

News Letter

POC Connect

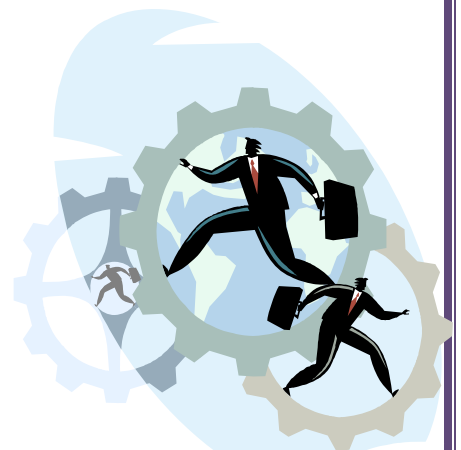
Updates

August, 2012 Edition



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Corporate News

[From 1st July to 31st July, 2012]

Satyam settles Aberdeen US lawsuit for \$12 million

The scam-hit Mahindra Satyam had finally been successful in the settling the Aberdeen US lawsuit for US \$12 million as against a total claim of over \$ 68 million dollars. With this, MSat has been able to settle all its legal liabilities in the US.

Government may ease FDI norms in pharmaceutical industry

An inter-ministerial group set up by the finance ministry has favoured that FDI in pharmaceuticals up to 49% stake should be allowed under the automatic route to ensure a balance between public health concerns and the need to attract investments.

Foreign law firms can't open liaison offices in India, SC to RBI

The Supreme Court directed the RBI not to allow foreign law firms to open liaison offices in the country in an order passed on an appeal filed by the Bar Council of India against Madras High Court judgement that allowed foreign advocates to visit India to offer legal advice to their clients.



Sahara set to enter digital cable business

Sahara India is close to acquiring a controlling stake in DigiCable, a cable service provider. This will mark the entry of Sahara into the digital cable business. Stellar Interactive is likely to use the Sahara funds to buy out private equity player Ashmore Investment's 49 per cent stake in DigiCable.

MCX Stock Exchange to launch currency options soon

MCX Stock Exchange will launch trading in stocks and interest rate derivatives within the next few months. The exchange which currently runs currency futures trading platform will also offer the facility for currency options trading.

Jindal Steel & Power to buy CIC Energy

Canadian coal mine developer CIC Energy Corp has agreed to be sold to India-based Jindal Steel & Power Ltd for C\$116 million (\$114 million) in cash, more than a year after ending an agreement with JSW Energy Ltd . As per the agreement, CIC will be merged with JSPL's wholly-owned subsidiary, Jindal BVI Ltd and its existing shareholders would get CAD 2 per share for their outstanding shares



Tax News

[From 1st July to 31st July, 2012]

Authority for Advance Rulings orders can be challenged before HC: Supreme Court

The Supreme Court on Monday clarified that the orders of the Authority for Advance Rulings(AAR) can be challenged before the respective high courts through writ petitions. Until Monday's ruling, an order passed by the AAR was considered final, with the option to appeal being restricted to Supreme Court, that also to a limited extent.

GAAR panel to also review retrospective amendment proposal to Income Tax Act

The prime minister's office has asked the Partho Shome-headed expert committee, tasked with drawing up General anti-avoidance rules (GAAR), to also examine the impact of the retrospective change in the income tax law on foreign institutional investors (FII) and portfolio investors. This suggests that Prime Minister Manmohan Singh may be looking for ways to dilute a law that has been panned by foreign investors and governments.



Income tax department gets nod to prosecute employees at HSBC Geneva

The income tax department plans to initiate prosecution proceedings against employees of HSBC Switzerland for allegedly helping Indians stash away illegal wealth in Swiss banks. The finance ministry has given permission to the income tax department to initiate action against employees of HSBC.

Income Tax dept to run mobile vans to reach out to tax payers

The Income Tax department is now planning to run mobile vans in the city to reach out to tax payers in the different corners of the city. This has been done after the tax kiosks have been a huge hit. The Income Tax department has organized tax kiosks at different places in the city to help tax payers in filing their I-T returns.

Central Vigilance Commission reviews probe by CBI, Enforcement Directorate in 2G spectrum case

The Central Vigilance Commission has reviewed the probe being carried out by CBI, Enforcement Directorate (ED) and Income Tax department in the 2G spectrum allocation scam to remove any "bottlenecks" they may be facing and expedite the investigations.



Circulars , Notifications and Press Releases

[From 1st to 31st July, 2012]

Ministry of Corporate Affairs

❖ *New e-Form 24AAA introduced*

G.S.R (E) Dated 10.07.2012

- The Company filing applications under Section 17, 18, 19,141 & 188 of the Companies Act, 1956 shall within one month from such filing of petition shall file e-Form 24AAA to Regional Director through MCA portal
- The Annexures to the Petition is also required to be attached as Attachments to the Form.

❖ *Investor Education & Protection Fund(Uploading of Information regarding unpaid and unclaimed amount lying with company) Rules, 2012*

General Circular No. 17/2012 dated 23.07.2012

- As per the rules information regarding unpaid and unclaimed amount has to be update in Form 5INV
- The Form 5INV has to be filed within 90 days of the Annual General Meeting of the company.



Reserve Bank of India

❖ ***Master Circular on Establishment of Liaison / Branch / Project Offices in India by Foreign Entities***

RBI Master Circular No. 7/2012-13 dated 02.07.2012

- Consolidation of the existing instructions on the subject of “Establishment of Branch/Liaison/Project Offices in India by Foreign Entities”; at one place.
- This circular will stand withdrawn on July 1, 2013 and be replaced by an updated Master Circular on the subject.

Income Tax

❖ **Register for home visit' and 'online tax help**

Press Release, Dated 24-7-2012

- The Income Tax Department has started two more taxpayer friendly initiatives’ Register for Home Visit' and 'Online Tax Help' for convenience of taxpayer.
- The taxpayer can avail these facilities by visiting on website www.trpscheme.com and take help of trained professionals either online or at their homes.



S.No	Particulars	Brief
1	Online tax help	The taxpayer can fill in his tax related query along with his contact details & query will be resolved by tax experts through E-mail or Phone within 24 hours
2	Register for Home Visit'	In this facility, the taxpayers indicate the help required by them & a convenient date & time when the tax return preparer can visit them for assistance. The facility is aimed to facilitate taxpayers in filing their return and thereby reducing their cost of compliance



Corporate Case Laws

Till 31st July, 2012

SMC Share Broker Limited v. ITC ltd. Company Law Board,
Kolkata Bench [2012] 114 SCL 246/20C.A No.
33(111A)/ERB/2007 C.P. No.481 (111A)/ ERB/2007

Applicable Sections: 111A of the Companies Act, 1956

BRIEF FACTS:

The Petitioner company purchased 200 shares of the Respondent company No.1 through Respondent no.2, share broker. According to the petitioner, it lost the share certificates in the transit & hence intimated the same along with the copy of the FIR to the Respondent Company No.1. The Respondent Company no.1 replied that it has received the share transfer deed duly executed by Respondent no.3 in favour of Respondent No. 4 in case the petitioner failed to produce the stay order from court of law for transferring the same. The petitioner filed a reply U/S 111A seeking directions against the Respondents company & ors. for rectification of share register for disputed 200 shares. R1 filed reply to petition that the shares were standing in the name of R3 & it received summons in civil suit filed by petitioner in court of Senior Judge, Delhi. R3 filed reply that she was the original holder of the shares & transferred the shares to R 5 & R 6. The petitioner argued that

CLB alone was competent to rectify the share register as enunciated U/S 111A thereby whatever proceedings initiated before a civil court were *void ab initio* in the eye of law.

HELD:

The Petition was dismissed.

CONCLUSION:

The petition was dismissed on merits by civil court. Since the issue had been already tried and adjudicated by civil court in a suit between same parties on same cause of action, seeking relief ,the instant petition is hit by *res judicata* as the petition is re-agitating over the self-same cause of action before CLB.



Tax Case Laws

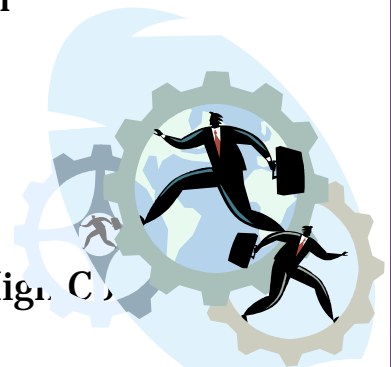
Till 31st July, 2012

CIT vs. PVP Ventures limited (Madras High Court) ITA.No. 1384/Mds/2004 Decided on 19.06.2012

Difference between Market price & option price of ESOP shares deductible

BRIEF FACTS:-

The assessee allotted shares to its employees under an ESOP scheme. In accordance with the Employees Staff Option Plan and Employee Staff Purchase Scheme Guidelines, 1999 issued by SEBI, the difference between the market value of the shares and the value at which they were allotted to the employees was debited to the P&L A/c. This was claimed as a deduction under the head “staff welfare expenditure”. The AO allowed the claim though the CIT revised the assessment u/s 263 (revision of order prejudicial to revenue) and held that the expenditure was notional and contingent in nature and not allowable as a deduction. On appeal, the Tribunal held that as the SEBI regulations required the difference between the market price of the shares and the price at which the option is exercised by the employees to be debited to the P&L A/c as expenditure, it was an ascertained expenditure and not contingent in nature. On appeal by the department to the High Court,



HELD:-

The appeal was dismissed

CONCLUSION:-

As far as the Employees Stock Option Plan is concerned, as rightly pointed out by the Tribunal, the assessee had to follow SEBI direction and by following such directions, the assessee claimed the ascertained amount as liability for deduction. There is no error in the order of the Tribunal.

CIT vs. Amitabh Bachchan (Bombay High Court) INCOME TAX APPEAL NO.4646 OF 2010 Decided on 5th July 2012

Section 147 Reopening in the absence of “fresh tangible material” is invalid

BRIEF FACTS:-

The assessee has filed a ROI declaring income of Rs.14.99 crores. A revised ROI was then filed claiming 30% adhoc expenses (Rs. 6.31 crores) and offering income of Rs. 8.11 crores. When the AO asked the assessee to substantiate the expenses, he withdrew the claim. The AO passed a Section 143(3) assessment determining the income at Rs.56.41 crores. The AO then issued a section 148 notice (within 4 years) to reopen the assessment on the ground that the claim for expenses (which was withdrawn) had to be assessed



as unexplained expenditure. The CIT (A) & Tribunal struck down the reassessment order on the ground that the material on the basis of which the assessment was sought to be reopened was always available at the time of the original proceeding and there was no new material.

HELD:-

On appeal by the department to the High Court, held dismissing the appeal.

CONCLUSION:-

The assessee had made a claim for 30% adhoc expenditure. This was withdrawn by the assessee when asked by the AO to substantiate. The reopening on the basis that the said adhoc expenditure constituted “unexplained expenditure” u/s 69 was based on the same material. There was no fresh tangible material before the AO to reach a reasonable belief that the income liable to tax has escaped assessment. It is a settled position of law that review under the garb of reassessment is not permissible.



With Warm Regards...

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