

# NEWSLETTER

## POC Connect



Updates

March 2012, Edition

# Corporate News

[From 1<sup>st</sup> to 29<sup>th</sup> February, 2012]

## **Sesa Goa, Sterlite merger to cut Vedanta debt by 60%**

The holding company of Sesa Goa and Sterlite Industries, has decided to merge the two companies in a bid to cut debt and improve cash flows. The merger, to be executed through an all-share transaction swap share ratio of 3:5. Vedanta would transfer its 38.8 per cent holding in Cairn India, including a debt of \$5.9 billion (around Rs 30,000 crore), to the new company that would hold 58.9 per cent of Cairn India.

## **BSE SME exchange by March**

The Small and Medium Enterprises (SME) Exchange, promoted by the Bombay Stock Exchange (BSE), is expected to begin operation by March.

## **India, Europe to speed up talks on trade pact**

India and Europe have agreed to expedite discussions so that a Broad-Based Trade and Investment Agreement can be concluded at the earliest as discussed at the 12th India-EU Summit meeting.

## **Solvency, auditing guidelines for LLPs on the cards**

The government is set to introduce stringent solvency and auditing norms for LLPs bringing in more transparency and in order to satisfy the regulatory concerns raised by the Reserve Bank of India.

## **Telenor Appeals in Uninor Dispute**

Telenor ASA of Norway has approached Company Law Board to prevent its Indian partner from obstructing its attempt to run its Indian operations from a new venture after India's Supreme Court earlier this month canceled all telecommunications licenses granted in 2008 without auctions, saying the allocations were rigged and underpriced.

## **Kingfisher Airlines aims at equity infusion of \$500-600 million**

Kingfisher Airlines have planned to fully recapitalize by way of an equity infusion of between \$500 million and \$600 million through a mix of fresh funds as well as capital from the banks to tackle Rs. 6000 cr accumulated losses and outstanding debt of Rs.7075 cr

# Tax News

[From 1<sup>st</sup> to 29<sup>th</sup> February, 2012]

## **I-T relief: House panel may push for higher deduction of Rs 3.20 lakh**

The Standing Committee of Parliament on Finance is likely to recommend a deduction of Rs 3.20 lakh for income-tax relief. This limit would be made available for long-term savings, investment and expenditure on life insurance, health insurance and education for children.

## **Vodafone dials HC in Rs 8,500 crore tax case**

UK- based telecom giant Vodafone has moved the Bombay High Court challenging the jurisdiction of transfer pricing orders from the income tax department that proposes to add approximately Rs 8,500 crore rupees to its Indian income.

## **I-T department asks for over Rs 413 crore as tax from BCCI**

The income tax department has demanded over Rs 413 crore as tax from BCCI as per its income assessment for the year 2009-10 of which only Rs 41 crore have been paid.

## **Foreign bank deposits may attract wealth tax**

Foreign bank deposits, paintings, sculptures and expensive watches may come under the wealth tax net as part of the government's efforts to unearth black money and raise additional revenue. The proposal forms part of the Direct Taxes Code Bill which is being scrutinized by a Parliamentary Standing Committee.

## **Service tax is payable on flats allotted to the landowner**

When the landowner is given flats in lieu of cash, such flats become liable to service tax, says the Finance Ministry's clarification of February 10. The taxable value would be the amount for which similar flats have been booked by the other buyers on the date of such agreement.

## **States want CST raised to 4% till row is settled**

Few states have now come up with a new formula: raise the CST to the original 4% and retain it at that level till the Centre is in a position to compensate states for the revenue loss arising from the proposed phasing out of the tax.

# Circulars, Notifications and Press Releases

[From 1<sup>st</sup> to 29<sup>th</sup> February, 2012]

## Companies Act, 1956

General Circular No. 1/2012 dated 10.02.2012

### **Clarification regarding Filing of conflicting returns by contesting parties**

- The company is required to mandatorily file the attachment relating to cause of cessation alongwith Form 32 with the ROC concerned irrespective of the ground of cessation
- Any Director is aggrieved with his cessation in the company; he may file complaint in the Investor Complaint Form.
- On receipt of complaint, the ROC concerned will examine the complaint and mark the company as having 'management dispute'.

## SEBI

❖ *Circular No.CIR/CFD/DIL/1/2012 dated 8/02/2012*

### **Amendments to the Equity Listing Agreement**

a) Amendment to Clause 40A

- Listed company may also achieve the minimum level of public shareholding through

Institutional Placement Programme (IPP) in terms of Chapter VIII-A of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended.

b) Amendment to Clause 43 & 43A

- Disclosure of utilization of funds raised upon conversion/ exercise of warrants issued along with public or rights issue of specified securities

❖ Notification No.LAD-NRO/GN/2011-12/37/3689, dated 10-2-2012

**Enhancement of minimum limit for PMS to R25 lakh**

- SEBI raised the minimum investment amount of clients for portfolio management schemes to Rs. 25 lakh from the earlier Rs. 5 lakh
- The regulator said that the new rule will apply to new clients as well as fresh investments by existing clients. In a notification amending the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993

### **Sec 139 - Return of Income**

Notification no. 9/2012 [f. No.225/283/2011-ita(ii)], dated 17-2-2012

#### a) Applicability:-

- Individual whose total income for the relevant assessment year does not exceed 5 lakh rupees
- In respect of income chargeable to income-tax under "Salaries" and "Income from other sources" [*interest from a saving accounts not exceeding Rs.10000*].

#### b) Conditions:-

- Individual has reported his PAN No. to his employer
- Tax is deducted at source of employer
- Received a certificate of tax deduction in Form 16
- No claim of refund of taxes due
- Received salary from only one employer

*[Note: -Exemption from the requirement of furnishing a return of income tax shall not be available where a notice under section 142(1)/148/153A/153C of the Income-tax Act has been issued for filing a return of income for the relevant assessment year]*



## Corporate Case Laws

[Till 29<sup>th</sup> February, 2012]

### **Indian Oil Corp. Limited v. Southern Petrochemical Industries Corp. Limited** **[2012]111 SCl 538/17 [High Court of Madras]**

*Whether that after the winding up order is passed and during the course of its operation, all dispositions of properties of companies-in- liquidation are invalid under section 536 without considering nature of such dispositions?*

#### **BRIEF FACTS:-**

The Respondent Company had been purchasing naphtha and furnace oil from the applicant, (IOCL, a Govt. company u/s 617 of companies Act, 1956) The respondent had defaulted in making payments towards supply of naphtha and furnace oil. As a result the applicant initiated winding up proceedings against the respondent. Subsequently the respondent had shut down its urea plant. During the Pendency of the winding up proceedings an MoU was entered into between both the parties to effect that applicant would resume its

supply so that respondent could restart its urea unit and make all payments towards future & past suppliers. Respondent which was under orders of winding up was therefore, to make substantial payments to applicant in pursuance of MoU which was hit by Section 536(2). Applicant therefore filed instant application u/s 536(2) as a matter of abundant caution in order to ensure validation of amounts which would be paid by respondent under MoU.

**HELD:-**

The application was allowed.

**CONCLUSION:-**

As the MoU between applicant and Respondent was entered into with due approval of secured creditors of respondent and same was not only in the public interest but also worked for the betterment of respondent & its creditors giving scope of revival to the Respondent company, disposition which were sought to be made during course of pendency of winding up proceedings is to be protected.

**Binay Kishore Prasad v. Union of India**  
**[2012] 111 SCL 438/17[High Court of Patna]**

*Whether in case of continuing offence as mentioned in section 162, provisions of section 468 of Code of Criminal Procedure, 1973 do not apply?*

**BRIEF FACTS:-**

The Registrar of Companies filed a complaint on 04/07/2007 against five persons including the company & its Board of Directors for an offence punishable under section 162(1) on account of default of submission of Annual Return in pursuance of section 159 for the period 31-03-1992 to 31-03-2006 as a continuing offence. The petitioners challenged their prosecution contending that it was hit by section 468 of the Code of Criminal Procedure, 1973. The aforesaid event has to be guided by another section which commands the conduction of general meeting as provided U/s 166. Section 162 prescribes for the penal action by the way of the fine charged on every day during which the default continues till the day of offence. The petitioners have not challenged the period for which they have been found at default by not filing annual general meeting return.

**HELD:-**

**The petition was dismissed.**

**CONCLUSION:-**

**In the case of continuing offence as mentioned in Section 162, the provisions of Section 468 of Code of Criminal Procedure, do not apply. Because of the fact that it happened to be continuing offence which prescribed only fine as a result of which Section 468 of Code of Criminal procedure is not applicable. The case is not fit for invoking extraordinary power as governed under Section 482 of the Code of Criminal Procedure.**

## Tax Case Laws

[Till 29<sup>th</sup> February, 2012]

### **Arun Shungloo Trust vs. CIT ITA No.116/2011** **(Delhi High Court)**

*Whether in case of Transfer by gift, will, trust, etc, indexed cost is to be determined with reference to holding by previous owner*

#### **BREIF FACTS:-**

The settlor acquired property before 01/04/1981 and he settled in on trust on 5.1.1996. The assessee-trust sold the property and computed the indexed cost of acquisition on the basis that it “held” the property from the time the settlor had held it. The AO accepted that the settlor’s cost of acquisition had to be treated as the assessee’s cost of acquisition but held that the settlor’s period of holding could not be treated as the assessee’s period of holding. This was upheld by the Tribunal. On appeal by the assessee to the High Court,

#### **HELD:-**

Appeal was allowed.

## CONCLUSION:-

It was held that department's views in a cases where section 49 applies, the holding of the predecessor has to be accounted for the purpose of computing the cost of acquisition/cost of improvement and indexed cost of improvement but not for the indexed cost of acquisition will result in absurdities and the same cannot be intention behind the enactment of section 49 and the Explanation to s. 48. There is no reason why the legislature would want to deny or deprive an assessee the benefit of the previous holding for computing "indexed cost of acquisition" while allowing the said benefit for computing "indexed cost of improvement". The benefit of indexed cost of inflation is given to ensure that the taxpayer pays capital gain tax on the "real" or actual "gain" and not on the increase in the capital value of the property due to inflation.

## Cases:-

(CIT v. Manjula J. Shah 16 Taxman 42 (Bom) followed.

**Girnar Investment Ltd vs. CIT**  
**WP(C) No.5750/2010 (Delhi High Court)**

*Whether in case the original demand is not fully paid, interest to be payable even for period when demand was not in existence?*

**BRIEF FACTS:-**

The AO passed an assessment order raising demand of Rs. 21.24 lakhs, out of which Rs. 10.50 lakhs was paid by the assessee and the balance of Rs. 10.94 was stayed. On 20.5.1998, the CIT (A) allowed the appeal of the assessee and no demand remained payable by the assessee. The AO refunded the taxes paid by the assessee. Subsequently, the Tribunal reversed the CIT (A). The AO gave effect to the Tribunal's order on 30.7.2004 and charged interest u/s 220(2) for the entire period. The assessee filed a Writ Petition claiming that it was not liable to pay interest for the period from 20.5.1998 to 30.7.2004 (6y 3M) when the CIT(A)'s order was operative and no sum was due from it.

**HELD:-**

Writ Petition was dismissed.

## **CONCLUSION:-**

**S. 220(2) provides for levy of interest if the demand is not paid within 30 days of the service of notice u/s 156. This is a case where the assessee pays up the entire demand raised pursuant to the assessment order within the period specified in s. 156, wins in appeal and the amount is refunded and subsequently loses in further appeal and has to repay the taxes. In such a case, as the assessee is not in default in the first instance, no interest u/s 220(2) is payable for the period when the favourable verdict of the appellate authority was operative. However, if the assessee has not paid up the entire tax within the specified period, it is liable to pay interest u/s 220(2) from that date on the unpaid amount and any variation in the amount of the demand favourable to the assessee which was directed by any of the appellate authorities in the interregnum has no effect on the liability of the assessee to pay the interest.**

## **Cases:-**

**(Vikrant Tyres Ltd 247 ITR 821(SC), S.M.S. Schloemann Siemag 250 ITR 97 (AP)(FB) distinguished; New United Construction Co 270 ITR 224 (Jhar) not followed)**





***For any suggestions & Queries***

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