POC Connect

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Connect

NFRA to get powers to investigate, audit firms

National Financial Reporting Authority (NFRA) envisaged in the new Companies Act, 2013, will also conduct quality review of audit of listed and unlisted companies, With powers to lay down accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, the proposed NFRA will be able to take over a bulk of the work currently being executed by the Institute of Chartered Accountants of India

Rupee recoups on RBI intervention

Rupee fell to 5-week low on Friday tracking a weaker euro after Thursday's surprise rate cut by the European Central Bank. Increased dollar-demand from oil marketing companies, saw the volatile rupee dip to an intraday low of 62.75 per dollar several times before it got sobered down by RBI.

SEBI lays out guidelines for listing SMEs and start-ups

Market regulator Sebi issued detailed guidelines (Oct 24) for listing of start-ups and small and medium enterprises (SMEs) on stock exchanges without an IPO. Through this new route, the SMEs and start-ups can get listed on the bourses without making a public offer. This would help enterprises to raise capital from the securities market during their early stages of growth, as it provides exit opportunities for investors

India Inc sees red on voting rights for preference shares

Companies that have issued preference shares to a large number of investors, including private equity, are in for a big surprise as the Act gives the voting rights to preference shareholders in

certain circumstances as to equity capital holders. This will impact voting rights of all those companies whose preference share capital is larger than their equity capital.

SEBI cuts paper work for public issues

Investors in IPO/FPOs now would not have to pour over voluminous prospectus/application forms. The Securities and Exchange Board of India on Wednesday asked companies planning to float IPOs/FPOs to give them an abridged prospectus with key information, and provide generic details in a separate document.

Companies Act rules likely to be sent to Law Min this month

The Corporate Affairs Ministry, which is in the process of preparing rules for the new companies legislation, is expected to send the final norms to the Law Ministry for approval this month.

A handle on internal control

A key provision pertains to the auditor's responsibility to comment on the adequacy (design) and operating effectiveness of a company's internal financial controls. Auditors now have to conduct a more integrated audit, opining both on financial reporting and internal controls**.**

Large Taxpayer Unit launched in Kolkata

The Union Government has finally launched the large taxpayer unit (LTU) in Kolkata, the fifth such in the country. The LTU here started its journey with eight assessees — two public sector banks, UCO and UBI; State-owned Hindustan Copper Ltd along with private sector organisations such Titagarh Wagons Ltd and Century Plyboards (India) Ltd, have volunteered to join the Kolkata LTU.

Duration of cap gains must be based on date of allotment

It is very important to find out the date of purchase of the property because it is this date which will determine the nature of Capital Gain namely whether the Gain is a Long-term Capital Gain or a Short-term Capital Gain.

Mauritius gears up for Indian GAAR

The foreign direct investment (FDI) that is made from there into India is quite substantial. As per the latest statistics, about 40% of India's annual FDI of about $23 billion comes from Mauritius; next on the list is Singapore, from where around 10% comes. The key reason for this is the well-known capital gains tax exemption accorded to foreign investors under the India-Mauritius Tax Treaty.

SEBI

CIR/MIRSD/11/2013 DATED 28 OCTOBER, 2013

Disclosure of Investor Complaints on websites of Stock Exchanges

In order to bring more transparency in the disclosure of complaint redressal status of the stock brokers on the website of stock exchange, in consultation with the stock exchanges and the associations of stock brokers, it has been decided to modify the format by including following information:

- Number of active clients of each stock broker;
- Percentage of number of complaints received;
- Percentage of complaints resolved.

M/s Deloitte Haskins & Sells vs. DCIT (ITAT Chennai)

Section 40(b): Appointment of an existing partner as representative partner for another party may circumvent the ceiling on number of partners

BRIEF FACTS:

The assessee, a firm of Chartered Accountants, filed a return offering income of Rs. 17.70 crores which was accepted by the AO u/s 143(3). The CIT then passed an order u/s 263 stating that the assessee had amended its partnership deed pursuant to which Mr. Mukund Dharmadhikari, who was already a partner of the firm, was added once again as a partner in a representative capacity, to represent Deloitte Haskins & Sells, Mumbai. As Mr. Dharmadhikari had the right to share profit, both in the representative capacity as well as in his individual capacity, the CIT held that the number of partners exceeded 20, the maximum allowed under the Partnership Act, 1932, and that the assessee had, therefore, to be treated as an Association of Persons. He held

that the assessee was not entitled to claim a deduction u/s 40(b) for the salaries paid to its' partners. On appeal by the assessee to the Tribunal

HELD:

A study of the partnership deed shows that Deloitte Haskins & Sells, Mumbai, which is the participating firm, is not a stranger to the assessee. The assessee can take policy decisions, which have a policy bearing on such firm, once there is an approval of the majority of the members of the "National Firm". Mukund Dharmadhikari was representing Deloitte Haskins & Sells, Mumbai, and the endeavour of the assessee was to bring on board the participating firm, on which it had powers to make policy decision, so that they became entitled for a share of profit. The assessee was a renowned partnership firm and was well aware that number of partners cannot exceed 20. It is a well settled principle of law that what is permissible is tax planning, but not evasion.

Though in Rashik Lal 229 ITR 458 (SC) & Bagyalakshmi55 ITR 660 (SC) it was held that a partner may be a trustee or may enter into a sub-partnership with others, or can be a representative of a group of persons and that qua the partnership, he functions in his personal capacity, these decisions will not apply since the assessee was indirectly trying to bring in M/s Deloitte Haskins & Sells, Mumbai, another firm, which was already a participating firm, as its partner, circumventing the limit of maximum 20 members. The AO did not apply his mind and go into these aspects and so the CIT was justified in directing him to look into the issue.

London Star Diamond Company (I) P. Ltd vs. DCIT (ITAT Mumbai)

Loss on foreign exchange forward contracts is incidental to the exports business and not a "speculation loss". However, if the contract is prematurely cancelled, the assessee has to justify the loss

BRIEF FACTS:

Assessee, an exporter of diamonds, entered into forward contracts with Banks to hedge the exchange loss, if any, in respect of the outstanding receivable in foreign currency. The assessee suffered a loss of Rs. 4.69 crore on account of the maturity & premature cancellation of the said forward contracts. The AO & CIT(A) held that the forward contracts constituted a "speculative transaction" u/s 43(5) and that the loss suffered thereon was a "speculation loss" which could not be set-off against the other income. On appeal by the assessee to the Tribunal

DECISION OF THE CASE:

(i) Though a forward contract for purchase or sale of foreign currency falls in the definition of "speculation transaction" u/s 43(5) as it is settled otherwise than by the actual delivery or transfer of the commodity, it cannot be regarded as constituting a "speculation business" under Explanation 2 to s. 28. A forward contract, entered into with banks for hedging losses due to foreign exchange fluctuations on the export proceeds, is in the nature of a "hedging contract" and is integral or incidental to the export activity of the assessee and cannot be considered as an independent business activity. Therefore, the losses or gains constitute business loss or gains and do not arise from speculation activities. The fact that there is a premature cancellation of the forward contract does not alter the nature of the transaction.

There is also no requirement in the law that there should be a 1:1 correlation between the forward contracts and the export invoices. So long as the total value of the forward contracts does not exceed the value of the invoices, the loss has to be treated as a business loss (Sooraj Mull Magarmull 129 ITR 169 (Cal), Badridas Gauridu 261 ITR 256 (Bom), Panchamahal Steel 215 Taxman 140 (Guj) and Friends and Friends Shipping (Guj) followed; contrary view in S. Vinodkumar Diamonds (ITAT Mum) referred)

CITICORP FINANCE (INDIA) LTD VS. ACIT (ITAT MUMBAI)

TDS Credit must be given even if TDS Certificate is not available/ entry is not shown in Form 26AS

BRIEF FACTS:

The assessee claimed credit for TDS which was denied by the AO on the ground that the claim did not match the entries shown in Form No. 26AS and that there was a discrepancy. On appeal, the CIT(A) held that the assessee would be entitiled to credit to the extent shown in the computer system of the department. On further appeal by the assessee to the Tribunal

HELD:

The AO is not justified in denying credit for TDS on the ground that the TDS is not reflected in the computer generated Form 26AS. In Yashpal Sahwney 293 ITR 539 the Bombay High Court has noted the difficulty faced by taxpayers in the matter of credit of TDS and held that even if the deductor had not issued a TDS certificate, still the claim

of the assessee has to be considered on the basis of the evidence produced for deduction of tax at source.

The Revenue is empowered to recover tax from the person responsible if he had not deducted tax at source or after deducting failed to deposit with Central Government. The Delhi High Court has in Court On Its Own Motion Vs. CIT 352 ITR 273 directed the department to ensure that credit is given to the assessee even where the deductor had failed to upload the correct details in Form 26AS on the basis of evidence produced before the department. Therefore, the department is required to give credit for TDS once valid TDS certificate had been produced or even where the deductor had not issued TDS certificates on the basis of evidence produced by assessee regarding deduction of tax at source and on the basis of indemnity bond.

Anita Grover v. CCEx. 2013 (288) E.L.F. 63 (Del.)

Can a former director of a company be held liable for the recovery of the customs dues of such company?

Facts of the case:

A demand notice was raised against the petitioner in respect of the customs duty payable by a company of which she was a former director, She had resigned from the Board of the company long time back. The Customs Department sought to attach the properties belonging to the petitioner for recovery of the dues of the company. The petitioner contended that the action of the Department was not

justified as the said properties belonged to her and not to the company.

Revenue contended that as director, the petitioner could not distance herself from the company's acts and omissions, she had to shoulder its liabilities. It was in furtherance of such obligation that the authorities acted within their jurisdiction in issuing the impugned notice,

Observations of the Court:

Considering the provisions of section 142 of the Customs Act, 1962 and the relevant rules, the High Court elucidated that it was only the defaulter against whom steps might be taken for the recovery of the dues. in the present case, it was the company who was the defaulter.

Decision of the case:

The Court held that since the company was not being wound up, the juristic personality the company and its former director would certainly be separate and the dues recoverable from the former could not, in the absence of a statutory provision, be recovered from the latter. There was no provision in the Customs Act, 1962 corresponding to section 179 of the Income-tax Act, 1961 or section 18 of the Central Sales Tax, 1956 (refer note below) which might enable the Revenue authorities to proceed against directors of companies who were not the defaulters.

For any suggestions & Queries

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