

Punkaj Oswal & Co.
Chartered Accountants

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Updates News Letter

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ONGC weighs its power on Cairn deal

ONGC has sought legal opinion from the Solicitor General of India on its rights in the USD 9.6 billion Cairn-Vedanta deal. The state-owned firm believes that it has pre-emption or right of first refusal in all the three producing oil and gas fields operated by Cairn India and Edinburgh-based Cairn Energy needs its consent for sale of stake to Vedanta Cairn Energy.

PNB to raise base rate to 8.5pct

State-owned Punjab National Bank said it will raise the minimum rate of interest on loans from 8 per cent at present to 8.5 per cent with effect from October 1. However, the bank has left the Benchmark Prime Lending Rate (BPLR) on loans taken prior to adoption of the base rate system which stipulates the minimum lending rate below which the bank will not offer loans the same at 11.75 per cent.

India Presses Mauritius To Renegotiate Treaty,

The Indian government would like to see an end to the provision in the India-Mauritius tax treaty which provides that capital gains from sale of securities in India can only be taxed in Mauritius, especially with regard to "treaty shopping". In the absence of a capital gains tax in Mauritius, more than 40% of foreign investment inflows to India are routed through Mauritius, more than any other country

RBI permits banks to engage companies registered under the Indian Companies Act, 1956 to function as business correspondents

The Reserve Bank of India (RBI) permitted banks to engage companies registered under the Indian Companies Act, 1956 to function as business correspondents. However companies would not include Non Banking Financial Companies. RBI had already permitted individuals like retired bank employees, retired teachers, retired government employees and ex-servicemen, individual owners of kirana or medical or Fair Price shops, individual Public Call Office (PCO) operators, agents of Small Savings schemes of Government of India or Insurance Companies, individuals who own Petrol Pumps, any other individual including those operating Common Service Centres (CSCs), as business correspondents.

Supreme Court declines to stay the operation of the Bombay High Court order in Vodafone tax case

The Supreme Court declined to stay the operation of the Bombay High Court order under which the petition of Vodafone challenging the demand of Rs 12000 crore made by the Income Tax department was dismissed. A bench Chief Justice S H Kapadia, issued notices to the Income Tax department on the petition filed by Vodafone challenging the demand raised by the Income Tax department pertaining to 11 billion dollars deal between Vodafone and Hutchison in 2007 through which Vodafone had acquired stakes in Hutchison.

FDI norms for LLPs may be eased

The government has indicated that it will opt for gradual liberalization of foreign direct investment norms for Limited Liability Partnerships (LLPs). The Department of industrial policy and promotion sought comments on whether FDI should be restricted to LLPs operating in sectors without any investment caps, conditionalities or entry route restrictions. It is indicated that foreign investment might not be permitted in sectors such as real estate, plantations and agriculture.

ENTRY of foreign law firms

The Bar Council of India has decided not to permit foreign lawyers into India. However, the said decision is being subject to a more detailed and rational scrutiny in the light of the opinions and points of view of different stakeholders. The Bar Council of India is committed to take steps which will benefit the Indian legal profession.



TAX NEWS

NEWSLETTER

Global Group under I-T scanner:-

The Manoj Tirodkar-owned Global Group is under the scanner of the income-tax department for raising false bills and evading tax, three officials of the department have said. Many of the parties to whom the bills were addressed were living in Mumbai's chawls or slums, the officials, who did not want to be named, said. The Global Group was in the news recently for its Rs 8,000-crore acquisition of telecom operator Aircel's towers, through its listed subsidiary GTL Infrastructure, and its recently collapsed talks for a Rs 30,000-crore merger with Reliance Communications' towers business.ing downstream in LLPs.

IATA terms service tax on air tickets illegal

The International Air Transport Association (IATA) has termed the service tax charged on air tickets by the Indian government as illegal according to the Chicago Convention. "According to the Chicago Convention, service tax on air tickets charged by the Indian government is illegal. India is a signatory to the convention and it cannot charge service tax on tickets," said Giovanni Bisignani, director general and chief executive officer, IATA.

DUE DATE FOR FILING IT RETURN EXTENDED TO 15th OCTOBER 2010

The Central Board of Direct Taxes (CBDT) vide its Circular No. 225/72/2010/ITA/2nd/CBDT dated 27th September 2010 has extended due date for filing of IT return due on 30th September 2010 to 15th October, 2010

L&T to buy back 14% in core arm from PE investors

LARSEN & Toubro will make L&T Infrastructure Development Projects (L&T IDPL) a wholly-owned subsidiary by buying 14% stake from IDFC Private Equity and JP Morgan Chase for at least 740 crore in a move seen as efforts by India's largest engineering company to consolidate its shareholding in the infrastructure arm as a precursor for an initial share sale. Larsen is likely to announce the deal next week

CORPORATE CASE LAW

NEWSLETTER

Whether the name was to restored to Register of Companies??

Case Facts:-

The petitioner company failed to file annual returns for period 30-09-2001 to 31-09-2008 and failed to file balance sheet for period 31-03-2001 to 31-03-2008. The name was struck off under Section 560 by Registrar of companies due to default in statutory compliances.

Petitioner filed instant petition seeking restoration of its name in the register contending that it had been active since incorporation and that it did not receive show-cause notice as required under section 560.

Held:-

It was held that the registered office of the company had been changed twice on 02-09-1985 and 20-12-1997 respectively and according to the records revealed that notice under section 560(5) had been sent to address where registered office of the company was situated before 02-09-1985. **Since, the mandatory requirement was not met, hence the name is to be restored in the register of Registrar Of Companies**

[True Fab (P) Ltd. v. Registrar of Companies [2010] 102 SCL
153 (DELHI) Decided on April, 27, 2010]

CORPORATE CASE LAW

NEWSLETTER

Whether the order of Company Law Board was to be set aside where CLB allowed petition by directing company to reverse all transfers holding same to be illegal & Void.

Case Facts:-

A settlement took place between appellant and his four brothers who were jointly running business. The respondent company was allotted to appellant and members of his group. . A member of one of groups handed over their shares in company along with duly executed share transfer forms to appellant and said shares were transferred by board of directors of respondent company in the name of appellants in register of members. Respondent filed a petition challenging transfer of shares on ground that it was contrary to section 108 and the Articles of the Association of the company. **CLB allowed petition by directing company to reverse all transfers, holding the same to be illegal and void.**

Held:-

It was held that since board of directors had, in fact, exercised their right conferred by second proviso of section 108 by recognizing

transfer, registration of transfer, .Registration of transfer of shares pursuant to award was not contrary to section 108. Since acquisition of shares pursuant to award fell within Article of Association of the company and consent of board having been accorded to same, registration of said shares by board of directors was not contrary to Articles of Association of the company. **Hence, order of Company Law Board was to be set aside.**

[Dinesh Nagindas Shah v. Pankaj Aluminium Industries (P.) Ltd. 102 SCL 161 (BOM.) Held on July, 7, 2010]

TAX CASE LAW

NEWSLETTER

NATIONAL LEATHER CLOTH MANUFACTURING CO. v. UNION OF INDIA [[2010] 3 GSTR 580 (SC)]

Brief facts: The assessee, engaged in the manufacture of coated fabrics, claimed that the cost of material used for packing the final product was not to be included for determining the assessable value for the purpose of excise duty. The adjudicating authority held that that the packing of coated fabrics in polythene bags for delivery to the customers located in Bombay as also packing of three such rolls in hessian cloth and stitching them into bundles for dispatch to up-country customers was in the normal course of trade and, therefore, there was nothing special about such packing so as to exclude its cost from the value of the fabric. On a writ petition, the High Court rejected the plea of the assessee. Assessee appealed to the Supreme Court.

Decision: Appeal allowed.

Reason: Section 4(4) (d) (i) of the Central Excise Act, 1944 provides how the value of excisable goods is to be determined. The expression "value" has been extended to include the cost of packing. According to section 4(4) (d) (i) of the Act, the cost of packing is to be included in working out the value of the goods, unless the packing is of a durable nature and is returnable by the buyer to the assessee.

Whether section 244(1)(b) read with the Explanation thereto excludes payment of interest on refund of self-assessment tax?

Case Facts:-

The assessee should be, on principle entitled to interest thereon since the self-assessment tax falls within the expression "refund of any amount". The computation of interest on self-assessment tax has to be in terms of section 244A (1) (b), i.e., from the date of payment of such amount up to the date on which refund is actually granted.

Decision: - Dismissed

Reason: - The special leave petition against which order was dismissed by the Supreme Court. Even otherwise, it is trite law that wherever the assessee is entitled to refund, there is statutory liability on the Revenue to pay the interest on such refund on general principles to pay the interest on sums wrongfully retained. Thus, the question of law is in favour of the assessee and against the Revenue. **The present appeal is accordingly dismissed.**

Income Tax - 2010 TMI - 77624 - DELHI HIGH COURT
Commissioner of Income-tax Versus Sutlej Industries Ltd.



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