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EDITORIAL

National General Election – Our vote to be decisive



CA Vinod Jain*

The general elections have been announced and within 3 to 4 weeks voting process will commence. It is very important for the Chartered Accountants fraternity to actively participate in the election process not only by casting their votes but also actively participating in shaping the thought process of the society. In the last 2 to 3 years India has witnessed a very serious lack of

policy and administrative initiative at macro- economic level, resulting into very serious issues in the overall economic scenario including infrastructure sector, banking, power, telecom, coal, roads, water management, real estate, petroleum and gas and so on. The chartered accountancy profession which has a very large force of 2.25 lakh members, 1 million students and millions of clients and employees, who can be directly influenced through a proper dialogue. We can as a class be a very powerful class of intellectuals by our active participation.

The nation is currently suffering from multiple taxes and highly litigative approach of the tax officials, severe corruption, huge compliance costs and complex legal requirements. Similarly the new Companies Act, 2013, the draft rules framed there under, draconian powers given to SEBI for searches and seizure and very highly complex corporate law compliances requirement even for private limited and closely held small and mid- size Companies are some very serious issues, which are impacting the business and economic environment adversely.

It is important for us to put forth a clear mandate and consensus to the newly elected government that Indian democracy will not permit so much powers and procedures that are unwarranted and unjustified, in the hands of bureaucracy. The size of the government and powers given to them has to be brought down substantially and a

congenial business and economic environment to do business with ease and pride is necessary.

The entire C.A. profession and a very large number of voters which can be influenced by us should talk in one voice on all electoral forums to potential candidates, seeking their support to a business friendly environment conducive to rapid growth. The revival of capital market, availability of adequate low cost funds from the financial market including towards risk equity capital and easy availability of funds to self-employed small and medium sector are certain pre-requisites.

The introduction of single GST, providing for a clear-cut automatic sharing between State and Central Government, providing for automatic credit of share of State and Central government by electronic bank transfer of all collection of GST, will be very necessary to bring easy implementation of GST as well as full respect to federal constitution framework. The expenditure of the Central and State Government can also be substantially reduced by merging all central level and state level taxes into one single GST. The concept of dual GST is basically incorrect and will only bring more confusion and anarchy.

To ensure complete transparency and eradication of corruption at all levels, a transparent, robust electronic governance portal needs immediate implementation. The government also needs to consider to completely withdrawing the large number of regulations, procedures, compliances and tax laws, which are redundant, unreasonable and unfriendly. Most of the Central Government, State Government and local government related interaction and approvals needed by the citizen should be shifted to electronic system so as to eradicate corruption, reduce the size of the government and reduce burden on the exchequer. The current tax GDP ratio is too high and a substantial reduction will fuel big growth momentum.

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LATEST IN FINANCE

1.0 RBI removes 26% interest rate cap on MFI loans

The Reserve Bank of India (RBI) has removed the 26% interest rate cap on loans given by microfinance companies regulated by it and linked the interest rate to the cost of funds, providing a greater leeway to the lenders from April 1.

RBI said the microfinance institutions (MFIs) should arrive at the lending rate by calculating their cost of funds plus a maximum 10% margin or the average base rate of the five largest commercial banks by assets multiplied by 2.75 times, whichever is lower.

2.0 Corporate debt recast to get tougher

For India Inc, loan recast by banks is set to become tougher. The corporate debt restructuring (CDR) cell has mandated that the lead bank in a consortium of lenders conduct an audit of how a company has utilised the loan before processing its request for debt recast.

According to Raj Kumar Bansal, Chairman, CDR Cell, the lead bank could also press for special audit where diversion of funds and fraud are suspected. All references for corporate debt restructuring by lenders / borrowers are made to the CDR Cell. The CDR mechanism covers only multiple banking accounts, syndication/consortium accounts, where all banks and institutions together have an outstanding aggregate exposure of ₹ 10 crore and above.

3.0 Microfinance industry reviving fast

Signs of Revival

- 30% Industry gross loan portfolio growth in Q2 FY14 over Q2 FY13
- 54% Portfolio growth of MFIs other than CDR MFIs
- 300% Growth of funding to the industry in Q2 FY14 over Q1 FY14
- 50% Rise in total loan disbursements compared to Q2 FY12
- Lending rises significantly in states such as Uttarakhand, Rajasthan, Punjab and UP

DIRECT TAXATION

1.0 Software Development Expenses – Normal Upgrade – Revenue Expenditure

Due to rapid developments in technology, software up gradation is required to keep & ensure marketability of product specially in mobile phoning. Saleability of a software or upgrade lasts only as long as a newer update/upgrade is not available. The period between two upgrades is not substantial and as such, there may be no enduring benefit from the software. Expenditure which enables the profit-making structure to work more efficiently leaving the source of profit-making structure untouched would be revenue in nature.

CIT vs. ACL Wireless Ltd., [2014] 361 ITR 210 (Delhi)

2.0 Section 10A: Unit's Profit – No Set-off Needed

The Delhi High Court has held that the current year losses & brought-forward losses of non-export processing zone unit of an organization need not be set off against profit/income of export processing zone unit. The full amount of profit/income of export processing zone unit shall be exempt.

CIT vs. TEI Technologies Pvt. Ltd., [201] 361 ITR 36

3.0 Section 48: Computation of Capital gains [Determination of fair market value]

The High Court of Gujarat has held that where for purpose of computing capital gain arising from sale of property acquired prior to 1-4-1981, assessee adopted fair market value of property on basis of report of registered valuer who had given his opinion on basis of four different sale instances, Tribunal was justified in accepting said fair market value and, thus, no substantial question of law arose from Tribunal's order.

CIT-I vs. Pramila M. Desai, HUF, [2014] 42 taxmann.com 39

4.0 Section 68 : Cash credits [Share application money]

The High Court of Delhi has held that if share application money had been assessed in hands of share applicants, then same would not be assessed in hands of assessee.

CIT-II vs. Kansal Fincap Ltd., [2014] 42 taxmann.com 147



5.0 The High Court of Bombay has held that:

Section 36(1)(iii) - Interest on borrowed capital :- There is no requirement under section 36(1)(iii) that assessee should have separate account in respect of non-interest bearing funds from that of interest bearing funds to establish that investments have been made out of its own funds i.e. non-interest bearing funds.

Section 37(1) - Business expenditure:- In view of consistent practice followed by assessee, Tribunal rightly allowed its claim for prior period expenses which were crystallized during relevant assessment year on receipt of bills even though assessee was following mercantile system of accounting.

CIT-10 vs. Mahanagar Gas Ltd., [2014] 42 taxmann.com 40

6.0 Section 158BB, read with section 158B: Block assessment in search cases - Undisclosed income

The High Court of Allahabad has held that in course of block assessment proceedings, Assessing Officer could not make addition to assessee's taxable income on basis of material collected during a survey conducted prior to search proceedings.

Deputy Commissioner of Income-tax, Lucknow vs. Dr. Lalit Verma, [2014] 42 taxmann.com 136

7.0 Section 37(1): Allowability of Business expenditure

The High Court of Punjab & Haryana has held that where assessee purchased superior quality goods from sister concern at a higher rate but third parties purchased same at a more higher rate, excess payment would be allowable.

Commissioner of Income-tax-I, Ludhiana vs. Mansarover Impex, [2014] 42 taxmann.com 124

8.0 Section 149(1)(b)

The High Court of Delhi has held that extended time limit of 6 years under section 149(1)(b) requires data for prima facie computation of income escaping assessment.

BBC World News Ltd. vs. Assistant Director of Income-tax, Circle -I (1), [2014] 42 taxmann.com 456

9.0 Section 12A, read with section 12AA: Charitable or religious trust

The High Court of Punjab & Haryana has held that merely because a trustee is a life long member of a trust, it would not lead to finding that trust is not charitable.

CIT-I, Ludhiana vs. Baba Kartar Singh Dukki Educational Trust, [2014] 42 taxmann.com 17

10.0 Section 68 - Cash credit

The High Court of Andhra Pradesh has held that identity, creditworthiness and genuineness of transaction is not established merely by filing bank account details.

Gayathri Associates vs. Income-tax Officer, Hyderabad, [2014] 41 taxmann.com 526

11.0 Section 45 - Capital gains

The High Court of Bombay has held that no capital gains tax on amount received by partner arising from transfer of goodwill would arise at time on retirement from firm.

CIT -III, Pune vs. Riyaz A. Sheikh, [2014] 41 taxmann.com 455

12.0 Section 37(1), read with section 36(1)(vii): Advances Written off - Allowability

The High Court of Calcutta has held that where trade advances becoming unrealizable, provision was made and profit & loss account was debited in earlier year, same was to be allowed when written off in subsequent year.

Commissioner of Income-tax, Kolkata-IV vs. Indian Explosives Ltd., [2014] 41 taxmann.com 264

13.0 Section 147, read with section 158BC: Income escaping assessment

The High Court of Gujarat has held that reopening of assessment in relation to a matter which is subject matter of block assessment is evidently without jurisdiction.

Yogeshbhai R Dhanak vs. ACIT, [2014] 41 taxmann.com 183

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ADVISORY AND END TO END MANAGEMENT
OF OVERSEAS OPERATIONS



14.0 Section 43 : Deductions on Actual Payment Basis

The High Court of Delhi has held that Section 43B doesn't apply to contractual liability to pay customs duty to the importer of goods.

Oswal Agro Mills Ltd. vs. CIT, [2014] 42 taxmann.com 100

15.0 Authority for Advance Rulings : Permanent Establishment (PE) by Control

Technical and professional personnel were deputed by applicant to assist its affiliates to optimally execute the contract received by it or its affiliate. The applicant had the power to recall these technical or professional personnel and replace them with other personnel. These personnel would work under the supervision of Indian affiliate. However, the overall control over these personnel was with the applicant. On these facts, the Indian affiliate shall be deemed to be PE of applicant.

Booz & Company (Australia) (P.) Ltd., In re, [2014] 42 taxmann.com 288

16.0 The Mumbai Bench of ITAT has held that:

Section 11, read with Section 24 - Charitable or religious trust:- In case of assessee, a charitable trust, claiming exemption under section 11(1)(a), it is only expenditure actually incurred to earn rental income, i.e., repairs, municipal taxes etc. which has to be allowed as deduction, however, assessee's claim for standard deduction under section 24(a) cannot be allowed.

Section 11 - Charitable or religious trust:- Donation made by one charitable trust to another charitable trust would entitle donor trust to claim exemption qua application of income under section 11(1) even if donation is towards corpus of donee-fund.

ACIT, Central Circle -17 & 28 vs. Nandlal Tolani Charitable Trust, [2014] 42 taxmann.com 154

17.0 Section 92C: Transfer pricing – Internal Comparables have a Priority

The Delhi Bench of ITAT has held that in course of determining Arm Length Price (ALP), preference should be given to internal uncontrolled comparables over external uncontrolled comparables, however, if nature of transaction with Associated Enterprise (AE) is different from that with non-AE or data in respect of two segments is either not workable or not reliable, then assistance from such internally comparable uncontrolled transactions should be avoided.

Lummus Technology Heat Transfer B.V. vs. Assistant Director of Income-tax, International Taxation -1(1), New Delhi, [2014] 42 taxmann.com 113

18.0 The Mumbai Bench of ITAT has held the following:

Section 68 – Revenue is fully entitled to rely on reports of its investigation wing which entailed serious doubt with regard to genuineness of share application money; however, assessee is to be given opportunity to confront those materials.

Section 73 - In absence business activity during year, loss on account of valuation of inventories, should be treated as speculation loss.

Section 234B - If working of interest is not repugnant to law, same is to be upheld.

Luminant Investments (P.) Ltd. vs. DCIT, Central Circle 40, Mumbai, [2014] 42 taxmann.com 14

19.0 The Mumbai Bench of ITAT has held the following:

Section 194C, read with section 194J - Provisions of section 194C which specifically cover activity of production of television serial programmes will prevail over section 194J which is general in nature.

Section 194C, read with section 194J - Dubbing charges and processing fees being a part of production of television serials and programmes, are squarely covered under specific provisions of section 194C.

ACIT(TDS) -3(2) vs Sahara One Media & Entertainment Ltd., [2014] 41 taxmann.com 488

20.0 Section 10(14)(i) : Uniform Allowance

The Ahmedabad Bench of ITAT has held that Normal dress worn by employees in office is not 'uniform' for the purposes of exemption uniform allowance u/s 10(14)(i).

ONGC, Basin Baroda vs ACIT (TDS), Baroda, [2014] 42 taxmann.com 350

21.0 The Mumbai Bench of ITAT has held the following:

Section 50, read with section 50C - Provisions of section 50C would also apply in case of capital gain from depreciable assets.

Section 28(i), read with section 36(1)(vii) - Deposits/advances given in connection with business could not be allowed as bad debt but had to be considered as business loss.

Smita Conductors Ltd. vs DCIT, Range -3(3), Mumbai, [2014] 41 taxmann.com 514

**22.0 Section 80G, read with Section 12A**

The Mumbai Bench of ITAT has held that Section 25 Company registered with a foreign director is eligible for deduction under section 80G.

GIA India vs. Director of Income-Tax (Exemption), [2014] 146 ITD 238/[2013] 38 taxmann.com 323

23.0 Section 54: Capital gain - Exemption

The Mumbai Bench of ITAT has held that joint ownership of a house property allows section 54 deductions to both husband and wife.

Mrs. Sheela Bhagwandas Nichlani vs. Income-Tax Officer – 12(3)(2), Mumbai, [2014] 146 ITD 244/[2013] 38 taxmann.com 289

24.0 Section 92B, read with section 92C: Transfer pricing – Meaning of international transaction

The Delhi Bench of ITAT has held that where, as per importation agreement between assessee and its foreign associate enterprises, assessee had performed greater intensity of service than a normal distributor, by also performing functions of advertisement, it contributed to brand building for its associated enterprise, and constituted an international transaction.

BMW (India) Pvt. Ltd. vs. Additional Commissioner of Income-tax, Range- I, [2014] 146 ITD 165/[2013] 37 taxmann.com 319

25.0 Section 271(1)(c), read with section 273A: Penalty for concealment of income

The High Court of Punjab & Haryana has held that where assessee offered additional income after search operation unearthing substantial undisclosed income for earlier years, concealment penalty was to be imposed upon assessee and waiver of penalty could not be granted.

Commissioner of Income-tax (Central), Ludhiana vs. Bansal Abushan Bhandar, [2014] 42 taxmann.com 9

26.0 Section 37(1), Read With Section 147 : Allowability of Business expenditure

The High Court of Allahabad has held that where addition pertaining to expenses had been deleted on merit, there was no reason to re-open assessment.

CIT vs. Gauriganj Mahila Prashikshan Kendra Sultanpur, [2014] 42 taxmann.com 148

AUDIT**1.0 KPMG in Reebok chargesheet, auditor denies charges**

In its chargesheet filed with the special magistrate on economic offences in Gurgaon, the Serious Fraud Investigation Office (SFIO) has named Reebok India's statutory auditor — N Narasimhan & Co — and KPMG India and its affiliate auditing arm BSR & Co, along with its sacked top executives Subhinder Singh Prem and Vishnu Bhagat, for fudging and fabricating accounts of the company.

2.0 United Bank of India faces auditing, corporate governance probes

The crisis-hit United Bank of India (UBI), which has run into losses amid suspiciously high bad loans, now faces fresh probes for possible lapses related to auditing and corporate governance norms.

Raising alarm, the lender's gross Non Performing Assets (NPAs) touched ₹ 8,546 crore during the same period. The amount of NPAs surged from just ₹ 2,964 crore at the end of March last year.

Besides, there are apprehensions about the books of UBI amid fears that rising bad loans might have not been properly reported for quite sometime.

CAPITAL MARKET**1.0 SEBI makes public issue grading optional**

Market regulator Securities & Exchange Board of India (SEBI) has notified changes in IPO regulations which make grading of initial share sales by credit rating agencies optional. Earlier, it was mandatory.

2.0 RBI lays down stricter norms on intra-group exposure for banks*For single-group entity exposure*

- Exposure limit of 5% of the paid-up capital for unregulated, non-financial cos
- Exposure limit 10% of the paid-up capital for regulated financial services cos

For aggregate-group exposure

- Limit of 10% of paid-up capital for unregulated, non-financial cos
- Limit of 20% of paid-up capital for regulated financial services cos



CORPORATE & ECONOMIC LAWS

1.0 Rules for CSR Spending Notified

The new Corporate Social Responsibility (CSR) Rules are notified & effective from April 1, 2014. It is applicable on companies with net worth of over ₹ 500 crore or turnover of over ₹ 1000 crore or net profit of over ₹ 5 crore.

The **Eligible activities** for CSR Spending are as follows :

- Eradicating hunger, poverty and malnutrition, promoting preventive healthcare and sanitation
- Making available safe drinking water
- Promoting education, including special education & employment-enhancing vocation skills.
- Promoting gender equality, empowering women, setting up homes and hostels for women, orphans.
- Ensuring environmental sustainability.
- Protection of national heritage sites, art and culture including restoration of buildings and sites of historical importance
- Measures for benefit of Armed Forces veterans, war widows.
- Training to promote rural sports, Olympic sports, nationally recognised sports.
- Contribution to Prime Minister's National Relief Fund.
- Contributions to technology incubators located within academic institutions approved by Centre.
- Rural development projects.

2.0 New SEBI norms a step ahead of Companies Act

The corporate governance norms announced by the Securities and Exchange Board of India (SEBI) go beyond those mentioned in the Companies Act. SEBI has pushed for better corporate governance of listed companies through measures such as the need for a succession policy, prior approval of the audit committee for all related-party transactions and e-voting facility for all shareholder resolutions by the top 500 companies (by market capitalisation). All these measures have either not been specified in the Companies Act or haven't been made mandatory.

3.0 SEBI sets seven-board cap for independent directors

Under the new Corporate Governance rules, an individual can serve as an independent director on a maximum of seven listed companies. The Securities & Exchange Board of India (SEBI) also decided that if an individual is a whole-time director in a listed company, he can serve as an independent director in a maximum of three companies. Also, if one has completed five years or more as an independent director, he will be eligible for just one more term of five years.

Managerial remuneration will be decided by a compensation committee headed by an independent director.

The board has also decided that the definition of related-party transactions will be widened.

SEBI said that there will be voting (by the shareholders) in which the related party cannot vote.

4.0 Independent directors will have to give reasons to quit

Independent directors will soon have to provide "detailed reasons" for their resignations from boards of listed companies and the same would need to be made public under new norms being finalised by the regulator Securities & Exchange Board of India (SEBI).

If an independent director is citing "personal reasons" for his/her resignation from a company board, then he/she may be required to explain the logic behind staying on boards of other companies.

INSURANCE

1.0 IRDA asks insurers to remit claims only electronically

The Insurance Regulatory and Development Authority (IRDA) said insurance companies shall remit proceeds of all claims, maturity payments or any sum due to policyholders or nominees only through electronic mode.

2.0 Govt allows FIIs, NRIs to invest in insurance sector

Foreign institutional investors (FII) and non-resident Indians (NRIs) can now invest in the insurance sector, within the overall 26 per cent cap on foreign direct investment (FDI).



SPECIAL INCENTIVES FOR EXPORTERS

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FOCUS MARKET SCHEME

OBJECTIVE

To offset high freight cost and other externalities to select international markets with a view to enhance India's export competitiveness in these markets.

ELIGIBILITY

1. Exporters of all products to countries notified in Table 1 & 2 of Appendix 37C of Handbook of Procedures Volume 1 (HBPv1) entitled for Duty Credit Scrip equivalent to 3 % of FOB value of exports (in free foreign exchange) for exports made from 27.8.2009 onwards, unless a specific date of export/period is specified by a public notice/notification.
2. Export to countries notified in Table 3 of Appendix 37C of HBP v1 entitled for additional Duty Credit Scrip @ 1% for export made with effect from 01.04.2011.

SOME NOTIFIED MARKETS UNDER FOCUS MARKET SCHEME (FMS)

NEW FOCUS MARKETS (Table 2)

Costa Rica	Cuba
Panama	Algeria
Bahamas	Aruba
Haiti	Austria
Barbados	Cambodia
Antigua	Myanmar
St. Lucia	Netherland Antilles
Guyana	Ukraine
Grenada	Cayman Islands
St. Vincent	New Zealand
Papua new guinea	Latvia
Solomon island	Lithuania
Tonga	Bulgaria
Samoa	Norway

SPECIAL FOCUS MARKETS (Table 3)

Armenia	Uruguay
Azerbaijan	Colombia
Kazakhstan	Costa Rica
Kyrgyzstan	Panama Republic
Tajikistan	Haiti
Uzbekistan	Cuba
Argentina	Mexico
Ecuador	Angola
Paraguay	Cameroon
Peru	Ethiopia

Gambia

Liberia

Madagascar

Malawi

Mali

Namibia

Tunisia

Uganda

Congo D. Rep.

Zambia

Zimbabwe

Sudan

Chile

Uruguay

Morocco

Venezuela

INELIGIBLE EXPORT CATEGORIES

1. Supplies made to SEZ units
2. Service Exports
3. Diamonds & other precious, semi precious stones
4. Gold, silver, platinum & other precious metals in any form, including plain & studded Jewellery
5. Ores & Concentrates, of all types and in all forms
6. Cereals, of all types
7. Sugar, of all types and in all forms
8. Crude / Petroleum Oil & Crude / Petroleum based Products covered under ITC HS codes 2709 to 2715, of all types and in all forms and
9. Export of Milk and Milk Products covered under ITC HS Codes 0401 to 0406, 1 9011 001, 1 9011 010, 2105 & 3501.
10. Export of Meat and Meat Products

FINANCIAL INDICATORS

	Current Rate*	Month Ago	3Month	6Month
3 Month LIBOR (%)	0.23	0.24	0.23	0.26
3 Month MIBOR (%)	9.96	9.52	9.09	10.99
SENSEX	21935	20334	21255	19782
NIFTY	6537	6053	6333	5850
CRR (%)	4.00	4.00	4.00	4.00
REPO (%)	8.00	8.00	7.75	7.25
REVERSE REPO (%)	7.00	7.00	6.75	6.25
Gold (per 10 gm)	30123	29881	29223	30047
Silver (per kg)	45996	44585	44468	50495
Crude (USD/bbl)	108.21	108.35	108.67	112.63
₹ vs USD	60.85	62.34	61.21	64.22
₹ vs Euro	84.42	85.06	84.15	85.21
₹ vs 100 Yen	58.94	61.03	59.29	64.28
₹ vs RMB	9.92	10.29	10.05	10.45
₹ vs Pound	101.21	102.36	100.65	100.83
MCX Aluminium	105.95	103.95	107.85	113.00
MCX Copper	409.00	444.45	439.45	476.70

*As on 10th March 2014

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

FEMA

1.0 Third-party payment norms for imports relaxed

The Reserve Bank of India (RBI) liberalized third party payment norms for import of goods by removing the ceiling of \$100,000.

2.0 RBI may ease norms to reduce delays in payments to exporters

The Reserve Bank of India (RBI) is soon expected to simplify and streamline the payment process in the interest subvention scheme so that banks can credit the interest subsidy benefit upfront to exporters against quick reimbursement by the central bank/ government. The exports sector is currently struggling and the January data showed a modest growth of 3.79%.

3.0 FDI into a SSI / MSE and in Industrial Undertaking manufacturing items reserved for SSI/MSE

An Indian Company may issue shares or convertible debentures to a person resident outside India in excess of 24% of its capital if:

- It has given up its Small Scale Industrial Undertaking (SSI) status, and
- It is not engaged or does not propose to engage in manufacture of items reserved for small scale sector

Any Industrial undertaking, with or without Foreign Direct Investment (FDI), which is not a Medium and Small Enterprises (MSE), having an industrial license under the provisions of the Industries (Development & Regulation) Act, 1951 for manufacturing items reserved for manufacture in the MSE sector may issue shares in excess of 24 per cent of its paid up capital with prior approval of the Foreign Investment Promotion Board of the Government of India.

INDIRECT TAXATION

1.0 Supreme Court restrains AP Govt. from collecting service tax from Tirupati Temple

The Supreme Court restrained the Andhra Pradesh (AP) government from collecting service tax from the Tirupati Balaji temple in Andhra Pradesh for accommodation provided to pilgrims.

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