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TAX MATTERS

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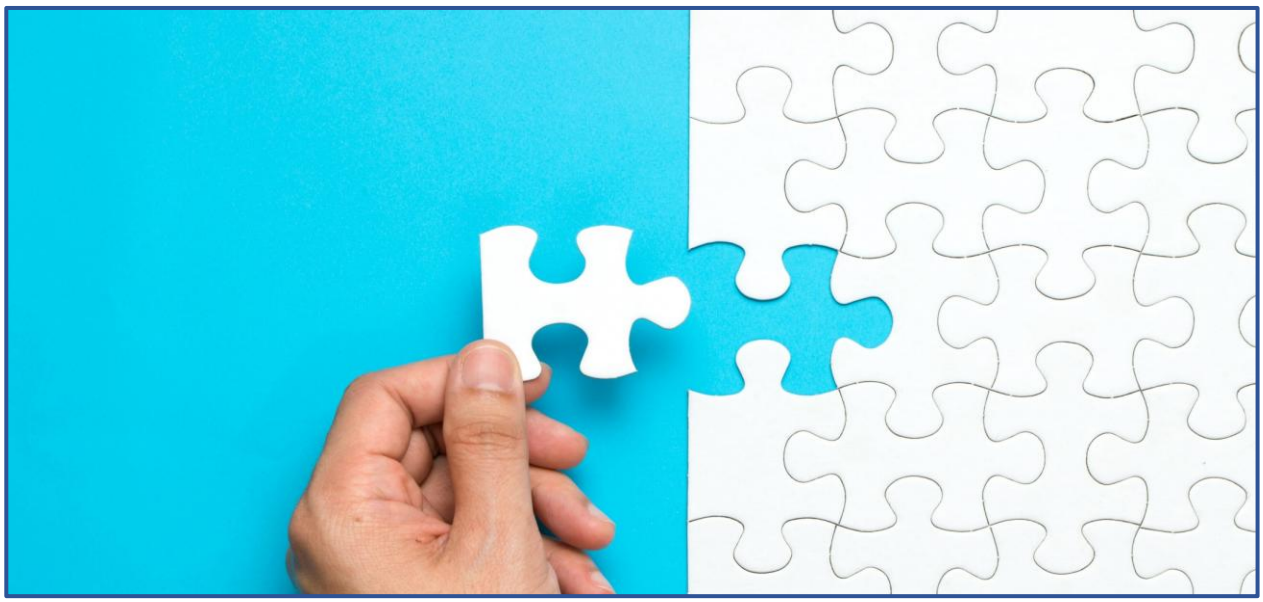

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DID YOU KNOW?

The India-France Double Taxation Avoidance Agreement ('DTAA') has been amended vide Protocol signed by India and France. The Protocol grants full taxing rights on capital gains from sale of shares to the source country. It also deleted Most-Favoured-Nation ('MFN') clause, settling interpretational issues. Further, it modifies dividend taxation by replacing a single rate of 10% of tax with a rate of 5% for shareholders holding at least 10% of capital and 15% for all other cases. It also aligns the definition of 'Fees for Technical Services' with the India US DTAA and expands the scope of Permanent Establishment ('PE') by introducing Service PE concept. These changes will take effect after the completion of the internal procedures required under the laws of both countries.

The team at JMP Advisors is pleased to bring to you a gist of some of the significant developments in the direct tax space during January and February 2026:

Income tax rulings

➢ Contractual payments to group companies attracts withholding tax and bogus reimbursements warrant disallowance

- Deys Medical (U.P.) Private Limited vs PCIT[1]

The taxpayer, a unit of the Dey's Medical Stores Group, is involved in the manufacture of products including hair oil and certain medicines. The taxpayer utilised the infrastructure, marketing and sales promotion services of its group companies on a reimbursement basis for expenses incurred. The group companies carried out relevant activities for their own products as well as for taxpayers' products.

Pursuant to agreements, the taxpayer reimbursed substantial sums towards expenses incurred on its behalf, to its group companies. These reimbursements were calculated as percentages of net sales realisation of the taxpayer's products - 10% for advertisement, 3% for marketing staff expenses, 19% for sales promotion expenses and 2.5% for handling, storage and collection services.

During scrutiny for Financial Year ('FY') 2004-05, the tax officer observed that the taxpayer had a contracted agreement with group companies to carry out the required work, which is covered under the definition of works contract under Section 194C of the Income-tax Act, 1961 ('the Act'), on which withholding taxes ('TDS') is applicable. The taxpayer's payment to group companies was considered a 'reimbursement of expenses', hence no tax was deducted at source. However, the tax officer stated that because the payments were computed as a percentage of sales realisation without a precise or clear reference to the actual spent, they could not be regarded as mere reimbursements. Hence, the tax officer disallowed these expenses under Section 40(a)(ia) of the Act, holding that the taxpayer had failed to deduct TDS on payments made to the group entities.

Aggrieved by the assessment order, the taxpayer filed an appeal at the next level with the Commissioner of Income-tax Appeals ['CIT(A)']. The CIT(A) reversed the order passed by the tax officer.

The revenue filed an appeal before the Appellate Tribunal ('Tribunal') challenging the order passed by the CIT(A). The taxpayer submitted that the TDS was paid by the group companies on the payments made on the underlying payments to third party vendors and hence it absolves the taxpayer from TDS obligations on the reimbursed amounts. The Revenue contended that the taxpayer's claim lacks validity in the absence of a clear documented linkage between the reimbursed amount and the underlying expenses. Further, it also contended that strict adherence to the deductibility requirements of the statute is essential to maintain the integrity of the tax collection process. In light of the above, the Kolkata Tribunal concluded that these were contractual payments for specific services that are explicitly covered under the payments for contracted work. This distinction is crucial as it directly influences the applicability of statutory provisions. So, the Tribunal partially upheld the tax officer's disallowance.

[1] ITA No. 1703/Kol/2018

The taxpayer filed an appeal before the Calcutta High Court ('HC') on the issue of whether the payments that were determined as a fixed percentage of net sales rather than actual expenses incurred fall within the scope of Section 194C of the Act.

The HC opined that the payments are contractual in nature and cannot be considered as genuine reimbursements. The HC remarked that genuine reimbursements are characterised by their nature as payments made post-facto, directly linked to specific, documented expenses which are supported by bills, vouchers or other tangible evidence. In contrast, the payments made by the taxpayer, lacked such detailed documentation and appeared to be structured based on fixed commission or service fees.

The HC relied on the principle laid down by the Supreme Court in Shree Choudhary Transport Co. v. Income Tax Officer. The HC emphasised that commercial arrangements, including apportionment of costs based on historical data on arms-length negotiations between group entities, cannot override the statutory obligation to deduct TDS when the underlying transactions are contractual in nature.

The HC held that the responsibility to deduct TDS rests with the payer at the time of making the payment and cannot be absolved by the payee's downstream tax compliance or subsequent deduction of TDS. The HC further observed that the fact that the group companies included these amounts in their income and paid the applicable taxes does not absolve the taxpayer of its statutory obligation to deduct tax. Therefore, the HC concluded that the payments squarely fall within the scope of Section 194C of the Act and confirmed the Tribunal's order to upheld the disallowance for non-deduction of tax.

JMP Insights - This ruling underscores that the obligation to deduct TDS is independent of the recipient's subsequent tax compliance. Taxpayers cannot rely on downstream payments as a defence for failing to withhold tax on contractual service arrangements. This decision reinforces that to qualify as a genuine reimbursement not subject to TDS, payments must be supported by detailed documentation demonstrating a direct, item-by-item link to actual expenses. Further, it is pertinent to note that, if a similar fact pattern were to arise under the current legal framework, such failure to deduct tax at source may result in the taxpayer being treated as an assessee-in-default, unless the conditions specified in the proviso to Section 201 of the Act are satisfied.

- **Interest expenditure incurred for acquisition of company in the same line of business allowed**

- Tata Steel Ltd. vs DCIT [2]

The taxpayer, Tata Steel Limited, is a public limited company engaged in manufacturing and trading in steel. During the year under consideration, the taxpayer incurred interest expenditure of INR 5.1 billion on borrowings utilised for acquiring Corus Group PLC ('Corus'), a foreign company, through its step-down wholly owned subsidiaries.

The taxpayer had, in its Return of Income ('ROI'), claimed a deduction for the aforesaid interest under section 36(1)(iii) of the Act.

[2] ITA No. 3294/Mum/2016

The tax officer disallowed the claim on the grounds that the investment in Corus was made to acquire controlling interest and not for any business consideration.

The tax officer observed that the shares of Corus were recorded as investments in the taxpayer's books, indicating that the taxpayer was not engaged in the business of acquiring shares. As no business income arose from such investment, and relying on the decision in the case of Tata Sons Limited[9], the tax officer disallowed the interest expenditure.

Relying on the decision of Bombay HC in Amritaben R. Shah[3], the tax officer also rejected the alternate claim of the taxpayer under section 57(iii) of the Act on the ground that the investment was not made for earning dividend but for acquiring control.

On appeal, the CIT(A) upheld the tax officer's approach. The taxpayer filed an appeal before the Mumbai Tribunal.

The Tribunal examined the allowability of the interest under section 36(1)(iii), which permits deduction for amount of the interest paid in respect of capital borrowed for the purposes of the business or profession. The Tribunal noted that the moot issue was whether the acquisition of Corus was driven by commercial and business considerations.

The Tribunal observed that the board minutes and management presentations placed on record clearly demonstrated that the taxpayer's Board had been contemplating and exploring the acquisition of large steel plants at selected locations, and Corus was one of the potential targets under consideration. The minutes and presentations also showed that Corus was one of the largest steel producers in Europe, operating in the same line of business as the taxpayer, with significant market share, integrated manufacturing facilities and strong R&D capabilities. The Tribunal noted that the acquisition was undertaken to expand the taxpayer's global footprint, leverage superior technology, achieve operational synergies, diversify markets and enhance scale. The Tribunal also took note that the taxpayer's intention and purpose behind acquiring Corus had been contemporaneously documented in the loan agreements executed at the time of syndicating the borrowings.

Relying on the decision of the Bombay HC in Concentrix Services[4], the Tribunal further observed that business growth and expansion may be pursued either organically or inorganically, each having distinct implications in terms of risk profile, capital structure, speed and degree of control. It noted that expansion or extension of business can take several forms, whether through new geographies, technology, scale, or diversification, and such decisions are purely matters of commercial judgment.

The Tribunal distinguished Tata Sons Ltd., noting that Tata Sons is an investment company, whereas the taxpayer is a manufacturing enterprise that acquired Corus as part of strategic business expansion.

Relying on the decisions of Punjab and Haryana HC in Majestic Auto Ltd[5], Delhi HC in Dalmia Cement (Bharat) Ltd[6], Supreme Court in SA Builders Ltd.[7] and Shark Business System[8], the Tribunal held that the interest was incurred for the purposes of the taxpayer's business and was therefore, allowable under section 36(1)(iii) of the Act.

As deduction under section 36(1)(iii) of the Act was granted, the alternate ground under section 57(iii) of the Act was rendered academic and was not adjudicated.

[3] [1999] 238 ITR 777 (Bom)
[4] [2019] 111 taxmann.com 269 (Bom)
[5] [2009] 315 ITR 445 (P&H)
[6] [2002] 254 ITR 377 (Del)
[7] [2007] 288 ITR 1 (SC)
[8] [2025] 181 taxmann.com 657 (SC)
[9] 4630 and 4637/Mum/2016

***JMP Insights** - A notable aspect of the ruling is the Tribunal's clear distinction between investment companies and operating companies. Where an operating company acquires an entity in the same business line to expand capacity, market share or technological capability, the investment cannot be equated with the passive investment made by an investment holding company. This distinction is critical in evaluating the nature of borrowing costs. Taxpayers should ensure that their funding structures, accounting treatment and commercial documentation reflect the operational nature of such acquisitions.*

This ruling highlights the need for companies to preserve contemporaneous records including Board presentations, financing memoranda, due diligence reports and synergy analyses to substantiate the business purpose of acquisition-related borrowings.

- **Rejects non-residence claim despite shift to Singapore, global income to be taxable in India**

- Shri Binny Bansal vs DCIT International taxation[10]

The taxpayer is an individual who was a part of the leadership team and one of the founders of Flipkart since inception. He held the position of Chairman, CEO and COO at various points of time until the company's acquisition by Walmart in 2018. Subsequent to acquisition, the taxpayer resigned from the Flipkart group. The tax payer left India to take up employment in Singapore and started working in Singapore from February 2019.

In FY 2019-20, the taxpayer's filed his ROI claiming his residential status as a Non-resident ('NR') in India. During FY 2019-20, the taxpayer sold shares of Flipkart Singapore to multiple non-resident buyers, resulting in Long Term Capital Gains ('LTCG'). The taxpayer claimed exemption on such LTCG under Article 13(5) of the India–Singapore tax treaty ('DTAA'). A substantial refund was claimed in respect of tax withheld by the purchasers on the share transfer, leading to the return being selected for scrutiny.

The tax officer disputed the taxpayer's claim of NR status considering his stay in India during FY 2019-20 as 141 days and the aggregate stay of 1,237 days in India in preceding four years did not satisfy the requirement of "being outside India" to qualify for the beneficial provisions of Section 6(1)(c) read with Explanation 1(b) of the Act. The officer further contended that the taxpayer's centre of vital interests was located in India and, therefore, the taxpayer was resident in India under the India–Singapore DTAA. The officer additionally viewed the Singapore employment as merely an extension of the Indian business, lacking commercial substance. The taxpayer contended his residential status as NR by relying on various judicial precedents and illustrations. However, the officer treated the taxpayer as a resident in India under the Act, leading to global income taxation in India resulting in the LTCG on the sale of shares being taxable in India.

[10]IT(IT)A No.571/Bang/2023

The Dispute Resolution Panel also upheld this view.

The taxpayer appealed to the Bangalore Tribunal, asserting that Explanation 1(b) to Section 6(1)(c) applied in the taxpayer's case. It was argued that Explanation 1(b) only requires the individual's physical presence to be outside India and does not presuppose NR status in earlier years.

After examining the submissions of the taxpayer and the tax officer, the Tribunal regarded the taxpayer to be a resident of India on the following grounds:

i. Applicability of Explanation 1(b) of Section 6(1)(c) of the Act:

   The Tribunal held that Explanation 1(b) must be interpreted in conjunction with the basic residency condition under Section 6(1)(c) of the Act. It ruled that Explanation 1(b) is available only where the individual was a NR in the immediately preceding year. In this case, the taxpayer had been resident in India from FY 2015-16 to FY 2018-19 and was, therefore, ineligible to invoke Explanation 1(b). Further, the Tribunal noted that the Singapore employment does not retrospectively create a 'non-resident situs' for the taxpayer. The Tribunal also relied upon the CBDT Circular[11] and the decision of the Bombay HC[12] and observed that Explanation 1(b) was introduced to shield brief visits of NRIs to India from creating a continuing residence exposure. Individuals who have continued to reside in prior years are not eligible for this relaxation.

ii. Denial of Explanation 1(a) to Section 6(1)(c) of the Act:

   The Tribunal rejected the taxpayer's alternate claim under Explanation 1(a) on the basis that this relief is confined to individuals who leave India for purposes of employment. In the present case, the taxpayer had already left India in FY 2018-19 for employment. The visits during FY 2019-20 were for business meetings and personal reasons and thus did not fall within the scope of Explanation 1(a). The Tribunal clarified that the relaxation under Explanation 1(a) is a one-time benefit tied to the year of departure and is not intended to be applied on a recurring annual basis.

iii. Tie-breaker test under India-Singapore DTAA:

   Having concluded that the taxpayer was resident under domestic law, the Tribunal further examined residence under the India–Singapore DTAA. It was observed that the taxpayer maintained a permanent home in both India and Singapore. The Tribunal therefore applied the "centre of vital interests" test and evaluated where the taxpayer's personal and economic ties were closer. The Tribunal took into account that the taxpayer's family had migrated to Singapore. The Tribunal also observed that details of investments provided by the taxpayer pertained to investments outside India and did not provide details of investments in Singapore.

11 Circular No. 648 dated 10-06-1994 reported in [1994] 208 ITR (St.) 8,21
12 PCIT vs. Binod Kumar Singh [2019] 107 taxmann.com 27 (Bombay)

It also noted that investments in Singapore were made only after the taxpayer relocated for employment in FY 2018-19, whereas the bulk of investments covering investment funds, equity shares, mutual funds and immovable properties remained in India. Based on these facts, it held that the taxpayer's centre of vital interests continued to be in India.

Despite the taxpayer's shift to Singapore at the end of FY 2018-19 for employment, the Tribunal found him resident under section 6(1)(c) due to 1,237 days' stay in the prior four years and 141 days in FY 2019-20, strictly denying Explanation 1(b) relaxation as these applied only to pre-existing non-residents 'leaving India' in the departure year and not recent emigrants visiting for business or personal reasons post-shift. Further, Tribunal denied the relaxation under Explanation 1(a) since taxpayer left for employment in FY 2018-19 itself and not in FY 2019-20.

Thus, Tribunal determined that the taxpayer was resident in India and not entitled to any relief under the India-Singapore DTAA in respect of the capital gains in question.

JMP Insights – The above ruling serves as a caution for high networth individuals planning relocation ahead of major liquidity events, rejecting the taxpayer's non-resident claim and upholding taxation of long-term capital gains from Flipkart Singapore share sales. This decision illustrates how Revenue authorities now rigorously scrutinise the chronology of events in cross-border transactions when evaluating tax treaty claims, particularly around residency and timing. The Tribunal's analysis on the tie-breaker rules under the DTAA is especially significant for founders, promoters and high-net-worth individuals whose wealth remains heavily concentrated in India. These findings hold specific relevance for promoters and high-net-worth individuals structuring relocation to other countries or exit transactions.

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10 Circular No. 648 dated 10-06-1994 reported in [1994] 208 ITR (St.) 8,21
11 PCIT vs. Binod Kumar Singh [2019] 107 taxmann.com 27 (Bombay)

➢ Draft Rules and Forms proposed by the Central Board of Direct Taxes

In order to operationalise the new Income Tax Act, 2025, the Central Board of Direct Taxes ('CBDT') had placed the draft Income Tax Rules, 2026 ('IT Rules, 2026') and statutory forms in the public domain for stakeholder consultation.

CBDT has rationalised the existing rules and forms to enable easier interpretation and reduce ambiguities. A comparative snapshot of the rationalisation achieved under draft Rules are as below:

Particulars	IT Rules, 1962	IT Rules, 2026 (Draft)
Number of Rules	511	333
Number of Forms	399	190

The draft Rules are proposed to be effective from 1 April 2026.

1. Key Changes in monetary allowances for employees

Particulars	IT Rules, 1962	IT Rules, 2026 (Draft)
House Rent Allowance (50% deduction)	Deduction applied only where accommodation is situated in specified four cities – Mumbai, Delhi, Kolkata and Chennai	Deduction now extended to accommodation situated in Ahmedabad, Bengaluru, Hyderabad, and Pune
Children's Education Allowance	INR 100 per month per child	INR 3,000 per month per child
Hostel Expenditure Allowance	INR 300 per month per child	INR 9,000 per month per child

2. Key changes in monetary thresholds for taxable value of Perquisites

Particulars	IT Rules, 1962	IT Rules, 2026 (Draft)
Motor Car Perquisite – Expenses reimbursed by employer		
Engine capacity up to 1.6 litres	INR 1,800 per month + INR 900 per month (if chauffeur provided)	INR 5,000 per month + INR 3,000 per month (if chauffeur provided)
Engine capacity exceeding 1.6 litres	INR 2,400 per month + INR 900 per month (if chauffeur provided)	INR 7,000 per month + INR 3,000 per month (if chauffeur provided)
Motor Car Perquisite – Expenses not reimbursed by employer		
Engine capacity up to 1.6 litres	INR 600 per month + INR 900 per month (if chauffeur provided)	INR 2,000 per month + INR 3,000 per month (if chauffeur provided)
Engine capacity exceeding 1.6 litres	INR 900 per month + INR 900 per month (if chauffeur provided)	INR 3,000 per month + INR 3,000 per month (if chauffeur provided)
Other Perquisites		
Gifts from Employer	Exemption, if below INR 5,000 per annum	Exemption, if below INR 15,000 per annum
Meal Vouchers	Exemption up to INR 50 per meal	Exemption up to INR 200 per meal
Education Facility provided by Employer	Exemption up to INR 1,000 per month per child	Exemption up to INR 3,000 per month per child
Loan for Medical Treatment	Exemption up to INR 20,000 (except for specified diseases)	Exemption up to INR 2,00,000 (except for specified diseases)

3. Enhanced compliance requirements for Foreign Tax Credit

The proposed Rule 76 introduces new draft Form 44 (corresponding to Form 67) for the taxpayers to claim credit of taxes paid outside India against income taxable in India. Additionally, proposed rule requires mandatory verification of the form by an accountant where the claimant is a company or where the foreign tax paid exceeds INR 100,000.

4. Conditional relief for Form 10F based on TRC contents proposed to be withdrawn

The draft rules intent to mandate the requirement of Form 41 (corresponding to Form 10F) in order for the taxpayers to claim benefit under tax treaty.

5. Mechanics for determination of multiple year Arms' Length Price

It is proposed to introduce a new rule to operationalise the multi-year Arms' Length Price ('ALP') determination regime under the transfer pricing regime.

The insertion of the new rule directly links to the amendments introduced in Budget 2025 to rationalise Transfer Pricing audits by permitting determination of ALP for a three-year block.

6. Procedure for Safe Harbour application for Information Technology Services

It is proposed to introduce a new rule for laying down the procedure for application of Safe Harbour for Information Technology ('IT') Services.

The proposed introduction is in line with the amendment introduced in Budget 2026 to expand the scope of Safe Harbour regime to low-risk IT service providers.

7. Key changes in certain Forms under Income Tax Framework

Form No (Draft IT Rules, 2026)	Form No (IT Rules, 1962)	Description	Key changes
Foreign Payments and Cross border compliance			
145	15CA	Information furnished for payments made to non-residents	▪ Tax Identification Number and Country of Residence of the vendor ▪ Changes of 15CB that will be auto populated ▪ PAN of the Signatory
146	15CB	Accountant certificate for payment to non-resident	▪ Tax Identification Number of the vendor ▪ Detailed computation of Capital Gains

Form No (Draft IT Rules, 2026)	Form No (IT Rules, 1962)	Description	Key changes
Foreign Payments and Cross border compliance			
41	10F	Other details to avail benefits of tax treaty	▪ Communication address of the vendor in India ▪ Email Id and Contact number ▪ Verification of the form to be PAN-based
44	67	To claim Foreign Tax Credit	▪ Additional details of Tax identification number, details of disputed tax credit
45	-	Intimation of settlement of dispute regarding foreign tax	▪ New form introduced to claim credit of foreign tax earlier under dispute. ▪ Form to be filed within six months from settlement of dispute.
Appeals, Disputes and Proceedings			
99	35	Appeal with the first level appellate authority	▪ Separate disclosure requirements added for block assessment and withholding tax; ▪ Appellate order where the same issue has been decided; ▪ Details to be filled for declaration filed in Form No. 117 for repetitive appeals, if any; ▪ Confirmation that no application for immunity from penalty has been filed.

Form No (Draft IT Rules, 2026)	Form No (IT Rules, 1962)	Description	Key changes
Appeals, Disputes and Proceedings			
115	36	Appeal with the second level appellate authority	▪ Option to file the appeal for a block period; ▪ Specific sections added for detailed disclosure requirements regarding appeals related to block assessment, withholding tax.
116	36A	Form of memorandum of cross-objections with to the second level appellate authority	▪ Option to file the appeal for a block period; ▪ Date of order appealed against and whether appeal relates to assessment/ penalty; ▪ Due date for filing of appeal; ▪ Specific sections added for detailed disclosure requirements regarding appeals related to block assessment, withholding tax; ▪ Amount of disputed demand

➢ **Forms related to Audit**

The draft rules propose to merge the existing Form 3CA, Form 3CB and Form 3CD into a single, consolidated audit report, Form 26, thereby streamlining the reporting framework and expanding the scope of disclosures from the current 44 clauses to 55.

➢ **Consolidation of Application for Nil / Lower TDS and TCS Certificates**

It is proposed to introduce a single consolidated application Form No. 128 for obtaining certificates for nil or lower deduction of tax at source ('TDS') and collection of tax at source ('TCS').

This unified form is intended to streamline the application process, eliminate the need for separate applications for TDS and TCS certificates, thereby reducing procedural duplication.

Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on coe@jmpadvisors.in.

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