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EDITORIAL VINOD JAIN*

THE CHARTERED ACCOUNTANT FIRMS TOWARDS A NEW HORIZON



The Chartered Accountant Firms in India have been predominantly small with about 97% of the firms with three or less CAs out of which about 60% being proprietorship firms. A meager about 118 firms have more than 10 partners. As islands of excellence they have been providing highly valuable professional services in the field of taxation, accounting, auditing, corporate laws and management consultancy. The locational reach of most of the firms has been fairly limited to their city of operations, with limited infrastructure, manpower and resources.

In the backdrop of 6 to 8% economic growth, Indian businesses becoming larger, some of them becoming the largest in the world, entry of multinational companies in India, doors for international inbound and outbound investments flowing, a new vista of opportunities has started knocking the doors of the profession of Chartered Accountants. Specially during last 2 to 3 years tremendous opportunities have emerged not only in the private sector but also from the Government and local bodies which have been mandated up gradation of their accounting system to modern double entry accounting and also to implement necessary financial discipline. The Indian businesses are taking leap in international arena by setting up factories, businesses and acquiring large and medium size

multinational companies.

The Indian businesses are looking towards the profession of chartered accountants for providing them valuable professional services not only in various new areas but also on national and international scale even in traditional areas of accounting, auditing and taxation. The requirements in the field of management consultancy, national and international regulatory compliance, business valuation, mergers and acquisitions, resource mobilization, international listing and an unending list of professional areas is hotting up.

A great shortage of reliable, competitive, efficient and experienced Chartered Accountant Firms with wide locational reach is already being felt by the businesses. **The big Indian businesses wish to take the professional services and support from Indian Chartered Accountant Firms as it is becoming difficult for them to rely on foreign consultants and foreign accounting firms, even when they are operating internationally.** Even the multinational companies are looking towards the Indian profession for providing valuable professional services in a competitive, efficient and effective manner. The Indian firms are keenly developing professional capacities to meet the rising expectation of national as well as international clientele.

The Indian government propose to welcome foreign direct investment in the accounting sector up to 26%, as is being proposed before the WTO. The Government of India has also signed a

Special Treaty with Singapore to enable Indian Chartered Accountants to freely provide services in Singapore on mutual basis. The international doors are opening up slowly. It is expected that within 3 to 5 years international challenge as well as international opportunities will be fully

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CA FIRMS.....

knocking the doors of the profession of Chartered Accountants.

The Indian profession of Chartered Accountants is prepared for international competition and rather welcoming the same provided our qualification is recognized internationally as well as visa, citizenship requirements and other non-professional restrictions do not restrict our international avenues, more particularly in Europe and US besides in South East Asia.

MULTINATIONAL FIRMS

The advent of multinational accounting firms in India including Price Waterhouse Cooper, KPMG, Ernst & Young, Delloite in India have brought in new professional cult. These firms are able to provide professional services with a very wide locational reach and have the benefit of technology, database, brand name, and effective professional delivery. The Indian profession has welcomed their entry into India, in spite of the fact that still the demands of Indian profession about international recognition and free access to international opportunities with full reciprocity in spirit is still pending. The government has not handled these areas as effectively and strategically as it should have. The demands of the Institute in this regard is being ignored by the government and Reserve Bank of India including at the political level without adequately appreciating the great opportunities which Indian Accountants can bring to India,

much larger than the opportunities in the field of Information Technology sector.

NETWORKING

ICAI has recently notified rules for networking, mergers and de-mergers of Chartered Accountant Firms. The institute has freely permitted the networking by Indian Chartered Accountant Firms nationally as well as internationally. Once the networking is registered with the Institute, combined infrastructure, experience, manpower, professional resources and capabilities can be projected to the prospective clients for effective professional delivery. The network firms are permitted to continue as separate firms for Empanelment as well as professional assignments.

MERGER / DEMERGER

ICAI has also permitted the CA firms to merge with each other which will not only increase their strength but the entire past experience of the CA firms as well as all the partners concerned will be combined in the merged firm, empowering them professionally. To enable restructuring, even de-merger by Chartered Accountant Firms are being freely permitted enabling de-merging partners / de-merging firms to carry with them their entire professional experience formally so that they don't have to start with a new slate, without any professional experience to their credit.

CORPORATE FIRMS

ICAI has also in principle permitted practicing Chartered Accountants to promote management consultancy corporate with limited liability. The practicing professionals can hold up to 100% equity and can also be whole time directors, while continuing as full time practicing Chartered Accountants. Such whole time Directors will also be permitted to train Articles and for all purposes will be treated as full time in practice. ICAI is further considering certain more initiatives to enable CA firms to undertake brand building and capacity building.

OPPORTUNITIES GROWING

The aforesaid initiatives have brought great opportunities for the Indian Accounting Firms as they can not only widen their locational reach but can also build capacities to deliver professional services in a wide spectrum of areas and can truly harness opportunities at the top end of the profession. A great vacuum at the top is getting filled up by more and more Chartered Accountant Firms expanding their horizon nationally as well as internationally. The Chartered Accountants are freely permitted to invest internationally and to create or acquire accounting and management consultancy companies in various parts of the world. The tremendous opportunities in the field of Business Process Outsourcing (BPO) are attracting Chartered Accountants to provide accounting, taxation and regulatory services in North America, Europe, Australia and South-East Asia besides similar great opportunities within India.

HOW TO DO IT?

There are several issues and questions in the minds of the profession as to:

- How to harness these opportunities?
- How to create a large firm without bottleneck and conflict of interests?
- How to join hands with each other?
- How to grow and prosper ? and
- How to compete with multinational accounting firms in India and overseas?

All these questions do not have any easy answer but **where there is a will there is a way**. The All India Chartered Accountants' Society is committed to provide guidance, support and facilitate the growth of Indian Profession of Chartered Accountants and has constituted a Task Force headed by Mr. Vinod Jain (Email: vinodjain@inmaccsindia.com) to facilitate the process of capacity building by Chartered Accountant Firms so that they can truly harness the opportunities knocking their doors in a plan-structured manner.

1.0 RBI ALLOWS LISTED FIRMS, UCBs TO UNDERTAKE REPOS

The RBI has allowed listed companies (having a gilt account with a commercial bank) and urban co-operative banks to undertake repos with other market participants. Repo or repurchase agreement is a bilateral contract between two counter-parties in which one borrows funds from the other by placing government securities as collateral.

The counter-party to the listed companies for repo transactions should be either a bank or a primary dealer maintaining an SGL (securities) account with the RBI. Co-operative banks are allowed to enter into repos with primary dealers, but not with NBFCs.

2.0 MINISTRY RULES OUT SIMULTANEOUS BAD DEBT PROCEEDINGS

Lenders will have to continue to package their bad debt recovery effort within the legal limitation period. This follows the Finance Ministry ruling out the possibility of allowing them to initiate simultaneous proceedings before the DRT while taking action under the Securitisation Act.

The Ministry has argued that as DRTs are also the forums for adjudication between borrowers and secured lenders for action taken under the Securitisation Act, it would not be possible to accede to the plea of the lenders to allow simultaneous proceedings. The Securitisation Act provides that borrowers aggrieved by the lenders' action under the Act can approach the DRTs for relief.

Lenders had earlier pointed out to the Ministry that the legal requirement of withdrawing DRT cases before initiating action against a borrower under the Securitisation Act threatens a large

number of recovery cases that may get time-barred for any further action before the Tribunals. There was a danger that once the cases are withdrawn from the DRTs, the lenders may not be able to approach the same forum for recovery of balance dues since the loan document might get time-barred by the time action under the Securitisation Act is completed.

3.0 4% TAX SOP TO SEZ GOODS SOLD TO DTA

The Finance Ministry has notified that goods produced or manufactured in a Special Economic Zone (SEZ) and brought to any other place in India are exempted from the 4 per cent additional duty of customs.

4.0 SSI CAP TO BE RAISED TO RS. 5 CRORES

The government recently introduced the Small and Medium Enterprises Development Bill, 2005, in the Lok Sabha, seeking to enhance the investment cap for small-scale units from Rs. 1 crore to Rs. 5 crore. The Bill also proposes to make medium enterprises a separate category, with an investment of upto Rs. 10 crore in plants & machinery.

In the services sector, units with less than Rs. 2 crore investment in equipment are proposed to be classified as small enterprises, while units with investments of Rs. 2-5 crore will come under the medium enterprises category.

5.0 BANK ACCOUNT INHERITANCE PROCESS SIMPLIFIED

Inheritors will find it easier to extract funds from deceased depositors' bank accounts with the Reserve Bank of India asking banks to simplify the process. The apex bank has also allowed banks to open estate accounts to receive pipeline income flows to deceased by way of dividend and interest warrants. In the case of term deposits of the deceased depositors, the RBI has asked banks to allow premature termination without any penal charge in the event of the death of the term deposit holder. The RBI has directed banks to incorporate such a clause in the term deposit account opening form itself.

Banks have also been asked to seek bare minimum documentation for release of the

funds in a deceased customer account which operate under 'either or survivor' clause or in accounts which have a nomination. Banks have been asked not to insist on production of succession certificate, letter of administration, probate or obtaining any bond of indemnity or surety from the "survivor(s)" or nominees. In these accounts, banks have been asked to release funds within a fortnight.

For accounts which do not have 'either or survivor' clause nor a nomination, banks have been asked to release small amounts based on an indemnity letter without insisting upon production of any other documents.

6.0 FOREIGNERS MAY MISUSE P-NOTES TO UP BANK STAKES

Amid a spate of block deals in bank shares, there is an underlying concern that the opaque world of participatory notes (PNs) can be misused to circumvent the stringent ownership rules in banks. Under the present norms, the RBI has to "acknowledge" any transaction where 5% or more shares of a local private bank change hands. This is a rule which is peculiar to bank scrips.

However, an overseas investor bullish on a private bank in India can take the PN route to overcome this. PNs are derivative instruments, underlying securities of which are Indian stocks. These are issued by FIIs or foreign brokers to overseas investors who want to take an exposure to Indian stocks, but are unable to do so as they are not registered with SEBI. Any such investor can use a foreign broker with operations in India to buy a bank stock. Such a purchase will be a little below the regulatory limit of 5%. As against this the foreign office of the FII/broker will issue PNs to the investor. A few months later the same investor can use another broker to pick a similar block of the same bank scrip.

7.0 LAW & CA FIRMS MAY GET APPROVAL FOR 26% FDI

The Government is likely to allow up to 26% foreign investment in legal, audit, and accounting services.

There will be some restriction, however, on statutory auditing by foreign players.

8.0 CORPORATES SEEK EXIT NORMS FOR CDR

Several corporates, which staged a turnaround on the back of debt relief from consortium of bankers, now want to exit the corporate debt restructuring (CDR) mechanism.

CDR is a forum of Banks, set up at the behest of the Reserve Bank of India (RBI), to resolve cases of bad loans. Corporates want to get away from CDR since the mechanism imposes stringent conditions, which, they feel, could curb growth prospects. These conditions include pledging of shares, personal guarantees and seeking CDR's approval before any expansion or acquisition. Since the loans restructured have a tenure of 10-15 years, corporates are bound by CDR conditions till the loan is fully repaid. However, those corporates who have performed well following the restructuring and are keen to exit fear that CDR could deprive them of some of the opportunities.

Banks, on the other hand, feel they have taken a risk of restructuring the bad loans and fear that once the corporate falls outside CDR mechanism it would be difficult to monitor them. Senior bankers are likely to ask the officials of the RBI to incorporate exit norms in its new CDR guidelines, which are likely to be issued soon. The RBI has issued draft guidelines on CDR. But the draft norms do not address issues related to exit policy for corporate.

9.0 INTEREST RATES SET TO DROP ACROSS EUROPE

Interest rate were poised to drop across Europe because economic growth would fall below expectations and that central banks has started discussing rate cuts seriously.

10.0 ECB CEILING RAISED TO US \$ 12 BILLION

The appetite for overseas borrowings shown by Indian corporates, reflected in record issuances last fiscal, has prompted the government to increase the ceiling for external commercial borrowings (ECBs) to US \$ 12 billion for 05-06. The decision to raise the internal ceiling for ECBs from US \$ 9 billion to US \$ 12 billion was taken after a review of the ECB policy undertaken by the finance ministry and the RBI. The ceiling on cumulative investment in government securities by foreign institutional investors (FIIs) has been left unchanged at US \$ 1.75 billion.

11.0 FED RAISES RATES AGAIN BY 25 bps

The Federal Reserve raised key US interest rates a quarter percentage point recently for a ninth straight time and gave no sign a yearlong campaign of increases was nearing an end. The US central bank's policy setting Federal Open Market Committee unanimously voted to lift the federal funds rate charged on overnight loans between banks and intended to influence credit costs throughout the economy to 3.25 per cent.

12.0 SEZ LIKELY TO HAVE MINIMUM 50 ACRE SIZE

The Board of Approval (BoA), the inter-ministerial body which considers Special Economic Zone (SEZ) proposals, is considering fixing 50 acres as the minimum area required for product specific SEZs. This follows objection raised by the finance ministry regarding the size of some SEZs.

Of the 19 product specific zones approved so far in principle, five are of less than 50 acres. These includes gems & jewellery zone in Manikanchan at salt lake and Wipro SEZ in salt lake electronic city in West Bengal; food processing SEZ at Kakkancherry near calicut and electronics industries SEZ at Kalamassery in Kerala, and information Technology SEZ at Shastri Park being set up by the Delhi Metro Rail Corporation in New Delhi.

13.0 CREDIT CARD GUIDELINES PROHIBIT INTIMIDATION OF CUSTOMERS

Reading out the riot act to credit card issuers, the Reserve Bank of India (RBI) released draft guidelines on credit card operations, which recommended the following restrictions:

- 1) That bank / non-banking finance companies (NBFC) and their agents should not resort to intimidation or harassment of any kind against any person in their debt collection efforts.
- 2) The guidelines said these include acts intended to humiliate publicly or intrude upon the privacy of the cardholders' family members, referees and friends, making threatening and anonymous calls or making false and misleading representations.
- 3) That the disclosure of the credit card users' personal information to direct sales agents / recovery agents should also be limited to the extent that it will enable them to discharge their duties.
- 4) Personal information provided by the cardholder, but not required for recovery purposes, should not be released by the card issuing bank / NBFC.
- 5) The guidelines said, in the matter of recovery of dues, matter of recovery of dues, banks / NBFCs may ensure that they, as also their agents, adhere to the extant instructions on fair practice code for lenders, as also their own code for collection of dues or in the absence of such a code, at the minimum, adopt the Indian Banks Association code for collection of dues and repossession of security.
- 6) In regard to appointment of third party agencies for debt collection, it is essential that such agents refrain from action that could damage the integrity and reputation of the bank/NBFC and that they observe strict customer confidentiality.
- 7) RBI has proposed a time limit of 60 days which may be given to the customers for referring their complaints / grievances.



..... Due Diligence, Takeover, Merger & Amalgamation

14.0 PROCESSING FEE FOR ELECTRONIC FUNDS TRANSFER WAIVED

In an effort to give a fillip to electronic mode of payment, the Reserve Bank of India (RBI) has waived processing charges for all transactions through the electronic funds transfer (EFT) Scheme, Special electronic funds transfer (SEFT) scheme and electronic clearing service (ECS).

The waiver of charges will be in effect from June 14, 2005 upto march 31, 2006.

(Source: RBI/2004-05/493 dt. 14.06.2005)

15.0 FIIs ALLOWED UPTO 26% IN PRINT MEDIA

The Government recently allowed foreign funds, overseas corporate bodies, non-resident Indians and persons of Indian origin to invest in Indian newspaper companies. Besides, the printing of foreign editions of international publications in India has also been allowed. However, the overall foreign investment cap in news and current affairs publications will remain at 26 per cent.

16.0 IMPORTERS ALLOWED TO CANCEL & REBOOK FORWARDS

The RBI allowed importers to cancel and rebook all forward contracts to hedge current account transactions. Earlier, only up to one year forward contracts, which were booked to cover import exposures, could be rebooked after cancellation.

17.0 FMC REGISTRATION MAY BE MANDATORY FOR TRADING ON EXCHANGES

The Forward Markets Commission (FMC) has proposed to make registration with it mandatory to trade on commodity futures exchanges.

CORPORATE LAWS

1.0 IMPORTANT DECISIONS

Companies Act, 1956

1.1 Section 81 – Further issue of capital

Though section 81 requirements for further issue of capital do not apply to private limited company in terms of clause (a) of subsection (3), the directors in a private limited company are expected to make a disclosure to the shareholders when further shares are issued. Any issue of shares solely to gain control over the company is not permissible. – *S Varadarajan v. Udhayam Leasings and Investments (P.) Ltd.* – [2005] 65 CLA 21 (CLB)

1.2 Section 111A – Refusal to register transfer of shares vested in transferee company by an order of High Court

A company can refuse registration of transfer of shares vested in the transferee company by an order of the High Court under sections 391/394 on sufficient cause as rights of third parties are not affected by such order of the High Court. In a case of disputed refusal, the court has only to consider whether the Board of directors of the company has refused the registration on sufficient cause. The settled law is that the Board of directors of a company does not have any inherent power to refuse registration of transfer, and such a power has to be specifically conferred on the Board by the articles. It is also a settled law that even if the articles provide for unrestricted or absolute powers, the same should be exercised bonafide and in the interest of the company, and not on a wrong principle or with an oblique motive or for a collateral purpose. – *eFirst Technologies (P.) Ltd. v. Hiperworld Cybertech Ltd.* – [2005] 65 CLA 151 (CLB)

1.3 Section 391/394 – Scheme providing for cancellation of shares

Section 101 is not attracted in a case of amalgamation of two companies. The focus is on creditors' interests when any reduction in capital is involved. When the transferor-company holds shares of the transferee-company in an amalgamation scheme, creditor's interests are taken care of by the court in sanctioning the amalgamation. – *EOC Tailor Made Polymers India (P.) Ltd., In re.* – [2005] 65 CLA 99 (Bom.)

The Securitisation Act, 2002

1.4 Sections 13(4) and 17(1) – Enforcement of security interest

Where a bank takes any measure under sub-section (4) of section 13, there is express remedy under sub-section (1) of section 17 to the party concerned and such remedy is not that of appeal but is like original proceedings, as per the decision of the Apex Court in the case of *Mardia Chemicals Ltd.* [2004] 59 CLA 380. Therefore, as and when such remedy is resorted to by any person who claims ownership of property subjected to action under sub-section (4) of section 13, the question of his status as bona fide purchaser of the property can be gone into at the trial or the Debt Recovery Tribunal may examine such questions of facts. When an efficacious remedy is separately available to the party, the High Court, by way of self-imposed restriction, may decline to interfere under article 226 of the Constitution. – *Kundanben Jayantilal Sanghvi v. State Bank of Saurashtra* [2005] 65 CLA 58 (Guj).

Negotiable Instruments Act

1.5 Strict liability u/s 138 can be enforced only when cheque is issued in discharge of any legal liability

Where a cheque is issued not for purpose of discharge of any debt or liability, return of such cheque unpaid will not meet penal consequences and therefore, maker of cheque would not be liable for prosecution for dishonour of cheque. The burden of proof is on the issuer. [Vijayaraj v. Githeyon Raj [2005] 60 SCL 102 (MAD.)]

2.0 RBI NOD FOR DO-NOT-CALL LIST SOON

The Reserve Bank of India (RBI) is finalising its guidelines for banning banks or their sales agents from making unsolicited calls to prospective credit card customers

3.0 EMPLOYEES CAN'T OBJECT TO TRANSFERS

Employees can no longer make a fuss on being transferred to another area of work. Elucidating the legal position on transfer norms, the Delhi High Court recently held that a company's management had full freedom to transfer its employees.

1.0 COMPANIES USE GDRs TO BEAT LOCK-IN CLAUSE

To get various benefits enlisted here in under, Companies are using GDR route:

- Investors can convert GDRs into domestic shares after which they are free to exit whenever they want;
- Shares placed through the GDR route are not classified as private placement, therefore Sebi's norms on private placement don't apply;
- Norms specify that instruments allotted on a preferential basis to promoter group shall be locked in for 3 years from the date of preferential allotment.

2.0 NEW SEBI RULE LIKELY TO HIT SUB-BROKERS.

The stock broking business of regional stock exchange (RSE) subsidiaries is likely to take a hit from next month. This is due to a new norm that will be implemented by SEBI from June barring the RSE members from dealing directly with clients.

RSEs contribute around 5-6 per cent of daily turnover of BSE and NSE though they do not contribute much business on NSE's derivatives market segment.

3.0 SEBI AGAINST RBI MOVE TO REDEFINE DERIVATIVES

SEBI has opposed the RBI proposal to expand the definition of derivatives as given under the RBI Act 1934. Expanding the definition of over the counter (OTC) derivatives will give more regulatory powers to RBI.

However, whatever is traded through stock exchanges comes under the regulatory ambit of SEBI.

4.0 STAMP PAPER REDESIGNED

To counter the menace of fake stamp papers, the government has introduced a new design of stamps. These are in the denominations of Re.1 to Rs. 25,000. The new stamps are printed on special security paper with special security inks and techniques in printing. Besides, the stamps will be now state-specific, as names of states are printed.

According to a finance ministry release, the stamps are serially numbered, so as to make the task of tracking very easy.

5.0 MAHARASHTRA SLASHES STAMP DUTY ON BONDS

The turmoil in the corporate bond market has forced the Maharashtra government to reduce the stamp duty on debt and securities transactions by 95 per cent and on commodities by 90 per cent. It has also brought corporate bonds on a par with government paper.

The stamp duty on corporate bonds will be Rs. 50 for a Rs. 1 crore deal or 0.05 paise on a volume of Rs. 100. The government recently had imposed a stamp duty of one paise on a deal of Rs. 100 worth of corporate bonds. In other words, it imposed Rs. 5,000 stamp duty on a Rs. 5 crore deal, which is the minimum lot dealt in the debt market.

6.0 SEBI SUSPENDS MAPIN NORM

SEBI has recently suspended fresh registrations for unique Identification number (UIN) under Sebi regulations 2003, better known as Mapin. The suspension comes into effect from July 1.

INSURANCE

1.0 IRDA MOOTS REGULATOR FOR GENERAL INSURERS

Insurance Regulatory & Development Authority (Irda) is in the process of setting up a self-regulatory organisation (SRO) in association with industry players. The body will act as a second tier regulatory structure under Irda and will take up general insurance related issues.

2.0 IRDA TO SCAN FOREIGN INDIRECT HOLDINGS IN INDIAN COMPANIES.

The Insurance Regulatory and Development Authority will examine the parentage of Indian promoters of life insurance companies to examine whether there is any indirect foreign control. The government has also disallowed Indian corporates from accepting loans from their foreign partners for the purpose of investing in insurance ventures. Earlier the regulator was looking at only the parentage of the Indian promoter.

3.0 IRDA NORMS SOON FOR THOSE GETTING INSURED OVERSEAS

IRDA, the regulatory body for insurers, is learnt to be working on a set of norms for policyholders getting insured overseas. There will be a set of criteria for policyholders to ensure a due diligence of the company before they buy a policy. Also it will be made clear that if at all any dispute arises in any such policy, it will be resolved outside India under the host country's jurisdiction and not under the jurisdiction of Irda.

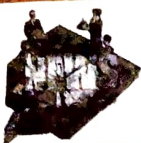
LIST OF DUE DATES UNDER VARIOUS LAWS FROM JULY 15TH TO AUGUST 14TH

INCOME TAX

- **15th July** - Pay first installment of Advance Tax on FBT during the quarter ended 30th June 2005.
- **15th July** - File quarterly tax deducted at source (TDS) the statement and tax collected at source (TCS) statement for quarter ending 30th June 2005 in Form 24Q (Salary) and/or Form 26Q (other than salaries) and/or Form 27EQ (TCS). (wherever to be filed in paper format only)
- **31st July** - File quarterly tax deducted at source (TDS) statements and tax collected at source (TCS) statement for the quarter ending 30th June 2005 (wherever to be filed in electronic format only).
- **31st July** - Last date of filing annual return of TCS for financial year 2004-05 in computer media.
- **31st July** - Return for non audit assessee including wealth tax return.
- **7th August** - Deposit TDS for payments made for salary, interest, commission, rent, etc. during the month of July 2005.
- **7th August** - Deposit TCS for collections made on under section 206C including sale of scrap during the month of July 2005.

SERVICE TAX

- **5th August** - Deposit tax for payments received by Companies from 01.07.2005 to 30.07.2005.



1.0 IMPORTANT DECISIONS

1.1 Law on Prosecution of Companies finally settled

Hon'ble Supreme Court in the matter of CIT Vs. Velliappa Textiles Limited held that company or corporate body where imprisonment is compulsory could be prosecuted. Punishment with fine alone is also permissible. [263 ITR 550] [275 ITR 81].

1.2 Clarificatory Amendment to Section 43B should have retrospective application

Hon'ble ITAT, New Delhi in the matter of Addl. CIT Vs. Vestas RRB India Limited held that the amendment being clarificatory in nature should apply to all pending assessments following the decision in respect of a similar amendment u/s 43B by the Hon'ble Supreme Court itself in Allied Motors Pvt. Ltd. Vs. CIT (1997) 224 ITR 677. This case will apply in spite of the law changed by the Finance Act 2003 with effect from 1st April, 2004 [275 ITR(AT) 81].

1.3 Jurisdiction of authority for advance rulings only where a non resident is a party

It is only where liability on non-resident is at issue, and then jurisdiction for advance ruling under chapter XIVB is possible. There could be no jurisdiction for advance rulings in respect of the tax implication of a loan transaction between two Indian subsidiaries of a non-resident as regards application of dividend u/s 2 of the Act. [275 ITR 327] [267 ITR 685]

1.4 INDO - US DTAA

Hon'ble ITAT Bombay Bench in the matter of Jt. CIT vs. Digital Equipment India Limited held that in terms of Indo-US DTAA foreign tax credit in respect of income tax paid in US cannot exceed income tax leviable in respect of that income in India. [94 ITD 340].

1.5 Renovation of rented premises is eligible expenses

Where an assessee incurs expenses in renovating a rented theatre, could it be disallowed merely because he did not own the theatre, so as to merit deduction under section 30? In CIT v. Laxmi Talkies [2005] 275 ITR 125 (Guj), it was found that there was no reason, why such expenditure cannot be allowed under section 37, since such expenses were incurred for facilitating the business of the assessee. All that is required is, to see whether it is incurred for the purpose of the assessee's business. Construction of a lift in the assessee's rented premises was found eligible for deduction in CIT v. Mehta Transport Co. [1986] 160 ITR 35 (Guj).

1.6 Payments to Non-residents without deduction of tax

Section 40(a)(I) bars deduction in respect of payments to non-residents from which tax is not deducted at source, but deduction is not barred even if tax deduction is in a succeeding year. It has been the practice prior to the present amendment effective from April 1, 2004 providing for deduction of the amount only in the year in which the tax in respect of the same has been deducted and paid. But where the payment is made in a succeeding year, but before the due date, there should be no difficulty in getting it allowed in the year to which it relates as found in CIT v. Nestle India Limited. [2005] 275 ITR 1 (Delhi). The law need not be understood to be different even after the amendment.

1.7 Taxation of interest paid to non-resident.

Interest income payable by a resident to a non-resident is deemed to arise in India under section 9(1)(v) of the Act. However, a presumptive rate of tax is stipulated on such income in most double tax avoidance agreements at 10 per cent in the source country with the right to relief from double taxation in the country of residence. The agreement between India and Singapore is no exception. It was this law, which was relied upon by the Authority for Advance Rulings in Jai Shree Tea and Industries Ltd. The Authority for Advance Rulings did not

accept the assessee's claim that article 11 (1) makes it taxable in the country of residence, and that, therefore the prescription of rate of tax under article 11(5) for levy of tax in the source country is ineffective. The Authority for Advance Rulings incidentally also overruled the objection of the Revenue that an assessee who makes payment of interest is not eligible for an advance ruling in respect of the liability of the non-resident payee. [274 ITR 97]

1.8 Treatment of Interest in case of business income

Hon'ble Mumbai High Court in the matter of Shree Krishna Polyster Limited Vs. Dy. Commissioner of Income Tax has broken the widespread mis-conception that interest should always be assessable only under "Income from other sources" which is a residuary head when an income does not fall to be assessed under any other head. Court held that income from interest on investment in short-term deposits pending use of business, should ordinarily be treated as 'business income. [274 ITR 21]

1.9 Accumulation of funds by Charitable Trust

Hon'ble Gujarat High Court in the matter of Commissioner of Income Tax Vs. Mayur Foundation decided that the appeal before the Tribunal is only an extension of assessment proceedings and as such Tribunal can entertain additional ground while matter is under hearing. Hon'ble Court held that the assessee's alternative claim based on the application in form No.10 for accumulation for the permitted object could be entertained and allowed after pointing out that the amount received were kept in fixed deposit and that neither the trustee nor the settler had benefited by the failure or delay in filing form-10 [274 ITR 562].

1.10 Overlapping jurisdiction of Income Tax Department

Hon'ble Calcutta High Court in the matter of India Glycols Ltd. Vs. CIT upheld the jurisdiction of the assessing officer in Calcutta in respect of a Company registered in Moradabad. The assessee having its principal place of business in Calcutta, though having a Factory and Registered Office at Moradabad. [274 ITR 137].

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INCOME TAX

1.11 Service of Notice

Hon'ble Income Tax Appellate Tribunal, Delhi Bench in the matter of Hind Book House Vs. Income Tax Officer held that proper service of notice is the foundation for valid assessment. The procedure has been prescribed u/s 282 of the Income Tax Act, 1961 to be read with the provisions of the Civil Procedure Code 1908 (CPC). It has to be served on the person named therein or his duly authorized agent. The burden of proving that the notice validly served is on the revenue. This case is based on the findings of Hon'ble Supreme Court in the matter of CIT Vs. Thayadhalli Mulla Jeevaji reported in 66 ITR 147. [274 ITR (AT) 71).

2.0 GUIDELINES FOR SCRUTINY OF I-T CASES

For the first time, the income tax department has decided to bring the following tax returns under compulsory scrutiny:

- Foreign companies & NRIs claiming hefty refunds;
- All returns where refund claims are over Rs. 50 lakh in metros;
- NSE 500 and BSE A group companies;
- Universities, hospitals whose receipt exceed Rs. 10 crore in metros;
- NBFCs and investment companies with paid up capital of over Rs. 10 crores;
- Stock brokers whose brokerage receipts are over Rs. 1 crore, but declared income is less than 10%.

3.0 CHARITY ROUTE TO SKIP TAX CLOSES

Corporates will find it more difficult to take tax breaks under the cover of charitable institutions because of the following proposals contained under The Taxation Law Amendment Bill:

- Audit must for charitable institutions with annual receipts of over Rs.1 crore;
- Charitable institutions must file returns;
- Individuals receiving over Rs.25,000/- a year from charitable institutions need not pay tax on it;
- Gifts aggregating to over Rs.50,000/- from unrelated parties to be taxed;
- TDS net widened, royalties, renting of plant and machinery to attract TDS;
- Provisional attachment of assets by excise and customs;
- Amnesty for excise and Customs evaders.

4.0 PRIOR APPROVAL FOR REFUND ABOVE RS. 1 CR

Corporates and individuals with refund claims exceeding Rs. 1 crore, better watch out. Refund orders will be given only after the assessing officers get prior administrative approval of the IT commissioner. The IT Commissioner will have to ensure that there are no scrutiny assessments in a particular case before issuing orders. Only then will the assessing officer be directed to pay refunds. The thresholds of Rs. 1 crore will apply for the four metros and Bangalore, Hyderabad, Ahmedabad and Pune. For other stations, any refund above Rs. 25 lakh will be given only after prior approval of the IT commissioner.

EXIM-FEMA

1.0 OVERSEAS INVESTMENT: LIBERALISATION

With a view to promoting Indian investment abroad and to enable Indian companies to reap the benefits of globalisation, it has been decided to raise the existing ceiling from the present 100 per cent of the net worth to 200 per cent of the net worth of the investing company. Accordingly, under the automatic route for overseas investment, eligible Indian entities are now permitted to invest in overseas in JV/WOS upto 200 per cent of their net worth. All other provisions of the Notification mentioned above applicable to such investment shall remain unchanged.

It is further clarified that the ceiling is not applicable to the investments made out of balances held in EEFC accounts and out of the proceeds of ADR / GDR issue, as hitherto.

(Source: RBI/2005/463-AP/DIR/CIR.No.42 dated May 12, 2005)

2.0 REMITTANCE OF ASSETS BY NRIs / PIO

In terms of guidelines, Non Resident Indian (NRI) / Persons of Indian Origin (PIO) is permitted to remit an amount not exceeding USD one million, per calendar year, out of balances held in NRO accounts/sale proceeds of assets/the assets in India acquired by him by way of inheritance/legacy, on production of certain documents. On a review, it has been decided:

- That NRIs/PIOs can now remit overseas funds received in India as a result of a family head dividing his estates among family members.
- That Documents required for transferring money abroad include an undertaking by the remitter and a certificate by a Chartered Accountant in the formats prescribed by the CBDT.
- For the purpose of allowing remittance, banks will recognise a deed of settlement made either by his parents or close relatives.

(Source: RBI/2005/465-AP/DIR/CIR.No.43 dated May 13, 2005)

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