FINANCE BULLETIN

Knowledge multiplies through sharing

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EDITORIAL

Dear friends,

The decision of the CBDT that no scrutiny of IT returns of senior citizens whose taxable income is not exceeding Rs 10 lakhs in a year is a very welcome feature but IT department would like Post offices to deduct TDS on the interest payments on small savings which needs to be noted by all including sr. citizens

Companies are now allowed time to buy back FCCB upto 31st Mar, 2012. On the Cost audit front the notifications issued by the MCA whereby now product specific orders will no more be issued is a very good simplification and encouragement of cost audit. The mandatory downloading of Form 16A from TIN, to be issued by the corporate and banks would pave the way for reducing the TDS disputes of amounts shown in the return Vs what is recorded with the IT Department and this will reduce the problems to the assesses, is a very welcome features of this month's coverage. Mandatory digital sign on DIN by professionals, online access to PF accounts, extension of DEPB scheme upto 30th Sept,2011 and rating agencies to adopt common symbols are some more important coverages of this issue.

With regards

R. Satyanarayana

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QUOTES FOR THE MONTH

1. ***The essence of competitiveness is liberated when we make people believe that what they think and do is important-and then get out of their way while they do it -Jack Welch***
2. ***Men are going to have to learn to be managers in a world where the organization will come close to consisting of all chiefs and one Indian. The Indian, of course, is the computer -Thomas L Whisler***

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GENERAL

- **Scrutiny norms of IT Returns:** CBDT vide Press release dated 14.3.2011 has decided not to subject to scrutiny of small taxpayers being individuals and HUFs whose annual taxable income less than 10 lakhs before availing deduction under Chapter VIA and senior citizens whose age is 60 years and above, except when tax officers have credible information.
- **Tape recorded evidence:** Tape recorded conversation admissible in evidence vide Havovi Kersi Sethna Vs Kersi Gustad Sethna, 2011 Vol.113(1) Bom L.R.0479
- **Indian post introduces mobile money transfer services:** Indian Postal Department had introduced mobile money transfer services wef 3rd June,2011 and the sender needs to visit the Post office and obtain some unique PIN allotted by the P.O vide the TOI dated 4th June,2011
- **8% interest on PPFs closed:** CG clarified that 8% interest would be paid on PPFs of HUFs closed between May 2005 and 7th Dec 2010 vide The Economic Times dated 4th June, 2011.
- **Collection of statistics Rules 2011:** The Collection of Statistics Act, 2008 was enacted by the Parliament on 7th January 2009. It was brought into force on 11th June 2010. The Act repealed the Collection of Statistics Act, 1953. Rules under the Act, namely, the Collection of Statistics. Rules 2011 vide The Economic Times dated 10th June,2011
- **eWaste Management Rules:** Ministry of Forest and Environment notified the eWaste Management Rules vide S.O.1035(E) dated 12th May,2011.
- **Tribunal member not allowed:** Appointment of Member – A person who has completed ten years as a Member of Tribunal is ineligible to be re-appointed as Member even if he has not attained 65 years of age vide SC decision in the case of Shanker Raju V UOI
- **Post office interest taxable:** The government has decided to levy tax on the interest obtained on Post Office savings schemes from the current financial year. The CBDT circular stipulates that any interest earned beyond Rs 3,500 (in case of individual accounts) and Rs 7,000 (in case of joint accounts) will be taxable from the running fiscal vide TOI dated 17th June,2011.
- **Govt. modifies guidelines for filling Board level vacancies in PSUs:** CG had issued revised guidelines for filling Board level vacancies in PSUs vide PTI dated 26th June,2011.

LABOUR LAWS

- **Revision of Index of All India Industrial Production:** The committee of Secretaries (COS) approved the new base for index of All India Industrial Production on 10th June and the said new base year is 2004-05 vide The Economic Times dated 10th June,2011
- **PF account details on line:** wef 1st July,2011, one can access the PF account details on line as per the announcement of PF Asst commissioner vide TOI dated 9th June,2011.
- **Components of basic wages for PF:** The Hon'ble Divisional Bench of Madhya Pradesh High Court Bench at Gwalior has laid down a principle for treatment of certain allowances like Conveyance/Transportation allowance, Special Allowance etc. as component of

"Basic Wages" for the purpose of Provident Fund liabilities if the same are being paid uniformly, necessarily and ordinarily to all employees vide the decision given in the case of Montage Enterprises Pvt. Ltd versus Employees Provident Fund, Indore & one another

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RESERVE BANK OF INDIA

- **Prudential guidelines for restructuring of advances by banks:** RBI released revised guidelines for restructuring of advances by banks and indicated alternate options for computing fair value of advances. **I**t has been decided that the alternative option of computing diminution in the fair value of advances extended by small and rural branches on restructuring will remain applicable for another two years, i.e. till the financial year ending March 31, 2013. The position would be reviewed thereafter vide RBI/2010-11/561 BOD.BP.BC.No.99 /21.04.132/2010-11 dated 10th June,2011.
- **Processing charges for electronic payments:** RBI has issued circular indicating the revised processing charges to be levied by banks for electronic transfer of funds through NEFT/NECS/RECS/NCSvide **BI/2010-**11/559 DPSS (CO) EPPD No. /2649/ 04.03.01/2010-11, Dated- June 02, 2011
- **Foreign nationals collecting dues in India:** RBI had issued circular that banks can convert the balance into NRO in respect of foreign nationals who leave India and remit the amount to them vide AP(DIR) circular No. 70 dated 9th June,2011.
- **Opening of subsidiaries of NBFC abroad:** RBI notified that NBFCs cannot open subsidiaries abroad without taking RBI permission vide www.rbi.org
- **Overseas Direct Investment:** RBI had issued revised guidelines liberalizing and rationalizing the issue of Overseas Direct Investment In India vide AP(Dir) Circular No.73 dated 29th June,2011.
- **Buy back of FCCB:** RBI notified that the due date of FCCB buyback extended upto 31st March,2012 vide AD(Dir) Circular No.75 dated 30th june,2011.
- **Issue of equity shares under FDI:** RBI has issued guidelines for issue of equity shares under FDI vide AD(Dir) Circular No.74/2011 dated 30th June,2011.

ACCOUNTS & AUDIT

- **Cost Audit**: CG has notified the central excise chapter numbers of the industries covered for Cost Audit vide F.No.52/26/CAB-2010 dated 30th June,2011
- **IFRS Taxonomy:** The IFRS Foundation has published a set of 12 illustrative examples in XBRL for the IFRS Taxonomy vide www.iasb.org
- **FAQ on Cost Audit matters:** ICWAI has released FAQ on Companies (Cost(Accounting Record) Rules 2011 and FAQ on Companies(Cost Audit Report) Rules 2011 which can be downloaded from the website of the Institute www.icwai.org
- **Non applicability of Revised Schedule VI for exam:** ICAI had clarified that a decision has been taken to defer the applicability of the Revised Schedule VI for CA examination, consequent to which the same will not be applicable for the PCC, IPCC and Final examinations to be held in November, 2011 vide www.icai.org
- **Companies (Cost Audit) Report Rules 2011 & Companies (Cost Accounting Record) Rules 2011:** The Central Government has also notified revised Companies (Cost Audit Report) Rules 2011 and Companies (Cost Accounting Record) Rules 2011 vide notifications dated 3rd June 2011 vide www.icwai.org.
- **ICWAI releases exposure draft of guidance manual for audit quality:** The Quality Review Board of the Institute, in its meeting held on 4th June 2011, has approved the

release of **Exposure Draft of Guidance Manual for Audit Quality**. The proposed manual may be modified in light of comments / suggestions received vide www.icwai.org

- **FAQ on XBRL**: MCA released FAQ on XBRL and also mandated that companies which are listed and their subsidiaries, companies with paidup capital of Rs 5 crores and other companies with annual turnover of Rs 100 crores are required to file BS and P&L accounts using XBRL for the FY 2010-11. However banks, insurance companies, power companies and non-banking companies are exempted from this vide General Circular No.37/2011 dated 7th June,2011.
- **CA aspirants need not clear CPT**: The ICAI has relaxed the norms for students aspiring to become chartered accountants. The students who have completed two years of graduation can directly appear for Intermediate Proficiency Competency Course (IPCC) – which is the final step in becoming a CA – after doing apprenticeship. Even those students who have not appeared for Std XII exam but have done a diploma and a vocational course followed by two years of graduation also need not appear for CPT. ICAI would not provide question papers to students 15 minutes before the examination begins vide TOI dated 13th June,2011 .
- **Extension of date for registration for IPCC:** ICAI council decided that candidates who register for Integrated Professional Competence Course (IPCC) in the respective Decentralized Office on or before 16th August, 2011 would be eligible to appear in the Integrated Professional Competence Examination (IPCE) to be held in May, 2012 vide www.icai.org
- **Period of validation for registration of CA courses:** CPT, IPCC and Final registrations shall be valid for 3 years, 4 years and 5 years respectively and thereafter renewal needs to be done by the students vide www.icai.org
- **Cost Audit order :** CG notified that all the companies producing products for which cost audit is compulsory shall follow the additional guidelines given vide cost audit order dated 30th June,2011 –ref www.mca.org
- **ICAI initiatives:** ICAI had launched certain new initiatives for the benefit of members and students like –Web TV Portal, CPT online registration, Website for the practitioners and CA Firms, ICAI Tax-suit Software and ICAI ROC software for details log on to www.icai.org

INCOME T AX

- **Percentage completion method:** The figure of opening WIP cannot be termed as piror period expense-opening WIP needs to be taken into consideration to ascertain correct profits vide ITAT Mumbai in the case of DDIT Vs Stork Engineers & Contractors B.V 127 ITD 211 (Mum)
- **Society -Disallowance of expenditure:** The disallowance of expenditure on account of non-deduction of TDS is not applicable to society engaged in charitable activities vide ITAT Amritsar in the case of Baba Farrid Vidyak Society V ACIT ITA No.180/ASR/2010
- **Charitable trust –carry forward of loss:** Trust can be allowed to carry forward deficit of current year and to set off against income of subsequent year and this would amount to application of income of trust for charitable purposes in subsequent years vide Delhi High court in the case of DI Vs Raghuvanshi Charitable Trust 192 Taxman 170
- **Deduction under Sec 80IA:** Deduction under 80IA in respect of notional income from generation of electricity which was captively consumed by itself is allowable vide Madras High court in the case of Tamilnadu Petro products Ltd V ACIT 328 CTR 454
- **FBT:** Rent paid for parking slots cannot be treated as car running expenses for the purpose of levy of FBT vide ITAT Bangalore decision in the case of Hewlett Packard India Sales P Ltd V CIT 51 DTR 173

- **Revaluation reserve:** The amount taken to balance sheet as revaluation reserve can not be added to book profits for MAT purpose vide ITAT Mumbai in the case of ITO Vs Galaxy Saws P Ltd ITA No.3747/Mum/2009
- **Salary earned on Board of a ship:** Salary earned by non-residents for services performed on board of a ship does not accrue in India and hence not taxable vide Karnataka High court in the case of DIT v Prahalad vijendra Rao 239 CTR 107.
- **NSDL Return Preparation Utility 2.**5 version:NSDL released Return Preparation Utility Version 2.5 for preparing regular and correction TDS/TCS statements released on 10th June 2011.
- **VRS Expenditure:** Expenditure on voluntary retirement scheme is tax deductible even if the scheme is not in accordance with the exemption provisions for the employees vide Sony India Pvt. Ltd. v. ACIT [I.T.A. Nos. 4008, 4114 & 4994(Del)/2010]
- **Trust need not be registered to claim IT benefits:** Registration of Trust is not a must for getting registration under section 12A of the Grameen Initiative for Women Vs DIT of Bombay High Court in the case of ITA No.1937/Mum/2009.
- **Corporate and Banks to issue 16A downloaded from TIN:** It is mandatory for Information Network of Income Tax Deptt. Hence insist on Form 16A (quarterly TDS certificate) that has been downloaded from TIN Central System only. corporate and banks to issue TDS certificate in Form 16A as generated from Tax
- **Interest under sections 234B and 234C:** Assessing officer can charge interest under sections 234B and 234C only upto the date of regular assessment not upto the date of rectification order issued under section 154 vide Karnataka High court in the case of CIT Vs Shetron Ltd ITA No.79/2006 delivered on 22nd Nov,2010.
- **Indexed cost:** Indexed cost of acquisition of a property has to be calculated with reference to date when assessee acquires ownership rights over property and physical possession of property is not relevant vide ITAT Mumbai in the case of Ms Nita A Patel V ITO (2011) ITD 24
- **Salaried employee interest under sec 234B:** Employee is not liable to pay interest under section 234B for failure to pay advance tax on salary vide Uttarakhand HC in the case of DIT Vs M/s Maersk Co Ltd ITA No.26 of 2009 dated 7.4.2011
- **Deduction under Sec 80IB:** Assessee not claiming deduction under section 80IB for initial years does not disentitle the assessee to claim deduction for remaining years if conditions are satisfied vide Del hi HC in the case of Pravin soni Vs CIT 333ITR 324.
- **Power of revision:** Power of revision not exercisable when an appeal is pending before Commissioner (Appeals) vide (2011) 22STR 56.
- **No withholding tax:** Indian companies need not withhold tax for data processing services vide ruling of AAR in the case of RR Donnelley http://thehindubusinessline.com
- **Cost inflation index for FY2011-12:** Government notified the cost inflation index for FY 2011-12 (AY 2012-13) as 785 vide CBDT notification No.35/2011 dated 23rd June,2011.

CENTRAL EXCISE

- **Indirect tax ombudsman guidelines:** CG notified the Indirect tax ombudsman guidelines 2011 which are effective from 11th May,2011.
- **Cenvat on Trial runs:** Credit is eligible on inputs used in the trial run production, even if cost of such inputs has been capitalized in books of accounts from Income Tax perspective vide Shree Rama Multitech Ltd. Vs. CCE (2011 (266) ELT 81).
- **Unjust enrichment:** Provisions of unjust enrichment would not be applicable when the price of the final product remained the same irrespective of payment of duty for which refund is claimed vide CCE Vs. Alliance Udyog Limited (2011 (184) ECR 318).

- **Penalty retrospectively:** Penalty provision being penal in nature the same cannot be applied by the department retrospectively vide CCE Vs. Bharat Electronics Ltd. (2011 (267) ELT 172)
- **Simplified quarterly return of goods cleared with 1% duty:** CBEC prescribed format for submitting quarterly return of goods cleared under 1% duty vide notification No.15/2011-NT dated 30th June,2011.

SERVICE TAX

- **Distant education:** Distant education programme by an institution analogical to a parallel college is not in the nature of commercial coaching or training vide CESTAT Chennai in the case of JMC educational Charitable Trust Vs CCE Trichy
- **Refund of service tax paid:** Service tax paid on transport of empty containers from yard to factory for stuffing export goods is eligible for refund vide CESTAT Chennai in the case of CCE Madurai Vs Tata Coffee Ltd (2011) 21 STR 546.
- **Point of taxation rules 2011:** CG notified that the Point of taxation rules 2011 shall come into effect wef 1st July,2011 vide notification No.41/2011 dated 27th June,2011
- **Food service in Hotel rooms:** No service tax on food served in rooms by the hotel restaurant vide CBEC in TOI http:timesofindia.indiatimes.com

CUSTOMS ACT

- **Project imports:** Assessments under the Project Import should be completed within a period of 60 days from the date of submission of required documents by the importer vide Circular No. 22/2011-dt. 04/05/2011.
- **Refund of excess paid customs duty**: The refund of customs duty paid in excess inadvertently cannot be denied merely on the ground that the shortage of goods was not recorded before the issue of out of charge control from customs vide Dalmia Cement (Bharat) Ltd. Vs CC (2011 (267) ELT 234.
- **CA certificate for refund:** The CA's certificate submitted by an importer for claiming refund of 4% ADC is sufficient to substantiate the bar of unjust enrichment vide STP Ltd. Vs CC (2011 (267) ELT 110

S ALES TAX & GST

- **Refund of tax:** Refund of tax paid can be claimed by the dealer, who has paid tax to the Government and not be the purchaser, who has purchased the goods in auction without specifying that such purchase is for the purpose of export but later exported the same vide Supreme Court decision in the case of Saraf Trading Corporation Vs State of Kerala (2011) 38 VST 1
- **No penalty:** No penalty can be levied for non submissions of C form vide CTT vs Control Switch Gears Co. Ltd. (2011) 10 VSTI 18(All)

COMPANY LAW

- **Companies engaged in electricity business declaration of Dividend:** MCA clarified that companies referred to in Section 616(c) of the Companies Act can distribute dividend out of profit arrived at after providing for depreciation following the rates as well as methodology notified by CERC and the same shall be sufficient compliance of section 205 of the Companies Act, 1956 vide General Circular No: 31/2011 General Circular No: 31/2011 dated 31st May,2011.
- **Public Financial Institution:** MCA had issued revised guidelines for declaring financial institution as public financial institution vide General Circular No: 34/2011 Dated-02.06.2011.
- **Fast track exit mode for defunct companies**: In order to give an opportunity for fast track exit by a defunct company, for getting its name struck off from the register of companies, the Ministry has decided to

modify the existing route through e-form – 61 and has prescribed the new Guidelines. The Guidelines for "Fast Track Exit mode" for defunct companies under section 560 of the Companies Act, 1956 and the details can be found in the General Circular No.36/2011 dated 7th June,2011.

- **Participation in meetings by Shareholders or Directors in the meeting by electronic mode:** MCA issued clarification on the issue indicating that (ii) In respect of shareholders meetings to be held during financial year 2011-12, video conferencing facility for shareholders is optional. Thereafter, it is mandatory for all listed companies. (v) In the case of e-voting in general meetings, the Ministry of Corporate Affairs are presently authorizing only National Security Depository Ltd and Central Depository Services (India) Ltd as agencies for providing and supervising electronic platforms for electronic voting subject to the conditions that they obtain a certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communication and IT, Government of India, New Delhi vide General Circular No.35/2011 dated 6th June,2011.
- **Signing of DIN:** MCA notified that wef 12th June,2011 all DIN 1 and DIN 4 applications to be signed digitally by practicing CA/ICWA/CS professionals vide www.mca.nic.in
- **Action on Practising professionals**: MCA directs Regional Directors to initiate action on professionals who had certified wrong filing details vide The Economic Times dated 10th June,2011.
- **Mandatory demant of shares and debentures**: The Ministry of Corporate Affairs (MCA) has proposed vide notification dated 06.06.2011 that all public companies and their subsidiaries convert share certificates and bonds into an electronic (demat) form. The Companies (Dematerialization of certificates) Rules 2011 are proposed to come into force from October 1. All new issuances will also have to be in demat form. MCA has also proposed to make this mandatory for all existing paper certificates by September 30 vide The Business Standard dated 14th June,2011
- **CISA Audit:** The requirement of system audits is not applicable where a bank/entity is a participant in various payment systems such as RTGS, NEFT, CFMS, ECS, NECS, card systems (Visa, MasterCard, etc.), ATM networks (illustratively like NFS, BANCS) etc vide RBI RBI/2010-11/563 DPSS.CO.OSD. No. 2764/06.11.001/2010-2011 dated 14th June,2011
- **PSU banks can compete for state owned firm's surplus funds:** Minimum of 60% of the state owned funds shall be invested in PSU banks and DPE also directs that PSU banks can now compete to get surplus funds of state owned companies vide The Economic Times dated 20th June, 2011.
- **Change of name by listed companies:** SEBI issued revised guidelines on this and indicated in the circular that 2.2. At least 50 per cent of its total revenue in the preceding 1 year period should have been accounted for by the new activity suggested by the new name Or The amount invested in the new activity/project (Fixed Assets + Advances + Works-in-Progress) is atleast 50 per cent of the assets of the company. The 'Advances' shall include only those extended to contractors and suppliers towards execution of project, specific to new activity as reflected in the new name vide CIRCULAR NO. MRD/DP/07/2011.
- **MCA clarified:** MCA clarified that the circular No.33/2011 dated 1-6-2011 shall be applicable to those defaulting companies and their Directors which have not filed Balance Sheet or Annual Return for any o f the financial year's 2006-07, 2007-08, 2008-09 and 2009-10 with the Registrar of Companies as required under sections 220 and / or 159 of the Companies Act, 1956 vide Clarification on circular No 33/2011 dated 01.06.2011

- **Digital signed certificates:** MCA notified the certificates which have been incorporated for issue under digital signature mode and indicated that no such certificates shall be issued manually and all pending issues should be cleared by 30th June 2011 vide General circular No.39/2011 dated 21st June,2011.

SEBI

- **SEBI circular on pre-funded instruments**: SEBI after review had issued circulars that borkers need to keep audit trail of the pre funded instruments received by them and also indicated detailed guidelines to be followed vide CIR/MIRSD/03/2011, Date- June 9, 2011.
- **Rating agencies to adopt common symbols etc:** Market regulator the Securities and Exchange Board of India (Sebi) asked credit rating agencies (CRAs) to adopt standard symbols and definitions devised by it within four months, a move that will help investors to better understand financial health of firms vide The Economic Times dated 16th june,2011.
- **Reporting of ODI and PNs:** SEBI issued revised guidelines regarding reporting requirements of off shore Derivative instruments and Participatory notes and as per the circular the FII shall report transaction-wise details in relevant Annexures in March 2012 along with the outstanding positions as on September 30, 2011 and thereafter with such six months' lag vide CI**RCULAR**CIR/IMD/FII&C/7/2011 dated 15th June 2011.
- **Promoters shares to be in demat:** SEBI in consultation with Stock Exchanges, has decided that the securities of companies shall be traded in the normal segment of the exchange if and only if, the company has achieved 100% of promoter's and promoter group's shareholding in dematerialized form latest by the quarter ended September 2011 as reported to the stock exchanges vide Cir/ISD/ 3/2011, Dated- June 17, 2011
- **Grant of prior approval to Merchant bankers:** SEBI had dispensed the requirement of taking prior approval by merchant bankers for change in status or constitution However, the merchant bankers are required to take prior approval from SEBI for change in control vide. CIR/MIRSD/7/2011, Dated – June 17, 2011Sub: Periodical report- Grant of prior approval to merchant bankers.
- **Prior approval for underwriters waived:** The requirement of taking prior approval by the underwriters from SEBI for change in status or constitution has been dispensed with. However, the underwriters are required to take prior approval from SEBI for change in control vide Circular No. CIR/MIRSD/6/2011, Dated- June 17, 2011.
- **Investors protection fund and customers protection fund:** SEBI modified the guidelines on these vide circular No. CIRCULAR NO. MRD/DP/06/2011 dated 16th June,2011

DG&FT

- **DEPB Scheme extended:** CG has extended the DEPB scheme upto 30th Sept,2011 vide The Economic Times dated 14th June,2011.
- **Duty drawbak claim:** Duty drawback cannot be claimed when goods are exported by DTA unit which were manufactured by EOU as the benefit of duty drawback is available only when the inputs of finished goods have suffered the duty burden vide CC Vs Leela Scottish Lace Limited (2011-TIOL-276).
- **Exemption from payment of duty:** Exemption from payment of duty is available on imported capital goods removed from a unit based in Domestic Tariff Area to a unit set up under Electronic Hardware Technology Park Scheme (EHTP) vide CCE Vs Solectron Centum electronics Limited (2011 (267) ELT 160)

INSURANCE

- **IRDA(Amalgamation of General Insurance Business) Rules 2011:** Govt. announced these regulations which shall come into effect from the date of publication in the gazette vide The Economic Times dated 8th June,2011.
- **IRDA levies penalty:** IRDA levied Rs 10 lacs penalty on insurance companies which have not complied with the targets fixed for coverage of Rural and Social sectors and directed them to comply with the shortfall too in two years time vide ORDER NO. IRDA/F&I/ORD/RSS/114/06/2011, DATED 7-6-2011

******THE END*****`**