INDIA BUSINESS
LAW JOURNAL

CBDT amends income tax rules

25 July 2018

The Central Board of Direct Taxes (CBDT) has amended the Income Tax Rules, 1962, by omitting the words "or an accountant" from rule 11UA(2)(b). Section 56(2)(viib) of the Income Tax Act, 1961 (ITA), provides that where consideration received by a company for issuance of shares exceeds the fair market value (FMV) of the shares, the difference between the consideration received and the FMV shall be subject to tax in accordance to the ITA under the heading of income from other sources. Rule 11UA(2)(b) prescribes the method of calculating the FMV for the purposes of section 56(2)(viib).

Before the amendment, rule 11UA(2)(b) provided that the FMV of unquoted equity shares for the purposes of section 56(2)(viib) can either be based on the formula prescribed in rule 11UA(2)(a) or as determined by a merchant banker or an accountant, as per the discounted free cash flow (DFCF) method under rule 11UA(2)(b). As a consequence of the amendment, only a merchant banker can independently determine the FMV of the unquoted equity shares by using the DFCF method for the purposes of section 56(2)(viib), and an accountant is no longer eligible to do this valuation.

The business law digest is compiled by Nishith Desai Associates (NDA). NDA is a research-based international law firm with offices in Mumbai, New Delhi, Bengaluru, Singapore, Silicon Valley, Munich and New York. It specializes in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner.