SRCP'S ➤ e-senze

Issue No. 8 Weekly e-Magazine 19th February, 2009

Editorial ....

Dear Readers,

Understand that if we continuously live in the past or live in the future, we are not present inside our system. When we are not present, the energy flow inside our system never happens totally and properly. Be in the present, be pain free and blissful. This is enlightened state.

L. Muralidharan
& Editorial Team of e-senze
Designed by: Mr. G. Natarajan

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Overseas investment - Capital Budgeting Applications - by CA. L. Muralidharan

Funding from domestic source to carry out overseas investments would be better than borrowing overseas. Borrowings overseas would call far more rigors, compliance etc and overseas bankers assuming greater risk in funding the project. This will reflect in higher cost of capital into the project. Hence borrowing locally would be a better option.

Evaluation of overseas investment is done in the same way as domestic investments. However, in such cases, inflows are denominated in foreign currency while borrowings are to be repaid in local currency. Foreign currency inflows are to be converted into local currency before discounting with local cost of capital.' Since the cash inflows would result for a fairly longer period, it would be a difficult task to get a

forward rate from dealers to convert foreign cash flows into local currency. Forward quotes are available in exceptional cases for a period of One year and not beyond. Therefore forward rate quote in the market will be extinct. The company has to estimate on reasonable basis either with the help of interest rate or inflation or PP index etc the forward to convert the inflows into local currency. This approach is referred to as domestic approach.

There is also another approach to the above overseas investment proposal. One is expected to estimate contemporary cost of capital as if the project is undertaken by a local person in a foreign country. The expected cost of capital is to be ascertained and consequently NPV can be ascertained. It is to be understood that such NPV shall be denominated in foreign currency. As a final step in the process, foreign currency NPV shall be converted at Spot rate which will enable easier comparison of such proposal with any other domestic proposals. In case there is no such comparative domestic proposal, the overseas investment can be accepted or rejected based on positive or negative NPV denominated in foreign currency

Capital budgeting with IFM

Home Currency Approach

1. Forward rate (use interest rate parity)
2. Conversion
3. Local Cost of Capital
4. NPV

Foreign Currency Approach

1. Ko (Foreign Currency)
2. NPV (Foreign Currency)
3. Spot Rate
4. NPV (Home Currency)

The Indian Partnership Act, 1932 - *by Mr. S. Ramasubramanian*

Continued from last edition ..

RETIREMENT OF A PARTNER

A Partner may retire with the consent of all the other partners, or in accordance with an express agreement by the partners, or in case partnership at will, by giving notice in writing to all the other partners of his intention to retire.

A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a party.

Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

INSOLVENT PARTNER

(1) Where a partner in a firm is adjudicated an insolvent, he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

(2) Where under a contract between the partners that the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and vice versa done after the date on which the order of adjudication is made.

(3) Under any circumstances a minor cannot be adjudged insolvent

DISSOLUTION OF THE FIRM

The dissolution of a partnership between all the partners of a firm is called the "dissolution of the firm".

A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

- ♣ if constituted for a fixed term, by the expiry of that term;
- ♣ if constituted to carry out one or more adventures or undertakings, by the completion thereof;
- ♣ by the death of a partner; and
- ♣ by the adjudication of a partner as an insolvent.
- ♣ by the adjudication of all the partners or of all the partners but one as insolvent, or
- ♣ by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on:
- ♣ by giving notice in writing to all the other partners of his intention to dissolve the firm.
- ♣ as from the date mentioned in the notice or, from the date of the communication of the notice to dissolve.

At the suit of a partner, the Court may dissolve a firm

A partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

A partner has become in any way permanently incapable of performing his duties as partner;

A partner is guilty of conduct which is likely to affect prejudicially the carrying on of the business regard being had to the nature of the business;

A partner willfully or persistently commits breach of agreements relating to the management of the affairs of the firm that it is not reasonably practicable for the other partners to carry on the business in partnership with him;

A partner has in any way transferred the whole of his interest in the firm to a third party, or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner;

- ♣ that the business of the firm cannot be carried on at all due to continued loss; or
- ♣ on any other ground which renders it just and equitable that the firm should be dissolved.

Class Timings

February 16th to March 6th 2009

Timings: Week Days:	6.30 am to 9.30 am & 5.30 pm to 8.30 pm
Saturday:	6.30 am to 9.30 am & 2.30 pm to 8.30 pm
Sunday:	7.30 am to 5.00 pm

Class Venue

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The Rote Mechanism

by Mr. L.N. Venkataraman

Every animal leaves traces of what it was; man alone leaves traces of what he created. - Jacob Brownowski

The birth of a baby is one of the most gripping wonders for the parent. From the moment of fertilization to the arrival into the world, the journey of the baby is most awesome and exciting. It is nature's power of creation. Like nature, man is unstoppable. Man may not be able to match nature but his ability to create is powerful as well. Man has created masterpieces in art, wonderful music, complex theories, great inventions and beautiful architecture. One can also see examples of creativity in everyday life. The programmer's new algorithm, the child's new drawing, the student's new poetry, the professor's new research, the comedian's new act or the salesperson's new strategy represent creativity. However, most of us follow the same routine throughout our lives. Conditioning and habit shape our character and are necessary to lead a purposeful life. Yet we are victims of certain forms of conditioning and habit that smother the human nature of creativity. We think the same way, read the same way, write the same way

or love the same way throughout their lives. How many times do we ever create something new on our own? The truth is that we do not realise the power of creation. We can best describe it as rote mechanism of human behaviour.

Those who do not realise the power of creativity remain passive spectators of life. Creativity provides a unique satisfaction, boosts self-esteem and gives self-confidence. It keeps one engrossed into a subject just for the love of it. Boredom is alien to the creative. Is creativity inborn or cultivated? Is creativity a talent or a skill? Does it need much thinking or much experiment? What are the reasons for the scarcity of creativity among us? These questions need serious attention.

In my humble opinion, we can attribute much of the lack of creativity to rote learning in school and home. The education policy forces us to memorize facts and theories. The exam guides give us mantras to become graduates. Most students go through education without understanding the subjects. This has a direct impact on life as well. Like character, we must encourage and develop creativity at a young age. Talent may be inborn but one can acquire creativity. Schools must encourage originality among students in their thinking as well as doing. This originality can grow and express as creativity in the student. While thinking and experiment need memory and hard work, creativity with learning becomes spontaneous and natural. Once picked up, it becomes part of one's life. With age creativity becomes a difficult skill to get. We become conditioned and habituated to the same way of life. Creativity ebbs and we remain creatures of rote mechanism. Brownowski's quote in the beginning of this article stresses man's unique power of creation. Sadly, we fail to capitalise on this power within us.

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Legal World - Corporate Laws - LW 166.12.2008 & LW 167.12.2008 by Mr. Kamal Garg

LW 166.12.2008

AFT TRUST v. CHAIRMAN, CBDT [(2008) 174TAXMAN 356 (DEL)] Badar Durrez Ahmed & Rajiv Shakdher, JJ [Decided on 05.09.2008]

Income tax Act,1961-Section 10(15A) - Leasing of Aircrafts - Central Government's approval - Change in ownership of the lessors of the aircrafts - New agreements entered into with the lessee by the lessors - Lessor approaching CG for approval – Approval denied -Whether denial of approval is correct - Held, No.

Brief Facts: Two companies, being joint owners of several aircrafts, had leased two aircrafts to GE Capital Bank, Austria, which had sub-leased the same to Jet Airways on 5-10-1997. At that point of time, there existed a DTAA between India and Austria, whereby the lease rentals paid by Jet Airways to GE Capital Bank, Austria were not subject to tax in India. Therefore, question of taking approval under section 10(15A) did not arise. After one and a half years aforesaid two companies sold said aircrafts to petitioner No.1 by virtue of Master Aircrafts Purchase Agreement dated 5-5-1999. Consequently, earlier sub-leases between GE Capital Bank, Austria and Jet Airways were terminated and fresh lease agreements were entered into between petitonerNo.1 and Jet Airways on 18-10-1999. Petitioner No.1 was a company based in the USA and, therefore, the DTAA between India was Austria was not applicable. It, however, filed an application to the Central Government claiming for benefit under section 10(15A). The application was rejected on the ground that the new agreements were, in effect, the same old agreements with only change in the name of the aircrafts owner and as the original agreements were entered into when the benefit of section 10(15A) was not available, the request for approval under section 10(15A) could not be acceded to. the appellant appealed to the High Court.

Decision: Appeal allowed.

Reasons: It was because of the circumstance of the change of ownership, that it had become necessary to execute fresh leases on 18-101999 between the new owners and Jet Airways. It might have been an

entirely different situation, had the ownership not changed and fresh agreements, such as the ones in question here, had been entered into after the expiry of the excluded period on 31-3-1999, because then it might have been said that the new agreements were a device to take advantage of the provisions of section 10(15A). But, in the instant case, the new lease agreements of 18-10-1999 were necessitated because of the change in the ownership and were not mere substitution of new agreements in place of old ones without there being any reason for entering into new agreements. The change in ownership was not something which had been engineered by Jet Airways or by the petitioners so as to take advantage of the end of the exclusion period on 31-3-1999. In such a situation, the reasoning adopted in the impugned order could not be accepted. Therefore, the impugned order is set aside and respondent Nos.1 and 2 are directed to grant approval to petitioner No.1 under section 10(15A).

LW 167.12.2008

COMMISSIONER OF INCOME-TAX v. ISHER SINGH [(2008) 174 TAXMAN 501(P&H)] Satish Kumar Mittal & Augustine George Masih, JJ [Decided on 24.07.2008]

Income tax Act, 1961 - Section 253 - Appeal to Tribunal - Appeal filed belatedly – No condonation of delay application filed - Tribunal dismissed the appeal - Whether the Tribunal is correct - Held, Yes.

Brief Facts: An Appeal was preferred by the revenue against the order of the Commissioner of Income-tax (Appeals), Bathinda, which was belatedly filed by 38 days.The Registry of the Tribunal informed the department about the delay in filing the appeal as also for furnishing correct copy of the assessment order of the Assessing Officer, which was not filed along with the memorandum of appeal. The department submitted the correct copy of the assessment but no steps were taken to file an application for condo nation of delay of 38 days as informed by the Registry of the Tribunal. The Tribunal, in the absence of the application for condo nation of delay, dismissed the appeal filed by the revenue. Revenue appealed to the High Court.

Decision: Appeal dismissed.

Reasons: The courts have been taking liberal view on the question of limitation where sufficient cause is given so as to advance substantial justice. Generally delays in preferring appeals are condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bonfire is imputable to the party seeking condo nation of delay. This is a case of gross negligence and inaction on the part of the official(s) of the department. The interest of revenue has suffered due to inaction on the part of the official(s) which calls for strict action on the part of the department against the erring official(s) which calls for strict action on the part of the department against the erring official(s). The defect in the appeal was brought to the notice of the appellant vide letter dated 1-2-2005 but till 6-12-2006, i.e., more than one year and 10 months, when the case was decided by the Tribunal, no application for condo nation of delay was filed.

Sub-section (3) of section 253 of the Act provides that every appeal under sub-section (1) or sub-section(2) of section 253 of the Act shall be filed within a period of 65 days of the date on which the order sought to be appealed against is communicated to the assessee or the Commissioner as the case may be. The appellate Tribunal under sub-section (5) of section 253 of the Act may admit an appeal after the expiry of the relevant period provided it is specified that there was sufficient cause for not presenting the appeal within the time stipulated. Since no application for condonation of delay was filed and there being no reason on record much less sufficient cause for not presenting the appeal within the time stipulated, the Tribunal was left with no option but to dismiss the appeal.

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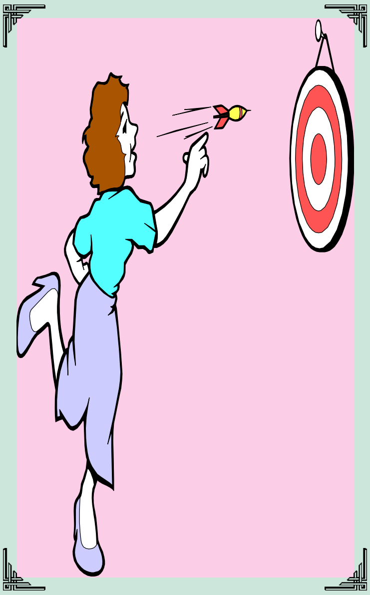
Continued in next edition

Dart-Board



Last *Week's* Question:

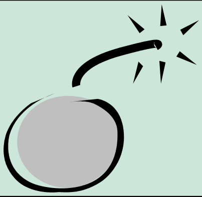
What is the difference between Realization Account and Revaluation Account?

Answer:

Realisation Account	Revaluation Account
1. Realisation account is prepared at the time of closure of business.	Revaluation Account is prepared to record the effect of revaluation of fixed assets.
Eg. Dissolution of a partnership, Amalgamation of a company	In case of partnership the revaluation profit or loss is adjusted in two accounts namely, Fixed asset Partners Capital /current account. Where as in case of Limited companies it is treated in accordance with the provisions of AS - 10.
2. In case of partnership net realisation loss or profit is transferred to partner's capital account in profit sharing ratio where in case of companies, it is transferred to equity share holders account.	

This Week's Question: What is the difference between merger and acquisition?

Send your queries and suggestions to : joinsreeram@gmail.com



Jokes

Man: You should marry "Mr.Y" after my death

Wife: Why should I marry "Mr.Y" who is your enemy No.1?

Man: That is the only way in which I can take revenge of that useless fellow

= =oo00oo= =

Man: Which book you love the most my dear?

Lady: Your Cheque Book!

Man: ???!!!

= =oo00oo= =

Dhoni asks Ishant Sharma to bring a bottle of Pepsi for him. Ishant Sharma takes the bottle of Pepsi but straightaway went to Gambhir.

Dhoni: Why you took the bottle to Gambhir?

Ishant: Because he is the opener!!!

= =oo00oo= =

Teacher: Can you do something which other students can't do?

Student: Yes madam! I can read my handwriting

Son: My teacher is not good.

Father: Your teacher says that it is very difficult and impossible to teach you!

Son: That is why I said that she is not good

= =oo00oo= =

Man 1: Whether giving love letter on Valentine's Day to a nurse is wrong?

Man 2: No. Not at all if she is unmarried!

Man 1: Then why everybody including the nurse scolded me when I gave the letter?

Man 2: What you wrote in the letter?

Man 1: "I Love you Sister!"

= =oo00oo= =

Man 1: What's the big deal about going to the moon? Anybody can go to the moon. We will directly go to the sun!

Man 2: If we get within 13 million miles from the sun, we will melt.

Man 1: So what? We will go at night!!

= =oo00oo= =

Man: "Do you have color TVs?"

Shop Owner: Yes! We have!

Man: "Give me a green coloured one, please."

= =oo00oo= =

Mr. X went to see "Jurassic Park" movie. When the dinosaur starts approaching, Mr. X started shivering.

Mr. Y: Are you afraid of the movie?

Mr. X: I know that it is a movie. I am an intelligent man. But whether that dinosaur knows?

= =oo00oo= =

Mr. B: Why do you carry a binocular in train? You didn't use it for a long time!

Mr. A: Well. I am going to meet my distant relative!"

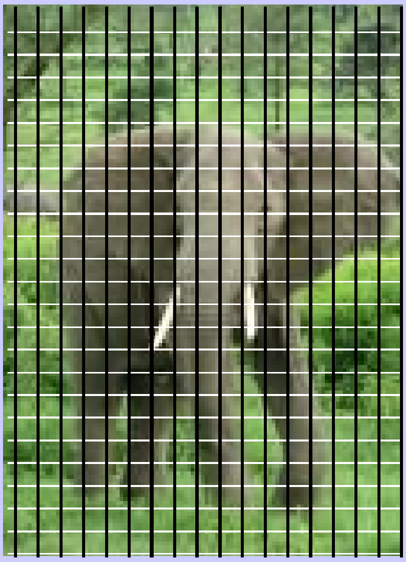
= =oo00oo= =

By Mr. Harish Bhat

Birthday Gift. Asset or Liability?

Vladimir Putin, Russian Prime Minister, received a tiger cub as his birth day gift. Before you conclude that this is the wildest gift you've heard of, listen to my small story. My uncle who lives Kerala, once received an elephant as a gift. An elderly priest gifted it to him. It was a noble female elephant. My uncle named her Preethikutty and tethered her to a coconut palm in his backyard. There she rested a couple of days. On the third day, perhaps despairing of such a sedentary existence, Preethikutty broke her tether and escaped. She attacked a small teashop opposite the house, spotting a buch of bananas. She ate the fruit and attempted to pick up the shopkeeper, but the man raised his dhoti and ran for his life -- into a police station, actually, where he created history by filing the first-ever FIR against an elephant, charging her with murderous assault.

So, two potbellied policemen arrived at my uncle's home and placed Preethikutty under arrest.



This created a fresh problem of elephantine proportions. There was no nearby jail large enough to hold an elephant. So the police eventually decided the solution was house arrest. A policeman now placed himself on guard next to the animal and demanded constant tea and refreshments.

Local news-papers carried headlines about the elephant under arrest. Hordes of curious onlookers arrived to look at Preethikutty, who continued to eat and sleep, treating arrest with total disdain. The teashop owner had meanwhile recovered and now prospered, selling thousands of cups of tea to visitors. Assorted other vendors also arrived. My uncle's house soon descended into chaos. At this point, my uncle regretted having accepted the gift and tried to return this white elephant to the elderly priest. But the priest had left on a Himalayan pilgrimage and no one knew when he would return.

After much consultation, my uncle gifted the elephant to a zoo, which insisted that my uncle pay fully for all transportation and incidental costs. Perhaps, Putin's tiger cub will also end up in a zoo. But Putin, as we all know, is a smart man.

He might even recycle the gift, sending the cub to Barack Obama. Americans can then feel happy they finally have a tiger in the White House, though their new president, already grappling with recession and terror, will have one more tiger by the tail.