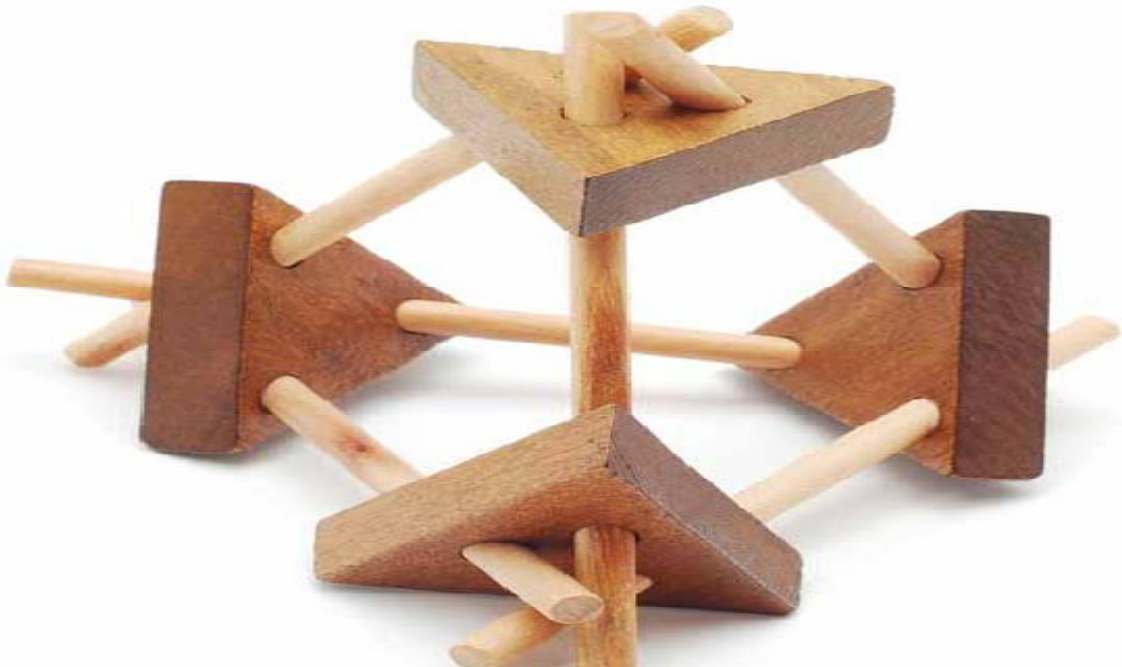


POC Connect

Updates  
November, 2012  
Edition





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# Corporate News

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



## **Companies Bill gets green light**

The Union cabinet cleared the revised draft of the Companies Bill, 2011, aimed at replacing the 55-year-old extant Companies Act with a new one. The Bill is now expected to be introduced in Parliament in the Winter session.

## **RBI to introduce inflation-indexed bonds soon**

To protect the returns of investors from the vagaries of inflation, the RBI plans to introduce inflation-indexed bonds (IIBs). The principal on the IIBs will be indexed to inflation and the coupon will be calculated on the indexed principal.

## **Centre has not followed legal route for FDI in retail: Supreme Court**

The Supreme Court has said that the UPA govt did not follow the proper legal route while allowing 100% FDI in retail trade citing that policy suffers from "curable" irregularity of want of legal sanction and asked the RBI to amend the Foreign Exchange Management Act (FEMA) regulations to allow implementation of the government's policy.

## **Ministry of Corporate Affairs plans rules to curb fraudulent pyramidal schemes.**

The MCA proposing new set of rules and amendments to the Companies Act to curb fraudulent pyramidal schemes that are

often disguised as multi-level marketing schemes. The (Disguised) Money Circulation Scheme (Banning) rules, 2012 will give the government powers to wind up all pyramid schemes that lure investors through promise of quick gains.

### **DLF independent directors in the dark over Vadra deals**

Independent directors of DLF have said the controversial transactions between Robert Vadra and India's largest realty firm were not discussed by the board and if allegations of easy loans and cheap deals are proved, they should be probed.

### **Sachin Pilot takes charges as Corporate Affairs Minister**

Sachin Pilot, who assumed charge as the Minister of State for Corporate Affairs (Independent Charge), on 29.1.0.2012 said all investigations related to companies in India will be conducted in a transparent manner and without any bias.

### **Indian Oil Corporation first Indian co to raise debt in Singapore dollar**

IndianOil Corporation (IOC) has raised around \$326 million through issue of 10-year bonds denominated in Singapore dollar. IndianOil priced the notes at 4% yield, which is better than 5.6% the company had paid for a US currency debt in 2011 with a similar tenor.



# Tax News

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

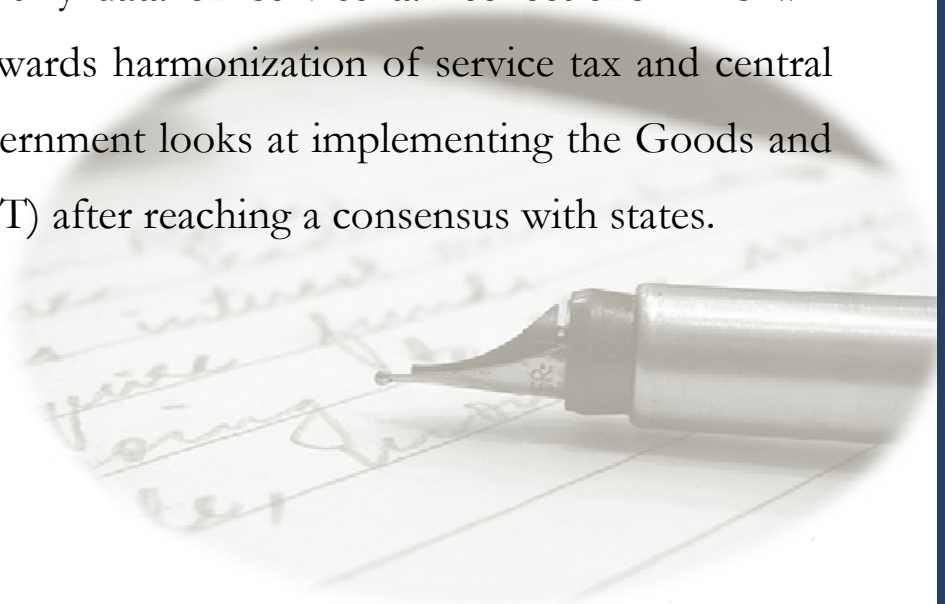


## **Kingfisher Airlines' employees get income-tax notices on non-payment of taxes**

The income-tax department has begun sending out notices directing employees of Kingfisher to clear tax liabilities, which run into several lakh of rupees. While the bankrupt airline, by not depositing the TDS, or tax deducted at source, still owes over Rs 60 crore in taxes to the government, the employees, who are already grappling with a cash crunch due to unpaid salaries for the past seven months, are wondering how the tax dues from the airline are their responsibility.

## **Monthly return for those who pay Rs 25 lakh in service tax**

Those paying more than Rs 25 lakh in service tax will soon have to file their returns every month instead of once in six months. Besides facilitating better audit, this move will give the government monthly data on service tax collections. This will also be a step towards harmonization of service tax and central excise as the government looks at implementing the Goods and Services Tax (GST) after reaching a consensus with states.



## **SC refuses to stay recovery of Vedanta entry tax dues**

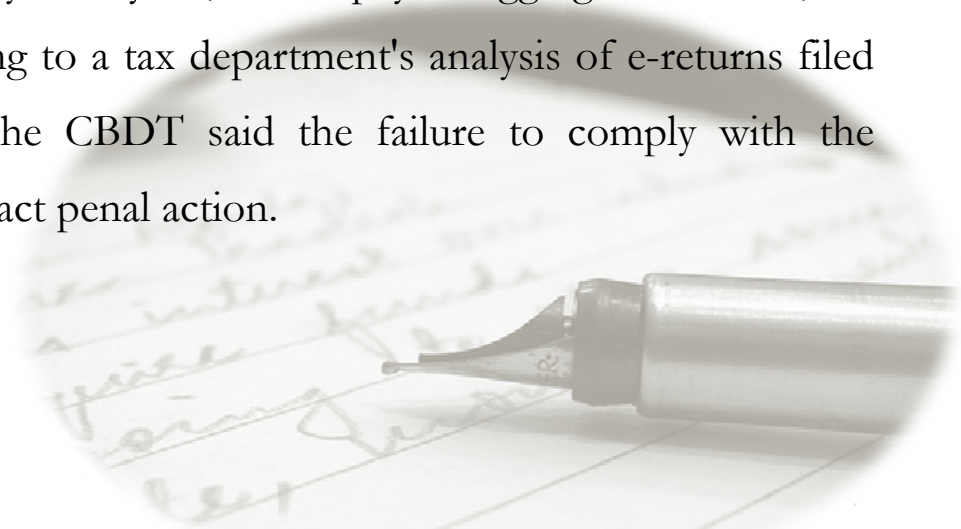
In a setback to Vedanta Aluminium (VAL), the Supreme Court has refused to stay recovery of entry tax dues of around R130 crore on goods imported for its alumina refinery and smelter plant in Orissa between 2008 and 2012.

## **Taxmen must probe inter-corporate gifts: Authority for Advance Ruling**

Gifts given by one company to another need to be probed into by the tax authorities, according to the Authority for Advance Ruling. In a recent ruling in an application filed by Singapore company Orient Green Power, AAR held that a "gift" by a corporate to another corporate deserved to be inquired into by the income-tax department as the intentions of such transactions are always under a cloud.

## **Nearly 29,000 tax defaulters owe Rs 3,770 Cr to govt**

Tax defaults by nearly 29,000 taxpayers aggregate to Rs 3,770 crore, according to a tax department's analysis of e>Returns filed in 2012-13. The CBDT said the failure to comply with the advice will attract penal action.







# Circulars, Notifications and Press Releases

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

## **Department of Industrial Policy & Promotion**

***[Press Note No. 9] (2012 Series, dated – 03<sup>rd</sup> October'2012)***

**Step down Subsidiaries for NBFC :** NBFCs having foreign investment above 75% and below 100% and with a minimum capitalization of US\$ 50 million. are allowed to set up step down subsidiaries for specific NBFC without any restriction on the number of operating subsidiaries and without bringing in additional capital.

## **Ministry of Corporate Affairs**

***General Circular No. 34/2012 Dated 25.10.2012***

**Extension of Time for Filing of Balance Sheet & Profit & Loss Account (XBRL) Mode for the financial year commencing on or after 01.04.2011 :-**The date for filing the financial statements in Extensible Business Reporting Language Mode(XBRL) without any penalty has been extended up to 15th December '2012 or within 30 days from the date of Annual General Meeting of the Company whichever is later.

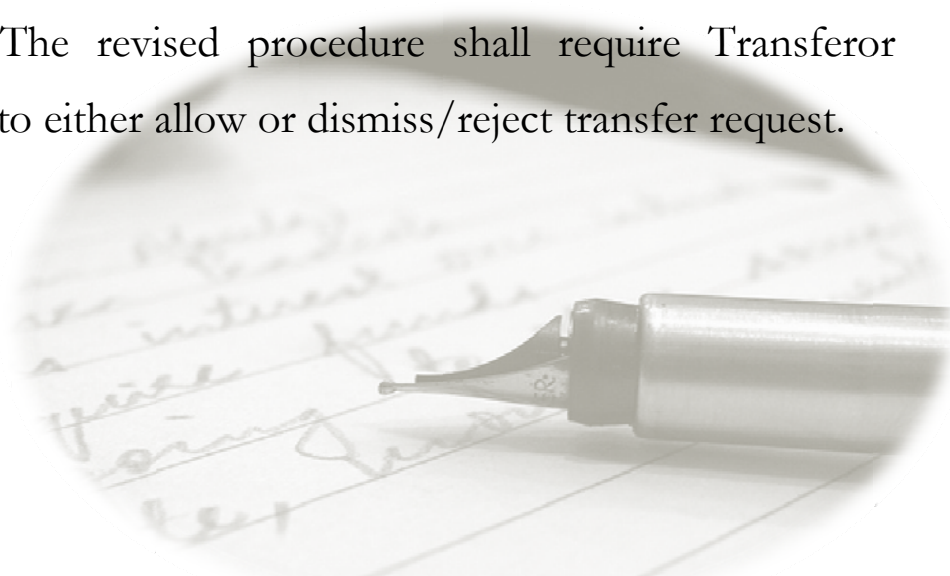
## Indirect/Direct Tax

### ***Notification No. F.No.137/99/2011-Service Tax Order No: 3/2012 Dated 15-10-2012***

- **Due Date for filing Service Tax return for Q-1 extended:-** Central Board of Excise & Customs has extended the date of submission of the return ST3 for the period 1st April 2012 to 30th June 2012, from 25th October, 2012 to 25th November, 2012.

### ***Letter No. DIT (S) –I/AIS/NODAL/ 12-13 dated 08.10.2012***

- **Withdrawal of auto route facility of PAN transfer request:-** The Automatic approval of PAN transfer of Individual which presumes 'no objection' from transferor officer as per AIS Instruction No. 49 and 53 has now been withdrawn in view of the misuse and resultant refund frauds. The revised procedure shall require Transferor officers to either allow or dismiss/reject transfer request.



# Corporate Case Laws

[Till 31st September, 2012]

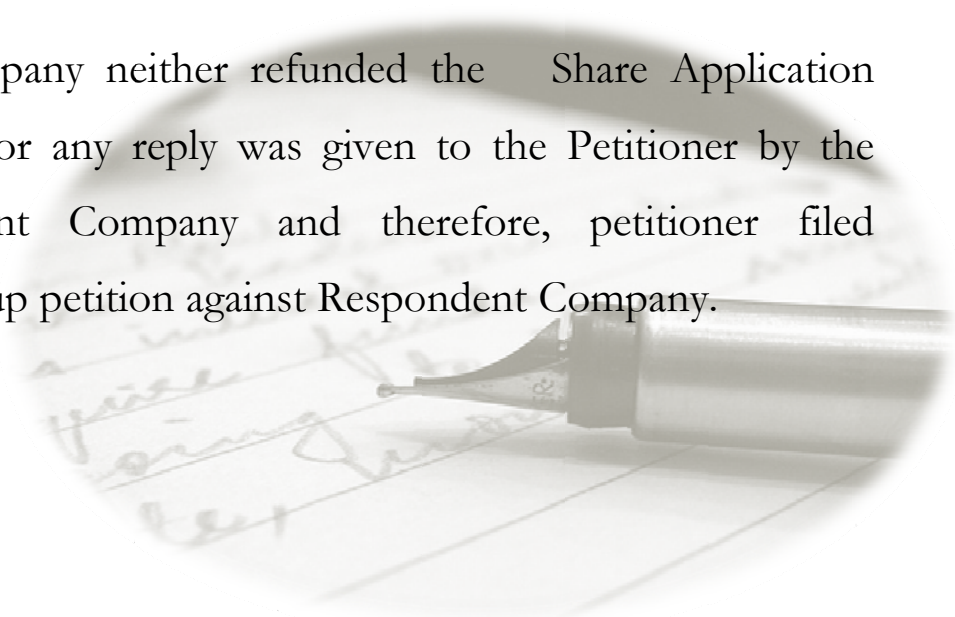


## **A.M.Sudhakar v. Magnus Healthcare & Research centre (p.) Ltd [high court of Karnataka] [July 2, 2012]**

*Applicable Section: Section 433 of the Companies Act, 1956*

### **Brief Facts:**

- Petitioner was one of the promoters of the Respondent Company who had resigned from the Board of the Directors of the Respondent Company.
- As per the Petitioner an amount was still lying to his credit in the share Application Money account in the respondent Company & request was made by him not to issue or allot any shares in his name and that he had given the sum to the respondent company as an **Unsecured loan**.
- The company neither refunded the Share Application money nor any reply was given to the Petitioner by the respondent Company and therefore, petitioner filed winding up petition against Respondent Company.



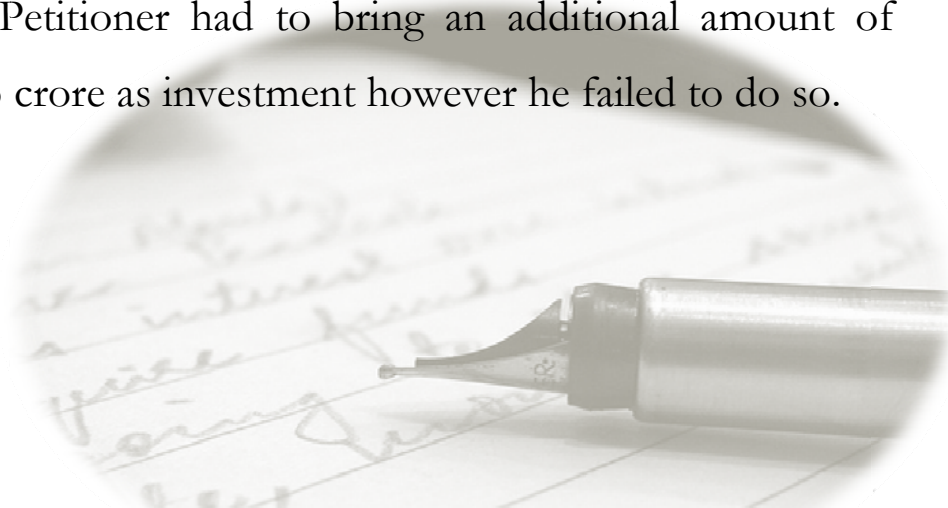


### **Held:-**

**The Petition was dismissed as the share application money has been allotted and the loan given by the petitioner is not due for payment.**

### **Reason:-**

- The respondent company submitted that the petition was filed by petitioner to withdraw his investments from the projects of the respondent company.
- That based on the credibility of the respondent company, the financial institutions have sanctioned a loan of Rs.25 crores & in terms of the loan sanction letter which the petitioner is very well aware of all monies infused by the promoters & Directors are subordinate to the loan availed from the bank. Hence the demand made by the petitioner is unsustainable.
- The Petitioner had to bring an additional amount of Rs.1.5 crore as investment however he failed to do so.





# **Tax Case Laws**

**[Till 31st September, 2012]**

## **Qualcomm Incorporated vs. Assistant Director of Income Tax [ITAT Delhi] Stay No. 177 to 183/DEL/2012**

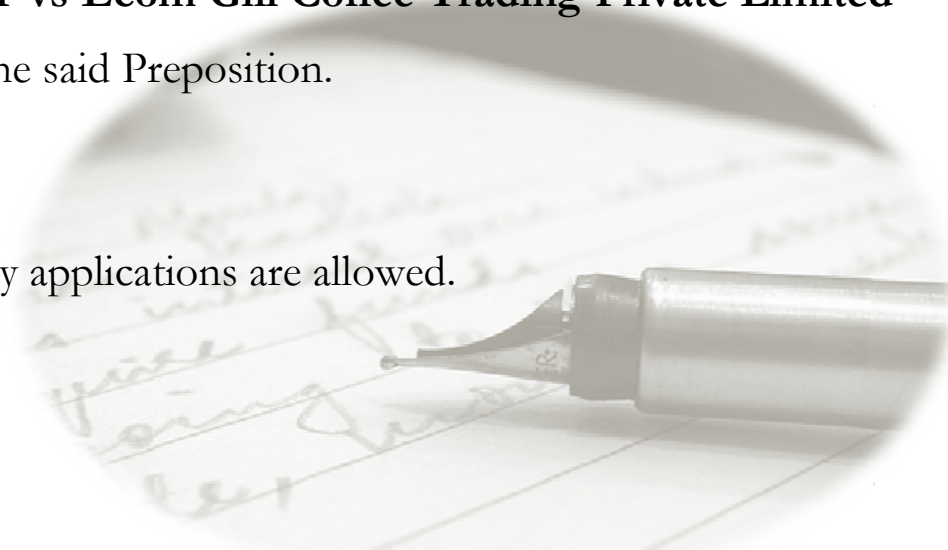
### ***Tribunal to decide in favour of the assessee in case of judicial conflicts***

#### **Brief Facts:-**

In the matter of Qualcomm Incorporated vs. Assistant Director of Income tax, ITAT Delhi has extended the stay of demand beyond 365 days as the delay in adjudication of the matter was not attributable to the assessee. Post amendment U/S 254(2A), in relation to stay of demand beyond 365 days. There are conflicting judgements in this regard . Mumbai High Court in the matter of **TATA Communication Ltd. ACIT 138TTJ (Mum) 257** stated that even after the amendment to third Proviso to Section 254 (2A), the tribunal had jurisdiction to extend stay beyond 365 days. Whereas Karnataka High Court in matter of **CIT vs Ecom Gill Coffee Trading Private Limited** has negated the said Proposition.

#### **Held:-**

Assessee's stay applications are allowed.



## **Reason:-**

ITAT Delhi in view of the order passed by special bench in the matter of Narang Overseas (P) Ltd vs. ACIT 114 TTJ 433 (SB), decided in favour of the assessee . Wherein it was decided that if there is a cleavage of opinion amongst different High Courts and there is no decision of jurisdictional High Court on the same, then the view favorable to the assessee has to be followed. Accordingly the matter was decided in favour of the assessee.

**Asstt. Commnr of Income Tax, Udaipur vs. M/s. Gebilal Kahnaialal HUF, Udaipur CA.No.636/2005 [Supreme Court]**

***Penalty under explanation 5 of clause 2 of section 271(1)(c) not leviable in the matter of search and seizure proceedings***

## **Brief Facts:-**

During the search and seizure proceedings at the premises of assessee, assets worth Rs.42,32,000 were found and being undisclosed. The Karta of HUF surrendered the amount and made the statement as required u/s 132(4). Subsequently it pleaded for the waiver of penalty under explanation 5 to clause 2 of Section 271(1)(c), which was denied by the department on the

ground that the tax has not been deposited and return has not been filed within the stipulated time.

**Held:-**

The appeal was dismissed.

**Reason:-**

The Supreme Court dismissed the appeal of department on the ground that the assessee has fulfilled all the conditions for grant of immunity including the 3<sup>rd</sup> condition i.e. the assessee shall deposit tax with interest upto the date of payment. The section does not stipulate the time within which assessee is supposed to deposit the tax with interest. Hence, the appeal of department is dismissed.







*For any suggestions & Queries*

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