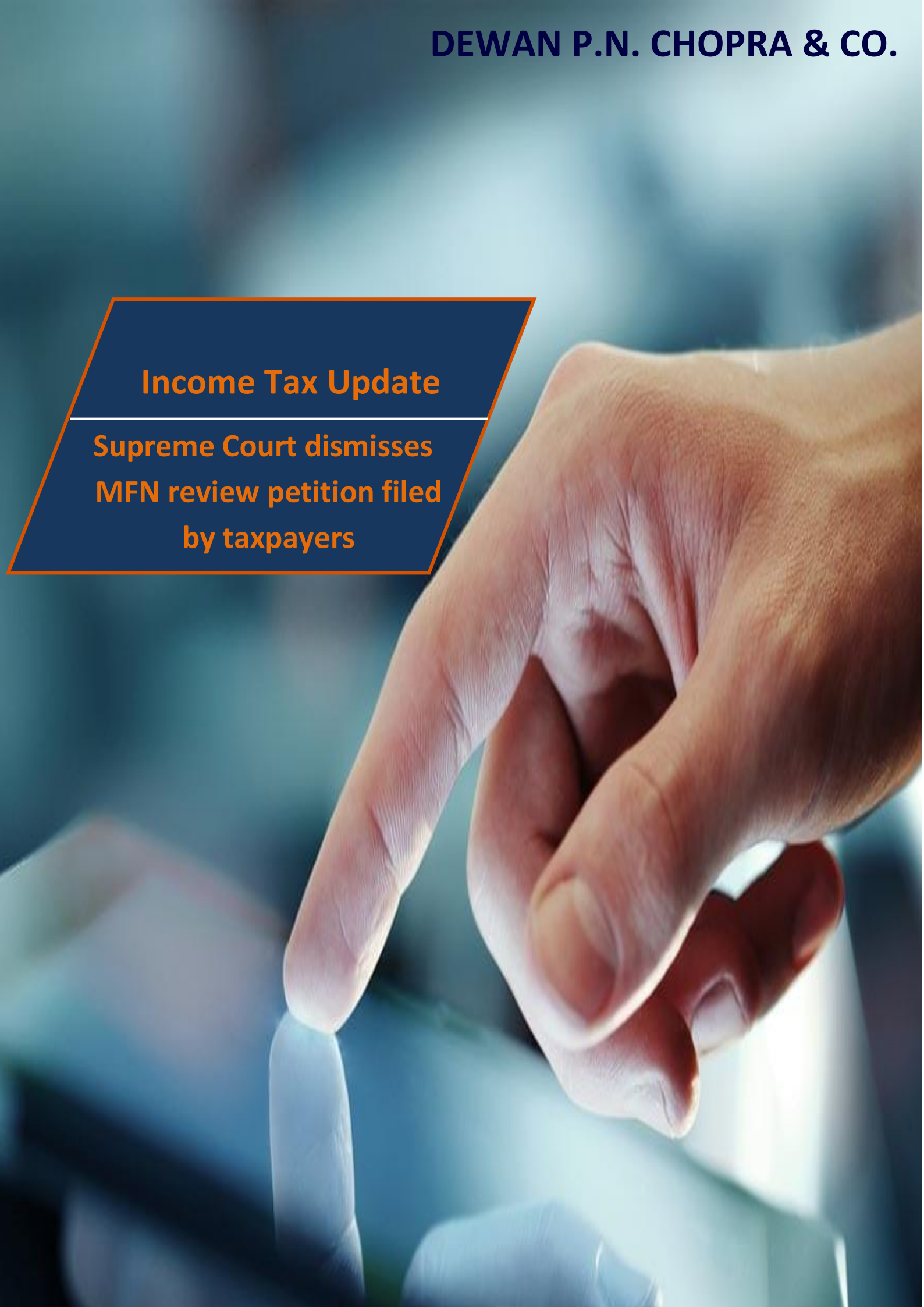


**Income Tax Update**

**Supreme Court dismisses  
MFN review petition filed  
by taxpayers**



**Supreme Court dismissed MFN review**  
**petition filed by the taxpayers in case of**  
**Nestle SA**

Hon'ble SC dismissed the review petition filed by taxpayers in case of Nestle SA vide order dated 6<sup>th</sup> August 2024 holding that no case for review of the original order dated 19.10.2023 is made out.

Hon'ble Supreme Court in the case of Nestle SA & Others [Civil Appeal No 1420/2023] vide order dated 19.10.2023 had ruled that the issuance of a notification under Section 90 of the Income Tax Act, 1961 (the Act) is an indispensable and obligatory requirement. A stipulation in a DTAA or a Protocol with one nation, requires same treatment to another nation does not apply automatically, without amending such DTAA through separate notification.

Furthermore, the Supreme Court held that, for a party to claim benefit of a “same treatment” clause, based on entry of DTAA between India and another state which is member of OECD, the relevant date is entering into treaty with India, and not a later date, when, after entering into DTAA with India, such country becomes an OECD member, in terms of India’s practice.

The SC ruling and observations has far reaching impact for the taxpayers who were claiming MFN benefit relying on HC rulings including Delhi HC. The taxpayers who were party to the dispute had filed review petition before SC which was admitted in April 2024. The same has been dismissed by SC stating the reason that after careful perusal of review petition, no case is made out by the taxpayers for review of original order. The issue has thus attained finality and become a law of land.

For details, please refer judgement of SC in case of Nestle SA vs Assessing Officer Intl Tax 2(2)(2).  
Toyota in Review Petition 77 of 2024.

*DISCLAIMER: - The summary information herein is based on SC ruling in review case of Nestle SA vide order dated 06.08.2024. While the information is believed to be accurate, we make no representations or warranties, express or implied, as to the accuracy or completeness of it. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, advice or solicitation. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.*

**IN THE SUPREME COURT OF INDIA**

**INHERENT JURISDICTION**

**REVIEW PETITION (C) NO. 77 OF 2024**  
**IN**  
**CIVIL APPEAL NO. 1420 OF 2023**

**M/S NESTLE SA**

**PETITIONER(S)**

**VERSUS**

**ASSESSING OFFICER, CIRCLE (INTERNATIONAL  
TAXATION) 2(2)(2), NEW DELHI**

**RESPONDENT(S)**

**WITH**

**REVIEW PETITION (C) NO. \_\_\_\_\_ OF 2024**  
**(@ Diary No. 47843 of 2023)**  
**IN**  
**CIVIL APPEAL NO. 1420 OF 2023**

**REVIEW PETITION (C) NOS. 82-83 OF 2024**  
**IN**  
**CIVIL APPEAL NOS. 1421-1422/2023**

**REVIEW PETITION (C) NO. 85 OF 2024**  
**IN**  
**CIVIL APPEAL NO. 1429 OF 2023**

**REVIEW PETITION (C) NO. 86 OF 2024**  
**IN**  
**CIVIL APPEAL NO. 1430/2023**

**REVIEW PETITION (C) NO. \_\_\_\_\_ OF 2024**  
**(@ Diary No. 54071 of 2023)**  
**IN**  
**CIVIL APPEAL NO. 1423 OF 2023**

**REVIEW PETITION (C) NO. \_\_\_\_\_ OF 2024**  
**(@ Diary No. 54075 of 2023)**  
**IN**  
**CIVIL APPEAL NO. 1424 OF 2023**

**REVIEW PETITION (C) NO. \_\_\_\_\_ OF 2024**  
**(@ Diary No. 54076 of 2023)**  
**IN**  
**CIVIL APPEAL NO. 1426 OF 2023**

Signature Not Verified  
Digitally signed by  
Deepak Gulwani  
Date: 2024.08.09  
18:56:36 IST  
Reason: I

**REVIEW PETITION (C) NO. \_\_\_\_\_ OF 2024**  
**(@ Diary No. 54088 of 2023)**  
**IN**  
**CIVIL APPEAL NO. 1427 OF 2023**

**O R D E R**

Permission to file the review petition(s) is granted.

Prayer for listing the review petitions in open Court is rejected.

Delay condoned.

We have carefully perused the review petitions as also the grounds in support thereof. In our opinion, no case for review of the order dated 19.10.2023 is made out.

The review petitions are, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.

.....J.  
(SANJIV KHANNA)

.....J.  
(DIPANKAR DATTA)

NEW DELHI;  
AUGUST 06, 2024.

ITEM NO.1006

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

REVIEW PETITION (C) NO. 77 OF 2024  
IN  
CIVIL APPEAL NO. 1420 OF 2023

M/S NESTLE SA

PETITIONER(S)

VERSUS

ASSESSING OFFICER, CIRCLE (INTERNATIONAL  
TAXATION) 2(2)(2), NEW DELHI

RESPONDENT(S)

(IA No. 246773/2023 - APPLICATION FOR LISTING REVIEW PETITION IN  
OPEN COURT and IA No. 246771/2023 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES)

WITH

Diary No(s). 47843/2023 (XIV-A)

(IA No. 6819/2024 - APPLICATION FOR LISTING REVIEW PETITION IN OPEN  
COURT and IA No. 6818/2024 - APPLICATION FOR PERMISSION TO FILE  
REVIEW PETITION)

R.P.(C) No. 82-83/2024 in C.A. No. 1421-1422/2023 (XIV-A)

R.P.(C) No. 85/2024 in C.A. No. 1429/2023 (XIV-A)

R.P.(C) No. 86/2024 in C.A. No. 1430/2023 (XIV-A)

Diary No. 54071/2023 (XIV-A)

(FOR CONDONATION OF DELAY IN FILING REVIEW PETITION ON IA  
268721/2023)

Diary No. 54075/2023 (XIV-A)

(FOR CONDONATION OF DELAY IN FILING ON IA 268722/2023)

Diary No. 54076/2023 (XIV-A)

(FOR CONDONATION OF DELAY IN FILING REVIEW PETITION ON IA  
268723/2023)

Diary No. 54088/2023 (XIV-A)

(FOR CONDONATION OF DELAY IN FILING ON IA 268724/2023)

Date : 06-08-2024 These matters were circulated today.

**CORAM :**

**HON'BLE MR. JUSTICE SANJIV KHANNA  
HON'BLE MR. JUSTICE DIPANKAR DATTA**

**By Circulation**

**UPON perusing papers, the Court made the following  
O R D E R**

**Permission to file the review petition(s) is granted.**

**Prayer for listing the review petitions in open Court is  
rejected.**

**Delay condoned.**

**The review petitions are dismissed, in terms of the signed  
order.**

**Pending application(s), if any, shall stand disposed of.**

**(DEEPAK GUGLANI)  
AR-cum-PS**

**(R.S. NARAYANAN)  
ASSISTANT REGISTRAR  
(signed order is placed on the file)**