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**EDITORIAL**

**SCOPE OF AUDIT –  
CHANGING DIMENSIONS**



CA Vinod Jain\*

The general public and the society including top bureaucrats, politicians, media personnel, social activists, thinkers, intellectuals and policy makers and those who determine the future directions of the society and the economy expect the auditing profession to perform the roles of a watchdog who can monitor the auditee entity comprehensively to ensure that interest

of owners, minority shareholders, investors, bankers, government, regulators, suppliers, customers and other stakeholders are fully protected. Most importantly interest of the auditee entity are preserved and various financial and operational decisions taken by the management at various levels were in the interest of the company and were within the policy framework laid down by the Board.

**The Comptroller & Auditor General of India (CAG)** has given a new dimension to the scope of audit by issuing several path-breaking and courageous audit reports bringing out large number of severe infirmities and financial irregularities in the working of the government, ministries and various independent autonomous government bodies, and regulators. According to CAG report they have questioned the decisions taken at various levels of the government, which according to CAG were beyond the overall policy framework laid down by the government. CAG has been very critical on -

- **Performance Parameters :** The various CAG reports have questioned the performance achieved by various government departments and bodies, as compared to money and resources allocated to them and spent by them.
- **Performance Achievement :** CAG has also outlined performance appraisal in its reports, the areas in which the overall purposes for which a significant financial layout was made, was not achieved.

*Contd..... on pg 3*

**TELECOM SECTOR –  
CRIPPLED BY GOVERNMENT**

The telecom sector growth has been crippled after the 2G scam controversy arose. The Hon'ble Supreme Court rejected all the licenses given in an irregular manner. The government is playing hot & cold and is unable to take appropriate decisions in a businesslike manner to suit the interest of all stakeholders and more specifically the telecom users besides the service providers. The auction of the spectrum has failed miserably twice due to very heavy reserve price.

A heavy reserve price actually indicates the CAG stand about the loss of profit due to first cum first serve policy, bringing forth allegations of FT, corruption. The Attorney General of India has bought a new assault, opining against the refunding of entry fee of 2G players whose licenses have been cancelled by Supreme Court.

Hon'ble former Prime Minister Shri Atal Bihari Vajpayee took a very pragmatic step in 1999 while allowing telecom operators to migrate from fixed license fee to revenue share regime & also extending the license tenure to 15 years including an opportunity to even rectify the deficiency in applications.

UPA government needs to take the most crucial step of bringing back common business sense while dealing with businesses. The government is unnecessarily frightened from possible judicial intervention.

The government should not concentrate on collecting very heavy license fee as it will kill competition; create oligopoly, resulting in heavier telecom charges, negatively impacting inclusive growth besides adversely affecting growth of telecom sector itself. The government may consider:-

1. To make application fee cum license fee refundable in respect of cancelled licenses, as it is most equitable and will bring back faith in the government.
2. Rather than charging license through auction, revenue sharing formula needs to be bought back, with auctioning the maximization of revenue sharing.

*Contd..... on pg 8*

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**LATEST IN FINANCE****1.0 RBI to Permit Urban Co-operative Banks to Grant Unsecured Loans up to 25% of Assets**

To promote lending to priority sectors, The Reserve Bank of India (RBI) has allowed Urban Co-operative Banks (UCBs) to grant unsecured loans up to 25% of their assets if certain conditions are met.

The Reserve Bank of India (RBI) has said that in order to promote lending to priority sectors and to provide impetus to the objective of financial inclusion it has been decided that UCBs fulfilling conditions may, with the prior approval of the Reserve Bank, grant unsecured loans (with or without surety) up to 25% of their total assets.

**2.0 RBI not keen on Bank Licence Auction as it will deter Financial Inclusion**

The Reserve Bank of India (RBI) Governor D. Subbarao has told the parliamentary committee examining the policy on new banking licenses is not in favour of auctioning bank licenses as it will deter the cause of financial inclusion. The RBI governor has also informed the committee that no limit has been set up for the number of bank licenses that will be issued.

**3.0 No takers for Annuity Based Highway Projects worth ₹ 1900 Cr**

Highway Projects worth over ₹ 1900 Crores have found no takers even though these are based on the annuity model under which the concessionaire recovers a fixed amount of the investment from the Centre each year, a situation that reflects the poor policy framework.

**4.0 Sugar Sector Decontrolled**

Initiating the long-awaited reform, the Government has lifted controls on the sugar sector partially by doing away with the levy system and regulated release mechanism.

**5.0 New EPFO Norms to Boost Infra Funds Inflows**

The Employees Provident Fund Organization's (EPFO's) recent relaxation of investment norms for public sector bonds is likely to trigger a flow of funds into the infrastructure segment, through the Infrastructure Debt Funds (IDFs).

In the new guidelines, any AAA-rated public sector unit will qualify for investments for tenure up to 25 years. Any AA-rated PSU will qualify for investments for tenure up to 15 years.

**6.0 HC Bars Co-operative Banks from Debt Recovery Under SARFAESI**

The Gujarat High Court has held that cooperative banks cannot use the Securitisation and Reconstruction of Financial Assets of Security Interest Act (SARFAESI), 2002 for recovery of debts from its defaulters.

**7.0 Suzlon's \$1.8-Bn Debt-recast: A Unique Plan**

The CDR package of \$1.8 billion (₹ 9,500 crore) includes a two year moratorium on principal and term-debt interest payments; a three percent reduction in interest rates and six months moratorium on working capital interest.

As a part of the package, ₹ 1,500 crore (two year's interest payment during moratorium) will be converted into equity or equity linked instrument over the next two years to bring stronger financial stability and a 10 year door-to-door back-ended repayment plan. In January, Suzlon received approval from a consortium of 19 banks to recast its debt.

**8.0 Co's with captive Coal Mines may be allowed to produce & sell surplus**

In yet another initiative to step up domestic coal output without impinging on the Coal Mines (Nationalization) Act that bars commercial coal mining by private players, the government intends to encourage companies with captive coal mines to produce surplus. What is being considered is a commercial arrangement that would entail use of the e-auction platform, which normally fetches higher profits and where the gains will be shared between the public sector (Coal India or CIL and state mineral development corporations) and the private firms operating captive coal mines.

**9.0 Banks serve loan Recall Notice on Kingfisher Airlines**

State Bank of India has said that a loan recall notice has been served on the defunct Kingfisher Airlines (KFA) on behalf of the consortium of 17 lenders. The notices under the SARFAESI Act, DRT and other processes will follow.



## SCOPE OF AUDIT .....

- **Physical Outcome :** CAG has also examined the actual physical outcome in certain areas as compared to what is documented by various financial statements, vouchers, contracts, reports and other documents.
- **Accounting Policy :** CAG has also questioned various accounting policies adopted by organizations working in PPP model, wherein revenue of the government or resources of the government have been compromised due to non adoption of generally accepted accounting practices. For e.g. in one of the airports developed in terms of PPP model, the money received by the private sector developer from long term lease of the land to number of hotels amounting to thousands of crores have been accounted for by the developer as capital receipts and the developer has not shared mandatory 46% revenue with the government.
- **Decisions Review :** CAG in its reports have also questioned a large number of decisions taken at the highest level and middle level of the management which were, although technically documented, on the face of it as appropriate but in fact most of such decisions were neither taken in the best interest of the government or the regulators or organizations concerned. Most importantly these decisions were beyond the overall policy framework laid down by the government/audit entity.  
The aforesaid initiatives on the part of Hon'ble CAG have brought to light a new debate within the audit profession and the entire chartered accountants circle as to what should be the real scope of audit and **can be really ignored** the real expectation of the society and the public from the profession of chartered accountants and auditors. Could not understand this?
- **Auditors' debate:** The entire auditing profession, more especially all leading chartered accountants are very actively debating on as to whether the international standards on auditing need a comprehensive revision and rather than only reporting on internal control, compliance of various decisions, documentation, supporting vouchers, bills, receipts of goods and other supporting facts and figure examination, is the real audit different and whether the expectation gap is real. The auditors are debating as to -
  1. Whether they can question the decisions taken by the management at various levels, in case they are not in the interest of the company or they are not in

2. Whether the auditors should review the actual performance vis-a-vis budgeted, standard or estimated performance at the time of financial outlay. Whether performance of management team need to be critically examined by the Auditors.
3. Whether besides the examination of financial figures and documentation supporting them, auditors need to confirm and verify as to whether the purpose to which the money was spent has been achieved.
4. Whether the Physical outcome arising out of the financial outlay is commensurate to the money spent.
5. Whether adequate due diligence was undertaken while carrying out various functions of the management.
6. Whether the auditors need to go in real corporate governance, rather than just verifying only symptoms or requirements of compliance of corporate governance indicators.
7. Whether the auditors can review the information disclosed to the audit committee or to the board of directors and to the shareholders, with a view to achieve adequate transparency and responsibility in the decision making process.
8. Whether the quality of services or quality of goods, claimed by the corporate were achieved or the corporate concerned is playing with the interest of various stake holders including customers, suppliers and employees and most importantly the shareholders.
9. Whether the propriety aspects of the audit are to be undertaken by the auditors, once the shareholders appoint them to review and undertake the audit and assurance process.
10. Whether auditors can question the extravagant or unwarranted cost and expenses.
11. Whether related party transactions are in the interest of the company or their justification can be reviewed.
12. Whether the money advances has unsecured loan as interest free loan or certain guarantees, advances or expenses were incurred without adequate justification, bearing the interest of the company in mind.

The aforesaid list is unending and can be summarized in one statement i.e. whether the auditors should be made responsible to ensure that the affairs of the audit entity are managed in a manner that they are genuinely in the interest of the owners, minority shareholders, buyers, suppliers, employees, government and regulators, society and most importantly the overall interest of the audit entity and the nation. You can't expect auditors to be all pervasive, do all and know all kind of class....Please rethink on this issue.



### CAPITAL MARKET

#### 1.0 SEBI asks Osian to close Art Fund

The Stock market regulator Securities & Exchange Board of India (SEBI) has directed Osian's -Connoisseurs of Art Pvt Ltd, an art fund to wind up its existing 'collective investment scheme' (CIS). Osian had raised ₹ 102.40 crore from 656 investors.

Osian has also been directed to refund the money to its investors within three months and submit a winding up report. Osian also has to pay the higher of profits earned according to its offer terms or 10 per cent interest a year.

The payout would be calculated from the date of investment till the date of refund, said SEBI. Failure to do so would lead to initiation of prosecution proceedings.

#### 2.0 SEBI decides to crack whip on Collective Investment Schemes

The Securities and Exchange Board of India (SEBI) has decided to crack the whip on collective investment schemes (CIS), which, according to the capital market regulator's estimates, have raised more than ₹ 10,000 crore by promising investors massive returns in quick time.

#### 3.0 SEBI move to stiffen Reverse Mergers to hit PEs exits

- In a reverse merger, unlisted entities are merged with a listed group entity
- Earlier, only court and exchange approval was required
- Now, SEBI will look into each case
- PEs see reverse merger as another exit route
- SEBI's tough stance could hit PEs' plan to liquidate shares.

### CORPORATE AND ECONOMIC LAWS

#### 1.0 Company Petition Maintainable

The Supreme Court has said aside the judgment of the Calcutta High Court in the long - standing dispute between Bhagwati Developers and

Peerless General Finance Ltd. over a compliant of oppression and mismanagement. Since the dispute started in 1991, the matter was remanded to the high court to decide it within six months. The High Court had rejected the claim of Bhagwati Developers to maintain the company petition because it had less than required shares to move the company court.

The Supreme Court stated that winding up petition can be filed with 10 per cent shareholding in all. It is not necessary that the petitioner must hold it individually. A petition can be filed even after obtaining the consent of other shareholders, the Supreme Court ruled. It said that the law does not require that "the consent should be given by a member personally, as the same can also be given by the power of attorney holder of such as shareholder.

Furthermore, the issue of compliant must be decided on the basis of a broad consensus approach, in relation to the avoidance and subsistence of the case. The same must be decided on the basis of the form of such consent, rather on the substance of the same. There is hence, no need of written consent, or even of the consent being annexed with the company petition.

#### 2.0 DTH free from Entertainment Tax

The Supreme Court has held that the Madhya Pradesh government cannot demand entertainment tax on DTH services provided to the customers.

#### 3.0 Nod for Clubbing Allowances with Basic Pay for PF Deduction

Decks have been cleared for clubbing of allowances with basic pay for PF deductions under the EPFO scheme, a move that will increase savings but reduce take-home pay of over 5 crore subscribers.

A review committee, constituted to look into the nitty-gritty of clubbing of allowances with basic pay for PF deductions, has supported the idea for enhancing the social security benefit under the EPF scheme run by the Employees' Provident Fund Organization (EPFO).



## AUDIT

### 1.0 CAG detects loss of ₹ 2,310 Cr in Tax Collection by Delhi Govt

The Comptroller and Auditor General (CAG) has said that under assessment, irregular claims of exemption and other shortcomings in tax collection system of Delhi Government have caused a loss of over ₹ 2,300 crore to the exchequer in 2011-12

### 2.0 National Highways Body loses ₹ 874 Cr on Project delays: CAG

Delay in completion of port road connectivity (PRC) projects and loss of toll revenue had resulted in a loss of around ₹ 873.85 crore to the National Highways Authority of India (NHAI), said the Comptroller and Auditor General of India.

### 3.0 CBI sharing Coal Probe Report has shaken Investigation Process : Apex Court

The Comptroller & Auditor General draft report alleges that government offered coal blocks without auction causing a loss of ₹ 10.67 Lakhs crores. It also blames Prime Minister Manmohan Singh for wrongdoings.

## INSURANCE

### 1.0 IRDA finalises norms for Surveyors and Loss Assessors

The Insurance Regulatory and Development Authority (IRDA) has finalized the training and licensing norms for surveyors and loss assessors for the insurance industry. The regulator has said appointment of a surveyor for loss assessment need to be made within 72 hours from the time of occurrence of loss was known to the insured. Further, they will be allowed to assess losses of only those departments specified in his/her license. They have been barred from acting as a consultant and are not to be involved in settlement of claims.

### 2.0 IRDA allows one time renewal of Agency License

The Insurance Regulatory and Development Authority (IRDA) has given a one-time chance

to insurance companies to renew the archived individual agency licenses. IRDA had achieved a large number of licenses of agents who had not submitted their PAN or whose licenses had lapsed for more than one year, resulting in large number of dormant practices.

### 3.0 Insurers Exposure cap for Reverse Repo deals removed

The Insurance Regulatory and Development Authority (IRDA) have done away with the exposure limit on reverse repo transactions by insurers. In a circular to the chief executives of all insurance companies, IRDA has said that reverse repo transactions in government securities were treated on a par with collateralised borrowing and lending obligation (CBLO) transactions and the 10 per cent investment limit wasn't applicable to this category.

## DIRECT TAXATION

### 1.0 Union Budget Approved

The Finance Bill for the year 2013 was approved by the parliament, subject to following changes:

1. No levy of wealth tax on farm land.
2. No requirement of TAN for tax deduction at source on transfer of immovable property of over ₹ 50 Lakhs.
3. Exemption for Gold Coin or articles, weighting less than 10 gms, from tax collected at source in cash sale withdrawn.

### 2.0 Withholding Tax thrashed

The Finance Bill has made the withholding tax for FIIs, QFIs cut to 5% on rupee-denominated infra bonds.

### 3.0 Some Latest Judgements

#### Section 32: Depreciation

The Gujarat High Court has held that depreciation would be allowed on software developed and installed by assessee.

*CIT-IV vs. Shree Rama Multi Tech Ltd., [2013] 32 taxmann.com 295*

#### Section 2(24): Income

The Gujarat High Court has held that where incentive in form of sales tax waiver/deferment



was not meant to give any benefit on day-to-day functioning of business or to make it more profitable, but was aimed to cover capital outlay of assessee for undertaking modernization of existing industry, it was capital receipt, not chargeable to tax

*CIT vs. Birla VXL Ltd., [2013] 32 taxmann.com 330*

### Section 40(a)(ia): Business Disallowance

**The Bombay High Court** has held that where assessee paid certain amount to sister concerns by way of reimbursement of salaries because their employees were deputed to assessee, there was no requirement to deduct tax at source while making said payments.

*CIT-II vs. OCB Engineers, [2013] 32 taxmann.com 271*

### Section 30: Rent, Rates, Taxes, Repairs and Insurance for Buildings

**The Madras High Court** has held that expenditure on designing, layout and other temporary constructions, to make leasehold office premises functional, is revenue expenditure.

*CIT- I, Chennai vs. Armour Consultants (P.) Ltd., [2013] 32 taxmann.com 172*

### Section 28(i), read with Section 22 and Section 80-IA: Business Income

**The Mumbai ITAT bench** has held that rental income derived by assessee from business centre (I.T. Park) was to be treated as business income and not as income from house property.

*Krishna Land Developers (P.) Ltd. vs. ACIT, Circle-2(2), [2013] 32 taxmann.com*

### Section 37(1): Business Expenditure

**The Mumbai ITAT bench** has held that payment made to stock exchange for violation of byelaws of stock exchange is allowable as business expenditure.

*HSBC Securities & Capital Markets (India) (P.) Ltd. vs. ACIT, Circle-4(1), [2013] 32 taxmann.com 328*

### Section 92C: Transfer Pricing

**The Delhi ITAT bench** has held that in case of transaction of lending money in foreign currency to foreign subsidiary, LIBOR should be taken as benchmark rate for computing ALP of interest.

*Cotton Naturals (I) (P.) Ltd. vs. DCIT, Circle 3(1), [2013] 32 taxmann.com 219*

**The Mumbai ITAT bench** has held that foreign exchange gain, if related to business of assessee profit, will be a part and parcel of arm's length price profit.

*S. Narendra vs. Add. CIT-16(3), [2013] 32 taxmann.com 196 (Mumbai - Trib.)*

**The Hyderabad ITAT bench** has held that while computing ALP, companies having supernormal profits and companies with extraordinary circumstances like merger/de-merger etc. cannot be taken as comparables

*Capital IQ Information Systems (India) (P.) Ltd. vs. DCIT (International Taxation), [2013] 32 taxmann.com 21*

**The Delhi ITAT bench** has held that the "Bright Line test" can be applied to disallow the excessive AMP expenses incurred by the assessee for the benefit of the brand owner.

*L.G. Electronics India P. Ltd. vs. ACIT*

**The Chennai ITAT bench** has explained law on valuation of shares of a closely held company for transfer pricing purposes.

*Ascendas (India) Pvt. Ltd. vs. DCIT*

### Section 2(14), read with Section 45: Capital Asset

**The Mumbai ITAT bench** has held that undisputed tenancy right of an assessee in respect of a property is a capital asset.

*Kewal Silk Mills vs. ACIT, [2013] 31 taxmann.com 405.*

### Section 194H: Deduction of Tax at Source on Commission or Brokerage

**The Mumbai ITAT bench** has held that sub-brokerage paid in connection with services rendered in course of buying and selling of units of mutual funds is not covered by provisions of Section 194H.

*DCIT - 2(3), Mumbai vs. S.J. Investment Agencies (P.) Ltd., [2013] 32 taxmann.com 97.*

### Section 147, read with Section 143(1) and Section 153C: Assessment / Reassessment / Search / Stay

**The Delhi High Court** has held that even Section 143(1) Intimation cannot be reopened u/s 147 without "fresh material".

*CIT vs. Orient Craft Ltd.*

**The Bangalore ITAT bench** has held that non-supply of recorded reasons before passing



## DIRECT TAXATION

reassessment order renders the reopening void u/s 147. Subsequent supply does not validate reassessment order.

*Synopsis International Ltd. vs. DDIT*

**The Mumbai High Court** has held that failure to obtain JCIT's approval renders Section 153C Assessment order void.

*CIT vs. Akil Gulamali Somji*

**The Mumbai ITAT bench** has held that Section 153A assessment is mandatory even if no incriminating material is found.

*ACIT vs. Pratibha Industries Ltd.*

**The Gujarat High Court** has held that AO cannot assess other escaped income if original reason is dropped u/s 147.

*CIT vs. Mohmed Juned Dadani*

**The Mumbai High Court** has held that Section 292BB does not have retrospective effect.

*CIT vs. Salman Khan*

**The Ahmedabad ITAT bench** has held that Tribunal has the power to grant unlimited stay of demand under third Proviso to section 254(2A)

*Vodafone West Ltd. vs. ACIT*

### Section 9: International Taxation / Royalty

**The Delhi ITAT bench** has laid down important law on taxability of royalty embedded in goods sold in India has held that royalty earned by non-resident from another non-resident is not taxable in India u/s. 9(1)(vi)(c) even if payer embeds the know-how into products sold in India.

*Qualcomm Incorporated vs. ADIT*

**The Mumbai ITAT bench** has held that services rendered by machines is not "fees for technical services" u/s 9(1)(vii)

*Siemens Limited vs. CIT*

**The Andhra Pradesh High Court** explaining entire Law on Lifting Corporate Veil to tax offshore transfers held that gains arising on sale of shares of foreign company by NR to NR not taxable in India under India-France DTAA even if the foreign co only held Indian assets.

*Sanofi Pasteur Holding SA vs. Department of Revenue*

### Section 50C read with Section 54 and 54F : Exemptions from Capital Gain

**The Mumbai ITAT bench** has held that Section

50C does not apply to transfer of immovable property held through company

*Irfan Abdul Kader Fazlani vs. ACIT*

**The Mumbai ITAT bench** has held that Section 50C does not apply to transfer of FSI & TDR.

*ITO vs. Prem Rattan Gupta*

**The Delhi High Court** has held that several independent units can constitute "a residential house" for the purposes of section 54 / 54F.

*CIT vs. Gita Duggal*

**The Punjab & Haryana High Court** has held that a family settlement does not result in a "transfer" and compensation received to equalize inequalities in family settlement is not taxable as "income".

*CIT vs. Ashwani Chopra*

**The Delhi High Court** has held that gains on shares held in investment portfolio are not assessable as business profits.

*CIT vs. Avinash Jain*

### Section 14A / Rule 8 D: Exempt Income

**The Kolkata ITAT bench** has held that expense specifically relatable to taxable income cannot be disallowed u/s 14A read with Rule 8D

*JCIT (OSD) vs. Pilani Investment & Industries Corpn. Ltd.*

## FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)	6 Month Ago (in %)
3 Month LIBOR (\$)	0.275	0.277	0.290	0.310
3 Month MIBOR (₹)	8.36	8.79	8.96	8.68
SENSEX	19939	18413	19485	18846
NIFTY	6050	5558	5903.5	5738
CRR	4	4	4	4.25
REPO	7.25	7.5	7.75	8
REVERSE REPO	6.25	6.5	6.75	7
Gold (per 10 gm)	26843	29230	30815	31415
Silver (per kg)	45062	51775	58246	59933
Crude (USD/bbl)	104.47	105.79	118.9	107.25
Rs. vs USD	54.54	54.53	53.57	54.34
Rs. vs Euro	71.11	71.33	71.79	69.43
Rs. vs 100 Yen	53.97	55.03	57.42	68.31
Rs. vs RMB	8.93	8.8	8.61	8.63
Rs. vs Pound	84.19	83.59	84.25	86.97
MCX Aluminium	100.75	102.4	110.7	103.65
MCX Copper	399.45	413.2	444	416.4

\*As on 10th May 2013

(Sources: Moneycontrol, NSE, BSE, RBI, MCX)

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**TELECOM SECTOR.....**

3. The telecom licenses & spectrum should be made freely transferable.
4. The entry barriers in telecom sector need to be completely withdrawn by permitting maximum possible telecom operators to bid for spectrum on revenue sharing basis, while allocating a reasonable economic size to each operator.

**"It is very important duty of the king to ensure, in an equitable manner that all fair opportunities are provided duly empowered by policy supports to ensure growth of each business sector"**

**FEMA**

**1.0 RBI clarifies on ODIs**

The Reserve Bank of India (RBI) has observed Indian parties were using the Overseas Direct Investments (ODI) as an automatic route to set up structures facilitating trading in currencies, securities and commodities. Such structures, with equity participation of Indian parties, have also started offering financial products linked to the rupee. The central bank has clarified any foreign entity, with equity participation directly/indirectly, shall not offer such products without its approval.

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