RNM ALERT

ISSUE NO.27
January, 2011

www.rnm.in


U.N. Marwah

Dear Readers,

We are pleased to inform all our esteemed readers that our associate concern, RNM &Associates which is active in corporate finance activities has been registered as an approved Channel Partner for HDFC Ltd. and is in the final stages of approval from Religare Finvest Ltd. And India Bulls Housing Finance Ltd / India Bulls Financial Services Ltd. RNM & Associates is in a position to provide Home Loan, Loan Against Property/ Shares, Unsecured Loans, Business Loans to not only retail customers but also corporate clients.

The forthcoming Budget session is expected to be a muted affair, with major changes being unlikely to be introduced, especially due to the volatile political situation surrounding the 2G Scam. Some tweaking of the tax slabs for individuals is expected in addition to enhanced fund allocation to infrastructure sector. The Power sector has been demanding relief from withholding tax provision on foreign lending to the sector as a means to boost further investments. The Banking industry is expecting a roadmap to be announced in the Budget regarding allowing new private sector banks. The limit on purchase of wine and spirits per passenger is likely to increase with airport duty free's raising this demand.

The RBI has simultaneously also issued a discussion paper on the presence of Foreign banks in India, which talks of a less restrictive branch expansion policy. But at the same time considering the international financial crisis, the RBI wishes to contain the dominance of the foreign banks.

India and Isle of Man have signed a Tax Information Exchange Agreement (TIEA) to facilitate greater information exchange on potential cases of tax evasion. India has completed negotiations of new TIEAs with Bahamas, British Virgin Islands, Cayman Islands, Jersey, Monaco, Saint Kitts & Nevis, Argentina and Marshall Islands out of 22 identified jurisdictions to facilitate greater exchange of information. This is an important development and all offshore structuring must factor in such Treaty provisions.

Regards,

U.N. Marwah

For and behalf of the RNM Alert Editorial Board

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DIRECT TAX

➢ Case Laws

Deductions & Exemptions

Sec-10B Exemption- Export Turnover - Foreign Expenditure for self purpose - Turnover retained abroad

Assessee engaged in business of development of software on site and off shore development with branch in USA for which separate accounts were maintained. In computing the export turnover, the AO held that Rs. 3.33 crores incurred by the USA branch constituted "expenses incurred in foreign exchange in providing technical services outside India" to be deducted from the export turnover as provided under section 10B. He also held that the turnover of the USA branch Rs. 15.14 croresbe reduced from the export profits. The Special Bench referring the circular No. 621 dated 19-12-1991 and 694 dated 23-11-1994 held that expenditure incurred on site abroad is eligible for deduction under section 10B. As regards the turnover of Rs. 15.14 retained abroad, one limb of the Government cannot be allowed to defeat the operation of other limb. While section 10B requires the foreign exchange to be brought to India within the prescribed period, the RBI permits the assessee to retain the said foreign exchange abroad for specific purpose. The result is that reinvestment of export earning is deemed to have been received in India and thereafter to have been repatriated abroad.(Principle in J. B. Boda& Co. (1998) 233 ITR 271 (SC) followed).

[Source: Zylog Systems Ltd. vs. ITO (2011) 49 DTR 1 (Chennai)(Trib.)(SB)]

Sec-12A & 10(23C)(via)

If registered u/s 12A then exemption cannot be claimed u/s 10(23C)(via)

[Source: CIT V. Sahrudaya Hospital (Ker. HC) [2011] 196 Taxman 76]

Disallowance U/S 14A

Sec14A-No Disallowance of administrative expenses pre Rule 8D

For pre AY 2008-09 the assessee earned tax free income from investment in units, shares, bonds etc. The assessee did not maintain separate books of account for the tax-free securities but claimed that the same had been **invested from its own funds** and no part of the interest on the borrowed funds could be disallowed. The AO took the view that the interest paid by the assessee on its borrowings together with the admin expenses had to be disallowed u/s 14A. On appeal, it was held that (i) Rule 8D inserted w.e.f. FY 2007-08, for periods prior thereto the expenditure can be estimated on a reasonable basis; (ii) *No* disallowance of administrative expenditure, considering the fact that there is no precise formula for proportionate disallowance.

[Source: CIT vs. Catholic Syrian Bank Ltd (Kerala High Court) ITA No. 467 of 2009]

Sec14A–For disallowance under Rule 8D, onus is on AO to show nexus between expenditure & tax-free income

Assessee earned exempt dividend income of Rs.

17,97,010 & made a suomoto disallowance of Rs.1,73,038 u/s 14A. AO applied Rule 8D & computed disallowance at Rs.32,18,475. ITAT held that

(i) AO applied Rule 8D without pointing out any inaccuracy in the method of apportionment or allocation of expenses as adopted by assessee.

(ii) Rule 8D r.w.s. 14A(2) can be invoked only if the AO "having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred" in relation to tax-free income. However, the assessment order did not show any such satisfaction of the AO regarding the correctness of the claim of the assessee. As such, Rule 8D was not appropriately applied by the AO. AO merely made an ad hoc disallowance. The onus was on the AO to establish that expenditure was incurred to earn tax-free income.

[Source:DCIT vs. Jindal Photo Ltd (ITATDelhi) I.T.A. No.4539/Del./2010]

House Property

Sec23(1)(a)-Only municipal valuation has to be taken. Notional Interest on deposit not includible in "Annual Value" u/s 23(1)(a) & 23(1)(b)

The assessee let out its premises at a rent of Rs. 2.87 crores per annum. The assessee also received a refundable interest free security deposit of Rs.2.60 crores. "Actual rent received" was Rs. 2.87 crores. AO held that the rent received was low owing to interest-free deposit. He accordingly computed notional interest on the deposit and arrived at the annual value of Rs.3.42 crores. On appeal ITAT held that annual value has to be adopted at the annual rent actually received by the assessee.

[Source:DCIT vs. Reclamation Realty India Pvt. Ltd (ITAT Mumbai) ITA NO.1411/MUM/07(A.Y.2004-05)]

Profits and Gains from Business and Professions

Sec32-Despite non-user of asset, depreciation admissible if it is part of "block of assets"

The assessee claimed depreciation u/s 32 in respect of the assets of its Bhopal unit which was **closed for 6 years**. The claim was on the basis that (i) despite closure of the unit there was a "**passive user**" of the assets and that (ii) even assuming there was no user, as the assets were part of the "**block of assets**", deprecation could not be disallowed. ITAT held that pursuant to the insertion of the concept of "*block of assets*" w.e.f. 1.04.1988, depreciation is allowable on the WDV of the "*block of assets*" and **individual assets lose their identity** upon introduction into the block. The department's argument that use of each and every asset is essential is not acceptable because it would mean that the assessee has to maintain the details of each asset separately and this would *frustrate the very purpose for which the amendment was brought about*. The Revenue is not put to any loss by adopting such method because when the asset is sold, it results in taxable STCG.

[Source: CIT vs. Oswal Agro Mills Ltd (Delhi High Court)ITA No.161 of 2006]

Sec37(1)-Business expenditure

Assessee made provision for expenses to be incurred upto

stage of completion-Assessing Officer held that such a liability, to be incurred on a future date, was a contingent liability & therefore, could not be allowed under section 37(1). ITAT allowed assessee's claim. HC held that, expenditure incurred by assessee on project was admissible deduction & only dispute was regarding year of allowability of expenditure, considering that assessee was a company assessed at uniform rate of tax, entire exercise of seeking to disturb year of allowability of expenditure would, in any case, be revenue neutral & therefore, no substantial question of law arose in instant case.

[Source: CIT v. TriveniEngg. & Industries Ltd. (Delhi HC) [2011] 196 Taxman 94]

Sec37(1)-Business Expenditure - Payment to Trust for Opening and Running a school in the assessee company premises

Payment made to a trust for opening a school in the assessee company's premises will be allowable as deduction since the amount was paid with the object of providing education to the children of employees of assessee company within the company premises itself and was necessitated for business purpose.

[Source: Chambal Fertilisers& Chemicals Ltd. vs. ACIT (2010) Tax World. December Vol. XLIV. Part 6. P.195]

Sec37(1)-Business Expenditure - Commencement of Business - Construction Business

Where the assessee had incurred expenditure towards soil testing, submission of tenders, payment of architect's fees, etc. in construction business, it would be integral part of the business of the assessee and the CIT(A) was justified in allowing the deduction of such expenditure by holding that the assessee had commencement its business.

[Source: CIT vs. Mfr. Construction Ltd. (2010) 48 DTR 360 (Kar.)]

Sec40A(2)-Excessive or unreasonable payments

Subsidiary company is not a **'related person'** within meaning of sec40A(2)(b). Assesseecompany purchased iron ore from its subsidiary company at higher than market rate in view of assurance of supply of huge quantity of ore of uniform quality. Assessing Officer made disallowance under sec40A(2). Whether since assessee as well as its subsidiary were in same tax bracket & paid same rate of tax, there was no question of diversion of funds by paying higher rate to subsidiary company &, therefore, no disallowance could be made under section 40A(2) – Held, yes.

[Source: CIT V. V.S. Dempo& Co. Pvt. Ltd. (Bom)]

Sec40A(3)-Business Disallowance - Cash Payments - Distributor for BSNL in its card division

During the year under consideration assessee made total purchases of India Telephone cards at Rs. 270.64 lakhs, of which Rs. 187.73 lakhs were by way of cash purchases. Assessing Officer invoked provisions of section 40A(3) and disallowed 20% of impugned expenditure. CIT(A) upheld the disallowance. The Tribunal held that on facts, it was apparent that relationship between service provider i.e. BSNL and assessee–distributor was of principal and agent and income arising to assessee was in nature of commission or remuneration against services rendered, hence, disallowance under sec40A(3) is not applicable.

[Source: S. Rahumathulla vs. ACIT (2010) 127 ITD 440 (Cochin)]

Sec41(1) & 28(iv)
The amount of Rs. 2,05,42,468/- written off by the banks in cash-credit accounts constitute the income of the assessee. Coming to the issue of taxability of interest waived by the banks and financial institutions, there is a clear finding by the ld. CIT(Appeals) that these amounts were not claimed in the past by the assessee by way of deduction. Therefore,the requirement of sec41(1) to the effect that "where a deduction has been made in the assessment of any year in respect of expenditure incurred by the assessee" has not been satisfied. The amount was otherwise debited to profit and loss account earlier and has been credited to profit and loss account now. Thus, there is no benefit to the assessee as the debits and the credit get netted to a zero sum. Therefore, the provision contained in section 28(iv) is also not applicable.
[Source: ACIT vs. M/s Rollatainers Limited [AIT-2010-227-ITAT, 2010-TIOL-379-ITAT-DEL]]

Sec43(5)-Speculation Loss - Derivatives Trading - (S. 73)
Trading in derivatives cannot be considered as a speculative transaction and therefore set off of loss of derivative trading against the profits of the share trading business was permissible.
[Source: Dy. CIT vs. Paterson Securities (P) Ltd. (2010) 127 ITD 386 / 48 DTR 50 (Trib.)(Chennai)]

Transfer Pricing and International Taxation

Sec92C
Transfer Pricing benefit u/s 92C of +/- 5% variation from ALP not available if only one price determined
[Source: ACIT vs. UE Trade Corporation (India) (ITAT Delhi) ITA No. 4405(Del)/2009]

Sec92C-Transfer Pricing – Arms Length Price – TNMM
It is not acceptable that for purpose of computation of ALP, the assessee has the unfettered discretion to adopt the TNMM and the TPO is not entitled to reject that method without showing deficiencies / defects. Section 92C r.w. Rule 10C requires the "most appropriate" method to be chosen from amongst those specified. The exercise of selecting the "most appropriate" method implies that the appropriateness of method is to be ranked in some order. Accordingly, it is open to the TPO to reject the TNMM and adopt the CUP method on the basis that the latter is "most appropriate" on the facts of the case.
[Source: Serdia Pharmaceuticals (I) Pvt. Ltd. vs ACIT (ITAT - Mumbai)www.itatonline.org]

Sec92C(2)-If transfer pricing difference is less than 5%, actual price should be taken as ALP
In respect of AY 2002-03 the assessee purchased goods from its associated enterprises. The difference between the price paid by the assessee and the arms' length price determined by the AO was 4%. The assessee argued that **by virtue of the second Proviso to sec92C(2), no adjustment could be made**. HELD accepting the assessee's claim: the second Proviso to section 92C(2) (as substituted by F (No. 2) Act, 2009 w.e.f. 1.10.09) clearly shows that **if the difference is less than 5% then the actual price paid shouldbe considered as arm's length price**. The TPO as well as CIT (A) have clearlyobserved that difference in respect of these two items is 4% and, therefore, same has tobe reckoned in terms of second proviso. Similar view was taken in the case of **Sony**

India vs. Dy. CIT by Delhi Bench of the Tribunal 114 ITD 448.

[Source: DCIT vs. BASF India Limited (ITAT Mumbai) I.T.A.NO.7626/Mum/2005]

Transfer Pricing - Even if commercial transaction is at arms' length, debt overdue for long period attracts transfer pricing interest

Assessee had transactions with its associated enterprise (AE) in USA which were **accepted by TPO to be at arms' length**. At year end, Rs.7.73 crores was receivable by assessee from AE & of this an amount of Rs.5.52 crores was **outstanding for more than 6 months**. TPO held that assessee ought to have earned interest on the said funds & computed interest of Rs. 56.60 lakhs on the outstanding of Rs. 5.52 crores by adopting the Prime Lending Rate (PLR) of 10.25%. Tribunal, held that a)The fact that the international transactions are at ALP does not mean that no addition can be made on the funds kept by the assessee with the AE. If the assessee had received funds within the normal period, it could have earned interest on the same. The potential loss is a factor to be considered while evaluating the financial impact of the international transactions between the assessee and the AE. However, a reasonable period has to be provided as interest-free period. b) The rate available on short-term deposits (5%) should be taken and not the PLR (10.25%);

[Source: Logix Micro Systems Ltd vs. ACIT (ITAT Bangalore) I.T.A No.423 /Bang/2009]

Transfer Pricing

Prescribed methods to be followed for ALP determination and interest on outstanding trade balances not the same as interest on loan. Assuming the continuing debit balances can be treated as an 'international transaction', the TPO ought to have applied the CUP method by considering whether the assessee had charged interest on overdues from independent enterprises (internal CUP) or whether other enterprises had charged interest in respect of overdues in respect of similar business transactions from independent enterprises (external CUP).

[Source: Nimbus Communications Ltd vs. ACIT (ITAT Mumbai) ITA No.: 6597/Mum/09]

Transfer Pricing

While doing the transfer pricing analysis the margin earned by the taxpayer on the functions performed is required to be considered and not the margin earned on the cost of services. This observation recognizes the concept of "pass through cost" and suggest that while computing the Net Cost plus Margin or say Cost plus Margin, "pass through cost" should not be considered in the denominator or cost base. [Total Cost = Value Added Expenditure + Pass Through Cost]; [Total Receipts = Agency Commission + Pass Through Cost]; [Operating Profit = Total Receipts – Total Cost = Agency Commission – Value Added Expenditure]

[Source: DCIT vs. Cheil Communications India Pvt. Ltd. (I.T.A. No. 712/Del/2010) [Delhi ITAT]]

Transfer Pricing: Super-normal profit companies must be excluded from comparables. DRP must not pass cursory / laconic orders

Assessee, engaged in providing software development services reported an OP/Cost Margin of 14.96%. The TPO worked out the average of arithmetic mean of ALP (OP/OC) of 42

comparables at 24.91% and directed that an adjustment of Rs. 10.40 crores be made. In its objections to the DRP, the assessee claimed that the *comparables included three companies which were* "**super-normal profit making**" *and that these should be excluded*. TPO rejected the contention of assessee. Delhi ITAT held that (i) TPO rejected the assessee's contention with regard to inclusion of 3 super-normal profit companies without any cogent reason. **It is undisputed that these 3 companies have shown super-normal profits as compared to other comparables. *Their exclusion from the list of comparable is quite correct***. After excluding these 3 companies arithmetic mean of comparables falls within the +-5% range permitted by s.92(C)(2); (ii) Despite the voluminous submissions and paper book filed, **the DRP passed a very cursory & laconic order without going into the details of the submissions which is quite contrary to the mandate of s. 144C**.

[Source: Adobe Systems India Pvt. Ltd. vs. ACIT (ITAT Delhi) I.T.A. No. 5043/Del/2010]

Minimum Alternate Tax

Sec115JB-Amount withdrawn from revaluation reserve & credited to P&L A/c cannot be reduced from book profit if in year of creation of reserve, the P&L A/c was not debited

Assessee revalued its fixed assets by Rs. 288.58 crores& credited the said sum to the revaluation reserve. In next year, assessee debited Rs.127.57 crores to P&L A/c for depreciation & as per AS-10 & AS-6 transferred Rs. 26.11 crores from revaluation reserve to P&L A/c. Assessee claimed that Rs. 26.11 crores transferred from revaluation reserves had to be excluded to compute book profits u/s 115JB. AO, CIT (A), Tribunal &High Court rejected the claim of the assessee. On appeal, Supreme Court held that **clause (i) of the Explanation to s115JB(2) permits the net profit to be reduced by the amount withdrawn from reserves only if in the year of creation of the reserves, the book profits had been increased.**As in the year of creation of revaluation reserves, book profits were not increased by Rs.288.58 crores or Rs.26.11 crores there is no question of reducing the amount transferred from such revaluation reserves to the P&L Account.

[Source:Indo Rama Synthetics (I) Ltd vs. CIT (Supreme Court)CIVILAPPEAL NO. OF 2011 (arising out of S.L.P. (C) No. 35133 of 2009)]

Sec115JA-Even s.115J/ 115JA Book Profit Cos liable for advance-tax & s. 234B interest

SC held that (deciding the issue against the assessee) section 115J/115JA are special provisions. For purposes of advance tax the evaluation of current income and the determination of the assessed income had to be made in terms of the statutory scheme comprising s. 115J/115JA. **Hence, levying of interest was inescapable**. **The assessee was bound to pay advance tax under the scheme of the Act. S. 234B is clear that it applies to all companies**. There is no

exclusion of s. 115J/115JA in the levy of interest u/s 234B.

[Source: JCIT vs. Rolta India Ltd (Supreme Court) CIVIL APPEAL NO.135 OF 2011]

Tax Assessment, Search & Seizure

Sec133A-Survey– Disclosure - Statement

Confession made during survey cannot be the sole basis for making an addition, without considering the explanation of assessee.

[Source: BabulalGangwal, Jaipur vs. Addl. CIT (2010) Tax World December, 10 Vol. XLIV, Part-6, P. No. 222]

Sec147-Reassessment - Reason to Believe - Report of DVO - (S. 148)

Opinion of DVO per se is not an information for the purpose of reopening assessment under section 147. Assessing Officer has to apply his mind to the information if any, collected and must form a belief thereon.

[Source: ACIT vs. Dhariya Construction Company (2010) 328 ITR 515 / 236 CTR 226 / 47 DTR 288 (SC)]

Sec147-Reassessment - After Four Years - Amount received on Retirement

Petitioner on retirement from law firm got first installment of Rs. 17,01,562/- as per partnership deed for not practicing as a lawyer for three years. During original assessment proceedings all the relevant material was disclosed. After four years the assessment was reopened to tax the amount. The Court held that all the relevant particulars was disclosed, assessment cannot be reopened under section 147 after four years.

[Source: Anil RadhakrishnaWani vs. ITO (2010) 219 Taxation 74 (Bom.)]

Sec148-Despite service of s. 148 Notice in time, non-supply of 'Reasons For Reopening' within time renders the reopening void

As the issuance of the s. 148 notice and the communication and furnishing of reasons go hand in hand, **the reasons have to be supplied to the assessee before the expiry of period of 6 years**. ***If this is not done, the validity of the s148 notice cannot be upheld***. In any proceeding, whether civil or criminal, a summons issued without a copy of the plaint or complaint has to be construed as if no valid service of notice has been effected upon the defendant or respondents.

[Source: BalwantRaiWadhwa vs. ITO (ITAT Delhi) I.T.A No. 4806/Del/10]

Deduction of Tax at Source

Sec194C-Deduction of Tax at Source - Payment to Contractor and Sub-contractors

Assessee–society having been created by transporters with a view to enter into contracts with companies for transportation of goods and to ensure allocation of work among all members on an equitable basis, there is no sub-contract between the society and the members and therefore, sec194C(2) is not attracted to the facts of the case and the assessee society is not liable to deduct tax at source from the payments made to the truck owners who are its members.

[Source: IT vs. Sirmour Truck Operators Union (2010) 48 DTR 130 (HP)]

Tax Administration

Sec226-Recovery Ability to pay demand is no bar for grant on recovery

The assessee filed a stay application before the Tribunal. The department opposed the stay by relying on the Supreme Court in ACCE vs. Dunlop India (1985) 154 ITR 172 (SC), and contended that as paucity of funds had not been sufficiently demonstrated, for this reason alone stay should not be granted. The Tribunal rejected the contention of Departmental representative following B. N. Co. vs. Jt. CIT (2001) 71 TTJ 153 (Kol.) and further held that Supreme Court's observation in Dunlop cannot be interpreted to mean that the Tribunal is denuded of the powers to grant stay until case for financial stringency is successfully made out by the applicant. Accordingly stay was granted till the disposal of appeal.

[Source: KEC International Ltd. vs. ACIT (ITAT - Mumbai) www.itatonline.org]

Penalty

Sec271(1)(c)-Penalty for concealment of income

Whether it is incumbent upon Tribunal in penalty proceedings to independently examine evidence and material on record for purpose of judging whether penalty proceedings are justified on account of concealment of income or furnishing of inaccurate particulars thereof – Held, yes – **Whether if assessee has disclosed each and every fact to departmental authorities or to Court concerned, then merely because departmental authorities concerned or High Court concerned does not concur with legal stand adopted by assessee, it will not be enough reason to hold that assessee is guilty of concealment of income or of furnishing inaccurate details – Held yes.**

Unexplained expenditure - Whether when factum of rendering of services by sub-contractors was not in dispute as the assessee had meticulously maintained log books for each sub-contract, which were duly verified and authenticated by JMC; and assessee had duly deducted tax at source in respect of entire amount credited in favour of those parties and in subsequent years all creditors had been paid their dues, addition made on account of said creditors was unjustified –Held, yes.

[Source: Devsons Pvt. Ltd. v. CIT(Delhi) [2011] 196 Taxman 21]

Miscellaneous

Despite lack of direct evidence, tax evasion can be assessed

Assessee, an agent of Bofors, was alleged to have received commission of Rs. 52.60 crores, for securing a defense deal for Bofors, from Government of India. The conclusion that the commission was paid was drawn on the basis of a report of the Swedish National Audit Bureau, certain correspondence and other documents that suggested that the assessee, in his capacity as a long-standing representative of Bofors was the beneficiary of the income. **No direct evidence to link the assessee with the alleged commission was found**. The AO assessed the said sum of Rs. 52.60 crores. For the subsequent years, the AO assessed notional interest at 5% p.a. on the said amount. CIT (A) confirmed the addition. **Assessee appealed to the Tribunal on the ground that there was no evidence to show that he had earned the alleged commission.** On confirming the addition of Rs. 52.60 crores while deleting the addition of notional interest ITAT held that

(i) Unlike criminal proceedings where the charge has to be proved beyond doubt,

income-tax proceedings are quasi-judicial. **Tax liability in cases of suspicious transactions has to be assessed on the basis of the material available on record, surrounding circumstances, human conduct and preponderance of probabilities**;

(ii)In secret transactions, it is impossible to have direct evidence or demonstrative proof of every move and when the assessee is not forthcoming with proper facts and chooses to be elusive and evasive, the AO has no choice but to take recourse to estimate. The only caveat is that it should be reasonable and based on material available on record. It should not be perverse or based merely on conjectures.

(iii) Surprise expressed on why the department has taken no proceedings against the other parties including Bofors, the alleged payer, for failure to deduct TDS on payments to the assessee. **Pointed out that inaction to take action against the others "may lead to a non-existent undesirable and detrimental notion that India is a soft state and one can meddle with its tax laws with impunity"**.

[Source: Hersh Win Chadha vs. DDIT (ITAT Delhi) - I.T.A.Nos.3088 to 3098 & 3107/Del/2005]

INDIRECT TAX

Central Excise & Custom

➢ Case Laws

Excess duty required to be deposited with govt.

Excise duty collected in excess than what shown in invoice- it was required to be deposited with government, and it was immaterial that excess duty was collected by warehouse- plea that only manufacturers were so liable, rejected- only relevant factors in this regard are duty assessed, charged and paid to government- Circumstance under which duty was collected and provisions of other laws, are irrelevant for this purpose-Section 11D of Central Excise Act, 1994.

[Source: Indian Oil Corporation Ltd. V. Commr. of C. Ex., Vadodra, 2011(263) ELT 698(Tri-Ahmd.)]

Benefit of concessional rate of duty available to "Similar" Goods

Mushrooms- Exemption for DTA clearance by EOU- Fresh mushrooms and processed mushrooms even though classifiable under seprate chapter headings, belong to same class of goods and therefore both are similar- Benefit of concessional rate of duty available under Notification No. 2/95-C.E. using word "similar".

[Source: Commissionerof C.EC., Salem V. Hindustan Lever Ltd, 2011(263) ELT 697(Tri-Chennai.)]

Area based exemption only for specific location

Area based exemption (Uttranchal and Himachal Pradesh)-Factory shifted within same area –Held: Exemption was available for specific location- On factory being shifted from that location, assessee is not entitled to exemption- Notification No. 50/2003-C.E.

[Source: Amazon alliance V Commissioner of C. EX. Meerut-II, 2011(263) ELT 682(TRI-Del.)]

Duty on goods manufactured for captive use

Demand- Manufacture, proof- Marketability-Testing equipments for testing final products, manufactured for captive use-Demand based on statements in balance sheet of such manufacture- Statements further corroborated by Director's report- Admission that various parts & components bought to develop testing equipments- Manufacture proved and established- Goods admitted as manufactured to avoid import with view to save foreign exchange- Statement confirms position that equipments saleable and marketable- Goods deemed to have been removed as per Rules 9 & 49 of erstwhile Central Excise Rules, 1944- Demand of duty upheld- Sections 2(f), 3 and 11A of Central Excise Act, 1944.

[Source: UshaRectifiercorpn. (I) ltd. V. Commissioner of C. EX., New Delhi, 2011(263) ELT 655(SC.)]

Service Tax

➢ Notifications

Fumigation not a taxable service

Fumigation, per se, is a cleaning activity. However, the definition under Section 65(24b) of the Finance Act, 1994, taxes cleaning of 'objects or premises' of (i) commercial or industrial buildings and premises thereof; or (ii) factory, plant or machinery, tank or reservoir of such commercial or industrial building and premises thereof. Fumigation of export cargo including agricultural/horticultural produce, whether loaded into containers or otherwise, does not satisfy the statutory definition of 'cleaning activity'.
[Source: C.B.E. &C. Circular No. 132/1/2011-ST, dated 12-1-2011]

➢ Case Laws

SC continues stay on HC order on commercial rent service tax

The Supreme Court in the Matter of DC 982/2011 Union on India & Others Vs. Home Solutions Retails India & Others maintained its stay on a Delhi High Court order that sought to restrain the Centre from recovering service tax on renting immovable property for commercial use. TheSupreme Court bench said the order would continue till the High Court takes a final decision on the matter.
[Source:-ibnlive.in.com, dated 14-01-2011]

Sale of time slot to electronic media not advertising service

Advertising Agency service- Sale of time slots- Time slots purchased from television channels and sold to advertising agencies- Appellants only purchasing and selling time slots and in no way connected with making, preparation, display or exhibition of advertisements- Tribunal in 2006 (1) STR 32(Tribunal) held that Service tax not payable as advertising agency when activity limited to providing space- CBE&C Circular dated 23-3-2004 clarifying that selling time not covered under advertising agency service- sale of time slot to electronic media cannot be termed as advertising service- Sale of Space or Time for advertisement service introduced from 1-5-2006 and such service not covered by other services for prior period-.
[Source: Needwise Advertising Pvt. ltd. V Commr of service tax, AHMD, 2011 (21) STR 229 (Tri-Ahmd.)]

Service tax on effluent treatment

Business Auxiliary Services- Effluent treatment- Processing and treatment of liquid chemical effluents generated in industries- Demand on the ground that service provided was ancillary to Business Auxiliary Services- CBE&C vide letter dated 13-7-2007 held that incineration/shredding of biomedical waste not covered under processing of goods and such activity not treatable as provision of service on behalf of clients.
[Source: Globe Enviro Care ltd. V. Commissioner of C. EX. & CUS. SURAT, 2011(21) STR 241 (Tri-Ahmd.)]

Refund of service tax

Rebate- Input Service Rebate- Refund of Service Tax paid on input services used for export of services- Rebate denied on the ground of claim for period prior to registration under service tax law- Person liable to pay Service tax required to apply for registration-Entire output services exported in present case and appellant not required to pay service tax- Appellant not required to take registration compulsorily as per

law-Penalty for non-taking registration being Rs. 1000, refund of over Rs. 3.5 lakhs not deniable for not taking registration before.
[Source: Textech International(P) Ltd V. Commr. Of service tax, CHENNAI, 2011 (21) STR 289 (Tri-Chennai)]

Additional evidence during appeal

Appeal- Additional evidence- Additional evidence can be taken into consideration only if they satisfy the test of relevance, veracity and credibility- Additional evidence in appeal is permissible if it is absolutely necessary for substantial justice between the parties.
[Source: Commissionerof C. EX V SouthernCoolingTower(P) ltd, 2011 (21) STR 335(Cal.)]

COMPANYLAWUPDATES

➢ Latest Notification/ News

Extension of Easy Exit Schemeupto 30th April, 2011

In continuation to this Ministry's earlier circular no. 6/2010 dated 03.12.2010 on the subject cited above, it has been decided to extend the Scheme for another three months i.e. upto 30th April, 2011.

[Source: General Circular No. 1/2011, Govt. of India, Ministry of Corporate Affairs, dated 03.02.2011]

SEBI UPDATES AND MISCELLANEOUS LAW UPDATES

➢ Latest Notification/ News

Amendment to Provident Fund

In the last two years, the Government of India has been making series of changes to the provident fund regulations. After inclusion of international workers (IWs) into the PF net, and also restricting their withdrawals, the Government of India, has made another change whereby it proposes to discontinue payment of interest on inoperative PF accounts.

At present, even inoperative PF accounts are entitled to interest payment. In September 2010, Ministry of Labour proposed to increase the rate of interest from 8.5% per annum to 9.5% per annum. In terms of the amendment, a PF account will be regarded as inoperative if no application is made for withdrawal or transfer of balance within thirty six months from the date on which it became payable to the member. These inoperative PF accounts will not fetch any interest from 1st April 2011.

PF account balance is payable to a domestic worker upon he/she ceasing employment/retirement/death. Domestic workers who do not make application for withdrawal/transfer after such an event will not be entitled to any interest once the accounts become inoperative.

In the case of IWs accumulated PF balance is payable on retirement after attaining 58 years. Under the existing PF regulations, repatriated IWs have to retain their PF account in India until they attain 58 years. It is not clear whether the amended PF regulation could treat the repatriated IW PF accounts (which may not be operative for over thirty six months) as inoperative thereby depriving them of interest.

[Source: Employees' Provident Fund (Amendment) Scheme, 2011- GSR 25(E) dated 15 January 2011 of the Ministry of Labour and Employment]

CORPORATE FINANCE

➢ Latest News

PRIVATE EQUITY

HDFC Invests Rs. 50crin Career Launcher'sIndus World Schools

HDFC is picking up a stake in Indus World Schools for Rs 50 crore, a chain promoted and run by education firm Career Launcher (CL). Private equity firm Gaja Capital Partners, an existing investor, is also co-investing in this round.

Career Launcher Education Infrastructure & Services, which operates Indus World Schools, opened the first school in 2005 at Hyderabad and the second one in 2006 at Indore. Since then the School chain has grown to eleven in 2010 with schools in the NCR, Himachal Pradesh, Haryana, Raipur, Ahmedabad, Aurangabad and Jalgaon. New schools are expected to come up in Karnataka, Haryana and a second school at Hyderabad.

[Source:Business Standard 4th Feb. 2011]

Goldman, Digital SkyInvestment Values Face bookat $50B

Face book has raised $500 million from Goldman Sachs and Russian Internet investment group Digital Sky Technologies in a deal valuing the social networking site at $50 billion;

Goldman has invested $450 million and Digital Sky Technologies, which has already invested about half a billion dollars in Face book, put in an additional $50 million.

[Source: The Economic Times 3rd Jan. 2011]

Groupon raises $950M in financing

Web advertising firm Groupon Inc, has completed a $950 million round of financing.

The financing consists of several venture capital firms and late-stage investors, including Andreessen Horowitz, Battery Ventures, Greylock Partners, Kleiner Perkins Caufield& Byers, Mail.ru Group, Maverick Capital, Silver Lake and Technology Crossover Ventures.

In December, Groupon, which specializes in local advertising, raised $500 million by selling an equity stake, a month after reports it turned down a $6 billion takeover offer from Google Inc.

[Source: The Mint 11th Jan. 2011]

QInvest picks up stake in education company FIITJEE

QInvest, Qatar's leading investment bank, has acquired a stake in FIITJEE Ltd, India's leading test Preparation Company for engineering and medical entrance examinations. Neither the acquisition cost nor the stake acquired is disclosed.

The Delhi-headquartered company was raising another round of private equity including a partial stake sale by promoters. In July 2009, the company had raised Rs 100 crore from Matrix Partners.

[Source:Business Standard 18th Jan. 2011]

3i Group Takes Minority Stake in Kotak PE-Backed BVG India

UK-based private equity major 3i Group has acquired a minority stake in BVG India Limited, one of India's largest facilities management services companies. Pune-based BVG, which was established in 1997 and has grown to over 18,000 employees, has been backed by Kotak Private Equity earlier. Financial details of the deal were not disclosed.
[Source: The Economic Times 27th Jan. 2011]

Venture Capital

Apalya Raises $7.5M in 3rdroundLEDby Indo-US venturePartners

Hyderabad-based mobile TV Company Apalya Technologies Pvt Ltd has raised $7.5 million in its third round of funding, led by IndoUS Venture Partners (IUVP). Existing investors, IDG Ventures India and Qualcomm Ventures, participated in the round.

Apalya will use the funds to expand into international markets, starting with deployments in S.E.Asia this quarter.
[Source:The Economic Times 12th Jan. 2011]

Letsbuy.com raises $6M from Helion, Accel& Tiger Global

E-commerce portal LetsBuy.com by New Delhi based Etree Marketing Private Limited has received $6 million in venture capital funding from Helion Venture Partners, Accel Partners and Tiger Global. This is its first round of institutional funding - it received an undisclosed sum from angel investors in May 2010.

Accel Partners and Tiger Global have invested in another ecommerce portal - Bangalore-based Flipkart.com. Accel Partners India invested an undisclosed amount in Flipkart in October 2009 while Tiger Global invested $10 million in June 2010 in the portal. Rival Infibeam is seeking venture capital funding to fuel its platform business.
[Source: The Mint 17th Jan. 2011]

Online apparel store Ink fruitraises $3M from SAIF Partners

Inkfruit, a community-centered online apparel store, has raised up to $3 million in Series A funding from SAIF Partners, an early stage venture capital firm.

Kashyap Dalal, founder, Ink Fruit, declined to comment on the development. The firm is founded by two IIT grads – Kashyap Dalal and Navneet Rai -- both in their 20s. Headquartered in Mumbai, Inkfruit (then called Gnome) officially launched in early December 2007.
[Source: Vccircle.com 24th Jan. 2011]

Snapdeal owner Jasper raises $12M from Nexus and Indo-US Ventures

Jasper Innovative Marketing Solutions, which owns the group buying portal Snapdeal.com, has raised $12 million in a series B financing from Nexus Venture Partners and existing investor IndoUS Venture Partners. The company raised its first round from IndoUS and prior to that had angel funding from unnamed US investors.
[Source: The Mint 26th Jan. 2011]

Investment Banking

Rothschild India to start IPO advisory

NM Rothschild & Sons, leading investment banking major, is looking at introducing IPO (initial public offer) advisory to expand its bouquet of services in India. The firm currently offers these services to clients in Europe.

NM Rothschild and Sons (India) Pvt Ltd, the Indian arm of the European investment banking major NM Rothschild and Sons, will continue to focus on mergers and acquisitions, restructuring and debt and equity raising.

[Source: VCCIRCLE.COM 6TH JAN. 2011]

Edelweiss Capital hires S Ranganathanof BOFA Merril Lynch as CFO

In a high profile move in the financial sector, which is a clear sign of the aggressive approach of domestic financial services firms, S Ranganathan, the CFO of Bank of America Merrill Lynch, is moving to Edelweiss Capital Ltd as Chief Financial Officer. At present, HimanshuKaji, the Chief Operating Officer of Edelweiss has been holding the additional charge of CFO of the company.

[Source: VCCIRCLE.COM 29TH JAN. 2011]

OUR OFFICES

HEAD OFFICE:

Mr. U.N. Marwah, Managing Partner
4/80, Janpath
New Delhi-1100 01
(India)
Tel: +91-11-43192000
Fax: +91-11-43192021
E-mail: rnm@rnm.in

BRANCH OFFICE:
Mr. Rathna Kumar
813 Oxford Towers,
139 Airport Road,
Bangalore-560 008
E-mail: bangalore@rnm.in

AFFILIATE OFFICES:

Mumbai
Mr. AshishBairagra,
F11, 3rd Floor, ManekMahal, 90 Veer Nariman Road, Church Gate,
Mumbai-400 020
Tel. +91 22 6117 4949
Fax. +91 22 6117 4950
E-mail: ashish@rnm.in

Pune
Mr. NitinKhangaonkar
9 'B' & 'C' Wing,
Supriya Gardens, Aundh,
Pune- 411 007
Tel: +91 98230 81701
E-Mail: nitin@rnm.in

Coimbatore
Mr. D. Purushthoman
Kaanchan, No. 6, North Hozur Road, Coimbatore- 641 018
Tel. +91 422 2212548, +91 422 2215407
Fax. +91 422 2201206
E-mail: purush@rnm.in

Chennai
Mr. Ashok Deora
SF 6, Golden Enclave,
184 Poonamallee High Road,
Chennai- 600 010
Tel: + 91 44 4217 8153, + 91 44 2641 5805
Fax : + 91 44 2641 5805
E-mail: ashok@rnm.in

Mauritius
Mr. KamalHawabhay,
365 Royal Road Rose Hill,
Mauritius
Tel : + 230 4542110
Fax : + 230 4549671
E-mail: kamal@rnm.in

Hong Kong
Mr. Raymond Choi
3705 Bank of America Tower
12 Harcourt Road
Central
Hong Kong
Tel: +852 2115 9878
Fax: +852 2115 9818
E-mail: raymond@rnm.in

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