INDIA BUDGET 2015

Nanubhai Desai & Co.

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FOREWORD….

Most eagerly awaited Budget of the recent times was presented by the Honourable Finance Minister, Shri Arun Jaitley, on February 28, 2015, as his first full – year Budget, seeking to put Asia's third largest economy on a path of 7-8 percent growth over the next two years. It was envisaged that Budget would lay down a road map for second generation reforms giving spurt to the goals which are essential for reviving Indian economy.

Budget was expected to begin the long awaited take-off, focus on the objectives of sharply improving efficiency of public expenditure and government flagship programs to benefit the common man. A clear political mandate for reforms and a benign external environment could have encouraged Finance Minister to make Budget polices in direction of enabling India to double digit growth trajectory.

Falling crude oil prices and its impact on the trade deficit, falling inflation and the recent trend of falling interest rates -along with a robust stock market which enables fundraising by disinvestment in public sector undertakings - helped ease the pressure on the government's fiscal balances. Equity markets touched new highs, riding on a surge in overseas inflow, as a result of gradual rejuvenation in the confidence of investors towards Indian equities.

Fall in the earnings of the country's top 100 companies by 6% in last quarter, weakening private investment and consumer demand, fall in merchandise export, subdued GDP growth below 5% for seven successive quarters, stagnant growth for two successive years to the index of industrial production and fall in domestic savings rate were amongst major serious concerns for the government at the time of formulating Budget policies.

The government's endeavour to adhere to medium term fiscal deficit target of 3% of the GDP could have left little space for incorporating populist measures. This will also augur well, however, to meet with the objectives of the government to have fiscal policy in direction of supporting and improving the effectiveness of monetary policy stabilising economic fluctuations and to ensure sustainable public finances that support confidence in the economy and promote intergenerational fairness.

Finance Minister Arun Jaitley announced a 5 per cent reduction in corporate tax over next 4 years,

100% exemption for contribution to Swachch Bharat, apart from CSR, abolished wealth tax and replaced it with an additional 2 per cent surcharge on super rich individuals. He deferred GAAR (General Anti Avoidance Rules) that aims to minimise tax avoidance, by two years and confirmed that the GST will be implemented by April, 2016. While he cut customs duty for 22 items and special additional duty has been done away with, he rounded off the excise duty rate to 12.5% from 12.36% and hiked service tax rate to 14% from 12.36%.

The Finance Minister announced plans for a new law to tackle black money with tough measures. Under the proposed law to be tabled before the Parliament in near future, concealment of income and assets & evasion of tax in relation to foreign assets will be prosecutable with rigorous imprisonment of up to 10 years along with dis-incentivising of cash dealings in real estate and other transactions.

Real GDP growth is expected to be 7.4% making India the fastest growing economy in the world. Budget lays down a roadmap to achieve fiscal deficit of 3 per cent in the next two years.

Budget sketches out a number of schemes for providing physical aids for senior citizens living below poverty line, 'Nayi Manzil' scheme for the youth minorities, 'Pradhan Mantri Suraksha Bima Yojana' for social security system for all Indians, insurance and pension schemes are some of the string of sops introduced for the welfare of people. With a view for creating more monetary benefit for people, Budget introduces gold monetisation scheme to allow depositors to earn interest.

This Budget points towards transformation of India, giving people greater assurance at each stage of life, more opportunities and a better home for all. Budget 2015 takes India into the future – a future that creates a new competitive strength, promoting innovation, strengthen assurance and enhance support for common man. Budget 2015 seems to be the beginning which will imprint the turn of the tide, though it is not all flowers (Phool) but some thorns (Katas) do remain!

Saturday, February 28, 2015
Mumbai
INDIA

EXECUTIVE SUMMARY

DIRECT TAX PROPOSALS

- No change in rate of personal income tax.
- Objective of stable taxation policy and a non-adversarial tax administration.
- Proposal to reduce corporate tax from 30% to 25% over the next four years, starting from next financial year.
- Rationalisation and removal of various tax exemptions and incentives to reduce tax disputes and improve administration.
- Exemption to individual tax payers to continue to facilitate savings.
- Additional investment allowance (@ 15%) and additional depreciation (@35%) to new manufacturing units set up during the period 01-04-2015 to 31-03-2020 in notified backward areas of Andhra Pradesh and Telangana.
- Benefit of deduction for employment of new regular workmen to all business entities and eligibility threshold reduced.
- Balance of 50% of additional depreciation @ 20% for new plant and machinery installed and used for less than six months by a manufacturing unit or a unit engaged in generation and distribution of power is to be allowed immediately in the next year.
- Monetary limit for a case to be heard by a single member bench of ITAT increase from Rs 5 lakh to Rs 15 lakh.
- Wealth-tax replaced with additional surcharge of 2 per cent on super rich with a taxable income of over Rs 1 crore annually.
- Provision of indirect transfers in the Income-tax Act suitably cleaned up.
- MAT rationalised for FIIs and members of an AOP.
- Donation made to National Fund for Control of Drug Abuse (NFCDA) to be eligible for 100% deduction u/s 80G of Income-tax Act.
- Seized cash can be adjusted towards assessees tax liability.
- 100% deduction for contributions, other than by way of CSR contribution, to Swachh Bharat Kosh and Clean Ganga Fund.
- Limit of deduction of health insurance premium increased from Rs 15000 to Rs 25000, for senior citizens limit increased from Rs 20000 to Rs 30000.

- Senior citizens above the age of 80 years, who are not covered by health insurance, to be allowed deduction of Rs 30000 towards medical expenditures.

- Deduction limit of Rs 60000 with respect to specified decease of serious nature enhanced to Rs 80000 in case of senior citizen.

- Additional deduction of Rs 25000 allowed for differently abled persons.

- Limit on deduction on account of contribution to a pension fund and the new pension scheme increased from Rs 1 lakh to Rs 1.5 lakh.

- Additional deduction of Rs 50000 for contribution to the new pension scheme u/s 80CCD.

- Payments to the beneficiaries including interest payment on deposit in Sukanya Samriddhi scheme to be fully exempt.

- Yoga to be included within the ambit of charitable purpose under Section 2(15) of the Income-tax Act.

- To mitigate the problem being faced by many genuine charitable institutions, it is proposed to modify the ceiling on receipts from activities in the nature of trade, commerce or business to 20% of the total receipts from the existing ceiling of Rs.25 lakh.

- Most provisions of Direct Taxes Code have already been included in the Income-tax Act; therefore, no great merit in going ahead with the Direct Taxes Code as it exists today.

- Direct tax proposals to result in revenue loss of Rs.8315 crore, whereas the proposals in indirect taxes are expected to yield Rs.23383 crore. Thus, the net impact of all tax proposals would be revenue gain of Rs.15068 crore.

- Domestic transfer pricing threshold limit increased from Rs.5 crore to Rs.20 crore

☐ **International taxation**

- Rationalisation of capital gains regime for the sponsors exiting at the time of listing of the units of REITs and InvITs.

- Rental income of REITs from their own assets to have passed through facility.

- Permanent Establishment (PE) norm to be modified to encourage fund managers to relocate to India.

- General Anti Avoidance Rule (GAAR) to be deferred by two years.

- GAAR to apply to investments made on or after 01.04.2017, when implemented.

- Rate of Income-tax on royalty and fees for technical services reduced from 25% to 10% to facilitate technology inflow.

- Applicability of indirect transfer provisions to dividends paid by foreign companies to their shareholders to be addressed through a clarificatory circular.

INDIRECT TAX PROPOSALS

☐ Service tax

- Efforts on various fronts to implement GST from next year.
- Penalty provision in indirect taxes are being rationalised to encourage compliance and early dispute resolution.
- Central excise/Service tax assesses to be allowed to use digitally signed invoices and maintain record electronically.
- Time limit for taking CENVAT credit on inputs and input services increased from 6 months to 1 year.
- Service-tax plus education cesses increased from 12.36% to 14% to facilitate transition to GST.
- Enabling provision to levy Swachh Bharat cess at a rate of 2% or less on all or certain services, if need arises.
- Services by common affluent treatment plant exempt from Service-tax.
- Service-tax exemption on Varishtha Bima Yojana.
- Service Tax exemption extended to certain pre cold storage services in relation to fruits and vegetables so as to incentivise value addition in crucial sector.
- Negative List under service-tax is being slightly pruned to widen the tax base.
- Service-tax to be levied on service provided by way of access to amusement facility, entertainment events or concerts, pageants, non recognised sporting events etc.
- Service-tax exemption:
- Services of pre-conditioning, pre-cooling, ripening etc. of fruits and vegetables.
- Life insurance service provided by way of Varishtha Pension Bima Yojana.
- All ambulance services provided to patients.
- Admission to museum, zoo, national park, wile life sanctuary and tiger reserve.

- Transport of goods for export by road from factory to land customs station.

- Enabling provision made to exclude all services provided by the Government or local authority to a business entity from the negative list.

- Service-tax exemption to construction, erection, commissioning or installation of original works pertaining to an airport or port withdrawn.

- Transportation of agricultural produce to remain exempt from Service-tax.

☐ **Excise Duty**

- Education cess and the Secondary and Higher education cess to be subsumed in Central Excise Duty.

- Specific rates of central excise duty in case of certain other commodities revised.

- Excise levy on cigarettes and the compounded levy scheme applicable to pan masala, gutkha and other tobacco products also changed.

- Excise duty on footwear with leather uppers and having retail price of more than Rs.1000 per pair reduced to 6%.

- Online central excise and service tax registration to be done in two working days.

- All goods, except populated printed circuit boards for use in manufacture of ITA bound items, exempted from SAD.

- SAD reduced on import of certain inputs and raw materials.

- Excise duty on chassis for ambulance reduced from 24% to 12.5%.

- Clean energy cess increased from Rs.100 to Rs. 200 per metric tonne of coal, etc. to finance clean environment initiatives.

- Excise duty on sacks and bags of polymers of ethylene other than for industrial use increased from 12% to 15%.

- Conversion of existing excise duty on petrol and diesel to the extent of Rs.4 per litre into Road Cess to fund investment.

- Excise duty on rails for manufacture of railway or tram way track construction material exempted retrospectively from 17-03-2012 to 02-02-2014, if not CENVAT credit of duty paid on such rails is availed.

- Excise duty exemption for captively consumed intermediate compound coming into existence during the manufacture of agarbathi.

☐ **Customs**

- Basic Custom duty on certain inputs, raw materials, inter mediates and components in 22 items, reduced to minimise the impact of duty inversion

- Concessions on custom and excise duty available to electrically operated vehicles and hybrid vehicles extended upto 31.03.2016

  Increase in basic custom duty:

- Metallurgical coke from 2.5 % to 5%.

- Tariff rate on iron and steel and articles of iron and steel increased from 10% to15%.

- Tariff rate on commercial vehicle increased from 10 % to 40%.

- Basic custom duty on digital still image video camera with certain specification reduced to nil.

- Artificial heart exempt from basic custom duty of 5% and CVD.

☐ **Black Money**

- Fight against the scourge of black money to be taken forward.

- Generation of black money and its concealment to be dealt with effectively and forcefully.

- Investigation into cases of undisclosed foreign assets has been given highest priority in the last nine months.

- Major breakthrough with Swiss authorities, who have agreed to:

- Provide information in respect of cases independently investigated by IT department.

- Confirm genuineness of bank accounts and provide non-banking information;

- Provide such information in time-bound manner; and

- Commence talks for automatic exchange of information.

- New structure of electronic filing of statements by reporting entities to ensure seamless integration of data for more effective enforcement.

- Bill for a comprehensive new law to deal with black money parked abroad to be introduced in the current session.

Key features of new law on black money:

- Evasion of tax in relation to foreign assets to have a punishment of rigorous imprisonment upto 10 years is non-compoundable, have a penalty rate of 300% and the offender will not be permitted to approach the Settlement Commission.

- Non-filing of return/filing of return with inadequate disclosures to have a punishment of rigorous imprisonment upto 7 years.

- Undisclosed income from any foreign assets to be taxable at the maximu marginal rate.

- Mandatory filing of return in respect of foreign asset.

- Entities, banks, financial institutions including individuals all liable for prosecution and penalty.

- Concealment of income/evasion of income in relation to a foreign asset to be made a predicate offence under PML Act, 2002.

- PML Act, 2002 and FEMA to be amended to enable administration of new Act on black money.

- Benami Transactions (Prohibition) Bill to curb domestic black money to be introduced in the current session of Parliament.

- Acceptance or re-payment of an advance of Rs.20, 000 or more in cash for purchase of immovable property to be prohibited.

- PAN being made mandatory for any purchase or sale exceeding Rupees 1 lakh.

- Third party reporting entities would be required to furnish information about foreign currency sales and cross border transactions.

- Provision to tackle splitting of reportable transactions.

- Leverage of technology by CBDT and CBEC to access information from either's data Bases

BACKDROP TO THE BUDGET AND RECENT DEVELOPMENTS

INCOME TAX

Domestic Taxation

Circulars/ Notifications/Press Release

Applicability of PAN requirements for Foreign Nationals

MCA has clarified that the PAN details are mandatory only for those foreign nationals who are required to possess "PAN" in terms of provisions of the Income-tax Act, 1961 on the date of application for incorporation Where the intending Director who is a Foreign National is not required to compulsorily possess PAN, it will be sufficient for such a person to furnish his/her passport number, along with undertaking stating that provisions of mandatory applicability of PAN are not applicable to the person concerned.

[MCA General Circular No. 12/ 2014, dated 22-05-2014]

Press Note on Standard Operating Procedures
New Wealth-tax return form notified

CBDT under Notification No. 32/2014 dated 23.06.2014 has made e-filing mandatory of wealth tax return in Form BB along digital signature for all the assessee's. However, Individual and HUF who are not liable to tax audit u/s 44AB of the income tax act, 1961 are given an option to file wealth tax return in paper form or file electronically in Form BB without digital signature.

[Notification NO.-32/2014, dated 23-06-2014]

Department of Scientific and Industrial Research (DSIR) issued new guidelines for approval of in-house R&D centres

Key changes in guidelines for approval in Form 3CM of In-House R&D

Centres Recognised by DSIR and submission of report in Form 3CL u/s 35(2AB) of Income-Tax Act, 1961 ('Act')

<u>Companies eligible for approval</u>

In-house R&D centers of companies, which satisfy the following conditions, are eligible to apply for approval of the 'Prescribed Authority':

- ☐ The company maintains separate accounts for the R&D expenditures and report the capital & recurring expenditures after duly audited by Statutory Auditors.
- ☐ The company shall be engaged in the business of Biotechnology or in the business of manufacturing or production of any article or thing other than those specified in the list of the Eleventh Schedule.

Conditions subject to which approval is given:

- ☐ The company shall submit Undertaking on its Letter head to:
  - o Maintain separate accounts for each R&D center and to reflect the expenditures in schedules/notes to accounts in the Annual Report after getting the same duly audited by Statutory Auditors.
  - o That they do not manufacture any product listed in Schedule 11 of IT Act.
- ☐ The personnel with Degree / Diploma in Science or engineering discipline and above qualification will only be regarded as R&D manpower eligible for weighted tax deduction. Manpower under the category of retainership / consultants and manpower on contract will not be admissible for weighted tax deduction.
- ☐ Capital expenditure on R&D, eligible for weighted deduction will include only plant and equipment or any other tangible item. Capitalized expenditure of intangible nature will not be eligible for weighted deduction.

Procedure for making application for approval in Form 3CM and submission of report in Form 3CL

- ☐ An online submission of application for approval is mandatory along with physical submission.
- ☐ Documents in two sets are required to be submitted for initial approval in Form 3CM.
- ☐ Two sets of duly filled applications in Form 3CK are to be submitted to the Secretary, Department of Scientific & Industrial Research.

Auditor's Certificate to certify the expenditure claims not to include the capitalised expenditure of intangible nature.

[Notification NO.-32/2014, dated 23-06-2014]

Circulars on Taxation of AIFs Having Status of Non-Charitable Trust Clarified

- ☐ The SEBI (Alternative Investment Funds) Regulations, 2012 aims at regulating all forms of private pool of funds in India. The said Regulations divide the AIFs into three broad categories: Category I, Category II and Category III depending upon the operational strategies, objectives and fund structure.
- ☐ While Venture Capital Funds sub-category of Category I AIF has been accorded "tax pass through" status wherein the income arising to VCFs would be treated as tax exempt, while investors of such funds would become liable to tax as if the investments were directly made by them. Category II and III AIFs will not be entitled to the tax pass-through status.

- Queries were raised about taxability in case of AIFs being non-charitable trusts where the investor name and beneficial interest are not explicitly known on the date of its creation but only when the funds starts accepting contributions from the investors.
- Catering to these queries, the Board has clarified that in cases where the trust deed either does not name the investors or does not specify their beneficial interest, the income of the fund shall be taxed at the Maximum Marginal Rates in the hands of the trustees of such AIFs in their capacity as 'Representative Assessee'. Investors, in such cases, will not be taxed as the corresponding income has already been taxed in the hands of the trustees of such AIFs.
- However, in cases of funds where names of the beneficiaries and their interests in the Fund are determined i.e. stated in the trust deed, the tax on whole of the income of the Fund - consisting of or including profits and gains of business, would be leviable upon the Trustees of such AIF, being 'Representative Assessee' at the Maximum Marginal Rates.
- Thus based on the above circular, it appear that in respect of AIFs other than Category I AIFs to whom the provisions of section 10(23FB) of the Act applies, a pass through status can be maintained if (1) The names of the investors and their beneficial interests are stated in the trust deed on the date of its creation and (2) the income of the AIF does not consist of or include profits and gains of business.
- It has also been specified that this clarification shall not be operative in the area falling in the jurisdiction of a High Court which has taken or takes a contrary decision on the issue.

Specified direction to assessing officers with respect to all fresh cases arising out of the retrospective amendments of 2012 in respect of indirect transfer. {225 taxmann (st.) 57}

Press release dated 02/09/2014 directs as under –

- Henceforth, in all fresh cases where income on account of retrospective amendments to the provisions related to indirect transfer is considered to accrue or arise before the 1st April, 2012, the Assessing Officer shall be required to seek prior approval of any proposed action in this regard from the committee. The committee shall, after providing an opportunity to the taxpayer, issue appropriate directions to the Assessing Officer in a time bound manner. The committee would be required to submit periodic report to the CBDT. The CBDT may intervene in the working/deliberations of the committee, as and when required.
- The Finance Minister in his budget speech on 10th July, 2014 had made an announcement that all fresh cases arising out of the retrospective amendments of 2012 in respect of indirect transfer and coming to the notice of Assessing Officer will be scrutinized by a High Level Committee to be constituted by Central Board of Direct Taxes (CBDT) before any action is initiated in such cases.

Section 143 of the act – assessment – compulsory manual selection of cases for scrutiny during financial year 2014- 15. {225 taxmann (st.) 60}

- The CBDT vide instruction No. 6/2014 dated 02/09/2014 in supersession of earlier instruction on the above subject lays down the procedure and criteria for manual selection of returns/cases for scrutiny during the Financial Year 2014-15.

- It provides that, list of Computer Aided Scrutiny Selection (CASS) cases shall be separately intimated by the DGIT (Systems) to the jurisdictional authorities concerned. Further, in order to ensure the quality of assessments being framed, Pr. CCsIT/CCsIT/ Pr.DsGIT/DsGIT should evolve a suitable monitoring mechanism and by 30th April, 2015, such authorities shall send a report to the respective Zonal Member with a copy to Member (IT) containing details of at last 50 quality assessment order from their respective charges. In this regard, IT Authorities concerned must ensure that cases selected for publication in ‘Let us Share’ are picked up only from the quality assessments as reported.
- One may refer to the above citation for detailed specific procedure and criteria for manual selection of returns and cases for scrutiny.

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INCOME TAX – DOMESTIC TAXATION

SUPREME COURT DECISION

RAJEEV KUMAR AGARWAL VS. ADDL CIT
SECTION 40(A) (IA) – SECOND PROVISO TO SECTION 40(A) (IA)

Facts:

- The assessee had made interest payments without discharging his tax withholding obligations u/s. 194A. Therefore, the Assessing Officer disallowed payment u/s. 40(a) (ia).
- The assessee contended that, in view of the insertion of second proviso to section 40(a) (ia) by the Finance Act, 2012, and in view of the fact that the recipients of the interest had already included the income embedded in the said interest payments in their tax returns filed u/s. 139, disallowance u/s. 40(a) (ia) could not be invoked in this case.
- He also contended that since the said second proviso to section 40(a)(ia) is 'declaratory and curative in nature’, it should be given retrospective effect from 01-04-2005, being the date from which sub-clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004.

Issue:

- which states that if assessee fails to deduct tax at source while making payments but the recipient has included the income embedded in the said payments in his tax return furnished u/s. 139 and had also paid the tax due thereon on such payments, then disallowance of such payments u/s. 40(a) (ia) cannot be invoked for assessee; has retrospective effect from 01-04-2005.

Held:

The Hon’ble Supreme Court has held that:

- The scheme of section 40(a) (ia) is aimed at ensuring that expenditure should not be allowed as deduction in the hands of an assessee in a situation in which income embedded in such expenditure has remained untaxed due to tax withholding lapses by the assessee.
- Section 40(a) (ia) is not a penalty for tax withholding lapse but it is a sort of compensatory deduction restriction to compensate for the loss of revenue for an income going untaxed due to tax withholding lapse. The penalty for tax withholding lapse per se is separately provided for in section 271C, and section 40(a) (ia) does not add to the same Thus, disallowance u/s. 40(a) (ia) cannot be invoked in a case, where assessee fails to deduct tax at source but recipients have taken, in their computation of income, the income embedded in the payments made by the assessee, paid taxes due thereon and filed income tax returns in accordance with the law.
- The provisions of section 40(a)(ia), as they existed prior to insertion of second proviso thereto, went much beyond the obvious intentions of the lawmakers and created undue hardships even in cases in which the assessee's tax withholding lapses did not result in any loss to the exchequer. Now that the legislature has been compassionate enough to cure these shortcomings of provision

and, thus, obviate the unintended hardships, such an amendment in law, in view of the well-settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso to section 40(a)(ia) must be given retrospective effect from the point of time when the related legal provision was introduced.

- Accordingly, the insertion of second proviso to section 40(a)(ia) is declaratory and curative in nature and it has retrospective effect from 01-04-2005, being the date from which sub-clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004.

DEL RAJASTHAN PETRO SYNTHETICS LTD. VS. ACIT

Facts:

- The assessee company was engaged in the business of manufacture and trade of synthetic yarn and freight forwarding. The assessee filed its return of income declaring a nil income. The assessee submitted that it had borrowed loans from various financial institutions to purchase capital assets prior to 1999. When it ran into losses and upon its net worth being fully eroded, it became sick as per provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). In the meanwhile, the assessee was served a notice u/s. 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) from Stressed Assets Stabilization Fund (SASF) (a financial institution which had taken over the loans advanced by IDBI Bank Ltd) who was authorised to act on behalf of self and all the secured lenders of the assessee. The SASF took over physical possession of the secured movable and immovable assets of the assessee u/s. 13(4) of SARFAESI on 28.9.2007.
- The assets of the assessee were sold by SASF sometime in March, 2008 for a sale price of Rs. 10 crore. The principal amount of loans outstanding to the secured lenders amounted to Rs. 97.42 crore, of which Rs. 24.46 crore was due on account of unpaid principal amount of borrowings utilised for working capital. It was stand of the assessee that the amount of Rs. 24.46 crore being the unpaid amount of working capital borrowings can form part of its taxable income and Rs. 72.96 crore (Rs 97.42 crore minus Rs. 24.46 crore) on account of unpaid principal amount of borrowings utilised for creation of depreciable fixed assets cannot form part of taxable income.
- The Assessing Officer (AO) added a sum of Rs. 61,73,27,400 to the total income of the assessee as short term capital gain on the ground that the assets of the assessee have been sold for a certain consideration and in return the assessee has received as benefit waiver of entire loan of Rs. 97.42 crore outstanding in its books. Since the WDV of the assets as per books was Rs 11.23 crore the AO charged Rs 61.73 crore as short term capital gains.

Issue:

Aggrieved the assessee preferred an appeal to CIT (A) who confirmed the action of the AO. Aggrieved, the assessee preferred an appeal to the Tribunal.

Held:

The Hon'ble Supreme Court has held that:

- The AO erred in applying the provisions of section 2(47) of the Act in considering that the secured lender acquires title to the secured assets of the assessee company on taking over of possession of assets of the assessee by overlooking the fact that what the secured lenders acquired on taking over of the possession of the secured assets were merely a special right to execute or implement the recovery of its dues from dealing with those assets of the assessee company.
- Had the assessee company tendered the amounts payable to the secured lenders before the date of sale of such assets without any further act, deed or thing being required to be carried out or completed towards title of the assets, the assessee company could have regained or taken possession of the secured assets from the secured lenders.
- The ownership rights in the assets did not at any stage stand transferred to the secured lenders by taking over the possession of the secured assets. Thus, the sale consideration received by the secured lender actually belonged to the borrower which by operation of law remained retained by the secured lenders to recover their costs, dues, etc. Further, if the consideration to the assessee is to be considered as the sale amount received by the lending banks, then, the loans waived by such banks (availed by the assessee for the purchase of capital assets such as land, building, plant and machinery, etc) was nothing but a capital receipt not liable for tax since neither the provisions of section 28(iv) nor section 41(1) of the Act are attracted.
- This ground of appeal of the assessee was allowed.

HIGH COURT DECISIONS

CIT VS. DEVDAS NAIK (BOMBAY HIGH COURT)
TWO FLATS WITH COMMON KITCHEN CONSIDERED AS ONE RESIDENTIAL UNIT FOR SECTION 54

Facts:

- The assessee sold a bungalow for a consideration of Rs. 3 Crores which was jointly owned by him and his wife.
- Out of the sales proceeds, the assessee purchased three flats, first in his name, second jointly with his wife and third in the name of his wife. First and second flats were purchased from different seller under two agreements; however, they were adjacent units with a common kitchen.
- Assessee claimed deduction u/s 54 of the Income Tax Act, 1961 (Act) for flat one and two by treating the same as one unit.
- Assessing officer disallowed deduction u/s 54 stating that two different residential house were purchased.

- Commissioner of Income Tax (Appeals) (CIT (A)) allowed the assessee's appeal, stating the reason that even though the flats were acquired under two different agreements, but eventually they are a single residential unit.
- Aggrieved by the order of CIT (A) department filed an appeal before tribunal. Even the tribunal upheld the findings of the CIT (A).

Issue:

- Whether houses with a common kitchen purchased under different agreement be considered as a single unit for claiming deduction u/s 54?

Held:

- Since, the flats had been constructed in a way that they could be combined into one unit and there is a single kitchen as evident from the plan, it is single unit; accordingly the assessee is eligible for deduction u/s 54.

Note:

- Finance Act, 2014, has amended the section 54 and 54F, accordingly the exemption u/s 54 and 54F is available only for one residential house constructed in India.

CIT VS. TIP TOP TYPOGRAPHY (BOMBAY HIGH COURT)

MUNICIPAL RATEABLE VALUE IS A SAFE GUIDE BUT THE AO IS NOT BOUND BY IT DEPENDING ON THE FACTS

Facts:

- The assessee owned commercial premises along with car parking open space in the building "Seth House" in a prime locality in Mumbai which was let out to a related concern for Rs. 3.60 lakhs and a sum of Rs. 5.25 crore was received as interest free security deposit. The actual rent received of Rs.3,60,000/- was considered as annual value of the property by the assessee.
- The Assessing Officer ('AO') noticed the property was located in a prime locality and the rent received by the assessee was nominal. He observed that the fair market rent of the property was higher and thus determined the annual letting value as Rs.85,75,608/- as against Rs.3,60,000/- determined by the assessee.
- The Commissioner of Income-tax (Appeals) ['CIT (A)'] upheld the order of the AO. On appeal before ITAT, the matter was remanded to with a direction to verify the rateable value fixed by the Municipal authority and if the same was less than Rs. 3.60 lakhs then, the actual rent received was to be taxed.
- Against the order of the ITAT, the revenue filed an appeal before the Bombay High Court.

Issue:

- ☐ Whether the annual letting value can just be taken at higher of municipal value or rent received without considering comparable fair market valuation in case the property was not covered by Rent Control Act?

Held:

The High Court observed as under:

- ☐ Factually, the position is that the property or part thereof is let or given on leave and license basis and the AO has proceeded considering the amount received towards rent either coupled with an interest free security deposit or otherwise as reflected and shown in the accounts of the assessees is not the market rent or market value.
- ☐ It would be open for the AO to doubt or question the same and he is free to determine the amount which the property may fetch. During such estimation, the AO is not bound by either standard rent or the rateable value for the purposes of municipal taxation determined by the municipal authorities.
- ☐ In the event the refundable interest-free security deposit is collected and the monthly rent shows a total mismatch or does not reflect the prevailing rate, then the AO is not prevented from carrying out the necessary investigation and enquiry. He must have cogent and satisfactory material in his possession to satisfy that the parties have concealed the real position considering the area, the measurement, the location, the use to which the property has been put, the access thereto and the special advantages or benefits. He must not make a guess work or act on conjectures and surmises.
- ☐ The satisfaction of the Assessing Officer that the bargain reveals an inflated or deflated rate based on fraud, emergency, relationship and other considerations makes it unreasonable must precede the undertaking of the above exercise. After the above ascertainment is done by the Officer he must, then, comply with the principles of fairness and justice and make the disclosure to the assessee so as to obtain his view. The municipal rateable value may not be binding on the Assessing Officer but that is only in cases of afore-referred nature.
- ☐ The Assessing Officer cannot brush aside the rent control legislation, in the event; it is applicable to the premises in question. Then, the Assessing Officer has to undertake the exercise contemplated by the rent control legislation for fixation of standard rent. If he desires to undertake the determination himself, he will have to go by the Maharashtra Rent Control Act, 1999. Merely because the rent has not been fixed under that Act does not mean that any other determination and contrary thereto can be made by the AO.
- ☐ Wherever the AO has not adhered to the above principles and his finding/ conclusion has rightly been interfered with, by the higher Appellate Authorities, the revenue cannot bring the matter to this Court as no substantial question of law can be arising for determination and consideration of this Court. In consideration of above observations, the appeal of the revenue was dismissed.

CIT VS. IMPACT CONTANAIRES PVT LTD AND OTHERS (HIGH COURT OF BOMBAY)
NO DEEMED DIVIDEND U/S 2(22) (E) IF PERSON IS NOT A SHAREHOLDER.

Facts:

- The assessee company had received advance money from its customers viz M/s. Bhavin containers Pvt Ltd, M/s. Patel Aluminum Pvt Ltd, M/s. Lans Metal Pvt Ltd and M/s. Patcart Packaging Pvt Ltd. The assessee company didn’t hold any shares in any of these companies.
- One of the directors of the assessee company (Mr. Patel) holding 20% shares in the assessee company was also holding more than 10% share in the above companies.
- The advance monies received from the above companies were treated as deemed dividend u/s 2(22) (e) of the Income Tax Act by the assessing officer (AO).
- Aggrieved by the AO’s order assessee preferred an appeal before the CIT (A), who allowed the appeal of the assessee on the ground that the credit entry reflects the cost of goods or services which cannot be treated as advance/ loan. CIT (A) further held that deemed dividend will be taxable only in the hands of shareholder, since the assessee company was not the shareholder the said advance cannot be treated as deemed dividend in the hands of assessee company.
- Aggrieved by the CIT (A)’s order revenue preferred an appeal before Hon’ble ITAT Mumbai. The Hon’ble ITAT following the decision of ACIT vs Bhaumik Colour Pvt Ltd {(313 ITR (AT) 146 (Mum) (SB)} and CIT Vs Universal Medicare Pvt Ltd {(2010) 324 ITR 263 (Bom)} dismissed the revenue’s appeal on the ground that the in order to attract provision of section 2(22) (e) the recipient must be a registered shareholder of the company.
- Now the Department in appeal before Hon’ble Mumbai High Court.

Issue:

- Whether the provision of section 2(22) (e) can be invoked even if the recipient of the money is not a shareholder?

Held:

The Hon’ble High Court of Bombay has held as under:

- In the given case recipient of advance money i.e Assessee Company was not the shareholder of the lending companies. Court further held that it is eventually the shareholder who will pay the tax. The shareholder cannot escape the liability merely because the loan or advance has been made over to any concern in which such shareholder is a member or partner and in which he has substantial interest.
- Relying on the decision of Universal Medicare Pvt Ltd (Supra) held that provision of section 2(22)(e) of act can be invoked only when the recipient is a shareholder.
- Accordingly, the appeal of the revenue was dismissed.

CIT VS. DARBHANGA MANSION CHS LTD. [BOMBAY HIGH COURT]
TRANSFER FEES RECEIVED BY CO-OP HOUSING SOCIETY IS EXEMPT ON THE GROUND OF MUTUALITY.

Facts:

- The assessee is a co-operative housing society ("Society"). During the year, the society received a sum of Rs. 39.68 lacs from its members which was credited to 'general amenities fund' as well as 'repair fund'. The said amount was not charged to tax on the basis of principle of mutuality.
- The amount of Rs. 39.68 lacs was brought to tax by the assessing officer (AO) on the ground that the contribution made by the members is occasioned by the transfer of the flat, therefore, it is nothing but transfer fees which is in excess of maximum fees of Rs. 25,000/- fixed by the government.
- Aggrieved by the order of AO, the society filed an appeal before the CIT (A). CIT (A) decided the case in favor of society placing reliance on the decision of Bombay High Court in the case of Sind Co-operative Housing Society (317 ITR 47); wherein it was held "contribution made by the members of the society are exempt from taxation under the principle of mutuality"
- Aggrieved by the order of CIT (A) the revenue filed an appeal before tribunal. The tribunal also upheld the order of CIT (A).
- Aggrieved by the tribunal order the revenue filed an appeal before Hon'ble Bombay High Court.

Issue:

- Whether amount of Rs. 39.68 Lacs contributed by the members towards 'general amenities fund' as well as 'repair fund' can be equated as transfer fees and brought to tax?

Held:

The Hon'ble High Court upheld the order of ITAT on the following grounds.

- The bye-laws of the society was in consonance with the Government Resolution and stipulated transfer fee of Rs. 25,000/- only.
- No cogent and satisfactory material was on records to prove that the amount of Rs. 39.68 Lacs received is towards transfer fees.

Relying on the decision of Sind co-operative housing society, the court held that the principle of mutuality will apply and the voluntary contribution cannot be taxed.

POTLA NAGESWARA RAO VS. DCIT (ANDHRA PRADESH HIGH COURT)
TRANSFER UNDER DEVELOPMENT AGREEMENT EFFECTED ON HANDING OVER POSSESSIONEVEN IF NO CONSIDERATION IS RECEIVED

Facts:

- ☐ The assessee entered into a development agreement with M/s Bhavya Construction Pvt. Ltd. on 07.03.2003 pursuant to which he agreed to transfer the land in consideration of the developer giving him four flats in the developed area. The assessee received a security deposit of Rs.25,000/- and the developer obtained the approval for construction of property in AY 2003-04.
- ☐ Subsequently, in AY 2004-05, the assessee received the consideration as per the agreement and offered the capital gains in that year. However, the AO held that capital gain was assessable in AY 2003-04.
- ☐ The CIT(A) affirmed the action of the AO of taxing the capital gains in AY 2003-04 observing that the token amount was received and the possession was transferred to the developer in the said year.
- ☐ On appeal before the Tribunal, the order passed by the CIT(A) was upheld on the ground that the transfer happened when the assessee had handed over the possession of the property to the developer. It was also held that the fact that the consideration was received in a later year was not relevant.
- ☐ Aggrieved by this view taken by the appellate authorities on the issue, the assessee preferred an appeal before the High Court.

Issue:

- ☐ Whether capital gains be assessed in the year of transfer of possession even if the consideration has not been discharged by the developer?

Held:

The Hon'ble Andhra Pradesh High court held as under (note)

- ☐ The assessee's contention that no transfer takes place on the date of the agreement and handing over of possession if consideration is not received by the assessee is not acceptable as the language of Section 53A 2(47) of the Income Tax Act, does not contemplate any payment of consideration. Payment of consideration is not a pre-requisite for 'transfer' and hence, the same may be deferred to a future date.
- ☐ The element of factual possession and agreement are contemplated as transfer within the meaning of the aforesaid section. When the transfer is complete, automatically, consideration mentioned in the agreement for sale has to be taken into consideration for the purpose of assessment of income for the assessment year when the agreement was entered into and possession was given. Since in the instant case, the agreement was entered and the possession was given to the developers in AY 2003-04, transfer can be said to have taken place in AY 2003-04 to tax the resulting capital gains.

DIT (IT) VS. MAHINDRA & MAHINDRA LIMITED

SECTION 201 TDS: EVEN IF THE STATUTE DOES NOT LAY DOWN A TIME LIMIT, PROCEEDINGS MUST BE COMPLETED WITHIN A LIMITED PERIOD

Bombay High Court held that Section 201 of the Income Tax Act, 1961 does not prescribe any limitation period for the assessee being declared as an assessee in default. In such cases, a statutory authority must exercise its jurisdiction within a reasonable period which would depend on the nature of the statute, rights and liabilities there under and other relevant factors. Section 153(1)(a) prescribes the time limit for completing the assessment, which is two years from the end of the assessment year in which the income was first assessable. Even though the period of three years would be a reasonable period as prescribed by Section 153 of the Act for completion of proceedings, the Income Tax Appellate Tribunal has taken the view that four years would be a reasonable period of time for initiating action, in a case where no limitation is prescribed.

CIT VS. DEVDAS NAIK

SECTION 54/54F: TWO FLATS, EVEN THOUGH ACQUIRED UNDER DIFFERENT AGREEMENTS AND FROM DIFFERENT SELLERS, ARE ONE RESIDENTIAL UNIT IF THERE IS A COMMON KITCHEN

Facts:

Two flats were acquired under different agreements, one in the assessee's name and other house jointly with his wife, from different sellers but there was a common kitchen

Bombay high Court held:

The map of the general layout plan as well as internal layout plan in regard to two flats indicates that there is only one common kitchen for both the flats. The flats were constructed in such a way that adjacent units or flats can be combined into one. The flats were converted into one unit and for the purpose of residence of the assessee. Thus, though the acquisition of the flats may have been done independently but eventually they are a single unit and house for the purpose of residence

JCIT VS. KALANITHIMARAN

SECTION 147: SECTION 148 NOTICE AND ORDER ON OBJECTIONS CANNOT BE CHALLENGED IN A WRIT PETITION

Madras High court held that an order passed by the Assessing Officer on the objections of an assessee cannot be challenged before the Court under Article 226 of the Constitution of India. The High Court observed that:

A challenge to an order passed on the objections of the assessee is in effect a challenge to a notice u/s 148 of the Act. Such an order passed by the Assessing Officer is only at the stage of process of determination and not a determination by itself. Therefore, the assessee cannot have a legal right as there

is no legal injury suffered by them at that stage. A Writ can be filed to the limited extent in cases where an assessment is sought to be reopened by an Officer who is not competent to do so or where on the face of it would appear that the reopening is barred by limitation or lacks inherent jurisdiction Once a notice u/s 148 is issued, the assessee has to file a return and can seek the reasons for issuing notice. The Assessing Officer is bound to furnish the reasons within a reasonable time and the assessee is entitled to file objections over which the Assessing Officer has to pass a speaking order. An assessee is not required to run to the Court before the passing of the assessment order by challenging a notice issued u/s 148. The legislative intent is to allow the Assessing Officer to go through the process of assessment. Even u/s 147, a Court of law cannot presume a lack of jurisdiction, when a fact in issue requires adjudication. It has to be exercised in terms of sections 139, 143(2) and 143(3).

M/S UNIQUE ARTAGE VS. UOI

STATUTORY BODY LIKE THE ITAT IS EXPECTED TO SHOW CONSISTENCY. CHANGE IN CONSTITUTION OF BENCH DOES NOT MEAN DIAMETRICALLY OPPOSITE VIEWS CAN BE TAKEN BY THE MEMBERS

Facts:

The assessee filed a stay application before the Tribunal (ITAT) requesting stay of demand and early hearing of the appeal. The Tribunal passed an order holding that it was satisfied that the assessee has an arguable case. It granted stay of the demand and directed early hearing of the appeal. However, as the bench of the ITAT was not available in that month, the matter was adjourned to next month. The assessee filed an application requesting for a date in the next month on the basis that a senior counsel was to appear on its behalf. The Tribunal passed an order thereon stating that as the assessee sought an adjournment, there does not seem to be any urgency for getting the dispute resolved by him and held that it was not a good case for granting absolute stay, hence there was no merit. It rejected the application for adjournment and the stay application.

Held:

The Rajasthan High Court held in the favour of the assessee directing Tribunal to hear and decide the appeal and observed:

The Tribunal having once held that the petitioner has a prima facie case while disposing of its stay petition, has taken diametrically opposite view when it later dismissed the stay petition. Notwithstanding change of composition of the bench, a certain amount of consistency is expected in the working of a statutory Tribunal like the ITAT. The learned senior counsel is right when he argues that if the Tribunal had formed an opinion, albeit tentatively, in the matter, it should have heard and decided the appeal itself.

CIT VS. LARSEN AND TOUBRO LTD.

FRIVOLOUS APPEALS BY DEPARTMENT RESULTS IN HARASSMENT TO ASSESSEE AND WASTAGE OF JUDICIAL TIME. DEPARTMENT TO PAY COSTS OF RS. 3 LAKHS. COSTS MAY BE RECOVERED FROM, DISCIPLINARY ACTION TAKEN AGAINST, CONCERNED OFFICIAL

Facts:

The Tribunal deleted the levy of penalty u/s 271(1)(c). Department appealed in High Court.

Held:

Bombay High Court held dismissed the appeal and observed that:

It is expected from the Revenue officers is to accept and abide by the Tribunal's findings in such matters and when they are based on settled principles of law. If they are not deviating from such principles and are not perverse but consistent with the material on record, then, there is no justification for filing of such appeals. Because the assessee is a leading Public Limited Company, should not act as a deterrent for them to take a informed, rational decision and sub serving larger Public Interest. The Revenue officers must realize that just like other powers an executive power conferred in them is in the nature of a Trust. They hold office as trustees of the public at large. They deal with public revenue and public money and that cannot be wasted in such frivolous litigation. It would be open for the superior/competent authority to recover the costs personally from the officer responsible and equally take disciplinary action against him if the power to decide about filing such appeals is abused or the decision making authority is utilized to harass innocent assessees. Every case must be dealt with on its merit and no routine exercise ought to be undertaken merely because the Revenue impact is higher or the status or financial position of the assessee is influential and strong.

CIT VS. M/S NAYAN BUILDERS AND DEVELOPERS
MERE ADMISSION OF APPEAL BY HIGH COURT SUFFICIENT TO DISBAR SECTION 271(1)(C) PENALTY

Facts:

In quantum proceedings, Bombay Tribunal upheld the addition of three items of income. The assessee filed an appeal to the High Court which was admitted. The Assessing Officer levied penalty u/s 271(1)(c) in respect of the said three items. The Tribunal deleted the penalty on the ground that when the High Court admits substantial question of law on an addition, it becomes apparent that the addition is certainly debatable. In such circumstances penalty cannot be levied u/s 271(1)(c). It held that the admission of substantial question of law by the High Court lends credence to the bona fides of the assessee in claiming deduction. Once it turns out that the claim of the assessee could have been considered for deduction as per a person properly instructed in law and is not completely debarred at all, the mere fact of confirmation of disallowance would not per se lead to the imposition of penalty.

Bombay High Court dismissed the department appeal and held:

This Appeal cannot be entertained as it does not raise any substantial question of law. The imposition of penalty was found not to be justified and the Appeal was allowed. As a proof that the penalty was debatable and arguable issue, the Tribunal referred to the order on Assessee's Appeal in Quantum proceedings and the substantial questions of law which have been framed therein. There was no case made out for imposition of penalty and the same was rightly set aside.

ACE MULTI AXES SYSTEMS LTD VS. DCIT

SECTION 80-IB: IF THE UNDERTAKING SATISFIES THE CONDITIONS FOR ELIGIBILITY IN THE INITIAL YEAR, IT MUST GET DEDUCTION FOR 10 YEARS AND NON-COMPLIANCE IN A SUBSEQUENT YEAR IS IRRELEVANT

Facts:

The assessee was initially set up as a small scale (SSI) undertaking and was eligible for deduction u/s 80-IB. In the ninth year, the assessee ceased to be a SSI undertaking as its investment in plant and machinery exceeded Rs. 1 crore. On the ground that each Assessment Year was separate and independent, the assessee was not eligible to claim deduction u/s 80-IB in the ninth year.

Karnataka High Court allowed the appeal and held:

There is no indication in section 80-IB that the conditions stipulated therein has to be fulfilled by the assessee in all the 10 years. When once the benefit of 10 years, commencing from the initial year, is granted, if the undertaking satisfy all these conditions initially, the undertaking is entitled to the benefit of 10 consecutive years. The argument that, in the course of 10 years, if the growth of the industry is fast and it acquires machinery and the total value of the machinery exceeds Rs.1 crore, it ceases to have the said benefit, do not follow from any of the provisions. It is true that there is no express provision indicating either way, what would be the position if the small scale industry ceases to be a small scale industry during the said period of 10 years. Because of that ambiguity, a need for interpretation arises. Merely because an industry stabilizes early, makes profits, makes future investment in the said business and it goes out of the definition of the small scale industry, the benefit u/s 80IB cannot be denied. keeping in mind the object with which these provisions are enacted, keeping in mind the industrial growth which is required to be achieved, if two interpretations are possible, the courts have to lean in favour of extending the benefit of deduction to an assessee who has availed the opportunity given to him under law and has grown in his business.

CANARA HOUSING DEVELOPMENT CO VS. DCIT

SECTION 153A: ASSESSING OFFICER IS REQUIRED TO ASSESS THE "TOTAL INCOME" AND IS NOT CONFINED ONLY TO INCOME WHICH WAS UNEARTHED DURING SEARCH.

Facts:

For AY 2008-09, the Assessing Officer passed an assessment order u/s 143(3) on 31.12.2010. A search u/s 132 was conducted on 12.04.2011 in the course of which incriminating material leading to undisclosed income was seized. The Assessing Officer initiated proceedings u/s 153A of the Act calling upon the assessee to file return of income u/s 153A(1)(a) for six years. The assessee complied with the same. When the said return was under consideration, the Commissioner of Income Tax(CIT) passed an order u/s 263 on the ground that the assessment order dated 31.12.2010 passed u/s 143(3) was erroneous and prejudicial to the interests of the revenue. The assessee filed an appeal to the Tribunal in which it claimed that as the assessments u/s 153A were open; the Assessing Officer could pass appropriate orders thereon. The Tribunal, held that as the Section 143(3) order did not abate and had become final, the Assessing Officer, in the Section 153A assessment had to confine himself to the incriminating material

found during search and could not take into consideration other materials while making the section 153A assessment. It consequently upheld the CIT's power to revise the section 143(3) order.

Karnataka High Court reversed Tribunal's decision and held that:

In the entire scheme of Section 153A of the Act, there is no prohibition for the assessing authority to take note of such income. On the contrary, it is expressly provided u/s 153A of the Act that the Assessing Officer shall assess or reassess the "total income" of six assessment years which means the said total income includes income which was returned in the earlier return, the income which was unearthed during search and income which is not the subject matter of aforesaid two income. If the CIT has come across any income that the assessing authority has not taken note of while passing the earlier order, the said material can be furnished to the assessing authority and the assessing authority shall take note of the said income also in determining the total income of the assessee when the earlier proceedings are reopened and that income also shall become the subject matter of said proceedings. In that view of the matter the reasoning given by the Tribunal is not justified. The CIT did not have jurisdiction to initiate any proceedings u/s 263 of the Act

CIT VS. TIP TOP TYPOGRAPHY
SECTION 23(1)(A): ENTIRE LAW ON DETERMINATION OF "ANNUAL VALUE" EXPLAINED

The issue before the Bombay High Court was whether the municipal valuation of the property was binding on the Assessing Officer; whether notional interest on interest-free security deposit could be added and whether if the property was covered by the Rent Control Act but no standard rent there under, the Assessing Officer can disregard the standard rent?

Bombay High Court observed:

As regards municipal valuation:

It cannot be discarded that the municipal rateable value cannot be accepted as a bonafide rental value of the property there cannot be a blanket rejection of the same. If that is taken to be a safe guide, then, to discard it there must be cogent and reliable material;

The market rate in the locality is an approved method for determining the fair rental value but it is only when the Assessing Officer is convinced that the case before him is suspicious, determination by the parties is doubtful that he can resort to enquire about the prevailing rate in the locality. The municipal rateable value may not be binding on the Assessing Officer but that is only in cases of afore referred nature. It is definitely a safe guide;

In the event the security deposit collected and refundable interest free and the monthly compensation shows a total mismatch or does not reflect the prevailing rate or the attempt is to deflate or inflate the rent by such methods, then, the Assessing Officer is not prevented from carrying out the necessary investigation and enquiry. He must have cogent and satisfactory material in his possession and which will indicate that the parties have concealed the real position. There must be definite and positive material to

indicate that the parties have suppressed the prevailing rate. He must find out as to whether the property which has been let out or given on leave and license basis is of a similar nature, namely, commercial or residential. He should also satisfy himself as to whether the rate obtained by him from the deals and transactions and documents in relation thereto can be applied or whether a departure there from can be made, for example, because of the area, the measurement, the location, the use to which the property has been put, the access thereto and the special advantages or benefits. It is possible that in a high rise building because of special advantages and benefits an office or a block on the upper floor may fetch higher returns or vice versa. However, that before the Assessing Officer determines the rate by the above exercise or similar permissible process he is bound to disclose the material in his possession to the parties. The Assessing Officer must comply with the principles of fairness and justice and make the disclosure to the Assessee so as to obtain his view;

As regards addition of notional interest:

Notional rent on the security deposit cannot be taken into account for the determination of the annual value. If the transaction itself does not reflect any of the aforestated aspects, then, merely because a security deposit which is refundable and interest free has been obtained, the Assessing Officer should not presume that this sum or the interest derived there from at Bank rate is the income of the assessee till the determination or conclusion of the transaction. There are terms and conditions on which the leave and license agreement is executed by parties. Everything depends upon the facts and circumstances in each case and the nature of the deal or transaction. These are not matters which abide by any fixed formula and which can be universally applied.

As regards properties where standard rent is not fixed:

As regards properties covered by rent control legislation, the Assessing Officer cannot brush aside the rent control legislation. The Assessing Officer either must undertake the exercise to fix the standard rent himself and in terms of the Maharashtra Rent Control Act, 1999 if the same is applicable or leave the parties to have it determined by the Court or Tribunal under that Act.

CIT VS. NANGALIA FABRICS PVT. LTD
SECTION 68: PURCHASES CANNOT BE TREATED AS "BOGUS" ONLY ON THE GROUND THAT THE SUPPLIERS ARE NOT TRACEABLE

Facts:

As the parties from whom the purchases were allegedly made by the assessee could not be located hence, they were treated as bogus and an addition had to be made u/s 68 in the hands of the assesse even though corresponding sales had been effected by the assessee and similar purchases in the earlier and subsequent years were not questioned by the Assessing Officer.

The Gujarat High Court dismissed the appeal of the department as it does not give rise to question of law but is finding of fact:

The Tribunal has found that the purchases are genuine because they are supported by bills, entries in the books of account, payment by cheque and quantitative details. The Assessing Officer did not find any

inflation in purchase price or inflation in consumption or suppression the production. The addition had been made only on the ground that the parties are not traceable. The assessee had made payment through crossed cheques and Assessing Officer did not find that payment made came back to assessee. The ratio of creditors to purchases is normal considering the past records of the assessee. The creditors were outstanding owing to liquidity as assessee is also required to get credit in respect of sales also. Even otherwise, Section 68 is not attracted to amounts representing purchases made on credit.

CIT VS. JYOTI PRAKASH DUTTA

SECTION 80-IB: AN "INDUSTRIAL UNDERTAKING" CAN BE FORMED BY TAKING PLANT AND MACHINERY ON HIRE. NOT NECESSARY FOR THE ASSESSEE TO "OWN" THE PLANT AND MACHINERY. DEPARTMENT'S TENDENCY TO TRY TO UNSETTLE MATTERS STRONGLY DISAPPROVED

Facts:

The assessee, a film producer, claimed deduction u/s 80-IB in respect of the profits from his film called 'Border'. The Assessing Officer denied the claim for deduction on the ground that as the assessee did not own any plant and machinery, he was not an "industrial undertaking" u/s 80-IB (2) (ii).

Bombay High Court dismissed the appeal of the Department and held that:

Section 80-IB permits an undertaking to be formed by 'hire' of plant and machinery and does not require the assessee to own the same. A film production unit formed by engaging cameraman, editor, sound technicians and using their equipments for filming, processing, sound recording and mixing machines on contract basis is an "industrial undertaking" eligible for Section 80-IB deduction. As the Tribunal had for the earlier years decided the issue in favour of the assessee and the High Court had dismissed the department's appeals, the Revenue ought not to have filed an appeal for the present year. The Court disapproved of the attempt to canvass extreme arguments so as to take a chance and try to unsettle the settled matters and things.

MADHUKARKHOSLA VS. ACIT

SECTION 147: IF "REASONS TO BELIEVE" ARE NOT BASED ON NEW, "TANGIBLE MATERIALS", THE REOPENING AMOUNTS TO AN IMPERMISSIBLE REVIEW

Facts:

In AY 2006-07 the Assessing Officer passed an assessment order u/s 143(3). After the expiry of four years from the end of the A.Y., he issued a notice u/s 148 reopening the assessment on the ground that the records showed that an amount of Rupees Twenty Five Lakhs had to been added to the capital account for which the assessee had offered no explanation and that the same constituted undisclosed income u/s 68. The assessee challenged the reopening on the ground that there was no failure on its part to make a disclosure of material facts and the reopening was based on change of opinion.

Delhi High Court held that:

In the recorded reasons, no details are provided as to what such information is which excited the Assessing Officer's notice and attention. The reasons must indicate specifically what such objective and new material facts are, on the basis of which a reopening is initiated u/s 148. This reassessment is clearly not on the basis of new (or "tangible") information or facts that which the Revenue came by. It is in effect a re-appreciation or review of the facts that were provided along with the original return filed by the assessee;

The foundation of the Assessing Officer's jurisdiction and the reason to reopen are the "reasons to believe". This should have a relation or a link with an objective fact, in the form of information or facts external to the materials on the record. Such external facts or material constitute the driver, or the key which enables the authority to legitimately re-open the completed assessment. In absence of this objective "trigger", the Assessing Officer does not possess jurisdiction to reopen the assessment. It is at the next stage that the question, whether the re-opening of assessment amounts to "review" or "change of opinion" arises. If there are no "reasons to believe" based on new, "tangible materials", then the reopening amounts to an impermissible review.

CIT VS. RELIANCE INFRASTRUCTURE LTD

SENIOR OFFICERS OF THE DEPARTMENT SUMMONED AND STRICTURES PASSED FOR 'IRRESPONSIBLE CONDUCT' OF FILING AN APPEAL ON A POINT WHICH IS ADMITTEDLY COVERED AGAINST THE DEPARTMENT BY A JUDGEMENT OF THE SUPREME COURT

Facts:

The department conceded before the Tribunal that the issue in the appeal was covered in favour of the assessee by the judgement of the Supreme Court. Despite this, the department filed an appeal before the High Court to challenge the order of the Tribunal.

Bombay High Court dismissed the appeal the Departmental appeal and held that:

The Revenue is unable to make any distinction with regard to the legal position noted in the judgment of the Supreme Court of India and it is bound by the said judgment of the highest court in the country. Once there is nothing to the contrary, then, the authoritative pronouncement should bind all. The Tribunal then cannot be approached and High Court to complain about an adverse order. The concerned Commissioner and who advised that such Appeal should be filed before this Court, was asked to remain present before the court on the next date of hearing. When the Tribunal follows and applies the ratio of a judgment of the Hon'ble Supreme Court of India, then, the officers are expected to accept an adverse verdict. Where no distinguishing feature can be pointed out, then, the law of the land must be allowed to prevail. It is the mandate of Article 141 of the Constitution of India which is further enshrined in Article 261(1) by giving of full faith and credit to public acts, records and judicial proceedings of the union and of every State. Hence, the law declared by the Supreme Court binds all and cannot be brushed aside. The repeated attempts to raise the same issues and questions in relation to same assessee and year after year results in loss of precious judicial time and public revenue.

NORTH KARNATAKA EXPRESSWAY LTD VS. CIT

THE PERSON WHO CONSTRUCTS A ROAD ON BUILD, OPERATE AND TRANSFER (BOT) BASIS ON LAND OWNED BY THE GOVERNMENT IS NOT THE "OWNER" OF THE ROAD AND CANNOT CLAIM DEPRECIATION THEREON

Bombay High Court had to consider whether a person who is in the business of infrastructure development constructs a road on Build, Operate and Transfer (BOT) basis on land owned by the Government, can it claim depreciation on the toll road. The Court held that:

The functions that are to be discharged by the authority under the National Highway Authority Act does not in any manner mean that this person who is engaged or entrusted with any of the functions by the authority can be said to be the owner of the National Highway. The ownership being that of the Union, it can never be said to be divested of that absolute right by engagement of any person or by entrusting any of the functions of the authority to him. It would not be proper, therefore, to read into section 32 of the Income-tax Act, 1961 something which is defeating and frustrating the mandate of these laws. A provision in one statute or a definition in one statute cannot be interpreted so as to defeat and frustrate another law or statute or any definition therein and when that another statute is a special legislation. The National Highways Act and the National Highways Authority of India Act are, special statutes and when the concept of ownership and vesting therein is of absolute nature that cannot be said to be in any manner restricted or curtailed by a general definition or understanding of the term owner as appearing in the Income-tax Act, 1961. The term is defined widely and broadly in the Income-tax Act, 1961 so as not to allow anybody to escape the provisions thereof by urging that he has a limited right or which is not akin to ownership. Therefore, his income should not be brought to tax;

DCIT VS. SUN PHARMACEUTICALS LTD

SECTION 80-IA/ 80HHC: DESPITE THE INTRODUCTION OF 'BLOCK OF ASSETS' DEPRECIATION CANNOT BE THRUST ON THE ASSESSEE WHILE COMPUTING QUANTUM OF ELIGIBLE DEDUCTION

Gujarat High Court had to consider whether for computing the profits eligible for deduction u/s 80HHC and 80-IA, depreciation (under the concept of ‘block of assets’) had to be deducted even though the assessee had not claimed the same. The Court held that:

Depreciation is optional to the assessee and once he chooses not to claim it, the Assessing Officer cannot allow it while computing the income. Further, once depreciation is optional, it will be optional for block of assets also. It is not necessary that the depreciation is allowable or not allowable as a whole. The assessee can claim it partly also in respect of certain block of assets and not claim in respect of other block of assets. Accordingly, for purposes of sections 80HHC and 80-IA, depreciation not claimed for by the assessee cannot be allowed as a deduction despite the introduction of the concept of block of assets.

CIT VS. HARIRAM BHAMBHANI

UNACCOUNTED SALES: THE ENTIRE UNACCOUNTED SALES CANNOT BE ASSESSED AS UNDISCLOSED INCOME PARTICULARLY IF THE PURCHASES HAVE BEEN ACCOUNTED FOR.

ONLY THE NET PROFIT ON SUCH UNACCOUNTED SALES CAN BE TAKEN AS INCOME

Facts:

In a survey conducted under Section 133A, the assessee had not accounted some of the sales in the total turnover. In the statement recorded at the time of survey, the Director of the assessee declared a sum of Rs.35 lakhs should be offered to tax. Thereafter, the assessee explained the statement on the basis that the director was not aware of the intricacies and implications of the statement made by him. The Assessing Officer rejected the assessee's explanation and assessed Rs.35 lakhs.

Bombay High Court dismissed the Departmental appeal and held:

Section 69C of the Act which speaks of unexplained expenditure is not relevant for this appeal. We are not concerned with any unexplained expenditure in this case. The Commissioner of Income Tax (Appeals) and Tribunal have come to the concurrent finding that the purchases have been recorded and only some of the sales are unaccounted. Both the authorities held that it is not the entire sales consideration which is to be brought to tax but only the profit attributable on the total unrecorded sales consideration which alone can be subject to income tax. No substantial question of law arises.

TRIBUNAL DECISIONS

M/S SMITA CONDUCTORS LTD VS. DCIT (MUMBAI ITAT)
THOUGH GAIN ON DEPRECIABLE ASSET HELD OVER 3 YRS TREATED AS STCG U/S 50, IT HAS TO BE TAXED AT THE LTCG RATE

Facts:

- ☐ During the year, the assessee had sold a flat which was treated as business asset and thus formed part of his block of asset. The said flat was held by the assessee for more than 36 months.
- ☐ The capital gains arising from the sale of such flat was offered to tax as capital gains u/s 50 of the Income Tax Act, 1961 (the Act) after deducting the WDV of the block of asset from the sale consideration.
- ☐ The assessee offered capital gains on the sale of flat as short term capital gains u/s 50 but for the purpose of applicability of tax rate the same was treated as long term capital gains, as the flat was held for more than 36 months.
- ☐ The assessee relied on the case of M/s Ace Builders Private Limited (281 ITR 410) wherein the Honourable High Court of Bombay had held that provision of section 50 is applicable only for computation of capital gain and for the purpose of other provisions of the Act, such as 54EC, the capital gains from the sale of depreciable asset has to be treated as long term capital gains if it is held for more than 36 months.
- ☐ The assessee also relied on decision of Mumbai Tribunal in the case of Prabodh Investment & Trading Company vs ITO (ITA No. 6557/Mum/2008) in which, following the judgment of Hon'ble

High Court of Bombay in case of M/s. Ace Builders Private Limited (supra), Tribunal held that section 50 created a legal fiction only for the purpose of section 48 & 49 (i.e. Computation of capital gain). The Tribunal further accepted that if the capital gain is assessed as long-term capital gain, the rate of tax would apply as provided in section 112.

Issue:

- Whether tax rate as applicable to long term capital assets, to be applied in case of capital gains on sale of depreciable asset held for more than 36months?

Held:

- The Hon’ble Mumbai Tribunal observed that, the flat was held for more than three years. Further, the capital gains should be treated as short term capital gain only for the purpose of computation of capital gains u/s 50 of the Act but for the purpose of applicability of tax rate the same has to be treated as long term capital gains as the said flat was held for more than 3 years. Accordingly, the tax rate has to be applied as provided in section 112 of the IT Act.

DDIT VS. IATA BSP INDIA (MUMBAI ITAT)
MFN CLAUSE CAN BE USED TO IMPORT 'MAKE-AVAILABLE' CLAUSE.

Facts:

- During the year under consideration, the assessee, an Indian branch office of IATA, Canada, was required to pay to IATA Canada, for the BSP Link services. BSP Link system enables issue of debit notes / credit notes, issue of refund, billing statement etc. electronically, for the participating agents and Air-lines.
- IATA Canada entered into an agreement through it administrative office in Geneva, Switzerland with ADP-GSI, a France company, to develop the system (BSP Link)
- ADP-GSI raises the invoice on Geneva Office of IATA, Canada who in turn raises the invoices on assessee for the cost attributable to it. Assessee made an application u/s 195(2) before the AO, seeking permission to remit the said amount without deducting TDS on the following grounds. Geneva Office is not rendering any services to the assessee and it is just a cost sharing arrangement, Provisions of section 195 are not applicable as there are no two distinct and separate entities
- The AO rejected assessee’s contention stating that, the beneficiary of service is assessee and said services are technical in nature, liable to tax in India @ 10% as per article 13 of DTAA between India and France.
- In addition to other grounds before the CIT(A), the assessee raised new argument, that amount paid by the assessee was not in the nature of Fee for Technical Services (FTS), as envisaged in Article 13 of India France DTAA, r.w. clause 7 of the protocol, as the services rendered do not make available any technical knowledge, skill, know-how etc.

- CIT (A), relying on the CBDT circular No. 740 dtd. 17-04-1996, rejected the contention of the assessee that provisions of section 195 are not applicable. However, CIT (A) accepted assessee's contention that services are not in the nature of FTS within the meaning of article 12(4)(b) of India-US treaty r.w. Article 13 of India- France DTAA and clause 7 of the protocol thereto.
- Aggrieved with the said order of CIT (A), the department preferred an appeal before the Hon'ble Tribunal.
- Before the Tribunal, the assessee relied upon the Decision of Hon'ble Karnataka High Court in the case of CIT v. De Beers India Minerals (P.) Ltd and Kolkata Bench of ITAT in the case of DCIT v. ITC Ltd., wherein the concept of "made available" has been explained in greater details.

Issue before the Tribunal:

- Whether the services provided by the France company to the assessee company are "made available" to the assessee?

Held:

The Hon'ble ITAT Mumbai held that:

- The restricted scope provided in India-USA DTAA and India-Portuguese DTAA is applicable in case of India-France DTAA as per clause 7 of the protocol.
- Further, the Tribunal observed that there was nothing to show that the said services made-available any technical knowledge, skill, know-how etc. and hence not in the nature of fees for included services.

RAJEEV KUMAR AGARWAL VS. ACIT (AGRA TRIBUNAL)
SECOND PROVISO TO S. 40(A) (IA) TO HAVE RETROSPECTIVE EFFECT FROM 1.4.2005

Facts:

- During the year the assessee made interest payments without deducting tax at source u/s 194A of the Act. The Assessing Officer disallowed the interest expenditure u/s. 40(a) (ia) of the Act for non deduction of tax at source.
- The assessee, before the ld. CIT (A), contended that second provision to section 40(a) (ia) inserted by Finance Act, 2012, provides for allowance of expenditure even though no tax is deducted at source, provided the recipient of income has paid tax on such income and has filed its Return of Income. The assessee contended that the second provision to s.40 (a) (ia), though effective from 01.04.2013, should be given retrospective effect since the amendment is "declaratory and curative" in nature.
- The department relied on the decision of Special bench (SB) in the case of Bharti Shipyard1 wherein the SB held that, the amendment brought out by the Finance Act, 2010 to section 40(a) (ia) w.e.f. 01.04.2010, cannot be held to have retrospective effect.

- Aggrieved, the assessee preferred an appeal before the Hon'ble Tribunal.

Issue:

- Whether second proviso to section 40(a) (ia) inserted by Finance Act, 2012 can be interpreted as retrospective in effect?

Held:

- The assessee relied on the decision of Honourable Delhi High Court in the case of CIT vs. Rajinder Kumar wherein stand taken by SB in case of Bharti Shipyard has been disapproved and held that the bigger picture of realization of legitimate tax dues shall be given consideration while interpreting the provisions of section 40(a) (ia) in a fair, just and equitable manner. The Hon'ble Agra Tribunal held as under:
- Section 40(a) (ia) provides for disallowance of expenditure in the hands of an assessee in a situation where income embedded in such expenditure has remained untaxed due to tax withholding lapses by the assessee. Therefore the deduction restriction shall not come into play when as assessee is able to establish that there is no actual loss of revenue.
- Section 40(a) (ia) is not a penalty section for tax withholding lapse.
- Accordingly, it was held that the insertion of second proviso to Section 40(a) (ia) is declaratory and curative in nature and it has retrospective effect from 1st April, 2005.

FINE JEWELLERY (INDIA) LTD. VS. ACIT (MUMBAI ITAT)
RECURRING EXPENDITURE ON 'BRAND BUILDING' DEDUCTIBLE AS REVENUE EXPENDITURE

Facts:

- The assessee, engaged in business of manufacturing and exporting jewellery incurred certain recurring expenditure on brand building. This predominantly consisted of expenditure incurred on advertising, display and launch of the products of the assessee to create public awareness and consciousness of the brand and of the product characteristics. Other expenses incurred were on legal and professional expenses hired for advertisement purpose.
- These expenses were deferred over a period of three years in its books of accounts and were claimed in its return of income as deductible under section 37(1) of the Act.
- The Assessing officer treated this as brand building/promotion expenditure as capital expenditure. On appeal by the assessee, the CIT (A) upheld the contention of the AO.

Issue:

- Whether expenditure incurred year to year for 'brand building' is revenue expenditure?

Held:

The Tribunal held as under:

- There was no empirical data or objective facts that were brought on record by the Department to prove that a brand had come into existence which has generated a positive and enduring value for the assessee. Further the fact that the expenditure was incurred in the regular course of business of the assessee has not been disputed.
- The recurring nature of this expenditure is important in understanding the purpose and characteristics of this expenditure. The fact that the assessee had to incur such expenditure every year towards 'brand building' shows that the benefit arising out of it was transitory.
- Deferral of the expenditure over a period of three years in the books of accounts did not imply an admission by the assessee that the expenditure is capital in nature. Just because an expenditure is debited in books as toward brand building, which it purportedly is, and a statutory recognition has since been accorded to such intangible assets, as a 'brand', would not by itself imply that an advantage in the capital field, or of enduring value to the business, has arisen to the assessee upon incurring the expenditure.
- Rather, the business is being competitive, and prudence and conservatism being fundamental accounting assumptions, capitalization of such expenses, or ascribing lasting/ abiding value to such expenses, could only be done on sound footings and cogent basis.
- In view of above, it was held that without any basis to hold that the expenditure has translated or manifested in, or resulted in the acquisition of, a capital asset or a in a profit making apparatus by the assessee, or of it being in the nature of capital expenditure, i.e., per se. The same, therefore, has been rightly treated by it as revenue expenditure, admissible u/s. 37(1) of the Act.

ALLCARGO GLOBAL LOGISTICS LTD VS. ACIT (MUMBAI ITAT)
NO TRANSFER PRICING ADJUSTMENT TOWARDS DELAY IN ALLOTMENT OF SHARES BY AE.

Facts:

- M/s Allcargo Global Logistics Limited (Assessee) along with M/s. RMK was holding shares of M/s. ECUHOLD (company incorporated in Belgium) in the ratio 49.99:50.01.
- To have complete control of M/s Ecuhold the assessee incorporated new company Allcargo Belgium NV (Associated Enterprises "AE"), who intern will hold 100% shares of M/s RMK. Under a Letter of intent the assessee agreed to purchase all shares of RMK through its AE.
- To go ahead with the above scheme the assessee, agreed to subscribe equity shares of its AE, with a condition that the shares shall be allotted only if the deal for purchase of 100% shares of RMK materializes. If the transaction doesn't materialize, the subscription money was to be returned.
- Accordingly, the assessee paid the share application money amounting to Rs.11,65,00,000/- and Rs. 46,18,94,150/- on 19.05.2006 and 22.06.2006 respectively to Allcoargo Belgium NV. Subsequently, the shares were allotted on 08.06.2007.
- Since the shares were allotted after a period of one year; the Assessing Officer was of the view that for the intermittent period (i.e the period between share application money received and

share actually allotted) was akin to a loan. Accordingly, computed interest @ 5.277% i.e 3% above LIBOR.

- Assessee explained that the delay in allotment of shares by its AE against the share application money was for genuine and due to unavoidable reasons. Accordingly, there was no justification to treat the transactions involving payment of share application money as loan transactions and no transfer pricing adjustment is required.
- Aggrieved, the assessee is in appeal before the CIT (A). However, the CIT (A) upheld the adjustment made by the AO.

Issue:

- Whether the AO was justified in considering the share application money held for unusually long period as a loan transaction?

Held:

The Hon'ble Tribunal allowed the assessee's appeal by relying on the Decision of Delhi ITAT in the case of Bharti Airtel Ltd. vs. ACIT (63 SOT 113) wherein it was held that

- The transactions involving payment of share application money could not be treated as international transactions of loan; merely because there was a delay in allotment of shares.
- Even if Arms Length Price (ALP) was to be determined on such deemed interest free loan, the same should have been done on the basis as to what would have been interest payable to an unrelated share applicant on similar transaction. Since there was no material on record showing that similar interest payments were made to unrelated parties, the impugned ALP adjustment was not warranted.
- Accordingly, the appeal was allowed in favour of the assessee.

SURESH NANDA V. ACIT (DELHI TRIBUNAL)
NO. OF DAYS OF FORCED STAY DUE TO UNTENABLE IMPOUNDING OF PASSPORT, EXCLUDED FOR DETERMINING RESIDENTIAL STATUS

Facts:

- The assessee came to India to attend birthday of his ailing father. On 09.10.2006, the CBI conducted a search at various places including his residence and seized his passport.
- In tax return he has declared his status as non-resident, though his say in India exceeded 182 during the relevant assessment year. In assessment, the AO treated assessee as resident and has assessed his global income.
- Before the CIT (A), the assessee contended that for relevant assessment year, his stay in India had exceeded 182 days only because his passport was illegally impounded by the Govt. agencies and he was unable to travel from India for reasons beyond his control. Accordingly, for the said years, he should qualify as a non-resident.

- However, CIT (A) held that the provision determining residential status does not provide for reasons for stay in India, but plainly states the conditions regarding number of days of stay.

Issue:

- Whether forced stay in India due to untenable impounding of assessee’s passport was to be excluded while computing his days of stay in India?

Held:

The Delhi ITAT held as under:

- The India law prescribes 182 days of stay outside India as a permissible way of claiming the NRI status. The law provides that assessee has a liberty to choose the prescribed number of days of stay outside India. It is ingrained in the provision that in exercise of this right assessee has to move from one country to other to comply with the relevant provisions and regulations in this behalf.
- The proceedings clearly reveal that the repeated impounding of assessee's passport and lodging of criminal case was found to be untenable by courts. This entangled the assessee into spat of litigation, forcing him to stay in India and unwillingly loose his NRI status on strict and literal interpretation of relevant provision. The circumstances were beyond assessee's control and no fault can be attributed to assessee in this behalf. The assessee also made legal efforts to maintain his past status as NRI and endeavoured to defend his legal rights before various legal forums.
- These facts and circumstances create a peculiar situation. The assessee's over stay in India was neither attributable to his volition nor free will and was a result of untenable actions of impounding his passport by executive orders which were quashed by the highest court. In these circumstances, the literal meaning of the provisions leads to a manifest absurdity in as much as by untenable actions of executive, a tax payer is exposed to the peril of loosing his valuable right under taxation law, i.e., retaining his NRI status.
- The legislature in its wisdom might not have envisaged such a situation wherein a person is forced to become a resident due to wrongful restraint of subject in absence of eligibility to travel outside India. This is case where strict reading of the legal provisions regarding residence in India should not be applied. Here, the interpretation should result in harmonious meaning and equity rather than injustice.
- In view of the above, the ITAT held the forced stay in India due to impounding of passport should not be considered for determining the residential status.

RAJ KUMARI AGARWAL VS DCIT (AGRA ITAT)

SECTION 57: WORDS "WHOLLY & EXCLUSIVELY" IN SECTION 57 INTERPRETED AS TO ALLOW EXPENSES INCURRED FOR "PROTECTING" THE INCOME SOURCE

Facts:

- The assessee earned interest income on fixed deposits (FDs) maintained with bank. While filing the return of income, the interest income was offered under the head income from other sources' after claiming a deduction of interest paid on loan on the security of FDs.
- The loan on the security of deposits was obtained to fund her personal requirements and to avoid the premature encashment of the FDs. The loan has resulted in continuance of FDs at a higher rate and hence, the end purpose of paying interest was to keep the interest source of income intact.
- The Assessing Officer rejected the claim of such deduction on the ground that interest on loan has not been incurred wholly and exclusively for the purpose of making or earning income from FDRs. The loan was not taken to make these FDs and therefore the claim is inadmissible as per section 57(iii) of the Act.
- The Ld. CIT (A) upheld the contention of AO and dismissed the assessee's appeal. Aggrieved by this order of CIT (A), the assessee preferred an appeal before the Hon'ble Tribunal.

<u>Issue:</u>

- Whether interest incurred to protect the income source, though not "wholly and exclusively" for earning the income, be allowed against such income under section 57(iii) of the Act?

<u>Held:</u>

The Tribunal allowed the deduction as under:

- It is an undisputed fact that the loan was taken to protect the income source from FDs which was earning interest at a higher rate.
- It is clear from section 56 that as long as the expense is incurred wholly and exclusively for the purpose of earning an income, even if it is not necessarily for earning that income, it will still be deductible in computation of income.
- The assessee could have gone for premature encashment of bank deposits, and thus ended the source of income itself as well, but instead of doing so, she resorted to borrowings against the fixed deposit and thus preserved the source of earning. The expenditure so incurred is an expenditure incurred wholly and exclusively for earning from interest on fixed deposit

BINJUSARIA PROPERTIES (P) LTD VS. ACIT
2(47) OF THE INCOME-TAX ACT, 1961

<u>Facts:</u>

- The assessee gave its plot of Land for development and had received a refundable deposit in the relevant year. According to Development Agreement-cum-General Power of Attorney, the

developer had to develop the property, according to the approved plan from the competent authority, and deliver to the assessee 38% of the constructed area in the residential part.

- No development activity was carried out by the developer in the year of the agreement and accordingly, assessee did not offer the sum for tax.
- The Assessing Officer was of the view that, in terms of the development agreement, the transfer has taken place during the year under appeal and the assessee was liable to pay capital gain taxes on the date of transfer.
- The CIT (A) confirmed the view of assessing officer and, therefore aggrieved, the assessee preferred an appeal to the Tribunal

Issue:

- Where assessee enters into a development agreement of land with a developer in terms of which developer has to develop property and deliver a part of constructed area to assessee

Held:

Tribunal observed the following:-

- The assessee has executed a 'Development Agreement- cum-General Power of Attorney' which indicates that the assessee has given a permissive possession to developer.
- The refundable deposit received by the assessee is to be refunded on the complete handing over of the area falling to the share of the assessee and in the event of the failure on the part of the assessee, the same shall be adjusted at the time of final delivery.
- It is undisputed that there is no development activity carried out in the said relevant year. Even the approval of plan was not obtained and the process of construction has not been initiated.
- Considering specific clauses in the agreement, all abovementioned facts and circumstances and the reading of section 2(47)(v) of the Income-tax Act, 1961 along with section 53A of The Transfer of property Act, 1882, Tribunal held that the assessee had fulfilled its part of obligation under the development agreement but the developer had not done anything to discharge the obligations cast on it under the development agreement, the capital gains could not be brought to tax in the year under appeal, merely on the basis of signing of the development agreement .
- It is only upon receipt of consideration in the form of developed area by the assessee in terms of the development agreement, the capital gains becomes assessable in the hands of the assessee.

ARAVALI POLYMERS LLP VS JCIT (KOLKATA ITAT)
GIVING OF INTEREST-FREE LOANS TO PARTNERS OF THE LLP CONTRAVENES PROVISO (F) TO SECTION 47(XIIIB) OF THE ACT.

Facts:

- A Private Limited Company namely Aravali Polymers Pvt. Ltd. was converted into a Limited Liability Partnership (LLP) in accordance with the provisions of the Companies act.
- At the time of conversion, one of the main assets of the Company was investment in equity shares of East India Hotels Ltd (EIH). The appellant also received Reserves and Surplus of the erstwhile company.
- The appellant also gave temporary interest free loans to its partners in the profit sharing ratio as on the date of conversion.
- Post conversion of the company into the LLP, the appellant sold the shares and offered the resulting capital gain to taxation as long term capital gain. The appellant claimed that the transfer of the assets by the company to the LLP was exempt u/s 47(xiiib).
- The Assessing Officer (AO) held that by giving interest-free loans to the partners in the same proportion as their shareholding in the company on the date of conversion, the appellant had contravened proviso (c) & (f) to section 47(xiiib) and that the exemption granted by s. 47(xiiib) was not available. He held that u/s 47A (4), the transfer of the said shares of EIH by the company to the LLP on conversion was assessable to tax on the basis of the market value of the shares on the date of conversion into the LLP. This was upheld by the CIT (A).
- Aggrieved by the order of CIT (A), the appellant filed an appeal before the ITAT.

Issue:

- Whether extending interest free loans to partners of the LLP contravenes the conditions laid down in section 47(xiiib) to exempt the capital gains arising on transfer of a capital asset by a private limited company to a LLP. If yes, whether the capital gains are to be computed on the book value of assets transferred or on its market value?
- Appellant's contention
    - The appellant contended that there has been no violation of section 47(xiiib) since the loan is receivable and no benefit had been given to the partners. Further no benefits had been received by the shareholders of the erstwhile company and no amount was paid to any partner out of the balance of accumulated profits standing in the accounts of the company as on the date of the conversion.
    - It was the further submission that even assuming there was a violation of the proviso to section 47(xiiib), the computation of capital gains as made by the AO was wrong in so far as there is no provision for deeming the market price of the shares or the assets, especially when the asset has been transferred at book value.
- Revenue's contention
    - The department submitted that the appellant had provided benefit to the partners (erstwhile shareholders of the company) out of the Reserves and Surplus in form of interest-free loans and hence there was a violation of section 47(xiiib) of the Act. In view of this violation and in consideration of section 47A (4) of the Act, the amount of gains

arising from the transfer of the shares of EIH were correctly taxed in the hands of the appellant.

Held:

The Tribunal held as under:

- Proviso (c) to section 47 (xiiib) bars the shareholders of the company from receiving any consideration or benefit in any form or manner other than by way of a share in the profit and capital contribution in the LLP. This means that both the company and the LLP must exist for the shareholders of the company to receive any consideration. As, in the present case, the company does not exist after conversion, the question of a violation of Proviso (c) to section 47(xiiib) does not arise;
- Proviso (f) to section 47(xiiib) bars payment either directly or indirectly to any partner out of the accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion. Here, the interest free loans given by the appellant to its partners (in profit sharing ratio) shows that the same has been given directly to the partners out of the accumulated profits standing in the books of erstwhile company on the date of conversion. This clearly violates the above condition and hence the exemption provided in section 47(xiiib) of the Act is not available to the appellant.
- However, the AO's action of invoking section 47A(4) and of computing capital gains by adopting the market value of the shares on the date of conversion is not correct. Section 47A (4) applies to a case where the exemption u/s 47(xiiib) is available and the conditions laid down in the proviso are not complied with. However, as in the present case, the Assessment Year under appeal is the year on which the conversion took place and in that year itself, the conditions prescribed for the benefit of section 47(xiiib) were not complied, section 47A(4) is not attracted. Under section 45, the market value of the asset transferred cannot be deemed to be the 'consideration'. As the shares were transferred at the book value, the capital gains have to be computed on the basis that the book value is the consideration received for the transfer by way of conversion. Accordingly, the appeal of the appellant was dismissed.

AGRANI TELECOM LTD. VS. ASST. CIT

Facts:

- The assessee company was mainly engaged in the business of trading in telecom and security equipment and providing transportation service.
- During the year under consideration, it had entered into the business of Fleet Management services and providing security products and networking solutions.
- The assessee had paid consultancy charges to a consultant, who had provided various kinds of advisory services and had also contributed in identifying prospective customers, for rendering of the aforesaid services.

- On appeal before CIT (A), the assessee contended that the Assessing Officer had completely misunderstood the facts and that it had incurred the said consultancy charges only after setting up of the new business and for developing the existing new business, which was in the service industry.
- On scrutinising the books of accounts of the assessee, CIT (A) noted that the income offered from new business services were meagre as compared to the income offered from existing business of trading and transportation service. He thus held that such consulting charges can neither be capitalised nor allowed as revenue expenditure. It was clear cut case of capital expenditure not allowable u/s. 37(1). On appeal before the Tribunal.

Issue:

- If the expenditure incurred by the assessee, to do business for earning some profit, does not impact its fixed capital, then such expenditure has to be reckoned on revenue account, even though the advantage from the expenditure so incurred, may endure in future.

Held:

- For deciding the issue whether the expenditure is capital or revenue in nature, the concept of enduring benefit is quite a paramount factor but such test of enduring benefit cannot be held to be conclusive. There may be a case where expenditures have been incurred for obtaining advantage of enduring benefit but nonetheless they may be on revenue account. What has to be seen is the nature of advantage in a commercial sense, that is, whether it is in the capital field or for the running of the business.
- If the advantage is necessitating the business operations for enabling the assessee to do business for earning some profit without having impact on fixed capital, then such expenditure has to be reckoned on revenue account, even though the advantage may endure in future.
- In the present case, there is no augmentation of asset to the assessee but the expenditure has helped the assessee to develop a proper guidance for running the new line of service industries. Thus, in our opinion, the payment for consultancy charges is on account of revenue field only and has to be allowed as revenue expenditure u/s. 37(1) as it is wholly and exclusively for the purpose of business.

ACIT VS. THE UPPER INDIA CHAMBER OF COMMERCE [ITAT LUCKNOW]
SECTION 50C NOT APPLICABLE IF CHARITABLE TRUST INVESTS ENTIRE SALE CONSIDERATION IN OTHER CAPITAL ASSET.

Facts:

- The assessee is a charitable society registered u/s. 12A of the Act. It had transferred an immovable property for Rs. 2.5 lacs and the entire net sale consideration was invested in other capital asset i.e. fixed asset with Bank.

- ☐ The AO invoked the provisions of section 50C and computed capital gains at Rs. 66.38 lacs based on the value adopted by the stamp duty authorities.
- ☐ The assessee contended that being a trust, specific provisions of section 11(1A) are applicable which say that if the net consideration for transfer of capital asset of a charitable trust is utilized for acquiring new capital asset, then the whole of the capital gain is exempt.
- ☐ The CIT (A), considering the applicability of section 11(1A) in case of assessee, deleted the additions made by the AO. Aggrieved by the order of CIT (A), the revenue filed an appeal before the ITAT.

Issue:

Whether provisions of section 50C for computation of deemed capital gains are applicable to charitable trusts taxed as per provisions of section 11(1A)?

Held:

- ☐ The Tribunal dismissed the appeal of the department and held that the assessee is a charitable society registered u/s 12A of the Act. The applicability of provisions of section 50C of the Act on transfer of capital asset in case of a charitable society has already been examined by the Tribunal in case of ACIT vs. Shri. Dwarikadhish Temple Trust, Kanpur (ITA No. 256 & 257/LKW/2011), in which it was held that where the entire sale consideration was invested in other capital asset, provisions of section 50C of the Act should not be invoked. It is specifically mentioned in section 50C(1) of the Act that the stamp duty value is to be considered as full value of consideration received or accruing as a result of transfer for the purpose of section 48 of the Act. In case of a registered charitable trust, the income of the assessee has to be computed u/s. 11 of the Act. As per sub section (1A) of section 11 of the Act, if the net consideration for transfer of capital asset of a charitable trust is utilized for acquiring new capital asset, then the whole of the capital gain is exempt. Therefore section 50C will not have any applicability where the exemption is claimed u/s provisions of section 11(1A).

MR. SHAH RUKH KHAN VS. ACIT (ITAT MUMBAI)
ASSETS PURCHASED BY SPOUSE FROM LOAN GIVEN BY THE ASSESSEE ARE NOT TO BE ADDED TO THE NET WEALTH OF THE ASSESSEE.

Facts:

- ☐ The assessee had given a loan to his spouse; out of such loan the spouse had purchased a residential house property and Jewellery. Subsequently, the spouse had repaid some part of the loan in subsequent years
- ☐ The AO added the value of House Property and Jewellery in the net wealth of assessee by holding that there was indirect transfer of asset to the spouse as per section 4(1) (a) (i) of the Wealth Tax Act (WT Act). The assessee could have purchased the jewellery by himself which he deliberately avoided.

- On appeal, the CIT (A) affirmed the view of the AO. Aggrieved by the order of CIT (A) the assessee preferred an appeal before the tribunal.

Issue:

Whether assets purchased by the spouse of assessee out of loan given by assessee would amount to indirect transfer of assets under WT Act?

Held:

The Tribunal held as under:

- There is difference between the term “transfer” and “loan”. In case of transfer, legal interest is created in the transferee over the subject matter of transfer, whereas in the case of “loan”, except a possessory interest which may be momentary also, no other interest is created.
- Amount given by the assessee to spouse merely an interest free loan, thus cannot be said to be a device for evasion of tax or transfer of assets.
- Lending of Cash loan to spouse is out of the purview of definition of “assets” mentioned in Section 2(ea) of the Wealth Tax Act and thus there is no “transfer of asset”.
- Accordingly, the appeal of the assessee was allowed.

YUM RESTAURANTS (INDIA) PVT LTD. VS ITO (ITAT NEW DELHI)
IMMEDIATE SHAREHOLDING RELEVANT FOR CARRY- FORWARD OF LOSSES U/S 79 AND NOT ULTIMATE BENEFICIAL SHAREHOLDING.

Facts:

- Yum Restaurants (India) Pvt Ltd. (“Assessee”) is the 100% subsidiary of Yum Restaurant Asia Pte Ltd. During the year, Yum Restaurant Asia Pte Ltd. (“Transferor”) transferred its entire shareholding in assessee to Yum Asia Franchisees Pte Ltd (“Transferee”). Both the transferor and transferee are sister concerns having a same parent company in USA.
- The Learned Assessing Officer (AO) denied carry forward and set-off of brought forward losses u/s 79 of the Act to assessee as 100% of its shareholding underwent a change.
- The AO also rejected the assessee’s contention that the entire shares were transferred to sister concern having same parent company, therefore there was no change in ultimate beneficial owner.
- Commissioner of Income Tax (Appeals) (CIT (A)) also upheld the order of AO. Being aggrieved by the order of CIT (A), the assessee preferred an appeal before ITAT.

Issue before ITAT:

Whether AO was justified to deny the carry forward and set-off of brought forward losses u/s 79, when the ultimate beneficiary is same parent company?

Held:

- Even though both are sister concerns having same parent company, however each concern is separately and individually liable for their transactions entered by them. Corporate veil cannot be pierced to treat both as one and the same to escape the consequence of section 79 of the Act.
- The ITAT also rejected the assessee’s contention of beneficial owner stating the reason that if same is accepted then assessment of all the subsidiary companies would be done in the hands of ultimate holding company only, which is incorrect.
- Therefore, assessee was not allowed to carry forward losses since each sister concern is treated as a different entity.

ARAMEX INDIA PRIVATE LIMITED VS. DCIT (MUMBAI TRIBUNAL)
NO TRANSFER PRICING ADJUSTMENT IF THE ASSESSEE IS BENEFITED BY A RECIPROCAL ARRANGEMENT WITH ITS AE.

Facts:

- Aramex India Private Limited (‘assessee’/‘AIPL’) is engaged in the business of courier services providing international express delivery, freight forwarding services and domestic distribution services to the customers.
- The assessee’s segmental results reflected huge profits under the express segment and the freight services segment, where the assessee had mainly transacted with its AEs. However, in the domestic segment, the assessee had reported a huge loss.
- The Transfer Pricing Officer (‘TPO’) rejected assessee's segmental results and held that the assessee's overall margin needs to be benchmarked under external TNNM with the comparable at the entity level. His main reason was that the domestic party transaction is also expected to earn arm's length margin and then only the AE transactions will stand the test of arm's length principle. The assessee contended that one of the reasons for varied segment results was undertaking delivery of shipments free to its AE in Middle East, from which it was benefited. However, this contention of benefit from reciprocal arrangement was not accepted and the TPO made a TP adjustment.
- Against the aforesaid TP adjustment, the assessee filed its objections before the DRP on various counts. The first and foremost objection was that the adjustment cannot be made at an entity level, but only on international transactions with the AE. However, the DRP rejected the assessee's contention on the ground that the assessee has not recorded all the international transactions with the AE in a fair and transparent manner so as to restrict the adjustment only to the transaction with the AE. The DRP also rejected the contention for acceptance of the segmental results computed by the assessee on the ground that no reasonable cost allocation has been determined to represent the true and correct segmental results. Thus, the adjustment

made by TPO was accepted by the DRP. The assessee, as a result, challenged the adjustment confirmed before the Tribunal.

Issue:

Whether overall benefit received from reciprocal arrangement with an AE can be accepted even if the arm's length principles are not followed?

Held:

The Hon'ble Mumbai Tribunal held as under:

- The TPO's basic premise for rejecting the segmental accounts is that, the assessee had suffered losses in the Indian operations and from this he inferred that the profits have been shifted to the international transaction with the AEs. Such an inference is not correct either on facts of the case or in law.
- Regarding losses in the Indian operations, the assessee had submitted that it was incurring losses year to year in domestic segment due to stiff competition which had compelled the assessee to charge less prices for delivery of parcel as compared to international business, so as to attract more domestic business. Also, the assessee had to maintain many international standards for its delivery services and accordingly the costs were quite high. The other reason given by the TPO for rejecting the segmental results was delivering AEs shipments free of charge or substantially discounted. On this, it was submitted that even the AEs are giving similar kind of services to the assessee in the outbound delivery services and if over all shipments/ consignment is taken into consideration, then the assessee get more benefited. Such a delivery free of charge among the group concerns have been accepted by the OECD in the transfer pricing guidelines.
- As regards allocation of expenses, the same should be made on the basis of turnover. Even going by the segmental margin on revenue basis for all the three segments, the margins of the assessee are much higher as compared to the average margin of comparable finally adopted by the TPO. Thus, assessee's overall segmental results are liable to be accepted.
- On the basis of above, the Tribunal deleted the TP adjustment made by the TPO.

DCIT- 1(1) VS. BRAMHA CORP. HOTELS AND RESORTS LTD. (ITAT PUNE)
PREMIUM ON BUY-BACK OF SHARES PAID TO RECALCITRANT1 SHAREHOLDERS IS ALLOWABLE AS REVENUE EXPENDITURE

Facts:

- The company was initially formed by the Agarwal group. To ensure adequacy of funds for their five star deluxe hotel project, the Agarwal group joined hands with Mac Charles (India) Ltd. group and the Gupta group.
- Subsequently, there were disputes amongst both these groups and the company, which resulted into several civil and criminal cases filed by them against each other.

- The matter was taken up before the Company Law Board where the company was permitted to buy back the shares.
- Due to disputes with the recalcitrant shareholders, the company entered into an agreement with Mac Charles (India) Ltd. and Gupta Group to buy-back the shares held by them at a stipulated price which included premium over and above the face value of the shares. Consequently, the assessee claimed the amount of premium paid as revenue expenditure.
- The AO disallowed the amount of premium incurred on buy back of shares on the ground that the amount so paid was not for the purpose of protection of the assets and interests of the company. He held that only Agarwal family would be benefitted by the compromise as they become the majority shareholders. He analysed that the company was gradually making profits since 2000-01 and therefore the contention that the functioning of business had been smoothened by the buyback is rejected. He placed reliance on certain judicial decisions to show that expenditure related to increase of share capital base which changes the capital structure of the company has to be disallowed on capital account.
- In appeal before the Ld. CIT (A), the claim of expenditure was allowed as revenue expenditure on the basis that the compromise settlement as ratified by the Company Law Board was in the interest of the company and the same has facilitated smooth running of the business.

Issue:

- Whether premium paid on buyback of shares to recalcitrant shareholders is allowed as revenue expenditure?

Held:

The ITAT upheld the order of the CIT (A) with the findings as under:

- In assessee's own case for AY 2006-07, a similar claim was made by the assessee who was allowed by the AO as revenue expenditure. The CIT invoked jurisdiction u/s. 263 and set aside the issue to the file of the AO with a direction to make addition of premium on buyback by treating the same as a capital expenditure. The assessee challenged the order of the CIT before the Tribunal where the appeal filed by the assessee was allowed and the order passed invoking section 263 was cancelled.
- In a similar issue, the Mumbai Tribunal in the case of USV Ltd. vs. JCIT. (ITA No.376/M/2001 dated 18.12.2006) for AY 1998-99, has held that premium on buyback of shares from recalcitrant shareholders is revenue expenditure.

M/S EICHER MOTORS LIMITED VS. DCIT, CIRCLE 11(1) (ITAT DELHI)
EXPENDITURE INCURRED TO STRENGTHEN CONTROLLING INTEREST IS ALLOWABLE U/S 37.

Facts:

- The Assessee Company is in the business of Manufacturing of Maps and other furnishing items.

- ☐ The assessee is a promoter and holding company of Eicher Limited. The assessee company with a view to acquire controlling stake in its subsidiary (Eicher Limited) made an open offer to public shareholders to acquire their shares and de-list the company from stock exchange.
- ☐ The assesse company employed J M Morgan Stanley Pvt. Ltd. and ILFS Investments Securities Limited and paid consultancy fees to them. Pursuant to delisting of shares of Eicher Limited, it was amalgamated with the assessee.
- ☐ The assessee claimed the consultancy fees as revenue expenditure u/s 37 of the Income Tax Act, 1961(Act) on the ground that shares were purchased during normal course of business and it doesn't result in any expanding the capital base of the company.
- ☐ However the Assessing Officer ("AO") denied the claim of the assessee on the ground that purchase of shares has not resulted in expanding the capital base of appellant company, but resulted into acquisition of new asset and traded it as capital expenditure.
- ☐ On appeal, the CIT (A) affirmed the view of the AO. Aggrieved by the order of CIT (A) the assessee preferred an appeal before the tribunal.

Issue:

- ☐ Whether expenditure incurred in relation to acquisition of shares of subsidiary company for strengthening the controlling interest is allowable deduction u/s 37?

Held:

The Tribunal held as under:

- ☐ The tribunal endorsed the contention of the assessee that the acquisition of shares in its subsidiary company was to strengthen its controlling interest in that company is furtherance of its business only.
- ☐ The tribunal accepted assessee's reliance on Addl CIT vs Laxmi Agents (P) Ltd- 125 ITR 227, CIT vs Amritaben R Shah – 238 ITR 777 etc., wherein it was held that "interest expenditure incurred on borrowed fund utilized for acquiring controlling interest in companies would be allowable business deduction since the acquisition of controlling interest in a company is in furtherance of the business purpose of the assessee"
- ☐ The tribunal accepted that judgment rendered in context in allowability of interest u/s 36 (i) (iii) would also be applicable to claim deduction u/s 37(1) as the condition precedent under both the provision is same.
- ☐ Accordingly, the consultancy fee paid by the assessee is allowable as a deduction u/s 37(1) of the Act.

MOHAN KANT BANSAL VS. ITO

CPC HAULED UP FOR HARASSING ASSESSEE BY IMPOSING TAX OF 60% ON LTCG AND REFUSING TO RECTIFY

Facts:

A long term capital gain was charged @ 60% instead of 20% in intimation u/s 143(1) of the Act by Centralised Processing Centre (CPC), Bangalore.

Held:

Kolkata Tribunal held in favour of the assessee and observed that in the entire Income-tax Act, there is no provision charging a tax rate of 60% on long term capital gains. The Delhi High Court has issued remedial directions to improve hardships faced by tax payers while processing the e-returns at CPC, Bangalore. Problem is faced by tax payers, when demand is raised or refund reduced on account of either suomotu adjustment by the Income Tax Department and refund against tax demands or mismatch of TDS credit or any other adjustment or disallowance of claim made by tax payer in the return and uploaded by the assessee in its e-returns. This is a general grievance among the tax payers that the Assessing Officers do not adhere to the time limit specified for the disposal of rectification applications and tax payers are invariably called upon to file duplicate application or new application. Further, no record or no receipt counters or registers for receipt of such applications are maintained. The Delhi High Court vide Para 18 has issued dictum as under: "18. Each application under Section 154 has to be disposed of and decided by a speaking order. The order has to be communicated to the assessee and there is a relevant column to be filled in the register, which is now required to be maintained. The Board should issue specific directions to ensure that there is full compliance of the said requirements and directions by the Assessing Officers, Dak counters and Aayakar Sewa Kendras. This is the first mandamus or direction we have issued in the present judgment".

EIH ASSOCIATED HOTELS LTD VS. DCIT
SECTION 14A AND RULE 8D: INVESTMENTS IN SUBSIDIARIES TO BE EXCLUDED WHILE COMPUTING DISALLOWANCE

Facts:

The assessee had investments; the entire investment was either in subsidiary or associated companies. The assessee claimed that the investments were not made for the purpose of earning dividend but out of business expediency and that no disallowance u/s 14A and Rule 8D could be made.

Chennai Tribunal held:

The investments made by the assessee in the subsidiary company are not on account of investment for earning capital gains or dividend income. Such investments have been made by the assessee to promote subsidiary company into the hotel industry. Out of total investment of Rs. 64.18 crore, Rs. 63.31 crore is invested in wholly owned subsidiary. The assessee is not into the business of investment and the investments made by the assessee are on account of business expediency. Any dividend earned by the assessee from investment in subsidiary company is purely incidental. Therefore, the investments made by the assessee in its subsidiary are not to be reckoned for disallowance u/s 14A r.w.r. 8D. The Assessing Officer is directed to re-compute the average value of investment under the provisions of Rule 8D after deleting investments made by the assessee in subsidiary company.

RAJ KUMARI AGARWAL VS. DCIT

SECTION 57(III): INTEREST PAID ON A LOAN TAKEN TO AVOID PREMATURE ENCASHMENT OF A FIXED DEPOSIT IS DEDUCTIBLE AGAINST THE INTEREST EARNED ON THE FIXED DEPOSIT

Facts:

The assessee placed a fixed deposit of Rs 1 crore with ICICI Bank on which she earned interest of Rs 11.77 lakhs. The assessee took a loan of Rs. 75 lakhs on the security of the said fixed deposit and paid interest of Rs. 4.36 lakhs thereon. The assessee claimed that the loan was taken to avoid premature encashment of the fixed deposit and the interest paid on the loan had to be deducted against the interest earned on the fixed deposit u/s 57(iii). Her claim was rejected on the ground that the interest on the loan had not been laid out or expended wholly and exclusively for the purpose of earning the interest from the fixed deposits.

Agra tribunal allowed the appeal and held:

Section 57(iii) allows a deduction of "any…expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income". It is clear that as long as the expense is incurred wholly and exclusively for the purpose of earning an income, even if it is not necessarily for earning that income, it will still be deductible in computation of income. On these facts, in order to protect the interest earnings from fixed deposits and to meet her financial needs, when an assessee raises a loan against the fixed deposits, so as to keep the source of earning intact, the expenditure so incurred in wholly and exclusively to earn the fixed deposit interest income. The assessee could have gone for premature encashment of bank deposits, and thus ended the source of income itself, as well, but instead of doing so, she resorted to borrowings against the fixed deposit and thus preserved the source of earning. The expenditure so incurred is an expenditure incurred wholly and exclusively for earning from interest on fixed deposits.

ACIT VS. IQBAL M. CHAGALA

SECTION 14A AND RULE 8D CANNOT BE APPLIED IN A MECHANICAL MANNER. DISALLOWANCE CANNOT EXCEED EXPENDITURE CLAIMED AS A DEDUCTION

Facts:

In AY 2009-10, the assessee was assessed to income of Rs. 12.62 crore. The assessee had investments of Rs. 32.71 crore. The investment transactions were managed by investment advisers and the assessee paid portfolio management services (PMS) fees which were debited to his capital account. The demat expenses and security transaction tax (STT) was also debited to the capital account. The assessee claimed that the expenses relating to salary, telephone and other administrative expenses were incurred by him for his professional income and not for earning tax-free income. However, the Assessing Officer rejected the claim and made a disallowance of Rs. 16.35 lakhs, being 0.5% of the average investments under Rule 8D(2)(iii).

Mumbai Tribunal dismissed the departmental appeal and held that:

The assessee had debited direct expenses on account of dematerialization and STT in the capital account and not in the Profit and loss account. The Assessing Officer had presumed that the assessee had must have incurred some expenditure under the heads salary, telephone and other administrative charges for earning the exempt income. It is further found that the total expenditure claimed by the assessee for the year is about 13 lakhs and the Assessing Officer had made a disallowance of about Rs.16 lakhs. The assessee had not claimed any expenditure in its Profit and Loss account and so the onus was on the Assessing Officer to prove that out of the expenditure incurred under various heads were related to earning of exempt income and give the basis of such calculation. In any manner disallowance of Rs.16.35 lakhs as against the total expenditure of Rs.13 lakhs claimed by the assessee in Profit and Loss account is not justified. Rule 8D cannot and should not be applied in a mechanical way.

MARUTI SECURITIES LTD VS. ACIT

SECTION 145: EVEN IF ASSESSEE IS FOLLOWING MERCANTILE SYSTEM, INCOME CANNOT BE ASSESSED, ON "REAL INCOME" VS. "HYPOTHETICAL INCOME" THEORY, IF ITS COLLECTION/ RECEIPT IS NOT CERTAIN

Facts:

The assessee advanced funds to various parties on which it was entitled to receive interest. However, owing to the financial difficulties of the borrower, the assessee did not receive any interest. It accordingly did not offer any interest income to tax. However, due to the mercantile system of accounting being followed by the assessee, the interest was held to have accrued to it and was chargeable to tax notwithstanding the inability of the borrower to pay the same.

Hyderabad Tribunal allowed the appeal and held that:

To arrive at the real income, accrual basis cannot be a justifying factor and the commercial and business realities of the assessee, should be considered. The interest income has been recognized in the books of accounts only to the extent of actual collection, which is the recommended/ recognized method as per Accounting Standard 9 of Institute of Chartered Accountants of India ICAI which lays down that when uncertainties exist regarding the determination of the amount or its collectability, the revenue shall not be treated as accrued and hence shall not be recognized until collection. The recognition of revenue on accrual basis presupposes the satisfaction of two conditions (a) The revenue is measurable (b) the revenue is collectable with certainty. The interest income has been admittedly recognized only on receipt basis. The contention of the revenue that the loan agreements have interest clause permitting the assessee to charge interest at the rate of 14% is not tenable. The terms of the agreements, which enabled the assessee company to demand interest were only enabling provisions and those enabling provisions did not guarantee the collection of overdue interest. They only gave a cause of action to the applicant; the method of accounting, as followed by the assessee, does not create any income. The method of accounting only recognizes income. Income cannot be taxed on hypothetical basis, and it is only the real income that is to be brought to tax. When the principal itself is overdue and not collected, there is no basis for making out a case that interest income would be collectable with certainty. Even where an assessee is following the mercantile system of accounting, it is only accrual of real income which is chargeable to tax,

that accrual is a matter to be decided on commercial belief having regard to the nature of business of the assessee and character of the transaction.

M/S MEDITECH VS. JCIT

ENTIRE LAW ON SECTION 263 REVISION EXPLAINED

Jodhpur Tribunal observed on powers of the Commissioner of Income Tax (CIT) u/s 263:

An order can be revised only and only if twin conditions of 'error in the order' and 'prejudice caused to the Revenue' co-exist. The revisional power conferred on the Commissioner of Income Tax (CIT) vide section 263 enables the CIT to call for and examine the records of any proceeding under the Act. CIT can make or cause to be made such an enquiry as he deems necessary in order to find out if any order passed by Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. However, CIT must have some material(s) which would enable him to form a prima facie opinion that the order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the Revenue, based on which he can pass an order as the circumstances of the case may warrant, enhancing the assessment or modifying the assessment. He is also empowered to cancel the assessment and direct to frame a fresh assessment. Hence, the CIT does not have unfettered and unchequred discretion to revise an order as he is required to exercise revisional power within the bounds of the law and has to satisfy the need of fairness in administrative action as envisaged in the Constitution of India as well as in section 263. An order can be treated as 'erroneous' if it was passed in ignorance/in violation of any law; or passed without taking into consideration all the relevant facts or by taking into consideration irrelevant facts. The 'prejudice' that is contemplated under section 263 is the prejudice to the Income Tax administration as a whole. The fundamental principles regarding the powers of the CIT under section 263 are:

The CIT must record satisfaction that the order of the Assessing Officer is erroneous and prejudicial to the interests of the revenue. Both the conditions must be fulfilled; Section 263 cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer and only in case when an order is erroneous; An incorrect assumption of facts or an incorrect application of law will make an order erroneous; If the order is passed without application of mind, such order will be an erroneous order; Every loss of revenue cannot be treated as prejudicial to the interest of the revenue and if the Assessing Officer has adopted one of the courses permissible under law or where two views are possible and the Assessing Officer has taken one view under with which the CIT does not agree, it cannot be treated as an erroneous order, unless the view taken by the Assessing Officer is unsustainable under the law; If while making the assessment, the Assessing Officer examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income, the CIT, while exercising his power u/s 263, is not permitted to substitute his estimate of income in place of the income estimated by the Assessing Officer; The Assessing Officer exercise quasi-judicial power vested in him and if he exercise such power in accordance with law and arrives as a conclusion, such conclusion cannot be termed to be erroneous if the CIT is not satisfied with the conclusion; The CIT, before exercising his jurisdiction u/s 263, must have material on record to arrive at a satisfaction; If the Assessing Officer has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation be a letter in writing and the Assessing Officer allowed the claim on being satisfied with the explanation of the assessee, the decision of the Assessing Officer cannot be held to be erroneous because in his order he does not make an elaborate discussion in that regard.

SANJAY BADANI VS. DCIT

A STRICT PROCEDURE HAS TO BE FOLLOWED FOR SERVICE BY AFFIXTURE. IF DONE IMPROPERLY, THE NOTICE AND THE RESULTANT ASSESSMENT ORDER ARE NULL AND VOID.

Facts:

There was sufficient time for normal service of notice however, it was made by affixture. There was no entry in the note-sheet by the Assessing Officer directing the Inspector for service by affixture and he had only recorded the fact that the notice was served by the affixture.

It was held by Mumbai Tribunal that:

As per sub-section (1) of Section 282, the notice is to be served on the person named therein either by post or as if it was a summons issued by Court under the Code of Civil Procedure, 1908 (V of 1908). The relevant provisions for effecting of service by different modes are contained in rules 17, 19 and 20 of Order V of CPC. Rules 17, 19 and 20 of Order V of CPC lay down the procedure for service of summons/notice and, therefore, the procedure laid down therein cannot be surpassed because the intention of the legislature behind these provisions is that strict compliance of the procedure laid down therein has to be made. Various Courts have held that unless a real and substantial effort has been made to find the defendant after proper enquiries, the Serving Officer cannot be deemed to have exercised 'due and reasonable diligence', he must make diligent search for the person to be served and make mention of his efforts in the report. The Serving Officer should also state that he has affixed the copy of summons as per this rule. The circumstances under which he did so and the name and address of the person by whom the house or premises were identified and in whose premises the copy of the summon was affixed has to be stated and these facts should also be verified by an affidavit of the Serving Officer. The service by affixture is substituted service and since it is not direct or personal service upon the defendant, to bind him by such mode of service by the mere formality of affixture is not sufficient. Since the service has to be done after making the necessary efforts, in order to establish the genuineness of such service, the Serving Officer is required to state his full action in the report and reliance can be placed on such report only when it sets out all the circumstances which are also duly verified by the witnesses in whose presence the affixture was done and thus the affidavit of the Serving Officer deposing such procedure adopted by him would also be essential. Hence, there was no valid service of notice u/s.143(2) by way of affixation and the assessment made on the basis of such invalid notice could not be treated to be valid assessment and, hence, such assessment order be treated as null and void and liable to be quashed and annulled.

PADINJAREKARA AGENCIES PVT. LTD VS. ACIT

SECTION 115JB: ASSESSING OFFICER ENTITLED TO TINKER WITH PROFIT AND LOSS A/C IF

ASSESSEE'S CLAIM NOT PERMITTED BY ACCOUNTING PRINCIPLES

Facts:

The assessee had passed the entry for prior period credits/charges in the assessment year only to ensure that the final book profit (surplus) was to be reduced.

Held:

Cochin Tribunal had to consider whether the Assessing officer was entitled to disturb the net profit shown by the assessee in the profit and loss account prepared as per the Companies Act, 1956. Tribunal held that in order to enable anybody to understand the implication of such deviation, it was made mandatory for the companies to disclose the financial implications of such deviation. Such kinds of deviations are always not acceptable to the income-tax authorities. Under the income-tax, the Assessing officer is entitled to examine the said deviations, particularly when it has an impact on the book profit. The assessee has to substantiate the legality of any item of expenditure/income found debited/credited in the profit and loss account by drawing support from any document or business practices or accounting requirements. On making careful observations of the facts of the case, the intention of the assessee was very much apparent and glaring. The assessee also could not substantiate the said claim with a legally tenable explanation. It was also not shown that the booking of such kind of entries are permitted under the accounting principles. Hence, it could not be said that the financial statements had been prepared in accordance with the provision of the Companies Act, even if the management/auditors were silent on that point.

ITO VS. N. C. CABLES LTD

SECTION 147/ 151: SANCTION BY THE COMMISSIONER OF INCOME TAX WITH WORD "APPROVED" WITHOUT RECORDING SATISFACTION NOTE RENDERS REOPENING INVALID

Facts:

The order sheet was placed on record which showed that the Commissioner of Income Tax (CIT) has simply affixed “approved” at the bottom of the note sheet prepared by the Income Tax Officer technical. Nowhere the CIT recorded his satisfaction.

Delhi Tribunal held that:

The provisions of Section 151(1) with the proviso, clearly show that no notice shall be issued unless the Commissioner is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for the issue of notice which means that the satisfaction of the Commissioner is paramount. Hence, the Commissioner has to make an application of mind and due diligence before according sanction to the reasons recorded by the Assessing Officer. The Supreme Court had held that on the Assessing Officer’s report the Commissioner against the question whether the Commissioner is satisfied that it is a fit case for the issue of notice u/s 148, he merely noted Yes and affixed his signature there under. Hence, the Supreme Court observed that the important safeguards provided in sections 147 and 151 were lightly

treated by the officer and the Commissioner and that the ITO could not have had reason to believe that income had escaped assessment by reasons of the appellant-firm's failure to disclose material facts. If the Commissioner had read the report carefully he could not have come to the conclusion that this was a fit case for issuing a notice under section 148. The notice issued under section 148 was invalid; Section 147 and 148 are charter to the Revenue to reopen earlier assessments and are, therefore protected by safeguards against unnecessary harassment of the assessee. The superior authority has to examine the reasons, material or grounds and to judge whether they are sufficient and adequate to the formation of the necessary belief on the part of the assessing officer. If, after applying his mind and also recording his reasons, even briefly, the Commissioner is of the opinion that the Assessing Officer's belief is well reasoned and bonafide, he is to accord his sanction to the issue of notice u/s. 148 of the Act.

JOHNSON & JOHNSON LTD VS. ACIT

"INNOVATIVE" METHOD OF DEPARTMENT OF FORCING HAPLESS ASSESSEES TO GIVE "CONSENT LETTERS" FOR TAX RECOVERY DEPLORED AND WARNING ISSUED

Mumbai Tribunal held:

The Assessing Officer had followed an innovative method of collecting taxes despite specific directions of the Bench. Therefore the Assessing Officer who had collected the revenue by flouting the directions of the Bench was called who appeared before and tendered an unconditional apology for his conduct and submitted that it was collected with the consent given by the appellant. The Representative of the assessee had no other alternative but to admit that he has given the consent letter. It is clarified that neither the assessee nor the Revenue has the right to flout the decision of the Tribunal and being an officer functioning under the Government of India, it is his obligation to follow the directions of the superior authority and even if there is consent he should not have collected the amount. The Court directed the Chief Commissioner of Income Tax to issue a letter to all the concerned Assessing Officers not to adopt this kind of approach of obtaining consent letters and to respect the order passed by the Tribunal as otherwise the Tribunal would be constrained to view the conduct of the Department adversely. Assessing Officer is directed to refund the amount collected contrary to the stay order passed by the ITAT along with interest within 15 days.

DCIT VS. COROMANDEL INTERNATIONAL LTD

SECTION 80-IB: EXCISE DUTY REFUND IS "DERIVED" FROM THE UNDERTAKING.

Held:

Hyderabad Tribunal held that the Assessing Officer has denied 80IB deduction on excise duty refund for the sole reason that it cannot be treated as income derived from eligible business of the undertaking. The assessee has paid the excise duty on the goods manufactured and sold and as such it forms part of the sale price of assessee. Therefore, payment of central excise duty is integrally connected with the manufacturing and sale of goods produced by assessee. Excise duty refund received by assessee has to be treated as part of the business profit, hence, eligible for deduction u/s 80IB of the Act. Otherwise also, as payment of excise duty is directly linked with the manufacturing of goods, refund of excise duty has to

be treated as income derived from eligible business as provided u/s 80IB. In the aforesaid view of the matter, assessee will be eligible to claim deduction u/s 80IB on the income accruing from refund of excise duty.

DCIT VS. BRAMHA CORP. HOTELS & RESORTS LTD

PREMIUM PAID TO BUYBACK SHARES OF RECALCITRANT SHAREHOLDERS IS TO FACILITATE SMOOTH RUNNING OF BUSINESS AND IS ALLOWABLE AS REVENUE BUSINESS EXPENDITURE

It has been held by Pune Tribunal that:

While accepting the compromise or settlement between the two warring groups, for a proceeding under Sections 397 and 398 of the Companies Act, 1956, the Court will keep in mind the prime interest of the company as well as public interest. It is difficult to accept the view of the Revenue that the assessee has obtained any right or advantage which would affect its capital structure. As a result of the compromise the assessee acquired the shares and the share capital was reduced. Secondly, it is necessary to consider whether the enduring advantage consisted merely facilitating the assessee’s operation or enabling the management and conduct of the assessee’s business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, then such expenditure would be on revenue account. Thirdly, the question must be viewed in a larger context or business necessity or expediency. The authorities relied upon by the learned counsel for the assessee show that payment made to secure peace and harmony and smooth management of the company, the interest of business would serve and that is the whole purpose of such payment. Therefore, the amount paid for this purpose was on revenue account. Applying those principles, the position is clear that by getting rid of the minority shareholders, the company could not be said to have acquired any enduring benefit. Secondly, even if it is assumed that an enduring benefit has been obtained, even then such enduring benefit is not relatable to fixed capital structure of the company because it has neither increased the assessee’s assets nor the company could be said to have acquired any right of income yielding nature. The act of writing off of share capital by way of reduction, may, on the first blush, suggest that the capital structure of the company has been affected, but it is not so if the facts are examined a little more closely. The reduction of the share capital was merely a consequence of the agreement which has to be given effect to, that too by an order of the Court where the interest of the company as well as of the public has to be necessarily kept in mind. Thus writing off of share capital by way of reduction as per the terms of consent decree merely was a consequential action and did not itself represent any effect on the capital structure or the acquisition of any right yielding income or advantage on capital account. The impugned expenditure, which was incurred in order to facilitate the smooth running of the business by getting rid of the recalcitrant group of shareholders, was an expenditure incurred out of business expediency and, therefore, wholly and exclusively incurred in the course of carrying on of the business.

INCOME TAX

International Taxation

Circulars/ Notifications/Press Release

Treatment of Expenditure incurred for Development of Roads/ Highways in Build-Operate-Transfer (BOT) Agreements

- The CBDT clarifies that the cost of construction on development of infrastructure facility of roads/highways under BOT projects may be amortized and claimed as allowable business expenditure under the Act.
- The amortization allowable may be computed at the rate which ensures that the whole of the cost incurred in creation of infrastructural facility of road/highway is amortized evenly over the period of concessionaire agreement after excluding the time taken for creation of such facility.
- In the case where a taxpayer has claimed any deduction out of initial cost of development of infrastructure facility of roads/highways under BOT projects in earlier year, the total deduction so claimed for the Assessment Years prior to the Assessment Year under consideration may be deducted from the initial cost of infrastructure facility of roads /highways and the cost 'so reduced' shall be amortized equally over the remaining period of toll concessionaire agreement.
- The Circular also clarifies that it is applicable only to those infrastructure projects for development of road/highways on BOT basis where ownership is not vested with the assessee under the concessionaire agreement.

[Notification NO. 09/2014, dated 23-04-2014]

DTAA – agreement of avoidance of double taxation and prevention of fiscal evasion with foreign countries – Bhutan {225 taxmann (st.) 59}

- The Central Government vide Notification No. 42/2014 dated 05/09/2014 notifies the agreement between the Government of Republic of India and Royal Government of Bhutan for the avoidance of double taxation and prevention of fiscal evasion with respect of taxes on income.

DTAA – agreement of avoidance of double taxation and prevention of fiscal evasion with foreign countries – Bhutan {225 taxmann (st.) 59}

- The Central Government vide Notification No. 42/2014 dated 05/09/2014 notifies the agreement between the Government of Republic of India and Royal Government of Bhutan for the avoidance of double taxation and prevention of fiscal evasion with respect of taxes on income.

S.O. 2049(E)

Whereas, an Agreement between the Government of the Republic of India and the Government of the Republic of Fiji for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed in India on the 30th day of January, 2014 (hereinafter referred to as the Agreement);

And whereas, the said Agreement entered into force on the 15th day of May, 2014, being the date of the later of the notifications of the completion of the procedures required by the respective laws for entry into force of the Agreement, in accordance with paragraph 2 of Article 30 of the Agreement;

And whereas sub-paragraph (a) of paragraph 3 of Article 30 of the said Agreement provides that the provisions of the Agreement shall have effect in India in respect of income derived in any fiscal year beginning on or after the first day of April following the calendar year in which the Agreement enters into force;

Now therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said Agreement, as annexed hereto, shall be given effect to in the Union of India.

[Notification No. 35/2014/F.No. 503/11/2005.FTD.II]

S.O. 2478(E)

In exercise of the powers conferred by the second proviso to sub-section (2) of section 92C of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that where the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one percent of the latter in respect of wholesale trading and three percent of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2014-15.

Explanation

For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-

(i) purchase cost of finished goods is eighty percent or more of the total cost pertaining to such trading activities; and

(ii) average monthly closing inventory of such goods is ten percent or less of sales pertaining to such trading activities.

[Notification No. 45/2014F.No. 500/1/2014-APA-II]

S.O. 1996.(E)

1. Whereas, the Agreement and the Protocol (hereinafter referred to as the said Agreement and the Protocol) was entered into between the Government of the Republic of India and the Government of Malta, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.
2. And whereas, the date of entry into force of the said Agreement and the Protocol is the 7th day of February, 2014, being the date of later of the notifications of completion of the procedures as required by the respective laws for entry into force of the said Agreement and the Protocol, in accordance with paragraph 1 of article 29 of the said Agreement.
3. And whereas, sub-paragraph (a) of paragraph 3 of Article 29 of the said Agreement provides that the provisions of the said Agreement shall have effect in India in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the said Agreement enters into force;
4. Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of said Agreement and the Protocol between the Government of the Republic of India and the Government of Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, as set out in the Annexure hereto, shall be given effect to in the Union of India with effect from the 1st day of April, 2015.

[Notification No. 34/2014/ F.No. 504/06/2003-FTD-I]

International Taxation Case Laws

SUPREME COURT DECISION

CONCEPT OF “SOURCE RULE” VS "RESIDENCE RULE" IS EXPLAINED AND DEFINITION OF EXPRESSION "FEES FOR TECHNICAL SERVICES" GIVEN IN SEC9(1)(VII)IS EXPLAINED WITH REFERENCE TO "CONSULTANCY" SERVICES

The assessee, an Indian company intending to set up a power project in India procured services of non-resident company who prepared scheme for raising required finance as well as tie-up for required loan from Indian and international financial institutions. For this purpose, assessee engaged a non-resident Swiss Company (NRC) as consultant and eventually entered into an agreement. In terms of the agreement, NRC was under obligation to: (a) develop comprehensive financial model to tie-up the rupee and foreign currency loan requirements of the project; (b)assist expert credit agencies world-wide and obtain commercial bank support on the most competitive terms; (c) Assist the appellant company in loan negotiations and documentation with the lenders.

The assessee claimed that as the fees were paid for services rendered outside India, the same were not chargeable to tax in India and that the assessee was under no obligation to deduct TDS under section 195.However, the claim of the assessee was rejected by Assessing Officer and CIT(A). On appeal, High Court[1] held that the said payment was not assessable under section 9(1)(i) but that it was assessable under section 9(1)(vii). Assessee challenged this decision claiming that section 9(1)(vii) was constitutionally invalid as it taxed extra-territorial transactions. The Constitution Bench of Supreme Court[2] rejected the claim of assessee. On merits, the matter was remanded to the Division Bench of the Supreme Court.

It was then held by the division bench of Supreme Court that the NRC had acted as a consultant. It had the skill, acumen and knowledge in the specialized field i.e. preparation of a scheme for required financing of the projects. In respect of nature of service referred by the NRC, Apex court stated that it is certain that such services would come within the ambit and sweep of the term 'consultancy service' as per clause (b) of section 9(1)(vii) and, therefore, it has been rightly held that the tax at source should have been deducted as the amount paid as fee could be taxable under the head 'fee for technical service'. It was further held that once the tax is paid/payable the grant of 'No Objection Certificate' was not legally permissible.

[1] 228 ITR 564
[2] 332 ITR 130

HIGH COURT DECISION

DIT (IT) V/S. WIZCRAFT INTERNATIONAL ENTERTAINMENT PVT.LTD.

Facts:

The assessee, Wizcraft International Entertainment Pvt. Ltd., is an event management company. The assessee had engaged the services of an agent, Mr. Colin Davie, to bring artists to India. The assessee paid remuneration to the artists, to the agent and reimbursed expenses in connection with the visit and performance of artists in India. AO was of the view that any payment made to the artists or their agent should be treated as consideration payable to the artist only. Further, according to the AO, the income of the artist had to be taxed in the State in which activities were organized which, in present case, was India. While it was noted that tax had been deducted on the amounts paid to the artists, no tax was deducted on payments made to the agent or for expenses. The AO proceeded to treat the assessee as a defaulter for neither deducting tax nor filing return of income as a representative assessee.

CIT (A) held that AO had completely misdirected himself and noted that it was a common practice to remit money in advance to incur expenses. Expenses in connection with artists' performance in India and their reimbursement did not constitute income derived by artists from their personal activities so as to be taxable under Article 18 of India-UK DTAA, held CIT (A). Thus, it was held that the reimbursement of expenses were not taxable in India.

Article 18 of India-UK DTAA provides for taxation of income of artists and athletes and states that income derived from their personal activities may be taxed in the Contracting State in which the activities are exercised. Article 18(2) states that where income arising from personal activities are such exercised in a Contracting State by an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may be taxed in that Contracting State.

Held:

Tribunal also held that AO, unjustifiably and without material on record, held that the payment for reimbursement of expenses were liable for tax deduction at source and in absence of certificate u/s 195(2), tax was required to be deducted and paid on the gross amount.

High Court upheld the Tribunal's and CIT(A) decision and held that commission income to the agent is not liable to tax in India and there was no obligation on the part of the assessee to deduct the tax at source at the time of making of payment. In so far as payment or reimbursement of expenses in connection with the visit and performance of the artists in India, the amount reimbursed to them was towards air travel and was supported by documents. On that tax need not be deducted.

VODAFONE INDIA SERVICE PVT. LTD V. UOI

The assessee, Vodafone India Service Pvt. Ltd, an Indian company, issued equity shares at the premium of Rs.8591 per share aggregating Rs.246.38 crores to its holding company. Though the transaction was reported as an "international transaction" in Form 3 CEB, the assessee claimed that the transfer pricing provisions did not apply as there was no income arising to it. The AO referred the issue to the TPO

without dealing with the preliminary objection. He held that the assessee ought to have charged the NAV of the share (Rs. 53,775) and that the difference between the NAV and the issue price was a deemed loan from the assessee to the holding company for which the assessee ought to have received 13.5% interest. He accordingly computed the adjustment for the shares premium at Rs. 1308 crore and the interest thereon at Rs. 88 crore. The AO passed a draft assessment order u/s 144C (1) in which he held that he was bound u/s 92-CA (4) with the TPO's determination and could not consider the contention whether the transfer pricing provisions applied. The assessee filed a Writ Petition challenging the jurisdiction of the TPO/AO to make the adjustment.

The High Court held that it is clear from s. 92(1) that there must be income arising/ potentially arising by an international transaction for the application of the transfer pricing provisions. This is a jurisdictional requirement and has to be dealt with by the AO when specifically raised by the assessee before making reference to the AO. Grant of personal hearing before referring the matter to the TPO has to be read into s. 92CA (1) in cases where the very jurisdiction to tax under Chapter X is challenged by the assessee (Veer Gems v. Asst. CIT (2013) 351 ITR 35 (Guj) disagreed with to the extent it holds that no hearing is required at the stage of reference to the TPO even on jurisdictional issues). If, after the hearing the assessee, the AO holds that there is an international transaction, that would be binding on the TPO;(iii) The department's contention, based on CBDT Instruction No.3 dated 20.05.2003, that the action of the AO in referring the international transaction is a mere administrative act is not acceptable. The AO is bound to hear the assessee in respect of jurisdictional issues before making the reference. The failure to do so is an illegality;

(iv) The assessee's contention that the DRP would not give a fair hearing as one of its members is the DIT (TP) is not acceptable because it overlooks the fact that these are not appeal proceedings but to finalize the draft assessment order. Also, the DIT (TP) who approved the TPO's order is not on the panel;

(v) The Revenue should keep in mind the sage advice of Nani Palkhivala that the department should not cause misery and harassment to the assessee and the gnawing feeling that he is made the victim of palpable injustice. In this case it would not be natural for the assessee to feel harassed as the AO nor the TPO gave a hearing or dealt with the preliminary objection. It is hoped that the revenue will be more sensitive to the just demands of the assessee and not treat the assessee as an adversary who has to be taxed, no matter what;

(vi) The DRP should decide the assessee's objection regarding chargeability of alleged shortfall in share premium as a preliminary issue. In case the DRP's decision on the preliminary issue is adverse, the assessee shall be entitled to challenge it in a writ petition if it can show that the DRP's decision on the preliminary issue is patently illegal notwithstanding the availability of alternate remedy before the ITAT. (W.P. No. 1877 of 2013, Dt. 29.11.2013.)

ZAHEER MAURITIUS VS. DIT (IT) –II (DELHI HIGH COURT)

INCOME FROM SALE OF CCDS UNDER EXIT OPTION WITH MINIMUM ASSURED RETURN IS NOT INTEREST BUT CAPITAL GAINS.

Zaheer (Petitioner)was a tax resident of Mauritius having a business of investing in Indian companies engaged in construction and development business in India. Vatika Limited ('Vatika'), an Indian company,

was engaged in the business of developing and dealing in real estate and was the owner of a land situated in Gurgaon which has been reserved for being developed as a cyber-park. SH Tech Park Developers Private Limited (JV Company) is incorporated as a wholly owned subsidiary of Vatika. The Petitioner entered into a Securities Subscription Agreement (SSA) and a Shareholder's Agreement (SHA) with Vatika and the JV Company. As per the SSA, the Petitioner agreed to subscribe to equity shares and zero percent CCDs of the JV Company. The SHA provided for a call option given to Vatika by the Petitioner to acquire all the securities during the call period and likewise, a put option given by Vatika to the Petitioner to sell to Vatika all the securities during the put period.

Vatika and the JV Company executed a Development Rights Agreement in terms of which Vatika transferred the exclusive development rights, entitlements and interest in the Gurgaon Land to the JV Company for development of the Land with the right to retain the sale proceeds thereof exclusively. Exercising the call option, Vatika acquired equity shares and CCDs of JV company from the Petitioner. The Petitioner filed an application under section 197 requesting a 'NIL' withholding tax certificate to receive the total consideration from Vatika for transfer of equity shares and CCDs without deduction of tax. However, the Assessing Officer held that the gains on the transfer of equity shares and CCDs would be treated as interest chargeable to tax.

The Petitioner filed an application before the AAR to obtain a ruling on whether the gains arising on sale of CCDs were capital gains, exempt from tax in India under the India - Mauritius Double Taxation Avoidance Agreement. The AAR ruled that the gains on sale of CCDs were taxable as interest within the meaning of section 2(28A) of the Act and Article 11 of the tax treaty with the findings that (a) there was a fixed rate of return on the investment, (b) the JV Company's affairs were controlled by Vatika/ its shareholders, (c) the entire transaction was structured as an investment in equity shares, and (d) CCDs to avoid the incidence of tax. Aggrieved by the ruling, the Petitioner filed a writ petition before Delhi High Court.

The Delhi High Court allowing the writ petition held that the Petitioner has asserted that the CCDs were capital assets in its hands and under normal circumstances, gains arising on the transfer of a debenture held as a capital asset by the transferor would be taxable as capital gains and not interest. In doing so, it stated that although the SHA enables the Petitioner to exit the investment by receiving a reasonable return on it, and in that sense it is assured of a minimum return, the same cannot be read to mean that the CCDs were fixed return instruments, since the Petitioner also had the option to continue with its investment as an equity shareholder of the JV Company. The AAR's conclusion that "when the corporate veil of the JV Company is lifted, Vatika and the JV Company were essentially one and the same entity" is wholly erroneous. It was further held that in terms of Circular no.74 dated 08.06.2007 issued by the RBI, an instrument which is fully and mandatorily convertible into equity shares within a specified time would be reckoned as part of equity under the FDI Policy. It is apparent that the Petitioner found the investment in CCDs as the most appropriate route for making its investment in real estate, in accordance with the policy of the Government of India. In these circumstances, it ought not to be readily inferred that the entire structure of the transaction was designed solely for the purposes of avoiding tax. Also, if the gains are considered as payment of interest by Vatika, as is contended by the Revenue, the same would also mean that the quantum of interest is a deductible expenditure in the hands of Vatika. Viewed from this perspective, it would be erroneous to conclude that the whole transaction had been structured to ensure avoidance of tax on income. The terms of the arrangements between Vatika and the Petitioner reveal that the JV was a genuine commercial venture, in which both partners had management rights. Thus, the gains arising on sale of CCDs under exit option with minimum assured return is not interest but capital gains.

DIT VS. PANALFA AUTOELEKTRIK LTD.

The assessee, Panalfa Autoelektrik Ltd, paid commission to Agenta World Trading and Consulting Establishment, a non-resident company registered in Liechtenstein for procuring export orders in A.Y. 2010-11. Assessing Officer held that commission payment to non-resident was taxable as Fees for Technical Services ('FTS') u/s. Sec. 9(1)(vii)(b). Assessing Officer directed that tax should be deducted at source @ 20%. Subsequently, Assessing Officer modified his order and reduced the tax rate to 10%.On appeal, CIT(A) reversed Assessing Officer's order. Tribunal confirmed CIT(A)'s order. Aggrieved, Revenue preferred an appeal before Delhi High Court.

The Delhi Hugh Court perused sections 5(2), 9(1)(i) and 9(1)(vii)ruled out the applicability of Sec. 9(1)(i) in present case as non-resident did not carry out any operation/ business in India. Observing that clause (b) of Sec. 9(1)(vii) (which stipulates that income by way of FTS payable to non-resident by a resident person to be income deemed to accrue or arise in India) was applicable in instant case, High Court examined whether commission payments made to non-resident by assessee were FTS. It was noted that there were three categories of technical services under Explanation 2 to Sec. 9(1)(vii) viz., managerial, technical and consultancy which were not defined under the Act.

The High Court observed that the non-resident was not acting as a manager or dealing with administration or controlling the policies or scrutinizing the effectiveness of the policies and did not perform as a primary executor, any supervisory functions whatsoever. Thus, the services rendered, i.e. the procurement of export orders, etc. cannot be treated as management services provided by the non-resident to the assessee. Further, High Court concluded that, the non-resident had not undertaken or performed "technical services", where special skills or knowledge relating to a technical field were required. With regard to 'consultancy' services it was held that the non-resident procured orders on the basis of the said knowledge, information and expertise to secure their commission. It is a case of self-use and benefit, and not giving advice or consultation to the respondent-assessee on any field. The assessee upon receipt of export orders manufactured the required articles/goods and then the goods produced were exported. There was no element of consultation or advice rendered by the non-resident to the assessee. Thus, confirming lower authorities' orders, HC dismissed revenue's appeal.

CIT VS VAN OORD ACZ EQUIPMENT BV

The assessee, Van Oord ACZ Equipment BV, is a company incorporated in Netherlands and is a foreign company within the meaning of Sec. 2(23A) of the Act. During financial year 2002-03, assessee had rented out the dredging equipment to its sister concern in India namely Van Oord ACZ India Private Ltd ('Van Oord India') for the purpose of dredging as per the contract awarded by Gujarat Adhani Port Limited. Assessee had deducted tax at source on the payment towards equipment lease and had claimed refund of TDS in its return of income for subject F.Y. contending that in view of provisions of India-Netherlands DTAA; the income earned by letting out the equipment was not taxable in India. Assessing Officer however held that as per definition of Royalty u/s. 9(1) of the Act, consideration received by the assessee company was taxable in India and levied tax at the rate of 10 percent on royalty amount. CIT(A) allowed

assessee's appeal and deleted tax so imposed by Assessing Officer. On appeal, ITAT also accepted that the assessee was not liable for tax as per the provisions of the India- Netherlands DTAA and also held that there was no PE in India to bring the income to tax in India. Aggrieved, Revenue preferred an appeal before Madras HC.

High Court held that amount received by assessee (Netherlands Company) for hiring out dredgers to Indian sister concern for use in Indian ports is not "Royalty" within meaning of India-Netherlands DTAA, and accordingly not taxable in India. It states that subsequent to modification in India-Netherlands DTAA w.e.f. 1/4/1998, "payments for use of equipment or any consideration for use of, right to use industrial, commercial or scientific equipment" was deleted from Article 12(1)/(2) and was therefore, not taxable in the source State i.e. India. Hon'ble High Court concluded that ITAT had rightly considered Article 12(4) of India- Netherlands DTAA and was right in concluding that amount received by assessee for hiring out Dredgers to sister concern (an Indian Company) for use in Indian Ports was not taxable in India. In coming to the conclusion, high court rejected revenue's plea that installation or structure used for exploration of natural resources is a Permanent establishment as unjustified as dredging equipment was leased out on bareboat basis i.e. without Master and Crew in present case and entire control of equipment was not with assessee.

INCOME TAX APPELLATE

TRIBUNAL DECISIONS

DCIT V/S GE BE PVT. LTD.

Facts of the case:

BE Pvt Ltd is a joint venture between GE Mauritius Ltd. and Bharat Electronics Ltd. ('BEL'). The assessee manufactures X-ray and CT tubes, HV Tanks, detectors, parts and accessories for medical diagnostic imaging equipments on contract basis for its AE. During AY 2004-05, it entered into various international transactions including sale of finished goods, import of raw materials, provision of engineering services, purchase of fixed assets etc. The assessee selected Cost Plus Method ('CPM') as the most appropriate method to determine the arm's length price ('ALP') of the international transactions. During TP proceedings, the TPO rejected the assessee's comparables and identified comparable companies and accordingly made an adjustment of Rs. 432.78 crores to the income of the assessee. The CIT (A) upheld the adjustment made by the TPO.

Held:

ITAT observed that, as a general rule, UN Practical TP manual advocates use of CPM in the case of Contract manufacturers. However, in the Indian context, determination of most appropriate method is subject to the satisfaction of the parameters laid down in Rule 10C (1) & (2) of the Rules. ITAT examined the parameters laid down in Rule 10C (1) and observed that, on the basis of facts and UN TP Manual Guidelines, Rule 10C (1) was satisfied. Thus, ITAT held that, in case of contract manufacturers like the assessee, CPM was the most appropriate method.

ASIAN PAINTS LTD V/S ACIT

Facts of the case:

Asian Paints Ltd is a company engaged in the business of manufacturing and sales of paints and enamels. The assessee filed its return for AY 07-08 declaring total income of Rs. 405.67 Cr. The assessee had given a guarantee to Bank of Singapore and to a Bank in Australia, so as to enable the Banks to provide loan to assessee's the AEs. Commission/fees for guarantees at 0.20% were offered by the assessee. The TPO determined the rate of commission at 3% and made a TP adjustment of Rs. 2.44 Cr. The CIT (A) deleted the addition observing that TPO had adopted a 'naked quote' without factoring in the qualitative factors which determined the fees. CIT (A) stated that quotation given by third party e.g. a Banker did not constitute a CUP since it was quotation and not an actual 'uncontrolled transaction'.

Held:

ITAT observed that the instant issue was covered in assessee's favour by co-ordinate bench ruling in assessee's own case for AY 2006-07. The co-ordinate bench had observed that charging of guarantee commission was dependent on the transaction and mutual understanding between the bank and the parties. There could be instances, where on the evaluation of various parameters, of financial credibility and stakes of the client, the bank may not charge any guarantee commission which completely depended

upon its evaluation. ITAT stated that TPO's application of guarantee commission rate by simply relying upon certain market data without carrying-out any comparability analysis of the actual transaction was incorrect.

GLENMARK PHARMACEUTICALS LTD. VS. ADDL. CIT

Facts of the case:

Glen mark Pharmaceuticals Ltd. is engaged in the business of manufacturing and marketing pharmaceutical products and related R&D activities. During AY 2008-09, the assessee extended guarantee in respect of bank loan and L/C facility obtained by its AEs, viz. Glen mark Holding SA Switzerland and Glen mark Generic SA Argentina. The assessee charged guarantee fee @0.53%

In respect of guarantee for bank loan and @1.47% in respect of guarantee for L/C facility.

During the TP proceedings, TPO benchmarked guarantee commission considering the guarantees commission rate charged by banks @ 3%. The CIT (A) confirmed the adjustment and aggrieved, the assessee was in appeal before ITAT.

Held:

ITAT observed that CUP was the most appropriate method for benchmarking guarantee commission. ITAT further observed that in case of Reliance Industries, corporate guarantee rate of 0.5% was approved by the Tribunal. Further in case of Nimbus Communication [TS-167-ITAT-2013(Mum)-TP] and Everest Kanto Cylinders [TS-714-ITAT-2012(Mum)-TP], rate of 0.25% was accepted to be at ALP. Therefore, ITAT decided that Bank guarantee rates adopted by TPO are Incomparable Uncontrolled Prices and cannot be used to benchmark corporate guarantee prices. ITAT also observed that bank guarantee and corporate guarantee are conceptually different and held that the TPO cannot pick up the naked quotes of the bank guarantee rates as given in the websites for public as CUP unless they are adjusted to the various controlling factors under Rule 10B. ITAT thereby approved guarantee commission fee @ 0.53% and 1.47% charged by assessee.

DCIT V/S `11` INTERNATIONAL

Facts of the case:

The assessee is an exporter of leather footwear and footwear uppers. During the year under consideration, the assessee had made payments to various non-residents, without deducting any taxes at source, towards 'design and development expenses'. The AO held the amounts so paid to the non-residents were in the nature of 'fees for technical services' under the Act, as also under the applicable tax treaties, held that the assessee was, under section 195, had an obligation to withhold tax at source from these payments, and, accordingly, proceeded to make the disallowance under section 40(a) (i).

Learned CIT (A) deleted the disallowance on the ground that no tax was deductible from these amounts and further held that "even if, by any stretch of imagination, such payments are considered as FTS, no

TDS was required to be made at the time of credit/ payment as per the law existing at that time because services were not rendered in India…". The disallowance was thus deleted.

Held:

On appeal to ITAT, it was observed that in accordance with the law laid down in Ishikawajma-Harima Heavy Industries, which was good law at the time of the remittance, unless the services are rendered in India, the same cannot be brought to tax as 'fees for technical services' u/s 9. Though the law was amended retrospectively, so far as tax withholding liability is concerned, it depends on the law as it existed at the point of time when payments, from which taxes ought to have been withheld, were made. Tribunal further held that the tax deductor cannot be expected to have clairvoyance of knowing how the law would change in future and that a retrospective amendment in law does change the tax liability in respect of an income, with retrospective effect, but it cannot change the tax withholding liability, with retrospective effect. Therefore, ITAT held that the assessee did not have any liability under section 195 r.w.s. 9(1) (vii) to deduct tax at source from these payments and hence the assessee no disallowance can be made in respect of these payments.

ALLCARGO GLOBAL LOGISTICS LTD VS. ACIT (MUMBAI ITAT)

NO TRANSFER PRICING ADJUSTMENT TOWARDS DELAY IN ALLOTMENT OF SHARES BY AE.

Facts:

- M/s Allcargo Global Logistics Limited (Assessee) along with M/s. RMK was holding shares of M/s. ECUHOLD (company incorporated in Belgium) in the ratio 49.99:50.01.
- To have complete control of M/s Ecuhold the assessee incorporated new company Allcargo Belgium NV (Associated Enterprises "AE"), who intern will hold 100% shares of M/s RMK. Under a Letter of intent the assessee agreed to purchase all shares of RMK through its AE.
- To go ahead with the above scheme the assessee, agreed to subscribe equity shares of its AE, with a condition that the shares shall be allotted only if the deal for purchase of 100% shares of RMK materializes. If the transaction doesn't materialize, the subscription money was to be returned.
- Accordingly, the assessee paid the share application money amounting to Rs.11,65,00,000/- and Rs. 46,18,94,150/- on 19.05.2006 and 22.06.2006 respectively to Allcoargo Belgium NV. Subsequently, the shares were allotted on 08.06.2007.
- Since the shares were allotted after a period of one year; the Assessing Officer was of the view that for the intermittent period (i.e the period between share application money received and share actually allotted) was akin to a loan. Accordingly, computed interest @ 5.277% i.e 3% above LIBOR.
- Assessee explained that the delay in allotment of shares by its AE against the share application money was for genuine and due to unavoidable reasons. Accordingly, there was no justification to treat the transactions involving payment of share application money as loan transactions and no transfer pricing adjustment is required.
- Aggrieved, the assessee is in appeal before the CIT (A). However, the CIT (A) upheld the adjustment made by the AO.

Issue:

- ☐ Whether the AO was justified in considering the share application money held for unusually long period as a loan transaction?

Held:

The Hon'ble Tribunal allowed the assessee's appeal by relying on the Decision of Delhi ITAT in the case of Bharti Airtel Ltd. vs. ACIT (63 SOT 113) wherein it was held that

- ☐ The transactions involving payment of share application money could not be treated as international transactions of loan; merely because there was a delay in allotment of shares.
- ☐ Even if Arms Length Price (ALP) was to be determined on such deemed interest free loan, the same should have been done on the basis as to what would have been interest payable to an unrelated share applicant on similar transaction. Since there was no material on record showing that similar interest payments were made to unrelated parties, the impugned ALP adjustment was not warranted.
- ☐ Accordingly, the appeal was allowed in favour of the assessee.

JOINT CIT VS. WIFI NETWORKS PVT. LTD. (ITAT BENGALURU)

Wifi Networks Pvt. Ltd., the assessee was engaged in the business of software development and implementation. For A.Y. 2007-08, assessee filed a revised return of income declaring a loss. On assessment of the same, Assessing Officer made various disallowance u/s 40(a)(ia) of the Act on account of software payments to parties outside India, market survey fees paid, knowhow fees. Aggrieved by this, assessee filed an appeal before CIT(A) who disposed-off the appeal granting partial relief to the assessee but confirmed the disallowance in respect of software payments and market survey fees. Assessee filed an appeal in respect of confirmation of disallowance in respect of software payments and market survey fees, before the tribunal. While aggrieved, the revenue filed an appeal in respect of deletion of disallowance in respect of knowhow fees.

Thus, issues under consideration before the tribunal were (a) whether depreciation on knowhow can be disallowed under section 40(a)(ia); (b) whether a software payment to parties outside India is in the nature of "Royalty" and (c) whether the payment towards market survey fees is in the nature of 'fees for technical services'.

With regard to Sec. 40(a)(ia) disallowance on account of depreciation on technical knowhow fees, ITAT observed that depreciation on knowhow fees were disallowed; the said payment was capitalised and was not charged to profit and loss account. ITAT also noted CIT(A) observation while deleting the disallowance that "The particular items of expenses disallowable under section 40(a) (ia) are specified. Depreciation on technical knowhow is not one of them." ITAT, in view of above concluded that CIT(A) was justified in deleting the disallowance on account of depreciation on technical knowhow fees. With respect to disallowance on account of software payments, ITAT directed AO to verify whether the said payment had been capitalised or charged to revenue and thus remitted matter back to AO.ITAT relied on the certain judicial decisions and held that as the Treaty between India-UAE does not contain an article in respect of ‘fees for technical services’, the payment of market survey fees will have to be regarded as ‘business profit’ as per Article 7 of the Treaty. The non-resident was carrying on business in UAE in the field of market survey and the assessee has availed his services for a consideration/ fees. ITAT also agreed with the CIT(A) view that agreement with non-resident was entered into by the assessee during the course of business carried on by non-resident. ITAT noted that in assessee’s case Revenue had not established that the non-resident to whom the assessee had made payment of market survey fees had a PE in India. In absence of PE in India the business profit of the non-resident was not taxable in India. ITAT further noted that even if it was considered that the payments made to non-resident will fall under Article 22 of the Treaty, viz., ‘Other Income’, then also payments were not taxable to tax in India since as per Article 22, income of a resident shall be taxable only in the contracting state i.e. UAE and not in India.

In view of above, ITAT concluded that the payments made to the non-resident were not chargeable to tax in India and therefore, there was no liability to deduct tax at source in respect to the said payment u/s. 195 and thus, deleted disallowance of market survey fees u/s. 40(a) (i).

GECF ASIA LIMITED VS. DDIT

GECF Asia Limited, a Thai tax resident, entered into a master agreement with Indian company (In Co) to provide various services such as accounting and finance support, legal and compliance services, sales and marketing services, etc. The assessee had filed ‘NIL’ return for the relevant assessment year on the ground that the income accrued to him on account of above services qualifies as business income and the same cannot be taxed under Article 7 of India–Thailand DTAA in the absence of a Permanent Establishment (PE) in India. The Assessing Officer however, in its draft order, held that the fee received by the taxpayer from In Co qualifies as Fees for Technical Services (FTS) and alternatively, such fee would also fall within the definition of “royalty” under the India-Thailand DTAA. Thus, such income would be taxable in India. Aggrieved by the order of the Assessing Officer, the assessee filed objections before the Dispute resolution panel (DRP). However, the DRP also concluded that the fee received by the Taxpayer is for providing industrial, commercial or scientific experience and, hence, the fee constituted “Royalty” under the DTAA, and thus would be taxable in India. Aggrieved, the assessee appealed to the Tribunal.

Tribunal held that Royalty is defined under India-Thailand DTAA to include payments of any kind received as a consideration for the use of, or the right to use, information concerning industrial, commercial or scientific experience. Considerations for information concerning industrial, commercial, scientific experience to be regarded as royalty should allude to the concept of know-how. There should be an element of imparting of know-how to the other, so that the other person can use or has right to use such know-how. If services are being rendered simply as an advisory or consultancy, then it cannot be termed as “royalty”, because the advisor or consultant is not imparting his skill or experience to other, but rendering his services from his own know how and experience. All that he imparts is a conclusion or solution that draws from his own experience. If there is no “alienation” or the “use of” or the “right to use of” any know-how i.e., there is no imparting or transfer of any knowledge, experience or skill or know how, then it cannot be termed as “royalty”. The services may have been rendered by a person from own knowledge and experience but such knowledge and experience has not been imparted to the other person as the person retains the experience and knowledge or know how with himself, which are required to perform the services to its clients. In principle, if the services have been rendered de-hors the imparting of know how or transfer of any knowledge, experience or skill, then such services will not fall within the ambit of royalty and accordingly tribunal restored back the matter to Assessing Officer to examine the nature of services based on the above principles.

ITO VS. M/S DENIAL MEASUREMENT SOLUTIONS PVT. LTD.

The assessee, M/s Denial Measurement Solutions Pvt. Ltd was engaged in the business of manufacturing Ultrasonic Meters which is Gas flow Measurement Equipment. It was noted by Assessing Officer that assessee had made payment to Colorado Engineering Experiment Station Inc., U.S.A towards calibration and testing of equipment but assessee had not deducted tax at source from the remittance made. Assessing Officer was of the view that the payment made by the assessee were in the nature of technical work and related to engineering and same were utilized by the assessee and were in the nature of technical services as defined in Explanation 2 of Section 9(1) (vii) of the Income-tax Act and therefore provisions of Section 195 of the Act were applicable and the assessee should have deducted the tax before making the payment. Aggrieved by the order of Assessing Officer, the assessee carried the matter before CIT(A).

CIT(A) observed that the nature of services provided by non-resident to the appellant, what emerges is that it is only giving a report of the correctness of calibration. If some technological activity is done for an entity earning income in India, without disclosing or associating it as to how it is done or how it can be replicated in future, it can be stated that the technology has not been made available to that entity. Hence, consequently, the assessee could not be held an assessee in default under section 201(i).Aggrieved Revenue, filed an appeal before Mumbai ITAT.

ITAT reiterated the submissions made before Assessing Officer and CIT(A) and held that payee has only given the certificate/report of the calibration to the assessee & does not contain the process of how the testing or calibration was carried out by the payee. The expertise connected with testing has not been passed on to the assessee. Also the condition precedent for invoking the “make available” clause is that the services should enable the person acquiring the services to apply technology contained therein. It further held that unless there is a transfer of technology involved in technical services, the “make available” clause is not satisfied. Thus the order of CIT(A) was upheld by the ITAT.

ERNST & YOUNG PVT. LTD. VS. DCIT

During AY 2006-07, in case of assessee, Ernst & Young Pvt Ltd., AO made disallowance u/s 40(a)(ia) for non-deduction of TDS on reimbursement of cost to Ernst & Young Global Services (‘EYGS’) LLP and Ernst & Young LLP, UK, concerns formed by member firms of Ernst & Young for providing access to system and management audit methodology updates etc. According to AO, assessee was liable to deduct TDS u/s 195. However, CIT(A) deleted the addition following Kolkata ITAT ruling in assessee’s own case for AY 2003-04.Aggrieved, Revenue preferred an appeal before Kolkata ITAT.

ITAT noted that Assessee Company was a member of the international organization of Ernst & Young and its several associate concerns worldwide. EYGS LLP and Ernst Young UK LLP provided administrative and management support services in connection with technology updates, system and methodology and upgrades, training through webs etc. to the assessee and to other associate concerns of the Group. The assessee and its other associate concerns shared the cost. In this regard, assessee paid impugned reimbursement amount to EYGS LLP and Ernst & Young UK LLP, on account of its share of costs for such services. ITAT noted that the said concerns were set up by member firms of Ernst & Young for providing resources to obtain best methodologies at a lower cost. Accordingly, arrangement was arrived at for such services to be developed in pool by the said two concerns to which the member firms would have access to it and reimbursing their respective shares of cost incurred on the basis of respective turnover of the member firms. ITAT held that these facts were not denied by revenue itself before ITAT and these were reimbursement of expenses. Once these are reimbursement of expenses the assessee is not liable to deduct TDS u/s. 195 of the Act. ITAT thus dismissed Revenue's appeal.

ACIT VS. BARTRONICS INDIA LTD.

The assessee, Bartronics India Ltd., is a company engaged in the business of providing enterprise solutions based on smart cards, bar-coding, biometrics etc. A survey u/s 133A was conducted on assessee's business premises to verify the TDS payments made by the assessee. Assessing Officer noted from assessee's books of account that payments were made to Gamma Machinery &Equipments Pte. Ltd. and Intra Asia Trading Pte Ltd, for complete source code for contact/contact less smart cards operating systems for transport application, conforming to National Informatics Centre, Government of India standards. Assessing Officer finally concluded that for the above amounts payable/paid by assessee, assessee was liable to deduct tax at source under section 195. Accordingly, he worked out the liability under section 201(1) and interest under section 201(1A).

On appeal before CITA), assessee contended that its business was covered under Article 7 and Article 5 of India-Singapore DTAA. However, CIT(A) held that assessee's business was neither covered under Article 7 nor under Article 12 of the DTAA. Aggrieved, Revenue preferred an appeal before Hyderabad ITAT.

ITAT noted that assessing officer had agreed to assessee's submissions of payments to be constituted 'business income' of the non-resident and would not be taxable income as per Articles 7 & 5 of Indo-Singapore DTAA. However, it held that payments could be considered as royalty/fees for technical services under Article 12 of DTAA. ITAT stated that, to be taxable as royalty income, the income of the assessee should have been generated by the "use of or the right to use of" any copyright. ITAT concluded that, the assessee has purchased only copy of the copyrighted article i.e., a computer program which was called software and, therefore, consideration cannot be treated as royalty. Copyright is distinct from the material object, copyrighted. Copyright is an intangible incorporeal right in the nature of a privilege, quite independent of any material substance, such as a manuscript. It does not amount to transfer of all or any right including license in respect of copyright. Copyright or even right to use copyright is distinguishable from sale consideration paid for "copyrighted" article. This sale consideration is for purchase of goods and is not royalty. Thus, on the above principles, tribunal ruled in favour of the assessee.

MORGAN STANLEY INTERNATIONAL INCORPORATED VS. DY. DIT (MUMBAI TRIBUNAL)
EMPLOYEE SECONDMENT CREATES SERVICE PE BUT SALARY EXPENSE DEDUCTIBLE

The assessee, a US resident is primary engaged in providing support services to its subsidiaries across the globe. During the year, the assessee deputed five of its employees to two of its Indian subsidiaries to render support services. These employees worked under the supervision and control of the Board of directors of the Indian subsidiaries. The salary of the seconded employees was paid by the assessee after deduction of taxes under section 192 of the Act and the same was reimbursed by the Indian subsidiaries without any mark-up. Since the salary was paid to employees after deduction of taxes and the payment by subsidiaries to assessee was a pure reimbursement without any mark-up, the assessee treated it as non-taxable in India. The AO taxed the amount so received by the assessee under Article 12 of the Indo-US DTAA as 'fees for Included Services' on the ground that it is generated out of the normal business activity of the assessee which is providing consultancy services to its subsidiaries for which the deputation was made. The CIT(A) upheld the order of the AO and found his contention tenable.

The assessee, as a result, was in appeal before the Tribunal where the issues for consideration were (a) Whether reimbursement of salary paid to seconded employee is taxable in India; (b) If taxable, whether the same is covered by Article7 (as Business Profits) or Article 12 (as Fees for Included Services) and (c) If taxable under Article 12, whether the secondment creates a service PE in India and whether the salary paid be claimed as an allowable expense?

The assessee argued that the employees deputed in India were under direct control and supervision of the Indian subsidiaries and it cannot be said that the assessee has rendered any direct or indirect services to the Indian subsidiary through its employees. Such reimbursement does not qualify as Fees for Included Services under Article 12 of the Indo-US DTAA. It submitted that, in the case of M/s Morgan Stanley, UK and M/s Morgan Stanley Singapore for the same assessment year, similar reimbursement of salary received for the deputed employees has not been treated as income taxable in India either as FTS or as FIS. It was also submitted before the tribunal that the amount received by the assessee is towards reimbursement of salary cost and does not involve any element of income. The reimbursement is cost recharge arising out of expenditure incurred by one person on behalf of another and not for provision of services. Placing reliance on several judgments, it was contended that there is no specific provision for taxing the reimbursement. On without prejudice basis, it was also submitted that the services provided by the seconded employees in India will constitute a service PE of the assessee in India and thus the taxability will be governed by Article 7 and not by Article 12 of the DTAA and in such case the assessee will be entitled to deduction of the expenditure incurred on salary. On the other side, revenue pressed upon the findings made by AO and CIT(A) that the seconded employees were highly qualified personnel having technical skills/ experience to render services to India subsidiaries. As the assessee is in the business of rendering support services which were provided through its employees, the amount received by the assessee as reimbursement is nothing but FIS on account of make available clause under Article 12 of DTAA.

The ITAT allowed the appeal of the assessee on the finding that Delhi High Court in case of Centrica India has dealt with a similar issue of taxability of reimbursement of salary cost of the seconded employee

and held that services rendered by deputed employees "made available" technical knowledge to Indian entity & hence was taxable as FIS. Further, Supreme Court in case of Morgan Stanley & Co held that such deputed employees if continued to be on the payrolls of the overseas entities while rendering their services in India, would constitute a Service PE in India. In the instant case, the seconded employees are actually the employees of the assessee who have come to India to render services. As they are rendering services on behalf of the assessee in India they constitute a service PE in India. Having established that the assessee had service PE in India, the recovery of salary cost would no longer be taxable under Article 12 of the DTAA as clause 6 of the Article 12 clarifies that Article 12 will not apply if the assessee carries on business in other contracting state in which FIS arises through PE situated therein. In such a case, Article 7 i.e. Business Profits will be applicable. While computing the profits under Article 7, payment received by the assessee is to be treated as revenue receipt and any cost incurred has to be allowed as deduction because salary is a cost to the assessee which is to be allowed. Accordingly, the ITAT directed the AO to compute the income under terms of Article 7 and not under Article 12 of the DTAA

DDIT VS. IATA BSP INDIA (MUMBAI ITAT)
MFN CLAUSE CAN BE USED TO IMPORT 'MAKE-AVAILABLE' CLAUSE.

The assessee, an Indian branch office of IATA Canada was required to pay to IATA Canada, for the BSP Link services during the year under consideration. BSP Link system enables issue of debit notes/credit notes, issue of refund, billing statement etc. electronically, for the participating agents and Air-lines. IATA Canada entered into an agreement through it administrative office in Geneva, Switzerland with ADP-GSI, a France company, to develop the system (BSP Link). ADP-GSI raises the invoice on Geneva Office of IATA, Canada who in turn raises the invoices on assessee for the cost attributable to it. Assessee made an application under section 195(2) before the Assessing Officer, seeking permission to remit the said amount without deducting tax at source on the ground that Geneva office is not rendering any services to the assessee and it is just a cost sharing arrangement and accordingly, provisions of section 195 are not applicable as there are no two distinct and separate entities involved in the transaction. The Assessing Officer rejected assessee's contention stating that the beneficiary of service is assessee and said services are technical in nature and therefore, liable to tax in India at the rate of 10% as per article 13 of DTAA between India and France.

Assessee filed an appeal before CIT(A) and raised a new argument in addition to its earlier arguments that amount paid by the assessee was not in the nature of fee for technical services as envisaged in Article 13 of DTAA between India and France read with clause 7 of the protocol to the DTAA. Assessee contended that the services rendered do not make available any technical knowledge, skill, know-how etc. CIT (A), relying on the CBDT circular No. 740 dated 17.04.1996, rejected the contention of the assessee that provisions of section 195 are not applicable. However, CIT(A) accepted assessee's contention that services are not in the nature of fees for technical services within the meaning of Article 12(4)(b) of India-USA DTAA read with Article 13 of India-France DTAA and clause 7 of the protocol thereto.

On department's appeal before tribunal, it is held that the restricted scope provided in India-USA DTAA and India-Portuguese DTAA is applicable in case of India-France DTAA as per clause 7 of the protocol to India-France DTAA. Further, the tribunal observed that there was nothing to show that the said services made-available any technical knowledge, skill, know-how etc. and hence concluded that these are not in the nature of fees for included services.

SWISS RE-INSURANCE COMPANY LIMITED VS. DDIT (ITAT MUMBAI)

Assessee, a Swiss company is engaged in the reinsurance business. Assessee's Singapore branch entered into a service agreement with an Indian Company(a wholly-owned subsidiary of the Assessee) for obtaining risk assessment services, marketing of insurance and administrative support services in India. Indian Company was remunerated at cost plus 12 percent mark-up for this purpose. Assessee, relying on the provisions of DTAA between India and Switzerland claimed that in the absence of a Permanent Establishment in India it's business income from the reinsurance business was not taxable in India.

The Tribunal ruled that the assessee's wholly-owned Indian subsidiary engaged in carrying out risk assessment services, marketing insurance and providing administrative support for the tax payer in India did not create a Permanent Establishment in India as per the India-Switzerland DTAA. The Tribunal also ruled that such an arrangement did not create a "business connection" in India for the assessee under the Indian Tax Laws.

AT & S INDIA PVT. LIMITED VS. DCIT (ITAT KOLKATA)

The assessee is an Indian company engaged in manufacturing and sale of professional grade printed circuit. In terms of the distribution agreement between assessee and its parent company AT&S, AT&S paid preliminary warranty costs to customers and reworking cost to service providers on behalf of appellant. In this regard, AT&S raised debit note on the assessee and the assessee made payment to its parent company towards reimbursements of the cost incurred by AT&S towards preliminary warranty and reworking costs. The Assessing Officer disallowed this payment by invoking the provision of section 40(a)(i) of the Act on the basis that Assessee failed to deduct tax at source.

Aggrieved by this, the assessee appealed before CIT(A). Assessee contended that the payments to AT&S Austria were not on account of any services rendered by AT&S, Austria but on account of the reimbursement of warranty obligation which the assessee, as a seller of the products, is bound to discharge. The CIT(A) deleted the disallowance made by Assessing Officer. Consequently, on appeal by department before tribunal it was held the reimbursement of the expenditure under cost-sharing does not generate any income in the hands of the recipient and thus, there was no requirement of deduction of TDS under section 195 and therefore the provisions of section 40(a)(ia) could not be invoked. In arriving

at the conclusion, tribunal relied on the decision of the Hon'ble Jurisdictional High Court in the case of CIT v Dunlop Rubber Co. Limited[3].

AMD RESEARCH & DEVELOPMENT CENTER INDIA PVT. LTD V/S DCIT CIRCLE 1(2), HYDERABAD (HYDERABAD TRIBUNAL)[4]

The assessee, an Indian company, is a subsidiary of ATI Technologies, a company incorporated in Canada (ATI Canada). The assessee was set up as a research & development and design centre for providing captive services to ATI Canada under a Master Service Agreement. Since it did not have complete skill set to render the agreed services it entered into an arrangement with ATI Canada pursuant to which required skill set was agreed to be made available by ATI Canada to the assessee through an Independent Service Provider ('ISP') in India. ATI Canada remunerated the ISP for the services and such payments were recovered from the assessee on cost. The Assessing officer ('AO') initiated default proceedings against the assessee for non-withholding of taxes. On appeal to CIT(A), AO's contentions were upheld that the payments were not reimbursement but the same were taxable in India. Aggrieved by the above, the assessee filed an appeal before the Tribunal.

The Tribunal observed that services were rendered by ISP pursuant to a contract with ATI Canada and that benefit of the services of ISP was not availed by the assessee directly and exclusively. Since the assessee received services from ATI Canada through ISP in India, payments made by the assessee to ATI Canada were not in the nature of pure reimbursement of expenses but were payments for services availed. Engineering services were in nature of "Fees for Included services" (FIS) which were made available by ATI Canada to the assessee through the ISP and the same were taxable in India as per Income tax laws as well as India-Canada tax treaty.

[3](1983) 142 ITR 493 (Cal)
[4][2015] 53 taxmann.com 300 (Hyderabad - Trib.)

INBOUND INVESTMENT AND OUTBOUND INVESTMENT

RECENT CHANGES IN FDI SECTOR WISE CAP

(Note: Below is only a summary of the shareholding limit for conditions attached to specific sectors, the sectoral policy may be referred to)

S.NO	SECTOR	ACTIVITY	2015 REVISED POLICY		FDI PREVIOUS POLICY (2014)	
			INVESTMENT CAP	APPROVAL ROUTE	INVESTMENT CAP	APPROVAL ROUTE
1	Agriculture	Agriculture& Animal Husbandry	100 percent	Automatic	100 percent	Automatic
2	Tea Plantation	Tea sector including tea plantations	100 percent	Government	100 percent	Government
3	Mining	Mining and Exploration of metal and non metal ores, coal & lignite, coal processing plant.	100 percent	Automatic	100 percent	Automatic
		Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities	100 percent	Government	100 percent	Government
4	Petroleum & Natural Gas	Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, petroleum product pipelines, natural gas/ pipelines, LNG Regasification infrastructure	100 percent	Automatic	100 percent	Automatic

		Petroleum refining by PSU, without any disinvestment or dilution of domestic equity in the existing PSUs.	49 percent	Automatic	49 percent	Automatic
5	Defence	-	49 percent	Government	26 percent	Government
			Above 49 percent	Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and ‘state-of-art’ technology in the country.	Above 26 percent	Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and ‘state-of-art’ technology in the country
6	Telecom	-	100 percent	Automatic up to 49 percent	100 percent	Automatic up to 49 percent
				Government route beyond 49 percent		Government route beyond 49 percent
5	E-commerce Activities	Activity of buying and selling by a company through the e-commerce platform	100 percent	Automatic	100 percent	Automatic
6	Single Brand Product Retail Trading	-	100 percent	Automatic up to 49 percent	100 percent	Automatic up to 49 percent
				Government route beyond 49 percent		Government route beyond 49 percent
7	Multi Brand Retail Trading	-	51 percent	Government	51 percent	Government

8	Financial Services	1) Asset Reconstruction Company (ARC)	100 percent of paid-up capital of ARC (FDI+FII/FPI)	Automatic up to 49 percent Government route beyond 49 percent	100 percent of paid-up capital of ARC (FDI+FII/FPI)	Automatic up to 49 percent Government route beyond 49 percent
		2) Banking- Private Sector	74 percent including investment by FIIs/FPIs	Automatic up to 49 percent Government route beyond 49 percent up to 74 percent	74 percent including investment by FIIs/FPIs	Automatic up to 49 percent Government route beyond 49 percent up to 74 percent
		2) Banking- Public Sector	20% (FDI and Portfolio Investment)	Government	20% (FDI and Portfolio Investment)	Government
		4) Commodity Exchange	49 percent (FDI + FII/FPI) [Investment by Registered FII / FPI under Portfolio Investment Scheme (PIS) will be limited to 23 percent and Investment under FDI Scheme limited to 26 percent]	Automatic	49 percent (FDI + FII/FPI) [Investment by Registered FII / FPI under Portfolio Investment Scheme (PIS) will be limited to 23 percent and Investment under FDI Scheme limited to 26 percent]]	Automatic
		5) Credit Information Companies CIC	74 percent (FDI+FII/FPI)	Automatic	74 percent (FDI+FII/FPI)	Automatic
		6) Infrastructure Company in the Securities Market	49 percent (FDI + FII/RFPI) [FDI limit of 26 per cent and FII/FPI limit of 23 per cent of the paid-up capital]	Automatic	49 percent (FDI + FII/FPI) [FDI limit of 26 per cent and FII/FPI limit of 23 per cent of the paid-up capital	Automatic

		7) Insurance	26 percent (FDI+FII/FPI+NRI)	Automatic	26 per cent (FDI+FII/FPI+NRI)	Automatic
9	Power Exchanges	-	49 percent FDI+FII/FPI)	Automatic	49 per cent FDI+FII/FPI)	Automatic
10	Pharmaceutical Sector	Greenfield investment	100 percent	Automatic	100 per cent	Automatic
		Brownfield investment	100 percent	Government	100 per cent	Government
		Manufacture of Medical Devices	100 percent	Automatic	-	-

- **AMENDMENTS RELATING TO REPORTING OF FDI**
  - ☐ **REPORTING UNDER FDI SCHEME ON THE E-BIZ PLATFORM**
    With a view to promoting the ease of reporting of transactions under foreign direct investment, the Reserve Bank of India, under the aegis of the e-Biz project of the Government of India has enabled the filing of Advance Remittance Form (ARF) and FCGPR Form. The reporting platform enables the customer to login into the e-Biz portal, download the reporting forms (ARF and FCGPR), complete and then upload the same onto the portal using their digitally signed certificates.

- **REVISED FORMAT OF ANNUAL RETURN ON FOREIGN LIABILITIES & ASSETS**
  - ☐ All Indian Companies who have made and/or received FDI are required to file the Annual Return on Foreign Liabilities and Assets (FLA) in the soft form to the Reserve Bank by July 15 every year. With effect from F.Y.2013-2014, the Annual Return form for FLA has been modified. The revised format is available at RBI website. (A.P. (DIR Series) Circular No. 145 dated June 18, 2014).

- **REPORTING UNDER FDI SCHEME**
  - ☐ The Department of Industrial Policy and Promotion (DIPP), decided to switch over to the National Industrial Classification 2008 (NIC 2008) from the NIC 1987 version, for the purpose of classification of activities under the industrial classification system.
  - ☐ It has also been decided to introduce a uniform State and District code list for reporting of details of foreign direct investment by Indian companies in Form FCGPR. The list can be accessed on the RBI website (www.rbi.org.in - FEMA – State and District Code List).

- **FOREIGN DIRECT INVESTMENT (FDI) IN LIMITED LIABILITY PARTNERSHIP (LLP)**
  - ☐ In terms of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, only a Company incorporated under the Companies Act, 1956 or a Venture Capital Fund was eligible to accept FDI.

- ☐ It has now vide Circular No. 123 dated April 16, 2014 been decided that a Limited Liability Partnership (LLP) formed and registered under the Limited Liability Partnership Act, 2008 shall be eligible to accept Foreign Direct Investment (FDI) under prior approval route subject to the conditions prescribed in Annex I of the Notification No. FEMA 20/2000-RB dated May 3, 2000.

- **FDI - PRICING GUIDELINES FOR FDI INSTRUMENTS WITH OPTIONALITY CLAUSES**

[A. P. (DIR Series) Circular No. 4 dated July 15, 2014]

Revised pricing guidelines in respect of transfer/issue of shares and for exit from investment in equity shares, CCD and CCPS with or without optionality clauses of listed/unlisted Indian companies

i. **Issue / Transfer of Shares to Non- Residents**

Price of shares issued / transferred to persons resident outside India shall not be less than:

a. the price worked out in accordance with the SEBI guidelines (in case the shares are listed on any Recognized Stock Exchange)

b. the fair valuation of shares done as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker (in case the shares are not listed)

ii. **Transfer of Shares by Non-resident to Resident**

Price of shares issued / transferred to persons resident outside India shall not be at a price not exceeding:

a. The minimum price at which the transfer of shares can be made from a resident to a non-resident as given in (i) above.

b. A price arrived at as per any internationally accepted pricing methodology on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker, in case of an unlisted company

iii. **Transfer of Compulsorily Convertible Debentures (CCDs) and Compulsorily Convertible Preference Shares (CCPS) by Non-resident to Resident**

The non-resident investor shall be eligible to exit from the investment in CCDs and CCPS of the investee company at a price not exceeding that arrived at as per any internationally accepted pricing methodology on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker.

The non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreements and shall exit at the fair price computed as above at the time of exit, subject to lock-in period requirement, as applicable.

- **ISSUE OF EQUITY SHARES UNDER THE FDI SCHEME AGAINST LEGITIMATE DUES**

(A.P. (DIR Series) Circular No.31, September 17, 2014)

An Indian company under the automatic route may issue shares/convertible debentures to a person resident outside India against lump-sum technical know-how fee, royalty External

Commercial Borrowings (ECBs) (other than import dues deemed as ECB or Trade Credit as per RBI guidelines) and import payables of capital goods by units in Special Economic Zones.

Through this circular RBI permit issue of equity shares against any other funds payable by the investee company, remittance of which does not require prior permission of the Government of India or Reserve Bank of India under FEMA, 1999 or any rules/ regulations framed or directions issued there under, provided that:

i. The equity shares shall be issued in accordance with the extant FDI guidelines on sectoral caps, pricing guidelines etc. as amended by Reserve bank of India, from time to time;

ii. The issue of equity shares under this provision shall be subject to tax laws as applicable to the funds payable and the conversion to equity should be net of applicable taxes.

- **FOREIGN INVESTMENT IN INDIA BY FOREIGN PORTFOLIO INVESTORS (FPI):**

☐ **REINVESTMENT OF COUPONS IN GOVERNMENT SECURITIES**

- Sixth Bi-Monthly Monetary Policy Statement, 2014-15, issued on February 03, 2015 provides that reinvestment of coupons in Government securities will be enabled even when the existing limits are fully utilised.

- These investments shall be kept outside the applicable limit (currently USD 30 billion) for investments by FPIs in government securities.

☐ **LOCK-IN PERIOD**

- Sixth Bi-Monthly Monetary Policy Statement, 2014-15, issued on February 03, 2015 provides that all future investment by FPIs in the debt market in India will be required to be made with a minimum residual maturity of three years.
- Further, all future investments against the limits vacated when the current investment runs off either through sale or redemption, shall be required to be made in corporate bonds with a minimum residual maturity of three years.
- FPIs shall not be allowed to make any further investment in liquid and money market mutual fund schemes.
- There will, however, be no lock-in period and FPIs shall be free to sell the securities (including those that are presently held with less than three years residual maturity) to domestic investors.

☐ **OVERSEAS INVESTMENTS BY ALTERNATIVE INVESTMENT FUNDS (AIF)**

- it has been decided to permit an Indian Alternative Investment Fund (AIF), registered with Securities and Exchange Board of India (SEBI), to invest overseas in terms of the provisions of Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004.

☐ RECENT DEVELOPMENTS IN OVERSEAS DIRECT INVESTMENT (ODI)

- The RBI has now issued an A.P. (DIR Series) Circular No. 1 dated July 3, 2014 whereby the said limit has been restated to 400 per cent of the net worth as per the last audited balance sheet of the Indian entity. however, the same comes with a caveat i.e., any ODI or financial commitment of more than USD 10,00,00,000 in a particular financial year will require prior approval of the RBI, even if such ODI or financial commitment is within the eligible ODI limit of 400 per cent.

- Now even LLP's are notified as Indian Party and hence can accordingly undertake financial commitment (investment) to/on behalf of a Joint Venture or Wholly Owned Subsidiary abroad.

- Given the fact that currently Indian Rupee is not fully convertible and financial products linked to Indian Rupee such as (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) could have implications for the exchange rate management of the country, it has been clarified by RBI that Overseas entity having equity participation directly / indirectly shall not offer such products without the specific approval of the Reserve Bank of India.

- Currently Creation of charge on shares of JV / WOS / step down subsidiary (SDS) in favour of domestic / overseas lender is under automatic route. Now additional conditions have been prescribed for charge on such shares as follows

(A.P. (DIR Series) Circular No.54 dated December 29, 2014):

i. Complying with the undertaking financial commitment,
ii. Period of charge should co-terminus with the period of end-use,
iii. Utilized only for its core business activities overseas and not for investing back in India,
iv. A certificate from the Statutory Auditors' of the Indian party, to the effect that the loan / facility availed by the JV / WOS / SDS has not been utilized for direct or indirect investments in India, is to be obtained and kept by the designated AD.

- Currently Creation of charge on the domestic assets in favour of overseas lenders to the JV / WOS / step down subsidiary requires prior approval of the Reserve Bank. Now the designated AD bank may permit creation of charge under the automatic route subject to the following:
  i. Complying with the undertaking financial commitment,
  ii. The domestic assets, on which charge is being created, are not securitized.
  iii. Period of charge should co-terminus with the period of end-use,

iv. Utilized only for its core business activities overseas and not for investing back in India,
v. A certificate from the Statutory Auditors' of the Indian party, to the effect that the loan / facility availed by the JV / WOS / SDS has not been utilized for direct or indirect investments in India, is to be obtained and kept by the designated AD.
vi. The overseas lender undertakes that, in the event of enforcement of charge, they shall transfer the domestic assets by way of sale to a resident only.
vii. In case of invocation of charge, the resultant remittance of the proceeds exceeding the prescribed limit of the financial commitment of the Indian party (prevailed at the time of creation of charge) shall require prior approval of the Reserve Bank.

- Currently Creation of charge on overseas assets in favour of domestic lender requires prior approval of the Reserve Bank. Now the designated AD bank may permit creation of charge under the automatic route subject to the following:
    i. Complying with the undertaking financial commitment,
    ii. The domestic assets, on which charge is being created, are not securitized.
    iii. Period of charge should co-terminus with the period of end-use,
    iv. Utilized only for its core business activities overseas and not for investing back in India,
    v. A certificate from the Statutory Auditors' of the Indian party, to the effect that the loan / facility availed by the JV / WOS / SDS has not been utilized for direct or indirect investments in India, is to be obtained and kept by the designated AD.
    vi. The invocation of charge resulting into the domestic lender acquiring the overseas assets shall require prior approval of the Reserve Bank.

☐ **RECENT DEVELOPMENT IN ECB**

- **REFINANCING OF ECB AT LOWER ALL-IN-COST – SIMPLIFICATION OF PROCEDURE**

On a review, it has been decided to simplify the procedure by delegating powers to the AD banks to approve even those cases where the Average Maturity Period (AMP) of the fresh ECB is exceeding the residual maturity of the existing ECB under the automatic route subject to the following conditions:

i. Both the existing and fresh ECBs should be in compliance with the applicable guidelines;
ii. All-in-cost of fresh ECB should be less than that of the all-in-cost of existing ECB;
iii. Consent of the existing lender is available;
iv. Refinancing is to be undertaken before the maturity of the existing ECB;
v. Borrower should not be in the default / Caution List of RBI and should not be under the investigation of the Directorate of Enforcement (DoE);
vi. Overseas branches / subsidiaries of Indian banks will not be permitted to extend ECB for refinancing an existing ECB; and

vii. All requirements in respect of reporting arrangements like filing of revised Form 83, etc. are followed.

This facility will be available even in those cases where existing ECBs were raised under the approval route subject to the amount of new ECBs being eligible to be raised under the automatic route.

- **EXTERNAL COMMERCIAL BORROWINGS (ECB) IN INDIAN RUPEES**

(A.P. (DIR Series) Circular No.25 dtd. September 3, 2014)

- With a view to providing greater flexibility for structuring of ECB arrangements, it has been decided that recognised non-resident ECB lenders may extend loans in Indian Rupees subject to the following conditions:

  a. The lender should mobilise Indian Rupees through swaps undertaken with an AD bank in India.
  b. The ECB contract should comply with all other conditions applicable to the automatic and approval routes as the case may be.
  c. The all-in-cost of such ECBs should be commensurate with prevailing market conditions.

- For the purpose of executing swaps for ECBs denominated in Indian Rupees, the recognised ECB lender, if it desires, may set up a representative office in India following the prescribed laid down process.
- It may be noted that the hedging arrangement for ECBs denominated in Indian Rupees extended by non-resident equity-holders shall continue to be governed by the provisions of AP (DIR Series) Circular No. 63 dated December 29, 2011.

- **PARKING OF ECB PROCEEDS**
  - At present, eligible ECB borrowers are required to bring ECB proceeds, meant for Rupee expenditure in India for permitted end uses, such as, local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, etc., immediately for credit to their Rupee accounts with AD banks in India.
  - With a view to providing greater flexibility to the ECB borrowers in structuring draw down of ECB proceeds and utilisation of the same for permitted end uses, it has been decided to permit AD banks to allow eligible ECB borrowers to park ECB proceeds (both under the automatic and approval routes) in term deposits with AD banks in India for a maximum period of six months pending utilisation for permitted end uses. The facility will be with the following conditions:
    i. The applicable guidelines on eligible borrower, recognised lender, average maturity period, all-in-cost, permitted end uses, etc. should be complied with.

ii. No charge in any form should be created on such term deposits i.e. to say that the term deposits should be kept unencumbered during their currency.
iii. Such term deposits should be exclusively in the name of the borrower.
iv. Such term deposits can be liquidated as and when required.

- **SECURITY FOR EXTERNAL COMMERCIAL BORROWINGS (01ST JAN 2015)**

a) Creation of Charge on immovable assets:

i. Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000.
ii. The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender / security trustee.
iii. In the event of enforcement / invocation of the charge, the immovable asset / property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

(b) Creation of Charge on Movable Assets

In the event of enforcement / invocation of the charge, the claim of the lender, whether the lender takes over the movable asset or otherwise, will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country.

(c) Creation of Charge over Financial Securities

i. Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower will be permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, will also be permitted.
ii. In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with AD Category-I banks in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in the form of escrow arrangement or debt service reserve account.
iii. In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable read with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.

(d) Issue of Corporate or Personal Guarantee

i. A copy of Board Resolution for the issue of corporate guarantee for the company issuing such guarantee, specifying name of the officials authorised to execute such guarantees on behalf of the company or in individual capacity should be obtained.
ii. Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.
iii. Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000.

☐ **ROUTING OF FUNDS RAISED ABROAD TO INDIA**

Some Indian companies are accessing overseas market for debt funds through overseas holding / associate / subsidiary / group companies. It has also been reported that such borrowings are raised at rates exceeding the ceiling applicable in terms of extant FEMA regulations and that the funds so raised are routed to the Indian companies which accounts for sole/major operations of the group. Different modalities/structures are resorted to for channelling such funds for Indian operations including investment in rupee bonds floated by the Indian company.

On a review of the matter in light of the existing regulatory framework, it is clarified as under

- Indian companies or their AD banks are not allowed to issue any direct or indirect guarantee or create any contingent liability or offer any security in any form for such borrowings by their overseas holding / associate / subsidiary / group companies except for the purposes explicitly permitted in the relevant Regulations.

- Further, funds raised abroad by overseas holding / associate / subsidiary / group companies of Indian companies with support of the Indian companies or their AD banks as mentioned at (i) above cannot be used in India unless it conforms to the general or specific permission granted under the relevant Regulations.

- Indian companies or their AD banks using or establishing structures which contravene the above shall render themselves liable for penal action as prescribed under FEMA, 1999.

☐ **NON-RESIDENT GUARANTEE FOR NON-FUND BASED FACILITIES ENTERED BETWEEN TWO RESIDENT ENTITIES**

(A.P. (DIR Series) Circular No. 56, January 6, 2015)

- It is clarified that residents subsidiaries of multinational companies can also hedge their foreign currency exposure through permissible derivative contracts executed with an AD Category – I bank in India on the strength of guarantee of its non-resident group entity. The method of discharge of liability by the non-resident guarantor under the guarantee and the subsequent repayment of the liability by the principal debtor shall continue to be governed, as hitherto, by the provisions of A.P. (DIR Series) Circular No. 28 dated March 30, 2001.

☐ RECENT CHANGES IN EXPORT OF GOODS AND SERVICES

To further liberalize and simplify the procedure, it has been decided to dispense with the requirement of submitting request in Form A-1 to the AD Category –I Banks for making payments towards imports into India. AD Category –I may however, need to obtain all the requisite details from the importers and satisfy itself about the bonafides of the transactions before affecting the remittance. (Feb. 12, 2015)

☐ PROJECT EXPORTS (22ND JULY 2014)

The structure of Working Group (consisting of representatives from Exim bank, ECGC & RBI), which has hitherto been permitted to consider project exports and deferred service exports proposals for contracts exceeding USD 100 Million in value will now be dispensed with. The AD banks / Exim Bank can now consider awarding post-award approvals without any monetary limit and permit subsequent changes in the terms of post award approval within the relevant FEMA guidelines / regulations. Project and service exporters may accordingly approach AD banks / Exim Bank based on their commercial judgment. The respective AD bank / Exim Bank should monitor the projects for which post-award approval has been granted by them; and

ii) The stipulation of time limit of 30 days for the exporter undertaking Project Exports and Service contracts abroad to submit form DPX1/ PEX-1 /TCS-1 to the Approving Authority (AA) for seeking post award approval will not apply henceforth.

The revised Memorandum of Instructions on Project and Service Exports (PEM) is enclosed.

Reserve Bank has since amended the Principal Regulations through the Foreign Exchange Management (Export of Goods and Services) (Second Amendment) Regulations, 2014 notified vide Notification No. FEMA 310/2014-RB dated June 12, 2014 c.f. G.S.R. No. 434 (E) dated July 8, 2014.

☐ Period of Realization and Repatriation of Export Proceeds – For exporters including Units in SEZs, Status Holder Exporters, EOUs, Units in EHTPs, STPs and BTPs

The issue has since been reviewed and it has been decided, in consultation with the Government of India, that henceforth the period of realization and repatriation of export proceeds shall be nine months instead of twelve months from the date of export for all exporters including Units in SEZs, Status Holder Exporters, EOUs, Units in EHTPs, STPs & BTPs until further notice.

The provisions in regard to period of realization and repatriation to India of the full exports made to warehouses established outside India remain unchanged.

☐ Delay in Utilization of Advance Received for Exports

As it has been observed that there is substantial increase in the number and amount of advances received for exports remaining outstanding beyond the stipulated period on account of non-performance of such exports (shipments in case of export of goods), AD Category –I banks are advised to efficiently follow up with the concerned exporters in order to ensure that export performance (shipments in case of export of goods) are completed within the stipulated time period. It is further reiterated that AD category –I banks should exercise proper due diligence and ensure compliance with KYC and AML guidelines so that only bonafide export advances flow into India. Doubtful cases as also instances of chronic defaulters may be referred to Directorate of Enforcement (DoE) for further investigation. A quarterly statement indicating details of such cases (as per Annex) may be forwarded to the concerned Regional Offices of RBI within 21 days from the end of each quarter.

☐ RECENT CHANGES IN EXPORT OF CURRENCY (FEB 02, 2015)

Attention of AD banks is invited to the provisions contained in A.P. (DIR Series) Circular No.42 dated November 28, 2014 in terms of which the 20:80 scheme for import of gold was withdrawn in consultation with the Government.

The RBI and the Government has been receiving requests for clarification on some of the operational aspects of the guidelines on import of gold consequent upon the withdrawal of 20:80 schemes. Accordingly, in consultation with the Government, the following clarifications are issued:

- The obligation to export under the 20:80 scheme will continue to apply in respect of unutilized gold imported before November 28, 2014, i.e., the date of abolition of the 20:80 scheme.
- Nominated banks are now permitted to import gold on consignment basis. All sale of gold domestically will, however, be against upfront payments. Banks are free to grant gold metal loans.
- Star and Premier Trading Houses (STH/PTH) can import gold on DP basis as per entitlement without any end use restrictions.
- While the import of gold coins and medallions will no longer be prohibited, pending further review, the restrictions on banks in selling gold coins and medallions are not being removed.

☐ RECENT CHANGES IN LIBERALISED REMITTANCE SCHEME

Increase in the limit from usd 75,000 to usd 125,000

- As per A.P. (DIR Series) Circular No.138 June 3, 2014, it has now been decided to enhance the existing limit of USD 75,000 per financial year (April-March) to USD 1,25,000 with immediate effect.
- With effect from 5th August 2013, Resident Individuals will be allowed to set-up Joint Venture (JV) / Wholly Owned Subsidiary (WOS) outside India for bonafide business activities outside India within the specified limit of US Dollars.

- Earlier banks were required to furnish information on the number of applications received and the total amount remitted under the Liberalised Remittance Scheme (the Scheme), on a monthly basis, in the prescribed format in both hard copy as well as soft copy in Excel format.
- As per A. P. (DIR Series) Circular No. 106 dated May 23, 2013, it has been decided, to collect the data in soft form only and to dispense with the submission of hard copies of the monthly statements by the AD banks. (W.e.f. July 01. 2013).

☐ LIBERALIZED REMITTANCE SCHEME FOR RESIDENT INDIVIDUALS- CLARIFICATION

- RBI has clarified that the LRS Scheme can also be used for acquisition of immovable property outside India.

(A.P. (DIR Series) Circular No.5, July 17, 2014)

- It is further clarified that the requirement of post facto reporting to RBI by Authorized Dealer has been withdrawn.

(A. P. (DIR Series) Circular No. 19 August 11, 2014)

☐ RISK MANAGEMENT AND INTER BANK DEALINGS

FOREIGN CURRENCY (FCY) – INR SWAPS

To permit greater flexibility to the residents borrowing in foreign currency, RBI dispense with condition that, on cancellation of the swap contract, a fresh FCY-INR swap to hedge the underlying may be permitted to re -enter into but
swap contract.

(A.P. (DIR Series) Circular No. 78, February 13, 2015)

HEDGING FACILITIES FOR FOREIGN PORTFOLIO INVESTORS (FPIS)

RBI has permitted FPIs to hedge the coupon receipts arising out of their investments in debt securities in India falling due during the following twelve months subject to the condition that the hedge contracts shall not be eligible for rebooking on cancellation. The contracts can however be rolled over on maturity provided the relative coupon amount is yet to be received.

(A.P. (DIR Series) Circular No.28, September 8, 2014)

ACCOUNTS, AUDIT AND INVESTMENTS

Circular/Notifications issued by statutory bodies under various Acts

Ind-AS road map

The Ministry of Corporate Affairs (MCA) issued a notification dated 16th February 2015 announcing a roadmap for the implementation of Ind-AS. The roadmap provides a phase-wise approach, primarily based on a company's net worth.

Phase 1: Mandatory for accounting periods beginning on or after 1 April 2016

<table>
<tr><th>A</th><th>B</th><th>C</th></tr>
<tr><td>Companies whose equity and/or debt securities are listed, or</td><td rowspan="3">Unlisted companies having a net worth of 500 crore INR or more</td><td rowspan="3">Holding, subsidiary, joint venture or associate companies of companies covered in (A) and (B).</td></tr>
<tr><td>Companies who are in the process of listing on any stock exchange in India or outside India, and</td></tr>
<tr><td>Companies having a net worth of 500 crore INR or more.</td></tr>
</table>

- Comparative information required for the period ending 31 March 2016 or thereafter.
- The roadmap does not mention the net worth criteria for holding, subsidiary, joint venture or associate companies covered in (C) above. Accordingly, it appears that even smaller sized companies in this category will get covered in phase 1.

Phase 2: Mandatory for accounting periods beginning on or after 1 April 2017

<table>
<tr><th>D</th><th>E</th><th>F</th></tr>
<tr><td>Companies whose equity and/or debt securities are listed, or</td><td rowspan="3">Unlisted companies having a net worth of 250 crore INR or more but less than 500 crore INR and not covered in any of the other categories.</td><td rowspan="3">Holding, subsidiary, joint venture or associate companies of companies covered in (D) and (E).</td></tr>
<tr><td>Companies who are in the process of listing on any stock exchange in India or outside India, and</td></tr>
<tr><td>Companies having a net worth of less than 500 crore INR.</td></tr>
</table>

- Comparative information required for the period ending 31 March 2017 or thereafter
- The roadmap does not mention the net worth criteria for holding, subsidiary, joint venture or associate companies covered in (F) above.

Voluntary adoption: For accounting periods beginning on or after 1 April 2015

- Comparative information required for the period ending 31 March 2015 or thereafter
- The roadmap does not lay any restriction on companies eligible for voluntary adoption. However, it specifies that once a company opts to follow Ind-AS, it shall be required to follow the Ind-AS for all the subsequent financial statements.

Companies not covered in the roadmap

- Banking, insurance and NBFCs have been excluded from this roadmap. As mentioned in the Finance Minister's Budget speech, it is expected that the implementation date for these companies shall be notified separately.
- Companies whose securities are listed or in the process of listing on SME exchanges. These companies shall continue to comply with the existing accounting standards unless they choose otherwise.
- Companies not covered by the roadmap shall continue to apply the existing accounting standards prescribed in the Annexure to the Companies (Accounting Standards) Rules, 2006.

For the purposes of calculation of net worth of companies, the following principles shall apply, namely:-

a) the net worth shall be calculated in accordance with the stand-alone financial statements of the company as on 31st March, 2014 or the first audited financial statements for accounting period which ends after that date;
b) for companies which are not in existence on 31st March, 2014 or an existing company falling under any of thresholds specified in sub-rule (1) for the first time after 31st March, 2014, the net worth shall be calculated on the basis of the first audited financial statements ending after that date in respect of which it meets the thresholds specified in sub-rule (1).

Explanation: - For the purposes of sub-clause (b), the companies meeting the specified thresholds given in sub-rule (1) for the first time at the end of an accounting year shall apply Indian Accounting Standards (Ind AS) from the immediate next accounting year in the manner specified in sub-rule (1). Illustration .- (i) The companies meeting threshold for the first time as on 31st March, 2017 shall apply Ind AS for the financial year 2017-18 onwards. (Ii) The companies meeting threshold for the first time as on 31st March, 2018 shall apply Ind AS for the financial year 2018-19 onwards and so on.

c) Standards in Annexure to these rules once required to be complied with in accordance with these rules, shall apply to both stand-alone financial statements and consolidated financial statements.

d) Companies to which Indian Accounting Standards (Ind AS) are applicable as specified in these rules shall prepare their first set of financial statements in accordance with the Indian Accounting Standards (Ind AS) effective at the end of its first Indian Accounting Standards (Ind AS) reporting period.

   Explanation:- For the removal of doubts, it is hereby clarified that the companies preparing financial statements applying the Indian Accounting Standards (Ind AS) for the accounting period beginning on 1st April, 2016 shall apply the Indian Accounting Standards (Ind AS) effective for the financial year ending on 31st March, 2017.

e) Overseas subsidiary, associate, joint venture and other similar entities of an Indian company may prepare its standalone financial statements in accordance with the requirements of the specific jurisdiction: Provided that such Indian company shall prepare its consolidated financial statements in accordance with the Indian Accounting Standards (Ind AS) either voluntarily or mandatorily if it meets the criteria as specified in sub-rule (1).

f) Indian company which is a subsidiary, associate, joint venture and other similar entities of a foreign company shall prepare its financial statements in accordance with 5 the Indian Accounting Standards (Ind AS) either voluntarily or mandatorily if it meets the criteria as specified in sub-rule (1).

g) Any company opting to apply the Indian Accounting Standards (Ind AS) voluntarily as specified in sub-rule (1) for its financial statements shall prepare its financial statements as per the Indian Accounting Standards (Ind AS) consistently

h) Once the Indian Accounting Standards (Ind AS) are applied voluntarily, it shall be irrevocable and such companies shall not be required to prepare another set of financial statements in accordance with Accounting Standards specified in Annexure to Companies (Accounting Standards) Rules, 2006

i) Once a company starts following the Indian Accounting Standards (Ind AS) either voluntarily or mandatorily on the basis of criteria specified in sub-rule (1), it shall be required to follow the Indian Accounting Standards (Ind AS) for all the subsequent financial statements even if any of the criteria specified in this rule does not subsequently apply to it

Amendment to Companies (Accounts) Rules 2014

MCA has amended the Companies (Accounts) Rules 2014 with the aforesaid notification. New sub-rule has been inserted to provide for Form AOC-5 pursuant to Section 128(1) of the Companies Act 2013 dealing with place of maintenance of books of accounts. Certain relaxations have also been provided in respect of consolidation of financial statements for the year commencing on 01.04.2014 only. For a complete text of this notification, please refer the link: http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_2015_19012015.pdf.

[Notification No. GSR (E) Dated 16th January 2015]

Amendment to Companies (Cost Records and Audit) Rules 2014

MCA has amended the Companies (Cost Records and Audit) Rules 2014 with the aforesaid notification. Certain amendments have been made to the criteria for applicability of cost records, cost audit, the particulars of cost those should be included in the cost records and the format of the cost audit report. For a complete text of this notification, please refer the link: http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_01012014. pdf.

[Notification No. GSR (E) Dated 31st December 2014]

Issue of Foreign Currency Convertible Bonds (FCCBs) and Foreign Currency Bonds (FCBs) - Clarification regarding applicability of provisions of Chapter III of the Companies Act, 2013.

Chapter III of the Companies Act 2013 deals with various provisions related to prospectus and issue of securities. The MCA had been receiving representations regarding applicability of these provisions to the issues of FCCBs and FCBs by Indian corporate in accordance with the extant sectoral regulatory provisions. It has been clarified that the provisions of Chapter III will not apply to such issues unless the relevant schemes under which these securities are issued specifically require such compliance. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_43-2014.pdf

[Circular 43/2014 dated 13th November 2014]

Amendment to Schedule VII of Companies Act 2013

MCA has notified two more avenues for incurring eligible expenditure under CSR requirements for companies. According to the said notification, the contributions to the Swach Bharat Kosh set up for the promotion of sanitation and contributions to the Clean Ganga Fund set up for rejuvenation of river Ganga will also be considered as eligible expenditure qualifying for CSR. For the complete text of this notification please refer to the link: http://www.mca.gov.in/Ministry/pdf/Amendment_ Notification_24102014.pdf

[Notification No GSR-E dated 24th October 2014]

Comparative Analysis of Clause 49 of SEBI Listing Agreement with Companies Act, 2013

To make the listed companies more transparent and to align the provisions related to Listing Agreement with the Companies Act, 2013, Capital Market Regulator, SEBI has amended Clause 49 of Listing Agreement. The said amendments will be effective from 1st October 2014. Comparative analysis between Clause 49 and Companies Act 20012 are as below:

Particulars	Clause 49	CA, 2013 & Rules, 2014
Exclusion of Nominee Director from Independent Directors (IDs)	**Clause 49(II)(B)** Nominee director is excluded from the definition of IDs.	**Section 149(6)** An independent director in relation to a company means a director other than a MD or a WTD or a nominee director.
Modified definition Ids	**Clause 49(II) (B)** SEBI has amended the definition of Independent Director in aligns with the provisions of Companies Act, 2013.	**Section 149(6)** of the Companies Act, 2013 defines the term Independent Director.
Qualification of IDs	The qualifications of IDs are not specified in the amended clause 49 of the listing agreement.	**Companies (Appointment and Qualification of Directors) Rules, 2014** An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.
Whistle- Blower mechanism	**Clause49(II)(F)** The company shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actuator suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism should also provide for adequate safeguards against victimization of director(s) / employee(s) who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases. The details of establishment of such mechanism shall be disclosed by the	**Section 177(9)** Every listed company and other classes of companies to establish a Vigil mechanism for directors and employees to report genuine concern. It provide adequate safeguards against victimization of employees **and directors** who avail of the Vigil mechanism and also provide for direct access to the **chairperson** of the Audit committee or the **director nominated** to play the role of audit committee, as the case may be, in exceptional cases. Once established, the existence of the mechanism may be

	company on its website and in the Board's report.	appropriately communicated within the organization. The details of establishment of Vigil mechanism shall be disclosed by the **company in the website**, if any, and in the **Board's Report.**
Prohibited Stock options for IDs	**Clause 49(II)(C)** IDs shall not be entitled to any stock options.	**Section 197(7)** IDs shall not entitle to any stock option.
Separate meeting of Ids	**Clause49(II)(B)(6)** The IDs of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting.	**Section 149 read with Schedule IV** IDs of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting.
Training of IDs	**Clause 49(II)(B)** The company shall provide suitable training to independent directors to familiarize them with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc. The details of such training imparted shall be disclosed in the Annual Report.	The Companies Act 2013 did not specify any training of IDs and Board of Directors.
Liability of IDs	**Clause49(II)(E)** An IDs shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently with respect of the provisions contained in the Listing Agreement.	**Section 149(12)** An IDs, a non-executive director not being promoter or KMP, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

Stakeholder Relationship Committee	**Clause 49(VIII)(E)** A committee under the Chairmanship of a non-executive director and such other members as may be decided by the Board of the company shall be formed to specifically look into the redressal of grievances of shareholders, debenture holders and other security holders. This Committee shall be designated as 'Stakeholders Relationship Committee' and shall consider and resolve the grievances of the security holders of the company including complaints related to transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends.	**Section- 178(5)** The Board of Directors of a company which consists of more than one thousand shareholders, debenture holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. The SRC shall consider and resolve the grievances of security holders of the company.
Disclosure policy for Remuneration	**Clause 49(VIII)(C)** All pecuniary relationship or transactions of the non-executive director's vis-à-vis the company shall be disclosed in the Annual Report. In addition to the disclosures required under the Companies Act, 2013, the following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the Annual Report: a. All elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc. b. Details of fixed component and performance linked incentives, along with the performance criteria. c. Service contracts, notice period, severance fees. d. Stock option details, if any – and	**Sec.197(12) and Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014:** Every listed company shall disclose in the Board's report- (i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year; (ii) the percentage increase in remuneration of each director, CFO, CEO, CS or Manager, if any, in the financial year; (iii) the percentage increase in the median remuneration of employees in the financial year; (iv) the number of permanent employees on the rolls of company; (v) the explanation on the relationship between average increase in remuneration and company performance; (vi) comparison of the remuneration of the KMP against the performance of the company;

	whether issued at a discount as well as the period over which accrued and over which exercisable. The company shall publish its criteria of making payments to non-executive directors in its annual report. Alternatively, this may be put up on the company's website and reference drawn thereto in the annual report. The company shall disclose the number of shares and convertible instruments held by non-executive directors in the annual report. Non-executive directors shall be required to disclose their shareholding (both own or held by / for other persons on a beneficial basis) in the listed company in which they are proposed to be appointed as directors, prior to their appointment. These details should be disclosed in the notice to the general meeting called for appointment of such director.	(vii) variations in the market capitalisation of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year; (viii) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration; (ix) the key parameters for any variable component of remuneration availed by the directors; (x) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year; and (xi) Affirmation that the remuneration is as per the remuneration policy of the company.
Performance evaluation of IDs	**Clause 49(II)(B)(5)** The Nomination Committee shall lay down the evaluation criteria for	**Section 178(2) read with Schedule IV** The Nomination and Remuneration Committee shall identify persons who

	performance evaluation of independent directors. The company shall disclose the criteria for performance evaluation, as laid down by the Nomination Committee, in its Annual Report. The performance evaluation of independent directors shall be done by the entire Board of Directors (excluding the director being evaluated). On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.	are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance. The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

SEBI

Circular / Notification

SEBI (Prohibition of Insider Trading) Regulations, 2015

SEBI has notified the regulations related to prohibition of insider trading in companies. These regulations contain various aspects like definition of connected person, insider, unpublished price sensitive information etc. It also provides for aspects like communication or procurement of unpublished price sensitive information, Trading Plans by an insider, disclosures by certain persons, Code of Fair Disclosure etc. For a complete text of the notification please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1421319519608.pdf

[Notification No. LAD-NRO/GN/2014-15/21/85 dated 15th January 2015]

INDIRECT TAX

Central Excise

Notifications:

CIRCULAR NO. 988/12/2014-CX: DETERMINATION OF PLACE OF REMOVAL.

- For a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition.
- The credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under Section 2of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930 occurred at the said place.
- The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

Service Tax

Notifications:

NOTIFICATION NO. 19/2014: AMENDMENT TO SERVICE TAX RULES, 1994.

New Rules 11 & 12 have been inserted w.e.f. 01/10/14 for determination of exchange rate and power to issue supplementary instructions respectively.

Rule 11 states that the rate of exchange for determination of value of taxable service shall be the applicable rate of exchange as per the generally accepted accounting principles on the date when point of taxation arises in terms of the Point of Taxation Rules, 2011.

Rule 12 gives powers to The Board and the Commissioners to issue instructions on incidental or supplementary matters.

NOTIFICATION NO. 23/2014: FURTHER AMENDMENT TO SERVICE TAX RULES, 1994.

In the Service Tax Rules, 1994, in rule 5A, for sub-rule (2), the sub-rule shall be substituted as a result of which recognition has been granted to CA/CMA for conducting Service Tax Audit.

Circulars:

CIRCULAR NO. 178/4/2014-ST: MANNER OF DISTRIBUTION OF COMMON INPUT SERVICE CREDIT UNDER RULE 7(d) OF THE CENVAT CREDIT RULES, 2004.

The Credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period. The distribution for the purpose of rule 7(d), will be done in this ratio in all cases, irrespective of whether such common input services were used in all the units or in some of the units.

CIRCULAR NO. 180/06/2014 –ST: LEVY OF SERVICE TAX ON ACTIVITIES INVOLVED IN RELATION TO INWARD REMITTANCES FROM ABROAD TO BENEFICIARIES IN INDIA THROUGH MTSOs.

Following clarifications have been issued on the above subject:

- No service tax is payable per se on the amount of foreign currency remitted to India from overseas. As the remittance comprises money, it does not in itself constitute any service in terms.
- The service of an agent or the representation service provided by an Indian entity/ bank to a foreign money transfer service operator (MTSO) in relation to money transfer falls in the category of intermediary service as defined in rule 2(f) of the Place of Provision of Service Rules, 2012.
- Service provided by an agent, located in India (in taxable territory), to MTSO is liable to service tax. The value of intermediary service provided by the agent to MTSO is the commission or fee or any similar amount, by whatever name called, received by it from MTSO and service tax is payable on such commission or fee.
- Service tax would apply on the amount charged separately, if any, by the Indian bank/entity/agent/sub-agent from the person who receives remittance in the taxable territory, for the service provided by such Indian bank/entity/agent/sub-agent.
- Service tax would apply on the services provided by way of currency conversion by a bank /entity located in India (in the taxable territory) to the recipient of remittance in India. Service provider has an option to pay service tax at prescribed rates in terms of Rule 6(7B) of theService Tax Rules 1994.
- A service provided by sub-agents to such Indian Bank/entity located in the taxable territory in relation to money transfer is leviable to service tax. It is payable on commission received by sub-agents from Indian bank/entity.

CASE LAWS (INDIRECT TAX)

High Court Decisions

NO PENALTY TO BE LEVIED WHEN SERVICE TAX AND INTEREST PAID BEFORE ISSUANCE OF SHOW CAUSE NOTICE.

COMMISSIONER VS TEJAS AGENCY [GUJ]

The Hon'ble Gujarat High Court while deciding on the issue whether penalty could be levied in case service tax and interest was paid before issuance of show cause notice dismissed the Tax Appeal of the Revenue and ruled in favour of the assessee by after going through and relying on sub-section 3 of section 73 which prohibits initiation of proceedings for recovery of penalty. The Court also noted that this was not a case of non-payment of service tax with intent to evade the payment of the same and hence question of applying sub-section 4 of section of Section 73 of The Finance Act, 1994 does not arise.

WHETHER TELECOMMUNICATION SERVICE PROVIDED TO INTERNATIONAL ROAMERS CAN BE CONSIDERED TO BE EXPORT OF SERVICE.

COMMISSIONER OF SERVICE TAX, MUMBAI-I Vs. VODAFONE INDIA LTD [Mum. Tri.]

In the present case respondent had provided telecom services to customers of foreign telecom service provider while they are in India. Consideration for such services was also received in convertible foreign exchange. Therefore, the Hon'ble Tribunal based on various precedent decisions in other case held them to be export of services in terms of the Export of Service Rules, 2005 and the appellant is rightly entitled for refund/rebate of the service tax paid in respect of such transactions, thereby deciding the case in favour assessee.

AVAILMENT OF INPUT CREDIT ON CLEARING HOUSE AGENCY SERVICE.

JSW STEEL LTD Versus COMMISSIONER OF CENTRAL EXCISE, THANE-I [Mum]

In the present case Appellant a Manufacturing company had availed CENVAT credit of various services such as CHA, Commission on Export sale etc which was denied by the department on the premises that the same do not qualify as input service. The Hon'ble Tribunal relying on the decision of Bombay High Court in the case of Comm. Of C. Ex., v. Ultratech Cement Ltd held that in the case of export of goods the place of removal would be the port from where the goods are exported and the assessee is entitled to take credit in the course of their business and hence the said order was passed in favour of the assessee.

SERVICE PROVIDED BY CLUBS/HOUSING SOCIETIES TO MEMBERS.

MATUNGA GYMKHANA, TAHNEE HEIGHTS CHSLAND MITTAL TOWER PREMISES CHSL Vs. COMMISSIONER OF SERVICE TAX, MUMBAI [Mum]

The facts of the above case are that Appellant had collected various charges from its members and neither service tax was levied to such collection nor paid to the government treasury. Department had raised demand on such collection charges on the basis that Club/Society is not covered under the exclusion category of definition of "club or association".

The Hon'ble Tribunal relying on the decision of Jharkhand High Court in case of Ranchi Club Limited which wherein no service tax could be levied on the basis of the principle of mutuality and hence services provided by appellants to their respective members would not fall within the ambit of taxable services and has declared the provisions which purport to levy service tax on services provided by a 'club or association' to its members as ultra vires and that there are no operative legislative provisions of the Act legitimizing the levy and collection of service tax from the appellants, for providing "club or association" service, in so far as these relate to any services provided to members of these appellants and hence the case was decided in favour assessee.

DIFFERENCE BETWEEN RENTING AND HIRING OF CABS.

COMM. OF CUST. & CE VS SACHIN MALHOTRA, RAJ KUMAR TANEJA, M/S. SHIVA TRAVELS [UTT.]

The Hon'ble Uttarakhand High Court while deciding the case passed an order in favour assessee and distinguished the judgment of Punjab & Haryana High Court in Commissioner of Central Excise, Chandigarh Versus M/s Kuldeep Singh Gillhas laid down various principles for distinguishing the transaction as rent-a-cab or Hire service Rent a cab scheme that unless there is renting of cabs, there is no question of further enquiring as to the services, which may be rendered therein. In other words, any service, which may be rendered and which does not relate to renting of cabs, would be irrelevant for its consideration. The said bench affirmed the principle propounded by Tribunal that unless the control of the vehicle is made over to the hirer and he is given possession for howsoever short a period, which the contract contemplates, to deal with the vehicle, no doubt subject to the other terms of the contract; there would be no renting.

The Court further held that under the rent-a-cab scheme, the hirer is endowed with the freedom to take the vehicle, wherever he wishes, and he is only obliged to keep the holder of the licence informed of his movements from time to time. When a person chooses to hire a car, which is offered on the strength of a permit issued by the Motor Vehicles Department, then the owner of the vehicle, who may or may not be the driver, will offer his service while retaining the control and possession of the vehicle with himself. The customer is merely enabled to make use of the vehicle by travelling in the vehicle. In the case of a passenger, he is expected to pay the metered charges, which is usually collected on the basis of the number of kilometers travelled. These are all matters, which are regulated by the Government. Unlike the said scenario, in the case of a rent-a-cab scheme, as is clear from the very fundamental principle underlying the scheme, it is to give the hirer the freedom to use the vehicle as he pleases, which, undoubtedly, implies that he must have possession and control over the vehicle. This is the fundamental distinction between rent-a-cab and a pure case of hiring.

Additionally though both, rent and hire, may, in a different context, have the same connotation; in the context of rent-a-cab scheme and hiring, Hon'ble Court was of the view that they signify two different transactions. What the lawgiver has chosen fit to tax by way of imposition of service tax is only transaction relating to business of renting of cabs. It is also pertinent to bear in mind that, in the case of hiring, the hirer may refuse to provide the service to the prospective customer. - when the lawgiver introduced this new source of taxation, it must be treated as having been aware of the distinct concept of renting a cab for which there is provision in the Central Legislation, namely, Section 75 of the Motor Vehicles Act and also a scheme stood framed as early as in 1989. The Court was therefore, of the view that, unless there is control, which is passed to the hirer under the rent-a-cab scheme, there cannot be a taxable transaction under Section 65(105)(o), read with Section 65(91) of the Service Tax Act.

REPAIRS & MAINTENANCE OF TRANSFORMERS – NO SERVICE TAX PAID ON MATERIAL ON WHICH EXCISE/SALES TAX IS PAID AND SEPARATELY INDICATED ON INVOICE – NOTIFICATION NO. 12/2003, DATED 20-06-2003.

COMMISSIONER OF CUSTOMS & CENTRAL EXCISE VS. J.P. TRANSFORMERS (ALL.)

In the present case assesse was engaged in the manufacture as well as repairs and maintenance of electrical transforms. By virtue of Notification No. 12\2003 dated 20-06-2003; services tax was paid only on lab our charges recovered from the customer. It was contended that the contract being a composite contract of services of repairing transformers, it was required to pay services tax on the total contracted value, including consumables and items used in the repair of the transformers. Tribunal decided the matter in favors of the assesses. Aggrieved by the same, revenue filed appeal before the high court.

The Hon'ble High Court observed that tribunal has given its decision based on undisputed finding of fact that the value of the goods and materials utilized for repair of the transformers is separately disclosed in the agreements and in the invoices and excise duty\value added tax has been paid on goods used in the repairing process. Therefore, since there is no substantial question of the law the appeal is dismissed. It was also noted that, reliance placed by the tribunal on its own decision in the case of balajiTirupati enterprises vs. CCE [2014] 43 taxmann.com 42 (new Delhi-CESTAT), which is subsequently upheld by the high court has also not been disputed in the appeal memo.

NO REFUND OF CENVET CREDIT ON THE ONSITE SERVICES NOT PROVIDED FROM INDIA, SINCE IT DOES NOT FULFILL THE CONDITIONS OF EXPORT OF SERVICES.

TECH MAHINDRA LTD. VS. CCEX. PUNE-III (BOM.)

The Appellant, an Indian entity entered into a contract to develop software for a US based customer. The offsite activities were performed in India and onsite activities were carried out by the Appellant's US based subsidiary. There was no privity of contract between the US based subsidiary and customer. The subsidiary billed the appellant for the work done by it. The services provided to the customer were claimed to be export of services. For the payment s made to its subsidiary, service tax was discharged considering it to be import of services and was claimed as CENVET Credit and being unable to utilize, applied for refund.

Department after following refund claim in totality for initial years, rejected the proportionately to the extent of onsite services for subsequent years stating that onsite activities were not provided from India and therefore, there was violation of condition of Rule 3[2][a] of the Export of Services Rule, 2005.

It was argued that if the onsite services were held to be not provided from India then the same would not take color of Import of services and therefore, service tax pad thereon should be eligible for refund u/s. 11B of the Central Excise Act, 1944.

The Hon'ble High Court observed that onsite services were admittedly rendered by the US subsidiary to the customer and there was no privity of contract between them and hence could not be regarded as export of services since the condition that the services should be provided from India, was not fulfilled and thus no refund proportionate to onsite services was granted. Further, the alternative argument in respect of refund was not entertained by the Court since an application for refund under the same was not made.

OVERVIEW OF ECONOMIC SURVEY

One of the redeeming features, while comparing economic performance across different countries for the year 2014-15, has been the emergence of India among the few large economies with propitious economic outlook, amidst the mood of pessimism and uncertainties that engulf a number of advanced and emerging economies. Brighter prospects in India owe mainly to the fact that the economy stands largely relieved of the vulnerabilities associated with an economic slowdown, persistent inflation, elevated fiscal deficit, slackening domestic demand, external account imbalances, and oscillating value of the rupee in 2011-12 and 2012-13. The latest indicators, emerging from the recently revised estimates of national income brought out by the Central Statistics Office, point to the fact that the revival of growth had started in 2013-14 and attained further vigour in 2014-15. Factors like the steep decline in oil prices, plentiful flow of funds from the rest of the world, and potential impact of the reform initiatives of the new government at the centre along with its commitment to calibrated fiscal management and consolidation bode well for the growth prospects and the overall macroeconomic situation. Encouraged by the greater macro-economic stability and the reformist intent and actions of the government, coupled with improved business sentiments in the country, institutions like the IMF and the World Bank have presented an optimistic growth outlook for India for the year 2015 and beyond. The possible headwinds to such promising prospects, however, emanate from factors like inadequate support from the global economy saddled with subdued demand conditions, particularly in Europe and Japan, recent slowdown in China, and, on the domestic front, from possible spill-overs of below normal agricultural growth and challenges relating to the massive requirements of skill creation and infrastructural upgradation. The encouraging results from the Advance Estimates for 2014-15 suggest that though the global sluggishness has partly fed into the lacklustre growth in foreign trade; yet this downward pressure has been compensated by strong domestic demand, keeping the growth momentum going.

RECENT GROWTH RECORD

The Advance Estimates of national income for the current year indicate that the positive growth trends that Unravelled in 2013-14 appear to have strengthened in 2014-15 in the industrial and services sectors, with the result that the growth in Gross Value Added (GVA) at basic prices improved by 0.9 percentage points and the Gross Domestic Product (GDP) by 0.5 percentage points in 2014-15. While electricity, gas, and water supply and other utility services are projected to achieve robust growth, manufacturing has gained momentum. Construction has done better while mining and quarrying activities still exhibit a tentative pattern. With appropriate policy changes, coal sector has broken shackles and grew by 9.1 per cent during April-December 2014. However, crude oil, natural gas and refinery products continued the slump, damaging the overall mining story. All major service-sector activities are estimated to have done well in the current year too. Financing, insurance, real estate, and business services, one of the most dynamic sector in the economy in recent years, is reckoned to have driven growth in the current year. The base revision has also shown that the contribution of the agriculture sector to overall (GVA) at factor cost is somewhat higher than was hitherto being shown on the basis of the earlier (2004-05) series. In addition, despite higher growth in services, there has been a realignment of sectoral shares in favour of the industrial sector mainly on account of the correction for under estimation of manufacturing GVA in the old series and over estimation of the trade sector GVA in services.

AGGREGATE DEMAND

The demand side of the Gross Domestic Product (GDP) presented mixed signals in 2014-15. First, the increasing trends in consumption have gradually firmed up, with both private and government consumption growing in strength. Second, the fixed capital formation in the economy has picked up growth but lost share in aggregate demand. Third, there is hardly any support to growth from exports. The deceleration in imports owes substantially to the sharp decline in international oil prices in the current year that compressed the oil import bill. Hence one cautious conclusion could be that the ongoing growth revival is predominantly domestic consumption-driven.

PUBLIC FINANCE

The first nine months of 2014-15 have witnessed some major policy reforms in the subsidy regime; the modified direct benefit transfer scheme has been launched; the new domestic gas pricing policy has been approved; and diesel prices have been deregulated. Fiscal deficit at 100.2 per cent of Budget Estimates (BE) in 2014-15 (April-December) is much higher than the five-year -average of 77.7 per cent. The revenue deficit for April-December 2014 is estimated at 106.2 per cent of BE and is significantly higher than the five-year -average of 81.4 per cent.

PRICES AND MONETARY MANAGEMENT

During the first quarter of 2014-15, Whole sale price (WPI) headline inflation was at 5.8 per cent mainly because food and fuel prices continued to be high. In the second and third quarters of 2014-15, (WPI) inflation declined to 3.9 per cent and 0.5 per cent respectively. WPI headline inflation declined by 0.4 per cent in January 2015 as compared to January 2014. As fuel has larger weight in the WPI, the decline in fuel prices led to a sharper reduction in the WPI as compared to the Consumer Price Index (CPI). Inflation in manufactured products has remained within a narrow range since 2013-14. CPI inflation has also moderated significantly since the second quarter of 2014-15, with moderation in inflation observed in all the three major subgroups, viz. food and beverages, and tobacco; fuel and light; and others.

Monetary Developments

The RBI kept policy rates unchanged during the year till January 2015. With the easing of inflationary conditions, the RBI has signalled softening of the monetary policy stance by cutting policy repo rates by 25 basis points to 7.75 percent in January 2015. Subsequently, the RBI also reduced the statutory liquidity ratio (SLR) by 50 basis points from 22.0 per cent of net demand and time liabilities (NDTL) to 21.5 per cent. The RBI adopted the new CPI (combined) as the measure of the nominal anchor - for policy communication from April 2014. With a view to ensuring flexibility, transparency, and predictability in liquidity management operations, the Reserve Bank revised its liquidity management framework in September 2014. Liquidity conditions have remained broadly balanced during 2014-15 so far, except transient tight conditions. The revised liquidity management framework helped the weighted average cut-off rates in the fourteen-day term repo auctions as well as in the overnight variable rate repo auctions to remain close to the repo rate.

Balance of Payments

The rupee-US dollar exchange rate has remained broadly stable during the year thanks to the huge inflow of Foreign Direct investment (FDI) and foreign institutional investment (FII) in the equity and bond markets. Due to the weak economic outlook in Europe and Japan, the rupee has appreciated against the euro and yen since September 2014 in tandem with cross-currency movements of the euro and yen vis-à-vis the US dollar. On point-to-point basis the rupee has depreciated by 3.3 per cent from the level of Rs 60.10 per US dollar on 28 March 2014 to Rs 61.76 per US dollar on 13 February 2015. The rupee touched a low of Rs 63.75 per US dollar on 30 December 2014 and a peak of 58.43 per US dollar on 19 May 2014.

External Debt

India's external debt stock increased by USD 13.7 billion (3.1 per cent) to USD 455.9 billion at end-September 2014 over the end-March 2014 level. The rise in external debt was on account of higher long-term debt particularly commercial borrowings and non-resident Indian (NRI) deposits. The maturity profile of India's external debt indicates the dominance of long-term borrowings. At end-September 2014, long-term debt accounted for 81.1 per cent of the total external debt as against 79.8 per cent at end-March 2014. India's external debt has remained within manageable limits as indicated by the external debt to GDP ratio of 23.5 per cent and debt service ratio of 5.9 per cent in 2013-14. The prudent external debt management policy of the Government of India has helped maintain a comfortable external debt position.

OUTLOOK FOR 2015-16

The macroeconomic situation in India has improved significantly during the current year. The release of the new series of national accounts revealed that the economy has been performing much better than what was being depicted earlier. The steady acceleration in services and manufacturing growth in the face of subdued global demand conditions point to the strengthening of domestic demand. Most of the buoyancy in domestic demand can be traced to consumption. Investment activity, which is slowly picking up, needs to be grounded on a stronger footing. The savings-investment dynamics will be crucial for the growth to strengthen further in the coming years, in addition to reversal of the subdued export performance being currently witnessed. The key will be the response of savings to improved price and financial market stability, and of investment, particularly in the crucial infrastructure sector, to reform efforts of the Government that are underway.

On the supply side, there are concerns about tentative growth patterns in construction and mining activities that need to be addressed to. This is particularly important in view of the strong inter sectoral linkages that these sectors have. The farm sector suffered from a relatively poor monsoon, but there are no indications of its spill over to be next year. The improving rate of value addition in the economy, represented by the ratio of value added to output, and the falling incremental capital output ratio indicate better resource use in production.

On the global front, the United States radiates confidence and strength, while some other structurally important economies like China, Russia, Euro area and Japan face uncertain prospects, thereby affecting global growth and investment outlook. The sharp decline in oil prices has provided an incentive for overall

global growth and stability. At the same time, it has diminished fortunes of oil exporting countries that can influence economic activity adversely.

In the light of the Government's commitment to reforms, along with the improvements in the price and external sector scenarios including the possibility of international oil prices remaining generally benign, the outlook for domestic macroeconomic parameters is generally optimistic, notwithstanding the uncertainties that could also arise from an increase in the interest rates in the United States and situation prevailing in Greece within Euro-zone. Given the above, and assuming normal monsoons better prospects in the world economy that could provide impetus to higher exports for Indian products and services, a growth of around 8.5 per cent is in the realm of possibility in 2015-16.

SECTORAL DEVELOPMENTS

Agriculture

As per the second Advanced Estimates released by the Ministry of Agriculture on 18 February 2015, total production of food grains during 2014-15 is estimated at 257.1 million tonnes. Agriculture and food sectors need huge investment in research, education, extension, irrigation, fertilizers, and laboratories to test soil, water, and commodities, and warehousing and cold storage. Rationalization of subsidies and better targeting of subsidies would generate part of the resources for public investment.

There are wide differences in yields between states. Even the best of states have much lower yield in different crops when compared to the best in the world. This provides ample opportunity to increase production by bridging the yield gap to the extent feasible within the climatic zone. Providing irrigation can improve yield substantially, as vast cropped area is still unirrigated. For a shift in production function, investment in basic research would be necessary.

Recommendations of the Shanta Kumar Committee provide useful suggestions for the future road-map of food policy. Every effort should be made to bring states on board for creating a national common market for agricultural commodities. Distortions emerging from various policies, including exempting user charges for electricity and water should be removed. For providing efficient advance price discovery to farmers and enabling them to hedge price risk, the Forward Markets Commission should be strengthened and empowered to regulate the market more effectively.

Industrial, Corporate, and Infrastructure Performance (IIP)

In terms of use-based classification of the IIP, basic goods and capital goods witnessed marked improvement in growth during April- December 2014-15. While the growth in intermediate goods remained sluggish, consumer goods contracted in April-December 2014-15, particularly due to contraction in the consumer durables sector.

Growth in infrastructure, based on an index of eight core industries, has improved slightly to 4.4 per cent during April-December 2014-15 as compared to 4.1 per cent in the same period in 2013-14. The performance of coal, electricity, and cement has shown marked improvement, steel and refinery products have grown marginally by 1.6 per cent and 0.2 per cent, while crude oil, gas, and fertilizers have seen negative growth. In the transport sector, growth in the first nine months of 2014-15 has improved in

railway freight (5.1 percent), domestic air passenger traffic (7.1 per cent), international passenger traffic (10.3 per cent), international cargo (8.3 per cent), domestic cargo (19.3 per cent), and cargo throughput at major and non-major ports (6.8 per cent) as compared to the same period in the 2013-14.

The performance of listed manufacturing companies in the private sector in terms of growth of sales and net profit appeared to turn around in Q1 2014-15. However, the performance in Q2 2014-15 dampened expectations of sustained improvement. There is no discernible improvement in capacity utilization in the first two quarters of 2014-15, as per the RBI’s twenty-seventh round of the Order Books, Inventories, and Capacity Utilization Survey.

All the other major industrial sectors except mining have witnessed slowdown in the growth of credit in 2014-15 as compared to 2013-14. The growth of credit flow to the manufacturing sector at 13.3 per cent in 2014-15 is lower than the growth of 25.4 per cent in 2013-14. Chemicals, food processing, and textiles have seen a sharp decline in growth of credit in 2014-15. Services, construction, telecommunications, computer software and hardware, drugs and pharmaceuticals, automobile industry, chemicals, and power have attracted a disproportionately high share of total inflows.

Services Sector

India’s services sector remains the major driver of economic growth contributing 72.4 per cent of GDP growth in 2014-15. Services-sector growth has increased from 8.0 per cent in 2012-13 to 9.1 per cent in 2013-14 and further to 10.6 per cent in 2014 -15. Growth in trade, hotels, transport, communication, and related services was 8.4 per cent in 2014-15 compared to 11.1 per cent in 2013-14. Data available for the beginning months of 2015 indicates pick-up in the services sector with expansion in business activity as indicated by services PMI data. This growth momentum is expected to continue in 2015-16. The services value-added content in exports has also been rising. India is very active in the services negotiations in the World Trade Organization (WTO) and has recently provided more liberal offers to least developed countries.

Banking and Insurance

Asset quality of banks showed some signs of stress during the year. The gross non-performing advances (NPAs) of scheduled commercial banks (SCB) as a percentage of the total gross advances increased to 4.5 per cent in September 2014 from 4.1 per cent in March 2014. The growth of aggregate deposits of Scheduled Commercial Banks decelerated during 2014-15 till December mainly due to base effect, i.e. high accretion to Non Resident Indian deposits last year during September-November and lower deposit mobilization during this year. The growth in non-food credit also decelerated. To achieve the objective of financial inclusion, the Pradhan Mantri Jan-Dhan Yojana (PMJDY) was launched on 28 August 2014. The Yojana envisages universal access to banking facilities with at least one basic banking account for every household. The scheme is expected to provide a big push to the Direct Transfer Benefit scheme. The year 2014-15 saw other reform initiatives in the banking and insurance sector, which Include allowing banks to raise capital from the market to meet capital adequacy norms by diluting the government’s stake up to 52 per cent and notifying of an ordinance to enhance the foreign equity cap in the insurance sector. Equity markets continued to do well during the year. The benchmark indices BSE Sensex and Nifty showed a general upward trend in the current year. A number of steps such as improvement in corporate

governance norms and establishment of foreign portfolio investor (FPI) regulation framework were taken by the Securities and Exchange Board of India (SEBI) to improve functioning of both primary and secondary markets.

Towards a Healthy India:

The Swachh Bharat Mission (Gramin) launched in October 2014, aims at attaining an Open Defecation Free India by 2 October 2019. Besides, Mission Indradhanush launched in December 2014 will cover all children by 2020 who are either unvaccinated or are partially vaccinated against seven vaccine-preventable diseases.

KEY BUDGET PROPOSALS

INCOME TAX RATES

TAX RATE

- **Personal Tax**

  No changes have been proposed in the tax rate for individuals. However, in substitution of the wealth tax leviable under Wealth Tax Act, 1957, which is now proposed to be abolished, an additional surcharge of 2 percent on the income tax is introduced on individuals and Hindu Undivided Family having total income exceeding Rupees one crore.

- **Corporate Tax**

  It is proposed to reduce corporate tax rate from 30 percent to 25 percent over the period of next four years starting from assessment year 2017-2018.Further, surcharge on income tax for domestic company has been increased by 2 percent i.e. 7 percent in case where the total income of domestic company exceeds Rupees one crore but does not exceed Rupees ten crore and 12 percent in case where total income exceeds Rupees ten crore.

TDS

TDS RATES FOR ASSESSMENT YEAR 2016-17 (FINANCIAL

(A) **On payments to Residents (subject to notes below)**

Sr. No.	Payments to Resident Payee	Criteria for Deduction	Section	Company	Partnership Firm	Individual , HUF, AOP, BOI
				Rate (%)		
1	Pre-mature withdrawals from Employee Provident Fund Scheme (Note 1)	Payment in excess of Rs. 30,000	192A	-	-	10
2	Interest on Securities (Note 2)	No Threshold Limit	193	10	10	10
3	Other Interest (Note 3)	Payment in excess of Rs. 5,000	194A	10	10	10
4	Winning From Lotteries	Payment in excess of Rs. 10,000	194B	30	30	30
5	Winning From Horse Race	Payment in excess of Rs. 5,000	194BB	30	30	30
6	Payment to contractors (Note 4)	Payment in excess of Rs. 30,000 per transaction or Rs. 75,000 p.a.	194C	2	2	1
7	Insurance Commission	Payment in excess of Rs. 20,000	194D	10	10	10
8	Sum received for Life Insurance Policy including bonus [except exempt u/s 10(10D)]	Payment in excess of Rs. 100,000 p.a.	194DA	2	2	2
9	Commission on Sale of Lottery Tickets	Payment in excess of Rs. 1,000	194G	10	10	10
10	Other Commission / Brokerage	Payment in excess of Rs. 5,000 p.a.	194H	10	10	10
11	Rent for Land or Building/ Furniture and Fixture	Payment in excess of Rs. 1,80,000 p.a.	194I	10	10	10
	Rent for Plant & machinery, Equipments			2	2	2
12	Consideration for transfer of Immovable Property (other than agricultural land)	Sale Consideration must exceeds Rs. 50,00,000	194IA	1	1	1
13	Professional Fees / Royalties / FTS (Note 5)	Payment in excess of Rs. 30,000 p.a.	194J	10	10	10

14	Consideration for compulsory acquisition of Immovable Property (other than agricultural land)	Payment in excess of Rs. 200,000 p.a.	194LA	10	10	10
15	Income by way of Interest from SPV distributed by Business Trusts i.e. REITs & Invits	No Threshold Limit	194LBA	10	10	10
16	Income by way of Rent from SPV distributed by REITs (Note 7)	No Threshold Limit	194I	10	10	10
17	Income other than business income distributed by an Investment Fund (Category I & II)	No Threshold Limit	194LBB	10	10	10

Notes:

1. TDS to be deducted at maximum marginal rate in case PAN is not furnished by the deductee.
2. In case of payment of interest on debentures, issued by company in which public are substantially interested, to resident individual and HUF TDS is required to be deducted if such payments exceeds Rs. 5,000/-. However, TDS is not required to be deducted in case of securities held in dematerialized form and listed on recognized stock exchange in India.
3. - For interest on Bank Deposits and Deposits with Post Office, the threshold limit is Rs 10,000.
   - Also applicable on payment of Interest on time deposits by co-operative banks to its members and payment of interest on Recurring Deposit
   - Computation of interest income shall be made taking into account income credited or paid by the bank (including all branches) who has adopted core banking solutions.
4. No TDS on payment made to contractor who owns ten or less goods carriage at any time during the year and furnishes PAN.
5. Any payments to a director of a company other than those on which TDS is deductible u/s 192 are specifically covered u/s 194J.
6. With effect from 1st April, 2010, the rate of TDS will be 20% in all cases other than Sec 192A, if PAN is not quoted by the deductee.
7. No deduction shall be made under section 194-I of the Act where the income by way of rent is credited or paid to a Real Estate Investment Trust.

(B) On payments to Non-Residents (subject to notes below)

Sr. No.	Payments to Non-Resident Payee	Criteria for Deduction	Section	Rate (%)
1	Tax on Short Term Capital Gains	On sale of shares or units of mutual funds where STT is paid	111A	15
		On sale of shares or units of mutual funds where STT is not paid	45	
		(a) In case of companies		40
		(b) In case of persons other than companies		30
2	Tax on Long Term Capital Gains	Not being long term capital gains referred to section 10(33), 10(36) and 10(38) i.e. on listed shares, units of an equity oriented fund, or units of business trust i.e. REITs & Invits	112	20
3	Winning From Lotteries	Payment in excess of Rs. 10,000	194B	30
4	Winning From Horse Race	Payment in excess of Rs. 5,000	194BB	30
5	Tax on royalty on copyrights or on fees for technical services matters included in industrial policy or under approved agreements by an Indian concern or by Government of India	Agreements made / entered after 31st March, 1976	115A(1)(b)	10
6	Tax on Interest	On borrowings in foreign currency:-		
		(a) by an Indian concern or by Government of India other than interest referred in (b) or (c) below	115A(1)(a)	20
		(b) On notified infrastructure debt fund	194LB	5
		(c) By Specified Companies or Business Trusts (REITs & Invits) under a loan agreement or any long term bond	194LC	5
7	Income by way of interest from SPV distributed by Business Trusts (REITS & Invits)	No Threshold Limit	194LBA	5
8	Income by way of Rent from SPV distributed by REITs	No Threshold Limit	195	Note - 7

9	Income other than business income distributed by an Investment Fund (Category I & II)	No Threshold Limit	194LBB	10
10	Income by way of interest to FII or QFI	On Rupee denominated Bonds of Indian Company and Government Securities	194LD	5
11	Payments to Non-Resident Sportsmen/Entertainer/Sports Association	Other than to a non-resident being an Indian citizen	194E	20
12	Other income	(a) In case of companies	-	40
		(b) In case of persons other than companies	-	30

Notes:

1. In case of non-residents (other than company) the tax amount deducted at source shall be increased by surcharge at the rate of 12% of such tax where the income or aggregate of all incomes paid or likely to be paid exceeds Rs. 1 crore.
2. In case of foreign companies, the TDS rate shall be increased by surcharge as below:
   - If the income or aggregate of all incomes paid or likely to be paid exceeds Rs. 1 crore but does not exceeds Rs. 10 crores, then surcharge would be applicable at the rate of 2%.
   - If the income or aggregate of all incomes paid or likely to be paid exceeds Rs. 10 crore, then surcharge would be applicable at the rate of 5%
3. Cess @ 3% shall be levied additionally.
4. Treaty rates will differ from Country to Country. Treaty rates will apply only if Tax Residency Certificate is produced.
5. NRI's opting to be taxed under chapter XII-A, tax shall be deductible at the rate of ten percent on long term capital gains referred to in section 115E and twenty percent on investment income.
6. With effect from 1st April, 2010, the rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee. However this condition is not applicable in respect of Interest covered u/s 194LC.
7. TDS is to be deducted at "Rate in Force". The term "Rate in force" means rate as per Income Tax Act, 1961 or relevant double taxation treaty whichever is beneficial.

TCS

TCS RATES FOR ASSESSMENT YEAR 2016-17 (FINANCIAL YEAR 2015-1

Sr. No.	Nature of Goods/Contract/Licence /Lease	Criteria for Collection	Percentage
1	Alcoholic Liquor for Human Consumption	No Threshold Limit	1
2	Tendu Leaves	No Threshold Limit	5
3	Timber obtained under a Forest Lease	No Threshold Limit	2.5
4	Timber obtained by any mode other than under a Forest Lease	No Threshold Limit	2.5
5	Any other Forest produce	No Threshold Limit	2.5
6	Scrap	No Threshold Limit	1
7	Minerals, being Coal or Lignite or iron ore	No Threshold Limit	1
8	Cash Sale of Bullion	Payment in excess of Rs. 200,000/-	1
9	Cash Sale of Jewellery	Payment in excess of Rs. 500,000/-	1
10	Transfer of right or interest in any Parking Lot or Toll Plaza or Mining and Quarrying (other than of mineral oil) under any contract, licence and lease	No Threshold Limit	2

FOREIGN POLICY ANNOUNCEMENTS

1. General

   - Establishment of a mechanism to be known as SETU (Self-Employment and Talent Utilization). SETU will examine all aspects of start-up businesses, and other self-employment activities, that could also address to concerns such as a more liberal system of raising global capital and ease of doing business in India. Appointment of an Expert Committee for the purpose of examining the possibility and preparing the draft legislation where the need for multiple prior permissions can be replaced with a pre-existing regulatory mechanism.
   - Government to introduce appropriate regulation in March 2015 to establish International Finance Centre (IFC) at GIFT, Gujarat. It has been visualized that IFC should actually become as good an International Finance Centre as Singapore or Dubai.
   - Setting up a Public Debt Management Agency (PDMA) which will have External Commodity Borrowings (ECB) and domestic debt under one roof. This will promote investments in India, including in the Indian infrastructure.

2. Foreign Exchange Regulations

   - Amendment to allow Foreign Investments in Alternative Investment Funds (AIFs).
   - Proposal to do away with the distinction between different types of foreign investments. Foreign Portfolio Investments (FPI) and Foreign Direct Investments (FDI) to be merged with one composite route.
   - Amendments to Foreign Exchange Management Act (FEMA) to provide that control on capital flows as equity will be exercised by the government. This is to ensure that Capital Account Control is a policy, and not a regulatory, matter.

DIRECT TAX PROPOSALS

DOMESTIC TAXATION

A. Provisions Affecting Individuals

Section 10 of the Income tax Act relating to incomes not included in total income

- **Section 10(11A)**

  It is proposed to insert a new clause (11A) so as to provide that any interest/withdrawals from an account opened in accordance with the SukanyaSamriddhi Account Rules, 2014 made under the Government Savings Bank Act, 1873, shall not be included in the total income of the assessee.

- **No deduction to be made on payment made under Life insurance policy and on accumulated balance due to an employee on filing Form 15G/15H [Sec 197A]**

  The existing provisions of section 197A provide that tax shall not be deducted, if the recipient of certain payment on which tax is deductible furnishes Form No.15G/15H to payer declaring that his tax liability for the year would be nil. Further existing provisions of Sec 194DA provide for deduction of tax at source at the rate of 2 percent from payments made (rupees one lac and above) during a financial year, under life insurance policy, which are chargeable to tax and Sec 192A provides for deduction of tax at source at the rate of 10 percent from payments made during a financial year, on accumulated balance of employee's provident fund due to an employee.

  It is proposed to amend the provisions of section 197A to include Sec 192A and Sec 194DA whereby no tax shall be deducted at source if the recipients of payments made under section 192A and 194DA files self-declaration in Form No.15G/15H for non-deduction of tax at source to the payer

  This amendment is proposed to take effect from 1st June, 2015.

- **Section 80C: Tax benefits for the girl child under the SukanyaSamriddhi Account Scheme**

  It is proposed to amend Sec 80C so as to provide deduction to an individual for a sum paid or deposited during the year in the Scheme in the name of any girl child of such individual or in the name of any girl child for whom such individual is the legal guardian.

  The aforesaid amendment will take effect retrospectively from 1st April, 2014 (i.e. AY 2015-16).

- **Section 80CCC: Increase in limit of deduction from gross total income**

  Under the existing provisions contained in Sec 80CCC(1) an individual is allowed a deduction upto Rs. 1,00,000/- in the computation of his total income, of an amount paid or deposited by him for any annuity plan of Life Insurance Corporation of India or any other insurer for receiving pension from a fund set up under a pension scheme.

  It is proposed to amend Sec 80CCC(1) so as to raise the limit of deduction from Rs. 1,00,000/- to Rs. 1,50,000/-, within the overall limit provided in Sec 80CCE w.e.f. 1st April, 2015 i.e. assessment year 2016-17, to promote social security.

- **Section 80CCD: Additional deduction**

  Under the existing provisions contained in Sec 80CCD(1) if an individual, employed by the Central Government on or after 1st January, 2004, or being an individual employed by any other employer, or any other assessee being an individual has paid or deposited any amount in a previous year in his account under a notified pension scheme, a deduction of such amount not exceeding ten per cent of his salary in the case of an employee and ten per cent of the gross total income in case of any other individual is allowed. Further, Sec 80CCD (1A) provides that the amount of deduction under sub-section (1) shall not exceed Rs. 1,00,000/-.

  It is proposed to omit sub-section (1A) and in addition to the enhancement of the limit under section 80CCD(1) to Rs. 1,50,000,

  It is further proposed to insert a new sub-section (1B) so as to provide for an additional deduction up to Rs. 50,000/- in respect of any contribution made by an individual under the notified pension scheme. (It is an additional deduction over and above limit provided in Sec 80CCE of Rs. 1,50,000)

  The aforesaid amendment will take effect from 1st April, 2015 (i.e. AY 2016-17).

- **Section 80D: Amendment relating to deduction in respect of health insurance premium**

  Under the existing provisions contained in section 80D a deduction up to Rs. 15,000/- is allowed to an assessee, being an individual in respect of health insurance premium paid, to effect or to keep in force an insurance on the health of the assessee or his family or any payment made on account of preventive health check up of the assessee or his family; and an additional deduction of Rs. 15,000/- is provided to an individual assessee to effect or to keep in force insurance on the health of the parent or parents of the assessee.

  The section presently provides for a deduction of Rs. 20,000/- (instead of Rs. 15,000/-) if the person insured is a senior citizen of sixty years of age or above.

It is proposed to amend section 80D so as to raise the limit of deduction from Rs. 15,000/- to Rs. 25,000/-. It is further proposed to raise the limit of deduction for senior citizens from Rs. 20,000/- to Rs. 30,000/-.

Further, it is also proposed to provide that any payment made on account of medical expenditure in respect of a very senior citizen (80 years or more), (if no payment has been made to keep in force an insurance on the health of such person), as does not exceed Rs. 30,000/- shall be allowed as deduction.

The aforesaid amendment will take effect from 1st April, 2015 (i.e. AY 2016-17).

- **Section 80DD and Section 80U: Raising the limit of deduction for persons with disability and severe disability**

The existing provisions of section 80DD provide for a deduction up to Rs. 50,000/- to an individual or HUF, who is a resident in India, who has incurred an expenditure for the medical treatment of a dependant, being a person with disability or paid any amount to LIC or any other insurer for the maintenance of a disabled dependant. If the dependant is suffering from severe disability then deduction up to Rs. 1,00,000/- can be claim.

Similarly, the existing provisions of section 80U provide for a deduction of Rs. 50,000/- to an individual, being a resident, who, at any time during the previous year, is certified by the medical authority to be a person with disability. If the person is suffering from severe disability then deduction of Rs. 1,00,000/-.

It is proposed to amend section 80DD and section 80U so as to raise the limit of deduction in respect of a person with disability from Rs. 50,000 to Rs. 75,000/- and to raise the limit of deduction in respect of a person with severe disability from Rs. 1,00,000/- to Rs. 1,25,000/-.

The aforesaid amendment will take effect from 1st April, 2015 (i.e. AY 2016-17).

- **Section 80DDB: Raising the limit of deduction**

Under the existing provisions of section 80DDB of the Act, an Individual (or HUF), resident in India is allowed a deduction of a sum not exceeding Rs. 40,000/-, being the amount actually incurred on himself or dependent relative (or member of HUF), for the medical treatment of such disease or ailment as may be specified in the rules. This deduction is allowed up to Rs. 60,000/- where the expenditure is in respect of a senior citizen (60 years or more).

It is proposed to amend section 80DDB to provide for a higher limit of deduction of up to Rs. 80,000, for the expenditure incurred in respect of the medical treatment of a “very senior citizen” (80 years or more).

The aforesaid amendment will take effect from 1st April, 2015 (i.e. AY 2016-17).

- **Section 80G: Donation made to following institution/Funds will be eligible for 100% deduction**

  It is proposed to amend Sec 80G as to provide 100% deduction from the total income of the donor in respect of donations made by any donor to the Swachh Bharat Kosh and donations made by resident donors to Clean Ganga Fund. However, any sum spent in pursuance of Corporate Social Responsibility under Sec 135(5) of the Companies Act, 2013, will not be eligible for deduction from the total income of the donor. This amendment will take effect retrospectively from 1st April, 2014 (i.e. AY 2015-16).

  It is proposed amend section 80G so as to provide 100% deduction from the total income of the donor in respect of donations made to the National Fund for Control of Drug Abuse. This amendment will take effect from 1st April, 2015 (i.e. AY 2016-17).

B. Deductions/Exemptions for Businesses

- **Section 10(23EE)**

  It is also proposed to insert a new clause (23EE) in the aforesaid section so as to provide for exemption in respect of any specified income of such Core Settlement Guarantee Fund, set up by a recognised clearing corporation in accordance with the regulations, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

- **Section 32: Increase in Additional depreciation**

  It is proposed to allow higher additional depreciation at the rate of 35% (instead of existing additional depreciation of 20%) on actual cost incurred for acquisition and installation of new machinery and plant (other than a ship and aircraft) by a manufacturing undertaking or enterprise which is set up in the notified backward area of the State of Andhra Pradesh or the State of Telangana during the period beginning on 1st day of April, 2015 and ending before the 1st day of April, 2020. The eligible machinery or plant for this purpose shall not include the machinery or plant which are currently not eligible for additional depreciation as per the existing proviso to section 32(1)(iia) of the Act.

  It is also proposed to make consequential amendments in the second proviso to section 32(1) of the Act for applying the existing restriction of the allowance to the extent of 50% for assets used for the purpose of business for less than 180 days in the year of acquisition and installation. Balance 50% of the allowance is also proposed to be allowed in the immediately succeeding financial year.

These amendments will take effect from assessment year 2016-17.

- **Section 32AD: Additional Investment Allowance to a Manufacturing Company**

It is proposed to insert a new section 32AD in the Act to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 to 31st March, 2020 in any notified backward areas in the State of Andhra Pradesh and the State of Telangana.

This deduction shall be available over and above the existing deduction available under section 32AC of the Act.

With a view to ensure that the manufacturing units which are set up by availing this proposed incentive actually contribute to economic growth of these backward areas by carrying out the activity of manufacturing for a substantial period of time, it is proposed to provide suitable safeguards for restricting the transfer of the plant or machinery for a period of 5 years. However, this restriction shall not apply to the amalgamating or demerged company or the predecessor in a case of amalgamation or demerger or business reorganisation but shall continue to apply to the amalgamated company or resulting company or successor, as the case may be.

These amendments will take effect from assessment year 2016-17.

- **Section 35(2AB): Expenditure on Scientific research**

Under existing provision of section 35(2AB) of the Act, weighted deduction of 200% is allowed to a company engaged in the business of biotechnology or manufacturing of goods (except items specified in Schedule-XI) for the expenditure (not being expenditure in the nature of cost of any land or building) incurred on scientific research carried out in an approved in-house research and development facility.

For availing this weighted deduction, the company is required to enter into an agreement with the prescribed authority and also required to obtain his approval. The such authority is required to send the report regarding approval to DGIT in prescribed Form who generally does not have jurisdiction over the assessee company. Further, the company is required to maintain separate books of account for approved R&D facility and is also required to get the account audited. However, the copy of audit report is required to be submitted to the such authority only.

It is proposed to amend the provisions of section 35(2AB) of the Act to provide that deduction under the said section shall be allowed if the company enters into an agreement with the prescribed authority for cooperation in such research and development facility and fulfils prescribed conditions with regard to maintenance and audit of accounts and also furnishes prescribed reports to the prescribed authority. It is also proposed that the report referred to therein may be sent by such authority to the Principal Chief Commissioner or Chief Commissioner having jurisdiction over the company claiming the weighted deduction under the said section.

These amendments will take effect from 1st April, 2015 (i.e. AY 2016-17).

- **Section 80JJAA: Deduction for employment of new workmen**

It is proposed to amend the section so as to extend the benefit to all assessee having manufacturing units rather than restricting it to corporate assessee only. Further, it is proposed to extend the benefit under the section to units employing even 50 instead of 100 regular workmen.

The quantum of deduction allowed will be equal to thirty per cent of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

Additional wages means the wages paid to the new regular workmen in excess of fifty workmen employed during the previous year.

The aforesaid amendment will take effect from 1st April, 2015 (i.e. AY 2016-17).

- **Section 92BA: Threshold for applicability of Domestic Transfer Pricing provisions increased**

The existing provisions of Sec 92BA introduced in the Finance Act of 2012, which had been applicable from assessment year 2013-14, had included certain domestic transactions under the ambit of transfer pricing only if the aggregate value of such Specified Domestic Transactions exceeded the monetary threshold of Rupees Five crores during the relevant financial year.

It is proposed to amend sec 92BA to increase the prescribed threshold of the aggregate value of Specified Domestic Transactions to a sum of Rupees Twenty Crore. The proposed amendment is a move to address the concerns raised on compliance cost incurred in case of small businesses on account of low threshold of five crore rupees.

This amendment is proposed to take effect from 1st April 2016.

- **Section 95: Deferment of provisions relating to General Anti Avoidance Rule ('GAAR')**

The existing provisions of Sec 95 introduced by the Finance Act, 2013 dealing with General Anti-Avoidance Rule were to be made effective from 1st April 2016 i.e. in respect of financial year 2015-16 corresponding to Assessment Year 2016-17 and subsequent years.
It is proposed to renumber the existing section as sub-section (1) and it is also proposed to insert a new sub-section (2) to include the proposed deferment of the GAAR provisions by two years and the

GAAR provisions are to be made applicable from the financial year 2017-18 corresponding to Assessment Year 2018-2019 and subsequent years. Further, investments made up to 31.03.2017 are proposed to be protected from the applicability of GAAR by amendment in the relevant rules in this regard.

This amendment is proposed to take effect from 1st April, 2015.

- **Section 115JB: Rationalization of Minimum Alternate Tax**

Sec 115JB provides that in case of a company, if the tax payable on the total income as computed according to the normal provisions under the Act is less than 18.5 percent of its book profit, such book profit shall be deemed to be the total income of the company and a minimum alternate tax at the rate of 18.5 percent shall be payable by the company for the relevant assessment year on such book profit.

Amendment in respect of income from share in AOP/BOI

It is proposed to amend Explanation 1 below sub-section (2) to insert clause (iic) to provide that if an amount is credited to the profit and loss account of the company being income which is in the nature of share of income as a member of an association of persons or body of individuals on which no income-tax is payable in accordance with the provisions of section 86 then it shall be reduced from the book profit for the purposes of calculation of Minimum Alternate Tax.

Consequently, it is also proposed to amend Explanation 1 below sub-section (2) to insert clause (fa) to provide that the book profit shall be increased by the amount or amounts of expenditure relatable to the income as explained above.

C. Procedural / Definition / Penalty

SECTION 2: DEFINITIONS

- **Section 2(13A)**

It is proposed to substitute clause (13A) of the said section in order to define a “business trust” to mean a trust registered as,–

(i) an Infrastructure Investment Trust under the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992; or

(ii) a Real Estate Investment Trust under the Securities and Exchange Board of India (Real Estate Investment Trusts)
Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992, and the units of which are required to be listed on a recognized stock exchange in accordance with the aforesaid regulations.

- **Section 2(15)**

It is proposed to amend clause (15) of the aforesaid section to provide that the definition of charitable purpose shall include “yoga” as a separate category on the lines of education and medical relief.

It is further proposed to amend the said clause (15) to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of
the income from such activity, unless—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

- **Section 2(37A)**

It is also proposed to amend clause (37A) of the said section to provide that for the purposes of deduction of tax under section 194LBA, the “rates in force”, in relation to an assessment year or financial year shall mean the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year.

- **Section 2(42A)**

The existing provisions contained in clause (42A) of the said section provide the definition of the term “short-term capital asset”. Explanation 1 of the said clause provides for determining the period for which the capital asset is held by the assessee.

It is proposed to amend the clause (i) of the said Explanation to provide that in the case of a capital asset, being a unit or units, which becomes the property of the assessee in consideration of a transfer referred to in clause (xviii) of section 47, there shall be included the period for which the unit or units in the consolidating scheme of the mutual fund were held by the assessee.

These amendments will take effect from assessment year 2016-17.

SETTLEMENT COMMISSION

- **Section 245A: Widening the scope of the term "case" defined for application to Settlement Commission**

    - **Amendment to Clause (i) of the *Explanation* to clause (b) of section 245A**
      It is proposed to substitute existing clause (i) of the Explanation to clause (b) to provide that where a notice under section 148 is issued for any assessment year, the assessee can approach Settlement Commission for other assessment years as well even if notice under section 148 for such other assessment years has not been issued. However, a return of income for such other assessment years should have been furnished under section 139 of the Act or in response to notice under section 142 of the Act.

      This amendment is proposed to take effect from 1st June, 2015.

    - **Amendment to Clause (iv) of the *Explanation* to clause (b)**
      It is proposed to amend clause (*iv*) of the *Explanation* to provide that a proceeding for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (*i*) or clause (*iii*) or clause (*iiia*), shall be deemed to have commenced from the date on which a return of income is furnished under section 139 or in response to notice under section 142 and concluded on the date on which the assessment is made or on the expiry of two years from the end of relevant assessment year, in a case where no assessment is made.

      This amendment is proposed to take effect from 1st June, 2015.

- **Section 245D: Sub-section (6B) - Rectification of mistake apparent from the record**

  Sub-section (6B) of section 245D provided that Settlement Commission could pass an order rectifying mistake apparent from record within six months from the date of order.

  It is now proposed to amend sub-section (6B) to provide that Settlement Commission can pass an order for rectification of mistake apparent from the record at any time within a period of six months from the end of month in which the order was passed; and on an application made by the Principal Commissioner or Commissioner before the end of period of six months from the end of month in which the order was passed, at any time within a period of six months from the end of month in which such application was made.

  This amendment is proposed to take effect from 1st June, 2015.

- **Section 245H: Power of Settlement Commission to grant immunity from prosecution and penalty**

The Settlement Commission was empowered to grant immunity from prosecution and penalty to any person who made an application before the commission if it may think fit to grant such immunity to such person who has co-operated in the proceedings and made full and true disclosure of his income.

It is proposed to amend sub-section (1) of section 245H so as to provide that the Settlement Commission while granting immunity to any person shall have to record the reasons in writing in the order passed by it.

This amendment is proposed to take effect from 1st June, 2015.

- **Section 245HA: Widening the scope for abatement of proceeding before Settlement Commission**

It is proposed to amend sub-section (1) of section 245HA by insertion of clause (iiia) to provide that where in respect of any application made under section 245C, an order under sub-section (4) of section 245D has been passed without providing the terms of settlement the proceedings before the Settlement Commission shall abate on the day on which such order under sub-section (4) of section 245D was passed.

This amendment is proposed to take effect from 1st June, 2015.

- **Section 245K: Widening the scope of cases barring subsequent application for settlement before Settlement Commission**

It is proposed to amend section 245K of the Income-tax Act to provide that any person related to the person who has already approached the Settlement Commission once, also cannot approach the Settlement Commission subsequently. The related person with respect to a person means,-

(i) where such person is an individual, any company in which such person holds more than fifty percent. of the shares or voting power at any time, or any firm or association of person or body of individual in which such person is entitled to more than fifty percent of the profits at any time, or any Hindu undivided family in which such person is a karta;

(ii) where such person is a company, any individual who held more than fifty percent of the shares or voting power in such company at any time before the date of application before the Settlement Commission by such person;

(iii) where such person is a firm or association of person or body of individual, any individual who was entitled to more than fifty percent of the profits in such firm, association of person or body of

individual, at any time before the date of application before the Settlement Commission by such person;

(iv) where such person is an Hindu undivided family, the karta of that Hindu undivided family.

This amendment shall become effective from 1st June, 2015.

- **Section 151: Sanction for issue of notice**

Presently, Section 151 specifies different sanctioning authorities for issue of notice for reassessment of income under section 148 based on- (i) whether scrutiny under sub-section (3) of section 143 or section 147 has been made earlier or not, (ii) whether notice is proposed to be issued within or after four years from the end of relevant assessment year, and (iii) the rank of the Assessing Officer proposing to issue notice.

To bring simplicity, it is proposed to now substitute the above to provide that no notice under section 148 shall be issued by an assessing officer up to four years from the end of relevant assessment year without the approval of Joint Commissioner and beyond four years from the end of relevant assessment year without the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

This amendment will take effect from 1st day of June, 2015.

- **Section 153C: Assessment of income of any other person**

The existing provisions contained in sub-section (1) of the said section 153C provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that ***any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to*** any person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

Disputes have arisen as to the interpretation of the words “belongs to” in respect of a document.

Accordingly, it is proposed to amend the aforesaid section to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, any person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

This amendment will take effect from the 1st day of June, 2015.

- **Section 154: Rectification of mistake**

  It is proposed to insert a new clause (d) in sub-section (1) of the aforesaid section so as to provide that an income-tax authority may amend an intimation issued under sub-section (1) of section 206CB.

  It is further proposed to amend sub-section (2),(3),(5),(6),(8) of the aforesaid section to insert the reference of "collector" in addition to assessee or deductor; these amendments will take effect from 1st June, 2015.

- **Section 156: Notice of demand**

  The existing provisions contained in the proviso to the aforesaid section provide that where any sum is determined to be payable by the assessee or by the deductor under sub-section (*1*) of section 143 or sub-section (*1*) of section 200A, the intimation under those sub-sections shall be deemed to be a notice of demand for the purposes of this section.

  It is proposed to amend the aforesaid proviso to section 156 to include that where any sum is determined to be payable by the assessee or the deductor or the collector under sub-section (*1*) of section 206CB, such intimation shall be deemed to be a notice of demand for the purposes of this section.
  This amendment will take effect from 1st June, 2015.

PENALTIES

- **Section 271: Amount of tax sought to be evaded for the purposes of penalty for concealment of income**

  Under the existing provision contained in clause (*c*) of sub-section (1) of section 271 of the Act, penalty for concealment of income or furnishing inaccurate particulars of income is levied on the "amount of tax sought to be evaded", which has been defined, *inter-alia*, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total income been reduced by the amount of concealed income.

In recent times, courts have held that penalty under section clause (*c*) of sub-section (1) of section 271 cannot be levied in cases where the concealment of income occurs under the income computed under general provisions and the tax is paid under the provisions of section 115JB or 115JC of the Act.

Now, it is proposed to amend section 271 of the Act so as to provide that the amount of tax sought to be evaded shall be the summation of tax sought to be evaded under the general provisions and the tax sought to be evaded under the provisions of section 115JB or 115JC. However, if an amount of concealment of income on any issue is considered both under the general provisions and provisions of section 115JB or 115JC then such amount shall not be considered in computing tax sought to be evaded under provisions of section 115JB or 115JC. Further, in a case where the provisions of section 115JB or 115JC are not applicable, the computation of tax sought to be evaded under the provisions of section 115JB or 115JC shall be ignored.

This amendment is proposed to take effect from 1st April, 2016 and will accordingly apply, in relation to the assessment year 2016-17 and subsequent assessment years.

- **Section 271D & 271E: Penalty for dealing in cash in relation to transfer of immovable property**

In order to curb generation of black money, it is proposed to bring in transactions in the nature of advance or otherwise in relation to immovable property in cash under the ambit of sec. 269SS and 269T. Now it is proposed that no person shall accept or repay any sum of money in cash in excess of rupees twenty thousand in relation to transfer of immovable property either as advance or otherwise. Consequently, the scope of sec. 271D and 271E is proposed to be widened to include these transactions in relation to immovable property. Accordingly, assessee shall be liable to pay, by way of penalty, a sum equal to the amount of such cash transactions.

These amendments are proposed to be introduced with effect from 1st June, 2015.

- **Section 271FAB: Penalty for failure to furnish statement or information or document by eligible offshore investment fund**

In order to facilitate location of fund managers of off-shore funds in India a specific regime has been proposed in the Act in line with international best practices by introducing new sec. 9A.

It is further proposed that every eligible investment fund shall, in respect of its activities in a financial year, furnish within ninety days from the end of the financial year, a statement in the prescribed form

to the prescribed income-tax authority containing information relating to the fulfilment of conditions under sec. 9A or any information or document which may be prescribed.

To ensure compliance with above provision, Sec. 271FAB is proposed to be introduced to provide a penalty of rupees five lacs for non-furnishing of the prescribed information or document or statement,

This provision is proposed to be introduced with effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

- **Section 271GA: Penalty for failure to furnish information or document under section 285A**

A new sec. 285A is proposed to be introduced providing for reporting obligation on Indian concern through or in which the Indian assets are held by the foreign company or the entity. The Indian entity shall be obligated to furnish information relating to the off-shore transaction having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity.

To ensure the above information or documents are furnished in time bound manner, a new sec. 271GA is proposed to be introduced to provide for penalty for any failure on the part of Indian concern. The proposed penalty shall be-
(a) a sum equal to two percent of the value of the transaction in respect of which such failure has taken place in case where such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern; and
(b) a sum of five hundred thousand rupees in any other case.

This section is proposed to be introduced with effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

- **Section 271-I: Penalty for failure to furnish information or furnishing inaccurate information under section 195**

It is proposed to amend Sec. 195(6) to provide that information related to all the remittances to non-resident whether chargeable to tax or not shall be furnished in the manner as may be prescribed.

Currently there is no provision for levying of penalty for non-submission/inaccurate submission of the prescribed information in respect of remittance to non-resident. For ensuring submission of accurate information in respect of remittance to non-resident, it is further proposed to insert a new provision in the Act to provide that in case of non-furnishing of information or furnishing of incorrect information under sub-section (6) of section 195(6) of the Act, a penalty of one lakh rupees shall be levied.

This section is proposed to be introduced with effect from 1st June 2015.

- **<u>Section 272A: Penalty for failure to furnish prescribed statement by Government deductor</u>**

Under the existing scheme of payment of TDS and TCS, Government deductors/collectors are allowed to make payment of tax deducted/collected by them without production of challan i.e. through book entry. In order to improve the reporting of payment of TDS/TCS made through book entry and to make existing mechanism enforceable, it is proposed to amend the provisions of sections 200 and 206C of the Act to provide that where the tax deducted [including paid under section 192(1A)] / collected has been paid without the production of a challan, the PAO/ TO/CDDO or any other person by whatever name called who is responsible for crediting such sum to the credit of the Central Government, shall furnish within the prescribed time a prescribed statement for the prescribed period to the prescribed income-tax authority or the person authorized by such authority by verifying the same in the prescribed manner and setting forth prescribed particulars.

To ensure compliance of this proposed obligation of filing statement, it is proposed to amend the provisions of section 272A of the Act so as to provide for a penalty of Rs.100/- for each day of default during which the default continues subject to the limit of the amount deductible or collectible in respect of which the statement is to be furnished of tax deducted/collected by them without production of challan i.e. through book entry.

This amendment is proposed to take effect from 1st June 2015.

D. Miscellaneous

- **<u>Section 10(23C)</u>**

The existing provisions of clause (23C) of the said section provide for exemption from tax in respect of the income of certain charitable funds or institutions like the Prime Minister's National Relief Fund; the Prime Minister's Fund (Promotion of Folk Art); the Prime Minister's Aid to Students Fund; the National Foundation for Communal Harmony etc.

It is proposed to amend the aforesaid clause by inserting two new sub-clauses (*iiiaa*) and (*iiiaaa*) so as to exempt income received by any person on behalf of the Swachh Bharat Kosh, set up by the Central Government and to exempt income received by any person on behalf of the Clean Ganga Fund, set up by the Central Government.

These amendments will take effect retrospectively from 1st of April, 2015 and accordingly apply in relation to assessment year 2015-16 and subsequent assessment years.

- **Section 158AA: Procedure when in an appeal by revenue an identical question of law is pending before Supreme Court**

It is proposed to insert a new section 158AA in the Act.
Sub-section (*1*) of the proposed new section seeks to provide that where the Commissioner or Principal Commissioner is of the opinion that any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in his case for another assessment year which is pending before the Supreme Court in an appeal under section 261 or in a special leave petition under article 136 of the Constitution against the order of the High Court in favour of the assessee, he may, instead of directing the Assessing Officer to file appeal to the Appellate Tribunal, direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within sixty days from the date of receipt of order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the other case.

Sub-section (*2*) of the proposed new section, *inter alia*, seeks to provide that the Commissioner or Principal Commissioner shall direct the Assessing Officer to make an application under subsection(1) only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case; and in case no such acceptance is received, the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in subsection(2) or sub section(2A) of section 253.

Sub-section (*3*) of the proposed new section seeks to provide that where the order of the Commissioner (Appeals) referred to in sub-section (1) is not in conformity with the final decision on the question of law in the other case, the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order and, save as otherwise provided in this section, all other provisions of Part B of chapter XX shall apply accordingly.

Sub-section (*4*) of the proposed new section seeks to provide that every appeal under sub-section (3) shall be filed within sixty days of the date on which the order of the Supreme Court in the other case is communicated to the Commissioner or Principal Commissioner.

This amendment will take effect from 1st June, 2015.

- **Section 194A - Deduction of tax on interest (other than interest on securities)**

Under the existing provisions of sec 194A (3) (i), interest income for the purpose of deduction of tax by the banking company or the co-operative bank or the public company shall be computed with

reference to a branch of these entities. It is proposed to insert proviso to the said clause (i) to provide that the computation of interest income for the purpose of deduction of tax should be made with reference to such interest credited or paid by the banking company or the co-operative bank or the public company which has adopted core banking solutions.

Under the existing provisions of sec 194A (3) (v), an exemption is provided for deduction of tax in respect of interest payments by co-operative society to a member thereof or any other co-operative society. It is proposed to amend the said clause (v) of sec 194A (3) to provide that such exemption shall not apply to interest payments on time deposits by co-operative banks to its members. Further, an explanation is inserted after aforesaid clause (v) to provide meaning of “co-operative bank” as meaning assigned to it in Part V of the Banking Regulation Act, 1949.

The existing exemption provided under section 194A(3)(viia) of the Act from the deduction of tax from interest paid by a co-operative society to another co-operative society shall to continue to apply to the co-operative bank and, therefore, a co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operative society.

Under the existing provisions of sec 194A (3) (ix), an exemption is provided for deduction of tax on income credited or paid by way of interest on the compensation amount awarded by Motor Accidents Claims Tribunal if the amount of such interest income during the financial year does not exceed Rs. 50,000. It is proposed to amend the said clause (ix) to provide that exemption is provided for such income credited and further inserted clause (ixa) to provide for exemption on such amount paid only at the time of payment if it does not exceed Rs. 50,000 during the financial year.

Under existing Explanation 1 below clause (xi), the definition of “time deposits” excludes recurring deposits. It is proposed to amend the definition of “time deposits” so as include recurring deposits.

The amendments are proposed to take effect from 1st June, 2015**.**

- **Section 194C - Deduction of tax from payments made to transporters**

Under the existing provisions of sub-sec (6) of sec 194C, exemption is provided for deduction of tax from payments made to the contractors during the course of plying, hiring and leasing goods carriage if the Contractor furnish his Permanent Account Number (PAN)

It is proposed to amend the said sec to expressly provide that the relaxation shall be applicable to payments made to contractors who own ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with their PAN.

The amendment is proposed to take effect from 1st June, 2015**.**

- **Section 200 - Duty of the person deducting tax**

Under existing provisions of sec 200(1), the person deducting taxes under Chapter XVII shall pay the same within the prescribe time. Further, under existing provisions of sec 200 (2), the employer referred in sec 192 (1A) shall pay the taxes deducted to the credit of the Central Government or as the Board directs.

It is proposed to insert a new sec 200(2A) to provide that where such taxes has been paid without production of a challan, the person responsible for crediting such taxes to the credit of the Government, shall deliver a statement to the income tax authority in the prescribed form.

The amendment is proposed to take effect from 1st June, 2015.

- **Section 200A- Processing of statements of tax deducted at source (TDS)**

Under existing provisions of sec 200A(1), the statement of TDS or a correction statement made under section 200 shall be processed in the manner specified therein.

It is proposed to amend sec 200A (1) to provide that such aforesaid statement of TDS or correction statement shall be processed and sum deductible under Chapter XVII shall be computed after also taking into account fees for default in furnishing the statements, if any, payable in accordance with the provisions of sec 234E. Further, the sum payable or refundable shall be determined after adjusting the aforesaid computed sum against any amount paid under sec 200 or sec 201 or sec 234E and any amount paid otherwise by way of tax or interest or fee.

The amendment is proposed to take effect from 1st June, 2015.

- **Section 203A- Tax deduction and collection account number**

Under existing provisions of sec 203A, every person deducting or collecting tax who has not been allotted "Tax deduction account number" or "Tax collection account number" is required to apply for the same and quote the same in challans, certificates, returns etc.

It is proposed to insert a new sec 203A (3) to provide that such provisions shall not apply to a person notified by the Central government in this behalf.

The amendments are proposed to take effect from 1st June, 2015.

- **Section 206C- Profit and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc**

Under existing provisions of sec 206C (3), the person collecting the taxes shall pay the same within prescribed time to the credit of the Central Government or as the Board directs.

It is proposed to insert a new sec 206C (3A) to provide that where such taxes collected as per sub sec (1) or (1C) or (1D) has been paid without production of a challan, the person responsible for crediting such taxes to the credit of the Government, shall deliver a statement to the income tax authority in the prescribed form.

Further, it is also proposed to insert sub sec (3B) to provide that such responsible person for collection of taxes may also deliver a correction statement for rectification of mistakes to the prescribed authority in the prescribed form.

The amendments are proposed to take effect from 1st June, 2015**.**

- **Section 206CB- Processing of statements of tax collected at source**

It is proposed to insert a new sec 206CB to provide that statement of tax collection at source or correction statement under sec 206C shall be processed in the manner specified therein.

The amendments are proposed to take effect from 1st June, 2015**.**

- **Section 220: The collection and recovery of tax**

It is proposed to insert sub-section 2C to Sec 220 which deals with the collection and recovery of tax so as to provide that when the person responsible for collecting tax on profits and gains from the business of trading in alcoholic liquor, forest produce, scrap etc. has paid simple interest at 1% as per section 206C due to the failure to collect tax or after collection non-payment of the same then no interest u/s 220(2) will be levied on the person on whose account tax has been collected at source.

The amendment is proposed to take effect from 1st June 2015.

- **Section 246 A – Appealable orders before Commissioner Appeals**

As per the existing provisions of section 246A(1), the orders passed by the assessing officer are appealable before Commissioner Appeals by any assessee or any deductor.
It is proposed to include the reference 'or any collector' in addition to any assessee or any deductor. Further, it is also proposed that the orders passed under section 206CB(1), a new proposed provision for processing of statements of tax collected at source, shall also be appealable before Commissioner Appeals.

This amendment is proposed to take effect from 1st June 2015.

- **Section 253 – Appeals to the Appellate Tribunal**

It is proposed to insert new clause (f) to section 253(1), wherein an order passed by the prescribed authority under section 10(23C)(vi) or (via) shall now be appealable by any assessee before the Appellate Tribunal.

This amendment is proposed to take effect from 1st June 2015.

- **Section 255 – Procedure for Appellate Tribunal**

The existing provision of section 255 provide that the President or any other member of Appellate Tribunal authorized by Central Government can dispose off any case, sitting singly, where total income of an assessee computed by the Assessing Officer does not exceed Rs. 5 lakh.
It is proposed that the President or any other member can now dispose off any case, sitting singly, where total income of an assessee computed by the Assessing Officer does not exceed Rs. 15 lakh.

This amendment is proposed to take effect from 1st June 2015.

- **Section 263 – Revision of orders prejudicial to revenue**

It is proposed to insert Explanation 2 to this section wherein the orders passed by the Assessing officer shall be deemed to be erroneous if in the opinion of the Commissioner –

a. the order is passed without making inquiries or verification which should have been made;
b. the order is passed allowing any relief without inquiring into the claim;
c. the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
d. the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

This amendment is proposed to take effect from 1st June 2015.

- **Section 269SS – Mode of taking or accepting certain loans, deposits and specified sum**

The existing provisions of section 269SS provides that any loan or deposit shall not be repaid, otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, by the persons specified in the said section, if the amount of such loan or deposit is twenty thousand rupees or more.
It is proposed to include the reference to 'any specified sum' in addition to loan or deposit. The term 'specified sum' is proposed to define as any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer materialises. Further, it is also proposed that the provisions of this section shall not apply where the person giving the loan, deposit or specified sum and the person accepting it, both have agricultural income and neither of them have any income chargeable to tax under the Act.

This amendment is proposed to take effect from 1^{st} June 2015.

- **Section 269T – Mode of repayment of certain loans or deposit**

The existing provision contained in section 269T provides that any loan or deposit shall not be repaid, otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, by the persons specified in the said section, if the amount of such loan or deposit is twenty thousand rupees or more.
It is proposed to include the reference to 'or any specified advance received by it' in addition to loan or deposit. The term 'specified advance' is proposed to be defined as any sum of money received, as an advance or otherwise, in relation to transfer of an immovable property and becomes repayable if the negotiations do not result in transfer of such immovable property.

This amendment is proposed to take effect from 1^{st} June 2015.

- **Section 234B: Interest for default in payment of advance tax in cases where application has been made to Settlement Commission**

It is proposed to insert sub-section 2A under Sec 234B relating to interest for defaults in payment of advance tax to provide that when application before settlement commission has been made, then the assessee shall pay simple interest at the rate of 1 percent on income tax which is contested before settlement commission commencing from 1^{st} April of the relevant assessment year till the filing of application before settlement commission.

Further, it is also proposed that when application before settlement commission has been made and the commission increases the income of the assessee, then the assessee shall pay simple interest at the rate of 1 percent of tax on differential income between the total income determined by Settlement Commission and income as disclosed in the application before the Settlement Commission commencing from 1^{st} April till the date of order of Settlement Commission.

Similarly, it is proposed to amend sub-section (3) to provide that as result of an order of reassessment/re-computation under section 147 or 153A, interest shall be levied from the 1^{st} day of April of the assessment year till the date of the reassessment/re-computation under section 147 or 153A on the resultant shortfall in payment of advance tax.

The amendment is proposed to come in effect from 1^{st} June 2015.

- **Section288: Clarification on who is Accountant to act as authorised representative for appearance**

The provision of Act contains several provisions (e.g. section 44AB, section 80-IA, section 92E, section 115JB, etc.) which mandate the taxpayers to furnish audit reports and certificates issued by an ‘accountant’ for ensuring correct reporting/computation of taxable income by the tax payers. Explanation below section 288(2) of the Act defines an ‘accountant’ as a chartered accountant within the meaning of Chartered Accountants Act, 1949 (including a person eligible to be appointed as auditor under section 226(2)of the Companies Act, 1956, of the companies registered under any State).

It is proposed to amend section 288 of the Act to provide that an auditor who is not eligible to be appointed as auditor of a company as per the provisions of sub-section (3) of section 141 of the Companies Act, 2013 shall not be eligible for carrying out any audit or furnishing of any report/certificate under any provisions of the Act in respect of that company. However, it is proposed to provide that the ineligibility for carrying out any audit or furnishing of any report/certificate in respect of an assessee shall not make an accountant ineligible for attending income-tax proceeding referred to in sub-section (1) of section 288 of the Act as authorised representative on behalf of that assessee.

It is further proposed to provide that the assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association, or the member of Hindu undivided family who is convicted by a court of an offence involving fraud shall not be eligible to act as authorised representative for a period of 10 years from the date of such conviction.

These amendments are proposed to take effect from 1st June, 2015.

DIRECT TAX PROPOSALS

INTERNATIONAL TAXATION

A. Provisions affecting Foreign Investors

- **Section 6 - Residence in India:**

  Computing period of stay in India for crewmembers and amendment in conditions for residency status in respect of Companies

  - **Period of Stay for crew members**

    The existing section 6 deals with the provisions for determining the residential status of an assessee in India. Clause (1) of section 6 provides the conditions under which an individual is held to be resident in India. The determination is based, inter alia, on the number of days during which such individual has been in India during a previous year.

    It is proposed to insert Explanation to section 6 for individuals who are Indian citizens and a member of the crew of foreign bound ships leaving India. It provides that the period or periods of stay in India of these individuals shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed.

    This amendment is proposed to take effect retrospectively from 1st April, 2015.

  - **Residential Status of Company**

    As per the existing provisions of clause (3) of section 6, a company is said to be resident in India in any previous year, if-

    (i) it is an Indian company; or

    (ii) during that year, the control and management of its affairs is situated wholly in India.

    It is proposed to amend the provisions of clause (3) of section 6 to provide that a person being a company shall be said to be resident in India in any previous year, if-

    (i) it is an Indian company; or

    (ii) Its **place of effective management**, at any time in that year, is in India.

Further, it is proposed to insert Explanation to clause (3) of section 6 to define the place of effective management to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.

These amendments are proposed to take effect from 1st April, 2016.

- **Section 9(1)(i) - Clarifications on Indirect Transfer Provisions**

The existing provisions of section 9 deal with cases of income which is deemed to accrue or arise in India in case of non-residents. Clause (i) to Sec 9(1) provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India shall be deemed to accrue or arise in India.

The Finance Act, 2012 inserted certain clarificatory amendments in the provisions of section 9. The amendments, inter alia, included insertion of Explanation 5 in section 9(1)(i) w.r.e.f. 1.04.1962. The Explanation 5 clarified that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

It is proposed to insert two new Explanations to section 9 in order to bring more clarity:-

(i) the share or interest of a foreign company or entity shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian assets,-
   (a) exceeds the amount of ten crore rupees ; and
   (b) represents at least fifty per cent of the value of all the assets owned by the company or entity.

(ii) Value of an asset shall mean the fair market value of such asset without reduction of liabilities, if any, in respect of the asset.

(iii) The specified date of valuation shall be the date on which the accounting period of the company or entity, as the case may be, ends preceding the date of transfer. However, if book value on date of transfer > 15% of book value on last balance sheet date then date of transfer shall be the specified date of valuation.

(iv) Accounting period shall be each period of twelve months ending with the 31st day of March. However, if a period adopted ends on a day other than the 31st day of March for the purpose of (i) complying with the provisions of the tax laws of the territory, of which it is a resident, for tax purposes; or (ii) reporting to persons holding the share or interest, then such period shall be considered as accounting period

(v) No income shall be deemed to accrue or arise in India to the transferor of a share of, or interest in, a foreign entity if he along with its associated enterprises,

  (a) neither holds the right of control or management,

  (b) Nor holds voting power or share capital or interest exceeding five per cent of the total voting power or total share capital, in the foreign company or entity directly holding the Indian assets (direct holding company).

(vi) Further, in case the transfer is of shares or interest in a foreign entity which does not hold the Indian assets directly then the exemption shall be available to the transferor if he along with its associated enterprises,-

  (a) neither holds the right of management or control in relation to such company or the entity,

  (b) Nor holds any rights in such company which would entitle it to either exercise control or management of the direct holding company or entity or entitle it to voting power exceeding five percent in the direct holding company or entity.

(vii) associated enterprise shall have the meaning assigned to it in section 92A

(viii) Where all the assets owned, directly or indirectly by the company are not located in India, only such proportionate income as is attributable shall be deemed to accrue or arise in India. There shall be further rules which shall provide for

  (a) the manner of determination of fair market value of the Indian assets vis-à-vis global assets of the foreign company

  (b) the method for determination of proportionality.

These amendments are proposed to take effect from 1st April, 2016.

- **<u>Section 9(1)(v) - Clarifications on Interest received by the non-residents engaged in banking business</u>**

  It is proposed to insert a new Explanation in clause (v) to section 9(1) which provides that in the case of a non-residents engaged in the business of banking, any interest payable by the permanent establishment ('PE') in India of such non-resident to the head office outside India shall be deemed to accrue or arise in India and shall be chargeable to tax in India. This shall be in addition to any income attributable to the PE in India. Further, such PE shall be deemed to be a person separate and independent of the non-resident person of which it is a PE and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery shall apply. The meaning of "permanent establishment" shall be as assigned to it in clause (iiia) of section 92F.

  These amendments are proposed to take effect from 1st April, 2016.

- **<u>Section 9A - Certain Activities not to constitute business connection in India</u>**

Under the existing provisions, the presence of a fund manager in India may create sufficient nexus of the off-shore fund with India and may constitute a business connection in India even though the fund manager may be an independent person. Further, presence of the fund manager may also lead to the off shore fund being held to be resident in India on the basis of its control and management being in India.

It is proposed to introduce a new section 9A which shall provide that the fund management activity carried out through an eligible fund manager acting on behalf of an eligible investment fund shall not constitute business connection in India of the said fund. For a fund to qualify as an eligible investment fund and for a fund manager to qualify as an eligible fund manager certain conditions are required to be fulfilled. Further such fund is required to furnish within 90 days from the end of the financial year, a statement in the prescribed form, to the prescribed income-tax authority containing information relating to the fulfilment of these conditions and also provide such other relevant information or documents as may be prescribed. On failure to submit the same, a penalty of Rs. 5 lakh shall be leviable on the fund.

Further, it is proposed that such fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India.

The section further provides for the definitions of “associate”, “corpus”, “connected person”, “entity” and “specified regulations” for the purposes of this Section.

These amendments are proposed to take effect from 1st April 2016.

- **Furnishing of information of taxable as well non-taxable remittances [Sec 195]**

As per existing of sub-section (6) of section 195, any person making remittances to non-resident were to furnish the information relating to the payment in such form and manner as prescribed by CBDT. The information provided in such form was only against those payments which were taxable remittances.

It is proposed to amend the provisions of section 195 and to provide that the person responsible for paying any sum, whether chargeable to tax or not, to a non-resident shall be required to furnish the information of the prescribed sum in such form and manner as may be prescribed.

This amendment is proposed to take effect from 1st June 2015.

- **Section 115A: Tax on Royalty and Fees for Technical Service in the case of non-resident**

As per existing section 115A, the rate of tax in cases of non-resident tax payer where the total income includes any income by way of Royalty and Fees for Technical Services received by a non-resident from Government of India or an Indian party was 25 percent

It is proposed to reduce the rate of income tax applicable on payments made to non-resident in the nature of Royalty and Fees for Technical Services to 10 percent.

This amendment is proposed to take effect from 1st April 2016.

- **Section 115ACA: Scope of provision relating to tax on income from Global Depository Receipts (GDR)purchased in foreign currency or capital gains there from restricted in respect of GDR issued by companies listed on recognized Stock Exchange in India**

  It is proposed to amend section 115ACA relating to tax on income from Global Depository Receipts purchased in foreign currency or capital gains arising from their transfer with a view to restrict the benefit of provisions only in respect of income arising from GDRs issued by listed company.

  As per existing explanation (a) to section 115ACA, the definition of Global Depository Receipts means an instrument in form of depository receipt or certificate created by the Overseas Depository Bank outside India and issued to non-resident investors against the issue of ordinary shares or foreign currency convertible bonds of issuing company.

  It is proposed to amend the definition of Global Depository Receipts issued to non-resident investors against the issue of ordinary shares or foreign currency convertible bonds of issuing company. The ordinary shares of issuing company shall now mean a company listed on a recognized stock exchange in India.

  This amendment is proposed to take effect from 1st April 2016.

- **Section 115JB: Rationalization of Minimum Alternate Tax**

  Sec 115JB provides that in case of a company, if the tax payable on the total income as computed according to the normal provisions under the Act is less than 18.5 percent of its book profit, such book profit shall be deemed to be the total income of the company and a minimum alternate tax at the rate of 18.5 percent shall be payable by the company for the relevant assessment year on such book profit.

  - **Amendment in respect of income of FIIs**

    It is proposed to amend Explanation 1 below sub-section (2) to insert clause (iid) to provide that in case of assessee company being a Foreign Institutional Investor (FII) which has invested in securities in accordance with the regulations made under the Securities and Exchange Board of India Act,1992 and the amount credited to the profit and loss account includes income from transactions in such securities (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable) then such income shall be reduced from the book profit for the purposes of calculation of minimum alternate tax.

Consequently, it is also proposed to amend Explanation 1 below sub-section (2) to insert clause (fb) to provide that the book profit shall be increased by the amount or amounts of expenditure relatable to the income as explained above.

These amendments are proposed to take effect from 1st April, 2016 and will accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

- **Sec 194 LD: Deduction of tax on income by way of interest on certain bonds and Government securities**

  Under existing provisions of sec 194LD(2), the interest income was eligible for lower withholding tax of 5 per cent as provided in sec 194LD (1) for interest payable on or after 1st June 2013 but before 1st June 2015.

  It is proposed to amend sec 194LD(2) to provide for concessional tax rate of 5 per cent on such interest payable up to 30th June 2017, thereby extending benefits of concessional rate for two more years.

  The amendment is proposed to take effect from 1st June, 2015.

- **Section 285A: Furnishing of information or documents in respect of companies incorporated outside India deriving value substantially from assets located in India**

  It is proposed to insert section 285A to provide that foreign companies, whose share/interest derive value substantially from the assets located in India as referred to in Explanation 5 to clause (i) of sec 9(1) and such company holds directly/indirectly such assets in India through or in an Indian concern, then such Indian company shall furnish within prescribed period the information or documents to the prescribed income tax authority for the purposes of determination of any income accruing or arising in India under clause (i) of sub section (1) of section 9.

  The amendment is proposed to take effect from 1st April 2016 and will accordingly apply in relation to the assessment year 2016-17 and subsequent assessment years

- **Section 295: Tax relief or deduction of income tax paid in foreign country has been included in Power of CBDT to make rules**

  The existing provisions contained in sub-section (1) of the section 295 provide that the CBDT may make rules for the whole or any part of India for carrying out the purposes of the Income Tax Act. Sub-section (2) of section 295 specifies the matters in respect of which such rules may be provided.

It is proposed to insert clause (ha) to subsection (2) of Sec 295 to provide the procedure for granting of relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, against the income-tax payable under the Act.

The amendment is proposed to take effect from 1st June 2015.

B. Real Estate Investment Trusts

- **Section 10(23FBB)**

It is proposed to insert a new clause (23FBB) to provide that any income of a person accruing or arising to, or received by, a unit holder of an investment fund, being that proportion of income which is of the same nature as income chargeable under the head “Profits and gains of business or profession” shall not be included in total income of such person.

- **Section 10(23FCA)**

It is proposed to insert a new clause (23FCA) so as to provide that any income of a business trust, being a real estate investment trust, by way of renting or leasing or letting out any real estate asset owned directly by such business trust, shall not be included in the total income.

- **Section 10(23FD)**

It is proposed to amend (23FD) of the said section to provide that any distributed income, referred to in section 115UA, received by a unit holder from the business trust, being that proportion of the income which is of the same nature as income by way of renting or leasing or letting out any real estate asset owned directly by the business trust, shall be included in total income and not be exempted.

- **Section 10(38)**

It is also proposed to amend clause (38) of the said section to provide that any income in the nature of long term capital gain arising from transfer of units of a business trust which were acquired in consideration of exchange of shares of a special purpose vehicle and on which securities transaction tax has been paid shall not be included in the total income of the sponsor.

These amendments will take effect from assessment year 2016-17.

- **Section 115UA: Taxation of business trusts**

Sec 115UA provided that any income distributed by a business trust to its unit holders shall be taxable in hands of such unit holders in like manner and in the same proportion as if such income was received by, or accrued to, the business trust.

It is proposed to provide that the distributed income (or any part thereof), received by a unit holder from the business trust, being a real estate investment trust (REIT), which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such business trust, shall also be deemed to be income of such unit holder and shall be charged to tax.

This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

- **Section 111A: Tax on Short Term Capital Gain in case of transfer of units of a business trust acquired in consideration of the shares of a SPV**

Existing second proviso to sub-section (1) of section 111A provided for non-applicability of provisions of section 111A on income arising from transfer of units of a business trust which were acquired by the assessee in consideration of a transfer of shares of a special purpose vehicle. This proviso came into effect from 01.04.2015.

It is proposed to omit the said proviso and therefore, after omission of the said proviso concessional rate of tax on short term capital gains provided in section 111A shall now be applicable to capital gains arising from transfer of units of a business trust which are acquired by the assessee in exchange of the shares of special purpose vehicle.

This amendment is proposed to take effect from 1st April 2016.

- **Section 194I - Deduction of tax on rent**

It is proposed to insert third proviso to section 194I to provide that no deduction of tax shall be made from payment of rent credited or paid to a business trust, being a real estate investment trust (REIT), in respect of any real estate asset, owned by such REIT.

The amendment is proposed to take effect from 1st June, 2015**.**

- **Sec 194LBA - Deduction of tax on income from units of a business trust**

Under the existing provisions of sec 194LBA (1), tax is required to be deducted on any distributed income by a business trust to its unit holder, being a resident. It is proposed to amend aforesaid sec by inserting any distributed income of REIT by way of renting, leasing or letting out of asset.

It is also proposed to insert a new sec 194LBA (3) to provide for deduction of tax on any distributed income by REIT to its unit holders being a non- resident (not being a company), or a foreign company at the rates in force.

The amendments are proposed to take effect from 1st June, 2015**.**

C. Alternate Investment Funds

- **Section 10(23FB)**

  This section provides that any income of a venture capital company or venture capital fund from investment in a venture capital undertaking shall not be included in total income.

  It is proposed to insert a proviso to the said clause to provide that the said clause shall not apply to a venture capital company or venture capital fund, being an investment fund specified in clause (*a*) of the *Explanation 1* to section 115 UB, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016.

- **Section 10(23FBA)**

  It is proposed to insert a new clause (*23FBA*) to provide that any income of an investment fund other than the income chargeable under the head “Profits and gains of business or profession” shall not be included in the total income of such fund.

- **Provisions relating to taxation of Investment Fund**

  It is proposed to insert a section 115UB in a new chapter XII FB to bring in special provisions relating to tax on income from Investment Funds. These funds are registered as Category I or Category II Alternate Investment Funds under Securities and Exchange Board of India (Alternate Investment Fund) Regulations, 2012 and can be set up as a trust, company, limited liability partnership or a body corporate. In relation to these funds, following proposals have been made in the said chapter:

  - Income of the fund under the head profits and gains of business or profession shall be taxable in the hands of the fund itself and thus exempt in the hands of the beneficial unit holder. However, income earned by the fund under other heads of income shall be taxable in like manner and to the same extent as if the investor had made direct investment in the fund and that too under the same head of income.

  - Tax at the rate ten percent shall be withheld on any income other than exempt income payable to a unit holder.

- o However, the loss at the fund level shall not be allowed to be pass through to the beneficial unit holders but shall be set off as per the existing provisions of the Act.

- o The provisions of Dividend distribution tax and tax on distributed Income shall not apply to the income distributed by the fund.

- o The income received the fund shall not be liable to withholding tax requirements provided a certificate under sec. 197A (1F) is appropriately procured.

- o The filing of the Return of Income is mandatory along with other compliance requirements.

- **<u>Section194LBB - Deduction of tax on income in respect of units of an investment fund</u>**

It is proposed to insert a new sec 194LBB to provide for deduction of tax on any income, other than that proportion of income which is of the same nature referred to in newly inserted sec 10 (23FBB), payable to a unit holder in respect of units of investment fund specified in clause (a) of Explanation 1 to sec 115UB at the rate of 10 per cent.

The amendment is proposed to take effect from 1st June, 2015**.**

SERVICE TAX

Effective date to be notified by the Government:

- Service Tax rate to be increased from 12% to 14%.
- Education Cess and Secondary & Higher Education Cess to be exempted.
- Swachh Bharat Cess to be levied @ 2% on all or any of the value of taxable service.
- Following Changes have been proposed in the Negative List:
    - Service Tax shall be levied on the service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks.
    - Services by way of carrying out any process in relation to preparation of alcoholic liquor for human consumption have been excluded from the negative list. Accordingly Service Tax shall be levied on contract manufacturing/job work for production of potable liquor used for human consumption. Simultaneous amendment has been made in the definition.
    - Earlier 'support services' provided by the Government or Local Authority to business entity was excluded from the negative list which has been replaced by 'any service' thereby expanding the scope of taxable service. Definition of support service has been accordingly omitted.
    - An explanation is being added in entry (i) of section 66D to specifically state that the activities undertaken by chit fund foremen in relation to chit, and lottery distributors and selling agents, in relation to lotteries are not covered by the Negative List.

Effective from the date of enactment of Finance Bill:

- Definition of Government to be inserted from the date of enactment of Finance Bill.
- Definition of consideration expanded under explanation to section 67 to include any 'reimbursable expenditure or cost' incurred in the course of providing the service subject to conditions.
- Section 73 is being amended in the following manner:
    - a new sub-section (1B) is being inserted to provide that recovery of the Service Tax amount self-assessed and declared in the return but not paid shall be made under section 87, without service of any notice under sub-section (1) of section 73; and
    - Sub-section (4A) that provides for reduced penalty if true and complete details of transaction were available on specified records is being omitted.
- Penalty provisions under section 76 and 78 have been amended to provide a reduced rate of penalty.
- Section 80 which provided for waiver of penalty in certain circumstances would be omitted.

Notifications

Notification No. 04/2015-ST: Addition of Land Customs Station in Notification 31/2012-ST (Effective 1 April 2015)

Vide above notification Land Customs Station has been added and thereby benefit of service tax exemption has been granted for services provided to an exporter of goods by goods transport agency from place of removal/container freight station/inland container depot till land customs station.

Notification No. 05/2015-ST: Amendment in Service Tax Rules

Effective 1 March 2015

- In respect of any service provided under aggregator model, the aggregator, or any of his representative office located in India, is being made liable to pay Service Tax if the service is so provided using the brand name of the aggregator in any manner.
  For the said purpose definition of 'aggregator' and 'brand name or trade name' has been inserted under Rule 2(1) which reads as follows:
  '(aa) "**aggregator**" means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator;';
  '(bca) "**brand name or trade name**" means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person;';

- Rule 4 is being amended to provide that the CBEC shall, by way of an order, specify the conditions, safeguards and procedure for registration under service tax. Further it has also been prescribed that henceforth registration for single premises shall be granted within two days from filing of the application.
- A provision for issuing digitally signed invoices is being added along with the option of maintaining of records in electronic form and their authentication by means of digital signatures. The conditions and procedure in this regard shall be specified by the CBEC.

Effective 1 April 2015

- Service provided or agreed to be provided by a mutual fund agent or distributor to a mutual fund or asset management company has been brought to tax under reverse charge mechanism.
- Service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent has been brought to tax under reverse charge mechanism.

Effective from date to be notified by government

- Option provided to air travel agents to pay service tax has been proposed to increased to 0.7 per cent and 1.4 per cent of the basic fare in case of domestic and International travel respectively.
- Residual category in case of Insurers carrying on life insurance business having option to pay service tax has been proposed to increase to 3.5 per cent and 1.75 per cent for first and subsequent years respectively.
- Optional rate of service tax in case of person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing is as follows:-

Amount	**Service Tax rate on Gross Amount**
Upto Rs. 1 one lakh	0.14 per cent (Min. Rs. 35)
Exceeding Rs. 1 one lakh but up to Rs. 10 lakhs	Rs. 140 and 0.07 per cent
Exceeding Rs. 10 lakhs	Rs. 770 and 0.014 per cent (Max. Rs. 7,000/-)

- Optional rate in case of lottery schemes have been increased to Rs. 8,200/- where the guaranteed prize pay out is more than 80 per cent and for rest increased to Rs. 12,800/-.

Notification No. 06/2015-ST: Amendments in mega exemption notification (Effective 1 April 2015)

- Any service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is exempt from Service Tax. The scope of this exemption is being widened to include all ambulance services.
- Exemption to construction, erection, commissioning or installation of original works pertaining to an airport or port is being withdrawn.
- Exemption to services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theater, will be limited only to such cases where amount charged is up to Rupees one lakh for a performance.
- Exemptions are being withdrawn on the following services.
    - services provided by a mutual fund agent to a mutual fund or assets management company,
    - distributor to a mutual fund or AMC,
    - Selling or marketing agent of lottery ticket to a distributor.
- Life insurance service provided by way of Varishtha Pension Bima Yojna is being exempted.
- Service provided by a Common Effluent Treatment Plant operator for treatment of effluent is being exempted.
- Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables is being exempted.
- Service by way of right to admission to,- **(to be effective from notified date)**

- o Exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet.
- o Recognized sporting events.
- o Concerts, pageants, award functions, musical performances or sporting events not covered above, where the consideration for such admission is upto Rs. 500 per person.

Notification No.07/2015-ST: Amendment in Reverse Charge Mechanism (Effective 1 April 2015)

- Manpower supply and security services when provided by an individual, HUF, or partnership firm to a body corporate are being brought to full reverse charge. Presently, these are taxed under partial reverse charge mechanism.
- Service Tax in respect of mutual fund agent and mutual fund distributor services shall be fully paid by the assets management company or, as the case may be, by the mutual fund receiving such services.
- In respect of selling or marketing agents of lottery, Service Tax shall be fully paid by the distributor of lottery or selling agent.

Notification No. 08/2015-ST: Amendment in Abatement Notification (Effective 1 April 2015)

- Uniform abatement has been prescribed for transport by rail, road and vessel and Service Tax shall be payable on 30% of the value of such service subject to a uniform condition of non-availment of Cenvat Credit on inputs, capital goods and input services.
- Abatement at the rate of 60 per cent has been provided in respect of Transport of passengers by air, with or without accompanied belongings in Economy class and for other class the abatement has been provided at the rate of 40 per cent.
- Abatement is being withdrawn from services provided in relation to chit. Consequently, Service Tax shall be paid by the chit fund foremen on the full consideration received by way of fee, commission or any such amount. However they would be entitled to take Cenvat Credit.

Notification No. 09/2015-ST: Resident firm can file application for Advance Ruling

'Resident firms' have been considered to be specified person for the purpose of Advance Ruling. For the said purpose Firm shall have the meaning assigned to it in Indian Partnership Act and shall include:

- o Limited Liability Partnership other than those which has company as its partner.
- o Sole Proprietorship
- o One Person Company

Further resident is to be construed as defined under the Income Tax Act in so far as it applies to a resident firm.

CUSTOMS

- Cases involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of duty, the amount of penalty payable shall be 15% instead of the present 25%.
- Various provisions which have become redundant have been omitted such as time limit for passing of order by the settlement commission.

Notifications

- No Change in rate of Basic Custom Duty.
- Education Cess and Secondary & Higher Education Cess exempted on CVD and SAD. Accordingly same would be levied on Basic Custom Duty.
- No Change in rate of Duty for Chapters 1-24, 31-71, 75,77-80,82,83,86,88,89,91-98.
- Illustrative Changes in BCD rates:

Sr. No.	Description	Chapter No.	New rate (%)	Old Rate (%)
1.	Metallurgical Coke	270400	5	2.5
2.	Sulphuric Acid	28070010	7.5	5
3.	Iron and Steel, Articles of Iron and Steel	72 & 73	15	10
4.	Import of Commercial Vehicles	8702, 8704	40	10
5.	Bituminous Coal	27011200	10	55

CENTRAL EXCISE

With Immediate Effect:

- Section 11A has been inter alia amended so as to amend the provision relating to relevant date to provide definition of relevant date in respect of cases where a return is not filed on the due date and cases where only interest is required to be recovered.

- Suitable amendments have been made under section 11AC to rationalize penalty in various cases.
- No cases can be accepted by the Settlement commission for fresh adjudication or decision which is referred back by any adjudicating authority.
- Residual Penalty increased from Rs. 2,000/- to Rs. 5,000/-.
- Clarification issued defining the scope of the term "place of removal" in case of export of goods by Manufacturers exporters as well as Merchants Exporters.

Notifications

- The standard ad valorem rate of duty of excise is being increased from 12% to 12.5%.
- Education Cess and Secondary & Higher Education Cess to be exempted.
- Exemption withdrawn on Solar Water heater and system.
- Excise duty exempted on parts including sub parts, components and accessories for use in manufacture of tablet computer.
- No Change in rate of duty for Chapters 1-3, 5-19, 26, 28-32, 34-38, 40-63, 65-71, 75-83, 86,88-89, 91-96.
- Illustrative Changes in basic duty rates:

Sr. No.	**Description**	**Chapter No.**	**New rate (%)**	**Old Rate (%)**
1.	waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured	220210	18	12
2.	High Speed Diesel	27101930	14+Rs. 15	14+ Rs. 5
3.	Mobile Handsets		12.5	6
4.	Wafers for IC module, input for use in manufacture of LED driver and MPCB		6	12
5.	Chassis for Ambulance		12.5	24

Notification No 6 - 8/2015-CE (NT): Amendments in Cenvat Credit Rules, 2004 and Central Excise Rules, 2002

- Direct dispatch of goods to registered dealer's/ registered importer's customers without first bringing them to the dealer's / importer's registered premises subject to the conditions specified therein,

- o Direct dispatch of inputs and capital goods to job worker without first bringing them to the manufacturer's /output service provider's premises subject to the conditions specified therein,
- o Definition of "export goods" (rule 5 of CCR refers) and "export" (rule 18 of CER refers) have been amended,
- o Application of certain provisions of these rules, presently applicable to the registered dealers, to apply to the registered importers also.
- o Provide for issue of digitally signed invoices and preservation of records in electronic form by a manufacturer.
- o Increase the time limit for taking CENVAT credit on inputs and input services from the present six months to one year,
- o Increase the time limit for return of Capital Goods from a job worker from the present six months to two years,
- o Make provision relating to reversal for CENVAT Credit under rule 6, presently applicable to exempt goods and services, applicable to non-excisable goods also,
- o Provide for recovery of CENVAT Credit taken but NOT utilized. Further, the manner of determining utilization of Credit is also being provided in the rule itself.
- o Registration process in Central excise is being simplified to ensure that registration is granted within two working days of the receipt of a duly completed application form.

FINANCE SECTOR

INTRODUCTION

India has a diversified financial sector, which is undergoing rapid expansion. The sector comprises commercial banks, insurance companies, non-banking financial companies, co-operatives, pension funds, mutual funds and other smaller financial entities. The financial sector in India is predominantly a banking sector with commercial banks accounting for more than 60 per cent of the total assets held by the financial system.

India's services sector has always served the country's economy well, accounting for about 57 per cent of the gross domestic product (GDP). In this regard, the financial services sector has been an important contributor.

The Government of India has introduced reforms to liberalise, regulate and enhance this industry. At present, India is undoubtedly one of the world's most vibrant capital markets. Challenges remain, but the future of the sector looks good. The advent of technology has also aided the growth of the industry. About 75 per cent of the insurance policies sold by 2020 would, in one way or another, be influenced by digital channels during the pre-purchase, purchase or renewal stages, as per a report by Boston Consulting Group (BCG) and Google India.

Prime Minister Mr. Narendra Modi launched the Pradhan Mantri Jan Dhan Yojana in August 2014 has cover 12.5 crore households with a balance of approx R.10000 cr.

The Pension Fund Regulatory and Development Authority (PFRDA) Act 2013 has been made effective from 1 February 2014, after it was passed by Parliament in September 2013.The PFRDA Act seeks to vest the PFRDA with statutory status in order to allow it to perform its regulatory and developmental roles effectively

The RBI has simplified the rules for credit to exporters. Now, exporters can get long-term advance credit from banks for up to 10 years to service their contracts. The requirement is that they have a satisfactory record of three years in order to get payments from the banks, which can adjust the payments against future exports.

Non-banking financial companies (NBFCs)

NBFC have evolved as important financial intermediaries particularly for the small-scale and retail sectors. NBFCs as a whole accounted for13.1 per cent of bank assets and 0.2 per cent of bank deposits as on 31 March 2014. There are two broad categories of NBFCs based on whether they accept public

deposits, viz., deposit-taking NBFCs (NBFC-D) and non-deposit-taking NBFCs (NBFC-ND). With the emergence of large sized NBFCs, the regulatory focus has gradually increased on systemically important NBFCs (NBFCs-ND-SI), i.e. with asset size Rs.500 crore and above. The total number of NBFCs registered with the RBI declined from12, 158 (as on 30 September 2013) to 11,932(as on 30 September 2014). The number of NBFCs-D declined from 253 to 226, while the number of NBFC-ND with asset size Rs.100 crore and above increased from 437 to 465 during the same period. The number of NBFCs-ND-SI stood at 200 as on 30 September 2014. Loans and advances by NBFCs witnessed a growth of13.1 percent during 2013-14. From the perspective of deployment of funds, loans and advances accounted for more than two-thirds of their total deployment of funds.

The RBI has issued a revised regulatory framework for NBFCs in November 2014, as they are increasingly exposed to risks arising out of counterparty failures, funding and asset concentration, and interest rate movement and risks pertaining to liquidity and solvency.

Microfinance Companies in India

Microfinance companies are the financial institutions that offer small-scale financial services in both the forms – credit and savings, especially to the poor in rural, semi-urban and urban areas. These financial services are meant to help them in undertaking economic activities, mitigating vulnerabilities to income shocks, smoothening consumption, increasing savings and supporting self-empowerment.

There are a number of microfinance companies in India, which play some pivotal roles to the development of India. India's microfinance sector is fragmented with more than 3000 microfinance companies (MGIs), NGOs and NGO-MFIs.

DEVELOPMENTS IN CAPITAL MARKETS

During April-December 2014, resource mobilization through the primary market exhibited mixed patterns with equity and debt issues declining and private placements of corporate bonds increasing, on year-on-year basis. As private placements of corporate bonds account for the lion’s share, total mobilization increased during the period. The number and value of private placements increased both in the National Stock Exchange (NSE) and Bombay Stock Exchange (BSE) during the period.

Market Size

The size of banking assets in India reached US$ 1.8 trillion in FY13 and is expected to touch US$ 28.5 trillion by FY25. Information technology (IT) services, the largest spending segment of India's insurance industry at Rs 4,000 crore (US$ 649.31 million) in 2014, is projected to continue strong growth at 16 per cent.

The total market size of the insurance sector in India was US$ 66.4 billion in FY13 and is expected to breach the US$ 350–400 billion mark by 2020.

Investment corpus in India's pension sector could cross US$ 1 trillion by 2025, following the passage of the Pension Fund Regulatory and Development Authority (PFRDA) Act 2013, according to a joint report by CII–EY on Pensions Business in India.

India’s foreign exchange (Forex) reserves touched US$ 320.56 billion on July 25, 2014, which was just US$ 23 million less than the all-time high of US$ 320.79 billion achieved on September 2, 2011.

Investments

Corporate law firms in India are benefiting from an increase in the value of mergers and acquisitions (M&As) and share acquisitions during the course of the year. According to Thomson Reuters data, the enterprise value of deals on which law firms have advised has shot up to US$ 35.7 billion this year till December, a 22 per cent increase over the US$ 29.3 billion in deals seen in the whole of 2013.

- Financial services provider Reliance Capital Ltd, a part of Anil Ambani’s Reliance Group, has formed a long-term strategic alliance with Japan’s Sumitomo Mitsui Trust Bank Ltd, offering the Japanese lender a small equity stake in the company. As part of the agreement, Sumitomo Mitsui Trust Bank will pick up an initial 2.77 per cent stake in Reliance Capital for Rs 371 crore (US$ 60.22 million) through a preferential allotment of shares.

- GIC, Singapore's sovereign wealth fund, is buying about 70 per cent stake in BSE-listed Nirlon for Rs 1,392.6 crore (US$ 226.07 million). Nirlon owns an information technology park in the western suburbs of Mumbai. GIC said it had signed agreements to buy 39.2 per cent in Nirlon from its promoters, including the Sagar family, for Rs 784.3 crore (US$ 127.32 million). It will make an open offer for 28.4 per cent stake from public shareholders at the same price.

- Canada pension plan investment board, which manages assets worth CAD 234.4 billion (US$ 193.92 billion), has through a subsidiary invested Rs 1,000 crore (US$ 162.34 million) in L&T Infrastructure Development Projects Ltd, a unit of Larsen and Toubro Ltd, India’s largest engineering and construction company. The investment is made by way of subscribing compulsory convertible preference shares, L&T said in a statement.

- Nearly three years after the BSE launched a separate platform for small and medium enterprises (SMEs), the market capitalization of the segment crossed Rs 10,000 crore (US$ 1.62 billion) recently. The market capitalization of the 82 listed SMEs was Rs 10,118.90 crore (US$ 1.64 billion).

- The Government of India signed an agreement with Asian Development Bank (ADB) for a US$ 75 million loan and a US$ 1.8 million grant that will help improve water resource management in three (3) towns of Karnataka in the Upper Tungabhadra sub-basin. This loan from the ADB’s Ordinary Capital Resources has a 25-year term including a grace period of five years.

Government Initiatives

Several measures have been outlined in the Union Budget that aim at reviving and accelerating investment which, inter alia, include fiscal consolidation with emphasis on expenditure reforms and continuation of fiscal reforms with rationalization of tax structure; fillip to industry and infrastructure, fiscal incentives and concrete measures for transport, power, and other urban and rural infrastructure; measures for promotion of Foreign Direct Investment (FDI) in selected sectors, including defence manufacturing and insurance. Fiscal reforms have been bolstered further by the recent deregulation of diesel prices. The launch of 'Make in India' global initiative is intended to invite both domestic and foreign investors to invest in India. The aim of the programme is to project India as an investment destination and develop, promote and market India as a leading manufacturing destination and as a hub for design and information. The programme further aims to radically improve the Ease of Doing Business, open FDI regime, improve the quality of infrastructure and make India a globally competitive manufacturing destination.

The Reserve Bank of India (RBI) has eased norms for mortgage guarantee companies (MGC) enabling these firms to use contingency reserves to cover for the losses suffered by the mortgage guarantee holders, without having to take approval of the apex bank. However, such a measure can only be initiated if there is no single option left to recoup the losses.

Financial inclusion is among the topmost priorities of the Indian government. Exclusion of a large number of people from access to financial services affects the growth of the country.

Budget Proposal

- Micro Units Development Refinance Agency (MUDRA) Bank, with a corpus of `20,000 crores, and credit guarantee corpus of `3,000 crores to be created.
- Introduce a Gold Monetisation Scheme, which will replace both the present Gold Deposit and Gold metal Loan Schemes. The new scheme will allow the depositors of gold to earn interest in their metal accounts and the jewellers to obtain loans in their metal account. Banks/other dealers would also be able to monetize this gold
- MUDRA Bank will be responsible for refinancing all Micro-finance Institutions which are in the business of lending to such small entities of business through a Pradhan Mantri Mudra Yojana.
- In banking capitalization to be in line with Basel-III norms there is a requirement to infuse ` Rs. 2,40,000crore as equity by 2018.
- PSUs will invest through capital investment a total sum of Rs.2, 47,941 crores in the current financial year to create virtuous investment cycle.

- Advise financial sector regulators to take early steps for a vibrant, deep and liquid corporate bond market and deepen the currency derivatives market by eliminating unnecessary restrictions.
- Liberalize the ADR/GDR regime to allow issuance of depository receipts on all permissible securities.
- Allow international settlement of Indian debt securities
- Completely revamp the Indian Depository Receipt (IDR) and introduce a much more liberal and ambitious Bharat Depository Receipt (BhDR).
- Clarify the tax treatment on income of foreign fund whose fund managers are located in India to resolve a long-standing problem
- Public Debt Management Agency (PDMA) bringing both external and domestic borrowings under one roof to be set up this year.
- Enabling legislation, amending the Government Securities Act and the RBI Act included in the Finance Bill, 2015.
- Section-6 of FEMA to be amended through Finance Bill to provide control on capital flows as equity will be exercised by Government in consultation with RBI.
- Proposal to create a Task Force to establish sector-neutral financial redressal agency that will address grievance against all financial service providers.
- India Financial Code to be introduced soon in Parliament for consideration.
- Vision of putting in place a direct tax regime, which is internationally competitive on rates, without exemptions.
- Foreign investments in Alternate Investment Funds to be allowed.
- Distinction between different types of foreign investments, especially between foreign portfolio investments and foreign direct investments to be done away with. Replacement with composite caps.
- To improve the Governance of Public Sector banks, the Government intends to set up an autonomous bank Board Bureau Permanent Establishment (PE) norm to be modified to encourage fund managers to relocate to India.
- Extend a liberalized facility of 5% withholding tax to all bonds issued by Indian corporate abroad for all sectors and extend the validity of the scheme to 30.06.2017

Road Ahead

India is today one of the most vibrant global economies, on the back of robust banking and insurance sectors. The country is projected to become the fifth largest banking sector globally by 2020, as per a report by CII. The report also expects bank credit to grow at a compound annual growth rate (CAGR) of 17 per cent in the medium term leading to better credit penetration. Life Insurance Council, the industry body of life insurers in the country also projects a CAGR of 12–15 per cent over the next few years for the financial services segment.

INFORMATION TECHNOLOGY IN INDIA

INTRODUCTION

Software development and information technology enabled services (ITeS) including business process management (BPM), software engineering R & D services and product development has emerged as one of the most dynamic and vibrant sectors in India’s economy.

The Indian IT and Information Technology enabled Services (ITES) sectors go hand-in-hand in every aspect. The industry has not only transformed India's image on the global platform, but also fuelled economic growth by energising the higher education sector (especially in engineering and computer science). The industry has employed almost 10 million Indians and, hence, has contributed significantly to social transformation in the country.

According to Indian Software Product Industry Roundtable (ISPIRT), India has the potential to build a US$ 100 billion software product industry by 2025.

India has a well-regarded and world-class IT industry with revenues of about US$ 150 billion, over US$ 100 billion of exports, employing nearly 40 lakh people directly.

Prime Minister Narendra Modi's ambitious e-governance initiative –“Digital India Project”, will be the next in the priority list of the government. Sources said like Clean India mission, the Digital India initiative is likely to be launched soon.

The project, with an overlay of Rs.1 lakh crore, will ensure that government services are available to citizens electronically and help people gain benefits from the latest information and communication technology. It also aims to ensure that all villages avail high- speed Internet at affordable rates. The project is aimed to be completed by 2019.

As part of the plan, the government has set a target of providing broadband connectivity to 2.5 lakh villages (according to the 2011 Census, India has about 6.41 lakh villages) and making as many schools Wi-Fi enabled by 2019.

Market Size

As per recent NASCOM report, the Indian IT-BPM industry is expected to add revenues of US$ 13-14 billion to the existing revenues by FY15, according to National Association of Software and Services Companies.

The industry grew at a compound annual growth rate (CAGR) of 13.1 per cent during FY08-13.Total exports from the IT-BPM sector (excluding hardware) were estimated at US$ 76 billion during FY13. Export of IT services has been the major contributor, accounting for 57.9 per cent of total IT exports (excluding hardware) in FY13. BPM accounted for 23.5 per cent of total IT exports during the same fiscal. The IT outsourcing sector is expected to see exports growing by 13-15 per cent during FY15.

The data centre infrastructure market of India is estimated to reach US$ 2.03 billion in 2015, a 5.4 per cent increase from US$ 1.92 billion in 2014.

E-commerce space in India is expected to grow at 20-25 per cent over the next 2-3 years in terms of jobs, salaries and growth, which in turn could create at least 150,000 jobs. The current estimated size of the industry is about Rs 18,000 crore (US$ 2.91 billion) and is expected to reach Rs 50,000 crore (US$ 8.08 billion) by 2016 and as the industry grows, the demand for talent would grow proportionally.

Overview

As per the National Association of Software and Service Companies (NASSCOM) study, it is the single largest contributor to services exports. As per AT Kearney's Global Services Location Index 2014, India ranked first and remains the pre-eminent destination for offshore services, with excellence in IT, BPO, and voice services. The sector continues to be one of the largest employers in the country, directly employing nearly 3.5 million people.

As per the Central Statistics Office (CSO), computer and related services with a share of 3.3 per cent in India's GDP grew by 14.4 per cent in 2013-14. As per NASSCOM's estimate the revenue of the IT-BPM industry at US$119 billion grew by 12 per cent in 2014-15, while the export market at US$ 98 billion grew by 12.3 per cent over the previous year. The BPM sector is being driven by greater automation, expanding omnichannel presence, and application of analytics across the entire value chain. The year also witnessed hyper-growth in the technology start-up and software product landscape, India ranking as the fourth largest start-up hub in the world with over 3100 start-ups in the country. The domestic IT-BPM market is estimated at US$ 20.9 billion in 2014-15, with a growth of 10 per cent. Software products and services revenues for 2015-16 are projected to grow at 12-14 per cent to reach US$ 133-136 billion as

per NASSCOM. Export revenues are projected to grow by 12 to 14 per cent to reach US$ 110-112 billion and domestic revenues by 10-15 per cent to reach US$ 23-24 billion during 2015-16. 7.32 Recognizing the need for greater penetration of IT services domestically, in Budget 2014-15 Digital India has been envisioned as an ambitious umbrella programme to prepare India for knowledge-based transformation. This would ensure broadband connectivity at village level, improved access to services through IT-enabled platforms, greater transparency in government processes and increased indigenous production of IT hardware and software. One of the important components of this programme is people's empowerment through availability of entitlements on the cloud, coupled with Aadhaar Authentication Platform.

Investments

Indian IT's core competencies and strengths have placed it on the international canvas, attracting investments from major countries.

According to data released by the Department of Industrial Policy and Promotion (DIPP), the computer software and hardware sector attracted foreign direct investment (FDI) worth US$ 13,238.58 million between April 2000 and September 2014.

Some of the major investments in the Indian IT and ITeS sector are as follows:

Microsoft plans to offer its commercial and cloud services-Azure and Office 365-from three local data canters by the end of 2015, making it the first technology company to set up cloud data centres in India.

Infosys plans to invest Rs 1,400 crore (US$ 228.04 million) in a campus proposed to be built in Noida, Uttar Pradesh. The project is estimated to generate 35,000 direct and indirect jobs.

Cognizant has acquired US-based digital marketing agency Cadient Group. The latter is expected to boost Cognizant's presence in the healthcare segment.

U.S.-based global technology giant IBM expressed keen interest to participate in the initiative of Digital India project when Prime Minister Modi visited US. Sources said the government machinery is working on different ideas to make it successful.

Visa plans to set up a technology centre in India in 2014 and join a host of global system players who have established technology centers in the country to access its software and engineering talent.

Genpact Ltd has signed an agreement with the US-based Automation Anywhere to provide automated business processes for its clients.

Nielsen India has acquired Indicus Analytics. This acquisition will add to Nielsen's capabilities for macro and microeconomic research for the public and private sectors.

Government Initiatives

The Government of India has played a key role with public funding of a large, well trained pool of engineers and management personnel who could forge the Indian IT industry.

Its spending on information technology (IT) will reach US$ 7.2 billion in 2015, a five per cent increase over 2014, according to a report by Gartner Inc.

Some of the major initiatives taken by the government to promote IT and ITeS sector in India are as follows:

The Government of India through the Board of Approval (BoA) under the Union Ministry of Commerce and Industry has approved Wipro Ltd's plan of setting up a special economic zone (SEZ) in Visakhapatnam.

The Government of India has launched the .bharat domain name which will cover eight languages. The domain will help to bridge the digital divide and enhance the reach of the Internet to remote villages.

The Government of Andhra Pradesh and Google India have signed a Memorandum of Understanding (MoU) to launch a number of initiatives aimed at bridging the state's digital divide and enabling skill development.

The Government of Karnataka and Nasscom plan to launch a series of new initiatives to help shore up the local start-up and technology ecosystem in the state, including plans to build one of Asia's largest start-up warehouses and also the country's first 'hack-celerator'.

In Railway Budget 2015, the railway minister has proposed to increase the number of stations for provision of Wi-Fi services and have also proposed other major steps in line with the Digital India Project.

Budget Proposals:

- A sum of Rs. 500 crore is set aside for National Rural Internet and Technology Mission for services in villages and schools, training in IT skills and E-Kranti for government service delivery and governance scheme.
- A programme for promoting “Good Governance” would be launched and a sum of Rs. 100 crore is set aside.
- Allocate a sum of Rs.100 crore for setting up virtual classrooms as Communication Linked Interface for Cultivating Knowledge (CLICK) and online courses.
- Setting up of around 400 Community Radio stations and a sum of Rs. 100 crore is being allocated to it.

- Andhra Pradesh is the first State to have opted for National Optical Fiber Network Programme implementation.7.5 lakh kms. networking 2.5 lakh villages is being further speeded up by allowing willing States to undertake its execution.

- Launched the Digital India programme to make India a knowledge & innovation based society with Broadband connectivity being taken to all villages, Success of Mars Orbiter Mission.

- Concerns of IT industries for a more liberal system of raising global capital, incubation facilities in our Centers of Excellence, funding for seed capital and growth, and ease of Doing Business etc. would be addressed for creating hundreds of billion dollars in value.

Tax Proposals:

- Mobiles handsets, including cellular phones from 1% without CENVAT creditor 6% with CENVAT credit to 1% without CENVAT credit or 12.5% with CENVAT credit. NCCD of 1% on mobile handsets including cellular phones remains unchanged.

- Tablet computers from 12% to 2% without CENVAT credit or 12.5% with CENVAT credit.

- Impose basic customs duty at 10 percent on specified telecommunication products that are outside the purview of the Information Technology Agreement.

- Rate of Income-tax on royalty and fees for technical services reduced from 25% to 10% to facilitate technology inflow.

Road Ahead

India continues to be the topmost off shoring destination for IT companies followed by China and Malaysia in second and third position, respectively. Leading IT services firms are expanding their traditional offerings (in India) to include research and development (R&D), product development, and other niche services.

Emerging technologies present an entire new gamut of opportunities for IT firms in India. Social, mobility, analytics and cloud (SMAC) collectively provide a US$ 1 trillion opportunity. Cloud represents the largest opportunity under SMAC, increasing at a CAGR of approximately 30 per cent to around US$ 650-700 billion by 2020.

Social media is the second most lucrative segment for IT firms, offering a US$ 250 billion market opportunity by 2020.

The New government Digital India plan also shall provide a huge growth opportunity to the local IT and ITES industry.

INFRASTRUCTURE

INTRODUCTION

A key driver of the economy, Infrastructure is highly responsible for propelling India's overall development. The industry enjoys intense focus from the top officials of the Government for initiating policies that would ensure time-bound creation of world class infrastructure in the country. This sector includes power, bridges, dams, roads and urban infrastructure development.

India has emerged as the largest PPP market in the world with over 900 projects in various stages of development. PPPs have delivered some of the iconic infrastructure like airports, ports and highways which are seen as models for development globally.

The private sector's share has expanded across key infrastructure segments, ranging from roads and communications to power and airports. Of the total planned infrastructure investments worth US$ 1 trillion during the 12th Five-Year Plan, the share of the private sector is estimated to be 47 per cent, up from 25 per cent during the 10th Five-Year Plan.

Sharp increase in outlays of roads and railways. Capital expenditure of public sector units to go up.

Indian port sector is poised to mark great progress in the years to come. It is forecasted that by the end of 2017 port traffic will amount to 943.06 MT for India's major ports and 815.20 MT for its minor ports.

Along with that, Indian aviation market is expected to become the third largest across the globe by 2020, according to industry estimates. The sector is projected to handle 336 million domestic and 85 million international passengers with projected investment to the tune of US$ 120 billion. Indian Aviation Industry that currently accounts for 1.5 per cent of the gross domestic product (GDP) has been instrumental in the overall economic development of the country. Given the huge gap between potential and current air travel penetration in India, the prospects and possibilities of growth of Indian aviation market are enormous.

Market Size

The Indian Railways generated total approximate earnings on originating basis of Rs 73,403.67 crore (US$ 11.56 billion) during April 1, 2014 to September 30, 2014 as against Rs 65,525.85 crore (US$ 10.32 billion) during the corresponding period last year, registering an increase of 12.02 per cent. While the total goods earnings increased by 10.44 per cent, total passenger revenue earnings shot up by 16.46 per cent.

The construction equipment industry's revenues are estimated to reach US$ 22.7 billion by 2020 from US$ 5.1 billion in FY12. Unit sale of construction equipment is expected to grow to 82,000 by 2016 from 61,745 in FY12. Construction equipment forms around seven to eight per cent of gross domestic product

(GDP) and gives employment to more than 30 million people in the country. It also accounts for more than 60 per cent in total infrastructural investment.

The demand for construction equipment in India is expected to grow to US$ 9.9 billion by 2015, at a compound annual growth rate (CAGR) of 24.1 per cent (from 2011). Increased impetus to develop infrastructure in the country is attracting the major global players. There were cumulative foreign direct investment (FDI) inflows of US$ 209.4 million in earth-moving machinery in the period April 2000-March 2014.

Meanwhile, the number of export and import containers moving through major ports in India expanded 7.34 percent year-over-year from April to October 2014, as a result of the Modi Government's efforts to make port development a major priority.

Investments

Foreign direct investment (FDI) received in construction development sector from April 2000 to September 2014 stood at US$ 23,874.10 million, according to the Department of Industrial Policy and Promotion (DIPP).

Some key investments and developments in the India's infrastructure sector in the past few months are as follows:

Seven roads in Haryana will be developed as National Highways, stated a Government official. These roads are Ghaziabad-Noida-Faridabad-Sohna (75km), Nuh-Mandkola-Palwal-Jewar-Bulandshahar (60km), Sohna- Ballabhgarh-Tigaon-Gautambudh Nagar-Deota-Sikandrabad (85km), Palwal-Aligarh (83km) and Hodal-Bhiruki-Hasanpur- Kashipur-Kushak-Barauli-Ghori-Dadota-Mohna-Arwa-Chandpur-Manjhawali (65km).

Meanwhile, Railway minister Suresh Prabhu has suggested some path breaking ideas to revive Indian Railways Department. Some of the suggested measures include decentralisation of authority from the Railway Board to the zones and incentivising GMs for timely completion of projects. He also endorsed foreign investment for the sector, especially from Japan, which is already funding the Dedicated Freight Corridor (DGC) project of the railways.

The highways ministry has also decided to revive 34 projects worth more than Rs 26,000 crore (US$ 4.09 billion). Spanning over 4,084 km, the road projects would be restructured or converted from public-private partnership to engineering, procurement and construction (EPC) mode to get them going.

The Prime Ministers vision to build atleast 100 smart cities will encourage infrastructure development .Many developed countries have envisaged their intent in jointly developing the smart cities. New smart cities in the country including a new capital for the state of Andhra Pradesh. The concerned authorities from both the sides have decided to further examine the areas of cooperation in building 100 new smart cities in India, developing infrastructure for 500 towns and cities, development of heritage cities and urban housing programme.

Government Initiatives

The Indian Government is taking every possible initiative to boost the infrastructure sector. Some of the steps taken in the recent past are being discussed hereafter.

Recently, the Government has relaxed rules for FDI in the construction sector by reducing minimum built-up area as well as capital requirement and liberalised the exit norms. The Cabinet has also approved the proposal to amend the FDI policy.

India and the US have signed a memorandum of understanding (MoU) in order to establish Infrastructure Collaboration Platform. The document showcases the relationship between both the Governments which intend to facilitate US industry participation in Indian infrastructure projects to improve the bilateral commercial relationship and benefit both the Participants' economies. The MoU's scope envisages efforts in the areas of Urban Development, Commerce and Industry, Railways, Road Transport and Highways, Micro Small and Medium Enterprises, Power, New & Renewable Energy, Information and Broadcasting, Communications & Information Technology, Water Resources, River Development and Ganga Rejuvenation.

- Central Government Departments and Ministries to integrate their services with the e-Biz—a single window IT platform—for services on priority.
- Rs 100 crore (US$ 16.68 million) provided for setting up a National Industrial Corridor Authority.
- An institution to provide support to mainstreaming PPPPs called 4PIndia to be set up with a corpus of Rs 500 crore (US$ 83.40 million).
- Rs 11,635 crore (US$ 1.94 billion) will be allocated for the development of Outer Harbour Project in Tuticorin for phase I.
- Scheme for development of new airports in Tier I and Tier II Cities to be launched.
- An investment of an amount of Rs 37,880 crore (US$ 6.31 billion) in NHAI and State Roads is proposed which includes Rs 3,000 crores (US$ 500.44 million) for the North East.
- Rs 100 crore (US$ 16.68 million) is allocated for a new scheme 'Ultra-Modern Super Critical Coal Based Thermal Power Technology'.
- Rs 500 crore (US$ 83.40 million) provided for Ultra Mega Solar Power Projects in Rajasthan, Gujarat, Tamil Nadu, Andhra Pradesh and Laddakh.
- For venture capital in the MSME sector, a Rs 10,000 crore (US$ 1.66 billion) fund to act as a catalyst to attract private Capital by way of providing equity , quasi equity, soft loans and other risk capital for start-up companies with suitable tax incentives to participating private funds to be established.

- Rs 500 crore (US$ 83.40 million) provided for developing 5 tourist circuits around specific themes.
- Sum of Rs 500 crore (US$ 83.40 million) for developing a Textile mega-cluster at Varanasi and six more at Bareilly, Lucknow, Surat, Kutch, Bhagalpur and Mysore.
- Pan India programme 'Digital India' to with an outlay of Rs 500 crore (US$ 83.40 million) to be launched.

Budget proposal

- National Investment and Infrastructure Fund (NIIF), to be established with an annual flow of `20,000 crores to it.
- Tax free infrastructure bonds for the projects in the rail, road and irrigation sectors.
- PPP mode of infrastructure development to be revisited and revitalised
- Atal Innovation Mission (AIM) to be established in NITI to provide Innovation Promotion Platform involving academicians, and drawing upon national and international experiences to foster a culture of innovation , research and development. A sum of `150 crore will be earmarked.
- Concerns of IT industries for a more liberal system of raising global capital, incubation facilities in our Canters of Excellence, funding for seed capital and growth, and ease of Doing Business etc. would be addressed for creating hundreds of billion dollars in value.
- (SETU) Self-Employment and Talent Utilization) to be established as Techno-financial, incubation and facilitation programme to support all aspects of start-up business. `1000 crore to be set aside as initial amount in NITI.
- Ports in public sector will be encouraged, to corporatize, and become companies under the Companies Act to attract investment and leverage the huge land resources. Sixteen new port projects are proposed to be awarded this year with a focus on port connectivity. Rs.11,635 crore will be allocated for the development of Outer Harbour Project in Tuticorin for phase I
- An expert committee to examine the possibility and prepare draft legislation where the need for multiple prior permission can be replaced by a pre-existing regulatory mechanism. This will facilitate India becoming an investment destination.
- 5 new Ultra Mega Power Projects, each of 4000 MW, in the Plug-and-Play mode, New and Renewable energy deserves a very high priority. It is proposed to take up Ultra Mega Solar Power Projects in Rajasthan, Gujarat, Tamil Nadu and Laddakh in J&K.
- Connecting each of the 1,78,000 unconnected habitations by all-weather roads. This will require completing 1,00,000 km of roads currently under construction plus sanctioning and building another 1,00,000 km of road.

Road Ahead

The new government resolves to push Infrastructure development is evident from recent Railway and Finance Budget proposals and is expected to show desired positive results in years to come.

REAL ESTATE

INTRODUCTION

The Indian realty sector has been one of the most emerging sectors out of all the developing economies. Being the second major contributor to the GDP, the Real Estate sector is also amongst the fastest growing sectors in the Indian economy. Real Estate as a matter of fact has always been an attractive investment option and with the additional support of the new rules and regulations by the government, it has resulted in significant growth in the residential & commercial Real Estate. Subdued economical conditions and high inflationary trends have negatively impacted consumer’s interest in the real estate sector. Due to high costs of construction materials and man power, the and as such almost all the players in the Real Estate industry are facing low demand and high cost pressure.

The major real estate markets like Mumbai, Bangalore, and Delhi etc. have seen increased investments. The year-end saw improvements in the investing patterns in Real Estate in India both in the residential as well as the commercial Real Estate. With National and International brands wanting to expand in India, the commercial and retail Real Estate continues to be a favoured destination for all kinds of investors.

The rising income level of the people and with people of all age groups investing in Real Estate, the residential sector is also expected to grow significantly over the next decade. The market is witnessing an increased demand of luxury housing and overall also we can expect the market size of Real Estate in India see a significant growth as well as development.

As per recent IBEF report, it is the second largest employer after agriculture and is slated to grow at 30 per cent over the next decade. It comprises four sub sectors - housing, retail, hospitality, and commercial. The growth of this sector is well complemented by the growth of the corporate environment and the demand for office space as well as urban and semi-urban accommodations.

According to a study by ICRA, the construction industry ranks third among the 14 major sectors in terms of direct, indirect and induced effects in all sectors of the economy.

Private equity (PE) funding has picked up in the last one year due to attractive valuations. Furthermore, with the Government of India introducing newer policies helpful to real estate, this sector has garnered sufficient growth in recent times.

Last year, the real estate sector got much-needed attention in the budget and got important announcement such as pass-through of taxes for REITs, changes in FDI policy and tax incentives for end consumers. The real estate sector expects more initiatives to revive the consumers’ interest and the real estate industry itself.

Market Size

The Indian construction market is expected to be the world's third largest by 2020. The market is expected to more than double to US$ 649.5 billion by 2020 from US$ 360 billion in 2010. It is currently the fourth-largest sector in the country in terms of foreign direct investment (FDI) inflows. FDI in the sector is estimated to grow to US$ 25 billion in 10 years.

As per Economic Survey of F.Y. 2014-2015 real estate has contributed about 7.8 per cent to India's gross domestic product (GDP) in 2013-2014. The market size of the sector is expected to increase at a compound annual growth rate (CAGR) of 11.2 per cent during FY 2008-2020 to touch US$ 180 billion by 2020.

According to data released by Department of Industrial Policy and Promotion (DIPP), the construction development sector in India has received foreign direct investment (FDI) equity inflows to the tune of US$ 23,874.1 million in the period April 2000-September 2014.

The Indian real estate market size is expected to touch US$ 180 billion by 2020. The housing sector alone contributes 5-6 per cent to the country's gross domestic product (GDP). Also, in the period FY08-20, the market size of this sector is expected to increase at a compound annual growth rate (CAGR) of 11.2 per cent. Retail, hospitality and commercial real estate are also growing significantly, providing the much-needed infrastructure for India's growing needs.

According to a study by a leading Real Estate consultancy firm Knight Frank, Mumbai is the best city in India for commercial real estate investment, with returns of 12-19 per cent likely in the next five years, followed by Bengaluru and Delhi-National Capital Region (NCR). Also, Delhi-NCR was the biggest office market in India with 110 million sq ft, out of which 88 million sq ft were occupied. Sectors such as IT and ITeS, retail, consulting and e-commerce have registered high demand for office space in recent times.

Investments

The Indian real estate sector has witnessed high growth in recent times with the modest rise in demand for office as well as residential spaces. The entry of major private players in the education sector has also created vast opportunities for the real estate sector. Emergence of nuclear families and growing urbanisation has given rise to several townships on the outskirts of the metro cities.

Some of the major investments proposals in this sector are as follows:

- L&T Infra Finance Private Equity (PE) plans to raise Rs 3,750 crore (US$ 606.54 million) in an overseas and a domestic fund, and launch a real estate fund.
- IDFC Alternatives Ltd has sold two of its real estate investments to PE firm Blackstone Group LP.

- Goldman Sachs plans to invest Rs 1,200 crore (US$ 194.1 million) to build a new campus to be developed in Bengaluru developed in collaboration with Kalyani Developers that can accommodate 9,000 people.
- Snapdeal has entered into a strategic partnership with Tata Value Homes to sell the latter's apartments on its e-commerce platform, which marks the first time that an e-commerce company has tied up with a real estate venture.

Government Initiatives

According to the World Bank's 'Doing Business 2015', India ranked 184th (out of 189 economies) in terms of construction permits. To tackle such position the Government of India has initiated various programme such as Sardar Patel Urban Housing Mission under which 30 million houses will be built by 2022, mostly for the economically weaker sections and low-income groups, through public-private-partnership, interest subsidy and increased flow of resources to housing sector', according to Mr M Venkaiah Naidu, Union Minister of Housing and Urban Poverty Alleviation.

The Government of India had allocated US$ 1.3 billion for Rural Housing Fund in the Union Budget 2014-15. It also allocated US$ 0.7 billion for National Housing Bank (NHB) to increase the flow of cheaper credit for affordable housing for urban poor. The government has allowed FDI of up to 100 per cent in development projects for townships and settlements.

The Government of India along with the governments of the respective states have taken several initiatives to encourage the development in the sector. Some of them are as follows:

- The Securities and Exchange Board of India (SEBI) has notified final regulations that will govern real estate investment trusts (REITs) and infrastructure investment trusts (InvITs). This move will enable easier access to funds for cash-strapped developers and create a new investment avenue for institutions and high net worth individuals, and eventually ordinary investors.
- The Telangana Real Estate Developers' Association (Treda) plans to host the Fifth Treda Property Show 2014 at Hitex Centre, Hyderabad. The show will be open to a mix of the populace, including prospective property purchasers, investors, architects and others.
- The State Government of Kerala has decided to make the process of securing permits from local bodies for construction of houses smoother, as it plans to make the process online with the launch of software called 'Sanketham'. This will ensure a more standardised procedure, more transparency, and less corruption and bribery.
- The Government of India has proposed to release the Real Estate (Development and Regulation) Bill which aims to protect consumer interest and introduce standardisation in business practices and transactions in the sector. The bill will also enable domestic and foreign investment flow into the sector.

Budget Proposals

- Proposal for Housing for 2 crore houses in Urban areas and 4 crore houses in Rural areas, the call given for ‘Housing for all’ by 2022
- Rs.22,407 crore has been allocated for housing and urban development,
- Projects which commit at least 30 per cent of the total project cost for low cost affordable housing will be exempted from minimum built up area and capitalization requirements, with the condition of three year lock-in under the FDI.
- Rationalize the capital gains regime for the sponsors exiting at the time of listing of the units of REITs and InvITs subject to payment of Securities Transaction Tax (STT).

Road Ahead

As the Indian economy grows, the real estate sector keeps benefiting. With the increase in foreign tourist arrivals (FTA) every year, there is demand for real estate in the tourism and hospitality sector. Also, with the entry of major private players in the education sector, the major cities, that is Hyderabad, Bengaluru, Mumbai, Delhi, Pune, Chennai and Kolkata are likely to account for 70 per cent of total demand for real estate in the education sector. Demand for improved healthcare facilities is also expected to provide a boost to the construction sector in the country.

ENGINEERING

INTRODUCTION

The Indian Engineering sector has witnessed a remarkable growth over the last few years driven by increased investments in infrastructure and industrial production. The engineering sector, being closely associated with the manufacturing and infrastructure sectors of the economy, is of strategic importance to India’s economy. Growth in the sector is driven by various sub-sectors such as infrastructure, power, steel, automotives, oil & gas, consumer durables etc.

India on its quest to become a global superpower has made significant strides towards the development of its engineering sector. The Indian government has appointed the Engineering Export Promotion Council (EEPC) to be the apex body in charge of promotion of engineering goods, products and services from India. India exports transport equipment, capital goods, other machinery/equipment and light engineering products such as castings, forgings and fasteners to various countries of the world.

Coupled with favourable regulatory policies and growth in the manufacturing sector, many foreign players have started to invest in the country. India recently became a permanent member of the Washington

Accord (WA) on June 13, 2014. The country now joins an exclusive group of 17 countries who are permanent signatories of the WA, an elite international agreement on engineering studies and mobility of engineers.

Capital goods and engineering turnover in India is expected to reach US$ 125.4 billion by 2017 from US$ 57.6 billion in 2012, while the electrical equipment market size is forecasted to touch US$ 105 billion by 2022 from US$ 24.2 billion in 2011. Also, the Indian telecom equipment market is expected to grow over two times by 2020.

Market size

Driven by strong demand for engineering goods, exports from India registered a double digit growth at 10.22 per cent to touch US$ 26.4 billion in June 2014 from US$ 24.02 billion in the corresponding month last year. This growth can be credited to the robust expansion in shipments of aircraft, spacecraft parts and automobiles. The second best performing sector was non-ferrous metals and metal products.

Engineering exports from India are expected to cross US$ 70 billion in FY 15 registering a growth of 15 per cent over the previous fiscal, as demand in key markets such as the US and the UAE is on the rise. Apart from these traditional markets, markets in Eastern and Central European countries such as Poland also hold huge promise. India exports its engineering goods mostly to the US and Europe, which accounts for over 60 per cent of the total exports. Recently, India's engineering exports to Japan and South Korea have also increased with shipments to these two countries rising by 16 and 60 per cent respectively.

The Indian engineering sector is divided into two major segments - heavy engineering and light engineering. Indian engineering exports stood at US$ 62.3 billion in FY14 while it registered a compound annual growth rate (CAGR) of 10.8 per cent over FY08-14. Transport equipment is the leading contributor to engineering exports accounting for 32.5 per cent of the total engineering exports in FY13, followed by machinery and instruments with a share of 26.8 per cent.

Investments

The engineering sector in India attracts immense interest from foreign players as it enjoys a comparative advantage in terms of manufacturing costs, technology and innovation.

FDI in the manufacturing sector is today on the automatic route. The manufacturing units will be allowed to sell its products through retail including E-commerce platforms without any additional approval.

The foreign direct investment (FDI) inflows into India's miscellaneous mechanical and engineering industries during April 2000 to September 2014 stood at around US$ 2,644.02 million, as per data released by the Department of Industries Policy and Promotion (DIPP). There have been many major investments and developments in the Indian engineering and design sector.

Government Initiatives

Mr Narendra Modi government's `Make in India' and " Skill India "campaign has got the attention of several in infrastructure and engineering multi nationals including GE and ThyssenKrupp, which are considering investing in the country.

Describing Germany and India as a "perfect match" for engaging in mutually beneficial collaboration in a host of areas, Mr Mark Hauptmann, political scientist and member of the German Parliament, has stressed on the time being ideal from a political and economic standpoint to further energise the bilateral relationship.

The Indian engineering sector is of strategic importance to the economy owing to its intense integration with other industry segments. The sector has been de-licensed and enjoys 100 per cent FDI. With the aim to boost the manufacturing sector, the government has relaxed the excise duties on factory gate tax, capital goods, consumer durables and vehicles. It has also reduced the basic customs duty from 10 per cent to 5 per cent on forged steel rings used in the manufacture of bearings of wind operated electricity generators.

The Government of India in its Union Budget 2014-15, has provided investment allowance at the rate of 15 per cent to a manufacturing company that invests more than US$ 4.17 million in any year in new plant and machinery. The government has also taken steps to improve the quality of technical education in the engineering sector by allocating a sum of Rs 500 crore (US$ 78.8 million) for setting up five more IITs in the states of Jammu, Chhattisgarh, Goa, Andhra Pradesh and Kerala.

Steps have also been taken to encourage companies to perform and grow better. For instance, EIL was recently conferred the Navaratna status after it fulfilled the criteria set by the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, Government of India. The conferred status would give the state-owned firm more financial and operational autonomy.

Budget Proposal

- Revival of growth and investment and promotion of domestic manufacturing for job creation.
- Government is also launching a Scheme for Faster Adoption and manufacturing of Electric Vehicles (FAME) with a proposed initial outlay of Rs.75 crore for this Scheme in 2015-16..
- Benefit of deduction for employment of new regular workmen to all business entities and eligibility threshold reduced from 100 workmen to 50 workmen for computation under Income tax Act.
- Set up 5 new Ultra Mega Power Projects, each of 4000MWs in the plug-and-play mode and The Ministry of New Renewable Energy has revised its target of renewable energy capacity to 1, 75,000 MW till 2022, comprising100,000 MW Solar, 60,000 MW Wind, 10,000 MW Biomass and 5000 MW Small Hydro will lead to increase requirement / expansion of engineering sector.

- Rate of Income-tax on royalty and fees for technical services reduced from 25% to 10% to facilitate technology inflow.
- Excise duty structure on certain goods is being restructured of Wafers for use in the manufacture of integrated circuit (IC) modules for smart cards from 12% to 6%.
- Excise duty structure on certain goods is being restructured of Pig iron SG grade and Ferro-silicon-magnesium for use in the manufacture of cast components of wind operated electricity generators to Nil, subject to certification by MNRE.
- Excise duty structure on certain goods is being restructured of Solar water heater and system from 12% to Nil without CENVAT credit or12.5% with CENVAT credit.

Road Ahead

The engineering sector is a growing market. Current spending on engineering services is projected to increase to US$ 1.1 trillion by 2020. With development in associated sectors such as automotive, industrial goods and infrastructure, coupled with a well-developed technical human resources pool, engineering exports are expected to touch US$ 120 billion by 2015.
Also, the Union Budget 2014-15 has allocated funds for several infrastructure projects which are further expected to provide a boost to the engineering sector. The industry can also look forward to deriving revenues from newer services and from newer geographies with Big Data, Cloud, M2M and Internet of Things becoming a reality.

With increasing demand for engineering goods in a number of sectors such as defence, civil nuclear and automobiles, the engineering industry in India have plenty of scope for growth in the years to come.

AGRICULTURE

INTRODUCTION

India holds the second largest agricultural land globally. Farming as an activity contributes nearly 1/6th to our National GDP and a major portion of our population is dependent on it for livelihood.

All the 15 major climates are found in India and the country also possess 45 of the 60 soil types in the world. India is the largest producer of pulses, milk, tea, cashew and jute, and the second largest producer of wheat, rice, fruits and vegetables, sugarcane, cotton and oilseeds.

The Indian agriculture sector accounts for 18 per cent of India's gross domestic product (GDP) and employs just a little less than 50 per cent of the country's workforce, the sectorial share of employment has changed over the last two decades with the share of agriculture falling. This sector has made

considerable progress in the last few decades with its large resources of land, water and sunshine. India is presently the world's largest producer of pulses and the second largest producer of rice and wheat.

The country is also the largest producer, consumer and exporter of spices and spice products in the world and overall in farm and agriculture outputs, it is ranked second. From canned, dairy, processed, frozen food to fisheries, meat, poultry, and food grains, the Indian agro industry has plenty of areas to choose for business.

Market Size

In 2013-14 India achieved a record food grain production of 264 million tonnes (MT), beating the previous year's (2012-13) 257 MT, according to data provided by Department of Economics and Statistics (DES). Also, agricultural profitability has increased over the last decade with record increases in MSPs (minimum support prices) for agricultural produce for all covered crops.

Total food grains production in India reached an all-time high of 259 million tonnes (MT) in FY13. The country is among the 10 leading exporters of agricultural products in the world, with total agricultural exports expanding at a compound annual growth rate (CAGR) of 22.3 per cent to US$ 42.37 billion over FY07-13.

Agricultural exports are expected to rise to US$ 45 billion this financial year. With government aid, there is scope for an increased use of hybrid seeds and improved farm machinery to better the yield of crops. Huge opportunities exist in introducing contract farming to agriculture as well as increasing cold storage capacity from the present level of 29 MT. The procurement target for rice during Kharif Marketing Season (KMS) 2014-15 has been finalized as 30.05 million tonnes (MT).

India is the second largest producer of sugar in the world and the government has aimed to increase the exports from 1.3 MT in 2013 to an average of 2 MT in 2014 and 2015.

Spice exports from India are expected to reach US$ 3 billion by 2016-17, on the back of creative marketing strategies, innovative packaging, strength in quality and a strong distribution network. The Indian spices market is pegged at Rs 40,000 crore (US$ 6.46 billion) annually, of which the branded segment accounts for 15 per cent.

India is the largest producer of milk since 1998 and accounts for about 17 per cent of the world's milk production. The average growth in milk production in the country in the last decade was 4.2 per cent as against the world average of 2.2 per cent, indicating a healthy trend.

Investments

The Indian agricultural services and the agricultural machinery sectors have cumulatively attracted foreign direct investment (FDI) equity inflows to the tune of US$ 365.79 million in the period April 2000-September 2014, according to the Department of Industrial Policy and Promotion (DIPP).

Prompted by the Indian government's initiatives, there have been various investments in the Indian agricultural sector. The major investments and developments in agriculture in the recent past are as follows:

- Metahelix Life Sciences has launched a new variety of maize hybrid seeds for improved productivity.
- The International Crops Research Institute for Semi-Arid Tropics (ICRISAT) and Ramoji Film City (RFC) has signed a MoA (Memorandum of Agreement) on Sustainable Management of Water Resources and Sustainable Agriculture Development through the establishment of an Agriculture Theme Park at RFC.
- Tata Global Beverages (TGB) has initiated research and development (R&D) under Project Sustainable Plant Protection Formulation (S-PPF) to evaluate the viability of biological or non-pesticidal methods for plant protection of tea crops. The project is a collaborative effort between TGB, Rallis and Tata Chemicals.
- ICRISAT plans to invest US$ 5 million in upgrading research infrastructure in Africa. The funds will also be used for building scientific skills in sub-Saharan Africa.

Government Initiatives

Central Government recognizes and discharges its responsibility to assist State Governments in overall development of Agriculture sector. Effective policy measures are in position to improve agricultural production and productivity and address problems of farmers. State Governments are also impressed upon to allocate adequate funds for development of agriculture sector in State plan, as well as initiate other measures required for achieving targeted agricultural growth rate and address problem of farmers.

- The National Dairy Development Board (NDDB) has announced 42 dairy projects with a financial outlay of Rs 221 crore (US$ 35.47 million) in order to boost milk output in the country and increase per animal production of milk.
- Israel has increased its cooperation with Indian agriculture, helping farmers multiply their income with better practices, yields and choosing the right crops or vegetables in a success story that is boosting bilateral ties that have strengthened under the Government of Mr Narendra Modi, Prime Minister of India.
- The Government of Telangana has allocated Rs 4,250 crore (US$ 682.31 million) for the first phase of farm loan waiver scheme. The scheme is expected to benefit 3.6 million farmers who had taken loans of Rs 100,000 (US$ 1,605.46) or below before March 31, 2014.
- The Government of India plans to launch a new insurance scheme to protect farmers and their incomes against production and price risks. The new insurance scheme is expected to encourage farmers towards crop diversification.

- The Ministry of Agriculture, Government of India, has signed a Memoranda of Understanding (MoU) with 52 countries to provide better agricultural facilities for cooperation in the field of agriculture and allied sectors.
- India and Bhutan plans to strengthen strategic cooperation in the field of agriculture and allied sectors.
- The Department of Agriculture and Cooperation under the Ministry of Agriculture is the nodal organization responsible for the development of the agriculture sector in India. Under it, several other bodies such as the National Dairy Development Board (NDDB) work for the development of the other allied agricultural sectors.
- Furthermore, Dairy Vision 2025 has been planned to take stock of the current situation across the dairy value chain and evolve strategies for increasing productivity and profitability of farmers.

Budget Proposals

Government propose to continue, Interest Subvention Scheme for short term crop loans, the banks are extending loans to farmers at a concessional rate of 7%. The farmers get a further incentive of 3% for timely repayment.

Since independence only Indian Agricultural Research Institute, Pusa has been at the forefront of research in this area has been established .Government will establish two more such institutions of excellence on similar pattern in Assam and Jharkhand with an initial sum of Rs 100 crore in the current financial year, additionally an amount of Rs. 100 crores is being set aside for setting up an “Agri-Tech Infrastructure Fund”. It is also proposed to establish Agriculture Universities in Andhra Pradesh and Rajasthan and Horticulture Universities in Telangana and Haryana with initial sum of Rs.200 crores has been allocated for this purpose.

Major steps proposed by the Finance minister in Budget 2015-16 to address the two major factors critical to agricultural production, that of soil and water.

- Full support is to be provided to ‘Paramparagat Krishi Vikas Yojana’
- ‘Pradhanmantri Gram Sinchai Yojana’ to provide ‘Per Drop More Crop’.
- Rs.5,300 crore to support micro-irrigation, watershed development and the ‘Pradhan Mantri Krishi Sinchai Yojana’. States are also urged to chip in.
- Rs.25,000 crore in 2015-16 to the corpus of Rural Infrastructure Development Fund (RIDF) set up in NABARD; Rs.15,000 crore for Long Term Rural Credit Fund; Rs.45,000 crore for Short Term Co-operative Rural Credit Refinance Fund; and Rs.15,000 crore for Short Term RRB Refinance Fund.
- Target of Rs.8.5 lakh crore of agricultural credit during the year 2015-16.
- Focus on improving the quality and effectiveness of activities under MGNREGA.

- Need to create a National Agriculture Market for the benefit farmers, which will also have the incidental, benefit of moderating price rises. Government to work with the States, in NITI, for the creation of a Unified National Agriculture Market.
- Services of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables are being exempted from Service Tax.
- Exemption to transportation of ‘food stuff’ by rail, or vessels or road will be limited to transportation of food grains including rice and pulses, flours, milk and salt only. Transportation of agricultural produce is separately exempt which would continue under service Tax.
- Benefits of Jan Dhan and Insurance proposals to help marginal farmers and for labourers.

Road Ahead

The government's liberal FDI policies have opened the doors for several foreign companies to set up operations in India. Also, there is scope for the use of genetically modified crops to increase the yield in farms. The 12th Five-Year Plan's estimates of expanding the storage capacity to 35 MT and the target of achieving an overall growth of four per cent will help in improving the growth of the agriculture sector.

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