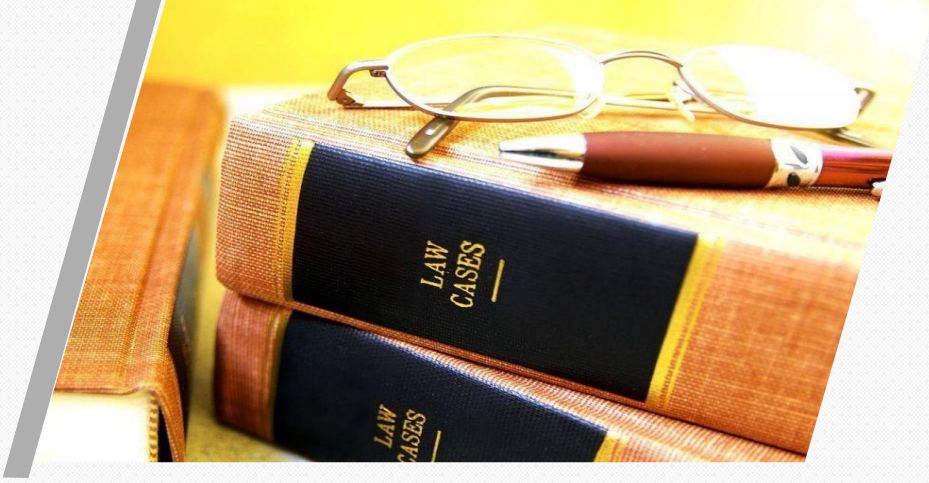
INTERNATIONAL BUSINESS ADVISORS

CONNEKT

February 2024

Content

Direct Tax Case Laws



Case Law 1:

HIGH COURT OF DELHI

Adobe Systems Incorporated v. Assistant Director of Income-tax

69 taxmann.com 228 (Delhi)/[2016] 240 Taxman 353 (Delhi)/[2017] 292 CTR 407

The company, based in Delaware, USA, specialized in software solutions for network publishing. It had a wholly owned subsidiary in India, Adobe India, providing software R&D services. The Assessing Officer initially accepted the cost plus 15% fees for R&D as at Arm's Length Price (ALP). Later, the officer sought to reopen the assessment, claiming Adobe India constituted a PE under Article 5(1) of India-US DTAA.

Consequently, a portion of the profits attributed to Indian activities was deemed taxable. The reassessment proceedings were initiated despite the assessee's objections being rejected. The Assessing Officer believes that the income of the assessee has escaped assessment due to the assumption that R&D services by Adobe India were conducted by the assessee. India-USA DTAA specifies that only profits attributable to a PE are taxable in the contracting State of the PE. Even if Adobe India is considered the assessee's PE, the entire income related to its activities has already been taxed in its hands.

The Assessing Officer's attempt to assess profits using a different method is not justified, especially when the DRP did not uphold this approach. The notices and proceedings initiated by the Assessing Officer are deemed to be set aside based on the above conclusions. Even if the assessee had a PE in India, there is no reason to believe that any part of its income has escaped assessment under the Act. The view that Adobe India constitutes the assessee's PE is not supported by the facts, as a subsidiary is a separate legal entity, and its activities and income have already been taxed. The Assessing Officer's interpretation of PE under different articles of the India-US DTAA is found to be erroneous and unsustainable. No evidence supports the claim that Adobe India acts as a Service PE, and the agreement terms do not indicate the assessee's provision of services in India. The view that Adobe India constitutes the assessee's PE under article 5(5) is also unsustainable, as there is no material suggesting that Adobe India acts as an agent for the assessee.

The impugned notices and orders are set aside, and the petition is allowed.

Case Law 2:

IN THE ITAT, MUMBAI BENCH 'E'

Tata Sons Ltd v. Commissioner of Income-tax

2024] 158 taxmann.com 601 (Mumbai - Trib.)

In the context of the Assessment Year 2009-10, a notable legal scrutiny revolved around the application of Section 2(47) of the

Direct Tax : Case Laws

Income-tax Act, 1961, coupled with Section 45, regarding capital gains arising from the reduction of share capital. The party in question, holding 288.13 crore equity shares in TTSL (TT Services Limited), witnessed a reduction in its shareholding following TTSL's financial losses. This reduction, implemented through a scheme of arrangement and restructuring, halved TTSL's paid-up equity share capital from 634.71 crore shares to 317.35 crore shares, resulting in a proportional reduction in the party's shareholding.

The crux of the matter rested on the party's claim of a long-term capital loss due to the reduction of capital. Initially permitted by the Assessing Officer, the Commissioner took a divergent stance, arguing that since no consideration had accrued to the party from the reduction of capital, the computation mechanism specified under Section 48 failed, precluding the computation of a long-term capital loss.

The question was whether the reduction of capital constituted the extinguishment of rights on shares, thus falling within the purview of Section 2(47) and allowing the party to claim a long-term capital loss. The ruling affirmed this interpretation, crucially categorizing the loss incurred by the party as a genuine capital loss rather than a notional one.

Moreover, the judgment clarified that the loss on the reduction of shares should be recognized as a capital loss, even if no consideration was received. This underscored the financial impact suffered by the party, providing grounds for the allowance or set-off of the capital loss against any other capital gains.

In conclusion, the decision favored the party, acknowledging the reduction of capital as a transfer under Section 2(47) and confirming the legitimacy of the capital loss incurred. This ruling establishes a precedent for similar cases, offering clarity on the taxation treatment of capital losses arising from corporate restructuring or the reduction of share capital without corresponding consideration.

Direct Tax Circulars & Notifications

S. No	Notification

1. Introduction of a new clause under section 43B of the Income Tax Act 1961 by Finance Act 2023.

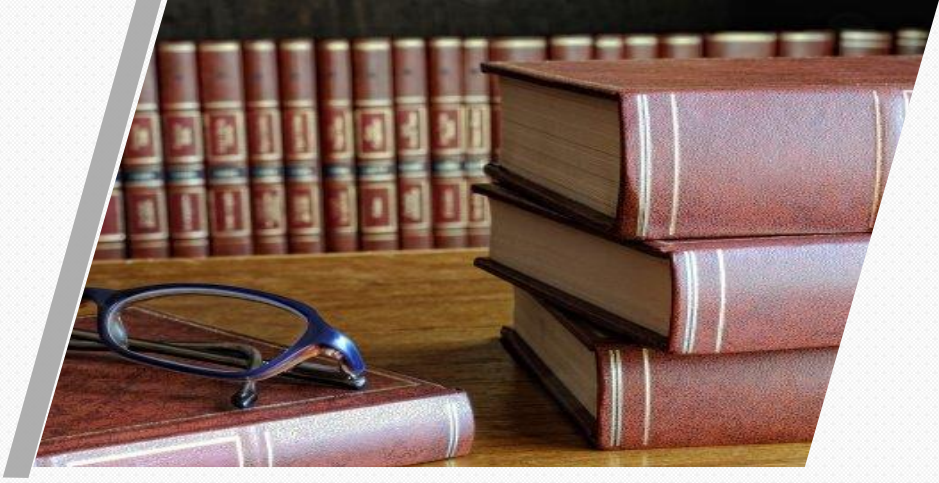
- A new clause {Clause(h)} is added under section 43B, in relation to delay in payments to entities registered under MSME Act.
- As per the added clause, if any amount remains unpaid on year end to creditors registered under MSME beyond 45 days or date mentioned in agreement whichever is earlier shall be disallowed and shall be added to taxable income.
- The wording 45 days is substituted as 15 days in case there is no agreement

This amendment is applicable w.e.f 1st April 2024.

We have explained this with the given example:

Case	Invoice raised	Payment made	Expense Allowed/Disallowed
1	Before 31st March	Within 15/45 days on or before 31st March	Allowed
2	Before 31st March	After 15/45 days but on or before 31st March	Allowed
3	Before 31st March	Within 15/45 days but after 31st March	Allowed
4	Before 31st March	After 15/45 days and after 31st March	Disallowed u/s 43B(h) and will be allowed in the year in which it is actually paid

Indirect Tax : Case Laws



Case Law 1:

Given that the assessee had been arrested and had admitted to obtaining GST registration for multiple firms under the same PAN, issuing invoices without actual supply, and had already made a payment of Rs. 81 lakhs towards the tax amount, there was no necessity for the additional detention of the assessee.

After a search and seizure operation at assessee's residence, the assessee was arrested based on allegations of running multiple firms on the same PAN without conducting any business or supplying goods from registered premises. The accused was accused of committing tax fraud amounting to Rs. 144 crores.

Subsequently, the applicant, who is the assessee in this case, filed a bail application seeking release. The court, after considering the circumstances, noted that the applicant had admitted during his statement that he obtained GST registration for the implicated firms under the same PAN. He acknowledged issuing invoices without actual supply of goods, availing ITC without receipts, and issuing bogus invoices.

The department had recorded the statement of the applicant, and the maximum punishment for the offense was imprisonment up to five years. Notably, the applicant had already paid a certain amount towards the disputed tax. The offense fell under the CGST Act, and though some exceptions were compoundable, further incarceration was deemed unnecessary.

Examining the facts, the court observed that the detention of the applicant in jail was not required. The dispute centered around tax evasion, and the applicant had already made a payment of Rs. 81.00 lacs towards the disputed tax amount. The offense, under the CGST Act, had limited exceptions that were compoundable.

Highlighting that the applicant was not involved in heinous crimes like murder or terrorism, the court reiterated the basic rule: 'bail is the rule, and jail is the exception.' Despite serious financial impropriety allegations, the court ruled in favor of the assessee, determining that he should be released on bail under Section 132 of the Central Goods and Services Tax Act, 2017/Maharashtra Goods and Services Tax Act, 2017, and Section 439 of the Code of Criminal Procedure, 1973.

In the matter of M/s. Arihant Traders vs Directorate General of GST Intelligence

Indirect Tax Notifications & Circulars

S. No	Notifications

1. Deadline Extension: GSTR-3B Filing for November 2023 in Specific Tamil Nadu Districts

CBIC vide Notification No.01/2024-Central tax dated 5th Jan ,2024, notifies that the last day to file return for the month of November 2023 will be 10th of January,2024 instead of 20th December 2023 for the districts of Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi, and Virudhunagar in the state of Tamil Nadu.

Link: https://taxinformation.cbic.gov.in/view-pdf/1009980/ENG/Notifications

2. Deadline Extension: GSTR-9 & 9C Specific Tamil Nadu Districts

CBIC vide Notification No.02/2024-Central tax dated 5th Jan ,2024, notifies that the last day to file GSTR 9 & 9C will be 10th of January,2024 instead of 31st December 2023 for the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu.

Link : https://taxinformation.cbic.gov.in/view-pdf/1009981/ENG/Notifications

3. CBIC revokes Special Procedure Notification for Certain Goods, effective 1st January 2024

CBIC vide Notification No.03/2024-Central tax dated 5th Jan ,2024, rescinds the special procedure outlined in Notification No. 30/2023-Central Tax (dated July 31, 2023) for registered persons manufacturing specific goods under section 148 of the CGST Act. The rescission, effective from January 01, 2024, does not impact prior actions taken under the earlier notification.

Link : https://taxinformation.cbic.gov.in/view-pdf/1009982/ENG/Notifications

4. CBIC notified New Special Procedure for Registration and Special Monthly Returns by Manufacturers of Tobacco, Pan Masala, and Similar Items

CBIC vide Notification No.04/2024-Central tax dated 5th Jan ,2024, introduces a special procedure for registered persons engaged in manufacturing specific goods listed in the schedule. It mandates the electronic submission of details of packing machines in FORM GST SRM-I within specified timelines given in the below table. The notification outlines requirements for installation, capacity changes, unique registration numbers, and declarations related to production capacity. Additionally, it requires the electronic submission of details regarding disposed machines in Table 8 of FORM GST SRM-I. Furthermore, registered persons must submit a special monthly statement (FORM GST SRM-II) on the common portal by the tenth day of the succeeding month. Also, this notification outlines a special procedure for manufacturing-specific goods, registered taxpayers must comply with the requirement of uploading a Chartered Engineer's certificate (FORM GST SRM-III) for machines declared in Table 6 of FORM GST SRM-I.

Indirect Tax Circulars & Notifications

S. No	Circulars

In instances of subsequent amendments to machine details, taxpayers are obligated to upload a fresh certificate reflecting the updated information.

Table for timelines for the above compliance activities

Compliance Activity	Form and Table	Specified Period for Compliance
Installation of a new filling and packing machine	FORM GST SRM-I	Within 15 days of installation
Installation of a new additional filling and packing machine	FORM GST SRM-I, PART (B) of Table 6	Within 24 hours of installation
Change in declared capacity of machines	FORM GST SRM-I, Table 6A	Within 24 hours of the change
Unique registration number generation	FORM GST SRM-I	Automatically generated
Submission of production capacity	FORM GST SRM-I, Table 7	Within 15 days of such submission
Submission of pre-existing production capacity	FORM GST SRM-I, Table 7	Within 30 days of issuance of the notification
Disposal of existing filling and packing machine	FORM GST SRM-I, Table 8	Within 24 hours of disposal

Link: https://taxinformation.cbic.gov.in/view-pdf/1009983/ENG/Notifications

Legal & Regulatory Notifications

S. No	Notifications

MINISTRY OF CORPORATE AFFAIRS

1. COMPANIES (LISTING OF EQUITY SHARES IN PERMISSIBLE JURISDICTIONS) RULES, 2024

(Circular dated January 24, 2024)

Ministry of Corporate Affairs, vide its circular dated January 24, 2024 mandates that every unlisted public company who intends to get its equity shares listed with any recognised stock exchange in addition to be in compliance with such conditions as may be specified by the Securities and Exchange Board of India shall also file the prospectus in e-Form LEAP-1 along with the fees within a period of seven days after the same has been finalised and filed in the permitted exchange.

The rule does not apply to:

- Nidhi company
- Section 8 company
- A company that has any outstanding deposits accepted from the public
- A company that has a negative net worth
- A company that has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holder or any other secured creditor
- Provided that this clause shall not apply if the company had made good the default and a period of two years had lapsed since the date of making good the default
- A company that has made any application for winding-up
- A company that has defaulted in filing of an annual return or financial statement under the Act within the specified period

Link:
https://www.mca.gov.in/bin/dms/getdocument?mds=qcIDsiX0Le%252F2EMv7m1iyEw%253D%253D&type=open

Column

Virtual Digital Assets and Taxes in India

By – Rupal Prajapati

IBA

Ever wondered how virtual digital assets are taxed in India?

How do virtual digital assets simplify transactions, bringing an innovative twist compared to traditional payments, and what about their taxation..!

Do virtual digital assets in India puzzle you when it comes to taxation? Let's discover how taxes work for virtual assets.

Ready to simplify the tax mystery?

INTRODUCTION :

In the fast digital world, knowing how taxes work for virtual assets in India is key for taxpayers and investors. Explore how taxes work for digital assets in India, giving you a clear picture of what taxpayers and investors should keep in mind.

In 2009, Bitcoin, the first cryptocurrency, was created by someone named **Satoshi Nakamoto.** Now, there are thousands of other digital currencies like Ethereum and Ripple etc.

A recent study says India's crypto market is growing fast, and Indians might invest **$241 million in crypto by 2030.** Right now, India has the most crypto owners worldwide.

Previously, there was no legislation governs, regulates, or prohibits dealing in cryptocurrencies in India. But, in the Union Budget 2022 the Government has cleared that it won't ban Indians from dealing in cryptocurrencies but aims to regulate it.

New provisions in the Income-tax Act are added to regulate crypto investments, NFTs, and other digital assets, applicable from the assessment year 2023-24. Any transfer of virtual assets from April 1, 2022, is taxed under the new provisions outlined in the Finance Bill, 2022.

CLASSIFICATION OF VIRTUAL DIGITAL ASSETS :

The Govt. did not clarify if the virtual digital assets will be a currency or security. In the absence of any such clarification, the virtual digital asset should be classified as a capital asset.

Therefore, cryptocurrencies or NFTs should be deemed capital assets, if purchased for investments by the taxpayers. Therefore, any gain arising on the transfer of such assets shall be taxable as capital gains. But if the transactions are frequent and substantial, it's seen as trading, and the income is taxed as business income.

TAXATION FRAMEWORK :

- Effective from April 1, 2022, any money earned from selling virtual digital assets will be taxed at a rate of 30%, with additional charges like surcharge and cess according to Section 115BBH.
- VDA, or virtual digital assets, is broadly defined to include things like information, codes, numbers, or tokens—excluding regular currencies. These are created using cryptographic methods or other ways.
- No deductions in respect of any expenses or allowances, except for the acquisition cost, when it comes to virtual digital assets. Furthermore, any losses incurred from selling these assets cannot be used to offset other income or carried forward for future deductions.
    - ✓ Infrastructure cost incurred on mining crypto assets will not be treated as cost of acquisition.
- For the purpose of Tax Deducted at Source (TDS), section 194S was inserted with effect from 1 July 2022. It mandates that a person must deduct 1% tax when making a payment or crediting any amount to a resident for the transfer of a VDA, if the transactions exceed ₹50,000 (or even ₹10,000 in some cases) in the same financial year.
- In the event of gifting VDAs, the tax payment would be made by the recipient.
- Tax on VDA is applicable to all investors, whether they are individuals or businesses, who transfer digital assets during the year.
- The tax rate is uniform for both short-term and long-term gains, and it covers all types of income earned by the investor.
- The GST treatment of virtual digital assets remains a topic of discussion. While the sale of cryptocurrencies is generally considered a supply of goods and attracts GST, clarity on specific transactions is evolving.

WHICH CRYPTO TRANSACTIONS ARE TAXED IN INDIA..?

If you participate in any of the listed transactions, a 30% tax will be mandatory.

- Using cryptocurrencies to buy things.
- Exchanging cryptocurrencies for other cryptocurrencies.
- Trading cryptocurrency for regular money like ₹(INR).
- Getting paid in cryptocurrency for a service.
- Receiving cryptocurrency as a gift.
- Mining cryptocurrency.
- Getting a salary in crypto.
- Staking crypto and getting benefits.
- Getting Airdrops.

EXCLUSIONS FROM VIRTUAL DIGITAL ASSETS :

- Gift cards or vouchers, being a record that you can use to get goods or services or a discount on them.
- Mileage points, reward points, and loyalty cards are records provided without direct money exchange as part of an award or promotional program. They can only be used to get goods or services or avail discounts on them.
- subscriptions to websites or platforms or applications.

DISCLOSURE OF VDA IN SCHEDULE OF ASSETS AND LIABILITIES :

The Ministry of Corporate Affairs (MCA) now requires companies to disclose gains and losses in virtual currencies, including reporting the cryptocurrency value on the balance sheet as of April 1, 2021. This move marks the government's initial steps in regulating cryptocurrencies.

It's important to note that this mandate is applicable only to companies, and individual taxpayers are not required to comply. However, reporting and paying taxes on cryptocurrency gains are obligatory for everyone.

CONCLUSION :

As virtual digital assets continue to shape the financial landscape, understanding their taxation is crucial for individuals and businesses alike. It is recommended that emphasizing the importance of staying informed, complying with regulations, and seeking help from experts to understand and manage the complex tax rules for virtual digital assets in India.

IBA NEWS

Celebrating Success

Congratulations to our newly qualified chartered accountants – Naman, Kunal and Nakul. Best wishes to Pranjal and Anuranjan for clearing one group of CA final. Their achievement not only reflects their individual excellence but also exemplifies the high standards of professionalism and expertise that we uphold here at IBA.

Dissecting Union Budget 2024

Our technical experts dissecting and analyzing Union Budget 2024. Wishing all a prosperous year ahead, fueled by knowledge, strategy, and informed decision-making!

Upcoming Compliances

Date	Compliance
February 11, 2024	Due Date for filing of Form GSTR-1 for the period January 2024 for the registered taxpayers who have opted for monthly filing of GST Returns
February 13, 2024	Due Date for submission of invoices through IFF under QRMP scheme for the period January pertaining to quarter January to March 2024 for the registered taxpayers who have opted for quarterly filing of GST Returns
	Due Date for filing of Form GSTR-6 for the period January 2024 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration
February 14, 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M 194S in the month of December, 2023
February 15, 2024	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2023.
February 20, 2024	Due Date for filing of Form GSTR-3B for the period January 2024 for the registered taxpayers who have opted for monthly filing of GST Returns
February 24, 2024	Due Date for filing of GSTR-3B and Challan Payment for the period January 2024 for the registered taxpayers who have opted for QRMP scheme.

Editorial Team

Vineet

Paridhi Agarwal

Himanshu Saluja

Alok Gupta

Sakshi Gogia

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.

Contact Us

S-217, Panchsheel Park,
New Delhi -110017

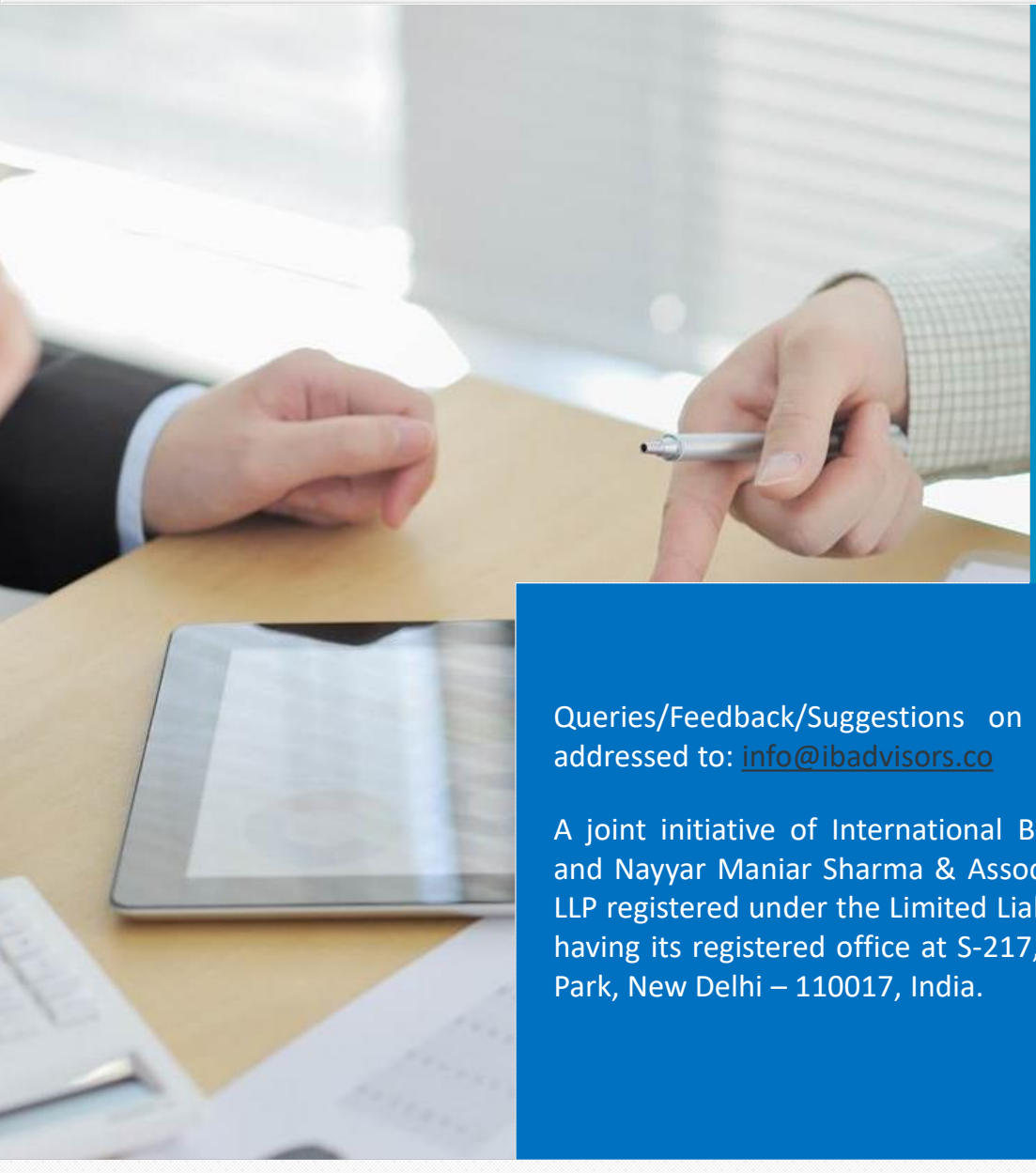
Mail Us
info@ibadvisors.co

Call Us
+91-11-40946000

Visit Us
www.ibadvisors.co

We have our branch offices in Gurgaon, Mumbai, Bangalore and New York and associate arrangements in other major cities of USA and India.

INTERNATIONAL BUSINESS ADVISORS



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

A joint initiative of International Business Advisors LLP (IBA) and Nayyar Maniar Sharma & Associates LLP (NMSA). IBA is a LLP registered under the Limited Liability Partnership Act, 2008 having its registered office at S-217, Ground Floor, Panchsheel Park, New Delhi – 110017, India.

For more information and past issues of ConneKt, kindly visit our website www.ibadvisors.co

You can also follow us at: