

POC CONNECT

UPDATES

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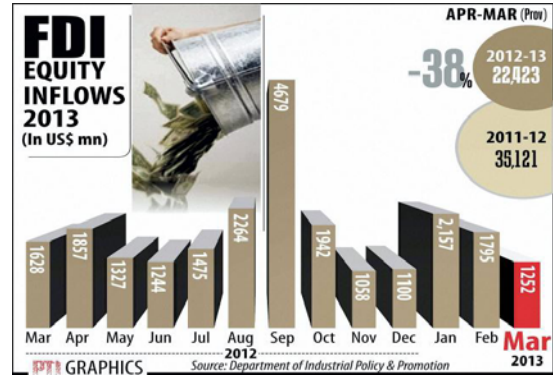


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FDI dips by 38% to \$22.4 bn in 2012-13

Government's efforts to promote India as an investment destination does not seem to be yielding fruits as FDI inflows registered 38 per cent decline to \$22.42 billion in 2012-13 compared to the previous year. FDI inflows were worth \$35.12 billion in 2011-12.



Immense pressure from stakeholders prompted KV Kamath to pass baton to NR Narayana Murthy

It was the immense pressure from internal and external stakeholders that prompted the non-executive chairman of India's second-largest software exporter to hand over the reins to co-founder NR Narayana Murthy in a desperate bid to revive the fortunes of the company

Electrolux scouts for partner to enter India's television and audio products market

Swedish household appliance maker AB Electrolux is scouting for a local partner to enter India's television and audio products market through brand licensing.



NASSCOM, SIDBI ink partnership for MSME development

The National Association of Software and Services Companies have entered into a Memorandum of Understanding with Small Industries Development Bank of India to work together for entrepreneurship growth and development of MSME in the Information and Communication Technology (ICT) sector in the country.



Rupee's fall hands international fund investors a bounty

Investors who bet on international funds last September are sitting on good returns now, helped by the favourable rupee as also the revival of equity markets in the developed world. The rupee has depreciated 7.6 per cent against the dollar over this nine-month period and, at 56.3 to a dollar now, is at a eleven-month low.

Walmart to buy 49% in holding company of Bharti Retail

Walmart Stores Inc, the world's largest supermarket, looks set to become the first foreign company to invest in multi-brand retail by buying a 49% stake in Cedar Support Service, the holding company for Bharti Retail, in September for Rs 455.8 crore and will convert compulsory convertible debentures (CCDs), purchased in March 2010, into 42.6 crore equity shares.



Over 100 MNCs seek advance ruling to avoid tax disputes

About 146 multinational companies (MNCs) seeking to avoid transfer pricing taxation dispute, have sought advance ruling under APA (Advance Pricing Agreements) mechanism.



I-T dismisses Nokia appeal against a Rs 2,080-crore income-tax demand notice

Finnish mobile phone maker Nokia has said tax authorities have dismissed its appeal against a Rs 2,080-crore income-tax demand notice for five fiscal years starting 2006-07.

Jaypee to get Rs 21-cr service tax notice for hosting F1 race

A Rs 21-crore notice to Jaypee Sports International, a subsidiary of Jai prakash Associates, is on its way for alleged evasion of service tax on acquisition of the rights to host and stage the Formula 1 motor sports race.



FM asks I-T to avoid raids

Finance Minister P Chidambaram has asked officials to tread cautiously while chasing tax evaders and avoid raids as long as possible. Mr. Chidambaram asked the income-tax department to focus on building a tax case by gathering information from third-party sources, instead of a raid, and then confront tax evaders with that information.

**Income tax office slaps Rs 577-cr tax demand notice on Infosys**

Income Tax department has slapped a fresh Rs. 577-crore tax demand notice on Infosys for 2009-10 assessment year, adding to the tax woes of India's second largest IT firm.

Ministry of Corporate Affairs

Power of ROCs to obtain declaration/affidavits from subscribers/first directors at the time of incorporation in respect of acceptance of deposits.

General circular no:11/2013 29th May,2013

ROCs may obtain declaration /affidavits from subscribers/first directors at the time of incorporation & subsequently whenever company shall change its objects, to the effect that company/directors shall not accept deposits unless compliance with the applicable provisions of the companies act 1956,RBI act 1934,SEBI act 1992 and rules/directions/regulations.

SEBI

Revised requirements for the Stock Exchanges and Listed Companies -Scheme of Arrangement under the Companies Act, 1956

CIR/CFD/DIL/8/2013 ,May 21, 2013

- Requirement of submission of Valuation Report from Independent Chartered Accountant
- No Valuation Report required if no change in the shareholding pattern of the listed company / resultant company
- Listed companies shall make sure that the after disclosure of all material facts in the explanatory statement shall be sent to the shareholders in relation to such resolution, in the certain cases



In the Court of Competition Commission Of India [2013] 119 SCL
107/32 201 (CCI) Section 3(4) of Competition Act 2002

Whether Opposite Parties [Ops] were in dominant position in relevant market to establish violation of section 4 and that adverse effect on competition in market and smart phones and or mobile services had been established for contravention of section 3(4)?

Sonam Sharma versus Apple Inc. USA (OP1), Apple India Pvt. Limited (OP2), Vodafone Essar Limited (OP3) and Bharat Airtel Limited (OP4)

Brief Facts:

The informant filled information against OP's alleging that OP's had entered into anti-competitive agreements and had abused their dominant position in violation of Section 3 and 4 of Competition Act, 2002 by granting exclusive selling rights of iPhone 3G/3Gs, manufactured by OP1 and OP2 to OP3 and OP4 for undisclosed number of years even prior to its launch in the market. The iPhones sold by OP3 and OP4 were compulsorily locked, thereby meaning that the handset purchased from either of them shall work only on their respective networks and none other. The Informant has further averred that OP3, in order to maximize its profit, tweaked its internet services in such a manner that they were no longer usable on iPhones and introduced iPhone-specific plans. The iPhone-specific internet plans of OP3 and OP4 were costly than their normal internet plans, thus compelling not only existing customers to pay extra for using internet on their iPhone but also prospective iPhone purchasers to leave their respective network providers and to compulsorily opt for expensive mobile telephony services.



Held:

It was held that respondents were not found to be abusing dominant position and thus the matter was closed.

Conclusion:

The Commission opined that there was no anti-competitive effect of the tie-in arrangement as alleged by the Informant. There was no evidence that such arrangement has created entry barriers for new entrants and no adverse effect has been established by such act. Moreover, the innovation had resulted in an explosion of new mobile devices and continued growth of the mobile communications industry. Hence, the belief that the tying arrangement had caused serious harm was misplaced. In view of the foregoing, there was no case in terms of Section 3(4) violation and Section 4.



Competition Commission of India

CIT vs. Friends And Friends Shipping Pvt. Ltd (Gujarat High Court)
May 9th, 2013

Loss on foreign currency forward contracts by a manufacturer/ exporter is a "hedging loss" and not a "speculation loss"[S. 43(5)]

BRIEF FACTS:

The assessee, an exporter, entered into forward contracts with Banks to hedge against any loss arising out of fluctuation in foreign currency. The forward contract provided that the assessee would buy some quantity of dollars at a particular rate to cover export bill payment. The contract gave delivery option dates and the assessee had the option to cancel the contract and pay the loss to the Bank. The assessee suffered a loss of Rs. 15 lakhs on such cancellation. The AO & CIT(A) held that the loss constituted a "speculation loss" u/s 43(5) and could not be allowed as a deduction. On appeal, the Tribunal upheld the assessee's claim. ,

HELD : The appeal of the department was dismissed before the high court.

CONCLUSION:

Though the assessee is not a dealer in foreign exchange, it entered into forward contracts with banks for the purpose of hedging the loss due to fluctuation in foreign exchange while implementing the export contracts. The transactions in foreign exchanges were incidental to the assessee's regular course of business and the loss was thus not a speculative loss u/s 43(5) but was incidental to the assessee's business and allowable as such. The fact that there may have been no direct co-relation between the exchange document and the precise export contract cannot be seen in isolation if there are in fact several separate contracts with the bankers. Case laws referred (**Soorajmull Nagarmull** 129 ITR 169 (Cal) & **Badridas Gauridu** 261 ITR 256 (Bom) followed; **M. G. Brothers** 154 ITR 695 (AP) distinguished).



Foreign Exchange

CIT vs. Kichha Sugar Company Ltd.(Uttarakhand High Court), May 31st, 2013

"Due date" in s. 36(1)(va) for payment of employees' Provident Fund, ESIC etc contribution should be read with s. 43B(b) to mean "due date" for filing ROI.

BRIEF FACTS:

The assessee collected employees' Provident Fund contribution for payment to the provident fund authorities. However, the amount was not paid to the provident fund authorities within the "due date" specified in the Provident Fund Act though it was paid before the due date of filing the return of income. The AO assessed the amounts received as income u/s 2(24)(x) but refused to allow a deduction u/s 36(1)(va) on the ground that the amounts were not paid within the prescribed "due date". The CIT(A) and Tribunal allowed the assessee's claim for deduction u/s 43B(b). The Department filed an appeal in the High Court claiming that s. 43B did not apply to employees' contribution.

HELD THAT:

S. 2(24)(x) provides that the amounts of employees' contribution to PF etc collected by the employer shall be assessed as his income. S. 36(1)(va) provides that the said employees' contribution shall be allowed as a deduction if paid within the "due date" specified in the relevant legislation. S.43(B)(b) provides that any sum payable by the assessee as an employer by way of contribution to any provident fund etc shall be allowed if paid before the due date of filing the ROI. The "due date" referred to in s. 36(1)(va) must be read in conjunction with s. 43B(b) to mean the "due date" of filing the ROI.



CIT vs. Madan Theatres (Calcutta High Court), May 27th 2013

No penalty for not offering capital gains on Section 50C stamp duty value

BRIEF FACTS:

The assessee sold property for a consideration of Rs. 2.50 crore. However, for the purpose of stamp duty, the property was valued at Rs. 5.19 crore and stamp duty was paid on that value. The assessee offered capital gains on the basis that the sale consideration was Rs. 2.50 crore.

HELD THAT:

The AO invoked s. 50C and held that the sale consideration had to be taken at Rs. 5.19 crore and capital gains computed on that basis. Accordingly the AO also initiate penalty proceedings u/s 271(1)(c) which was deleted by the CIT(A) and the Tribunal by relying on Renu Hingorani. On appeal by the department to the High Court, HELD dismissing the appeal:

Though the assessee could have disputed the valuation on the basis of the deemed value and chose not to do so, the fact remains that the actual amount received was offered for taxation. It is only on the basis of the deemed consideration that the proceedings u/s 271(1)(c) started. The revenue has failed to produce any iota of evidence that the assessee actually received one paise more than the amount shown to have been received by him. As such, there is no scope to admit the





For any suggestions & Queries

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