

# RNM ALERT

Thinking of the Bottom Line – Think of Us



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Dear Readers,



U.N. Marwah

I want to take this opportunity of wishing all our readers in the United States warm wishes for the forthcoming Thanksgiving weekend.

I would like to inform you about the recently concluded World Conference of the Geneva Group International in Toronto, Canada which was attended by our Partner, Mr. Raghu Marwah from 28-30 October 2011. Ms. Erin Brockovich, the famous legal clerk and environmentalist on whom a Hollywood movie was based, gave an extremely motivational speech and participated in the Conference. Raghu Marwah was elected as the Vice Chair for the M&A Practice Group for Asia of the GGI.

RNM is proud to offer as part of its Corporate & Legal Division, service of XBRL filing to its large corporate clients. We have a dedicated, proficient team who has already made number of filings using the latest XBRL software and we encourage all readers who are facing issues dealing with this new requirement to contact our Team.

The CBDT has notified a new Form 49AA for Non Residents for allotment of Permanent Account Number (PAN). The new Form should potentially clarify and lead to more expeditious issuance of PAN to non resident companies and foreign individuals.

The due date for filing of the half yearly Service Tax Return has been extended by the Dept. to December 26, 2011.

The Institute of Chartered Accountants of India (ICAI) have issued Corporate Affairs Standards (CAS) which do not interpret the law but set out the concepts, principles, practices and procedures that underlie the corporate law compliances, corporate governance and management of corporates. These Standards are recommendatory in nature effective from April 1, 2010.

The RBI has issued a revised format for the Liberalised Remittance Scheme (LRS) application which is applicable for overseas remittances made by resident individuals upto 200,000 USD per financial year.

The International crisis in Europe continues to deepen with a change of Government in Italy and Greece hoping to bring a breadth of fresh air to the dialogue. In India the weakness was reflected in the net direct tax collections for April to October which showed only a 7.10% increase as compared to previous fiscal as compared to the double digit growths earlier.

Regards,

**U.N. Marwah**

For and behalf of the RNM Alert Editorial Board

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## DIRECT TAX

### ➤ Case Laws

#### *International Taxation*

##### **Sec 9(1)(vii): Income deemed to accrue or arise in India- Fees for technical services- DTAA-India-USA(Art.12)**

Assessee running business of Hotel making payments to US based interior Landscaping consultants M. Work done by M is basically inspection of hotel, reviewing of the facilities, comparing the same with M's standards and suggesting improvements / change wherever required to M standard, which did not amount to technical services and therefore no tax was deductible at source. Similarly, fees paid to UK company A was also for work of design, documentation and did not fall under art 13 of Indo –UK DTAA, likewise, fees paid to Thailand company BD, for rendering services of landscape architectural consultancy was not assessable in India.(A.Y. 2003-04 to 2005-06).

[Source: Asst CIT v Viceroy Hotels Ltd ( 2011) 60 DTR 1 ( Hyd)(Trib)]

#### *Disallowance of Interest u/s 14A*

##### **Sec14A: Business expenditure- Exempted income- Investment in tax free income**

If the investment in tax-free income yielding securities is made from interest free funds, no disallowance can be made under section 14A.(A.Y. 2001-02).

[Source: CIT v LubiSummersibles Ltd ( ACAJVol 35 Part 5 August-2011 P. 319)( Guj) (High Court)]

##### **Sec14A: Business expenditure- Exempted income- Old investments- Own funds**

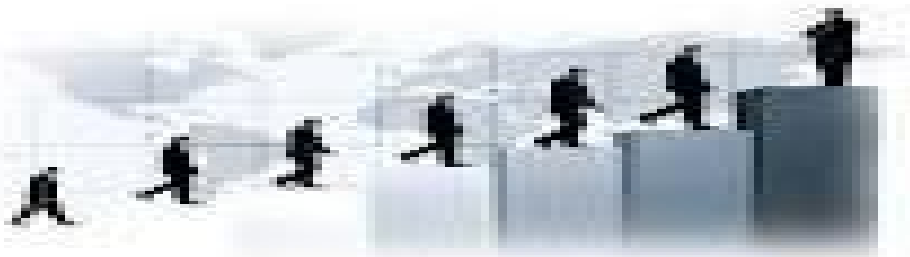
Investments in shares were made by the assessee from own funds, no disallowances were made in earlier years. No disallowance can be made for the relevant year. (A.Y. 2005-06).

[Source: G.D. Metsteel (P) Ltd v Asst CIT ( 2011) 47 SOT 62 ( Mum) (Trib)]

##### **Sec14A: Business Expenditure – Exempted Income –No nexus between investment in tax-free securities and borrowed funds – No disallowance to be made –Disallowance under sec14A cannot exceed exempt income**

In AY 2007-08, the assessee received dividend in respect of investment in shares made in earlier years. No investments were made during the year. It was claimed that the investment in the earlier years was made out of reserves & surplus and that there was no expenditure incurred during the year to earn the dividend. The AO held that as in the earlier years, the assessee had borrowed funds, s. 14A applied. It was held that if there is no nexus between borrowed funds and investments made in purchase of shares, disallowance u/s 14A is not warranted. (A.Y.2007-08).

[Source: ACIT v Punjab state Coop &Mktg (Chandigarh)(Trib)(www.itatonline.org)]



### ***Profit & Gain from Business & Profession***

#### **Sec28(iv): Remission of loan liability- (S. 41(1))**

The Tribunal held that since loan received was utilized for acquiring capital assets, the amount remitted was not taxable under sec41(1). As it was remission of liability section 28(iv) was also not applicable.

[Source: Terra Agro Technologies vs. ACIT, ITA No.1503/Mds./2010, Dt.09-06-2011, A.Y.2004-05, BCAJ September 2011, pg. 23, Vol. 43-A, Part 6]

#### **Sec32: Depreciation- Building- Landscaping expenses- Hotel-Storage tank**

Since the assessee is in Hotel business its building is not merely a structure of four walls but includes all such things as are necessary to give the building better look and is a matter of attraction for the customers, therefore Landscaping done by assessee in its hotel is to be treated as “building” and depreciation is allowable. Payments made by assessee to NDMC for unauthorized occupation, construction of diesel storage tanks and fire fighting tanks and covering sanitary lines without approval in respect of the hotel acquired by it from the Central Government formed part of purchase consideration as these payments were made to perfect the title of the assessee in the property and the amount being capitalized the assessee is entitled for depreciation. (A.Ys 2003-04 to 2007-08)

[Source: Dy CIT v Hotel Excelsior Ltd (2011) 60 DTR 450/141 TTJ 248 (Delhi)(Trib).]

#### **Sec32(1(ii)) : Depreciation-Non compete fee**

Non compete fee is not in the nature of knowhow, patents copyright, trade marks, licenses or franchises within the meaning of section 32 (1) (ii), depreciation is not allowable.

[Source: Sharp Business Systems (India) Ltd v Dy CIT (2011) 59 DTR 385 (Delhi) (Trib)]

#### **Sec36(1)(iii): Business expenditure- Interest on borrowed capital-Investment in sister concern-Shares of subsidiary- Control over the company**

Investment made by the assessee company out of bank overdraft in the shares of its subsidiary company to have control over that company being an integral part of its business, interest paid by the assessee which is attributable to said borrowings is allowable as deduction under section 36(1)(iii).

[Source: CIT v Phil Corporation (2011) 61 DTR 15 (Bom) (High Court)]

**Sec40(a)(ia): Expenses or payments not deductible- Interest- Form no 15G**

Depositors having submitted form no 15G to the assessee well in time, interest paid to them without deduction of tax at source cannot be disallowed under section 40(a)(ia) simply because the said forms could not be submitted to the AO the within the time stipulated in the Act, once the same were available to the AO while framing the assessment. (A.Y. 2006-07).

[Source: *Shyam Sunder Kailash Chand v ITO (2011) 60 DTR 270 (Jaipur) (Trib)*]

**S.40(a)(ia) No disallowance for short-deduction TDS default**

The assessee paid Rs. 3.37 crores as “*machine hire charges*” on which it deducted TDS u/s 194C at 1%. The AO held that the payment was “*rent*” and TDS ought to have been deducted at 10% u/s 194-I. He disallowed the expenditure u/s 40(a)(ia). This was reversed by the CIT (A). On appeal by the department, HELD dismissing the appeal:

Section 40(a)(ia) provides for a disallowance if amounts towards rent etc. have been paid without deducting tax at source. It does not apply to a case of short-deduction of tax at source. As the assessee had deducted u/s 194C, it was not a case of “non-deduction” of TDS. If there is a shortfall due to difference of opinion as to which TDS provision would apply, the assessee may be treated as a defaulter u/s 201 but no disallowance can be made u/s 40(a)(ia). (*Chandabhoy & Jassobhoy* (ITAT Mumbai) followed – included in file)

[Source: *DCIT vs. M/s. S. K. Tekriwal* (ITAT Kolkata) ([www.itatonline.org](http://www.itatonline.org))]

**Sec. 41(1): Profits chargeable to tax-Income-Liabilities outstanding more than three years**

Out standing liabilities of the assessee cannot be said to have ceased to exist merely because the relevant accounts have become non operational or period of three years have expired and, therefore such liabilities cannot be charged to tax by invoking the provisions of section 41(1), more so when the assessee has not written back such liabilities in its profit and loss account. (A.Ys 2003-05 to 2007-08).

[Source: *Dy CIT v Hotel Excelsior Ltd (2011) 60 DTR 450/141 TTJ 448 (Delhi) (Trib)*]

**Capital Gain**

**Sec. 45: Capital gains-Shares- Purchase and sale –Short time**

Mere fact that the shares were sold in a short span of time of acquisition due to steep and unanticipated rise in stock market does not mean that the intention was not to hold them for long period of time or deal in them. Profit on sale of shares with in short span of 7 to 10 months held to be capital gains and not as business income. (A.Y.2005-06).

[Source: *CIT v Consolidated Finvest and Holding Ltd (2011) 337 ITR 264 (Delhi) (High Court)*]

**Sec48: Capital gains- Fees paid for Portfolio Management services- Cost of acquisition-Diversion of income.**

Fees paid by assessee for PMS was not inextricably linked with particular instance of purchase and sale of shares and securities and sale of shares and securities so as to treat the same as expenditure incurred wholly and exclusively in connection with cost of acquisition, improvement, of shares and

securities so as to be eligible for deduction in computing capital gains under section 48. Payment of fees by assessee for PMS did not amount to diversion of income by an overriding title (A.Y. 2004-05)  
[Source: **Devendra Motilal Kothari v Dy CIT (2011) 132 ITD 173 (Mum) (Trib)**]

### **Undisclosed Income**

#### **Sec69: Income from undisclosed source- Statement in the course of search-Retractio [S.132(4)]**

Merely on the basis of statement made under section 132(4), in respect of loans, addition under section 69 as income from undisclosed source cannot be made when the said statement was retracted and evidence to show the genuineness of loan was filed. The court also referred the Circular of CBDT No F.NO.286/2/2003 IT (Inv) dt 10th March 2003. (A.Y.1994-95)

[Source: **M. Naranan & Bros v Asst CIT (2011) 60 DTR 233 (Mad) (High Court)**]

### **Deduction u/s 80IA / 80IB**

#### **Sec80IA: Deduction- Industrial undertaking- Generation and supply of power-Deemed generation of power**

Assessee entered into agreement for supply of power. Agreement providing that if power not required, compensation charges to be paid. Amount received for deemed generation of power is entitled to deduction under section 80IA as the compensation has direct nexus with the business of generation of power. (A.Y.2004-05)

[Source: **Magnum Power Generation Ltd v Dy CIT (2011) 11 ITR 493 (Delhi)(Trib)**]

#### **Sec80IB(10): Deduction-Housing project- Sale of pair of flats in the name of family members exceeding 1000 square feet- Amendment with effect from 1-4-2010 is prospective in nature.**

Under pre amended section as long as a residential unit has less than specified area, is as per duly approved plans and is capable of being used for residential purposes on standalone basis, deduction under section 80IB (10), cannot be declined in respect of same merely because end user, by buying more than one such unit in name of family members has merged those residential units in to a larger residential unit of a size which is in excess of specified size. Amendment, made to section 80IB (10) with effect from 1-4-2010, is prospective in nature. (A.Y. 2004-05).

[Source: **Emgeen Holdings (P) Ltd v Dy CIT (2011) 47 SOT 98 (Mum) (Trib)**]

### **Tax Administration**

#### **Sec119: Circulars- Binding nature-Conflict in law laid down by High Court or Supreme Court**

If a circular is in conflict with the law laid down by High Courts or Supreme court, the revenue authorities while acting quasi judicially, should ignore such circular in discharge of their quasi judicial functions. (A.Y.1998-99)

[Source: **Bhartia Industries Ltd v CIT (2011) 243 CTR 328 (Cal) (High Court)**]

### *Assessment Procedure*

#### **Sec 145: Method of Accounting- Despite s. 209(3) of the Co's Act, company can follow cash system for tax purposes**

As per Sec. 209(3) of the Co's Act, a company is obliged to follow the mercantile system and that is its' "regular method" for purposes of s. 145. It was held that the assessee has regularly employed the cash system of accounting in recording its day to day business transactions. It is not a case where the assessee has been maintaining its accounts of day to day business under the mercantile system of accounting and thereafter prepares accounts in accordance with cash system of accounting for income tax purposes. Section 209(3) of the Companies Act, 1956 does not override s. 145 of the Income-tax Act. There was also no valid basis for the AO's action in rejecting the books of account and system of accounting followed by the assessee. Further, since the department has accepted the assessee's system for the past several years, the principles of consistency apply and there should be finality and certainty in litigation in the absence of fresh facts to show that the assessee's system of accounting is arbitrary or perverse.

[Source: DCIT v Stup consultants Pvt. Ltd. (Mum)(Trib)([www.itatonline.org](http://www.itatonline.org))]

#### **Sec147: Reassessment-Valuation of property- Inspectors report**

Merely because the stamp valuation authority has adopted certain valuation for payment of stamp duty on the property purchased by the assessee, the same cannot be the basis to conclude that assessee's income has escaped assessment, particularly when no tangible material has been brought on record to suggest escapement of income except the inspector's report which could not be relied upon to ascertain the market value of property, hence reassessment quashed by the CIT (A) was upheld. (A.Y.2005-06).

[Source: ITO v Shiv Shakti Build Home (P) Ltd. (2011) 141 TTJ 123 (Jodhpur) (Trib)]

#### **Sec147: Reassessment-Housing project (S.80IB(10))**

As the reassessment proceedings are aimed at taxing the income which has escaped assessment, these cannot be taken as a tool for putting the assessee in a better position than in which it was before such proceedings. (A.Y.2004-05).

[Source: Bhumiraj Homes Ltd v Dy. CIT (2011) 60 DTR 65 (Mum) (Trib)]

### *Penalty*

#### **Sec 271(1)(c): Penalty –Concealment--No penalty can be levied without Assessing officers finding on "Inaccurate Particulars"**

Where there is no finding by the AO that the assessee furnished inaccurate particulars and that its explanation was not bonafide, the imposition of penalty u/s 271(1)(c) was a "complete non-starter". A mere erroneous claim made by an assessee, though under a bonafide belief that, it was a claim which was maintainable in law cannot lead to an imposition of penalty. The claim for deduction was made in a bona fide manner and the information with respect to the claims was provided in the return and documents appended thereto. Accordingly, there is no furnishing of "inaccurate particulars". Making

of an incorrect claim for expenditure does not constitute furnishing of inaccurate particulars of income

[Source: CIT v Mahanagar Telephone Nigam Ltd (Delhi) (High Court) ([www.itatonline.org](http://www.itatonline.org))]

**Sec 271(1)(c): Penalty – Concealment-Furnishing Inaccurate Particulars - Despite disclosure of conversion of stock into investment and acceptance by the Assessing Officer claim that gains is Long term capital gain penalty is leviable**

The assessee owned a plot of land which in the earlier years was treated as “stock-in-trade”. In the year of sale, the assessee converted the stock into “investment” and offered the gains as Long term capital gain. Penalty u/s 271(1)(c) was levied. It was held that though the Assessing Officer accepted the conversion, the assessee’s claim that the gains was a LTCG amounted to furnishing inaccurate particulars of income. The issue was not debatable as held by the Tribunal. When the order of the AO in quantum proceedings was sustained by all successive authorities and the High Court also dismissed the appeal at the admission stage, albeit after admitting the same, it cannot be said that the issue was debatable.

[Source: CIT v Splender Construction(Delhi) (High Court). ([www.itatonline.org](http://www.itatonline.org))]



## INDIRECT TAX

### Service Tax

#### ➤ Case Laws

##### *Royalty for Ground Handling Services at Airport not Taxable*

Liability of Ground Handling Services at airport entrusted by airport to Air India, who collected charges for same from other airlines, including applicable Service Tax, for remission to Government- Airport paid to Air India Ltd. royalty of 18.5% of gross receipts- HELD: Air-port was not rendering any service to Air India for royalty paid by them- In that view, royalty was not liable to Service Tax- it was part of value of taxable service on which Air India had paid Service Tax- Section 67 of Finance Act, 1994

[Source: Comm. Of Central ExcsVs Cochin International Airport ltd, 2011 (24) STR 20(KER)]

##### *Cenvat Credit of Service Tax on Telephone*

Input service- Telephone installed at residence of one of the partners and bills paid by the company- Telephone used for business purpose- Department could not produce any evidence that telephone was not used for business purpose- They could not refute appellant's contention that Income Tax Department has accepted such expenditure as business expenditure- Credit admissible- Appeal allowed- Rule 2(1) of Cenvat Credit Rules, 2004.

[Source: Basp industries VsComm of Central Excs, Mumbai-III, 2011 (24) STR 30(Tri.- Mumbai)]

##### *Maintenance of Effluent Treatment Plant as Input Service*

Cenvat Credit of Service Tax- Input Service- Effluent Treatment Plant, maintenance of Plant required to be used in relation to business and without this plant assessee cannot set up factory. Service required for maintenance of the same fall under definition of input service. Service availed by the appellant in respect of Effluent Treatment Plant are admissible input services- Rule 2(1) of Cenvat Credit Rules, 2004.

[Source: Anar Chemicalspvt. ltd.VsComm of Cent. Excs., Ahmedabad, 2011 (24) STR 32(Tri.- Ahmd)]

##### *Restrictions on Utilization of credit*

Cenvat credit- Demand of over Rs. 12.13 crores raised for utilization of credit in excess of 20% of tax paid every month- Assessee's submission that restriction applies only for input and input service credit and that major part of utilization presently of capital goods credit- HELD: Commissioner wrongly found restriction in Rule 6(2) of Cenvat Credit Rules, 2004 to be applicable to capital goods also- Matter remanded to Commissioner for fresh decision on all issues- Rule 6(3) ibid.

[Source:BSNL VsComm of Cent.Excs.,Thiruvananthapuram 2011 (24) STR 86(Tri.- Bang.)]

##### *Cenvat Credit of Capital Goods Used Outside Factory not Allowed*

Cenvat Credit- Capital Goods in fly ash extraction plant situated away from factory- Lower authorities rejected claim on ground that impugned activity not essentially carried out within captive mines and fly ash

extracted not utilized exclusively in appellant's factory- facts sufficient ground to reject claim- No case for interference with impugned order- Rule 2(a) of Cenvat Credit Rules, 2004.

[Source: India Cenets LtdVsCommof CentExcscalls-III, Hyderabad, 2011 (24) STR 94(Tri.- Bang.)]

## ➤ Notification

### *Date for Filing Return Extended*

The Central Board of Excise and Customs vide ORDER NO. 1 /2011 – Service Tax, 20th October 2011 has extends the date of submission of half yearly return for the period April 2011 to September 2011 from 25th October 2011 to 26th December 2011.

[Source: ORDER NO. 1 /2011 – Service Tax, 20th October 2011]



## Central Excise

### ➤ Case Law

#### *Smuggling of Goods*

Person claiming that impugned gold biscuits belonged to him producing vouchers showing sale of bars- CESTAT holding that in business, there was no distinction between bars and biscuits, and discrepancy of two grams in 16 pieces of biscuits, could not make vouchers unworthy of reliance- High Court not finding anything perverse with order of CESTAT- In that view, confiscation of the gold and penalty set aside. Section 123 of Customs Act, 1962.

[Source: Comm of Customs Dept Vs Kapil Deo Prasad, 2011 (272) ELT 31 (Pat.)]

#### *Availability of Seized Documents*

Investigation- Seized documents- It is mandatory for Revenue officers to make available their copies when asked for- Choice of either asking for documents or seeking their extract is of party from whom documents are seized- Revenue officer cannot say that documents would be provided on completion of investigation or

merely allow their inspection, and provide copies if they were relevant to show cause notice issued- Section 110(4) of Customs Act, 1962.

[Source: Manish Lalitkumar Bavishi V Addl. Dir. General, DRI, 2011 (272) ELT 42 (Bom)]

### *Clandestine Removal*

Proof of Clandestine Removal- Slips giving details of removal of goods, but their author not examined- Statements of Security and liaison officers relied on by Department, but they had nothing to do with production and clearance of goods- Statements of buyers taken, but they were retracted, and were not shown as relied on documents in show cause notice- HELD: Charges of clandestine removal was not proved- Rules 11 and 25 of Central Excise Rules, 2002.

[Source: Comm of Cent. Excs., Tiruchirapalli Vs Shree Rajeshwari Mills Ltd, 2011 (272) ELT 49 (Mad.)]

### *Cenvat Credit on Input in Combo-Pack*

Combo-pack of bought out tooth brush with tooth paste manufactured by assessee- No extra amount recovered from consumer on toothbrush- HELD: Combo-pack reached its final stage of marketability only after packet containing tooth brush was placed with tooth paste- Also, re-packing, labelling etc. amounted to manufacture- In that view, tooth brush was an input on which assessee was entitled to credit of duty paid- Rules 2(k) and 3 of Cenvat Credit Rules, 2004- Section 2(f) of Central Excise Act, 1944.

[Source: Comm of Cent. Excs., CUS. 7 S.T., Daman Vs Prime Healthcare products, 2011 (272) ELT 54 (Guj)]

### *Removal of Goods Without Payment of Duty, From One Unit to Another*

Penalty imposed as furnace oil removed without payment of duty, from one unit to another, under warehousing procedure- Re-warehousing certificate issued by departmental authorities from place of removal, and no action taken for non-warehousing, at place to which oil was removed- HELD: Setting aside of penalty was proper, and no substantial question of law arose thereby- Sections 11AC and 35 G of Central Excise Act, 1944.

[Source: Comm of Cent. Excs. & S.T., LTU, Chennai, Vs Chennai Petroleum Corpn. Ltd, 2011 (272) ELT 61 (Mad)]



## COMPANY LAW UPDATES

### ➤ **Circulars/Notification**

#### *Withdrawal of Draft of Companies (Dematerialization of Certificates) Rules, 2011*

The Ministry of Corporate Affairs in consultation with Law Ministry has decided to withdraw the draft of Companies (Dematerialization of Certificates) Rules, 2011, which it had proposed to issue vide letter of even number dated 06.06.2011.

[Source: MCA Notification No. 17/143/2011 CL.V dated 28.10.2011]

#### *Registration of Companies or LLP's having one of their objectives to do business of architect kept on hold*

Ministry has received representations to the effect that the Registrar of Companies and Registrar of LLP's are incorporating the companies and LLP's in contravention to the provisions of Architect Act, 1972. In terms of Section 36 and 37 of Architect Act, 1972 as well as rules and regulations framed there under only an architect registered with the Council of Architecture or a firm of Architects can represent itself as an Architect or use the title and style of architect of practicing the profession of an architect in India with the exception of a landscape architect and naval architect.

The matter is under examination in consultation with the Department of Legal Affairs. Pending finalization of view of Central Government on the subject, it has been directed that incorporation of companies/LLPs where one of the objects of such entities is to carry on the business of architect be not proceeded with till further order.

[Source: MCA General Circular No. 17/165/2011 CL-V dated 10.10.2011]

#### *Amendment in Companies (Central Government's) General Rules and Forms, 1956*

The Ministry has amended the said rules by inserting Form 23AC XBRL and Form 23ACA XBRL after the existing Form 23ACA and the amendment to be effective from October 6, 2011. And the said rules be known as Companies (Central Government's) General Rules and Forms, (Amendment) Rules 2011.

[Source: General Circular No. G.S.R(E) dated 05.10.2011]

#### *Companies (Filing of documents and forms in Extensible Business Reporting Language) Rules, 2011*

In exercise of the powers conferred by sub-section (1) of Section 642 read with Section 610B of Companies Act, 1956, the Central Government has come out with Companies (Filing of documents and

forms in Extensible Business Reporting Language) Rules, 2011 and the said rules to be effective from October 6, 2011.

[Source: General Circular No. G.S.R(E) dated 05.10.2011]

### *Company Law Settlement Scheme, 2011 extended*

Pursuant to the said circular, the Company Law Settlement Scheme has been extended up to December 15, 2011.

[Source: MCA General Circular No.65/2011 dated 04.10.2011]

### *Last date for filing Form DIN 4 extended*

Ministry of Corporate Affairs has extended the last date for filing DIN-4 by DIN holders for furnishing the PAN and to update PAN details till December 15, 2011.

[Source: MCA General Circular No.66/2011 dated 04.10.2011]



## RBI & SEBI UPDATES

### ➤ Circular

#### *Deregulation of Savings Bank Deposit Interest Rate- Guidelines*

It has been decided to deregulate the savings bank deposit interest rate w.e.f. October 25, 2011 and banks are free to determine their savings bank deposit interest rate, subject to the following two conditions:

- First, each bank will have to offer a uniform interest rate on savings bank deposits upto Rs. 1 Lakh, irrespective of the amount in the account within this limit.
- Second, for savings bank deposits over Rs. 1 lakh, a bank may provide differential rates of interest, if it so chooses, subject to the condition that banks will not discriminate in the matter of interest paid on such deposits, between one deposit and another of similar amount, accepted on the same date, at any of its offices.

The above revised guidelines would be applicable to savings bank deposits of resident Indians only.

[Source: RBI/2011-12/233DBOD. Dir .BC. 42/13.03.00/2011-12 dated 25.10.2011]

#### *Revision in Repo and Reverse Repo and Marginal Standing Facility Rates*

It has been decided to increase the repo rate under the Liquidity Adjustment Facility (LAF) by 25 basis points from 8.25 per cent to 8.50 per cent w.e.f 25.10.2011. Consequent to the increase in the repo rate, the revised repo rate under the LAF will stand automatically adjusted to 7.50 per cent and the Marginal Standing Facility (MSF) rate to 9.50 per cent w.e.f 25.10.2011.

[Source: RBI/2011-12/231 FMD.MOAG. No. 64/01.01.01/2011-12 dated 25.10.2011]

#### *Opening Foreign Currency Non Resident Account Banks Scheme [FCNR (B)] account in any freely convertible currency-liberalization*

It has been decided that AD Banks in India may be permitted to accept FCNR (B) deposits in any permitted currency and 'Permitted Currency' for this purpose would mean a foreign currency which is freely convertible as defined in terms of Regulation 2(v) of FEMA 14/2000-RB, dated May 3, 2000, as amended from time to time

[Source: RBI/2011-12/225 A.P. (DIR Series) Circular No. 36 dated 19.10.2011]

#### *Repatriation of income and sale proceeds of assets (i) held abroad by NRI's who have returned to India for permanent settlement and (ii) acquired abroad through remittances under Liberalised Remittance Scheme- Clarification*

It has been clarified that income and sale proceeds of assets held abroad by NRI's who have returned to India for permanent settlement and income and sale proceeds of assets through remittances under (Liberalised Remittance Scheme) LRS need not be repatriated and attention is drawn to Section 6(4) of FEMA, Act 1999, which states that a person resident in India is free to hold, own, transfer or invest in

foreign currency, foreign security or any immovable property situated outside India if such currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India; (ii) an investor can retain and reinvest the income earned on investments made under the LRS.

[Source: RBI/2011-12/226 A.P. (DIR Series) Circular No. 37 dated 19.10.2011]

### *Liberalized Remittance Scheme for Resident Individuals- Revised Application cum Declaration Form*

In terms of A.P. (DIR Series) Circular Nos. 17 and 18 dated September 16, 2011, a resident individual has been permitted to make a gift/ loan in rupees to a Non Resident Indian /Person of Indian Origin close relative (s), subject to certain terms and conditions. One of the conditions being that the gift/ loan amount should be within the overall limit of USD 200,000 per financial year as permitted under the LRS for the resident individual. Accordingly, the Application cum Declaration form for purchase of foreign exchange has been revised.

[Source: RBI/2011-12/ A.P.(DIR Series) Circular No.32 dated 10.10.2011]

### *Uniform Know Your Client (KYC) Requirements for the Securities Markets*

SEBI has been getting feedback from the investors that various SEBI registered intermediaries follow different KYC requirements. In order to bring uniformity in the said requirements, SEBI has initiated steps in this direction in consultation with major stock exchanges, depositories, AMFI and market participants, In case of stock brokers, the account opening process for investors has been simplified vide SEBI circular No.CIR/MIRAD/16/2011 dated August 22, 2011, KYC form Capturing the basic details about the client has been prescribed as Part I of the account opening form and additional information specific to dealing in stock exchanges are obtained in Part II of the form. Now, the same KYC form and supporting documents shall be used by all the SEBI registered intermediaries

[Source: MIRSD/SE/Cir-21/2011 dated October 5, 2011]



### *Amendments to the Equity, IDR and SME Equity Listing Agreements*

#### **(a) Amendments to Clause 41 - Disclosure of quarterly financial results**

- i) In order to give a better comparative picture of the quarterly financial results, listed entities shall disclose figures in respect of immediately preceding quarter as well in addition to the existing requirements.
- ii) Listed entities shall also submit the last quarter results along with the audited annual results.

#### **(b) Amendments to Clause 41 - Submission of financial results**

It is being observed that certain listed entities, while submitting their interim financial results, submit unaudited financials first and subsequently submit the limited review report after a lag. It is hereby clarified that submission of unaudited results shall be accompanied by the limited review report of the auditors.

#### **(c) Amendments to Clause 32 – Mode of Supplying Annual Reports to Shareholders**

In modification of SEBI circular no. SEBI/CFD/DIL/LA/2/2007/26/4 dated April 26, 2007 and in line with the green initiative of Ministry of Corporate Affairs vide their circular dated April 29, 2011, it has been decided that instead of supplying complete and full annual reports to all the shareholders, listed entities shall supply:

- i. soft copies of full annual reports to all those shareholders who have registered their email addresses for the purpose;
- ii. hard copy of abridged annual reports to others and
- iii. hard copies of full annual reports to those shareholders, who request for the same.

#### **(d) Insertion of Clause 35A - Disclosure of voting results by listed entities**

In order to ensure wider dissemination of information regarding voting results, listed entities shall disclose their voting results in the prescribed format, to the exchanges and also place the same on their websites, within 48 hours from the conclusion of the concerned shareholders' meeting. To begin with, this requirement shall be applicable to top 500 listed entities based on market capitalization computed as on the date of this circular.

#### **Applicability**

- (a) Provisions of Paras 2(a), 2(b) and 2(c) shall be applicable with effect from the quarter/financial year ending on December 31, 2011.
- (b) Provisions of Para 2(d) shall be applicable for all the shareholders' meetings, for which notices are issued on or after January 01, 2012. Stock Exchanges are advised to notify the list of entities for whom the said provision would be applicable based on the criteria specified at 2(d) above.

[Source: SEBI circular CIR/CFD/DIL/7/2011 dated October 05, 2011]

## CORPORATE FINANCE

### ➤ Latest News

#### *MERGERS & ACQUISITIONS*

##### **Red Hat Acquires Nexus Ventures-backed Gluster For \$136M**

Open source solutions firm Red Hat Inc. has acquired Nexus Ventures-backed Gluster Inc., a provider of scale-out, open source storage solutions, for approximately \$136 million in cash. Gluster was founded in 2005 by Hitesh Chellani and Anand Babu Periasamy. In late 2008, Gluster raised \$4 million in the series A funding round, led by Nexus Venture Partners. Last November, it received \$8.5 million in a series B funding round, led by Index Ventures, in which Nexus Venture Partners also participated.

[Source: The Venture Bay, October 04, 2011]

##### **US-based Akorn Acquires Kilitch Drugs' Assets For Rs 200Cr**

NASDAQ-listed pharmaceutical company Akorn, Inc. has struck a deal to acquire certain assets of Kilitch Drugs (India) Ltd, a contract manufacturer of sterile injectables, for Rs 200 crore. **Akorn has also struck a deal with NBZ Pharma, a promoter of Kilitch, to acquire certain other assets for Rs 34.46 crore.** The company has two manufacturing facilities located in Navi Mumbai and Paonta Sahib (Himachal Pradesh), and it has forayed into marketing and distribution of ophthalmology products in India and certain overseas markets

[Source: Reuters, October 07, 2011]

##### **Nomura Research Acquires 25.1% In Delhi-based Market Xcel Data**

Global consulting firm Nomura Research Institute (NRI) will acquire 25.1 per cent stake in Market Xcel Data Matrix Pvt Ltd, a local research company, for an undisclosed sum.

[Source :Business wire, October 07, 2011]

##### **South African Firm To Buy 26% In Max Healthcare For Rs 516Cr**

South Africa's Life Healthcare Group Holdings is acquiring 26 per cent stake in the healthcare arm of Aniljit Singh's Max India, valuing the unit at Rs 1984 crore (\$405 million). Life Healthcare Group (Proprietary) Ltd has entered into a non-binding term sheet to invest Rs 516.5 crore in Max Healthcare Institute Ltd for the stake. **Deal values unit at Rs 1,984cr, more than double as compared to the**

**Warburg Pincus exit at Rs 855cr in June.**

[Source: Business standard, October 12, 2011]



## VENTURE CAPITAL

### ***Helion Venture Partners Invests In Baby Products E-Tailer Hoopos.Com***

Mother care, baby care and kids' products e-tailing start-up hoopos.com has raised an undisclosed sum from early-stage venture capital firm Helion Ventures Partners. Bangalore-based hoopos.com offers products across 12 categories such as baby essentials, clothes, toys, travel, books and nursery furniture, among others. It was started in September this year by a four-member team, with experience across baby products retail, e-commerce and Web technologies.

[Source: Live mint, October 31, 2011]

### **Valyoo Technologies Raises \$4M From IDG Ventures India**

Valyoo Technologies Pvt Ltd has raised \$4 million in first round of funding from IDG Ventures India, a \$150 million technology venture capital fund. Incorporated in May 2008, Delhi-based e-commerce start-up Valyoo launched Lenskart.com in November 2010, and followed it with Watchkart.com and Bagskart.com in May 2011 and August 2011 respectively. Currently, the sites ship to 450 cities across India and employ 50 people.

[Source: Newspan, October 31, 2011]

### **Naaptol Raises \$25M From NEA, Canaan Partners & Silicon Valley Bank**

Naaptol Online Shopping Pvt Ltd, owner of the shopping site Naaptol.com, has raised \$25 million (Rs 123 crore) in an all cash deal, led by New Enterprise Associates (NEA). Earlier investors Canaan Partners and Silicon Valley Bank also participated in the round that ended in August 2011.

[Source: Economic times, October 19, 2011]

### **Webklipper Raises Seed Round From IAN**

Mumbai-based start-up [Webklipper Technologies Pvt Ltd](#), which offers online surveys and feedback tools for e-commerce sites, vertical search sites and blogs, has raised its first round of funding from the Indian Angel Network, led by Google India chief Rajan Anandan in his personal capacity.

[Source: Vccircle, October 18, 2011]

### **Singapore-Based Media Firm Cinemacraft Raises SG \$1M**

Singapore-based venture capital firm Jungle Ventures has partnered with independent investors to infuse SG\$1 million (Rs 3.87 crore) into Singapore-based mobile media solutions provider Cinemacraft, founded by Indian-origin entrepreneur Sandeep Casi.

[Source: , October 19, 2011]



## **PRIVATE EQUITY**

### **Matrix Partners Invests Rs 60Cr in TCNS Clothing**

Matrix Partners India is investing Rs 60 crore in TCNS Clothing Company Pvt Ltd, which manufactures and markets contemporary women's wear brand W in India. W is sold across 100 exclusive brand outlets (EBOs) in more than 40 cities and over 600 points of sale in multi-brand outlets and large format stores. Also, the brand has been registering 50 per cent year-on-year growth,

[Source: Livemint, October 24, 2011]

### **Reliance Equity Advisors Invests Rs 136Cr In VVF**

In its second deal in as many weeks, Reliance Equity Advisors has invested Rs 136 crore in VVF Ltd, which manufactures and markets personal care products and oleochemicals. The private equity arm of Anil Ambani's Reliance Capital has invested in different entities of the VVF group through a combination of equity shares and compulsorily convertible debentures.

[Source: The Reuters, October 18, 2011]

### **Svenska Design Hotels Raises Rs 30Cr In Mezzanine Capital**

Svenska Design Hotels, that runs a chain of luxury boutique hotels has raised Rs 30 crore in mezzanine capital from DMI Finance. Svenska operates hotels in Mumbai and Bangalore and has planned to expand in four more cities in the future including Delhi, Kolkata, Kakinada and Bhilwara. Based on European design concepts, Svenska is focused on developing and managing chic and trendy small-format (30-100 rooms) upscale hotels that offer luxury hospitality

[Source: Vccircle , October 18, 2011]

### **Greenko Gets \$50M From GE For Wind Energy Push**

London-listed clean energy producer Greenko Group PLC has raised \$50 million from an arm of the NYSE-listed conglomerate General Electric Company to expand its wind energy operations in India. Greenko, which develops, owns and operates clean energy projects, has raised the funding for its newly created wind holding company Greenko Wind Project Pvt Ltd.

[Source:Newspolitan ,October 10, 2011]

### **SAP Ventures Invests \$10M In One97 Communications**

SAP Ventures, which has recently invested \$10 million along with Sequoia in IPO-bound Just Dial, is the sole investor in the current round. Mobile Internet services company One97 Communications has raised third-round funding of \$10 million from SAP Ventures, the corporate venture capital arm of the software-maker SAP AG. The new funding comes as the Noida-based company has dropped its plans for an IPO due to volatile markets and now seeks to become one of the more-consumer-focused players in India's mobile Internet space

[Source: Times of india , October 10, 2011]

### **CLSA Capital Invests \$21.8M In Resonance Eduventures**

Kota-based test preparation company Resonance Eduventures Pvt Ltd, which offers coaching for IIT-JEE, engineering and medical entrance exams, has raised \$21.8 million or around Rs 100 crore from CLSA Capital Partners. CLSA is investing around 100 crore in Resonance for up to 12 per cent stake.

[Source: Reuters, October 05, 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](mailto:rnm@rnm.in)

Fax. +91 22 6117 4950  
E-mail: [ashish@rnm.in](mailto: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](mailto:nitin@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](mailto:ashok@rnm.in)

### **BRANCH OFFICE:**

Mr. Rathna Kumar  
813 Oxford Towers,  
139 Airport Road,  
Bangalore-560 008  
E-mail: [bangalore@rnm.in](mailto:bangalore@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](mailto:purush@rnm.in)

### **Mauritius**

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

### **AFFILIATE OFFICES:**

#### **Mumbai**

Mr. AshishBairagra,  
F11, 3<sup>rd</sup> Floor, ManekMahal, 90  
Veer Nariman Road, Church  
Gate,  
Mumbai-400 020  
Tel. +91 22 6117 4949



#### **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](mailto:raymond@rnm.in)

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