

RNM ALERT

Thinking of the Bottom Line – Think of Us



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U.N. Marwah

Dear Readers,

We are pleased to report that FCA Manoj Gupta, Partner attended the recently concluded Asian Regional Conference of the Geneva Group International (GGI) in Bangkok, Thailand from 13- 16 December 2012.

The recent spate of pro-investment actions taken by the Government, including passing by the Parliament the approval for Foreign Direct Investment (FDI) in Retail trade, key amendments to the Banking Bill and the new Companies Bill have given animpetus to market sentiments and should result in higher investments during the next 2 quarters. The approval of the new Companies Bill is especially important after pending before Parliament since the last decade, and now incorporating various new concepts in line with international best practices. The amendment in the Banking Bill should now clear the way for approval by the Reserve Bank of India of new private Banks after a gap of more than a decade. The stock market has also responded by recording new highs to these positive signals.

The recently announced, election results in the State of Gujrat in western India is also significant in so far as it brought the development agenda back on the centre stage of politics. The electorate is giving a thumbs up to Parties and Politicians whom are able to bring about developmental changes on the ground in precedence to religion, caste etc.

We would like to wish all our Readers a merry Christmas and a happy New Year. May 2013 bring good health, prosperity and happiness.

Regards,

U.N. Marwah, FCA

For and behalf of the RNM Alert Editorial Board

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DIRECT TAX

➤ Case Laws

Definition of Assessee

Sec 2(7): Definitions – Assessee – No business income in the hands of assessee where assessee is agent of the State Government

[Source: City and Industrial Development Corpn of Maharashtra Ltd. v. ACIT (2012) 138 ITD 381 (Mum.)(Trib.)]

Deemed Income

S. 2(22)(e): Definitions- Deemed dividend – Loan Advanced was at pre-condition of granting bank guarantee and collateral security for funding of company. Arrangement merely for sake of convenience arising out of business expediency is not deemed dividend

Assessee was a managing director in a company. She had taken a loan of Rs.17,65,517 from company. Assessing Officer treated said amount as 'deemed dividend'. Assessee contended that said amount was advanced to her as per her pre-condition of granting bank guarantee and collateral security for funding of company and at time of extending guarantee/security she had sought liberty to withdraw funds from company as and when required by her for personal purposes. It was held that on facts it could be said that arrangement between assessee and company was merely for sake of convenience arising out of business expediency, which could not partake character of deemed dividend. (A.Y. 2006-07)

[Source: ACIT v. G. Sreevidya (Smt) (2012) 138 ITD 427 (Chennai) (Trib.)]

International Taxation

Sec 9(1)(vii): Income deemed to accrue or arise in India –Fees for technical services-DTAA- India – UK Receipts from marketing contribution and value added service (VAS) was taxed as fees for technical services. (S.115A)

[Source: De Beers UK Ltd v. Dy. DIT (IT) (2012) 53 SOT 319 (Mum.)(Trib.)]

Sec 90: Double taxation avoidance – Non-residents- Capital Gains on transfer of shares - Legal vs Beneficial ownership - India-Mauritius DTAA-Ultimate beneficial owner is Jersey Co - Benefit of DTAA be available - legal ownership prevail over beneficial ownership in absence of any contrary evidence. Gains not chargeable to tax in India hence seller is not bound to deduct tax at source. Minimum alternative tax provision will apply to foreign company. (S.45, 115JB, 195, Art . 13(4))

[Source: *Moody's Analytics Inc., USA* (2012) 348 ITR 205(AAR), *Moody's Group Cyprus Ltd.*(2012) 348 ITR 205 (AAR), *Copal Research Ltd*(2012) 348 ITR 205 (AAR), *Copal Market Research Ltd*(2012) 348 ITR 205 (AAR)]

Transfer Pricing

Sec 92 CA: Avoidance of tax- Transfer pricing – Arms’ length price-Comparable-Assessee has not conducted a proper transfer pricing study and has wrongly chosen four comparables.

The assessee, a wholly owned subsidiary of a Hong Kong based private limited company providing internet data and international communication services, was established with the objective of rendering marketing support services to the parent company. The assessee carried out a transfer pricing analysis and chose the transactional net margin method as the most appropriate method. Assessee has not conducted a proper transfer pricing study and has wrongly chosen these four comparables. The four companies in question were engineering companies providing end-to-end solutions whereas the assessee company provided marketing support services to the parent company, which was in the nature of support service and hence not functionally comparable. Concluded that the risk profile was vastly different and hence on this count also they were not comparable. (A.Y. 2004-05, 2005-06)

[Source: Dy. CIT v. MCI Com India P. Ltd(2012) 19 ITR 42 (Delhi)(Trib.), Jt. CIT v. Verizon India P. Ltd(2012) 19 ITR 42 (Delhi)(Trib.)]

Sec 92C: Avoidance of tax-Transfer pricing-Arm’s length price-Aggregation-Application of “Aggregation”/ “Portfolio Approach”- The assessee cannot take advantage of its own mistake. Even if the TPO’s report on that issue is illegal, the AO is now aware of the fact that there is such an international transaction and he is empowered u/s 92C(3) to determine the ALP thereof.

[Source: Atul Limited v. ACIT (ITAT)(Ahd.)(Trib.)www.itatonline.org.]

Charitable or religious purpose

Sec 11: Charitable or religious purpose-Capital expenditure-Depreciation-After writing off the expenditure incurred for acquisition of capital assets as application of income the trust cannot claim the depreciation on said assets on notional basis

The assessee a charitable institution running hospital, acquired medical equipment with surplus funds available. It treated expenditure incurred for acquisition of capital assets as application of income u/s 11(1)(a). It was held that after writing off the full value of the capital expenditure on acquisition of assets as application of income for charitable purposes and when assessee again claimed the same amount in the form of depreciation, such notional claim became cash surplus available with the assessee, which was outside the books of account of the trust unless it was written back which was not done by the assessee. It was thus held that it was not permissible for a charitable institution to generate income outside the books in this fashion and there would be violation of section 11(1)(a). (A.Y. 2005-06)

[Source: Lissie Medical Institutions v. CIT (2012) 348 ITR 344 (Ker.)(High Court)]

Expenditure Disallowance

Sec 14A: Expenditure disallowance-Exempt income- Notional expenditure- The assessee had not retained shares with intention of earning dividend income but such

income was incidental to business of shares trading, no notional expenditure could be deducted by invoking section 14A.

The Assessing Officer found that the assessee had earned dividend income which was exempt and disallowed the expenditure in relation to earning of such income. The Assessing Officer attributed certain expenditure to share trading activity and certain amount in respect of dividend earned from PMS account. In appeal Commissioner (Appeals) deleted the disallowance in respect PMS account and retained the disallowance in respect of share trading account. The Tribunal held that the assessee earned the dividend income as incidental to trading activity hence no notional expenditure could be deducted by invoking section 14A. The Tribunal followed the ratio of Karnataka High Court in CCI Ltd v. Jt.CIT (2012) 206 Taxman 563 (Karn.)(High Court) (A.2006-07)

[Source: Apoorva Patni v. Addl.CIT (2012) 24 Taman.com 223 (Pune.)(Trib.)]

House Property Income

Sec 24: Income from house property- Deductions –Interest- Interest paid on borrowing for acquiring house is deductible under section 24(b) and as cost of acquisition under section 48.

The assessee borrowed funds for purchasing a house. The interest paid on the said loan was claimed as a deduction u/s 24(b). When the house was sold, the interest paid on the said loan was treated as “cost of acquisition” and claimed as a deduction u/s 48 in computing the capital gains. The AO held that as the interest had been allowed as a deduction u/s 24(b), it could not allowed again in computing capital gains. The CIT(A) allowed the claim. On appeal by the department to the Tribunal, held dismissing the appeal: Deduction u/s 24(b) and computation of capital gains u/s 48 are altogether covered by different heads of income i.e., income from ‘house property’ and ‘capital gains’. Neither of them excludes the other. A deduction u/s 24(b) is claimed when the assessee computes income from ‘house property’, whereas, the cost of the same asset is taken into consideration when it is sold and capital gains are computed under section 48. There is no doubt that the interest in question is an expenditure in acquiring the asset. Since both provisions are altogether different, the assessee is entitled to include the interest at the time of computing capital gains u/s 48.(A. Y. 2007-08)

[Source: ACIT v. C. Ramabrahmam (Chennai)(Trib.)]

Profits & Gains from Business & Profession

Sec 37(1): Business expenditure- Personal expenditure-Company-no disallowance for ‘personal expenditure’ in case of a company.

There can be no disallowance for ‘personal expenditure’ in case of a company. Foreign travel expenses incurred to explore new business opportunities, are eligible as ‘revenue’ in nature. (A.Y.1988-89)

[Source: CIT v. Nuchem (2012) 208 Taxman 250(Mag.)(P & H.) (High Court)]

Sec 40A(3): Expenses not deductible- Cash payment exceeding limits-If building constructed was not for personal use the disallowance will be justified if the cash payment were made exceeding the prescribe limit.

The assessee constructed the building for business and leasing. The Assessing Officer disallowed the cash expenses. On appeal Tribunal deleted the disallowances. On appeal by the revenue the Court held that,

when the assessee was putting up construction not for self occupation, but for business of selling a portion of building and leasing over the premises the cash payment exceeding the limit prescribed under section 40A(3) has to be disallowed. Accordingly the appeal of revenue was allowed. (A.Y. 1996-97)

[Source: CIT v. Sanu Family Trust (2012) 209 Taxman 529 (Karn.)(High Court)]

Capital Gain

Sec 45: Capital gains- Allotment letter- Under construction-Long term-Short term-Flat sold after three years from date of allotment of flat under construction but within three years from date of possession, held to be long term(S. 2(29A), 2(42B), 54)

The assessee was allotted a flat on 27-2-1982, the possession after completion was handed over on 15-5-1986 and the flat was sold on 6-1-1989. The assessee claimed the sale as a long term capital gain and invested the same in another apartment and claimed deduction u/s 54 of the Act. The AO, CIT(A) and tribunal both held that the sale amounts to short term capital gain as the flat was sold within 36 months from the date the assessee received possession of the said flat. On appeal to the High Court by the assessee the High Court while allowing the appeal held that as per paragraph 2 of circular No.471 dated 15-10-1986, 162 ITR (St) 41 issued by the Board as to the nature of that right that an allottee acquires on allotment of flat, the allottee gets title to the property on the issuance of an allotment letter and the payments of installments was only a consequential action upon which the delivery of possession follows. The High Court therefore held that in the instant case the right of the assessee prior to the possession of the flat was a right in the property, and therefore in such a situation it cannot be held that prior to that date, the assessee was not holding the flat, and therefore held that the sale of the flat amounts to a long-term capital gain. (A.Y. 1989-90)

[Source: Vinod Kumar Jain v. CIT (2012) 344 ITR 501 (P&H)(High Court)]

Sec 48: Capital gains – Computation- Constructed area- Agreed consideration not being actually received the same cannot be taken into account for the purpose of computation of capital gains

Agreed consideration in the form of constructed area of land as stated in the development agreement between the assessee- landowner and the developer not having been actually received by the assessee, the same cannot be taken into account for the purpose of computation of capital gain arising from the transfer of the property. (A.Y.2007-08)

[Source: Chemosyn Ltd. v. ACIT (2012) 139 ITD 68/19 ITR 6/ 149 TTJ 294/77 DTR 89 (Mum.)(Trib.)]

Income from Other Sources

Sec 56(2): Income from other sources –Gifts- Marriage of daughter Gifts received on the occasion of marriage of daughter, AO was justified in including the gifts in the hands of assessee in terms of s. 56(2)(vi)

Provisions of S. 56(2)(vi) r/w proviso (b) clearly reveal that the provisions of s. 56(2)(vi) shall not apply to any sum of money or any property received on the occasion of the marriage of the individual; where the gift cheques were in the name of the assessee and not in the name of the assessee's daughter, whose marriage was solemnized and the amount of such gifts was credited by the assessee to his bank account. It

was held that AO was justified in including the gifts in the hands of assessee in terms of s. 56(2)(vi)(A.Y.2007-08).

[Source: *Rajinder Mohan Lal v. Dy. CIT (2012) 75 DTR85 (Chandigarh) (Trib.)*]

Unexplained Investments

Sec 69: Unexplained investments-Income from undisclosed sources- Reference to DVO u/s 142A

AO is first required to reject the books of account before making a reference to the valuation officer under s. 142A; AO having not mentioned at any stage that the assessee's books of account are defective or that the cost of construction as shown in the books of account is not the true cost of construction there was no occasion for the AO to make reference to the valuation office report made by the valuation officer pursuant to such invalid reference could not have been made the basis of the addition under s. 69. (A.Y. 1989 – 90)

[Source: *Goodluck Automobiles (P) Ltd v. ACIT (2012) 78 DTR 104 (Guj.)(High Court)*]

Reassessment

Sec 147: Reassessment- Full and true disclosure – addition on different issue

Close perusal of the reasons recorded would immediately establish that, quite apart from no suggestion in the reasons regarding any attribution on the part of the assessee in fully and truly not disclosing material facts, all facts necessary for framing the assessment were very much before the AO when he previously took the return of the assessee for scrutiny assessment – Further if the reopening of assessment fails, on account of non existence of reasons for such reopening, the revenue cannot either sustain such reopening or bring within the assessment proceedings any other head of escaped income not mentioned in the reasons for reopening – Reopening on the ground of wrong deduction under s. 80HHC could not therefore be sustained on account of deemed dividend under s. 2(22)(e). (A.Y.2004 – 05)

[Source: *Dishman Pharmaceuticals and Chemicals Ltd v. Dy. CIT (2012) 77 DTR 173 (Guj.)(High Court)*]

Sec 147: Reassessment – Full and true disclosure – Notice after expiry of four years.

The validity of the reasons has to be judged only on the basis of what was originally recorded under s. 148(2). There is no authority given by the section enabling the Assessing Officer to reopen the assessment on the ground that credit for TDS was wrongly allowed in the original assessment.(S.9(1)(vi), 148, 154,155(14)

[Source: *Asia Satellite Telecommunications Co. Ltd. v. Asstt. DIT (2012) 253 CTR 150 (Delhi) (High Court)*]

Tax Deduction at Source

Sec 194C: Deduction at source – Contract work – Transport Contractor – As no contract with truck owner and truck merely hired not liable to deduct tax at source

Assessee was a transport contractor for one 'J' and payments were made to truck owner and driver by 'J' on behalf of assessee after deducting TDS. Assessing Officer held that assessee had availed services of truck drivers or transporters for carrying out work of 'J' thus, there existed sub contractor-ship and assessee itself should have deducted tax at source. Since assessee had not entered into a contract with

truck owners for part performance of its works with joint liability and he had simply hired trucks under his own obligation, he was not liable to deduct tax under sec. 194C. (AY 2007-08)

[Source: Kuldeep Kumar Sharma v. ITO (2012) 53 SOT 230 (Delhi)(Trib.)]

Advance Ruling

Sec245R: Advance rulings-Procedure-Application- rejection of application – similar application by holding company

Questions raised in the applications filed by the Petitioners were not pending in the petitioners own case before any Central Excise Officer, Tribunal or any court; further, petitioners having sought advance ruling in respect of activity/service which has not yet started, it could not be inferred that the proposed transaction of the petitioners would be identical to that undertaken by their holding company merely because the proposed business of the petitioners would be similar to that of the holding company and, therefore, the applications of the petitioners could not be rejected on the ground that the ruling might result in incompatible decisions on an identical question.

[Source: GSPL India Transco Ltd. v. Union of India & Anr. (2012) 77 DTR441 (Guj.)(High Court)]

Penalty for Concealment

Sec271(1)(c): Penalty – Concealment– Disallowance of fees paid to Registrar of companies and claim of depreciation, error being genuine and bona fide, no penalty be levied.

The AO levied penalty in case of disallowance of fees paid to Registrar of companies and claim of depreciation. It was held that the AO did not contradict the plea of the assessee that the excess claim of depreciation was an inadvertent error. As elements in the case indicate that the error by the assessee was genuine and bona fide, deletion of penalty was justified. (A.Y. 2001-02)

[Source: CIT v. Brahmaputra Consortium Ltd. (2012) 348 ITR 339 (Delhi)(High Court)]

Wealth Tax

Sec2(ea) – Asset – Urban Land – Held for industrial purpose

Land in question having been reserved for hotel by notification dated 12th Nov. 1992 issued under s.43 of the Maharashtra Regional Town Planning Act, 1966 the same is 'industrial land' within the meaning of s. 3(c) of the Industrial Development Bank of India Act, 1964 exempt from wealth tax for two years from the date of acquisition viz., 30th Nov. 1995, hence not chargeable to wealth tax for asst. Year 1996-97 by application of Expl. 1(b) to s. 2(ea). (A.Y. 1996 – 97 to 98 – 99)

[Source: Mars Hotels & Resorts (P) Ltd v. Dy. CIT (2012) 77 DTR 265 (Mum.) (Trib.)]

Sec7: Valuation- Shares – Lock in period

The shares were given to the assessee on promoters quota, they being family members of the promoter; the shares were held at the value of Rs.10 per share. It is an admitted fact that the shares of the company are quoted shares. Even though market value as a concept would hold good even in respect of shares suffering restriction on their transferability, there is need for assigning a depreciated value to such market value. In respect of shares with a lock in period held out of the promotes quota, necessarily one

has to arrive at the depreciated value of these shares. It is an open secret that in the absence of any such guideline, the depreciation may range from 0 to 100 and it is always a question of debate. Apparently, on account of all these, the CWT justifiably adopted r. 11 of Part C of the Sch. III, which is with reference to unquoted equity shares. By adopting the principle as given under r. 11, one is neither treating the shares as unquoted shares, nor is he ignoring the fact that the company shares are quoted shares. Though the assessee is not in a position to show what could be the depreciated value of the restriction on the transfer, even invoking r. 21, as had been done by the Revenue, r. 11 could only be a plausible method to arrive at the depreciated value of a quoted share, which suffers a lock in period, by reason of it being allotted as a promoters quota.

[Source: CWT v. Thirupathy Kumar Khemka & Ors. (2012) 77 DTR (Mad) 475]



INDIRECT TAX

Service Tax

➤ Case Laws

Exemption From Service Tax to Treatment Plant

Club or Association service- Exemption Notification No. 1/2012-ST.- Association of individual units formed for setting up and running common facility for treatment and recycling waste on payment of subscription- Impugned Notification given retrospective effect by Section 145 of Finance Act, 2012- Therefore, assessee squarely covered by exemption Notification- Activities undertaken not liable to Service Tax- Impugned order set aside- Section 65(105)(zzze) of Finance Act, 1994.

[Source: Vapi Waste & Effluent management CO. V Comm. OF C. EX., DAMAN, 2012(28) STR 356 (Tri-Ahmd.)]

Refund Claim Cannot Denied on Technical Ground

Refund of Service Tax on GTA service- Claim rejected on ground that transport of goods from ICD to port of exports, details like shipping bill number, export invoice number, description of export goods etc., are not available- Appellants claimed to have enough to link the goods with the invoices for claim of service tax- Refund claim cannot be rejected on technical grounds like invoices issued by transport agencies do not contain all the details.

[Source: Durhan Spintex & Holding Pvt. Ltd V Comm. OF ST Ahmadabad, 2012 (28) STR 366 (Tri-Ahmd.)]

Cenvat Credit Cannot Denied on Technical Ground

Cenvat Credit-Denial of-Failure to maintain separate accounts for input/input service availed for providing output service-HELD: No provision for segregation on input/Cenvat credit for payment of excisable goods and for payment of Service Tax- No requirement for one to one correlation- Impugned order set aside- Appeal allowed- Rule 3 of Cenvat Credit Rules, 2004.

[Source: Jyoti Structures Ltd. V Comm. Of Central Excise, Nasik, 2012 (28) STR 380 (Tri-Mumbai.)]

Service By Way of Warranty is Input Service

Cenvat Credit- Input service- After sales service of vehicle- HELD: As per Section 4(3)(d) of Central Excise Act, 1944 value of warranty and service is post manufacturing includible in assessee value- Therefore, expenses incurred entitled for input service credit.

[Source: Comm. OF C. EX., Nasik V Mahindra & Mahindra Ltd. 2012 (28) STR 382 (Tri-Mumbai.)]

Service Tax Rules – Cenvat Credit – Penalty

Assessee, a cellular telephone service provider, which was not paying service tax on roaming charges having wilfully suppressed the fact of availment of Cenvat credit in respect of exempted service in excess of the prescribed limit of 35per cent laid down in r. 3(5) of service tax credit Rules, 2002, it is liable for penalty under ss. 76 and 78 r/w/r. 6 of service tax rules, 1994.

[Source: Vodafone Digilink Ltd v. CCE (2012) 78 DTR (Raj) 128]

Cenvat Credit of GTA Services

Cenvat Credit- Input- GTA services- Transport of goods from factory to port of export of goods on FOB/GIF basis- HELD; Goods were delivered on board the vessel- Cost of transportation from factory to port of shipment became part of value of goods, and whatever service have been availed upto that point became input service on which exporter could take credit of Service Tax paid- It was more so as Section 4 of Central Excise Act, 1944, contemplates place other than factory also as a place of removal where sales are effected after clearance from factory- Rules 2(l) and 3 of Cenvat Credit Rules, 2004.

[Source: *Oriental Containers Ltd. V Comm. OF C. EX., Thane, 2012 (28) STR 397 (Tri-Mumbai.)*]

➤ Notification/Circular

Restoration of Service Specific Accounting Codes for Payment of Service Tax

Vide Circular No.165/16/2012 –ST, 20-12-2012, service specific accounting codes for payment of service tax has been restored. Therefore, for now payment of service tax should made under appropriate head.

[Source: *Circular No.165/16/2012 –ST, 20-12-2012*]



Central Excise

➤ Case Law

Release of Confiscated Goods

Confiscation- EXIM- Basmati Sella Rice for export- Confiscated for misdescription- CESTAT ordered release as they were not prohibited goods- Department not releasing consignment even after two months of CESTAT order- Before High Court, Department's Counsel unable to state whether any appeal had been preferred against CESTAT order- In that view, as goods were perishable and there was likelihood of loss or irreparable damage, Department directed to release them at the earliest and in any event within 72 hours from date of High Court order- Section 111 of Customs Act, 1962.

[Source: Prion Enterprises S B Comm. of Customs, 2012 (285) ELT 503 (DEL.).]

End Use Bond as Evidence

Confiscation- Barium Carbonate- Imported for use in manufacture of glass/ceramic and not for insecticide purpose- Classified under Tariff Item 2836 60 00 of Customs Tariff Act, 1975- Public Notice No. 94/2011, dated 7-7-2011 issued by Commissioner of Customs (Import), JNCH, Nhava Sheva prescribing that in such case importer is not required to be registered with Central Insecticide Board (CIB) if they produce end use bond- HELD; Public Notice ibid was a beneficial circular, and in that view, applicable retrospectively- Confiscation for non-registration with CIB set aside- Section 111 of Customs Act, 1962

[Source: Devanshi Impex P. Ltd. V Comm. Of C. (GENERAL), xMumbai, 2012 (285) ELT 523 (Mumbai.)]

No Exemption Benefit if Goods Not Directly Supplied to Project

Exemption- Project financed by International Organization- Wires and cables supplied to supplier of electro mechanical equipment to allottee of hydro project financed by World Bank- HELD: As wires and cables were not supplied directly to the hydro project, benefit of Notification No. 108/95-C.E. was not available.

[Source: Cable Corporation of India Ltd. V Comm. of C.EX., Mumbai V, 2012 (285) ELT 525 (Tri-Mumbai.)]

Cenvat Credit On Dutiable Product Laying In Stock

Cenvat- Inputs/finished goods/semi-finished goods- Lying in stock on date of coming into force of exemption Notification- Credit legally taken and utilized on dutiable final product, is not required to be reversed- Rule 6 of Cenvat Credit Rules, 2004

[Source: COMMR. OF C. EX., Chandigarh V Mount Everest Mineral Water LTD., 2012 (285) ELT 543 (Tri- Del.)]

Seizure of Goods

Show cause notice- sufficient cause for extending period for its issuance- Noticee not cooperating in retrieval of data from seized CPU and not appearance despite service of summon- They were unable to explain source of confiscated

goods and Indian currency recovered from them- HELD: Delay in completion of investigation was due to non-cooperation by noticee- In that view, there was no infirmity in extension of period for issuance of show cause notice- Prima facie, further investigation was required to verify whether seized goods and Indian currency were result of clandestine removal of excisable goods- Section 110(2) of Customs Act, 1962- Section 12 of Central Excise Act, 1944.

[Source: Hytech Earthmoving Engineers V CCE Delhi-IV, Faridabad, 2012 (285) ELT 372 (Tri- Del.)]



COMPANY LAW UPDATES

➤ Circular/ Notification/ Guidance

Examination of Balance Sheets by ROCs

The underlying idea behind the filing of balance sheets and other documents which require similar filings is to publicly disclose information which reflects various aspects of the working of a company so that the company's public accountability is maintained. It is neither intended nor feasible for the Registrars to scrutinize or verify the contents of filing except on a random basis. Companies and its Directors and officials are liable to be penalized for any incorrect, false or misleading information that such filing disclose. In the following cases, however, the Registrars routinely scrutinize balance sheets:

- (i) Of companies against whom there are complaints;
- (ii) Of companies which have raised money from the public through public issue of shares/debentures etc.;
- (iii) In cases where the auditors have qualified their reports;
- (iv) Default in payment of matured deposits and debentures;
- (v) References received from other regulatory authorities pointing out violations/irregularities calling for action under the Companies Act, 1956.

[Source: General Circular No. 37/2012 dated 06th November, 2012]

Appointment of Cost Auditor by Companies

In continuation of the General Circular No. 15/2011 dated 11th April 2011, Ministry hereby makes the following changes:

- a) The company shall, within thirty days from the date of approval by MCA of the application made to the Central Government in the prescribed Form 23C seeking its prior approval for the appointment of cost auditor, issue formal letter of appointment to the cost auditor, as approved by the Board.
- b) The cost auditor shall, within thirty days of the date of formal letter of appointment issued by the company, inform the Central Government in the prescribed form 23D, along with a copy of such appointment.
- c) In case of change of cost auditor caused by the death of existing cost auditor, companies are allowed to file fresh e-form 23C, without any additional fee, within 90 days of the date of death. The additional fee payable as per the Companies (Fees on Applications) Rules, 1999 [as amended] shall become applicable after expiry of the said 90 days. Accordingly, e-forms 23C and 23D are being modified to capture such details.
- d) In case of change of cost auditor for reasons other than death of the existing cost auditor, companies are required to file fresh e-form 23C with applicable fee & additional fee, clearly specifying the reasons of change. In case of change due to resignation of the existing cost auditor, e-form 23C should be accompanied by the resignation letter of the existing cost auditor. In case of change due to the management policy of periodical rotation, then attach a copy of the Board approved rotational

policy with the e-form 23C. In any other case, the change should be duly justified and supported with the relevant documents.

- e) In order to ensure compliance of section 224(1-B) of the Companies Act 1956, required changes are being made in the MCA21 system to restrict the number of cost audit approvals to the limits specified in section 224(1-B) through a counter on the membership number of the sole proprietor or partner of the firm. It will be further ensured that in case of a sole proprietor, he has completed the audit and submitted the cost audit report. In case of a partnership firm, the partner so appointed or any other partner of the same firm is allowed to complete the audit & submit cost audit report subject to his total numbers not exceeding the limit specified in section 224(1-B).

MCA is regularly receiving requests from the companies and cost auditors for making corrections in the e-forms 23C & 23D in respect of minor typographical errors or other mistakes such as incorrect financial year, incorrect name of the cost auditor or the cost audit firm, incorrect PAN number, incorrect scope of audit, etc. In MCA21 system, no changes are permitted in the approved e-forms.

Therefore, all companies and cost auditors are hereby informed to carefully verify all particulars before uploading e-forms 23C or 23D on the MCA21 portal. In any rare case, if still any error/mistake is observed, it should be brought to the notice of MCA well before its approval enabling it to return the said e-form for re-submission after making the required corrections. Else, the companies and cost auditors shall be required to file fresh e-forms 23C & 23D containing correct particulars, along with the applicable fee and additional fee.

If a company or the cost auditor contravenes any provisions of this circular, the company and every officer thereof who is found to be in default, and the cost auditor in case he is in default, shall be punishable as per applicable provisions of the Companies Act, 1956.

The modifications contained in this circular shall be effective from the financial year commencing on or after the 1st day of January, 2013.

[Source: General Circular No. 36/2012 dated 06th November, 2012]

Default by the Cost Auditors in filing Form 23D against the corresponding Form 23C

Since April 1, 2011, though all the appointment applications made by the companies concerned in Form 23C have already been approved by the MCA, a large number of cost auditors have defaulted in filing the required Form 23D within the stipulated time. In many cases, the default period is even more than a year. This has been viewed very seriously by the Ministry.

Keeping in view the initial operation of the revised procedure, all the defaulting cost auditors are requested to file their required Form 23D that have already become due till date, by December 16, 2012 positively. In case of any further default, names of such defaulting members shall be sent to the Institute on December 17, 2012 intimating the Institute to initiate Disciplinary Proceedings against them under the relevant provisions of Cost and Works Accountants Act, 1959.

In cases where the company concerned, after approval of Form 23C, has failed to issue the formal letter of appointment to the cost auditor, they shall do so within 15 days of the issue of this circular enabling the cost auditor to file Form 23D within the extended time indicated above. In case of non-compliance, the company

and every officer thereof who is found to be in default shall be punishable as per provisions of the Companies Act, 1956.

[Source: General Circular No. 35/2012 dated 05th November, 2012]



RBI UPDATES

➤ Circular

Liaison Office (LO)/Branch Office (BO) in India by Foreign Entities – Reporting to Income Tax Authorities

It is clarified that copies of the Annual Activity Certificate (AACs) submitted to the DGIT (International Taxation) should be accompanied by audited financial statements including receipt and payment account. Further, at the time of renewal of permission of LOs by AD banks, they may note to endorse a copy of each such renewal to the office of the DGIT (international Taxation)

[Source: RBI/2012-13/311 A. P. (DIR Series) Circular No. 55 dated 26th November, 2012]

External Commercial Borrowings (ECB) Policy – ECB by Small Industries Development Bank of India (SIDBI)

On a review of the extant ECB policy, it has been decided to include SIDBI as an eligible borrower for availing of ECB for on-lending to MSME sector, as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, subject to the following terms and conditions:-

- a) such on-lending by SIDBI shall be to the borrowers' directly either in INR or in foreign currency (FCY);
 - i. the foreign currency risk shall be hedged by SIDBI in full in case of on-lending to MSME sector in INR; and
 - ii. on-lending in foreign currency shall be subject to Regulation 5(5) of FEMA Notification No. 3/2000-RB dated May 03, 2000, as amended from time to time and shall only be to those beneficiaries which have natural hedge by way of foreign exchange earnings;
- b) availment of ECBs, including the outstanding ECBs, up to 50 per cent of their owned funds, for on-lending to MSME sector, will be under the automatic route and beyond 50 per cent of owned funds, will be under the approval route, subject to a ceiling of USD 500 million per financial year; and
- c) the proceeds of ECB availed by SIDBI, shall be used for on-lending to MSME sector only for the permissible end-uses as provided under the extant ECB policy.

All other conditions of ECB, such as recognized lender, all- in-cost, average maturity, prepayment, refinancing of existing ECB and reporting arrangements shall remain unchanged.

[Source: RBI/2012-13/284 A.P. (DIR Series) Circular No. 48 dated 6th November, 2012]



CORPORATE FINANCE

➤ Latest News

Private Equity

GE Capital invests Rs 125cr in Biocon arm

GE Capital, the investment arm of General Electric, has picked up a 7.69% stake for Rs 125 crore in Syngene, a subsidiary of Biocon. The deal values the biotech company's subsidiary at about Rs 1,624 crore. Syngene, a contract research organization, is into drug discovery and development services. Its client list includes Bristol-Myers Squibb, Abbott, Endo Pharma and DuPont. "This stake investment is not just a financial investment. GE has leading edge expertise in lifescience technologies and we believe that through this investment Syngene has the opportunity to engage with different parts of the GE organization," said Kiran Mazumdar Shaw, CMD, Biocon. She added that the investment would take Biocon closer to its commitment of taking Syngene through an IPO.

[Source: Times of India, November 1, 2012]

EILSF exits Sutures India with 3.2x returns as CX Partners buys stake for \$37M

The fund has few more exits in the pipeline and expects to close at least one more in the next six months. Life Sciences-focused private equity fund EILSF (Evolvement India Life Sciences Fund) has exited Sutures India Private Limited with cash on cash returns of 3.2x on its three-year-old investment, according to a top official.

[Source: Times of India, November 5, 2012]

Everstone Capital, ICICI invest \$23.5M in Sohan Lal Commodity Management

Return backers Mayfield Fund and Nexus India Direct Investments (II) (Nexus) have also participated in the fresh round of funding. Everstone Capital Advisors and Emerging India Fund (EIF), a fund by ICICI Bank, have together invested \$23.5 million (Rs 129.3 crore) in Sohan Lal Commodity Management Pvt Ltd for a 25.55 per cent and 6.93 per cent stake, respectively. This is the Series C round of funding for the warehousing and collateral management company.

[Source: Vccircle, November 19, 2012]

Matrix Partners bets on Mewar Orthopaedic

This is Matrix Partners' third deal in healthcare space after Kids Clinic India & Centre for Sight, and the fifth deal across sectors in India this calendar year. Matrix Partners India has picked up a minority stake in a Series A round of investment in Rajasthan-based Mewar Orthopaedic Hospitals Pvt Ltd for an undisclosed amount. The private equity firm has participated in the first institutional round of equity funding for the company, headquartered in Udaipur.

[Source: Reuters, November 21, 2012]

Cbay's Raman Kumar sets up venture fund

The Indian business process outsourcing industry in the recent times have been in news due to renewed interest shown by private equity industry. However, the one deal that missed creating the buzz was the acquisition of MModal, earlier known as CBay Systems, by One Equity Partners, JPMorgan's PE partner for \$1.1 billion. The deal that was announced in July this year would be one of the large PE deal in the BPO space this year. A month after that, in August, PE player Bain Capital announced the acquisition of 30 per cent of Genpact's stock for \$1 billion.

[Source: Business Standard, November 18, 2012]

Tata Housing turns to US PE player to raise capital

Tata Housing, a wholly owned subsidiary of Tata Sons on Thursday said the company has for the first time raised private equity funding from Atlanta-based Portman Holdings for its luxury project in Bengaluru. The Tatas are now following in the footsteps of Godrej Properties, which has regularly been raising PE funds to optimise its capital requirement and boost its return ratios. Portman Holdings has invested around Rs 70 crore for 26 per cent equity in Tata Housing's luxury housing project The Promont in Bengaluru. Promont the luxury project is valued at 240 crore. YES Bank was the financial advisor on this transaction.

[Source: Indiapex.com, November 30, 2012]

PVR buys entire 69.27% promoters stake in Cinemax India

PVR Ltd has informed BSE that the Board of Directors of the Company at its meeting held on November 29, 2012, approved, subject to receipt of relevant consents under applicable law, the purchase of entire 69.27% stake in Cinemax India Limited from the Kanakia family, promoters of Cinemax India Limited at a per share price of Rs. 203.65 and a total consideration of Rs. 394,97,54,278 through Cine Hospitality Private Limited, a wholly owned subsidiary of the Company. The Board also approved purchase of upto 26% stake of Cinemax India Limited from the public shareholders pursuant to an open offer under the SEBI

[Source: frrole, November 29, 2012]



Swipe Telecom to raise \$20 mn through PE

Pune headquartered Swipe Telecom India Pvt Ltd would be raising \$20 million (Rs 110 crore approx) through private equity (PE) route for expansion, branding and innovation of its products which include mainly tablet PCs. “We already have \$ 10 million (Rs 55 crore approx) from a strategic investor Mantra Ventures which is based out of Pune. We hope to raise another \$20 million through PE by early next year,” said CEO of Swipe Telecom Shripal Gandhi

[Source: Business standard, November 30, 2012]

Venture Capital

Sequoia backs Suburban Diagnostics as healthcare deals hit record high

Sequoia Capital has been making early-growth bets in the healthcare delivery space and this is its fourth such investment. Venture and growth capital investor Sequoia Capital India has put in Rs 40 crore or \$7.5 million in pathology chain Suburban Diagnostics India Pvt Ltd – its fourth investment in the healthcare delivery segment. The funding came when private equity deals in healthcare services and equipment space have reached a record high in 2012 as investors look at a large, recession-proof market with minimal regulatory intervention.

[Source: Vccircle, November 2, 2012]

Norwest Venture Partners starts exiting Persistent with over 4x returns

Norwest has sold stake worth \$18M in Pune-based software development firm, which was its debut investment in India. Norwest Venture Partners is exiting its seven-year-old investment in software development firm Persistent Systems Ltd at over 4x. The Silicon Valley-based growth and venture capital investor sold a 5.01 per cent stake for about \$18 million (Rs 100 crore) in Persistent.

[Source: frrole, November 6, 2012]

Mobile payments firm Ezetap raises \$3.5M from Social+Capital Partnership, Peter Thiel, others

Prior to the Series A round, Ezetap raised an undisclosed amount from AngelPrime, a startup incubator launched by serial entrepreneurs. Mobile payments service provider Ezetap Mobile Solutions Pvt Ltd has raised \$3.5 million in a Series A round of funding from Chamath Palihapitiya’s Social+Capital Partnership, a Silicon Valley-based VC firm, as well as from Peter Thiel (co-founder of PayPal and one of the early investors in Facebook who is now associated with a VC firm and a hedge fund), David Sacks (Yammer founder) and Nicolas Berggruen. Social+Capital Partnership led the round which also saw participation from the existing investor AngelPrime. As part of the investment, Palihapitiya will join the board of Ezetap.

[Source: vccircle, November 7, 2012]

Nexus Ventures-backed online video management startup Kaltura raises \$25M

The New York-based startup, which has presence in the US and Europe, will use the money to expand into the Asia-Pacific market. Open Office-based online video platform Kaltura Inc, has

raised \$25 million in Series D from Mitsui Global Investment and Orix Ventures, with participation from existing investors Intel Capital, 406 Ventures, Avalon Ventures and India-based Nexus Venture Partners.

[Source: frrole, November 20, 2012]

MobiSwipe raises funding from One97 Mobility Fund

Vijay Shekhar Sharma, founder and CEO of One97 Communications, which runs One97 Mobility Fund along with private equity firm SAIF Partners, will join MobiSwipe board as its chairman. Mobile payment solutions provider MobiSwipe Technologies Pvt Ltd has received undisclosed funding from early-stage investor One97 Mobility Fund.

[Source: vccircle, November 21, 2012]

IncuCapital invests in genetic diagnostic startup Navigene

Earlier this year, IncuCapital invested in F&B chain Steammo and software development company Loginworks Softwares. Incubation and early-stage venture capital investment firm IncuCapital, a group company of the BSE-listed private equity player IndiaCo Ventures Ltd, has invested an undisclosed amount in Mumbai-based genetic diagnostics and research startup Navigene Genetic Science Pvt Ltd. Although the deal value cannot be immediately ascertained, some of the recent investments by IncuCapital have been in the range of Rs 40-50 lakh (\$90,000).

[Source: Reuters, November 22, 2012]

Smaller funds allow smaller cheques: Dave McClure & Paul Singh of 500 Startups on micro funds

McClure says the local fund would act more like a predecessor in the investment cycle with possible follow-on round from the main global fund. Silicon Valley-based incubator-cum-seed fund 500 Startups is looking to ramp up its regional investments with micro funds. The firm is in the process of raising two micro funds, believed to be for India (500 Startup Wallah) and Mexico (500 Luchadores). While the interest in India is not surprising, given the investment group's recent activity in the Indian startup ecosystem, what surprised us was the small size of the fund (just \$5 million each for the micro funds).

[Source: vccircle, November 27, 2012]

Location-based mobile ad platform AdNear raises \$6.3M from Sequoia & Canaan Partners

The Singapore & Bangalore-based company leverages real-time geo-location, combined with consumer behavior, to target relevant users. AdNear, a location-based mobile advertising platform that supports both feature phones and smartphones, has raised Rs 35 crore (\$6.3 million) in Series A funding from Sequoia Capital and Canaan Partners. The money raised will be primarily used to support the company's expansion plans across the Asia-Pacific region and also to expand the team.

[Source: vccircle, November 28, 2012]

Shubham Housing raises \$8M from Elevar, Helion, Accion & Saama Capital

The mortgage company, which focuses on low-income families in India, raised around \$2m from Elevar Equity and Helion around 2 years ago. Social sector investor Accion has announced that its Frontier Investments Group, along with Saama Capital (an India venture-focused investment firm), has invested \$4 million as part of an \$8 million investment into Gurgaon-based NBFC Shubham Housing Development Finance Company Pvt Ltd. Existing investors Elevar Equity and Helion Venture Partners brought in the rest of the money in the second round of funding for the non-banking finance company.

[Source: Vccircle, November 29, 2012]



Mergers & Acquisitions

IT firm Rolta India acquires US-based AdvizeX for \$32M

In the past five years, Rolta acquired several other foreign firms in the Middle East, the US and Canada. Mumbai-based IT solutions provider Rolta India Ltd has acquired AT Solutions Group's AdvizeX Technologies through its wholly owned US-based subsidiary Rolta International Inc. for about \$32 million, including escrows and earn-outs.

[Source: Vccircle, November 6, 2012]

Mahindra Holidays buys 49% in Bangkok resort Mac Boutique Suites

The firm, which claims 1.5 lakh members globally, has added 781 rooms over the past 10 months and with this new addition, the resort count stands at 43 in India and abroad. India's largest vacation ownership company Mahindra Holidays and Resorts India Ltd (MHRIL) has added a 77-room resort called Mac Boutique Suites in Sukhumvit, Bangkok, to its network by acquiring 49 per cent equity share capital of Thailand-based Infinity Hospitality Group Company (IHGCL) for an undisclosed amount. With this acquisition, Club Mahindra members can use the Bangkok resort through a special arrangement and a nominal access fee.

[Source: Dealcurry, November 6, 2012]

MakeMyTrip acquires HotelTravel.com for \$25M

The company's share price crashed on Tuesday to \$12.58 at NASDAQ, below the price at which it came with its IPO two years ago after it lowered revenue guidance for FY13. NASDAQ-listed online travel services firm MakeMyTrip India Pvt Ltd (MMT) has acquired the Hotel Travel Group (HT Group) for \$25 million. HT Group, with the brand 'Hotel Travel', has been operating the website www.hoteltravel.com for more than a decade in South East Asia, though the booking platform offers hotel reservation across the world. The acquisition will help MakeMyTrip to further strengthen its presence in the hotel and holidays segment internationally specially in South East Asia, a market which comprises a good chunk of outbound travel from India.

[Source: The hindu business line, November 7, 2012]

Hinduja Group's Gulf Oil buys Houghton for \$1.04B

The public-listed firm is acquiring the US-based specialty chemicals company, which is over three times its revenues and 10 times EBITDA. Hinduja Group company Gulf Oil Corporation Ltd (GOCL), through its UK subsidiary, has acquired 100 per cent stake in Houghton International Inc. from the US-based private equity fund AEA Investors, for \$1.04 billion, subject to customary closing conditions. Gulf Oil, part of the diversified Hinduja Group, said Houghton's strong presence in the industrial segment would complement its own range of automotive lubricants, and expected synergies in manufacturing, sourcing and distribution.

[Source: Vccircle, November 7, 2012]

Tata Power Buys 26% Of Indonesian Coal Producer Baramulti Sukses Sarana

Baramulti Sukses Sarana was listed on the Indonesian Stock Exchange on Thursday. Tata Power has bought a 26 per cent stake in Indonesian coal producer PT Baramulti Sukses Sarana Tbk (BSSR), which owns about 1 billion tonnes of coal resources in the South East Asian country, for an undisclosed amount. The deal, which comes five years after it struck a billion dollar deal in Indonesia, would further help the power producer to secure raw material for its thermal plants.

[Source: Vccircle, November 8, 2012]

Myntra acquires Exclusively.in and its online private label Sher Singh

The two firms share common investors in Accel Partners and Tiger Global. Bangalore-based Myntra Designs Pvt Ltd, which runs the lifestyle e-commerce site Myntra.com, has acquired Exclusively.in Inc., the company behind the private label brand Shersingh.com and the fashion site Exclusively.in, in a cash-cum-equity deal, for an undisclosed amount. The deal comes as yet another consolidation in the e-commerce space in India involving common VC investors. Accel Partners and Tiger Global are shareholders in both Myntra and Exclusively.in. However, Mukesh Bansal, founder and CEO of Myntra, clarified that the investors did not play an active role in the acquisition process.

[Source: Businesswire, November 8, 2012]

Auto component maker Anand acquires stake in Mando Steering Systems

Auto component maker Anand today said it has acquired a stake in Mando Steering Systems India for an undisclosed amount. "Anand, India, has recently entered into a joint venture partnership with Mando

Corporation, Korea, having acquired a stake in Mando Steering Systems India on October 29, 2012,” the domestic firm said in a statement. The company, however, did not share any detail such as the stake acquired, the valuation and the equity holdings of the two firms in the JV. Mando Steering Systems India has an existing operation in Chennai with a turnover of Rs 600 crore per annum. It manufactures column supported electric power steerings.

[Source: Economic Times, November 11, 2012]

Info Edge India invests Rs.5 crore in www.happilyunmarried.com

Info Edge (India) Ltd has invested an amount of Rs. 50 million (Rs. Fifty million) through optionally convertible cumulative redeemable preference shares in Happily Unmarried Marketing Private Limited for about 25% of the Company, on a fully diluted and converted basis. The Company is engaged in the business of designing & selling fun products through offline stores and will also now be expanding its online business through its website www.happilyunmarried.com.

[Source: Indiapex, November 11, 2012]

New Zealand-based Fletcher Building buying Well Pack's laminate biz for \$6.6M

The Kiwi firm is one of the largest laminate manufacturer worldwide with its Formica brand.

Formica Group, a part of New Zealand's Fletcher Building Ltd, has acquired the decorative laminate manufacturing division of Well Pack Papers & Containers Limited for approximately Rs 36.5 crore (\$6.6 million). Gujarat based Well Pack will sell the assets include land, buildings and machinery related to its laminate business as a part of the transaction.

[Source: Reuters, November 14, 2012]

UAE-based Network International buys majority stake in TimesofMoney

This is the first transaction of the Times Group in the financial technology sector. Times Group company Times Internet Ltd has recently sold a majority stake in digital payment service providing subsidiary TimesofMoney Ltd to Network International of the UAE for an undisclosed amount.

[Source: Economic Times, November 19, 2012]

Trivitron Healthcare acquires Finland-based Ani Labsystems for \$22M

Chennai-headquartered Trivitron, a medical technology solutions provider, acquired a minority stake in Kiran Medical Systems in Oct 2011. Chennai-based medical device and technology provider Trivitron Healthcare Pvt Ltd has acquired Finland-based Ani Labsystems Ltd and its group companies Ani Biotech, Biopoint and K3 for \$22.2 million, according to a Hindu Business Line report.

[Source: Vccircle, November 26, 2012]

Patni brothers buy 40% in Grameen Capital India, IFMR Trust exits

Grameen Capital has facilitated over Rs 700cr of capital flow to microfinance institutions and other social enterprises, indirectly touching the lives of more than 1m beneficiaries. Amit Patni and Arihant Patni of Nirvana Venture Advisors have acquired a stake in Grameen Capital India (GCI)

from its original investor IFMR Trust for an undisclosed amount. Grameen capital is joint venture between Grameen Foundation, Citi and IFMR Trust.

[Source: Frrole, November 26, 2012]

MakeMyTrip acquires majority stake in Thai hotel aggregator ITC Group for \$3.2M

This is the second deal within a month for MakeMyTrip focused on South East Asia market after it acquired the Hotel Travel Group for \$25 million. NASDAQ-listed online travel services firm MakeMyTrip Ltd has struck its second acquisition within a month by snapping an effective majority equity interest in Thai hotel aggregator comprising a group of companies known as the ITC Group for \$3.2 million. The ITC Group comprises of International Tour Center Co Ltd, ITC Bangkok Co Ltd and ITC South Co Ltd.

[Source: Vccircle, November 27, 2012]

CCI approves Religare's 49% stake sale in MF biz to Invesco

Fair trade regulator Competition Commission of India (CCI) today said it has approved Religare group's 49 per cent stake sale in its mutual fund business to global investment management firm Invesco. According to the deal, reached in September, US-based Invesco is acquiring 49 per cent stake in Religare Asset Management Company and Religare Trustee Company Pvt Limited, which manage assets worth over Rs 14,600 crore for Religare group's mutual fund business.

[Source: Livemint, November 27, 2012]



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