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## EDITORIAL

### POWER REFORMS – HITTING ROAD BLOCK

The Electricity Act, 2002, a brainchild of Hon'ble Mr. P. Uresh Prabhu, FCA, former Union Minister of Power, Government of India, was a historical step in the history of modern India. The Act not only enabled privatisation of existing Electricity Boards but also opened the doors of promoting for private initiative in electricity generation, electricity transmission and electricity distribution.

A large number of private initiative have already taken shape and equally large number are in the process for setting up large capacities of electricity generation as well as transmission. The Government has also freely permitted power trading. The experience of Delhi privatizing distribution of power has significantly improved the availability and quality of power. The black out

running into number of days and number of hours are slowly becoming the things of past. The growth and improvement potential have, however, not been harnessed to its adequate level. Still the required capital investment for upgrading distribution infrastructure is significantly lacking and additional capital investment has to be immediately made. The continuous availability of good quality power is still an issue.

#### HIGH BILLING

The very important aspect, which requires attention of Electricity Regulatory Authorities as well as Government, is the common complaint of wrong metering in an organized manner. A large number of consumers have complained that their meters, more particularly the new electronic

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### PROFESSIONAL DEVELOPMENT - HOW TO DO IT?

The editorial in the Chartered Accountant World July, 2005 titled as "THE CHARTERED ACCOUNTANT FIRMS TOWARDS A NEW HORIZON" has evoked a very good response from the profession. The task force headed by Mr. Vinod Jain, FCA has received a very good response from all across the country including small towns, where Chartered Accountants both in industry as well as in practice have conveyed their sincere desire to harness new professional opportunities in a society which is both qualitatively and quantitatively different from the earlier economy. The task force is actively working on responding to all Chartered Accountants who have approached the society for professional development, harnessing opportunities, creation of large firm and to achieve the dream of growing and prospering.

The profession is realising increasing client expectations of requirement of -

- Expertise;
- Efficiency;
- Experience;
- Effectiveness;
- Excellence;
- Standard delivery on multiple locations coupled with ethical and professional standards.

It is important to remove the various growth barriers. The turnover and profitability of business around us is increasing rapidly, the business confidence index is at its peak in last 10 years, but the Chartered Accountant Firm, a large number of them are still not having adequate advantage of this mammoth opportunity growing around us. Are we changing with changing time?

We, as Chartered Accountants, contribute towards actualization

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#### IMPORTANT DECISIONS

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## LATEST IN FINANCE

### 1.0 AMENDMENTS UNDER BANKING ACT

The union cabinet approved the following amendments to the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 / 1980:

- Increase the number of full-time directors from two to four;
- Restrict the number of shareholder directors at three;
- Enhance flexibility to the boards of banks and improve corporate governance.

### 2.0 BPO BILLING RATES CRASH BY 60%

Severe competition has led to a crash in billing rates in the BPO industry. The rates have slipped by as much as 60% since the industry boomed in 1999-2000. The impact has been particularly severe in voice-based processes where rates are down from \$12-14 per hour to as low as \$6-8 per hour.

### 3.0 STEPS TO PREVENT MISUSE OF BAD LOANS BY FOREIGN ARCS

The Government and RBI are set to incorporate safeguard clauses to prevent abuse in terms of use of real estate holdings and round tripping when foreign direct investment is allowed in the Asset Reconstruction Companies (ARCs).

The government has allowed the setting up of ARCs, which acquire non-performing loans or bad loans from lenders at a discount and then recover the loans. The huge NPAs hinder lending activity of banks and, therefore, ARCs help banks free their balance sheets by taking over the bad loans. However, considering the resources which ARCs will need to acquire such loans, private investors, especially those overseas, are seen as candidates who can fulfill the need to bring the capital.

### 4.0 FINMIN TO CLEAR 9.5% EPF INTEREST RATE

Almost two months after the central board of trustees (CBT) of the employees provident fund organisation (EPFO) approved a 9.5% interest rate for 2004-05, the finance ministry is yet to ratify the decision. Consequently, close to four crore subscribers of the EPF are yet to be paid the interest.

### 5.0 NBFCs TARGET PUBLIC BANKS' BAD LOANS

Non-banking finance arms of Citigroup, Standard Chartered, Rabo Finance, DSP Merrill Lynch and Kotak Mahindra are queuing up to buy bad loans. This has been triggered by the RBI circular issued in April, enabling sale of bad loans between Banks, Financial Institutions and NBFCs.

### 6.0 LOAN SYNDICATION MARKET UPBEAT DESPITE HIGH RATES

Despite hardening of interest rates, the sentiments in Indian loan syndication market have remained high. The corporate are increasingly tapping the loan syndication route, which is quite evident by the fact that the loan syndication market is expected to witness a demand of Rs 10,000 crore in the next quarter.

### 7.0 INVESTOR CAN NOW HOLD GOLD IN DEMAT FORM

The Indian investor, known for his interest for gold, can now hold the yellow metal in the dematerialised form. In terms of the proposal favored by Forward Markets Commission, Gold between 100 gm and 1 kg can be bought from a commodity exchange and at the time of settlement, the investor can either demand physical gold from the exchange or hold it in a demat account with the custodian of the exchange.

At present, investors can only take exposures in gold futures through the commodity exchange, which is very different from actually buying gold, and then holding it in demat instead of parking it in a vault. Investors can use member brokers of the Mumbai-based Multi commodity exchange (MCX) for the said investment.

### 8.0 RBI NOT TO ISSUE URBAN CO-OPERATIVE BANK LICENCES

It has been decided that:

- RBI won't issue further licences for UCBs till new framework is in place;
- RBI wants to introduce a system of continuous supervision through enhanced use of technology;
- RBI seeks to enhance professionalism & improve quality of governance in UCBs;
- RBI aims to put in place a mechanism that addresses problems of dual control
- RBI to provide training for skill Upgradation

### 9.0 51% EQUITY REQUIRED TO GET VIABILITY GAP FUNDING

Private companies coming up with mega projects may have to bring in minimum 51% equity in order to avail the proposed 'viability gap funding' scheme for which Government has earmarked Rs.1500 crore this fiscal. Subject to cabinet approval, the guidelines for the viability gap funding scheme is likely to be put in place by the end of this month.

### 10.0 CRISIL TO RATE BANK LOAN DEFAULTERS

Banks will now be in a position to gauge the prospects of recovering loans from defaulting companies through an external agency. Credit rating agency Crisil has launched a new product, bank loan rating, which will provide an opinion on the extent of recoverability of the loan post defaults. The rating agency will consider the nature of loan agreement, nature of security pledged with the bank and other payment protection provided specifically to the lenders.

As per Crisil, this rating will support Indian Banks in the implementation of the Basel II accord, by providing an independent opinion on loan specific risk. Banks for, risk pricing, capital allocation and portfolio management can use it.

However, the ratings will not be made public. A corporate, which seeks this rating, can share it with its bankers. In case a bank desires to get loans given to its borrower rated on the 'bank loan rating' model, Crisil will provide the rating only after receiving the consent of the borrower.



### 11.0 COMMODITY HEDGING

At present, Reserve Bank, on case by case basis, permits residents in India to enter into contracts in commodity exchanges or markets outside India to hedge the price risk on import/export of a commodity, subject to certain terms and conditions. It has now been decided to delegate the authority to select commercial bank ADs to grant permission to companies listed on a recognized stock exchange to hedge the price risk in respect of any commodity (except gold, silver, petroleum and petroleum products) in the international commodity exchanges/markets. Minimum norms which are required to be satisfied by the ADs are:

- i) Continuous profitability for at least three years;
- ii) Minimum CRAR of 9%;
- iii) Net NPAs at reasonable level but not more than 4% of net advances;
- iv) Minimum net worth of Rs.300 crore.

ADs may grant permission to corporates only after obtaining approval from the Reserve Bank. Reserve Bank retains the right to withdraw the permission granted to the bank, if considered necessary.

*(Source: A.P./DIR/03 dt. July 23, 2005)*

### 12.0 RBI CLEARS ONLINE TRADING IN G-SECS

RBI has finally decided to introduce an electronic order matching trading platform for government securities on the negotiated dealing system (NDS). This will be in addition to the present facility of reporting and settlement on NDS. The NDS order matching (NDS-OM) segment has been formally launched on August 1, 2005.

### 13.0 RBITIGHTENSECBNORMS TO CURB LAUNDERING

RBI has tightened external commercial borrowing (ECB) regulations to curb money laundering. RBI has notified following new norms on lenders to ECBs and parking of borrowing proceeds abroad:

- Allowed non-banking finance companies to tap the foreign currency convertible (FCCB) market provided they have a minimum net worth of Rs 500 crore.
- Corporates have also been allowed to prepay ECBs up to \$200 million without prior RBI approval as against the \$100 million ceiling earlier.
- Overseas organizations planning to extend ECBs will have to furnish a certificate of due diligence from an overseas bank, which complies with host-country regulations and adheres to financial action task force guidelines.
- The certificate of due diligence should say:
  - (i) the lender maintains an account with the bank for at least two years,
  - (ii) the lending entity is organized as per local law and held in good esteem by the business/local community,
  - (iii) that there is no criminal action pending against it.
- Individual lenders have to obtain a certificate of due diligence from an overseas bank indicating that the lender maintains an account with the bank for at least two years.
- Individual lenders from countries where banks are not required to adhere to know your customer guidelines are not permitted to extend ECBs.
- For a 'foreign equity holder' to be eligible as 'recognised lender' under the automatic route would require minimum holding of equity in the borrower's company. The norms are:
  - (i) ECB up to \$5 million – minimum equity of 25% held directly by the lender,
  - (ii) ECB more than \$5 million – minimum equity of 25% held directly by the lender

and debt-equity ratio not exceeding 4:1 (i.e.-the proposed ECB should not exceed four times the direct foreign equity holdings).

- FCCB's can be issued by housing finance companies satisfying the following criteria:
  - (i) the minimum net worth during the previous three years shall not be less than Rs 500 crore,
  - (ii) a listing on the BSE or NSE,
  - (iii) minimum size of FCCB is \$100 million,
  - (iv) the applicant should submit the purpose/plan of utilization of funds.
- ECB proceeds parked overseas can be invested in deposits or certificate of deposit or other products offered by banks rated not less than AA(-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's, deposits with overseas branch of an authorized dealer in India; and treasury bills and other monetary instruments of one year maturity having minimum rating as above.

### 14.0 GUIDELINES ON PURCHASE/SALE OF NPAs

In order to increase the options available to banks for resolving their non performing assets and to develop a healthy secondary market for non-performing assets, where securitisation companies and reconstruction companies are not involved, it has been decided by RBI to issue necessary guidelines, as prescribed to banks on purchase / sale of Non-Performing Assets. Since the sale/purchase of non-performing financial assets under this option would be conducted within the financial system the whole process of resolving the non performing assets and matters related thereto has to be initiated with due diligence and care warranting the existence of a set of clear guidelines which shall be complied with by all entities so that the process of resolving non-performing assets by sale and purchase of NPAs proceeds on smooth and sound lines.

*(Source: RBI/2005-06/54 dt. 13.07.2005)*

**INMAGS**

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

adv.

**15.0 SETTLEMENT OF CLAIMS OF DECEASED DEPOSITORS**

The following instructions are being issued to facilitate expeditious and hassle-free settlement of claims on the death of a depositor:

**1. Access to balance in Deposit Accounts**

**(A) with survivor/nominee clause**

The payment of the balance in the deposit account to the survivor(s)/ nominee of a deceased deposit account holder represents a valid discharge of the bank's liability provided:

- (a) the bank has exercised due care and caution in establishing the identity of the survivor(s)/ nominee and the fact of death of the account holder, through appropriate documentary evidence;
- (b) there is no order from the competent court restraining the bank from making the payment from the account of the deceased; and
- (c) it has been made clear to the survivor(s)/ nominee that he would be receiving the payment from the bank as a trustee of the legal heirs of the deceased depositor.

**(B) without the survivor/nominee**

Banks are advised to adopt a simplified procedure for repayment to legal heir(s) of the depositor keeping in view the imperative need to avoid inconvenience and undue hardship to the common person. In this context, banks may, keeping in view their risk management systems, fix a minimum threshold limit, for the balance in the account of the deceased depositors, up to which claims in respect of the deceased depositors could be settled without insisting on

production of any documentation other than a letter of indemnity.

**2. Premature Termination of term deposit accounts**

In the case of term deposits, banks are advised to incorporate a clause in the account opening form itself to the effect that in the event of the death of the depositor, premature termination of term deposits would be allowed. The conditions subject to which such premature withdrawal would be permitted may also be specified in the account opening form. Such premature withdrawal would not attract any penal charge.

**3. Treatment of flows in the name of the deceased depositor**

In this regard, banks could consider adopting either of the following two approaches:

- The bank could be authorized by the survivor(s)/ nominee of a deceased account holder to open an account styled as 'Estate of Shri \_\_\_\_\_, the Deceased' where all the pipeline flows in the name of the deceased account holder could be allowed to be credited, provided no withdrawals are made.
- OR The bank could be authorized by the survivor(s)/ nominee to return the pipeline flows to the remitter with the remark "Account holder deceased" and to intimate the survivor(s)/ nominee accordingly. The survivor(s)/ nominee / legal heir(s) could then approach the remitter to effect payment through a negotiable instrument.

**4. Access to the safe deposit lockers**

For access to the contents of the locker / safe custody article on the death of a locker hirer/ depositor of the article, the banks are advised to adopt generally the foregoing approach, *mutatis mutandis*, as indicated for the deposit accounts.

**5. Time limit for settlement of claims**

Banks are advised to settle the claims in respect of deceased depositors and release payments to survivor(s)/ nominee(s) within a period not exceeding 15 days from the date of receipt of the claim subject to the production of proof of death of the depositor and suitable identification of the claim(s), to the bank's satisfaction.

(Source: RBI/2005-06/48 dt. 12.07.2005)

**16.0 TOUGH TO FIGURE OUT THE CHINESE ECONOMY**

Beijing, China has finally ended the peg to the US dollar and let the yuan float against a basket of currencies. It is expected that the basket will be made up of the Euro, yen and other Asian currencies as well as the dollar. China's currency immediately strengthened by 2.1% to 8.11% per US dollar. But as per the people's bank of china, it will continue to maintain a trading band of 0.3%.

**17.0 ARCIL NPA BUYOUT AT RS 16,500 CR.**

Asset Reconstruction Company of India (Arcil)'s buyout of non-performing asset amounting to Rs 16,500 crore till the end of June 2005 in following manner:

Bank/FI	Total Dues (in crore)	No. of Cases
ICICI Bank	9,028	136
State Bank of India	2,634	189
IDBI	1,334	20
IFCI	1,144	9
Punjab National Bank	842	40
Bank of India	431	7
Canara Bank	192	6
Exim Bank	155	4
Others	4208	72
<b>Total</b>	<b>16,492</b>	<b>483</b>

**AUDIT**

**1.0 ACCOUNTING STANDARDS**

The Council of ICAI has clarified that those foreign companies which are incorporated and listed outside and which are required to prepare their financial statements as per the India GAAP, will be treated as Level I company.

In view of this, the Indian subsidiaries of such foreign companies would also be considered to be a Level I enterprise for the reason that it is a subsidiary of another Level I enterprise. Being a level I enterprise, all the accounting standards will apply to the Indian subsidiary company.

**1.0 FDI IN PETROLEUM SECTOR AND AIR TRANSPORT SERVICES**

The foreign direct investment (FDI) limit in the Petroleum sector and Air Transport Services (Domestic Airlines) under the Automatic Route, has been further liberalised by Government of India.

Accordingly, FDI upto 100% has been permitted under the Automatic Route in Petroleum Product Marketing, Oil Exploration in both small and medium sized fields and Petroleum Product Pipelines.

In Air Transport Services (Domestic Airlines) sector, FDI upto 100% has been permitted under the Automatic Route by Non-Resident Indians (NRIs) and upto 49% by others. However, no direct or indirect equity participation by foreign airlines would be allowed.

*(Source: RBI/2005-06/83 dt. 29.07.2005)*

**2.0 FOREIGN NATIONALS CAN BECOME DIRECTOR WITHOUT APPROVAL**

The Reserve Bank of India has clarified that its approval is not required for the appointment of a foreign national as a director on the board of directors of an Indian Company under FEMA, 1999.

**3.0 EXPENSES CAN BE REIMBURSED TO FOREIGN DIRECTOR WITHOUT APPROVAL**

RBI also clarified that it has granted Indian companies general powers to make payment in rupees towards sitting fees or commission or remuneration and travel expenses to and from and with in India to its non-whole time director, who is resident outside India, and is on a visit to India for company's work.

**4.0 GIFT OF SHARES TO PERSON RESIDENT OUTSIDE INDIA REQUIRE RBI APPROVAL**

It has been decided by RBI to amend the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) in the manner so that in case a person resident in India proposes to transfer any security to a person resident outside India, then the same required prior approval of Reserve Bank in following manner:

(a) any security, by way of gift, required making of an application to the reserve bank for its approval.

(b) The reserve bank may grant such approval on being satisfied of the following conditions:

- i) The donee is eligible to hold such a security under schedules 1, 4 and 5 of said regulations.
  - ii) The gift does not exceed 5% of the paid up capital of the Indian company/ each series of debentures/ each mutual fund scheme.
  - iii) The applicable sectoral cap/foreign direct investment limit in the indian company is not breached.
  - iv) The donor and the donee are relatives as defined in section 6 of the companies Act, 1956.
  - v) The value of security to be transferred by the donor together with any security transferred to any person residing outside india as gift in the calender year does not exceed the rupee equivalent of US D 25,000.
  - vi) Such other conditions as considered necessary in public interest by the Reserve Bank.
- (c) The application for approval shall contain the following information/ documents.
- i) Name and address of the donor and the donee.
  - ii) Relationship between the donor and the donee.
  - iii) Reasons for making the gift.

- iv) In case of government dated securities and treasury bills and bonds, a certificate issued by a chartered accountant on the market value of such securities.
- v) In case of units of domestic mutual funds and units of money market mutual funds, a certificate from a chartered accountants on the value of such securities according to the guidelines issued by the securities & exchange board of india or the erstwhile CCI with regard to listed companies and unlisted companies respectively.

*(Source: FEMA 137/2005- RBI dt. 22.07.2005)*

**5.0 FTA-VALUE ADDITION NORMS**

Hectic lobbying by India Inc. for enhanced protection from imports and equally strong pressure from foreign companies, which are seeking higher market access, has let the government to consider two levels of rules of origin in future free trade agreements (FTAs). The various norms proposed are:

- Planning Commission had strongly pitched for flexible rules of origin
- Minimum value addition stipulation may be cut to 30%
- Sensitive goods would be subject to more stringent rules of origin
- Singapore FTA is considered to be too harsh

**6.0 FCNR (B) DEPOSIT SCHEME**

On a review of the recommendations made by the Technical Committee on Forex markets and feed back received so far, it has been decided by RBI:

- (a) to allow banks to accept FCNR (B) deposits denominated in Canadian dollars and Australian dollars in addition to the existing four currencies viz., US dollars, Pound Sterling, Euro and Yen and
- (b) to allow banks to accept FCNR (B) deposits upto a maximum maturity period of five years.

All other terms and conditions applicable to the FCNR(B) deposit scheme would remain unchanged.

*(Source: RBI No. 2005-06/ 80 dt. 26.07.2005)*





### 1.0 TAKE INFORMED DECISIONS: FM & SEBI

Even as the stock market recently scaled new highs, there was some advice for small investors from unexpected quarters, finance minister P. Chidambaram cautioned investors against exhibiting undue exuberance when markets are surging.

Even Sebi Chairman M. Damodaran has welcomed the bull run in stock markets, but cautioned investors to take informed decisions for getting a reasonable return from their investments.

### 2.0 CENTRAL LISTING BODY FIGHTS REDUNDANCY

The Central Listing Authority (CLA) is being given a quiet burial. While the members of the CLA await Sebi response on going ahead with making the CLA functional, Sebi Chief M. Damodaran expresses that CLA does not have much role to play anymore.

### 3.0 SEBI ASKS STOCK EXCHANGES TO SWOOP ON BLOCK DEALS

SEBI has asked stock exchanges to clamp down on block deals that appear to be done to distort prices of stocks.

In a notice to the Bombay Stock Exchange and the National Stock Exchange, Sebi said, "Media reports allege that these transactions have been executed with an ulterior motive to distort the fair price discovery in such scripts. Such market practices do not appear to be in conformity with the guidelines."

The market regulator has asked SEs to inform their members and listed companies that such type of transactions are under the regulatory purview and appropriate punitive action would be taken against those violating the regulatory provisions.

### 4.0 PERSONS MAKING STOCK RECOMMENDATIONS IN MEDIA DISCLOSE HOLDINGS - SEBI

Now, persons making stock recommendations in the media have to disclose their holdings on the scrips being recommended.

The Securities and Exchange Board of India has advised that media companies have to ensure that persons making investment advices disclose their holdings as well as that of their dependent family members and their employer in the particular company about which advice is being made.

### 5.0 SEBI TO INTRODUCE NEW MARKET SURVEILLANCE SYSTEM

Market regulator Sebi will introduce a comprehensive integrated market surveillance system (IMSS) by February-March as part of efforts to keep a better vigil on the sudden surge or fall in share prices. IMSS is expected to generate alerts that will help Sebi to identify and detect serious market violations such as market manipulations, insider trading and other types of frauds that undermine.

### 6.0 SEBI TELLS EXCHANGES TO PRESERVE DOCUMENTS

SEBI has recently directed all stock exchanges to maintain and preserve the originals of specified books of account and documents till investigations by enforcement agencies reach their logical conclusion. In a separate notification to Central Depository Services Ltd. (CDSL), the regulator also advised depositories to make sure that their constituents keep originals of such specified records.

At present, in terms of rules 14 and 15 of SCRR, 1957, every recognized stock exchange and its members are required to maintain and preserve the specified books of account and documents for a period ranging from two years to five years.

As per regulation 18 of Sebi (Stock Brokers & Sub-brokers) Regulations, 1992 (Stock Broker Regulations) every stockbroker shall preserve the specified books of account and other records for a minimum period of five years.

## SERVICE TAX

### 1.0 GOVT. ISSUES INSTRUCTIONS ON SERVICE TAX CHANGES

The Government has issued detailed instructions explaining the scope of new services, extended scope of existing taxable services and other legislative changes made in the Finance Act, 2005. The objective of the official release is to provide guidance and to facilitate understanding of the changes made in the Union Budget.

### 2.0 MANPOWER ON TEMPORARY BASIS MADE TAXABLE

The Finance Act, 2005 has made the service relating to temporary supply of manpower liable to service tax w.e.f 16th June, 2005. Ministry of Finance (MoF) has clarified that service tax is to be charged on the full amount of consideration for the supply of manpower, whether full time or part time. MoF has also clarified that where salaries are directly paid to the individual and not to the supplier or the contributions are paid to the respective authority, these amounts are still part of the consideration and hence form part of the gross amount.

### 3.0 SERVICE TAX ON GOODS TRANSPORT AGENCY

MoF has clarified that to avail the abatement of 75%, where the liability for tax payment is on the consignor or the consignee, a declaration should be taken from the goods transport agency in the consignment note that neither credit on inputs or capital goods used for the provision of service has been taken nor the benefit of Notification No. 12/2003-Service Tax has been taken by them and it may suffice for the purpose of availment of abatement.

*(Source: F. No. B1/6/2005-TRU dt. 27.07.2005)*

### 4.0 SERVICE TAX ON MEMBERSHIP OF CLUBS

It has been clarified that clubs formed and registered as a company or society under the provisions of Companies Act and Societies Registration Act, which provides services, facilities or advantages for a subscription, or any other amount to its members is liable to pay service tax.

*(Source: F. No. B1/6/2005-TRU dt. 27.07.2005)*



# IMPORTANT DECISIONS

## IMPORTANT DECISIONS

### 1.0 TAKEOVER CODE

SEBI (Substantial Acquisitions and Takeover) Regulations, 1997-Regulation 3(4) – SEBI Act, 1992 – Section 15J – Disclosures made but not in prescribed format and with out prescribed fee – Appellants themselves had remedied the deficiencies later – Penalty imposed – Whether correct – Held No. – *Rahul Holdings (P) Ltd. V. SEBI [(2005) 60 SCL 600(SAT)]*.

### 2.0 TAX LAW JUDGEMENT

#### Additional evidence before Commissioner of Income tax (Appeals)

Commissioner of Income tax (Appeals) cannot admit additional evidence filed by assessee without confronting or calling comments from Assessing Officer under Rule 46A of the Income tax Rules, 1962. It was so decided by Hon'ble Income Tax Appellate Tribunal, New Delhi in the matter of *ITO Vs Enn Enterprises P Ltd. (146 Taxman 16)*

#### ACKNOWLEDGEMENT

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

1. **D.C. Garg, FCA** (dchgarg@inmacsindia.com) for contribution in the field of Taxation.
2. **Rajesh Gosain, ACA** (rajeshgosain@inmacsindia.com) for contribution in the field of Service Tax, Audit and Central Excise.

## CONGRATULATIONS

We congratulate our members having brought out a comprehensive and useful books.

**Title of the Book**  
"FRINGE BENEFIT TAX AND BANKING CASH TRANSACTION TAX - THE COMPLETE SOLUTION"



Mr. Pramod Jain, FCA

**Title of the Book**  
"PRACTICAL GUIDE FOR PREVENTION OF FRAUDS IN BANKS"



Mr. D.P. Gupta, FCA



Mr. R.K. Gupta, FCA

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### POWER REFORMS .....

meters installed by the 2 Distribution Companies with higher speed are not providing correct metering and actually inflating the bill substantially. There are allegations that meter manufacturers are mandated to provide for 20% to 100% inflated metering. These accusations against the private sector distribution companies require a thorough analysis. It is possible that a large section of complainants could be having ulterior motives but the Electricity Consumers Task Force of All India Chartered Accountants' Society has observed that there is great merit in the complaints of a large section of the electricity consumers.

The Government of Delhi is to take immediate and fast action. The entire government machinery including Central Bureau of Investigation and Delhi Police, Central Electricity Authority, Electricity Audit Agencies and the entire paraphernalia of the Government needs to be activated to examine the truth.

The Hon'ble Chief Minister of Delhi cannot rest in peace with only all promises and assurances. She needs to act or quit. Any privatisation exercise or liberalisation has to be coupled with regulation, efficiency. There cannot be any compromise.

The message is loud and clear that the Indian consumer will not tolerate any mischievous and fraudulent or inefficient delivery of service.

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### PROFESSIONAL DEVELOPMENT .....

of dreams and vision of the entrepreneur. What is required at our own end for our own professional firms needs an analysis. All India Chartered Accountants' Society has decided to continue through this column to keep on giving a regular advice. The task force on the other hand will work on specific cases based on references received by us. You may please feel free to write to us at [aicas@vsnl.net](mailto:aicas@vsnl.net) & [vinodjain@inmacsindia.com](mailto:vinodjain@inmacsindia.com) (Attn. Professional Development Task Force).

The important growth contributors to be addressed include –

- Knowledge Management;
- Building capacities within the firm to have diversified and expert knowledge;
- Increasing professional resources, data base and infrastructure;
- Adaptability to technological and other changes;
- Geographical spread.

The harnessing of growth contributors successfully requires a commitment with a long-term vision, a concrete plan, necessary organization of resources, adequate staffing & controlling and monitoring the growth. The growth will be organic. The growth can also be inorganic by merger, acquisition, networking and joining hands with open mindset. The biggest barriers in the growth of our firm have been our concern for the trade name or the so called goodwill. It is very important to build brand and goodwill around it. How we can grow the size of the brand and the significance of goodwill and transforming the same into multiple growth of our top line i.e. gross revenue is something to be planned, strategize, organized and achieve.

It is important to improve business processes, delivery mechanism, and approach towards clients and all the more ensuring towards world-class professional delivery. All India Chartered Accountants' Society has committed to provide guidance, support and facilitate the growth of Indian Chartered Accountants. If you have some good idea or some issues or some problems or some proposition or suggestions, please share with us at [aicas@vsnl.net](mailto:aicas@vsnl.net)

## TAXATION

### 1.0 DERIVATIVE TRADING – BOURSES AWAIT CBDT APPROVAL

According to the recently issued CBDT notification, the conditions for recognition as a stock exchange dealing in derivatives include the approval of the market regulator Sebi and compliance guidelines. The exchange will have to ensure that information about the client (including unique client identity number and PAN) are duly recorded and stored in its database. Further, the exchange will have to maintain a complete audit trail of all transactions in cash and derivatives market for a period of 7 years. Transactions once registered in the system cannot be erased and modified. BSE and NSE will have to make the application to the CBDT along with documents showing up-to-date rules, bye-laws and trading regulations.

### 2.0 BANK-TO-BANK DEALS EXEMPT FROM TAX

The government has decided to exempt bank-to-bank transactions from the purview of banking cash transaction tax (BCTT) with immediate effect.

### 3.0 PANEL AGAINST SETTING UP OF NTT

The Government's proposal to set up a national tax tribunal (NTT) has not found favour with a parliamentary panel. The committee, during its deliberations, expressed doubts as to whether setting up of the NTT alone will reduce the pendency of tax related cases. The committee felt that establishing the NTT would entail a huge expenditure in terms of salary and infrastructure. Also, since the writ jurisdiction of the High Court would not be taken away, the party who is aggrieved by an order of the NTT can invoke this jurisdiction. This would result in delay in final disposal of cases, which would defeat the very purpose of the Bill.

### 4.0 NORMS FOR SCRUTINY ISSUED BY INCOME TAX DEPARTMENT

Income tax Department has developed a score based scrutiny system. Now cases for scrutiny will be selected based on the high scoring entries in your return. Few parameters for securing score will be Short Term Capital Gain, Income claimed as exempt, higher deductions claimed under chapter VIA, Heavy payment of advance tax and TDS, heavy income tax refund etc.

The Central Board of Direct Taxes (CBDT) will decide the ratio and relative score for the parameters. The computer-based system will assign a score to every return and arrange them in descending order of score, the highest score will be picked up. It has been decided that 15 cases will be selected for each assessing officer in 8 major cities including four metros. For other selected 52 cities, 50 cases will be assigned to each assessing officer.

### 5.0 NORMS FOR SET OFF OF PROFIT & LOSS FROM DERIVATIVES

CBDT has cleared for a tax payer to set off for tax purposes, his profit and losses in 'option' and 'futures' (derivative instruments) contracts in stocks, against gain and losses from other sources on income.

### 6.0 REVISED DTAA WITH SINGAPORE

The Government of India has notified the revised Double Tax Avoidance Agreement (DTAA) with Government of Singapore which comes in to effect from August 1, 2005. According to the new agreement capital gains tax benefits are available on the same lines with those pact with Mauritius. As per the agreement, a citizen from Singapore making investment in India will not have to pay capital gains tax in India. A similar exemption will be available to Indian citizens investing in Singapore. DTAA also states the tax on royalties and fees for technical services accruing to a resident of other country will not exceed 10%.

#### EDITOR

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

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