R. N. Marwah & Company
Chartered Accountants
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U.N. Marwah

Dear Readers

We wish to inform you that based upon the feedback of our esteemed readers it has been decided to make the **RNM Alert** a monthly newsletter instead of a fortnightly issue. We hope our endeavor to provide you the most upto date corporate, tax and regulatory information continues to receive such good response.

March, being the end of the financial year is always associated with hectic efforts to achieve Sales/ Service targets and close the annual figures on a high note for most of our readers. Physical stock verifications and other year end audit procedures on the Audit side and filing of belated Return of Incomes and advance tax on the Taxation side keep us busy.

The increasing importance of Private Equity, especially in the realty sector in the absence of cheap availability of debt is a factor which is becoming more accepted in light of the current international financial squeeze on banks.

With the Federeal Reserve chairman, Mr. Ben Bernanke admitting that US may slip into recession it may be the perfect time for India Inc. to tightens its belt by introducing cost cutting and kaizen measures.

U.N. Marwah
Senior Partner
On behalf of the Editorial Team

[Company Law]

Accounting for Derivatives

The applicability or non-applicability of the accounting norms for derivatives during the financial year ended March 31, 2008 has kicked up a big storm with India Inc. trying to resist making huge provisions in its books in regard to losses in exotic derivative instruments as per AS-30. The following clarificatory Announcement issued by the Institute of Chartered Accountants of India (ICAI) has been the main bone of contention and especially para 3 thereof dealing with requirements for enterprises who do not follow AS-30 in the current financial year:-

1. Certain issues have been raised with regard to the foreign currency derivative exposures of various corporates that are not being fully accounted for. These exposures may translate into heavy losses due to fluctuations in the foreign exchange rates. The matter was considered by the Council of the ICAI at its meeting held on March 27-29, 2008. The Council decided to clarify the best practice treatment to be followed for all derivatives, which is contained in the following paragraphs.

2. It may be noted that although the ICAI has issued AS 30, *Financial Instruments: Recognition and Measurement,* which contains accounting for derivatives, it becomes recommendatory from 1.04.2009 and mandatory from 1.04.2011. In this scenario, the Council expressed the view that since the aforesaid Standard contains appropriate accounting for derivatives, the same can be followed by the entities, as the earlier adoption of a standard is always encouraged.

3. In case an entity does not follow AS 30, keeping in view the principle of prudence as enunciated in AS 1, *Disclosure of Accounting Policies*, the entity is required to provide for losses in respect of all outstanding derivative contracts at the balance sheet date by marking them to market.

4. The entity needs to disclose the policy followed with regard to accounting for derivatives in its financial statements. In case AS 30 is followed by the entity, a disclosure of the amounts recognised in the financial statements should be made. In case AS 30 is not followed, the losses provided for as suggested in paragraph 3 above should be separately disclosed by the entity.

5. The auditors should consider making appropriate disclosures in their reports if the aforesaid accounting treatment and disclosures are not made.

6. In case of forward contracts to which AS 11, *'The Effects of Changes in Foreign Exchange Rates'*, applies, the entity

needs to fully comply with the requirements of AS 11. Accordingly, this Announcement does not apply to such contracts.

7. This clarificatory Announcement applies to financial statements for the period ending March 31, 2008, or thereafter.

Subsequent to the issue of the aforesaid Announcement, the ICAI has also issued another Announcement withdrawing its earlier Announcement on 'Accounting for exchange differences arising on a forward exchange contract entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction'. The said withdrawal has been made in light of the issuance of AS-30 due to which the said Announcement had become redundant.

[Direct Tax]

Leading Case Laws

Konkan Barge Builders (P) Ltd Vs ITO (2008) 166 Taxman 217 Bom (HC)

Interest Received on compensation under arbitration award is revenue receipt, taxable on accrual basis.

Smarts (P.) Ltd Vs CIT (2008) 166 Taxman 53 Delhi (HC)

In case when tenant has a full control over property, then income received from subletting the premises is chargeable under the head "House Property Income".

CIT Vs Turner International India (P).Ltd. (2008) 166 Taxman 22.

In case Capital assets given on loan is a transaction in the ordinary course of business the owner can claim the depreciation under section 32 provided he has full control over property is required (as per the agreement terms).

CIT Vs. South Corporation (Agencies) Ltd (2008) 166 Taxman 78/(2007) 293 ITR 237 Madras (HC)

Disallowances under section 36(1)(iii) of interest on borrowing capital can't be made on the basis of lucrative earnings of sister concern, when no interest free fresh loan is given.

Allowed the expenses under section 37(1) when payments are essentially incidental to carrying on of assessee's business with a view to earning profits.

Assessing Officer has no authority to make addition in the income when such income is not shown in profit & loss account. In this case A.O disallowed the expenses under section 37(1) to the extent 20% of the value of tools as its realizable value if such assets would have been sold.

Section 145 employing the accounting method according to the source is acceptable. In this case assessee followed mercantile system except for interest, clearing, and handling receipts, stevedoring receipts, agency fees and

service charges which were maintained on receipt basis.

CIT Vs. R.G. Scientific Enterprises (P) Ltd.(2008) 166 Taxman 161.Delhi (HC)

Non Recovery of sums advanced for purchase of premises would constitute a capital loss and not a business loss.

Jay Engg. Works Ltd Vs CIT (2008) 166 Taxman 115 Delhi (HC)

Section 37(1) pre-operative expenses expenditure is revenue in nature, in case if the establishment or management or administration of the existing and new project is run in common and the common pool of funds is employed.

CIT Vs Noble & Hewitt (I) (Pvt) Ltd.(2008) 166 Taxman 48.Delhi(HC)

Section 43B, no question of disallowances or additions arises for the expenses which are neither claimed as deduction nor debited to the profit & loss account.

CIT Vs. Ideal Sheet Metal Stampings & Pressing (P) Ltd.(2008) 166 Taxman 91/(2007)295 ITR 295 Gujarat (HC)

Section 43B is attracted even where some payment whereof is stayed by court because of some dispute. In this case assessee collected excise duty and deposited the sum into excise deposit account on the ground that dispute between assessee and govt.

Jaya Securities Ltd Vs CIT (2008) 166 Taxman 7 Allahabad (HC)

Section 68, no addition can be made in respect of investment made by different persons in share capital of assessee company, limited by shares, whether public or private.

For this case Allahabad High Court accepts the reasoning given by Delhi High Court in the case of CIT vs Steller Investment Ltd.

"It is evident that even if it be assumed that the subscriber to the increased share capital were not genuine, nevertheless, under no circumstances, can the amount of share capital be regarded as undisclosed income of the assessee. It may be that there are some bogus shareholders in whose name shares had been issued and the money may have been provided by some other persons. If the assessment of the persons who are alleged to have advanced the money is sought to be reopened, that would have made some sense but we fail to understand as to how this amount of increased share capital can be assessed in the hands of the company itself."

Smt.Prem Kumari Mudria Vs Asstt. CIT (2008) 166 Taxman 1 Rajasthan (HC).

Section 69 Valuation made by the valuation officer is not mandatory for the juridical authority they can take the different opinion.

"In this case assessing officer referred the matter to the valuation officer, he followed CPWD rates for valuation on the other hand Commissioner (A) accepted the plea of the

assessee and did the valuation on the basis of local PWD rates and granted 20% deduction on the cost so determined by valuation officer."

Phatela Cotgin Industries (P.) Ltd. Vs CIT (2008) 166 Taxman 9 Punjab and Haryana (HC).
Section 80HH read with Section 80I- Interest received on delayed payment from debtors is clearly an income derived from industrial undertaking and it will be entitled for deduction under sections 80HH and 80I.

Honda Siel Power Products Ltd Vs CIT (2008) 166 Taxman 126 Delhi Court (HC)
Section 80HH- Profits on sale of spare parts using after sales service wouldn't qualify for deduction.

CIT vs Bakeman's Home Products (2008) 166 Taxman 150 Punjab and Haryana (HC).
Section 80J no deduction under this section allowable as investment on the amount incurred on assets taken on lease, only right to use is transferred not the ownership.

CIT Vs Giza Impex (P) Ltd (2008)166 Taxman 30/(2007)293 ITR 301.Madras (HC)
In case when some specific section is not available then the next nearer section can be applied.
In this case the export/ transfer of master copies of films songs and music along with rights to make copies and sell cassettes outside India, the deduction under section 80HHC claimed by the assessee the assessing officer disallowed it on the basis that it doesn't come under the definition of goods and specific section 80HHF was not inserted till that time. Juridical authority accepted the fact goods may be tangible or intangible one and assessee can claim deduction under 80HHC because specific section 80HHF was not on statute book during that assessment year.

E-Payment of tax Press Release

There has been a fair amount of confusion among the assessee's in regard to e-payment becoming mandatory with effect from April 1, 2008. We wish to clarify that this confusion which arose from the Press Release of the CBDT vide **No.402/92/2006-MC (05 of 2008)** dated January 23, 2008 stated that the introduction of E-payment is **proposed to be mandatory.** The complete Press release is hereunder stated for your benefit:-

"The optional scheme of electronic payment of taxes for income-tax payers was introduced in 2004. With a view to expand the scope of electronic payment of taxes, it is proposed to make the scheme mandatory for the following categories of tax-payers:-

(i)All corporate assesses;
(ii)All assesses (other than company) to whom provisions of section 44AB of the Income Tax Act are applicable.

2.The scheme of mandatory electronic payment of taxes for income-tax payers is proposed to be made applicable from 1st April, 2008.

3.Tax-payers can make electronic payment of taxes through the internet banking facility offered by the authorized banks. They will also be provided with an option to make electronic payment of taxes through internet by way of credit or debit cards.

E-Payment facilitates payment of direct taxes online by taxpayers. To avail of this facility the taxpayer is required to have a net-banking account with any of the banks listed below, which are the only banks offering this facility at present.

- Account Holders of

1. Axis Bank
2. State Bank of India
3. Punjab National Bank
4. Indian Overseas Bank
5. Canara Bank
6. Indian Bank
7. Bank of India
8. Corporation Bank
9. State Bank of Bikaner & Jaipur
10. State Bank of Travancore
11. State Bank of Indore
12. Vijaya Bank
13. HDFC Bank
14. Oriental Bank of Commerce
15. State Bank of Patiala
16. Bank of Baroda
17. IDBI Bank
18. State Bank of Mysore
19. Bank of Maharashtra
20. State Bank of Hyderabad
21. State Bank of Saurashtra
22. Union Bank of India
23. Allahabad Bank
24. Dena Bank
25. Syndicate Bank
26. ICICI Bank

Procedure for e-payment:

1. To pay taxes online the taxpayer will select the relevant challan i.e. ITNS 280, ITNS 281, ITNS 282 or ITNS 283, as applicable.
2. Enter its PAN / TAN as applicable. There will be an online check on the validity of the PAN / TAN entered.
3. If PAN/ TAN is valid the taxpayer will be allowed to fill up other challan details like accounting head under which payment is made, name and address of TAN and also select the bank through which payment is to be made, etc.
4. On submission of data entered a confirmation screen will be displayed. If the taxpayer confirms the data entered in the challan, it will be directed to the net-banking site of the bank.
5. The taxpayer will login to the net-banking site with the user id/ password provided by the bank for net-banking purpose and enter payment details at the bank site.
6. On successful payment a challan counterfoil will be displayed containing CIN, payment details and bank name through which e-payment has been made. This counterfoil is proof of payment being made."

[Service Tax]

Sub-Contractor Does Not Need To Pay Service Tax

(**Evergreen Suppliers V. Commissioner Of C. Ex., Mangalore, 2008 (9) STR 467 (Tri.-Bang.)**)

In the course of deciding a case the CESTAT-Bangalore pronounced that there is no need for the sub-contractor to discharge service tax liability. The Tribunal held, "Trade Notice No. 39 Central Excise dated 11-6-1997 of New Delhi Commissionerate case contains the following clarification in Para 2.6 which is reproduced below:

2.6 Sometimes CHAs sub-contract their work to CHAs located in other Stations. In such cases it is possible that the sub-contracting CHA raises the bill on the main CHA who in turn raises the bill to client. It has been decided that in such cases the sub-contracting will not be required to pay service tax on the bills raised by him on the main CHA. The service tax will be payable by the CHA who provides the actual service to the client and raise the bill to the client.

It is not necessary that CHA should sub-contract only a particular category of service. They can sub-contract any activity undertaken by them. When they deal with the customers directly and pay service tax there is no need for the sub-contractor to discharge service tax liability. **This principle is applicable to all service and not only to particular services…"**

Transportation Of Goods Is Not Cargo Handling Service

(**Dalveer Singh V Commissioner Of Central Excise, Jaipur, 2008 (9) STR 491 (Tri.-Bang.)**)

The issue to be decided in the present was as to whether the activity undertaken by the appellant i.e. transportation of material from railway station to the company's/ customer's warehouse is covered under Cargo Handling services or not.

The Tribunal was of the opinion that mere **transportation of the goods would not make them as cargo handling service provider.**

State Government Department Is Not Liable For Levy of Service Tax

(**Electrical Inspectorate, Govt. Of Karnataka V. Cst, Bangalore, 2008 (9) STR 494 (Tri.-Bang.)**)

In this case the Tribunal decided that the State Government Department is not liable for levy of Service Tax as sovereign function cannot be subject matter of Service Tax.

Gross Value of C & F Agent Service Include Only Gross Commission Received

(**Keralam Enterprises V Commr. C. Ex., Cus. & S.T., Cochin, 2008 (9) STR 503 (Tri.-Bang.)**)

In this matter the assessee was asked to include the handling charges and secondary freight in the taxable value.

The Tribunal held the Service Tax for Clearing and Forwarding Agent service has to be charged only on the gross commission received and the elements on which the service tax is being taxed is not correct.

Service Tax is Not Leviable on the Activity not Carried out in the Course of Duties to be Performed by a CA

(**Commissioner Of Central Excise Thirupati V Umakanth & Co., 2008 (9) STR 527 (Tri.-Bang.)**)

In this case the Assessee entered into an agreement with Transmission Corporation of AP for undertaking data processing work and maintenance of billing and accounting work on monthly/bimonthly basis of specified area. They were required to maintain consumer master/ledger, test reports BCRCS and all other records and registers and furnish the Information/output returns which are to be furnished to the AP Transco. The Revenue proceeded to bring this activity under the category of practicing Chartered Accountants.

The Tribunal held the issue pertaining to the activity of the assessee not coming within the category of practicing CAs was already discussed and decided in assessee's favour by large number of judgments rendered by this bench for the reason that the activity is carried out even by non-CAs and it is done by unskilled employees who are employed on contract basis. The activity is not carried out in the course of duties to be performed by a CA.

HEAD OFFICE:

Mr. U.N. Marwah, Senior Partner
4/80, Janpath
New Delhi-1100 01
(India)
Tel: +91-11-2332 2685 2332 0601
Fax: +91-11-23322520
E-mail: rnm@rnm.in

BRANCH OFFICE:

Mr. Narendra Sanklecha
813 Oxford Towers,
139 Airport Road,
Bangalore-560 008
Tel.: +91-80-23612337, +91- 98440 62721
E-mail: bangalore@rnm.in

AFFILIATE OFFICES

Mumbai
Mr. Harshal Aggarwal
204, Mhatre Pen Building,
Senapati Bapat Marg, Dadar (W),
Mumbai-400 028
Tel. +91 22 24314881, +91 22 24314882
Fax. +91 22 24363312
E-mail: harshal@rnm.in

Pune
Mr. Nitin Khangaonkar
4, Shilpa Apartments,
43/15, Erandwane,
Pune- 411 004
Tel: +91 20-254 67340
Fax: +91 20- 254 39889
E-Mail: nitin@rnm.in

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

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

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

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