R.C. JAIN AND ASSOCIATES LLP

NEWSLETTER

September 2024

"Do not save what is left after spending, but spend what is left after saving."

-Warren Buffett.

INDEX

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION

- **Notification No. 101/2024/F. No. 203/19/2024/ITA-II Dated 31-08-2024**

This notification approves the **Advanced Manufacturing Technology Development Centre** (PAN: AAEAA9272B), Chennai' as **'Other Institution' under the category of 'University,** College or Other Institution' for 'Scientific Research:

- This recognition shall be applicable for Assessment Years **2025-2026 to 2029-2030**.
- The institution is recognized for the purpose of encouraging scientific research, meaning any donation or expenditure for scientific research under this institution can be eligible for **tax deduction** under Section 35(1) (ii).

This type of approval promotes funding and contributions towards scientific research in India by providing tax benefits to donors.

- **Notification No.102/2024/F.No. 203/12/2024/ITA-II Dated 18-09-2024**

- Approval: **Auroville Foundation** is now recognized as an institution eligible for tax deductions on contributions made towards research in social science or statistical research.
- Effective Date: The notification applies from the fiscal year **2024-25** onwards, covering **Assessment Years 2025-26 to 2029-30**.
- Tax Benefits: Under Section 35(1)(iii), contributions for research to such institutions are eligible for **tax deductions**.

This encourages funding towards research in social sciences and statistics, promoting intellectual development in these areas with added tax incentives for donors.

- **Notification No. 103 /2024, F.No.370142/17/2024-TPL Dated 19-09-2024**

The notification (S.O. 4016(E)) issued by the Central Government brings the **Direct Tax Vivad Se Vishwas Scheme, 2024** into effect from **October 1, 2024**, as per the powers granted under **Section 88(2)** of the **Finance (No. 2) Act, 2024**.

Key Points:

- **Scheme Introduction**: The Direct Tax Vivad Se Vishwas Scheme, 2024 is designed to resolve disputes related to direct taxes between taxpayers and the tax authorities. It aims to reduce litigation by providing a mechanism for taxpayers to settle tax disputes.
- **Effective Date**: The scheme officially comes into force from **October 1, 2024**.

  It is a continuation of the government's efforts to streamline tax processes and reduce the burden of prolonged litigation

- **Notification No. 104/2024, F. No. 370142/16/2024-TPL Dated 20-09-2024**

The G.S.R. 584(E) notification, issued under section 99 of the Finance (No. 2) Act, 2024, introduces the *Direct Tax Vivad se Vishwas Rules, 2024*. These rules govern the settlement of direct tax disputes under the Vivad Se Vishwas Scheme 2.0. Below are some key aspects:

- **Commencement**: The rules come into force from the date of their publication in the Official Gazette.
- **Definitions**: The notification defines key terms like "dispute," "Form," and categories like "new appellant case" (for appeals made after January 31, 2020) and "old appellant case" (for appeals on or before January 31, 2020).
- **Amount Payable**: Taxpayers can settle disputes by paying specified amounts, with different rates applying depending on whether the declaration is made before or after January 1, 2025.
- **Forms and Procedure**: The scheme requires the filing of various forms (Form-1 for declarations, Form-2 for certificates, etc.) electronically, to streamline the process.
- **Computation of Disputed Tax**: The rules specify how to compute the disputed tax when issues like loss, unabsorbed depreciation, or Minimum Alternate Tax (MAT) credit are involved. Taxpayers have options to include or exclude certain amounts from the disputed tax.

These provisions aim to facilitate quicker resolution of tax disputes by allowing taxpayers to settle on favourable terms.

- **Notification No. 105/2024, F. No. 370142/16/2024-TPL Dated 27-09-2024**

The notification **G.S.R. 601(E)** issued by the **Ministry of Finance, Department of Revenue (Central Board of Direct Taxes)** makes specific amendments to a previously issued notification (**G.S.R. 584(E)** dated September 20, 2024) that was published in the **Gazette of India**.

Key Amendments:

- **Page 28, Schedule V, Row A**: The words **"OR to be filed"** are **omitted**.
- **Page 32, Schedule XXIII, Row A**: The words **"or appeal to be filed"** are **omitted**.
- **Page 29, Schedule XII, Rows X and Y**: The last term of the formula, represented as **[+(figure)*B]* for both new and old appellant cases, is **omitted**.
- **Pages 31 and 32, Schedules XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, Rows X and Y**: The last term of the formula, represented as **[+(figure)*C]**, for both new and old appellant cases, is **omitted**.

Purpose:

These amendments appear to streamline the text and formulas within these schedules, likely to simplify procedures or remove redundant or outdated language. These adjustments may impact how certain tax disputes, appeals, or assessments are handled under the respective schedules. (This notification is in reference to the above previous mentioned notification.)

- **Circular No. *10/2024 Dated 29-09-2024***

The Central Board of Direct Taxes (CBDT) has extended the deadline for filing various audit reports for the **Assessment Year 2024-25**. The deadline has been moved from **September 30, 2024**, to **October 7, 2024**.

This extension gives additional time for assesses to comply with the audit report submission requirements.

~Compiled by Karthy Mudaliar

Case Law-1

Issue Involved:

Judgment of Supreme Court in case of Union of India v. Ashish Agarwal [2022] 138 taxmann.com 64/286 Taxman 183/444 ITR 1 which required all notices issued under section 148 between period commencing from 01-4-2021 and ending on 30-6-2021 to be treated as SCN's referable to section 148A(b) does not mandate completed assessment to be reopened; therefore, where reassessment proceedings initiated against assesse were already concluded, there was no justification to issue notice afresh seeking to reopen proceedings based on judgment passed in Ashish Agarwal.

HIGH COURT OF BOMBAY

Satish Chand Jain

v.

Assistant Commissioner of Income-tax

YASHWANT VARMA AND RAVINDER DUDEJA, JJ.

W.P.(C) NO. 12044 OF 2022

SEPTEMBER 11, 2024

Gist of the case:

Here are the key points from the case:

1. **Original Assessment Completed:** The assessee's assessment for AY 2014-15 was concluded on 30.03.2022 under Section 143(3).
2. **Reopening Based on Investigation:** The case was reopened under Section 147 based on information from the Investigation Wing that the assessee was a beneficiary of misuse of the NSEL Exchange platform by a broker.
3. **Supreme Court Judgment Reference:** The reopening was based on the Supreme Court judgment in Union of India v. Ashish Agarwal (2022), which required certain notices issued between 01-04-2021 and 30-06-2021 to be treated as show-cause notices under Section 148A(b).
4. **Reassessment Proceedings:** A show-cause notice under Section 148A(b) was issued on 02.06.2022, and the final order under Section 148A(d) was passed, followed by a fresh notice under Section 148 on 19.07.2022.

5. **Issue with Reopening:** The court ruled that since the assessment had already been completed before the Ashish Agarwal judgment, there was no justification for reopening the case on the same grounds.

6. **Conclusion:** The reassessment proceedings were set aside, and the court ruled in favor of the assessee.

Facts of the case:

- The assessee filed its return for the assessment year 2014-15 on 30-9-2014, declaring total income of certain amount. The return was processed under section 143(3). The case was assessed under section 143(3) on 30-12-2016.
- On the basis of information received from the Investigation Wing that the assessee was the beneficiary of certain amount through misusing the platform of NSEL Exchange by unscrupulous broker during the year under consideration, the case was reopened under section 147 after obtaining the necessary approval from the concerned authority. Accordingly, notice under section 148 was issued on 31-3-2021 for the assessment year 2014-15 after recording the reasons that the income chargeable to tax had escaped assessment as per the provisions of Income Tax Act as they stood before 1-4-2021.
- The reassessment proceedings were concluded by computing the total assessed income by making addition of the taxable income of certain amount. The assessee challenged the reassessment order dated 30-3-2022 before the Commissioner (Appeals), which was pending adjudication.
- On 2-6-2022, yet another Show Cause Notice came to be issued proposing additions of income, based upon the same reason that assessee was the beneficiary of Rs. 3.07 crores through misusing the platform of NSEL by unscrupulous broker. While responding to the same, assessee raised various objections including that of limitation and asserting that the notice was void ab initio as the previous notice dated 31-3-2021 was served on 1-4-2021 which was not challenged before any Court.
- However, the objections came to be negated and final order under section 148A(d) came to be passed on 19-7-2022 and consequent thereto, a notice under section 148 was issued on 19-7-2022.
- The assessee filed instant writ petition challenging the impugned order under section 148A(d) as well as consequential notice under section 148.

Conclusion held:

- Undisputedly, order under section 148A(d) for the AY 2014-15 and the notice under section 148 for the AY 2014-15 dated 19.07.2022 are based on identical facts as posed in the earlier reassessment and which had preceded proposed action for reassessment. [Para 7]
- The right of the respondents to reopen the concluded assessment was ostensibly based on a perceived reading of the decision of the Supreme Court in Union of India v. Ashish Agarwal (2023) 1 SCC 617. In this case, the Supreme Court held that a notice issued under section 148 during the period beginning on 01.04.2021 and ending 30.06.2021 to be considered as a Show

Cause Notice under section 148A(b). The Apex Court had held that the reassessment notice under section 148 under the old law shall be deemed to be a Show Cause Notice under Clause (b) of section 148-A of the new law substituted w.e.f. 01.04.2021. [Para 8]

- Notice under section 148-A(b) proceeds on the premise that the judgment of Supreme Court in Ashish Agarwal (supra) requires all notices issued under section 148 between the period commencing from 01.04.2021 and ending on 30.06.2021 to be treated as SCNs referable to section 148-A(b). [Para 10]
- Undisputedly and as admitted, the assessment proceedings in this case were already concluded on 30-3-2022 and reassessment action was re-initiated on the same set of reasons vide SCN dated 2-6-2022 under section 148A(b) leading to passing of an order section 148A(d) and notice under section 148 of the Act dated 19-7-2022. There was no justification for the respondents to issue notices afresh seeking to reopen the proceedings which had been concluded prior to the judgment passed in Ashish Agarwal (supra). The judgment passed in Ashish Agarwal (supra) does not mandate the completed assessment being reopened. Therefore, the impugned action for reassessment could not be sustained. [Para 11]
- The writ petition is accordingly allowed. The impugned order dated 19-7-2022 under section 148A(d) as well as consequential notice under section 148 of the even date shall stand quashed. [Para 12]

Case Law-2

Issue involved:

Where Assessing Officer issued reopening notice solely on basis of information received from Investigation Wing that substantial amount of cash deposited by assessee had escaped assessment, since there was no close nexus between tangible material and reason to believe that income had escaped assessment neither Assessing Officer made further enquiries to form said belief, reopening notice was to be set aside

HIGH COURT OF BOMBAY

Well Trans Logistics India (P.) Ltd.

v.

Addl Commissioner of Income-tax

YASHWANT VARMA AND RAVINDER DUDEJA, JJ. IT

W.P. (C) NO. 13273 OF 2018

SEPTEMBER 2, 2024

Gist of the case:

1. **Original Case**: For AY 2011-12, the Assessing Officer (AO) received information from the Investigation Wing that the assessee had deposited a substantial amount of cash in various bank accounts.
2. **Reassessment Initiated**: Based on this information, the AO believed that the cash deposits represented income that had escaped assessment and initiated reassessment proceedings under Section 147.
3. **Lack of Nexus**: It was found that there was no "close nexus" or "live link" between the tangible material (cash deposits) and the reason to believe that income had escaped assessment.
4. **Information Alone Insufficient**: The court held that information from the Investigation Wing cannot solely form the basis of belief that the assessee's income had escaped assessment.
5. **Need for Further Investigation**: The AO was required to conduct further inquiries after receiving the information to gather additional material to support the belief that income had escaped assessment.
6. **Failure to Gather Evidence**: Since the AO did not gather further material or evidence to substantiate the belief, the reassessment notice was deemed invalid.
7. **Conclusion**: The reassessment notice was set aside by the court, ruling in favour of the assessee.

Facts of the case:

1. **Assessee's Business**: The petitioner, Well Trans Logistics India (P.) Ltd., is engaged in the business of freight forwarding. As part of its operations, the company receives payments from

customers for its services. These payments are made through various channels such as cheques, electronic transfers, and sometimes cash, or a combination of these modes.

2. **Return Filed:** For the Assessment Year (AY) 2011-12, the petitioner company filed its income tax return on 30.09.2011.
3. **Information from Investigation Wing:** In November 2013, the Deputy Director of Income Tax (DDIT), Investigation Unit, sent a letter to the Assessing Officer (AO). The DDIT's letter provided information that a substantial amount of cash deposits totaling ₹5.76 crore had been made in multiple bank accounts of the petitioner during the financial year 2010-11. The DDIT raised concerns about the source of these cash deposits.
4. **Reassessment Proceedings Initiated:** On 22.03.2018, based on the information from the DDIT, the AO issued a notice under Section 148 of the Income Tax Act, reopening the assessment for AY 2011-12, on the grounds that the income related to the cash deposits had escaped assessment. The AO believed that the cash deposits were unaccounted income and should have been assessed.
5. **Petitioner's Objection:** After receiving the notice, the petitioner objected to the reopening of the assessment, claiming that:
   - The AO had relied solely on the information provided by the DDIT, without conducting any independent inquiry to form a belief that income had escaped assessment.
   - The cash deposits were part of the business receipts and had already been accounted for in the books of accounts and declared in the profit and loss statement.
   - The reason to believe that income had escaped assessment was based on the DDIT's belief, not the AO's independent application of mind.
6. **Failure of Further Inquiry by AO:** The petitioner argued that the AO did not make any further inquiries or investigations into the DDIT's information. The AO failed to seek additional evidence to substantiate the suspicion that the cash deposits represented unaccounted income. According to the petitioner, merely relying on the information from the DDIT without further inquiry was not sufficient to justify reopening the assessment.
7. **Assessing Officer's Response:** The AO rejected the objections and maintained that there was credible information from the Investigation Wing regarding the cash deposits, and the assessee had failed to provide details regarding the parties or sources of the cash deposits

Conclusion Held:

1. The Delhi High Court noted that while the AO can reopen an assessment if there is reason to believe that income has escaped assessment, such belief must be based on tangible material and not merely on a suspicion.
2. The court observed that the AO did not establish a "close nexus" or "live link" between the cash deposits (tangible material) and the reason to believe that income had escaped assessment.
3. The court ruled that information from the DDIT alone could not be the sole basis for reopening the assessment. The AO was required to conduct further investigations and gather more material before forming a belief that income had escaped assessment.
4. Since the AO had not acquired any additional material or evidence to support this belief, the reassessment notice was not justified.
5. The Delhi High Court held that the reassessment proceedings were invalid due to the lack of independent application of mind by the AO. Consequently, the court set aside the reassessment notice dated 22.03.2018 and all subsequent proceedings initiated based on that notice.
6. **Outcome:** The case was ruled in favor of the assessee, Well Trans Logistics India (P.) Ltd., and the reassessment was quashed.

~ **Compiled by Amrit Bodwani**

Section 39(11) of the CGST Act, 2017 (Effective from October 1, 2023)

- Section 39(11), introduced through Notification No. 28/2023, states that taxpayers will **not be allowed to file their GST returns** after three years from the due date.
- This means if a taxpayer misses the filing deadline for a return (GSTR-3B, GSTR-1, etc.), they will have a maximum window of **three years** from the due date to submit it. After this period, the portal will **block** the filing, and the taxpayer will lose the ability to file that particular return.

GST Portal's Data Retention Policy

- According to the data retention policy of the GST portal, return data will only be **available for viewing for seven years**. After this period, the data will be archived.
- Any GST return or related data older than seven years from the current date will no longer be available for direct viewing on the GST portal. This is important for taxpayers who may need access to historical data for audits, references, or legal purposes.

Monthly Data Archival Process

- The GST portal has implemented a **monthly archival** process for older returns.
- Starting from August 1, 2024, return data from July 2017 was archived. Then, on September 1, 2024, the return data for August 2017 was archived. This process will continue each month, archiving data that is seven years old. For instance, the return data for **September 2017** will be archived on **October 1, 2024**, and this pattern will continue for subsequent months and years.
- To avoid losing access to critical data, taxpayers are **strongly advised** to download and save any relevant **return** data or reports from the GST portal before it gets archived.

CIRCULARS

- **Circular No. 230/24/2024-GST**

Clarification in respect of advertising services provided to foreign clients–reg.

The Board has issued clarifications regarding advertising services provided by Indian agencies to foreign clients, addressing key issues:

1. Nature of Supply: Agencies provide comprehensive advertising services to foreign clients, invoicing them after paying media owners.

2. Intermediary Status (Section 2(13) IGST Act): Agencies are not "intermediaries" as they act on their own account, making the place of supply the foreign client's location.

3. Recipient of Services (Section 2(93) CGST Act): The foreign client is the recipient, not Indian representatives or the target audience.

4. Performance-Based Services (Section 13(3) IGST Act): Advertising services do not qualify as performance-based services requiring physical presence.

5. Place of Supply (Section 13(2) IGST Act): The place of supply is outside India, qualifying as an export of services.

6. Different Scenarios: If agencies act merely as agents for foreign clients, they may be considered intermediaries, altering the place of supply determination.

- **Circular No. 231/25/2024-GST**

Clarification on availability of input tax credit in respect of demo vehicles-reg. Authorized dealers maintain demo vehicles for customer trials, purchased against tax invoices and capitalized in their accounts.

Key Issues

1. **Input Tax Credit (ITC) Availability (Section 17(5))**:
    - **Section 17(5)(a)** restricts ITC on vehicles with a seating capacity of up to 13 persons, except for:
        - A. Further supply of such vehicles
        - B. Transportation of passengers
        - C. Driving training.
    - **Clarification**:
        - Demo vehicles are used to promote sales and qualify for ITC under sub-clause A as they assist in "further supply."
2. **Non-Eligibility for ITC**:
    - If demo vehicles are used for staff transportation or if dealers act solely as agents (not making direct sales), ITC is not available.

Capitalization of Demo Vehicles (Section 16):

- **Section 16(1)** allows ITC for goods used in business.
- **Definitions**:
    - **Goods** (Section 2(52)): Includes all movable property.
    - **Capital Goods** (Section 2(19)): Goods capitalized in accounts for business use.
- **Clarification**:
    - Capitalized demo vehicles qualify as capital goods, allowing ITC. If depreciation is claimed, corresponding ITC is disallowed (Section 16(3)). Upon sale, applicable taxes must be paid per Section 18(6) and Rule 44(6).

- **Circular No. 232/26/2024-GST**

Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India-reg.

Representations from trade and industry seek clarification on the place of supply for data hosting services provided by Indian service providers to overseas cloud computing providers.

Key Issues

1. **Intermediary Status (Section 2(13))**:
    - Data hosting providers do not qualify as intermediaries; they operate independently and do not interact with end users. Thus, their services are not intermediary services under Section 13(8)(b).
2. **Relation to Goods (Section 13(3)(a))**:
    - The data hosting services are not related to goods made available by the cloud provider, as the infrastructure is owned and managed by the hosting provider.
3. **Immovable Property (Section 13(4))**:
    - Data hosting services are comprehensive and not just passive services related to immovable property.

Conclusion

The place of supply should be determined under the default provision (Section 13(2)), based on the location of the recipient. Services qualify as exports if they meet conditions in Section 2(6) of the IGST Act.

- **Circular No. 233/27/2024-GST**

Clarification on Refund of IGST for Exporters

This circular addresses the refund of Integrated Goods and Services Tax (IGST) paid by exporters who initially imported inputs without paying IGST and compensation cess.

Rule 96(10) Overview: According to the CGST Rules, exporters cannot claim a refund of IGST if they've benefited from certain exemptions on imported inputs.

Scenario in Question: Questions have arisen about whether exporters who imported inputs under specific exemptions (Notifications No. 78/2017 and 79/2017) can later claim a refund if they pay the IGST and compensation cess afterward.

Retrospective Change: A change was made to the rules (Notification No. 16/2020-CT) that allows for refunds if the exporter pays IGST and compensation cess later. The key points of this change are:

If the exporter pays IGST and compensation cess on inputs and only availed an exemption for Basic Customs Duty (BCD), they haven't actually availed the benefits of the exemption for IGST.

This means that if an exporter pays the IGST and compensation cess later, it's as if they never benefited from the exemptions for the purpose of claiming refunds.

Conclusion: If an exporter initially imported inputs without paying IGST but later paid it (along with interest) and got their customs documents reassessed, they can claim a refund of IGST on exports without violating the rules.

~Compiled by Sanish Naik

RBI/2024-25/76
DOR.STR.REC.44/04.02.001/2024-25
September 20, 2024

Interest Equalization Scheme (IES) on Pre and Post Shipment Rupee Export Credit

Indian Government's Interest Equalization Scheme Extension

- The Government of India (GoI) extended the Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit from September 1, 2024, to September 30, 2024.
- The extension is only applicable to MSME Manufacturer exporters.
- The annual net subvention amount is capped at Rs.10 Crore per Importer-Exporter Code (IEC), with a cap of Rs.5 Crore per IEC for MSME Manufacturer exporters until September 30, 2024.
- For non-MSME category Manufacturer Exporters and Merchant Exporters, the cap is Rs.2.5 Crore per IEC until June 30, 2024.
- Other provisions of the existing instructions remain unchanged.

(The Interest Equalization Scheme (IES) is a program that provides a subsidy on interest to exporters for pre- and post-shipment rupee export credit. The scheme was launched on April 1, 2015, and has been extended several times, including a one-year extension during the COVID-19 pandemic.)

RBI/2024-25/74
A.P. (DIR Series) Circular No. 16
September 06, 2024

Liberalised Remittance Scheme (LRS) for Resident Individuals- Discontinuation of Reporting of monthly return

Authorized Dealer Category-I Banks' Revisions to LRS Regulations.

- AD Category-I banks were required to submit monthly information on the number of applications received and total amount remitted under LRS in the Centralized Information Management System (CIMS).
- The requirement has been discontinued from September 2024.
- Banks will now upload transaction-wise information under LRS daily return (CIMS return code: R010). If no data is required, a 'NIL' report will be uploaded.
- Instructions issued in previous circulars have been withdrawn with immediate effect.
- AD Category-I banks are advised to inform their constituents of the changes.
- The Master Direction – Reporting under Foreign Exchange Management Act, 1999 is being updated to reflect this change.

~ Compiled by Prachi Dubey

- **CSR-2 Filing Requirements (2023-2024)**

- **Deadline:** Companies must submit Form CSR-2 by **December 31, 2024**.
- **Prerequisite:** Submission should follow the filing of financial statements (Form AOC-4, AOC-4-NBFC, or AOC-4 XBRL).

- **New Amendment Rules for Producer Companies**

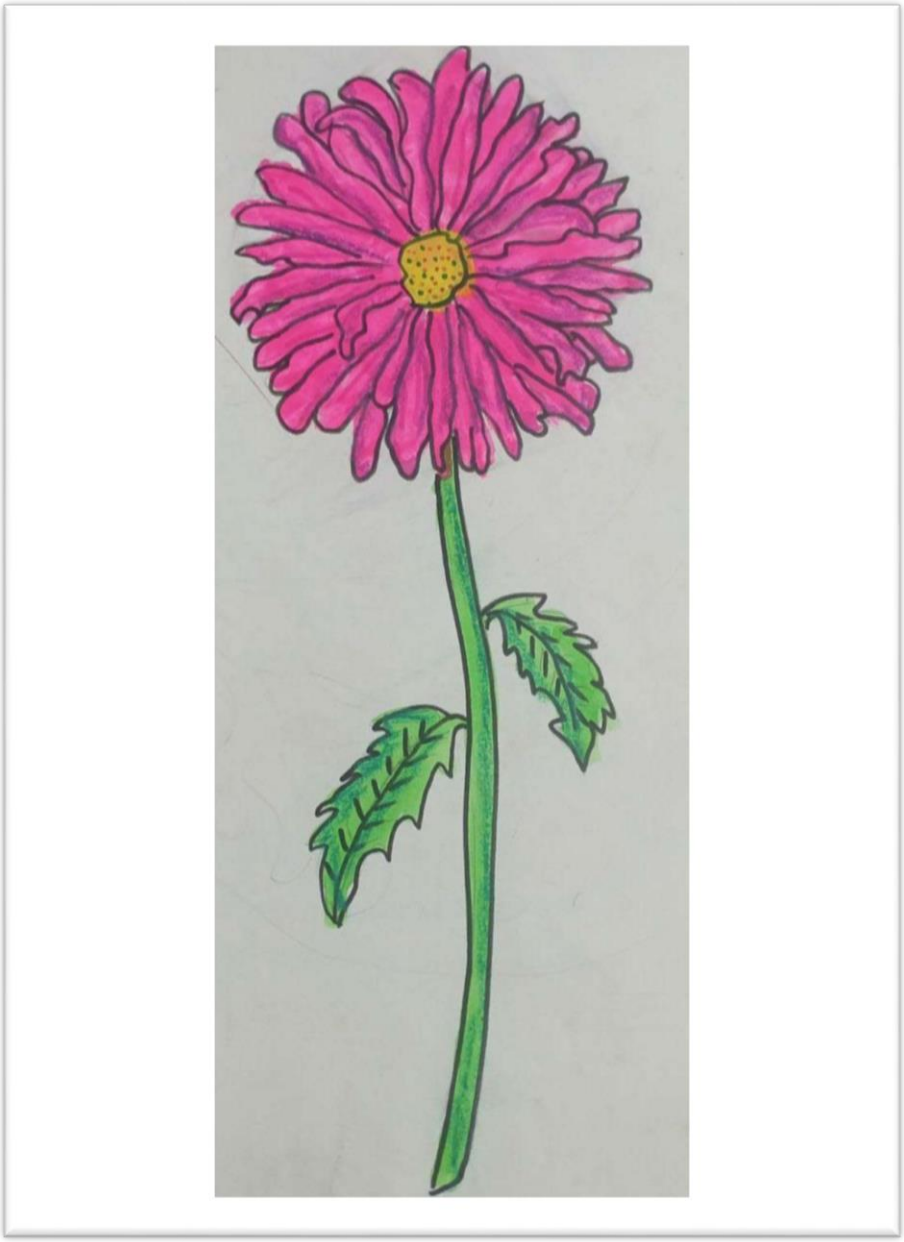
- **Prospectus and Allotment of Securities (dematerialization of Shares):** Producer companies must adhere to new compliance requirements within **five years** following the closure of a financial year. (Originally the last date of dematerialization of shares was 30/09/2024.)

- **AGM/EGM Holding Extension**

- **VC/OAVM Extension:** The provision for holding Annual General Meetings (AGMs) and Extraordinary General Meetings (EGMs) through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) has been extended until **September 30, 2025**. This extension allows companies to conduct meetings virtually, maintaining compliance post-COVID-19.

~ Compiled by Ankita Jain

#HUNAR ART



~ By Yagnik Koriya.

Allow us to tell you more!

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