



POC Connect

NEWSLETTER

Updates

November, 2011 Edition

Corporate News

[From 1st to 31st October, 2011]

Firms get govt. breather on forex earnings

MCA has given Indian firms another year to spread their liabilities on account of foreign exchange borrowings accruing from fluctuations in foreign exchange, or forex, rates by giving more time to amortize such liabilities.

SAT orders Sahara to refund Rs 24,029 cr

SAT today directed two Sahara group firms to refund a sum of Rs 24,029 crore to 29.6 million investors who had subscribed to its optionally fully convertible debentures (OFCD) within six weeks

SEBI revises bidding norms for FIIs in infra bonds

SEBI lowered the minimum bidding and allocation amounts for such investors whereby no single FII shall be allocated more than Rs 2,000 crore of the investment limit against the existing Rs 10,000 crore. The market regulator has also reduced the minimum bid size to Rs 50 crore from the existing Rs 250 crore.

Saudi Arabia may open stock market to foreign investors

Saudi Arabia's Capital Market Authority is in discussions with international banks to open the country's stock exchange to foreign investors by first quarter of 2012. Foreign, non-Persian Gulf investors currently can't directly invest in Saudi shares.

Google may finance an offer to acquire Yahoo!

Google Inc is considering providing financing for an acquisition of Yahoo! Inc by another company or a group of bidders, according to a person who has been briefed on the matter.

Companies law set to mandate 2% CSR spend

MCA, which is finalizing the new Companies Bill, has accepted a Parliamentary Standing Committee's recommendation on the issue that companies with a turnover of Rs 1,000 crore or net profit of Rs 5 crore or more earmark 2% of their net profit for the preceding three years on CSR.

Tax News

[1st to 31st October, 2011]

I-T dept to make names of defaulters owing over Rs 10cr public

The Income Tax department has decided to publish the names of defaulters who owe more than Rs 10 crore and has decided to send show cause notices to such assesseees, who have reported "no assets/inadequate assets for recovery", by the end of this month, asking why their names should not be published and put in the public domain.

SC notice to I-T dept on Bharti Cellular's plea

The Supreme Court has issued a notice to the income-tax department on telecom services provider Bharti Cellular's plea challenging the department's view that the company was liable to deduct TDS in respect of discounts paid to its franchisees on SIM cards and recharge vouchers.

Tax benefit on LTA can be claimed twice in four years

An employee can claim tax benefit under Section 10(5) of the Income-Tax Act, 1961, for travel costs commonly known as leave travel allowance (LTA) exemption twice in a block of four calendar years. The current block of four years is 2010-2013.

India, Philippines to Revise DTA

There are on-going negotiations for a revision of the existing double taxation agreement (DTA) between India and the Philippines citing that there is a need for a legal framework for the exchange of information between the two countries relating to banking and tax-related matters.

S.K.Goel Takes Over As Chairman, Central Board Of Excise And Customs

Shri. S.K.Goel (IRS:1975) today took charge as the Chairman, Central Board of Excise & Customs (CBEC) on 31st October, 2011. He took charge from Shri S.Majumdar who demitted the office on his superannuation.

Circulars, Notifications and Press Releases

[From 1st to 31st October, 2011]

COMPANY LAW

Circular No.17/165/2011-CL-V dated 10/10/2011

Registration of Co's/LLP's which have one of their objectives to do business of architect

The registration of Companies or LLP where one of the objects is to carry on the business of architect will not be proceeded as MCA has received various representations regarding the contravention of section 36 and 37 of the Architects Act, 1972 whereby it is mandatory to register with Council of Architecture.

General Circular No. 65/2011 dated 04/10/2011

Extension of Company Law Settlement Scheme

The Company Law Settlement scheme for levy of subsidized additional fees introduced vide Circular 59/2011 dated 05/08/2011 has been extended till 15th December, 2011.

INCOME TAX

Circular No 8/2011 dated 14.10.2011

Tax deduction at source on the deposits in banks during the pendency of litigation of claim/compensation

Where one or more than one litigant is directed by the order of court that a specified amount be deposited in the bank directly or through the court. The bank shall in accordance with the provisions of the Act, deduct tax at source on the interest accruing on the above mentioned deposit(s) as per existing procedure and at the rates in force. The certificate of deduction of tax shall be issued by the bank in the name of 'the depositor'.

However, The above procedure shall not apply to:

- (a) any deposit in the bank held or dealt by the court or any other person appointed by the court in the capacity of being an administrator or receiver or any authority of similar nature;
- (b) any deposit which has not been made by any specific depositor but has arisen due to attachment made by the Court; or
- (c) the cases of "representative assessee" within the meaning of section 160 of the Act.

SERVICE TAX

Circular No. 147/16/2011 – Service Tax

Levy of service tax on various service providers engaged / associated with such construction work

If the main infrastructure projects of execution of works contract in respect of roads, airports, railways, transport terminals, bridges tunnels and dams, is sub-divided into several sub-projects and each such sub-project is assigned by the main contractor to the various sub-contractors. In such cases, if the sub-contractors are providing works contract service to the main contractor for completion of the main contract, then service tax is not leviable on the works contract service provided by such sub-contractor.

Corporate Case Laws

[Till 31st October, 2011]

Prashanthi Cashew(P) Ltd. V.Official liquidator (in liquidation)Company Appeal No.24 of 2011

Whether interest of relevant parties are to be considered while issue of notice for auction of property of company -in liquidation?

BRIEF FACTS:-

The Court had passed order on 18/03/2011 permitting the official liquidator to take steps for the sale of the certain immovable properties belonging to the company -in-liquidation .The official liquidator published notice on 23/03/2011 and sale was conducted on 31/03/2011.The Appellant auction purchaser bid the property at an amount of Rs.8,80,05,001. The ex-managing director raised objection that the sale was made in the haste giving notice of only 8 days and opposed the request for confirmation of sale. The Company Judge refused to confirm the sale. The auction-purchaser preferred appeal against this order.

HELD:-

Appeal was dismissed.

REASON:-

The company judge was correct in refusing to confirm the sale having regard to the interest of the relevant parties as aforesaid time period of eight days was too short. A fifteen days notice is warranted as per the provisions of CPC as applicable through rule 6 of Companies (Court) Rule, 1959. Accordingly the appeal was dismissed.

Tax Case Laws

[Till 30th Sept, 2011]

CIT vs. Mohair Investment & Trading Co (Delhi High Court)

S. 275(1)(a) Penalty limitation period not curbed by Proviso

BRIEF FACTS:-

The Assessee Company operating in the business of securities filed its return of income on 29.10.2001 declaring income of Rs. 3,84,75,860/- for the Assessment year 2001-02 [dividend income was of Rs. 3,11,85,522/-] claiming exemption of an expenditure of Rs. 4,15,86,591/- being interest on loans raised for acquiring shares of various companies. AO vide assessment order dated 28.02.2003 made a disallowance of Rs. 3,07,77,285/- and initiated penalty proceedings under Section 271(1)(c) of the Act on premise that as per Section 14A and Section 115-O(5) of the Act, no deduction was allowable with respect to the expenditure incurred in relation to dividend income which was exempted from tax. On appeal, CIT(A) and ITAT confirmed the stand of the Assessing Officer vide order dated 23.12.2005 and 11.08.2008 respectively.

On 26.09.2009 penalty of Rs.1,49,38,148/- was levied on the ground that the Assessee had furnished incorrect particulars of his income which was confirmed by the CIT(A) vide order dated 12.10.2009. Consequently ITAT vide order dated 30.04.2011, quashed the penalty order imposed on the Assessee only on the ground that it was

imposed beyond the period of limitation under Section 275(1) (a) of the Act. Therefore present appeal was made before High Court on the impugned order.

HELD:-

The Appeal was allowed by remitting back the matter to Department

REASON:-

S. 275(1) (a) provides that no order imposing penalty shall be passed after the expiry of six months from the end of the month in which the quantum order of the CIT (A) or Tribunal is received. The Proviso to s. 275(1) (a), as inserted by the FA 2003, provides that if the CIT (A) passes the order on the quantum appeal on or after 1.6.2003, the order imposing penalty has to be passed before the expiry of one year from the end of the financial year in which the order of the CIT (A) is received . The Tribunal held that the effect of the Proviso was that one could only have regard to the order of the CIT (A) for determining limitation. The fact that an appeal was pending before the Tribunal was irrelevant. It accordingly held that the penalty order having been passed after 1 year of receipt of the CIT (A)'s order was barred by limitation. Therefore appeal was allowed and impugned order was set aside by remanding back matter to Department.

*Sending warmest Diwali
Wishes.....*

Punkaj Oswal & Co.
Chartered Accountants
***LGF-7A, NRI Complex, Mandakini, Greater
Kailash – IV
New Delhi-110019***
Ph: +91-11-26277030, 26270070
Fax: +91-11-26272011
Email: - pankajos@airtelmail.in
Website: - www.capoc.in