

## RS compiles : e-BULLETIN ON FINANCE'

(Commenced in May 2007)

PROFESSIONAL VERSION

Knowledge multiplies through sharing

Vol. II

JUNE, 2009

Issue No.04

My dear friends,

Please go through the e-Bulletin and mail me your suggestions/comments if any.

Please **confirm receipt** of the e-Bulletin to my email address satyanarayana.yadav@rediffmail.com

Yours sincerely,

**R. Satyanarayana**

**Quote for the month:** Have friendship with equals, compassion for those in sorrow, joy in others & superiors and indifference and absence of ill will and anger for the wicked men. You will be peaceful and happy

**-by Swami Shivananda**

### INCOME TAX

- **Form 17:** CBDT extends the implementation of Form No.17 till 1<sup>st</sup> July, 2009 which was originally notified to be implemented from 1<sup>st</sup> April, 2009 and tax has to be deposited upto 30<sup>th</sup> June 2009 in old Form. vide press release by GOI CBDT No.402/92/2006-MC dated 11<sup>th</sup> May, 2009
- **Tax audit:** In form 3CD at sr.No.17A we need to indicate the amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act 2006 vide IT(10<sup>th</sup> Amendment) Rules 1962 CBDT Notification 36/2009 dated 13<sup>th</sup> April, 2009
- **IT Returns:** Government notified IT Return forms for AY 2009-10 and clarified certain issues connected therewith. The e-Return has to be furnished at <http://incometaxindiaefiling.gov.in>. If the return is filed electronically and under digital signature, the tax payer is not required to furnish the Form ITR-V to IT department. Further the ITR V shall be submitted to Income tax department-CPC Post Box No.-1, Electronic city post office, Bangalore-560100 Karnataka only vide Circular No.03/2009 dated 21<sup>st</sup> May, 2009.
- **TDS & TCS payment:** Government notified the information reporting system in respect of new TDS and TCS payments and for claiming TDS/TCS deduction Unique Transaction Number (UTN) allotted by the system will be the basis for allowing TDS/TCS claimed in the IT Returns-

vide Notification No. 858(E) dated 25<sup>th</sup> March, 2009 –Circular No.02/209 dated 21<sup>st</sup> May, 2009.

- **TDS default:** The maximum time limit available for initiating and completing the proceedings on account of failure to deduct /remit tax will be at par with the time limit available for assessment/re-assessment proceedings against the assessee vide ITAT Mumbai SB in the case of M/s Mahindra & Mahindra Vs DCIT.
- **Disallowance of expenditure:** No disallowance of expenditure can be made for not withholding tax when income is computed under special provisions and further reimbursement of expenses is not subject to withholding tax vide ITAT Chennai in the case of Cairn energy India Ltd Vs ACIT ITA Nos. 208-211 (Mds)/2006
- **OBAMA's tax proposals:** The proposed new tax proposals of President OBAMA if given to legal status would result in removing relaxations that currently allow businesses to deduct expenses on their overseas operations while paying taxes in the US and by closing foreign tax credit loopholes etc.
- **Trademarks:** Goodwill of a business can not be sold without the sale of business itself and transfer of trademark can not be regarded as sale of goodwill vide ITAT Bangalore in the case of Associated electronic and electrical industries Vs DCIT Bangalore
- **Warranty expenses:** Estimated expenditure towards Warranty charges is allowable under section 37(1) of the ITA vide Supreme court in the case of Rotork controls Vs CIT
- **Scholarship:** Scholarship/stipend received by a student for pursuing higher studies cannot be termed as salary vide ITAT Chandigarh in the case of Dr.Rahul Tugnait Vs ITO ITA NO.197/CHD/2008
- **TDS:** The contract for sale of goods will not be covered within the ambit of section 194C vide ITAT Mumbai in the case of Shemaroo video Pvt. Ltd. V ITO –ITA Nos 337 to 340/MUM/2007
- **TDS on salaries:** Expenditure incurred by Assesses company on transport facility given to employees from their residence to office and vice versa could not be treated as perquisite and hence would not attract TDS at source under section 192 of the ITA vide ITAT Mumbai in the case of Transworks Information Services ltd Vs ITO(TDS) 2009 29 SOT 543

- **Taxable receipts:** When an amount is received by the assessee towards its income generating assets, then it is a capital receipt, on the other hand, if the receipt is towards the loss of income and not the source of income, then it is of revenue nature attracting the liability to tax vide ITAT Mumbai in the case of BASF India Ltd Vs Additional, CIT ITA No.4287/MUM/2005
- **Bad debts:** It is not obligatory on the part of the assessee to prove that the debt written off is indeed a bad debt for the purpose of deduction vide ITAT Mumbai in the case of DI Vs M/s Oman International Bank SAOG.
- **Software expenses:** Amount spent on computer software is a revenue expense as there is nothing to show that the software used by the assessee was of enduring nature and will not become outdated in view of past changing technology vide P&H High court in the case of CIT Vs Varinder Agro Chemicals Ltd 309 ITR 272.
- **MAT:** Provision for bad and doubtful debts is not for meeting liability and cannot be added back in computing "book profits" under Section 115JA vide Supreme court in the case of CIT Vs HCL Comnet systems and services Ltd 2008 305 ITR 409
- **Fines are allowed:** Fine paid for belated payment of excise duty cannot be disallowed as P&H High court had held that though the payment was termed as fine, the payment was not in the nature of punishment, but was by way of compensation and therefore, the payment was deductible under section 37(1) of the IT Act 1961.
- **Website expenses:** The expenses incurred for development of company's web site are revenue in nature vide Delhi High court in the case of CIT Vs Indian Visit.com P. Ltd 2009 176 Taxman 164.
- **Depreciation on emergency spares:** Emergency spares specific to fixed assets are covered under 'put to use' and their cost is eligible for depreciation under section 32 of the IT Act vide Delhi High court in the case of CIT Vs Insilco Ltd (2009) 222 CTR 641.

### **CUSTOMS LAW**

- **Interest on warehoused goods:** Interest on warehoused goods is payable when they remain in a warehouse beyond the period specified under section 61 of the customs Act vide CBEC circular No.15/2009- Customs dated 12<sup>th</sup> May, 2009.

- **Anti dumping duty:** Imposition of anti-dumping duty on imports of Caustic soda, originating in or exported from, Indonesia and the European Union (excluding France) and Imported into India extended for another five years vide notification No.48/2009 dated 13<sup>th</sup> May, 2009 of Ministry of Finance (Department of Revenue)

### **SERVICE TAX**

- **Cenvat:** Service tax on deemed output service can be paid by utilizing cenvat credit on input services vide CESTAT Bangalore in the case of Commissioner of service tax Vs Arvind Fashions Ltd appeal Nos. ST/401 & 411 of 2007
- **No taxes in SEZ:** CBEC notified the unconditional exemption to services consumed within the SEZ without following the refund route thus dispensing with the requirement of first paying the tax by the service provider and then claiming the refund there of by the developer/unit. However the exemption by way of refund would be limited to situations only when taxable services provided to SEZ are consumed partially or wholly outside SEZ vide CBEC Notification No.15/2009- Service Tax dated 20.05.2009

### **SALES TAX LAWS**

- **New VAT rate to star hotels from 15<sup>th</sup> May, 09:** Three star hotels and above would have to pay 12.5% VAT with input tax deduction and others to collect VAT at 4% without input tax deduction vide TOI dated 4<sup>th</sup> May, 2009 under Maharashtra value added tax system.
- **Statutory forms :** The dealers can make applications manually (on CD) for statutory forms required for the period prior to 1.4.2008 upto 30.6.2009 vide Commissioner of Sales tax Maharashtra circular No.12T of 2009 dated 31.3.2009
- **Administrative relief:** The commissioner of sales tax Maharashtra had redelegated the powers to grant administrative relief to all the Addl. Commissioners of sales tax with the exception of powers of further redelegation vide circular No.14T of 2009 dated 18.4.2009
- **Refunds & Nil returns:** Dealers claiming refund in their returns and dealers filing NIL returns can also upload the e-returns within 10days from

the due date prescribed for filing the returns vide The commissioner of sales tax Maharashtra circular No.15T dated 21<sup>st</sup> April, 2009

- **Relaxation for e-Return:** The Commissioner of sales tax Maharashtra issued circular giving relaxation of uploading of e>Returns ending 31<sup>st</sup> March, 2009 upto 10<sup>th</sup> May, 2009 without any penalty vide circular No.16T of 2009 dated 30<sup>th</sup> April,2009.
- **e-Filing and e>Returns:** The Commissioner of sales tax Maharashtra issued circular giving solutions to the problems raised by different dealers on the topic vide circular No.17T of 2009 dated 20<sup>th</sup> April, 2009.
- **e-Payments etc:** Commissioner of sales tax Maharashtra issued circular giving clarifications on issues connected with mandatory filing of e>Returns and instructions to banks for acceptance of challans/returns not containing valid TINs etc vide circular No.18T of 2009 dated 11<sup>th</sup> May, 2009
- **Know about e-enrolment & e>Returns:** Maharashtra sales tax department had published a small booklet containing FAQ on all issued connected with e-enrolment & e-returns.

### **CENTRAL EXCISE**

- **Monitoring of pending Appeals:** CBEC prescribed a form calling for status of pending appeals with Commissioner (Appeals) and indicated that every commissioner should dispose minimum of 60 appeals in a month and send report of the pending appeals in the prescribed form vide CBEC circular No. 885/05/2009-CX dated 30<sup>th</sup> April, 2009.
- **Valuation:** Freight and insurance not includable when the sale is ex-factory vide CCE Vs Accurate Metes Ltd 2009 235ELT581(SC).
- **Scrutiny of ER1, ER2 and ER3 returns:** Manner of Scrutiny of ER1, ER2 and ER3 returns and returns submitted by Dealers by the proper officer has been notified by CBEC vide circular No.887/05-2009-CX dated 11<sup>th</sup> May, 2009
- **Invoice:** Invoice numbers had to be pre-printed and not hand written and failure to do so would result in disallowance of the CENVAT Credit vide HP high court in the case of CCE Vs Spectra Electronics Pvt Ltd. 2009 235ELT795

- **Cenvat on Plastic crates:** Cenvat credit is available on the plastic crates as capital goods and inputs vide Supreme court decision in the case of Collector Vs Rajasthan Chemical works 1991-55ELT444 and also CESTAT LB in the case of Banco Products India Ltd Vs CCE 2009-235ELT636.
- **Outward freight cenvat:** Outward freight is an input service when freight paid upto customer's doorstep where the contract is FOR destination vide P&H High court in the case of Ambuja Cement Vs UOI 2009-14-SRT-3
- **Fire accident:** Inputs issued for manufacture if destroyed in a fire accident there is no need to reverse the Cenvat credit vide CESTAT Ahmedabad in the case of Sabero organics Ltd Vs CCE 2009-TIOL-475

### **COMPANY LAW**

- **Mandatory cost accounting standards:** ICWAI has made six cost accounting standards (CAS) mandatory from 1<sup>st</sup> April, 2010 and these standards relate to classification of costs, capacity determination, overheads, cost of production for captive consumption, determination of average cost of transportation and material costs vide Business Standard dated 29<sup>th</sup> April, 2009
- **Form 8 Revision:** The form for creation or modification of charge has been revised by government vide notification GSR No.284(E) dated 24<sup>th</sup> April, 2009.
- **SEBI to pay peer review fees:** In an effort to build investor confidence and avoid recurrence of Satyam-like frauds, SEBI had announced a peer review of company accounts of companies in the 50-index Nifty and 30-index BSE and will pay auditors fees for the first year of peer review of accounts vide Financial express dated 15<sup>th</sup> May, 2009
- **Audit of foreign branches of PSUs:** As of now foreign branches of PSUs are not audited by CAG and hence in order to make books of account of PSUs more transparent ICAI had indicated that CAG should take-up the audit of foreign branches of PSUs too vide Economic Times dated 14<sup>th</sup> May, 2009.
- **AS 11:** FAQ has been issued on AS11 by ASB and the same has been notified by Ministry of corporate affairs vide G.S.R.225(E) dated 31<sup>st</sup> March, 2009

- **Retrieval of company property:** A company is entitled to invoke the provision of Sec 630 of the Companies Act so as to retrieve its property being withheld wrongfully by legal representatives of the employees vide Supreme court in the case of Gopika Chgandrabhushan Saran & Anr Vs M/s XLO India Ltd & Anr., SLP No.4685/2008dated 13/2/2009
- **Investors protection:** SEBI has notified the SEBI(Investor Protection and Education: Fund) Regulations 2009 on 19<sup>th</sup> May, 2009 vide Notification No. LAD-NRO/GN/2009-10/05/163525, dated 19-5-2009
- **LLP:** Provisions for conversion of partnership firms and companies into Limited Liability partnership (LLP) under the LLP Act 2008 comes into effect wef 1<sup>st</sup> April, 2009 vide notifications of Ministry of Corporate Affairs GOI S.O.1323 and 1334 both dated 22nd<sup>t</sup> May, 2009

### **DGFT**

- **Export obligation:** DGFT clarified that the export obligation period of 36 months is equally applicable to Duty Free Import Authorization schemes vide policy circular No.86(RE 2008) 2004-2009 dated 4<sup>th</sup> May, 2009.
- **Target plus scheme:** Duty scrip issued under Target plus scheme will be permitted to import only when such item has nexus with the export item and necessary endorsement to this effect would be made on such scrips too vide DGFT policy circular No.90(RE-2008)/2004-2009 dated 15<sup>th</sup> May, 2009

### **RESERVE BANK OF INDIA**

- **Corporate guarantee:** Indian companies can now give corporate guarantee in favour of the overseas lessor, for operating lease in respect of import of aircraft/aircraft engine/helicopter vide RBI's AP(DIR) circular No.62/2008-09-RB dated 20<sup>th</sup> April, 2009.
- **FDI:** Modified Reporting Mechanism had been notified for transfer of shares/preference shares/convertible debentures by way of sale vide RBI's AP(DIR) circular No.63/2008-09-RB dated 22.4.09
- **Buyback/Prepayment of Foreign Currency Convertible Bonds (FCCBs) :** RBI had decided to increase the amount permissible buyback of FCCBs, out of internal accruals from USD 50 million of the redemption value per company to USD 100 million subject to certain other conditions vide AP(DIR) Series circular No.65/2008-09-RB dated 28.4.2009

- **Loans against NR(E)RA & FCNR(B) account:** RBI had now decided to enhance the existing cap of Rs 20 lacks to Rs 100 lacs on loans against security of funds held in NR(E)RA & FCNR(B) deposits either to the depositors or third parties vide AP(DIR Series) circular No.66/2008-09RB dated 28.4.2009.

### **MISCELLANEOUS**

- **New pension scheme:** Government of India had opened another investment channel under new pension scheme for citizens for which contributions can be paid by opting citizens in the age group of 18 to 55 years. The applicant need to visit a point of presence (PoP) of the scheme and fill the form to join the new pension scheme vide The Business standard dated 2<sup>nd</sup> May, 2009
- **ICWAI enters MOU with IMA (USA):** The Institute of cost and works accountants of India entered into MOU with Institute of Management Accountants (IMA) USA. The MOU will enable recognition of the professional qualification of the respective Institutes. A member of ICWAI can get enrolled as a member of IMA USA and vice versa. Vide PIB 30<sup>th</sup> April, 2009.
- **Appellate Tribunal notified:** Central Government had notified establishment of competition appellate tribunal under the Competition Act 2002 vide Notification No. SO 1240(E) dated 15.5.2009
- **Copyright:** A joint owner of a copyright without the consent of the other joint owner cannot grant licence or interest in the copyright vide Bombay High court in the case of Angath Arts P. Ltd & Anr AIR 2009 Bom26.
- **Stamps validity period:** Supreme court had decided that the stamps should be used within a period of six months from the date of purchase vide SC decision in the case of Thiruvengalada Pilla Vs Navanee thammal & others writ petition (civil) No.290 of 2001 decided on 19<sup>th</sup> Feb, 2008
- **Entry & Operation of operation of Foreign Universities:** AICTE issued Regulations for Entry and Operation of Foreign Universities in India imparting technical education, 2005 have been notified vide notification dated 16<sup>th</sup> May, 2009