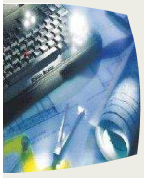

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SNK Newsletter

DIRECT TAXES

Judicial pronouncements

mens rea is not essential.

CIT v. Creative Dyeing & Printing (P) Ltd. (2009) 30 DTR (Del) 143

Advance for commercial purpose and Deemed dividend under s. 2(22)(e)

Assessee company received funds for expansion of production capacity from PE Ltd. which has 50% shareholding in the assessee and has common directors with the assessee. Transaction in question was a business transaction which would benefit both assessee company and PE Ltd. Admittedly, the amount is to be adjusted against the moneys payable by PE Ltd. to the assessee company in the subsequent years. Contention of the Revenue that since PE Ltd. is not into the business of money lending, the payments made by it to the assessee company would be covered by s. 2(22)(e)(ii) and consequently payments even for business transactions would be deemed dividend is not acceptable. Once it is held that business transactions do not fall within s. 2(22)(e), there is no need to go further to s. 2(22)(e)(ii). Therefore, amount advanced for the business transaction by PE Ltd. to the assessee company did not fall within the definition of deemed dividend under s. 2(22)(e).

Prestige Estate Projects Pvt. Ltd. v. DCIT (ITA No. 218/Bang/09)

Rental receipt from a building taken on lease cannot be taxed at all under head `income from house property'

The income in respect of a portion of the building, which has been taken on lease by the assessee from the owner of the land and thereafter subleased, cannot be taxed under the head `income from house property' but is to be taxed under the head `income from business'.

ACIT v. Chennai Petroleum Corpn. Ltd. (ITA Nos. 1967/Mds/2006 & 1643/Mds/2007)

Allowability of depreciation on a plant which was kept ready but not actually used

The assessee would be entitled to depreciation even though the assets in question were not actually put to use in the relevant previous year, but were kept ready for being put to use for the purpose of the business.

Maharashtra State Road Development Corpn. Ltd. v. ACIT (ITA No. 4050/Mum/2005)

Rate of depreciation applicable to bridges and flyovers constructed & owned by an infrastructure company

Roads, flyovers bridges etc., constructed and owned by an infrastructure company and utilised in its business of providing infrastructure is the tool of its trade and an essential adjunct to its business and not merely a setting in which the business is carried on and therefore, would constitute plant and will be entitled to depreciation at the rate of 25 per cent.

CIT v. Rockman Cycle Industries (P) Ltd. (2009) 226 CTR (P&H) 562

Interest on borrowed capital - Investment of borrowings in shares of sister concern yielding a low return

Assessee, borrowed money from a sister concern on interest @ 18% p.a. and purchased shares from another sister concern which carried dividend @ 4%. AO disallowed the claim for interest holding that there was no justification to borrow funds at 18% interest for making investment in shares, which would give a dividend of 4% only. However, Tribunal upheld assessee's claim holding that the assessee could not be prevented from making investment only because the return from shares was low and the transactions were not prudent, without applying the test of commercial expediency. Division Bench in the case of CIT v. Pankaj Munjal Family Trust (IT Ref. Nos. 87 to 91 of 1995, Hi 9th July, 2008) decided the case without applying the test of commercial expediency as laid down by the Supreme Court in the cast of S.A. Builders Ltd. v. CIT (2006) 206 CTR (SC) 631 : (2007) 288 ITR 1. Moreover, Question whether the taxing authority should examine the question of business expediency where a transaction is patently imprudent and not go merely by the fact that the assessee had taken a decision in the wisdom which may be wrong or right is referred to a Larger Bench.

Panatone Finvest Ltd. [2009-TIOL-717-ITAT-MUM]

Deductibility of interest on funds borrowed for acquiring controlling interest

The Taxpayer is a Tata Group company, engaged in the business of investment and finance. The Taxpayer was used as a Special Purpose Vehicle (SPV) by the Tata Group for the acquisition of 45% equity share capital of VSNL (a telecom company owned by Government of India) under a divestment program. By this acquisition, the Tata Group acquired management control over VSNL. For financing the acquisition, the Taxpayer used its share capital, as also borrowed funds raised by way of unsecured loan and private placement of bonds and debentures. The Taxpayer claimed interest paid on the borrowed funds as a deduction under the Section from the dividend income received from VSNL.

It was held that the Taxpayer acquired the shares of VSNL with a view to enable the Tata Group to have control over VSNL. The acquisition was, therefore, only for the Tata Group's convenience and not for the Taxpayer's own benefit. The Section requires the expenditure to be incurred 'wholly and exclusively' for the purpose of making or earning income to be allowed as deduction. The Taxpayer acquired the shares neither with a view to have controlling interest for itself nor with a view to earn dividend income.

CIT v. Industrial Finance Corporation of India Ltd. (2009) 31 DTR (Del) 114

Year of allowability business expenditure - Expenditure incurred in connection with forward contracts for swapping of foreign currency funds

In order to ensure that it is able to repay the foreign lenders in the foreign currency on the due dates of repayment, assessee entered into forward contracts as a safeguard against foreign currency fluctuations. Difference between the forward contract rate and the exchange rate on the date of entering into the contract has to be recognized as income or expense, which is ascertained and definite in terms of the contract and not notional or contingent. Swapping cost incurred by the assessee is capable of determination at the time of execution of the forward contracts and such determination does not get postponed. Expenditure had crystallized on the date of contracts, though part payment is to be made in succeeding years as per the contracts. Therefore, assessee is entitled to claim deduction thereof in the relevant year itself.

Eih Associated Hotels Ltd. v. DCIT (2009) 126 TTJ (Kol) 246

Notional gain on foreign currency swap

Even under the mercantile system of accounting, the Revenue can tax an income which is only a real income and not otherwise. Assessee has not actually realised any income because of the fluctuation of foreign exchange rates. While there was a book gain in two assessment years, assessee company incurred a book loss in a subsequent year. AO did not deduct the notional loss arising from currency swap while completing the assessment for that assessment year. This clearly proves that the gain shown in the books was a contingent income and not a real income. Hence, it is not taxable even though assessee is following mercantile system of accounting.

Judicial pronouncements

Ranbaxy Laboratories Ltd v. DCIT ITA No. 1666/Del/2006

Cost of granting stock options to employees is not deductible expenditure in the hands of employer

The assessee was an Indian company listed on a stock exchange in India. During the assessment year (AY) 2001-02, it granted stock options to it employees for 332,250 shares whereby shares with a face value of Rs 10 were to be issued at Rs 595 per share. The market price of the shares as on the date of grant was Rs. 738.95 per share.

The assessee claimed the difference between the market price and the issue price to its employees as employee compensation in its books of accounts. The charge to its financial statements was deferred over the vesting period (5 years) as deferred employees compensation.

The assessee claimed the deferred revenue expenditure in its return of income which was disallowed by the assessing officer (AO) on the basis that no liability had arisen or been paid by the assessee during the year. The Commissioner of Income–tax (Appeals) (CIT(A)) held that the deduction is allowable in the year in which the option is exercised by the employees i.e. when the liability became certain and not proportionately over the vesting period as claimed by the assessee.

The assessee and the revenue, both filed an appeal before the Income Tax Appellate Tribunal (ITAT).

The ITAT dismissed the appeal of the Revenue and the assessee by holding that the discount on stock options was notional in nature and was not deductible either in the year of grant or in the year when the option is exercised by the employees. In reaching the conclusion, the main consideration by the ITAT was the argument that the difference between market price and grant price is only a notional expenditure. Where ESOPs are granted by overseas parent companies and the difference between market price and grant price is charged to the Indian subsidiary, the allowability of expenditure would require further evaluation.

Denso Faridabad Pvt. Ltd. (Delhi ITAT)

Royalty paid for certain rights, which are not in the nature of "make available," can be charged to revenue account

The taxpayer was a wholly owned subsidiary of Denso Thermal Systems, Italy. The taxpayer was engaged in the business of manufacturing certain automobile products and selling the same in India and abroad. For the impugned assessment year, the taxpayer claimed that the royalty paid to its parent company as revenue expenditure. After perusing the details called for, the AO, relying on the decision of CIT vs. Southern Switchgear Ltd. 148 ITR 272 (Mad) held 25% of the royalty claimed as capital expenditure and disallowed the same. However, perusing the technical collaboration agreement entered by the taxpayer the CIT (A) deleted the addition made on account of 25% of royalty expenditure. The revenue authority preferred an appeal before the Tribunal.

Regarding the terms of the agreement, the Tribunal held that, in the current case, the terms of the agreement was for 10 years and upon completion of the term, the rights, technical know-how and confidential information were to revert to the licensor and the respondent will not have further right to use the property and know-how. Since the respondent was granted just a license to use the technology in the product manufactured by it and was never made the owner of such technology, he could not be said to have acquired any capital asset. Hence no part of the expenditure could be capitalized. The Tribunal placed reliance on the decisions of CIT vs. Ciba of India Ltd. (69 ITR 672) (SC) and Sriram Pistons & Ring Ltd. (171 Taxman 81) (Del). Thus, in view of the above, the Tribunal confirmed the order of CIT(A).

CIT v. Kohli Brothers Color Lab (ITA No. 2 of 2007)(Allahabad HC)

Assessee has to prove "bad debt" even under new s. 36 (1) (vii)

The assessee wrote off an amount as a "bad debt" in its accounts and claimed a deduction u/s 36 (1) (vii). The AO asked the assessee to furnish information as to the names and addresses of the debtors, copies of ledger accounts and efforts made to realize these dues. On failure by the assessee to furnish the information, the claim was disallowed on the ground that the onus to prove that the debt was a bad debt was on the assessee which had not been discharged. This stand was confirmed by the CIT (A). On appeal, the Tribunal decided in favour of the assessee by relying on Oman International Bank 100 ITD 285 (Mum) (SB) where it had been held that after the amendment of s. 36(1)(vii) w.e.f. 1.4.1989, it was not obligatory on the part of the assessee to prove that the debt written of was indeed a bad debt. On appeal by the Revenue, HELD reversing the Tribunal:

Judicial pronouncements

(i) The effect of the amendment to s. 36 (1) (vii) is that it is not necessary for the assessee to establish that the debt had become bad in the previous year and mere writing of the debt as irrecoverable is sufficient. However, the said entry of write off of the bad debt in the books of accounts is not conclusive and the AO is not precluded from making inquiries as to whether the entries are genuine and not imaginary or fanciful. The AO has the power u/s 143(2) to see that the entries are not mere paper work or fake.

(ii) However, at the same time, the wisdom of the assessee cannot be questioned and no demonstrative or infallible proof of bad debt having become bad is required. Commercial expediency is to be seen from the point of view of assessee depending on nature of transaction, capacity of debtor etc.

(iii) This interpretation harmonizes S. 143 (2) with s. 36(1)(vii) so that the assessees are enabled to get deduction of their bad debts while at the same time the AO is authorized to see that the provisions of the Act are not flouted by any means.

The Surat Electricity Co. Ltd. v. ACIT (ITA No. 2152/Ahd/2004)

Donation made out of commercial expediency is an allowable expenditure u/s 37(1)

If the expenditure has been incurred by the assessee voluntarily, even without necessity, but for the promotion of business, the deduction would be permissible u/s 37(1).

Cipla Investments Ltd. [2009-TIOL-707-ITAT-MUM]

Taxability of waiver of loan

The ITAT held that since the loan received was on capital account, its subsequent waiver too was on capital account. Hence, the loan waived was not liable to be taxed as profits and gains from its business (business income) under the provisions of the Indian Tax Law (ITL). The ITAT also held that waiver would not be taxable as business income if a taxpayer was not allowed deduction of the loan amount earlier.

Savala Associates v. ITO (ITA No. 4441/M/2008)

Scope for making addition on a/c of disallowance of expenditure u/s 40 (a) in a case where assessee follows `completed contract method'

The correct procedure in "completed contract method" is that instead of making addition, if some expenditure are found to be not allowable, the AO should correct the amount of work-in-progress by reducing or enhancing work-in-progress as the case may be.

Rajinder Kumar Mittal v. ACIT (ITA No.1109/Del/2007)

Mere receipt of amount through banking channel is by itself not sufficient to prove genuineness of a gift

It is the burden of the assessee to show and demonstrate what kind of relationship or what kind of love and affection the donor has with the assessee, and to explain circumstances in which gifts are made.

First State Investments (Hongkong) Ltd. vs. ADIT (Intl. Tax.) [2009] 33 SOT 26 (Mum)

Short-term capital loss from a transaction can be set-off against short-term capital gain from any transaction at the option of the taxpayer, Section70 r.w.s 115AD

Taxpayer, a FII, earned short-term capital gains on sale of shares which it bifurcated as pre and post 30 September 2004 (pre and post STT), chargeable to tax at 30% and 10%, respectively under section 115AD. It also suffered short-term capital loss during both these periods. It set-off pre-STT short-term capital loss against pre-STT short-term capital gain and also post-STT short- term capital loss against left over balance of pre-STT short-term capital gain. The Revenue, however, al owed set-off of post-STT short-term capital loss only against post-STT short-term capital gain.

On appeal, held, under section 70(2), the option is with the taxpayer to decide as to whether the short-term capital loss from the first transaction ought to be set-off against the short-term capital gain of transaction No. 2, 3 or 4, etc., as the case may be, whether within or outside the cut-off date. Thus, the higher benefit opted by the taxpayer by exercising such option was to be allowed.

ITO v. Ethno Financial Research Pvt. Ltd. (ITA No. 2743(Del) of 2008)

Income from trading of shares will be speculative business within meaning of provision of Explanation to section 73

Where assessee is engaged in trading in share of other companies, the business carried on by the assessee will be in nature of speculative business and profit or loss arising therefrom will be the speculative profit/loss.

Judicial pronouncements

CIT v. Sportking India Ltd. (2009) 30 (I) ITCL 119 (Del-HC)

Deduction under section 80-IA- Profit and gains derived from industrial undertaking

Amount received from insurance company on account of loss of goods-The insurance claim received by assessee on account of loss of goods from fire has to be taken into account for computing deduction in respect of the profits and gains of an industrial undertaking under section 80-IA.

Mrs. Delna Rustum Boyce, In Re (2009) 227 CTR (AAR) 46

Deduction u/s. 80-IB- Processing, preservation and packaging of fruits or vegetables and production of fruit based drink mixes, concentrates and fruit powder

Extraction of juice and oil from fruits and further converting the homogenized juice into fruit powder and adding preservatives would fall within the sweep of the expression 'processing' and, therefore, profit derived from the business of production of fruit based drink mixes, concentrates or fruit powder is eligible for deduction under subs. (11 A) of s. 80-IB.

DCIT v. Glenmark Laboratories (ITA No. 4155/Mum/2007)

S. 80HHC deduction is allowable for s. 115JB even if there are no normal profits

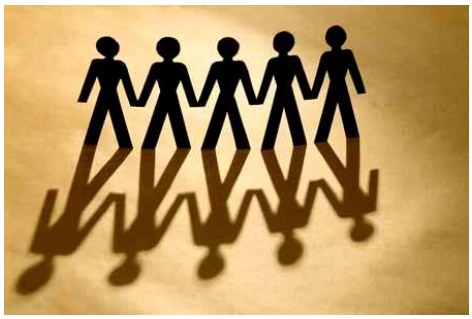
The assessee's income was computed u/s 115JB as it had no income under the normal provisions of the Act. The assessee claimed that despite the absence of normal profits, it was eligible for deduction u/s 80HHC in computing the book profits under Expl. (iv) of s. 115JB in accordance with the judgement of the Special Bench in Syncome Formulations 106 ITD 193 (Mum) (SB) and that the judgement of the Bombay High Court in Ajanta Pharma 223 CTR 441 (Bom) (which overruled Syncome Formulations) was not applicable. HELD upholding the assessee's plea:

In Syncome Formulations, the Special Bench had to consider two questions i.e. (a) method of computation of deduction u/s 80HHC and (b) percentage of deduction allowable in each year. As regards the percentage of deduction, the Special Bench held that the assessee would be entitled to 100% deduction. This view was overruled by the High Court in Ajanta Pharma where it was held that in view of s. 80HHC (1B), deduction was only allowable as per the limits set out therein. However, the first issue as to the method of deduction u/s 80HHC was not before the High Court. As per Sun Engineering 198 ITR 297, the observations of a Court have to be read in context. Consequently, the judgement of the Special Bench on this aspect still held good and the assessee was entitled to deduction u/s 80HHC even though there were no normal profits.

Harrisons Malayalam Ltd. v. ACIT [2009] 32 SOT 497 (Cochin)

Profit from sale of agricultural land not covered u/s 115JB

Profits arising on transfer of rural agricultural land amounts to agricultural income under section 2(1A). Such income cannot be included in the total income under section 10(1). Section 115JB provides that any income, listed under section 10, other than the ones listed in clause (38), shall be reduced from the book profit. This means that such agricultural income shall not form part of the book profit for the purposes of levy of minimum alternate tax.



ITO v. M. V. Balaji (ITA No. 284/ Mds/08)

AO can make addition on ground other then on which he reopened the Assessment

It is within the power of the AO not to add that particular item based on which the AO has formed a belief that income has escaped assessment; when the AO is satisfied that there was no reason for an addition on the matter based on which the notice u/s 148 was issued, does not mean that he cannot bring to tax any other income which has escaped assessment and which has come to his notice subsequently, in the course of proceedings u/s 147.

M/s. Pannalal Mahesh Chandra Jwellers v. DCIT (11 2009 - TMI - 34982 - Allahabad HC)

Search - Legality and validity of notice u/s 148 – change of opinion – re assessment versus block assessment

It was held that the income which can be included in the block assessment is only such income which is directly evidenced by the material found during the search and does not include the income which has been discovered on the basis of post-search enquiries made during the block assessment proceeding. However, after the amendment made by the Finance Act, 2002, the assessment of undisclosed income can only be based on the evidence

found in the search and the material or information gathered in post-search enquiry made on the basis of the evidence found in the search. The issue whether the petitioner is entitled for deduction as a 'trader exporter' or a 'manufacturer exporter' having not been addressed in the block assessment order even, it is a clear case of initiation of reassessment proceedings. Held that proceedings u/s 148 are legal.

Mepco Industries Ltd v. Commissioner of Income Tax (SC)(Civil Appeal Nos. 7662-7663 of 2009)

Scope for rectifying Income Tax assessments limited

The Supreme Court (SC) last week set aside the judgement of the division bench of the Madras high court in a case raising the question of the power of the Income Tax authorities to 'rectify mistakes' in assessment under Section 154 of the Income Tax Act. In this case, the company received power subsidy from the Pondicherry government for two years. The company filed returns on the basis that the subsidy was revenue receipt. Later, it claimed that it was capital receipt and therefore sought revision of the assessment. After that there was a change in the interpretation of the law by the SC. The revenue authorities sought to 'rectify' their earlier order. The company moved the high court, which allowed the authorities to rectify the order. On appeal, the Supreme Court accepted the argument of the company. It explained that a 'rectifiable mistake' is one which is obvious. In this case, it was a change of opinion; therefore Section 154 cannot be invoked by the authorities.

CIT v. Peerchand Ratanlal Baid (ITA No.19 of 2006)(Gauhati HC)

Even block assessments can be reopened u/s 147/148

The AO passed a block assessment order u/s 158BC by which he assessed the undisclosed income of the assessee at Rs. 24.37 L. Subsequently, he passed an order by which he added a further sum of Rs. 13.66 L to the said undisclosed income without issuing a notice u/s 148. The Tribunal allowed the appeal on the ground that the AO could not have made the addition without reopening the block assessment u/s 147. On appeal by the Revenue, the High Court upheld the Tribunal's order. However, on the question whether the AO had jurisdiction to issue notice u/s 148 in respect of a block assessment made under Chapter XIV-B in view of the judgement of the Gujarat High Court in Cargo Clearing Agency 307 ITR 1, HELD dissenting from the judgment:

The view of the Gujarat High Court that while s. 147 permits re-assessment of income that has escaped assessment for any assessment year, assessment under Chapter XIV-B is for a block period of 10/6 years without reference to any particular assessment year and that, therefore, s. 147 does not apply to a block assessment cannot be accepted in view of the judgment of the Supreme Court in Suresh N. Gupta 297 ITR 322 where it was held that the other provisions of the Act would be applicable to the scheme under Chapter XIV-B, if no conflict arises upon such application. The provisions of Chapter XIV prescribing the period of limitation for reopening of assessments apply to block assessments under Chapter XIV-B and there is no conflict between the two.

CIT v. Tony Electronics Ltd. (ITA No. 196 of 2009) (Delhi HC)

Date of reckoning for limitation period provided u/s 154(7) of Income Tax Act, 1961

Once an appeal against the order passed by an authority is preferred and is decided by the appellate authority, the order of the said authority merges into the order of the appellate authority; with this merger, order of the original authority ceases to exist and the order of the appellate authority prevails; the limitation for the purpose of section 154(7) is to be counted from the date of this order of CIT (A) and not the date of original order of assessment.

TRO v. Bharat Hotels Ltd. (2009) 125 TTJ (Bang) 679

Liability to deduct tax vis-a-vis year of assessment of income

A person who is responsible for paying to a resident any income by way of rent is required to deduct tax at source under s. 194-I at the time of credit of such income to the account of the payee even if it is not the income of the payee of the same previous year in which it is paid; upfront fee paid by assessee to the lessor which is adjustable against 50 per cent of the annual licence fee payable to the lessor was rent and, therefore, assessee was required to deduct tax at source under s. 194-I at the time of credit of such amount.

Limitation for initiating proceedings under s. 201

Orders under s. 201(1) and 201.(1 A) passed by the AO after the end of four years from the end of the relevant financial years are barred by limitation.

Interest under s. 201(1A)

When the payee has paid the advance tax on the lease rent paid to it by the assessee, interest under s. 201(1 A) is not chargeable in view of Instruction No. 275/201 / 1995-IT(B) dt. 29th Jan., 1997; interest under s. 201 (IA) is chargeable upto the time when the payee paid the tax.

CIT v. M/s. Bilaspur District Truck Operators Transport Co. Op. Society Ltd. (19 2009 - TMI - 34971 - Himachal Pradesh HC)

Person liable to deduct TDS u/s 194C(a) – Registered Society / Association

It was held that admittedly, the society does not retain any profits. It only retain as nominal amount which is used for meeting the administrative expenses of the society. There is no dispute with the submission that the Society has an independent legal status and is also contractor within the meaning of Section 194C. It is also not disputed that the members have a separate status but there is no sub-contract between the society and the members. In fact if the entire working of the society is seen it is apparent that the society has entered into a contract on behalf of the members. The society is nothing but a collective name for all the members and the contract entered by the society is for the benefit of the constituent members and there is no contract between the society and the members. - Section 194C(2) of the Act is not attracted and the assessee Society is not liable to deduct tax at source on account of payments made to the truck owners who are also members of the society.

Supreme Renewable Energy Ltd. v. ITO (ITA No. 11/Mds/2008)

Allowability of credit of TDS on income not liable to tax

When TDS is made on a particular income which is otherwise not liable for tax, the assessee is entitled for the said credit of the TDS; even if the income earned by the assessee has not been offered for tax being not liable for tax, the assessee is entitled for credit of TDS made in respect of that income.

Indo Rama Synthetics (I) Ltd. v. DCIT (2009) 31 DTR (Del)(Trib) 42

Admissibility of Additional ground

Additional ground of appeal regarding taxability of sales-tax subsidy received by assessee is admitted as it is purely a legal ground and the facts relating thereto are already on record.

Capital or revenue expenditure - Expenditure relating to setting up of a new unit

Decisive tests for determining whether a new unit is an expansion of the existing business and the two lines of business constitute same business are whether the control over two units is in the hands of same management and administration and whether the new venture is managed from common funds and there is unity of control leading to inter-connection, interdependence and interlacing of the two ventures. Mere fact that the assessee company was taking steps to set up a new unit for manufacturing a product which is authorized by its memorandum and articles of association does not prove that the proposed unit was inextricably linked with the existing business of the assessee. Proposed unit was to be set up much away from the existing unit of the assessee and the project was ultimately cancelled. Assessee has failed to produce any evidence which could prove that the new unit proposed to be set up constituted the same business as the existing business or that it was an expansion thereof. Therefore, assessee is not entitled to claim the impugned expenditure as revenue expenditure

Capital or revenue expenditure - Consultancy fee

Assessee is said to have engaged consultants for carrying out a detailed study on various aspects relating to the operations of the assessee company and to suggest appropriate measures for improving the operational efficiency and profitability. Said assignment was however terminated after a short period and the amount in respect of the work already done upto the stage of termination was made. There is no written agreement with the said consultants to ascertain the scope of study to be carried out by them. Assessee has not been able to prove its intendments regarding payment of consultancy fee for enhancing productivity and profitability of the company. Therefore, expendiuture incurred by assessee towards consultancy fee constituted capital expenditure.

Book profit u/s. 115JB - Amount withdrawn from revaluation reserve

After the insertion of proviso to cl. (i) of Expln. 1 to s. 115JB, the amount withdrawn from a provision or reserve and credited to P&L is statutorily to be included while computing the book profit under s. 11SJB in case the amount of such reserve was not added back by the assessee in the assessment year in which it created the reserve. In the instant case, assessee company had admittedly not increased its book profit for the asst. yr. 2000-01 i.e. year in which the revaluation reserve was created by it. Thus, it is not entitled to reduce the amount withdrawn from such reserve from the book profit under s. 115JB in view of proviso to cl. (i) of Expln. 1. Accounting Standards or the Guidance Notes issued by the ICAI cannot override the said provisions.

Book profit under s. 115JB & Deduction under s. 80HHC

While computing the book profit under s. 115JB the assessee is entitled to reduce the net profit as per P&L a/c by the amount eligible for deduction under s. 80IIHC, computed with reference to book profit and not the actual deduction computed with respect to provisions of the Act.

ADIT (Intl. Taxation) v. Precision Drilling (Cyprus) Ltd. [ITA No. 1604/Ahd/2009]

Penalty cannot automatically be imposed when a disallowance is made merely on an estimate basis

Even if the Tribunal has confirmed the addition it does not mean that the assessee has concealed the income or has furnished inaccurate particulars of such income.

Kanel Oil v. JCIT (ITA No. 2667/Ahd/2002)(ITAT Ahmedabad Third Member)

Special Bench judgement may prevail over non-jurisdictional High Court judgement

The Tribunal had to consider whether an assessee liable to pay Minimum Alternate Tax u/s 115JA was also liable to pay interest u/ss 234B & 234C for short-fall in payment of advance tax. The Judicial Member followed the judgment of the Bombay High Court in Snowcem India Ltd 313 ITR 170 and held that interest u/ss 234B and 234C could not be levied when book profits was computed u/s 115JA. The Accountant Member dissented and followed the earlier judgment of the Special Bench in Ashima Syntex Ltd 117 ITD 1 where a contrary view was taken. The Third Member had to consider whether the judgment of a non-jurisdictional High Court would prevail over that of the Special Bench of the Tribunal. HELD by the Third Member:

(i) The view that the High Court is above the Tribunal in the judicial hierarchy and that the judgment of a non-jurisdictional High Court would prevail over that of the Special Bench is subject to two exceptions. The first exception is where there is only one judgment of a High Court on the issue and no contrary view has been expressed by any other High Court. But when there are several decisions of non-jurisdictional High Courts expressing contrary views, the Tribunal is free to choose that view which appeals to it and in certain circumstances the view which is favourable to the taxpayer may be adopted;

(ii) The second exception is where the judgment of the non-jurisdictional High Court, though the only judgment on the point, is 'per incuriam' i.e. is rendered without having been informed about certain statutory provisions or binding precedents that are directly relevant. A 'per incuriam' judgment need not be given effect to by a lower court;

(iii) In Snowcem India Ltd, the Bombay High Court decided in favour of the assessee following the precedents rendered in the context of s. 115J. However, its attention was not drawn to sub-sec (4) of 115 JA which, according to the department, makes all the difference between s. 115J and s. 115JA. Accordingly, the judgment cannot be relied upon by the assessee as being entirely in its favour on all the aspects of section 115JA and therefore it cannot be said that it should be followed in preference to the order of the Special Bench in Ashima Syntex;

(iv) Consequently, the judgement of the Special Bench had to be followed and it had to be held that the assessee was liable to pay interest u/ss 234B & 234C even when income was computed u/s 115JA.

CIT (Intl. Taxation) v. Samsung Electronics Co. Ltd. (ITA No. 2808 of 2005)(Karnataka HC)

Assessee is liable for TDS qua payment made for purchase of software from non-residents.

The Tribunal was incorrect in holding that since the assessee had purchased only a right to use the copyright i.e., the software, and not the entire copyright itself, the payment cannot be treated as Royalty as per the Double Taxation Avoidance Agreement and Treaties which is beneficial to the assessee and consequently section 9 of the Act should not be taken into consideration.

The High Court has also held that any payments in the nature of income per se to non resident taxpayers would require withholding of tax under section 195(1) of the Income-tax Act, 1961 (the Act). Further, for no withholding of tax or withholding at lower rate, a taxpayer will have to obtain a prior approval of Assessing Officer (AO) under section 195(2) of the Act.

Maruti Udyog Ltd. v. ADIT (Int'l Taxation)(ITA Nos. 4217,4219 & 4221 (Del.) of 2005)

Payments for technical services are to be treated as "fees for technical services" under Article 13(4) of Indo-French DTAA

It was considered that one of the discernible common factor in Indian Double Taxation Avoidance Agreements with UK, USA and Switzerland is that in all these treaties 'fees for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property is outside the scope of 'fees for technical services' liable to separate treatment under the respective DTAA. In other words, in all these treaties, unless the 'fees for services that are ancillary and subsidiary, as well as inextricably arid essentially linked, to the .sale of property' is attributable to PE and fulfils the other requirements laid down under the relevant article dealing with business profits, the same cannot be taxed in the source country. The scope of expression 'fees for technical services', in these treaties, appears to be far more restricted than the scope of the same expression in Indo French DTAA which broadly defines fees for technical services as to mean payments in consideration for services of a managerial, technical or consultancy nature. Therefore, whereas payments for all kind of technical services are to be treated as 'fees for technical services' for the purpose of Article 13(4) of Indo French DTAA, such payments cannot be treated as to be in the nature of 'fees for technical services', under respective articles in Indo UK, Indo US and Indo Swiss Double Taxation Avoidance Agreements, in case the same constitutes 'fees for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property'. Therefore, scope of 'fees for technical services' is much more restricted in Indo UK., Indo US and Indo Swiss DTAAs vis-a-vis the DTAA that India has entered into with France. Hence in all these DTAAs, fees for technical services will not include the fees received for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of a property.

There is no dispute about the fact that the fees for technical services in the form of test reports have been used by the assessee in India in manufacturing of cars. It has been laid down in Steffen, Robertson & Kristen Consulting Engineers & Scientist, In re[1998] 230 ITR 206(AAR) that the statutory test for determining the place of their accrual is not the place where the services for which the payments are being made, are rendered but the place where the services are utilised. Therefore, the payments made UTAC are chargeable tax in India.

Accordingly, it was held that UTAC, France had provided technical services to the assessee and those technical services were used in India in product development of desired specifications and hence payments for such technical services are liable to be taxed in India. Therefore, the assessee was liable to deduct tax at source u/s 195 (2) of the Act.

International Tire Engineering Resources LLC, In re (AAR No. 804 of 2009)

Taxability of an American company, having no PE in India, for technology transfer to an Indian company against consideration

It cannot be doubted that the technology/know- how transfer that is contemplated by clause 2 of the `Technology Transfer Agreement' between the parties gets covered by more than one sub-clause of Explanation 2 to section 9(1)(vi) of the Income-tax Act, 1961 i.e., sub-clauses (i),(ii) and (iv); the services in the form of technical assistance and consultancy connected with those items fall under sub-clause (vi); therefore, the consideration received by the American Company towards technology transfer/technical know-how and the services connected therewith is clearly liable to be taxed as royalty under section 9(1)(vi).

JCIT v. State Bank of Mauritius Ltd. [2009-TIOL-712- ITAT-MUM]

Deductibility of PE expenses under India- Mauritius Tax Treaty

The ITAT held that the Taxpayer, a company incorporated in Mauritius, having established a Permanent Establishment (PE) in India, is entitled to the deduction of expenses, incurred for the purpose of the business of the PE, in computing the profits of the PE under Article 7(3) of the India-Mauritius Tax Treaty (Tax Treaty). In view of the specific provisions of the Tax Treaty allowing the deduction for such expenses, such a deduction is not subject to restrictions prescribed under the Indian Tax Law (ITL).

New Skies Satellites N.V. v. **ADI (Intl. Taxation) (2009) 121 ITD 1 (DELHI)(SB)**

Section 9 r.w. DTAA with Netherlands, Thailand and Hongkong - Income Deemed to accrue or arise in India

Assessees were non-resident companies (incorporated in Netherlands, Thailand and Hongkong) engaged in operating telecommunication satellites. Said satellites typically consisted of 20 to 30 transponders, each operating on a particular frequency within a frequency range allocated to that satellite. Through such transponder installed at location of satel-lite, assessees were providing facility of data transmission to their customers, which were telecasting companies/telecom operators. For obtaining such services an agreed amount was to be paid periodically by telecasting companies as was stated in their respec-tive agreements with assesses. According to assessees all equip-ments, i.e., satellites as well as operating facilities (to control, monitor and operate satellites), were owned, maintained and con-trolled by them from outside India and, therefore, amount received by them from telecasting companies was not liable to tax in India. Assessing Officer, however, taxed such receipts in India by taking a view that receipts of assessees were in nature of royalty under section 9(1) (vi) as well as under provisions of DTAA as applicable to respective cases for the reason that there was a 'process' involved in satellites which had been used by customers of assesses. Commissioner (Appeals) upheld order of Assessing Officer. On second appeal, Division Bench referred matter to Special Bench.

It was held that on facts, services rendered by assessees through their satellites for telecommunication or broadcasting amounted to 'pro-cess'. Term 'secret' appearing in phrase 'secret formula or process' in Explanation 2 to section 9(l)(vi) and in relevant article of DTAA would not qualify word 'process' and, therefore, to fall within meaning of royalty as envisaged in these provisions, it is not necessary that services rendered must be through 'secret process' only. Accordingly, payments received by assessees from their customers (i.e., telecasting companies) were on account of use of process involved in transponders and it amounted to royalty within mean-ing of section 9(l)(vi) and respective articles of DTAA.

International Tire Engineering Resources Llc, In Re (2009) 30DTR (AAR) 161

Income in the form of Royalty, Sale or transfer of technical know-how, drawings and designs deemed to accrue or arise in India

Applicant had agreed to grant to the Indian company a perpetual irrevocable right to use the know-how required for the manufacture of radial tyres for a lump sum consideration. Agreement although composite in nature is divisible into following three distinct parts:

(i) Transfer of know-how i.e. the grant of right to use the know-how

(ii) Transfer of ownership of tread and side wall design/patterns (TSD)

(iii) Consultancy and assistance including training services

There was no sale of technical documents as the applicant was not alienating its property or intellectual property rights in the know-how. Applicant would still be the owner and holder of know-how pertaining to the manufacture and marketing of radial tyres. Crux of the transaction is to disseminate and divert the technical know-how, knowledge and informations for the use of the Indian enterprise for the purpose of manufacture of radial tyres. Theory of "off-shore supply of technical documentation" sought to be developed by the applicant's counsel has no factual foundation. Therefore, it was held that

(i) the consideration received towards technology transfer/technical know-how and the services connected therewith is clearly liable to be taxed as royalty under s. 9(1)(vi). Power of taxation in this regard cannot be denied to the Indian Government from the standpoint of territorial nexus. Further, the know-how transfer squarely falls within the definition of 'royalties' in para 3(a) of art. 12 of DTAA.

(ii) As regards second part, having regard to the fact that the ownership in TSD is transferred absolutely to the Indian company, the consideration related thereto cannot be brought within the fold of royalty under art. 12.3 of the treaty. Amount of consideration related to the transfer of ownership in TSD cannot be subjected to tax under the IT Act, 1961.

(iii) Regarding third part, consultancy and assistance services fall within 'included services' as defined in para 4 of art. 12 of DTAA as also fees for technical services under s. 9(l)(vii) and liable to be taxed in India. Tax was required to be deducted at source @ 10 per cent plus surcharge as per Sch. I to the Finance Act, 2009.

DDI (Intl. Taxation) v. Pipeline Engineering Gmbh (India Branch Office) (2009) 318ITR (AT) 210 (Mumbai)

Computation of income of Non-resident - Roy-alty or fees for technical services

When Royalty or fees for technical services is received by non-resident in pursuance of agreement made before April 1, 2003 Section 44D is applicable. Section 44DA is applicable for ax agreement made after March 31, 2003. Income is to be computed on basis of gross fees received by assessee. Non-discriminatory clause in article 24(2) does not apply where article 7(3) applies. Moreover, rate of tax provided in arti-cle 12(2) cannot be applied to income computed under article 7

Deduc-tion from Royalty or fees for technical services

Expenses incurred through its permanent establishment in India. Deductions sub-ject to provisions of domestic law of contracting state. domes-tic law prohibiting deductions and accordingly assessee is not entitled to deduc-tion.

Powers of Appellate Tribunal on ruling of AAR

Ruling given by Authority for Advance Rulings not a binding precedent, but Tribunal can concur with reasoning given by authority.

Powers of Appellate Tribunal - Theory of reading down provisions of statute

High Court or Supreme Court can read down provision if found to be violative of fundamental right. Tribunal has no such powers.

DDI (Intl. Taxation) v. Jebon Corporation India Liaison Office (2009) 31 DTR (Bang)(Trib) 187

DTA with South Korea - Permanent establishment

Assessee, a South Korean company, has a liaison office (LO) in India which is engaged in the activity of liaising in the area of sale of electronic components by securing orders in India for the non-resident company. Hence, in view of Expln. 2(c) to s. 9(l)(i) inserted w.e.f. 1st April, 2004, there is a business connection in respect of asst. yr. 2004-05 and subsequent assessment years, and income from such activity is to be deemed to accrue or arise in India and is taxable in India. Even prior to asst. yr. 2004-05, part of the trading activity in respect of supplies made to Indian customers is done by the LO and there was thus business connection. Further, LO is an office and cannot be excluded from the word 'office' occurring in art. 5(2).

Oracle India (P) Ltd. V. ACIT (2009-TIOL-540-ITAT-DEL)

Assessing officer's adjustment to international transactions not justified when transfer pricing officer accepts arm's length character of international transactions

It was held that Section 40A(2) of the Income-tax Act, 1961 (the Act) overrides the provisions relating to computation of business income only and thus in relation to international transactions, the specific provisions embodied in Chapter X (section 92 - 92F) shall override the general provisions embodied in section 40A of the Act. Hence, once the transfer pricing officer (TPO) accepts the arm's length character of any international transaction, the assessing officer could not make an adjustment in relation to that transaction under section 40A(2) of the Act.

Circulars / Notifications

Applicability of provisions under Section 194J of Income Tax Act'61 in the case of transactions by the Third Party Administrators (TPAs) with Hospitals etc.

Circular No. 8/2009, dated 24-11-2009

A number of representations have been received from various stake-holders regarding applicability of provisions under Section 194J of Income Tax Act'61 on payments made by Third Party Administrators (TPAs) to hospitals on behalf of insurance companies for settling medical/insurance claims etc with the hospitals.

2. The matter was examined by the Board. As per provisions of section 194J (1) 'Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of-

(a) fees for professional services, or

(b) fees for technical services, or

(c) royalty, or

(d) any sum referred to in clause (va) of section 28,

shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a. cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax on income comprised therein...". Further as per Explanation (a) to 194J "professional services " means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession etc..'.

3. The services rendered by hospitals to various patients arc primarily medical services and, therefore, provisions of 194J are applicable on payments made by TPAs to hospitals"1etc. Further for invoking provisions of 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital. Therefore TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc under various schemes including Cashless schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.

3.1. In view of above, all such past transactions between TPAs and hospitals fall within provisions of Section 194J and consequence of failure to deduct tax or after deducting tax failure to pay on all such transactions would make the deductor (TPAs) deemed to be an assessee in default in respect of such tax and also liable for charging of interest under Section 201 (1A) and penalty under Section 271C.

4. Considering the facts and circumstances of the class of cases of TPAs and insurance companies, the Board has decided that no proceedings u/s 201 may be initiated after the expiry of six years from the end of financial year in which such payment have been made without deducting tax at source etc by the TPAs. The Board is also of the view that tax demand arising out of Section 201(1) in situations arising above, may not be enforced if the deductor(TPA) satisfies the officer in charge of TDS that the relevant taxes have been paid by the deductee assessee (hospitals etc.). A certificate from the auditor of the deductee assessee stating that the tax and interest due from deductee assessee has been paid for the assessment year concerned would be sufficient compliance for the above purpose. However, this will not alter the liability to charge interest under Section 201 (1 A) of the Income Tax Act till payment of taxes by the deductee assessee or liability for penalty under Section 271C of the Income Tax Act as the case may be.

5. The contents of the circular may be brought to the notice of officers and officials working under you for strict compliance.

INDIRECT TAXES

Judicial Pronouncements

Poly Hose India Pvt. Ltd. v. Commissioner of Central Excise [2003 (152) ELT 361 (Tribunal)]

Admissibility of Cenvat Credit when CVD is paid through DEPB

Hon'ble Tribunal has held that Cenvat credit could be availed even when Additional Custom Duty is paid through DEPB.

There is no dispute that under those provisions Cenvat Credit should be allowed to the manufacturer even when Additional Duty have been paid through DEPB. When Additional duty has been paid through DEPB, it does amount to payment of duty. Thus under Cenvat Credit Rules credit should be allowed even when duty has been paid through DEPB. These rules are specific rules with respect to applicability and availability of Cenvat Credit and if credit is allowable under these rules, it must be allowed.

It is seen that Exim policy cannot be directly applied on the Central Excise assessee. There are numerous examples where Board has issued notifications, circulars etc to give effect to the provisions of Exim Policy whenever it was required to be applied in the Custom and Central excise proceedings.

F.No.354/189/2009-TRU, Dated 4th November, 2009.

Subject: Applicability of indirect taxes on packaged software – regarding

The undersigned is directed to state that 'Packaged Software' is a type of IT software which caters to the needs of a variety of users and is capable of being used for variety of hardwares. IT software is fully exempt from basic customs duty being covered under Information Technology Agreement. So far as excise duty/CVD is concerned, while customised software is fully exempt, the packaged software attracts duty @ 8%.

2. Shrink wrap software is a type of packaged software which consists of a box containing software or software upgrade on media (i.e. CD/DVD), users manual and end-user licence agreements, which is shrink wrapped in plastic cover and is always sold as a set (without removing the plastic cover).

3. Normally, cost of a software supplied in a media consists of two cost components, namely,-

   (a) the cost of the actual software, i.e. set of information which is placed on a media; and

   (b) the cost of the intellectual property right (IPR) relating thereto.

4. In 2008 budget, the IPR portion of the cost of software was brought under the service tax net under a new taxable service 'IT Software Service' (ITSS). As per the definition, a service provided in relation to IT software for use in the course, or furtherance, of business or commerce was covered under this taxable service. In specifics, the taxable service included,-

   .....

   (v) providing the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,

   (vi) providing the right to use information technology software supplied electronically and the term 'service provider' shall be construed accordingly.

5. In their pre-budget representations for the 2009 budget, the IT companies and their associations represented that if such IT software is imported, it is likely to be subjected to double taxation. While for calculating additional duty, the value of 'right to use' supplied alongwith the software would be included (as per the provisions of the Customs Valuation Rules) by the Customs authorities, the service tax authorities would charge service tax on the same value (i.e. on right to use) considering it to be import of ITSS.

6. Accepting their plea, in Budget 2009, two parallel notifications were issued on the excise and customs side. Vide notification no.22/2009-CE dated 07.07.2009, partial exemption from excise duty was provided to packaged or canned software on that portion of the value which represents the consideration for the transfer of the right to use for commercial exploitation, as on this portion, service tax would be leviable under the ITSS. Similar exemption from CVD was provided vide notification No. 80/2009-Customs dated 07.07.2009 on such software. These exemptions were notified to ensure that while importing or manufacturing packaged software, the importer/manufacturer is spared from paying customs duty/excise duty on the value attributable to transfer of 'right to use'.

7. It has been brought to the notice of the Board that some of the importers of shrink wrapped software have faced certain difficulties in availing of Notification No.80/2009-Customs dated 7.07.2009. It has been reported that their live consignments are held up, especially at Mumbai and Chennai cargo complexes. From the documents submitted by them it appears that two major objections have been raised at Mumbai and Chennai respectively.

8. It may be recalled that the first proviso of the said notification states that the exemption would be limited to that much of value which is towards right to use such software for commercial exploitation including the right to

reproduce, distribute and sell such software and the right to use software components for creation of and inclusion in other information technology software products. In Mumbai, a view has been taken that the benefit of the notification is available only if all the activities, viz., right to reproduce, right to distribute, right to sell and right to use the software component for creation of and inclusion in other IT software products are fulfilled. Thus a conjunctive meaning of the term 'and' has been taken and it has been held that since the importer did not fulfill all the conditions, they should be denied the benefit of the notification.

9. In another case in Chennai, where fully packed product (FPP) was imported by a company which produced split value (i.e., one value for media CVD and other for right to use software) in a single invoice shown separately, the jurisdictional authorities have refused to accept such split value for the purpose of claiming NotificationNo.80/2009 -Customs and taken the view that CVD should be charged on entire amount.

10. The above instances show that the field formations have failed to appreciate the scope of the said notification. In the first case, the view taken by officers is legally untenable because the phrase used in notification No.80/2009-Cus is inclusive in nature and it is a well-known principle that in an inclusive expression, the word 'and' is to be understood as 'or' and that even if one of the activities (such as right to reproduce, right to distribute, right to sell etc.) mentioned in the said inclusive portion is carried out, it would satisfy the condition of commercial exploitation, thus making the import eligible for notification No. 80/2009-Customs. As for the second case, the notification No.80/2009-Cus itself envisages splitting of the value of the imported goods into that pertaining to software on media and the one pertaining to right to use. In such cases, there is no rationale for the department to deny splitting of value unless there are reasons to believe that such a splitting has been done in order to evade payment of duty.

11. The assessment of the shrink wrapped packaged software may be done keeping in view the above directions.

Circular No. 32/2009-Cus. (F.NO.605/61/2007-DBK) Dated: 25th November 2009.

Sub: Revised norms for execution of Bank Guarantee under specified Export Promotion Schemes – Modifications in Circular No.17/09-Cus dt.25.05.09 – reg.

I am directed to invite your attention to Circular No.17/2009-Cus. dated 25.05.2009 (herein after referred to as 'the said circular') vide which revised norms for execution of Bond / Bank Guarantee (BG) in respect of imports made under the Advance Authorization / Export Promotion Capital Goods/ Duty Free Import Authorization Schemes were notified and to say that, representations have been received to clarify, whether the status holders other than 'Star Export House' are entitled for 'nil' BG in terms of sl.No.(c) of the Table appended to para 2.1 of the said circular.

2 The issue has been examined by the Board. The circular no 17/09-Cus. had amended circular No.58/2004-Cus which was issued in the light of the provisions of the 2004-05 edition of the Foreign Trade Policy (FTP).The FTP-2004 recognized five categories of Status Holders viz. One star /two star / three star /four star and five star Export Houses. The circular No. 58/2004-Cus extended the benefit of 'nil' BG to all the five categories through a common phrase 'Star Export House' under sl.No. (c) of the Table. The intention of the circular no 58/2004-Cus was therefore to extend the benefit of 'nil' BGto all the status holders.The sl no. (c) of the table remained unchanged in circular No. 17/09-Cus.

3. As the above categories are now known as Export House, Star Export House, Trading House, Star Trading House and Premier Trading House respectively in terms of para 3.10.2 of the current FTP, the benefit of 'nil' BG should also be extended to all categories of status holders.The words 'Star Export House' appearing under sl. No. (c) of the Table may therefore be read to mean 'Status Holders recognized under the provisions of the Foreign Trade Policy'

4. These instructions may be brought to the notice of the trade / exporters by issuing suitable Trade / Public Notices. Suitable Standing orders/instructions may be issued for the guidance of the assessing officers. Difficulties faced, if any, in implementation of the Circular may please be brought to the notice of the Board at an early date.

SEBI

Circular No. SEBI/IMD/DOF-1/BOND/Cir-5/2009 Dated 26-11-2009

SEBI has issued subject circular making Amendments in Simplified Debt Listing Agreement for Debt Securities.

Companies Act

Smt. Hetal Alpesh Muchhala v. Adityesh Educational Institute [Company Application No. 843 of 2009, In Company Appeal (L) No.48 of 2009, In Petition No.44-45 of 2007]

Applicability of section 5 of Limitation Act, 1963 to a company appeal

The time limit prescribed under section 10F of the Companies Act, 1956 to file an appeal from the order of the Company Law Board is absolute and unextendable by Court under section 5 of the Limitation Act.

SEZ

Instruction No. 41 - F.No.C.6/9/2009-SEZ- Dated 22nd November, 2009

Clarification on calculation of NFE as per Rule 53 of the SEZ Rules, 2006

I am directed to say that references have been received in this department seeking clarification on the currency in which NFE is to be calculated. The matter has been examined in this department and it is clarified that NFE is to be calculated in rupee terms only. In case a unit is NFE negative and claims that it is due to foreign exchange fluctuation, the Approval Committee may consider such cases provided that the unit gets the computations certified by the Authorised Bank, on a case to case, basis.

5th Dec.	*Payment of Service Tax & Excise duty for December*
6th Dec.	*Payment of Excise duty paid electronically through internet banking*
7th Dec.	*TDS/TCS Payment for November*
10th Dec.	*Excise Return ER1 / ER2 /ER6*
15th Dec.	*Advance income tax for Companies (Quarter III)*
15th Dec.	*Advance Income Tax for Non Corporate Assesses (Quarter II)*
15th Dec.	*PF Contribution for November, Excise payment by SSI*
21st Dec.	*ESIC Payment for November*