19th December 2008 | *Issue No 26* | **Weekly News Letter**

Income Tax and Company Law Weekly Updates

THE FEDERATION OF ANDHRA PRADESH CHAMBERS OF COMMERCE AND INDUSTRY

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Important News

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Pending tax refund up to Rs 25,000 to be given soon: Govt

The government has asked the I-T department to soon process refund claims up to Rs 25,000 for every assessee whose tax is deducted at source (TDS) for 2007-08. More…..

Chartered Accountants to be barred from non-audit work

The government will prevent chartered accountants (CAs) from offering consultancy and advisory services to the companies which hire them for auditing their accounts. More…..

Upcoming Events

National programme on
"International Financial Reporting Standards"

Open forum with Income Tax Officials, Hyderabad

Advanced course on
"Income Tax"

One day seminar on
"Tax Deduction at Source"

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Income Tax exemption on home loans may be doubled

The government is considering a proposal to double the income tax exemption limit on housing loans to Rs 3 lakh from the current level of Rs 1.5 lakh, according to government sources. The proposal is being discussed by the committee of secretaries that was set up in the wake of the global financial crisis affecting the Indian economy. Industry lobby groups have been urging the government to raise the limit as it will reduce the cost of borrowing on home loans.

On December 7, the government had virtually unveiled a mini-budget that included Rs 20,000 of additional spending on infrastructure and cut excise duty across-the-board. It also provided a package for banks aimed at making home loans cheaper.

Pending tax refund up to Rs 25,000 to be given soon: Govt

The government has asked the I-T department to soon process refund claims up to Rs 25,000 for every assessee whose tax is deducted at source (TDS) for 2007-08. "The Income-Tax Department has instructed the field formations to accept the TDS-payer's claim, with certain exceptions ... where the refund computed does not exceed Rs 25, 000," a Finance Ministry official said.

Taxpayers for long have been complaining about delays in getting refunds. The department, though, holds a different view and says that it has been making efforts for speedily processing refund payment.

The problems arise because taxpayers are also not careful about giving relevant information on their returns, he said, adding I-T authorities are often not informed when taxpayers change residence.

Celebrities too may face heat over misleading advertisements

The new Companies Bill 2008 proposes sending celebrities to jail for up to three years if they induce consumers to buy a product with misleading claims. The Bill also wants the company to pay Rs 50 lakh as penalty for cheating consumers. Currently, such companies face a Rs 1-lakh fine. The Bill was tabled in Parliament in October.

Though the existing law — Companies Act 1956 — has a similar provision in Section 68, punishment is limited to a fine. The new law creates a bigger deterrent by adding a jail term and increasing the penalty several-fold.

“We welcome this regulatory structure that could take into account companies misleading the public,” said Madhukar Kamath, chairman of Advertising Standards Council of India, an industry body. Prathap Suthan, national creative director of ad agency Cheil Worldwide, believes it’s a “great proposition” which would act as an “effective filter” to weed out potential fraudsters, while protecting consumers, ad agencies and celebrities from getting duped.

Chartered Accountants to be barred from non-audit work

The government will prevent chartered accountants (CAs) from offering consultancy and advisory services to the companies which hire them for auditing their accounts. This is being done to lend greater credibility to company accounts.

The proposal forms part of the Companies Bill 2008, currently pending before the Lok Sabha. The move is expected to usher in greater independence in the audit function and infuse greater confidence in the minds of investors on the credibility of financial statements. At present, the statutory auditors are barred from providing accounting and internal audit services for their clients, but are allowed to deliver consultancy and advisory services.

ICAI to help Indian railways upgrade accounting practices

The Institute of Chartered Accountants (ICAI) will help the 155-year-old Indian Railways upgrade its accounting practices. "We will help the railways upgrade its accounting system and make it look like a corporate account, fully based on accrual accounting system," said ICAI President Ved Jain. As the government is in the process of moving towards the accrual-based accounting system, the institute will be providing technical assistance to state-owned entities to help them graduate to advanced accounting system.

Vodafone case: 'No definitive findings on taxability of deal'

The observations of the Bombay High Court in the Vodafone tax case appear to be only prima facie; the court has not made any definitive findings on the taxability of the deal, say most of the international tax advisors' assessments of the case. As it currently stands, the court's decision is unlikely to be considered a legal precedent that would apply to other similar deals of the past or the future; each would be considered on its own merit, observes one of the international law firms in its private communication to clients. Vodafone had filed a writ petition at the court challenging the Revenue department's show-cause notice (SCN) to the company asking why it should not be considered an "assessee in default" for not paying withholding tax (TDS) upon its acquisition of Hutchison Essar (Now Vodafone Essar).

Company law under slowdown spectre

The global economic meltdown may bring in a major change in the final layout of the new company law, which is now being considered by a Parliamentary Standing Committee. The Companies Bill 2008, which aimed to reduce government intervention in internal affairs of the companies and substitute it with disclosures and their self-regulation, may now be reworked. A government official said on the condition of anonymity that there could be changes in the new law, as recent economic trends worldwide have suggested a need to keep a close regulatory watch on corporate behavior. Noting that the Bill was drafted at a time of global economic prosperity and that the recent financial turmoil has reflected the need for greater oversight, he said a fine balance between companies' liberty and the overall interest of the economy has to be struck. The proposed law has been prepared after five years of consultations and proposed relaxation for companies on the regulatory front. However, the Standing Committee is now expected to judge the effectiveness of these proposals in the light of the global economic crisis.

Case Laws

HIGH COURT DELHI DIRECTOR OF INCOME TAX versus JINDAL DRILLING and INDUSTRIES LTD

Income Tax - Whether the services rendered by the non-resident company NDAL for the transportation and jacking up of rigs, review of design and issuance of suitability certificate is covered u/s 9(1) (vii) OR u/s 44BB - sums of money received by the NDAL from the assessee were not includable in the definition of "fees" for technical services as provided in Section 9(1)(vii) read with Explanation 2 - Such receipts are covered u/s 44-BB – no substantial question arise – no infirmity in order of CIT & ITAT

HIGH COURT DELHI THE COMMISSIONER OF INCOME TAX-XVII versus M/S DEWAN CHAND

Income Tax - TDS in respect of amounts paid to persons who have already paid tax on the said receipts – ITAT was right in holding that whatever assessee pays, payee would be required to claim the refund & whole exercise will be in futility - both CIT and ITAT have concluded on facts that the payments made by the assessee were not in the nature of payments under contract but had the character of wages, hence liability to deduct tax under Section 194C not arises - no substantial question of law arises

Dates with Direct Taxes - January, 09		
Date	Obligation	Form No
14-Jan-09	Statement of tax deduction from interest, dividend or any other sum payable to non-resident during October, 1 , 2008 to December 31, 2008	27 Q
15-Jan-09	Quarterly statement of TDS/TCS deposit for the quarter ending December 31, 2008	24Q, 26 Q and 27 EQ
31-Jan-09	Quarterly return on non-deduction at source by a banking company from interest on time deposit in respect of the quarter ending December31, 2008	26QAA

AUTHORITY FOR ADVANCE RULINGS

Mr. Mustaq Ahmed., In re

Income Tax - Applicant is a non-resident - applicant sells Jewellery in local market as well as by export, mostly to Singapore – income arising to the applicant on the purchase in India of gold for the purpose of manufacturing gold jewellery in India for export –held that such income attracts charge to tax under sub-section (2) of Sec.5 as the income is received in India and has accrued in India - Explanation 1(b) to Sec. 9(1)(i) does not come to the aid of the applicant - income is taxable in India.

AUTHORITY FOR ADVANCE RULINGS Burmah Castrol Plc, In re

Income Tax - Applicant, Non-resident – held that the tax payable on the long term capital gains arising on sale of equity shares of FIL (Indian company) being listed securities, will be 10% of the amount of capital gains as per the proviso to s. 112(1) – held that while calculating the long term capital gain chargeable to tax, interest paid by the applicant to the shareholders of FIL as per the directives of the SEBI will also be treated as a part of the cost of acquisition of the shares

RAJASTHAN HIGH COURT COMMISSIONER OF INCOME-TAX Vs SHRI RAM SINGH

Income Tax - Tribunal was justified in holding that the proceedings for re-assessment u/s 148/147 were initiated by the Assessing Officer on non-existing facts because ultimately, the assessee has been able to explain the income which the AO believed to have escaped assessment – tribunal was justified in holding that as the proceedings were based on non-existing facts so they were not valid - revenue's appeal dismissed.

MADRAS HIGH COURT Dr. C. M. K. Reddy Vs SETTLEMENT COMMISSION (IT/WT) AND OTHERS

Income Tax - Writ petition is filed for the issue of writ of certiorarified mandamus to quash the order of the Settlement Commission and direct the Commission to take up the application filed by the petitioner u/s 245C (1) – assessee failed to disclose full and true income in order to maintain an application u/s 245C & failed to pay admitted tax – principle of acquiescence would apply – order of Commission non-suiting the petitioner for admission of the case for settlement required no interference.

RAJASTHAN HIGH COURT RAJESH SURANA Vs COMMISSIONER OF INCOME-TAX

Income Tax - Transfer of asset (residential house) – capital gains - a plot of land having a boundary wall and a garage-cum-room, cannot be treated as "residential house" – section 53 does not exempt merely a building nor does it exempt merely the land appurtenant thereto – claim for exemption u/s 53 is not accepted, as asset did not fulfill the character of a residential house

RAJASTHAN HIGH COURT COMMISSIONER OF INCOME-TAX Vs BANK OF RAJASTHAN LTD and vice versa

Income Tax - Question of assessability of Interest which had not been received, is a debatable question - in view of the settled legal position, the provisions of under Section 143(1) (a) were not attracted, and since the action had been taken under Section 143(1) (a), obviously, it rightly attracted the right of the assessee, to move application under Section 154, and the same was rightly allowed by the CIT, as well as the Income-tax Appellate Tribunal.

DELHI HIGH COURT COMMISSIONER OF INCOME-TAX Vs YAMU INDUSTRIES LTD

Income Tax - Service of notice - provisions of Section 282 of the Act with regard to the service of notice has been duly complied with by the Revenue. Since the notice under Section 143(2) of the Act sent by the registered post had not been received back "unserved" within thirty days of its issuance, so there would be presumption under the law that notice has been duly served upon the Assessee – subsequently assessment order was also justified

PUNJAB AND HARYANA HIGH COURT JAI NARAYAN Vs INCOME-TAX OFFICER

Income Tax - Claim for deduction u/s 54B – capital gains - purchase of agricultural land by assessee in name of his son and grandson - Tribunal held that the assessee on utilsing the capital gain arising from the transfer of capital asset being agricultural land in purchasing other land in the name of his son and grandson disentitled himself from deduction under section 54B – order of tribunal is justified - assessee's appeal dismissed

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