

# The Chartered Accountant World



ESTD. - 1989

A JOURNAL OF  
ALL INDIA CHARTERED ACCOUNTANTS' SOCIETY

VOLUME XV

No. 12

December, 2004

Editorial Advisory Board  
Mr. Vinod Jain, FCA, President

Members — Mr. Sunil Khemka FCA, Mr. Vinod Rustagi FCA, Mr. Anil Sharma FCA,  
Mr. Avneesh Matta FCA, Mr. Naveen Jain FCA and Mr. Shiv Mittal FCA

Annual Subscription for C.A.'s Rs. 200/- Single Copy Rs. 25.00  
Annual Subscription for Others Rs. 250/- Single Copy Rs. 25.00

EDITORIAL VINOD JAIN\*

## BUDGET 2005 – SOME ISSUES AND SUGGESTIONS



The Union Government has commenced the exercise of formulating comprehensive changes in the fiscal laws to enable it to collect

adequate revenue, fuel the economic growth and at the same time to meet the challenge of Fiscal Responsibility Act, whereby nil fiscal deficit is to be achieved by 2007. This is a difficult task as agriculture, irrigation, education, roads, ports, health and infrastructure growth demand huge resources. The current allocation being too low, Montek Singh Ahluwalia is openly advocating, rightly so, increase monetisation to garner additional resources.

The Union Finance Minister, P. Chidambaram promised a comprehensive review of taxation structure in the coming finance bill. The following suggestion are important:

### A. Direct Taxes

- Corporate Tax rate to be lowered to 30%, including all surcharge & cess;
- Personal Tax slabs to be rationalised;
- Partnership Firms to be taxed as corporates;
- Salaries of partners in professional firms to be fully allowed as a deduction in the hands of the firm to enable growth of larger number of domestic professional firms, internationally competitive;
- Assessing officer to be responsible for reckless additions or harassment by ITAT judicial scrutiny for all such complaints through a formal mechanism;
- Section 277A to be scrapped to bring more mutual confidence and avoid misuse of unrequired provision;
- Section 269TT/269SS limits to be enhanced to atleast Rs. 50,000/-;
- Ridiculously low limits in Annual Information Returns to be reviewed;

- Taxation of agriculture income should not be considered as an alternative in view of high burden of local taxes, poor infrastructural and other support to agriculture, poor value addition in agriculture produce and lack of allocation of necessary resources to agriculture in last 57 years;
- Self employed professionals to get a mandatory social security scheme with fiscal support of the Government;
- Income tax return filing could be

Contd. 8

## Contents

### LATEST IN FINANCE

1. Booking of Forward Contract based on Past Performance	2
5. Interest rates on NRE Deposits	2
6. NBFCs to file returns with RBI	2
8. Amendment to SARFAESI Act, 2002	3
10. Investment by FIs in Corporate Debt	3

### CORPORATE LAW

1. Exit policy for companies	3
2. Important Decisions	3

### AUDIT

1. Amendments in CARO, 2003	6
2. Amendments in Form 3CD	6

### EXCISE

1. Amendment in Cenvat Credit Rules, 2004	6
---	---

### TAXATION

1. Revised scrutiny norms for individuals	7
2. Income Tax Decisions	7
3. Filing of AIR with IT Department	7



All India Chartered Accountants' Society

Announces an intensive

### 2nd ANNUAL WORKSHOP ON DIRECT TAXES

from concepts to practice ....

#### DATES:

from 5th to 22nd January 2005  
(5th, 7th, 8th, 13th, 15th, 21st & 22nd)

#### VENUE:

India International Centre (IIC), Annexe Building,  
Lecture Hall, 40, Max Mueller Marg, New Delhi - 110003

#### TIMINGS:

1.30 p.m. to 8.00 p.m.

for details and registration form please see page no. 4 & 5



## 1 Booking of Forward Contracts Based on Past Performance

Importers/exporters are now permitted to book forward contracts on the basis of past performance (without production of any underlying documents) up to the average of the past three years' or the previous year's turnover, whichever is higher. Outstanding contracts under this facility at any point of time should not exceed 100 per cent of the eligible limit. The enhanced limits may be permitted by AD banks on being satisfied about the genuine requirements of their constituents after examination of the following documents:

- i) A certificate from the Chartered Accountant of the customer that all guidelines have been adhered to while utilizing this facility.
- ii) A certificate of import/export turnover of the customer during the past three years duly certified by their Chartered Accountant/bank.

In the case of an exporter, the amount of overdue bills should not be in excess of 10 per cent of the turnover to avail this facility. All other conditions prescribed for this facility remain unchanged. As hitherto, contracts booked in excess of 25 per cent of the eligible limit will have to be necessarily delivered.

(Source: 2004-05/265 dated 01.11.2004)

## 2 Debt Restructuring

A Reserve Bank of India group has recommended a restructuring system for medium enterprises on the lines of corporate debt restructuring facility for large units to cover more than one lender with outstanding exposure of Rs.5-20 crore.

## 3 Trade Credits for Imports into India

It has been decided to accord general permission to ADs to issue guarantees/LoUs/LoCs in favour of overseas supplier, bank and financial institution, up to USD 20 million per transaction for a period up to one year for import of all non-capital goods permissible under Foreign Trade Policy (except gold) and up to three years for import of capital goods, subject to prudential guidelines issued by Reserve Bank from time to time. The period of such guarantees/LoUs/LoCs has to be co-terminus with the period of credit, reckoned from the date of shipment.

(Source: RBI/2004-05/263 dated 01.11.2004)

## 4 FCNR(B) Accounts Interest Rates

With a view to bringing consistency in the procedure of fixing the interest rates on NRE and FCNR(B) deposits, it has been decided that with effect from November 1, 2004, the banks may fix the interest rates on FCNR(B) deposits also on the basis of LIBOR/SWAP rates as prevailing on the last working day of the preceding month. The ceiling on interest rates, however, will continue to be the LIBOR/SWAP rate minus 25 basis points, as hitherto except in the case of Yen deposits, where banks have the freedom to set the FCNR(B) deposit rates which may be equal to or less than the LIBOR.

(Source: RBI/2004-05/267 dated 01.11.2004)

## 5 Interest rates on NRE Deposits

It has been decided that until further notice, the interest rates on NRE deposits for one to three years maturity contracted with effect from November 1, 2004 should not exceed the LIBOR/SWAP rates, as on the last working day of the previous month, for US dollar of corresponding maturity plus 50 basis points. The interest rates as determined above for three year deposits would also be applicable in case the maturity period exceeds three years. The changes in interest rates will also apply to NRE deposits renewed after their present maturity period.

(Source: RBI/2004-05/266 dated 01.11.2004)

## 6 NBFCs to file returns with RBI

As per the Reserve Bank of India, non-banking financial companies (NBFCs), which are not accepting/ holding public deposits and having assets size of Rs500 crore and above as on March 31, 2004, are required to submit a quarterly return on important financial parameters. The central bank also warned that non-submission of returns would be viewed seriously and penal action would be taken for non-compliance.

Returns for the quarter ended September 2004 should be submitted to the RBI on or before November 30, 2004 and the subsequent returns should be submitted within 30 days of the month following the respective quarter end.

The financial parameters that the central bank is seeking from the returns, among others, include position of net-owned funds (as per the latest audited balance sheet); number of branches/ offices; whether the company is having subsidiaries/ associate companies/ joint ventures; name of the company's statutory auditors/ bankers; sources of funds; application of funds; items of income; items of expenses; asset classification; percentage of sticky assets; banks/financial institutions exposure on the company; company's exposure to group/ associate/ related parties, and details of capital market exposure.

## 7 Export of Goods and Services – EOUs

Following the announcement by the Government in the Foreign Trade Policy in September 2004, it has been decided that 100 per cent Export Oriented Units (EOUs) and units set up under the Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs) Schemes would be allowed to realise and repatriate the full value of export proceeds within a period of twelve months from the date of export.

The existing guidelines relating to 100 per cent credit of foreign exchange earnings to EEFC account by the above units would continue as hitherto.

(Source: RBI/2004-05/264 dated November 1, 2004)



## 8 Amendment to SARFAESI Act, 2002

The Hon'ble Supreme Court in its judgment in the matter of Mardia Chemicals Ltd. upheld the constitution validity of the SARFAESI Act, but struck down sub-section (2) of section 17, which provides for a deposit of 75% of the claimed amount before the appeal is admitted by DRT.

To bring the provision of the Act in conformity with the Hon'ble Supreme Court judgment, to dissuade the borrower from indulging in dilatory tactics and enable secured creditors to make speedy recovery by enforcement of securities, the SARFAESI Act, 2002 has been amended by promulgation of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004 - Ordinance No. 5 of 2004 dated 11-11-2004, effective from 11-11-2004. The Salient features of the same are as follows:

- The secured creditors will be able to take possession of the secured assets only after reasons for not accepting the objections of the borrower have been communicated to him in writing.
- In case possession of the secured assets has been taken, the borrower can file an application before the DRT without any deposit.
- If the DRT does not dispose off the petition within 4 months, the borrower or the secured creditors can move the Debt Recovery Appellate Tribunal (DRAT) for directing the DRT for expeditious disposal of the application.
- If the borrower is aggrieved by the DRT order, borrower can appeal to the DRAT with a deposit of 50% of the decreed amount or as determined by the DRT but not lower than 25% of the decreed amount.

## 9 Bank Finance to NBFCs against 2nd hand Assets

In the light of the experience gained by NBFCs in financing second hand assets, banks may, henceforth, extend finance to NBFCs against second hand assets financed by them. Banks may also extend financial assistance to the customers directly for purchase of second hand assets.

(Source: RBI/273/2004-05 dated 19.11.2004)

## 10 Limit for investment by FIIs in Corporate Debt

As per SEBI, the cap of US \$1.75 billion will be applicable to FII investment in dated Government securities and T-bills only, both under 100% debt route and general 70:30 route. It has been further clarified by Ministry of Finance, Government of India that a cumulative sub-ceiling of US \$500 million outstanding would be fixed on FII investments in corporate debt and this would be over and above the sub-ceiling of US \$1.75 billion for Government debt under the overall ECB ceiling.

(Source: IMD/FII/18/2004 dated 02.12.2004)

### CORPORATE LAW

## 1 Exit policy for companies to be made easier soon

Exit options of companies are going to be substantially easier. A draft exit policy, formulated by the ministry of company affairs, has proposed to do away with the mandatory requirement of filing audited accounts to the registrar of companies for exit. A mere 'statement of accounts' will do. Also, the companies will not have to file an affidavit before a first class magistrate for the exit. Instead, they can file the affidavit with a notary, to forgo their incorporated status. Companies that did not have any business operations ever, which are reckoned to be the largest in number, will have fast-track exit facility. The other two categories are of companies wanting to exit because they did not file the balance sheets as required. The new draft, however, proposes to retain the indemnity bond obligation on companies wanting exit to deal with any liability that may show up in future.

## 2 Important Decisions

### 2.1 Surety's Liability

In State Bank of India v. Nagesh Hariyappa Nayak [2004] 56 SCL 46 (KAR.) (CLP), it has been decided by the Hon'ble High Court of Karnataka that, when once borrower has repaid loan amount as per principal agreement, surety or guarantor gets discharged and there is no further liability on part of guarantor; if after period stipulated in principal agreement any further transactions between bank and borrower are entered into and amounts are lent by bank, drawn by customer, interest added on that, and borrower has failed to make payment of those amounts, the guarantor will be absolved of his liability.

### 2.2 Debt Recovery Tribunals not subordinate to High Court

In State Bank of India v. Madhumita Constructions (P) Ltd. [2004] 56 SCL 5 (CAL.) (CLP), it has been decided by the Hon'ble High Court of Calcutta that, Debt Recovery Tribunal (DRT) or Appellate Tribunal constituted under Recovery of Debts Due to Banks and Financial Institutions Act is not subordinate to High Court and, therefore, High Court cannot stay proceedings pending before DRT.

### 2.3 Power of judicial authority to refer parties to arbitration

In Premier Automobiles Ltd. v. Fiat India (P.) Ltd. [2004] 56 SCL 59 (CLB - NEW DELHI), it has been decided by the Hon'ble Company Law Board, Principal Bench, New Delhi that, if a company is not a party to arbitration agreement entered into between two groups of its shareholders, company cannot be added as party to arbitration proceedings even though company is willing to abide by terms of arbitration agreement.

### 2.4 Suspension of legal proceedings - BIFR

In Singhal Strips Ltd. v. Sales Tax Tribunal [2004] 55 SCL 571 (PUNJ. & HAR.), it has been decided by the Hon'ble High Court of Punjab and Haryana that, where in respect of a Company, an inquiry under section 16 is pending, sales tax authority could not recover amount of assessed sales tax from that company without prior permission of BIFR.





All India Chartered Accountants' Society

*Announces an intensive*

## 2nd ANNUAL WORKSHOP ON DIRECT TAXES

from concepts to practice ....

### DATES:

from 5<sup>th</sup> January, 2005 to 22<sup>nd</sup> January, 2005  
(5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup>, 21<sup>st</sup> & 22<sup>nd</sup> January 2005)

### VENUE:

India International Centre (IIC), Annexe Building,  
Lecture Hall, 40, Max Mueller Marg, New Delhi.

## THE COMPREHENSIVE REFRESHER COURSE ON DIRECT TAXES

A Comprehensive Refresher Course/ Workshop on Direct Taxes is being conducted spread over 7 days with the active participation of eminent speakers and professionals. The MAIN THRUST is to carry out an indepth study of the basic concepts, critical issues and their practical applications including tax planning of the laws, rules and regulations and recent case laws relating to Direct Taxes.

### PROGRAMME SCHEDULE

#### Day 1 - 05/01/2005 (Wednesday)

Registration & Lunch (1.30 p.m. to 2.00 p.m.)

Opening Session (2.00 p.m. to 2.15 p.m.)

##### SESSION I

- 2.15 p.m. to 4.45 p.m.
- Basic framework of Income Tax Law including
    - Basis of charge
    - Scope of total income
    - Residential Status

Tea with Snacks (4.45 p.m. to 5.15 p.m.)

##### SESSION II

- 5.15 p.m. to 8.00 p.m.
- Income of Charitable Trusts, NGOs, Societies, Section 25 Companies, Mutual benefit Societies, Not for profit Organisations and Institutions covering:
    - Selection of entity and its formation
    - Procedure of registration & exemption
    - Accounts, Audit & Taxation
    - FCRA

#### Day 2 - 07/01/2005 (Friday)

Lunch (1.30 p.m. to 2.15 p.m.)

##### SESSION III

- 2.15 p.m. to 4.45 p.m.
- Salaries of residents, their allowances & perquisites
  - Salary of Expatriates & Postings outside India
  - Tax Planning for Salaried Persons
  - Filing of Returns for Salaried Persons

Tea with Snacks (4.45 p.m. to 5.15 p.m.)

##### SESSION IV

- 5.15 p.m. to 6.45 p.m.
- Income from House Property
  - Income from other sources including taxability of gifts

##### SESSION V

- 6.45 p.m. to 8.00 p.m.
- Clubbing of incomes
  - Aggregate of income
  - Certain Deemed incomes

#### Day 3 - 08/01/2005 (Saturday)

Lunch (1.30 p.m. to 2.15 p.m.)

##### SESSION VI

- 2.15 p.m. to 5.00 p.m.
- Profits and gains of business or profession (Indian Business)
  - Presumptive Incomes
  - Section 28, 30, 32, 35D, 40(a)(ia) & 43B
  - Section 37 & precaution to be taken for disallowances by Assessing Officer

Tea with Snacks (5.00 p.m. to 5.30 p.m.)

##### SESSION VII

- 5.30 p.m. to 6.45 p.m.
- Deductions to be made under Chapter VI-A (including 80IA, 80HHC etc.)
  - Rebates under Chapter VIIIA

##### SESSION VIII

- 6.45 p.m. to 8.00 p.m.
- Deductions under Sections 10A, 10B

#### Day 4 - 13/01/2005 (Thursday)

Lunch (1.30 p.m. to 2.15 p.m.)

##### SESSION IX

- 2.15 p.m. to 5.00 p.m.
- Foreign Profits and gains of business or profession
  - Capital Vs. Revenue

Tea with Snacks (5.00 p.m. to 5.30 p.m.)

##### SESSION X

- 5.30 p.m. to 7.15 p.m.
- Income of Non-Residents
  - Double Taxation Avoidance Agreement & Implications of variations in treaties

##### SESSION XI

- 7.15 p.m. to 8.00 p.m.
- Taxation of BPOs

Contd....

## PROGRAMME SCHEDULE (Contd...)

### Day 5 - 15/01/2005 (Saturday)

#### SESSION XII

2.15 p.m. to 5.00 p.m.

- Concept of Transfer under General & Tax Laws
- Capital Gains
- STT
- Bonus / Dividend Stripping
- Tax Planning on Capital Gains

Tea with Snacks (5.00 p.m. to 5.30 p.m.)

#### SESSION XIII

5.30 p.m. to 7.00 p.m.

- Corporate Taxation including:
- Minimum Alternative Tax
- Section 35D
- Deemed Dividend

#### SESSION XIV

7.00 p.m. to 8.00 p.m.

- Taxation of Builders & Developers (Special Tax Planning issues - collaborations, joint ventures, housing schemes, etc.)
- Taxation of Shares, securities, MF units & Derivatives

### Day 6 - 21/01/2005 (Friday)

#### SESSION XV

2.15 p.m. to 3.45 p.m.

- Tax Deducted at Source (TDS)
- Tax collection at Service (TCS)

#### SESSION XVI

3.45 p.m. to 4.45 p.m.

- Filing of Returns
- Assessments and Reassessments
- Practical aspects of presentation before A.O.

Tea with Snacks (4.45 p.m. to 5.15 p.m.)

#### SESSION XVII

5.15 p.m. to 6.30 p.m.

- Appeal to the Commissioner of Appeals
- Appeal to the Income Tax Appellate Tribunal
- Revision by the Commissioner of Income Tax
- Judicial Precedents

#### SESSION XVIII

6.30 p.m. to 7.15 p.m.

- Penalty
- Penalty u/s 277A
- Offences and Prosecutions

#### SESSION XIX

7.15 p.m. to 8.00 p.m.

- CBDT - Powers and Authority - waiver of interest etc. (Sections 119 and 230)
- Powers of waiver of penalty of Commissioner of Income tax {Section 273A (4)}

### Day 7 - 22/01/2005 (Saturday)

Lunch (1.30 p.m. to 2.15 p.m.)

#### SESSION XX

2.15 p.m. to 4.15 p.m.

- Fundamental issues relating to Transfer Pricing
- Practical issues related to Transfer Pricing
- Case Laws on Transfer Pricing - Indian & International
- Approach of the Department - TP Audit/Assessment
- Approach of the Assessee

#### SESSION XXI

4.15 p.m. to 5.15 p.m.

- Tax Planning & Tax Management (Business Income)

Tea with Snacks (5.15 p.m. to 5.45 p.m.)

#### SESSION XXII

5.45 p.m. to 7.15 p.m.

- Taxation of Taxable Entities and Allied laws relevant for taxation
- Taxation Entities viz. Individual; H.U.F. including creation, etc. Company; Firm; A.O.P./ B.O.I.; Co-operative Society; Local Authority; Artificial Judicial Person; Political party

#### SESSION XXIII

7.15 p.m. to 8.00 p.m.

- Wealth Tax
- Basic Provision
- Exemptions

Valedictory Function (8.00 p.m. to 8.30 p.m.)

\* Chairman - Central Board of Direct Taxes (CBDT)



All India Chartered Accountants' Society  
Announces an intensive

## 2nd ANNUAL WORKSHOP ON DIRECT TAXES

from concepts to practice...

### DATES:

from 5<sup>th</sup> to 22<sup>nd</sup> January, 2005  
(5, 7, 8, 13, 15, 21 & 22 January 2005)

### VENUE:

India International Centre (IIC), Annexe Building,  
Lecture Hall, 40, Max Mueller Marg, New Delhi

## SPEAKERS

Experts invited to address the participants at the workshop are:

- |                                |                              |
|--------------------------------|------------------------------|
| • Sh. Anil Gupta, FCA          | • Sh. N.K. Poddar, FCA       |
| • Sh. Anil Chopra, FCA         | • Sh. Pramod Jain, FCA       |
| • Sh. Ajay Vohra, FCA          | • Sh. Pradeep Dinodia, FCA   |
| • Sh. Ashutosh Chaturvedi, FCA | • Sh. R. Devarajan, FCA      |
| • Sh. Anil Sharma, FCA         | • Sh. Rahul Garg, FCA        |
| • Sh. Ashish Bhandari, FCA     | • Sh. Rakesh Gupta, FCA      |
| • Sh. Ajay Kumar, FCA          | • Sh. Ravi Gupta, FCA        |
| • Sh. Akhilesh Ranjan          | • Sh. R. Santanam, FCA       |
| • Sh. Girish Ahuja, FCA        | • Dr. R.C. Vaish, FCA        |
| • Sh. G.S. Pannu, FCA          | • Sh. Shiv Mittal, FCA       |
| • Sh. Gautam Doshi, FCA        | • Sh. Sanjay Aggarwal, FCA   |
| • Sh. Ishwar, FCA              | • Sh. S.K. Khurana, FCA      |
| • Sh. Jayant Gokhale, FCA      | • Sh. Sanjeev Choudhary, FCA |
| • Sh. Krishan Malhotra, FCA    | • Sh. T.N. Manoharan, FCA    |
| • Sh. K. Sampath, FCA          | • Sh. Ved Jain, FCA          |
| • Sh. M.S. Syali, FCA          | • Sh. Vinod Gupta, FCA       |
|                                | • Sh. Vinod Jain, FCA        |

\*Note: Certain speakers are under confirmation.

## REGISTRATION FORM

### REGISTRATION OPTIONS

- **By Fax** - Fax completed Registration Form to : 91-11-2622 3014
- **By email** - email completed Registration Form to: [aicas@vsnl.net](mailto:aicas@vsnl.net)
- **By Mail** - Mail completed Registration Form to The Secretary:  
All India Chartered Accountants' Society  
503-504, Chiranjiv Tower, 43, Nehru Place, New Delhi-19

### PERSONAL DETAILS

- Name : Mr./Ms. ....
- CA Membership No. : ..... Designation : .....
- Company Name : .....
- Address : ..... Pin : .....
- Phone : (O)..... (R) .....
- Fax : ..... Mobile : .....
- E-mail : .....

### REGISTRATION AMOUNT REMITTANCE

payable to "All India Chartered Accountants' Society"

Via DD/Cheque (Delhi only) No. : ..... Date : .....

Bank : .....

Amount : ..... Signature : .....

## PARTICIPATION FEES

- **MEMBERS OF ICAI** (alternate nominee permitted) **Rs. 3750/- per person**
- **OTHERS** **Rs. 4250/- per person**

### Course Directors

Sh. Pramod Jain, FCA Sh. Yatinder N. Khemka, FCA Sh. Manoj Pahwa, FCA

For further details please contact: Ritu Julka (9350899605)

### NOTE:

- Participation fees covers high tea, lunch and background material to the participants.
- Alternative nominee for specific session(s) or day(s) could be permitted.
- A Voluntary Appraisal Questionnaire to judge the understanding of the workshop is proposed.
- A Certificate of satisfactory completion of workshop will be issued.
- Participants are expected to share their own practical experiences and raised queries during interactive session.
- All participants should bring their copy of Income Tax Act and Income Tax Rules for ready reference.

**RESTRICTED TO ONLY 100 PARTICIPANTS ON FIRST COME FIRST SERVE BASIS**



## 1 Amendments in CARO, 2003

The highlights of the amendments made in Companies (Auditor's Report) Order, 2003 are as follows:

### (a) Applicability of Order to Pvt. Ltd. Companies

Earlier the Pvt. Ltd. Companies inter-alia having outstanding loan of Rs. 10 lakhs or above from bank or financial institution and which have accepted public deposit were covered by CARO. Now this limit of Rs. 10 lakhs has been extended to Rs. 25 lakhs and condition of acceptance of public deposit has been removed.

### (b) Certain Definitions omitted

Definitions of various companies viz. finance, investment, service, manufacturing, mining, processing and trading company have been omitted from the Order.

### (c) Loans to/from Companies etc. listed in the Register maintained u/s 301

In the erstwhile CARO, 2003, there were four clauses enjoining upon the Auditor to report on loans to/from 301 Companies etc. Under Clause 4(iii)(a), Auditor was to report on whether the Company has granted or taken loans, secured or unsecured to/from companies, firms or other parties covered in the register maintained under section 301 of Companies Act. Now Auditor is required to report under two separate clauses, one for loans granted and other for loans taken. The other information whether the rate of interest and other terms and conditions are prima facie prejudicial to the interest of the Company as required by Clause 4(iii)(b) are also to be reported upon separately for loans granted and taken.

**Clause 4(iii)(c) of erstwhile CARO, 2003** require Auditor to report whether payment of principal amount and interest are

also regular. Now this reporting is to be given both for receipt and payment of principal and interest.

**Clause 4(iii)(d) of erstwhile CARO, 2003** require Auditor to report whether, if the overdue amount is more than one lakh, whether reasonable steps have been taken by the company for recovery/payment of the principal and interest. Now Auditor has to report only on steps taken for recovery of principal and interest, if overdue amount is more than rupees one lakh.

### (d) Internal Control System

Now the Auditor is required to report on the adequacy of internal control system relating sale of goods and services. Earlier it was restricted to sale of goods.

### (e) Acceptance of Public Deposits

Now the Auditor is also required to report whether any other relevant provision of Companies Act have been complied with in case public deposits are accepted by a company. Earlier this requirement was limited to section 58A and 58AA.

For the "words Company Law Board", the words "Company Law Board or National Company Law Tribunal or Reserve Bank of India or any Court or any other Tribunal" have been substituted.

### (f) Deposit of Statutory Dues etc.

Now the Auditor is also required to report on deposit or otherwise of service tax.

### (g) Investment of Funds raised on Long term basis

Now the Auditor is not required to report on the use of funds raised on long term basis for short term investments. Earlier the Auditor was required to report on use of funds raised on short term basis for long term investments and vice versa.

### (h) Applicability

The above amendments are applicable from 25th November, 2004.

## 2 Amendments in Form 3CD

Central Board of Direct Taxes (CBDT) has recently amended the form of Tax Audit Report i.e Form 3CD. As per the amendments, businesses have been divided in to nine categories where information are required to be given considering 16 parameters for both the current year and the preceeding year. New Tax Audit Form shall be effective from December 01, 2004.

## 3 Accounting Standard on Inventory - FASB

The Financial Accounting Standards Board (FASB) has issued FASB Statement No. 151, Inventory Costs, an amendment of ARB No. 43, Chapter 4. The amendments made by Statement 151 will improve financial reporting by clarifying that abnormal amounts of idle facility expense, freight, handling costs, and wasted materials (spoilage) should be recognized as current-period charges and by requiring the allocation of fixed production overheads to inventory based on the normal capacity of the production facilities.

### EXCISE

## 1 Amendment in Cenvat Credit Rules, 2004

The Central Government has amended Cenvat Credit Rules, 2004 by inserting Rule 9A in the existing Rules. Rule 9A requires a manufacturer of final products to furnish to the Superintendent of Central Excise, annually by 30th April of each Financial Year, a declaration in Form ER-5, in respect of each of the excisable goods manufactured or to be manufactured by him, the principal inputs and the quantity of such principal inputs required for use in the manufacture of unit quantity of such final products. The information for the year 2004-05 is required to be furnished latest by 31.12.2004.

A manufacturer of final products shall submit, within ten days from the close of each month, to the Suptt., a monthly return in Form ER-6, in respect of information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by him.

(Source: 38/2004-Central Excise dated 25.11.2004)

### ACKNOWLEDGEMENT

Society hereby acknowledge the contributions made by the following persons on regular basis in The Chartered Accountant World:

1. Mr. D.C. Garg, FCA (dcgarg@inmacsindia.com) for contribution in the field of Taxation.
2. Mr. Rajesh Gosain, ACA (rajeshgosain@inmacsindia.com) for contribution in the field of Service Tax, Audit and Central Excise.
3. Mr. Manish Goyal, ACA (manishgoyal@inmacsindia.com) for contribution in the field of Latest in Finance.





## 1 I-T scrutiny norms for individuals

If you have an exempt income of over Rs. 2lakh, but are otherwise a honest tax-paying citizen, there is nothing to worry about. On the sole ground of your having exempt income over this limit, your income-tax return will not be taken up for scrutiny. The earlier internal instructions issued by the CBDT in late September, this year, called for compulsory scrutiny of all returns where the exempt income was above Rs. 2 lakh for non-corporate assesseees has now accordingly revised.

## 2 Income Tax Decisions

### 2.1 Software sold off the shelf is liable to sales tax

The Supreme Court recently held that software programmes such as Oracle, Lotus and Unigraphics sold off the shelf are goods are goor for the purpose of levy of sales tax by States. A five-judge Constitution Bench headed by Mr Justice N. Santosh Hegde gave this ruling on a special leave petition filed by Tata Consultancy Services (TCS) challenging the Andhra Pradesh High Court judgement upholding the levy of sales on software programmes developed by TCS and sold off the shelf. As per the judges a software programme might consist of various commands to enable a computer to perform a designated function. As per the Bench, the copyright in that programme may remain with the originator of the programme but the moment copies are made and marketed, it becomes goods, which are susceptible to sales tax.

### 2.2 Penalty for Artificial Disallowance

Hon'ble Madhya Pradesh High Court in the matter of CIT vs. S.P.K. Steel Pvt. Ltd. held that no penalty can be levied when loss of a company dealing in shares is treated as speculative loss under the explanation to Sec. 73 and is, therefore, disallowed in computation of taxable income.

There was a case when a company was not aware of this artificial disallowance and reported the income taking into consideration of this loss the Assessing Officer not only disallowed this loss but also levied penalty. [270 ITR 156].

### 2.3 Two Deductions need not mean Double Deduction

Where the same industrial undertaking is eligible for two deductions under Chapter VI-A as for example, under sections 80-IA and 80-I, there is no reason why the assessee should not get the benefit of both, as long as it does not get double deduction, that is deduction of the same income under both heads as held in CIT v. Mittal Appliances (P) Lt. [2004] 270 ITR 65 (MP), where it was pointed out that such a view taken in J.P. Tobacco Products P. Ltd. v. CIT [1998] 229 ITR 123 (MP) has reached finality on denial of special leave by the Supreme Court.

### 2.4 Warranty Liability is a Deductible Expenditure

Hon'ble Karnataka High Court in the matter of CIT v. Indian Transformers Ltd. held that provision for warranty liability is deductible for income tax purposes, when it is a charge on the profits on accounting principles and accounting standards.

Hon'ble High Court found that the provision for after sales service of transformer in the facts of the case was a reasonable one in view of the actual expenses, which materialized in later year, so that it was held allowable following the decision in Bharat Earth Movers Ltd. v. CIT [ 245 ITR 428 (SC)] [ 270 ITR 259 ].

### 2.5 Peak Credit / Telescoping

It is not unusual that the unaccounted income takes different shapes. Where credits are withdrawn only to be re-introduced, the question that arises is whether each such credit should be added or only the net amount after giving credit for previous withdrawals, so that what is known as peak credit alone should be added This was the issue which was raised by the Revenue, where the Tribunal limited the addition to the peak credit. The judgement of the tribunal was upheld by Rajasthan High Court in CIT v. Ishwardass Mutha [2004] 270 ITR 597 (Raj).

## 3 Filing of Annual Information Return with Income Tax Department

As per new Income Tax Rules, following seven categories of persons are required to file Annul Information Return (AIR) with the Income Tax Department on or before 31st August, immediately following the financial year in which the transaction is registered or Recorded :

- a) **For Banks :-** Cash deposit of Rs. 10,00,000/- or more in aggregate in a financial year in any SAVING BANK ACCOUNT.
- b) **For Banks and other institutions issuing Credit Cards :-** payment of Rs. 2,00,000/- or more in a financial year by any person against bills raised for credit cards dues.
- c) **For Trustee of Mutual Funds :** Deposit of Rs. 2,00,000/- or more by any person for acquiring units of that fund.
- d) **For Companies/Institutions issuing shares through public or right issue:** Deposit of Rs. 1,00,000/- as application money.
- e) **For Companies/Institutions issuing bonds or debentures :** Deposit of Rs. 5,00,000/- as application money.
- f) **For Registrar or Sub- Registrar :** Purchase or Sale by any person of Immovable property valued Rs. 30,00,000/- or more.
- g) **For Reserve Bank of India :** Investment of Rs. 5,00,000/- or more by any person in bonds of RBI.

**INMAGS**

..... your growth partner

advl.



Contd. from page no. 1

## BUDGET 2005 .....

incentivised by providing graded sales tax/excise (GST credit)/service tax;

- Voluntary Discloser Scheme to be introduced to channelise black money towards productive usage and raise additional resources for the Government;
- Profit/Loss on sale of depreciable assets to be considered as business income or loss;
- Women and senior citizens have an additional rebate of income tax. Children are country's future, a reasonable tax rebate upto two children may be introduced in the hands of parents.

## B. VAT

VAT in lieu of sales tax is a very good concept, subject to:

- Similar legislation on national basis in all states;
- Complete inter state vatability by refunding VAT paid to the exporter by exporting state and charging VAT by importing state from the goods importer;
- VAT tax rate to be kept low i.e. 2%-4%-8% in three slabs. Individual states could be given liberty to charge differential rates within their states;
- Central sales tax to be completely and immediately withdrawn;
- VAT credit to be allowed for service tax paid also;
- Small traders upto Rs. 10 lacs turnover to be completely exempted with an option for a lower VAT rate.

## C. Service Tax

- The Tax rate of 10.2% is too high and need revision. It is creating backdrop for a parallel black money economy;
- A minimum threshold of receipts upto Rs. 10 lacs to be exempted;
- Transaction wise exemption for all transactions introduced for transporter to be extended to all services. – This is a welcome step.
- Finance Minister jokingly, avoided service tax on Accountants by saying that "they do not provide any service". Actually like lawyers provide justice, doctors saves life, the Chartered Accountants are wealth generators, bring financial discipline and manage economy. All three are equally entitled for complete exemption.



CFO WORLD MEETING

ON NOVEMBER 27, 2004

## BUSINESS EXCELLENCE

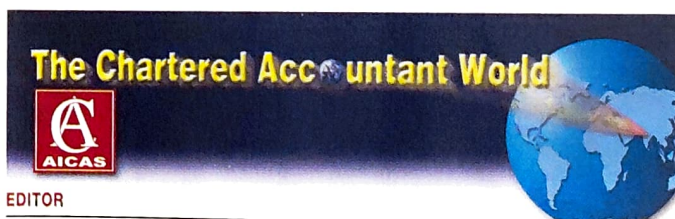


(Sitting L-R) Mr. Naveen Jain, Chairman, CFO World & Vice President, Operations, Finance & Control, The Oberoi Group; Mr. Vinod Jain, President, AICAS & Chairman, INMACS Management Services Limited; Major General B.K. Bhatia, (Guest Speaker); Consultant TATA Group and Mr. Sunil Wadhwa (Guest Speaker), CFO, North Delhi Power Limited (Standing)

**INMACS**

..... International Corporate & Tax Structuring

adv.



EDITOR

Pankaj Gupta, LL.B, FCS E-mail: pankajgupta@inmacsindia.com

**PUBLISHED & PRINTED**

At New Delhi by Satish Chandra, Administrative Officer, on behalf of All India Chartered Accountants' Society, 4696, Brij Bhawan, 21A, Ansari Road, Darya Ganj, New Delhi - 110 002 Phone : 23265320, 23288101 E-mail: aicas@vsnl.net Printed at : EIH Limited, Unit: Printing Press, No. 7, Sham Nath Marg, Delhi-110054. For address change/queries: Dharampal - 2622 6933 / 2622 8410.

*If undelivered, please return to :*

**All India Chartered Accountants' Society**  
4696, Brij Bhawan 21A, Ansari Road,  
Darya Ganj, New Delhi - 110 002

"The Chartered Accountant World" is normally published in the second week of every month ■ Non-receipt of any issue should be notified within that month ■ Articles on subjects of interest to Chartered Accountants are welcome ■ Views expressed by contributors are their own and the Society does not accept any responsibility ■ While all reasonable care has been taken to ensure that the information provided in the "Journal" is fair and accurate, the society and its editorial advisory board shall not in any way be responsible for the consequences of any action taken on the basis of reliance upon the contents of this "Journal" ■ All rights reserved ■ No part of the journal may be reproduced or copied in any form by any means without the written permission of the Society.