIT (Ahmedabad) v/s Shree Rama Multi Tech Ltd (2018) (Supreme Court)
- CIT v. Bokaro Steel Ltd. (1999) (Supreme Court)

From the above stated matter, it can be said that the money/(ies) so received shall be treated as exempt income in the hands of the assessee company and not liable to income tax.

Issue II : <u>Interest accrued on account of deposit of share application money is liable to be set off against public issue expenses</u>

Relevant Provision :

While there is no relevant provision to substantiate the correct treatment in such a case, reliance on judicial precedents as referred to in above can be made.

In the case of 'CIT (Ahmedabad) v/s Shree Rama Multi Tech Ltd', interest earned from share application money statutorily required to be kept in separate account was being adjusted towards the cost of raising share capital. The rationale followed in this judgment is that if there is any surplus money which is lying idle and it has been deposited in the bank for the purpose of earning interest then it is liable to be taxed as income from other sources but if the income accrued is merely incidental and not the prime purpose of doing the act in question which resulted into accrual of some additional income then the income is not liable to be assessed.

Moreover, the issue of shares relates to capital structure of the company and hence expenses incurred in connection with the issue of shares are to be capitalize, hence, the companies who wanted to go public had an option of not capitalising the expenses & treating it as an asset but rather setting it off from the incidental bank interest earned on account of complying with the Law because the purpose of such deposit is not to make some additional income but to comply with the statutory requirement, and interest accrued on such deposit is merely incidental.

Hence, as per the article above it can be adjudged that the interest accrued on account of deposit of share application money is not taxable income and the same is liable to be set off against public issue expenses.

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Upcoming Compliances

Date	Compliance
July 13, 2021	Due Date for filing of FORM GSTR-1 for the quarter ending June 2021 for the registered taxpayers who have opted QRMP scheme.
	Due Date for filing of FORM GSTR-6 for the month of June 2021 for the registered taxpayers who have taken Input Service Distributor (ISD) registration.
July 15, 2021	Quarterly statement of TCS deposited for the quarter ending June 30, 2021
	Statement of Deduction of Tax (Quarter IV-FY 20-21)
July 20, 2021	Due Date for filing of FORM GSTR-3B for the month of June 2021 for the registered taxpayers who have opted for monthly filing of GST Returns.
July 22 2021	Due Date for filing of FORM GSTR-3B for the quarter ending June 2021 for the registered taxpayers who have opted QRMP scheme and having principal place of business in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep.
July 24, 2021	Due Date for filing of FORM GSTR-3B for the quarter ending June 2021 for the registered taxpayers who have opted QRMP scheme and having principal place of business in the state of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.
July 31, 2021	Equalization Levy Statement in Form No. 1 (FY 20-21)
	Issuance of Form 16 to employees
	Quarterly statement of TDS deposited for the quarter ending June 30, 2021

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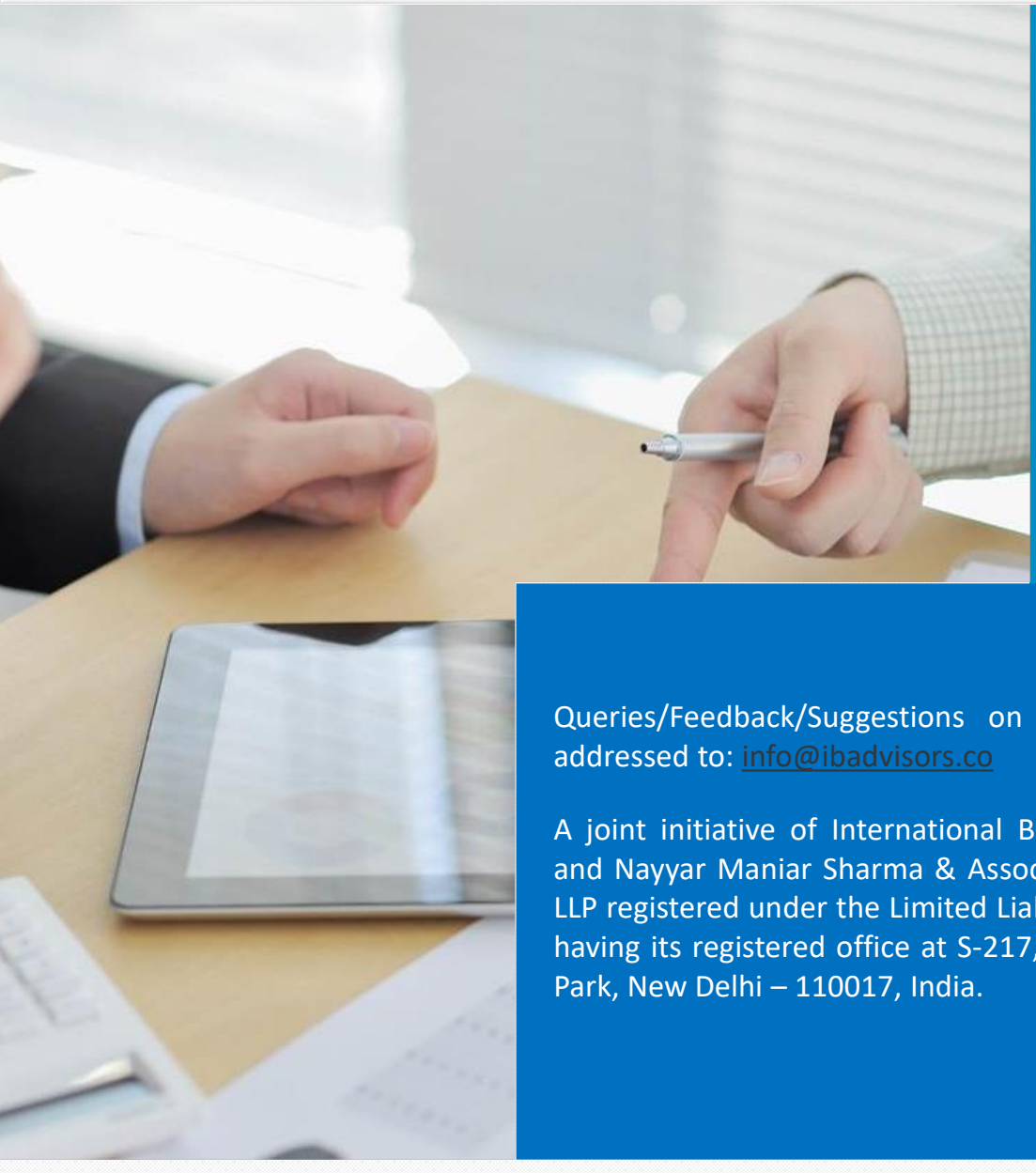

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