

# POC Connect

Updates  
February  
2012 Edition



# Corporate News

[From 1<sup>st</sup> Jan to 31<sup>st</sup> Jan, 2012]

## Section I

### ***Buyback booster for small investors***

SEBI is planning to further empower smaller investors in buyback offers. The capital markets regulator believes that smaller investors, those holding a few hundred shares, should get the benefit of a higher acceptance ratio.

### ***Cabinet note on 49% FDI by foreign carriers soon***

The government said it would soon initiate the process to allow foreign carriers to pick up to 49% stake in Indian airlines. Accordingly, the civil aviation ministry would soon prepare a Cabinet note to this effect.

***Global banks Citigroup, HSBC, BofA Merrill Lynch and Barclays cutting jobs in India at ruthless pace***

Global banks led by Citigroup, HSBC, Bank of America Merrill Lynch and Barclays are slashing jobs in their Indian operations at the fastest pace since the 2008 credit crisis amid dwindling deal flows and parent companies' shrinking balance sheets to boost capital.

***Reliance Industries' Rs 10,440 cr share buyback to start from February 1***



The country's most-valued firm Reliance Industries today said its Rs 10,440 crore share buyback offer will start from February 1 and closes on January 19, 2013.

***Telecom merger deals to be freed of spectrum transfer charge***

In a bid to encourage consolidation in the sector, the Telecom Commission has decided against imposing a spectrum transfer charge on Merger and Acquisition deals.



# **Tax News**

**[From 1<sup>st</sup> Jan to 31<sup>st</sup> Jan, 2012]**

## **Section II**

### ***No need to respond to tax notices for below Rs 100***

The Income Tax Department has issued the clarification in response to reports that the Central Processing Centre (CPC), Bangalore, is sending notices for payment of tax arrears as small as Re 1, Rs 4 and Rs 6 and thus causing hardship to assesseees according to CBDT release.

### ***I-T department slaps Rs 1,067-cr tax notice on Bharti Airtel***

The income-tax department has slapped a 1,067-crore demand notice on Bharti Airtel for its alleged non-payment of TDS dues in the last four financial years in relation to its overseas operations.

***I-T dept may not file review petition in  
Vodafone case***

The income tax department may not go in for filing a review petition on the Supreme Court's judgement on the Vodafone taxation case according to the specially constituted 10-member "core committee" will go into the details of the order.

***Govt starts automatic service tax refund for exporters***

Government linked tax refund for exporters with electronic payment system and fixed the average rate at 0.03-0.3% of the shipment value as the refund system has been synchronized with the Electronic Data Interchange (EDI).

***Essar to seek tax refund in Vodafone stake deal***

The Essar group is seeking a refund of the Rs 4,426 crore Vodafone Plc withheld as tax to pay the income-tax department while buying 22 per cent stake in Vodafone Essar from Essar after the Supreme Court verdict cleared Vodafone of any tax liabilities on its acquisition of a controlling stake in Hutch Essar.

# **Circulars, Notifications and Press Releases**

**[From 1<sup>st</sup> Jan to 31<sup>st</sup> Jan, 2012]**

## **Section III**

### **Company Law**

**[SEBI Circular No. CIR/IMD/FII&C/3/2012](#)  
[dated 13.01.2012](#)**

#### **Investment by Qualified Foreign Investors (QFI) in Indian equity shares.**

The Central Government has allowed Qualified Foreign Investors to directly invest in Indian equity market who meet prescribed Know Your Customer (KYC) requirements may invest in equity shares listed on the recognized stock exchanges and in equity shares offered to public in India. They will hold equity shares in a demat account opened with a SEBI registered qualified Depository Participant.

**SEBI Circular No. CIR/ IMD/ FII&C/ 4/ 2012**  
**dated 25.01.2012**

**Revised eligibility criteria for qualified depository participant.**

- DP shall have net worth of Rs. 50 crore or more;
- DP shall be either a clearing bank or clearing member of any of the clearing corporations;
- DP shall have appropriate arrangements for receipt and remittance of money with a designated Authorized Dealer (AD) Category - I bank.

**FEMA**

**FEMA Circular No.67 Dated 13-01-2012**

Prior to this circular, FDI up to 51 percent was permitted in Single Brand Product trading under Government route of FDI scheme. The extant FDI policy has been reviewed and it is now decided that FDI up to 100 percent was permitted in Single Brand Product trading under Government route.

## Direct Tax

**Centralised Processing of Returns Scheme, 2011**  
**Notification No.2/2012[F.No.142/27/2011**  
**SO(TPL)], dated 4-1-2012**

The CPC scheme makes a provision for the centralized computerized processing of Returns of Income(ROI) filed by the tax payers by providing for mode and manner of receipt and acknowledgements of ROIs, filing of revised ROIs etc. The scheme shall come into force from 04/01/2012.

No personal appearances in CPC

The CPCs will be administered by DG and CIT

Service of Notice or communication by post or email or any other mode prescribed by ITA.



**Verification of high value transactions from persons who are not assessed to income tax**  
**Press release no.402/92/2006-mc (03 of 2012)**  
**dated 18.01.2012**

The CBDT has directed the Income Tax department to launch a special drive, from 20.01.2012 to 20.03.2012 for verifying high value transactions (investments / deposits / expenditure) from persons who are not assessed to income tax or who have not furnished their PAN while entering into such transactions. The Assessee will have to explain the source of the high value investments / deposits / expenditure, and its proper accounting.

# Corporate Case Laws

[From 1<sup>st</sup> Jan to 31<sup>st</sup> Jan, 2012]

## Section IV

*Ravi Raj Gupta vs. Hans raj Gupta & co. High Court of Delhi [Cm no. 7043 of 2009, RFA (OS) no 45 of 2009]*

### FACTS OF THE CASE:

H' had constituted a HUF with his four sons. Appellant No. 2 was son of Late 'H' Appellant No.1 was son of appellant No.2. A perpetual lease of subject property was granted to HUF. 'H' and others, formed respondent company, and a resolution dated 27.02.1974 was passed in which company resolved to take subject premises on rent. The said premises was to be occupied by chairman i.e. 'H' for his residence and he was residing with appellants during his lifetime. Appellant No. 1 was CEO of respondent company since 25.08.1981 and he was removed from this post on 9.10.2000 by a resolution dated 12.01.2002 whereby it was also decided that tenancy rights be surrendered to the owner of the

property. The appellants filed the suit challenging the validity of the resolution dated 12.01.2002 contending that Respondents had interest in property being coparceners of HUF which was owner thereof and as directors of the company , they have failed to disclose their interest in terms of Section 299.

HELD :

The appeal was dismissed.

CONCLUSION:

The Single Judge held that there is no violation of 299 since the resolution dated 27/02/1974 contained sufficient disclosure of interest of all directors in the subject property. Therefore resolution dated 12/01/2002 could not be treated as void for non re-disclosure of interest which was already brought on record earlier. Therefore appeal was held liable to be dismissed.

***Suresh Kumar Rungta v.Roadco (India)(P.) Ltd. [C.P.NO.298 OF 2002,CA NO.167 OF 2002 & 592 OF 2009]***

Facts of the case:-

The Appellants were the majority shareholders in the respondent company no.2 to 7, which was amalgamated to the Transferee company i.e respondent company. The

scheme of amalgamation was sanctioned by order dated 16-01-2003. One “A” Shareholder with support of some applicants had filed present application for recalling the order on the grounds that no notice of the board meeting of the respondents was received for the purpose for considering the scheme of amalgamation. The trial judge dismissed the application of the appellants which has been affirmed by the division bench and SLP had also been dismissed.

**HELD :-**

The application was dismissed.

**CONCLUSION:-**

The application was dismissed by the single judge on the grounds of res judicata and /or constructive res judicata ,since all appellants had accepted scheme of amalgamation and the companies against whom relief was sought for were no longer in existence, they could not be reverted back to their earlier position.

## **Tax Case Laws**

**[From 1<sup>st</sup> Jan to 31<sup>st</sup> Jan, 2012]**

### **Section V**

**M/s VEER GEMS vs. ACIT (Gujarat High Court)  
SPECIAL CIVIL APPLICATION No. 12648 of 2011**

***AO's decision to refer to TPO must be based on material & not be arbitrary***

#### **FACTS OF THE CASE:-**

The assessee entered into transactions with a party named Blue Gems BVBA. The assessee treated the transactions as an “international transaction” for transfer pricing purposes in the preceding year. In the present year, the assessee claimed that though the said party was a “related party”, it was not an “affiliated entity” as defined in s. 92CA. The AO made a reference to the TPO to determine the ALP and the TPO asked the assessee to show-cause why the transaction with the said party was not subject to transfer pricing proceedings.

The assessee then filed a Writ Petition to challenge the action of the AO/TPO.

HELD:

The Writ Petition was dismissed.

CONCLUSION:-

The AO has jurisdiction to make a reference to the TPO only if there is an “international transaction in which the AO is not obliged to grant hearing to the assessee, invite and consider the objections with respect to “international transaction” before making a reference to the TPO. At the stage of framing the assessment in terms of the TPO’s report the AO is entitled (despite the amendment to s. 92CA (4)) to consider the objections of the assessee that in fact there had been no “international transaction”. If the assessee succeeds in establishing such fact, the AO would have to drop the entire transfer pricing proceedings. However, the TPO has no jurisdiction to decide the validity of any such reference and his task is only to determine the ALP. On facts, as the parties were closely related and the assessee had accepted in the preceding year that the transactions were subject to transfer pricing, the AO’s reference could not be interfered in writ proceedings.

**Vodafone International Holdings B.V Vs. UOI  
(Supreme court) Civil Appeal NO.733 OF 2012  
arising out of S.L.P. (C) No. 26529 of 2010)**

***Transfer of shares of foreign company by non-resident to non-resident does not attract Indian tax even if object is to acquire Indian assets held by the foreign company***

FACTS OF THE CASE:-

A Cayman Island company called CGP Investments held 52% of the share capital of Hutchison Essar Ltd, an Indian company engaged in the mobile telecom business in India. The shares of CGP Investments were in turn held by another Cayman Island company called Hutchison Telecommunications. The assessee, a Dutch company, acquired from the second Cayman Islands company, the shares in CGP Investments for a total consideration of US \$ 11.08 billion. The AO issued a show-cause notice u/s 201 in which he took the view that as the ultimate asset acquired by the assessee were shares in an Indian company, the assessee ought to have deducted tax at source u/s 195 while making payment to the vendor. The notice was challenged by a Writ Petition

but was dismissed by the Bombay High Court. The Appellant moved an appeal.

**HELD THAT:-**

The Appeal was allowed

**CONCLUSION:-**

It was held that Section 195 would apply only if payments made from a resident to another non-resident and not between two nonresidents situated outside India. In the present case, the transaction was between two non-resident entities through a contract executed outside India moreover, the consideration was also passed outside India. That transaction has no nexus with the underlying assets in India. In order to establish a nexus, the legal nature of the transaction has to be examined and not the indirect transfer of rights and entitlements in India. Therefore the appeal was allowed setting aside the impugned judgment of the Bombay High Court dated 8.09.2010 in Writ Petition No. 1325 of 2010.





# ***Thank You!***

**With Warm Wishes:-**

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