

A group of four men in suits standing together, one holding a large award or trophy. The image is slightly blurred and has a warm, golden-brown tint. The text is overlaid on the image.

NEWS LETTER

UPDATES

1st JAN to 15th JAN, 2011

INDEX

1. CORPORATE NEWS

2. TAX NEWS

3. NOTIFICATIONS, CIRCULARS AND PRESS

RELEASES

4. CORPORATE CASE LAWS

5. TAX CASE LAWS

CORPORATE NEWS

[From 1st to 15th January 2011]

SAIL APPOINTS 2 PART TIME DIRECTORS

State-run Steel Authority of India today approved appointment of P C Jha and P K Sengupta as part-time non-official directors following nomination of the two by the central government. In another filing, the steel maker said it has fixed January 20 as a record date for payment of interim dividend of Rs 1.20 per share for the financial year 2010-11.

ANIL AMBANI BARRED FROM TRADING IN STOCKS BY SEBI

The Securities & Exchange Board of India (Sebi) has barred Anil Ambani and four other directors R-Infra and Reliance Natural Resources (RNRL) from investing in listed securities until December .This is part of a settlement for misusing funds raised abroad. As part of a consent order he has also paid Rs 50 crore as settlement charges.

RBI WILL HAVE TO RAISE RATES BY 1% THIS YEAR: GOLDMAN

The Reserve Bank of India will have to raise interest rates by 1 percentage point this year to fight inflation and the currency

would depreciate against the US dollar as the country imports more than it exports as forecasted by Goldman Sachs.

GUJRAT TO GET 1/3rd OF INDIA'S GDP

India will see its industry pledge investments in one state that may add up to \$450 billion, or one-third of the country's GDP. Top names from Corporate India will announce projects they plan to start in Gujarat at the two-day Vibrant Gujarat Global Summit. A 100% rise in investments is expected in the fifth edition of the summit.

RBI CRACKS THE WHIP ON FUND DIVERSION BY COMPANIES

The Reserve Bank of India has said some corporate clients of banks have diverted loans meant for business purposes, and has provided a six-step approach to prevent such diversion. RBI said that over-reliance on auditors should be avoided if the banking system has to grow in strength.

TATA STEEL FIXES PRICE BAND FOR SHARE SALE AT RS 594-610

Tata Steel fixed the price band of Rs 594-610 a share for its follow - on public offer of 5.7 crore shares, which will hit the capital markets between January 19 to 21.

At the higher end of the price band at Rs 610 per share, the company will garner Rs 3,477 crore from the FPO, while at the lower end of price band at Rs 594 a share; it will raise Rs 3,385 crore.

TATA STEEL TO RAISE UP TO \$769.5 MLN IN SHARE SALE

Tata Steel, the world's seventh largest steel maker, could raise as much as 34.77 billion rupees (\$769.5 million) in its follow-on public share sale. The company, which the market values at \$12.43 billion, has fixed a price band of 594 rupees to 610 rupees (\$13-\$13.5) for the share sale, the company said in a statement.

INDIGO SIGNS \$16-BN DEAL WITH AIRBUS

Budget airline IndiGo has signed an agreement to buy 180 Airbus A320 aircraft, the European plane maker said, in a record sale worth \$16.4 billion (about Rs 73,000 crore). by signing a memorandum of understanding (MoU) to acquire 150 single-aisle A320 neo jets.

TAX NEWS

[From 1st to 15th January 2011]

GOVT AGAINST BANNING FUTURES TRADE IN ESSENTIAL COMMODITIES

Contrary to concerns from the market, the government is not in favour of banning futures trading in essential commodities. There was a consensus not to tinker with the futures market now since it would send wrong signals to the market. None of the commodities where futures trading is currently taking place does not contribute to the current rally of prices.

SC EXEMPTS I-T FROM FEE ON VODAFONE MONEY

The Supreme Court on Monday exempted the income tax department from mandatory payment of 1% court fee on withdrawal of Rs 2,500 crore deposited by Vodafone International Holdings BV, the world's biggest mobile-phone company by sales, with its registry. The money was deposited by the British telecom major as part of its alleged tax liability in the 2007 Vodafone-Hutch cross-border deal that created Vodafone-Essar.

INCOME TAX OFFICES IN 8 NATIONS INCLUDING US, UK SOON

Government will operationalise eight overseas Income Tax offices in countries like the US, the UK and the UAE soon to obtain classified financial data and the officers who will man these units will be chosen by this month-end.

INDO-SWISS TAX TREATY HITS BUREAUCRATIC HURDLE

The revised tax treaty between India and Switzerland, to enable access to Swiss accounts of tax evaders, seems to have hit bureaucratic hurdle as the two governments are yet to notify each other on the required legal and procedural approvals. As per an agreement between the two countries, the information exchange was expected to take effect on January 1.

GE RESEARCH UNIT UNDER I-T LENS

The Bangalore based John F Welch Technology Centre of General Electric Company have come under the scanner of the income tax department for availing tax benefits by claiming to be engaged in the development and export of software and IT-enabled services. The centre has claimed deduction under Section 10A of the IT Act which relates to tax exemptions for software export income for units registered with the Software Technology Parks of India.

**CIRCULARS, NOTIFICATIONS AND PRESS
RELEASES**

[FROM 1st to 15th JANUARY, 2011]

SEBI

CIR/DNPD/ 2 /2011 [Dated January 11, 2011]

Introduction of Derivative Contracts on Foreign Stock Indices

It has been decided to permit Stock Exchanges to introduce derivative contracts (Futures and Options) on foreign stock indices in the equity derivatives segment in accordance with the Guidelines mentioned in the circular which shall come into force from the date of the circular.

INCOME TAX DEPARTMENT

Press Release: Dated 08.01.2011

IT Dept Plans New Measures to Curb Tax Evasion

The 30-page document, which charts out the course of action for the I-T department over next few years, was unveiled recently by Finance Minister Pranab Mukherjee strategic planning of the

department and its policies from 2011-2015 along with the new Direct Taxes Code (DTC) which is proposed to replace the current Income Tax Act from next fiscal. The Income Tax department plans to "immediately capture" on receipt the data of returns filed by taxpayers to enhance their investigation and enforcement action to curb tax evasion and reduce tax gap over the next few years. The I-T department is also considering modification of Income Tax Return forms and a "criminal investigation" system within its establishment to combat terror financing, money laundering, offshore tax evasion and other illegal trades which impact national security.

CORPORATE CASE LAWS

[TILL 15th JANUARY, 2011]

Legality of Imposition of monetary penalty

Mansukh Stock Brokers Limited v. Securities and Exchange Board of India, Mumbai [*SECURITIES APPELLATE TRIBUNAL, 10 Jan 2011*]

FACTS OF THE CASE:-

Securities Exchange Board of India (Board) investigated in the trading of the scrip of the company which revealed that stock brokers including the appellant executed circular trades in the scrip of the company .Adjudication proceedings were initiated against all the brokers and their clients .Show cause notice was issued to appellant alleging that it had alongwith other stock brokers executed circular trades in the scrip of the company thereby violating regn. 4 of the Regulations, 2003 and the code of conduct prescribed in schedule II r/w Regulations, 1992 .Adjudicating officer imposed a monetary penalty on appellant.

HELD:-

The appeal was dismissed.

REASON:-

The anonymous trading system does not permit trades to be executed in circles and whenever such trades are executed, it could only be the result of manipulation which implies a prior understanding between the stock brokers and the clients. Such circular trades are artificial in nature as they do not transfer the beneficial ownership in the shares traded and are meant only to create volumes on the screen of the trading system. In the present case, charges levelled against the appellant were established on the basis of the evidence on record.

Whether primary responsibility to ensure statutory Compliances as per section 159 and 200 vest with management

VATS ASSOCIATES (P.) LTD. v. REGISTRAR OF COMPANIES

[2010] 102 SCL 397 (DELHI)

BRIEF FACTS:-

The name of the petitioner Company was struck off from the register of Companies by the ROC due to defaults in statutory compliances of filing Balance sheet and annual return of 31-3-2000 to 31-3-2008. The petitioner Company filed the petition seeking restoration of its name in the register of Companies stating that it has been active since incorporation and its Company secretary did

not file the said returns and documents which came to the knowledge of the petitioner Company in 2009.

HELD:-

The petition was allowed

REASON:-

The name of the Petitioner Company was restored in the register of Companies after payment of late fees and completion of all formalities for late deposit of statutory documents with ROC as it is a running Company. But the court also sated that the primary responsibility to ensure compliances rest with the Company even if the employee has performed negligently on his part.

TAX CASE LAWS

[TILL 15th JANUARY, 2011]

Even s. 115J / 115JA Book Profit Cos liable for advance-tax & s. 234B interest

JCIT v ROLTA INDIA LTD.

CIVIL APPEAL NO.135 OF 2011 (S.L.P. (C) No. 25746 of 2009)

FACTS OF THE CASE:-

Assessee furnished a return of income on 28.11.1997 declaring total income of Rs. Nil and an order under Section 143(3) was passed determining the total income at nil after set off of unabsorbed business loss and depreciation. The tax was levied on the book profit worked out at Rs. 1, 52, 61,834/- determined as per the provisions of Section 115JA. The interest for default in payment of advanced tax under Section 234B of Rs. 39, 73,167/- was charged on the tax on the book profit as worked out in the order of assessment. The assessee went in appeal before CIT (A) aggrieved by the said order but the said appeal was dismissed on the ground

that the case fell under Section 115JA and not under Section 115J. However the Karnataka High Court held that interest under Section 234B cannot be charged on tax calculated on book profits. Thus the department went in for this appeal in the Supreme Court.

HELD:-

The appeal was upheld and decided against the assessee

REASON:-

As S. 115J/115JA are special provisions. For purposes of advance tax the evaluation of current income and the determination of the assessed income had to be made in terms of the statutory scheme comprising s. 115J/115JA. Hence, levying of interest was inescapable. The assessee was bound to pay advance tax under the scheme of the Act as it is clear that S. 234B applies to all companies. There is no exclusion of s. 115J/115JA in the levy of interest u/s 234B.

If commercial transaction is at arms' length, no transfer pricing addition for non-charging of interest on overdue debt.

Nimbus Communications Ltd vs. ACIT (ITAT Mumbai) ITA [6597/Mum/09 Assessment year: 2004-05]

FACTS OF THE CASE:-

The assessee had an “international transaction” with its associated enterprise because of which it was due to receive payment which was overdue. No interest was charged on the said dues. The Transfer Pricing Officer took the view that charging of interest on outstanding balances after about 30 days was the expected normal arm’s length price and made an adjustment of Rs 12.51 lakhs being the notional interest calculated at 2.19% LIBOR on the overdue amount beyond 30 days. This was confirmed by the CIT (A).

HELD:-

The appeal was allowed

REASON:-

A transfer pricing adjustment can be made u/s 92 in respect of an “international transaction”. A continuing debit balance is not an “international transaction” per se but is a “result” of the international transaction. A continuing debit balance reflects that the payment, even though due, has not been made by the debtor. It is not necessary that a payment is to be made as soon as it becomes due. Many factors, including terms of payment and normal business practices, influence the fact of payment in respect

of a commercial transaction. The question here was that whether the commercial transaction is at arms length or not .The continuing debit balance does not have any effect as there is nothing on record to show that as a result of not realizing the debts from the AE there has been an impact on profits, incomes, losses or assets of the assessee. Further, when an ALP is made in respect excessive credit period allowed under the CUP method, the comparable has to be dues recoverable from a debtor and not a borrower. The adoption of interest @ 2.19% LIBOR on balances which exceed 30 days is not justified because LIBOR is relevant only in the case of lending or borrowing of funds and not to commercial over-dues. Assuming the continuing debit balances can be treated as an 'international transaction', the TPO ought to have applied the CUP method by considering whether the assessee had charged interest on overdues from independent enterprises (internal CUP) or whether other enterprises had charged interest in respect of overdue in respect of similar business transactions from independent enterprises (external CUP).

No s. 14A disallowance for personal tax-free investments if business expenditure not disallowed on ground of being for personal purposes

Shri Pawan Kumar Parmeshwarlal v. ACIT (Mumbai)

ITA No. 530/Mum/2009

BREIF FACTS:-

The assessee, a stock broker & Member of BSE, earned tax-free income by way of dividend, interest on RBI bonds and PPF interest. The assessee claimed that no disallowance u/s 14A could be made as no expenditure was incurred by him to earn the tax-free income as the shares were in the demat account for a long time and dividend was automatically credited to the bank account. The AO disallowed Rs. 20,000 u/s 14A. In appeal, the CIT (A), instead of examining the issue on factual basis, directed that Rule 8D should be applied. The assessee filed appeal against the order of CIT(A).

HELD:-

The appeal was allowed

REASON:-

The assessee is maintaining separate books of account for the purpose of business. The tax-free investments are in his personal capacity. As the AO has not disallowed any expenditure of personal nature out of the business income, the expenditure claimed in the business of share dealings cannot be correlated to the incomes earned in personal capacity that too on dividend, PPF interest and tax free interest on RBI bonds. Accordingly, the estimation of expenditure of Rs. 20,000 out of business expenditure as being incurred for earning tax free income is not acceptable.



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