Issue – 8 | August 2008

SNK Newsletter

DIRECT TAXES

Judicial Pronouncements

Gujarat Credit Corpn. Ltd. v. ACIT (2008) 113 ITD 133 (Ahd.)(SB)

Since loss which was not allowable was claimed as allowable, the same constituted 'reason to believe' for re-opening assessment under section 147.

The Assessee-company was engaged in business of finance and investment. Its assessment for relevant assessment year was completed under section 143(3), allowing unabsorbed business loss and unabsorbed depreciation to be carried forward. Subsequently, assessment was reopened on ground that loss on sale of investment which had been treated as asset in balance sheet, was to be treated as capital loss under head 'Capital gain' which was required to be added back to total income of assessee. Besides, penalty under section 271(l)(c) was also imposed. On appeal, Commissioner (Appeals) upheld disallow-ance of loss, however, taking a different view, i.e., loss on sale of securities was speculative loss - Commissioner (Appeals) further upheld imposition of penalty. The Assessee filed instant appeal on three grounds, firstly, reopening of assessment was invalid, sec-ondly, loss in question could not be disallowed as speculative loss and, thirdly, imposition of penalty under section 271(l)(c) was unjustified.

Since, in instant case, loss which was not allowable was claimed as allowable, constituted 'reason to believe' and it was held that income had escaped assessment. It was further held that the Assessing Officer was justified in reopening assessment under section 147.

In view of facts stated under heading 'income escaping assessment, non-disclosure of primary facts', it could be said that since assessee had not explained either before Commissioner (Ap-peals) or before Tribunal position of date of

purchase of scrip being after date of its sale, this was a clear indication of fact that transac-tion had been settled without delivery and was in nature of specu-lation.

Airports Authority of India v. DIT 2008-TIOL-10-ARA-IT

Payment made in lieu of transfer of right to use copyright is a royalty income.

Provision of services of installation, testing and training amount to technical service and would attract TDS as per DTAA.

Under the Income-tax Act as well as DTAA the payment made in lieu of transfer of right to use copyright is a royalty income.

The transfer of disc/floppy on which the copyrighted software has been inscribed is immaterial for this purpose. Further treatment for the purpose of sales tax law is also immaterial.

Sale of Software - In the absence of permanent establishment, as per Article 7 of DTAA, the income does not attract tax under the Act.

Installation, testing and training services - These primarily relate to software and they are in the nature of 'technical services' as per section 9 of the Act and 'included services' as per paragraph (4) of Article 12. According to Explanation (2) to clause (vii) of sub-section (1) of section 9, 'fees for technical services' means any consideration for the rendering of any managerial, technical or consultancy services, including provision of services of technical personnel. This income is chargeable to tax @ 10 per cent as per section 115A(1)(b)(BB) of the Act.

DDIT (Int. Tax.) v. M/s Thoresen Chartering Singapore (Pte) Limited 2008-TIOL-341-ITAT-MUM

Since the assessee was a mere agent in the chain of agencies involved between the cargo owner and the ship owner, it cannot claim benefits of Article 8 of DTAA with Singapore

The assessee is a tax resident of Singapore and deals in transportation of goods by sea. He claims non-taxability of income under Article 8 and benefits under Article 24 of DTAA. The AO holds since the assessee is a mere commission agent it cannot claim benefits admissible under Article 8. The CIT(A) admits additional evidence of agreements between the assessee and the ship-owning companies and allows the benefits under Article 8 but disallows under Article 24.

The ITAT held that Since the evidence reveals that the assessee was a mere agent in the chain of agencies involved between the cargo owner and the ship owner, it cannot claim benefits of Article 8 which mandates that it can be allowed only if Profit is derived from the operation of ships or aircraft in international traffic.

ITO v. M/S Ekta Promoters Pvt. Ltd. 2008-TIOL-337-ITAT-DEL-SB

Section 234D i.e. interest on excess refund granted cannot be applied with retrospective effect and is applicable w.e.f. AY 2004-05.

There is no dispute to the proposition that court cannot read anything into a statutory provision which is plain and unambiguous. A statute is the edict of the legislature. The language employed in a statute is a determinative of the legislative intent and according to the first and primary rule of construction the intention of the legislation must be found in the words used by the legislature itself and the function of the court is only to interpret the law and court cannot legislate, if a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. Legislative causus omissus cannot be supplied by judicial interpretative course." Thus, on the basis of argument that legislature has brought this provision just to fill the lacuna in the law and, therefore, these provisions should be construed retrospective cannot be accepted more particularly when these provisions have been inserted on the statute w.e.f. 1st June, 2003 and not with retrospective effect. The legislature has specifically mentioned the date of applicability i.e., 1st June, 2003 and the legislature was not incompetent to make retrospective provision, if it was so intended. Therefore, merely on the basis of interpretation, retrospective effect cannot be given to the provisions of Section 234-D.

The contention of the DR that the provision of Section 234-D being under the Chapter XVII under the head 'Collection and Recovery' should be construed to be a procedural or machinery section and, therefore, should be applied retrospectively is rejected.

The tribunal held, "If the provisions of Section 234-D are substantive, then the same cannot be held to be retrospective unless specifically provided in the statute itself; the provisions of Section 234-D are substantive and they cannot be applied retrospectively."

Section 234-D which has been brought on the statute from 1st June, 2003 cannot be applied to assessment year 2003-04 or earlier years, but it will have application only with effect from Assessment year 2004-05.

M/s India Comnet International (P) Limited v. ITO 2008-TIOL-360-HC-MAD-IT

Interest on exports proceeds deposited in bank is not eligible for deduction u/s 80-IA.

The assessee received the export proceeds and the same was deposited in the bank and the income was derived from the said deposit and hence here also there is no direct nexus between the interest and the Industrial Undertaking.

Hence, this Court judgment in the case of CIT v. Menon Impex P. Ltd. is squarely applicable to the facts of the present case.

CIT v. Moser Baer India Ltd. 2008-TIOL-338-HC-DEL-IT

The requirement of filing declaration for withdrawal of exemption claim u/s 10B before return-filing is only directory and not mandatory.

The assessee is a 100% EOU and decided to withdraw the claim of exemption for a particular Assessment Year. The assessee files declaration after due date of filing of the return. The AO disallows and CIT(A) approves it. The Hon'ble Tribunal holds the requirement of filing declaration for withdrawal of exemption claim before return-filing is only directory and allows the assessee's appeal. It was held that there are two limbs to Sec 10B(7). First one relating to filing of declaration for withdrawal of claim is mandatory where the second one relating to the time limit prescribed for filing the same before the due date of return-filing is only directory as it can be done before the assessment is completed.

Canara Bank v. ITO (TDS) 2008-TIOL-297-ITAT-AHM

Tax needs to be deducted on MICR charges by banks.

State Bank of India was managing and clearing of the cheques through MICR Centre by rendering managerial services which falls within the definition of technical services. The definition of "fees for technical services" is very wide. It covers within its ambit any managerial, technical or consultancy services rendered by a person. Since other banks pay to the State Bank of India charges for the MICR facilities regarding identifying, reading and clearing cheques through its special kind of machines, the same is in the nature of fees for technical services and, therefore, will be liable for TDS.

Covanta Samalpatti Operating Pvt. Ltd. v. ACIT 2008-TIOL-289-ITAT-MAD

Income from operating & maintain power plant set up by another enterprise is not eligible for deduction u/s 80-IA.

The Assessee enters into a service contract to operate & maintain power plant set up by another enterprise - claims Sec 80IA(4) benefits. The AO denies it and CIT(A) agrees with him. Since the assessee had only service contract and it had no ownership right over the electricity generated it is not entitled to Sec 80IA(4)(iv)(a) benefits. What further disentitles it is the works contract nature of the contract which was excluded by an Explanation inserted vide Finance Act 2007 with retrospective effect from 1.4.2000.

Unlike Section 80IA(4)(i) which confers such benefits to even an enterprise which develops, operates and maintains infrastructural facility, Section 80IA(4)(iv) does not confer similar benefits to enterprise manning service contract for power plants.

Kanhaiyalal Agarwal v. ACIT (2008) 116 TTJ 849 (Agra)(TM)

Mere fact that ornaments found at the residence does not give the AO the right to treat the same as undisclosed income. Explanation by the assessee needs to be rebutted.

Apart from the fact that silver ornaments were found at the shop premises of the assessee, there is nothing on record to consider the same in the hands of the assessee. Consistent stand of the assessee and the confirmation of his son M that these ornaments were brought to the shop only for getting them polished and the same were to be returned back to his customers cannot be brushed aside without assigning any reason. Therefore addition on account of undisclosed income cannot be sustained in the hands of the assessee.

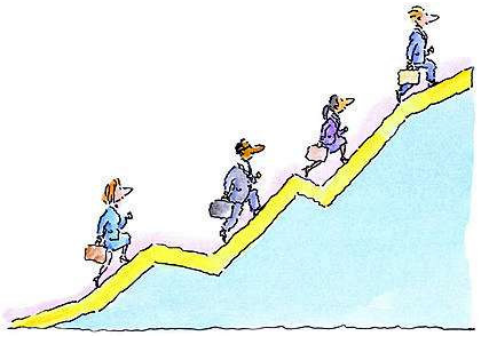
The explanation of the assessee that cash seized was sale proceeds of gold ornaments received by him at the time of his marriage rejected by AO. The assessee has produced Dharamkanta weighment receipt in support of his assertion and also filed the confirmation of the Dalai affirming sale of jewellery weighing 128.550 gms and the same has not been rebutted by the Department. The explanation of the assessee cannot be rejected simply because the particulars of jewellery are not mentioned in the Dharamkanta receipt.

Judicial pronouncements

ACIT vs. Goldmine Shares & Jance (P) Ltd. (2008) 116 TTJ 705 (Ahd) (SB)

Deduction u/s 80-IA is to be computed after deduction of the notional b/f losses and depreciation of eligible business even though they have been allowed set off against other income in earlier years.

Section 80-IA(5) bids one to treat the eligible business as the only source of income of an undertaking as real, which is an imaginary state of affairs. One must, therefore, surely imagine as also real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flown from or accompanied it i.e., there was no other source of income of the assessee. The contention on behalf of the assessee that the object of sub-s. (5) of s. 80-IA. was not that sections 32(2), 70, 71 and 72 would not be applicable, has also no force because it amounts to permit your imagination to boggle when it comes to the inevitable corollaries of the deemed state of affairs and also reading something which is prohibited by the fiction as not there in the provisions. Losses of the eligible business are to be set off only against the subsequent years' income of the eligible business, even though these were set off against other income of the assessee in the earlier year. This is so evident from CBDT Circular No. 281, dt. September 22, 1980. In view of the specific provisions of sections 80-IA(5), the profit from the eligible business for the purpose of determination of the quantum of deduction under section 80-IA has to be computed after deduction of the notional brought



forward losses and depreciation of eligible business even though they have been allowed set off against other income in earlier years.

DCIT vs. Maipo India Ltd. (2008) 116 TTJ (Del) 791

Securities Premium balance are not accumulated profits for taxing deemed dividend u/s 2(22)(e).

The Assessee company received a sum of Rs. 25,42,772 in the nature of loans and advances from company GCPL in which assessee company held 40 per cent shares. The Assessee repaid a sum of Rs. 14,31,000 towards the end of the year and the balance of Rs. 11,11,772 was treated by AO as deemed dividend. The CIT (A), on appeal, found that out of reserves and surplus account of GCPL, Rs. 1.90 crores represented share premium and Rs. 1,85,821 was on account of balance in P&L ale, which was treated as deemed dividend.

There being a statutory bar under section 78 of the Companies Act, 1956 on the share premium account being used for distribution of dividend, the deeming provisions of s. 2(22)(e) cannot apply. Sec. 78(1) of the Companies Act, 1956 says that any payment out of the share premium account, except for purposes authorised by sub-s. (2), will be treated as reduction of share capital attracting the provisions of the Companies Act in relation thereto. The expression "whether capitalised or not" can have application only where the profits are capable of being capitalized and not where the receipt in question forms part of the share capital of the company under the provisions of the Companies Act. In view of the provisions of Companies Act share premium cannot be stated to be commercial profits. It was held that amount of 1,85,821 alone out of the amount of Rs. 25,42,772 can be assessed as deemed dividend under s. 2(22) (e) represented share premium and Rs. 1,85,821 was on account of balance in P&L a/c, which was treated as deemed dividend.

ACIT vs. S. Prabhakar Kamath & Ors. (2008) 116 TTJ 817 (Bang.)

Income from house property cannot be assessed in hands of AOP in case of co-owners.

The house property under consideration was owned by co-owners. As per section 26, any income which is chargeable under the head 'Income from house property' is to be assessed in the hands of individual co-owners if their shares are ascertainable and such income cannot be taxed in the hands of AOP, more so, when it is taxed in-Individual hands up to AY 1994-95.

Mangalore Refinery & Petrochemicals Ltd. v. DDIT(IT) (2008) 113 ITD 85 (Mum.)

Delayed payment charges remitted by assessee to foreign company, being nothing but in nature of interest, the assessee was required to deduct at source.

Authority for permitting an assessee to remit payment to non-resident without deducting tax at source vests in Assessing Officer and not in any other person and such powers and discretions of Assessing Officer cannot be substituted with belief of an assessee.

It was held that in respect of payments made after moving an application under section 195(2) and on issuance of Certificate of no objection by Assessing Officer, assessee should not be treated as in default under section 201.

It was further held that before treating an assessee in default under section 201, it is not duty of Assessing Officer to ascertain whether recipient had paid tax and then adju-dicate upon dispute, but it is for assessee to demonstrate that on a particular remittance, tax had already been paid.

It was held that an order passed under section 201, read with section 195, is a tentative order subject to regular assessment, and Assessing Officer has to see prima facie whether any element of income chargeable to tax under section 4 is involved in amounts paid to non-resident; whether such receipts are actually taxable or not and to what extent element of income is involved in such payments, is issue which can be agitated in regular assessment proceedings of recipients.

It was held that delayed payment charges remitted by assessee to foreign company, being nothing but in nature of interest assessee was required to deduct at source before making said payments.

B.G. Chitale v. DCIT, Special Range 3 (2008) 23 SOT 189 (Pune)(SB)

Pasteurization of milk does not amounts to manufacture and hence no deduction can be allowed u/s 80-IA.

In the process of pasteurization, the milk passes through various stages of 'processing'. Defective raw milk is eliminated, odour and smell test is carried out. The raw milk is passed through fine duplex filters again to remove the impurities. At the next stage, pre-determined quantity of cow's milk is blended with buffalo's milk and pumped to a flow controller, maintaining constant flow through the pasteurizer. It is heated to 45 °Cand then goes to filtration stage. Then the milk enters hermetic cream separator, at which stage the standardization of the fat content is done, ***i***.e., a process of adjustment of fat content of milk by adding cream or skimmed milk so as to obtain appropriate specified constant fat content. The milk is again heated to 70.5 °Cand then it is cooled using glycol chiller to 1 degree C/2 degree C. In spite of all the process, the name 'milk' continues and it is treated as such in the market, though the natural ratio of components changes; it is used for the same purpose as it would have been used in its original stage itself. Mere value addition is not sufficient to. treat it as a separate commodity. Such process has to be treated as an independent process eligible for the claim the assessee had made.

Hence the assessee is not eligible for deduction u/s 80-I.

Voltas Ltd. v. ACWT (2008) 133 ITD 19 (Mum)(WT)(SB)

Section 4(8)(b) of wealth tax Act applies to lease and not to leave and license agreements.

Section 4, read with section 2(m), of the Wealth-tax Act, 1957, and section 269UA(f) of the Income-tax Act, 1961 - Deemed wealth -Assessment years 1997-98 and 1998-99

It was held that a lessee cannot be deemed to be owner of property leased to him under section 4(8)(b) if lease is on month to month or year to year basis or if terms of lease is less than 12 years.

In such cases, it is legal owner who is liable to wealth-tax levy on value of specified assets licensed/leased by him for a term of less than twelve years, as laid down in section 269UA (f) and his legal ownership would remain unaffected so long as term of lease is less than twelve years.

However, if term of lease is 12 years or more, then lessee would be deemed to be owner of such property under section 4(8) (b) and liable to wealth-tax.

Section 4(8)(b) applies to lease and not to leave and license agreements. In case of license, all ingredients of ownership including right to possession vest in owner-licensor and not in licensee and, therefore, in a leave and license arrangement, legal owner shall continue to be owner of licensed premises and assessable to wealth-tax as such.

Circulars / Notifications / Press release

Circular No. 5 /2008 F. No. 134 / 35 /2008 -TPL dated 14-07-2008

E-payment of tax can be made from account of any other person.

The Central Board of Direct Taxes, vide notification S.O.No.493(E) dated 13-3-2008 have notified the categories of taxpayers who are mandatorily required to electronically pay taxes on or after the 1st day of April, 2008. The taxpayers who are required to pay taxes by the prescribed mode are – (i) a company; and (ii) a person (other than a company), to whom provisions

of section 44AB of the Income-tax Act, 1961 are applicable.

With a view to facilitating electronic payment of taxes by different categories of taxpayers, it is hereby clarified that, - an assessee can make electronic payment of taxes also from the account of any other person. However, the challan for making such payment must clearly indicate the Permanent Account Number (PAN) of the assessee on whose behalf the payment is made. It is not necessary for the assessee to make payment of taxes from his own account in an authorized bank. Further, it is also clarified that payment of any amount by a deductor by way of tax deducted at source (TDS) or tax collected at source (TCS) shall fall within the meaning of 'tax' for the purpose of the rule 125 of the Income-tax Rules, 1962.

Circular No. 6 /2008 (F.No.142/02/2008-TPL) Dated 18-07-2008

Guidelines for filing Income Tax returns for AY 2008-09.

No documents need to be attached with the returns.

The Central Board of Direct Taxes, vide notification S.O.No.752(E) dated 28.3.2008 have notified return forms for the assessment year 2008-09. With a view to enabling tax-payers to file returns in the electronic mode, these returns (except ITR-7) have been made annexure-less. The instructions for filling up the return forms clearly stipulate that "No document (including TDS/TCS certificate, report of audit) should be attached to this form. Official receiving the return has been instructed to detach all documents enclosed with this form and return the same to the assessee.".

It has come to the notice of the Board that in spite of the directions contained in the Instructions for filling the return forms, the practice of accepting returns, along with annexures is still continuing. This practice goes against the expressed policy of the Government and is not in consonance with the legal provisions. Therefore, it is emphasized that Chief Commissioners of Income Tax must ensure strict compliance with the provisions of law. It may be reiterated that all annexures accompanying the income tax return forms should be detached and returned to the tax-payers by the receiving official.

India is, the cradle of the human race, the birthplace of human speech, the mother of history, the grandmother of legend, and the great grand mother of tradition.

Further, while processing such returns under section 143(1), the credit for tax deducted at source (TDS)/tax collected at source (TCS) shall be allowed on the basis of details furnished in the relevant schedules of the return forms subject to Instruction No.6/2008 dated 18th June, 2008 issued by the Central Board of Direct Taxes in respect of assessment year 2007-08 or any similar instructions as may be issued for assessment year 2008-09. No disallowance of claim for TDS/TCS shall be made by the assessing officer only on the ground that the TDS/TCS certificates have not been filed along with the return of income or Form ITR-V. The same procedure shall also apply in respect of challans relating to Advance Tax and Self Assessment Tax.

Assessees are advised to retain with themselves all annexures relating to computation of income, TDS/TCS certificates, counterfoil of challans relating to payment of advance tax and self assessment tax, audit reports and any other document which they would have otherwise liked to file in support of their claims. The original documents and certificates may be produced by them as and when called for by the assessing officer.

Instances have also come to the knowledge of the Board that ITR-V verification form are being received without giving them a Receipt Number. Since ITR-V verification form is an acknowledgement, the same should be received by giving a Return Receipt Number, as if it were a return. Separate counters may be set-up to receive such ITR-V verification forms. These ITR-V verification forms should be kept in safe custody.

Press Release, Dated 1-7-2008

CBDT clarification on tax holiday on Oil and Natural Gas Production

Whether natural gas is included in the expression "mineral oil" is subjudice and it would only be appropriate to allow the Courts to resolve this issue.

Newspaper reports in the recent past have suggested that the Ministry of Finance has gone back on its commitment to provide tax holiday in respect of profits derived from the commercial production of both oil and natural gas. CBDT wishes to clarify that this is not correct.

Section 80-IA(4E), the predecessor section to section 80-IB(9), was introduced in the financial year 1997-98. Section 80-IB(9) replaced section 80-IA(4E) with effect from the financial year 1999-2000. However, there is no material difference in the content or substance of the old provision and the

new provision. Subsequent to its introduction, bidding has taken place under NELP I to NELP VI and no request for amendment of the section was received from any quarter.

Meanwhile, whether natural gas is included in the expression "mineral oil" was raised by certain contracting parties before different authorities, including tribunals and courts. This issue is, therefore, sub-judice and it would only be appropriate to allow the Courts to resolve this issue. This has been abundantly clarified by the Finance Minister in his reply to the debate on the Finance Bill, 2008 in the Lok Sabha.

Furthermore, as oil exploration companies are aware, under Production Sharing Contracts with the Government of India, the exploration company is entitled to recover the full costs (as cost petroleum) before profits are shared with the Government or subject to any tax.

Notification no. 76/2008, dated 2-7-2008

Few Amendments have been made in Industrial Park Scheme, 2008

In exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961 (43 of 1961), the Central Government has made few amendments to the Industrial Park Scheme, 2008.

Instruction

CBDT relaxes norms for scrutiny of company tax returns

In what could be a major relief to the corporate sector, the revenue department has decided not to scrutinise the tax returns of over 1000 top companies, provided no major disputes are pending against them they had been complying with laws.

INDIRECT TAXES

Judicial pronouncements

Shree Rama Multi-tech Ltd. v. Commission of C. Ex. (Mum. CESTAT)

Valuation

Technical know-how supplied by foreign supplier being related to plant and machinery importer, technical know-how fees includible in the assessable value of project imports in term of Rule 9(1)(b)(iv).

Commissioner of C. Ex. v. Nand Mangal Steels Ltd. (2008) 226 ELT 701 (P&H)

No incriminating material found - Levy of penalty not justified

Demand and penalty – Clandestine removal – Photocopies of alleged parallel invoices which were provided by informer, not supported by any material – statement of assessee which was relied upon by the department, was retracted on the very next day – no incriminating documents found during the search of factory, office and residential premises of the director and authorized signatory of assessee company by officers of department – Assessee already reversed cenvat credit in respect of inputs found short and hence no infirmity can be said to have found in the impound order quashing demand and penalty.

Chandra Cotton fabrics v. Commissioner of C. Ex. (2008) 226 ELT 731 (Tri- Chennai)

Refund of cenvat credit

Refund of accumulated cenvat credit – when manufacturer exports his finished products under bond and is not in a position to utilize the credit for payment of duty on clearances for home consumption etc. the manufacturer is entitled to received refund of input credit periodically.

Circulars / Notifications

Circular No. 12/2008-Customs Dated 24-07-2008

Changes/amendments in the EOU/ EHTP/STP and Gems and Jewellery Export Promotion Schemes

In the recent past, many changes/ amendments have been made in the Foreign Trade Policy, 1st September, 2004- 31st March, 2009 (FTP) and Hand Book of Procedure, Volume 1 (HBP) relating to EOU/EHTP/STP/ BTP units under Export Oriented Undertaking scheme and Gem & Jewellery Export Promotions Scheme. To effect these changes, the relevant notifications have been suitably amended from time to time, wherever necessary.

Further, a few procedural changes have also been made in order to simplify procedures and to bring about uniformity in their implementation.

For detail changes please refer **www.cbec.gov.in.**

Service tax notification

CBEC has notified the accounting codes for the new services.

The detailed codes have been notified by CBEC in respect of new services notified vide Finance Act, 2008.

SEBI

Press Note No. 7 dated 16-06-2008

Consolidated policy on Foreign Direct Investment incorporating the policy changes up to 31-03-2008 has been released.

After the review of the policy on FDI, summary of policy was notified vide Press Note 4 (2006) and also further revised. A summary of the FDI policy and regulations applicable in various sectors and activities after incorporating the policy changes up to 31-03-2008 has been annexed in the press release.

FOREIGN EXCHANGE MANAGEMENT ACT

A. P. (DIR SERIES) Circular No. 01 dated 11-07-2008

Liberalisation in providing security for External Commercial Borrowings.

Under the extant ECB guidelines, the choice of security to be provided to the overseas lender / supplier for securing ECB is left to the borrower. However, creation of charge over immoveable assets and financial securities, such as shares, in favour of the overseas lender is subject to Regulation 8 of Notification No. FEMA 21/RB-2000 dated May 3, 2000 and Regulation 3 of Notification No. FEMA 20/RB-2000 dated May 3, 2000, respectively, as amended from time to time. Accordingly, proposals for creation of charge on immovable assets, financial securities and issue of corporate or personal guarantees, on behalf of the borrower in favour of the overseas lender, to secure the ECB under automatic / approval route, are considered by the Reserve Bank.

As a measure of rationalization of the existing procedures, it has been decided to allow AD Category - I banks to convey 'no objection' under the Foreign Exchange Management Act (FEMA), 1999 for creation of charge on immovable assets, financial securities and issue of corporate or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised by the borrower. Certain conditions have been imposed.

OTHERS

RBI Circular C.C. No. 124/ 03.05.002/ 2008-09 dated 31-07-2008

Deferred Tax Assets will be treated as an intangible asset and should be deducted from Capital

In terms of Accounting Standard 22 issued by the Institute of Chartered Accountant of India (ICAI), on 'Accounting for Taxes on Income', taxable income is calculated in accordance with tax laws and the requirements of these laws to compute taxable income differ from the accounting policies applied to determine accounting income. The tax effects of timing differences are included in the tax expense in the statement of profit and loss and as deferred tax assets (DTA) (subject to the consideration of prudence) or as deferred tax liabilities (DTL) in the balance sheet.

As creation of DTA or DTL would give rise to certain issues impacting the balance sheet of the company, it is clarified that the regulatory treatment to be given to these issues are as under :-

- The balance in DTL account will not be eligible for inclusion in Tier I or Tier II capital for capital adequacy purpose as it is not an eligible item of capital.
- DTA will be treated as an intangible asset and should be deducted from Tier I Capital.
- NBFCs may keep the above clarifications in mind for all regulatory requirements including computation of CRAR and ensure compliance with effect from the accounting year ending March 31, 2009. NBFCs which are unable to comply with the regulatory CRAR requirement due to giving effect to the norms as above will be given an appropriate transition period to comply with the same. Such companies may approach the Regional Office of the Bank in the jurisdiction of which their Registered Office is located for suitable dispensation in accordance with the spirit of these norms within a period of thirty days of the issue of the instructions in this regard.

Due Dates of key compliances pertaining to the month of August -08:

5th Aug.	***Payment of Service Tax & Excise duty for July***
6th Aug.	***Payment of Excise duty paid electronically through internet banking***
7th Aug.	***TDS/TCS Payment for July***
10th Aug.	***Excise Return ER1 / ER2 /ER6***
16th Aug.	***PF Contribution for July, Excise payment by SSI***
21st Aug.	***ESIC Payment for July***