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EDITORIAL VINOD JAIN*

DILEMMA OF DEMOCRACY



The Government has resolved vehemently to bring in inclusive growth. The Union Budgets of 2004 and 2005 have outlined desire of the Government for all round development of agriculture, rural

areas, poor, down trodden and backward classes besides ensuring high growth rate of business and industry. Though there may no aspersions be cast upon its good intentions, the Government has not been able to allocate enough resources as are required in the desired direction. Irrigation, watershed development, education, health, roads, rural electrification and other infrastructure – all need higher allocations in the budgets for an all round development of Indian economy. The non-plan expenditure of the Government is mounting. The revenue expenditure has also gone up substantially, leaving very little for capital expenditure to incubate growth. At the same time, the government has been able to rein in the rate of inflation, maintain further accumulation of foreign exchange reserve. The industrial growth is maintained at a high level although some slackening signs are showing up.

On the face of it, it seems economy is booming. Be it realty, bullion, commodities or stock markets – investors (read punters) are in high spirits. They have made us perceive that economy is doing too very well and this boom is going to have only one direction, and that is north. This is truer for the real estate at present. 'Pre-Launch' syndrome has taken fancy. Unregulated and unchecked boom in any segment of economy is socially

harmful and morally deplorable in social system.

The growth is yet to touch the rural poor, agriculturist and increasing number of unemployed. The quality education and medical facilities are not affordable by most of the citizens.

The levy of multiple taxes and complex taxation provisions are adversely affecting small and medium enterprises. The introduction of VAT on national level without proper clarity is adding on the confusion and chaos to Indian businesses. The VAT as a concept is to be supported being in the interest of Indian Economy. The Government need to rationalise the rates to much lower levels, exempt all essential items, rebate and refunds have to be automated and so on. The introduction of fringe benefit tax, Banking cash transaction tax and several other new taxes are creating new hurdles in the overall growth and development of Indian Economy. The compliance cost is increasing substantially. The small and medium enterprises are being worst hit, as they have been completely ignored in the policy and planning process.

Due to inherent contradictions in the political and economic philosophies of UPA constituents, the nation is being run by the bureaucratic whims and fancies. The new legislations are being introduced without a detailed political review.

The boycott of parliament by the entire opposition is completely unfortunate. The basic principles of democracy require that the ruling party is adequately and appropriately responsive to the views of the opposition. The opposition is also failing to concentrate on the real issues and not playing

its role of a watchdog. The ruling party is becoming a bloodhound by not even responding to genuine demands of the opposition. Even the participation of members of the ruling party alliance in the parliament is fairly thin. It is the fundamental principle in any strong democracy that the opposition as well as the ruling parties should adequately involve themselves in the decision making process rather than concentrating on politically motivated enquiries on the decisions earlier taken. We under our august

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1 Mauritian FDI route still most favoured

Mauritius continues to top the list of FDI flows into India accounting for 31.23% of the total inflows for January-December 2004. In value terms, this is equivalent to about Rs. 4,616 crore. The reason for this is the double taxation avoidance agreement between India and Mauritius, as a result of which lot of investments are routed through the island nation.

Mauritius is seconded by the US at Rs. 2,979 crore which is about 20.15% of FDI flows in percentage terms, according to the latest annual report prepared by the department of industrial policy and promotion (DIPP). The US is followed by Netherlands at 15.41%, Germany at 4.92% and the UK at 4.46%.

2 Companies to pay more for loans

Corporate loan rates are expected to go up by at least 25-50 basis points, with yields on government securities rising by as much as 42 basis points in the current financial year. Bankers are readying to offer rates that are 25-50 basis points higher for corporate loans without changing their prime lending rates (PLRs). In other words, the spread below the PLR will shrink. For instance, a company that has been offered a loan 3 percentage points below a bank's PLR may see the loan rate revised to 2.5 percentage points below the PLR. One basis point is one hundredth of a percentage point.

The prime-lending rate is the rate at which banks are expected to lend to their prime customers. However, all prime customers now raise loans at sub-PLR. The average PLR of public sector banks is 10.25 – 10.75 percent.

3 Credit exposure limit for UCB tightened

The Reserve Bank of India has tightened the credit exposure norms for urban co-operative banks.

The single borrower limit for UCBs has been reduced to 15 per cent from 20 per cent and group borrower limit to 40 per cent from 50 per cent of the banks' capital fund.

In a circular issued to the chiefs of all primary UCBs, the central bank said, exposures shall include funded and non-funded credit limits as also underwriting and similar commitments. The sanctioned limit or outstanding whichever is higher shall be considered for arriving at exposure limit.

However, in respect of non-funded credit limits, 100 per cent of such limits or outstanding, whichever is higher, shall be taken into account for this purpose.

(Source: RBI2004-05/423 dated 15.04.2005)

4 RSU to replace ESOP

Indian Software Companies are looking at rewarding their employees through an instrument called restricted stock or restricted stock units (RSU).

The move is in response to the fact that bottom lines of Indian companies listed on the US stock exchange are expected to be hit by the Sarbanes-Oxley Act from the next quarter, as they start expensing their stock options. Software companies, which have been the most liberal issuers of stock options, are now looking at innovative instruments to replace them. Most software companies already show the impact of expensing as a note to their accounts. If the employers want to defer the tax liability for employees to the time that the stock actually vests, they can award units and not the stock per se.

5 Fed raises rates for eighth time

The Federal Reserve recently signalled no change in strategy, as it lifted US interest rates another quarter point to 3 per cent and said it would continue raising rates at a "measured" pace.

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INDIAN DEMOCRACY.....

Constitution have strong institutions like CAG to review the governmental decisions at length. Let these institutions take cognizance of deficiency in the processes and place these as envisaged under the constitutional framework. The corruption and criminalisation of politics can be addressed only by a strong political will which is lacking in the current breed of our political leaders. The recent passing of Right to Information Bill is a highly appreciable step. The dissemination of information need to be built into the systems to bring transparency and fight corruption.

The decision of the government to open up real estate sector to foreign direct investment could bring serious repercussion for the common man. The property prices are already too high and rather than concentrating on developing the cheap and affordable housing complexes and new towns by the government, the property development process is proposed to be left on the mercy of unregulated private and foreign enterprises. The average cost of housing in India is many times higher even as compared to the United States, when compared on the basis of purchasing power parity (PPP) and the average income levels.

The government decision to permit 100% foreign direct investment in retail trading is also another assault on small and medium size businesses. A very large section of the Indian economy is supported by small low cost retail sector, which also provide self-employment to a large number of people. The impact of large retail businesses to be run by multinational retail chains in India could be disastrous. The Communist Parties need to be clear about their political and economic policies. They cannot keep on criticizing the government on one hand while simultaneously supporting all the actions, which are clearly against their declared policies.

It may be appropriate in a democratic atmosphere to have an open public debate on crucial political and economic policies so that an appropriate consensus driven direction is attained by the nation.

6 Reverse repo rate hiked by 25 bps

Bankers are expecting a hike in interest rates in the medium term after the Reserve Bank of India in its Annual Policy Statement for the year 2005-06 decided to increase the fixed reverse repo rate by 25 basis points under the liquidity adjustment facility (LAF) with effect from April 29, 2005 to 5% from 4.75%.

7 Interest rates to be charged on group loans under SGSY

It is clarified that the rates of interest to be charged on Group loans under Swarnjayanti Gram Swarozgar Yojana (SGSY) may be linked to per capita size of the loans so as to mitigate the burden on the BPL beneficiaries on the analogy of IRDP group loans.

(Source: RBI/2004-05/421 dated 13.04.2005)

8 Draft Guidelines on CDR

The Reserve Bank of India recently placed on its website www.rbi.org.in proposed amendments to the existing guidelines on Corporate Debt Restructuring (CDR) for feedback from the public.

Comments on the proposed amendments may be sent within a period of one month by e-mail to arappathurai@rbi.org.in or r-kumar@rbi.org.in

(Source: RBI PR dated 06.05.2005)

9 Certificates of Deposit

On a review, the minimum maturity period of certificates of deposit (CDs) has been reduced from 15 days to 7 days with immediate effect.

(Source: RBI/2004-05/440 dt. 28.04.05)

10 Asian forex reserves too high - ADB

Asia's foreign exchange reserves have soared beyond 'optimal' levels and governments must tackle global imbalances by ploughing some money back into the region. To mountain of reserves has grown rapidly in recent years as Asian Central Banks intervened in markets to curb the export-damaging rise of their currencies against the falling dollar.

Forex reserves excluding gold		
	Current (\$ bn.)	% of total
• Worldwide	3,807	100
• Japan	819	21.5
• China	659	17.3
• Taiwan	251	6.6
• Korea	205	5.4
• Eurosystem	177	4.6
• India	136	3.6
• Hong Kong	122	3.2
• Russia	121	3.2)

11 Home loan rates to go up by 25-50 basis points

The interest rates on housing loans are expected to go up by 25 to 50 basis points in the coming months.

CORPORATE LAWS

1 Corporate Laws Cases

(a) Central Government could not refuse to supply a copy of the inspection report to respondents

The Hon'ble Company Law Board, Principal Bench, New Delhi has held that since foundation of the petition was inspection report and no privilege had been claimed in respect of the report on ground that disclosure would be against public interest, Central Government could not refuse to supply a copy of inspection report to the respondents. It has also been held that other documents sought for by respondents, like statements recorded by inspecting officer and a complaint received by Central

Government need not be supplied as Central Government had not relied on those documents in petition. [Central Government v. Premier Automobiles Limited, [2005] 59 SCL 654 (CLB- NEW DELHI)].

(b) Provision of Section 101(2) would not apply in case of Amalgamation

The Hon'ble High Court of Bombay has held that the provisions of Section 101(2) of the Companies Act, 1956 which includes taking approval of High Court will not apply in case where there is a reduction in share capital of Company by virtue of Amalgamation of two Companies. {EOC Tailor Made Polymers India (P.) Ltd., In re. [2005] 59 SCL 199 (BOM)}.

(c) SEBI registered Broker cannot deal as Sub-broker

The Hon'ble Securities Appellate Tribunal, Mumbai, has held that a Person or body, even if registered with SEBI as a Broker cannot buy, sell or deal in securities as Sub- Broker unless he is registered with SEBI as sub-broker in Stock Exchange with which he deals. {Doogar & Associates Securities Limited v. Securities and Exchange Board of India, [2005] 59 SCL 356 (SAT- MUM.)}

(d) Proceedings for acquisition of land of Sick Company are not legal Proceedings under SICA

The Hon'ble High Court of Bombay has held that the proceedings for acquisition of land of Company are not legal proceedings contemplated under Section 22 of Sick Industrial Companies (Special Provisions) Act (SICA), requiring prior consent of BIFR for that purpose. {Hindustan Antibiotics Limited v. Special Land Acquisition Officer, [2005] 59 SCL 560 (BOM)}.

2 Consent must be before charging: Trai

The Telecom Regulatory Authority of India (Trai) has directed mobile operators to publish details of the special tariffs for value-added services.

It has also barred operators from providing customers with a chargeable value-added service without the explicit consent of the customer.

AMENDMENTS TO THE FINANCE BILL, 2005

While moving the Finance Bill, 2005 in the Lok Sabha for approval, the Finance Minister Shri P. Chidambaram has made certain changes which are briefly explained below:

- (a) Threshold exemption limits revised for women from Rs. 125,000/- to Rs. 135,000/- and for senior citizens from Rs. 150,000/- to Rs. 185,000/-.
- (b) Savings under section 80C not necessarily be out of earnings for the year.
- (c) **Tax holidays under Section 10A**

It was proposed in the Bill that the tax incentives under section 10A vis-à-vis Special Economic Zone (SEZ) units would be available only to those SEZ units, which begin to manufacture by March 31, 2009. This condition has been done away with. However, a new proviso has been added in sub-section (1A) to provide that the deduction will be allowed only if the return of income has been furnished on or before the due date for filing of return specified under section 139(1) of the Act.

Though the proviso is placed under the provisions dealing with SEZ units [sub-section (1A)], it appears that it may apply to all assesses claiming benefit under section 10A.

(d) Banking Cash Transaction Tax

Earlier provisions to levy Banking Cash Transaction Tax (BCTT) have been changed in the following manner :

Nature of Banking Transactions	Limit proposed in Budget, 2005	Limit Changed now Rs.
Withdrawal of cash on any single day from a current account maintained with scheduled bank	Rs. 10000/-	- for Individuals/ HUF Rs. 25000/- - for others Rs. 100000/-
Receipt of cash from any schedule bank on encashment of term deposits on a single day whether on maturity or otherwise	Rs. 10000/-	- for Individuals/ HUF Rs. 25000/- - for others Rs. 100000/-

Purchase of Bank Draft or any other financial instrument is now beyond the preview of the BCTT. It may be noted that withdrawal from saving Bank Accounts have now been completely excluded from the levy of BCTT.

(e) Fringe Benefit Tax

The Bill proposed introduction of Fringe Benefit Tax (FBT) as an additional income tax to be paid by an employer for certain fringe benefits provided to the employees. The Finance Minister had set up an expert committee headed by Dr. Parthasarathi Shome to review and rework the FBT provisions. The committee has submitted its report. The originally proposed FBT provisions have been amended and placed before the Lok Sabha.

Whilst the FBT rate has been retained at 30%, following key amendments have been made:

- Following categories of assesses have been exempted from FBT:
 - Individuals / HUF engaged in business or profession.
 - Fund or Trust or institution eligible for exemption under section 10(23C) or registered under section 12AA of the Income-tax Act, 1961 (the Act).
- The definition of 'Fringe Benefits' has been amended in an attempt to exclude legitimate business expenditure and restrict the same to expenditure resulting in benefits provided by the employer to its employees.

i) FBT - Amendments to scope of certain benefits

Provision of Hospitality – The provision of hospitality now specifically excludes non-transferable paid vouchers for use at eating joints / outlets.

Conference – Any expenditure on conveyance, tour and travel including foreign travel or hotel, boarding and lodging in connection with any conference has been specifically covered; however fee for participation by the employees in such conference has been excluded.

Sales promotion including publicity – The following advertisement expenses have been specifically excluded from sales promotion:

- Advertisement expenses (including rental) in any print mode;
- Holding or participating in any press conference/ business convention;
- Sponsorship of any sports event or an other event organized by any government agency/ trade association;
- Publishing of any statutory notice, advertising by way of signs/ banners/hoarding etc; and
- Payments for any of the above made to any advertisement agency.

Employees' Welfare – With respect to employees' welfare, specific exclusion has been made for any expenditure incurred or payment made to:

- Fulfill any statutory obligation; or
- Mitigate occupational hazards; or
- Provide first aid facilities in the hospital or dispensary run by the employer.

Use of Telephone – Use of telephone now includes use of mobile phone also. However, expenses on leased telephone lines are excluded from the provisions of FBT.

Maintenance of Guest House – Maintenance of any accommodation in the nature of guesthouse now specifically excludes accommodation used for training purposes.

Free or subsidised allowance / transportation to and fro to office – The earlier exempted free or subsidised transport or other similar allowance to cover journeys to and fro from residence to office / work place will now attract FBT.

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AMENDMENTS TO THE FINANCE BILL, 2005

ii) FBT - Valuation of certain benefits revised

Nature of Benefit	Proposed Valuation	Amended Valuation
Entertainment, maintenance of guest house, conference, employees welfare, sales promotion including publicity (but excluding certain expenditure on advertisement), provision of hospitality	50%	20%
Use of telephone	10%	20%
Scholarships	100%	50%

iii) FBT - Industry specific amendments

Specified industries have been given the benefit of reduced valuation for specified fringe benefits. The industries covered and the reduced valuation bases are as under:

Employers engaged in business of	Hospitality	Conveyance, tour & travel	Hotel, boarding & lodging	Repair, Running, fuel, maintenance & depreciation
Hotel	20% reduced to 5%			
Construction		20% reduced to 5%		
Manufacture and production of pharmaceuticals		20% reduced to 5%	20% reduced to 5%	
Manufacture and production of computer software		20% reduced to 5%	20% reduced to 5%	
Carriage of passengers / goods by motor car				20% reduced to 5%. Zero valuation is prescribed for carriage of passengers/ goods by aircraft

iv) FBT - Final Outcome - As a result of the aforesaid changes, final out come of FBT is now structured as under :

Part 'A'	
"Fringe benefits", as per section 115WB(1), means any consideration for employment provided by way of :-	Value as per section 115WC
Any privilege, service, facility or amenity, directly or indirectly, provided by an employer, whether by any of reimbursement or otherwise, to his employees (including former employees) [not being expenses mentioned in Note 1]	No value given
Any free or concessional ticket provided by the employer for private journeys of his employees or their family members	100% (cost at which the same benefit is provided to the general public) minus any recovery from the employee
Any contribution by the employer to an approved superannuation fund for employees	100%

Part 'B'

Deemed fringe benefits [the following shall be deemed to have been provided by the employer to his employees if the employer has in the course of his business and profession (whether or not such activity is carried on which the object of deriving income) incurred these expenses] as per section 115 WB(2)	Value as per section 115WC
Entertainment	20%
Provision of hospitality of every kind by the employer to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade (but does not include any expenditure on, or payment for, food or beverages provided by the employer to his employees in office or factory and any expenditure on or payment through paid vouchers which are not transferable and usable only at eating joints or outlets)	20% (hotels 5%)
Conference (not being fee for participation by the employees in any conference) [Any expenditure on conveyance, tour and travel (including foreign travel), on hotel, or boarding and lodging in connection with any conference shall be deemed to be expenditure incurred for the purposes of conference]	20%
Sales promotion including publicity (not being the expenditure mentioned in Note 2)	20%
Employees' welfare (not being any expenditure incurred or payment made to fulfil any statutory obligation or mitigate occupational hazards or provide first aid facilities in the hospital or dispensary run by the employer)	20%
Conveyance, tour and travel (including foreign travel)	20% (construction business 5%, business of manufacture/ production of pharmaceuticals 5%, manufacture production of computer software 5%)
Use of hotel, boarding and lodging facilities	20% (business of manufacture / production of pharmaceuticals 5%, manufacture production of computer software 5%)
Repair, running (including fuel), maintenance of motorcars and the amount of depreciation thereon	20% (business of carriage of passengers or goods by motorcar 5%)
Repair, running (including fuel) and maintenance of aircrafts and the amount of depreciation thereon	20% (business of carriage of passengers or goods by aircraft 0%)
Usage of telephone (including mobile phone) other than expenditure on leased telephone lines	20%
Maintenance of any accommodation in the nature of guest house (other than accommodation used for training purpose)	20%
Festival celebrations	50%
Use of health club and similar facilities	50%
Use of any other club facilities	50%
Gifts	50%
Scholarships	50%

v) FBT - Return of fringe benefits

Every employer who has paid (or made provisions for payment) fringe benefits to his employees during the previous year shall submit the return of fringe benefits to his employees during the previous year shall submit the return of fringe benefits to the Assessing Officer on or before the due dates i.e. October 31 in case of company and a person other than company when books of accounts are audited, otherwise July 31.

1 SOX deadline for NYSE-listed Indian cos deferred

The deadline for Indian Companies listed on the New York Stock Exchange (ICICI Bank, MTNL, VSNL, Tata Motors, Dr. Reddy's Labs, Satyam Computer, Wipro, HDFC and HDFC Bank) to abide by the Sarbanes-Oxley Act (SOX) has been extended till June 2006. Noreen Culhane, Executive Vice President, Global Corporate Client Group, NYSE, has recently informed the same.

2 Sebi gets a rap from SAT again

Taking the capital market regulator Sebi head on, the Securities Appellate Tribunal (SAT), in a recent judgment, has observed that "Sebi must get its act together if its valuable time is to be used for catching serious offenders, otherwise its energy will get dissipated."

The SAT reprimand has come in case of Sebi imposing a penalty of Rs. 2 lakh on one Vinod C. Shah under section 15A. This section deals with penalty for failure to furnish information

3 Takeover Code to be revised

India Inc, which has been opposing the frequent changes in the ceiling and creeping acquisition limits, may have its wishes answered. As per the SEBI Chairman, Mr. M. Damodaran, the amendments to the takeover code would be taken up in the next board meeting of the regulator. Industry has been opposing the present reduction in the ceiling on acquisition from 75% to 55% through market purchase and preferential allotment, stating that it is unwarranted and would cause problems for promoters. They have been seeking restoration of the 75 per cent limit.

4 SC endorses Sebi power to bar entities

In a major victory for the Securities and Exchange Board of India, the Supreme Court has ruled that the powers given to the regulator under section 11B of the Sebi Act are not only punitive but also preventive in nature.

EXIM-FEMA

1 Foreign Trade policy – Annual Supplement

The Highlights of the Annual Supplement to the five year foreign trade policy for 2004 – 09 are as follows:

- Advance licence entitlements increased to 300% of FOB / FOR value of exports;
- EoUs can claim IT exemption within 12 months of exports;
- Bank guarantee reduced for units in agri export zones;
- No safeguard and antidumping duty on inputs under advance licence;
- "Served from India" scheme under service exports made more liberal;
- Inter-state trade council proposed for boosting exports.

2 Microfinance NGOs allowed to raise up to \$ 5 m ECBs

The Reserve Bank of India permitted non-government organizations (NGOs) engaged in micro finance activities to raise external commercial borrowing up to \$ 5 million during a financial year. According to the RBI directive NGOs engaged in micro finance activities having satisfactory borrowing relationship of three years with a bank and 'fit and proper' board or management committed would be eligible to avail ECB. To ensure appropriate utilization of funds the RBI has further added that authorized dealer (AD) would have to ensure that the ECB proceeds are utilized for lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building. ECB funds should be routed through normal banking channel.

(Source: RBI2004-05/434 dated 25.04.2005)

INSURANCE

1 Insurance firm's liability not unlimited

The Hon'ble Supreme Court recently ruled that the liability of an insurance company to pay compensation was not unlimited unless extra premium was paid for comprehensive coverage. An easy way to check whether a company will pay the entire amount is to search for the words "a policy for Act liability" or "Act liability" in the policy. If they are there, the liability of the insurer is limited to that arising from the Workmen's Compensation Act. A three-judge Bench headed by Chief Justice RC Lahoti stated this while overruling the judgment of the Madhya Pradesh High Court, which fixed unlimited liability on National Insurance Company following the death of a truck driver in an accident.

2 Maturity benefit on keyman policy goes

Concerned over the abuse of the keyman policy, the Insurance Regulatory and Development Authority (Irda) has barred all life insurance companies from offering these policies with maturity benefits. In other words, future keyman policies will pay out money only if the insured dies.

- IRDA has noticed aberrations in sales of keyman policies in March' 05.
- Henceforth, they will be allowed on term insurance without maturity benefits.
- Companies have been assigning keyman policies to provide tax-free maturity gains to employees.
- IRDA wants companies to concentrate on protection of their work-force and not provide them investment substitutes.

3 Foreign insurers can set up liaison offices

The Reserve Bank of India allowed insurance companies incorporated outside India to establish liaison offices in India. However, the permission has been granted to only those insurance companies, which had obtained prior approval from the Insurance Regulatory and Development Authority for establishing offices in India.

(Source: RBI2004-05/433 dated 25.04.2005)



1 Funds seek CBDT clarification on ELSS

The mutual fund sector has sought clarification from the Central Board of Direct Taxes (CBDT) regarding the status of equity linked savings schemes (ELSS) in the changed tax scenario. The 2005-06 Budget announcements had placed equity linked savings schemes among the list of instruments eligible for the Rs. 1 lakh investment amount, which will be deducted for computation of tax. The sector wants to know whether this applies to existing schemes or whether new schemes which will be launched. Further the association has also sought clarifications on the lock-in for such schemes. At present, ELSS has a lock-in of three years after which transactions can take place in the units. Other instruments that are eligible for investments under the Rs. 1 lakh limit include public provident funds (which have a lock-in of 15 years) and post office savings schemes and national savings certificates, both of which have lock-in of six years. There are some apprehensions that the lock-in for such schemes might get extended.

2 Selection of IT cases

Even as fears persist over unbridled powers to income-tax officials to harass assesses over the proposed FBT and cash transaction tax details, the Finance Ministry clearly seems to be in favor of minimizing the discretionary powers of the assessment officers (AOs) while selecting cases for scrutiny. The Finance Minister at a recent meeting, while expressing the above view, has urged the chief commissioners of income-tax (CCsIT) to come up with suggestions to identify parameters against tax evaders which can be integrated into the security guidelines or the computer aided scrutiny selection (CASS) system.

3 8% Savings (Taxable) Bond, 2003

RBI has advised that the concluding sentence of paragraph 2 of the Circular RBI/2005/415 dated 07.04.2005 on the captioned subject may please be read as, "only such institutions which have obtained Certificate under Section 80G or 35(1) (ii) or (iii) of Income Tax Act will be eligible for investment in 8% Savings (Taxable) Bonds, 2003 Scheme" instead of "only such institutions which have obtained Certificate under Section 80G and the 35(1) (ii) or (iii) of Income Tax Act will be eligible for investment in 8% Savings (Taxable) Bonds, 2003 Scheme".

(Source: RBI/2004-05/432 dated 25.04.2005)

4 Deduction u/s 80HHC – Stay of Proceedings

In exercise of the power conferred under section 119 of the income Tax Act, the Central Board of Direct Taxes hereby directs Assessing Officers to keep in abeyance till 30th June, 2005, all assessment and recovery proceedings relating to assessments reopened specifically to reassess the claim for deduction under section 80HHC. However, notices under section 148 may be issued. Wherever necessary but all other proceedings following the issue of such notices should be kept in abeyance. Further it is clarified that where a case getting barred by limitation at any time on or after 30th June, 2005, the directions contained above, shall not be applicable. However, recovery proceedings in such cases should be kept in abeyance till 30th June, 2005

5 Income Tax Decisions

(a) Bar on recovery proceedings u/s 226(3) of the Income Tax Act, 1961

Hon'ble Kerala High Court in the matter of Punalur Paper Mills Ltd. Vs. Asstt. Commissioner of Income Tax and Others held that when the assessee company is a sick company within the meaning of Sick Industrial Companies (Special Provisions) Act, 1985 and proceedings are pending before BIFR, recovery proceedings u/s 226 of the Income Tax Act, 1961 cannot be initiated [274 ITR 475]

(b) Penalty for concealment of income.

Hon'ble Madhya Pradesh High Court in the matter of Commissioner of Income Tax Vs. S.V. Electricals Pvt. Ltd. decided that when the assessee surrendered full income to the Department, there is no concealment of income and hence penalty u/s 271(I) (c) cannot be imposed [274 ITR 334]

(c) Treatment of cash credit in case of Partnership Firm.

Hon'ble Allahabad High Court in the matter of Jagmohan Ram Ramchandra and Girish Narain Vs. Commissioner of Income Tax held that un-explained credit into the capital account of partner in case of partnership firm will be assessable in the hands of firm u/s 68 and also in the hands of respective partner u/s 69 as undisclosed investments [274 ITR 405]

(d) Application of section 11 and 12A of the Income Tax Act.

Hon'ble ITAT Delhi Bench in the matter of Aryan Educational Society Vs. Commissioner of Income Tax held that exemption u/s 11 could not be denied merely because some profit had been earned by the assessee Educational Institution and also registration u/s 12A could not be refused for the same reason [93 ITD 546].

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MEETING OF CFO WORLD

We are pleased to inform you that the next meeting of CFO World, a forum promoted by All India Chartered Accountants' Society and The Chartered Accountant World is scheduled as per the following programme:

Date : Saturday, May 28, 2005
Time : 8.15 a.m. to 11.30 a.m.

Venue :
The Oberoi, Dr. Zakir Hussain Marg, New Delhi-110 003

Programme

Breakfast and Informal Interaction : 8.15 a.m. to 9.00 a.m.
Professional Update : 9.00 a.m. to 9.10 a.m.

"VAT - Implementation Issues"

Mr. S. Madhavan, Executive Director, Pricewaterhouse Coopers Pvt. Ltd.
Mr. Satya Poddar*, Partner, Ernst & Young Pvt. Ltd.

The programme is open only for members of CFO World.
For membership details please contact **Ms. Hema Karan (9891504705)**
Tel.: 2622 3712, 2622 8410; Fax: 91-11-2622 3014; cfoworld@vsnl.net

A programme is scheduled on Insider Trading and Takeover Code
on Saturday 25th June, 2005 (details to follow)

*Confirmation awaited

Contd. from page no. 7

INSURANCE

(e) Taxability of commission received by a Director of the Company.

Hon'ble ITAT Delhi Bench in the matter of Jt. Commissioner of Income Tax Vs. Rajat Lal held that commission received by Director on the basis of audited financial accounts of the company will be taxed in the year in which financial accounts of the company were approved by the shareholders in the AGM and not in the year for which commission was received [93 ITD 482]

(f) Application of section 11 and 12A of the Income Tax Act.

Hon'ble ITAT Delhi Bench in the matter of Aryan Educational Society Vs. Commissioner of Income Tax held that exemption u/s 11 could not be denied merely because some profit had been earned by the assessee Educational Institution and also registration u/s 12A could not be refused for the same reason [93 ITD 546].

(g) Interest u/s 244A is compensatory in nature.

Hon'ble ITAT Bombay Bench in the matter of Artist Tree Pvt. Ltd. Vs. Income Tax Officer held that interest u/s 244A is compensatory interest and when the same is declined to the assessee, such an action can only be construed as penal in effect, and, therefore, cannot be taken without giving an opportunity of hearing to person who is being de facto penalized [93 ITD 603].

(h) Tax departments has no preference over secured creditors

Hon'ble High Court of Madras in the matter of ICICI Bank Ltd. V. Official Liquidator held that in view of the decision of Supreme Court in Dena Bank v. Bhikhabhai Prabhudas Parekh and Co. [2000] 5 SCC 694; [2001] 107 Comp Cas 157 vide para 10, the claim of the petitioner will prevail over the claim of the Income Tax Department and the Karnataka Sales Tax Department. [(2005) 124 COMP CAS 550 (MAD.)].

EDITOR

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

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All India Chartered Accountants' Society
4696, Brij Bhawan 21A, Ansari Road,
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