

Newsletter

By:-
Punkaj Oswal & Co.
Chartered Accountants

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CORPORATE NEWS

[From 1st June to 30th June, 2012]

E-Payment must for public sector banks from July 1

The finance ministry has asked state-run banks to stop making payments to their customers through cheques from July 1 and to "migrate totally" to electronic payment channels, a move aimed at cutting costs in a sluggish economy. In a circular issued to chairmen of public sector banks and regional rural banks, the ministry said all payments to customers, staff, vendors and suppliers as well as disbursement of loans and payments towards investments should be made only through the electronic mode. According to the ministry's estimate, state-run banks spend Rs 4,000- Rs 8,000 crore every year on handling of cheques.



Cairn Energy sells 3.5% in India arm for R2,000 cr

British oil and gas major Cairn Energy has sold 3.5% stake in Cairn India for over R2,000 crore in an open market deal. With this, the Edinburg-based firm's shareholding in the Indian entity will come down from 21.79% to around 18.3%. The company had earlier sold 40% stake in Cairn India to London-based mining company Vedanta Resources as part of its plan to exit from India

Lost time is never

found again. . .

Benjamin Franklin

Rs 33,500-cr shares on the block: Govt plans to sell stake in 15 PSUs this fiscal

The government is planning disinvestment in 15 public sector enterprises in the current fiscal, including sale of shares worth Rs 7,000 crore in the state-owned mining company NMDC. Shares worth \$6 billion (about Rs 33,500 crore) are on the block as the government has lined up disinvestment in companies such as Hindustan Copper, BHEL, Engineers India and NHPC.





FII's sellout in equities continues in May; withdraw Rs 347 cr

Overseas investors, for the second straight month, in May pulled out funds of Rs 347 crore from the equity markets amid concerns over domestic economic growth and depreciating rupee. Foreign institutional investors (FIIs) made gross purchase of equities worth Rs 42,443.30 crore and sold shares valued at Rs 42,790.70 crore, translating into a net outflow of Rs 347.40 crore, according to the data available with the market regulator SEBI

CCI nod for Hero Moto Corp to merge with Bain, GIC backed investment arm

The Competition Commission of India has approved the combination of Hero Investments Private Limited and Hero Moto Corp Ltd (HMCL). Earlier this month, the two wheeler major's board had approved the proposal to merge the investment arm of its parent — Hero Investment Pvt. Ltd — into the automaker. The move comes eighteen months after Hero Moto Corp announced its split from Honda Motor. The entire share capital of Hero Investments is held by the promoters who are promoters of Hero Moto Corp, private equity fund BC India Private Ltd and Lathe Investments

*The only source of
knowledge
is
experience.
Albert Einstein*



RBI to infuse Rs 12k cr next week

The Reserve Bank of India (RBI) today announced an auction under open market operations (OMOs) to purchase Rs 12,000 crore of government bonds on Tuesday. No OMOs were conducted this week. "RBI must have come up with the OMO keeping in mind the pressure on liquidity conditions ahead of advance tax payments on June 15," said a bond dealer with a public sector bank.

TAX NEWS

[From 1st June to 30th June, 2012]

Vodafone may exit tax crash course, considers out-of-court settlement

Vodafone is considering to reduce its confrontation with income tax (I-T) authorities and could seek a solution through the Income Tax Settlement Commission in the Rs 20,00-crore tax case . Vodafone has moved the Bombay High Court against the income tax department for invoking Section 163 of the Income Tax Act, which makes it liable to pay tax liabilities as the agent of Hong Kong-based Hutch, from whom it had acquired a majority stake in the mobile phone company in 2007.



Leadership is the challenge to be something more than average.

Jim Rohn

Bharti Airtel to pay Rs 700 crore for customs duty evasion case

Bharti Airtel has been asked to pay over Rs 700 crore for customs duty evasion under a Customs, Excise and Service Tax Appellate Tribunal (CESTAT) order issued last week by its Bangalore bench. The total amount due includes differential duty liability of Rs 215.51 crore, apart from a similar amount of penalty and a redemption fine of Rs 189 crore for confiscated goods. Additionally, an interest on the duty liability has also been charged on a per year basis.

No customs duty on 5 items for import in border trade with China

The Centre has allowed five additional items to the list of goods exempted from customs duty for import through border trade with China from Nathula in Sikkim after six years. The five additional items are readymade garments, shoes, quilts, blankets, carpets and local herbal medicines for import from the Tibetan Autonomous Region from this trading season according to an official press release .



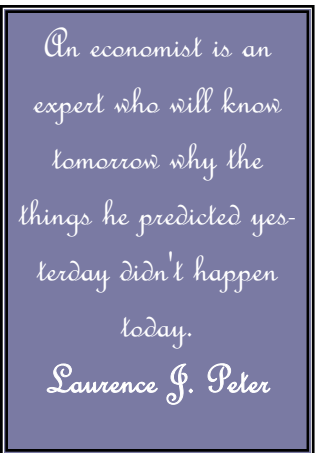


Govt to remove multi-level TDS on software from July

In a big relief to the software industry, the government today said it will do away with the complex multi-level system of Tax Deduction at Source (TDS) for the sector from July 1 whereby payment by a person (transferee) for acquisition of software from another person (transferor), being a resident. The provisions will come into force from July 1, 2012, it said. Under the current structure, TDS of 10% is levied at every level of software distribution chain -- right from master distributor to retailer and then to the final consumer.

Now file your I-T returns at a kiosk, mobile van near you

Income Tax department has decided to set up special 'tax kiosks' in residential areas and localities for facilitating a host of taxpayer related services in view of the forthcoming tax returns filing season. The initiative will ensure that the taxpayers are not required to travel to I-T offices or other special camps for performing tasks like filing of returns, tracking refunds and applying for fresh PAN cards. The department has also decided to run and station 'mobile vans' in smaller cities, manned by I-T trained personnel, who would help taxpayers perform their tasks in view of the July 31 deadline of filing I-T returns.



14 more services get tax rebate

Finance Minister Pranab Mukherjee on Wednesday announced tax exemption for 14 more services, which have been included in the negative list that is set to kick in on July 1. Sale of businesses, services of lawyers to small firms and construction of metro and monorail will not attract service tax. Also exempted are services provided by advocates with a turnover of up to Rs 10 lakh in the preceding financial year. The new exemptions also cover certain support services in formal education, sub-contractors working for contractors who are already exempt, transportation of passengers by ropeway, cable car or air-tram, public libraries, public conveniences and services provided in a taxable territory where both service provider and recipient are in a non-taxable territory, such as special economic zones and local bodies.

NOTIFICATIONS , CIRCULARS AND PRESS RELEASES

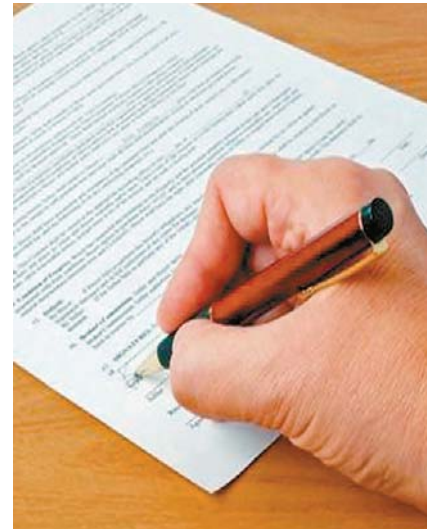
[From 1st June to 30th June, 2012]

COMPANIES ACT

Amendment of Form DIN-1 for Obtaining Director Identification Number

Notification No. F 1/1/2011-CL-V dated 05.06.2012

- Amendment to Director Identification Rules, 2006 whereby it is inserted that whether the Applicant is a resident in India or not.



Amendment of LLP Rules , 2012

Notification dated 05.06.2012

- Consent required to be filed in Form-2 by proposed Partner/Designated Partner
- LLP having similar name as that of already registered LLP/partnership / Company shall obtain NOC from such registered entity for reservation of name
- Approval of Regulatory Authorities for names with words like 'Bank' Venture Capital ' etc.

Small opportunities are often the beginning of great enterprises."

Demosthenes

Imposition of Fees on Certain Forms

General Circular No. 14/2012 dated 21.06.2012

- MCA has levied fees on certain forms like—Form 23B and 36 as per Schedule X of Companies Act, 1956.
- Fees on Form 24A, 61 and 62 shall be according to Companies (Fee on Application) Rules, 1999.



INCOME TAX



Extension to file Form 49 C

ORDER [F. NO. 225/124/2012/ITA.II], DATED 20-6-2012

- Specified categories of assessee having a Liaison Office in India shall electronically file Form 49C, within 60 days from the end of financial year.
- The due date for filing Form 49C for the financial year 2011-12 was prescribed as 30th May, 2012 and now been extended to 30.09.2012.
- The Board has further decided that for the financial year 2011-12, Form 49C can be filed in 'paper mode' instead of electronic.

NO TDS ON SPECIFIED PAYMENTS

NOTIFICATION NO. 21/2012 [F.No.142/10/2012-SO (TPL)] S.O. 1323(E), DATED 13-6-2012

This Notification states that there shall be no deduction of tax on payment by a person for acquisition of software provided that transferor is a resident and the following conditions are fulfilled:-

- Subsequent transfer of software without any modification in the same
- Provided that the tax has been deducted :-
 - under section 194J on payment for any previous transfer of such software; or
 - under section 195 on payment for any previous transfer of such software from a non- resident
- The transferee obtains a declaration from the transferor that the tax has been deducted either under sub-clause (a) or (b) of clause (ii) along with the Permanent Account Number of the transferor.

*Business is a combination
of war and sport.
Andre Maurois*



CORPORATE CASE LAWS

[Till 30th June, 2012]

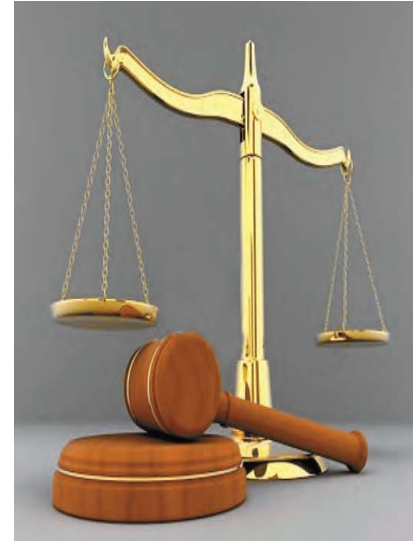
REGISTRAR OF COMPANIES V.DHARMENDRA KUMAR GARG

W.P.(C) 11271/2009

RTI ACT DOES NOT OVERRIDE THE COMPANIES ACT

BREIF FACTS

The applicant filed an application under the RTI Act requiring the PIO of the ROC to provide the certain information in relation to company No. 056045 M/s Bloom Financial Services Limited. Section 610 of the Companies Act, 1956, and it was directed that the complete information sought by the respondent under the Right to Information Act (RTI Act) be provided to him .The CIC has also directed issuance of show-cause notice to the petitioner-PIOs under Section 20(1) of the RTI Act asking them to show



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is
experience.
Albert Einstein*

cause as to why penalty should not be imposed upon them for not furnishing information as sought by the querist within thirty days.

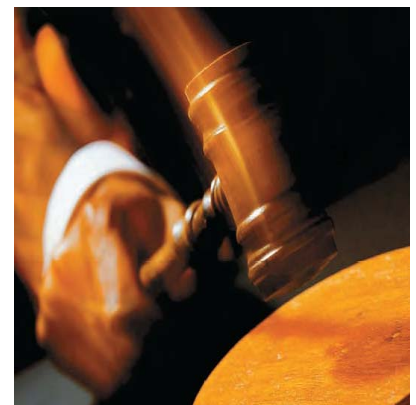
HELD:

Writ Petition was allowed.

CONCLUSION:

The PIO- responded that in view of the provisions of Section 610 of the Companies Act, 1956 ,the documents filed by companies pursuant to various provisions of the Companies Act, 1956 with the ROCs are to be treated as „information in public domain” and is accessible by public through payment of fees as prescribed under the Act.

In view of this, such information would not be treated as „information held by or under the control of public authority” pursuant to Section 2(j) of the Right to Information Act, 2005. Therefore, the provisions of RTI Act, 2005 would not be applicable for providing inspection/copies of such documents/information .



**ANEETA HADA V. M/S. GODFATHER TRAVELS & TOURS PVT LTD;
ANIL HADA**

**[CRIMINAL APPEAL NO. 838 OF 2008] SUPREME COURT OF INDIA
OFFENCES BY COMPANY-VICARIOUS LIABILITY OF DIRECTORS -WHETHER DI-
RECTORS ALONE CAN BE PROSECUTED WITHOUT PROSECUTING THE COM-
PANY**

BREIF FACTS:-

The appellant, Anita Hada, an authorised signatory of International Travels Limited, issued a cheque in favour of the respondent M/s. Godfather Travels & Tours Private Limited, which was dishonored as a consequence of which respondent initiated criminal action by filing a complaint before the concerned Judicial Magistrate under Section 138 of the Negotiable Instrument Act 1881. In the complaint petition, the Company was not arrayed as an accused. However, the Magistrate took cognizance of the offence against the accused appellant Director. Being aggrieved by the said order, Appellant invoked the jurisdiction of the High Court under Section 482 of the Cr.P.C for quashing of the criminal proceeding and the High Court.



HELD: The Petition was allowed.

CONCLUSION:

It was held that the prosecution of a company is a pre requisite that for the prosecution of the other persons who fall within second and third categories of candidates under section 141 of the Negotiable Instruments Act, 1881 and therefore proceedings against the appellant must be quashed in absence of the company having joined as an accused. Further Section 141 is concerned

*Good judgment comes
from experience and
experience comes from bad
judgment.
Fred Brooks*

with the offences by the company and it also makes the other persons vicariously liable for commission of an offence on the part of the company. The vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Negotiable Instrument Act 1881 stands satisfied. Resultantly, the Criminal Appeal No. 1483 of 2009 was allowed and the proceeding against the appellant is quashed.



TAX CASE LAWS

[Till 30th June, 2012]

CIT, Bombay Vs M/s Airlines Hotel Pvt. Ltd (Dated: March 30, 2012) 2012-TIOL-242-HC-MUM-IT

SETTLEMENT CHARGES PAID TO RESOLVE DISPUTE IS ALLOWED TO BE DEDUCTED

BRIEF FACTS:-

The assessee was an owner of a land and had entered into an agreement with one 'J' and handed over bar and restaurant of hotel to be managed and conducted by him against a monthly payment as royalty. As litigation ensued between them, a suit was instituted before City Civil Court and a consent decree was passed. Thus, assessee paid certain sum to 'J' as settlement charges and incurred some legal expenses. , said claim was

disallowed by lower authorities.

HELD:-

The high court held in favour of the assessee.

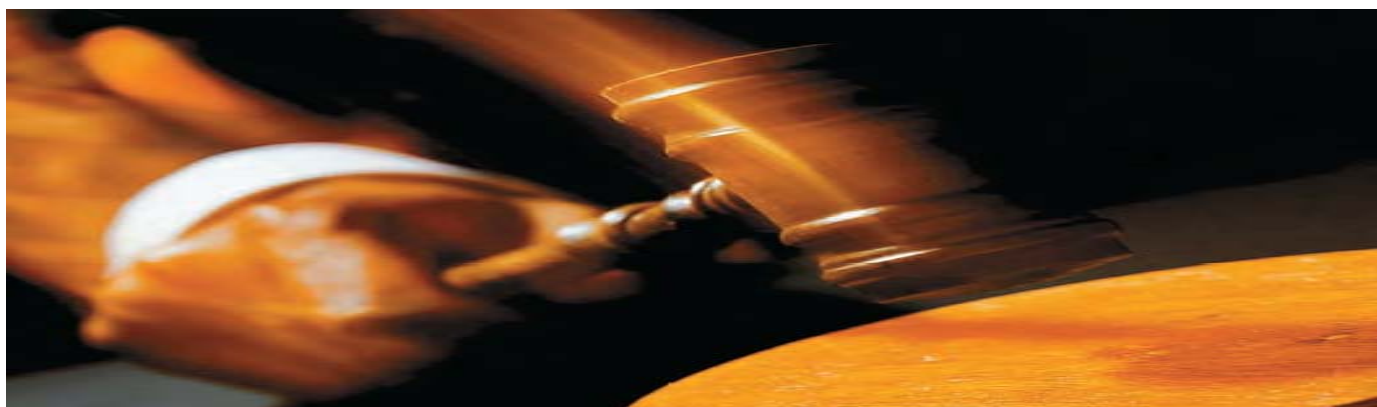
CONCLUSION:-

It was held that since settlement charges were paid for removing obstruction or hindrance in conducting and managing restaurant, same must be regarded as a matter of commercial expediency and, therefore these were clearly allowable.



*"Small opportunities
are often the beginning
of great enterprises."*

Demosthenes



KOWSALYA BAI vs. UOI (KARNATAKA HIGH COURT)

Writ Petitions 12780 – 12782 / 2010 (T) decided on 5th day of June 2012
S. 206AA PAN Law read down to not apply to assesseees without taxable income

BREIF FACTS:-

The Income of the assessee was below taxable limit & she filed Form 15G and requested that no TDS be deducted on the interest on fixed deposit. However, she was informed that in view of s. 206AA inserted by FA 2009, TDS would have to be deducted in the absence of PAN. The assessee filed a writ petition to challenge s. 206AA as being arbitrary and unconstitutional to the extent that it compelled persons with no taxable income to obtain a PAN.



HELD :-

Writ Petition was allowed

REASON:-

U/s 139A, only persons whose income is chargeable to tax are required to obtain a PAN. However, s. 206AA compels even persons without a taxable income to obtain a PAN to avoid TDS. This creates difficulty for poor and illiterate persons who make small investments and discourages them to invest money. S. 206AA runs counter to s. 139A and is discriminatory.

*Good judgment comes
 from experience and
 experience comes from bad
 judgment.
 Fred Brooks*

Though the Legislature's intention is to bring maximum persons under the income-tax net, it may not insist that even persons whose income is below the taxable limit have to compulsorily obtain a PAN. If any tax avoidance is detected, that can be taken care of by penal provisions. Accordingly, s.206AA is read down as being inapplicable to persons whose income is less than the taxable limit. Banks & financial institutions should not insist upon PAN from such small investors.



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