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U.N. Marwah

Dear Readers,

The extent of the US slowdown due to the sub-prime crisis continues to hog the limelight and its impact due to global linkages is being witnessed increasingly by our domestic markets. Both our stock markets as well as the realty markets are being beaten down with expectations of a slowdown in growth for 2008. On the ground, Real Estate PE Funds/ VC's are reducing their exposure on the Tier II and Tier III cities.

Our website- www.rnm.in has been updated with the addition of the GGI World Conference in New Delhi and the RNM in the News WebPages. We look forward to your suggestions on the same.

The Budget expectations continue to roll out- with cuts in tax slab, extension of exemption to STP Units being expected. For the individual taxpayer the increase in the limit u/s 80C is being expected. Clarity regarding the tax structure of REIT's and LLP's are also expected to form part of the Budget amendments. The due dates for filing of Tax Returns both for individuals and corporates is expected to be pre-poned leading to earlier tax collections.

In so far as investment opportunities for entrepreneurs, Budget Hotels and Renewable Energy are two hot areas at the moment. Good momentum can be expected in these sectors due to the high growth demand. Efficient supply chain management is critical.

U.N. Marwah
Senior Partner

On behalf of the **RNM Alert** Editorial Team.

Honeymoon of Manufacturers in Excise Free Zones Over

The CBEC has amended provisions which provided full exemption from excise duty to the units located in specified areas of Uttarakhand and Himachal Pradesh vide Central Excise Tariff Notification No. **1/2008** and Central Excise Non- Tariff Notification Nos. **3/2008** and **4/2008** both dated 18.1.2008 to exclude the benefit to those units which undertake only peripheral activities like preservation during storage, cleaning operations, packing, re-packing, labeling or re-labeling, sorting, alteration of retail sale price etc. Therefore, the units carrying out only such processes would not be eligible for exemption benefit and would be required to pay duty as per normal procedure.

The Government has also prescribed a quarterly return for assesses availing exemptions under the said notifications in order to create a database about the actual impact of exemptions on the industrial activities in these regions. Rule 12 of Central Excise Rules, 2002 has been amended vide Central Excise Non-Tariff Notification No. **3/2008** dated the 18th January, 2008 to prescribe for a Quarterly



Return, to be filed by the assessee's with the jurisdictional Central Excise Commissionerate by the 20th of the subsequent month of the quarter to which the return relates. However, for the quarter ending 31st day of December, 2007, the units have been allowed to file the return by the 20th February, 2008.

The aforesaid provisions have come into force with effect from 18th January, 2008 and are applicable to all the existing units availing the benefits of these notifications as also to new industrial units that may be set up in future.

Sales Tax collected but not paid to Sales Tax Department: Part of Total Income of Assessee

[CIT Vs United Cardamom Auctioneers (2007) 295 ITR 574 (Kerala)]

The Assessing Officer during assessment added the amount of sales tax etc. which was not paid to the sales tax department, to the income of the assessee.

The High Court observed that sales tax collected is taxable as a trading receipt. Under section 43B of the Income Tax Act, 1961, deduction is allowed only in the year in which such sums are actually paid over to the Government. The Hon'ble High Court held that the sales tax recovered by the assessee not paid over to the sales tax department and outstanding under the respective heads at the end of the accounting year is includible in the assessee's total income.

TDS clarification on payments made for Cooling Charges to the Cold Storage owners

CIRCULAR NO. 1/2008, DATED 10-1-2008.

The Department has clarified that TDS on cooling charges paid by customers to Cold Storage owners would not be levied as Rent u/s 194-I but as a Contract u/s 194-C.

It had been represented that cold storage owners provide a composite service, which involves preservation of essential food items including perishable goods at various temperatures suitable for specific food items for required periods and storage of goods being incidental to the activity of preservation. The customer brings its packages for preservation for a required period and takes away its packages after paying cooling charges.

The customer does not hire the building, plant/machinery etc. in any manner and does not become a tenant of any kind. Therefore, the provision of 194-I is not applicable to the cooling charges paid by the customers of the cold storage.

However, since the arrangement between the customers and cold storage owners are basically contractual in nature, the provision of section 194-C will be applicable to the amounts paid as cooling charges by the customers of the cold storage.

TDS deduction to be treated as tax payment on behalf of holder of Bond

One Vivek Bansal, Liberty House, Karnal had originally purchased deep discount bonds (the original purchaser). The original purchaser filed his return for the assessment year 2001-02 and reflected the difference in amount of purchase and the sale. It is undisputed that the bonds were subject to accruing of interest year to year although, no income was received annually by the bond holder.

The assessee-secondary purchaser received a draft for the interest after deduction of TDS.

The assessee secondary purchaser had duly filed her return and included only part of the interest income but claimed the TDS credit of full amount but the A.O allowed credit only on the declared interest.

The assessee filed an application under Section 154 of the Act with a request to the Assessing Officer to allow her full credit of T.D.S on the basis of Section 199 of the Act. The Assessing Officer followed the reasoning that the provision of Section 199 of the Act stipulates that credit of T.D.S was to be given to the assessee-secondary purchaser for the amount so deducted on furnishing of a Certificate under Section 203 of Act for the assessment year for which such income was assessable.

The CIT(A) concluded that the effect of circular No. 2 of 2002 issued by C.B.D.T was that the

entire T.D.S benefit was to be given to the holder of the bond at the time of maturity and the assessee-secondary purchaser was entitled to the same.

Accordingly, direction was issued by the CIT (A) to the Assessing Officer to allow credit to the assessee-secondary purchaser for the entire amount of T.D.S. Upon the appeal by revenue before the High Court the High Court observed that:

1. Any deduction made of tax at source and paid to the Central Government is required to be treated as payment of tax on behalf of the person from whose income the deduction was made.

2. However, with effect from 01.04.1997 amendments were introduced by Finance Act, 1996 which resulted into addition of words 'depositor' or 'owner of property' or 'owner of security' or 'unit holder' as the case may be. Therefore, it has to be accepted that any deduction made of tax at source and paid to the Central Government is required to be treated as payment of tax on behalf of 'owner of security' or 'unit holder'.

3. In the present case, it is obviously the assessee-secondary purchaser who is owner of security and therefore, tax deducted at source has to be regarded as payment made on her behalf. Moreover, certificate under Section 203 of the Act has also been issued to assessee-secondary purchaser.

SC: Export Co. can't value its Closing Stock on lower pricing of product in International market

[Hindustan Zinc Ltd Vs CIT (2007)295 ITR 453(SC)]

The Apex Court held that the settled tenet of commercial practice and accountancy was that the closing stock should be valued at the lower of cost or market price and that there should be no writing down of goods except when there was an actual or anticipated loss. The Court held that the assessee was not correct in writing down its stock of zinc concentrate at lower than the cost price by taking the London Metallic Exchange price as its net realizable value instead of taking into consideration the domestic price. The Supreme Court, accordingly, dismissed the review petition submitted by the assessee.

International Taxation: Business Connection

[Amadeus Global Travel vs. DCIT (ITAT Delhi)]

(i) The Amadeus system, by which subscribers in India are enabled to perform the functions of reservation and ticketing, represents a "business connection" because it extends to the Indian territory in the form of connectivity in India and generates income in India when the booking is completed on the subscribers' computer;

(ii) As the Indian agent has the authority to entry into agreements with the subscribers and installs and configures the computers, and provides connectivity and is functionally and financially dependent on the assessee, there is also a 'dependent agent' PE in India;

(iii) In determining the extent of profits attributable to such business connection, one has to look into the factors like functions performed, assets used and risk undertaken. Only 15% of the revenue accruing to the assessee in respect of bookings made in India can be said to have accrued or arisen in India;

(iv) In view of Circular No.23 of 23rd July 1969, where the income accruing in India is consumed by the payment made to the agents in India, no income is left to be taxed in India under the Act. Since the payment to the agent in India is more than what is the income attributable to the PE in India, it extinguishes the assessment and no further income is taxable in India under the DTAA.

Realtors: Business Income vs. House Property Income

PFH Mall & Retail Management Ltd Vs ITO (2008) 110 ITD337 (Kol)

The Kolkata ITAT has in a contentious issue of concern to Real Estate developers held that mere fact that income is attached to immovable property, cannot be sole criterion for assessment of such income as income from house property and it is necessary to dig further

to find out what is primary object of assessee while exploiting property. Whether if it is found that main intention is for simply letting out of property or any portion thereof, resultant income must be assessed as income from house property but if main intention is found to be exploitation of immovable property by way of commercial activities, then resultant income must be held as business income.

Company had developed shopping malls/business centers on properties owned by it and had let out same to various users by providing host of services /facilities/amenities in said malls/business centers, it could be said that basic intention of assessee was commercial exploitation of its properties by developing them as shopping malls/business centers and, therefore, income derived there from was rightly assessed as business income.

Composite Capital Gains

CIT v Yamuna Syndicate Ltd (Chd Trib)

Held- Where composite consideration received for two assets under a composite agreement, assessee would be well with in its right to segregate consideration amongst two assets and compute capital gains accordingly

Deemed Dividend Applicability

Asstt. CITv. Smt. Lakshmikutty Narayanan
HELD- Deemed Dividend provisions do not get attracted if there is no payment during the previous year relevant to the assessment year. Also transactions/ book entries passed in

respect to agreements between the shareholder and company do not attract provisions of section 2(22) (e) of the Income Tax Act, 1961.

Government raises FDI limit in Various Economic Sectors

The Government during a Cabinet review on FDI Policy on 30th January 2008 has approved further liberalisation of Foreign Direct Investment (FDI) in various economic sectors, however, the Notification for the same is awaited.

Real Estate

In a bid to boost the growth of Industrial Parks, foreign investors are exempted from certain regulatory norms such as minimum capitalization and the three-year lock-in period stated in Press Note 2 (2005).

For Construction development projects, investments by registered Foreign Institutional Investors (FIIs) under the Portfolio Investment Scheme are to be outside the purview of restrictive covenants of Press Note 2 (2005). The restriction regarding lock in period of 3 years in particular is expected to be lifted.

Civil Aviation

Non-scheduled airlines, chartered and cargo airlines, the FDI cap is at 74 per cent on the automatic route and 100 per cent for NRIs, without any participation –direct or indirect by foreign airlines. The same norms are to apply for ground handling services.

The policy has, however, proposed a liberal FDI regime of up to **100% on the automatic**

route for Maintenance and Repair Organizations, Flying training institutes; Technical training institutions and Helicopter services/sea plane services.

Petroleum & Natural Gas

The ceiling on FDI in public sector refineries has also been raised to 49 per cent from its existing cap of 26 per cent.

The revised FDI policy has also done away with the norms of 26 per cent compulsory equity divestment in fuel and gas trading ventures.

Titanium Mining

Foreign investment to the extent of 100 per cent will henceforth be permitted in mining of titanium bearing minerals.

Commodity Exchanges

In a major step towards corporatising commodity exchanges, the 49 per cent FDI ceiling has been divided. The policy has allowed FDI of up to 26% and FII of up to 23% in such exchanges with a 5% cap on single entity.

Credit Information Companies (CICs)

For credit information companies (CICs) up to 49% FDI is allowed in which, FIIs would be allowed to invest up to 24 per cent in firms listed on the stock exchanges subject to government approval and RBI clearance. Besides, 'Credit Reference Agencies' are to be deleted from the list of NBFCs activities permitted for FDI up to 100 per cent under the automatic route.



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