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PROFESSIONAL VERSION

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My dear friends,

With this issue of the e-Bulletin on Finance we have entered the 3rd year. I am very happy to get your feedback all through. Should you have any suggestions/comments, please mail to me.

With regards.

Yours sincerely,
R.Satyanarayana

Quote for the month: Winners can sustain their success, if they recognize others role in their success

INCOME TAX

- **Finance Act 2008:** CBDT has issued an explanatory note on Finance Act 2008 vide F.No.142/09/2000-TPL dated 27th March 2009
- **Form 3CD Tax Audit:** Amendments have been made to Form 3CD by incorporating the interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 vide F.No.149/2008/TPL dated 13th April, 2009 and CBDT notification No.36/2009 dated 13th April, 2009
- **Depreciation on commercial vehicle:** New commercial vehicle which is acquired on or after 1st day of Jan, 2009 but before 1st day of Oct, 2009 and put to use before 1st day of Oct, 2009 for the purpose of business or profession will be eligible for depreciation at the rate of 50% vide CBDT Notification 37/2009 (F.No.142/01/2009-TPL) dated 21.4.2009
- **PF investments:** Government notified that the investment pattern to be complied by PF trusts – invest upto 55% in Govt.Securities and units of MF which invest in Govt. securities, 40% in prescribed ebt securities and time deposits, 5% in money market instruments and 15% in derivatives of companies available on BSE/NSE and equity linked schemes of regulated MF. There are certain restrictions and conditions prescribed for each individual limit aforesaid vide CBDT notification No.24/2009 dated 12th March, 2009.
- **TDS/TCS challan:** New form 17 (Challan) for payment of TDS/TCS is applicable only in respect of TDS/TCS on or after 1.4.09 and for earlier periods the old challan No.281 to be used even for deposits made after 31st March, 2009
- **Transfer pricing TMNN Method:** Income Tax Appellate Tribunal, Mumbai rejected the appellant's approach of overall Transactional Net Margin Method (TNMM) for justification of arm's length price of import of raw materials from Associated Enterprise (AE) and also rejected the adoption of Comparable Uncontrolled Price Method (CUP) by the revenue for this purpose and remanded the case back to the assessing officer for fresh adjudication-vide ITAT Mumbai in the case of UCB Pvt. Ltd 2009-TIOL-184-MUM.

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- **Transfer pricing:** TP provisions to be invoked only when there is evidence to suggest that the business arrangements were made to avoid tax vide ITAT Delhi in the case of Assistant Commissioner of Income Tax Vs SDRCL India Pvt. Ltd.
- **TDS/TCS payments:** In respect of TDS/TCS payments made upto 31st March, 2009 shall continue to be deposited in challan form No.281 even after 31.3.2009. However for TDS/TCS made after 1st April, 2009 shall be through electronically and using new Form 17 prescribed vide CBDT Notification No.31/2009 dated 25th March,2009 vide press release of GOI.
- **Foreign exchange loss:** Supreme Court ruled that companies can claim deduction against tax liability on account of losses due to foreign exchange rate fluctuations vide decision of SC in the case of Revenue filed against 33 foreign & domestic companies.
- **Corporate membership fees:** Corporate membership fee is eligible for deduction under section 37 of the ITA vide Delhi High court in the case of CIT Vs Samtel Color Limited decided on 30th Jan 2009.
- **TDS and interest:** The assessee is not liable to pay interest under section 234B for default on the part of the deductor vide Uttaranchal High court in the case of CIT Vs Tide water marine international (2009) 309
- **Interest under Sec 234B & 234C:** Interest under sections 234B & 234C is not leviable in case of computation of income under provisions of section 115JA vide Mumbai High court decision in the case of Snowcem India Ltd Vs Deputy CIT (2009) 178 Taxman 478(BOM)
- **Depreciation:** Machinery installed but found defective amounts to use of machinery and hence depreciation is allowable vide Karnataka High court in the case of CIT Vs Chamundeshwari Sugar Ltd (2009) 309 ITR 326.
- **Deferred revenue expenditure:** The heavy expenses like for advertisement, exhibition, cultural programmes and sales promotions etc though accounted as deferred revenue expenditure in the books of account, IT act does not recognize concept of deferred revenue expenditure and the entire expenditure is allowable revenue expenditure for tax purpose ITAT Ahmedabad (SB) in the case of ACIT Vs Ashima Syntex Ltd (2009) 18 DTR 91
- **Penalty:** Additions/disallowances made in quantum proceedings do not automatically lead to imposition of penalty under the provisions of the ITA as decided by Mumbai Tribunal in the case of VIP Industries.
- **Keyman insurance policy:** The premium paid by firm in respect of policy on lives of partners is an allowable deduction vide ITAT Mumbai in the case of ITO Vs Modi Motors ITA No.6900(Mum) of 2006.
- **Deduction under section 80IB:** Income from DEPB and drawback are eligible for deduction vide ITAT Jaipur Bench in the case of ACIT Vs Podar Associates ITA No.579/JP/2008
- **Depreciation on non-compete fees:** Depreciation is admissible on non-compete fees paid by the assessee being intangible asset vide ITAT Chennai in the case of ITO Vs medicor Technologies India Ltd ITA No.2328/Mds/2007

- **Stamp duty:** sale consideration as per sale deed if accepted by stamp valuation authority section 50C is not applicable and hence no question of replacing the value adopted by stamp valuation authority by valuation arrived by DVO ITAT Asr in the case of Punjab Poly Jute Cor Vs ACIT 2009 19 DTR 65

CENTRAL EXCISE

- **Valuation for Excise duty levy:** The Supreme court has held that freight and insurance charges are not to be taken into account in determining the value of goods for imposing excise duty vide judgment of SC in the case of Central Excise department's Vs Accurate meters Ltd.,
- **Interest-price escalation:** Interest is not payable on price escalation of goods cleared before vide Punjab & Haryana High court decision in the case of CCE Panchkula Vs Polyplastics 2009 (236) ELT 210
- **Interest on rebate:** Department has to pay interest for delayed payment of rebate unless the delay is on account of rebate claim being incomplete vide CESTAT Ahmedabad in the case of CCEC Surat Vs Nemlaxmi books (India) P Ltd 2209 (236) ELT 260
- **Interest on cenvat:** Interest is payable by the department on delayed refund of cenvat credit on exports unless the delay is due to incomplete application for refund vide CESTAT Ahmedabad in the case of Banyan Chemicals Ltd Vs CCE Vadodara-1 2009 (236) ELT 298
- **MRP Valuation:** Not applicable for semi-finished goods vide CESTAT Bangalore in the case of RCC(Sales) Pvt. Ltd Vs CCCE Hyerabad 2009 (236) ELT 360.
- **COD issue:** No coercive action from PSUs when matter is pending with High powered committee for clearance of COD vide CESTAT Ahmedabad in the case of GAIL India Ltd Vs CCEC Vadodara 2009 (235) ELT 846
- **CERA officers:** CERA officers are not empowered to visit factories of excise assesses vide ELT 235 part 4 page A115
- **No excise duty:** on furniture permanently fixed to wall vide CESAT Chennai in the case of Automotive Coaches & Components Ltd Vs CCE Chennai 2009 (235) ELT 864
- **Interest:** Interest is not payable on subsequent increase in price on account of escalation clause Gujarat High court in the case of CCE Vs Chloritech Industries 2009(235) ELT 17

CUSTOMS LAW

- **Customs cargo handling regulations** notified vide CBEC notification No.26/2009-Cus(N.T) dated 17.3.2009
- **CESTAT no jurisdiction:** CESTAT has no jurisdiction on short receipt of imported goods vide CESTAT Kolkata in the case of Swastik oil industries pvt. Ltd Vs Commissioner of Customs Kolkata vide 2009 (235) ELT 878

- **FRIC for exports:** For regular export to the customers, if FIRC's are issued on consolidated basis, self-certified statement by exporter along with FIRC shall be accepted

SERVICE TAX

- **Renting of property:** No service tax can be levied on renting of immovable property and if levied it is unconstitutional vide Delhi High court decision dated 18th April, 2009 while disposing the writ petitions filed in the case since the same is a state subject CUSTOMS
- **Doctrine of unjust enrichment:** The Doctrine of unjust enrichment is not applicable when price is reduced on issuance of credit and debit notes vide Rajasthan High court in the case of UOI Vs A.K.Spintex Ltd 2009 (234) ELT 41.
- **Demand set aside:** Show cause notice issued by the department does not indicate the category of taxable service under which department proposed to classify the services rendered and hence there is flaw in the issue of notice and demand set aside vide CESTAT Chennai in the case of Coromondal Fertilizers Ltd vs CCE 2209 (13) STR 542
- **Cenvat on mobile phones:** Mobile phones standing in the name of the company and used by employees in relation to work only and incidental use for personal work by employees cant be ground for denying cenvat credit thereon in view of CBEC circular No.97/8/2007-ST dated 23rd Aug, 2007 CESTAT Bangalore in the case of CCE Bangalore I Vs Conzerv Systems Pvt. Ltd 2009(13) STR 638

DGFT

- **DEPB & Incentive scheme without BRC:** Guidelines have been prescribed for furnishing BG/LUT to claim the DEPB & other incentive schemes without production of Bank Realization certificate vide DGFT policy circular NO.76(RE-2008)/2004-2009 dated 30-3-09

RESERVE BANK OF INDIA

- **High value clearances:** RBI has decided to phase out High Value Clearing completely with effect from 1st Nov, 2009 at Mumbai vide RBI circular dated 26th March, 2009.
- **New credit rating agencies:** RBI has given clearance for three more credit information companies –Equifax credit information services, Experian Credit Information Company and Highmark Credit Information services (Economic times dated 20th April, 2009)
- **RTGS transactions:** RBI has issued guidelines for operation of RTGS transactions and indicated the steps for standardization of inputs etc in the format vide RBI circular No.RBI/2008/09/426 dated 8th April, 2009
- **ATMs:** Banks allowed to open ATMs without requiring the permission of RBI vide Times of India dated 21st April 2009.

- **Due diligence report:** IBA releases ICSI guidance note on diligence report which covers all aspects of the format of diligence reporting prescribed by RBI and will serve as a reference for banks, borrowers and professionals in related issues.
- **Transfer of Equity shares:** Modified procedure has been prescribed for transfer of shares of Indian company to non-resident company and reporting there of now required to RBI within 60 days of receipt of payment by filing of form FC-TRS vide AD (Dir) Series Circular No.63 dated 22nd April, 2009

SALES TAX LAWS

- **CST RATE 2%:** The Central government has put on hold the reduction in the central sales tax (CST) rate from 2% to 1% from 1.4.2009 as per the CST phase out plan and allowed collection of CST at the rate of 2% for the time being.
- **CST applicable:** Taking delivery within state by purchasing dealer for whom stocks kept in the premises of purchase dealer by a selling dealer in other state constitute inter-state sale attracting levy of CST vide Supreme court judgment in the case of DCM Vs Commissioner of sales tax Delhi civil appeals Nos. 1323 to 1327 decided on 27th Feb, 2009
- **Cancellation of tickets:** Suo moto credit can be taken on cancellation of tickets vide P&H high court in the case of CCE Vs Janata Travels Pvt Ltd. 2209 (13) STR 488
- **Service tax paid by GTA:** If Service tax paid by GTA operators the same can not be demanded from recipients CESTAT Ahmedabad in the case of Navyug Alloys Pvt Ltd Vs CCEC 2009(13) STR 421.

COMPANY LAW

- **Mark to Market:** The National Advisory Committee on Accounting Standard (NACAS) a government appointed body has postponed the implementation of Accounting standard 11 (AS 11) to 1.4.2011 and this may result in capitalization of losses and providing deferred tax liability in the books of account. Further, companies can adopt the notification for deferment of AS 11 application retrospectively wef 2006.
- **Corporate governance code:** A separate corporate governance code for unlisted companies may be brought under the Companies Act 1956 to take care of the interest of the stakeholders in such companies vide report of committee on Financial sector assessment appointed by RBI (financial express dated 8th April 09)
- **Limited Liability Partnership:** Government has notified the Limited Liability Partnership Rules, 2009 vide notification No.G.S.R 229(E) dated 1st April, 2009.
- **Schedule VI:** Amendments have been made to Schedule VI (Sec 641) of the companies Act 1956 vide G.S.R. 226(E) dated 31st March, 2009.
- **Peer review of Audit:** The ICAI has said that from accounting periods commencing from 1st April, 2009, all listed companies would be audited by only those firms, that have been issued peer review certificate by the Peer Review Board of ICAI (Economic times dated 20th April, 2009)

- **Equity listing amendments:** SEBI issued equity amendments to equity listing agreement by reducing the notice period to stock exchange to 2 days about board meeting considering dividend declaration, listed companies to declare dividend per share only, additional format for disclosure of voting rights pattern and introduction of uniform procedure for dealing with unclaimed shares vide SEBI CFD/DIL/LA/2009/24/4 dated 24th April 2009.
- **Right shares:** Civil court can not sit in judgment over the commercial wisdom of Directors of a company if they have decided to issue further shares by way of right issue to dilute the shareholding of the company vide Calcutta High court in the cae of Hanuman Prasad Bagri Vs Bagree cereals (P) Ltd 2009 (90) SCL 209

MISCELLANEOUS

- **Blood donors:** In case anyone needs blood they can send SMS to "BLOOD<Needed Blood Group> and send SMS to 96000 97000 and a blood donor will call the person who sends SMS.
- **Stamp papers:** The stamp papers do not have any expiry period vide Supreme court judgment in the case of Thiruvengada Pillai Vs Navaneethgammal and Anr decided on 19th Feb, 2008.
- **Witness:** Relationship is not a factor to affect credibility of a witness vide section 3 of Evidence Act vide Supreme Court in the cae of Arumugam Vs Sate AIR 2009