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EDITORIAL

INDIAN ECONOMY AND THE CHALLENGES

CA Vinod Jain*

The Union Budget was presented on 28th February, 2013 in the Parliament. It was being touted as a good mix of growth and reform. The major challenges outlined by the Economic Survey, RBI as well as by the FM were in respect of considerably reduced estimated growth of GDP, increase in fiscal deficit, mounting current account deficit and high inflation rate.

The FM expressed his concern on lower GDP growth that was estimated between 5%-5.5%, which is much below India's potential growth rate of 8% and narrated that getting back to that growth rate is the major challenge which the country is facing. The FM has plans to restrict fiscal deficit by restricting government spending and cutting subsidies. He has plans to control current account deficit by inviting FDI, FII and ECB.

The plan allocation for different sectors was covered in detail in the budget speech of the FM. The various tax proposals and policy initiatives were also announced.

There is a need to analyze areas of major concern and to consider appropriate initiative at the level of government and all other stake holders to achieve the desired results

Power Sector

The power sector is the biggest sufferer of lukewarm policy initiatives and the absence of strong initiative on the fronts of coal linkages and financial closure. A large number of projects are incomplete, or stuck at advanced stage of implementation, due to poor availability of funds and apprehension among lenders about future of the power sector. State level electricity distribution and transmission companies are bleeding and have substantial dues to be paid to various power producers.

Infrastructure

The Infrastructure Sector consisting of roads, housing and urban development as well as rural infrastructure development have also faced new challenges in the absence of adequate policy initiative and the problems being faced by BOOT or public private partnership models. The National Highway Authority of India have also developed several contentious issues with various road developers, which have resulted into slow completion of projects, delay in financial closure or disbursement and similar other issues.

Port Development

The development of ports by the government as well as under the PPP model has suffered due to security concern and policy bugs.

Telecom

Telecom sector latest round of 2G auction failed miserably, in the absence of response, due to heavy reserved price. Even the 3G licenses have not been made fully operational due to heavy license fee payable to the government. The expectation of the government to earn Rs. 40 to 50 thousand crores per annum as license fee from the telecom sector is resulting into a heavy financial burden on the sector creating price pressure and is affecting the growth.

Watershed Development and Irrigation

The government has not been able to initiate any major watershed development program, river linkage program or other irrigation projects except minor plan allocation, without any visionary plan for a galloping growth of agriculture and water supply.

Education

Although the allocation to education sector has been increased significantly, the need of Indian society in respect

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LATEST IN FINANCE

1.0 SPECTRUM AUCTION FAILED

- Not a single GSM operator applied to participate in the auction of spectrum in the 900 and 1,800 MHz bands
- Sistema Shyam, whose 21 licences were cancelled by SC, was the lone applicant for spectrum in 800 MHz
- The Telecom secretary has said that Govt to explore all options to see how spectrum can be auctioned in the 1,800 and 900 MHz bands
- One option is to reduce the reserve price as industry has clearly indicated that the current price is unviable

2.0 SUUTI'S SHARES NOT FOR ALL

The Cabinet in March 2012 cleared the winding up of the Specified Undertaking of Unit Trust of India (SUUTI) and the transfer of its assets (11.5% stake in ITC, 23.6% in Axis Bank and 8.3% in L&T) to an asset management company. The Finance Minister has said that the government's "SUUTI shares" in three private firms would not be sold through the competitive bidding route.

3.0 NTPC, NHPC MAY FIND IT TOUGH TO EXIT NATIONAL POWER EXCHANGE

NTPC and NHPC could find it tough to pull out of the yet-to-be-operational National Power Exchange (NPX), with the other two shareholders, Power Finance Corporation (PFC) and Tata Consultancy Services (TCS), learnt to be against their exit. NTPC recently announced its decision to leave the project, saying the proposed exchange was in viable, given the low volume of exchange-traded electricity in the country. NHPC followed suit.

4.0 RBI DIRECT BANKS TO IMPOSE LIMITS ON GLOBAL CARD TRANSACTIONS

In order to check frauds, The Reserve Bank of India (RBI) has asked banks to impose monetary limit for international transactions on credit and debit cards and refrain from issuing cards with global access unless specifically sought by the customer.

RBI has said that a monetary limit of $ 500 be imposed by issuing bank on all global cards which has not been used in the past.

5.0 BANKS PLAN TO EASE RECOMPENSE CLAUSE FOR COs

Banks plan to ease the recompense clause for companies that become profitable after debt restructuring, as firms choose to stay in the Corporate Debt Restructuring cell to enjoy lower interest rates even after recovering to profits.

6.0 REVISED BANK DEPOSIT RATES

Bank	% p.a.	Bank	% p.a.
SBI	8.50%	HDFC Bank	8.75%
PNB	9.00%	ICICI Bank	7.50%
Axis Bank	8.50%	BOB	9.00%
Citi Bank	7.25%	IDBI Bank	8.75%
BOI	9.00%	Canara Bank	9.05%

CAPITAL MARKET

1.0 LISTED COMPANIES MUST SEEK SEBI NOD FOR ALL M&A DEALS

Companies traded on stock exchanges will now need the clearance of the capital market regulator Securities & Exchange Board of India (SEBI) for all merger, demerger and amalgamation deals. Till now, companies could execute these strategies by obtaining the approval of a high court and no-objection certificate from exchanges.

The following has been instructed by SEBI to companies before executing M&As & demerger:-

1. Include non-objection certificate of stock exchanges in the letter sent to the shareholders for approval.
2. Obtain the approval of at least two - third of the minority shareholders.
3. Disclose the scheme valuation report of independent Chartered Accountant(s) (CAs), fairness opinion and audit committee on the scheme for public scrutiny for 21 days.

2.0 OPEN OFFER WILL BE TRIGGERED IF BUYING TOPS 5% IN A FISCAL

Stock market regulator Securities and Exchange

EDITORIAL

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INDIAN ECONOMY ......

of higher education and employable education including technical training, vocational training and high-end professional skills require much deeper initiative and a larger framework of government led institutions in addition to major thrust in private sector.

Research and Development

The private sector initiatives as well as the government sector initiative in this field are lack luster. A major initiative is mandatory for sustained high growth of industrial sector, service sector as well as agricultural sector.

The government announcement of their desire of achieving a high level of inclusive growth is required to be brought to deeds by policy initiatives. The Financial sector, capital market as well as industrial growth require a very comprehensive plan and their seamless implementation. The dream of being the 3rd largest economy in the world and to be reckoned as a developed country will otherwise take much longer time in getting accomplished.

SOME IMPORTANT TERMS IN THE UNION BUDGET 2013-14

1. Fiscal Deficit

When a government's total expenditures exceed the revenue that it generates (excluding money from borrowings).

2. Current Account Deficit

Occurs when a country's total imports of goods, services and transfers are greater than the country's total export of goods, services and transfers. In other words, the current account is simply a measure of how much money is flowing out of the country compared with how much is flowing in from foreign sources.

3. Trade Deficit

An economic measure of a negative balance of trade in which a country's imports exceeds its exports

4. Gross Domestic Product (GDP)

The total market value / monetary value of all the finished goods and services produced within a country's borders in a specific time period. GDP is usually calculated on an annual basis. It includes all of private and public consumption, government outlays, investments and exports less imports that occur within a defined territory.

GDP = C + G + I + NX

where:

"C" is equal to all private consumption, or consumer spending, in a nation's economy

"G" is the sum of government spending

"I" is the sum of all the country's businesses spending on capital

"NX" is the nation's total net exports, calculated as total exports minus total imports. (NX = Exports - Imports)

Board of India (SEBI) has said that the 5% for creeping acquisition of shares by promoters would be calculated on the basis of the shares that exist at the end of the previous fiscal. Any acquisition above five per cent in a financial year by promoter group attracts open offer obligation.

3.0 TRADING IN ILLIQUID SHARES ONLY THRU PERIODIC CALL AUCTION: SEBI

The Securities and Exchange Board of India (SEBI) has said that effective from April 1, illiquid stocks would be traded only through the periodic call auction mechanism on stock exchanges instead of the existing order-driven system in the normal market.

1. Call Auction in these stocks would be done every one hour starting 9:30 a.m. on each trading day.
2. Stocks having an average daily trading volume of less than 10,000 shares with the average daily number of trades of less than 50.

4.0 SEBI RESERVES 20% RESERVATION FOR RETAIL INVESTORS IN IDR REDEMPTIONS

Market regulator Securities and Exchange Board of India (SEBI) has said that reservation of 20 per cent will have to be made for retail investors during conversion of Indian Depository Receipts (IDRs) into underlying shares. Current regulations allow partial fungibility of such instruments - in

a financial year conversion to the extent of 25% of the IDRs originally issued is permitted.

The issuer can either give the option of converting IDRs into underlying shares or selling the underlying shares in the foreign market or both to the IDR holders. The periodicity for fungibility has been fixed at least once every quarter and the window would be open for at least seven days.

5.0 SEBI ALLOWS MUTUAL FUNDS TO LEND IDLE GOLD SUBJECT TO CEILING

Capital Market regulator Securities and Exchange Board of India (SEBI) has said that gold mutual funds can now invest in gold deposit schemes of banks provided they limit investments to 20% of total asset base of the scheme.

6.0 MCX-SX ANNOUNCES INCENTIVES TO BOOST LIQUIDITY

MCX-SX has announced incentive schemes to brokers, market makers and investors to improve liquidity on its platform. The liquidity enhancement scheme (market-making) in its equity (cash) and equity derivatives segments starts on March 6.

CORPORATE AND ECONOMIC LAWS

1.0 XBRL FILING

The Ministry of Corporate Affairs (MCA) has said that the time limit to file the financial statements in the XBRL mode without any additional fee/penalty has been extended up to 15th February 2013 or within 30 days from the date of AGM of the company, whichever is later.

Circular Reference: General Circular no. 01/2013 dated 15.01.2013, www.mca.gov.in

2.0 MCA CLARIFIES ON DEBENTURE REDEMPTION RESERVE

The Ministry of Corporate Affairs (MCA) has decided to clarify the adequacy of Debenture Redemption Reserve (DRR) as under:-

1. For All India Financial Institutions (AIFIs) and Banks: NIL
2. For Financial Institutions and NBFCs: 25% of publicly issued debenture & NIL for others
3. Listed Companies: 25% of publicly issued debentures and 25% on privately placed debentures.
4. Unlisted Companies: 25% on privately placed debentures

All companies are required to invest 15% of debenture falling due in the year in specified securities by 30th April each year.

Circular Reference: Circular no. 04/2013 dated 11.02.2013, www.mca.gov.in

3.0 REINSTATEMENT NOT AUTOMATIC

The Supreme Court has said that a daily wage earner is not entitled both to reinstatement and back wages even if he had worked in an establishment for more than 240 days continuously. A wrongful termination did not entitle a daily worker to automatic reinstatement with other benefits. It depends on various factors like the method of appointment, nature of employment and length of service.

Assistant Engineer v/s Gitam Singh

4.0 DUAL CLAIMS FOR COMPENSATION

The Supreme Court held that dependents of a worker who dies in the course of employment are entitled to compensation both under the Workmen's Compensation Act and under the Motor Vehicles Act, dismissing the appeal of Oriental Insurance Company.

5.0 PRIOR USE OF TRADEMARK, A VALID RIGHT IN ITSELF EVEN IN THE ABSENCE OF REGISTRATION

The Allahabad High Court has held that a person using a trademark for long cannot be upstaged by an impostor even if such mark is not registered.

Guru Kripa Manufacturing Pvt Ltd.v/s Duro Pipe Industries Pvt Ltd

6.0 DRT AUCTION RULE MANDATORY

The Supreme Court has ruled that the provision for deposit of 25 per cent of the purchase money in an auction sale under the Debt Recovery Act (DRT) is mandatory and the recovery officer cannot relax it. According to the law, if there is a default on this, the property shall be resold immediately.

BUDGET 2013 MINUTES

1.0 INDIVIDUALS

- Income tax slabs/rates: No change. Exemptions will erode tax base.
- Tax credit: ₹ 2,000 in lowest income slab up to ₹ 5 lakh. Cost: ₹ 3,600 cr
- Super-rich: 10% surcharge on taxable income above ₹ 1 cr for one year
- Home loans: Up to ₹ 25 lakh, additional interest deduction of ₹ 100,000
- TDS: 1% on value of the transfer of immovable property over ₹ 50 lakh
- Price of luxury: Duty hiked for imported luxury cars, bikes and yachts
- Costlier: Cigarettes, SUVs, marble, high-end phones

2.0 STATE OF THE STATE

Fiscal deficit: For 2013-14: 5.2%; For 2014-15, estimated at 4.8%.

3.0 CORPORATES

- Allowance of 15% for manufacturing investment over ₹ 100 cr
- Repatriation bait: Tax sop on dividends from foreign subsidiary to local parent continues with benefits in Dividend distribution tax
- Withholding tax of 20% on profits of unlisted cos given in dividend to shareholders via buyback Royalty tax: Payouts for technical services given to non-residents hiked to 25% from 10%
- No change in customs, excise & service tax; amnesty scheme for service tax evaders

4.0 SOCIAL SECTOR

- 29% hike in Plan expenditure in 2013-14 over Budgeted Expenditure of 2012-13
- Exclusive bank for women; JNNURM allocation doubled
- Rural development to get ₹ 80,194 cr, up 46%; flagship MGNREGS will get ₹ 33,000 cr
- PMGSY will get ₹ 21,700 cr; IAY ₹ 15,184 cr; PMGSY-II to be rolled out
- Additional ₹ 10,000 cr for food security, over & above subsidy costs
- Merged national health mission to get ₹ 21,239 cr, up 24.3%
- ₹ 65,867 cr for MHRD; ₹ 27,258 cr for Sarva Shiksha Abhiyan

5.0 MARKETS

- Pass-through status: For specified alternate investment funds, angel investors registered with SEBI
- Cut in securities transaction tax: For equity futures, redemptions of mutual funds, exchange-traded funds
- Commodities transaction tax: 0.01%, for futures in non-farm commodities
- Rajiv Gandhi Equity Savings Scheme (RGESS): Opened to MFs as well as shares for three years; Income cap at ₹ 12 lakh
- Inflation-indexed bonds or inflation-indexed national security certificates to protect savings planned

INDIRECT TAXATION

1.0 SUPREME COURT DIRECTS FIAT TO PAY ₹ 311 Cr AS EXCISE DUTY

The Supreme Court in its August verdict, while setting aside the excise tribunal's order, had directed the car maker to pay duty for Uno cars sold at a price lower than the cost price to penetrate the market. Upholding the department's stand, the Supreme Court had clarified that central excise duty was chargeable on manufacture or production of goods and not only on sale price. As per the judgment, Fiat will have to pay around ₹ 311 crore and Premier will pay more than ₹ 49 crore as outstanding excise duty.

2.0 E-REFUND OF TAXES FOR SERVICES EXPORTERS

Infosys, TCS, Wipro and a slew of services exporters will soon get electronic refunds of taxes they pay on their inputs, a repeated demand from the sector. The finance ministry is mulling a new duty drawback scheme for services sector.

INTERNATIONAL TAXATION

1.0 INDIA ENTERED IN NEW DTAA WITH MALAYSIA

- The agreement is effective from **April 1, 2013**
- Dividends paid by Indian companies to Malaysian investors or entities will attract a lower withholding tax of 5 per cent against 10 per cent earlier
- Addition of a benefit clause, an anti- abusive provision
- Provision of a new transfer pricing adjustment avoiding double taxation
- Introduction of a new article for taxing capital gains from alienation of property
- Introduction of the concept of service permanent establishment with a threshold of 90 days within any 12-month period.

DIRECT TAXATION

1.0 I-T DEPT TO QUESTION PAN HOLDERS FOR NOT FILLING RETURNS

Tax authorities are set to crack down on those not paying their due taxes and will soon send out letters to about 35,000 individuals seeking to know why they have not filed tax returns. The letter sent to the PAN card holders contains the summary of the information of financial transactions along with a customized response sheet and seeks to know whether the person had filed his income tax return or not.

2.0 MAURITIUS OFFERS ZERO CUSTOMS DUTY REGIME FOR INDIAN FIRMS

Mauritius has offered a zero customs duty regime for Indian firms to gain easier access to European Union and Africa. **Mauritius has also agreed to incorporate a limitation of benefit clause in the tax treaty to curb abuse of the pact**.

3.0 LATEST JUDGEMENTS

SECTION 92 READ WITH SECTION 271(1)(c): COMPUTATION OF ARM LENGTH PRICE

The Ahmedabad ITAT bench has held that where the assessing officer did not record any fining that assessee failed to offer any information relating to its international transactions, or information provided was false, penalty order passed by invoking Explanation 7 to Section 271(1)(c) was not sustainable.

Mastek Ltd. v/s DCIT, [2012] 27 taxmann.com 292 (Ahmedabad - Trib)

SECTION 92CA: COMPUTATION OF ARM LENGTH PRICE

The Bangalore ITAT bench has held that there may be variations/difference in activities of both assessee and comparables from year to year requiring appropriate TP adjustment.

Toyota Kirloskar Motors (P) Ltd. v/s ACIT, [2012] 28 taxmann.com 293 (Bangalore - Trib).

The Bangalore ITAT bench has held that super profit making companies and companies with functional differences are to be excluded from list of comparables while making transfer pricing adjustment.

Google India (P) Ltd. v/s DCIT, [2013] 29 taxmann.com 412 (Bangalore- Tribunal)

The Bangalore ITAT bench has held that TP provisions do not require TPO to establish a motive of transferring profits out of India prior to finding out as to whether assessee's inter-national transactions are at arm's length or not.

24/7 Customer.com (P.) Ltd. v/s DCIT, [2012] 28 taxmann.com 258 (Bangalore- Trib.)

SECTION 10(23C): EXEMPTION TO CHARITABLE AND EDUCATIONAL INSTITUTIONS

The Bombay High Court has held that an incidental surplus which is utilized to upgrade library facilities of a college can't deprive the college of exemption under section 10(23C). Such incidental surplus doesn't mean that the college exists for the purposes of profit

Tolani Education Society v/s Dy. Director of Income-tax (Exemptions) - I(2), Mumbai, [2013] 30 taxmann.com 165 (Bombay)

The Agra ITAT bench has held that where assessee- institution did not exist solely for educational purpose and, moreover, donations received by it exceeded prescribed monetary limit of ₹ 1 crore, its claim for exemption under section

10(23C) (iiiad) was to be rejected.

Manas sewa samiti v/s Addl. CIT, [2012] 28 taxmann.com 265 (Agra- Trib)

SECTION 35(2AB)(1): DEDUCTIONS FOR SCIENTIFIC RESARCH EXPENDITURE

The Ahmedabad ITAT bench has held that explanation to Section 35(2AB)(1) does not require that the expenses which are included in this explanation are essentially to be incurred inside an in-house research facility because it is not possible to incur these expenses inside in-house research facility.

Cadila Healthcare Ltd v/s ACIT, Range - I, Ahmedabad, [2013] 29 taxmann.com 229 (Ahmd. - Trib.)

SECTION 32: DEPRECIATION

The Mumbai ITAT bench has held that depreciation is not an outgoing expenditure but a statutory deduction. Therefore, the provisions of section 40(a)(i) are not attracted on such deduction.

SKOL Breweries Ltd. v/s ACIT, Range 8(3), Mumbai, [2013] 29 taxmann.com 111 (Mumbai - Trib.)

The Supreme Court has held that where assessee, engaged in business of hire purchase & leasing, having purchased vehicles from manufacturers, leased out those vehicles to customers, it was entitled to claim deprecia-tion in respect of vehicles so leased out.

I.C.D.S. Ltd. v/s CIT, Mysore,[2013]29 taxmann.com 129 (SC)

The Delhi ITAT bench has held that where Assessing Officer had allowed depreciation on assets in question in previous assessment year, in absence of any change in facts, depreciation on said assets could not be disallowed in subsequent years.

ACIT, Circle -12(1) v/s Hindustan Fertiliser Corpn. Ltd., [2013] 30 taxmann.com 221 (Delhi - Trib.)

SECTION 194C, READ WITH SECTION 40(a)(ia): TDS ON CONTRACTOR

The Hyderabad ITAT bench has held that mere providing of machinery on hire without any manpower cannot be termed as carrying out of any work by plant and machinery owners and, thus, no tax is required to be deducted under section 194C.

ACIT, Circle 5(1) v/s Kiran Constructions, [2013] 30 taxmann.com 235 (Hyderabad - Trib.)

SECTION 50C: SLUMP SALE

The Mumbai ITAT bench has held that where assessee, a shareholder of KMPL, along with other shareholders sold entire shares of KMPL to 'R', it could not be regarded as an indirect transfer of flats owned by KMPL to 'R' and, consequently, provisions of section 50C could not be applied to transaction of sale of shares.

Irfan Abdul Kader Fazlani v/s ACIT, Central Circle-44, Mumbai, [2013]29 taxmann.com 424(Mum. - Trib.)

SECTION 2(22): DEEMED DIVIDEND

The Mumbai ITAT bench has held that where assessee having more than 10% shares in a company received from it and lending of money was a substantial part of business of said comp-any and loan was made by it in ordinary course of its business, amount of loan could not be regarded as deemed dividend in hands of assessee.

Jayant H. Modi v/s Jt. CIT, [2012] 28 taxmann.com 252 (Mumbai Trib)

SECTION 220: COLLECTION AND RECOVERY OF TAX

The Kerala High Court has held that where assessee did not satisfy conditions specified in section 220(2A), waiver of interest could not be granted.

K.C. Mohanan v/s Chief Commissioner of Income-tax, [2013] 30 taxmann.com 376 (Kerala).

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)	6 Month Ago (in %)
3 Month LIBOR ($)	0.51	0.29	0.31	0.41
3 Month MIBOR (₹)	9.48	8.96	8.72	8.87
SENSEX	19683	19484.77	19355	17767
NIFTY	5946	5903.5	5888	5364
CRR	4	4	4.25	4.75
REPO	7.75	7.75	8	8
REVERSE REPO	6.75	6.75	7	7
Gold (per 10 gm)	29345	30815	30886	31951
Silver (per kg)	54855	58246	60699	62065
Crude (USD/bbl)	110.85	118.90	108.01	114.81
Rs. vs USD	54.40	53.57	54.23	55.52
Rs. vs Euro	71.24	71.79	70.94	70.85
Rs. vs Yen (₹ 100)	57.06	57.42	64.86	70.99
Rs. vs RMB	8.71	8.61	8.70	8.75
Rs. vs Pound	81.57	84.25	87.53	88.85
MCX Aluminium	104.80	110.70	115.45	114.00
MCX Copper	420.85	444.00	444.60	450.00

**As on 10th March 2013* *(Sources: Bloomberg, NSE, BSE, RBI, MCX)*

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ICAI

1.0 ICAI RECOMMENDS NEW IFRS ROAD-MAP

ICAI recommendatons, if accepted by the Ministry of Corporate Affairs (MCA), companies with a net worth of over ₹ 1,000 crore will have to adopt International Financial Reporting Standards (IFRS) from April 1, 2015 for preparing their financial statements. For companies with net worth of ₹ 500-1,000 crore, the recommended date is April 1, 2016. For all other companies (including listed ones), the recommended date is April 1, 2017.

ICAI has already prepared Indian accounting standards (Ind AS) that converged with International Financial Reporting Standards (IFRS).

INSURANCE

1.0 IRDA ALLOWS HIGHER EQUITY INVESTMENT FOR INSURANCE COs

The Insurance Regulatory and Development Authority (IRDA) has allowed insurance companies to increase their equity holding in companies by up to 15%, from 10% earlier. The regulator said insurers can pick up stakes of up to 12% or 15% in a company, depending on the size of their controlled fund.

2.0 T S VIJAYAN TAKES OVER AS IRDA CHIEF

Former LIC chief T S Vijayan took over as the chairman of the IRDA. Vijayan succeeds J Hari Narayan.

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