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Updates

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2013

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- CORPORATE NEWS



MCA readying self-reporting CSR template

MCA is working on developing an 'exhaustive' and 'interactive' form as part of the standard template that all companies will have to fill while reporting their projects and proposed spends on the soon-to-be mandatory corporate social responsibility (CSR) initiatives.

Draft rules for Companies Bill to be ready by mid-Feb

The draft rules for the Companies Bill 2012 are likely to be ready by mid-February ahead of the Budget Session of Parliament. The proposed framework would obviate the need to repeatedly go back to Parliament to tinker with the provisions.

Rs 100-cr CSR bill likely for each of top-15 BSE companies

Top-listed firms will have to shell out hundreds of crores each in social sector initiatives if the new Companies Bill takes effect. Officials are targeting the beginning of the new financial year, (April 1) as the effective date for the new Act.



Registration must for investment advisers: SEBI

SEBI registration is a must for all investment advisers — both individual and corporate, according to a new regulation by market regulator SEBI. Professionals such as lawyers, chartered accountant and those giving generic view on economic situation without charging and incidental to discharging their professional services are exempt. SEBI has mandated a minimum net worth requirement of Rs 25 lakh for corporate and Rs 1 lakh for individuals.

SAT adjourns RIL plea against SEBI till Jan 24

SAT has adjourned the hearing of an appeal filed by RIL until January 24 after the capital market regulator sought some more time to file its reply. RIL challenged SEBI refusal to provide documents based on which a show-cause notice was issued to the company.

SEBI allows market entities to verify PAN of QFI via IT website

SEBI on allowed market entities to verify the PAN of qualified foreign investors (QFIs) through the Income Tax (I-T) department's website, as against the current practice of asking for their original PAN card. The move will ease the process of obtaining PAN card details from QFIs but they will have to give on alternative identity proof.

RBI cuts repo rate and CRR, sets stage for lower interest rates

RBI have reduced repo rate now stands at 7.75% from 8% earlier and Cash Reserve Ratio now stands at 4% from 4.25% earlier rate.

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- TAX NEWS



Finance ministry may amend I-T law to spare Vodafone-like deals from penalty, interest on taxes

Finance ministry is considering amending the income-tax act empowering the tax authorities to spare companies from paying penalty as well as interest on taxes levied on indirect transfer of Indian assets through sale of shares abroad.

Banks want PAN rule relaxed for non-deduction of tax at source

Banks have moved the authorities to allow them to act upon self-declarations made in Form 15G and Form 15H (for non-deduction of tax at source) by the above mentioned category of people even if they do not have a permanent account number (PAN).

GAAR implementation deferred by 2 yrs till April 2016

Government has deferred implementation of the GAAR by two years which were to come into effect from 2013-14 financial years, but the Shome Committee had recommended putting it off by three years.

McDonalds soft serve should be classified as ice-cream for determining excise duty: Supreme Court

Supreme Court has ruled that the 'soft serve' sold at McDonalds India's outlets should be classified as ice-cream for the purpose of determining excise duty, upholding the excise department's claim. The argument that 'soft serves' is distinct from 'ice-cream' due to a difference in its milk fat content, the same must be construed in the scientific sense for the purpose of classification, was rejected.

No service tax on transportation of milk by rail or vessel

The Finance Ministry has made it clear that transportation of milk by rail or a vessel will not attract service tax. The Central Board of Excise and Customs (CBEC) has issued a circular to this effect. This clarification has come in the wake of queries received from Railways as to whether the service of transportation of milk by rail is covered by an exemption notification issued in June 2012.

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- CIRCULARS
- NOTIFICATIONS
- PRESS RELEASES



RESERVE BANK OF INDIA

*RBI/201213/401,REF:DBOD.NO.RET.BC.76/12.01.001/
2012-13, JANUARY 29, 2013*

MAINTENANCE OF CASH RESERVE RATIO (CRR)

- Reduction of the Cash Reserve Ratio (CRR) of Scheduled Commercial Banks by 25 basis points from 4.25 per cent to 4.00 per cent of their Net Demand and Time Liabilities (NDTL) with effect from the fortnight beginning February 09, 2013.
- The Local Area Banks to maintain CRR at 3.00 per cent of its net demand and time liabilities up to February 08, 2013 and 4.00 per cent of its net demand and time liabilities from the fortnight beginning from February 09, 2013

*RBI/2012-13/375 A. P. (DIR SERIES) CIRCULAR
NO.74 DATED 10TH JANUARY' 2013*

**AMMENDMENT IN THE FDI SCHEME ON
ISSUEANCE OF EQUITY SHARES IN LIEU OF
IMPORT OF GOODS**

- As per the notification no A.P.(DIR Series) Circular No. 74 dated 10th January,2013 issuance of equity shares in lieu of import of the second hand machinery is not permitted ,which was allowed earlier.

MINISTRY OF CORPORATE AFFAIRS

GENERAL CIRCULAR NO. 01/2013 DATED 15/01/2013

FILING OF BALANCE SHEET AND PROFIT & LOSS ACCOUNT IN EXTENSIBLE BUSINESS REPORTING LANGUAGE (XBRL) MODE FOR THE FINANCIAL YEAR COMMENCING ON OR AFTER 01.04.2011

Time limit to file the financial statements in XBRL mode without any additional fee/penalty has been extended up to 15th February' 2013 or within 30 Days from the due date of AGM of Company, whichever is later.

TAX NOTIFICATIONS

NOTIFICATION NO.01/2013 UNDER CPR SCHEME **2011, 07/JANUARY/2013**

EXTENSION OF TIME LIMIT FOR FILING ITR-V FORMS FOR A.Y. 2010-11, A.Y. 2011-12 AND A.Y. 2012-13

Extension of the time limit for filing ITR-V forms relating to the Income Tax Returns filed electronically for (without digital signature certificate) for A.Y. 2010-11 (filed during F.Y. 2011-12) & for ITRs of A.Y. 2011-12 (filed on or after 1.4.2011) till 28th February, 2013. In respect of return filed for A.Y. 2012-2013 for which ITR-V are yet to be received at CPC & time of 120 days has also elapsed, time limit for filing of ITR-V is extended up to 31st March, 2013 or 120 days from the date of uploading of the electronic return data, whichever is later.

NOTIFICATION NO. 56/2012 [F. NO. 275/53/2012-IT (B)], DATED 31-12-2012

**SECTION 197A OF THE INCOME-TAX ACT, 1961 -
DEDUCTION OF TAX AT SOURCE - NO DEDUCTION
IN CERTAIN CASES - SPECIFIED PAYMENT UNDER
SECTION 197A (1F)**

No TDS on payment of charges for bank guarantee, cash management, demat services, clearing charges, charges for warehousing services for commodities, underwriting service charges, credit card or debit card commission for transaction between the merchant establishment and acquirer bank.

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- CORPORATE
CASE LAWS



***AMRITA BAZAR PATRIKA(P.) LTD.IN RE (2012)
C.P.NO. 424 (186)/KB/2011 JULY 27, 2012***

CLB is powerless to convene extraordinary general meeting unless it is impracticable for company to convene it.

Applicable Sections: Section 186 R/w Section 169 of the Companies Act, 1956

BRIEF FACTS:

Two sets of individuals were claiming control over the office of the Board of Directors of the company. The petitioners were 75 percent shareholders of share capital. In an EOGM held on 03.11.2006, the members of the company, inter alia, passed certain resolutions for removal of certain persons as directors while admitting some others in their place. The outcome of that EOGM was under challenge in pending civil suit before High Court. The petitioner filed instant petition under section 186 before CLB for convening a general meeting of the shareholders of the company.

HELD:

The Petition was dismissed

CONCLUSION:

- The Company Law Board held that where convening of the Extraordinary General Meeting in terms of the provisions of section 169 fails or the meeting does not take place for any reason and/ or it is not practicable, only then the provisions of section 186 comes into play, and can be revoked.
- The petitioner was required to make compliance of section 169 by undertaking of the entire exercise afresh before filing the instant petition.
- Neither provisions of section 186 nor jurisdiction of CLB could be invoked to order meeting to be called without complying with Section 169 afresh. Therefore, the petition was bad for non – compliance of Section 169 and dismissed.

IN HINDUSTAN DORR OLIVER LTD. V. JET AIRWAYS (INDIA) LTD. (2012) HIGH COURT OF BOMBAY, CO. PETITION NO. 350 OF 2012, NOVEMBER 1, 2012

Winding up petition to recover service tax dismissed as the respondent didn't admit its liability.

APPLICABLE SECTIONS: Section 433 of the Companies Act, 1956

BRIEF FACTS:

The petitioner had let out commercial premises to the respondent company. The respondent vacated the premises six months prior to expiry of agreement and licence fee was adjusted out of deposit amount. No adjustment was made towards service tax as there was no agreement between parties with regard to liability of service tax. Later, the petitioner filed winding up petition against respondent on ground that it had not cleared service tax liability.

HELD:

The High Court dismissed the petition.

CONCLUSION:

- The respondent company never admitted the liability of service tax. It was not even the case of the petitioner that there was any specific written agreement with regard to the service tax.
- If there was no agreement and no admitted liability, the respondent company was not liable for the service tax.
- The petition was dismissed as there were disputed questions of facts and the law.

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- TAX CASE LAWS



SUPREME COURT OF INDIA M/S I.C.D.S. LTD. VS.
CIT CIVIL APPEAL NO. 3282/2008 DATE OF ORDER:
14-01-2013

**VEHICLE FINANCIER ELIGIBLE FOR
DEPRECIATION ON VEHICLE NOT REGISTERED IN
ITS NAME.**

BRIEF FACTS:

The assessee is engaged in the business of hire purchase, leasing and real estate etc. The vehicles, on which depreciation was claimed, are stated to have been purchased by the assessee against direct payment to the manufacturers. The assessee, as a part of its business, leased out these vehicles to its customers and thereafter, had no physical affiliation with the vehicles. In its return of income for the relevant assessment years, the assessee claimed depreciation in relation to certain assets which had been financed by the assessee but registered in the name of third parties. The assessee also claimed depreciation at a higher rate on the ground that the vehicles were used in the business of running on hire. The Assessing Officer disallowed claims,

both of depreciation and higher rate. CIT(A) & ITAT allowed the assessee's claim. However, the High Court reversed the Tribunal stand on the ground that the assessee was merely a financier and not the owner and so was not eligible to claim depreciation.

Aggrieved with the order, the assessee filed an appeal before the Supreme Court of India.

HELD THAT:

The Supreme Court allowed both the assessee's claim stating that Motor Vehicle Act mandates that during the period of lease, the vehicle be registered, in the name of the lessee and, on conclusion of the lease period, the vehicle be registered in the name of lessor as owner. It would be a strange situation to have no claim of depreciation in case of a particular depreciable asset due to a vacuum of ownership. This reaffirms the position that the assessee is in fact the owner of the vehicle, in so far as Section 32 of the Act is concerned.

CIT VS. AVINASH JAIN ITA NO.703/2012 09-01-2013

HIGH COURT OF DELHI

WHETHER SHORT TERM CAPITAL GAIN AND LONG TERM CAPITAL GAIN CAN BE TREATED AS BUSINESS INCOME?

BRIEF FACTS:

The assessee is engaged in sale and purchase of shares and maintains two separate portfolios. One is an investment portfolio and the other is a trading portfolio. It is only in this year that the assessing officer made additions of 1,38,015/- and 1,07,44,493/- on account of short term capital gains and long term capital gains respectively in relation to the sale of shares out of the assessee's investment portfolio. The assessing officer did so by treating both the short term capital gain as well as the long term capital gain as business income by construing the entire activity of the assessee as a business activity. The Commissioner of Income Tax (Appeals) as well as the Tribunal held the verdict in favour of the assessee. Being aggrieved thereby the revenue filed an appeal with the High court.

HELD THAT:

If assessee has maintained two types of portfolios in their books of accounts - one on account of investment and the other on account of trading. It is not the case that the assessee started these activities in the year under consideration. The practice is supported by earlier years also which is not disputed. The department has earlier accepted the assessee's practice and treatment under heads of capital gains and business. Assessee's separate activities in share are further supported and endorsed by the fact that separate de mat accounts, bank accounts are being maintained and separate trading account and investment accounts are maintained in the books. Under these circumstances it leaves no room for doubt that the assessee was dealing in different activities of trading and investment. That being the position, no interference with the decision of the Tribunal is called for. No question of law arises for our consideration. The appeal is dismissed by the High Court of Delhi.

**CIT VS. SHRI KAMAL WAHA ITA NO. 4/2013 DATE
OF DECISION: 11-01-2013 HIGH COURT OF DELHI**

***DEDUCTION U/S 54F WAS AVAILABLE ON THE
PORTION OF INVESTMENT MADE IN THE NAME OF
THE ASSESSEE'S WIFE.***

BRIEF FACTS:

The new residential property was acquired in the joint names of the assessee and his wife. The assessing officer while completing the assessment took the view that under Section 54F, the investment in the residential house should be made in the assessee's name and in as much as the residential house was purchased by the assessee in the name of his wife, the deduction was not allowable. He reduced the deduction and computed the capital gains accordingly. The income tax authorities restricted the deduction under Section 54F to 50% on the footing that the deduction was not available on the portion of the investment which stands in the name of the assessee's wife.

HELD THAT:

This view was disapproved by this Court.

CONCLUSION:

It was noted that the entire purchase consideration was paid only by the assessee and not a single penny was contributed by the assessee's wife. It also noted that a purposive construction is to be preferred as against a literal construction, more so when even applying the literal construction, there is nothing in the section to show that the house should be purchased in the name of the assessee only. As a matter of fact, Section 54F in terms does not require that the new residential property shall be purchased in the name of the assessee, it merely says that the assessee should have purchased/constructed "a residential house".



For any suggestions & Queries

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