Monthly Newsletter Volume No. 10/2007

SNK

INDIA SHINING				
Year	GDP	FOREX	PER CAPITA	INFLATION
1990	4.9%	<$1 billion	$ 390	9%
2007	9.4%	$ 246 billion	$ 720	3.4%

CONTENTS **PAGE NO.**

DIRECT TAXES

Judicial Pronouncements

CIT v. Relaxo Footwear (2007) 293 ITR 231 (Delhi)

Assessee was engaged in trading in footwear. It started mfg. and sale of hawai chappals and claimed deduction of pre-operative expenses. It was held that the new unit was part of existing business. There was unity of control and interlacing of the units. Expenses incurred for setting up new unit which was part of existing business is allowable as business expenditure.

CIT v. Ram Kumar (2007) 163 Taxman 253 (P & H)

Addition was made by A.O. to the income of assessee on the basis of documents seized from purchaser of land that he paid more money than the declared sale consideration to assessee. As the assessee was never confronted with the document addition was rightly deleted.

Kwality Foods and Restt. v. DCIT (2007) 108 ITD 274 (Chennai)

Assessee advanced certain amounts to contractor for construction of cold storage in factory. The work could not be executed. Assessee received part money only and claimed the balance as business loss or bad debt. As expenditure was incurred towards acquiring profit-earning apparatus, it was not revenue loss. If was also not a debt and cannot be allowed as bad debt.

CIT v. Rotork Controls (India) (2007) 293 ITR 311 (Mad.)

Assessee was engaged in sale of commodity and made provision for warranty No evidence was produced regarding actual expenditure incurred in prior years. Provision is not deductible.

Patel Brass WKS v. CIT (2007) 163 Taxman 279 (Guj.)

Assessee entered into contract for purchase of machinery and paid Rs.1,16,000/- as earnest money. Assessee gave up plan to purchase it and on his request, seller returned Rs.36,000/- after retaining Rs.80,000/- as cancellation charges. The said Rs.80,000/- cannot be treated as short term capital loss as assessee did not own any capital asset.

Prem Prakash Bhutan v. ACIT (2007) 110 TTJ 440 (Delhi Trib.)

Assessee sold his residence and acquired three flats for his family of self, one son and one widowed daughter. The same was held as permissible for the purpose of section 54.

ITO v. Kalyan Gupta (2007) 293 ITR (AT) 249 (Mum.)

An amount of Rs.73,00,000/- advanced during the year is the deemed dividend. Deemed dividend is not exempt u/s.10(33). An amount of Rs.3,37,133/- treated as deemed dividend in earlier year and returned in this year cannot be deducted from Rs.73,00,000/-.

Wimco Seedlings v. DCIT (2007) 293 ITR (AT) 216 (Delhi.)

Composite activity gave rise to taxable and nontaxable income. Only expenditure actually incurred on non taxable income has to be

disallowed. Such expenditure cannot be assumed or deemed to have been incurred for earning exempted income. The burden in on the A.O. to prove the nexus between the expenditure disallowed and non taxable income.

Sandeep Kumar HUF v. CIT (2007) 293 ITR 294 (Delhi.)

In proof of the foreign gift of Rs.3,73,000/- received from NRE account assessee, filed details of source from which gifts were made, the bank a/c. donor's declaration regarding his financial status his annual income and total wealth. The gifts were held as non genuine as the donor is not related, his present address is not known to assessee, balance sheet was not filed with the copy of donors returns and the real financial capacity and credit worthiness of donor could not be established.

ITO v. P.C. Ramakrishna (2007) 108 ITD 251 (Chennai)

There is no difference between son and daughter of mitakshara Hindu Family. Daughter is conferred with coparcenary rights by birth and daughter is entitled to claim partition and her share in HUF property is without dispute. It is no longer necessary to provide separately for maintenance and marriage of daughter.

CIT v. Hotel Ratanada International (2007) 293 ITR 557 (Raj.)

One of the objects of the company was to carry on business in land and / or properties, dwelling houses, hotels etc. Construction of hotel has not been completed in this year nor hotel business commenced. Rental income received from the property is assessable as income from house property.

CIT v. South India Copn. (2007) 293 ITR 237 (Mad.)

Where there is no evidence that interest free loans advanced to sister companies are out of borrowed and interest bearing funds or that any fresh loans were advanced during the year, notional interest on said interest-free advances cannot be disallowed.

Dina Bandu Pal v. ITO (2007) 293 ITR (AT) 199 (Kol.)

Cash credit was claimed by assessee as loan. Details and confirmation letter were furnished. However assessee failed to produce creditors and offered the amount as income. Confirmation was not shown to be false. This is not a case for levy of penalty

CIT v. Caplin Point Lab (2007) 293 ITR 524 (Mad.)

Assessee's claim that interest income is business income for the purpose of section 80 HHC and 80I was rejected and penalty was levied u/s.271(1)(c). As the claim had been made on the basis of the then prevalent judicial decisions penalty was cancelled.

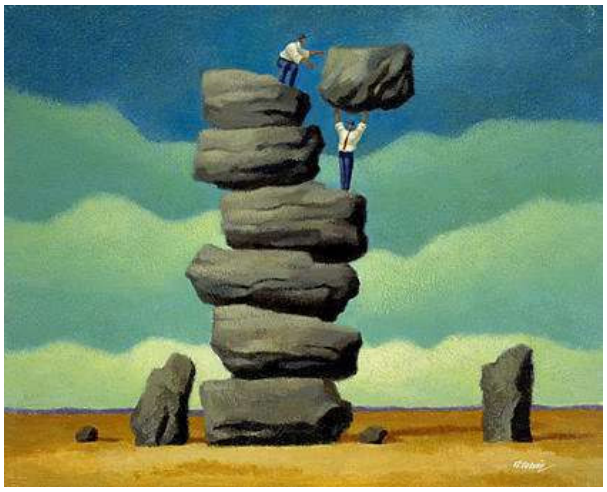
CIT v. TVS Lean Logisties (2007) 293 ITR 432 (Mad.)

Assessee Co constructed building on leasehold land. The construction is for business advantage Assessee has not acquired any capital asset. Cost of construction is revenue exp.

Hindustan COCA Cola Beverage v. CIT (2007) 293 ITR 226 (SC.)

Assessee deducted tax at 2% on warehousing charges treating it as contractual payment A.O. held that it is was rent and passed order for recovery of balance tax deductible and also charged interest u/s.201(1A). It was found that the payee had paid full tax on warehousing income. Therefore only interest u/s.201(1A) is chargeable CBDT circular No.275/201/95 IT (B) dated 29-01-

1997 laying down that where deductee had paid full tax due, no demand can be visualized u/s. 201(1) was referred to.



Yashpal Sahni v. ACIT (2007) 293 ITR 539 (Bom)

Employer had deducted Rs.6,66,000/- from employee's salary as per TDS certificate but did not deposit it with the Govt. The A.O. recovered it from employee instead of recovering TDS amount with interest from employer. The High Court directed the refund of the amount to the employee, as the liability continues to be with the employer.

Plaza Investment v. ITO (2007) 108 ITD 239 (Mum.)

The Tribunal had held that dividend income from shares held as stock- in-trade should be assessed as business income. The Tribunal ostensibly followed Supreme Court's decision in Western State Trading Co. 80 ITR 21. Assessee moved Miscellaneous Application (MA) pointing out that the said decision was in the context of set-off of income from business and not in the context of taxability of income under the head income from business. Accordingly the Tribunal recalled its earlier order.

Dresdner Bank AG v. Addl CIT (2007) 108 ITD 375 (Mum.)

Section 5, read with section 9, of the Income-tax Act, 1961 - Income - Accrual of - Assessment year 1998-99 – Provisions of section 5(2) make it clear that under Act so far as foreign companies are concerned, taxable unit is a foreign company and not its branch or permanent establishment in India, even though taxability of such foreign companies is confined to (i) an income which 'accrues or arises in India' or is 'deemed to accrue or arise in India', and (ii) an income which is received or is deemed to be received by or on behalf of such foreign company

For determination of 'income accruing or arising' in India in case of a foreign GE operating in India, its Indian operations are to be treated as a hypothetically independent unit and, therefore, intra-organisation interest income would have to be taken into account, to arrive at income accruing or arising to assessee non-resident in India under section 5(2)

Proposition that intra-organisation transactions are to be ignored for computing business profits holds good only when profits of organisation as a whole are to be computed, or when these transactions are domestic transactions within one single enterprise and within one tax jurisdiction

Assessee, a non-resident banking company incorporated in Germany and operating in India through its branch office in Mumbai had given a note to computation of income that inter-branch income/expenditure credited/debited to profit and loss account had been excluded while arriving at total income, since bank could not be regarded as trading with itself - Assessee, therefore, claimed that interest income received by it from head office and other branches, i.e., intra- organization interest income, could not be brought to tax in India - Assessing Officer rejected assessee's claim and applying provisions of section 9(1) assessed interest income in question in hands of assessee - Whether provisions of section 9(1) were not applicable to instant case - Held, yes - Whether it could not be said that since no one could be expected to make profits out of transactions with himself, intra-organization transactions were to be ignored for purposes of computing profits accruing or arising, to an Indian PE of a foreign company, under section 5(2)(b) - Held, yes - Whether interest earnings from head office were to be taken into account for purposes of computing profits arising

in or accruing in India - Held, yes - Whether therefore, impugned order was to be upheld though for different reasons -Held, yes

CIT vs Bharat Aluminium Co. Ltd. (2007) 292 ITR 600

Depreciation allowance - Ownership need not be legal Since the assessee was in possession of and used the building for its business, the depreciation thereon was allowable even of legal title had not passed on to it.

S.V.Shankar v. Settlement commission (2007) 292 ITR 633 (Mad)

Whether, decision of settlement commission can be review by High court on the ground that the decision was erroneous on the merits? – It was held that the provision for the settlement under chapter XIX-A is in the nature of a statutory arbitration to which a person may submit himself voluntarily and power of review can not be exercised on the ground that the decision was erroneous on the merits.

Extracts from www.taxindiaonline.com

2007 TIOL 299 (Mum. ITAT)

The interesting issue in this Revenue application before the ITAT is whether the DR can concede a point and did Tribunal commit an error in not adjudicating on the issue conceded by the DR?.

The tribunal observed,

1. As per Rule 2 of the ITAT Rules, "authorized representative" means in relation to an income-tax authority who is a party to any proceeding before the Tribunal, a person duly appointed by the Central Government by notification in the Official Gazette as authorized representative to appear, plead and act for such authority in any such proceeding and any other person acting on behalf of the person so appointed.

2. In view of the above rule, the departmental representative had no authority to concede.

Obviously this will apply to CESTAT also. So now DRs cannot concede a point even if it is wrong. And in future orders of Tribunal will not have words like, the "Learned DR fairly conceded".

2007 TIOL 272 (Pune ITAT)

Indian company's PE in Japan makes losses - Deduction for such losses is available in India even though positive income is taxed in Japan.

PRESS RELEASE

Taxpayers liable to TDS/TCS are advised to furnish their Correct PAN with their deductors

All tax deductors / collectors are required to file the TDS / TCS returns in Form No.2 4Q (for tax deducted from salaries), Form No. 26Q (for tax deducted from payments other than salaries) or Form No. 27EQ (for tax collected at source).

These forms require details of all tax deductions with name and permanent account number (PAN) of parties from whom tax was deducted.

However, it has been observed that in most of the TDS / TCS returns, the PAN of the deductees is either missing or incorrect. As the requirement of filing TDS / TCS certificates has been done away with, the lack of PAN of deductees is creating difficulties in giving credit for the tax deducted and collected.

It has, therefore, been decided that TDS returns for salaries, i.e. Form No.24Q with less than 90% of PAN data, and TDS returns for payments other than salaries and TCS returns, i.e. Form No.26Q and Form No.27EQ respectively, with less than 70% of PAN data will not be accepted for the quarter ending on 30.9.2007 and thereafter.

Tax deductors and tax collectors are, therefore, advised to obtain correct PAN details of all deductees and quote the same in the TDS / TCS returns, failing which the TDS / TCS returns will not be accepted and all penal consequences under the Income Tax Act will follow.

Taxpayers liable to TDS / TCS are also advised to furnish their correct PAN with their deductors, failing which they will also face penal proceedings under the Income Tax Act.

For and from the quarter ending 30.9.2007, in addition to government offices and companies, filing of TDS / TCS returns in electronic form is mandatory for (i) deductor / collector required to get his accounts audited under section 44AB of the Income-tax Act in the immediately preceding financial year, and (ii) where the number of deductees' / collectees' records in a quarterly statement for any quarter of the immediately preceding financial year is equal to more than fifty. TDS / TCS returns in paper form will no longer be accepted from such tax deductors / collectors.

INDIRECT TAXES

Judicial pronouncements

Raghu Lakshminarayanan v. Fine Tubes (2007) 215 ELT 19 (SC)

Persons other than the director cannot be prosecuted for vicarious liability.

2007-TIOL-1511-CESTAT-DEL

GTA service during period Nov 16, 1997 to June 1, 1998 - SCN issued in 2002 is not valid for period extended by SC : Tribunal

Basti Sugar Mills Co. ltd. v. CCE (2007) 10 Taxmann 107 ((New Delhi CESTAT)

Where the assessee engaged in sugar manufacturing process took over the management of another mill under an agreement and revenue treated said contract as a management consultancy agreement and demanded service tax, since the assessee was in charge of operation of the factory, it was performing management function and was not a management consultant.

R.R.D. Tex (P.) Ltd. v. Commissioner of Central Excise (2007) 10 STT 255 (Chennai CESTAT)

Rule 4, read with rule 2(p), of the Cenvat Credit Rules, 2004 - Conditions for allowing CENVAT credit - Period from July, 2005 to September, 2005 - Assessee-company paid service tax in respect of Goods transport agency services received for inward and outward movement of goods **-** Whether since assessee was service recipient and was not providing any taxable service, Goods transport agencys service on which assessee paid service tax would be deemed to be its output service by virtue of Explanation to rule 2(p) and, therefore, for payment of service tax on such output service, assessee would be entitled to avail credit of service tax paid on any input service and/or credit of duty paid on any input or capital goods - Held, yes [Para 3]

Notifications

Notification No. 34/2007-Central Excise (N.T.) dated 11-09-2007

In the Central Excise Rules, 2002, in rule 8, in sub-rule (1),-

(a) for the words and figure "the 5th day of the following month" the following shall be substituted, namely,-

" the 6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case"

(b) in the second proviso, for the words and figure "the 15th day of the following month", the following shall be substituted, namely,-

" the 16th day of the following month, if the duty is paid electronically through internet banking and by the 15th day of the following month, in any other case,"

OTHER LAWS

Circulars

FEMA

With a view to providing greater flexibility to the corporates in managing their liquidity and interest costs dynamically, the existing limit for prepayment of ECB has been enhanced from USD 400 million to USD 500 million. Accordingly, AD Category - I banks may allow prepayment of ECB up to USD 500 million without prior approval of the Reserve Bank subject to compliance with the minimum average maturity period as applicable to the loan. **(Circular No. 10 dated 26-09-2007)**

In terms of extant provisions under FEMA on overseas investments, the total overseas investment of an Indian party in all its Joint Ventures (JVs) and / or Wholly Owned Subsidiaries (WOSs) abroad engaged in any bonafide business activity should not exceed 300 per cent of its net worth for companies incorporated in India or bodies created under an Act of Parliament and 200 per cent of net worth in the case of registered partnership firms. With a view to provide greater flexibility to Indian parties for investments abroad, the existing limit of 300 per cent of the net worth of the Indian party (200 per cent in case of registered partnership firms) has been enhanced to 400 per cent of the net worth of the Indian party. (Circular No. 11 dated 26-09-2007)

At present, listed Indian companies are permitted to invest up to 35 per cent of their net worth as on the date of its last audited balance sheet, in the equity of listed foreign companies, which are listed on a recognised stock exchange and having shareholding of at least 10 per cent in Indian companies listed on a recognised stock exchange in India and rated bonds / fixed income securities issued by overseas companies, under the portfolio investment scheme. In order to provide greater opportunities to listed Indian companies for portfolio investments, the existing limit of 35 per cent has been enhanced to 50 per cent of the net worth of the investing company as on the date of its last audited balance sheet. It has also been decided to do away with the requirement of a reciprocal 10 per cent share holding in Indian companies with immediate effect. All other terms and conditions stipulated in Regulation 6B of the Notification shall remain unchanged. **(Circular No. 11 dated 26-09-2007)**

The aggregate ceiling for overseas investment by Mutual Funds, registered with SEBI, has been enhanced from USD 4 billion to USD 5 billion with immediate effect. The existing facility to allow a limited number of qualified Indian Mutual Funds to invest cumulatively up to USD 1 billion in overseas Exchange Traded Funds, as may be permitted by the SEBI, shall continue. (Circular No. 12 dated 26-09-2007)

Mutual Funds, registered with SEBI are presently permitted to invest in ADRs / GDRs of Indian and foreign companies, rated debt instruments not below investment grade by accredited/registered credit rating agencies, in the equity of overseas companies listed on a recognized stock exchange overseas, in overseas mutual funds that make nominal investments (say to the extent of 10 per cent of net asset value) in unlisted overseas securities, and overseas exchange traded funds that invest in securities. In order to enable the Mutual Funds to tap a larger investible stock overseas, it has been decided to allow Mutual Funds also to invest in additional instruments, subject to the guidelines issued by SEBI. **(Circular No. 12 dated 26-09-2007)**

RBI/2007-2008/154 A.P. (DIR Series) Circular No 13

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to Regulation 4 of Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000 notified vide Notification No.FEMA.10/2000-RB dated 3rd May, 2000 and as amended from time to time, in terms of which a person resident in India is permitted to open and maintain with an authorized dealer in India a Foreign Currency Account known as Exchange Earner's Foreign Currency (EEFC) Account

subject to the terms and conditions of the Exchange Earner's Foreign Currency Account Scheme specified in the Schedule to the above mentioned Notification.

2. In view of the recent global and domestic developments and with a view to give an opportunity to small and medium enterprises to manage the challenges in the global markets, it has been decided, in consultation with Government of India, to permit all exporters to earn interest on EEFC accounts to the extent of outstanding balances of US $ 1 million per exporter. This is a purely temporary measure and valid upto October 31, 2008 and would be subject to further review.

3. Currently, EEFC accounts are permitted to be maintained in the form of non-interest bearing current accounts. It will now be possible for account holders to maintain outstanding balances to the extent of US $ 1 million in the form of term deposits up to one year maturing on or before 31st October 2008. The rate of interest may be determined by the banks themselves.

4. Necessary amendments to the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000 are being issued separately.

5. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

6. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

COMPANIES ACT, 1956

General Circular no. 13 /2007, Dated 27-9-2007

Order of the Company Law Board under Section 141 of the Companies Act, 1956 regarding extension of time for filing documents by companies and levy of additional fee (Extracts can be taken from departmental websites)

Due Dates of key compliances pertaining to the month of October-07:

5th Oct.	**Payment of Service Tax & Excise duty for September**
6th Oct.	**Payment of Excise duty paid electronically through internet banking**
7th Oct.	**TDS/TCS Payment for September**
10th Oct.	**Excise Return ER1 / ER2 /ER6**
15TH Oct	**Filing of TDS return for second quarter**
15th Oct.	**PF Contribution for September, Excise payment by SSI**
21st Oct.	**ESIC Payment for September**
25th Oct.	**Service Tax Return for the half year ended on September**
31st Oct.	**Return of Income for Corporate Assessees**
	ROI for non-corporate Assessees whose accounts are required to be audited under any law

Life is like riding a bicycle. To keep your balance you must keep moving – Albert Einstein.