



NEWS LETTER

Updates

October 1st- 15th

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India signed a pact with Bermuda on exchange of tax information

India on Thursday signed a pact with Caribbean tax haven Bermuda, which will facilitate exchange of information between the two countries regarding tax evasion. The Tax Information Exchange Agreement (TIEA), as it is called, conforms to the guidelines issued by OECD for countries and destinations considered tax havens to share information.

Miners with political links shell out record income tax

Individuals engaged in the mining business have emerged the country's top taxpayers along with film stars, professionals, top-notch CEOs and promoters of large corporations. These individuals, most of whom are prominent politicians or having direct links with the political elite, have shown a quantum jump in their advance tax payments this September, data gathered by FE s.

Vodafone files petition against India tax move

Vodafone said on Friday it had filed a writ with the Bombay High Court defending itself against a new step by Indian tax authorities to treat the company as an agent of the seller in its 2007 purchase of Hutchison Whampoa Ltd's mobile business in the country. Vodafone contended that the key issue of jurisdiction (as to whether the Indian tax office can tax the transfer of a foreign company's shares between two non-residents) is currently under appeal to the Supreme Court of India.

Nelp 9 blocks on offer for global investors sans 7-year tax break

Global majors are set to bid for 34 hydrocarbon blocks, which will be put on offer on Friday, but without seven year tax-free profits that companies have tried hard to secure on natural gas to be produced from the blocks.

Petroleum minister Murli Deora will place the details of the blocks and re-worked model production sharing contract before potential bidders in the capital on Friday, followed by a similar drill in Mumbai on Monday.



[Sebi Okays USE to trade in currency options](#)

The United Stock Exchange, which began operations last month, has received approval from the market regulator Securities and Exchange Board of India (Sebi) to start trading in currency options. On September 20, the exchange commenced future trading in currency pairs of Dollar-Rupee, Euro-Rupee, Yen-Rupee and Pound-Rupee, allowed by the market regulator Sebi.

[IPO guidelines for insurance companies soon: IRDA](#)

Insurance regulator IRDA today said the guidelines for insurance companies to tap the capital market for funds were awaiting Sebi nod and would be out soon. However, it has been approved by the Joint Committee of SEBI.

[Reliance Life launches highest NAV advantage Ulip plan](#)

ADAG group company, Reliance Life Insurance, today launched of a Unit Linked Insurance Plan (Ulip) that address long-term wealth creation and protection needs of Customers. The key highlight Reliance Life Insurance Highest NAV Advantage Plan is it offers guarantee on maturity with the highest net asset value (NAV) per unit achieved during the entire 15 years policy term, Reliance Life Insurance said in a statement.

[RBI tells foreign banks to take country roads](#)

The government and the Reserve Bank of India, or RBI, will nudge foreign banks in India to operate in unbanked areas and relatively small towns like their local counterparts, in new rules for conversion of their existing branches here to fully-owned subsidiaries. The proposed draft guidelines are expected to be unveiled shortly.

[SBI eyes up to Rs 20,000-cr from rights issue by end-FY 11](#)

According to a Top Bank Official, State Bank of India (SBI) will be raising up to Rs 20,000-crore through a rights issue and hopes to launch it before March 2011, final decision on the issue by December-end and the issue to hit the market before the culmination of the current fiscal year.



Infosys declare 200% Interim Dividend:

Infosys Technologies Ltd Friday declared 200 per cent interim dividend of Rs 10 per share and a whopping 300 per cent special dividend of Rs 30 per share of Rs 5 at par value for its 30th year. An interim dividend of Rs.10 per share and a 30th year special dividend of Rs.30 per share will be paid for all shareholders of the company.

Corporate Case Law

KOTHARI INDUSTRIAL CORPORATION LTD. v. KOTAK MAHINDRA BANK LTD

BREIF FACTS:-

The appellant-company was ordered to be wound up on pre-admission notice and upon hearing contended that none of the mandatory statutory provisions for ordering Winding up of a company had been followed and that the winding up order had been passed without admitting the company petition Which was against the requirements of rules 96 and 99 of the Companies (Court) Rules, 1959 and section 443(2) of the Companies Act, 1956.

HELD:

The petition was allowed as the order of winding up was contrary to the statutory requirements and amounted to an illegal order not supported by the statute. An illegal order could not be severed by keeping the finding alone in tact and setting aside that portion of the conclusion and remitting back the matter to the court to cure the defects. An appellate court could not do the exercise of the company court, when the court had come to the conclusion that the order impugned was against the statutory provisions. The order impugned was to be set aside and the matter was to be remitted to the company court to pass orders on the petition in accordance with the statutory provisions.

Ashok Kumar Aggarwal vs. Gopal Corporation

ISSUE:

Whether the terms of settlement are binding upon the parties?

BRIEF FACTS:

The terms of settlement entered into between the parties relating to valuation of

shares was referred for mediation to facilitate a mode of exit of the petitioner from the first respondent-company. The parties consented to and participated voluntarily in the process of mediation and agreed to the terms of settlement dated October 12, 2009. The petitioners filed applications seeking implementation of the terms of settlement signed and recorded before the mediators. The respondents contended that the terms of settlement were only interim in nature and it contained only a brief outline of issues and it was not a final settlement.

HELD: - Application allowed on the grounds that:

The rights and obligation of the parties were distinctly and clearly carved out by the terms of settlement arrived at between the parties on October 12, 2009. The words "upon signing of the settlement agreement" and "at the time of signing of the settlement agreement" used in terms of settlement could not be interpreted to draw an inference that the settlement arrived at was of an interim nature. The mediators to the Company Law Board regarding conclusion of mediation, the mediators became *functus officio* and no future correspondence in any manner would change the nature of the concluded mediation and the terms of settlement. The terms of settlement were binding on the parties and legally enforceable.

Giri Babu & Prakash R Shah vs. Deputy Director of Enforcement, Directorate of Enforcement

ISSUE:

Whether petitioner can seek the assistance of a lawyer at the stage of preliminary investigation under FEMA - Exchange Control & FDI - Practice & Procedure - Foreign Exchange Management Act, 1999

BRIEF FACTS:

Preliminary investigation - Advocate assistance - Petitioner/jewellery shop owner was booked under the provisions of the Act by respondent/Enforcement Directorate

.Petitioner sought to accompany his lawyer along with him when he was summoned to appear before the respondent/Directorate.

HELD:

Petition was held dismissed. Officers of respondent/Directorate would not act as a court when collecting materials for taking further action. Whether the petitioners would be treated as an accused for contravening the provisions of Act or whether he would be treated as a witness, would be decided only after the preliminary enquiry or investigation - Before coming to a conclusion to proceed further or not at the initial stage, there is no need of any assistance to the petitioner either by an advocate or by a chartered accountant. Petitioners have no right to take their counsels along with them at the time when their statement is recorded by the respondent/officials - Collecting materials to investigate cannot be construed as evidence taken by the respondent from the petitioners.

KRUNG THAI BANK PCL vs. JDIT (Mumbai)

ISSUE:

Whether Banks are liable to pay MAT on “book profits” or not

FACTS OF THE CASE:

The assessee, a foreign bank operating in India through a branch office, filed a return offering nil income. Though the assessee had a net profit of Rs. 78.32 lakh in the P&I A/c, It did not compute “book profits” u/s 115JB. The AO accepted the return u/s 143(3) though he subsequently made a reassessment u/s 147 in which he assessed the “book profits” u/s 115JB. The assessee challenged the reopening on the ground that s. 115JB did not apply to banking companies.

HELD THAT:

S. 115 JB can only come into play when the assessee is required to prepare its profit and loss account in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act. The starting point of computation of minimum alternate tax u/s 115 JB is the result shown by such a profit and loss account. In the case of banking companies, however, the provisions of Schedule VI are not applicable in view of exemption set out under proviso to S. 211 (2) of the Companies Act. The final accounts of banking companies are required to be prepared in accordance with the provisions of the Banking Regulation Act. Consequently, s. 115 JB cannot be applied to a banking company. As s. 115 JB did not apply to the assessee, no income had escaped assessment and consequently the very initiation of reassessment proceedings u/s 147 was bad in law.

CIT vs. Dhingra Metal Works (Delhi HIGH Court)

ISSUE:

Whether Confession made during survey is not conclusive & can be retracted?

FACTS OF THE CASE:

Survey u/s 133A was conducted in the premises of the assessee during which certain discrepancies were found in stock & cash-in-hand. The assessee surrendered an amount of Rs. 99 lakh and offered the same to tax. The offer included a sum of Rs. 45 lakh on account of excess stock found during the survey. Subsequently, the assessee **retracted the offer** of Rs. 45 lakh in respect of the stock on the ground that the discrepancy noticed during the survey had been reconciled. The AO rejected the retraction on the ground that it was an **after-thought** though the CIT (A) and Tribunal upheld the assessee' claim on the basis that the AO had not made any independent investigation and had made the addition solely on the basis of the survey statement.

HELD THAT:

The Appeal was dismissed on the grounds that:

Section 133A does not mandate that any statement recorded under that section would have evidentiary value. It merely enables the authority to record the statement of any person which may be useful for, or relevant to, any proceeding under the Act. For a statement to have evidentiary value, the survey officer should have been authorized to administer oath and to record sworn statement as under s.132 (4). While s. 132(4) specifically authorizes an officer to examine a person on oath, s. 133A does not permit the same. And in any event though an admission is extremely important piece of evidence, it is not conclusive and it is open to the person who has made the admission to show that it is incorrect.

Dinesh T. Tailor vs. Tax Recovery Officer

ISSUE:

Whether Assessing Officer not considering submissions of assessee for tax due is correct or not?

Brief facts:

The petitioner was appointed as an additional director of a company on January 1987. During the period when he was a director, the petitioner signed the audited accounts of the company on June 30, 1987 and June 30, 1988. The petitioner resigned as a director of the company on October 14, 1989. A demand was raised on the company for assessment year 1990-91. The Assessing Officer initiated proceedings under section 179 of the Income-tax Act, 1961. The petitioner was held liable under section 179 to meet the liability of the company in respect of the penalty imposed under section 271(1) (c) which, the Assessing Officer held had a direct linkage with the addition made under section 143(3), for the assessment year 1990-91. The Assessing Officer held the petitioner jointly and severally liable under section 179 for the payment of the tax dues of the company with interest payable under section 220(2). An attachment was levied in respect of a residential flat belonging to the petitioner.

HELD::

Directions issued to AO to arrive at fresh determination. Whether the non-recovery of tax from the company was or was not a result of a gross neglect, misfeasance or breach of duty on the part of the petitioner in relation to the affairs of the company ought to have been considered by the Assessing Officer having regard to the submissions which had been urged by the petitioner. This issue would raise a mixed question of law and fact, upon which an adequate determination could not be found in the order passed by the Assessing Officer. Therefore, it would be appropriate and proper to direct the Assessing Officer to arrive at a fresh determination. [In the meantime, until a fresh order was passed, the attachment which had been levied shall continue, but the respondents shall not take any action in respect of the flat which had been attached.

Commissioner of Income Tax vs. Jindal Stainless Limited

ISSUE:

Whether a decision on a debatable point of law be treated as a mistake apparent from the record?

BRIEF FACTS:

Assessee filed a return declaring income of Rs. 71.43 Crores and the assessment of same was completed u/s. 143(3)/153A of the IT Act. Subsequently, AO issued a fresh notice u/s. 154 of IT Act as he opined that the assessee had not added a sum of Rs. 39.28 lacs being provision for doubtful debts and advances/bad debts to the income. Assessee submitted that out of Rs. 39.28 lacs, amount of Rs. 38, 59,820/- was bad debts and a sum of Rs. 68,039/- only was towards provision. AO rejected the reply of the assessee and added the entire amount of Rs. 39.28 lacs to the income of the respondent assessee u/s. 154 of the Act. Commissioner dismissed appeal filed against said order. On appeal, Tribunal deleted the addition of Rs. 39.28 lacs made by the AO u/s. 154 of the Act on the ground that AO's action was on a debatable issue and jurisdiction u/s. 154 of the Act could have been invoked only to rectify a mistake apparent from the record which was not the present case - Hence, present appeal.

HELD:

That the right to rectify mistakes u/s. 154 of the Act cannot be invoked in case of change of opinion - A rectifiable mistake is a mistake which is obvious and not something which has to be established by a long drawn process of reasoning or where two opinions are possible. Hence, tribunal rightly held that - Revenue's appeal dismissed.



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