RNM ALERT

ISSUENO.17

April - May 2009

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U.N. Marwah

Dear Readers,

The five-phased Lok Sabha Polls started on April 16 and was completed on May 13. The results were declared on May 16. Taking the individual tally to 206 seats, the Congress polled 28.55 per cent vote share in Election for 15th Lok Sabha, up from 26.53 per cent in the last polls.

The Congress-led UPA coalition's triumph in the recent general elections may have lifted the morale of investors and fired up stock prices in the past three trading sessions. But if market observers are to be believed, retail investors are not making a beeline for their brokers' offices, atleast not yet. The common man has high expectations from the new government, which would be one of the most stable government formations in recent times, and await the roadmap of the first 100 days in office of the second innings of Prime Minister Manmohan Singh.

The current year budget would be presented by the new government in the July session of Parliament. The budget comes packed with some concessions for the middle class by way of raising the tax exemption limit to up to Rs. 1.75 lakh-Rs. 2 lakh from the current Rs. 1.50 lakh.

The judgment of the Hon'ble Delhi High Court on the issue of the constitutional right to levy service tax on renting of immovable property which was delivered in April 18, 2009 has come as a shot in the arm for the real estate sector in general and the tenants dealing with unreasonably high rentals for commercial space in particular. By holding that service tax cannot be levied on the said act of renting of immovable property, various other issues have arisen such as (a) should an assessee stop making payment of service tax based on the judgement?; (b) can an assessee claim refund of service tax already paid?

In the last issue of the RNM Alert, Issue XVI, the amendments to AS-11 was reported. To overcome the various doubts that arose in the implementation of the amendments to AS-11, guidance is now available from the Institute of Chartered Accountants of India. Corporates who have not already finalized their financial statements can now better appreciate the nuances of the amendments.

RNM now has a strong team for extensive appellate work at all levels. Its appellate team comprises of Shri Anil Kumar C.A., Shri Sikander Talwar IRS(retd.) C.CIT Delhi, Shri Birender Singh, Advocate of long standing, besides the undersigned.

U.N. Marwah
Managing Partner
On behalf of the **RNM Alert** Editorial Team

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➢ *Case Law*

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Money lending being one of the six main objects of the lender company and the said business having been carried on by it in preference to other business, the loan given to the assessee was in the course of money lending business and therefore, assessee's case is not covered by the provisions of s. 2(22) (e), income criteria from a particular source of income was not relevant. **[ITO v Krishnoics Ltd. (2009) 120 TTJ 650 (Ahd)]**

Exemptions

Tax holiday on Forex Gain available

Whether foreign exchange gain arising to assessee on sales realisation in foreign currency on date of its receipt and deposit in EEFC account amounts to income derived from export of goods and services and, therefore, it would be eligible for deduction under section 10B - *Held,* yes - Whether, however, foreign exchange gain being difference in rates on date of withdrawals from EEFC account and date of deposit in that account, would not be part of sales as once sale consideration is deposited in EEFC account, exchange gain accrued thereafter would not be a part of turnover and, consequently, not a profit arising from export of goods eligible for deduction under section 10B-Held yes.**[ITO v. Banyan Chemicals (P.) Ltd. (2009) 117 ITD 376 (Ahd.) (TM)]**

Sec 10A option exercised cannot be change in re-assessment

Assessment year 2000-01 - In original return assessee-company had claimed adjustment of brought forward losses/depreciation and returned *nil* income - Subsequently, when Assessing Officer reopened assessment,

assessee filed a revised return claiming benefit under section 10A - Assessing Officer, however, proceeded with reassessment on basis of original return filed by assessee - On appeal, Commissioner (Appeals) opined that since assessee had not claimed benefit of exemption under section 10A in original return, no such claim could be made during reassessment proceedings under section 143(3), read with section 147 - Whether by specifically claiming adjustment of unabsorbed depreciation/losses against current year's income and not claiming section 10A relief, assessee had exercised its option in that regard - *Held,* yes - Whether, moreover, in view of decision of Supreme Court in *CIT* v. *Sun Engineering Works (P.) Ltd.* [1992] 198 ITR 297/64 Taxman 442, no fresh exemption/benefit could be claimed by assessee in course of reassessment proceedings - *Held,* yes - Whether, therefore, impugned order of Commissioner (Appeals) was to be upheld - *Held,* yes. **[Sella Synergy (India) Ltd. v. Asstt. CIT(2009)117ITD264 (Chennai)]**

Assessment Proceedings

Rejection of Accounts: Justifiable Basis

Assessment year 2002-03 - A survey under section 133A was carried out at business premises of assessee in course of which revenue authorities valued stock at a higher amount than what was disclosed in assessee's books of account - In course of assessment proceedings, assessee was asked to produce books of account, bills, vouchers etc. - Assessee furnished chart depicting sales, GP and GP rate for year under consideration and earlier two years - Assessing Officer on perusal of said chart found that there was decline in sales but assessee did not furnish a proper explanation for same - Assessing Officer thus rejected assessee's books of account and made certain addition to its income - Commissioner (Appeals) deleted addition - On revenue's appeal, it was seen that assessee had shown better profit percentage in sales chart submitted to Assessing Officer - It was also noted that Assessee's books of account were duly supported by purchase and sales bills - Whether in absence of material on record to show that there was sales outside books of account, Assessing Officer was not correct in rejecting books of account maintained by assessee merely on basis of fall in sales value - *Held,* yes - Whether, therefore, addition based on certain estimation of sales was correctly deleted by Commissioner (Appeals) - *Held,* yes. **[ACIT Vs Ravi Agricultural Industries (2009) 117ITD 338 (Agra) (TM)]**

Carry forward of losses in belated Return permitted

Assessment year 2001-02 - Assessee-company was incorporated in Mauritius under protected cells Companies Act and it had four cells operating in India - Those four cells filed four returns separately within time prescribed under section 139(1) on 30-10-2001 - Subsequently, assessee realized that a consolidated return for all four cells was required to be filed - Assessee, therefore, filed a revised return on 29-10-2002 incorporating losses of four cells - Assessing Officer held that original returns filed by four cells were invalid returns and, therefore, return filed on 29-10-2002 was only valid - He further held that since said consolidated return was belated, question of carry forward of losses suffered by assessee did not arise - In view of difference of opinion between Members of Tribunal relating to carry forward and set-off of loss, matter was referred to Third Member - It was seen from records that in four separate returns filed earlier, full information of total loss had been disclosed as was needed by revenue authorities - It was further noted that *bona fide* mistake in filing four returns was corrected by assessee by filing one consolidated return and, thus, said mistake did not remain material in light of provisions of section 292B - Whether in aforesaid circumstances, consolidated return filed by assessee related back to date of filing of separate returns and same had to be taken along and considered with original four returns, which contained complete information for making assessment - *Held,* yes - Whether, therefore, view taken by Accountant Member that assessee could carry forward and set off loss in question in subsequent years was to be affirmed - *Held,* yes - **[Nicholas Applegate South East Asia Fund Ltd. v. Asstt. DIT, International Taxation (2009)117 ITD 299 (Mum) (TM)]**

Profits and Gain from Business and Profession

Bad Debts

Assessment year 1999-2000 - During relevant assessment year, assessee did not disclose any lease rent received, though it had received certain amount on that account - Assessee, however, claimed bad debts representing lease rent receivable from one party - Assessing Officer rejected assessee's claim holding that assessee had not provided for lease income in books of account and, therefore, there was nothing which could be written-off - On instant appeal, it was seen that during relevant previous year, whenever lease rent became due for month, same was debited to 'lease rent recoverable account' and credited to 'lease rent received account' - However, on 31-3-1998, entries in ledger account were reversed by debiting 'lease rent received account' and crediting 'lease rent recoverable account' and, thus, both accounts were closed with no balance remaining as on 31-3-1998 - Whether, aforesaid accounting entries amounted to write-off of debt in accordance with provisions of section 36(1)(*vii*) - *Held,* yes - Whether, therefore, assessee's claim was to be allowed - *Held,* yes . **[Global Capital Ltd. v. Dy. CIT (2009) 117ITD251(Delhi)]**

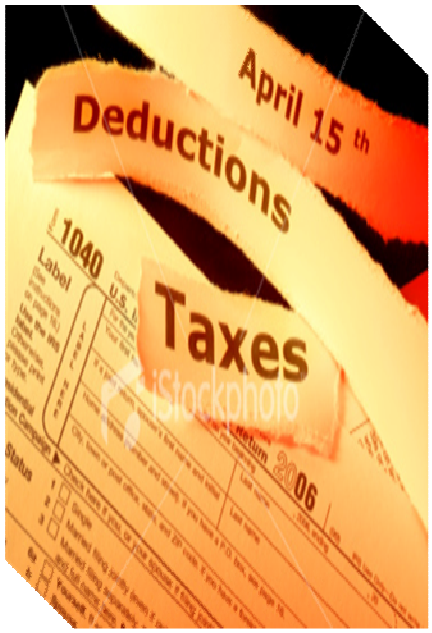
Business expenditure

Assessment year 1999-2000 - Assessee, an advocate, claimed deduction under section 37(1) in respect of donation to a charitable trust with a specific direction that it should form a corpus which would be invested in a manner so that interest thereon would be utilized for purchase of books and magazines and to provide other library facilities to advocates practicing in Court - Lower authorities however, disallowed said claim - It was found from records that moment assessee had donated amount to charitable trust, he had no right or control over money, and, as such, he could not issue any direction to trust for utilization of donated amount and objects of trust nowhere provided to utilize interest on donation for providing library facilities to advocates and further there was nothing on record to establish that donation was directly connected and related to business or profession of assessee - Whether in view of above facts, expenditure by way of donation could not be allowed as deduction under section 37(1) - *Held,* yes . **[A.M. Mathur v. Dy. CIT (2009) 117 ITD 274(Indore)]**

Unexplained Money

Cash credits

Assessment year 2003-04 - Assessee-HUF was partner in a firm - In course of its reassessment proceedings, it was seen that assessee had received a gift of Rs. 10 lakhs through a cheque from one 'S' which stood credited in its capital account - Assessing Officer issued summons to donor who made a statement wherein she admitted that she was not a person of means and had not got issued any cheque book from bank - 'S' further stated that manager of bank had taken her signatures on some blank papers, stating that same were required for her bank account; that she being an un-educated lady, was not aware of contents of affidavit and a blank cheque was got signed by manager - On said facts, Assessing Officer held that gift was an unexplained cash credit since assessee had failed to prove any blood relation with donor; capacity of donor and occasion for gift, besides fact that preponderance of human probabilities was entirely against assessee - Commissioner (Appeals) upheld addition - Whether in view of uncontroverted findings recorded by authorities below, it could be concluded that assessee had not been able to prove ingredients of valid gift - *Held,* yes - Whether, therefore, impugned order passed by authorities below was to be affirmed - *Held,* yes. **[Yogesh Kumar & Sons (HUF) v. Assessing Officer(2009) 117ITD 288 (Asr.)]**



Deduction of tax at source

Payments to Contractors/Sub-contractors

Assessment year 2002-03 - Assessee-company was engaged in business of transportation of goods for various clients all over India on a contract basis - It had engaged trucks through agents and suppliers and for each truck they had made separate payment because each truck was for a separate destination - Assessing Officer, however, held that assessee had made payments to suppliers and not directly to truck owners and suppliers/brokers of trucks being sub-contractors within meaning of provisions of section 194C, assessee was liable to deduct tax at source on such payments - However, it was found from records that suppliers had no contract with assessee, and that they only helped to get trucks hired and all payments were made directly to drivers or truck owners by assessee and not through suppliers and further that they were charging their commission from truckwalas and not from assessee and that fact had been confirmed by various suppliers - Further, it was also found that no payment exceeding Rs. 20,000 was made to truck owners or drivers and where payment exceeded Rs. 20,000, tax had been deducted - Whether, in view of said facts, it could be said that assessee had contract with truck owners/drivers and not with agents or suppliers and, therefore, provisions of section 194C were not applicable to instant case - *Held,* yes. **[ITO v. Bhoruka Roadlines Ltd. (2009)117ITD311(Mum.)]**

➢ Latest Notification/ News

CBDT extends depreciation benefit on Commercial Vehicles

In a move that will boost demand for domestic truck makers, the government today

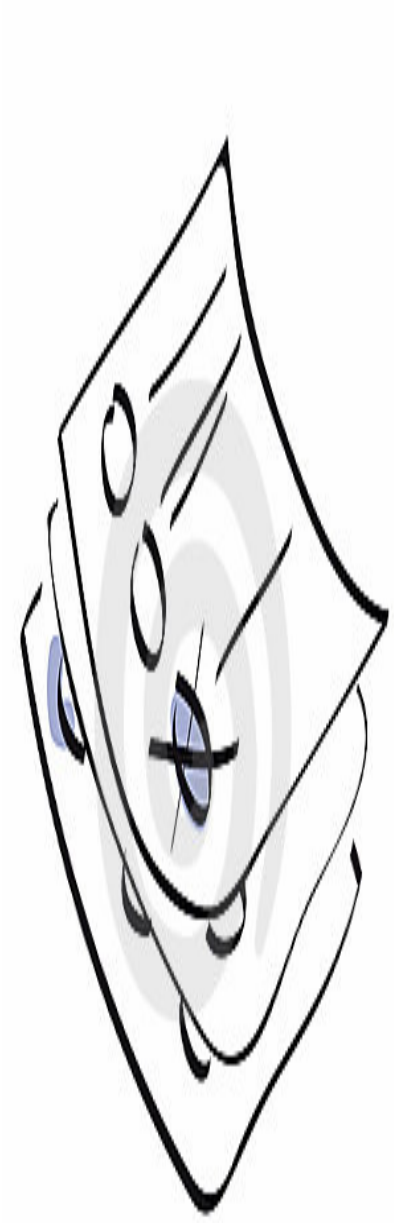
extended higher depreciation benefits by another six months till September this year. According to a notification issued by the Central Board of Direct Taxes (CBDT), which administers matters relating to direct tax in India, truck owners can claim 50 per cent depreciation for vehicles that are bought and put to use before October 1, 2009. Both truck companies and operators were demanding the government to extend the scheme from April 1, 2009, because of continued contraction in demand for trucks and buses. For truck operators, a higher depreciation would increase their net income after tax. **[Vide Notification no. S.O. 989(E), dated 21-4-2009]**

AMENDMENT IN FORM NO.3CD

The Micro , Small and Medium Enterprises Development Act, 2006 has given some protection to the Micro , Small and Medium Enterprises as defined in that Act. One of protection given to these Industries is that the Buyers of these Enterprises have to make the payment to them within stipulated time as per the agreement and if the payment is delayed then the Buyers have to pay interest at prescribed rate. These provisions are given in section 15 to Section 23 of the MSMED Act, These provisions have overriding effect over all the other laws in force and one of the provision which is contained in Section 23 of MSMED Act 2006 the interest paid or payable as per the provisions of MSMED Act 2006 will not be available as deduction while calculating the income tax payable by the assessee.

If any body has paid or make a provision of payment of interest to any enterprises as mentioned above have to be reported against the new requirement of the Form 3CD.

Here Buyers mean "buyer" means whoever buys any goods or receives any services from a supplier for consideration" defined in sec 2d,of the Act. [**Notification no. 36/2009, dated 13-4-2009 (Amendment in Tax Audit Report)]**



INDIRECT TAX

Central Excise & Service Tax

➢ Case Laws

Service tax on renting of immovable property is unconstitutional: Delhi High Court

The petitioners have raised the question as to whether the Finance Act, 1994 envisages the levy of service tax on letting out / renting out of immovable property *per se* ?

The Court pointed out that the main challenge in the present petitions is not on the ground of lack of legislative competence, but on the ground that the impugned notification and circular are *ultra vires* the Act itself.

In the present petitions, the Hon'ble High Court found that there is a transfer of immovable property insofar as those properties are concerned where leases have been executed. Although the right of ownership is not transferred and is retained by the owner, the right of possession certainly gets transferred in the case of a lease.

There is no dispute that any service connected with the renting of such immovable property would fall within the ambit of Section 65(105)(zzzz) and would be exigible to service tax. The question is whether renting of such immovable property by itself constitutes a service and, thereby, a taxable service. We have already seen that service tax is a value added tax. It is a tax on the value addition provided by some service provider. Insofar as renting of immovable property for use in the course or furtherance of business or commerce is concerned, the Hon'ble court observed that we are unable to discern any value addition. Consequently, the renting of immovable property for use in the course or furtherance of business of commerce by itself does not entail any value addition and, therefore, cannot be regarded as a service.

In view of the foregoing discussion, the Hon'ble Court hold that Section 65(105)(zzzz) does not in terms entail that the renting out of immovable property for use in the course or furtherance of business of commerce would by itself constitute a taxable service and be exigible to service tax under the said Act. The obvious consequence of this finding is that the interpretation placed by the impugned notification and circular on the said provision is not correct. Consequently, the same are *ultra vires* the said Act and to the extent that they authorize the levy of service tax on renting of immovable property *per se*, they are set aside.

The Hon'ble Court made it clear that we would like to

observe that we have not examined the alternative plea taken by the petitioners with regard to the legislative competence of the Parliament in the context of Entry 49 of List II of the Constitution of India.[**Home Solutions Retail India Ltd. And ORS vs. UOI & ORS. (WPC Nos. 1659/2008 & ORS)**

No Penalty if there is no mala fide intention

The Tribunal held, going by the contract details the assessee is providing security service but penalty is not called for as there is no mala fide intention. The relevant facts of the case, in brief, are that the appellants were entered into an agreement with BSNL for providing guarding and manning of the exchanges/offices and operating the generators in case of power failure. During the course of audit of service tax records of BSNL, it was detected by Central Excise Officers that the appellants are providing security services to them. The original authority confirmed demand of tax under the category of "security services" and imposed penalty. The Commissioner (A) reduced the penalty to Rs. 40,000/- and Rs.500/- under section 75 of the Act. The Tribunal found that the agreement indicates that the appellants provided guarding and manning of Exchange/Office and operating generator in case of failure of power. Clause 10 of the agreement indicates that the appellant will be liable to compensate in full the losses to the BSNL on account of any theft/burglary. So it is clear that the assessee provided security services. However, the Commissioner (A) observed that there is no mala fide on the part of the appellant. We also noted that the appellant provided security men to the BSNL, which is a Public Sector Undertaking. In view of that, imposition of penalty is not warranted. Accordingly, the demand of tax along with interest is upheld and penalties are set aside. **[M/s SHUBAM SECURITY SERVICE Vs CCE, MEERUT, 2009-TIOL-737-CESTAT-DEL]**

Vehicle used for particular destination is not taxable

Rent-a-Cab or Tour Operator Service - assessee enters into a contract for providing vehicles for fixed destination - Since the vehicles were used for a particular destination on demand of client, such service is not taxable.

In respect of services rendered continuously proportional tax shall be leviable

Service tax - construction service - assessee avails Cenvat credit as well as abatement of 67% - demand and penalty confirmed - held, since the assessee had provided the service before the Board's notification making availment of cenvat credit inadmissible for assessee if one avails abatement, and the

notification had come later, the assesse is entitled to relief - Assessee's appeal allowed

In this case the Appellants were engaged in providing construction services. It was noticed that the appellants had availed cenvat credit under Cenvat Credit Rules 2004 to the tune of Rs.74,888/-in the quarter ending March 2006 and simultaneously availed benefit by way of abatement of 67% as per Notification No. 18/2005-ST dated 07.6.2005.

The Tribunal observed that there was no dispute that the service was provided prior to amendment and by the time payment was received and tax liability arose, the Notification had been rescinded. As rightly pointed out by the appellants, in this case, the taxable event which is rendering the services was completed during the period prior to 1.3.2006. For this period appellant was entitled to abatement as well as Cenvat credit and for the subsequent period in respect of services rendered, the appellant was not entitled to abatement as well as cenvat credit. As further pointed out by the appellants, the argument is supported by the instructions issued of the Board at the time of introduction of services for commercial training, wherein a view was taken that in respect of services rendered continuously and part of services rendered prior to imposition, proportional tax shall be leviable. In Art Leasing case (*Art Leasing Ltd. 2007 (8). STR.162 (Tri. - Bang.)* = (2007-TIOL-1493-CESTAT-BANG)), the Tribunal held that taxable event had already occurred when the hire purchase contract was entered and installment payment started. The Tribunal also held that installments are only obligation of hirer and rate of services will be the rate prevailing on the date on which contract is entered into. In this case also, following the same analogy, appellants are eligible for the benefit of Notification No. 18/2005 for the period prior to 01.3.2006.**[M/s SANTOSH ASSOCIATES Vs CST, AHMEDABAD, 2009-TIOL-720-CESTAT-AHM]**

Tax paid before issue of Show Cause Notice (SCN) would not attract penalty

Service Tax paid before issue of SCN with interest covered by s. 73 (3) – Assessee under bonafide belief of non levy established on record – Penalty not leviable under Ss. 76, 77 and 78 of Finance Act, 1994

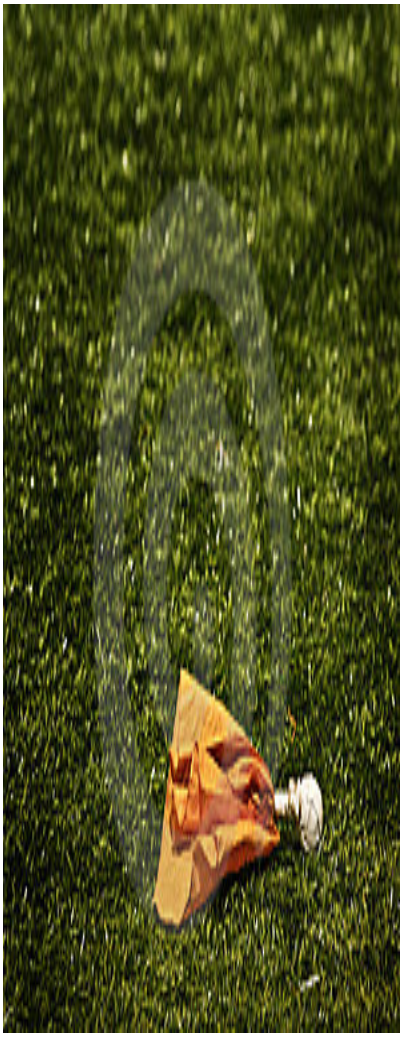
The Tribunal found that the adjudicating officer accepted that there was ignorance of law, absence of qualified accounts in-charge, new start up company and refusal by service receivers to pay Service Tax as they provide training as part of software implementation to companies who categorized it as software development. But, he adds that the same is not as sufficient reason for waiver of penalty. It is also on record that the appellant had not concealed any of his income; the entire transactions were truly accounted for in their books of accounts, based on which the quantification and demand was made. Moreover the adjudicating authority,

The Tribunal held that in the instance case, the Service Tax along with interest was paid before the issue of show cause notice and it is clearly noted down in the show cause notice. Further, there is no allegation regarding evasion. Therefore, the subject show cause notice is not at all valid, hence, on this ground alone

the impugned order needs to be set aside. [**(i) M/s C AHEAD INFO TECHNOLOGIES INDIA PVT LTD (ii) COMMISSIONER OF SERVICE TAX COMMISSIONERATE, BANGALORE** vs. **COMMISSIONER OF SERVICE TAX COMMISIONERATE, BANGALORE (ii) M/s C AHEAD INFO TECHNOLOGIES INDIA PVT LTD, 2009-TIOL-673-CESTAT-BANG]**

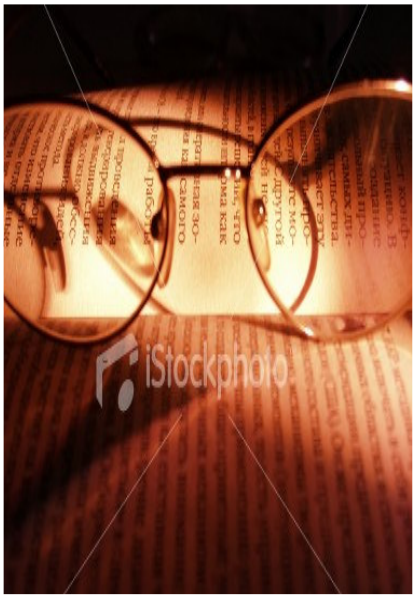
Leviability of service tax on promotion and marketing of lottery tickets

By inserting the Explanation appended to clause (19) of section 65 of the Finance Act, 1994, a new concept of imposition of tax has been brought in; but when a new type of tax is introduced or a new concept of tax is introduced so as to widen the net, it should not be construed to have a retrospective operation on the premise that it is clarificatory or declaratory in nature; therefore, the service tax, if any, on promotion and marketing of lottery tickets would be payable only with effect from May, 2008 and not with retrospective effect .**[UNION OF INDIA Vs M/s MARTIN LOTTERY AGENCIES LTD, 2009-TIOL-60-SC-ST]**



COMPANY LAW

➢ Latest Notification



FAQs on AS-11

The Institute of Chartered Accountants of India, through its Accounting Standard Board (ASB) issued a guidance in the form of FAQs on the AS 11 notification – Companies (AccountingStandards) Amendment Rules, 2009 (G.S.R. 225 (E) dt. 31.3.09) issued by Ministry of Corporate Affairs' The purpose of this Guidance is to illustrate and to assist in clarifying the application of the notification. Some of the main FAQs are as follows

(1) The notification uses the term 'depreciable capital asset'. What is meant by the term 'depreciable capital asset' as none of the accounting standards uses this terminology?

Response

The notification dated 31.03.2009 issued by the Ministry of Corporate Affairs seeks to insert paragraph 46 after paragraph 45 in the Accounting Standard (AS) 11 relating to the "The Effects of Changes in Foreign Exchange Rates". It requires that exchange differences arising on reporting of long term foreign currency monetary items at rates different from those at which they were initially recorded during the period (in respect of accounting periods commencing on or after 7thDecember 2006) or reported in previous financial statements, in so far as it relates to the acquisition of a depreciable capital asset can be added to or deducted from the cost of the asset. The notification also requires that depreciation on such capital asset be provided over the balance life of such an asset. The term "depreciable capital asset" has not been used in the accounting standards or the "Guidance Note on Terms used in Financial Statements". The nearest term available is "depreciable assets" in paragraph 3.2 of AS 6, reproduced below:
"Depreciable assets are assets which
(i) are expected to be used during more than one accounting period; and
(ii) have a limited useful life; and
(iii) are held by an enterprise for use in the production or supply of goods and services, for rental to others, or for administrative purposes and not for the purpose of sale in the ordinary course of business."
Further paragraph 3.1 of AS 6 states: "Depreciation includes amortisation of assets whose useful life is predetermined".
Accordingly, in the view of the ASB, the term "depreciable capital asset" would cover tangible fixed assets and intangible assets that are subject

to depreciation, amortisation or impairment.

(2) Would the notification cover exchange differences including those arising in terms of paragraph 36 of the Standard which deals with the forward exchange contracts?

Response

The notification would cover exchange differences including those arising in terms of paragraph 36 of AS 11 which deals with the forward exchange contracts provided such exchange differences relate to long term foreign currency monetary items as per the notification.

(3) Which other category of long term monetary assets would be covered apart from the depreciable capital asset? For example will this cover Fixed Deposits with a foreign bank held for more than 12 months as well as the amounts payable for a period exceeding 12 months?

Response

The notification covers the exchange differences arising on reporting of long termforeign currency monetary items and would cover all the long term monetary assets in foreign currency which have a term of 12 months or more at the date of the origination of the asset or liability.

(4) Will the assets acquired in India by payment in foreign currency also be covered by the notification? If this presumption is correct will it contradict the requirements of Schedule VI to the Companies Act 1956?

Response

The notification would apply to all the depreciable capital assets which are acquired using the long term foreign currency monetary items as no distinction is made with regard to the place of acquisition of assets. It may be added that Schedule VI has simultaneously been amended so as to delete the paragraph dealing with the increase or decrease in original cost of fixed asset acquired from a country outside India as a consequence of change in the exchange rate. This paragraph was a part of the Horizontal form of Balance Sheet under heading "Instructions in accordance with which assets should be made out".

(5) Will exercising the option under the Companies (Accounting Standards) Amendment Rules, 2009 be a change in the accounting policy?

Response

As the notification involves the adoption of an option available (a different accounting policy), it will be treated as change in accounting policy and it should be disclosed in accordance with Para 32 of AS 5, Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies.

(6) In case the foreign currency monetary item is not fully utilised for acquisition of fixed assets, then will proportionate adjustment be permissible in the fixed asset cost and balance of exchange fluctuation will be adjusted to Foreign Currency Monetary Items Translation Difference Account?

Response

Proportionate adjustment based on actual application of funds should be done to the fixed asset cost and 'Foreign Currency Monetary Item Translation Difference Account'.

(7) How 'Foreign Currency Monetary Item Translation Difference Account' should be presented in the Balance Sheet?

Response

The 'Foreign Currency Monetary Item Translation Difference Account' should be shown as a separate line item in the Balance Sheet, in line with treatment given to Deferred Tax Asset/Liability, i.e. after the head 'Investments' or after the head 'Unsecured Loans' as the case may be and separately from current assets and current liabilities.

(8) Whether the notification applies to non-corporate entities which are not covered by Companies Act?

Response

The notification applies to Companies registered under the Companies Act, 1956. In respect of all other entities, AS 11 as issued by ICAI is required to be followed.

(9) Should we capitalise exchange differences arising on settlement of long term foreign currency monetary items?

Response

As per paragraph 7.3 of AS 11, exchange differences include differences arising out of settlement also. Hence, such differences also should be capitalised.

(10) If the company exercises the option, what are the implications on current tax and deferred tax?

Response

Where the option is not exercised by the company, the foreign exchange losses and gains would continue to be treated as per the present practice for determining the current tax liability. However, the accounting treatment as per the option in the notification may give rise to timing differences under AS 22, Accounting for Taxes on Income. Adjustment to the general reserves should be made on a net of tax basis. This is supported by the approach taken by the ICAI in other cases. Thus, the deferred tax asset/liability arising in the event of the option being exercised is to be recognized against the corresponding net adjustment to the general reserves.

SEBI Amendments to the Equity Listing Agreement

(A) **Uniform procedure for dealing with unclaimed shares – Insertion of clause 5A**

It has been brought to the notice of the Board that there is a large quantum of shares issued pursuant to the public issues, which remain unclaimed despite the best efforts of the Registrar to Issue or Issuers and that there is no uniform practice for dealing with such shares. It has been decided to provide a uniform procedure for dealing with unclaimed shares i.e., shares which could not be allotted to the rightful shareholder due to insufficient/incorrect information or any other reason. Accordingly, the new Clause 5A is to be inserted, which, inter alia, provides the following:

The unclaimed shares shall be credited to a demat suspense account opened by the issuer with one of the depository participants.

Any corporate benefit in terms of securities, accruing on unclaimed shares such as bonus shares, split etc., shall also be credited to such account.

Details of shareholding of each individual allottee whose shares have been credited to such suspense account shall be properly maintained by the issuer.

The allottee's account shall be credited as and when he/she approaches the issuer, after undertaking the proper

verification of identity of the allottee.

The voting rights of these shares will remain frozen till the rightful owner claims the shares.

Details (in aggregate) of shares in the suspense account including freeze on their voting rights, shall be disclosed in the Annual Report as long as there are shares in the suspense account.

(B) **Notice period for Record Date and Board Meeting – Amendments to clause 16 and clause 19**

It has been decided to reduce the timelines for notice period for all corporate actions like dividend, bonus etc, for all scripts whether in demat or physical, whether in F&O segment or not. The notice period for record date has been reduced to 7 working days and for board meeting has been reduced to 2 working days.

(C) **Uniformity in dividend declaration – Insertion of clause 20A**

It has been decided to mandate that listed companies shall declare their dividend on per share basis only. This is expected to bring uniformity in the manner of declaring dividend amongst the listed companies.

(D) **Shareholding pattern for each class of shares and voting rights pattern –Amendment to clause 35**

It is clarified that clause 35 of the listing agreement which gives a format for disclosures of shareholding pattern, is required to be given for each class of security separately. Further, it has been decided to amend clause 35 to provide an additional format for disclosures of voting rights pattern in the company. **[Issued by the SEBI, vide SEBI/CFD/DIL/LA/1/2009/24/04 dated April 24, 2009]**

Simplified Listing Agreement for Debt Securities

In order to develop the primary market for corporate bonds in India, SEBI has notified the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008. The regulations provide for a simplified regulatory framework for issuance and listing of non-convertible debt securities by any issuer company, public sector undertaking or statutory corporation.

A. Where the equity of an issuer is listed, and such an issuer seeks listing of debt securities (whether by way of a public issue or a private placement), minimal incremental disclosures related to the debt security issuance would be sufficient, since large amount of information is already in public domain and material developments are disclosed under the equity Listing Agreement on a nearly continuous basis.

B. Where the equity of an issuer is not listed, and such an issuer seeks listing of debt securities (whether issued by way of a public issue or a private placement), detailed disclosures, fewer than those made under the equity Listing Agreement, would need to be made.

The Listing Agreement for debt securities as set out at Annexure consists of two parts. The first part prescribes only incremental disclosures which are relevant for debt securities of such issuers whose equity shares are listed on the Exchange. The second part, which is applicable to issuers whose equity shares are not listed on the Exchange, prescribes detailed disclosures. During the currency of listing of equity shares, the issuer shall comply with provisions in **Part A**. In all other cases, the Issuer shall comply with provisions in **Part B**. **[Issued by the SEBI, vide SEBI/IMD/BOND/1/2009/11/05 dated May 11, 2009]**

FOREIGN EXCHANGE MANAGEMENT ACT & RELATED REGULATIONS

➢ Latest Notification/ News

Prudential Norms on Unsecured Advances

In order to enhance transparency and ensure correct reflection of the unsecured advances in Schedule 9 of the banks' balance sheet, it is advised as under:

a) For determining the amount of unsecured advances for reflecting in schedule 9 of the published balance sheet, the rights, licenses, authorizations, etc., charged to the banks as collateral in respect of projects (including infrastructure projects) financed by them, should not be reckoned as tangible security. Hence such advances shall be reckoned as unsecured.

b) Banks should also disclose the total amount of advances for which intangible securities such as charge over the rights, licenses, authority, etc. has been taken as also the estimated value of such intangible collateral. The disclosure may be made under a separate head in "Notes to Accounts". This would differentiate such loans from other entirely unsecured loans. It would be applicable from the financial year 2009-10 onwards. **[Issued by RBI vide circular) RBI/2008-09/434 DBOD.No.BP.BC. 125 /21.04.048/2008-09 dated April 17, 2009]**

External Commercial Borrowings Policy – Liberalization Issue of Guarantee for operating lease

As a further measure of rationalization, it has been decided to allow AD Category – I banks to convey 'no objection' from the Foreign Exchange Management Act (FEMA), 1999 angle for issue of corporate guarantee in favour of the overseas lessor, for operating lease in respect of import of aircraft / aircraft engine / helicopter. The 'no objection' to the Indian importer for issue of corporate guarantee under FEMA, 1999 may be conveyed after obtaining -

(i) Board Resolution for issue of corporate guarantee from the company issuing such guarantees, specifying names of
or any other the officials authorized to execute such guarantees on behalf of the company.
(ii) Ensuring that the period of such corporate guarantee is co-terminus with the lease period.
[Issued by RBI vide circular RBI/2008-09/438 A. P. (DIR Series) Circular No.62 dated April 20, 2009]

External Commercial Borrowings (ECB) Policy - Liberalisation

It has been decided to extend the relaxation in all–in-cost ceilings, under the approval route, until December 31, 2009 which was earlier relaxed till June 30, 2009 as per A.P. (DIR Series) Circular No. 46. This relaxation will be reviewed in December 2009. **[Issued by RBI vide circular RBI 2008-09/460 A.P. (DIR Series) Circular No. 64 dated April 28, 2009]**

Foreign Direct Investment in India- Transfer of Shares / Preference Shares / Convertible Debentures by way of Sale - Modified Reporting Mechanism

In order to capture the details of investment received by way of transfer of the existing shares / compulsorily and mandatorily convertible preference shares (CMCPS) / debentures [hereinafter referred to as equity instruments], of an Indian company, by way of sale, in a more comprehensive manner, the form FC-TRS has been revised (format in Annex I).

Accordingly, the proforma for reporting of inflows / outflows on account of remittances received / made in connection with the transfer of equity instruments by way of sale, submitted by IBD/FED/nodal branch of the AD Category – I bank to the Reserve Bank has also been modified (format in Annex III).

The sale consideration in respect of equity instruments purchased by a person resident outside India, remitted into India through normal banking channels, shall be subjected to a KYC check (format in Annex II) by the remittance receiving AD Category – I bank at the time of receipt of funds.

In case, the remittance receiving AD Category – I bank is different from the AD Category - I bank handling the transfer transaction, the KYC check should be carried out by the remittance receiving bank and the KYC report be submitted by the customer to the AD Category – I bank carrying out the transaction along with the form FC-TRS. The form FC-TRS should be submitted to the AD Category – I bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the form FC-TRS within the given timeframe would be on the transferor / transferee, resident in India. In case of transfer of equity instruments where the non-resident acquirer proposes deferment of payment of the amount of consideration, prior approval of the Reserve Bank would be required, as hitherto. Further, in case approval is granted for a transaction, the same should be reported in form FC-TRS, duly certified by the AD Category – I bank, within 60 days from the date of receipt of the full and final amount of consideration. **[Issued by RBI vide circular RBI/2008-09/447A. P. (DIR Series) Circular No.63 dated April 22, 2009]**

Buyback / Prepayment of Foreign Currency Convertible Bonds (FCCBs)

It has been decided to increase the total amount of permissible buyback of FCCBs, out of internal accruals, from USD 50 million as per (RBI/2008-09/317A. P. (DIR Series) Circular No. 39 dated December 08, 2008) of the redemption value per company to USD 100 million, under the approval route by linking the higher amount of buyback to larger discounts. Accordingly, Indian companies may henceforth be permitted to buyback FCCBs up to USD 100 million of the redemption value per company, out of internal accruals, with the prior approval of the Reserve Bank, subject to a:

i) minimum discount of 25 per cent of book value for redemption value up to USD 50 million;

ii) minimum discount of 35 percent of book value for the redemption value over USD 50 million and up to USD 75 million; and

iii) minimum discount of 50 per cent of book value for the redemption value of USD 75 million and up to USD 100 million. **[Issued by RBI vide circular RBI/2008-09/461 A. P. (DIR Series) Circular No 65 dated April 28, 2009]**

RNM New Appointments

Birender Singh Advocate by profession has joined the RNM team as a Senior Advisor- Legal He obtained his Obtained Law degree from the University of Delhi (CLC) and was admitted at the Bar council of Delhi in 1986. He then joined M/s. Bhasin & Company, advocate & solicitors, New Delhi, a leading law firm, wherein, he handled both corporate and litigation till 1991. Thereafter, he has been practicing independently, with a wide range of cases such as constitutional, civil, criminal and service matters including Arbitration, property and consumer cases.

Pranab Majumdar has joined RNM Team as Manager- Finance & Consultancy. He is a qualified MBA and ICWAI with 9 years experience in corporate finance, banking, business analysis and financial planning, risk assessment, client and relationship management. Previously worked with companies like Copal Partner, Sprint RPG and GE Group.

Deepanshu C. Kalra has joined the RNM team as Asst. Manger HR. She has completed her MBA in HR with 6 years experience in HR and Administration. She previously worked as an Administration Head & Human Resources Executive with Convergys, Club Mahindra and MLG Group.

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