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INTERNATIONAL RECOGNITION OF INDIAN CHARTERED ACCOUNTANTS

— by Vinod Jain*

The Central Council of the Institute of Chartered Accountants of India have initiated significant steps to achieve international recognition of Indian Chartered Accountants. The new course curriculum of the Institute of Chartered Accountants of India is comparable to the best in the world and has been put in place after a thorough research of more than 30 developed countries. The Indian Accounting Standards as well as Indian Auditing and Assurances Standards are also completely at par and may be ahead in certain areas as compared to the International Standards in place.

The Indian profession is making serious attempt to ensure that most of the developed countries recognize the Indian qualification and also exempt training for the Indian Chartered Accountants. The Indian CA profession is of the view that barring few papers on taxation and local corporate laws, most of the papers should be exempted by the developed countries for the Indian qualification, on the basis of reciprocal mutual recognition agreement on equal footings.

A series of presentations, visits and discussions have taken place between Indian Institute and their counterparts in the US, Europe, Australia and other developed countries for Mutual Recognition of Qualification and the results are fairly encouraging.

In view of the initiative of the Council of the Institute of Chartered Accountants of India, Canadian Institute of Certified General Accountants (CGA) have exempted all the papers except 5 papers for Indian Chartered Accountants. The Institute of Chartered Accountants of England and Wales have also come forward and exempted 5 papers of professional stage for the Indian Chartered Accountants. The exemption from part / full training will be decided on case to case basis. A similar recognition is expected from the Australian Institute. The efforts are on to commence the Australian qualification examination in India.

This is, however, not enough and still we have to go a long way to achieve what we really deserve. **The Indian**

Chartered Accountants are technically the best in the world and our members who have appeared in examination in any of the developed countries have not only generally passed in the very first attempt but have also obtained very high ranks in most of the cases including award of Gold Medals. This clearly indicates the strength of the Indian Chartered Accountancy Profession.

On the WTO front, in terms of general agreement on trade in services (GATS) the negotiations are getting advanced, as the international framework is to be finalized by the year 2005. The US as well as European countries today have a series of restrictions in the accountancy and auditing sector by way of requirements of citizenship, residency, mandatory professional insurance with hefty costs besides Visa restrictions. The Securities and Exchange Commission (SEC) of US has also made it mandatory that all Chartered Accountants who audit the accounts of Companies which are registered with US Stock Exchanges (which include good

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CAPITAL MARKET

1.0 LISTING MADE MANDATORY FOR BONDS

Companies have been issuing debt securities on private placement basis from time to time. In order to provide greater transparency to such issuances and to protect the interest of investors in such securities, it has been decided that any listed company making issue of debt securities on a private placement basis and listed on a stock exchange shall be required to comply with the following:-

- a) The company shall make full disclosures (initial and continuing) in the manner prescribed in Schedule II of the Companies Act, 1956, SEBI (Disclosure and Investor Protection) Guidelines, 2000 and the Listing Agreement with the exchanges. However, if the privately placed debt securities are in standard denomination of Rs.10 lakhs, such disclosures may be made only through web sites of the stock exchange where the debt securities are sought to be listed.
- b) The debt securities shall carry a credit rating of not less than investment grade from a Credit Rating Agency registered with SEBI.
- c) The company shall appoint a debenture trustee registered with SEBI in respect of the issue of the debt securities.
- d) The debt securities shall be issued and traded in demat form.
- e) The company shall sign a separate listing agreement with the exchange in respect of debt securities and comply with the conditions of listing.
- f) All trades with the exception of spot transactions, in a listed debt security, shall be executed only on the trading platform of a stock exchange.
- g) The trading in privately placed debts shall only take place between Qualified Institutional Investors (QIBs) and High Networth Individuals (HNIs), in standard denomination of Rs.10 lakhs.
- h) If the intermediaries registered with SEBI associate themselves with the issuance of private placement of unlisted debt securities, they will be held accountable for such issues. They will also be required to furnish periodical reports to SEBI in such format as may be decided by SEBI.

(Source: SEBI/MRD/SE/AT/36/2003/30/09 dated September 30, 2003)

2.0 SEBI LIMITS SUB-BROKERS TO ONE BROKER PER EXCHANGE

In a move to reduce the complexities in broker-sub-broker network and make main brokers of the stock exchanges (SEs) more accountable, the Securities and Exchange Board of India has tightened its regulations pertaining to these market intermediaries. The amended regulations will be called SEBI (Brokers and Sub-brokers) (Amendment) 2003, and have come into force from September 23, 2003.

The new regulations have restricted multi-membership of sub-brokers, and now no sub-broker can be affiliated to more than one stockbroker of one stock exchange. Earlier, a sub-broker was allowed to be affiliated with any number of main brokers of different Stock Exchanges.

3.0 UNIQUE CLIENT CODE

Please refer to SEBI Circular No.SMDRP/Policy/CIR-39/2001 dated July 18, 2001 on the captioned subject. The said circular, inter-alia, mandated that the brokers would be required to furnish the particulars of their clients to the stock exchanges/clearing corporations and the same would be updated every quarter.

It has, therefore, been decided to call for such details as prescribed in the aforesaid circular on a monthly basis. Such information for a specific month should reach the exchange within 7 working days of the following month.

(Source: SEBI/MRD/SE/Cir-34/2003/29/09 dated September 29, 2003)

4.0 COMPULSORY LISTING ON REGIONAL STOCK EXCHANGES WITHDRAWN

The Government of India vide circular No.F.No.1/9/SE/2003 dated April 23, 2003 has, inter alia, withdrawn the requirement relating to compulsory listing by companies on regional stock exchange. Keeping in view the letter and spirit of the said circular, it has been decided that if a company is listed on any stock exchange which is having nationwide trading terminals, it would be a sufficient compliance of the aforesaid SEBI circular, if it obtains 'in-principle' approval from such stock exchange(s) for further issue of shares or securities. Where the company is not so listed on any stock exchange having nationwide trading terminals, it shall continue to obtain 'in-principle' approval from all the exchanges where it is listed as was provided in the aforesaid Circular dated March 08, 2001.

(Source: MRD/Policy/Cir - 35 /2003/29/09 dated September 29, 2003)

5.0 LISTING OF COMPANIES WITH RS. 3-CR CAPITAL ALLOWED - BSE

In an effort to encourage small companies to tap the primary market, the Bombay Stock Exchange has decided to permit listing of the shares issued by small capital companies. Under this, companies having paid-up capital of Rs. 3 crore, after the issue, can list on the exchange. Other conditions for listing on the BSE include minimum turnover of Rs. 3 crore in each of the previous 3 years and should have a minimum of 500 shareholders.

Apart from BSE norms, these companies would be required to meet the SEBI guidelines for making public issue. In the case of NSE, the listing requirements are paid-up capital of Rs. 10 crore and a market capitalisation of Rs. 25 crore and for the knowledge-based companies, the requirement is Rs. 5 crore paid-up capital and market capitalisation of Rs. 50 crore.

6.0 BROKERS TO DISCLOSE EQUITY RISKS TO CLIENTS

Brokers will now have to make their clients aware of the risk involved in equity investments. The Securities and Exchange Board of India has made it mandatory for brokers to ask their clients sign a document listing various risks involved in equity investment before proceeding with the transaction.

It should ask investors to carefully consider whether such trading is suitable for them in the light of their financial condition. The document should mention that "if they suffer loss, the investors will be solely responsible for the same and the exchange, its clearing corporation or SEBI shall not be responsible."

CAPITAL MARKET

7.0 BROKING FIRM DIRECTOR CAN'T BE SUB-BROKER FOR SAME OUTFIT

SEBI has barred directors of stock broking companies from doubling up as sub-brokers to the same broking outfit. The capital market regulator has ruled that a director of a stockbroker cannot act as a sub-broker to the same stockbroker.

8.0 SEBI TO ENFORCE 25% PUBLIC STAKE RULE

A large number of listed companies will soon be required to shore up their public shareholding to a minimum 25%. SEBI will shortly issue direction to listed companies to maintain their minimum non-promoter holding at 25%. The market regulator is planning to set a two-year deadline for increasing the float in the listed companies. All listed companies are required to maintain on a continuous basis their non-promoter holding at the same level as applicable at the point of entry into the market, which is usually 25%, or 10% in some cases.

Some of the leading companies where the non-promoter holding has fallen below 25% include Wipro, Dabur, Nirma, Gillette, Carrier Aircon, Madura Coats, Godrej Indus, Amtek, Kalyani Brakes Bayer, Crop-science, HCL, Tech and Whirlpool.

9.0 ADB, IFC APPROACH SEBI FOR RAISING FUNDS, LISTING

International Finance Corporation (IFC) and Asian Development Bank (ADB) are planning to enter the Indian capital market. Teams from ADB and IFC have already had discussions with SEBI for raising funds in local market. SEBI along with the Finance Ministry are working out the modalities for them to issue debt securities in India.

10.0 MARGIN BY STOCK EXCHANGES

The National Stock Exchange and Bombay Stock Exchange have decided to act jointly amidst sharp rise in volatility due to day trading and imposed 10% additional margins on 16 volatile scrips. The new margins are in addition to the existing value at risk margins linked to the volatility in individual scrips and mark-to-market margins linked to the exposure.

The scrips where the new margins have been imposed include Adani Exports, Digital GlobalSoft, Hexaware Technologies, SAIL, Satyam Computer, SBI, Tata Steel, Aftak Infosys, Divi's Laboratories, Geometric Software, Hughes Software, Mastek and Essar Steel.

EXCISE

FILING OF EXCISE RETURN MADE EASIER

With effect from October 1, 2003 manufacturers of excisable goods registered with the Central Excise department is required to file two returns, one return for manufactured goods and another for Cenvat availment. In the new unified single page return, details of information about excisable goods are to be furnished on the basis of 6-digit sub-heading level of the Central Excise Tariff Act and not on the basis of description of goods.

LATEST IN FINANCE

1.0 INTEREST RATE ON NRE DEPOSITS

RBI has directed that, until further notice, the interest rates on fresh repatriable Non-resident (External) Rupee Account (NRE) deposits for one to three years contracted effective close of business in India on September 15, 2003 should not exceed 100 basis points (instead of 250 basis points announced on July 17, 2003) above the LIBOR/SWAP rates for US dollar of corresponding maturity.

The LIBOR/SWAP rates as on the last working day of the preceding month would form the base for fixing ceiling rates for the interest rates that would be offered effective from the following month. The above changes in interest rates will also apply to repatriable NRE deposits renewed after their present maturity period.

(Source: DBOD. No. Dir. BC. 25/13.01.09/2003-04 dated September 15, 2003)

2.0 NEW REVIVAL SCHEME FOR TEXTILE UNITS

In an attempt to revitalize the potentially viable textile units that are leading towards sickness, the Government has recently announced a revival scheme, having following features:

- Scheme has been in effect from September 15, 2003;
- Banks and financial institutions would be permitted to access external commercial borrowings (ECBs) and convert rupee term loans into foreign currency loans;
- The entire scheme would have a five-year tenure;
- All accumulated liquidated damages and penal interest would be waived;
- The accumulated interest liability would be frozen and converted into zero coupon bonds, payable after five years, in instalments, or at one time, as negotiated between the lender and the borrower;
- Eligibility of units would be determined on certain parameters, which include post-restructuring debt servicing coverage ratio of at least 1:1.33.
- Further, units should have positive earning before interest, depreciation, tax and amortization (EBIDTA) in three out of last five years.

3.0 SECURITISATION ACT : GOVERNMENT WANTS FAIR PLAY FOR BORROWERS

Defending the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, before the Supreme Court recently, Attorney-General Soli Sorabjee proposed to infuse elements of natural justice and fair play in the Act. It has been submitted that if aggrieved by any measure actually taken by the creditor, the borrower can appeal to the Debt Recovery Tribunal as well as the Debt Recovery Appellate Tribunal, which will have to dispose of the appeal within 60 days. In case either of the tribunals grants interim relief, the secured creditor can make an application seeking its vacation. Such an application will have to be disposed of within four weeks of the 60 day period. In case the application is not disposed of within schedule, the interim order shall stand vacated. Moreover, if the secured creditor takes possession of assets, it will not sell them for 30 days, during which the borrower can seek legal redress.

1.0 GUIDELINES ON NETTING OFF OF OLD AND SMALL VALUE ENTRIES

It has been decided, as a one time measure, to allow banks to net off the entries representing clearing differences receivable against entries representing clearing differences payable up to Rs. 500 which are outstanding for more than three years.

Banks may net off all entries representing clearing differences 'receivable' against entries representing clearing differences 'payable', of amounts less than Rs. 500 each which are outstanding in the Clearing Adjustment Accounts for more than three years as on March 31, 2003, i.e., all outstanding entries of less than Rs. 500 each in the Clearing Adjustment Account (receivables against payables) originated on or before March 31, 2000 and outstanding as on March 31, 2003.

(Source: BPD 13 /09, 11, 00/2003-04 dated September 19, 2003)

2.0 ACCOUNTING TREATMENT OF LEGAL EXPENSES INCURRED BY BANKS IN SUIT FILED ACCOUNTS

It has been decided that banks should adopt the following guidelines for accounting legal expenses in suit filed accounts:

- i. Legal expenses incurred by banks in respect of suit-filed accounts should be debited to the profit and loss account at the time of incurrence. For the purpose of monitoring the recovery of such expenses from the borrowers, the banks may keep a memorandum control account.
- ii. At the time of recovery of the legal expenses from the borrower, the amount recovered should be recognised in the profit and loss account of the year in which the recovery is made.

(Source: DBOD. BP. BC.24/2.04.018/2003-2004 dated September 13, 2003)

3.0 ACCOUNTING RULES EASED FOR LEVEL 2 AND 3 COMPANIES

ICAI has classified all business into following three categories:

- **Level 1** entities include all entities that have its securities listed on the exchanges in the country or outside, those that are in the process of listing its securities and a board resolution has been passed, banks and co-operative banks, financial institutions and insurance companies. Also, any commercial enterprise with turnover, excluding other income, of Rs. 50 crore or borrowings including public deposit in excess of Rs. 10 crore.
- **Level 2** includes all enterprises with turnover in the immediately preceding accounting period between Rs. 40 lakh and Rs. 50 crore and those with borrowings including public deposits in excess of Rs. 1 crore but less than Rs. 10 crore.
- Holding and subsidiary enterprises of these enterprises in respective levels that are not covered by level 1 or 2 are in **level 3**.

ICAI has decided that level 2 and level 3 companies will not be required to comply with accounting standards on cash flow statements (AS3), segment reporting (AS17), related party disclosure (AS18) and discontinuing operations (AS24).

The modifications and exemptions would be applicable from accounting period commencing on or after April 1, 2004.

1.0 OCBs ARE ON PAR WITH FOREIGN INVESTORS

RBI has clarified that the overseas entities owned by Non-resident Indians (NRIs) can enjoy all the facilities available to any foreign investor, including automatic route for foreign direct investment.

Reserve Bank of India, on September 16, 2003 had, in consultation with the Government of India derecognised overseas corporate bodies (OCBs) in India as an eligible class of investor under various rules and schemes available for foreign investment. The Reserve Bank has clarified that derecognition of OCBs as a separate category of investor meant withdrawal of special facilities made available to OCBs and that entities owned by NRIs would continue to enjoy all the facilities available to other foreign investors.

(Source: A.P.(DIR Series) Circular No.14 dated September 16, 2003)

2.0 ADVANCE REMITTANCE FOR IMPORTS

With a view to further liberalising and simplifying the procedure for import of goods into India, it has now been decided that Authorised Dealers may henceforth allow advance remittance for import of goods into India as under:

- a) If the amount of advance remittance exceeds USD 100,000 or its equivalent, an unconditional, irrevocable standby Letter of Credit or a guarantee from international bank of repute situated outside India or a guarantee of an Authorised Dealer (AD) in India, if such guarantee is issued against the counter guarantee of an international bank of repute situated outside India, is obtained, except when the AD is satisfied about the track record and bonafides of the importer, the requirement of the bank guarantee/ standby Letter of Credit may not be insisted upon for advance remittances upto USD 1,000,000 (US dollar one million). AD may frame their own internal guidelines to deal with such cases as per a suitable policy framed by the bank's Board of Directors.
- b) In the case of a Public Sector Company or a Department/ Undertaking of Central/State Governments the requirement of bank guarantee has been specifically waived by the Ministry of Finance, Government of India for advance remittances exceeding USD100,000 (USD one hundred thousand).

(Source: A.P.(DIR Series) Circular No.15 dated September 17, 2003)

3.0 EEFC/RFC(D) ACCOUNT - CLARIFICATION

Reserve Bank has been receiving requests from the account holders seeking clarification whether the balances in the EEFC and RFC (D) Accounts could be credited to their Non-Resident (External) Rupee Accounts (NRE) and/or Foreign Currency Non-Resident (Bank) Accounts (FCNR-B) consequent upon change of the residential status of the account holder from resident to non-resident. The matter has been examined and it is clarified that the balances in the EEFC and RFC (D) Accounts may be allowed to be credited to NRE/FCNR-B Account, at the option/request of the account holders consequent upon change of their residential status from resident to non-resident.

(Source: A.P. (DIR Series) Circular No.21 dated September 23, 2003)

4.0 REMITTANCE OF SALARY - RELAXATION

Now it will be in order for a national of a foreign state, resident in India being an employee of a foreign company or a citizen of India employed by a foreign company outside India and in either cases on deputation to the office/branch/subsidiary/joint venture in India of such foreign company, to open, hold and maintain a foreign currency account with a bank outside India and receive the salary payable to him for services rendered to the office/branch/subsidiary/joint venture in India of such foreign company, by credit to such account subject to the following conditions :

- the amount to be credited to such account shall not exceed 75 per cent of the salary accrued to or received by such person from the foreign company;
- the remaining salary shall be paid in Rupees in India; and
- subject to applicable taxes on the entire salary as accrued in India.

(Source: A.P. (DIR Series) Circular No.17 dated September 20, 2003)

5.0 BORROWING FROM CLOSE RELATIVES ABROAD

It has been decided that an individual resident may borrow a sum not exceeding USD 2,50,000 or its equivalent from close relatives residing outside India, subject to the conditions that :

- the minimum maturity period of the loan is one year;
- the loan is free of interest; and
- the amount of loan is received by way of inward remittances in free foreign exchange through normal banking channels or by debit to the NRE/FCNR(B) account of the non-resident lender.

'Close relative' means relative as defined in Section 6 of the Companies Act, 1956'.

(Source: A.P. (DIR Series) Circular No.24 dated September 27, 2003)

6.0 EXPORT OF BOOKS ON CONSIGNMENT BASIS

With a view to liberalising the procedure for export of books, it has been decided that henceforth the Authorised Dealers may approve proposals for export of books on consignment basis for realisation of export proceeds upto 360 days from the date of shipment. The exporters may also be allowed to abandon the books which remain unsold at the expiry of the period of the sale contract. Accordingly, the value of the unsold books may be shown by the exporters as deduction from the export proceeds in the Account Sales.

(Source: A.P.(DIR Series) Circular No.26 dated October 3, 2003)

7.0 PURCHASE/SALE OF IMMOVABLE PROPERTY BY FOREIGN EMBASSIES/DIPLOMATS/CONSULATE GENERAL

It has been decided to allow a Foreign Embassy/Diplomat/Consulate General to purchase/sell immovable property in India other than agricultural land/plantation property/farm house provided (i) clearance from Government of India, Ministry of External Affairs is obtained for such purchase/sale, and (ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channel.

(Source: A.P. (DIR Series) Circular No.19 dated September 23, 2003)

8.0 CURRENT FACILITIES AVAILABLE TO NRIs INCLUDING PIOs FOR INVESTMENTS IN INDIA

Following the derecognition of OCBs as an investor class, RBI clarified the following current status in regard to the facilities for investment in India by NRIs:

(i) Bank Accounts and Deposits

a) NRE Accounts (Principal/interest repatriable)

- Savings** - Interest is paid at par with domestic deposits. Currently it is 3.5 per cent.
- Term deposits** - Fixed or floating rates of interest within the ceiling rate announced by RBI from time to time. At present the rate is USD LIBOR/SWAP rates of corresponding term plus 100 basis points.
- Current** - No interest is paid.

b) FCNR(B) (Principal/interest repatriable)

- Term deposit** can be placed with ADs in India in 4 specific foreign currencies.
- Rate of Interest** - Fixed or floating within the ceiling rate of LIBOR/SWAP rates for the respective currency/ corresponding term minus 25 basis points.

c) NRO Accounts (Current earnings repatriable)

- Savings** - Normally operated for crediting rupee earnings / income such as dividends, interest. Currently the interest rate is 3.5 per cent.
- Term Deposit** - Banks are free to determine interest rates.
- Current** - No interest is paid.
- Repatriation from NRO balances** - Authorised Dealers can allow remittance/s upto USD 1 million, per calendar year from balances in NRO accounts subject to payment of applicable taxes. The limit of USD 1 million per year includes sale proceeds of immovable properties held by NRIs/PIOs for a period of 10 years. In case a property is sold after being held for less than 10 years, remittance can be made after the sale proceeds have been held in the account for the balance period.

(ii) Other Investments on repatriation basis:

- government dated securities/treasury bills.
- units of domestic mutual funds.
- bonds issued by a public sector undertaking (PSU) in India.
- shares in Public Sector Enterprises being dis-invested by the Govt. of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.
- shares and convertible debentures of Indian companies under FDI scheme (including automatic route & FIPB).
- shares and convertible debentures of Indian companies through stock exchange under Portfolio Investment Scheme.
- deposits with Indian companies, non-banking finance companies registered with RBI, housing finance companies and other financial institutions.

(iii) Other Investments on non-repatriation basis:

- units of Money Market Mutual Funds in India.
- the capital of a firm or proprietary concern in India, not engaged in any agricultural or plantation activity or real estate business.

(iv) Immovable Property

- NRIs can acquire immovable property in India other than agricultural/plantation property or a farmhouse.
- PIOs can acquire immovable property other than agricultural land/farm house/plantation property in India out of repatriable funds.
- NRIs and PIOs can repatriate sale proceeds of immovable property acquired in India to the extent of repatriable funds used for acquiring the property, without any lock-in period, upto two residential properties.
- NRIs and PIOs can repatriate refund of application/earnest money/purchase consideration made by house-building agencies/seller on account of non-allotment of flats/plots/cancellation of booking/deals for purchase of residential/commercial properties, together with interest, net of taxes, provided original payment is made out of NRE/FCNR(B) account/inward remittances.

(v) Facilities to returning NRIs/PIOs

- May continue to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India, if such currency, security or property was acquired, held or owned when resident outside India.
- May open, hold and maintain with an authorised dealer in India a Resident Foreign Currency (RFC) Account to transfer balances held in NRE/FCNR(B) accounts. Proceeds of assets held outside India at the time of return, can be credited to RFC account. The funds in RFC accounts are free from all restrictions regarding utilisation of foreign currency balances including any restriction on investment in any form outside India.

(Source: Press Release : 2003-2004/387 dated September 18, 2003)

9.0 PAYMENT OF CLAIMS BY ECGC

It has now been decided that Authorised Dealers shall, on an application received from the exporter supported by a documentary evidence from the ECGC confirming that the claim in respect of the outstanding bills has been settled by them, write off the relative export bills and delete them from the XOS statement. Such write-off will not be restricted to the limit of 10 per cent indicated in paragraph C.18(b) of the circular No.12 dated September 9, 2000.

It is clarified that the claims settled in rupees by ECGC should not be construed as export realisation in foreign exchange and claim amount should not be allowed to be credited to Exchange Earner's Foreign Currency Account maintained in terms of Regulation 4 of FEMA Notification No.FEMA 10/2000-RB dated May 3, 2000.

(Source: A.P.(DIR Series) Circular No.22 dated September 24, 2003)

ELECTION TO THE CENTRAL COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

POLLING DATES

• New Delhi / Delhi	Friday & Saturday 19th & 20th December, 2003
• Outside Delhi (Jammu & Kashmir, Himachal Pradesh, Punjab, Haryana & Chandigarh)	Saturday, 20th December, 2003
Time of Polling	8.30 a.m. to 6.30 p.m.

1.0 INCOME TAX ACT – IMPORTANT JUDGEMENT

1.1 Accrual of interest on sticky loans is not mandatory under mercantile system of accounting

In *Commissioner of Income Tax Vs. Balrampur Commercial Enterprises Limited* Hon'ble Calcutta High Court has found that where the debt itself becomes doubtful, the principle is clear and unambiguous, that there could be an inference of non-accrual of interest by reason of the conduct of the parties. It is a matter of objective inference from the facts of the case. [262 ITR 439].

2.0 NATIONAL TAX TRIBUNAL GETS CABINET NOD

The cabinet recently cleared the proposal to set up a National Tax Tribunal (NTT). The features of the NTT are as follows:

- Tribunal to ensure uniformity and certainty in administration of tax laws;
- Tribunal to be chaired by either a retired judge of Supreme Court or a retired Chief Justice of a high court;
- Tribunal will have powers to punish for its contempt;
- An appeal from order passed by Income Tax Appellate Tribunal (ITAT) and Central Excise, Customs and Service Taxes Appellate Tribunal (CESTAT) shall lie to the NTT only on the substantial question of law.

3.0 PATENTS CONTROLLER CAN CERTIFY TAX DEDUCTION ON ROYALTY INCOME

The Central Board of Direct Taxes (CBDT) has ruled that the Controller General of Patents, Designs and Trade Marks would be the specified authority for certifying the claims made by a resident individual seeking tax deduction on royalty income earned from use of patents registered in India.

A new Section 80RRB was inserted in the Income Tax Act, 1961 through the Finance Act, 2003 that provided tax breaks on royalty income earned from patents.

4.0 REIMBURSEMENT MADE TO NON-RESIDENT SHALL BE TAXABLE IN INDIA

The Income Tax Appellate Tribunal (ITAT), Mumbai has held that reimbursement by an Indian entity to a non-resident is taxable in India, unless it is proved beyond doubt that the reimbursement is not income in disguise. The ruling came in response to an appeal filed by the now defunct accounting firm Arthur Andersen.

5.0 POLITICAL PARTY FUNDING MADE EASIER

Funding of political parties by corporates has been made easier with Indian companies now permitted to avail of an attractive tax benefit for such contributions. The country's income tax law has been amended to permit companies to claim deduction, in computation of total income, on any contributions made to political parties.

A new Section 80GGB has now been inserted in the Income Tax act, 1961, which states that "in computing the total income of an assessee, being an Indian company, there shall be deducted any sum contributed by it, in the previous year to any political party."

TAXATION

6.0 NO I-T REFUND CLAIMS PENDING

According to Union Minister of state for finance, there are no income tax refund cases which are pending before the Income Tax department. This year department has paid back Rs. 16,122 crore.

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INTERNATIONAL RECOGNITION

number of Indian Companies) have to get themselves registered with SEC, US. The Indian Chartered Accountants are required to pay a sum of US\$ 250 thousand (Rs.1.15 crores) for such registration to the US authorities. A large number of Indian Chartered Accountants are also aspiring to qualify CPA in US and Chartered Accountancy qualification in other developed countries. The Visa restrictions for appearing in such examinations are still a big hurdle.

India has taken a stand on the WTO platform that to start with free trade in services should commence in Mode-1 (cross border supply), Mode-2 (consumer visit the service provide) and Mode-4 (movement of natural persons) whereby services could be provided by Indian Chartered Accountants in any of the developed countries. The Indian Government is of the view that once freedom to trade in services is established by movement of natural persons and restrictions relating to Visa Nationality requirements and citizenship requirement etc. and other unreasonable restrictions in the Accountancy Sector are withdrawn by the developed world. India would be willing to permit foreign Chartered Accountancy Firms to establish commercial establishments (Mode-3) in India, on a reciprocal basis.

It will be very important to negotiate on the WTO platform in terms of GATS that mutual recognition agreement are mandated so that India can utilize the real potential in export of accountancy services and India can get respectable market share in 200 billion dollars International Market in the accountancy sector. India has the capability and capacity to get a 10 per cent share in the international market in view of a very highly qualified, technically skilled and highly knowledgeable Indian Accountants, which are considered as best in the world. The top positions in a number of Fortune-500 Companies and large Accountancy Firms worldwide are being held by Indians, even today.

The future is bright and all of us in the profession of Chartered Accountants in India, need to prepare ourselves and initiate acquisition of knowledge in the field of international regulatory, taxation and corporate laws and strengthen our investment and infrastructure creation capacity with a view to prepare ourselves to provide the world best quality and value added services in the accounting sector.

JUDGEMENT

NO CRIMINAL LIABILITY FOR CORPORATES

The Supreme Court has ruled that a company will not be asked to pay a fine for an offence that calls for only imprisonment or imprisonment plus fine under the relevant law.

The judgment is based on the fact that a company is a "juristic person" and not a natural person and, therefore, cannot be imprisoned. Also, under extant laws, a fine cannot be imposed in lieu of imprisonment.

A three judge bench in a case where *Velliappa Textiles Limited* made false income-tax declarations and was prosecuted by the income-tax department. The court ruled that the company was a "juristic person" and could neither be imprisoned, nor be asked to pay a fine.

The highlights of the Supreme Court rulings are as follows:

- A company is a juristic person and cannot be prosecuted;
- Existing laws do not permit replacing imprisonment with fine;
- The law says so and the court can't usurp the legislative function;
- Directors and employees of a company not to be affected by the decision;
- The dissenting judge said courts would be unfair in holding that a company could not be prosecuted.



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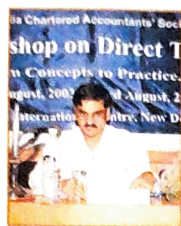
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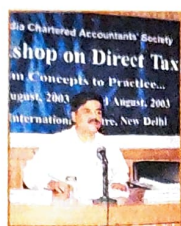
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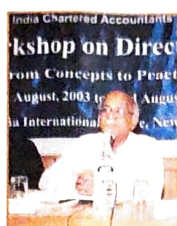
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