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EDITORIAL

INDIAN ECONOMY: CHALLENGES AND EXPECTATIONS TOWARDS THE BRIGHT FUTURE

CA Vinod Jain*

The Reserve Bank of India has recently released a small dose of liquidity by reducing Cash Reserve Ratio (CRR) by 0.5% for the commercial banks. Government borrowings have swallowed significant resources from the banking sector in recent months. The Liquidity with banking sector is still a major issue.

The US economy has already started picking up, employment rates have improved, order books have started moving and real estate has started looking up in US. The European crises are moving towards settling down with the help of Germany, England and US governments. The worst seems to be over. The year 2012 could be very fruitful for reinstatement of a high growth rate in India. The inflation figure have also indicated a positive picture. The only major worry is large fiscal deficit, which is expected to be around 3.5% by the fiscal year end.

> **The year 2012 could be very fruitful for reinstatement of a high growth rate in India. The inflation figures have also indicated a positive picture. The only major worry is large gap of fiscal deficit, which is expected to be around 3.5% by the fiscal year end.**

It is important for Reserve Bank of India to come up to the expectations of industry, service sector and agriculture and to chanalize larger resources at lower interest rate to productive uses and creation of new capacities. The December 2011 Index of Industrial Production has been at a tad low, at 1.8%, the lowest since July 2009. The real estate sector, housing, infrastructure sector including power, road, port and other major private sector and public sector projects require high capital and intensive investments. These are suffering severely in the absence of low rate adequate liquidity.

The power sector is also struggling due to lack of coal linkage and non disbursal of loans which were already sanctioned and where financial closure was already completed. The new sanctions in the power sector have reduced by more than 75%, which is critical impediment to growth. The Union Budget 2012 and the policy announcement contained therein including incentive for improving the sentiment providing realistic framework for growth are crucial at this stage.

The Union Finance Minister Mr. Pranab Mukherji is known for his special visionary approach and all of us look forward for a concrete positive movement at the initiative of the government. Budget this year need very special and aggressive approach to restore higher growth in economy and to reinstate robust confidence in masses.

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LATEST IN FINANCE

1.0 SUPREME COURT CANCELS 122 TELECOM LICENSES

The Supreme Court ordered the cancellation of all the 122 unified access service licenses issued in January 2008 by former telecom minister A Raja. It also directed the Telecom Regulatory Authority of India (TRAI) to make fresh recommendations for the telecom spectrum auction route in future, within four months. The number of licenses cancelled for various companies are as follows:

Name of the Company			
❖ UNINOR	22	❖ VIDEOCON	21
❖ STEL	06	❖ LOOP TELE	21
❖ ETISALAT	15	❖ SISTEMA	21
❖ IDEA	13	❖ TATA	03
TOTAL			**122**

2.0 FRANCE, AUSTRIA LOSE AAA AS S&P'S DEMOTES 9 EUROPE NATIONS

European leaders' efforts to extract the Euro Zone from the current crisis suffered a significant blow, as ratings agency Standard & Poor's followed up on its December warning by downgrading the sovereign ratings of nine European nations.

3.0 INDIA, JAPAN SIGN $15BILLION CURRENCY SWAP DEAL

India and Japan signed a revised $15 billion currency swap deal which is expected to help support the rupee.

4.0 MERCHANT BANKERS MUST DISCLOSE TRADE RECORD OF PUBLIC ISSUES: SEBI

With a view to enabling investors to take well - informed investment decisions, regulator Securities and Exchange Board of India (SEBI) directed merchant bankers to disclose the track record of the performance of the public issues managed by them.

5.0 RBI CUTS CRR

The Reserve Bank of India (RBI) Governor D Subbarao went halfway by cutting the cash reserve ratio, which determines the amount of cash banks must keep with the central bank, by 50 basis points (bps) to 5.5 per cent.

6.0 DEBT FUND ALLOWED

The Reserve bank of India (RBI) has issued guidelines to allow banks and NBFCs to sponsor Infrastructure debt Funds (IDFs), to support long term finance in infrastructure. NBFCs trying to set up IDFs should have been operational for at least 5 years, should have minimum net owned funds of ₹ 300 Crore and a capital adequacy ratio of 15 percent. Moreover, its net non performing assets should be less than 3 percent of net advances.

7.0 TRAI PROPOSES ₹ 20 CR ENTRY FEE FOR UNIFIED LICENCE

NEW REGIME

- ❖ Three levels of unified licensing-National level, Service area level and District level
- ❖ Entry fee for national level licence will be ₹ 20 crore
- ❖ Circle level licence to cost between ₹ 2 crore and ₹ 50 lakh
- ❖ ₹ 25 lakh for district level licence.
- ❖ No cap on the number of licences
- ❖ Operators will have to apply/buy for spectrum separately

8.0 BANK OF INDIA TO HAVE 51% STAKE IN JV WITH AXA

Bank of India said that it would have a majority stake of 51 per cent in its proposed asset management joint venture with AXA Investment Managers. French financial services firm AXA currently has 74 per cent stake in an asset management joint venture, Bharti Axa Investment Managers, with Indian telecom major Bharti. According to senior bank officials, AXA would acquire Bharti's 26 per cent stake in the firm and then transfer 51 per cent of its holdings to the bank. AXA will hold the remaining 49 per cent stake in the joint venture. Bharti Axa Investment Managers is currently the asset management company to Bharti AXA Mutual Fund.

9.0 IIFCL LINES UP ₹ 3,600-CR PROPOSALS FOR TAKE-OUT FINANCING

India Infrastructure Finance Company Ltd (IIFCL) has lined up proposals worth ₹ 3,600 crore for take-out financing. The company is awaiting the Cabinet's approval for the tweaked norms for take-out financing. The approval is "expected any moment" and once it comes, IIFCL would disburse the ₹ 3,600 crore in less than a month.

A take-out agreement helps the first lender go ahead with lending to an infrastructure project, as he knows that he would keep the loan on his books only for a few years, say until the project is completed.

10.0 GOVT PLANS TO SET UP ₹ 5000 CR PPP FUND FOR R&D

The government plans to set up a public-private partnership fund of ₹ 5000 crore for supporting joint research and development (R&D). The proposed fund is expected to be available for R&D efforts at public educational institutions like the IITs, as well as private industries.

The government also plans to bring out a white paper for increasing private sector engagement in R&D.

11.0 BANKS TO ACCEPT DEPOSITS IN NINE CURRENCIES

Private Sector Banks have started accepting Foreign Currency Non-Resident (FCNR) deposits in nine currencies. The bank will accept FCNR deposits in US, Canadian, Australian, Singaporean and Hong Kong dollars, as well as the British pound, euro, yen and Swiss franc with effect from November 1. Banks have also hiked the interest rates it offers on non-resident term deposits. FCNR deposits in the US dollar will get 1.94-2.69% interest in select maturities.

12.0 RBI GUIDELINES ON CREDIT DEFAULT SWAP OPERATIONAL

Reserve Bank of India (RBI) operationalised new guidelines on Credit Default Swap (CDS), directing market participants to report such trades within 30 minutes to the Clearing Corporation's online repository. The Reserve Bank of India (RBI) said that it is advised that all market makers shall report their Credit Default Swap (CDS) trades in corporate bonds within 30 minutes of the trade to the Clearing Corporation of India Ltd. (CCIL) trade repository CCIL Online Reporting Engine (CORE) beginning December 1, 2011.

13.0 CREDIT PROTECTION

CDS provides credit protection to corporate bond buyers, as the sellers of the swaps guarantee the credit-worthiness of the product. Thus, the risk of default is transferred from the holder of the fixed income security to the seller of the swap.

The Reserve Bank of India (RBI) observed that the objective of introducing CDS on corporate bonds is to provide market participants a tool to transfer and manage credit risk in an effective manner through redistribution of risk.

14.0 RBI ALLOWS BANKS, NBFCS TO SET UP INFRA DEBT FUNDS

The Reserve Bank of India (RBI) issued guidelines to allow banks and Non-Banking Financial Companies (NBFCs) to Sponsor Infrastructure Debt funds (IDFs) to support long-term finance in infrastructure. Sponsor Infrastructure Debt funds (IDFs) may be set up either as mutual funds or Non-Banking Financial Companies (NBFCs). According to the guidelines, Non-Banking Financial Companies (NBFCs) trying to set up Sponsor Infrastructure Debt funds (IDFs) should have been operational for at least five years, should have minimum net owned funds of ₹ 300 crore and a capital adequacy ratio of 15 per cent. Besides, its net non-performing assets should be less than three per cent of net advances. Reserve Bank of India (RBI) also said that it should also have earned profits for the last three years.

15.0 SEBI TO REVIEW HIGH FREQUENCY TRADING RISK MANAGEMENT

The Securities and Exchange Board of India (SEBI) has said that it will do a thorough review of the risk management system in high frequency or algorithmic trading. Securities and Exchange Board of India (SEBI) said that it observed large movements in Sensex futures during the special session, conducted as Muhurat trading for Diwali at BSE. This has again raised the question of risk management measures in high frequency trading.

CAPITAL MARKET

1.0 SEBI IMPOSES ₹ 5 LAKH PENALTY ON PANTALOON

Market regulator Securities and Exchange Board of India (SEBI) has imposed a penalty of ₹ 5 lakhs on retail major Pantaloon for failing to address investor grievances within the stipulated timeframe. SEBI had earlier identified the Kishore Biyani-promoted firm as one of the companies against whom a large number of investor grievances were pending for more than six months as on June 30 last year.

2.0 SEBI EASES NEW NORMS-KEY CHANGES

- Sale and lock - in restrictions lifted for insurance firms and mutual funds subscribing to preferential issues.

- Advertisement code amended, made more principle - based.
- Definition of advertisement broadened to influence investment decisions of any investor.
- Minimum investment amount under PMS increased to ₹ 25 lakh from ₹ 5 lakh.
- Reservation in rights / bonus issues only to compulsorily convertible debt holders.
- Valuation norms for liquid funds tightened

3.0 SEBI CUTS TIMEFRAME FOR BUYBACK PROCESS TO 44 DAYS

Market regulator Securities and Exchange Board of India (SEBI) has reduced the timeframe for completion of buyback of shares by companies to 34-44 days. Earlier, the buyback process could take anywhere between 63 to 114 days.

4.0 SEBI MOOTS CALL AUCTION ON LISTING DAY TO CHECK SWINGS

To minimize volatility and price manipulation on listing day, stock market regulator Securities and Exchange Board of India (SEBI) has extended the call auction concept to initial public offerings (IPOs) and re-listings. SEBI has prescribed 100 per cent margin requirement for buying and selling shares in call auction period for an issue size of up to ₹ 250 crores.

5.0 SEBI ISSUES NORMS FOR STRENGTHENING KRA REGULATIONS

It shall be mandatory for all the intermediaries to carry out In-Person Verification (IPV) of their clients.

6.0 TOP 100 COS CAN SELL STAKE VIA BOURSES: SEBI

Stock market regulator Securities and Exchange Board of India (SEBI) has notified guidelines that enable promoters to sell their stake through stock exchanges and increase minimum public shareholding in their companies to the stipulated 25 per cent.

This facility would be available only on the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE) and only to the top 100 companies by average market capitalisation in the preceding quarter. Promoters should not have bought or sold their shares 12 weeks prior to and should not buy or sell 12 weeks after the offer period.

7.0 FACEBOOK FILES FOR $5 BILLION IN BIGGEST INTERNET IPO

Facebook, the social- networking website that in eight years changed the way the world communicates, filed to raise $5 billion in the largest internet initial public offering on record. Facebook, whose meteoric rise spawned an Oscar-winning film and captivated Wall Street named Morgan Stanley as the lead underwriter on the IPO, while reporting a 24-fold increase in sales over the past four years to $3.71 billion in 2011.

AUDIT

1.0 PWC FINED $2.17M IN UK OVER JPMORGAN CLIENT - MONEY AUDIT

PricewaterhouseCoopers LLP was fined a record £2.17 million for failures concerning reports on client - money accounts at JPMorgan Chase & Co`s London securities unit.

ICAI

1.0 CA INSTITUTE INKS PACT WITH UK ACCOUNTANCY BODY

The CA Institute has signed a memorandum of understanding with the Association of International Accountants (AIA), a UK-based professional accountancy body, for reciprocal membership arrangement.

INSURANCE

1.0 IRDA ON AGENT TRAINING INSTITUTES

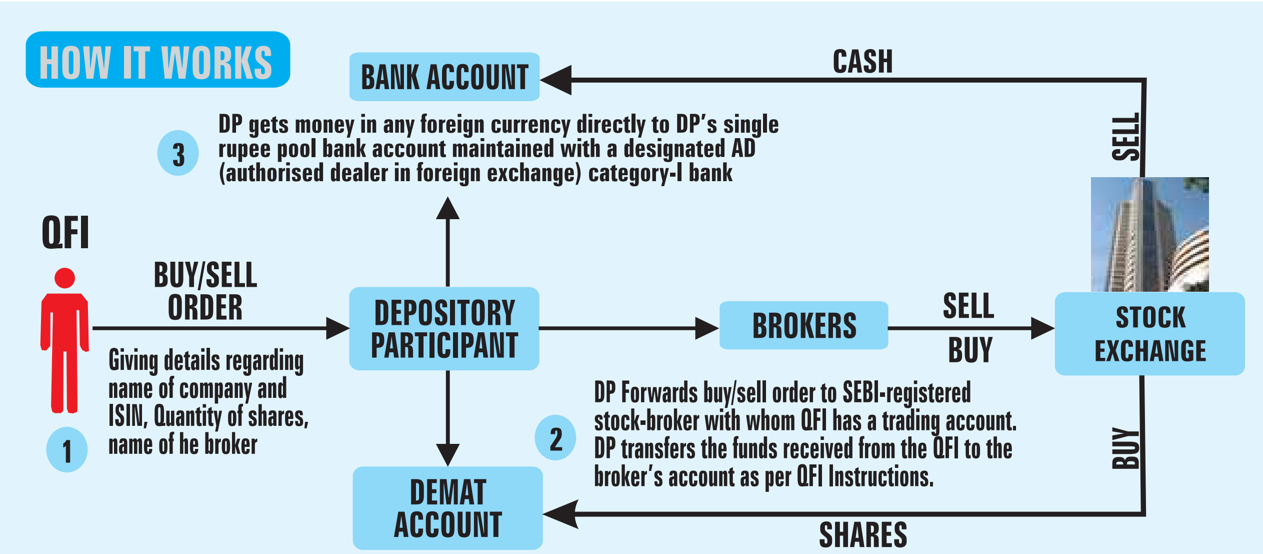
To eliminate non-serious players, Insurance regulatory and Development Authority (IRDA) has asked all existing agent training institutes (ATIs) to get themselves registered either as a company or trust by June.

FEMA

1.0 UNHEDGED FOREIGN CURRENCY EXPOSURE RISKY: RBI

Recent events relating to derivative trades have shown that excessive risk trading by corporate could lead to severe distress to them and large potential credit loss to their bankers in the event of sharp adverse movements in currencies, **as per the RBI circular dated 2 February 2012.**

2.0 SEBI SETS NORMS FOR FOREIGN INVESTMENTS IN STOCKS BY FOREIGNERS



Note: If the QFI is not able to purchase the shares within 5 working days (from the date of receipt of the inward remittance by the DP), the DP shall immediately remit the money back into the designated overseas bank account; After receiving sale proceeds of the shares, the DP shall hold the funds for a maximum of 5 days in its single rupee pool account; If the QFI does not make any fresh purchase of shares within 5 days, the DP shall remit the funds to the overseas bank account in 5 days from receipt of money in the pooled bank account.

3.0 FOREIGN INVESTORS CANNOT SQUARE OFF THEIR POSITIONS: SEBI

Though Qualified Financial Investors (QFIs) have been allowed to directly buy shares of Indian companies, the Securities and Exchange Board of India (SEBI) has put several restrictions on investments and a slew of terms and conditions for monitoring QFIs investment limits.

QFIs will necessarily have to give and take delivery of shares they sell or buy. They cannot square off their positions (buy or sell) intra-day. Each transaction by a QFI shall be cleared and settled on a gross basis. There will be no netting of transactions.

QFIs are not allowed to issue offshore derivatives instruments/ participatory notes. The depository participant (DP) is responsible for obtaining an undertaking from the QFI to this effect.

4.0 FOREIGN INVESTORS CAN INVEST IN IDFS: RBI

The Reserve Bank of India (RBI) has allowed foreign investors to invest in debt instruments floated by Infrastructure Debt Funds (IDF) set up as Non-Banking Financial Companies (NBFCs) or Mutual Funds (MFs). The debt instrument would include foreign currency and rupee bonds. While both individual and institutional foreign investors are allowed to invest, the Reserve Bank of India (RBI) has specified the instruments they are eligible to invest in. Eligible foreign investors include high net worth individuals registered with the Securities and Exchange Board of India (SEBI) and high net worth individuals registered with Securities and Exchange Board of India (SEBI) as sub-accounts of Securities and Exchange Board of India (SEBI) registered foreign institutional investors (FIIs). Non-residents are also eligible to invest.

5.0 100% FDI IN SINGLE-BRAND RETAIL OKAYED

The government notified the Cabinet's decision to allow up to 100% foreign direct investment in single-brand retail with certain conditions. So far, policy allowed FDI of only up to 51% in single-brand retailers. With the notification, the new policy comes into effect immediately.

TAXATION

1.0 HC RULES IMPORTED SOFTWARE LIABLE TO WITHHOLDING TAX

A Karnataka High Court ruling is likely to hit the likes of GE, Sonata Software, HP and many others as all payments made for imported software will face withholding tax after verdict.

2.0 I-T HAS NO ROLE IN VODAFONE - HUTCH DEAL: SC

Case facts:

- In 2007, Vodafone bought a 67% stake in Hutchison Essar for about ₹ 55000 cr.
- The revenue department said the sale was taxable because the assets acquired by Vodafone are based in India.
- The department said that Vodafone should have deducted taxes before making a payment of $11076 million (about ₹ 55000 Cr) to Hutchison Telecommunications.
- Vodafone claims no tax levy because deal was between Non - India companies outside country.
- Vodafone lost case in the Bombay high court in 2008 and appealed to SC
- SC asked Vodafone to deposit ₹ 2500cr along with a bank guarantee worth ₹ 8500 Cr against its alleged dues of nearly ₹ 12550 Cr.
- Vodafone wins the case in Supreme Court.
- SC asks the department to refund ₹ 2500 Cr with 4% interest (₹ 100 Cr).

3.0 NO NEED TO RESPOND TO TAX NOTICES FOR BELOW ₹ 100

The Income Tax Department has asked assessees not to respond to notices of arrears of paltry amounts like ₹ 1, ₹ 4 and ₹ 6 as demands of less than ₹ 100 would be adjusted against future refunds.

4.0 SOME IMPORTANT JUDGEMENTS

SECTION 2(24):

The Mumbai ITAT held that where a housing society & developer entered into a development agreement where under old building was demolished and new multi-storied building was built, compensation paid to assessee-member in addition to allotment of flat & displacement compensation was a capital receipt.

Decided case: Kushal K. Bangia v/s Income-tax Officer

SECTION 40(a) (ia):

The Mumbai ITAT held that the provisions of section 40(a) (ia) can be invoked only in event of non-deduction of tax at source but not for lesser deduction of tax at source.

Decided Case: Deputy Commissioner of Income-tax v/s Chandabhoy & Jassobhoy

SECTION 28(i), READ WITH SECTION 15:

The Mumbai ITAT held that where assessee received fees on per hourly basis for delivering lectures, then such fees received by the assessee should not be treated under Income from Salaries but under Business Income.

Decided Case: Hardik Bhadresh Bengali v/s Income-tax Officer.

SECTION 80-IC:

The Punjab & Haryana High Court held that where generation of scrap had direct link with manufacturing process carried out by assessee, income arising from sale of scrap was also eligible for deduction under section 80-IC.

Decided Case: Commissioner of Income-tax v/s Micro Turners.

SECTION 37(1):

The Visakhapatnam ITAT held that penalty paid for infraction of traffic rules is not deductible as payments were made for infraction of law, it was hit by Explanation to section 37 and, therefore, expenditure in question could not be considered to be business expenditure under section 37(1).

Decided Case: Kranti Road Transport (P.) Ltd. v/s Assistant Commissioner of Income-tax.

SECTION 32:

The Delhi ITAT held that depreciation is allowable on assets acquired by assessee-Charitable trust by application of income of trust.

Decided Case: Escorts Cardiac Diseases Hospital Society v/s Assistant Director of Income-tax (Exemption), Trust.

The Delhi ITAT held that assessee would be allowed depreciation on factory building owned by it though registration of title of said building in its name was pending.

Decided Case: Deputy Commissioner of Income-tax v/s Biltech Building Elements Ltd.

SECTION 10(23C):

The Delhi High Court held that without considering explanation furnished by petitioner-society in regard to expenditure incurred, denial of registration under section 10(23C)(iv) on ground that there were abnormal fluctuation in expenditure incurred was not justified.

Decided Case: Synodical Board of Health Services v/s Director General of Income-tax.

SECTION 2(28A), READ WITH SECTION 194A:

The Himachal Pradesh High Court held that interest paid by Housing Board to its allottees on amount deposited by them on account of delayed allotment of flats is not interest within meaning of section 2(28A).

Decided Case: Commissioner of Income-tax, Shimla v/s H.P. Housing Board.

SECTION 2(22):

The Delhi High Court held that amount received by assessee-shareholder from a company as a result of trading transaction could not be regarded as deemed dividend merely because it had been shown as 'unsecured loan' in assessee's books of account.

Decided Case: Commissioner of Income-tax v/s Arvind Kumar Jain.

SECTION 10BA:

The Jaipur ITAT held that deduction under section 10BA was allowed where assessee was found to have fulfilled conditions of clauses (a), (b), (c) and (d) of section 10BA(2).

Decided Case: Deputy Commissioner of Income-tax v/s Manoj Kumar Johari.

SECTION 194C:

The Delhi ITAT held that payment made by assessee for taking cranes on lease on time basis, did not constitute payment with regard to 'work contract' as defined in section 194C.

Decided Case:Asstt. CIT v/s Sanjay Kumar.

SECTION 195:

The Chennai ITAT held that tax is not liable to be deducted at source under section 195 on payment made to foreign companies which do not have branches, or business place in India, and have rendered services outside India-Section 195.

Decided Case:Asstt. CIT v/s Leaap International (P.) Ltd.

TRANSFER PRICING

- **The Hon'able Supreme Court** has held that transfer of shares of foreign company by non-resident to non-resident does not attract Indian tax even if object is to acquire Indian assets held by the foreign company.

  Decided Case: Vodafone International Holdings vs. Union of India & Anrs

- **The Pune ITAT** has held that TPO is duty bound to eliminate differences in comparables' data for working capital if material.

  Decided Case: Demag Cranes & Components (India) Pvt. Ltd. vs. DCIT

- **The Delhi High Court** has held that even if not assessable as "fees for technical services" under DTAA, bar in s. 44D against deduction of expenses will apply.

  Decided Case: DIT vs. Rio Tinto Technical Services

- **The Gujarat High Court** has held that AO's decision to refer to TPO must be based on material & not be arbitrary. The question as to whether there is an "international transaction" cannot be referred to TPO.

  Decided Case : Veer Gems vs. ACIT

- **The Mumbai ITAT** has held that onus on AO to show foreign co has a PE in India. Under India-France DTAA, even dependent agent is not PE in absence of finding that transactions are not at ALP.

  Decided Case: Delmas vs. ADIT

SECTION 147:

- **The Rajasthan High Court** has held that in high-pitched assessments, AO must ordinarily grant stay of demand

  Decided Case :Maheshwari Agro Industries vs. Union of India & Anrs

- **The Gujarat High Court** has held that retrospective amendment no basis to reopen the case beyond 4 years u/s 147. AO not to delay passing objection order

  Decided Case: Doshion Ltd. vs. ITO

- **The Delhi High Court** has held that if original demand not fully paid, interest payable u/s 220(2) even for period when demand was not in existence.

  Decided Case: Girnar Investment Ltd. vs. CIT

SECTION 271(1)(c):

- **The Delhi ITAT** has held that CA's opinion does not necessarily make claim "bona fide" and penalty can be levied u/s 271(1)(c)

  Decided Case: Chadha Sugars Pvt. Ltd. vs. ACIT

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- **The Hyderabad ITAT** has held that despite Surrender After Detection, Penalty Can be Waived u/s 271 (1) (c)

  Decided Case : P. V. Ramana Reddy vs. ITO

OTHERS:

- **The Delhi ITAT** has held that Long-term & short-term gains from PMS transactions are taxable as business profits.

  Decided Case : Radials International vs. ACIT

- **The Bangalore ITAT** has held that gains arising from "business assets" (fixed assets used for business) are not eligible for set-off against brought forward business loss u/s 72.

  Decided Case: Nandi Steels Ltd. vs. ACIT

- **The Gujarat High Court** has held that deduction u/s 80-IB (10) for "Housing Project" is eligible even if Developer is not "owner" of land.

  Decided Case: CIT vs. Radhe Developers

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)	6 Month Ago (in %)
3 Month LIBOR	0.52	0.58	0.44	0.28
3 Month MIBOR	9.92	9.79	9.49	9.43
SENSEX	17830.75	16067.44	17362	16858
NIFTY	5412.35	4820.65	5116	5073
CRR	5.5	6	6	6
REPO	8.5	8.5	8.5	8
REVERSE REPO	7.5	7.5	7.5	7
Gold (per 10 gm)	28274	27555	28584	25450
Silver (per kg)	56915	51968	56595	57200
Crude (USD/bbl)	117.31	113.09	97.38	104.53
Rs. vs USD	49.65	52.23	49.78	45.17
Rs. vs Euro	65.80	66.80	68.82	64.25
Rs. vs Yen	63.94	67.99	64.16	58.85
Rs. vs RMB	7.89	8.27	7.88	7.05
Rs. vs Pound	78.35	80.84	80.11	73.51
MCX Aluminium	110.15	108.8	105.15	108.9
MCX Copper	432.3	397.15	377.65	395.4

*As on 10th February 2012

(Sources: Bloomberg, NSE, BSE, RBI)

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