

# *NEWS LETTER*

## *UPDATES*

*1<sup>st</sup> TO 15<sup>th</sup> December, 2010*

*Punkaj Oswal & Co.*

**Chartered Accountants**

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## *CORPORATE NEWS*

*(From 1<sup>st</sup> to 15<sup>th</sup> December, 2010)*

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### **Deepak Kapoor to head PwC India from January 1**

On 13<sup>th</sup> Dec, PwC appointed Deepak Kapoor as the chairman of PwC India, replacing Gautam Banerjee who will complete his term by December end. The appointment of Mr. Kapoor was done through the firm's governance board which consulted all 150 India partners before shortlisting probable candidates. He has been elected as the new chairman of PwC India for a three-year term beginning on January 1, 2011. Mr. Kapoor led the financial advisory practice and the telecom and entertainment and media practices for ten years.

### **RBI to inject further Rs.12, 000 Cr to improve liquidity**

The Reserve Bank of India on Monday announced another round of facility to inject liquidity of up to Rs.12, 000 crores in the system, which is facing cash shortage due to the busy credit season and impending advance tax payments. Liquidity injection would be on December 15 through open market operations, under which the RBI pumps in money by purchasing government securities held by banks. The government securities, which the RBI will purchase this time, are to mature in 2016, 2017, and 2022.

### **SBI mulls firm for private banking business**

State Bank of India (SBI) is considering setting up a separate company for its private banking initiative, as part of a plan to garner a larger share of business from the country's burgeoning affluent class. The new unit could provide banking and wealth management

services to high net-worth individuals and families with an investible surplus of Rs1 crore or more. However, SBI is yet to finalise its criteria.

### **Review of limits for FIIs investments in Government Securities and corporate debt**

Ministry is now deciding to increase the current limit of FII investment in Government Securities by US \$ 5 billion raising the cap to US \$ 10 billion and the current limit of FII investment in corporate bonds by US \$ 5 billion raising the cap to US \$ 20 billion and the incremental limit of US \$ 5 billion be invested in corporate bonds with residual maturity of over five years issued by companies in infrastructure sector.

### **Lankan curry beats burger giant McDonalds in trademark battle**

A Sri Lankan curry company Lanka Spice Limited (LSL) has successfully defended the right to continue using its trade name "Mc Curry" despite objections by the US giant McDonalds which entered the country 12 years ago. The Intellectual Property Office rejecting 'the notice of opposition' concluded that the registration Mc Curry by Lanka Spice did not offend any of the provisions of the Intellectual Property Act.

### **Rcom, China bank to sign \$1.9-bn deal**

Reliance Communications has struck a deal with China Development Bank (CDB) for a \$1.93-billion (Rs 9,000 crore) syndicated loan, a major part of which will be utilised to refinance the company's short-term debt, which it had incurred to pay for 3G spectrum. The loan, which will have a maturity of ten years at an all inclusive rate of interest of around 5 per cent, will help the company save Rs 500-crore annually as interest cost. The move will come as a major relief for the telecom company, which has very high debt of around Rs 33,000 crore

## *TAX NEWS*

*(From 1<sup>st</sup> to 15<sup>th</sup> December, 2010)*

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### **I-T dept to tax 380 Cos for M&A deals in FY'08**

Having scrutinised more than 380 merger and acquisition deals from 2007-08, the Income Tax department is expected to soon slap entities concerned with notices for tax totaling several crores of rupees. Although the scrutiny has been on for a couple of years now, the department must be expected to raise tax demands or else the cases will get barred by time this year under the provisions of the I-T Act.

### **Brokers, corporate investors get I-T notice for 'under-reporting' income**

The Income Tax department is learnt to have sent notices to over a dozen proprietary stock trading firms and corporate investors, for alleged 'under-reporting' of taxable income for assessment years 2006-07 and 2007-08. The notices have been sent to entities which availed of the rebate against securities transaction tax (STT) to reduce their tax liabilities to zero or pay very low taxes. The broking firms have been asked to pay the difference with an interest rate of 12%.

### **UP demands autonomous body for settling tax revenue claims**

In the run-up to the proposed Goods and Services Tax (GST), the Uttar Pradesh government demanded setting up of an autonomous agency to settle sales tax and Value-Added Tax (VAT) revenue loss claims of the respective state governments. The state government said, unless such an agency was constituted by the Centre for time-bound

reimbursement of pending claims, it would be difficult for states to concede to the assurance by the Centre for similar reimbursements under GST.

### **Fin Min probing more than 100 overseas deals for tax evasion**

The Finance Ministry has begun its maiden investigation into over 100 offshore "financial structuring deals" undertaken by Indian business entities in foreign tax havens to allegedly evade the taxman's net. The multi-pronged probe has been undertaken by the international taxation wing of the Income Tax department and the foreign taxation unit in the Central Board of Direct Taxes (CBDT).



### **No tax on additional interest on EPF money**

The additional quantum of interest on Employees Provident Fund deposits would be exempted from income tax, the Lok Sabha was informed today. The provident fund trustees had on September 15 decided to raise the EPF interest rate by a percent from 8.5% to 9.5% for 2010-11. The decision taken by the Central Board of Trustees of EPF to raise the interest rate would benefit 4.71 crores employees in both public and private sectors.

### **No tax on loan interest for foreign entities' India ops**

If a foreign company pays interest on loan for carrying out operations in India it will be allowed tax exemption under the Income Tax Act, 1961, a tax tribunal has ruled. The Mumbai Bench of the Income Tax Appellate Tribunal has ruled that interest payments by Belgium-based Besix Kier Dabhol's project office for debt taken to carry out operations in India, is an allowable expense under the Income Tax Act. The revenue department had argued that the debt of the assessee should be re-characterised as equity, but the tribunal said it was not sustainable as thin capitalisation rules do not exist in India.

*NOTIFICATIONS, CIRCULARS & PRESS*

*RELEASES*

*(From 1<sup>st</sup> to 15<sup>th</sup> December, 2010)*

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SEBI



NOTIFICATION No. LAD-NRO/GN/2010-11/21/29390

*Dtd. 10-12-2010*

SEBI notified that with effect from the date of this notification, the following category of associated persons, *i.e.*, persons associated with a registered stock-broker/trading member/clearing member in recognised stock exchanges, who are involved in, or deal with, any of the following, namely:-

- (a) assets or funds of investors or clients,
- (b) redressal of investor grievances,
- (c) internal control or risk management, and
- (d) activities having a bearing on operational risk,

shall be required to have a valid certification from the National Institute of Securities Markets (NISM) by passing the NISM-Series-VII: Securities Operations and Risk Management Certification Examination.



SEBI

Cir/ IMD/ DF/20/2010

Dtd. 06-12-2010

It has been decided that physical verification of gold underlying the Gold Exchange Traded mutual fund schemes [Gold ETF] units shall be carried out by statutory auditors of mutual fund schemes and reported to trustees on half yearly basis. The confirmation on physical verification of gold as above shall also form part of half yearly report by trustees to SEBI. This shall come into effect from the half yearly report ending April 2011 by trustees to SEBI

MINISTRY OF CORPORATE AFFAIRS

GENERAL CIRCULAR NO. 6 /2010

*Dtd.03.12.2010*

Ministry of Corporate Affairs has decided to introduce a Scheme namely, "Easy Exit Scheme, 2011" under Section 560 of the Companies Act, 1956 to give an opportunity to the defunct companies, for getting their names struck off from the Register of Companies again. The scheme will be in operation from 1st January, 2011 to 31st January, 2011 with filing fees of Rs. 3000/-



## *CORPORATE CASE LAWS*

*(Till 15<sup>th</sup> December, 2010)*

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State Bank of India vs. Official liquidator, H.K Datarex (p) Ltd. (in liquidation)

[2010] 103 SCL 339 (KAR.)

FACTS OF THE CASE:-

Applicant Bank was a secured creditor of Company in liquidation. It had obtained a decree for recovery of sum prior to winding up order. On Winding up, Official Liquidator took possession of all the assets and liabilities of the Company-in-liquidation. Applicant filed claim petition before the Official Liquidator on basis of the Recovery Certificate but the Official Liquidator ordered to pay only a part of the amount and rejected the balance claim. Therefore the applicant moved to the High Court.

HELD:-

The Application was allowed and impugned order of the Official Liquidator was to be quashed.

REASON:-

The Official Liquidator did not comply with mandatory provision of Sec 529 A , thus denying the claim of the secured creditor i.e the Applicant .Section 529 A clearly states that the sale proceeds of the assets of the Company – in – liquidation are to be distributed among its secured creditors in accordance with section 529 A. The matter was thus remanded to Official Liquidator for reconsideration of the applicant’s claim.

Gopika Chandrabhushan Saran & Anr. v. Xlo India Ltd. & Anr.

[(2009) 148 COMP CAS 130 (SC)]

FACTS OF THE CASE:-

The appellants are the legal heirs of the deceased managing director of the respondent company. The respondent allotted the house to its managing director and he since died, demanded the house from the appellants. After contending before various lower courts the issue ultimately came before the Supreme Court.

HELD:-

Appeal dismissed.

REASON:-

Section 630 of the Act will cover within its ambit not only the employee or officer but also the past employee or the past officer or the heirs of the deceased employee or anyone claiming under them in possession of the property. The legal heirs or representatives in possession of the property acquire the right of occupancy in the property of the company, by virtue of being family members of the employee or the officer during the employment of the employee or the officer and not on any independent account. They, therefore, derive their colours and content from the employee or the officer only and have no independent or personal right to hold on to the property of the company.

# *TAX CASE LAWS*

*(Till 15<sup>th</sup> December, 2010)*

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## CIT vs. Parle Plastics Ltd. (Bombay High Court)

### FACTS OF THE CASE:-

The assessee availed of loans and advances of Rs. 2.18 crores from a closely held company (“AMPL”) of which Rs. 11.68 lakh was received during the year. The shareholders holding majority of the share capital in the assessee also held the majority of the shareholding in AMPL. The AO took the view that the said loan / advance was assessable as “deemed dividend” u/s 2(22) (e) in the hands of the assessee. The CIT (A) confirmed the view of the AO though he held that only the loan / advance received during the year was assessable as “deemed dividend” and not the brought forward balance. On appeal by the assessee, the Tribunal deleted the addition on the ground that the granting of loans was a substantial part of the business of AMPL and so the loan could not be treated as “deemed income” in the hands of the assessee. The department appealed to the High Court.

### HELD:-

The Appeal was dismissed

### REASON:-

It was held that Sec 2(22) (e) covers only the amount received during the previous year by way of loans / advances and not amounts received in an earlier year. Further, increase in the outstanding on account of provision for interest is not covered. S. 2(22) (ii) excludes loans and advances where (a) the loan or advance was made by the lending-company in the ordinary course of its business and lending of money is a “substantial part” of the business of the lending-company. The first condition was satisfied as the business of the assessee

was complimentary to the business of AMPL. In regard to the second condition, as facts indicate that about 40% of the total assets of AMPL were deployed by way of loans and advances, and its interest income was substantial compared to the total income, lending of money was a “substantial part of its business” and the money given by it by way of loan / advance was thus excluded from the definition of “dividend” under s. 2(22) (ii).

### The Commissioner Of Income Tax And Ors. Vs.M/S Rama Paper Mills Ltd

I T APPEAL No. - 545 of 2007

#### FACTS OF THE CASE:-

The assessee filed his return for the assessment year 2000-01 claiming Rs.17, 60028 as deferred revenue expenditure under section 35-D (1) of the Income Tax Act (the Act). However, at the time of passing of the order the assessee claimed the entire amount to be revenue expenditure liable to be allowed in the same year. This was negated by the assessing officer by his order dated 28.3.2003. The assessee filed an appeal. The Commissioner (Appeals) by his order dated 16.7.2003 accepted this contention of the assessee. The Income Tax Department (the Department) filed an appeal before the Income Tax Appellate Tribunal, which was dismissed , hence the present appeal.

#### HELD:-

Appeal was dismissed.

#### REASON:-

The fact that assessee by mistake had claimed the benefit under a wrong Section, does not mean that he should not be given correct relief as admissible under the law. The payment was made during the year and as such there was no justification to take recourse of section 35-D (1) of the Act. There is no illegality in the same. Therefore Appeal deserved to be dismissed.

THANK YOU

***Punkaj Oswal & Co.***  
***Chartered Accountants***

***LGF-54,***

***NRI Complex, Mandakini,***

***Greater Kailash – IV***

***New Delhi-110019***

***Ph: +91-11-26277030, 26270070***

***Fax: +91-11-26272011***

***Email: - [pankajos@airtelmail.in](mailto:pankajos@airtelmail.in)***

***Website: - [www.capoc.in](http://www.capoc.in)***