

POC Connect

Newsletter

Updates

December, 2011 edition



Corporate News

[From 1st to 30th November, 2011]

Face book planning \$10 Billion IPO

Face book Inc. plans to raise \$10 billion in an initial public offering that would value the social-networking site at more than \$100 billion making the offering would raise more money than any other technology IPO

SEBI selection petition withdrawn

A petition seeking annulment of a 2010 notification on the selection of Sh. U.K. Sinha top Securities and Exchange Board of India functionaries was allowed to be withdrawn for the second time by the Supreme Court.

Bail granted to 2G Spectrum accused

The Delhi High Court on 28.11.2011 granted bail to DMK MP Kanimozhi and four other accused in the 2G spectrum allocation scam case. The order on the bail plea of former telecom secretary Siddharth Behura was reserved.

Ministry approves FDI inflow in retail sector

The change in FDI policy allows foreign retailers own up to 51 percent of supermarkets and 100 percent of single-brand stores. However, this move has been criticized by many political parties who seek that parliamentary approval must be taken.

Cyrus P Mistry appointed Deputy Chairman of Tata Sons

The board of directors of Tata Sons at its meeting today appointed Cyrus P Mistry as Deputy Chairman, who will work with Ratan N Tata over the next year and take over from him when Mr. Tata retires in December 2012.

Companies Bill to be Tabled This Session as Cabinet Gives Assent

The Cabinet on gave its nod to introduce the Companies Bill in the ongoing Winter Session. The Bill has already been vetted by the parliamentary standing committee. The Bill could pave the way for replacement of the 55-year-old Companies Act, the salient features of which would be greater shareholder democracy, enhanced disclosures and less intrusive regulation.



Tax News

[From 1st to 30th November, 2011]

ICAI will set up centre for e-filing tax returns

The apex accounting body ICAI has announced to set up centres for filing returns and tax-related documents electronically. This will help in implementing goods and services tax (GST) effectively.

GST Bill to go for the cabinet approval

The finance ministry is on its way to introduce the Goods and Service Tax bill to public as Finance Minister, Pranab Mukherjee is very keen to get this bill passed.

Doctors to protest against the proposed tax rate hike

28th November was distinguished as 'Misery Day' by the doctors as they were not happy with the tax hike of 5 percent on healthcare in the recent health budget.

India, Nepal sign revised double taxation avoidance pact

India and Nepal today inked a revised double taxation avoidance agreement (DTAA) that would facilitate sharing of banking information between two countries for better tax administration purposes.

I-T Dept adds Rs 8,500 crore to income of Vodafone India

The income-tax department has issued a draft transfer pricing order to Vodafone, adding nearly Rs 8,500 crore to its income from Indian operations. The potential tax liability on this additional income at this point in time is still undecided because the I-T is yet to issue a final order.



Circulars, Notifications and Press Releases

[From 1st to 30th November, 2011]

COMPANIES ACT

Withdrawal of draft of companies (dematerialization of certificates) Rules, 2011

Notification No. 17/143/2011-CL.V, Dated 28-10-2011

After receiving comments / Recommendations on the issue, the Ministry of Corporate Affairs in consultation of Law Ministry has decided to withdraw draft of Dematerialization of Certificates Rules, 2011.

Cost Accounting Records and Cost Audit

Master Circular No.2/2011 dated 11-11-2011

Ministry vide this circular has clarified on various issues namely as to:-

- Whether Cost Auditor can be Internal Auditor? *No.*
- How to compute of specified number of cost audits?
In accordance with Sec 233B (2) read with sec 224 of Companies Act
- Signing of Cost Audit Report conducted by a firm?
Signed by any of partners of the firm

SEBI

Review of Limits for FII Investments in Government Securities & Corporate Bonds

Press Release [F. NO. 9/2/2009-ECB], Dated 17-11-2011

Ministry has increased the limits of Foreign Institutional investments as follows:-

FII Investment type	Earlier limit	Revised limit
Govt. Securities	US \$ 10 million	US \$ 15 million*
Corporate Bonds	US \$ 15 million	US \$ 20 million**

Incremental 5 million can be invested in :-

* Securities without any residual maturity criterion

** Listed corporate bonds

Income Tax

Public Provident Fund - Interest Effective From 1-12-2011 Notified

Notification [F.NO.1/9/2011-NS. (II), Dated 25-11-2011

Central Government hereby notifies that the subscriptions made to the fund on or after the 1st day of December, 2011 and balances at the credit of the subscriber shall bear interest at the rate of 8.6 percent, per annum.



Corporate Case Laws

[Till 30th November, 2011]

**Murat Viniyog Ltd. vs. Bijay Kumar
Kajaria [2011] 110 SCL 53/14
taxmann [High Court of Calcutta]**

Whether in 397, 398 petition, CLB is required to come to a positive finding as per section 399?

BREIF FACTS:-

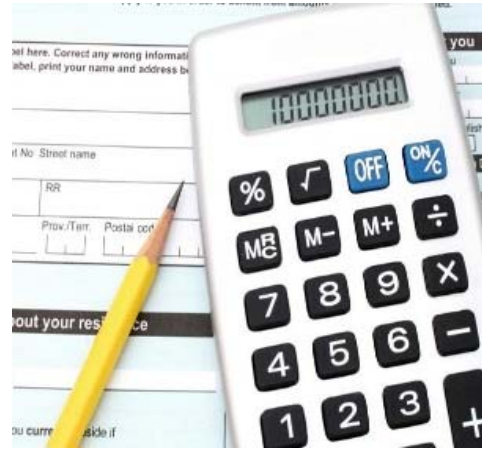
Respondent filed a 397, 398 petition against the appellant herein alleging oppression and mismanagement. The Appellant alleged that requisite share qualification is not fulfilled by Respondents, thus challenging their locus standi. CLB dismissed the application challenging the maintainability of the Petition and decided to hear the petition on merits. The Appellant approached the High Court against the order

HELD:-

The matter was remanded back to CLB

REASON:-

The CLB is required to come to positive finding whether petitioners before them have requisite holding and fulfills the requirements of section 399 before final determination of the matter. The High Court was of the view that CLB should look into the maintainability of the petition qua section 399 before going into the merits of the case.



Tax Case Laws

[Till 30th November, 2011]

CIT vs. M/s. K. Mohan & Co. (Exports) IT Appl(L) 2347 OF 2010 & 1263 OF 2011

Whether IT authorities was justified in cancelling the re-assessment proceedings initiated by assessing officer beyond period of 4 years from relevant assessment year

BREIF FACTS:-

In both the cases, assessment was sought to be reopened on account of retrospective amendment to section 80HHC introduced w.e.f 1/4/1998, which was introduced with retrospective effect. The proceedings of reopening was initiated after original assessment was completed u/s 143(3).

HELD:-

Appeal by Department was dismissed

REASON:-

That if the legislature amends the provisions of the Act with retrospective effect, it cannot be said that there was failure on the part of the assessee to disclose fully and truly all material facts relevant for the purpose of assessment therefore reassessment could not have been done by the Department.

Rolls Royce Plc v. DIT (International taxation) (2011) 202 Taxman 309 (Delhi) (High Court)

S. 9 (1) : Income deemed to accrue or arise in India – Permanent Establishment – DTAA – India – UK. [Art. 5]

BREIF FACTS:-

The Assessee was British Company. It supplied certain parts and equipments to Indian customers. RRIL was assessee's 100 % subsidiary set up in India through which it carried out marketing and selling of goods to Indian customers. A.O. after holding RRIL as PE of the assessee, attributed 100% of profits earned from sale of goods to Indian customers to activities carried on in India. The Tribunal restricted such attribution to 35 % holdings that profits attributed to manufacturing activity and research and development activities, i.e. 50 % and 15%, respectively had to be excluded. Assessee filed appeal before the High Court contending that net research and development expenses should also be reduced while computing operating profits; and that Tribunal had not considered objections and documents filed by it on aspect of PE properly and, therefore, matter should be remanded for reconsideration.

HELD:-

The Appeal was dismissed

REASON:-

That expenses on research and development were already taken care of when remuneration at rate of 35% was attributed to marketing activities in India on which global profits was apportioned. From the order of the Tribunal it

was clear that while holding that RRIL constituted PE of assessee, it had undertaken critical analysis of material on record including objections and documents filed by the assessee and therefore there was no reason to remand the case back to the Tribunal.

Shri Uday Punj Vs DCIT [Delhi ITAT]

Promoter stake sale through IPO taxable as sale of unlisted shares

BREIF FACTS:

The assessee, Mr Uday Punj, was a promoter-director of the company, Punj Lloyd Ltd (PLL), which obtained SEBI approval in October, 2005 for subscription of shares through IPO. However, actual listing and trading approval from both entities was obtained only in January 2006. On basis of the provisional approvals, the assessee sold certain shares through the IPO and opened an escrow account with the Registrar for this purpose. Actual credit of shares to allottees' demat account, was effected in December 2005 but the sale consideration was credited to the assessee's account in January 2006. The assessee claimed that the gain arising on such sale was exempt u/s 10(38), as it was eligible to the levy of Securities Transaction Tax (STT). The AO however, observed that no STT was paid on the sale and hence, the gain arising on the sale was liable to be taxed as LTCG @ 20% as per sec 112, since the shares were not actually listed on any stock exchange on the date of sale.

HELD:-

The Delhi Bench ITAT ruled in favour of the revenue.

REASON:-

ITAT observed that provisional approval granted in Nov 2005 was only for using the name of the exchanges in the offer document thus the sale was effected in Dec 2005, when the shares were not listed on a recognized stock exchange. ITAT also held that the SEBI circular dated 19.01.2006, regarding IPOs-ISINs to be activated after commencement of trading on the stock exchanges thus the Tribunal held that shares of PLL could still be sold as unlisted securities prior to grant of final approval in January 2006. Accordingly, ITAT held that the transaction was not chargeable to STT and exemption under Sec 10(38) was not available. ITAT further held that the benefit of lower rate of tax @ 10% on LTCG (under Proviso to Sec 112) was also not applicable to the assessee, as the transaction was not the transfer of a listed security.



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