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Newsletter December 2024
(covering updates for the the month of November)

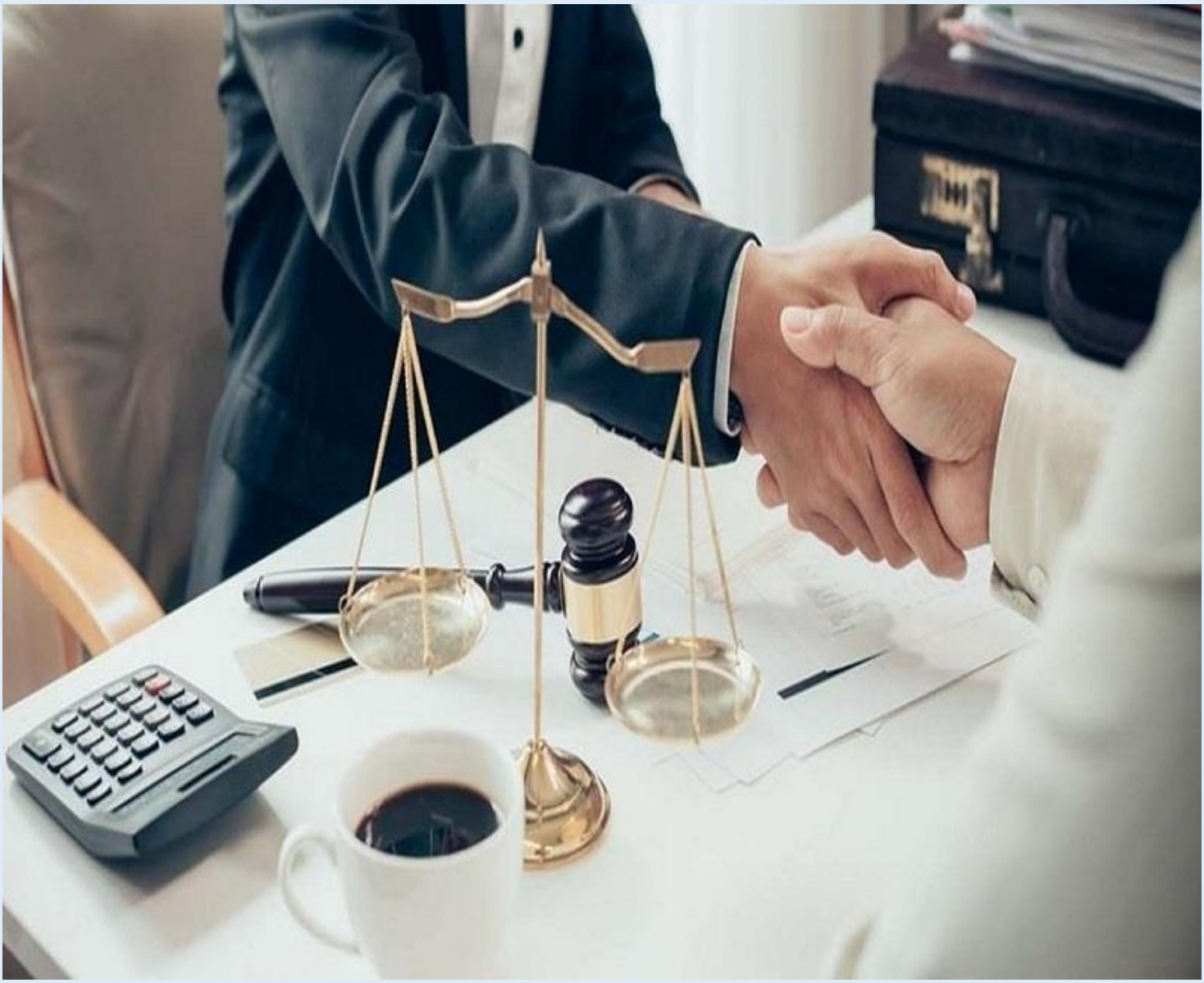

Table of Contents

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REGULATORY UPDATE
INCOME TAX

❖ **CBDT Notification No. 06/2024 dated 19.11.2024**

In exercise of the powers granted under the Income-tax Rules,1962 (ITR), the Director General of Income Tax (Systems), with the approval of the Board, has specified that the following Forms must be submitted electronically and verified as per the method outlined under Rule 131:

- **Form 42**: Appeal against the refusal to recognize or withdrawal of recognition from a provident fund
- **Form 43**: Appeal against the refusal to approve or withdrawal of approval from a superannuation fund
- **Form 44**: Appeal against the refusal to approve or withdrawal of approval from a gratuity fund

This notification will take effect from November 22, 2024.

❖ **CBDT Notification No. 123/2024 dated 28.11.2024**

The Central government has issued a notification exempting certain foreign diplomatic entities from the provisions of section 194N of the Income Tax Act, 1961(ITA), which mandates tax deduction at source (TDS) on specific cash withdrawals. The exemption applies to foreign representations approved by the Ministry of External Affairs, such as diplomatic missions, United Nations agencies, international organizations, consulates, and honorary consuls' offices. These entities are already exempt from taxes in India under the Diplomatic Relations (Vienna Convention) Act, 1972, and the United Nations (Privileges and Immunities) Act, 1947. This exemption will come into effect on December 1, 2024.

❖ **CBDT Notification No. 124/2024 dated 29.11.2024**

The Central Board of Direct Taxes (CBDT) has amended the ITR to introduce safe harbour provisions for foreign companies involved in diamond mining and raw diamond sales within designated special zones. These new rules set specific criteria for eligible businesses, requiring a minimum profit margin of 4% on gross receipts to qualify for safe harbour, thus eliminating the need for detailed transfer pricing assessments. The rules also impose restrictions on deductions, loss set-offs, and depreciation claims to simplify compliance. Furthermore, businesses under these provisions cannot invoke mutual agreement procedures under double taxation avoidance agreements.

❖ **CBDT Circular No. 15/2024 dated 04.11.2024**

The CBDT has set monetary thresholds for income-tax authorities to reduce or waive interest under the ITA. This mandates interest on overdue taxes, calculated at 1% per month, based on demand notices u/s 156. However, section 220(2A) allows certain authorities to reduce or waive this interest if specific conditions are met. According to the new circular, the Principal Commissioner of Income Tax (Pr.CIT) or Commissioner of Income Tax (CIT) can waive interest on amounts up to ₹50 lakh, while the Chief Commissioner of Income Tax (CCIT) or Director General of Income Tax (DGIT) can handle amounts between ₹50 lakh and ₹1.5 crore. For amounts exceeding ₹1.5 crore, the Principal Chief Commissioner of Income Tax (Pr.CCIT) has the authority to decide.

To qualify for a waiver or reduction, taxpayers must show that they are experiencing genuine hardship, that the delay was due to circumstances beyond their control, and that they have cooperated with any inquiries or recovery actions. The circular is effective immediately.

- **CBDT Circular No. 16/2024 dated 18.11.2024**

CBDT has issued a new circular, replacing all previous instructions regarding the condonation of delay in filing Form 9A/10 for the Assessment Year (A.Y) 2018-19 and subsequent years. Under the powers granted by section 119(2)(b) of the ITA, the circular delegates authority for handling delay condonation applications to different levels of income tax authorities. For delays of up to 365 days, the Pr. CITs and CITs are authorized to process applications. For delays exceeding 365 days, the Pr. CCITs, CCITs, and DGITs are responsible. Authorities must verify that the delay was due to a reasonable cause and that the case involves genuine hardship. Additionally, for Form No. 10, they must ensure the accumulated amounts are invested as required by section 11(5) of the ITA. Applications for condonation of delay must be filed within three years from the end of the relevant A.Y, and such applications should ideally be disposed of within six months from the month they are received. This delegation of powers also applies to pending applications as of the date of the circular's issuance.

- **CBDT Circular No. 17/2024 dated 18.11.2024**

CBDT, u/s 119(2)(b) of the ITA, issued Circular No. 6/2022 on March 17, 2022, and Circular No. 19/2023 on October 23, 2023, which condoned the delay in filing Form No. 10-IC for A.Y 2020-21 and 2021-22, provided specific conditions were met. Following further requests, the CBDT has now extended this provision to include delays in filing Form No. 10-IC or Form No. 10-JD for A.Ys 2020-21, 2021-22, and 2022-23. For delays up to 365 days, the Pr. CITs and CITs are authorized to admit and process applications. For delays exceeding 365 days, the Pr. CCITs, CCITs, and DGITs have the authority to handle such cases. To grant condonation of delay, the authorities must ensure that the taxpayer meets the following criteria:

(i) the return of income for the relevant year was filed on time,
(ii) the taxpayer opted for taxation u/s 115BAA or 115BAB, as applicable, in their ITR-6 form, and
(iii) there was a reasonable cause for the delay and the case involves genuine hardship. Additionally, applications for condonation must be submitted within three years from the end of the relevant A.Y, with applications filed after the circular's issue date adhering to this deadline.

The CBDT aims to resolve condonation requests within six months from receipt. This delegation of powers also applies to pending applications as of the circular's issuance.

- **CBDT Circular No. 18/2024 dated 30.11.2024**

CBDT has extended the deadline for filing the Income Tax Return for the A.Y 2024-25. For assessees required to submit a report u/s 92E of the ITA (related to international or specified domestic transactions), the original due date of November 30, 2024, has now been extended to December 15, 2024. Section 92E mandates that any person engaging in international or specified domestic transactions must obtain a report from a Chartered Accountant and submit it by the specified date.

JUDICIAL UPDATES
INCOME TAX CASES

Whether electrical fittings forms part of plant & machinery and assessee is eligible for depreciation as well as additional depreciation on such parts of plant & machinery

During the assessment proceedings, the Assessing Officer (AO) found that the assessee had claimed additional depreciation of Rs. 32,65,56,918 on plant and machinery purchased in the previous year. The claim was made for the balance 50% of the additional depreciation, as 50% had been claimed in the preceding year when the machinery was bought in less than 180 days. The AO, however, disallowed the claim, stating that additional depreciation u/s 32(1)(iia) can only be claimed in the year of installation of the plant and machinery. The AO further cited amendments to section 32(1)(iia) from A.Y 2016-17 to support the disallowance.

Additionally, the AO made an adjustment of Rs. 2,58,50,676 on account of incorrect depreciation claims on electrical items like substations, DG sets, and transformers, which were not treated as part of plant and machinery.

On appeal, the First Appellate Authority (FAA) not only confirmed the disallowance of additional depreciation but also enhanced the disallowance, arguing that the assessee, being in the dairy business, was not engaged in manufacturing or production, and thus, was not entitled to additional depreciation. The FAA also upheld the AO's disallowance on the electrical items, ruling they were not part of plant and machinery.

However, the Tribunal reversed the FAA's decision, concluding that the assessee was indeed engaged in manufacturing milk and milk products, which qualified for additional depreciation u/s 32(1)(iia). The Tribunal also ruled that electrical items like substations, DG sets, and transformers formed an integral part of the plant and machinery, following precedents such as the *CIT vs. Starlight Silk Mills Pvt. Ltd.* case, which held that such electrical installations are eligible for depreciation as part of plant and machinery. Consequently, the Tribunal allowed the additional depreciation claim for both the plant and machinery as well as the electrical items.

Whether while calculating income, net income should be considered as taxable income after reducing the expenditure incurred towards earning of such income

The assessee filed a return of income declaring a total income of Nil after claiming a deduction of Rs. 21,25,403 u/s 80P(2)(a)(i). The case was selected for scrutiny, and the AO issued statutory notices to the assessee. The AO observed that the primary business of the society was to provide credit facilities to its members, who were either regular/normal members or nominal members. The AO proposed to disallow the deduction u/s 80P(2) and noted that the society had earned interest income of Rs. 13,33,517 from investments in co-operative and scheduled banks. The AO examined the entitlement to a deduction u/s 80P(2)(d), which allows a deduction for interest earned on deposits by the society, but concluded that the interest received from these banks did not qualify for the deduction, and thus treated the entire interest as income from other sources.

The assessee appealed the decision to the Commissioner of Income Tax (Appeals) [CIT(A)], but the CIT(A) upheld the AO's disallowance of the deduction under both section 80P(2)(a)(i) and section 80P(2)(d). The assessee then appealed to the Income Tax Appellate Tribunal (ITAT).

The issue raised in the appeal was that the interest received from the co-operative and commercial banks was treated as income from other sources u/s 56, but the associated expenses incurred to earn that income were not allowed as deductions u/s 57(iii). The assessee argued that the net income should be calculated by considering the expenditure incurred to earn the interest income. The ITAT agreed with this argument and directed the assessee to provide details of the "cost of funds" incurred to earn the interest income. The ITAT remitted the matter back to the AO to determine the cost of funds for the interest income earned from the banks and allow the appropriate deductions for such costs.

Whether when assessee is having sufficient capital & free reserves which far exceeds investment in shares, then dividend income earned out of it will be exempt

The assessee, a company involved in infrastructure construction, filed its return of income declaring a total income of Rs. 20,79,02,355/-. During assessment, the AO observed that the company had made an investment of Rs. 6,89,03,906/- in shares and mutual funds and incurred interest expenses of Rs. 2,93,08,592/- on borrowed funds. The AO questioned why disallowance u/s 14A of the ITA should not be made, as the investment might have led to exempt dividend income.

The assessee argued that the investment was made using its own funds or from prior receipts, and claimed that it had non-interest bearing funds amounting to Rs. 200.73 crore as of 31.03.2017. However, the AO rejected this explanation and applied the provisions of section 14A read with Rule 8D, disallowing Rs. 6,65,484/-.

On appeal, the CIT(A) deleted the disallowance. The Departmental Representative (DR) contended that disallowance u/s 14A should be based on the actual dividend income received, while the Authorized Representative (AR) argued that the company had sufficient capital and reserves, far exceeding its share investments, and that the actual dividend income was only Rs. 23,575/-.

The appellate authority accepted the AR's alternative argument, agreeing that the actual dividend income was Rs. 23,575/-, and directed the AO to limit the disallowance u/s14A to this amount.

Whether where assessee has submitted detailed documents to support her claim of genuineness & creditworthiness of lenders, then no addition is permitted on account of unexplained loan u/s 68

The assessee had made investments totaling Rs. 3,49,50,000/- in three properties and took a loan of Rs. 3,64,83,000/- from various relatives to fund these investments. During the assessment, the AO made an addition of Rs. 1,57,50,000/- from six out of the eleven parties who had lent money to the assessee, treating these loans as unexplained cash credits u/s 68.

On appeal, the CIT (A) deleted the addition made by the AO. The CIT(A) found that the AO had wrongly relied on the income tax returns of the lenders to determine their creditworthiness and concluded they were unable to provide loans. The CIT(A) also pointed out that the AO had not considered confirmations from several lenders and had failed to account for exempt income, which was part of the returns filed by the assessee. Furthermore, the CIT(A) observed that the AO did not consider the legitimate transactions where the lenders had received the money through banking channels before advancing it to the assessee.

The CIT(A) concluded that the AO had not fulfilled his basic duty of verifying the loan transactions properly. Therefore, the addition of Rs. 1,57,50,000/- was not justified u/s 68. After reviewing the records, the appellate authority determined that the decision was based on the submissions already provided to the AO and judicial precedents, without relying on any new evidence. Thus, the addition was deleted, and the AO's action was deemed legally untenable.

Whether interest under sections 234A, 234B, 234C & 234D as well as penalty u/s 271(1)(c) are invalidated, where the additions based on which interest & penalty are levied, are themselves quashed

The assessee, a company involved in gold trading, jewellery manufacturing, and lagadi production, filed its return of income for A.Y 2010-11 declaring an income of Rs. 19,75,190. However, the case was reopened u/s 148 based on information from the DDIT(Inv) suggesting that the assessee was involved in high-value transactions linked to "cheque entries." The AO identified credit entries amounting to Rs. 1,92,29,000 in the bank account of Vishnu Trading Co., which was connected to the assessee. Although the assessee claimed these amounts were sales transactions, the AO dismissed the documentation as misleading, linking it to another entity, Edelweiss Commodities Ltd., and treated the Rs. 1,92,29,000 as unexplained cash credits u/s 68.

On appeal, the CIT upheld the AO's decision, noting that the assessee had failed to substantiate the nature of the entries and the transactions with Edelweiss. The validity of the reopening notice was upheld based on the reasonable belief of the AO that income had escaped assessment, which did not require definitive evidence but a justified reason for the belief. Therefore, the reopening u/s 148 was deemed valid.

However, the tribunal reviewed the case and disagreed with the AO's treatment of the bank credits as unexplained cash credits u/s 68. The tribunal found that the amounts were already included in the declared sales and had been taxed previously, following the ruling in Vishal Exports Overseas Ltd., which prohibits double taxation. The AO had not rejected the books of accounts or stock details, nor had they provided conclusive evidence that the bank credits were accommodation entries. The assessee had provided adequate documentation, including sales invoices and a sales register, to substantiate the transactions. Additionally, the failure to allow cross-examination of individuals whose statements were used against the assessee violated principles of natural justice.

The tribunal clarified that the transactions with M/s. Edelweiss Commodities Ltd. were purchases, not sales to Vishnu Trading Co., highlighting a misunderstanding by the AO and

CIT(A). As a result, the addition of Rs. 1,92,29,000 as unexplained cash credit was deemed unjustified and deleted.

Furthermore, since the principal addition was deleted, the confirmation by the CIT(A) of the AO's decision to tax the income u/s 115BBE was also found to be unwarranted. The tribunal also deleted the consequential interest charges u/s 234A, 234B, 234C, and 234D, and quashed the initiation of penalty proceedings u/s 271(1)(c). The assessee's appeal was allowed on all grounds.

Whether prize winning from unsold lottery tickets are taxable as 'business income' and not 'income from other sources'

The assessee, a partnership firm involved in the distribution of government lottery tickets, credited Rs. 46.83 Crores as "prize money from unsold lottery tickets" in its Profit & Loss Account and reported a net profit of Rs. 1.68 Crores, which was offered as business income. The assessee also claimed credit for Tax Deducted at Source (TDS) u/s 194B, deducted by the Sikkim and Mizoram Directors of Lotteries. The assessee argued that the prize money from unsold tickets was part of its business income and could be offset against the cost of the tickets.

However, the AO disagreed, treating the prize money as "income from other sources" u/s 56(2)(ib) and 2(24)(ix), which governs winnings from lotteries. The AO stated that the provisions of section 58(4) disallowed any deductions for expenses related to such income. The AO further pointed out that the income from lottery winnings could not be considered business income, as the firm had not participated in the lottery draws but had simply purchased tickets and sold them, with unsold tickets being eligible for prize money.

The assessee argued that the prize money from unsold tickets was simply a refund of the cost paid for the tickets and not a lottery win. The firm emphasized that it was a distributor and not a participant in the lottery, and the prize money reduced the cost of the tickets it had purchased. However, the AO rejected this explanation, citing the terms of the agreements with Sikkim and Mizoram lottery authorities, which treated the purchase and sale of tickets as separate activities, and the prize money was linked to the chance element inherent in lottery draws.

The AO concluded that the prize money from unsold tickets should be treated as "income from other sources" and taxed accordingly u/s 56(2)(ib), with no deductions allowed for related expenses. This meant that the prize money was subject to a 30% tax rate u/s 115BB. The AO also reduced the value of unsold tickets from the cost of the tickets purchased by the assessee, treating the prize money as a separate non-business income.

On appeal, the Tribunal ruled that the prize money earned from unsold lottery tickets was indeed business income, as it was realized during the course of the business of distributing lottery tickets. The Tribunal rejected the Revenue's argument that the prize money should be treated as "income from other sources" u/s 56(2)(ib), and ruled that the assessee could set off the expenditure of Rs. 51.18 Crores incurred for the purchase of unsold tickets against the prize winnings. The Tribunal found that the assessee's activities constituted a business, and the prize money was a part of that business.

The Tribunal also rejected the Revenue's contention that the prize money from unsold tickets should be classified as "income from other sources," as the firm had not reflected any stock-in-trade for the unsold tickets, and the prize money was an integral part of the ticket distribution business. As a result, the Tribunal ruled in favor of the assessee, treating the prize money as business income and allowing the set-off of related expenses.

Whether interest paid for delayed payment of customs duty cannot be at par with penalty paid for any infringement of law

The assessee, a company engaged in fertilizer manufacturing, filed a return for A.Y 2013-14 declaring a loss of Rs. 1,25,37,85,663, which was processed u/s 143(1). However, after a detailed scrutiny, the AO assessed the income at Rs. 34,46,80,874, adding Rs. 2,52,84,40,251 as disallowances. Later, the case was reopened u/s 148 based on information from the Customs and Central Excise Department regarding evasion of Countervailing Duty (CVD) amounting to Rs. 1,40,87,305 by the assessee.

The issue arose because the assessee had imported raw materials for fertilizer manufacturing and paid customs duty. However, the Customs authorities later determined that the goods were misclassified, leading to excess customs duty being paid. The matter was taken up with the Customs and Central Excise Settlement Commission, which confirmed that the assessee had misclassified the goods to evade duty and ordered the payment of additional duty, interest of Rs. 1,25,46,377, and a penalty of Rs. 9,00,000.

The AO allowed the additional customs duty as a business expense but disallowed the interest payment of Rs. 4,26,569, claiming it was in the nature of a penalty, as it resulted from the misclassification. The assessee, however, argued that the interest was compensatory in nature and should be treated as a revenue expense incurred wholly and exclusively for the business. The company contended that the interest was a compensation for the delayed payment of taxes, and since it was not related to any violation of law, it should not be considered a penalty.

The Tribunal upheld the assessee's position, stating that the interest paid on delayed customs duty was compensatory in nature and should be allowed as a business expense u/s 37(1). It clarified that interest on delayed tax payments is not a penalty and should not be equated with penalties for legal violations. The Tribunal further explained that since the penalty for misclassification was disallowed by the assessee in A.Y 2016-17, the interest could not be treated in the same manner. As a result, the interest payment of Rs. 4,26,569 was deemed a legitimate business expense and allowed as a deduction u/s 37.

NEWS UPDATES

GST Collection Rises By 8.5% To Rs 1.82 Lakh Crore In November

RBI injects ₹6,956 crore as liquidity turns to deficit

Income Tax probe finds 500 'actionable' cases of undisclosed Dubai assets held by Indians

Rupee Remains One Of The Best-Performing Asian Currencies: MoS Finance

Over 98% of Rs 2,000 notes back with RBI: MoS for finance

VALUATION BUZZ

Merger concludes! Viacom18-Star India valued at Rs 70,000 cr

Dabur to acquire 51% stake in Sesa Care for Rs 12.59 crore

JioHotstar domain finally with Mukesh Ambani's Viacom 18

NCLAT dismisses plea seeking insolvency against Amazon Wholesale

ICAI launches CA GPT platform for analysing annual reports of 5,000 listed companies

ABOUT THE FIRM

DGA Global is a multi-disciplinary audit and advisory firm providing gamut of services including audit, income tax, consulting and outsourcing services. We are based in the National Capital Region, Gurgaon, India. The firm is headed by Deepanshu Gupta, Chartered Accountant, having 14 years of experience working in Deloitte and PwC. Deepanshu is also a Cost and Management Accountant having secured 1st rank in North India. He has worked extensively for Indian and global clients serving wide-ranging sector experience in Manufacturing, Engineering, Automobile, IT/ITES/BPO, Real Estate, Investment Management, Mining among others for several years. He is also a Registered Valuer in domain of Securities and Financial Assets (SFA).

OUR TEAM

We are a team of professionals comprising of Chartered Accountants, Company Secretaries, Cost and Management Accountants, Advocates and MBAs who are truly committed in providing timely, professional and quality services to our clients thereby building a long-term relationship with them.

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