# RNM ALERT

Thinking of the Bottom Line – Think of Us

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U.N. Marwah

Dear Readers,

The monsoons, the lifeblood of most of the rivers in India and of agriculture, has arrived in most parts of the country. As per experts the extent of monsoon rains over the next 10 days would determine whether the shortfall of 28% for the month of June is made up. The economic performance is riding on a good monsoon, so we at RNM are hopeful that the rain Gods shall be kind.

The RBI has issued new guidelines permitting External Commercial Borrowings (ECB) to be used for repayment of rupee loans, subject to certain conditions. This is a significant step which will permit India Inc. to reduce their debt service costs, with China and European Union recently further reducing their rates. *RNM would generally recommend a Forex hedge to be taken in light of the likely impact that a further slide in the Rupee,which is likely,shall have.*

In a significant recent judgment in the case of ***B4U International Holdings Ltd v. DCIT (Trib)(Mum)***the Tribunal has upheld the supremacy of the DTAA over the recent retrospective amendment introduced in the Income Tax Act, 1961 through the Finance Act 2012. This judgment would provide significant comfort to the Foreign Investors in the rule of law and to all those who were opposed to the retrospective amendments.

Under the new negative list regime of Service tax effective from July 1, 2012 the earlier relief available to renting of land used for educational, sports, circus, entertainment and parking purposes from the applicability of service tax on renting of immovable property has now been removed. Further, the relief granted for use of land for the purpose of accommodation, including hotels, hostels, boarding houses, holiday accommodations, tents, camping facilities has also been removed. Therefore, landlords giving their properties on rent for all purposes other than residential purposes shall be liable for service tax.*RNM recommends that all service providers seek advice on the specific changes applicable under the heads relevant to them as a result of the new negative list regime*.

I would separately like to highlight here the earlier RNM Flash of June 2012 which concerned the issues surrounding the need to obtain the Tax Residency Certificate for availing the benefits under the relevant Double tax Avoidance Agreements (DTAA).

Regards,

**U.N. Marwah**

For and behalf of the RNM Alert Editorial Board

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# DIRECT TAX

## ➢ Case Laws

### *Charitable Purpose*

**Sec2(15):** Definitions- Charitable purpose – Publication of books, booklets as reference material by the public as well as the professionals in respect of bank audit, tax audit etc. cannot be construed as commercial activities hence approval under section 80G(5) cannot be denied (S.80G(5)).
***[Source: DIT v. The Chartered Accountants Study Circle (2012) 70 DTR 219(Mad) (High Court)]***

**Sec2(15):**Definitions – Charitable Purpose – Expression "education" – Coaching class by open university or distance education cannot be construed as "education" for charitable purpose. (S. 11, 12A)
***[Source: Dy. DIT v. Kuttukaran Foundation (2012) 51 SOT 175 (Cochin) (Trib)]***

### *Deemed Dividend*

**Sec 2(22) (e): Definitions-dividend-deemed dividend-Loan to partnership- Since the partnership firm which has purchased the shares through its partners though not registered share holder, being beneficial owner is to be treated as share holder and loan advanced by company to such partnership is liable to tax as deemed dividend.**

The Assessing Officer has held that loan received by partnership firm from Bharti Enterprises (P) Ltd. should be treated as deemed dividend as two partners hold more than 10 percentage shares in Bharti Enterprises (P) Ltd. CIT (A) and Tribunal decided the issue in favour of assessee. On appeal, the High Court following the Judgment in National Travel services (2012) 249 CTR 540 (Delhi) held the issue in favour of revenue holding that partnership firm is to be treated as the share holder and it is not necessary that it has to be "registered shareholder". The question was answered in favour of revenue. As regards the accumulated profits the matter is set aside to the Tribunal by giving a reasonable opportunity to both the parties. (A.Y. 2004-05)
**[Source: CIT v. Bharati Overseas Trading Co. (2012) 249 CTR 554 (Delhi) (High Court)]**

**Sec2(22)(e): Definitions- Dividend Deemed- Unsecured loans from other Company- Provisions of section 2(22)(e) cannot be invoked if the assessee does not possess the prescribed voting rights in that company**

Sec2(22)(e) cannot be invoked in respect of the unsecured loans taken by the assessee from the other company if the assessee does not possess the prescribed voting rights in that company; shareholding of the common shareholder or director cannot be taken into consideration for the purpose. (AY 1994-95, 1996-97 & 1997-98)
**[Source: CIT v. Gopal Clothing Co. Ltd. (2012) 71 DTR 358 (Delhi)(High Court)]**

## *Income Deemed to accrue or arise in India*

### A subsidiary created for Indian business is a PE of the foreign parent

The applicant, a Singapore company, entered into an agreement with an Indian group subsidiary company for the performance of shipment transport services within & outside India. The agreement was on a principal to principal basis. The applicant claimed that as it had no office, equipment, employee or agent in India and did not carry out operations in India, it did not have a PE in India and no part of the receipts from outbound and inbound consignments was taxable in India. HELD by the AAR:

(i) A "permanent establishment" is something which enables a non-resident to carry on a part of its whole business in a particular country. The Aramex group could not have done business in India without a presence in India. This presence in India can be achieved through an independent entity or through a subsidiary. If the entity is an independent & uncontrolled entity, then there is no PE if the requirements in Article 5(2) of the DTAC are not satisfied. However, if a 100% subsidiary is created for the purpose of attending to the business of the group, the subsidiary must be taken to be a PE of the group in India applying common sense.

(ii) As the subsidiary has a fixed place of business in India and the business of the applicant is carried on through it, the definition in Article 5(1) is satisfied. The subsidiary is also a PE under Article 5(8) because it habitually secures orders in India wholly for the Aramex group and concludes contracts for the group. The exception in Article 5(10) that the fact that a subsidiary carries on business shall not of itself constitute that company a PE of the foreign company does not apply because it is not a case of the subsidiary carrying on "its business" in India but it is a case of the entire group carrying on business in India through the subsidiary. Also, the fact that the agreement refers to the subsidiary as "independent" and "non-exclusive" is not relevant because it is a mere camouflage to screen the fact that the subsidiary is really a PE of the applicant's group in India.

**[Source:** ***In Re Aramex International Logistics Pvt Ltd (AAR) A.A.R. No. 1061 of 2011]***

### Sec9(1)(iv): Income deemed to accrue or arise in India- Reimbursement-Fact that third party invoices are paid does not necessarily show "reimbursement"

The subsidiary constituted a dependent agent PE (DAPE) of the assessee because de facto the assessee was carrying on the contract work on behalf of the subsidiary and if we pierce the veil of the assignment contract and go to the root, there is interlacing of activities and interlocking of funds between the assessee and the subsidiary in executing the dredging contract. There is a relationship of agency and a PE is created. (A.Y. 2003-04).

**[Source: Van Oord ACZ Marine Contractors BV v. ADIT (Chennai)(Trib.)]**

### Sec9(1)(vi):Income deemed to accrue or arise in India –Royalty - Despite retrospective law By Finance Act 2012, "Royalty" is not taxable as DTAA prevails. (S. 40(a)(ia). 195)

The assessee, a Mauritius company, made payment to Panamsat, USA, for hire of a "transponder satellite". The AO held that the said hire charges constituted "royalty" and that the assessee ought to have

deducted TDS u/s 195 and that as it had not done so, the amount was to be disallowed u/s 40(a)(ia). Before the Tribunal, the department argued that though as per **Asia Satellite Telecommunications Co. Ltd. (2011) 332 ITR 340 (Delhi)(High Court)**, the hire charges were not assessable as "royalty", this verdict was no longer good law in view of the amendment to s. 9(1)(vi) by the Finance Act 2012 w..e.f. 1.4.1976 to provide that such hire charges shall be assessable as "royalty". Held by the Tribunal:
(i) In **Asia Satellite Telecommunications Co. Ltd. v. DCIT (2011) 332 ITR 340 (Delhi)(High Court)** it was held that in order to constitute "royalty", the payer must have the right to control the equipment. A payment for a standard service would not constitute "royalty" merely because equipment was used to render that service. A similar view was taken in **Skycell Communications Ltd v.Dy. CIT (2001) 251 ITR 53 (Mad.)(High Court)**. In De Beers India Minerals (www.itatonline.org)(Kar.) & Guy Carpenter & Co. Ltd. (Delhi)(High Court) it was held that to "make available" technical knowledge, mere provisions of service was not enough and the payer had to be enabled to perform services himself. ***The department's argument that the amendments by the Finance Act, 2012 changes the position is not acceptable because there is no change in the DTAA between India and USA and the DTAA prevails where it is favourable to the assessee;***
(ii) Even otherwise as the payment is made from one non-resident to another non-resident outside India on the basis of contract executed outside India, s. 195 will not apply as held in **Vodafone International Holdings B.V. v. UOI (2012) 341 ITR 1 (SC)**. As s. 195 did not apply, no disallowance can be made u/s 40(a)(i);
(iii) Further, as prior to the insertion of s. 40(a)(ia) in AY 2004-05, payments to a resident did not require TDS, under the non-discrimination clause in the DTAA, the disallowance u/s 40(a)(i) in the case of non-residents cannot be made as held in Herbalife International India (P) Ltd (2006) 101 ITD 450 (Delhi)(Trib.), Central Bank of India & Millennium Infocom Technologies Ltd v. ACIT (2008) 21 SOT 152 (Delhi)(Trib). (A.Y. 2002-03)
**[Source: B4U International Holdings Ltd v. DCIT (Trib)(Mum)]**

## Sec9(1)(vi):Income deemed to accrue or arise in India –Royalty –Information through internet-DTAA India-Singapore- Subscription received by Indian subscriber would be royalty. (Sec195, Art 12)

The applicant is a Singaporean company engaged in providing social media monitoring services for a company, brand or product. It is a platform for users to hear and engage with their customers brand ambassadors etc. across the internet. The applicant offered services on charging a subscription. The clients who subscribed can log into its website to search on what is being spoken about various brands and so on. The applicant raised the two question before the Authority;
(a) Whether the amount received by offering subscription based services is taxable in India?
(b) Whether tax is required to be deducted from such amount by the subscribers who are resident in India?
Authority for Advance Rulings held that the applicant being engaged in providing social media monitoring service by generating reports with analytics on the basis of the inputs given by the clientswhich amounts to business of gathering, collating and making available or imparting information concerning industrial and commercial knowledge, experience and skill and therefore, the subscription

received by it form the Indian subscribers would be royalty in terms of clause (iv) of Explanation 2 to section 9(1)(vi) as well as para12 of the India –Singapore DTAA, consequently tax is required to bededucted in terms of section 195 from the payment made to it by the subscribers who are resident inIndia.

**[Source: Thoughtbuzz (P) Ltd. (2012) 250 CTR 1 / 71 DTR 105 (AAR)]**

### Sec 9(1)(vi): Income deemed to accrue or arise in India- Royalty- Deduction at source- DTAA-India- Canada- Rendering of services is not "supply of knowledge or information" to be "royalty". (S. 40 (ia), 195, art. 12)

The assessee was engaged as a consultant by Essar Oil Ltd to provide consultancy services in connection with sale of its energy business. As the consultancy required high level technical and industry knowledge, the assessee engaged KPMG LLP, USA & KPMG Consulting LP, Canada for rendering professional services and paid Rs. 20 lakhs &Rs. 13 lakhs respectively. The AO held that the said fees constituted "royalty" u/s 9(1)(vi) & Article 12 and as there was no TDS, the amount was to be disallowed u/s 40(a)(i). This was reversed by the CIT(A). On appeal by the department, held dismissing the appeal:

The professional services rendered does not fall in the definition of "royalty" in Article 12 of the DTAA. It was purely a professional service for consultancy which were rendered outside India and not for supply of scientific, technical, industrial or commercial knowledge or information. Thus, there was no liability to deduct TDS and consequently no disallowance u/s 40(ia) can be made. (A.Y. 2001-02)

**[Source: KPMG India Pvt. Ltd v. DCIT (Mum.)(Trib)**.]

## *Income not includable in Total Income and disallowance u/s 14A*

### Sec14A: Business expenditure-Disallowance-Exempt income - Firm- Partner -Interest-Disallowance cannot made if there is no tax-free income. [S. 10(2A, 36(I)(iii)]

The assessee, a partner in a firm, borrowed funds and advanced it to the firm on terms that the firm would pay interest if it made a profit. For one year, the firm paid interest which was offered as income by the assessee while for the second year it did not pay interest as it made a loss. The assessee claimed the interest paid on the borrowing as a deduction u/s 36(1)(iii). The AO disallowed the claim on the ground that as the borrowings had been invested in the firm and the income from the firm was exempt u/s 10(2A), the interest expenditure was not allowable u/s 14A. This was reversed by the CIT (A). On appeal, the Tribunal upheld the CIT(A) on the ground that as there was no exemption claimed u/s 10(2A) by the assessee and there was no tax-free income, s. 14A could not apply. The department filed an appeal in the High Court in which it argued that as the profits derived by the assessee from the firm was exempt u/s 10(2A), the interest on the borrowed funds used to invest in the firm was disallowable u/s 14A. The court dismissing the appeal, held :

In so far as Question (A) is concerned, on facts we find that there is no (tax-free) profit for the relevant assessment year. Hence the question as framed would not arise.

**[Source: CIT v. Delite Enterprises (Bom.)( High Court)]**

**Sec14A: Business expenditure-Disallowance-Exempt income - Firm- Partner – Depreciation - Disallowance applies to partner's share of profits. Depreciation is not "expenditure" & cannot be disallowed u/s 14A. (S.10(2A), 28(v), 32 )**

(i) When s. 10(2A) speaks of its exclusion from the total income it means the total income of the person whose case is under consideration i.e. the partner. As the share income is excluded from his total income, s. 14A would apply and any expenditure incurred to earn the share income will have to be disallowed (Dhamasingh M. Popat v. ACIT(2010 )127 TTJ 61 (Mum) approved; SudhirKapadia& Hitesh Gajaria reversed);

(ii) However, s. 14A applies only to "expenditure" incurred by the assessee. Depreciation u/s 32 is an "allowance" and not "expenditure" and so cannot be disallowed u/s 14A (Hoshang D. Nanavati approved) (A.Y. 2006-07)

**[Source: Vishnu AnantMahajan v. ACIT (SB)(Ahd)(Trib)]**

## *House Property*

**Sec22:**Income from house property – Business income- Builder-Property dealer-**Stock in trade-Unsold flats being house property rental income should be assessed as income from house property and not as business income (S. 28(i) )**

**[Source: Azimganj Estate (P) Ltd. v. CIT (2012) 206 Taxman 308 (Cal.)(High Court)]**

## *Profit & Gain from Business & Profession*

**Sec28(i):Business income- Business loss-Amalgamation-**Advances to employees- Security deposit-Advances to employees by amalgamating company which could not be recovered allowable as business loss. Security deposit for obtaining lease of business premises is not allowable as a business loss.

**[Source: CIT v. Triveni Engineering and Industries Ltd. (2012) 343 ITR 245 / 250 CTR 277 (Delhi)(High Court)]**

**Sec37(1): Business expenditure - Tax levied in foreign countries - Taxes levied in foreign countries on profits and gains are deductible[Sec40(a)(ii)]**

The assessee paid tax in Belgium and claimed this amount as deduction. The Assessing Officer held that the term "tax" under section 40(a)(ii) is not limited to tax levied under Indian Income-tax, but is wide enough to include all taxes which are levied on profits of business, accordingly he disallowed the amount. On appeal the commissioner (Appeals) allowed the claim.On appeal to the Tribunal by revenue, the court referred the judgment of Mumbai Tribunal in South Asia Shipping co ITA no 123 of 1976, which was up held by Bombay High Court in ITA no 123 of 1976 .The Tribunal also noted that in case ofTata Sons Ltd ITA no .89 of 1989, the department's reference application were rejected . The Tribunalheld that the taxes levied in foreign countries on profits and gains or otherwise are deductible undersection 37(1), such taxes are not hit by section 40(a)(ii). (A.Ys 2003-04, 2004-05)

**[Source: Mastek Ltd v. DCIT 300 (2012) 44-A BCAJ -May –P.32 (Ahd.)(Trib.)]**

**Sec40(a)(ia): Amounts not deductible – Deduction at source - Work contract- Printing and supply of diaries, catalogues, etc., material used by the assessee, procured from other parties does not amount to work contract u/s 194C**

Printing and supply of diaries, catalogues and folders by printers as per the requirements of the assessee by using materials procured from other parties did not amount to works contract within the meaning of Section 194C and, therefore assessee was not obliged to deduct tax at source from the payments made to the said printers and consequently, the payment could not be disallowed under section 40(a)(ia). (AY 2007-08)

**[Source: DCIT v. *Eastern Medikit Ltd. (2012) 71 DTR 241 / 146 TTJ 551 (Delhi)(Trib.)]***

**Sec40(a)(ia): Consultancy fees, if not taxable as "fees for technical services", is not taxable as "other income"**

The assessee paid consultancy fees to a Singapore company on which tax was not deducted at source. The AO held that the said consultancy fees were assessable as "fees for technical services" u/s 9(1)(vii) and that the failure to deduct TDS meant that the amount had to be disallowed u/s 40(a)(ia). This was reversed by the CIT (A). On appeal by the department to the Tribunal, HELD dismissing the appeal:

(i) While the consultancy fees may constitute "fees for technical services" u/s 9(1)(vii), it does not fall within the ambit of that term in the India-Singapore DTAA because it does not "make available any technical knowledge, experience, skill, know-how or processes, which enables the person acquiring the services to apply the technology contained therein". The services were **simply consultancy services which did not involve any transfer of technology** and so were not assessable as "fees for technical services" (Guy Carpenter (Del) & De Beers (Kar) followed);

(ii) The department's argument that if the sum is not assessable as "fees for technical services", it is assessable as "other income" Article 23 of the DTAA is **not acceptable** because that Article applies only to "items of income which are not expressly mentioned in the foregoing Articles of this Agreement". Article 23 **does not apply to items of income which can be classified under Articles 6-22** whether or not taxable under these articles. Therefore, income from consultancy services, which **cannot be taxed** under articles 7, 12 or 14 because the conditions laid down therein are not satisfied, **cannot be taxed** under article 23 either.

**[Source: DCIT vs. Andaman Sea Food Pvt Ltd (ITAT Kolkata)]**

## *Capital Gain*

**Sec50: Capital gains - Depreciable assets - Plant and machinery - Plant and machinery which was not in use and no depreciation was claimed and assets were held for more than 36 moths assets were to be treated as long term capital gains (S. 2(11), 2(29B), 45)**

The assessee had sold the plant and machinery in the assessment year 2006-07 and claimed the same as assessable as long term capital gain. The plant and machinery was acquired partly in the financial year 1997-98 and partly in the year 1998-99. The assessee contended that as the plant and machinery was not

in use, the assessee had not claimed depreciation. The Assessing Officer held that the section 50 is applicable hence assessable as short term capital gain. The Commissioner (Appeal) also confirmed the order of Assessing Officer. On appeal to the Tribunal, the Tribunal held that section 50 did not apply and plant and machinery which was not in use had to be regarded as long term capital gain. On appeal by revenue the Court held that once Tribunal had recorded a finding of fact that plant and machinery, which is covered by section 50, would be a depreciable asset and not one on which no depreciation was ever claimed, then such assets, which were not depreciable, could not ever be assessed under section 50. Since assessee held assets as defined under section 2 (28A) and capital gain arising on transfer is required to be assessed as long term capital gain. (A.Y. 2006-07)
**[Source: CIT v. Santosh Structural & Alloys Ltd. (2012) 206 Taxman 616 / 72 DTR 65 (P&H)(High Court)]**

**Sec50: Capital gains - Block of assets -Short term capital gain on sale of plant and machinery of one unit cannot be assessed if the assessee has one more unit where the rate of tax is the same.**
**[Source: CIT v. Ansal Properties & Infrastructure Ltd. (2012) 207 Taxman 61 (Delhi)(High Court)]**

## *Undisclosed Income/Investment*

### Sec68: Cash Credits – Gift – None of the donors being available at the addresses given in their returns or PAN cards - addition is held to be justified.

Where none of the donors being available at the addresses given in their returns or PAN cards, AO was justified in making addition of alleged gifts under section 68 for failure of assessee to produce the donors though assessee produced their acknowledgements, PAN cards, IT returns, Bank Passbooks, etc. (A.Y. 2002-03)
**[Source:PrakashchandraSinghvi (HUF) v. ITO (2012) 146 TTJ 121 (Ahd.)(Trib.)]**

### Sec69: Unexplained Investments – unaccounted income – Statement-In the absence of evidence, mere statement of DGM of company surrendering deficit for cash, is not a ground to sustain addition. [S.132 (4)]

Detection of shortage in cash ipso facto does not lead to inference of earning unaccounted income and, therefore, in absence of any evidence of undisclosed income, mere statement of Director cum DGM (finance) of the assessee company surrendering the deficit of cash for taxation during the survey proceedings cannot be a ground for sustaining the addition. (A.Y. 2007-08)
**[Source: DCIT v. Eastern Medikit Ltd. (2012) 71 DTR 241 (Delhi)(Trib.)]**

### Sec69A: Unexplained money -Jewellery – HUF-Reasonable amount of jewellery may be accepted as accumulated and explained and additions cannot be made.

Assessee HUF neither furnished item-wise details of the jewellery owned by it nor adduced any reliable evidence to show that it was the owner and in possession of the jewellery on 31st March 2005,as it had filed the WT Return before an incompetent AO and produced an undated valuation report, it could not be

accepted that the whole of the jewellery was acquired by it from the deceased father of the Karta and, therefore, provisions of Section 69A are attracted to the sale proceeds of the jewellery and it is not assessable as capital gains; however, it would be reasonable to accept that jewellery was received bytheassessee from the deceased and accumulated on other occasions and thus, only the remainingjewellery to be treated unaccounted. (A.Y. 2006-07)
**[Source: Naveen Bansal (HUF) v. ITO (2012) 146TTJ 207 (Delhi) (Trib.)]**

## *Assessment Procedure*

**Sec119:**Income-tax authorities- Instructions to subordinate authorities- Waiver of interests –**Due to financial difficulties there was delay in payment of advance tax, interest levied under section 234B, and 234C cannot be waived. (S. 234B, 234C)**
**[Source: De Souza Hotels (P.) Ltd. v. Chief CIT (2012) 207 Taxman 84 (Bom.)(High court)]**

**Sec132B: Income-tax authorities – Powers - Search and seizure - Application of seized or requisitioned assets – Pendency of penalty proceedings - Expression "penalty levied" in S.132B(1) should be read as penalty to be levied in a proceeding u/s 271(1)(c)** Expression "penalty levied" in S. 132 B(1) should be read as penalty to be levied in a proceeding underSection 271(1)(c); S.132B(1) therefore entitles the I.T. department to retain the seized gold in questionwith them until penalty is levied and apply the same towards the liability so determined, provided theassessee is in default or deemed to be in default. (A.Ys. 2003-04 to 2009-10)
**[Source: SreeBalaji Refinery v. Dy.CIT (2012) 71 DTR 297 (Ker.)(High Court)]**

**Sec147: Reassessment-Full and true disclosure-Notice after expiry of 4 Yrs.**
Reassessment - Income escaping assessment - Since the first two conditions are not pleaded by the Respondents, it is the submission of the Petitioner that the notice is wholly unwarranted and invalid since there is no allegation whatsoever that the Petitioner has failed to disclose all material facts necessary for assessment - long term capital gains have been wrongly claimed by the assessee which have been wrongly considered for the set off of the Unit of Kundaim which has resulted in escapement of income - it is necessary for the Assessing Officer to first observe whether there is a failure to disclose fully and truly all material facts necessary for assessment and having observed that there is such a failure to proceed under Section 147 - There is a well known difference between a wrong claim made by an assessee after disclosing all the true and material facts and a wrong claim made by the assessee by withholding the material facts fully and truly - the Writ Petition is allowed.
**[Source: Titanor Components Ltd. Vs ACIT, CIT and UOI - (Bombay High Court ) Income Tax- TMI- 204715- HC]**

**Sec147: Reassessment - Full and true disclosure - Notice after expiry of four years - Reassessment is not permissible notwithstanding subsequent decision of Court or retrospective amendment. (A.Y.2005-06)**

On the facts the Assessing Officer reopened the assessment on the ground that set off of brought forward unabsorbed depreciation loss was allowed against the income from other sources and capital gains, which is not in accordance with law as explained by special bench in the case of Times Guarantee Ltd and while giving effect to the order of Tribunal no addition was made while computing the income under section 115JB on account of provision for diminution in the value of investment charged to P&L account as the law is amended by Finance Act . 2009 with retrospective effect from the Assessment year 2001-02.The Objection raised by the assessee was rejected by the Assessing Officer. The assessee filed the writ petition . The Court held that there being full and true disclosure by assessee reopening of assessment beyond four years was not permissible not withstanding subsequent decision of Court or retrospective amendment. (A.Y. 2005-06).

**[Source: Voltas Ltd. v. ACIT (2012) 70 DTR 433 (Bom.)(High Court)]**

## Sec147: Reassessment-Deduction at source - Software - Change of opinion -Assessing Officer has applied his mind as regards applicability of section 9(1) (vii), hence reassessment held to be bad in law. (S. 9(I)(vii), 195)

The assessee made payment towards software consultancy services to a foreign company, withoutdeduction of tax at source. In the course of original assessment proceedings the assessee explained that

payment made for consultancy services outside India were not chargeable under Act as per section 9 (1)(vii) , hence not liable for deduction of tax at source, which was accepted by the Assessing Officer. TheAssessing Officer thereafter reopened the completed assessment on the ground that the assessee hadneither any sale of software outside India nor earned any income from outside India and consumed allsoftware in house and therefore consultancy charges paid to foreign company was to be disallowed. Onwrit petition challenging the reassessment, the court held that **the Assessing Officer during the original assessment proceedings had gone in to and examined applicability of section 9 (1) (vii) and thereafter did not invoke section 9(1) (vii), therefore it being a change of opinion, reassessment is bad in law. The court also held that even otherwise since it was found that Assessing Officer had incorrectly recorded reasons by presuming that payments were made to Artech Software Information Systems LLC, where as the said transaction was in respect of software purchase from Micrografx, and assessee had given all details in respect of same, it could be said that the Assessing Officer had proceeded on wrong factual basis also, therefore, reopening proceedings was to be quashed.** (A.Y. 2003-04)

**[Source: ArtechInfoystems (P) Ltd. v. CIT (2012) 206 Taxman 432 (Delhi)(High Court)]**

## Sec147: Reassessment – Reason to believe – Non submission of schedules to the balance sheet along with its income and expenditure account and balance sheet, does not form reasonable belief for reassessment.

The fact that the assessee, a charitable trust, has not submitted the schedules to the balance sheet along with its income and expenditure account and balance sheet or that it earned substantial rental income or that it earned income from sale of books and a printing press or that two societies are donating a fraction of their profits to the corpus of the assessee- trust did not constitute reason to believe that some taxable

income had escaped assessment, moreso and therefore, initiation of reassessment proceedings as well as the assessment proceedings made under section 147 r.w.s. 143(3) in furtherance thereto were not valid. (A.Y. 1999-2000)

***[Source: BharatiVidyapeeth v. ACIT (2012) 146 TTJ 238 / 70 DTR 375 (Pune)(Trib.)***

***ACIT v BharatiVidyapeeth (2012) 146 TTJ 238 / 70 DTR 375 (Pune)(Trib.)]***

### Sec148: Reassessment – Notice - After expiry of four years – Material and information provided by Investigation Wing to the AO on basis on which reasons recorded and assessment reopened, Issue of notice is held to be valid

Material and information provided by Investigation Wing to the AO, on the basis of which he recorded reasons and reopened the assessment, throw considerable doubt on the veracity, correctness, completeness and truth of particulars furnished by the assessee at the time of the original assessment and therefore notice issued by AO under Section 148 was valid. (A.Y.2004-05)

**[Source: Money Growth Investment & Consultants (P) Ltd. v. ITO (2012) 71 DTR 317 (Delhi)(High Court)]**

**Sec158BE:**Block assessment - Time limit - Panchnama- A panchnama which does not record a search does not extend limitation period, hence order held to be invalid.

**[Source: ACIT v. Shree Ram Lime Products Ltd. (SB)(Jodhpur)(Trib.) www.itatonline.org.]**

## *Tax Deduction at Source*

### Sec194H: Deduction at source – Commission - Brokerage - Sale of milk and milk products – Agents - TDS is not deductible on sale of milk and milk products at concessionaires

Held that sale of milk and milk products by assessee dairy to concessionaries/agents who hold the same from the booths owned by the assessee was on principal to principal basis and therefore assessee dairy was not liable to deduct tax at source under section 194H from the payments made to concessionaires. Appeal of revenue was dismissed. (A.Ys. 2004-05 & 2005-06)

**[Source: CIT v. Mother Dairy India Ltd. (2012) 70 DTR 223 (Delhi)(High Court)]**

### Sec201: Deduction at source – Failure to deduct or pay LimitationFor initiating proceedings under section 201, issuance of notice beyond reasonable time period of 4 years, barred by limitation

Even if no period of limitation is mentioned or prescribed, the statutory power must be exercised within reasonable period. Therefore, notice under section 201 and 201(1A) issued beyond the reasonable period of four years were barred by limitation. (A.Y. 1996-97)

**[Source: CIT v. SatlujJalVidyut Nigam Pvt. Ltd. (2012) 71 DTR 145 (HP) (High Court]**

### Sec206AA: Require tofurnish Permanent Account Number-Deduction at source-PAN law read down to not apply to assessee below taxable income - (S. 139A, Article, 226 Constitution of India)

Held upholding the challenge: U/s 139A, only persons whose income is chargeable to tax are required to obtain a PAN. However, s.206AA compels even persons without a taxable income to obtain a PAN to avoid TDS. This creates difficulty for poor and illiterate persons who make small investments and discourages them to invest money. S. 206AA runs counter to s. 139A and is discriminatory. Though the Legislature's intention is to bring maximum persons under the income-tax net, it may not insist that even persons whose income is below the taxable limit have to compulsorily obtain a PAN. If any tax avoidance is detected, that can be taken care of by penal provisions. Accordingly, s.206AA is read down as being inapplicable to persons whose income is less than the taxable limit. Banks & financial institutions should not insist upon PAN from such small investors. It continues to apply to persons whose income is above the taxable limit.

**[Source: A KowsalyaBai v. UOI (Karn.)(High Court)]**

## *Collection and Recovery*

### Sec226: Collection and recovery- Modes of recovery - Garnishee proceedings - Assessee can approach the Assessing Officer against garnishee proceedings and request for withdrawal, writ is not the remedy

Against the garnishee proceedings the assessee filed a writ petition on the ground that once the money is recovered under garnishee order the revocation of the notice will be of no consequences. The court held that such a presumption is without any legal base because of the reasons that with the withdrawal of the notice of garnishing, the action taken in furtherance of garnishing order falls down and possession of the property is required to be restored to the assessee and if the Assessing Officer by exercising power under sub –clause (vii) of sub section (3) of section 226 of the said Act obtains money from the payee of the assessee, he has been given power to withdraw the notice and it cannot be interpreted to mean that notice can be withdrawn only before giving effect to the garnishing order and receiving the money by the Assessing Officer. Otherwise the words at any time or from time to time will be of no consequence in sub clause (vii) of sub section (3) of the said Act. The Court held that the assessee is free to challenge the

order of non – revocation of the garnishee order under sub clause (vii) of sub section (3) of section 226. Commissioner was directed to hear the appeal expeditiously.
**[Source: Central Coal Fields Ltd v. CIT (2012) 249 CTR 523 (Jharkhand)(High Court)]**

## *Appeal & Appellate Tribunal*

### Sec249: Appeal – Commissioner (Appeals) - Form of appeal and limitation – Payment of tax due on returned income mandatory, however no time limit is prescribed for the same

Only requirement of Section 249(4) is payment of tax due on returned income. There is no such time limit is prescribed for payment of such taxes. If an appeal has been filed has been filed after making payment, it cannot be said that the requirement of section 249(4) has been complied with. (A.Y. 1996-97)
**[Source: ITO v. AnkushFinstock Ltd. (2012) 136 ITD 168 (Ahd.)(Trib.)]**

**Sec254(1):** Appellate Tribunal –Orders - Binding precedent -**Tribunal cannot come to conclusion contrary to its earlier order where facts are same or alternatively, can refer the matter to larger bench**.
**[Source: A CIT v. Chandragiri Construction Co. (2012) 136 ITD 133 (TM )(Cochin)(Trib.)]**

## *Penalty and Tax Administration*

### Assessee entitled to raise claims not made in ROI before appellate authorities

It is well settled that an assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also **entitled to raise additional claims** before them. The appellate authorities have the discretion whether or not to permit such additional claims to be raised. It cannot, however, be said that they have no jurisdiction to consider the same. That they may choose not to exercise their jurisdiction in a given case is another matter. The exercise of discretion is entirely different from the existence of jurisdiction. **Goetze** was confined to a case where the claim was made only before the AO and not before the appellate authorities. **The Court did not lay down that a claim not made before the AO cannot be made before the appellate authorities**. The jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Supreme Court in this judgment. On facts, there was nothing to show that the claim entertained by the CIT (A)/ ITAT was improper (**Jai Parabolic** 306 ITR 42 (Del) referred).
**[Source: ITA No. 3908 of 2010]**

**Sec234A: Interest –** Default in furnishing return of income - Charge - Assessment order - Interest, though mandatory, is not payable if Assessing Officer does not direct it to be charged in assessment order (S. 234B & 234C)
**[Source: CIT v. Awadh Hotels (P) Ltd (Allah) (High Court)]**

### Penalty under section 271(1)(c)

Penalty under section 271(1)(c) - explanation versus bona-fide explanation versus proper disclosure - held that:-assessee claimed deduction for Rs. 33.63 crores in its Profit and loss account towards the amount

paid to NOPL for use and occupation of the property. The claim was made on actual payment and the assessee did offer the explanation in support of the claim. If the claim had been not been genuine or the assessee had not offered any explanation, the case would have been covered in clause (A) of Expl. 1 itself. The Assessing Officer was not convinced with the claim and disallowed the deduction. It shows that the assessee offered an explanation about the claim of deduction but could not satisfy the Assessing Officer as to its allowability. First condition is that the assessee offers an explanation, which he is not able to substantiate or prove. It divulges that condition (i) is satisfied in this case.

Penalty under section 271(1)(c) - bona fide explanation - held that:- A claim shall lack bona fide if the facts are manufactured to give a colour of genuineness to the deduction; or if there is not even a far-flung possibility of forming a legally sustainable opinion about the deduction either because of the facts prevailing in a particular case or because no judicial precedent in favour of allowability of such deduction or if an issue is still virgin and had not received attention of the Courts so far, then simple and plain interpretation of the provision leaves no chance to a reasonably prudent person to form an opinion that such a deduction is allowable. These are only some of the instances in which a claim for deduction shall be short of bona fide. - by no standard the claim of the assessee for deduction of Rs. 33.63 crores can be categorized as not bona fide in any manner.

Penalty under section 271(1)(c) - proper disclosure - held that:- when the disclosure made by the assessee in its Profit and loss account and by way of Note in the Balance sheet is considered in the backdrop of ongoing litigation of the assessee with the Department for last three years on the same point, no hesitation in coming to the conclusion that the assessee made a proper disclosure of the facts material to this claim.

As per majority view, we hold that on the facts and circumstances of the case penalty u/s. 271(1)( c) of the Act is not leviable.

**[Source: Narangs International Hotels (P.) Ltd. vs. DCIT - 2012 (6) TMI 648 (Tri)]**

# INDIRECT TAX

## Service Tax

### ➢ Case Laws

***When provider of service had paid service tax, no service tax would be collected from service recipient***

It was contended that for the self same service provided by the transporter and that was received by the respondent, tax was collected from the transporter on such service and that has gone into the treasury. The notice issued proposed double taxation of the same service.Bench held that When the transporter is same and recipient is respondent and there is no contradiction that tax was collected from the transporter, double taxation on the same transaction is inconceivable under the present provisions of Finance Act, 1994.

**[Source: Comm. of Central Excise, Kanpur *v.* Om Tea Company,[2012] 22taxmann.com405 (NewDelhi-CESTAT)]**

***Cenvat Credit of Service Tax***

Document for availing credit- Assessee made a debit entry I Cenvat Account and utilized it for payment of Excise duty- Debit entry in Cenvat Credit account is a proof of payment of service tax by the assessee for inward transport of goods- Debit entry was made on the basis of Lorry Receipt provided all the required information- No infirmity in impugned order- Appeal dismissed- Rule 9(1) of Cenvat Credit Rules, 2004.

**[Source: Comm. of C. Ex., Jaipur-II v Rajsthan Spinning & Weaving Mills Ltd., 2012 (26) STR 466 (Tri- Del.)]**

***Cenvat Credit of Courier Services***

Cenvat Credit of Service Tax- Input Services- courier service and premium of insurance in respect of car- such service are related to activity of business- Cenvat credit available.

**[Source: Commr. of C. Ex., Raipur v Topworth Steels Pvt. Ltd., 2012 (26) STR 420 (Tri- Del.)]**

### ➢ Notification/Circular

***Continuous Application of Education Cess***

Vide Circular No. 160/11/2012-ST, dated:-29th June, 2012 doubt regarding applicability of provisions relating to education cess and secondary and higher education cess as the concerned Acts make reference to section 66 of the Finance Act, 1994, which shall cease to have effect from July 1, 2012.

It has been clarified that according to Removal of Difficulties Order No. 2/2012 dated 29.06.2012 any reference to section 66 of the Finance Act, 1994 shall be construed as reference to the newly re-enacted provision i.e. section 66B of the same Act.

**[Source: Circular No. 160/11/2012-ST, dated:-29th June]**

***Exemption to Railways from Service Tax***

The Central Government, has exempted (i) Service of transportation of passengers, with or without accompanied belongings, by railways in --(A) first class; or (B) an air conditioned coach and (ii) Services by

way of transportation of goods by railways from the whole of service tax leviable thereon under section 66B of the said Act, with effect from the date of publication of this notification in the Official Gazette, upto and including the 30th day of September, 2012.

**[Source: Notification No. 43/2012-ST, dated 2-7-2012]**


# Central Excise/Customs

## ➢ Case Laws

### *Prosecution of Director of Company*

Offence of evasion of Excise Duty allegedly committed by company- Complainant-Department has to make specific factual allegations that person concerned was Director of company, and how and in what manner he was in-charge of and responsible for day-to-day conduct of business of company- In the alternative, it has to be alleged and proved that impugned offence was committed with his consent/connivance or neglect attributable to him- if complaint does not make such allegations and at pre-charge evidence stage, such evidence is not led, charge/complaint under Sections 9AA(1) and 9AA(2) of Central Excise Act, 1944 is not sustainable- On facts, simple re-production of language of Section 9AA(1) ibid in complaint found to be insufficient, and plea that initial onus for making out a prima facie case against accused was discharged by Complainant-Department, and onus to adduce evidence that accused-director was not in-charge or responsible for conduct of company had shifted to him, rejected.

**[Source: T. R. Bhagat v Director General of Central Excise, 2012(280) ELT 499 (Del.)]**

## *Refund of Excise Duty Though Exempt Paid Wrongly*

Duty paid fuel supplied for foreign bound flights exempt from payment of excise duty under exemption Notification dated 26-06-2011- Being a question of fact which would require examination of bulky materials, petitioner's case should be r-examined by the revisional authority. If on availability of evidence on record, it is established that petitioner has fulfilled the mandatory and substantive requirement of Rules and the notification, its refund claim should not be defeated on the ground of some procedural infraction or the documents not being supplied in the original at the outset- If petitioner establishes before revisional authority that the excise duty though exempt was paid wrongly, its refund claim should be granted.

**[Source: Indian Oil Corporation Ltd. v Union of India, 2012(280) ELT 507 (Guj)]**

## *Availment on Inputs Used in Exempted Final Goods*

Cenvat Credit- Availment on inputs used in exempted final goods- Reversal of such credit amounts to not taking of credit, and there is no liability to pay duty- it was more so as transaction prior to 2002 were covered by retrospective effect to Rule 57 CCC of erstwhile Central Excise Rules, 1944.

**[Source: Commissioner of C. Ex., Mangalore v Hindustan Petroleum Corporation Ltd. 2012(280) ELT 510 (Kar.)]**

## *Cenvat Credit of Accident Group Insurance Policy*

Cenvat Credit- Input service- Accident Group Insurance Policy- Treatable as business activity of factory- Impugned order holding services relating to payment of premium as Input services, calls for no interference- Rules 2(1) and 14 of Cenvat Credit Rules, 2004.

**[Source: Commissioner of C. Ex., Tirupati v Nutrine Confectionery Co. Ltd 2012(280) ELT 516 (Tri.- Bang.)]**

## *Interest on wrongly availed Cenvat Credit*

Wrongly availed Cenvat Credit reversed without utilization- Interest liability does not arise- Section 11AB of Central Excise Act, 1944 has to be read down mean that interest liability arises when wrongly availed credit has been utilized.

**[Source: Pearl Insulations Pvt. Ltd. V Commissioner of C. Ex., Bangalore, 2012(280) ELT 559 (Tri.- Bang.)]**

# COMPANY LAW UPDATES

## ➢ Circular/ Notification/ Guidance

### *Extension of time in filing of Annual Return by Limited Liability Partnerships (LLPs)*

In continuation of the Ministry's Circular no 13/2012 dated 06.06.2012 on the subject cited above, it is stated that the time for filing the Annual Return by LLPs (i.e. Form 11) has been further extended upto 31st July, 2012 which was earlier extended upto 30th June 2012. In order to have better understanding of the circular, it is clarified that the time limit of 60 days shall be now read as 122 days (replacing the earlier time limit of 90 days) for filing of Form 11 by LLPs in respect of the financial year ending on 31.03.2012. This circular is effective from 30.06.2012.

**[Source: General Circular No. 15 dated 29th June, 2012 read with General Circular No. 13/2012 dated 06th June, 2012]**

### *Filing of Cost Audit Report (Form-I) and Compliance Report (Form-A) in the eXtensible Business Reporting Language (XBRL) mode*

Incontinuation of MCA's General Circular No.8/2012 dated 10th May, 2012, it has been decided that filing of Cost Audit Reports and Compliance Reports with the Central Government in the XBRL mode shall be allowed after 31st July, 2012.

**[Source: General Circular dated 29thJune, 2012]**

### *Imposing fees on certain e-forms filed with ROC, RD or MCA (HQ) under MCA-21 where at present no fee is prescribed*

The Ministry of Corporate Affairs has decided that fees shall be applicable on the following forms at the rates indicated in the table below:-

| S.N. | Form No. | Particulars of the Form | Applicable Fee |
|---|---|---|---|
| 1. | Form 1 of Investor Education protection Fund Rule | Statement of amounts credited to Investor Education and Protection Fund | As per Schedule X to the Act |
| 2. | Form 23B | Information by statutory auditor to the Registrar of companies Act, 1956 pursuant to section 224(1)(a) of the Companies Act, 1956 | As per Schedule X to the Act |
| 3. | Form 24A | Application to RD<br>(a) For Appointment of Auditors under section 224(3)<br>(b) Others | As per Companies (Fee on Application) Rules, 1999 |

| | | | |
|---|---|---|---|
| 4. | Form 36 | Receiver's or manager's abstract of receipts and payments (charge related form) | As per Schedule X to the Act |
| 5. | Form 61 | Application to RoC-<br>(a) Compounding of Offences u/s 621A<br>(b) Application for extension of Annual General Meeting upto 3 months u/s 166 of the Act<br>(c) Application for extension of time for preparation of Annual Accounts upto 18 months u/s 220 of the Act.<br>(d) Others | (a) As per Companies (Fee on Application) Rules, 1999<br>(b) -Do-<br>(c) -Do-<br>(d) -Do- |
| 6. | Form 62 | Form for submission of misc. documents under the below mentioned rules:<br>(a) Form 154 of the companies (Court) Rules, 1959<br>(b) Form 157 of the companies (Court) Rules, 1959<br>(c) Form 158 of the Companies (Court) Rules, 1959 | As per Schedule X to the Act |
| 7. | Form 65 | Application to the Central Govt (HQ)-<br>(a) Application pursuant to rule 2 of the Companies (Application for Extension of Time or Exemption under Subsection (8) of Section 58A) Rules, 1979.<br>(b) Information and explanation on reservations and qualification contained in the cost audit report by a company<br>(c) Others | (a) as per Companies (Fee on Application) Rules, 1999<br>(b) Nil<br>(c) as per Companies (Fee on Application) Rules, 1999 |

*This circular will come into effect from 22nd July, 2012.*
**[Source: General Circular No. 14/2012 dated 21st June, 2012]**

## *The Limited Liability Partnership (Amendment) Rules, 2012*

Ministry of Corporate Affairs has decided to amend the Limited Liability Partnership Rules, 2009 and these rules may be called as the Limited Liability Partnership (Amendment) Rules, 2012. These rules are effective from 11th June, 2012.**[Source: Notification No. G.S.R (E) dated 05th June, 2012]**

### *Amendment of DIN-1*

Ministry of Corporate Affairs has decided to amend Companies (Director Identification Number) Rules, 2006 and these rules may be called as the Companies Director Identification Number (Second Amendment) Rules, 2012. These rules are effective from 11th June, 2012.

**[Source: Notification No. G.S.R (E) dated 05th June, 2012]**

### *Cost Accounting Records and Cost Audit – general clarifications*

Ministry of Corporate Affairs has so far issued following circulars in connection with the cost accounting records, cost audit, appointment of cost auditors etc:

1. General Circular No. 15/2011 dated 11th April, 2011
2. Master Circular No. 2/2011 dated 11th November, 2011
3. General Circular No. 67/2011 dated 30th November, 2011
4. General Circular No. 68/2011 dated 30th November, 2011
5. General Circular No. 8/2012 dated 10th May, 2012
6. General Circular No. 11/2012 dated 25th May, 2012

It is hereby clarified that all these circulars [including the present circular] are applicable in respect of all the Cost Accounting Records Rules notified in 2011 and the industry specific Cost Audit Orders issued so far; to the extent these are relevant and applicable.

**[Source: General Circular No. 12/2012 dated 04th June, 2012]**

## ➢ Case Laws

### *Section 394of the Companies Act, 1956*

The Hon'ble High Court of Gujarat held that pendency of any proceedings, if any, by the Income Tax Department cannot be ground not to sanction the scheme of amalgamation. Even if there are any proceedings, the said proceedings cannot come in the way of sanction of the scheme. The issue and allotment of shares on premium or otherwise is in the sole domain of the board of directors of the Company. Furthermore, even the action of the company in forfeiting the shares cannot be said to be against the provisions of Companies Act, 1956. In case of default in payment of call money, it is open for the board of directors of the Company to forfeit the shares of the concerned shareholder. In any case, such aspects would not affect Scheme of amalgamation.

**[Source:Aangi Shares & Services (P) Ltd. [2012] 113 SCL 515/22 taxman.com 17 (Gujarat)]**

# RBI& SEBI UPDATES

## ➢ Circular

### *Foreign Investment in India - Sector Specific conditions*

The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India has been updating/notifying the FDI policy through issue of Consolidated FDI Policy Circular. Accordingly, Government has notified the latest FDI policy changes vide FDI Policy Circular 1 of 2012 dated April 10, 2012. In order to bring uniformity in the sectoral classification position for FDI as notified under the Consolidated FDI Policy Circular with the FEMA Regulation, the revised position on Annex A and Annex B of Schedule 1 to Notification No. FEMA 20/2000-RB dated 3rd May 2000, has been suitably revised.

**[Source:RBI/2011-12/626 A.P. (DIR Series) Circular No. 137 dated 28th June, 2012]**

### *External Commercial Borrowings (ECB) – Rationalisation of Form-83*

It has been decided to rationalize the Form-83 submitted to the Reserve Bank for obtaining Loan Registration Number (LRN) to reflect the liberalization and rationalization measures that have been carried out over a period of time. Accordingly, borrowers desirous of obtaining Loan Registration Number (LRN) with effect from July 01, 2012 may submit Form-83 in the revised format.

**[Source:RBI/2011-12/620 A. P. (DIR Series) Circular No. 136 dated 26th June, 2012]**

### *Foreign investment in India by SEBI registered FIIs in Government securities and SEBI registered FIIs and QFIs in infrastructure debt*

**Government Securities**

The limit of USD 15 billion for FII investment in Government securities stands enhanced with immediate effect by USD 5 billion to USD 20 billion. It has also been decided to rationalize the conditions governing the investments under this scheme by making the residual maturity of the instrument at the time of first purchase by FIIs and SEBI registered eligible non- resident investors in IDFs and foreign Central Banks to be at least three years for a sublimit of USD 10 billion.

**Infrastructure Debt**

The conditions for the limit of USD 22 billion including the sub-limit of USD 5 billion with one year lock-in/residual maturity requirement and USD 10 billion for non-resident investment in IDFs (which are all within the overall limit of USD 25 billion for investment in infrastructure corporate bonds) have been changed as under:

i. The lock-in period for investments under this limit has been uniformly reduced to one year; and

ii. The residual maturity of the instrument at the time of first purchase by an FII/ eligible IDF investor would be at least fifteen months.

Further, as a measure of relaxation, QFIs can now invest in those MF schemes that hold at least 25 per cent of their assets (either in debt or equity or both) in the infrastructure sector under the current USD 3 billion sub-limit for investment in mutual funds related to infrastructure. This relaxation would be subject to review.

**[Source:RBI/2011-12/618 A. P. (DIR Series) Circular No. 135 dated 25th June, 2012]**

## *External Commercial Borrowings (ECB) – Repayment of Rupee loans*

It has been decided to allow Indian companies to avail of ECBs for **repayment of Rupee loan(s)** availed of from the domestic banking system and / or for fresh Rupee capital expenditure, **under the approval route**, subject to them satisfying the following conditions:-

i. Only companies in the manufacturing and infrastructure sector will be eligible to avail of such ECBs;
ii. Such companies shall be a consistent foreign exchange earner during the past three financial years;
iii. Such companies are not in the default list/caution list of the Reserve Bank of India; and
iv. Such ECBs shall only be utilized for repayment of the Rupee loan(s) availed of for 'capital expenditure' incurred earlier and are still outstanding in the books of the domestic banking system and / or for fresh Rupee capital expenditure.

The overall ceiling for such ECBs above shall be USD **10 (ten) billion.** The maximum permissible ECB that can be availed of by an individual company will be limited to **50 per cent of the average annual export earnings realised**during the past three financial years. The ECBs will be allowed to companies based on the foreign exchange earnings and its ability to service the ECB. The companies should draw down the entire facility within a month after taking the Loan Registration Number (LRN) from the Reserve Bank.

**[Source:RBI/2011-12/617 A. P. (DIR Series) Circular No. 134 dated 25th June, 2012]**

## *Annual return on Foreign Liabilities and Assets Reporting by Indian Companies – Revised format*

The Annual Return on Foreign Liabilities and Assets (FLA) which is required to be submitted directly by all the Indian companies which have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year, by July 15 of every year has now been revised.

**[Source: RBI/2011-12/613 A.P. (DIR Series) Circular No.133 dated 20th June, 2012]**

# CORPORATE FINANCE

## ➢ Latest News

### *Merger & Acquisition*

**Suzlon Energy sells China manufacturing unit for $60M**

Suzlon Group, which controls wind-turbine maker Suzlon Energy, said on Saturday it will sell stake in its China manufacturing unit to China Power New Energy Development Co. Ltd. for 3.4 billion rupees. Suzlon, the world's fifth-largest wind turbine maker by cumulative installed capacity, will sell the unit with the majority of its assets and liabilities. Suzlon Group established its marketing operations in China in 2005, followed by a wholly-owned manufacturing facility in 2006. The company has till date installed over 900 megawatts of wind capacity in China.

**[Source :Vccircle, 23 June 2012]**

**Yatra acquires online hotels aggregator Travelguru from Travelocity**

Online travel portal Yatra.com has acquired Travelguru, the Indian arm of US travel services provider Travelocity, to become the largest provider of hotel bookings in the country.

The acquisition will help company double revenue growth in the next 12 months by expanding market share as Travelguru is the country's largest hotel distribution network with access to more than 6,500 hotels in India and 72,000 hotels worldwide. Yatra.com's revenue in 2011-12 was about 3,500 crore.

**[Source: The Economic Times, 2nd July 2012]**

**Panasonic exiting Nippo Batteries, to raise stake in Panasonic Carbon**

Japanese major Panasonic Corporation, which holds a near 30 per cent stake in Nippo Batteries Co. Ltd, is exiting from the joint venture by selling its stake to the Indian promoter of the company. Nippo Batteries said that its Managing Director Mr. P.Dwaraknath Reddy would acquire from Panasonic Corporation 11,47,125 shares forming 30.59 per cent of the equity capital, its entire stake. The acquisition would be through block deal at market price prevailing on the date of transfer

**[Source : Hindu Business Line, 5th June 2012]**

**Rating company CRISIL to buy UK-based analytics firm Coalition for $44.8M**

Rating company Crisil Ltd has agreed to acquire UK-based analytics firm Coalition Development Ltd , along with its subsidiaries, for about £29 million (Rs. 250 crore). The deal is an all-cash transaction and will add to the earnings per share (EPS) of Crisil from the first year.

**[Source: Livemint, 1st June 2012]**

## *Private Equity*

### Fidelity leads $6.3M investment round in MineralTree

Fidelity Growth Partners India has led a $6.3 financing round for Boston-based MineralTree, which provides cloud-based secure payments services for small- and medium-sized enterprises (SMEs). MineralTree's payment-plus-cash-management solution is intended to meets the needs of companies with annual revenues of $500,000 to $50 million. The funding will be used to enhance the company's service platform and, accelerate partnerships with banks and improve distribution to customers.

**[Source: Asian Venture capital Journal, 26th June 2012]**

### Samara Capital invests $32M in Monte Carlo Fashions

Mumbai-based private equity fund Samara Capital has invested Rs 175 crore to acquire 20 per cent stake in Monte Carlo Fashions Ltd, an apparel manufacturing and retailing company. The funding will be used to meet working capital requirements and Capex needs.Monte Carlo Fashions is a part of the Punjab-based Nahar Group. Last year, the group's flagship OswalWoollen Mills hived off this premium apparel brand into a separate entity to unlock the value of the brand through IPO and private placement. Monte Carlo was valued at Rs 850 crore when it was hived off from the parent

**[Source : Reuters, 9th June 2012]**

### AMP Capital invests $29M in Shalivahana Green Energy

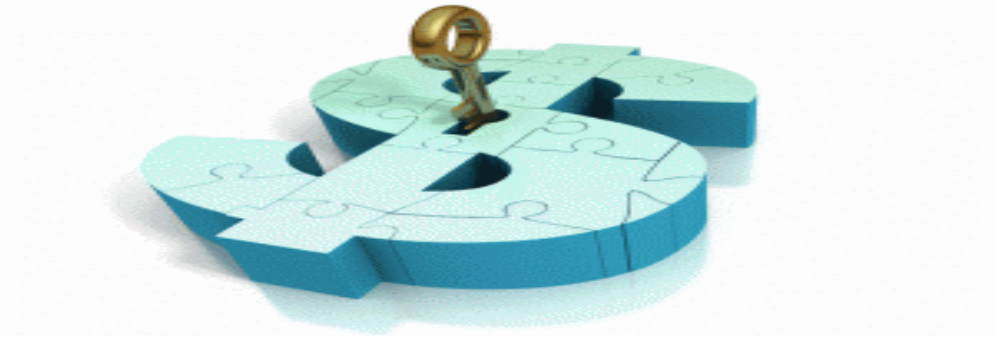
The Hyderabad based Shalivahana Green Energy develops, owns and operates a portfolio of power generation assets across the agri-waste, hydro and wind sectors. It has an operating capacity of 80 mega watt (MW) with another 45 MW to be commissioned in the next six months. AMP Capital Asian Fund has acquired 34% stake in Shalivahana Green Energy for $29 million.

**[Source : Hindu Business line, 6th June 2012]**

### Warburg Pincus acquiring majority stake in Future Capital

US private equity giant Warburg Pincus will expand its presence in the country's financial services sector by buying a majority stake in Future Capital, the troubled finance arm of one of India's Future Group. The $40 billion buyout firm is likely to pay `165-170 per share to, a premium to Friday's closing price of Rs.138. The deal will help Pantaloon Retail, the group's listed flagship company, which holds the majority stake in Future group, to cut debt and improve cash flows

**[Source: The Economic Times, 3rd June 2012]**



## *Venture capital*

### Sequoia Capital invests in Citrus Payment Solutions

Sequoia Capital has invested in Mumbai based - Citrus Payment Solutions Private Limited, offering payment solutions. The amount of investment is undisclosed.Founded in 2011 by Jitendra Gupta, Citrus Payments provide online bank payment and cards payments solutions for internet retailersinIndia.The Citrus Payment Gateway platform provides a superior, secure and cutting edge to process online payments for a host of service providers. The company also offers Email invoicing solutions.

**[Source: Dealcurry.com, 8th June 2012]**

### Komli Media raises $39M from Norwest Venture Partners, Nexus, Helion

Komli Media, India's biggest online media technology platform for advertising, has raised $39 million, or Rs 214 crore, in the biggest round of fundraising by an internet company.Norwest Venture Partners led the latest round with participation from existing investors- Nexus Venture Partners, Helion Venture Partners and Draper Fisher Jurvetson- along with one new investor, Western Technology Investment.

**[Source: The Economic times, 12 June 2012]**

### Kids-related services firm Mycity4kids.com raises angel funding from YourNest Angel Fund

Gurgaon-based startup Mycity4Kids has raised an undisclosed angel funding from YourNest Angel Fund, an early-stage venture capital firm. IT is estimated to be around Rs 3-5 crore, given the investment strategy of the sector-agnostic fund.

**[Source : Reuters, 21st June 2012]**

### VinodKhosla'sSunBorne Energy raises $5M VC funding

VinodKhosla-backed Sun Borne Energy Holdings LLC has raised $5 million (Rs 28.4 crore).Massachusetts-based SunBorne Energy, which was incorporated in 2008, operates in the solar energy spectrum. In India, the company's business model is based on utility scale projects. SunBorne has successfully bid for several solar projects awarded by Gujarat (15 MW), Rajasthan (Phalodi), Andhra Pradesh and Karnataka (10 MW). It has drawn up massive expansion plans in the solar energy segment and aims to build over 1 GW of power in 5-7 years, underlining the enormous potential of the nascent solar power sector in India. SunBorne plans to commission more than 200 MW of capacity by 2014.

**[Source: Reuters, 25th June 2012]**

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