

NEWS LETTER

UPDATES 15th - 30th

January, 2011

HAPPY 62nd REPUBLIC DAY

Lets Salute the True Spirit of Freedom...

Index

- ❖ *Corporate News*
- ❖ *Tax News*
- ❖ *Notifications, Circulars*
and Press Releases
- ❖ *Corporate Case Law*
- ❖ *Tax Case Laws*

CORPORATE NEWS

[FROM 15TH TO 30TH JANUARY, 2011]

UK SINHA SET TO BE NEXT SEBI CHAIRMAN

The Prime Minister's Office (PMO) cleared the appointment of Shri. UK Sinha as the next chairman of India's market regulator, SEBI. He is currently the Chairman and Managing Director of Unit Trust of India (UTI) Asset Management Company. He succeeds Mr. CB Bhave, whose three-year term ends on February 17, 2011.

SATYAM FRAUD NOT AN ACCOUNTING FAILURE: ICAI

Amarjit Chopra, president, Institute of Chartered Accountants of India said that the Satyam scam was not an accounting or auditing failure, but one of corporate governance. ICAI had reportedly found two PriceWaterhouse auditors, S Gopalakrishnan and Talluri Srinivas guilty of professional misconduct in the Fraud.

RIL ALLOTS 1.6 LAKH SHARES UNDER ESOP

Corporate giant Reliance Industries allotted 1, 60,832 equity shares of Rs 10 each, on January 22, 2011 to its employees

under the Employees Stock Option Scheme (ESOP). RIL had earlier announced the allotment of 2.86 lakh shares on January 5 and in November 2010, 2.25 lakh shares to employees, while in October last year allotted 2.18 lakh shares under the ESOP scheme to its employees.

GVK BIDS \$2 BILLION FOR ASSETS OF AUSTRALIA'S HANCOCK COAL.

Hyderabad-based GVK Power & Infrastructure has submitted a preliminary bid for a controlling stake in a coal mine owned by Australian mining giant Hancock Coal for nearly \$2 billion.

SIEMENS LTD PROMOTER'S OPEN OFFER AT RS 930/SHARE

Industry and infrastructure solutions company Siemens Ltd today said that its German parent Siemens AG has made an open offer to buy 19.82 per cent equity in the company at Rs 930 per share. Following the announcement, shares of Siemens skyrocketed by 19.30 per cent to touch an early-high of Rs 867.95 on the Bombay Stock Exchange (BSE).

TAX NEWS

[FROM 15TH TO 30TH JANUARY, 2011]

DELAY IN INDO-SWISS TAX TREATY

India will have to wait for another nine months before it can lay its hands on information on Indian's holding accounts in Swiss banks. The Swiss Parliament is expected to complete the ratification by October after which the new tax treaty shall come into effect.

TAX ISSUE ON FOREIGN BANKS CONVERSION RESOLVED

Foreign banks converting their branches into wholly-owned subsidiaries will not be required to pay capital gains tax from the transfer of assets and properties during this procedure. RBI said in its discussion paper the provisions of Section 47(iv) of the Income-Tax Act, 1961, would be applicable to foreign banks converting their branches into subsidiaries.

I-T VERIFYING BOOKS OF RBI, AIRLINES FOR TDS

The I-T department has conducted a series of surveys at the office premises of local and foreign airlines to verify whether they have been deducting taxes (TDS) while paying passenger service fees to the Airports Authority of India (AAI). The total TDS amount due from these airlines is about 2,500 crore, according to an I-T official.

REVIEW OF TRANSFER PRICING REGULATIONS

The Finance Ministry and Director-General of Income-Tax (international taxation) set up a committee to look into the issue of revising the transfer pricing regulations which will submit its report by end March this year in order to upgrade transfer pricing provisions introduced in 2001.

INFOSYS TOLD TO PAY RS 400-CR TAX ON ONSHORE SALES

Tax authorities have asked India's second-largest software firm, Infosys Technologies, to shell out over Rs 400 crore. According to the order, deputation and technical manpower (DTM) contract for deputing software professional abroad is not an eligible activity for claiming deduction under sections 10A/10AA of the Income-Tax Act.

NOTIFICATIONS, CIRCULARS AND
PRESS RELEASES

[FROM 15TH TO 31ST JANUARY, 2011]

❖ ***COMPANIES ACT, 1956***

Notification No. S.O.107 (E) [Dated 19-1-2011]

***CONSTITUTION OF NATIONAL ADVISORY COMMITTEE
ON ACCOUNTING STANDARDS***

Central Government constituted National Advisory Committee on Accounting Standards to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under the Companies Act

❖ ***RESERVE BANK OF INDIA***

Notification No. RBI/2010-11/381 [Dated 20-1-2011]

***INTRUMENTS WITH STEP UP OPTION ISSUED BY
BANKS***

The banks have been permitted to issue capital instruments with a 'step-up' option regarding the following:-

- Innovative Perpetual Debt Instruments (IPDI)
- Perpetual Cumulative Preference Shares (PCPS), Redeemable Non-Cumulative Preference Shares (RNCPS) and Redeemable Cumulative Preference Shares (RCPS)
- Subordinated debt.

However, such instruments can be issued with only 'call option' as per existing rules.

❖ *SECURITIES AND EXCHANGE BOARD OF INDIA*

Circular No.CIR/IMD/FIIC/1/2011 [Dated 17/01/2011]

REPORTING OF OFFSHORE DERIVATIVE INSTRUMENTS (ODIS)/ PARTICIPATORY NOTES (PNS) ACTIVITY

The FIIs issuing ODIs/PNs shall be now be required to provide information about their ODI/PN activity and their underlying trade(s) activity in India in reports to be submitted by 10th of every month with a six month's lag along with relevant annexures as mentioned in Circular.

Along with this a Monthly Summary Report shall be submitted to SEBI by 7th of every month capturing the summary of the India ISIN-wise PN/ODI activity for the preceding month in the prescribed format.

❖ ***DIRECTORATE GENERAL OF AUDIT (SERVICE TAX)***

Service Tax Manual, 2010

FREQUENCY NORMS OF AUDIT FOR SERVICE TAX ASSESSEES

The Director General of Audit, New Delhi published Service Tax Audit Manual, 2010. As per these guidelines, tax payers whose annual service tax payment (including cash and CENVAT) was Rs.3 crore or more in the preceding financial year may be subjected to mandatory audit each year by using Computer Assisted Audit Program (CAAP) techniques. The frequency of audit for other taxpayers would be as per following norms:-

- i. Taxpayers with Service Tax payment above Rs.3 crores (Cash + CENVAT) (MANDATORY UNITS) – to be audited every year.

- ii. Taxpayers with Service Tax payment between Rs.1 crore and Rs.3 crores (Cash + CENVAT) – to be audited once every two years.
- iii. Taxpayers with Service Tax payment between Rs.25 lakhs and Rs.1 crore (Cash + CENVAT) – to be audited once every five years.
- iv. Taxpayers with Service Tax payment upto Rs.25 lakhs (Cash + CENVAT) – 2% of taxpayers to be audited every year.

CORPORATE CASE LAWS

[TILL 31ST JANUARY, 2011]

Whether replying to SCNs on merits amount to self incrimination prohibited u/art. 20(3) of the Constitution?

SATYAM COMPUTER SERVICES LIMITED VS. [SECURITIES AND EXCHANGE BOARD OF INDIA, 18 JAN 2011]

BREIF FACTS:-

Show cause notices were issued to the noticees, in the matter of Satyam Computer Services Limited .It was submitted that the proceedings by SEBI may be kept in abeyance till the conclusion of criminal trials as the rights of the noticees' available u/art. 20(3) of the Constitution would be violated and their defence in criminal proceedings would be prejudiced if they were to make any submission on merits of the matter raised in the SCNs before the conclusion of the criminal trials.

HELD:-

The present petition to pray stay on proceedings is dismissed.

REASON:-

There was no evidence that the present proceedings would seriously prejudice the defence of the noticees in criminal proceedings. Also, there was no evidence to indicate that the criminal charges involve complicated questions of law and fact. The present proceedings u/s. 11 and 11B of the SEBI Act cannot be equated with departmental proceedings. SEBI Act, which provides for simultaneous criminal and civil proceedings on the same facts, does not contemplate stay of the civil proceedings till the conclusion of the criminal proceedings. This is so because the remedial or preventive measures contemplated u/s. 11 and 11B cannot be postponed till the conclusion of related criminal trials. Further, staying the present proceeding till the conclusion of the criminal trials would unduly delay disposal and deprive investors of the relief envisaged u/ss. 11 and 11B of the SEBI Act.

Companies Act, 1956 – sections 433(e), 434 – winding up – non payment of dues against supplies made – facts establishing admitted debt – whether petition to be admitted?

**GUANGDONG FUWA ENGINEERING
MANUFACTURING CO LTD V. ANG AUTO LIMITED
[DEL]**

CP NO. 409 OF 2009

BRIEF FACTS:

This petition under Section 433(e) and 434 of the Companies Act, 1956 for the winding up of M/s ANG Auto Ltd. or the “respondent” has been filed by M/s Guangdong Fuwa Engineering Manufacturing Ltd. or the “petitioner” on the ground that an amount of USD 582,095.40 is due and payable by the respondent to the petitioner. The respondent stated that some of the goods supplied by the petitioner were not as per specifications however, made no mention of any defect in the goods earlier. The Respondent has acknowledged the debt amount due. Since the amount was not paid to the petitioner, the said petition was made.

HELD:-

The Petition was allowed.

REASON:-

The Court held that in Ordinary commercial prudence a party engaged in business transactions is required to be vigilant and prompt in its dealings, since, in the absence of the same, adverse conclusions can be legitimately drawn based on the conduct of that party. If the respondent was unsatisfied with the quality of the goods supplied by the petitioner, it would not have continued business dealings with the petitioner, as it has placed further orders and thereafter acknowledging its liability to the amount demanded. As, there is a clear acknowledgment of liability to make payments constituting an admission of debt by the respondent with regard to the amount claimed by the petitioner in the statement of account. The Court was of the view that as no genuine, bona fide dispute exists with regard to this debt, the petition is allowed.

TAX CASE LAWS

[TILL 31ST JANUARY, 2011]

Whether the Income Tax Appellate Tribunal is justified in not holding that the contract in question is not a composite one and, therefore, the assessee is not liable to pay tax in India in respect of offshore service?

DIRECTOR OF INCOME TAX, NEW DELHI vs. LG CABLE LTD.,

ITA No. 703/2009

BRIEF FACTS:-

LG Cable Ltd. was awarded two contracts on February 26, 2001 by the Power Grid Corporation of India Limited (“PGCIL”). The first was for onshore execution of the Fibre Optic Cabling System Package Project and second contract was for offshore supply of equipment and offshore services. During the financial year 2001-02, LGCL had set up a “project office” in India after obtaining requisite approval from the Reserve Bank of India. The return filed by the assessee showed a loss of ` 85, 69,828/- for the assessment

year 2002-03 and was only in respect of the onshore contract and contended that income from the offshore supply was not taxable in India. The Assessing Officer did not accept the claim holding that the income arising from the off-shore contract was taxable. The aggrieved assessee appealed to CIT(A) which held that held that the income from the offshore sale of goods could be deemed to be accrued to assessee in India and was taxable in India in terms of Section 9(1)(i) of the Act as both the contracts were composite in nature. The assessee preferred a second appeal before the Appellate Tribunal which held that the income off -shore contract was not taxable in the hands of the Assessee under Section 234B of the Act. The Department aggrieved filed the appeal in the High Court.

HELD:-

The Appeal filed by the Department is dismissed.

REASON:-

In the instant case there are two separate contracts i.e. offshore supply and the onshore services contract and the consideration for them are separate and distinct from each other. There were no operation qua the agreement for supply of equipment, which was carried out in India, and therefore, no income could be deemed to have accrued or arisen in India whether directly or indirectly or through any business

connection in India. Therefore, no tax is leviable on the income arising out of the offshore contract as long as tile passes outside country and payments are made in foreign exchange.

Whether Intangible Assets are liable for Depreciation?

**COMMISSIONER OF INCOME TAX –
IV vs. HINDUSTAN COCA COLA BEVERAGES PVT.
Ltd.**

ITA Nos.1391/2010, 1394/2010 & 1396/2010

BRIEF FACTS:-

The respondent or the assessee is a limited company engaged in manufacturing and trading of non-alcoholic beverages. The assessee filed its return of income on 2.12.2003 declaring loss for the relevant assessment year under Section 143(3) of the Act and the assessment was completed and loss was determined at Rs.2,82,90,29,838/- and the assessing officer had allowed the depreciation on goodwill as claimed in the return. However, the Commissioner of Income Tax noticed that the depreciation on goodwill which was accepted by the assessing officer was not an intangible asset and set aside the order of AO. The appeal made to the Tribunal was allowed in favour of the Assessee and order

passed by the Commissioner was dislodged. The appeal was filed by the Department.

HELD:-

The Appeal filed by the Department was dismissed.

REASON:-

The tribunal has treated the same to be valuable commercial asset similar to other intangibles mentioned in the definition of the block of assets and, hence, eligible to depreciation. The meaning of business or commercial rights of similar nature has to be understood in the backdrop of Section 32(1) (ii) of the Act. Therefore the depreciation allowed on the Goodwill by the tribunal is justified.

Whether the interest paid on borrowed funds can be allowed on the interest earned from investment and be allowed under the provisions of Section 57 (iii) of the Act.

COMMISSIONER OF INCOME-TAX, Vs. M/S TAJ INTERNATIONAL JEWELLERS

ITA NO. 985 OF 2010

BREIF FACTS:-

The assessee is in the business of export of jewellery. The AO found that the assessee had taken a huge amount as loan on which interest was paid and had converted the said loans in

the FDRs and interest was received on the said FDRs. The assessee had shown the interest earned on FDRs as „income from other sources“ but the interest which was paid by the assessee to the bank on the loans was reduced from the interest earned on the FDRs. The AO disallowed the interest paid by the assessee to the banks on the borrowed amount on the ground that the loan was borrowed for business purpose and interest paid thereon should not be netted against the interest earned on the FDRs but should be allowed as deduction while computing the income from the head of „income from business“. The assessee filed an appeal against this order before the CIT (A) which deleted the addition and allowed the deduction of interest paid by the assessee to the bank on the borrowed funds under Section 57 (iii) of the Income-Tax Act. This order of the CIT (A) has been affirmed by the Tribunal.

HELD:-

The Appeal filed by the Department was dismissed.

REASON:-

The interest paid had to be allowed under the provisions of Section 57 (iii) of the Act as the amount was borrowed for making and earning income, taking advantage of the EXIM policy of the Government of India as well as lower LIBOR

interest rate and the entire money was borrowed with the sole purpose of converting the same into FDRs .Therefore there was a clear nexus between the interest earned on the FDRs and the interest paid on loans utilized for purchase of FDRs.

Whether the appellant, who is a licensee, could be held liable for payment of service tax when actually the service provided by them could and should be said to be provided by the Airport Authority of India (AAI)?

**P.C. PAULOSE, M/S. SPARKWAY ENTERPRISES
APPELLANT vs. COMMNR. OF CENTRAL EXCISE &
CUSTOMS**

(Case No: Civil Appeal No(s). 483 of 2011)

BRIEF FACTS:-

A license agreement entered into between AAI and the appellant by which the appellant was entrusted with the responsibility of collecting airport admission ticket charges on behalf of AAI Limited at Karipur Airport, Calicut. The adjudicating authority confirmed the demand of service tax of Rs. 1, 64,106/- and education cess of Rs. 3,282/- with interest upon the appellant. However, the Tribunal held that the appellant is only a collecting agent and therefore the

liability to pay the service tax rest on AAI which is the actual service provider. The High Court gave direction to the original authority to verify whether AAI has paid service tax on the admission tickets during the relevant period and otherwise, service tax would be recovered from the appellant as per the provisions of the Act. Appeal was filed against the order.

HELD:-

The appeal was dismissed.

REASON:-

The appellant deposits a license fees of Rs.2,66,797/- per month to AAI but it collects the required fees from the users of the facility and provide all facilities to such customers. Therefore, Hon'ble Supreme Court held that the appellant being a person authorized by AAI to provide service in express terms and conditions, becomes liable to pay such tax in terms of the operation of Section 65 Clause 105 (zzm) of the Finance Act, 1994 as it was an authorized person to provide taxable service and collect the admission ticket charges on a contract basis.

REPUBLIC DAY OF INDIA 26TH JANUARY

The constitution of India and the transition of India from a British Dominion to a republic on January 26, 1950.

Pankaj Oswal & Co.

Chartered Accountants

LGF-54,

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