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EDITORIAL

RBI AS WELL AS GOVERNMENT OF INDIA MUST RECONSIDER RELAXATION ALLOWED RECENTLY IN AUDIT OF BRANCHES OF PUBLIC SECTOR BANKS



CA Vinod Jain*

The RBI had set up a committee to review various important aspects of audit of public sector banks. The committee, despite serious objections by the Central Council of the Institute of Chartered Accountants of India, gave its interim report recently which inter alia include exemption from audit of branches having Rs. 100 crore

advances for large banks and Rs. 50 crore advances for mid size banks. On the basis of the report, RBI has recommended that all the branches of public sector banks having less than Rs. 20 crore advances should be exempted from audit, except once in 5 years.

The Central Council of the ICAI is of the strong view that any such decision may seriously impact the financial discipline of the public sector banks and may result into unprecedented increase of indiscreet lending or even Frauds in banks. The Central council felt that it may be difficult for central statutory auditors to express an opinion about true and fairness of the Financial statements of the respective banks, in the absence of audit of majority of the bank branches except very small branches up to Rs. 3 crore / Rs. 5 crore. The Central Council must express its concerns to the RBI as well as to the Government well in advance.

It is very important that Lakhs of crores advances, deposits and other banking operations do not remain without

adequate audit. The Central Council members and various other leading chartered accountants have met the Corporate Affairs Minister, several leaders of Congress and BJP beside top of officials in RBI and Ministry of Finance, to highlight the problem the Indian Banking Sector can face in the absence of adequate indepth audit.

It is suggested that an independent organisation such as Accounting Research Foundation may be asked to prepare a report based on audit reports/ LFARs made by statutory auditors of such branches which are likely to be exempted, as to highlight the areas/ quantum which shall get exposed if audits of such branches are not taken up.

The Council of the ICAI has considered this matter in their emergency meeting and decided that any such decision may seriously impact the financial discipline of the public sector banks and may result into unprecedented increase of indiscreet lending or even Frauds.in banks.

The claim of some of the banks that they are paying very high audit fee, as compared to private sector banks, is baseless as they have not realized their size, number of borrowers, risk of money laundering and most

importantly fragile internal control system and MIS system in public sector banks. In case of private sector banks most of the loan documents, securities, loan processing, credit authorization are all centralized, whereas to meet the inclusive growth agenda of the Government, public sector banks have delegated large powers in respect of sanction of loans, documentation, credit monitoring and loan records at the branch level.

In a recent meeting, with Sh. Pranab Mukherjee, a delegation of ICAI led by Mr. Veerapa Moily, Minister of Corporate Affairs and President of the Institute, the Council

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**LATEST IN FINANCE****1.0 RBI ASKS BANKS TO PUT UP LIST OF UNCLAIMED DEPOSITS, INOPERATIVE ACCOUNTS ON WEB SITE**

The Reserve Bank of India (RBI) has asked the banks to display the list of unclaimed deposits/inoperative accounts which have been inactive / inoperative for ten years or more on their respective Web sites.

2.0 GOVT. SETS JOINT VENTURE NORMS FOR DEFENCE PSUs

To strengthen tie-ups between defence public sector undertakings and their private partners, the Union Cabinet approved guidelines for setting up joint ventures. Government rules only allow 26 per cent foreign direct investment in the defence sector. A European defence company official said that “Public sector companies are not too keen to create new companies holding majority shareholdings. The new guidelines will allow a domestic private sector company to tie up with a foreign private sector company and form a joint venture with the defence Public Sector Undertakings (PSU).”

3.0 FIPB ACCEPTS PHRAMA FDI RIDERS

The foreign investment promotion board (FIPB) has accepted some of the stiff riders proposed by the health ministry for pharmaceutical companies trying to acquire Indian firms.

4.0 BANGLADESH WOOS INVESTORS WITH INDIA-SPECIFIC SEZs

Armed with duty-free treaty with India, Bangladesh is aiming \$1 billion export by this June and has also begun wooing Indian companies to invest in the neighboring country with SEZs targeting only Indian companies. India Bangladesh Chamber of Commerce & Industry President A M Ahmed said that “With duty-free export to India, we are expecting the Bangladeshi export should increase to \$1 billion by June 2012 from \$500 million last year.”

INSURANCE**1.0 IRDA FROWNS ON PNB PLAN TO BUY 30% IN METLIFE FOR ₹ 1**

Punjab National Bank, the country’s second largest lender, wanted to buy 30 per cent stake in MetLife Insurance for ₹ 1, but the deal has run into a regulatory hurdle.

The Insurance Regulatory and Development Authority (IRDA) is scanning the contours of the deal as it is not comfortable with the valuation, though the Reserve Bank of India (RBI) has given its approval to PNB.

2.0 IRDA TO GIVE MORE HEDGING OPTIONS TO LIFE INSURERS

In a bid to give more options in long-term investments and to hedge interest rate risks for life insurance companies, The Insurance Regulatory and Development Authority (IRDA) may allow investments in equity derivatives and credit default swaps (CDS).

ICAI**1.0 ICAI BARS SATYAM EX-CFO AND PWC PARTNER FOR LIFE**

Accounting regulator, The Institute of Chartered Accountants of India (ICAI), has barred the ex-CFO of the erstwhile Satyam Computer Services, Srinivas Talluri, and former Pricewaterhouse auditor Vadlamani Srinivas from practice for life, while slapping a ₹ 5 lakh penalty on them over the ₹ 14,000 crore fraud at the IT firm.

2.0 SECTION 21 READ WITH SECTION 22 OF CHARTERED ACCOUNTANTS ACT, 1949:

The Delhi High Court held that “Other Misconduct” will be any misconduct which is not specified in Schedule to Act or notified there under.

Decided Case: Council of Institute of Chartered Accountants of India v/s Kul Rattan Bhasin, CHAT. A. REF. NO. 1 OF 2007 Dated November 18, 2010.



EDITORIAL

RBI AS WELL AS GOVERNMENT OF INDIA MUST ...

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of the Institute have elaborately explained the risk which may be faced by the banking sector arising out of reduction of number of audits. Mr. D.K. Mittal, Secretary Department of Financial Services, Government of India was also present. Shri Mukerjee gave a patient hearing to the matter.

We hope that good wisdom would prevail and this matter is at least postponed to enable detailed preparation and examination of all the risk areas on the one hand and means of reduction in cost of audit in banks.

The C A profession is committed to win over any attempt to destabilize India's biggest strength a resilient Banking sector. We also strongly oppose the delegation of powers to appoint auditors in the hands of bank management and the Board. The independence, integrity and excellence of auditors are very crucial for the banking sector especially in public sector and for safeguarding the interest of the society as a whole.

**CA PROFESSION: NEW CHALLENGES AND OPPORTUNITIES:
ICAI'S VISIONARY ACTION NEEDED**

The profession of chartered accountants in India is witnessing a very high growth rate in terms of number of students as well as qualified chartered accountants joining the profession. It is very important for ICAI to ensure that the quality of education and training is significantly up graded to ensure sustained growth in demand for Indian chartered accountants in India and overseas.

The students are currently depending on unorganized coaching institutions for their studies, which are not able to adequately meet the increase in quest for quality and indepth education. ICAI has significantly upgraded the quality of study material and practice notes but provision of high quality low cost teaching under ICAI supervision is a highly pressing need of the hour. E-learning can also be exploited to its full strength to reach to the remotest part of the country so that students need not shift to other places only for coaching classes.

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The training of increasing number of students is posing challenge. Even students are more keen to pass the exams rather than taking practical training with the practicing firm. The quality of examination of the Institute has been the biggest strength of the profession. It is important for the Institute to significantly upgrade the quality of its examination further, with the changing

time and expectation of the society. The examinations must test the practical application of studies by the students. More importantly, CPT Entrance Examination and IPCC Part-I examination require highest benchmark of quality so as to ensure that only those who are really capable to be a chartered accountant are enrolled for training. This will ensure that the profession is able to concentrate its energy to effectively and efficiently educate and train such high quality students .The Institute is already very carefully monitoring the quality of the final examination and the restructuring of course content is already in advance stages of formulation at ICAI.

The newly qualified chartered accountants are currently focusing on accounting, audit, taxation, corporate laws and Finance function. They must be exposed to and encouraged to expand their horizon for opportunity in commercial functions such as purchase, stores, production planning and control, logistic planning and control etc.

The demand for chartered accountants from other parts of the world is also significantly increasing recently and newly qualified chartered accountants must be groomed to move other parts of the world.

We are hopeful; the new leadership at the ICAI would sincerely consider these suggestions and shall take effective steps for the best for the profession.

**FEMA****1.0 RBI LIBERALISES PAYMENT FOR EXPORTERS**

The Reserve Bank of India (RBI) has allowed banks to permit exporters to receive advance payment for shipment of goods that would take more than a year to manufacture, a step which would reduce transaction time.

2.0 RBI FOR ONLY 'PURE' FDI IN REALTY

The Reserve Bank of India (RBI), which has taken a firm stand against allowing external commercial borrowings (ECBs) in the real estate sector, now wants to clamp down on overseas investments in the sector through instruments that carry a fixed or variable internal rate of return. The central bank seems to be clear on allowing only pure foreign direct investment (FDI) in real estate where not firms but only specified projects can accept these foreign funds.

3.0 FOREX LIMIT FOR IMPORTS SANS DOCUMENTATION RAISED TO \$5,000

The Reserve Bank of India (RBI) has upped the limit for release of foreign exchange for imports by persons, firms and companies without any documentation formalities from \$500 or its equivalent to \$5,000 or its equivalent, with immediate effect.

4.0 TRAI WANTS FDI CAP ON TOWER COMPANIES CUT TO 74%

The Telecom Regulatory Authority of India (TRAI) has recommended lowering the foreign direct investment (FDI) cap on telecom tower companies to 74%, a move that will adversely impact the Indian operations of Nasdaq-listed American Towers (ATC) as well as stake sale plans of other tower units. At present, 100% foreign direct investment is allowed in tower companies but TRAI wants to lower this limit and bring it on a par with other telecom services, which are subject to a 74% cap.

5.0 CLARIFICATION REGARDING PURCHASE OF IMMOVABLE PROPERTY IN INDIA

As per the Reserve Bank of India (RBI) circular

dated February 15, 2012, it is clarified that the extant regulations do not prescribe any reporting requirements for transactions where a person resident outside India who is a citizen of India or a person of Indian Origin (PIO) as defined in Regulation 2(C) of Notification No. FEMA 21/2000-RB, *ibid*, acquire/s immovable property in India in accordance with the said provisions of the aforesaid Notification. Form IPI has been, accordingly, amended for greater clarity.

6.0 RULE 8 OF THE FOREIGN EXCHANGE MANAGEMENT (ENCASHMENT OF DRAFT, CHEQUE, INSTRUMENT AND PAYMENT OF INTEREST) RULES, 2000

The Delhi High Court held that interest at the rate of 6% per annum under Rule 8 could have been awarded to the respondent on the seized Indian currency only. The learned Single Judge has while applying the said Rule also awarded interest on the seized foreign currency, which cannot be sustained.

Decided Case: Directorate of enforcement v/s Subhash Muljimal Gandhi, LPA NO. 669/2011, Dated February 1, 2012

CAPITAL MARKET**1.0 SEBI RESERVES 15% BUYBACK OFFERS FOR SMALL INVESTORS**

In a move that will make buybacks more friendly for small shareholders, the Securities and Exchange Board of India (SEBI) announced that 15% of a buyback offer will have to be reserved for such investors. A small shareholder has been defined as one who holds shares with market value not exceeding ₹ 2 lakhs.

2.0 SEBI ON PREFERENTIAL ALLOTMENT RULES

The Securities and Exchange Board of India (SEBI) shot down a proposal by pharma firm Strides acrolab to issue warrants worth ₹ 260 crores on a preferential basis to its promoters. The regulator, in an informal guidance to the company, said the rules governing preferential allotments would be applicable for inter-se transfers within the promoter group.



3.0 SEBI ISSUES GUIDELINES FOR BUYBACK DISCLOSURES.

The Securities and exchange board of India (SEBI) has prescribed a standard format for a letter of offer in a buyback. The circular comes into force with immediate effect.

The disclosures include details of the buyback; its necessity; management view on the likely impact of the buyback; basis of offer price and the source of funds for the buy back; change in capital structure and shareholding pattern after the buyback; financial information about the company; procedure for tender/offer and settlement and collection centres; taxation issues; process and methodology for the buyback and other details required as per the extant regulations.

CORPORATE LAW

1.0 RULES FOR REGULAR STAFF DO NOT APPLY TO CONTRACTUAL EMPLOYEES: SUPREME COURT

In keeping with its trend to move with times in matters economic, the Supreme Court vide its recent order in *GRIDCO Ltd v. Sadananda Doloi* held that when a person accepts a tenured job (for three years in this case) he cannot demand for application the same sympathetic considerations that apply to regular employees so long as the removal order was not vitiated by mala fides and was as per the contractual agreement. Quashing the order of the Division Bench of the Orissa High Court which had held the removal of the respondent illegal, the Supreme Court made among other things the following telling observations: “We need to remind ourselves that in modern commercial world executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or be asked to leave by the employer. Contractual employments work only if the same are mutually beneficial to both the contracting parties and not otherwise.”

The Court has also observed that those taking up contractual employments do so on their own volition and must be prepared to face the consequences if their contracts are not renewed at the end of each tenure.

2.0 DELHI SET TO ABOLISH STAMP PAPERS

In a major reform initiative, the Delhi government has decided to completely do away with stamp paper of all denominations and shift to electronic-stamping facility, a move aimed to ensure hassle-free transactions and prevent fraudulent practices.

Currently, e-stamping is applicable to values of ₹ 501 and above; but, the Government has now decided abolish stamp papers of all denominations, which will mean people will have to pay stamp duty for sworn affidavits, agreement of tenancy, mortgage deeds, power of attorney and other instruments through e-stamping facility.

3.0 SOME IMPORTANT JUDGEMENTS

▶▶ Section 433:

- **The Karnataka High Court** held that where liability of a company was more than its assets and it was unable to clear debts of creditors, company was to be ordered to wound up.

Decided Case: Ashok Gowda v/s Gopika Credit & Investment Co.

- **The Karnataka High Court** held that winding up petition on basis of acknowledgement by company of outstanding consultancy fees after expiry of period of limitation would not be admissible.

Decided Case: T.V. Anantharaman v/s Wintac Ltd.

▶▶ Section 394:

The Calcutta High Court held that transfer of any property upon sanction of a scheme of amalgamation under Companies Act would not be exempt from stamp duty

Decided Case: Emami Biotech Ltd., In re

▶▶ Section 531A read with section 531:

The Delhi High Court held that ignorance of filing of winding up petition against company-in-liquidation at time of execution of agreement to sell in respect of its property, would not validate transaction.

Decided Case: National Institute of Technology Trust v/s Koshika Telecom Ltd.

**AUDIT****1.0 AUDITOR FINDS LILLIPUT REVIEW FACING NON-COOPERATION HURDLE**

In a new twist in the tussle between Lilliput Kids wear promoter Sanjeev Narula and investors Bain Capital and TPG, the Delhi High Court-appointed auditor, SS Kothari Mehta & Co, has expressed inability to complete the court-directed audit. The auditor's withdrawal could have a significant bearing on the sale of the business initiated by all shareholders. The auditor has cited the company's non-cooperation in the audit as the reason.

Last November, the court had mandated SS Kothari Mehta & Co to probe the company's books and review an earlier audit carried out by SR Batliboi. SR Batliboi resigned as external auditor after Lilliput's board disapproved of the company's financial statements by a majority vote at a meeting on September 28 last year amid questions over the authenticity of the company's books.

2.0 COST & ENERGY AUDITS NOW MANDATORY FOR MAHARASHTRA SUGAR CO-OPERATIVES

The Maharashtra government has made it mandatory for the co-operative sugar industry to perform cost and energy audits.

3.0 BROKER AUDITS SET TO BE MADE MANDATORY SOON

The Forward Markets Commission (FMC), the commodity futures market regulator will now put in place a written guideline, making audits of each of the 2,500 active brokers once every three years a mandatory affair. The regulator and exchanges will audit around 800-900 members each year of five national commodity exchanges - MCX, NCDEX, National Multi Commodity Exchange, Kotak-promoted Ace Exchange and Reliance ADA-anchored Indian Commodity Exchange. In total, there are nearly 5,100 members who trade in 66 commodities.

4.0 GOVT. MAY HIRE CA FIRMS TO VET BROADCASTERS' DATA

Seeking more transparency in the wake of mounting workload, the information and broadcasting (I&B) ministry is planning to hire a panel of chartered accountancy firms which will scrutinize and evaluate the various financial and

technical data provided by the broadcasters, FM radio companies and DTH operators.

The job includes verification of net worth, cases of mergers/demergers, disinvestments, verification of gross revenue figures of DTH and FM radio operators, determination of interest on delayed payments and cases referred to the foreign investment promotion board (FIPB), among others.

TAXATION**1.0 SALARIED CAN SKIP FILING RETURN ONLY UNDER CERTAIN CONDITIONS**

The Central Board of Direct taxes (CBDT) has notified for salaried persons not filing an income-tax return despite having taxable income for the upcoming assessment year 2012-13. The conditions are that the total income should not exceed ₹ 5 lakh, including salary and savings bank interest, if any, not exceeding ₹ 10,000. Such interest needs to be disclosed to the employer, who would deduct tax on salary as embellished by savings interest. The rules make it clear that, just as no tax should be due, no refund should be due either.

2.0 SC RELIEF TO BANKS ON BAD DEBTS

In a major relief to banks, the Supreme Court has held that they can claim deductions for entire bad debts written off in respect of both rural and urban advances. It reversed the judgment of the full bench of the Kerala High Court that held that banks can claim deduction of the bad and doubtful debts actually written off only to the extent it exceeds the credit balance created and allowed as deduction, in view of Section 36(1)(vii), which limits the deduction allowable under the proviso to the excess over credit balance made under Clause (vii) of Section 36(1) of the Income Tax Act 1961.

3.0 SOME IMPORTANT JUDGMENTS:**» Section 9, Read with Article 5 of Double Taxation Avoidance Agreement between India and USA:**

The Delhi ITAT bench held that merely because assessee, a US company, appointed agents in India and also opened liaison offices in India, it could not be said that assessee has a Permanent Establishment in India.

Decided Case: Deputy Director of Income tax, International Taxation v/s Western Union Financial Services Inc.



▶ **Section 54EC:**

The Kolkata ITAT bench held that 6 months time-limit for investment in bonds under section 54EC of the Income-tax Act, 1961 to be reckoned from date of receipt of part payments, not from date of transfer under section 53A of the Transfer of Property Act.

Decided Case: Chanchal Kumar Sircar v/s Income-tax Officer

▶ **Section 43(5):**

The Kolkata ITAT bench held that no TDS under section 194H required on payment of brokerage paid to an agency for facilitating derivatives trade.

Decided Case: Deputy Commissioner of Income-tax v/s Noble Enclave & Towers (P.) Ltd.

▶ **Section 54F read with Section 254:**

The Hyderabad ITAT bench held that deduction under section 54F not available where assessee purchased a residential house not from her own fund but from fund borrowed from bank and relatives.

Decided Case: Smt. V. Kumuda v/s Deputy Commissioner of Income-tax

▶ **Section 145:**

The Rajkot ITAT bench held that assessee company having not maintained proper record of its inventory, rejection of its books was justified.

Decided Case: Gupta Global Exim (P.) Ltd. v/s Assistant Commissioner of Income-tax

▶ **Section 271(1)(c):**

The Delhi ITAT bench held that Reliance on CA's opinion which dealt with accounting for expense (not its deductibility under the Act) will not save assessee from penalty under section 271(1)(c)

Decided Case: Chadha Sugars (P.) Ltd. v/s Assistant Commissioner of Income-tax.

▶ **Section 9, Read with Article 12 of Double Taxation Avoidance Agreement between India And Australia (Royalties) – Income:**

The Authority for Advance Rulings (Income tax), New Delhi held that payment received by applicant, an Australian company, from its Indian distributor for sale of applicant's software product in India is Royalty.

Decided Case: Citrix Systems Asia Pacific Pty. Ltd., In re

▶ **Section 143 read with Section 292B:**

The Mumbai ITAT bench held that assessment

order without signature of Assessing Officer is invalid.

Decided Case: Vijay Corporation v/s Income-tax Officer 12(2)(1), Mumbai

▶ **Section 2(22)(e):**

● **The Delhi ITAT bench** held that where amount in question was advanced to assessee in pursuance of memorandum of agreement for developing plots of land belonging to assessee into commercial building, such advance could not be treated as deemed dividend.

Decided Case: Assistant Commissioner of Income-tax, Circle 27(1), New Delhi v/s S. Joginder Singh

● **The Rajasthan High Court** held that where assessee-firm had received an advance from a company and it was assessee's partners who were shareholders in said company and not assessee-firm, such an advance could not be taxed as deemed dividend in hands of assessee-firm

Decided Case: Commissioner of Income-tax, Udaipur V/S Hotel Hilltop

▶ **Section 32:**

The Delhi High Court held that Assessing Officer could not restrict assessee's claim for depreciation by making changes in costs of various assets on estimated basis.

Decided Case: Commissioner of Income-tax V/S V/S Pepsico India Holdings (P.) Ltd.

▶ **Section 115JB read with Section 147:**

The Mumbai High Court held that the reasons recorded by Assessing Officer, in fact, merely indicated a reason to believe that income of assessee had escaped assessment and there was no reference whatsoever to formation of an opinion that there was a failure on part of assessee to fully and truly disclose all material facts necessary for assessment, reopening of assessment beyond period of four years was contrary to law.

Decided Case: DIL Ltd. v/s Assistant Commissioner of Income-tax, Circle 6(2)

▶ **Section 194C:**

The Karnataka High Court held that where one of products of assessee had been got prepared from a manufacturing company on certain terms and conditions, transaction entered into between assessee and manufacturing company was a contract for work and not contract for sale.

Decided Case: Commissioner of Income-tax, Central Circle V/S Nova Nordisk Pharma India Ltd.

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FINANCIAL INDICATORS				
	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)	6 Month Ago (in %)
3 Month LIBOR	0.48	0.52	0.54	0.34
3 Month MIBOR	10.52	9.92	9.37	9.41
SENSEX	17503.24	17830.75	16002	16867
NIFTY	5333.55	5412.35	4801	5059
CRR	4.75	5.5	6	6
REPO	8.5	8.5	8.5	8
REVERSE REPO	7.5	7.5	7.5	7
Gold (per 10 gm)	27982	28274	28673	28176
Silver (per kg)	59052	56915	55213	65165
Crude (USD/bbl)	125.98	117.31	108.09	112.77
Rs. vs USD	49.75	49.65	53.40	46.38
Rs. vs Euro	65.25	65.80	70.44	64.48
Rs. vs Yen	60.35	63.94	68.58	59.87
Rs. vs RMB	7.88	7.89	8.36	7.28
Rs. vs Pound	78.06	78.35	83.33	74.01
MCX Aluminium	108.50	110.15	106.25	108.65
MCX Copper	425.45	432.3	409.60	409.30

*As on 10th March 2012

(Sources: Bloomberg, NSE, BSE, RBI)

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