

# RNM ALERT

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U.N. Marwah

Dear Readers,

It is the season of hectic lobbying, discussions and parleys and the corridors of power are full of the 'men in suits' running with their pre-budget Memorandums and proposals for concessions/ changes. An article by Mr. Raghu Marwah, Partner was published in the *Navbharat Times* front page issue of February 18, 2008.

Some of the key budget expectations from Corporates are:-

- Simplify the taxation laws by the expeditious introduction of the new Tax Code
  - Reduction in the value of Fringe benefits u/s 115WC and rate of Dividend Distribution Tax u/s 115-O of the Income Tax Act
  - Extension of the exemptions granted to STP Units u/s 10A of the Act
  - Extension of benefit u/s 80IB(10) granting deduction to real estate developers for developing the housing projects for the mid to low income groups
  - Clarity on the tax structure of Limited Liability Partnerships (LLPs) and of Real Estate Investment Trusts (REITs)
  - Tax deductions/ exemption to corporates for use of Bio-fuel, bio-mass power plants based upon renewable energy sources
- Increase in Duty drawback rates for garment exporters who have been badly hit due to the Rupee appreciation vis-à-vis the US dollar.

With the general elections in India in 2009, we just hope that the Hon'ble Finance Minister would not be forced to play to the dictates of vote bank politics.

**U.N. Marwah**  
Senior Partner

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

## [UPVAT]

### Option For Composition Money In Lieu Of Tax Under UPVAT

The state government of Uttar Pradesh vide notification No. KANI-2-251/XI-9(2)/08-UP Ordi-37-2008-Order-(5)-2008 dated 04/02/2008 has given an option under UPVAT regime that a dealer who carries on the exclusive business of resale of goods within the State and whose turnover of sale of goods, for any assessment year is neither likely to exceed Rs. 50 lakh, nor has his such turnover for the assessment year preceding such assessment year exceeded Rs. 50 lakh, may opt for the payment of composition money in lieu of tax payable, at the rate of one percent, on the sale of goods mentioned in Schedule II, III and IV of the Ordinance but subject to certain conditions including, in computing the turnover of Rs. 50 lakh, the turnover of sale of goods mentioned in Schedule I to V of the Ordinance shall be taken into account, such dealer shall not be entitled to claim input tax credit under section 13 of the Ordinance, such dealer shall not issue a tax invoice and shall not realize any amount from the purchaser of goods by way of tax or by giving it a different name or colour, a dealer who purchases goods from such a dealer shall not be entitled to claim input tax credit in respect of the goods purchased from such a dealer, such dealer shall file quarterly return, along with the challan of deposited composition money payable in form XXIV-A, duly completed in all respects along with annexure A and B thereof.

## [Service Tax]

### 'Railway Siding Charges' distinguished from 'Railway Haulage Charges'

[New mangalore port trust v commr. Of service tax, mangalore, 2008 (9) str 235 (tri-bang.)]

The appellant have their Port Railway Yard. The Railway collects 'railway siding charges' from the users and remit the same to the appellant. The appellant contended that the '**Railway siding charges' are distinguished from the 'Railway haulage charges' for rail borne goods, local haulage and storage, therefore, they are outside the scope of Service Tax under the category of 'Port Service'.**

The Tribunal held that it is very clear that these charge do not represent the money received by the appellant for any service rendered by them. Alternatively, we cannot hold that the Railway siding charges have been received for Port service rendered by the appellants. The railway siding charges collected for use of the infrastructure put up by the appellant also do not collect these charges from the users.

### Quoting PAN In TDS Returns Made Mandatory

The Income Tax Department today made it mandatory for the employers to quote permanent account number (PAN) of all of employees and parties from whom tax is deducted while filing quarterly TDS or TCS returns.

"It has now been decided to enhance the threshold limit for PAN quoting without which TDS/TCS (tax deducted at source/ tax collected at source) returns will not be accepted," said a Finance Ministry statement.

All tax deductors, collectors are required to file the TDS or TCS returns in Form No 24Q (for salaries), Form No 26Q (for payments other than salaries) or Form No 27EQ (for TCS).

All tax deductors, collectors are required to file the TDS or TCS returns in Form No 24Q (for salaries), Form No 26Q (for payments other than salaries) or Form No 27EQ (for TCS).

The enhanced limits will be applicable for and from the quarter ending March 31, 2008

The Ministry also asked the employees and other parties to provide correct PAN to their employers and tax deductors, failing which they will not only have difficulty in getting credit of TDS/TCS in their income tax assessments but will also face penal proceedings under the Income Tax Act.

## Direct Tax Case Laws

- **Can the Assessing Officer pass an order under section 142(2A) directing the assessee to get new books of account prepared by the special auditors?**

**CIT v Bajrang Textiles(2007) 294 ITR 561(Raj)**

In this case, the Assessing Officer had not merely referred the accounts to be audited under special audit by the auditor named by

him, but he had directed the special auditor to prepare books of account in the form of cash book, ledger, on the basis of documents/ papers seized during the course of search as per his directions.

On this issue, the High Court observed that apparently, the order was for preparing fresh books rather than for conducting a special audit. The court observed that under section 142(2A), no authority has been conferred on the Assessing Officer for directing the assessee to prepare fresh books by referring the matter to an auditor under special audit. Audit is for the purpose of satisfying one about the authenticity and credibility of accounts prepared by the assessee but not preparing new account book as per the directions of the Assessing officer.

- **Can the amount of share application money be treated as undisclosed income if it was found that the subscribers to the share capital were not genuine?**

**CIT v Electro Polychen Ltd(2007) 294 ITR 661 (Mad)**

The assessee – company filed its return of income for the relevant assessment years. The Assessing Officer found that the assessee had brought in share capital by way of share applications in fictitious names. Accordingly, he made addition under section 68 in respect of the share application money.

In this case Madras High Court applied the ratio CIT v Stellar Investment Ltd (1991) 192 ITR 287 in which it was held that even if it be assumed that the subscribers to the increased

share capital were not genuine, under no circumstances the amount of share capital could be regarded as undisclosed income of the company.

- **Can penalty be levied under section 271(1)(c) on the difference between the value of stock declared to the bank and to the income tax authorities, by treating such difference in the value as undisclosed income?**

**CIT v. Pioneer Breeding Farms (2007) 295 ITR 78(Mad)**

In this case, the Assessing Officer found that the assessee had declared a much higher value of closing stock to the bank than it had to the income tax authorities. The Assessing Officer treated the difference in valuation of stock as undisclosed income and initiated penalty proceedings under section 271(1)(c) of the Act.

There was a difference between the value of closing stock declared to the bank and to the income –tax authorities. However, the higher valuation given to the bank was merely based on the direction issued by the bank. The Court held that in view of the same, there is no basis to treat the difference in value as the assessee's undervaluation of stock or undisclosed income.

- **Is penalty under section 271B attracted for failure to maintain books of account as prescribed under section 44AA?**

**CIT v. Bisauli Tractors (2007)165 Taxman 1(All)**

The assessee filed its return of income for the relevant assessment years without attaching trading account, profit and loss account and balance sheet. Since the turnover of the assessee

had exceeding Rs.40 Lakh during each of these years, penalty under section 271B was levied .

The High Court observed that separate penalty has been provided under section 271A for non – maintenance of accounts and under section 271B for non furnishing of audit report. If a person has not maintained books of account, the question of its audit doesn't arise.

In such an event, the imposition of penalty under section 271A for non-compliance of section 44AA may arise but the provisions of section 44AB don't get violated in a case.

The High Court, thereof, held that the Tribunal was justified in holding that the question of getting the accounts audited didn't arise as the assessee was not maintaining any books of account.

- **Can the self –assessment tax paid under section 140A be taken into account while determining the interest on refund payable to the assessee under section 244(1A)?**

**CIT v. SIV Industries Ltd (In Liquidation )(2007) 295 ITR 114 (Mad)**

On this issue, the High Court observed that the tax paid under section 140A can be treated as amount paid in pursuance of assessment for the purpose of computing interest under section 244(1A).

The High Court, thereof, held that while determining interest under section 244(1A), the self assessment tax paid under section 140A would get adjusted against the assessed tax and partake the character of tax paid in pursuance of the assessment order.

## NOTIFICATIONS:

### • **NOTIFICATION NO. 20/2008, dated 5-2-2008**

In exercise of the powers conferred by sub-section (2D) of section 142 of the Income-tax Act, 1961, the Central Board of Direct Taxes hereby makes the following rules further to amend the Income -tax Rules, 1962, namely:-

1.

(1) These rules may be called the Income-tax (Third Amendment) Rules, 2008.

(2) They shall come into force from the date of their publication in the Official Gazette.

2.

In the Income-tax Rules, 1962, after rule 14A, the following rule shall be inserted, namely :-

#### **"14B Guidelines for the purposes of determining expenses for audit-**

(1) Every Chief Commissioner shall maintain a panel of accountants, out of the persons referred to in the Explanation to sub-section (2) of section 288, for the purposes of sub-section (2A) of section 142.

(2) Where the Assessing Officer directs for audit under sub-section (2A) of section 142 on or after the 1st day of June, 2007, the expenses of, and incidental to, audit (including the remuneration of the Accountant, qualified

Assistants, semi-qualified and other Assistants who may be engaged by such Accountant) shall not be less than rupees three thousand seven hundred and fifty and not more than rupees seven thousand and five hundred for every hour of the period as specified by the Assessing Officer under sub-section (2C) of section 142.

(3) The period referred to in sub-rule (2) shall be specified in terms of the number of hours required for completing the report.

(4) The Accountant referred to in sub-section (2A) of section 142 shall maintain a time-sheet and shall submit it to the Chief Commissioner or Commissioner, along with the bill.

(5) The Chief Commissioner or the Commissioner shall ensure that the number of hours claimed for billing purposes is commensurate with the size and quality of the report submitted by the Accountant.

## **Companies allowed to issue foreign currency bonds to meet fund requirements**

Indian promoters can now raise money abroad by issuing foreign currency bonds against the value of their investments in shares of listed group companies. Government has notified a Scheme on 15th February, 2008 for Issue of Foreign Currency Exchangeable Bonds. The salient features of the Scheme are as follows:

## 1. Foreign Currency Exchangeable Bond

The bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an Issuing Company and subscribed to by a person who is a resident outside India in foreign currency and these bonds are described as 'exchangeable bonds' as it would be exchangeable into equity shares or the warrants of the listed group company any time before its redemption.

## 2. Advantages

One of the advantages of the 'exchangeable bonds' is that a promoter company can help the group company to protect its earnings till the latter's acquisition abroad, if not profitable, is able to generate returns.

## 3. Other Conditions

a. The proceeds of the FCEBs can be invested by the issuing company in the promoter group companies and would have to be used in accordance with the end uses prescribed under the External Commercial Borrowing Policy (ECB). Proceeds of FCEBs could be invested by the issuing company overseas by way of direct investment including in Joint ventures or wholly owned subsidiaries subject to the existing direct investment guidelines.

b. The investment under the scheme shall comply with the Foreign

Direct Investment policy as well as the External Commercial Borrowing Policy requirements.

- c. Rate of interest payable on such bonds and the issue expenses incurred in foreign currency would have to be within the all-in cost ceiling specified by RBI under the ECB policy.
- d. The group company that receives such investments would not be permitted to utilise the proceeds for investments in the capital market or real estate sector in India
- e. The minimum maturity of the Foreign Currency Exchangeable Bond shall be five years for purposes of redemption. The exchange option can be exercised at any time before redemption.
- f. The Tax treatment on Exchangeable Bonds would be as per FCEB Scheme.



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