



Vijayadashami
Shubhahaaraikegalu

From the Chairman's Desk



Dear Professional Colleagues,

The e-news letter of our Chapter is being well received by our fraternity in Mysore. We have some articles contributed by our members. I would encourage you to share your insight into areas of common interest to us by regularly contributing articles/News update etc., by 10th each month so that our E-News letter could carry these for the benefit of the members in Mysore and elsewhere. Please feel free to chip in with your suggestions, views, and articles to add more value to this important communication tool.

The State's budget is turning into a nightmare, after the recent notifications on the Entry Tax. So is the case with certain notifications on applicability of service tax under the Finance Act 2004.

During the month, the Chapter conducted a career awareness programme at Mahajana's First Grade College for about 600 hundred students of B.Com & B.B.M. stream. While we are behind in achieving our target registration, these efforts are expected to improve our performance. Your suggestions in this regard would be most welcome.

The Oral Coaching Classes for December 2004 Intermediate Examination complete on time, and the next batch for Jun 04, examination, with about 20 students is set to commence on 15th October 2004.

As mentioned earlier, our chapter would be celebrating its Silver Jubilee Foundation Day next year. This would be a land mark in the history of the Chapter and I seek the support of all the members, in and around Mysore, by volunteering themselves and make this event a very special and memorable one. The Management Team of the Chapter met on 10th October at the Chapter to discuss the plan for this momentous event. I would encourage you to actively participate in this meeting.

With warm regards,

C.K.Sabareeshan

Monday, October 11, 2004

Newsletter-11

October 2004

Chapter News

Oral Coaching Classes: 2nd Batch to begin

This year's first batch for Oral Coaching classes completed its course as planned. Final test was conducted on 10th October 2004. This batch underwent coaching for first group of intermediate course.

Now the chapter has planned to begin classes for the next batch from 15th October 2004. The second batch will receive coaching for Group II of the intermediate course. Around 20 students have joined for the coaching.

Career Awareness Programs

On Tuesday 28th September 2004 career awareness program was conducted for B Com students of Mahajana College. Over 300 students participated in the program. In the same college, second program was conducted on Thursday 30th October 2004 for BBM Students. Over 250 students participated in this program.

Mr. C K Sabareeshan and Ms. Jayalakshmi Anshuman provided career awareness to the students in both of these programs.

Preliminary Meet on Silver Jubilee Celebrations

Mysore chapter is in its 25th year of existence. To mark this occasion, there were ideas floating among members. To begin with the management committee called a meeting of all members on 10th October 2004 in the chapter premises. The member participated in the discussion were Mr. C K Sabareeshan, Mr. Lakshminarasimha, Mr. K R Ganapathi, Ms. Nommoo Kinger Ms. Sarina, Mr. Dattatri and Mr. M C Bhansali. Different ideas were put on paper and currently the report is under circulation among members in Mysore for further consolidation.



News of Use

New norms to quicken incorporation in India

BANGALORE: Ask any foreign company: what is the main problem associated with incorporating a company in India? You will invariably meet with the same reply, the undue time involved.

A recent Reserve Bank of India (RBI) circular which does away with the requirement of obtaining an approval from the Foreign Investment Promotion Board (FIPB) on transfer of shares by a resident to a non-resident, will help quicken the process of incorporation. Here is how.

Of the two alternatives available to incorporate a company in India, foreign companies prefer one where the initial shares of the Indian subsidiary are subscribed to by Indian resident individuals as nominees of the foreign company. Such initial subscribers are often the solicitors of the company. Once the company is set-up, the shares are transferred to the foreign parent company.

The other alternative to incorporating a company in India, is for the foreign company itself to subscribe to the initial shares. This is more time consuming, as it requires getting the incorporation documents notarised and legalised in the country of origin of the foreign company.

INCOME TAX CANNOT DISALLOW LATE CONTRIBUTION TO PF, GRATUITY

NEW DELHI, OCT 5 : HEARTENING news for Companies. ITAT has ruled that the payment made by the employer towards contribution of PF, ESI, Gratuity, Superannuation and other welfare funds are allowable if the same are paid before filing the return of income and necessary evidence of such payment is enclosed with the return of income. No disallowance of such payment would be made even if the same are made beyond the due dates prescribed in section 36 (1)(va) . This amendment has been made to remove the hardship caused at present by the total disallowance of the amount paid for the welfare of employees, if the same had been paid after the due date. The amendment being curative in nature, would have a retrospective application.

Just a Click away

Here's one more step towards a simpler, easier way to file your tax returns -- virtually a click away.

In fact, the Central Board of Direct Taxes recently notified the Furnishing of Return of Income on Internet

Scheme, 2004 which enables individuals to now file their return on the Internet just like in the advanced countries.

Scrutiny guidelines

Scrutiny guidelines have been finalised by the CBDT. As per the information available following cases will be taken up for scrutiny.

1. All returns where deduction claimed under Chapter VIA of the I.Tax Act is Rs.25 lakhs or above in Delhi, Mumbai, Chennai, Kolkata, Pune, Hyderabad, Bangalore and Ahmedabad and Rs.10 lakhs or above in other places.
2. All returns where refund claimed is Rs.50 lakhs or above in Delhi, Mumbai, Chennai, Kolkata, Pune, Hyderabad, Bangalore and Ahmedabad and Rs.20 lakhs or above in other places.
3. All cases wherein Addition/Disallowance has been sustained by the CIT(Appeal) in any of the three preceding years amounting to Rs.10 lakhs and above in Delhi, Mumbai, Chennai, Kolkata, Pune, Hyderabad, Bangalore and Ahmedabad and Rs.5 lakhs or above in other places.
4. All cases of companies liable to pay tax under Section 115JB with book profit exceeding Rs.50 lakhs.
5. All cases where income exceeding Rs.10 lakhs has been claimed as exempt.
6. Cases where value of International Transaction (as defined U/s 92B of the I.T.Act) exceeds Rs.5 crores.
7. All cases of stockbrokers(including sub-brokers) where gross brokerage disclosed is Rs.1 crore and above and income declared is less than 10% of gross brokerage.
8. All cases of stockbrokers (including sub-brokers) with claim of bad debts of Rs.10 lakhs or more.
9. All cases of deduction under section 10A and /or 10B of the I.T Act with export turnover exceeding Rs.10 crores.
10. All cases of contractors whose gross contract receipts exceed Rs.5 crores and net income declared is less than 5% of gross contract receipts.
11. Cases not falling in the above categories and where the Assessing Officer is of the opinion that scrutiny is required for specific reasons viz. cases of builders/contractors following project completion method to declare their income, cases where there is prima facie evidence of dividend/bonus stripping etc.

may be selected for scrutiny after recording the reasons in writing and with prior approval of CCIT concerned.

12. In addition to the above, returns processed on AST will be selected through a Computer Assisted Scrutiny System(CASS). The selection criteria will be determined by the Board and the process which will be run by the Central System, will be completed in the 1st week of October, 2004. Separate instructions in this regard will be issued by the Directorate of Income Tax(Systems).

13. All Banks and Public Sector Undertaking.

14. All NSE-500 companies & BSE-A group companies as on 31/8/2004 listed on Bombay Stock Exchange.

Compulsory scrutiny for exempt income above Rs.2 lakh

The Central Board of Direct Taxes (CBDT) has stated that all non-corporate or individual taxpayers, whose income exceeds Rs 2 lakh and where exemption has been claimed, will automatically come under scrutiny. They will come under the "compulsory scrutiny" category as per the new scrutiny guidelines that were recently issued. This measure became necessary as dividends, long-term capital gains, some leave travel allowances, interest on specified tax-free bonds, agricultural income etc. are now exempt.

There is some concern, however, that this will cause great problems for the department as there is lack of adequate manpower.



Problem companies prohibited from premature repayment: RBI

RBI has stipulated stricter norms prohibiting "problem companies" from prematurely repaying of any deposits or to grant any loan against deposit in order to safeguard asset liability management discipline and restrict preferential repayment.

The RBI also stated in a notification that the non-banking companies like NBFCs and MNBCs have been classified into normally run and problem companies for permission to repay deposits. Certain companies have offered the depositors the right to premature repayment, which may vitiate the ALM discipline.

While the prevailing contracts conferring the right for premature withdrawal on the depositors would remain unchanged. In case of a depositor's death, the deposit may be repaid prematurely, even within the lock -- in period, to the surviving depositors or his nominee. After the minimum lock-in period, the problem company may pay the depositor, the principle sum of deposits or grant loan against the tiny deposits up to Rs.10, 000.

No: 06 (10-Jun-04) Investors' Education Protection Fund (IEPF)

The Department has vide its Circular No. 22/2002 dated 23rd September, 2002 have clarified inter alia that the Investors' Education Protection Fund (IEPF) became operational only on 1st October 2001, and all amounts due for transfer between 1st November 1998 and 30th September 2001 should have been transferred to it within the grace period of 30 days, i.e., by 31st October, 2001. Accordingly all concerned were advised to transfer to IEPF all the amounts referred to in Section 205C immediately after issue of the circular.

Conversion of External Commercial Borrowing and Lumpsum Fee/Royalty into Equity

Attention of Authorised Dealer (AD) banks is invited to A.P. (DIR Series) Circular No. 34 dated November 14, 2003, in terms of which issue of equity/preference shares against lump-sum technical know-how fee, royalty and External Commercial Borrowings (ECBs) already due for payment/repayment was permitted, subject to meeting all applicable tax liabilities and compliance with the procedures prescribed. The matter

has been further reviewed by the Government of India, Ministry of Finance vide Press Release dated September 29, 2004 (copy enclosed). Accordingly, it has been decided to grant General Permission for conversion of ECB into equity subject to certain conditions. A.P. (DIR Series) Circular No: 15 (01-oct-04)

Synchronization of holidays by Ports/Airports and the Customs Authority

The issue of synchronization of holidays between Ports/Airports and Customs was discussed on 9.4.1999 in the 22nd Export Promotion Board meeting Chaired by Cabinet Secretary and it was decided that Ports/Airports and Customs would synchronize their holidays. As the synchronization of holidays between ports/airports had still not materialized, the decision was again reiterated in the 42nd Export Promotion Board meeting held on 9.7.2004. **No: 50 (01-Oct-04)**

Reliability on Legal Opinions:

The assessee did not deduct tax on retention/ continuation pay paid by it in Japan to its expatriate employees deputed to India. It was held by the Tribunal that the bona fide belief of the assessee that such payments were not taxable in India, based on a legal opinion obtained from its internal legal cell (along with other facts), constituted a reasonable cause for not deducting tax at source and hence no penalty was leviable under section 271C. The High Court held that the decision of the Tribunal was not perverse.

CIT v. Mitsui & Co. Ltd. [2004] 190 CTR 38 (Del.)

Issuance of second show cause notice on different grounds is bad in law

The tribunal held that a second show cause notice cannot be issued on different grounds for the same issue and period after gathering additional information or material, when one show cause notice has already been issued.

CCE v Siddharth Tubes Ltd 2004 (170) ELT 331 (Trib)

Highlights of Foreign Trade Policy 2004-09

The Foreign Trade Policy for 2004-2009 has been announced with an objective to double India's percentage share of global trade to 1.5% in next 5 years and to act as an effective instrument of economic growth by providing a thrust to employment generation. Some of the key proposals of the Foreign Trade Policy are:

- Second hand capital goods can now be imported without any age limit (earlier the age limit was upto 10 years)
- Export obligation can now be discharged by export of other goods/ services (other than by use of goods imported under EPCG scheme) by company/ firm or group company/ managed hotel, without any prior approval.
- Actual User condition under EPCG relaxed to permit transfer of capital goods to group company/ managed hotel
- Remission of service tax proposed on goods and services exported by Domestic Tariff Area units

Service Tax Exemption to Certain Banking Services

The Ministry of Finance and Company Affairs notified the exemption of taxable service provided to a customer by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, in relation to overdraft facility, cash credit facility or discounting of bills, bills of exchange or cheques. The value of such exemption is equivalent to the amount of interest on such overdraft, cash credit or, as the case may be, discount, from the service tax leviable under section 66 of the said Act, subject to the condition that the said interest amount is shown separately in an invoice, a bill or, a challan issued for this purpose

Notification No: 29/2004 Dated 22.09.2004

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Applicability of service tax on consignment agents

The appellant received goods from the principal on consignment basis and sold the same to the customers. The authorities contended to tax the above services as consignment agent services under the definition of 'clearing and forwarding agent'. The Tribunal held that mere inclusion of the term 'consignment agent' in the definition of clearing and forwarding services does not make any consignment agent liable to service tax, unless its services are in relation to clearing and forwarding.

Mahavir Generics v CCE 2004 (170) ELT 78 (Tri)

Applicability of service tax on royalty payments

The appellant had made certain royalty payments to a foreign company in pursuance of agreement for technical know-how, equipment, skills etc. The authorities demanded service tax on the royalty payments under the category of 'consulting engineer services'. The Tribunal held that, in common parlance, payments of royalty is generally understood as share of product or profit reserved by owner for permitting another the use of his property. In the instant case, the royalty payments for use of technology and know how could not be equated with any services provided by the foreign company. Accordingly, the order for levy of service tax under the category of 'consulting engineer services' on such royalty payments was set aside.

Navinon Ltd v CCE (presently unreported)

Declaration of Interest By Directors & CARO

Section 299 of the Companies Act requires every director of a company to disclose his interest in a contract or arrangement with the company. For this purpose a general disclosure of interest by directors, shall be deemed sufficient compliance.

Section 299 is inapplicable if the directors either individually or together do not hold more than 2% of the paid up share capital of the other company. All parties disclosed in the general disclosure above are entered in the section 301 register.

CARO contains the following reporting requirements connected with section 301 register:

- 1) Whether the loans taken/granted to/from section 301 parties are prejudicial and whether payment of principal and interest are regular and reasonable steps have been taken, if overdue amount is greater than Rupees one lakh.
- 2) Whether transactions with section 301 parties have been entered at prices, which are reasonable having regard to, the prevailing market prices at the relevant time.
- 3) Whether the company has made any preferential allotment of shares to section 301 parties and if so whether the price at which shares have been issued is prejudicial to the interest of the company.

It is important to make correct entries in the section 301 register, since any additional entries that are not warranted by section 299 may unnecessarily extend the scope of CARO to companies, which are not intended to be covered.

In this connection, it is usually noticed that directors while making the general disclosure do not give their percentage holding in those companies and as a result even otherwise exempt companies are entered in the section 301 register.

One way of dealing with this situation is to ask directors to give a general notice with the percentage holding and then aggregating the percentage holding of all directors to verify if the 2% limit is exceeded or not. Another way of doing this is to ask the directors to give a declaration of whether they hold more than 0.1% shareholding. If all directors are below the 0.1% limit, then even where a company has 20 directors (maximum number), all interested in a particular company, the 2% limit would not be exceeded. This way one would ensure that the exempt companies are not included in the section 301 register.