

NEWS LETTER

**UPDATES,
JANUARY, 2013**

POC CONNECT



Contents

- ⌘ Corporate News
- ⌘ Tax News
- ⌘ Circulars, Notifications & Press Releases
- ⌘ Tax Case Laws
- ⌘ Corporate Case Laws



Corporate News

WWW.WALLCOO.COM



Companies can merge with foreign firms via IDRs; RBI to issue norms

The government has allowed Indian companies to merge with firms overseas through the issue of Indian Depository Receipts (IDRs) and RBI has been asked to issue detailed guidelines on the process whereby the shareholders of the merging company can be paid in cash or in IDRs or partly in cash or partly in IDRs.

No woman director in half of Nifty firms

24 of the top-50 listed firms that form the Nifty index do not have a single woman director, according to an analysis of board composition by Stakeholders Empowerment Services (SES). Clause 149 (1) of the new Companies Bill proposes that at least one woman director should be on the board of companies.

SFIO alone to probe economic offences

Companies Bill will make SFIO the leading probe agency for economic offences, streamlining inquiries into corporate irregularities and catapulting the now toothless body to one with over-riding powers. The proposed legislation will bar any other investigating agency of the central or state government from proceeding with any inquiry with respect to violation of the Companies Act.



EU slaps \$1.92 billion cartel fine on Philips, LG, Samsung

Philips, LG Electronics, Samsung SDI and three others were fined a record 1.47 billion (\$1.92 billion) by EU antitrust regulators for fixing prices of TV and monitor cathode-ray tubes for nearly a decade. The European Commission slapped the biggest penalty, of 313.4 million, on Dutch-based Philips.

Corporates told to rectify any misleading addresses

MCA has asked corporate to rectify any mistake with regard to the address of their respective registered office by June next year. This initiative has been undertaken "to minimize instances of registration of bogus or misleading addresses as registered office of companies.

RBI Gets Power to Issue New Bank Licenses

The Lok Sabha has approved crucial Banking Laws (Amendment) Bill has brought about changes in three laws, giving the Reserve Bank of India more power to regulate banks, raising voting rights for investors in banks and allowing state-owned banks to raise capital through bonus and rights issues.

Tax News



Finance Bill amendment to roll back retrospective tax rule likely

The government is likely to approach Parliament next month to water down retrospective tax rules that damaged investor confidence, two finance ministry officials said on Monday, a move that may help settle Vodafone Group's long-running \$2-billion tax dispute.

Taking foreign tax credit set to become easier from 2013-14

The hassles in taking credit from the Income-Tax Department for the tax payments on their income in other countries is set to subside. The Central Board of Direct Taxes (CBDT) is drafting rules for foreign tax credit (FTC), to bring in clarity in its administration.

Cut lock-in period for tax saving deposits to 3 yrs: bankers

Bankers today demanded that lock-in period for tax saving deposits be brought down to three years from five years to channelize more funds into the banking sector. In a pre-budget consultation with Finance Minister P Chidambaram, bankers also sought permission to issue tax-free bonds like other financial institutions for raising funds and augmenting business.

SC admits I-T plea to tax Nasscom members' fees

Supreme Court has decided to look into the issue whether the annual subscription fees received by the Nasscom, a trust registered under Section 12A,, from its members for promotion of software industry in the country is taxable under Section 28 (III) of the Income Tax Act, 1961.

Service tax exemption for Aam Aadmi, Janashree Bima Yojana

The Centre has granted service tax exemption on the services of life insurance business provided under the Aam Aadmi Bima Yojana (AABY) and Janashree Bima Yojana (JBY), which covers death and disability insurance for the benefit of rural landless households.

FinMin to track excise, service tax defaulters through database

The Finance Ministry has decided to take help from the Financial Intelligence Unit-India (FIU-Ind) in tracking evasion of Central excise duty and service tax, mainly in cases where defaulters are not traceable. FIU-Ind was set up by the Government in 2004 as a national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions.

CIRCULARS, NOTIFICATIONS & PRESS RELEASES



MINISTRY OF CORPORATE AFFAIRS

General Circular No.42/2012 dated 21.12.2013

Filing of Form 68 for rectification of mistakes in Form 1, 1A, 44 are to be made electronically to ROC with a fee of Rs 1000. Rule 20G (2) permits filing of application in form 68 to be filed within 365 days from the date of approval of the aforesaid forms by the registrars concerned.

Notification no. G.S.R (e) dated 24.12.2012

- Amendment in Form 18 has been made by inserting the sub clause 4(b) whereby every company has now has to state that whether its Registered Office is Owned by Company /Owned by Director/taken on lease by company/ Owned by any other entity/person and not taken on lease by company.
- It shall come into effect from 25.12.2012.
- Proof of the registered office has now become a mandatory attachment in revised form.

Notification No. G.S.R (E) Dated 24.12.2012

This notification requires DIN Applicant to disclose details of his/her Current Occupation as well as Educational Qualification as per newly inserted Clause 4B in amended Form No. DIN-1. In addition to this,

additional verification by the Applicant with respect to material information and cancellation /deactivation of DIN No. is also required to be disclosed.

Income Tax

Circular no. 10/2012 [f. No. 282/22/2012-it (inv. V)], dated 31-12-2012

The Central Government amended the Income Tax Rules, 1962, to insert a new Rule 112F after the existing Rule 112, specifying the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. The aforesaid amendment was introduced with a view to reduce infructuous proceedings under the Income Tax Act, in cases where a search is conducted u/s 132 or requisition made u/s 132A and cash or other assets are seized during the election period, generally on a single warrant, and no evidence is available, or investigation required, for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made

TAX CASE LAWS



Case Law

KOTAK MAHINDRA BANK LTD. v. HINDUSTAN NATIONAL GLASS & IND. LTD. [2012] (Supreme Court)

'Willful defaults' even cover those cases where 'lender-borrower' relationship is missing among parties and banks

BRIEF FACTS: In the instant case the question which arose before the Supreme Court was as under:

"Whether the expression 'lender' used in para 2.1 of RBI's Master Circular dated 01.07.2008 on willful defaults should be restricted to a bank which had lent funds by way of loans and advances or it could be extended to cover a bank to which customer owes money under a derivative transaction"

HELD: Deliberating on the above issue the Supreme Court held that the purpose of RBI's Master Circular on willful defaults was to put in place a system to disseminate credit information pertaining to willful defaulters for cautioning banks and financial institutions so as to ensure that further bank finance is not made available to them. However, it is crystal clear from a bare reading of Para 2.6 of the Master Circular that non-funded facilities such as a guarantee is covered by the Master Circular and when a guarantee is invoked by a bank/financial institution but is not honored, the defaulting constituent of the bank is treated as a willful defaulter even though it may not have borrowed funds from the bank in the form of advances or loans.

On basis of above, it was held that 'willful defaults' of parties under a derivative transaction with a bank are covered by the Master Circular.

U.O.R. & ANR 2012(12) TMI 150 (Delhi High Court)

BRIEF FACTS: The petitioner has received payments not only for its service but also was reimbursed expenses incurred by it such as air travel, hotel stay, etc. It was paying service tax in respect of amounts received by it for services rendered to its clients. It was not paying any service tax in respect of the expenses incurred by it, which was reimbursed by the clients. The department raised the demand for service tax on the reimbursement considering the rule 5 of Service Tax (Determination of Value) Rules, 2006.

HELD: The Hon'ble Delhi High Court has struck down the provisions relating to service tax on reimbursement of expenses like travel, hotel stay etc and held that no service tax shall be charged on such reimbursement amount. It does not become the law of the land and the case law shall be applicable to only to the assessee and should be followed after it obtains finality from the Supreme Court. Further, the government of India may amend the Act retrospectively.

**NATIONAL THERMAL POWER CORPORATION. LTD. V. COMMISSIONER
OF INCOME-TAX [ITR 43-44/1998] Delhi High Court**

BRIEF FACTS: The Assessee let out machinery and equipment to the contractors and in turn the contractors used them in the construction of the projects. Some machinery and equipment relating to the construction of the projects were not actually put to use, though they were kept ready for use and the assessee claimed depreciation in respect of these unused machinery. However, this claim was disallowed by the Assessing Officer, whose action was confirmed by the CIT(Appeals) as well as by the Tribunal. Moreover, the Tribunal took the view that the equipment and machinery which was not actually put to use related to the power generation and were to be installed only after the construction of the projects was completed.

HELD: Court held that that the equipments were “capital construction equipments” which were kept ready for use. The machinery on which depreciation was claimed by the assessee were all related to the construction work such as crawler tractors, bulldozers, coal carriers, road rollers, drilling machines, etc. None of the items of machinery represents power generation equipment which was required to be installed only after the construction. Moreover, it does not stand to reason that the assessee would invest monies in acquiring power generation equipment long before the construction of the projects is completed. The court also stated that Capital construction equipments kept ready for use, but no actually used are entitled to depreciation.

15 Court made the decision in favour of Assessee.

CORPORATE CASE LAWS



ARUNACHALAM MUTHU V. NAFAN BV [Co. Appl 28/2012] HIGH COURT OF BOMBAY

BRIEF FACTS:- The appellants had filed C.P. No. 62 of 2009 before Western Bench of CLB at Mumbai. The matter reached the stage of final arguments. In the meanwhile, Member of the Western Region Bench who heard the Petition got transferred to the Southern Region Bench at Chennai. In view of the transfer of member, appellant filed Company Application before the Chairman, CLB, to transfer Company Petition No. 62 of 2009 to the same Member now posted at Southern Bench for hearing of matter or in the alternative to permit that member to preside over the Western Bench, for the limited purpose of completing the hearing of the matter on the dates assigned. The Application praying such direction was rejected by the Chairman against which the present appeal is preferred.

HELD: The appeal was dismissed

CONCLUSION: Intra Bench allocation of matters to Chairman i.e., transfer of a matter from one Member of Bench to another Member of a same Bench is permitted but not inter Bench transfer i.e. from one Member of Bench to a Member of another Bench. Thus it was held, Chairman has no power and/or jurisdiction to transfer a case from one Regional Bench to another under CLB Regulations.



H a p p y R e p u b l i c D a y

2 0 1 3

H a p p y R e p u b l i c D a y

For any suggestions & Queries

Contact:-

Punkaj Oswal & Co.

Chartered Accountants

7A LGF, NRI Complex

Mandakini GK-IV

New Delhi-110019

Ph: +91-11-26277030, 26270070

Fax: +91-11-26272011