

## Challenge to legality of Indo-Mauritius tax treaty continues to be live!

By TIOL News Service

**NEW DELHI, AUG 27, 2006 :** IF one thought that the issue of capital gains exemption to Mauritius-based FIIs was settled with the SC verdict in the Azadi Bachao Andolan case ([2003-TIOL-13-SC-IT](#)), then one may be proven wrong. The issue is very much live not only in the light of the Finance Minister's statement as to the on-going review by the CBDT but also judicially.

A whole basket of vital issues were involved in this case, and one of the key PIL crusaders, Mr Shiva Kant Jha, did not leave it there. He filed a 'Review Petition' which was dismissed by the Apex Court. Then, he filed a 'Curative Petition' but it was to be debated in the light of the Constitution Bench order in the famous Rupa Ashok Hurra vs. Ashok Hurra & Anr case ([2002-TIOL-469-SC-MISC-CB](#)). So he challenged the very foundation of this case and in-camera hearing is being done.

While hearing this case, the three-judge bench of the Chief Justice, Justice C.K. Thakker and Justice R.V. Raveendran observed that in view of the law laid down by the Constitution Bench of this Court in Rupa Ashok Hurra case, the petition under Article 32 of the Constitution of India is not maintainable. According to the petitioner, the decision in Rupa Ashok Hurra requires re-consideration. The Court requested Mr. Gopal Subramanian, learned Additional Solicitor General, and Mr. Soli J. Sorabjee, learned senior advocate, to assist this Court on the point in issue prima facie perspective. The matter is likely to come up again in the middle of October.

It is pertinent to note that the judgment in Civil Appeal Nos.8163-8164 of 2003 had been delivered by a Division Bench of the Supreme Court reversing the decision of the Delhi High Court in Shri Shiva Kant Jha & Anr. v. Union of India & Ors ([2003-TIOL-04-HC-DEL-IT](#)), which had held the CBDT's circular 789 dated 13 th April 2000 illegal, and had observed that the Indo-Mauritius tax treaty had been abused.