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THE NEWSLETTER

USE OF CENVAT CREDIT TO PAY SERVICE TAX UNDER REVERSE CHARGE ON GOODS TRANSPORT AGENCY'S SERVICES.[1]

The Hon'ble Gujarat High Court in the case of *Commissioner of Central Excise & Customs* v. *Banco Aluminium Ltd.* while dealing with the matter of utilization of CENVAT Credit on 'input service' of GTA Services in respect of payment of Service Tax liability held that the assessee can pay service tax under reverse charge on input services of Goods Transport Agency's Services.

RECENT REFORMS BY SEBI.[2]

SEBI on 19.11.2014 approved the SEBI (Prohibition of Insider Trading) Regulations 2014 ("New Regulations"), which will facilitate legitimate business transactions in the securities market. In order to strengthen the legal and enforcement framework, the New Regulations have widened the definition of the term "insider" to include persons connected on the basis of being in any contractual, fiduciary or employment relationship that allows such person access to unpublished price sensitive information ("UPSI") of the company. Further, UPSI has also been defined as information which is not generally available and which may impact the price, and the definition also specifies a test to identify price sensitive information, aligning it with listing agreement and providing a platform of disclosure of such information. Under the SEBI (Prohibition of Insider Trading) Regulations, the onus of proof lied on SEBI to prove that the "connected persons" were in possession of price sensitive information, whereas under the New Regulations, the burden of proof now lies with the "connected person".

SEBI also brought into existence the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2014 in order to prevent any confusion regarding the enforceability of the listing requirements, and also to streamline the disclosures and corporate governance norms with the aim to ensure better enforceability and monitoring of the securities market. SEBI also approved amendments in the SEBI (Delisting of Equity Shares) Regulations, 2009 prescribing the conditions for delisting, prohibition on making a delisting offer in certain cases, safeguards that the delisting offer shall only be approved if it is in the interest of the shareholders and that the offer is in compliance with the applicable laws. Lastly, another salient feature that has been amended is the timeline for completing the delisting process, which has been reduced from 137 calendar days (approx 117 working days) to 76 working days.

RELIEF U/S 80P OF THE INCOME TAX ACT UNAVAILABLE TO CO-OPERATIVE SOCIETIES.

The Hon'ble Delhi High Court while deciding the appeal in the matter of *Mantola Co-operative thrift & Credit Society Ltd.* v. *Commissioner of Income Tax*[3] held that the assessee in the instant case being a co-operative society which is engaged in providing credit facilities to its members, deposited surplus funds in fixed deposits and earned interest thereon, the interest would be assessable as 'income from other sources' and, thus, would not eligible for deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961.

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[1] *Commissioner of Central Excise & Customs* v. *Banco Aluminium Ltd.,* [2014] 51 taxmann.com 175 (Gujarat)

[2] Press release no. 130/2014 dated November 19, 2014

[3] *Mantola Co-operative thrift & Credit Society Ltd. v. Commissioner of Income Tax ,* Income Tax Appeal No. 569 of 2013

RBI ON ECBS

Reserve Bank of India ('RBI') vide its circular[4] dated 21.11.2014 has provided parking facility for External Commercial Borrowings ('ECB') proceeds. RBI has permitted Authorised Dealer ('AD') Category – 1 banks to allow eligible ECB borrowers to park ECB proceeds (both under the automatic and approval route) in term deposits with AD Category – 1 banks in India for a maximum period of 6 months. This facility is subject to certain conditions mentioned herein below:

"Eligible ECB borrowers permitted to park ECB proceeds in term deposits for a maximum period of 6 months, subject to fulfilment of certain conditions."

1. That the applicable guidelines should be duly complied with respect to eligible borrower, recognised lender, average maturity, all in cost, permitted end uses etc.
2. No charge should be created on such term deposit.
3. Such term deposit should be exclusively in the name of borrower,
4. Such term deposit can be liquidated as and when required.

RBI vide its another circular[5] dated 25.11.2014 has cut down the scope of obtaining ECB. RBI has restricted Indian companies and AD Category – 1 banks from issuing any direct or indirect guarantee or creating any contingent liability or offer any security in any form for such overseas borrowings by their overseas holding/ associate/ group companies except for the purposes explicitly permitted in the relevant regulations. Even if funds are raised abroad by overseas holdings/ associates/ subsidiary/ group companies of Indian Companies with support of Indian companies or AD Category – 1, such funds cannot be used in India unless specific permissions have been granted under relevant regulations. Violation of the aforesaid guidelines will attract penal provisions of Foreign Exchange Management Act, 1999.

CONSENT FEE ALLOWABLE AS BUSINESS EXPENDITURE : ITAT MUMBAI [6]

ITAT, Mumbai has clarified that money paid under the consent decree mechanism to settle disputes without admitting or denying guilt by the assessee is permissible as business expenditure under Section 37 of the Income Tax Act, and cannot be equated to penalty levied for breaching law. The reasoning behind the same is that the fee is paid for the purposes of business in order to settle a dispute with SEBI and to be able to conduct its business without any interruption.

EXEMPTION FROM DISCLOSURE OF INFORMATION PROVIDED TO TAX AUTHORITIES UNDER THE RIGHT TO INFORMATION ACT, 2005.

The Hon'ble Delhi High Court while deciding the writ petition in the matter of *Naresh Trehan vs. Rakesh Kumar Gupta*[7] held that the income tax returns and information provided to Income Tax Authorities by assessee are confidential and are not required to be placed in public domain. Given the nature of income tax returns and the information provided, it would be exempt under section 8(1)(j) of the Right to Information Act, 2005 in respect of individual and unincorporated assessees. The court further held that the Information furnished by an assessee in income tax return can be disclosed only where it is necessary to do so in public interest and where such public interest outweighs, any possible harm or injury to assessee or any other third party, however, information furnished by corporate assessees that neither relates to another party nor is exempt under section 8(1)(d) of the 2005 Act can be disclosed.

[4] A.P. (DIR Series) Circular No. 39 Ref No. RBI/2014-15/309

[5] A.P. (DIR Series) Circular No. 41 Ref No. RBI/2014-15/316

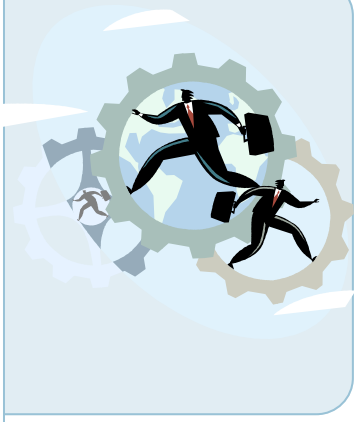
[6] *ITO v Reliance Share & Stock Brokers (P.) Ltd.,* MANU/IU/1152/2014

[7] W.P. (C) Nos. 85, 202, 206, 207 and 214 of 2010

RBI ON MINIMUM BALANCE CHARGES IN SAVINGS A/C'S. [8]

Reserve Bank of India ('RBI') vide its circular dated 20.11.2014 has passed certain guidelines, effective from 01.04.2015, which banks are required to comply with while deducting penal charges from savings accounts in the event of shortfall of account balance from minimum balance requirement. Some of the important guidelines are that the banks need to give a notice of at least one month to customer either through SMS/Email/Letter regarding shortfall in account balance. If the minimum balance requirement is not restored in the reasonable period, which should not be less than one month from the date of notice of shortfall, then only penal charges can be levied, which shall be in accordance with policy on penal charges that may be decided with the approval of Board of the bank. Other guidelines as mentioned in the Circular ensure that the penal charges must be reasonable, and should be a certain percentage of the shortfall amount and that penal charges should not lead to negative balance of the account.

RBI RAISES LIMIT OF NET OWNED FUND AND REVISES PROVISIONING NORMS OF STANDARD ASSETS FOR NBFCS.[9]



RBI has issued revised regulatory framework for NBFCs in order to synchronize it with banking norms, such as limit of minimum 'Net Owned Fund' raised to Rs. 1 crore for all NBFCs by the end of March, 2016 and Rs. 2 crores for all NBFCs by the end of March 2017. NBFCs failing to achieve the aforesaid ceiling within the stipulated time shall not be eligible to hold the Certificate of Registration (COR) as NBFCs. The existing unrated asset finance companies are required to get themselves rated by 31.03.2016. The total assets of NBFCs in a group (including deposit taking NBFCs, if any) will be aggregated to determine if such consolidation falls within the assets sizes 2 categories, i.e., NBFCs-ND or NBFCs-ND-SI. All NBFCs-ND with assets of 500 crores and above shall comply with prudential regulations as applicable to NBFCs-ND-SI as well as the conduct of business regulations if customer interface exists. The NBFCs-ND with asset size of less than Rs. 500 crores, are exempted from the requirement of maintaining Capital to Risk Asset Ratio (CRAR) and complying with credit concentration norms. The provision for standard assets for NBFCs-ND-SI and for all NBFCs-D, has been increased to 0.40%. NBFCs-D with minimum deposits of Rs. 20 crores, and NBFCs-ND with minimum asset size of Rs. 50 crores are required to constitute an Audit Committee.

OPPRESSION MISMANAGEMENT DISPUTES NOT ARBITRABLE. [10]

The Hon'ble Bombay High Court in the case of *Rakesh Malhotra* vs. *Rajinder Malhotra* has adjudicated that the disputes before Company Law Board u/s 397-398 of the Companies Act, 1956 are not capable of being referred to arbitration. The Court acknowledged that the powers of CLB u/s 402(a) to (g) of the Companies Act, 1956 are of such expansive nature that no arbitral tribunal could be called upon to exercise such powers. The Court, however, also held that petition which is merely 'dressed up' and seeks, in the guise of an oppression and mismanagement petition, to oust an arbitration clause, or a petition that is itself vexatious, oppressive or *mala fide* cannot be permitted to succeed. In view of the this judgment an arbitration clause alone is not enough for seeking a reference to arbitration, the party would also have to establish that the petition is *mala fide*, vexatious and 'dressed up' and that the reliefs sought are such as can be resolved by a private arbitral tribunal.

[8] DBR.Dir.BC.No.47/13.03.00/2014-15 Ref. No. RBI/2014-15/308
[9] Notification no. RBI/2014-15/299 dated November 10, 2014
[10] Company Appeal (L) No. 10 of 2013

FAQ'S ON CORPOATE SOCIAL RESPONSIBILITY: COMPANIES ACT, 2013 (PART 2)

RAGHAV BAJAJ AND RUCHIKA AGARWAL, SENIOR ASSOCIATES

A. *Can the Board of Directors of a company go beyond the CSR Policy of the company (of course within the purview of the CSR activities)?*

Ans: As per Rule 4(1), the CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.

B. *What shall be the treatment of the CSR expenditure in the computation of the total income of the company under the Income Tax Act, 1961?*

Ans: As per the Explanation 2 to section 37(1) inserted by Finance (No. 2) Act, 2014 w.e.f. 1-4-2015, any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

C. *Can the activities undertaken by a company in pursuance of its normal course of business for part of its CSR?*

Ans: As per Rule 2(1)(e), 4(1) and the proviso to Rule 6(1), the activities undertaken by a company in pursuance of normal course of business shall neither form part of the CSR Policy nor the CSR activities.

D. *ABC Private Limited received Rs.50 lacs as dividend from PQR Limited. Will this Rs.50 lacs form part of the 'Net Profit' of ABC Private Limited for the purpose of CSR?*

Ans: As per Rule 2(1)(f)(ii), 'Net Profit' shall not include any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act. However, under the present law, there is no prescribed procedure or manner for identifying whether the company from which dividend is being received is covered under and complying with the provisions of section 135 of the Act. In such a scenario, ABC Private Limited will have to rely upon the disclosures (if any) made by PQR Limited as to whether it is covered under and complying with the provisions of section 135 of the Act.

E. *XYZ Private Limited wants to contribute Rs.15 lacs to a political party. Will such contribution qualify to CSR?*

Ans: As per Rule 4(7), contribution of any amount directly or indirectly to any political party u/s 182 of the Act shall not be considered as CSR activity.

F. *While computing the average net profit, will the CSR spending of a previous year be deducted in the computation of the net profit of such previous year?*

Ans: As per the explanation below section 135(5), 'Average net profit' shall be calculated in accordance with the provisions of section 198. Section 198 does not specify that the CSR spending has to be deducted in the computation of the net profit of any year. Thus, while computing the average net profit, the CSR spending of a previous year shall not be deducted in the computation of the net profit of such previous year.

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